Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

January 2003

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I. Summary

❖ Background

Minnesota's Sentencing Guidelines system, adopted over 20 years ago, became a model for felony sentencing reform throughout the United States. Compared to the prior, indeterminate sentencing system, the Sentencing Guidelines made several major improvements:

1. Truth In Sentencing/Predictability. All of the participants in the criminal justice system—courts, prosecutors, offenders, and victims—would know, at sentencing, how much time in prison an offender would serve when given a particular sentence. For example, if an offender were sentenced to 60 months in prison, that offender would serve 40 months in prison and would be on supervised release for 20 months.

A highly desirable side effect of the specificity of the sentence was to allow accurate predictability of the future need for prison bed space. For example, if the sentence for a particular offense was increased by 12 months, the guidelines commission staff could, with a fair amount of confidence, predict the long-term prison bed impact of that change. In conjunction with other agencies, the likely fiscal impact of any sentencing change could also be measured.

2. Clear Proportionality/Uniformity. Under this "Just Deserts" model, an offender who committed a more serious crime would receive a longer sentence than one who committed a less serious crime. An offender with a criminal history would receive a longer sentence than an offender who committed the same crime but did not have a criminal history. Similarly, offenders with similar offense and history characteristics would be treated the same across the state.

3. Accurate Data Collection. The new system also allowed the Guidelines Commission to collect accurate data on sentencing practices across the state with respect to actual sentencing practices. For example, data collected by the Commission allows analysis of sentencing trends with respect to particular offenses, specific types of offenders, and geographic variations.

The primary goal of the Sentencing Guidelines has always been the protection of public safety.

❖ The Current Commission and Staff

The Minnesota Sentencing Guidelines Commission is responsible for maintaining the sentencing guidelines. The 11 commission members represent a variety of participants in the Minnesota criminal justice system.

In the past year, two new members have been appointed to the commission: Jodie Carlson was appointed as the State Public Defender Representative and Hennepin County District Court Judge Isabel Gomez was appointed as a member from the trial courts.

Scott Swanson left his post as Executive Director of the commission in October 2002 to take a position as Director of Academic Achievement at the University of St. Thomas School of Law. Barbara Tombs (current Executive Director of the Kansas Sentencing Commission) has accepted an offer from the commission to become the new Executive Director and will be joining the staff in January 2003. Anne Wall served as the Acting Director while the position was vacant.

❖ Commission Activity

The commission set as their priorities for 2002 reconvening two subcommittees and reviewing proportionality issues. Proportionality became a concern after recent mandatory minimum and presumptive sentence decisions were made by the Legislature. The commission discussed how crimes within the various severity levels are sentenced compared to each other and to crimes in other severity levels.

The Drug Sentencing Policy Subcommittee reconvened shortly after the first of the year. The chair of the 2002 subcommittee is Judge Gordon Shumaker. The subcommittee includes people from the Department of Corrections, Department of Human Services, law enforcement, prosecution, defense attorneys, judiciary, chemical health treatment providers, and citizens.

In August 2002, four states attended a conference put on by the VERA Institute of Justice in New York City. The states were Minnesota, Utah, Kansas and Georgia. Minnesota attendees were Scott Swanson, Jodie Carlson, Judge Gordon Shumaker and State Representative Richard Stanek. The purpose of the conference was to discuss drug-sentencing policies throughout the country.

Since September 2002, the committee has been working on a draft legislative proposal to consider a possible civil course of action for certain drug possession offenses. It would be up to the Legislature to determine whether the resources are available to pursue such a proposal.

The 2002 Intermediate Sanctions Subcommittee, chaired by Justice Russell Anderson, has focused on a number of projects including information-gathering efforts on creative sentencing options. Their immediate focus, however, has been on the computation of misdemeanor and gross misdemeanor criminal history. The subcommittee's initial discussions centered on creating a philosophical statement outlining what misdemeanors and gross misdemeanors should be included when computing criminal history. However, the subcommittee moved away from this concept and toward a specific proposal that would eliminate the Misdemeanor/Gross Misdemeanor Offense List and count, instead, all gross misdemeanors and targeted misdemeanors, defined as those that can be enhanced to a higher level offense. The subcommittee felt this approach would establish a simplified and more rational system of counting criminal history, enhance uniformity within the guidelines by counting all gross misdemeanors and the most serious misdemeanors, and establish criteria for future additions to what is counted.

The subcommittee was mindful of the fact that data needed to be collected for the impact of such a shift to be considered. Commission staff conducted a special data collection project. It was determined that there would be very little bed impact from this proposal. The subcommittee also discussed lifting the one point limit on the Misdemeanor/Gross Misdemeanor Point and counting gross misdemeanor offenses as two units. It did appear, however, that there would be impact associated with these changes. The subcommittee agreed upon the recommendation regarding the offenses to be counted, and agreed to forward to the commission without recommendation the other proposals.

The full commission received input from interested stakeholders at their November meeting indicating that there were concerns regarding differences in record keeping practices across the state and a disparate impact on minorities that might occur if the one point cap on the Misdemeanor/Gross Misdemeanor Point were lifted. For this reason, the subcommittee decided to revisit the proposal instead of moving it before the full commission.

II. Guidelines Modifications

This year, changes to the sentencing guidelines related to new and amended crimes passed by the Legislature during the 2002 session become effective January 1, 2003. Other proposed modifications will go into effect August 1, 2003 following Legislative review.

The language of the specific changes is included in the Appendix. A summary of the most significant of those changes follows. Other changes not summarized here but included in the Appendix involved placing certain offenses on the unranked list of offenses and correcting technical omissions.

❖ **Changes Effective January 1, 2003.**

The following Severity Levels were assigned to these new crimes:

- Criminal Sexual Conduct in the Third Degree (Special Transportation Services) – VIII
- Criminal Sexual Conduct in the Fourth Degree (Special Transportation Services) – VI
- Harassment/Stalking (3rd or subsequent violations) – V
- Harassment/Stalking (Victim under 18, Committed with Sexual or Aggressive Intent) – IV

The commission adopted a proposal to add a presumptive executed sentence of at least 90 months for convictions of certain Criminal Sexual Conduct in the Second Degree offenses (M.S. § 609.343 subd. 1 clauses (c), (d), (e), (f), and (h)). The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer. The commission also adopted a proposal to increase by 50% the presumptive sentence duration for offenses committed in furtherance of terrorism (M.S. § 609.714).

❖ **Changes Effective August 1, 2003 (following Legislative review).**

The commission adopted a proposal to add language indicating that the presumptive consecutive sentencing policy applies to offenders on conditional release. The commission adopted a proposal to add language indicating that felony assaults committed while confined in a local jail or workhouse may be sentenced consecutive to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the commissioner of corrections. The commission also adopted a proposal indicating that a custody status point applies to offenders who escape before they are sentenced.

The commission adopted a proposal to change language as it applies to determining the date of offense when multiple offenses are an element of the conviction offense. The language was changed to say that the date must be determined rather than using the earliest offense as the date of offense. This change was made to be consistent with case law. The commission also adopted a proposal to assign two units each to prior gross misdemeanor criminal vehicular injury offenses when the current offense is felony DWI or felony criminal vehicular homicide or injury.

The commission adopted a proposal to rank certain offenses previously left unranked. Unranked offenses often create confusion for practitioners as to how they should proceed before sentencing. The following language appears in the Sentencing Guidelines and addresses the ranking of unranked offenses.

> ***II.A.05.*** *….If a significant number of future convictions are obtained under one or more of the excluded offenses, the Commission will determine an appropriate severity level, and will add the offense to the Offense Severity Reference Table.*

Severity Levels were assigned to previously unranked offenses as follows:

- Controlled Substance Crime in the Third Degree (Aggregated Offenses) – VI
- Registration of Predatory Offenders (2nd or subsequent violation) – III
- Registration of Predatory Offenders – I

The Commission did not adopt Severity Level rankings for the offenses in MN Statute 617.247 – Possession of Pornographic Work Involving Minors. After hearing testimony on this issue, the Commission decided to wait until it had more information regarding how sentencing courts are ranking these offenses following the increases to the statutory maximums enacted in 1991. They plan to seek additional comment from practitioners on this issue in the coming year.

