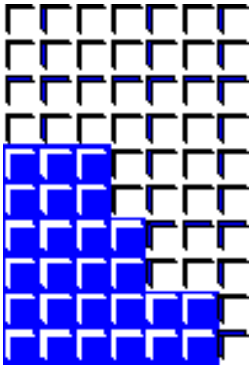
MINNESOTA SENTENCING
GUIDELINES COMMISSION

MSGC Report to the Legislature

MSGC Report to the Legislature, January 2012



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Introduction

In 1981, Minnesota became the first state to implement a sentencing guidelines structure. The Minnesota Sentencing Guidelines Commission is a legislatively created body whose purpose is to maintain the guidelines, evaluate outcomes of changes in sentencing policy, analyze trends and make appropriate recommendations, and provide education on sentencing law and policy. The goals of the Minnesota Sentencing Guidelines are:

- To better assure **public safety**.
- To promote **uniformity** in sentencing so that offenders who are convicted of similar types of crimes and who have similar types of criminal records are similarly sentenced.
- To provide **truth and certainty** in sentencing.
- To establish **proportionality** in sentencing by emphasizing a "just deserts" philosophy. Offenders convicted of serious violent offenses (even with no prior record), those with repeat violent records, and those with more extensive non-violent criminal records are recommended the most severe penalties.

Throughout the time the guidelines have existed, Minnesota has undergone significant changes in population, while both its crime rate and its rate of imprisonment per capita have remained among the lowest in the United States. In a 2009 comparison, the Bureau of Justice Statistics determined that Minnesota's prison incarceration rate was the second-lowest of all states in the nation with a 189 inmate per 100,000-resident ratio.[1] The guidelines play a crucial role in helping to maintain balance between appropriate sentencing policy and correctional resources.

This report details the work of the Minnesota Sentencing Guidelines Commission during 2011 and provides an overview of sentencing practices and trends in the criminal justice system. The sentencing data included in this report is from the most recent full year of sentencing data: 2010. Please direct any comments or questions regarding the report to the Minnesota Sentencing Guidelines Commission Office. Additional reports on overall data trends in 2010 and sentencing practices for specific offenses, including assault offenses and violations of restraining orders, controlled substance, criminal sexual conduct, criminal vehicular homicide and injury, dangerous weapons, failure to register as a predatory offender and felony DWI, as well an unranked offense report and probation revocation report are available on the Commission's website at http://www.msgc.state.mn.us.

[1] *Prisoners in 2009;* Bureau of Justice Statistics; December 2010, NCJ 231675, page 24; http://bjs.gov/content/pub/pdf/p09.pdf

Executive Summary

The 2012 Report to the Legislature contains information for which the Commission is required to report: modifications to the sentencing guidelines and use of firearms in crimes as reported by Minnesota's County Attorneys. As in past years, the Commission also took this opportunity to highlight topics that may be of interest to the legislature: sentencing and departure trends; developments with sex offenses; information on domestic assault-related offenses; and updates on Commission and staff activities.

Sentencing Trends (p. 4) – Minnesota continued to experience a decrease in the number of felons sentenced. This downward trend began in 2007. There were 14,311 felony offenders sentenced in 2010, a 3.6% decrease from 2009. The only felony crime category exhibiting growth was "person," at a rate of 2%, with much of that growth from domestic assault-related offenses.

Departures from the Sentencing Guidelines (p. 14) – In 2010, 75 percent of all felony offenders sentenced received the presumptive guidelines sentence. The remaining 25 percent received some type of departure (Figure 8). A majority of the departures occurred in cases that involved a plea agreement or in which the prosecutor recommended or did not object to the departure.

Criminal Sexual Conduct Offenses (p. 20) – Of the 600 offenders sentenced in 2010 for criminal sexual conduct offenses, 511 (85%) were eligible to be sentenced on the sex offender grid. The average pronounced prison sentence was 125 months (Figure 16), which is the longest average sentence ever observed since the guidelines took effect. For offenders sentenced to probation, the average pronounced period of probation was approximately 13 years. Overall, only a small percentage of cases (6%) involved offenders who were strangers to their victims.

Domestic Assault-Related Offenses (p. 34) – The overall number of person offenses increased slightly in 2010 (2%). This growth is primarily attributable to an increase in domestic assault-related offenses, including domestic assault by strangulation and violations of restraining orders.

New and Amended Crime Legislation (p. 37) – The 2011 Legislature created criminal penalties for the sale and possession of a controlled substance analog, which is defined as a Schedule I controlled substance. The Commission maintained the severity level rankings for all applicable crimes involving Schedule I controlled substances. After considering amendments made by the 2011 Legislature to existing crimes, including expanded definitional statements and expansions in the scope of certain offenses, the Commission maintained their current severity level rankings as well.

Non-Legislative Modifications (p. 40) – The Commission added language to the guidelines to clarify that the assignment of a custody status point should be consistent for felons, non-traffic gross misdemeanants, and misdemeanor offenders convicted of a Targeted Misdemeanor offense. The Commission also added stalking and possessing a dangerous weapon to a list of offenses for which the Commission determined a mandatory minimum prison sentence always applies.

Staff Activities (p. 41) – The staff performed the following activities: trained 250 practitioners in six traditional classroom trainings held throughout the state and nearly 300 more statewide in a single quarter via on-line training; provided 51 fiscal impact statements for introduced legislation; worked with Department of Corrections to generate prison bed projections; served on various criminal justice boards, forums and committees; processed and ensured the accuracy of over 14,000 sentencing records; published annual guidelines and commentary; and provided reports on sentencing practices.

County Attorney Firearms Reports (p. 43) – County Attorneys collect and maintain information on crimes for which a defendant is alleged to have possessed or used a firearm. The Commission is required to include in its annual report a summary and analysis of the reports received. Since the mandate began, the average number of cases has been 700.

2010 Sentencing Practices Data Summary

The following data summarizes information about sentencing practices and case volume and distribution. The recommended sentence under the guidelines is based primarily on the severity of the offense of conviction and secondarily on the offender's criminal record. The majority of offenders receive the recommended sentence.

Sentencing practices are very closely related to the recommended guideline sentence. It is very important, therefore, to be aware of the effect of differences in offense severity and criminal history when evaluating sentencing practices. This is particularly important when comparing groups of offenders (e.g. by gender, race/ethnicity and judicial district). For example, if in a particular district the proportion of serious person offenders is fairly high, the imprisonment rate for that district will likely be higher than for districts with predominantly lower severity level offenses.

Case Volume

There were 14,311 felony offenders sentenced in 2010; a decrease of 3.6 percent from the number sentenced in 2009. Figures 1 and 2 illustrate a large growth in the number of offenders sentenced for felony convictions between 2001 and 2006. This growth can be attributed to the implementation of the felony driving while impaired (DWI) law and increases in the number of drug crimes sentenced, particularly methamphetamine cases. Both trends appear to have leveled off.

The decrease in volume for felony sentences is likely related to an overall decrease in reported crime. Data published by the Minnesota Department of Public Safety indicates that the overall crime rate for "index crimes"[2] has fluctuated since 1981, but has decreased for the last four years. The 2010 rate of 2,797 crimes per 100,000 in population represents a decrease of 3.4 percent from the 2009 rate. In 2010, there were 12,661 reported violent crimes in Minnesota, a decrease of almost three percent from the 13,036 violent crimes reported in 2009.

[2] Index crimes are Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny, Motor Vehicle Theft, and Arson. *2010 Uniform Crime Report, p. 10.*

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2010

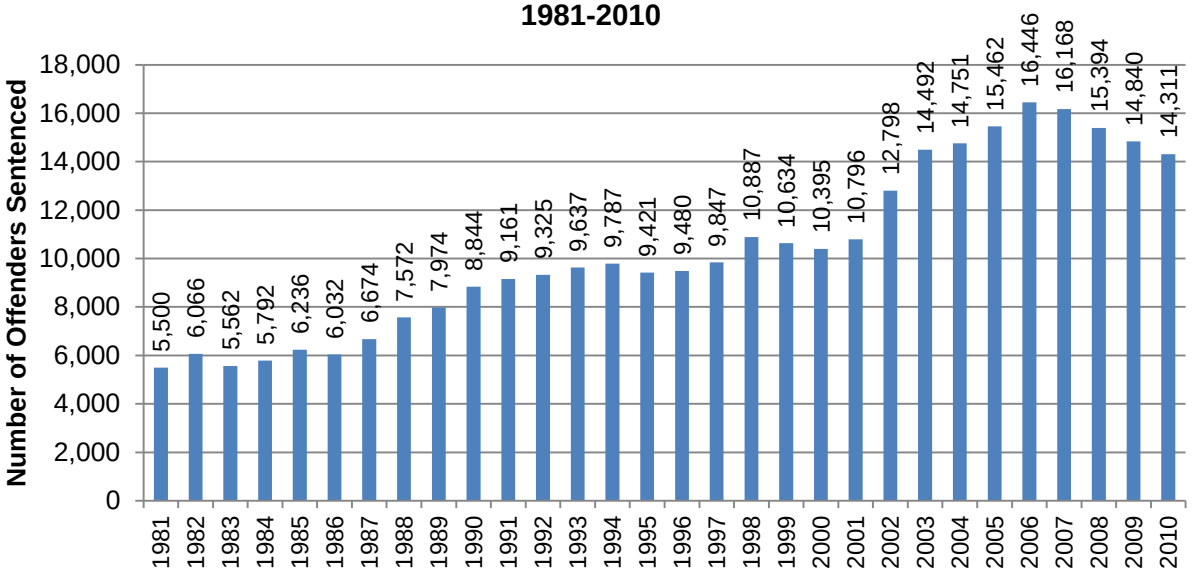


Figure 2. Percent Change in Number of Offenders Sentenced for Felony Convictions: 1982-2010

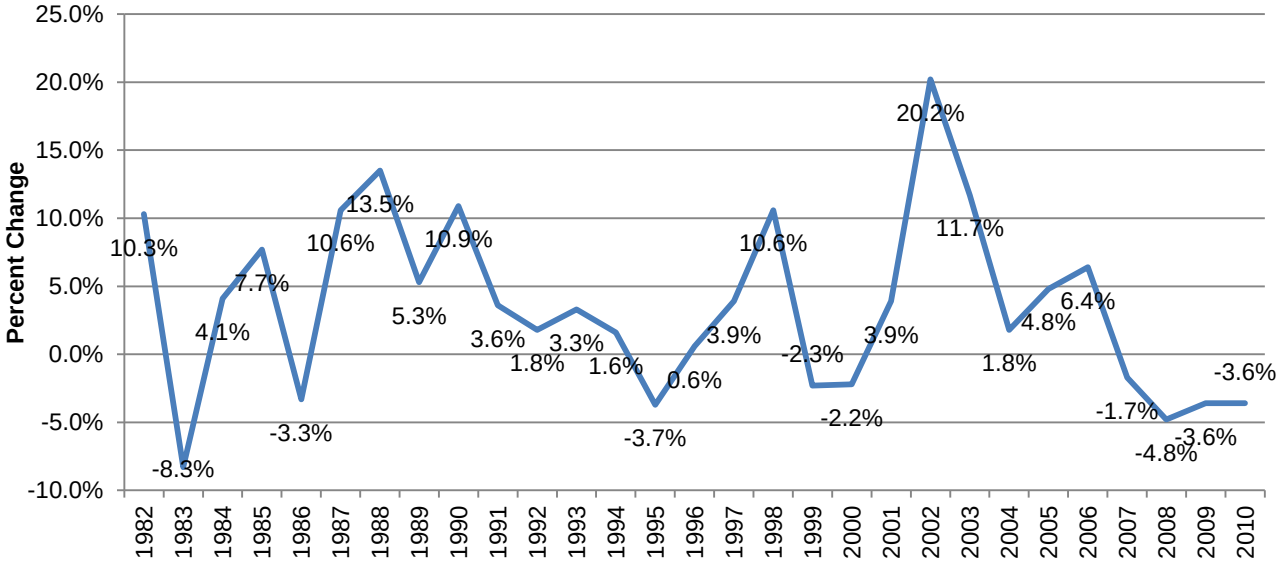
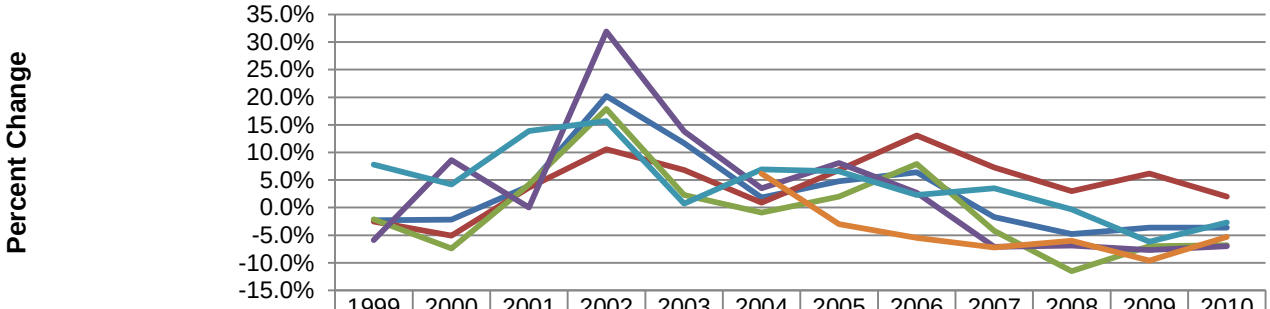


Figure 3. Percent Change by Offense Type: 1999-2010 (Felony DWI and Non-Person Sex Offenses Separated from "Other" Category)



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total (All Offenses)	-2.3%	-2.2%	3.9%	20.2%	11.7%	1.8%	4.8%	6.4%	-1.7%	-4.8%	-3.6%	-3.6%
Person	-2.5%	-5.1%	3.6%	10.6%	6.8%	0.9%	6.8%	13.1%	7.3%	3.0%	6.2%	2.0%
Property	-2.1%	-7.4%	4.2%	17.9%	2.3%	-0.9%	2.0%	7.9%	-4.2%	-11.5%	-7.0%	-6.8%
Drug	-5.9%	8.6%	0.0%	31.9%	13.8%	3.5%	8.1%	2.7%	-7.1%	-6.9%	-7.7%	-7.0%
Other	7.8%	4.2%	13.9%	15.7%	0.7%	6.9%	6.6%	2.3%	3.5%	-0.3%	-6.2%	-2.7%
Other (Felony DWI*)						6.2%	-3.0%	-5.5%	-7.2%	-6.0%	-9.6%	-5.3%
Other (Non-Person Sex Offenses**)												3.1%

*Felony DWI went into effect August 1, 2002. Since 2003 was the first full year in which this offense existed, percent change for this category is only provided for 2004 and beyond.

**Category created in 2010 for sex offenses without a direct victim (failure to register as a predatory offender and possession and dissemination of child pornography). These offenses are excluded from the percent change calculation between 2009 and 2010 for the "other" category.

Change in Case Volume by Offense Type

Figure 3 shows the percent change, by offense type, in the number of offenders sentenced between 1999 and 2010.

- Person Offenses

Sentencing for person crimes has increased every year since 2001. In 2010, the number of offenders sentenced for person crimes increased by two percent, which follows a growth rate of six percent in 2009, three percent in 2008, over 7 percent in 2007, and 13 percent in 2006 (Figure 3). As a proportion of total crimes sentenced in 2010, person offenses accounted for approximately 32 percent of the offenses, which is the highest percentage since the guidelines went into effect (Figure 4). Much of this growth can be attributed to the increase in certain domestic assault-related offenses, including domestic assault, domestic assault by strangulation, and violations of restraining orders. The growth in the number of offenders sentenced for violations of domestic abuse no contact orders (VDANCO) (50.6%) and violations of harassment restraining orders (VHRO) (64.9%) was particularly striking. For a more detailed discussion of the growth in domestic assault and restraining order offenses, please see the Domestic Assault-Related section of this report (pp. 34-36) and the full report entitled *Assault Offenses & Violations of Restraining Orders Sentenced in 2010*, which is available on the MSGC website (http://www.msgc.state.mn.us).

