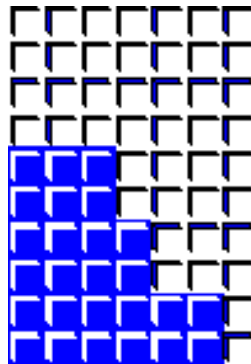


MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Impact of *Blakely* and Expanded Ranges on
Sentencing Grid

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Background

On June 24, 2004, the United States Supreme Court handed down a ruling in *Blakely v. Washington*, 1264 S. Ct. 2531 (2004), that impacted criminal sentencing throughout the United States, including Minnesota. The Court reaffirmed and clarified its prior holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which stated that under the Sixth Amendment of the United States Constitution, any fact other than prior criminal convictions that enhances a defendant's sentence beyond the statutory maximum must be presented to a jury and proven beyond a reasonable doubt. In *Blakely*, the Supreme Court held that a defendant's Sixth Amendment right to a jury trial could be violated even when the sentence imposed is below the stated statutory maximum sentence. The Court treated the presumptive sentence, rather than the statutory maximum sentence, as the punishment that could not be increased without a jury's input.

On October 12, 2004, in *State v. Conger*, the Minnesota Court of Appeals ruled that the findings in *Blakely* apply to the Minnesota Sentencing Guidelines, specifically aggravated departures. The Sentencing Guidelines Commission amended the guidelines' procedures for imposing aggravated departures and consecutive sentences to comply with the constitutional issues raised in *Blakely*. The proposed modifications were procedural in nature and ensure that aggravated departures are available for those cases in which an enhanced sentence is necessary and appropriate to ensure public safety.

In its *Blakely* reports, the Commission recommended legislative changes to sentencing provisions in statutes that would conform with the *Blakely* decision.¹ In 2005, the Legislature amended the following special sentencing enhancement statutes: Minn. Stat. § 609.108, the Patterned and Predatory Sex Offender; Minn. Stat. § 609.1095, the Dangerous and Repeat Felony Offender, or Minn. Stat. § 609.109, Repeat Sex Offenders.

On October 6, 2005, the Minnesota Supreme Court issued an order amending its *Shattuck* opinion, clarifying that the Legislature had enacted significant new requirements for sentencing aggravated departures which included sentencing juries and bifurcated trials. It further clarified that these changes applied both prospectively and to re-sentencing hearings. This clarified that aggravated departures resulting in enhanced sentences above the presumptive range on the sentencing grid are not deemed unconstitutional by *Blakely*, as long as the aggravating factor(s) that may result in a departure are determined beyond a reasonable doubt by a jury or the defendant knowingly and willingly waives his/her right to a jury determination of aggravating factors.

In another Minnesota Supreme Court opinion, *State v. Barker*, the Court found that Minn. Stat. § 609.11 was unconstitutional to the extent that it authorized the district court to impose an aggravated durational departure upon a finding of sentencing factors, other than prior convictions, without the aid of a jury or an admission by the defendant. Following this court decision, the legislature amended Minn. Stat. § 609.11 to comply with the constitutional issues.

The Sentencing Guidelines Grid contains ranges of sentences within which a pronounced sentence is not considered a departure. Minnesota statutes allowed the Commission discretion to provide ranges of up to 15% of the presumptive sentence in each direction. The grid in

¹ The Commission's reports in response to *Blakely* can be found online:
http://www.msgc.state.mn.us/msgc5/reports_to_leg.htm

existence at the time of the *Blakely* decision provided smaller ranges than the 15% authorized by statute. In response to *Blakely*, the Commission adopted modifications to increase the ranges to the 15% maximum allowed by statute, in order to provide the Court with greater flexibility to pronounce appropriate sentences without actually departing from the guidelines. The Legislature rejected these proposed modifications, but adopted statutory language requiring the Commission to provide ranges of 15% downward and 20% upward from the presumptive sentence. That grid became effective for offenders with offense dates on/after August 1, 2005.

Summary²

This report examines the impact of the adoption of grids with expanded ranges in three areas: the number of offenders sentenced at the lower or upper limits of the ranges, the number of durational departures, and average pronounced sentence durations. A new grid with expanded ranges was implemented for sex offenses effective for applicable crimes committed on/after August 1, 2006. As a result of these changes, there are three grids to examine in this analysis: the standard grid prior to expanding the sentencing ranges (referred to as “pre-expansion”), the standard grid after this expansion (referred to as “post-expansion”), and the sex offender grid.

