

STAGGERED SENTENCING:

***A SUCCESSFUL SENTENCING
MECHANISM
FOR REPEAT DUI OFFENDERS
(REDUCING RECIDIVISM BY 50% WHILE
CREATING COST SAVINGS IN REDUCED JAIL
TIME)***

By

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Table of Contents for Staggered Sentencing

- Time Magazine Article (April 2002)
- What is Staggered Sentencing?
- Courts with Extended Probation (more than 1 year) Staggered Sentencing Visual – pg 1
- Staggered Sentence Approach for Courts with Extended Probation (more than 1 year) – page 1a
- Courts with Limited Probation (1 year or less) Staggered Sentencing Visual – pg 2
- Staggered Sentence Approach for Courts with Limited Probation (1 year or less) – page 2a
- Staggered Sentencing for Repeat DWI Offenders – An Innovative Approach to Reducing Recidivism (Research from Minnesota Legislature)
- Minnesota Statute §169A.275
- Judge’s Checklist for Staggered Sentencing

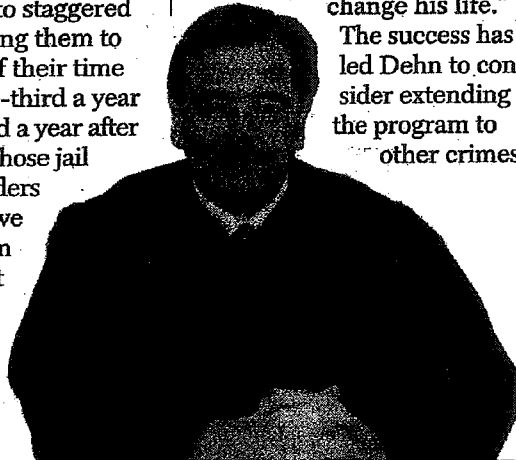
Minnesota Forms (Examples)

- Staggered Sentence Notice To Defendant (specific dates)
- Affidavit of Service
- Post Conviction Motion (specific dates)
- Order

NOTEBOOK

Jail on the Installment Plan

ARURAL MINNESOTA JUDGE, tired of seeing the same people come before him repeatedly for drunken driving, is trying something new. Isanti County District Judge James Dehn sentences some repeat drunken drivers to staggered jail terms—allowing them to serve one-third of their time immediately, one-third a year later and one-third a year after that. In between those jail stints, if the offenders can prove they have reformed, they can earn their way out of the remaining jail time. But if they get another Dehn believes in second chances



ISANTI COUNTY NEWS

DUI infraction, it's back to jail for the full sentence.

Dehn, 52, says he has had phenomenal results. "Of about 60 people I have sentenced like this, there are only three who have gotten a new DUI over the past four years," he says. "We are empowering the drunk driver like no one else has done before to change his life."

The success has led Dehn to consider extending the program to other crimes,

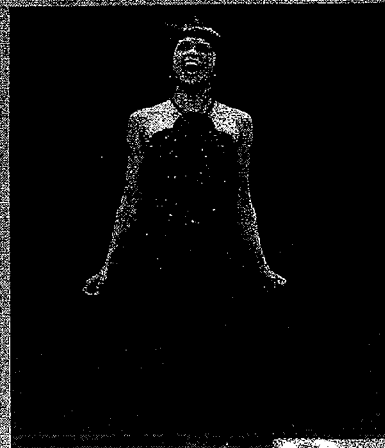
such as domestic violence and drug abuse. As many as 15 other judges in Minnesota are trying staggered sentencing, in part because of the annual classes on sentencing alternatives that Dehn teaches for new judges.

Some prosecutors, however, question the long-term effectiveness of the staggered sentence and express concern about its fairness, since the sentence is given to only some offenders. The experiment has generated so much attention that the Minnesota Sentencing Guidelines Commission plans to weigh in on the debate with a study due to be released this summer. "If it works as well as he says it does, everybody should be doing it," says Scott Swanson, executive director of the commission. "If not, we should be able to tell." —By Sarah Sturmon Dale

Kid, You're Gonna Come Back a Star!

The businessmen of Broadway know one way to create a hit: hire a big Hollywood star and hope the name on the marquee will pull in the crowds. The romanticists of Broadway prefer another, more storied method: take a kid from the chorus, stick him or her into the lead role and watch as a new star is born. Sometimes this Broadway fable even comes true. Oddly, it did so twice last week.

