

Minnesota Sentencing Guidelines Commission



Minnesota Sentencing Guidelines Commission
REPORT TO THE LEGISLATURE
on Three Special Issues
February, 1989

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EXECUTIVE SUMMARY

The 1988 Legislature passed a bill directing the Sentencing Guidelines Commission to study three issues and report back to the 1989 Legislature in February. The three issues were:

- 1) should criteria and procedures be developed to limit the length of aggravated durational departures from presumptive sentences;
- 2) whether improved criteria and procedures can be developed to minimize or eliminate the use of social and economic factors as the basis for dispositional departures from presumptive sentences; and
- 3) whether and to what extent guidelines should be developed to govern the type and severity of nonimprisonment sanctions imposed by sentencing judges as conditions of stayed sentences.

This report presents a study of these issues along with the conclusions and recommendations of the Commission. The recommendations of the Commission are directed toward the improvement of the operation of the sentencing guidelines system with respect to these issues and better achievement of the sentencing goals of uniformity, neutrality, and proportionality.

The guidelines allow for the sentencing judge to depart from the presumptive sentence with respect to the disposition or the duration when an individual case involves substantial and compelling circumstances. While the guidelines do provide the judge with a nonexclusive list of possible reasons for departure, the guidelines offer no specific guidance with respect to the extent of a durational departure. The Supreme Court has been active in the development of case law regarding the extent of durational departures and has ruled that, generally, a durational departure would be limited to double the presumptive sentence; State v. Evans (Minn. Supreme Court, 1981). More recently, in State v. Mortland (Minn. Supreme Court, 1986), the Supreme Court ruled that durational departures were only limited by the statutory maximum once the case was determined to have severe aggravating circumstances. The Supreme Court did not define what constitutes "severe" aggravating circumstances and the question is raised whether this lack of policy results in disproportionate sentences.

An analysis of the data on durational departures indicated a significant increase in the frequency of durational departures that exceed double the presumptive sentence corresponding to the timing of the Mortland ruling in 1986. Yet, in 1987, the percentage of these cases decreased and indicated a possible leveling off of these extensive departures. The Commission decided not to adopt any modifications, at this time, that would address the issue of extensive aggravated durational departures. Given that guidelines have been in place for over eight years, it is likely that judges recognize proportionality concerns when departing durationally to a greater extent than they did during the first years under guidelines and it is perhaps not as necessary to have explicit policy direction. However, the Commission recognizes that the potential for serious proportionality and uniformity problems still remains and believes that these data should be closely monitored and study of this issue should be ongoing.

The Supreme and Appellate Courts, over time, have expanded their rulings to where the use of the factor "amenable to probation" is now an acceptable reason for a dispositional departure, even if no other factors or supporting reasons are stated. It is possible that social and economic factors could be the underlying reason for concluding that an offender is amenable to probation. In fact, the Supreme court has acknowledged the use of social and economic factors in determining whether an offender is amenable to probation.

The 1984 indepth data do indicate that social factors may be entering into the dispositional decisions but the influence of these factors does not appear to be consistent. The rate of

mitigated dispositional departures climbed from 1981 through 1985. The rate dropped somewhat in 1986 and remained stable in 1987 but the use of reasons related to the amenability to probation remained high. The Commission is concerned that the neutrality of the guidelines may be threatened even though the data do not clearly represent a problem. Therefore, the Commission decided to take some minimum action to address this issue.

The Commission decided to allow for the use of amenability to probation as a reason for departure but require that the sentencing judge demonstrate that the departure is not based on any of the excluded factors; i.e., social and economic factors. The Commission believed it was important to have the same requirement for the use of the reason "unamenable to probation" as social and economic factors could be the basis for such a determination. As with the issue of aggravated durational departures, the Commission will continue to closely monitor and study these cases.

The Commission studied the issue of nonimprisonment guidelines through an examination of the monitoring data, subcommittee work which included the exploration of various ways to develop nonimprisonment guidelines, review of other jurisdictional efforts designed to structure nonimprisonment sanctions, and two public hearings.

The Commission has concluded that no modifications to the sentencing guidelines or Minnesota Statutes will, at this time, improve the operation of the sentencing guidelines system with respect to this issue. The Commission arrived at this conclusion for the following reasons:

- 1) As evidenced by public response, there exists a widespread lack of support for nonimprisonment guidelines on a statewide basis among criminal justice professionals. This lack of support raises question as to whether successful implementation of nonimprisonment guidelines can occur at this time.
- 2) The Commission recognized that the monitoring data indicate that there are problems with inconsistency in the use of nonimprisonment sanctions. There is only limited data available, however, on the specific type and length of treatment imposed, the use of community work service, and actual jail time served. The absence of current, in-depth data on these types of sanctions is problematic in terms of assessing both the level of inconsistency in sentencing practices and the impact of nonimprisonment guidelines on local resources.
- 3) The Commission explored the development of nonimprisonment guidelines that were based on retribution and were consistent with the prison guidelines, along with a structure that would provide flexibility for judges to choose among a set of possible types of sanctions. However, the Commission was unable to fully develop a feasible and complete set of guidelines in the time frame presented by the legislature. Even if the Commission were to recommend the implementation of nonimprisonment guidelines, a great deal of work would need to be completed. This process was particularly difficult given the lack of consensus on the Commission regarding the merits of and the fundamental concept of nonimprisonment guidelines.
- 4) The Commission was concerned with the complexity a nonimprisonment guidelines system would introduce in the criminal justice system. While a nonimprisonment guidelines system that allows for exchanges of various types of sanctions to be made would provide more flexibility and be less of a burden on local resources, this type of system would also be more complex. The Commission was particularly concerned with this issue in light of recently adopted changes the Commission passed with respect to the weighting of criminal history score.

While the Commission has concluded that nonimprisonment guidelines should not be developed at this time, the Commission remains concerned about the inconsistency in nonimprisonment sanctions that is suggested by the available data and recognizes that there may be merits to structured sentencing in the area of nonimprisonment sanctions. Therefore, there are several specific actions the Commission would like to pursue to assure continued attention is given to this issue.

- 1) There currently exists a number of local and regional corrections agencies that are working to develop guidelines or have developed guidelines for their recommendations to judges for sanctions on a case by case basis. The Department of Corrections has such a policy (pilot project) as well as the Dodge/Fillmore/Olmsted county area. The Commission will continue to consider such efforts and review their progress.
- 2) The Commission encourages individual jurisdictions to develop local guidelines and to share such policy developments with the Commission. The Commission will assist as much as possible to provide necessary information to these jurisdictions for purposes of development, implementation, evaluation, and assessment of the resource impact of any nonimprisonment guidelines.
- 3) The Commission will study and determine what action is necessary to improve the Commission's monitoring system to include more complete information on nonimprisonment sanctions imposed by the judge and those nonimprisonment sanctions actually carried out. When possible, the Commission will take the action necessary to make such improvements.

I. Legislative Directive

The 1988 Legislature passed a bill directing the Sentencing Guidelines Commission to study three issues and report back to the 1989 Legislature in February. The language of the bill is as follows:

Subd. 1. [REPORT REQUIRED.] The sentencing guidelines commission shall study the sentencing issues outlined in subdivision 2 and submit a written report to the judiciary committees of the house or representatives and the senate on or before February 1, 1989. The report shall contain proposed modifications to the sentencing guidelines, the sentencing grid, or Minnesota statutes which will, in the commission's judgment, improve the operation of the sentencing guidelines system with respect to these issues and better achieve the sentencing goals of uniformity, neutrality, and proportionality.

Subd. 2. [ISSUES TO BE STUDIED.] The commission shall study the following sentencing issues:

(1) should criteria and procedures be developed to limit the length of aggravated durational departures from presumptive sentences;

(2) whether improved criteria and procedures can be developed to minimize or eliminate the use of social and economic factors as the basis for dispositional departures from presumptive sentences; and

(3) whether and to what extent guidelines should be developed to govern the type and severity of nonimprisonment sanctions imposed by sentencing judges as conditions of stayed sentences.

This bill resulted from an initiative in the House of Representatives where a Sentencing Guidelines Subcommittee of the Judiciary Committee was established to hear bills that affected sentencing guidelines and to become educated on the details of sentencing guidelines and sentencing practices. This subcommittee held special hearings on sentencing guidelines around the state during the summer and fall of 1987. Legislative and Commission staff presented information on sentencing guidelines at several of the legislative and public hearings. Also, the report by Terance D. Miethe and Charles A. Moore on the Evaluation of Minnesota's Felony Sentencing Guidelines was presented to the subcommittee. As a result of this initiative, particular concern arose regarding the three issues referenced in the bill.

II. Study of Issues

A. Aggravated Durational Departures

The guidelines allow for the sentencing judge to depart from the presumptive sentence with respect to the disposition or the duration when an individual case involves substantial and compelling circumstances. The guidelines provide a nonexclusive list of both mitigating and aggravating factors that a judge may use when departing from the presumptive sentence. The guidelines do not, however, provide any guidance with respect to the extent of a durational departure. The Supreme Court has been active in the development of case law regarding the extent of a durational departure. The first case to establish policy in this area was State v. Evans (Minn. Supreme Court, 1981), where the court generally limited durational departures to double the presumptive sentence.

Recently, the legislature has become concerned with the frequency and extent of aggravated durational departures from the guidelines. This concern stems from the 1986 Supreme court case, State v. Mortland (Minn. Supreme Court, 1986), where the court ruled that durational departures are only limited by the statutory maximum once the case is determined to have severe aggravating circumstances. What constitutes "severe" aggravating circumstances, however, has not been defined by the Supreme Court. The Supreme Court chose not to develop further policy regarding the extent of durational departures and the legislature has questioned whether this lack of policy results in disproportionate sentences.

1. Case law summary

In State v. Tommy J. Evans (Minn. Supreme Court, 1981), the offender was convicted of two counts of Aggravated Robbery. With a criminal history score of zero, the presumptive sentence was 24 months for each count. The trial court judge departed durationally from the sentencing guidelines and pronounced a sentence of 180 months on each conviction, to run consecutively. The sentence totaled 360 months which is 7.5 times the presumptive sentence. The statutory maximum sentence is 240 months for each offense. The reasons the trial court gave for departure were 1) vulnerability of victim; and 2) gratuitous cruelty.

The following is a brief description of the offense: The offender and accomplice forced their way into the home of an elderly couple. Offender punched the man in the chest to gain entry. Accomplice held a wallpaper-trimming knife against the man's throat and threatened to kill the couple if they did not get what they wanted. On the next evening, the offender and three accomplices robbed another elderly couple who were parking their car in their garage. The man was hit, jabbed with a shovel handle, kicked in the head, and threatened by the offender with a knife. Offenders took a wallet and a watch from the man and a ring and a watch from the woman. The man sustained 3 cracked ribs, a black eye, and contusions on the face. The woman sustained bruises on the wrist, arm, and legs.

The Supreme Court ruled that the departure was justified but was excessive. The court stated that, generally, the upper limit would be double the presumptive sentence length. "This is only an upper limit and we do not intend to suggest that trial courts should automatically double the presumptive length in all cases in which upward departure is justified nor do we suggest that we will automatically approve all departures of this magnitude. On the other hand, we cannot state that this is an absolute upper limit on the scope of departure because there may be rare cases in which the facts are so unusually compelling that an even greater degree of departure will be justified." The Supreme Court modified the sentence to a total of 96 months or two 48 month consecutive sentences.

Including the Evans case, there have been 18 cases where the Supreme or Appellate Courts reduced a trial court sentence to double the presumptive sentence. The original sentences ranged from 2.2 to 10 times the presumptive sentence. The last case reduced by the appellate courts was decided in July, 1985. Conversely, there have been 23 cases since the guidelines went into effect where the Supreme or Appellate Courts have upheld a trial court sentence that was more than double the presumptive sentence. More than half of these cases (11) were appealed in 1987. A listing of all 41 appeals relating to the issue of more than double the presumptive sentence is contained in Appendix A.

There were two pivotal cases in 1986 that have had a direct effect on the policy that was developed by the Evans ruling. In State v. Victor Daniel Mesich (Minn. Court of Appeals, 1986), the offender was given a sentence that was 5.6 times the presumptive sentence and was equal to the statutory maximum sentence of 240 months (20 years). The offender had been convicted of one count of Criminal Sexual Conduct 1st Degree and with a criminal history score of zero, the presumptive sentence was 43 months in prison. The reasons the trial court departed from the guidelines are as follows: 1) victim treated with outrageously gross and vile physical and verbal cruelty; 2) victim forced to engage in six different acts of sexual abuse, including various types of penetration; 3) victim significantly traumatized psychologically; and 4) course of conduct intended to humiliate, degrade, and physically harm the victim.

The following is a brief description of the offense: The offender abducted an 18 year old college freshman in a church parking lot, forced her into a car, threatened to cut her breasts off, punched and stabbed her in the stomach with a knife, forced her to submit to oral and vaginal penetration, and spoke to her with verbal cruelty.

