

# MINNESOTA SENTENCING GUIDELINES COMMISSION

## Assault Sentencing Practices

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Assault Offenses and Violations of Restraining  
Orders Sentenced in 2016



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**Minnesota Sentencing Guidelines Commission**

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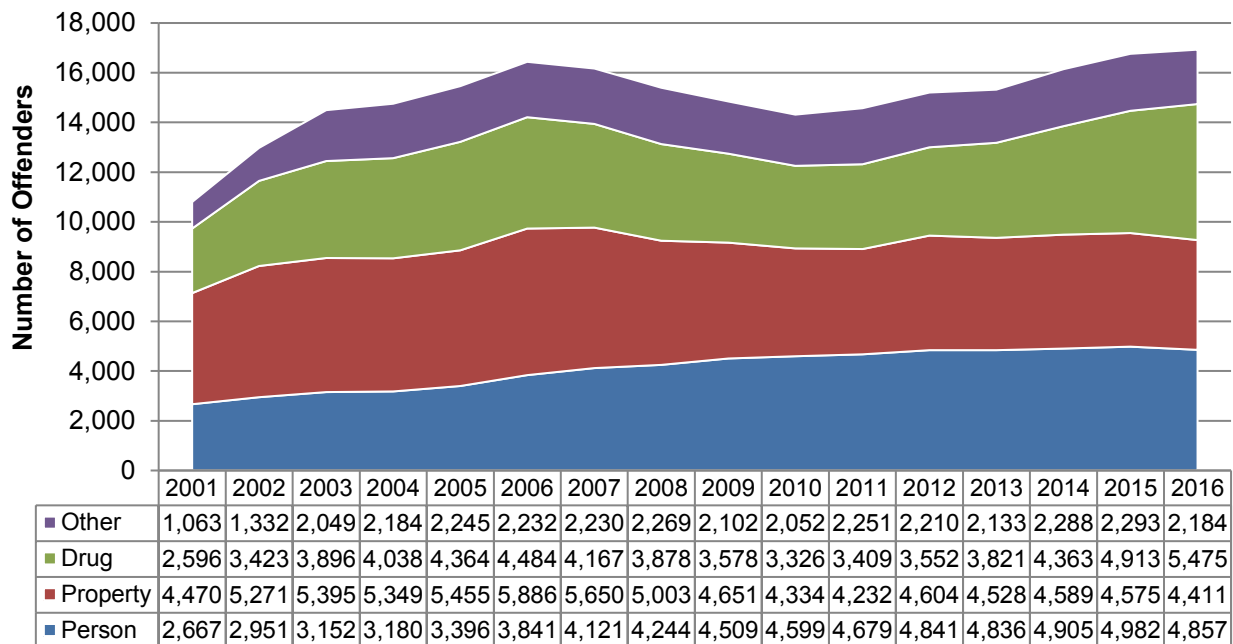
### About This Report

This data report has been prepared by the research staff of the Minnesota Sentencing Guidelines Commission in fulfillment of the Commission’s statutory role as a clearinghouse and information center for information on sentencing practices. This is not a policy document. Nothing in this report should be construed as a statement of existing policy or recommendation of future policy on behalf of the Commission itself, or as an authoritative interpretation of the Minnesota Sentencing Guidelines, Minnesota statutes, or case law.

## Introduction

From 2001 to 2010, the trend in volume<sup>1</sup> for felony offenders sentenced resembled a bell curve, with the volume reaching a high of 16,443 offenders in 2006, and generally declining after that. From 2010 to 2016, the total volume rose again, reaching a new high of 16,927 offenders in 2016. The number of offenders sentenced for person offenses<sup>2</sup> increased each year from 2001 to 2012, declined slightly in 2013 (-0.1%), and, in 2014, increased by 1.4 percent. In 2015, the number increased again by 1.6 percent and rose to 4,982 offenders, a new high (Figure 1).

**Figure 1. Number of Offenders Sentenced by Offense Type, Sentenced 2001-2016**



The number of offenders sentenced for person offenses decreased by 2.5 percent in 2016, the first decline by more than a fraction of a percent since 2010.

Part of the increase in person offenses after 2005 is due to the fact that MSGC started tracking first-degree murder sentences then,<sup>3</sup> but the roughly 15 to 25 first-degree murder sentences annually cannot solely explain the increase in person offenses. The increase in certain felony

<sup>1</sup> Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

<sup>2</sup> In addition to assault offenses and restraining order violations, “person offenses” include a number of offenses outside the scope of this report, such as murder, manslaughter, criminal vehicular homicide, criminal vehicular operation, criminal sexual conduct, kidnapping, drive-by shooting, robbery, stalking, and threats of violence.