The first instance was when Henry Goodman, the British actor named last month to replace Nathan Lane as star of the hit musical *The Producers*, was suddenly fired. Not funny enough, the (small p) producers had ruled. For the new Max Bialystock, they tapped Brad Oscar, Lane's longtime understudy in the part. Oscar won a Tony nomination in the role of Franz, the Nazi author of *Springtime for Hitler*—a role he stepped into in Chicago when the original actor was sidelined by knee



JOHN HANCOCK

What is Staggered Sentencing?

Courts that lack the financial resources or system cooperation to develop the "DWI/Drug Court Team" model with a team-oriented approach can now look to a new and innovative court-driven model called "Staggered Sentencing". Staggered Sentencing is a proven, low-cost, Judge-driven program devised by Minnesota Judge James E. Dehn (a rural judge who sits in multiple Minnesota counties) to reduce recidivism by repeat DWI offenders. This program used by Judges in Minnesota for several years has received critical review from TIME Magazine (April 29, 2002 Notebook), recipient of the 2003 Paul H. Chapman Award from The Foundation for the Improvement of Justice, and analysis by Hamline University Law School (25 Hamline J.Pub.L.8Pol'Y). From the research conducted by The Minnesota Legislature House Research Department (see www.house.leg.state.mn.us/hrd/issinfo/crime.htm), the Minnesota legislature has welcomed its results as it has codified its practice into statutory law in 2003 (MN Stat. §169A.275).

The research shows that offenders given staggered sentences are re-arrested for DWI at only 50% (one-half) the rate that would be expected based on the recidivism rates of comparable DWI offenders sentenced by all other Minnesota courts. The program also results in 66% 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.

The Staggered Sentencing Model has four key aspects:

1. A Staggered Incarceration Period.

Generally, when a multiple-repeat offender is convicted of a repeat DWI and is sentenced to an executed period of incarceration, the court orders that period to begin on a given date 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 court provides the dates to offenders when they 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 (see appendix): If the offender can maintain sobriety, as shown through input from the offender's probation agent, (if available in the court system), family, friends, AA sponsor, and/or employer, the offender can file the motion a month before the next scheduled jail date and request forgiveness of the next segment of incarceration. The offender can also request to have the next segment of the Home Electronic Alcohol Monitoring (HEM) period (described below) forgiven or reduced. The offender is instructed that the sentencing Judge is the only judge they can bring their motions before. This one judge/one defendant situation enables the judge to develop a consistency and rapport not only with the offender, but at the hearing, with family members who accompany the offender to court.

Giving an offender responsibility for altering the course of future consequences may well be the true innovation of this program. Unlike traditional probation – a system under which offenders receive additional consequences for program failures – the court informs offenders that their successes will allow the court to give the offenders additional control over their lives.

Under the Staggered Sentencing Model, offenders retain the responsibility for achieving the conditions of probation, scheduling court motion hearings and for convincing the court that they have adopted lifestyle changes that significantly lessen their chances of further recidivism.

An offender who does not file the required motion and request a hearing must report to serve the next incarceration segment as

scheduled. No hearing is required. The offender simply shows up to serve the previously imposed incarceration segment. A failure to appear to serve an incarceration segment or Electronic Alcohol Monitoring segment (described below) would, of course, also be a probation violation, which could result in additional sanctions being imposed.

3. Home Electronic Alcohol Monitoring (HEM).

Home Electronic Alcohol Monitoring (HEM) is also ordered at the initial sentencing, typically in segments of 30 days per year if probation exceeds one year. HEM is a non-house arrest program that allows the offender to carry on normal daily activities. However, three times a day, (early morning, an hour after work, and late at night) the offender must be home to provide a breath sample into the video monitoring unit, connected to their phone line. If the offender tests positive for alcohol usage or fails to provide a test at the designated time their probation is violated and they are brought before the sentencing judge. 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 the Christmas/New Years holiday period while others during periods of employment layoffs. The monitoring results are weighed heavily in the later hearing requesting a waiver of the next pending segment of incarceration. However, if offenders can demonstrate their alcohol abstinence by letters (co-employees, friends, etc.), the support of their probation officer, and in other ways, they may also petition the court, by motion, to waive the next HEM or incarceration segments.

4. Clearly Articulated Consequences for Specific Violations.

At the initial sentencing, the court advises offenders of the tremendous rewards to be gained by sobriety but warns of the penalties to be assessed upon failure to stay sober or get a new DWI. For example, the court typically informs an offender 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 court typically

informs the offender that any violation of the other conditions of probation – such as alcohol abstinence, completion of treatment, payment of fines, and so on – will not only trigger a probation violation but result in the execution of the next segment of incarceration that has already been ordered to be served (instead of being forgiven). This “carrot and stick” approach has been very effective for the participants as they leave the courtroom with a clear message and understanding. Treatment professionals refer to this approach as “Motivational Enhancement” which motivates strategy changes (e.g. sobriety over time).

