Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

on Controlled Substance Offenses

February, 1992

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I. LEGISLATIVE DIRECTIVE

Minnesota's drug laws are among the toughest in the country but they are also intended to promote proportionality, uniformity, and fairness in sentencing. We must continue to scrutinize our laws and sentencing policy and evaluate whether we are accomplishing our goals. We must also be willing to change policy that appears to counter our goals. The challenge in Minnesota is unique. We do not have high crime rates and prison crowding problems found in many other states but we must continue efforts to assure Minnesota remains a safe place to live.

The Legislature requested the Sentencing Guidelines Commission study sentencing practices for possession of 3 or more grams of crack. The issue of whether penalties should differ for the same amount of crack as for powdered cocaine became a concern for the Legislature due to a trial court ruling in the summer of 1990. The trial court ruled that the state's third degree controlled substance possession statute violated the constitutional guarantee of equal protection of the law. The imposition of harsher penalty for the possession of certain amounts of crack cocaine than for the same amounts of powdered cocaine appeared to create a disproportional impact on African Americans.

The case was appealed to the Supreme Court but the decision was not made before the end of the 1991 legislative session. Thus, the Legislature asked the Commission for some insight into the concerns raised on appeal. Four specific issues were to be addressed by the Commission:

1) the proportionality of the statutory penalty for and severity level ranking of this crime relative to other controlled substance crimes;

2) the characteristics of offenders sentenced for committing this crime relative to other controlled substance offenders;

3) the sentencing practices of the courts with respect to presumptive sentences, sentencing departures, and conditions of stayed sentences for this crime; and

4) the harm to the community resulting from the commission of this crime relative to other controlled substance crimes.

The Legislature also suggested that the Commission include in its study any other sentencing policy issues it deemed relevant and report its findings, along with any recommendations for change, by February 15, 1992.

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 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; (2) 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; (3) To provide truth and certainty in sentencing; (4) To enable the legislature to coordinate sentencing practices with correctional resources; and (5) To ensure public safety.

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 an offender may earn up to one-third the pronounced sentence for good behavior, sentences are fixed and 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 sentence 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. 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, only 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.

II. HISTORICAL SUMMARY OF DRUG LAWS

Both the Sentencing Guidelines Commission and the Legislature have been concerned about controlled substance crimes and they have worked, over time, to construct a proportional sentencing scheme. In the mid 1980s, the Commission amended the original guidelines policy to create tougher and more proportional sentences for cocaine. Subsequently, the Legislature amended the drug laws each year to further differentiate penalties based on drug types and amounts. Each year the Commission responded to the legislative changes by amending the guidelines. The following is a summary of the changes to drug policy over the last 5 years.

Prior to August 1, 1986

Prior to 1986, state law differentiated statutory maximum penalties only for sale versus possession crimes. The statutes did not differentiate differences on the basis of the specific type or amount of the controlled substance involved. Sale crimes included the following acts: manufacture, sell, give away, barter, deliver, exchange or distribute; or possess with intent to manufacture, sell, give away, barter, deliver, exchange or distribute, a controlled substance.

- While the statute did not differentiate penalties on the basis of the type of drug, the sentencing guidelines commission did rank drug crimes on the basis of the type of drug that was either possessed or sold. Severity level rankings are summarized below:

Severity Level	Offense
VI	**Sale** of Hallucinogens, PCP, Heroin, and Remaining Schedule I & II Narcotics
IV	**Sale** of Cocaine (This offense was ranked at severity level III prior to 1982.)
III	**Sale** of Remaining Schedule I, II, & III Non-narcotics **Possession** of Hallucinogens, PCP, Heroin, and Remaining Schedule I & II Narcotics
II	**Sale** of Marijuana/Hashish/Tetrahydrocannabinols, and Schedule IV Substances
I	**Sale** of Simulated Controlled Substance **Possession** of Cocaine, Marijuana/Hashish/ Tetrahydrocannabinols, Remaining Schedule I, II, & III Non-narcotics, and Schedule IV Substances

- Effective August 1, 1981, the commission added the factor of "major controlled substance offense" to the nonexclusive list of aggravating factors for departure.

- Effective August 1, 1985, the commission added guideline language to II.C. to presume a prison sentence for persons convicted of sale of cocaine or sale of a controlled substance that was ranked at severity level VI if there had been a previous adjudication of guilt for sale of cocaine or sale of a severity level VI drug.

Effective August 1, 1986

The legislature modified the drug laws to provide greater statutory maximum penalties for offenders convicted of the sale of 7 or more grams or 10 or more dosage units of any narcotic classified in schedule I or II, or PCP, or hallucinogens (other than marijuana).

- The commission ranked these new controlled substance offenses at severity level VII.

- The commission also increased the severity level ranking of Possession of Cocaine from severity level I to severity level III and the Sale of Cocaine (less than 7 grams) from severity level IV to severity level VI.

Effective August 1, 1987

The legislature revised the drug laws again to distinguish "cocaine base" offenses from other offenses involving powdered cocaine. Three grams of cocaine base or 10 grams of a schedule I or II narcotic which were sold within a 90-day period were classified at a higher statutory maximum penalty than lower amounts. Other changes were made to the drug laws to increase the statutory penalties for offenses involving minors.

* The commission continued to rank these revised higher level drug crimes as defined by the legislature at severity level VII.

Effective August 1, 1989

The legislature completely revised the structure and content of the controlled substance laws and created 5 degrees of drug crimes. Each degree is intended to represent an increasingly more serious drug offender. Each degree contains both sale and possession crimes which vary by the type and amount of drug involved. The apparent legislative rationale behind combining both sale and possession crimes within the same degree was the notion that an offender who possessed a particular amount of controlled substance was likely to be dealing the drug at the same level as the offender who sold the same drug but in smaller quantities. For example, it was believed that someone who possessed 25 or more grams of crack was the same level of dealer as someone who actually sold 10 or more grams of crack. For the 1st and 2nd degree sale crimes, the amount of drug involved in the case could be aggregated over a 90 day period.

- The commission believed that because the legislature had specifically considered the seriousness of drug crimes as it created the new laws, it made sense to retain the degree structure within the severity level rankings of the guidelines. Thus, the commission ranked all drug crimes within each degree at the same severity level with one exception: 1st degree at severity level VIII, 2nd degree at severity level VII, most of 3rd degree at severity level VI, 4th degree at severity level IV, and 5th degree at severity level II.

- The exception the commission made to its ranking decision to keep all drug crimes within a degree at the same severity level was with regard to third degree possession of 3 or more grams of crack or 10 or more grams of cocaine/narcotic. This possession offense was not ranked at severity level VI with all the other 3rd degree drug crimes but was ranked at severity level VII. The commission had been urged by prosecutors and others to rank this possession crime at a level where the guidelines would recommend prison for the first time offender. These prosecutors and

others believed that the offenders who would be charged and convicted for possession of 3 or more grams of crack or 10 or more grams of powdered cocaine were more serious offenders than those offenders convicted of other 3rd degree crimes such as sale of crack or powdered cocaine of lesser amounts. These possession crimes were believed to be more serious because these individuals likely intended to sell these larger amounts of crack and powdered cocaine.

It was suggested by some that the commission create a new severity level between VI and VII that would provide for a recommended prison sentence for offenders with no criminal history score but where the prison durations would be less than the 48 months recommended at severity level VII. It was further suggested that this 3rd degree possession crime could be ranked at this new severity level. The commission chose not to create a new severity level but did decide to rank this possession crime at severity level VII.

The 5 degrees of controlled substance offenses are summarized in the Appendix along with the respective severity level rankings. This summary also incorporates additional amendments made to the controlled substance laws in 1990 and 1991. The changes made after 1989, however, do not affect crack or powdered cocaine provisions.

Future Considerations

The Minnesota Sentencing Guidelines Commission has, after studying and consulting with other states, become deeply involved in a thorough, ongoing review of ranking principles covering all felony offenses. This ongoing review is needed to assure the continued proportionality and fairness of all guidelines sentences. The legislature and the courts, on a continuous basis, give the Commission new or modified crimes, policy considerations, and direction. The ongoing review is needed for strong and sound continuity.

III. PROPORTIONALITY ISSUES

As described above, the current controlled substance laws differentiate penalties according to the type and amount of drug involved in the case. The amount necessary to convict an offender of a third degree controlled substance possession crime is 3 grams for crack cocaine compared to 10 grams for powdered cocaine. These third degree offenses carry a presumptive 48 month prison sentence under the guidelines, for someone who has no criminal record. Offenders who are convicted of possession of lesser amounts of these types of drugs are recommended a stayed sentence under the guidelines.

In the summer of 1990, a trial court in Hennepin County ruled that the state's third degree controlled substance possession statute violated the constitutional guarantee of equal protection of the law. The law imposed a harsher penalty for the possession of certain amounts of crack cocaine than for the same amount of powdered cocaine. This distinction was noted to have a disproportional impact on African Americans because a very high proportion of convicted crack offenders were black and a high proportion of convicted powdered cocaine offenders were white.

The case was appealed directly to the Minnesota Supreme Court. When the Legislature met last session, the case had not yet been decided. The Legislature was concerned with the issues raised on appeal and in the 1991 session passed a bill directing the Sentencing Guidelines Commission to examine certain issues of proportionality with regard to different penalties for crack and powdered cocaine. However, the Supreme Court has recently issued a decision and declared the statutory scheme as unconstitutional violation of the state's constitutional guarantee of equal protection. The Legislature acted quickly to correct the unconstitutional law.

The Supreme Court decision and subsequent action by the Legislature has, to some extent, rendered the issue of proportionality moot. However, the Commission had taken action previous to the Supreme Court decision to explore the issue of proportionality and it is of value to present this information to the Legislature.

To address the question of proportionality, the Commission requested a number of experts in the field of cocaine research and chemical dependency to address the Commission, it examined data on offender characteristics and sentencing practices, and it examined the structure and severity level rankings for the current drug laws dealing with powdered and crack cocaine.

The first proportionality issue identified by the Commission relates to the similarities and differences between powdered and crack cocaine. The Commission asked several individuals with expertise in the areas of cocaine research, chemical dependency and treatment, and forensic science to address the issue of the differences between crack and powdered cocaine. Meeting minutes summarizing the testimony of these experts are included in the Appendix.

The Commission believes that based on the information presented in the form of expert testimony, it is unable to clearly establish that there is a significant or appreciable difference between the ultimate impact of crack cocaine and powdered cocaine that should be addressed through differing criminal penalties. This conclusion was arrived at even before considering the disparate racial impact of the current sentencing structure for these offenses.

The expert testimony led the Commission to conclude that differences between crack cocaine and powdered cocaine are due to the route of administration rather than differences in the substances. For example, testimony from Dr. Dorothy Hatsukami, an associate professor at the University of Minnesota,

concluded from her research and that of others that: 1) smoked cocaine has a greater potential for addiction than intranasal; 2) however, subjective and physical effects are similar regardless of the route of administration although the peak onset and duration may be dissimilar, and 3) once addicted, the consequences of addiction are similar across routes of administration. In addition, most differences between the two forms of cocaine disappear when crack and the intravenous use of cocaine are compared.

Other testimony clarified that converting powdered cocaine to crack is extremely easy to do and it is profitable for a dealer to convert powdered cocaine to crack and sell it in small quantities. These facts further diminish the need to proportionally treat crack cocaine offenders more harshly as crack is simply a by-product of powdered cocaine.

A second proportionality issue deals with the severity level ranking of third degree controlled substance crimes. The Supreme Court decision in State vs. Russell, suggested that the 3rd degree statute, in effect, creates an "irrebuttable presumption of intent to sell without affording the defendant an affirmative defense of lack of intent to sell." In fact, it is Commission policy that directly creates this situation.

As described above in the Historical Summary section, the Commission currently ranks at severity level VII, those provisions in third degree that refer to the possession of 3 grams of crack or 10 grams of narcotic drug, including cocaine. Sale of these substances in amounts less than these possession amounts are ranked at severity level VI. Thus, for 3rd degree possession crimes the presumptive sentence is prison for 48 months for offenders with no criminal history score compared to a stayed sentence for the other third degree offenders. The rationale for these different rankings was that an individual who possessed at least 3 grams of crack or 10 grams of powdered cocaine was likely to have the intent to sell. These offenders would thus be considered more serious drug sellers than those actually convicted of third degree sale.

State v. Russell and the recent legislative action taken in response thereto makes it incumbent on the Commission to reevaluate severity level rankings for the controlled substance crimes.

A third proportionality issue deals with the overall structure of the controlled substance laws which differentiate seriousness on the basis of the amount of the specific drug involved. What is the purpose of the specific amount breakdowns? Are the amounts designed to differentiate major dealers, street dealers, and users? If so, are there factors other than the amount of drug that must be considered in order to make such a determination? Are the drug laws designed to give prosecutors and law enforcement tools which could be used to motivate drug offenders to "cooperate?" If so, should the sentences and charging practices be expected to reflect compliance with sentencing policy?

The guidelines allow for judges to depart from the presumptive sentence when substantial and compelling circumstances exist. The presumptive sentence is based on the "typical" case, and the appropriate use of departures by the courts when substantial and compelling circumstances exist can enhance proportionality. Information on sentencing practices and charging practices indicate judges struggle to sentence fairly and proportionately for offenders convicted of drug crimes. Drug offenses committed after August 1, 1989 fall under the new drug laws. Of those cases involving powdered cocaine that fall into severity level VII or VIII, 27 of 69, or 39%, received a mitigated dispositional departure with intermediate sanctions. Of those new crack cases that fell at severity level VII or VIII, 19 of 40 cases, or 48%, received intermediate sanctions.

The number of mitigated durational departure rates for crack and powdered cocaine cases at severity levels VII and VIII under the 1989 laws were comparable to dispositional departures. It is clear that trial

judges do not "automatically" consider incarceration at a state level necessary for public safety in every drug case.

It appeared that charging practices also varied. For example, of the 51 powdered cocaine possession cases where the data collected in our survey indicated the offense involved an amount that would prescribe a third degree offense, 29 (57%) actually resulted in a conviction at that level. Of the possible 20 third degree crack cocaine possession cases, 12 actually resulted in a conviction at that level. Similar patterns of variation exist for first and second degree drug crimes.

The Commission will continue to assess proportionality in sentencing consistent with its understanding of the intent of the purpose of the law.

IV. CHARACTERISTICS OF OFFENSES AND OFFENDERS

Methodology

To address the questions posed by the legislature regarding offender characteristics and sentencing practices for offenders convicted of drug offenses, the Commission examined data on all of the 1,811 felony level drug offenders sentenced in Minnesota in 1990. The population of drug cases for 1990 was defined using the Commission's monitoring system. The information in the monitoring system was supplemented by a special data collection project.

One of the primary functions of the Sentencing Guidelines Commission is to monitor sentencing practices. The Commission's monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the guidelines. A case is defined when conviction data received from the probation officer is matched with sentencing data received from the State Judicial Information System. Cases generally represent offenders. An offender sentenced in the same county on more than one offense within a thirty day period is counted as one case.

Sentencing guidelines worksheets, submitted by probation officers to the court and to the Commission, contain information about the offender (e.g., date of birth, sex, race), the offenses for which the offender was convicted, the offender's criminal history, and the presumptive guidelines sentence. This information is matched up with sentencing data provided by the State Judicial Information System. The monitoring data set includes information on the sentence pronounced by the court, and if the sentence was a departure, the reasons cited by the court.

Surveys requesting information on the amount of controlled substance involved in each case, the actual sanctions imposed and served by the offenders, and whether a violation report was filed, were distributed to the probation officers who were supervising the drug offenders given stayed sentences in 1990. Staff collected the data for cases sentenced in Anoka, Hennepin, Ramsey and Washington counties. We were also able to collect information from the Department of Corrections on some of the cases for which a survey was not returned (e.g., non-CCA counties and probation revocations). Completed surveys were available for 1,488 (93.5%) of the 1,592 felony drug cases resulting in a probationary sentence in 1990. We were able to obtain information on the actual amount of jail time served for 24 of the 104 cases where a completed survey was not available. Staff also collected data from Department of Correction files on the 219 drug offenders sentenced to prison in 1990.

