

# **Minnesota Felony Driving While Impaired Report, 2010**

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## TABLE OF CONTENTS

Executive Summary .....	1
Introduction.....	3
Data and Methods .....	3
Commitments to Prison.....	4
County of Commitment .....	5
Offender Demographics.....	6
Criminal History .....	6
Sentences.....	7
Chemical Dependency Treatment in Prison .....	8
Releases and Reincarcerations .....	9
Challenge Incarceration Program .....	9
Per Diem .....	11
Conclusion .....	11
References.....	12

## TABLES

Table 1. Prison Admissions by Admission Type.....	5
Table 2. Prison Admissions by Committing County .....	5
Table 3. Prison Admissions by Committing County Location.....	6
Table 4. Demographic Characteristics at Prison Admission .....	6
Table 5. Criminal Histories at Prison Admission .....	7
Table 6. Sentence Length by Admission Type .....	7
Table 7. Probation Revocation Reasons .....	8
Table 8. Chemical Dependency Treatment Status.....	8
Table 9. Chemical Dependency Treatment Outcome .....	9
Table 10. Status of Offenders Admitted to CIP.....	9
Table 11. Reasons Offenders Failed CIP .....	10
Table 12. Failure Rates by Phase for Offenders Admitted to CIP.....	11

## FIGURE

Figure 1. Prison Admissions by Month .....	4
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## **EXECUTIVE SUMMARY**

This is the first legislatively-mandated report required by Minnesota Laws 2009, Chapter 83, Article 3, Section 12 on felony driving while impaired (DWI) offenders committed to the commissioner of corrections. Previous reports included all persons convicted of a felony DWI. In 2009, the legislature amended the statute, narrowing the scope of the report to only those felony DWI offenders admitted to prison.

### **Incidence and County Characteristics**

- Between September 1, 2002, and June 30, 2009, there were 1,517 offenders admitted to prison as a new commitment for a felony DWI offense. Of these, 1,428 offenders were admitted once as a new commitment for a felony DWI offense, 88 were admitted twice, and one offender was admitted to prison three times for separate felony DWI offenses.
- Admissions increased sharply in the first few months after the law went into effect. They continued to increase gradually until early in 2007 when admissions leveled off.
- On average, 11 offenders were admitted each month as new court commitments compared to an average of 8 offenders admitted each month as probation violators.
- The state's two most populous counties, Hennepin and Ramsey, together account for 28.2 percent of the offenders admitted to prison for a felony DWI offense. This is slightly less than the percentage of the population (33.1%) residing in those counties.
- Counties from outside of the metropolitan area were responsible for nearly 59 percent of the offenders admitted to prison for a felony DWI, yet roughly 44 percent of the state's population reside in these counties.

### **Offender Characteristics**

- The typical felony DWI offender admitted to prison is a male in his 30s or 40s.
- Felony DWI offenders have been convicted of an average of four non-felony DWI offenses prior to prison admission. Most have not had a prior felony DWI conviction. Many of these offenders have received convictions for other criminal behavior that does not involve drinking and driving – on average, these offenders have been convicted of a total of nearly eight non-felony and three felony offenses prior to prison admission.

### **Sentencing Characteristics**

- On average, new court commitments received a sentence of 50.4 months, while probation violators received a sentence of 45.2 months.
- Nearly half (48.7%) of the offenders given an executed sentence and committed to prison as a new court commitment received a sentence of 49 months or more compared to 27.9 percent of those given an executed sentence upon revocation of probation.
- Offenders can have their probation revoked for multiple reasons; in fact, probation violators had an average of two violations per revocation.
  - ✓ Alcohol use was cited for over half (53.9%) of the probation violators, and use of drugs was cited for almost 20 percent (18.7%).

- ✓ Commission of a new offense was cited for 39.6 percent of the cases.
- ✓ Refusal of or failure to complete chemical dependency (CD) treatment was cited as a revocation reason for nearly one-fourth (23.5%) of the cases.