The Appellate Court upheld the sentence but 5 judges dissented and one judge concurred specially. The dissents focused on the need for some limit other than the statutory maximum and the consideration of criminal history. The judges who dissented agreed that a durational departure beyond double was justified but believed that the statutory maximum was excessive in this case, primarily because the offender had no criminal history score. The Supreme Court denied the petition for further review.

In a subsequent case, State v. Craig Scott Mortland (Minn. Court of Appeals, 1986), the Supreme Court did rule on a petition for further review. This case involved an offender who was convicted and sentenced on one count of Criminal Sexual Conduct 1st Degree, two counts of Kidnapping, and one count of Assault 2nd Degree. There were two victims and the trial court pronounced consecutive sentences totaling 300 months. The sentence was 3.0 times the presumptive sentence. The reasons for departure for convictions involving the girl victim were: 1) particular vulnerability of 6 year old; 2) more than one form of sexual penetration; 3) particular cruelty, physical injuries, broken tooth; 4) use of threats of death to coerce; 5) invasion of victim's zone of privacy; and 6) psychological damage to victim. The reasons for departure for convictions involving the boy victim were: 1) vulnerability due to age, 7 years; 2) particular cruelty, brandishing knife and threats to kill victim; 3) trauma of being forced to observe sexual assault on friend; 4) invasion of victim's zone of privacy; and 5) psychological damage to victim.

Briefly, the offense involved: the offender persuaded a 6 year old girl and a 7 year old boy into a wooded area in a park by their residence. The boy was threatened to be killed if he didn't remain quiet. The offender committed oral, vaginal, and anal penetration on the girl, breaking the victim's tooth during oral penetration. The offender held a knife throughout the assault. He warned the victims he would come back and kill them if they told anyone.

The Appellate Court upheld the triple departure on the sentence for the conviction involving the girl victim but reduced the departure on the sentence for the conviction involving the boy victim to double the presumptive. The Appellate Court stated that the reason for the reduction of the sentence involving the boy victim was primarily because he was not physically injured and that the use of the knife was an element of the crime. The Court went on to state that this was not the rare case that compels a greater than double the presumptive sentence (with respect to the boy victim). Also, the Appellate

Court did not uphold the consecutive departure on the kidnapping convictions, stating that "the facts here do not justify the use of the same aggravating circumstances to impose consecutive sentencing for the kidnapping convictions." The trial court sentence was reduced to 195 months for Criminal Sexual Conduct 1st Degree + 42 months for Assault 2nd Degree for a total of 237 months.

The Supreme Court on a petition for further review, reinstated the 300 month sentence. The Supreme Court stated that the same basic factors were present with respect to the assault of the boy except that the boy was not sexually penetrated and did not sustain any physical injury. In every other way, the boy victim suffered as much as the girl victim and suffered severe psychological damage. The Supreme Court went on to state that when there are severe aggravating factors to justify more than double the presumptive sentence, no further limit exists except those set by statute. The trial court could have imposed a statutory maximum sentence of 240 months on the sex offense and 60 months on the Assault 2nd Degree and arrived at 300 months. Therefore, the Supreme Court did not see a need to address the issue of whether the trial court was free to depart from the presumption of concurrence with respect to the kidnapping convictions.

There is a serious potential danger with respect to this shift in case law and its effect on the goals of the sentencing guidelines. The case law seems to suggest that the Evans rule of double the presumptive is no longer controlling. Although, the Supreme Court did qualify that "severe" aggravating circumstances were necessary for departures beyond double the presumptive sentence, the Supreme Court has not defined what "severe" aggravating circumstances include. Since the Mortland ruling, the Supreme Court has not ruled any case as not having the "severe" aggravating circumstances necessary for upholding the departure to more than double the presumptive sentence. If it is possible that any aggravating factor would qualify for an unlimited durational departure, what does this do to proportionality and uniformity in sentencing?

The result of this shift in case law could be that similarly situated offenders could receive extremely different sentence durations, depending on factors that are unrelated to the relevant circumstances of the case, such as the prosecutor, the sentencing judge, or the intensity of media attention. Another result could be that offenders convicted of such crimes as Aggravated Robbery and Criminal Sexual Conduct will begin to receive, through departure, sentences that far exceed the presumptive sentences for Murder or other offenses ranked as more serious on the severity scale. This would seriously erode the scale of proportionality that the sentencing guidelines grid promotes.

These concerns do not suggest that an extensive aggravated durational departure, even up to the statutory maximum, is never the appropriate sentence. There are those egregious cases that must be dealt with severely. It is presumed that these egregious cases would happen relatively infrequently and it is useful to examine the sentencing practices, over time, to see how often judges depart extensively from the presumptive sentence and what effect the Mortland ruling appears to have.

2. Data summary

The first table below simply shows the total number of offenders who were given prison sentences each year, from 1981 through 1987.

Total Number of Offenders with Executed Prison Sentences 1981 - 1987

<u>1987</u>	<u>1986</u>	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>
1443	1198	1186	1134	1142	1127	827

It is interesting to first note the percentage and number of offenders with prison sentences who received durations that were less than what the guidelines recommended. In each year, the rate of mitigated (downward) durational departures exceeded, and in some years was more than double, the rate of aggravated durational departures.

Percentage and Number of Offenders with a Mitigated Durational Departure (Offenders with Executed Prison Sentences Only)

<u>1987</u>	<u>1986</u>	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>
13.7 (198)	14.0 (168)	14.2 (168)	13.0 (147)	16.9 (193)	13.8 (155)	15.7 (130)

The rate of aggravated durational departures has fluctuated over time and was up somewhat in 1987 (7.1%) as compared with the rate in 1986 (5.2%).

Percentage and Number of Offenders with an Aggravated Durational Departure (Offenders with Executed Prison Sentences Only)

<u>1987</u>	<u>1986</u>	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>
7.1 (102)	5.2 (62)	5.2 (62)	8.7 (99)	6.0 (68)	6.6 (74)	7.9 (65)

The next series of tables displays the aggravated durational departures in three groups: 1) those where the durational departure was less than double the presumptive sentence; 2) those where the durational departure was double the presumptive sentence; and 3) those where the durational departure was more than double the presumptive sentence. These data represent the original sentence pronounced by the trial court.

Percent and Number of Offenders with an Aggravated Durational Departure
Less than Double the Presumptive
(Offenders with Executed Prison Sentences Only)

<u>1987</u>	<u>1986</u>	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>
71.6 (73)	61.3 (38)	80.6 (50)	74.7 (74)	77.9 (53)	60.8 (45)	63.1 (41)

Percent and Number of Offenders with an Aggravated Durational Departure
Double the Presumptive
(Offenders with Executed Prison Sentences Only)

<u>1987</u>	<u>1986</u>	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>
14.7 (15)	17.7 (11)	16.1 (10)	20.2 (20)	16.2 (11)	13.5 (10)	7.7 (5)

Percent and Number of Offenders with an Aggravated Durational Departure
More than Double the Presumptive
(Offenders with Executed Prison Sentences Only)

<u>1987</u>	<u>1986</u>	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>
13.7 (14)	21.0 (13)	3.2 (2)	5.1 (5)	5.9 (4)	25.7 (19)	29.2 (19)

It is clear that the majority of aggravated durational departures were less than double the presumptive sentence. Yet, in 1981 and 1982 there was a fairly high percentage of durational departures that were more than double the presumptive. This is primarily a result of judges not being fully aware of the reality of real time sentencing. Judges, prior to guidelines, had pronounced indeterminate sentences, such as zero to twenty years, and the parole board decided when to release an offender. Some judges were not aware of the actual time offenders had served under indeterminate sentencing and thus did not realize the excessiveness of departures that were close or equal to the statutory maximum. The Evans ruling helped judges to focus on the proportionality of the departure.

In 1983 through 1985, the frequency of durational departures that were more than double the presumptive sentence was minimal. But in 1986, the percentage of durational departures that were more than double the presumptive climbed to 21.0%, almost as high as it was in the first two years of sentencing under guidelines. This increase corresponds to the timing of the Mortland ruling and raises the question as to whether these types of departures are eroding the goals of the guidelines.

In 1987, although the raw number of extensive aggravated durational departures remained the same, as a percentage, the frequency decreased to 13.7%. These figures are encouraging but leave a great deal of uncertainty.

3. Conclusions and Recommendations regarding aggravated durational departures

The Commission has not adopted any modifications, at this time, that would address the issue of extensive aggravated durational departures. While the 1986 figures indicate a sharp increase in the number and percentage of cases where the trial court more than doubled the presumptive sentence, the 1987 figures indicate a reduction and a possible leveling off of these types of departures. Given that guidelines have been in place for eight years, it is likely that judges recognize proportionality concerns when departing durationally much more now than they did during the first years under guidelines and it is perhaps not as necessary to have explicit policy direction. However, the Commission recognizes that the potential for serious proportionality and uniformity problems still remains and believes that these data should be closely monitored and study of this issue should be ongoing.

The Commission had originally considered changes to certain aggravated departure factors that would limit the length of the durational departure to double the presumptive sentence if any one of these departure factors were the only reason for departure. Commentary language had also been considered that would reiterate the policy established by case law and emphasize the goal of proportionality in sentencing. (Modifications that were under consideration are included in Appendix A.) There was some opposition voiced at the public hearing to any limit placed on durational departures. The Commission voted to not adopt this language. Upon their study of the data on durational departures and their review of the case law, the Commission believes that changes to the guidelines are not necessary at this time.

In addition, if the Commission's adopted modifications, regarding the increases in durations at severity levels VII and VIII, become effective August 1, 1989, it is possible that the aggravated durational departure rate could decrease. If durational departures have taken place because judges and prosecutors have believed the current presumptive durations to be disproportionate to the seriousness of the conviction, departure rates should decline when the new presumably more proportional durations become effective.

B. Social and Economic Factors as Basis for Dispositional Departures

One of the primary goals of the sentencing guidelines is to promote neutrality in sentencing with respect to offenders' race, gender, and income levels. The Commission has listed several factors that should not be used as reasons to depart from the sentencing guidelines because these factors are highly correlated with race, gender, or income levels. The following factors are listed in the guidelines as factors not to be used as reasons for departing from the presumptive sentence:

- a. Race
- b. Gender
- c. Employment factors, including:
 - (1) occupation or impact of sentence on profession or occupation;
 - (2) employment history;
 - (3) employment at time of offense;
 - (4) employment at time of sentencing.
- d. Social factors, including:
 - (1) educational attainment;
 - (2) living arrangements at time of offense or sentencing;
 - (3) length of residence;
 - (4) marital status.
- e. The exercise of constitutional rights by the defendant during the adjudication process.

The Commission monitors all criminal cases resulting in a felony conviction and collects information on the reasons judges use to depart from the sentencing guidelines. Although, on rare occasions, judges have explicitly cited one or more of the above factors as the reason for the departure, this does not indicate a significant problem with neutrality in sentencing. However, judges do cite on a frequent basis the factor of "amenable to probation or treatment" as the reason for a dispositional departure. It is possible that social and economic factors could be the underlying reason for concluding that an offender is amenable to probation. In fact, the Supreme Court has acknowledged the use of social and economic factors in determining whether an offender is amenable to probation and has upheld the use of the factor "amenable to probation or treatment" as appropriate for a dispositional departure.

Commission data on mitigated dispositional departures (where the guidelines recommended prison and the judge pronounced a nonprison sentence) indicate that the rate increased each year from 3.1% (169 cases) in 1981 to 7.4% (464 cases) in 1985. The rate dropped in 1986 to 6.3% (381 cases) and remained at that level in 1987, 6.3% (420 cases). Through 1984, a significant proportion of these mitigated dispositional departures, around 40%, were justified by reasons related to the amenability of the offender to probation or treatment. In 1985, the proportion increased to 58% and remained high at 55% in 1986 and 58% in 1987.

In light of case law developments and the increased rate of mitigated dispositional departures for reasons related to amenability to probation and treatment, the Legislature has directed the Commission to study this issue further and to determine what, if any, changes should be made to the guidelines. A summary of the case law is presented first, followed by a summary of the data, and Commission action on this issue.

1. Case law summary

State vs. Michael James Park (Minn. Supreme Court, 1981)

Convicted of Unauthorized Use of a Motor Vehicle; Severity = I; Criminal History Score = 5;

Presumptive sentence = 21 months stayed;

Pronounced sentence = 21 months executed, consecutive to a prior sentence;

Reasons for departure = 1) Defendant's unamenability to probation evidenced by:

- strong recommendation of the probation officer;
- defendant's serious chemical dependency problem;
- defendant refused to accept that he had a problem or needed treatment;
- defendant completely failed to cooperate on his earlier adult probation;
- defendant was already serving a prison term for another offense.

(justified dispositional departure)

2) "I find no good reason to make it concurrent, Counsel."
(justified consecutive departure)

Supreme Court ruling = The mere fact that the probation officer states the offender is unamenable to probation is not sufficient to justify departure. In this case there was more evidence than just a statement by the probation officer that justifies the dispositional departure. The Supreme Court reversed the decision to make the sentence consecutive because there was not proper justification.

This case deals with the issue of unamenability to probation and is important in setting the stage for future appeals dealing with amenability to probation.