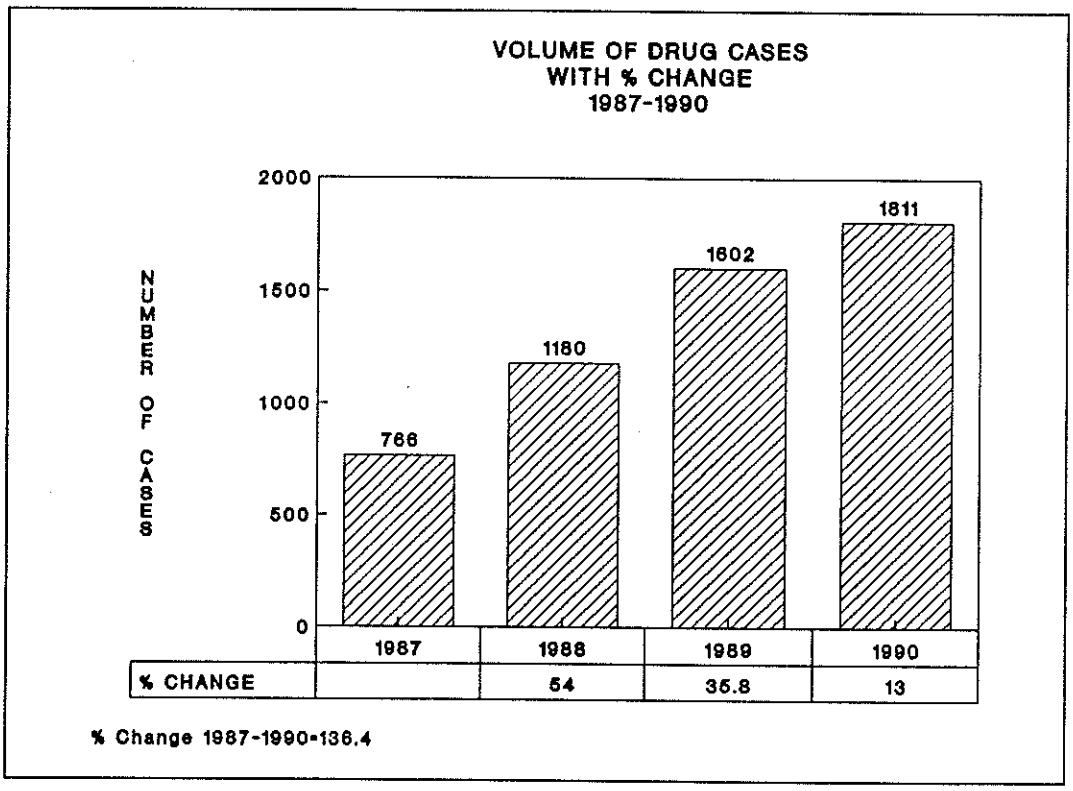
The cases for which we did not have a completed survey were generally distributed among several counties, and for each of these counties, most of the surveys had been returned. There were only a few counties where there was a significant proportion of cases for which survey information was not available. In all of these counties, the total number of drug cases sentenced in 1990 was relatively small (e.g., Aitkin, Carlton, Cook, Crow Wing, Houston and Olmsted).

A copy of the questionnaire used to collect the data for this study is included in the appendix.

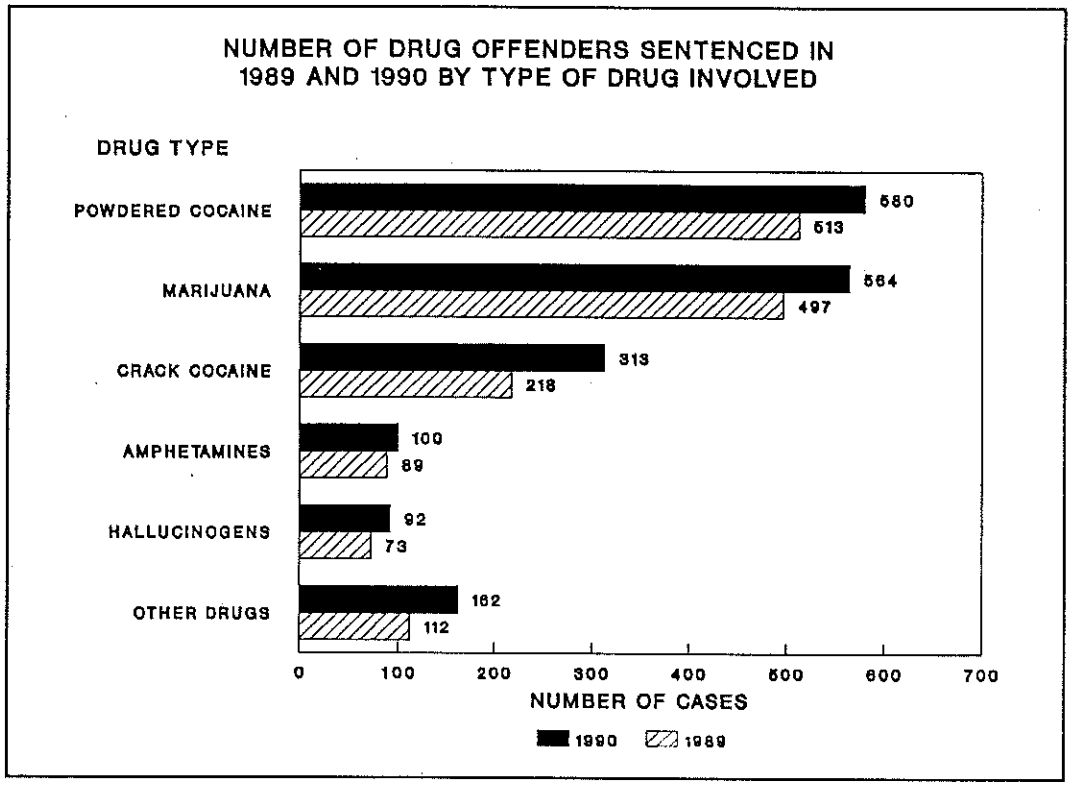
A. Offense Characteristics

Volume of Cases

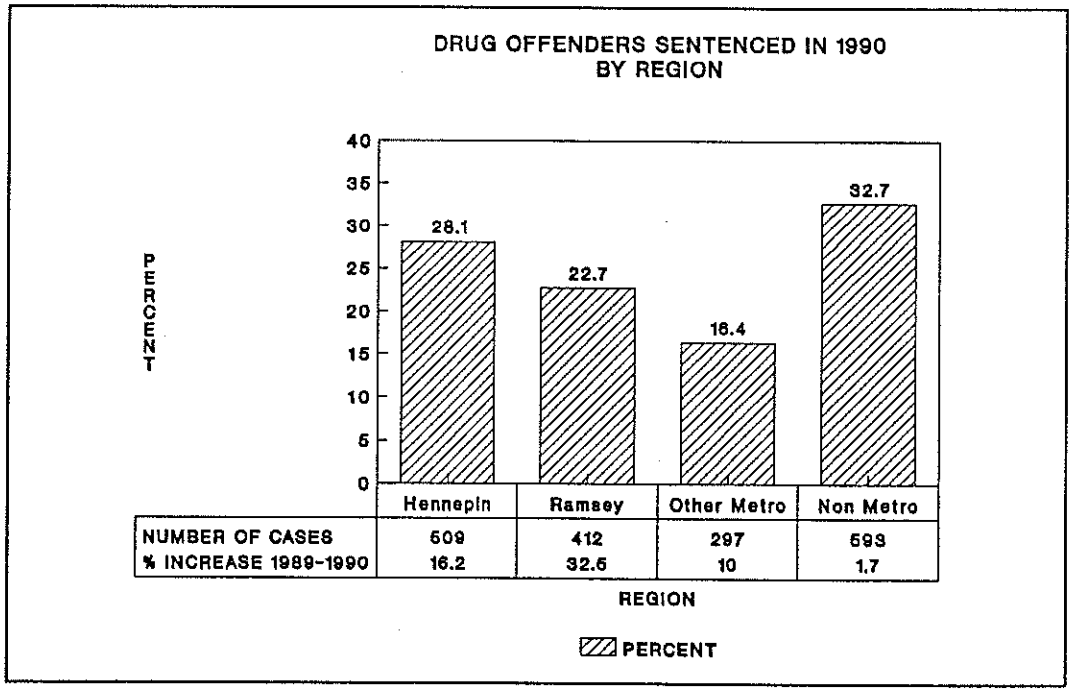
The number of sentenced drug offenders increased by 13% from 1989 to 1990. The overall growth in offenders sentenced for drug crimes from 1987 to 1990 was 136%, but the rate of growth has decreased each year. The graph below displays the overall volume of drug cases sentenced each year from 1987 to 1990.



The graph on the following page compares the number of drug offenders sentenced in 1990 and 1989 by the type of drug involved. The growth in volume was approximately 13% for cases involving marijuana or powdered cocaine, but the number of crack cocaine cases sentenced in 1990 was 44% greater than in 1989.

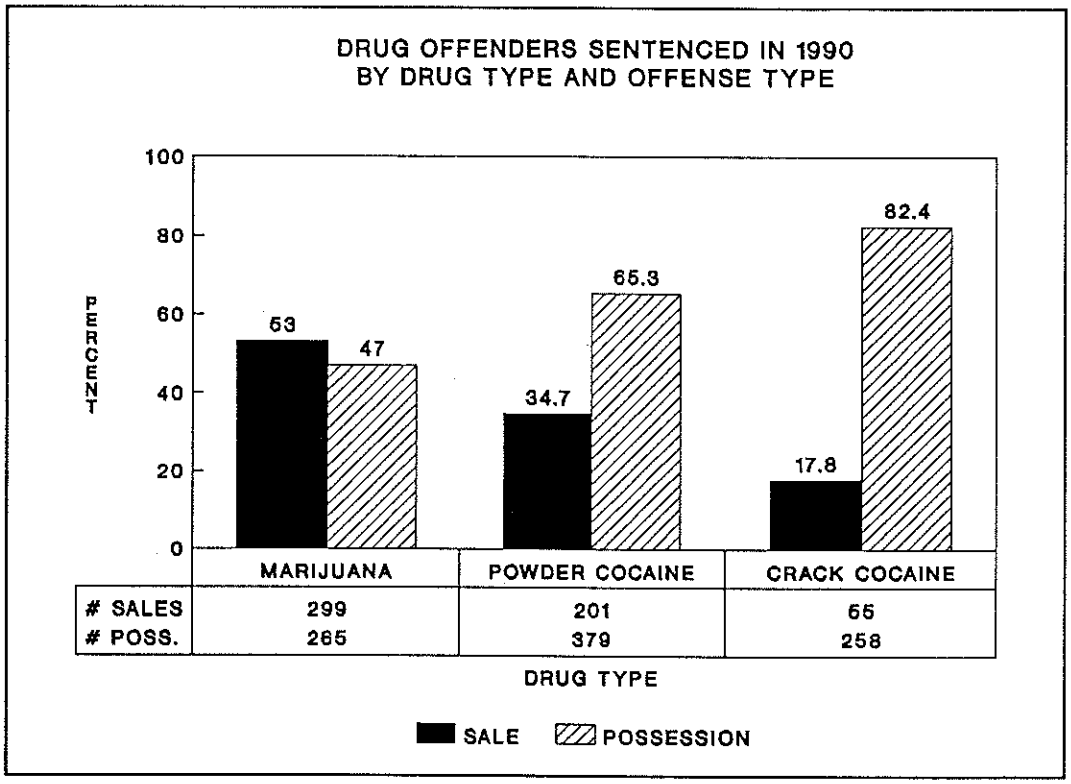


The volume increase also varied by the region of the state. Sentenced drug cases in 1990 increased by 33% in Ramsey County as compared to 16% in Hennepin County, 10% in other metro area counties, and only about 2% in greater Minnesota counties.



Offense and Drug Type

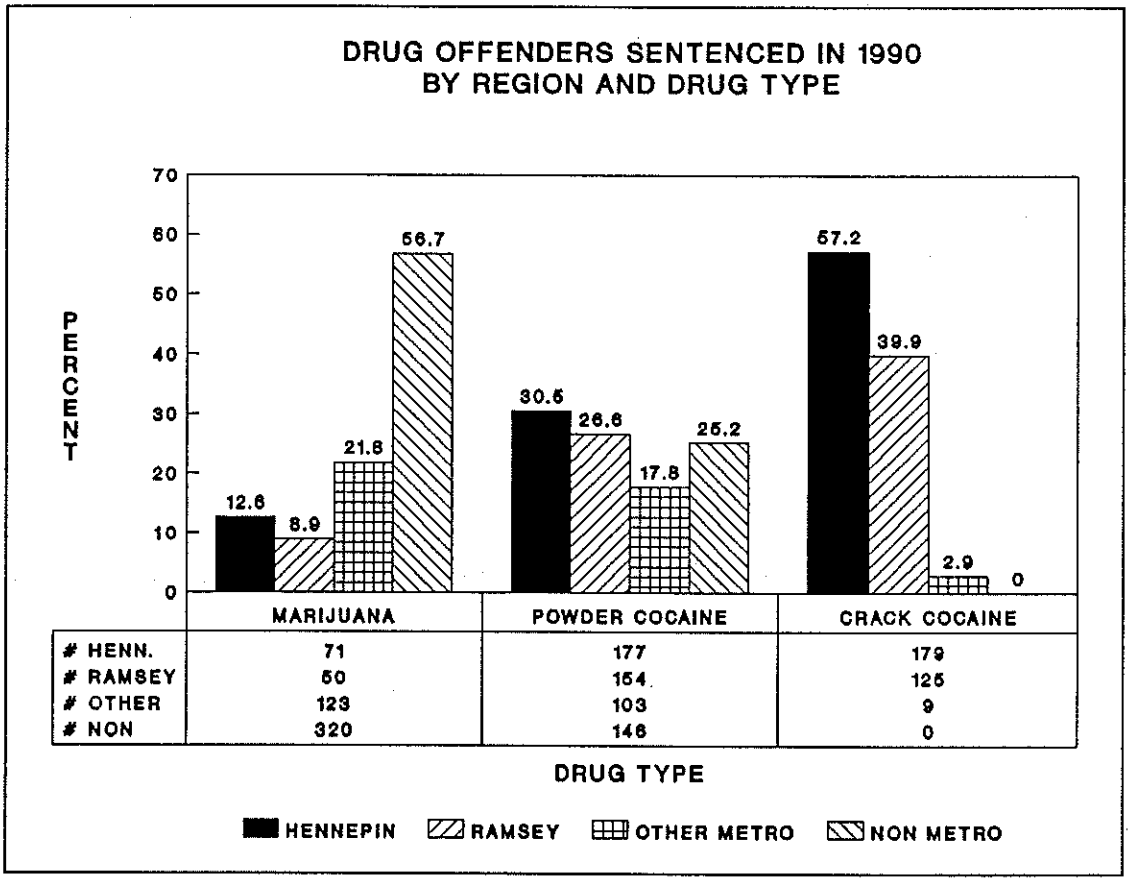
Most offenders in 1990 were convicted and sentenced for possession offenses (63%). Eighty-two percent of crack convictions were for possession, 65% of powdered cocaine convictions were for possession and 47% of marijuana convictions were for possession.



In summary, marijuana and powdered cocaine were the most common drugs involved in cases sentenced in 1990; 31% and 32% respectively. About 17% of the sentences involved crack cocaine, 5% involved amphetamines, 5% involved hallucinogens, and 9% involved other types of controlled substances or simulated controlled substances.

Region

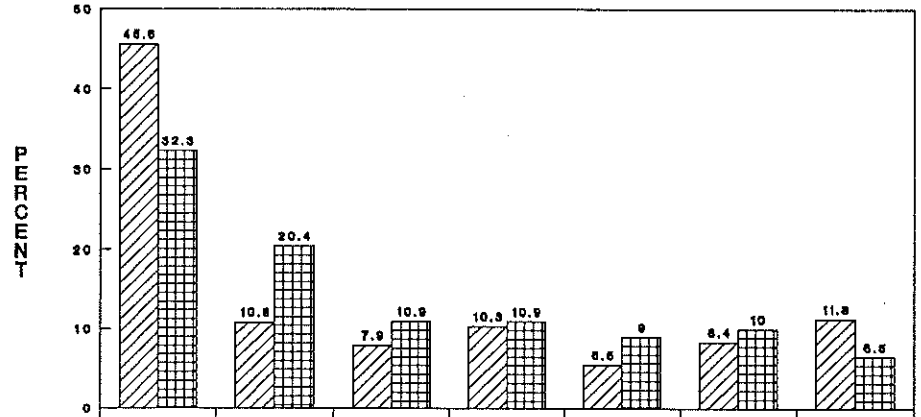
Offenses involving different types of drugs tended to occur in certain areas of the state. About 57% of all marijuana cases occurred in greater Minnesota while 57% of the powdered cocaine cases occurred in Hennepin or Ramsey counties. Even more striking was that 97% of all crack cocaine cases occurred in Hennepin or Ramsey counties with the remaining 3% occurring in other metro counties.



