



Report to the Legislature

January 2004

Minnesota Sentencing Guidelines Commission



Minnesota Sentencing Guidelines Commission

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Minnesota Sentencing Guidelines Commission

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Table of Contents



Executive Summary	1
Commission Background, Structure and Activity	3
Guidelines Modifications	7
Felony Driving While Impaired	9
Predatory Offenders – Failure to Register	11
County Attorney Reports on Criminal Cases Involving Firearms	17
APPENDIX	20
Sentencing Guidelines Grid	21
Specific Guidelines Modifications	22
Predatory Offenders – Failure to Register Cases by County	25
County Attorney Reports on Criminal Cases Involving Firearms by County	29
Minn. Stat. § 609.11	38
Firearms Report [Form]	40
Firearms Report Form Illustration	41

Executive Summary

Since 1978, the Minnesota Sentencing Guidelines Commission has been designated the responsibility for development, oversight and monitoring of the state's sentencing guidelines for felony offenders. Although Sentencing Guidelines were developed with the overriding goal of assuring public safety, they were also designed to promote truth in sentencing, ensure proportionality and uniformity in sentencing and to coordinate sentencing practices with correctional resources. Once the guidelines were developed and enacted, the Commission has spent the vast majority of its time monitoring and analyzing sentencing practices throughout the state and providing sentencing information to the legislature.

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Each January, the Sentencing Guidelines Commission submits its annual Report to the Legislature, which has contained a variety of sentencing information including: recent legislative modifications to the guidelines, analysis of felony DWI sentences, County Attorney Reports on cases involving firearms and other sentencing issues of importance to the legislature. The 2004 Report to the Legislature also contains a new section that summarizes sentencing patterns for Failure to Register by Predatory Offenders.

In 2002 data, the Sentencing Commission noted an unprecedented increase in the number of felony sentences imposed, as well as a significant increase in the number of offenders admitted to prison when compared to previous years. The number of offenders sentenced for felony offenses increased from 10,796 in 2001 to 12,978 in 2002, a 20.2% increase in a year. This figure represents the largest yearly growth since the guidelines were established in 1981. When that growth rate is broken down by offense types, drug felony sentences increased by 32% between 2001 and 2002, whereas non-drug felony sentences increased by only 17%.

Prison admissions showed a corresponding increase between 2001 and 2002. Department of Corrections data shows that new court commits admitted to prison increased from 3,213 in 2001 to 3,705 in 2002. In addition, the number of drug offenders sentenced to prison in 2002 exceeded the number of person and property offenders for the first time, representing 35.4% of the admissions.

2003 Legislative modifications to the Sentencing Guidelines for new and amended crimes were effective on August 1, 2003 but were technically unranked until August 8, 2003. The major sentencing modifications were made to: Attempted Manufacture of Methamphetamine, Identity

Theft, Interference with Emergency Communication and Mail Theft. New departure factors were also added to the sentencing guidelines.

Analysis of felony DWI data indicates that the Commission received 816 sentencing worksheets through the end of October 2003. Fifteen percent were sentenced to prison for an average of 50 months; 82% served jail time for an average of 234 days and 3% did not receive any form of incarceration. The data also indicates a 35% mitigated dispositional departure rate for felony DWI.

County Attorney Reports regarding offenses involving firearms show that last year, 622 cases involved an offender allegedly committing an offense listed in subdivision 9 of Minn. Stat. § 609.11 while possessing or using a firearm. This represents an 11% increase over the previous year. Prosecutors secured convictions in 72% of the cases charged, which shows an increase from 67% in the previous year. In about 66% of the cases, a mandatory minimum sentence was imposed and executed where it was required.

In reviewing the Failure to Register by Predatory Offenders data, the number of offenders sentenced in 2002 totaled 140, which is up 84% over the 2001 number of 76. Of the 140 offenders sentenced, 122 were first time offenders and 18 were subsequent offenders. The average pronounced prison sentence was 14.5 months for first offenders and 18.5 months for subsequent offenders. Mitigated (downward) dispositional departures were granted in 68% of the cases for first time offenders and 28% of the cases for subsequent offenders.

The Sentencing Guidelines Commission hopes the information contained in this report will be both useful and informative. The Commission is available to address any questions or to provide any additional information requested.

Commission Background, Structure and Activity

Commission 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 the time of sentencing, how much time an offender would serve in prison when a particular sentence was imposed. For example, if an offender were sentenced to 60 months in prison, that offender would serve 40 months in prison and would then be placed on supervised release for the remaining 20 months.

A highly desirable side effect of determinate sentencing was the ability to fairly accurately predict future prison bed space needs. For example, if the sentence for a particular offense was increased by 12 months, the Guidelines Commission staff could, within a certain amount of statistical confidence, project the long-term prison bed impact of that change. In conjunction with other agencies, the potential fiscal impact of any sentencing change could also be measured and quantified.

2. Clear Proportionality/Uniformity. Under this "Just Deserts" model of sentencing, an offender who commits a more serious crime would receive a longer sentence than one who commits 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 criminal history characteristics would be treated the same across the state, thus reducing disparity in sentencing.

3. Accurate Data Collection. The new sentencing system also allowed the Guidelines Commission to collect accurate and detailed data on the specific determinate sentences actually imposed across the state. 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 been the protection of public safety.

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Commission Structure

The Minnesota Sentencing Guidelines Commission is responsible for maintaining and monitoring the sentencing guidelines. The 11-member commission is composed of a variety of representatives of the Minnesota criminal justice system.

In April of 2003, several new members were appointed to the Commission. Sheriff Steve Borchardt from Olmstead County was appointed Chair of the Commission. Joan Fabian joined the Commission in her role as the Commissioner of Corrections. In addition, Jeffrey Edblad from Isanti County was appointed as the County Attorney Representative, Darci Bentz of Farimont, MN was appointed as the Public Defender Representative, Tracy Jenson of Washington County was appointed as the Probation Representative and Michael Williams of Minneapolis, MN was appointed as a new Citizen Member on the Commission.

Barbara Tombs, former Executive Director of the Kansas Sentencing Commission, joined the Commission as Executive Director on August 1, 2003. Anne Wall served as the Acting Director while that position was vacant.

Commission Activity

During the Special Session in 2003, SF 2 was passed and directed the Sentencing Guidelines Commission to undertake a comprehensive study of drug offender sentencing issues in Minnesota. Section 14 of the bill states that the Commission, in consultation with the Commissioner of Corrections, shall prepare a report to be presented to the chairs and ranking minority members of the house and senate committees having jurisdiction over criminal justice policy and financing.

Compiling the information and data requested in the report has been the focus of the commission's activities over the past several months.

Compiling the information and data requested in the report has been the focus of the Commission's activities over the past year. Information requested includes a history of Minnesota drug sentencing laws, comparison of Minnesota drug laws to other states, the effectiveness of Drug Courts and other alternative sentencing options for drug offenders. The legislation also requests statistical data on numerous drug offender sentencing issues and patterns over time, as well as, various costs associated with incarceration of drug offenders.

