



mn MINNESOTA
SENTENCING GUIDELINES
COMMISSION

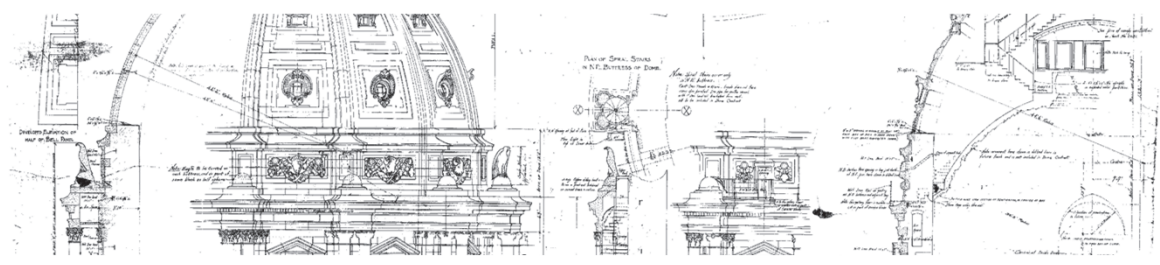
Overview of the Minnesota Sentencing Guidelines Commission

January 12, 2021
 Kelly Lyn Mitchell, MSGC Chair • Nate Reitz, MSGC Executive Director
 House Public Safety and Criminal Justice Reform Finance and Policy Committee
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Structure of the Sentencing Guidelines Commission

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Brief History of the Guidelines

BEFORE 1978	AFTER 1978
<ul style="list-style-type: none">• No guidelines—each judge had broad discretion to sentence within statutory maximum• Indeterminate sentencing—parole board had broad discretion to grant early release	<ul style="list-style-type: none">• Commission to create advisory Guidelines to district court• Judges directed to provide written reasons for departures• Determinate sentencing—$\frac{1}{3}$ sentence reduction for good behavior

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1978 Legislature’s Directives to the Commission

Establish Sentencing Guidelines for the district court	Serve as a clearinghouse and information center with respect to state and local sentencing practices data
Meet as necessary for the purpose of modifying and improving those Guidelines	Conduct ongoing research on various matters related to the improvement of the criminal justice system
Report to the Legislature on such modifications annually	Make recommendations to the Legislature regarding changes in criminal law & procedure & other aspects of sentencing

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Distribution of Sentencing Authority

LEGISLATURE	COMMISSION	JUDGES
<ul style="list-style-type: none">• Establish broad policy standards & statutory maximums• Review Guidelines	<ul style="list-style-type: none">• Establish advisory Guidelines to the district court	<ul style="list-style-type: none">• Impose real-time sentences for felons (with input from the parties and victims)

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Members Represent Criminal Justice System and Public

 Supreme Court	 Court of Appeals	 District Court
 Public Defenders	 County Attorneys	
 Corrections	 Police	 Probation
 Public (Crime Victims)	 Public	 Public

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SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By Shootings)</i>	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 2nd Degree (Unintentional)</i>	150	165	180	195	210	225	240

Overview of Sentencing Guidelines

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Sentencing Guidelines Grid Structure

- Vertical Axis: Offense Severity (least severe offenses at the bottom)
- Horizontal Axis: Criminal History (zero criminal history at the left)
- Each cell contains a presumptive prison duration (in months)
- Judges must impose this duration (+20%/-15%) or explain reasons why
- Shaded cells: Presumptive stayed sentence (up to 1 yr. jail) unless mandatory minimum applies

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By Shootings)</i>	11 306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 2nd Degree (Unintentional)</i>	10 150	165	180	195	210	225	240
<i>Murder, 3rd Degree (Depraved Mind)</i>	10 128-180	141-198	153-216	166-234	179-252	192-270	204-288
<i>Murder, 3rd Degree (Controlled Substances)</i>	9 86	98	110	122	134	146	158
<i>Assault, 1st Degree</i>	9 74-103	84-117	94-132	104-146	114-160	125-175	135-189
<i>Agg. Robbery, 1st Degree</i>	8 48	58	68	78	88	98	108
<i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8 41-57	50-69	58-81	67-93	75-105	84-117	92-129
<i>Felony DWI</i>	7 36	42	48	54	60	66	72
<i>Financial Exploitation of a Vulnerable Adult</i>	7 46-64	51-72	57-79	62-84 ^{1,3}			
<i>Assault, 2nd Degree</i>	6 21	27	33	39	45	51	57
<i>Burglary, 1st Degree (Occupied Dwelling)</i>	6 34-46	39-54	44-61				
<i>Residential Burglary</i>	5 18	23	28	33	38	43	48
<i>Simple Robbery</i>	5 29-39	33-45	37-51	41-57			
<i>Nonresidential Burglary</i>	4 12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3 12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i>	2 12 ¹	12 ¹	13	15	17	19	21
<i>Check Forgery (\$251-\$2500)</i>	2 12 ¹	12 ¹	13	15	17	19	21
<i>Assault, 4th Degree</i>	1 12 ¹	12 ¹	12 ¹	13	15	17	19
<i>Fleeing a Peace Officer</i>	1 12 ¹	12 ¹	12 ¹	13	15	17	19

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Presumptive Sentences

- The presumptive sentences on the grid are generally believed to be appropriate for all “typical” cases sharing the same or similar characteristics.
- A *departure* is a sentence that is something other than the sentence recommended under the guidelines. If the crime or the offender is truly “atypical” then a departure sentence may be more appropriate than the presumptive sentence.

