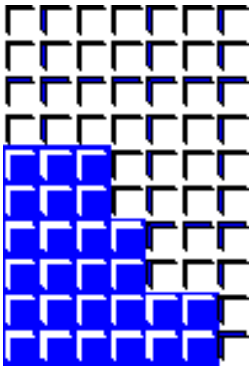
MINNESOTA SENTENCING
GUIDELINES COMMISSION

MSGC Report to the Legislature

MSGC Report to the Legislature, January 2010



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Introduction

In 1978, Minnesota created the nation's first sentencing guidelines commission to develop a model for rational and consistent sentencing standards for felony offenders. In 1981, Minnesota became the first state to implement a sentencing guidelines structure. Over the years, the guidelines system has proven capable of providing sound data to inform policy-makers and effectuating their decisions. While the number of felons sentenced in this state, as in every American jurisdiction, has greatly increased, the growth has been less than in states with indeterminate sentencing systems. A 2008 study by the National Center for State Courts concluded that our guidelines system has made sentences predictable, limited undesirable sentencing disparity and made sentencing transparent (Ostrom, Brian J., Ostrom, Charles W., Hanson, Roger A. et al. Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States (2008)).

The state's guidelines make it possible to give citizens an honest, front-end account of sentences actually to be served. They allow us to capture and analyze precise details about every felony punishment, so as to accurately describe sentencing trends and predict the impact of statutory changes on prison resources. They have enabled judges to "make the punishment fit the crime," by providing the most severe sentences for the most serious offenses, while taking into account important differences among offenders. Throughout the time the guidelines have existed, Minnesota has undergone significant changes in population, while both its crime rate and its rate of imprisonment per capita have remained among the lowest in the United States. In a 2005 comparison, the Bureau of Justice Statistics determined that Minnesota's prison incarceration rate was the second-lowest of all states in the nation with a 300 inmate per 100,000 resident ratio.

Throughout its history, the agency has lived up to its mission by collaborating with criminal justice partners and by utilizing and promoting advances in information technology. In this way, the Minnesota Sentencing Guidelines Commission (MSGC) has maintained its position as one of the least expensive and most effective sentencing commissions in the United States. The strategies of collaboration and efficient utilization of technology have made it possible for the agency to manage and analyze data about more than 15,000 cases in 2008 on a budget not much greater than that we had when there were half as many sentences. We are confident that our value to Minnesota's criminal justice system will continue to grow in the coming years.

The Annual Report details the work of the Minnesota Sentencing Guidelines Commission during 2009 and provides an overview of sentencing practices and trends in the criminal justice system. Please direct any comments or questions regarding the report to the Minnesota Sentencing Guidelines Commission Office. Additional reports on overall data trends in 2008 and sentencing practices for specific offenses including Assault Offenses and Violations of Restraining Orders, Controlled Substance, Criminal Sexual Conduct, Criminal Vehicular Homicide and Injury, Dangerous Weapons, Failure to Register as a Predatory Offender and Felony DWI, as well an Unranked Offense report and Probation Revocation report are available on the Guidelines Commission website at http://www.msgc.state.mn.us.

Executive Summary

The 2010 Report to the Legislature contains information for which the Commission is required to report: modifications to the sentencing guidelines and use of firearms in crimes as reported by Minnesota's County Attorneys. As in past years, the Commission also took this opportunity to highlight topics which may be of interest to the Legislature: sentencing trends; Commission and staff activities; and a new report on probation revocations. Presented below is a summary of the sections contained in the report.

Sentencing Trends (p. 3) – Minnesota continued to experience a decrease in the number of felons sentenced which began in 2007. There were 15,394 felony offenders sentenced in 2008, a 4.8% decrease from 2007. The trend appears to be the result of the decline in both the number of felony DWI offenders sentenced and the number of drug offenders sentenced, namely meth offenders. In 2008, person offenses accounted for 27.6 percent of all offenses sentenced, the highest proportion since 1996. Within the person category, the largest percentage increase was for offenders sentenced for violations of restraining orders (62.8%).

Commission Activities (p. 8) – Based on requests from justice agencies, the Commission made modifications to the Guidelines which are effective August 1, 2010. The modifications included moving certain prostitution offenses to the sex offender grid and re-ranking the offense of Riot First Degree (resulting in death) from severity level 5 to severity level 8.

Sentencing Guidelines Modifications (p. 9) – In response to new legislation, the Commission ranked one new crime, financial exploitation of a vulnerable adult (M.S. § 609.2335), at severity level 7; added two offenses to the Misdemeanor and Gross Misdemeanor Offense List; added two aggravating factors for departure, and added a 48–month enhancement for solicitation or promotion of prostitution for which sex trafficking aggravating factors existed. Several non-legislative and technical modifications to the guidelines were made. Modifications to the misdemeanor and gross misdemeanor point will go into effect August 1, 2010, provided the Legislature does not pass a law to the contrary.

Staff Activities (p. 11) – The staff performed the following activities: trained over 200 probation officers and lawyers; developed a narrated sentencing guidelines training PowerPoint presentation available on the website; provided 77 fiscal impact statements for proposed legislation; worked with Department of Corrections to generate prison bed projections; served on various criminal justice boards, forums and committees; processed and ensured accuracy of over 15,000 sentencing records; published annual guidelines and commentary and provided reports on sentencing practices.

Probation Revocation Report (p. 13) – The Commission produced a new report on probation violators. The overall revocation rate was just under 15 percent. The majority of revocations occurred within the first two years of sentencing. Revocation rates tended to be higher for offenders who were recommended prison according to the sentencing guidelines.

County Attorney Firearms Reports (p. 15) – Current law directs County Attorneys to collect and maintain information on crimes for which a defendant is alleged to have possessed or used a firearm. The Commission is required to include in its annual report a summary and analysis of the reports received. Since the mandate began, the average number of cases has been 684.

2008 Sentencing Practices Data Summary

The data on the following pages display summary information about sentencing practices and case volume and distribution. The recommended sentence under the guidelines is based primarily on the severity of the offense of conviction and secondarily on the offender's criminal record. The majority of offenders receive the recommended sentence.

Sentencing practices are very closely related to the recommended guideline sentence. It is very important, therefore, to be aware of the effect of differences in offense severity and criminal history when evaluating sentencing practices. This is particularly important when comparing groups of offenders (e.g. by gender, race/ethnicity and judicial district). For example, if in a particular district the proportion of serious person offenders is fairly high, the imprisonment rate for that district will likely be higher than for districts with predominantly lower severity level offenses.

There were 15,394 felony offenders sentenced in 2008; a decrease of 4.8 percent from the number sentenced in 2007. Figures 1 and 2 illustrate a large growth in the number of offenders sentenced for felony convictions between 2001 and 2004. This growth can be attributed to the implementation of the felony driving while impaired (DWI) law and increases in the number of drug crimes sentenced, particularly methamphetamine cases. Both trends appear to have leveled off. The number of felony DWI offenders sentenced actually declined in the years 2005-2007. The number of felony DWI offenders sentenced in 2008 was 779, 44 more than the number sentenced in 2007, but that is nine percent lower than the number sentenced in 2004 (860). In 2007 and 2008, the number of drug offenders sentenced actually decreased by seven percent in each year, the first time the number of drug offenders sentenced has decreased since 1999. As a proportion of total crimes sentenced, drug crimes decreased in 2006 for the first time since 2001 and further declined in 2007 and 2008 (Figure 5).

In 2008, there was also a decrease in the number of offenders sentenced for property offenses. Between 2007 and 2008 there was a slight increase in the number of offenders sentenced for offenses in the "other" category, due to the increase in the number of offenders sentenced for felony DWI. If felony DWI is excluded from the "other" category, there was a decrease of five offenders in that category.

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2008

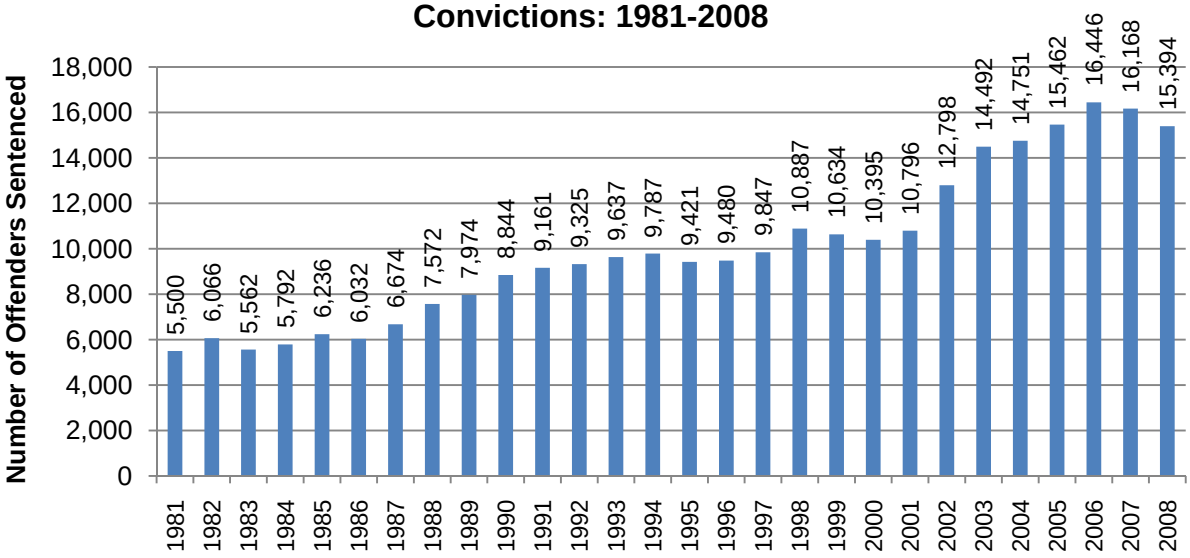
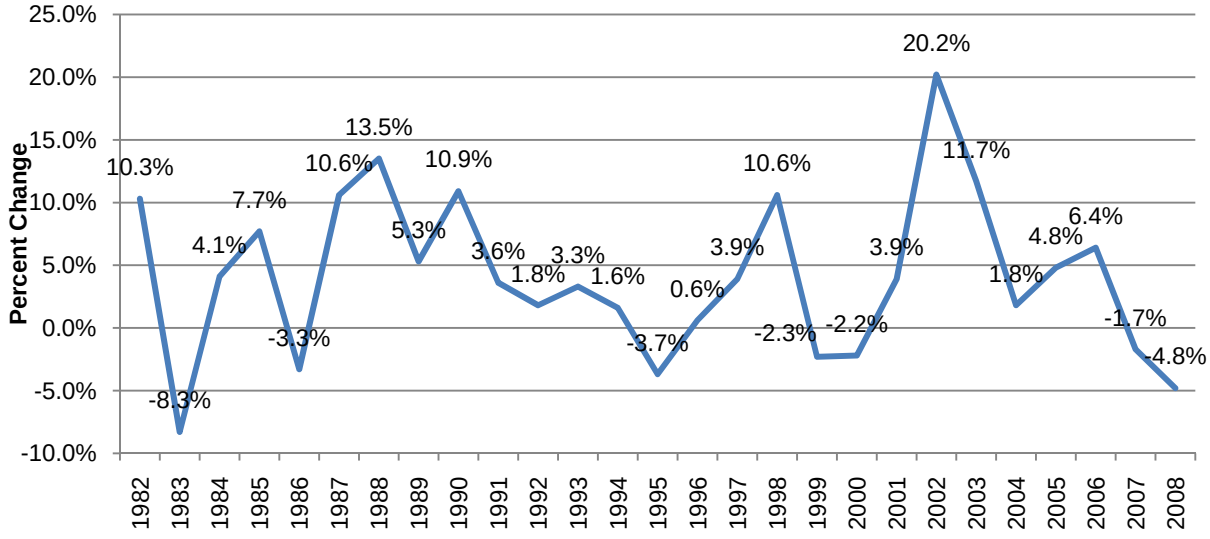
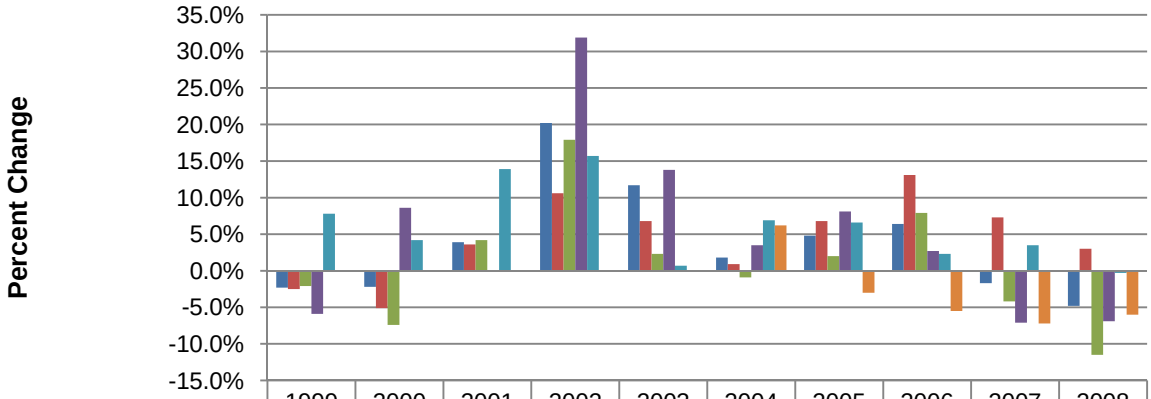


