

Battered Women's Legal Advocacy Project, Inc.

CRIMINAL SENTENCING OPTIONS

Advocates working in the criminal court system need to be able to understand and explain the various sentencing options that could arise with different criminal charges. This packet explains the various options, defines sentencing terms and gives information on the felony sentencing guidelines.

Attached: Minn. Stat. §§ 609.11 and 609.135

Updated: November, 2005

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CRIMINAL CHARGES

POSSIBLE OUTCOMES

If a person is charged with a crime, one of the following outcomes results:

- the charge is dismissed
- the person pleads guilty and is sentenced
- the person is found guilty by a judge or jury and then sentenced
- the judge gives a “stay of adjudication:” a sentence without finding the person guilty

NOTE: If the person charged with the crime is not a United States citizen, then an admission of domestic violence in court could lead to deportation. This includes all non-citizens and includes admissions as well as direct convictions. The possibility of deportation will not be considered as part of the defendant’s sentence, but it is clearly a severe consequence that may result from the criminal charge. If the person charged is not a United States citizen or has not naturalized, she/he should contact an immigration attorney for a full explanation of the possible consequences.

There are three basic options when a defendant is sentenced:

1. **Serve the maximum amount of time** for the crime. This means that the defendant is in the county jail or state prison for the maximum amount of time for their crime.

Maximum time would be:

- 90 days for a misdemeanor crime
- 1 year for a gross misdemeanor
- 1 year and 1 day or more for a felony

A defendant may qualify for work release or furloughs while the defendant is serving time. This means they may be released from the jail or prison in order to go to work or for other reasons (e.g. attend funerals, participate in counseling).

2. **Serve some time** (less than the maximum) **and then allowed out on parole.**

Parole is the conditional release of a prison inmate after serving part (if not all) of his or her sentence, allowing the inmate to live in the community under supervision for the parole period. The decision to grant parole is the responsibility, in a majority of states, of a board of parole or commission. Violations of the conditions of parole result in revocation of parole and re-imprisonment.

Each state has its own laws regarding the supervision of someone who is on parole. The parolee may be restricted to a particular community, job, or home. He may also be restricted in his general lifestyle, such as friendships or associations or where he can travel. He may also be placed in a community-based reentry or work furlough facility prior to release. The parolee may be required to obtain psychiatric treatment and be required to attend outpatient therapy. Those who abuse drugs or alcohol must abstain and may have to periodically go through an in-office drug test.

3. **Serve a set amount of time or serve no time and be put on probation.**

Probation is a sentence ordered by a judge, usually instead of, but sometimes in addition to, serving time in jail. It allows the convicted person to live in the community for a specified period of time, sometimes under the supervision of a probation officer, depending on the circumstances and the seriousness of the crime.

Probation means that the defendant must not commit new crimes and must follow the conditions set by the judge. If they commit new crimes or don't follow the court orders, the defendant could be sent to jail/prison to serve time.

The judge sets the conditions of probation. The judge can order various kinds of conditions as part of the probation. Each battered woman should think about what would increase her safety and what does the abuser need, then ask for these things as part of the probation sentence. The most common probation conditions are:

- being supervised by a probation officer.
- attending counseling or therapy for domestic violence, drug use or mental health issues.
- not using of drugs or alcohol.
- not contacting certain people.
- electronic monitoring.
- paying restitution for any costs incurred due to the assault.

Serving Time:

Whenever a defendant is ordered to serve time in a jail or prison, the person will receive credit for time already served and also will receive 1/3rd off their sentence for "good behavior". This means that a defendant sentenced to serve time will be released after serving 2/3rd of the sentence minus any other time that the defendant spent in jail before the hearing.

For example:

If the sentence is for 90 days in jail, 30 days will be taken off the sentence as good behavior. If the defendant was in jail for 3 days when first arrested, that time will also be taken off the sentence.

$$\begin{array}{r} 90 \text{ day sentence} \\ -30 \text{ days for good behavior} \\ \hline - 3 \text{ days time already served} \\ \hline =57 \text{ days time actually served in jail.} \end{array}$$

TERMS USED WHEN SENTENCING

Execute/impose: If a sentence is executed, then the defendant is being sent to serve the time in jail or prison.

Stay of execution: The defendant is sentenced to a set amount of prison or jail time but he or she does not serve that time now. Rather the defendant is placed on probation for a set period of time. If the defendant does not follow the conditions, then he or she can be sent to serve the amount of time that was sentenced.

Stay of adjudication: This term refers to a number of different things. It means that the court is not making a final finding but is sentencing the defendant.

Stay of imposition: The defendant is not sentenced to any prison or jail time. The court is placing the defendant on probation for a set period of time. If the defendant does not follow the conditions of probation, then he or she can be brought back to court and then the judge can give them a set number of days or months in jail or prison. If at the end of probation there have not been any problems, then the criminal charge is usually reduced to something less than the original charge. For example, a felony can be reduced to a misdemeanor on the defendant's record.

