MINNESOTA SENTENCING GUIDELINES COMMISSION

2014 Minn. Sentencing Guidelines Commission Report to the Legislature

January 15, 2014

Minnesota Sentencing Guidelines Commission

309 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155

Voice: (651) 296-0144
Fax: (651) 297-5757

Website: mn.gov/sentencing-guidelines
Email: sentencing.guidelines@state.mn.us

MN Relay TTY: 1-800-627-3529; ask for (651) 296-0144

Reports are available in alternative formats upon request.

Commission Members

Jeffrey Edblad, Chair and Isanti County Attorney
Jason Anderson, Probation Representative, Itasca County Probation
Christopher Dietzen, Justice, Minnesota Supreme Court
Paul Ford, Peace Officer Representative, Washington County
Connie Larson, Vice-Chair and Citizen Representative
Caroline Lennon, Judge, First Judicial District
Tom Roy, Commissioner of Corrections
Heidi Schellhas, Judge, Minnesota Court of Appeals
John Stuart, State Public Defender
Yamy Vang, Citizen Representative
Sarah Walker, Citizen Representative

Commission Staff

Kelly Lyn Mitchell, Executive Director
Jackie Braun, Research Analyst
Kathleen Madland, Research Analyst Intermediate
Linda McBrayer, Management Analyst 4
Jill Payne, Research Analysis Specialist, Senior
Anne Wall, Research Analysis Specialist, Senior

Table of Contents

Minnesota Sentencing Guidelines Commission

Introduction 1

Executive Summary 2

2012 Sentencing Practices Data Summary 4
- Case Volume, Distribution, and Percent Change: Overall and by Offense Type 4
- Distribution of Offenders by Race and Judicial District 7
- Incarceration by Race and Judicial District 9
- Average Pronounced Prison and Local Confinement 11
- Departures from the Guidelines 12

First- and Second-Degree Controlled Substance Offenses 20

The Commission's Activities in 2013 28
- Modifications to the Guidelines 28
  - New and Amended Crime Legislation 28
  - Non-Legislative Modifications 30
- Staff Activities 32

County Attorney Firearms Reports 35
- County Distribution 38

Appendix 1. Minnesota Judicial District Map 41
Appendix 2. Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2013 42
Appendix 3. Standard Sentencing Guidelines Grid 59
Appendix 4. Sex Offender Sentencing Grid 60

This information will be made available in an alternative format upon request. The total cost of development and preparation for this report was $4,167.17 (Reported as required by Minn. Stat. § 3.197.)

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 criminal records are similarly sentenced.
- To provide **rationality** and **predictability** in sentencing.
- To establish **proportionality** in sentencing so that the severity of the sanction increases in direct proportion to an increase in the offense severity or the convicted felon's criminal history, or both.

Throughout the time the Guidelines have existed, Minnesota has undergone significant changes in population, while its rate of imprisonment per capita has remained among the lowest in the United States. In a 2012 comparison, the Bureau of Justice Statistics determined that Minnesota's prison incarceration rate was the second-lowest of all states with a 184 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 2013, 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: 2012. Please direct any comments or questions regarding the report to the Minnesota Sentencing Guidelines Commission Office. Additional reports on overall data trends in 2012 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 mn.gov/sentencing-guidelines/reports.

[1] *Prisoners in 2012-Advance Counts;* Bureau of Justice Statistics; July 2013, Revised 2/9/12, NCJ 242467, Page 8 at http://www.bjs.gov/content/pub/pdf/p12ac.pdf.

Executive Summary

The 2014 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; and updates on Commission and staff activities.

Sentencing Trends (p. 4): There were 15,207 felony offenders sentenced in 2012; an overall increase of 4%. Of the total volume, person offenses accounted for 32%, property offenses accounted for 30%, and drug offenses accounted for 23%. The number of offenders sentenced increased in every offense category except "Other". Property offenses grew the most at nearly 9%, person offenses were up almost 4%, and drug offenses rose a little over 4%. These increases are consistent with national trends. Overall, 91% of felony offenders were incarcerated in either a State prison on an executed sentence (26%) or in a local correctional facility as a condition of a stayed sentence (65%). Overall, 72% of felony offenders received the presumptive Guidelines Sentence, but there was variation in the rates depending on where in Minnesota the offender was sentenced.

First- and Second-Degree Controlled Substance Offenses (p. 20): Beginning in late 2011, the Commission began examining first- and second-degree controlled substance offenses because of the departure rates. The data indicated that this sentencing pattern represents a long-term trend. For most years, beginning in 1990, one-third or less of first-degree offenders and 40% or less of second-degree offenders received the Guidelines presumptive sentence. This prompted an outcome study of offenders to address two questions: (1) Are first- and second-degree offenders sentenced to probation different than those sentenced to prison? (2) How successful are the probationers compared to the released prisoners as measured by reconviction rates and revocation rates? The majority of offenders in both groups had no new conviction and the new conviction rate for probationers was lower than that for released prisoners (21% vs. 27%, respectively). However, when new convictions and revocations are combined as a measure, 27% of probationers were not successful. In October of 2013, the Commission held a round table to present these results and seek feedback from various stakeholders in the criminal justice community as to whether the Guidelines should be changed. A variety of feedback was heard, ranging from "the Guidelines are working well and should not be changed" to "departure data suggest that the Guidelines should be adjusted."

Modifications to the Sentencing Guidelines (p. 28): The Commission incorporated into the Guidelines the mandatory minimum 36-month prison sentenced for repeat sex offenders enacted by the Legislature's amendment to Minn. Stat. § 609.3453. The Commission also reviewed amended crime legislation to determine the effect on the Guidelines and assigned severity level rankings to the following new felony offenses: theft of motor fuel from a retailer over $5,000 (Severity Level 3); theft of motor fuel from a retailer, $5,000 or less (Severity Level 2); emergency telephone calls and communication (3rd or subsequent, making calls when no emergency exists – Severity Level 4); emergency telephone calls and communication (blocks,

interferes, prevents, using multiple communication devices or electronic means – Severity Level 5 and eligible for consecutive sentence); emergency telephone calls and communication (reports fictitious emergency resulting in serious injury or death – Severity Level 8 and eligible for consecutive sentence); wildfire arson (demonstrable bodily harm – Severity Level 5 and eligible for consecutive sentence); wildfire arson (damaged over 5 dwellings, burns 500 acres or more, or crops in excess of $100,000 – Severity Level 7 and eligible for consecutive sentence); and wildfire arson (damaged over 100 dwellings, burns 1,500 acres or more, or crops in excess of $250,000 – Severity Level 8 and eligible for consecutive sentence).

Non-Legislative Modifications (p. 30): Throughout the year, the Commission considered case law and other issues that were brought to its attention. New policies or policy clarifications were implemented to: 1) explain the use of expunged convictions in criminal history scores; 2) add fleeing a peace officer in a motor vehicle without injury to the permissive consecutive list in § 6; 3) clarify how to calculate the presumptive duration for an attempt or conspiracy that carries a mandatory minimum; and 4) explain how to calculate the presumptive duration for an attempt or conspiracy that will be sentenced consecutively.

Staff Activities (p. 32): The staff performed the following activities: developed and implemented a new website; trained 700 practitioners in traditional classroom and online settings; provided 47 fiscal impact statements for introduced legislation; worked with the Department of Corrections to generate prison bed projections; served on various criminal justice boards, forums and committees; processed and ensured the accuracy of over 15,000 sentencing records; published annual Guidelines and commentary; and provided reports on sentencing practices.

County Attorney Firearms Reports (p. 35) – 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 726.

2012 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, Distribution, and Percent Change: Overall and by Offense Type

There were 15,207 felony offenders sentenced in 2012; an increase of 4.4 percent from 2011 (Figure 1). As a proportion of total offenders sentenced, person offenders accounted for 31.8 percent and property accounted for 30.3 percent (Figure 2). The number of offenders sentenced increased in every offense category except "other." Property offenses grew the most at 8.8 percent, person offenses were up 3.5 percent, and drug offenses rose 4.2 percent (Figure 3).

The increase in case volume for felony sentences is likely related to an overall increase in reported crime. Data published by the Minnesota Department of Public Safety indicates an increase of 1.4 percent in the overall crime rate for the eight most serious crimes.[2] Of those, murder, rape, robbery, and aggravated assault increased by 3.8 percent.[3]

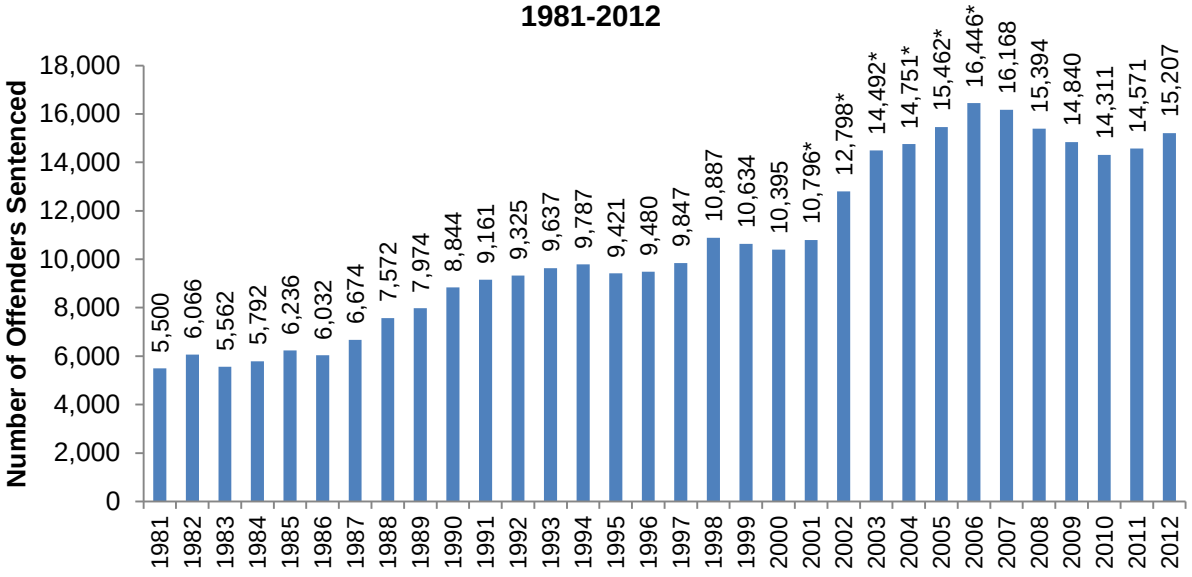
Minnesota's rise in crime rates and felony sentences is consistent with that of a national trend. The Bureau of Justice Statistics reported that in 2012 violent and property crime rates rose for U.S. residents for the second straight year. The report notes that that the increase in simple assaults accounted for the majority of the rise in total violent crimes and theft accounted for the majority of the increase among property crimes.[4]

[2] "Serious Crimes" or "Index Crimes" are defined as Murder, Rape, Robbery, Aggravated Assault, Burglary, Larceny, Motor Vehicle Theft, and Arson.
[3] *2012 Uniform Crime Report,* State of Minnesota, Department of Public Safety, July 2013, p. 10 at https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2012%20Crime%20Book.pdf.
[4] *Criminal Victimization, 2012* (NCJ 243389), Bureau of Justice Statistics, October 2013 at http://www.bjs.gov/content/pub/pdf/cv12.pdf.

While the overall number of offenders in the "other" category did not fluctuate, changes within the category occurred (Figure 3)[5]. In 2010, the "other" offense category was separated so that data about felony DWI and sex offenses without a direct victim (failure to register as a predatory offender and possession and dissemination of child pornography) could be analyzed separately. The number of offenders sentenced for Felony DWI peaked in 2004 at 860 and has declined in most years since. In 2012, the number of offenders sentenced for felony DWIs (631) decreased by four percent, a larger decrease than that seen in 2011.

Conversely, there was a four percent increase in the number of offenders in the non-person sex offense category--Failure to register increased by 40 offenders and pornography offenses decreased by 21 offenders. The number sentenced for the remaining offenses in the "other" category decreased by almost three percent. However, there were noticeable increases in escape offenses (from 42 cases in 2011 to 69 cases in 2012) and ineligible felon in possession of a firearm (from 274 to 321). Voting violations decreased from 160 in 2011 to 95 in 2012.

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2012



* The growth between 2001 and 2006 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.

[5] "Other" category includes: Felony DWI, failure to register as a predatory offender, possession or dissemination of child pornography, possession of a firearm by a felon convicted of a crime of violence, fleeing police, escape, discharge of a firearm, and other offenses of less frequency.

