

“Why doesn’t the defendant have a criminal history point?”

“Why does my client have a criminal history point?”

**Defending your work on the
Sentencing Guidelines Worksheet**

A FEW GENERAL POLICIES

To get the ball rolling

Policy Overview: Where to begin - § 2

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Always use the Guidelines in effect on the date of conviction offense occurs.

- Guidelines are in effect from August 1 thru July 31.
- Use Guidelines to find:
 - Severity level of the current offense;
 - Rules for applying criminal history;
 - The presumptive disposition and duration – the Guidelines sentence;
 - Policies pertaining to sentencing modifiers, Hernandizing, mandatory minimums, and consecutive sentencing.

Drug Offender Grid – effective 8/1/2016

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.

Vertical axis represents the severity level of the current offense. Felonies are currently ranked from D1-D9. The offenses listed on the grid are examples of common offenses at that severity level.

The horizontal axis represents the offenders total criminal history score.

Each individual cell on the grid contains the *presumptive duration* of a sentence in months. For cells above the disposition line, a range is also given. It is important to use the grid in effect when the current offense is committed so that the correct range is used.

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.

Date of Offense - § 2

The presumptive sentence for any offender convicted of a felony on or after May 1, 1980, is determined by the Sentencing Guidelines in effect on the date the current offense was committed, except that:

- if multiple offenses are an element of the conviction offense, the date of the conviction offense must be determined by the factfinder.
- If offenses have been aggregated, the date of the earliest offense should be used as the date of the conviction offense.
 - Eligible under one of the statutes listed in the Guidelines or as otherwise permitted by statute.

Targeted Misdemeanors

§§ 2.B.2, 2.B.3, and 8

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As of August 1, 2010, certain misdemeanor offenses will count toward assigning a custody point or a misdemeanor unit.

- These are provided for under Minn. Stat. § 299C.10 are:
 - Driving While Impaired, 169A.20
 - Order for Protection Violation, 518B.01
 - Assault Fifth Degree, 609.224
 - Domestic Assault, 609.2242
 - Interference with Privacy, 609.746
 - Harassment or Restraining Order Violation, 609.748
 - Indecent Exposure, M.S. §617.23
 - Domestic Abuse No Contact Order Violation, 629.75

Out-of-State Offenses – § 2.B.5

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The final determination for using all non-MN offenses in criminal history is left to the MN Sentencing Court. With that in mind, the following policies apply for non-MN offenses:

- All Guidelines policies for computing criminal history apply the *same way as they do for MN offenses*:
 - **Custody** status: It must be for an type under Guidelines § 2.B.2 for an offense that will also be used as felony or misd/GM history.
 - **Felony**: meets both the MN statutory definition **AND** felony imposed sentence of at least 1 year + 1 day or Stay of Imposition (§ 2.B.1).
 - **Misd. or Gross Misd.:** meets both the MN statutory definition **AND** received a sentence that corresponds to Minn. Stat. § 609.02 **AND** is eligible based on the date of the current offense (§ 2.B.3).
 - **Juvenile**: it must meet the criteria outlined in § 2.B.4 – age, felony-level offense, adjudication in juvenile court.
 - **EXCEPTION – Federal offenses**: worth 1 point if **no** MN statutory equivalent **AND** received a sentence of more than 1 year.

Enhanced criminal history checklist for non-DWI felony offenses

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- ✓ A qualified custody status point, as determined by § 2.B.2, must be given for a targeted misd. or non-traffic GM that is used to enhance.
- ✓ Qualifying misd/GM priors used to enhance are not listed in criminal history on the current felony.
 - ✓ The enhancing priors are only removed from history on the current felony. It will be eligible to be used on future offenses per the policies in §§ 2.B.3 and 2.B5.
- ✓ Felony offenses that are used to enhance, including juvenile adjudications for felonies if applicable, are used in criminal history provided they meet the qualifications in §§ 2.B.1 and 2.B.4.

