

EXAMINING THE INCREASING PRESUMPTIVE PRISON RATE IN MINNESOTA

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MINNESOTA SENTENCING GUIDELINES COMMISSION

Presented at the National Association of Sentencing Commissions Conference 8/12/25

This work is generously funded by Arnold Ventures.



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Researcher – Commission Partnership

- Minnesota Sentencing Guidelines Commission sets the sentencing guidelines for all felony sentences in the state.
- 13 members appointed by the governor and other authorities
- Minnesota was the first state to implement structured sentencing guidelines -1978
- Undergoing a multi-year comprehensive review to review the guidelines for consistency, proportionality, and fairness.
- Relative to the current guidelines, the revised guidelines should contribute to:
 - Improved public safety
 - More consistent sentencing
 - Decreased disparities
- Partnered with UMN Robina Institute and Department of Sociology to provide research support



Felony Sentencing Guidelines – Three Grid System

- **Standard Grid Matrix**
 - Encompasses a wide range of offenses, including most violent ones
 - Covers approx. 60 percent of cases
 - Presumptive sentences are determined by severity level of the offense and a person's criminal history score

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By Shootings)</i>	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹	426 363-480 ¹
<i>Murder, 2nd Degree (Unintentional)</i>	10	150	165	180	195	210	225	240
<i>Murder, 3rd Degree (Depraved Mind)</i>		128-180	141-198	153-216	166-234	179-252	192-270	204-288
<i>Murder, 3rd Degree (Drugs)</i>	9	86	98	110	122	134	146	158
<i>Assault, 1st Degree (Great Bodily Harm)</i>		74-103	84-117	94-132	104-146	114-160	125-175	135-189
<i>Agg. Robbery, 1st Degree</i>	8	48	58	68	78	88	98	108
<i>Burglary, 1st Degree (w/ Weapon or Assault)</i>		41-57	50-69	58-81	67-93	75-105	84-117	92-129
<i>Felony DWI</i>	7	36	42	48	54	60	66	72
<i>Financial Exploitation of a Vulnerable Adult</i>		46-64	51-72	57-79	62-84 ^{1,2}			
<i>Assault, 2nd Degree</i>	6	21	27	33	39	45	51	57
<i>Burglary, 1st Degree (Occupied Dwelling)</i>		34-46	39-54	44-61	49-68			
<i>Residential Burglary</i>	5	18	23	28	33	38	43	48
<i>Simple Robbery</i>		29-39	33-45	37-51	41-57			
<i>Nonresidential Burglary</i>	4	12	15	18	21	24	27	30
		21-28	23-32	26-36				
<i>Theft Crimes (Over \$5,000)</i>	3	12	13	15	17	19	21	23
		17-22	18-25	20-27				
<i>Theft Crimes (\$5,000 or less)</i>	2	12	12	13	15	17	19	21
<i>Check Forgery (\$251-\$2,500)</i>		18-25						
<i>Assault, 4th Degree</i>	1	12	12	12	13	15	17	19
<i>Fleeing a Peace Officer</i>		17-22						

-  Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.
-  Presumptive stayed sentence; at the discretion of the court, up to 364 days of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

Felony Sentencing Guidelines – Three Grid System

- **Drug Grid Matrix**

- Adopted in 2016
- Move drug sentencing off the standard grid
- Reserve prison for the most serious and repeat offenders – offer probation for others.
- Covers aprox. 30 percent of cases

4.C. Drug Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subjected to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Aggravated Controlled Substance Crime, 1st Degree</i>	D9	86 74*-103	98 84*-117	110 94*-132	122 104*-146	134 114*-160	146 125*-175	158 135*-189
<i>Controlled Substance Crime, 1st Degree</i>	D8	65 56*-78	75 64*-90	85 73*-102	95 81*-114	105 90*-126	115 98*-138	125 107*-150
<i>Controlled Substance Crime, 2nd Degree</i>	D7	48	58	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Controlled Substance Crime, 3rd Degree</i>	D6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Possess Substances with Intent to Manufacture Meth</i>	D5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Controlled Substance Crime, 4th Degree</i>	D4	12	15	18	21	24 21-28	27 23-32	30 26-36
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	D3	12	13	15	17	19 17-22	21 18-25	23 20-27
<i>Controlled Substance Crime, 5th Degree</i>	D2	12	12	13	15	17	19	21 18-25
<i>Sale of Simulated Controlled Substance</i>	D1	12	12	12	13	15	17	19 17-22

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).



Presumptive commitment to state imprisonment.



Presumptive stayed sentence; at the discretion of the court, up to 364 days of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

Felony Sentencing Guidelines – Three Grid System

- **Sex Offense Matrix**

- Adopted in 2006
- Moved sex offenses off the standard grid
- Grid allowed for longer prison and supervision terms for serious and repeat offenders
- Covers aprox. 10 percent of cases

4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144¹-172</i>	156 <i>144¹-187</i>	168 <i>144¹-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360¹</i>
<i>CSC 2nd Degree-1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i) (e.g., contact & force with bodily harm)</i>	B	90 <i>90²-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-306</i>	300 <i>255-360</i>
<i>CSC 3rd Degree-1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., penetration & coercion/occupation)</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-183</i>	180 <i>153-216</i>
<i>CSC 2nd Degree-1a(e)(f)(g) (age) CSC 3rd Degree-1a(a)(e)(f) or 1a(b) with 2(1) (age)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree-1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., contact & coercion/occupation)</i>	E	24	36	48 <i>51-72</i>	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120¹</i>
<i>CSC 4th Degree-1a(a)(b)(e)(f) (age) CSC 5th Degree-3(b) (subsequent)</i>	F	18	27	36 <i>39-54</i>	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree-1a(b) with 2(2) Possession of Child Pornography Solicit Child for Sexual Conduct</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60³</i>
<i>CSC 5th Degree-3(a) (nonconsensual penetration)</i>	H	12	14	16	18	24	24 ¹ <i>24-24</i>	24 ¹ <i>24-24</i>
<i>Failure to Register as a Predatory Offender</i>	I	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