Preliminary Evaluation of Staggered Sentencing

Using a newly developed analytic tool for measuring DWI recidivism, the Minnesota Legislature House Research Department evaluated the effectiveness of staggered sentencing program in a preliminary report dated January 2003 (Jim Cleary House Research Report, January 2003). The initial results of the study suggest that the program may be effective in reducing DWI recidivism by those offenders given staggered sentences. Specifically, the analysis tracked over 50,000 days of sobriety of the first 61 DWI offenders (tracked up to 4 years) given staggered sentences by Judge Dehn. The research reveals that these offenders have experienced 49.9% less DWI recidivism than would otherwise be expected based on statewide recidivism rates for comparable DWI offenders in the same time frame.

In addition to the direct and indirect cost savings associated with the reduced recidivism, the research report shows a substantial direct cost savings associated with reduced executed jail terms. The research report further shows the court forgiving, on average, approximately 52 actual days of executed jail time for offenders who were successful under staggered sentencing. At the approximate per diem jail cost of \$70/day (a conservative estimate), the 52 days saved leads to a direct jail cost savings of over \$3,500 per successful offender. In total, over 3,000 days of jail was forgiven (a cost savings of over \$210,000), for the first 60 people on the program. Further, the nearly 50% reduction in recidivism translates into future law enforcement, judicial, and correctional cost savings.

While the findings of the House Research Department report are preliminary, until confirmed by further application and analysis, they have

been codified into Minnesota law (see MN Stat. §169A.275). Minnesota judges from around the state are reporting the same results that Judge Dehn has experienced. If these findings hold and Courts throughout the Country broadly adopt staggered sentencing, it could possibly help reduce fiscal burdens for local governments throughout the Country, while simultaneously enhancing traffic safety. This in turn will help alleviate pressure on state correctional budgets, by freeing up local jail space to house the growing number of state prisoners local jails are forced to house. 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 offenders and domestic abuse offenders, Judge Dehn has begun to selectively extend staggered sentencing to these areas.

The DWI/Drug Court model depends on a team-oriented approach, which includes cooperation from all the players in the system (Prosecutors, Probation Officers, Defense Counsel, etc.). Judge Dehn has accomplished the above results using a staggered sentence model despite reluctance and resistance on the part of the prosecutors, and some probation officers. Developing a team-oriented approach would fast tract thousands of repeat offenders and, in Judge Dehn's opinion, lead to even lower recidivism rates.

It would be beneficial for other jurisdictions to develop, test and fine-tune their own staggered sentencing model. Especially since few – if any programs – judicial or otherwise – have shown this magnitude of early success in reducing repeat DWI offenders.

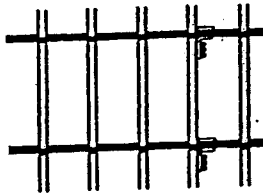
To receive additional information as well as forms, teaching materials, etc. please contact Judge James E. Dehn at james.dehn@courts.state.mn.us.

Courts with Extended Probation (more than 1 year) Staggered Sentencing



Sentence: Defendant is sentenced up to 365 days executed.

1/3



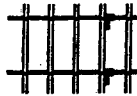
served **IMMEDIATELY!**

Electronic Monitor:
Minimum 30 days to include
Christmas and New Years.

Meet with Judge
Prior to next
Segment of jail/monitor.



1/3



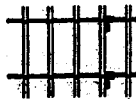
Served one (1) year later.

Electronic Monitor:
Minimum 30 days to include
Christmas and New Years.

Meet with Judge
Prior to next
Segment of jail/monitor.



1/3



Served two (2) years later.

Electronic Monitor:
Minimum 30 days to include
Christmas and New Years.



STAGGERED SENTENCE APPROACH **for courts with extended probation (more than 1 year)**

SENTENCE: Defendant is sentenced up to 365 days; 185 days stayed and 180 days executed (staggered) as follows:

1/3 of sentence is served **immediately.** (60 days)

1/3 of sentence is served (60 days) July 1st of the **next year.**

1/3 of sentence is served (60 days) at the end of **two years** of probation, approximately July 1st.

Review by the Court: The Sentencing Judge will review Defendants sentence one month before the start of the next phase of jail **ONLY** if Defendant files a motion for review. It is essential that the sentencing Judge remain with the file to assure maximum accountability.

