



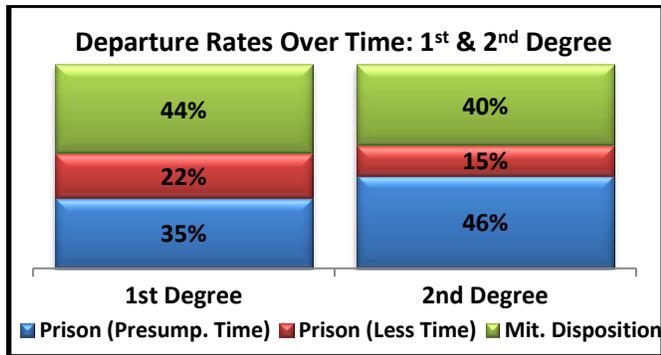
MINNESOTA SENTENCING GUIDELINES COMMISSION

OUTCOMES: FIRST- AND SECOND-DEGREE CONTROLLED SUBSTANCE OFFENDERS

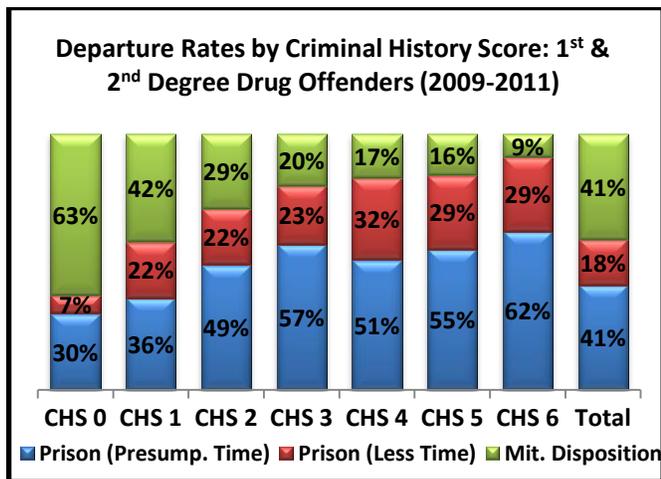
May 2013

High Departure Rates

From 2009-2011, less than half of first- and second-degree controlled substance offenders received the presumptive Guidelines sentence, which ranges from 48-158 months in prison for second-degree offenses and 86-158 months for first-degree offenses.



Since the presumptive sentence is based on “the typical case,” the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance uniformity¹ and proportionality² by varying the sanction in an “atypical case.” In contrast, high departure rates can result in sentencing disparity, and may signal that actors in the criminal justice system deem some aspect of the Guidelines, the governing law, or both, to be inappropriate.



When compared by criminal history score, offenders at lower criminal history scores tend to receive mitigated dispositional departures (probation when the Guidelines presume prison), and a large percentage of offenders at higher criminal history scores receive durational departures (shorter prison terms than presumed in the Guidelines). For example, at a criminal history score of 0, 63% of offenders received a dispositional departure. And at a criminal history score of 6, 29% received a durational departure.

Because the departure pattern has been consistent for several years, the Commission conducted a study to better understand the types of outcomes offenders experience under current sentencing practices. The Commission studied two groups of first- and second-degree controlled substances offenders: (1) those sentenced to probation between 2007 and 2009; and (2) those released from prison between 2007 and 2009.

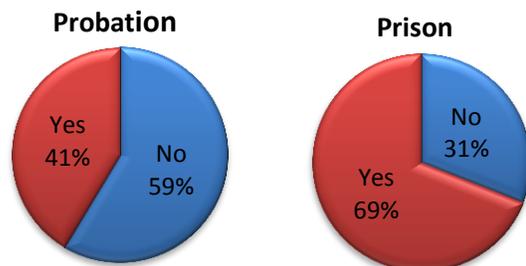
Comparing Probationers and Prisoners

All first- and second-degree controlled substances offenses are presumed prison under the Guidelines. In an effort to understand why some are sentenced to probation and others are sentenced to prison for less time than called for in the Guidelines, the Commission compared offenders on a number of characteristics including: age, race, gender, region, criminal history, LSI-R score, drug type, and sale/possession offense. While there were some differences in every category studied, the more noteworthy differences were in the areas of criminal history and region.