Figure 2. Percent Change in Number of Offenders Sentenced for Felony Convictions: 1982-2008



The crime category with the most growth in 2008 was "person," with a growth rate of three percent (Figure 3). Part of this growth can be attributed to the fact that 2006 was the first full year in which first-degree murder offenses were included in the Commission's data.[1] There were 25 completed first-degree murders sentenced in 2006, 23 offenses sentenced in 2007, and 24 in 2008. The crime with the most impact on the growth rate of person crimes in 2006 was domestic assault by strangulation. In 2005, the Legislature made it a felony to assault a family or household member by strangulation. The crime went into effect August 1, 2005, and there were 20 offenders sentenced by the end of December in that year. In 2006, the number of offenders sentenced grew to 264. Because no decrease was observed in the number of other felony domestic assaults, third-degree assaults, or felony fifth-degree assaults sentenced in 2006, it seems clear that the domestic assault by strangulation offenses are largely cases that would not have been felony offenses before the statutory change. If first-degree murder offenses and domestic assault by strangulation offenses were removed from the calculation, the growth rate of person crimes between 2005 and 2006 was 5.2 percent.

Figure 3. Percent Change by Offense Type: 1999-2008
(Felony DWI Separated from Other Category)



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total (All Offenses)	-2.3%	-2.2%	3.9%	20.2%	11.7%	1.8%	4.8%	6.4%	-1.7%	-4.8%
Person	-2.5%	-5.1%	3.6%	10.6%	6.8%	0.9%	6.8%	13.1%	7.3%	3.0%
Property	-2.1%	-7.4%	4.2%	17.9%	2.3%	-0.9%	2.0%	7.9%	-4.2%	-11.5%
Drug	-5.9%	8.6%	0.0%	31.9%	13.8%	3.5%	8.1%	2.7%	-7.1%	-6.9%
Other*	7.8%	4.2%	13.9%	15.7%	0.7%	6.9%	6.6%	2.3%	3.5%	-0.3%
Felony DWI**						6.2%	-3.0%	-5.5%	-7.2%	-6.0%

*Offenses in the "Other" Category are: discharge of a firearm; felon in possession of a weapon; bribery; perjury; escape; fleeing a peace officer; aiding an offender; accomplice after the fact; obstructing legal process; lottery fraud; fail to register as a predatory offender; possession of, dissemination of, child pornography; failure to appear in court; weapon-related offenses.

**Felony DWI went into effect August 1, 2002. Since 2003 was the first full year in which this offense existed, percent change for this category is only provided for 2004 and beyond.

[1] Before August 1, 2005, first-degree murder was not included in the MSGC's dataset; first-degree murder is excluded from the sentencing guidelines by law and continues to have a mandatory life sentence.

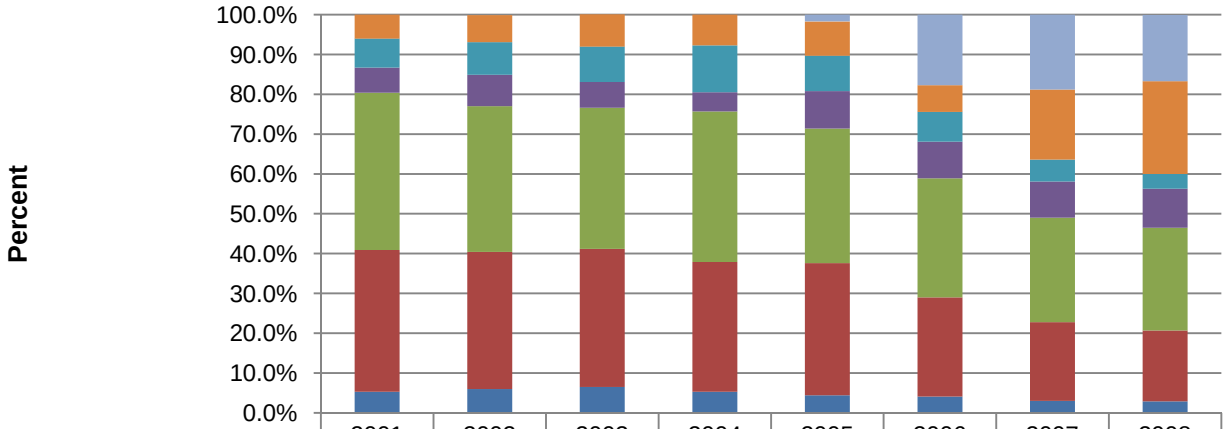
The growth in the number of person offenses sentenced in 2007 is only partly attributable to continued growth in the number of offenders sentenced for domestic assault by strangulation. In 2007, that number grew to 315 (a 19% increase). Person offenses, other than domestic assaults by strangulation, increased by 6.4 percent between 2006 and 2007. While the number of offenders sentenced for first-, second-, and third-degree assault decreased by 6.7 percent in 2007, the number of offenders sentenced for other felony domestic assaults increased by almost 200 percent—from 100 offenders in 2006 to 295 offenders in 2007 (Figure 4).

In 2008, person offenses accounted for 27.6 percent of all offenses sentenced (Figure 5), the highest proportion since 1996. The number of offenders sentenced for murder and manslaughter offenses decreased by ten percent between 2007 and 2008 and the number sentenced for criminal sexual conduct (CSC) offenses was virtually identical. The number of offenders sentenced for robbery increased by 7.6 percent. Assaults overall increased by only one percent, but there was great variation in the growth rate among the various types of assault. While there were declines in the number of offenders sentenced for first-, second-, third-, and fifth-degree assaults, the number sentenced for fourth-degree assault increased by 9.2 percent. There was a 10.5 percent decrease in the number of offenders sentenced for domestic assaults by strangulation (to 282). The number of offenders sentenced for felony domestic assault continued to grow in 2008 to 396 offenders, an increase of 34 percent. With the creation of felony offenses for repeat domestic assaults and domestic assault by strangulation, the composition of the assault offenses has changed in recent years. Felony domestic assaults and domestic assault by strangulation made up almost 40 percent of all assaults sentenced in 2008 (Figure 4).

Within the person offense category, the largest percentage increase was for offenders sentenced for violations of restraining orders (62.8%). There are three offenses in this group: violations for orders of protection (OFP), violations of harassment restraining orders (HRO), and violations of domestic abuse no contact orders (DANCO). These are felonies that have been created for offenders who have prior offenses from the list of qualified domestic-violence offenses and violate the restraining orders against them. The list of prior qualified offenses was expanded in 2006 and a standardized 10-year look-back period was also implemented at that time. In 2008, violations of OFP increased slightly from 139 to 151 and violations of HRO decreased from 43 to 41. A violation of DANCO is the newest offense in this group, effective for crimes committed on/after August 1, 2007. The number of offenders sentenced for that offense increased from 9 in 2007 to 119 in 2008.

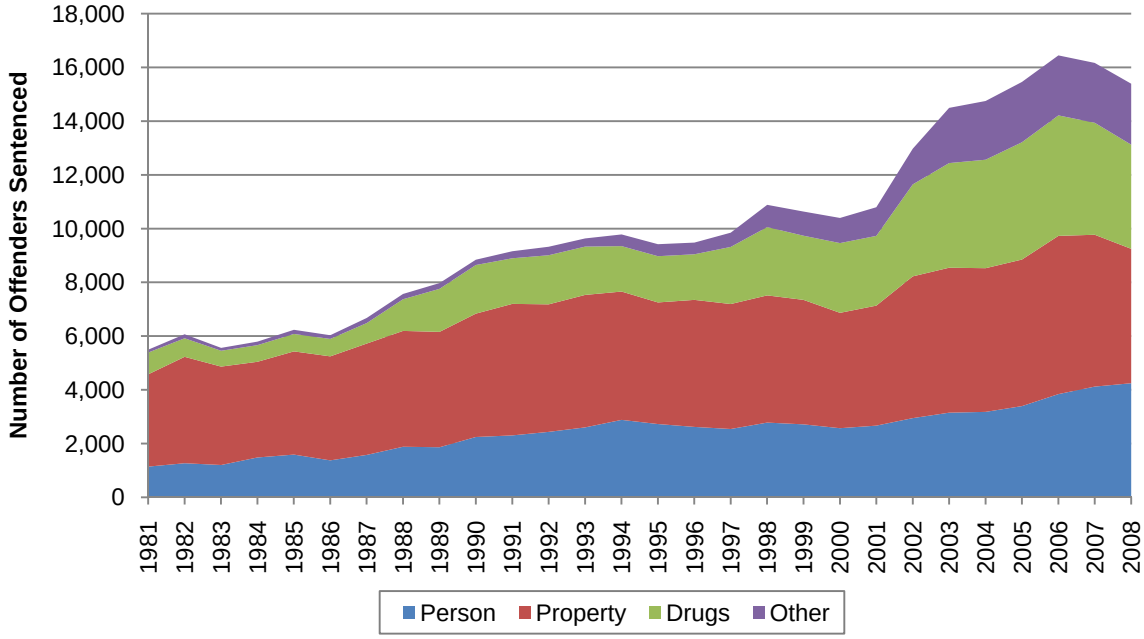
Data from *Minnesota Crime Information 2008*, published by the Minnesota Department of Public Safety, indicates that the overall crime rate for index crimes has fluctuated since 1981, but has decreased for the last two years. The 2008 rate of 3,105 crimes per 100,000 in population represents a 4.7 percent decrease from the 2007 crime rate of 3,257 per 100,000. The 2007 rate was 3.2 percent lower than the 2006 rate of 3,366 per 100,000. In 2008, there were 14,085 reported violent crimes in Minnesota, a 7.5 percent decrease from the 15,228 violent crimes reported in 2007.

