



Minnesota Sentencing Guidelines Commission Approved Modifications to the Sentencing Guidelines

July 20, 2006

I. Approved Modifications Associated With New and Amended Crimes Passed by the Legislature During the 2006 Legislative Session – Effective August 1, 2006

A. The Commission made the following modifications in Section V. OFFENSE SEVERITY REFERENCE TABLE:

- III Escape from Civil Commitment – 609.485, subd. 4 (a) (5)

- II Failure to Control a Regulated Animal, resulting in great bodily harm or death – 346.155, subd. 10(e)

B. The Commission added the following offenses to the unranked offense list in the Offense Severity Reference Table:

Counterfeiting of Currency – 609.632
Fraudulent or Improper Financing Statements – 609.7475
Computer Encryption – 609.8912

C. The Commission added the following crimes to the *Misdemeanor and Gross Misdemeanor Offense List*:

Counterfeiting of Currency – 609.632
Fraudulent or Improper Financing Statements – 609.7475
Computer Encryption – 609.8912
G.M. Facilitating Access to a Computer Security System – 609.8913
Disruption of Funeral Services – 609.501
G.M. Interference with 911 Calls – 609.78 subd.2
G.M. 4th Degree Assault of Animal Control Officer – 609.2231 subd.6

D. The Commission added the following crimes to the *Offenses Eligible for Permissive Consecutive Sentencing* list:

609.185

Murder in the First Degree

II. Other Changes to the *Minnesota Sentencing Guidelines and Commentary*, Related to 2006 Legislative Action

A. Corrections to Sex Offender Modifications

Corrections to Adopted Guideline Modifications:

V. OFFENSE SEVERITY REFERENCE TABLE

C Criminal Sexual Conduct 3 - 609.344 subd. 1 (c), (d), (g), (h), (i), (j), (k), (l), (m), & (n)

D Criminal Sexual Conduct 3 - 609.344 subd. 1(a), (b), (e), (f)

E Criminal Sexual Conduct 4 - 609.345 subd. 1 (c), (d), (g), (h), (i), (j), (k), (l), (m), & (n)

F Criminal Sexual Conduct 4 - 609.345 subd. 1 (a), (b), (e), (f)

NUMERICAL REFERENCE OF FELONY STATUTES

This statutory felony offense listing is for convenience in cross-referencing to the Offense Severity Table; it is not official nor is it intended to be used in place of the Offense Severity Reference Table.

609.344 subd. 1 (a)	Criminal Sexual Conduct 3 (By definition perpetrator must be a juvenile)	unranked <u>D</u>
609.344 subd. 1(b)(e)(f)	Criminal Sexual Conduct 3	5 <u>D</u>
609.344 subd. 1(c)(d)(g) (h)(i)(j)(k)(l)(m)(n)	Criminal Sexual Conduct 3	8 <u>C</u>
609.345 subd. 1(a)	Criminal Sexual Conduct 4 (By definition perpetrator must be a juvenile)	unranked <u>E</u>
609.345 subd. 1(b)(e)(f)	Criminal Sexual Conduct 4	4 <u>E</u>
609.345 subd. 1(c)(d)(g) (h)(i)(j)(k)(l)(m)(n)	Criminal Sexual Conduct 4	6 <u>E</u>

B. The Commission made the following corrections to Section II.E. of the *Minnesota Sentencing Guidelines and Commentary* to make the language conform with statutory provisions regarding conditional release.

E. Mandatory Sentences

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Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. When a court commits a person subject to one of these statutes to the custody of the commissioner of corrections, it shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for the designated term. A person committed to prison for a sex offense or criminal sexual predatory conduct is subject to a ten-year conditional release term, unless the offense is a violation of M.S. § 609.3451 (fifth degree criminal sexual conduct). If the person was committed to prison ~~sex offense before conviction for the current sex offense and either the present or prior sex offense was~~ for a violation of M.S. §§ 609.342 (first degree criminal sexual conduct), 609.343 (second degree criminal sexual conduct), 609.344 (third

degree criminal sexual conduct), 609.345 (fourth degree criminal sexual conduct), or 609.3453 (criminal sexual predatory conduct), and there is a previous or prior sex offense conviction, the person shall be placed on conditional release for the remainder of the person's life, unless the current offense and prior conviction were both for violations of M.S. § 609.345 (fourth degree criminal sexual conduct). If both the current and prior convictions are for M.S. § 609.345 (fourth degree criminal sexual conduct) the conditional release period shall be for ten years. If a person who is subject to a life-with-the-possibility-of-release sentence is released, that offender is subject to conditional release for the remainder of his or her life. If a person is sentenced for failure to register as a predatory offender and the person was assigned a risk level III under M.S. § 244.052, the person shall be placed on conditional release for ten years. A person convicted of fourth degree assault against secure treatment facility personnel under M.S. § 609.2231, subdivision 3a, use of minors in a sexual performance under M.S. § 617.246, or a child pornography offense under M.S. § 617.247 is subject to a five-year conditional release term. If the person was committed to prison for a violation of M.S. §§ 617.246 (use of minors in a sexual performance) or 617.247 (possession or dissemination of child pornography), and there is a previous or prior conviction for either of these offenses or for a criminal sexual conduct offense, the person shall be placed on conditional release for ten years. Finally, a person sentenced to imprisonment for first degree (felony) driving while impaired is subject to five years of conditional release.