The expansion of the ranges has resulted in a significant increase in the number of offenders receiving sentences at the lower end of the sentencing range for offenses with presumptive sentences on both the standard and sex offender grids. For offenses sentenced on the standard grid, there has been a very slight increase in the number of offenders sentenced at the upper end of the range post-expansion. For specified sex offenses³, the number of offenders sentenced at the upper end of the range increased slightly with the implementation of the post-expansion grid, but following the implementation of the sex offender grid, the percentage of offenders sentenced at the upper end of the range is only slightly greater than the percentage on the pre-expansion grid.

For offenders with presumptive sentences on the standard grid who received executed prison sentences, mitigated durational departure rates decreased from 30 to 23 percent with the expansion of the ranges and aggravated durational departures decreased from 6 to 3 percent. For the specified sex offenses, mitigated durational departure rates increased slightly following the implementation of the expanded grid (from 22 to 23 percent) and increased again following implementation of the sex offender grid (to 30 percent). Aggravated durational departures for those offenders decreased from 11 percent on the pre-expansion grid to 6 percent on the post expansion grid and 2 percent on the sex offender grid. While it is difficult to determine how much of the decrease in aggravated durational departures is attributable to the expansion of the ranges and how much is due to the *Blakely* decision, it does appear that aggravated durational departure rates were somewhat higher for offenders with presumptive sentences whose sentence dates were prior to the *Blakely* effective date than the rates for offenders whose sentence dates are after the *Blakely* effective date.

The average pronounced duration for offenders receiving executed prison sentences was 46 months for offenders with presumptive sentences on the pre-expansion grid, 42 months for offenders with presumptive sentences on the post-expansion grid, and 58 months for offenders with presumptive sentences on the sex offender grid. When the specified sex offenses are excluded, the average pronounced sentences decreased from 44 months to 42 months with the expansion of the ranges on the standard grid. Changes in average pronounced durations vary by severity level and offense, with some offenses at the higher severity levels showing increases in average pronounced durations.

² It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

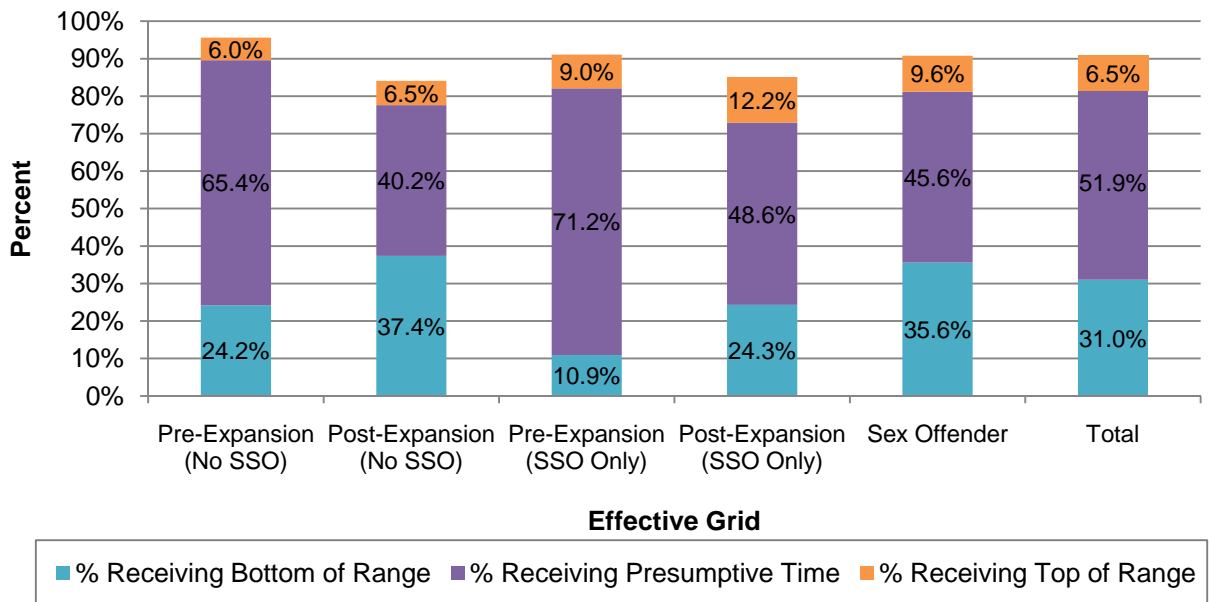
³ “Specified sex offenses” are defined as those offenses currently on the sex offender grid (first- through fifth-degree criminal sexual conduct, possession and dissemination of child pornography, use of minors in a sexual performance, indecent exposure, solicitation of children for sexual conduct, and failure to register as a predatory offender). These offenses are abbreviated as “SSO” in Figures 1-3.

Impact: Offenders Sentenced at the Upper and Lower Ends of Sentencing Range

The following data includes offenders with offense dates on/after August 1, 2002 (when the felony DWI law went into effect). It includes offenders who received executed prison sentences; therefore, stayed (probationary) sentences are excluded. Offenders who received life sentences are also excluded.