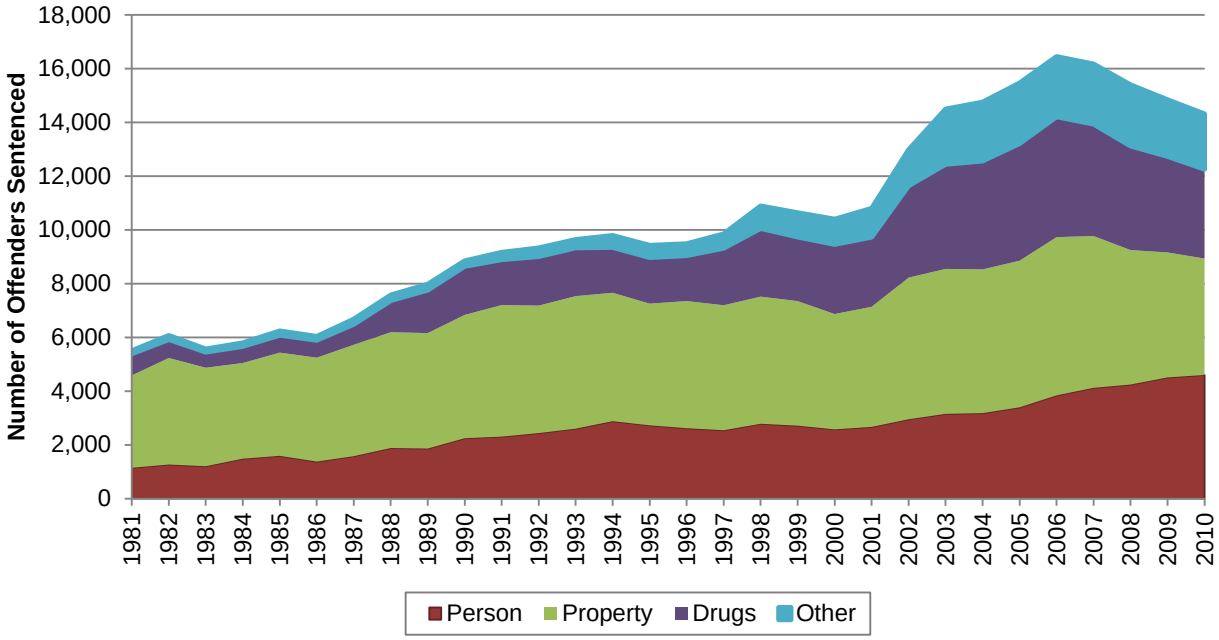
- Drug Offenses

Sentencing for drug offenses, which had increased dramatically in 2002 (up 31.9%) and 2003 (up 13.8%), has been steadily declining since 2007. In 2010, the number of drug offenders sentenced was down by 7 percent (Figure 3). As a proportion of total crimes sentenced, drug offenses have been decreasing since 2006 (Figure 4). In 2010, the proportion of offenders sentenced for drug offenses fell to 23 percent for the first time since 1999.

- Other Offenses (Including Felony DWI)

In 2010, the “other” offense category was separated so that data about felony DWI and non-person sex offenses (e.g., failure to register as a predatory offender or possession and dissemination of child pornography) could be analyzed separately. In 2010, the number of offenders sentenced for felony DWIs decreased by five percent. Overall, there was a three percent increase in the number of offenders in the non-person sex offense category. Although failure to register decreased by 25 offenders; pornography offenses increased by 38 offenders (from 57 to 95). Of the remaining offenses in the “other” category, there was a nearly three percent decrease in the number of offenders sentenced for these crimes (Figure 3).

Figure 4. Volume of Offenders Sentenced by Offense Type: 1981-2010



Offense Type		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Person	#	2,667	2,951	3,152	3,180	3,396	3,841	4,121	4,244	4,509	4,599
	%	24.7	22.7	21.7	21.6	22.0	23.4	25.5	27.6	30.4	32.1
Property	#	4,470	5,271	5,395	5,349	5,455	5,888	5,650	5,003	4,651	4,334
	%	41.1	40.6	37.2	36.3	35.3	35.8	34.9	32.5	31.3	30.3
Drug	#	2,596	3,424	3,896	4,038	4,366	4,485	4,167	3,878	3,578	3,326
	%	24.0	26.4	26.9	27.4	28.2	27.3	25.8	25.2	24.1	23.2
Other –	#	1,063	1,332	2,049	2,184	2,245	2,232	2,230	2,269	2,102	952
	%	9.8	10.3	14.1	14.8	14.5	13.6	13.8	14.7	14.2	6.7
Felony DWI	#										667
	%										4.7
Non-Person Sex Offense	#										433
	%										3.0
Total Number		10,796	12,978	14,492	14,751	15,462	16,446	16,168	15,394	14,840	14,311

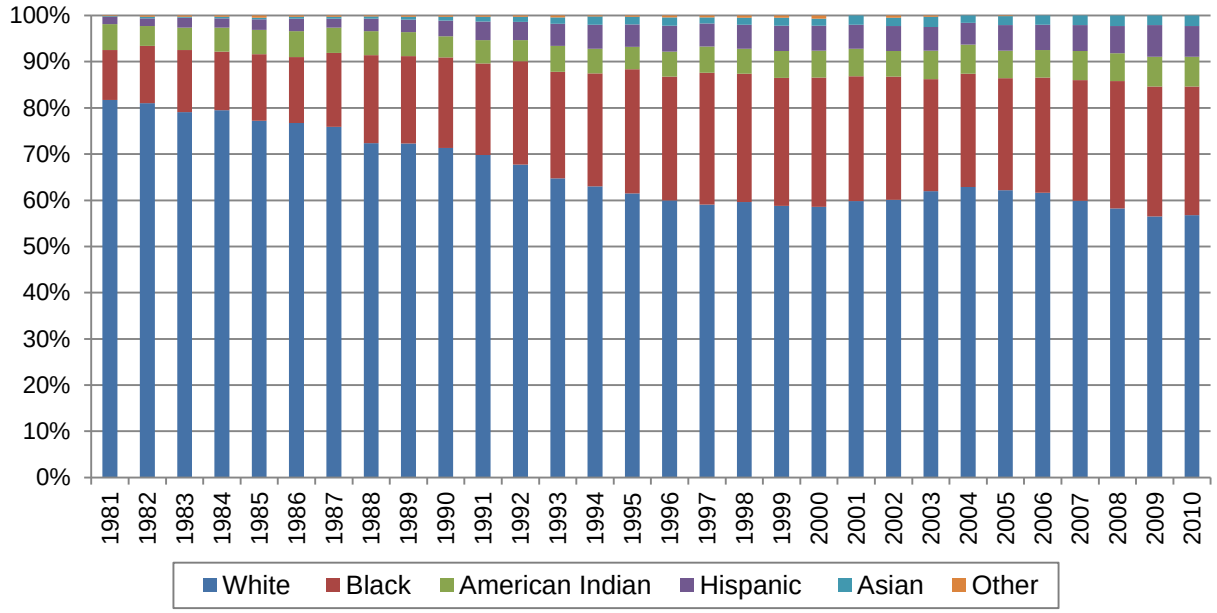
Distribution of Offenders by Race and Judicial District

Figure 5 shows the racial composition of the felony offender population from 1981 through 2010. The percentage of offenders who are white has decreased by roughly 20 percent since 1981. This is largely due to an increase in the number of black offenders, though the number of Hispanic offenders has also increased.

Figure 6 displays the 2010 distribution of the racial composition by judicial district. After white offenders, black offenders represent the largest racial group. The largest populations of black offenders are in the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County), which include the Metropolitan areas of St. Paul and Minneapolis.

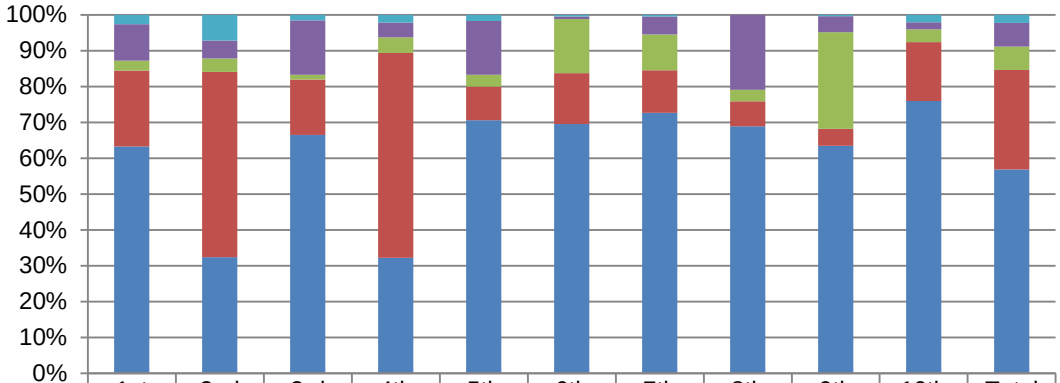
For comparison purposes, Figure 7 illustrates the 2010 U. S. Census summary data for Minnesota's total population of people ages 18 years and over.[3] Approximately 86.1 percent of Minnesota's population is white. The composition of the remaining 13.9 percent is as follows: 4.3 percent black; 3.7 percent Hispanic; 3.6 percent Asian; 1.0 percent American Indian; and roughly 1.2 percent who identify themselves with two or more races, another race, or as Pacific Islander ("Other"). These figures vary by judicial district. (See, page 49, for a map of Minnesota's ten judicial districts.)

Figure 5. Distribution of Felony Offenders by Race: 1981-2010



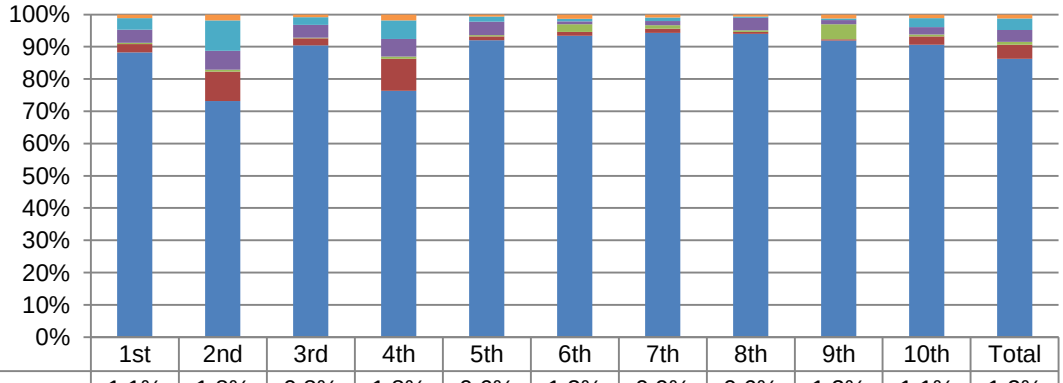
[3] U.S. Census Bureau, Census Summary File 1, Table P11.

Figure 6. 2010 Distribution of Felony Offenders by Race and Judicial District



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	Total
Asian	2.6%	7.2%	1.6%	2.2%	1.7%	0.5%	0.5%	0.0%	0.4%	2.1%	2.3%
Hispanic	10.2%	5.0%	15.2%	4.1%	15.0%	0.7%	5.0%	20.9%	4.5%	2.0%	6.6%
American Indian	2.8%	3.7%	1.3%	4.4%	3.3%	15.1%	10.0%	3.2%	27.0%	3.5%	6.5%
Black	21.2%	51.7%	15.5%	57.2%	9.4%	14.2%	11.9%	7.0%	4.7%	16.4%	27.8%
White	63.3%	32.3%	66.6%	32.2%	70.6%	69.6%	72.6%	68.8%	63.5%	75.9%	56.8%

Figure 7. 2010 Distribution of Minnesota Population by Race and Judicial District



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	Total
Other	1.1%	1.8%	0.8%	1.8%	0.6%	1.3%	0.9%	0.6%	1.2%	1.1%	1.2%
Asian	3.6%	9.5%	2.4%	5.8%	1.6%	0.8%	1.1%	0.4%	0.5%	2.8%	3.6%
Hispanic	4.1%	5.8%	4.0%	5.4%	4.2%	0.9%	1.3%	3.9%	1.3%	2.3%	3.7%
American Indian	0.4%	0.6%	0.2%	0.7%	0.4%	2.4%	1.1%	0.5%	4.7%	0.6%	0.9%
Black	2.6%	9.2%	2.2%	9.9%	1.2%	1.2%	1.3%	0.6%	0.4%	2.6%	4.3%
White	88.2%	73.2%	90.4%	76.3%	91.9%	93.4%	94.0%	94.0%	92.0%	90.7%	86.1%

Incarceration by Race and Judicial District

Under Minn. Stat. § 609.02, a felony sentence must be at least 366 days long. Sentences of one year or less are gross misdemeanors or misdemeanors and are served in local correctional facilities. The sentencing guidelines establish which offenders should receive a prison sentence and for how long. Imprisonment rates are related to the guideline recommendations and are based on the seriousness of the offense and the offender's criminal history score. In cases where prison sentences are stayed, the judge usually places the offender on probation. As a condition of probation, the court can impose up to one year of incarceration in a local correctional facility, such as a jail or workhouse. Probationers usually serve time in a local facility and are often given intermediate sanctions such as treatment (residential or nonresidential), restitution, and fines.

When comparing imprisonment rates across various groups (sex, race or judicial district) it is important to note that much of the variation is directly related to the proportion of offenders in any particular group who are recommended a prison sentence by the guidelines based on the severity of the offense and the offender's criminal history.

Table 1, below, provides total incarceration information for offenders sentenced in 2010. The total incarceration rate describes the percentage of offenders who received a sentence that included incarceration in a state prison or local facility, such as a jail or workhouse, following conviction.

- Race

The total incarceration rate varies across racial groups (ranging from 80.7% for Hispanic offenders to 88.8% for black offenders). However, there is greater variation by race in the separate rates for prison and local confinement. For example, white offenders received prison sentences at the lowest rate (21.2%) whereas black offenders were imprisoned at the highest rate (32.9%).

- Judicial District

Variation was also observed in incarceration rates by judicial district. The Second Judicial District, which includes the St. Paul metropolitan area, had the highest total incarceration rate (92.7%) and the Third Judicial District, which includes Rochester, had the lowest total incarceration rate (72.1%). This variation continues with respect to the separate rates for prison and local confinement. For example, the Fourth Judicial District, which includes the Minneapolis metropolitan area, had the highest imprisonment rate (31.5%) and the Sixth Judicial District, which includes Duluth, had the lowest rate (18.1%). With regard to use of local confinement, the Tenth Judicial District had the highest rate (69.5%) and the Third Judicial District had the lowest rate (48.3%).

Table 1. Total Incarceration Rates by Gender, Race / Ethnicity, and Judicial District

		Total Cases	Total Incarceration		Prison		Local Confinement	
			#	%	#	%	#	%
Gender	Male	11,926	10,365	86.9%	3,378	28.3%	6,987	58.6%
	Female	2,385	1,862	78.1%	262	11.0%	1,600	67.1%
Race/ Ethnicity	White	8,125	6,828	84.0%	1,724	21.2%	5,104	62.8%
	Black	3,975	3,530	88.8%	1,306	32.9%	2,224	55.9%
	American Indian	934	815	87.3%	283	30.3%	532	57.0%
	Hispanic	946	763	80.7%	255	27.0%	508	53.7%
	Asian	331	291	87.9%	72	21.8%	219	66.2%
	Other	0	0	0.0%	0	0.0%	0	0.0%
Judicial District	First	1,762	1,446	82.1%	336	19.1%	1,110	63.0%
	Second	1,794	1,663	92.7%	529	29.5%	1,134	63.2%
	Third	1,346	970	72.1%	320	23.8%	650	48.3%
	Fourth	2,987	2,608	87.3%	942	31.5%	1,666	55.8%
	Fifth	700	582	83.1%	147	21.0%	435	62.1%
	Sixth	861	675	78.4%	156	18.1%	519	60.3%
	Seventh	1,393	1,271	91.2%	421	30.2%	850	61.0%
	Eighth	401	349	87.0%	124	30.9%	225	56.1%
	Ninth	1,098	906	82.5%	276	25.1%	630	57.4%
	Tenth	1,969	1,757	89.2%	389	19.8%	1,368	69.5%
Overall		**14,311**	**12,227**	**85.4%**	**3,640**	**25.4%**	**8,587**	**60.0%**

Average Pronounced Prison Sentences

The average length of a state prison sentence has fluctuated over time (Table 2). Numerous changes in sentencing practices and policies, as well as changes in the distribution of cases, can affect the average. The average prison sentence increased after 1989. It has fluctuated up and down in the high 40s to low 50s since then. The substantial increase in the average prison sentence after 1989 was due to both the increased presumptive sentences adopted by the commission in 1989 and, until recent years, an increase in the number of upward durational departures.

Average Pronounced Local Confinement

The average amount of local confinement pronounced as a condition of probation has remained largely constant since 1988. The average was 110 days in 2010 compared to 107 days in 2009, and 109 days in both 2008 and 2007 (Table 3).