Figure 2. Volume of Offenders Sentenced by Offense Type: 1981-2012

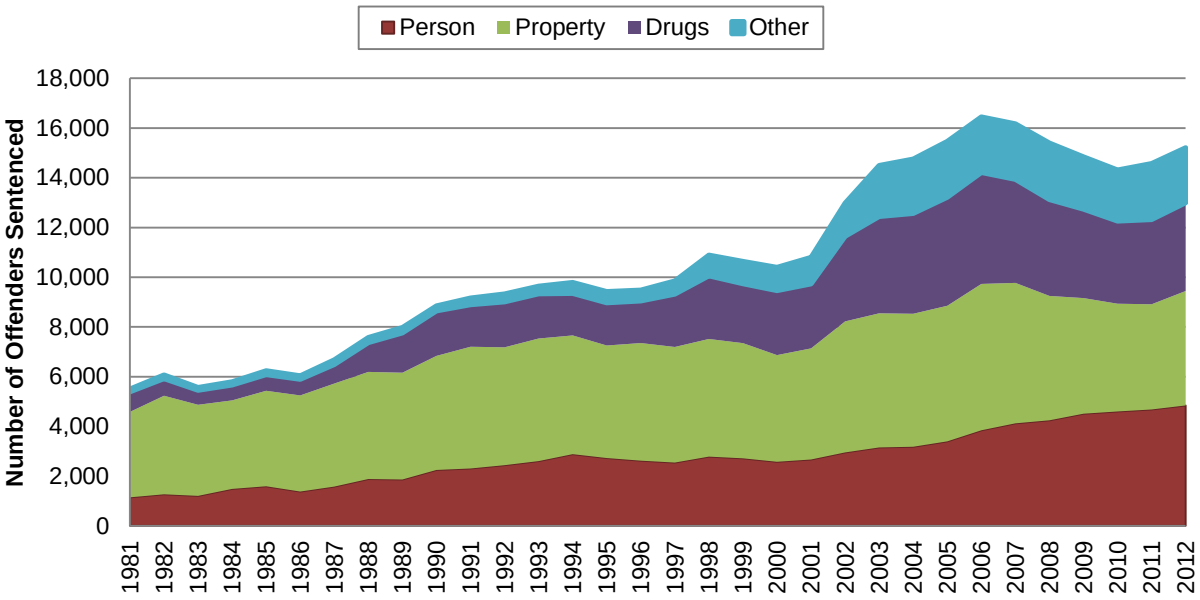
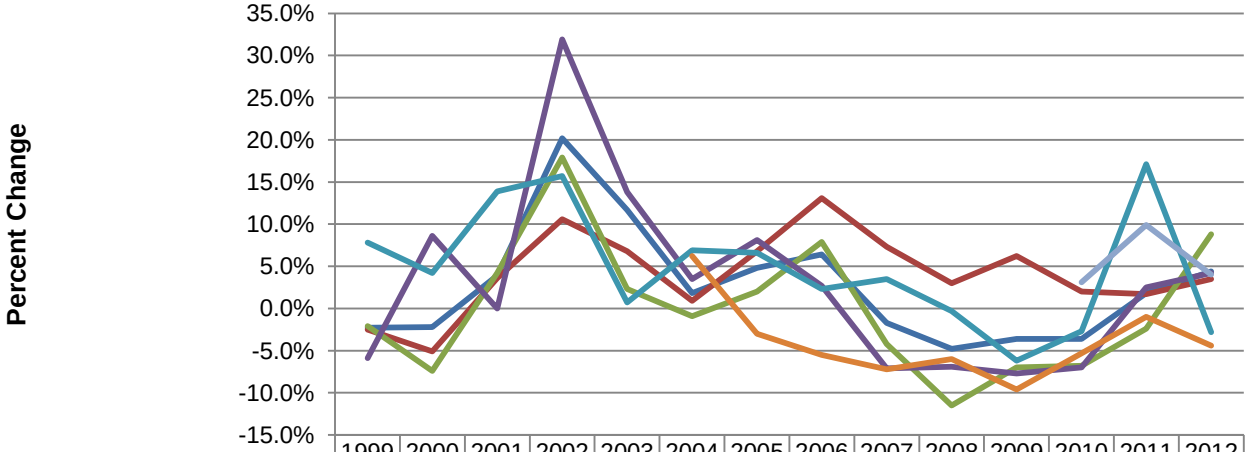


Figure 3. Percent Change by Offense Type: 1999-2012 (Felony DWI and Non-Person Sex Offenses Separated from "Other")



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
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%	4.4%
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%	3.5%
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%	8.8%
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%	4.2%
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%	-2.8%
Other (Felony DWI*)						6.2%	-3.0%	-5.5%	-7.2%	-6.0%	-9.6%	-5.3%	-1.0%	-4.4%
Other (Non-Person Sex Offenses**)												3.1%	9.9%	4.0%

* 2003 was the first full year in which this offense existed; percent change is provided for 2004 and beyond.

** Offenses excluded from the percent change calculation between 2009 and 2010 for the "other" category.

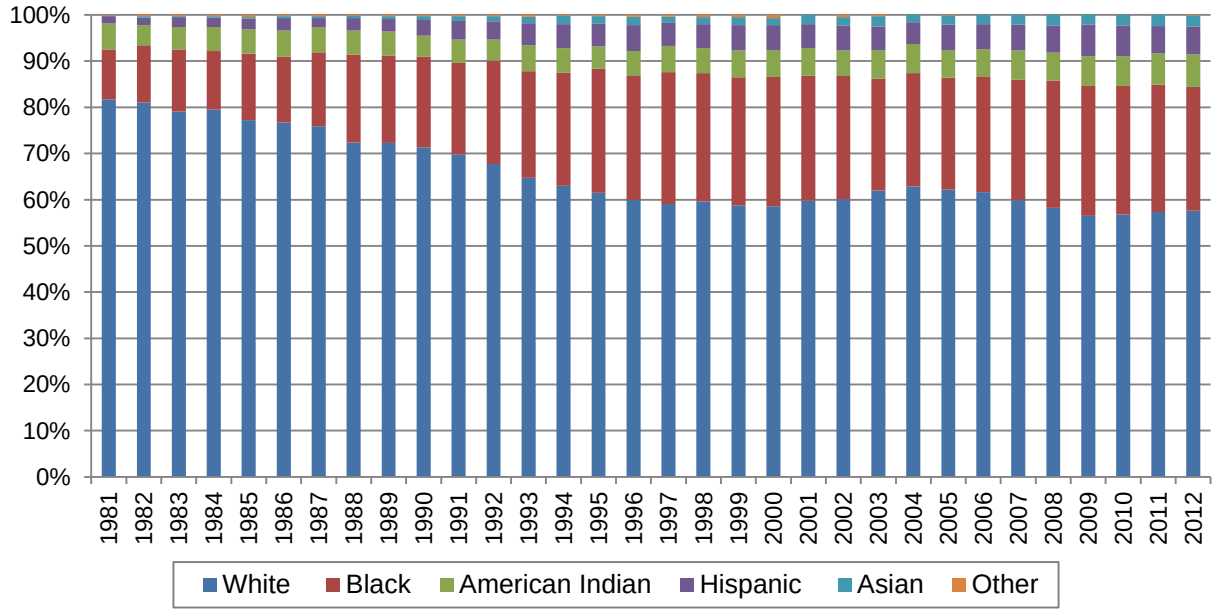
Distribution of Offenders by Race and Judicial District

Figure 4 shows the racial composition of the felony offender population from 1981 through 2012. 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 5 displays the distribution of the racial composition by Minnesota 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.

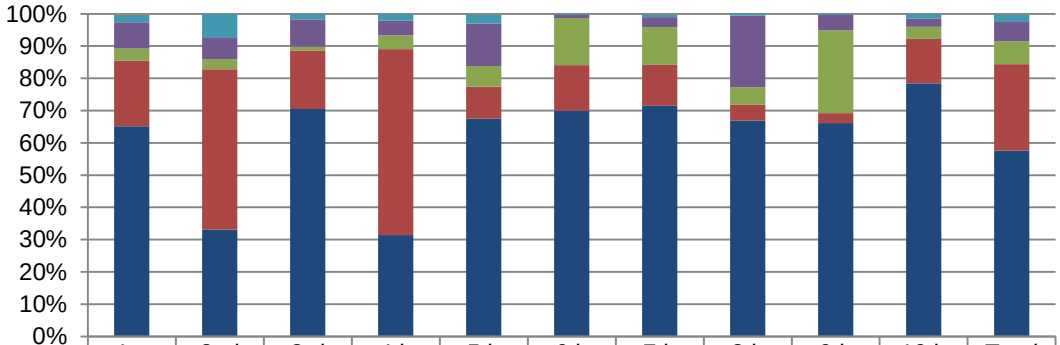
For comparison purposes, Figure 6 illustrates the 2010 U. S. Census data for Minnesota's total population of people ages 18 years and over.[6] Minnesota's population is 86.1 percent white, 4.3 percent black; 3.7 percent Hispanic; 3.7 percent Asian; 1 percent American Indian; and 1.2 percent people who identify themselves with two or more races or another race ("Other"). These figures vary by judicial district. (See, Appendix 1 for a map of Minnesota's ten judicial districts.)

Figure 4. Distribution of Felony Offenders by Race: 1981-2012



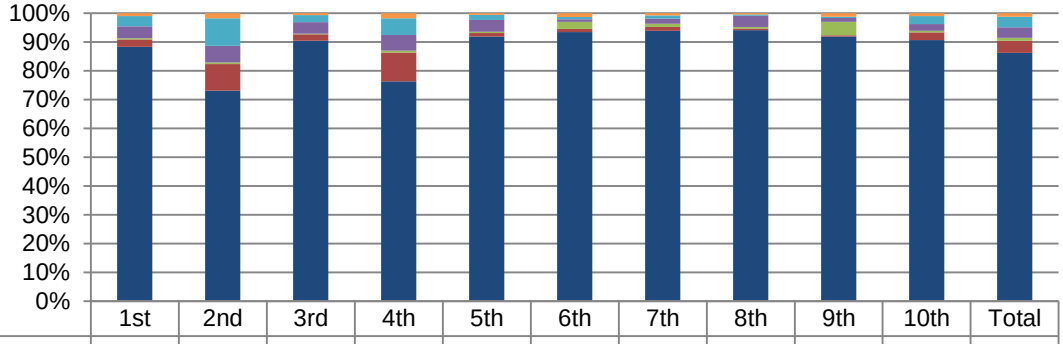
[6] Source for "Total MN Population 18 years and older": U.S. Census Bureau; Census 2010, Summary File 1, Table 11; generated by Sarah Welter, Kathleen Madland, and Jill Payne (November 2013).

Figure 5. Distribution of Felony Offenders by Race and Minnesota Judicial District



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	Total
Other	0.2%	0.0%	0.0%	0.0%	0.1%	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%
Asian	2.4%	7.5%	1.7%	2.1%	2.9%	0.2%	0.9%	0.5%	0.3%	1.5%	2.4%
Hispanic	8.2%	6.5%	8.5%	4.6%	13.2%	1.1%	3.1%	22.3%	4.8%	2.5%	6.0%
American Indian	3.7%	3.2%	1.2%	4.3%	6.3%	14.6%	11.7%	5.3%	25.7%	3.8%	7.1%
Black	20.3%	49.6%	18.1%	57.6%	10.0%	14.1%	12.7%	5.0%	3.1%	13.8%	26.8%
White	65.1%	33.1%	70.6%	31.4%	67.4%	70.0%	71.4%	66.9%	66.1%	78.4%	57.7%

Figure 6. 2010 U.S. Census Data: Distribution of Minnesota Population (18 yrs and older) by Race and Minnesota Judicial District



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	Total
Other	1.0%	1.8%	0.7%	1.8%	0.6%	1.3%	0.8%	0.5%	1.2%	1.0%	1.2%
Asian	3.6%	9.5%	2.4%	5.8%	1.7%	0.8%	1.1%	0.4%	0.5%	2.8%	3.7%
Hispanic	4.1%	5.8%	4.0%	5.4%	4.2%	0.9%	1.8%	3.9%	1.3%	2.3%	3.7%
American Indian	0.4%	0.6%	0.2%	0.7%	0.4%	2.4%	1.1%	0.5%	4.7%	0.6%	0.9%
Black	2.6%	9.2%	2.2%	9.9%	1.2%	1.2%	1.3%	0.6%	0.4%	2.6%	4.3%
White	88.2%	73.2%	90.4%	76.3%	91.9%	93.4%	94.0%	94.0%	92.0%	90.7%	86.1%

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 may 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 2012. 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 89.8% for white offenders to 93.2% 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 (22.6%); whereas black offenders were imprisoned at the highest rate (33.6%).

- 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 (99.3%) and the Third Judicial District, which includes Rochester, had the lowest total incarceration rate (82%). This variation continues with respect to the separate rates for prison and local confinement. For example, the Seventh Judicial District, which includes the cities of Alexandria, Moorhead, and St. Cloud, had the highest imprisonment rate (29.9%) and the Sixth Judicial District, which includes the city of Duluth, had the lowest imprisonment rate (20.2%). With regard to use of local confinement, the Tenth Judicial District, which includes the cities of Anoka and Stillwater had the highest rate (71.9%) and the Third Judicial District, which includes the cities of Rochester and Winona had the lowest rate (56.8%).

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

		Total Cases	Total Incarceration		Prison		Conditional Confinement	
Gender	Male	12,699	11,692	92.1%	3,692	29.1%	8,000	63.0%
	Female	2,508	2,150	85.7%	312	12.4%	1,838	73.3%
Race/ Ethnicity	White	8,777	7,880	89.8%	1,984	22.6%	5,896	67.2%
	Black	4,073	3,797	93.2%	1,369	33.6%	2,428	59.6%
	American Indian	1,080	993	91.9%	305	28.2%	688	63.7%
	Hispanic	908	832	91.6%	255	28.1%	577	63.5%
	Asian	361	334	92.5%	89	24.7%	245	67.9%
	Other/ Unknown	8	6	75.0%	2	25.0%	4	50.0%
Judicial District	First	1,898	1,637	86.2%	395	20.8%	1,242	65.4%
	Second	2,099	2,085	99.3%	661	31.5%	1,424	67.8%
	Third	1,296	1,063	82.0%	327	25.2%	736	56.8%
	Fourth	2,891	2,609	90.2%	860	29.7%	1,749	60.5%
	Fifth	819	738	90.1%	185	22.6%	553	67.5%
	Sixth	930	779	83.8%	188	20.2%	591	63.5%
	Seventh	1,499	1,455	97.1%	448	29.9%	1,007	67.2%
	Eighth	417	392	94.0%	113	27.1%	279	66.9%
	Ninth	1,323	1,149	86.8%	355	26.8%	794	60.0%
	Tenth	2,035	1,935	95.1%	472	23.2%	1,463	71.9%
Overall		**15,207**	**13,842**	**91.0%**	**4,004**	**26.3%**	**9,838**	**64.7%**

Average Pronounced Prison Sentences and Local Confinement

In 2012, the average prison sentence was 47.3 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 when the Commission doubled the recommended prison sentences for the higher severity level offenses. The average amount of local confinement pronounced as a condition of probation was 108 days (Table 3). The average has remained largely constant since 1988.

Table 2. Average Pronounced Prison Sentence

Executed Prison Sentences (in months)

2012	47.3
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

Table 3. Average Pronounced Local Confinement

Local Confinement Time (in days)

2012	108
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

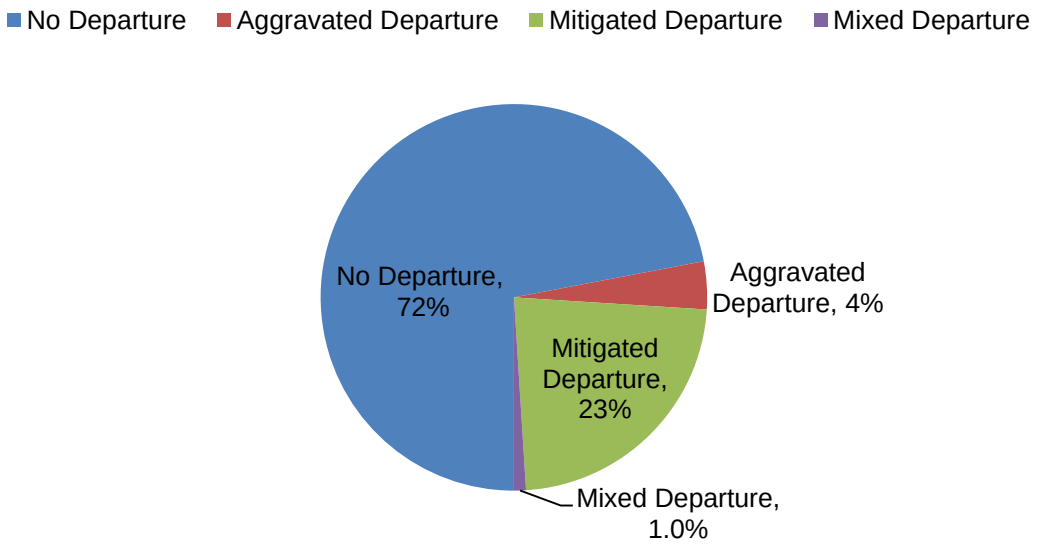
Departures from the Guidelines

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 2012, 72 percent of all felony offenders sentenced received the presumptive Guidelines sentence. The remaining 28 percent received some type of departure (Figure 7).