Figure 4. Distribution of Assault Offenses: 2001-2008



	2001	2002	2003	2004	2005	2006	2007	2008
Dom. Assault by Strang.					1.7%	17.7%	18.8%	16.6%
Domestic Assault	6.0%	6.8%	8.1%	7.7%	8.6%	6.7%	17.6%	23.3%
Assault 5	7.3%	8.2%	8.9%	11.8%	8.9%	7.5%	5.5%	3.7%
Assault 4	6.3%	7.9%	6.5%	4.8%	9.4%	9.2%	9.1%	9.8%
Assault 3	39.5%	36.6%	35.4%	37.8%	33.8%	29.9%	26.2%	25.8%
Assault 2	35.6%	34.4%	34.7%	32.6%	33.2%	24.9%	19.8%	17.8%
Assault 1	5.3%	6.0%	6.5%	5.3%	4.4%	4.1%	3.0%	2.9%

Figure 5. Volume of Offenders Sentenced by Offense Type: 1981-2008



The Commission's Activities in 2009

The Minnesota Sentencing Guidelines Commission consists of eleven members, of whom eight are appointed by the Governor and three are judges appointed by Minnesota's Chief Justice. Currently, the Governor's appointees are: Commission Chair Jeffrey Edblad, Isanti County Attorney; Rev. Robert Battle, citizen member, St. Paul; Fifth Judicial District Assistant Public Defender Darci Bentz; Kari Berman, citizen member, Minneapolis; Commissioner of Corrections Joan Fabian; Martin County Sheriff Brad Gerhardt; Washington County Community Corrections Supervisor Tracy Jenson; and Connie Larson, citizen member, Waseca. The judicial representatives are Second Judicial District Judge Edward Cleary, Supreme Court Justice Helen Meyer, and Court of Appeals Judge Gordon Shumaker.

One of the basic responsibilities of the Commission is to maintain the guidelines structure by annually modifying the Guidelines in response to legislative changes, case law, and issues raised by various parties. In order to meet this responsibility, the Commission met eight times during 2009, held two public hearings and approved a number of modifications to the Guidelines which are summarized below. All modifications are set forth in the Appendix.

Moving Prostitution to the Sex Offender Grid – Effective August 1, 2010

The Advocates for Human Rights with support from Minnesota Coalition Against Sexual Assault requested that the Commission review the rankings for certain felony prostitution offenses and consider increasing their severity levels in order to make them more consistent with offenses on the sex offender grid. In considering the request, the Commission reviewed sentencing practices for felony prostitution offenses from 2005-2008, including incarceration rates, average pronounced durations and departure rates. Additionally, information was obtained from the County Attorneys regarding charging practices in prostitution cases.

The Commission reviewed the rankings and statutory maximums for felony prostitution offenses as defined in M.S. § 609.324, as well as M.S. § 609.322, and considered possible severity level rankings on the Sex Offender Grid according to comparable sex offense statutory maximums and presumptive sentences. In most cases, placement of prostitution offenses on the sex offender grid results in more presumptive prison sentences and longer sentences. Additionally, offenders who commit these offenses are eligible for a second custody status point if they commit the offense while on probation or supervised release for a prior offense on the sex offender grid other than failure to register, and some prior criminal sexual conduct offenses would carry higher criminal history weights.

The Advocates for Human Rights asked that the Commission delay any changes made to the sentencing guidelines regarding M.S. § 609.324 until after the 2010 Legislative Session, as they were concerned that such changes may have unintended consequences for victims of sex trafficking and prostituted individuals. The Advocates, however, supported new rankings for M.S. § 609.322, subd. 1(a) and subd. 1a.

The Commission adopted a proposal to change the severity level ranking for solicitation, inducement, and promotion of prostitution; sex trafficking in the first degree (individuals under 18) from a severity level 9 to a severity level B on the sex offender grid. The Commission also adopted a change to the severity level ranking for solicitation, inducement, and promotion of prostitution; sex trafficking in the second degree (individuals 18 and over) from a severity level 5 to a severity level C on the sex offender grid.

With the re-rankings at severity level B and C, all sentences for these offenses are presumptive prison. The prison bed impact is expected to be 23 beds; 6 beds for the new severity level B offenses and 17 beds for the new severity level C offenses. The modifications are effective August 1, 2010.

Re-Ranking Riot First Degree – Effective August 1, 2010

In response to a request from Hennepin County Attorney Mike Freeman, the Commission considered increasing the severity level ranking of Riot First Degree (resulting in death). Following a public hearing, the Commission adopted its proposal to change the ranking from severity level 5 to severity level 8. The increase in severity level brings the ranking and presumptive sentence for Riot First Degree in-line with other similar crimes. At severity level 8, all are presumptive prison sentences with a range of 48 months (with 0 criminal history score) to 108 months (with 6 or more criminal history score). In reviewing past sentencing practices for Riot First Degree, the prison bed impact is expected to range from 0-2 beds, depending on when offenders happen to be sentenced. The prison bed projection is based on the assumptions that one offender will be sentenced for this offense every 4 years, and that he/she will serve 36 months. The modifications are effective August 1, 2010.

Modifications to the Misdemeanor and Gross Misdemeanor Point – Effective August 1, 2010

The Commission adopted three proposals making modifications to the misdemeanor and gross misdemeanor point calculation: 1) Replace the Misdemeanor/Gross Misdemeanor List with a policy that counts all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs); 2) Change the policy for a gross misdemeanor custody status point that applies a point for all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs). This will make it consistent with the policy change for handling misdemeanor and gross misdemeanor offenses in criminal history; and 3) Change the start-date and end-date used to calculate the misdemeanor and gross misdemeanor decay to make it uniform with the dates used for felony decay. The modifications are effective August 1, 2010, provided a bill is not passed to the contrary.

New Crime Legislation – Effective August 1, 2009

The Commission ranked one new crime, financial exploitation of a vulnerable adult (over $35,000) – M.S. § 609.2335, at severity level 7. Other provisions for lesser monetary values have been in existence since 1995. The Commission considered new and amended misdemeanors and gross misdemeanors passed by the 2009 Legislature and added the following to the Misdemeanor and Gross Misdemeanor Offense List: discharging a laser at an aircraft; and financial exploitation of a vulnerable adult.

The Commission added two aggravating factors to the departure section of the guidelines (Section II.D.2b). They are: "the offense was committed in the presence of a child"; and "the offense was committed in a location in which the victim had an expectation of privacy." This followed an amendment to M.S. § 244.10, in which a subdivision was added to include possible "aggravating factors" in cases for which aggravated departures are being considered.

The Commission passed a policy which will add 48 months to a solicitation or promotion of prostitution sentence for which aggravating factors for sex trafficking existed. If the underlying crime was an attempt or conspiracy, an additional 24 months will be added instead.

Non-Legislative Modifications – Effective August 1, 2009

- The Commission ranked bribery - § 211B.13, at severity level 4. It has been inadvertently left unranked since 1988.
- The Commission added policy language in which convictions for attempts or conspiracies of offenses are included on the list of offenses eligible for permissive consecutive sentences. This follows the Minnesota Court of Appeals decision, *State v. Brandon M. Johnson* (Minn. App. 2008).
- The Commission added language clarifying that misdemeanor and gross misdemeanor offenses which are excluded from the criminal history for an enhanced felony should be used to calculate future criminal history provided that the offense is not an enhanced felony.
- The Commission modified language to make it clearer that a custody status point is assigned to offenders released pending sentencing on a non-traffic gross misdemeanor or gross misdemeanor DWI, not just a felony.
- The Commission added a comment to clarify that "warrant status" is included in the guidelines' definition of statuses which triggers a custody point by virtue of the fact that another custody type already exists.
- The Commission added a reference in the guidelines which explains that assault on a secure treatment facility employee under M.S. § 609.2231, subd. 3a(b) is a felony which carries a mandatory minimum prison sentence of at least one year and one day; and, therefore, the presumptive disposition is commitment to the Commissioner of Corrections.

- The Commission added language to clarify that the severity level ranking policy for felony theft involving a foreseeable risk of bodily harm ($501-$1,000, with a prior conviction), is the same as that for other felony theft involving a foreseeable risk of bodily harm: it is elevated by one severity level.

Technical Modifications and Corrections – Effective August 1, 2009

The Commission adopted a proposal to make several technical modifications in the sentencing guidelines intended to improve upon them.

Technical Modifications – Effective August 1, 2010

The Commission adopted a proposal to amend the criminal history section to consistently reference the three exceptions to the "*Hernandize*" rule and amend the commentary to clarify its actions are deliberate. The Commission added language to the commentary referencing a recent MN Supreme Court case to that effect.

The Commission adopted a proposal to amend the presumptive sentence section to be consistent with a recent MN Supreme Court case in which procedures for determining the minimum term of imprisonment for certain repeat sex offenders under Minn. Stat. § 609.3455, subd. 5, were decided.

The Staff's Activities in 2009

The following provides a summary of the activities performed by staff to further the goals and purpose of the Commission.

Training and other Assistance

The Commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via email and telephone. The Commission offers training and educational opportunities in an effort to promote the accurate application of sentencing guidelines. During 2009, eight training sessions were held in various locations throughout the state for over 200 criminal justice practitioners. Recognizing both time and money constraints for training, staff developed a narrated PowerPoint training made available on the website which has received favorable response. In addition to providing training and education programs, staff answers phone calls on a daily basis in response to questions regarding guidelines application.

