

Appendix 5G

Framework for Recommending Time to Serve and Length of Probation

When using this Framework, the following principles apply:

1. This Framework is intended to be a guide for use in exercising discretion regarding charging, plea agreements, sentencing recommendations, length of probation and probation supervision levels. It is not intended to create a presumptive or required response for any particular case.
2. The Framework is intended for use when a probationary sentence, as opposed to an executed sentence, is the presumptive or expected outcome. In order to provide guidance in all cases where a probationary response is being agreed to or recommended, the Framework includes cases where a non-probationary response might be the more appropriate response. The fact that a particular case falls within a Framework category is not a statement that probation is the preferred response. The Minnesota Sentencing Guidelines, victim safety or offender accountability should be considered first to determine if an executed sentence is the preferred response.
3. This framework addresses time to serve. It is assumed that whenever an offender is placed on probation for a misdemeanor or gross misdemeanor offense the suspended time generally will be the maximum allowed by law. In felony cases it is assumed that the suspended time generally will be the presumptive sentence under the Minnesota Sentencing Guidelines.
4. It is recognized that in some cases prosecutors will go outside the Framework response because other factors, such as the likelihood of success at trial, may necessitate a different response in a particular case.
5. Time to Serve is expressed as a range. In considering where a particular case falls within that range, it is expected that practitioners will consider other factors such as:
 - a. Any minimum sentence mandated by statute
 - b. The level of violence
 - c. The injury or other harm which resulted
 - d. What is needed to manage the risk posed by the particular offender

- e. What response is most likely to maximize public safety, particularly victim safety
 - f. Except in those cases where the likelihood of success on probation is low, whether the remaining stayed time is a meaningful incentive to comply with probation
 - g. In those cases where the likelihood of success on probation is low, whether execution of the maximum sentence is likely to maximize victim safety
 - h. Offender accountability, without regard to considerations of motivating change or responding to violations, is the primary goal where the risk to the victim is high or the defendant is not considered a good candidate for probation supervision
 - i. The implicit message conveyed to the offender and the victim regarding the seriousness of the offense
6. The Framework ranges for time to serve are for probationary sentences. They do not address the appropriate range when an executed sentence is the expected or presumptive outcome.
7. In considering the length of supervised probation, it is expected that practitioners will consider factors such as:
- a. Amenability to probation. When the likelihood of success on probation is low, supervised probation may have only a marginal impact on victim safety or offender accountability. In those cases, consider whether victim safety is better served by maximizing time to serve.
 - b. Whether probation is necessary to meet the goals of offender accountability and victim safety when the offender presents a low risk of re-offending.
 - c. Length of time needed to complete probation conditions.
 - d. Need for a no contact order.
 - e. Need for the victim to have a probation officer available to contact regarding ongoing aggression.
 - f. Availability of other mechanisms to ensure that continued aggression is met with a sure, swift response.
 - g. Whether the remaining available stayed time is a viable incentive to comply with probation.

- h. Whenever authorized by law, when there is a pattern of actions associated with lethality, recidivism or severe abuse a second year of supervised probation should generally be required
- 8. While the Framework addresses the length of the probationary term, it is not anticipated that practitioners will enter into plea agreements regarding the length of the probationary term.
- 9. The apparent risk is based on risk factors identified by research as associated with heightened levels of risk (See Practitioner's Guide to Risk, and Danger in Domestic Violence Cases).
- 10. **Harm** as used in the Framework refers to all harm to the victim, not just physical injury.
- 11. **Battering** as used in the Framework means engaging in an ongoing, patterned use of coercion, intimidation, aggression and emotional abuse over a targeted victim which is reinforced by the use of or threat of physical or sexual violence.

Examples of Cases with an Apparent Risk of <u>No or Low</u> Levels of Ongoing Harm	Examples of Cases with an Apparent Risk of <u>Moderate</u> Levels of Ongoing Harm	Examples of Cases with an Apparent Risk of <u>High</u> Levels of Ongoing Harm
<p><i>NON-BATTERING OFFENDERS</i></p> <p>Offenders who are <i>not</i> engaged in patterned aggression against a current or former domestic partner</p>		
<ul style="list-style-type: none"> • Offender is a victim of ongoing violence who has used illegal violence or activities to control or stop the violence used against them • Offender has committed an act uncharacteristic of their usual behavior and other risk factors are not present • Offender has used low levels of violence without a demonstrated pattern of coercion and other risk factors are not present • Offender is mentally ill and there is no pattern of coercion and control and the offender 	<ul style="list-style-type: none"> • Offender is a victim of ongoing abuse who shows a number of risk markers for continuing use of non-lethal violence toward the predominant aggressor. • Offender is mentally ill, there is no patterned use of coercion, intimidation or control directed at a specific victim, factors associated with non-lethal violence or aggression are present • Offender is not engaging in patterned aggression against a current or former domestic partner but has a history of violence toward others 	<ul style="list-style-type: none"> • Offender is a victim of ongoing abuse who has used high levels of violence against the predominant aggressor and/or there are risk factors associated with lethal violence present • Offender is mentally ill, there is no pattern of coercion or control targeting a specific victim but the offender has used high levels of violence or there are risk factors associated with lethal violence present • Offender is not engaging in battering behavior but has used at least moderate violence and risk factors associated with lethal violence are present

