

From the office of the Rice County Attorney:

Adult Plea Negotiation Guidelines

Revision June, 2004

1. These guidelines apply to any adult felony defendant case prosecuted by this office, which is not disposed of by diversion. See Diversion Policy and Procedure for those cases and Minnesota Statutes Chapter 152.
2. A. The presumptive plea negotiation for any presumptive stay (non-prison) shall be recommended as a sentence consistent with the Minnesota Sentencing Guidelines (hereinafter guidelines =) with a recommended jail cap as follows:

Criminal History Score

Severity Level of Conviction Offense (Common offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i>	XI	306	326	346	366	386	406	426
<i>(Intentional murder; drive-by-shootings)</i>		299-313	319-333	339-353	259-373	379-393	399-413	419-433
<i>Murder, 3rd Degree Murder, 2nd Degree</i>	X	150	165	180	195	210	225	240
<i>(Unintentional murder)</i>		144-156	159-171	174-186	189-201	204-216	219-231	234-246

<i>Criminal Sexual Conduct, 1st Degree</i> ²	IX	86	98	110	122	134	146	158
<i>Assault, 1st Degree</i>		81-91	93-103	105-115	117-127	129-139	141-151	153-163
<i>Aggravated Robbery 1st Degree</i>	VIII	48	58	68	78	88	98	108
<i>Criminal Sexual Conduct, 2nd Degree</i> ²		44-52	54-62	64-72	74-82	84-92	94-102	104-112
<i>Felony DWI</i>	VII	36	42	48	54	60	66	72
		365	365	365	51-57	57-63	63-69	69-75
<i>Criminal Sexual Conduct, 2nd Degree</i>	VI	21	27	33	39	45	51	57
		120-210	159-300	180-365	37-41	43-47	49-53	55-59
<i>Residential Burglary</i>	V	18	23	28	33	38	43	48
<i>Simple Robbery</i>		90-180	120-240	150-300	31-35	36-40	41-45	46-50
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24	27	30
		60-120	75-150	90-180	120-210	23-25	26-28	29-31
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19	21	23
		45-90	60-120	75-150	90-180	18-20	20-22	22-24
<i>Theft Crimes (\$2,500 or less)</i>	II	12 ¹	12 ¹	13	15	17	19	21
<i>Check Forgery (\$200 - \$2,500)</i>		30-60	45-90	60-120	75-150	90-180	120-210	20-22

<i>Sale of Simulated</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19
<i>Controlled Substance</i>		30-60	30-75	45-90	60-120	75-150	90-180	18-20

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. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault).

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.

An Offense Severity Reference Table found in the sentencing guidelines, which defines crimes by severity level is incorporated by reference.

1. If the offense is the crime of conspiracy one half shall be reduced an attempt other than conspiracy to commit a controlled substance crime in jail cap established in a paragraph 2(A).

2. Recommended jail caps may include an agreement for work release privileges, if eligible, unless otherwise stated. A position on alternatives to jail, such as home detention or sentence to service shall be at the discretion of the assigned prosecutor.

3. The County Attorney or the assistant county attorney assigned to the case may determine factors that cause exceptions to this policy, either in aggravation or mitigation.

4. Any exceptions must be based on one or more of the following reasons and specifically noted and documented in this file:
 - A. Extensive adult or juvenile record and/or other contact with the criminal justice system as evidenced by law enforcement documentation or dealings with this office.
 - B. Any possible relationship between the accused and the victim.
 - C. The attitude and mental state of the accused at the time of the crime, the time of the arrest, and the time of the plea discussion.
 - D. The age or vulnerability of the victim.
 - E. Sufficiency of admissible evidence to support a verdict.
 - F. Undue hardship caused to the accused.
 - G. Possible deterrent value of prosecution.
 - H. Aid to other prosecution goals through non-prosecution or negotiated disposition .
 - I. A consideration of the opinion, feelings, and attitude of the victim.
 - J. The age of the case, which may create proof issues.
 - K. Prosecution in another jurisdiction.
 - L. Provisions of restitution.
 - M. The attitude, availability, and credibility of witnesses.
 - N. The feelings and attitude of the community.
 - O. The feelings and attitude of the responsible law enforcement agency.
 - P. The extent of injury to the victim.
 - Q. Severity of crime compared to other similar crimes.
 - R. Other aggravating or mitigating circumstances.

5. The presumptive plea negotiation for all presumptive executed (prison) sentence crimes and for all severity level VII through X crimes shall be a recommended guidelines disposition. Any exceptions must be based on reasons set forth in paragraph 4 above or other exceptions recognized by law.

6. Normally, the offender is expected to plead to the greatest severity level charged offense. Any exceptions must be based on reasons set forth in paragraph 4 above or other exceptions recognized by law.

7. A charged case will not be dismissed unless it is dismissed as part of a plea negotiation in conformance with this policy or unless the County Attorney or Senior Assistant/Chief Deputy County Attorney approves the dismissal.

8. A written offer letter shall be sent to defense counsel no later than one week before the settlement conference outlining the proposed settlement unless settled earlier. In all cases if no formal offer letter is made, a memorandum to the file will outline the settlement and rationale for it.