Drug Amounts

About 46% of the possession of powdered cocaine cases and 32% of the sale cases involved amounts less than 3 grams. For crack cocaine the figures are significantly higher at these low amounts. About 78% of the possession of crack cocaine cases and 75% of the sale cases involved amounts less than 3 grams. With regard to large amounts of drug, about 8% of the possession of powdered cocaine cases and 10% of the sale cases involved amounts of 50 grams or more. Very few crack cocaine cases involved large amounts. Less than 2% of the possession of crack cases and sale cases involved 25 or more grams. Marijuana cases typically involve small amounts of less than one kilogram (77% of the cases).

DRUG OFFENDERS SENTENCED IN 1990
POWDER COCAINE CASES
BY DRUG AMOUNT

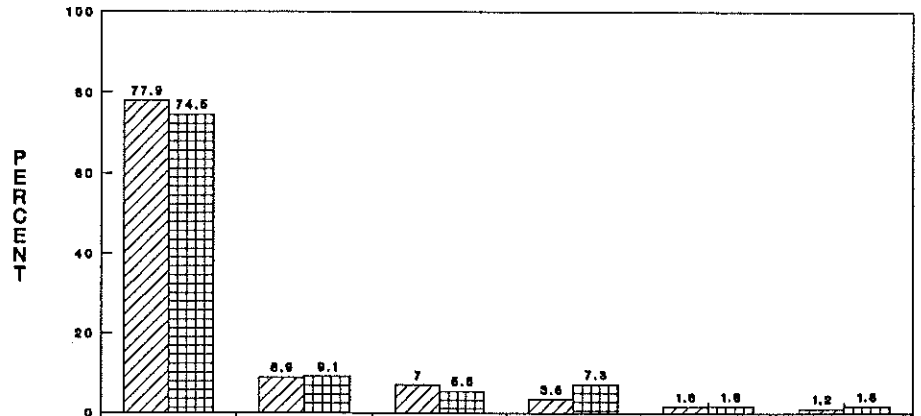


	LT 3	3-LT 6	6-LT 10	10-LT 25	25-LT 50	50 AND UP	UNKNOWN
# POSS.	173	41	30	39	21	32	43
# SALES	65	41	22	22	16	20	13

DRUG AMOUNT IN GRAMS

POSSESSION SALE

DRUG OFFENDERS SENTENCED IN 1990
CRACK COCAINE CASES
BY DRUG AMOUNT



	LT 3	3-LT 6	6-LT 10	10-LT 25	25 AND UP	UNKNOWN
# POSS.	201	28	18	9	4	3
# SALES	41	5	3	4	1	1

DRUG AMOUNT IN GRAMS

POSSESSION SALE

B. Offender Characteristics

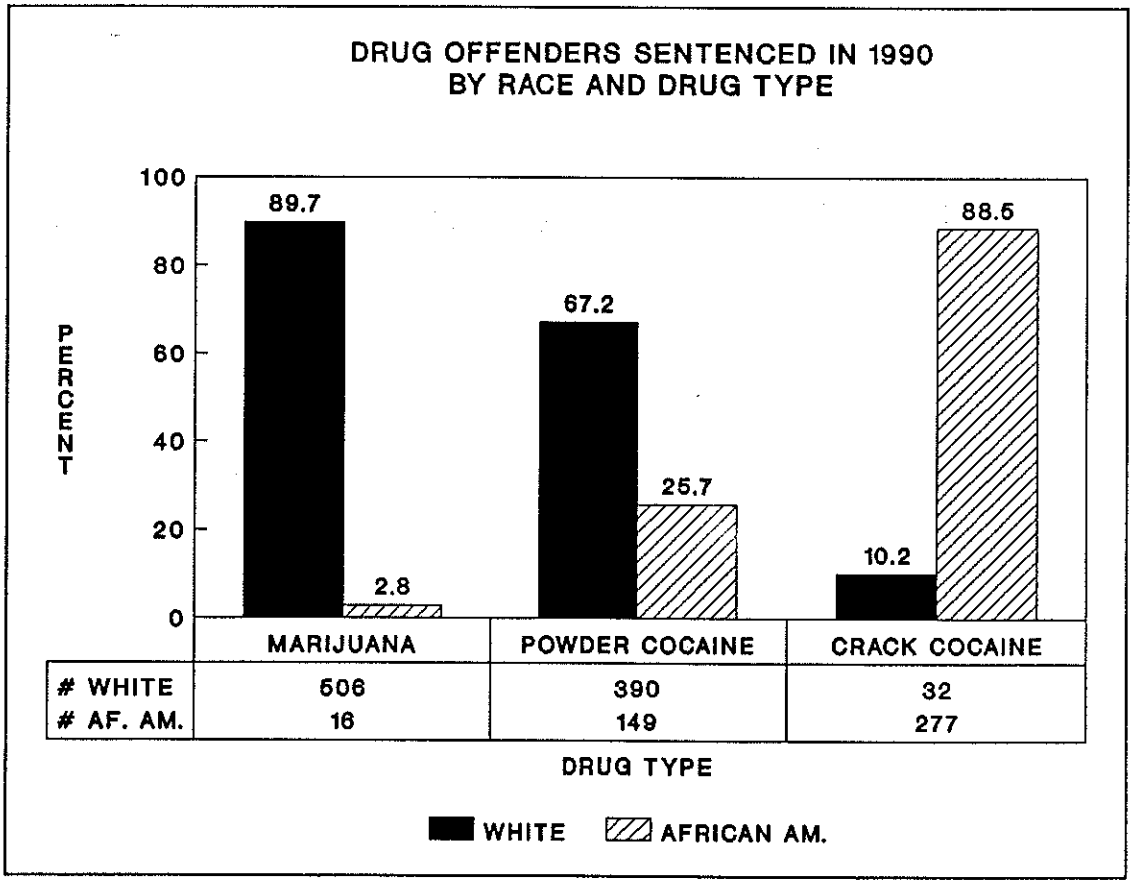
Gender

The vast majority of offenders sentenced for drug crimes in 1990 were males; 81% were males and 19% were females. A higher proportion of females, however, were sentenced for drug crimes involving crack cocaine (24%) and for fraudulent procurement (35%).

Race

In 1990, the breakdown by race of drug offenders was as follows: 68% were white, 25% were African American, under 2% were American Indian and less than 5% were other racial minorities.

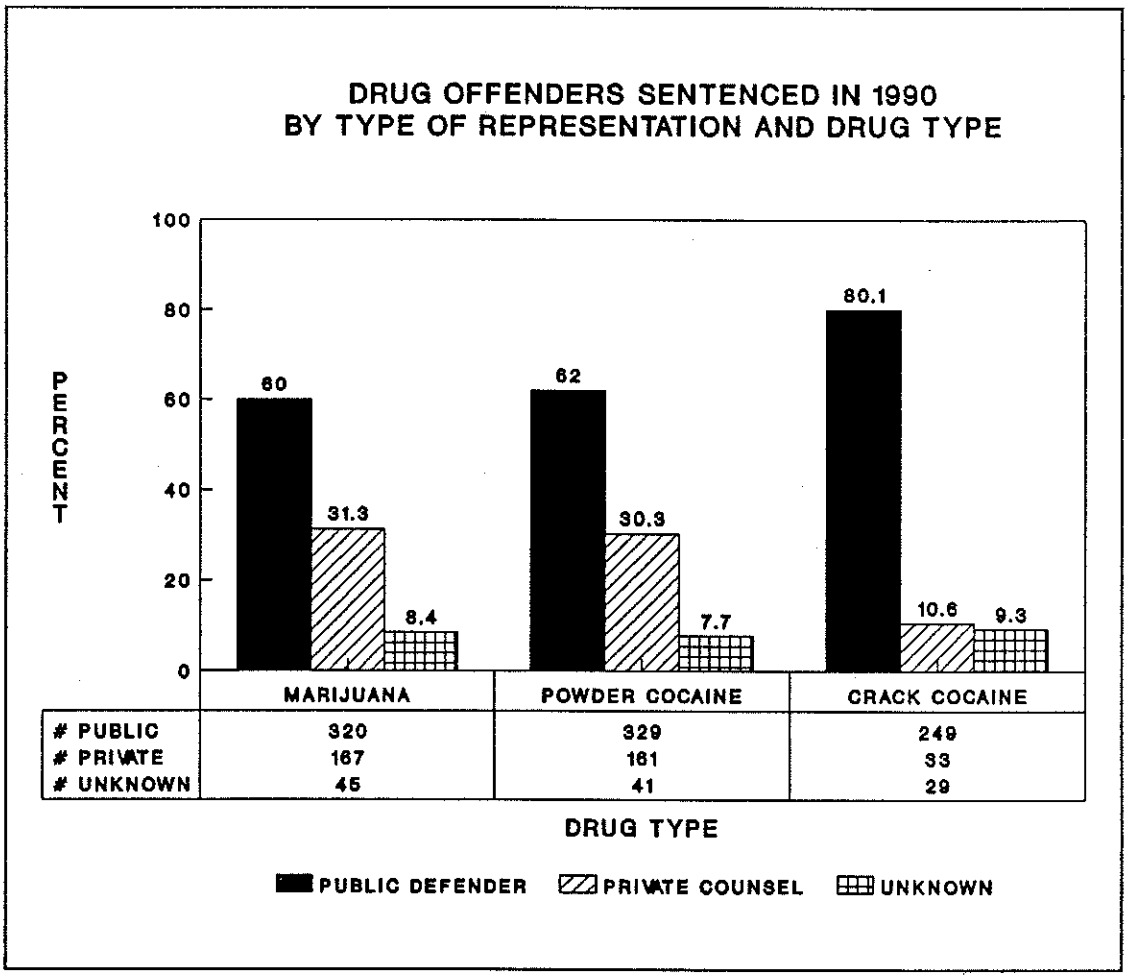
The following graph shows the 1990 racial breakdowns by drug type. The graph only displays figures for whites and African Americans because of the small numbers in other racial groups.



In Hennepin County, the percentage of offenders sentenced for powdered cocaine offenses is approximately the same for whites (47%) and African Americans (45%). The pattern for crack cocaine

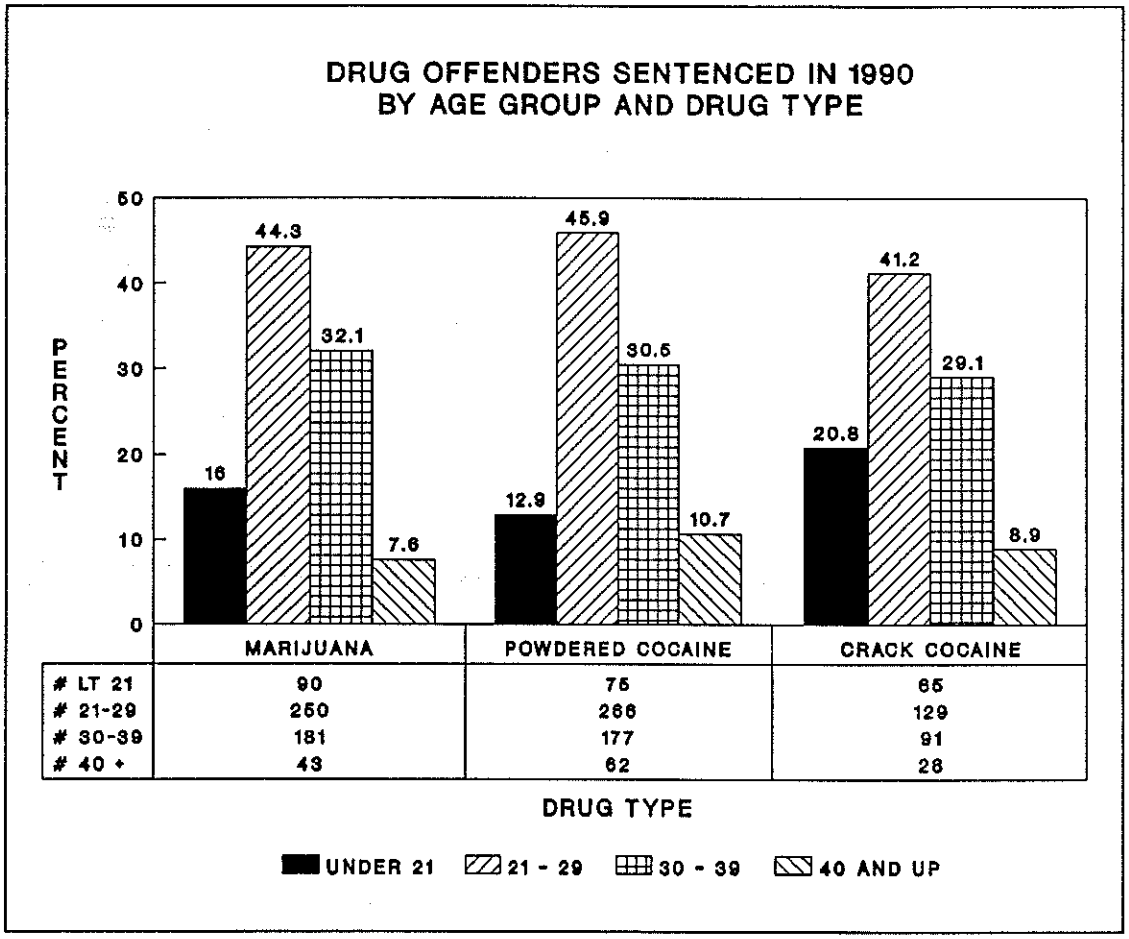
offenses in Hennepin County is nearly the same as for the state as a whole; 91% are African American and 8% are white.

In 1990, 73% of African American sentenced for a drug crime used a public defender. Fifty four percent of the whites sentenced for a drug crime in 1990 used a public offender. For offenders sentenced in 1990 for offenses involving powdered cocaine, both whites and African Americans used a public defender approximately 55% of the time. For offenders sentenced in 1990 for offenses involving crack cocaine, 66% of whites and 81% of African Americans used a public defender. It appears that the need for a public defender runs somewhat higher in crack cocaine offenders than those involving powdered cocaine.



Age

The vast majority of offenders sentenced in 1990 for drug crimes was under the age of 40 (90%). About 42% of the offenders comprised the largest age group of 21 to 29. Youthful offenders under the age of 21 accounted for nearly 16% of all drug offenders. However, the percentage of youthful offenders was higher among crack cocaine cases (21%) and lower among powdered cocaine cases (13%).



First Time Felony and Drug Offenders

The criminal history policy of the Minnesota Sentencing Guidelines allows the criminal history points assigned to the multiple current convictions to accumulate at the time of sentencing. Sentences can be included in the criminal history score even if they are from current multiple offenses and the "prior" sentence to be included was pronounced on the same day or during the same proceedings as the sentencing for the current offense. For example, an offender prosecuted for the first time, but who was prosecuted for three current felonies, would have two of those felonies included in his or her criminal history score by the time the third felony was sentenced. Using data provided by probation officers on the sentencing guidelines worksheet, we were able to identify those drug offenders sentenced in 1990 in response to their first felony prosecution.

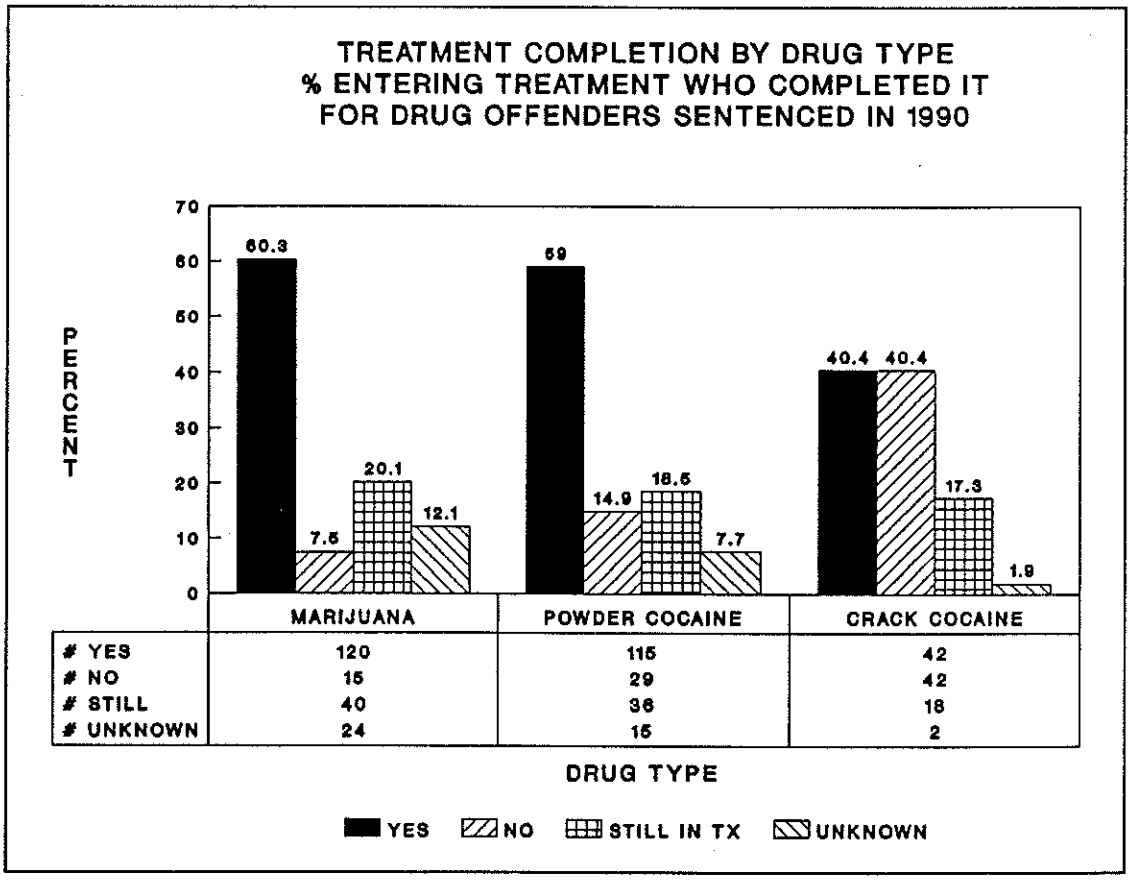
The majority of drug offenders sentenced in 1990 (62%) had not previously been sentenced for a felony offense. The percentage of first time felony offenders varied slightly by the type of drug involved; 63% of powdered cocaine, 58% of crack cocaine, and 69% of marijuana cases involved offenders who had not previously been sentenced for a felony conviction.