Continuance for Dismissal: The prosecutor agrees to discontinue the case, provided the defendant follows certain conditions (e.g. remains law abiding, goes to treatment, etc.). If the defendant breaks these conditions, then the state will prosecute the original charge. If the defendant successfully completes all of the conditions, the case is dismissed.

Term	What it Means	What to consider	Long-term Consequences
Execute or Impose Sentence	Serve the sentenced time in jail or prison	Will defendant be released for work? Will defendant be released for anything else? Will defendant serve time just on weekends?	Once the time is served, the judge has no more control over the defendant. Defendant could lose civil rights...e.g. right to own guns, voting rights. A non-citizen defendant may be deported.
Stay of Execution	The defendant is sentenced to time but doesn't serve the time right now. The defendant is on probation and could serve the time if they have trouble while on probation.	What are the conditions of probation? What probation violations will land the defendant in jail? Can the probation officer send the defendant to jail (sentenced by furlough) or does there need to be a hearing?	Could lose civil rights. A non-citizen defendant may be deported.
Stay of Imposition	The defendant is not sentenced to serve time. He or she is placed on probation.	What are the conditions of probation? Is there a probation officer? What will land defendant back in jail? Will the defendant's criminal record be reduced at the end of probation?	The crime will be reduced at the end of probation. The defendant may not have the crime on his or her record. This could mean that he or she can still own guns. This may be an incentive to obey the probation conditions. A non-citizen defendant could be deported.
Continuation for dismissal	No plea of guilty, the case is simply continued for a year (or some length of time) and if the defendant does what is ordered, the case will be dismissed at the end of the year	What are the conditions of the continuance? What happens if defendant violates? Is there a probation officer to monitor the conditions? Who will the battered woman call if there are problems with the defendant?	There is no plea of guilty. If there are problems, there may be a trial later. A defendant may come out of the court proceedings with no criminal record. If the continuance for dismissal involves the defendant admitting to the crime, a non-citizen defendant may face deportation.

FELONY SENTENCING GUIDELINES

In Minnesota, all felony cases are to be sentenced according to the Minnesota Sentencing Guidelines. These guidelines were developed in the 1970's following a legislative mandate. The legislature established the Minnesota Sentencing Guideline Commission which continues to update the guidelines to match new legislation.

The guidelines were developed to increase consistency and to reduce individual judge bias in the sentencing process. The guidelines are to be applied without respect to "the race, gender, social, or economic status" of the defendant.

The guidelines basically look at two factors --- the severity of the crime and the defendant's criminal history. Judges still retain a lot of discretion in the sentencing process and have the ability to depart from the sentencing guidelines. The guidelines have a number of rules and factors that are to be considered when sentencing.

Judges have lost some discretion when dealing with an upward departure from the sentencing guidelines (imposing a longer sentence than the guidelines recommend). Any fact that a judge relies on to increase the sentence beyond the maximum set in the guidelines must have been specifically submitted to a jury and proved beyond a reasonable doubt. (*Blakely v. Washington*, 542 U.S. 296, (2004)). For example: if a defendant was convicted of kidnapping and victim was treated with particular cruelty the court may seek to increase the sentence, however, all the facts used to explain why this kidnapping was particularly cruel must have been found by a jury beyond a reasonable doubt (i.e. he used a gun, he restrained the victim with tape, etc.).

UNDERSTANDING & USING THE GUIDELINES:

To determine what a defendant's presumptive sentence is, you would:

1. Look at the most severe offense charged. (See attached severity level lists.)
2. Determine the defendant's criminal history score
 - a. Look at the defendant's prior felony convictions. You can consider the felony convictions if the date of the completion of the sentence occurred within the past 15 years. If the prior conviction was:
 - severity level I-II, the defendant receives ½ point;
 - severity level III – IV, the defendant receives 1 point;
 - severity level VI – VII, the defendant receives 1½ point;
 - severity level VIII-X, the defendant receives 2 points;
 - for Murder in the first degree, the defendant receives 2 points.
 - b. Look at the defendant's custody status at the time the new offense was committed. If the defendant was:
 - on probation, parole, supervised release, or conditional release for a felony or gross misdemeanor;
 - in jail or prison after conviction of a felony or gross misdemeanor or;

- released pending a sentencing hearing for a felony or gross misdemeanor, then; the defendant would receive one custody point.

c. Look at the defendant's prior misdemeanor and gross misdemeanor convictions. The court can consider the conviction if the defendant was convicted during the past 10 years. For four qualifying misdemeanors or gross misdemeanor convictions, the defendant receives one point. A list of qualifying misdemeanors and gross misdemeanors is attached. The defendant can only receive only one point for misdemeanor/gross misdemeanor convictions no matter how many convictions there are.

d. If the defendant is under 25 years of age at the time the new offense was committed, the court can consider the defendant's juvenile court record. The defendant can be given one point for committing and being prosecuted as a juvenile for two offenses that would have been felonies if there were committed by an adult. The court can only consider offenses which were committed after the defendant was 14 years old. The defendant can generally receive only one point based on their juvenile record. Convictions for certain more serious juvenile offenses could result in additional points.

e. After totaling defendant's criminal history score, it is rounded down to the nearest whole number. Partial points are not considered.

