Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

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I. BACKGROUND INFORMATION

Minnesota adopted a sentencing guidelines system effective May 1, 1980. The guidelines were created to ensure uniform and determinate sentencing. The goals of the guidelines are: (1) To enhance public safety; (2) To promote uniformity in sentencing so that offenders who are convicted of similar types of crimes and have similar types of criminal records are similarly sentenced; (3) To establish proportionality in sentencing by emphasizing a "just deserts" philosophy. Offenders who are convicted of serious violent offenses, even with no prior record, those who have repeat violent records, and those who have more extensive nonviolent criminal records are recommended the most severe penalties under the guidelines; (4) To provide truth and certainty in sentencing; and (5) To enable the Legislature to coordinate sentencing practices with correctional resources.

A sentencing guidelines system provides the legislature and the state with a structure for determining and maintaining rational sentencing policy. Through the development of the sentencing guidelines, the legislature determines the goals and purposes of the sentencing system. Guidelines represent the general goals of the criminal justice system and indicate specific appropriate sentences based on the offender's conviction offense and criminal record.

Judges may depart from the presumptive guideline sentence if the circumstances of the case are substantial and compelling. The judge must state the reasons for departure and either the prosecution or the defense may appeal the pronounced sentence. While the law provides for offenders to serve a term of imprisonment equal to two-thirds of their total sentence and a supervised release period equal to up to one-third of their total sentence if there are no disciplinary infractions, the sentence length is fixed. There is no mechanism for "early release due to crowding" that other states have been forced to accept because of disproportionate and overly lengthy sentences.

Judges pronounce sentences and are accountable for sentencing decisions. Prosecutors also play an important role in sentencing. The offense that a prosecutor charges directly affects the recommended guideline sentence if a conviction is obtained.

The Minnesota Sentencing Guidelines Commission is responsible for maintaining the sentencing guidelines. There are 11 members on the Commission who represent the criminal justice system and citizens of the State of Minnesota. The Commission meets monthly and all meetings are open to the public. Meeting minutes are available upon request.

A constant flow of information is gathered on sentencing practices and made available to the Commission, the legislature, and others interested in the system. The Commission modifies the guidelines, when needed, to take care of problem areas and legislative changes. Extensive changes were made in 1989 when the Commission and the Legislature addressed the problem of violent crime. In subsequent years, the Legislature made additional changes to law and sentencing policy to address public concerns. This report outlines the work of the Commission in 1995, and includes a special section on modifications to the sentencing guidelines and recommend changes to state law that address the preservation of prison space for violent offenders.

II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1995 (or with Special Effective Dates as noted)

A. RANKING OF NEW OR AMENDED CRIMES

1. The Commission adopted the following severity level rankings:

Severity Level VIII

Criminal Abuse of Vulnerable Adult (death) - 609.2325, subd. 3 (1)
Manslaughter 1 - 609.20 (1), & (2) & (5)

Severity Level VII

Criminal Abuse of Vulnerable Adult (great bodily harm) - 609.2325, subd. 3 (2)
Manslaughter 2 - 609.205 (1) & (5)

Severity Level V

Financial Exploitation of a Vulnerable Adult (over $2,500) - 609.2335

Severity Level IV

Criminal Abuse of Vulnerable Adult (substantial bodily harm) - 609.2325, subd. 3 (3)
Domestic Assault - 609.2242, subd. 4 **(effective December 13, 1995)**
Financial Exploitation of a Vulnerable Adult ($2,500 or less) - 609.2335

Severity Level I

Assaulting or Harming a Police Horse - 609.597, subd. 3 (3)

Unranked List

Assaulting or Harming a Police Horse - 609.597, subd. 3 (1) & (2)
Registration of Predatory Offenders - 243.166, subd. 5

2. The Commission considered the changes made by the 1995 Legislature to the following crimes and will continue to rank these crimes at the current severity levels, unless otherwise noted above:

Burglary 1, Criminal Sexual Conduct 2 & 4, Death of an Unborn Child, Escape from Custody, Injury to an Unborn Child, Murder 1, Murder 2, Pattern of Harassing Conduct, Receiving Profit Derived from Prostitution, and Tampering with a Witness.

3. ***The following language is added to commentary to clarify that the new crime of Knowing Transfer of Communicable Disease is ranked according to the underlying crime chosen for prosecution.***

II.A.08. *Knowing Transfer of Communicable Disease, Minn. Stat. § 609.2241, is prosecuted under section 609.17, 609.185, 609.19, 609.221, 609.222, 609.223, 609.2231, or 609.224. The severity level ranking for this crime would be the same as the severity level ranking of the crime for which the offender is prosecuted. For example, if the offender commits this crime and is convicted under Assault in the 1st Degree, Minn. Stat. § 609.221, the appropriate severity level ranking would be severity level VIII.*

4. ***The following crimes were added to the Misdemeanor and Gross Misdemeanor Offense List:***

Criminal Abuse of Vulnerable Adult (bodily harm)
609.2325, subd. 3(a) (4)

Domestic Assault
609.2242 **(Effective January 12, 1996)**

B. ADOPTED MODIFICATIONS TO CORRECT TECHNICAL ERRORS

1. ***The following reference to criminal vehicular operation is amended to criminal vehicular homicide and injury:***

II.B.202. *. . . However, one gross misdemeanor offense -- aggravated driving while intoxicated -- is particularly relevant in sentencing cases of criminal vehicular ~~operation~~ homicide or injury. Because of its particular relevance in cases of this nature, a custody status point shall be assigned if the offender is under probation, jail, or other custody supervision following a gross misdemeanor conviction ~~of aggravated DWI~~ under section 169.121, 169.1211 or 169.129, when the felony for which the offender is being sentenced is criminal vehicular ~~operation~~ homicide or injury, and the criminal vehicular ~~operation~~ offense occurred while under that supervision.*

2. ***The Commission amended Section II.C. Presumptive Sentence to clarify the current policy for escapes from executed prison sentences. Currently, this policy is only referenced in the section on consecutive sentencing.***

. . . Similarly, when the current conviction offense is a severity level VI drug crime or sale of cocaine and there was a previous adjudication of guilt for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or was convicted elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer. In addition, the presumptive disposition for escapes from executed sentences is Commitment to the Commissioner of Corrections and the presumptive duration is determined by the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer.

3. The following language change to commentary will help clarify the rationale for the severity level rankings of crimes involving a mandatory minimum:

II.E.02. *The Commission attempted to draw the dispositional line so that the great majority of offenses that might involve a mandatory sentence would fall below the dispositional line. However, some cases carry a mandatory prison sentence under state law but fall above the dispositional line on the Sentencing Guidelines Grid; e.g., Assault in the Second Degree. When that occurs, imprisonment of the offender is the presumptive disposition. The presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer. These crimes are ranked above the dispositional line because the Commission believes the durations at these levels are more proportional to the crime than the durations found at the higher severity levels where prison is recommended regardless of the criminal history score of the offender. For example, the mandatory minimum prison sentence for Assault in the Second Degree involving a knife is one year and one day. For someone with no criminal history score, the guidelines recommend a 21 month prison sentence based on the severity level VI ranking. The Commission believes this sentence is more appropriate than the 48 month prison sentence that would be recommended if this crime were ranked at severity level VII which is the first severity level ranked completely below the dispositional line.*

4. The Commission adopted the following changes to section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers to clarify language regarding crimes committed for the benefit of a gang. The new language explains how to determine the appropriate duration when attempts or mandatory minimums are involved:

For persons ~~convicted of~~ sentenced under Minn. Stat. § 609.229, subd. 3 (a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, and the duration contained therein plus an additional 12 months. If the underlying crime carries a mandatory minimum prison sentence, the 12 months is added to the mandatory minimum or the duration in the appropriate cell, whichever is greater. If the underlying crime is an attempt, the 12 months is added to the respective duration first and then divided by two, but the duration shall not be less than one year and one day.

5. The following language is confusing and is deleted:

~~***II.G.02.*** *When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. § 609.17 or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.*~~

~~***II.G.03.***~~ ***II.G.02.*** *If the fixed presumptive sentence is an odd number . . .*

6. The following repealed or non-felony crimes are updated or deleted from the guidelines:

Theft Related Offense List

~~Assistance Transaction Card Fraud~~
~~256.986, subd. 3~~

Severity Level IV

Perjury - ~~290.53, subd. 4;~~ 300.61; & 609.48, subd. 4 (2)

Unranked Offense List

Forced execution of a declaration - ~~145B.10, subd. 3~~ 145B.105
~~Possession of pictorial representations of minors - 617.247~~
Unlawful Transfer of Sounds; Sales - ~~325E.20~~ 325E.201

7. ***The Commission adopted the following language to clarify that jail credit should not be extended for electronic monitoring:***

III.C.02. *. . . Credit for time spent in custody as a condition of a stay of imposition or stay of execution is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should not be extended for time spent in residential treatment facilities <u>or on electronic monitoring</u> as a condition of a stay of imposition or stay of execution.*

C. <u>ADOPTED MODIFICATIONS REVIEWED BY THE 1995 LEGISLATURE</u>

1. ***A felony offense was discovered that had not been considered for ranking by the Commission. This crime was technically unranked. The Commission adopted a severity level ranking of I for this crime.***

<u>Severity Level I</u>

False Declaration - 256.984

2. ***The crime of Lottery Fraud was on the unranked offense list and the Commission reviewed information over the last several years on the types of Lottery Fraud prosecutions and where judges ranked these crimes. The Commission adopted a severity level ranking of I for the following provision of Lottery Fraud:***

<u>Severity Level I</u>

Lottery Fraud - 609.651, subd. 1 with subd. 4(a)

The remaining felony level subdivisions will remain on the unranked offense list because there had been no prosecutions under subd. 2 or 3 and those crimes sentenced under subd. 4(b) would involve larger monetary losses.

3. ***The Commission adopted a proposal to change the manner in which the criminal history score is calculated for enhanced felonies by adding the following language to section II.B. of the sentencing guidelines and commentary:***

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related offenses, the prior conviction upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.

Comment

II.B.601. *There are a number of instances in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than $200 but less than $500 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.*

7. ~~6.~~ The criminal history score is the sum of points accrued under items one through four above.

4. The Commission adopted a proposal to place the crime of Aiding an Offender, Accomplice After the Fact - 609.495, subd. 3 on the Unranked Offense List. Subdivision 1 remains ranked at severity level I.