NOTE: Defendant is given motion papers at the time of sentencing, which provide the Court's expectations for the Defendant during probation. (See Court provided motion papers)

Electronic Alcohol Monitoring During each Year: It is important to continue or place Defendant on the monitor up to or beyond the commencement of treatment and require monitor usage each year for a minimum of 30 consecutive days to comply with the intent of the law and achieve accountability.

NOTE: It is suggested Defendant be monitored during times when alcohol is a prevalent part of a Holiday or activity (e.g. opening fishing/hunting, fourth of July, Christmas, New Years, Birthdays, and traditional layoff periods where defendant is inactive).

Areas Covered in Judge's Meeting with Defendant: The Judge should review treatment aftercare status, sobriety, feedback from family members, and feedback from fellow AA/employees/interested parties. Honest discussion between Court/defendant about sobriety, goals, hobbies, selection of sober activities or friends (support group). (See Court provided motion papers).

Judge Does not Make a Decision Until There has been Contact with Defendant's Probation Agent: Defendant is told at sentencing that the Judge will not likely forgive or stay the next segment of jail if the Probation Agent does not have a favorable report about Defendant. Therefore, a good relationship is stressed at the time of sentencing. The Judge should consider whether additional monitoring beyond what is ordered should occur if jail is forgiven or stayed.

➤ **Warning to Defendant at Time of Sentencing:** If Defendant receives a new DUI, at any time while on this program, **ALL** jail will be executed!!!

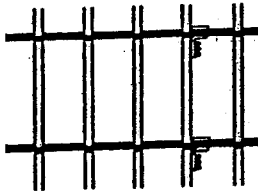
Courts with Limited Probation (1 year or less)

Staggered Sentencing



Sentence: Defendant is sentenced up to 365 days executed.

1/3

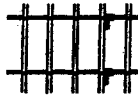


served **IMMEDIATELY!**

Meet with Judge
Prior to next
Segment of jail/monitor.



1/3



Served 6 months later.

Electronic Monitor:
Minimum 30 days to include
Christmas and New Years.

Meet with Judge
Prior to next
Segment of jail/monitor.



1/3



Served 11 months later.

STAGGERED SENTENCE APPROACH

for Courts with limited probation (1 year or less)

SENTENCE Example: Defendant is sentenced up to 365 days (or maximum sentence); 185 days stayed and 180 days executed (staggered) as follows:

1/3 of sentence is served **immediately** (60 days)

1/3 of sentence is served (60 days) **In Six (6) Months.**

1/3 of sentence is served (60 days) **In Eleven (11) Months** prior to the completion of probation.

Review by the Court: The Sentencing Judge will review Defendants sentence one month before the start of the next phase of jail **ONLY** if Defendant files a motion for review. It is essential that the sentencing Judge remain with the file to assure maximum accountability.

NOTE: Defendant is given motion papers at the time of sentencing, which provide the Court's expectations for the Defendant during probation. (See Court provided motion papers)

Electronic Alcohol Monitoring During the Year: It is important to continue or place Defendant on the monitor up to or beyond the commencement of treatment and require monitor usage during the year for a minimum of 30 consecutive days to achieve accountability.

NOTE: It is suggested Defendant be monitored during times when alcohol is a prevalent part of a Holiday or activity (e.g. opening fishing/hunting, fourth of July, Christmas, New Years, Birthdays, and traditional layoff periods where defendant is inactive).

Areas Covered in Judge's Meeting with Defendant: The Judge should review treatment aftercare status, sobriety, feedback from family members, and feedback from fellow AA/employees/interested parties. Honest discussion between Court/defendant about sobriety, goals, hobbies, selection of sober activities or friends (support group). (See Court provided motion papers).

Judge Does not Make a Decision Until There has been Contact with Defendant's Probation Agent: Defendant is told at sentencing that the Judge will not likely forgive or stay the next segment of jail if the Probation Agent does not have a favorable report about Defendant. Therefore, a good relationship is stressed at the time of sentencing. The Judge should consider whether additional monitoring beyond what is ordered should occur if jail is forgiven or stayed.

➤ **Warning to Defendant at Time of Sentencing:** If Defendant receives a new DUI, at any time while on this program, **ALL** jail will be executed!!!

Staggered Sentencing for Repeat DWI Offenders An Innovative Approach to Reducing Recidivism

This information brief describes, discusses and partially evaluates a new sentencing strategy for repeat DWI offenders that is being developed and implemented by Judge Jim Dehn, Tenth District Court, and by other district court judges in Minnesota.