General Rules

1. To avoid the expense and uncertainty of a trial, a recommended presumptive prison sentence may be reduced to the low end of the range provided in the box as the presumptive sentence unless specifically stated otherwise. This is not a reduction of the sentence, only a reduction of the discretionary range provided in the pertinent grid square.
2. Sexual Predators, Dangerous or Career Offenders: The Rice County Attorney's Office policy for criminals committing major violent crimes against a person or with career criminals, is the recommended reduction to the low end of the presumptive sentence does not apply to crimes where the defendant has a criminal history score of 6 or more. The office recommendation on these cases is "plead as charged, guidelines." In cases involving defendants who qualify or may qualify as a career offender or other offender who by statute may be given an enhanced sentence under the sentencing guidelines, the prosecutor may seek sentencing under those provisions.
3. In all severity levels of crimes, a presumptive prison commitment will not be negotiated away except for the reasons and under the rules provided in paragraph 4 above.
4. Multiple crimes (not same course of conduct). Consideration will be given to permitting a defendant to plead guilty to less than all crimes he or she is or may be charged with in an effort to obtain a conviction and sentence that is appropriate to the conduct. As an example, if a person engaged in a "Crime spree" who has forged ten checks or committed ten burglaries over two nights, under most circumstances, ten separate complaints, trials and convictions would not be a productive use of limited public resources or productive in punishing the offender.
5. In cases in which crimes may be aggregated, such as some thefts, credit card fraud and other property crimes, multiple counts may be aggregated to the extent allowed by statute into one or more counts. In such circumstances, the expected number of convictions may be based upon the revised number of counts, rather than the original number of charges. In such cases, the State will seek restitution for all crime victims.
6. The plea negotiation for the crime of escape shall be a recommended guidelines sentence, consecutive or guidelines sentence concurrent, whichever results in a longer sentence.

7. The plea negotiation for any criminal vehicular homicide or injury resulting in great bodily harm crime where the presumptive sentence is a stayed sentence under the Minnesota Sentencing Guidelines shall be guidelines. The plea negotiation for any criminal vehicular injury resulting in substantial bodily harm crime where the presumptive sentence is a stayed sentence shall be guidelines. The plea negotiation for any felonious leaving the scene of an accident crime where the presumptive sentence is stayed under the Minnesota Sentencing Guidelines shall be guidelines.
8. The plea negotiation for any presumptively stayed Manslaughter crime shall be guidelines.
9. The recommended jail cap on any Deprivation of Parental Rights crime shall be the number of days which is equivalent to the number of days during which the parental rights were wrongfully and criminally denied by the defendant or guidelines, whichever results in a longer sentence.
10. In all crimes against the person, input to the plea negotiation from the victim shall be sought before entering into the negotiation, including any subsequent deviations or modifications to the original plea negotiation. Input from the investigating agency is encouraged. The victim/witness coordinator shall assist in assuring the victim's opinion is voiced. Normally, a negotiation will not be agreed to over the victim's reasonable objection.
11. All plea negotiations shall include reservation of the ability of the court to order fines, restitutions, P.D. fund reimbursement, drug counseling, community service, drug evaluation, treatment, etc. We do not have the legal authority to limit the sentencing discretion of the court. It shall be made clear on the record in any guilty plea that we are making recommendations, which the court may follow or not follow, and that failure to follow the recommendation is not grounds alone to withdraw the plea. Forfeitures will not be negotiated away as part of a criminal plea agreement, although forfeiture cases may be settled through compromise of the claim by the civil division.
12. The Legislature has passed statutes, which impose mandatory minimum fines, and the Minnesota Supreme Court has held such fines may be imposed without regard to a finding by the court of ability to pay. Recognizing our obligations to enforce state statutes, we will not agree to recommend waiver of imposition of any mandatory minimum fine except for reasons set forth in paragraph four of this policy. In all cases the prosecutor will recommend that restitution be paid first in accordance with the law.
13. Any offer or recommendation shall be in writing and made no later than one week prior to the settlement conference and will be withdrawn no later than the end of the settlement conference.

14. All general rules may be modified by the County Attorney or Assistant County Attorney assigned to the case upon consultation with the County Attorney or Senior Assistant/Chief Deputy County Attorney.

15. As an additional inducement to encourage the just and speedy resolution of presumptive stayed (non-prison) cases, the plea negotiation recommended jail guidelines maybe reduced by 25% if the defendant pleads guilty at or before the Pre-trial or Omnibus Hearing, unless the office recommendation specifically states otherwise.

Such authority exists under the following terms and conditions, all of which must be met.

A. The guilty plea must be entered at or before the setting of a trial date.

B. The prosecutor is authorized, but not required, to recommend the additional reduction in the recommended guidelines, but when such an offer is made, the reason(s) shall be documented in the file, i.e. no aggravating factors or full admission to culpability.

¹ One year and one day

- • • Presumptive stayed sentences are set forth in # of days rather than months as in presumptive commitments to state imprisonment.

- • • For property crimes at severity levels I, II, III if the value is less than \$3,000.00 and defendant is a first time offender, STS may be requested in lieu of jail.