Enhanced criminal history checklist for DWI felony offenses

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- ✓ A qualified custody status point, as determined by § 2.B.2, must be given for a targeted misd. or *non-traffic* GM that is used to enhance.
- ✓ Qualifying misd/GM priors used to enhance are not listed in criminal history on the current felony DWI.
 - ✓ These priors are removed permanently from history for all future felony DWI offenses under § 2.B.6.c
 - ✓ These priors are eligible to use in criminal history for non-DWI felony offenses provided they meet the qualifications under § 2.B.3.
- ✓ Felony Criminal Vehicular Operation offenses under Minn. Stat. § 609.21, subd. 1(2) thru 1(6) used to enhance are used in criminal history provided they meet the qualifications under § 2.B.1.

CRIMINAL HISTORY CALCULATION POLICIES



Sentence Durations under Minn. Stat. § 609.02

- A **felony** is defined under subd. 2 as a crime for which a sentence of imprisonment for more than one year may be imposed.
- A **gross misdemeanor** is defined under subd. 4 as any crime which is not a felony or a misdemeanor.
- A **misdemeanor** is defined under subd. 3 as a crime for which a sentence of imprisonment of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.
- A **petty misdemeanor**, defined under subd. 4a, means an offense which is prohibited by statute, which does not constitute a crime and for which a sentence for a fine of not more than \$300 may be imposed. ***Petty offenses are never used in criminal history.***

Imposed Executed Sentence: Jail or Prison

7. Terroristic Threats-Reckless Disregard Risk

10/21/2013 (FEL) 609.713.1 (6097131)

Disposition 06/04/2014 Convicted

Court Decision 08/06/2014 Sentenced

~~Commit to Commissioner of Corrections - Adult:~~

MN Correctional Facility - St. Cloud 24 Mo

Report on 08/06/2014

Credit for Time Served for 290 Days

Departure: Upward Durational

Comment: Execute Forthwith. Truth in Sentencing.

Status: Active 08/06/2014

Condition - Adult:

1. Pay restitution To MN Crime Victims Reparations Board. Order signed.

2. Predatory offender registration required 08/06/2014, Active 08/06/2014

Fee Totals:

Due 08/08/2016

Restitution 1,425.20

Fee Totals \$ 1,425.20

From prison wages

Concurrent/Consecutive:

Concurrent

Level of Sentence:

Convicted of a Felony

When using a prior executed sentence in criminal history, the Level of Sentence is based on the imposed duration

Imposed Sentence Duration & Stayed Disposition: Stay of Execution

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This is the imposition of a jail or prison term that is then stayed for a specified period of time.

1. The court records a finding of guilt and a sentence is imposed but not executed.
2. Because a sentence duration is imposed, the Level of Sentence is equal to the imposed sentence duration found in Minn. Stat. § 609.02, subd. 2, 3, or 4.
3. The Level of Sentence is **not** determined by the length of the stay or the probation term, or any conditional jail time imposed as an element of probation.

When a non-felony sentence is imposed

1. Terroristic Threats-Reckless Disregard Risk

12/14/2013 (FEL) 609.713.1 (6097131)

Plea 03/10/2014 Guilty
Disposition 04/24/2014 Convicted
Court Decision 04/24/2014 Sentenced

Monitoring - Adult:

Type: Supervised probation
Agency: Anoka County Corrections
Term of 2 Yr
04/24/2014 - 04/24/2016
Status: Active 04/24/2014

Local Confinement:

Agency: Anoka County Jail-2
Term: 365 Days
Time To Serve: 5 Days
Stay: 360 Days For 2 Yr
Credit For Time Served: 5 Days
Status: Active 04/24/2014

Fee Totals:

Due	09/0
Fine \$	
Imposed Fine \$	

County/Sh
Felony Fin
Crim/Traffi
Surcharge
per case)
Law Libra

Fee Totals \$

Service - Adult:

Type: Community work service
30 Hours For Indeterminate
In Lieu of Fine (\$300.00)
Start: 04/24/2014 Due: 09/02/2014
Status: Active 04/24/2014

Condition - Adult:

1. Remain law-abiding and of good behavior, 04/24/2014, Active 04/24/2014
2. No assault No assaultive/abusive or disorderly behavior, 04/24/2014, Active 04/24/2014
3. Domestic No Contact (DANCO) see order, 04/24/2014 - 04/24/2016, Active 04/24/2014
4. Counseling complete and follow any recommendations, 04/24/2014, Active 04/24/2014
5. No use or possession of firearms 04/24/2014, Active 04/24/2014

Comment: dispositional departure

Level of Sentence:

Conviction deemed a Gross Misdemeanor pursuant to M.S. 609.13

When a sentence of 1 year or less is imposed, the Level of Sentence will match sentence duration found in Minn. Stat. § 609.02., subd 3 or 4. That offense will then be considered a M or GM offense for purposes of criminal history.

No Sentence Duration Imposed: Stay of Imposition

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For this sentence, the court does not impose a sentence duration.

1. The court records a finding of guilt but no sentence duration corresponding to Minn. Stat. § 609.02 is imposed.
2. For criminal history purposes the Level of Sentence is equal to the offense level at the time of the finding of guilt, and remains so until the offense decays under Guidelines policies.
3. The Level of Sentence is **not** determined by the length of the stay or the probation term, or any conditional jail time imposed as an element of probation.
4. If the offender is discharged from probation without a revocation, the conviction will be deemed a misdemeanor for *non-criminal* history purposes.

Stay of Imposition

2. Terroristic Threats-Reckless Disregard Risk (Not applicable - GOC)

07/27/2012 (FEL) 609.713.1 (6097131)

Add'l Statutes: Terroristic Threats-Reckless Disregard Risk

Penalty (FEL) 609.713.1

 Plea	10/29/2013	Guilty
Disposition	01/06/2014	Convicted
Court Decision	01/06/2014	

Stay of Imposition Pursuant to M.S. 609.135

Monitoring - Adult:

Type: Supervised probation
Agency: Aitkin County Probation
Term of 5 Yr
01/06/2014 - 01/06/2019
Status: Active 01/06/2014

Condition - Adult:

1. Complete Chemical Assessment and comply with recommendations., 01/06/2014, Active 01/06/2014
2. Anger management complete assessment at own expense and follow recommendations., 01/06/2014, Active 01/06/2014
3. Supply DNA sample 01/06/2014, Active 01/06/2014
4. Cognitive skill training as required by Probation., 01/06/2014, Active 01/06/2014
5. No contact with victim(s) victim(s) family, or victim(s) property., 01/06/2014, Active 01/06/2014
6. Remain law-abiding and of good behavior., 01/06/2014, Active 01/06/2014
7. No same or similar 01/06/2014, Active 01/06/2014
8. Follow all Conditions set forth in the Probation Agreement 01/06/2014, Active 01/06/2014
9. Pay restitution 01/06/2014, Active 01/06/2014

Local Confinement:

Agency: Aitkin County Jail
Term: 60 Days
Duration: 02/02/2014 9:00 AM
Serve As:
Sentence To Serve
Comment: Allowed to serve 30 days in Jail with Huber and STS privileges, and 30 days STS.
Status: Active 01/06/2014

Fees - Adult: (Grand Total: \$1,411.00)

Due Within 5 Yr
Fine: \$900.00
Fees: (Fees Total: \$87.00)
Criminal Surcharge: \$75.00
Law Library: \$12.00
Restitution: \$424.00

Level of Sentence:
Convicted of a Felony

When no sentence duration is imposed, the Level of Sentence is equal to the conviction offense level until it is decayed.

“Non-conviction” Disposition

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Continuance for Dismissal, Stay of Adjudication, Probation before Conviction, or Diversion

1. The offender may or may not enter a guilty plea, but the court *will not* enter a final judgment of guilt.
2. Without a final judgement of guilt, there cannot be a sentence imposed.
3. Without an imposed sentence or Stay of Imposition, a “non-conviction” disposition will not be included in criminal history *unless* it is revoked and given an imposed sentence or Stay of Imposition.
4. In that situation, include it in the appropriate criminal history section based on the Level of Sentence.