Data Requests

One of the important ways in which the Commission works with fellow agencies and departments across the state is researching and compiling statistical data in response to information requests. During 2009, MSGC staff responded to 64 data requests for a total of 180 hours. These requests are most often made by lawyers or corrections agents to show specific sentencing practices to the court. However, the requests are also made by academics, students, other state agencies, legislative staff, law enforcement, and the press for other purposes. The topics range from departure data for a single type of offense within a given county to comparative data on how an offense has been sentenced from one county to another during a specific timeframe.

Fiscal/Racial-Impact Statements

During the 2009 Legislative Session, Commission staff prepared 77 fiscal impact statements for any proposed legislation that may result in a net increase in state correctional facility beds. These impact statements include details as to any increase or decrease in adult offender populations as well as the impact on local jails. Staff provided the requested information within time requirements set by the Legislature. In 2006, the Commission agreed that it would be appropriate to begin providing the Legislature with racial-impact notes on proposed crime bills, in addition to the fiscal notes. Minnesota became the first state in the nation to prepare estimates of racial impact for legislators. Subsequently, both Connecticut and Iowa enacted laws requiring such estimates using Minnesota's notes as patterns.

Collaboration with Criminal Justice Agencies

Each year staff works with the Department of Corrections to generate prison bed projections. In other examples of collaborations to further the goals and work of the criminal justice system, MSGC staff served on the Criminal and Juvenile Justice Information Task Force, Supreme Court Criminal Justice Forum, Department of Corrections Evidence Based Practices Committee, State Court Administration Drug Court Evaluation Committee and Supreme Court Racial Fairness Subcommittee on Drug Offenses.

Other Activities

Additionally, as part of the agency's core functions, Commission staff processed and ensured the accuracy of over 15,000 sentencing records; published annual editions of the sentencing guidelines and commentary and reports to the legislature; collected and analyzed data and provided reports on sentencing practices and trends and continued to develop a new method for retrieving sentencing information from the State Court's Information System (MNCIS).

Probation Revocations: Offenders Revoked to Prison for Technical Violations

In 2009, the Commission created a new report with detailed information on probation revocations. Staff analyzed probation revocations after matching Department of Corrections (DOC) data with data from the Minnesota Sentencing Guidelines Commission (MSGC).[2] The analysis included offenders receiving an initial stayed sentence between 2001 and 2007. Offenders were tracked for revocations through December 31, 2008. The DOC data include admissions as a result of revocations. Offenders whose probation was revoked due to the commission of a new offense are classified as new admissions and, therefore, were not included in this analysis. Going forward, the revocations included in this analysis will be referred to as "technical" revocations (e.g.: absconding, failure to comply with treatment, failure to comply with probation terms). It is the Commission's intention to update this report annually, once new data are available from both DOC and MSGC.

It is important to remember that this analysis was not intended to be a recidivism study. It describes, in very basic terms, technical revocation data for felony offenders who were originally sentenced to probation. The analysis does not statistically control for a variety of factors that may influence an offender's success. Also, the data were not standardized based on date of offense. All offenders sentenced between 2001 and 2007 were tracked through December 31, 2008. Therefore, an offender sentenced to probation in January 2001 is tracked for almost a full eight years, while an offender sentenced to probation in January 2007 is only tracked for 1 year and 11 months.

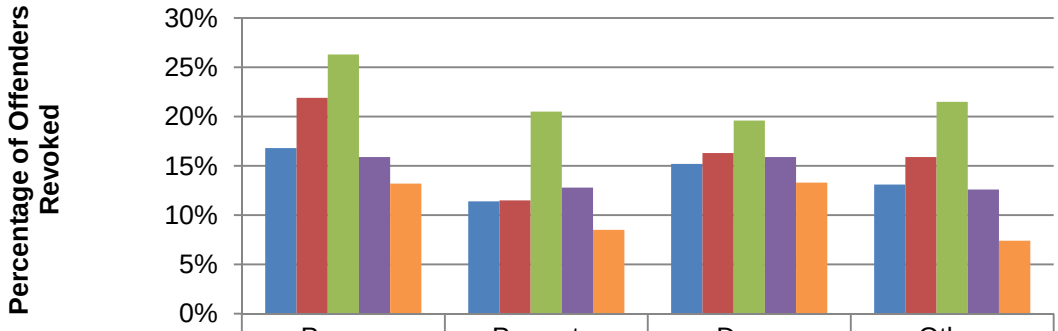
Offenders receiving probation are slightly more likely to be white and less likely to be black: white offenders made up 64 percent of felony probationers, but 61 percent of the total felony population; black offenders made up 23 percent of felony probationers, but 25 percent of the total felony population. Offenders receiving probation are more likely to be female: females made up approximately 21 percent of felony probationers, but 18 percent of the total felony population.

Through the end of 2008, the overall revocation rate was just under 15 percent. The majority of technical revocations occurred within the first two years of sentencing. Revocation rates tended to be higher for offenders who were recommended prison according to the sentencing guidelines grid. The revocation rate varied among groups (e.g.: race, offense type).

American Indians have had their probation revoked at a higher rate than any other racial group. Among offense types, person offenses had the highest rate of revocation (18.7%), while property offenses had the lowest (11.9%). Part of the reason revocation rates may be so high among American Indians could be because of the higher percentage of American Indians convicted of person crimes. However, as Figure 6 illustrates, American Indians had the highest rate of revocation within each offense type.

[2] MSGC monitoring data are offender-based; cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

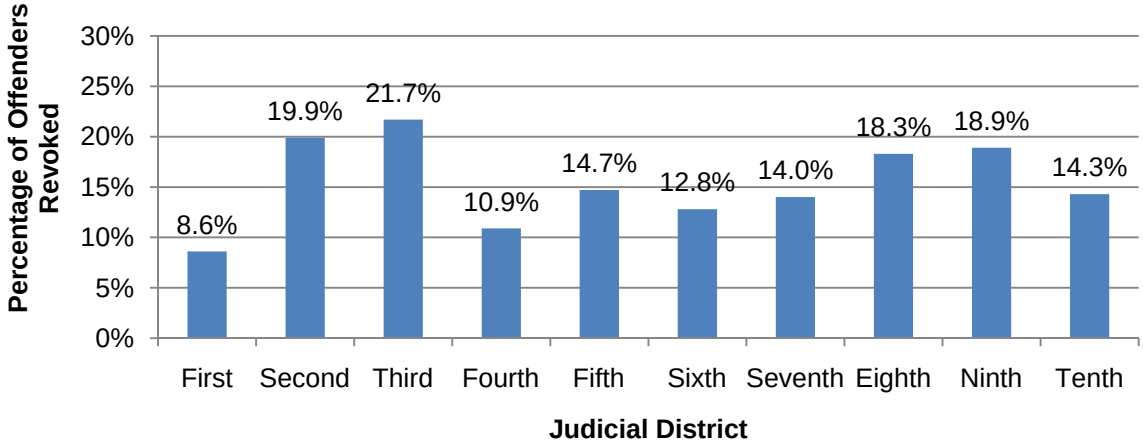
Figure 6. Probation Revocations by Offense Type and Race: 2001-2008



	Person	Property	Drug	Other
White	16.8%	11.4%	15.2%	13.1%
Black	21.9%	11.5%	16.3%	15.9%
American Indian	26.3%	20.5%	19.6%	21.5%
Hispanic	15.9%	12.8%	15.9%	12.6%
Asian	13.2%	8.5%	13.3%	7.4%

Some differences were also observed when comparing overall revocation rates between both judicial districts and counties. The first judicial district had the lowest rate of revocation (8.6%), while the third district had the highest (21.7%). In line with district-wide rates, the county with one of the lowest revocation rates was Carver (4.9%), located in the first district. Likewise, the county with the highest revocation rate was Dodge (33.0%), located in the third district (Figure 7).

Figure 7. Probation Revocations by Judicial District: 2001-2008



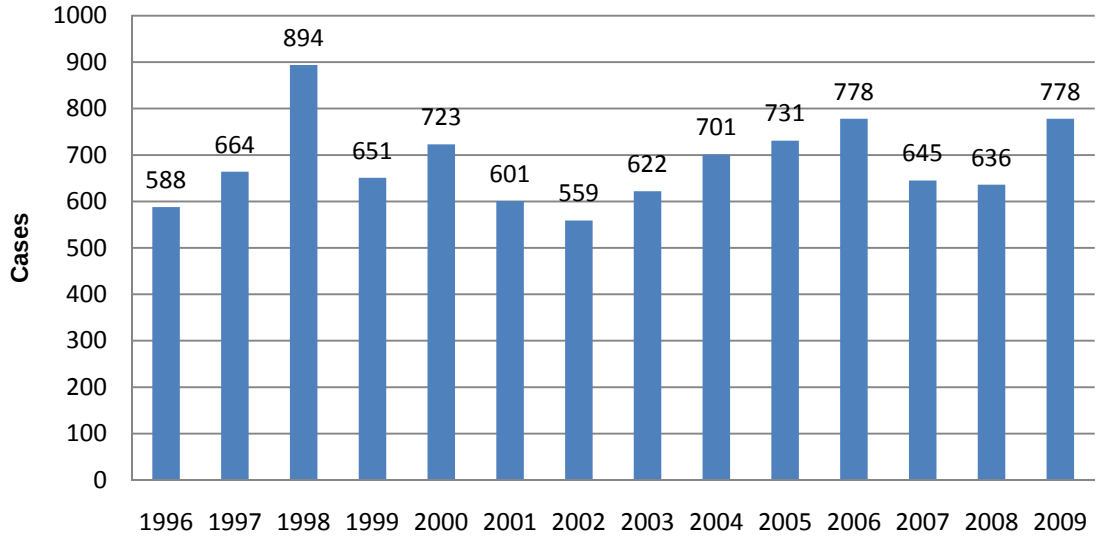
For more information on the analysis of probation revocations, please see MSGC's *Probation Revocations* report, available online at: http://www.msgc.state.mn.us.

County Attorney Firearms Reports

Current law directs County Attorneys to collect and maintain information on criminal complaints and prosecutions in which a defendant is alleged to have committed an offense while possessing or using a firearm, as described in M.S. § 609.11, subdivision 9.[3] This information is to be forwarded to the Sentencing Guidelines Commission no later than July 1 of each year. Pursuant to M.S. § 244.09, subdivision 14, the Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received. Memoranda describing the mandate, along with forms on which to report, are distributed by the Commission to County Attorneys. Although the Commission's staff clarifies inconsistencies in the summary data, the information received from the County Attorneys is reported directly as provided.

