

Minnesota Sentencing Guidelines Commission
REPORT TO THE LEGISLATURE
on The Mandatory Minimum Law
for Weapons Offenses
November, 1991

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EXECUTIVE SUMMARY

Mandatory minimum terms of imprisonment for offenders convicted of violent felony offenses involving dangerous weapons have been in effect since 1969, before the enactment of sentencing guidelines. The law has been modified over time. The Legislature has been concerned that offenders who commit offenses with a dangerous weapon be treated more harshly, but they have also recognized that certain circumstances could exist that would justify a sentence other than prison.

The emphasis in the law as it was amended throughout the 1980's has been to hold offenders accountable for weapon involvement by: 1) requiring that prosecutors place on the record any evidence regarding weapons and establish a finding of weapon use and 2) by requiring that the court cite the reasons for sentencing an individual offender without regard to the mandatory minimum. The purpose of this study is to determine whether practitioners are meeting the requirements of the mandatory minimum law and the sentencing guidelines.

Special data were collected to conduct this study. The study includes the population of offenders whose most serious charged offense was for a crime against the person and who were sentenced in an eight county area in 1989. The study consisted of 1,390 cases from the following counties: Anoka, Crow Wing, Dakota, Hennepin, Olmsted, Ramsey, St. Louis, and Washington. The study indicates that some type of weapon was allegedly involved in 41% of the cases.

The study concludes that in a large majority (83.4%) of the cases eligible for mandatory minimum sentencing under section 609.11, prosecutors and courts complied with the statutory requirement to make a finding of weapon involvement. Only 10.3% of the eligible cases resulted in no finding of weapon involvement. In 6.3% of the cases the information was missing and it could not be determined whether a finding was made.

Among the offenders who were eligible for a mandatory minimum sentence under section 609.11, nearly all were incarcerated and the majority were sentenced to prison. Among those who were not sentenced to prison, the court provided specific reasons for sentencing without regard to the mandatory minimum in the majority of the cases (74%). In addition to local incarceration, these offenders also often received fines, restitution, community work, and treatment requirements as conditions of their probation.

Compliance with the statutory requirements and the requirements of the sentencing guidelines policy is quite high and the Commission does not recommend any changes to law at this time. However, there does appear to be some confusion among practitioners as to how the requirements of the law and the policy of the sentencing guidelines interact. The Commission believes compliance rates could be further improved by the following actions: 1) train practitioners at various annual criminal justice conferences on the requirements of the mandatory minimum law and the sentencing guidelines; 2) widely distribute this report to judges, prosecutors, public defenders, and probation agents; and 3) amend the sentencing guidelines to further emphasize the sentencing guidelines policy with regard to mandatory minimums.

I. INTRODUCTION

In 1989, the Legislature directed the Minnesota Sentencing Guidelines Commission to study sentencing practices under the mandatory minimum sentencing law for offenses involving weapons (Minn. Stat. § 609.11) to determine the following issues:

- 1) whether prosecutors are complying with the statute's requirement to place on the record any evidence tending to show that a gun or dangerous weapon was used to commit an offense listed in section 609.11, subdivision 9;
- 2) whether courts are complying with the statute's requirement to determine on the record the question of whether a gun or dangerous weapon was used to commit an offense listed in section 609.11, subdivision 9;
- 3) the number of cases in which a prosecutor files a motion under section 609.11, subdivision 8, seeking waiver of the mandatory minimum sentence, the reasons given in these cases to support the motion, and the disposition of these motions; and
- 4) the number of cases in which the court, on its own motion, sentences defendant without regard to the mandatory minimum sentence, the reasons given in these cases for the court's departure, and the sentences pronounced by the court.

The Commission was allocated a one time appropriation of \$38,000 in F.Y. 1991 to conduct this study of the mandatory minimum law for weapons offenses. These funds were used to collect indepth information on cases involving crimes against persons, to identify those cases involving firearms or other dangerous weapons, and to examine the extent to which prosecutors and the courts are complying with the specific provisions of the law. Information was also collected on the severity and types of sanctions imposed on offenders convicted of offenses involving dangerous weapons.

Minnesota has had a mandatory minimum provision for certain felony offenses involving dangerous weapons since 1969, before the enactment of the sentencing guidelines. Section II of this report provides background information on the legislative history of this law. In addition, this section of the report includes a discussion of the relationship and interaction between mandatory minimum laws and the sentencing guidelines system. A copy of M.S. § 609.11, the mandatory minimum law for offenses involving weapons, is included in the appendix.

The research methodology involved in conducting this study is explained in Section III. A wide range of data was collected on cases sentenced in 1989 which involved crimes against persons. The specific data collected in the study is explained, and the limitations of the available data are discussed.

An analysis of the data is contained in Section IV of the report. This section is structured to directly respond to the four major issues and questions raised by the Legislature in its directive to the Commission. The data analyzed in this section includes cases involving dangerous weapons. An overview of all of the cases involving crimes against persons is included in the appendix. The Commission's recommendations are contained in Section V.

II. BACKGROUND INFORMATION

A. Legislative History

Minnesota has had a mandatory minimum provision for certain felony offenses involving weapons since before the enactment of the sentencing guidelines. Essentially, those offenders convicted of violent felony acts with a dangerous weapon are required to serve a minimum period of incarceration in a state prison. The specific language of the law, however, has experienced changes over time.

The mandatory minimum terms of imprisonment for offenses involving weapons were first created in 1969. In the 1970's, the law was amended to separate the penalties for use of a firearm from simple possession of a firearm or use of other dangerous weapons. The amended law also included enhanced penalties for repeat offenders.

It is important to note that from 1974 to 1978, the law required the prosecutor to cite Minn. Stat. § 609.11 if weapon involvement was alleged. While the law in 1974 allowed the court to stay the sentence for first time offenders, the law was amended in 1975 to reduce judicial discretion to stay the sentence. However, prosecutorial discretion was enhanced because the prosecutor could "drop" the Minn. Stat. § 609.11 cite and thus remove the mandatory minimum prison term. The legislature amended the law in 1978 to eliminate the need to cite the statute and simply required the prosecutor to allege in the complaint or indictment whether any weapon was involved.

In the 1980's the statute was rewritten to emphasize that evidence of weapon involvement should be established at the trial or guilty plea. The prosecutor was given the discretion to file a motion to have the offender sentenced without regard to the mandatory minimum if substantial mitigating factors existed and were recorded. This discretion was extended to the court in 1982 by the Supreme Court in *State vs. Olson and Cundy*. The court ruled it would be unconstitutional for the legislature to give such power to the prosecutor to affect the sentence and not the sentencing judge. None the less, it appeared that the legislature wanted weapon use or possession to be established on the record even if the court believed the offender should not receive a prison sentence. This would hold the system more accountable because the weapon involvement as well as the mitigating factors would be stated on the record.

Prior to 1978, the prosecutor could simply "drop" Minn. Stat. § 609.11 even when a record of weapon involvement had been established. This action would result in no mandatory minimum sentence. Given the changes in 1978, prosecutors had to "swallow the gun" to avoid the application of the mandatory minimum by not establishing any evidence of weapon involvement on the record. The legislature amended the language in 1989 to further emphasize that the court shall determine on the record at the time of

the finding of guilt the question of whether there was weapon involvement. This action was taken to further clarify that the prosecutor could no longer control the application of the mandatory minimum law by choosing to cite or not cite the statute and to discourage the "swallowing of the gun".

This background information, while seemingly technical and exacting, provides some insight into legislative intent. The legislature, over time, has been concerned that offenders who commit offenses with a dangerous weapon be treated more harshly. It is also apparent, however, that the legislature recognized that certain circumstances could exist that would justify not sentencing a weapons offender to prison. The legislature wanted this discretion to be exercised with regard to the sentence and not to be exercised with regard to the fact finding process. Legislators were comfortable with a judge not sentencing an offender to prison if there were good reasons and if those reasons were cited. Legislators were not as comfortable with weapon involvement not being acknowledged in court in order to avoid the mandatory minimum prison sentence. It was this concern over whether the criminal justice system was holding offenders accountable for weapon involvement that raised an interest in this study.

Below is a detailed summary of the mandatory minimum law, Minn. Stat. § 609.11. Prior to 1969 there were no mandatory minimums except for offenses with life sentences.

- 1969 - Created a mandatory minimum of 3 years for possession of a firearm at the time of the offense.

- 1971 - Added the discharge of an explosive, explosive device or incendiary device to the 3 year mandatory minimum.

- 1974 - Statute was revised to include in the mandatory minimum both the possession of a firearm and the use of a dangerous weapon;
 - Statute was revised to specify that the offender would not be eligible for parole until the full minimum sentence had been served;
 - Statute, however, allowed the judge to stay the sentence if the offense was the offender's first offense involving a firearm or dangerous weapon;
 - A list of offenses for which the mandatory minimums could apply was specified: aggravated assault, burglary, kidnapping, manslaughter, murder in the second or third degree, rape, robbery, sodomy, felony escape, or discharge of an explosive.

- A new subdivision was added that the mandatory minimum applies to charges or indictments for the above offenses where firearm possession or use of a dangerous weapon is alleged and this section was cited.

- 1975 - Statute was revised to create two separate mandatory minimums for first time and repeat offenders. The first conviction for an offense involving the possession of a firearm or use of a dangerous weapon called for a year and one day minimum and a second or subsequent conviction called for a 3 year minimum. Stayed sentences were no longer allowed for first time offenders.

- 1977 - In the section that listed the offenses for which mandatory minimum sentences could apply, the references to rape and sodomy were changed to criminal sexual conduct in the 1st, 2nd, and 3rd degree.

- 1978 - The provision requiring the citation of Minn. Stat. § 609.11 was repealed. A new provision was added that directed the prosecutor to allege whether the offender possessed a firearm or used a dangerous weapon in the complaint or indictment.

- 1979 - Added to the list of offenses for which mandatory minimums could apply were any attempts of the included offenses.

- 1981 - The entire statute was amended.
 - Subdivision on "dangerous weapon" provided for a mandatory minimum of one year and one day for possessing a firearm or using a dangerous weapon and a 3 year mandatory minimum for second or subsequent offenses.
 - Subdivision on "firearm" provided for a mandatory minimum of 3 years for using a firearm and a 5 year mandatory minimum for second or subsequent offenses.
 - Statute continued to provide for no early release prior to serving the full mandatory minimum.

- Provision required the prosecutor to establish the fact of weapon involvement by presenting all evidence at the trial or guilty plea unless it was otherwise admitted on the record. This provision also required the court to determine at the time of sentencing whether the defendant had been convicted of a second or subsequent offense.
 - Provision allowed the prosecutor to file a motion prior to sentencing to have the defendant sentenced without regard to the mandatory minimum term when substantial mitigating factors existed and the reasons were recorded.
 - The applicable offenses were changed to conform to current statutory offense titles: murder in the 1st, 2nd, or 3rd degree; assault in the 1st, 2nd, or 3rd degree; burglary; kidnapping; false imprisonment; manslaughter in the 1st and 2nd degree; aggravated robbery; simple robbery; criminal sexual conduct in the 1st, 2nd, or 3rd degree; escape from custody; arson in the 1st, 2nd, or 3rd degree; or any attempt to commit any of these offenses.
- 1982 - The Supreme Court ruled in State vs. Olson and Cundy, 325 NW 2d 13, that prosecutors and courts alike should be given the power to initiate sentencing without regard to the statutory minimums. The court ruled that "If the legislature gives power to the prosecutors, it must also give it to the courts. It cannot constitutionally do otherwise."
- 1983 - Technical changes only.
- 1986 - The reference for criminal sexual conduct as an applicable offense was amended to specify the particular subdivisions that would be applicable.
- 1989 - The provision that required the prosecutor to establish weapon involvement was amended to state that the court shall determine on the record at the time of the finding of guilt the question of whether there was weapon involvement.
- Felony violations of chapter 152 (controlled substance crimes) were added to the list of applicable offenses.