One of the items of information requested to be included in the report was a projected cost saving to the Department of Corrections by diverting "non-violent drug offenders" from state correctional institutions to non-custodial drug treatment given the same length of sentence is imposed. The Commission recognized immediately that identifying what constituted a "non-violent drug offender" was very complicated and complex, since violence can be measured from varying perspectives.

The Commission decided to form a special subcommittee that allowed for input and to hear concerns from different parts of the criminal justice system as well as from treatment providers

and others involved with drug offenders. Sheriff Borchardt, Chair of the Sentencing Guidelines Commission, also chaired the Non-Violent Drug Offender Subcommittee. The twenty-member subcommittee included Commission members, judges, prosecutors, law enforcement, probation, defense council, treatment providers and representatives from the courts. Because of the controversial nature of the task before the Subcommittee, the Commission chose to utilize a facilitator to oversee the work of the Subcommittee and to ensure that all the varying perspectives were acknowledged and incorporated into the group's final product.

The Subcommittee met on October 16, 2003, and consensus was reached early in the discussion that given the various meanings that could be attributed to the term non-violent, that the group would take the approach instead to define what was considered to be a violent offender. For the purpose of the Drug Offender Study, if an offender did not meet the criteria to be classified as violent then the offender would be considered non-violent.

The Subcommittee reviewed the definitions of non-violent drug offenders used by other states, including Arizona, Washington, California, and Kansas. The definitions used by various drug courts in Minnesota were also reviewed and discussed. The group then looked to the statutory definitions of a violent offender under MS 609.1095 Subd. 1(d) and MS 624.712 Subd. 5 to begin its deliberations.

After lengthy and very open discussion, consensus was reached among the Subcommittee members on several elements of what constituted a violent offender. Those elements included use or possession of a firearm in the current drug offense, use of force in the current drug offense, death or serious bodily injury in the current drug offense, if the offender had pending charges for a violent offense, if the offender had prior felony or EJJ conviction for a violent offense and if the current offense was a 1st degree attempted manufacture or manufacture of methamphetamine or the tampering, theft or transportation of anhydrous ammonia.

There were several issues, however, where consensus was not reached among the Subcommittee. A major issue was whether current convictions or prior convictions for 1st and 2nd degree controlled substance convictions, other than those relating to manufacture or attempt to manufacture methamphetamines, should classify an offender as a violent offender. Very strong arguments were presented for each of the opposing views. The subcommittee finally conceded that consensus would not be reached on this specific item and decided that the report would contain two scenarios defining a "non-violent drug offender" each with the corresponding impact on the Department of Corrections.

Given that the task of the subcommittee had been attempted in the past with virtually no areas of consensus reached and ending in a stalemate, the work of this group was very significant. The full Commission reviewed the recommendations of the Subcommittee and agreed to incorporate their work product into the final report

Staff has focused on gathering drug sentencing information from other states, reviewing drug court procedures and compiling historical sentencing data for drug offenses in Minnesota. Projections were developed to identify the number of prison beds that would be required to incarcerate drug offenders over the next ten years. A survey was designed and distributed by



staff to probation and community corrections departments to gather information pertaining to the types, capacity and cost of drug treatment available to non-custodial drug offenders.

Chairman Borchardt and Barbara Tombs met with representatives from several community groups in Hennepin County on November 13, 2003 to discuss concerns regarding the Commission's proposed definition of a "non-violent drug offender." They expressed concern that the definition failed to take into consideration the collateral effects of repeat offenders on communities such as lower property values, fear by residents to leave their homes and lack of consequences to offenders for their behavior. This issue was brought before the Commission at its November 24th meeting and it was agreed that the final report would include a section to address the collateral effects of drug offenders on communities.

The Commission will review the Drug Offender Sentencing Report to the legislature in early January and the report will be submitted on January 15, 2004.

Guidelines Modifications

Changes to the sentencing guidelines related to new and amended crimes passed by the Legislature during the 2003 session became effective August 8, 2003. New crimes made effective by the Legislature August 1, 2003, were technically unranked until August 8, 2003.

The language of the specific changes to the sentencing guidelines is included in the Appendix. A summary of new felony crime legislation and the most significant guidelines changes follow. Other changes not summarized here are included in the Appendix.

New crimes made effective by the Legislature August 1, 2003, were technically unranked until August 8, 2003.

- ❖ **Attempted Manufacture of Methamphetamine:** Committed when a person possesses certain chemical reagents or precursors with the intent to manufacture methamphetamine. Unlike most other offenses, the general provisions of the Attempt statute (M.S. §609.17) do not apply to this offense. Although this crime is placed in the First Degree statute, it has a specified statutory maximum of 3 years, whereas the other First Degree offenses, including manufacture of methamphetamine, have a statutory maximum of 30 years (for a first offense). This new crime has a statutory maximum of 4 years for subsequent offenses whereas the statutory maximum for other subsequent First Degree offenses is 40 years with a mandatory minimum of 4 years.
MN Statute: 152.021, subd. 2a
Severity Level: III
- ❖ **Identity Theft:** Crime adds a category of offenses for which the statutory maximum is 20 years – offenses which have 8 or more victims or if the combined loss is over \$35,000.
MN Statute: 609.527, subd. 3(5)
Severity Level: VIII
- ❖ **Interference with Emergency Communications:** Involves broadcasting, transmitting on, interfering with, blocking or cross patching another frequency onto a law enforcement, firefighting, or emergency medical services emergency frequency or channel or an official cellular telephone communication of one of those agencies. If the offense is committed while knowing or having reason to know that the act creates a risk of obstructing, preventing, or misdirecting official law enforcement, firefighting, or emergency medical services communications, the offense is a felony with a statutory maximum of five years.
MN Statute: 609.776
Severity Level: V



- ❖ **Mail Theft:** Includes removing mail from depositories, taking mail from a mail carrier, obtaining mail by deception, removing contents of mail addressed to another. The crime has a statutory maximum of three years.

MN Statute: 609.529

Severity Level: II

Two new reasons for departure were added to the sentencing guidelines: One aggravating factor and one mitigating factor.

Aggravating Factor

The offender's use of another's identity without authorization to commit a crime. This aggravating factor may not be used when the use of another's identity is an element of the offense.

Mitigating Factor

Alternative placement for offender with serious and persistent mental illness (See Minn. Stat. §609.1055).

Felony DWI

Felony Driving While Intoxicated went into effect August 1, 2002. 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 a stayed sentence for a person with a criminal history score of less than 3. However, if a person has a prior felony DWI conviction, the sentence is presumed to be an executed sentence.

(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.). Offenders receiving stayed sentences can receive up to one year of local jail time as a condition of their probation and are subject to the mandatory penalty provisions specified in Minn. Stat. § 169A.275. This statute provides that 4th time offenders must be incarcerated for 180 days and 5th or more time offenders for one year, unless they are placed in an intensive supervision program. This statute also allows that a portion of this mandatory jail time may be served on electronic monitoring.

Through October 2003, the commission received 816 Felony DWI Sentencing Worksheets: 91% of the worksheets were for Male offenders and 9% were for Females. A higher percentage of Felony DWI offenders came from Greater Minnesota than for other crimes overall. In 2002, Minnesota Sentencing Guidelines Commission Monitoring Data indicated that 45% of offenders sentenced overall represented Greater Minnesota while 55% of Felony DWI offender worksheets received by the commission came from outside the Twin Cities Metro Area.

