



# Report to the Legislature

## January 2005

### Minnesota Sentencing Guidelines Commission

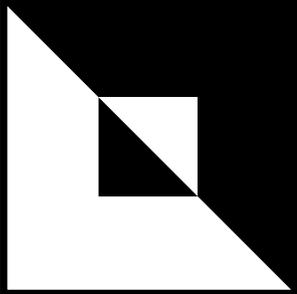


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#### Minnesota Sentencing Guidelines Commission

Capitol Office Building  
525 Park Street, Suite 220  
Saint Paul, MN 55103

Phone: 651-296-0144  
Fax: 651-297-5757  
Email: [sentencing.guidelines@state.mn.us](mailto:sentencing.guidelines@state.mn.us)  
Website: [www.msgc.state.mn.us](http://www.msgc.state.mn.us)  
MN Relay Service TTY: 1-800-627-3529 (ask for 651-296-0144)



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### **Minnesota Sentencing Guidelines Commission**

#### Members



Steven Borchardt, Chair and Olmsted County Sheriff  
Russell A. Anderson, Justice, Minnesota Supreme Court  
Darci Bentz, Public Defender Representative  
Jeffrey Edblad, County Attorney, Isanti County  
Joan Fabian, Commissioner of Corrections  
Lorie Gildea, Citizen Representative  
Isabel Gomez, District Court Judge, Fourth Judicial District  
Tracy Jenson, Probation Officer, Washington County  
Connie Larson, Citizen Representative  
Gordon Shumaker, Judge, Court of Appeals  
Michael Williams, Citizen Representative

#### Staff

Barbara Tombs, Executive Director  
Matt Berger, Research Analyst  
Linda McBrayer, Managements Analyst 3  
Lori Neubauer, Research Analyst  
Scott Van Cleave, Research Analyst Intermediate

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#### **Minnesota Sentencing Guidelines Commission**

This information will be made available in an alternative format upon request. The total cost of development and preparation for this report was \$17,167.71 (reported as required by Minn. Stat. § 3.197).



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# Executive Summary

In 1978, the Minnesota Sentencing Guidelines Commission was established and has been responsible for developing, overseeing and monitoring the state's sentencing guidelines for all felony offenders. With the overriding goal of assuring public safety, the guidelines were also created to promote proportionality and uniformity in sentencing, reduce disparity in sentencing, and to coordinate sentencing practices with correctional resources. Since the development and implementation of the guidelines, the Commission has spent the vast majority of its time monitoring and analyzing sentencing practices throughout the state and providing sentencing information to the Legislature.

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Each January, the Sentencing Guidelines Commission submits its annual Report to the Legislature, which has contained a variety of sentencing information including: recent legislative modifications to the guidelines, analysis of felony DWI sentences, County Attorney Reports on cases involving firearms and other sentencing issues of importance to the Legislature. The 2005 Report to the Legislature also contains two significant modifications to the sentencing guidelines. The first set of modifications addresses the impact of the recent Supreme Court decision *Blakely v. Washington* on criminal sentencing in Minnesota. The second set of modifications focuses on changes in sentencing policies for sex offenders. These modifications become effective for crimes committed on or after August 1, 2005, pending Legislative review.

The Supreme Court's decision in *Blakely* did not rule determinate sentencing unconstitutional, nor did it rule aggravated departures unconstitutional. What the Court's ruling did indicate was that the state's current procedure for imposing aggravated departures and statutorily enhanced sentences is unconstitutional. The proposed modifications address those procedural issues while preserving the ability to impose aggravated departures in cases when appropriate and necessary to protect public safety.

The second area for which modifications to the guidelines is proposed involves changes in the sentencing structure and procedures for sex offenders. The Commission is proposing a separate determinate sentencing grid for sex offenses that enhances sentences for the most serious sex offenders and calculates criminal history in a different manner, weighting prior sex offense convictions more heavily. The proposed modifications contain a recommendation for an indeterminate life sentencing option for the "worst of the worst" sex offenders.

In 2003, the Sentencing Commission's data continues to demonstrate an increase in both the number felony sentences imposed and the number of offenders sentenced to prison when compared to previous years. The number of offenders sentenced for felony offenses increased

from 12,978 in 2002 to 14,492 in 2003, representing an 11.7% yearly increase. It should be noted that this increase follows a 20.0% increase between 2001 and 2002. When this growth is broken down by offense types, person offenses increased by 7.0%; property offenses increased by 2.3%; drug offenses increased by 13.8% and the "other" offense category increased by 53.6% between 2002 and 2003. When Felony DWI is excluded from the "other" offense category, the increase between 2002 and 2003 is only .06%. The data indicates that Felony DWI accounted for almost half of the overall growth in cases between 2002 and 2003.

The total number of felony offenders sentenced to prison increased from 3,057 in 2002 to 3,536 in 2003. The imprisonment rate increased from 23.6% in 2002 to 24.4% in 2003. The average pronounced prison sentenced also increased from 47.2 months in 2002 to 51.2 months in 2003. The increase in the number of felony offenders sentenced to prison, combined with the increase in the average pronounced sentence, has directly contributed to the increase in the prison population from 7,568 offenders in 2002 to 8,333 offenders in 2003.

County Attorney Reports regarding firearm offenses show that 701 cases last year involved an offender allegedly committing an offense listed in subdivision 9 of Minn. Stat. § 609.11 while possessing or using a firearm. This represents a 1.5% increase over the previous year. Prosecutors secured convictions in 70% of the cases charged, a slight decrease from 72% in the previous year. In about 61% of the cases, a mandatory minimum sentence was imposed and executed.

Analysis of felony DWI data indicates that 929 cases have been sentenced through December 2003, with 38% (354) of the offenders having a criminal history of one and 26% (235) offender having a criminal history of zero. Fourteen percent of the 929 cases (132) were sentenced to prison, whereas 86% of the total number of felony DWI cases received local jail time or other sanctions. Of the 132 cases sentenced to prison, 44% received a mitigated durational departure. Analysis of DWI data also indicates that, of the 797 offenders who received a stayed sentence, only 3% (24) had a stayed sentence revoked and were sentenced to prison by the end of 2003.

The Sentencing Guidelines Commission hopes the information contained in this report will be both useful and informative. The Commission is available to address any questions or to provide any additional information requested. Additional data reports on overall data trends in 2003 and sentencing practices for specific offenses including Criminal Sexual Conduct Offenses, Failure to Register, Drug Offenses, Criminal Vehicular Operation, Weapons Offenses, and Unranked Offenses are available on the Guidelines Commission's web site at: <http://www.msgc.state.mn.us/>

# Commission Background, Structure and Activity

## Commission Background

Minnesota was the first state to adopt a Sentencing Guidelines system over 24 years ago and has been viewed as the model for felony sentencing reform throughout the United States. The Sentencing Guidelines provided several major improvements over the old indeterminate sentencing system.

Sentencing Guidelines promote public safety while enabling efficient use of limited state resources for incarceration of felony offenders

1. Truth In Sentencing/Predictability. All of the participants in the criminal justice system – courts, prosecutors, offenders, and victims – now know, at the time of sentencing, how much time an offender will serve in prison. For example, if an offender is sentenced to 60 months in prison, that offender will serve 40 months in prison and would then be placed on supervised release for the remaining 20 months.

A highly desirable side effect of determinate sentencing is the ability to fairly accurately predict future prison bed needs. Thus, if the sentence for a particular offense is increased by 12 months, the Guidelines Commission staff can, within a certain amount of statistical confidence, project the long-term prison bed impact of that change. In conjunction with other agencies, the potential fiscal impact of any sentencing change can also be measured and quantified, thus providing the Legislature information for policy decisions.

2. Clear Proportionality/Uniformity. Under this “Just Deserts” model of sentencing, an offender who commits a more serious crime receives a longer sentence than one who commits a less serious crime. An offender with a criminal history receives a longer sentence than an offender who commits the same crime but does not have a criminal history. Offenders with similar offense and criminal history characteristics are treated the same across the state, thus reducing disparity in sentencing.

3. Accurate Data Collection. The sentencing guidelines system also allowed the Commission to collect accurate and detailed data on the specific determinate sentences actually imposed across the state. Data collected by the Commission allows analysis of sentencing trends with respect to particular offenses, specific types of offenders, and geographic variations.

The primary goal of the Sentencing Guidelines has always been and remains protecting public safety while enabling the efficient use of limited state resources for incarceration of felony offenders.

## Commission Structure

The Minnesota Sentencing Guidelines Commission is responsible for maintaining and monitoring the sentencing guidelines. The 11-member commission is composed of a variety of representatives of the Minnesota criminal justice system.

The Governor is responsible for eight appointments to the Commission, including the Chairman. Those appointments currently include Sheriff Steve Borchardt from Olmstead County, representing law enforcement and currently serving as Chairman of the Commission. Additional Governor appointees include: Joan Fabian, Commissioner of Corrections; Jeffrey Edblad from Isanti County, the County Attorney Representative; Darci Bentz of Fairmont, MN, the Public Defender Representative; and Tracy Jenson of Washington County, the Probation Representative. Lori Gildea and Michael Williams, both of Minneapolis, and Connie Larson of Waseca, serve as Citizen Members on the Commission.

The Chief Justice of the Minnesota Supreme Court is responsible for three appointments to the Commission. Those appointments currently include: Justice Russell A. Anderson, Minnesota Supreme Court; Judge Gordon Shumaker, Minnesota Court of Appeals; and Judge Isabel Gomez, District Court Judge from the Fourth Judicial District.

The Commission is comprised of one part-time and six full-time employees, a decrease of two full time positions since 2002. Barbara Tombs serves as the Executive Director of the Minnesota Sentencing Guidelines Commission. The other employee positions are filled by four full-time and one part-time researchers and one administrative staff person.

## Commission Activity

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 Supreme Court's ruling in *Blakely v. Washington* impacted criminal sentencing throughout the United States

In *Blakely v. Washington*, a Washington State defendant pled guilty to a second degree kidnapping offense involving a firearm. Under Washington's sentencing statute, the defendant would have received a sentence of between 49 and 53 months for this offense. However, the sentencing judge sentenced the defendant to 90 months, citing a Washington statute that allows a sentence of up to ten years if the judge finds justification for the imposition of an "exceptional sentence." The judge stated that justification for the sentence imposed was that



the defendant committed the offense with deliberate cruelty. The defendant appealed his sentence and the Court ruled that the sentence was a Sixth Amendment violation.

Under the Sixth Amendment, the Court held that all facts, other than prior criminal convictions, that increase a criminal defendant's sentence beyond what it would have been absent those facts, must be presented to a jury and proven beyond a reasonable doubt. Thus, it treated the presumptive sentence, rather than the statutory maximum sentence, as the punishment that could not be increased without a jury's input.

In the Court's view, the jury trial right does not just mean that a person has the right to present a case to the jury; it also means that a person has a right to have a jury, not a judge, make all the factual findings required to impose a sentence longer than recommended by the guidelines, unless the defendant formally admits some or all of the aggravating facts.

### **Impact on Sentencing in Minnesota**

Minnesota Sentencing Guidelines remain intact and constitutional after the *Blakely* decision. Only sentences that are aggravated beyond the presumptive guidelines sentence are affected by the Supreme Court's ruling.

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. Thus, it is the procedure that the Court calls into question, not the enhanced sentence itself.

The structure of Sentencing Guidelines in Minnesota remains constitutional, as do aggravated departures

Shortly after the *Blakely* decision was released, Governor Pawlenty directed the Sentencing Guidelines Commission to examine how the state's sentencing system would be impacted and to submit both short and long-term recommendations to address the issues raised by the case. The Commission established a subcommittee to examine the impact of the ruling. In addition to members of the Commission, the subcommittee included representatives from the County Attorneys' Association, the Attorney General's Office, Public Defenders, and the Judiciary. The subcommittee's work focused on several issues: interpreting the high court's ruling, identifying areas of impact, and sharing specific concerns from the various perspectives.

The subcommittee determined that the current procedure for imposing aggravated departures, as well as, certain statutory sentencing enhancements that require a finding of additional factors, appear to be unconstitutional under *Blakely* because the court, not the jury, makes the findings. Subsequently, three Minnesota Court of Appeals decisions have addressed this issue. On October 12, 2004, in *State v. Conger*, the Court of Appeals ruled that the findings in *Blakely* apply to the Minnesota Sentencing Guidelines. In *State v. Ibberson*, released on October 19, 2004, the Court of Appeals held that *Blakely* is only applicable to aggravated durational departures and does not extend to aggravated dispositional departures. This ruling is significant in that it limits the number of cases that will be impacted to approximately 200 to 250 per year (of the total 14,492 cases sentenced in 2003). Finally, in the *State v. Huston* handed down on December 7, 2004, the Court of Appeals decided that the rule in *Blakely* will

not be applied retroactively to *Apprendi*. This ruling further limits the impact on aggravated departures to those cases not final or with direct appeals pending on the date that *Blakely* was decided.

In addition, the state will need to modify procedures for imposing consecutive sentences, since the current procedure requires the court to determine whether an offense is a "person" offense. Finally, it is the Commission's finding that mandatory minimum sentences are generally not impacted by the recent court decision. However, the mandatory minimum sentence under M.S. § 609.11 Dangerous Weapons may be subject to *Blakely* when the use or possession of the weapon is not an element of the offense.

In response to the findings of the subcommittee, the Sentencing Guidelines Commission adopted proposed modifications to the sentencing guidelines (contained in the following chapter) that modify the procedures for imposing aggravated departures and consecutive sentences to comply with the constitutional issues raised in *Blakely*. The proposed modifications are procedural in nature and will ensure that aggravated departures are available for those cases in which an enhanced sentence is necessary and appropriate to ensure public safety. In addition, in its *Blakely* reports, the Commission made recommendations regarding changes that should be made to statutes related to enhanced sentences and issues related to M.S. § 609.11

### **Modifications to the Sentencing Grid**

The *Blakely v. Washington* decision provided the Commission an opportunity to closely examine departure trends, procedures and the structure of the current sentencing grid. When the sentencing guidelines were developed, statutory authority was granted for a 15% sentence range within individual sentencing cells on the grid. The Commission chose at that time to enact a narrower sentencing range that was not necessarily applied uniformly to all grid cells. In response to the *Blakely* decision and concerns expressed by various criminal justice entities, the Commission decided to modify the current sentencing grid to reflect a 15% sentence range both up and down from the presumptive sentence designated in an individual cell on the grid. In addition, the 15% sentence range is applied uniformly to all cells on the sentencing grid. The impact of this modification is that the number of aggravated durational departures will be reduced because of the increased sentence range; thus the impact of *Blakely* will be mitigated to some extent.

The Supreme Court's ruling in *Blakely v. Washington* at the end of its 2003-2004 term created an enormous amount of confusion and uncertainty in sentencing practices and policies at both the state and federal level. Academics, courts, legal experts and sentencing professionals have struggled to decipher what the Court's decision really means and to determine to what extent current sentencing policies and practices are affected in various jurisdictions. Acknowledging the level of confusion surrounding the *Blakely* ruling, the Supreme Court heard two *Blakely* related cases in early October and a ruling is expected shortly. In addition, Minnesota courts have been addressing *Blakely* related issues over the past months. The Commission believes that the state should move slowly and cautiously with responses related to *Blakely*, since many legal issues are still before the courts.

## Modifications to Sex Offender Sentencing Policies

During the past year, the Sentencing Guidelines Commission revisited sentencing policies and practices for sex offenders, considering legislation proposed during the 2004 legislative session and the use of aggravated durational departures in the sentencing of sex offenders. After a preliminary review of the issues relating to sentencing of sex offenders, a subcommittee was designated to explore options that would more appropriately address the difficult public safety issue surrounding sex offenders, particularly recidivism. The Commission felt it was imperative to preserve the current determinate sentencing model in Minnesota to ensure proportionality, uniformity and certainty in sentencing, while addressing the availability of longer sentences for cases involving serious or repeat sex offenses.

The subcommittee began by reviewing current sex offense sentences and their placement on the sentencing grid. Several issues relating to the severity level rankings of sex offenses, repeat sex offenders, and mandatory minimums sentences were identified. The subcommittee determined that sentencing issues related to sex offenders are different from those for other felony offenders and that prior convictions for sex offenses should weigh more heavily in determining an appropriate sentence. To address the multiple issues surrounding sentencing of sex offenders, the subcommittee developed a separate sentencing grid for sex offenses, including Failure to Register as a Predatory Offender, that encompasses the current statutory maximums and mandatory minimum sentences for sex offenders. Criminal history calculations for the sex offender will weigh prior sex offense convictions more heavily. Sex offenses committed on supervision will also result in enhanced custody status points.