III. Felony Driving While Impaired

Felony Driving While Intoxicated went into effect August 1, 2002. To accommodate felony DWI, the commission added a new Severity Level VII to the Sentencing Guidelines Grid. The only offense ranked at the new Severity Level VII is Felony DWI. A minimum 36-month felony sentence of imprisonment must be imposed for this offense. (Minn.Stat. § 169A.276, subd. 1(d); MSGC II.E.) However, the sentence does not have to be executed.

The Sentencing Guidelines presume that, for a person with a criminal history score of less than 3, the sentence will not be executed. However, if a person has a prior felony DWI conviction, the sentence is presumed to be an executed sentence of imprisonment. (MSGC II.C.) An offender being sentenced for a felony DWI is also subject to a 5-year term of Conditional Release. (Minn.Stat. § 169A.276, subd. 1(d); MSGC II.E.) Beginning in the summer of 2002, commission staff traveled throughout the state training criminal justice practitioners in the implementation of sentencing guidelines policy as it relates to the new felony Driving While Impaired law.

Through December 17, 2002, the commission received 77 Sentencing Worksheets for felony DWI: 61 (79%) were presumed non-executed prison sentences, 16 (21%) were presumed executed prison sentences. On these worksheets, 16 offenders (21%) had a Criminal History Score of zero. The majority of felony DWI Sentencing Worksheets had a Criminal History Score greater than 0: 30 (39%) had a Criminal History Score of 1; 15 (20%) had a Criminal History Score of 2; 10 (13%) had a Criminal History Score of 3; and 6 (8%) had a Criminal History Score of 4 or more. Forty-five (58%) of these offenders received a custody status point; they committed the Felony DWI while under supervision for a previous felony or gross misdemeanor offense (not necessarily a prior DWI). Twenty-nine (38%) had a prior non-DWI felony offense that contributed to their criminal history score.

Commission staff matched MSGC felony DWI worksheet data with District Court data individually, using the Trial Court Information System (TCIS) and sentencing data from Hennepin County. As of December 17, 2002, conviction and sentencing data were available for 53 cases (69% of the 77 worksheets received by that date). Other offenders' sentencing data were not yet updated on TCIS; offenders were awaiting trials, or plea dates were forthcoming. Missing cases were excluded from the sentencing data summary.

For those cases sentenced, the guidelines recommended non-prison sentences in 46 cases (87%) and prison sentences in 7 cases (13%). All 46 offenders who were not recommended prison received non-prison sentences. Their sentences included probation and pronounced jail time. The average probation term was 72 months. The average pronounced jail term was 222 days.

Four of the 7 offenders who were recommended prison under the guidelines went to prison. The average prison sentence was 58 months. Three of the 7 offenders who were recommended prison sentences received probationary sentences (a mitigated dispositional departure rate of 43%). The average probation term for the 3 mitigated departure cases was 96 months and all 3 received jail time. The average pronounced jail term was 252 days.

IV. Juvenile Out of State or Alternative Placement Reports Summary

The 2000 Legislature amended Minn. Stat. 260B.199 and Minn. Stat. 260B.201 requiring that the court, when making certain placements of juveniles at out-of-state facilities (rather than at MCF-Red Wing) or alternative placements when juveniles meet the requirements for mandatory commitment, report information about the placement to the Minnesota Sentencing Guidelines Commission. This report will be submitted by February 15, 2003 as required.

V. Sentencing Guidelines Electronic Worksheet System (EWS)

The Sentencing Worksheet is a form completed by probation officers that provides information on the application of the sentencing guidelines for individual cases. The commission was allocated $150,000 in the 2000-2001 biennium to develop a web-based application that would be used to complete the sentencing worksheet and replace the current manual process that uses typewritten multi-part forms. The sentencing guidelines electronic worksheet system (EWS) has since replaced the manual process and allows Sentencing Worksheets to be submitted directly into a statewide database that is accessible to criminal justice practitioners. The system has reduced the work required for completing and submitting a Sentencing Worksheet and the result is more accurate, timely, and complete information.

Other advantages of this system include:

- Establishing a uniform way to complete, submit, and share sentencing worksheets.
- Ensuring more accurate worksheets with immediate edit checks to reduce errors and the ability to provide more immediate review of the worksheets by commission staff.
- Reducing delivery time of the worksheet to the commission and other criminal justice practitioners; copies of the worksheet can be shared by email or by directly accessing the database.
- Providing search capabilities to look-up previously submitted sentencing worksheets and links to information in the Statewide Supervision System (S^3).

As of February 2002, commission staff provided training to all probation officers responsible for completing Sentencing Worksheets throughout the state. The commission continues to encourage implementation of electronic access to other criminal justice professionals. Overview and registration information regarding the system is provided on the MSGC websites.

To further the goal of statewide integration of criminal justice data, the worksheet system is directly linked to S^3. Under a collaborative effort with the Department of Corrections, the sentencing worksheet database resides on the same server as S^3. The same security system is used for both systems and only one log-on process is required. As part of this collaborative effort, the Department of Corrections is responsible for technical maintenance and commission staff is responsible for user administration and assistance of the S^3.

Commission staff continues to log user suggestions to help identify necessary changes for future enhancements. There will be a continued need to update the system due to new laws and guideline revisions that will affect the system. Also, a goal of the commission is to further integrate the system with other criminal justice information projects and systems (e.g., use of the newly developed statute table designed to provide consistent entry of information and more efficient use and analysis of data).

VI. County Attorney Reports on Criminal Cases Involving Firearms

The 1994 Legislature passed a law (M.S. § 609.11, subdivision 10) directing county attorneys to collect and maintain the following information on criminal complaints and prosecutions within the county attorney's office in which the defendant is alleged to have committed an offense listed in subdivision 9 while possessing or using a firearm: 1) Whether the case was charged or dismissed; 2) Whether the defendant was convicted of the offense or a lesser offense; 3) Whether the mandatory minimum sentence required under this section was imposed and executed or was waived by the prosecutor or court. This information is to be forwarded to the sentencing guidelines commission no later than July 1 of each year, beginning on July 1, 1995. Pursuant to M.S. § 244.09, subdivision 14, the sentencing guidelines commission is required to include in its annual report to the legislature a summary and analysis of the reports received from county attorneys. Memorandums describing the ongoing mandate by the legislature along with forms (See Appendix) on which to report their county's cases are distributed to Minnesota's county attorneys. Although commission staff clarifies inconsistencies in the summary data, the information received from the county attorneys is reported directly as provided.

This year the commission received information from all of Minnesota's eighty-seven counties. Figure 1 below displays a historical summary of cases since the mandate began. In FY 2002, there were a total of 559 cases in which a defendant allegedly committed an offense listed in subdivision 9 while possessing or using a firearm. Case volume was down 7 percent from last year.

Figures 2 through 5 summarize this year's statewide information. Tables providing information for individual counties are included in the Appendix.

