

3. RELATED POLICIES

A. Establishing Conditions of Stayed Sentences

1. Method of Granting Stayed Sentences. When the court orders a stayed sentence, the court may pronounce a stay of execution or a stay of imposition. The court must pronounce the length of the stay, which may exceed the duration of the presumptive prison sentence but not the maximum length of stay established in Minnesota Statutes, section 609.135, subdivision 2. The court may establish appropriate conditions subject to the considerations in section 3.A.2.

a. Stay of Execution. When ordering a stay of execution, the court must pronounce the prison sentence duration, but its execution is stayed. The presumptive duration is shown in the appropriate cell.

b. Stay of Imposition. When ordering a stay of imposition, the court must not pronounce a prison sentence duration, and the imposition of the sentence is stayed.

The Commission recommends that stays of imposition be used for offenders who are convicted of lower severity offenses and who have low criminal history scores. The Commission further recommends that convicted felons be given one stay of imposition, although for very low severity offenses, a second stay of imposition may be appropriate.

Comment

3.A.101. The use of either a stay of imposition or stay of execution is at the discretion of the court. The Commission has provided a non-presumptive recommendation regarding which categories of offenders should receive stays of imposition, and has recommended that convicted felons generally should receive only one stay of imposition. The Commission believes that stays of imposition are a less severe sanction, and should be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, courts use stays of imposition most frequently for these types of offenders.

3.A.102. When a court grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell on the applicable Grid, and may be as long as the maximum length of stay provided in Minnesota Statutes, section 609.135, subdivision 2 - for most offenses, no more than five years. Thus, for a sentence for Theft over \$5,000 (Severity Level 3), with a Criminal History Score of 1, the duration of the stay could be up to five years. Regardless of the length of stay, the 13-month sentence shown in the Guidelines is the presumptive sentence length and, if imposed, would be executed if: (a) the court departs from the dispositional recommendation and decides to execute the sentence; or (b) the stay is later revoked and the court decides to imprison the offender.

2. Other Conditions of Stayed Sentences. While the Commission has otherwise chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including:

- (1) deterrence;
- (2) public condemnation of criminal conduct;
- (3) public safety;
- (4) rehabilitation;
- (5) restitution;

(6) retribution; and

(7) risk reduction.

The Commission also recognizes that the relative importance of these objectives may vary with both offense and offender characteristics and that multiple objectives may be present in any given sentence. The Commission urges courts to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction. The Commission further urges courts to consider the following principles in establishing the conditions of stayed sentences:

(1) Retribution. If retribution is an important objective of the stayed sentence, the severity of the retributive sanction should be proportional to the severity of the offense and the prior criminal record of the offender. A period of confinement in a local jail or correctional facility may be appropriate.

(2) Rehabilitation. If rehabilitation is an important objective of the stayed sentence, the court should make full use of available local programs and resources. The absence of a rehabilitative resource, in general, should not be a basis for enhancing the retributive objective in sentencing and, in particular, should not be the basis for more extensive use of incarceration than is justified on other grounds.

(3) Restitution. The Commission urges courts to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for offenders with short criminal histories who are convicted of property crimes, although the use of these conditions in other cases may be appropriate.

(4) Supervision. Supervised probation should be a primary condition of stayed sentences.

(5) Fines. If fines are imposed, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.

(6) Work Release and Community Based Programs. The Commission has chosen not to establish specific guidelines relating to work release programs in local facilities or community-based residential and nonresidential programs.

Comment

3.A.201. *The court may attach any conditions to a stayed sentence that are permitted by law and that the court deems appropriate. The Guidelines neither enlarge nor restrict the conditions that courts may attach to a stayed sentence. Minnesota Statutes, section 244.09, subdivision 5, permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. In 2020, the Commission developed such guidelines with respect to the pronounced length of stay - which the Legislature essentially codified in Minnesota Laws 2023, chapter 52, article 6, section 13 - and has provided additional, general direction in the use of conditions of stayed sentences in the above section.*

3.A.202. *While the Commission has otherwise not developed guidelines for nonimprisonment sanctions, the Commission believes it is important for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minnesota Statutes, section 609.135, subdivision 7, which states when an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration.*

B. Revocation of Stayed Sentences

The Commission views a revocation of a stayed sentence and commitment to be justified when:

(1) the offender is convicted of a new felony for which the Guidelines recommend prison;
or

(2) the offender continues to violate conditions of the stay despite the court's use of expanded and more onerous conditions.

The decision to revoke an offender's stayed sentence should not be undertaken lightly. Great restraint should be exercised in imprisoning offenders who were originally convicted of low severity level offenses or who have short prior criminal histories. For these offenders, the Commission urges continuance of the stay and use of more restrictive and onerous conditions, such as periods of local confinement. Less judicial tolerance is urged for offenders who were convicted of a more severe offense or who had a longer criminal history. For both groups of offenders, however, the court should not reflexively order imprisonment for non-criminal violations of probationary conditions.

Comment

3.B.01. The Guidelines are based on the concept that the severity of the sanction is proportional to the severity of the current offense and the criminal history of the offender. Therefore, great restraint should be used when considering increasing the severity of the sanction based upon non-criminal technical violations of probationary conditions.