Table 2. Average Pronounced Prison Sentence

Executed Prison Sentences (in months)

2010	46.5
2009	42.8
2008	45.0
2007	44.8
2006	44.8
2005	45.7
2004	45.1
2003	51.2
2002	47.2
2001	49.8
2000	49.7
1999	47.9
1998	47.0
1997	44.5
1996	47.4
1995	48.5
1994	51.3
1993	46.9
1992	48.6
1991	45.2
1990	45.7
1989	37.7
1988	38.1
1987	36.3
1986	35.4
1985	38.4
1984	36.2
1983	36.5
1982	41.0
1981	38.3

Table 3. Average Pronounced Local Confinement

Local Confinement Time (in days)

2010	110
2009	107
2008	109
2007	109
2006	111
2005	110
2004	112
2003	112
2002	106
2001	105
2000	104
1999	103
1998	107
1997	107
1996	107
1995	108
1994	113
1993	112
1992	109
1991	106
1990	110
1989	110
1988	108
1987	116
1986	113
1985	120
1984	126
1983	132
1982	144
1981	166

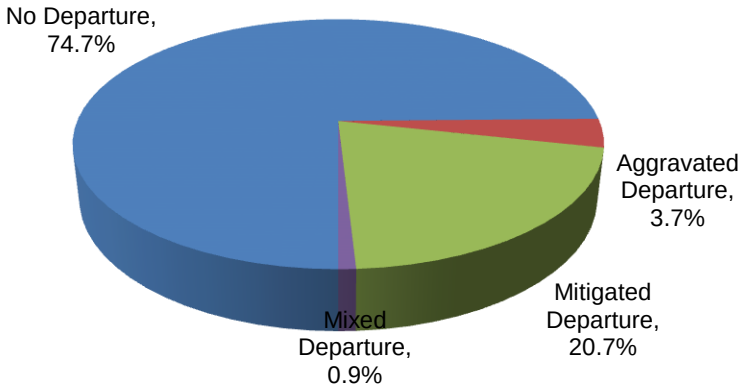
Departures from the Sentencing Guidelines

Judges may depart from the sentencing guidelines when substantial and compelling circumstances exist. It should be noted that the presumptive sentence is based on "the typical case," and the appropriate use of departures by the courts when substantial and compelling circumstances exist actually enhances the proportionality of sentences under the guidelines.

It is also important to recognize that while the judge ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision. Probation officers make recommendations to the judge regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence. Ultimately, only a small percent of all cases sentenced (1% to 2%) result in an appeal of the sentence.

In 2010, 75 percent of all felony offenders sentenced received the presumptive guidelines sentence. The remaining 25 percent received some type of departure (Figure 8).

Figure 8. Overall Departure Rates



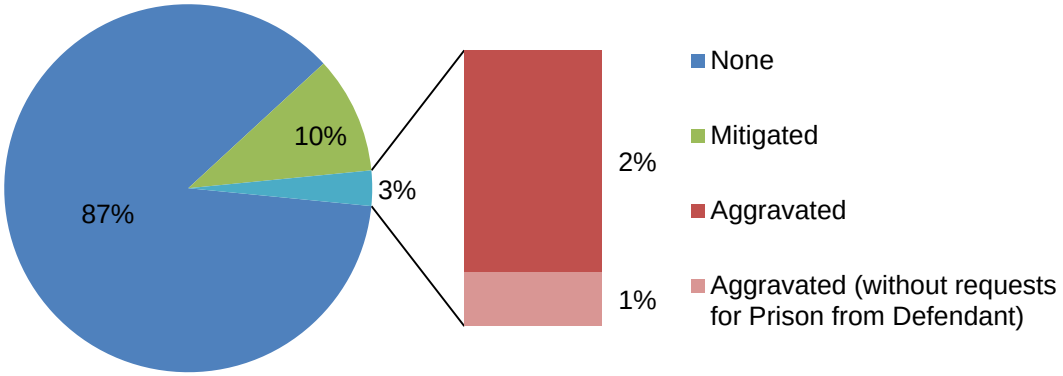
Dispositional Departures

A disposition refers to the decision to send an offender to state prison or to place the offender on probation (usually with some time in a local facility, such as a jail or workhouse, pronounced as a condition of that probation). A dispositional departure occurs when the court orders a disposition other than that recommended in the guidelines. Overall, 1,921 offenders (13.4%) received a dispositional departure from the guidelines (Figure 9).

Aggravated dispositional departures occur when the guidelines recommend a stayed sentence and the judge chooses to pronounce a prison sentence instead. In 444 cases (3.1%), the offenders received prison when the guidelines recommended probation (Figure 9).

Most aggravated dispositional departures occur when an offender with a presumptive stayed sentence requests an executed prison sentence or agrees to the departure as part of a plea agreement. This request is usually made in order for the offender to serve the sentence concurrently with another prison sentence. The commission has generally included these cases in the departure figures because, for the given offense, the sentence is not the presumptive guidelines sentence. As a measure of judicial compliance with the guidelines, however, the inclusion of these cases inflates the overall dispositional departure rate to 13 percent and the aggravated dispositional departure rate to three percent. However, if requests for prison are not included in the analysis, the aggravated dispositional departure rate is just one percent (Figure 9, Inset).

Figure 9. Dispositional Departures with and without Requests for Prison from Defendant



Mitigated dispositional departures occur when the guidelines recommend prison and the judge decides to stay the sentence (often including the imposition of intermediate sanctions such as local incarceration, community work service, treatment, financial sanctions, etc.). In 2010, approximately ten percent of the overall cases sentenced had mitigated dispositional departures (Figure 9). In 51 percent of the mitigated dispositional departures, the court reported that there was a plea agreement for the departure. In another 12 percent of the mitigated dispositional departures, the court reported that the prosecutor recommended the departure or did not object to the departure.

Mitigated Dispositional Departures by Gender, Race and Judicial District

Table 4 displays the overall dispositional departure rate as well as the rates broken out by gender, race, and judicial district. It also displays the mitigated dispositional departure rates for those offenders for whom the presumptive sentence was prison. The mitigated dispositional departure rate is lower for women (7.8%) than men (10.8%). When examined by racial composition, the rate ranged from a low of 8.4 percent for Hispanic offenders to a high of 11.8 percent for Asian offenders. There was also a great deal of variation in the mitigated dispositional departure rate by judicial district, ranging from lows of 5.7 percent and 7.6 percent in the Eighth and Third judicial districts, respectively, to a high of 13.3 percent in the Fourth Judicial District (Table 4). In 2010, the mitigated dispositional departure rate for offenders recommended prison under the sentencing guidelines was just under 32 percent (1,477of the 4,673 offenders recommended prison) (Table 4). When viewing the information in Table 4, it is important to note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across racial groups or across regions, and differences in the criminal history scores of offenders across racial groups or across regions.

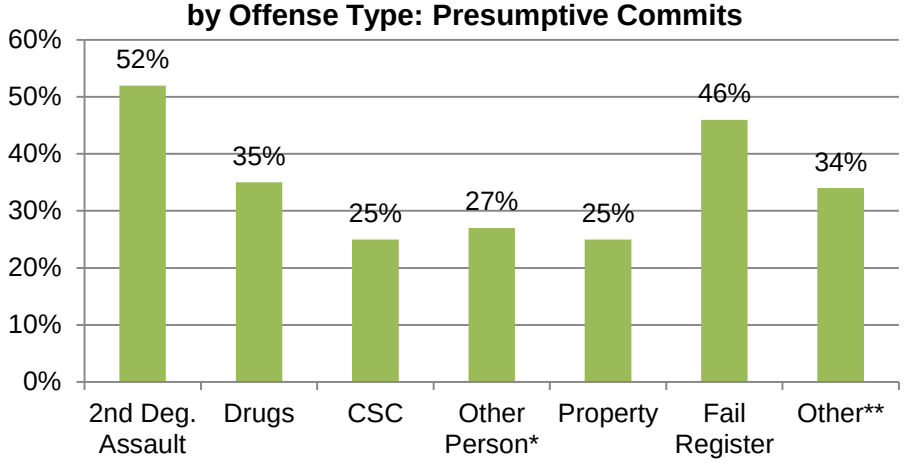
Table 4. Dispositional Departure Rates for All Cases and for Presumptive Commitments by Gender, Race, and Judicial District

	All Cases								Presumptive Commits		
	Total Cases	Total Disp. Dep. Rate	No Departure		Aggravated		Mitigated		Number Pres. Commit	Mitigated	
			#	%	#	%	#	%		#	%
Male	11,926	14.0%	10,262	86.0%	372	3.1%	1,292	10.8%	4,298	1,292	30.1%
Female	2,385	10.8%	2,128	89.2%	72	3.0%	185	7.8%	375	185	49.3%
White	8,125	13.1%	7,063	86.9%	271	3.3%	791	9.7%	2,244	791	35.2%
Black	3,975	14.2%	3,411	85.8%	104	2.6%	460	11.6%	1,662	460	27.7%
American Indian	934	15.6%	788	84.4%	38	4.1%	108	11.6%	353	108	30.6%
Hispanic	946	10.8%	844	89.2%	23	2.4%	79	8.4%	311	79	25.4%
Asian	331	14.2%	284	85.8%	8	2.4%	39	11.8%	103	39	37.9%
First	1,762	14.5%	1,507	85.5%	49	2.8%	206	11.7%	493	206	41.8%
Second	1,794	10.2%	1,611	89.8%	42	2.3%	141	7.9%	628	141	22.5%
Third	1,346	11.1%	1,196	88.9%	48	3.6%	102	7.6%	374	102	27.3%
Fourth	2,987	16.3%	2,501	83.7%	90	3.0%	396	13.3%	1,248	396	31.7%
Fifth	700	14.4%	599	85.6%	25	3.6%	76	10.9%	198	76	38.4%
Sixth	861	14.5%	736	85.5%	15	1.7%	110	12.8%	251	110	43.8%
Seventh	1,393	12.2%	1,223	87.8%	56	4.0%	114	8.2%	479	114	23.8%
Eighth	401	10.2%	360	89.8%	18	4.5%	23	5.7%	129	23	17.8%
Ninth	1,098	16.2%	920	83.8%	54	4.9%	124	11.3%	346	124	35.8%
Tenth	1,969	11.8%	1,737	88.2%	47	2.4%	185	9.4%	527	185	35.1%
Totals	**14,311**	**13.4%**	**12,390**	**86.5%**	**444**	**3.1%**	**1,477**	**10.3%**	**4,673**	**1,477**	**31.6%**

Mitigated Dispositional Departures by Offense Type

In addition to examining overall departure rates, it can be helpful to look at dispositional departure rates by offense type. Figure 10 displays the mitigated dispositional departure rates for the overall offense types (e.g., drugs) and specific offenses (e.g., second-degree assault) for which mitigated dispositional departures are most frequently observed. Second-degree assault and failure to register incurred the highest percentages of mitigated dispositional departures (52% and 46%, respectively). In all offense categories, amenability to probation and amenability to treatment were the most frequently cited reasons for departure.

Figure 10. Mitigated Dispositional Departure Rates by Offense Type: Presumptive Commits



* Includes person offenses beyond second-degree assault and CSC offenses.
** Offenses in the "Other" category with more than 10 cases: felon in possession of a firearm, felony DWI, fleeing police, escapes, possession of child pornography and accomplice after the fact.

Durational Departures

The guidelines recommend an appropriate length of incarceration for those offenders who receive an executed prison sentence. Just as the presumptive disposition is determined by the severity level of the conviction offense and the criminal history score of the offender, the recommended duration is also determined by these same factors.

The guidelines provide both a presumptive duration and a range of months around the presumptive duration that a judge may pronounce and still be within the guidelines. If the judge pronounces a prison sentence that is greater or less than the upper and lower ranges, this constitutes a departure and the sentencing judge must cite the substantial and compelling circumstances that warranted the durational departure. In 70 percent of the mitigated durational departures, the court reported that there was a plea agreement for the departure. In another six percent of the mitigated durational departures, the court reported that the prosecutor recommended the departure or did not object to the departure.

Table 5 illustrates durational departure rates for executed prison sentences by gender, race, and judicial district. As a percentage, males receive more durational departures than females (26.6% vs. 19.1%). When the mitigated durational departure rate is examined by racial composition, the rate varies from a low of 17.7 percent for American Indian offenders to a high of 30.9 percent for black offenders. There is also considerable variation in mitigated durational departure rates by judicial district, ranging from a low of 5.6 percent in the Eighth Judicial District to a high of 40.2 percent in the Fourth Judicial District.

When viewing the information in Table 5, it is important to note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across racial groups or across regions, and differences in the criminal history scores of offenders across racial groups or across regions.

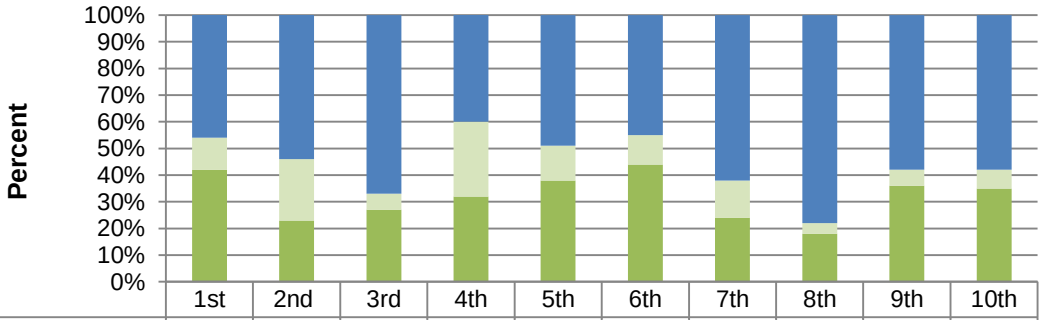
Table 5. Durational Departure Rates for Executed Prison Sentences by Gender, Race, and Judicial District

		Executed Prison Sentences Only							
		# Executed Prison	Total Dur. Dep. Rate	No Departure		Aggravated		Mitigated	
				#	%	#	%	#	%
Gender	Male	3,378	26.6%	2,481	73.4%	108	3.2%	789	23.4%
	Female	262	19.1%	212	80.9%	5	1.9%	45	17.2%
Race/ Ethnicity	White	1,724	20.9%	1,364	79.1%	46	2.7%	314	18.2%
	Black	1,306	34.2%	859	65.8%	43	3.3%	404	30.9%
	American Indian	283	22.6%	219	77.4%	14	4.9%	50	17.7%
	Hispanic	255	21.6%	200	78.4%	4	1.6%	51	20.0%
	Asian	72	29.2%	51	70.8%	6	8.3%	15	20.8%
Judicial District	First	336	24.7%	253	75.3%	14	4.2%	69	20.5%
	Second	529	30.1%	370	69.9%	7	1.3%	152	28.7%
	Third	320	9.4%	290	90.6%	4	1.3%	26	8.1%
	Fourth	942	45.1%	517	54.9%	46	4.9%	379	40.2%
	Fifth	147	21.8%	115	78.2%	2	1.4%	30	20.4%
	Sixth	156	19.2%	126	80.8%	1	0.6%	29	18.6%
	Seventh	421	20.0%	336	79.8%	12	2.9%	73	17.3%
	Eighth	124	8.1%	114	91.9%	3	2.4%	7	5.6%
	Ninth	276	12.7%	241	87.3%	12	4.3%	23	8.3%
	Tenth	389	14.9%	331	85.1%	12	3.1%	46	11.8%
Overall		**3,640**	**26.0%**	**2,693**	**74.0%**	**113**	**3.1%**	**834**	**22.9%**

Overall Mitigated Departures by Judicial District

Also worth examining more closely are overall mitigated departure rates by judicial district. The likelihood of an offender receiving a departure varies widely across the state. Figure 11 shows the percentage of offenders with presumptive prison sentences who received mitigated dispositional and mitigated durational departures by judicial district. The portion of offenders who received the presumptive sentence ranged from 41 percent in the Fourth Judicial District to 78 percent in the Eighth Judicial District. When viewing the information in Figure 11, it is important to note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across regions, and differences in the criminal history scores of offenders across regions.

Figure 11. Mitigated Departures by Judicial District: Presumptive Prison Cases



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
Presumptive	47%	55%	67%	41%	49%	45%	62%	78%	58%	58%
Mitigated Duration (Less Prison Time)	12%	23%	6%	28%	13%	11%	14%	4%	6%	7%
Mitigated Disposition	42%	23%	27%	32%	38%	44%	24%	18%	36%	35%

Criminal Sexual Conduct Offenses

Sex Offense Statutes: General Structure

Under Minnesota law, sex offenses are categorized into five degrees of criminal sexual conduct (CSC), with first-degree being the most serious. The classification of offenses into degrees is based on a combination of factors:

- whether the offense involved sexual penetration or contact;
- the age of the victim;
- the relationship of the offender to the victim (e.g., position of authority, significant relationship, psychotherapist, etc.);
- the degree of injury or threat of injury;
- whether a weapon was involved; and
- whether force or coercion was involved.