FIGURE 1. I. Historical Case Summary

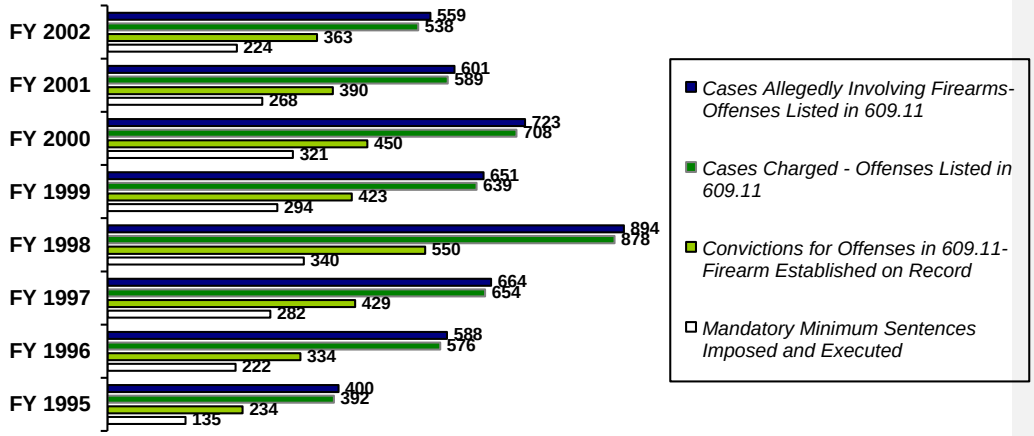


FIGURE 2. **Total Number Cases Allegedly Involving Firearms Offenses Listed in § 609.11, subdivision 9**

- *Prosecutors charged offenders in 96 percent of the cases allegedly involving firearms. This figure is down slightly from 98 percent reported since the mandate began.*

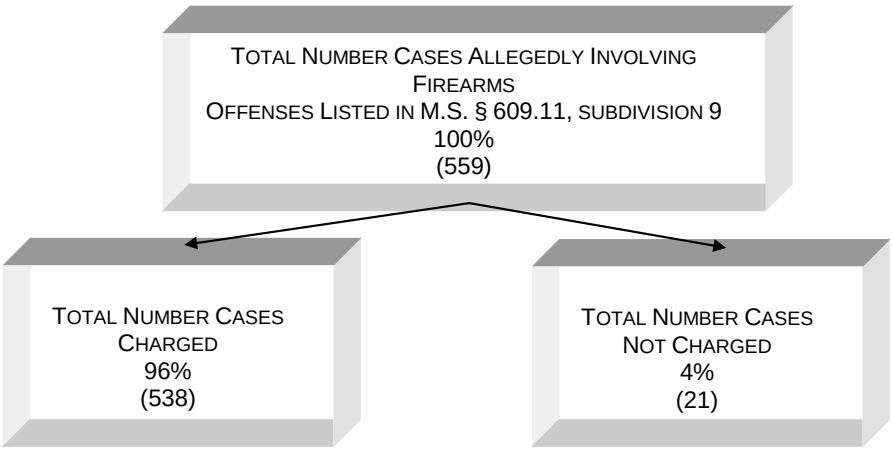


FIGURE 3. **Offenses Charged – Case Outcomes**

- *Among those cases charged, 67 percent were convicted of an offense listed in § 609.11, subdivision 9. This figure is slightly lower than the 70 percent recorded in FY 2001.*

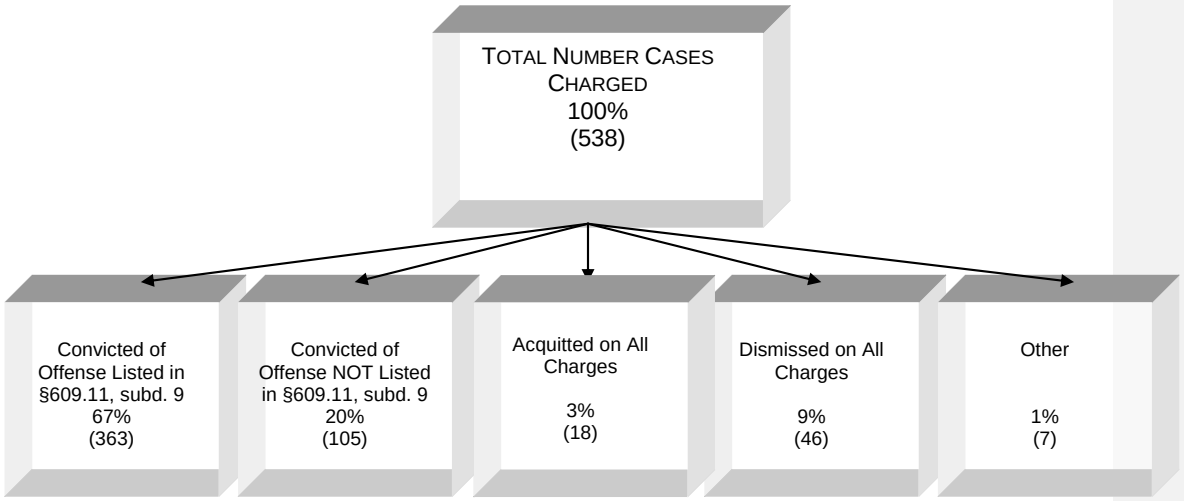


FIGURE 4. Convictions for Offenses Listed in § 609.11, subdivision 9 - Firearm Established on the Record

- *There were 363 convictions for offenses listed in § 609.11, subdivision 9. In 95 percent of the cases, a firearm was established on the record. This is the same percentage reported in FY 2001.*

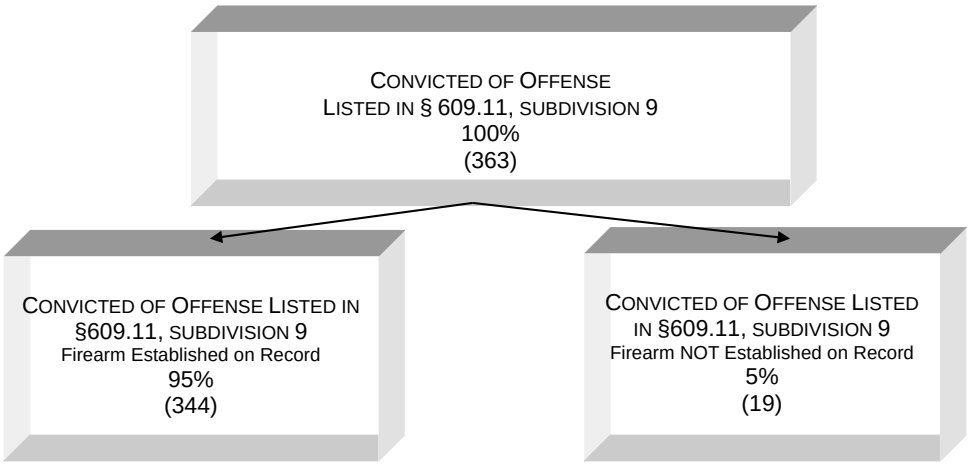
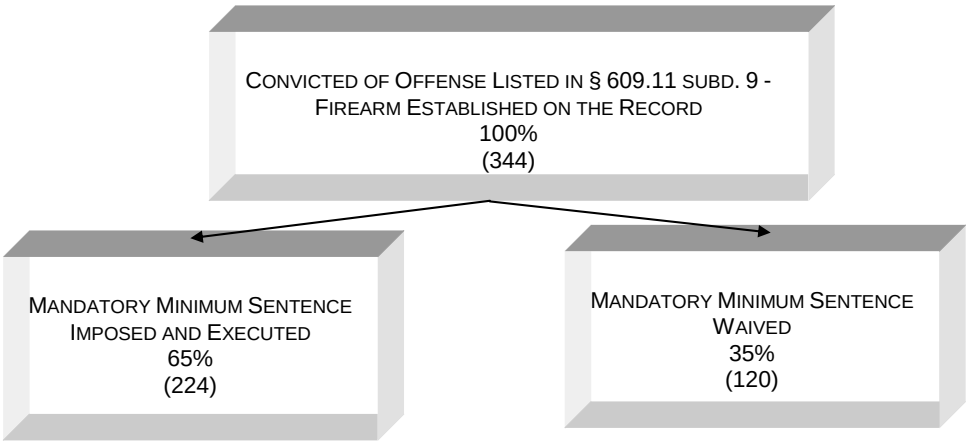


FIGURE 5. Mandatory Minimum Sentences Imposed and Executed

- *A mandatory minimum sentence was imposed and executed in 65 percent of the cases where it was required. This figure was 69 percent in FY 2001.*