### **Prison-Based Treatment and Post-Release Supervision**

- Just over three-fourths (76.2%) of the felony DWI offenders admitted to prison have entered a CD treatment program. Most of the remaining offenders have been assessed as chemically dependent or abusive of one or more substances and are awaiting treatment.
  - ✓ The 1,224 offenders who have entered a CD treatment program in prison have entered treatment a total of 1,285 times. Fifty-nine of these offenders (4.8%) entered a treatment program twice, and two (0.2%) entered a treatment program three times. The remaining 1,163 offenders entered treatment one time.
  - ✓ Roughly 61 percent of treatment episodes were completed.
- A total of 1,076 (70.9%) of the 1,607 felony DWI offender admissions to prison during the time frame examined were released from prison. The majority (98.2%) were placed on supervision at the time of release from prison.
  - ✓ Of those released to supervision, 29 percent were returned to prison for a technical violation.
  - ✓ Of those released to supervision, 9 percent were returned to prison for a new felony sentence.
- A total of 219 offenders, accounting for 13.6 percent of all felony DWI offenders incarcerated, entered the Challenge Incarceration Program (CIP).
- As of July 1, 2009, 100 of these offenders were in one of the three phases of CIP, 68 had completed the program, and 51 had failed.
  - ✓ Failure rates were slightly higher in Phase III than either Phase I or Phase II. Failure rates for Phase III were 12.8 percent, compared to 9.1 percent for Phase I and 11.6 percent for Phase II.

## **INTRODUCTION**

In June 2001, the Minnesota Legislature amended the state's DWI laws by creating a felony-level offense. The felony offense is for those individuals who violate the state's DWI laws and have three or more DWIs within the last ten years or have a previous conviction for a felony DWI. The law stipulates a mandatory sentence that can be no less than three years but no greater than seven years; subsequently, the court may stay execution of the sentence but not imposition of the sentence. Minnesota sentencing guidelines presume an executed sentence of imprisonment for offenders convicted of a felony DWI who have a criminal history score greater than two or those who have a previous felony DWI conviction, regardless of criminal history score. Offenders who receive an executed sentence also are placed on conditional release for an additional five years after their release from prison. Failure to comply with conditions of release may result in revocation of supervised release, and the offender may be returned to prison.

Sentencing guidelines presume a stayed sentence for offenders who have a criminal history score of two or less. The court must apply the mandatory penalties for non-felony DWI offenses for those who receive a stayed sentence, which may include a jail term, intensive supervised release, long-term alcohol monitoring, and any CD treatment recommended. The court may order the stayed sentence to be executed if any conditions are violated; if so, the offender is committed to the commissioner of corrections and incarcerated in prison.