Seventy-nine percent of Felony DWI worksheets had a presumptive "stayed" (non-executed prison) sentence recommended while 21% had a presumptive executed prison sentence. Twenty-five percent had a Criminal History Score of zero. The majority of felony DWI worksheets had a Criminal History Score greater than zero: 38% had a Criminal History Score of one; 17% had a Criminal History Score of two; 8% had a Criminal History Score of three; and 5% had a Criminal History Score of four; 3% had a Criminal History Score of five; and 5% had a Criminal History Score of six or more.

Fifty-Six percent had a Custody Status Point; meaning that the worksheet indicated that the offender committed the Felony DWI while under supervision for a previous felony or gross misdemeanor offense (not necessarily a prior DWI). Forty percent had a prior non-DWI felony offense that contributed to their Criminal History Score and 3% had a prior Felony DWI as part of their Criminal History Score.

A higher percentage of Felony DWI offenders came from Greater Minnesota than for other crimes overall.



The Commission received sentencing information for 786 of the 816 Felony DWI offenders for which we received Sentencing Worksheets. Fifteen percent were sentenced to prison for an average of 50 months. Eighty-two percent were sentenced to serve a jail sentence averaging 234 days as a condition of their probation. Three percent of felony DWI offenders did not receive a sentence that included some form of incarceration. Sixty-five percent of the offenders recommended to prison were sent to prison (35% mitigated dispositional departures rate). Forty-two percent of the offenders who went to prison went for less time than was recommended by the guidelines (mitigated durational departures). Ninety-eight percent of the offenders recommended stayed (non-prison sentences) were placed on probation (2% aggravated dispositional departures rate).

Predatory Offenders – Failure to Register

Minn. Stat. § 243.166 sets forth the offenses of conviction under which an offender is required to register as a predatory offender, which include murder, kidnapping, criminal sexual conduct, indecent exposure and use or solicitation of a minor in various sex offenses. The statute also sets forth the registration period and the penalty for failure to register.

Failure to Register was an unranked Offense (no Severity Level Assigned by the Commission) until 8/1/2003. Effective for crimes committed after that date, the Commission ranked first offenses at severity level 1 and subsequent offenses at severity level 3. For the offenses sentenced in 2002, the sentencing court assigned the severity levels.

Offenders Sentenced in
2002: 140
Offenders Sentenced in
2001: 76
Percent Increase: 84%

For crimes committed on or after 8/1/2000, there is a statutory mandatory minimum penalty of a year and a day in prison for a first offense and 24 months in prison for a subsequent offense. These mandatory minimums applied to all the offenders sentenced in 2002. The presumptive sentence for offenses with a mandatory minimum as stated in the Guidelines is:

II.E. Mandatory Sentences: When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment to the Commissioner of Corrections. The presumptive duration of the prison sentence should be the mandatory minimum sentence according to statute or the duration of the prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

MSGC monitoring data is offender based. An offender sentenced in the same county for more than one offense within a thirty-day period is counted as one case; information included in the data is for the most serious offense. Reported here are cases where Failure to Register was the most serious offense sentenced.

Number of Offenders Sentenced in 2002: 140
Number of Offenders Sentenced in 2001: 76
Percent Increase 2001-2002: 84%

Severity Levels Assigned by the Court for Offenders Sentenced in 2002

Severity Level	Number	Percent
I	47	34%
II	41	29%
III	35	25%
IV	16	11%
VI	1	1%
Total	140	100%

The data indicate an 84% increase in the number of offenders sentenced for Failure to Register between 2001 and 2002. However, there is very little difference in the percentage distribution by individual severity level between the two years with severity level II showing the greatest difference of 26% in 2001 and 29% in 2002.

The geographic distribution of offenders sentenced for Failure to Register follows very similar sentencing patterns as that for all other offenses. Greater Minnesota shows the highest percentage of cases at 41%, with Other Metro counties (Anoka, Carver, Dakota, Scott, and Washington counties) accounting for second highest percentage at 22%. The Other Metro counties and Ramsey county are the two geographic areas in which the percentage of offenders sentenced for Failure to Register is higher than the percentage of offenders sentenced for all other offenses.

Geographic Distribution of Cases Compared with All Offenses

Region	Failure to Register	All Offenses
Hennepin	21%	23%
Ramsey	16%	15%
Other Metro	22%	17%
Greater MN	41%	45%

Sentencing Patterns for Failure to Register

Of the 140 offenders sentenced for Failure to Register in 2002, 122 represented first time offenders, with 18 offenders being sentenced for a second or subsequent offense. Overall, 37% of the offenders received prison sentences, which is slightly lower than the 42% imprisonment rate in 2001. The imprisonment rate was significantly higher at 72% for offenders sentenced for a second or subsequent conviction. Local jail time was imposed in 59% of the cases for first time offenders, but only 22% of the cases for second and subsequent convictions, since a larger portion of those offenders received prison sentences. Overall local jail time was imposed in 54% of the cases in 2002, which is consistent with the jail time being imposed in 55% of the cases in 2001.

Total Incarceration

Type	# Offenders	Prison	Local Jail Time	Other Sanctions
First Time Offenders	122	39 (32%)	72 (59%)	11 (9%)
Subsequent Offender	18	13 (72%)	4 (22%)	1 (6%)
Total	140	52 (37%)	76 (54%)	12 (9%)

The overall average prison sentence pronounced was 15.5 months, which is the same length of sentence pronounced in 2001. There was only a slight difference of four months between the pronounced sentences for first time offenders and the pronounced sentences for subsequent offenders.

Average Pronounced Prison Sentences

Type	Prison	Local Jail
First Time Offenders	14.5 months	94 days
Subsequent Offender	18.5 months	120 days
Total	15.5 months	95 days

Departure Rates

Minn. Stat. § 243.166 subd. 5. (a) through (c) sets forth a mandatory period of incarceration in a state correctional facility for a conviction under Failure to Register. Subd. 5. (d) does permit sentencing without regard to the mandatory minimum and provides that such a sentence is considered a departure from the Sentencing Guidelines.

In 2002, 63% of the offenders sentenced for Failure to Register received a non-prison sentence as the result of a mitigated dispositional departure, with first time offenders receiving dispositional departures at a slightly higher rate of 68%.

Dispositional Departure Rate

Type	# Offenders	Prison	Mitigated Dispositional Departure
First Time Offenders	122	39 (32%)	83 (68%)
Subsequent Offender	18	13 (72%)	5 (28%)
Total	140	52 (37%)	88 (63%)

Of the total number of offenders who did receive the mandatory prison sentence, 44% received a mitigated durational departure in which the offender was sentenced to less time in prison than recommended by the Guidelines. Mitigated durational departures rates were the highest at 62% for second and subsequent convictions. There were no aggravated upward durational departures imposed.