Appendix

SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	**1**	**2**	**3**	**4**	**5**	**6 or more**
Murder, 2nd Degree (intentional murder; drive-by-shootings)	**XI**	306 *299-313*	326 *319-333*	346 *339-353*	366 *359-373*	386 *379-393*	406 *399-413*	426 *419-433*
Murder, 3rd Degree *Murder, 2nd Degree (unintentional murder)*	**X**	150 *144-156*	165 *159-171*	180 *174-186*	195 *189-201*	210 *204-216*	225 *219-231*	240 *234-246*
Criminal Sexual Conduct, 1st Degree[2] *Assault, 1st Degree*	**IX**	86 *81-91*	98 *93-103*	110 *105-115*	122 *117-127*	134 *129-139*	146 *141-151*	158 *153-163*
Aggravated Robbery 1st Degree	**VIII**	48 *44-52*	58 *54-62*	68 *64-72*	78 *74-82*	88 *84-92*	98 *94-102*	108 *104-112*
Felony DWI	**VII**	36	42	48	54 51-57	60 57-63	66 63-69	72 69-75
Criminal Sexual Conduct, 2nd Degree (a) & (b)	**VI**	21	27	33	39 *37-41*	45 *43-47*	51 *49-53*	57 *55-59*
Residential Burglary *Simple Robbery*	**V**	18	23	28	33 *31-35*	38 *36-40*	43 *41-45*	48 *46-50*
Nonresidential Burglary	**IV**	12[1]	15	18	21	24 *23-25*	27 *26-28*	30 *29-31*
Theft Crimes (Over $2,500)	**III**	12[1]	13	15	17	19 *18-20*	21 *20-22*	23 *22-24*
Theft Crimes ($2,500 or less) *Check Forgery ($200-$2,500)*	**II**	12[1]	12[1]	13	15	17	19	21 *20-22*
Sale of Simulated Controlled Substance	**I**	12[1]	12[1]	12[1]	13	15	17	19 *18-20*

Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section **II.E. Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections **II.C. Presumptive Sentence** and **II.E. Mandatory Sentences**.

[1] One year and one day

[2] Pursuant to M.S.§ 609.342, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months (**see II.C. Presumptive Sentence** and **II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers)**.

Effective August 1, 2002

SPECIFIC GUIDELINES MODIFICATIONS

I. Adopted Modifications to Rank the Severity of New or Amended Crimes Passed by the Legislature during the 2002 Session – Effective January 1, 2003

A. The Commission adopted a proposal to rank the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:

Severity Level VIII
Criminal Sexual Conduct 3 – 609.344, subd. 1(c), (d), (g), (h), (i), (j), (k), (l), ~~&~~ (m) & (n)

Severity Level VI
Criminal Sexual Conduct 4 – 609.345, subd. 1(c), (d), (g), (h), (i), (j), (k), (l), ~~&~~ (m) & (n)

Severity Level V
Harassment/Stalking (third or subsequent violations) – 609.749, subd. 4(b)

Severity Level IV
Harassment/Stalking (second or subsequent violations) – 609.749, subd. 4(a)
Harassment/Stalking (aggravated violations) – 609.749, subd. 3(a),(b)

B. The Commission adopted a proposal to add the following crimes to the Unranked Offense List in *Section II.A.03* of the *Commentary*:

Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines – 609.594
Real and Simulated Weapons of Mass Destruction – 609.712
Insurance Fraud-Employment of Runners – 609.612

C. The Commission adopted a proposal to continue the existing severity level ranking for the following crimes and the existing policies regarding Attempted Murder in the First Degree:

Attempted Murder in the First Degree; Child Endangerment

II. Other Adopted Modifications Related to New and Amended Crimes Passed by the Legislature during the 2002 Session – Effective January 1, 2003

A. The Commission adopted a proposal to add the following language to the Sentencing Guidelines and Commentary to address legislative amendments to *Minnesota Statute* § 609.343 subd. 2 creating a presumptive sentence of at least 90 months for Criminal Sexual Conduct in the Second Degree 609.343 subd. 1 (c), (d), (e), (f), and (h).

C. Presumptive Sentence: …

Pursuant to M.S. § 609.343, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the Second Degree, 609.343 subd. 1 clauses (c), (d), (e), (f), and

(h), is an executed sentence of at least 90 months. Sentencing a person in a manner other than that described in M.S. § 609.343, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.

****

II.C.09. *When an offender has been convicted of M.S. § 609.343* subd. 1 clauses (c), (d), (e), (f), or (h)*, the presumptive duration is that found in the appropriate cell of the Sentencing Guidelines Grid, any applicable mandatory minimum sentence, or the minimum presumptive sentence pursuant to M.S. § 609.343, subdivision 2, whichever is longer. According to M.S. § 609.343, subd. 2, the presumptive sentence for a conviction of these clauses of Criminal Sexual Conduct in the Second Degree is an executed sentence of at least 90 months. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.*

****

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: …

For persons convicted of an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree (M.S. э 609.342) or Criminal Sexual Conduct in the Second Degree (M.S. э 609.343 Subd. 1 (c), (d), (e), (f), and (h)), the presumptive duration is one-half of that found in the appropriate cell of the Sentencing Guidelines Grid or any mandatory minimum, whichever is longer.

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V. OFFENSE SEVERITY REFERENCE TABLE

VIII	Criminal Sexual Conduct 2 - 609.343 Subd. 1 (c), (d), (e), (f), and (h) (See II.C. Presumptive Sentence and II. G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.)

****

NUMERICAL REFERENCE OF FELONY STATUTES

609.343 subd.1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2

* See II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.

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IV. SENTENCING GUIDELINES GRID

Aggravated Robbery 1st Degree *Criminal Sexual Conduct,* *2nd Degree (c), (d), (e), (f), & (h)*[2]	**VIII**	48 *44-52*	58 *54-62*	68 *64-72*	78 *74-82*	88 *84-92*	98 *94-102*	108 *104-112*

2 Pursuant to M.S. § 609.342, subd. 2 and 609.343 subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree - clauses c,d,e,f, and h is a minimum of 90 months (**see II.C. Presumptive Sentence** and **II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers)**.

B. The Commission adopted a proposal to add the following language to the Sentencing Guidelines and Commentary to address a new sentencing enhancement for Crimes Committed in Furtherance of Terrorism – 609.714

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:
****

For persons sentenced under Minn. Stat. § 609.714 (an offense committed in furtherance of terrorism), the presumptive sentence duration for the underlying offense is increased 50%. The presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime.
****

C. The Commission adopted a proposal to add the following language to the Sentencing Guidelines and Commentary to address the new provision in Aiding an Offender – Taking Responsibility for Criminal Acts– 609.495 subd. 4

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: For persons convicted of attempted offenses or conspiracies to commit an offense, Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), ~~or~~ Solicitation of Mentally Impaired Persons under Minn. Stat. § 609.493, or Aiding an Offender-Taking Responsibility for Criminal Acts under Minn. Stat. § 609.495 subd. 4, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed or intended offense or the offense committed by the principal offender, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that for Conspiracy to Commit a Controlled Substance offense as per Minn. Stat. § 152.096, in which event the presumptive sentence shall be that for the completed offense.
****

III. Technical Modifications and Corrections – Effective January 1, 2003

A. The Commission adopted a proposal to add the following language to section II.F. Concurrent/Consecutive Sentences to account for the possibility of more than one sentence running consecutive to the sentence being served by the offender.

II.F. Concurrent/Consecutive Sentences:

* * * *

Under the circumstances above, it is presumptive for the sentence(s) to be consecutive to the sentence being served by the offender at the time the escape or other new offense was committed.