State vs. Michael James Wright (Minn. Supreme Court, 1981)

Convicted of Arson 1st Degree; Severity = VII; Criminal History Score = 0;

Presumptive sentence = 24 months;

Pronounced sentence = 24 months, stay of execution with 20 years probation, one year in jail with release to a suitable treatment program after 6 months;

Reasons for departure = 1) "The defendant is a unique individual in that he seems to require some type of psychiatric or mental treatment rather than incarceration. His condition is such that he does not seem to fit into a traditional correctional mold and there is no psychiatric institution which would be available for someone with his type of problem;

2) The recommendations of the psychiatrist, the probation officer, and all concerned were to the effect that this defendant would be abused seriously if he were in some type of correctional institution;

3) He does not seem to be a menace as long as he will receive the type of outpatient treatment which will be structured for him. The best interests of this defendant and of society are served by the departure as outlined in the sentencing transcript."

Supreme Court ruling = Determined that amenability to probation was the other side of unamenability to probation - "defendant is particularly unamenable to incarceration and particularly amenable to individualized treatment in a probationary setting." The court, therefore, ruled that amenability to probation was a reason that justified a dispositional departure. In this case there was evidence that the offender might be seriously abused in a correctional setting. The Supreme Court expressed concern, however, over the danger that this type of justification could be loosely applied.

The emphasis in this case appears to be on the likelihood that this offender would be victimized if sent to prison. Social and economic factors are not specifically at issue in this case.

State vs. Richard Paul Trog (Minn. Supreme Court, 1982)

Convicted of Burglary with Assault; Severity = VII; Criminal History Score = 0;
Presumptive sentence = 24 months;

Pronounced sentence = 24 months, execution stayed with probation for 5 years, 6 months in jail under the Huber Law, probation officer given authority to submit offender to treatment if needed;

Reasons for departure =

- 1) Offenders youth;
- 2) Offender had never been involved in crime before;
- 3) Believed offender could be rehabilitated without prison confinement.

Supreme Court ruling = Stated: "Numerous factors, including the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting. All these factors were present in this case and justify the dispositional departure."

This case upheld the use of social factors in determining whether an offender was particularly amenable to probation but did not cite any of the social factors that are specifically excluded by the sentencing guidelines. The Supreme Court elaborated on the trial court's reasons for departure to demonstrate how social factors might be important in the dispositional decision.

State vs. Wayne Donald King (Minn. Supreme Court, 1983)

Convicted of Attempted Aggravated Robbery; Severity = 7; Criminal History Score = 0;
Presumptive sentence = 12.1 months;

Pronounced sentence = 12.1 months, execution stayed with probation for 10 years, one year in jail, restitution, participate in treatment;

Reasons for departure (somewhat unclear) =

- 1) Offense was not as serious as typical attempted aggravated robbery;

- 2) Implication that offender was particularly amenable to treatment in a probationary setting.

Supreme Court ruling = Although the trial court had apparently not used the language of previous case law involving the reason of amenability to probation, the Supreme Court assumed that the trial court was relying on the approach used in those cases. The Supreme Court noted that the stayed sentence was actually more onerous yet the offender accepted the probationary sentence. The Supreme Court explained that this offender's desire to continue work was the motivation for accepting the harsher sanction. Thus, the court concluded that "While it is true that social and financial factors may not be directly considered as reasons for departure, occasionally they bear indirectly on a determination such as whether a defendant is particularly suitable to treatment in a probationary setting.

The Supreme Court again elaborated on the trial court's departure reasons and expressly stated that employment and financial factors could be considered when determining whether to depart downward dispositionally.

State vs. David William Case (Minn. Court of Appeals, 1984)

Convicted of Criminal Sexual Conduct 1st Degree; Severity = 8; Criminal History Score = 0;

Presumptive sentence = 43 months;

Pronounced sentence = 43 months, execution stayed with 5 years probation, one year jail with a furlough to treatment when appropriate;

Reasons for departure = 1) Defendant would appear to be not only particularly amenable to treatment but unless this occurs within a relatively brief time would appear to be a far greater risk upon ultimate release.

Appellate Court ruling = The court stated: "This court may have acted otherwise had it been sitting as a sentencing court. As a reviewing court, however, we are loath to interfere in the absence of an abuse of the discretion granted in departing dispositionally from the guidelines. The only expert testimony on Case's amenability to treatment was positive. No contrary testimony appeared. We cannot say the trial court abused its discretion or that the reasons stated by the court were insufficient to justify the dispositional departure."

There was one dissenting judge who stated that the offender had not demonstrated by his actions that he was particularly amenable to probation.

According to the information contained in the appeal, it appears that the trial court based its decision to depart dispositionally on the opinion of the probation officer and the court psychologist. No underlying reasons were presented as to why this individual was particularly amenable to probation and the Appellate Court did not elaborate. Thus, it apparently is sufficient to simply state "amenable to probation" as the reason for the dispositional departure, if there is support from professionals.

State vs. Benjamin Robert Malinski (Minn. Court of Appeals, 1984)

Convicted of Possession of Stolen Goods and Theft by Credit Card;

Severity = V & III; Criminal History Score = 8 & 9;

Presumptive sentence = 57 months;

Pronounced sentence = 57 months, execution stayed with 5 years probation, 76 days jail with credit for the 76 days served awaiting sentence, restitution, 100 hours of public service work, personal meetings with the trial court judge once a month for six months, maintain residence in Redwood County;

Reasons for departure =

- 1) Past incarceration had failed to correct respondent's conduct. The court added: "The court is satisfied that (imprisonment) . . . at this time . . . will serve only to substantially defer the likelihood that the defendant will become a productive member of society and will likely entrench the defendant further into the life of criminal conduct."
- 2) Rehabilitative factors existed which could make respondent a useful citizen in the long run: he had plans to marry and resided in a stable rural setting; his fiancée was due to have their child shortly; and respondent had a job. The court stated: "The court believes that placing the defendant on probation will most likely ensure that defendant will become a productive member of society."
- 3) Respondent had not physically harmed anyone despite his long criminal history and he presented no danger if given a chance to contribute to society.
- 4) Restitution could be made to the victims.
- 5) Face-to-face contact between respondent and the trial judge would be made monthly for six months so that the judge could monitor respondent's adjustment;
- 6) Probation revocation would result if respondent failed to honor the probation conditions.

Appellate Court ruling = Stated that while it recognized that amenability is typically based on the offender's past behavior patterns, amenability can also be based on the offender's motive to reform. In determining whether an offender is motivated to reform, social factors and human factors can be used just as they can be used to determine an offender's particular amenability to probation.

This decision basically allows factors about the individual offender to be used for a dispositional departure, both with respect to how those factors reflect past behavior as well as how they are perceived to predict future behavior regardless of past behavior. The dispositional policy of the sentencing guidelines, based on just deserts, has not been upheld by the Supreme or Appellate Court. The trial courts have a wide range of discretion to depart downward dispositionally for reasons irrespective of the level of punishment determined by the guidelines as appropriate for the seriousness of the offense. Fortunately, as demonstrated by the monitoring data, the trial court judges have not loosely applied this discretion to date. As noted above, the mitigated dispositional departure rate climbed dramatically from 1983 to 1985 but leveled off in 1986 and 1987.

2. Data summary

a. Summary of Offender Characteristics for Certain Offenders 1984 Indepth Data, 8 County Area

The Commission's monitoring system does not contain information regarding social and economic characteristics of the offender. On three occasions, the Commission has conducted special studies to collect additional information such as social and economic characteristics of the offender. These studies have required special grants to fund the data collection process. As the Commission did not have the funds or the time to conduct a new indepth study, a review of the most recent 1984 data is presented below to examine the question of whether social and economic factors appear to be influencing the sentencing decision.

Offender characteristics were compared among four groups of offenders: 1) those that received a mitigated dispositional departure for the reason of amenable to probation or treatment; 2) those that received a mitigated dispositional departure for other reasons; 3) those that were sentenced to prison according to guidelines; and 4) those who received an aggravated dispositional departure. The purpose of this analysis is to recognize any particular offender characteristic that is more common for one group than another. We might expect to find those offenders who received mitigated dispositional departures to more frequently display "positive" offender characteristics than those offenders who were sent to prison. This expectation would be based on the idea that offenders who have social and economic support are more likely to be viewed as amenable to probation. Sophisticated statistical procedures were not performed on these data; rather, simple percentages are displayed to help determine if any particular offender characteristic is consistently present with respect to a particular sentencing outcome.

	<u>Marital Status</u>	
	<u>Single/Separated/Divorced/Widowed</u>	<u>Married/Cohabitation</u>
Mitigated Disp. Amenable	57.7% (45)	41.0% (32)
Mitigated Disp. Other reasons	60.7% (88)	35.2% (51)
Presumptive Prison No Departure	77.8% (458)	22.2% (131)
Aggravated Disp.	83.3% (120)	16.7% (24)

Those offenders who received mitigated dispositional departures were more likely to be married or cohabitating than the offenders who received prison sentences. As is demonstrated below, the offenders who received mitigated dispositional departures were also more likely to be supporting dependents, although the overall proportion for any one of the groups is less than 27%.

Percentage of Offenders Who Support Dependents

Mitigated Disp. Amenable	24.4% (19)
Mitigated Disp. Other reasons	26.9% (39)
Presumptive Prison, No Departure	13.6% (80)
Aggravated Disp.	6.3% (9)

The data on the educational level of these groups of offenders show those offenders who received mitigated dispositional departures have a higher proportion of post high school education and conversely they have a lower proportion without a high school degree. The differences, however, are not dramatic.

	<u>Level of Education</u>			
	<u>0 - 11</u>	<u>GED</u>	<u>High School</u>	<u>13 - Highest</u>
Mitigated Disp. Amenable	29.5% (23)	25.7% (20)	14.3% (11)	23.1% (18)
Mitigated Disp. Other reasons	24.1% (35)	18.6% (27)	18.7% (27)	32.4% (47)
Presumptive Prison No departure	35.1% (207)	27.7% (163)	16.0% (94)	18.8% (111)
Aggravated Disp.	31.3% (45)	27.8% (40)	22.2% (32)	17.4% (25)

We see that those offenders who received a mitigated dispositional departure were more often employed at time of sentence than those offenders who were sentenced to prison. Interestingly, those offenders who received a mitigated dispositional departure for reasons other than amenable to probation or treatment were more often employed at time of sentence than those offender who had received a mitigated dispositional departure for the stated reason of amenable to probation or treatment.

Percentage of Offenders Employed at Time of Sentence

Mitigated Disp. Amenable	25.6% (20)
Mitigated Disp. Other reasons	45.5% (66)
Presumptive Prison No Departure	8.5% (50)
Aggravated Disp.	4.2% (6)

Similarly the same pattern that is displayed with offenders who are employed at time of sentence can also be seen when looking at the percentage of offenders who have maintained stable employment over time. These two characteristics are, of course, closely related.

Percentage of Offenders With Stable Employment Over Time

Mitigated Disp. Amenable	33.3% (26)
Mitigated Disp. Other reasons	53.8% (78)
Presumptive Prison No Departure	21.1% (124)
Aggravated Disp.	18.8% (27)

Those offenders who received mitigated dispositional departures for reasons other than amenability were not as likely to be heavy users of drugs or alcohol as were the other three groups. The group of offenders who received mitigated dispositional departures for reasons of amenability had the highest frequency of offenders under the influence of alcohol during the commission of the conviction offense.

Percent of Offenders with Heavy Alcohol or Drug Use

	<u>Heavy Alcohol Use</u>	<u>Heavy Drug Use</u>
Mitigated Disp. Amenable	52.6% (41)	34.6% (27)
Mitigated Disp Other reasons	35.2% (51)	12.4% (18)
Presumptive Prison No Departure	44.7% (263)	33.4% (197)
Aggravated Disp.	43.8% (63)	40.3% (58)

**Percent of Offenders Under the Influence of Alcohol
During the Commission of the Conviction Offense**

Mitigated Disp. Amenable	39.0% (30)
Mitigated Disp. Other reasons	24.8% (36)
Presumptive Prison No Departure	24.1% (142)
Aggravated Disp.	21.5% (31)

In summary, offenders who received mitigated dispositional departures were more often married, supporting dependents, employed, and more educated than those who were sentenced to prison. These more positive social and economic characteristics are not, however, consistently present among those offenders who received a mitigated dispositional departure. In fact, the majority of the offenders in each group are unmarried, not supporting dependents, unemployed, and have a high school degree or less. There were some differences noted between the group of offenders who received a dispositional departure for reason of amenability vs. those who received a dispositional departure for other reasons. It appears that amenability was probably considered even in those cases where amenability was not specifically cited as the reason. "Other reasons" included such factors as: victim recommendation, plea negotiation, best interest of the family, and some excluded factors; i.e., employed and community support.

*b. Summary of Nonimprisonment Sanctions Pronounced for Certain Offenders
1987 Monitoring Data*

The pronounced nonimprisonment sanctions for offenders who received stayed sentences are summarized below. The sanctions are compared among the three groups of offenders: 1) those that received a mitigated dispositional departure for the reason of amenable to probation or treatment; 2) those that received a mitigated dispositional departure for other reasons; and 3) those that were sentenced to a stayed sentence according to guidelines. We might expect those offenders who received mitigated dispositional departures to have received more harsh nonimprisonment sanctions as these offenders would have committed more serious offenses or have more extensive criminal history scores. The first table displays the percentage of offenders who had jail, fines, restitution, or residential treatment pronounced by the judge as a condition of the stay.