For the most serious sex offenses, an offender would receive at least two-thirds the statutory maximum sentence for one prior sex offense conviction and the statutory maximum sentence for two prior sex offense convictions, if they commit subsequent offenses while under supervision for a prior sex offense. It should be noted that current sentencing policy provides for lengthy periods of supervision for serious offenders. Aggravated durational departures remain a sentencing option with the new Sex Offense Grid, but it is likely that departures will be less frequent because of the longer sentences provided within the presumptive range.

The Commission is also recommending that the Legislature create a class of offenses that would allow for a specific indeterminate sentencing option for sex offenders with more than two prior sex offenses designating a life sentence with possible release determined by a Sex Offender Review Board. In addition, the indeterminate life sentencing option would be available for offenders with less than two prior sex offenses, if certain criteria were met. Finally, the Commission ranked all current unranked sex offenses, with the exception of incest, which is almost never charged because the behavior involved is fully chargeable under more modern statutes.

The modifications to current sex offender sentencing policies increase sentences, notably for the more serious sex offenses. However, on examination of aggravated durational departures for sex offenders, the enhanced sentences are reflective of sentences that offenders are currently receiving through departures. The Commission prepared a projected prison bed impact indicating the proposed sex offense grid would require 580 beds per year after a 20 year phase-in period.



A Public Hearing was held on December 9, 2004, to gather input on the proposed modifications. The Commission subsequently met on December 16, 2004, to adopt the proposed modifications to the Guidelines that are contained in this report. The Commission believes the proposed modifications to the sentencing guidelines promote public safety, while providing appropriate determinate sentencing options that are responsive to both the constitutional issues identified in *Blakely* and the complexity surrounding sentencing of sex offenders.

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# Guidelines Modifications

Changes to the sentencing guidelines related to new and amended crimes **passed by the Legislature during the 2004 session became effective August 1, 2004.**

The language of the specific changes to the sentencing guidelines is included in the Appendix. A summary of new felony crime legislation and the most significant guidelines changes follow. Other changes not summarized here are included in the Appendix.

## Adopted Modifications Related to New and Amended Crimes

The commission considered new and amended crime legislation from the 2004 Legislative Session and adopted a proposal to retain affected severity level rankings and guidelines policies, as follows:

- A. **Blood Alcohol Concentration Level Reduction:** The commission considered changes made to the blood alcohol concentration level reduction and adopted a proposal to maintain the current severity level rankings and guidelines policies for criminal vehicular operations and felony driving while impaired.
- B. **Assault in the Fourth Degree:** The commission considered changes made to assault in the fourth degree and adopted a proposal to maintain the current severity level I ranking for the crime.
- C. **Misdemeanor and Gross Misdemeanor Offense List:** The commission considered new and amended misdemeanors and gross misdemeanors and adopted a proposal to maintain the current Misdemeanor and Gross Misdemeanor Offense List.

## Other Adopted Modifications

- ❖ **Criminal History – Custody Status Point:** The commission adopted a proposal to add language to section II.B.2 of the sentencing guidelines and comment II.B.206 of the sentencing guidelines to clarify that a custody status point should be assigned when the conviction offense involves multiple offenses that occur over a period of time.
- ❖ **Concurrent/Consecutive Sentences – Permissive Consecutive Policy:** The commission adopted the following changes related to consecutive sentences in section II.F of the sentencing guidelines:



- **Felony Assault Committed in Local Jail:** The commission adopted a proposal to add language to section II.F of the sentencing guidelines to clarify that a felony assault committed while in a local jail or workhouse may always be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.
  
- **Escape from Nonexecuted Prison Sentence:** The commission adopted a proposal to modify language in section II.F of the sentencing guidelines to clarify that a felony escape from a nonexecuted prison sentence may always be sentenced consecutively.
  
- **Dispositional Departures:** The commission adopted a proposal to add language to section II.F of the sentencing guidelines to explain that in some situations it is not a dispositional departure to execute a sentence for an offense for which consecutive sentencing is permissive when it is going to be sentenced consecutive to another executed sentence.

# Adopted Modifications

## To Be Effective 8/1/2005 Following Legislative Review

### I. Modifications Related to Blakely Decision

#### A. *Departure Language*

The commission modified the language in section II.D and comment II.D.01 of the sentencing guidelines to conform to the *State of Washington v. Blakely* decision.

#### Adopted Language

**D. Departures from the Guidelines:** The sentences ranges provided in the Sentencing Guidelines Grid are presumed to be appropriate for every case the crimes to which they apply. Thus, the judge shall utilize the presumptive sentence provided in the sentencing guidelines pronounce a sentence within the applicable range unless the individual case involves there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grid. A sentence outside the applicable range on the grid is a departure from the sentencing guidelines and is not controlled by the guidelines, but rather, is an exercise of judicial discretion constrained by case law and appellate review. However, in exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular When such circumstances are present, the judge may depart from the presumptive sentence and stay or impose any sentence authorized by law. When departing from the presumptive sentence, the court should pronounce a sentence which is proportional to the severity of the offense of conviction and the extent of the offender's prior criminal history, and should take into substantial consideration the statement of purpose and principles in Section I, above. When departing from the presumptive sentence, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances that, and which demonstrate why the sentence selected in the departure is make the departure more appropriate, reasonable, or equitable than the presumptive sentence.

Furthermore, if an aggravated durational departure is to be considered, the judge must afford the accused an opportunity to have a jury trial on the additional facts that support the departure and to have the facts proved beyond a reasonable doubt. If the departure facts are proved beyond a reasonable doubt, the judge may exercise the discretion to depart from the presumptive sentence. In exercising that discretion, it is recommended that the judge pronounce a sentence that is proportional to the severity of the crime for which the sentence is imposed and the offender's criminal history, and take into consideration the purposes and

underlying principles of the sentencing guidelines. Because departures are by definition exceptions to the sentencing guidelines, the departure factors set forth in II.D are advisory only, except as otherwise established by settled case law. When the conviction is for a criminal sexual conduct offense or offense in which the victim was otherwise injured, and victim injury is established in proving the elements of the crime, an aggravated durational departure is possible without a jury determination of additional facts if the departure is based on the offender's prior history of a conviction for a prior criminal sexual conduct offense or an offense in which victim injury was established as an element of the offense.

*Comment*

**II.D.01.** *The guideline sentences are presumed to be appropriate for every case. However, there will be a small number of cases where substantial and compelling aggravating or mitigating factors are present. When such factors are present, the judge may depart from the presumptive disposition or duration provided in the guidelines, and stay or impose a sentence that is deemed to be more appropriate, reasonable, or equitable than the presumptive sentence. A defendant has the right to a jury trial to determine whether or not aggravating factors are proved beyond a reasonable doubt.*

**II.D.02.** *Decisions with respect to disposition and duration are logically separate. Departures with respect to disposition and duration also are logically separate decisions. A judge may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa. A judge who departs from the presumptive disposition as well as the presumptive duration has made two separate departure decisions, each requiring written reasons.*

**II.D.03.** *The aggravating or mitigating factors and the written reasons supporting the departure must be substantial and compelling to overcome the presumption in favor of the guideline sentence. The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if judges depart from the guidelines frequently. Certainty in sentencing cannot be attained if departure rates are high. Prison populations will exceed capacity if departures increase imprisonment rates significantly above past practice.*

**II.D.04.** *Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the sentencing guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to provide for informed policy making or to ensure consistency, proportionality, and rationality in sentencing.*

*Departures and their reasons highlight both the success and problems of the existing sentencing guidelines. When a plea agreement is made that involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain the reasons the negotiation was accepted.*

**B. Permissive Consecutive Sentences**

The commission modified the language in section II.F and comment II.F.04 of the sentencing guidelines to specify the offenses for which consecutive sentencing is permissive without departure, in order to avoid such determinations by the Court, which may be unconstitutional under the *State of Washington v. Blakely* decision. Offenses were considered for inclusion on the list based on the potential level and type of injury to victims, and previous patterns of consecutive sentencing use.

**Permissive Consecutive Sentences**

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

1. A current felony conviction for a crime ~~against a person~~ on the list of offenses eligible for permissive consecutive sentences found in Section VI may be sentenced consecutively to a prior felony sentence for a crime ~~against a person~~ listed in Section VI which has not expired or been discharged; or
2. Multiple current felony convictions for crimes ~~against persons~~ on the list of offenses eligible for permissive consecutive sentences found in Section VI may be sentenced consecutively to each other; or

...

Consecutive sentences are permissive under the above criteria numbers 1, 2, and 4 only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. In addition, consecutive sentences are permissive under number 1 above, ~~involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged,~~ only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.



*Comment*

**II.F.04.** *The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D. of the guidelines.*

*It is permissive for multiple current felony convictions ~~against persons~~ for offenses on the eligible list to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C. Presumptive Sentence. Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissive under these circumstances when the court has given an upward durational departure on any of the current offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.*

The Commission adopted the following list of offenses for which consecutive sentencing is permissive without departure from the Guidelines as Section VI of the Guidelines.

## VI. Offenses Eligible for Permissive Consecutive Sentences

<b>Statute Number</b>	<b>Offense</b>
152.021 subd. 2a(a)	Manufacture any amount of Methamphetamine
152.022 subd. 1 (5)	Sells Cocaine/Narcotic to Minor/Employs Minor
152.023 subd. 1 (3)	Sells Sch. I,II,III to Minor (not Narcotic)
152.023 subd. 1 (4)	Sells Sch I,II,III Employs Minor (not Narcotic)
152.024 subd. 1 (2)	Schedule IV or V to Minor
152.024 subd. 1 (3)	Employs Minor to sell Schedule IV or V
152.0261 subd. 1a	Employing a Minor to Import Controlled Substances
169.09 subd. 14(a)(1)	Accidents- Resulting in Death
169.09 subd. 14(a)(2)	Accidents- Great Bodily Harm
169A.24 subd. 1 (1)	First Degree DWI – 4 or more w/in 10 years
169A.24 subd. 1 (2)	First Degree DWI – 2 <sup>nd</sup> or subsequent
243.166 subd. 5 (b)	Registration of Predatory Offenders
243.166 subd. 5 (c)	Registration of Predatory Offenders - 2 <sup>nd</sup> or subsequent
518B.01 subd. 14(d)	Violation of an Order for Protection
609.185	Conspiracy/Attempted Murder in the First Degree
609.19	Murder in the Second Degree
609.195	Murder in the Third Degree
609.20	Manslaughter in the First Degree
609.205	Manslaughter Second Degree
609.21 subd. 1 & 3	Criminal Vehicular Homicide
609.21 subd. 2 & 4	Criminal Vehicular Injury - Great Bodily Harm
609.21 subd. 2a	Criminal Vehicular Injury - Substantial Bodily Harm
609.215	Aiding Suicide
609.221	Assault 1
609.222	Assault 2 - Dangerous Weapon
609.223	Assault 3
609.2231	Assault 4
609.224 subd. 4	Assault 5 - 3 <sup>rd</sup> or subsequent violation
609.2241	Knowing Transfer of Communicable Disease
609.2242 subd. 4	Domestic Assault
609.2245	Female Genital Mutilation
609.228	Great Bodily Harm - Distribution of Drugs
609.229 subd. 3	Crime Committed for Benefit of Gang
609.2325 subd. 3(1)	Criminal Abuse of Vulnerable Adult (Death)
609.2325 subd. 3(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)
609.2325 subd. 3(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)
609.235	Use of Drugs to Injure or Facilitate Crime
609.24	Simple Robbery
609.245 subd. 1	Aggravated Robbery 1
609.245 subd. 2	Aggravated Robbery 2

<b>Statute Number</b>	<b>Offense</b>
609.25	Kidnapping
609.255	False Imprisonment
609.2661	Consp./At. Murder I of Unborn Child
609.2662	Murder 2 of an Unborn Child
609.2663	Murder 3 of an Unborn Child
609.2664	Manslaughter 1 of an Unborn Child
609.2665	Manslaughter 2 of an Unborn Child
609.267	Assault 1 of an Unborn Child
609.2671	Assault 2 of an Unborn Child
609.268	Death or Injury of an Unborn Child in Comm. of Crime
609.322 subd. 1	Solicit, Promote, or Profit from Prost. Under 18
609.322 subd. 1a	Solicit, Promote, or Profit from Prost. (No Age Limit)
609.324 subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution
609.324 subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution
609.324 subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution
609.342 subd. 1	Criminal Sexual Conduct 1
609.343 subd. 1	Criminal Sexual Conduct 2
609.344 subd. 1	Criminal Sexual Conduct 3
609.345 subd. 1	Criminal Sexual Conduct 4
609.3451 subd. 3	Criminal Sexual Conduct 5
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct
609.365	Incest
609.377	Malicious Punish. of Child
609.378	Child Neglect/Endangerment
609.485 subd. 4(a)(3)	Escape with Violence from GM or Misd. Offense
609.485 subd. 4(b)	Escape with Violence from Felony offense
609.487 subd. 4(a)	Fleeing Peace Officer (Resulting in Death)
609.487 subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)
609.487 subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)
609.498 subd. 1a	Tampering with a Witness in the First Degree
609.498 subd. 1b	Tampering with a Witness, Aggravated First Degree
609.527	Identity Theft
609.561	Arson in the First Degree
609.582 subd. 1(a)	Burglary First Degree - of Occupied Dwelling
609.582 subd. 1(b)	Burglary First Degree with Dangerous Weapon
609.582 subd. 1(c)	Burglary First Degree with Assault
609.582 subd. 2(a)	Burglary Second Degree – Dwelling
609.582 subd. 2(b)	Burglary Second Degree – Bank
609.591 subd. 3 (1)	Hinder Logging (Great Bodily Harm)
609.594 subd.2	Damage to Prop.-Critical Public Service Facilities
609.66 subd. 1e	Drive-By Shooting
609.662 subd. 2 (b)(1)	Duty to Render Aid (Death or Great Bodily Harm)
609.662 subd. 2 (b)(2)	Duty to Render Aid (substantial bodily harm)
609.671	Hazardous Wastes
609.687 subd. 3(1)	Adulteration Resulting in Death

<b>Statute Number</b>	<b>Offense</b>
609.687 subd. 3(2)	Adulteration Resulting in Bodily Harm
609.71 subd. 1	Riot 1
609.712	Real/Simulated Weapons of Mass Destruction
609.713 subd. 1	Terroristic Threats-Violence Threat/Evacuation
609.713 subd. 2	Terroristic Threats-Bomb Threat
609.713 subd. 3(a)	Terroristic Threats-Replica Firearm
609.714 subd. 2	Crimes Committed in Furtherance of Terrorism
609.748 subd. 6(d)	Violation of Restraining Order
609.749 subd. 3	Harassment/Stalking (Aggravated Violations)
609.749 subd. 4	Harassment/Stalking (Subsequent Violations)
609.749 subd. 5	Harassment/Stalking (Pattern of Conduct)
609.855 subd. 2(c)(1)	Interference with Transit Operator
609.855 subd. 5	Discharge Firearm at Occup. Tran. Vehicle/Facility
617.23 subd. 3	Indecent Exposure
617.246, subd. 2 617.246, subd. 3 617.246, subd. 4	Use of Minors in Sexual Performance Prohibited Operation/Owner-Use of Minors in Sexual Perform. Dissemination-Use of Minors in Sexual Performance
617.247, subd. 3(a) 617.247, subd. 3(b)	Dissemination of Pictorial Representations of Minors Dissemination by Predatory Offender
617.247, subd. 4(a) 617.247, subd. 4(b)	Possession of Pictorial Representations of Minors Possession by Predatory Offender
624.732 subd. 2	Intentional Release of Harmful Substance
624.74	Metal Penetrating Bullets

**C. Sentencing Guidelines Grid**

The commission modified the presumptive sentence ranges on the Sentencing Guidelines Grid and the grid for Conspiracy/Attempted Murder in the First Degree in section G. to reflect the full 15% plus and minus ranges authorized in M.S. § 244.09 subd. 4 (2). This modification creates greater flexibility for the courts in determining the appropriate sentence in an individual case and reduces the need for jury determination of aggravating factors in cases where aggravated durational departures are within 15% of the presumptive sentence.

**G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.**

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or More
<i>Conspiracy/Attempted Murder, 1<sup>st</sup> Degree</i>	180	190	200	210	220	230	240
	<del>176-184</del>	<del>186-194</del>	<del>196-204</del>	<del>206-214</del>	<del>216-224</del>	<del>226-234</del>	<del>236-240</del>
	<u>153-207</u>	<u>162-218</u>	<u>170-230</u>	<u>179-240*</u>	<u>187-240*</u>	<u>196-240*</u>	<u>204-240*</u>

\* Statutory Maximum of 20 years reached.