III. 1995 ADOPTED MODIFICATIONS - EFFECTIVE AUGUST 1, 1996, AFTER REVIEW BY THE 1996 LEGISLATURE

A. ADOPTED MODIFICATIONS FOR TECHNICALLY UNRANKED CRIMES

Several felony offenses were recently discovered that have not been considered for ranking by the Commission. These crimes are technically unranked at this time. The Commission adopted the following severity level rankings for these crimes:

Severity Level I

Nonsupport of Spouse or Child - 609.375, subd. 2a

Theft *Related* Offense List

Theft from Coin Operated Machines
609.52, subd. 2 (7)

Unranked Offense List

Issuing a second receipt without "duplicate" on it - 227.52

B. ADOPTED MODIFICATIONS TO CLARIFY CERTAIN CURRENT GUIDELINES POLICIES

1. The Commission adopted a proposal to amend Section II.C. of the guidelines to clarify that the Commission's intent is to only include severity level VI drug crimes:

C. Presumptive Sentence: . . . Similarly, when the current conviction offense is a severity level VI drug crime ~~or sale of cocaine~~ and there was a previous adjudication of guilt for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or was convicted elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer.

2. ***The Commission adopted a proposal to amend Section II.B.2 of the guidelines to clarify the different possible types of custody status:***

2. The offender is assigned one point if he or she was on probation, ~~or~~ parole, supervised release, conditional release, or confined in a jail, workhouse, or prison following conviction of a felony or gross misdemeanor or an extended jurisdiction juvenile conviction, or released pending sentence at the time the felony was committed for which he or she is being sentenced.

II.B.201. *. . . Criminal justice custodial status includes probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following conviction of a felony or gross misdemeanor, or release pending sentence following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor. . .*

C. ADOPTED MODIFICATION TO INCREASE RANKING FOR RECEIVING STOLEN PROPERTY - FIREARMS

The Commission adopted a proposal to increase the severity level ranking of Receiving Stolen Property (firearm) to make it consistent with the ranking for Theft of a Firearm:

Severity Level III

~~Receiving Stolen Property (firearm) - 609.53~~

Severity Level IV

Receiving Stolen Property (firearm) - 609.53

D. ADOPTED MODIFICATIONS TO CLARIFY CONSECUTIVE SENTENCING POLICY

The Commission adopted a proposal to amend the section on consecutive sentencing to reflect policy that is less confusing, more consistent, and easier to apply. Highlights of the new policy include:

- Lessens confusion and increases consistency by having all offenses sentenced in the order in which they occurred, regardless of whether the sentences are consecutive or concurrent.

- Clarifies that only offenses that are presumptive commit under the guidelines will be permissive consecutive.

- Eliminates the requirement that consecutive sentencing involve separate victims. It will be permissive to sentence current separate crimes against a person consecutively regardless of whether the crimes involve the same victim.

- Adds a new criteria for permissive consecutive sentences; when an offender is on escape status from a non-prison sentence, the sentence for the escape may be consecutive to the crime from which the offender was in custody and consecutive to any crime (that calls for prison under the guidelines) committed while on escape status.

- To ensure that escapes involving violence would always be covered under the permissive consecutive policy, the severity level for escapes with violence will be increased from severity level VI to severity level VII.

The adopted language changes are found in the appendix.

6. In addition to these specific changes to the Consecutive Policy, the Commission adopted an increase to the severity level for Escape from Custody that involves violence.

Severity Level VII

Escape from Custody - 609.485, subd. 4(b)

Severity Level VI

~~Escape from Custody - 609.485, subd. 4(5)~~

E. ADOPTED MODIFICATIONS TO INCREASE SEVERITY LEVEL RANKING OF CERTAIN ASSAULT CRIMES

The Commission adopted a proposal to increase the severity level rankings for several assault crimes from a ranking of I to a severity level ranking of IV. This will result in consistent rankings with the adopted severity level ranking for Domestic Assault, 609.2242, subd. 4 (also ranked at severity level IV). The crimes include Assault 5 - 609.224, subd. 4 and Assault 3 - 609.223, subd. 2 & 3.

IV. SPECIAL PROPOSAL TO MODIFY THE SENTENCING GUIDELINES

The Minnesota Sentencing Guidelines Commission previously forwarded a report to the 1995 Legislature that detailed a proposal to modify the sentencing guidelines to ensure that scarce prison resources are reserved for the violent offender. The proposal was discussed in legislative committees and legislators suggested more study was needed to address concerns regarding the specifics of the proposal. The Commission worked to revise their proposal taking into account the various concerns of numerous interested groups and organizations. (A list of these organizations is included in the appendix.) The revised proposal, while significantly different from the original, continues to address the need to reserve prison resources for the violent offender yet results in little direct impact on local correctional resources. The proposal was developed to work together as a balanced package toward the goals of protecting the public's safety and ensuring that state correctional resources are reserved for violent offenders.

The Commission received support for its proposal at the public hearing from a wide range of organizations including community corrections, county attorneys, and the Attorney General's Office. (A summary of the public hearing comments is included in the appendix. Additional written comments from organizations and individuals are available upon request.) The components of the proposal are presented below.

A. ADOPTED MODIFICATIONS REQUIRING LEGISLATIVE REVIEW

1. *The Commission adopted the proposal to reverse the order of the severity levels on the sentencing guidelines grid.*

The Commission believes this reversed order will more clearly reflect the emphasis under the guidelines for using prison resources for person offenders. (A copy of the proposed grid is included in the appendix.)

2. *The Commission adopted the proposal to adjust increases in durations across criminal history at severity levels I through VI to be more consistent with durational increases at severity levels VII through X.*

The increases in durations across criminal history will be at uniform intervals with increases by increments of two months at severity levels I, II, and III; three months at severity level IV; five months at severity level V; and six months at severity level VI. Current increments at the remaining severity levels are as follows: ten months at severity level VII; twelve months at severity level VIII; fifteen months at severity level IX; and twenty months at severity level X. (These durational changes are reflected in the proposed grid included in the appendix.)

3. *The Commission adopted the proposal to eliminate the distinction between Theft and Theft Related Offenses.*

It was agreed that the crimes listed on the Theft List and the Theft Related List were not substantively different from each other to warrant different presumptive sentences under the guidelines. Theft Crimes over $2,500 would move from severity level IV to III and continue to be weighted at one in the calculation of criminal history scores. Theft crimes of $2,500 or less would move from severity level III to II and would be weighted at one-half in the calculation of criminal history. For consistency, the Commission also adjusted the rankings for Receiving Stolen Property as the penalties for this crime are covered under the theft statute.

The Commission did not adopt any changes to the severity level rankings for Theft over $35,000, Theft from Person, Theft of a Firearm, Motor Vehicle Theft, Motor Vehicle Use Without Consent or any other crime.

B. RECOMMENDED CHANGES TO THE INTENSIVE COMMUNITY SUPERVISION PROGRAM

The Commission recommends that the Legislature amend the necessary statutory language to shift the discretion from the Department of Corrections to the sentencing judge with regard to whether to place an offender in the Intensive Community Supervision (ICS) Program. The Commission also recommends that this change not occur unless there is adequate funding to maintain the low caseloads required by current statute (2 agents for every 30 offenders). In addition, it is the intent of the Commission to add language to the sentencing guidelines that will provide participation criteria for judges to consider before deciding whether to place someone on ICS.

Currently, pursuant to Minn. Stat. § 244.12, the Commissioner of Corrections has the authority to order that certain offenders who meet the eligibility requirements be placed on Intensive Community Supervision (ICS). Statutory requirements are described in subd. 2 & 3 and the program itself is described under Minn. Stat. § 244.13 through § 244.15. (A copy of the statutory language is included in the appendix.) The goals of the program as stated in statute include: 1) to punish the offender; 2) to protect the safety of the public; 3) to facilitate employment of the offender during the intensive community supervision and afterward; and 4) to require the payment of restitution ordered by the court to compensate the victims of the offender's crime.

According to the Department of Corrections, approximately 70% of the offenders placed in the program successfully complete it and the reconviction rate is quite low (about 4%). The philosophy of the program is well regarded. It sorts out those prison inmates who do not pose a public safety threat and places them into a community based sanction that focuses on employment for the offender and restitution for the victim. This program saves taxpayers money, helps restore the victim and in addition provides an opportunity for the offender to become a productive citizen.

The Department of Corrections currently places about 100 inmates into the program each year. The Commission believes that the use of ICS could be expanded and recommends that the Legislature amend the statute to shift the discretion as to whether to place an offender in ICS from the Department of Corrections to the sentencing judge. The Commission believes that because ICS is a community based sanction, it ought to be available to the court as a sentencing option. Giving the judges this discretion supports the sentencing guidelines' goal of "truth in sentencing" because everyone will know at the time of sentencing whether the offender is going to serve time in prison or in ICS. Also, placing the discretion at the front end of the system will allow a wider range of interested parties to have input into the decision including: prosecutors, defense attorneys, probation officers, law enforcement agents, and victims.

It is anticipated that shifting the discretion to place offenders in ICS from the DOC to judges will expand the program. Judges have access to more immediate information on the offender as gathered for the presentence investigation and recommendations regarding ICS could become part of the plea negotiation which could contribute to increased usage of the program. It will be important to implement a monitoring system that can evaluate the use and success of the program.

The Commission would implement this shift in discretion by displaying on the sentencing guidelines grid those cells where a judge would have the option to place an offender in the ICS program. This option for judges would apply to cells on the grid where the presumptive disposition is commitment to the Commissioner of Corrections but the presumptive duration listed on the grid is 30 months or less (includes severity levels I and II at criminal history score six and severity levels III and IV at history scores of four or more - see proposed grid in appendix). The court, in its discretion, could sentence the offender to state prison or could choose to commit the offender to prison but sentence the offender to participate in the ICS program. Neither option would be a departure from the presumptive guidelines sentence. It is the Commission's intent to develop participation criteria to guide judges in their consideration to use the program.

The Commission envisions that the program would continue to operate the same as it does currently and recommends the program be implemented as follows:

- ✓ The ICS program would remain a "commitment to the commissioner" and the offender would be sent to prison for an unspecified amount of time (approximately 30 days) to be processed as an inmate and if necessary to wait for an available placement in the community.

- ✓ The DOC would retain the authority to revoke the offender from ICS based on DOC criteria and procedures.

- ✓ The DOC would retain discretion to place those offenders in ICS who commit their crimes prior to the effective date of the change in discretion (probably 8/1/96) and judges would have discretion for those offenders who commit their crimes on or after the effective date.

- ✓ Just as the DOC has discretion under current law to place any probation revocation on ICS, so would the judges have this discretion under the new law.

- ✓ The ICS program should be available to anyone who qualifies but participants may have to go to communities where the program is available if it is not possible to place them in their own community. The DOC would have the responsibility to determine where the offender would reside but the placement should be agreed upon by both the community and the offender. Funding should be provided to ensure that the program is available in as many counties as possible.