Durational Departure Rate – Executed Sentences

Type	# Prison Sentences	Mitigated Durational Departure	Aggravated Durational Departure
First Time Offenders	39	15 (39%)	0
Subsequent Offender	13	8 (62%)	0
Total	52	23 (44%)	0

DISPOSITIONAL DEPARTURES

As indicated previously, in 2002 dispositional departures occurred in 63% total cases sentenced. Of the total 88 cases that received mitigated (downward) dispositional departures, 60 (68%) resulted from a plea agreement in which the prosecutor recommended or did not object to the plea, up from 62% in 2001. In all five cases in which a subsequent conviction resulted in a mitigated dispositional departure the prosecutor agreed or did not object to the plea.

Plea Information for Offenders Receiving Dispositional Departures

Position of Prosecutor as Cited by Court in Departure Report				
	Number of Mitigated Dispositions	Plea Agreement or Prosecutor Recommends or Prosecutor does not object	Prosecutor Objects	No Information given
First Time Offenders	83	55 (66%)	5 (6%)	23 (28%)
Subsequent Offender	5	5 (100%)	0	0
Total	88	60 (68%)	5 (6%)	23(26%)

Listed below is a summary of the reasons stated for the imposition of mitigated durational departures. The most frequently cited reason was the offender was amenable to probation (43%), followed by the offense was less onerous than the typical offense (31%). These were the same two most frequently cited departure reasons indicated in the 2001 data.

Other Most Frequently Cited Departure Reasons for Dispositional Departures

Departure Reason	Number of Cases	Percentage of 88 Dispositional Departures
Offense Less Onerous than Typical Offense	27	31%
Recommended by Court Services	11	13%
Prior Offense is Old or a Juvenile Offense or Less Serious Offense	7	8%
Has Had no New Offenses Since Prior	3	3%
Probation Allows Supervision for Extended Time	10	11%
Amenable to Probation	38	43%
Amenable to Treatment	8	9%
Impaired Capacity for Judgment/ Mental Illness	11	13%
Shows Remorse/Accepts Responsibility	10	11%
Factors Mitigate or Excuse Culpability Although not Amounting to a Defense	12	14%

DURATIONAL DEPARTURES

For offenders sentenced to prison for Failure to Register, 44% received mitigated durational departures. In 83% of those cases, the prosecutor either recommended or did not object to the plea agreement resulting in the reduced imposed sentence.

**Plea Information for Offenders that Received Mitigated Durational Departures
(Executed Sentences Only)**

Position of Prosecutor as Cited by Court in Departure Report				
	Number of Mitigated Durations	Plea Agreement or Prosecutor Recommends or Prosecutor does not object	Prosecutor Objects	No Information given
First Time Offenders	15	12 (80%)	0	3 (20%)
Subsequent Offender	8	7 (88%)	0	1 (12%)
Total	23	19 (83%)	0	4 (17%)

Other Most Frequently Cited Departure Reasons for Mitigated Durational Departures

Departure Reason	Number of Cases	Percentage of 88 Dispositional Departures
Offense Less Onerous than Typical Offense	2	9%
Recommended by Court Services	1	4%
Has Had no New Offenses Since Prior	1	4%
Sentence Appropriate or Just	1	4%
Shows Remorse/Accepts Responsibility	1	4%
Factors Mitigate or Excuse Culpability Although not Amounting to a Defense	1	4%

County Attorney Reports

Current law directs county attorneys to collect and maintain information on criminal complaints and prosecutions within the county attorney's office in which a defendant is alleged to have committed an offense while possessing or using a firearm. This information is then forwarded to the Sentencing Guidelines Commission no later than July 1 of each year. 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.

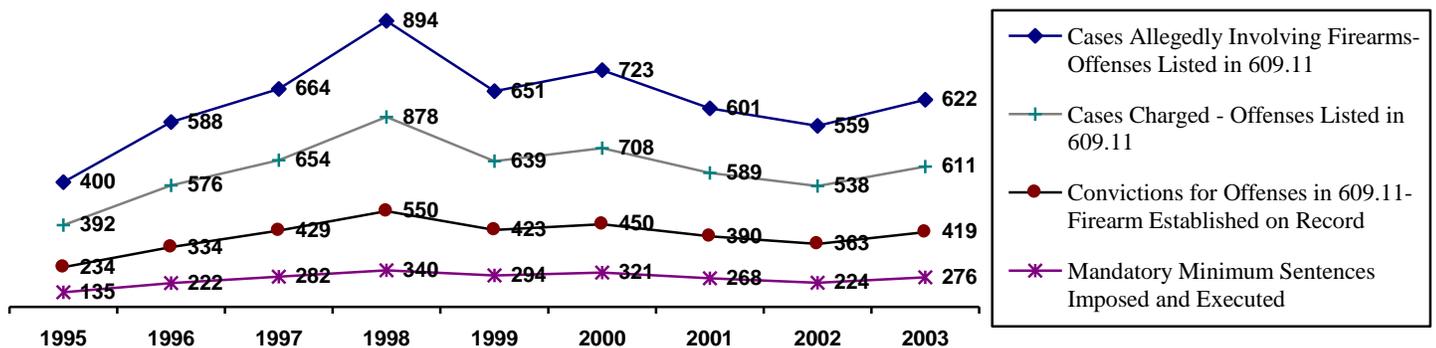
A mandatory minimum sentence was imposed and executed in 66 % of the cases where it was required.

Memoranda 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 85 of the 87 Minnesota counties. Figure 1 below displays a historical summary of cases since the mandate began. In FY 2003 there were a total of 622 cases in which a defendant allegedly committed an offense listed in subdivision 9 of 609.11 while possessing or using a firearm. Case volume was up 11 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



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

FIGURE 2.

- Prosecutors charged offenders in 98 percent of the cases allegedly involving firearms. This figure is up slightly from 96 percent reported last year.

