

MINNESOTA SENTENCING
GUIDELINES COMMISSION

Assault Sentencing Practices

Assault Offenses and Violations of Restraining
Orders Sentenced in 2013

Published November 2014

Minnesota Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Voice: 651.296.0144 Fax: 651.297.5757
TTY: 1-800-627-3529, ask for 651.296.0144

Website: <http://mn.gov/sentencing-guidelines>
E-mail: sentencing.guidelines@state.mn.us

Reports are available in alternative formats upon request.

Commission Members

Jeffrey Edblad, Chair and Isanti County Attorney
Jason Anderson, Probation Representative, Itasca County Probation Director
Hon. Christopher Dietzen, Vice-Chair and Minnesota Supreme Court Justice
Sergeant Paul Ford, Peace Officer Representative, St. Paul Police Department
Hon. Caroline Lennon, First Judicial District Court Judge
Cathryn Middlebrook, Chief Appellate Public Defender
Tom Roy, Commissioner of Corrections
Hon. Heidi Schellhas, Minnesota Court of Appeals Judge
Yamy Vang, Citizen Representative
Sarah Walker, Citizen Representative
Citizen Representative - vacant

Commission Staff

Nathaniel J. Reitz, Executive Director
Kathleen Madland, Research Analyst Intermediate
Linda McBrayer, Management Analyst 4
Jill Payne, Senior Research Analyst
Anne Wall, Senior Research Analyst

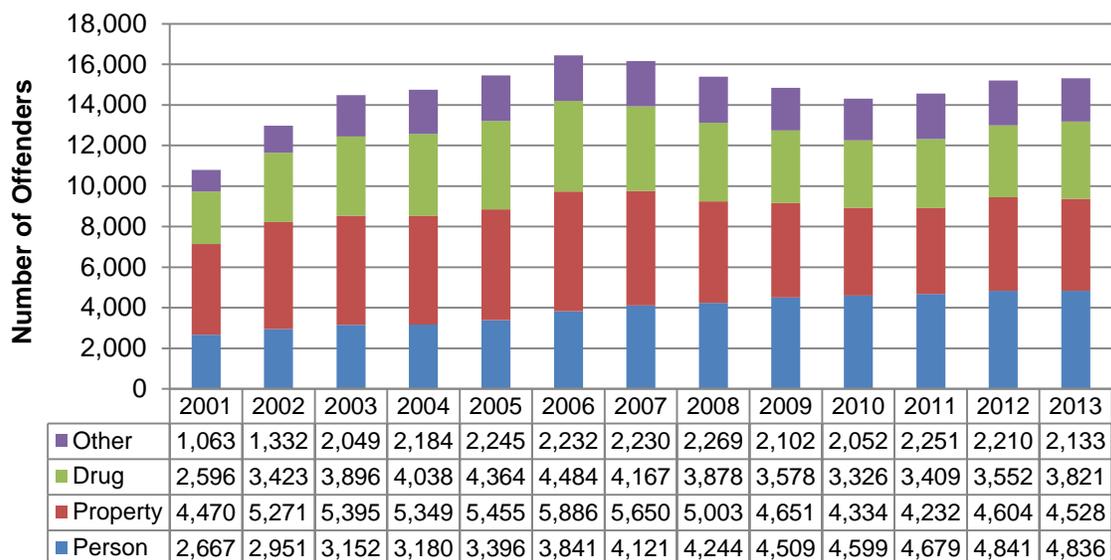
Table of Contents

Introduction	4
Assault Offenses	5
Distribution of Cases	5
Incarceration Rates	8
Violation of Restraining Order Offenses	10
Distribution of Cases	10
Incarceration Rates	11
How the Guidelines Work	12
Sentencing Guidelines Grid	13

Introduction¹

From 2001 to 2010, the overall trend in volume for felony offenders sentenced resembled a bell curve, with the volume reaching a high of 16,443 offenders in 2006, and generally declining after that. From 2010 to 2013, the overall volume began to increase again. In contrast to this overall trend, the number of offenders sentenced for person offenses had increased each year until 2013 (Figure 1). In 2013, the number of offenders sentenced for person offenses declined slightly (-0.1%).

**Figure 1. Number of Offenders Sentenced by Offense Type:
Sentenced 2001-2013**



Part of the increase in person offenses is due to the fact that MSGC started tracking first-degree murder sentences; 2006 was the first full year in which first-degree murder was included in its data.² However, with roughly 15 to 25 first-degree murders sentenced each year, these cases are not the sole explanation for the increase in person offenses. The increase in certain felony assaults is also a large factor, particularly domestic assault-related offenses. There has also been an increase in the number of felony violation of restraining order offenses sentenced over the past few years.