- ✓ The offender would not receive credit for time spent in ICS off of the term of imprisonment if the offender fails ICS and is revoked.

C. SUPPORT THE CONTINUED DEVELOPMENT OF STRUCTURED POLICIES AND MONITORING SYSTEMS AT THE LOCAL LEVEL

The Commission will support and offer assistance to counties to continue to develop ways to structure the efficient and effective use of local resources and to develop local monitoring systems. They also support the improvement of state-wide criminal justice information systems to include more specific information on local sanctions. With these developments, greater progress can be made toward understanding the use of all correctional resources, state and local.

When proposing changes to the sentencing guidelines, the Commission found it difficult to determine the impact of such changes on local resources because of a lack of information about the use of local sanctions and/or a lack of policies to guide the use of local resources. If policies are developed at the local level that address the use of local resources and monitoring systems are created that gather information about the actual use of local resources, impact analysis and correctional resource assessments can take into account the whole continuum of sanctions. Therefore, generally, as well as when policy changes are proposed at the state level, policy makers would be better informed as to the resource needs of local jurisdictions.

D. ISSUE FOR THE FUTURE - DRUG CRIMES

The Commission did not include in the revised proposal any changes to the guidelines that directly affect drug offenders. It is believed that this is an area that needs additional study and the Commission plans to continue to pursue policy solutions. In developing the revised proposal over the last year, the Commission learned that many of the organizations and individuals that participated with the Commission believe that changes need to be made to the state's drug policies. However, the issues are complex and any plan for change needs to involve the continuum of the criminal justice system including law enforcement, prosecution, defense, probation, judiciary, community members, and the legislature.

E. IMPACT OF SPECIAL PROPOSAL TO MODIFY THE SENTENCING GUIDELINES

The impact of the Commission's proposal on correctional resources is explained in two parts. First, those proposals adopted by the Commission, including changes to durations at the lower severity levels and the collapsing of Theft and Theft Related crimes, are estimated to reduce the need for prison space by approximately 220 beds over a three year time period. The impact to local jails is estimated around 45 beds statewide if no changes are made to the Intensive Community Supervision Program (ICS). Second, the impact of the proposal to shift discretion for ICS from the Department of Corrections to judges will depend upon how frequently judges use the program. If the program is used 50% of the time it is available, the need for prison space could be reduced by an additional 250 beds over a two year time period. In addition, if the ICS program is used for those offenders who would otherwise receive a downward dispositional departure, the impact the first part of the Commission's proposal would have on local jails would be greatly reduced or eliminated. Therefore, the impact of the Commission's complete proposal could be a total reduction in the need for prison space of nearly 500 beds (under the above assumptions), and the impact to the counties would be negligible.

More specific information on the impact over time and by county are included in the appendix.

V. COUNTY ATTORNEY REPORTS ON CRIMINAL CASES INVOLVING FIREARMS

The 1994 Legislature passed a law (M.S. § 609.11, subd. 10) directing county attorneys to report information to the sentencing guidelines commission on criminal cases involving a firearm. This new law reads as follows:

> *Subd. 10. [Report on Criminal Cases Involving a Firearm]*
>
> *Beginning on July 1, 1994, every county attorney shall collect and maintain the following information on criminal complaints and prosecutions within the county attorney's office in which the defendant is alleged to have committed an offense listed in subdivision 9 while possessing or using a firearm:*
>
> *(1) whether the case was charged or dismissed;*
> *(2) whether the defendant was convicted of the offense or a lesser offense;*
> *(3) whether the mandatory minimum sentence required under this section was imposed and executed or was waived by the prosecutor or court.*
>
> *No later than July 1 of each year, beginning on July 1, 1995, the county attorney shall forward this information to the sentencing guidelines commission upon forms prescribed by the commission.*

Pursuant to M.S. § 244.09, subd. 14, the sentencing guidelines commission is required to include in its annual report to the legislature a summary and analysis of the reports received from county attorneys.

With input from the County Attorneys Association, the Commission designed a form for data collection and provided each county attorney with a copy of the form and a memo explaining how to complete the form. However, as county attorneys began to complete the forms and return them to the Commission, it was realized that there were problems and confusion regarding what cases to include in each of the boxes and how to interpret some of the terminology of the form. While the data collected for FY 1995 provides some insight into firearms cases, it is not clear whether some of the information has been erroneously coded. Policies regarding mandatory minimum sentencing for firearm cases are complex and confusing and a greater effort will need to be made by Commission staff to train county attorneys to ensure more reliable information is collected. Also, because this was the first year of data collection, there were difficulties in getting tracking systems started. This was particularly a problem in those counties where a new county attorney was recently elected.

The following sets of tables summarize statewide information. The data indicate that prosecutors charged offenders in almost all of the cases disposed of in FY 1995 that involved a firearm (98%). Among those cases charged, a majority (60%) of the offenders were convicted of an applicable offense pursuant to § 609.11, subd. 9 and a firearm was established on the record. In those cases where the mandatory minimum applied, a prison sentence was pronounced 58% of the time. When the mandatory minimum was not imposed, prosecutors made the motion to disregard the mandatory minimum in 62% of the cases and the court ruled to disregard in 38% of the cases. Tables that provide the information by individual county are included in the appendix.

County Attorney Report on Criminal Cases Involving Firearms
Statewide Summary (Excluding Counties with Missing Information)
Cases Disposed from July 1, 1994 to July 1, 1995

Cases Where Reporting Is Required by M.S. § 609.11, Subd. 10 - Cases Charged and Not Charged

	Total Number of Cases Where Reporting Is Required	Cases Charged	Cases Not Charged
Percent of Cases Number of Cases	100% (400)	98% (392)	2% (8)

Outcome of Cases Charged

	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Percent of Cases Number of Cases	100% (392)	59.7% (234)	2.6% (10)	23.7% (93)	4.1% (16)	9.2% (36)	1% (3)

Convictions for Offenses Covered by M.S. § 609.11 - Establishment of Firearm on the Record

	Total Number of Cases	Firearm Established	Firearm Not Established
Percent of Cases Number of Cases	100% (244)	95.9% (234)	4.1% (10)

Sentences for Cases Where a Mandatory Minimum for a Firearm was Required

	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Not Imposed	
			Motion to Disregard was made by Prosecutor	Motion to Disregard Not Made by Prosecutor
Percent of Cases Number of Cases	100% (234)	57.7% (135)	26.1% (61)	16.2% (38)

Cases Where a Mandatory Minimum for a Firearm was Required but not Imposed Motion to Disregard

Number of Cases Where Mandatory Minimum was Required But Not Imposed	Motion to Disregard was Made by Prosecutor	Motion to Disregard Not Made by Prosecutor
100% (99)	61.6% (61)	38.4% (38)

APPENDIX

A. LANGUAGE CHANGES TO CLARIFY CONSECUTIVE SENTENCING POLICY

F. Concurrent/Consecutive Sentences: When an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentences shall be given in all cases not covered below. ~~The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence.~~

There are two situations in which consecutive sentences are presumptive; there are four situations in which consecutive sentences are permissive. The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

When consecutive sentences are imposed, offenses are sentenced in the order in which they occurred.

For persons who, while on probation, parole, or incarcerated, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising from the prior sentence.

~~Consecutive sentences may be given only in the following cases:~~

~~1. When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or~~

~~2. When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or~~

~~3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, unless the offender escaped from an executed prison sentence. If the escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid.~~

~~When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, and the offender escaped from an executed prison sentence, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the new escape offense was committed. The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence.~~

~~It is also presumptive for the sentence for a felony conviction resulting from a crime committed by an inmate serving an executed prison sentence at a state correctional facility, or while on escape status from such a facility, to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from~~

~~the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.~~

Presumptive Consecutive Sentences

Consecutive sentences are presumptive in the following cases:

1. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485 and the offender escaped from an executed prison sentence; or

2. When the conviction is for a crime committed by an inmate serving an executed prison sentence at a state correctional facility, or while on escape status from such a facility.

Consecutive sentences are presumptive under the above criteria only when the presumptive disposition for the current offense is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. The presumptive disposition for escapes from executed sentences, however, is always commitment to the Commissioner of Corrections.

Under the circumstances above, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the escape or other new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

For each presumptive consecutive offense sentenced consecutive to another offense(s), a criminal history score of one, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing.

Permissive Consecutive Sentences

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or

2. Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other; or

3. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or

4. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a nonexecuted felony sentence may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined.

Consecutive sentences are permissive under the above criteria only when the presumptive disposition for the current offense is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B. ~~For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid.~~ The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.

~~For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.~~

~~When a current conviction is sentenced consecutive to a prior indeterminate or presumptive sentence, the presumptive duration for the current conviction is determined by locating the severity level appropriate to the current conviction offense and the zero criminal history column or the mandatory minimum, whichever is greater.~~

Comment

II.F.01. *Consecutive sentences are a more severe sanction because the intent of using them is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. Generally, the Commission has*

established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines. For felony convictions committed while an offender is serving an executed prison sentence or while on escape status from such a facility, it is presumptive to impose the sentence for the current offense consecutive to the sentence for which the inmate was confined at the time the new offense was committed. The guidelines create a presumption against the use of consecutive sentences in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.

In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.