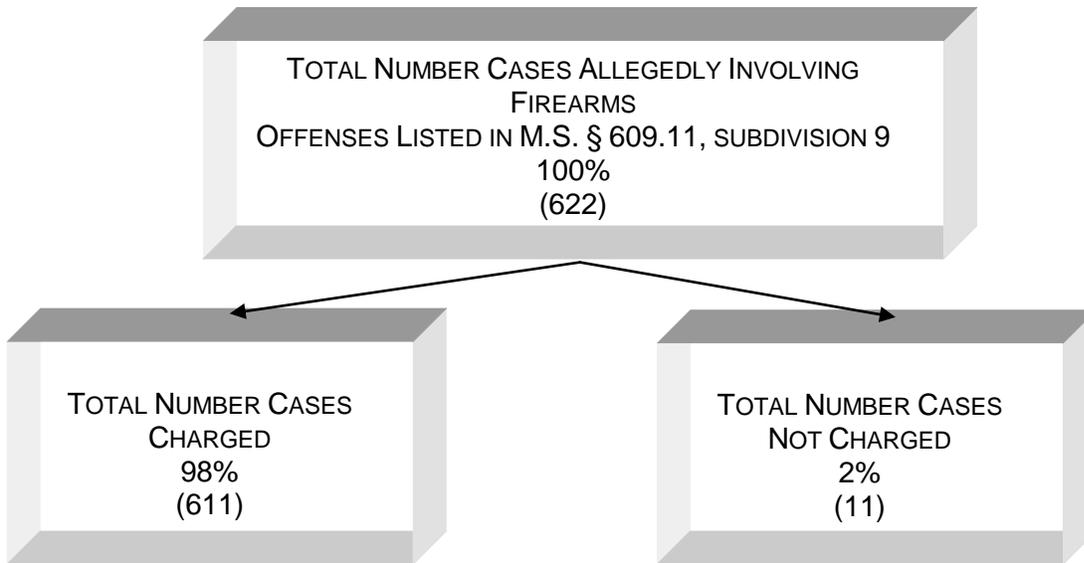
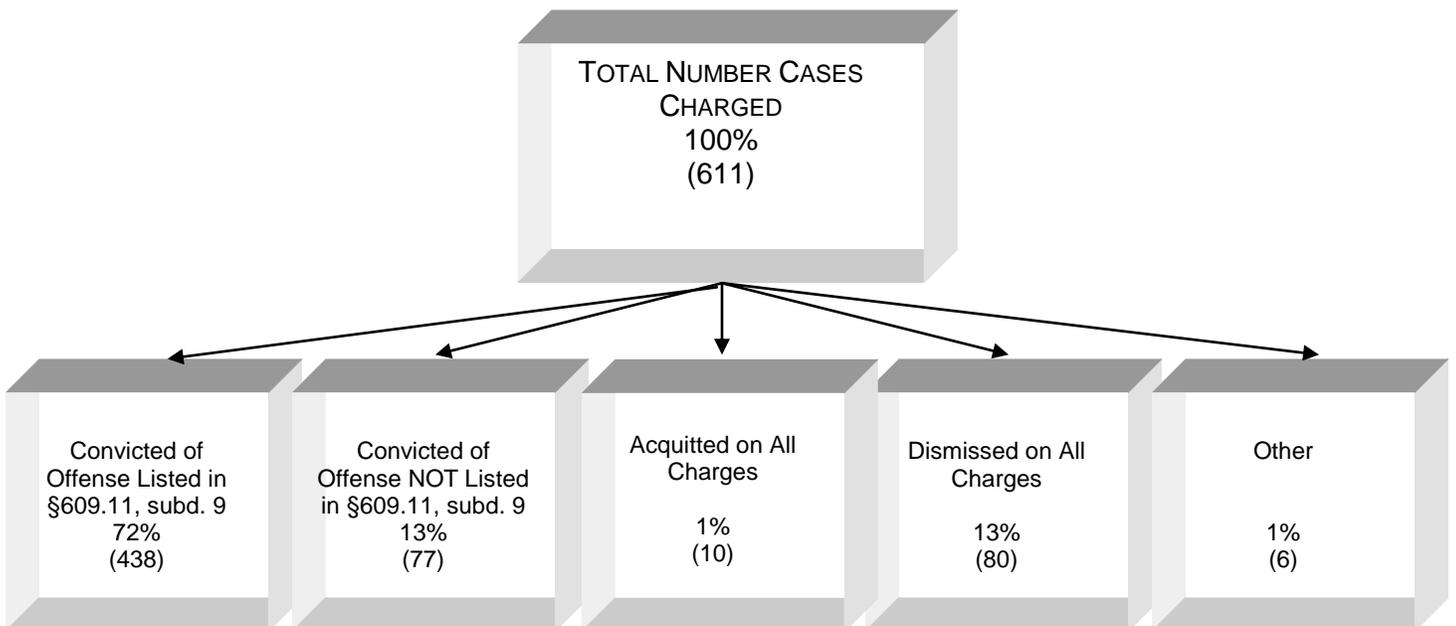


FIGURE 3. Offenses Charged – Case Outcomes

- Among those cases charged, 72 percent were convicted of an offense listed in § 609.11, subdivision 9. This figure is slightly higher than the 67 percent recorded in FY 2002.





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

FIGURE 4.

- *There were 438 convictions for offenses listed in § 609.11, subdivision 9. In 96 percent of the cases, a firearm was established on the record. This is up slightly from 95 percent as reported in FY 2002.*

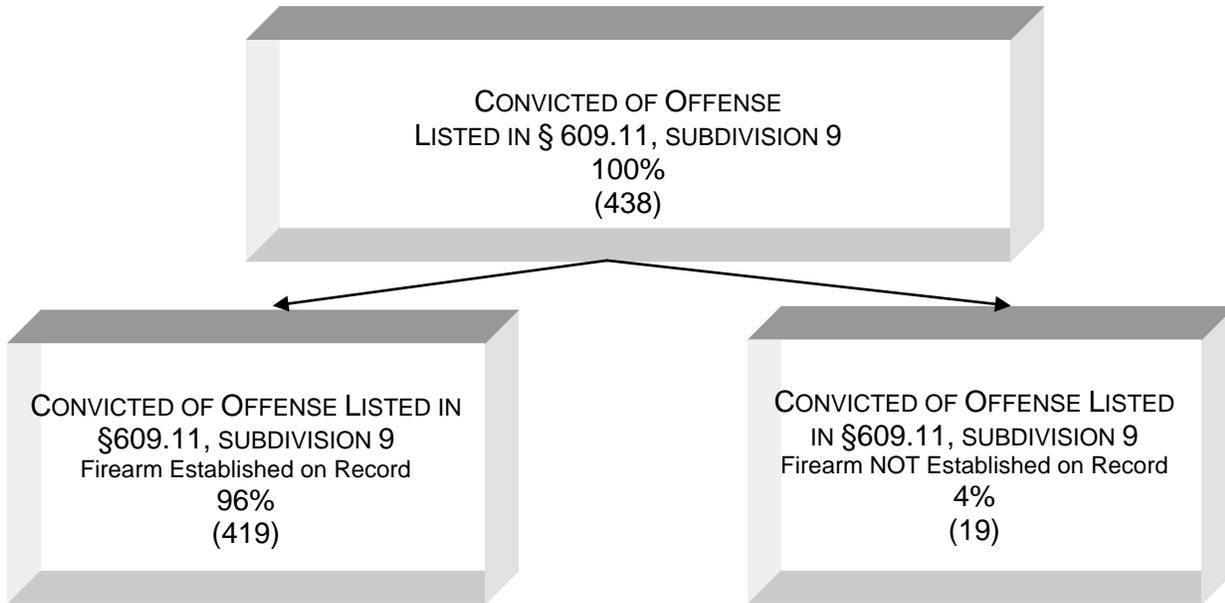
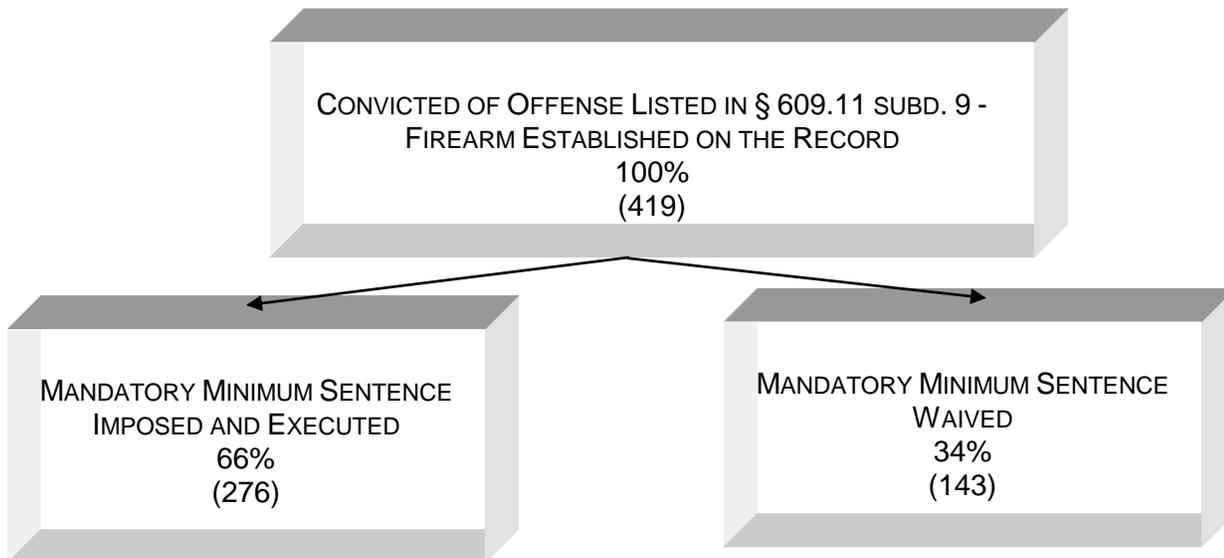