<sup>3</sup> Before August 1, 2005, first-degree murder was not included in the MSGC’s dataset; first-degree murder is excluded from the sentencing guidelines by law and continues to have a mandatory life sentence.

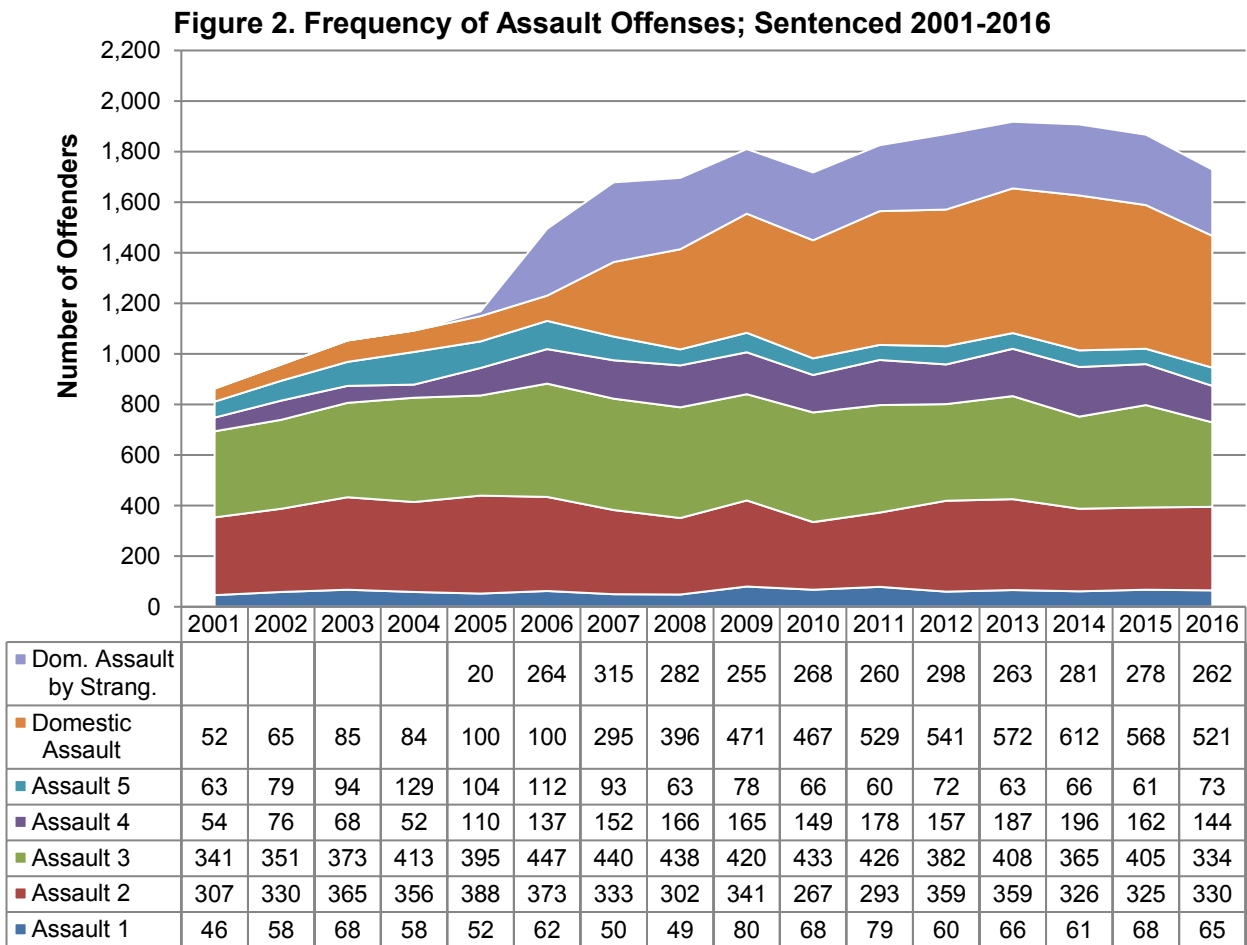
assaults is a large factor, particularly domestic assault-related offenses. The number of felony violation of restraining order offenses sentenced has also increased over the past several years.