B. Mandatory Minimums and Sentencing Guidelines

In general terms, mandatory minimum sentences and sentencing guidelines are both ways to structure sentencing, but the two types of systems do not work well together. Sentencing guidelines systems generally provide the court with the appropriate sentence for the typical case. Guidelines systems usually take into account both the conviction offense and the criminal background of the offender. The severity of sanctions in a guidelines system are based on a rational scheme of proportionality. A most important feature of a guidelines system is the ability of a judge to sentence apart from the presumptive sentence and pronounce a more appropriate sentence when there are substantial and compelling circumstances associated with the case.

In a sentencing guidelines system the prosecutor has some discretion to affect the presumptive sentence through charging and plea negotiating practices. If a prosecutor chooses to reduce or drop a charge, the result will be a less severe presumptive sentence. However, it may not necessarily result in a change in the presumptive disposition; i.e., a prison or a stayed sentence. In addition, the sentencing judge may depart from the presumptive sentence if there are substantial and compelling circumstances that distinguish the case from the typical case.

Therefore, generally speaking, mandatory minimum sentences established in statute give prosecutors greater discretion than judges to determine who should go to prison. If a prosecutor decides to pursue the fact finding process that would result in application of a mandatory minimum, the judge must send the offender to prison. However, a prosecutor could decide, because of a plea negotiation, to not establish the facts that would result in application of a mandatory minimum. Consequently, the sentencing judge could not sentence the offender to prison on the basis of those non established facts. In contrast, a sentencing guidelines structure offers a greater balance of discretion between the judge and the prosecutor, offers flexibility to the judge to consider substantial and compelling circumstances, and still allows for statewide sentencing goals to be communicated through the policy framework of the guidelines.

(Minnesota's mandatory minimum statutes do not place all the discretion with the executive branch as is the case in other states. Minnesota's system has a greater balance of discretion by allowing the judge to sentence without regard to the mandatory minimum when mitigating factors exist and are cited.)

When mandatory minimum sentences and sentencing guidelines structures are combined, the result can be confusion over what the state sentencing policy is and mixed results regarding whether state sentencing policy is being adhered to. This study will demonstrate that in Minnesota, while compliance with statutory requirements is high, there is some confusion among some practitioners with regard to the state's mandatory minimum law for weapons offenses and how it relates to the sentencing guidelines. An indepth explanation of the requirements of both the mandatory minimum law and the

sentencing guidelines mandatory minimum policy is presented below. This explanation should underscore the difficulty some practitioners have in interpreting the requirements of both the mandatory minimum law and the sentencing guidelines.

Sentencing Guidelines Policy Regarding Mandatory Minimum Sentences

The basic structure of the sentencing guidelines can be understood by reviewing the sentencing guidelines grid.

Offenses are ranked according to their severity on a scale from one to ten with ten being the most severe. The severity levels constitute the vertical dimension of the grid. The horizontal dimension of the grid is a measure of the offender's criminal history on a scale from zero to six. The severity of the conviction offense and the extent of the offender's criminal history will place the offender in a particular cell in the grid. The bold black line distinguishes those cells where prison is presumed from those where a stayed sentence is presumed. If the offender falls in one of the white cells below the black line, a prison sentence is presumed for the duration found in the cell. If the offender falls in one of the gray cells above the black line, a stayed sentence is presumed for which the offender may receive any number of intermediate sanctions.

The mandatory minimum for weapon involvement would apply if:

- a finding of weapon involvement was made during the guilt finding process; and
- the offender was convicted of one of the offenses covered under Minn. Stat. § 609.11.

If the mandatory minimum term applies:

- the presumptive sentence is prison;
- the presumptive duration is the mandatory minimum or the grid cell time, whichever is greater;
- the prosecutor can make a motion to have the offender sentenced without regard to the mandatory minimum; and
- the judge has the discretion to sentence without regard to the mandatory minimum if substantial mitigating factors exist and are cited.

Confusion arises in the interpretation of how the mandatory minimum statute and the sentencing guidelines policy interact because:

- some practitioners differ in their interpretation of when the mandatory minimum applies;
- offenders can fall above the dispositional line on the grid but the presumptive disposition will still be prison when the mandatory minimum applies; and
- even though the statute and case law allows the judge to sentence without regard to the mandatory minimum, it is not always realized that the case would still be a departure from the presumptive sentence and that reasons would be required.

This report will illustrate that while there is some confusion in the criminal justice system regarding the relationship between mandatory minimums and the sentencing guidelines, the compliance with the statutory requirements is quite high. The Commission has examined mandatory minimum sentencing patterns before, but this study offers a much more comprehensive analysis. It will hopefully provide some insight into how the Commission and the Legislature can continue to work to achieve particular sentencing goals for offenses involving dangerous weapons.

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 LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Sale of a Simulated Controlled Substance</i>	I	12*	12*	12*	13	15	17	19 18-20
<i>Theft Related Crimes (\$2500 or less) Check Forgery (\$200-\$2500)</i>	II	12*	12*	13	15	17	19	21 20-22
<i>Theft Crimes (\$2500 or less)</i>	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
<i>Nonresidential Burglary Theft Crimes (over \$2500)</i>	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
<i>Residential Burglary Simple Robbery</i>	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Criminal Sexual Conduct 2nd Degree (a) & (b)</i>	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Aggravated Robbery</i>	VII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
<i>Criminal Sexual Conduct, 1st Degree Assault, 1st Degree</i>	VIII	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Murder, 3rd Degree Murder, 2nd Degree (felony murder)</i>	IX	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Murder, 2nd Degree (with intent)</i>	X	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433

1st 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.



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.



Presumptive commitment to state imprisonment.

* one year and one day

III. RESEARCH METHODOLOGY

The Commission was allocated a one time appropriation of \$38,000 in F.Y. 1991 to conduct this special study on the mandatory minimum law for weapons offenses. The Commission utilized these funds to contract researchers to collect indepth information on cases involving crimes against persons. The study includes the population of offenders whose most serious charged offense was for a person type offense and who were sentenced in 1989 in an eight county area. The total number of cases included in the study is 1,390. The eight counties chosen for the study included: Anoka, Crow Wing, Dakota, Hennepin, Olmsted, Ramsey, St. Louis, and Washington. These particular counties were chosen because they provide a representation of the metro area as well as a representation of the larger rural areas in the state.

Data was collected on the population of cases because of the relatively small number of cases for any given offense type. Collecting information on the population allows us to describe the data more completely but still does not provide conclusive results because of the small number of cases. Also, the Commission chose to collect data on all person type offenses, even those where weapon use was not involved, to provide comparative data and to assure that we could measure the actual frequency of weapon involvement. Cases were selected for the study on the basis of whether the offender was initially charged or convicted of a person type offense.

A wide range of data was collected on each offender including: offense characteristics, offender characteristics, plea negotiations, court procedures, and revocations. This report will serve to summarize the highlights discovered in these indepth data and the data will continue to provide long range policy development support.

An overall summary of the collected data is found in the Appendix. The main body of the report will focus on the questions raised by the Legislature.

Data Limitations

It is important to understand the limitations of the collected data because it affects the ability to draw conclusions from the results. Data collectors obtained information primarily from the probation officer files and the court plea and sentencing transcripts. The documents reviewed by the data collectors included the presentence investigation report and any other documents that were available in the probation officer files.

These important documents were not always available for every case. Transcripts and PSIs were missing for some cases. When these documents were missing we also checked the sentencing worksheet to see whether the probation officer had indicated that a finding on weapon involvement had been made. However, there were some

cases where it could not be determined whether weapon involvement had been addressed by the court. The analysis below will indicate the extent of the missing information.

A second limitation of the collected data is with regard to a lack of insight into what might have been transpiring with the case "behind the scene". Unless charging or sentencing decisions were described in court or contained within some other official document, we were unable to recognize the specific rationale for decisions or who was responsible for particular actions.

For example, we might learn from the complaint or other descriptions of the offense that a firearm was used by the offender in the commission of the offense. Yet, the court transcripts for the case made no mention of the weapon use. The decision to not place on the record the weapon use may have resulted from a lack of evidence (the gun was never found) or it could have been based on an undocumented plea agreement between the defense and prosecution. It is important to understand that we could not determine when there were evidentiary problems. We could not determine when there were witness problems. In general, we could not evaluate the strengths or weaknesses of the prosecution's case.

Third, the data we attempted to collect was very complex and confusing. We provided a significant amount of training to the data collectors. Initial reliability testing was conducted to instruct the data collectors on the appropriate way to interpret various information. Due to time and budget constraints, we were unable to conduct formal validity and reliability testing. While we have confidence that the data collectors were well trained and competent, it is important to recognize the lack of any formal testing when interpreting the results of the data.

IV. LEGISLATIVE DIRECTIVE

The Legislature directed the sentencing guidelines commission to address four basic questions when conducting this study on weapons cases. The mandatory minimum requirements for offenses involving dangerous weapons was discussed at the beginning of this report. Essentially a mandatory minimum prison sentence is in effect whenever a finding has been made in court that a dangerous weapon was used or possessed in connection with certain crimes against the person. The mandatory minimum law does however allow the sentencing judge to sentence without regard to the mandatory minimum if substantial mitigating factors exist. The following analysis focuses on the legislative questions and examines those cases where weapons were allegedly involved.

Question 1: Are prosecutors complying with the statute's requirement to place on the record any evidence tending to show that a gun or dangerous weapon was used to commit an offense listed in section 609.11, subdivision 9?

and

Question 2: Are courts complying with the statute's requirement to determine on the record the question of whether a gun or dangerous weapon was used to commit an offense listed in section 609.11, subdivision 9?

We are not able to answer these first questions asked by the Legislature with any degree of certainty because of the data limitations described above. Also, the second question addresses a change made to the mandatory minimum statute in 1989. This change would not have been in effect until August 1, 1989 and the data in this sample covers the entire year of 1989 sentencings. Therefore, over half of the cases in the study would have been sentenced before this change in the law went into effect. Yet, we can discuss the basic and most important question as to whether a finding of weapon involvement had been made for those cases where the mandatory minimum could apply.

Several sources were used to determine whether a finding was made as to weapon involvement. First, the plea, trial and sentencing transcripts were reviewed by the data collectors. Second, if the conviction offense was Assault in the 2nd Degree, it was assumed that a weapon finding was made. This assumption was made because the definition of Assault in the 2nd Degree is assault with a dangerous weapon. Third, if the sentencing worksheet that is completed by the probation officer indicated weapon involvement, we assumed a weapon finding was made. This assumption was made because probation officers are instructed to indicate the weapon involvement on the sentencing worksheet whenever a finding has been made.

As noted above, the study includes the population of offenders whose most serious charged offense was for a person type offense and who were sentenced in an eight

