
Controlling Repeat DWI Offenders with Staggered Sentencing

This policy brief describes and partially evaluates a new sentencing strategy for repeat DWI offenders called staggered sentencing. This new sentencing strategy is being developed and implemented by Judge James Dehn, Tenth District Court, and by other district court judges in Minnesota. Our preliminary evaluation suggests that staggered sentencing reduces DWI recidivism by nearly 50 percent, while saving considerable jail resources.

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Summary

This policy brief describes staggered sentencing as a way to reduce recidivism by repeat DWI offenders. Staggered sentencing has been principally developed and implemented by Minnesota Tenth District Court Judge James Dehn.

A preliminary evaluation by the author¹ indicates that offenders given staggered sentences by Judge Dehn are re-arrested for DWI at only about one-half the rate that would be expected based on the recidivism rates of comparable DWI offenders sentenced by all other Minnesota courts. Simultaneously, it notes Judge Dehn's claim that staggered sentencing results in considerably less incarceration time for the great majority of offenders who successfully comply with the program's conditions of release, thereby resulting in considerable jail cost savings, as well.

These findings should be regarded as preliminary until confirmed by further application and analysis. But if these findings hold and staggered sentencing was to be broadly adopted by Minnesota's District Courts, it could possibly help reduce fiscal burdens for county governments throughout the state, while simultaneously enhancing traffic safety. It could also help alleviate pressure on the state correctional budget, by freeing up local jail space to house the growing number of state prisoners who currently are being committed to prison for relatively short time periods.² Finally, staggered sentencing may have the potential for broader application with other chemically involved offenders being arrested for other types of crimes— such as low-level drug offenses and domestic abuse offenses—for whom the court may wish to provide opportunity for rehabilitation, combined with oversight and accountability.

¹ Scott Swanson, former director of the Minnesota Sentencing Guidelines Commission (SGC), contributed to the field observation and editorial review for this policy brief. Anne Wahl, acting director of the SGC, participated significantly in the evaluation analysis.

² For example, the Minnesota Department of Corrections recently reported that during 2002 more than 800 prison beds were fully occupied by the more than 1,400 inmates who were admitted to the state prison system with less than one year remaining on their sentence. Some of these offenders had been given the minimum felony sentence of "one year and a day" (with one-third to be served on supervised release), while others were re-incarcerated following revocation of their supervised release following their original prison sentence.

The Impetus for Staggered Sentencing

More than 30,000 people are arrested for DWI each year in Minnesota, and nearly half of them are repeat offenders. For many years, a wide spectrum of leaders—police, court officials, legislators, mental health professionals, and others—have focused on a straightforward, but complex, problem: *How do we stop people from driving while impaired?*

A wide variety of strategies and programs have been developed to address this problem. Some have aimed at deterring people from committing an initial offense while others have aimed at providing punishment, incentive, and support to people who have already committed this crime. These efforts have helped to curb the problem, but it is far from eliminated. This is particularly true for repeat DWI offenders.

This policy brief describes and discusses an innovative strategy called staggered sentencing, which has been developed and applied to a small but growing sample of repeat DWI offenders in some Minnesota district courts. Tenth District Court Judge James Dehn, the principal developer and advocate of staggered sentencing, describes this approach as: “having the advantage of providing clear and certain incentives and punishment at the day of sentencing, as distinct from much traditional sentencing.”

It is particularly timely to review this new method now, as the state begins to implement and monitor the effects of the new felony DWI law that was enacted during the 2001 legislative session (effective August 1, 2002).³

Advocates of staggered sentencing claim that this model decreases the recidivism rate for repeat DWI offenders. That claim is supported by House Research analysis that is reported later in this brief. Likewise, advocates claim that staggered sentencing also decreases the number of days offenders spend incarcerated in jail, thereby producing direct cost savings, as well. If these claims are accurate, staggered sentencing would be a welcome addition to the strategies available to the courts to combat DWI recidivism.