“Non-conviction” Disposition Revocation policies

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- The policy found in 2.B.1.e states that “multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred.”
 - ▣ That means that if the “non-conviction” disposition is revoked and sentenced on the same day as a new offense the revocation should be sentence #1, with the new offense sentenced as #2.
- If the revocation will occur after sentencing on a new offense – different court hearing – 2.B.1 states that all offenses receiving an imposed sentence or a stay of imposition prior to sentencing on the current offense will be included in criminal history.
- Finally, if the court revokes a “non-conviction” disposition and imposes a prison sentence when the Grid calls for a stayed disposition, that is a departure (unless requested by the defendant).

Weighting prior drug offenses - §2.B.106

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Comment amended to reflect Commissions interpretation of how to weight prior drug offenses when the current offense was committed on/after 8/1/2016:

2.B.106. If the prior offense has been removed from the current Severity Offense Reference Table in response to a legislative action that repealed the prior offense and created separate offenses with new or removed elements, use the current severity level for the newly created offense that has been added to Severity Offense Reference Table and encompasses the behavior necessarily proven by the prior conviction. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.

What does this mean? Example:

- The offender has a prior 3rd degree drug offense in criminal history.
- When the current offense was committed before August 1, 2016, the offense is a Severity Level 6 weighted at 1.5 points in felony history.
- When the current offense was committed on/after August 1, 2016, the offense is a Severity Level D6 weighted at 1.5 points in felony history.

Offenses Committed Over Time: Custody Status Policy – § 2.B.2.a(5)

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Assign a custody status point when the offender meets the conditions cited in § 2.B.2.a. (1) through (3):

- 2.B.2.a(1): on an applicable custody status type – probation, SR, CR, release pending sentencing, confinement in a jail, workhouse, or prison pending or after sentencing, or escape from an executed sentence.
- 2.B.2.a(2): Under one of the custody status found in 2.B.2.a(1) following a guilty plea, guilty verdict, or conviction. This includes a guilty plea for under Minn. Stat. § 152.18.
- 2.B.2.a(3): the custody status is for a: felony, EJJ conviction, non-traffic GM, GM-DWI, GM refusal to test, GM reckless driving, or a targeted misd.

And the offender was placed under one of the custody statuses in paragraph (1) at any point in time during which the offense occurred when:

- multiple offenses are an element of the conviction offense (such as under Minn. Stat. § 609.342, subd. 1(h)(iii)); or
- the conviction offense is an aggregated offense (such as under Minn. Stat. § 609.52, subd. 3(5)).

Custody Status Policy for an Offender Who Absconds – § 2.B.211

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When an offender is placed on an applicable custody status absconds and commits a new felony offense, a custody point will be assigned based on the form of supervision the offender was under when they absconded.

Example

An offender is under Supervised Release absconds and commits a new felony. The custody status for the new felony will be Supervised Release.

Custody Status: Within Original Probation Period

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This status is assigned when the offender is discharged early from probation and commits a new offense during the time remaining on the original term imposed by the sentencing court.

- **Determine eligibility:**
 - **The offender receives a specified period of probation.**
 - On June 17, 2015, the offender is sentenced to a Stay of Execution for 18 months with 3 years probation for felony Burglary.
 - **The offender is discharged early from the probation period for the Burglary.**
 - Discharged early from probation on January 2, 2017.
 - **The offender commits a new felony offense before the end date on the original term of probation that was discharged early; this is the offense that is eligible for this custody status.**
 - The offender commits a felony 2nd degree drug offense on February 22, 2017.
 - **Since the original year term of probation for the Burglary does not expire until June 17, 2018, the drug offense will have the custody status “Within Original Probation Period.”**

Within Original Probation Period: Violation of probation then discharge

- **Violation of Probation:**
 - **The offender receives a specified period of probation.**
 - On June 17, 2015, the offender is sentenced to a Stay of Execution for 18 months with 3 years probation for felony Burglary.
 - **After violating the probation conditions, the offender is discharged early from probation following specified sanctions.**
 - Complete 30 days jail; discharged early from probation on January 2, 2017.
 - **The offender commits a new felony offense before the end date on the original term of probation that was discharged early; this is the offense that is eligible for this custody status.**
 - The offender commits a felony 2nd degree drug offense on February 22, 2017.
 - **Since the original term of probation was not revoked and the original sentence, the drug offense will have the custody status “Within Original Probation Period.”**