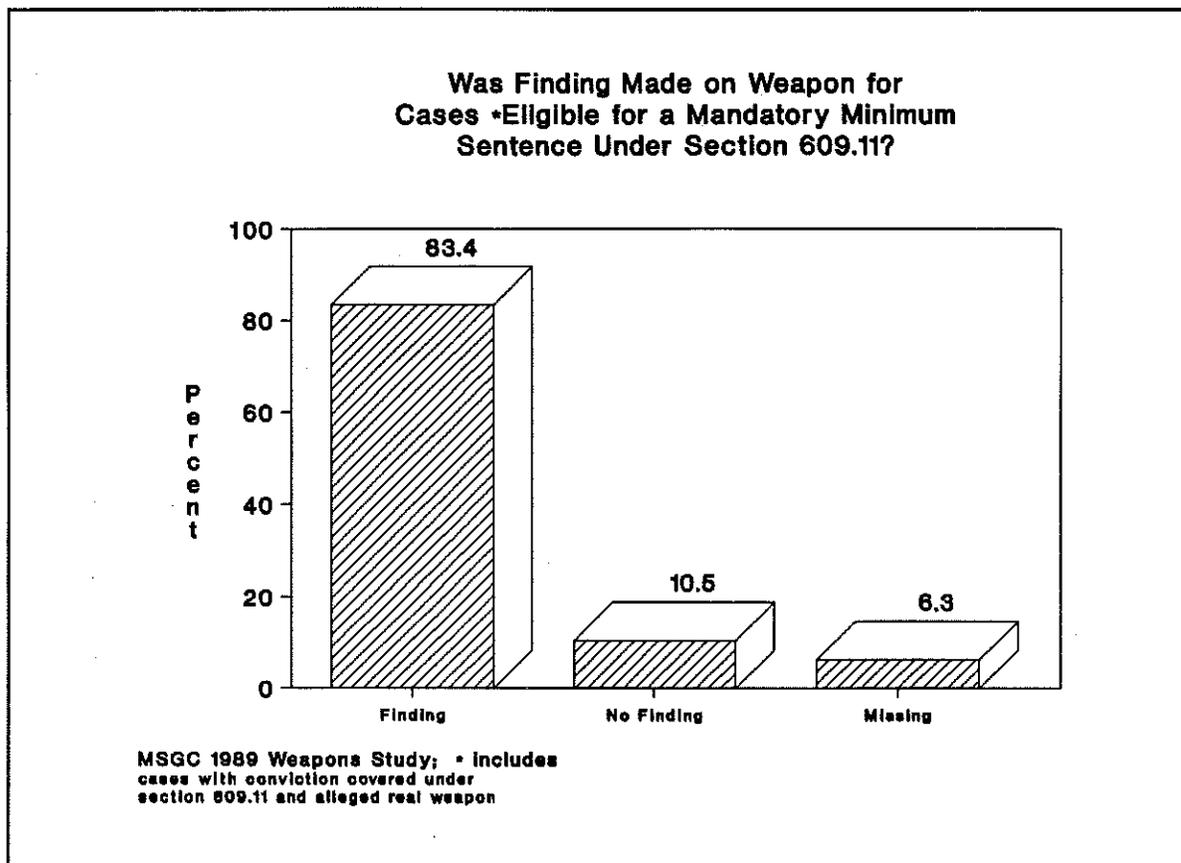
county area. With this pool of data we are able to determine the extent to which weapons were allegedly involved in crimes against the person. Just over 40% of the cases (550) allegedly involved a weapon. As is noted in the Appendix, weapons were more likely to be involved in homicide and assault offenses and were rarely involved in sex offenses. Also, weapons were more often simply possessed or used to threaten the victim (60%) as opposed to causing or attempting to cause injury. In addition, 7.1% of all cases allegedly involving weapons actually involved fake or feigned weapons.

Before reviewing the weapons cases to determine to what extent practitioners complied with the requirements of the statute, we must first eliminate those alleged weapons cases that would not be eligible for sentencing under the mandatory minimum statute. There were 39 cases that involved feigned or fake weapons and thus would not come under mandatory minimum sentencing for dangerous weapons. In addition, there were 64 other cases where the offense for which the offender was convicted of was not an offense covered under section 609.11, subd. 9. Most of these offenders were convicted of Terroristic Threats (40) and several offenders (12) were convicted of a theft crime.

It should also be noted that the alleged weapon involvement relates to the most serious alleged offense in each case. The offense of conviction may not necessarily even relate to the most serious alleged offense because there could have been separate offenses for which the offender was being prosecuted for at the same time.

As described above, in the 550 cases where weapon involvement was alleged, 103 cases were eliminated because the cases involved a fake or feigned weapon or the conviction offense was not included under section 609.11. Among the 447 cases eligible for a mandatory minimum sentence, a finding of weapon involvement was made in 83.4% of the cases, no finding was made in 10.5% of the cases, and in 6.3% of the cases we were unable to determine whether a finding was made due to missing information.

It is interesting to examine what offenses these offenders allegedly committed as well as what offenses they eventually were convicted of. Under the sentencing guidelines system, weapon involvement is only one factor that would affect the presumptive sentence. Weapon involvement may not be admitted to, resulting in no mandatory minimum prison sentence, yet the conviction offense may still result in a presumptive prison sentence under the guidelines. The following section analyzes the most serious alleged offenses and the conviction offenses.



Most Serious Alleged Offense

The above graph indicates that a finding was made as to weapon involvement in the majority of cases where a real weapon was allegedly involved and the conviction offense was included under section 609.11, subd. 9. Data regarding alleged weapon involvement relate to the most serious alleged offense for each case in this study. This section addresses the question of whether there are differences in the types of the most serious alleged offenses in cases where a finding was made on weapon involvement compared to those cases where there was no finding?

Weapon Finding Made

In a substantial proportion (39.9%) of the cases where a weapon finding was made, the offender had allegedly committed a 2nd Degree Assault. The statutory definition of Assault in the 2nd Degree is "whoever assaults another with a dangerous weapon." A finding of weapon use **must** be made by the court in order to convict someone of this crime. A conviction for Assault in the Second Degree carries a presumptive prison

sentence under the guidelines regardless of the criminal history of the offender because the mandatory minimum **always** applies.

Another 28.7% of these offenders allegedly committed an Aggravated Robbery. The statutory definition of this crime is "whoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another." It would not be absolutely necessary for the court to make a finding of weapon use in order to convict someone of this crime because injuring the victim or the use of fake or feigned weapons could also result in a conviction for Aggravated Robbery. A conviction for Aggravated Robbery carries a presumptive prison sentence under the guidelines regardless of the criminal history of the offender and regardless of whether the mandatory minimum applies.

Nearly 14% of the offenders admitting weapon involvement had allegedly committed a murder or manslaughter offense. The statutory definitions of murder or manslaughter do not implicitly describe a dangerous weapon as an element of the offense. All murder and most manslaughter offenses carry a presumptive prison sentence under the guidelines regardless of the criminal history of the offender and whether the mandatory minimum applies.

No Finding of Weapon

In contrast, in the 46 cases where a finding was not made, Aggravated Robbery was the most common serious alleged offense (18 cases or 39.1%). Another 6 offenders had allegedly committed 2nd Degree Assault and 13 offenders had allegedly committed some type of burglary. Only 2 of these offenders had allegedly committed some type of homicide offense.

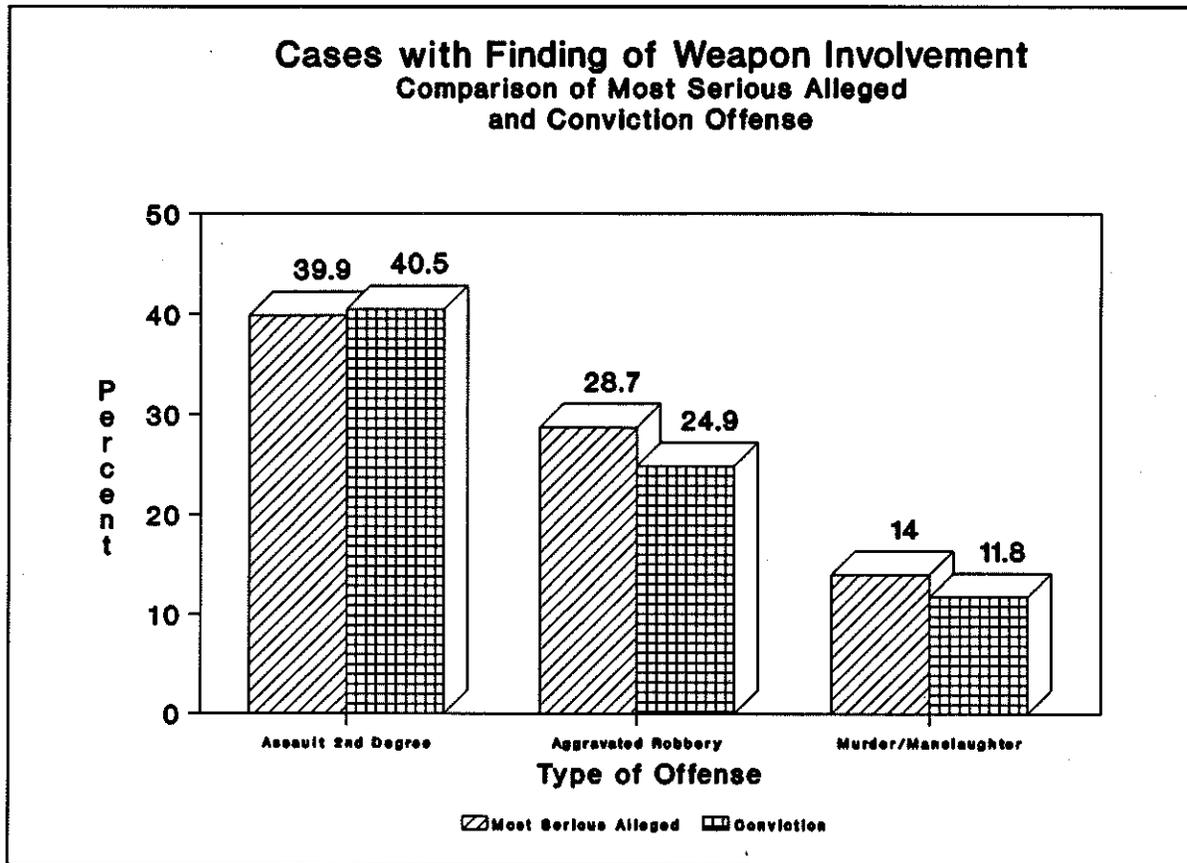
Conviction Offense

The previous section examined the relationship between weapon findings and the most serious alleged offense. This section examines the actual conviction offenses for those cases eligible for mandatory minimum sentencing under section 609.11.

Weapon Finding Made

Among those cases with a weapon finding, a similar pattern of conviction offenses was found as were alleged to have occurred. In 40.5% of these cases, the offender had been convicted of Assault in the 2nd Degree. Another 24.9% of these cases resulted in convictions for Aggravated Robbery and 11.8% of the cases resulted in convictions for murder or manslaughter. The following chart shows this comparison between the

most serious alleged offense and the conviction offense for cases with a finding of weapon involvement.



No Finding of Weapon

A different pattern of conviction offenses compared to alleged offenses appears when we look at those cases where no finding was made as to weapon use. Among the 46 cases in this group, 15 cases or 32.6% resulted in convictions for Simple Robbery, 14 cases or 30.4% were Burglary convictions, 4 cases were Aggravated Robbery convictions, and 6 cases were convictions for Assault in the Third Degree. Convictions for Simple Robbery, Assault in the Third Degree, and certain burglary crimes do not carry a presumptive prison sentence under the guidelines unless the offender has a criminal history or a mandatory minimum sentence applies.

Other Characteristics

The following section will examine other ways in which those eligible cases where a finding of weapon involvement was made differed from those cases where a weapon was allegedly involved but no finding was made. While these differences are interesting they are not significant because of the small number of cases where no finding of weapon involvement was made (46).