Figure 1 displays the number of offenders who received the presumptive duration, or the top or bottom of the range based on the applicable grid. Specified sex offenses are separated from other offenses on the standard grid for comparison. When the ranges were expanded, it was anticipated that the effect would be an increase in the number of offenders sentenced at the top and bottom of the ranges. Offenders sentenced for specified sex offenses on the pre-expansion grid have the lowest percentage sentenced at the bottom of the range. The percent of offenders receiving a sentence at the bottom of the range increased substantially for offenders sentenced on both the post-expansion and sex offender grids; the percentage sentenced at the top of the range only increased slightly. The percentage sentenced at the top of the range was greatest for specified sex offenses sentenced on the post-expansion grid (12.2%).

**Figure 1. Pronounced Sentences by Effective Grid:
Prison Sentences Only - Durational Departures Excluded⁴**



⁴ Percentages in each row do not equal 100 percent due to offenders being sentenced somewhere within the range that is not the bottom, top, or mid-point.

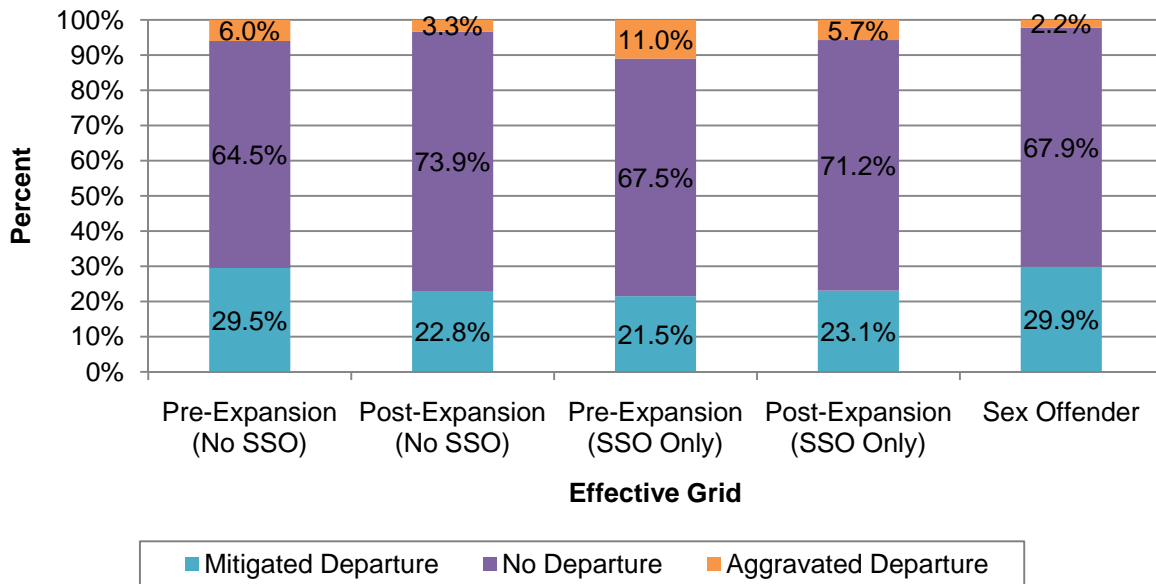
In examining the impact of the expansion of the ranges, it is important to exclude offenders whose presumptive sentences were subject to a sentence length modifier which altered the presumptive sentence from the time on the grid (e.g., offenders who received consecutive sentences, those sentenced for attempts or conspiracies, a gang-related offense, or who solicited a minor or impaired person to commit the offense). The data also excludes offenders who received durational departures, as well as those offenders who received executed prison sentences, but are in a cell on the grid that is below the dispositional line (the gray shaded area of the grid). While a sentencing range does apply to offenders in that area of the grid who have presumptive prison sentences, no sentencing range is designated on the grid and this policy was only recently clarified in the Guidelines.

Because the presumptive sentence for some offenders is determined by mandatory minimum sentencing provisions, they can be ineligible for sentencing within a range; they may have no lower or upper end of a range that differs from the presumptive sentence. In Figure 1 (above), these offenders are excluded from percentage calculations.

Impact: Durational Departures

Figure 2 displays the durational departure rates by eligible grid for all offenders who received executed prison sentences.⁵ One of the reasons for the expansion of the ranges on the sentencing grids was to give the court more flexibility to pronounce sentences that were appropriate to individual cases without actually departing from the recommended guidelines sentence. Therefore, it was anticipated that durational departures would decline following the expansion of the ranges. This has been the result for aggravated durational departures, and mitigated durational departures for offenders who are not among the specified sex offenders. With the expansion of the ranges, the number of offenders receiving mitigated durational departures decreased for non-specified sex offenders on the post-expansion grid. Mitigated durational departures increased for specified sex offenses sentenced on both the post-expansion grid and the sex offender grid, with the increase being greater for offenders sentenced on the sex offender grid. Aggravated departures declined for all offenders on the post-expansion and sex offender grids. Specified sex offenses sentenced on the pre-expansion grid had the highest aggravated durational departure rates; on the sex offender grid, these offenders have the lowest aggravated durational departure rates.