³ [Laws 2001, 1st spec. sess., ch. 9](#), art. 19. According to an impact statement prepared by the Minnesota Sentencing Guidelines Commission, an estimated 1,378 DWI offenses will be eligible for felony-level conviction each year. This represents an increase of almost 14 percent in the total number of felony convictions which will occur in Minnesota in the next year.

The Experience in the Tenth District

During his 15 years on the district court bench, Judge Dehn has sentenced thousands of DWI offenders. In searching for more effective legal controls over such offenders, he has looked beyond the traditional penalties and sanctions.

For example, Judge Dehn spearheaded the use of remote electronic alcohol monitoring (REAM or EAM). REAM is used by Minnesota courts for monitoring the alcohol abstinence requirement of pretrial release for defendants charged with repeat DWI violations.⁴ He routinely requires REAM as a condition of probation for convicted repeat DWI offenders, as well. REAM has since been embraced by the legislature and most Minnesota district courts as an integral part of the legal control system for repeat DWI offenders.⁵

Judge Dehn has continued to review the variety of sentencing options available for these offenders. These include the traditional palate of sentences—a period of incarceration, a monetary fine, and some period of supervision (during which the offender would be subject to additional incarceration for violations of probation).

Less traditional options are also available, particularly in Minnesota, where the courts have long recognized that repeat DWI offenders typically have a diagnosed mental/physical illness, chemical dependency, which, if successfully treated, can help reduce the recidivism rate for

⁴ REAM allows the court to monitor the alcohol use of a person who has been released from custody, whether pending trial or following conviction. The system monitor, working from a central location, telephones the released defendant or offender to request a breath alcohol sample; the person being monitored is required to blow into an alcohol-sensing device which is attached to a telephone located in his or her own home. As the person blows an adequate breath sample, the device verifies the person's identity and analyzes his or her breath-alcohol concentration, and then immediately transmits the results to the monitoring agent. A positive alcohol reading results immediately in a verification visit from a police officer or probation agent, and, if alcohol use is verified, the person is typically returned to custody, pending a court hearing on the violation. The court directs whether the person is subject to home detention; if so, the system is programmed to telephone the person at random hours and up to nine or so times throughout the day and night. If home detention is not ordered, then the system is programmed to phone the person before and after his or her workday and before bedtime. On occasion, the court allows a more flexible schedule of REAM, such as to accommodate a person on business travel or at a special family event.

Typically, the REAM device and service are leased from a private vendor by the defendant/offender, and at his or her own expense (\$8 to \$14 per day). However, the legislature has appropriated as much as \$765,000 annually for a grant program to enable courts to assume part of the cost of the monitoring for indigent persons. Currently, there are four vendors providing REAM services throughout Minnesota.

⁵ REAM has become a mandated part of both pretrial release and post-conviction probation monitoring for certain categories of repeat DWI offenders in Minnesota (see [Minn. Stat. §§ 169A.44, 169A.277, and 169A.73](#)). In 2001, Minnesota courts placed over 8,400 repeat DWI offenders defendants on REAM—3,000 as a pretrial condition of release, and 5,400 as a post-trial condition of probation.

DWI offenders.⁶ Those alternatives include chemical dependency treatment, counseling, community work service, and other forms of remediation and ongoing judicial control, often as a supplement to more punitive sanctions.

The wide variety of alternatives, and the discretion given to district court judges in Minnesota to try different responses to the different sentencing problems, has led Judge Dehn to develop staggered sentencing.

The Staggered Sentencing Model

The staggered sentencing model has four key aspects, as described below.⁷ [For a brief review of certain relevant features of Minnesota's criminal sentencing laws, see [Appendix B.](#)]

1. A Staggered Incarceration Period

Generally, when a person convicted of a crime is sentenced to an executed period of incarceration, the court orders that period to begin on a given date⁸ and to run continuously until it is completed. With staggered sentencing, however, the court places the offender on probation for several years, and orders the executed period of incarceration to be served in two or more installments occurring during that period of probation. Those installments are spaced several months to one year apart, and the offender is given specific dates to report for incarceration.