This report examines the increase in assault and restraining-order violations over the last fifteen years, with consideration of the impact of statutory enhancements in 2005 and 2006 to domestic assault and violation of restraining-order offenses.

## Assault Offenses

### Distribution of Cases

In 2016, 1,729 offenders were sentenced for felony-level assault. These assaults accounted for 36 percent of the person offenses sentenced. The total number of person offenses decreased in 2016 by 2.5 percent, largely because the number of assault offenses decreased by 7.4 percent from the previous year (Figure 2). There was variation in the changes among the various types of assault. Second-degree assaults actually increased slightly (by 1.5%); and fifth-degree assaults increased by 19.7 percent. All other assault categories decreased; with the largest decreases seen in third-degree (17.5%) and fourth-degree (11.1%).



### **Domestic Assault**<sup>4</sup>

In 2016, 521 offenders were sentenced for domestic assault (Figure 2). Felony domestic assault is chargeable when the offender has two or more qualified domestic violence-related prior offenses. While felony domestic assault has existed since 1995, the Legislature made several changes to the offense in 2006—removing the requirement that the prior offenses had to be against the same victim, extending the look-back period to 10 years, and expanding the list of qualified priors—that effectively expanded the scope of those eligible to be sentenced for this offense as a felony.<sup>5</sup> Since these enhancements, the number of offenders sentenced for felony domestic assault has more than quadrupled. While the number of offenders sentenced for domestic assault did increase between 2001 and 2005—before the enhancements were enacted—the annual increases observed since 2006 have been more dramatic, rising from 100 cases in 2006 to 612 cases in 2014, a new high. The 2015 number of 568 was a 7.2 percent decrease from the 2014 high number, and the 2016 number is a further 8.3 percent decrease.

### **Domestic Assault by Strangulation**

In 2016, 262 offenders were sentenced for domestic assault by strangulation (Figure 2) a felony created in 2005.<sup>6</sup> This was a 5.8 percent decrease from 2015 (278 offenders). Prior to the crime's enactment, the assault of a family member or household member by strangulation may have been categorized and charged either as a misdemeanor—such as domestic assault—or under other felony assault provisions—such as felony domestic assault, fifth-degree assault, or third-degree assault. As Figure 2 illustrates, the number of offenders sentenced for the newly created offense quickly climbed to 315 offenders in 2007, then remained below 300 annually from 2008 through 2016. Because the other felony assault provisions that may have previously encompassed this behavior—most obviously, felony domestic assault—did not fall by an offsetting amount during this time period, the creation of this offense appears to have increased the number of felony assault cases.