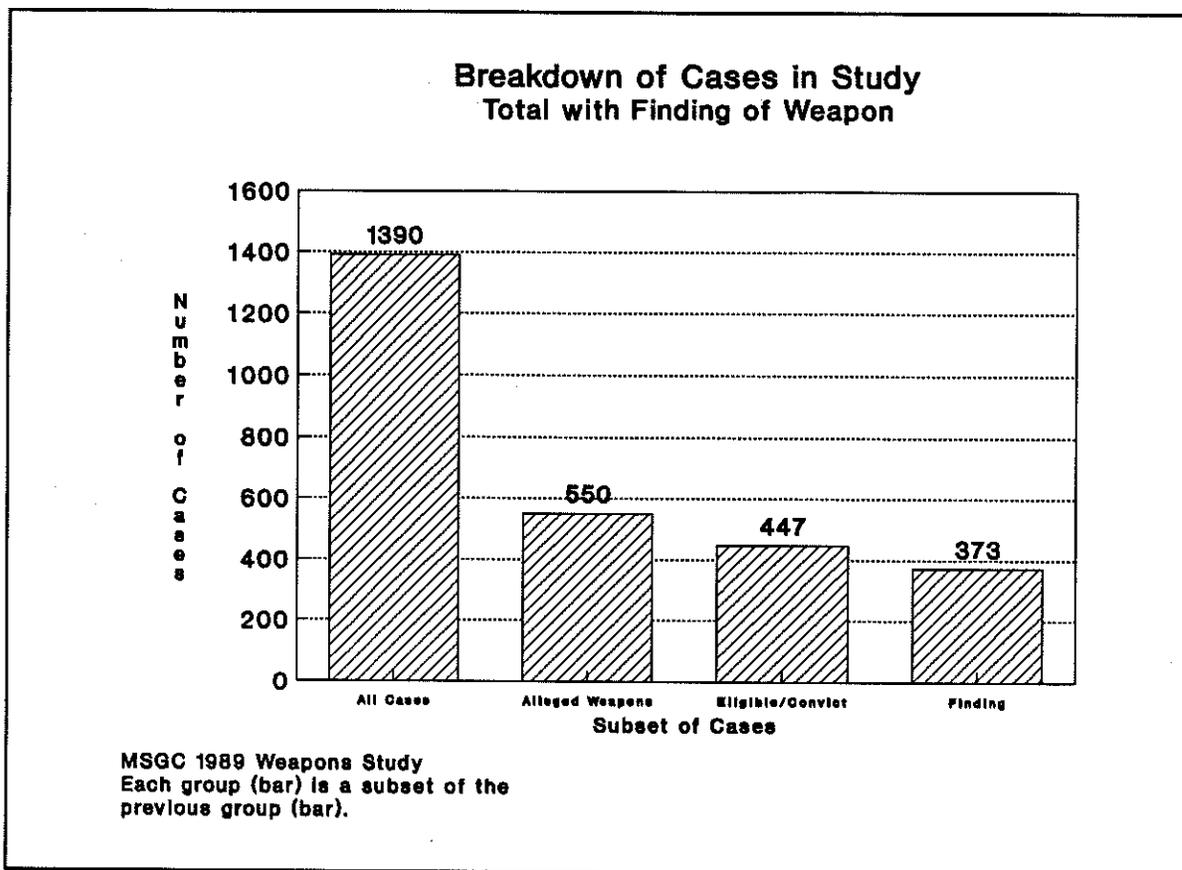
In 44.8% of the cases with findings, the dangerous weapon was used to cause injury or death compared to 21.7% of the cases without a finding of weapon involvement. Nearly 83% of the cases with no finding did not result in any significant bodily harm to the victim compared to about 73% of the cases with findings. More of the cases with findings involved firearms (40.2%) than did the cases without a finding (15.2%). In fact, a finding of weapon involvement was made in over 90% of all the eligible cases allegedly involving a firearm.

Another characteristic that differs somewhat is that nearly 57% of the cases with no finding involved a victim who was a stranger to the offender compared to only 47% of the cases with a finding. This figure is likely related to the differences in the types of offenses committed by each group. A greater proportion of cases where a finding was not made were robberies. Robberies were more likely to involve a victim who was a stranger than were other types of crimes.

Criminal history scores tended to be concentrated differently for the two groups of offenders. While 41% of the offenders with no finding had criminal history scores of 1 to 3 compared to 32% of those offenders with weapon findings, a slightly greater proportion of the offenders with findings had a criminal history score of 4 or more (19.3%) than did the offenders without weapon findings (13%). Just a slightly greater proportion of those offenders with weapon findings had no criminal history score (48.5%) compared to those without a finding (45.7%).

Summary

In summary, the study indicates that in a large majority (83.4%) of cases eligible for mandatory minimum sentencing under section 609.11, prosecutors and courts complied with the statutory requirement to make a finding of weapon involvement. There was no finding of weapon involvement in only 10.3% of the eligible cases and in 6.3% of the cases the information was missing. The graph below displays the breakdown of cases in the study by alleged weapon involvement to whether a finding was made. Each group (bar) is a subset of the previous group.



Generally, the most serious alleged offenses for cases with no weapon finding did not appear to be as serious as the alleged offenses for cases where a finding was made. This was also true with regard to victim injury and the type of weapon involved. In fact, in over 90% of the eligible cases allegedly involving a firearm, a finding of the weapon was made.

Questions 3 and 4: Are prosecutors and/or judges filing motions to seek waiver of the mandatory minimum sentence and to sentence without regard to the mandatory minimum and are reasons given for the court's departure?

In answering these questions, it is necessary to look at just those cases where a finding of weapon involvement was made and the offense of conviction was one of the offenses covered under mandatory minimum statute for weapons offenses; i.e., Minn.Stat. 609.11. (See Appendix for a listing of the offenses covered under this provision.)

Of the 1,390 cases in this study, 550 allegedly involved a dangerous weapon. Of the 550 alleged weapons cases, 373 resulted in finding of weapon involvement by the court and a conviction for an offense covered under the mandatory minimum law. The following section focuses on these 373 cases with regard to whether the offenders were sentenced according to the mandatory minimum, whether a motion was made to sentence without regard to the mandatory minimum, and whether reasons were articulated for sentencing without regard to the mandatory minimum.

Also, it is important to realize that the analysis presented below essentially represents sentencing practices in Hennepin county, and to some extent Ramsey county. About 61% of the cases were sentenced in Hennepin county and another 16% were sentenced in Ramsey county. The other 6 counties, combined, only account for 23% of the 373 cases examined below and any one of these counties accounts for less than 8% of the cases.

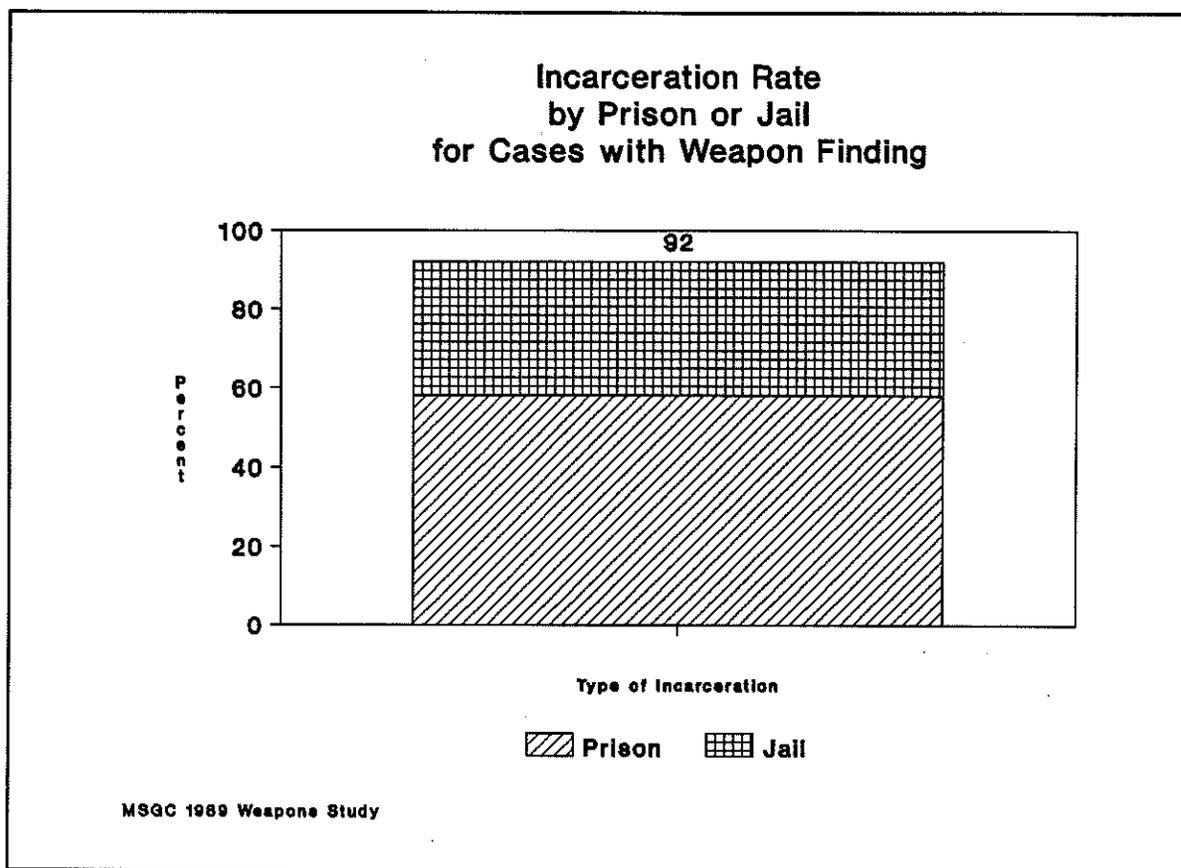
Sentenced to Incarceration

Of the 373 cases resulting in a finding of weapon involvement which were subject to the mandatory minimum provision under section 609.11, over 92% were incarcerated. About 63% of these offenders were sentenced to prison and the other 37% were incarcerated in local jails or workhouses. The graph below displays this breakdown.

Prison

Two hundred sixteen of the 373 offenders were sentenced to prison. These offenders were most often convicted of Aggravated Robbery (39%), Assault in the 2nd Degree (22%), or some type of homicide (20%). Of particular interest is that in 83% of these cases, the sentencing guidelines would have recommended a prison sentence regardless of the mandatory minimum. In other words, there were 179 cases that fell in grid cells below the dispositional line. Of the 37 cases that fell above the dispositional line, the majority of them were convictions for Assault in the 2nd Degree (30 cases).

The average prison sentence for these 216 offenders was 65 months. There was a fair number of durational departures among this group of offenders. Nearly 22% were downward durational departures and over 12% were upward durational departures. Among the 47 cases involving a downward durational departure, 6 were simply due to a misapplication of the sentencing guidelines, 11 were solely a result of a plea negotiation, and in 5 cases we were not able to determine the reasons for departure. The reasons cited for the other mitigated durational departures included "victim aggressor", "offender played a minor or passive role", and "victim recommended." The reasons cited for aggravated durational departures included "particular cruelty", "victim vulnerable", "crime more onerous than usual", "victim injury", and "crime committed in



victim's zone of privacy." It does not appear that any of the cases with downward durational departures were for less than the mandatory minimum.

The vast majority of offenders sentenced to prison were males (93%). This is not unusual since 95% of the offenders in the study were males. African Americans made up 34% of the offenders in the study. Nearly half (49.8%) of the offenders sent to prison were African American but this difference is explainable because of the types of offenses committed by African Americans and whites.

As noted in the Appendix, a higher proportion of African Americans allegedly committed offenses with dangerous weapons as compared to whites; 47% compared to 34% respectively. Also, nearly 52% of all offenders convicted of Aggravated Robbery were African American. Aggravated Robbery nearly always involves a weapon and most aggravated robbers were sentenced to prison. The imprisonment rate for aggravated robbers was actually slightly higher for whites than for African Americans, 88% and 85% respectively. On the other hand, white offenders were more typically convicted of sex offenses (35%). Most sex offenses did not involve weapons and involved child victims and offenders with a significant relationship to the victim or in a position of authority over the victim.

The offenders who were sentenced to prison were more likely to be unemployed at the time of offense than those who were given a mitigated dispositional departure, 68% and 40% respectively. Also, 91% of offenders sentenced to prison were unemployed at time of sentence compared to 61% of those offenders with mitigated dispositional departures.

The incidence of chemical abuse was somewhat higher among offenders sentenced to prison; 74% compared to 66% of those who did not go to prison. Yet, a slightly higher proportion of offenders given mitigated dispositional departures were under the influence of alcohol or other drug at the time of the offense; 55% compared to 47% of those who went to prison.

Just slightly more of the prison cases allegedly involved a firearm (42%) than was the case with the departures (38%). However, a higher proportion of the prison cases involved victim injury of at least substantial bodily harm than did the departure cases; 29% and 19% respectively. In addition, in the departure cases, over 19% involved some degree of victim precipitation compared to only 8% of the prison cases. Victim precipitation would include situations where the victim initiated the occurrence of the offense or had some part in instigating the offense; e.g., a bar room fight where the victim started the fight.

A higher proportion of the victims of the offenders who were sentenced to prison were strangers to the offender (55%) than were the victims of the offenders who received departures (36%). This, in part, is a result of most of the prison cases involving Aggravated Robbery which is the offense in this study most likely to involve a victim who is a stranger to the offender.

Plea negotiations occurred less frequently for those offenders sentenced to prison than those who received a mitigated dispositional departure. It should first be noted that about 14% of the prison bound offenders were convicted by a trial compared to only 3% of the departure cases. About one third of the offenders who went to trial were convicted of a homicide offense and another one third were convicted of Assault in the 2nd Degree. All but three of these offenders were convicted of the most serious alleged offense.

Among the offenders who did not go to trial, 67% of the prison cases involved a plea negotiation compared to 86% of the departures. The plea negotiations typically involved a charge and a sentence negotiation for both groups. However, the proportion of sentence negotiations among the prison offenders was much smaller than it was for the departure offenders; 47% and 78% respectively.

