MINNESOTA SENTENCING GUIDELINES COMMISSION

Report to the Legislature

January 15, 2013

Minnesota Sentencing Guidelines Commission

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Introduction

In 1981, Minnesota became the first state to implement a sentencing guidelines structure. The Minnesota Sentencing Guidelines Commission is a legislatively created body whose purpose is to maintain the guidelines, evaluate outcomes of changes in sentencing policy, analyze trends and make appropriate recommendations, and provide education on sentencing law and policy.

The primary consideration of the Minnesota Sentencing Guidelines is **public safety**. Other considerations are:

- To promote **uniformity** in sentencing so that offenders who are convicted of similar types of crimes and who have similar types of criminal records are similarly sentenced.
- To provide **rationality** and **predictability** in sentencing.
- To establish **proportionality** in sentencing by emphasizing a "just deserts" philosophy. Offenders convicted of serious violent offenses (even with no prior record), those with repeat violent records, and those with more extensive non-violent criminal records are recommended the most severe penalties.

Throughout the time the Guidelines have existed, Minnesota has undergone significant changes in population, while both its crime rate and its rate of imprisonment per capita have remained among the lowest in the United States. In a 2010 comparison, the Bureau of Justice Statistics determined that Minnesota's prison incarceration rate continues to be the second-lowest of all states in the nation with a 185 inmate per 100,000-resident ratio.[1] The Guidelines play a crucial role in helping to maintain balance between appropriate sentencing policy and correctional resources.

This report details the work of the Minnesota Sentencing Guidelines Commission during 2012 and provides an overview of sentencing practices and trends in the criminal justice system. The sentencing data included in this report is from the most recent full year of sentencing data: 2011. Please direct any comments or questions regarding the report to the Minnesota Sentencing Guidelines Commission Office. Additional reports on overall data trends in 2011 and sentencing practices for specific offenses, including assault offenses and violations of restraining orders, controlled substances, criminal sexual conduct, criminal vehicular homicide and injury, dangerous weapons, failure to register as a predatory offender, and felony DWI, as well an unranked offense report and probation revocation report are available on the Commission's website at http://www.msgc.state.mn.us.

[1] *Prisoners in 2010;* Bureau of Justice Statistics; December 2011, Revised 2/9/12, NCJ 236096, Page 22; http://www.bjs.gov/content/pub/pdf/p10.pdf.

Executive Summary

The 2013 Report to the Legislature contains information for which the Commission is required to report: modifications to the Guidelines and use of firearms in crimes as reported by Minnesota's County Attorneys. As in past years, the Commission also took this opportunity to highlight topics that may be of interest to the legislature: sentencing and departure trends; information on felony driving while impaired (DWI) ten years following the enactment of the law; and updates on Commission and staff activities.

Sentencing Trends (p. 4): There were 14,571 felony offenders sentenced in 2011; an overall increase of 2% from the number sentenced in 2010. Person offenses accounted for 32% of the volume which was the highest percentage since the Guidelines went into effect. Overall, 91% of felony offenders were incarcerated in either a State prison on an executed sentence (25%) or in a local correctional facility as a condition of a stayed sentence (66%). Overall, 74% of felony offenders received the presumptive Guidelines Sentence.

Felony DWI – Ten Years Later (p. 23): Felony Driving While Impaired (DWI) went into effect ten years ago on August 1, 2002. The highest number of offenders was recorded at 860 offenders in 2004. Since the height, the overall number of offenders has dropped, but has remained consistently above 650 offenders. At the same time, the proportion of subsequent offenders has steadily grown, reaching the highest rate recorded in 2011 (199 offenders out of a total 660; 30%). Because subsequent offenders are more likely to be given a prison sentence, there has been a corollary increase in the prison rate from 14% in 2003 to 31% in 2011 (Figure 17, p. 27).

Modifications to the Sentencing Guidelines (p. 32): The Commission reviewed amended crime legislation to determine the effect on the Guidelines and assigned severity level rankings to the following new felony offenses: Sale of synthetic cannabinoids (Severity Level 2); deprivation of vulnerable adult resulting in great bodily harm (Severity Level 8); deprivation of vulnerable adult resulting in substantial bodily harm (Severity Level 5); false imprisonment – unreasonable restraint of children (Severity Level 3).

Non-Legislative Modifications (p. 34): Throughout the year, the Commission considered case law and other issues that were brought to its attention. New policies or policy clarifications were implemented for: 1) non-felony sentences for felony convictions; 2) sentence ranges for sex trafficking offenses; 3) felony convictions sentenced consecutively to gross misdemeanors; 4) felony convictions sentenced consecutively to non-Minnesota felonies; 5) juvenile DWIs in adult traffic court; and 6) determining offense dates for aggregated offenses.

Guidelines Revision Project (p. 37): Over the past year, the Commission revised the text of the Guidelines to make them easier to read, use, and understand. The scope of the revision was primarily stylistic, and the revisions were incorporated into the 2012 Guidelines.

Technical Correction to Ranges on the Sex Offender Grid (p. 38): Commission staff discovered that some upper and lower ranges displayed on the Sex Offender Grid were off by one month due to a rounding error. The Commission sought and was given legislative authority to reissue the Sex Offender Grid to correct these errors. The Commission also confirmed that the ranges on the Standard Grid are calculated correctly. The modified Sex Offender Grid became effective May 1, 2012 (See Appendix 4, p. 59).

Commission Discussions: In addition to the above activities, the Commission heard presentations about:

- Evidence-based practices;
- Departure rates; and
- Criminal history scores.

Staff Activities (p. 39): The staff performed the following activities: trained nearly 1,000 practitioners in traditional classroom and online settings; provided 24 fiscal impact statements for introduced legislation; worked with Department of Corrections to generate prison bed projections; served on various criminal justice boards, forums and committees; processed and ensured the accuracy of over 14,000 sentencing records; published annual Guidelines and commentary; and provided reports on sentencing practices.

County Attorney Firearms Reports (p. 41) – County Attorneys collect and maintain information on crimes for which a defendant is alleged to have possessed or used a firearm. The Commission is required to include in its annual report a summary and analysis of the reports received. Since the mandate began, the average number of cases has been 709.

2011 Sentencing Practices Data Summary

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

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

Case Volume

There were 14,571 felony offenders sentenced in 2011; an increase of 1.8 percent from the number sentenced in 2010. Figures 1 and 2 illustrate a large growth in the number of offenders sentenced for felony convictions between 2001 and 2006. This growth can be attributed to the implementation of the felony driving while impaired (DWI) law and increases in the number of drug crimes sentenced, particularly methamphetamine cases. Both trends appear to have leveled off.

The decrease in volume for felony sentences is likely related to an overall decrease in reported crime. Data published by the Minnesota Department of Public Safety indicates that the overall crime rate for "index crimes"[2] has fluctuated since 1981, but has decreased for the last five years. The 2011 rate of 2,757 crimes per 100,000 in population represents a decrease of 1.4 percent from 2010. In 2011, there were 11,876 reported violent crimes in Minnesota, a decrease of six percent from the 12,661 violent crimes reported in 2010.

[2] Index crimes are Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny, Motor Vehicle Theft, and Arson. *2011 Uniform Crime Report, p. 10.*

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2011

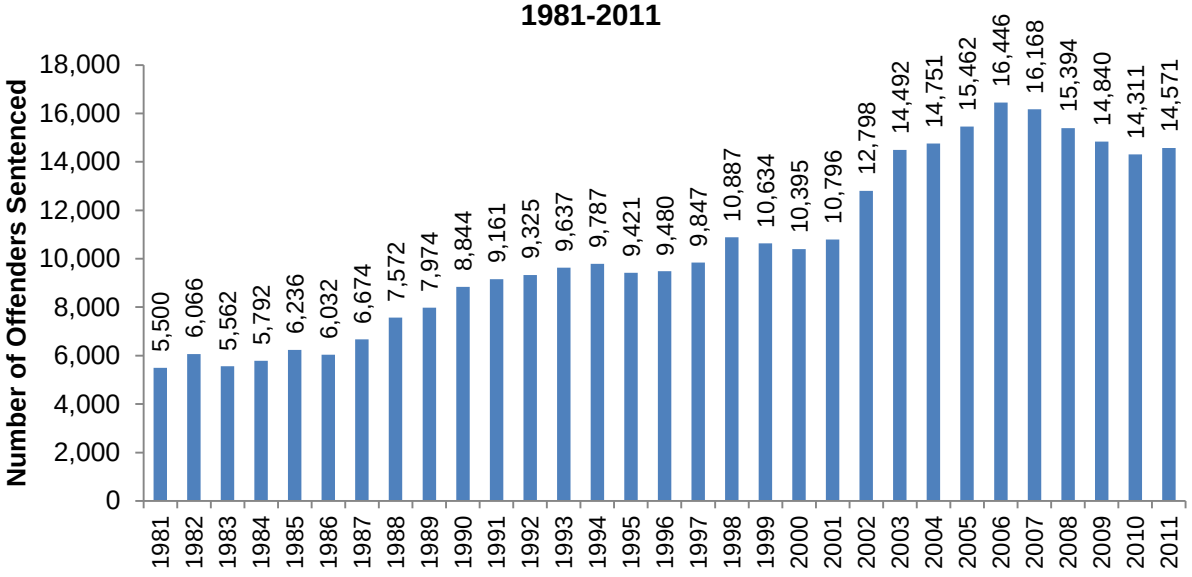


Figure 2. Offenders Sentenced for Felony Convictions: 1982-2011

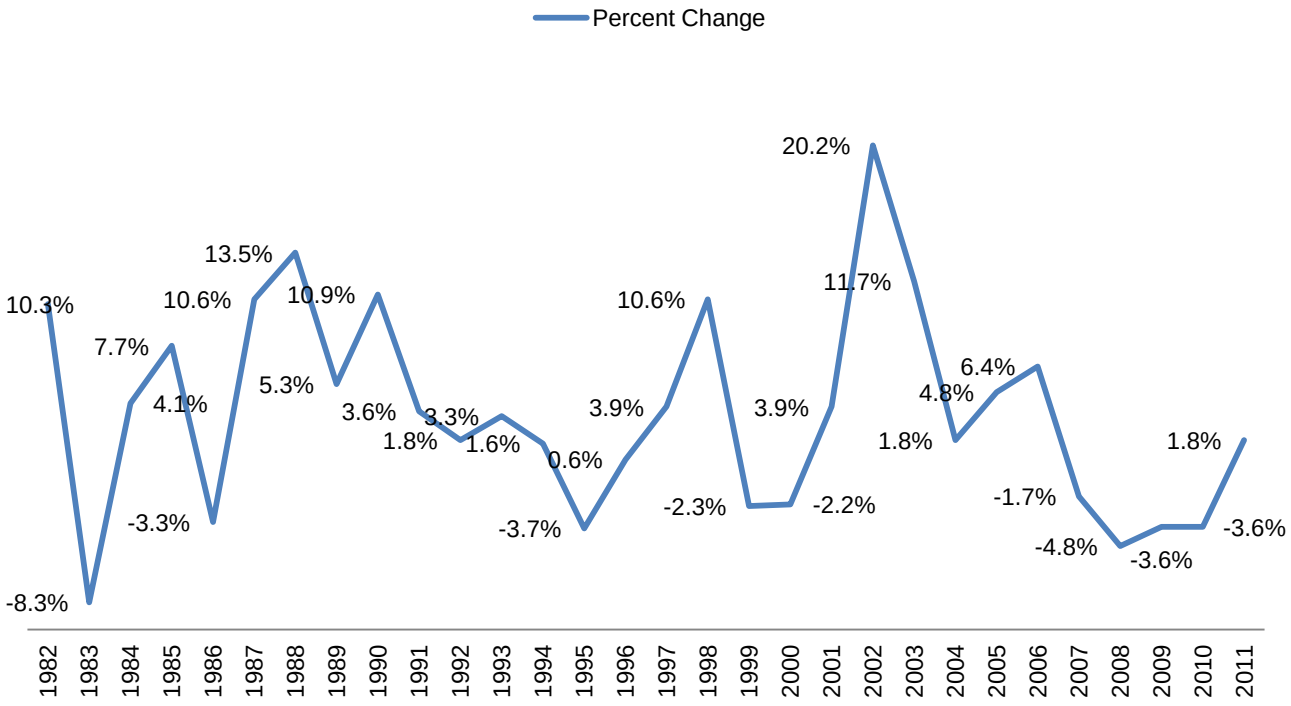
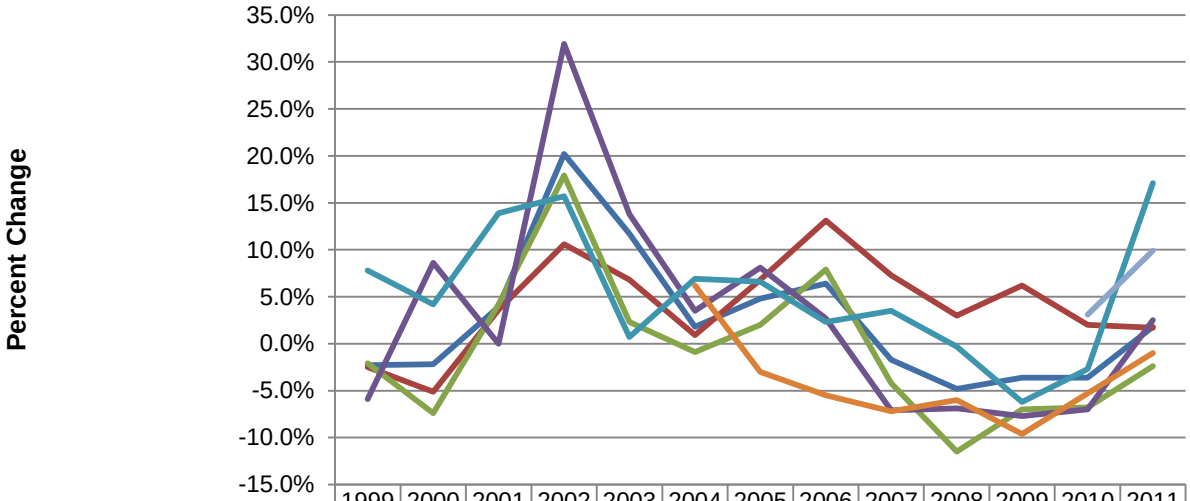


Figure 3. Percent Change by Offense Type: 1999-2011
(Felony DWI and Non-Person Sex OffensesSeparated from "Other")



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Total (All Offenses)	-2.3%	-2.2%	3.9%	20.2%	11.7%	1.8%	4.8%	6.4%	-1.7%	-4.8%	-3.6%	-3.6%	1.8%
Person	-2.5%	-5.1%	3.6%	10.6%	6.8%	0.9%	6.8%	13.1%	7.3%	3.0%	6.2%	2.0%	1.7%
Property	-2.1%	-7.4%	4.2%	17.9%	2.3%	-0.9%	2.0%	7.9%	-4.2%	-11.5%	-7.0%	-6.8%	-2.4%
Drug	-5.9%	8.6%	0.0%	31.9%	13.8%	3.5%	8.1%	2.7%	-7.1%	-6.9%	-7.7%	-7.0%	2.5%
Other	7.8%	4.2%	13.9%	15.7%	0.7%	6.9%	6.6%	2.3%	3.5%	-0.3%	-6.2%	-2.7%	17.1%
Other (Felony DWI*)						6.2%	-3.0%	-5.5%	-7.2%	-6.0%	-9.6%	-5.3%	-1.0%
Other (Non-Person Sex Offenses**)												3.1%	9.9%

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

**Category created in 2010 for sex offenses without a direct victim (failure to register as a predatory offender and possession and dissemination of child pornography). These offenses are excluded from the percent change calculation between 2009 and 2010 for the "other" category.

Change in Case Volume by Offense Type

Figure 3 shows the percent change, by offense type, in the number of offenders sentenced between 1999 and 2011.

- Person Offenses

Sentencing for person crimes has increased every year since 2001. In 2011, the number of offenders sentenced for person crimes increased by nearly two percent, which follows a growth rate of two percent in 2010, six percent in 2009, three percent in 2008, over seven percent in 2007, and 13 percent in 2006 (Figure 3). As a proportion of total crimes sentenced in 2011, person offenses accounted for approximately 32 percent of the offenses, which is the highest percentage since the Guidelines went into effect (Figure 4). Much of this growth can be attributed to the increase in certain domestic assault-related offenses, including domestic assault, domestic assault by strangulation, and violations of restraining orders. For a more detailed discussion of the growth in domestic assault and restraining order offenses, please see MSGC's report entitled *Assault Offenses & Violations of Restraining Orders Sentenced in 2011*, which is available on the MSGC website. (http://www.msgc.state.mn.us).