**SENTENCING GUIDELINES GRID**

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment 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</i> (intentional murder; drive-by-shootings)	<b>XI</b>	306 <del>299-313</del> <u>261-351</u>	326 <del>319-333</del> <u>278-374</u>	346 <del>339-353</del> <u>295-397</u>	366 <del>359-373</del> <u>312-420</u>	386 <del>379-393</del> <u>329-443</u>	406 <del>399-413</del> <u>346-466</u>	426 <del>419-433</del> <u>363-480</u>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	<b>X</b>	150 <del>144-156</del> <u>128-172</u>	165 <del>159-171</del> <u>141-189</u>	180 <del>174-186</del> <u>153-207</u>	195 <del>189-204</del> <u>166-224</u>	210 <del>204-216</del> <u>179-241</u>	225 <del>219-231</del> <u>192-258</u>	240 <del>234-246</del> <u>204-276</u>
<i>Criminal Sexual Conduct, 1st Degree</i> <sup>2</sup> <i>Assault, 1st Degree</i>	<b>IX</b>	86 <del>81-94</del> <u>74-98</u>	98 <del>93-103</del> <u>84-112</u>	110 <del>105-115</del> <u>94-126</u>	122 <del>117-127</del> <u>104-140</u>	134 <del>129-139</del> <u>114-154</u>	146 <del>141-151</del> <u>125-167</u>	158 <del>153-163</del> <u>135-181</u>
<i>Aggravated Robbery 1st Degree</i> <i>Criminal Sexual Conduct, 2nd Degree</i> (c),(d),(e),(f),(h) <sup>2</sup>	<b>VIII</b>	48 <del>44-52</del> <u>41-55</u>	58 <del>54-62</del> <u>50-66</u>	68 <del>64-72</del> <u>58-78</u>	78 <del>74-82</del> <u>67-89</u>	88 <del>84-92</del> <u>75-101</u>	98 <del>94-102</del> <u>84-112</u>	108 <del>104-112</del> <u>92-124</u>
<i>Felony DWI</i>	<b>VII</b>	36	42	48	54 <del>51-57</del> <u>46-62</u>	60 <del>57-63</del> <u>51-69</u>	66 <del>63-69</del> <u>57-75</u>	72 <del>69-75</del> <u>62-82</u>
<i>Criminal Sexual Conduct, 2nd Degree</i> (a) & (b)	<b>VI</b>	21	27	33	39 <del>37-41</del> <u>34-44</u>	45 <del>43-47</del> <u>39-51</u>	51 <del>49-53</del> <u>44-58</u>	57 <del>55-59</del> <u>49-65</u>
<i>Residential Burglary</i> <i>Simple Robbery</i>	<b>V</b>	18	23	28	33 <del>31-35</del> <u>29-37</u>	38 <del>36-40</del> <u>33-43</u>	43 <del>41-45</del> <u>37-49</u>	48 <del>46-50</del> <u>41-55</u>
<i>Nonresidential Burglary</i>	<b>IV</b>	12 <sup>1</sup>	15	18	21	24 <del>23-25</del> <u>21-27</u>	27 <del>26-28</del> <u>23-31</u>	30 <del>29-34</del> <u>26-34</u>
<i>Theft Crimes (Over \$2,500)</i>	<b>III</b>	12 <sup>1</sup>	13	15	17	19 <del>18-20</del> <u>17-21</u>	21 <del>20-22</del> <u>18-24</u>	23 <del>22-24</del> <u>20-26</u>
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	<b>II</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 <del>20-22</del> <u>18-24</u>
<i>Sale of Simulated Controlled Substance</i>	<b>I</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 <del>18-20</del> <u>17-21</u>



## **II. Other Adopted Modifications**

### **A. *Unranked Offense***

The commission modified the rank the offense of illegal theft, tampering with transport of anhydrous ammonia at severity level 3, the same severity level as 152.021 subd. 2a (b): possession of methamphetamine precursors with intent to manufacture.

#### **V. OFFENSE SEVERITY REFERENCE TABLE**

**III** Anhydrous Ammonia (tamper/ttheft/transport) – 18D.331 subd. 5

#### **NUMERICAL REFERENCE OF FELONY STATUTES**

18D.331 subd.5

Anhydrous Ammonia (tamper/theft/transport)

### III. Adopted Modifications Related to Sex Offenses

#### SEX OFFENSE GRID EXPLANATION

##### Grid Design Principles:

1. The Commission acknowledges that sex offenses require a different sentencing structure than that contained on the current sentencing guidelines grid, due to a combination of the serious nature of the offense, components of the underlying criminal behavior involved and the threat to public safety.
2. The new sex offense grid is developed to reflect a combination of sentence lengths based on presumptive sentences and mandatory minimums enacted by the Legislature with relation to sex offenses, thus preserving the "truth in sentencing" principle set forth in the Sentencing Guidelines and retaining the guideline's determinate sentencing structure.
3. The severity ranking of sex offenses on the new grid is based primarily on the statutory maximum sentence for individual sex offenses. Severity levels generally place sex offenses with the same statutory maximum sentence on the same severity level, which allows for greater proportionality in sentences than is currently provided.
4. The new grid contains significantly enhanced sentence lengths that addresses issues raised in *Blakely v. Washington* relating to aggravated durational departures, as well as recognizing actual sentencing practice in serious sex offense cases.
5. Criminal history scores totaling six or more indicate a presumptive prison sentence that reflect the statutory maximum penalty designated for most sex offenses. Although the sex offense grid, like the general sentencing guidelines grid, provides ranges of 15% above and below the presumptive sentence, ranges for criminal history scores of six or more do not extend above the statutory maximum sentence. Similarly, the range for first degree criminal sexual conduct does not extend below the statutorily required 144 month presumptive sentence for zero criminal history scores.
6. The underlying prison sentence for the presumptive non-prison portion of the sex offense grid (the shaded areas) enhances current sentence lengths to demonstrate the seriousness assigned to violations and subsequent revocation of a presumptive non-prison sentence.
7. The Commission decided to include Failure to Register as a Sex Offender in the new sex offense sentencing policy. Although this offense is not itself a sex offense, the Commission believes predatory sex offenders that fail to register pose a serious threat to public safety. Therefore, the Commission feels these offenders should be eligible for the enhanced criminal history calculation and sentences contained in the new policy. Inclusion also permits the Commission to tailor appropriate punishment for these

offenders consistent with the statutory minimum and maximum sentences without the constraints of the existing grid.

8. The new sex offense grid would apply only to offenders with two or fewer prior CSI 1<sup>st</sup> degree convictions. If an offender has more than two CSI 1<sup>st</sup> degree convictions, the offender would be eligible for sentencing under a new sentencing option entitled "Off Grid Sex Offense," in which the offender could receive an indeterminate life sentence in prison.
9. Current unranked sex offenses, including Use of Minors in Sexual Performance and Possession/Dissemination of Child Pornography were ranked on the new grid. Given the infrequency in prosecution of Incest, it was the Commission's decision not to rank that offense at this time.

#### **Structure of the Sex Offense Grid:**

1. Severity levels are indicated by the letters A through H, with A representing the most serious sex offenses and H the least serious. Letters were chosen to designate the severity levels to avoid the confusion between the current sentencing grid and the new sex offense grid.
2. Registration of Predatory Offender is the only offense listed on the H severity level. Although severity level H is the lowest severity level, all criminal history categories reflect a presumptive term of imprisonment to reflect the current statutory requirement as well as the seriousness of the offender's prior sex offense conviction.
3. CSC 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> degree offenses retain the previous multi severity level designation which treats sexual offenses committed with force, violence or weapons more seriously with longer presumptive sentences.
4. Criminal history scores are calculated in the same manner as under the current sentencing grid, however, the weights given for prior sex offense convictions are modified (New Severity Levels). Weights were increased for more serious sex offenses, with the less serious sex offenses remaining at their current weight. The prior conviction weight is not reduced for any sex offense under the new grid.
5. Criminal history scores totaling six or more points indicate a presumptive prison sentence that reflect the statutory maximum penalty designated for most sex offenses.
6. Criminal history scores were designed so that a score of 3 generally designates a presumptive sentence of two-thirds of the statutory maximum sentence. Thus, one prior CSC 1<sup>st</sup> degree sex offense conviction alone will result in a criminal history score of 3 and a presumptive sentence of two-thirds of the maximum sentence set forth in statute for a specific severity level. At other offense levels, second time offenders who commit their offenses while on probation or supervised release will also be recommended a sentence that is two-thirds the statutory maximum.



7. The presumptive non-prison portion of the new grid is structured similar to the current grid with lower level sex offenses with limited criminal history scores designated as a non-prison sentence. However, the new sex offense grid contains fewer presumptive non-prison cells and the underlying prison term is notably longer on the new grid, even for zero criminal history scores, than on the current sentencing grid.
8. When ranking the offense of Child Pornography, the severity level was chosen to coincide with the statutory maximum sentence, which is 7 years for Dissemination of Pornography and 5 years for Possession of Pornography. Thus, Dissemination of Child Pornography is ranked at severity level F and Possession of Child Pornography at severity level G.
9. Use of Minors in Sexual Performance has a designated statutory maximum sentence of 10 years and was ranked with similar sex offenses carrying a 10 year statutory maximum sentence at severity level E.

**Custody Status Points:**

1. If an offender is on supervision (probation, supervised release or conditional release) for a sex offense and commits another sex offense, the offender would receive two custody status points, instead of the current one custody status point.
2. If an offender is on supervision (probation, supervised release or conditional release) for a sex offense and commits a non-sex offense, the offender would receive the current one custody status point.
3. If an offender is on supervision for a sex offense and is convicted of Failure to Register, the offender would receive two custody status points instead of the current one custody status point.

**Consecutive Sentences and Departures:**

1. The new sentencing grid and sentencing structure would still permit consecutive sentencing by the court when the facts or circumstances surrounding a specific offender/conviction warrant an enhanced sentence. Consecutive sentencing can result in periods of incarceration that exceed the statutory maximum for any single conviction.
2. Departures, both aggravated and mitigated, would be available with the new sex offense grid. Although the sentences have been significantly enhanced on the new grid, mitigated durational and dispositional departures are available for the atypical cases that may warrant a lesser sentence. Aggravated departures are still available as long as *Blakely* issues are addressed in the sentencing process. However, with the enhanced sentence lengths contained on the new grid, the need for aggravated departures may be lessened.

**The Commission Recommends that the Legislature create an Off Grid Sex Offense Category designating offenses for which a sentence of life in prison with the possibility of release is appropriate:**

Designating a separate "Off Grid" sentencing structure addresses the concern often voiced about appropriate sentencing options for the "worst of the worst" or the repeat predatory sex offender. The commission acknowledges that there is a certain type of sex offender who presents a clear and continuing danger to the public and for which an indeterminate life sentence maybe both appropriate and necessary. Implementation of such an option requires Legislative action to establish a set of offenses for which a life sentence is authorized. Offenders sentenced under this sentencing option should focus on those for which consecutive sentencing would not be available, offenders with three or more CSC 1<sup>st</sup> degree convictions or extensive prior convictions for sex offenses that would not be addressed by the new sex offense grid. Offenders sentenced under this provision would truly represent the "worst of the worst" sex offenders.

The Off Grid sex offense category could be indeterminate in nature with a pronounced minimum sentence and a release determined by a sex offender review board or reflective of a life sentence. This sentencing option could be crafted in such a manner as to narrowly define the population of offenders for whom it would be appropriate that the sentence imposed should exceed the statutory maximum.

An offender could be subject to an indeterminate life sentence based on criminal history score, for example, three or more prior convictions for a CSC 1<sup>st</sup> degree sex offense. Under the new sex offense grid, offenders with two prior CSC 1<sup>st</sup> degree convictions would receive the current statutory maximum sentence. However, if an offender has a more extensive criminal history related to multiple prior sex offense convictions, a life sentence could be imposed.

An offender could also be subject to an indeterminate life sentence under the Off Grid sentencing structure if the current offense is a First Degree Criminal Sexual Conduct offense involving penetration and the offense involves three or more of the following elements:

- (1) Torture of the victim;
- (2) Great Bodily Harm or Mutilation of the Victim;
- (3) Kidnapping;
- (4) The offense is committed by a group of two or more offenders;
- (5) The offense involves multiple victims or multiple acts per victim;
- (6) The offense involved a foreign object or an animal;
- (7) The offender has a prior conviction for a first degree criminal sexual conduct offense;
- (8) The victim is under the age of six;
- (9) The offense was committed in the presence of young children;
- (10) The offense involved abandonment of the victim;
- (11) The offense involved exposure of the victim to extreme inhumane conditions.



This list is not meant to be exhaustive, but rather meant to provide a set of circumstances in which an offender without a lengthy prior criminal history of sex offenses would be eligible for sentencing under the Off Grid Sex Offense sentencing option.

By incorporating the Off Grid Sex Offense sentencing option with the new sex offense grid, the Commission believes that appropriate sentencing options for sex offenders will be available while maintaining a determinate sentencing structure under the guidelines. This proposal provides a rational approach to ensure public safety and correct current deficiencies with sentencing options for sex offenders, while maintaining a level of predictability of prison population, addressing potential disparity in sentencing and managing limited correctional resources.

The most likely candidates for this type of sentencing structure are probably currently receiving aggravated durational departures and/or consecutive sentences. For a description of who these offenders might be, and how their presumptive sentences would change under the adopted modifications, see the Appendix.

**Ranking of Sex Offenses and Weights to be Assigned to Prior Offenses**

<b>Offense</b>	<b>Statutory Provisions Statutory Maximum</b>	<b>Severity Level</b>	<b>Stat. Max.</b>	<b>Weight of Prior</b>	<b>Current Weight</b>
CSC 1	Penetration- 609.342, all clauses	A	30	3	2
CSC 1	Contact-victims under 13 (def, in 609.341 subd.11)	A	30	3	1.5
CSC 2	Contact with Force- 609.343 subd. 1 c, d, e, f, h	B	25	2	1.5
CSC 3	Penetration – Force or prohibited occupation 609.344 subd. 1 c, d, g, j, k, m, n	C	15	2	1.5
CSC 2	Contact with minors- 609.343 subd. 1 a, b, g	D	25	1.5	1.5
CSC 3	Penetration – minors or some occupation 609.344 subd, 1 b, e, f, h, i, l	D	15	1.5	1
CSC 4	Contact – Force or prohibited occupation: 609.345 subd. 1 c, d, g, j, k, m, n	E	10	1.5	1.5
Use Minors Sexual Perform.	617.246 subd. 2,3,4	E	10	1.5	Unranked
CSC 4	Contact – minors or some occupations 609.345 subd, 1 b, e, f, h, i, l	F	10	1	1
Dissemination Pornography	617.247 subd. 3	F	7	1	Unranked
CSC 5	Repeat G.Misd offenses involving minors 609.3451 subd.3	G	5	1	1
Indecent Exposure	Repeat G.Misd offenses 617.23 subd.. 3	G	5	1	1
Possession Pornography	617.247 subd.4	G	5	1	Unranked
Incest	609..365	Unranked	10	Unranked	Unranked
Solicit Children Sexual Conduct	609.352 subd. 2	G	3	1	1
Failure to Register	243.166 subd 5b 243.166 Subd 5c (subsequent offense)	H	5	0.5 1.5	0.5 1



## **Estimated Prison Bed Impact of Changes for Sentencing Sex Offenses**

Number of Sex Offenders Sentenced in 2003: 884

Number of Sentences Expected to Change: 176 (20%)

Eventual Prison Bed Impact: 580 additional beds needed per year

### **Assumptions:**

1. The number and type of offenders sentenced remains the same as in 2003.
2. Offenders currently receiving mitigated dispositional and durational departures would continue to receive an identical sentence.
3. Offenders currently receiving aggravated departures would receive sentences at least as long as they are currently receiving.

### **Estimated Impact by Type of Change to Presumptive Sentence**

<b>Type of Change</b>	<b>Number of Offenders</b>	<b>Prison Bed Impact</b>
New Prison Sentences	25	88
Serve More Time	171	492
<b>Total</b>	<b>196</b>	<b>580</b>

### **Timing of Prison Bed Impact**

<b>Year</b>	<b># Extra Beds Needed</b>	<b>Year</b>	<b># Extra Beds Needed</b>
1	34	11	442
2	91	12	461
3	155	13	481
4	210	14	498
5	260	15	513
6	304	16	527
7	339	17	540
8	365	18	554
9	389	19	566
10	417	20	580

**Estimated Impact by Offense and New Severity Level**

<b>Offense</b>	<b>Statutory Provisions</b>	<b>Severity Level</b>	<b>Number of Offenders</b>	<b>Number with Increased Sentences</b>	<b>Prison Bed Impact</b>
CSC 1	Penetration- 609.342, all clauses	A	170	44	234
CSC 2	Contact with Force- 609.343 subd. 1 c, d, e, f, h	B	29	11	51
CSC 3	Penetration – Force or prohibited occupation 609.344 subd. 1 c, d, g, j, k, m, n	C	57	15	26
CSC 2	Contact with minors- 609.343 subd. 1 a, b, g	D	104	22	66
CSC 3	Penetration – minors or some occupation 609.344 subd, 1 b, e, f, h, i, l	D	132	31	105
CSC 4	Contact – Force or prohibited occupation: 609.345 subd. 1 c, d, g, j, k, m, n	E	53	11	36
Use Minors Sexual Perform.	617.247 subd. 2,3,4	E	4	0	0
CSC 4	Contact – minors or some occupations 609.345 subd, 1 b, e, f, h, i, l	F	58	10	26
Dissemination Pornography	617.247 subd. 3	F	6	0	0
CSC 5	Repeat G.Misd offenses involving minors 609.3451 subd.3	G	4	1	2
Indecent Exposure	Repeat G.Misd offenses 617.23 subd.. 3	G	4	0	0
Possession Pornography	617.247 subd.4	G	50	4	6
Solicit Children Sexual Conduct	609.352 subd. 2	G	12	1	2
Failure to Register	243.166 subd 5b 243.166 Subd 5c (subsequent offense)	H	201	46	27

## Modifications to Implement Sex Offender Sentencing Grid

### II. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by locating the appropriate cell of the Sentencing Guidelines Grid. The grid represents the two dimensions most important in current sentencing and releasing decisions--offense severity and criminal history.