Figure 7. 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 2012, the overall dispositional departure rate was 15 percent: 11 percent mitigated; and four percent aggravated (Figure 8). 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 8-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 8. Dispositional Departures with and without Requests for Prison from Defendant

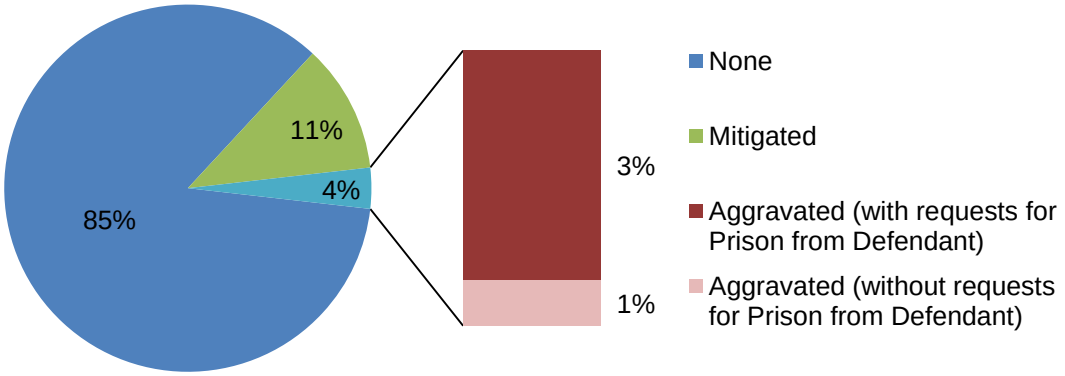


Table 4 illustrates dispositional departure rates by gender, race, and judicial district. The mitigated dispositional departure rate is lower for women (8.5%) than men (11.9%). When examined by racial composition, the rate ranged from a low of 9.4 percent for Asian offenders to a high of 12.9 percent for black offenders. There was also a great deal of variation in the rate by Judicial District, ranging from lows of 9.2 percent and 9.1 percent in the Second and Seventh Judicial Districts, respectively, to a high of 14.8 percent in the Fourth Judicial District.

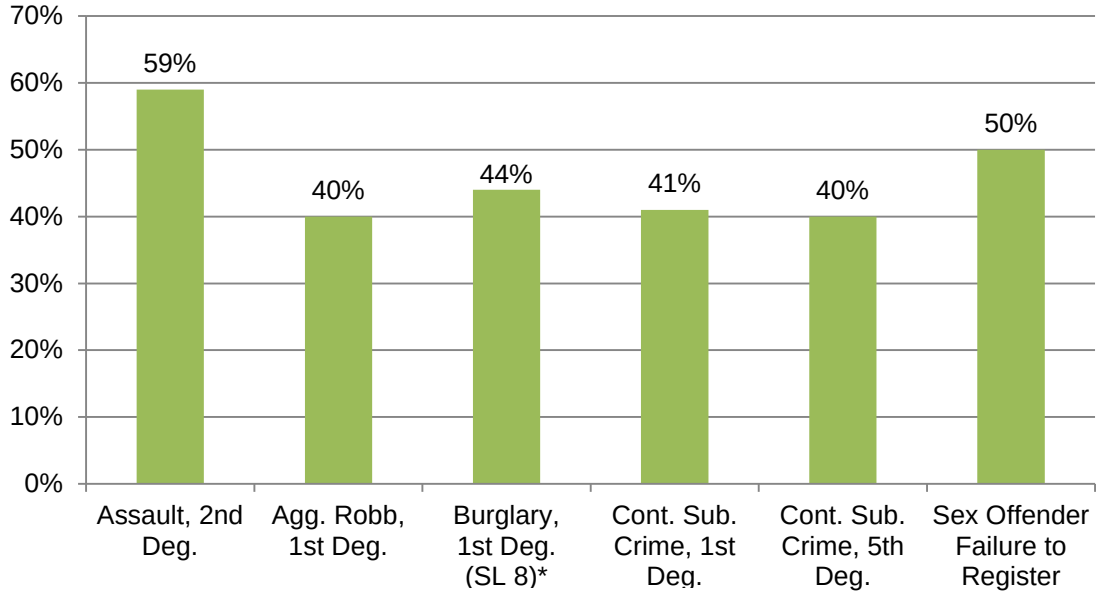
When reviewing the information in Table 4, it is important to note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across racial groups or across regions, and differences in 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		Number Presumptive Commits	Mitigated Dispositional Departures	
Gender	Male	12,699	450	3.5%	1,509	11.9%	4,752	1,509	31.8%
	Female	2,508	90	3.6%	214	8.5%	436	214	49.1%
Race/ Ethnicity	White	8,777	333	3.8%	952	10.8%	2,604	952	36.6%
	Black	4,073	136	3.3%	525	12.9%	1,758	525	29.9%
	American Indian	1,080	36	3.3%	114	10.6%	383	114	29.8%
	Hispanic	908	23	2.5%	98	10.8%	330	98	29.7%
	Asian	361	12	3.3%	34	9.4%	111	34	30.6%
Judicial District	First	1,898	58	3.1%	206	10.9%	543	206	37.9%
	Second	2,099	62	3.0%	194	9.2%	793	194	24.5%
	Third	1,296	52	4.0%	131	10.1%	406	131	32.3%
	Fourth	2,891	89	3.1%	429	14.8%	1,200	429	35.8%
	Fifth	819	40	4.9%	105	12.8%	250	105	42.0%
	Sixth	930	29	3.1%	128	13.8%	287	128	44.6%
	Seventh	1,499	50	3.3%	137	9.1%	535	137	25.6%
	Eighth	417	19	4.6%	43	10.3%	137	43	31.4%
	Ninth	1,323	77	5.8%	140	10.6%	418	140	33.5%
	Tenth	2,035	64	3.1%	210	10.3%	619	210	33.9%
Overall		**15,207**	**540**	**3.6%**	**1,723**	**11.3%**	**5,188**	**1,723**	**33.2%**

Dispositional departure rates vary for specific offenses. Included in Figure 9 are offenses with mitigated dispositional departure rates that are higher than the overall average (33.2%). These offenses include 50 or more presumptive commitment cases and cases with mitigated dispositional departure rates of over 38 percent.

Figure 9. 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 sex 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 predatory 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.

In 2012, the mitigated durational departure rate was approximately 25 percent. The aggravated durational departure rate was three and a half percent. The low aggravated durational departure rate in recent years 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 sex offenders and sex offenders with prior criminal history records.[7]

Table 5 illustrates durational departure rates for executed prison sentences by gender, race, and judicial district. When the departure rate is examined by racial composition, the total rate varies from a low of 22.7 percent for white offenders to a high of 38.1 percent for black offenders. There is also considerable variation in durational departure rates by judicial district, ranging from a low of 14.4 percent in the Third Judicial District to a high of 57.1 percent in the Fourth Judicial District (which includes the city of Minneapolis).

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.

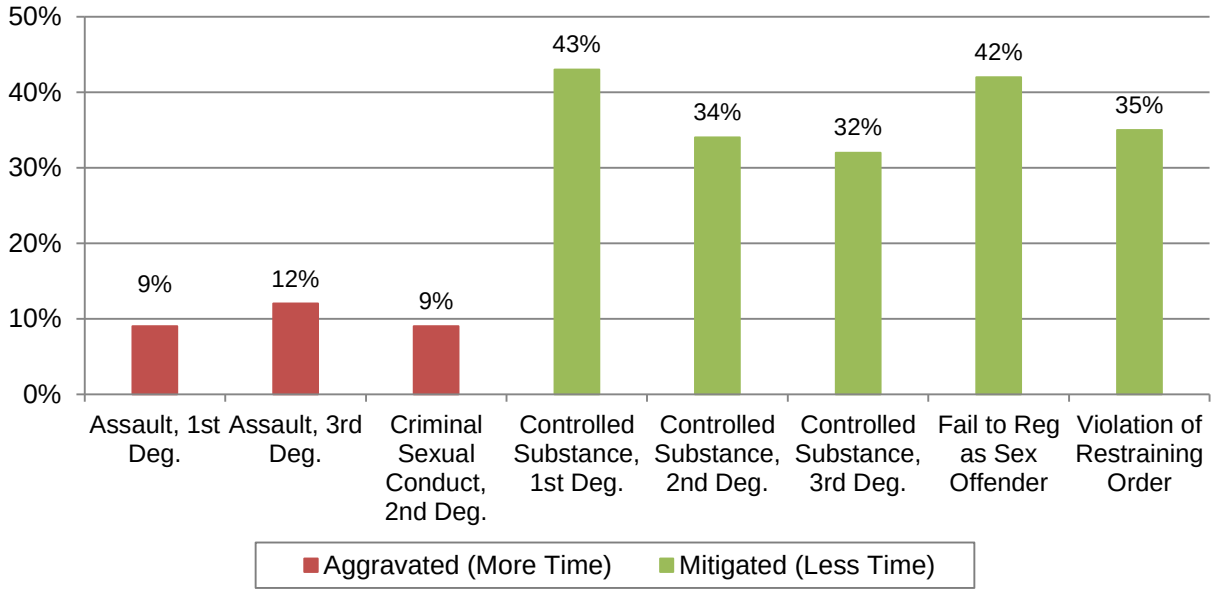
[7] For a more in-depth examination of the effect of the *Blakely* decision on sentencing practices, see the MSGC special report: *Impact of Blakely and Expanded Ranges on Sentencing Grid*, at: mn.gov/sentencing-guidelines/reports/Blakely and Expanded Ranges on Sentencing Grid.pdf.

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	3,692	28.7%	2,634	71.3%	132	3.6%	926	25.1%
	Female	312	25.3%	233	74.7%	8	2.6%	71	22.8%
Race/ Ethnicity	White	1,984	22.7%	1,533	77.3%	64	3.2%	387	19.5%
	Black	1,369	38.1%	847	61.9%	52	3.8%	470	34.3%
	American Indian	305	24.3%	231	75.7%	14	4.6%	60	19.7%
	Hispanic	255	25.5%	190	74.5%	8	3.1%	57	22.4%
	Asian	89	27.0%	65	73.0%	2	2.2%	22	24.7%
Judicial District	First	395	25.1%	296	74.9%	18	4.6%	81	20.5%
	Second	661	30.9%	457	69.1%	19	2.9%	185	28.0%
	Third	327	14.4%	280	85.6%	12	3.7%	35	10.7%
	Fourth	860	57.1%	369	42.9%	45	5.2%	446	51.9%
	Fifth	185	18.9%	150	81.1%	3	1.6%	32	17.3%
	Sixth	188	21.3%	148	78.7%	4	2.1%	36	19.1%
	Seventh	448	14.7%	382	85.3%	13	2.9%	53	11.8%
	Eighth	113	14.2%	97	85.8%	4	3.5%	12	10.6%
	Ninth	355	15.5%	300	84.5%	12	3.4%	43	12.1%
	Tenth	472	17.8%	388	82.2%	10	2.1%	74	15.7%
Overall		**4,004**	**28.4%**	**2,867**	**71.6%**	**140**	**3.5%**	**997**	**24.9%**

As with dispositional departures, it can be helpful to look at offenses with higher than average durational departure rates. Figure 10 displays offenses with the highest durational departure rates among offenses with at least 45 executed prison cases. Aggravated durational departure rates were highest for first- and third-degree assault, and second-degree criminal sexual conduct. Mitigated durational departure rates were highest for first, second-, and third-degree controlled substance offenses, failure to register as a predatory sex offender, and violations of a restraining order.

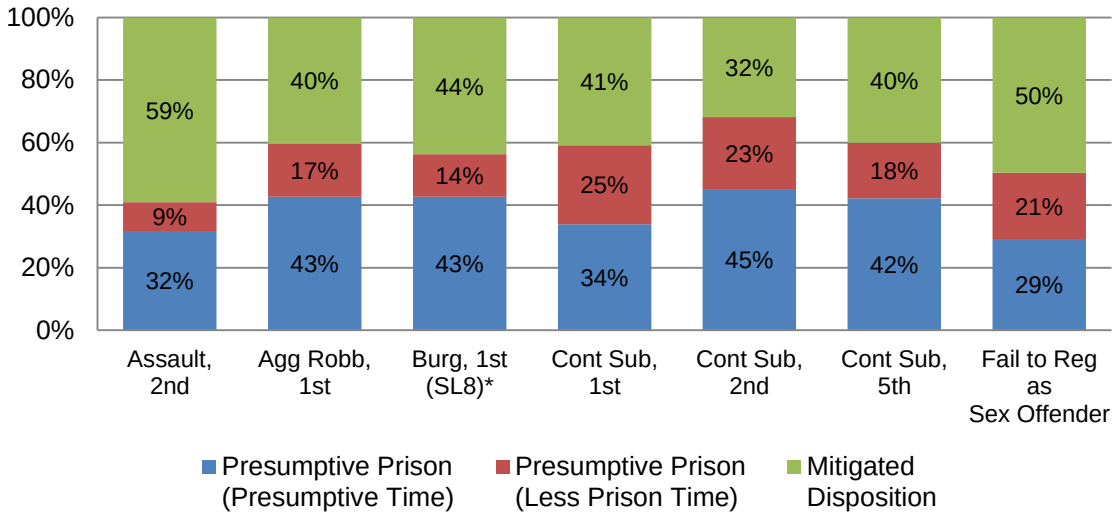
Figure 10. High Durational Departure Rates for Specific Offenses
Executed Prison Sentences Only



Included in Figure 11 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 (49.7%). For these seven 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 9, 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 11. High Departure Rates For Specific Offenses (Presumptive Commitments Only)



* Burglary with assault or dangerous weapon.

