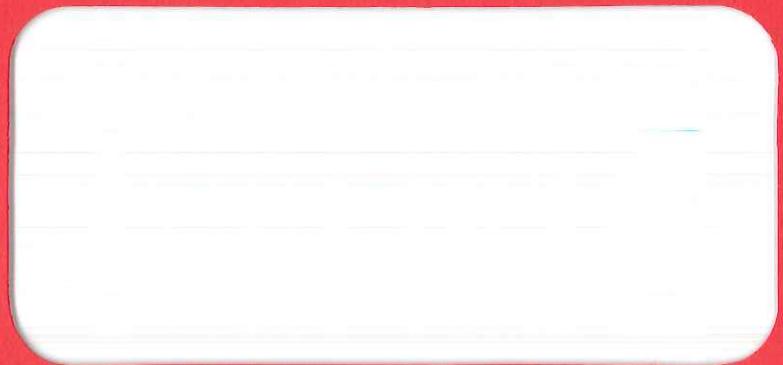
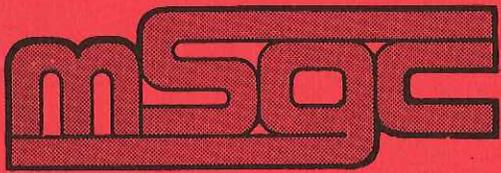
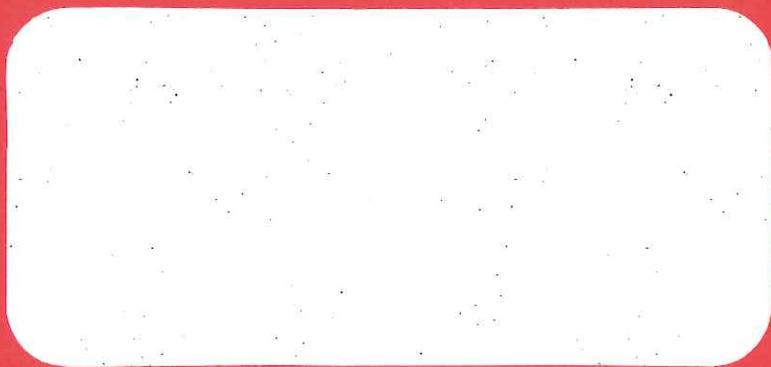


Minnesota Sentencing Guidelines Commission





Minnesota Sentencing Guidelines Commission
REPORT TO THE LEGISLATURE
January, 1992

MINNESOTA SENTENCING GUIDELINES COMMISSION

Meridian National Bank Building

205 Aurora Avenue

Suite 205

St. Paul, Minnesota 55103

Telephone: (612) 296-0144

Members

Julius E. Gernes, Chairman and County Attorney, Winona County

James Dege, Law Enforcement Representative, Steele County

Sandra Gardebring, Justice, Minnesota Supreme Court

Mary T. Howard, Citizen Representative

Susan Lange, Citizen Representative

David E. Marsden, District Court Judge, Second Judicial District

Orville Pung, Commissioner of Corrections

R. A. Randall, Judge, Court of Appeals

Stanley J. Suchta, Probation Officer Representative, Ramsey County

Jenny L. Walker, Public Defender, Anoka County

T. Williams, Citizen Representative

Staff

Debra L. Dailey, Director

Susan D. Carter, Research Analysis Specialist

Anne Wall, Research Analyst

Julie K. H. Harbeck, Administrator

TABLE OF CONTENTS

I. INTRODUCTION	1
Background Information	2
II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1991	3
A. Modifications that Received Legislative Review	3
B. Ranking of New or Amended Crimes	3
1. Obstructing Legal Process	3
2. Duty to Render Aid	3
3. Hinder Logging	3
4. Assault 4, Corrections Officer	4
5. Controlled Substance Crimes	4
6. Solicitation of Juveniles/Gang Related Crimes	4
7. Theft of a Firearm	5
8. Dangerous Weapon Crimes	6
C. Other Modifications not Requiring Legislative Review	6
1. Hazardous Wastes (correction)	6
2. Malicious Punishment of a Child (correction)	6
3. <u>Numerical Reference of Felony Statutes</u> (corrections)	6
4. Addition of an Index	7
III. 1991 ADOPTED MODIFICATIONS REQUIRING LEGISLATIVE REVIEW	7
IV. OTHER LEGISLATIVE ACTION REQUIRING COMMISSION ATTENTION	7
A. Principles for Criminal Justice Resource Management Plans	7
B. Day Fine Model	9
C. Drug Study on Crack vs. Powdered Cocaine	9

V. 1990 DATA SUMMARY	10
A. Overall 1990 Data	10
B. 1990 Cases Sentenced Under the 1989 Modifications	11
Summary of Certain Offenders	14
Sex Offenders	14
Aggravated Robbery	16
Assault 1st Degree	16
Murder	16
Conclusions	17
 APPENDIX	 18
Graphs Comparing 1990 Data under the 1989 Modifications to Comparative 1988 Data	
Average Prison Sentences by Severity Level	19
(Executed Sentences Only)	
Average Prison Sentences by Offense Type	20
(Executed Sentences Only)	
Mitigated Dispositional Departure Rates by Offense Type	21
Aggravated Durational Departure Rates by Offense Type	22
(Executed Sentences Only)	
Mitigated Durational Departure Rates by Offense Type	23
(Executed Sentences Only)	

I. INTRODUCTION

Sentencing guidelines have been in effect in Minnesota for over a decade and are of enormous benefit to the criminal justice system. Sentences are uniform, proportional, fair, and there is truth and certainty in pronounced sentences. Minnesota's correctional resources are manageable, promote public safety, and do not deprive taxpayers who get accountability for their dollars. If we are to continue to make progress, commissioners, legislators, practitioners, and concerned citizens must all work together toward common goals. Minnesota can remain a correctional and sentencing model for the country in the 1990s with continued strong leadership and commitment to reasonable principles. This report summarizes the work of the Sentencing Guidelines Commission in 1991 and describes the projects for the upcoming year.

Briefly, the Commission is working on the following projects:

- 1) The Commission continues to work on the development of a workable day fine model. The Legislature extended the time frame for a day fine model to February, 1993, and further requested the Commission to incorporate gross misdemeanors and misdemeanors into the model.

- 2) A report on the issue of differences between crack versus powdered cocaine will be provided to the Legislature in February, 1992. This report is in response to a request of the 1991 Legislature.¹

- 3) The Commission continues to analyze the 1990 sentencing practices to assess the impact of the major changes made to the guidelines and law in 1989. A brief summary of these data is included in this report. A detailed report will follow by March, 1992.

¹ The Minnesota Supreme Court on December 13, 1991, released State v. Russell, et al., #C3-91-22 and C7-91-203 which held Minn. Stat. § 152.03, subd. 3(1) (1989) violated the equal protection clause of the fourteenth amendment to the U.S. Constitution, art. I, § 2. In essence, the supreme court held it is unconstitutional in Minnesota to punish possessors of crack proportionately more seriously than possessors of powdered cocaine. As the case was just released, more time is needed to fully develop its implications on Minnesota's drug laws. It can be stated with certainty that Russell strongly impacts the legislative directive to the Sentencing Guidelines Commission to study the difference between crack and powdered cocaine. It will take several more weeks to develop a detailed and thorough analysis.