Most of the provisions of first-degree criminal sexual conduct involve penetration and personal injury, fear of great bodily harm, or the use of a dangerous weapon. First-degree also includes offenses involving young children, regardless of whether or not any injury, force or weapons were involved. Second-degree offenses are similar, but involve sexual contact rather than penetration. Effective August 1, 1995, some sexual contact offenses were also categorized as first-degree offenses. These offenses involve the more serious forms of sexual contact with victims who are under the age of 13, as defined in Minn. Stat. § 609.341, subdivision 11.

Third-degree offenses involve penetration and focus on children who are slightly older, and on cases in which there was force or coercion. The use of a weapon or the threat of great bodily harm is not a necessary element of the offense. Third-degree offenses also include cases involving psychotherapists, health professionals, clergy and correctional employees. Fourth-degree offenses are similar, except that they involve sexual contact rather than penetration. There are some felony-level, fifth-degree offenses. They involve repeat violations of gross misdemeanor indecent exposure offenses involving minors.

Life Sentences for Certain Sex Offenders

Since 2005, the Legislature has provided for life sentences in cases in which an individual's criminal behavior is so egregious that public safety demands it be possible to incarcerate them for much, and possibly all, of their lives (See, Minn. Stat. § 609.3455, subdivision 2). Sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the sentencing guidelines, because by law the sentence is mandatory imprisonment for life.

Sentencing Guidelines for Sex Offenders

All first-degree CSC offenses are ranked at a severity level where all offenders are recommended prison sentences, regardless of their criminal history score. Until August 1, 2000, the length of the recommended sentence for first-degree penetration cases ranged from 86 months (at a criminal history score of zero) to 158 months (at a score of six). For first-degree contact cases, the length of the recommended sentence ranged from 48 months (at a criminal history score of zero) to 108 months (at a score of six). On August 1, 2000, due to a legislative mandate, the presumptive sentence for all completed first-degree offenses increased to at least 144 months. Of the 140 completed first-degree penetration cases sentenced in 2010, 132 (94%) had offense dates after August 1, 2000, and, therefore, had a presumptive sentence of at least 144 months.

For the other degrees, the assigned severity level depends on the statute of conviction. In general, provisions involving force are ranked at higher severity levels. Second- and third-degree offenses involving force are ranked a severity level in which all offenders are recommended prison, regardless of the offender's criminal history score. Second-degree offenses that involve force or violence became subject to a statutorily-defined 90-month presumptive sentence, effective May 22, 2002.

Presumptive Sentences over Time

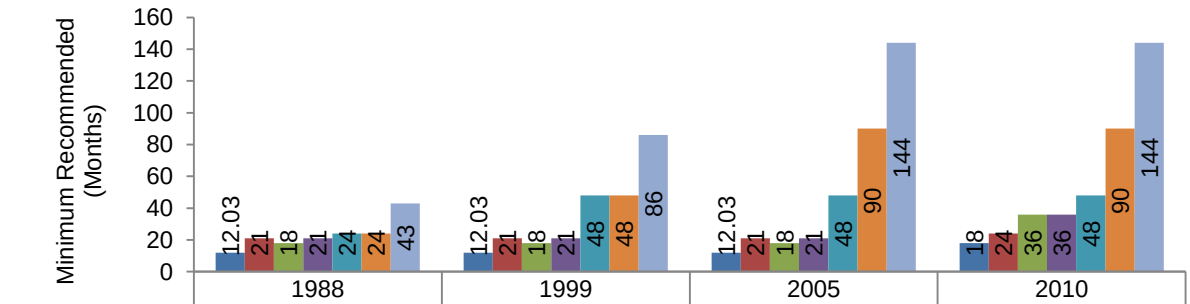
A sex offender grid was adopted by the Commission and went into effect for offenses committed on or after August 1, 2006. At that time, all first-degree completed offenses increased to a range between 144 months and 360 months. The sex offender grid does not distinguish between first-degree contact and penetration cases; they are all ranked at the same severity level.

Second-degree force offenses are ranked at severity level B on the sex offender grid and have presumptive sentences that range from 90 months to 300 months. The third-degree force offenses are ranked at severity level C on the sex offender grid and have presumptive sentences that range from 48 months to 180 months.

Second and third-degree offenses not involving force and fourth-degree offenses are ranked at severity levels where some offenders are recommended probation based on criminal history. Recommendations for prison begin at a criminal history score of two or three, depending on the offense (See, Sex Offender Grid, p. 58). Maximum recommended sentences range from 84 months to 140 months.

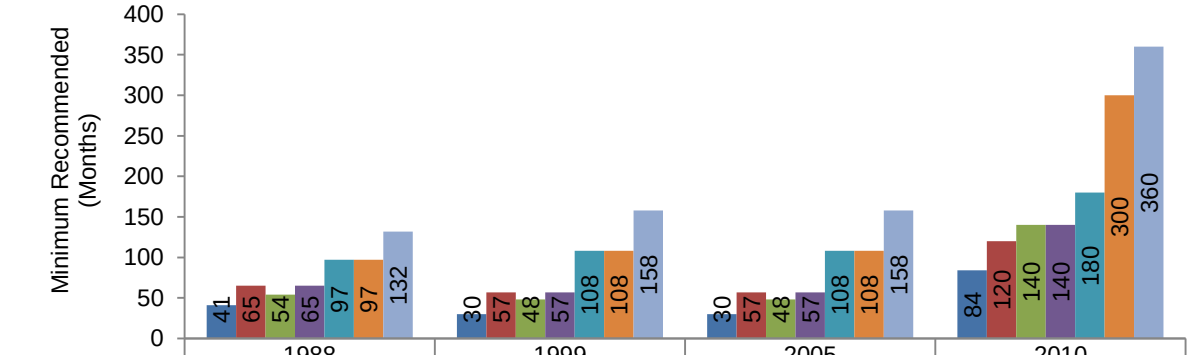
In addition to longer recommended sentences for offenders with criminal history scores greater than zero, the modified guidelines compute criminal history differently for sex offenses than for other offenses. The weights assigned to some prior sex offenses were increased, and repeat sex offenders who commit a sex offense while on probation or supervised release for a sex offense receive an extra custody status point. Figures 12 and 13 illustrate the changes to the presumptive sentences for sex offenders over time at criminal history scores zero and six.

**Figure 12. Minimum Presumptive Sentences by Degree over Time ± *
At Criminal History Score Zero**



	1988	1999	2005	2010
CSC 4-Minor*	12.03	12.03	12.03	18
CSC 4-Force*	21	21	21	24
CSC 3-Minor*	18	18	18	36
CSC 2-Minor*	21	21	21	36
CSC 3-Force	24	48	48	48
CSC 2-Force	24	48	90	90
CSC 1	43	86	144	144

**Figure 13. Maximum Presumptive Sentences by Degree over Time
At Criminal History Score Six**



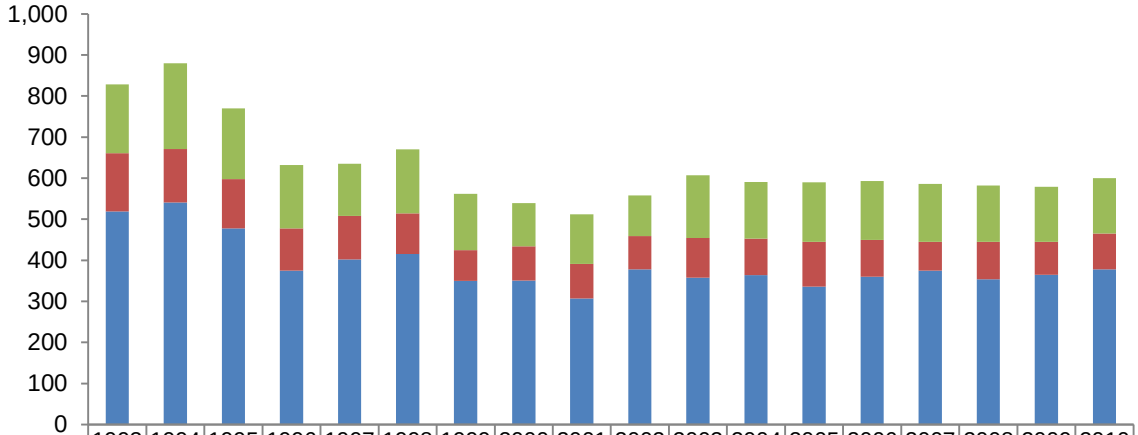
	1988	1999	2005	2010
CSC 4-Minor	41	30	30	84
CSC 4-Force	65	57	57	120
CSC 3-Minor	54	48	48	140
CSC 2-Minor	65	57	57	140
CSC 3-Force	97	108	108	180
CSC 2-Force	97	108	108	300
CSC 1	132	158	158	360

± 12.03 = 12 months and 1 day
* Presumptive sentence = stayed (probationary) sentence

Case Volume & Distribution

In 2010, 600 offenders were sentenced for CSC offenses, an increase of four percent from the number sentenced in 2009 (579).[4] As Figure 14 illustrates, the number of offenders sentenced for CSC offenses peaked in 1994 at 880 offenders. Since 2003, the number of offenders sentenced for criminal sexual conduct offenses had consistently ranged from 580-600.

Figure 14. Volume of Cases and Type of Offense: 1993-2010



	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Force / Other	167	209	172	154	127	156	137	105	121	99	153	138	145	143	141	137	134	135
IFSA	142	130	120	103	106	99	75	83	84	81	96	89	109	90	70	91	80	87
Other Child	519	541	478	375	402	415	350	351	307	378	358	364	336	360	375	354	365	378

The labels in Figure 14 have the following meanings:

- Force / Other: Force or a weapon was involved, or the offense involved abuse by a psychotherapist, health care professional, clergy member or members of other specified occupations. The provisions do not specify the age of the victim or the relationship of the offender to the victim. Some of the victims of these offenses are also children.

- IFSA (Intra-Familial Sex Abuse): Conviction under a subdivision that specifies that the offender had a significant relationship to the victim.

- Other Child: Conviction under a subdivision that specifies that the victim is a minor, but does not specify that there was a significant relationship. Subdivisions that specify that the offender was in a position of authority over the victim are included here because, in addition to parents, those offenses include persons acting in a position of authority.

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

Applicable Grid

Guideline 3.G. provides that modifications to the guidelines will be applied to offenders whose date of offense is on or after the specified modification effective date. Therefore, the sex offender grid enacted in 2006 is applicable only to offenders whose date of offense is on or after August 1, 2006. Of the 600 offenders sentenced in 2010 for criminal sexual conduct offenses, 511 (85%) were eligible to be sentenced on the sex offender grid. Seventy-six percent of first-degree offenders sentenced for completed offenses were eligible for sentencing on the sex offender grid. Table 6 provides a summary of cases by degree and applicable grid.

Table 6. Distribution of Cases by Degree, Severity Level and Applicable Grid

Degree	Statutory Provisions	Cases Sentenced on Standard Grid		Cases Sentenced on Sex Offender Grid		Total # of Cases Sentenced
		Severity Level	# Cases Sentenced	Severity Level	# Cases Sentenced	
First	Penetration: 609.342, all clauses	9	34 (24%)	A	109 (76%)	143
First	Contact: victims under 13 (def. in 609.341 subd.11)	8	0	A	0	0
Second	Contact with Force: 609.343 subd.1 c,d,e,f,h	8	10 (26%)	B	29 (74%)	39
Second	Contact with Minors: 609.343 subd.1 a,b,g	6	20 (20%)	D	82 (80%)	102
Third	Penetration: Force or Prohibited Occupation 609.344 subd.1 c, d, g-n	8	7 (13%)	C	48 (87%)	55
Third	Penetration with Minors: 609.344 subd, 1 b,e,f	5	10 (7%)	D	135 (93%)	145
Fourth	Contact: Force or Prohibited Occupation 609.344 subd. 1 c, d, g-n	6	2 (4%)	E	48 (96%)	50
Fourth	Contact with Minors: 609.344 subd, 1 b,e,f	4	6 (9%)	F	59 (91%)	65
Fifth	Repeat gross misdemeanor offenses involving minors	4	0	G	1 (100%)	1
Total			89 (15%)		511 (85%)	600

Victim/Offender Characteristics

Victim characteristics were derived primarily from the Minnesota Offense Codes (MOCs), which accompany the charge on the complaint. In 2010, 91 percent of the victims were female and 83 percent were minors. Of the minor victims, 33 percent were under the age of 13, and 50 percent were between ages 13 and 17.

Table 7 displays the relationship between the victim and the offender by the offense degree and clause of conviction (clause specifying a child victim or clause specifying force or other). For first- and second-degree offenses, the offender was more likely to be a family member; for third- and fourth-degree offenses, the offender was more likely to be an acquaintance. Overall, only a small percentage of cases (6%) involved strangers.

Table 7. Victim-Offender Relationship by Child / Other Statutory Provisions Criminal Sexual Conduct Offenses: 2010 [5]

Degree	Provision	Relationship Between Victim and Offender						Total # Cases
		Family	Position Authority	Occupation	Acquaintance	Stranger	Unknown	
First	Child	78 (66%)	14 (12%)	0 ---	22 (19%)	4 (3%)	1 (1%)	119 (83%)
	Force/Other	2 (8%)	0 ---	0 ---	9 (38%)	11 (46%)	2 (8%)	24 (17%)
	Total	80 (56%)	14 (10%)	0 ---	31 (22%)	15 (11%)	3 (2%)	143 (100%)
Second	Child	84 (64%)	10 (8%)	1 (1%)	34 (26%)	0 ---	2 (2%)	131 (93%)
	Force/Other	3 (30%)	0 ---	0 ---	4 (40%)	3 (30%)	0 ---	10 (7%)
	Total	87 (62%)	10 (7%)	1 (1%)	38 (27%)	3 (2%)	2 (1%)	141 (100%)
Third	Child	12 (8%)	0 ---	0 ---	129 (88%)	2 (1%)	3 (2%)	146 (73%)
	Force/Other	14 (26%)	0 ---	0 ---	31 (57%)	7 (13%)	2 (4%)	54 (27%)
	Total	26 (13%)	0 ---	0 ---	160 (80%)	9 (5%)	5 (3%)	200 (100%)
Fourth	Child	17 (25%)	11 (16%)	0 ---	37 (54%)	2 (3%)	1 (2%)	68 (59%)
	Force/Other	7 (15%)	2 (4%)	0 ---	28 (60%)	6 (13%)	4 (9%)	47 (41%)
	Total	24 (21%)	13 (11%)	0 ---	65 (57%)	8 (7%)	5 (4%)	115 (100%)
Fifth	Child	0 ---	0 ---	0 ---	0 ---	0 ---	1 (100%)	1 (100%)
Total	Child	191 (41%)	35 (8%)	1 (<1%)	222 (48%)	8 (2%)	8 (2%)	465 (78%)
	Force/Other	26 (19%)	2 (2%)	0 ---	72 (53%)	27 (20%)	8 (6%)	135 (23%)
	Total	217 (36%)	37 (6%)	1 (<1%)	294 (49%)	35 (6%)	16 (3%)	600 (100%)

[5] The CSC offenses are grouped within each degree by statutory provisions that either specify that the victim was a child or do not specify the victim's age. The "Occupation" category refers to statutes or MOC codes specifying the occupation of the offender e.g.: psychotherapist, health care professional.

Sentencing Practices for Sex Offenders

The recommended sentence under the guidelines varies by the severity level of the conviction offense and the offender's criminal history.