First- and Second-Degree Controlled Substance Offenses

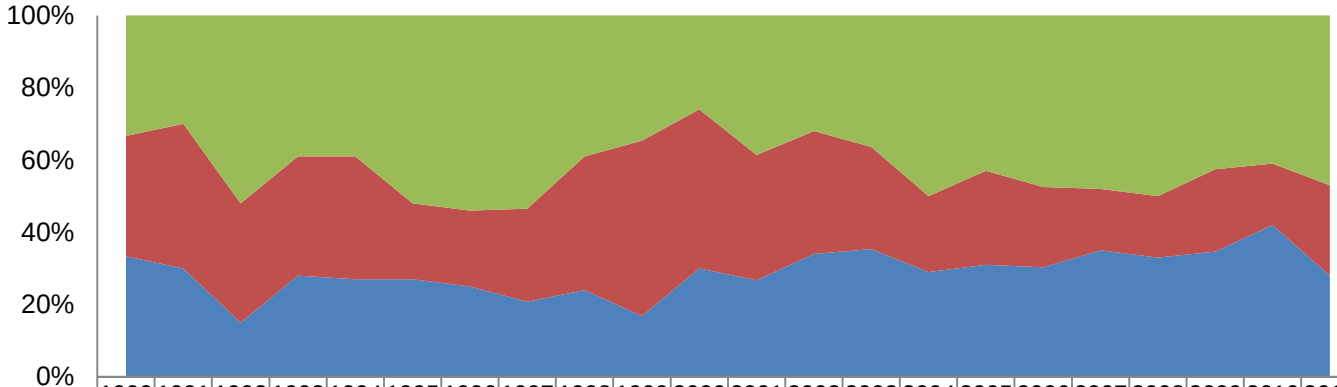
The Commission annually reviews sentencing data to determine if there are any patterns or trends that warrant further study. In late 2011, while performing this regular review, the data indicated that there were a few offenses for which the Guidelines sentences were being followed less than half the time. Two of those offenses were first- and second-degree controlled substances offenses.

First-degree controlled substance offenses are ranked at severity level 9, and second-degree controlled substance offenses are ranked at severity level 8. Because both severity levels are in the non-shaded portion of the grid, the presumptive sentence is prison for all offenders at all criminal history scores. But a large proportion of offenders instead received a durational departure (less prison time than called for on the grid) or dispositional departure (probation instead of prison).

Sentencing Trends

The sentencing pattern noticed in the 2011 data represents a long-term trend. Figure 12 shows departure rates over time for first-degree. For most years, one-third or less of first-degree offenders received the Guidelines presumptive sentence ("Prison-Presumptive Time") and over 40 percent received probation ("Mitigated Disposition").

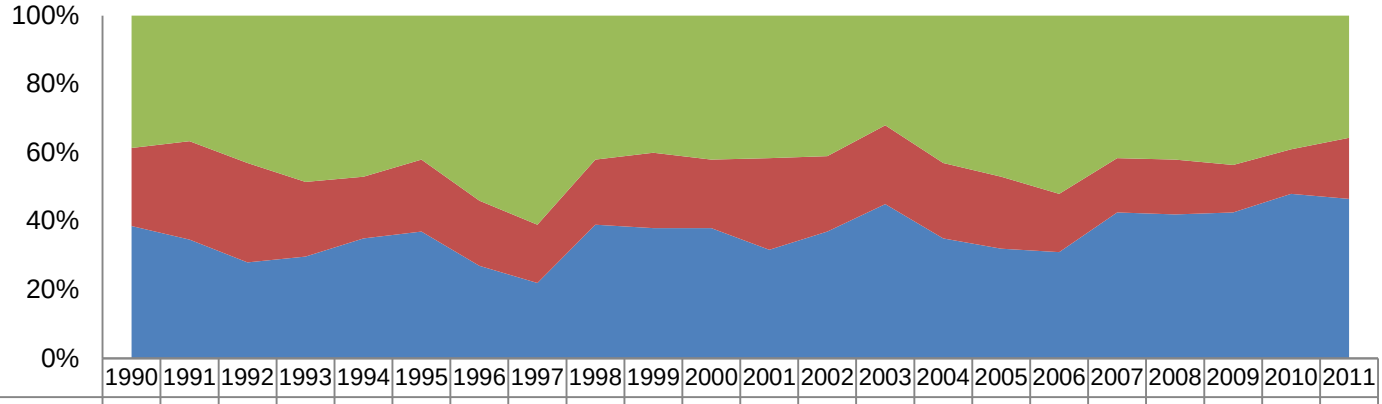
Figure 12. Departure Rates Over Time:
First-Degree Controlled Substance Offenses Sentenced 1990-2011



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Mitigated Disposition	33%	30%	52%	39%	39%	52%	54%	54%	39%	35%	26%	39%	32%	36%	50%	43%	47%	48%	50%	43%	41%	47%
Prison-Less Time	33%	40%	33%	33%	34%	21%	21%	26%	37%	49%	44%	35%	34%	28%	21%	26%	22%	17%	17%	23%	17%	25%
Prison-Presumptive Time	33%	30%	15%	28%	27%	27%	25%	21%	24%	17%	30%	27%	34%	35%	29%	31%	30%	35%	33%	35%	42%	28%

Figure 13 shows the second-degree rates. In most years, 40 percent or less of the second-degree offenders received the Guidelines presumptive sentence ("Prison-Presumptive Time") and over 40 percent received probation ("Mitigated Disposition").

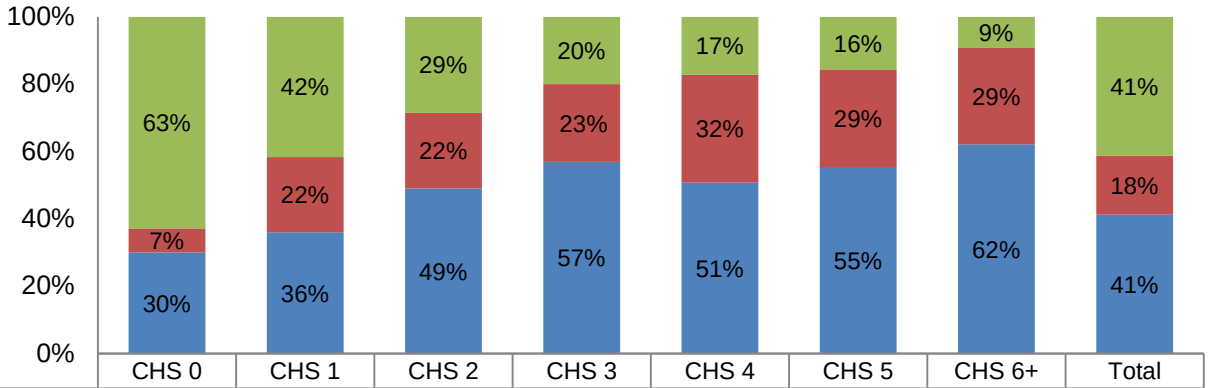
Figure 13. Departure Rates Over Time:
Second-Degree Controlled Substance Offenses Sentenced 1990-2011



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Mitigated Disposition	39%	37%	43%	49%	47%	42%	54%	61%	42%	40%	42%	42%	41%	32%	43%	47%	52%	42%	42%	44%	39%	36%
Prison - Less Time	23%	29%	29%	22%	18%	21%	19%	17%	19%	22%	20%	27%	22%	23%	22%	21%	17%	16%	16%	14%	13%	18%
Prison-Presumptive Time	39%	35%	28%	30%	35%	37%	27%	22%	39%	38%	38%	32%	37%	45%	35%	32%	31%	43%	42%	43%	48%	47%

When the most recent three years of data was analyzed by criminal history score, the data indicated that offenders with lower criminal history scores were more likely to receive departures. Figure 14 shows that at a criminal history score of zero, more than 60 percent of offenders received probation ("Mitigated Disposition"). At the higher criminal history scores, there was a higher durational departure rate ("Prison-Less Time").

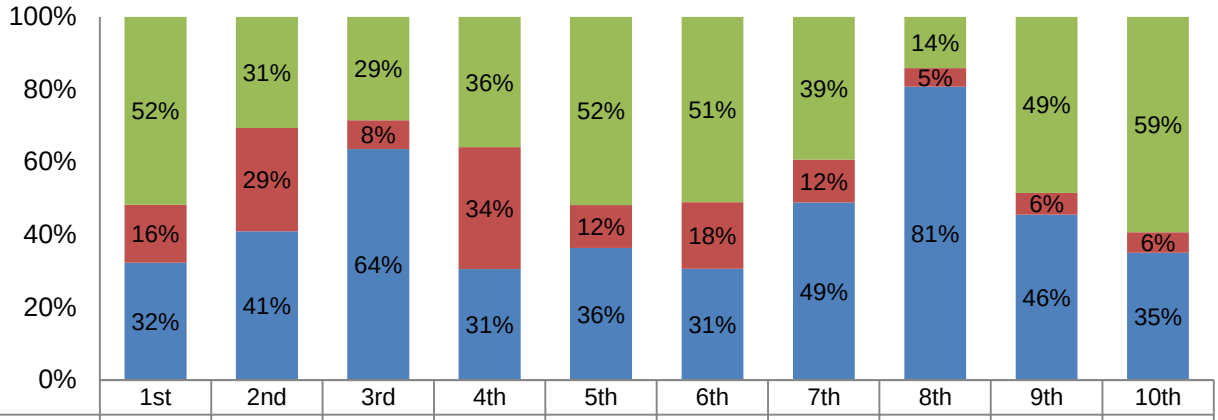
Figure 14. Departure Rates by Criminal History Score: First- and Second-Degree Controlled Substance Offenses (2009-2011 Combined Data)



	CHS 0	CHS 1	CHS 2	CHS 3	CHS 4	CHS 5	CHS 6+	Total
Mitigated Disposition	479	119	61	39	22	13	13	746
Prison -Less Time	54	64	48	45	41	24	40	316
Prison -Presumptive Time	229	103	105	111	65	46	87	746

When the same data was analyzed by judicial district, there was a wide variance in sentencing practices between districts. For example, the Guidelines were followed most closely in the Eighth Judicial District where 81 percent of first- and second-degree offenders received the presumptive Guidelines sentence ("Prison-Presumptive time") (Figure 15). However, the presumptive Guidelines sentence were followed in just 31 percent of the cases in the Fourth and Sixth Judicial Districts (Figure 15).

Figure 15. Departure Rates by Judicial District:
First- and Second-Degree Controlled Substance Offenses
(2009-2011 Combined Data)



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
Mitigated Disposition	117	59	43	139	57	50	100	11	65	105
Prison -Less Time	36	55	12	130	13	18	30	4	8	10
Prison -Presumptive Time	73	79	96	118	40	30	124	63	61	62

Outcome Study

These analyses prompted Commission members to question what types of outcomes offenders are experiencing based upon the sentences received. A study was commenced to address the following two questions:

1. Are first- and second-degree controlled substance offenders who are sentenced to probation (given mitigated dispositional departures) different than those who are sentenced to prison?

2. How successful are first- and second-degree controlled substance offenders who are sentenced to probation compared to those who are sentenced to prison? (Success measured by reconviction rates and revocation rates.)

The following two groups were identified for study:

- **Probationers (N=965):** Controlled substance offenders sentenced to probation January 2007 to December 2009.

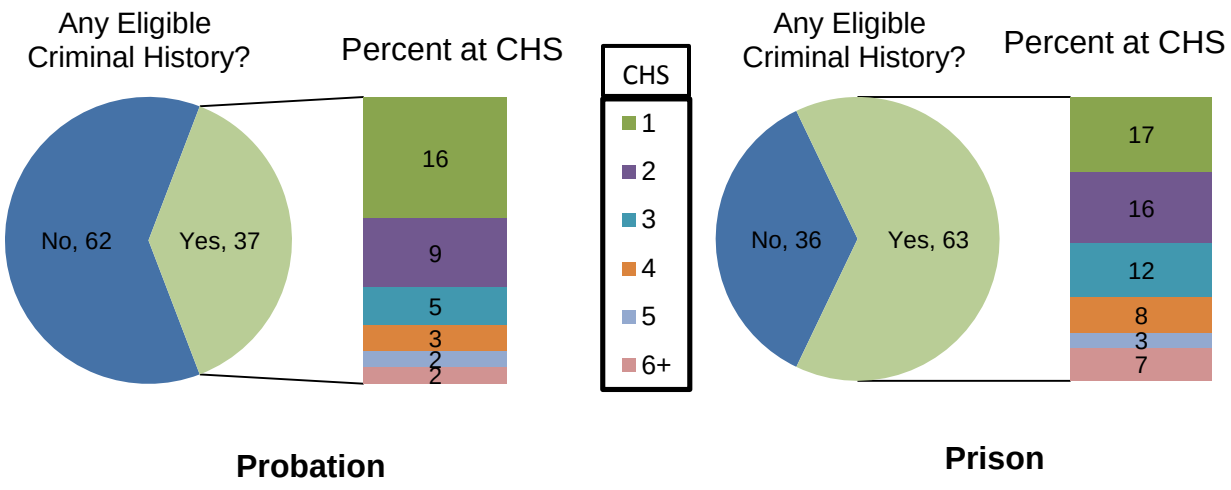
- **Prisoners (N=1224):** Controlled substance offenders released from prison January 2007 to December 2009. This group comprised initial commitments only; not offenders who were serving time after being revoked from probation.

Both groups were followed for a period of three years to determine if the offenders in each group were reconvicted for felony, gross misdemeanor, or targeted misdemeanor offenses. Those in the prison group were followed for three years after release from prison. Those in the probation group were followed for three years after serving any jail that was ordered as a condition of probation.