Within Original Probation Period: Revocation of sentence

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“Within Original Probation Period” is assigned when the offender is discharged early from probation and commits a new offense during the time remaining on the original term imposed by the sentencing court ***provided that the original sentence was not revoked.***

- **Revocation of sentence:**
 - **The offender receives a specified period of probation.**
 - On June 17, 2015, the offender is sentenced to a Stay of Execution for 18 months with 3 years probation for felony Burglary.
 - **After violating the probation conditions one too many times, the offender is *revoked on the original probation sentence* and the 18 months prison term imposed.**
 - Revocation of original sentence; report to MCF – St. Cloud on February 2, 2017 to complete 18 months sentence w/ expiration date of August 2, 2018.
 - **Beginning February 2, 2017 the custody status for the Burglary changes to Confined or Supervised Release; no custody for the Burglary after 8/2/2018.**

Felony History Policies: Current Court Appearance Resulting in Multiple Sentences – Hernandizing § 2.B.1.e(1)

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If multiple sentences are imposed for a single course of conduct where one of the offenses is a:

- Burglary (Minn. Stat. § 609.585);
- Kidnapping (Minn. Stat. § 609.251); or,
- Meth-related crime involving a child or vulnerable adult (Minn. Stat. § 152.137)

then do not count the first offense sentenced in criminal history for the second offense.

<u>Current</u> Burglary 3 4	<u>Current</u> MV Theft 3
<i>History</i> None	<i>History</i> None

No “*Hernandizing*”

2.B.109 The Commission has carefully considered the application of the Hernandize method to offenses other than those cited above; the decision not to amend the Guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009)

Felony History Policies: Prior Court Appearance Resulting in Multiple Sentences – Criminal History § 2.B.1.d(1)

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When multiple sentences were imposed for a single course of conduct where one of the offenses was a:

- Burglary (Minn. Stat. § 609.585);
- Kidnapping (Minn. Stat. § 609.251); or,
- Meth-related crime involving a child or vulnerable adult (Minn. Stat. § 152.137)

then include only the offense at the highest Severity Level in future criminal history.

<u>Current</u>		
Burglary 3	4	
<i>History</i>		
None		

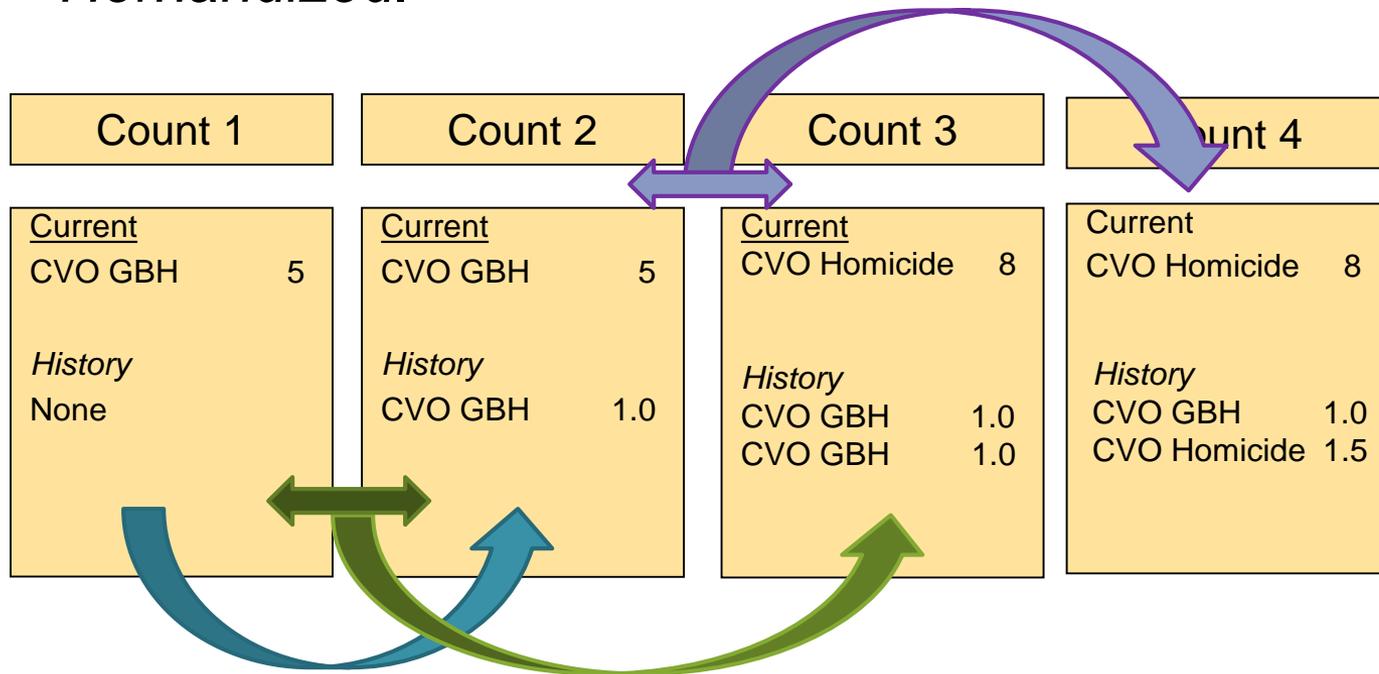
<u>Current</u>		
MV Theft	3	
<i>History</i>		
None		