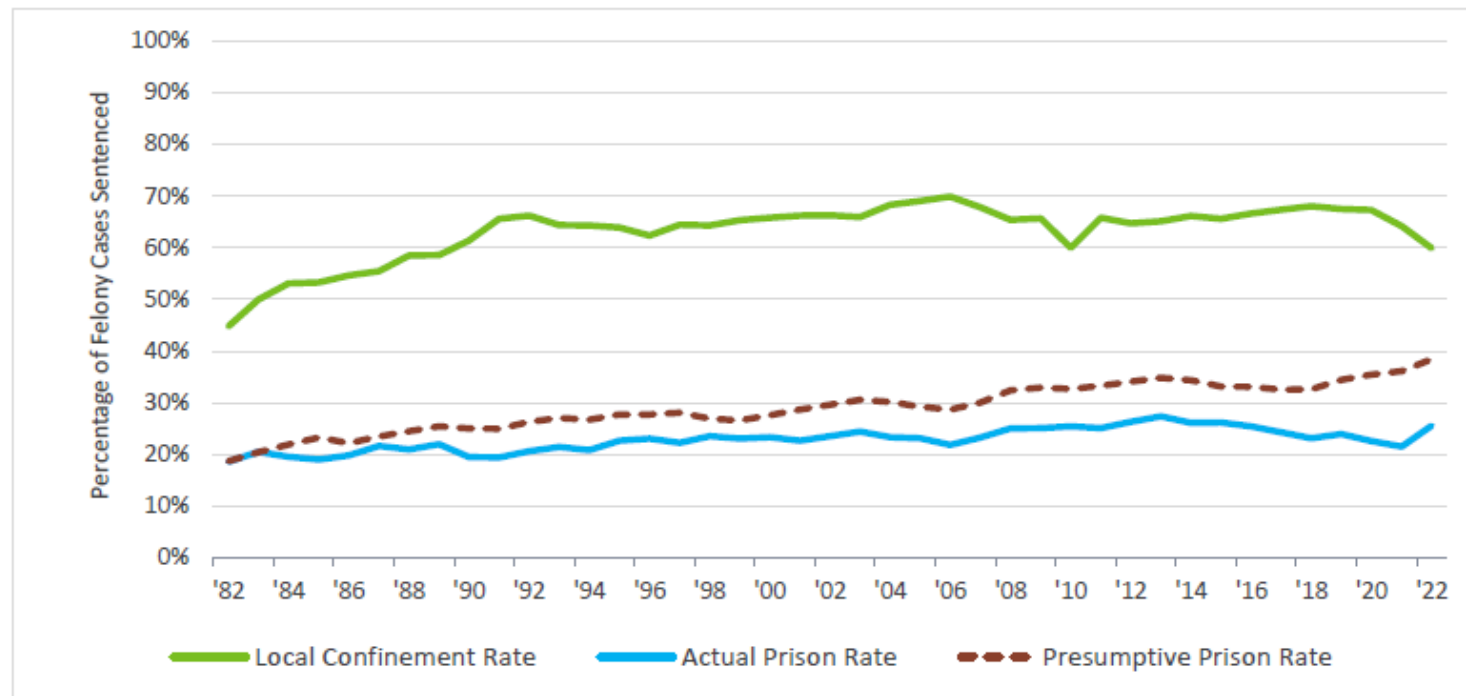
¹ 12¹=One year and one day mandatory minimum under Minn. Stat. § 243.166, subd. 5(b).

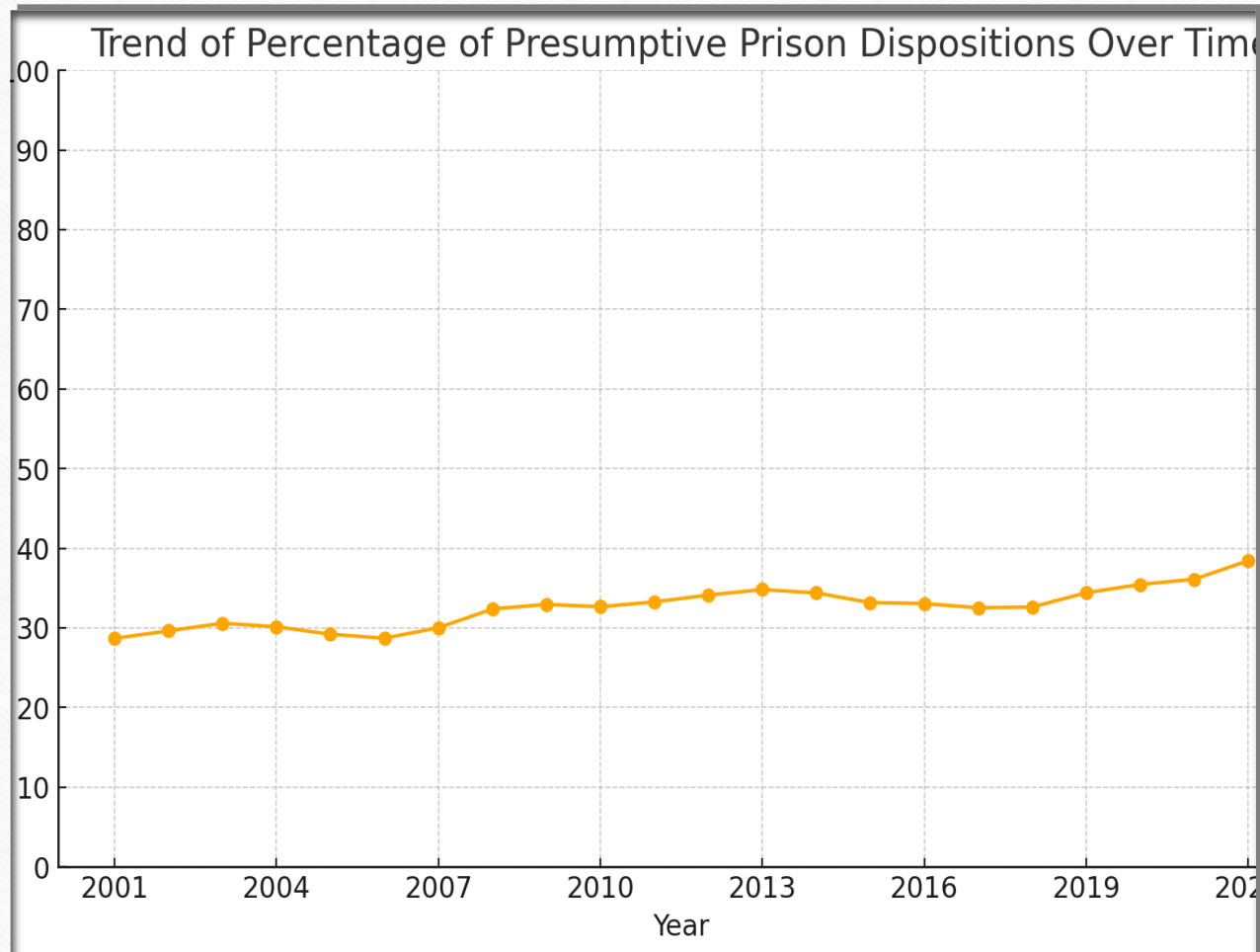
☐ Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