C. Jail Credit

1. In General. In order to promote the goals of the Sentencing Guidelines, it is important to ensure that jail credit is consistently applied. The court must assure that the record accurately reflects all time spent in custody - including examinations under Minn. R. Crim. P. 20 or 27.03, subd 1(B) - for the offense or behavioral incident for which the offender is sentenced. Minnesota Statutes, Rules of Criminal Procedure, relevant court decisions, and these Guidelines determine how jail credit is applied.

2. Applying Jail Credit. To uphold the proportionality of sentencing, jail credit should be applied in the following manner:

a. The Commissioner of Corrections must deduct jail credit from the sentence imposed by subtracting the time from the specified minimum term of imprisonment. If there is any remaining time, it must be subtracted from the specified maximum period of supervised release.

b. To avoid double credit when applying jail credit to consecutive sentences, the court must apply the jail credit to the first sentence only.

c. To avoid creating a concurrent sentence when a current offense is sentenced consecutively to a prior offense for which the offender is already serving time in a prison or jail, the court must not apply jail credit from the prior offense to the current offense.

d. When a stayed sentence is revoked and the offender is committed, jail credit must reflect time spent in confinement as a condition of the stayed sentence.

e. Jail credit must be awarded at the rate of one day for each day served for time spent in confinement under Huber Law (Minnesota Statutes, section 631.425).

Comment

3.C.01. *Jail credit is governed by statute and rule - see, e.g., Minnesota Statutes, sections 609.145 & 611.51, and Minn. R. Crim. P. 27.03, subd 4(B) - and a great deal of case law. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that an offender in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial.*

3.C.02. *Determining the appropriate application of jail credit for an individual can be very complicated, particularly when multiple offenses are involved. While the Commission recognizes the difficulty in interpreting individual circumstances, it believes that the court should award jail credit so that it does not turn on matters that are subject to the manipulation by the prosecutor.*

3.C.03. *The Commission also believes that jail credit should be awarded for time spent in custody as a condition of a stay of imposition or stay of execution when the stay is revoked and the offender is committed. The primary purpose of imprisonment is punishment, and the punishment imposed should be proportional to the severity of the conviction offense and the criminal history of the offender. If, for example, the presumptive duration in a case is 18 months, and the sentence was initially executed, the specified minimum term of imprisonment would be 12 months. If the execution of the sentence had initially been stayed and the offender had served four months in jail as a condition of the stay, and later the stay was revoked and the sentence executed, the offender would be confined for 16 months rather than 12 without awarding jail credit. By awarding jail credit for time spent in custody as a condition of a stay of imposition or execution, proportionality is maintained.*

3.C.04. *Credit for time spent in custody as a condition of a stay of imposition or stay of execution is appropriate for time spent in jails, workhouses, and regional correctional facilities. The Commission takes no position on the applicability of jail credit for time spent in other residential facilities, electronic monitoring, etc., and leaves it to the sentencing authority to determine whether jail credit should be granted in these situations.*

3.C.05. *In computing jail time credit, each day or portion of a day in jail should be counted as one full day of credit. For example, a defendant who spends part of a day in confinement on the day of arrest and part of a day in confinement on the day of release should receive a full day of credit for each day.*

3.C.06. *The Commission's policy is that sentencing should be neutral with respect to the economic status of felons. In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody must be computed by the Commissioner of Corrections and subtracted from the specified minimum term of imprisonment. If there is any remaining jail credit left over, it should be subtracted from the specified maximum period of supervised release. If credit for time spent in custody were immediately deducted from the sentence instead, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond.*

3.C.07. *For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody must be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.*

D. Juveniles

The Guidelines apply when determining:

(1) the appropriate sentence for a juvenile certified as an adult under Minnesota Statutes, section 260B.125; or

(2) the stayed adult sentence pronounced as part of the disposition imposed for a juvenile convicted as an extended jurisdiction juvenile under Minnesota Statutes, section 260B.130.

E. Presentence Mental or Physical Examinations for Sex Offenders

The Commission recommends that, under Minn. R. Crim. P. 27.03, subd 1(B)(1)(b), the court order a physical or mental examination of the offender as a supplement to the presentence investigation required by Minnesota Statutes, section 609.115, when:

(1) an offender has been convicted under Minnesota Statutes, section 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 609.365 (incest); or

(2) an offender is convicted under Minnesota Statutes, section 609.17, of an attempt to commit an act proscribed by Minnesota Statutes, section 609.342 (first-degree criminal sexual conduct) or 609.344 (third-degree criminal sexual conduct.)

F. Military Veterans

Under Minnesota Statutes, section 609.115, subdivision 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision. Minnesota Statutes, section 609.1056, provides deferred judgment procedures for certain criminal offenses related to service-related disorders if the defendant is a United States military service member or veteran.

G. Modifications

1. Policy Modifications. Modifications to sections 1 through 8 of the Minnesota Sentencing Guidelines, and associated commentary and appendices, apply to offenders whose date of offense is on or after the specified modification effective date.

2. Clarifications of Existing Policy. Modifications to commentary and appendices relating to existing Guidelines policy apply to offenders sentenced on or after the specified effective date.