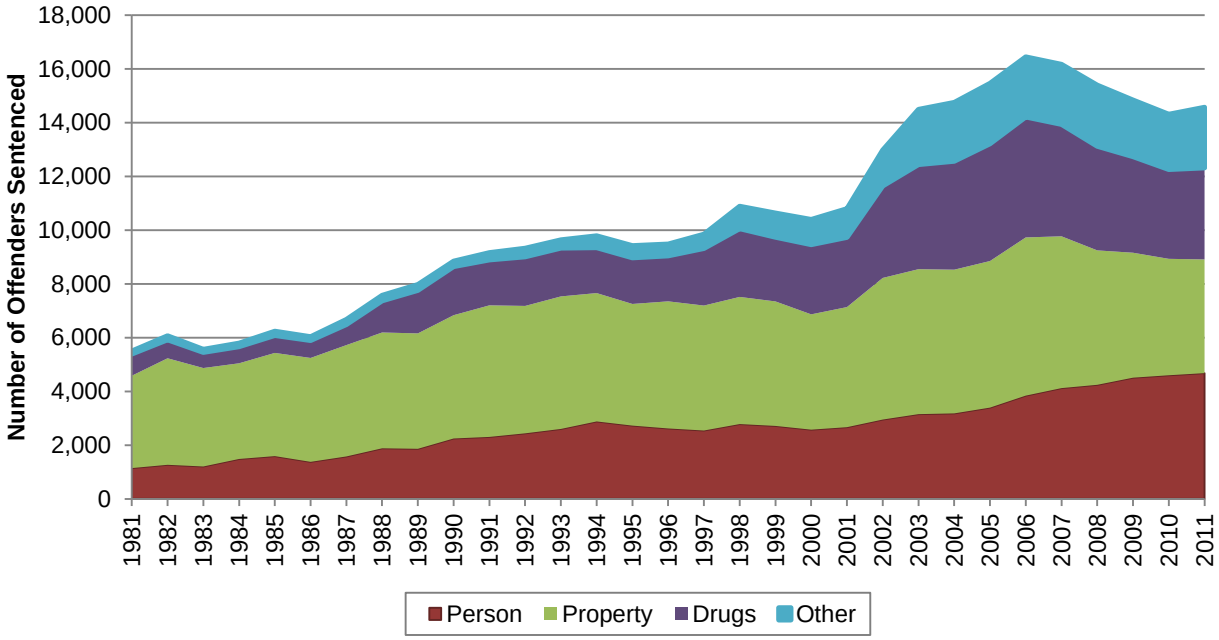
- Drug Offenses

Sentencing for drug offenses, which had increased dramatically in 2002 (up 31.9%) and 2003 (up 13.8%), has generally declined since 2007. But in 2011, the number of drug offenders sentenced was up slightly by 2.5 percent (Figure 3). As a proportion of total crimes sentenced, drug offenses have been decreasing since 2006 (Figure 4). In 2011, the proportion of offenders sentenced for drug offenses was the same as in 2010 (23%), which is the lowest percentage seen since 1999.

- Other Offenses (Including Felony DWI)

In 2010, the "other" offense category was separated so that data about felony DWI and non-person sex offenses (e.g., failure to register as a predatory offender or possession and dissemination of child pornography) could be analyzed separately. In 2011, the number of offenders sentenced for felony DWIs decreased by one percent, a smaller decrease than that seen in recent years (Figure 3). Overall, there was a ten percent increase in the number of offenders in the non-person sex offense category (Figure 3). Failure to register increased by 13 offenders and pornography offenses increased by 30 offenders (from 95 to 125). Among the remaining offenses in the other category the most noticeable increases were in voting violations (from 23 cases in 2009 to 120 cases in 2011) and ineligible felon in possession of a firearm (from 234 to 274).

Figure 4. Volume of Offenders Sentenced by Offense Type: 1981-2011



Offense Type		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Person	#	2,667	2,951	3,152	3,180	3,396	3,841	4,121	4,244	4,509	4,599	4,679
	%	24.7	22.7	21.7	21.6	22.0	23.4	25.5	27.6	30.4	32.1	32.1
Property	#	4,470	5,271	5,395	5,349	5,455	5,888	5,650	5,003	4,651	4,334	4,232
	%	41.1	40.6	37.2	36.3	35.3	35.8	34.9	32.5	31.3	30.3	29.0
Drug	#	2,596	3,424	3,896	4,038	4,366	4,485	4,167	3,878	3,578	3,326	3,409
	%	24.0	26.4	26.9	27.4	28.2	27.3	25.8	25.2	24.1	23.2	23.4
Other –	#	1,063	1,332	2,049	2,184	2,245	2,232	2,230	2,269	2,102	952	1,115
	%	9.8	10.3	14.1	14.8	14.5	13.6	13.8	14.7	14.2	6.7	7.7
Felony DWI	#										667	660
	%										4.7	4.5
Non-Person Sex Offense	#										433	476
	%										3.0	3.3
Total Number		10,796	12,978	14,492	14,751	15,462	16,446	16,168	15,394	14,840	14,311	14,571

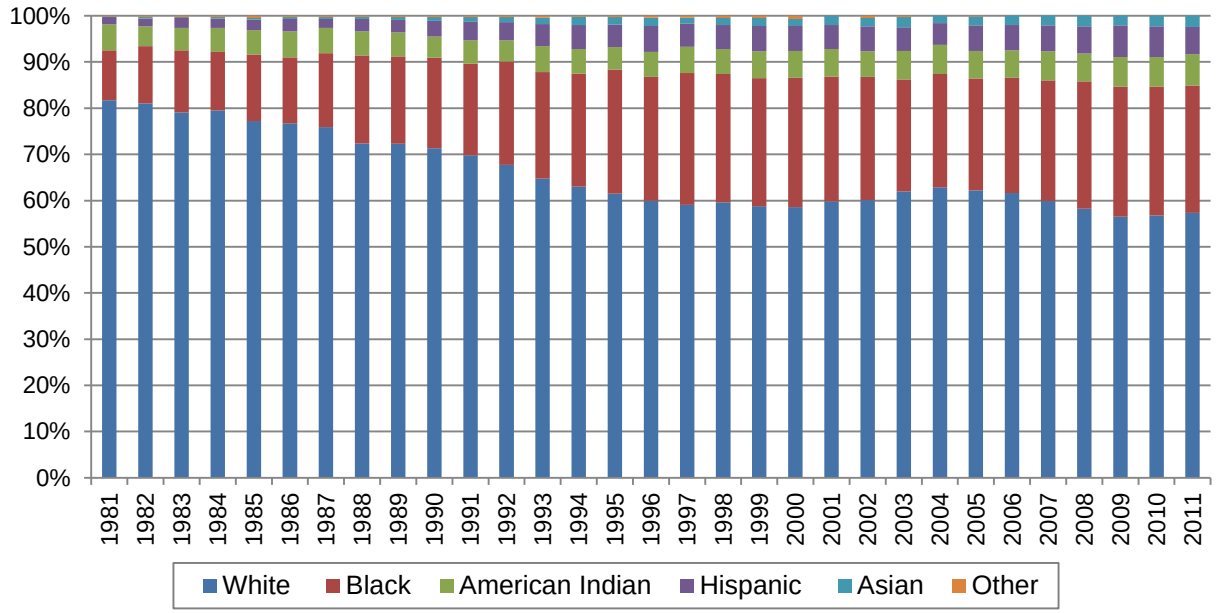
Distribution of Offenders by Race and Judicial District

Figure 5 shows the racial composition of the felony offender population from 1981 through 2011. The percentage of offenders who are white has decreased by roughly 25 percent since 1981. This is largely due to an increase in the percentage of black offenders, though the percentage of other minority offenders has also increased (particularly Hispanic offenders).

Figure 6 displays the 2011 distribution of the racial composition by Judicial District. The largest populations of black offenders are in the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County). These districts include the Metropolitan areas of St. Paul and Minneapolis.

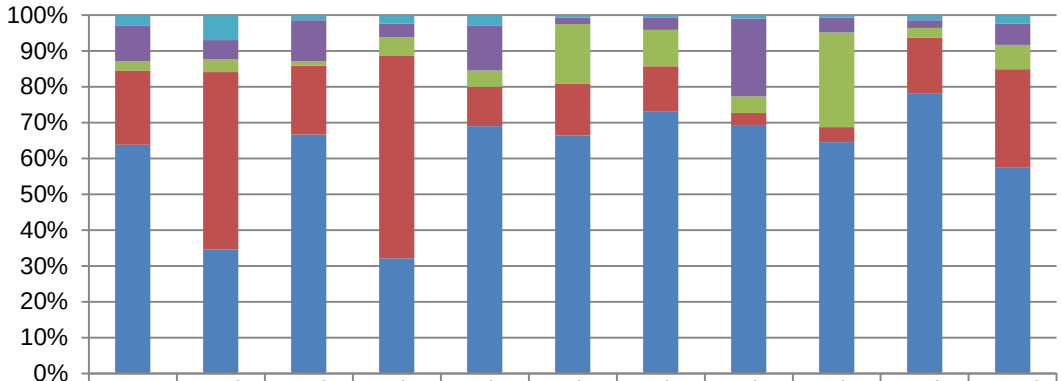
For comparison purposes, Figure 7 illustrates the 2011 U. S. Census summary data for Minnesota's total population of people ages 18 years and over.[3] Minnesota's population is 82.8 percent white, 5.4 percent black; 4.9 percent Hispanic; 4.2 percent Asian; 1.3 percent American Indian; and 2.3 percent people who identify themselves with two or more races, another race, or as Pacific Islander ("Other"). These figures vary by judicial district. (See, Appendix 1 for a map of Minnesota's ten judicial districts.)

Figure 5. Distribution of Felony Offenders by Race: 1981-2011



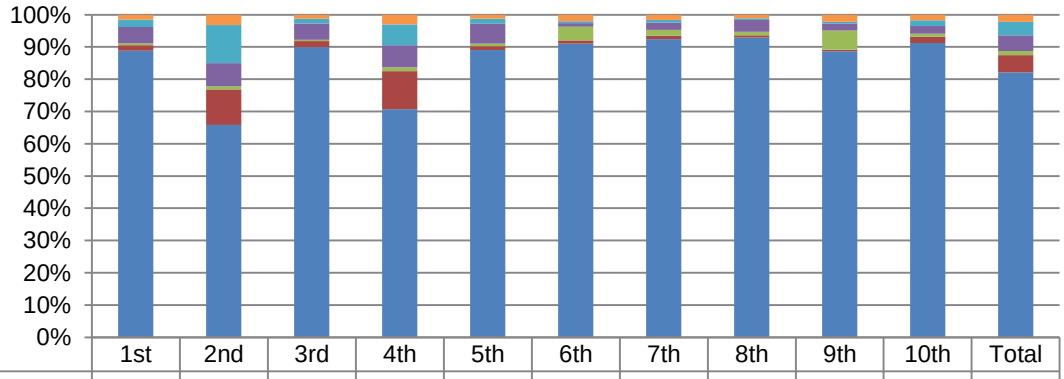
[3] U.S. Census Bureau, Census Summary File 1, Table P11 at http://quickfacts.census.gov/qfd/states/27000.html.

Figure 6. 2011 Distribution of Felony Offenders by Race and Judicial District



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	Total
Asian	2.9%	7.0%	1.5%	2.4%	2.9%	0.8%	0.7%	1.0%	0.8%	1.5%	2.4%
Hispanic	10.0%	5.4%	11.4%	3.8%	12.6%	1.7%	3.5%	21.7%	4.1%	2.1%	5.9%
American Indian	2.6%	3.5%	1.2%	5.1%	4.5%	16.7%	10.1%	4.7%	26.4%	2.7%	6.8%
Black	20.7%	49.5%	19.2%	56.6%	11.0%	14.4%	12.7%	3.5%	4.2%	15.5%	27.5%
White	63.8%	34.6%	66.6%	32.1%	69.0%	66.3%	73.1%	69.1%	64.5%	78.1%	57.3%

Figure 7. 2011 Distribution of Minnesota Population (18 yrs and older) by Race and Judicial District



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	Total
Other	1.5%	3.3%	1.3%	3.1%	1.2%	2.0%	1.6%	1.2%	2.2%	1.7%	2.3%
Asian	2.3%	12.0%	1.5%	6.5%	1.7%	0.6%	0.8%	0.5%	0.6%	1.8%	4.2%
Hispanic	5.1%	7.2%	5.1%	6.9%	6.1%	1.2%	2.3%	3.7%	2.1%	2.4%	4.9%
American Indian	0.6%	1.0%	0.4%	1.2%	0.8%	4.3%	1.8%	1.1%	6.0%	0.9%	1.3%
Black	1.7%	11.2%	1.8%	12.0%	1.2%	0.9%	1.1%	0.7%	0.5%	2.0%	5.4%
White	89.3%	66.8%	90.4%	71.6%	89.6%	91.3%	92.7%	93.3%	89.1%	91.5%	82.8%

Incarceration by Race and Judicial District

Under Minn. Stat. § 609.02, a felony sentence must be at least 366 days long in Minnesota. Sentences of one year or less are gross misdemeanors or misdemeanors and are served in local correctional facilities.

The Guidelines presume who should go to state correctional institutions (prison) and for how long. Imprisonment rates are related to the Guideline recommendations and are based on the seriousness of the offense and the offender's criminal history score. In cases in which prison sentences are stayed, the court usually places the offender on probation. As a condition of probation, the court can impose up to one year of incarceration in a local correctional facility. Probationers usually serve time in a local facility and are often given intermediate sanctions such as treatment (residential or nonresidential), restitution, and fines.

When comparing imprisonment rates across various groups (sex, race or judicial district) it is important to note that much of the variation is directly related to the proportion of offenders in any particular group who are recommended a prison sentence by the Guidelines based on the severity of the offense and the offender's criminal history.

Table 1, below, provides total incarceration information for offenders sentenced in 2011. The total incarceration rate describes the percentage of offenders who received a sentence that included incarceration in a state prison or local facility, such as a jail or workhouse, following conviction.

- Race

The total incarceration rate varies across racial groups (ranging from 89.4% for white offenders to 93.3% for black offenders). However, there is greater variation by race in the separate rates for prison and local confinement. For example, white offenders were imprisoned at the lowest rate (21.0%) whereas black offenders were imprisoned at the highest rate (31.4%).

- Judicial District

Variation was also observed in incarceration rates by Judicial District. The Second Judicial District, which includes St. Paul, had the highest total incarceration rate (98.9%) and the Third Judicial District, which includes Rochester, had the lowest total incarceration rate (78.8%). This variation continues with respect to the separate rates for prison and local confinement. For example, the Fourth Judicial District, which includes Minneapolis, had the highest imprisonment rate (30.6%) and the Fifth Judicial District, which includes Mankato, had the lowest imprisonment rate (19.8%). With regard to use of local confinement, the Tenth Judicial District had the highest rate (74.9%) and the Third Judicial District had the lowest rate (52.3%).

Table 1. Total Incarceration Rates by Gender, Race / Ethnicity, and Judicial District

		Total Cases	Total Incarceration		Prison		Conditional Confinement	
Gender	Male	12,150	11,195	92.1%	3,390	27.9%	7,805	64.2%
	Female	2,421	2,041	84.3%	263	10.9%	1,778	73.4%
Race/ Ethnicity	White	8,346	7,462	89.4%	1,755	21.0%	5,707	68.4%
	Black	4,007	3,740	93.3%	1,260	31.4%	2,480	61.9%
	American Indian	998	922	92.4%	301	30.2%	621	62.2%
	Hispanic	864	784	90.7%	270	31.2%	514	59.5%
	Asian	356	328	92.1%	67	18.8%	261	73.3%
Judicial District	First	1,756	1,514	86.2%	364	20.7%	1,150	65.5%
	Second	1,961	1,939	98.9%	554	28.3%	1,385	70.6%
	Third	1,232	971	78.8%	327	26.5%	644	52.3%
	Fourth	2,936	2,685	91.5%	897	30.6%	1,788	60.9%
	Fifth	661	581	87.9%	131	19.8%	450	68.1%
	Sixth	921	768	83.4%	194	21.1%	574	62.3%
	Seventh	1,472	1,414	96.1%	357	24.3%	1,057	71.8%
	Eighth	401	378	94.3%	115	28.7%	263	65.6%
	Ninth	1,183	1,037	87.7%	299	25.3%	738	62.4%
	Tenth	2,048	1,949	95.2%	415	20.3%	1,534	74.9%
Overall		**14,571**	**13,236**	**90.8%**	**3,653**	**25.1%**	**9,583**	**65.8%**

Average Pronounced Prison Sentences

In 2011 the average prison sentence was 45.6 months. The average has fluctuated over time (Table 2). Numerous changes in sentencing practices and policies, as well as changes in the distribution of cases, can affect the average. The average prison sentence increased after 1989. It has fluctuated up and down in the high 40s to low 50s since then. The substantial increase in the average prison sentence after 1989 was due to both the increased presumptive sentences adopted by the commission in 1989 and, until recent years, an increase in the number of upward durational departures.