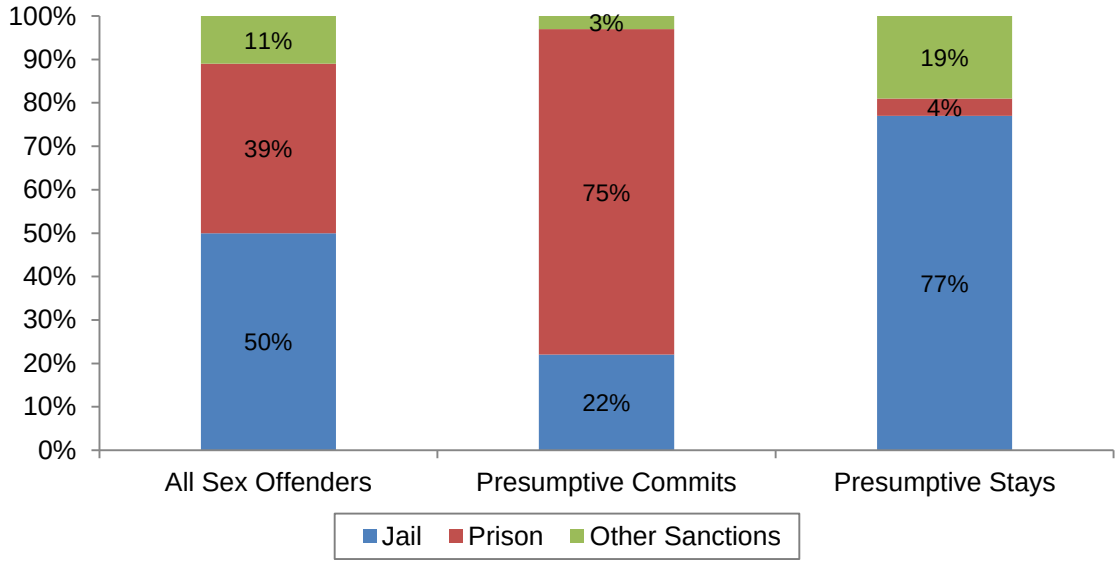
Incarceration Rates

In 2010, the total incarceration rate[6] for sex offenders was 89 percent, with 39 percent of offenders receiving a prison sentence and 50 percent receiving local confinement (Figure 15).

The guidelines recommended a presumptive sentence of imprisonment for forty-nine percent of the CSC offenses sentenced. Of these, 75 percent actually received a prison sentence (Figure 15).

Most offenders sentenced for felony-level sex offenses do not have "true prior" sex offenses in their criminal record. A "true prior" is a prior offense with a conviction date before the date of the current offense. Other priors may include multiple offenses charged in a single complaint and sentenced in successive order. Prior offenses that contribute to an offender's criminal history score are listed on an offender's worksheet. In 2010, only five percent of sex offenders had a true prior felony sex offense listed on their sentencing worksheet. The imprisonment rate for offenders who had a true prior sex offense was 74 percent.

Figure 15. Incarceration Rates



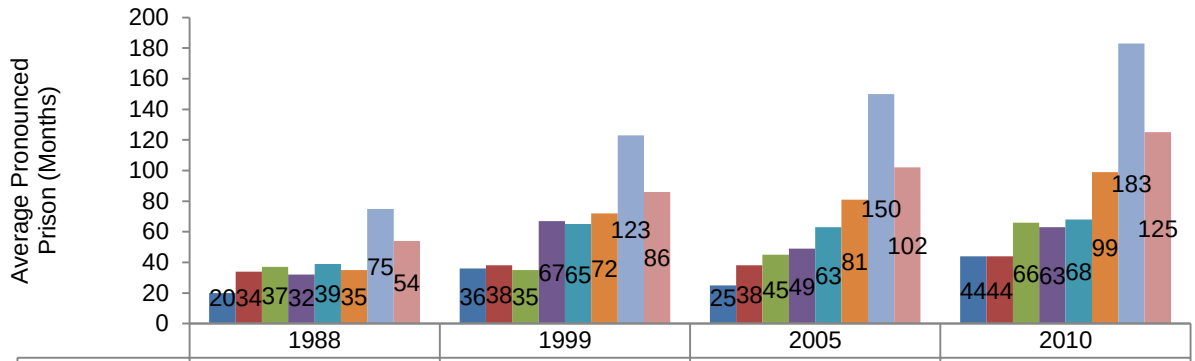
[6] As stated earlier in this report (p. 11), "total incarceration" includes all offenders receiving prison sentences or receiving local jail time as a condition of a stayed sentence.

Sentence Durations: Prison Sentences

The average pronounced duration in months is presented for offenders who received executed prison sentences. In 2010, the average pronounced prison sentence was 125 months (Figure 16), which is the longest average sentence ever observed since the guidelines took effect. There was one case that received an extraordinarily long sentence of 1,173 months (through consecutive sentencing). When this case is excluded, the average pronounced sentence was 121 months, still the longest average pronounced sentence. This is an increase from 100 months in 2009. The increase is partly attributable to the fact that the percent of first-degree criminal sexual conduct offenses sentenced increased from 18 percent in 2009 to 24 percent in 2010. Average pronounced durations have also been impacted by the implementation of the sex offender grid. In 2010, a larger percentage of the offenders sentenced were eligible for sentencing based on the sex offender grid (85%) than in previous years (77 percent in 2009, 64 percent of sex offenders in 2008, and 37 percent in 2007).

Figure 16 illustrates the increase in average pronounced sentences for CSC by degree over time.

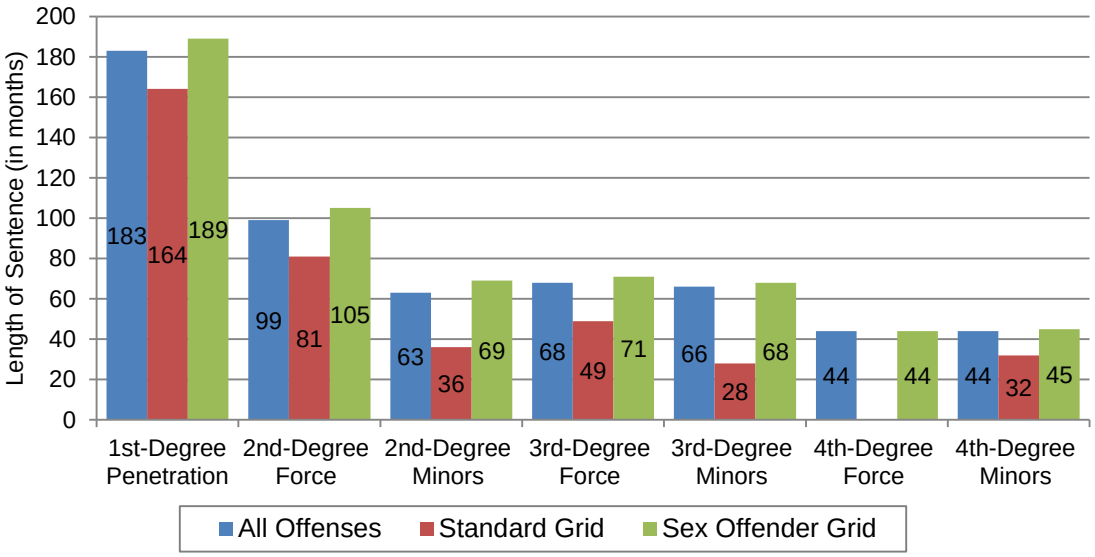
Figure 16. Average Pronounced Prison Sentences by Degree over Time
Executed Sentences by Offense



	1988	1999	2005	2010
CSC 4-Minor	20	36	25	44
CSC 4-Force	34	38	38	44
CSC 3-Minor	37	35	45	66
CSC 2-Minor	32	67	49	63
CSC 3-Force	39	65	63	68
CSC 2-Force	35	72	81	99
CSC 1	75	123	150	183
Overall	54	86	102	125

For all degrees, the average pronounced sentence is longer for offenders who were eligible for sentencing on the sex offender grid (Figure 17). The 2010 average excludes two offenders who received life sentences.

Figure 17. Average Pronounced Prison Sentence: Executed Sentences by Offense and Grid



Significantly Longer than the Presumptive Prison Sentences

There are several statutes and guidelines that permit the court to impose sentences that are significantly longer than the presumptive sentence when the circumstances of the case so warrant. This section describes the longer sentences pronounced in 2010. This section also describes the life sentences pronounced since that provision was enacted.

Use of Life Sentences over Time

As mentioned above (p. 20), in late 2005, the Legislature established life sentences for certain offenders. Table 8 displays information on sex offenders who have received life sentences since 2006. In both 2009 and 2010, two offenders received life sentences. The two offenders who received life sentences in 2009 both received sentences of life without the possibility of release. One of the two life sentences pronounced in 2010 was for life without the possibility of release. A prior sex offense is indicated if the offender was sentenced for a criminal sexual conduct offense before they committed the current offense.

Table 8. Pronounced Life Sentences: Type of Offense and Presumptive Sentence

Year	Offense	Severity	Criminal History	# True Prior Sex Offenses	Grid Duration	Pronounced Minimum to Serve	Life Sentencing Provision
2006	3rd Degree- Force or Coercion	8	2	1	68 months	136 months	Unknown
2007	1st Degree - Fear Great Bodily Harm	9	0	0	144 months	144 months	Unknown
2007	2nd Degree - Dangerous Weapon	8	4	1	98 months	180 months	609.3455 subd.4(a)1
2007	2nd Degree - Victim Under 13	6	8	1	60 months	360 months	609.3455 subd.4(a)1
2007	3rd Degree - Victim 13-16	D	4	3	91 months	240 months	609.3455 subd.4(a)1
2008	1st Degree - Fear Great Bodily Harm	9	5	2	146 months	No release	609.3455 Subd.2 (a) 1
2008	2nd Degree - Victim Under 13	D	9	4	140 months	140 months	609.3455 subd.4(a)1
2008	1st Degree- Multiple Acts	A	3	1	180 months	206 months	609.3455 subd.4(a)1
2009	1st Degree- Personal Injury and Force or Coercion	A	1	0	156 months	No release	609.3455 Subd.2 (a) 1
2009	1st Degree - Fear Great Bodily Harm	A	4	0	234 months	No release	609.3455 Subd.2 (a) 1
2010	1st Degree - Fear Great Bodily Harm	A	6	2	360 months	No release	609.3455 Subd.2 (a) 2
2010	3rd Degree- Force or Coercion	C	4	1	117 months	117 months	609.3455 subd.4(a)2ii

2010 Sentences with Double the Presumptive Sentence or More

In 2010, seven offenders received sentences that were double the length of their presumptive sentences or more. The presumptive sentences, pronounced sentences, criminal history scores and sentence type for these cases are listed in Table 9. All were first-degree offenders. The average sentence length for these offenders was 454 months, with four offenders receiving sentences of 30 years or more. The average sentence length is heavily impacted by one case in which the total consecutive sentence was 1,173 months. Without that one case, the average sentence length was 334 months.

Four of these lengthy sentences were the result of aggravated durational departures. The patterned sex offender provision was cited in one of these cases and one case had both an aggravated durational departure and a consecutive sentence. The remaining three cases were the result of consecutive sentencing. Through the use of consecutive sentencing provisions, offenders can receive lengthy sentences without the requirement to find substantial and compelling departure reasons. A true prior sex offense is indicated if the offender was sentenced for a criminal sexual conduct offense before they committed the current offense. Three of the four offenders who received consecutive sentences were sentenced for multiple current sex offenses. The other offender was sentenced to 360 months consecutive to “any

federal sentence." The total duration of his combined Minnesota and federal sentence is unclear, but is at least 360 months.

Table 9. Double the Presumptive Sentence or More

Offense	History	# True Prior Sex Offenses	Grid Duration	Total Sentence	Consec.	Aggravated Duration
1st Degree- Personal Injury and Force or Coercion	2	1	180	360	No	Yes
1st Degree - Victim Under 13	0	0	144	324	No	Yes
1st Degree- Personal Injury and Force or Coercion	1	0	156	312	No	Yes; Pattern Sex Cited
1st Degree - Victim Under 16 and Significant Relationship	3	0	180	360	Yes	Yes
1st Degree - Victim Under 13	1	0	156	360	Yes	No
1st Degree- Victim Under 16 and Multiple Acts	2	0	144	288	Yes	No
1st Degree - Victim Under 13	6	0	158	1,173	Yes	No

2010 Sentences with Durations of 30 Years or More

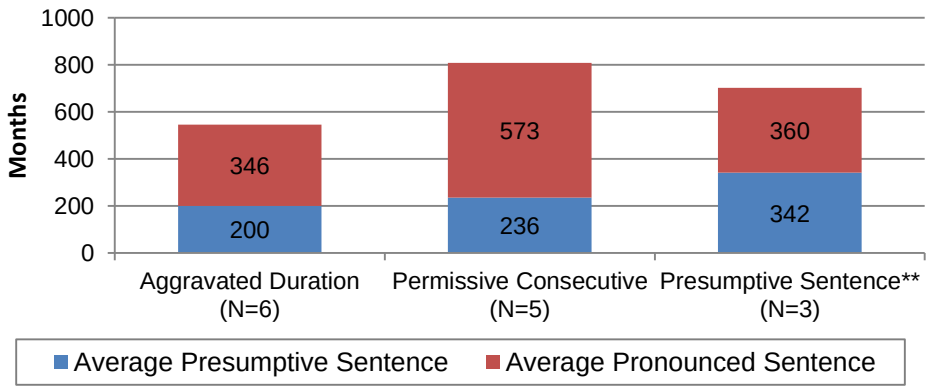
In addition to the sentences described above, seven offenders received sentences of 360 months (30 years) or more that were not twice their presumptive sentences. All were first-degree offenders who had high criminal history scores. Information about these offenders is displayed in Table 10. Six offenders received sentences of 360 months; for three cases, this was the presumptive sentence, for one, it was the upper end of the range, and for two, the court pronounced aggravated durational departures. One offender had a presumptive sentence of 360 months but received a sentence of 684 months through consecutive sentencing with no departure. A true prior sex offense is indicated if the offender was sentenced for a criminal sexual conduct offense before they committed the current offense. Four of these offenders had prior sex offenses that were not sentenced before they committed the current offense.

Table 10. Durations of 30 Years or More

Offense	History	# True Prior Sex Offenses	Grid Duration	Total Sentence	Consec.	Aggravated Duration
1st Degree - Victim Under 13	6	0	360	360	Yes	No
1st Degree - Victim Under 16 and Position of Authority	6	0	360	684	Yes	No
1st Degree - Victim Under 16 and Position of Authority	6	0	360	360	No	No
1st Degree - Victim Under 16 and Position of Authority	5	1	306	360	No	Yes
1st Degree - Victim Under 16 and Position of Authority	5	1	306	360	No	No
1st Degree- Personal Injury and Force or Coercion	4	0	234	360	No	Yes
1st Degree- Personal Injury and Force or Coercion	6	0	360	360	No	No

Figure 18 combines the information described in tables 9 and 10 to illustrate some of the longest sentences pronounced in 2010. There were 14 offenders who either received double their presumptive sentence or more, or a sentence of 360 months (30 years) or more. These sentences were achieved either through the presumptive sentence or guidelines policies that permitted aggravated durational departures or permissive consecutive sentences.

Figure 18. Significantly Longer Sentences than the Presumptive: Double the Presumptive or more and 360 Months or more*



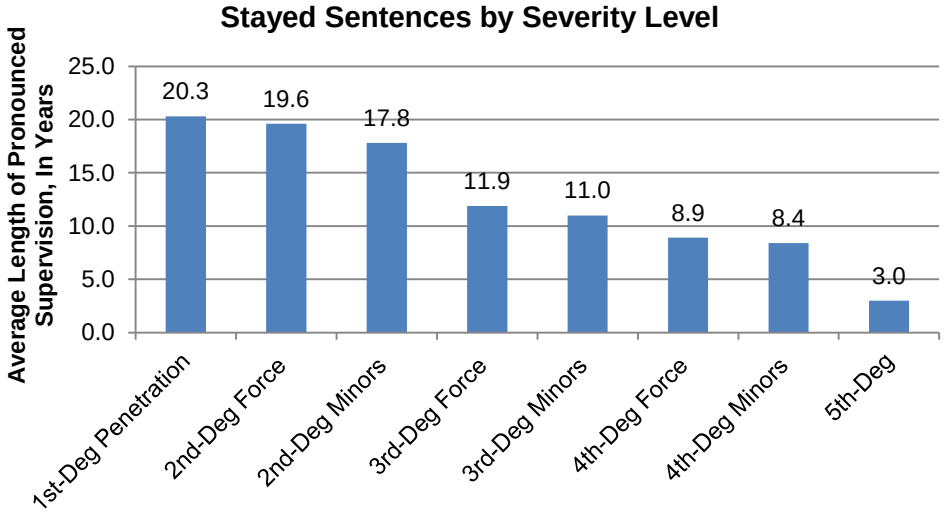
* Excludes 2 offenders who received life sentences.

** 3 offenders total; 1 of which received the top of the cell range to get to 360 months (30 years).

Sentence Durations: Probation Sentences

Sixty-one percent of the CSC offenders sentenced in 2010 received a probation sentence. Of the offenders who were placed on probation, 80 percent received probation because it was the presumptive sentence and 20 percent received probation as a mitigated dispositional departure. The average pronounced period of probation for sex offenders was approximately 13 years.

Figure 19. Average Pronounced Period of Probation: Stayed Sentences by Severity Level



Departures from the Guidelines

In Table 11, mitigated dispositional departure rates are presented over time for cases in which the guidelines recommend prison. The overall mitigated dispositional departure rate was 25 percent, a decrease from the rate in 2009 (30%).