The first incarceration segment must be served immediately (or soon after the sentencing date). The offender is given the dates in the future when he or she must begin serving subsequent incarceration segments.

2. Active Participation by the Offender

At the initial sentencing, the offender is given a motion form and instructions: If the offender can maintain sobriety (as shown through input from the offender's probation agent, family, friends, AA sponsor, and/or employer), the offender can file a motion approximately one month

⁶ Minnesota has a national reputation for being the state with perhaps the greatest availability of chemical dependency treatment programs, whether inpatient or outpatient, public or private, and for alcohol or other chemical substances. Much of the impetus for this state of affairs has stemmed from the early embracement by the Hazelden Foundation of the 12-step model of Alcoholics Anonymous treatment program. (Hazelden is located in Chisago Lakes, Minnesota). Another more recent key development has been the considerably lower cost intensive probation program for repeat DWI offenders developed by the Anoka County Corrections Agency, which in turn led directly to the 1991 legislative enactment to provide incentive funding to other counties to develop similar low-cost intensive probation programs for repeat DWI offenders ([Minn. Stat. § 169A.74](#)).

⁷ Appendix A describes an alternative approach to staggered sentencing used by another Minnesota District Court judge.

⁸ Typically, if the offender is in custody, the period of incarceration begins immediately, on the day of sentencing. In many cases, however, the offender is ordered to begin the incarceration period at a later date—such as when the offender is not deemed an immediate risk, needs some time to prepare personal matters before incarceration, or when local jails do not have sufficient space available.

before the next scheduled jail date to request forgiveness of all (or a portion) of the next period of incarceration. The offender can also request to have a segment of the alcohol monitoring period forgiven or reduced.

Giving an offender responsibility for altering the course of the future consequences may well be the true innovation in this program. Unlike traditional probation—a system under which an offender receives additional consequences for program failures—an offender is told that success will allow the court to give the offender additional control over the offender's life.

Under the staggered sentencing model, the offender has the responsibility to take the initiative to live up to the conditions of probation, to schedule a court hearing prior to the date for reporting for any subsequent segment of incarceration, and to convince the court that he or she has adopted lifestyle changes which significantly lessen the chances of further recidivism.

An offender who does not file the motion and request a hearing must report to serve the next incarceration segment as scheduled. No hearing is required; there is no “violation” of probation, and the offender simply shows up to serve the previously imposed incarceration segment. A failure to appear to serve an incarceration segment would, of course, also be a probation violation, which could result in additional sanctions being imposed.

3. Remote Electronic Alcohol Monitoring

REAM is also ordered at the initial sentencing, typically in segments of 30 days per year. Judge Dehn has attempted to tailor the frequency and timing of the monitoring to the specific circumstances of the offender; for example, some offenders require closer monitoring during holidays. The monitoring results are weighed heavily in the subsequent hearing requesting a waiver of the next pending segment of incarceration. However, if an offender can demonstrate his or her alcohol abstinence in other ways, he or she may also petition the court to waive the next segment of REAM, as well as the next segment of incarceration.

4. Clearly Articulated Consequences for Specific Violations

At the initial sentencing, the court advises offenders of the consequences for specific violations. For example, typically an offender is informed that any arrest for a new DWI violation will result in the revocation of the person's probation and immediate incarceration for the entire period of stayed sentence remaining. Likewise, the offender is typically informed that any violation of the other conditions of probation (including alcohol abstinence, completion of treatment, payment of fines, etc.) will result in the execution of the next segment of incarceration that has already been ordered to be served (instead of being forgiven).

Examples of Staggered Sentencing

During the past several years, Judge Dehn has ordered staggered sentencing for several dozen repeat DWI offenders—typically for second- or third-time offenders, though for at least one gross misdemeanor first-time offender, as well (as shown in the first example in the following table).

Table 1 contains specific offense and sentencing information for three selected gross misdemeanor DWI offenders who were given staggered sentences by Judge Dehn.⁹ These three very different cases illustrate some of the adaptive variations of Judge Dehn's approach to staggered sentencing.