Background Information

Minnesota adopted a sentencing guidelines system effective May 1, 1980. The guidelines were created to ensure uniform and determinate sentencing. The goals of the guidelines are: (1) To promote uniformity in sentencing so that offenders who are convicted of similar types of crimes and have similar types of criminal records are similarly sentenced; (2) To establish proportionality in sentencing by emphasizing a "just deserts" philosophy. Offenders who are convicted of serious violent offenses, even with no prior record, those who have repeat violent records, and those who have more extensive nonviolent criminal records are recommended the most severe penalties under the guidelines; (3) To provide truth and certainty in sentencing; (4) To enable the legislature to coordinate sentencing practices with correctional resources; and (5) To assure public safety.

A sentencing guidelines system provides the legislature and the state with a structure for determining and maintaining rational sentencing policy. Through the development of the sentencing guidelines, the legislature determines the goals and purposes of the sentencing system. Guidelines represent the general goals of the criminal justice system and indicate specific appropriate sentences based on the offender's conviction offense and criminal record.

Judges may depart from the presumptive guideline sentence if the circumstances of the case are substantial and compelling. The judge must state the reasons for departure and either the prosecution or the defense may appeal the pronounced sentence. While an offender may earn up to one-third the pronounced sentence for good behavior, sentences are fixed and there is no mechanism for "early release due to crowding" that other states have been forced to accept because of disproportionate and overly lengthy sentences.

Judges pronounce sentence and are accountable for sentencing decisions. Prosecutors also play an important role in sentencing. The offense that a prosecutor charges directly affects the recommended guideline sentence if a conviction is obtained.

The Minnesota Sentencing Guidelines Commission is responsible for maintaining the sentencing guidelines. There are 11 members on the Commission who represent the criminal justice system and citizens of the State of Minnesota. The Commission meets monthly and all meetings are open to the public. A constant flow of information is gathered on sentencing practices and made available to the Commission, the legislature, and others interested in the system. The Commission modifies the guidelines, only when needed, to take care of problem areas and legislative changes. Extensive changes were made in 1989 when the Commission and the Legislature addressed the problem of violent crime.

II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1991

A. Modifications that Received Legislative Review

There was only one modification that had been adopted by the Commission in 1990 and was reviewed by the 1991 Legislature. Concern had been raised by several probation agents that Minn. Stat. § 641.165 Introduction of Contraband in Jail/Lockup/Correctional Facility was not included on the Misdemeanor/Gross Misdemeanor List. **The Commission shared this concern and added Introduction of Contraband in Jail/Lockup/Correctional Facility to the Misdemeanor and Gross Misdemeanor Offense List.**

B. Ranking of New or Amended Crimes

The Commission ranked several crimes created and amended by the Legislature in the 1991 session. These are outlined below:

1. The legislature amended Minn. Stat. § 609.50 Obstructing Legal Process, Arrest, or Firefighting, to include the intentional disarming of a peace officer. **The Commission currently ranks this crime at severity level III and the Commission adopted the same ranking for this new provision.**

2. The legislature created a new felony offense for when a person discharges a firearm, causing bodily harm to someone, but does not render immediate assistance to the injured person, Minn. Stat. § 609.662. The penalty section of the statute differentiates between offenses which result in death or great bodily harm and those that result in substantial bodily harm. **The Commission adopted a severity level ranking of II for the provision that includes death or great bodily harm, and adopted a severity level ranking of I for the provision that includes substantial bodily harm.**

3. The legislature created a new felony offense of hindering logging when it results in great bodily harm, Minn. Stat. § 609.591. **The Commission adopted a severity level ranking of III.**

4. The legislature increased the penalty from a gross misdemeanor to a 2 year felony for assaulting and inflicting demonstrable bodily harm on an employee of a correctional facility while the employee is engaged in the performance of a duty imposed by law, policy, or rule. This offense is similar to Assault 4 in which a misdemeanor level assault is designated as a felony when it is committed against a peace officer. **The Commission adopted a severity level ranking of I**, which is the same ranking as Assault 4 of a peace officer.

5. Further changes were made by the 1991 legislature to the controlled substance crimes. Offenses were added to 1st, 2nd, 3rd, and 4th degree controlled substance crimes that involved drug activity in a school, park, or public housing zone. **The Commission adopted the same severity level rankings which currently exist for these crimes**; i.e., new 1st degree provisions were ranked at severity level VIII, new 2nd degree provisions were ranked at severity level VII, new 3rd degree provisions were ranked at severity level VI, and new 4th degree provisions were ranked at severity level IV. Because these new provisions regarding school and park zones had previously been incorporated into a reason for aggravated departure, this aggravating factor was removed from the nonexclusive list, section D.2.b. of the guidelines. According to law, elements of the crime of conviction cannot be used to "further" aggravate the sentence, because inherently the seriousness of the elements is already built into the presumptive sentence.

Another change made by the legislature that was addressed by the Commission was the requirement that when an offender is convicted of a second or subsequent drug offense with a mandatory minimum, and the mandatory minimum for weapon involvement also applies, the two mandatory minimums are added together; i.e. consecutive. **The Commission adopted the following language which was added to the guidelines at the end of section E. Mandatory Sentences to help clarify this new provision:**

When an offender has been sentenced according to Minn. Stat. § 609.11, subd. 5a the presumptive duration of the prison sentence is the mandatory minimum term for dangerous weapon involvement plus the mandatory minimum term for the second or subsequent controlled substance offense or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

6) The legislature created two new crimes that involve a conspiracy to commit a crime through the solicitation of a juvenile and a sentence enhancement for offenders who commit an offense for the benefit of a gang.

The Commission added language to section G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to describe the appropriate presumptive sentence for these crimes.

For persons convicted of attempted offenses or conspiracies to commit an offense or for persons convicted of Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed or intended offense, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day ...

For persons convicted of Minn. Stat. § 609.229, subd. 3 (a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, and the duration contained therein plus an additional 12 months.

In addition, the Commission removed the factor involving gang activity from the nonexclusive list of reasons for departure and added the following commentary language to section **II.D.205**:

Gang related criminal activity is now a separate crime under Minn. Stat. § 609.229 and can no longer be used as a reason for departure from the presumptive sentence. See Section G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers for the presumptive sentence for persons convicted of Crime Committed for Benefit of a Gang, Minn. Stat. § 609.229, subd. 3 (a).

7) The statutory maximum for theft of a firearm or receiving stolen property involving a firearm was increased from 5 years to 20 years. The Commission chose not to change the current severity level ranking of III. The presumptive sentence addresses the typical case whereas the statutory maximum addresses the most egregious case. If the situation involved an egregious set of circumstances such as stealing guns to sell to gangs, the sentencing judge, depending on the facts, can always depart from the presumptive sentence. The Commission noted that the statutory maximum for second degree assault (assault with a dangerous weapon) was 7 years,

yet this offense would typically be more serious than the theft of a firearm. Also, if a more serious or threatening activity was also involved with the firearm theft, such as an assault or robbery, those offenses could also be charged and would result in a more severe presumptive sentence.