Average Pronounced Local Confinement

The average amount of local confinement pronounced as a condition of probation has remained largely constant since 1988. The average was 107 days in 2011 compared to 110 days in 2010 (Table 3).

Table 2. Average Pronounced Prison Sentence

Executed Prison Sentences (in months)

2011	45.6
2010	46.5
2009	42.8
2008	45.0
2007	44.8
2006	44.8
2005	45.7
2004	45.1
2003	51.2
2002	47.2
2001	49.8
2000	49.7
1999	47.9
1998	47.0
1997	44.5
1996	47.4
1995	48.5
1994	51.3
1993	46.9
1992	48.6
1991	45.2
1990	45.7
1989	37.7
1988	38.1
1987	36.3
1986	35.4
1985	38.4
1984	36.2
1983	36.5
1982	41.0

Table 3. Average Pronounced Local Confinement

Local Confinement Time (in days)

2011	107
2010	110
2009	107
2008	109
2007	109
2006	111
2005	110
2004	112
2003	112
2002	106
2001	105
2000	104
1999	103
1998	107
1997	107
1996	107
1995	108
1994	113
1993	112
1992	109
1991	106
1990	110
1989	110
1988	108
1987	116
1986	113
1985	120
1984	126
1983	132
1982	144

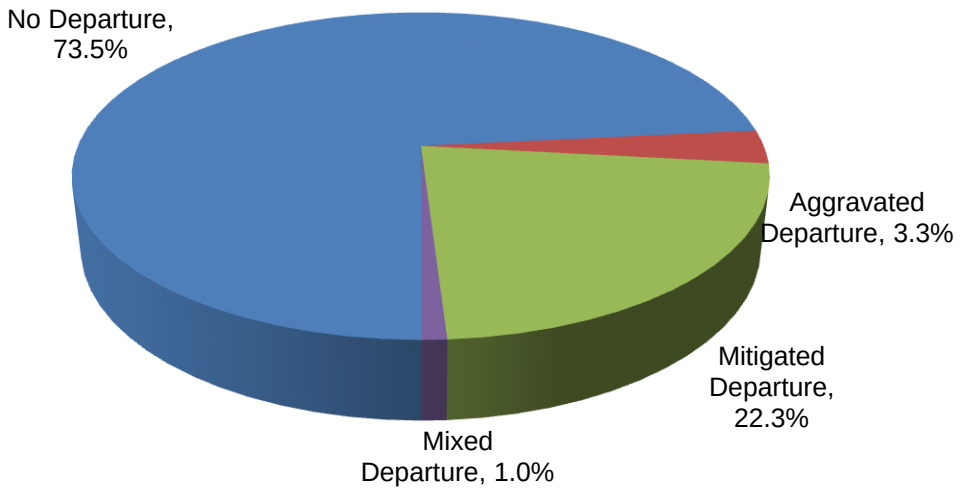
Departures from the Guidelines

A "departure" is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures – dispositional and durational – as further explained below. Since the presumptive sentence is based on "the typical case," the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

While the court ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is typically agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

In 2011, 73.5 percent of all felony offenders sentenced received the presumptive Guidelines sentence. The remaining 26.5 percent received some type of departure (Figure 8).

Figure 8. Overall Departure Rates



- Dispositional Departures

A “dispositional departure” occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: aggravated dispositional departures and mitigated dispositional departures. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence.

In 2011, the overall dispositional departure rate was 14 percent: 11 percent mitigated; and three percent aggravated (Figure 9). Most aggravated dispositional departures occur when an offender with a presumptive stayed sentence requests an executed prison sentence or agrees to the departure as part of a plea agreement. This request is usually made in order for the offender to serve the sentence concurrently with another prison sentence. The Commission has generally included these cases in the departure figures because, for the given offense, the sentence is not the presumptive Guidelines sentence. However, if requests for prison are not included in the analysis, the aggravated dispositional departure rate is one percent (Figure 9-Inset). Because aggravated dispositional departures represent such a small percentage of cases, the remainder of this analysis on departures will focus on mitigated dispositional departures.

Figure 9. Dispositional Departures with and without Requests for Prison from Defendant

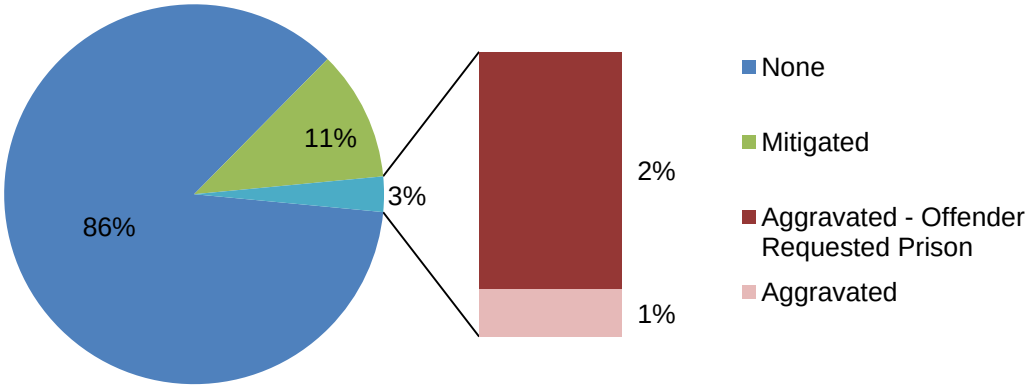


Table 4 illustrates dispositional departure rates by gender, race, and judicial district. The mitigated dispositional departure rate is lower for woman (8.3%) than men (11.7%). When examined by racial composition, the rate ranged from a low of 8.8 percent for Hispanic offenders to a high of 13.2 percent for black offenders. There was also a great deal of variation in the rate by Judicial District, ranging from lows of 8 percent and 7.5 percent in the Eighth and Third Judicial Districts, respectively, to a high of 15.5 percent in the Fourth Judicial District.

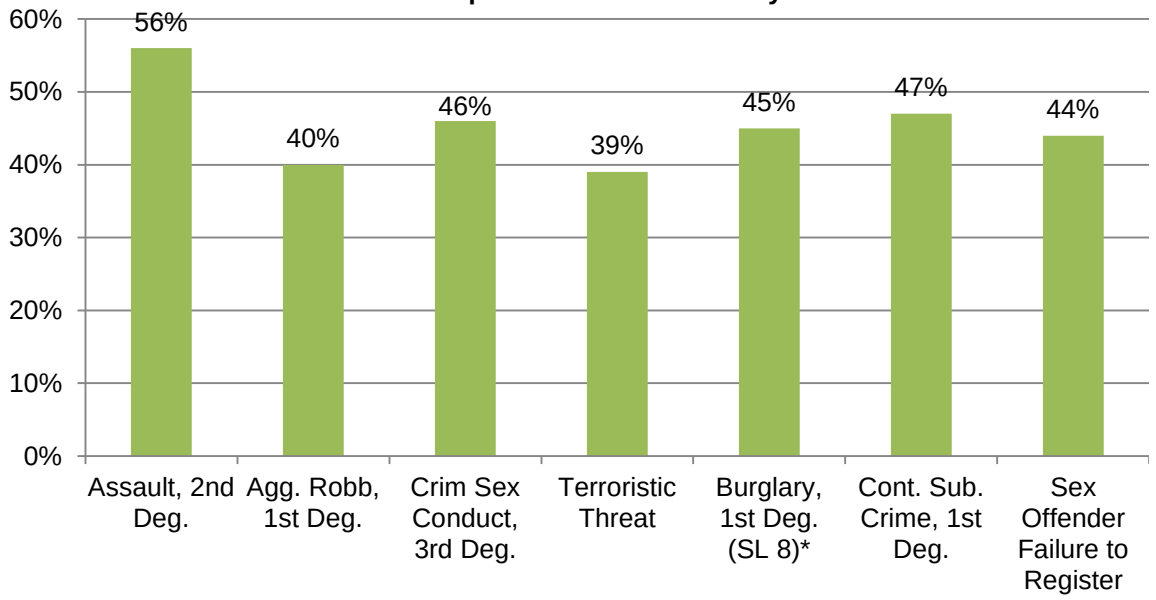
When reviewing the information in Table 4, it is important to note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across racial groups or across regions, and differences in the criminal history scores of offenders across racial groups or across regions.

Table 4. Dispositional Departure Rates for All Cases and for Presumptive Commitments by Gender, Race, and Judicial District

		Total Cases	Aggravated Dispositional Departures		Mitigated Dispositional Departures		Presumptive Commits	Mitigated Dispositional Departures	
Gender	Male	12,150	362	3.0%	1,423	11.7%	4,451	1,423	32.0%
	Female	2,421	68	2.8%	201	8.3%	396	201	50.8%
Race/ Ethnicity	White	8,346	261	3.1%	871	10.4%	2,365	871	36.8%
	Black	4,007	112	2.8%	528	13.2%	1,676	528	31.5%
	American Indian	998	31	3.1%	103	10.3%	373	103	27.6%
	Hispanic	864	22	2.5%	76	8.8%	324	76	23.5%
	Asian	356	4	1.1%	46	12.9%	109	46	42.2%
Judicial District	First	1,756	54	3.1%	196	11.2%	506	196	38.7%
	Second	1,961	52	2.7%	159	8.1%	661	159	24.1%
	Third	1,232	56	4.5%	93	7.5%	364	93	25.5%
	Fourth	2,936	71	2.4%	456	15.5%	1,282	456	35.6%
	Fifth	661	22	3.3%	70	10.6%	179	70	39.1%
	Sixth	921	31	3.4%	115	12.5%	278	115	41.4%
	Seventh	1,472	32	2.2%	153	10.4%	478	153	32.0%
	Eighth	401	18	4.5%	32	8.0%	129	32	24.8%
	Ninth	1,183	58	4.9%	132	11.2%	373	132	35.4%
	Tenth	2,048	36	1.8%	218	10.6%	597	218	36.5%
Overall		**14,571**	**430**	**3.0%**	**1,624**	**11.1%**	**4,847**	**1,624**	**33.5%**

Dispositional departure rates vary for specific offenses. Included in Figure 10 are offenses with mitigated dispositional departure rates that are higher than the overall average (33.5%). These offenses include 50 or more presumptive commitment cases and cases with mitigated dispositional departure rates of over 38 percent.

Figure 10. High Mitigated Dispositional Departure Rates For Specific Offenses
Presumptive Commitments Only



* Burglary with assault or dangerous weapon.

Two of these offenses, assault in the second degree and failure to register as a predatory offender, have mandatory minimum sentences specified in statute and also have statutory provisions allowing for departure from the mandatory minimum. Assault in the second degree, by statutory definition, involves the use of a dangerous weapon and carries a mandatory minimum prison sentence. However, injury to the victim may or may not occur. The type of dangerous weapon involved can vary widely, from a pool cue to a knife to a firearm. Circumstances surrounding the offense can also vary significantly, from barroom brawls to unprovoked confrontations. The mandatory minimum statute specifically permits the court to sentence without regard to the mandatory minimum, provided that reasons are presented by the court or the prosecutor (Minn. Stat. § 609.11, subd. 8). It is to be expected that there will be many departures in sentencing a crime that can be committed in many different ways. Failure to register as a sex offender also has a statutory mandatory minimum sentence, accompanied by a statutory provision that allows for sentencing without regard to the mandatory minimum (Minn. Stat. § 243.166, subd. 5(d)).

- Durational Departures

A "durational departure" occurs when the court orders a sentence with a duration that is other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

The durational departure rates for offenders receiving executed prison sentences (those offenders for whom a prison sentence was imposed) are shown in Figure 11. Since the enactment of the Guidelines, the mitigated durational departure rate has consistently been higher than the aggravated durational departure rate. Both mitigated and aggravated durational departures increased until the early 2000s. In 2001 and 2002, the mitigated durational departure rate was the highest since the enactment of the Guidelines. However, there has been a decline in that rate in the years since. Likewise, the aggravated durational departure rate has been slowly declining since 2000, when it reached a high of almost twelve percent.

In 2011, the mitigated durational departure rate was slightly higher than observed in 2010, at approximately 25 percent. The aggravated durational departure rate reached the lowest level ever observed in 2011, at two percent. This trend likely reflects the impact of increased presumptive sentences over the past years and issues related to the U.S. Supreme Court ruling in *Blakely v. Washington,* 542 U.S. 296 (2004), holding that a defendant's Sixth Amendment right to a jury trial was violated when the sentence imposed was above the stated statutory maximum sentence. In response to the *Blakely* decision, the ranges on the Standard Grid were widened, effective August 1, 2005, to 15 percent downward and 20 percent upward within which the court may sentence without departure. 2005 Minn. Laws ch. 136, art. 16, § 1. In 2006, a Sex Offender Grid was adopted. The Sex Offender Grid introduced higher presumptive sentences for repeat offenders and offenders with prior criminal history records.[4]

[4] For a more in-depth examination of the effect of the *Blakely* decision on sentencing practices, see the MSGC special report: *Impact of Blakely and Expanded Ranges on Sentencing Grid*, at: www.msgc.state.mn.us/msgc5/reports.htm#special_guidelines_reports.

Figure 11. Durational Departure Rates: 1981-2011
Executed Prison Sentences Only

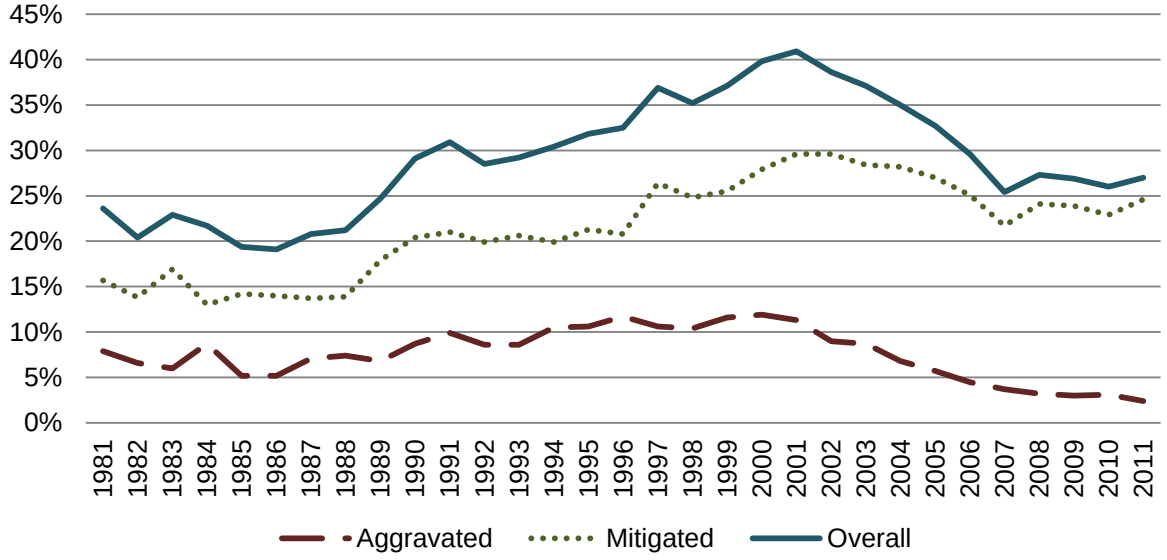


Table 5 illustrates durational departure rates for executed prison sentences by gender, race, and judicial district. As a percentage, male offenders received roughly the same durational departures as female offenders (27% vs. 27.4%). When the departure rate is examined by racial composition, the rate varies from a low of 22 percent for white offenders to a high of 35 percent for black offenders. There is also considerable variation in mitigated durational departure rates by judicial district, ranging from a low of 8.6 percent in the Third Judicial District to a high of 45.7 percent in the Fourth Judicial District.