*** * * ***

B. The Commission adopted a proposal to clarify the following jail credit language.

****

III.C.04. *The Commission also believes that jail credit should be awarded for time spent in custody as a condition of a stay of imposition or stay of execution when the stay is revoked and the offender is committed to the Commissioner of Corrections. The primary purpose of imprisonment is punishment, and the punishment imposed should be proportional to the severity of the conviction offense and the criminal history of the offender. If, for example, the presumptive duration in a case is 18 months, and the sentence was initially executed, ~~by means of a departure~~ the specified minimum term of imprisonment would be 12 months. If the execution of the sentence had initially been stayed and the offender had served four months in jail as a condition of the stay, and later the stay was revoked and the sentence executed, the offender would be confined for 16 months rather than 12 without awarding jail credit. By awarding jail credit for time spent in custody as a condition of a stay of imposition or execution, proportionality is maintained.*

****

C. The Commission adopted a proposal to add the following Felony DWI Conditional Release Commentary to the Sentencing Guidelines.

II.E.05. *….M.S. § 169A.276, subd. 1(d) requires that when the court commits a person to the custody of the commissioner of corrections for first degree (felony) driving while impaired, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.*

D. Corrections

1. Corrections to the **Severity Level Reference Table**

III	Tear Gas & Tear Gas Compounds; Electronic incapacitation devices - 624.731, subd. 8(a)
I	Dangerous Weapons on School Property - 609.66, 1d(a)

2. Corrections to ***Theft Offense List***

Non-payment for Improvement (Proceeds of Payments; Acts Constituting Theft)
514.02, subd. 1(b)

3. Corrections to ***Misdemeanor and Gross Misdemeanor Offense List***

~~Arson 3rd Degree~~
~~609.563; subd. 2~~

Arson in the Fourth Degree
609.5631

Burglary **4**th in the Fourth Degree
609.582

4. Corrections to **Permissive Consecutive Sentences** section

Permissive Consecutive Sentences

* * * *

In addition, consecutive sentences are permissive under number 1. above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C.

5. Correction to ***II.F.06.***

II.F.06. *Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of $5,3000 or both, for possession or use of metal-penetrating bullets during the commission of a crime.*

IV. Other Adopted Modifications – Effective August 1, 2003 following Legislative Review

A. The Commission adopted a proposal to add the following language to section II.F. Concurrent/Consecutive Sentences.

1. The Commission adopted a proposal to add language to indicate that Presumptive Consecutive Sentences apply to offenders who are on Conditional Release

****

Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving, or on supervised release, conditional release, or on escape status from, an executed prison sentence.

****

2. The Commission adopted a proposal to add language to indicate that felony assaults committed while confined in a local jail or workhouse are Permissive Consecutive

****

Permissive Consecutive Sentences

****

7. A current conviction for a felony assault committed while in a local jail or workhouse may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.

****

B. The Commission adopted a proposal to modify the following language to II.B.2 to indicate that the Custody Status Point applies to offenders who escape before sentencing.

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 or verdict in a felony, gross misdemeanor, or extended jurisdiction juvenile case, or following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction;

****

II.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody ~~following conviction of a felony or gross misdemeanor~~ when the offense was committed for which they are now being sentenced. ~~Criminal justice custodial status includes: 1) probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following a felony, gross misdemeanor, or an extended jurisdiction juvenile conviction; 2) release pending sentencing following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor; or 3) if the current offense occurred within the period of the initial length of stay pronounced by the sentencing judge for a felony, gross misdemeanor, or extended jurisdiction juvenile conviction.~~*

****

C. The Commission adopted a proposal to modify the following language in II.A.02 related to determining the date of offense to make it consistent with case law.

* * * *

II.A.02.

* * * *

b. If multiple offenses are an element of the conviction offense, such as in subd. 1(h)(iii) of first degree criminal sexual conduct, the date of the ~~earliest offense should be used as the date of the conviction offense~~ conviction offense must be determined. If there is a reasonable likelihood that all of the offender's multiple acts occurred before a date on which the presumptive sentence changed, the earlier presumptive sentence should be used. If there is no reasonable likelihood that all of the offender's multiple acts occurred before that date, the later presumptive sentence should be used. See State v. Murray, 495 N.W.2d 412, 415 (Minn. 1993)(articulating rule).

* * * *

D. The Commission Adopted a Proposal to Rank the Following Unranked Offenses.

V. OFFENSE SEVERITY REFERENCE TABLE

****

VI	Controlled Substance Crime in the Third Degree ~~(non aggregated offenses)~~ – 152.023
III	Registration of Predatory Offenders (2nd or subsequent violation) – 243.166 subd. 5(c)
I	Registration of Predatory Offenders – 243.166 subd. 5(b)

****

II.A.03. *The following offenses were excluded from the Offense Severity Reference Table:*

****

~~*13. Controlled substance crime, third degree (aggregated offenses) - 152.023*~~
~~*40. Registration of predatory offenders - 243.166, subd. 5*~~

****

E. The Commission adopted a proposal to assign two units each to prior Gross Misdemeanor Criminal Vehicular Injury offenses when the current offense is felony DWI or felony Criminal Vehicular Homicide or Injury.

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction 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….There is the following exception to this policy when the current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired: previous violations of section 169A.20, 169A.31, 169.121, 169.1211, 169.129, ~~or~~ 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 and Injury violations.

II.B.301.

****

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 injury 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 injury or first degree (felony) driving while impaired. ~~These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each.~~

****

II.B.302.

****

The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired, and who have prior violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, ~~or~~ 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 and injury violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVI misdemeanor units. If there are less than four units, add any DWI/CVI units. Four or more units would equal one point. Only DWI/CVI units can be used in calculating additional points. Each set of four DWI/CVI units would equal an point. For example, if an offender had two theft units and six DWI/CVI units, the theft would added to the two DWI/CVI units to equal one point. The remaining four DWI/CVI units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVI units, the first four theft units would equal one point. Four of the DWI/CVI units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CIV units for a third point. The total misdemeanor score would be two.

Juvenile Out-of-State Placement Report (Minn. Stat. 260B.199)

County: _____ **Juvenile Court Case #:** _____

Judge: _____

Report Completed By: _____ **Contact Phone # or E-Mail:** _____

Out-of-State Placement: *Minn. Stat. 260B.199 requires that before a court orders a delinquency or EJJ disposition, it determine whether the child meets the admission criteria for the MCF-Red Wing, including full consideration of local and regional placements. If the child meets the criteria, the court shall place the child at the facility and may not place the child in an out-of-state facility unless the court finds, on the record, that this best addresses the safety of the child or the community or that the out-of-state facility is closer to the child's home. Courts placing a child in an out-of-state facility are required to provide information pertaining to the placement to the Minnesota Sentencing Guidelines Commission.*

A. Name of out-of-state facility where child was placed: _____

Reason for this placement: _____

_____

B. In-state facilities considered:_____

Reason for <u>not</u> choosing an in-state facility:

- _ Need for appropriate therapeutic placement
- _ Need for appropriate physical treatment/care
- _ Need for appropriate mental health treatment/care
- _ Public Safety
- _ No opening in appropriate program
- _ Out-of-state facility closer to child's home

Other: _____

C. Red Wing Criteria

- _ **Reason(s) why the child did not meet the admissions criteria for the MCF-Red Wing**
  - _ Criteria not applicable to this case (e.g., the child is female)
  - _ Does not meet Red Wing commitment criteria as a <u>Serious Offender</u> because:
    - _ Offense would not be at Severity Level VII through X of the Sentencing Guidelines
    - _ Offense not included in M.S. 609.11 (mandatory minimum sentences)
    - _ Firearm was not used
    - _ Child is not an EJJ
  - _ Does not meet Red Wing commitment criteria as a <u>Chronic Offender</u> because:
    - _ Child does not have two or more current or previous felony-level offenses.
    - _ Child has not experienced at least one prior court-ordered placement in a residential program with an expected duration of 90 days or more.
  - _ Does not meet Red Wing commitment criteria as a <u>Sex Offender</u> because:
    - _ Child did not fail to complete court-ordered treatment.
    - _ Child is able to complete residential sex offender treatment at a local facility.
    - _ More appropriate sex offender treatment is available locally.