FIGURE 5. Mandatory Minimum Sentences Imposed and Executed

- *A mandatory minimum sentence was imposed and executed in 66 percent of the cases where it was required. This figure was 65 percent in FY 2002 and 69 percent in FY 2001.*





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
<i>Murder, 2nd Degree</i> (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
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Criminal Sexual Conduct, 1st Degree</i> ² <i>Assault, 1st Degree</i>	IX	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Aggravated Robbery 1st Degree</i> <i>Criminal Sexual Conduct, 2nd Degree</i> (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
<i>Felony DWI</i>	VII	36	42	48	54 51-57	60 57-63	66 63-69	72 69-75
<i>Criminal Sexual Conduct, 2nd Degree</i> (a) & (b)	VI	21	27	33	39 37-41	45 43-47	51 49-53	57 55-59
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 31-35	38 36-40	43 41-45	48 46-50
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 23-25	27 26-28	30 29-31
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 18-20	21 20-22	23 22-24
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 20-22
<i>Sale of Simulated Controlled Substance</i>	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 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](#)).

SPECIFIC GUIDELINES MODIFICATIONS
Effective August 8, 2003

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

Note: The following new crimes made effective by the Legislature August 1, 2003, are technically unranked until August 8, 2003.

VIII	Identity Theft – 609.527, subd. 3(5)
V	<u>Interference with Emergency Communications – 609.776</u>
III	<u>Attempted Manufacture of Methamphetamine – 152.021, subd. 2a(b)</u>
II	<u>Mail Theft – 609.529</u>

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
152.021, subd. 2a(b) ¹	<u>Attempted Manufacture of Methamphetamine</u>	<u>3</u>

¹ The presumptive duration for this offense is the time found in the appropriate cell on the Sentencing Grid or the mandatory minimum, whichever is longer. Durations should not be divided in half. Policies applying to Attempts under M.S. §609.17 in section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers are not applicable.

The Commission adopted proposals to add the following crimes to the *Misdemeanor and Gross Misdemeanor Offense List*

Misdemeanor and Gross Misdemeanor Offense List

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

Registration of Predatory Offenders
243.166, subd. 5

The Commission adopted a proposal to add the following language to II.D. of the *Sentencing Guidelines and Commentary* to address the legislative directive requiring a new aggravating factor for Identity Theft:

D. Departures from the Guidelines: ****

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: ****

(12) The offender's use of another's identity without authorization to commit a crime. This aggravating factor may not be used when the use of another's identity is an element of the offense. ****

The Commission adopted a proposal to add the following language to II.D. of the *Sentencing Guidelines and Commentary* to address new legislation allowing alternative placement for offenders with serious and persistent mental illness as defined in M.S. §609.1055:

D. Departures from the Guidelines: ****

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: ****

a. Mitigating Factors: ****

(6) Alternative placement for offender with serious and persistent mental illness (See Minn. Stat. §609.1055). ****

The Commission adopted a proposal to add the following language to II.B.2. of the *Sentencing Guidelines and Commentary* to clarify that a Custody Status Point should not be assigned if the current offense was committed within the original length of stay and the probationary sentence for the prior offense was revoked and the offender served an executed sentence:

c. committed the current offense within the period of the initial length of stay pronounced by the sentencing judge for a prior felony, gross misdemeanor or 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.

II.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody when the offense was committed for which they are now being sentenced. The Commission believes that the potential for a custody status point should remain for the entire period of the initial length of stay pronounced by the*

sentencing judge. An offender who is discharged early but subsequently is convicted of a new felony within the period of the initial length of stay should still receive the consequence of a custody status point. If probation is revoked and the offender serves an executed sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence.

The Commission adopted a proposal to make the following technical changes to Section V. OFFENSE SEVERITY REFERENCE TABLE and the *Theft Offense List*:

- IX ~~Prostitution (Patron)~~ Engage or Hire a Minor to Engage in Prostitution - 609.324, subd. 1(a)
- V ~~Prostitution (Patron)~~ Engage or Hire a Minor to Engage in Prostitution - 609.324, subd. 1(b)
- IV Negligent Fires - Great Bodily Harm – 609.576 subd. 1(~~a~~) (1)
- III ~~Prostitution (Patron)~~ Engage or Hire a Minor to Engage in Prostitution - 609.324, subd. 1(c)
- II Negligent Fires - Damage ~~Exceeds \$2,500 or more~~ – 609.576 subd. 1(~~b~~)(3)(iii)
- ~~Excise Tax on Alcoholic Beverages—297C.13, subd. 1~~
~~Liquor Taxation-Criminal Penalties 297G.19 subd. 3, 4(c), 5(c)~~
- I ~~Motor Vehicle Taxes—296.25, subd. 1(b)~~
Tax on Petroleum and Other Fuels-Willful Evasion 296A.23 subd. 2

Pistol w/out Permit (subsequent violations) - 624.714 subd. 1(~~a~~) a

Theft Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES (\$2,500 or less and over \$2,500) in the Offense Severity Reference Table.