Offender A is a first-time DWI offender, but since he was arrested with an alcohol concentration over .20 percent, his crime is enhanced to a gross misdemeanor. He received a 50-day jail sentence, to be served in two segments.

Offender B is a third-time DWI offender; he received a 90-day sentence to be served in three segments.

Offender C was convicted of his eighth DWI violation, which was a gross misdemeanor under the statutes at that time but which, if committed after August 1, 2002, would qualify as a felony offense (the sentencing guidelines would call for a three-year presumptive commit to prison for this offender). He was ordered to serve 120 days in jail immediately, to be followed by 50 days in each of the next four years, and 40 days in the fifth year.

In each of these cases, the offender has the possibility of earning forgiveness of each subsequent segment of incarceration after the first segment.

Note also the wide range of conditions of probation that were also ordered for these offenders. Many of these conditions are commonly prescribed by courts throughout the state and country. However, there is one condition of probation in these three sentences that is nearly an integral feature of the staggered sentencing model and used widely throughout Minnesota courts—remote electronic alcohol monitoring.

⁹ These offenders are: Rodney Mylan Moran, Louis James Bialka and Marc Joseph Arens.

Table 1 – Part I
Three Actual Examples of Staggered Sentences for DWI Offenders

	Offender A: 1st Time Offender, but with a High AC	Offender B: 3rd Time Offender	Offender C: 8th Time Offender
DWI Offense	Gross Misdemeanor DWI, with .20 percent or more AC [his first DWI, but enhanced to a GM by the high AC]	Gross Misdemeanor DWI, 3rd within ten years [prior DWIs in 1994 and 1996]	Count 1: Gross Misdemeanor DWI, 4th DWI within ten years Count 2: False Info [prior DWIs in: 1986, 1988, 1989, 1990, 1993, 1994, 1996]
Current Offense Date	Aug. 21, 2000	Aug. 10, 1999	Dec. 4, 2000
Sentencing Date	Feb. 14, 2001	Dec. 2, 1999	July 24, 2001
Jail Days			
Total Imposed	365 days	365 days	Count 1: 365 days Count 2: 90 days
Stay of Execution	315 days, stayed for four years	275 days, stayed for four years	Five days, stayed for six years
Ordered Executed	50 days	90 days	360 days
1st Segment	25 days jail, with Huber Work Service or Sentence to Service during jail commencing by April 1, 2001 (this jail time was served)	30 days jail commencing by Jan. 15, 2000 (this jail time was served)	120 days jail for count 1, to be served concurrently with 90 days for count 2 (this jail time was served)
2nd Segment	25 days jail, with Huber work service or Sentence to Service during jail commencing by July 1, 2003 (pending)	30 days jail commencing by July 1, 2001 (served)	50 days jail commencing by July 1, 2002 (pending)
3rd Segment		30 days jail commencing by July 1 2003 (pending)	50 days jail commencing by July 1, 2003 (pending)
4th Segment			50 days jail commencing by July 1, 2004 (pending)
5th Segment			50 days jail commencing by July 1, 2005 (pending)
6th Segment			40 days jail commencing by July 1, 2006 (pending)
Fine	\$900 total, with \$400 stayed; must pay \$125 alcohol assessment fee annually for four years; a total of \$500 + \$35 fees	\$900 total, with \$400 stayed; must pay \$125 alcohol assessment fee annually for four years; a total of \$500 + \$35 fees	\$3,000, with \$2,500 and fees stayed for six years; must pay \$500