The following report examines the increase in these offenses over the last thirteen years and considers the impact of statutory enhancements in 2005 and 2006 to domestic assault and violation of restraining order offenses.

¹ It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning 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.

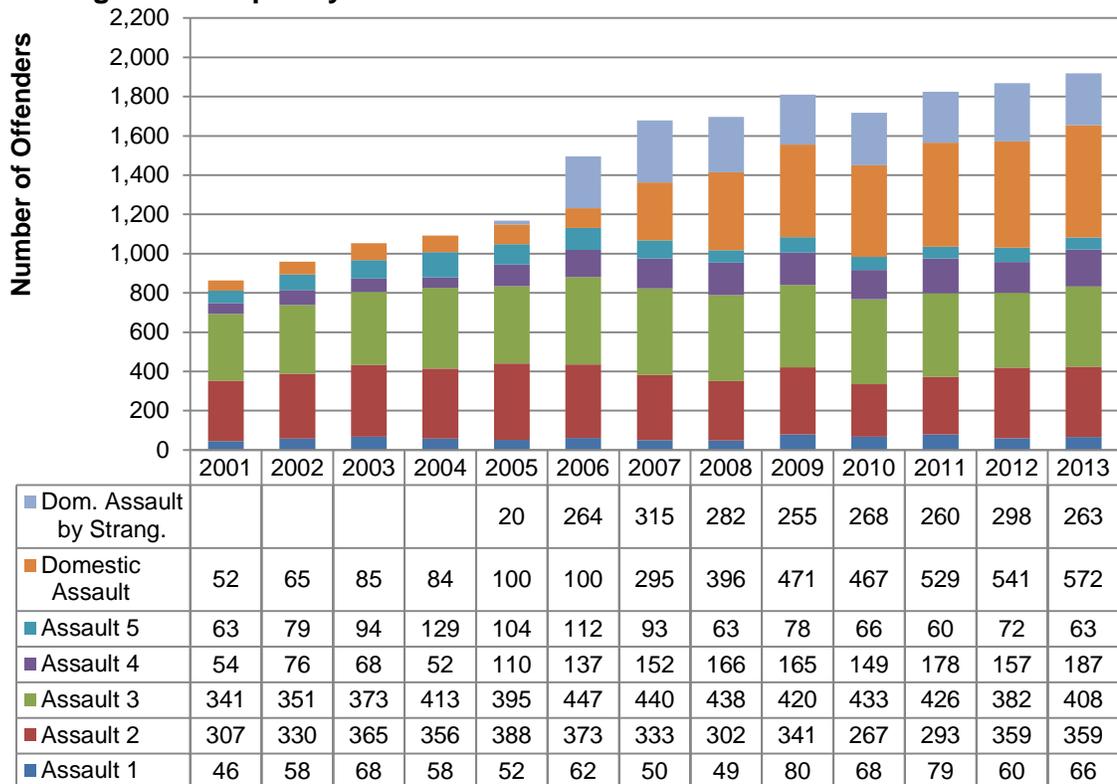
² Before August 1, 2005, first-degree murder was not included in the MSGC's dataset; first-degree murder is excluded from the sentencing guidelines by law and continues to have a mandatory life sentence.

Assault Offenses

Distribution of Cases

While the overall number of person offenses decreased slightly, the number of assault offenses increased in 2013 (Figure 2). Between 2012 and 2013 there was just over a two and a half percent increase in the total number of offenders sentenced for felony-level assault offenses, but there was variation in the changes among the various types of assault. In 2013, there were increases in four of the seven assault types. The largest increase was in fourth-degree assault (19.1%). First-degree assault increased by 10 percent, third-degree assault increased by seven percent and domestic assault increased by six percent. The number of offenders sentenced for fifth-degree assault decreased by 13 percent, and domestic assault by strangulation decreased by 12 percent. The number of offenders sentenced for second-degree assault remained the same. The number of offenders sentenced for second-degree assault remained the same.