**Nonimprisonment Sanctions Pronounced for Certain Offenders
1987 Monitoring Data**

	<u>Mitigated Disp. Amenable</u>	<u>Mitigated Disp. Other Reasons</u>	<u>Presumptive Stay No Departure</u>
Jail	80.4% (189)	83.9% (162)	69.7% (3349)
Fines	8.5% (20)	13.5% (26)	13.9% (667)
Restitution	9.4% (22)	10.9% (21)	31.3% (1504)
Treatment (residential)	20.4% (48)	10.4% (20)	6.1% (292)

Those offenders who received mitigated dispositional departures were more likely to have jail time pronounced as a condition of the stayed sentence than were those offenders who were sentenced to a stayed sentence according to guidelines. Residential treatment was pronounced more frequently for those who received mitigated dispositional departures for the stated reason of amenable to probation or treatment. Restitution was pronounced more frequently for those offenders who received stayed sentences according to guidelines.

Averages of Nonimprisonment Sanctions Pronounced for Certain Offenders
1987 Monitoring Data

	<u>Mitigated Disp.</u> <u>Amenable</u>	<u>Mitigated Disp.</u> <u>Other Reasons</u>	<u>Presumptive Stay</u> <u>No Departure</u>
Jail Time	247 days	218 days	103 days
Fines	\$ 2,423	\$ 919	\$ 772
Restitution	\$ 975	\$ 1,018	\$ 1,878
Length of Stay	89 months	68 months	57 months

The table above displays the average jail time, average amount of fine and restitution, and the average length of stay pronounced for these offenders. The averages are higher for those offenders who received mitigated dispositional departures for all types of nonimprisonment sanctions, except restitution. It should be noted that the averages for the fines and restitution for those offenders who received mitigated dispositional departures are based on small numbers of cases. These data indicate that nonimprisonment sanctions tend to be more harsh for those offenders who received a stayed sentence as a result of a mitigated dispositional departure than for those that received a stayed sentence according to guidelines, particularly with respect to the pronouncement and length of jail, pronouncement of residential treatment and the pronounced length of the stay. Monetary sanctions are more frequently pronounced for those offenders sentenced to stayed sentences according to guidelines. Also, 16 to 20 percent of those offenders who received a mitigated dispositional departure did not have any period of pronounced jail time and while the jail time averages are greater for those offenders who were given stayed sentences due to mitigated dispositional departures, the range of jail terms is equally as wide as it is for those offenders who were given stayed sentences according to guidelines.

3. Conclusions and Recommendations for modifications to the guidelines

The Supreme and Appellate Courts, over time, have expanded their rulings to where the use of the factor "amenable to probation" is now an acceptable reason, even if no other factors or supporting reasons are stated. The 1984 indepth data does indicate that social factors may be entering into the dispositional decisions but the influence of these factors do not appear to be consistent. The rate of mitigated dispositional departures climbed from 1981 through 1985. The rate dropped somewhat in 1986 and remained stable in 1987 but the use of reasons related to the amenability to probation remained high. The Commission is concerned that the neutrality of the guidelines may be threatened even though the data do not clearly represent a problem. Therefore, the Commission decided to take some minimum action to address this issue. The Commission had initially considered four options and decided to adopt one of the options as the most appropriate way to address the issue, at this time. The options are presented below, including the adopted change to the Commentary. As with the issue of aggravated durational departures, the Commission will continue to closely monitor and study these cases.

- 1) *State in the guidelines that amenability to probation is not an acceptable reason for departure.* The Commission decided that there could be cases where this reason would be acceptable and did not want to disallow this reason entirely.
- 2) *State that amenability to probation was a permissible reason, but limit and control its use by defining "amenability."* The Commission decided that it would be difficult to define "amenability" for the purpose of controlling its use.
- 3) *Develop nonimprisonment guidelines to cover mitigated dispositional departures. Under nonimprisonment guidelines, offenders who received mitigated dispositional departures could at least be assured of receiving a level of sanction in the community that was commensurate with the severity of the conviction offense and criminal history of the offender.* The Commission decided not to develop nonimprisonment guidelines at this time.
- 4) *Allow for the use of amenability to probation as a reason for departure but require a judge to indicate the basis for that determination.* The Commission decided to pursue this option by amending the Commentary in II.D.101. The new Commentary requires the judge to demonstrate that the departure was not based on any of the excluded factors. The Commission believed it was important to have the same requirement for the use of the reason "unamenable to probation" as social and economic factors could be the basis for such a determination. It is uncertain what effect this change will have on departures. The Supreme and Appellate Courts will be the enforcers of this policy enhancement and it is unknown how the Court will interpret this change when challenged. Also, this change to the Commentary will probably not have any effect in cases where all parties agree to the sentence and there is no appeal. The language changes are presented below.

Comment

II.D.101. *The Commission believes that sentencing should be neutral with respect to offenders' race, sex, and income levels. Accordingly, the Commission has listed several factors which should not be used as reasons for departure from the presumptive sentence, because these factors are highly correlated with sex, race, or income levels. ~~The Commission's study of Minnesota sentencing decisions indicated that, unlike many other states, these factors generally were not important in dispositional decisions. Therefore, their exclusion as reasons for departure should not result in a change from current judicial sentencing practices. The only excluded factor which was associated with judicial dispositional decisions was employment at time of sentencing.~~ In addition to Employment is excluded as a reason for departure not only because of its correlation with race and income levels, but also because this factor was excluded because it is manipulable--offenders could lessen the severity of the sentence by obtaining employment between arrest and sentencing. While it may be desirable for offenders to obtain employment between arrest and sentencing, some groups (those with low income levels, low education levels, and racial minorities generally) find it more difficult to obtain employment than others. It is impossible to reward those employed without, in fact, penalizing those not employed at time of sentencing. The use of the factors "amenable to probation (or treatment)" or "unamenable to probation" to justify a dispositional departure, could be closely related to social and economic factors. The use of these factors, alone, to explain the reason for departure is insufficient and the trial court shall demonstrate that the departure is not based on any of the excluded factors.*

C. Nonimprisonment Guidelines

1. Summary of previous and current Commission efforts

Minnesota has had a sentencing guidelines system in place since May 1, 1980 for the primary purpose of establishing rational and consistent sentencing standards which reduce sentencing disparity and ensure proportionality in sanctions. Under sentencing guidelines sanctions increase in direct proportion to the severity of the conviction offense and the severity of the criminal history. The legislature, in mandating the Commission to develop guidelines for prison sanctions, also authorized the Commission to develop guidelines for nonimprisonment sanctions, which could include up to a year in a local jail, probation, fines, restitution, community work service, treatment programs, and various other sanctions. The Commission chose not to develop guidelines for nonimprisonment sanctions initially and on several subsequent occasions when the issue has been reconsidered.

The Commission initially chose not to develop nonimprisonment guidelines primarily because of time constraints. The time frame given to the Commission by the legislature to develop sentencing guidelines was approximately one year. The Commission viewed prison guidelines and nonimprisonment guidelines as two separate stages and developed the prison guidelines first. The Commission dedicated most of their time to developing prison guidelines and believed not enough time remained to give adequate consideration to nonimprisonment guidelines. The Commission delayed the development of nonimprisonment guidelines for a later time.

The Commission considered the development of nonimprisonment guidelines in 1981 and again in 1982. On both occasions the Commission chose not to develop nonimprisonment guidelines. The 1982 consideration was a response to a resolution passed by a House Criminal Justice Committee that recommended that the Commission develop presumptive durations of probation and establish whether incarceration in a local jail or workhouse is a proper condition of probation. The Commission formalized their response to this resolution in the 1983 Report to the Legislature:

"Unlike many other issues, a consensus on the issue of guidelines for the use of jails and workhouses has not emerged on the Commission. However, the majority opinion of the Commission is that guidelines for the use of jails and workhouses should not be developed at this time. There are four major factors involved in a condition of jail and workhouse guidelines, two of which indicate their establishment and two of which indicate continuing with the current system. The factors that would suggest the establishment of jail guidelines are:

- the existence of substantial disparity in the use of local incarceration that guidelines could address; and
- the need to more rationally allocate scarce jail and workhouse resources by reserving incarceration for more serious offenders.

The other two major factors were deemed more compelling and indicated the inadvisability of establishing guidelines for the use of jails and workhouses, at this time. Those factors are:

- the inequality of jail and workhouse resources--both regarding quantity and quality--in various locations around the state, which render uniform guidelines unfeasible; and
- the strong opposition of the criminal justice community to guidelines for the use of jails and workhouses which creates a political climate unfavorable to successful implementation."

The Commission, again, considered the development of nonimprisonment guidelines in 1986 for several reasons (in addition to those previously articulated regarding disparity and proportionality problems). It appeared that the legislature was interested in offenders receiving minimum amounts of local jail time for certain offenses, as indicated by recently imposed mandatory jail terms. The State Planning Agency had recommended that the Commission address the problems of the disparate and nonproportional use of jails in their report Firm Convictions. Some local facilities were reportedly experiencing overcrowding problems.

Although the Commission recognized that the first reason for not developing nonimprisonment guidelines as stated in the 1983 Report to the Legislature (see above) was no longer as relevant due to improvements in many local facilities, the Commission still believed the second stated reason was a major concern. The Commission cited two additional reasons for not developing nonimprisonment guidelines in the 1986 Report to the Legislature:

- "1. There is no Commission consensus on what is or should be the major sentencing philosophy behind the use of jail as a condition of a stayed sentence; i.e., punishment or rehabilitation; and
2. Some Commission members do not feel it is appropriate to set a statewide policy regarding the use of jails and other local resources because it is the local communities that must bear the financial burden."

The Legislature, in 1988, passed a bill requiring the Commission to study whether and to what extent guidelines should be developed to govern the type and severity of nonimprisonment sanctions imposed by sentencing judges as conditions of stayed sentences. The Commission was asked to submit a written report to the judiciary committees of the House of Representatives and the Senate on or before February 1, 1989. The report is to contain proposed modifications to the sentencing guidelines, the sentencing guidelines grid or Minnesota Statutes which will, in the commission's judgment, improve the operation of the sentencing guidelines system with respect to these issues and better achieve the sentencing goals of uniformity, neutrality, and proportionality.

The Commission has concluded that no modifications to the guidelines or Minnesota Statutes will, at this time, improve the operation of the sentencing guidelines system with respect to the issue of nonimprisonment guidelines. A discussion of the Commission's most recent efforts and consideration of this issue is presented below. First, a data summary is presented, followed by a summary of the factors that support the development of nonimprisonment guidelines; next, a summary of the Commission work and activity, including a summary of public comment; and last, an explanation of the Commission's conclusions regarding this issue.

2. Data Summary

The following table displays jail information by the specific conviction offense. The offenses are categorized within their appropriate sentencing guidelines severity level. The table shows the percentage of the cases, for each crime, that received some jail time and the range of jail time that was pronounced by the judge. For comparative purposes, the percentage of offenders that received a prison sentence is also shown. All of the cases included in the table below were for offenders who had a criminal history score of zero and thus the presumptive disposition was a nonimprisonment sentence.

Jail Time by Crime Type

**1987 Monitoring Data
Criminal History Score = 0
Presumptive Disposition = Nonimprisonment Sentence**

	<u># of Cases</u>	<u>% Prison</u>	<u>% Jail</u>	<u>Pronounced Jail Range (in days)</u>
<u>Severity I</u>				
Drug Possession	106	0.9	58.5	3 - 365
UUMV	124	0.0	69.4	3 - 365
Agg. Forgery	128	0.0	57.0	2 - 365
<u>Severity II</u>				
Drug Sale	109	0.9	70.6	3 - 365
Welfare & Food Stamps	173	0.0	24.9	2 - 90
Theft Crimes	89	0.0	53.9	3 - 365
Damage to Property	110	1.8	60.9	2 - 365
Agg. Forgery	105	1.0	47.6	1 - 365
<u>Severity III</u>				
Welfare & Food Stamps	149	0.0	34.9	2 - 200
Theft Crimes	359	1.1	55.7	1 - 365
<u>Severity IV</u>				
Drug Sale	19	0.0	84.2	30 - 300
Assault 3	85	2.4	74.1	2 - 365
CSC 4th Degree	54	3.7	77.8	5 - 365
Theft Crimes	107	2.8	57.9	2 - 365
Theft from Person	11	0.0	63.6	30 - 240
Rec. Stolen Property	56	0.0	67.9	2 - 180
Burglary	300	0.7	75.3	2 - 365
<u>Severity V</u>				
Simple Robbery	34	0.0	97.1	30 - 365
CSC 3rd Degree	41	4.9	73.2	5 - 365
Rec. Stolen Property	32	0.0	65.6	2 - 180
Residential Burglary	123	0.8	80.5	7 - 365
<u>Severity VI</u>				
CSC 2nd Degree	136	2.9	74.3	3 - 365
IFSA 2nd Degree	7	0.0	85.7	30 - 240
Occ. Dwelling Burglary	19	5.3	89.5	10 - 365

The crime types which displayed the highest degree of consistency with respect to the percentage of cases with some jail time were severity level IV drug sale, severity level V simple robbery and residential burglary, and severity level VI burglary of an occupied dwelling. The amount of the pronounced jail time varied greatly, however, even among those crimes where jail was usually pronounced, ranging from less than 10 days to 365 days.