<u>New Felony</u>		
Flee PO in MV	1	
<i>History</i>		
Burglary 3	1pt.	

Felony Policies: Current Court Appearance Resulting in Multiple Sentences – Hernandizing § 2.B.1.e(2)

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- Multiple sentences can be imposed; however,
- only the two offenses at the highest severity levels are “*Hernandized.*”



Felony History Policies: Prior Court Appearance Resulting in Multiple Sentences – Criminal History § 2.B.1.d(2)

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Count 1	Count 2	Count 3	Count 4
<i>Current</i> CVO 5	<i>Current</i> CVO 5	<i>Current</i> CVO Homicide 8	<i>Current</i> CVO Homicide 8
<i>History</i> CVO 1	<i>History</i> CVO 1	<i>History</i> CVO GBH 1.0 CVO GBH 1.0	<i>History</i> CVO GBH 1.0 CVO Homicide 1.5

Criminal History on future felonies:

When prior multiple convictions were sentenced for a single course of conduct involving multiple victims, weights are given only to the two offenses at the highest severity level.

<u>New Felony</u>	
Cont. Sub. 5	2
<i>History</i>	
CVO Homicide	1.5
CVO Homicide	1.5

THE PRESUMPTIVE SENTENCE

The Grid and other factors

Custody Status Enhancement – Section 2.B.2

Custody Point + Juvenile + Misdemeanor + Felony Points = 7 or more

Criminal History Score Example

<i>Custody Point</i>	<i>Juv Points</i>	<i>Misd/GM Points</i>	<i>Felony Points</i>	Total Criminal History
1	1	1	4	7

The additional 3 months would be added on here because the total includes a point from a custody status.

~~Custody Point~~ + Juvenile + Misdemeanor + Felony Points = 7 or more

Criminal History Score Example

<i>Custody Point</i>	<i>Juv Points</i>	<i>Misd/GM Points</i>	<i>Felony Points</i>	Total Criminal History
0	1	1	5	7

The additional 3 months would *not* be added on here because the total does not include a point from a custody status.