To address the first question – whether offenders receiving a probation sentence versus a prison sentence are somehow different –eight different attributes were analyzed: age, race, gender, Judicial District/region, criminal history, LSI-R Score,[8] drug type, and whether the offense was a sale or possession offense. Generally, the two groups were similar when viewed by the various factors. But two factors stood out: criminal history and Judicial District/region. The data indicated:

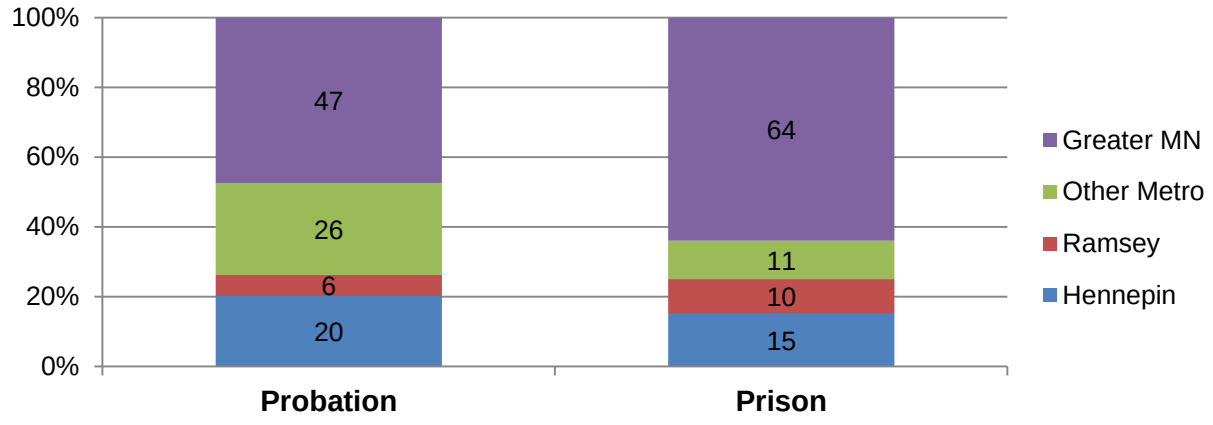
- Many more probationers than prisoners had a criminal history score of 0 (62% vs. 36%, respectively) (Figure 16).
- More prisoners than probationers were from Greater MN (64% vs. 47%, respectively) (Figure 17).

Figure 16. Distribution by Criminal History Score Percentage: First- and Second-Degree Controlled Substance Offenses (2009-2011 Combined Data)



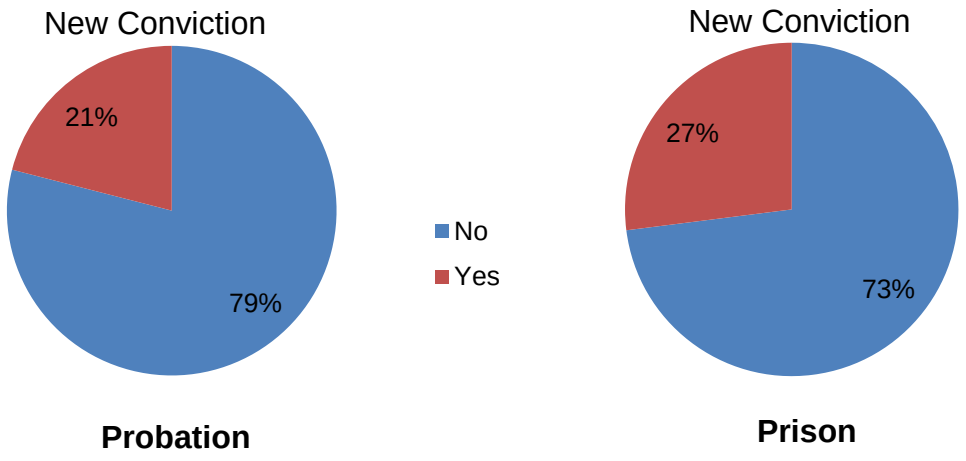
[8] The LSI-R is a risk assessment tool designed to measure risk to reoffend, level of supervision, and treatment needs.

Figure 17. Distribution by Region:
First- and Second-Degree Controlled Substance Offenses
(2009-2011 Combined Data)



To address the second question – how successful offenders were given their respective sentences – the Bureau of Criminal Apprehension (BCA) record for each offender was checked to determine if the offender was convicted of a new felony, gross misdemeanor, or targeted misdemeanor within an appropriate three-year period. The majority of offenders in both groups had no new conviction. The new conviction rate for offenders in the probation group was lower than that for offenders in the prison group (21% vs. 27%) (Figure 18).

Figure 18. New Conviction Rates:
First- and Second-Degree Controlled Substance Offenses
(2009-2011 Combined Data)



For both groups, new conviction rates increase as criminal history score increases (Figure 19). And for offenders in the prison group, the reconviction rate was much higher for offenders with a criminal history score of 3 to 6 (Figure 19-"Prison"). When new convictions and revocations are combined as a measure, 27 percent of offenders in the probation group were not successful (Figure 20).

Figure 19. New Conviction Rates by Criminal History Score: First- and Second-Degree Controlled Substance Offenses (2009-2011 Combined Data)

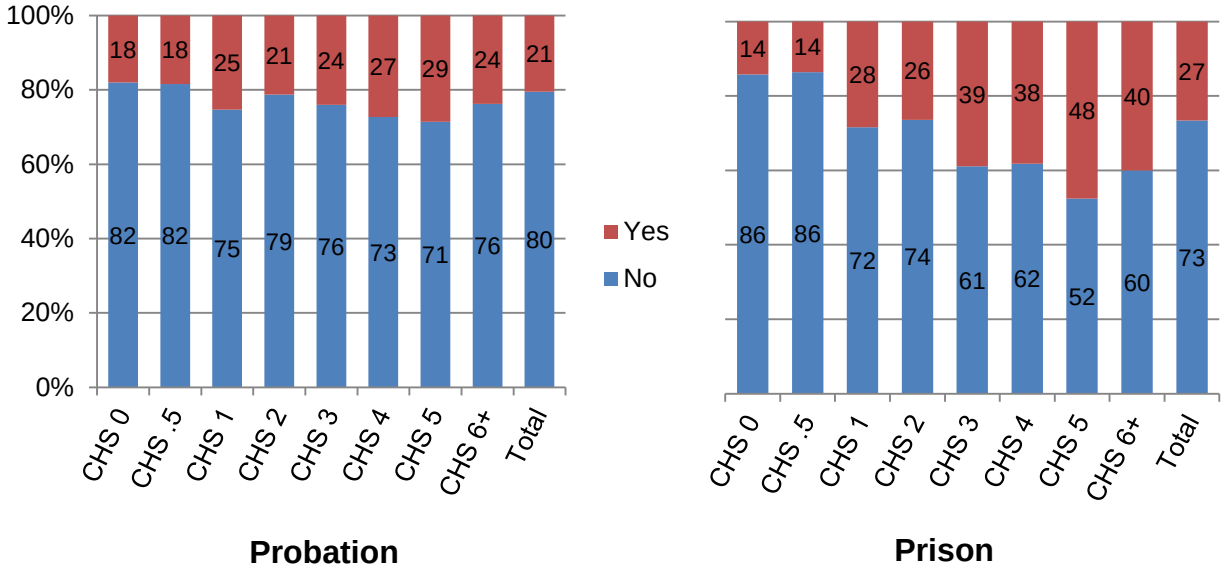
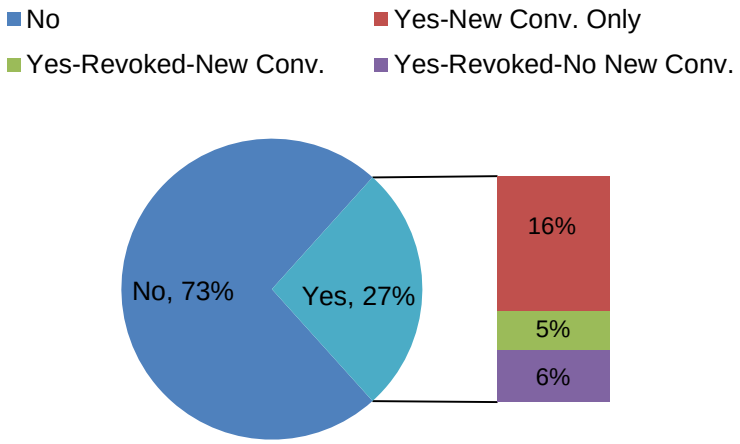


Figure 20. Probationers Revoked or New Conviction: First- and Second-Degree Controlled Substance Offenses (2009-2011 Combined Data)



Round Table Meeting

In October, the Commission held a Round Table meeting to present the results of this study and to seek feedback from the various stakeholders in the criminal justice system as to whether the Guidelines should be changed. Several themes emerged from the feedback received at the Round Table. Some of the themes contradict each other, but all are representative of the wide variety of views the Commission heard at the event. The themes were as follows:

- The Guidelines are working well: judges should be individualizing in these offense categories, and that is what the patterns are showing.
- Mitigated departure data suggest that the Guidelines should be adjusted so that the majority of Guidelines sentences are more in line with the sentences that judges are currently pronouncing.
- Data on the racial disparity in the Minnesota prison population should be a larger part of the discussion.
- The statutory offense definitions are too broad; they should be adjusted to better grade from the most serious to least serious drug offenses.
- Mandatory minimums are a large part of this issue and are possibly skewing the data.
- Drug courts should be more integrated into sentencing.

The Commission is continuing to study this issue. The next phase of the study will include a regression analysis to determine which factors most strongly influence departures for first- and second-degree controlled substance offenders.

The Commission's Activities in 2013

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, Itasca County Probation; Paul Ford, peace officer representative; 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.

Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2013

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 2013, held one public hearing and approved a number of modifications to the Guidelines which are summarized below. All modifications are set forth in Appendix 2.

New and Amended Crime Legislation

The Commission reviewed the following new and amended offenses, which were enacted into law by the 2013 Legislature, unless otherwise noted.

A. <u>Amended Offense. Aggregation of Financial Exploitation of Vulnerable Adults (Minn. Stat. § 609.2335).</u>

Description: Subdivision 4 was added to the law for financial exploitation of vulnerable adult statute (Minn. Stat. § 609.2335) and provides for aggregating the value of the money or property or services received by the defendant within a six-month period.

Adopted Proposal: The Commission decided to maintain the existing Severity Level rankings in Minn. Sentencing Guidelines § 5, and to maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

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

1. Theft of Motor Fuel from Retailer (Minn. Stat. § 609.52, subd. 2(a)(18))[9].

   Description: Theft of motor fuel from a retailer is a felony if the value is over $1,000. The penalties for the offense are found in subdivision 3 of the theft statute.

   Adopted Proposal: The Commission adopted a proposal to modify Minn. Sentencing Guidelines § 5.B, by ranking the offense according to the Theft Offense list; Severity Level 3 for theft over $5,000; and Severity Level 2 for theft $5,000 or less.

2. Emergency Telephone Calls and Communications (Minn. Stat. § 609.78).

   Description: New offenses were added to the law for emergency telephone calls and communications.

   Adopted Proposals:

   a) Severity Level 8; Added to list of eligible offenses for permissive consecutive sentencing in § 6 – if a person places an emergency call and reports a fictitious emergency with the intent of prompting an emergency response, and the call triggers an emergency response and, as a result of the response, someone suffers great bodily harm or death (Subd. 2a).

   b) Severity Level 5; Added to list of eligible offenses for permissive consecutive sentencing in § 6 – if a person intentionally uses multiple communication devices or electronic means to block, interfere with, overload, or otherwise prevent the emergency call center's system from functioning properly, and these actions make the system unavailable to someone needing emergency assistance (Subd. 2b(2)).

   c) Severity Level 4 – if a person commits a third or subsequent violation of the misdemeanor offense of making or initiating an emergency call, knowing that no emergency exists, and with the intent to disrupt, interfere with, or reduce the provision of emergency services or the emergency call center's resources, remaining silent, or making abusive or harassing statements to the call recipient (Subd. 2b(1)).

[9] Enacted into law during the 2012 Session (2012 Minn. Session Laws, Ch. 173, Sec. 6).

3. Wildfire Arson (Minn. Stat. § 609.5641).

   Description: The existing law of wildfire arson defined as intentionally setting a fire to burn out of control on land of another containing timber, underbrush, grass, or other vegetative combustible material was amended by adding new offenses.

   Adopted Proposals:

   a) Severity Level 7; Added to list of eligible offenses for permissive consecutive sentencing in § 6 – if the fire damages or threatened to damage in excess of five dwellings, burns 500 or more acres, or damages crops in excess of $100,000 (Subd. 1a(b)).

   b) Severity Level 8; Added to list of eligible offenses for permissive consecutive sentencing in § 6 – if the fire damages or threatened to damage in excess of 100 dwellings, burns 1,500 or more acres, or damages crops in excess of $250,000 (Subd. 1a(c)).

   c) Severity Level 5; Added to list of eligible offenses for permissive consecutive sentencing in § 6 – if the fire causes another person to suffer demonstrable bodily harm. The statutory maximum is ten years (Subd. 1a(d)).

C. Legislative Action – Presumptive Executed Sentences for Repeat Sex Offenders.

Description: Minn. Stat. § 609.3455, was amended to provide for presumptive executed prison sentences of at least 36 months for offenders sentenced for first- through fourth-degree criminal sexual conduct offenses under Minn. Stat. §§ 609.342 to 345, and criminal sexual predatory conduct under Minn. Stat. § 609.3453, if the offender has a previous sex offense conviction. The court may stay execution of the presumptive sentence if it finds that the offender is accepted by and can respond to a long-term inpatient treatment program for sex offenders. If the sentence is stayed, the court must include as conditions of probation some term of incarceration in a local facility and a requirement that the offender successfully complete the treatment program and aftercare.

Adopted Proposal: The Commission modified § 2.C.3.a, to address presumptive executed prison sentences of at least 36 months for repeat sex offenders.

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.

A. Use of Expunged Convictions in Criminal History Score Calculation.

Description: The Guidelines do not address whether an expunged conviction is eligible for possible use in future criminal history. Minn. Stat. § 609A.03, states that an ex parte order may open an expunged record for sentencing purposes. The Commission agrees that the statute is clear on the process required for including an expunged offense in criminal history.

Adopted Proposal: The Commission added a comment to § 2.B, directing practitioners to the governing statute.

B. Add Fleeing a Peace Officer in a Motor Vehicle (No Injury) to Permissive Consecutive List.

Description: Fleeing a peace officer in a motor vehicle without any resulting injury under Minn. Stat. § 609.487, subd. 3 was not on the list of offenses eligible for permissive consecutive sentencing; however, the acts as described in subd. 4, resulting in substantial bodily harm, great bodily harm, or death were.

Adopted Proposal: The Commission added the offense of fleeing a peace officer in a motor vehicle without any resulting injury under Minn. Stat. § 609.487, subd. 3, to the permissive consecutive sentencing list in § 6. This modification was made to address offenders with high criminal history scores who habitually flee but are not currently eligible for additional prison confinement.