In addition, the vast majority of drug offenders sentenced in 1990 (82%) were sentenced for their first drug offense(s). The percentage of first time drug offenders was nearly the same for crack and powdered cocaine offenders (83%) with a slightly higher percentage of first time marijuana offenders (86%).

Treatment

The majority of drug offenders sentenced in 1990 had a chemical dependency evaluation done (65%). This varied only slightly by the type of drug involved in the crime; 62% of marijuana offenders were evaluated compared to 69% of powdered cocaine offenders and 64% of crack cocaine offenders. Among those who were evaluated, a greater percentage of crack cocaine offenders than powdered cocaine offenders was considered abusive or dependent. Nearly 73% of the crack cocaine offenders were considered abusive or dependent compared to 62% of the powdered cocaine offenders and 63% of the marijuana offenders.

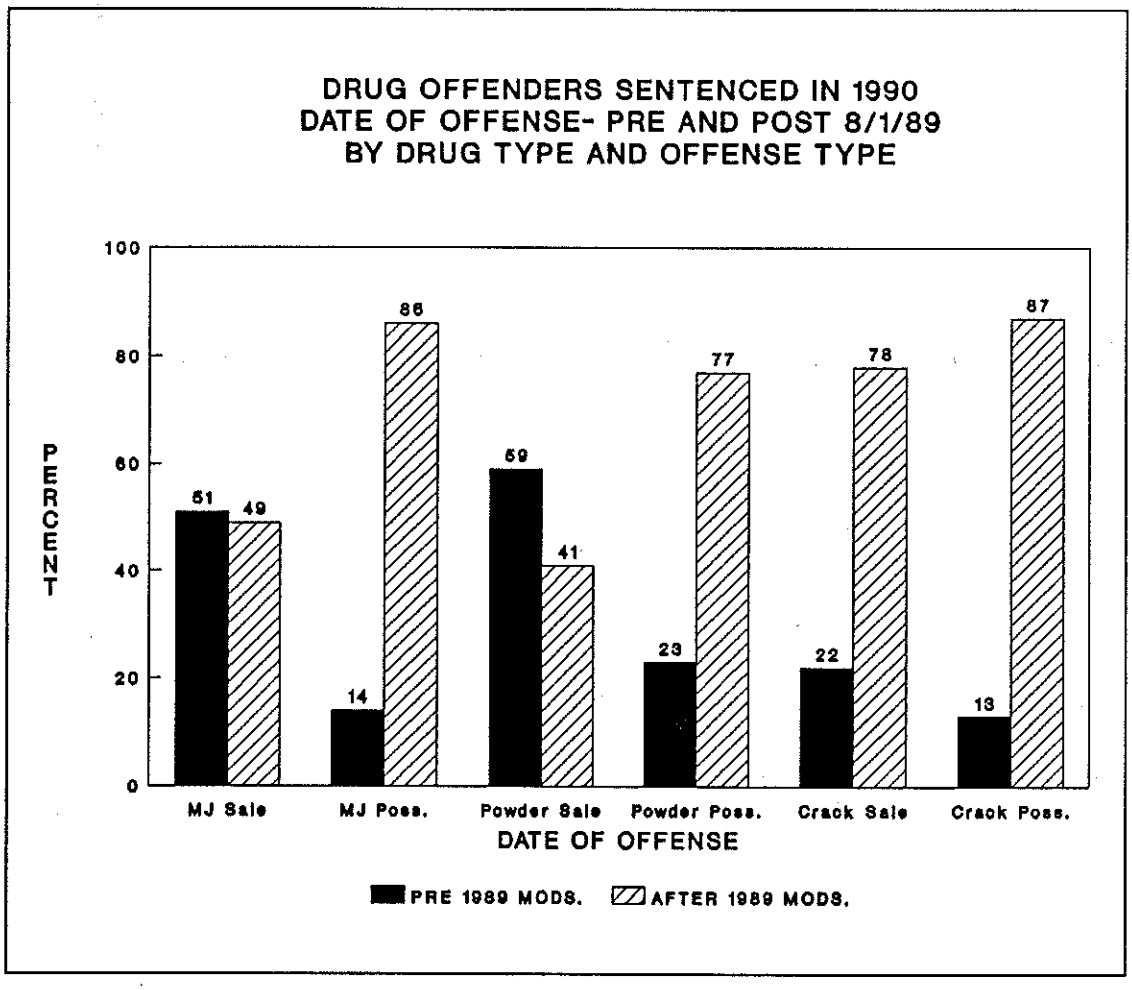
While only 7% of those drug offenders who were not evaluated for chemical dependency participated in treatment, 62% of those who were evaluated participated in treatment. The percentage of offenders who completed treatment varied by drug type. The graph below demonstrates that a smaller percentage of crack cocaine offenders completed treatment than did powdered cocaine or marijuana offenders.



V. SENTENCING PRACTICES

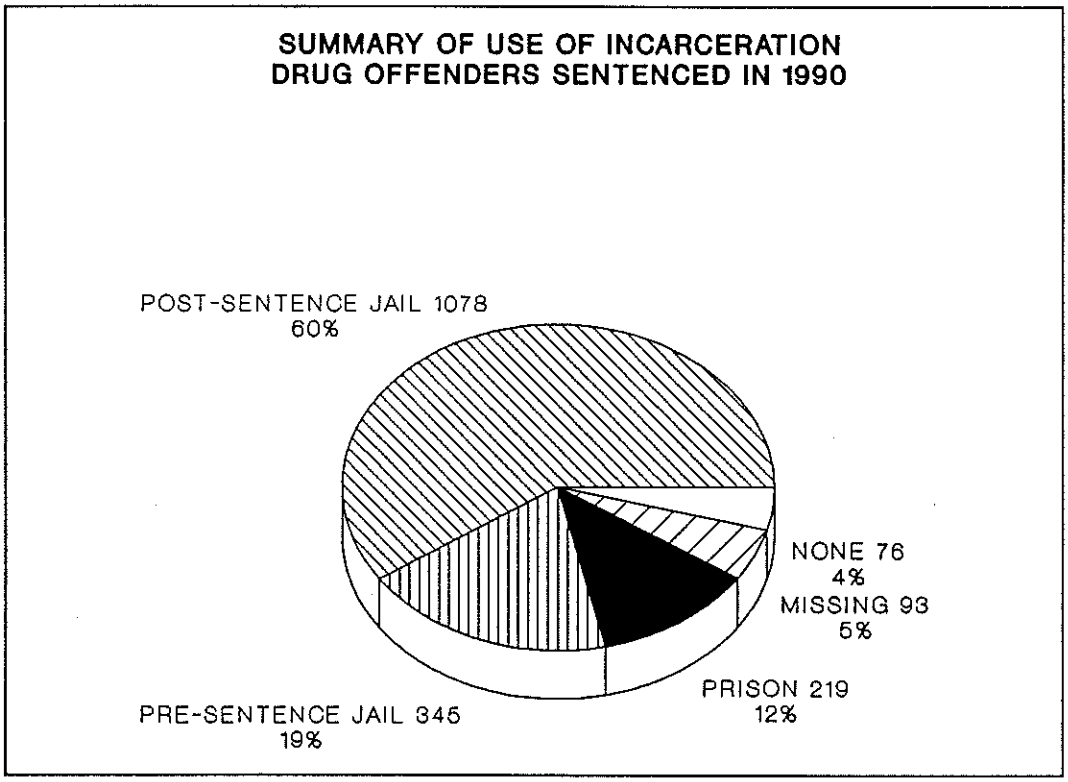
The sentencing guidelines modifications that were implemented in August of 1989 apply to offenses that are committed on or after August 1, 1989. The data analyzed in this section reflects sentencing practices for all offenders sentenced in 1990. The 1989 modifications applied to 72% (1,300) of the 1,811 drug offenders sentenced in 1990. The remaining 28% of the cases involved offenses that were committed prior to August 1, 1989.

As illustrated by the graph below, the percentage of drug cases which came under the 1989 modifications varied by the type of offense and the type of drug. A significant proportion of the sale of marijuana and powdered cocaine cases sentenced in 1990 did not come under the modifications because the offenses occurred prior to the August 1, 1989 effective date. This should be kept in mind when interpreting the sentencing practices described in this section.



A. Incarceration Rates

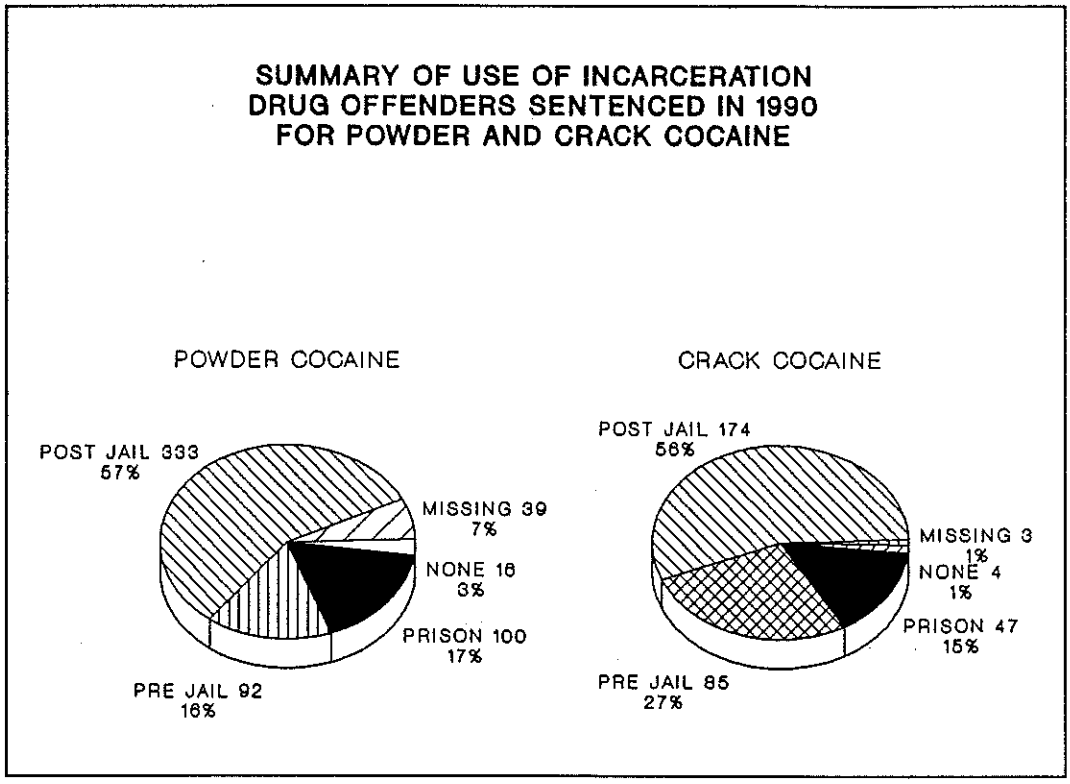
In 1990, 91% of all drug offenders were incarcerated. Incarceration is defined as being imprisoned in a state level prison or a local level jail or workhouse. This incarceration rate is an increase over the 1989 total incarceration rate of 88%. The pie chart below summarizes the use of incarceration for felony drug offenders sentenced in 1990.



The 1990 incarceration rate of 91% breaks down into 12% incarcerated in state level institutions and 79% incarcerated in local jails. The 1990 state level incarceration rate of 12% is approximately the same as in the 1989 state level incarceration rate (14%). In 1990, the percentage of offenders incarcerated in local jails and workhouses rose from 75% in 1989 to 79% in 1990.

Information in the above pie chart summarizes the use of incarceration and shows the percentage of offenders who served time in a state institution or local facility. In 1990, judges pronounced jail as a condition of a stayed sentence for 71.3% of all drug offenders. Offenders can spend a significant amount of time in jail prior to sentencing. This time is credited to any post sentence jail or prison time the offender may subsequently receive. Data were collected on the actual amount of jail time served, both pre and post sentence. Seventy-nine percent of all offenders sentenced for a felony drug conviction did time in jail in 1990. Commission staff were unable to verify whether or not 93 offenders had served any jail time. Data on actual time served in a jail or workhouse is difficult to collect and it is possible that some of the 93 offenders for whom jail time could not be verified did actually serve time in jail.

The total incarceration rate in 1990 did not vary greatly by type of offense. Of all drug sale offenders in 1990, 91% were incarcerated, as compared to 90% of possession offenders. However, the rates did vary by the type of drug involved. The total incarceration rate for offenders convicted of powdered cocaine offenses was 91%, as compared to 98% for crack offenders. This pattern holds true for both sale and possession. The graph below summarizes the patterns of incarceration for crack and powdered cocaine offenders.



The percentage of powdered cocaine offenders sentenced to a state institution in 1990 was slightly higher than the percentage of crack cocaine offenders. This was due to the higher proportion of cocaine offenders who were convicted of sale offenses. Only 18% of crack offenders in 1990 were convicted of sale offenses, as compared to 35% of powdered cocaine offenders.

Marijuana offenders had lower incarceration. The total incarceration rate for offenders convicted of marijuana offenses was 88% (3% in state institutions and 85% in local jails or workhouses). The lower rate of state level incarceration is accounted for by the small percentage of marijuana offenders whose offense and history score results in a presumptive commit (3%).

A table summarizing incarceration rates for different types of offenders is included in the appendix.

B. Average Durations

Data on average prison sentences are presented for the 219 offenders who were sent to state prisons in 1990. The section on average jail durations includes the actual time served in jail by drug offenders in 1990. A table providing more detailed information on average durations, pre and post sentence, is included in the appendix.

Average State Prison Durations

The average state prison sentence pronounced for offenders convicted of felony level drug offenses has been increasing since the mid 1980s. The average prison sentence for drug offenders sentenced in 1990 was 33 months. This is 50% greater than the average prison sentence for drug offenders in 1988. The average pronounced prison sentence was 26 months in 1989 and 22 months in 1988. The increase in 1989 reflected more convictions for the types of drug crimes that were recommended harsher sentences under the guidelines modifications adopted in 1986 and 1987. The increase in 1990 reflects convictions for the types of drug crimes for which harsher sentences are recommended under the guidelines modifications adopted in 1989. If only those cases sentenced under the 1989 modifications are included in the analysis, the average prison sentence increases to 36 months.

The increase in the average prison sentences for drug offenders occurred for both sale and possession crimes. The average durations for sale offenses, however, tended to be higher than for possession offenses. The average prison sentence for offenders convicted of sale offenses in 1990 was 38 months, as compared to 31 months for offenders convicted of possession. In 1989, the average prison duration for sale offenses was 32 months; the average for possession offenses was 19 months.

There are significant differences in average prison durations among different drug types. The average prison sentence in 1990 was 38 months for powdered cocaine, 27 months for crack cocaine and 22 months for marijuana. In 1989, the average prison durations were 29 months for powdered cocaine, 23 months for crack cocaine and 18 months for marijuana. The higher average durations for powdered than crack cocaine cases resulted, in part, from the greater proportion of powdered cocaine offenders who are convicted of sale offenses.