**A. Offense Severity:** The offense severity level is determined by the offense of conviction. When an offender is convicted of two or more felonies, the severity level is determined by the most severe offense of conviction. For persons convicted under Minn. Stat. § 609.229, subd. 3(a) - Crime Committed for Benefit of a Gang, the severity level is the same as that for the underlying crime with the highest severity level.

Felony offenses, other than specified sex offenses, are arrayed into eleven levels of severity, ranging from low (Severity Level I) to high (Severity Level XI). Specified sex offenses are arrayed on a separate grid into eight severity levels labeled A thru H. First-degree murder is excluded from the sentencing guidelines, because by law the sentence is mandatory imprisonment for life. Offenses listed within each level of severity are deemed to be generally equivalent in severity.

...

**II.A.03.** *The following offenses were excluded from the Offense Severity Reference Table:*

1. *Abortion - 617.20; 617.22; 145.412*
2. *Accomplice after the fact - 609.495, subd. 3*
3. *Adulteration - 609.687, subd. 3 (3)*
4. *Aiding suicide - 609.215*
5. *Altering engrossed bill - 3.191*
6. ~~*Anhydrous ammonia (tamper/theft/transport) - 18D.331, subd. 5*~~
7. *Animal fighting - 343.31*
8. *Assaulting or harming a police horse - 609.597, subd. 3 (1) & (2)*
9. *Bigamy - 609.355*
10. *Cigarette tax and regulation violations - 297F.20*
11. *Collusive bidding/price fixing - 325D.53, subds.1(3), 2 & 3*
12. *Concealing criminal proceeds; engaging in business - 609.496; 609.497*
13. *Corrupting legislator - 609.425*
14. *Criminal sexual conduct, third degree - 609.344, subd. 1(a)*  
*(By definition the perpetrator must be a juvenile.)*

15. *Criminal sexual conduct, fourth degree - 609.345, subd. 1(a)*  
*(By definition the perpetrator must be a juvenile.)*
16. *Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines – 609.594*
17. *Escape with violence from gross misdemeanor or misdemeanor offense – 609.485, subd. 4(a)(3)*
18. *Failure to Report - 626.556, subd. 6*
19. *Falsely impersonating another - 609.83*
20. *Female genital mutilation - 609.2245*
21. *Forced execution of a declaration - 145B.105*
22. *Gambling acts (cheating, certain devices prohibited; counterfeit chips; manufacture, sale, modification of devices; instruction) - 609.76, subd. 3,4,5,6, & 7*
23. *Hazardous wastes - 609.671*
24. *Horse racing-prohibited act - 240.25*
25. *Incest - 609.365*
26. *Insurance Fraud – Employment of Runners – 609.612*
27. *Interstate compact violation - 243.161*
28. *Issuing a receipt for goods one does not have – 227.50*
29. *Issuing a second receipt without "duplicate" on it – 227.52*
30. *Killing or harming a public safety dog - 609.596, subd. 1*
31. *Lawful gambling fraud - 609.763*
32. *Metal penetrating bullets - 624.74*
33. *Misprision of treason - 609.39*
34. *Motor vehicle excise tax - 297B.10*
35. *Obscene materials; distribution - 617.241, subd. 4*
36. *Obstructing military forces - 609.395*
37. *Pipeline safety - 299J.07, subd. 2*
38. *Police radios during commission of crime - 609.856*
- ~~39. *Possession of Pictorial Representations of Minors – 617.247*~~
40. *Racketeering, criminal penalties (RICO) - 609.904*
41. *Real and Simulated Weapons of Mass Destruction – 609.712*
42. *Refusal to assist - 6.53*
43. *Sale of membership camping contracts – 82A.03; 82A.13; 82A.25*
44. *Service animal providing service – 343.21, subd. 9(e)(g)*
45. *State lottery fraud - 609.651, subd. 1 with 4(b) and subd. 2 & 3*
46. *Subdivided land fraud - 83.43*
47. *Torture or cruelty to pet or companion animal – 343.21, subd. 9(c)(d)(f)(h)*
48. *Treason - 609.385*
49. *Unauthorized computer access - 609.891*
50. *Unlawful Transfer of Sounds; Sales - 325E.201*
- ~~51. *Use of Minors in Sexual Performance Prohibited – 617.246*~~
52. *Warning subject of investigation - 609.4971*
53. *Warning subject of surveillance or search - 609.4975*
54. *Wire communications violations - 626A.02, subd. 4; 626A.03, subd. 1(b)(ii); 626A.26, subd. 2(1)(ii)*

...

**B. Criminal History:** A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grids. The criminal history index is comprised of the following items: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.

...

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned a particular weight for every extended jurisdiction juvenile conviction and for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. Multiple offenses are sentenced in the order in which they occurred. For purposes of this section, prior extended jurisdiction juvenile convictions are treated the same as prior felony sentences.
  - a. If the current offense is not a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:
    - Severity Level I - II = ½ point;
    - Severity Level III - V = 1 point;
    - Severity Level VI - VIII = 1 ½ points;
    - Severity Level IX - XI = 2 points; and
    - Murder 1st Degree = 2 points;
    - Severity Level A = 2 points;
    - Severity Level B – E = 1½ points;
    - Severity Level F – G = 1 point; and
    - Severity Level H = ½ point for first offense  
and 1 point for subsequent offenses
  - b. If the current offense is a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:
    - Severity Level I - II = ½ point;
    - Severity Level III - V = 1 point;

Severity Level VI - VIII = 1 ½ points;  
Severity Level IX - XI = 2 points;  
Murder 1st Degree = 2 points;  
Severity Level A = 3 points;  
Severity Level B – C =2 points;  
Severity Level D – E =1 ½ points;  
Severity Level F – G = 1 point; and  
Severity Level H = ½ point for first offense  
and 1 ½ points for subsequent offenses

The severity level to be used in assigning weights to prior offenses shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense.

2. One point is assigned if the offender:
  - a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea or verdict in a felony, gross misdemeanor or an extended jurisdiction juvenile case, or following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction; or
  - b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced; or
  - b. committed the current offense within the period of the initial length of stay pronounced by the sentencing judge for a prior felony, gross misdemeanor or an extended jurisdiction juvenile conviction. This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or
  - c. became subject to one of the criminal justice supervision statuses listed in 2.a above at any point in time during which the offense occurred when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense.
  - d. An additional custody status point shall be assigned if the offender was on

probation, supervised release, or conditional release for a specified sex offense and the current offense of conviction is a specified sex offense.

The offender will not be assigned a point under this item when:

- a. the person was committed for treatment or examination pursuant to Minn. R. Crim. P. 20; or
- b. the person was on juvenile probation or parole status at the time the felony was committed for which he or she is being sentenced and was not on probation or supervised release status for an extended jurisdiction juvenile conviction.

An additional three months shall be added to the duration of the appropriate cell time which then becomes the presumptive duration when:

- a. a custody status point is assigned; and
- b. the criminal history points that accrue to the offender without the addition of the custody status point places the offender in the far right hand column of the Sentencing Guidelines Grid.

*Comment*

**II.B.201.** *The basic rule assigns offenders one point if they were under some form of criminal justice custody when the offense was committed for which they are now being sentenced. The Commission believes that the potential for a custody status point should remain for the entire period of the initial length of stay pronounced by the sentencing judge. An offender who is discharged early but subsequently is convicted of a new felony within the period of the initial length of stay should still receive the consequence of a custody status point. If probation is revoked and the offender serves an executed sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence. Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. Commitments under Minn. R. Crim. P. 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony or gross misdemeanor which resulted in the individual being under such status. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile conviction. Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded. Probation, parole, and supervised release will*



*be the custodial statuses that most frequently will result in the assignment of a point. It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony or gross misdemeanor. Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.*

**II.B.207.** *When an offender who is on probation, conditional release or supervised release for a sex offense commits another sex offense, they are assigned an additional custody status point. The commission believes that offenders who commit a subsequent sex offense pose such a risk to public safety that their criminal history scores should be enhanced to reflect this risk.*

...

**C. Presumptive Sentence:** The offense of conviction determines the appropriate severity level on the vertical axis of the appropriate Grid. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis of the appropriate Grid. The presumptive fixed sentence for a felony conviction is found in the Sentencing Guidelines Grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense severity level. The offenses within the Sentencing Guidelines Grids are presumptive with respect to the duration of the sentence and whether imposition or execution of the felony sentence should be stayed.

The ~~line~~ shaded areas on the Sentencing Guidelines Grids demarcates those cases for whom the presumptive sentence is stayed ~~executed~~ from those for whom the presumptive sentence is ~~stayed~~ executed. For cases contained in cells ~~above and to the right of the line~~ outside of the shaded areas, the sentence should be executed. For cases contained in cells ~~below and to the left of the line~~ within the shaded areas, the sentence should be stayed, unless the conviction offense carries a mandatory minimum sentence.

~~Pursuant to M.S. § 609.342, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months.~~

~~Sentencing a person in a manner other than that described in M.S. § 609.342, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree is one half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.~~

~~Pursuant to M.S. § 609.343, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the Second Degree, 609.343 subd. 1 clauses (c), (d), (e), (f), and (h), is an executed sentence of at least 90 months. Sentencing a person in a manner other than that described in M.S. § 609.343, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.~~

...

#### *Comment*

***II.C.01.*** *The guidelines provide sentences which are presumptive with respect to (a) disposition--whether or not the sentence should be executed, and (b) duration--the length of the sentence. For cases ~~above and to the right of the dispositional line~~ outside the shaded area, the guidelines create a presumption in favor of execution of the sentence. For cases in cells ~~below and to the left of the dispositional line~~ within the shaded area, the guidelines create a presumption against execution of the sentence, unless the conviction offense carries a mandatory minimum sentence.*

*The dispositional policy adopted by the Commission was designed so that scarce prison resources would primarily be used for serious person offenders and community resources would be used for most property offenders. The Commission believes that a rational sentencing policy requires such trade-offs, to ensure the availability of correctional resources for the most serious offenders. For the first year of guidelines operation, that policy was reflected in sentencing practices. However, by the third year of guideline operation, the percentage of offenders with criminal history scores of four or more had increased greatly, resulting in a significant increase in imprisonment for property offenses. Given finite resources, increased use of imprisonment for property offenses results in reduced prison resources for person offenses. The allocation of scarce resources has been monitored and evaluated on an ongoing basis by the Commission. The Commission has determined that assigning particular weights to prior felony sentences in computing the criminal history score will address this problem. The significance of low severity level prior felonies is reduced, which should result in a lower imprisonment rate for property offenders. The significance of more serious prior felonies is increased, which should result in increased prison sentences for repeat serious person offenders.*

***II.C.02.*** *In the cells ~~above and to the right of the dispositional line~~ outside of the shaded areas of the grids, the guidelines provide a fixed presumptive sentence length, and a range of time around that length. Presumptive sentence lengths are shown in months, and it is the Commission's intent that months shall be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell of the Sentencing Guidelines Grids is not a departure from the guidelines, and any sentence length given which is outside that range is a departure from the guidelines. In the cells ~~below~~*

*and to the left of the dispositional line in the shaded areas of the grids, the guidelines provide a single fixed presumptive sentence length.*

*The presumptive duration listed on the grid, when executed, includes both the term of imprisonment and the period of supervised release. According to M.S. § 244.101, when the court sentences an offender to an executed sentence for an offense occurring on or after August 1, 1993, the sentence consists of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence; and a specified maximum supervised release term equal to one-third of the total executed sentence. A separate table following the Sentencing Guidelines Grids illustrates how executed sentences are broken down into their two components.*

*The Commissioner of Corrections may extend the amount of time an offender actually serves in prison if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.*

...

~~**II.C.08.** When an offender has been convicted of M.S. § 609.342, the presumptive duration is that found in the appropriate cell of the Sentencing Guidelines Grid, any applicable mandatory minimum sentence, or the minimum presumptive sentence pursuant to M.S. § 609.342, subdivision 2, whichever is longer. According to M.S. § 609.342, subd. 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree is one half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.~~

~~**II.C.09.** When an offender has been convicted of M.S. § 609.343 subd. 1 clauses (c), (d), (e), (f), or (h), the presumptive duration is that found in the appropriate cell of the Sentencing Guidelines Grid, any applicable mandatory minimum sentence, or the minimum presumptive sentence pursuant to M.S. § 609.343, subdivision 2, whichever is longer. According to M.S. § 609.343, subd. 2, the presumptive sentence for a conviction of these clauses of Criminal Sexual Conduct in the Second Degree is an executed sentence of at least 90 months. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.~~

...

**E. Mandatory Sentences:** When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment to the Commissioner of Corrections. The presumptive duration of the prison sentence should be the mandatory minimum sentence according to statute or the duration of the prison sentence provided in the appropriate cell of the Sentencing Guidelines Grids, whichever is longer.

*Comment*

**II.E.02.** *The Commission attempted to draw the dispositional line so that the great majority of offenses that might involve a mandatory sentence would fall ~~above the dispositional line~~ outside the shaded areas of the Grids. However, some cases carry a mandatory prison sentence under state law but fall ~~below the dispositional line~~ within the shaded areas on the Sentencing Guidelines Grids; e.g., Assault in the Second Degree. When that occurs, imprisonment of the offender is the presumptive disposition. The presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer. These crimes are ranked below the dispositional line because the Commission believes the durations at these levels are more proportional to the crime than the durations found at the higher severity levels where prison is recommended regardless of the criminal history score of the offender. For example, according to Minn. Stat. § 609.11, the mandatory minimum prison sentence for Assault in the Second Degree involving a knife is one year and one day. However, according to the guidelines, the presumptive duration is the mandatory minimum or the duration provided in the appropriate cell of the grid, whichever is longer. Therefore, for someone convicted of Assault in the Second Degree with no criminal history score, the guidelines presume 21-month prison duration based on the appropriate cell of the grid found at severity level VI. The Commission believes this duration is more appropriate than the 48-month prison duration that would be recommended if this crime were ranked at severity level VIII, which is the first severity level ranked completely above the dispositional line.*

*When the mandatory minimum sentence is for less than one year and one day, the Commission interprets the minimum to mean any incarceration including time spent in local confinement as a condition of a stayed sentence. The presumptive disposition would not be commitment to the Commissioner unless the case falls above the dispositional line on the Sentencing Guidelines Grids. An example would be a conviction for simple possession of cocaine, a Fifth Degree Controlled Substance Crime. If the person has previously been convicted of a controlled substance crime, the mandatory minimum law would require at least six months incarceration, which could be served in a local jail or workhouse.*

...

**G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:** For persons convicted of attempted offenses or conspiracies to commit an offense, Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), Solicitation of Mentally Impaired Persons under Minn. Stat. § 609.493, or Aiding an Offender – Taking Responsibility for Criminal Acts under Minn. Stat. § 609.495, subd. 4, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed or intended offense or the offense committed by the principal offender, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that for Conspiracy to Commit a Controlled Substance offense as per Minn. Stat. § 152.096, in which event the presumptive sentence shall be that for the completed offense.