Figure 2. Durational Departure Rates by Effective Grid



It cannot be determined if the decreases in durational departure rates were the result of the expanded ranges or the ongoing impact of the *Blakely* decision. In *State v Petschl* (2004), the Minnesota Court of Appeals ruled that the *Blakely* sentencing provisions apply to all cases sentenced, or with direct appeals pending, on or after June 24, 2004. While it cannot be determined what cases might have had appeals pending before July 24, 2004, for non-specified sex offenses on the pre-expansion grid, the aggravated durational departure rate was approximately 7 percent for those with sentence dates before July 1, 2004 and roughly 5 percent for those with sentence dates on or after July 1, 2004. For specified sex offenses on

⁵ It should be noted that Figures 2-4 and Tables 1-3 exclude offenders receiving life sentences.

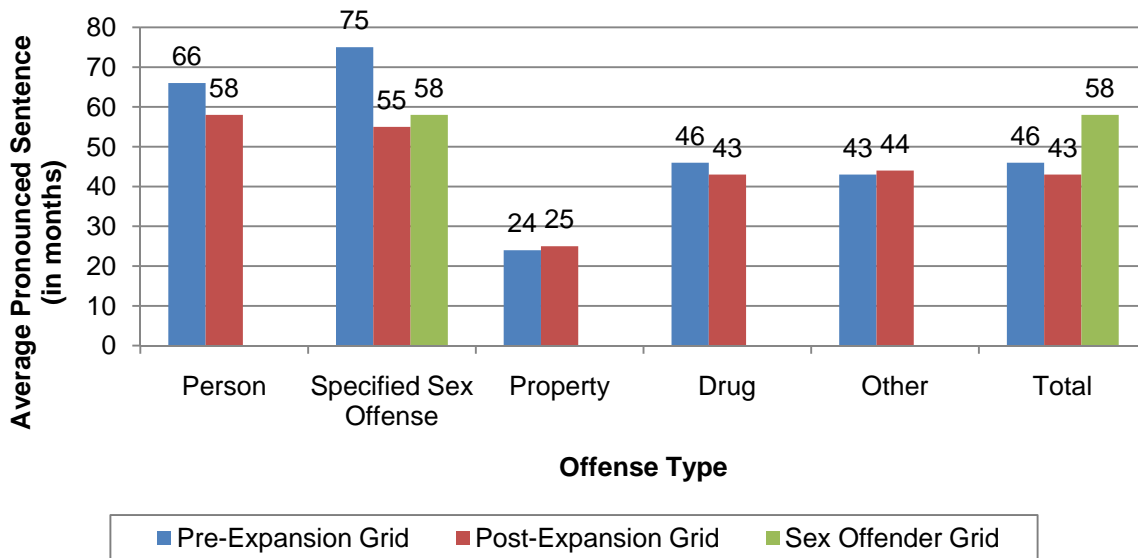
the pre-expansion grid, the aggravated durational departure rate was 20 percent for those with sentence dates before July 1, 2004 and dropped to 7 percent for those with sentence dates on or after July 1, 2004.

Impact: Average Sentence Durations

Figure 3 displays the average pronounced sentences for executed prison sentences by offense type and effective grid.⁶ The total average pronounced sentence decreased from 46 months to 43 months with the expansion of the ranges on the grid; the average on the sex offender grid increased to 58 months. This figure includes all offenders who received executed prison sentences. Specified sex offenses are given a separate category in “offense type” in order to more accurately compare the average sentence lengths by grid. While the overall sentence average decreased on the post-expansion grid, average sentences increased for property and other offenders. (See Table 3 for average sentence lengths for each crime.)

It should be noted that average pronounced sentences were shorter on the sex offender grid due to the type of offenses being sentenced. Because there is a delay in the charging/sentencing of sex offenses, a smaller percentage of those sentenced on the sex offender grid committed the more serious sex offenses. For example, roughly 29 percent of offenders sentenced for specified sex offenses on the pre-expansion grid were sentenced for first-degree criminal sexual conduct; only 16 percent of those sentenced on the sex offender grid were sentenced for this offense. It is assumed that, over time, the average pronounced sentence for offenses sentenced on the sex offender grid will increase as this percentage increases. It should also be noted that 56 percent of offenders sentenced on the sex offender grid were sentenced for Failure to Register, the least serious offense in terms of severity level ranking.