The average prison duration for the sale of crack cocaine is slightly higher than for powdered cocaine (41 months as compared to 40 months). The average duration for the possession of powdered cocaine, however, is significantly higher than for the possession of crack (37 months as compared to 24 months).

Average Local Jail Durations

The average time served in a jail or workhouse for drug offenders in 1990 was 66 days, down from the 1989 average of 71 days. In 1990 the average jail duration for offenders serving pre-sentence jail only was 23 days; the average duration for offenders serving post sentence jail or both pre and post sentence jail terms was 80 days.

Average jail time served in 1990 varied by the type of offense and the type of drug involved. The average jail time served was 87 days for sale offenses and 57 days for possession offenses. The average was 79 days for powdered cocaine offenders, 65 days for crack cocaine offenders, and 61 days for marijuana offenders.

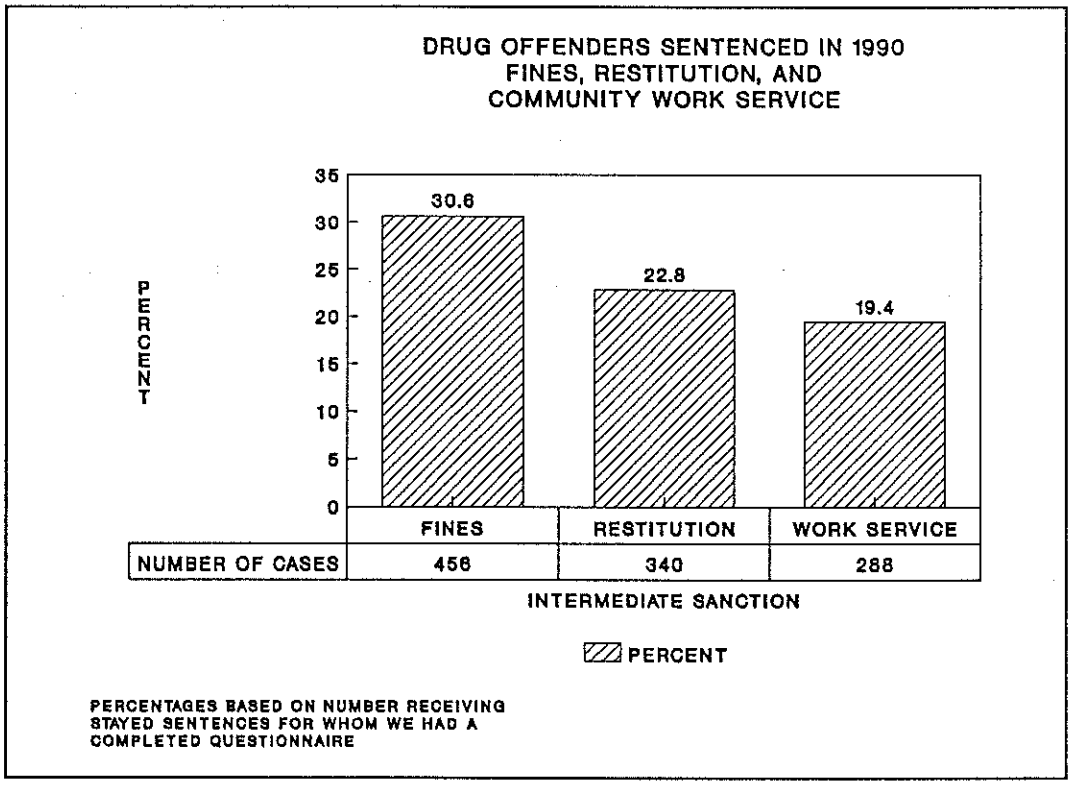
Offenders who sold powdered or crack cocaine served longer jail terms than did those who possessed those drugs. In 1990 the average jail time served for sale of powdered cocaine was 113 days, as compared to 61 days for possession. The average jail time served for sale of crack cocaine in 1990 was 90 days, as compared to 60 days for possession. The average jail time served by marijuana offenders in 1990 was 72 days for sale and 51 days for possession.

C. Intermediate Sanctions

In addition to jail (discussed above) and to treatment (discussed in the section on offender characteristics), offenders who are given probationary sentences may also receive a variety of other intermediate sanctions. Information is available on intermediate sanctions for 93% (1,488) of the 1,592 offenders who received probationary sentences. Percentages discussed in this section are based on the number of offenders receiving stayed sentences and for whom we had a completed questionnaire. Data was collected on fines, restitution/drug buy fund reimbursement, community work service and drug testing.

Fines, Restitution/Drug Buy Fund Reimbursement, and Community Work Service

The graph below shows the percentage of all felony level drug offenders sentenced in 1990 who received fines, restitution and community work service as a sanction. The categories are not mutually exclusive. Offenders can, and do, receive multiple sanctions. It should be noted that the category labeled as restitution includes reimbursements to drug buy funds.

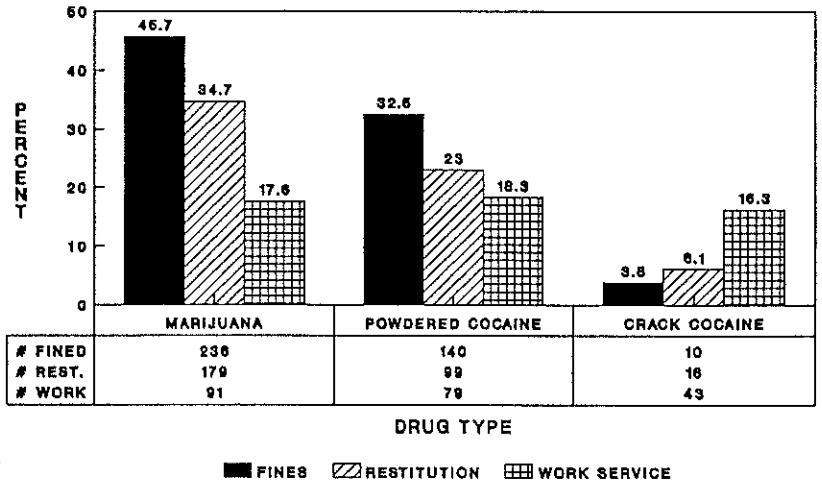


The percentage of offenders receiving restitution/drug buy fund reimbursement as a sanction in 1990 was the same as in 1989 (23%). The usage of fines increased from 29% in 1989 to 31% in 1990, and the use of community work service increased from 15% in 1989 to 19% in 1990.

In 1990 the average fine was $679 and the median fine was $500. The mean and median amounts of restitution were $353 and $200. The average number of community work service hours required of drug offenders was 161, the median was 100 hours.

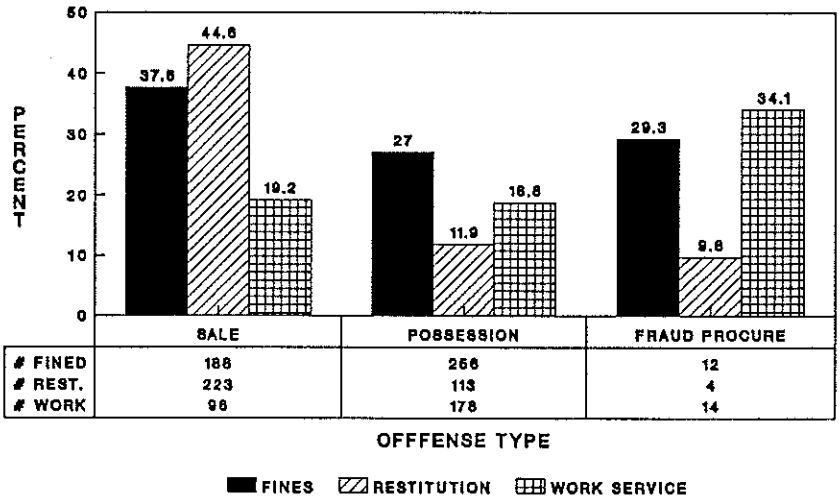
The following two graphs illustrate how the imposition of these intermediate sanctions varies by the type of offense and the type of drug involved.

DRUG OFFENDERS SENTENCED IN 1990
FINES, RESTITUTION, AND
COMMUNITY WORK SERVICE BY DRUG TYPE



PERCENTAGES BASED ON NUMBER RECEIVING STAYED SENTENCES FOR WHOM WE HAD A COMPLETED QUESTIONNAIRE

DRUG OFFENDERS SENTENCED IN 1990
FINES, RESTITUTION, AND
COMMUNITY WORK SERVICE BY OFFENSE TYPE



PERCENTAGES BASED ON NUMBER RECEIVING STAYED SENTENCES FOR WHOM WE HAD A COMPLETED QUESTIONNAIRE

As the graph illustrates, the use of fines in 1990 varied by the type of drug involved. A significantly larger percentage of marijuana offenders received a fine as a sanction. Only a small number of crack cocaine offenders were fined. These differences are observed even when the type of offense is controlled for (see appendix).

The percentage of offenders who received fines as a sanction was greater for those who committed sale offenses. In 1990, 38% of drug sellers were given a fine, as compared to 27% of offenders who possessed drugs, and 29% of those convicted of fraudulent procurement. These differences are due in part to the large percentage of marijuana offenders who are given fines, combined with the fact that marijuana offenders accounted for 31% of all drug cases and 43% of all sale cases.

The use of restitution/drug buy fund reimbursement also varied by the type of drug involved and the type of offense. In 1990, 45% of drug cases involving sale resulted in the requirement that offenders pay restitution or reimburse a drug buy fund. In 1990, restitution was given as a sanction to only 12% of those offenders possessing drugs and 19% of those convicted of fraudulent procurement. This relationship holds true when cases are examined by the type of drug involved.

The percentage of offenders receiving restitution/drug buy fund reimbursement as a sanction also varied by the type of drug involved. In 1990, 23% of powdered cocaine offenders, 6.1% of crack offenders, and 34.7% of marijuana offenders were given this sanction. These differences are accounted for, in part, by the higher percentage of marijuana and powdered cocaine offenders who are convicted of sale offenses.

The use of community work service also varied by offense and drug type. The percentage of offenders in 1990 who received community work service was lower for crack offenders, but the difference for community work service was not as great as for fines and restitution. For marijuana and powdered cocaine offenders sentenced in 1990, the most frequently used of the three sanctions was fines, followed by restitution and community work service. For crack cocaine offenders sentenced in 1990, however, the most frequently used intermediate sanction was community work service.

Tables providing more detailed information on the use of these sanctions and the average and median amounts of the sanctions are included in the appendix.

Drug Testing

Drug testing was conducted for 35% of the 1,488 offenders who received a stayed sentence in 1990 and for whom we had a completed questionnaire. This is an increase over the testing rate of 25% in 1989 and 15% in 1988.

Although the percentage of offenders who undergo drug testing has increased, there has been no change in the percentage of offenders who fail at least one drug test. Of the 35% who were tested in 1990, 35% failed a drug test at least once. This failure rate is similar to the 34% rate observed in 1989 and in 1988. Over 80% of offenders who fail drug tests fail due to the use of drugs, rather than alcohol.

Offenders who were convicted of selling drugs in 1990 were tested at a higher rate than those convicted of possession or fraudulent procurement (42% as compared to 31% and 32%, respectively). However, offenders convicted of possessing drugs failed at a higher rate (37% of drug possessors as compared to 33% of drug sellers and 8% of those convicted of fraudulent procurement).

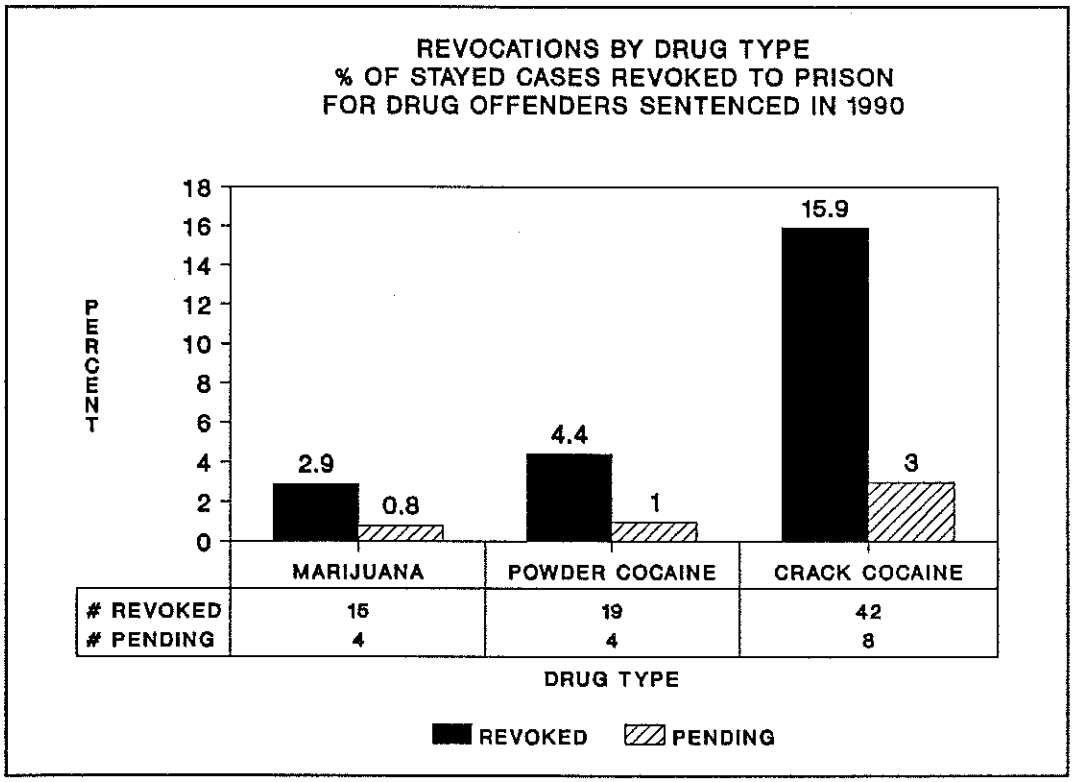
There were some differences among the different drug types. In 1990, 37% of powdered cocaine offenders underwent drug testing as compared to 33% of crack cocaine offenders and 35% of marijuana offenders. Crack cocaine offenders had the highest rate of drug test failure. In 1990, 36% of powdered cocaine

offenders and 32% of marijuana offenders failed a drug test at least once, as compared to 46% of crack cocaine offenders.

A table providing more detailed information on drug testing and failure rates by drug type and offense type is included in the appendix.

D. Revocations

Of the 1,488 offenders who were on probation and for whom a completed questionnaire was available, 6% had their probation revoked and were sent to prison by the time this data was collected (six to 18 months after sentencing). This figure did not change significantly between 1989 and 1990. The revocation rate did vary by drug type, with crack offenders having the highest revocation rate. The graph below illustrates the differences in the revocation rates by drug type. In about half of the pending revocations, the offender was at large.



E. Departures from the Presumptive Sentence

The guidelines allow for judges to depart from the presumptive sentence when substantial and compelling circumstances exist. Departures are allowed because the presumptive sentence is based on the "typical" case, and the appropriate use of departures by the courts when substantial and compelling circumstances

exist can enhance proportionality. A table in the appendix provides detailed information about the aggravated and mitigated dispositional departure rates for different types of drug offenses.

Dispositional Departure Rates

The presumptive disposition is determined by the severity level of the offense of conviction and the offender's criminal history score. A prison sentence is presumed for offenders who fall below and to the right of the dispositional line on the sentencing guidelines grid. In addition, sentencing guidelines policy states that "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 severity level VI or above drug crime or sale of cocaine before the current offense occurred, the presumptive disposition is Commitment tot he Commissioner of Corrections." If the judge pronounces a sentence that includes a disposition other than the presumptive, it is considered a departure and the court is to provide the substantial and compelling reasons for the dispositional departure.

The overall dispositional departure rate for drug offenders sentenced in 1990 was 8.3%, as compared to 7.9% in 1989 and 1988. The mitigated dispositional departure rate increased to 5.7% in 1990 from 4.7% in 1989 and 4% in 1988. The aggravated dispositional departure rate decreased to 2.6% in 1990 from 3.2% in 1989 and 3.8% in 1988. Most of the aggravated dispositional departures in each year were primarily due to offenders requesting to be sentenced to prison, typically because the offender was already going to prison for a different felony offense.

Dispositional Departure rates were highest for cocaine offenders, particularly crack cocaine. The overall dispositional departure rate was 10.7% for powdered cocaine offenses and 13.1% for crack cocaine offenses. The dispositional departure rate for marijuana offenders was 1.8%.