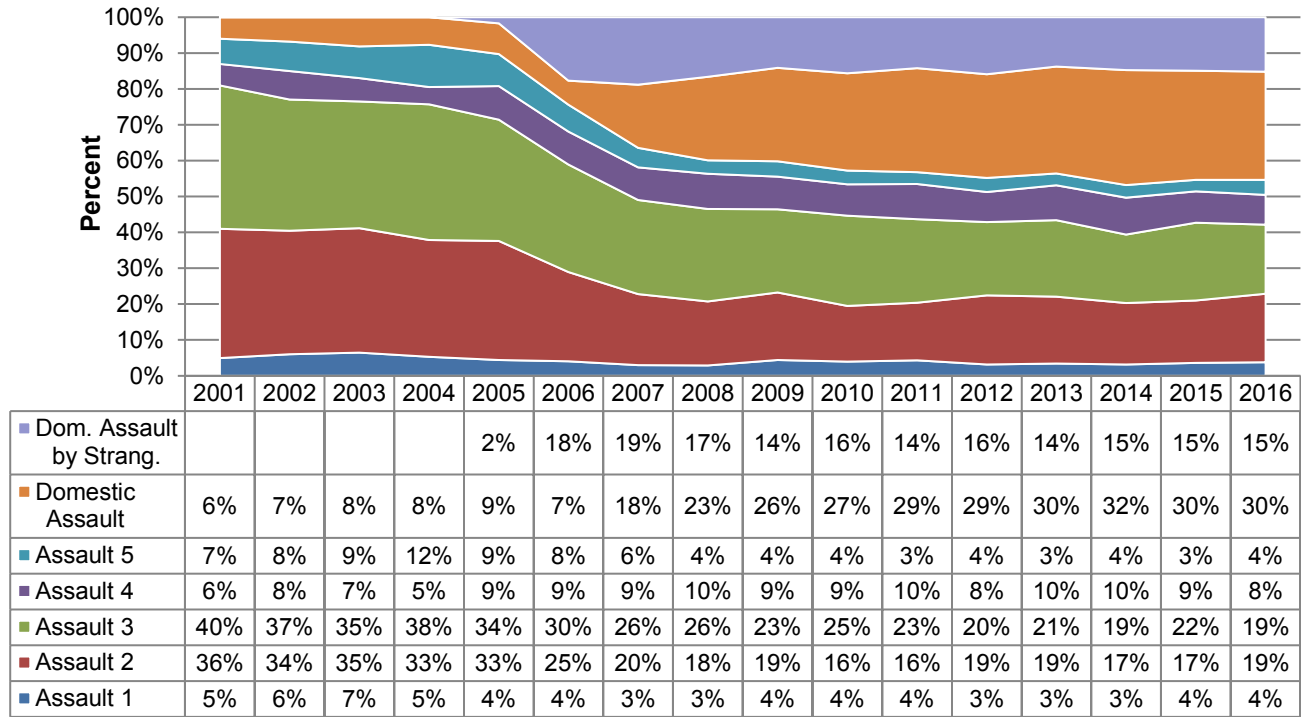
Figure 3 provides another way to examine felony assault offenses. While Figure 2 displayed the number of offenders sentenced for each type of assault, Figure 3 shows the proportion each assault offense comprises of all felony assaults. With the creation of felony offenses for repeat domestic assault and domestic assault by strangulation, the composition of the assault offenses has changed in recent years. For example, felony domestic assault offenses made up less than seven percent of the felony assaults sentenced in 2006; by 2009, the percentage increased to 26 percent of assaults and in 2014 increased to almost one-third of all assaults. Since 2008, felony domestic assault and domestic assault by strangulation have made up over 40 percent of all assaults sentenced. In 2015 and 2016, that share was 45 percent, a slight decrease from the 2014 figure (47%).

<sup>4</sup> Throughout this report, “domestic assault” is reported separately from “domestic assault by strangulation.”

<sup>5</sup> [2006 Minn. Laws ch. 260](#), Art. 1, §§ 12 & 19.

<sup>6</sup> [2005 Minn. Laws ch. 136](#), Art. 17, § 13.

**Figure 3. Distribution of Assault Offenses; Sentenced 2001-2016**



**Second-Degree Assault**

Second-degree assault is on the list of offenses eligible for mandatory minimum sentences when committed while using or in possession of a firearm or other dangerous weapon.<sup>7</sup> Because second-degree assault necessarily involves the use of a firearm or other dangerous weapon,<sup>8</sup> the mandatory minimum prison sentence always applies. The statute specifically permits the court to sentence without regard to the mandatory minimum, however, if it finds substantial and compelling reasons to do so.<sup>9</sup> In second-degree assault cases, the gravity of the offense may vary greatly from case to case. Injury to the victim may or may not occur, and 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.

Figure 2 illustrates that, other than a two-year dip into the 200s in 2010 and 2011, the frequency of second-degree assault sentences has stayed within the 300s for twelve of the past fourteen years. Figure 3 shows that the proportion of second-degree assault offenses is much lower than it was in 2001. In that year, second-degree assault made up almost 36 percent of felony assaults, compared to 17 percent in 2014 and 2015. In 2016, second-degree assault rose to 19 percent of all assaults.

<sup>7</sup> Minn. Stat. § 609.11, subd. 9.

<sup>8</sup> Minn. Stat. §§ 609.02, subd. 6, & 609.222.

<sup>9</sup> Minn. Stat. § 609.11, subd. 8.

*Incarceration Rates*

**Domestic Assault**

The increase in felony-level domestic assault offenders translates into an increased need in correctional resources. As Table 1 shows, the average lengths of prison sentences and confinement in local facilities have fluctuated within a narrow range with no obvious directional trend. However, the number of felony-level domestic assault cases for which prison or confinement in a local facility are pronounced has increased dramatically in recent years. For example, of the 1,343 offenders sentenced to prison for felony-level domestic assaults since 2001, just 88 were sentenced between 2001 and 2006; the remaining 1,255 were sentenced between 2007 and 2015, after the 2006 enhancements took effect (Table 1). Since the enhancements, the need for prison beds has increased from an average of 19 per year (2001-06) to 161 per year (2007-15).<sup>10</sup>