☒ Presumptive stayed sentence; at the discretion of the court, up to 364 days of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

Why is the presumptive prison rate increasing?

Figure 10. Actual & Presumptive Prison Rates and Local Confinement Rate, 1982–2022.







Increasing Presumptive Prison Rate – Across Three Grids Combined

- Presumptive prison rate has increased by about 10 percentage points over the last 20 years.
- Cases recommended for prison in 2001 - 29%
- In 2022 – 39%
- In 2022 – that results in 6,341 more people receiving a recommended prison sentence.

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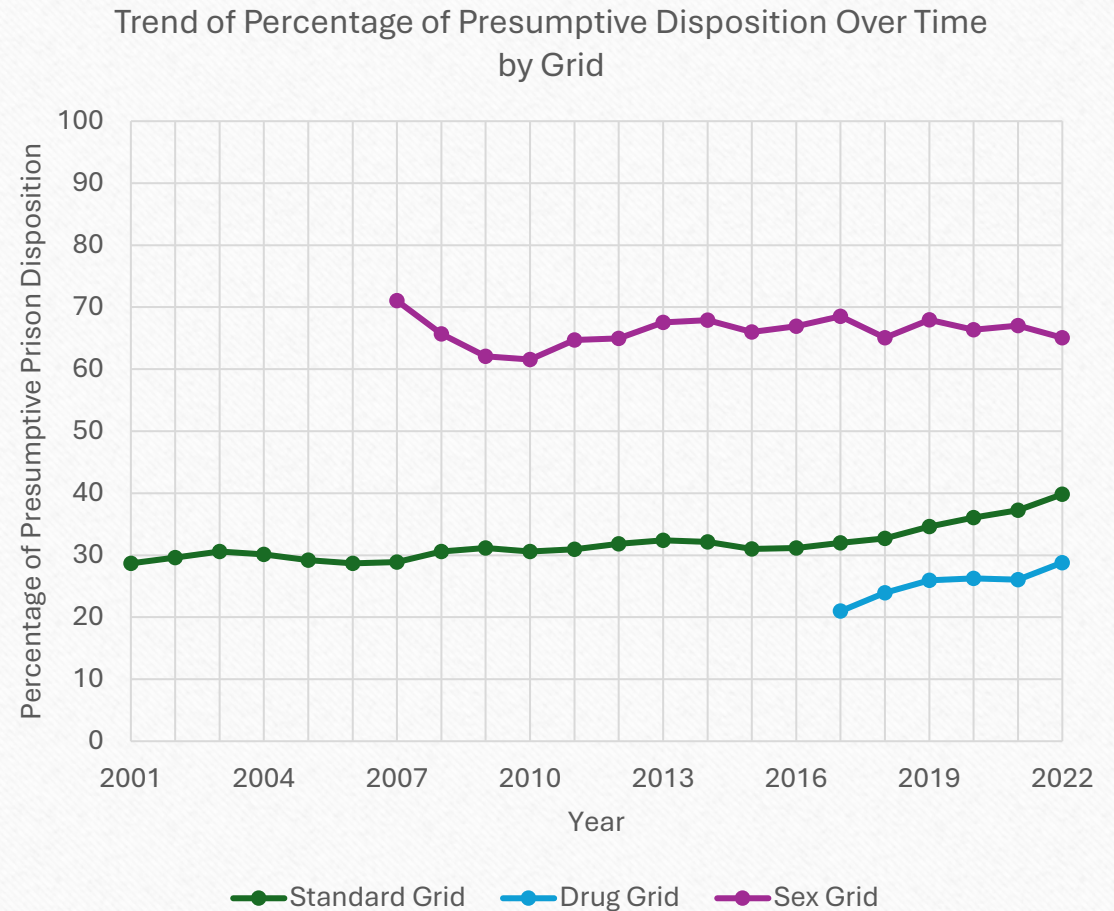
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<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{1,2}
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<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
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<i>Theft Crimes (Over \$5,000)</i>	3	12	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12	12	13	15	17	19	21 18-25
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12	12	12	13	15	17	19 17-22