Durational departure rates are influenced by changes in presumptive sentences. Nineteen percent of the 231 offenders who received executed prison sentences (other than life sentences) were given shorter sentences than recommended, a decrease from 21 percent in 2009. Five percent of offenders who received executed prison sentences were given longer sentences than recommended, an increase from three percent in 2009. Aggravated durational rates continue to be lower post-*Blakely* and the implementation of the sex offender grid.

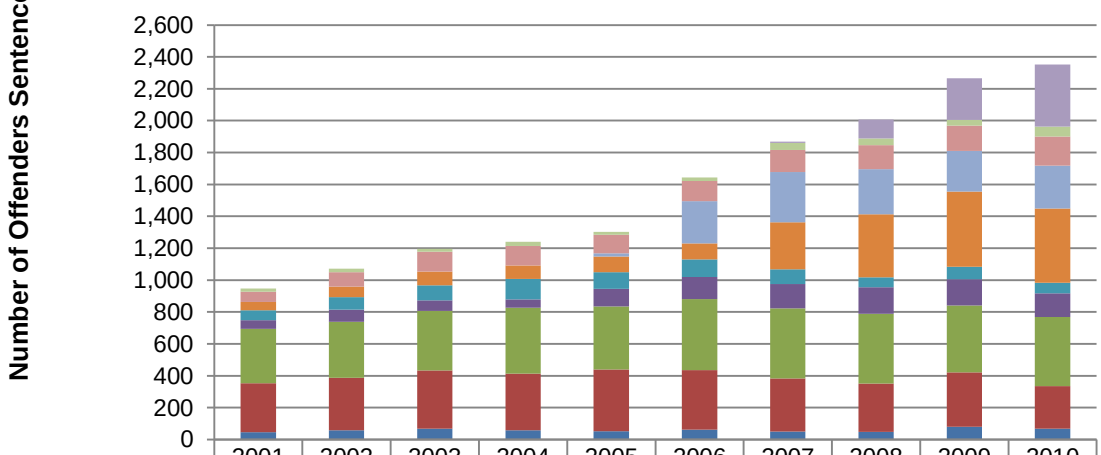
Table 11. Departure Rates: 1988-2010

		Mitigated Dispositional Departures		Durational Departures Executed Sentences		
Year	**# Cases**	**# Presumptive Commits**	**# Receiving Probation**	**# Executed Sentences**	**Aggravated Duration**	**Mitigated Duration**
1988	677	273 (40%)	101 (37%)	180	19 (11%)	19 (11%)
1989	688	319 (46%)	110 (35%)	217	29 (13%)	20 (9%)
1990	771	365 (47%)	144 (40%)	231	50 (22%)	39 (17%)
1991	725	334 (46%)	121 (36%)	227	44 (19%)	37 (16%)
1992	798	353 (44%)	129 (37%)	239	50 (21%)	30 (13%)
1993	828	360 (44%)	136 (38%)	244	45 (18%)	41 (17%)
1994	880	408 (46%)	148 (36%)	279	61 (22%)	38 (14%)
1995	770	346 (45%)	118 (34%)	249	59 (24%)	40 (16%)
1996	632	317 (50%)	97 (31%)	236	63 (27%)	28 (12%)
1997	635	288 (45%)	107 (37%)	201	41 (20%)	44 (22%)
1998	670	326 (49%)	86 (26%)	255	55 (22%)	32 (13%)
1999	562	245 (44%)	80 (33%)	189	45 (24%)	18 (10%)
2000	539	248 (46%)	67 (27%)	194	46 (24%)	39 (20%)
2001	512	250 (49%)	66 (26%)	194	49 (25%)	36 (19%)
2002	558	241 (43%)	60 (25%)	197	41 (21%)	36 (18%)
2003	607	323 (53%)	95 (29%)	250	57 (23%)	48 (19%)
2004	591	288 (49%)	103 (36%)	204	41 (20%)	43 (21%)
2005	590	299 (51%)	82 (27%)	230	36 (16%)	41 (18%)
2006	593	281 (47%)	77 (27%)	220	20 (9%)	44 (20%)
2007	586	278 (47%)	86 (31%)	210	17 (8%)	36 (17%)
2008	582	288 (49%)	80 (28%)	229	18 (8%)	40 (18%)
2009	579	247 (43%)	74 (30%)	186	6 (3%)	39 (21%)
2010	600	296 (49%)	74 (25%)	231	12 (5%)	43 (19%)

Domestic Assault-Related Offenses

As a proportion of total crimes sentenced in 2010, person offenses accounted for approximately 32 percent of the offenses, which is the highest percentage since the guidelines went into effect. The overall number of person offenses increased slightly in 2010 (2%), but the number of assaults actually fell for the first time in five years (a 5% decrease). Comparing the number of cases from 2009 to 2010 in Figure 20 below, we can see that second-degree assault decreased by roughly 22 percent, first- and fifth-degree assault decreased by 15 percent, and fourth-degree assault decreased by 10 percent. Thus, overall growth in person offenses is attributable to an increase in domestic assault-related offenses, including domestic assault by strangulation and violations of restraining orders.

Figure 20. Frequency of Assault and Restraining Order Offenses: 2001-2010



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
VDANCO							9	119	259	390
VHRO	20	22	19	26	17	22	43	41	37	61
VOFP	65	91	125	123	116	126	139	151	159	183
Dom. Assault by Strang.					20	264	315	282	255	268
Domestic Assault	52	65	85	84	100	100	295	396	471	467
Assault 5	63	79	94	129	104	112	93	63	78	66
Assault 4	54	76	68	52	110	137	152	166	165	149
Assault 3	341	351	373	413	395	447	440	438	420	433
Assault 2	307	330	365	356	388	373	333	302	341	267
Assault 1	46	58	68	58	52	62	50	49	80	68

Domestic Assault

Felony domestic assault is chargeable when the offender has two or more qualified domestic violence-related prior offenses. In 2006, the legislature removed the requirement that the prior offenses had to be against the same victim, expanded the look-back to 10 years, and also expanded the list of qualified priors. By enacting these statutory changes, the legislature widened the net for those eligible to be sentenced for this offense as felony-level offenders. Since the enactment of these legislative changes, the number of offenders sentenced for felony domestic assault has more than quadrupled. While there was an increase in the number of offenders sentenced for domestic assault between 2001 and 2005, before the statutory enhancements were enacted, the annual increases observed since 2006 have been dramatic, increasing from a low of 100 cases in 2006 to highs of 471 cases in 2009 and 467 cases in 2010 (Figure 20).

Domestic Assault by Strangulation

In 2005, the Legislature made it a felony to assault a family member or household member by strangulation. The number of offenders sentenced for this offense quickly climbed to 315 offenders in 2007, then decreased slightly in 2008 and 2009 (282 and 255 offenders, respectively), before rising again in 2010 to 268 offenders. Prior to the enactment of domestic assault by strangulation, this type of criminal behavior may have been categorized and charged under other felony assault offenses, such as domestic assault and third- or fifth-degree assault. However, the decreases in these offenses are not significant enough to explain the rise in felony domestic assault by strangulation cases. Even the decrease in fifth-degree assault, for which we have seen the most dramatic change (a 41% decrease from 112 offenders in 2006 to 66 offenders in 2010), does not involve a large enough number of cases to have contributed to the majority of the increase in domestic assault by strangulation cases. Therefore, it is likely that the increase is primarily derived from cases that would not have been felony offenses before the statutory changes.

Violation of Restraining Order Offenses

The most dramatic case volume increase has occurred in cases involving violations of restraining orders (Figure 20). There are three offenses in this group: violations of orders of protection (OFP) under Minn. Stat. § 518B.01, subd. 14(d), violations of harassment restraining orders (HRO) under Minn. Stat. § 609.748, subd. 6(d), and violations of domestic abuse no contact orders (DANCO) under Minn. Stat. § 629.75, subd. 4(d). Each involves offenders who have prior offenses from a list of qualified domestic-violence offenses and who violate the restraining orders against them. The list of prior qualified offenses was expanded in 2006 and a standardized 10-year look-back period was also implemented at that time. Violation of a DANCO is the newest offense in this group, effective for crimes committed on or after August 1, 2007. Prior to 2008, violation of a DANCO was punishable as a gross misdemeanor.

Looking at all three offenses together, it can be seen that restraining order violation offenses have greatly increased in the last four years (Figure 20). From a total of 148 offenders sentenced in 2006, the number grew to 191 in 2007, 311 in 2008, 455 in 2009, and 634 in 2010. This represents a 328 percent increase since 2006, and a 39 percent increase over 2009. The growth in DANCO violations has been particularly striking, increasing from 259 cases in 2009 to 390 cases in 2010 (a nearly 51% increase).

A higher percentage of violation of restraining order offenders receive prison sentences than those sentenced for either domestic assault or domestic assault by strangulation (31% compared with 25% and 24%, respectively). While the imprisonment rates have remained fairly stable, the overall increase in case numbers means that the number of cases for which prison or local confinement is pronounced has increased dramatically in the last three years. The 481 offenders sentenced to prison for restraining order violation offenses in the last four years (Table 12) resulted in the need for an additional 618 prison beds.[7] The 975 offenders receiving local confinement as a condition of their stayed sentences (Table 12) resulted in the need for an additional 193 local confinement beds.[8]

Table 12. Length of Pronounced Sentences for Violation of Restraining Order Cases: Sentenced 2001-2010

Year	# Cases	Pronounced Prison Sentence			Pronounced Local Confinement		
		Prison Rate	Average Duration (in months)	Number of Beds	Local Incarceration Rate	Average Duration (in days)	Number of Beds
2001	85	12 14%	27	18	64 75%	127	15
2002	113	28 25%	22	34	78 69%	120	17
2003	144	29 20%	23	37	96 67%	127	22
2004	149	47 32%	23	60	94 63%	140	24
2005	133	27 20%	22	33	99 74%	116	21
2006	148	39 26%	24	52	95 64%	109	19
2007	191	51 27%	25	71	125 65%	105	24
2008	311	91 29%	23	117	195 63%	111	40
2009	455	142 31%	24	190	291 64%	106	57
2010	634	197 31%	22	242	364 57%	108	72

For a more detailed discussion of the growth in these offense categories, including impact on prison and local confinement resources, please see MSGC's report entitled *Assault Offenses and Violations of Restraining Orders Sentenced in 2010*, which is available on the MSGC website (http://www.msgc.state.mn.us).

[7] Based on the average prison term of 23 months from 2007-2010, serving 2/3 or 15.41 months. 481 offenders x 15.41 mos.=7,412/12 mos.=618 prison beds.

[8] Based on the average local confinement term of 108 days from 2007-2010, serving 2/3 or 72.36 days. 975 offenders x 72.36 days=70,551/365 days=193 local confinement beds.

The Commission's Activities in 2011

The Minnesota Sentencing Guidelines Commission is an eleven-member body created by the legislature. Eight members are appointed by the Governor: the Commissioner of Corrections, one peace officer, one prosecutor, one defense attorney, one probation officer, and three citizens, one of whom must be a crime victim. The Chief Justice of the Supreme Court also appoints three members representing the District Court, Court of Appeals, and Supreme Court.

One of the basic responsibilities of the Commission is to maintain the guidelines structure by annually modifying the sentencing guidelines in response to legislative changes, case law, and issues raised by various parties. In order to meet this responsibility, the Commission met six times during 2011, held one public hearing and approved a number of modifications to the sentencing guidelines which are summarized below. All modifications are set forth in the Appendix.

Most of the proposals set forth in this report were initiated or moved forward to public hearing and approved by the previous Commission, which was: Commission Chair Jeffrey Edblad, Isanti County Attorney; Rev. Robert Battle, citizen member, St. Paul; Fifth Judicial District Assistant Public Defender Darci Bentz; Kari Berman, citizen member, Minneapolis; Martin County Sheriff Brad Gerhardt; Washington County Community Corrections Supervisor Tracy Jenson; and Connie Larson, citizen member, Waseca. The judicial representatives were Second Judicial District Judge Edward Cleary, Supreme Court Justice Helen Meyer, and Court of Appeals Judge Gordon Shumaker.

New and Amended Crime Legislation –Effective August 1, 2011

The following crimes were passed into law by the 2011 Legislature and were reviewed and considered by the Commission for sentencing guidelines modification.

1. New Felony Offense: Controlled Substance Analog (Minn. Stat. § 152.01)

The 2011 Legislature created criminal penalties for the sale and possession of a controlled substance analog, which is defined as a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II. Analogs are defined as Schedule I controlled substances; sale and possession of these substances can range from a controlled substance crime in the fifth degree to a controlled substance crime in the second-degree.

The Commission maintained the severity level rankings for sale and possession of controlled substance crime in the fifth degree (Minn. Stat. § 152.025) at severity level 2; controlled substance crime in the fourth degree (Minn. Stat. § 152.024) at severity level 4; controlled substance crime in the third degree (Minn. Stat. § 152.023) at severity level 6; and controlled substance crime in the second degree (Minn. Stat. § 152.022) at severity level 8.

2. Amended Felony Offenses

After considering amendments made by the 2011 Legislature to the following existing felony offenses, the Commission maintained their current severity level rankings and status on the permissive consecutive list (where applicable). In some cases, the amendments expanded definitional statements; in others, the amendments expanded the scope of the offense.

a. Killing or harming a public safety dog (Minn. Stat. § 609.596): The felony offense of killing or harming a public safety dog (Minn. Stat. § 609.596) was amended to include "great or substantial bodily harm." The offense is on the unranked offense list.

b. Vulnerable Adult Abuse, Registration (Minn. Stat. § 243.166): The law governing registration of predatory offenders was amended to add criminal abuse of a vulnerable adult under Minn. Stat. § 609.2325, subd. 1(b) to the list of offenses for which registration is required. Subdivision 1(b) of this statute is limited to a caregiver who "engages in sexual contact or penetration…with a resident, patient, or client of the facility…" Failure to register as a predatory offender is ranked at severity level H on the sex offender grid and it is an eligible offense for a permissive consecutive sentence.

c. Fleeing Police in a Motor Vehicle (Minn. Stat. § 609.487): The fleeing a peace officer statute (Minn. Stat. § 609.487, subd. 4) was amended by expanding the definition to include whoever, in the course of fleeing in a motor vehicle "or subsequently by other means," causes death or bodily injury to any person other than the perpetrator. Fleeing offenses are ranked at severity level 10 for fleeing resulting in death; severity level 6 for fleeing resulting in great bodily harm; and severity level 4 for fleeing resulting in substantial bodily harm. Fleeing a peace officer under Minn. Stat. § 609.487, subd. 4, is an eligible offense for a permissive consecutive sentence.

d. Racketeering (Minn. Stat. §§ 609.902-904): Theft of moveable property (under Minn. Stat. § 609.52, subd.2(1)) was added to the list of eligible offenses in Minn. Stat. § 609.902, for which an offender can be charged with racketeering. Racketeering is on the unranked offense list.

e. Fourth-Degree Assault, Assault of a Police Horse (Minn. Stat. § 609.597): The crime of assaulting a police horse, Minn. Stat. § 609.597, was expanded to include police horses being utilized by reserve officers. Paragraphs (1) (death or great bodily harm to the officer) and (2) (death or great bodily harm to the horse) are unranked. Paragraph (3), which involves demonstrable bodily harm to a horse, is ranked at severity level 1.

f. During the Special Session, the 2011 Legislature amended prostitution offenses by revising the definitions for "patron," "prostitute," and "prostitution" in Minn. Stat. § 609.321, and established separate, non-felony penalties for patrons and prostitutes in Minn. Stat. § 609.324. Even with these structural changes, the offenses continued to mirror current law. Because the Special Session occurred just days before the Commission's Public Hearing, the Commission was not able to consider these changes prior to issuance of the 2011 Guidelines. However, a motion was made and approved at its next meeting on July 28, 2011, to continue the current severity level rankings for felony prostitution. This proposal will be given a public hearing in July 2012.

3. Gross Misdemeanors/Targeted Misdemeanors

Minn. Sent. Guidelines § 2.B.3 provides that prior non-traffic gross misdemeanors and misdemeanors on the targeted misdemeanor list defined in Minn. Stat. § 299C.10, subd. 1(e) shall count towards an offender's criminal history score.

The 2011 Legislature expanded the definition of "targeted misdemeanor" to include violations of domestic abuse no contact orders under Minn. Stat. § 629.75. This offense had been previously included within the targeted misdemeanor definition, but was missed when the provisions relating to domestic abuse no contact orders were recodified by the 2010 Legislature.

The Commission removed a footnote to the Targeted Misdemeanor List contained in Appendix B because the footnote is no longer necessary.