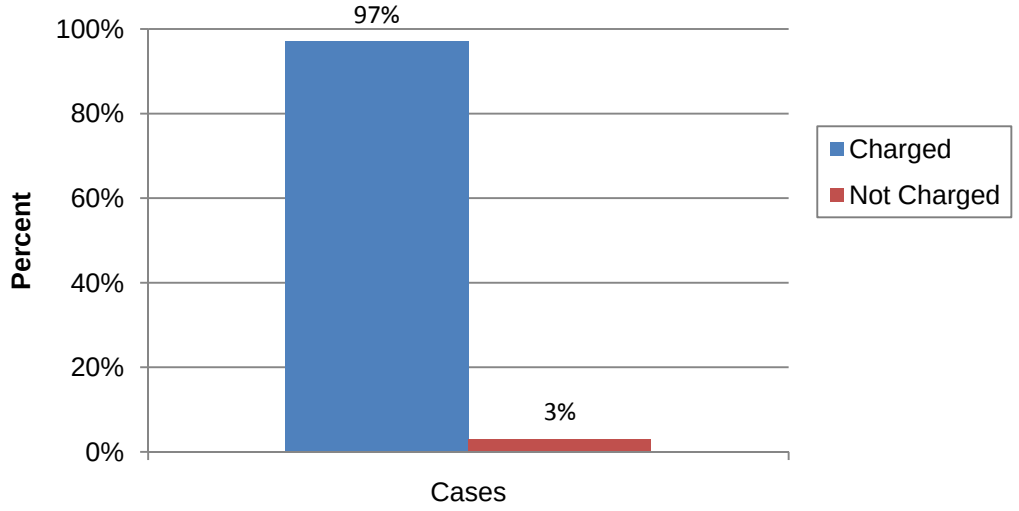
Since the mandate began in 1996, the average number of annual cases involving firearms statewide has been 684. Between July 1, 2008 and July 1, 2009, there were 778 cases allegedly involving a firearm (Figure 8). Figure 9 displays that prosecutors charged 756 cases (97%).

Figure 8. Cases Allegedly Involving a Firearm 1996 to 2009



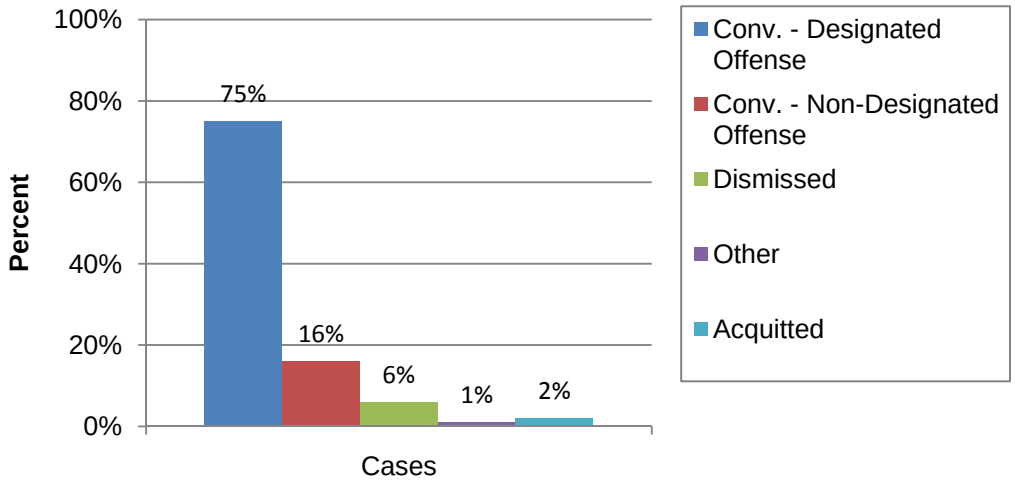
[3] The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; some criminal sexual conduct offenses; escape from custody; arson in the first, second, or third degree; felony drive-by shooting; aggravated harassment and stalking; felon in possession of a firearm; and felony controlled substance offenses.

Figure 9. Cases Charged



Of those 756 charged, 565 (75%) were convicted of offenses designated in M.S. § 609.11. One hundred and eighteen (16%) were convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 46 (6%) had all charges dismissed; 7 (1%) were "other" cases, such as federal prosecutions and civil commitment; and 13 (2%) were acquitted on all charges (Figure 10).

Figure 10. Case Outcomes



In 529 (94%) of the 565 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 11). In the cases in which the firearm was established on the record, 307 offenders (58%) were sentenced to the mandatory minimum prison term (Figure 12).

Figure 11. Cases Convicted of Designated Offense

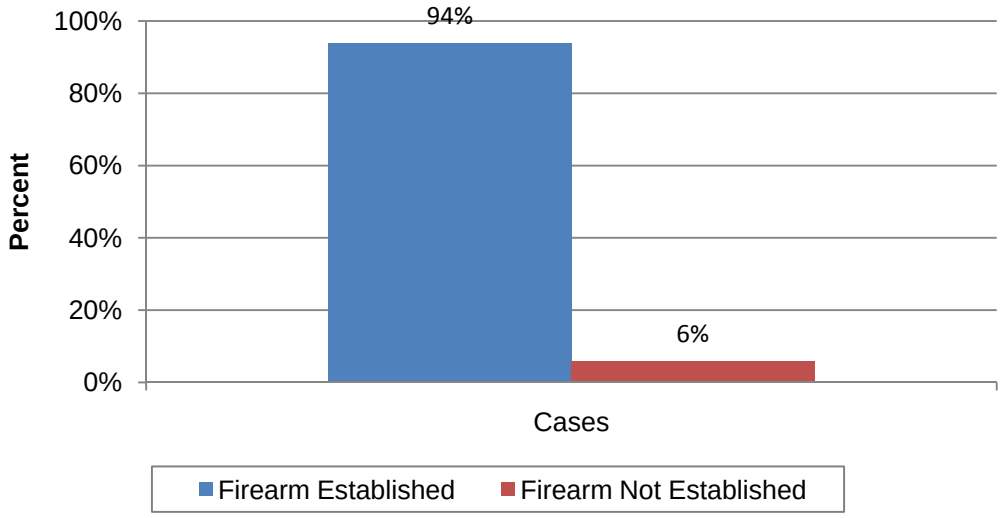


Figure 12. Firearm Established on the Record

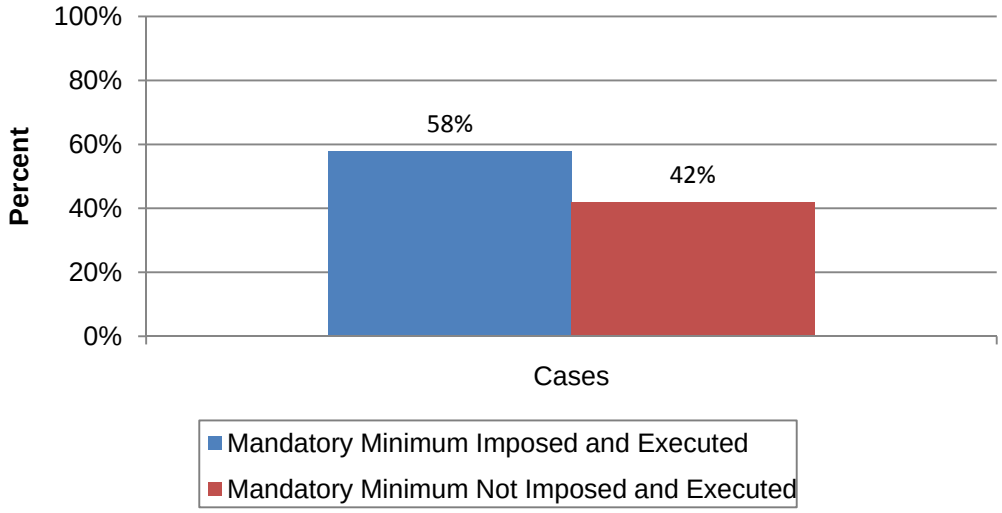


Table 1. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm by MN County
Cases Disposed from July 1, 2008 to July 1, 2009

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Aitkin	3	3	3	0	0
Anoka	38	38	35	35	9
Becker	5	5	5	5	4
Beltrami	2	2	1	1	1
Benton	11	11	6	4	3
Big Stone	0	0	0	0	0
Blue Earth	0	0	0	0	0
Brown	0	0	0	0	0
Carlton	3	3	2	2	0
Carver	0	0	0	0	0
Cass	6	6	3	2	1
Chippewa	1	1	1	1	1
Chisago	4	4	2	2	1
Clay	5	5	3	3	3
Clearwater	9	9	5	5	5
Cook	1	1	0	0	0
Cottonwood	3	3	1	1	1
Crow Wing	2	2	1	0	0
Dakota	53	53	47	47	31
Dodge	0	0	0	0	0
Douglas	0	0	0	0	0
Faribault	0	0	0	0	0
Fillmore	1	1	0	0	0
Freeborn	0	0	0	0	0
Goodhue	14	14	0	6	3
Grant	1	1	0	1	1
Hennepin	216	216	188	188	90
Houston	0	0	0	0	0
Hubbard	5	5	2	2	2
Isanti	8	8	6	6	4
Itasca	8	8	6	6	1
Jackson	0	0	0	0	0
Kanabec	2	1	0	0	0
Kandiyohi	7	4	1	1	1
Kittson	0	0	0	0	0
Koochiching*	---	---	---	---	---

* Not reported

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Lac Qui Parle	1	1	0	0	0
Lake	8	8	7	3	3
Lake of the Woods	6	6	4	0	0
LeSueur	0	0	0	0	0
Lincoln	1	0	0	0	0
Lyon	1	1	0	0	0
McLeod	11	11	6	6	4
Mahnomen	1	1	1	1	1
Marshall	1	1	0	0	0
Martin	2	2	1	1	0
Meeker	0	0	0	0	0
Mille Lacs	14	14	4	2	2
Morrison	7	7	5	4	1
Mower	0	0	0	0	0
Murray	2	2	0	0	0
Nicollet	0	0	0	0	0
Nobles	2	2	1	0	0
Norman	0	0	0	0	0
Olmsted	19	19	15	14	13
Otter Tail	5	5	1	1	0
Pennington	4	4	2	2	2
Pine	5	5	3	2	1
Pipestone	6	6	6	1	1
Polk	10	10	10	9	5
Pope	0	0	0	0	0
Ramsey	107	107	92	92	60
Red Lake	1	1	0	0	0
Redwood	6	6	2	2	0
Renville	4	4	0	0	0
Rice	5	5	2	2	1
Rock	0	0	0	0	0
Roseau*	---	---	---	---	---
Scott	1	1	1	0	0
Sherburne	6	6	4	4	3
Sibley	0	0	0	0	0
St. Louis	46	36	26	16	8
Stearns	21	16	16	16	12
Steele	6	6	6	5	5
Stevens	0	0	0	0	0
Swift	0	0	0	0	0

* Not reported

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Todd	0	0	0	0	0
Traverse	0	0	0	0	0
Wabasha	5	5	1	1	1
Wadena	10	10	6	6	5
Waseca	1	1	1	1	1
Washington	25	25	13	13	12
Watonwan	2	1	0	0	0
Wilkin	0	0	0	0	0
Winona	10	9	8	6	3
Wright	7	7	2	0	0
Yellow Medicine	1	1	1	1	1
Total	**778**	**756**	**565**	**529**	**307**

Appendix A: New and Amended Crimes Passed by the Legislature – Effective August 1, 2009

1. Statutory Amendments without Modifications

The Commission considered amendments made to the following statutes and adopted a proposal to retain their current severity level rankings and status on the permissive consecutive list (where applicable): Failure to register as a predatory offender (M.S. §243.166); criminal sexual conduct second- and fourth-degrees (M.S. §§ 609.343 and 345); electronic solicitation of children (M.S. § 609.352); escape from civil commitment (M.S. §609.485).