Figure 3. Average Pronounced Sentence by Effective Grid and Offense Type (in months)



⁶ Offenses in the "Other" Category include (among others): discharge of a firearm; felon in possession of a weapon; bribery; perjury; escape; fleeing a peace officer; aiding an offender; accomplice after the fact; obstructing legal process; lottery fraud; failure to appear in court; weapon-related offenses; felony DWI.

Table 1 displays the average pronounced sentences for executed prison sentences by severity level and effective grid. Specified sex offenses are excluded so that the impact of the expansion of the ranges on sentence durations can be more fairly evaluated by severity level. This table includes all other offenders who received executed prison sentences. While the overall average sentence decreased from 44 months to 42 months with expansion of the ranges on the grid, average sentences increased for some severity levels. Average sentences were unchanged at severity levels 1-4, changed very slightly at severity levels 5-8, and increased at every severity level above 8 except attempted first-degree murder.

Table 1. Average Pronounced Sentences by Effective Grid and Severity Level: Executed Prison Sentences Only – Excluding Specified Sex Offenses (in months)

| Severity Level | Number of Offenders | Grid (in months) | |
|----------------|---------------------|------------------|----------------|
| | | Pre-Expansion | Post-Expansion |
| 1 | 670 | 16 | 16 |
| 2 | 3,540 | 17 | 17 |
| 3 | 1,857 | 20 | 20 |
| 4 | 2,649 | 24 | 24 |
| 5 | 792 | 37 | 36 |
| 6 | 3,049 | 41 | 42 |
| 7 | 946 | 52 | 50 |
| 8 | 2,602 | 59 | 60 |
| 9 | 1,588 | 82 | 89 |
| 10 | 172 | 185 | 195 |
| 11 | 233 | 292 | 307 |
| Att. Murder 1 | 50 | 232 | 229 |
| Total | 18,148 | 44 | 42 |

Table 2 displays the average pronounced sentences for executed prison sentences by offense group and effective grid. This table includes all offenders who received executed prison sentences. While the overall average sentence decreased with expansion of the ranges on the grid, average sentences increased for some types of offenders: murder/manslaughter, robbery criminal sexual conduct and other person offenses.

Table 2. Average Pronounced Sentences by Effective Grid and Offense Group: Executed Prison Sentences Only – All Offenders (in months)

| Offense Group | Number of Offenders | Grid (in months) | | |
|------------------|---------------------|------------------|----------------|--------------|
| | | Pre-Expansion | Post-Expansion | Sex Offender |
| Murder-Mansl. | 595 | 200 | 210 | |
| Assault | 2,000 | 38 | 34 | |
| Crim Sex Conduct | 975 | 106 | 90 | 110 |
| Robbery | 994 | 55 | 56 | |
| Terr Th/Stalking | 744 | 25 | 24 | |
| Other Person | 289 | 56 | 59 | 26 |
| Drugs | 5,405 | 46 | 43 | |

| Offense Group | Number of Offenders | Grid (in months) | | |
|----------------|---------------------|------------------|----------------|--------------|
| | | Pre-Expansion | Post-Expansion | Sex Offender |
| Other Property | 1,889 | 20 | 20 | |
| Theft | 1,983 | 20 | 21 | |
| Burglary | 1,835 | 38 | 38 | |
| DWI | 944 | 52 | 50 | |
| Fail Register | 724 | 17 | 16 | 18 |
| Other Crimes | 1,501 | 37 | 39 | 69 |
| Total | 19,878 | 46 | 43 | 58 |

Table 3 displays the average pronounced sentences by offense for offenses with more than 25 offenders sentenced. If 25 or fewer offenders have been sentenced, a few offenders with unusual sentences or criminal history scores on one of the grids could unduly influence the average sentence for that group. This data shows that, even within offense groups, there were variations in the way average sentences changed. For example, average sentences increased for both intentional and unintentional second-degree murder, first-degree manslaughter, and criminal vehicular homicide, but decreased for attempted first-degree murder and second-degree manslaughter. Differences can also be found in the assault, robbery, and burglary offense groups. Average sentences for most property offenses remained relatively unchanged. While the overall average sentence for drug offenses decreased, the average sentence increased for first- through fourth-degree offenses and remained almost the same for fifth-degree offenses.

Average sentences for criminal sexual conduct offenses are higher for offenders sentenced on the sex offender grid than on the pre-expansion grid for second- through-fourth degree offenses, but slightly lower for offenders sentenced for first-degree offenses. This is because the presumptive sentences remained unchanged for many of the first-degree offenders. Even on the pre-expansion grid, the presumptive sentence was at least 144 months for all offenders because of the statutorily-mandated minimum presumptive sentence.