C. Attempts and Conspiracies that Carry Mandatory Minimums.

Description: Non-substantive Guidelines revisions that were effective August 1, 2012, caused them to be unclear about how to determine the appropriate presumptive duration of the sentence when the offender is convicted of an attempt or conspiracy and the underlying offense carries a mandatory minimum sentence.

Adopted Proposal: The Commission modified §§ 2.E and 2.G, to clarify that the duration is the mandatory minimum or one-half the duration on the appropriate Grid, whichever is longer.

D. Attempts or Conspiracies and Consecutive Sentencing.

Description: The rule for finding the presumptive duration when applying consecutive sentencing to an attempt or conspiracy offense was unclear.

Adopted Proposal: The Commission added commentary to § 2.F, in order to clarify that if the court sentences an attempted offense consecutively, the presumptive duration is one-half of the duration found in the appropriate cell on the applicable Grid at a Criminal History Score of 1 for presumptive consecutive sentences and at a Criminal History Score of 0 for permissive consecutive sentences.

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 15,000 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 400 practitioners in fourteen traditional classroom trainings in 2013. In additional to fulfilling training requests from probation agencies, public defenders, and prosecutors, this year's classroom trainings included New Agent Academy trainings for Department of Corrections agents, training for new prosecutors conducted by the Minnesota Association of County Attorneys, and a presentation at the Minnesota Association of Criminal Defense Attorneys. Nearly 300 additional practitioners were trained statewide via the online training service WebEx made available on the Commission's new website. These trainings allow Commission staff to focus the training on a single topic, giving practitioners a more in-depth view of advanced policies. MSGC training staff has also made available five pre-recorded training sessions that practitioners can access when their schedule permits, making the training more accessible to all practitioners. Finally, the Commission staff published three 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.

New Website

The Commission's new website was launched in July 2013. It was designed to be a more user-friendly resource for MSGC information, including a revamped "Meetings" page containing current and past Commission meeting materials. A new "Seminars and Assistance"

page includes training webinars which lead the user through the application of the Guidelines. In addition, the home page of the new website contains a dynamic component, allowing the Commission to alert visitors to news events, new research, and other items that may be of interest to practitioners and the public.

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 200 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 2013 Legislative Session, Commission staff prepared 47 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.

More than five years ago, the Commission began providing the legislature with racial-impact notes on proposed crime bills when a disparate impact was anticipated. During the 2013 Legislative Session, one racial-impact note was prepared: House File 285, 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, domestic assault by strangulation, and juveniles not to possess firearms, are black or American Indian 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. MSGC staff served on the Criminal and Juvenile Justice Information Task Force and Supreme Court Criminal Justice Forum. Additionally, the Executive Director serves as an ex-officio member of Minnesota's Sex Offender 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.

Electronic Sentencing Worksheet

The Electronic Worksheet System (EWS) assists probation officers in creating the Guidelines sentencing worksheet. In March 2013 the Commission commenced a project to revise and update the EWS system. The project was supported by Minnesota's criminal justice community and was funded, in part, by an appropriation from the 2013 Legislature. The new EWS system is scheduled to launch in the spring of 2014.

Planned for this project are the introduction of a sentence calculator, a worksheet copy feature, data integration with the Minnesota Court Information System (MNCIS), new user e-mail notifications, and more data controls for better input validation. It is estimated that the current error rate for sentencing worksheets is about 25 percent. The system design enhancements in the new EWS should reduce this error rate and reduce the amount of time needed to complete each worksheet. There are several stakeholders who will benefits from the project:

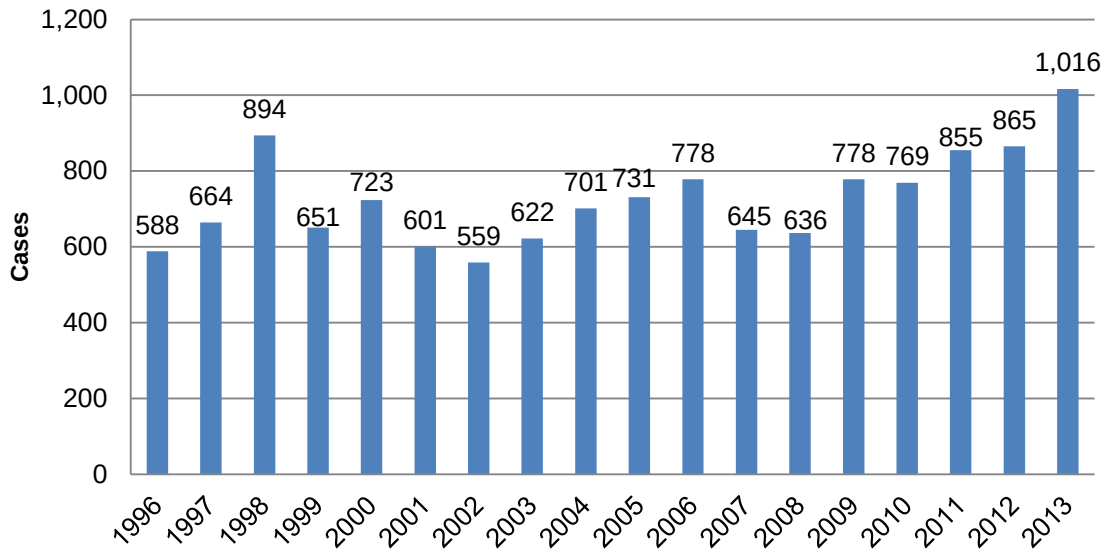
- Probation officers will benefit because the new system will greatly reduce the amount of data that must be entered manually.
- MSGC staff will benefit from this system due to the additional automation that will make the system more user-friendly and reduce the error rate of sentencing worksheets. The automation and increased consistency will result in faster review turnaround, reduced follow-up time for resolving errors, and fewer rejected worksheets.
- The courts will benefit because the amount of time for probation officers to complete the worksheet will be reduced, thereby allowing the worksheets to be provided to the court more quickly.
- The DOC will benefit from this system due to the fact that the "Classic S3" portal can be retired, which will streamline the DOC's support of the EWS as there would no longer be a need to maintain two independent S3 portals with different technologies, development standards, and independent security models, thus simplifying user account maintenance and eliminating the need for passwords to be synced between the two S3 portals.

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.

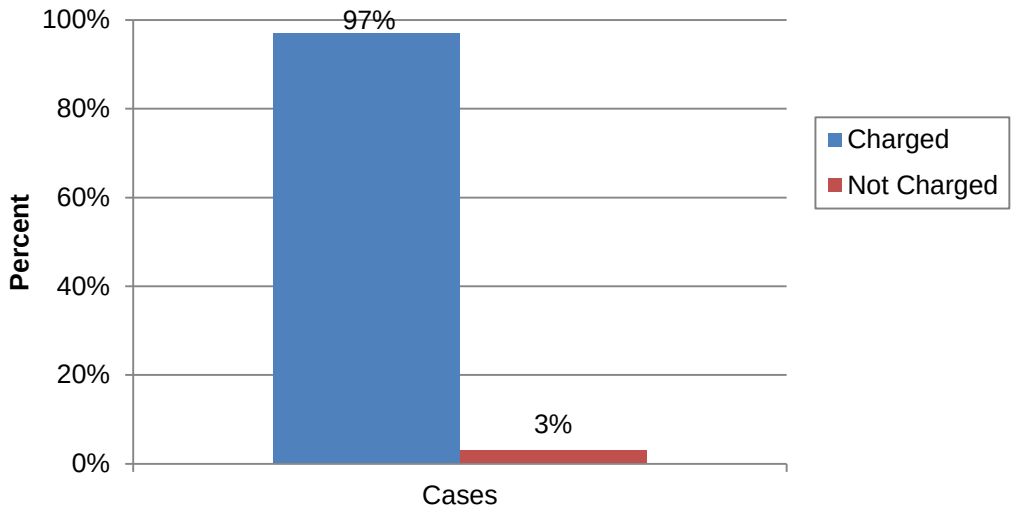
Since the mandate began in 1996, the average number of cases involving firearms statewide has been 726 yearly. Between July 1, 2012 and June 30, 2013, there were 1,016 cases allegedly involving a firearm (Figure 21). As shown in Figure 22, of those 1,016 cases, prosecutors charged 982 cases (97%) while 34 cases (3%) were not charged.

Figure 21. Cases Allegedly Involving a Firearm 1996 to 2013



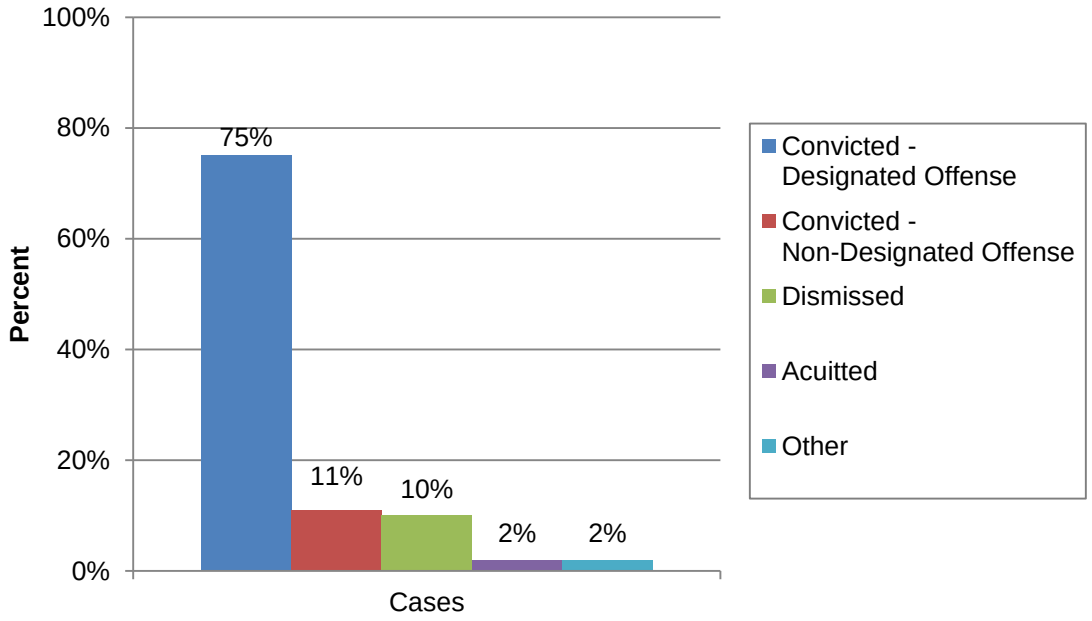
[10] The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter 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 22. Cases Charged



Of the 982 cases charged, 740 (75%) were convicted of offenses designated in Minn. Stat. § 609.11. One-hundred ten (11%) were convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 100 (10%) had all charges dismissed; 15 (2%) were acquitted on all charges; and 17 (2%) were "other" cases including federal prosecutions and stays of adjudication (Figure 23).

Figure 23. Case Outcomes



In 695 (94%) of the 740 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 24). In the cases in which the firearm was established on the record, 407 offenders (59%) were sentenced to the mandatory minimum prison term (Figure 25).

Figure 24. Cases Convicted of Designated Offense

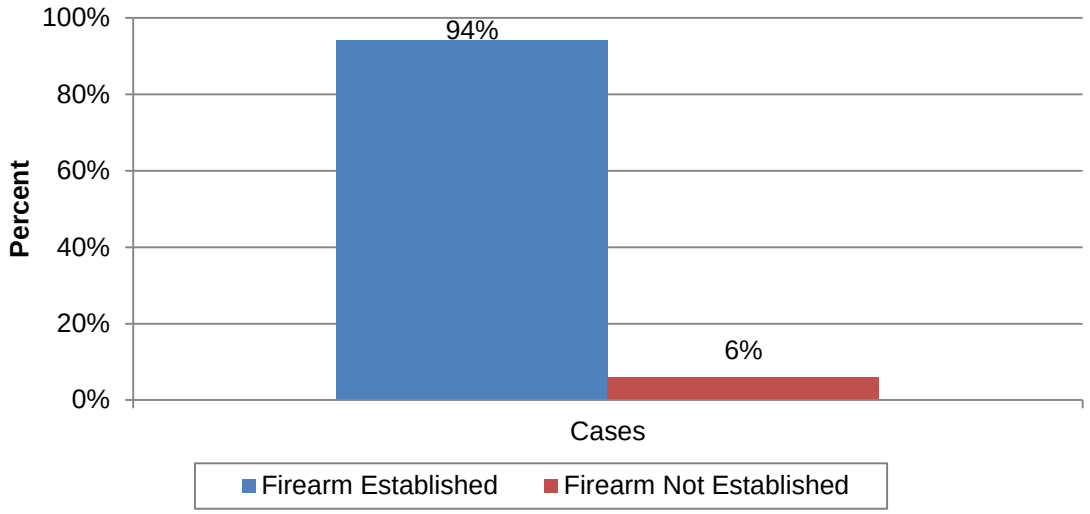


Figure 25. Firearm Established on the Record

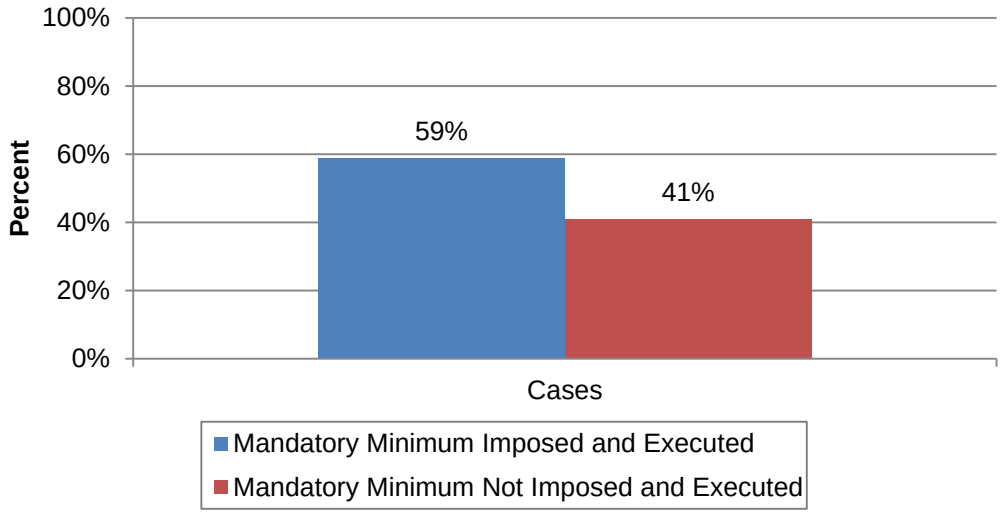


Table 6. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm by MN County

Cases Disposed from July 1, 2012 to June 30, 2013

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	16	14	5	0	0
Anoka	17	15	9	9	7
Becker	11	11	8	5	4
Beltrami*	---	---	---	---	---
Benton	7	6	6	6	2
Big Stone	0	0	0	0	0
Blue Earth	1	1	1	0	0
Brown	1	1	1	1	1
Carlton	6	6	6	4	2
Carver	2	2	2	2	0
Cass	7	7	5	5	2
Chippewa	2	2	0	0	0
Chisago	2	2	0	0	0
Clay	2	2	2	2	1
Clearwater	7	7	3	1	1
Cook	0	0	0	0	0
Cottonwood	2	2	2	2	2
Crow Wing	6	6	1	0	0
Dakota	46	40	30	30	13
Dodge	0	0	0	0	0
Douglas	2	2	1	1	0
Faribault	0	0	0	0	0
Fillmore	5	5	5	5	5
Freeborn	5	5	1	1	1
Goodhue	0	0	0	0	0
Grant	1	1	1	0	0
Hennepin	340	340	287	287	160
Houston	2	2	1	1	0
Hubbard	2	2	2	1	1
Isanti	1	1	0	0	0
Itasca	29	29	16	15	9
Jackson	3	3	1	0	0
Kanabec	0	0	0	0	0
Kandiyohi	4	3	3	3	3

* Not reported as of December 19, 2013.