Figure 2. Frequency of Assault Offenses: Sentenced 2001-2013



Domestic Assault³

In 2013, 572 offenders sentenced for domestic assault. Felony domestic assault is chargeable when the offender has two or more qualified domestic violence-related prior offenses. In 2006, the Legislature removed the requirement that the prior offenses had to be against the same victim, extended the look-back period to 10 years, and expanded the list of qualified priors.⁴ By enacting these statutory changes, the Legislature widened the net for those eligible to be sentenced for this offense as felony-level offenders. Since the enactment of this legislative change, the number of offenders sentenced for felony domestic assault has more than quadrupled. While the number of offenders sentenced for domestic assault did increase between 2001 and 2005—before the statutory enhancements were enacted—the annual increases observed since 2006 have been more dramatic, increasing from a low of 100 cases in 2006 to a high of 572 cases in 2013 (Figure 2).

Domestic Assault by Strangulation

In 2013, 263 offenders were sentenced for domestic assault by strangulation, a felony created in 2005.⁵ Prior to the crime's enactment, the assault of a family member or household member by strangulation may have been categorized and charged under misdemeanor or other felony assault offenses, such as domestic assault and third- and fifth-degree assault. As Figure 2 illustrates, the number of offenders sentenced for the newly created offense quickly climbed to 315 offenders in 2007, then remained below 300 annually from 2008 through 2013. Even the marked decrease in fifth-degree assault—a 36 percent reduction from 2006 (112 offenders) to 2012 (72 offenders)—does not involve enough cases to have contributed to the majority of the increase in domestic assault by strangulation offenses. Therefore, it is likely that many of these domestic assault by strangulation cases would not have been felony offenses before the statutory change.

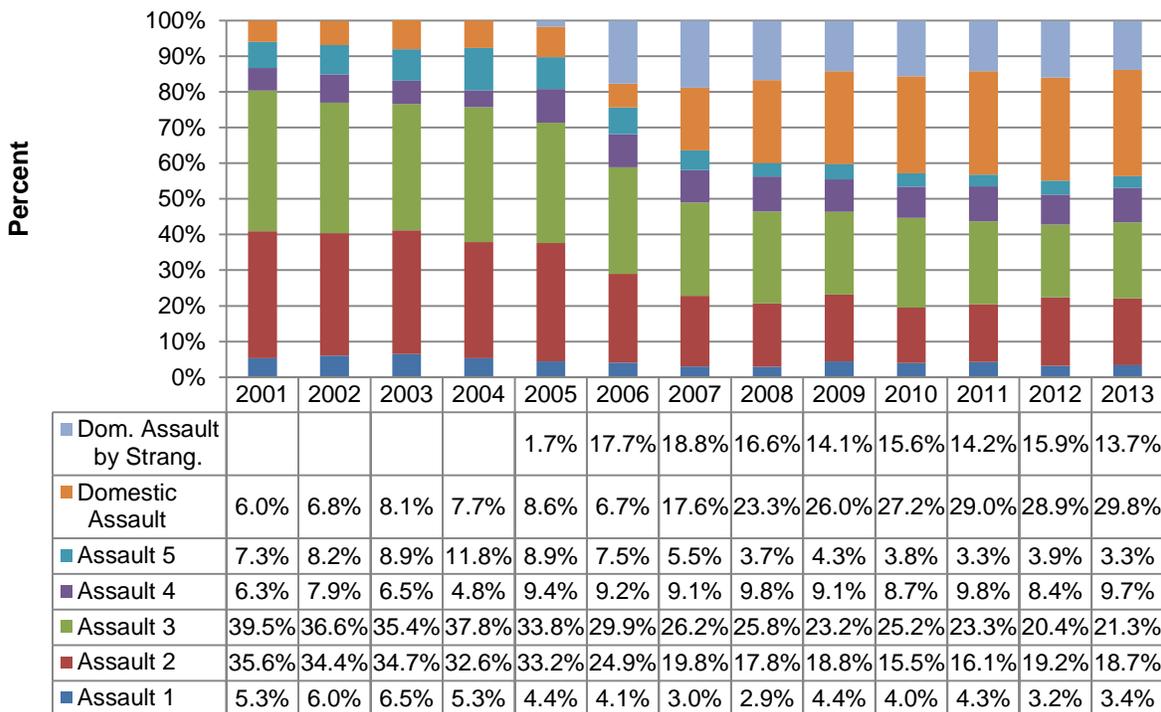
Figure 3 provides another way to examine felony assault offenses. While Figure 2 displayed the number of offenders sentenced for each type of assault, Figure 3 shows the proportion each assault offense comprises of all felony assaults. With the creation of felony offenses for repeat domestic assault and domestic assault by strangulation, the composition of the assault offenses has changed in recent years. For example, felony domestic assault offenses made up less than seven percent of the felony assaults sentenced in 2006; by 2009, the percentage increased to over 26 percent of assaults. Since 2008, felony domestic assaults and domestic assault by strangulation have made up over 40 percent of all assaults sentenced. In 2013, that percentage rose to 44 percent.