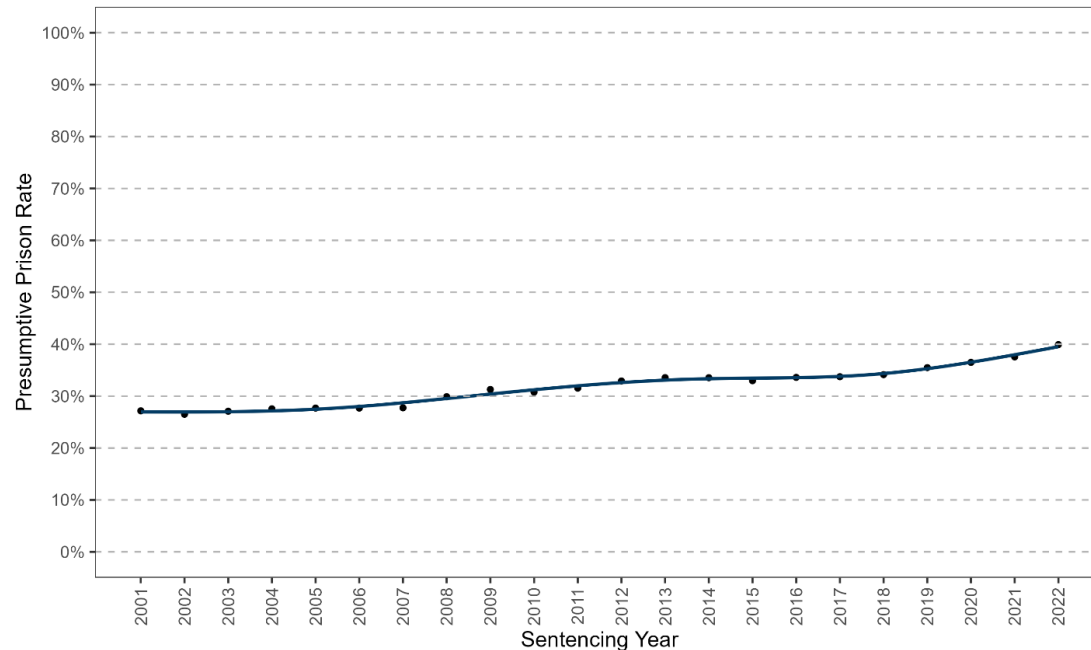
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- Presumptive prison rate = the percentage of cases that end up in the white area of the grid(s) within a given year.
- What factors push the presumptive sentence into the prison commit area of the grid?
 - Criminal history score
 - Offense severity
 - Mandatory minimums, or other policy exceptions, that mandate someone to prison even if they are in the dark area of the grid.

Are the presumptive prison rate trends similar across the three grids?

- Upward trend in both the standard grid and the drug grid – both by about 10 percentage points.
- No obvious trend line for the sex offense grid.

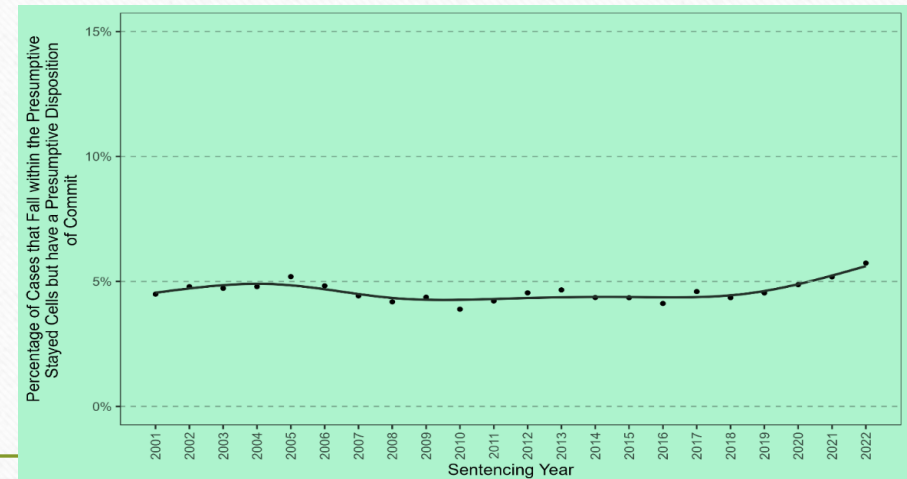
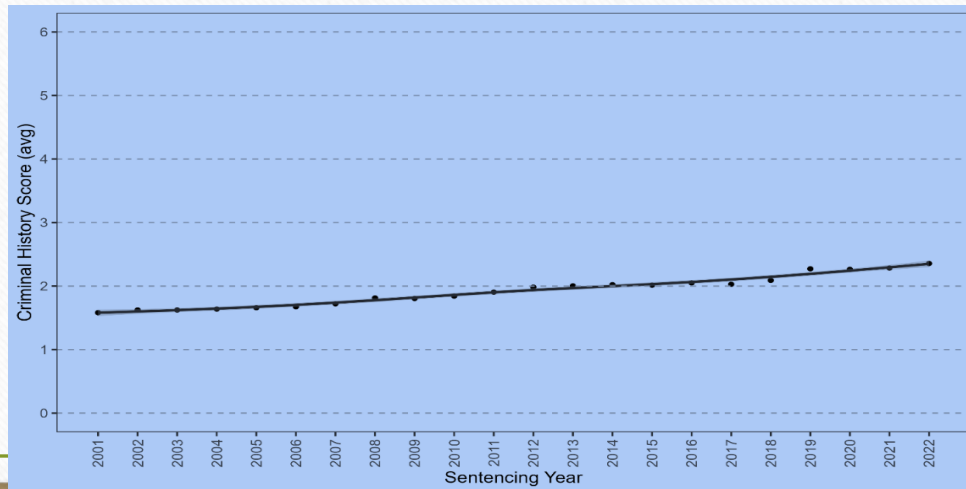
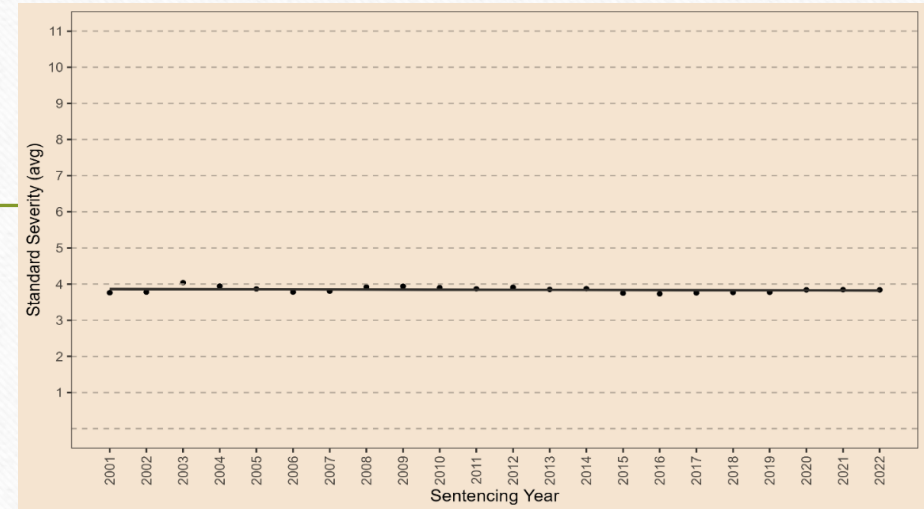
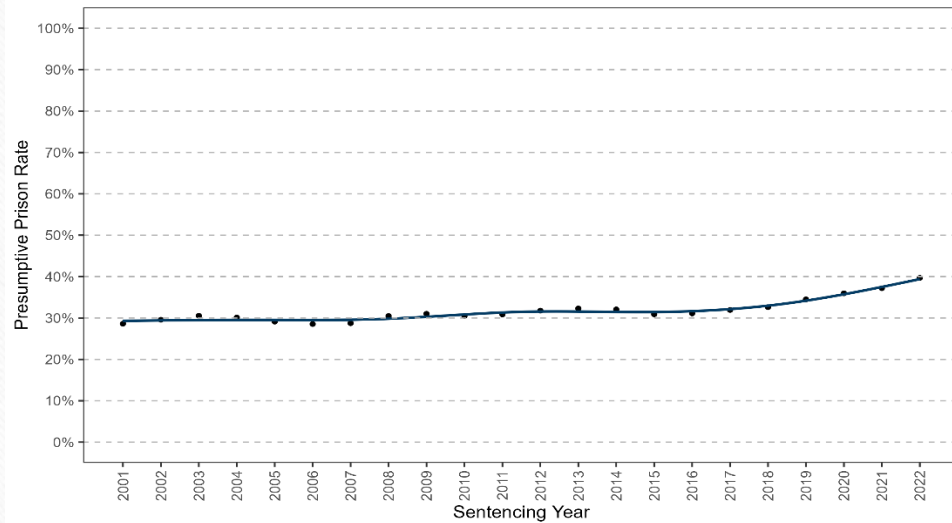