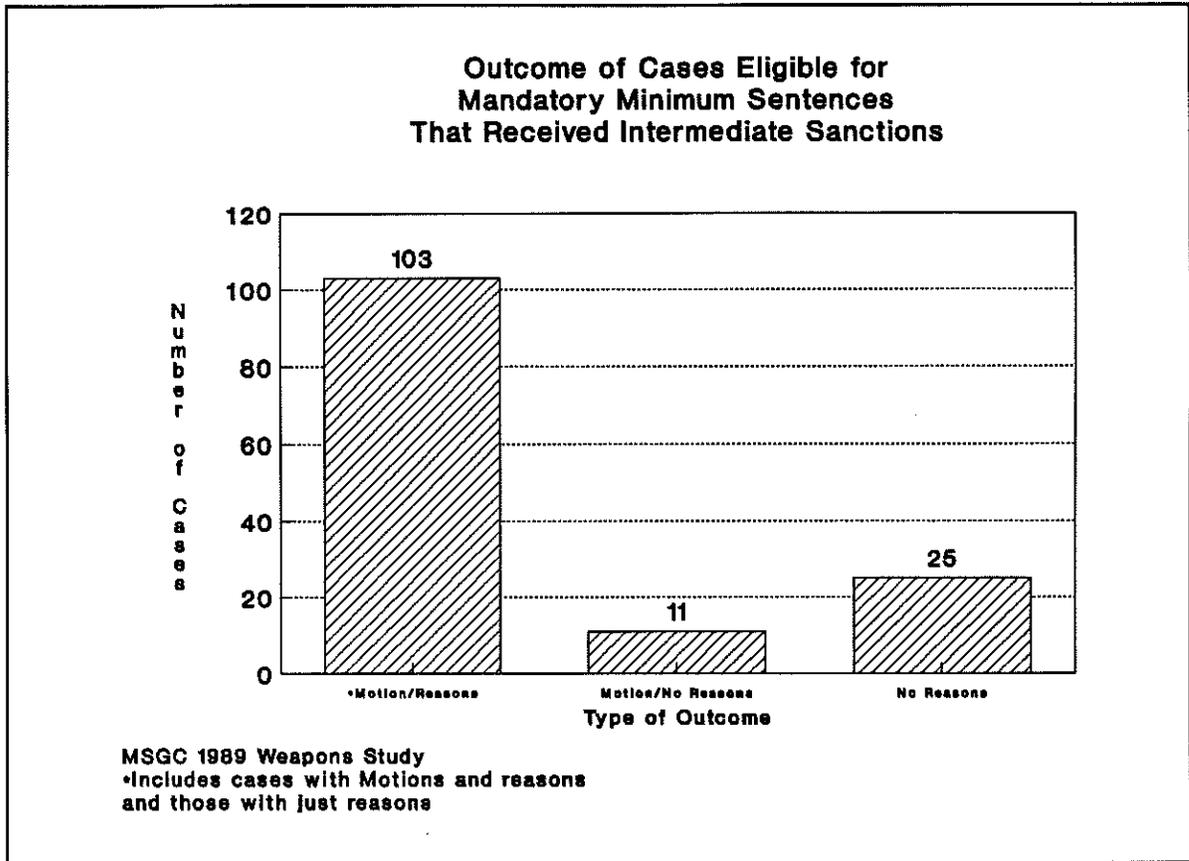
Mitigated Dispositional Departures (Sentenced without Regard to the Mandatory Minimum)

While nearly all of the offenders eligible for a mandatory minimum prison sentence were sentenced to some type of incarceration, about 37% or 139 offenders were not sentenced to a state prison and received a downward dispositional departure. By examining this group of offenders we can address the second set of questions raised by the legislature. The mandatory minimum statute and case law allows for judges to sentence without regard to the minimum prison term when a prosecutor's motion is accepted by the court and reasons are given. The judge can also choose to sentence without regard to the mandatory minimum if substantial factors exist and are cited. Among the 139 cases, how often was a motion made and were reasons given when the offender was not sentenced to prison?

In the majority of these cases (74.1%) the requirements of the mandatory minimum provision under section 609.11 were satisfied either by a motion from the prosecutor with reasons or else by reasons stated by the court. The most common reason for sentencing without regard to the mandatory minimum and departing from the presumptive sentence was related to the offender's amenability to treatment or probation. Over half of all these cases cited this factor as at least one of the reasons. Other common reasons included: "victim aggressor", "offender played a minor or passive role", and "recommendation of victim."

Among the other 36 cases, motions were made by the prosecutor in 11 of the cases to sentence without regard to the mandatory minimum but no specific reasons were cited. Reasons were not cited in any of these 36 cases other than in many of these cases a statement that the sentence was part of a plea negotiation or was an agreement to sentence without regard to the mandatory minimum.

Nine of these 36 cases involved errors on the sentencing worksheet where the sentencing judge believed that the presumptive sentence under guidelines was a stayed sentence. While commission staff had corrected these worksheets, the errors had not been caught until after sentencing. Apart from these 36 cases, there were also 19 more cases where the presumptive guidelines sentence indicated on the sentencing worksheet was a presumptive stayed sentence. If indeed a finding of weapon use had been made in these 19 cases, the sentencing worksheet had been incorrectly completed but staff was not aware that the sentencing worksheet was incorrect until this study was completed. This situation is discussed in greater detail below in the section that focuses on Assault 2nd Degree. The graph below displays the outcome of the 139 cases eligible for mandatory minimum prison sentences that received intermediate sanctions.

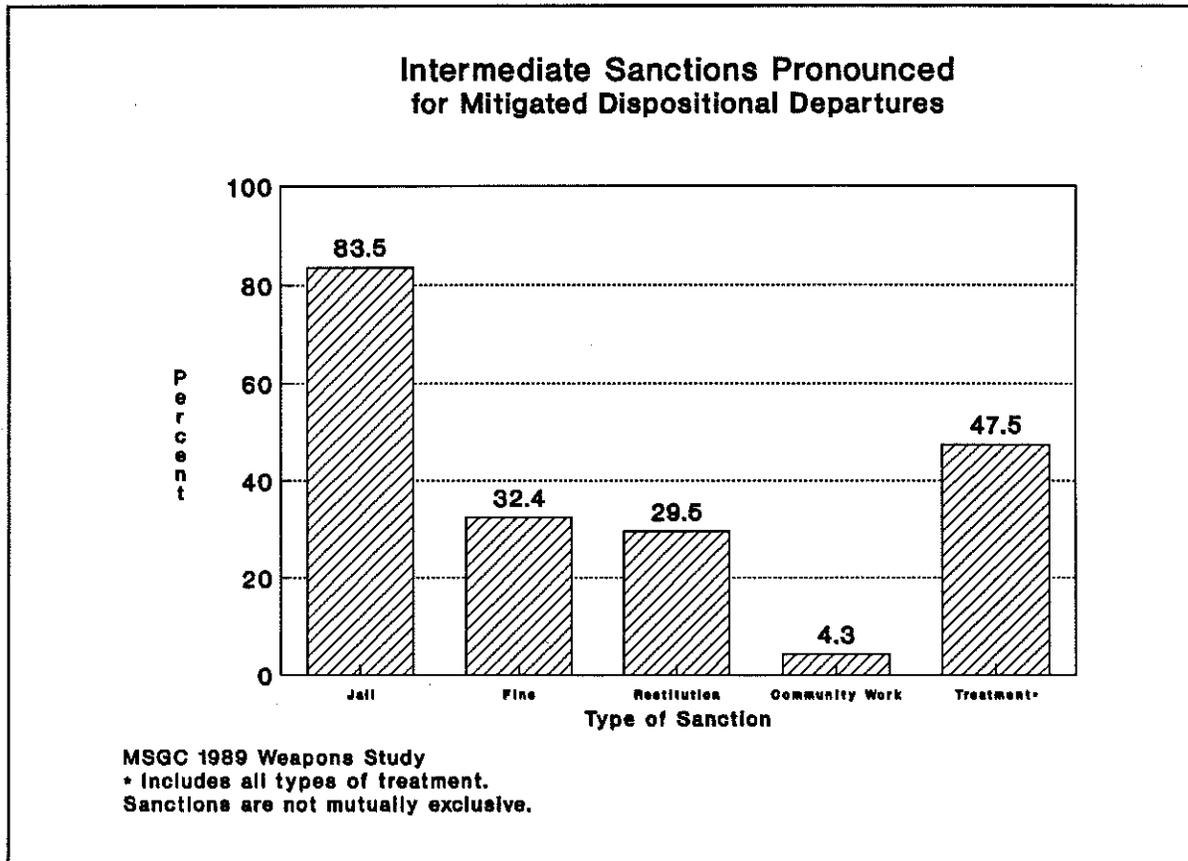


It is interesting to consider where the offenders who received stayed sentences were situated on the sentencing guidelines grid. Recall that 83% of the prison cases were situated at a place on the sentencing guidelines grid where prison was presumed regardless of the mandatory minimum. Conversely, nearly 70% of the stayed cases were situated on the grid where the guidelines would have presumed a stayed sentence but for the mandatory minimum requirement.

It is also important to recognize the types of intermediate sanctions that the offenders who received mitigated sentences were required to serve. Judges pronounced jail as a condition of the stayed sentence in the vast majority of these cases (84%), with 24% of these offenders to serve their time with work release. In fact, nearly all (96.4%) of these offenders actually served some time in jail, pre or post sentence, with an average time actually served of 169 days.

Other intermediate sanctions pronounced by judges for these offenders included: 32.4% received a fine, 29.5% received restitution, 4.3% received community work service, and 47.5% were required to complete some type of treatment program with another 31.7% required to follow the recommendation of the probation officer regarding treatment. The graph below displays the proportion of offenders where the particular sanction was

pronounced by the judge. These sanctions are not mutually exclusive and offenders typically are given more than one sanction.



Assault 2nd Degree

Findings

A large proportion of the alleged weapons cases with findings were convictions for Assault 2nd Degree (151 cases or 37.4%). The offense of Assault in the 2nd Degree is unique when analyzing the first two questions raised by the legislature. With regard to whether prosecutors are placing on the record any evidence tending to show that a weapon was involved, the answer is always yes with an Assault 2nd Degree conviction. A prosecutor must establish weapon use in order to obtain a conviction for Assault 2nd Degree because the offense is defined as assault with a dangerous weapon. Likewise with the question of whether the courts are determining on the record the question of weapon involvement, the answer is always yes with an Assault 2nd Degree conviction.

For purposes of this study, when the conviction was for Assault 2nd Degree, it was considered that the court established a finding of weapon use. However, among these assault cases, it appears that the court did not always interpret that a finding had been made or was "permanent". It appears that in at least some of these assault cases, the parties involved in the cases believed that the allegation of weapon use could be "dismissed" even though the individual was pleading guilty to an offense defined as "assault with a dangerous weapon".

There were actually 34 of the 151 cases with convictions for Assault 2nd Degree where researchers could not find evidence of an explicit finding of weapon use on the record. The "finding" was assumed for purposes of this study because of the definition of Assault 2nd Degree includes the use of a dangerous weapon. Below is an excerpt from a sentencing transcript that illustrates what might be happening in these cases where a "finding" of weapon use is unclear:

Prosecutor: "Your honor, we have reviewed a presentence investigation and have discussed this matter in chambers. For the record, the State would be dismissing the allegation of 609.11 in this matter and now we ask the Court to proceed to sentencing."

The Court: "So that would change the probation report to 21 months stayed?"

Prosecutor: "That's right, your Honor."

The Court: "I am going to note it here. I am going to ask the probation records be changed accordingly. I have changed the copy I have here. Anything further, other than what we have discussed in chambers before we impose sentence?"

This example demonstrates that even though the court has already established weapon use by the conviction for Assault in the 2nd Degree, the court, the prosecutor, and evidently the defense attorney, all believed that the "allegation of 609.11" or weapon use could simply be dismissed. Furthermore, they all believed that this action would **change** the presumptive sentence from 21 months in prison to 21 months stayed. Thus, when the court pronounced a stayed sentence as opposed to a prison sentence, the court did not recognize this sentence as a departure from the presumptive sentence.