**Table 3. Average Pronounced Sentences by Effective Grid and Offense:
Executed Prison Sentences Only (in months)⁷**

| Offense Group | Number of Offenders | Grid (in months) | | |
|-------------------|---------------------|------------------|----------------|--------------|
| | | Pre-Expansion | Post-Expansion | Sex Offender |
| Att. Murder 1 | 48 | 238 | 229 | |
| Murder 2 (sev=11) | 234 | 291 | 307 | |
| Murder 2 (sev=10) | 156 | 184 | 191 | |
| Mansl 1 (sev=9) | 29 | 96 | 104 | |
| Mansl 2 (sev=8) | 28 | 70 | 54 | |
| CVH | 89 | 59 | 63 | |
| Assault 1 | 218 | 100 | 103 | |
| Assault 2 | 871 | 35 | 34 | |
| Assault 3 | 339 | 23 | 22 | |
| Assault 4 | 115 | 15 | 14 | |

⁷ Offenses with 25 or fewer offenders have been excluded from this table.

Sentencing Practices

| Offense Group | Number of Offenders | Grid (in months) | | |
|----------------------|---------------------|---------------------|----------------|--------------|
| | | Pre-Expansion | Post-Expansion | Sex Offender |
| Assault 5 | 166 | 23 | 23 | |
| Dom Assault | 229 | 24 | 23 | |
| Dom Asslt Strang | 62 | - | 22 | |
| Simple Robbery | 190 | 37 | 34 | |
| Agg Robbery 1 | 703 | 61 | 63 | |
| Agg Robbery 2 | 101 | 46 | 41 | |
| Kidnap (sev=8/9) | 62 | 78 | 82 | |
| CSC 1 | 409 | 166 | 156 | 164 |
| CSC 2 | 198 | 71 | 70 | 97 |
| CSC 3 | 287 | 53 | 42 | 69 |
| CSC 4 | 79 | 39 | 29 | 52 |
| Terr Threats (sev=4) | 370 | 24 | 23 | |
| Stalking (sev=3/4) | 39 | 23 | 25 | |
| Stalking (sev=5) | 48 | 39 | 38 | |
| Drive-By Shooting | 54 | 60 | 53 | |
| Viol Rest Or | 279 | 23 | 24 | |
| Theft | 917 | 19 | 20 | |
| Theft Over 35K | 37 | 51 | 48 | |
| Theft from Person | 105 | 22 | 25 | |
| Theft MV | 64 | 29 | 28 | |
| MV Use | 749 | 19 | 19 | |
| Rec Stolen Property | 400 | 18 | 19 | |
| Arson 1 | 58 | 60 | 50 | |
| Burglary 1 (sev=8) | 288 | 67 | 64 | |
| Burglary 1 (sev=6) | 294 | 45 | 48 | |
| Burglary 2 (sev=5) | 471 | 36 | 37 | |
| Burglary 2 (sev=4) | 93 | 30 | 31 | |
| Burglary 3 | 689 | 25 | 26 | |
| Poss Burglary Tools | 128 | 20 | 18 | |
| Crim Damage | 174 | 17 | 18 | |
| Other Forgery | 37 | 18 | 17 | |
| Check Forg (sev=3) | 132 | 20 | 21 | |
| Check Forg (sev=2) | 501 | 18 | 18 | |
| Check Forg (sev=1) | 87 | 18 | 18 | |
| Dishonored Check | 81 | 20 | 19 | |
| FTCF | 183 | 19 | 19 | |
| Identity Theft | 84 | 29 | 32 | |
| Counterfeit Check | 58 | 21 | 17 | |
| Other Drug | 56 | 19 | 16 | |
| Cont. Sub. 1 | 1,310 | 77 | 84 | |
| Cont. Sub. 2 | 1,280 | 56 | 57 | |
| Cont. Sub. 3 | 927 | 35 | 36 | |
| Cont. Sub. 4 | 132 | 22 | 24 | |
| Cont. Sub. 5 | 1,672 | 16 | 16 | |
| Subs Intent Manuf | 28 | 21 | 33 | |
| Other Other | 54 | 35 | 20 | |
| Felon with a Gun | 786 | 53 | 52 | |
| Escape (sev=3) | 166 | 17 | 19 | |
| Fleeing Police | 357 | 16 | 16 | |

Sentencing Practices

| Offense Group | Number of Offenders | Grid (in months) | | |
|---------------------|---------------------|------------------|----------------|--------------|
| | | Pre-Expansion | Post-Expansion | Sex Offender |
| Accomplice After | 39 | 78 | 75 | |
| Felony DWI | 944 | 52 | 50 | |
| Failure to Register | 724 | 17 | 16 | 18 |
| Total | 19,508 | 49 | 48 | 80 |

How the Guidelines Work

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

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

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

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

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

It is not possible to fully explain all of the policies in this brief summary. Additional information on the sentencing guidelines and information on obtaining copies of the *Minnesota Sentencing Guidelines and Commentary* are available by contacting the Commission's office. This document is also available online at <http://www.msgc.state.mn.us>.