Sentence Modifier Policies – Section 2.G

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- Modifiers that reduce the sentence:
 - Duration not calculated to less than 12 months/1 day or to less than any mandatory minimum. Apply to the range as well.
 - Attempt – Minn. Stat. § 609.17
 - Conspiracy - Minn. Stat. § 609.175

- Modifier that increase the sentence:
 - Duration not calculated to more than statutory maximum. Apply to the range as well.
 - Crime Committed for the Benefit of a Gang, Minn. Stat. § 609.229, subd. 3(a)
 - Victim under 18 years of age – add 24 months
 - Other crimes – add 12 months

Other statutes which don't affect the presumptive sentence

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- Conspiracy to Commit a Controlled Substance per Minn. Stat. §152.096
- Liability for Crimes of Another – AKA Aid & Abet per Minn. Stat. § 609.05
 - These are not considered by the Guidelines to be modifiers of an underlying offense, and there is no provision in the statute for the sentence of the underlying offense modified.

Mandatory Minimum vs. Grid Sentence – Section 2.E

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- Offenses with a mandatory minimum sentence of at least 12 months and 1 day presume a disposition of commit.
 - If the presumptive sentence is calculated to a duration found in the stayed portion of the grid, the sentence will be a presumptive commit because of the mandatory minimum.
 - If the mandatory minimum sentence is less than 12 months/1 day it is presumed to be local time.
- The sentence reflected on the worksheet should always be the applicable mandatory minimum or the grid duration, whichever is longer.
- If the court sentences without regard to the mandatory minimum that is a departure, even if the statute allows for it (e.g. Minn. Stat. § 609.11, subd. 8).

Mandatory Minimums for Drug Offenses: On/before 7/31/2016

Controlled Substance Offense of Conviction	Mandatory Minimum from Statute	When does the Grid time exceed the mandatory minimum?
1 st Degree: Minn. Stat. § 152.021	48 months	Severity Level 9/score of 0 (86 months)
2 nd Degree: Minn. Stat. § 152.022	36 months	Severity Level 8/score of 0 (48 months)
3 rd Degree: Minn. Stat. § 152.023	24 months	Severity Level 6, score of 1 (27 months)
4 th Degree: Minn. Stat. § 152.024, subd. 3(b)	12 months	Mandatory minimum is local time – presumptive sentence is reflected on Grid
5 th Degree: Minn. Stat. § 152.025, subd. 1(b) or 2(b)	6 months	Mandatory minimum is local time – presumptive sentence is reflected on

Mandatory Minimums for Drug Offenses: On/after 8/1/2016

Controlled Substance Offense of Conviction	Mandatory Minimum from Statute	When does the Grid time exceed the mandatory minimum?
1 st Degree: Minn. Stat. § 152.021 w/ prior 1 st or 2 nd degree drug offense conviction	48 months	Severity Level D8/score of 0 (86 months)
2 nd Degree: Minn. Stat. § 152.022 w/ prior 1 st or 2 nd degree drug offense conviction	36 months	Severity Level D7/score of 0 (48 months)
3rd Degree: Minn. Stat. § 152.023	24 months	Severity Level D6, score of 1 (27 months)
4th Degree: Minn. Stat. § 152.024, subd. 3(b)	12 months	Mandatory minimum is local time – presumptive sentence is reflected on Grid
5th Degree: Minn. Stat. § 152.025, subd. 1(b) or 2(b)	6 months	Mandatory minimum is local time – presumptive sentence is reflected on

EXPLAINING THE PLEA AGREEMENT

Level of sentence and departures

Which stayed sentence do they mean?

Explaining the difference

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■ Stay of Imposition

- Court adjudicates guilty but does not impose a sentence duration corresponding to 609.02, subd. 2, 3, or 4.
- Defendant may be given intermediate sanctions, probation.
- **Level of sentence remains the same as the conviction offense level for criminal history purposes.**

■ Stay of Execution

- Court adjudicates guilty and imposes a sentence duration corresponding to 609.02, subd. 2, 3, or 4.
- Defendant may be given intermediate sanctions, probation.
- **Level of sentence is determined by duration imposed which corresponds to 609.02, subd. 2, 3, or 4.**

Types of Departures – Section 2.D

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■ **Dispositional**

- Aggravated
 - Execution of a presumptive stayed sentence.
- Mitigated
 - Staying a presumptive prison sentence.

■ **Durational**

- Aggravated
 - More time than the range on the grid indicates.
- Mitigated
 - Less time than the range on the grid indicates.

