

Felony Sentencing in Minnesota. A Primer on Sentencing Guidelines

Our Hypothetical: A person we will call “Jane” has been found guilty of felony level welfare fraud. The amount stolen equals \$50,000. She has no prior felony level criminal history.

In Minnesota, more than 95% of felony level offenses are sentenced pursuant to the Minnesota Sentencing Guidelines. These guidelines have been in effect since the early 1980s.

The legislature has established a Sentencing Guidelines Commission. This commission meets every year and determines the “presumptive” sentence for each of Minnesota’s felony level crimes. They do it by first ranking the crime on scale of one to ten in severity. They next establish how a criminal history score is computed. Finally, they determine the actual number of months a sentence should be based on the severity level of the offense and the criminal history score. These guidelines are considered approved each year unless the legislature acts to reverse them. For more information, go to their website at <http://www.msgc.state.mn.us/index.htm>.

It is important to note that the presumptive sentences bear no resemblance to the maximum sentence provided in the statute that defines a crime.

The result of the Commission’s work is a chart. This chart is reproduced below. The left hand column of the chart is the severity level of the offense. Almost all felony level crimes in Minnesota have been assigned to one those severity levels. The descriptions of offenses on the chart are generalizations. To get the actual level for a specific offense, there is a lengthy index to refer to.

The upper row is the criminal history score an offender has (based on prior offenses he/she has been sentenced for).

To determine the presumptive sentence, go to the offenses severity level, and then right to the correct criminal history score.

The Chart is reproduced below:

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	XI	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, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	IX	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	VIII	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	VII	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ²
<i>Controlled Substance Crime, 3rd Degree</i>	VI	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	III	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Sale of Simulated Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the guidelines by law. See Guidelines Section [II.E., Mandatory Sentences](#), for policy regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. See, Guidelines Sections [II.C., Presumptive Sentence](#) and [II.E., Mandatory Sentences](#).

¹ One year and one day

² M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which 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, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

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The guidelines also determine whether an offender receives probation or goes straight to prison. The shaded area in the chart indicates a probationary sentence is called for. Under that type of sentence, the most an offender can be incarcerated, at least initially, is for up to one year in a

county jail. Prison is generally not allowed until the offender has violated probation, not once, but several times. There are exceptions to this general rule.

The presumptive sentence is the single number. In many cases, below that number is range. When it comes time to sentence an offender, a judge has to sentence in that range, preferably at the presumptive level. The only way a judge can “depart” upward (i.e. increase the length of the sentence) from that range is if either a jury determines there are aggravating factors, or the Defendant agrees to let the judge decide if there are aggravating factors. An “aggravating” factor is some fact that would make the current offense more heinous than the usual offense of that type. Determining that is very complicated, and we will leave it at that.

So, going back to the Hypothetical above: Welfare Fraud over \$5,000 (no matter how much over) is a Level 3 offense. If “Jane” has no prior felony history, her score is zero. The presumptive sentence is 12 months and 1 day. Since it is in a shaded area, “Jane” gets probation. A judge only has the discretion to determine the conditions and length of probation and the length of a jail (not prison) term up to one year. This is far different from the statutory “maximum” sentence for this offense, which is 10 years in prison, a \$20,000 fine or both.

For a person to go to prison for this type of welfare fraud offense, their criminal history score must be at least 4, meaning they must have at least several prior felony convictions.

Thus, for the vast, vast majority of cases, the offender receives a “presumptive sentence.” And, except for the range, it is not the Judge who determines the length of the sentence, or whether the offender goes to prison. The Judge must sentence in accordance with the chart.

One final note: The legislature has also determined that every offender who goes to jail or prison shall receive a one day reduction in actual time served for every two days they serve. To qualify, however, they must behave and not break any rules. The reduced days are converted to supervised release where the offender lives in the community supervised by a state probation agent. Thus, in the hypothetical above, if the Judge sentenced “Jane” to one year in jail, she would actually serve 8 months and 1 day, and would be on supervised release for the balance of 4 months. After that, her sentence is completely finished: i.e. she is no longer on probation.

As you can see, under Minnesota law Judges do not have much discretion in whether an offender goes to prison and for how long. The Sentencing Guidelines set out the rules.

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