For persons convicted of attempted offenses or conspiracies to commit an offense with a mandatory minimum of a year and a day or more, the presumptive duration is the mandatory minimum or one-half the duration specified in the applicable Sentencing Guidelines Grid cell, whichever is greater. ~~For persons convicted of an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree (M.S. § 609.342) or Criminal Sexual Conduct in the Second Degree (M.S. § 609.343, subd. 1(c), (d), (e), (f), and (h)), the presumptive duration is one half of that found in the appropriate cell of the Sentencing Guidelines Grid or any mandatory minimum, whichever is longer.~~



Proposed Sex Offender Grid

Severity Level of Conviction Offense		I. Criminal History Score						
		0	1	2	3	4	5	6 or more
CSC 1 <sup>st</sup> Degree	<b>A</b>	144 144-165	180 153-207	200 170-230	240 204-276	280 238-322	320 272-360	360 326-360
CSC 2 <sup>nd</sup> Degree - Contact with force	<b>B</b>	90 77-103	120 102-138	160 136-184	200 170-230	230 196-264	270 230-310	300 255-300
CSC 3 <sup>rd</sup> Degree - Penetration with force or by some occupations	<b>C</b>	48 41-55	60 51-69	90 77-103	120 102-138	140 119-161	160 136-184	180 153-180
CSC 2 <sup>nd</sup> degree – Contact with minors CSC 3 <sup>rd</sup> Degree – Penetration of minors or by some occupations	<b>D</b>	36	48	60 51-69	94 80-108	102 87-117	120 102-138	140 119-161
CSC 4 <sup>th</sup> Degree – Contact with force or by some occupations Use Minors in Sexual Performance	<b>E</b>	21	40	55	80 68-92	95 81-109	110 94-126	120 102-120
CSC 4 <sup>th</sup> Degree - Contact with minors or by some occupations Dissemination Child Pornography	<b>F</b>	18	36	48	60 51-69	70 60-80	80 68-92	90 77-103
CSC 5 <sup>th</sup> Degree Indecent Exposure Possession Child Pornography Solicit Children for Sexual Conduct	<b>G</b>	15	20	30	40	46 40-52	52 45-59	60 51-60
Registration Of Predatory Offenders	<b>H</b>	12 <sup>1</sup> 12 <sup>1</sup> -13	15 13-17	18 16-20	21 18-24	24 21-27	30 26-34	36 31-41



Presumptive commitment to state imprisonment. 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 some second and subsequent Criminal Sexual Conduct offenses and Failure to Register as a Predatory Offender. See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

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

**Examples of Executed Sentences (Length in Months) Broken Down by:  
Specified Minimum Term of Imprisonment and Specified Maximum Supervised Release Term**

*Offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993 will no longer earn good time. In accordance with Minn. Stat. § 244.101, offenders will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. This provision requires that the court pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court shall also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison. The court's explanation is to be included in a written summary of the sentence.*

<b>Executed Sentence</b>	<b>Term of Imprisonment</b>	<b>Supervised Release Term</b>	<b>Executed Sentence</b>	<b>Term of Imprisonment</b>	<b>Supervised Release Term</b>
12 and 1 day	8 and 1 day	4	80	53 1/3	26 2/3
13	8 2/3	4 1/3	90	60	30
15	10	5	94	62 2/3	31 1/3
17	11 1/3	5 2/3	95	63 1/3	31 2/3
18	12	6	102	68	34
19	12 2/3	6 1/3	110	73 1/3	36 2/3
20	13 1/3	6 2/3	120	80	40
21	14	7	122	81 1/3	40 2/3
23	15 1/3	7 2/3	134	89 1/3	44 2/3
24	16	8	140	93 1/3	46 2/3
27	18	9	144	96	48
28	18 2/3	9 1/3	150	100	50
30	20	10	158	105 1/3	52 2/3
33	22	11	160	106 2/3	53 1/3
36	24	12	180	120	60
38	25 1/3	12 2/3	190	126 2/3	63 1/3
39	26	13	195	130	65
40	26 2/3	13 1/3	200	133 1/3	66 2/3
43	28 2/3	14 1/3	210	140	70
46	30 2/3	15 1/3	220	146 2/3	73 1/3
48	32	16	225	150	75
52	34 2/3	17 1/3	230	153 1/3	76 2/3
54	36	18	240	160	80
57	38	19	270	180	90
58	38 2/3	19 1/3	280	186 2/3	93 1/3
60	40	20	300	200	100
66	44	22	320	213 1/3	106 2/3
70	46 2/3	23 1/3	360	240	120
72	48	24	406	270 2/3	135 1/3

**V. OFFENSE SEVERITY REFERENCE TABLE**

<b>IX</b>	<p>Criminal Sexual Conduct 1 (sexual penetration) — 609.342                  (See <u>II.C. Presumptive Sentence</u> and <u>II. G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.</u>)</p>
<b>VIII</b>	<p>Criminal Sexual Conduct 1 (sexual contact — victim under 13) — 609.342                  (See <u>II.C. Presumptive Sentence</u> and <u>II. G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.</u>)</p> <p>Criminal Sexual Conduct 2 — 609.343, 1(c), (d), (e), (f), &amp; (h)                  (See <u>II.C. Presumptive Sentence</u> and <u>II. G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.</u>)</p> <p>Criminal Sexual Conduct 3 — 609.344, subd. 1(c), (d), (g), (h), (i), (j), (k), (l), (m), &amp; (n)</p>
<b>VI</b>	<p>Criminal Sexual Conduct 2 — 609.343, subd. 1(a), (b), &amp; (g)                  Criminal Sexual Conduct 4 — 609.345, 1(c), (d), (g), (h), (i), (j), (k), (l), (m), &amp; (n)</p>
<b>V</b>	<p>Criminal Sexual Conduct 3 — 609.344, subd. 1(b), (e), &amp; (f)</p>
<b>IV</b>	<p>Criminal Sexual Conduct 4 — 609.345, subd. 1(b), (e), &amp; (f)                  Criminal Sexual Conduct 5 — 609.3451, subd. 3                  Indecent Exposure — 617.23, subd. 3(a), (b)</p>
<b>III</b>	<p>Registration of Predatory Offenders (2<sup>nd</sup> or subsequent violation) — 243.166 subd. 5(c)                  Solicitation of Children to Engage in Sexual Conduct — 609.352, subd. 2</p>
<b>I</b>	<p>Registration of Predatory Offenders — 243.166 subd. 5(b)</p>



**SPECIFIED SEX OFFENSES**

- A** Criminal Sexual Conduct 1 - 609.342
  
- B** Criminal Sexual Conduct 2 - 609.343 subd. 1 (c), (d), (e), (f), (h)
  
- C** Criminal Sexual Conduct 3 - 609.344 subd. 1 (c), (d), (g), (j), (k), (m), (n)
  
- D** Criminal Sexual Conduct 2 - 609.343 subd. 1 (a), (b), (g)  
Criminal Sexual Conduct 3 - 609.344 subd. 1 (b), (e), (f), (h), (i), (l)
  
- E** Criminal Sexual Conduct 4 - 609.345 subd. 1 (c), (d), (g), (j), (k), (m), (n)  
Use Minors in Sexual Performance - 617.246 subd. 2, 3, 4
  
- F** Criminal Sexual Conduct 4 - 609.345 subd. 1 (b), (e), (f), (h), (i), (l)  
Dissemination of Child Pornography - 617.247 sub. 3
  
- G** Criminal Sexual Conduct 5- 609.3451 subd. 3  
Indecent Exposure - 617.23 subd. 3  
Possession of Child Pornography – 617.247 subd. 4
  
- H** Failure to Register as a Predatory Offender – 243.166 subd. 5(b), (c)

**NUMERICAL REFERENCE OF FELONY STATUTES**

This statutory felony offense listing is for convenience in cross-referencing to the Offense Severity Table; it is not official nor is it intended to be used in place of the Offense Severity Reference Table.

<b>STATUTE</b>	<b>OFFENSE</b>	<b>SEVERITY LEVEL</b>
243.166 subd. 5(b)	Registration of Predatory Offenders	1 <u>H</u>
243.166 subd. 5(c)	Registration of Predatory Offenders (2 <sup>nd</sup> or subsequent violations)	3 <u>H</u>
609.342	Criminal Sexual Conduct 1 ( <del>Sexual Penetration</del> )	<del>9</del> * <u>A</u>
609.342	<del>Criminal Sexual Conduct 1 (Sexual Contact-victim under 13)</del>	<del>8</del> *
609.343 subd.1(a)(b)(g)	Criminal Sexual Conduct 2	6 <u>D</u>
609.343 subd.1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2	<del>8</del> * <u>B</u>
609.344 subd. 1(b)(e)(f)(h)(i)(l)	Criminal Sexual Conduct 3	5 <u>D</u>
609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)	Criminal Sexual Conduct 3	8 <u>C</u>
609.345 subd. 1(b)(e)(f)(h)(i)(l)	Criminal Sexual Conduct 4	4 <u>F</u>
609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)	Criminal Sexual Conduct 4	6 <u>E</u>
609.3451 subd. 3	Criminal Sexual Conduct 5	4 <u>G</u>
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	3 <u>G</u>
617.23 subd. 3	Indecent Exposure	4 <u>G</u>
617.246	Use of Minors in Sexual Performance Prohibited	unranked <u>E</u>
<u>617.247 subd. 3</u>	<u>Dissemination of Pictorial Representation of Minors</u>	<u>F</u> unranked
617.247 subd. 4	Possession of Pictorial Representation of Minors	unranked <u>G</u>

\* See II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.

# Felony DWI

## Cases Sentenced Through December 2003

Felony Driving While Impaired went into effect August 1, 2002. Minn. Stat. § 169A.276, subdivision 1(a) created a minimum 36-month felony sentence of imprisonment for this offense, while subdivision 1(b) allows for a stay of execution of that sentence, but specifically forbids a stay of imposition or stay of adjudication. This means that the court is required to pronounce a period of incarceration even if the court intends to pronounce a probationary sentence.

The Minnesota Sentencing Guidelines and Commentary (MSGC) presume a minimum 36-month sentence be imposed by the court for this offense (MSGC § II.E.). For a person convicted of a felony DWI who has a criminal history score of less than 3, the sentencing guidelines presume a stayed sentence; however, if a person has a prior felony DWI conviction, the sentence is presumed to be an executed sentence of imprisonment, regardless of the criminal history score (MSGC § II.C.). An offender being sentenced for a felony DWI is also subject to a 5-year term of conditional release (Minn. Stat. § 169A.276, subd. 1(d); MSGC § II.E.).

Offenders receiving stayed sentences can receive up to one year of local jail time as a condition of their probation and are subject to the mandatory penalty provisions specified in Minn. Stat. § 169A.275. This statute provides that 4<sup>th</sup> time offenders must be incarcerated for 180 days and 5<sup>th</sup> or more time offenders must be incarcerated for one year, unless they are placed in an intensive supervision program. This statute also allows that a portion of this mandatory jail time may be served on electronic monitoring.

The following report summarizes data for all felony DWI offenses sentenced in Minnesota through December 2003. MSGC monitoring data is offender based. An offender sentenced in the same county for more than one offense within a thirty-day period is counted as one case; information included in the data is for the most serious offense. Reported here are cases where First Degree DWI was the most serious offense.

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Beginning August 1, 2002 and as of the end of December 2003, there were 929 offenders (855 males and 74 females) sentenced in Minnesota for First Degree Driving While Intoxicated. Of the 929 offenders sentenced, the sentencing guidelines presumed a stayed sentence for 743 offenders (80%) and a presumptive commit to prison for 186 offenders (20%).

**Number of Offenders Sentenced Through December 2003: 929**  
**Sex: Male – 855 (92%) / Female – 74 (8%)**  
**Presumptive Stayed Cases 743 (80%) -- Presumptive Prison Cases 186 (20%)**

**Criminal History**

All felony DWI offenders have, at a minimum, three prior alcohol related driving offenses on their record that serve as the predicate offenses upon which a felony DWI charge is based. Per the sentencing guidelines, the predicate offenses upon which a felony offense is based are not used in calculating an offender’s criminal history score (MSGC § II.B.6). Thus, a first time felony DWI offender may be sentenced at a criminal history score of zero.

Of the 929 cases sentenced through December 2003, the greatest number of offenders (354 or 38%) were sentenced at a criminal history score of one, followed by 235 offenders (25%) sentenced at a criminal history score of zero and 155 offenders (17%) sentenced at a criminal history score of two. All totaled, the vast majority (80%) of offenders sentenced for felony DWI were sentenced at a criminal history score of two or less. A criminal history score of 2 or less is a presumed stayed sentence unless the offender’s criminal history score includes a prior felony DWI. Only one offender sentenced at a criminal history score of two or less had a presumed prison sentence.

Just over half of all offenders (57%) were under some kind of supervision (e.g., probation, release pending sentence, supervised release from prison) at the time they committed the current offense. Over a third (38%) of these offenders had other felony offenses (i.e., non-DWI felonies) on their record that contributed to their total criminal history score, while only 22 (2%) had a prior DWI felony offense that contributed to their total criminal history score.

**Number with Custody Status Point: 527 (57%)**  
**Number with Prior Non-DWI Felony Offense in Criminal History: 351 (38%)**  
**Number with Prior DWI Felony Offense in Criminal History: 22 (2%)**

**Distribution of Cases by Criminal History Score**

<b>Criminal History Score</b>	<b>Number</b>	<b>Percent</b>
0	235	25%
1	354	38%
2	155	17%
3	74	8%
4	45	5%
5	24	3%
6 or more	42	5%

### Incarceration Rates

At the time of sentencing, the court can impose one or more of several different sentences, the most restrictive being a sentence of imprisonment in a state facility for a period exceeding a year. The court may also impose a sentence of local incarceration for a period of up to one year as a condition of probation, as well as other sanctions including community work service, court ordered treatment, and fines.

Of the 929 offenders sentenced for felony DWI, 132 (14%) were sentenced to imprisonment in a state facility. The average pronounced sentence for these 132 offenders was 50 months. An additional 770 offenders (83%) were sentenced to local incarceration for an average period of 233 days. The total incarceration rate (i.e., both offenders sentenced to prison and local incarceration) was 97%. The remaining 27 offenders (3%) received other sanctions by the court at sentencing.

**Total Incarceration Rate for Felony DWI Offenders: 97%**  
**Number of Offenders That Received Various Types of Incarceration**

Type	Number	Percent	Average Pronounced Durations
Prison	132	14%	50 months
Local Jail Time	770	83%	233 days
Other Sanctions	27	3%	
Total	929	100%	

### Departure Rates

A departure occurs when the court imposes a sentence that is different from that presumed under the sentencing guidelines. A departure can be to the presumed **disposition** of the sentence (i.e., whether the guidelines calls for a stayed probationary sentence or a commitment to prison) or to the presumed **duration** or the sentence measured in months. A departure can be "aggravated" meaning either imposing a prison sentence on a presumptive stayed probationary sentence or imposing a greater amount of time than that presumed by the sentencing guidelines. A departure can also be "mitigated," meaning either imposing a stayed probationary sentence on a presumed prison sentence or imposing a shorter duration than that presumed under the sentencing guidelines.

### Dispositional Departures

As noted above, 186 of the 920 cases sentenced were presumed prison sentences under the sentencing guidelines. Of those 186 cases, 116 (62%) were given the presumptive sentence and committed to prison. The remaining 70 cases (38%) were given a mitigated dispositional departure and placed on probation.

Of the 743 cases where the sentencing guidelines presumed a stayed sentence, 16 (2%) were given an aggravated dispositional departure and committed to prison. The remaining 727 cases received the presumptive stayed sentence and were placed on probation. As noted above, a stayed sentence where the offender is placed on probation might include up to a year of incarceration in a local facility as a condition of the probation.

**Dispositional Departures**

Presumptive Disposition	Sentence Received		Departure Rate
	Prison	Probation	
Prison – 186	116 (62%)	70 (38%)	Mitigated – 38%
Probation – 743	16 (2%)	727 (98%)	Aggravated – 2%
Total – 929	132 (14%)	797 (86%)	

**Durational Departures on Prison Cases**

Of the 132 cases sentenced to prison, 73 (55%) received the duration recommended by the sentencing guidelines. One case received a duration greater than that recommended by the sentencing guidelines and the remaining 58 cases (44%) received a sentence duration shorter than that recommended by the sentencing guidelines.

**Durational Departures-Executed Sentences**

Number of Executed Sentences	No Departure	Aggravated Departures	Mitigated Departures	Total Departure Rate
132	73 (55%)	1 (1%)	58 (44%)	45%

**Total Departure Rate**

The total dispositional departure rate for all 929 cases was 9%. For presumed prison cases, the rate was higher at 38%; for presumed stayed cases, it was lower at only 2%. The total durational departure rate for all 929 cases was 14%. For presumed prison cases, the rate was higher at 38%, and for presumed stayed cases, it was 7%.

Any individual sentence might contain more than one kind of departure. For example, if the sentencing guidelines presume a 48 month stayed sentence but the offender actually receives a 36 month executed prison sentence, the offender’s sentence would be both an aggravated dispositional and mitigated durational departure. Only 2% of all 929 cases were given a sentence that was both a dispositional and a durational departure. For presumed prison cases,

9% received a sentence that was both a dispositional and a durational departure. For presumed stayed cases only 1% received a sentence that was both types of departure.

The overall total departure rate (combining both dispositional and durational departures) was 21%; of the 929 cases sentenced, 191 received one or more departures. For presumptive prison cases, the total departure rate was the highest at 67%. For presumed stayed cases, the total departure rate was just 9%.