8) Several changes were made to the statutory provisions regarding dangerous weapons. The statute was modified to differentiate those offenses committed in a school, park, or public housing zone. The statutory maximum penalty was increased from 2 to 5 years for the offense involving the furnishing of a firearm to a minor. A new crime of recklessly furnishing a person with a dangerous weapon was created and carries a 5 year statutory maximum. **The Commission increased the ranking for Furnishing Firearm to Minor from severity level I to level II. Other adopted rankings included: severity level III for Possession or Sale of a Firearm Silencer in a School, Park, or Public Housing Zone; severity level II for Reckless Furnishing of a Weapon and Discharge of a Firearm in a School, Park, or Public Housing Zone.**

C. Other Modifications not Requiring Legislative Review

The Commission also adopted several changes to the guidelines that do not require legislative review. The changes involved technical changes or additions to the unofficial section of the guidelines and were not changes to the policy of the guidelines.

1) In section **II.A.03**, the list of unranked offenses, the listing for Hazardous Wastes contained a second cite that had recently been repealed by the legislature. The cite was removed.

15. Hazardous wastes - 609.671; ~~115.071, subd. 2(2)~~

2) The crime of Malicious Punishment of a Child (great bodily harm) had been incorrectly listed at severity level VI and was removed.

3) Numerous changes were made in the Numerical Reference of Felony Statutes to reference the appropriate changes made to statutory cites and new rankings.

4) An INDEX was added to the back of the guidelines to assist criminal justice professionals in finding the appropriate reference to guideline policy.

III. 1991 ADOPTED MODIFICATIONS REQUIRING LEGISLATIVE REVIEW

There were no additional modifications adopted by the Commission which will need to be reviewed by the 1992 Legislature.

IV. OTHER LEGISLATIVE ACTION REQUIRING COMMISSION ATTENTION

A. Principles for Criminal Justice Resource Management Plans

The legislature passed a law requiring judicial districts to develop criminal justice resource management plans and present them to the legislature by January 1, 1993. The Commission was directed to develop principles to guide judicial districts in developing judicial resource management plans by September 1, 1991. The following is the set of principles developed by the Commission:

Principles for Criminal Justice Resource Management Plans

September, 1991

The Legislature is concerned about the increasing demands of the criminal justice system upon limited resources to deal with offenders. The Legislature also recognizes that local correctional resources, and, therefore, sentencing options, vary from county to county, and from judicial district to judicial district. An inventory (and evaluation) of local correctional resources and dispositional practices of the courts should assist the courts in managing available resources and planning for the needs of the criminal justice system. Thus, the Legislature passed a law in 1991 directing each judicial district to develop a Criminal Justice Resource Management Plan by January 1, 1993, to implement the goal of ensuring the fair and economical use of the criminal justice system resources within the district and the continued effective implementation of the district's case management plan.

The Legislature further directed the Sentencing Guidelines Commission to develop principles by September 1, 1991, to guide judicial districts in developing judicial district resource management plans and to provide technical assistance. These principles are found below. Each judicial district is encouraged to contact commission staff offices to obtain any information and data on current sentencing practices that might be of use to the judicial districts in developing these resource management plans.

PRINCIPLES

- 1) Sentencing policy should help ensure fair and economical use of criminal justice system resources within the district.
- 2) Reasonable sentencing practice dictates that judges consider the objective to be served and the resources available to achieve those objectives.
- 3) Severity of sanctions should increase in proportion to increases in the severity of the criminal offense and the criminal history of the offender. In general, crimes of violence are viewed more seriously than non-violent crimes.
- 4) There are several penal objectives to be considered in establishing conditions of stayed sentences, including, but not limited to, rehabilitation, restitution, deterrence, and public protection. Sanctions should be the least restrictive necessary to achieve the purposes of the sentence. Incarceration should be reasonably limited to those convicted of more serious offenses and those with longer criminal histories.
- 5) Development of intermediate sanctions, new technologies, treatment alternatives, and the sharing of correctional resources helps ensure availability of space to incarcerate the serious offender.
- 6) When applicable, principles 1 through 5 may apply to pretrial conditions and diversion programs.
- 7) Overall severity of sentences should have reasonable parity among offenders convicted of similar types of crimes with similar criminal records.
- 8) Persons violating conditions of a stayed sentence should be given progressively more onerous and restrictive sanctions along a continuum of which prison is the most onerous and restrictive consequence.
- 9) Criminal Justice Resource Management Plans are most effective and have the best chance of success when they include the input of corrections, the judiciary, local law enforcement and probation departments, prosecution, defense, and the appropriate local funding agency.

B. Day Fine Model

The 1990 Legislature passed a bill directing the Minnesota Sentencing Guidelines Commission to develop a day fine model. The Legislature amended this directive in 1991 to provide more time for the Commission to develop a day fine model and to have the Commission include provisions for misdemeanors and gross misdemeanors. The new law allows the Commission to establish a pilot project in a judicial district. The Commission is aware of federal grant money that is available to assist in the development and implementation of a day fine model in a large jurisdiction (population of 250,000 or more). However, the Commission was unable to find a judicial district interested in pursuing this federal money before the May, 1991 grant deadline. While it remains unclear whether any judicial district will be interested in piloting a day fine model, the Commission will, none the less, proceed with its development and present the model to the legislature in 1993.

C. Drug Study on Crack vs. Powdered Cocaine

The legislature directed the Sentencing Guidelines Commission to study sentencing practices for possession of 3 or more grams of crack. Four specific issues are to be addressed by the Commission:

- 1) the proportionality of the statutory penalty for and severity level ranking of this crime relative to other controlled substance crimes;
- 2) the characteristics of offenders sentenced for committing this crime relative to other controlled substance offenders;
- 3) the sentencing practices of the courts with respect to presumptive sentences, sentencing departures, and conditions of stayed sentences for this crime; and
- 4) the harm to the community resulting from the commission of this crime relative to other controlled substance crimes.

The legislature also suggests that the Commission include in its study any other sentencing policy issues it deems relevant and report its findings with any recommendations for change by February 15, 1992.

In preparation for this report, the Commission has heard expert testimony from professionals in the field of chemical dependency, academic and state

professionals who have studied cocaine issues, and a forensic science expert from the Bureau of Criminal Apprehension. In addition, the Commission staff is collecting additional information regarding drug cases sentenced in 1990 to provide more detail on sentencing practices. It is understood that this particular issue is subject to the impact of State v. Russell set out in the footnote on page 1.

V. 1990 DATA SUMMARY

A primary function of the Minnesota Sentencing Guidelines Commission is to monitor sentencing practices. This information is used to evaluate sentencing policy and to determine how sentencing policy affects correctional resources. Information is maintained on every convicted felon sentenced under the guidelines and data are compiled each year for analysis. A case is defined when conviction data are received from the probation officer and matched with sentencing data received from the State Judicial Information System. Cases generally represent offenders.