C. The Commission added the following modifications to the Guidelines Commentary to provide clarification regarding M.S. § 609.11 and the impact of the MN Supreme Court ruling in *State v. Barker*.

II.C.09

Mandatory Minimum – Minn. Stat. § 609.11

State v. Barker ---N.W.2d--- (Minn. 2005) Case involves a defendant convicted of a 5th degree controlled substance offense and sentenced under Minn. Stat. § 609.11 to a mandatory prison sentence of 36 months based on a judicial finding that the defendant possessed a firearm during the predicate offense. The defendant has a criminal history score of 0, thus the presumptive guideline sentence for the 5th degree controlled substance offense would have been a stayed sentence of a year and a day. At sentencing the defendant stipulates to the possession of the firearm but claims it was for self protection and did not increase the risk of violence associated with the drug offense. The court denies the defendant's request for a jury

~~trial and imposes the mandatory minimum 36 month prison sentence. Defendant appeals on Blakely issues. The Court ruled that Minn. Stat. § 609.11 is unconstitutional to the extent that it authorizes the district court to impose an aggravated departure upon a finding other than prior criminal convictions, without the aid of a jury. Unlike most mandatory minimum sentences which are triggered by prior criminal convictions, Minn. Stat. § 609.11 requires a finding of the possession of a weapon when the weapon is not an element of the offense to impose the 36 month prison sentence. Even though the defendant admitted to the possession of a weapon, he did not admit to the increased risk of violence the court determined was associated with the possession of the weapon. The court also indicated that the Legislature did not amend 609.11 as it did with other sentencing enhancement statutes allowing for jury determination of aggravated factors. In cases where the weapon is an element of the offense there is no Blakely issue. Effective August 1, 2006, Minn. Stat. § 609.11 provides for a mandatory minimum prison sentence when the factfinder determines that the defendant possessed a deadly weapon while committing the predicate offense. If an offense that occurred before August 1, 2006, is charged under § 609.11, the defendant cannot be sentenced to the mandatory minimum when the resulting sentence is higher than the presumptive sentence for the predicate offense, unless the same Blakely-based procedure is followed. State v. Barker, 705 NW2d 768 (Minn. 2005). In cases where the weapon is an element of the offense, there is no Blakely issue.~~

D. The Commission made the following modifications to section II.D. of the Guidelines to provide clarification regarding departures from the presumptive guidelines sentence and the impact of the U.S. Supreme Court ruling in *Blakely v. Washington*.

D. Departures from the Guidelines: The sentence ranges provided in the Sentencing Guidelines Grid are presumed to be appropriate for the crimes to which they apply. Thus, the judge shall pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grid. A sentence outside the applicable range on the grid is a departure from the sentencing guidelines and is not controlled by the guidelines. Rather, it is an exercise of judicial discretion constrained by case law and appellate review. However, in exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence.

Furthermore, if an aggravated ~~durational~~ departure is to be considered, the judge must afford the accused an opportunity to have a jury trial on the additional facts that support the departure and to have the facts proved beyond a reasonable doubt. If the departure facts are proved

beyond a reasonable doubt, the judge may exercise the discretion to depart from the presumptive sentence. In exercising that discretion, it is recommended that the judge pronounce a sentence that is proportional to the severity of the crime for which the sentence is imposed and the offender's criminal history, and take into consideration the purposes and underlying principles of the sentencing guidelines. Because departures are by definition exceptions to the sentencing guidelines, the departure factors set forth in II.D are advisory only, except as otherwise established by settled case law. When the conviction is for a criminal sexual conduct offense or offense in which the victim was otherwise injured, and victim injury is established in proving the elements of the crime, an aggravated durational departure is possible without a jury determination of additional facts if the departure is based on the offender's prior history of a conviction for a prior criminal sexual conduct offense or an offense in which victim injury was established as an element of the offense.

E. The Commission approved a policy regarding presumptive consecutive sentences for Felony DWI offenses to conform with the consecutive sentencing provisions in M.S. § 169A.28.