II.F.02. ~~*The guidelines provide that when one judge gives consecutive sentences in cases involving multiple current convictions, sentence durations shall be aggregated into a single fixed presumptive sentence. Moreover, the Commission recommends that when an offender is charged with multiple offenses within the same judicial district the trials or sentencings be consolidated before one judge, whenever possible. This will allow the judge to perform the aggregation process described in the guidelines if consecutive sentences are given.*~~

The order of sentencing when consecutive sentences are imposed by the same judge is to sentence ~~*the most severe conviction offense first*~~ *in the order in which the offenses occurred. For persons given permissive consecutive sentences,* ~~*t*~~*The presumptive duration for* ~~*the conviction*~~ *each offense sentenced consecutive to another offense(s) is determined by the severity level appropriate to the conviction offense at the zero criminal history* ~~*score of the offender*~~ *column, or the mandatory minimum, whichever is greater. For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid, or the mandatory minimum, whichever is greater. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively would include additional months as outlined under Section II.G. and using the respective criminal history score appropriate for consecutive sentencing.* ~~*When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses occurred. A zero criminal history score shall be used in determining the presumptive duration for each subsequent offense sentenced consecutively.*~~

~~*When concurrent and consecutive sentences are imposed for different offenses, the most severe offense involving consecutive sentencing shall be sentenced first. When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses occurred. The presumptive duration for each offense sentenced consecutively shall be based on a zero criminal history score. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B.*~~

~~*If multiple trials or sentencings cannot be consolidated before one judge, and if two or more*~~

~~*judges give presumptive sentences some of which are given consecutively to others, the following method can be used.*~~

~~*The second or subsequent judge can pronounce the durations indicated in the Sentencing Guidelines Grid at the zero criminal history column for the severity level for the current offense, and can state that this sentence would be consecutive to the previous presumptive sentence.*~~ *The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The institutional records officer will aggregate the separate durations into a single fixed* ~~*presumptive*~~ *sentence, as well as aggregate the terms of imprisonment and the periods of supervised release. For example, if the* ~~*J*~~*judge* ~~*A*~~ *executed a 44 month fixed* ~~*presumptive*~~ *sentence, and* ~~*Judge B later executes*~~ *a 24 month fixed* ~~*presumptive*~~ *sentence to be served consecutively to the first sentence, the records officer has the authority to aggregate* ~~*those*~~ *the sentences into a single 68 month fixed* ~~*presumptive*~~ *sentence, with a specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release.*

~~*Under this method, if the most severe current offense is sentenced first, the resulting aggregated sentence lengths would be the same as if one judge had sentenced the offenses consecutively.*~~

~~*It is permissive for a sentence for an escape conviction from a nonexecuted prison sentence to be consecutive to any other current sentence and any prior sentence regardless of whether the other sentences are for crimes against the person. It is presumptive for a sentence for an escape conviction from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. If the sentencing judge determines that the sentence for an escape conviction is to be consecutive with sentences for other current felony convictions, the escape conviction should be sentenced last with the presumptive duration found at the zero criminal history column and the appropriate severity level. For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.*~~

~~*In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.*~~

II.F.03. ~~*For cases with a prior felony sentence, which has neither expired nor been discharged, and a single current conviction, and when the current conviction is sentenced consecutive to the prior, the presumptive duration for the current conviction is found at the zero criminal history column and the appropriate severity level, unless the consecutive sentence is presumptive. For person given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.*~~

~~*If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is*~~

~~convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.~~

The presumptive disposition for escapes from executed sentences is commitment to the Commissioner of Corrections. It is presumptive for an escape from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving an executed prison sentence at a state correctional facility or while on escape status from such a facility if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C..

In certain situations a concurrent sentence would result in an offender serving longer in prison than a consecutive sentence and in such situations a concurrent sentence is presumptive. For example, an inmate has four months left to serve before release on the first offense. The new offense is a severity level IV crime and the inmate's criminal history score is five. If sentenced concurrently, the presumptive duration would be 32 months, the term of imprisonment would be 21⅓ months and because the sentence runs concurrently with the first offense, the total time to be served would be 21⅓ months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or 7⅓ months less than the time to be served under concurrent sentencing. In a situation like this example, concurrent sentencing would be presumptive.

For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.

II.F.04. ~~The sentencing guidelines provide that sentences must be stayed or imposed if they are to be used in computing the criminal history score. When multiple convictions are sentenced concurrently, separate sentences arising out of separate behavioral incidents must be stayed or imposed on each conviction if they are to be used in computing future criminal history scores. If an offender is convicted of two offenses arising from separate behavioral incidents, but the judge stayed or imposed a sentence for only one conviction, only one point would accrue to the prior felony sentences item in the computation of a future criminal history score. If the judge stayed or imposed a sentence for each conviction offense in this example, then two points would accrue to the prior felony sentences item in future criminal history score computation.~~

~~The phrase "multiple current felony convictions" means two or more cases in which the defendant has been found guilty by verdict or by a finding of the Court following trial, or in which the defendant has entered a plea of guilty, and for which sentences have not been stayed or imposed. Multiple current convictions may occur before one Court or two or more Courts.~~

The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures

both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D. of the guidelines.

If the presumptive disposition for an escape conviction from a nonexecuted prison sentence is commitment to the Commissioner of Corrections, it is permissive for the sentence to be consecutive to any prior sentence regardless of whether the other sentences are for crimes against the person. The presumptive duration for the escape is found at the zero criminal history column and the appropriate severity level. In addition to making the sentence for the escape offense consecutive to the sentence for which the offender was confined, it is also permissive to pronounce a sentence for any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections, consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offender was confined.

II.F.05. *The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.*

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.

~~II.F.05.~~ II.F.06. *Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of $3000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery with use of a gun and had a zero criminal history score, the mandatory minimum sentence and the presumptive sentence for the offense would be 36 months; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.*

~~II.F.06.~~ *~~The criterion that crimes must be against different persons for permissive consecutive sentencing is designed to exclude consecutive sentences in two types of situations. One type involves multiple offenses against a victim in a single behavioral incident such as burglary with a dangerous weapon and aggravated robbery with bodily harm. The requirement of different victims is also intended to exclude consecutive sentences in domestic abuse and child abuse situations when there are multiple incidents perpetrated against a victim over time. Assault, criminal sexual conduct, and incest are the conviction offenses most frequently found in domestic abuse and child abuse cases. Multiple incidents against a victim typifies these types of situations. In fact, one criminal sexual conduct provision delineates multiple incidents as an element of the offense. The high severity~~*

~~*rankings assigned to offenses that tend to involve very young victims reflect the understanding that multiple incidents generally occur in these kinds of situations. The Commission believes that a uniform policy reflected in high severity rankings provides the best approach in sentencing these cases. Permissive consecutive sentences would result in enormous disparity based on varying charging practices of prosecutors and discretionary judicial decisions.*~~

~~*There are rare instances in which multiple person crimes are committed at different times against a victim in other than a domestic abuse or child abuse situations. For example, a pharmacist could be a victim of an aggravated robbery at one point and some time later be robbed by the same offender a second time. Circumstances such as these are clearly atypical. In the rare instances in which this type of situation occurs, consecutive sentencing is permissive under the guidelines.*~~

B. LIST OF INTERESTED ORGANIZATIONS AND INDIVIDUALS REGARDING THE WORK OF THE "PROPOSAL SUBCOMMITTEE"

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Greg Bergstrom
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C. SUMMARY OF DECEMBER 6, 1885 PUBLIC HEARING

MINNESOTA SENTENCING GUIDELINES COMMISSION PUBLIC HEARING

December 6, 1995

The public hearing was held at 4:30 p.m. on December 6, 1995 in Room 15 of the State Capitol, St. Paul, Minnesota. Commission members present were Chairman Stanley Suchta, Justice Sandra Gardebring, Julius Gernes, Dr. Mary T. Howard, Judge Roger Klaphake, Scott Mattison, Donald Streufert, Judge Edward Wilson, and Commissioner Frank Wood. Jim Early, Assistant to the Attorney General, was also present.

Public attendance included: John Wallraff, retired judge; Mark Wernick, Criminal Law Division of State Bar; Professor Richard Frase, University of Minnesota Law School; Tommie Seidel, Coalition for Battered Women; Raymond Schmitz, Minnesota County Attorney's Association; Carol Arthur, Domestic Abuse Project; Russell Reetz, Minnesota Association of Community Corrections Act Counties; Pat Diamond, Hennepin County Attorney's Office; John Menke, Ramsey County Community Corrections; Dick Erickson, Citizens Council; Jane Ranum, State Senator; Ember Reichgott-Junge, State Senator; Deanna Wiener, State Senator; Patricia Linn-Jones, citizen; Carol Tocko, Metro Inter-County Assn.; Bill Jeronimus, Minnesota County Attorneys Assn.; and Gerald Keeville, Anoka County.

Chairman Suchta explained that the purpose of the hearing was to accept public comment on the proposed sentencing guideline modifications published in the Notice of Public Hearing in the State Register. He stated that all interested persons would be allowed to speak and that both written and oral statements would be accepted. Chairman Suchta explained that the record would be held open for five days following the public hearing to allow for additional written comments. Final action on the proposed modifications will be taken at the commission meeting scheduled for December 12, 1995 at 3:00 p.m. in the Orville Pung Conference Room of the Department of Corrections, 1450 Energy Park Drive, Suite 200, St. Paul, Minnesota. He stated that if the proposal is adopted it will be forwarded to the legislature.

Chairman Suchta stated that people interested in speaking would be asked to testify in the order in which they had registered and he requested that anyone interested in testifying who had not previously registered do so with commission staff. Commission members then heard public testimony.

John Wallraff, retired judge

Judge Wallraff related to the commission information about a case in which an offender with no previous record was convicted of theft over $35,000 and the judge in the case doubled the recommended guideline sentence and sent the defendant to prison for 11 years. He stated that the man was not a violent offender and was employed at the time of sentencing. He stated that the Commission's previous proposal was a more balanced approach because of the focus on keeping violent offenders in prison but finding other options for property offenders such as the one he was describing. He expressed concerns about uniformity in sentencing and noted a number of state and federal embezzlement cases which resulted in short jail sentences. Judge Wallraff stated that there was not uniformity if judges were allowed to increase sentences in this way.

Commissioner Wood noted that the Commission does not have authority over individual cases but that the sentences could be appealed. Judge Wallraff responded that the case had been appealed but that both the Court of Appeals and the Supreme Court had declined to hear the case.

Mark Wernick, Immediate Past Chair, Criminal Law Division of the State Bar Association

Mr. Wernick stated that the Criminal Law Division had voted to support the Commission's original proposal which was submitted to the legislature last year and that this support was based on two general principles: reserving prison space for violent offenders and the need to lower penalties for drug offenders.

Mr. Wernick stated that they would be meeting to vote on the current version of the proposal on December 8, and that he expected the group to vote to support this proposal as well. He expressed his personal concern, however, over the Commission's decision to refrain from recommending lower penalties for drug offenders. He stated that during his 18 years in private practice and two years as a public defender he had worked on countless numbers of drug cases. He stated that the current approach to the drug problem was not working and that it would be more effective to free up resources from the criminal justice system and try to address the problem using a social-medical model. He stated that it is especially important for those knowledgeable about the criminal justice system to speak up and educate people about the costs of the prison approach.

Mr. Wernick stated that drug sentences in Minnesota's statutes and guidelines are much harsher in comparison to other states and the federal system. He also noted the very high dispositional and durational departure rates for drug offenders with no history. Mr. Wernick stated that although he understood the concerns about getting such proposals passed, it was important that recommendations regarding drug sentences be made to the legislature so that there could be public debate.

Commissioner Wood stated that he appreciated Mr. Wernick's position on the drug issue and his continued support of the Commission's proposal. He added that this modified proposal is an incremental step and that there are many members of the commission and the subcommittee who want to continue discussing and revisiting the issue of sentencing for drug offenders.