## **DATA AND METHODS**

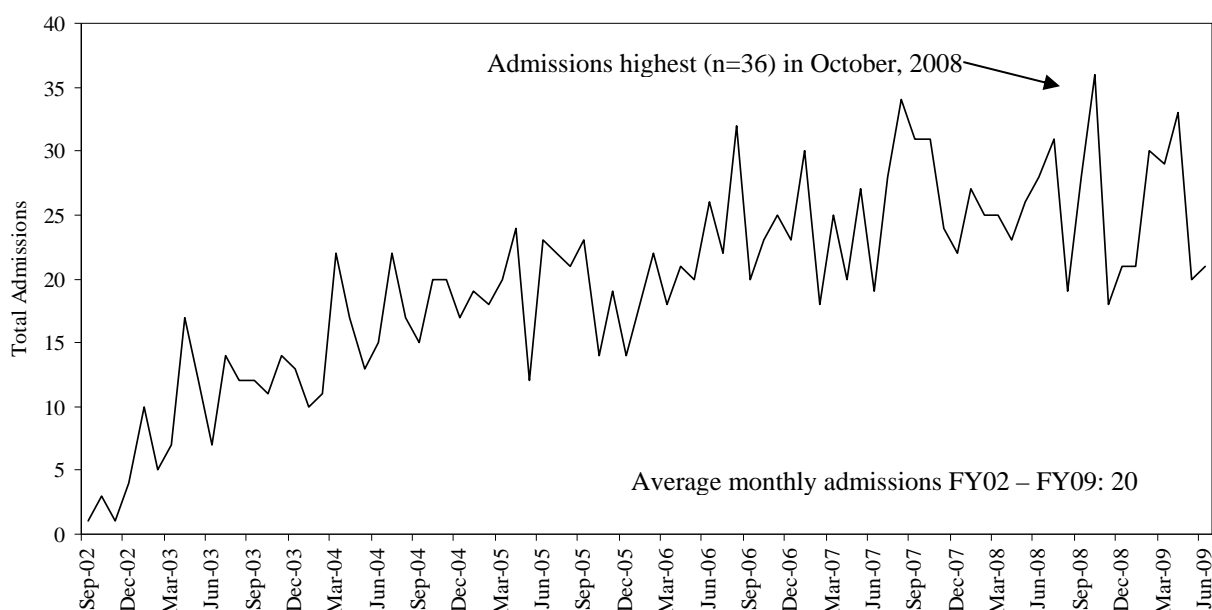
The commissioner of corrections previously submitted five legislatively-mandated reports on the implementation and effects of Minnesota's felony DWI law, the last of which was published in January 2007. The scope of these reports, according to statute, included all persons convicted of a felony DWI. In 2009, the legislature amended the statute, narrowing the scope of the report to only those felony DWI offenders committed to the commissioner of corrections and requiring submission of the report annually. This is the first report submitted on only those felony DWI offenders given an executed sentence (new court commitments) or whose stayed sentence was executed following a probation violation (probation violators).

The felony DWI law went into effect August 1, 2002, and the first felony DWI offender was admitted to prison in September 2002. There were 1,517 offenders admitted to prison 1,607 times as either a new court commitment or a probation violator between September 1, 2002, and June 30, 2009. An additional 351 admissions of release violators occurred during this time; these offenders are not included in the primary analysis for this report but are included in the section addressing release violation rates. A portion of the data on offenders incarcerated prior to July 1, 2007, was obtained from the last felony DWI report submitted by the commissioner of corrections (Minnesota Department of Corrections, 2007) and the database created for this report. Reasons for probation revocation were collected from the counties in which the offender was convicted, and all other data were derived from the DOC's Correctional Operations Management System (COMS). All data were collected prior to July 1, 2009.

## COMMITMENTS TO PRISON

Figure 1 shows the total number of offenders admitted for a felony DWI offense as either a new court commitment or a probation violator by month of admission.<sup>1</sup> The graph reveals fluctuations from month to month but also a gradual, overall increase over time until early in 2007 when admissions level off. Admissions were highest, however, in October of 2008 when 36 offenders were admitted for a felony DWI offense; subsequently, it is possible that admissions are increasing again.

**Figure 1. Prison Admissions by Month**



Disaggregating total monthly admissions into new court commitments and probation violators suggests different trends for these two admission types. As shown in Figure 1, new court commitments increased rapidly after the felony DWI law went into effect and then remained fairly stable until the end of 2006. At this time, the number of new court commitments increased slightly again but then stayed at this level through the end of fiscal year 2009. As expected, only a small number of offenders were admitted as probation violators initially. In 2004, however, admissions of probation violators began to increase. Admissions of probation violators peaked at 21 in August of 2006 but declined slightly after this time and then stayed level.

Annual admission figures illustrate the changes that have occurred in felony DWI prison admissions since inception of the law in 2002. Table 1 shows an increase in felony DWI admissions occurring in the first three fiscal years after the law went into effect. Admissions stabilized in 2006 but increased again in 2007 and 2008. The total number of admissions then declined slightly, from 323 in 2008 to 304 in 2009. The decrease is due to a drop in probation violator admissions, which declined from 141 in 2008 to 119 in 2009. In fiscal year 2009, probation violators accounted for approximately 39 percent of all felony DWI admissions; this figure is lower than the figures reported for the four preceding fiscal years.