Table 1 – Part II
Three Actual Examples of Staggered Sentences for DWI Offenders

	Offender A: 1st Time Offender, but with a High AC	Offender B: 3rd Time Offender	Offender C: 8th Time Offender
Terms of Probation	Four years total	Four years total	Six years total
	30 days REAM commencing before Dec. 1, 2002, at own expense	Stay on monitor until jail	Huber work release, or Sentence to Service during jail
	30 days REAM commencing before Dec. 1, 2003, at own expense	Enter outpatient treatment within 60 days	REAM for 30 days on or before Dec. 5 each year; at own expense unless grant eligible
	30 days REAM commencing before Dec. 1, 2004, at own expense	Weekly AA as long as probation deemed necessary	Credit for time served pending trial
	Pay fine by Aug. 14, 2001	30 days REAM before Dec. 1, 2000, at own expense	Pay fine by July 24, 2003
	Attend Health Recovery Center session within 180 days at own expense (biochemical connection)	30 days REAM before Dec. 1, 2001, at own expense	May perform community work service while in jail (in lieu of fine)
	Attend MADD victims impact panel w/in 180 days	30 days REAM before Dec. 1, 2002, at own expense	Attend Health Recovery Center session within 180 days at own expense (biochemical connection)
	No same or similar offenses	Attend Health Recovery Center session within 120 days at own expense (biochemical connection)	Attend MADD victims impact panel w/in 180 days
	No entering alcohol establishments	Attend MADD victims impact panel within 120 days	Weekly participation in AA
		No use/possession of alcohol or mood altering substances	No new alcohol violations
		No entering alcohol establishments	No use/possession of alcohol or mind-altering substances
		Pay fine and other charges by April 1, 2001 at \$50/month	No entering alcohol establishments
		Probation hearing: March 5, 2001, defendant had not attended AA or Health Recovery Center; given 20 days to enroll	
Data Source: Minnesota's Tenth Judicial District, Judge Dehn			

Preliminary Evaluation of Staggered Sentencing

Using a newly developed analytic tool for measuring DWI recidivism, the House Research Department has undertaken a limited evaluation of the effectiveness of staggered sentencing program. The results suggest that the program may be quite effective in reducing DWI recidivism by those offenders given staggered sentences.

Specifically, the analysis reveals that the first 61 DWI offenders given staggered sentences by Judge Dehn have experienced 49.9 percent less DWI recidivism than would otherwise be expected based on statewide recidivism rates for comparable DWI offenders in the same time frame.¹⁰

In addition to the direct and indirect cost savings associated with reduced recidivism, staggered sentencing may result in substantial direct cost savings from a reduction in executed jail time. According to Judge Dehn, offenders who are successful under staggered sentencing are forgiven, on average, about 78 days of executed jail time, or 52 days after deducting for good-time earned. At the approximate per diem jail cost of \$60 (a conservative estimate), the 52 days saved translates to a direct jail cost savings of over \$3,000 per successful offender on the current offense. Further law enforcement, judicial, and correctional cost savings would derive from the nearly 50 percent reduction in recidivism.

These findings are clearly encouraging for the staggered sentencing model. However, the reader should be cautioned that they are preliminary at this early stage of any new program, it is an empirical question whether the favorable results can be replicated in other courtrooms and communities. Nevertheless, it would seem advisable to go forward with developing, testing, and fine-tuning staggered sentencing, since few if any programs have shown this magnitude of early success in controlling repeat DWI offenders.

¹⁰ The methodology used to create the statewide DWI recidivism rate tables and to utilize them in the present analysis is available from the author. In brief, the statewide recidivism rate tables were constructed using survival analysis methods to create life tables showing cumulative monthly DWI recidivism rates for each DWI offense level separately. Each offender given a staggered sentence was then categorized by offense level and months of follow up (or months to recidivism, for failures) for comparison with the corresponding rate table to determine the person's expected probability of recidivating in that specific time frame. Those expected probabilities were aggregated across all offenders to produce a total for comparison with the actual aggregate recidivism for the group. The results showed six actual DWI recidivisms, compared to an expected number of 11.98, for a reduction of 49.9 percent. The analysis involved over 1,500 total months of follow up for the 61 sentenced offenders, for an average of just over 24 months each.

Appendix A

An Alternative Model of Staggered Sentencing: The Gebeck Case

Not all applications of staggered sentencing in Minnesota closely resemble Judge Dehn's approach. For example, in one well-publicized felony level case of alcohol-related criminal vehicular homicide involving wrong-way, high-speed driving on an interstate highway in 2000 (the Gebeck case),¹¹ the second-time DWI offender was sentenced to a staggered sentence involving jail time and work service, rather than to a term of prison. This sentence was rather controversial, given that the state sentencing guidelines specified a four-year presumptive commit to prison sentence for this felony-death crime.