The 1990 sentencing data offers, for the first time, insight into the effects of the extensive changes made to the guidelines and law in 1989. Only a brief summary of these data will be presented in this report. A more complete and detailed report will follow in February or March of 1992.

A. Overall 1990 Data

The **volume of cases** sentenced in 1990 once again increased substantially over the previous year. There were 8,844 cases in 1990 as compared to 7,974 cases in 1989, a 10.9% increase. However, improved data collection measures were employed for this data set. It is estimated that these improvements account for about 200-250 of the additional cases in 1990. Therefore, the true increase in the number of cases is likely to be closer to 8%.

The overall **imprisonment rate** was 19.5% in 1990 with another 61.4% of offenders receiving jail as a condition of probation resulting in a total **incarceration rate** of 80.9%. The total rate of incarceration was only 56% in 1978 and has grown dramatically during the 1980s. The growth has been primarily due to the increased use of jail.

The **average prison sentence** was 45.7 months, the highest average ever. **Durational departure rates** for these executed prison sentences were also

the highest ever at 29.1%. As has been the case over time, most of the durational departures were mitigated (a lower duration than recommended by the guidelines), but both aggravated and mitigated durational departures increased in 1990.

The **overall dispositional departure rate** was also the highest ever at 11.2%. Dispositional departures can be of two types. Aggravated dispositional departures occur when the guidelines recommend a stayed sentence and the judge decides to execute the prison sentence, and mitigated dispositional departures occur when the guidelines recommend prison and the judge decides to stay the sentence and impose intermediate sanctions. The **aggravated disposition rate** actually decreased from what it was in previous years to 2.9% and the **mitigated dispositional departure rate** increased to its highest rate ever at 8.2%.

B. 1990 Cases Sentenced Under the 1989 Modifications

While the overall 1990 data are interesting, it is important to examine the cases that the 1989 changes apply to. Enormous changes took effect in August, 1989 as the Commission and the Legislature worked together on state sentencing policy, particularly in reference to violent offenders.

- * Sentences under the guidelines increased substantially for most violent offenses, including murder, criminal sexual conduct, serious assaults, and armed robberies.
- * Sentences under the guidelines increased substantially for offenders with repeat violent criminal records.
- * Provisions in the guidelines and state law allow judges to give lengthy sentences of at least twice the recommended guidelines sentence when the offender is a repeat sex offender.
- * The legislature passed several mandatory sentencing provisions for the most severe murderers and sex offenders.
 - Minimum time to be served for the offense of murder in the first degree increased from 17 to 30 years.

- Certain third time sex offenders will receive 37 year sentences.
 - Certain 1st degree murderers will receive life sentences with no possibility of release, and certain second and third degree murderers will receive the statutory maximum sentences.
- * Judges determine whether sex offenders are potential candidates for civil commitment, after the prison term is served. If civilly committed as dangerous sex offenders, they are held indefinitely.

The 1990 data set includes all felony offenders sentenced in 1990. The changes described above are applicable to offenses **committed** on or after August 1, 1989. Of the offenders sentenced in 1990, about 71% (6,313) were sentenced under the new 1989 laws and guidelines modifications.

Two comparative data sets were prepared for the purpose of analyzing the impact of the 1989 modifications. The 1990 comparative data set contains only those cases sentenced in 1990 where the offense was committed on or after August 1, 1989.

The 1988 data set was chosen for purposes of comparison. It is more useful than the 1989 data set because it does not contain any cases sentenced under the 1989 modifications (about 5% of the cases sentenced in 1989 were sentenced under the changes). Also, it is possible that practitioners' decisions throughout 1989 were affected by the 1989 changes, even with regard to cases that did not come under the changes.

The 1988 monitoring data set includes all offenders sentenced in calendar year 1988. It was necessary to make some adjustments to this data set to make it more comparable to the 1990 data set described above. It was necessary to delete cases from the 1988 data set that had dates of offense prior to August 1, 1987 because the 1990 comparative data set does not include those cases sentenced in 1990 that have dates of offense prior to August 1, 1989. It was particularly important to exclude these cases because they represent a certain type of case and including them in one year but not the other would skew the analysis. These cases were often of the type to have occurred over a long period of time, such as welfare and food stamp fraud, certain types of theft crimes, and incest cases. The pattern of offenses and sentencing practices for the cases excluded from each data set was similar.

To clarify that the 1990 data described below includes only cases sentenced under the modifications, the data set will be referred to as "1990^m". Likewise the comparative 1988 data set will be referred to as "1988^o".

It should be cautioned that although 1988 was a typical year of sentencing practices in many respects, there are always natural fluctuations in sentencing practices that occur in any given year. Thus, some particular differences between 1988^o and 1990^m may not be apparent if 1990^m were compared to a different year.

Imprisonment rates were slightly lower in 1990^m compared to 1988^o; 21.2% and 22.6% respectively. Jail rates, however, were higher in 1990^m, 63.3% compared to 1988^o (60.8%). Therefore, nearly 85% of all offenders in 1990^m served time in prison or jail, slightly higher than the rate in 1988^o (83.4%).

The most profound differences between 1990^m and 1988^o were with regard to the length of prison sentences. The average prison sentence increased from 37.4 months in 1988^o to 46.5 months in 1990^m. The increase was exclusively at severity levels VII through X. The table below compares the average prison sentences by severity level.

**Average Prison Sentences by Severity Level
In Months**

<u>Severity Level</u>	<u>1990^m</u>		<u>1988^o</u>	
	<u>Avg.</u>	<u>(# cases)</u>	<u>Avg.</u>	<u>(# cases)</u>
VII	57.4	(241)	50.3	(186)
VIII	114.4	(124)	84.7	(77)
IX	184.7	(21)	104.2	(10)
X	293.6	(17)	193.6	(15)
Attempted Murder 1	163.5	(4)	159.7	(7)

Departure rates generally increased from 1988^o to 1990^m. The overall dispositional departure rate was 11.5% in 1990^m compared to 10.6% in 1988^o. The dispositional departure rate had increased each year through 1985 and then stabilized. Therefore, this increase represents a significant shift in sentencing practices. The increase in dispositional departures is only with regard to mitigated dispositional departures; 6.9% in 1988^o compared to 8.5% in 1990^m. The increase was found primarily at severity levels VI through VIII. The aggravated dispositional departure rate actually decreased slightly from 3.7% in 1988^o to 3.0% in 1990^m.

Durational departures for executed prison sentences increased for both aggravated and mitigated departures in 1990^m compared to 1988^o. Aggravated durational departures increased from 6.7% in 1988^o to 8.4% in 1990^m. Mitigated durational departures increased substantially from 14.0% in 1988^o to 21.6% in 1990^m. However, at severity levels VII and VIII where presumptive sentences were doubled in 1989 at zero criminal history, the lengths of the sentences in over 80% of the cases that were mitigated durational departures were still greater than the length of the presumptive sentences under the pre 1989 guidelines.

