

# Minnesota Sentencing Guidelines Commission

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## Appendix 1 and 2: Technical Modifications February 21, 2013

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**Description:** Three offenses listed in the appendices refer to the incorrect location for the source of the mandatory minimum or presumptive sentence. The current appendix indicates that all subsequent third-degree drug offenses have a mandatory minimum of 24 months, but by statute only third-degree drug offenses charged under Minn. Stat. 152.023 subd. 3(b) have a mandatory minimum of 24 months. Subsequent third-degree drug offenses charged under Minn. Stat. § 152.023 subd. 3(a) are presumptive commitment per Guidelines section 2.C. First-degree burglary with a prior felony burglary conviction only carries a six month mandatory minimum, but the current appendix indicates that the presumptive commitment is due to this mandatory minimum. These offenses are presumptive commitment per Guidelines section 2.C. rather than by statute. The current title of Appendix 1 indicates that all of the presumptive sentences are mandatory minimums when some are due to Guidelines policy, and are presumptive sentences rather than mandatory sentences. In Appendix 2, the mandatory minimum for felon in possession of a firearm (Minn. Stat. §§ 609.165 or 624.713 subd. 1(2)) is found in Minn. Stat. § 609.11 subd. 5(b) rather than in the conviction statute.

**Guidelines Considerations:** The appendices are used by practitioners to quickly locate offenses with presumptive sentences or mandatory minimums that fall outside the applicable Grid.

**MSGC Staff Recommendation:** Clarify the source of the durations found in each appendix. Update the title of Appendix 1 to indicate that some sentences are found in the Guidelines rather than in statute.

### **Proposed Modifications:**

1. Amend the title of Appendix 1 and add a reference to Minn. Stat. § 152.023, subd. 3(a) as follows:

### **Appendix 1. Mandatory and Presumptive Sentences Reference Table**

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

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| <b>Statute</b>             | <b>Offense</b>                               | <b>Prerequisite or Conditions</b>  | <b>Minimum Duration</b>      |
|----------------------------|--|--|------------------------------|
| <u>152.023, subd. 3(a)</u> | <u>Controlled Substance Crime 3rd Degree</u> | <u>Prior felony conviction per chapter Minn. Stat. § 152 or finding under Minn. Stat. § 152.18</u> | <u>Grid Time<sup>1</sup></u> |
| <u>152.023, subd. 3(b)</u> | Controlled Substance Crime 3rd Degree        | Prior felony conviction per chapter Minn. Stat. § 152 or finding under Minn. Stat. § 152.18        | 24 months                    |
| <u>609.582, subd. 1(a)</u> | Burglary 1st Degree                          | Prior felony burglary  | <u>Grid Time<sup>1</sup></u> |

<sup>1</sup> Presumptive commitment per Guidelines section 2.C.

2. Amend the last line of the table in Appendix 2 as follows:

**Appendix 2. Dangerous Weapons Offense Reference Table**

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C.) It is not exhaustive.

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| <b>Dangerous Weapons – Minn. Stat. § 609.11</b>                 |                                      |   |                         |
|---|--------------------------------------|---|-------------------------|
| <b>Statute</b>  | <b>Offense</b>                       | <b>Prerequisite or Conditions</b>                             | <b>Minimum Duration</b> |
| <del>609.165 or 624.713.1(2)</del><br><u>609.11, subd. 5(b)</u> | Certain Persons not to have Firearms | <u>Current conviction under 609.165 or 624.713 subd. 1(2)</u> | 60 Months               |