Non-Legislative Modifications – Effective August 1, 2011

Throughout the year, the Commission reviews possible modifications to the sentencing guidelines. Some are points of clarification and are technical in nature (Non-Legislative Technical Modifications), while others are more substantive (Non-Legislative Modifications). Requests for policy review come from practitioners and citizens. Non-Legislative modifications are set forth in the next two sections. Relevant language changes are found in Appendix C and Appendix D.

1. Targeted Misdemeanors – Custody Status Point Assigned to Targeted Misdemeanor Offenders Discharged Early From Probation

The Commission modified the sentencing guidelines to clarify that a custody status point applies to an offender who was on probation for a targeted misdemeanor offense, even if the offender had been discharged early from probation. This policy is consistent with that for felons and non-traffic gross misdemeanants.

2. Targeted Misdemeanors – No Custody Status Point Assigned to Offenders Sentenced for Non-Targeted Misdemeanor Offenses

The Commission modified the sentencing guidelines commentary to clarify that a custody status point shall not apply to an offender convicted of a felony or gross misdemeanor who is given a misdemeanor sentence.

3. Targeted Misdemeanors – Custody Status Point Applies to Enhanced Felonies

The Commission modified the sentencing guidelines to make it clear that a custody status point shall apply to an offender on probation for a targeted misdemeanor offense at the time he or she commits an enhanced felony.

4. **Stalking (Aggravated Violations) and Possessing a Dangerous Weapon – Mandatory Imprisonment**

   The Commission adopted a proposal to modify the sentencing guidelines to add stalking and possessing a dangerous weapon to a list of offenses for which the Commission determined a mandatory minimum prison sentence always applies because a dangerous weapon was involved.

Non-Legislative Technical Modifications – Effective August 1, 2011

1. **Permissive Consecutive Sentences List – Single Entry for First-Degree DWI**

   The Commission modified the sentencing guidelines to combine the entries for felony DWI on the list of offenses eligible to be sentenced consecutively. First-degree DWI – previous conviction for criminal vehicular homicide or injury – was added to the law in 2006, but was not added to the list of offenses eligible for permissive consecutive sentencing. A single entry for felony first-degree DWI will reference all paragraphs within the statute.

2. **Conditional Release – Mandatory Terms of Release for Certain Offenders**

   The Commission modified the sentencing guidelines to simplify the language that relates to conditional release for certain offenders so that it identifies the offenses for which there is a conditional release term and cites to the appropriate statute rather than listing those terms in detail.

3. **Unofficial Mandatory Sentences Reference Table – Dangerous Weapons**

   The Commission corrected an error related to subsequent dangerous weapons offenses on an unofficial reference table. A 36-month mandatory minimum applies if a current offense involves a dangerous weapon other than a firearm, and a prior offense involves any dangerous weapon.

4. **Repealed Statute – Security Violations**

   The Commission updated the entry for the offense of “Security Violations” in the sentencing guidelines. “Security Violations” under Minn. Stat. § 80A.22 was repealed in 2006 and was replaced with Minn. Stat. § 80A.68.

5. **Reformatted Sentencing Guidelines**

   The Commission made the following formatting changes to the sentencing guidelines: using bullet points to make long passages of text more readable; changing roman numerals to numbers; and reformatting the offense severity reference table into a more legible, shaded table.

The Staff's Activities in 2011

The following provides a summary of the activities performed by staff to further the goals and purpose of the Commission.

Monitoring Sentencing Data

One of the primary functions of the Sentencing Guidelines Commission staff is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the guidelines. A case is defined when a sentencing worksheet is received from the probation officer and matched with sentencing data from the District Court. As part of the agency's core functions, Commission staff collected and analyzed data for over 14,000 felony offenders. Additionally, staff published its annual edition of the Sentencing Guidelines and Commentary, Report to the Legislature and various reports on sentencing practices and trends.

Training and other Assistance

The commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, and real-time email and telephone assistance for judges, attorneys, and probation officers in determining appropriate presumptive sentences.

In 2011, Commission staff trained 250 practitioners in six traditional classroom trainings held throughout the state. Additionally, in the fall of 2011, the Commission launched a new on-line training service via WebEx, and provided training to nearly 300 practitioners statewide in a single quarter. This online venue allows the Commission to reach large numbers of practitioners statewide, including many in outstate Minnesota who might not otherwise have been able to participate in live trainings due to cost or travel restrictions. The online format also allows the Commission to provide more frequent training on short, discrete topics, and in greater depth. Finally, this year the Commission launched *The Guideliner*, which is a quarterly newsletter directed primarily at probation officers, prosecutors, and defense attorneys, and which provides information and practice tips about the guidelines, as well as a schedule of upcoming Commission trainings and activities. All of the above services are offered in an effort to promote the accurate application of the sentencing guidelines.

Data Requests

One of the important ways in which the Commission works with fellow agencies and criminal justice practitioners across the state is researching and compiling statistical data in response to information requests. MSGC staff responded to over 100 data requests for a total of 139 hours. These requests are most often made by lawyers or corrections agents to show specific sentencing practices to the court. However, the requests are also made by academics, students, other state agencies, legislative staff, law enforcement, and the press for other purposes. The topics range from departure data for a single type of offense within a given county to comparative data on how an offense has been sentenced from one county to another during a specific timeframe.

Fiscal/Racial-Impact Statements

During the 2011 Legislative Session, Commission staff prepared 51 fiscal impact statements for proposed legislation. These impact statements include details as to any increase or decrease in adult offender populations, the estimated net increase in state correctional facility beds, and the impact on local confinement. Staff provided the requested information within the time requirements set by the legislature.

In 2006, the Commission began providing the legislature with racial-impact notes on proposed crime bills when a disparate impact was anticipated. In 2011, one racial-impact note was prepared on House File 306, which would have created a new offense category for "violent juvenile offense," and provided that a child who had allegedly committed a "violent juvenile offense" could be designated for extended jurisdiction juvenile prosecution regardless of age, and could be certified as an adult offender at ten years of age or older. Commission staff determined that this bill could increase racial disparity, resulting in a higher percentage of American Indian offenders receiving prison sentences. The bill was not enacted.

Collaboration with Criminal Justice Agencies

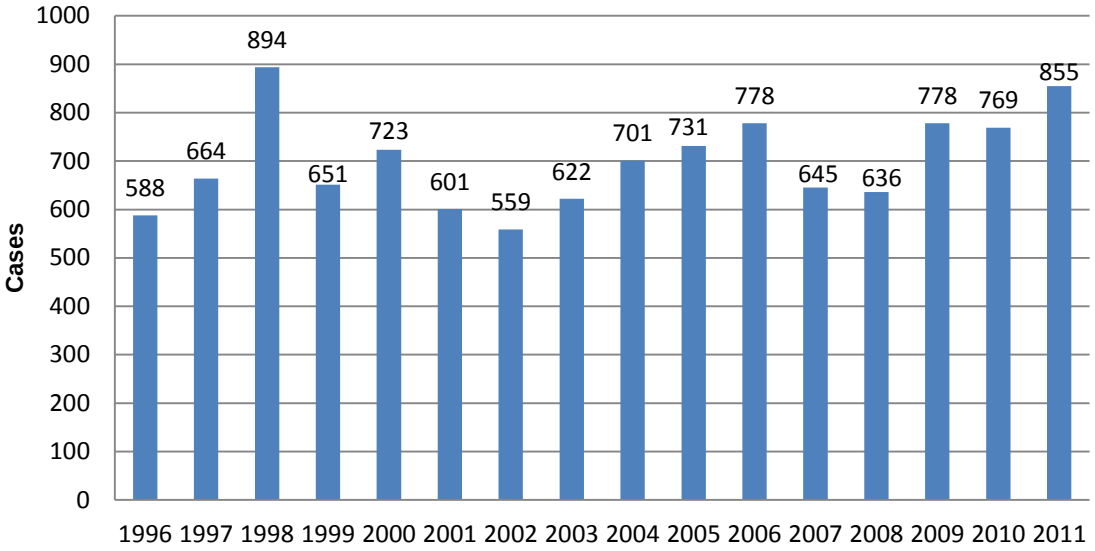
The Commission's knowledge of felony sentencing and practice makes the Commission a valued contributor to criminal justice policy discussions. Each year, Commission staff works with the Department of Corrections to generate prison bed projections. And in 2011, MSGC staff served on the Criminal and Juvenile Justice Information Task Force, Supreme Court Criminal Justice Forum, and State Court Administration Drug Court Evaluation Committee. Additionally, the Executive Director serves as an officer for the National Association of Sentencing Commissions, ensuring that Minnesota is tied into national trends in sentencing policy.

County Attorney Firearms Reports

Current law directs County Attorneys to collect and maintain information on criminal complaints and prosecutions in which a defendant is alleged to have committed an offense while possessing or using a firearm, as described in Minn. Stat. § 609.11, subdivision 9.[9] This information is to be forwarded to the Sentencing Guidelines Commission no later than July 1 of each year. Pursuant to Minn. Stat. § 244.09, subdivision 14, the Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received. Memoranda describing the mandate, along with forms on which to report, are distributed by the Commission to County Attorneys. Although the Commission's staff clarifies inconsistencies in the summary data, the information received from the County Attorneys is reported directly as provided.

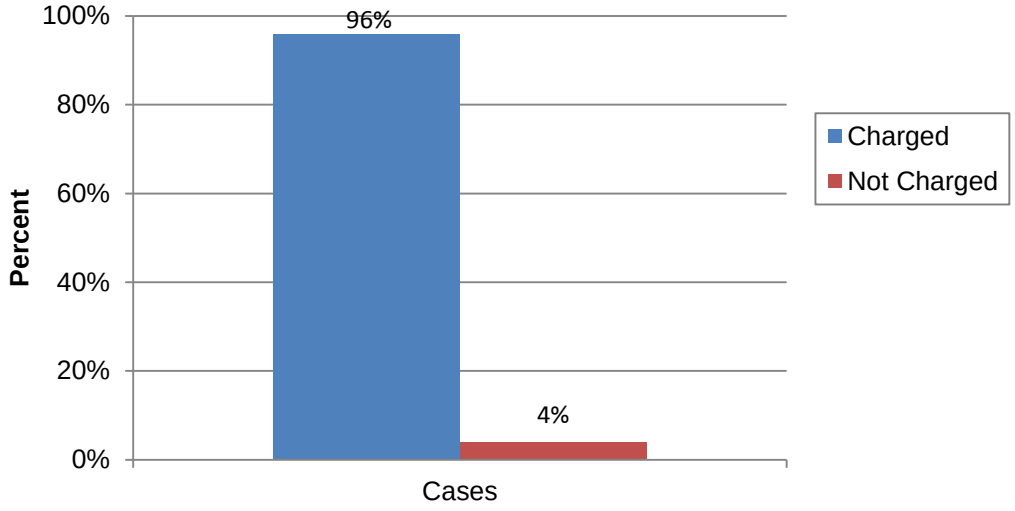
Since the mandate began in 1996, the average number of annual cases involving firearms statewide has been 700. Between July 1, 2010 and June 30, 2011, there were 855 cases allegedly involving a firearm (Figure 21). As shown in Figure 22, of those 855 cases, prosecutors charged 817 cases (96%) while 38 cases (4%) were not charged.

Figure 21. Cases Allegedly Involving a Firearm 1996 to 2011



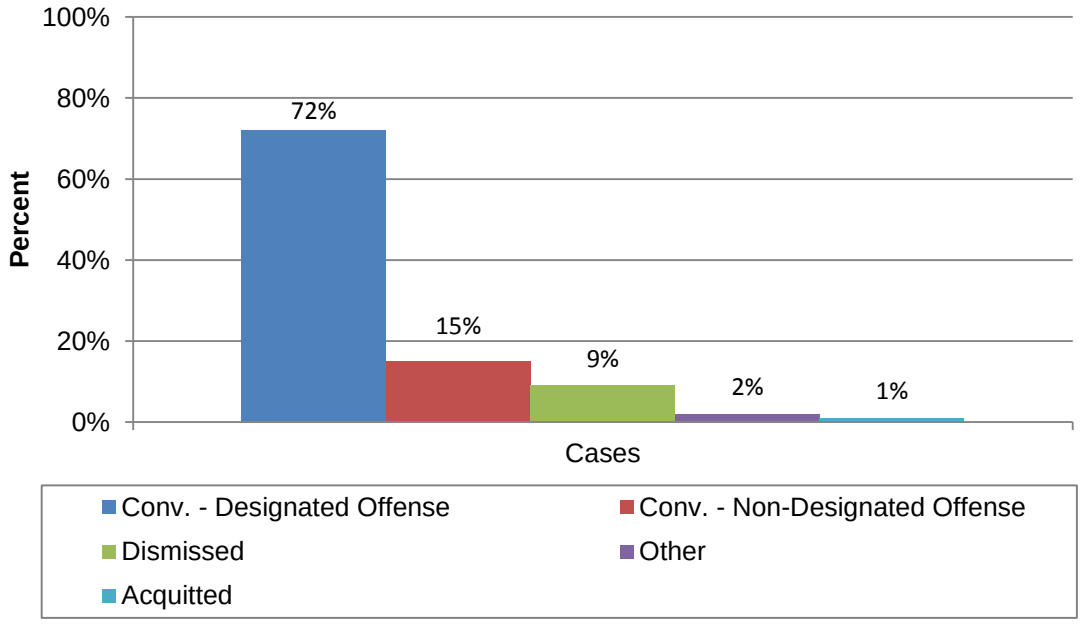
[9] The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; some criminal sexual conduct offenses; escape from custody; arson in the first, second, or third degree; felony drive-by shooting; aggravated harassment and stalking; felon in possession of a firearm; and felony controlled substance offenses.

Figure 22. Cases Charged



Of the 817 cases charged, 591 (72%) were convicted of offenses designated in Minn. Stat. § 609.11. 123 (15%) were convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 74 (9%) had all charges dismissed; 15 (2%) were "other" cases, such as federal prosecutions and civil commitment; and 10 (1%) were acquitted on all charges (Figure 23).

Figure 23. Case Outcomes



In 557 (94%) of the 591 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 24). In the cases in which the firearm was established on the record, 329 offenders (59%) were sentenced to the mandatory minimum prison term (Figure 25).