Probation officers are instructed to indicate on the sentencing worksheet weapon use or possession whenever a finding is made. They are further instructed to **always** indicate weapon use for Assault 2nd Degree. For all cases with convictions covered under Minn. Stat. § 609.11 where a finding has been made as to weapon involvement, the sentencing guidelines presume prison, regardless of where the offender falls on the

sentencing guidelines grid. Probation officers are instructed to **not** change the sentencing worksheet to correspond to the type of negotiation noted in the transcript above. However, these types of plea negotiations create obvious conflict between the probation officer who is trying to properly apply the sentencing guidelines and the mandatory minimum law and the court and prosecutor who may have a different interpretation of how the guidelines and the mandatory minimum laws work.

In situations such as this example, the prosecutor and the court are not meeting the requirements of the mandatory minimum statute for weapons offenses and are not understanding the sentencing guidelines policy with regard to convictions involving a mandatory minimum. The following example illustrates a similar situation except that the judge is apparently confused by the interpretation of the defense attorney.

The Court: "Now, the 609.11 was --?"

Defense Attorney: "It was dismissed, Your Honor, and the State has filed a sentencing memorandum."

The Court: "But these matters are still within a posture of commitment, even with dismissal of the 609.11?"

Defense Attorney: "No, Your Honor, they are Level 6 offenses then." (A severity level 6 offense would presume a stayed sentence if there was no mandatory minimum provision and little or no prior criminal record.)

The Court: "I just wanted to be sure on that. . ."

In this example the judge apparently thought that a conviction for Assault 2nd Degree resulted in a finding of weapon use on the record and therefore would require a prison sentence. The defense attorney understood otherwise and assured the judge that guidelines would **not** presume prison. Thus, the judge did not realize that a stayed sentence would require reasons for departure to satisfy the mandatory minimum statute and the sentencing guidelines.

These erroneous interpretations of the mandatory minimum law and the application of the sentencing guidelines raise concern and should be addressed. The next section will discuss more about the requirement for the prosecutor or court to make a motion to sentence without regard to the mandatory minimum.

Motions

The most noteworthy fact about those weapons cases that were eligible for a mandatory minimum under Minn. Stat. § 609.11 yet did not result in a prison sentence was that the vast majority were for convictions of Assault in the 2nd Degree (71.2%).

Among the 373 offenders in the study who were eligible for a mandatory minimum sentence under Minn. Stat. § 609.11, 151 or 40.5% were convicted of Assault 2nd Degree. Most offenders convicted of Assault 2nd Degree did not go to prison while about 34% of these offenders did receive a prison sentence. There were some indicators that would suggest that the cases resulting in prison sentences were more serious in nature and in the harm to the victim.

First, twice as high a proportion of the prison cases than the stayed cases involved an alleged offense that was more serious than the conviction offense; 21.3% compared to 11.1%. Second, a slightly higher proportion of the offenders who went to prison, used the weapon to injure the victim as opposed to threatening the victim; 52% compared to 41%. Third, 36.5% of the cases where the offender went to prison involved more than one victim compared to 23.2% of those cases with stayed sentences. Last, nearly twice as high of a proportion of the prison cases involved substantial or great bodily harm to the victim than was true among stayed cases; 25% compared to 13.1%.

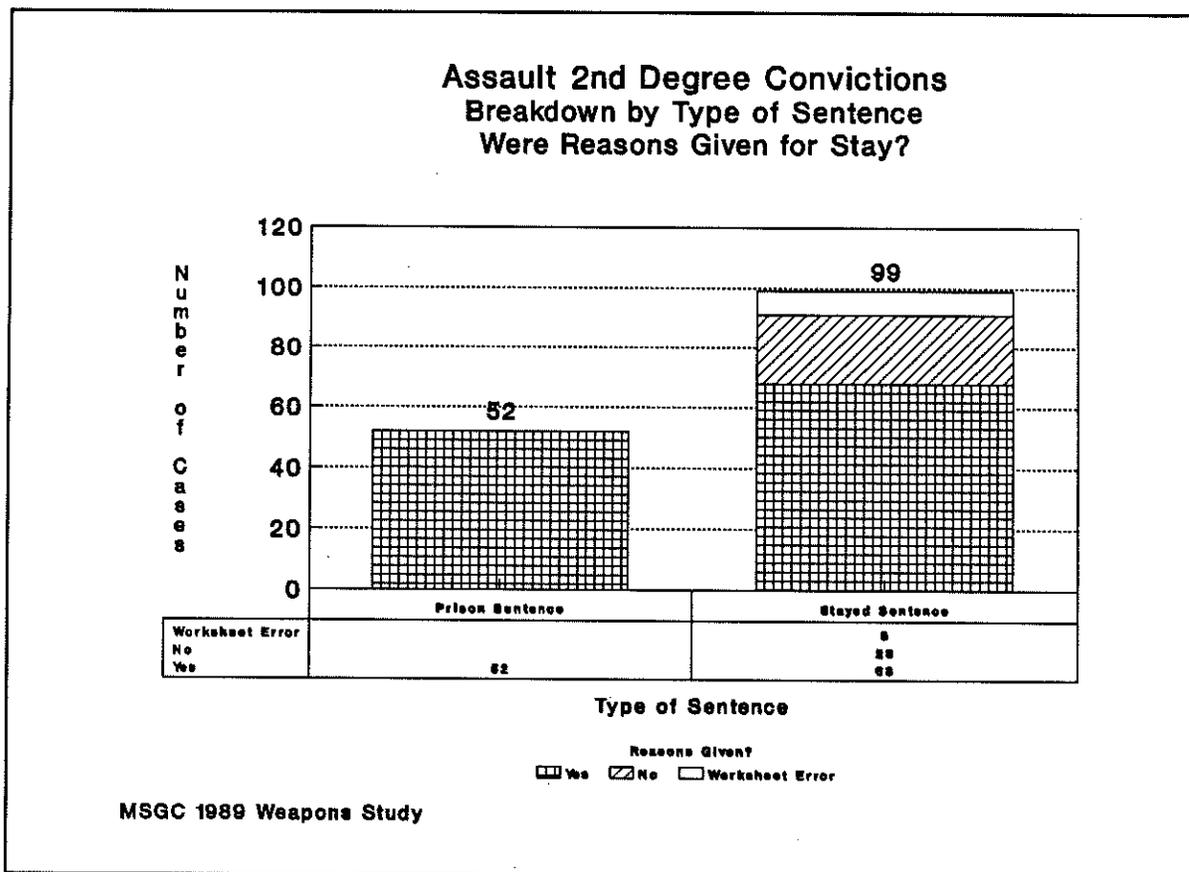
Other factors about the offenders and the case circumstances might also explain the different outcomes. Offenders who were given prison sentences were more likely to be unemployed both at time of the offense and at the time of the sentencing. Differences in employment rates between those offenders given prison and those offenders given stayed sentences existed prior to the sentencing guidelines and have continued to exist, although not to as great of an extent.

Similar to the pattern for all weapons offenders who were sentenced to prison, a higher proportion of those convicted of Assault 2nd Degree and sentenced to prison (80.8%) abused chemicals than did those who did not go to prison (66.7%). Yet, again, a higher proportion of the offenders given stayed sentences were under the influence of alcohol or some other drug at the time of the offense; 69.7% compared to 57.7%. The reasons for departure cited by the court would indicate that the judge concluded that many of the offenders who received a stayed sentence were amenable to treatment.

Interestingly, approximately the same proportion of Assault 2nd Degree convictions that resulted in prison sentences involved firearms as did those cases that resulted in stayed sentences. As was demonstrated by the overall statistics at the beginning of the report, alleged weapons offenses involving firearms resulted in a lower incidence of serious bodily harm than did other types of weapons offenses. This was also the case among these Assault 2nd Degree convictions.

The above analysis helps us to understand why there are differences in the sentences among convicted Assault 2nd Degree offenders. In returning to the question of whether judges and prosecutors are following the requirements of Minn. Stat. § 609.11, we further examine the Assault 2nd Degree convictions resulting in stayed sentences.

In order to address the legislative concerns, we must look at whether reasons were given for the stayed sentences. A considerable proportion (31.3%) of these cases did not have specific reasons for disregarding the mandatory minimum. In 23 of the 99 Assault 2nd Degree convictions that resulted in a stayed sentence, "plea negotiation" was the only reason cited or else no reason was apparently given. It is quite possible that in these cases, given the discussion above regarding findings on Assault 2nd Degree cases, the court believed it could actually "undo" its finding of weapon use by "dismissing" the 609.11 cite and that reasons for departure would be unnecessary. In addition, another 8 cases involved errors on the sentencing worksheet that evidently indicated to the judge that the presumptive sentence was a stayed sentence. The outcome for all cases with a conviction for Assault 2nd Degree is displayed below.



These data on Assault 2nd Degree convictions indicate some confusion on the part of practitioners as to the requirements of the mandatory minimum law and confusion regarding the appropriate application of the sentencing guidelines. This confusion is further illustrated by the remaining 19 cases among the 373 cases with weapon findings that were briefly mentioned above in this report. In these 19 cases, researchers concluded that a finding of weapon involvement had been made by the courts. Yet, the sentencing worksheet did not indicate the weapon involvement and the presumptive sentence indicated on the worksheet was a stayed sentence.

We are uncertain why this misapplication of the sentencing guidelines occurred in these cases. Perhaps the probation officer did not understand the requirements of the statute and thus completed the worksheet according to where the case fell on the sentencing guidelines grid. Perhaps the prosecutor agreed to "dismiss" the 609.11 and instructed the probation officer to ignore the weapon for purposes of sentencing. None the less, these cases indicate further confusion among practitioners as to the requirements of the law and the sentencing guidelines.

Summary

Among the offenders who were eligible for a mandatory minimum prison sentence under Minn. Stat. § 609.11, nearly all were incarcerated and the majority were sentenced to prison. Among those who were not sentenced to prison, the court provided reasons for departure in the majority of the cases (74%). In most of the remaining stayed cases, "plea negotiation" was the only reason cited for not sentencing according to the mandatory minimum and in some of these stayed cases, the correct presumptive sentence was not properly communicated to the sentencing judge.

While compliance with the statutory requirements and the requirements of sentencing guidelines policy is quite high, there appears to be some confusion among practitioners as to how the requirements of the statute and the policy of the sentencing guidelines interact. This confusion is indicated by the analysis of the Assault 2nd Degree convictions and those cases where the sentencing worksheets did not indicate a presumptive prison sentence even though the record indicated a finding of weapon involvement had been made. As was discussed at the beginning of the report, old habits likely exist with regard to the practice of simply dismissing the 609.11 "charge" as could be done under previous law. These misinterpretations are coupled with the general overall problems of incorporating any mandatory minimum law with sentencing guidelines policy. It would appear that the lack of reasons for sentencing without regard to the mandatory minimum stems from the difficulties in understanding or in recognizing the state's sentencing policy for weapons offenders.

V. COMMISSION ACTION AND RECOMMENDATIONS

The Commission believes that because of the high level of compliance by practitioners with the requirements of section 609.11 there is not a need for any legislative change at this time. Findings of weapon involvement were made in the large majority of cases where the offender could be eligible for a mandatory minimum sentence. Nearly all of these eligible offenders were incarcerated and most were sentenced to prison. In those cases where the decision was made to sentence without regard to the mandatory minimum, reasons were usually cited.

The Commission recognizes, however, that there is some confusion regarding the proper application of the mandatory minimum law and its interaction with sentencing guidelines policy. The Commission believes the following action should be taken to communicate the proper policy application to practitioners to further improve on the compliance rates:

- Pursue training opportunities at various criminal justice conferences held annually in Minnesota such as:
 - Criminal Justice Seminar
 - Sentencing Institute for Judges
 - Minnesota Corrections Association
- Widely distribute this report to judges, prosecutors, public defenders, and probation officers.
- Amend the sentencing guidelines to further emphasize the sentencing guidelines policy with regard to mandatory minimums and to particularly emphasize the requirement for the court to place on the record and file with the Sentencing Guidelines Commission the rationale behind disregarding the mandatory minimum sentence.