It is also the case that the amount of time the judge pronounces is not necessarily the actual amount of time the offender serves in jail. In some counties, such as Hennepin, the sentencing judge is likely to pronounce a more lengthy amount of jail time as a condition of probation and release the offender early to complete treatment or for other reasons. In contrast, St. Louis county offenders usually serve the full amount of jail time pronounced by the judge, minus good time. In addition, the application of good time is not uniformly applied from county to county. Therefore, the monitoring data on pronounced jail time is not necessarily representative of the actual time served. Sentencing guidelines staff conducted an indepth study on 1984 cases from an eight county area where the actual amount of jail time served was collected. The average jail time served is approximately 66% of the average jail time pronounced. The table below demonstrates the average jail time pronounced versus the average jail time served. These figures take into account both good time earned and jail time added for violations while on probation.

**Average Jail Time Served as a Percent
of the Average Jail Time Pronounced**

**1984 Indepth, 8 County Area
Overall, and by County, Gender, Race**

		In Days	
		<u>Average Pronounced</u>	<u>Average Served</u>
Overall	66.4%	140	93
Anoka	82.2%	107	88
Crow Wing	100.0%	103	103
Dakota	70.7%	89	63
Hennepin	51.3%	180	92
Olmsted	65.1%	78	51
Ramsey	79.5%	121	96
St. Louis	89.8%	158	141
Washington	86.1%	76	66
Male	66.7%	144	96
Female	58.3%	91	53
White	66.7%	138	92
Black	64.9%	146	95
Am. Indian	61.7%	164	101
Other	65.5%	129	84

While local incarceration is the most restrictive sanction imposed on offenders who are not sent to prison, it is not the only meaningful sanction. In the analysis below, other types of nonimprisonment sanctions are examined including restitution, fines, residential treatment, the use of stays of imposition, the length of the stay, and a measure used to calculate the overall level of the sanction. Only those cases resulting in a stayed sentence were included.

In 1987, among those offenders who were not given executed prison sentences, 71% received some jail time, 30% were required to pay restitution, 14% were given fines, and 7% were required to complete residential treatment. (Information on outpatient treatment is not available.) Among this same group of offenders, 41% were given stays of execution and 59% were given stays of imposition. Only slightly more than 1% of the cases resulted in a misdemeanor or gross misdemeanor sentence. The average pronounced jail term was 116 days, the average amount of restitution was \$1,856, the average fine was \$824, and the average length of stay was 58 months. Clearly, the most common sanction pronounced as a condition of a stayed sentence is local incarceration. As mentioned above, there is a lack of consistency with respect to the use of jail and the length of the jail terms. There is an equal amount of variation with respect to the other sanctions monitored by the Sentencing Guidelines Commission.

It is interesting to look at these figures by gender, race, and judicial district. Males have a much higher jail rate than do females, 76% compared with 48%. Males also have a higher rate of fines than females, 15% compared with 8%, and a slightly higher rate of treatment, 7% compared with 5%. Females, however, have a much higher rate of restitution than males, 40% compared to 27%. The difference in the rates of restitution could be affected by the types of crimes females tend to be convicted of; e.g., Wrongfully Obtaining Assistance and Theft Crimes. Females were more likely to receive a stay of imposition, 74% compared to 56% for males, but the average lengths of stays were nearly the same, 59 months for males and 57 months for females. The average pronounced jail term was significantly longer for males, 122 days compared to 73 days. The average amount of restitution was higher for females, \$3,137 compared to \$1,397 for males.

Racially, there were also differences. Whites have a higher jail rate (71%) than blacks (67%), as well as a higher restitution rate (33% compared with 16%) and a higher fine rate (16% compared with 3%). Blacks were required to enter residential treatment twice as often as whites, 11% compared to 6%. American Indians have a higher jail rate than whites at 77% but a lower rate of restitution and fines than whites at 25% and 10% respectively. American Indians have the same rate of residential treatment as blacks at 11%. Whites were more likely to receive a stay of imposition than any other racial group: 63% for whites, 41% for blacks, 54% for American Indians, and 53% for other racial groups. The average length of stay was higher for whites than for any of the other races: 61 months for whites, 50 months for blacks, 51 months for American Indians, and 53 months for other racial groups. While the rate of jail has been the highest for whites, whites have the lowest average of pronounced jail time: 111 days for whites, 137 days for blacks, 126 days for American Indians, and 143 days for other racial groups.

Some of the differences between the races are confounded by differences in the racial distributions across judicial district. See Appendix B for a listing of which counties are in each of the ten judicial districts. Most of the blacks and American Indians are sentenced in Hennepin County (district four). Hennepin County has a lower jail rate

(70%) than most outstate judicial districts, has the lowest restitution (10%) and fine rates (3%) in the state, and has the highest rate of residential treatment (17%) in the state. Minorities would tend to be affected by the practices in Hennepin County while whites would be more affected by the practices in outstate Minnesota. Ramsey County (district two) has the lowest jail rate in the state (57%) and the lowest fine rate (3%), yet it has a higher rate of restitution than does Hennepin County (26%). While all other districts have fine rates lower than 20%, judicial districts 8 and 9 have fines rates at 44% and 33% respectively. These two districts also have high jail rates (district 8 = 80%, district 9 = 78%) and high restitution rates (district 8 = 37%, district 9 = 39%). Hennepin and Ramsey counties do not pronounce stays of imposition as frequently as the other judicial districts, 42% and 43% respectively. In the first judicial district, 86% of all the stayed cases received a stay of imposition. Judicial districts 3, 5, and 9 had a high percentage of their cases receiving a stay of imposition, 75%, 73%, and 71% respectively. The average length of the stay varied considerably from district to district. The lowest average was 33 months in the sixth judicial district followed by 44 months in the fourth judicial district (Hennepin County). The highest average length of stay was found in the seventh and tenth judicial districts with 73 months and 76 months respectively. The average pronounced jail time varied from 70 days in judicial district seven to 167 days in district four.

There appear to be significant differences in the use of all types of nonimprisonment sanctions between genders, racial groups, and judicial districts. An attempt was made to take into account all the various nonimprisonment sanctions to see if there were similarities in the overall sanction level. An equivalency scale was established to assign sanction units to the various nonimprisonment sanctions, displayed below:

1 day local incarceration = 1 sanction unit
 residential treatment = 30 sanction units
 \$30 fine = 1 sanction unit
 \$30 restitution = 1 sanction unit
 1 month probation = 1 sanction unit

The overall average sanction level in 1987 was 165 units. Males had a higher average than females, 171 units compared to 137 units. Blacks had the lowest average sanction level and the "other" racial groups had the highest sanction level: whites at 165 units, blacks at 158 units, American Indians at 167 units, and other racial groups at 175 units. The average sanction level varied considerably by judicial district from 113 units in district one to 197 units in district five. As averages can sometimes be skewed toward the extremes, the median sanction levels were also calculated. The median is the figure in the middle, half of all sanction levels fall above the median and half of all sanction levels fall below the median. A sentencing guidelines grid displaying the medians sanction levels is found in Appendix B. Note that the medians do seem to progressively increase, somewhat, according to criminal history and severity. However, it is also important to look at the ranges which are listed below the medians. The ranges indicate that a very wide range of sanction levels can occur even within one cell on the grid.

It is also interesting to narrow the focus to specific conviction offenses for those offenders who have no prior criminal history. A review of the nonimprisonment sanctions pronounced for these offenders indicate that differences are still much apparent.

For those convicted of Aggravated Forgery at severity level I, no criminal history score, 57% received some jail as a condition of the stay, 49% received restitution, 8% received a fine, and 5% received residential treatment. Most of the offenders received a stay of imposition (87%) with an average length of stay of 60 months. The average pronounced jail time was 61 days. Males were more likely to receive jail time than females, 67% compared with 49%. However, females on the average were given more pronounced jail time, 67 days for females and 56 days for males. Approximately half of both males and females were given restitution, 47% for males and 51% for females. Over twice as many males were fined than females, 12% compared to 4%. The percentage of males and females that received a stay of imposition was the same, 87% and the average length of the stay was slightly higher for females, 58 months for males and 61 months for females.

Differences between the races were also apparent for those offenders with no criminal history score who were convicted of Aggravated Forgery at severity level I. Blacks had the lowest rate of jail at 35% compared to 62% for whites, 60% for American Indians, and 67% for other racial groups. Restitution also varied by race: 54% for whites, 26% for blacks, 80% for American Indians, and 33% for other racial groups. Stays of imposition were pronounced in a large majority of cases for all races except blacks: 92% for whites, 100% for American Indians and other racial groups, and 61% for blacks. The average length of stay was highest for other racial groups at 88 months and lowest for American Indians at 48 months. A similar pattern existed with respect to the average jail time pronounced with the other racial groups at 75 days and American Indians at 35 days.

Breakdowns by judicial district showed the widest spread of differences. The rate of jail use ranged from 31% in district one to 91% in district three for aggravated forgers. The rate of restitution ranged from 0% in district four to 87% in district seven. Fines were not used at all in judicial district 2, 4, 6, 8, and 9 and for those four districts that used fines, the rate ranged from 5% in district five to 27% in district three. Stays of imposition were imposed fairly consistently in outstate Minnesota with over 90% of the cases receiving stays of imposition. Judicial districts 2, 4, 6, and 10 had a somewhat lower percentage of cases receiving a stay of imposition at 71%, 83%, 83%, and 75% respectively. The average length of the stays varied greatly by the judicial district ranging from an average of 22 months in the 6th judicial district to 93 months in the 7th judicial district. The average length of the pronounced jail time also varied significantly, ranging from 14 days in the 7th judicial district to 136 days in the fifth judicial district.

The same equivalency scale that was used to analyze the overall use of nonimprisonment sanctions was also calculated for these aggravated forgery cases. While the average sanction level did not vary by gender, about 105 sanction units for both genders, the average sanction level did vary by race and judicial district. Blacks and American Indians had the lowest average sanction levels at 87 units and 79 units respectively while the average sanction level for whites was 110 and for other racial groups was 142 units. The average sanction levels ranged from about 48 units in districts one and six to 129 units in district seven, 146 units in district ten, and 152 units in district five.

For those convicted of Burglary at severity level IV, with no criminal history, 76% were given jail as a condition of the stayed sentence, 40% were required to pay restitution, 15% were fined, 2% were required to enter residential treatment, and 88% were given stays of imposition. The average length of stay was 49 months and the average pronounced jail time was 63 days. Although, the jail rate was higher for those convicted

of Burglary than it is for those convicted of Aggravated Forgery, the data do not indicate that burglars at severity level IV consistently received significantly harsher sentences. The average sanction level for burglary was 116 units compared to 105 units for aggravated forgery.

As with aggravated forgery, males were more likely to receive jail as a condition of the stay (77%) than females (63%). Females had a higher rate of restitution, 50% for females and 40% for males but males were fined more than twice as often as females, 14% compared to 6%. The same percentage of males as females was given stays of imposition (88%) and this was the same percentage of stays of imposition as existed for the aggravated forgers. Females had a higher average length of stay (55 months) than males (48 months) but a lower average of pronounced jail time, 29 days for females and 64 days for males. The sanction levels also differed significantly, 118 units for males and 85 units for females.

There were differences by race that should be noted. While the jail rate for blacks and whites was the same (75%), the jail rate was higher for American Indians (89%) and the other racial groups (86%). The use of restitution varied by race: 41% for whites, 25% for blacks, 53% for American Indians, and 0% for the other racial groups. Although no blacks received a fine, the remaining races received fines in approximately 15% of the cases. Blacks had the lowest rate of stays of imposition (75%) and American Indians had the highest rate of stays of imposition (95%). The average length of stay varied somewhat by race: 49 months for whites, 42 months for blacks, 52 months for American Indians, and 49 months for other racial groups. The average length of pronounced jail time also varied by race with blacks having the highest average: 63 days for whites, 94 days for blacks, 52 days for American Indians, and 55 days for other racial groups. American Indians had the highest average sanction level at 148 units compared to 114 units for whites, 116 units for blacks, and 97 units for other racial groups.

Considerable differences were apparent between judicial districts. The rate of jail ranged from 50% in district two to 92% in district ten. While restitution was pronounced in only 17% of the cases in district one, 18% in district four, and 29% in district two; restitution was pronounced between 40% and 53% of the cases in districts 3, 5, 6, 7, 8, 9, and 10. Fines were used heavily in district eight (60%) but rarely in districts two and four (3%). The percentage of cases where a stay of imposition was pronounced ranged from 65% in district five to 100% in districts 1, 7, 8, and 9. The average length of stay ranged from 26 months in district six to 60 months in district ten. The average pronounced jail time also varied by district from 29 days in district seven to 109 days in district eight. The average sanction level ranged from 73 units in district one to 164 units in district nine.