<p>has only engaged in low levels of violence.</p>	<ul style="list-style-type: none"> Offender is not engaging in patterned aggression against a current or former domestic partner but a number of risk factors for continued violence are present 	
<p>Examples of Cases with an Apparent Risk of <u>No or Low</u> Levels of Ongoing Harm</p>	<p>Examples of Cases with an Apparent Risk of <u>Moderate</u> Levels of Ongoing Harm</p>	<p>Examples of Cases with an Apparent Risk of <u>High</u> Levels of Ongoing Harm</p>
<p style="text-align: center;"><i>BATTERING OFFENDERS</i></p> <p style="text-align: center;">Offenders who are engaged in patterned aggression against a current or former domestic partner</p>		
<p>NOT APPLICABLE. Offenders who are engaged in patterned aggression are not low risk</p>	<p>Offender has used a pattern of intimidation, coercion, and low or moderate levels of violence but few, if any, lethal risk factors are present</p>	<ul style="list-style-type: none"> Offender has used levels and types of violence associated with lethal violence targeting a specific victim Offenders where there is an escalation in the frequency or severity of aggression or violence. Offender has used moderate levels of violence but other risk factors, particularly factors associated with lethal violence, are present.

		<ul style="list-style-type: none"> Offender is engaging in a substantial pattern of intimidation and control and acts to instill fear over a targeted victim
<p><i>CHRONIC OFFENDERS</i></p> <p>Offenders who are unlikely to comply with probation expectations and have engaged in at least moderate levels of violence regardless of whether the offender engaged in battering</p>		
<p>NOT APPLICABLE. Chronic offenders are not low risk</p>	<p>NOT APPLICABLE. Chronic offenders are not moderate risk</p>	<ul style="list-style-type: none"> Are extremely uncooperative Refused to show up for PSI Have failed on previous probation supervision Have a history of generalized aggression or violent acts. Are habitual Domestic Violence Offenders

	<p>→</p> <p>Apparent Risk is of a <u>Low</u> Level of Ongoing Harm</p> <p>Those offenders for whom there is not a likelihood of significant levels of ongoing harm, based on the <i>Practitioners' Guide</i>.¹</p>		<p>→</p> <p>Apparent Risk is of a <u>Medium</u> Level of Ongoing Harm</p> <p>Those offenders for whom there is a likelihood of moderate future harm to the victim or others based on the <i>Practitioners' Guide</i>.</p>		<p>→</p> <p>Apparent Risk is of a <u>High</u> Level of Ongoing Harm</p> <p>Those offenders for whom there is a likelihood of high levels of future harm to the victim or others based on the <i>Practitioners' Guide</i>.</p>	
	Time to Serve	Probation	Time to Serve	Probation	Time to Serve	Probation
Misdemeanor						
<i>Non-patterned</i>	0-15 days	0-1 years	0-30 days	1 year	0-45 days	1-2 years
<i>Patterned-Targeted</i>	n/a	n/a	15-45 days	1 year in most cases, 2 years when in unusual cases	30-45 days	2 yrs, both supervised
<i>Chronic</i>	n/a	n/a	45-90 days	2 years, both supervised	60-90 days	2 years, both supervised
Gross Misd.						

¹ See *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* for factors associated with probability that violence will continue, escalate and/or become lethal in domestic violence cases.

<i>Non-patterned</i>	0-30 days	0-2 years	0-90 days	1-2 years	0-180 days	2 years
<i>Patterned-Targeted</i>	n/a	n/a	30-120 days	2 years	90-180 days	2 years
<i>Chronic</i>	n/a	n/a	180-365 days	2 years	270-365 days	2 years
Felony						
<i>Non-patterned</i>	0-180 days	MAX	0-270 days	MAX	0-365 days	MAX
<i>Patterned-Targeted</i>	n/a	n/a	90-270 days	MAX	270-365 days	MAX
<i>Chronic</i>	n/a	n/a	180-365 days	MAX	270-365 days	MAX