<sup>1</sup> Offenders returned to prison for violating their release conditions who initially were incarcerated for a felony DWI offense are not included in this chart. Release violators are addressed in a later section of this report.

**Table 1. Prison Admissions by Admission Type**

<b>Fiscal Year</b>	<b>New Court Commitment</b>		<b>Probation Violator</b>		<b>Total</b>	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
2003	57	85.1	10	14.9	67	100.0
2004	113	68.9	51	31.1	164	100.0
2005	116	51.1	111	48.9	227	100.0
2006	130	54.6	108	45.4	238	100.0
2007	150	52.8	134	47.2	284	100.0
2008	182	56.2	141	43.7	323	100.0
2009	185	60.9	119	39.1	304	100.0
<b>Total</b>	<b>933</b>	<b>58.1</b>	<b>674</b>	<b>41.9</b>	<b>1,607</b>	<b>100.0</b>

## COUNTY OF COMMITMENT

Table 2 shows the ten counties accounting for the greatest proportion of the felony DWI prison admissions as well as the percent of the state's population residing in each county. Hennepin and Ramsey counties, the state's two most populous counties, together are responsible for 28.2 percent of the offenders admitted to prison for a felony DWI offense. This figure is slightly less than the percentage of the population (33.1%) residing in those counties. Many of these counties are the most populous counties in the state, and five of the ten (Hennepin, Ramsey, Dakota, Anoka, and Washington) are in the metropolitan area.

**Table 2. Prison Admissions by Committing County**

<b>County</b>	<i>Number</i>	<i>Percent</i>	<i>Percent of Population</i>
Hennepin	288	17.9	22.7
Ramsey	166	10.3	10.4
St. Louis	75	4.7	4.1
Dakota	72	4.5	7.2
Anoka	70	4.4	6.1
Clay	57	3.5	1.0
Olmsted	51	3.2	2.5
Becker	42	2.6	0.6
Polk	41	2.6	0.6
Washington	40	2.5	4.1
Remaining counties	705	43.9	40.6
<b>Total</b>	<b>1,607</b>	<b>100.0</b>	<b>100.0</b>

Prison admissions for felony DWI disproportionately originate in non-metropolitan counties (Table 3). The seven counties comprising the metropolitan area – Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington – contain nearly 56 percent of the state's population but were responsible for just 41 percent of the offenders admitted to prison for a felony DWI offense. Counties from outside of the metropolitan area were responsible for nearly 59 percent of the offenders admitted to prison for a felony DWI, yet roughly 44 percent of the state's population reside in these counties.

**Table 3. Prison Admissions by Committing County Location**

<b>County</b>	<i>Number</i>	<i>Percent</i>	<i>Percent of Population</i>
Metro counties	665	41.4	55.7
Non-metro counties	942	58.6	44.3
Total	1,607	100.0	100.0

Source: U.S. Census Bureau (2000)

Additional analysis, not shown here, which separated prison admissions into new court commitments and probation violators resulted in virtually identical findings. Specifically, new court commitments accounted for roughly 58 percent of the offenders committed by both metropolitan and non-metropolitan counties, and probation violators accounted for 42 percent of the prison commitments for both county types.

## **OFFENDER DEMOGRAPHICS**

Table 4 shows the demographic characteristics of all felony DWI offender admissions to prison between September 1, 2002, and June 30, 2009. The typical DWI offender admitted to prison is a white male in his 30s or 40s. The average age of these offenders at admission is 38.5 years.

**Table 4. Demographic Characteristics at Prison Admission**

<i>Sex</i>	<i>Number</i>	<i>Percent</i>	<i>Age</i>	<i>Number</i>	<i>Percent</i>
Male	1,487	92.5	Under 25	58	3.6
Female	120	7.5	25 – 29	246	15.3
			30 – 34	298	18.5
			35 – 39	303	18.9
			40 – 44	312	19.4
			45 – 49	232	14.4
			50 and over	158	9.8
Total	1,607	100.0		1,607	100.0