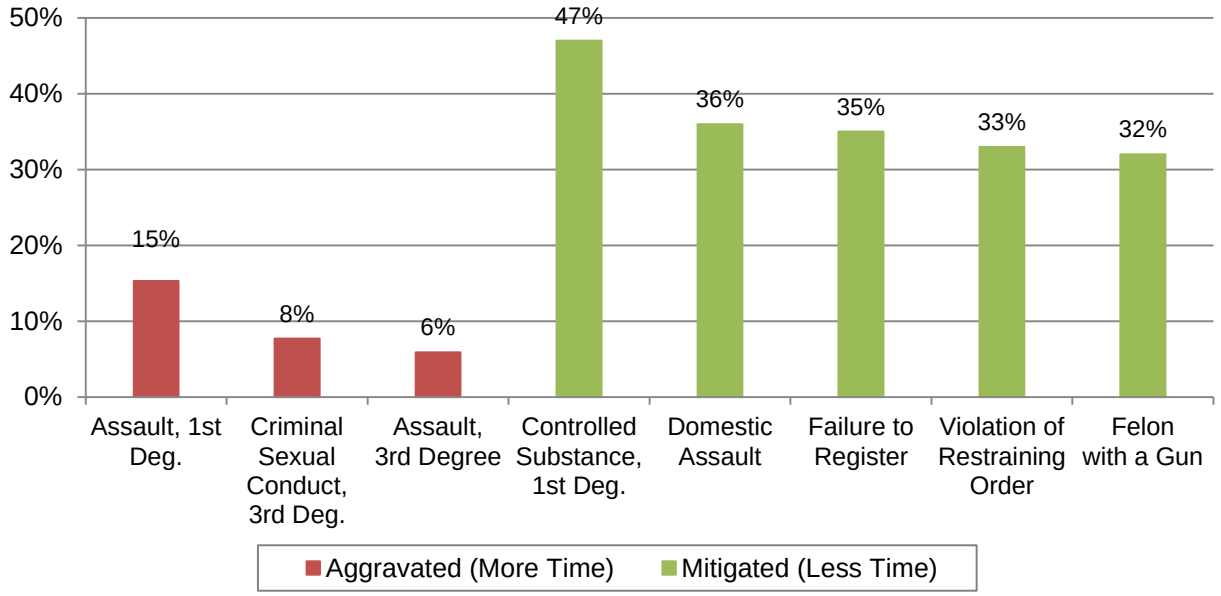
When reviewing the information in Table 5, it is important to note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across racial groups or across regions, and differences in the criminal history scores of offenders across racial groups or across regions.

Table 5. Durational Departure Rates for Executed Prison Sentences by Gender, Race, and Judicial District

		Executed Prison	Total Durational Dep. Rate	No Departure		Aggravated Durations		Mitigated Durations	
Gender	Male	3,390	27.0%	2,475	73.0%	81	2.4%	834	24.6%
	Female	263	27.4%	191	72.6%	7	2.7%	65	24.7%
Race/ Ethnicity	White	1,755	22.1%	1,368	77.9%	50	2.8%	337	19.2%
	Black	1,260	35.3%	815	64.7%	23	1.8%	422	33.5%
	American Indian	301	23.9%	229	76.1%	7	2.3%	65	21.6%
	Hispanic	270	23.7%	206	76.3%	7	2.6%	57	21.1%
	Asian	67	28.4%	48	71.6%	1	1.5%	18	26.9%
Judicial District	First	364	27.5%	264	72.5%	14	3.8%	86	23.6%
	Second	554	31.2%	381	68.8%	8	1.4%	165	29.8%
	Third	327	8.6%	299	91.4%	3	0.9%	25	7.6%
	Fourth	897	45.7%	487	54.3%	24	2.7%	386	43.0%
	Fifth	131	17.6%	108	82.4%	6	4.6%	17	13.0%
	Sixth	194	25.3%	145	74.7%	4	2.1%	45	23.2%
	Seventh	357	21.0%	282	79.0%	6	1.7%	69	19.3%
	Eighth	115	13.0%	100	87.0%	2	1.7%	13	11.3%
	Ninth	299	14.4%	256	85.6%	11	3.7%	32	10.7%
	Tenth	415	17.1%	344	82.9%	10	2.4%	61	14.7%
Overall		**3,653**	**27.0%**	**2,666**	**73.0%**	**88**	**2.4%**	**899**	**24.6%**

As with dispositional departures, it can be helpful to look at offenses with higher than average durational departure rates. Figure 12 displays offenses with the highest durational departure rates among offenses with at least 50 executed prison cases. Aggravated durational departure rates were highest for first-degree assault, third-degree criminal sexual conduct, and third-degree assault. Mitigated durational departure rates were highest for first-degree controlled substance offenses, domestic assault, failure to register as a predatory offender, violation of a restraining order, and felon with a gun.

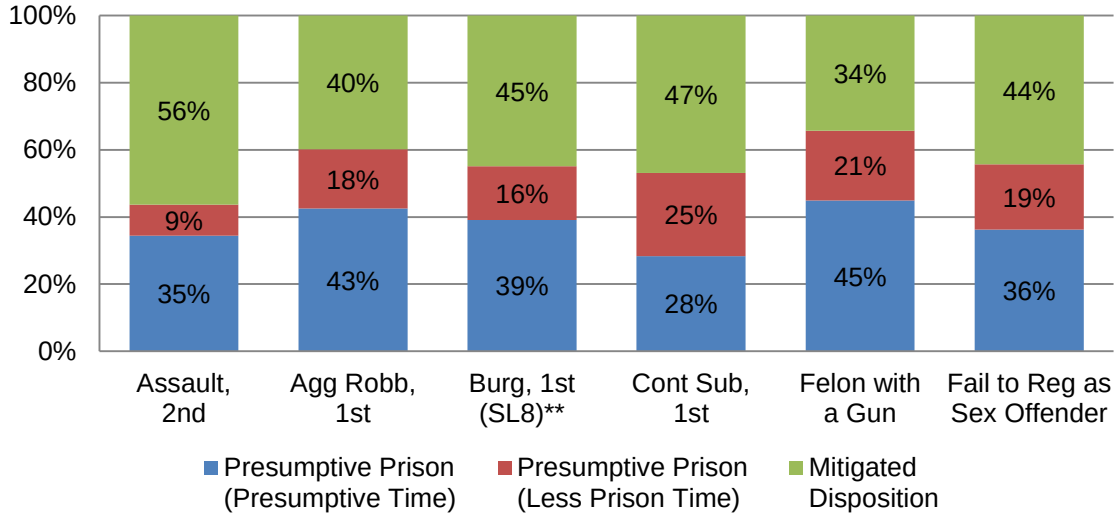
Figure 12. High Durational Departure Rates for Specific Offenses
Executed Prison Sentences Only



Included in Figure 13 are presumptive commitment offenses with 50 or more cases that have a combined higher than average mitigated dispositional departure rate and mitigated durational departure rate. Overall, offenders received both their presumptive disposition (prison) and presumptive duration (presumptive time) about half of the time (49.8%). For these six offenses (with 50 or more presumptive commitment cases), the Guidelines were followed for both disposition and duration 45 percent or less of the time.

As was pointed out for Figure 10, it is important to note that provisions in law allow for sentencing without regard to mandatory minimums for assault in the second degree, felon with a gun, and failure to register as a sex offender (Minn. Stat. § 609.11, subd. 8; § 243.166, subd. 5(d)).

Figure 13. High Departure Rates For Specific Offenses (Presumptive Commitments Only)



Felony Driving While Impaired (DWI) – 10 Years Later

Felony Driving While Impaired (DWI) went into effect ten years ago on August 1, 2002. This section provides an overview of the sentencing trends for felony DWI since its enactment. The trend data examined in this section are from the MSGC monitoring system for cases sentenced from 2002 to 2011.[5]

Presumptive Sentence

The Legislature took a unique approach when establishing the penalty for felony DWI by providing for a minimum 36-month felony sentence of imprisonment and limiting the court's sentencing options to an executed sentence or a stay of execution. The court is expressly forbidden to order a stay of imposition or stay of adjudication. Minn. Stat. § 169A.276 (2012). This means that the court is required to pronounce a period of incarceration even if the court intends to pronounce a probationary sentence. An offender receiving a prison sentence for a felony DWI is also subject to a 5-year term of conditional release. Minn. Stat. § 169A.276, subd. 1(d); Minn. Sentencing Guidelines § 2.E (2012).

To accommodate this unique penalty, the Sentencing Guidelines Commission added new Severity Level 7 to the Sentencing Guidelines Grid. The 36-month minimum sentence is noted for offenders with a Criminal History score of 0, and increases from there in proportion to the offender's increased criminal history score. For an offender convicted of a felony DWI who has a Criminal History Score of 2 or less, the Guidelines presume a stayed sentence (stay of execution under Minn. Stat. § 169A.276); however, if the offender has a prior felony DWI conviction, or a prior conviction for criminal vehicular homicide or operation, the sentence is presumed to be an executed sentence of imprisonment, regardless of the offender's criminal history score. Minn. Sentencing Guidelines § 2.C.3.d (2012).

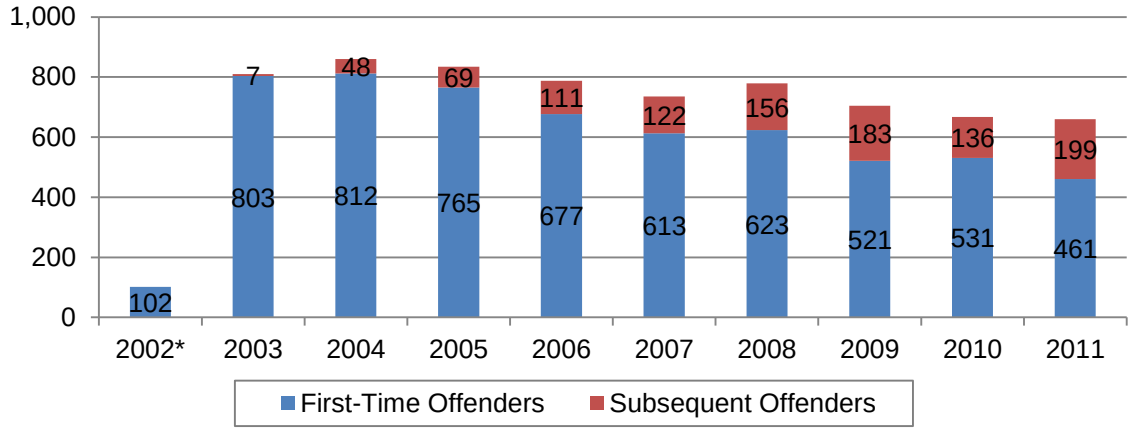
Case Volume & Distribution

Because felony DWI went into effect midway through the year (August of 2002), the 2002 data were not reflective of the overall trend. Beginning in 2003, there were 810 felony DWI offenders; seven of whom were subsequent felony DWI offenders (Figure 14).

The highest number of offenders was recorded in 2004 at 860. The growth was so great that it attributed, in part, to the large growth in the overall number of offenders sentenced in 2003 and 2004 as described on page 4 of this report. Since the height, the overall number of offenders sentenced for felony DWI has generally declined. But at the same time, the proportion of offenders who are subsequent felony DWI offenders has steadily increased, reaching a high of 30 percent in 2011.

[5] It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

Figure 14. Number of Offenders Sentenced: 2002 - 2011



Total DWI Offenders Sentenced by Year

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
102*	810	860	834	788	735	779	704	667	660

* Felony DWI went into effect August 1, 2002; data from August – December.

Demographic Characteristics

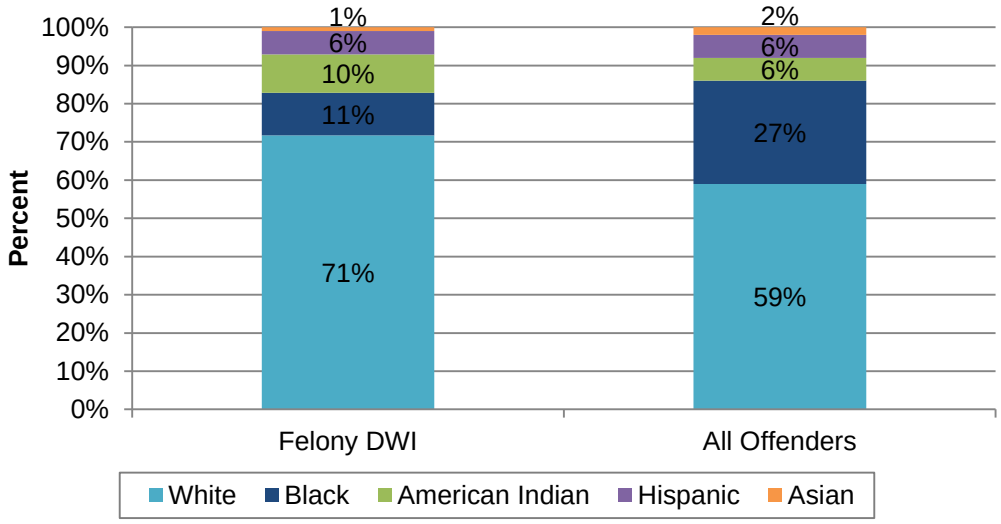
DWI offenders are slightly more likely to be male (89%) than in the overall felony population (83%). The average age at time of offense is 36 for felony DWI offenders, compared to 31 for offenders overall (Table 6).

Table 6. Gender and Average Age: 2002-2011

	Male	Female	Average Age
Felony DWI	(89%)	(11%)	36
All Offenders	(83%)	(17%)	31

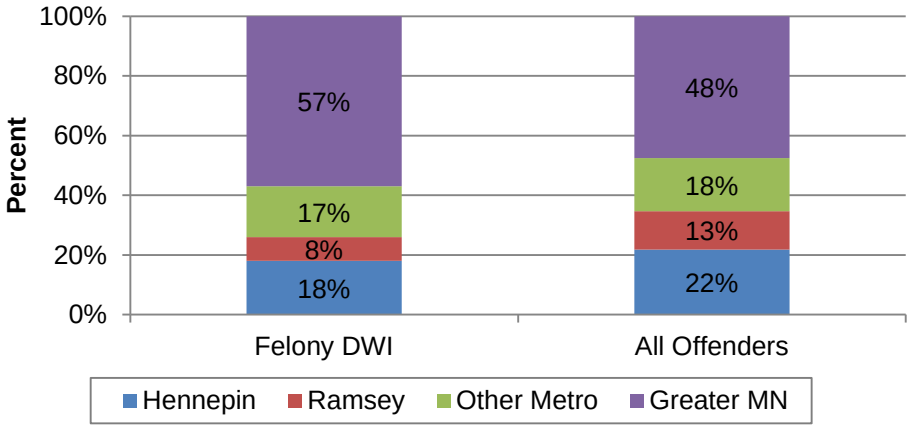
A greater proportion of felony DWI offenders are white (71%) or American Indian (10%) than in the overall felony offender population (59% and 6%, respectively) (Figure 15). The proportion of felony DWI offenders who are black (11%) is much lower than the proportion of black offenders in the overall felony population (27%).

Figure 15. Distribution of Offenders by Race: 2002-2011



Hennepin County sentenced 18 percent of the felony DWI cases in the state, compared to 22 percent of all felony cases sentenced. Ramsey County sentenced eight percent of the felony DWI cases, compared to 13 percent of all felony cases. The other metro counties had a similar percentage of felony DWI and total felony offenses (17% and 18%, respectively). Conversely, Greater Minnesota sentenced a larger proportion of felony DWIs (57%) than its share of all felonies sentenced (48%) (Figure 16).

Figure 16. Distribution of Offenders by Region: 2002-2011



Slightly more than half of all felony DWI cases were sentenced in the following counties (in order of greatest number): Hennepin, Ramsey, Dakota, St. Louis, Anoka, Olmsted, Washington and Clay. (Table 12).

Incarceration Rates

Ninety-six percent of all felony DWI offenders received incarceration in either state prison or a local correctional facility such as jail or a workhouse (Table 7). Overall, twenty-two percent were sentenced to state prison and 74 percent were sentenced to a local correctional facility. But there is a distinct difference in sentencing patterns between first-time felony DWI offenders and subsequent felony DWI offenders. First-time felony DWI offenders are more likely to be given a stayed sentence that includes local jail time (84%) than to be given an executed prison sentence (13%). Subsequent offenders receive sentences that are just the opposite: 21 percent were given a stayed sentence that includes local jail time whereas 75 percent were given an executed prison sentence. This factor, combined with the increase in the number of subsequent offenders noted above in Figure 14 accounts for the overall decline in the jail rate and increase in the prison rate shown in Figure 17, below.

Since enactment, the average prison sentence for felony DWI has consistently been between 50 and 53 months (Table 8). The overall average pronounced jail time is 213 days. It has been as low as 191 days (2009) and as high as 237 days (2002) (Table 8).