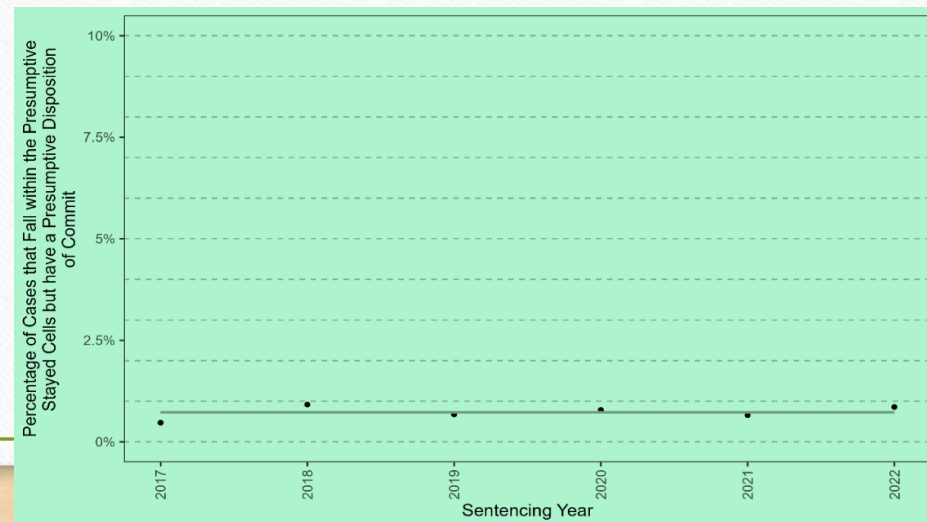
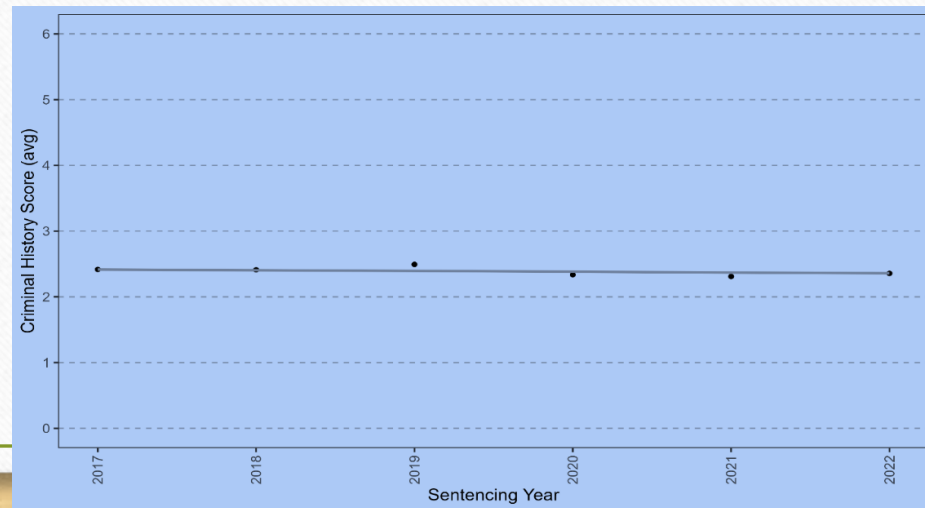
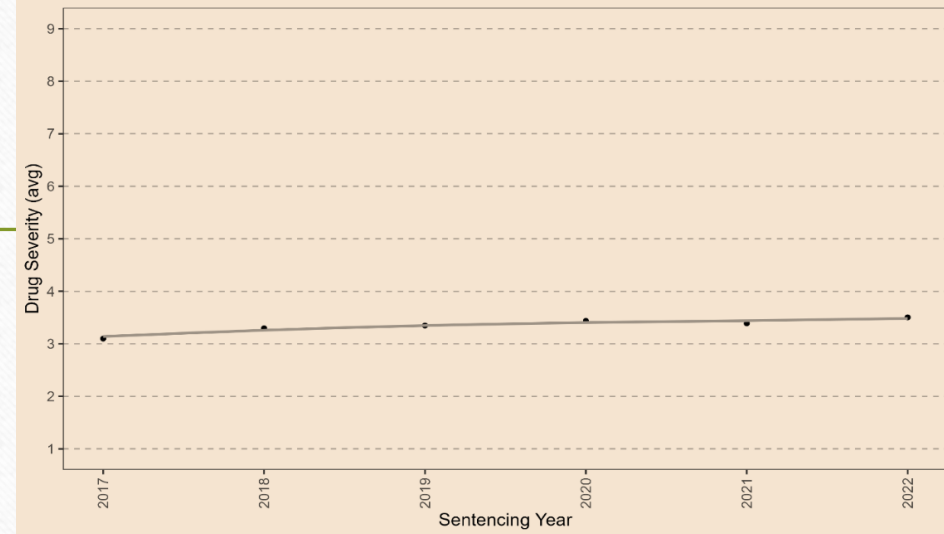
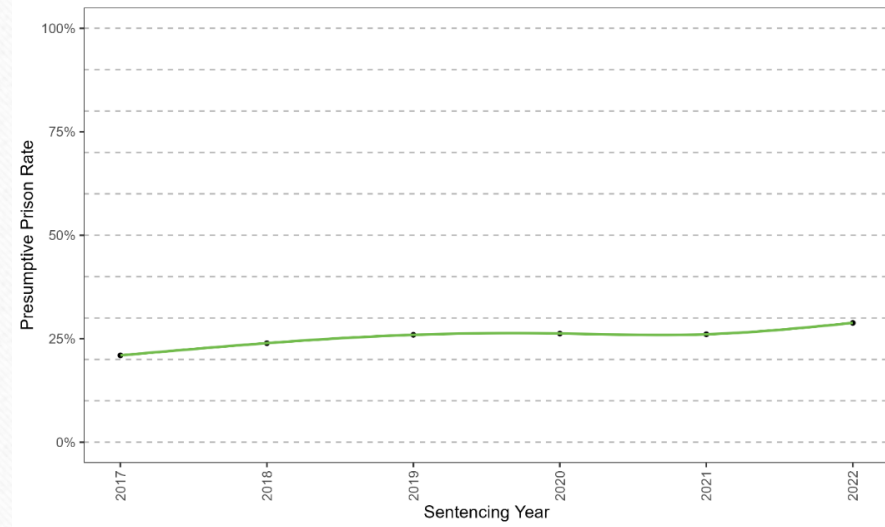
Does the 2016 intro of the drug grid cause an artificial spike in the presumptive prison rate for the standard grid?