## **CRIMINAL HISTORY**

Data on offenders' prior criminal offenses was obtained through COMS. Prior offense information was obtained for all but 17 (1.1%) of the 1,517 offenders in this study. Table 5 shows that, prior to their admission to prison for the felony DWI offense, offenders had, on average, a total of eight non-felony (i.e., misdemeanor or gross misdemeanor) convictions and three felony convictions. The average number of prior non-felony impaired driving convictions was just over four; most had not had a prior felony DWI conviction. Only convictions for DWI or refusal to submit to testing that resulted in a DWI conviction were included. Convictions for other offenses, which often but not always involve impaired drivers (e.g., careless driving or criminal vehicular operation), were not included. Offenses that often occur after an impaired driving offense, including driving after license suspension or driving after license revocation, also were not included.



**Table 5. Criminal Histories at Prison Admission**

	<b>All Offenses</b>		<b>Impaired Driving Offenses</b>	
	<i>Non-Felony</i>	<i>Felony</i>	<i>Non-Felony</i>	<i>Felony</i>
Minimum	3	0	3	0
Maximum	41	19	18	5
Average	7.7	2.7	4.1	0.2

**SENTENCES**

Table 6 shows the pronounced sentence length of the 1,607 offender admissions to prison for a felony DWI offense by admission type. The data reveal that sentence lengths for offenders given an executed prison sentence typically are longer than those who initially receive a stay of imposition or stay of execution. Nearly half (48.7%) of the offenders given an executed sentence and committed to prison as a new court commitment received a sentence of 49 months or more compared to 27.9 percent of those given an executed sentence upon revocation of probation. On average, new court commitments received a sentence of 50.4 months, while probation violators received a sentence of 45.2 months.

**Table 6. Sentence Length by Admission Type**

<b>Sentence Length</b>	<b>New Court Commitment</b>		<b>Probation Violator</b>		<b>Total</b>	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
Average	50.4 months		45.2 months		48.2 months	
24 months or less	10	1.1	4	0.6	14	0.9
25 to 36 months	139	14.9	153	22.7	292	18.1
37 to 48 months	329	35.3	396	58.8	725	45.1
49 to 60 months	313	33.5	83	12.3	396	24.6
61 months or more	142	15.2	38	5.6	180	11.2
Total	933	100.0	674	100.0	1,607	100.0

Table 7 shows the reasons cited for the 674 offenders whose probation was revoked. Offenders can have their probation revoked for multiple reasons, and all reasons are included in the following table. Use of alcohol, the most common revocation reason, was cited for 53.9 percent of the cases; use of drugs was cited for 18.7 percent of the cases. Commission of a new offense was noted for 39.6 percent of the cases. Failing general probation rules was cited for 45.3 percent of the cases, and failing repeat DWI probation rules was cited for 18.2 percent. Refusal of or the failure to complete CD treatment was cited as a revocation reason for nearly one-fourth (23.5%) of the cases. The average number of violations per offender was two.

**Table 7. Probation Revocation Reasons**

<i>Reason</i>	<i>Number</i>	<i>Percent of Total Probation Revocations</i>
Use of alcohol	363	53.9
Failed general probation rules	305	45.3
New offense	267	39.6
Use of drugs	126	18.7
Failed repeat DWI probation rules	123	18.2
Failed treatment	119	17.7
Refused treatment	39	5.8
Other	13	1.9
Unknown	10	1.5

Note: Because an offender can have his or her probation revoked for multiple reasons, a total of 1,365 reasons were identified for the 674 probation violators. The percentages presented in this table are based on the total number of probation revocations (N=674).

## **CHEMICAL DEPENDENCY TREATMENT IN PRISON**

The majority of felony DWI offenders entered CD treatment while in prison. Table 8 summarizes treatment and assessment data for the 1,607 offender admissions and classifies each offender according to the highest level achieved in the assessment and treatment continuum. As shown in Table 8, just over three-fourths (76.2%) of the felony DWI offenders admitted to prison have entered a CD treatment program. Nearly 22 percent (21.8%) were assessed as dependent on or abusive of one or more substances and presently are awaiting treatment. Very few (1.7%) offenders have been released and did not enter treatment. Overall, the 1,224 entered treatment in prison a total of 1,285 times. Fifty-nine of these 1,224 offenders (4.8%) entered a treatment program twice, and two (0.2%) entered a treatment program three times.