Durational Departure Rates-Executed Sentences

The guidelines recommend the appropriate duration of incarceration for those offenders who receive an executed prison sentence. Just as the disposition is determined by the severity level of the conviction offense and the criminal history score of the offender, the duration is also determined by these factors. The guidelines provide both a presumptive duration and a narrow range of months around the presumptive duration that a judge may pronounce and still be within the guidelines. If the judge pronounces a prison sentence that is greater or less than the upper and lower ranges, this constitutes a departure and the sentencing judge must cite the substantial and compelling circumstances that warranted the durational departure.

The overall durational departure rate for drug offenders sentenced in 1990 was 30.5%. Eight offenders (3.7%) received aggravated durational departures and 59 offenders (26.9%) received mitigated durational departures.

F. Sentencing Practices by Gender and Race

Gender

Incarceration rates in 1990 were nearly the same for males and females at 91% and 89% respectively. Males were more likely to be incarcerated in state institutions and females were more likely to be incarcerated in local jails. On the average, females tended to serve less time than males. Males were

given an average sentence in a state institution of 34.4 months compared to 26.4 months for females. These sentencing practices were similar for cases involving each particular drug type.

Based on information on those offenders who received stayed sentences and for whom we had a completed questionnaire, the use of intermediate sanctions differed somewhat by gender. Males were more likely to be fined (33%) than females (20%) and more than twice as high a percentage of female offenders received community work service (36%) than did male offenders (15%). The use of restitution/drug buy fund reimbursement was similar for males and females; 22% and 26% respectively. These sentencing patterns were similar when the data were examined by drug type.

Race

The incarceration rate for whites was 89% compared to 94% for African Americans. The slight difference is explained in part by the larger percentage of whites who were convicted of marijuana offenses and the larger percentage of African Americans who were convicted of crack cocaine offenses. The incarceration rates for both whites and African Americans involved in marijuana (87%) were lower than the rates for other drug types and the incarceration rates for both whites (98%) and African Americans (100%) involved in crack cocaine were higher than the rates for other drug types.

About 10% of white offenders were incarcerated in state institutions compared to 17% of African American offenders. The average pronounced sentence for those incarcerated in state institutions was slightly higher for whites than African Americans; 34.7 months and 31.4 months respectively.

The following is a breakdown of intermediate sanctions by race for those offenders who received a stayed sentence and for whom we had a completed questionnaire: whites received fines in 40% of the cases, restitution/drug buy fund reimbursement in 29% of the cases, and community work service in 20% of the cases; African Americans received fines in 5% of the cases, restitution/drug buy fund reimbursement in 7% of the cases; and community work service in 18% of the cases.

VI. HARM TO THE COMMUNITY

The Legislature instructed the Commission to address the issue of harm to the community that results from crack cocaine versus powdered cocaine or other controlled substances. Direct correlations between specific harms to the community and specific drugs are difficult to establish.

The Commission acknowledged that there is harm to any community if there is a cheap and readily accessible drug of any kind that people want to use. Disruption, fear, and anxiety occur in communities where drugs are sold blatantly on street corners or out of houses and apartments in the neighborhood. But there are problems when trying to measure and account for the harms caused by specific drugs.

The Commission had previously heard testimony from neighborhood groups and citizens about the destructive impact drug abuse caused in their communities. The Commission is concerned about these problems. However, it was clear from the testimony that these citizens were concerned about the devastating impact of all drugs in their communities. They could not distinguish the specific effects of one drug from another, particularly powdered vs. crack cocaine. The concerns of citizens regarding drugs and their neighborhoods extended beyond sentencing issues. They include such concerns as release with no or low bail amounts, lack of convictions following arrest, problems with police response time, and more general social problems resulting from drug use and abuse. The citizens wanted the problems in their neighborhoods addressed, regardless of the type of drug involved.

Tremendous harm is caused by any type of drug use, including the abuse of alcohol. The emotional and financial harm to families where drug or alcohol abuse occurs is widespread in this country. Costs to businesses and health care institutions are also great from drug use. In addition, we cannot ignore the enormous threat to our health caused by the spread of HIV infections from the intravenous use of any drug, including powdered cocaine.

At present, the Commission has not been able to make a meaningful distinction between the harm to the community caused by crack versus powdered cocaine. The Commission believes it would be extremely difficult at this time to measure harm to a community by the type of drug. Some of the reasons for the difficulty are that most drug abusers do not confine themselves to one drug. Alcohol as a drug permeates all statistics. Also, the order of drug taking when more than one is involved is important, but usually impossible to track with certainty. In addition, there are the broader concerns of the citizens of the most devastated neighborhoods and the extremely difficult problem with attempting to measure specific harms caused by specific drug types. Public policy must try to alleviate the harm caused by all drugs, including alcohol abuse.

VII. CONCLUSIONS

The Commission realizes that the Supreme Court case State v. Russell and recent actions of the Legislature have had an impact on this report.

The Commission believes the impact of the Supreme court and the legislative action will help focus the overall need to study the state's drug laws, to address deteriorating conditions in neighborhoods and communities, and to study all reasonable options with a view toward continuing to address drug abuse and addiction in Minnesota. The Commission believes that additional work is needed on these issues and will continue to look for opportunities to receive input from sources knowledgeable in the field.

APPENDIX

SUMMARY OF CONTROLLED SUBSTANCE STATUTES
Effective August 1, 1991

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE (M.S. § 152.021):

Severity Level

8 — Sale: Aggregated Over 90 Day Period (subd. 1)
- (1) 10 or more grams Crack
- (2) 50 or more grams Cocaine/Narcotic
- (3) 50 grams or 200 or more dosage units PCP/Hallucinogen/Methamphetamine
- (4) 50 kilograms or more Marijuana
  or
  25 kilograms or more Marijuana in a School, Park, or Public Housing Zone

8 — Possession (subd. 2)
- (1) 25 or more grams Crack
- (2) 500 or more grams Cocaine/Narcotic
- (3) 500 grams or 500 or more dosage units PCP/Hallucinogen/Methamphetamine
- (4) 100 kilograms or more Marijuana

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE (M.S. § 152.022):

Severity Level

7 — Sale: Aggregated Over 90 Day Period (subd. 1)
- (1) 3 or more grams Crack
- (2) 10 or more grams Cocaine/Narcotic
- (3) 10 grams or 50 or more dosage units PCP/Hallucinogen/Methamphetamine
- (4) 25 kilograms or more Marijuana
- (5) Crack/Cocaine/Narcotic to minor
- (6) Any of the Following in a School, Park, or Public Housing Zone:
  - (i) Schedule I & II Narcotics
  - (ii) Methamphetamine/Amphetamine
  - (iii) 5 kilograms or more Marijuana

7 — Possession (subd. 2)
- (1) 6 or more grams Crack
- (2) 50 or more grams Cocaine/Narcotics
- (3) 50 grams or 100 or more dosage units PCP/Hallucinogen/Methamphetamine
- (4) 25 kilograms or more Marijuana

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE (M.S. § 152.023):

Severity Level

6	Sale (subd. 1)	
	(1)	Crack/Cocaine/Narcotic
	(2)	10 or more dosage units of Hallucinogen/PCP
	(3)	Schedule I,II,III to minor - Not Narcotics
	(4)	Schedule I,II,III employs minor - Not Narcotics
	(5)	5 kilograms Marijuana
	Possession (subd. 2)	
7	(1)	3 or more grams Crack
7	(2)	10 or more grams Cocaine/Narcotic
6	(3)	Narcotic with intent to sell
6	(4)	50 or more dosage units of Narcotics
6	(5)	Sch. I & II Narcotics in a School, Park, or Public Housing Zone
6	(6)	10 kilograms Marijuana
6	(7)	Methamphetamine/Amphetamine in a School, Park, or Public Housing Zone

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE (M.S. § 152.024):

Severity Level

4	Sale (subd. 1)	
	(1)	Schedule I,II,III (except Marijuana)
	(2)	Schedule IV or V to minor
	(3)	Employs minor to sell schedule IV or V
	(4)	Marijuana in a School, Park, or Public Housing Zone
4	Possession (subd. 2)	
	(1)	10 or more dosage units of Hallucinogen/PCP
	(2)	Schedule I,II,III (except Marij.) w/ intent to sell

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE (M.S. § 152.025):

Severity Level

2	Sale (subd. 1)	
	(1)	Marijuana
	(2)	Schedule IV
2	Possession (subd. 2)	
	(1)	Possession of Schedule I,II,III,IV - Includes Marijuana Also Includes: Crack/Cocaine/Narc./PCP/Halluc.
	(2)	Marijuana with intent to sell
	(3)	Procurement by fraud

The following are excerpts from the minutes of the Sept. and Oct. 1991 Commission meetings. The Commission invited experts in the area of cocaine research, addiction and treatment, and forensic science to present information on the differences and similarities of crack vs. powdered cocaine.

September 1991 Commission Meeting:

The first speaker was Dan Cain of Eden House. Mr. Cain stated that he was the director of three substance abuse programs that deal with illegal drugs as well as alcohol. He stated that he had obtained his information from the people these drug programs serve. He noted that in his opinion someone should ask the legislature why this issue wasn't considered prior to passing the law rather than after the fact. He stated that the commission should not have to resolve the issue for the legislature. He began his presentation with a brief historical overview of the legislative action behind the current law.

Dan Cain next addressed the question "Is crack more harmful than powdered cocaine?" He stated that he felt the answer to this was "Both yes and no." In explanation, he compared crack to a Hostess Twinkie, and powdered cocaine to a Baked Alaska dessert. He stated that, although powdered cocaine is considered 'better' than crack, due to the high price, it is out of reach for most people. Crack, on the other hand, just like the hostess Twinkie, makes the 'high' available to a larger population due to its lower cost per dose. He noted that at the time of introduction of crack, the sellers did a tremendous marketing job in promoting the drug. He stated that this occurred at a time when cocaine hydrochloride was talked about as not being a problem, and as a beauty drug. He stated that because of this, crack does present a bigger societal problem due to its harsh impact on neighborhoods. As far as the individual user, however, the difference was only in the route of administration. He stated that certain means of administration were more effective than others. Judge Marsden asked what he meant by effective. Mr. Cain stated that, by that, he meant how long it took for the drug to reach the brain. Smoking or injecting the drug will produce a very swift, intense, but short lived high in comparison to taking the drug by 'snorting'. He stated that, again, the route of administration chosen also often involved the cost difference between crack and powdered cocaine. He also noted that many people have a psychological fear of needles, thus they prefer smoking. However, clients he had talked to who had gotten over the fear of needles and had tried both forms of administration preferred injecting a liquified form of cocaine whenever they could afford it. Dan Cain stated that at the time this law was passed, crack was a "new" drug on the streets. Crack was making a big impact on communities, and the public was experiencing a great deal of fear. Because of this, they didn't question having a disparity between crack and cocaine.

Jenny Walker asked him if the issue actually came down to economics. Mr. Cain stated that it came down to economics and the availability of the drug. Justice Gardebring asked if crack was addictive in a different way than powdered cocaine. Mr.Cain stated that the route of administration may have a certain effect on frequency of use, but not on the actual addiction itself. He also stated that at one time it was believed that cocaine was not addictive at all. Now, however, psychological addiction is recognized. He stated that when the drug is smoked or injected the 'high' is immediate, intense, and short lived. When the drug wears off, the individual experiences depression. To prevent the depression, the individual may go on 'binges'. He also stated that again money is involved in that for about $125.00 an individual could purchase a gram of powdered cocaine. This would amount to about three uses. For the same price the individual could purchase five rocks and use it more frequently.

Stanley Suchta asked if the rate of addiction is the same regardless of the form of administration. Dan Cain stated that if comparing injecting cocaine and smoking crack, the frequency of use could be the same. He stated that the cravings, etc., would be the same. Chairman Jessen stated that if there is no difference in the addiction between the two, then it came down to an economic, cultural, and neighborhood problem. Dan Cain stated that making a drug available which offers immediate gratification to an impoverished population wanting a means to make up for the lack of sustained gratification, would obviously cause problems.

Chairman Jessen asked if Mr. Cain felt there was any deterrent value in punishing one more severely. Mr. Cain stated that for deterrence, people must think about their actions. An addicted person is not thinking about his/her actions, but merely trying to supply the addiction. He stated that some people know of the penalty difference, others don't. Some know, but don't care as they feel they will never get caught. Judge Marsden asked if Dan Cain would recommend changing the statute. Mr. Cain stated that if the result of prosecutions is the persecution of people of color, it is not worth it to have the distinction. Stan Suchta asked if it was true that dealers were driven by a need to support their own drug habit. Dan Cain stated that it used to be true that almost all dealers were also users, now, however, a new phenomenon of entrepreneurship has been spawned by gang activity. Stan Suchta asked if stiffer laws would get at this. Mr. Cain stated that if sale can be proven, then a level could be defined as a dealer. Stan Suchta asked if one amount should be raised and the other lowered. Mr. Cain stated that he would be less concerned about what level than that they were at the same level. He felt that 10 grams of powdered cocaine was reasonable to delineate a dealer, but that three grams of crack simply was not comparable.

The next speaker was Mr. BoisSan Moore of the Institute on Black Chemical Abuse. Mr. Moore stated that he was involved in the treatment for drug abuse, but that he was also involved in working with victims. He stated that he supported many comments made by Dan Cain. Mr. Moore stated that he does not see a distinction between these two drugs. The behavior of an addict of one form of the drug is the same as an addict of another form of the drug. He also stated that he wanted to clarify that having three grams of crack is not the same as having three grams of cocaine due to adulterants and impurities. He stated that the addictive process for any form of cocaine depends on how much and how often the drug is taken, not on the form taken. One form does not necessarily cause addiction faster than another form. He stated that he has seen a disproportionality in the types of people that get arrested due to the differentiation between crack and cocaine. He cited surveys which indicate that African Americans use less over all of a given drug, yet, the arrests and convictions are extremely disproportional. He stated that the reasoning behind differentiating between crack and powdered cocaine tends to focus on the existence of 'crack houses'. Law enforcement tries to go after the higher level dealers. He stated that even this is disputable, as the public wants the low level dealers off the streets just as badly as the higher level dealers.

Mr. Moore stated that the indicators of overall cocaine use were dropping. He stated that a danger is that if crack and cocaine use is considered 'just' an inner city problem, treatment, etc., will not be considered important enough to warrant funding. He stated that the indicators are coming down overall, but not for inner city areas. He also stated that the availability of treatment in jail and prison is relatively low. If these people are not treated, they will return to the outside with the same problem. In the long run, it costs a great deal more to not treat an addict than it does to treat him as soon as the opportunity arises. He stated that studies have shown that even when addicts are forced into treatment, there are good outcomes. He again stated that there is no difference between addiction to one form of the drug as compared to another form. He illustrated this by stating that there is no significant difference in the treatment approaches.

Commissioner Pung stated that there was also the concern over the accompanying violence when gang activity is involved. When gang activity becomes involved in the drug culture, weapons are introduced, and eventually the use of weapons is not necessarily related to drugs. Mr. Moore stated that according to BCA data, looking at 20 year trends, there is a general increase in violent crime. This is also taking place in Minnesota, although at a slower rate in comparison to other states. He stated that he feels that due to a cultural shift, people have become more willing to use handguns. This trend is evident in the drug culture as well. He also stated that a study performed in New York concluded that violence accompanies any drug. Crack has not been much different than any other drug in this respect. Stan Suchta asked if either crack or cocaine tends to induce a greater likelihood of violence. Mr. Moore stated that his experience indicated that neither form of the drug caused a greater likelihood for violence than the other

form. Cocaine psychosis can be brought about by either form. He stated that it is impossible to detect who will suffer particular ill effects from the drug.

Jenny Walker asked if sellers were more likely to use crack than powdered cocaine. Mr. Moore stated that the trend of sellers also being users has been changing. A study in New York indicated that many dealers were involved for economic reasons. He stated that a misconception was that dealers are making huge amounts of money. In actuality it is not steady work. A seller must work extremely hard for long hours for minimal returns. The higher level dealers in the suburbs dealing in powdered cocaine, however, are much more calculating and would be more likely to know the difference in the law as far as severity. Stan Suchta asked when a high profit dealer was shown on TV, that person was in fact just an example of a good salesperson, or whether that was the typical seller. Mr. Moore stated that an individual who sells a great deal is much more newsworthy.

Chairman Jessen asked Mr. Moore about crack houses in Minnesota. Mr. Moore stated that the number of crack houses in Minnesota has probably been inflated. An example of how this could happen is the offender who operates a crack house, is arrested and serves time, and then gets out and opens up another crack house. These houses would be counted separately, but in reality they were run by the same person. Mr. Moore stated that true "crack houses" are much more common on the east coast. He stated that the pictures in the media showing bulldozers going in and knocking out walls of crack houses had had a great impact on increasing the public's fear of crack.