SENTENCING GUIDELINES GRID (Pre-Expansion)

Presumptive Sentence Lengths in Months

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

| SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics) | | CRIMINAL HISTORY SCORE | | | | | | |
|---|-------------|------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
| <i>Murder, 2nd Degree (intentional murder; drive-by-shootings)</i> | XI | 306 <i>299-313</i> | 326 <i>319-333</i> | 346 <i>339-353</i> | 366 <i>359-373</i> | 386 <i>379-393</i> | 406 <i>399-413</i> | 426 <i>419-433</i> |
| <i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree (unintentional murder)</i> | X | 150 <i>144-156</i> | 165 <i>159-171</i> | 180 <i>174-186</i> | 195 <i>189-201</i> | 210 <i>204-216</i> | 225 <i>219-231</i> | 240 <i>234-246</i> |
| <i>Criminal Sexual Conduct, 1st Degree²</i> <i>Assault, 1st Degree</i> | IX | 86 <i>81-91</i> | 98 <i>93-103</i> | 110 <i>105-115</i> | 122 <i>117-127</i> | 134 <i>129-139</i> | 146 <i>141-151</i> | 158 <i>153-163</i> |
| <i>Aggravated Robbery 1st Degree</i> <i>Criminal Sexual Conduct, 2nd Degree (c),(d),(e),(f),(h)²</i> | VIII | 48 <i>44-52</i> | 58 <i>54-62</i> | 68 <i>64-72</i> | 78 <i>74-82</i> | 88 <i>84-92</i> | 98 <i>94-102</i> | 108 <i>104-112</i> |
| <i>Felony DWI</i> | VII | 36 | 42 | 48 | 54 <i>51-57</i> | 60 <i>57-63</i> | 66 <i>63-69</i> | 72 <i>69-75</i> |
| <i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i> | VI | 21 | 27 | 33 | 39 <i>37-41</i> | 45 <i>43-47</i> | 51 <i>49-53</i> | 57 <i>55-59</i> |
| <i>Residential Burglary</i> <i>Simple Robbery</i> | V | 18 | 23 | 28 | 33 <i>31-35</i> | 38 <i>36-40</i> | 43 <i>41-45</i> | 48 <i>46-50</i> |
| <i>Nonresidential Burglary</i> | IV | 12 ¹ | 15 | 18 | 21 | 24 <i>23-25</i> | 27 <i>26-28</i> | 30 <i>29-31</i> |
| <i>Theft Crimes (Over \$2,500)</i> | III | 12 ¹ | 13 | 15 | 17 | 19 <i>18-20</i> | 21 <i>20-22</i> | 23 <i>22-24</i> |
| <i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i> | II | 12 ¹ | 12 ¹ | 13 | 15 | 17 | 19 | 21 <i>20-22</i> |
| <i>Sale of Simulated Controlled Substance</i> | I | 12 ¹ | 12 ¹ | 12 ¹ | 13 | 15 | 17 | 19 <i>18-20</i> |



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



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

¹ One year and one day

² Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see [II.C. Presumptive Sentence](#) and [II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers](#)).

SENTENCING GUIDELINES GRID (Post-Expansion)