While these data indicate extensive variation in sentencing outcomes for offenders who have been convicted of the same crime and have no criminal history score, it is not clear from these data whether the differences are representing county differences. Is there consistency for these offenders in the nonimprisonment sanctions pronounced within a particular county? Severity level I aggravated forgery cases and severity level IV burglary cases for offenders with no criminal history score were examined individually for the purpose of exploring county consistency. Many of the counties only had one or two cases, but a summary of the sentencing practices for some of the counties with five or more cases is provided below.

Aggravated Forgery - Severity Level I - Zero Criminal History

In Blue Earth county, 4 of the 5 offenders received one year in jail. Of the 4 that received jail, three were given restitution and three received a length of stay of three years with the fourth offender receiving a length of stay of two years. The remaining offender who did not get any jail time was given a stay of imposition for 36 months and \$50 restitution. All offenders received a stay of imposition. The sanction level was around 400 units for four of the cases and 38 units for the fifth case.

In Dakota county, 4 of the 15 offenders received some jail time, one had 4 days, one had 5 days, and two had 30 days. Three of the offenders received restitution and two of the offenders were fined. One offender was given a stay of execution with a length of stay of one year. The remaining 14 offenders were given stays of imposition, one with a length of stay of two years, 10 with length of stays of 3 years, and 3 with length of stays of 5 years. The sanction level ranged from 12 units to 90 units.

In Lyon county, 3 of the 5 offenders received 30 days in jail and the two offenders who did not go to jail were required to pay restitution of \$60 and \$13. All offenders were given a stay of imposition, 3 had a length of stay of three years and 2 had a length of stay of five years. The sanction level ranged from 36 units to 90 units.

In Ramsey county, 12 of the 35 cases received jail, ranging from 6 days to 90 days. Fourteen offenders were required to pay restitution and one offender was required to enter residential treatment. No fines were given. Twenty-five of the 35 offenders were given a stay of imposition. The length of the stay varied significantly: one offender had two years, three offenders had three years, 22 offenders had five years, and 9 offenders had ten years. The sanction level ranged from 24 units to 247 units.

Burglary - Severity Level IV - Zero Criminal History

In Anoka county, all 12 offenders received jail, ranging from 3 days to 90 days. Half of the offenders were required to pay restitution and one offender was required to enter residential treatment. No fines were given. Stays of imposition were pronounced in all but one case and the case that had the stay of execution, the sentence was stayed for only two years. Two offenders received 30 month length of stays and the remaining nine offenders received 5 year lengths of stay. The sanction level ranged from 70 units to 317 units.

In Freeborn county, 4 of the 5 offenders were given jail, two for 15 days, one for 45 days, and one for 86 days. Restitution was pronounced in two of the cases. No fines or residential treatment were required. Four of the five offenders received stays of imposition and all stays were for three years. The sanction level ranged from 36 units to 122 units.

In Hennepin county, 25 of the 34 offenders were given jail time, ranging from 12 days to 180 days. Fourteen of the 25 offenders had 90 day pronounced jail terms. Six offenders were required to pay restitution, one offender was fined, and three offenders were required to enter residential treatment. Twenty seven of the 34 offenders were given stays of imposition with most offenders having a length of stay of 36 months (24 offenders). Five offenders received five year lengths of stay. The sanction level ranged from 24 units to 246 units.

In Rice county, 7 of the 10 offenders were given jail, three received 30 days, two received 60 days, and two received 180 days. Four offenders were required to pay restitution and five offenders were fined, ranging from \$100 to \$800. Nine offenders were given stays of imposition and the one offender who was given a stay of execution had a length of stay of only 4 months. Five offenders had five year lengths of stay, two had three year stays, one had a one year stay, and one had a six year stay. The sanction level ranged from 8 units to 297 units.

In Washington county, 12 of the 14 offenders were given jail, three for 20 days, six for 30 days, two for 45 days, and one for 90 days. Six of the offenders were required to pay restitution and one offender was fined \$700. All offenders but one were given a stay of imposition and all offenders but one had length of stays of 5 years. There was a fair amount of consistency in this county but some of the offenders were given significant restitution amounts to pay (\$5,966) which heavily affected the sanction levels. The sanction level ranged from 60 units to 304 units.

In Winona county, 7 of the 8 offenders were given jail, two for 3 days, two for 20 days, two for 30 days, and one for 60 days. Six were given restitution and no fines were pronounced. All but one offender received a stay of imposition and four offenders had a length of stay of 5 years and four offenders had a length of stay of 3 years. The sanction level ranged from 39 units to 180 units.

This analysis demonstrates that a fair amount of inconsistency in the use of nonimprisonment sanctions exists within most counties, even for similar offenders convicted of the same offense.

Other conviction offenses were also examined for similarities and differences in the use of nonimprisonment sanctions. Generally, a high degree of variation existed with respect to most nonimprisonment sanctions and with respect to the calculated sanction level. While it would be tedious to summarize the data for each of the twelve crimes reviewed, such a summary could be provided upon request. The twelve offenses examined were: severity level I - Drug Possession, UUMV, Aggravated Forgery; severity level II - Drug Sale, Wrongfully Obtaining Assistance; severity level III - Wrongfully Obtaining Assistance, Theft Crimes; severity level IV - Assault 3, Theft Crimes, Burglary; severity level V - Residential Burglary; severity level VI - Criminal Sexual Conduct 2nd Degree.

The final analysis regarding nonimprisonment sanctions included in this report focuses on judicial sentencing, by controlling for specific cases. The Sentencing Guidelines Commission conducted a workshop at a judges' conference in July, 1986 where 20 judges were asked to read a brief description of two separate cases and indicate what the appropriate sentence should be for each case. Both cases involved offenders with no criminal history score, one was convicted of Aggravated Forgery at severity level II and the other was convicted of Burglary 3rd Degree at severity level IV. The case descriptions and sentencing worksheet, as had been provided to the judges, are attached for your reference, in Appendix B. A review of the sentences indicates a significant amount of variation. The sentences are summarized below.

Charles - Aggravated Forgery

Most of the judges gave a stay of imposition (80% or 16 judges), with one judge giving a stay of execution and three judges giving gross misdemeanor sentences. Slightly more than half of the judges gave some jail time (55% or 11 judges). Among those judges who gave jail, seven judges gave 30 days, one judge gave 45 days, one judge gave 60 days, one judge gave 180 days, and one judge gave 365 days but suspended it. Sixty percent of the judges (12 judges) required residential treatment and 15% (3 judges) required non-residential treatment. Almost all judges required restitution (95% or 19 judges) and one judge gave a fine. Although six of judges did not indicate the length of the stay, one judge stayed the sentence for a year, seven judges stayed the sentence for 2 years, two judges stayed the sentence for 3 years, two judges stayed the sentence for 5 years, and two judges stayed the sentence for 10 years. The sanction levels ranged from 42 units to 180 units + restitution. Restitution could not be calculated into units for most of the sentences because the specific amount was not given. The actual sentence for this offender was: Stay of Imposition, 24 months probation, 180 days jail (with Huber), a chemical dependency evaluation, and restitution of \$610.

Jay - Burglary 3rd Degree

Twelve of the 20 judges or 60% gave a stay of imposition, four judges or 20% gave a stay of execution, and four judges or 20% gave a gross misdemeanor sentence. Most of the judges (80% or 16 judges) gave some jail time but the amount of jail time varied from 5 days to 90 days. Four judges gave 90 days, four judges gave 60 days, one judge gave 45 days, six judges gave between 21 and 30 days, and one judge gave 5 days. Six judges or 30% required residential treatment and seven judges or 35% required non-residential treatment. Two judges gave fines and two judges gave community work service. The length of the stays also varied: two judges stayed the sentence for one year, three judges stayed the sentence for 2 years, eight judges stayed the sentence for 3 years, one judge stayed the sentence for 4 years, and four judges stayed the sentence for 5 years. The sanction units ranged from 12 units to 170 units + restitution. The actual sentence for this offender was: Stay of Imposition, 60 months probation, no jail time, \$750 court costs, \$400 to public defender fund, and restitution.

3. Factors that support the development of nonimprisonment guidelines

The review of the data above suggests that there exists wide variation in the types and amount of nonimprisonment sanctions placed on offenders, even when controlling for the conviction offense, the criminal history score of the offender, and the jurisdiction. This variation in sentencing patterns might indicate a need for nonimprisonment guidelines. Although, the Commission is not recommending the development of nonimprisonment guidelines, it is important that the legislature recognize that the Commission did consider the data that are presented above and the following factors that support the development of nonimprisonment guidelines:

- 1) **Proportionality** - The sentencing guidelines were designed to increase the severity of the sanction with direct proportion to the severity of the conviction offense and the severity of the criminal history, with prison considered the most harsh sanction. The lack of structure for nonimprisonment sanctions has resulted in some offenders,

who have a presumptive stayed sentence under guidelines, requesting to go to prison because the prison term is viewed as less harsh than the conditions of the stayed sentence.

Conversely, in cases where the presumptive disposition under the guidelines is a prison sentence but the judge departs from the guidelines and stays the sentence, the conditions of the stay could be substantially disproportionate to the prison term.

A third proportionality problem exists among those offenders who are given presumptive stayed sentences. Many offenders who have been convicted of low severity level crimes and/or have low criminal history scores receive the same or more extensive nonimprisonment sanctions when compared with those offenders who have been convicted of more serious offenses and/or have more extensive criminal history scores.

- 2) Uniformity - The sentencing guidelines were designed to increase the level of uniformity in sentencing for persons convicted of a felony. Uniformity has increased substantially under the sentencing guidelines system with respect to prison sanctions. There appears to be little uniformity with respect to nonimprisonment sanctions such as local jail time. Whether someone receives jail time as a condition of the stayed sentence is not consistently related to where the offender falls on the grid. The amount of jail time pronounced is equally unrelated to where the offender falls on the grid. There is also an apparent lack of consistency with respect to other nonimprisonment sanctions such as fines, restitution, the length of the stay, or treatment. Even when a measure of equivalencies is established to credit and equate the various types of sanctions, there appears to be little consistency in the overall level of nonimprisonment sanctions. This lack of consistency holds true when the focus is narrowed to an individual judge or conviction offense.

- 3) Truth and Certainty - Another goal of the sentencing guidelines is to promote truth and certainty in sentencing. With a presumptive sentencing system, criminal justice professionals, offenders, victims, and the public know what the sentencing guidelines presume is appropriate for any particular case. If the presumptive sentence is pronounced and the offender is sent to prison, everyone knows how long that offender will be in prison. The public, the victim, and other interested parties are not led to believe that the sentence is more harsh than it actually is; the offender recognizes what the sentence is and cannot manipulate correctional personnel to obtain early release. However, this goal of truth and certainty in sentencing is only met with respect to the decision to imprison in a state institution and for the duration of a prison sentence.

Approximately 80% of all felons convicted in a given year will have a presumptive stayed sentence under the sentencing guidelines. This means that approximately 80% of all convicted felons are sentenced indeterminately because there are no fixed nonimprisonment sanctions. There is no certainty that what the judge pronounces will be carried out completely as the courts have the discretion to discharge before all the original pronounced conditions have been met.

- 4) Accountability - Offenders should be held accountable for the offense of conviction, judges should be accountable for their sentencing decisions, and prosecutors should be accountable for their charging and plea negotiation decisions.

Sentencing guidelines promote this accountability to some degree. However, a sentencing guidelines system that only addresses the question of prison and does not address a continuum of sanctions might possibly create the impression that if prison is not recommended - nothing happens. It appears that the offender is not being held accountable for the conviction offense. Andrew von Hirsch in a recent article in The Nation, stated: "Punishment conveys our disapproval of criminal conduct, and should be graduated to reflect that conduct's degree of reprehensibility." Nonimprisonment guidelines would provide a standard upon which the question of accountability and appropriateness could be addressed. If someone did not believe the presumptive nonimprisonment sanctions were appropriate for a particular offense, the concern could be raised with the Sentencing Guidelines Commission.

Prosecutors are held accountable under sentencing guidelines in that if a charge is reduced or dropped that results in a presumptive stayed sentence rather than a presumptive executed sentence, the sentencing judge generally may not depart and sentence the offender to prison for reasons related to elements of the more serious charge. Nonimprisonment guidelines could hold the prosecutor more accountable for any reduced or dropped charge.

- 5) **Resources** - The legislature mandated the Commission to "take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities." While the Commission carefully considered the impact of sentencing guidelines on the state correctional institutions in developing the guidelines and continues to monitor the impact of sentencing practices on prison populations, the Commission is unable to consider the impact of sentencing practices on other correctional resources. Absent a sentencing policy that addresses nonimprisonment sanctions, there is no systematic method for assessing or controlling the impact of sentencing decisions on the local resources. A structured sentencing policy for nonimprisonment sanctions would allow for more rational use of all correctional resources. It would be necessary, however, to extend such guidelines to misdemeanants as well in order to fully structure the rational use of all correctional resources.