~~Theft by Soldier of Military Goods~~
~~192.36~~

Predatory Offenders – Failure to Register By County

Incarceration Rates by County

County	Number of Cases	Number and % of Offenders Receiving Different Types of Incarceration		
		State Prison	Local Jail	Other Sanctions
Aitkin	1	0	1 (100%)	0
Anoka	10	2 (20%)	7 (70%)	1(10%)
Becker	2	0	2 (100%)	0
Beltrami	1	1 (100%)	0	0
Blue Earth	2	1 (50%)	1 (50%)	0
Carlton	2	1 (50%)	1 (50%)	0
Cass	2	2 (100%)	0	0
Chisago	1	0	1 (100%)	0
Cottonwood	2	0	1 (50%)	1 (50%)
Dakota	11	3 (27.3%)	8 (72.7%)	0
Dodge	1	0	0	1 (100%)
Goodhue	2	0	2 (100%)	0
Hennepin	29	7 (24.1%)	18 (62.1%)	4 (13.8%)
Itasca	1	0	1 (100%)	0
Kanabec	3	0	3 (100%)	0
Kandiyohi	1	0	1 (100%)	0
McLeod	1	0	1 (100%)	0
Marshall	3	1 (33.3%)	2 (66.7%)	0
Mower	1	1 (100%)	0	0
Nobles	1	1 (100%)	0	0
Olmsted	8	5 (62.5%)	3 (37.5%)	0
Otter Tail	1	0	1 (100%)	0
Pennington	2	2 (100%)	0	0
Polk	1	1 (100%)	0	0
Ramsey	22	13 (59.1%)	8 (36.4%)	1 (4.5%)
Rice	1	0	1 (100%)	0

County	Number of Cases	Number and % of Offenders Receiving Different Types of Incarceration		
		State Prison	Local Jail	Other Sanctions
St. Louis	6	3 (50%)	2 (33.3%)	1 (16.7%)
Scott	5	0	4 (80%)	1 (20%)
Sibley	1	1 (100%)	0	0
Stearns	4	3 (75%)	1 (25%)	0
Stevens	1	1 (100%)	0	0
Todd	1	0	0	1 (100%)
Waseca	2	0	2 (100%)	0
Washington	5	2 (40%)	3 (60%)	0
Watonwan	1	0	1 (100%)	0
Wright	1	0	0	1 (100%)
Yellow Medicine	1	1 (100%)	0	0
Total	140	52 (37.1%)	76 (54.3%)	12 (8.6%)

Plea Information for Offenders that Received Dispositional Departures by County

Position of Prosecutor as Cited in Departure Report				
County	Number of Departures	Plea Agreement or Prosecutor Recommends or Prosecutor does not object	Prosecutor Objects	No Information given
Aitkin	1	1 (100%)	0	0
Anoka	8	6 (75%)	0	2 (25%)
Becker	2	0	0	2 (100%)
Blue Earth	1	1 (100%)	0	0
Carlton	1	1 (100%)	0	0
Chisago	1	0	0	1 (100%)
Cottonwood	2	1 (50%)	0	1 (50%)
Dakota	8	6 (75%)	0	2 (25%)
Dodge	1	0	0	1 (100%)
Goodhue	2	2 (100%)	0	0
Hennepin	22	9 (40.9%)	4 (18.2%)	9 (40.9%)
Itasca	1	1 (100%)	0	0
Kanabec	3	3 (100%)	0	0
Kandiyohi	1	1 (100%)	0	0
McLeod	1	1 (100%)	0	0
Marshall	2	2 (100%)	0	0
Olmsted	3	2 (66.7%)	0	1 (33.3%)
Ottertail	1	1 (100%)	0	0
Ramsey	9	8 (88.9%)	0	1 (11.1%)
Rice	1	1 (100%)	0	0
St. Louis	3	2 (66.7%)	0	1 (33.3%)
Scott	5	2 (40%)	1 (20%)	2 (40%)
Stearns	1	1 (100%)	0	0
Todd	1	0	0	1 (100%)
Waseca	2	2 (100%)	0	0
Washington	3	3 (100%)	0	0
Watonwan	1	1 (100%)	0	0

Position of Prosecutor as Cited in Departure Report				
County	Number of Departures	Plea Agreement or Prosecutor Recommends or Prosecutor does not object	Prosecutor Objects	No Information given
Wright	1	1 (100%)	0	0
Total	88	59 (67%)	5 (5.7%)	24 (27.3%)

Note: Figures on this table represent the 88 offenders who received dispositional departures.

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, 2002 to July 1, 2003

County	Cases Allegedly Involving Firearms - Offenses Listed in § 609.11	Cases Not Charged	Cases Charged
Aitkin	3	0	3
Anoka	25	2	23
Becker	7	0	7
Beltrami	---	---	---
Benton	4	0	4
Big Stone	0	0	0
Blue Earth	1	0	1
Brown	0	0	0
Carlton	5	0	5
Carver	6	0	6
Cass	10	0	10
Chippewa	3	0	3
Chisago	11	0	11
Clay	4	0	4
Clearwater	2	0	2
Cook	0	0	0
Cottonwood	0	0	0
Crow Wing	12	0	12
Dakota	27	0	27
Dodge	0	0	0
Douglas	3	0	3
Faribault	0	0	0
Fillmore	---	---	---
Freeborn	6	0	6
Goodhue	3	0	3
Grant	1	0	1
Hennepin	142	0	142
Houston	2	0	2
Hubbard	3	0	3

County	Cases Allegedly Involving Firearms - Offenses Listed in § 609.11	Cases Not Charged	Cases Charged
Isanti	4	1	3
Itasca	7	0	7
Jackson	0	0	0
Kanabec	5	3	2
Kandiyohi	5	1	4
Kittson	0	0	0
Koochiching	0	0	0
Lac Qui Parle	1	0	1
Lake	2	0	2
Lake of the Woods	0	0	0
LeSueur	1	0	1
Lincoln	0	0	0
Lyon	6	0	6
McLeod	4	0	4
Mahnomen	5	0	5
Marshall	0	0	0
Martin	5	0	5
Meeker	2	0	2
Mille Lacs	12	0	12
Morrison	6	0	6
Mower	11	0	11
Murray	3	0	3
Nicollet	0	0	0
Nobles	3	0	3
Norman	0	0	0
Olmsted	37	0	37
Otter Tail	3	1	2
Pennington	0	0	0
Pine	4	0	4
Pipestone	2	0	2
Polk	8	0	8
Pope	1	0	1
Ramsey	102	0	102
Red Lake	0	0	0
Redwood	11	0	11

County	Cases Allegedly Involving Firearms - Offenses Listed in § 609.11	Cases Not Charged	Cases Charged
Renville	2	0	2
Rice	4	0	4
Rock	0	0	0
Roseau	2	0	2
St. Louis	30	3	27
Scott	3	0	3
Sherburne	7	0	7
Sibley	0	0	0
Stearns	14	0	14
Steele	4	0	4
Stevens	1	0	1
Swift	1	0	1
Todd	3	0	3
Traverse	1	0	1
Wabasha	3	0	3
Wadena	1	0	1
Waseca	1	0	1
Washington	4	0	4
Watsonwan	0	0	0
Wilkin	0	0	0
Winona	3	0	3
Wright	7	0	7
Yellow Medicine	1	0	1
Total	622	11	611