Contents

Page

Introduction.....	2
The Impetus for Staggered Sentencing.....	3
The Staggered Sentencing Model.....	4
Some Examples of Staggered Sentencing	6
Three Actual Examples of Staggered Sentences for DWI Offenders	7
Preliminary Evaluation of Staggered Sentencing	9
Summary and Conclusions	10
Appendix A - An Alternative Model of Staggered Sentencing: The <i>Gebeck Case</i>	11
Appendix B - A Brief Overview of Criminal Sentencing in Minnesota	13

¹ Scott Swanson, former Director of the Minnesota Sentencing Guidelines Commission, contributed to the field observation and editorial review for this information brief.

Introduction

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, courts, 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 been aimed at deterring people from committing an initial offense while others have been aimed at providing punishment, incentive and support to people who have already committed this crime. While these efforts have helped to curb the problem, it is far from eliminated. This is particularly true for repeat DWI offenders.

This information brief describes and discusses an innovative strategy – *staggered sentencing* – which has been developed and applied to a small but growing sample of repeat DWI offenders in some Minnesota district courts. Judge Jim 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 prepares to implement and monitor the effects of the new felony DWI law that was enacted during the 2001 legislative session (effective August 1, 2002).²

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.

² Laws of Minn., 2001 First Special Session, 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% in the total number of felony convictions which will occur in Minnesota in the next year.

The Impetus for Staggered Sentencing

The model of staggered sentencing that is described in this information brief was developed and implemented by Judge Jim Dehn of Minnesota's Tenth District Court in Cambridge, Minnesota.³ 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 repeatedly looked beyond the traditional penalties and sanctions in general use.

For example, Judge Dehn spearheaded the use of *remote electronic alcohol monitoring (REAM or EAM)* 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. As a result of Judge Dehn's pioneering efforts, 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

³ Appendix A describes an alternative approach to *staggered sentencing* used by another Minnesota District Court judge.

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 monitoring, such as to accommodate a person on business travel or at a special family event.

Typically, the REAM monitoring device and service are leased from a private vendor by the defendant/offender himself, and at his 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 monitoring 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 pre-trial 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 the approach discussed in this brief – Staggered Sentencing.

The Staggered Sentencing Model

The Staggered Sentencing Model has four key aspects, as described below. [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 date⁷ 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 the motion a month before the next scheduled jail date and request forgiveness of all (or a portion) of the next period of incarceration. The offender can also request to have part of the Alcohol Monitoring period forgiven or reduced.

Giving an offender responsibility for altering the course of the future consequences may well be

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 development of the 12-step model of alcoholics anonymous by the Hazelden Foundation, 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 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, and needs some time to prepare personal matters before incarceration, or when local jails do not have sufficient space available.

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 responsibility lies on the offender 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. Electronic Alcohol Monitoring.

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 – such as alcohol abstinence, completion of treatment, payment of fines, and so on – will result in the execution of the next segment of incarceration that has already been ordered to be served (instead of being forgiven).

Some 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.⁸ 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, 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 8th DWI violation, which was a gross misdemeanor under the statutes at that time but which, if committed after August 1st, 2000, would qualify as a felony offense (the sentencing guidelines would call for a 3-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 4 years, and 40 days in the 5th following 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 fairly commonly prescribed by courts throughout the state and country. However, note that there is one condition of probation in these three sentences that is nearly an integral feature of the staggered sentencing model and which is used widely throughout Minnesota courts, but which is still far from universal nationally – i.e., remote electronic alcohol monitoring.