2. The Commission adopted a proposal to modify Guidelines Section V. Offense Severity Reference Table and the Numerical Reference of Felony Statutes related to new crime legislation:

. . . .

VII Financial Exploitation of a Vulnerable Adult (over $35,000) – 609.2335

. . . .

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.2335	Financial Exploitation of Vul. Adult (over $35,000)	7

3. New Misdemeanors and Gross Misdemeanors Reviewed

A proposal was adopted that would not add unauthorized practice by a peace officer (M.S. § 626.863) and misappropriation of money by state official (M.S. § 169A.139) to the Misdemeanor and Gross Misdemeanor Offense List.

4. The Commission adopted a proposal to add the following offenses to the Misdemeanor and Gross Misdemeanor Offense List:

Misdemeanor and Gross Misdemeanor Offense List

. . . .

Discharging a Laser at an Aircraft
609.857

Financial Exploitation of a Vulnerable Adult
609.2335

. . . .

5. The Commission adopted a proposal to modify Guidelines Section II.D. Departures from the Guidelines:

Adopted Modifications to Guidelines Section II.D.2:

2. Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which may be used as reasons for departure:

….

b. Aggravating Factors:

. . . .

(13) The offense was committed in the presence of a child.

(14) The offense was committed in a location in which the victim had an expectation of privacy.

6. The Commission adopted a proposal to modify Guidelines Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:

Adopted Modifications to Guidelines Section II.G:

. . . .

For persons sentenced under Minn. Stat. § 609.322, subd. 1(b) – Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking – the presumptive sentence is determined by 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, or the mandatory minimum, whichever is greater, plus an additional 48 months. If the underlying crime is an attempt or conspiracy, the presumptive duration includes an additional 24 months instead.

Appendix B: Non-Legislative Modifications – Effective August 1, 2009

1. Rank Inadvertently Unranked Offense

The Commission adopted a proposal to rank M.S. § 211B.13, at severity level 4 on the Severity Level Reference Table and the Numerical Reference of Felony Statutes. The crime was inadvertently left unranked.

. . . .

IV Bribery, Advancing Money, and Treating Prohibited – 211B.13

. . . .

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
211B.13	Bribery, Advancing Money, and Treating Prohibited	4

2. Permissive Consecutive Sentences

The Commission adopted a proposal to add a policy to Guidelines Section VI, in which convictions for attempts or conspiracies for offenses on the Permissive Consecutive Sentences list are eligible for permissive consecutive sentencing.

Adopted Modifications to Guidelines Section VI:

OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.

….

~~609.185~~ ~~Conspiracy/Attempted Murder in the First Degree~~

….

3. Enhanced Felony Priors

The Commission adopted a proposal to clarify that misdemeanor and gross misdemeanor offenses which are excluded from the criminal history for an enhanced felony should be used to calculate future criminal history provided that the offense is not an enhanced felony. The section is also restructured to make the Commission's policy on the use of prior non-felony DWI criminal history clearer.

Adopted Modifications to Guidelines Section II.B.6:

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, the prior gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score. Except for in the case of first degree (felony) driving while impaired (DWI), misdemeanor and gross misdemeanor offenses used to enhance the current offense shall be used in calculating the offender's criminal history score on future offenses that are not enhanced felonies. Prior felony offenses used for enhancement shall always be used in calculating the offender's criminal history score.

   ~~For instance, i~~If the current offense is a ~~first degree (~~felony~~) driving while impaired (~~DWI~~)~~ offense and the offender has a prior felony DWI offense, the prior felony DWI shall be used in computing the criminal history score, but the prior misdemeanor and gross misdemeanor offenses used to enhance the prior felony DWI cannot be used in the offender's criminal history.~~ Similarly, if the current offense is any other enhanced felony, prior misdemeanor and gross misdemeanor offenses used to enhance the current offense to a felony shall be excluded from computing the criminal history score (other than the custody status point), but prior felony offenses used for enhancement shall be included.~~

4. Released Pending Sentencing Custody Status

The Commission adopted a proposal to modify Guidelines Section II.B.2, to make it clearer that a custody status point is assigned to offenders released pending sentencing on a non-traffic gross misdemeanor or gross misdemeanor DWI, not just a felony. The modified language renumbers the section and makes it consistent throughout.

Adopted Modifications to Guidelines Section II.B.2:

* 2. One point is assigned if the offender:

a. was on probation, parole, supervised release, conditional release, released pending sentencing, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea, guilty verdict, or ~~extended jurisdiction juvenile~~ conviction in a felony, extended jurisdiction juvenile, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case; or

~~b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction; or~~

b. ~~c.~~ committed the current offense within the period of the initial probationary sentence. If an offender is given an initial term of probation that provides a range of years (e.g. “not to exceed three years,” “three to five years,” “up to the statutory maximum”), rather than a specified number of years, and commits a new crime at any time prior to the end date of the pronounced range, a custody status point will be assigned. This policy applies to a conviction in a prior felony, extended jurisdiction juvenile, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case~~an extended jurisdiction juvenile conviction~~. This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or

c. ~~d.~~ became subject to one of the criminal justice supervision statuses listed in 2.a

* Language from other adopted modifications is not reflected.

above at any point in time during which the offense occurred when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense.

d. ~~e.~~ An additional custody status point shall be assigned if the offender was under any of the custody status conditions in a through d above for a specified sex offense, other than Failure to Register as a Predatory Offender (M.S. 243.166), and the current offense of conviction is a specified sex offense, other than Failure to Register as a Predatory Offender (243.166).

….

5. Assault at a Secure Treatment Facility

The Commission adopted a proposal to clarify that assault on a secure treatment facility employee under M.S. § 609.2231, subd. 3a(b), is a felony which carries a mandatory minimum prison sentence of at least one year and one day; and, therefore, the presumptive disposition is commitment to the Commissioner of Corrections.

Adopted Modifications to Guidelines Section II.C:

~~In addition, t~~The presumptive disposition is commitment to the Commissioner of Corrections for an escape from an executed sentence, ~~and~~ for a felony assault committed by an inmate serving an executed term of imprisonment, ~~is~~ or for assault on secure treatment facility personnel. ~~commitment to the Commissioner of Corrections.~~

It is presumptive for escape from an executed sentence and for a felony assault committed by an inmate serving an executed term of imprisonment ~~these offenses~~ to be sentenced consecutively to the offense for which the inmate was confined and the presumptive duration is determined by the presumptive consecutive policy (See II.F. Presumptive Consecutive Sentences).

6. Theft - Reasonably Foreseeable Risk of Bodily Harm

The Commission adopted a proposal to clarify Guidelines Section II.A, in that the policy for theft (reasonably foreseeable risk of bodily harm) also applies to thefts for which there is a prior conviction and foreseeable risk of bodily harm ($501-$1,000). This modification corrects the oversight and does not change the intent of the Commission.

Adopted Modifications to Guidelines Section II.A:

….

For persons sentenced under Minn. Stat. § 609.52, subd. 3a for which a violation involves a monetary value over $1,000, <u>or a monetary value between $500 and $1,000, and the person has been convicted within the preceding five years for an offense under this section,</u> and creates a reasonably foreseeable risk of bodily harm to another, the severity level ranking is elevated by one severity level from that listed on the Offense Severity Reference Table.

NUMERICAL REFERENCE OF FELONY STATUTES

This statutory felony offense listing is for convenience in cross-referencing to the Offense Severity Table; it is not official nor is it intended to be used in place of the Offense Severity Reference Table.

Statute	Title	Severity Level
609.52 subd. 3a(1)	Theft ($1,000, or less; risk of bodily harm)	2
609.52 subd. 3a(2)	Theft (over $1,000; risk of bodily harm)	see note
<u>609.52 subd. 3a(2)</u>	<u>Theft ($501-$1,000, and prior conviction; risk of bodily harm)</u>	<u>see note</u>

7. Warrant Status

The Commissioner adopted a proposal to modify Guidelines Section II.B, adding a comment meant to clarify that "warrant status" is included in the guidelines' definition of statuses triggering a custody point by virtue of the fact that another custody type already exists.

Adopted Modifications to Guidelines Section II.B:

Comment

....

II.B.209. *A custody status point shall be assigned to an offender who is on any custody status condition listed above who absconds and commits a new felony offense. The custody status type depends on the form of supervision which exists. For example, a custody status point is assigned to a person who absconds from supervised release and commits a new felony offense. The custody status type would be "supervised release."*

Appendix C: Technical Modifications and Corrections – Effective August 1, 2009

1. Technical Modification of Statutory Citations for Certain persons not to possess firearms (M.S. § 624.713)

Misdemeanor and Gross Misdemeanor Offense List

....

Certain Persons Not to Possess Firearms
624.713, subd. 2(c)

V. OFFENSE SEVERITY REFERENCE TABLE

....

III	Dangerous Weapons/Certain Persons Not to Have Firearms - 609.67, subd. 2; 624.713, subd. ~~1(a)~~ 2(a)
VI	Certain Persons Not to Have Firearms – 624.713, subd. ~~1(b)~~ 2(b); 609.165, subd. 1b

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
….		
624.713 subd. ~~1(a)~~ 2(a)	Certain Persons Not to Have Firearms	3
624.713 subd. ~~1(b)~~ 2(b)	Certain Persons Not to Have Firearms	6

2. Technical Modification of Title for Assault in the Fourth Degree (M.S. § 609.2231, subd. 2)

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.2231 subd. 2	Assault 4 (Bodily Harm, Firefighters and Emergency Medical Personnel)	1

3. Technical Modification of Title for Solicitation of Children (M.S. § 609.352, subd. 2a)

V. OFFENSE SEVERITY REFERENCE TABLE

G	Solicitation of Children to Engage in Sexual Conduct (Electronic ~~Internet or computer~~) – 609.352, subd. 2a

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic ~~Internet or computer~~)	G

4. Technical Modification of Title for Solicitation, Inducement, and Promotion of Prostitution; Sex Trafficking (M.S. § 609.322)

V. OFFENSE SEVERITY REFERENCE TABLE

IX	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree ~~Individual Under 18~~ - 609.322, subd. 1
V	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree; - 609.322, subd. 1a

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.322 subd. 1	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree ~~Indiv. Under 18~~	9
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree	5

OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

Statute	Offense Title
….	
609.322, subd. 1	Solicit, Promote, or Profit from Prost.; Sex Trafficking in the First Degree ~~Under 18~~
609.322, subd. 1a	Solicit, Promote, or Profit from Prost.; Sex Trafficking in the Second Degree ~~(No Age Limit)~~
….	