Professor Richard Frase, University of Minnesota Law School

Prof. Frase spoke in favor of the modifications contained in section I of the notice of public hearing. He noted that his comments were his own and did not necessarily represent the views of the University or the Law School, but that they reflected his experience with teaching and conducting research about sentencing guidelines.

Prof. Frase stated that the proposals represented sound public policy and were consistent with the state's goal of ensuring that prison space and correctional resources are available for violent offenders. The changes would also make the guidelines more proportional and fair.

Prof. Frase told the Commission that while the proposal to reverse the order of the severity levels on the grid may seem a small and symbolic step, it is important. The change will emphasize the importance of setting priorities. It shows that we must make sure that there are adequate resources available to deal with the most serious offenders and it reassures the public that in Minnesota the penalties for the most serious offenses are quite severe. Prof. Frase stated that smoothing out the durational increases across criminal history would make the guidelines more fair and proportional than the current haphazard pattern of increases.

Prof. Frase supported eliminating the distinction between theft and theft related offenses because, given the offenses in these two categories, it is not clear why some should be ranked more or less serious than others. Ranking all of these crimes based on the dollar amount of the property involved would be more fair and eliminate disparities resulting from differences in charging practices. He noted that the offenses would all be placed at the theft related levels. He stated that it is unlikely that these modest changes would have any noticeable impact on crime rates or public safety, and that the changes would help avoid aggravating the problem of prison overcrowding. He noted that these types of offenses are ideal for this purpose because they do not involve actual or potential physical harm or the invasion of homes, and they are well suited to sanctions which fit into a restorative justice

model, such as day-fines, restitution, community service, victim-offender mediation, work-release and other community based sanctions.

Prof. Frase noted that in other states the alternative to fiscally responsible sentencing policy has been a system of chronically overcrowded prisons and that many states have had to resort to "back door" release mechanisms. He noted that many of these states are now looking at adopting sentencing guidelines which are linked to available correctional resources in an effort to prevent prison overcrowding and to restore truth in sentencing.

In reference to the Commission's proposal regarding the Intensive Community Supervision Program (ICS), Prof. Frase noted that this would create a third zone or band on the guidelines grid and that this multi-leveled approach has long been favored by experts in sentencing policy. He noted that grids with three or more dispositional bands are now found in a number of other states. He stated that since the group of offenders affected by this change would have committed property or minor drug crimes, the change would be consistent with reserving scarce resources for violent offenders. Prof. Frase added that having the judge decide whether ICS is appropriate would be consistent with truth in sentencing.

Tommie Seidel, Minnesota Coalition for Battered Women

Ms. Seidel spoke against the proposed ranking for felony level Domestic Assault and she encouraged the commission to increase the severity levels for all offenses involving domestic assault. She noted that there would be a number of legislators presenting proposed rankings to the commission and that she supported their proposals. She stated that the ranking should be higher because these offenders were chronic perpetrators of violence and require more severe sanctions. A severity level I ranking would perpetuate the idea that domestic assault is a lesser crime.

Raymond Schmitz, Olmsted County Attorney, Pres. of the Minnesota County Attorney's Assoc.

Mr. Schmitz directed the Commission's attention to an October 24, 1995 letter from Ann Carrott, the previous president of the Association.

Mr. Schmitz expressed his appreciation to the Commission for the process set up during the summer to promote extended discussion of the proposals and to promote the involvement of a variety of groups and interests. He stated that the process was extremely constructive and increased the understanding of problems related to sentencing serious offenders convicted of person offenses and those other serious offenders who have exceeded the tolerance of the community. He stated that the county attorneys feel that it is necessary to maintain the ability, regardless of offense, to take control of the individual when the tolerance of the community is past the breaking point and that they understand that this new proposal will allow that.

Mr. Schmitz expressed concerns about the criteria that would be used in screening offenders and about funding the expanded ICS program. He stated that although ICS costs are now charged against the state, counties are rightly concerned that, as the program is expanded, these costs will be passed on to local government.

Carol Arthur, Executive Director, Domestic Abuse Project

Ms. Arthur opposed the ranking of felony level Domestic Assault at severity level I and recommended that the ranking be increased. She stated that in Minneapolis there were 4,078 misdemeanor arrests for domestic abuse and 300 felony level charges filed. She noted, however, that there were 22,000 calls to 911 that were identified as domestic calls.

Ms. Arthur stated that domestic abuse cases comprise the largest number of cases handled by the

city attorney but that this group of offenses has one of the poorest conviction rates. She stated that percent of the cases are eliminated because the victim is fearful to testify or is coerced to not testify. She cited a survey showing that 32 percent of the victims in domestic abuse cases are revictimized within six months and that on average the victims are revictimized three times within that period. She also stated that 50 percent of victims are threatened with retaliation and that 30 percent will be assaulted during the pre-conviction phase. Domestic assaults are progressive and continue to get more severe and can escalate to homicide. Ms. Arthur stated that most of the homicides occur when the victim is either seeking legal intervention or leaving the relationship.

Ms. Arthur stated that this information on the progressive nature of the offense and on conviction rates indicates that by the time an offense results in a felony conviction there has already been a long string of offenses and there is a clear disregard for the law. She encouraged the Commission to consider this in the way the legislature has: as an offense involving special circumstances and needing strong intervention.

Russell Reetz, Minnesota Association of Community Corrections Act Counties and Director of Community Corrections in Washington County

Mr. Reetz stated that MACCAC had supported the original proposal and that while they had not taken a formal position yet on the new proposal, they would probably support it as well. He stated that he did have some concerns, however, about the availability of the ICS program, the need to maintain adequate funding and the need for consistency in its use.

Mr. Reetz stated that if the ICS program is expanded it is important to continue to maintain low caseloads as that is an important part of the program's success. He added that problems could also arise if the program is not available state-wide and if there are not consistent standards developed to screen whether an offender is an appropriate candidate for the program. He noted that consistency currently exists because the screening and selection is done by the Department of Corrections.

Mr. Reetz added that programming is an important part of any ICS program because the biggest impact on repeat behavior is through education and the development of cognitive and vocational skills. He stated that the state will need to provide adequate funding to ensure that the program continues to be successful.

Jane Ranum, State Senator, Minneapolis, Ember Reichgott-Junge, State Senator, Robinsdale, Senator Deanna Wiener, State Senator, Eagan

A joint statement was presented by Senator Jane Ranum who expressed the three Senators' concerns for the proposed severity level I ranking of felony level Domestic Assault as well as past rankings for felony level abuse crimes. The senators referenced studies that show family violence to be learned behavior and demonstrate the link between childhood victimization and future violence. The senators explained that a survey conducted in Minnesota of adult prison inmates and juveniles in detention reports substantially higher incidences of family abuse and higher incidences of witnessing family abuse than in the general population. The senators felt that these studies showed that children who witness abuse in the home suffer similarly to those who are actually abused.

The senators stated that they supported the philosophy of the commission's Severity Level Ranking Principles to treat person crimes more severely than other crimes and to use the severity level ranking exercise to be informed, but not governed by past exercise. In light of this, the senators urged commission members to reconsider their proposed ranking for family violence crimes, such as felony level domestic assault, based on the research demonstrating the link between future violent offenses and childhood victimization.

The senators suggested that in order to stop the increased need for prisons and decrease the frequency of violent crimes, family violence crimes must be treated much more seriously than they are

currently by employing meaningful and graduated sanctions that offer a real deterrent. The senators suggested that increasing the time an offender serves when a pattern of assaultive behavior continues coupled with a potential for criminal history points equaling one or one and one-half upon violation would serve as a deterrent. The senators felt that a severity level between four and six would be an equitable ranking for felony level domestic assault.

Patrick Diamond, Deputy Hennepin County Attorney

Mr. Diamond spoke on behalf of Mike Freeman, Hennepin County Attorney, and the Hennepin County Attorney's Office. Mr. Diamond stated that the original proposal to modify the sentencing guidelines and, to a lesser degree, the current proposal, are a step backward because they minimize criminal history. Mr. Diamond faulted the current proposal for relying on community based sanctions for offenders demonstrating considerable criminal history. Mr. Diamond stated that while low level repeat offenders accounted for the largest amount of potential savings of state correctional resources, he questioned whether or not the cost to public safety might be greater. Mr. Diamond stated that in 1994, Hennepin County reported only a 15 percent rate of apprehension on many common property crimes and that he felt that offenders achieving high criminal history scores of six or more with such a low apprehension rate demonstrated that they were not amenable to community placement. Mr. Diamond suggested that if any experimentation with alternative sanctioning is to be done with this type of repeat offenders, it may best be done through low cost, state run, low security and medium security incarceration options, as described in the recent Weber-Brandl Report to the Governor. Mr. Diamond expressed the Hennepin County Attorney's Office concerns that an expanded ICS program that splits responsibility between sentencing judges and the Department of Corrections would lessen program quality and reduce public safety.

Mr. Diamond discussed drug sentences explaining that he believed the work of the Sentencing Guidelines Subcommittee highlighted the need for additional study into drug offense sentences. Mr. Diamond explained that, in Hennepin County, drug sentences were a growing problem and that between 1991 and 1994 the number of drug offenses increased from less than 3,000 to more than 5,200. Mr. Diamond said that Hennepin County is experiencing a dramatic increase in drug related violence and other drug related harms as well. Mr. Diamond stated that, although he felt the Sentencing Guideline Commission's original proposal to modify drug sentences was indefensible as a method to save on cost, he felt one would be hard pressed to describe the current system as uniform or effective. Mr. Diamond stated that the racial disparity in drug enforcement strategies are also very troubling and that true reform, and not just cost savings, are needed. Mr. Diamond stated that he felt the Sentencing Guidelines Commission should use their knowledge and authority to assist others in the criminal justice system to devise new approaches to sanctioning drug offenders and to develop policies that would make drug sentences more uniform across racial lines.

Mr. Diamond stated that the Hennepin County Attorney's Office urged the Commission to rank Domestic Assault (M.S. §609.2242) at severity level VI. Mr. Diamond stated that, Hennepin County is experienced in dealing with large domestic assault caseloads and, based on their experience, they find it is best to have a broad range of options when dealing with domestic abuse offenders. Mr. Diamond suggested that because offenders and victims must often maintain contact following incidents of domestic assaults because of common children or common property, it may be best to give stayed sentences with long periods of probation or jail time in order to encourage offenders to remain law abiding.