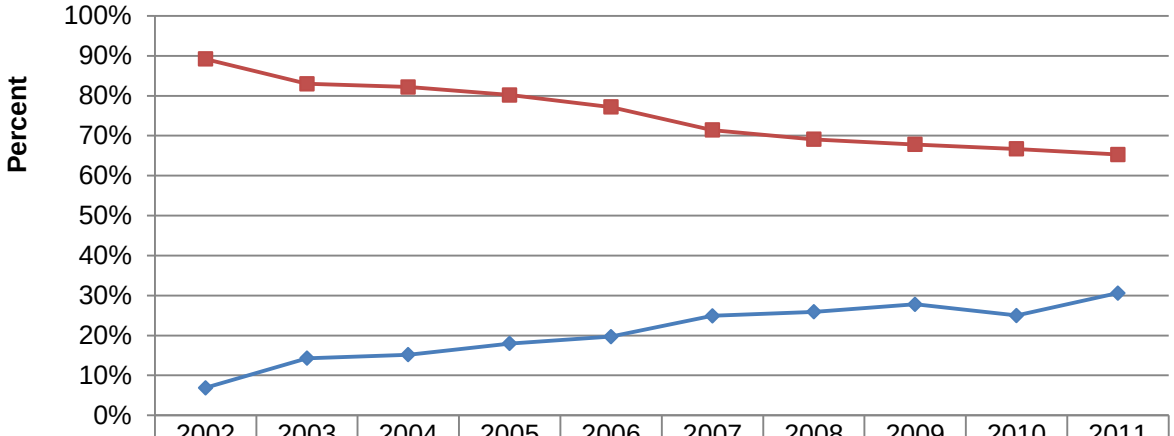
Table 7. Total Incarceration Rates: 2002-2011

	Total Incarceration	Prison	Local Jail Time	Other Sanctions
First-Time Offenders	96%	13%	84%	4%
Subsequent Offenders	96%	75%	21%	4%
Total	**96%**	**22%**	**74%**	**4%**

Table 8. Incarceration Rates and Average Durations by Year

Year	Number of Offenders	Prison	Average Pronounced Prison Sentence (months)	Local Jail Time	Average Pronounced Conditional Confinement Time (days)
2002	102	7 (7%)	53	91 (89%)	237
2003	810	116 (14%)	50	672 (83%)	233
2004	860	131 (15%)	52	707 (82%)	229
2005	834	150 (18%)	52	669 (80%)	215
2006	788	155 (20%)	51	608 (77%)	212
2007	735	183 (25%)	50	525 (71%)	211
2008	779	202 (26%)	51	538 (69%)	202
2009	704	196 (28%)	51	477 (68%)	191
2010	667	167 (25%)	53	445 (67%)	199
2011	660	202 (31%)	50	431 (65%)	202
Total	**6,939**	**1,509 (22%)**	**51**	**5,163 (74%)**	**213**

Figure 17. Prison Rate and Jail Rate for Felony DWI Offenses : 2002-2011



	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Prison	6.9%	14.3%	15.2%	18.0%	19.7%	24.9%	25.9%	27.8%	25.0%	30.6%
Jail	89.2%	83.0%	82.2%	80.2%	77.2%	71.4%	69.1%	67.8%	66.7%	65.3%

Departures from the Guidelines: Dispositional[6]

Of the offenders sentenced for felony DWI from 2002-2011, thirty-two percent were recommended to be sentenced to prison under the Guidelines (Table 9). Of those, 66 percent were given the presumptive sentence and committed to prison. The remaining 34 percent were given a mitigated dispositional departure and placed on probation.

The mitigated dispositional departure rate has varied since enactment, appearing to be high at first, and then dropping from 2005 to 2007. Since 2008, the rate has been increasing (29% in 2007 vs. 35% in 2011). At the same time, the dispositional departure rates have consistently been higher for first-time felony DWI offenders than for subsequent felony DWI offenders (Figure 18). The total mitigated dispositional departure rate for first-time offenders is 42 percent, while the rate for subsequent offenders is 25 percent (Table 10).

Of the felony DWI offenders who were recommended probation under the Guidelines, one percent was given an aggravated dispositional departure and committed to prison (Table 9). The majority of these departures (65%) were the result of a request by the offender for an executed prison sentence. The remaining 99 percent received the presumptive probationary or "stayed" sentence. A stayed sentence in which the offender is placed on probation might include up to one year of incarceration in a local correctional facility as a condition of probation.

[6] For definitions, please see the section in this report entitled "Departure from the Guidelines," p.14.

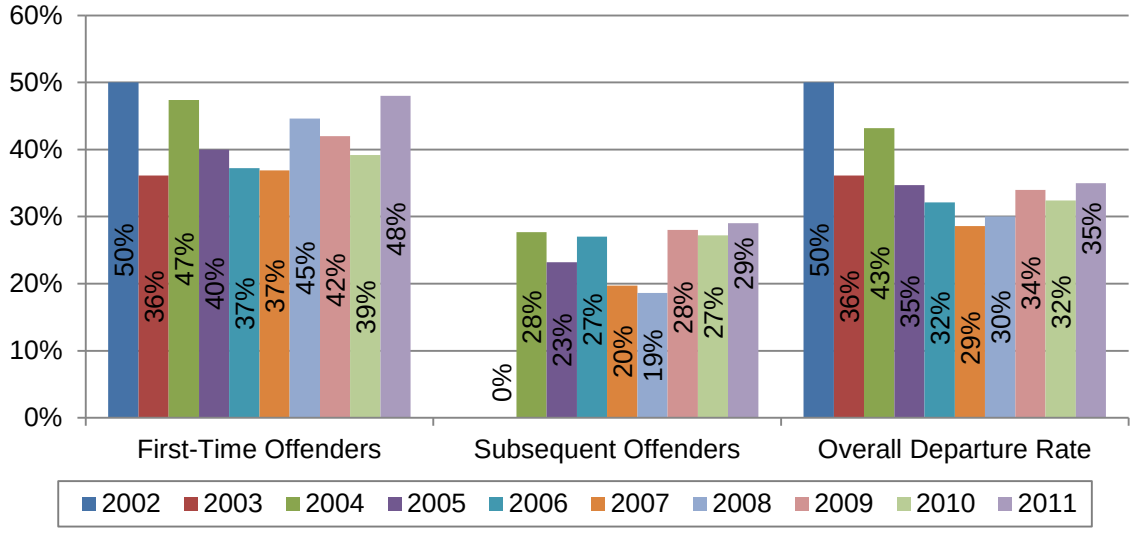
Table 9. Overall Dispositional Departure Rates: 2002-2011

Presumptive Disposition	Sentence Received: Prison	Sentence Received: Probation	Departure Rate
Prison: 32%	66%	34%	Mitigated: 34%
Probation: 68%	1%	99%	Aggravated: 1%
Total: 100%	**22%**	**78%**	**11%**

Table 10. Dispositional Departure Rates: Presumptive Prison Cases, 2002-2011

	No Departure	Mitigated Dispositional Departure
First-Time Offenders	58%	42%
Subsequent Offenders	75%	25%
Total	**66%**	**34%**

Figure 18. Mitigated Dispositional Departure Rates: 2002-2011±
Presumptive Commits Only



± No subsequent felony DWI offenders sentenced in 2002; no felony DWI offenders sentenced to prison in 2002 received a durational departure.

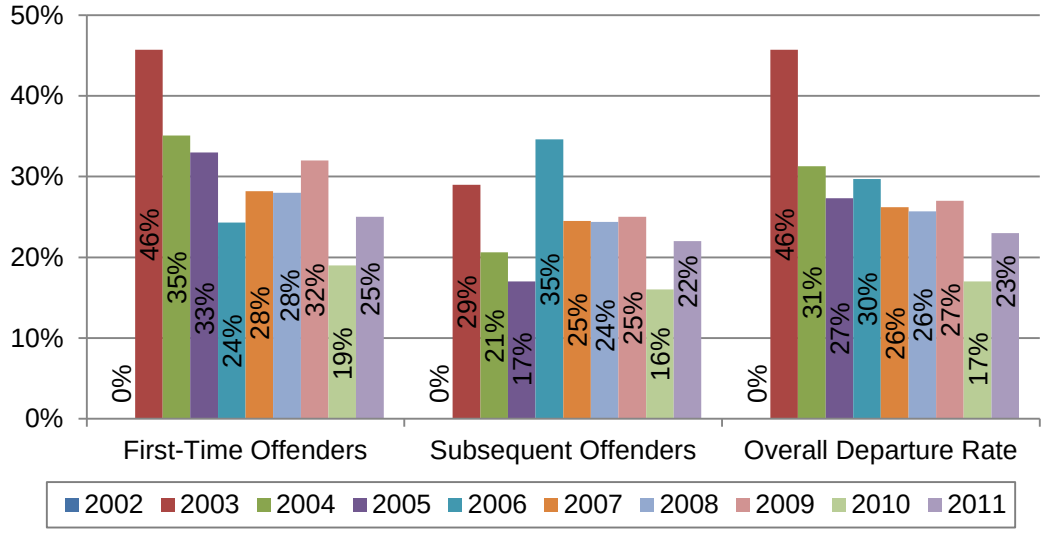
Durational Departures

Of the felony DWI offenders sentenced to prison, 72 percent received the sentence duration recommended under the Guidelines; 27 percent received a duration that was shorter; and one percent received a longer duration than that recommended (Table 11). As with mitigated dispositional departures, subsequent felony DWI offenders are less likely to receive mitigated durational departures. This is consistently the case over time (Figure 19). The total mitigated durational departure rate for first-time offenders who were sentenced to prison was 31 percent, while the rate for subsequent offenders was 23 percent (Table 11).

Table 11. Overall Durational Departure Rates: Executed Sentences, 2002-2011

	No Departure	Aggravated Departure	Mitigated Departure	Total Departure Rate
First-Time Offenders	68%	1%	31%	32%
Subsequent Offenders	76%	1%	23%	24%
Total	**72%**	**1%**	**27%**	**28%**

Figure 19. Mitigated Durational Departure Rates: 2002-2011±
Executed Prison Sentences Only



± No subsequent felony DWI offenders sentenced in 2002; no felony DWI offenders sentenced to prison in 2002 received a durational departure.

County Distribution

Table 12 shows the distribution by county for all felony DWI offenders sentenced from 2002-2011.

Table 12. Number of Felony DWI Offenders and Percent Sentenced by County: 2002-2011

County	Number of Cases	Percent
Aitkin	40	.6
Anoka	335	4.8
Becker	137	2.0
Beltrami	126	1.8
Benton	73	1.1
Big Stone	4	.1
Blue Earth	114	1.6
Brown	25	.4
Carlton	104	1.5
Carver	49	.7
Cass	104	1.5
Chippewa	17	.2
Chisago	80	1.2
Clay	189	2.7
Clearwater	27	.4
Cook	9	.1
Cottonwood	8	.1
Crow Wing	112	1.6
Dakota	466	6.7
Dodge	33	.5
Douglas	41	.6
Faribault	16	.2
Fillmore	12	.2
Freeborn	41	.6
Goodhue	62	.9
Grant	5	.1
Hennepin	1,212	17.5
Houston	22	.3
Hubbard	37	.5
Isanti	56	.8
Itasca	85	1.2

County	Number of Cases	Percent
Jackson	17	.2
Kanabec	25	.4
Kandiyohi	41	.6
Kittson	4	.1
Koochiching	15	.2
Lac Qui Parle	7	.1
Lake	10	.1
Lake of the Woods	15	.2
LeSueur	34	.5
Lincoln	1	.0
Lyon	30	.4
McLeod	53	.8
Mahnomen	66	1.0
Marshall	19	.3
Martin	34	.5
Meeker	16	.2
Mille Lacs	100	1.4
Morrison	46	.7
Mower	56	.8
Murray	6	.1
Nicollet	31	.4
Nobles	50	.7
Norman	10	.1
Olmsted	209	3.0
Otter Tail	88	1.3
Pennington	45	.6
Pine	85	1.2
Pipestone	14	.2
Polk	108	1.6
Pope	11	.2
Ramsey	576	8.3

County	Number of Cases	Percent
Red Lake	11	.2
Redwood	29	.4
Renville	19	.3
Rice	71	1.0
Rock	9	.1
Roseau	32	.5
St. Louis	352	5.1
Scott	123	1.8
Sherburne	108	1.6
Sibley	24	.3
Stearns	151	2.2
Steele	55	.8
Stevens	4	.1
Swift	4	.1
Todd	27	.4
Traverse	5	.1
Wabasha	25	.4
Wadena	15	.2
Waseca	21	.3
Washington	199	2.9
Watonwan	7	.1
Wilkin	13	.2
Winona	69	1.0
Wright	85	1.2
Yellow Medicine	18	.3
Total	6,939	100.0

The Commission's Activities in 2012

The Minnesota Sentencing Guidelines Commission is an eleven-member body created by the Legislature. Eight members are appointed by the Governor: the Commissioner of Corrections, one peace officer, one prosecutor, one defense attorney, one probation officer, and three citizens, one of whom must be a crime victim. The Chief Justice of the Supreme Court also appoints three members representing the District Court, Court of Appeals, and Supreme Court.

Currently, the Governor's appointees are: Jeffrey Edblad, chair and Isanti County Attorney; Jason Anderson, probation representative, Department of Corrections; Paul Ford, peace officer representative, Washington County; Connie Larson, vice-chair and citizen representative; Tom Roy, Commissioner of Corrections; John Stuart, State Public Defender; Yamy Vang, citizen representative; and Sarah Walker, citizen representative. The judicial representatives are Justice Christopher Dietzen, Minnesota Supreme Court; Judge Caroline Lennon, First Judicial District Court; Judge Heidi Schellhas, Minnesota Court of Appeals.[7]

Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2012

One of the basic responsibilities of the Commission is to maintain the Guidelines structure by annually modifying them in response to legislative changes, case law, and issues raised by various parties. In order to meet this responsibility, the Commission met ten times during 2012, held one public hearing and approved a number of modifications to the Guidelines which are summarized below. All modifications are set forth in the Appendix.

New and Amended Crime Legislation

The Commission reviewed the following new and amended offenses, which were enacted into law by the 2012 Legislature. Relevant Guidelines language changes are found in Appendices 2.A and 2.B.

1. Amended Offenses. The Commission adopted a proposal to maintain the existing severity level rankings and policies for each of the offenses below:

   a. Amended Prostitution in a School or Park Zone (Minn. Stat. § 609.3242, subd. 2(2)).[8] The Legislature amended the definitions in Minn. Stat. § 609.321 for "patron," "prostitute," and "prostitution,", and established separate non-felony penalties for patrons and prostitutes in Minn. Stat. § 609.324. These amendments did not directly create or amend a felony offense, but they do form the underlying definitions that support the

[7] Justice Helen Meyer was a member of the Commission until her retirement from the Minnesota Supreme Court August 10, 2012. Her replacement was Justice Dietzen.

[8] Prostitution in a school or park zone (Minn. Stat. § 609.3242, subd. 2(2)) was enacted into law during the 2011 Special Session; and took effect August 1, 2011. Because the 2011 Special Session extended into July, the Commission was unable to address it until its 2012 public hearing (Appendix 2.A, p. 48).

felony offense of committing a prostitution offense in a school or park zone, which is in Minn. Stat. § 609.324. The Commission maintained the existing severity level ranking (Severity Level 1) for felony-level prostitution in a school or park zone under Minn. Stat. § 609.3242, subd. 2(2).

b. Fraudulent or Improper Financing Statements (Minn. Stat. § 609.7475). The law for fraudulent or improper financing statements was expanded to include retaliation against a sheriff, deputy sheriff, or county recorder for performing official duties (e.g., sheriff's sale or filing of liens regarding real property). The Commission maintained that the offense shall remain on the unranked offense list.

c. Corrections Related to Criminal Vehicular Operations (CVOs). The Legislature amended the prior impaired driving conviction definition, the prior impaired driving-related loss of license definition, and the first-degree driving while impaired (DWI) offense in Chapter 169A by adding references to the 2006 CVO statutes. The intent was to clarify that these prior CVO offenses can be used under the law for enhancement purposes. These amendments did not directly create or amend a felony offense, but clarified that the Legislature intends criminal vehicular operation convictions to be used for enhancing felony DWI, which is ranked at Severity Level 7.

d. Expanded List of Qualified Domestic Violence-Related Offenses (Minn. Stat. § 609.02). The list of qualified domestic violence-related offenses in Minn. Stat. § 609.02, subd. 16, was expanded to include female genital mutilation under Minn. Stat. § 609.2245. The law clarified that domestic violence-related offenses from other states, tribal lands, and U.S. territories, qualify under Minnesota law for enhancing certain assaults and violation of restraining orders to gross misdemeanors and felonies. The amendment did not directly create or amend a felony offense, but did form the underlying definition that supports such felony offenses as domestic assault and violation of a restraining order, which are ranked at Severity Level 4.