³ Throughout this report, “domestic assault” is reported separately from “domestic assault by strangulation.”

⁴ [2006 Minn. Laws Ch. 260](#), Art. 1, §§ 12 & 19.

⁵ [2005 Minn. Laws Ch. 136](#), Art. 17, § 13.

Figure 3. Distribution of Assault Offenses: Sentenced 2001-2013



Second-Degree Assault

Much of the discussion has been focused on increases in the number of domestic assault offenses. However, it is also interesting to note the changes in second-degree assaults. Figure 2 illustrates that until 2009, there had been decreases in the number of second-degree assaults sentenced over the previous four years. In 2010, the number declined again to below 300 for the first time in the last decade. In 2011, the number increased, but still stayed below 300. In 2012, the number of offenders sentenced for second-degree assault showed the largest increase of any assault category (22.5%) and rose to 359, the highest number since 2006. In 2013 the number remained at 359. Figure 3 shows the marked decrease in the proportion of these offenses since 2001. In that year, second-degree assault offenses made up almost 36 percent of felony assaults; in 2012 and 2013, they made up 19 percent.

Incarceration Rates

Domestic Assault

The increase in felony-level domestic assault offenders translates into an increased need in correctional resources. As Table 1 shows, the average lengths of prison sentences and conditional jail terms have fluctuated within a narrow range over the last twelve years, with no obvious directional trend. However, the number of felony-level domestic assault cases for which prison or jail are pronounced has increased dramatically in recent years. For example, although a total of 883 offenders have been sentenced to prison for felony-level domestic assaults since 2001, just 88 were sentenced between 2001 and 2006, and the remaining 795 were sentenced between 2007 and 2013, after the statutory enhancements went into effect at the end of 2006 (Table 1). Since the enhancements, the need for prison beds has increased from an average of 19 per year (2001-06) to 144 per year (2007-13).⁶

**Table 1. Length of Pronounced Sentence for Domestic Assault Cases:
Sentenced 2001-2013**

Year	# Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (months)	Prison Beds	Jail Rate	Average Duration (days)	Jail Beds
2001	52	7 13%	21	8	40 77%	131	10
2002	65	11 17%	22	14	48 74%	128	11
2003	85	15 18%	25	21	66 78%	111	13
2004	84	18 21%	23	23	56 67%	143	15
2005	100	21 21%	24	28	77 77%	131	19
2006	100	16 16%	20	18	73 73%	153	21
Average 2001-2006	81	15 18%	23	19	60 74%	133	15
2007	295	61 21%	23	77	213 72%	104	41
2008	396	101 26%	22	126	270 68%	117	58
2009	471	97 21%	23	126	332 71%	102	62
2010	467	118 25%	24	156	278 60%	107	55
2011	529	125 24%	22	153	374 71%	104	72
2012	541	136 25%	23	174	375 69%	107	74
2013	572	157 27%	22	198	383 67%	95	67
Average 2007-2013	467	114 24%	23	144	318 68%	105	61

⁶ Although the need for jail beds for felony-level domestic assaults has also increased, from an average of 15 per year (2001-06) to 61 per year (2007-13), it is possible that jails have seen an offsetting decrease in the number of misdemeanor and gross misdemeanor jail sentences because more of those cases have qualified for felony enhancement after 2006. "Prison beds" are based on the average pronounced executed prison term of 22.7 months from 2007 to 2013, assuming service of 2/3 of the pronounced sentence (15.2 months); 114 offenders × 15.2 mos. = 1,732.8 ÷ 12 mos. = 144 prison beds. "Jail beds" are based on the average term of 105 days from 2006 to 2013, serving 2/3 of the pronounced sentence (70.4 days); 318 offenders × 70.4 days = 22,387.2 ÷ 365 days = 61 jail beds.