F. Concurrent/Consecutive Sentences: Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentencing is presumptive. In certain situations, consecutive sentences are presumptive; there are other situations in which consecutive sentences are permissive. These situations are outlined below. The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section II.D of these guidelines.

When consecutive sentences are imposed, offenses are sentenced in the order in which they occurred.

Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving an executed prison sentence, or by an offender on supervised release, on conditional release, or on escape status from an executed prison sentence.

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When an offender is sentenced for a felony DWI, a consecutive sentence is presumptive if the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence. The presumptive disposition for the felony DWI is based on the offender's location on the Grid. If the presumptive disposition is probation, the presumptive sentence for the felony DWI is a consecutive stayed sentence with a duration based on the appropriate Grid time. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense. If the presumptive disposition is commitment to prison, the requirement for consecutive sentencing does not apply (M.S. § 169A.28 subd. 1(b)) presumptive sentence is a consecutive sentence of 42 months duration, except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive.

III. Additional Approved Modifications – Effective August 1, 2006

A. The Commission made the following modifications to Sections II.C. and II.E. to clarify the sentencing guidelines policy regarding prior DWI convictions:

II.C Presumptive Sentence:

When the current conviction is for felony DWI, and the offender ~~has a prior conviction for a felony DWI~~ had a previous conviction, as defined by Minn. Stat. § 609.02 subd. 5, for a felony DWI prior to commission of the current offense, the presumptive disposition is Commitment to the Commissioner of Corrections.

II.E Mandatory Sentences:

When an offender is sentenced for first degree (felony) driving while impaired, the court must impose a sentence of at least 36 months. The presumptive disposition is determined by the dispositional line on the Sentencing Guidelines Grid. For cases contained in cells outside the shaded areas of the grid, the sentence should be executed. For cases contained in cells within

the shaded areas of the grid, the sentence should be stayed unless the offender ~~has a prior conviction for a felony DWI~~ had a previous conviction, as defined by Minn. Stat. § 609.02 subd. 5, for a felony DWI prior to commission of the current offense, in which case the presumptive disposition is Commitment to the Commissioner of Corrections. In addition, when the court commits a person convicted of first degree (felony) driving while impaired to the custody of the commissioner of corrections, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.

B. The Commission made the following modifications to Section II.B.2 to clarify the sentencing guidelines policy on the use prior gross misdemeanor DWI and traffic offenses for custody status points:

2. One point is assigned if the offender:

- a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea, ~~or guilty verdict~~ or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case, ~~an extended jurisdiction juvenile case, or following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction;~~ or
- b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced; or

Comment

II.B.202. *As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. Given the increased penalties associated with driving while impaired offenses and serious impact on public safety, the Commission determined that these offenses should be considered for custody status points in the same manner as non-traffic offenses. However, ~~one gross misdemeanor offense driving while impaired is particularly relevant in sentencing cases of criminal vehicular homicide or injury and first degree (felony) driving while impaired. Because of its particular relevance in cases of this nature, a custody status point shall be assigned if the offender is under probation, jail, or other custody supervision following a gross misdemeanor conviction under section 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752, when the felony for which the offender is being sentenced is criminal vehicular homicide or injury or first degree (felony) driving while impaired,~~*

~~and the offense occurred while under that supervision.~~

VI. Other Modifications – Effective August 1, 2007, Pending Legislative Approval

A. The Commission approved the proposal to add the following crimes to the *Misdemeanor and Gross Misdemeanor Offense List*:

Unauthorized Computer Access – 609.891

B. The Commission approved the proposal to add the following modifications in Section V. **OFFENSE SEVERITY REFERENCE TABLE:**

VI	Bringing Stolen Goods Into State – over \$2,500
V	Bringing Stolen Goods Into State – \$1,000-\$2,500
IV	Bringing Stolen Goods Into State – \$301-\$999
III	<u>Bringing Stolen Goods Into State – over \$2,500 – 609.525</u>
II	<u>Bringing Stolen Goods Into State – \$501-\$2,500 – 609.525</u> <u>Bringing Stolen Goods Into State – \$251-\$500, with previous conviction – 609.525</u>

Note: Most modifications forwarded by the Commission on May 25, 2006, take effect August 1, 2006. There are two exceptions: re-ranking of Bringing Stolen Goods into the State (M.S. 609.525) and placement of Unauthorized Computer Access (M.S. 609.891) on the Gross Misdemeanor Offense List. The latter action has not had adequate public hearing. M.S. 609.525 was apparently overlooked when the Commission re-ranked theft offenses in 1989; the present Commission has ranked it to conform with the relevant penalty provision (M.S. 609.52, subd. 3) and with all other theft-related crimes covered by that provision. Since the new ranking will result in lower sentences than the Guidelines presently indicate, it must be reported to the next Legislature and approved by both legislative bodies before it can become law.