2. New Offenses. The Commission adopted severity level rankings and policy proposals as follows:

a. Sale of Synthetic Cannabinoids (Minn. Stat. § 152.027). The Legislature increased the penalty for the crime of sale of synthetic cannabinoids under Minn. Stat. § 152.027, subdivision 6. Sales with no remuneration remain a gross misdemeanor, while other sales became a felony with a five-year statutory maximum. The Commission ranked felony sale of synthetic cannabinoids at Severity Level 2.

b. Deprivation of Vulnerable Adult (Minn. Stat. § 609.233). Felony deprivation was created, and was defined as a "caregiver or operator who intentionally deprives a vulnerable adult of necessary food, clothing, shelter, health care, or supervision, when the caregiver or operator is reasonably able to make the necessary provisions…." There were two felony-level offenses added: 1) neglect resulting in great bodily harm, which carries a 10-year statutory maximum sentence; and 2) neglect resulting in substantial bodily harm, which carries a 5-statutory maximum sentence.

The Commission assigned the following severity level rankings; and added the offenses to the list in section 6, Offenses Eligible for Permissive Consecutive Sentences:

1) Neglect resulting in great bodily harm—Severity Level 8; and
2) Neglect resulting in substantial bodily harm—Severity Level 5

c. False Imprisonment; Unreasonable Restraint of Children (Minn. Stat. 609.255). Minn. Stat. § 609.255, subd. 3, was amended to add a second felony-level offense when the confinement or restraint results in demonstrable bodily harm. The statutory maximum sentence is two years imprisonment. The Commission assigned a Severity Level 3 ranking and affirmed its eligibility on the list in section 6, Offenses Eligible for Permissive consecutive Sentences.

Non-Legislative Modifications

Throughout the year, the Commission reviews possible modifications to the Guidelines. Some are substantive, while others are technical or corrective. Requests for policy review come from practitioners, citizens, or are in response to court opinions. Non-Legislative modifications are set forth in the next section. Relevant language changes are found in Appendix 2.C.

1. Non-Felony Sentence for Felony Conviction

The Commission adopted a proposal to modify Guidelines section 2.D, to clarify that if the court pronounces a gross misdemeanor or misdemeanor sentence for a felony conviction, that sentence is a departure because it is outside the appropriate range on the applicable Grid. Under Minn. Stat. § 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed to be a gross misdemeanor or misdemeanor. The Commission noticed that courts were sometimes failing to issue departure reports in these situations because they were under the mistaken belief that the reduction in the level of sentence pursuant to Minn. Stat. § 609.13 meant that the original charge was also reduced. This modification clarifies that the reduced sentence is in fact a departure. New comment 2.D.105 further explains that if the prosecutor amends the charge to an existing statutory gross misdemeanor or misdemeanor offense *prior* to conviction, the gross misdemeanor or misdemeanor sentence will not be a departure because it will be consistent with the level of the charge.

2. Sex Trafficking Notation on the Sex Offender Grid

The Commission adopted a proposal to add a notation on the Sex Offender Grid at Severity Level B/Criminal History Score 0, explaining that the statutory range (15 percent below and 20 percent above the presumptive sentence) *does* apply to sex trafficking cases. The other offense ranked at Severity Level B is criminal sexual conduct in the second degree, which carries a 90-month minimum statutory presumptive sentence. Because second-degree criminal sexual conduct is charged much more frequently than sex trafficking, the Commission deliberately chose to reflect the mandatory minimum at the low end of the range in the cell at a criminal history score of zero, even though 90 months is less than 15 percent below the presumptive sentence in that cell. This step was taken to ensure that the mandatory minimum would be correctly applied. But because sex trafficking is not subject to the same mandatory minimum as second-degree criminal sexual conduct, there was some confusion as to whether the full range is available for sentencing sex trafficking offenses. To clarify that it is, the Commission marked the range with footnote 3, which clarifies that the

range for sex trafficking offenses at a criminal history score of zero is 77-108 months.

3. Permissive Consecutive Sentences: Criminal History Score for Felony Sentenced Consecutive to a Gross Misdemeanor

The MN Supreme Court issued a decision in *State v. Campbell*, 814 N.W.2d 1 (Minn. 2012), which addressed whether, when a district court permissively imposes a felony sentence consecutive to a gross misdemeanor sentence, the court is required under Minn. Sent. Guidelines § 2.F.2, to reduce the offender's criminal history score to zero before calculating the presumptive sentence for the felony offense. The Supreme Court held that "another offense" means "felony offense." The Commission adopted a proposal to modify Guidelines section 2.F.2, making it clear that when applying a consecutive sentence, the directive to reduce the offender's criminal history score to zero applies only to a felony offense run consecutively to another *felony* offense.

4. Permissive Consecutive Sentences: Sentencing a Current Felony Conviction and a Prior Non-Minnesota Felony Sentence Consecutive

The Minnesota Court of Appeals issued an opinion in *State v. Hahn*, 799 N.W.2d 25 (Minn. Ct. App. 2012), which addressed whether a current Minnesota state conviction can run consecutively to a federal sentence when only Minnesota offenses are listed in section 6 of the Guidelines, *Offenses Eligible for Permissive Consecutive Sentences*. The Court held that a current felony conviction may be sentenced consecutively (i.e., "permissive consecutive") to a prior felony sentence only when both the current felony conviction and the prior felony sentence are on the list in section 6. The Commission adopted a proposal to modify Guidelines section 2.F.2, to permit the court to sentence a current felony conviction consecutively to a prior unexpired felony sentence from a jurisdiction other than Minnesota if the court finds that the non-Minnesota offense is equivalent to an offense on the list in section 6.

5. Juvenile DWIs in Adult Traffic Court

The Commission adopted a proposal to modify Guidelines sections 2.B.2 and 2.B.3, to clarify that prior targeted misdemeanor or gross misdemeanor DWIs committed when an offender was 16 or 17 years old *do not* count for custody status or criminal history purposes even when processed as "adult court traffic offenses" under Minn. Stat. § 260B.225. Prior to August 1, 2010, only offenses specifically enumerated on the Misdemeanor and Gross Misdemeanor Offense List within the Guidelines counted towards criminal history. DWI was not an enumerated offense, but due to an exception in the Guidelines, could potentially count toward criminal history, if the current offense was criminal vehicular homicide or operation or felony DWI. Effective August 1, 2010, section 2.B.3 was amended to provide that targeted misdemeanors and gross misdemeanor driving while impaired offenses *would* count towards the calculation of criminal history. "Targeted misdemeanors" are defined in Minn. Stat. § 299C.10, subd. 1(e), and include misdemeanor violations of Minn. Stat. § 169A.20 (driving while impaired). Therefore, the policy today is that previous DWI offenses count as two units if the current offense is criminal vehicular homicide or operation or felony DWI, and count as one unit when calculating criminal history for all other offenses. A

question arose as to whether misdemeanor and gross misdemeanor DWIs committed by an offender as a juvenile but handled in adult court under Minn. Stat. § 260B.225 should count towards the misdemeanor/gross misdemeanor component of the criminal history score. The Commission learned that the issue was being handled differently in different parts of the state, and so made this change to clarify its intent and ensure uniformity in criminal history scores.

6. Aggregated Offenses: Determining Date of Conviction Offense

The Commission adopted a proposal to modify Guidelines section 2 to include citations to offenses that can be aggregated into a single offense for purposes of determining a single offense date. Additionally, the Commission included language making it clear that the Guidelines policy applies to offenses not listed, but for which aggregation is permitted by statute. When multiple offenses are aggregated into a single offense, section 2 of the Guidelines states that "the earliest date of offense should be used as the date of the conviction offense." The date of offense is important because it determines which Guidelines apply to the sentence. Previously, the Guidelines only recognized theft offenses under Minn. Stat. § 609.52, subd. 3(5), or Criminal Damage to Property offenses under Minn. Stat. § 609.595, as aggregate offenses. But there are several additional statutes that allow for aggregation, including Issuing a Dishonored Check under Minn. Stat. § 609.535 and Financial Transaction Card Fraud under Minn. Stat. § 609.821. When the conviction offense is one other than that noted in Section 2, practitioners were often unclear about what date of offense to use.

7. Correction: Renumber Metal-Penetrating Bullets

The Commission adopted a proposal to correct the Guidelines citation for metal-penetrating bullets from Minn. Stat. § 624.74 to Minn. Stat. § 624.7191, after the 2006 Legislature renumbered it.

Guidelines Revision Project

In March 2010, the Commission approved a plan to revise the Guidelines. The project was approached in two phases. Phase 1, which was completed with the publication of the 2011 Guidelines, focused on reformatting the Guidelines to improve their visual appearance and organization. Phase 2, which was commenced in September 2011, involved revising the Guidelines to make them easier to read, use, and comprehend. Although the Guidelines are a dynamic document, and are frequently updated to keep in step with changing laws and public policy initiatives, the Guidelines had not been comprehensively reviewed since they were first promulgated in 1981. This phase of the project allowed the Commission to focus on the Guidelines as a whole when making revisions.

A workgroup comprised of Commission members and subject matter experts was established to draft preliminary revisions before presentation to the full Commission. Members of the workgroup were Jason Anderson, Commission Member, Department of Corrections; Deanna Bothma, Senior Corrections Agent, Department of Corrections; Jeffrey Edblad, Commission Chair and Isanti County Attorney; and Gordon Shumaker, former Commission Member and retired Judge of the Minnesota Court of Appeals.

The objectives for the revision project were as follows:

- Restructure individual sections of the Guidelines to make them easier to read (e.g., break up long passages; apply standard grammar rules to improve flow and readability).
- Clarify intended meaning.
- Focus Guidelines content on policies established by the Commission; remove text that merely repeats language from statutes, rules, or policies that exist outside of the Guidelines. (Where content such as this has been retained, it has been placed in the comments rather than the Guidelines themselves.)
- Wherever possible, simplify the language and content.
- To the extent feasible, change the passive voice to active voice.
- Achieve a level of clarity that will enable those who have not used the Guidelines previously to feel confident that they understand them.
- Establish parameters for appropriate inclusion of case law.

The scope of the revision was primarily stylistic, that is, focused on achieving the objectives above rather than substantively rewriting the Guidelines. It was inevitable, however that substantive issues would be discovered during the course of the revision. Minor substantive changes were made if the Commission determined that the changes would be relatively noncontroversial and should be addressed. All other areas where substantive issues were identified were documented for future discussion and consideration by the Commission.

The Commission adopted a proposal to incorporate the revisions into the 2012 Guidelines as presented in *Guidelines Revision Project, Proposed Modifications, June 2012,*available on the Commission's website:

http://www.msgc.state.mn.us/commission_info/Guidelines%20Proposed%20Revisions.pdf.

Technical Correction to Ranges on the Sex Offender Grid

In 2006, the Commission developed and issued a separate Sex Offender Grid. Like the Standard Grid, the presumptive sentence for each offense on the Sex Offender Grid is determined by locating the cell at the intersection of the offense severity level and the offender's criminal history score. Each cell on the Grid displays the presumptive fixed sentence duration in months. For offenses located in the non-shaded portion of the Grid, the presumptive disposition is commitment to prison, and Minn. Stat. § 244.09, subd. 5(2) requires that "[t]he Guidelines shall provide for an increase of 20 percent and a decrease of 15 percent in the presumptive fixed sentence." The Grids denote the 20 percent higher and 15 percent lower range in italicized numbers.

Commission staff discovered that some upper and lower ranges displayed on the Sex Offender Grid were off by one month due to a rounding error. Both the Standard and Sex Offender Grids have always displayed the range in whole numbers even though, when the percentages are calculated, the calculation often results in a fraction of a month. Standard rounding rules would dictate that: (1) if the calculation results in a number with a decimal of .5 or above, the number should be rounded *up* to the nearest whole number; and (2) if the calculation results in a number with a decimal of .4 or below, the number should be rounded *down* to the nearest whole number. These standard rounding rules were used in calculating the ranges on the Sex Offender Grid. However, in some instances, this resulted in a whole number that is outside of the range allowed by law. Instead of using standard rounding rules, the ranges on the Sex Offender Grid should have been calculated by *rounding up* to the nearest whole number for the lower end of the range and *rounding down* to the nearest whole number for the upper end of the range. For example, when the presumptive fixed duration is 78 months; 15 percent lower is 66.3 months and should be *rounded up and displayed as 67 months*; 20 percent higher is 93.6 months and should be *rounded down and displayed as 93 months*.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		**0**	**1**	**2**	**3**	**4**	**5**	**6 or More**
CSC 4th Degree–(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) *Use Minors in Sexual Performance* *Dissemination of Child Pornography*[2]	**E**	24	36	48	60 51-72	78 ~~*66-94*~~ *67-93*	102 *87-120*	120 *102-120*[2]

The Commission sought and was given legislative authority to reissue the Sex Offender Grid to correct these errors in the calculation of the ranges displayed on the Sex Offender Grid.[9] The Commission also confirmed that the ranges on the Standard Grid have been calculated correctly. Only the ranges on the Sex Offender Grid were in need of correction. The modified Sex Offender Grid became effective May 1, 2012 (See Appendix 4, p. 59). The Commission worked with the State Court Administrator's Office to identify cases that had been sentenced incorrectly in the past – especially those where the error resulted in a sentence higher than that allowed by law – and the courts have reviewed and resentenced cases as deemed appropriate.

[9] 2012 Minn. Laws Ch. 229 at https://www.revisor.mn.gov/laws/?id=229&doctype=Chapter&year=2012&type=0

Commission staff continues to monitor for pronounced sentences with range-errors; and communicates with sentencing courts when they are discovered.

Staff Activities

The following provides a summary of the activities performed by staff, in addition to providing support and research for the Guidelines modifications detailed in this report, to further the goals and purpose of the Commission.

Monitoring Sentencing Data

One of the primary functions of the Sentencing Guidelines Commission staff is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the Guidelines. A case is defined when a sentencing worksheet is received from the probation officer and matched with sentencing data from the District Court. As part of the agency's core functions, Commission staff collected and analyzed data for over 14,500 felony offenders. Additionally, staff published its annual edition of the Sentencing Guidelines and Commentary, Report to the Legislature, and various reports on sentencing practices and trends.

Training and other Assistance

The Commission provides Guidelines assistance in a variety of forms: training and education seminars, training materials and publications, and real-time email and telephone assistance for judges, attorneys, and probation officers in determining appropriate presumptive sentences.

Commission staff trained 600 practitioners in twenty-five traditional classroom trainings in 2012. Held throughout the state, these trainings were enhanced to include more hands-on exercises and were focused more on the offenses traditionally seen by practitioners: domestic assaults, felony driving while impaired (DWI), and controlled substance offenses. Nearly 350 additional practitioners were trained statewide via the online training service WebEx. These trainings allow Commission staff to focus the training on a single topic, giving practitioners a more in-depth view of advanced policies. Finally, the Commission staff published four issues of its newsletter, *The Guideliner*, directed primarily at probation officers, prosecutors, and defense attorneys. All of the above services are offered in an effort to promote the accurate application of the Guidelines.

Data Requests

One of the important ways in which the Commission works with fellow agencies and criminal justice practitioners across the state is researching and compiling statistical data in response to information requests. MSGC staff responded to over 100 data requests totaling more than 150 hours. These requests are most often made by lawyers or corrections agents to show specific sentencing practices to the court. However, the requests are also made by academics, students, other state agencies, legislative staff, law enforcement, and the press for other purposes. The topics range from departure data for a single type of offense within a given

county to comparative data on how an offense has been sentenced from one county to another during a specific timeframe.

Fiscal/Racial-Impact Statements

During the 2012 Legislative Session, Commission staff prepared 24 fiscal impact statements for proposed legislation. These impact statements include details as to any increase or decrease in adult offender populations, the estimated net increase in state correctional facility beds, and the impact on local confinement. Staff provided the requested information within the time requirements set by the legislature.

In 2006, the Commission began providing the legislature with racial-impact notes on proposed crime bills when a disparate impact was anticipated. During the 2012 Legislative Session, one racial-impact note was prepared: House File 1665, proposed to amend the list of offenses defined as crimes of violence in Minn. Stat. § 624.712. The expansion of this list would have increased racial disparity in Minnesota's prison population because a disproportionate number of offenders sentenced to felony fifth-degree assault, felony domestic assault, and domestic assault by strangulation are black as compared to the overall felony population in Minnesota. This bill was not enacted.