- Isolate presumptive prison rate for standard offenses only
- Does the 2016 intro of drug grid = artificial presumptive prison rate spike in the standard grid?
- No – standard offenses have similar spike over study period.

What is causing an increase in the presumptive prison rate for the **standard** grid?



What is causing an increase in the presumptive prison rate for the drug grid?

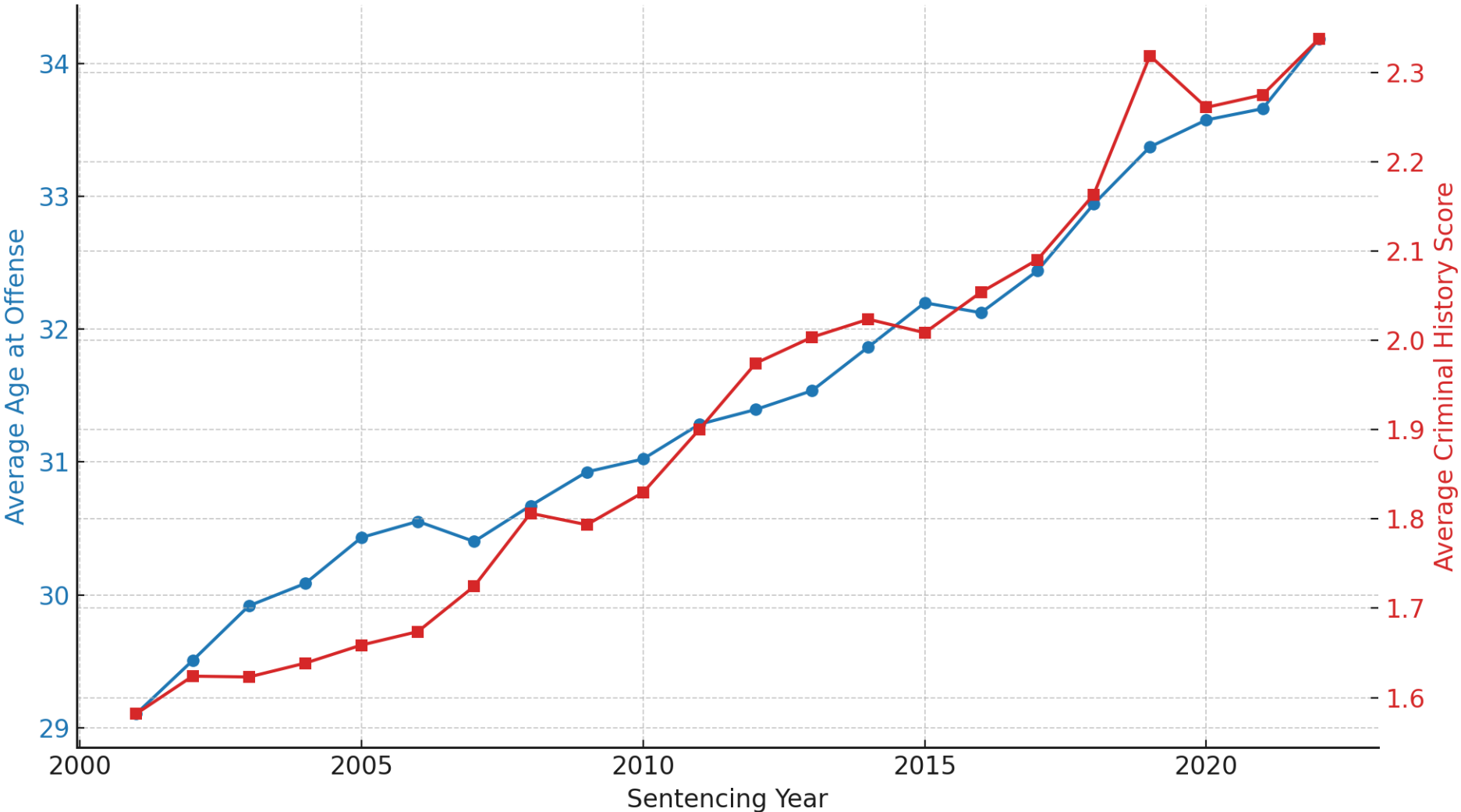




The average criminal history score has increased over time.