**Total Departure Rate**

<b>Presumptive Disposition</b>	<b>Dispositional Departure</b>	<b>Durational Departure</b>	<b>Both</b>	<b>Total Departure Rate</b>
Prison – 186	54 (29%)	54 (29%)	16 (9%)	124 (67%)
Probation – 743	11 (2%)	51 (7%)	5 (1%)	67 (9%)
Total – 929	65 (7%)	105 (11%)	21 (2%)	191 (21%)

**Revocations to Prison**

A revocation occurs when an offender placed on probation violates the conditions of that probation. A revocation can add additional sanctions to an offender’s sentence or can result in the offender being sent to prison to serve their sentence.

Of the 929 DWI cases sentenced, 797 were initially given a stayed sentence. Of those 797 stayed cases, 24 (3%) were revoked, their sentences executed and the offender sent to prison. The average period of time between sentencing and revocation for all 24 cases was 5 ½ months.

**Average Number of Months To Revocation by Criminal History Score**

<b>Criminal History Score</b>	<b>Average number of Months to Revocation</b>	<b>Number of Cases</b>
0	6.0	4
1	4.2	7
2	7.4	8
3	4.0	1
4	9.5	1
6	4.0	1
7	2.0	1
8	1.0	1
Total	5.6	24

### **Distribution of Cases Sentenced by Month**

This report covers cases sentenced over a period of 17 months, from August 2002, when the law first went into effect, until the end of 2003. There was an average of 55 cases per month sentenced in that period of time. In 2002 (the first five months the new DWI law was in effect) there was an average of 21 cases sentenced per month. In 2003, on average there were 69 cases sentenced per month. The largest number of cases sentenced in 2003 occurred in September, when 86 cases were sentenced. The smallest number of cases sentenced in 2003 occurred in February with 43 total cases sentenced.

#### **Number of Cases Sentenced by Month**

<b>Month</b>	<b>Number of Cases Sentenced</b>
August 2002	2
September 2002	5
October 2002	17
November 2002	31
December 2002	50
January 2003	61
February 2003	43
March 2003	81
April 2003	71
May 2003	64
June 2003	79
July 2003	80
August 2003	59
September 2003	86
October 2003	69
November 2003	59
December 2003	72
<b>Total</b>	<b>929</b>

### Distribution of Cases by County

By far, the highest number of cases sentenced was in Hennepin County with 178, followed by Ramsey County with 85, Dakota County with 77, St Louis County with 49, and Anoka County with 48. These counties accounted for nearly half (47%) of all felony DWI cases sentenced in the state. Other counties with more than 20 felony DWI cases sentenced included Clay County with 31 cases; Mille Lacs and Polk Counties with 23 cases each; Olmsted with 22 cases and Becker and Washington Counties with 21 cases each. These six counties accounted for an additional 15% of all felony DWI cases sentenced in Minnesota.

When comparing felony DWI's sentenced through December 2003 to all felony offenses sentenced in Minnesota in 2003, Hennepin and Ramsey counties accounted for a smaller percentage of DWI cases sentenced and Greater Minnesota accounted for a larger number of cases.

Hennepin County sentenced 19.2% of the felony DWI cases in the state, compared to 22% of other cases sentenced in 2003. Ramsey County sentenced 13.7% of all other cases in 2003, compared to only 9.1% of felony DWI's sentenced through December 2003. The other metro counties had the same percentages in each category, sentencing 18.1% of the cases. Conversely, Greater Minnesota sentenced a greater portion of all felony DWI's (53.6%) compared to other felonies sentenced in 2003 (46.7%).

### Regional Distribution of Felony DWI Cases Sentenced Compared to all Offenses Sentenced in 2002

Region	Percent and Number of Other Felonies Sentenced in 2003	Percent and Number of Felony DWI's Sentenced through December 2003
Hennepin County	21.5% (2,937)	19.2% (178)
Ramsey County	13.7% (1,880)	9.1% (85)
Other Metro Counties	18.1% (2,472)	18.1% (168)
Greater Minnesota	46.7% (6,393)	53.6% (498)
Total	100% (13,682)	100% (929)

For information on sentencing practices by county, see the Appendix.

# County Attorney Reports

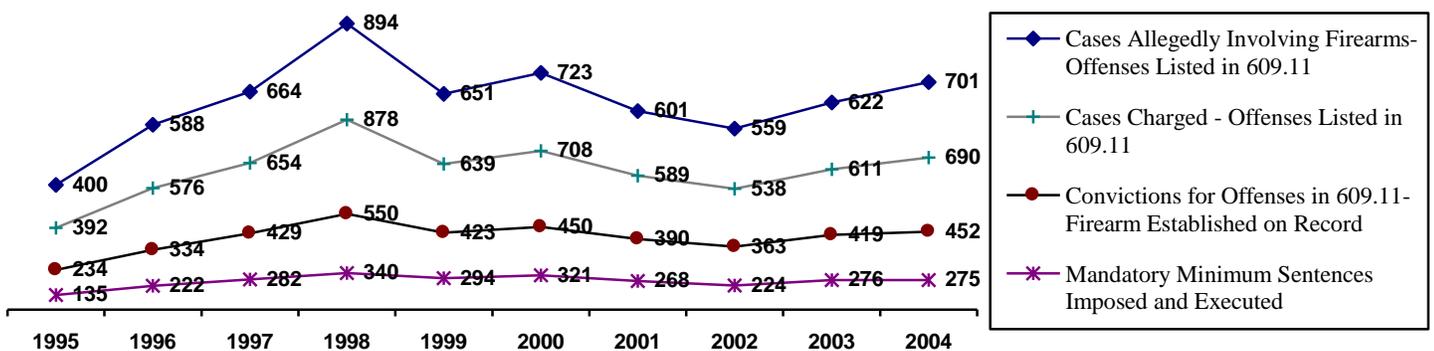
Current law directs county attorneys to collect and maintain information on criminal complaints and prosecutions within the county attorney's office in which a defendant is alleged to have committed an offense while possessing or using a firearm. This information is then forwarded to the Sentencing Guidelines Commission no later than July 1 of each year. Pursuant to M.S. § 244.09, subdivision 14, the Sentencing Guidelines Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received from county attorneys. Memoranda describing the ongoing mandate by the Legislature along with forms (See Appendix) on which to report their county's cases are distributed to Minnesota's county attorneys. Although commission staff clarifies inconsistencies in the summary data, the information received from the county attorneys is reported directly as provided.

A mandatory minimum sentence was imposed and executed in 61 % of the cases where it was required.

This year the Commission received information from all 87 Minnesota counties. Figure 1 below displays a historical summary of cases since the mandate began. In FY 2004 there were a total of 701 cases in which a defendant allegedly committed an offense listed in subdivision 9 of M.S. § 609.11 while possessing or using a firearm. Case volume was up 11 percent from last year.

Figures 2 through 5 summarize this year's statewide information. Tables providing information for individual counties are included in the Appendix.

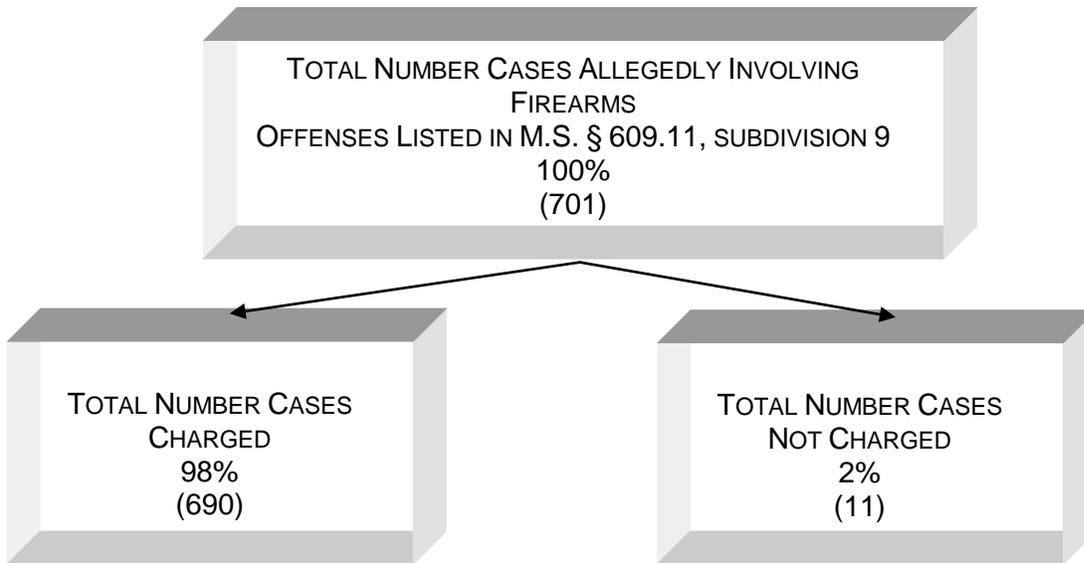
**FIGURE 1. Historical Case Summary**



**Total Number Cases Allegedly Involving Firearms  
Offenses Listed in M.S. § 609.11, subdivision 9**

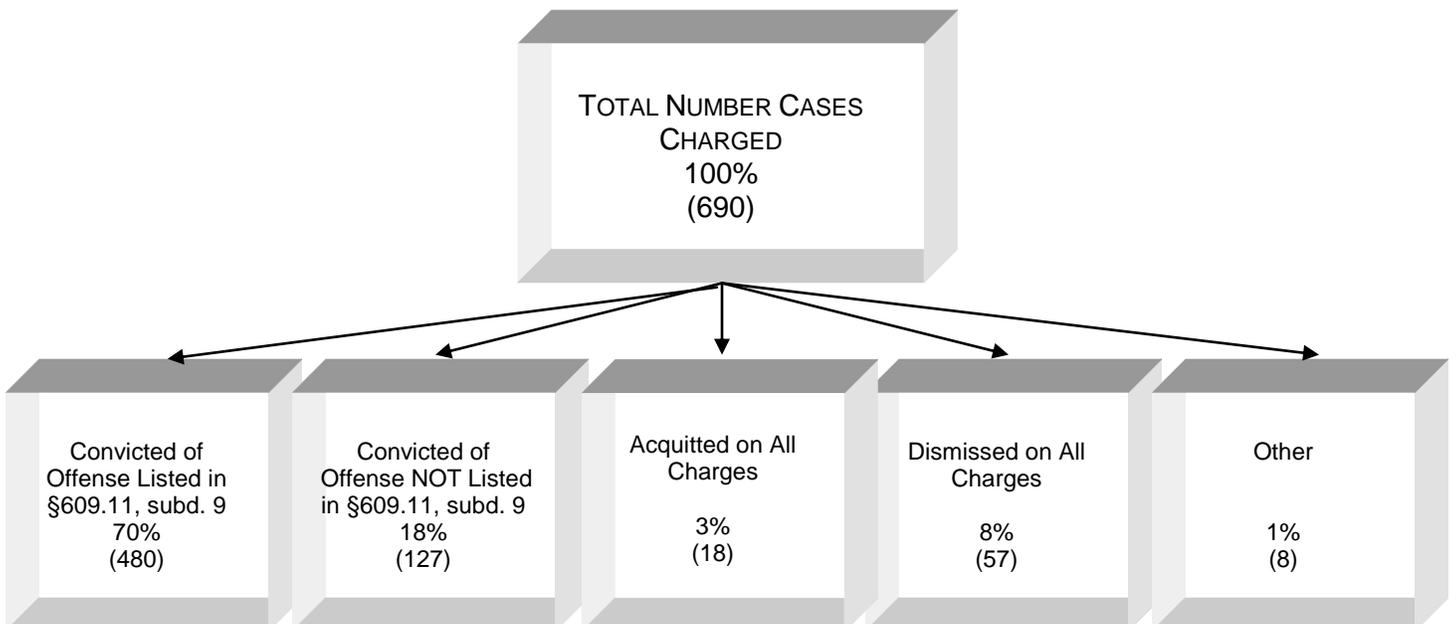
**FIGURE 2.**

- Prosecutors charged offenders in 98 percent of the cases allegedly involving firearms. This figure remains the same as reported last year.



**FIGURE 3. Offenses Charged – Case Outcomes**

- Among those cases charged, 70 percent were convicted of an offense listed in M.S. § 609.11, subdivision 9. This figure is slightly lower than the 72 percent recorded in FY 2003.
- In FY2003, five percent more of the cases were charged, but not sentenced, as a M.S. § 609.11, subdivision 9, offense than in FY 2002.

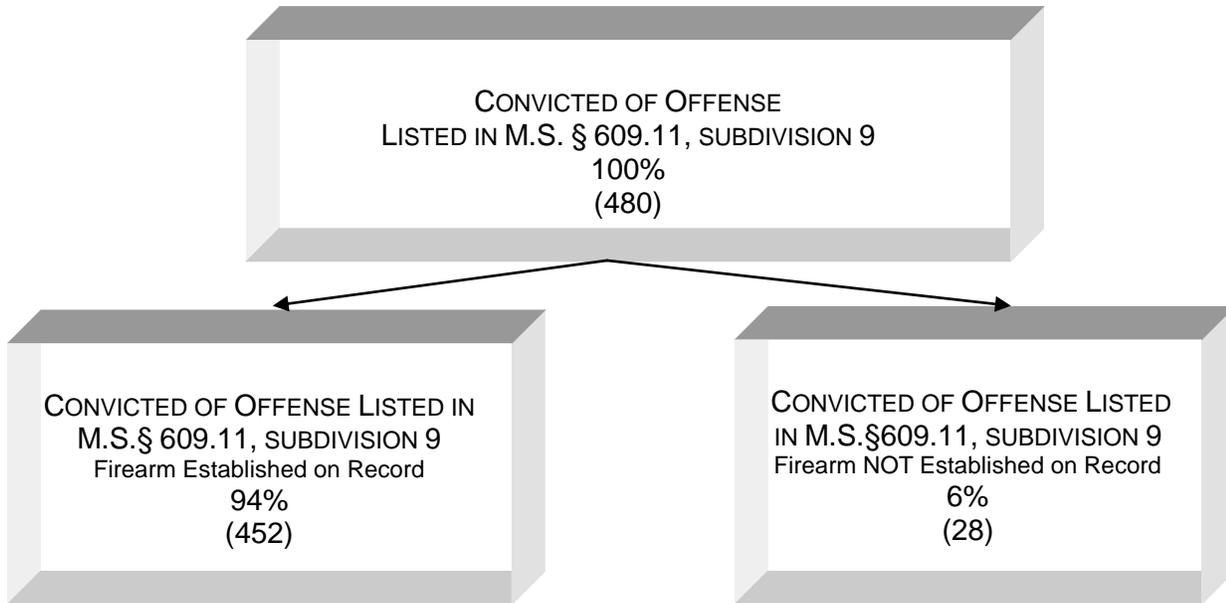




**Convictions for Offenses Listed in M.S. § 609.11, subdivision 9 -  
Firearm Established on the Record**

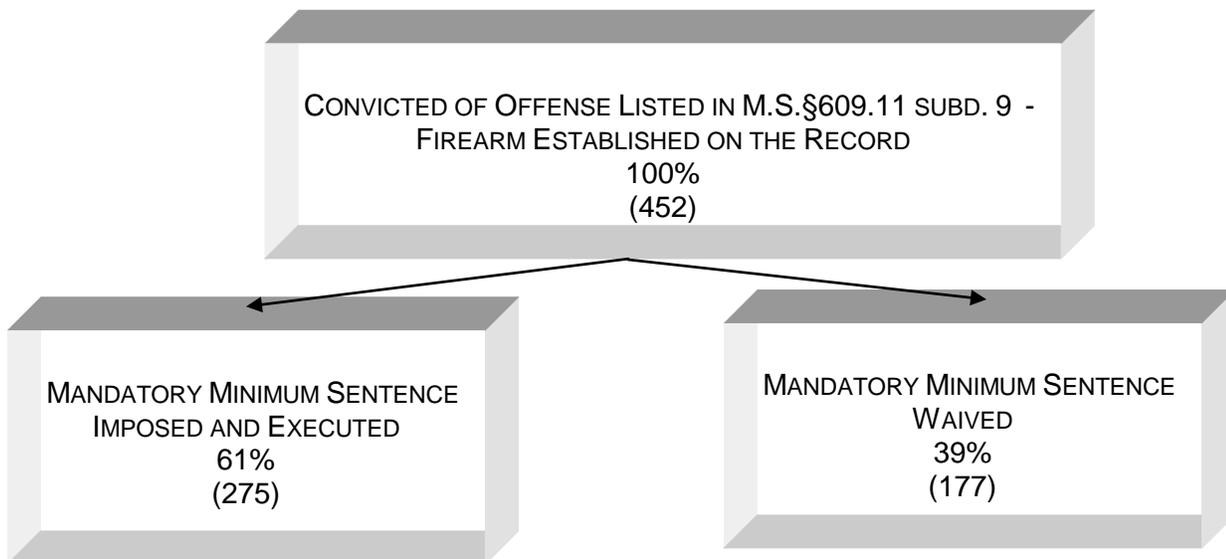
**FIGURE 4.**

- *There were 480 convictions for offenses listed in M.S. § 609.11, subdivision 9. In 94 percent of the cases, a firearm was established on the record. This is slightly lower from 96 percent as reported in FY 2003.*



**FIGURE 5. Mandatory Minimum Sentences Imposed and Executed**

- *A mandatory minimum sentence was imposed and executed in 61 percent of the cases where it was required. This figure was 66 percent in FY 2003 and 65 percent in FY 2002.*





# SENTENCING GUIDELINES GRID

## Presumptive Sentence Lengths in Months

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

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



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



Presumptive 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](#).