- A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.
- Departures to both the presumptive disposition and duration are separate decisions, each requiring written departure reasons.

Was it a felony conviction sentenced to a non-felony duration? Was it amended prior to sentencing? Do I need to do a worksheet?

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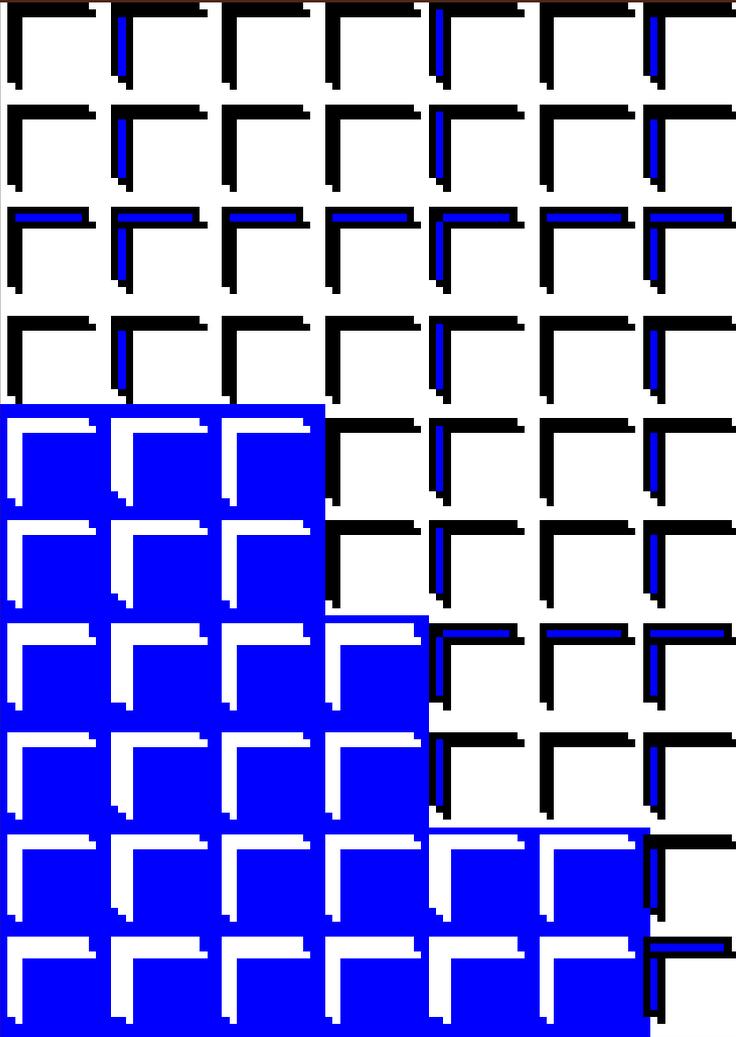
- **OPTION 1: Court Driven – Minn. Stat. § 609.13**
 - The defendant pleads guilty or is convicted for a felony, but the court sentences to the gross misdemeanor or misdemeanor sentence limits outlined under Minn. Stat. § 609.02.
 - This will result in a departure and a worksheet is required.

- **OPTION 2: Prosecutor Driven**
 - The prosecutor amends the charge to a lesser offense, either a M or GM offense, and a plea is entered on that.
 - There must be a M or GM level offense in statute - there is no GM level for Terroristic Threats.
 - PROVIDED AMENDED CHARGE IS AN EXISTING M/GM OFFENSE, NO WORKSHEET IS NEEDED.

“Inadvertent” Departures – explaining the “Request for Departure” reports

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- Negotiating a plea for the Guidelines sentence off the Grid but:
- doing so without a worksheet identifying exactly what the presumptive sentence is based on the severity level, criminal history score, and other factors.
 - Sentencing multiple offenses without Hernandizing
 - not applying any applicable modifiers to the range on the Grid.
 - using the wrong Sentencing Guidelines policies and Grids based on the current offense date. This is usually the result of a date range – probation uses earliest date when creating the post-sentencing worksheet, other parties used later date.



THANKS FOR YOUR TIME

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