- _ **Reason(s) for not placing at Red Wing if juvenile did meet admissions criteria:**
  - _ Safety of Child
  - _ Safety of Community
  - _ Closer to Child's Home

Reasons why safety of the child or the community could not be met at MCF-Red Wing:

_____

_____

Please Forward Report to:

Minnesota Sentencing Guidelines Commission, University National Bank Building, 200 University Avenue West, Suite 205, St. Paul, MN 55103. Phone: (651) 296-0144 Fax: (651) 297-5757 E-mail: sentencing.guidelines@state.mn.us

(Form Revised 10/4/2000)

Mandatory Commitment: Juvenile Alternative Placement Report (Minn. Stat. 260B.201)

County: _____ **Juvenile Court Case #:** _____

Judge: _____

Report Completed By: _____ **Contact Phone # or E-Mail:** _____

Alternative Placement when Commitment/Placement at Red Wing Required: *Minn. Stat. 260B.201requires that a child be committed to the custody of the commissioner of corrections or placed at the MCF-Red Wing if the child: (1) was previously adjudicated delinquent or convicted as an EJJ for an offense requiring registration under section 243.166; (2) was placed on probation and ordered to complete a sex offender or chemical dependency treatment program; and (3) subsequently failed or refused to successfully complete the program. If initially convicted as an EJJ, the court may execute the child's adult sentence under section 260B.130, subdivision 4. A court may place a child in an out-of-state facility if the court makes a finding on the record that the safety of the child or the community can be best met by placement in an out-of-state facility or that the out-of-state facility is located closer to the child's home. A court ordering an alternative placement is required by the statute to report on the placement and the reasons for not committing the child to the custody of the Commissioner of Corrections.*

A. Alternative Placement Ordered:

_____

_____

B. Reasons for Alternative Placement:

_ Safety of Child _ Safety of Community _ Closer to Child's Home

_____

_____

_____

Reasons why safety of the child or the community could not be met at the MCF-Red Wing:

_____

_____

_____

Please Forward Report to:
Minnesota Sentencing Guidelines Commission
University National Bank Building
200 University Avenue West, Suite 205, St. Paul, MN 55103.
Phone: (651) 296-0144 Fax: (651) 297-5757 E-mail: sentencing.guidelines@state.mn.us

(Form Revised 10/4/2000)

County Attorney Reports on Criminal Cases Involving Firearms
By County

Cases Allegedly Involving Firearms - Offenses Listed in § 609.11, Subd. 9
Cases Disposed from July 1, 2001 to July 1, 2002

County	Cases Allegedly Involving Firearms - Offenses Listed in § 609.11	Cases Not Charged	Cases Charged
Aitkin	4	1	3
Anoka	33	1	32
Becker	3	0	3
Beltrami	6	0	6
Benton	10	1	9
Big Stone	1	0	1
Blue Earth	5	0	5
Brown	0	0	0
Carlton	4	0	4
Carver	3	0	3
Cass	11	1	10
Chippewa	1	0	1
Chisago	2	0	2
Clay	2	0	2
Clearwater	0	0	0
Cook	2	0	2
Cottonwood	0	0	0
Crow Wing	4	0	4
Dakota	19	0	19
Dodge	3	1	2
Douglas	0	0	0
Faribault	0	0	0
Fillmore	0	0	0
Freeborn	0	0	0
Goodhue	6	0	6
Grant	0	0	0
Hennepin	106	0	106
Houston	0	0	0
Hubbard	0	0	0
Isanti	10	0	10
Itasca	12	0	12

County	Cases Allegedly Involving Firearms - Offenses Listed in § 609.11	Cases Not Charged	Cases Charged
Jackson	0	0	0
Kanabec	8	2	6
Kandiyohi	2	0	2
Kittson	1	0	1
Koochiching	0	0	0
Lac Qui Parle	0	0	0
Lake	2	0	2
Lake of the Woods	0	0	0
LeSueur	0	0	0
Lincoln	0	0	0
Lyon	3	0	3
McLeod	7	0	7
Mahnomen	2	1	1
Marshall	0	0	0
Martin	1	0	1
Meeker	5	0	5
Mille Lacs	12	0	12
Morrison	7	0	7
Mower	6	0	6
Murray	3	0	3
Nicollet	0	0	0
Nobles	4	0	4
Norman	3	0	3
Olmsted	27	0	27
Otter Tail	4	1	3
Pennington	0	0	0
Pine	0	0	0
Pipestone	5	1	4
Polk	3	0	3
Pope	0	0	0
Ramsey	103	0	103
Red Lake	0	0	0
Redwood	2	0	2
Renville	4	0	4
Rice	4	1	3

County	Cases Allegedly Involving Firearms - Offenses Listed in § 609.11	Cases Not Charged	Cases Charged
Rock	0	0	0
Roseau	6	0	6
St. Louis	29	9	20
Scott	2	0	2
Sherburne	9	0	9
Sibley	0	0	0
Stearns	11	0	11
Steele	1	0	1
Stevens	1	0	1
Swift	1	0	1
Todd	1	0	1
Traverse	0	0	0
Wabasha	12	0	12
Wadena	2	0	2
Waseca	0	0	0
Washington	5	0	5
Watonwan	0	0	0
Wilkin	0	0	0
Winona	4	1	3
Wright	8	0	8
Yellow Medicine	2	0	2
Total	**559**	**21**	**538**

County Attorney Report on Criminal Cases Involving Firearms
By County

Offenses Charged - Case Outcome
Cases Disposed from July 1, 2001 to July 1, 2002

County	Total Number of Cases Charged	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Established	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Not Established	Conviction Offense Not Listed in M.S. §609.11	Acquitted on all Charges	Dismissed on all Charges	Other
Aitkin	3	2	0	0	0	1	0
Anoka	32	18	0	9	1	4	0
Becker	3	3	0	0	0	0	0
Beltrami	6	5	0	0	0	1	0
Benton	9	4	2	2	0	1	0
Big Stone	1	0	0	0	0	0	1
Blue Earth	5	5	0	0	0	0	0
Brown	0	0	0	0	0	0	0
Carlton	4	1	0	3	0	0	0
Carver	3	2	0	0	0	1	0
Cass	10	4	0	5	0	1	0
Chippewa	1	0	1	0	0	0	0
Chisago	2	1	0	0	0	1	0
Clay	2	1	0	0	0	0	1
Clearwater	0	0	0	0	0	0	0
Cook	2	0	1	0	0	1	0
Cottonwood	0	0	0	0	0	0	0
Crow Wing	4	2	1	1	0	0	0
Dakota	19	15	0	0	0	3	1
Dodge	2	0	0	2	0	0	0
Douglas	0	0	0	0	0	0	0
Faribault	0	0	0	0	0	0	0
Fillmore	0	0	0	0	0	0	0
Freeborn	0	0	0	0	0	0	0
Goodhue	6	1	1	3	0	1	0
Grant	0	0	0	0	0	0	0
Hennepin	106	85	0	12	7	2	0
Houston	0	0	0	0	0	0	0
Hubbard	0	0	0	0	0	0	0
Isanti	10	4	1	3	0	2	0