Instead of sentencing the offender, Gebeck, to the 48-month presumptive executed sentence in a state prison, the district court *imposed* a prison sentence of six years (72 months), but *stayed the execution of that sentence* for ten years on multiple conditions. Among the conditions prescribed by the district court, were that the offender serve 365 days in the workhouse, 275 of them immediately. Additionally, it ordered that beginning on the first anniversary of the offense, and for each of four years thereafter, the offender would serve 18 days in the workhouse with no weekend furloughs. This is to be followed for each of the following four years by 15 days of sentence to service (a county correctional work program) and 120 hours of community service each year.

The convicted offender in this case challenged her staggered sentence, both for its downward dispositional departure and its upward durational departure. However, the Minnesota Court of Appeals affirmed the district court's sentence.¹²

Thus, under this particular staggered sentence the court *imposed* a relatively long sentence to incarceration (six years instead of the presumptive four years called for by the guidelines), but then *stayed* most of that sentence while ordering part of it (365 days) *to be executed* in six separate segments spread over a six-year period, followed by segments of work service over the next four years.

Despite the obvious similarities, the staggered sentence ordered in the Gebeck case differs from Judge Dehn's approach in at least three principal ways.

1. The crime in the Gebeck case was a felony-level crime involving criminal vehicular homicide, the most serious level of DWI crime possible. Judge Dehn has indicated that he generally limits his own use of staggered sentencing to cases of DWI not involving death, saying that, absent special circumstances, when death results from the impaired driving, justice usually dictates that the court commit the offender to prison.

¹¹ See, *State v. Gebeck*, Minnesota Fourth Judicial District Court, file number 00035819, Sentencing Order, Oct. 10, 2000; Judge Stephen Aldrich, presiding.

¹² *State v. Gebeck*, 635 N.W.2d 385 (Minn. Ct. App. 2001).

2. In the Gebeck case, all segments of incarceration that have been ordered to be executed will, in fact, be served; that is, the offender does not have the option of earning forgiveness of any subsequent segment after the first one, as would be possible under the model initiated by Judge Dehn. Judge Dehn regards the possibility for forgiveness of a segment of incarceration as a key component of his model, in that it creates a powerful incentive for an offender to follow the prescribed conditions of probation (in Judge Dehn's words, "it places on the offender the responsibility and control for his own destiny.")
3. The Gebeck sentence does not require the use of remote electronic alcohol monitoring (REAM), whereas Judge Dehn's staggered sentences require that REAM be used for 30 days each year at some time prior to the offender's motion for forgiveness of a segment of incarceration. Judge Dehn regards REAM as an important indicator and validator of the offender's alcohol abstinence during probation. The virtual certainty of REAM's ability to detect alcohol use eliminates much of the deceptive behavior and denial that often characterizes the offender's alcohol dependence during probation.

Appendix B

A Brief Overview of Criminal Sentencing in Minnesota¹³

This appendix is intended to provide background information as reference material for readers who may already be familiar with criminal sentencing generally, or as a helpful context for readers new to the topic of criminal sentencing.

[Minnesota Statutes, section 609.02](#), defines four levels of offenses—the latter three as crimes—as follows:

- **Petty misdemeanor:** An action (e.g., a traffic violation) that is prohibited by statute but which is not a crime; no incarceration may be given; maximum fine is \$300.
- **Misdemeanor:** Maximum 90 days of incarceration (in a local jail or workhouse) and \$1,000 fine, or both.
- **Gross Misdemeanor:** Maximum one year of incarceration (jail or workhouse) and \$3,000 fine or both.¹⁴
- **Felony:** A crime for which a sentence to imprisonment of over one year may be imposed, in addition to a fine.¹⁵

Generally, a person's first impaired driving incident within a ten-year period is a misdemeanor crime (though the presence of either child endangerment or an alcohol concentration of .20 percent or more would enhance the charge one level), the second or third impaired driving incident within that time frame is a gross misdemeanor crime, and the fourth or more within a ten-year period is a felony crime.