John Menke, Supervisor, Ramsey County Community Corrections

Mr. Menke spoke as a private citizen and as a corrections professional. Mr. Menke stated that he was pleased with the Commission's all inclusive proposal process. However, Mr. Menke did not feel that the proposal would offer enough prison bed savings, especially in the area of ICS, to stop prison expansion. Mr. Menke stated that he was disappointed that the Commission was not lowering sentence lengths on drug offenses as part of their proposal. He felt that Controlled Substance Crime

First Degree is not equal to crimes such as Criminal Sexual Conduct First Degree, Kidnaping with Great Bodily Harm, and various murder and manslaughter offenses ranked at the same severity level. Mr. Menke stated that there would be a savings of 48 months just by reducing Controlled Substance Crime First Degree from a severity level VIII to a severity level VII and thereby not making it necessary to expand the ICS program to include offenders who have already proven themselves incapable of being in the community.

Mr. Menke stated that the new ranking for Domestic Assault is consistent with other offenses ranked at severity level I, however, he felt that a severity level I ranking was inappropriate for any person crime that involves violence. Mr. Menke felt that weapon offenses were ranked inappropriately at severity level I as well. Mr. Menke encouraged the Commission to take a look at changing the way offenses are ranked paying particular attention to a crime's violence potential and to change the relative severity between property and drug offenses making property more severe than drugs.

Dick Erickson, Citizens Council

Mr. Erickson spoke in support of the Commission's proposal to the sentencing guidelines saying that he liked the rational proportionality of it. Mr. Erickson stated that the proposal is a viable solution recognizing that correctional institutions are a finite resource and that they should be reserved for offenders needing incapacitation. Mr. Erickson stated that the majority of offenders receive punishment in the community and that there was no need to erode this policy any further and that, in fact, the community can stand an expanded form of ICS. Mr. Erickson stated that the Citizens Council supported the proposal's policy requiring property offenders to restore their community by making restitution to their victims and by gaining more acceptable skills while they are in the community. Mr. Erickson stated that the proposal establishes a commitment by the state to work with counties in a different and expanded way.

Patricia A. Linn-Jones, citizen

Ms. Linn-Jones offered her observations and opinions developed as a mother of a boy who has been a juvenile offender and who is now a young adult offender. Ms. Linn-Jones stated that she has a concern for persons with mental disabilities in the criminal justice system and that there are sentencing disparity biases based on race, gender, I.Q., and undiagnosed mental health. Ms. Linn-Jones felt that treatment should be a major focus of rehabilitating offenders in the community, however, Ms. Linn-Jones recognized the importance of punishing violent offenders.

D. PROPOSED SENTENCING GUIDELINES GRID

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE 0	1	2	3	4	5	6 or more
Murder, 2nd Degree (with intent)	X	306 *299-313*	326 *319-333*	346 *339-353*	366 *359-373*	386 *379-393*	406 *399-413*	426 *419-433*
Murder, 3rd Degree *Murder, 2nd Degree (felony Murder)*	IX	150 *144-156*	165 *159-171*	180 *174-186*	195 *189-201*	210 *204-216*	225 *219-231*	240 *234-246*
Criminal Sexual Conduct, 1st Degree *Assault, 1st Degree*	VIII	86 *81-91*	98 *93-103*	110 *105-115*	122 *117-127*	134 *129-139*	146 *141-151*	158 *153-163*
Aggravated Robbery	VII	48 *44-52*	58 *54-62*	68 *64-72*	78 *74-82*	88 *84-92*	98 *94-102*	108 *104-112*
Criminal Sexual Conduct, 2nd Degree (a) & (b)	VI	21	27	33	39 *37-41*	45 *43-47*	51 *49-53*	57 *55-59*
Residential Burglary *Simple Robbery*	V	18	23	28	33 *31-35*	38 *36-40*	43 *41-45*	48 *46-50*
Nonresidential Burglary	IV	12[1]	15	18	21	24 *23-25*	27 *26-28*	30 *29-31*
Theft Crimes (Over $2,500)	III	12[1]	13	15	17	19 *18-20*	21 *20-22*	23 *22-24*
Theft Crimes ($2500 or less) *Check Forgery ($200-$2500)*	II	12[1]	12[1]	13	15	17	19	21 *20-22*
Sale of Simulated Controlled Substance	I	12[1]	12[1]	12[1]	13	15	17	19 *18-20*

Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section **II.E. Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

Presumptive commitment to state imprisonment, but at the discretion of the court the offender may be committed to the Department of Correction's program for intensive community supervision. **(Requires statutory changes.)**

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to a state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections **II.C. Presumptive Sentence** and **II.E. Mandatory Sentences**.

1 One year and one day

E. CURRENT STATUTORY LANGUAGE GOVERNING ICS PROGRAM

INTENSIVE COMMUNITY SUPERVISION

244.12 INTENSIVE COMMUNITY SUPERVISION.

Subdivision 1. Generally. The commissioner may order that an offender who meets the eligibility requirements of subdivisions 2 and 3 be placed on intensive community supervision, as described in sections 244.14 and 244.15, for all or part of the offender's sentence if the offender agrees to participate in the program and the commissioner notifies the sentencing court.

Subd. 2. Eligibility. The commissioner must limit the intensive community supervision program to the following persons:

(1) offenders who are committed to the commissioner's custody following revocation of a stayed sentence; and

(2) offenders who are committed to the commissioner's custody for a sentence of 30 months or less, who did not receive a dispositional departure under the sentencing guidelines, and who have already served a period of incarceration as a result of the offense for which they are committed.

Subd. 3. Offenders not eligible. The following are not eligible to be placed on intensive community supervision, under subdivision 2, clause (2):

(1) offenders who were committed to the commissioner's custody under a statutory mandatory minimum sentence;

(2) offenders who were committed to the commissioner's custody following a conviction for murder, manslaughter, criminal sexual conduct, or criminal vehicular homicide or operation resulting in death; and

(3) offenders whose presence in the community would present a danger to public safety.

History: *1990 c 568 art 2 s 33; 1991 c 258 s 2; 1992 c 571 art 1 s 8; 1994 c 636 art 6 s 15,16*

244.13 INTENSIVE COMMUNITY SUPERVISION AND INTENSIVE SUPERVISED RELEASE; ESTABLISHMENT OF PROGRAMS.

Subdivision 1. Establishment. The commissioner of corrections shall establish programs for those designated by the commissioner to serve all or part of a sentence on intensive community supervision or all or part of a supervised release or parole term on intensive supervised release. The adoption and modification of policies and procedures to implement sections 244.05, subdivision 6, and 244.12 to 244.15 are not subject to the rulemaking procedures of chapter 14. The commissioner shall locate the programs so that at least one-half of the money appropriated for the programs in each year is used for programs in community corrections act counties. In awarding contracts for intensive supervision programs in community corrections act counties, the commissioner shall give first priority to programs that utilize county employees as intensive supervision agents and shall give second priority to programs that utilize state employees as intensive supervision agents. The commissioner may award contracts to other providers in community corrections act counties only if doing so will result in a significant cost savings or a significant increase in the quality of services provided, and only after notifying the chairs of the committees in the senate and house of representatives with jurisdiction over criminal justice policy.

Subd. 2. Training. The commissioner shall develop specialized training programs for intensive supervision agents assigned to the intensive community supervision and intensive supervised release programs. The agent caseload shall not exceed the ratio of 30 offenders to two intensive supervision agents. An intensive supervision agent must have qualifications comparable to those for a state corrections agent.

Subd. 3. Evaluation. The commissioner shall develop a system for gathering and analyzing information concerning the value and effectiveness of the intensive community supervision and intensive supervised release programs and shall compile a report to the chairs of the committees in the senate and house of representatives with jurisdiction over criminal justice policy by January 1 of each odd-numbered year.

Subd. 4. Definition. For purposes of section 244.05, subdivision 6, and sections 244.12 to 244.15, "intensive supervision agent" means a probation officer, a corrections agent, or any other qualified person employed in supervising offenders serving a period of intensive community supervision or intensive supervised release.

History: *1990 c 568 art 2 s 34; 1991 c 258 s 3; 1994 c 636 art 6 s 17,18*

244.14 INTENSIVE COMMUNITY SUPERVISION; BASIC ELEMENTS.

Subdivision 1. Requirements. This section governs the intensive community supervision programs established under section 244.13. The commissioner shall operate the programs in conformance with this section. The commissioner shall administer the programs to further the following goals:

(1) to punish the offender;

(2) to protect the safety of the public;

(3) to facilitate employment of the offender during the intensive community supervision and afterward; and

(4) to require the payment of restitution ordered by the court to compensate the victims of the offender's crime.

Subd. 2. Good time not available. An offender serving a sentence on intensive community supervision for a crime committed before August 1, 1993, does not earn good time, notwithstanding section 244.04.

Subd. 3. Sanctions. The commissioner shall impose severe and meaningful sanctions for violating the conditions of an intensive community supervision program. The commissioner shall provide for revocation of intensive community supervision of an offender who:

(1) commits a material violation of or repeatedly fails to follow the rules of the program;

(2) commits any misdemeanor, gross misdemeanor, or felony offense; or

(3) presents a risk to the public, based on the offender's behavior, attitude, or abuse of alcohol or controlled substances. The revocation of intensive community supervision is governed by the procedures in the commissioner's rules adopted under section 244.05, subdivision 2.

An offender whose intensive community supervision is revoked shall be imprisoned for a time period equal to the offender's term of imprisonment, but in no case for longer than the time remaining in the offender's sentence. "Term of imprisonment" means a time period equal to two-thirds of the sentence originally executed by the sentencing court, minus jail credit, if any.

Subd. 4. All phases. Throughout all phases of an intensive community supervision program, the offender shall submit at any time to an unannounced search of the offender's person, vehicle, or premises by an intensive supervision agent. If the offender received a restitution order as part of the sentence, the offender shall make weekly payments as scheduled by the agent until the full amount is paid.

History: *1990 c 568 art 2 s 35; 1991 c 258 s 4; 1993 c 326 art 9 s 7; art 13 s 15*

244.15 INTENSIVE COMMUNITY SUPERVISION; PHASES I TO IV.

Subdivision 1. Duration. Phase I of an intensive community supervision program is six months, or one-half the time remaining in the offender's term of imprisonment, whichever is less. Phase II lasts for at least one-third of the time remaining in the offender's term of imprisonment at the beginning of Phase II. Phase III lasts for at least one-third of the time remaining in the offender's term of imprisonment at the beginning of Phase III. Phase IV continues until the commissioner determines that the offender has successfully completed the program or until the offender's sentence, minus jail credit, expires, whichever occurs first. If an offender successfully completes the intensive community supervision program before the offender's sentence expires, the offender shall be placed on supervised release for the remainder of the sentence.

Subd. 2. Random drug testing. (a) During phase I, the offender will be subjected at least weekly to urinalysis and breath tests to detect the presence of controlled substances or alcohol. The tests will be random and unannounced.

(b) During phase II, the tests will be done at least twice monthly.