Domestic Assault by Strangulation

As mentioned earlier in this report, the creation of the offense of felony domestic assault by strangulation has also contributed to the recent increase in person offenses. Table 2 provides incarceration data for offenders sentenced for domestic assault by strangulation since the statute's 2005 enactment. This offense is ranked at the same severity level as felony domestic assault, so it is not surprising that the average prison sentence pronounced is very similar to that average. However, for those offenders receiving stayed sentences, the pronounced jail time is less. The imprisonment rate for these offenders is less than for offenders sentenced for domestic assault because of lower criminal history scores. Since 2006,⁷ an average of 276 offenders each year have been sentenced. An average of 23 offenders each year received a prison sentence, creating a need for 29 prison beds per year.⁸ On average, 80 offenders each year have received jail time as a condition of their stayed sentences and have required 34 jail beds per year.⁹

Table 2. Length of Pronounced Sentence for Domestic Assault by Strangulation Cases: Sentenced 2005-2013

Year	# Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (in months)	Prison Beds	Jail Rate	Average Duration (in days)	Jail Beds
2005	20	2 10%	20	2	18 90%	66	2
2006	264	16 6%	24	21	229 87%	89	37
2007	315	22 7%	22	28	272 86%	91	45
2008	282	22 8%	22	26	239 85%	83	36
2009	255	26 10%	22	33	206 81%	80	30
2010	268	24 9%	23	31	208 78%	81	31
2011	260	23 9%	25	32	221 85%	71	29
2012	298	28 9%	21	32	257 86%	72	34
2013	263	26 10%	22	32	223 85%	71	29
Average 2006-2013	276	23 8%	22	29	232 84%	80	34

⁷ Because the statute took effect August 1, 2005, very few cases were sentenced in 2005.

⁸ Based on the average pronounced executed prison term of 22.3 months from 2006 to 2013, assuming service of 2/3 of the pronounced sentence (14.9 months); 23 offenders × 14.9 mos. = 342.7 ÷ 12 mos. = 29 prison beds.

⁹ Based on the average jail term of 80 days from 2006 to 2013, assuming service of 2/3 of the pronounced sentence (53.6 days); 232 offenders × 53.6 days = 12,435.2 ÷ 365 days = 34 jail beds. It is possible that jails have seen an offsetting decrease in the number of misdemeanor and gross misdemeanor jail sentences because some of those cases were charged as felony strangulation cases after 2005; see discussion on page 6.

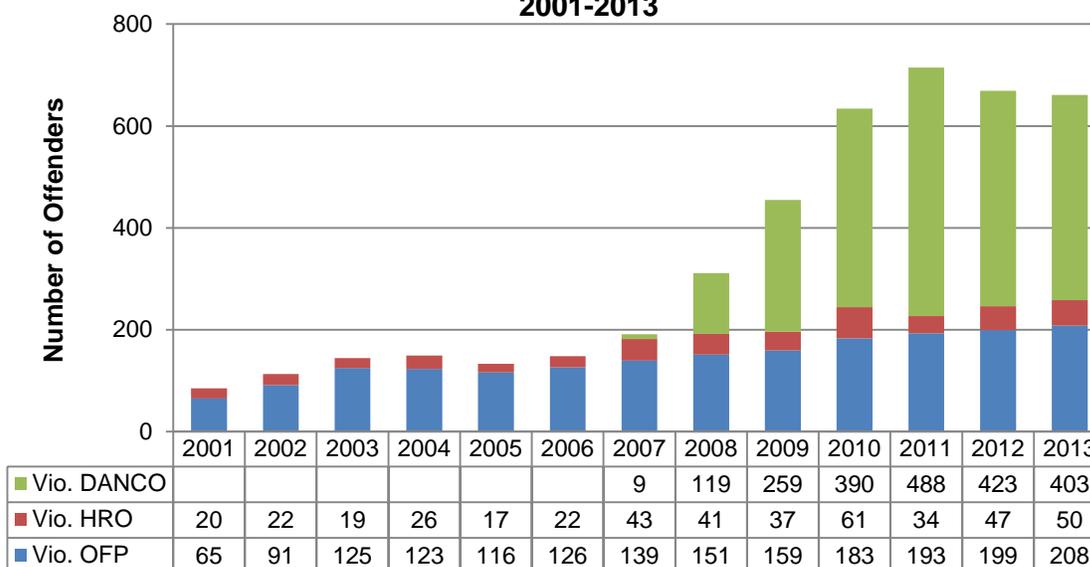
Violation of Restraining Order Offenses

A dramatic case volume increase has occurred in violations of restraining orders (Figure 4). There are three offenses in this group: violations for orders of protection (OFP) under Minn. Stat. § [518B.01](#), subd. 14(d), violations of harassment restraining orders (HRO) under Minn. Stat. § [609.748](#), subd. 6(d), and violations of domestic abuse no contact orders (DANCO) under Minn. Stat. § [629.75](#), subd. 2(d). Each involves offenders who have prior offenses from a list of qualified domestic-violence offenses and who 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.¹⁰ Violation of DANCO is the newest offense in this group, effective for crimes committed on or after August 1, 2007.¹¹