For a person who has once been convicted of a felony DWI crime, any subsequent impaired driving violation also qualifies as a felony crime, irrespective of the time lapse since the most recent prior violation; thus, the felony DWI law is said to have a lifetime lookback period.

¹³ For statutory provisions on criminal sentencing, see in particular [Minnesota Statutes, sections 609.095 to 609.165](#) in the Minnesota Criminal Code.

¹⁴ The maximum sentence to incarceration for any gross misdemeanor crime is one year, to be served in a local jail or workhouse ([Minn Stat. § 609.15](#), subd. 2). Note, however, that upon conviction for a third or more DWI offense within a ten-year period, this statute and [Minnesota Statutes, section 609.035](#), provide an exception to this one year maximum by permitting consecutive sentences (i.e., sentence stacking) of up to one year each, for a total of three years, for certain separate gross misdemeanor crimes committed as part of the same course of conduct involving the DWI offense, as well as for separate DWI offenses.

¹⁵ Sentences longer than one year for any single crime are permitted only upon conviction for felony-level offenses and are to be served in state prison under the supervision of the Commissioner of Corrections ([Minn. Stat. § 609.02](#) and [§ 609.105](#)). Maximum fines for felony crimes are specified in statute for each specific category of crime, with some being as high as \$50,000.

For purposes of criminal charging, a prior impaired driving incident qualifies to be counted whether it results in: a) a DWI conviction, with or without administrative license revocation (ALR); or b) only in administrative license revocation (i.e., for an implied consent violation).¹⁶ In practice, the legal penalties following conviction for misdemeanor, gross misdemeanor, or felony crimes generally consist of a period of incarceration,¹⁷ a monetary fine,¹⁸ and some period of probation or supervised release. Intermediate sanctions are also available to courts as alternatives or supplements to incarceration.¹⁹

When sentencing a convicted offender to incarceration, the court first *imposes* a sentence of a specified period of time, and then often *stays* part (or all) of that sentence, while ordering the remainder, if any, to be *executed* (typically with credit for time already served awaiting trial).²⁰

¹⁶ The use of a prior implied consent administrative driver's license revocation (ALR) is an important feature of Minnesota's laws because it enhances the criminal charge for a subsequent impaired driving violation. It is important because a significant portion of DWI offenses (nearly 25 percent of first offenses and about 16 percent of repeat offenses, statewide) do not result in a DWI conviction. On the other hand, approximately 97 percent of impaired driving incidents result in ALR. Such ALR for a prior violation is also used to enhance the administrative sanctions and criminal penalties for a subsequent impaired driving violation. Thus, for example, a person who is arrested for his second impaired driving incident within a ten-year period, and who received ALR but no DWI conviction for the first incident, would nevertheless meet with a longer license revocation (180 days, instead of 90/30 days), in addition to stiffer criminal charges (gross misdemeanor, instead of misdemeanor) for this subsequent violation.

This situation contrasts markedly with the law and practice in many states, where the administrative sanctions and criminal penalties for a subsequent impaired driving incident are enhanced only if the prior incident resulted in actual conviction for DWI. Furthermore, in many such states, prosecutors traditionally accept a charge-reduction type of plea bargain for a violation by a person who has no prior DWI convictions on record. New York City and New York state public safety officials, for example, have indicated that such a policy in their state provides a DWI offender with "about three free bites off the apple" (three prior DWI arrests) "before prosecutors will push for a DWI conviction" (on the fourth or so actual DWI violation, which would then go on record as the person's first DWI conviction). Upon the person's next subsequent DWI arrest, the person's fifth actual DWI violation, the offender's driving and criminal history records would indicate only one prior DWI offense. To the extent that this pattern is true in other states, Minnesota's DWI laws and practice are considerably more rigorous.