⁸ 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 or more AC [his first DWI, but enhanced to a GM by the high AC]	Gross Misdemeanor DWI, 3rd within 10 years [prior DWIs in '94 and '96]	Count 1: Gross Misdemeanor DWI, 4th DWI w/in 10 years Count 2: False Info [prior DWIs in: '86, '88, '89, '90, '93, '94, '96]
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 4 years	275 days, stayed for 4 years	5 days, stayed for 6 yrs
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 4/1/01 (this jail time was served)	30 days; Jan 15, 2000 (this jail time was served)	120 days 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 7/1/03 (pending)	30 days; July 1, 2001 (served)	50 days; July 1, 2002 (pending)
3rd Segment		30 days; July 1 2003 (pending)	50 days; July 1, 2003 (pending)
4th Segment			50 days; July 1, 2004 (pending)
5th Segment			50 days; July 1, 2005 (pending)
6th Segment			40 days; July 1, 2006 (pending)
Fine	\$900 total, with \$400 and \$125 alcohol assessment fee, stayed for 4 years; must pay \$500 + \$35 fees	\$900 fine, with \$400 and \$122 fees stayed for 4 years; must pay \$500	\$3,000, with \$2,500 and fees stayed for 6 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	4 years total	4 years total	6 years total
	30 days REAM commencing before 12/1/02, at own expense	stay on monitor until jail	Huber work release, or Sentence to Service during jail
	30 days REAM commencing before 12/1/03, at own expense	enter outpatient treatment w/in 60 days	REAM for 30 days on or before 12/5 each year; at own expense unless grant eligible
	30 days REAM commencing before 12/1/04, at own expense	weekly AA as long as probation deemed necessary	credit for time served pending trial
	pay fine by 8/14/01	30 days REAM before 12/1/00, at own expense	pay fine by 7/24/03
	attend HRC clinic in Mpls. w/in 180 days at own expense (biochemical connection)	30 days REAM before 12/1/01, 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 12/1/02, at own expense	attend HRC clinic in Mpls. w/in 180 days at own expense (biochemical connection)
	no same or similar offenses	attend HRC clinic in Mpls. w/in 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 w/in 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 4/01/01 at \$50/month		no entering alcohol establishments	
Probation hearing: 3/5/01 defendant had not attended AA or HRC; 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 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% less DWI recidivism than would otherwise be expected based on statewide recidivism rates for comparable DWI offenders in the same time frame.⁹

In addition to the direct and indirect cost savings associated with reduced recidivism, staggered sentencing might well result in substantial direct cost savings associated with a reduction in executed jail time for the current offense. 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 \$70 (a conservative estimate), the 52 days saved translates to a direct jail cost savings of over \$3,500 per successful offender on the current offense. Further law enforcement, judicial and correctional cost savings would derive from the nearly 50% reduction in recidivism.

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

⁹ The methodology used to create the statewide DWI recidivism rate tables and to utilize them in the present analysis is described in the following Minnesota House of Representatives Research Department publication: *DWI Recidivism Rate Tables, And an Example Application* (Sept. 27, 2002), available on the legislative web site at <http://www.house.leg.state.mn.us/hrd/pubs/publist.htm#CRM>. 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 6 actual DWI recidivisms, compared to an expected number of 11.98, for a reduction of 49.9%. 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. See the cited publication for a more detailed explanation of the methodology of the rate table construction and its application in the present analysis.

Summary and Conclusions

This information brief describes *staggered sentencing*, an innovative judicial program devised by Judge James Dehn, of Minnesota's Tenth Judicial District Court, to reduce recidivism by repeat DWI offenders.

It also reports the results of a preliminary evaluation by the author indicating 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.

While these findings should be regarded as preliminary until confirmed by further application and analysis, they are certainly encouraging. If these findings hold and staggered sentencing should happen 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.¹⁰ 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 offenders and domestic abuse offenders.

¹⁰ For example, the Mn. Department of Corrections recently reported that during 2002 over 800 prison beds were fully occupied by the more than 1,200 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.

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, which is the model discussed in this brief. 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 year 2000 (the *Gebeck case*),¹¹ the 2nd-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 *4-year presumptive commit to prison* sentence for this felony-death crime.

Instead of sentencing Gebeck to the 48-month presumptive executed sentence in a state prison, the district court *imposed* a prison sentence of 6 years (72 months), but *stayed the execution of that sentence* for 10 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 unsuccessfully 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 (6 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's 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, noting that in his view – and 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. App. 2001).

2. In the Gebeck case, all segments of incarceration that have been ordered to be executed will, in fact, be served – i.e., *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 – i.e., 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, and the virtual certainty of REAM’s ability to detect alcohol use eliminates much of the deception and denial behavior that all too often characterizes the 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 1-year of incarceration (jail or workhouse) and \$3,000 fine or both.¹⁴
- **Felony:** a crime for which a sentence to imprisonment of over 1-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 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 10-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 Minn. Stat. 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 3rd or more DWI offense within a ten-year period, this statute and Minn. Stat. 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 3 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 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

¹⁶ This is a very important feature of Minnesota's laws – i.e., the use of a prior implied consent administrative driver's license revocation (ALR) to enhance the criminal charge for a subsequent impaired driving violation – particularly given that a significant portion of DWI offenses (nearly 25% of first offenses and about 16% of repeat offenses, statewide) do not result in a DWI conviction. On the other hand, approximately 97% of impaired driving incidents result in administrative license revocation. Such ALR for a prior violation is also used to enhance the ALR sanction for a subsequent implied consent violation. Thus, for example, a person who is arrested for his second impaired driving incident within a 10-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 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” – i.e., 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 Minn. Stat. 609.10, and for misdemeanor and gross misdemeanor crimes, see Minn. Stat. 609.125.