**Table 1. Length of Pronounced Sentence for Domestic Assault Cases; Sentenced 2001-2016**

Year	No. of Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (months)	Estimated Prison Beds	Local Rate	Average Duration (days)	Local Beds
2001	52	7 13%	21	8	40 77%	131	10
2002	65	11 17%	22	13	48 74%	128	11
2003	85	15 18%	25	21	66 78%	111	13
2004	84	18 21%	23	23	56 67%	143	15
2005	100	21 21%	24	28	77 77%	131	19
2006	100	16 16%	20	18	73 73%	153	21
<b>Avg. 2001-06</b>	<b>81</b>	<b>15 18%</b>	<b>23</b>	<b>19</b>	<b>60 74%</b>	<b>133</b>	<b>15</b>
2007	295	61 21%	23	78	213 72%	104	41
2008	396	101 26%	22	123	270 68%	117	58
2009	471	97 21%	23	124	332 71%	102	62
2010	467	118 25%	24	157	278 60%	107	55
2011	529	125 24%	22	153	374 71%	104	72
2012	541	136 25%	23	174	375 69%	107	74
2013	572	157 27%	22	192	383 67%	95	67
2014	612	156 26%	24	208	424 69%	101	79
2015	568	159 28%	23	203	379 67%	93	65
2016	521	145 28%	23	185	347 67%	96	61
<b>Avg. 2007-16</b>	<b>497</b>	<b>126 25%</b>	<b>23</b>	<b>161</b>	<b>338 68%</b>	<b>102</b>	<b>63</b>

<sup>10</sup> Although the need for local beds for felony-level domestic assaults has also increased, from an average of 15 per year (2001-06) to 63 per year (2007-16), it is possible that local facilities have seen an offsetting decrease in the number of misdemeanor and gross misdemeanor sentences because more of those cases have qualified for felony enhancement after 2006. "Prison beds" are based on the average pronounced executed prison term of 22.97 months from 2007-16, assuming service of 2/3 of the pronounced sentence (15.3 months); 126 offenders × 15.3 mos. = 1,927.8 ÷ 12 mos. = 160.65 prison beds. "Local beds" are based on the average term of 102 days from 2007-16, serving 2/3 of the pronounced sentence (68 days); 338 offenders × 68 days = 22,984 ÷ 365 days = 63 local beds.



**Domestic Assault by Strangulation**

As mentioned earlier in this report, the creation of the offense of domestic assault by strangulation has also contributed to the recent increase in felony person offenses. Table 2 provides incarceration data for offenders sentenced for domestic assault by strangulation since the statute’s 2005 enactment. This offense is ranked at the same severity level as felony domestic assault (Severity Level 4), so it is not surprising that the average prison sentence pronounced is very similar to that average. However, for those offenders receiving stayed sentences, the pronounced local confinement time is less. The imprisonment rate for these offenders is less than for offenders sentenced for domestic assault because of lower criminal history scores. Since 2006,<sup>11</sup> an average of 276 offenders each year have been sentenced. An average of 23 offenders each year received a prison sentence, creating a need for 28 prison beds per year.<sup>12</sup> On average, 233 offenders each year have received local confinement time as a condition of their stayed sentences and have required 33 beds in local facilities per year.<sup>13</sup>

**Table 2. Length of Pronounced Sentence for Domestic Assault by Strangulation Cases; Sentenced 2005-2016**

Year	Number of Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (months)	Estimated Prison Beds	Local Rate	Average Duration (days)	Local Beds
2005	20	2 10%	20	2	18 90%	66	2
2006	264	16 6%	24	21	229 87%	89	37
2007	315	22 7%	22	28	272 86%	91	45
2008	282	22 8%	22	26	239 85%	83	36
2009	255	26 10%	22	33	206 81%	80	30
2010	268	24 9%	23	31	208 78%	81	31
2011	260	23 9%	25	32	221 85%	71	29
2012	298	28 9%	21	32	257 86%	72	34
2013	263	26 10%	22	32	223 85%	71	29
2014	281	21 7.5%	21	25	248 88%	77	35
2015	278	17 6.1%	25	24	242 87%	70	31
2016	262	28 10.7%	20	31	215 82%	70	27
<b>Average 2005-2016</b>	<b>276</b>	<b>23 8.4%</b>	<b>22</b>	<b>28</b>	<b>233 85%</b>	<b>78</b>	<b>33</b>

<sup>11</sup> Because the statute took effect August 1, 2005, very few cases were sentenced in 2005.