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

<sup>2</sup> 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](#)).

**SPECIFIC GUIDELINES MODIFICATIONS**  
**Effective August 1, 2004**

**IV. Adopted Modifications Related to New and Amended Crimes**

The commission considered new and amended crime legislation from the 2004 Legislative Session and adopted a proposal to retain affected severity level rankings and guidelines policies, as follows:

- A. Blood Alcohol Concentration Level Reduction: The commission considered changes made to the blood alcohol concentration level reduction and adopted a proposal to maintain the current severity level rankings and guidelines policies for criminal vehicular operations and felony driving while impaired.
- B. Assault in the Fourth Degree: The commission considered changes made to assault in the fourth degree and adopted a proposal to maintain the current severity level I ranking for the crime.
- C. Misdemeanor and Gross Misdemeanor Offense List: The commission considered new and amended misdemeanors and gross misdemeanors and adopted a proposal to maintain the current Misdemeanor and Gross Misdemeanor Offense List.

**V. Other Adopted Modifications**

**A. Criminal History: Felony Weights for Previously Unranked Offenses**

The commission adopted a proposal to add language to comment II.B.101 of the sentencing guidelines to clarify that the policy applied to weighting prior felonies is also applied to offenses that were previously unranked.

\*\*\*\*

**II.B.101.** *The basic rule for computing the number of prior felony points in the criminal history score....*

*The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. If an offense has been repealed but the elements of that offense have been incorporated into another felony statute, the appropriate severity level shall be based on the current severity level ranking for the current felony offense containing those similar elements. This policy also applies to offenses that are currently assigned a severity level ranking, but were previously unranked and excluded from the Offense Severity Reference Table.*

\*\*\*\*

## **B. Criminal History: Custody Status Point**

The commission adopted a proposal to add language to section II.B.2 of the sentencing guidelines and comment II.B.206 of the sentencing guidelines to clarify that a custody status point should be assigned when the conviction offense involves multiple offenses that occur over a period of time.

### **Proposed Language**

\*\*\*\*

2. One point is assigned if the offender:
  - a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea or verdict in a felony, gross misdemeanor or an extended jurisdiction juvenile case, or following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction; or
  - b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced; or
  - c. committed the current offense within the period of the initial length of stay pronounced by the sentencing judge for a prior felony, gross misdemeanor or an extended jurisdiction juvenile conviction. This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or;
  - d. became subject to one of the criminal justice supervision statuses listed in 2.a above at any point in time during which the offense occurred when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense.

\*\*\*\*

***II.B.206.*** *The commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, the offender should receive a custody status point if they become subject to one of the criminal justice supervision statuses outlined in 2.a at any point during the time period in which the offenses occurred. While the commission recognizes that its policy for determining the presumptive sentence states that for aggregated offenses, the earliest offense date determines the date of offense, it believes that eligibility for a custody status point should not be limited to the offender's status at the time of the earliest date of offense.*

\*\*\*\*

### ***C. Concurrent/Consecutive Sentences: Permissive Consecutive Policy***

The commission adopted the following language related to consecutive sentences in section II.F of the sentencing guidelines:

1. **Felony Assault Committed in Local Jail:** The commission adopted a proposal to add language to section II.F of the sentencing guidelines to clarify that a felony assault committed while in a local jail or workhouse may always be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.
2. **Escape from Nonexecuted Prison Sentence:** The commission adopted a proposal to modify language in section II.F of the sentencing guidelines to clarify that a felony escape from a nonexecuted prison sentence may always be sentenced consecutively.
3. **Dispositional Departures:** The commission adopted a proposal to add language to section II.F of the sentencing guidelines to explain that in some situations it is not a dispositional departure to execute a sentence for an offense for which consecutive sentencing is permissive when it is going to be sentenced consecutive to another executed sentence.

#### **Proposed Language**

\*\*\*\*

#### **Permissive Consecutive Sentences**

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

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or
2. Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other; or
3. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or
4. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a nonexecuted felony sentence

may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined; or

5. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from an executed felony sentence may be sentenced consecutively to the sentence for the escape; or
6. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle as defined in Minn. Stat. § 609.487 or Criminal Sexual Conduct in the First through Fourth Degrees with force or violence as defined in Minn. Stat. § 609.342 through 609.345; or
7. A current conviction for a felony assault committed while in a local jail or workhouse may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.

Consecutive sentences are permissive under the above criteria numbers ~~1-4~~ 1, 2, and 4 only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. In addition, consecutive sentences are permissive under number 1 above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

Consecutive sentences are always permissive under the above criteria numbers 3, 5, and 6, or 7. There is no dispositional departure if the sentences are executed when consecutive sentences are pronounced under criteria numbers 3, 5, 6, or 7.

\*\*\*\*

***D. Misdemeanor/Gross Misdemeanor Offense List and Theft Offense List***

The commission adopted a proposal to make the following modifications to the Misdemeanor and Gross Misdemeanor Offense List due to repealed, renumbered, and new statutes passed during the 2003 Legislative Session:

Carrying a pistol while under the influence of alcohol or a controlled substance  
624.7142, subd. 6(a)(b)

Contributing to Delinquency of Minor  
260.315 (Repealed. 1999 C. 139, Art. 4, S. 3)

Contributing to status as a juvenile petty offender or delinquency  
260B.425

## Analysis of Possible Candidates for Off-Grid Sentence: Offenders Sentenced in 2003

### First Degree Offenders

#### Offenders with 2 or more True Prior Sex offenses

1. 1<sup>st</sup> degree – personal injury with force, 4 True Prior Sex Offenses (2 fifth degree, second degree, solicit child for sexual conduct)  
Got 360, no departure reasons.  
**Current Presumptive= 158 months, New Presumptive=360 months**
2. 1<sup>st</sup> degree – under 13, 4 True Priors (3 2<sup>nd</sup> degree, 4<sup>th</sup> degree)  
Got 288 – prior sex offense, vulnerability, multiple acts, position of trust,  
**Current Presumptive= 158 months, New Presumptive=360 months**
3. 1<sup>st</sup> degree – under 13, 2 True Priors (2 1<sup>st</sup> degree sentenced in 2002)  
Got total of 216 consecutive, no departure.  
**Current Presumptive= 144 months, New Presumptive=360 months**
4. 1<sup>st</sup> degree – under 13, 2 True Priors (5<sup>th</sup> degree, second degree IFSA)  
Got 288, patterned sex offender  
**Current Presumptive= 144 months, New Presumptive=280 months**
5. 1<sup>st</sup> degree – fear great bodily harm, 2 True Priors (2 rape in IL in 1978)  
Got presumptive of 160  
**Current Presumptive= 160 months, New Presumptive=360 months**

#### Offenders Receiving Statutory Maximum Sentence or Longer Consecutive Sentence

6. 1<sup>st</sup> degree – under 13, Got total of 840 months- multiple offenses, patterned sex offender, cruelty, vulnerability (no true priors)  
**Current Presumptive= 158 months, New Presumptive=360 months**
7. 1<sup>st</sup> degree – weapon, Got total of 528 months, multiple offenses, injury, privacy, plea agreement (no true priors)  
**Current Presumptive= 158months, New Presumptive=360 months**
8. 1<sup>st</sup> degree – under13, Got total of 480 months, no departure reasons.  
(1 true prior)  
**Current Presumptive= 146 months, New Presumptive=320 months**
9. 1<sup>st</sup> degree – under 16, significant relationship, Got 432 months, multiple offenses, cruelty, injury (no true priors).  
**Current Presumptive= 122 months, New Presumptive=280 months**
10. 1<sup>st</sup> degree – personal injury with force, Got total of 381 months through consecutive sentencing, no departure. (no true priors)  
**Current Presumptive= 158 months, New Presumptive=380 months**

11. 1<sup>st</sup> degree – personal injury with force, Got 360 months-cruelty, prior sex offense, more onerous, privacy (one prior 3<sup>rd</sup> degree)  
**Current Presumptive= 110 months, New Presumptive=200 months**
12. 1<sup>st</sup> degree – personal injury with force, Got 360 months - cruelty, prior sex offense, more onerous, vulnerability (one prior 2<sup>nd</sup> degree)  
**Current Presumptive= 134 months, New Presumptive=320 months**
13. 1<sup>st</sup> degree – Under 16, multiple acts, Got 360 months – no departure reasons. (no true priors)  
**Current Presumptive= 158 months, New Presumptive=360 months**

## Second Degree Offenders

Offenders with 2 or more True Prior Sex Offenses

1. 2<sup>nd</sup> Degree – under 13 (sev. Level 6), 2 True Priors (2<sup>nd</sup> degree, 3<sup>rd</sup> degree)  
Got presumptive sentence of 60 months  
**Current Presumptive= 60 months, New Presumptive=140 months**

**No Second Degree offenders got the Statutory Maximum Sentence of 25 Years**

## Third Degree Offenders

Offenders with 2 or more True Prior Sex Offenses

1. 3<sup>rd</sup> Degree – force (severity level 8), 3 True Priors (1<sup>st</sup> degree, 2<sup>nd</sup> degree, 4<sup>th</sup> degree)  
Got 180 months, not amenable to treatment, plea negotiation  
**Current Presumptive= 98 months, New Presumptive=180 months**
2. 3<sup>rd</sup> Degree – victim incapacitated (severity level 8), 3 True Priors (2 3<sup>rd</sup> degree, 4<sup>th</sup> degree all with same prior sentencing date). Got presumptive 88 months, but stayed - amenable to treatment, shows remorse, plea agreement  
**Current Presumptive= 88 months, New Presumptive=180 months**
3. 3<sup>rd</sup> Degree – victim 13-16 (severity level 5) 2 True Priors (1<sup>st</sup> degree, 3<sup>rd</sup> degree)  
Got 36 month mandatory minimum for subsequent offenders, not a departure.  
**Current Presumptive= 36 months, New Presumptive=140 months**

**Offenders Receiving Statutory Maximum Sentence of 15 Years**

1. 3<sup>rd</sup> Degree – force (severity level 8), 1 True Prior (sexual assault)  
Got 180 months, vulnerability, dangerous offender provision  
**Current Presumptive= 108 months, New Presumptive=180 months**

## Fourth Degree Offenders

### Offenders with 2 or more True Prior Sex Offenses

1. 4<sup>th</sup> Degree – force (severity level 6), 3 True Priors (21<sup>st</sup> degree, 3<sup>rd</sup> degree)  
Got 240 months, patterned sex offender  
**Current Presumptive= 60 months, New Presumptive=120 months**
2. 4<sup>th</sup> Degree – force (severity level 6), 2 True Priors (2<sup>nd</sup> degree, 4<sup>th</sup> degree ).  
Got 480 months, patterned sex offender, public protection.  
**Current Presumptive= 57 months, New Presumptive=120 months**
3. 4<sup>th</sup> Degree – victim incapacitated (severity level 6) 2 True Priors (1<sup>st</sup> degree, 2<sup>nd</sup> degree)  
Got 102 months, dangerous offender, vulnerability, privacy, position of trust.  
**Current Presumptive= 51 months, New Presumptive=120 months**
4. 4<sup>th</sup> Degree – force (severity level 6) 2 True Priors (2 3<sup>rd</sup> Degree),  
Got 45 months, no departure.  
**Current Presumptive= 45 months, New Presumptive=120 months**
5. 4<sup>th</sup> Degree – force (severity level 6) 2 True Priors (2 1<sup>st</sup> degree)  
Got 36 month mandatory minimum for subsequent offense, no departure.  
**Current Presumptive= 36 months, New Presumptive=120 months**

**No Other 4<sup>th</sup> Degree Offenders Received the Statutory Maximum Sentence of 10 Years**

## Felony DWI Cases By County

### Incarceration Rates by County

County	Number of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Aitkin	7	0	7 (100%)	0
Anoka	48	1 (2%)	44 (92%)	3(6%)
Becker	21	3 (14%)	18 (86%)	0
Beltrami	16	2 (13%)	13 (81%)	1 (6%)
Benton	8	0	8 (100%)	0
Big Stone	1	1(100%)	0	0
Blue Earth	9	3 (33%)	6(67%)	0
Brown	2	1 (50%)	1 (50%)	0
Carlton	15	1 (7%)	14 (93%)	0
Carver	8	0	8(100%)	0
Cass	11	2 (18%)	9 (82%)	0
Chippewa	4	0	3 (75%)	1 (25%)
Chisago	10	3 (30%)	6 (60%)	1 (10%)
Clay	31	6 (19%)	25 (81%)	0
Clearwater	2	0	2 (100%)	0
Cook	0	0	0	0
Cottonwood	0	0	0	0
Crow Wing	16	0	16 (100%)	0
Dakota	77	12 (16%)	64 (83%)	1 (1%)
Dodge	4	1 (25%)	3(75%)	0
Douglas	5	1 (20%)	4 (80%)	0
Faribault	2	0	2 (100%)	0
Fillmore	0	0	0	0
Freeborn	1	1 (100%)	0	0
Goodhue	7	1 (14%)	5 (71%)	1 (14%)
Grant	2	0	2 (100%)	0
Hennepin	178	27 (15%)	142(80%)	9 (5%)
Houston	4	0	4(100%)	0

County	Number of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Hubbard	1	0	1 (100%)	0
Isanti	2	0	1 (50%)	1 (50%)
Itasca	17	3 (18%)	14 (82%)	0
Jackson	1	0	1 (100%)	0
Kanabec	6	1 (17%)	5 (83%)	0
Kandiyohi	3	0	3 (100%)	0
Kittson	1	0	1 (100%)	0
Koochiching	3	2 (67%)	1 (33%)	0
Lac Qui Parle	1	0	1 (100%)	0
Lake	0	0	0	0
Lake of the Woods	3	0	3 (100%)	0
Le Sueur	4	0	3 (75%)	1 (25%)
Lincoln	0	0	0	0
Lyon	2	0	2 (100%)	0
McLeod	9	1 (11%)	7 (78%)	1 (11%)
Mahnomen	6	0	5 (83%)	1 (17%)
Marshall	4	0	4 (100%)	0
Martin	5	1 (20%)	4 (80%)	0
Meeker	0	0	0	0
Mille Lacs	23	6 (26%)	17 (74%)	0
Morrison	4	0	4 (100%)	0
Mower	7	0	6 (86%)	1 (14%)
Murray	1	0	1 (100%)	0
Nicollet	4	0	4 (100%)	0
Nobles	8	0	8 (100%)	0
Norman	1	0	1 (100%)	0
Olmsted	22	1 (5%)	21 (95%)	0
Otter Tail	12	1 (8%)	11 (92%)	0
Pennington	8	1 (13%)	7 (88%)	0
Pine	5	0	5 (100%)	0
Pipestone	1	0	1 (100%)	0
Polk	23	9 (39%)	13 (57%)	1 (4%)

County	Number of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Pope	0	0	0	0
Ramsey	85	15 (18%)	69 (81%)	1 (1%)
Red Lake	1	0	1 (100%)	0
Redwood	3	1 (33%)	2 (67%)	0
Renville	2	0	2 (100%)	0
Rice	13	1 (8%)	12 (92%)	0
Rock	2	0	2 (100%)	0
Roseau	3	0	3 (100%)	0
St Louis	49	8 (16%)	41 (84%)	0
Scott	14	1 (7%)	13 (93%)	0
Sherburne	12	4 (33%)	7 (58%)	1 (8%)
Sibley	3	1 (33%)	2 (67%)	0
Stearns	7	1 (14%)	6 (86%)	0
Steele	3	1 (33%)	2 (67%)	0
Stevens	0	0	0	0
Swift	2	0	2 (100%)	0
Todd	4	0	4 (100%)	0
Traverse	0	0	0	0
Wabasha	3	0	3 (100%)	0
Wadena	3	0	2 (67%)	1 (33%)
Waseca	4	0	3 (75%)	1 (25%)
Washington	21	3 (14%)	18 (86%)	0
Watonwan	1	0	1 (100%)	0
Wilkin	0	0	0	0
Winona	3	0	3 (100%)	0
Wright	11	3 (27%)	8 (73%)	0
Yellow Medicine	4	1 (25%)	3 (75%)	0
<b>Total</b>	<b>929</b>	<b>132 (14%)</b>	<b>770 (83%)</b>	<b>27 (3%)</b>