Figure 24. Cases Convicted of Designated Offense

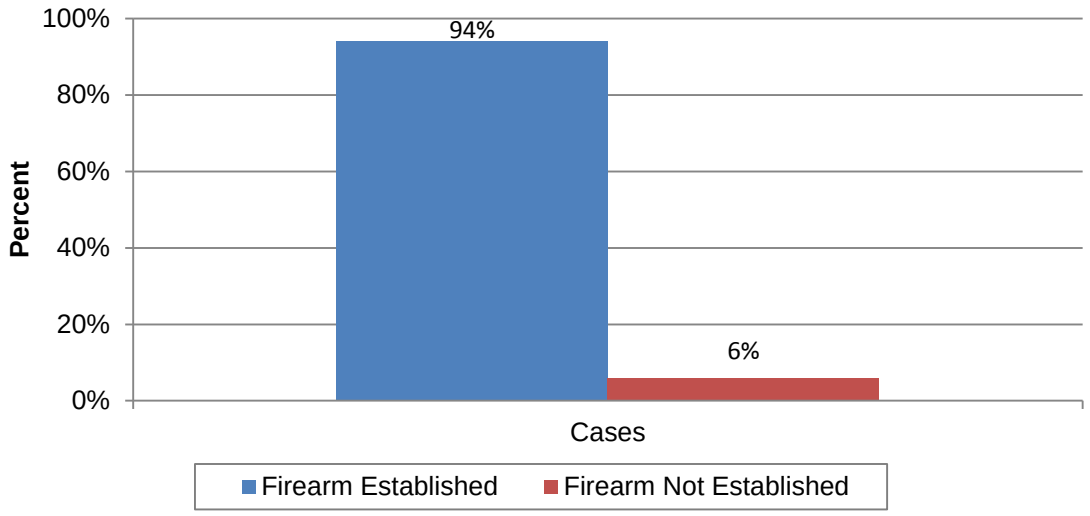


Figure 25. Firearm Established on the Record

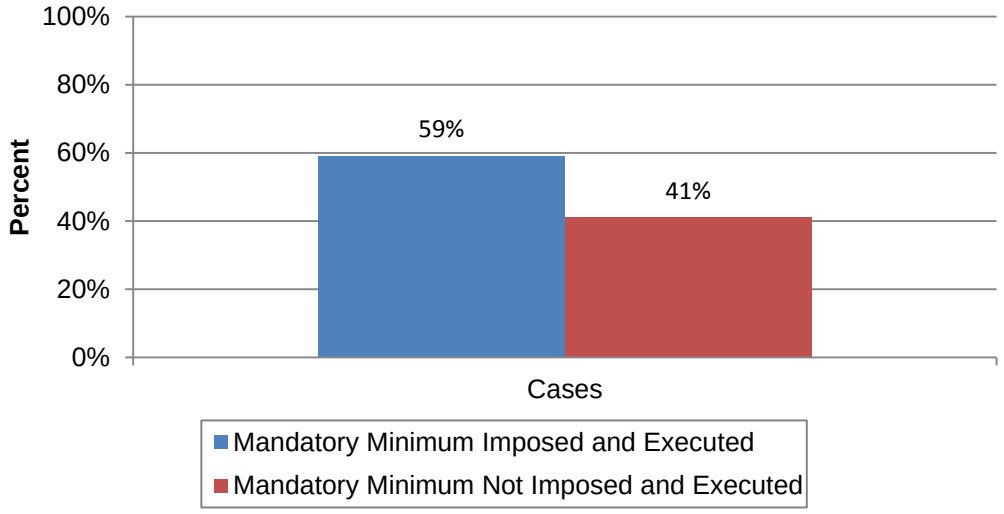


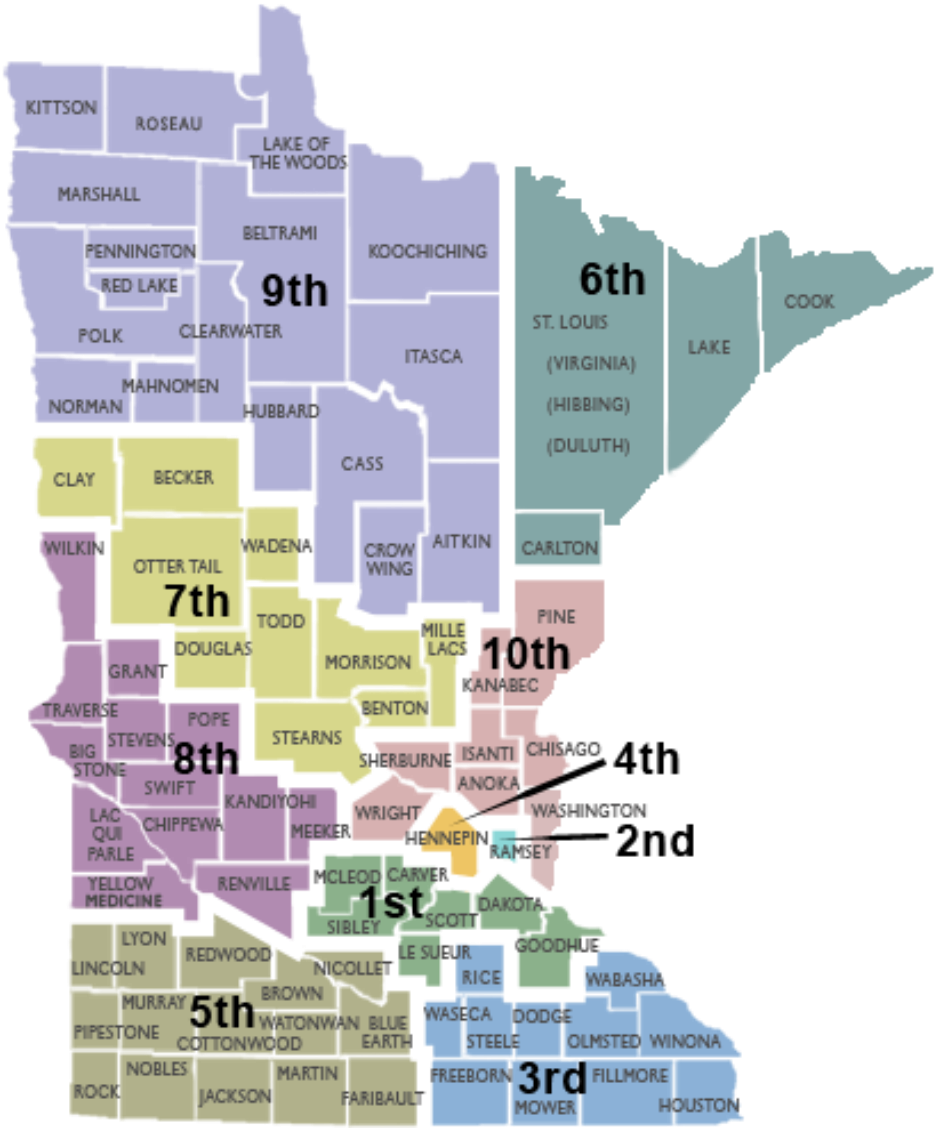
Table 13. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm by MN County
Cases Disposed from July 1, 2010 to June 30, 2011

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Aitkin	9	9	4	3	1
Anoka	49	45	35	35	15
Becker	2	2	1	1	1
Beltrami	11	10	3	3	3
Benton	10	10	3	2	1
Big Stone	0	0	0	0	0
Blue Earth	0	0	0	0	0
Brown	1	1	0	0	0
Carlton	4	2	1	1	0
Carver	4	3	3	2	2
Cass	13	0	4	4	3
Chippewa	0	0	0	0	0
Chisago	4	4	1	1	1
Clay	5	5	4	4	4
Clearwater	1	1	0	0	0
Cook	3	3	2	2	1
Cottonwood	0	0	0	0	0
Crow Wing	12	12	8	3	1
Dakota	20	20	15	15	11
Dodge	1	1	1	1	1
Douglas	0	0	0	0	0
Faribault	0	0	0	0	0
Fillmore	1	1	1	1	1
Freeborn	0	0	0	0	0
Goodhue	4	4	0	3	3
Grant	2	2	0	0	0
Hennepin	286	286	255	255	149
Houston	0	0	0	0	0
Hubbard	2	2	1	1	0
Isanti	5	5	4	2	2
Itasca	22	21	12	12	5
Jackson	1	1	1	1	1
Kanabec	4	4	0	0	0
Kandiyohi	8	8	4	4	4
Kittson	1	1	1	1	0
Koochiching	1	1	1	1	0
Lac Qui Parle	0	0	0	0	0
Lake	2	2	0	0	0

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Lake of the Woods	3	3	1	0	0
LeSueur	0	0	0	0	0
Lincoln	0	0	0	0	0
Lyon	4	3	2	2	0
McLeod	1	1	1	1	0
Mahnomen	1	1	1	1	1
Marshall	0	0	0	0	0
Martin	2	2	2	1	0
Meeker	3	3	3	3	3
Mille Lacs	11	11	8	8	7
Morrison	1	1	1	1	0
Mower	10	10	1	1	0
Murray	0	0	0	0	0
Nicollet	1	1	1	1	1
Nobles	5	5	2	1	1
Norman	0	0	0	0	0
Olmsted	19	19	12	11	10
Otter Tail	5	5	4	4	2
Pennington	0	0	0	0	0
Pine	11	10	7	2	0
Pipestone	3	3	2	0	0
Polk	7	7	6	6	2
Pope	0	0	0	0	0
Ramsey	102	102	83	83	52
Red Lake	2	2	1	1	0
Redwood	3	3	1	1	1
Renville	4	4	3	3	2
Rice	5	5	4	4	1
Rock	2	2	2	2	2
Roseau	1	1	1	0	0
Scott	2	2	2	2	2
Sherburne	7	7	4	4	3
Sibley	0	0	0	0	0
St. Louis	73	54	30	22	14
Stearns	21	17	12	11	5
Steele	1	1	1	1	1
Stevens	0	0	0	0	0
Swift	3	3	1	0	0
Todd	0	0	0	0	0
Traverse	0	0	0	0	0
Wabasha	2	2	2	1	0
Wadena	4	4	3	3	0

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Waseca	0	0	0	0	0
Washington	19	19	8	8	2
Watonwan	3	3	0	0	0
Wilkin	0	0	0	0	0
Winona	12	8	5	4	2
Wright	11	11	8	5	5
Yellow Medicine	3	3	1	1	0
Total	**855**	**817**	**591**	**557**	**329**

Appendix A: Minnesota Judicial District Map



First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth	Ninth	Tenth
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota		Fillmore		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
LeSueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Mille Lacs	LacQuiParle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Otter Tail	Pope	Itasca	Washington
		Steele		Martin		Stearns	Renville	Kittson	Wright
		Wabasha		Murray		Todd	Stevens	Koochiching	
		Waseca		Nicollet		Wadena	Swift	Lake-Woods	
		Winona		Nobles			Traverse	Mahnomen	
				Pipestone			Wilkin	Marshall	
				Redwood			Yellow Medicine	Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	

Minnesota Judicial Branch at http://mncourts.gov/?page=238

Appendix B: New and Amended Crimes Passed by the Legislature – Effective August 1, 2011

Adopted Language:

Targeted Misdemeanor List
(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

According to Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

….

Offense Title	Statute Number
Order for Protection Violation~~*~~	518B.01; 629.75

….

~~* According to the MN Bureau of Criminal Apprehension, this includes violations of domestic abuse no contact orders under M.S. § 518B.01, subd. 22, which was re-codified to M.S. § 629.75, effective August 1, 2010 (2010 Minn. Session Laws, Ch, 299, section 14).~~

Appendix C: Non-Legislative Modifications – Effective August 1, 2011

1. Targeted Misdemeanors – Custody Status Point Assigned to Targeted Misdemeanor Offenders Discharged Early From Probation

Adopted Language (Minn. Sentencing Guidelines § 2.B.2):

2. One point is assigned if the offender:

….

b. committed the current offense within the period of the initial probationary sentence. If an offender is given an initial term of probation that provides a range of years (e.g. "not to exceed three years," "three to five years," "up to the statutory maximum"), rather than a specified number of years, and commits a new crime at any time prior to the end date of the pronounced range, a custody status point will be assigned. This policy applies to a conviction in a prior felony, extended jurisdiction juvenile, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case <u>or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e)</u>. This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or

….

2. Targeted Misdemeanors – No Custody Status Point Assigned to Offenders Sentenced to Non-Targeted Misdemeanor Offenses

Adopted Language (Minn. Sentencing Guidelines § 2.B.2):

II.B.203. *It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony, non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). 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 for an offense not on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.

3. Targeted Misdemeanors – Custody Status Point Applies to Enhanced Felonies

Adopted Language (Minn. Sentencing Guidelines § 2.B.6):

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, ~~the~~ prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e) or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score....

4. Stalking (Aggravated Violations) and Possessing a Dangerous Weapon – Mandatory Imprisonment

Adopted Language (Minn. Sentencing Guidelines § 2.E):

II.E.05. *There are some offenses that by statutory definition involve a dangerous weapon and, therefore, the mandatory minimum provision dealing with dangerous weapons always applies: ~~; for example,~~ Assault in the Second Degree, Certain Persons Not to Have Firearms, Drive-By Shootings, and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3) ~~Certain Persons Not to Have Firearms.~~ The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater.*

Appendix D: Non-Legislative Technical Modifications – Effective August 1, 2011

1. Permissive Consecutive Sentences List – Single Entry for First-Degree DWI

Adopted Language (Minn. Sentencing Guidelines § 6):

6. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

….

Statute Number	Offense Title
169A.24~~, subd. 1 (1)~~	First-Degree DWI~~ – 4 or more w/in 10 years~~
~~169A.24, subd. 1 (2)~~	~~First Degree DWI – 2nd or subsequent~~

….

2. Conditional Release – Mandatory Terms of Release for Certain Offenders

Adopted Language (Minn. Sentencing Guidelines § 2.E):

E. Mandatory Sentences:

. . .

Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

- First-degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
- Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.
- Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a(d).
- First through fourth degree criminal sexual conduct and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6-8.
- Use of minors in a sexual performance. Minn. Stat. § 617.246, subd. 7.

- Possession of pornographic work involving minors. Minn. Stat. § 617.247, subd. 9.
- ~~When a court commits a person subject to one of these statutes to the custody of the Commissioner of Corrections, it shall provide that after the person has been released from prison, the Commissioner shall place the person on conditional release for the designated term.~~
- ~~A person committed to prison for a sex offense or criminal sexual predatory conduct is subject to a ten-year conditional release term, unless the offense is a violation of M.S. § 609.3451 (fifth degree criminal sexual conduct).~~
- ~~If the person was committed to prison for a violation of M.S. §§ 609.342 (first degree criminal sexual conduct), 609.343 (second degree criminal sexual conduct), 609.344 (third degree criminal sexual conduct), 609.345 (fourth degree criminal sexual conduct), or 609.3453 (criminal sexual predatory conduct), and there is a previous or prior sex offense conviction, the person shall be placed on conditional release for the remainder of the person's life, unless the current offense and prior conviction were both for violations of M.S. § 609.345 (fourth degree criminal sexual conduct).~~
- ~~If both the current and prior convictions are for M.S. § 609.345 (fourth degree criminal sexual conduct), the conditional release period shall be for ten years.~~
- ~~If a person who is subject to a life-with-the-possibility-of-release sentence is released, that offender is subject to conditional release for the remainder of his or her life.~~
- ~~If a person is sentenced for failure to register as a predatory offender and the person was assigned a risk level III under M.S. § 244.052, the person shall be placed on conditional release for ten years.~~
- ~~A person convicted of fourth degree assault against secure treatment facility personnel under M.S. § 609.2231, subdivision 3a, use of minors in a sexual performance under M.S. § 617.246, or a child pornography offense under M.S. § 617.247, is subject to a five-year conditional release term.~~
- ~~If the person was committed to prison for a violation of M.S. §§ 617.246 (use of minors in a sexual performance) or 617.247 (possession or dissemination of child pornography), and there is a previous or prior conviction for either of these~~

~~offenses or for a criminal sexual conduct offense, the person shall be placed on conditional release for ten years.~~

- ~~Finally, a person sentenced to imprisonment for first degree (felony) driving while impaired is subject to five years of conditional release.~~

3. Unofficial Mandatory Sentences Reference Table – Dangerous Weapons

Adopted Language (MANDATORY SENTENCES REFERENCE TABLE)

Dangerous Weapons – M.S. § 609.11			
Statute	**Offense**	**Prerequisite or Conditions**	**Minimum Duration**
609.11, subd. 4	Dangerous Weapon (Other than firearm)	*Weapon is an element of crime*	1 year and 1 day
609.11, subd. 4	Dangerous Weapon (Other than firearm) – Subsequent offense	*Current dangerous weapon offense (other than firearm) with prior dangerous weapon offense* ~~*firearm offense with prior firearm or dangerous weapon offense*~~ *Weapon is an element of crime*	36 months

4. Repealed Statute – Security Violations

Adopted Language (Minn. Sentencing Guidelines § 5):

5. OFFENSE SEVERITY REFERENCE TABLE

….

SEVERITY LEVEL	OFFENSE	STATUTE
4	Security Violations (over $2,500)	~~80A.22, subd. 1;~~ 80A.68; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
3	Security Violations ($2,500, or less)	~~80A.22, subd. 1;~~ 80A.68; 80B.10, subd. 1;

….

APPENDIX E: 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**
Murder, 2nd Degree (intentional murder; drive-by-shootings)	**11**	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480*[2]	426 *363-480*[2]
Murder, 3rd Degree *Murder, 2nd Degree (unintentional murder)*	**10**	150 *128-180*	165 *141-198*	180 *153-216*	195 *166-234*	210 *179-252*	225 *192-270*	240 *204-288*
Assault, 1st Degree *Controlled Substance Crime, 1st Degree*	**9**	86 *74-103*	98 *84-117*	110 *94-132*	122 *104-146*	134 *114-160*	146 *125-175*	158 *135-189*
Aggravated Robbery, 1st Degree *Controlled Substance Crime, 2nd Degree*	**8**	48 *41-57*	58 *50-69*	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Felony DWI	**7**	36	42	48	54 *46-64*	60 *51-72*	66 *57-79*	72 *62-84*[2]
Controlled Substance Crime, 3rd Degree	**6**	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Residential Burglary *Simple Robbery*	**5**	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Nonresidential Burglary	**4**	12[1]	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Theft Crimes (Over $5,000)	**3**	12[1]	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Theft Crimes ($5,000 or less) *Check Forgery ($251-$2,500)*	**2**	12[1]	12[1]	13	15	17	19	21 *18-25*
Sale of Simulated Controlled Substance	**1**	12[1]	12[1]	12[1]	13	15	17	19 *17-22*

Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the guidelines by law. See Guidelines Section 2.E. Mandatory Sentences, for policy regarding those sentences controlled by law.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. See, Guidelines Sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

[1] One year and one day

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

Effective August 1, 2011

APPENDIX F: SEX OFFENDER GRID

Presumptive Sentence Lengths in Months

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

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

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

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See, Guidelines Sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

[1] One year and one day

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