In summary, the development of nonimprisonment guidelines could enhance the original goals of the sentencing guidelines regarding uniformity, proportionality, truth and certainty, accountability, and the rational use of limited correctional resources. The current two tier system results in approximately 20% of convicted felons receiving fixed sentences and 80% of convicted felons receiving indeterminate sentences.

4. Commission activity regarding the issue of nonimprisonment guidelines

The Commission formed a subcommittee, chaired by Judge Fred Norton, to study the issue of nonimprisonment guidelines. The subcommittee met several times over the spring and through early fall to discuss the development of nonimprisonment guidelines. Their initial discussions centered around the philosophical goals of sentencing and which goal of sentencing should be pursued in guidelines for nonprison sanctions. Although there was no consensus, there was some agreement that because the prison guidelines were

primarily based on retribution that any nonimprisonment guidelines the Commission developed should also have similar goals. This emphasis on just deserts would produce an overall set of guidelines with a consistent focus and proportionality could be properly addressed as well.

The subcommittee had difficulty in determining how to structure sanctions that are primarily oriented toward the goal of rehabilitation or other utilitarian goals. The subcommittee's views on the use of treatment as a condition of probation were mixed. One view held that the purpose of treatment should be to address a problem the offender may have such as alcohol or drug abuse. It would, therefore, be inappropriate to consider treatment in the same manner as jail or fines which are more clearly designed to punish. The other view recognized that the purpose of treatment should be to "treat" but that various judges may be imposing treatment for a variety of reasons, including surveillance purposes. Thus, it became a question of how to structure the use of treatment. The justification for structuring the use of treatment within a just deserts framework is based on the idea that treatment is a deprivation of freedom and can be viewed as punishment and often is viewed as punishment by the offender. Structuring nonimprisonment sanctions on the basis of just deserts does not preclude a judge from imposing treatment with the purpose of rehabilitation in mind. There was also a similar discussion regarding purposes of probation.

The subcommittee reviewed several different models of nonimprisonment guidelines. Generally, the models can be described as follows:

- 1) The first model addressed a single sanction, such as jail. The philosophical approach would be retribution and relatively narrow ranges of jail time would be presumed appropriate, as indicated in each cell of the grid. Only in cells where the range would begin at zero would it be optional to not pronounce any jail and still sentence within the guidelines. This model was fairly rigid and limited in that it would not allow for other sanctions to be imposed in lieu of jail. Wider ranges would allow for more flexibility but would also provide less uniform sanctions.
- 2) The second model focused on retribution but also included the possibility of pronouncing sanctions that could be considered equivalent to jail. A specific level of sanction units was set for each grid cell and each unit was then set to equal a certain value. An equivalency chart would be displayed at the bottom of the grid that would indicate the value of one sanction unit as it relates to each type of sanction. For example, one sanction unit might be equal to one day in jail and equal to 8 hours of community work service and equal to a certain amount of fine, etc. The judge could choose among the different types of sanctions to arrive at the presumptive number of sanction units. This model allowed for more flexibility than the first model because a judge could decide to pronounce a certain fine instead of jail or use part of the sanction units for jail and part of the units for community work service. This model would be more sensitive to the variation in county resources.
- 3) The third model focused on retribution but included sanctions that could be viewed as promoting utilitarian goals. Treatment and probation equivalencies were set on the same scale as other traditional just deserts sanctions. The inclusion of these utilitarian sanctions in a just deserts model was justified by the idea that these sanctions do cause "pain" to the offender through the

deprivation of freedom. Probation was difficult to equate along with the other sanctions without some distortion and wide variation in the possible sentencing outcomes.

- 4) The fourth model was very similar to the third model except it separated and structured probation lengths.
- 5) The fifth model presumed separate sanction levels for two separate purposes; i.e., punishment and utilitarian goals. The model structured the same sanctions as model four but set the equivalencies on two scales. This model presumed that both sanction levels would be addressed in the sentencing. A variation of this model would be to allow a choice between the two sanction levels; i.e., the sentencing judge could either set the nonimprisonment sanctions designed for just deserts purposes only or those sanctions designed for utilitarian purposes only.

The subcommittee and the whole Commission focused primarily on the second model. Sanction levels were developed that were set at basically, one third of the presumptive prison sentence for each grid cell. For offenders who received mitigated dispositional departures, the sanction level was set at one third of the presumptive prison duration, up to a maximum of 365 units. The Commission set up equivalencies for jail, community work service, house arrest, and day fines. (The idea of a day fine is to set the fine relative to the offender's income and wealth.)

The Commission also agreed that any nonimprisonment guidelines should be advisory to the judge. Upon departure from the guidelines, a judge would be required to provide written reasons.

Preliminary impact analysis was conducted on the model that the Commission focused on. The assumption was made that all sanction units would be used as jail days. The analysis demonstrated that some counties would experience increases in the need for jail resources under this model while most other counties, including Hennepin and Ramsey, would experience a decrease in the need for jail resources.

5. Public hearing on nonimprisonment guidelines

The Minnesota Sentencing Guidelines Commission held a public hearing on June 21, 1988 and again on December 8, 1988 to hear testimony on the issue of nonimprisonment guidelines. The Commission was concerned with the reaction of the criminal justice system to a major change on the system such as nonimprisonment guidelines. The Commission wanted to benefit from the insights of practitioners and citizens and involve interested parties in the study of this issue. The Commission heard from all segments of the criminal justice system, including law enforcement, prosecutors, defense attorneys, trial court judges, and corrections officials. The vast majority of those testifying among these groups, were not in favor of the concept of nonimprisonment guidelines for statewide application. Those organizations and groups not in favor of the concept of nonimprisonment guidelines included the Minnesota District Judges Association, the Minnesota County Attorneys Association, the Office of the Attorney General, the Office of the State Public Defenders, the Minnesota Police and Peace Officers Association, the Minnesota Community Corrections Association, and the Minnesota State Sheriffs Association. There was a handful of individual corrections officers, professors, and a

citizens organization that favored the concept of nonimprisonment guidelines. A list of all individuals and organizations that testified or submitted written materials is included in Appendix B. Those in favor of nonimprisonment guidelines were supportive, generally, for reasons described above in section 2 and 3. The vast majority of those who testified or supplied written comment, had major concerns regarding the development of nonimprisonment guidelines. These concerns are summarized below.

- 1) Philosophy - In deciding which offenders should receive a prison sentence, a just deserts philosophy is appropriate. If a stayed sentence is presumed, the judge should have the flexibility to tailor the sentence according to the individual offender. This flexibility allows the judge to consider other utilitarian sentencing goals such as rehabilitation, public safety, and deterrence.
- 2) Variation in community resources - Each jurisdiction has different resources to draw upon for criminal sanctions. These resources are typically funded on the local level. Statewide guidelines for nonimprisonment sanctions would not allow individual jurisdictions to utilize the available resources in the manner in which the community believes is appropriate. These statewide guidelines could also lead to the overcrowding of particular resources resulting in an economic impact to the individual county.
- 3) Variation in community priorities - Judges need to have flexibility to reflect the view of what constitutes appropriate sanctions in any particular community. Views may differ from community to community because of the frequency of particular crimes, the community's view of the severity of the crimes committed, or the resources that are available within the community. Is a statewide guidelines system better than local determination of appropriate sanctions?
- 4) Further complication of an already complex system - Even though the sentencing guidelines were designed to be fairly simple to understand and apply, a fair degree of complexity has been introduced into the system. Ambiguities continue to surface that the Commission or appellate courts must address. The introduction of a complex set of nonimprisonment guidelines could result in an unmanageable and ineffective system. More time would be needed to resolve cases.
- 5) Increased appeals - The number of appeals generated from offenders who receive stayed sentences could over burden the appellate court.
- 6) Prosecutorial discretion would be enhanced - The prosecutor, through charging practices can currently influence the presumptive sentence. This influence would become even more pervasive with nonimprisonment guidelines where all charging decisions would have direct impact on the presumptive sentence to some degree. It is preferable to keep the discretion with the judge where it is more visible to the public.
- 7) Proportionality concerns with respect to misdemeanor and gross misdemeanor sentences - Without guidelines to cover sentences for misdemeanor and gross misdemeanor convictions, there is no mechanism to promote proportional sentences between those who are convicted of felonies and those convicted of lesser offenses. This could possibly result in an offender choosing to plea to a felony offense, such as felony theft, rather than a misdemeanor level offense because the presumptive sentence under guidelines might assure the offender of a less harsh sentence.

- 8) Undermine support for sentencing guidelines - Implementation of nonimprisonment guidelines could undermine what current support exists for sentencing guidelines. Many who support the current sentencing guidelines do so because flexibility in sentencing remains in the system for 80% of the felons.
- 9) Disparity does not exist - There were those who did not believe that there is a lack of consistency in nonimprisonment sanctions. They believed that the Commission data do not demonstrate that the jail sanctions are not balanced by the imposition of other types of nonimprisonment sanctions. Also, if there are inconsistencies, they are across jurisdictions and not within a single jurisdiction, and even if inconsistencies exist within a single jurisdiction, there is probably a valid reason for the differences.

6. Conclusions and Recommendations regarding nonimprisonment guidelines

The Commission has concluded that no modifications to the sentencing guidelines or Minnesota Statutes will, at this time, improve the operation of the sentencing guidelines system with respect to this issue; and, presently no legislation or guidelines should be developed to govern the type and severity of nonimprisonment sanctions imposed by sentencing judges as conditions of stayed sentences. The Commission arrived at this conclusion for the following reasons:

- 1) As evidenced by public response, there exists a widespread lack of support for nonimprisonment guidelines on a statewide basis among criminal justice professionals. This lack of support raises question as to whether successful implementation of nonimprisonment guidelines can occur at this time.
- 2) The Commission recognized that the monitoring data indicate that there are problems with inconsistency in the use of nonimprisonment sanctions. There is only limited data available, however, on the specific type and length of treatment imposed, the use of community work service, and actual jail time served. The absence of current, in-depth data on these types of sanctions is problematic in terms of assessing both the level of inconsistency in sentencing practices and the impact of nonimprisonment guidelines on local resources.
- 3) The Commission explored the development of nonimprisonment guidelines that were based on retribution and were consistent with the prison guidelines, along with a structure that would provide flexibility for judges to choose among a set of possible types of sanctions. However, the Commission was unable to fully develop a feasible and complete set of guidelines in the time frame presented by the legislature. Even if the Commission were to recommend the implementation of nonimprisonment guidelines, a great deal of work would need to be completed. This process was particularly difficult given the lack of consensus on the Commission regarding the merits of and the fundamental concept of nonimprisonment guidelines.
- 4) The Commission was concerned with the complexity a nonimprisonment guidelines system would introduce in the criminal justice system. While a nonimprisonment guidelines system that allows for exchanges of various types of sanctions to be made would provide more flexibility and be less of a burden

on local resources, this type of system would also be more complex. The Commission was particularly concerned with this issue in light of recently adopted changes the Commission passed with respect to the weighting of criminal history score.

- 5) Any system for nonimprisonment guidelines that used "social factors" to determine the sanction would be in direct opposition to the guidelines' principle of neutrality.

While the Commission has concluded that nonimprisonment guidelines should not be developed at this time, the Commission remains concerned about the inconsistency in nonimprisonment sanctions that is suggested by the available data and recognizes that there may be merits to structured sentencing in the area of nonimprisonment sanctions. Therefore, there are several specific actions the Commission would like to pursue to assure continued attention is given to this issue.

- 1) There currently exists a number of local and regional corrections agencies that are working to develop guidelines or have developed guidelines for their recommendations to judges for sanctions on a case by case basis. The Department of Corrections has such a policy (pilot project) as well as the Dodge/Fillmore/Olmsted county area. The Commission will continue to consider such efforts and review their progress.
- 2) The Commission encourages individual jurisdictions to continue to develop local guidelines and to share such policy developments with the Commission. Since the date of the public hearing on this issue, the Commission is aware of a number of jurisdictions that are developing some form of nonimprisonment guidelines, including Anoka county, Ramsey county, and the Dodge/Fillmore/Olmsted county area. The Commission will assist as much as possible to provide necessary information to these jurisdictions for purposes of development, implementation, evaluation, and assessment of the resource impact of any nonimprisonment guidelines.
- 3) The Commission will study and determine what action is necessary to improve the Commission's monitoring system to include more complete information on nonimprisonment sanctions imposed by the judge and those nonimprisonment sanctions actually carried out. When possible, the Commission will take the action necessary to make such improvements.

In closing, the legislature made the decision to mandate a commission to develop and implement a prison guidelines system for the purpose of promoting more determinate, uniform, and proportional sentencing. Due to the continued concerns among criminal justice professionals regarding the need to individualize nonimprisonment sanctions and not have the judge be constrained by any guidelines, it will perhaps be necessary for the legislature to likewise mandate the development and implementation of nonimprisonment guidelines if the legislature believes that such guidelines are in the best interest of the state.