Certain Offenders Sentenced in 1990 Under the 1989 Modifications

It is helpful to look closely at certain types of offenders to see how the 1989 modifications may have affected their sentences. It must be noted that the numbers of cases in each subgroup are small and caution should be used in drawing any absolute conclusions about the impact of the changes.

Sex Offenders

The changes made in 1989 greatly affected sex offenders, particularly those offenders convicted of sex offenses ranked at severity levels VII and VIII. The following analysis focuses on severity levels VII and VIII only and compares sex offenders sentenced in 1990 under the modifications to those sentenced in the comparable 1988 data set. The sex offenders are broken down into three groups based on the statutory provision of the conviction.

The first group includes only offenders who have a significant relationship to child victims; e.g., parent, step-parent, grandparent, etc. There were few significant relationship cases in these data sets because they tend to have occurred over a relatively long period of time and had to be excluded in order to make the data sets comparable (see above). Mitigated dispositional departure rates were actually higher in 1988^o than in 1990^m for this group of sex offenders. In 1988^o, 10 of the 12 offenders received a stayed sentence, typically with jail time, compared to 17 of 29 offenders in 1990^m. Of the 12 offenders in this group that did go to prison in 1990^m, 5 received a mitigated durational departure and there were no aggravated durational departures.

The second group of sex offenders also includes child victims but the relationship between the offender and the victim is not specified by statute. The mitigated dispositional departure rate did not change much for this group of cases; 31.6% in 1988^o compared to 32.6% in 1990^m. (All of these cases fall at severity level VIII.) Of the 13 offenders in this group that went to prison in 1988^o, 1 received an aggravated duration and 2 received mitigated

durations. Durational departures increased in 1990^m with 4 of 29 offenders who went to prison receiving an aggravated duration and 6 receiving a mitigated duration. For those offenders in this group that did go to prison, the average prison duration increased substantially, from 78.9 months in 1988^o to 139.8 months in 1990^m.

The last group of sex offenders includes those cases where the statutory provision explicitly cites that force or violence was part of the criminal conduct. These cases fall into both severity level VII and VIII. For those cases at severity level VII (53 in 1990^m and 41 in 1988^o), the mitigated dispositional departure rate increased from 31.7% in 1988^o to 43.4% in 1990^m. The mitigated dispositional departure rate decreased, however, for those cases at severity level VIII (39 in 1990^m and 35 in 1988^o), from 8.6% in 1988^o to 7.7% in 1990^m.

Both aggravated and mitigated durational departures increased from 1988^o to 1990^m at both severity levels. It is important to note that in 1989 the Commission added an aggravating factor to the nonexclusive list of possible departure reasons that allows for departure when the offender is a second or subsequent sex offender. The rate of aggravated durational departures for prison bound offenders convicted of any degree of criminal sexual conduct with force, and who had one or more prior sex offenses, increased by 78% from 1988^o to 1990^m. (In addition, among all the sex offenders convicted in 1990^m, there were 3 repeat sex offenders who received the 37 year mandatory sentence under the 1989 law, Minn. Stat. § 609.346, subd. 2a.) The chart below displays the aggravated and mitigated durational departure rates for severity levels VII and VIII. The total number of cases are displayed next to the aggravated durational departure rates.

Durational Departure Rates for Executed Sentences
Criminal Sexual Conduct (force)

	<u>Aggravated</u>		<u>Mitigated</u>			
	<u>1988^o</u>	<u>1990^m</u>	<u>1988^o</u>	<u>1990^m</u>		
	<u>%</u>	<u>(#)</u>	<u>%</u>	<u>%</u>		
Severity Level VII	10.7	(28)	23.3	(30)	10.7	23.3
Severity Level VIII	31.3	(32)	44.4	(36)	0.0	13.9

The average prison sentences increased dramatically in 1990^m for both severity levels. Average prison sentences at severity level VII increased from 40.1 months in 1988^o to 64.7 months in 1990^m. At severity level VIII, average prison sentences increased from 89.2 months to 133.2 months.

Aggravated Robbery

Aggravated robbery is ranked at severity level VII and is one of the primary offenses affected by the 1989 changes to the sentencing guidelines. Interestingly, the mitigated dispositional departure rate decreased from 22.5% of 129 cases in 1988° to 17.5% of 126 cases in 1990^m.

Aggravated durational departures decreased from 8.0% in 1988° to 4.8% in 1990^m but mitigated durational departures increased from 13.0% in 1988° to 20.2% in 1990^m. Despite this increase in mitigated durational departures, the average prison sentence increased from 54.6 months in 1988° to 61.2 months in 1990^m.

Assault 1st Degree

Assault in the 1st Degree is ranked at severity level VIII and also is an offense affected by the 1989 modifications. However, it should be noted that there were relatively few offenders convicted of this crime (37 in 1990^m and 22 in 1988°). All mitigated departure rates were higher in 1990^m than in 1988°. The mitigated dispositional departure rate was 27.0% in 1990^m compared to 9.1% in 1988° and the mitigated durational departure rate was 29.6% in 1990^m compared to 10.0% in 1988°. The aggravated durational departure rate was slightly lower in 1990^m compared to 1988°, 11.1% and 15.0% respectively. Again, despite these departure rates, the average prison sentence increased substantially from 66.1 months in 1988° to 90.2 months in 1990^m.

Murder

Murder in the 1st Degree does not fall under sentencing guidelines. It carries a mandatory life sentence that judges cannot deviate from. Convictions for Attempted 1st Degree Murder and 2nd and 3rd Degree Murder fall under the guidelines and these offenses were affected by changes made in 1989. For murder crimes that fall under the guidelines, there were no dispositional departures in either 1988° or 1990^m; all murderers were sentenced to prison; 42 in 1990^m and 32 in 1988°. Durational departure rates differed only slightly between 1990^m and 1988°. The aggravated durational departure rate decreased slightly from 25% in 1988° to 21.4% in 1990^m and the mitigated durational departure rate increased slightly from 21.9% in 1988° to 23.8% in 1990^m. It should be noted these differences in rates represent an actual difference of only 2 or 3 cases. The average prison sentence increased dramatically, from 158.2 months in 1988° to 226.8 months in 1990^m.

Conclusions

Two changes in sentencing practices in 1990 are profound. Sentence lengths have increased sharply for the more serious violent offenders and departure rates have increased significantly, although not for all offense types. Departure rates have changed in two ways. Mitigated dispositional departures have increased. The changes in durational departure rates for offenders sentenced to prison are more complex.

Generally, the proportion of offenders receiving a prison sentence shorter than that recommended by the guidelines has increased. Despite this increase, the lengths of the sentences in over 80% of the cases that were mitigated durational departures were still greater than the length of the presumptive sentences under pre 1989 guidelines. In addition, the proportion of offenders receiving a prison sentence longer than that presumed by the guidelines increased. However, the patterns for departure vary by offense type.

It is difficult to understand the significance of this data on cases affected by the 1989 changes given the small numbers of cases in some subgroups and the relatively short period of time these changes have been in effect. Because not all cases sentenced in 1990 came under these modifications, and because the criminal justice system is still adjusting to these changes, caution should be used in drawing absolute conclusions from the data that is currently available.