<sup>12</sup> Based on the average pronounced executed prison term of 22.1 months from 2006 to 2016, assuming service of 2/3 of the pronounced sentence (14.8 months); 23 offenders × 14.8 mos. = 340.4 ÷ 12 mos. = 28.3 prison beds.

<sup>13</sup> Based on the average local confinement term of 78 days from 2006 to 2016, assuming service of 2/3 of the pronounced sentence (52.3 days); 233 offenders × 52.3 days = 12,185.9 ÷ 365 days = 33 local beds. It is possible that local confinement facilities have seen an offsetting decrease in the number of misdemeanor and gross misdemeanor sentences because some of those cases were charged as felony strangulation cases after 2005; see discussion on page 3.

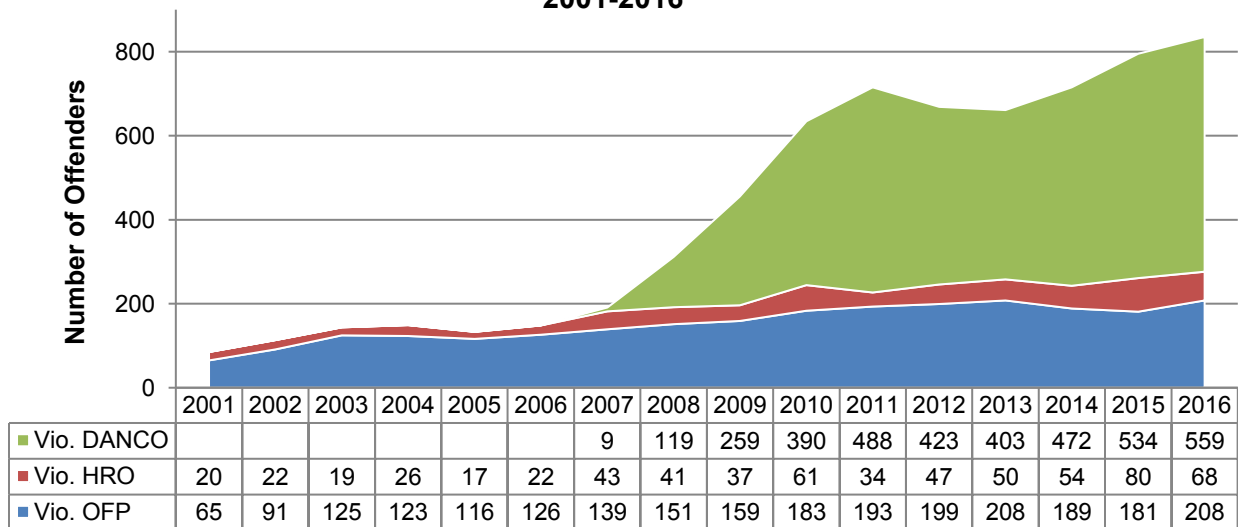
## Violation of Restraining Order Offenses

The case volume of violations of restraining orders has grown fivefold since 2006 (Figure 4). Three offenses are in this group: violations for orders of protection (OFP) under Minn. Stat. § [518B.01](#), subd. 14(d); violations of harassment restraining orders (HRO) under Minn. Stat. § [609.748](#), subd. 6(d); and violations of domestic abuse no contact orders (DANCO) under Minn. Stat. § [629.75](#), subd. 2(d). Each involves offenders who have two or more prior convictions for an offense from a list of qualified domestic-violence offenses and who violate the restraining orders against them. The list of qualifying prior offenses was expanded in 2006, and a standardized 10-year look-back period was also implemented at that time.<sup>14</sup> Violation of DANCO is the newest offense in this group, effective for crimes committed on or after August 1, 2007.<sup>15</sup> These offenses are ranked at the same severity level as the felony domestic assault offenses (Severity Level 4),

### Distribution of Cases

As Figure 4 shows, the number of offenders sentenced has increased 464 percent in the last ten years—from a total of 148 offenders sentenced in 2006 (the year the Legislature implemented the policy changes described above) to 835 in 2016. Most of this increase appears to have come from DANCO violations, which have accounted for more than 60 percent of violations of restraining orders sentenced in each year from 2010 to 2015 (67% in 2017).