(c) During phases III and IV, the tests will be done at random at the frequency determined by the intensive supervision agent.

Subd. 3. House arrest. (a) During phase I, the offender will be under house arrest in a residence approved by the offender's intensive supervision agent and may not move to another residence without permission. "House arrest" means that the offender's movements will be severely restricted and continually monitored by the assigned agent.

(b) During phase II, modified house arrest is imposed.

(c) During phases III and IV, the offender is subjected to a daily curfew instead of house arrest.

Subd. 4. Face-to-face contacts. (a) During phase I, the assigned intensive supervision agent shall have at least four face-to-face contacts with the offender each week.

(b) During phase II, two face-to-face contacts a week are required.

(c) During phase III, one face-to-face contact a week is required.

(d) During phase IV, two face-to-face contacts a month are required.

(e) When an offender is an inmate of a jail or a resident of a facility which is staffed full time, the assigned agent may reduce face-to-face contacts to one per week during all phases.

Subd. 5. Work required. During phases I, II, III, and IV, the offender must spend at least 40 hours a week performing approved work, undertaking constructive activity designed to obtain employment, or attending a treatment or education program as directed by the commissioner. An offender may not spend more than six months in a residential treatment program that does not require the offender to spend at least 40 hours a week performing approved work or undertaking constructive activity designed to obtain employment.

Subd. 6. Electronic surveillance. During any phase, the offender may be placed on electronic surveillance if the intensive supervision agent so directs.

Subd. 7. Other requirements. The commissioner may include any other conditions in the various phases of the intensive community supervision program that the commissioner finds necessary and appropriate.

History: *1990 c 568 art 2 s 36; 1991 c 258 s 5; 1993 c 326 art 13 s 16; 1994 c 636 art 6 s 19*

F. IMPACT ANALYSIS OF SPECIAL PROPOSAL OVER TIME AND BY COUNTY

Minnesota Sentencing Guidelines
Proposed Modifications

January 1996

- ❒ Reverse Order of Severity Levels
- ❒ Adjust Increases in Durations Across Criminal History
- ❒ Eliminate the Distinction between Theft and Theft Related Offenses
- ❒ Expand Intensive Community Supervision - Allow Judges to Choose to Sentence Certain Offenders in Selected Grid Cells to the ICS program (not included in bed savings estimate)
- ❒ Support the Continued Development of Structured Policies and Monitoring Systems at the Local Level

Summary of Impact on Prison Resources Over Time

(Estimates are Based on MSGC 1994 Monitoring Data)

The proposed modifications would result in a total net savings of 219 prison beds. Forty-three percent of the beds would be saved by the end of the first full year and almost all (94%) of the bed savings would occur by the end of the third full year.

These figures do not include the prison bed space savings that would result from expanding the ICS program.

Year	Prison Beds Not Needed that Year
1	94
2	165
3	206
4	217
5	217
6	218
7	219

Reduction in Need for Additional Prison Beds
Modification/Expansion of ICS Program
(1994 MSGC Monitoring Data)

Based on a usage rate of 50%, it is estimated that implementation of the recommended modification and expansion of the Intensive Supervision Program would reduce the need for additional prison beds by 249 beds. If the usage rate is lower (25%) the reduction in the need for additional beds would be 93 beds. If the usage rate is 75%, the reduction in the need for additional prison beds would be 404.

Calculation of the Reduced Need for Additional Prison Beds:

Reduction from Initial Commitments	234
Reduction from Probation Revocations	111
Additional Beds Needed for Mitigated Dispositional Departures	-33
Reduction in Additional Prison Beds Needed	**312**
Current Bed Savings from ICS program	-63
Total Net Reduction in Prison Beds Needed	**249**

Assumptions:

- **Usage Rate**: A 50% usage for initial commitments, probation revocations and mitigated Dispositional departures will result in the following number of offenders entering the ICS program each year:

  286 initial commits
  76 who under current policies have received mitigated Dispositional departures
  253 probation revocations

- **Average time to serve in ICS:** The average time to serve in ICS is equal to the average term of imprisonment minus one month that would continue to be served in prison to allow for processing.

  14.2 months for initial commits
  14.1 months for mitigated Dispositional departures
  8.6 months for probation revocations

- **ICS Completion Rate:** 70% completion rate for all three groups (initial commitments, probation revocations and mitigated Dispositional departures).

- **Average Days in ICS Prior to Failure:** 60 days for initial commitments and mitigated Dispositional departures and 30 days for probation revocations.

Impact of Minnesota Sentencing Guidelines Proposal on the Number of Probation Cases - by County

(1994 MSGC Monitoring Data)

County	Number New Probation Cases Each Year	Mitigated Dispositional Departures in ICS Grid Cells	Impact if All Departures Sentenced to ICS
Aitkin	0	0	0
Anoka	6	13	-7
Becker	0	0	0
Beltrami	0	1	-1
Benton	0	1	-1
Big Stone	0	0	0
Blue Earth	1	0	1
Brown	0	0	0
Carlton	2	0	2
Carver	1	2	-1
Cass	0	0	0
Chippewa	0	0	0
Chisago	1	0	1
Clay	1	0	1
Clearwater	0	0	0
Cook	0	0	0
Cottonwood	0	0	0
Crow Wing	0	0	0
Dakota	9	9	0
Dodge	1	1	0
Douglas	0	0	0
Faribault	0	0	0
Fillmore	0	2	-2
Freeborn	0	0	0
Goodhue	0	1	-1
Grant	0	1	-1
Hennepin	26	41	-15
Houston	0	0	0
Hubbard	0	0	0

County	Number New Probation Cases Each Year	Mitigated Dispositional Departures in ICS Grid Cells	Impact if All Departures Sentenced to ICS
Isanti	1	0	1
Itasca	0	0	0
Jackson	0	0	0
Kanabec	1	0	1
Kandiyohi	0	0	0
Kittson	0	0	0
Koochiching	1	2	-1
Lac Qui Parle	2	0	2
Lake	0	0	0
Lake of the Woods	0	0	0
LeSueur	0	0	0
Lincoln	0	0	0
Lyon	0	0	0
McLeod	1	1	0
Mahnomen	0	0	0
Marshall	2	1	1
Martin	1	0	1
Meeker	0	0	0
Mille Lacs	1	3	-2
Morrison	0	0	0
Mower	0	0	0
Murray	0	0	0
Nicollet	1	0	1
Nobles	0	0	0
Norman	0	0	0
Olmsted	3	5	-2
Otter Tail	1	3	-2
Pennington	0	2	-2
Pine	2	1	1
Pipestone	0	0	0
Polk	2	3	-1
Pope	0	0	0
Ramsey	9	33	-24

County	Number New Probation Cases Each Year	Mitigated Dispositional Departures in ICS Grid Cells	Impact if All Departures Sentenced to ICS
Red Lake	0	0	0
Redwood	1	1	0
Renville	1	0	1
Rice	2	0	2
Rock	0	0	0
Roseau	0	1	-1
St. Louis	4	5	-1
Scott	1	1	0
Sherburne	0	1	-1
Sibley	0	0	0
Stearns	4	6	-2
Steele	0	1	-1
Stevens	0	0	0
Swift	0	0	0
Todd	0	0	0
Traverse	0	0	0
Wabasha	0	2	-2
Wadena	0	1	-1
Waseca	0	0	0
Washington	2	1	1
Watonwan	0	0	0
Wilkin	0	0	0
Winona	0	1	-1
Wright	1	4	-3
Yellow Medicine	0	0	0
TOTAL	**92**	**151**	**-59**

Intensive Community Supervision Program
Offenders in Areas of the Grid where the Judge could Choose to Sentence the Offender to an Intensive Supervision Program and Eligible Probation Revocations - by County of Conviction

(1994 MSGC Monitoring Data)

County	Eligible Prison Commitments in ICS Grid Cells	Mitigated Dispositional Departures in ICS Grid Cells	Eligible Probation Revocations	Total Potential Number of Offenders in ICS
Aitkin	2	0	0	2
Anoka	46	13	60	119
Becker	6	0	1	7
Beltrami	3	1	10	14
Benton	8	1	3	12
Big Stone	0	0	0	0
Blue Earth	4	0	4	8
Brown	2	0	1	3
Carlton	4	0	1	5
Carver	4	2	0	6
Cass	8	0	5	13
Chippewa	2	0	0	2
Chisago	1	0	2	3
Clay	3	0	2	5
Clearwater	3	0	0	3
Cook	0	0	1	1
Cottonwood	1	0	0	1
Crow Wing	8	0	4	12
Dakota	24	9	8	41
Dodge	1	1	0	2
Douglas	6	0	3	9
Faribault	0	0	1	1
Fillmore	0	2	0	2
Freeborn	4	0	1	5
Goodhue	5	1	1	7
Grant	1	1	0	2
Hennepin	153	41	112	306

County	Eligible Prison Commitments in ICS Grid Cells	Mitigated Dispositional Departures in ICS Grid Cells	Eligible Probation Revocations	Total Potential Number of Offenders in ICS
Houston	0	0	0	0
Hubbard	2	0	2	4
Isanti	1	0	2	3
Itasca	6	0	0	6
Jackson	1	0	2	3
Kanabec	3	0	5	8
Kandiyohi	1	0	3	4
Kittson	0	0	0	0
Koochiching	0	2	2	4
Lac Qui Parle	1	0	0	1
Lake	0	0	1	1
Lake of the Woods	0	0	0	0
LeSueur	3	0	0	3
Lincoln	3	0	0	3
Lyon	2	0	1	3
McLeod	4	1	3	8
Mahnomen	4	0	0	4
Marshall	2	1	0	3
Martin	1	0	2	3
Meeker	0	0	1	1
Mille Lacs	4	3	3	10
Morrison	7	0	0	7
Mower	2	0	3	5
Murray	0	0	1	1
Nicollet	3	0	0	3
Nobles	4	0	2	6
Norman	0	0	0	0
Olmsted	2	5	7	14
Otter Tail	5	3	9	17
Pennington	3	2	0	5
Pine	9	1	4	14
Pipestone	0	0	2	2

County	Eligible Prison Commitments in ICS Grid Cells	Mitigated Dispositional Departures in ICS Grid Cells	Eligible Probation Revocations	Total Potential Number of Offenders in ICS
Polk	11	3	1	15
Pope	2	0	0	2
Ramsey	87	33	152	272
Red Lake	0	0	0	0
Redwood	1	1	1	3
Renville	1	0	0	1
Rice	3	0	5	8
Rock	0	0	1	1
Roseau	2	1	1	4
St. Louis	20	5	22	47
Scott	11	1	0	12
Sherburne	2	1	9	12
Sibley	0	0	1	1
Stearns	18	6	7	31
Steele	1	1	2	4
Stevens	0	0	1	1
Swift	0	0	2	2
Todd	8	0	2	10
Traverse	0	0	1	1
Wabasha	0	2	0	2
Wadena	2	1	0	3
Waseca	1	0	0	1
Washington	19	1	9	29
Watonwan	1	0	0	1
Wilkin	1	0	2	3
Winona	3	1	2	6
Wright	4	4	8	16
Yellow Medicine	1	0	1	2
TOTAL	**571**	**151**	**505**	**1,227**