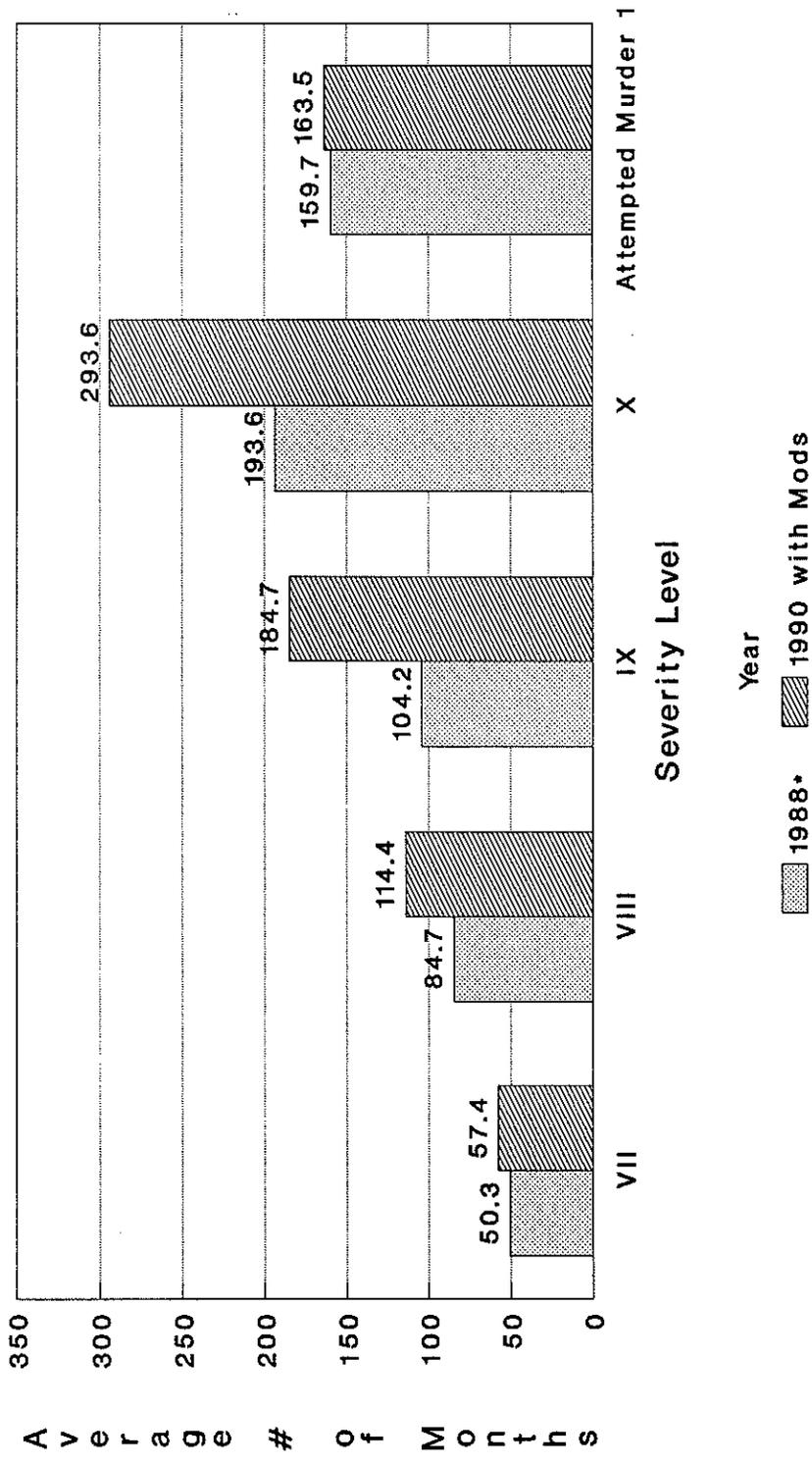
The Commission will continue to review the 1990 sentencing data in the next few months. A more comprehensive review of 1990 sentencing practices for convicted felons will be available by March, 1992. It is probable the 1990 data will not be able to explain all the dynamics of the criminal justice system as it adjusts to the 1989 major changes. At least a year or two more of sentencing data needs to be analyzed before it can be determined whether there are definable trends or the to-be-expected normal irregular cycles. Data on plea negotiations will need to be collected and should help identify the impact of these changes on charge and sentence negotiations.

In conclusion, just as the Commission conducted a major indepth evaluation of the sentencing guidelines after their first three years, the 1989 changes are significant enough to suggest an adequately funded indepth study after the justice system has had more time to absorb the changes and more time to accurately assess their impact.

APPENDIX

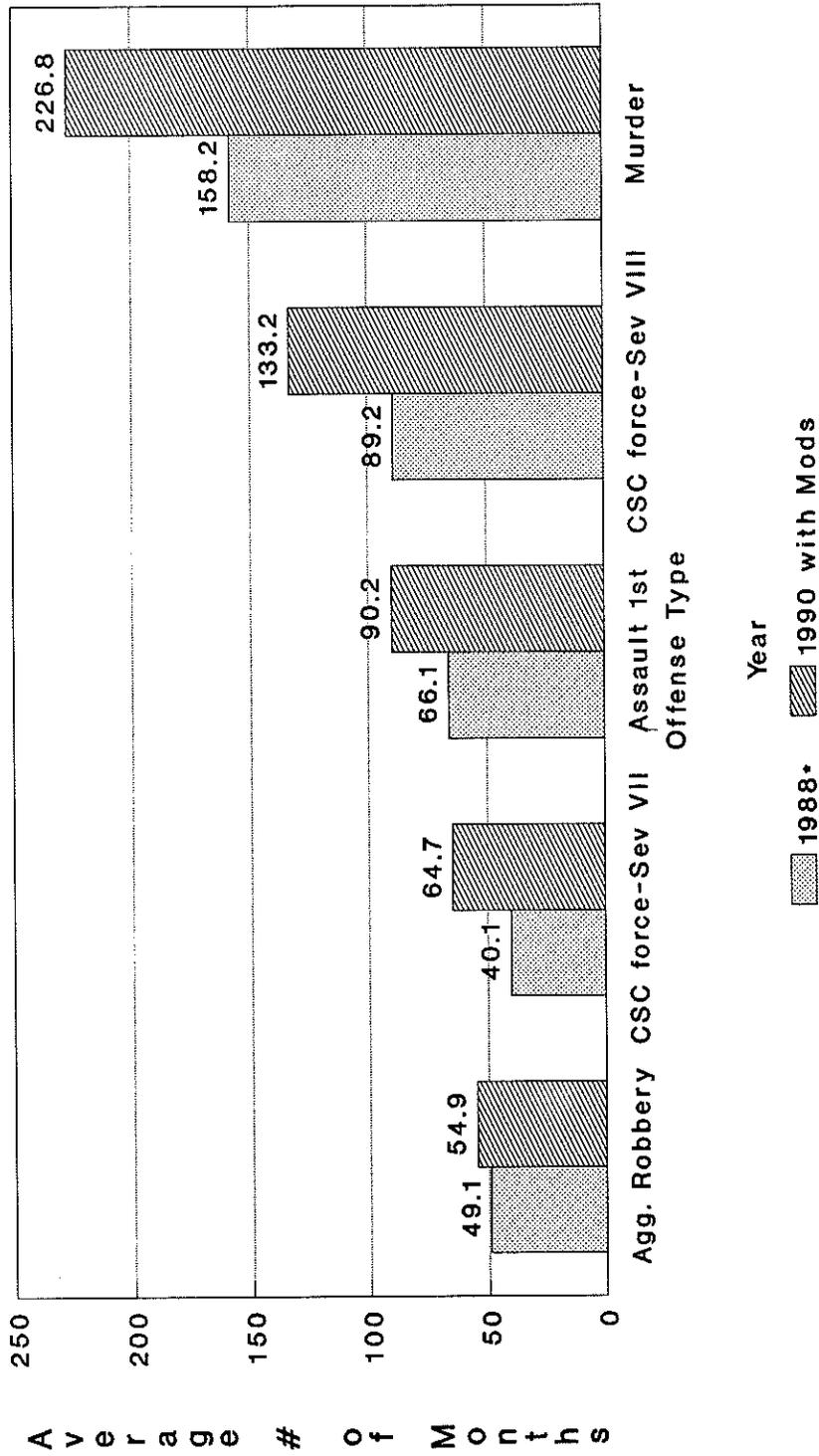
The following graphs summarize certain information from section V. 1990 DATA SUMMARY above. The graphs compare 1990 sentencing data under the 1989 modifications with a comparative 1988 data set.

