



MINNESOTA JUDICIAL TRAINING UPDATE



(Read Time – Less than 10 minutes)

Time Spent in Jail While on Probation Urban Myth – The 12 Month Limit



Probationary Jail Sentences.

In most felony cases, a defendant is ordered to serve local jail time in one of two situations:

1. **Initial Sentencing:** When the defendant is placed on probation and ordered to serve jail as a condition of probation; or
2. **Probation Violation:** After a probation violation, the defendant is reinstated on probation and ordered to serve additional jail as an intermediate sanction -----
But is there a limit to how long that jail sanction can be?

What Does The Statute Say? According to *M.S. 609.135, subd. 4*, a district court “may, as a condition of probation, require the defendant to serve up to one year incarceration in a county jail” That statute appears to create a 12-month cap on how long a defendant can serve in jail as a condition of probation – but does it?

Urban Myth:

- **Myth:** Once a defendant has served 12 months in jail as a condition of probation, the court has no authority to impose any additional jail as an intermediate sanction, and any further incarceration would require execution of the stayed sentence. This myth is based on an inaccurate reading of *M.S. 609.135, subd. 4*.
- **Reality:** The 12-month jail limit codified in *M.S. 609.135, subd. 4*, only applies to jail imposed at one time. The 12-month jail limit does NOT apply to the cumulative total imposed over multiple probation violations.

The Rule:

- **At Sentencing:** The court may impose up to (but not more than) 12 months in local jail as a condition of probation. *M.S. 609.135, subd. 4* clearly limits probationary jail imposed as a condition of probation to no more than 12 months at one time.
- **After Probation Violations:** The court may impose additional local jail as an intermediate sanction, even if the cumulative total exceeds 12 months. But under no circumstance can the court impose more than 12 months in jail at one time.

Explanation & General Rule: Jail imposed at sentencing is different from jail imposed for a probation violation. *M.S. 609.135, subd. 4* limits local jail to 12 months at one time, whether as a probation condition or intermediate sanction. It does not cap cumulative jail time for probation violations, even if the total exceeds one year.

- **Caveat:** Total probationary jail time cannot exceed the prison time the defendant would have served if the stayed sentence had been executed. *State v. Gilbertson*, 455 N.W.2d 59 (Minn. 1990); Minnesota Sentencing Guidelines (MSG) 3.A.202.

Legal Authority: Johnson and Hoskins

[State v. Johnson, 743 N.W.2d 622 \(Minn. App. 2008\)](#): In *State v. Johnson*, the district court executed the defendant's stayed prison sentence after concluding it could not impose more local jail time because the defendant had already served more than one year during probation. The Court of Appeals reversed, holding that **M.S. 609.135, subd. 4 caps local jail time imposed at one time but does not cap the cumulative jail time that may be imposed for probation violations.**

- ✓ **Takeaway:** Prior aggregate jail time over 12 months does not make execution mandatory; additional jail may still be available as an intermediate sanction.

[State v. Hoskins, 943 N.W.2d 203 \(Minn. App. 2020\)](#): In *State v. Hoskins*, after the defendant had already been ordered to serve one year in county jail as a probation condition, the district court imposed an additional one-year jail term for later probation violations instead of executing the stayed prison sentence. The Court of Appeals affirmed, relying on Johnson and confirming there is **no cumulative one-year cap** on local jail sanctions for probation violations.

- ✓ **Takeaway:** Courts may impose additional jail as an intermediate sanction, even if the cumulative total exceeds 12 months, subject to the *Gilbertson* executed-sentence cap. In other words, the 12-month jail limit is a per-sanction limit, not a cumulative cap on probationary jail.

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Alan F. Pendleton, Of Counsel, Martine Law Firm; Director of Mentorship and Education, Former District Court Judge; alan@xmartinelaw.com; [Minnesota Judicial Training & Education Website](#)