5. Change Reference from "Findings" to "Adjudications"

The Commission adopted a proposal to correct a reference in Guidelines Section II.B.3, which should be updated to "adjudications." This is consistent with the Commission's intent and the other policy changes in Guidelines Section II.B.4, effective August 1, 2009.

Adopted Modifications to Guidelines Section II.B.3:

*****II.B.312.*** *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile ~~findings~~ adjudications.*

* Language from other adopted modifications is not reflected.

Appendix D: Non-Legislative Modifications – Effective August 1, 2010, Following Review by the 2010 Legislature

1. Modify the Criminal History Policy for Misdemeanor and Gross Misdemeanor Offenses

The Commission adopted a proposal to replace the Misdemeanor/Gross Misdemeanor List with a policy that counts all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs).

Adopted Modifications to Guidelines Section II.B.3:

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), ~~and~~ for each non-traffic gross misdemeanor conviction and for each gross misdemeanor driving while impaired or refusal to submit to a chemical test case ~~included on the Misdemeanor and Gross Misdemeanor Offense List and~~ for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. ~~All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.~~ Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions. There is the following exception to this policy when the current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired: previous violations of Minn. Stats. §§~~section~~ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation violations.

    a. Only convictions of statutory misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), ~~and~~ non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case ~~listed in the Misdemeanor and Gross~~

~~Misdemeanor Offense List (see Section V.)~~ shall be used to compute units. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

b. Any gross misdemeanor convictions resulting in misdemeanor sentences for offenses not on the targeted misdemeanor list provided in Minn. Stat § 299C.10, subd. 1(e), shall not be used to compute units.

~~b.~~ c. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, no offender shall be assigned more than one unit.

* ~~c.~~d. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the offender was adjudicated guilty for that offense, to the sentencing date for the current offense. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

Comment

~~***II.B.302.*** *As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, driving while impaired traffic offenses have particular relevance to the offenses of criminal vehicular homicide or operation and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or operation or first degree (felony) driving while impaired.*~~

~~***II.B.303***~~ ***II.B.302.*** *The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI-related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which receive 1/2 point each.* ~~*In addition, with the continued creation of new gross misdemeanors that are by definition nearly identical to misdemeanors, it is becoming increasingly difficult to discern whether a prior offense is a gross misdemeanor or a misdemeanor.*~~ *The Commission believes that* ~~*in light of these recording problems,*~~ *a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.*

~~***II.B.304.*** *The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is*~~

* Language from other adopted modifications is not reflected.

~~deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one unit in computing the criminal history. Effective for crimes occurring on or after August 1, 1997, all fleeing a peace officer in a motor vehicle offenses are felonies. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned the appropriate weight for each sentence subject to the provisions in II.B.1.).~~

~~II.B.305~~ ***II.B.303.*** *The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done because with no limit on point accrual, persons with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and, thus, be subject to inappropriately severe sentences upon their first felony conviction. The Commission limited consideration of misdemeanors to particularly relevant misdemeanors under existing state statute. ~~The Commission believes that only certain misdemeanors and gross misdemeanors are particularly relevant in determining the appropriate sentence for the offender's current felony conviction(s).~~ Offenders whose criminal record includes at least four prior sentences for misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), ~~and~~ non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case ~~contained in the Misdemeanor and Gross Misdemeanor Offense List,~~ are considered more culpable and are given an additional criminal history point under the guidelines.*

~~II.B.306~~ ***II.B.304.*** *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21, are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation (CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVO misdemeanor units. If there are less than four units, add in any DWI/CVO units. Four or more units would equal one point. Only DWI/CVO units can be used in calculating additional points. Each set of four DWI/CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/CVO units, the theft would be added to the two DWI/CVO units to equal one point. The remaining four DWI/CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVO units, the first four theft units would equal one point. Four of the DWI/CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CVO units for a third point. The total misdemeanor score would be two.*

~~II.B.307.~~ *~~The Commission has not included certain common misdemeanors in the Misdemeanor and Gross Misdemeanor Offense List because it is believed that these offenses are not particularly relevant in the consideration of the appropriate guideline sentence. This limiting was also done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias. For offenses defined with monetary thresholds, the threshold at the~~*

~~*time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*~~

* ~~***II.B.308***~~ ***II.B.305.*** *The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585, that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a one-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.*

* ~~***II.B.309***~~ ***II.B.306.*** *The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses. Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.*

~~***II.B.310***~~ ***II.B.307.*** *Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or which are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02, will not be used to compute the criminal history score.*

~~***II.B.311.*** *Misdemeanor convictions under Minn. Stat. § 340A.503, with the exception of subd. 2 (1), will not be used to compute the criminal history score. Because it is not the nature of the act but the age of the offender that determines the crime and because the record of violation cannot be disclosed absent an order by the court, the Commission believes it is inappropriate to include these convictions in the criminal history score.*~~

* ~~***II.B.312***~~ ***II.B.308.*** *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile findings.*

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* Language from other adopted modifications is not reflected.

Deletion of the Misdemeanor and Gross Misdemeanor Offense List:

*** ~~Misdemeanor and Gross Misdemeanor Offense List~~**

~~The following misdemeanors and gross misdemeanors will be used to compute units in the criminal history score. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.~~

~~Animal Fighting – Admission to an animal fight (gross misdemeanor)~~
~~343.31 (c)~~

~~Arson in the Fourth Degree~~
~~609.5631~~

~~Assault in the Fourth Degree~~
~~609.2231, subd. 1, 2a, 4, 5, 6, & 7~~

~~Assault in the Fifth Degree~~
~~609.224~~

~~Burglary in the Fourth Degree~~
~~609.582~~

~~Carrying Pistol~~
~~624.714~~

~~Carrying a Pistol While Under the Influence of Alcohol or a Controlled Substance~~
~~624.7142, subd. 6(a)(b)~~

~~Certain Persons Not to Possess Firearms~~
~~624.713, subd. 2~~

~~Check Forgery~~
~~609.631~~

~~Computer Encryption~~
~~609.8912~~

~~Contraband Articles Forbidden (Jail/Lock-up/Correctional Facility)~~
~~641.165~~

~~Contributing to Status as a Juvenile Petty Offender or Delinquency~~
~~260B.425~~

~~Counterfeiting of Currency~~
~~609.632~~

* Language from other adopted modifications is not reflected.

~~Criminal Abuse of Vulnerable Adult (bodily harm)~~
~~609.2325, subd. 3 (a) (4)~~

~~Criminal Sexual Conduct 5th Degree~~
~~609.3451~~

~~Criminal Vehicular Homicide or Operation (bodily harm)~~
~~609.21, subd. 1a(d)~~

~~Damage to Property~~
~~609.595~~

~~Dangerous Dogs – Subsequent violations (gross misdemeanor)~~
~~347.55 (c)~~

~~Dangerous Dogs – Dog ownership prohibited (gross misdemeanor)~~
~~347.55 (d)(e)~~

~~Dangerous Weapons~~
~~609.66~~

~~Dealers in Scrap Metal; Records, Reports, and Registration~~
~~325E.21~~

~~Disruption of Funeral Services~~
~~609.501~~

~~Domestic Assault~~
~~609.2242, subd. 1 & 2~~

~~Emergency Calls and Communications~~
~~609.78, subd. 1~~

~~Emergency Calls and Communications – Interference (gross misdemeanor)~~
~~609.78, subd. 2~~

~~Facilitating Access to a Computer Security System (gross misdemeanor)~~
~~609.8913~~

~~Fleeing a Police Officer~~
~~609.487~~

~~Furnishing Liquor to Persons Under 21~~
~~340A.503~~

~~Fraudulent or Improper Financing Statements~~
~~609.7475~~

~~Harassment/Stalking~~

~~609.749, subd. 2 & 8~~

~~Indecent Exposure~~
~~617.23~~

~~Interference with Privacy~~
~~609.746~~

~~Letter, Telegram, or Package; Opening; Harassment~~
~~609.795~~

~~Malicious Punishment of a Child~~
~~609.377~~

~~Obscene or Harassing Telephone Calls~~
~~609.79~~

~~Overworking or Mistreating Animals (second or subsequent torture or cruelty)~~
~~343.21, subd. 9(a)~~

~~Possession of Small Amount of Marijuana in Motor Vehicle~~
~~152.027, subd. 3~~

~~Predatory Offender Carrying a Weapon~~
~~624.714, subd. 24~~

~~Receiving Stolen Property~~
~~609.53~~

~~Registration of Predatory Offenders~~
~~243.166, subd. 5~~

~~Theft~~
~~609.52, subd. 2(1)~~

~~Torture or Cruelty to Pet or Companion Animal (substantial bodily harm)~~
~~343.21, subd. 9(b)~~

~~Trespass (gross misdemeanor)~~
~~609.605~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline – Without claim of right or consent (gross misdemeanor)~~
~~609.6055, subd. 2(a)~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline – Underground structure not open to the public (gross misdemeanor)~~
~~609.6055, subd. 2(b)~~

~~Unauthorized Computer Access~~
~~609.891~~

~~Violation of Harassment Restraining Order~~
~~609.748~~

~~Violating an Order for Protection or Domestic Abuse No Contact Order~~
~~518B.01; subd. 14 & 22~~

Add the Targeted Misdemeanor List:

Targeted Misdemeanor List
(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

According to Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

Driving While Impaired
169A.20

Order for Protection Violation
518B.01

Fifth-Degree Assault
609.224

Domestic Assault
609.2242

Interference with Privacy
609.746

Harassment or Restraining Order Violation
609.748

Indecent Exposure
617.23

2. Modify the Custody Status Policy Related to Gross Misdemeanor Offenses

The Commission adopted a proposal to change the policy for a gross misdemeanor custody status point that applies a point for all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs). This will make it consistent with the policy change for handling misdemeanor and gross misdemeanor offenses in criminal history.

Adopted Modifications to Guidelines Section II.B.2:

* 2.One point is assigned if the offender:

a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e); or

Comment

II.B.202. *Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. Commitments under Minn. R. Crim. P. 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony, ~~or~~ non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), which resulted in the individual being under such status. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile conviction. ~~Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded.~~ Probation, parole, and supervised release will be the custodial statuses that most frequently will result in the assignment of a point.*

II.B.203. *It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony, ~~or~~ non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would*

* Language from other adopted modifications is not reflected.

not get a custody status point. ~~Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.~~

3. Modify the Dates Used for Misdemeanors and Gross Misdemeanor Decay

The Commission adopted a proposal to change the start-date and end-date used to calculate the misdemeanor and gross misdemeanor decay to make it uniform with the dates used for felony decay.