Chairman Jessen asked if BoisSan Moore felt that a higher severity level was warranted. Mr. Moore stated that there was if there is evidence of an individual operating a crack house or evidence that that individual is indeed dealing in crack. He stated that individual dependency on the drug varies, but that 3 to 7 grams is a typical range of use for an addict. At the 3 gram level you may be convicting addicts as dealers.

Mr. Moore stated that another misconception is that crack is cheaper. It is cheaper by the dosage unit, but more units are used and thus becomes more expensive in the long run.

Chairman Jessen asked if focusing on first timers would serve as a deterrent. Mr. Moore stated that his experience was that it was not a deterrent. Mary T. Howard asked if people tend to graduate up to cocaine. Mr. Moore stated that it depended on what the individual was initiated on. James Dege asked which caused the biggest problem, crack or powdered cocaine. Mr. Moore stated that crack is more visible, but it depends on the view of what constitutes a "problem". If what constitutes a problem is the effect on family, etc., then powdered cocaine would have to be considered the bigger problem. In regards to crack, people see the effects on TV more vividly than the effects of cocaine. They do not see the effects brought about by people in prominent positions. People in powerful and prominent positions actually affect more people than the crack user on the corner. In the African American community, however, crack is by far the bigger problem. Jenny Walker asked if this was due to availability. Mr. Moore stated that that was true. He stated that 6 years ago PCP was the popular drug, whereas now it is crack. Commissioner Pung stated that the Dept. of Human Services was reporting a leveling off of cocaine use. Mr. Moore stated that there have been positive effects brought about through prevention and promotion measures.

Chairman Jessen at this time turned the Chair over to Julius Gernes.

The next speaker was Carol Falkowski of the Dept. of Human Services. She stated that she studied patterns and use of drugs of abuse. She noted that at the time these laws were made, crack and cocaine were talked about as different drugs. For example, she stated, you heard about "crack babies", but not about "cocaine babies". She stated that the public got its first introduction to crack in the mid 1980's. In 1986, for the first time, deaths due to cocaine use outnumbered deaths due to heroin use. Since 1989, however, this has been declining. Ms. Falkowski provided the commission with several illustrations

showing the rate of use among various populations. She stated that in regards to the drug itself, there is no difference between crack and powdered cocaine. She noted that crack has settled into areas of poverty. She also noted that there is a possibility that a predisposition to addiction is genetic. If one form of cocaine is considered more harshly just because it is absorbed by the body more swiftly, then other drugs would have to be looked at in the same light.

Chairman Gernes stated that perhaps the distinction in the law reflected the impact on the community rather than the addictiveness.

October 1991 Commission Meeting

The first speaker was Dr. Dorothy Hatsukami, an associate professor of psychiatry at the University of Minnesota. Dr. Hatsukami provided several illustrations showing the use and effects of cocaine. Dr. Hatsukami stated that in relative proportions, the National Household Survey on Drug Abuse has shown higher numbers of African Americans using crack than caucasians. Dr. Hatsukami provided the commission with three conclusions which she has reached through her research and review of research of others in regards to various routes of administration of the drug cocaine. These conclusions were 1) Smoked cocaine has a greater potential for addiction than intranasal 2) However, subjective and physical effects are similar regardless of the route of administration although the peak onset and duration may be dissimilar, and 3) Once addicted, the consequences are similar across routes of administration. Dr. Hatsukami stated that the determining factor as to how addictive a drug is, is the immediacy and intensity of the effect of the drug. The quicker the drug is absorbed by the body, the more rapid is the effect, the more intense is the feeling, and the more highly addictive is the drug. Dr. Hatsukami stated that her review of research looked at the effects of various routes of administration. When the drug is introduced to the body through an intranasal route of administration , there is a gradual absorption of the drug with the peak of the high taking place in about 20 to 30 minutes. The duration of the effect is about 30 to 40 minutes. During this time the "high" decreases at a steady rate. When the drug is injected or smoked, however, there is a very rapid absorption (1 to 2 minutes) and the duration is very short. Because of the immediate effect experienced, these routes of administration are both more addictive than "snorting". Dr. Hatsukami next compared IV use and smoking. Dr. Hatsukami stated that in her research people who had tried both IV use and smoking claimed to prefer smoking the drug. To help explain this, Dr. Hatsukami referred to a study which compared the effect of nicotine introduced through smoking and injection. In this study it was found that smoking causes much higher amounts of the drug in the brain at a quicker rate of time. If this effect holds true when looking at cocaine, smoking cocaine would be the quickest route of administration. Therefore it would also be the most addictive.

Dr. Hatsukami next discussed comparisons between the immediate and long term effects of cocaine through various routes of administration. Her studies as well as others have shown that the immediate effects brought about by various routes of administration are somewhat different in that injection and smoking cause a swifter "high". However, the actual consequences of the drug are the same. Immediate subjective effects including stimulation, euphoria, energy, alertness, decreased anxiety, decreased social inhibitions, and increased sexuality were similar. Likewise, no differences were found in the effects after controlled multiple doses. The effects after prolonged and excessive use can also be similar across routes of administrations. These effects include anxiety, hyperactivity, panic, paranoia, and delusions. Another study which looked at long term consequences of cocaine addiction has also shown that the effects on interpersonal relationships, financial problems, minor physical problems, vocational problems, major psychological problems, and major physical problems, are not different across the various routes of administration. The most important factor in determining consequences was one dose and not necessarily by route of administration.

Justice Gardebring asked Dr. Hatsukami why the effects change from extremely positive to extremely negative over time. Dr. Hatsukami stated that this could at least in part be from the depletion of neurotransmitters in the brain. She also stated that the body develops a tolerance to the drug after multiple doses; because of this the body is not reacting in the same way as it did after just one dose. Judge Marsden asked if Dr. Hatsukami felt that crack affects distinct socio-economic groups. Dr. Hatsukami stated that crack seems to affect the lower socio-economic strata. Chairman Gernes asked if there were any studies to show the extent one might be addicted if using crack. Dr. Hatsukami stated that there were studies which had shown that there is a high probability of an addiction to nicotine developing for individuals who experimented with cigarettes. Certain comparisons could perhaps be drawn between smoking cigarettes and smoking crack because of the immediacy of drug effect. In addition to this, one other study stated that two-thirds of a population experimenting with crack went on to become addicted to crack. Judge Marsden asked if any studies had been performed on the scope and success of treatment for the various routes of administration. Dr. Hatsukami stated that she did not have that information with her, but that in her opinion, if many resources are available, no matter what the route of administration, an individual will have a higher likelihood of a successful treatment. Dr. Hatsukami stated that it may true that in general crack users may not have many resources available to them.

The next speaker was Mr. Frank Dolejsi, Assistant director of the BCA laboratory and a forensic toxicologist. Mr. Dolejsi discussed three differences between crack and powdered cocaine. Mr. Dolejsi first demonstrated the differences in the chemical formulas between freebase and cocaine hydrochloride. Because of the slight differences in the chemical formulas, however, when cocaine hydrochloride is burned it decomposes and the drug is lost, when freebase is burned it vaporizes. Because of this difference, freebase can easily be introduced into the body through inhaling the vapors. Mr. Dolejsi stated that once these two forms of cocaine are inside the body, however, they are the same drug. The only difference between these two forms prior to being placed inside the body is that cocaine hydrochloride is in a salt form and freebase (crack) is in a basic form. Mr. Dolejsi next discussed the procedure involved in making freebase stating that the procedure which is currently used to make crack is very simple. Baking soda and water is added to about three parts of cocaine hydrochloride. This mixture is heated to almost boiling, then cooled and precipitated. The lumps which are left is crack. This method is easier and safer than earlier methods used to obtain freebase, as the earlier methods used flammable compounds which could ignite and cause injury.

Stanley Suchta asked Mr. Dolejsi what the conversion rate is between powdered cocaine and crack. Mr. Dolejsi stated that based on its molecular formula, if 10 grams of powdered cocaine were used - assuming 100% purity - approximately 9 grams of crack would be obtained. Mr. Dolejsi stated that it is a myth that freebase is 100% pure. The process used to make base will take out impurities such as sugar, but will not remove other impurities or chemicals that are bases.

Mr. Dolejsi next discussed the dosage units required for crack as compared to powdered cocaine. According to DEA information, a normal dosage unit of crack is one-tenth of a gram. The normal dosage unit for powdered cocaine taken intranasally may vary from one-tenth to one gram. Taking the average dosage unit for powdered cocaine provides a comparison of approximately one-tenth to five-tenths between the two forms. Smaller doses of crack are required due to the route of administration. When smoking the drug, the drug is transferred from the lungs to the heart, and then directly to the brain very quickly. This is the most effective means to administer the drug. The blood serum levels will also be high and the effect swift if injecting cocaine hydrochloride, but through this route of administration, the drug is carried through the circulatory system to the liver and then to the brain. Although this takes place very swiftly, it does take longer for the drug to reach the brain through this means of administration.

Stanley Suchta asked if crack is adulterated in order to make up for the percentage lost through the conversion process. Mr. Dolejsi stated that crack cannot be 'cut' as easily as powdered cocaine. This is because crack is a hard substance. Judge Randall asked if there is any reason to differentiate between

crack and cocaine. Mr. Dolejsi stated that one reason could be that crack is probably more addictive. Justice Gardebring asked Mr. Dolejsi what he meant by "more addictive". Mr. Dolejsi stated that because smoking is the quickest means of administration, it would be considered more addictive than slower routes of administration. Dr. Hatsukami stated that the quicker the drug causes a peak effect in the brain, the more probable it is that an individual will become an abuser of that drug. Justice Gardebring asked if this higher probability was because the experience is more intense. Dr. Hatsukami and Mr. Dolejsi stated that yes, this was true.

Mr. T. Williams asked how significant the difference between crack and cocaine actually was. Mr. Dolejsi stated that a significance is that it takes less of the drug in the form of crack to experience extreme results. Ms. Jenny Walker pointed out that although smaller amounts of crack are required per dose, more doses are used. Mr. Dolejsi stated that an individual would probably use crack more frequently. He also stated that according to hospital admittance studies, since the introduction of crack, more adverse episodes to the drug cocaine have shown up.

Mr. T. Williams stated that if two people perform essentially the same behavior, except that one person takes powdered cocaine and the other takes crack cocaine, there is no justification for treating one more severely than the other as they both committed the same offense. Dr. Hatsukami stated that she too felt that there was no reason to treat one form of the drug more severely than another form. Chairman Gernes stated that the commission must deal with the issues of a person 'using' as compared to a person selling. Questions that must be answered included "Should a seller be treated differently?" and "Can it be presumed that a person is a seller just by the amount he/she possesses?" Mr. T. Williams stated that selling crack is still selling cocaine, therefore it should not be treated differently. Chairman Gernes stated that if one form of the drug is more addictive than another form, perhaps this would justify treating them differently. Dr. Hatsukami stated that converting powdered cocaine to crack is extremely easy. An individual could sell another individual powdered cocaine. The buyer could then convert it to crack for personal use, and would be treated as a seller if convicted and treated more harshly than the person who actually sold the drug to him/her.

The next speaker was Mr. Carlton Hogan. Mr. Hogan stated that currently he is in recovery for chemical abuse. He is also involved in clinical research programs on AIDS and with PW Alive. Mr. Hogan focused his presentation on his personal experience with the drug culture and on cocaine use in particular. He stated that to begin, he wanted the commission members to be clear on the fact that crack cocaine is just a particular form of the drug cocaine itself. Crack is not a new drug, it is simply currently a popular form of an old drug. The difference between powdered cocaine and crack, as was explained earlier, lies in the fact that powdered cocaine is a salt and crack is a base. Mr. Hogan stated that making crack out of powdered cocaine is essentially like going backwards in the production of powdered cocaine. In explanation, he stated that the earliest stage of cocaine in South America is Basuca. Only the peasants smoke this in South America as extremely adverse side effects are experienced due to toxins used in processing the basuca. Mr. Hogan noted that he found it interesting that in the United States, just as in South America, it is the poor that use the smokable form of the drug.

Mr. Hogan stated that freebase started surging in the early 1970's. Freebase at that time was made through a complex process which utilized a flammable substance to change the salt to a base. For a short time a freebase kit was available which contained everything needed to make freebase for personal use. The majority of users at this time, however, still used powdered cocaine. The crack form of freebase was first presented to the market in California. A number of drug dealers in New York who had connections with California brought the idea to New York, introducing crack as an extremely difficult drug to process. Because of this, a great deal of mystique has always surrounded the drug. In actuality, stated Mr. Hogan, it is an extremely simple process. Mr. Hogan stated that one gram of cocaine will convert to about ten "good" rocks of crack. These were sold at a low cost to people who couldn't afford to buy an entire gram of powdered cocaine.

Mr. Hogan next discussed comparisons between smoking crack and injecting cocaine hydrochloride. He stated that the LD50 (the dosage which would be fatal to 50% of the population) is four-tenths of a gram for injecting cocaine hydrochloride. This dosage unit is very similar to that for crack. Mr. Hogan stated that smoking crack may be the swiftest way to get the drug to the brain, but a user cannot tell the difference. He stated that the effect is immediate for both routes of administration. When a user injects cocaine hydrochloride, the effect is actually experienced before the needle can be withdrawn. Mr. Hogan stated that the "rushes" experienced from these two routes of administration, although similar in intensity, are very different to the user.

Mr. Hogan next discussed the racial disparity seen among the users of powdered cocaine and crack. He stated that in his opinion packaging of the drugs play a role in this issue. In explanation, Mr. Hogan stated that crack is much easier for a street dealer to handle. If a dealer is selling on the street, the powdered cocaine must be kept in sealed containers. He noted that powdered cocaine is very water soluble. Because of this, great care must be taken to keep it dry. Crack, however, is not water soluble and it does not crush easily. Because of this, it can easily be carried and concealed in a pocket. It is simply easier for a street dealer to carry crack than it is to carry cumbersome and harder to conceal baggies of cocaine. Mr. Hogan also noted that there is a wide misperception in the United States that drug use and abuse is a lower class problem. This is because it is easier for the lower class to "do" their drugs on the street, whereas the opposite is true for the upper or middle class person. The lower class goes to the street to buy drugs, the middle class has them delivered.

Mr. Hogan also discussed the issue of the spread of AIDS caused by sharing IV needles when injecting cocaine hydrochloride. He stated that when looking at the issue of whether one form is 'better' or 'worse' than the other in light of the spread of AIDS, it is much more desirable to have a population smoking the drug than injecting it with a shared needle. Mr. Hogan stated that the U.S. health structure will not be equipped to support the HIV "that's coming down the pike". He stated that there are emergency room waiting lists of up to two or three days in New York already. A large population of drug addicts with AIDS would destroy the health care system.

In conclusion, Mr. Hogan stated that he could find no reason to justify treating crack differently than powdered cocaine in the criminal justice field. He stated that the difference between smoking crack and 'shooting' cocaine is virtually negligible.

Mr. Paul Kempainen asked if Mr. Hogan had any information regarding the breakdown between snorters, shooters, and smokers. Mr. Hogan stated that he did not have those figures with him, but that it was his opinion that a progression process took place. People are usually introduced to the drug through snorting and then progress to the other routes of administration. Mr. Kempainen asked if violent crime is more prevalent with crack users compared to cocaine users. Mr. Hogan stated that there is no difference between crack users and people who inject cocaine hydrochloride. Both of the above two groups differ from people who snort powdered cocaine. Mr. Kempainen asked how prevalent IV use is. Mr. Hogan stated that Carol Falkowski of the Department of Human Services would have that information. Dr. Hatsukami noted that she was aware of a study which found that 75% of the study population started out snorting. Ms. Jenny Walker asked if it is a process of increasing the high. Mr. Hogan stated that it is not a quantitative difference but a qualitative difference. It is a different high. Mr. Stanley Suchta asked if Mr. Hogan felt that users were aware of the current difference between crack and cocaine under the law. Mr. Hogan stated that addicts will do anything for the drug. They are willing to pay the price, whatever that price may be. Mr. Hogan noted that in New York, when Nelson Rockefeller increased second time heroin sales to mandatory life imprisonment without parole, there was an increase in the rate of police officer killings. Higher penalties do not always achieve the desired effect, stated Mr. Hogan.

Agent:

MINNESOTA SENTENCING GUIDELINES COMMISSION
Drug Offense Survey

SJIS Number: **Dist. Ct. Number:**
Offender's Name:

Most Severe Offense on Worksheet:

Offense Title: **Statute Number:**
Date of Offense: **Offense Severity:** **History Score:**

---

1. List the amount and type of drug involved in the above offense (distinguish between powder cocaine and crack cocaine):

   Drug Type: _____
   (if not specified in offense title)

   Drug Amount (specify grams/ounces/dosage units)_____

2. List additional quantities of the above drug or any other drugs that were seized. Circle the appropriate response to indicate whether the offender was charged and sentenced, and whether the offense involved possession or sale/possession with intent.