Average Prison Sentences By Severity Level 1988* Compared to 1990 w\ Modifications



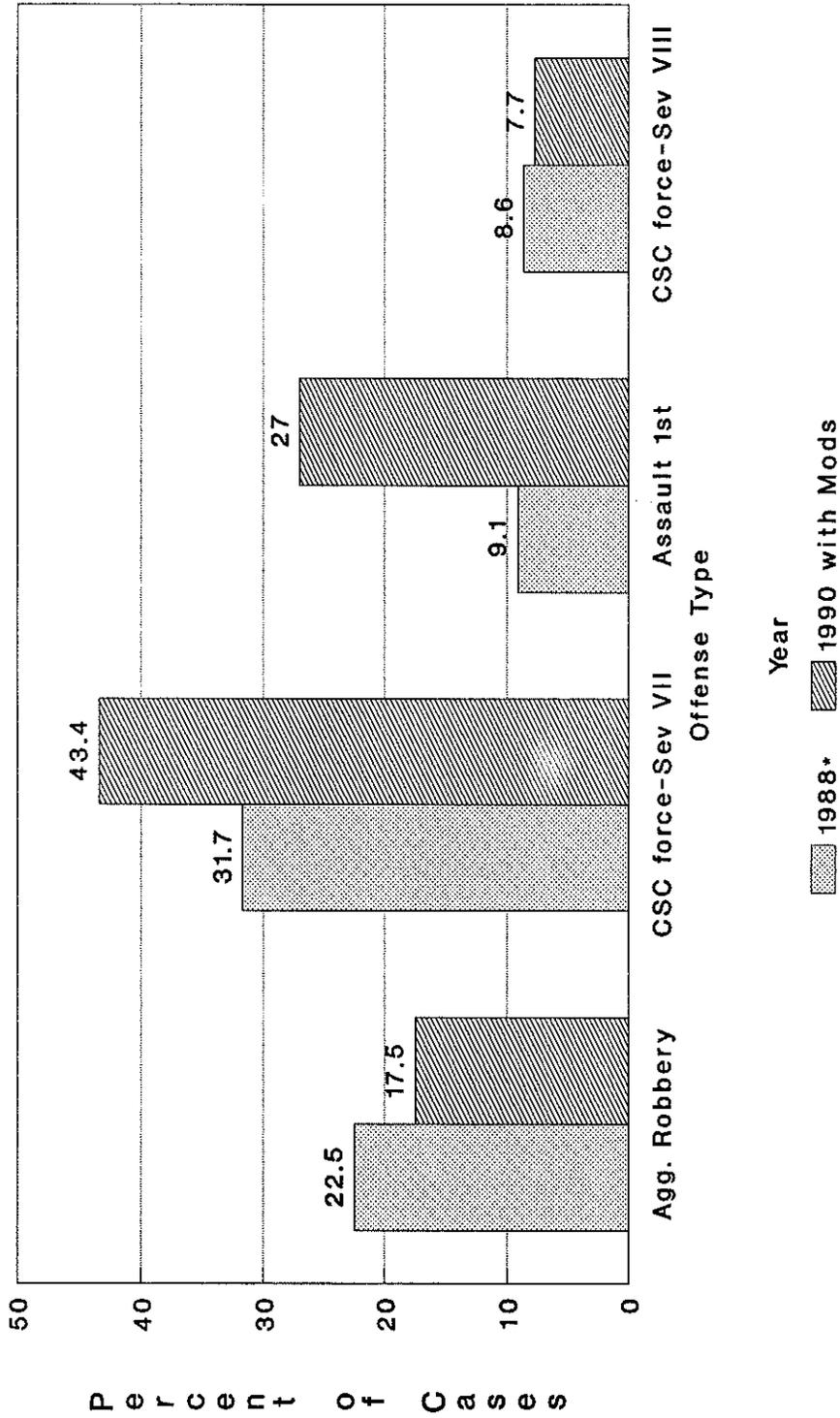
MSGC Monitoring Data
 * 1988 data adjusted to be comparative
 Executed Sentences Only