¹⁷ For a listing of allowable kinds of sentences upon conviction for felony crimes, see [Minnesota Statutes, section 609.10](#), and for misdemeanor and gross misdemeanor crimes, see [Minnesota Statutes, section 609.125](#).

¹⁸ See [Minnesota Statutes, section 609.101](#), regarding fines, surcharges, and assessment fees. See [Minnesota Statutes, section 609.102](#), regarding local correctional fees.

¹⁹ Minnesota Statutes, section 609.135, subdivision 1, (b), defines intermediate sanctions as "including but not being limited to incarceration in a local jail or workhouse, home detention, electronic monitoring, intensive probation, sentencing to service, reporting to a day reporting center, chemical dependency or mental health treatment or counseling, restitution, fines, day-fines, community work service, work service in a restorative justice program, work in lieu of or to work off fines and, with the victim's consent, work in lieu of or to work off restitution."

²⁰ If a court actually executes the maximum jail sentence, it is prohibited from ordering probation following the person's release from incarceration. Thus, a court typically *imposes* a relatively long jail sentence, but *stays* a significant portion of it, thereby ordering only a part of it to be *executed* immediately. This is followed by a period of probation, during which time the stayed portion of the sentence is held in abeyance, so to speak, pending the person's successful performance of the conditions of probation that have been ordered by the court (see [Minn. Stat. § 609.135](#)). Court officials commonly refer to the amount of stayed jail sentence as "time hanging over the offender's head," which is regarded as important leverage to help motivate the offender to comply with the prescribed conditions of probation, or suffer the consequences.

When the court stays the imposition or execution of a sentence to incarceration, it may: a) order intermediate sanctions without placing the person on probation; and/or b) place the person on probation with or without supervision and on terms that the court prescribes,²¹ including intermediate sanctions.²² An offender who is given an executed jail sentence typically actually serves two-thirds of that executed sentence, with the remaining one-third being offset by good conduct allowance “good time,” in the common vernacular).²³

The maximum period of probation is two years following conviction for a misdemeanor DWI offense, and six years for a gross misdemeanor DWI conviction (compared to one year and two years, respectively, for most other misdemeanor and gross misdemeanor offenses; see [Minn. Stat. § 609.135](#), subd. 2). However, the court may extend the period of probation for up to two years for unpaid fines and fees (clause g), or up to three years if the offender has not successfully completed court-ordered treatment (clause h). It may also revoke an offender’s probation for these and other probation violations, and reincarcerate the person.

²¹ The court orders the conditions of probation which the offender must follow. (See, for example, the conditions specified in the table in the main text of this document.) If the offender fails to follow the specified conditions, the court may revoke the person’s probation and execute part or all of the stayed portion of the person’s sentence by ordering that the offender be returned to jail. It may also extend the probation period for certain violations, such as failure to pay fines and restitution and failure to complete treatment.

²² See [Minnesota Statutes, section 609.135](#) regarding the stay of execution or imposition of a sentence.

²³ More precisely, offenders sentenced to any county jail, workhouse, or correctional work farm, when sentenced to serve ten days or more, may have their sentence diminished by one day for each two days served during which the person has not violated any jail rule (i.e., a good conduct allowance; see [Minnesota Statutes, section 643.29](#)).

However, to accommodate Minnesota’s system of determinate sentencing for felony offenders, this good time concept is implemented somewhat differently in the case of an offender sentenced to state prison. When a felony offender is sentenced to a fixed term of imprisonment, the executed sentence consists of two parts: (1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum term of supervised release that is equal to one-third of the executed sentence. Then, the amount of time the offender actually serves in prison may be extended by prison officials if the defendant commits any disciplinary offenses in prison, with an equal offset of time on supervised release, such that this extension could result in the defendant’s serving the entire executed sentence in prison and none on supervised release. Nevertheless, the total sentence is determined at the time of initial sentencing; hence, Minnesota employs a system of determinate sentencing for felony offenders. (See [Minnesota Statutes, section 244.101](#), Determinate Sentencing, which supercedes [Minnesota Statutes, section 244.04](#), Good Time Reduction, for crimes committed on or after August 1, 1993).