**Table 8. Chemical Dependency Treatment Status**

<i>Treatment Status</i>	<i>Number</i>	<i>Percent</i>
Entered treatment	1,224	76.2
Awaiting treatment, assessed dependent or abusive	351	21.8
Did not enter treatment	32	2.0
Total	1,607	100.0

Table 9 summarizes the outcomes of all treatment episodes for the felony DWI offenders who have entered CD treatment. Findings show that roughly 61 percent (60.6%) of treatment episodes were completed. Seventeen percent of offenders were terminated from the program by program staff, and seventeen percent quit.

**Table 9. Chemical Dependency Treatment Outcome**

Treatment Status	Treatment	
	Number	Percent
Completed	779	60.6
Participated until released	20	1.6
Terminated	222	17.3
Offender quit	219	17.0
Discharged by administration <sup>2</sup>	45	3.5
Total	1,285	100.0

## RELEASES AND REINCARCERATIONS

A total of 1,076 (70.9%) of the 1,607 felony DWI offender admissions to prison during the seven-year time frame examined were released from prison. All but 19 of the 1,076 released offenders were placed on supervision at the time they left prison. Of the 19 who were not released to supervision, 15 were discharged by the court or an executive order and four died while incarcerated. Of the 1,057 offenders released to supervision, 270 (28.5%) returned to prison on revocations for technical violations. In addition, 81 offenders (8.5%) were revoked after being resentenced for a new felony-level offense.

## CHALLENGE INCARCERATION PROGRAM

More than one of every ten felony DWI offenders admitted to prison entered CIP. Table 10 shows that 219 offenders, accounting for 13.6 percent of all felony DWI offenders incarcerated, entered CIP. At the end of fiscal year 2009, 100 of these offenders were in one of the three phases of the program. Nearly equal percentages of offenders were in Phase I, the portion of the program which takes place while the offender is incarcerated, and Phases II or III, the portions which take place in the community. A total of 68 offenders completed CIP and were placed on supervised release. Notably, none of these offenders have reached their sentence expiration; subsequently, all are still under supervision. A total of 51 offenders failed to complete CIP.

**Table 10. Status of Offenders Admitted to CIP**

	Count
In CIP	
Phase I	32
Phase II <sup>3</sup>	35
Phase III	33
Total	100
Completed CIP	68
Failed CIP	51
Total	219

<sup>2</sup> Offenders who are discharged by prison administration are removed from treatment for a variety of non-disciplinary reasons and are not considered treatment failures. Unlike offenders who are terminated from treatment or those who quit, these offenders do not receive a sanction for leaving treatment.

<sup>3</sup> The Phase II total includes one offender who absconded while in Phase II.

Table 11 shows the reasons why offenders failed to complete CIP by the phase in which they failed.<sup>4</sup> Nine (39.1%) of the 23 offenders who failed in Phase I committed a program violation and were removed from the program and returned to the general prison population. Just over one-fourth (26.1%) quit, and one-fourth were removed from the program administratively. Most of the latter were found to have a warrant outstanding, the presence of which was not known by DOC staff at the time program eligibility was determined. Only two (8.7%) offenders had mental or physical issues that precluded their participation in Phase I. Nearly all (94.4%) of the 18 offenders who failed Phase II committed a program violation while under community supervision and were returned to prison. Just one (5.6%) offender was removed following an administrative decision. Finally, all of the ten offenders who failed while on Phase III committed program violations while under community supervision and were returned to prison.

