

# Minnesota Sentencing Guidelines Commission

---

## Attempts and Conspiracies that Carry Mandatory Minimums: Possible Modifications

April 18, 2013

---

**Description:** The language in the Guidelines section 2.G. is currently unclear about what the duration of the sentence should be when the offender is convicted of an attempt or conspiracy and the underlying offense carries a mandatory minimum sentence.

Attempt (Minn. Stat. § 609.17) and conspiracy (Minn. Stat. § 609.175) are sentence modifiers. The term “modifier” is used in the Guidelines to describe a statute that aids in defining the punishment for the underlying offense. Both attempt and conspiracy reduce the statutory maximum imprisonment time by one-half.

In some cases, the crime the offender attempted or conspired to commit carries a mandatory minimum sentence. For these crimes, both the mandatory minimum sentence and the sentence modifier could impact the duration of the presumptive sentence.

Prior to the full revision of the Guidelines, Minn. Sentencing Guidelines § 2.G (2010) stated:

For persons convicted of attempted offenses or conspiracies to commit an offense with a mandatory minimum of a year and a day or more, the presumptive duration is the mandatory minimum or one-half the duration specified in the applicable Sentencing Guidelines Grids cell, whichever is greater.

**Guidelines Considerations:** The Guidelines policy has long been that the appropriate duration in these cases is the mandatory minimum or one-half the Grid time, whichever is longer. But the language contained within the Guidelines following the rewrite is less clear. Modification to the existing language is necessary to clarify that the sentence duration should not be less than any applicable mandatory minimum required by statute.

**MSGC Staff Recommendation:** Modify sections 2.E. and 2.G. as proposed below.

### **Proposed Modifications:**

#### **E. Mandatory Sentences**

1. In General. When an offender is convicted of an offense with a statutory mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment even if the presumptive sentence would ordinarily fall within the shaded

area on the applicable Grid. The presumptive duration of the prison sentence is the mandatory minimum sentence in statute or the duration provided in the appropriate cell on the applicable Grid, whichever is longer. When an offender is sentenced for an attempted offense under Minn. Stat. § 609.17 or conspiracy to commit an offense under Minn. Stat. § 609.175, and the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer. *See Mandatory Sentences Reference Table in Appendix 1.*

\*\*\*

### **G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers**

1. In General. Sentence modifiers are statutes that aid in defining the punishment for the underlying offense. Modifiers can affect either or both the duration and the disposition of the presumptive sentence. Any change to the presumptive fixed sentence under this section must also be applied to the upper and lower ends of the range found in the appropriate cell on the applicable Grid, except that the presumptive sentence cannot be less than one year and one day, nor can it be less than any applicable mandatory minimum.
2. Attempt or Conspiracy. When an offender is sentenced for an attempted offense under Minn. Stat. § 609.17 or for conspiracy to commit an offense under Minn. Stat. § 609.175, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense. When the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer.

\*\*\*