APPENDIX

Overall Summary of all Cases

Alleged Weapon Involvement

In 41% of the cases in this study, some type of dangerous weapon was allegedly involved or feigned. In the 550 cases where a dangerous weapon was allegedly involved, 35% involved firearms and 41% involved knives.

In 40% of the cases where a dangerous weapon was allegedly involved, the weapon was used to injure or cause death or was used in an attempt to injure. In the remaining 60% of the weapons cases, the weapon was simply in the possession of the offender or was used to threaten the victim. It is interesting that nearly twice the proportion of cases involving non firearm type weapons resulted in serious bodily injury when compared with those cases allegedly involving firearms; 61.1% compared to 31.9%.

Offense Type

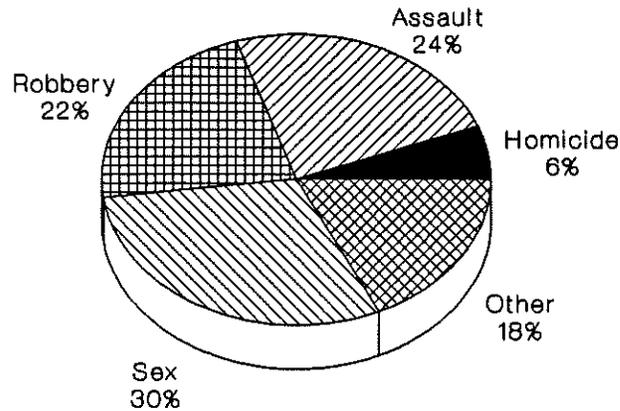
Sex offenses were the most serious alleged offense in 30% of the 1,390 cases in this indepth data set. Sex offenses include all four degrees of criminal sexual conduct and include child sexual abuse as well as violent rapes. The vast majority of criminal sexual conduct cases were for child sexual abuse and in many cases involved intrafamilial relationships. About 24% of the cases involved an alleged assault, 22% involved an alleged robbery, and nearly 5% allegedly involved some type of homicide offense. The graph below demonstrates the distribution of cases by the type of the most serious alleged offense.

Dangerous weapons were more likely to be involved in alleged murders, manslaughters, and assaults. A weapon was allegedly involved in about 81% of the cases where a homicide (excluding criminal vehicular homicide) was the most serious alleged offense and in about 71% where an assault was the most serious alleged offense. Weapons were also typically involved in the cases when the most serious alleged offense was a robbery (58%). In contrast, weapons were rarely involved in cases where the most serious alleged offense was criminal sexual conduct (9%). The majority of cases involving criminal sexual conduct in the study were for child sexual abuse where the offender was typically in a position of authority over the victim.

Criminal History Scores

The criminal history of an offender is calculated for purposes of sentencing under the sentencing guidelines. The criminal history score primarily takes into account prior felony sentences but also includes a measure of the offender's prior misdemeanor

Distribution of Cases by Most Serious Alleged Offense



MSGC 1989 Weapons Study

record, their custody status at the time of the offense, and includes a measure of youthful offenders' juvenile record.

The criminal history scores of the offenders in this study are comparable to those of the population of offenders sentenced for felony convictions in 1989. Just over 50% of the offenders in this study had no criminal history score, while around 34% of the offenders had a criminal history score of 1 to 3, and the remaining 15% had a criminal history score of 4 or more.

There were some differences in criminal history scores between the offenders in this study who allegedly used or possessed weapons and those who did not. Alleged weapons offenders tended to have somewhat higher criminal history scores. While about 34% of both groups had criminal history scores of 1 to 3, 20% of the alleged weapons offenders had criminal history scores of 4 or more compared to 12% of those offenders who did not allegedly use or possess weapons.

Victim Demographics

Information regarding the victims of the offense was not always available or complete. In three fourths of the cases there was only one victim. These were two victims in 15% of the cases and at least 3 victims in remaining 10% of the cases. In 36% of the cases, the victim(s) was a male and in 52% of the cases the victim(s) was a female. In 10% of the cases, there was at least one male and one female victim. In 2% of the cases, it was unknown whether the victim was male or female.

While there were more female than male victims in this study, it was more common for males to be victim in an offense where a weapon was allegedly used or possessed than it was for females. In cases with male victims, 55.4% allegedly involved weapons compared to 26.1% of the cases with female victims.

The age and particularly the race of the victims were difficult to determine. The victims were minor children (under the age of 18) in 25% of the cases and the victims were elderly (65 or older) in about 1% of the cases. However, in 15% of the cases there were multiple victims of different ages and in 41% of the cases, information was missing on the age of the victims. Similarly, while researchers attempted to collect information on the race of the victim, such detail was available in only 13% of the cases.

Victim Injury

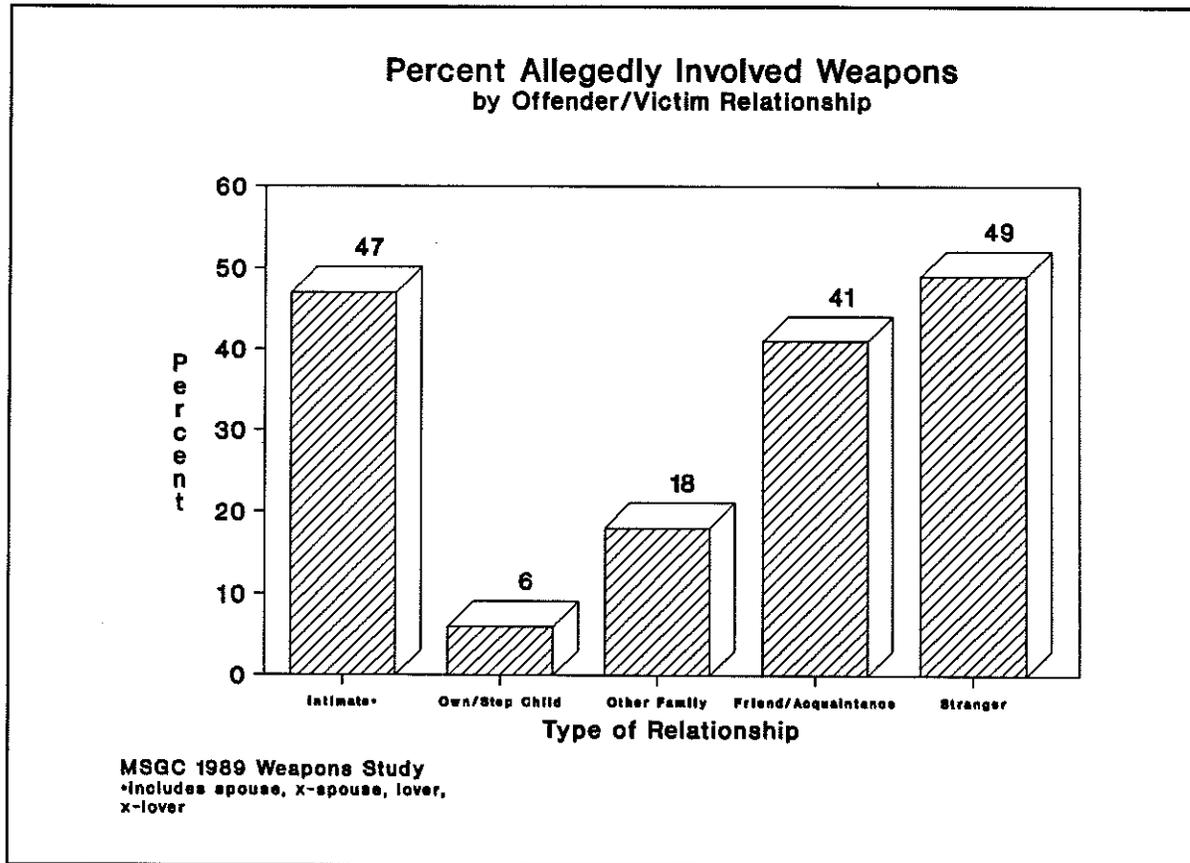
There was some degree of physical injury to the victim in approximately 41% of the cases in this study. Among the 570 cases where there was physical injury to the victim, 37% involved injury ranging from substantial bodily harm to death. The remaining 63% of the injury cases involved relatively minor injuries requiring minimal or no medical attention. Interestingly, in those cases involving serious bodily injury or death, just over half involved a dangerous weapon.

It would appear that the involvement of a dangerous weapon in a serious person type offense does not necessarily increase the incidence of serious bodily harm or death. There are some differences, however, when victim injury and weapon use is examined by the most serious alleged offense. In the 66 cases allegedly involving homicide or attempted homicide with substantial bodily harm or death (excluding criminal vehicular homicide), 80% involved a dangerous weapon. In the 104 cases allegedly involving assault with serious bodily harm, over half involved dangerous weapons (55 cases). There were only 7 cases allegedly involving robbery with serious victim injury, 3 involved a dangerous weapon and 4 did not. There were also few cases (4) where the most serious alleged offense was for criminal sexual conduct and the victim suffered serious physical bodily harm. No weapons were involved in any of the four cases.

Victim Relationship to Offender

While generally, the greatest fear of crime is the fear of being the random victim of a violent crime perpetrated by a stranger, the majority of the personal crimes in this study were committed against someone the perpetrator knew. In this study, the offender typically knew the victim intimately, or as family, friend, acquaintance, or co-worker (56%). In 39% of the cases, the offender was a stranger to the victim and in a small percentage (2%) the victim was a peace officer.

Among those cases where the offender knew the victim, 34% involved a weapon compared to nearly half of the cases where the offender was a stranger. However, when the relationship between the offender and the victim was intimate; i.e., spouse, ex-spouse, lover, ex-lover, weapon involvement was quite high (47%). The following graph displays a breakdown of the cases in the study by victim relationship and weapon use.



The victim's relationship to the offender varied a great deal by the type of the most serious alleged offense. The victim was a stranger to the offender in 84% of alleged

robberies compared to only 16% of the cases with alleged sex offenses. In cases where the most serious alleged offense was an assault, 26% of the offenders were strangers to their victims. For homicides (not including criminal vehicular homicides), about 19% of the offenders were strangers to their victims.

Also of interest is that while victims generally knew the perpetrator, the offenders in the study were not typically living with their victims. Offenders lived with the victims in 16% of the cases in the study. Again, these figures varied by the type of the most serious alleged offense. In 16 of the 74 alleged homicide cases, not including criminal vehicular homicide, the offender lived with the victim, as was also the case in nearly 19% of the alleged assaults. There was an even greater percentage of alleged sex offenders (30%) who lived with their victims.

Offense Location

While the victim generally did not live with the offender, most offenses were committed in the victim's home, the offender's home, a friend or relative's home, or the shared home of the victim and the offender; i.e., 55% of the cases. About 19% of the offenses were committed on the street and about 11% of the offenses were committed at a private business. Robberies were more likely to occur on the street or at a private business while sex offenses were more likely to occur in someone's home. Weapons were slightly more likely to be allegedly involved in offenses committed on the street (40%) compared to offenses committed in someone's home (33%).