**Table 11. Reasons Offenders Failed CIP**

Reasons	<i>Phase I</i>		<i>Phase II</i>		<i>Phase III</i>	
Offender quit	6	26.1	0	0.0	0	0.0
Mental/physical issue	2	8.7	0	0.0	0	0.0
Administrative decision	6	26.1	1	5.6	0	0.0
Revoked and returned	9	39.1	17	94.4	10	100.0
Total	23	100.0	18	100.0	10	100.0

Failure rates were calculated for each phase of the program and reported in Table 12. To compute failure rates by program phase, one first must determine how many offenders had the opportunity to complete (and thus are “eligible to fail”) each phase. For example, 187 offenders had the opportunity to complete Phase I, which was determined by subtracting the number of offenders currently in Phase I (32) from the total number of offenders entering the program (219). Offenders who had the opportunity to complete Phase II were determined in a similar manner, but also excluded were those offenders who failed in Phase I.

A small number of offenders known to have failed CIP are excluded from the failure rate calculation as well. Since offenders currently in each phase are not included in the calculation, as explained above, offenders who failed each phase during the same time frame also are excluded. For example, an offender who began Phase I after January 1, 2009, would still be in this phase by the end of the time period covered in this report (June 30, 2009), since each phase takes a minimum of six months to complete. Including this offender, if he or she failed, artificially would increase Phase I failure rates since his or her successful counterpart who began at the same time is not included. Similarly, offenders who failed in Phase II but entered CIP after July 1, 2008, are excluded as are offenders who failed in Phase III but entered CIP after January 1, 2008. Nine offenders known to have failed are excluded from the failure rate analysis. Six of these offenders were in Phase I, and three were in Phase II.

As shown in Table 12, failure rates were slightly higher in Phase III than either Phase I or Phase II: Failure rates for Phase III were 12.8 percent compared to 9.1 percent for Phase I and 11.6 percent for Phase II. All offenders who failed were removed from the program and returned to prison to serve their remaining sentence as determined by state statute.

<sup>4</sup> Violation data are not available as only those violations which result in program failure are recorded in COMS.

**Table 12. Failure Rates by Phase for Offenders Admitted to CIP**

Phase	<i>Number Failed</i>	<i>Number "Eligible" to Fail</i>	<i>Failure Rate</i>
Phase I	17	187	9.1
Phase II	15	129	11.6
Phase III	10	78	12.8

## **PER DIEM**

The legislation governing this report requests information on the costs associated with the incarceration and treatment of felony DWI offenders committed to the commissioner of corrections. Per diem information, however, is available only on incarcerated adult offenders in general and is not disaggregated by offense type. Following are the average adult per diems, which included treatment costs, for the seven fiscal years since inception of the felony DWI law:

\$80.52 (FY03)  
\$77.09 (FY04)  
\$76.43 (FY05)  
\$80.11 (FY06)  
\$86.14 (FY07)  
\$89.77 (FY08)  
\$89.24 (FY09)

## **CONCLUSION**

There were 1,517 individual offenders admitted to prison for a felony DWI offense between September 1, 2002, and June 30, 2009. Admissions increased sharply at first, and then continued to increase but at a slower pace until early in 2007 when admissions leveled off. On average, 11 offenders are admitted each month to prison as a new court commitment, and 8 are admitted following revocation of probation. Nearly 59 percent of all admissions come from counties outside of the metropolitan area, although these counties account for just 44 percent of the state's population.

The typical felony DWI offender admitted to prison is a male in his 30s or 40s who has been convicted of a non-felony DWI four times prior to his incarceration. These offenders have committed other types of offenses as well, averaging a total of eight non-felony convictions and three felony convictions prior to admission. The average sentence received for those admitted as a new court commitment is 50.4 months compared to 45.2 months among probation violators. Many (76.2%) of the felony DWI offenders admitted to prison enter CD treatment while incarcerated. Among those who enter a treatment program, 61 percent successfully complete it.

Of those who have been released from prison, 98 percent were placed on supervision. More than one-fourth (28.5%) were returned to prison for a technical violation, whereas 8.5% were returned for a new offense. A total of 219 offenders entered CIP. Failure rates were slightly higher in Phase III of CIP than either Phase I or Phase II. Failure rates for Phase III were 12.8 percent compared to 9.1 percent for Phase I and 11.6 percent for Phase II.

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