**County Attorney Report on Criminal Cases Involving Firearms
By County**

Offenses Charged - Case Outcome
Cases Disposed from July 1, 2002 to July 1, 2003

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	0	0	2	0	1	0
Anoka	23	17	0	4	0	2	0
Becker	7	2	0	2	0	3	0
Beltrami	0	---	---	---	---	---	---
Benton	4	2	0	2	0	0	0
Big Stone	0	0	0	0	0	0	0
Blue Earth	1	0	0	1	0	0	0
Brown	0	0	0	0	0	0	0
Carlton	5	3	0	2	0	0	0
Carver	6	4	0	1	0	1	0
Cass	10	4	0	2	0	4	0
Chippewa	3	1	0	0	0	2	0
Chisago	11	5	1	3	1	1	0
Clay	4	4	0	0	0	0	0
Clearwater	2	0	1	1	0	0	0
Cook	0	0	0	0	0	0	0
Cottonwood	0	0	0	0	0	0	0
Crow Wing	12	6	3	2	0	1	0
Dakota	27	23	1	1	0	2	0
Dodge	0	0	0	0	0	0	0
Douglas	3	3	0	0	0	0	0
Faribault	0	0	0	0	0	0	0
Fillmore	---	---	---	---	---	---	---
Freeborn	6	2	0	2	0	2	0
Goodhue	3	0	0	3	0	0	0
Grant	1	1	0	0	0	0	0
Hennepin	142	117	0	3	3	19	0
Houston	2	1	0	1	0	0	0
Hubbard	3	1	2	0	0	0	0
Isanti	3	1	0	1	0	1	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	7	6	0	1	0	0	0
Jackson	0	0	0	0	0	0	0
Kanabec	2	1	0	0	0	1	0
Kandiyohi	4	1	0	0	0	2	1
Kittson	0	0	0	0	0	0	0
Koochiching	0	0	0	0	0	0	0
Lac Qui Parle	1	1	0	0	0	0	0
Lake	2	1	0	1	0	0	0
Lake of the Woods	0	0	0	0	0	0	0
LeSueur	1	1	0	0	0	0	0
Lincoln	0	0	0	0	0	0	0
Lyon	6	4	0	0	0	1	1
McLeod	4	2	0	2	0	0	0
Mahnomen	5	3	1	0	0	1	0
Marshall	0	0	0	0	0	0	0
Martin	5	2	0	1	0	2	0
Meeker	2	2	0	0	0	0	0
Mille Lacs	12	6	1	2	0	3	0
Morrison	6	4	0	0	0	1	1
Mower	11	2	3	5	0	1	0
Murray	3	1	2	0	0	0	0
Nicollet	0	0	0	0	0	0	0
Nobles	3	2	1	0	0	0	0
Norman	0	0	0	0	0	0	0
Olmsted	37	25	0	4	0	8	0
Otter Tail	2	2	0	0	0	0	0
Pennington	0	0	0	0	0	0	0
Pine	4	3	0	1	0	0	0
Pipestone	2	0	0	2	0	0	0
Polk	8	5	1	0	0	2	0
Pope	1	0	0	0	0	1	0
Ramsey	102	86	0	4	4	8	0
Red Lake	0	0	0	0	0	0	0
Redwood	11	5	0	0	2	4	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	2	1	0	1	0	0	0
Rice	4	3	1	0	0	0	0
Rock	0	0	0	0	0	0	0
Roseau	2	0	0	1	0	1	0
St. Louis	27	20	0	4	0	3	0
Scott	3	3	0	0	0	0	0
Sherburne	7	2	0	5	0	0	0
Sibley	0	0	0	0	0	0	0
Stearns	14	7	0	4	0	1	2
Steele	4	3	0	1	0	0	0
Stevens	1	1	0	0	0	0	0
Swift	1	0	0	1	0	0	0
Todd	3	1	1	0	0	0	1
Traverse	1	1	0	0	0	0	0
Wabasha	3	3	0	0	0	0	0
Wadena	1	1	0	0	0	0	0
Waseca	1	1	0	0	0	0	0
Washington	4	3	0	0	0	1	0
Watonwan	0	0	0	0	0	0	0
Wilkin	0	0	0	0	0	0	0
Winona	3	2	0	1	0	0	0
Wright	7	4	0	3	0	0	0
Yellow Medicine	1	1	0	0	0	0	0
Total	611	419	19	77	10	80	6

County Attorney Report on Criminal Cases Involving Firearms By County

Mandatory Minimum Sentences Imposed and Executed

Cases Disposed from July 1, 2002 to July 1, 2003

County	Convicted of Offense Listed in § 609.11, subd. 9 Firearm Established on Record	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Waived
Aitkin	0	0	0
Anoka	17	6	11
Becker	2	1	1
Beltrami	---	---	---
Benton	2	2	0
Big Stone	0	0	0
Blue Earth	0	0	0
Brown	0	0	0
Carlton	3	1	2
Carver	4	0	4
Cass	4	2	2
Chippewa	1	1	0
Chisago	5	3	2
Clay	4	2	2
Clearwater	0	0	0
Cook	0	0	0
Cottonwood	0	0	0
Crow Wing	6	3	3
Dakota	23	14	9
Dodge	0	0	0
Douglas	3	3	0
Faribault	0	0	0
Fillmore	---	---	---
Freeborn	2	1	1
Goodhue	0	0	0
Grant	1	1	0
Hennepin	117	93	24
Houston	1	1	0

County	Convicted of Offense Listed in § 609.11, subd. 9 Firearm Established on Record	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Waived
Hubbard	1	1	0
Isanti	1	1	0
Itasca	6	3	3
Jackson	0	0	0
Kanabec	1	1	0
Kandiyohi	1	0	1
Kittson	0	0	0
Koochiching	0	0	0
Lac Qui Parle	1	0	1
Lake	1	1	0
Lake of the Woods	0	0	0
LeSueur	1	0	1
Lincoln	0	0	0
Lyon	4	1	3
McLeod	2	0	2
Mahnomen	3	3	0
Marshall	0	0	0
Martin	2	1	1
Meeker	2	1	1
Mille Lacs	6	4	2
Morrison	4	2	2
Mower	2	2	0
Murray	1	1	0
Nicollet	0	0	0
Nobles	2	1	1
Norman	0	0	0
Olmsted	25	17	8
Otter Tail	2	1	1
Pennington	0	0	0
Pine	3	3	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	5	4	1
Pope	0	0	0
Ramsey	86	52	34
Red Lake	0	0	0
Redwood	5	2	3
Renville	1	0	1
Rice	3	1	2
Rock	0	0	0
Roseau	0	0	0
St. Louis	20	17	3
Scott	3	0	3
Sherburne	2	1	1
Sibley	0	0	0
Stearns	7	6	1
Steele	3	3	0
Stevens	1	1	0
Swift	0	0	0
Todd	1	1	0
Traverse	1	0	1
Wabasha	3	3	0
Wadena	1	1	0
Waseca	1	0	1
Washington	3	1	2
Watonwan	0	0	0
Wilkin	0	0	0
Winona	2	2	0
Wright	4	3	1
Yellow Medicine	1	0	1
Total	419	276	143

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
of cases =

CASES <u>NOT</u> CHARGED WHERE REPORTING IS REQUIRED
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 <u>NOT</u> 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
of cases =

MANDATORY MINIMUM SENTENCE WAIVED
of cases =