## County Attorney Reports on Criminal Cases Involving Firearms By County

**Cases Allegedly Involving Firearms - Offenses Listed in M.S. § 609.11, subd. 9**  
*Cases Disposed from July 1, 2003 to July 1, 2004*

County	Cases Allegedly Involving Firearms - Offenses Listed in M.S § 609.11	Cases Not Charged	Cases Charged
Aitkin	1	0	1
Anoka	32	2	30
Becker	4	0	4
Beltrami	7	1	6
Benton	2	0	2
Big Stone	0	0	0
Blue Earth	6	0	6
Brown	0	0	0
Carlton	2	0	2
Carver	4	1	3
Cass	6	0	6
Chippewa	3	0	3
Chisago	6	0	6
Clay	2	0	2
Clearwater	2	0	2
Cook	1	0	1
Cottonwood	0	0	0
Crow Wing	11	0	11
Dakota	32	0	32
Dodge	3	0	3
Douglas	1	0	1
Faribault	1	0	1
Fillmore	0	0	0
Freeborn	2	0	2
Goodhue	4	0	4
Grant	0	0	0
Hennepin	193	0	193
Houston	3	0	3
Hubbard	5	0	5

<b>County</b>	<b>Cases Allegedly Involving Firearms - Offenses Listed in M.S § 609.11</b>	<b>Cases Not Charged</b>	<b>Cases Charged</b>
Isanti	5	0	5
Itasca	14	0	14
Jackson	4	0	4
Kanabec	5	3	2
Kandiyohi	4	1	3
Kittson	0	0	0
Koochiching	1	0	1
Lac Qui Parle	0	0	0
Lake	3	0	3
Lake of the Woods	2	0	2
LeSueur	0	0	0
Lincoln	1	0	1
Lyon	2	0	2
McLeod	5	0	5
Mahnomen	3	0	3
Marshall	1	0	1
Martin	4	0	4
Meeker	2	1	1
Mille Lacs	7	0	7
Morrison	7	0	7
Mower	2	0	2
Murray	2	0	2
Nicollet	0	0	0
Nobles	1	0	1
Norman	1	0	1
Olmsted	39	0	39
Otter Tail	5	0	5
Pennington	1	0	1
Pine	2	0	2
Pipestone	2	0	2
Polk	10	0	10
Pope	1	0	1
Ramsey	111	0	111
Red Lake	0	0	0
Redwood	10	0	10

<b>County</b>	<b>Cases Allegedly Involving Firearms - Offenses Listed in M.S § 609.11</b>	<b>Cases Not Charged</b>	<b>Cases Charged</b>
Renville	5	0	5
Rice	4	0	4
Rock	0	0	0
Roseau	2	0	2
St. Louis	40	2	38
Scott	5	0	5
Sherburne	8	0	8
Sibley	0	0	0
Stearns	9	0	9
Steele	6	0	6
Stevens	0	0	0
Swift	0	0	0
Todd	1	0	1
Traverse	0	0	0
Wabasha	4	0	4
Wadena	8	0	8
Waseca	0	0	0
Washington	6	0	6
Watsonwan	0	0	0
Wilkin	0	0	0
Winona	1	0	1
Wright	11	0	11
Yellow Medicine	1	0	1
<b>Total</b>	<b>701</b>	<b>11</b>	<b>690</b>

**County Attorney Report on Criminal Cases Involving Firearms  
By County**

**Offenses Charged - Case Outcome**  
*Cases Disposed from July 1, 2003 to July 1, 2004*

<b>County</b>	<b>Total Number of Cases Charged</b>	<b>Convicted of Offense Listed in M.S. § 609.11, subd. 9 Firearm Established</b>	<b>Convicted of Offense Listed in M.S § 609.11, subd. 9 Firearm Not Established</b>	<b>Conviction Offense Not Listed in M.S. §609.11</b>	<b>Acquitted on all Charges</b>	<b>Dismissed on all Charges</b>	<b>Other</b>
Aitkin	1	1	0	0	0	0	0
Anoka	30	19	0	11	0	0	0
Becker	4	3	0	1	0	0	0
Beltrami	6	5	0	1	0	0	0
Benton	2	1	0	1	0	0	0
Big Stone	0	0	0	0	0	0	0
Blue Earth	6	2	0	2	0	2	0
Brown	0	0	0	0	0	0	0
Carlton	2	0	0	2	0	0	0
Carver	3	1	0	1	1	0	0
Cass	6	3	1	0	0	2	0
Chippewa	3	1	2	0	0	0	0
Chisago	6	4	0	1	0	1	0
Clay	2	0	0	1	0	1	0
Clearwater	2	0	0	2	0	0	0
Cook	1	0	0	1	0	0	0
Cottonwood	0	0	0	0	0	0	0
Crow Wing	11	3	1	2	0	5	0
Dakota	32	25	0	4	1	2	0
Dodge	3	1	0	0	0	0	2
Douglas	1	1	0	0	0	0	0
Faribault	1	0	0	1	0	0	0
Fillmore	0	0	0	0	0	0	0
Freeborn	2	0	1	0	0	1	0
Goodhue	4	0	0	3	0	1	0
Grant	0	0	0	0	0	0	0
Hennepin	193	167	0	12	7	7	0
Houston	3	0	0	2	0	1	0
Hubbard	5	0	2	0	3	0	0

<b>County</b>	<b>Total Number of Cases Charged</b>	<b>Convicted of Offense Listed in M.S. § 609.11, subd. 9 Firearm Established</b>	<b>Convicted of Offense Listed in M.S § 609.11, subd. 9 Firearm Not Established</b>	<b>Conviction Offense Not Listed in M.S. §609.11</b>	<b>Acquitted on all Charges</b>	<b>Dismissed on all Charges</b>	<b>Other</b>
Isanti	5	2	0	3	0	0	0
Itasca	14	13	0	0	0	1	0
Jackson	4	4	0	0	0	0	0
Kanabec	2	1	0	1	0	0	0
Kandiyohi	3	0	2	1	0	0	0
Kittson	0	0	0	0	0	0	0
Koochiching	1	0	0	1	0	0	0
Lac Qui Parle	0	0	0	0	0	0	0
Lake	3	3	0	0	0	0	0
Lake of the Woods	2	0	0	1	0	1	0
LeSueur	0	0	0	0	0	0	0
Lincoln	1	0	0	1	0	0	0
Lyon	2	0	2	0	0	0	0
McLeod	5	1	0	4	0	0	0
Mahnomen	3	1	1	1	0	0	0
Marshall	1	1	0	0	0	0	0
Martin	4	1	1	1	0	0	1
Meeker	1	1	0	0	0	0	0
Mille Lacs	7	1	4	1	0	1	0
Morrison	7	5	1	1	0	0	0
Mower	2	2	0	0	0	0	0
Murray	2	0	2	0	0	0	0
Nicollet	0	0	0	0	0	0	0
Nobles	1	1	0	0	0	0	0
Norman	1	1	0	0	0	0	0
Olmsted	39	23	1	11	0	4	0
Otter Tail	5	2	0	3	0	0	0
Pennington	1	0	0	1	0	0	0
Pine	2	1	0	1	0	0	0
Pipestone	2	2	0	0	0	0	0
Polk	10	9	0	0	0	1	0
Pope	1	1	0	0	0	0	0
Ramsey	111	82	0	10	6	13	0
Red Lake	0	0	0	0	0	0	0

County	Total Number of Cases Charged	Convicted of Offense Listed in M.S. § 609.11, subd. 9 Firearm Established	Convicted of Offense Listed in M.S § 609.11, subd. 9 Firearm Not Established	Conviction Offense Not Listed in M.S. §609.11	Acquitted on all Charges	Dismissed on all Charges	Other
Redwood	10	8	1	1	0	0	0
Renville	5	1	1	2	0	1	0
Rice	4	2	0	2	0	0	0
Rock	0	0	0	0	0	0	0
Roseau	2	1	1	0	0	0	0
St. Louis	38	17	0	12	0	5	4
Scott	5	5	0	0	0	0	0
Sherburne	8	4	3	1	0	0	0
Sibley	0	0	0	0	0	0	0
Stearns	9	7	0	1	0	1	0
Steele	6	2	1	3	0	0	0
Stevens	0	0	0	0	0	0	0
Swift	0	0	0	0	0	0	0
Todd	1	1	0	0	0	0	0
Traverse	0	0	0	0	0	0	0
Wabasha	4	1	0	3	0	0	0
Wadena	8	4	0	1	0	2	1
Waseca	0	0	0	0	0	0	0
Washington	6	2	0	4	0	0	0
Watsonwan	0	0	0	0	0	0	0
Wilkin	0	0	0	0	0	0	0
Winona	1	0	0	1	0	0	0
Wright	11	2	0	6	0	3	0
Yellow Medicine	1	0	0	0	0	1	0
<b>Total</b>	<b>690</b>	<b>452</b>	<b>28</b>	<b>127</b>	<b>18</b>	<b>57</b>	<b>8</b>

## County Attorney Report on Criminal Cases Involving Firearms By County

### Mandatory Minimum Sentences Imposed and Executed

*Cases Disposed from July 1, 2003 to July 1, 2004*

County	Convicted of Offense Listed in M.S. § 609.11, subd. 9 Firearm Established on Record	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Waived
Aitkin	1	0	1
Anoka	19	10	9
Becker	3	2	1
Beltrami	5	3	2
Benton	1	1	0
Big Stone	0	0	0
Blue Earth	2	2	0
Brown	0	0	0
Carlton	0	0	0
Carver	1	0	1
Cass	3	2	1
Chippewa	1	1	0
Chisago	4	3	1
Clay	0	0	0
Clearwater	0	0	0
Cook	0	0	0
Cottonwood	0	0	0
Crow Wing	3	2	1
Dakota	25	12	13
Dodge	1	1	0
Douglas	1	1	0
Faribault	0	0	0
Fillmore	0	0	0
Freeborn	0	0	0
Goodhue	0	0	0
Grant	0	0	0
Hennepin	167	101	66
Houston	0	0	0

<b>County</b>	<b>Convicted of Offense Listed in M.S. § 609.11, subd. 9 Firearm Established on Record</b>	<b>Mandatory Minimum Sentence Imposed</b>	<b>Mandatory Minimum Sentence Waived</b>
Hubbard	0	0	0
Isanti	2	1	1
Itasca	13	6	7
Jackson	4	2	2
Kanabec	1	1	0
Kandiyohi	0	0	0
Kittson	0	0	0
Koochiching	0	0	0
Lac Qui Parle	0	0	0
Lake	3	3	0
Lake of the Woods	0	0	0
LeSueur	0	0	0
Lincoln	0	0	0
Lyon	0	0	0
McLeod	1	0	1
Mahnomen	1	1	0
Marshall	1	0	1
Martin	1	0	1
Meeker	1	1	0
Mille Lacs	1	0	1
Morrison	5	0	5
Mower	2	1	1
Murray	0	0	0
Nicollet	0	0	0
Nobles	1	0	1
Norman	1	1	0
Olmsted	23	15	8
Otter Tail	2	2	0
Pennington	0	0	0
Pine	1	1	0
Pipestone	2	1	1

<b>County</b>	<b>Convicted of Offense Listed in M.S. § 609.11, subd. 9 Firearm Established on Record</b>	<b>Mandatory Minimum Sentence Imposed</b>	<b>Mandatory Minimum Sentence Waived</b>
Polk	9	5	4
Pope	1	1	0
Ramsey	82	54	28
Red Lake	0	0	0
Redwood	8	8	0
Renville	1	1	0
Rice	2	1	1
Rock	0	0	0
Roseau	1	1	0
St. Louis	17	11	6
Scott	5	4	1
Sherburne	4	0	4
Sibley	0	0	0
Stearns	7	5	2
Steele	2	1	1
Stevens	0	0	0
Swift	0	0	0
Todd	1	1	0
Traverse	0	0	0
Wabasha	1	1	0
Wadena	4	3	1
Waseca	0	0	0
Washington	2	1	1
Watonwan	0	0	0
Wilkin	0	0	0
Winona	0	0	0
Wright	2	0	2
Yellow Medicine	0	0	0
<b>Total</b>	<b>452</b>	<b>275</b>	<b>177</b>

## 609.11 MINIMUM SENTENCES OF IMPRISONMENT

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

**Subd. 2.** Repealed, 1978 c 723 art 2 s 5

**Subd. 3.** Repealed, 1981 c 227 s 13

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

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

(b) Any defendant convicted of violating section 609.165 or 624.713, subdivision 1, clause (b), shall be committed to the commissioner of corrections for not less than five years, nor more than the maximum sentence provided by law.

**Subd. 5a. Drug offenses.** Notwithstanding section 609.035, whenever a defendant is subject to a mandatory minimum sentence for a felony violation of chapter 152 and is also subject to this section, the minimum sentence imposed under this section shall be consecutive to that imposed under chapter 152.

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

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

**Subd. 8. Motion by prosecutor.** (a) Except as otherwise provided in paragraph (b), prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum sentences established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When

presented with the motion, or on its own motion, the court may sentence the defendant without regard to the mandatory minimum sentences established by this section if the court finds substantial and compelling reasons to do so. A sentence imposed under this subdivision is a departure from the sentencing guidelines.

(b) The court may not, on its own motion or the prosecutor's motion, sentence a defendant without regard to the mandatory minimum sentences established by this section if the defendant previously has been convicted of an offense listed in subdivision 9 in which the defendant used or possessed a firearm or other dangerous weapon.

**Subd. 9. Applicable offenses.** The crimes for which mandatory minimum sentences shall be served as provided in this section are: murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; criminal sexual conduct under the circumstances described in sections 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); and 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); escape from custody; arson in the first, second, or third degree; drive-by shooting under section 609.66, subdivision 1e; harassment and stalking under section 609.749, subdivision 3, clause (3); possession or other unlawful use of a firearm in violation of section 609.165, subdivision 1b, or 624.713, subdivision 1, clause (b), a felony violation of chapter 152; or any attempt to commit any of these offenses.

**Subd. 10. Report on criminal cases involving a firearm.** Beginning on July 1, 1994, every county attorney shall collect and maintain the following information on criminal complaints and prosecutions within the county attorney's office in which the defendant is alleged to have committed an offense listed in subdivision 9 while possessing or using a firearm:

- (1) whether the case was charged or dismissed;
- (2) whether the defendant was convicted of the offense or a lesser offense; and
- (3) whether the mandatory minimum sentence required under this section was imposed and executed or was waived by the prosecutor or court.

No later than July 1 of each year, beginning on July 1, 1995, the county attorney shall forward this information to the sentencing guidelines commission upon forms prescribed by the commission.

## Firearms Report Form:

### County Attorney Report on Criminal Cases Involving Firearms

M.S. § 609.11, subdivision 10 requires that no later than July 1 of each year, every county attorney shall forward to the sentencing guidelines commission information on cases in which the defendant is alleged to have committed an offense listed in M.S. § 609.11, subdivision 9. Please report on **adult cases** that were disposed of in the time period indicated. Please **do not include cases that were pending** during this time period. Consult reverse side for an illustration.

County: \_\_\_\_\_

Criminal Complaints Disposed of from July 1, \_\_\_\_\_ to July 1, \_\_\_\_\_.

Completed by: \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

#### I. CHARGING

CASES CHARGED WHERE REPORTING IS REQUIRED
# of cases =

CASES <u>NOT</u> CHARGED WHERE REPORTING IS REQUIRED
# of cases =



**Only cases in this box should be carried down to Table II.**

#### III. CASE OUTCOME: *Sum of Table II = total of "CASES CHARGED WHERE REPORTING IS REQUIRED" box above*

CONVICTED OF OFFENSE LISTED IN SUBD. 9; FIREARM ESTABLISHED ON THE RECORD	CONVICTED OF OFFENSE LISTED IN SUBD. 9; FIREARM <u>NOT</u> ESTABLISHED ON THE RECORD	CONVICTED OF OFFENSE NOT LISTED IN SUBD. 9	ACQUITTED ON ALL CHARGES	ALL CHARGES DISMISSED	OTHER
# of cases =	# of cases =	# of cases =	# of cases =	# of cases =	# of cases =



**Only cases in this box should be carried down to Table III.**

#### III. SENTENCES FOR CASES REQUIRING MANDATORY MINIMUM UNDER M.S. § 609.11:

*Sum of Table III = Total in "FIREARM ESTABLISHED ON RECORD" box above*

MANDATORY MINIMUM SENTENCE (OR GREATER) IMPOSED AND EXECUTED
# of cases =

MANDATORY MINIMUM SENTENCE WAIVED
# of cases =