Why?

Average Age at Offense vs. Average Criminal History Score (2001-2022)



Minnesota Criminal History Score – Components

Felony Points 

Prior felony convictions
Points based on severity
Largest CHS driver

Misdemeanor / Gross Misdemeanor 

Eligible prior convictions
Max of 1 point (except DWI)

Juvenile Points 

Serious juvenile
adjudications (14+)
Max of 1 point

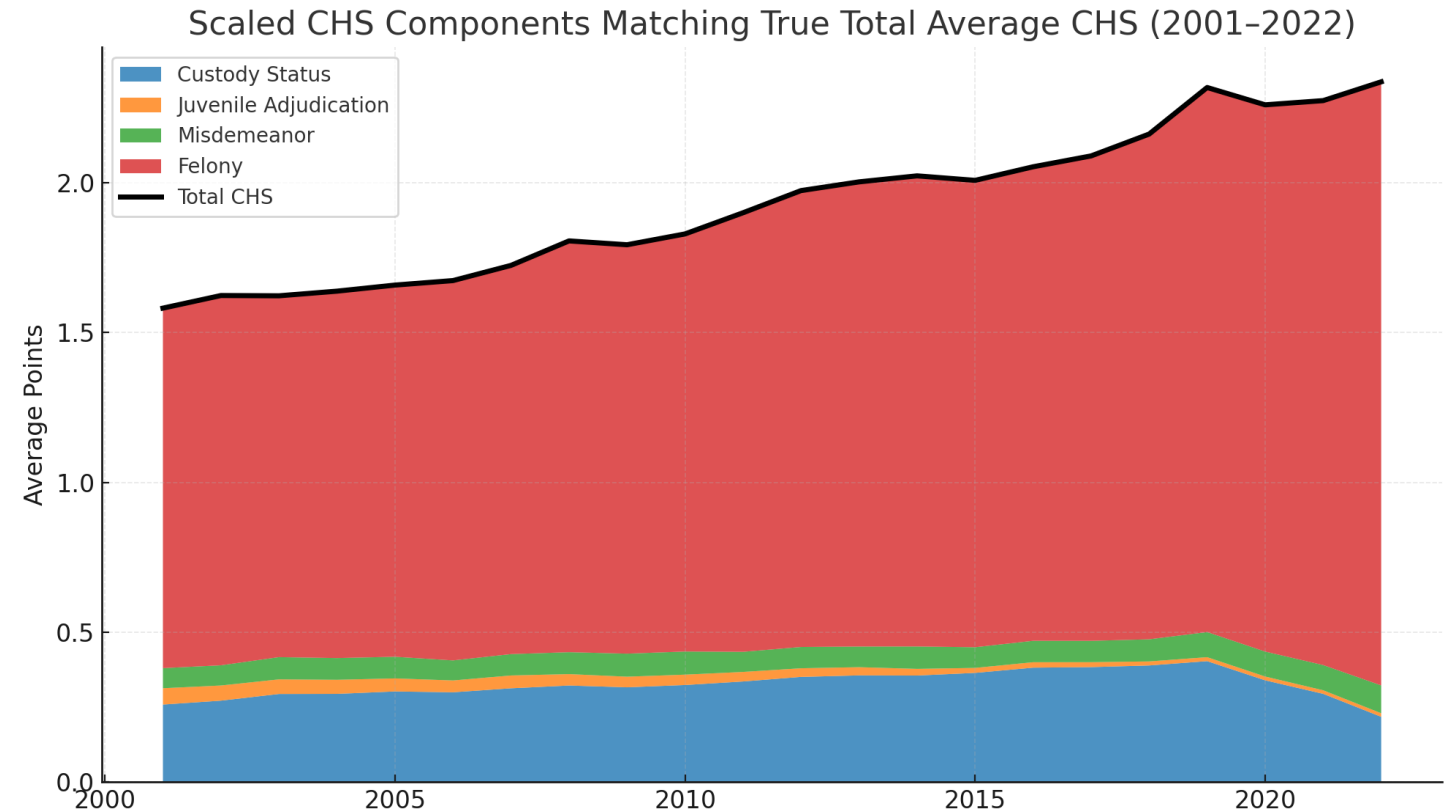
Custody Status 

Offense committed while on
probation, parole, supervised
release, escape, or custody

Criminal History Score (0–7+)
Determines position on
sentencing grid

How have different parts of the CHS contributed to its overall increase?

- The total CHS has gone up over time.
- Almost all of the increase has come from felony points.
- Both the prevalence of felony priors and average number of felony points have increased over time.
- Custody status, misdemeanor, and juvenile adjudications have stayed steady.