¹⁸ See Minn. Stat. 609.101, regarding fines, surcharges and assessment fees. See Minn. Stat. 609.102, regarding local correctional fees.

¹⁹ Minn. Stat. 609.135, subd. 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, to be 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.

probation with or without supervision and on terms that the court prescribes,²¹ including intermediate sanctions if it so decides.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* (i.e., *good time*, in the common vernacular).²³

The maximum period of probation is 2 years following conviction for a misdemeanor DWI offense, and 6 years for a gross misdemeanor DWI conviction (compared to 1 year and 2 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 Minn. Stat. 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 10 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: MS § 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 Minn. Stat. 244.101, *Determinate Sentencing*, which supercedes Minn. Stat. 244.04, *Good Time Reduction*, for crimes committed on or after August 1, 1993).

Minnesota Statute §169A.275

Subd. 3. Fourth offense. (a)(3) a program of staggered sentencing involving a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility.

Subd. 4. Fifth offense or more. (a)(3) a program of staggered sentencing involving a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility.

Subd. 6 (b) "Staggered sentencing" means a sentencing procedure in which the court sentences a person convicted of a gross misdemeanor or felony violation of section 169A.20 (driving while impaired) to an executed sentence of incarceration in a local correctional facility, to be served in equal segments in three or more consecutive years. Before reporting for any subsequent segment of incarceration after the first segment, the offender shall be regularly involved in a structured sobriety group and may bring a motion before the court requesting to have that segment of incarceration stayed. The motion must be brought before the same judge who initially pronounced the sentence. Before bringing the motion the offender shall participate for 30 days in a remote electronic alcohol-monitoring program under the direction of the person's probation agent. It is within the court's discretion to stay the second or subsequent segment of remote electronic alcohol monitoring or incarceration that has previously been ordered. The court shall consider any alcohol-monitoring results and the recommendation of the probation agent, together with any other factors deemed relevant by the court, in deciding whether to modify the sentence by ordering a stay of the next following segment of remote electronic alcohol monitoring or incarceration that the court had initially ordered to be executed.

(c) When the court stays a segment of incarceration that it has previously ordered to be executed, that portion of the sentence must be added to the total number of days the defendant is subject to serving in custody if the person subsequently violates any of the conditions of that stay of execution.

(d) A structured sobriety group is an organization that has regular meetings focusing on sobriety and includes, but is not limited to, Alcoholics Anonymous.

Judge's Checklist

For Staggered Sentencing

- ◆ **Break the Sentence and Electronic Monitoring into separate time segments. Note: Use same dates each year to avoid confusion for defendants, P.O.'s and Court Administration.**
- ◆ **Tell Defendant you are the only Judge they will deal with on future motions.**
- ◆ **Assign the case to yourself (rationale: all motions and probation violations will come to you).**
- ◆ **Give Defendant, in court at the time of sentencing, "Staggered Sentence Packet". Tell them they must serve a copy of the motion papers on the prosecutor and file them with Court Administration at least ten (10) days before their next motion date for each jail or electronic monitoring segment.**
- ◆ **Remind Defendant:**
 - a. **If Defendant is actively sober and has the backing of the P.O. then the Judge will stay the next segment of jail or electronic monitoring.**
 - b. **If there is a new DUI during the probation period then all jail time (365 days) will be executed.**
- ◆ **Encourage the Defendant in their sobriety.**

STAGGERED SENTENCE NOTICE TO DEFENDANT:

You *must* serve a copy of the "Post-Conviction Motion for Review Hearing" paperwork you received in your staggered sentencing packet on the Prosecuting Attorney and file the original document with the Court Administrator's Office along with proof of service, no later than ten (10) days before your hearing date given below. Failure to do so will result in striking your motion and serving your segment (jail/monitor).

You *must* include with your "Post-Conviction Motion for Review Hearing" paperwork, letters from AA sponsors, counselors, concerned family members, significant other, clergy, concerned neighbors, concerned employers/co-worker, and/or concerned friends.

A written recommendation *must* be received by the Court, from your Probation Officer (unless they will be in court with you) by the date of the hearing given below or the Judge will not consider your motion and it will be stricken from the calendar.