County	Total Number of Cases Charged	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Established	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Not Established	Conviction Offense Not Listed in M.S. §609.11	Acquitted on all Charges	Dismissed on all Charges	Other
Itasca	12	7	0	3	0	2	0
Jackson	0	0	0	0	0	0	0
Kanabec	6	1	0	5	0	0	0
Kandiyohi	2	2	0	0	0	0	0
Kittson	1	1	0	0	0	0	0
Koochiching	0	0	0	0	0	0	0
Lac Qui Parle	0	0	0	0	0	0	0
Lake	2	2	0	0	0	0	0
Lake of the Woods	0	0	0	0	0	0	0
LeSueur	0	0	0	0	0	0	0
Lincoln	0	0	0	0	0	0	0
Lyon	3	3	0	0	0	0	0
McLeod	7	6	0	0	0	1	0
Mahnomen	1	0	0	1	0	0	0
Marshall	0	0	0	0	0	0	0
Martin	1	0	1	0	0	0	0
Meeker	5	3	0	0	0	2	0
Mille Lacs	12	5	0	5	0	2	0
Morrison	7	4	1	1	0	1	0
Mower	6	4	0	2	0	0	0
Murray	3	0	0	3	0	0	0
Nicollet	0	0	0	0	0	0	0
Nobles	4	2	0	2	0	0	0
Norman	3	0	0	3	0	0	0
Olmsted	27	18	0	5	0	4	0
Otter Tail	3	2	0	2	0	0	0
Pennington	0	0	0	0	0	0	0
Pine	0	0	0	0	0	0	0
Pipestone	4	0	1	0	0	0	3
Polk	3	2	1	0	0	0	0
Pope	0	0	0	0	0	0	0
Ramsey	103	88	0	0	6	9	0
Red Lake	0	0	0	0	0	0	0
Redwood	2	0	1	1	0	0	0

County	Total Number of Cases Charged	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Established	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Not Established	Conviction Offense Not Listed in M.S. §609.11	Acquitted on all Charges	Dismissed on all Charges	Other
Renville	4	0	0	3	0	1	0
Rice	3	2	0	1	0	0	0
Rock	0	0	0	0	0	0	0
Roseau	6	1	4	0	0	1	0
St. Louis	20	10	0	5	3	2	0
Scott	2	2	0	0	0	0	0
Sherburne	9	5	2	2	0	0	0
Sibley	0	0	0	0	0	0	0
Stearns	11	5	0	5	0	1	0
Steele	1	0	0	1	0	0	0
Stevens	1	0	0	0	0	0	1
Swift	1	0	0	1	0	0	0
Todd	1	1	0	0	0	0	0
Traverse	0	0	0	0	0	0	0
Wabasha	12	12	0	0	0	0	0
Wadena	2	0	0	2	0	0	0
Waseca	0	0	0	0	0	0	0
Washington	5	0	0	3	1	1	0
Watonwan	0	0	0	0	0	0	0
Wilkin	0	0	0	0	0	0	0
Winona	3	3	0	0	0	0	0
Wright	8	0	1	7	0	0	0
Yellow Medicine	2	0	0	2	0	0	0
Total	**538**	**344**	**19**	**105**	**18**	**46**	**7**

County Attorney Report on Criminal Cases Involving Firearms By County

Mandatory Minimum Sentences Imposed and Executed

Cases Disposed from July 1, 2001 to July 1, 2002

County	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Established on Record	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Waived
Aitkin	2	2	0
Anoka	18	12	6
Becker	3	1	2
Beltrami	5	3	2
Benton	4	4	0
Big Stone	0	0	0
Blue Earth	5	4	1
Brown	0	0	0
Carlton	1	0	1
Carver	2	0	2
Cass	4	2	2
Chippewa	0	0	0
Chisago	1	0	1
Clay	1	1	0
Clearwater	0	0	0
Cook	0	0	0
Cottonwood	0	0	0
Crow Wing	2	2	0
Dakota	15	9	6
Dodge	0	0	0
Douglas	0	0	0
Faribault	0	0	0
Fillmore	0	0	0
Freeborn	0	0	0
Goodhue	1	1	0
Grant	0	0	0
Hennepin	85	60	25
Houston	0	0	0

County	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Established on Record	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Waived
Hubbard	0	0	0
Isanti	4	1	3
Itasca	7	2	5
Jackson	0	0	0
Kanabec	1	1	0
Kandiyohi	2	2	0
Kittson	1	1	0
Koochiching	0	0	0
Lac Qui Parle	0	0	0
Lake	2	2	0
Lake of the Woods	0	0	0
LeSueur	0	0	0
Lincoln	0	0	0
Lyon	3	0	3
McLeod	6	3	3
Mahnomen	0	0	0
Marshall	0	0	0
Martin	0	0	0
Meeker	3	1	2
Mille Lacs	5	3	2
Morrison	4	2	2
Mower	4	4	0
Murray	0	0	0
Nicollet	0	0	0
Nobles	2	2	0
Norman	0	0	0
Olmsted	18	9	9
Otter Tail	2	0	2
Pennington	0	0	0
Pine	0	0	0
Pipestone	0	0	0

County	Convicted of Offense Listed in § 609.11, Subd. 9 Firearm Established on Record	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Waived
Polk	2	2	0
Pope	0	0	0
Ramsey	88	63	25
Red Lake	0	0	0
Redwood	0	0	0
Renville	0	0	0
Rice	2	2	0
Rock	0	0	0
Roseau	1	1	0
St. Louis	10	7	3
Scott	2	1	1
Sherburne	5	4	1
Sibley	0	0	0
Stearns	5	5	0
Steele	0	0	0
Stevens	0	0	0
Swift	0	0	0
Todd	1	1	0
Traverse	0	0	0
Wabasha	12	1	11
Wadena	0	0	0
Waseca	0	0	0
Washington	0	0	0
Watonwan	0	0	0
Wilkin	0	0	0
Winona	3	3	0
Wright	0	0	0
Yellow Medicine	0	0	0
Total	**344**	**224**	**120**

609.11 MINIMUM SENTENCES OF IMPRISONMENT

Subdivision 1. Commitments without minimums. All commitments to the commissioner of corrections for imprisonment of the defendant are without minimum terms except when the sentence is to life imprisonment as required by law and except as otherwise provided in this chapter.

Subd. 2. Repealed, 1978 c 723 art 2 s 5

Subd. 3. Repealed, 1981 c 227 s 13

Subd. 4. Dangerous weapon. Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a dangerous weapon other than a firearm, shall be committed to the commissioner of corrections for not less than one year plus one day, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a dangerous weapon other than a firearm, shall be committed to the commissioner of corrections for not less than three years nor more than the maximum sentence provided by law.

Subd. 5. Firearm. (a) Except as otherwise provided in paragraph (b), any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, had in possession or used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm, shall be committed to the commissioner of corrections for not less than three years, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, had in possession or used a firearm shall be committed to the commissioner of corrections for not less than five years, nor more than the maximum sentence provided by law.

(b) Any defendant convicted of violating section 609.165 or 624.713, subdivision 1, clause (b), shall be committed to the commissioner of corrections for not less than five years, nor more than the maximum sentence provided by law.

Subd. 5a. Drug offenses. Notwithstanding section 609.035, whenever a defendant is subject to a mandatory minimum sentence for a felony violation of chapter 152 and is also subject to this section, the minimum sentence imposed under this section shall be consecutive to that imposed under chapter 152.

Subd. 6. No early release. Any defendant convicted and sentenced as required by this section is not eligible for probation, parole, discharge, or supervised release until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 242.19, 243.05, 244.04, 609.12 and 609.135.

Subd. 7. Prosecutor shall establish. Whenever reasonable grounds exist to believe that the defendant or an accomplice used a firearm or other dangerous weapon or had in possession a firearm, at the time of commission of an offense listed in subdivision 9, the prosecutor shall, at the time of trial or at the plea of guilty, present on the record all evidence tending to establish that fact unless it is otherwise admitted on the record. The question of whether the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm shall be determined by the court on the record at the time of a verdict or finding of guilt at trial or the entry of a plea of guilty based upon the record of the trial or the plea of guilty. The court shall determine on the record at the time of sentencing whether the defendant has been convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm.

Subd. 8. Motion by prosecutor. (a) Except as otherwise provided in paragraph (b), prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum sentences established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When

presented with the motion, or on its own motion, the court may sentence the defendant without regard to the mandatory minimum sentences established by this section if the court finds substantial and compelling reasons to do so. A sentence imposed under this subdivision is a departure from the sentencing guidelines.

(b) The court may not, on its own motion or the prosecutor's motion, sentence a defendant without regard to the mandatory minimum sentences established by this section if the defendant previously has been convicted of an offense listed in subdivision 9 in which the defendant used or possessed a firearm or other dangerous weapon.