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Goals of the Sentencing Guidelines

- The Commission maintains and modifies the sentencing guidelines that govern felony sentences in the state, in order to support Minnesota’s sentencing goals.
 - To better assure **public safety**.
 - To promote **uniformity** in sentencing so that offenders who are convicted of similar crimes and who have similar criminal records are similarly sentenced.
 - To establish **proportionality** in sentencing by emphasizing a “just deserts” philosophy where the punishment fits the crime. First-time offenders convicted of violent offenses and those with more extensive non-violent records are recommended prison.

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Goals of the Sentencing Guidelines

- In addition, the sentencing guidelines embody the following principles:
 - Sentencing should be **neutral** with respect to race, gender, social, or economic status of convicted felons.
 - Prison and jail **capacity** is finite and should be reserved for those convicted of more serious offenses or for those with longer criminal histories.
 - Departures should be made only when **substantial and compelling** circumstances exist.

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Commission's Resources for the Legislature

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Report to the Legislature – Published January 15

- 2020 changes to the Sentencing Guidelines
- Proposed 2021 changes to the Sentencing Guidelines
- Recommendation(s) to the Legislature
- Report on mandated review of child pornography sentencing guidelines
- Initiation of Sentencing Guidelines neutrality review
- Summary of 2019 felony sentencing practices in Minnesota
- County attorney firearms reports

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Key Points of 2019 Sentencing Practices Summary

- Among all states, Minnesota has 4th-lowest imprisonment rate (but 5th-highest probation rate)
- 2019 felony case volume (17,335 cases) fell sharply from record highs in 2017–18
- For the past three years (but not before), drugs have been the largest offense category (30% of felonies in 2019)
- 24 percent of felony sentences were for executed prison—but Guidelines recommended prison for 34.4 percent (largest gap on record)
- A record-high 13.6 percent of felony sentences were mitigated dispositional departures (stayed sentence when Guidelines recommended prison)
- Presumptive & actual imprisonment rates vary by gender, race/ethnicity, geography

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Other Resources for the Legislature

Six*-person MSGC staff—

- Publishes sentencing-practices data reports (web site)
- Prepares individual sentencing data reports upon request
- Estimates prison-bed impact of crime bills
 - Tip: Most of the impact is felt long-term
- Estimates racial & demographic impact of select crime bills

*Five, as of 12/31/20, due to attrition & hiring freeze

We can also return to this committee to brief you on—

- Details of felony sentencing practices and trends
- Proposed changes to the Guidelines
- Child porn sentencing review
- Progress on neutrality review
- Impact of the 2016 Drug Sentencing Reform Act

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Questions?

Kelly Lyn Mitchell, Minnesota Sentencing Guidelines Commission Chair

Nate Reitz, MSGC Executive Director

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4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By-Shootings)</i>	11 306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	10 150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Murder, 3rd Degree (Controlled Substances)</i> <i>Assault, 1st Degree</i>	9 86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8 48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	7 36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84^{2,3}</i>
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6 21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5 18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4 12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3 12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2 12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1 12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
<i>CSC 2nd Degree–1(c)(d)(e)(f)(h) (e.g., contact, force, & injury)</i>	B	90 <i>90</i> ³ -108	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
<i>CSC 3rd Degree–1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) (e.g., penetration & force/occupation)</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> ²
<i>CSC 2nd Degree–1(a)(b)(g) (e.g., contact & victim under 13)</i> <i>CSC 3rd Degree–1(a)(e)(f) or 1(b) with 2(1) (e.g., penetration & child victim)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree–1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) (e.g., contact & force/occupation)</i> <i>Dissemination of Child Pornography</i> ²	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
<i>CSC 4th Degree–1(a)(b)(e)(f) (e.g., contact & child victim)</i> <i>CSC 5th Degree</i> <i>Possession of Child Pornography (Subseq./Pred. Off./Under 13)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree–1(b) with 2(2) (i.e., penetration & child victim 24–48 mo. younger)</i> <i>Possession of Child Pornography</i> <i>Solicit Child for Sexual Conduct</i> ²	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
<i>Failure to Register as a Predatory Offender</i>	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2.

³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)

4.C. Drug Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subjected to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Aggravated Controlled Substance Crime, 1st Degree</i> <i>Manufacture of Any Amt. Meth</i>	D9	86 <i>74*-103</i>	98 <i>84*-117</i>	110 <i>94*-132</i>	122 <i>104*-146</i>	134 <i>114*-160</i>	146 <i>125*-175</i>	158 <i>135*-189</i>
<i>Controlled Substance Crime, 1st Degree</i>	D8	65 <i>56*-78</i>	75 <i>64*-90</i>	85 <i>73*-102</i>	95 <i>81*-114</i>	105 <i>90*-126</i>	115 <i>98*-138</i>	125 <i>107*-150</i>
<i>Controlled Substance Crime, 2nd Degree</i>	D7	48	58	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Controlled Substance Crime, 3rd Degree</i> <i>Failure to Affix Stamp</i>	D6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i>	D5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i>	D4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	D3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i>	D2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	D1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.