You are scheduled to appear at the Isanti County Government Center, before the Hon. _____, for a motion to consider your *July 1st* jail segments as follows:

June 23, 2005 at 1:30 p.m.

June 22, 2006 at 1:30 p.m.

June 21, 2007 at 1:30 p.m.

You are scheduled to appear at the Isanti County Government Center, before the Hon. _____, for a motion to consider your *Dec. 5th – Jan. 5th* electronic monitor segments as follows:

November 17, 2005 at 1:30 p.m.

November 16, 2006 at 1:30 p.m.

November 15, 2007 at 1:30 p.m.

Failure to appear at the dates and times given above will result in your motion being stricken from the court calendar and you will be required to serve your next jail segment or complete the next electronic monitoring segment as ordered.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ISANTI

TENTH JUDICIAL DISTRICT

**AFFIDAVIT OF SERVICE FOR
POST-CONVICTION MOTION
FOR REVIEW HEARING**

_____, being sworn on oath,
(NAME)

says that on the _____ day of _____, 20____, (s)he

served the attached Post-Conviction Motion for Review Hearing upon (YOU MUST SERVE
THE PROSECUTOR AND YOUR PROBATION OFFICER) _____

_____ by

(check one)

_____ Personally by handing to and leaving with him/her a true and correct copy

_____ By personally delivering true copies to _____

the _____ (title) of _____ (agency)

_____ By mailing in an envelope, postage prepaid and depositing in the post office at

_____, MN, directed to the last known address.

Subscribed and sworn to before me on

_____, 20_____

Signature of person who served the papers

Deputy/Notary Public

NOTE: Motion must be served on all parties no less than ten (10) days before the hearing date. Failure to do so will result in striking your motion and serving your segment (jail/monitor). The ten (10) days does not include Saturdays, Sundays, or legal holidays. Service is the obligation of the moving party.

STATE OF MINNESOTA

TENTH JUDICIAL DISTRICT

COUNTY OF _____

DISTRICT COURT

State of _____,

Plaintiff,

**POST - CONVICTION
MOTION FOR REVIEW HEARING**

vs.

Defendant.

Court File No. _____

I, the undersigned Defendant, move the sentencing Court for a review hearing to reconsider staying the pending executed jail time and/or home electronic monitor that I have been sentenced to by Judge _____. These hearings are set in front of my sentencing judge, the Honorable _____ at 1:30 p.m. on June 23, 2005, and June 22, 2006, June 21, 2007 for the jail segments and November 17, 2005, and November 16, 2006, November 15, 2007 for the electronic monitor segments.

I believe that my executed jail time and/or home electronic monitoring should be stayed because I have been alcohol and controlled substance free by doing the following:

I have also included by an attached letter my thoughts entitled, "How being chemically free has changed my life".

In addition, I have maintained contact with my Probation Officer. I understand that my sentencing Judge will not consider my request until he has been provided with a written recommendation from my Probation Officer by the hearing date or at the time of the hearing. Service is required, ten(10) days before the hearing, on the Prosecutor and Probation Officer.

*** NOTE: Letters from AA sponsors, counselors, concerned family members, significant other, clergy, concerned neighbors, concerned employers/co-worker, concerned friends, should accompany this motion.**

DATED: _____

Defendant: _____

Address: _____

Phone Number: _____

Isanti County Government Center
555 - 18th Avenue S.W.
Cambridge, Minnesota 55008

RE: **How being chemically free has changed my life.**
(It is important to include information about groups, organizations, and people
that have helped you remain chemically free).

Dear Sentencing Judge,

STATE OF MINNESOTA
COUNTY OF ISANTI

TENTH JUDICIAL DISTRICT
DISTRICT COURT

State of Minnesota,

Plaintiff,

ORDER

vs.

Defendant.

Court File No.

The Defendant moved the sentencing Court on _____ at the review hearing to reconsider staying the pending executed jail time and/or home electronic monitor that he/she had been sentenced to by a Judge of District Court.

Based upon the file, submissions, and proceedings herein, the Court makes the following

ORDER

- _____ 1. Defendant's _____ segment of jail time to begin _____ shall be stayed.
- _____ 2. Defendant's _____ segment of jail time to begin _____ shall be executed.
- _____ 3. Defendant's 30 days of electronic alcohol monitoring time to begin _____ shall be stayed.
- _____ 4. Defendant's 30 days of electronic alcohol monitoring time to begin _____ shall be executed.

All other conditions of Defendant's sentence shall remain in full force and effect.

DATED: _____

BY THE COURT

James E. Dehn
Judge of District Court