Presumptive Sentence Lengths in Months

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

| SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in <i>italics</i>) | | CRIMINAL HISTORY SCORE | | | | | | |
|--|-------------|------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------------------|-----------------------------------|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
| <i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>) | XI | 306 <i>261-367</i> | 326 <i>278-391</i> | 346 <i>295-415</i> | 366 <i>312-439</i> | 386 <i>329-463</i> | 406 <i>346-480³</i> | 426 <i>363-480³</i> |
| <i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>) | X | 150 <i>128-180</i> | 165 <i>141-198</i> | 180 <i>153-216</i> | 195 <i>166-234</i> | 210 <i>179-252</i> | 225 <i>192-270</i> | 240 <i>204-288</i> |
| <i>Assault, 1st Degree</i> <i>Controlled Substance Crime,</i> <i>1st Degree</i> | IX | 86 <i>74-103</i> | 98 <i>84-117</i> | 110 <i>94-132</i> | 122 <i>104-146</i> | 134 <i>114-160</i> | 146 <i>125-175</i> | 158 <i>135-189</i> |
| <i>Aggravated Robbery 1st Degree</i> <i>Controlled Substance Crime,</i> <i>2nd Degree</i> | VIII | 48 <i>41-57</i> | 58 <i>50-69</i> | 68 <i>58-81</i> | 78 <i>67-93</i> | 88 <i>75-105</i> | 98 <i>84-117</i> | 108 <i>92-129</i> |
| <i>Felony DWI</i> | VII | 36 | 42 | 48 | 54 <i>46-64</i> | 60 <i>51-72</i> | 66 <i>57-79</i> | 72 <i>62-86</i> |
| <i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i> | VI | 21 | 27 | 33 | 39 <i>34-46</i> | 45 <i>39-54</i> | 51 <i>44-61</i> | 57 <i>49-68</i> |
| <i>Residential Burglary</i> <i>Simple Robbery</i> | V | 18 | 23 | 28 | 33 <i>29-39</i> | 38 <i>33-45</i> | 43 <i>37-51</i> | 48 <i>41-57</i> |
| <i>Nonresidential Burglary</i> | IV | 12 ¹ | 15 | 18 | 21 | 24 <i>21-28</i> | 27 <i>23-32</i> | 30 <i>26-36</i> |
| <i>Theft Crimes (Over \$2,500)</i> | III | 12 ¹ | 13 | 15 | 17 | 19 <i>17-22</i> | 21 <i>18-25</i> | 23 <i>20-27</i> |
| <i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i> | II | 12 ¹ | 12 ¹ | 13 | 15 | 17 | 19 | 21 <i>18-25</i> |
| <i>Sale of Simulated</i> <i>Controlled Substance</i> | I | 12 ¹ | 12 ¹ | 12 ¹ | 13 | 15 | 17 | 19 <i>17-22</i> |



Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section [II.E. Mandatory Sentences](#) for policy regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. See sections [II.C. Presumptive Sentence](#) and [II.E. Mandatory Sentences](#).

¹ One year and one day


² M.S. § 244.09 requires the Sentencing Guidelines to provide a range of 15% downward and 20% upward from the presumptive sentence. However, because the statutory maximum sentence for these offenses is no more than 40 years, the range is capped at that number.


SEX OFFENDER GRID
Presumptive Sentence Lengths in Months

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

CRIMINAL HISTORY SCORE

| SEVERITY LEVEL OF CONVICTION OFFENSE | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
|---|---|--------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------------------|
| <i>CSC 1st Degree</i> | 144 <i>144-173</i> | 156 <i>144-187</i> | 168 <i>144-202</i> | 180 <i>153-216</i> | 234 <i>199-281</i> | 306 <i>260-360</i> | 360 <i>306-360²</i> |
| <i>CSC 2nd Degree – (c)(d)(e)(f)(h)</i> | 90 <i>90-108</i> | 110 <i>94-132</i> | 130 <i>111-156</i> | 150 <i>128-180</i> | 195 <i>166-234</i> | 255 <i>217-300</i> | 300 <i>255-300²</i> |
| <i>CSC 3rd Degree – (c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)</i> | 48 <i>41-58</i> | 62 <i>53-74</i> | 76 <i>65-91</i> | 90 <i>77-108</i> | 117 <i>99-140</i> | 153 <i>130-180</i> | 180 <i>153-180²</i> |
| <i>CSC 2nd Degree – (a)(b)(g) CSC 3rd Degree – (a)(b)² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i> | 36 | 48 | 60 <i>51-72</i> | 70 <i>60-84</i> | 91 <i>77-109</i> | 119 <i>101-143</i> | 140 <i>119-168</i> |
| <i>CSC 4th Degree – (c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography²</i> | 24 | 36 | 48 | 60 <i>51-72</i> | 78 <i>66-94</i> | 102 <i>87-120</i> | 120 <i>102-120²</i> |
| <i>CSC 4th Degree – (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)</i> | 18 | 27 | 36 | 45 <i>38-54</i> | 59 <i>50-71</i> | 77 <i>65-92</i> | 84 <i>71-101</i> |
| <i>CSC 5th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct²</i> | 15 | 20 | 25 | 30 | 39 <i>33-47</i> | 51 <i>43-60</i> | 60 <i>51-60²</i> |
| <i>Registration Of Predatory Offenders</i> | 12 ¹ <i>12¹-14</i> | 14 <i>12¹-17</i> | 16 <i>14-19</i> | 18 <i>15-22</i> | 24 <i>20-29</i> | 30 <i>26-36</i> | 36 <i>31-43</i> |

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2 are excluded from the guidelines, because by law the sentence is mandatory imprisonment for life. See Guidelines Section [II.E., Mandatory Sentences](#), for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

 Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See, Guidelines Sections [II.C. Presumptive Sentence](#) and [II.E. Mandatory Sentences](#).

¹ One year and one day

² M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.