Collaboration with Criminal Justice Agencies

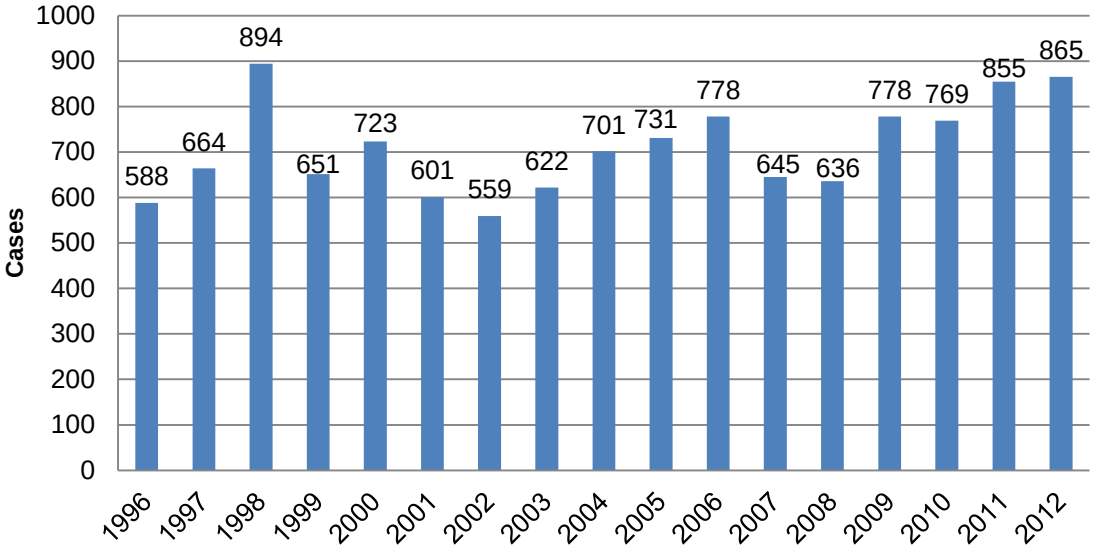
The Commission's knowledge of felony sentencing and practice makes the Commission a valued contributor to criminal justice policy discussions. Each year, Commission staff works with the Department of Corrections to generate prison bed projections. And in 2012, MSGC staff served on the Criminal and Juvenile Justice Information Task Force, Supreme Court Criminal Justice Forum, and State Court Administration Drug Court Evaluation Committee. Additionally, the Executive Director serves as an ex-officio member of Minnesota's Civil Commitment Advisory Task Force and as an officer for the National Association of Sentencing Commissions, ensuring that Minnesota is tied into national trends in sentencing policy.

County Attorney Firearms Reports

Current law directs County Attorneys to collect and maintain information on criminal complaints and prosecutions in which a defendant is alleged to have committed an offense while possessing or using a firearm, as described in Minn. Stat. § 609.11, subdivision 9.[10] This information is to be forwarded to the Sentencing Guidelines Commission no later than July 1 of each year. Pursuant to Minn. Stat. § 244.09, subdivision 14, the Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received. Memoranda describing the mandate, along with forms on which to report, are distributed by the Commission to County Attorneys. Although the Commission's staff clarifies inconsistencies in the summary data, the information received from the County Attorneys is reported directly as provided.

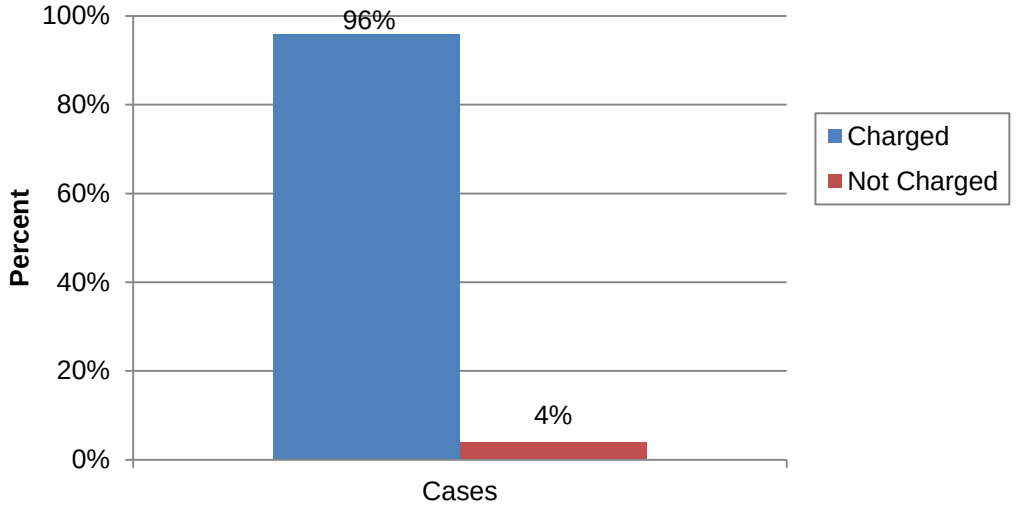
Since the mandate began in 1996, the average number of cases involving firearms statewide has been 709 yearly. Between July 1, 2011 and June 30, 2012, there were 865 cases allegedly involving a firearm (Figure 20). As shown in Figure 21, of those 865 cases, prosecutors charged 834 cases (96%) while 31 cases (4%) were not charged.

Figure 20. Cases Allegedly Involving a Firearm 1996 to 2012



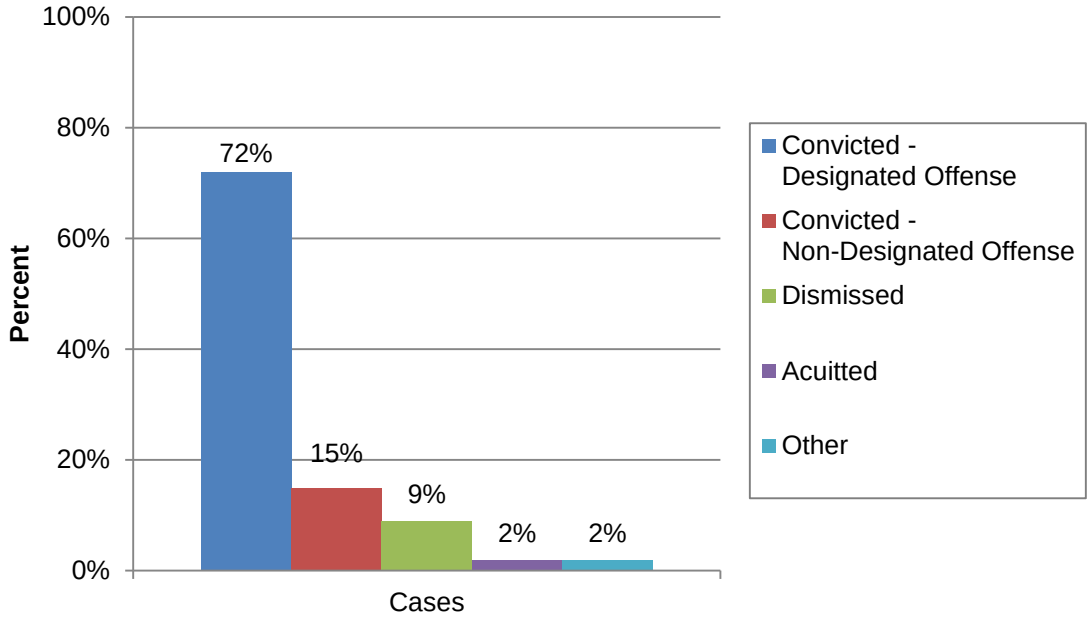
[10] The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter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

Figure 21. Cases Charged



Of the 834 cases charged, 600 (72%) were convicted of offenses designated in Minn. Stat. § 609.11. 125 (15%) were convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 73 (9%) had all charges dismissed; 21 (2%) were acquitted on all charges; and 15 (2%) were "other" cases, such as federal prosecutions, the suspect died before outcome, and civil commitment (Figure 22).

Figure 22. Case Outcomes



In 549 (92%) of the 600 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 23). In the cases in which the firearm was established on the record, 327 offenders (60%) were sentenced to the mandatory minimum prison term (Figure 24).

Figure 23. Cases Convicted of Designated Offense

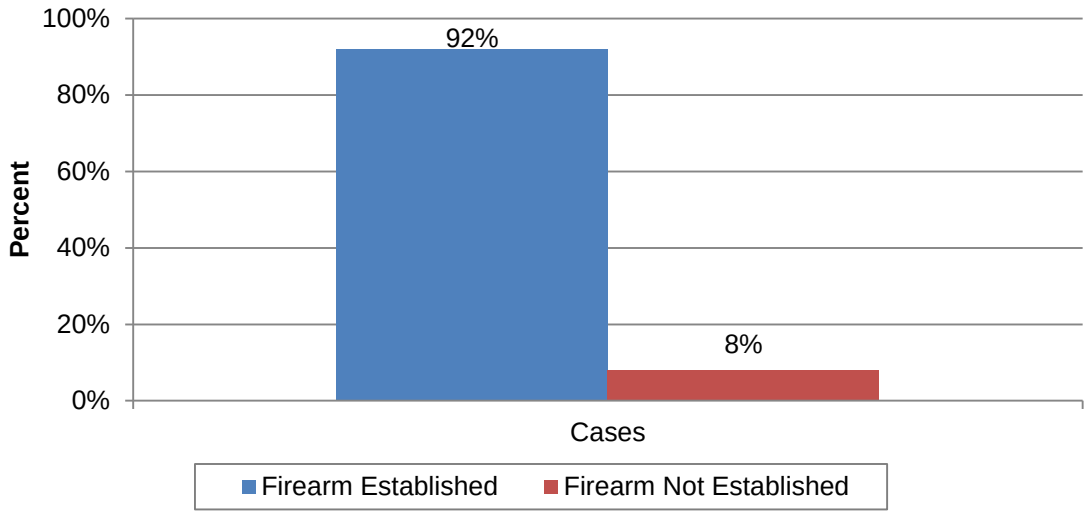


Figure 24. Firearm Established on the Record

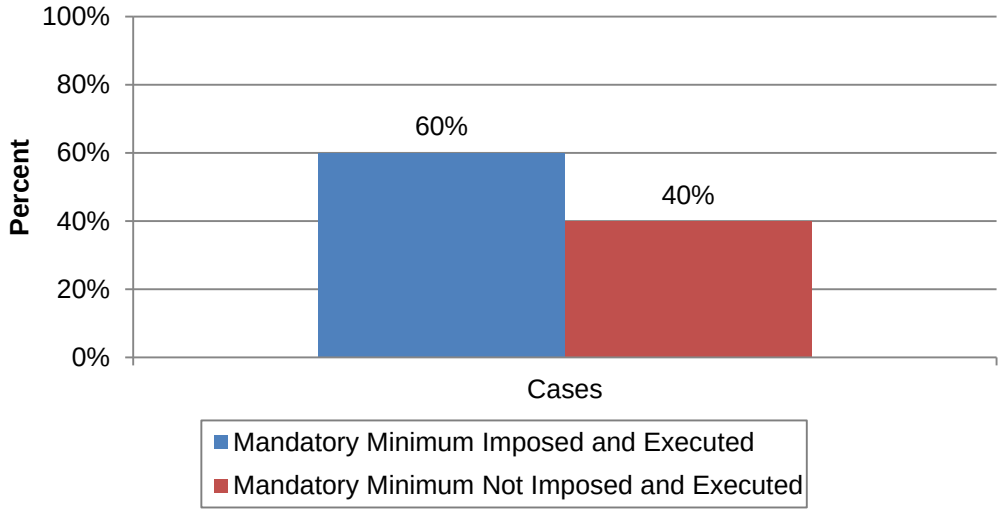


Table 13. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm by MN County
Cases Disposed from July 1, 2011 to June 30, 2012

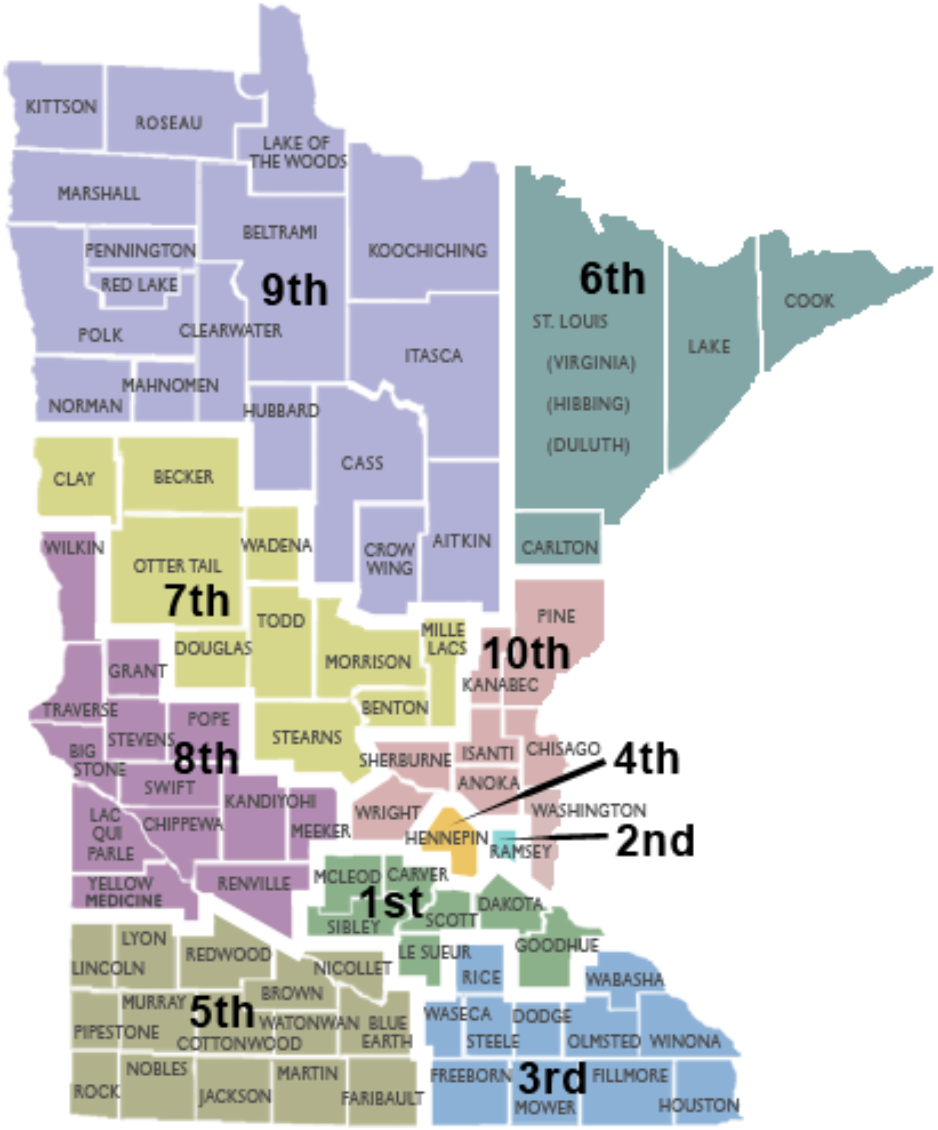
County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Aitkin	6	5	1	0	0
Anoka	33	33	21	21	9
Becker	13	13	8	8	8
Beltrami	3	3	0	0	0
Benton	7	7	5	4	4
Big Stone	0	0	0	0	0
Blue Earth	1	1	1	1	1
Brown	4	4	0	0	0
Carlton	5	5	5	5	1
Carver	7	6	6	4	4
Cass	17	17	5	4	4
Chippewa	3	2	0	0	0
Chisago	1	1	0	0	0
Clay	7	7	4	3	3
Clearwater	2	2	1	1	0
Cook	2	2	0	0	0
Cottonwood	0	0	0	0	0
Crow Wing	4	3	2	0	0
Dakota	23	23	21	21	19
Dodge	0	0	0	0	0
Douglas	0	0	0	0	0
Faribault	0	0	0	0	0
Fillmore	1	1	1	1	1
Freeborn	2	1	0	0	0
Goodhue	9	9	3	3	1
Grant	1	1	0	0	0
Hennepin	295	295	249	249	132
Houston	1	1	1	0	0
Hubbard	0	0	0	0	0
Isanti	8	8	3	3	2
Itasca	14	13	11	11	3
Jackson	0	0	0	0	0
Kanabec	1	1	1	1	1
Kandiyohi	4	4	2	2	2
Kittson	0	0	0	0	0
Koochiching	0	0	0	0	0

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Lac Qui Parle	1	1	1	1	1
Lake	1	1	0	0	0
Lake of the Woods	4	4	2	2	0
LeSueur	1	1	1	1	1
Lincoln*	---	---	---	---	---
Lyon*	---	---	---	---	---
McLeod	6	6	5	5	5
Mahnomen	0	0	0	0	0
Marshall	0	0	0	0	0
Martin	1	1	0	0	0
Meeker	1	1	1	1	0
Mille Lacs	40	40	25	9	7
Morrison	5	5	3	3	2
Mower	14	14	6	5	5
Murray	0	0	0	0	0
Nicollet	0	0	0	0	0
Nobles	3	3	1	1	1
Norman	0	0	0	0	0
Olmsted	16	15	11	10	6
Otter Tail	7	6	3	2	0
Pennington	1	1	0	0	0
Pine	7	7	2	2	1
Pipestone	4	4	3	0	0
Polk	12	11	7	6	3
Pope	2	2	1	1	0
Ramsey	89	89	84	80	46
Red Lake	0	0	0	0	0
Redwood	3	3	2	2	2
Renville	8	8	2	0	0
Rice	6	6	6	6	2
Rock	1	1	1	1	1
Roseau	4	4	0	0	0
Scott	1	1	1	1	1
Sherburne	8	8	6	5	5
Sibley	0	0	0	0	0
St. Louis	68	48	34	28	22
Stearns	19	19	13	12	9
Steele	0	0	0	0	0

* Not reported

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Stevens	0	0	0	0	0
Swift	3	3	2	1	1
Todd	0	0	0	0	0
Traverse	2	2	0	0	0
Wabasha	4	4	2	2	1
Wadena	4	4	3	3	0
Waseca	0	0	0	0	0
Washington	13	13	8	8	3
Watonwan	2	2	1	0	0
Wilkin	1	1	1	1	1
Winona	13	11	7	6	5
Wright	14	14	2	1	1
Yellow Medicine	2	2	2	1	0
Total	**865**	**834**	**600**	**549**	**327**

Appendix 1. Minnesota Judicial District Map



First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth	Ninth	Tenth
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota		Fillmore		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
LeSueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Mille Lacs	LacQuiParle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Otter Tail	Pope	Itasca	Washington
		Steele		Martin		Stearns	Renville	Kittson	Wright
		Wabasha		Murray		Todd	Stevens	Koochiching	
		Waseca		Nicollet		Wadena	Swift	Lake-Woods	
		Winona		Nobles			Traverse	Mahnomen	
				Pipestone			Wilkin	Marshall	
				Redwood			Yellow Medicine	Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	

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Appendix 2. Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2012

The Minnesota Sentencing Guidelines Commission adopted the following legislative and non-legislative modifications to the Sentencing Guidelines and Commentary, effective August 1, 2012.