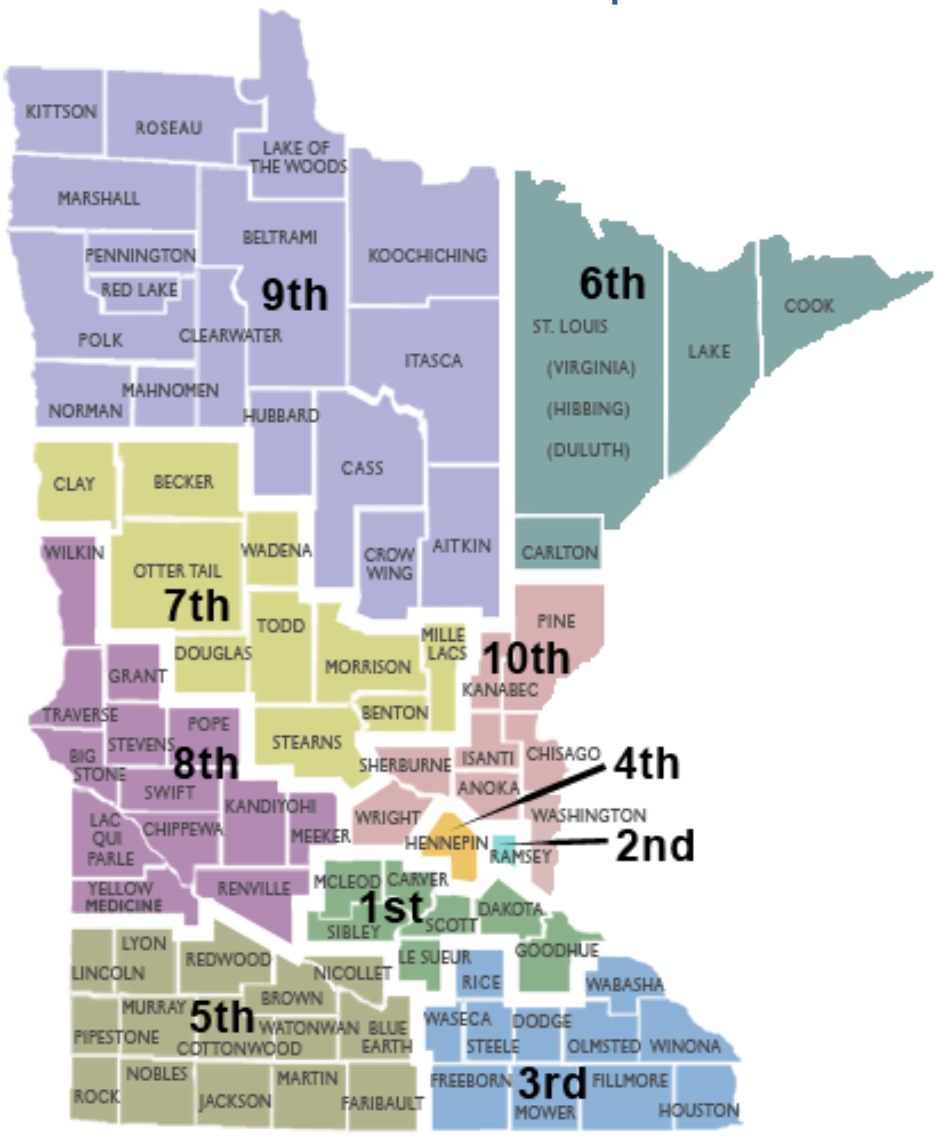
County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Kittson	1	1	0	0	0
Koochiching	0	0	0	0	0
Lac Qui Parle	0	0	0	0	0
Lake	2	2	0	0	0
Lake of the Woods	0	0	0	0	0
LeSueur	1	1	1	1	1
Lincoln*	---	---	---	---	---
Lyon	5	5	3	2	0
McLeod	5	5	1	1	0
Mahnomen	0	0	0	0	0
Marshall	1	1	1	1	0
Martin	3	3	2	2	0
Meeker	2	2	1	1	0
Mille Lacs	17	17	8	7	4
Morrison	7	7	6	6	5
Mower	11	11	6	2	2
Murray	0	0	0	0	0
Nicollet	2	2	0	0	0
Nobles	2	2	2	0	0
Norman	0	0	0	0	0
Olmsted	18	18	14	14	12
Otter Tail	8	7	7	6	2
Pennington	3	2	2	2	1
Pine	6	6	0	0	0
Pipestone	0	0	0	0	0
Polk	13	12	11	11	4
Pope	1	1	0	0	0
Ramsey	208	208	172	172	119
Red Lake	3	3	3	3	1
Redwood	7	7	7	7	7
Renville	2	2	2	1	0
Rice	13	3	2	0	0
Rock	0	0	0	0	0
Roseau	4	4	0	0	0
Scott	5	5	4	3	3
Sherburne	8	6	5	5	4
Sibley	0	0	0	0	0
St. Louis	38	35	26	21	6

* Not reported as of December 19, 2013.

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
Stearns	24	23	18	18	10
Steele	3	3	2	2	1
Stevens	0	0	0	0	0
Swift	7	6	1	1	1
Todd*	---	---	---	---	---
Traverse*	---	---	---	---	---
Wabasha	6	6	5	1	1
Wadena	5	5	3	3	0
Waseca	1	1	1	1	0
Washington	18	18	13	11	4
Watonwan	2	2	1	0	0
Wilkin	0	0	0	0	0
Winona	14	12	6	6	3
Wright	11	11	8	3	2
Yellow Medicine	0	0	0	0	0
Total	**1,016**	**982**	**740**	**695**	**407**

* Not reported as of December 19, 2013.

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	

Minnesota Judicial Branch at http://mncourts.gov/?page=238

Appendix 2. Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2013

The Minnesota Sentencing Guidelines Commission adopted the following legislative and non-legislative modifications to the Sentencing Guidelines and Commentary, effective August 1, 2013, except as otherwise noted in section A.

A. Legislative Modification – Theft of Motor Fuel from Retailer (2012 Legislative Session)

Reference: 2012 Minn. Session Laws, Ch. 173, Sec. 6.

Note: The Commission reviewed the following new offense, which took effect August 1, 2012, and adopted the following modifications to the Minn. Sentencing Guidelines.

Description: Theft of motor fuel from a retailer under Minn. Stat. § 609.52, subd. 2(a)(18), went into effect August 1, 2012. The penalties for the offense are found in subdivision 3 of the theft statute. It is a felony if the value is over $1,000.

Adopted Proposal: Modified Minn. Sentencing Guidelines § 5.B, by ranking the offense according to the Theft Offense list; Severity Level 3 for theft over $5,000; and Severity Level 2 for theft $5,000 or less.

Adopted Modifications:

5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(18)	Theft of Motor Fuel from Retailer (Over $5,000)	3
609.52 subd. 2(a)(18)	Theft of Motor Fuel from Retailer ($5,000 or Less)	2

B. Legislative Modification – New and Amended Offenses (2013 Legislative Session)

The Commission reviewed the following amended offenses and new offenses, which were enacted into law by the 2013 Legislature, and adopted the following modifications to the Minn. Sentencing Guidelines.

1. Amended Offense – Aggregation of Financial Exploitation of Vulnerable Adults (Minn. Stat. § 609.2335).

Reference: 2013 Minn. Session Laws, Ch. 5.

Description: Subdivision 4 was added to the law for financial exploitation of vulnerable adult statute (Minn. Stat. § 609.2335) and provides for aggregating the value of the money or property or services received by the defendant within a six-month period. The defendant is then charged according to the criminal penalties in subdivision 3. The Commission ranks financial exploitation of a vulnerable adult over $1,000 at Severity Level 4; over $5,000 at Severity Level 5; and over $35,000 at Severity Level 7. The Commission recognized that because the current rankings are based on dollar amount, this new aggregation provision may result in an increase in the number of people who are charged with felony-level offenses as well as an increase in the number of felony offenses sentenced at higher severity levels.

Adopted Proposal: After considering the amendment, the Commission decided to maintain the existing Severity Level rankings in Minn. Sentencing Guidelines § 5, and to maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

2. **New Offenses.** The Commission reviewed the offenses that were newly enacted by the 2013 Legislature, and adopted the following Severity Level rankings and modifications to the list of offenses eligible for permissive consecutive sentencing:

   a. **Emergency Telephone Calls and Communications (Minn. Stat. § 609.78)**

   References: 2013 Minn. Session Laws, Ch. 20.

   Description: New offenses were added to the law for emergency telephone calls and communications.

   1) It is a felony under subdivision 2a, if a person places an emergency call and reports a fictitious emergency with the intent of prompting an emergency response, and the call triggers an emergency response and, as a result of the response, someone suffers great bodily harm or death.

   2) It is a felony under subdivision 2b(2), if a person intentionally uses multiple communication devices or electronic means to block, interfere with, overload, or otherwise prevent the emergency call center's system from functioning properly, and these actions make the system unavailable to someone needing emergency assistance.

   3) It is a felony under subdivision 2b(1), if a person commits a third or subsequent violation of the misdemeanor offense of making or initiating an emergency call, knowing that no emergency exists, and with the intent to disrupt, interfere with, or reduce the provision of emergency services or the emergency call center's resources, remaining silent, or making abusive or harassing statements to the call recipient.

   Adopted Proposal: The Commission adopted the Severity Level rankings outlined in the proposed modifications below.

   Adopted Modifications:

5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
8	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)	609.78, subd. 2a
5	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)	609.78, subd. 2b(2)
4	Emergency Telephone Calls and Communications (3rd or Subsequent, Making Calls When No Emergency Exists)	609.78, subd. 2b(1)

* * *

5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.78, subd. 2a	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)	8
609.78, subd. 2b(1)	Emergency Telephone Calls and Communications (3rd or Subsequent, Making Calls When No Emergency Exists)	4
609.78, subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)	5

* * *

Adopted Proposal: The Commission added the offenses outlined in the proposed modifications below to the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

Adopted Modifications:

6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
609.78, subd. 2a	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)
609.78, subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)

* * *

a. Emergency Telephone Calls and Communications Wildfire Arson (Minn. Stat. § 609.5641)

References: 2013 Minn. Session Laws, Ch. 139.

Description: The existing law of wildfire arson defined as intentionally setting a fire to burn out of control on land of another containing timber, underbrush, grass, or other vegetative combustible material was amended by adding new offenses for which the statutory maximums were based on the number of buildings, acres, or size of crop loss that are damaged or threatened with damage. The penalty for the existing felony was moved from subdivision 1 to subdivision 1a(a).

1) Under subdivision 1a(b), the statutory maximum is ten years when the fire damages or threatened to damage in excess of five dwellings, burns 500 or more acres, or damages crops in excess of $100,000.

2) Under subdivision 1a(c), the statutory maximum is 20 years when the fire damages or threatened to damage in excess of 100 dwellings, burns 1,500 or more acres, or damages crops in excess of $250,000.

3) Additionally, subdivision 1a(d) is added for intentionally setting a fire where the fire causes another person to suffer demonstrable bodily harm. The statutory maximum is ten years.

Adopted Proposal: The Commission adopted the Severity Level rankings as outlined below.

Adopted Modifications:

5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
8	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of $250,000)	609.5641 subd. 1a(c)
7	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of $100,000)	609.5641 subd. 1a(b)
5	Wildfire Arson (Demonstrable Bodily Harm)	609.5641 subd. 1a(d)
2	Wildfire Arson	609.5641 subd. 1a(a)

* * *

5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.5641 subd. 1a(a)	Wildfire Arson	2
609.5641 subd. 1a(b)	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of $100,000)	7
609.5641 subd. 1a(c)	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of $250,000)	8
609.5641 subd. 1a(d)	Wildfire Arson (Demonstrable Bodily Harm)	5

* * *

Commission Proposal: The Commission added the offenses outlined in the proposed modifications below to the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

Adopted Modifications:

6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
609.5641 subd. 1a(b)	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of $100,000)
609.5641 subd. 1a(c)	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of $250,000)
609.5641 subd. 1a(d)	Wildfire Arson (Demonstrable Bodily Harm)

* * *

C. Legislative Action – Presumptive Executed Sentences for Repeat Sex Offenders (2013 Legislative Session)

References: Chapter 86, Art 3, Sec. 10 - S.F. 671

Description: Minn. Stat. § 609.3455, was amended to provide for presumptive executed prison sentences of at least 36 months for offenders sentenced for first- through fourth-degree criminal sexual conduct offenses under Minn. Stat. §§ 609.342 to 345, and criminal sexual predatory conduct under Minn. Stat. § 609.3453, if the offender has a previous sex offense conviction. The court may stay execution of the presumptive sentence if it finds that the offender is accepted by and can respond to a long-term inpatient treatment program for sex offenders. If the sentence is stayed, the court must include as conditions of probation some term of incarceration in a local facility and a requirement that the offender successfully complete the treatment program and aftercare.