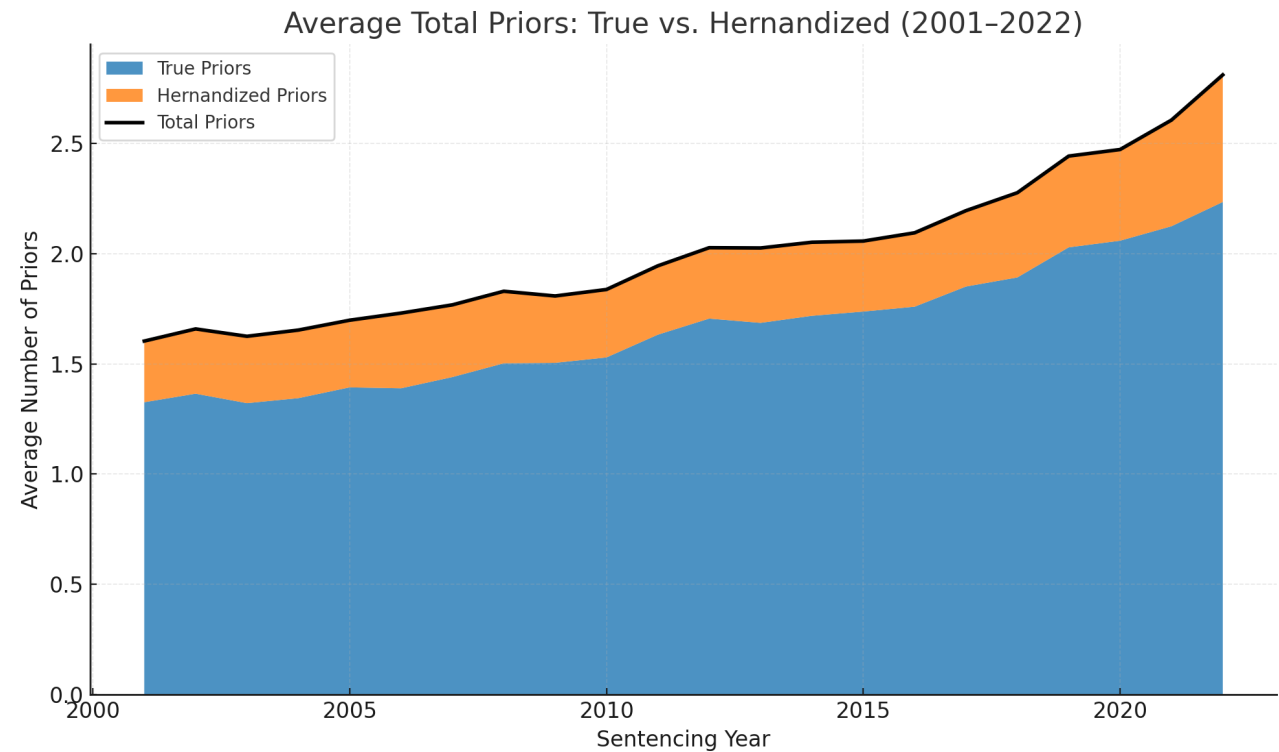


Two Ways Felony Points Can Increase

- True Priors: prior felony convictions from earlier, separate cases.
- If more defendants have multiple prior cases, average felony points rise.
- Hernandized Priors: multiple felony convictions sentenced together (often related or concurrent charges)
- If prosecutors bring more separate counts to sentencing, CHS can rise even without more true priors.

What is driving the increase in felony points?

- **True priors** — prior convictions from earlier cases — account for ~75% of the growth in total priors since 2001.
- **Hernandized priors** — multiple convictions sentenced together — account for ~25% of the growth.
- People being sentenced today are more likely to have prior convictions from earlier cases.

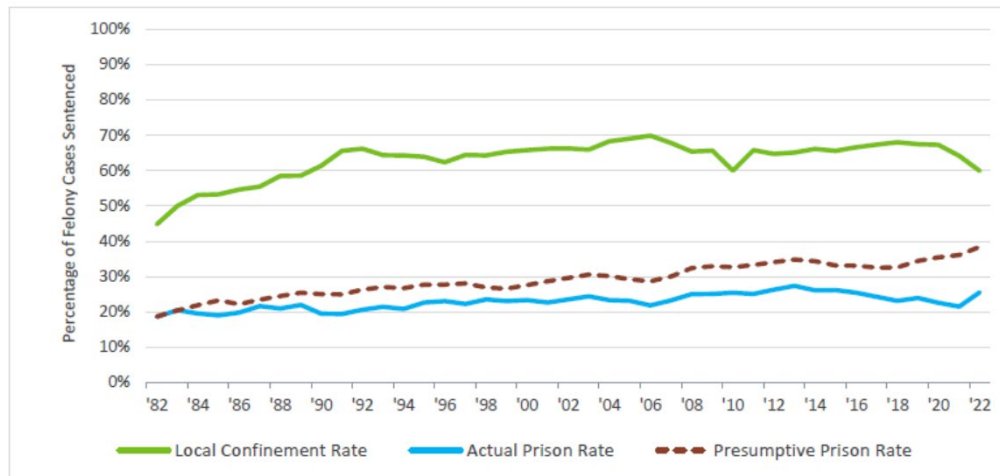


Takeaways

- Increase in the overall presumptive prison rate is being **driven by both the drug and standard grid, not the sex offense grid.**
- Within the **standard grid** – the increase in the presumptive prison rate is being driven mainly by an **increase in the criminal history score**, and - less so - by the **percentage of cases that are mandated to prison by mandatory minimums.**
- The average **criminal history score is gradually increasing**, due to **an increase in average age** of those convicted.
- Older individuals have more time to accumulate priors.
- Why is the average offender getting older?
 - Demographic changes in MN – the state is getting older on average.
 - Younger cohorts (Gen Z) are less involved in criminal offending.

Policy Implications

Figure 10. Actual & Presumptive Prison Rates and Local Confinement Rate, 1982–2022.



- While the presumptive prison rate is increasing, **the actual prison rate has remained steady**, or even slightly decreased.
- Downward departures have increased
 - Some offenses at over 50%

Three Paths Forward

- The only way for the percentage of prison sentences to stay steady, while the presumptive prison rate is increasing, is if **mitigated departure rates also continue to increase.**
-
- Three scenarios:
 - Mitigated departures continue to go up – keeping the prison population steady
 - Risk legitimacy of the guidelines
 - Possible effect on public safety
 - Prison sentences go up
 - More system strain, human and community cost
 - Address the rising presumptive incarceration rate issue
 - Reformulating CH score
 - Downranking some offenses
 - Eliminating some mandatory minimums

Contact Info

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<https://robinainstitute.umn.edu/>

<https://mn.gov/sentencing-guidelines/>