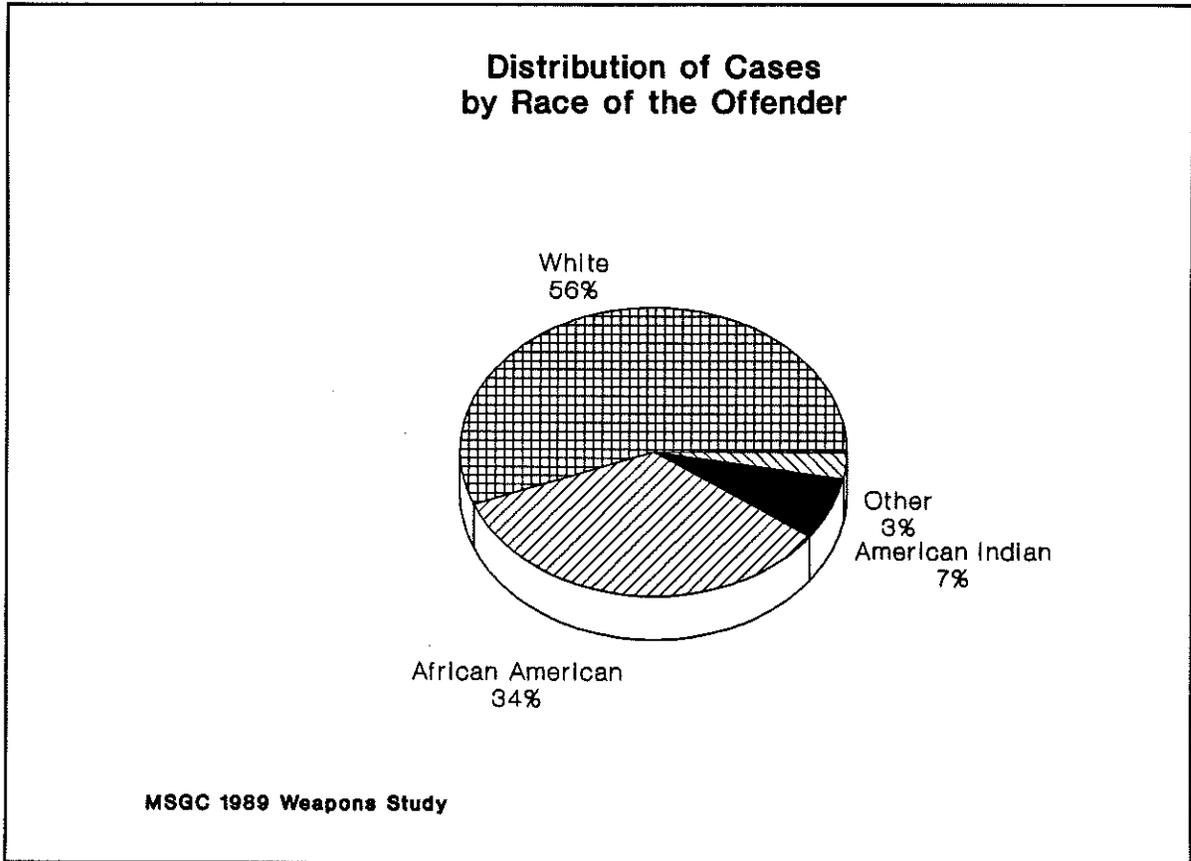
Offender Demographics

The overwhelming majority of offenders in this indepth study were men (95%) compared to a somewhat smaller majority (84%) based on all of the felony cases sentenced in 1989. Females are more likely to be convicted of property or drug crimes and therefore make up only a small percentage of the offenders in this study. However, among the small number of female offenders in this study (76), 52.6% allegedly used or possessed a dangerous weapon compared to 38.8% of the male offenders (1,314).

Racial breakdowns are also interesting. Whites make up 56% of the offenders in this study. This study has a higher proportion of African Americans than does the population of felony cases sentenced in 1989 (34% compared to 19%). Much of this difference is explained by the fact that the indepth study consists of only a sample of counties in which Hennepin and Ramsey are included. Hennepin and Ramsey are the only counties with any significant population of African Americans convicted of felonies.

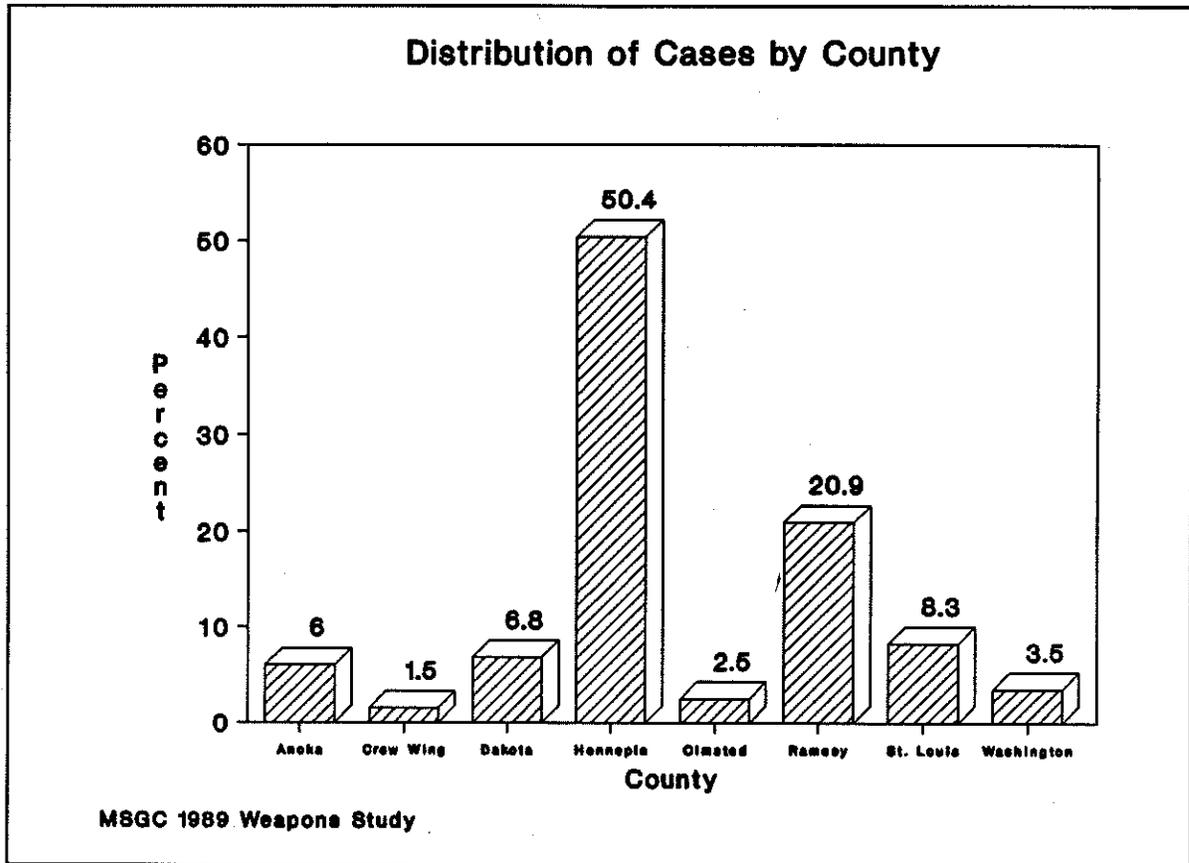
However, it is the case that even for Hennepin and Ramsey counties, the proportion of African Americans is higher in this study than it is for the population of cases in those

counties. This is because African Americans are convicted of a slightly higher proportion of person offenses than whites. The following graph displays the distribution of cases by race.



Dangerous weapons were allegedly involved in offenses committed by minorities more often than by white offenders. Approximately 34% of the white offenders allegedly used or possessed a dangerous weapon compared to 47% of the African Americans and 46% of the American Indians. This weapon involvement is related to the type of offense that each racial group was typically convicted of. Among the white offenders, the largest proportion was convicted of sex offenses (35%), whereas for African American offenders, the largest proportion was convicted of robbery (38.7%). Among the 93 American Indian offenders, 35 or 38% were convicted of some degree of assault.

Half of all the cases in this study were sentenced in Hennepin county and another 21% were sentenced in Ramsey county. The following graph shows the distribution of cases by the county in which sentencing occurred.



Just over 25% of the offenders were 21 years of age or younger. Certified juveniles represented 2.6% of all offenders in the study. The majority of offenders ranged from 22 to 29 years old (36%) and from 30 to 39 years old (34%). Only 4% of the offenders were over the age of 50. Although there were only 36 certified juveniles in the sample, this group had the highest proportion of alleged weapon involvement; i.e., 58% or 21 cases. In each of the next three age breakdowns (18-21, 22-29, 30-49), weapons were involved in 40% of the cases. Weapons were allegedly involved in only 11 of the 60 cases where the offender was 50 years or older.

Employment Factors

The employment records of most of the offenders in this study were quite poor. Just over half (50.5%) of all offenders in the study were unemployed at the time of the offense. An even greater proportion of offenders was unemployed at the time of sentencing (67.6%). These figures were even higher for the offenders who allegedly used or possessed weapons. Among this group of offenders, 56.4% were unemployed at the time of the offense and 76.4% were unemployed at time of sentencing.

The primary occupation of most of the offenders in the study was unskilled labor (53%) with about 13% of the offenders classified as skilled laborers and nearly 23% of the offenders had no identifiable primary occupation. About 26% of the offenders had been able to maintain stable full or part time employment but a much larger proportion of offenders (44.5%) could only maintain sporadic employment. In addition, 10% had been virtually never employed and another 10% had no employment record due to youthful status. The stability of employment was somewhat more troubled for alleged weapons offenders. Among this group, 48% had sporadic employment and over 12% were virtually never employed with another 12% having no employment record due to youthful status.

Chemical Abuse

Chemical abuse was widespread among the offenders in this study (over 60%). About 27% abused alcohol, 8% abused other illegal drugs, and 26% abused both alcohol and illegal drugs. Offenders were identified as abusing chemicals if the chemical use resulted in occasional or persistent problems with work, family, personal relationships, and other areas of the offender's life. In fact, a significant proportion of the offenders in this study (42%) were under the influence of alcohol, illegal drugs, or both at the time of the offense. Offenders convicted of homicide (53%) and assault (54%) crimes were the most likely to be under the influence of alcohol and/or drugs at the time of the offense.

Among alleged weapons offenders, the proportion that abused chemicals was even higher (70%). In addition, 48% were under the influence of alcohol, illegal drugs, or both at the time of the offense.

By far, the drug of primary use among the offenders who used chemicals was alcohol, 85.6%, compared to 7.2% who primarily used cocaine and 5% who primarily used marijuana. Among those who primarily used alcohol, 43% did not use any other drug. Powdered cocaine was the second choice for 18% of the alcohol users and marijuana was the second choice for 29%.

609.11 MINIMUM TERMS OF IMPRISONMENT.

Subdivision 1. **Commitments without minimums.** All commitments to the commissioner of corrections for imprisonment of the defendant are without minimum terms except when the sentence is to life imprisonment as required by law and except as otherwise provided in this chapter.

Subd. 2. [Repealed, 1978 c 723 art 2 s 5]

Subd. 3. [Repealed, 1981 c 227 s 13]

Subd. 4. **Dangerous weapon.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a dangerous weapon other than a firearm, or had in possession a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than one year plus one day, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a dangerous weapon other than a firearm, or had in possession a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than three years nor more than the maximum sentence provided by law.

Subd. 5. **Firearm.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than three years, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a firearm shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than five years, nor more than the maximum sentence provided by law.

Subd. 6. **No early release.** Any defendant convicted and sentenced as required by this section is not eligible for probation, parole, discharge, or supervised release until that person has served the full mandatory minimum term of imprisonment as provided by law, notwithstanding the provisions of sections 242.19, 243.05, 244.04, 609.12 and 609.135.

Subd. 7. **Prosecutor shall establish.** Whenever reasonable grounds exist to believe that the defendant or an accomplice used a firearm or other dangerous weapon or had in possession a firearm, at the time of commission of an offense listed in subdivision 9, the prosecutor shall, at the time of trial or at the plea of guilty, present on the record all evidence tending to establish that fact unless it is otherwise admitted on the record. The question of whether the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm shall be determined by the court on the record at the time of a verdict or finding of guilt at trial or the entry of a plea of guilty based upon the record of the trial or the plea of guilty. The court shall determine on the record at the time of sentencing whether the defendant has been convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm.

Subd. 8. **Motion by prosecutor.** Prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum terms of imprisonment established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion and if it finds substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum terms of imprisonment established by this section.

Subd. 9. **Applicable offenses.** The crimes for which mandatory minimum sentences shall be served before eligibility for probation, parole, or supervised release as provided in this section are: murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; criminal sexual conduct under the circumstances described in sections 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); and 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); escape from custody; arson in the first, second, or third degree; a felony violation of chapter 152; or any attempt to commit any of these offenses.

History: 1963 c 753 art 1 s 609.11; 1969 c 743 s 1; 1971 c 845 s 15; 1974 c 32 s 1; 1975 c 378 s 8; 1977 c 130 s 2; 1978 c 723 art 2 s 2; 1979 c 258 s 1; 1981 c 227 s 1-7; 1983 c 274 s 15; 1986 c 351 s 5; 1989 c 290 art 3 s 27,28