Formatting Note: The modifications to the Guidelines as presented in this appendix further modify the Guidelines as revised in the Commission's "Guidelines Revision Project." The Guidelines Revision Project made primarily stylistic and technical modifications to its 2012 edition. (See p. 37, for more information on the project.)

A. Legislative Modification – Amended Prostitution in a School or Park Zone (2011 Special Session)

The following amendment was enacted into law by the 2011 Legislature during its Special Session. It was effective August 1, 2011. Because the Special Session extended into July, the Commission was unable to address this offense in its 2011 public hearing.

Description: The Legislature amended the definitions in Minn. Stat. § 609.321 for "patron," "prostitute," and "prostitution,", and established separate non-felony penalties for patrons and prostitutes in Minn. Stat. § 609.324. These amendments do not directly create or amend a felony offense, but they do form the underlying definitions that support the felony offense of committing a prostitution offense in a school or park zone, which is in Minn. Stat. § 609.324.
Reference: 2011 Special Session 1, Chapter 1, Article 5

Adopted Proposal: The Commission maintained the existing severity level ranking (Severity Level 1) for felony-level prostitution in a school or park zone under Minn. Stat. § 609.3242, subd. 2(2).

B. Legislative Modification – New and Amended Offenses (2012 Legislative Session)

The Commission reviewed the following new and amended offenses, which were enacted into law by the 2012 Legislature.

1. **Amended Offenses:** The following offenses were amended by the 2012 Legislature. In some instances, the amendments expanded offense definitions; in others the amendments expand the scope of the offense(s).

   Adopted Proposal: The Commission adopted a proposal to maintain the existing severity level rankings and policies for each of the offenses below that were amended by the 2012 Legislature:

a. Fraudulent or Improper Financing Statements (Minn. Stat. § 609.7475) – Unranked;

b. Corrections Related to Criminal Vehicular Operations (Minn. Stat. § 169A) – Severity Level 8 (Death), Severity Level 5 (Great Bodily Harm), Severity Level 3 (Substantial Bodily Harm); and

c. Expanded List of Qualified Domestic Violence-Related Offenses (Minn. Stat. § 609.02) – Amendment did not directly create or amend a felony offense, but did form the underlying definition that supports such felony offenses as domestic assault and violation of a restraining order, which are ranked at Severity Level 4.

2. New Offenses. The Commission reviewed the offenses that were newly enacted by the 2012 Legislature, and adopted severity level rankings and policy proposals as follows.

a. Sale of Synthetic Cannabinoids (Minn. Stat. § 152.027). Ranked felony sale of synthetic cannabinoids at Severity Level 2.

Relevant Guidelines Language follows:

5.A. OFFENSE SEVERITY REFERENCE TABLE

* * *

SEVERITY LEVEL	OFFENSE	STATUTE
2	Sale of Synthetic Cannabinoids	152.027, subd. 6(c)

* * *

5.B. SEVERITY LEVEL BY STATUTORY CITATION

* * *

Statute Number	Offense Title	Severity Level
152.027, subd. 6(c)	Sale of Synthetic Cannabinoids	2

* * *

b. Deprivation of Vulnerable Adult (Minn. Stat. § 609.233). The Commission assigned the following severity level rankings; and added the offenses to the list in section 6, Offenses Eligible for Permissive Consecutive Sentences.
1) Neglect resulting in great bodily harm—Severity Level 8
2) Neglect resulting in substantial bodily harm—Severity Level 5

Relevant Guidelines Language follows:

5.A. OFFENSE SEVERITY REFERENCE TABLE

* * *

SEVERITY LEVEL	OFFENSE	STATUTE
8	Deprivation of Vulnerable Adult (Great Bodily Harm)	609.233, subd. 2a(1)
5	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	609.233, subd. 2a(2)

* * *

5.B. SEVERITY LEVEL BY STATUTORY CITATION

* * *

Statute Number	Offense Title	Severity Level
609.233, subd. 2a(1)	Deprivation of Vulnerable Adult (Great Bodily Harm)	8
609.233, subd. 2a(2)	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	5

* * *

6. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

* * *

Statute Number	Offense Title
609.233, subd. 2a	Deprivation of Vulnerable Adult

* * *

d. False Imprisonment; Unreasonable Restraint of Children (Minn. Stat. 609.255). The Commission assigned a Severity Level 3 ranking and affirmed its eligibility on the list in section 6, Offenses Eligible for Permissive consecutive Sentences.

Note that the offense is listed in each table with the high-level offense description of false imprisonment. The specific offense of unreasonable restraint of a child is identifiable by the more specific statutory cite.

Relevant Guidelines Language follows:

5.A. OFFENSE SEVERITY REFERENCE TABLE

* * *

SEVERITY LEVEL	OFFENSE	STATUTE
3	False Imprisonment (Demonstrable Bodily Harm)	609.255, subd. 3(b)
4	False Imprisonment (Substantial Bodily Harm)	609.255, subd. 3(c)

* * *

5.B. SEVERITY LEVEL BY STATUTORY CITATION

* * *

Statute Number	Offense Title	Severity Level
609.255, subd. 3(b)	False Imprisonment (Demonstrable Bodily Harm)	3
609.255, subd. 3(c)	False Imprisonment (Substantial Bodily Harm)	4

* * *

6. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

* * *

Statute Number	Offense Title
609.255	False Imprisonment

* * *

C. Non-Legislative Modifications

Following are adopted non-legislative modifications to the Sentencing Guidelines made by the Commission.

1. Non-Felony Sentence for Felony Conviction

Relevant Guidelines Language follows:

D. Departures from the Guidelines:

1. Departures in General

The sentence ranges provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the applicable Grid.

The court may depart from the presumptive disposition or duration provided in the Guidelines, and stay or impose a sentence that is deemed to be more appropriate than the presumptive sentence. A pronounced sentence for a felony conviction that is outside the appropriate range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines ~~and~~. A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.

* * * *

2.D.105. *Under Minn. Stat. § 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the appropriate range on the applicable Grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure.*

In contrast, if the prosecutor amends the charge to a gross misdemeanor or misdemeanor offense prior to conviction, a gross misdemeanor or misdemeanor sentence will not be a departure because the sentence will be consistent with the level of the charge. When the prosecutor amends the charge, the prosecutor must amend it to an existing offense. For example, there is no gross misdemeanor

version of terroristic threats (Minn. Stat. § 609.713) in statute, so a terroristic threats charge cannot be amended from a felony to a gross misdemeanor.

2. Sex Trafficking Notation on the Sex Offender Grid

Relevant Guidelines Language follows:

4.B. SEX OFFENDER GRID

* * * *

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE 0	1	2	3	4	5	6 or More
CSC 2nd Degree–(c)(d)(e)(f)(h) Prostitution; Sex Trafficking[3] 1st Degree–1(a)	**B**	*90 90[3]-108*	*110 94-132*	*130 111-156*	*150 128-180*	*195 166-234*	*255 217-300*	*300 255-300[2]*

* * * *

[3]Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)

Effective August 1, 2012

3. Permissive Consecutive Sentences: Criminal History Score for Felony Sentenced Consecutive to a Gross Misdemeanor

Relevant Guidelines Language follows:

2. Permissive Consecutive Sentences

a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section. For each felony offense sentenced consecutive to another felony offense(s), a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, is used in determining the presumptive duration. A consecutive sentence at any other duration is a departure.

* * *

4. Permissive Consecutive Sentences: Sentencing a Current Felony Conviction and a Prior Non-Minnesota Felony Sentence Consecutive

Relevant Guidelines Language follows:

2. Permissive Consecutive Sentences

* * *

(1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment and paragraph (i), (ii), or (iii) applies. If the court pronounces a consecutive stayed sentence under one of these paragraphs the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

(i) Prior Felony Sentence. A current felony conviction for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences may be sentenced consecutively to a prior felony sentence that has not expired or been discharged if the prior felony conviction:

(a) is for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences; or

(b) is from a jurisdiction other than Minnesota and would be equivalent to a crime on the list in section 6.

The presumptive disposition for the prior offense(s) must also be commitment as outlined in section 2.C. A non-Minnesota conviction is equivalent to a crime on the list in section 6 if it would both be defined as a felony in Minnesota, and received a sentence that in Minnesota would be a felony-level sentence, including the equivalent of a stay of imposition.

* * *

6. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

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

B. Under section 2.F.2(a)(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

* * *

5. Juvenile DWIs in Adult Traffic Court

Relevant Guidelines Language follows:

2. Custody Status at the Time of the Offense

* * *

d. No Custody Status Points Assigned. The offender must not be assigned custody status points when:

(1) The offender was committed for treatment or examination under Minn. R. Crim. P. 20.~~; or~~

(2) The offender was on juvenile custody status other than for an extended jurisdiction juvenile (EJJ) conviction, at the time the adult felony was committed.

(3) The offender was on custody status for a misdemeanor or gross misdemeanor DWI committed when the offender was 16 or 17 years old, and the DWI was processed in adult court under Minn. Stat. § 260B.225, subds. 3 and 8.

3. Prior Gross Misdemeanors and Misdemeanors

* * *

h. Prior Misdemeanor or Gross Misdemeanor Driving While Impaired (DWI) Committed by Juvenile Offenders. Assign no units under this section if the offender

was 16 or 17 years old when the prior misdemeanor or gross misdemeanor DWI was committed, and the DWI was processed in adult court under Minn. Stat. § 260B.225, subds. 3 and 8.

6. Aggregated Offenses: Determining Date of Conviction Offense

Relevant Guidelines Language follows:

2. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by the Sentencing Guidelines in effect on the date of the conviction offense, except that:

- If multiple offenses are an element of the conviction offense, the date of the conviction offense must be determined by the factfinder.
- If offenses have been aggregated under ~~Minn. Stat. § 609.52, subd. 3(5), or § 609.595~~one of the following statutes, or as otherwise permitted by statute, the date of the earliest offense should be used as the date of the conviction offense~~.~~:

Statute Number	**Offense Title**
349.2127, subds. 2 and 6	Gambling Regulations
609.322, subd. 1c	Solicitation, Promotion, and Inducement of Prostitution; Sex Trafficking
609.52, subd. 3(5)	Theft
609.527, subd. 7	Identity Theft
609.535, subd. 2a(b)	Issuance of Dishonored Checks
609.551, subd. 3	Rustling and Livestock Theft
609.595	Criminal Damage to Property
609.631, subd. 4	Check Forgery
609.632, subd. 5	Counterfeiting Currency
609.763, subd. 3	Lawful Gambling Fraud
609.821, subd. 3	Financial Transaction Card Fraud
609.86, subd. 3(2)	Commercial Bribery
609.893, subd. 3	Telecommunications Fraud
609.895, subd. 3	Counterfeited Intellectual Property

7. Correction: Renumber Metal Penetrating Bullets

Relevant Guidelines Language follows:

5.A. OFFENSE SEVERITY REFERENCE TABLE

* * *

SEVERITY LEVEL	OFFENSE	STATUTE
UNRANKED	Metal Penetrating Bullets	~~624.74~~ 624.7191

* * *

5.B. SEVERITY LEVEL BY STATUTORY CITATION

* * *

Statute Number	Offense Title	Severity Level
~~624.74~~ 624.7191	Metal Penetrating Bullets	unranked

* * *

6. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

* * *

Statute Number	Offense Title
~~624.74~~ 624.7191	Metal Penetrating Bullets

Appendix 3: Standard Sentencing Guidelines Grid – Effective August 1, 2012

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

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	**1**	**2**	**3**	**4**	**5**	**6 or more**
Murder, 2nd Degree (intentional murder; drive-by-shootings)	**11**	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480* [2]	426 *363-480* [2]
Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)	**10**	150 *128-180*	165 *141-198*	180 *153-216*	195 *166-234*	210 *179-252*	225 *192-270*	240 *204-288*
Assault, 1st Degree Controlled Substance Crime, 1st Degree	**9**	86 *74-103*	98 *84-117*	110 *94-132*	122 *104-146*	134 *114-160*	146 *125-175*	158 *135-189*
Aggravated Robbery, 1st Degree Controlled Substance Crime, 2nd Degree	**8**	48 *41-57*	58 *50-69*	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Felony DWI	**7**	36	42	48	54 *46-64*	60 *51-72*	66 *57-79*	72 *62-84* [2]
Controlled Substance Crime, 3rd Degree	**6**	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Residential Burglary Simple Robbery	**5**	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Nonresidential Burglary	**4**	12[1]	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Theft Crimes (Over $5,000)	**3**	12[1]	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Theft Crimes ($5,000 or less) Check Forgery ($251-$2,500)	**2**	12[1]	12[1]	13	15	17	19	21 *18-25*
Sale of Simulated Controlled Substance	**1**	12[1]	12[1]	12[1]	13	15	17	19 *17-22*

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

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

[1] 12[1]=One year and one day

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

Appendix 4. Sex Offender Sentencing Grid – Effective August 1, 2012

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

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	**1**	**2**	**3**	**4**	**5**	**6 or More**
CSC 1st Degree	**A**	144 *144-172*	156 *144-187*	168 *144-201*	180 *153-216*	234 *199-280*	306 *261-360*	360 *306-360* [2]
CSC 2nd Degree–(c)(d)(e)(f)(h) *Prostitution; Sex Trafficking* [3] *1st Degree–1(a)*	**B**	90 *90* [3]*-108*	110 *94-132*	130 *111-156*	150 *128-180*	195 *166-234*	255 *217-300*	300 *255-300* [2]
CSC 3rd Degree–(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) *Prostitution; Sex Trafficking 2nd Degree–1a*	**C**	48 *41-57*	62 *53-74*	76 *65-91*	90 *77-108*	117 *100-140*	153 *131-180*	180 *153-180* [2]
CSC 2nd Degree–(a)(b)(g) *CSC 3rd Degree–(a)(b)* [2] *(e)(f)* *Dissemination of Child Pornography (Subsequent or by Predatory Offender)*	**D**	36	48	60 *51-72*	70 *60-84*	91 *78-109*	119 *102-142*	140 *119-168*
CSC 4th Degree–(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) *Use Minors in Sexual Performance* *Dissemination of Child Pornography* [2]	**E**	24	36	48	60 51-72	78 *67-93*	102 *87-120*	120 *102-120* [2]
CSC 4th Degree–(a)(b)(e)(f) *Possession of Child Pornography (Subsequent or by Predatory Offender)*	**F**	18	27	36	45 *39-54*	59 *51-70*	77 *66-92*	84 *72-100*
CSC 5th Degree *Indecent Exposure* *Possession of Child Pornography* *Solicit Children for Sexual Conduct* [2]	**G**	15	20	25	30	39 *34-46*	51 *44-60*	60 *51-60* [2]
Registration Of Predatory Offenders	**H**	12[1] *12* [1]*-14*	14 *12* [1]*-16*	16 *14-19*	18 *16-21*	24 *21-28*	30 *26-36*	36 *31-43*

Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

12[1]=One year and one day

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

[3] Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)