**Figure 4. Frequency of Violation of Restraining Order Offenses; 2001-2016**



<sup>14</sup> [2006 Minn. Laws ch. 260](#), Art. 1, §§ 10, 12 & 28. The lookback period was changed to 10 years after conviction. Previously, the lookback period had been five years after discharge from sentence.

<sup>15</sup> [2007 Minn. Laws ch. 54](#), Art. 2, § 1 (enhancing DANCO violations by repeat offenders to felony level).

### Incarceration Rates

As Table 3 shows, the average lengths of prison sentences have fluctuated within a narrow range since 2002. The average local confinement time pronounced appears to have decreased slightly. A higher percentage of these offenders receive prison sentences than those sentenced for either of the domestic assault offenses. While the imprisonment rates have remained fairly stable, the number of cases for which prison or local confinement is pronounced has increased dramatically since the extension of the look-back periods and the creation of felony DANCO violation. From 2008 to 2016, the need for prison beds rose to an average of 248 per year, compared with an annual average of 44 prison beds from 2001 to 2007.<sup>16</sup>

**Table 3. Length of Pronounced Sentence for Violation of Restraining Order Cases: Sentenced 2001-2016**

Year	Number of Cases	Pronounced Prison Sentence			Pronounced Conditional Confinement		
		Prison Rate	Average Duration (months)	Estimated Prison Beds	Local Rate	Average Duration (days)	Local Beds
2001	85	12 14%	27	18	64 75%	127	15
2002	113	28 25%	22	34	78 69%	120	17
2003	144	29 20%	23	37	96 67%	127	22
2004	149	47 32%	23	60	94 63%	140	24
2005	133	27 20%	22	33	99 74%	116	21
2006	148	39 26%	24	52	95 64%	109	19
2007	191	51 27%	25	71	125 65%	105	24
<b>Average 2001-2007</b>	<b>138</b>	<b>33 23%</b>	<b>24</b>	<b>44</b>	<b>93 68%</b>	<b>121</b>	<b>20</b>
2008	311	91 29%	23	117	195 63%	111	40
2009	455	142 31%	24	190	291 64%	106	57
2010	634	197 31%	22	242	364 57%	108	72
2011	715	209 29%	22	262	453 63%	103	86
2012	669	219 33%	23	276	414 62%	96	73
2013	661	208 32%	23	262	415 63%	100	76
2014	715	203 28%	23	261	477 67%	91	80
2015	795	265 33%	23	337	495 62%	97	88
2016	835	238 29%	22	299	550 66%	97	100
<b>Average 2008-2016</b>	<b>643</b>	<b>197 31%</b>	<b>23</b>	<b>248</b>	<b>406 63%</b>	<b>99</b>	<b>73</b>

<sup>16</sup> Although the need for local beds for felony-level violations of restraining orders has also increased, from an average of 20 per year (2001-07) to 73 per year (2008-16), it is possible that local facilities have seen an offsetting decrease in the number of misdemeanor and gross misdemeanor sentences because more of those cases have qualified for felony enhancement after 2006 and 2007. "Prison beds" are based on the average pronounced executed prison term of 22.54 months from 2008 to 2016, assuming service of 2/3 of the pronounced sentence (15.1 months); 197 offenders × 15.1 mos. = 2,975 ÷ 12 mos. = 248 prison beds. "Local beds" are based on the average term of 99 days from 2008 to 2016, serving 2/3 of the pronounced sentence (66 days); 406 offenders × 66 days = 26,796 ÷ 365 days = 73 local beds.

## How the Guidelines Work

Minnesota's guidelines are based on a grid structure. The vertical axis of the Grid represents the **severity** of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's **criminal history**. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the **Severity Reference Table** in the *Minnesota Sentencing Guidelines and Commentary*.

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was on probation or parole when the current offense was committed.

The recommended (presumptive) guideline sentence is found in the cell of the sentencing grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the grid.

The Guidelines generally recommend a stayed sentence for cells in the shaded area of the applicable Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of confinement in a local jail or workhouse. Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the applicable Guidelines Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).

The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the applicable Grid, the Guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the Guidelines.

It is not possible to fully explain all of the policies in this brief summary. Additional information on the Guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at <http://mn.gov/sentencing-guidelines>.

## Sentencing Guidelines Grid

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.

### CRIMINAL HISTORY SCORE

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

<sup>1</sup> 12<sup>1</sup>=One year and one day



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 section 2.E, 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. See sections 2.C and 2.E.

<sup>2</sup> 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. See section 2.C.1-2.

<sup>3</sup> The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)