Subd. 9. Applicable offenses. The crimes for which mandatory minimum sentences shall be served as provided in this section are: 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; criminal sexual conduct under the circumstances described in sections 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); and 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); escape from custody; arson in the first, second, or third degree; drive-by shooting under section 609.66, subdivision 1e; harassment and stalking under section 609.749, subdivision 3, clause (3); possession or other unlawful use of a firearm in violation of section 609.165, subdivision 1b, or 624.713, subdivision 1, clause (b), a felony violation of chapter 152; or any attempt to commit any of these offenses.

Subd. 10. Report on criminal cases involving a firearm. Beginning on July 1, 1994, every county attorney shall collect and maintain the following information on criminal complaints and prosecutions within the county attorney's office in which the defendant is alleged to have committed an offense listed in subdivision 9 while possessing or using a firearm:

(1) whether the case was charged or dismissed;

(2) whether the defendant was convicted of the offense or a lesser offense; and

(3) whether the mandatory minimum sentence required under this section was imposed and executed or was waived by the prosecutor or court.

No later than July 1 of each year, beginning on July 1, 1995, the county attorney shall forward this information to the sentencing guidelines commission upon forms prescribed by the commission.

Firearms Report Form:

County Attorney Report on Criminal Cases Involving Firearms

M.S. § 609.11, subdivision 10 requires that no later than July 1 of each year, every county attorney shall forward to the sentencing guidelines commission information on cases in which the defendant is alleged to have committed an offense listed in M.S. § 609.11, subdivision 9. Please report on ***adult cases*** *that were disposed of in the time period indicated. Please* ***do not include cases that were pending*** *during this time period. Consult reverse side for an illustration.*

County: _____

Criminal Complaints Disposed of from July 1, _____ to July 1, _____.

Completed by: _____ **Telephone:**(____)_____

I. CHARGING

CASES CHARGED WHERE REPORTING IS REQUIRED	CASES NOT CHARGED WHERE REPORTING IS REQUIRED
# of cases =	# of cases =

Only cases in this box should be carried down to Table II.

III. CASE OUTCOME: *Sum of Table II = total of "CASES CHARGED WHERE REPORTING IS REQUIRED" box above*

CONVICTED OF OFFENSE LISTED IN SUBD. 9; FIREARM ESTABLISHED ON THE RECORD	CONVICTED OF OFFENSE LISTED IN SUBD. 9; FIREARM NOT ESTABLISHED ON THE RECORD	CONVICTED OF OFFENSE NOT LISTED IN SUBD. 9	ACQUITTED ON ALL CHARGES	ALL CHARGES DISMISSED	OTHER
# of cases =	# of cases =	# of cases =	# of cases =	# of cases =	# of cases =

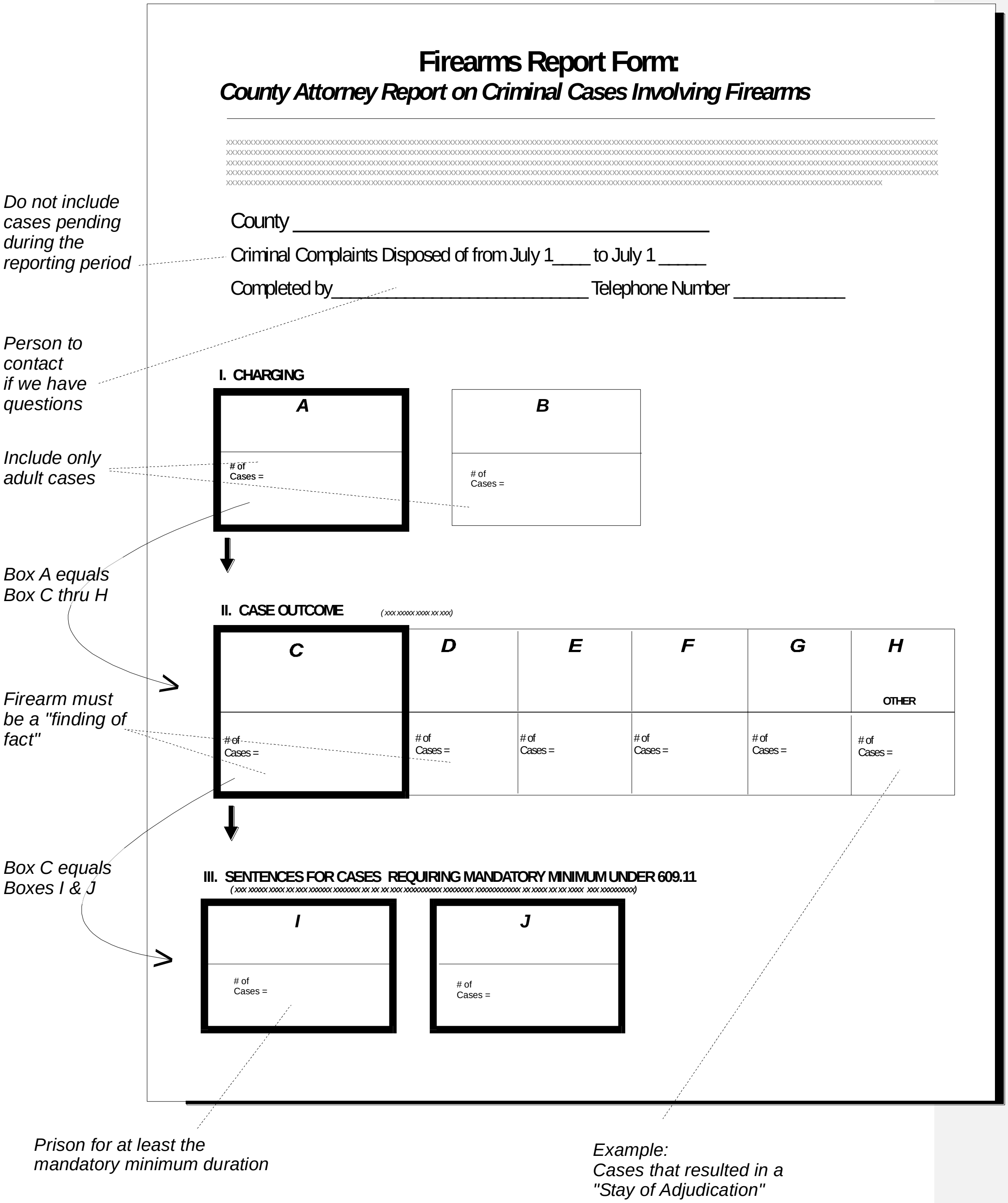
Only cases in this box should be carried down to Table III.

III. SENTENCES FOR CASES REQUIRING MANDATORY MINIMUM UNDER M.S. § 609.11:
Sum of Table III = Total in "FIREARM ESTABLISHED ON RECORD" box above

MANDATORY MINIMUM SENTENCE (OR GREATER) IMPOSED AND EXECUTED	MANDATORY MINIMUM SENTENCE WAIVED
# of cases =	# of cases =

Please send form to: Minnesota Sentencing Guidelines Commission, 200 University Ave. W., Suite 205, St. Paul, MN 55103
651.296.0144 Fax: 651.297.5757 TTY: 1.800.627.3529 (ask for 651.296.0144)

[FIREARMS REPORT FORM ILLUSTRATION]



Firearms Report Form:

County Attorney Report on Criminal Cases Involving Firearms

County ______________________________________

Criminal Complaints Disposed of from July 1____ to July 1 _____

Completed by__________________________ Telephone Number ___________

I. CHARGING

A	B
# of Cases =	# of Cases =

II. CASE OUTCOME

C	D	E	F	G	H OTHER
# of Cases =	# of Cases =	# of Cases =	# of Cases =	# of Cases =	# of Cases =

III. SENTENCES FOR CASES REQUIRING MANDATORY MINIMUM UNDER 609.11

I	J
# of Cases =	# of Cases =