Drug Type and Amount	Poss. or Sale?	Charged?	Sentenced?
_____	Poss/Sale	Yes/No	Yes/No
_____	Poss/Sale	Yes/No	Yes/No

3. Length of pre-trial/pre-sentence detention: _____ (in days)

4. Was defendant represented by a public defender or private counsel? _____

5. Please circle the answers to the following questions.

   Was any type of chemical dependency assessment done? Yes/No/Unknown

   If yes, what were the results of the assessment? No Risk/At Risk/Abuse/Chem. Dep./
   Unknown/Other:_____

6. Did offender participate in a chemical dependency treatment program (including programs like Portland House and Genesis)? Yes/No/Unknown

   Did offender successfully complete the program? Yes/No/Still in Treatment/Unknown

   Was it a residential or non-residential program? Residential/Non-Residential/Unknown

7. Had offender previously participated in a treatment program? Yes/No/Unknown

   Number of previous treatment programs, if known: _____/Unknown

8. Other conditions of probation. Check all of the following that apply and fill in the relevant amounts, if known.

_____ Jail time served **post** sentence _____ (in days)

_____ Fines _____ (in $$)

_____ Restitution/Drug Buy Fund _____ (in $$)

_____ Community Work Service _____ (in Hours)

_____ Urinalysis

Did offender fail one or more drug tests? Yes/No/Unknown

Number of times offender failed test (if known) _____

Were failed drug tests due primarily to: Alcohol/Drugs/Unknown

_____ Other conditions (please specify): _____

_____

_____

9. Has a violation report or order of arrest and detention been filed for this offender? _____

If yes, briefly state the violations: _____

_____

_____

Have additional sanctions been imposed or probation restructured as a result of these violations? _____

If so, in what way? _____

_____

_____

Has the stay been vacated and the offender sent to prison? _____

DRUG OFFENDERS SENTENCED IN 1990
DISTRIBUTION OF CASES BY TYPE OF DRUG OFFENSE

	Sale	Possession	Fraud. Procurement	
All Drug Offenders	33.8% (612)	63.4% (1148)	2.8% (51)	100% (1,811)
Powder Coc.	34.7% (201)	65.3% (379)	---	100% (580)
Crack Coc.	17.8% (55)	82.4% (258)	---	100% (313)
Marijuana	53.0% (299)	47.0% (265)	---	100% (564)

DRUG OFFENDERS SENTENCED IN 1990
DISTRIBUTION OF CASES BY GENDER

	Male	Female
All Drug Offenders (1,811)	80.8% (1,464)	19.2% (347)
All Sales (612)	81.0% (496)	19.0% (116)
All Possession (1148)	81.4% (935)	18.6% (213)
All Fraud. Proc. (51)	64.7% (33)	35.3% (18)
Powder Coc. (580)	80.7% (468)	19.3% (112)
Sale (201)	80.1% (161)	19.9% (40)
Poss. (379)	81.0% (307)	19.0% (72)
Crack Coc. (313)	75.7% (237)	24.3% (76)
Sale (55)	80.0% (44)	20.0% (11)
Poss. (258)	74.8% (193)	25.2% (65)
Marijuana (564)	87.2% (492)	12.8% (72)
Sale (265)	83.4% (221)	16.6% (44)
Poss. (299)	90.6% (271)	9.4% (28)

DRUG OFFENDERS SENTENCED IN 1990
DISTRIBUTION OF CASES BY RACE

	White	African American	American Indian	Other
All Drug Offenders (1,811)	67.4% (1220)	26.3% (476)	1.7% (31)	4.6% (84)
All Sales (612)	76.6% (469)	17.3% (106)	2.0% (12)	4.1% (25)
All Possession (1148)	61.6% (707)	32.1% (369)	1.3% (15)	5.0% (57)
All Fraud. Proc. (51)	86.3% (44)	2.0% (1)	7.8% (4)	3.9% (2)
Powder Coc. (580)	67.2% (390)	25.7% (149)	.9% (5)	6.2% (36)
Sale (201)	71.6% (144)	21.9% (44)	1.5% (3)	5.0% (10)
Poss. (379)	64.9% (246)	27.7% (105)	0.5% (2)	6.9% (26)
Crack Coc. (313)	10.2% (32)	88.5% (277)	0.3% (1)	1.0% (3)
Sale (55)	7.3% (4)	90.9% (50)	-	1.8% (1)
Poss. (258)	10.9% (28)	88.0% (227)	0.4% (1)	0.8% (2)
Marijuana (564)	89.7% (506)	2.8% (16)	2.7% (15)	4.8% (27)
Sale (265)	90.9% (241)	2.3% (6)	3.0% (8)	3.8% (10)
Poss. (299)	88.6% (265)	3.3% (10)	2.3% (7)	5.7% (17)

DRUG OFFENDERS SENTENCED IN 1990
DISTRIBUTION OF CASES BY TYPE OF REPRESENTATION

	Public Defender	Private Attorney	Self	Unknown
All Drug Offenders (1,707)	63.6% (1,085)	27.3% (466)	0.1% (1)	9.1% (155)
All Sales (583)	63.5% (370)	28.3% (165)	---	8.2% (48)
All Possession (1,074)	64.1% (688)	26.5% (285)	0.1% (1)	9.3% (100)
All Fraud. Proc. (50)	54.0% (27)	32.0% (16)	---	14.0% (7)
Powder Coc. (531)	62.0% (329)	30.3% (161)	---	7.7% (41)
Sale (190)	63.7% (121)	27.9% (53)	---	8.4% (16)
Poss. (341)	61.0% (208)	31.7% (108)	---	7.3% (25)
Crack Coc. (311)	80.1% (249)	10.6% (33)	---	9.3% (29)
Sale (55)	74.5% (41)	16.4% (9)	---	9.1% (5)
Poss. (256)	81.3% (208)	9.4% (24)	---	9.4% (24)
Marijuana (533)	60.0% (320)	31.3% (167)	0.2% (1)	8.4% (45)
Sale (253)	63.6% (161)	29.2% (74)	---	7.1% (18)
Poss. (280)	56.8% (159)	33.2% (93)	0.4% (1)	9.6% (27)

* Percentages are based on the number of offenders for whom we had a completed questionnaire, including offenders who received executed prison sentences.

DRUG OFFENDERS SENTENCED IN 1990
INCARCERATION RATES

	State Prison	Local Jail - Served			Total Incarceration
		Pre-Sentence Only	Post or Pre & Post Sentence	Total Jail	
All Drug Offenders (1,811)	12.1% (219)	19.1% (345)	59.5% (1078)	78.6% (1423)	90.7% (1642)
All Sales (612)	13.6% (83)	10.8% (66)	67.0% (410)	77.8% (476)	91.3% (559)
All Possession (1148)	11.1% (127)	23.0% (264)	56.4% (647)	79.4% (911)	90.4% (1038)
All Fraud. Proc. (51)	17.6% (9)	29.4% (15)	41.2% (21)	70.6% (36)	88.2% (45)
Powder Coc. (580)	17.2% (100)	15.9% (92)	57.4% (333)	73.3% (425)	90.5% (525)
Sale (201)	21.4% (43)	9.5% (19)	62.7% (126)	72.1% (145)	93.5% (188)
Poss. (379)	15.0% (57)	19.3% (73)	54.6% (207)	73.9% (280)	88.9% (337)
Crack Coc. (313)	15.0% (47)	27.2% (85)	55.6% (174)	82.7% (259)	97.8% (306)
Sale (55)	14.5% (8)	16.4% (9)	65.5% (36)	81.8% (45)	96.4% (53)
Poss. (258)	15.1% (39)	29.5% (76)	53.5% (138)	82.9% (214)	98.1% (253)
Marijuana (564)	3.0% (17)	14.7% (83)	70.2% (396)	84.9% (479)	87.9% (496)
Sale (265)	3.0% (8)	11.3% (30)	74.7% (198)	86.0% (228)	89.1% (236)
Poss. (299)	3.0% (9)	17.7% (53)	66.2% (198)	83.9% (251)	87.0% (260)

DRUG OFFENDERS SENTENCED IN 1990
AVERAGE DURATIONS

	State Prison	Local Jail Time Served (in days)		
		Pre-Trial Only	Post or Pre & Post Trial	Total Jail Served
All Drug Offenders	33.2 months	23 days	80 days	66 days
All Sales	37.8 months	23 days	98 days	87 days
All Possession	31.4 months	23 days	70 days	57 days
All Fraud. Proc.	16.3 months	20 days	53 days	39 days
Powder Coc.	38.4 months	22 days	95 days	79 days
Sale	40.4 months	13 days	129 days	113 days
Poss.	36.9 months	24 days	74 days	61 days
Crack Coc.	26.6 months	32 days	82 days	65 days
Sale	41.4 months	21 days	107 days	90 days
Poss.	23.6 months	33 days	75 days	60 days
Marijuana	21.6 months	18 days	70 days	61 days
Sale	20.4 months	25 days	79 days	72 days
Poss.	22.7 months	14 days	61 days	51 days

DRUG OFFENDERS SENTENCED IN 1990
PERCENT OF OFFENDERS WHO RECEIVED
FINES, RESTITUTION OR COMMUNITY WORK SERVICE *

	Fines	Restitution	Community Work Service
All Drug Offenders (1,488)	30.6% (456)	22.8% (340)	19.4% (288)
All Sales (500)	37.6% (188)	44.6% (223)	19.2% (96)
All Possession (947)	27.0% (256)	11.9% (113)	18.8% (178)
All Fraud. Proc. (41)	29.3% (12)	9.8% (4)	34.1% (14)
Powder Coc. (431)	32.5% (140)	23.0% (99)	18.3% (79)
Sale (147)	32.0% (47)	44.2% (65)	21.8% (32)
Poss. (284)	32.7% (93)	12.0% (34)	16.5% (47)
Crack Coc. (264)	3.8% (10)	6.1% (16)	16.3% (43)
Sale (47)	2.1% (10)	10.6% (5)	14.9% (7)
Poss. (217)	4.1% (9)	5.1% (11)	16.6% (36)
Marijuana (516)	45.7% (236)	34.7% (179)	17.6% (91)
Sale (245)	49.8% (22)	51.8% (127)	17.6% (43)
Poss. (271)	41.1% (114)	19.2% (52)	17.7% (48)

* Percentages are based on the number of offenders who received stayed sentences and for whom we had a completed questionnaire.

DRUG OFFENDERS SENTENCED IN 1990
AVERAGE AND MEDIAN AMOUNTS OF
FINES, RESTITUTION OR COMMUNITY WORK SERVICE

		Fine	Restitution	Community Work Service
All Drug Offenders	Mean	$ 679	$ 353	161 hrs.
	Median	$ 500	$ 200	100 hrs.
All Sales	Mean	$ 702	$ 343	181 hrs.
	Median	$ 500	$ 173	120 hrs.
All Possession	Mean	$ 663	$ 374	157 hrs.
	Median	$ 500	$ 240	100 hrs.
All Fraud. Proc.	Mean	$ 675	$ 286	79 hrs.
	Median	$ 525	$ 273	55 hrs.
Powder Coc.	Mean	$ 692	$ 576	183 hrs.
	Median	$ 500	$ 300	100 hrs.
Sale	Mean	$ 782	$ 630	177 hrs.
	Median	$ 500	$ 345	120 hrs.
Poss.	Mean	$ 647	$ 472	186 hrs.
	Median	$ 500	$ 205	100 hrs.
Crack Coc.	Mean	$ 510	$ 324	202 hrs.
	Median	$ 500	$ 235	100 hrs.
Sale	Mean	$ 1,000	$ 328	164 hrs.
	Median	$ 1,000	$ 182	150 hrs.
Poss.	Mean	$ 456	$ 322	209 hrs.
	Median	$ 500	$ 240	90 hrs.
Marijuana	Mean	$ 706	$ 234	131 hrs.
	Median	$ 500	$135	100 hrs.
Sale	Mean	$ 678	$ 200	124 hrs.
	Median	$ 500	$ 120	100 hrs.
Poss.	Mean	$ 737	$ 321	137 hrs.
	Median	$ 500	$ 300	120 hrs

DRUG OFFENDERS SENTENCED IN 1990
DRUG TESTING

	Drug Testing Conducted	Failed Drug Test At Least Once	Failure Due to:		
			Alcohol	Drugs	Unknown
All Drug Offenders (1,488)	34.7% (517)	34.8% (180)	15.6% (28)	83.9% (151)	0.6% (1)
All Sales (500)	41.6% (208)	33.2% (69)	15.9% (11)	82.6% (57)	1.4% (1)
All Possession (947)	31.3% (296)	37.2% (110)	15.5% (17)	84.5% (93)	---
All Fraud. Proc. (41)	31.7% (13)	7.7% (1)	---	100% (1)	---
Powder Coc. (431)	36.9% (159)	35.8% (57)	17.5% (10)	80.7% (46)	1.8% (1)
Sale (147)	46.3% (68)	39.7% (27)	22.2% (6)	74.1% (20)	3.7% (1)
Poss. (284)	32.0% (91)	33.0% (30)	13.3% (4)	86.7% (26)	---
Crack Coc. (264)	33.3% (88)	45.5% (40)	17.5% (7)	82.5% (33)	---
Sale (47)	40.4% (19)	47.4% (9)	11.1% (1)	88.9% (8)	---
Poss. (217)	40.4% (19)	47.4% (9)	11.1% (1)	88.9% (8)	---
Marijuana (516)	31.8% (69)	44.9% (31)	19.4% (6)	80.6% (25)	---
Sale (245)	39.2% (96)	30.2% (29)	13.8% (4)	86.2% (25)	---
Poss. (271)	31.4% (85)	32.9% (28)	7.1% (2)	92.9% (26)	---

* Testing percentages are based on the number of offenders who received stayed sentences and for whom we had a completed questionnaire. Percent of offenders who failed a drug test at least once is based on the total number who received drug testing as a sanction. Data on the primary type of substance involved in failing drug tests is based on the total number of offenders known to have failed a drug test at least once.

DRUG OFFENDERS SENTENCED IN 1990
DISPOSITIONAL DEPARTURES BY DRUG TYPE:
ALL DRUG CASES

	AGGRAVATED	MITIGATED	NONE	Total
All Drug Offenders (1,811)	2.6 (47)	5.7 (103)	91.7 (1661)	100%
All Sales (612)	1.6 (10)	6.5 (40)	91.8 (562)	100%
All Possession (1148)	3.0 (35)	5.3 (61)	91.6 (1052)	100%
All Fraud. Proc. (51)	3.9 (2)	3.9 (2)	92.2 (47)	100%
Powder Coc. (580)	2.8 (16)	7.9 (46)	89.3 (518)	100%
Sale (201)	1.0 (2)	9.5 (19)	89.6 (180)	100%
Poss. (379)	3.7 (14)	7.1 (27)	89.2 (338)	100%
Crack Coc. (313)	3.8 (12)	9.3 (29)	86.9 (272)	100%
Sale (55)	---	16.4 (9)	83.6 (46)	100%
Poss. (258)	4.7 (12)	7.8 (20)	87.6 (226)	100%
Marijuana (564)	1.1 (6)	.7 (4)	98.2 (554)	100%
Sale (265)	1.5 (4)	.8 (2)	97.7 (259)	100%
Poss. (299)	.7 (2)	.7 (2)	98.7 (295)	100%

DRUG OFFENDERS SENTENCED IN 1990
DURATIONAL DEPARTURES BY DRUG TYPE:
EXECUTED SENTENCES ONLY

	AGGRAVATED	MITIGATED	NONE	Total
All Drug Offenders (219)	3.7 (8)	26.9 (59)	69.4 (152)	100%
All Sales (83)	3.6 (3)	31.3 (26)	65.1 (54)	100%
All Possession (127)	3.9 (5)	23.6 (30)	72.4 (92)	100%
All Fraud. Proc. (9)	---	33.3 (3)	66.7 (6)	100%
Powder Coc. (100)	2.0 (2)	25.0 (25)	73.0 (73)	100%
Sale (43)	---	23.3 (10)	76.7 (33)	100%
Poss. (57)	3.5 (2)	26.3 (15)	70.2 (40)	100%
Crack Coc. (47)	4.3 (2)	25.5 (12)	70.2 (33)	100%
Sale (8)	---	25.0 (2)	75.0 (6)	100%
Poss. (39)	5.1 (2)	25.6 (10)	69.2 (27)	100%
Marijuana (17)	11.8 (2)	23.5 (4)	64.7 (11)	100%
Sale (8)	25.0 (2)	25.0 (2)	50.0 (4)	100%
Poss. (9)	---	22.2 (2)	77.8 (7)	100%