G. COUNTY ATTORNEY REPORTS ON CRIMINAL CASES INVOLVING FIREARMS BY COUNTY

County Attorney Report on Criminal Cases Involving Firearms

Cases Where Reporting Is Required
by M.S. § 609.11, Subd. 10
Cases Disposed from July 1, 1994 to July 1, 1995

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Aitkin	2	0	2
Anoka	22	0	22
Becker	4	0	4
Benton	4	0	4
Big Stone	1	0	1
Blue Earth	9	0	9
Brown	0	0	0
Carlton	1	0	1
Carver	0	0	0
Cass	8	0	8
Chippewa	0	0	0
Clay	5	1	4
Clearwater	0	0	0
Cook	0	0	0
Cottonwood	0	0	0
Dakota	16	0	16
Dodge	2	0	2
Douglas	6	0	6
Faribault	0	0	0
Fillmore	0	0	0
Freeborn	7	0	7
Goodhue	3	0	3
Grant	0	0	0
Hennepin	101	0	101

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Houston	0	0	0
Hubbard	4	0	4
Isanti	0	0	0
Itasca	8	0	8
Jackson	2	0	2
Kanabec	3	1	2
Kandiyohi	2	1	1
Kittson	1	0	1
Koochiching	0	0	0
Lac Qui Parle	0	0	0
Lake	2	0	2
Lake of the Woods	1	0	1
Lesueur	3	0	3
Lincoln	1	0	1
Lyon	2	0	2
Mcleod	4	0	4
Mahnomen	8	0	8
Marshall	0	0	0
Martin	4	0	4
Mille Lacs	0	0	0
Morrison	2	1	1
Murray	0	0	0
Nicollet	1	0	1
Nobles	1	0	1
Norman	2	0	2
Olmsted	14	0	14
Otter Tail	3	0	3
Pennington	5	0	5
Pine	4	1	3

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Pipestone	1	0	1
Polk	2	0	2
Pope	0	0	0
Ramsey	66	0	66
Red Lake	0	0	0
Redwood	4	0	4
Renville	0	0	0
Rice	5	2	3
Rock	0	0	0
Roseau	1	0	1
St. Louis	16	0	16
Scott	4	0	4
Sherburne	6	0	6
Sibley	1	0	1
Stearns	8	0	8
Steele	0	0	0
Stevens	3	0	3
Swift	0	0	0
Todd	0	0	0
Traverse	0	0	0
Wabasha	0	0	0
Wadena	2	0	2
Waseca	0	0	0
Washington	7	0	7
Watonwan	1	0	1
Wilkin	0	0	0
Winona	0	0	0
Wright	4	0	4
Yellow Medicine	1	1	0
Total	400	8	392

County Attorney Report on Criminal Cases Involving Firearms

Cases Where Reporting Is Required by M.S. § 609.11, Subd. 10
Outcome of Cases Charged
Cases Disposed from July 1, 1994 to July 1, 1995

County	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Aitkin	2	1	0	1	0	0	0
Anoka	22	14	0	5	2	1	0
Becker	4	0	2	1	1	0	0
Benton	4	2	0	1	0	1	0
Big Stone	1	0	0	1	0	0	0
Blue Earth	9	5	0	3	0	1	0
Brown	0	0	0	0	0	0	0
Carlton	1	0	0	1	0	0	0
Carver	0	0	0	0	0	0	0
Cass	8	2	2	3	0	1	0
Chippewa	0	0	0	0	0	0	0
Clay	4	1	0	0	1	2	0
Clearwater	0	0	0	0	0	0	0
Cook	0	0	0	0	0	0	0
Cottonwood	0	0	0	0	0	0	0
Dakota	16	12	0	2	1	1	0
Dodge	2	0	0	2	0	0	0
Douglas	6	2	2	1	0	0	1
Faribault	0	0	0	0	0	0	0
Fillmore	0	0	0	0	0	0	0
Freeborn	7	3	0	2	1	1	0
Goodhue	3	0	0	3	0	0	0
Grant	0	0	0	0	0	0	0
Hennepin	101	69	0	23	4	5	0
Houston	0	0	0	0	0	0	0
Hubbard	4	3	0	0	0	1	0
Isanti	0	0	0	0	0	0	0

County	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Itasca	8	3	1	3	0	1	0
Jackson	2	0	0	2	0	0	0
Kanabec	2	2	0	0	0	0	0
Kandiyohi	1	1	0	0	0	0	0
Kittson	1	0	0	0	0	0	1
Koochiching	0	0	0	0	0	0	0
Lac Qui Parle	0	0	0	0	0	0	0
Lake	2	0	0	0	0	2	0
Lake of the Woods	1	0	0	1	0	0	0
Lesueur	3	1	0	0	0	2	0
Lincoln	1	0	0	1	0	0	0
Lyon	2	2	0	0	0	0	0
Mcleod	4	3	0	1	0	0	0
Mahnomen	8	5	0	2	0	1	0
Marshall	0	0	0	0	0	0	0
Martin	4	3	1	0	0	0	0
Mille Lacs	0	0	0	0	0	0	0
Morrison	1	0	0	1	0	0	0
Murray	0	0	0	0	0	0	0
Nicollet	1	0	0	1	0	0	0
Nobles	1	1	0	0	0	0	0
Norman	2	0	0	2	0	0	0
Olmsted	14	9	0	2	2	1	0
Otter Tail	3	2	0	1	0	0	0
Pennington	5	1	0	2	0	2	0
Pine	3	2	0	1	0	0	0
Pipestone	1	0	0	1	0	0	0
Polk	2	2	0	0	0	0	0
Pope	0	0	0	0	0	0	0

County	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Ramsey	66	42	0	10	3	11	0
Red Lake	0	0	0	0	0	0	0
Redwood	4	4	0	0	0	0	0
Renville	0	0	0	0	0	0	0
Rice	3	3	0	0	0	0	0
Rock	0	0	0	0	0	0	0
Roseau	1	1	0	0	0	0	0
St. Louis	16	14	0	2	0	0	0
Scott	4	2	1	0	0	1	0
Sherburne	6	3	0	3	0	0	0
Sibley	1	0	0	1	0	0	0
Stearns	8	4	0	4	0	0	0
Steele	0	0	0	0	0	0	0
Stevens	3	1	1	1	0	0	0
Swift	0	0	0	0	0	0	0
Todd	0	0	0	0	0	0	0
Traverse	0	0	0	0	0	0	0
Wabasha	0	0	0	0	0	0	0
Wadena	2	1	0	0	0	0	1
Waseca	0	0	0	0	0	0	0
Washington	7	5	0	0	1	1	0
Watonwan	1	0	0	1	0	0	0
Wilkin	0	0	0	0	0	0	0
Winona	0	0	0	0	0	0	0
Wright	4	3	0	1	0	0	0
Yellow Medicine	0	0	0	0	0	0	0
Total	392	234	10	93	16	36	3

County Attorney Report on Criminal Cases Involving Firearms

Sentences for Cases Where a Mandatory Minimum for a Firearm was Required

Cases Disposed from July 1, 1994 to July 1, 1995

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Not Imposed	
			Motion to Disregard Made was made by Prosecutor	Motion Not Made by Prosecutor
Aitkin	1	0	1	0
Anoka	14	11	3	0
Becker	0	0	0	0
Benton	2	2	0	0
Big Stone	0	0	0	0
Blue Earth	5	1	3	1
Brown	0	0	0	0
Carlton	0	0	0	0
Carver	0	0	0	0
Cass	2	2	0	0
Chippewa	0	0	0	0
Clay	1	1	0	0
Clearwater	0	0	0	0
Cook	0	0	0	0
Cottonwood	0	0	0	0
Dakota	12	7	0	5
Dodge	0	0	0	0
Douglas	2	0	1	1
Faribault	0	0	0	0
Fillmore	0	0	0	0
Freeborn	3	1	0	2
Goodhue	0	0	0	0
Grant	0	0	0	0
Hennepin	69	43	18	8
Houston	0	0	0	0
Hubbard	3	0	3	0
Isanti	0	0	0	0

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Not Imposed	
			Motion to Disregard Made was made by Prosecutor	Motion Not Made by Prosecutor
Itasca	3	3	0	0
Jackson	0	0	0	0
Kanabec	2	1	1	0
Kandiyohi	1	0	0	1
Kittson	0	0	0	0
Koochiching	0	0	0	0
Lac Qui Parle	0	0	0	0
Lake	0	0	0	0
Lake of the Woods	0	0	0	0
Lesueur	1	0	1	0
Lincoln	0	0	0	0
Lyon	2	0	2	0
Mcleod	3	0	0	3
Mahnomen	5	4	1	0
Marshall	0	0	0	0
Martin	3	0	3	0
Mille Lacs	0	0	0	0
Morrison	0	0	0	0
Murray	0	0	0	0
Nicollet	0	0	0	0
Nobles	1	1	0	0
Norman	0	0	0	0
Olmsted	9	5	2	2
Otter Tail	2	1	1	0
Pennington	1	1	0	0
Pine	2	1	1	0
Pipestone	0	0	0	0
Polk	2	1	1	0
Pope	0	0	0	0
Ramsey	42	26	3	13
Red Lake	0	0	0	0

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Not Imposed	
			Motion to Disregard Made was made by Prosecutor	Motion Not Made by Prosecutor
Redwood	4	3	1	0
Renville	0	0	0	0
Rice	3	3	0	0
Rock	0	0	0	0
Roseau	1	1	0	0
St. Louis	14	6	7	1
Scott	2	2	0	0
Sherburne	3	1	2	0
Sibley	0	0	0	0
Stearns	4	1	3	0
Steele	0	0	0	0
Stevens	1	0	1	0
Swift	0	0	0	0
Todd	0	0	0	0
Traverse	0	0	0	0
Wabasha	0	0	0	0
Wadena	1	0	1	0
Waseca	0	0	0	0
Washington	5	4	0	1
Watonwan	0	0	0	0
Wilkin	0	0	0	0
Winona	0	0	0	0
Wright	3	2	1	0
Yellow Medicine	0	0	0	0
Total	234	135	61	38