Distribution of Cases

As Figure 4 shows, there has been a large increase in the number of offenders sentenced in the last seven years. From a total of 148 offenders sentenced in 2006, the year the Legislature implemented the policy changes described above, the number grew to a high of 715 in 2011. In 2012, the number sentenced for these offenses decreased by six percent to 669. In 2013 there was a further slight decrease to 661.

Figure 4. Frequency of Violation of Restraining Order Offenses: 2001-2013



¹⁰ [2006 Minn. Laws Ch. 260](#), Art. 1, §§ 10, 12 & 28.

¹¹ [2007 Minn. Laws Ch. 54](#), Art. 2, § 1 (enhancing DANCO violations by repeat offenders to felony level).

Incarceration Rates

As Table 3 shows, the average lengths of prison sentences have fluctuated within a narrow range since 2002. There appears to be a slight decrease in the average conditional jail time pronounced. A higher percentage of these offenders receive prison sentences than those sentenced for either of the domestic assault offenses. While the imprisonment rates have remained fairly stable, the number of cases for which prison or jail is pronounced has increased dramatically in the six years following the extension of the look-back periods and the creation of felony DANCO violation. From 2008 to 2013, the need for prison beds rose to an average of 225 per year, compared with an annual average of 44 prison beds from 2001 to 2007.¹²

Table 3. Length of Pronounced Sentence for Violation of Restraining Order Cases: Sentenced 2001-2013

Year	# Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (in months)	Prison Beds	Jail Rate	Average Duration (in days)	Jail Beds
2001	85	12 14%	27	18	64 75%	127	15
2002	113	28 25%	22	34	78 69%	120	17
2003	144	29 20%	23	37	96 67%	127	22
2004	149	47 32%	23	60	94 63%	140	24
2005	133	27 20%	22	33	99 74%	116	21
2006	148	39 26%	24	52	95 64%	109	19
2007	191	51 27%	25	71	125 65%	105	24
Average 2001-2007	138	33 23%	24	44	93 68%	121	20
2008	311	91 29%	23	117	195 63%	111	40
2009	455	142 31%	24	190	291 64%	106	57
2010	634	197 31%	22	242	364 57%	108	72
2011	715	209 29%	22	262	453 63%	103	86
2012	669	219 33%	23	276	414 62%	96	73
2013	661	208 32%	23	262	415 63%	100	76
Average 2008-2013	574	178 31%	23	225	355 62%	104	67

¹² Although the need for jail beds for felony-level violations of restraining orders has also increased, from an average of 20 per year (2001-07) to 67 per year (2008-13), it is possible that jails have seen an offsetting decrease in the number of misdemeanor and gross misdemeanor jail sentences because more of those cases have qualified for felony enhancement after 2006 and 2007. "Prison beds" are based on the average pronounced executed prison term of 23 months from 2008 to 2013, assuming service of 2/3 of the pronounced sentence (15.2 months); 178 offenders x 15.2 mos. = 2,706 ÷ 12 mos. = 225 prison beds. "Jail beds" are based on the average term of 104 days from 2008 to 2013, serving 2/3 of the pronounced sentence (69 days); 355 offenders x 69 days = 24,495 ÷ 365 days = 67 jail beds.

How the Guidelines Work

Minnesota's guidelines are based on a grid structure. The vertical axis of the Grid represents the **severity** of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's **criminal history**. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the **Severity Reference Table** in the *Minnesota Sentencing Guidelines and Commentary*.

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was on probation or parole when the current offense was committed.

The recommended (presumptive) guideline sentence is found in the cell of the sentencing grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the grid.

The Guidelines generally recommend a stayed sentence for cells in the shaded area of the applicable Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of conditional confinement in a local facility (jail or workhouse). Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the applicable Guidelines Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).

The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the applicable Grid, the Guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the Guidelines.

It is not possible to fully explain all of the policies in this brief summary. Additional information on the Guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at <http://mn.gov/sentencing-guidelines>.

Sentencing Guidelines Grid – Effective August 1, 2014

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI; Financial Exploitation of a vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{2,3}
<i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$2,500)</i>	3	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences

¹ 12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See Guidelines section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)