Adopted Modifications to Guidelines Section II.B.3:

3. Subject to the conditions listed below, the offender is assigned one unit ….

* c. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense. ~~offender was adjudicated guilty for that offense, to the sentencing date for the current offense.~~ However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

Comment

* ***II.B.309.*** *The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses; however, given that these offenses are less serious, the decay period is 10 years rather than 15 years. ~~Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.~~*

* Language from other adopted modifications is not reflected.

Appendix E: Non-Legislative Modifications – Effective August 1, 2010

1. Re-Ranking Riot First Degree

Description: The Commission adopted a proposal to change the severity level ranking for riot first degree (resulting in death) from severity level 5 to severity level 8, to bring the ranking and presumptive sentence in-line with other similar crimes (See, Table 1).

Table 1. Current vs. Proposed Ranking

Statute Number	Statute Description	Statutory Maximum	Current Severity Level and Presumptive Sentence (in months)	Proposed Severity Level and Presumptive Sentence (in months)
609.71, subd. 1	Riot First Degree	20 years	Severity Level 5 18-48 Presumptive prison at criminal history of 3 or more	Severity Level 8 48-108 All presumptive prison

Prison Bed Impact Analysis

Assumptions: There have been 2 offenders sentenced for this offense in the last eight years. Therefore, there will not be an impact realized in every year. The two offenders who were sentenced for this offense both had a criminal history score of zero. The new presumptive sentence for those offenders would be 48 months, of which they would be expected to serve two-thirds (32 months). Since it is possible that some offenders sentenced in the future might have longer presumptive sentences, the prison bed projection is based on the assumptions that one offender will be sentenced for this offense every 4 years, and that he/she will serve 36 months.

Prison Bed Impact: The prison bed impact is expected to range from 0-2 beds, depending on when offenders happen to be sentenced (See, Table 2).

Table 2. Estimated Prison Bed Impact by Offense

Statute Number	Statute Description	Proposed Severity Level and Presumptive Sentence (in months)	Estimated Prison Bed Impact
609.71, subd. 1	Riot First Degree	Severity Level 8 48-108 All presumptive prison	**0-2 beds**

Adopted Modifications to Guidelines Section V:

V. OFFENSE SEVERITY REFERENCE TABLE

V	~~Riot 1 - 609.71, subd. 1~~
VIII	Riot 1 - 609.71, subd. 1

Adopted Modifications to the Numerical Reference Table:

STATUTE	OFFENSE	SEVERITY LEVEL
609.71 subd. 1	Riot 1	~~5~~ 8

2. Re-Ranking and Moving Certain Prostitution Offenses to the Sex Offender Grid

Description: The Commission wishes to treat certain prostitution offenses similarly to offenses currently on the sex offender grid. The Commission adopted a proposal to change the severity level ranking for solicitation, inducement, and promotion of prostitution; sex trafficking in the first degree from a severity level 9 to a severity level B on the sex offender grid. The Commission also adopted a proposal to change the severity level ranking for solicitation, inducement, and promotion of prostitution; sex trafficking in the second degree from a severity level 5 to a severity level C on the sex offender grid (See, Table 3).

Table 3. Current vs. Proposed Rankings

Statute Number	Statute Description	Statutory Maximum	Current Severity Level and Presumptive Sentence (in months)	Proposed Severity Level and Presumptive Sentence (in months)
609.322, subd. 1(a)	Solicitation, inducement, and promotion of prostitution; sex trafficking in the first degree; individual under 18	20 years	Severity Level 9 86-158 All presumptive prison	Severity Level B 90-300 All presumptive prison
609.322, subd. 1a	Solicitation, inducement, and promotion of prostitution; sex trafficking in the second degree; individual over 18	15 years	Severity Level 5 18 Stayed-48 Presumptive prison at criminal history of 3 or more	Severity Level C 48-180 All presumptive prison

Prison Bed Impact Analysis

Assumptions: Table 4 below displays the estimated prison bed impact based on the following assumptions.

1. **Number of Offenders:** It is assumed that in the future, 2 offenders per year will be sentenced at severity level B, and 8 offenders per year will be sentenced at severity level C. In the previous 4 years' data (2005-2008), there have been 8 offenders total sentenced for the current severity level 9 offense (i.e., new severity level B) and 32 offenders total sentenced for the current severity level 5 offense (i.e., new severity level C).

2. **Departure Rates:** It is assumed that the mitigated dispositional departure rate will be 37 percent for both offense groups. This is the rate observed for the current severity level 9 offenders. The downward dispositional departure rate for the current severity level 5

offense is less relevant because prison is recommended in only 41 percent of the cases (i.e., offenders with a criminal history score of 3 or more).

Prison Bed Impact: The prison bed impact is expected to be 23 beds; 6 beds for the new severity level B offense and 17 beds for the new severity level C offense (See, Tables 4 and 5). The estimated impact may be conservative as the departure rate for the current severity level 5 offense may be higher as all offenders will be presumptive commits with substantially longer sentence durations than are currently recommended.

Table 4: Estimated Prison Bed Impact by Offense

Statute Number	Statute Description	Proposed Severity Level and Presumptive Sentence (in months)	Estimated Prison Bed Impact
609.322, subd. 1(a)	Solicitation, inducement, and promotion of prostitution; sex trafficking in the first degree	Severity Level B 90-300 All presumptive prison	6 beds
609.322, subd. 1a	Solicitation, inducement, and promotion of prostitution; sex trafficking in the second degree	Severity Level C 48-180 All presumptive prison	17 beds
Total			**23 beds**

Table 5. Estimated Prison Bed Impact by Type of Change

Type of Change	Number of Offenders	Estimated Prison Bed Impact
None	3	0
New Prison Sentences	3	12 beds
Serve more Time	4	11 beds
Total	**10**	**23 beds**

Adopted Modifications to Guidelines Section V:

V. OFFENSE SEVERITY REFERENCE TABLE

IX	~~Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree - 609.322, subd. 1~~
V	~~Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree - 609.322, subd. 1a~~
B	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree - 609.322, subd. 1(a)
C	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree - 609.322, subd. 1a

Adopted Modifications to the Numerical Reference Table:

STATUTE	OFFENSE	SEVERITY LEVEL
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree	~~9~~ B
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree	~~5~~ C

Adopted Modifications to the Sex Offender Grid:

....

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE 0	1	2	3	4	5	6 or more
CSC 2nd Degree – (c)(d)(e)(f)(h) *Prostitution; Sex Trafficking 1st Degree – 1(a)*	**B**	90 *90-108*	110 *94-132*	130 *111-156*	150 *128-180*	195 *166-234*	255 *217-300*	300 *255-300*[2]
CSC 3rd Degree – (c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) *Prostitution; Sex Trafficking 2nd Degree – 1a*	**C**	48 *41-58*	62 *53-74*	76 *65-91*	90 *77-108*	117 *99-140*	153 *130-180*	180 *153-180*[2]

Effective August 1, 2010

….

3. Technical Modifications

a. Technical Modifications to the Criminal History Section

Description: The sentencing guidelines provide that, in the case of multiple sentences arising from a single behavioral incident in which one of the crimes is meth crimes with children/vulnerable adults present, burglary, or kidnapping, the conviction and sentence for the "earlier" offense should not be included in the criminal history. If an offense is not one of the recognized provisions of law, the criminal history for the "earlier" offense should be used in the criminal history (i.e., "*Hernandized*").

The Commission adopted a proposal to amend the criminal history section to consistently reference the three exceptions to the "*Hernandize*" rule and amend the commentary to clarify its actions are deliberate. The Commission added language to the commentary referencing a recent MN Supreme Court case to that effect.

Adopted Modifications to Guidelines Section II.B.1:

Comment

….

II.B.107. *The Commission established policies to deal with several specific situations which arise under Minnesota law: a conviction under Minn. Stat. § 152.137, under which persons convicted of methamphetamine-related crimes involving children and vulnerable adults are subject to conviction and sentence for other crimes resulting from the same criminal behavior; Minn. Stat. § 609.585, under which persons committing theft or another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony; and a conviction under Minn. Stat. § 609.251 under which persons who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minn. Stats. §§ 152.137, 609.585, or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved.*

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

Adopted Modifications to Guidelines Section II.B.3:

3. Subject to the conditions listed below, ….

    b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, no offender shall be assigned more than one unit.

Comment

II.B.308. *For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minn. Stats. §§ 152.137, 609.585 or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved. References are made to felony convictions under Minn. Stats. §§ 152.137, 609.585 and 609.251, in the event that they result in a misdemeanor or gross misdemeanor sentence.*

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

~~*The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585, that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a one-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.*~~

II.B.312. ~~*In order to provide a uniform and equitable method of computing criminal history*~~

~~scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251.~~ When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile adjudications.

Adopted Modification to Guidelines Section II.B.4:

Comment

II.B.408. *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with findings arising from a single course of conduct when single victims are involved and when the findings involved provisions of Minn. Stats. §§ 152.137, 609.585 or 609.251, consideration should be given to the most severe offense with a finding for purposes of computing criminal history.*

When there are multiple felony offenses with findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

b. Technical Modifications to the Presumptive Sentence Section

Description: Minn. Stat. § 609.3455, subd. 5, mandates life sentences with minimum terms of prison for certain repeat sex offenders. The law indicated that an offender must serve a minimum term of prison before being considered for release and that the prison term is "based on the sentencing guidelines or any applicable mandatory minimum sentence,…" (2005 Minn. Stat. § 609.3455, subd. 5.) In 2005, the sentencing guidelines were amended to reference the statutory language.

In a recent MN Supreme Court case, the procedures which should be used to determine the minimum term of imprisonment were in question. It was decided that it was proper to base the minimum prison term on the presumptive sentence absent the mandatory life sentence imposed by Minn. Stat. § 609.3455, subd. 4.

The Commission adopted a proposal to amend the presumptive sentence section to be consistent with the MN Supreme Court case.

Adopted Modifications to Guidelines Section II.C:

. . . .

Pursuant to M.S. § 609.3455, certain sex offenders are subject to mandatory life sentences. The sentencing guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release sentences under subdivision 2 of that statute. For offenders subject to life with the possibility of release sentences under subdivisions 3 and 4 of that statute, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines presumptive sentence as determined in Section II.C, or any applicable mandatory minimum sentence not contained in M.S. § 609.3455, that must be served before the offender may be considered for release.

Comment

. . . .

II.C.08. *The 2005 Legislature enacted statutory changes allowing life sentences with the possibility of release for certain sex offenders. The statute requires the sentencing judge to pronounce a minimum term of imprisonment, based on the sentencing guidelines or ~~and~~ any applicable mandatory minimum not contained in M.S. § 609.3455, that the offender must serve before being considered for release. All applicable sentencing guidelines provisions, including the procedures for departing from the presumptive sentence, are applicable in the determination of the minimum term of imprisonment for these sex offense sentences. See, State v. Hodges, 770 N.W.2d 515 (Minn. 2009).*