Average Prison Sentences By Offense Type 1988* Compared to 1990 w/ Modifications



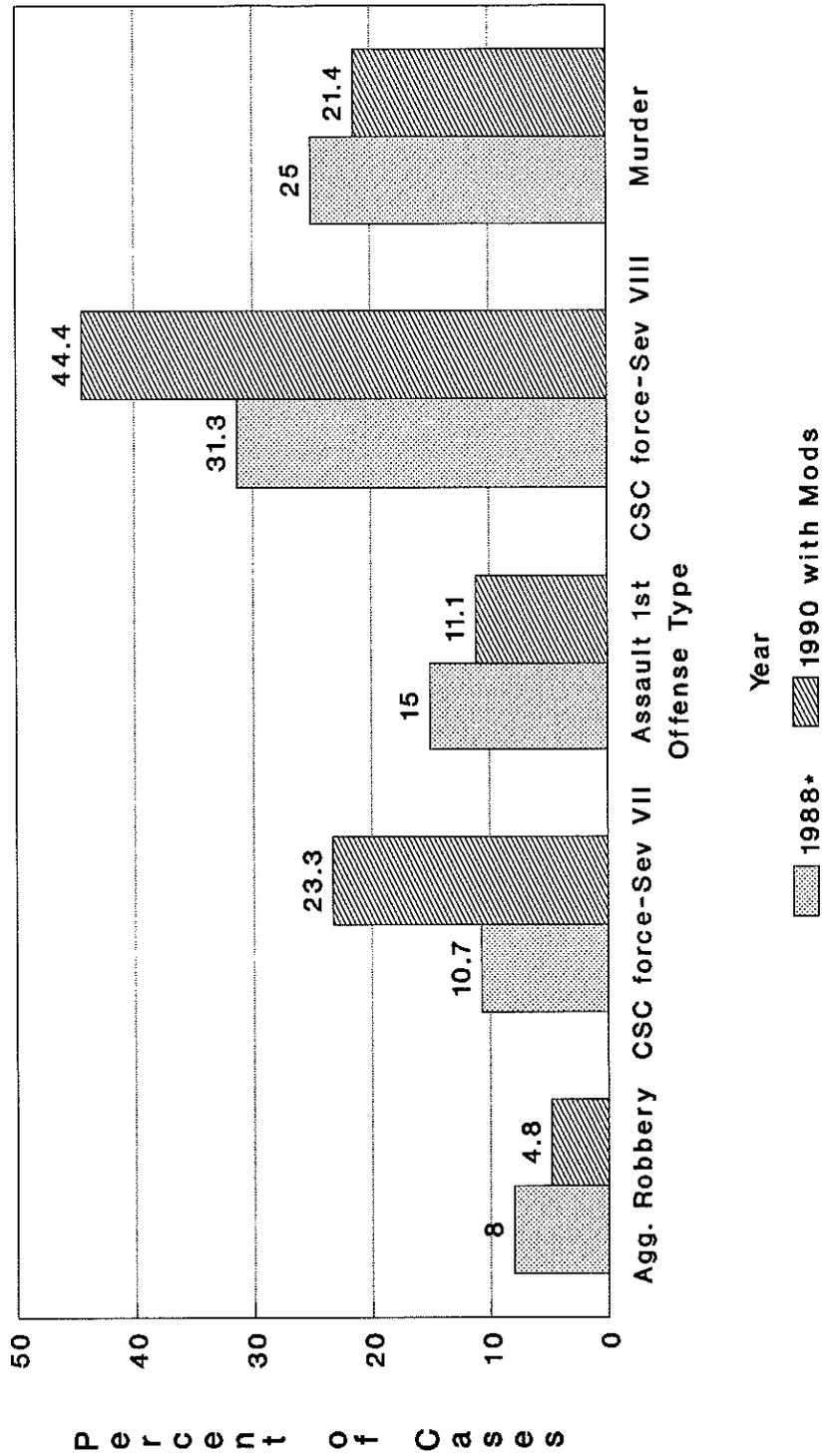
MSGC Monitoring Data
 * 1988 data adjusted to be comparative
 Executed Sentences Only

Mitigated Dispositional Departure Rates By Offense Type 1988* Compared to 1990 w/ Modifications



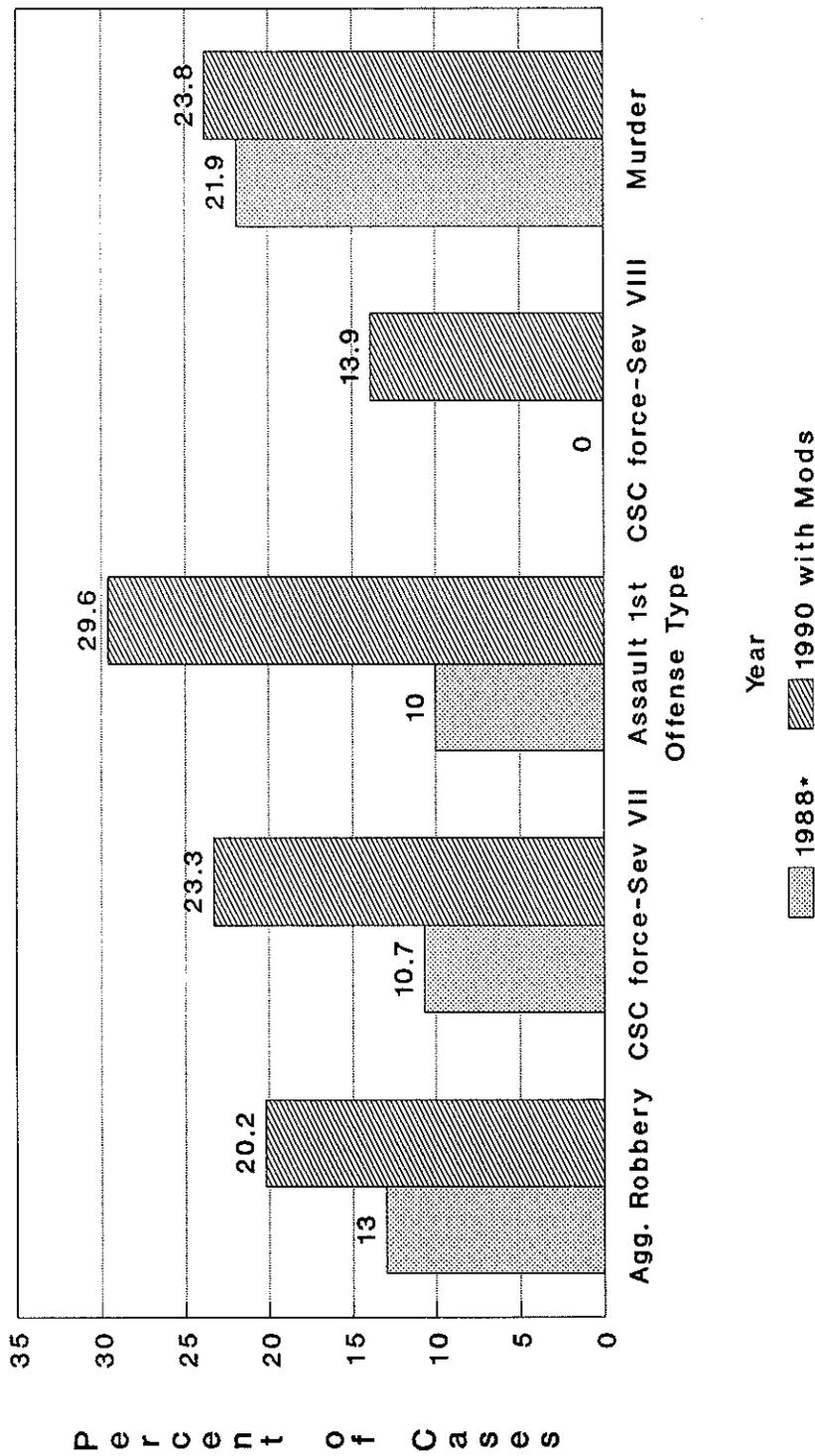
MSGC Monitoring Data
 * 1988 data adjusted to be comparative

Aggravated Durational Departure Rates By Offense Type 1988* Compared to 1990 w/ Modifications



MSGC Monitoring Data
 * 1988 data adjusted to be comparative
 Executed Sentences Only

Mitigated Durational Departure Rates By Offense Type 1988* Compared to 1990 w/ Modifications



MSGC Monitoring Data
 * 1988 data adjusted to be comparative
 Executed Sentences Only