More than Double Durational Departures - Upheld

<u>Name</u>	<u>Severity</u>	<u>History</u>	<u>Presumptive Sentence</u>	<u>Pronounced Sentence</u>	<u>Times Presumptive Sentence</u>	<u>Statutory Maximum</u>
<u>1981</u>						
Stumm	7	0	24.0	84.0	2.9	84
<u>1982</u>						
Herberg	8	2	65.0	240.0	3.7	240
Van Gorden	8	1	54.0	180.0	3.3	240
Shuie	10	1	140.0	480.0	3.4	480
Norton	7	0	24.0	72.0	3.0	480
<u>1983</u>						
Wellman	4	2	18.0 stay	60 (consec)	3.3	36
<u>1984</u>						
Wittig	4	1	15.0 stay	45.0 stay	3.0	120
Shoebottom	10	0	120.0	300.0	2.5	480
<u>1985</u>						
Finbraaten	4	0	12.1 stay	36.0	3.0	120
<u>1986</u>						
Mortland	8	2	65.0	195 (+ consec)	3.0	240
Mesich	8	0	43.0	240.0	5.6	240
<u>1987</u>						
Leonard	8	0	43.0	120 (+ consec)	2.8	120
Perez	8	1	54.0	162.0	3.0	240
Wickstrom	8	0	43.0	107.5	2.5	120
Steinhaus	8	1	54.0	120.0	2.2	120
Harris	11	0	70.0	240.0	3.4	240
Gaines	8	2	43.0	110.0	2.5	240
Hatton	8	1	54.0	130.0	2.4	240
Strommen	8	0	43.0	180.0	4.2	240
Dircks	10	1	140.0	324.0	2.3	480
Holscher	7	2	41.0	180.0	4.4	180
Frank	8	0	43.0	162.0	3.8	480
<u>1988</u>						
Glaraton*	8	1	54.0	240.0	4.4	240

* Remanded for resentencing by the Appellate Court; reversed by the Supreme Court and reinstated the trial court sentence.

More than Double Durational Departures - Reduced to Double

<u>Name</u>	<u>Severity</u>	<u>History</u>	<u>Presumptive Sentence</u>	<u>Pronounced Sentence</u>	<u>Times Presumptive Sentence</u>	<u>Statutory Maximum</u>
<u>1981</u>						
Schantzen	7	2	41.0	240.0	5.9	240
Evans	7	0	24 (+24)	180 (+180)	7.5	240
Rott	2	0	12.1 stay	36.0	3.0	120
<u>1982</u>						
Watters	3	2	16.0 stay	120.0	7.5	120
Martinez	8	0	43.0	150.0	3.5	240
Partlow	8	0	43.0	240.0	5.6	240
Heinkel	7	0	24.0	180.0	7.5	480
Profit	8	2	70 (+54)	150 (+100)	2.1	240
Blue	7	0	24 (+24)	240 (+240)	10.0	480
<u>1983</u>						
Schmit, Jr.	8	0	54.0	180.0	3.3	180
Patch	8	2	65.0	240.0	3.7	240
Givens	9	0	97 (+24)	288 (+48)	3.0	300
Kirsch	4	2	16.0 stay	36.0 stay	3.0	120
<u>1984</u>						
Gissendanner	8	2	65 (+24)	130 (+21)	2.3	240
Ture, Jr.	8	2	54.0	120.0	2.2	240
Pince	7	5	36 (if consec)	81.0 (consec)	2.3	180
<u>1985</u>						
Pierson	7	2	41.0	135.0	3.3	240
Dye	7	2	41.0	120.0	2.9	240

Modifications Considered but not Adopted to
Aggravating Factors

b. Aggravating Factors:

- (3) The current conviction is for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured. An aggravated durational departure for this factor alone shall not exceed twice the presumptive sentence.
- (6) The offender committed, for hire, a crime against the person. An aggravated durational departure for this factor alone shall not exceed twice the presumptive sentence.
- (7) The offender committed a crime against the person in furtherance of criminal activity by an organized gang. An "organized gang" is defined as an association of five or more persons, with an established hierarchy, formed to encourage gang members to perpetrate crimes or to provide support to gang members who do commit crimes. An aggravated durational departure for this factor alone shall not exceed twice the presumptive sentence.

Modifications Considered but not Adopted to Commentary Regarding Departures**Comment**

II.D.204. The Supreme Court has ruled that usually an aggravated durational departure of no more than double the presumptive sentence is sufficient to extend the punishment in cases where substantial and compelling circumstances exist. The Commission believes this limit on the extent of the aggravated durational departure supports the goal of the guidelines regarding proportionality in sentencing; State v. Evans, 311 N.W. 2d 481. Although, generally, the guidelines do not provide the trial court with specific recommendations regarding the extent of an aggravated durational departure, the Commission has indicated that with respect to certain aggravating factors, compliance with the Evans ruling is recommended. The Commission believes that any other aggravating factors do not necessarily require more than double the presumptive sentence in order to establish proportionality but that circumstances would vary enough to place the trial court in the best position to make that determination, with the oversight of the Supreme Court. The Commission, in light of case law, urges the trial court to continue to consider the goals of the guidelines and to consider the possible proportionality distortion that the criminal history score might introduce when aggravating the duration of the prison sentence to double the presumptive sentence or beyond. When severe aggravating circumstances are present that warrant a durational departure that is more than double the presumptive sentence, the Commission urges the trial court to reserve the statutory maximum sentence for the most egregious cases.

COUNTIES WITHIN JUDICIAL DISTRICTS

FIRST DISTRICT

Carver	McLeod
Dakota	Scott
Goodhue	Sibley
LeSueur	

SECOND DISTRICT

Ramsey

THIRD DISTRICT

Dodge	Rice
Fillmore	Steele
Freeborn	Wabasha
Houston	Waseca
Mower	Winona
Olmsted	

FOURTH DISTRICT

Hennepin

FIFTH DISTRICT

Blue Earth	Murray
Brown	Nicollet
Cottonwood	Nobles
Faribault	Pipestone
Jackson	Redwood
Lincoln	Rock
Lyon	Watonwan
Martin	

SIXTH DISTRICT

Carlton
Cook
Lake
St. Louis

SEVENTH DISTRICT

Becker	Morrison
Benton	Otter Tail
Clay	Stearns
Douglas	Todd
Mille Lacs	Wadena

EIGHTH DISTRICT

Big Stone	Renville
Chippewa	Stevens
Grant	Swift
Kandiyohi	Traverse
LacquiParle	Wilkin
Meeker	Yellow Medicine
Pope	

NINTH DISTRICT

Aitkin	Lake of the Woods
Beltrami	Mahnomen
Cass	Marshall
Clearwater	Norman
Crow Wing	Pennington
Hubbard	Polk
Itasca	Red Lake
Kittson	Roseau
Koochiching	

TENTH DISTRICT

Anoka	Pine
Chisago	Sherburne
Isanti	Washington
Kanabec	Wright

1987 Monitoring Data
Nonimprisonment Sanction Levels
Median and Range

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana I	66 10-464	100 12-406	96 24-425	120 24-432	201 15-431	156 36-438	217 24-606
Theft Related Crimes (\$2500 or less) Check Forgery (\$200-\$2500) II	90 6-1557	110 24-462	141 24-520	150 24-525	180 24-425	207 36-425	306 36-485
Theft Crimes (\$2500 or less) III	85 12-1706	120 24-612	141 3-508	150 24-748	150 24-431	118 60-455	120 54-243
Nonresidential Burglary Theft Crimes (over \$2500) IV	100 8-1424	143 15-1424	175 12-497	216 24-485	180 24-451	422 36-1152	240 60-485
Residential Burglary Simple Robbery V	165 6-605	240 34-742	240 24-485	270 60-515	401 300-425	479 120-485	90 60-162
Criminal Sexual Conduct 2nd Degree (a) & (b) VI	202 10-1487	268 26-612	367 24-908	257 60-485	367 60-458	363 180-608	180 90-270
Aggravated Robbery VII	323 60-515	425 114-515	210 60-396	276 276-276	515 515-515	—	431 431-431
Criminal Sexual Conduct, 1st Degree Assault, 1st Degree VIII	431 50-622	540 159-635	285 240-485	—	—	—	—
Murder, 3rd Degree Murder, 2nd Degree (felony murder) IX	—	—	—	—	—	—	—
Murder, 2nd Degree (with intent) X	—	—	—	—	—	—	—

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

*one year and one day

CHARLES

OFFENSE: 609.625 Subd. (3) Aggravated Forgery

OFFENSE DESCRIPTION

The offender stole and forged a check (\$510) on his ex-roommate's bank account. The police were called by the bank. The ex-roommate indicated that the offender might be a suspect. The offender was arrested and two days later confessed. The offender says that he was heavily into drinking at the time and forged the check to get drinking money. He also admitted to forging another check for \$110.

PRIOR RECORD

No prior felonies, gross misdemeanors, misdemeanors or traffic violations.

PERSONAL

The offender is a 22 year old, Indian, male. He is a high school graduate, single and has no children. He learned welding while in the Navy. He admits to drinking heavily and has been through treatment in the past.

EMPLOYMENT

For the last four months he has worked at a food plant. Prior to that he worked short periods of time at a grocery store, a restaurant, on a farm and for a delivery service.

SENTENCE

Prison Prison Duration _____
 Stay of Execution Length of Stay _____
 Stay of Imposition Length of Stay _____
 Mis'd or Gross Mis'd Disposition

Jail Jail Duration _____
 Treatment Residential Non-Residential _____
 Restitution
 Other Conditions _____

JAY

OFFENSE: 609.582 Subd. (3) Burglary, 3rd

OFFENSE DESCRIPTION

The offender and an accomplice broke into an American Legion Hall through a basement window. They set off a silent alarm, and the police found them hiding in the basement of the building. The offender states that he and his accomplice had been drinking heavily and when they ran out of beer in the early hours of the morning, they decided to break into the American Legion Hall to get more.

PRIOR RECORD

No prior felonies. He completed juvenile probation for check forgery. He had two traffic violations (driving without a license and careless driving) and two adult misdemeanors (criminal damage to property and disorderly conduct).

FAMILY BACKGROUND

Offender is the third oldest of six children. His father is unemployed and receives welfare; his mother does seasonal work at a nursery. He lives with his grandmother because his parents apartment is too crowded. His parents home burned down and they have not been able to replace it.

PERSONAL

The offender is a 21 year old, white, male. He is a high school graduate, single and has no children. He was drinking heavily at the time of the offense but does not feel he has a problem or that he needs treatment. He has never gone through treatment.

EMPLOYMENT

His only employment since high school has been odd jobs driving trucks. He receives \$199 a month in general assistance.

SENTENCE

Prison Prison Duration _____
 Stay of Execution Length of Stay _____
 Stay of Imposition Length of Stay _____
 Mis'd or Gross Mis'd Disposition

Jail Jail Duration _____
 Treatment Residential Non-Residential _____
 Restitution
 Other Conditions _____

PERSONS OR ORGANIZATIONS PROVIDING SPOKEN AND/OR WRITTEN TESTIMONY
PUBLIC HEARINGS JUNE AND DECEMBER, 1988

Tom Johnson, Hennepin County Attorney
 Robert Streitz, Hennepin Co. Attorney's Office
 John Menke, MCCA
 David Murrin, Henn. Co. Public Defender's Office
 Sue Maki, State Public Defender's Office
 Robert Hanson, Ramsey Co. Community Corrections
 *Dennis Doffing, Dodge/Fillmore/Olmsted Co. Community Corrections
 *John Rayman, Olmsted Co. Corrections
 Judge Kevin Burke, Fourth Judicial District
 Judge Charles Porter, Fourth Judicial District
 *Duane Erickson, Director of Field Services, Dept. Corrections
 Judge Mary L. Klas, Second Judicial District
 Michael Cunniff, Director, Hennepin Co. Court Services
 Dave Gair, citizen (also Henn. Co. Court Services)
 Minnesota District Judges Association
 *Charles Moore, Professor, University of Wisconsin
 Representative Randy Kelly, Minnesota House of Representatives
 *Richard Frase, Professor, Univ. of MN Law School
 Creighton Orth, Henn. County Court Services
 Tom Barbeau, Henn. Co. Probation Officers Local 552
 Minnesota County Attorneys Association
 Bruce Anderson, Lake County Attorney
 Tom Foley, Ramsey County Attorney
 Steve Kilgriff, Attorney General's Office, speaking for Attorney General
 Hubert H. Humphrey, III
 Mike Kehoe, Jack Hughes, and John Staloch, MCA
 *Dick Ericson and Jerry Potter, Citizens Council on Crime and Justice
 Mitchell Rothman, Minneapolis City Attorney
 Mary Scully Whitaker, Women Offenders in Corrections
 C. Paul Jones, State Public Defender
 *Stephen Coleman, State Planning Agency
 Anthony Bouza, John Laux, Minneapolis Police Department
 Minnesota State Sheriffs' Association
 Judge Paul Ballard, representing MN District Judges Association
 *Andrew von Hirsch, Professor, Rutgers University
 Judge Martin Mansur, First Judicial District
 Dennis Flaherty, MN Police and Peace Officers Association

*The individuals noted with an asterisk testified in support of the concept of statewide nonimprisonment guidelines. The remaining individuals were not in favor of statewide nonimprisonment guidelines.