3. Look on the sentencing guidelines grid. (A copy of the grid is included with these materials.) Using the severity level number and the defendant's criminal history score find the box which will have either a single number or one number with a range below it.

- The grid has a heavy black line through the middle of the chart. If the defendant falls "below the line", in the dark shaded area, it is presumed that the sentence will be stayed. The defendant should be placed on probation and have the amount of time specified in the box used as stayed time.
- If the defendant falls "above the line", or in the unshaded areas, it is presumed that the defendant will be sentenced to serve time. The judge can sentence the defendant to serve any amount of time that is included in the range and still be following the sentencing guidelines.

DEPARTURES FROM THE SENTENCING GUIDELINES:

If a judge departs from the range specified on the sentencing grid or departs from the presumption of prison, the judge must give written reasons for the departure. Departures should only be under "substantial and compelling circumstances".

Factors which are not reasons for a departure are:

- race
- sex
- employment factors, including:
 - occupation or impact of sentence on profession or occupation;

- employment history;
- employment at the time of the offense;
- employment at the time of sentencing.
- social factors, including:
 - educational attainment;
 - living arrangements at the time of the offense or sentencing;
 - length of residence;
 - marital status.
- exercise of constitutional rights by the defendant.

Factors that may be used as reasons for departure (this is not an exhaustive list). However, any of these factors used to **increase** the sentence beyond the statutory maximum must be proved by a jury beyond a reasonable doubt:

- victim was an aggressor in the incident;
- offender played a minor or passive role in the crime;
- offender participated due to coercion or duress;
- offender, because of physical or mental impairment, lacked substantial capacity for judgment;
- offender is a “patterned sex offender”;
- victim was treated with particular cruelty;
- victim was particularly vulnerable due to age, infirmity or reduced physical or mental capacity;
- offense involved multiple victims or multiple incidents.

Mandatory minimum sentences are specified in certain legislation. For example, Minnesota Statute §609.11 says that when a dangerous weapon is used when committing a crime such as assault in the first, second or third degree there should be a minimum sentence of a year and a day in prison. If a firearm is used, there is a minimum sentence of three years.

This minimum sentence may be negotiated away or a judge may decide not to give the minimum sentence. However this would need to be stated on the record.

A number of other criminal statutes include mandatory minimum sentences. However, these are really recommendations and the judge does not have to give the mandatory minimum sentence. But if the judge departs from that mandatory minimum, the reasons for the departure must be stated on the record.

CONCURRENT/CONSECUTIVE SENTENCES:

Presume that if a defendant is sentenced on more than one charge, the sentences will run concurrently (run at the same time).

Consecutive (end-to-end) sentences may be given only the select cases, such as if the defendant is convicted for escape from custody or if he or she committed the new crime

while serving prison time. If a consecutive sentence is given in any other case, this is considered a departure from the guidelines and requires a judge to give written reasons for the departure.

ATTEMPTED CRIMES:

The sentence for an attempted crime is half of what the sentence would be if the crime had been committed rather than attempted.

This is merely a summary of major points in the sentencing guidelines. The sentencing guidelines can be found at http://www.msgc.state.mn.us/sentencing_guidelines.htm.

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		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Murder, 2nd Degree (intentional murder; drive-by-shootings)	XI	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ^b	426 363-480 ^b
Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)	X	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
Criminal Sexual Conduct, 1st Degree ² Assault, 1st Degree	IX	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
Aggravated Robbery 1st Degree Criminal Sexual Conduct, 2 nd Degree (c),(d),(e),(f),(h) ²	VII I	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
Felony DWI	VII	36	42	48	54 46-64	60 51-72	66 57-79	72 62-86
Criminal Sexual Conduct, 2 nd Degree (a) & (b)	VI	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
Residential Burglary Simple Robbery	V	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
Nonresidential Burglary	IV	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
Theft Crimes (Over \$2,500)	III	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
Theft Crimes (\$2,500 or less) Check Forgery (\$200-\$2,500)	II	12 ¹	12 ¹	13	15	17	19	21 18-25
Sale of Simulated Controlled Substance	I	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22

EXPLANATIONS ON NEXT PAGE

Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section [II.E. Mandatory Sentences](#) for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

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 sections [II.C. Presumptive Sentence](#) and [II.E. Mandatory Sentences](#).

¹ One year and one day

² Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see [II.C. Presumptive Sentence](#) and [II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers](#)). Pursuant to M.S. § 609.3455, certain sex offenders are subject to life sentences. Some of these life sentences are life without release, while others are indeterminate life sentences with the minimum term of imprisonment specified by the court and based upon the sentencing guidelines and any applicable mandatory minimums. See II.C. Presumptive Sentence.

³ M.S. § 244.09 requires the Sentencing Guidelines to provide a range of 15% downward and 20% upward from the presumptive sentence. However, because the statutory maximum sentence for these offenses is no more than 40 years, the range is capped at that number.

Effective August 1, 2005