Adopted Proposal: The Commission modified Minn. Sentencing Guidelines § 2.C.3.a to address presumptive executed prison sentences of at least 36 months for repeat sex offenders, as outlined below:

Adopted Modifications:

3. Finding the Presumptive Sentence for Certain Offenses.
   a. Sex Offenses. Under Minn. Stat. § 609.3455, certain sex offenders are subject to mandatory life sentences and certain repeat sex offenders are subject to presumptive executed prison sentences of at least 36 months.
      (1) Mandatory Life Sentence. The Sentencing Guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release under subdivision 2 of that statute. For offenders subject to life with the possibility of release under subdivisions 3 and 4 of that statute, the court must specify a minimum term of imprisonment, based on the Sentencing Guidelines presumptive sentence as determined in section 2.C, or any applicable mandatory minimum sentence not contained in Minn. Stat. § 609.3455, that must be served before the offender may be considered for release.
      (2) Presumptive Executed Prison Sentences of at least 36 Months. Except when a life sentence applies, if the current conviction offense is criminal sexual conduct in the first, second, third, or fourth degree (Minn. Stat. §§ 609.342 to 345) or criminal sexual predatory conduct (609.3453) within 15 years of a previous sex offense conviction, under Minn. Stat. § 609.3455, subd. 10, the presumptive disposition is commitment. The presumptive duration is at least 36 months, or the fixed duration indicated in the appropriate cell on the Grid, whichever is longer.

* * *

D. Non-Legislative Modifications

The following are adopted proposals related to non-legislative modifications to the Minn. Sentencing Guidelines.

1. Use of Expunged Convictions in Criminal History Score Calculation

Description: The Guidelines do not address whether an expunged conviction is eligible for possible use in future criminal history. Minn. Stat. § 609A.03, states that an ex parte order may open an expunged record for sentencing purposes. The Commission agrees that the statute is clear on the process required for including an expunged offense in criminal history.

Adopted Proposal: The Commission added a comment to Minn. Sentencing Guidelines § 2.B, directing practitioners to the governing statute.

Adopted Modifications:

2.B.03. *Minn. Stat. § 609A.03, subd. 7(b) provides that:*

Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

. . .

Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph. . . .

2. Attempts and Conspiracies that Carry Mandatory Minimums

Description: Non-substantive Guidelines revisions that were effective August 1, 2012, caused them to be unclear about how to determine the appropriate presumptive duration of the sentence when the offender is convicted of an attempt or conspiracy and the underlying offense carries a mandatory minimum sentence.

Adopted Proposal: The Commission modified Minn. Sentencing Guidelines §§ 2.E and 2.G, to clarify that the duration is the mandatory minimum or one-half the duration on the appropriate Grid, whichever is longer.

Adopted Modifications:

E. Mandatory Sentences

1. In General. When an offender is convicted of an offense with a statutory mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment even if the presumptive sentence would ordinarily fall within the shaded area on the applicable Grid. The presumptive duration of the prison sentence is the mandatory minimum sentence in statute or the duration provided in the appropriate cell on the applicable Grid, whichever is longer. When an offender is sentenced for an attempted offense under Minn. Stat. § 609.17 or conspiracy to commit an offense under Minn. Stat. § 609.175, and the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is

longer. See Mandatory and Presumptive Sentences Reference Table in Appendix 1.

* * *

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

* * *

2. Attempt or Conspiracy. When an offender is sentenced for an attempted offense under Minn. Stat. § 609.17 or for conspiracy to commit an offense under Minn. Stat. § 609.175, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense. When the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer.

* * *

3. Add Fleeing a Peace Officer in a Motor Vehicle to Permissive Consecutive List

Description: Fleeing a peace officer in a motor vehicle without any resulting injury under Minn. Stat. § 609.487, subd. 3 is not on the list of offenses eligible for permissive consecutive sentencing; however, the acts as described in subd. 4, resulting in substantial bodily harm, great bodily harm, or death are on the list.

Adopted Proposal: The Commission proposes added the offense of fleeing a peace officer in a motor vehicle without any resulting injury under Minn. Stat. § 609.487, subd. 3, to the permissive consecutive sentencing list in Minn. Sentencing Guidelines § 6. This modification was made to address offenders with high criminal history scores who habitually flee but are not currently eligible for additional prison confinement.

Adopted Modifications:

6. Offenses Eligible for Permissive Consecutive Sentences

Statute Number	Offense Title
609.487, subd. 3	Fleeing Peace Officer
609.487, subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)
609.487, subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)
609.487, subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)

4. Attempts or Conspiracies and Consecutive Sentencing

Description: The rule for finding the presumptive duration when applying consecutive sentencing to an attempt or conspiracy offense is to first locate the duration at a Criminal History Score of 0 or 1 (as appropriate), and then to cut that duration in half. This guidance is derived from reading Minn. Sentencing Guidelines §§ 2.F and 2.G together.

Adopted Proposal: The Commission added commentary to Minn. Sentencing Guidelines § 2.F, in order to clarify that if the court sentences an attempted offense consecutively, the presumptive duration is one-half of the duration found in the appropriate cell on the applicable Grid at a Criminal History Score of 1 for presumptive consecutive sentences and at a Criminal History Score of 0 for permissive consecutive sentences, as follows:

Adopted Modifications:

* * * *

2.F.104. *If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a presumptive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced presumptive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 1 (58 months), is divided in half – making the presumptive duration 29 months.*

* * * *

* * * *

2F.203. *If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a permissive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced permissive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half – making the presumptive sentence 24 months.*

2.F.~~203~~204 . *The Commission's policies on permissive consecutive sentences outline the criteria that are necessary to permit consecutive sentences without the requirement to cite reasons for departure . . . .*

2.F.~~204~~205. *Consecutive sentences are permissive for multiple current felony convictions even when the offenses involve one victim and a single course of conduct, but only when the presumptive disposition is commitment. . . .*

2.F.~~205~~206. *An offender given a consecutive sentence for a crime committed while using or possessing metal-penetrating bullets under Minn. Stat. § 624.7191, subd. 3, can get up to the three-year statutory maximum without departing from the Guidelines.*

* * * *

E. Technical Modifications

The following are adopted proposals related to technical modifications to the Minn. Sentencing Guidelines.

1. Theft Re-codified

Description: To accommodate theft of motor fuel from retailer offense that went into effect August 1, 2012 (See section A, above), the theft statute was recodified to include paragraph (a) after subdivision 2. This was done to accommodate a new paragraph (b), which relates to how it is proven that theft of motor fuel from a retailer occurred. The change was made editorially by the Revisor of Statutes, effective October 23, 2012.

Adopted Proposal: The Commission corrected references in Minn. Sentencing Guidelines §§ 2, 5 and 7, by adding "(a)" after subdivision 2, as follows:

Adopted Modifications:

2.A.05. *For Theft of a Motor Vehicle…, Minn. Stat. § 609.52, subd. 2(a)(1),*

….

2.B.703. *When the offense severity level is determined…. Minn. Stat.*

§ 609.52.2(a)(1)….

5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
6	Theft Over $35,000	609.52, subd. 2(a)(3),(4), (15), & (16) with 609.52, subd. 3(1)
4	Theft of Motor Vehicle	609.52, subd. 2(a)(1)
3	Motor Vehicle Use Without Consent	609.52, subd. 2(a)(17)
3	Theft of Trade Secret	609.52, subd. 2(a)(8)

* * *

5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(1)	Theft (Over $5,000)	3
609.52 subd. 2(a)(1)	Theft ($5,000 or Less)	2
609.52 subd. 2(a)(1)	Theft of a Motor Vehicle	4**
609.52 subd. 2(a)(2)	Taking Pledged Property (Over $5,000)	3
609.52 subd. 2(a)(2)	Taking Pledged Property ($5,000 or Less)	2
609.52 subd. 2(a)(3) with subd. 3(1)	Theft by Check/False Representation (Over $35,000)	6
609.52 subd. 2(a)(3)(i)	Theft by Check ($5,001 - $35,000)	3
609.52 subd. 2(a)(3)(i)	Theft by Check ($5,000 or Less)	2
609.52 subd. 2(a)(3)(ii-v)	Theft by False Representation ($5,001-$35,000)	3
609.52 subd. 2(a)(3)(ii-v)	Theft by False Representation ($5,000 or Less)	2
609.52 subd. 2(a)(4) with subd. 3(1)	Theft by Trick (Over $35,000)	6
609.52 subd. 2(a)(4)	Theft by Trick ($5,001-$35,000)	3
609.52 subd. 2(a)(4)	Theft by Trick ($5,000 or Less)	2

** See *Comment 2.A.05* for commentary on motor vehicle offense severity levels.

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(5)	Temporary Theft (Over $5,000)	3
609.52 subd. 2(a)(5)	Temporary Theft ($5,000 or Less)	2
609.52 subd. 2(a)(6)	Refusing to Return Lost Property (Over $5,000)	3
609.52 subd. 2(a)(6)	Refusing to Return Lost Property ($5,000 or Less)	2
609.52 subd. 2(a)(7)	Theft from Coin Operated Machine (Over $5,000)	3
609.52 subd. 2(a)(7)	Theft from Coin Operated Machine ($5,000 or Less)	2
609.52 subd. 2(a)(8)	Theft of Trade Secret	3
609.52 subd. 2(a)(9)	Theft of Leased Property (Over $5,000)	3
609.52 subd. 2(a)(9)	Theft of Leased Property ($5,000 or Less)	2
609.52 subd. 2(a)(10)&(11)	Altering Serial Number (Over $5,000)	3
609.52 subd. 2(a)(10)&(11)	Altering Serial Number ($5,000 or Less)	2
609.52 subd. 2(a)(12)	Theft of Cable TV Services (Over $5,000)	3
609.52 subd. 2(a)(12)	Theft of Cable TV Services ($5,000 or Less)	2
609.52 subd. 2(a)(12)	Theft of Services (Over $5,000)	3
609.52 subd. 2(a)(13)	Theft of Services ($5,000 or Less)	2
609.52 subd. 2(a)(14)	Theft of Telecommunication Services (Over $5,000)	3

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(14)	Theft of Telecommunication Services ($5,000 or Less)	2
609.52 subd. 2(a)(15)(16) with subd. 3(1)	Diversion of Corporate Property (Over $35,000)	6
609.52 subd. 2(a)(15)(16)	Diversion of Corporate Property ($5,001 - $35,000)	3
609.52 subd. 2(a)(15)(16)	Diversion of Corporate Property ($5,000, or Less)	2
609.52 subd. 2(a)(17) *	Motor Vehicle Use Without Consent	3**

* * *

7. Theft Offense List

* * *

Statute Number	Offense Title
609.52 subd. 2(a)(1)	Theft
609.52 subd. 2(a)(2)	Taking Pledged Property
609.52 subd. 2(a)(3)(i)	Theft By Check
609.52 subd. 2(a)(3)(ii), (iii), (iv), & (v)	Theft By False Representation
609.52 subd. 2(a)(4)	Theft by Trick
609.52 subd. 2(a)(5)	Temporary Theft
609.52 subd. 2(a)(6)	Refusing to Return Lost Property
609.52 subd. 2(a)(7)	Theft from Coin Operated Machines
609.52 subd. 2(a)(9)	Theft of Leased Property

* Includes offenses sentenced according to Minn. Stat. § 609.52, subd. 3(3)(d).
** See *Comment 2.A.05* for commentary on motor vehicle offense severity levels.

Statute Number	Offense Title
609.52 subd. 2(a)(10) & (11)	Altering Serial Number
609.52 subd. 2(a)(12)	Theft of Cable TV Services
609.52 subd. 2(a)(13)	Theft of Services
609.52 subd. 2(a)(14)	Theft of Telecommunications Services
609.52 subd. 2(a)(15) & (16)	Diversion of Corporate Property

* * *

2. Guidelines Appendices

Description: Three offenses listed in the appendices refer to the incorrect location for the source of the mandatory minimum or presumptive sentence. The current title of Appendix 1 indicates that all of the presumptive sentences are mandatory minimums when some are due to Guidelines policy, and are presumptive sentences rather than mandatory sentences.

Adopted Proposal: The Commission modified the appendices to correctly show the source of the durations found in each appendix by updating the title of Appendix 1 to indicate that some sentences are found in the Guidelines rather than in statute.

Adopted Modifications:

Appendix 1. Mandatory and Presumptive Sentences Reference Table

* * *

Statute	Offense	Prerequisite or Conditions	Minimum Duration
152.023, subd. 3(a)	Controlled Substance Crime 3rd Degree	Prior felony conviction under Minn. Stat. § 152 or finding under Minn. Stat. § 152.18	Grid Time*
152.023, subd. 3(b)	Controlled Substance Crime 3rd Degree	Prior felony conviction ~~per chapter~~ under Minn. Stat. § 152 or finding under Minn. Stat. § 152.18	24 months
609.582, subd. 1(a)	Burglary 1st Degree	Prior felony burglary	Grid Time*

* * *

* Presumptive commitment per Guidelines section 2.C.

Appendix 2. Dangerous Weapons Offense Reference Table

* * *

Dangerous Weapons – Minn. Stat. § 609.11			
Statute	**Offense**	**Prerequisite or Conditions**	**Minimum Duration**
~~609.165 or 624.713.1(2)~~ 609.11, subd. 5(b)	Certain Persons not to have Firearms	Current conviction under Minn. Stat. § 609.165 or Minn. Stat. § 624.713 subd. 1(2)	60 Months

3. Overworking or Mistreating Animals

Description: The 2010 Legislature amended the statute for overworking or mistreating animals. A new gross misdemeanor for harming a service animal that renders the service animal unable to perform its duties was inserted as paragraph (e); the felony offenses that followed the gross misdemeanor were renumbered. The Commission's staff neglected to make the necessary changes at the time of amendment.

References: 2010 Minn. Session Laws, Ch. 292, Sec. 2.

Adopted Proposal: The Commission made corrections to Minn. Sentencing Guidelines § 5, as follows:

5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
UNRANKED	Service Animal Providing Service	343.21, subd. 9~~(e)(g)~~ (f)(h)
UNRANKED	Torture or Cruelty to Pet or Companion Animal	343.21, subd. 9(c)(d)~~(f)(h)~~ (g)(i)

* * *

5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
343.21, subd. 9~~(e)(g)~~ (f)(h)	Service Animal Providing Service	UNRANKED
343.21, subd. 9(c)(d)~~(f)(h)~~ (g)(i)	Torture or Cruelty to Pet or Companion Animal	UNRANKED

* * *

Appendix 3: Standard Sentencing Guidelines Grid – Effective August 1, 2013

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, 2013

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.)