Criminal history seemed to be a significant factor contributing to the imposition of dispositional departures.

- More than half of those on probation had no criminal history, whereas over two-thirds of the prison group had criminal history.

% Offenders w/Any Eligible Criminal History

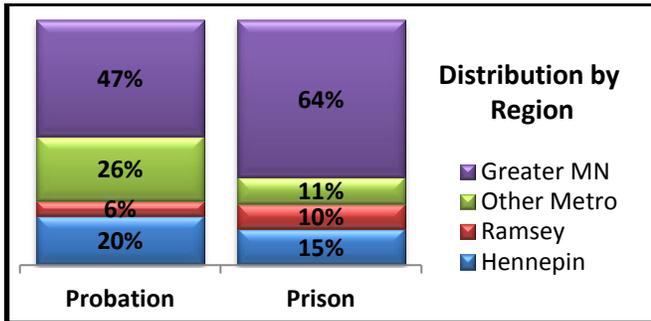


¹ Uniformity means similar offenders convicted of similar crimes receive similar sentences.

² Proportionality means that offenders receive sanctions that vary in direct relation to differences in the seriousness of their offenses and their blameworthiness.

The location an offender was sentenced (region) also seemed to be a significant factor contributing to differences in sentencing.

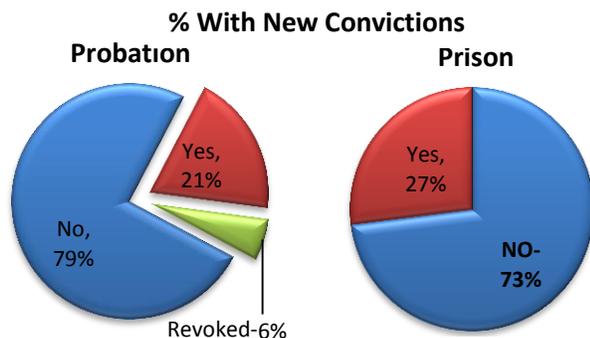
- When compared by region, a higher percent of prisoners were from Greater Minnesota (64%), and a higher percent of probationers were from Other Metro (26%). Hennepin and Ramsey Counties varied slightly.



Results of Comparison Study

The Commission sought to determine how successful first- and second-degree controlled substance offenders who were sentenced to probation were compared to those who were sentenced to prison. Offenders were followed for three years following release from confinement (prison or jail) to compare rates of reconviction for new felony, gross misdemeanor, or targeted misdemeanor offenses. The Commission found:

- The majority of offenders in both groups had no new conviction, and the new conviction rate was slightly lower for probationers than released prisoners (21% vs. 27%).

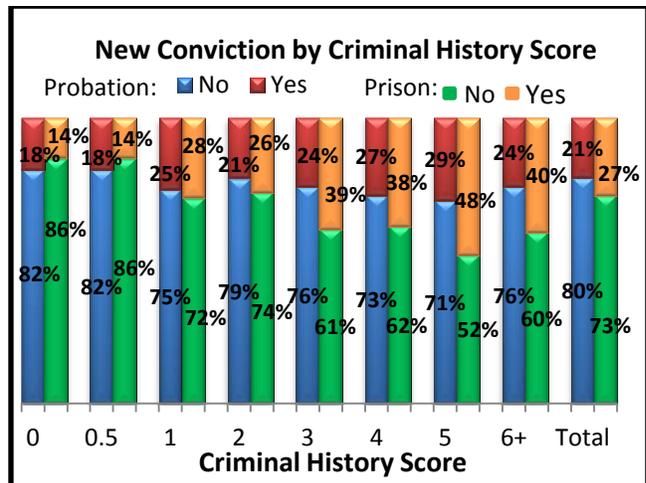


When conviction and revocation rates are combined as a measure for probationers, 27% were unsuccessful.

For both groups, the majority of those with a new conviction had just one offense (over 70%). Reconviction for person or property crimes was low. Probationers were more likely to be convicted for an offense falling into the “other” (primarily DWI)

category (9%). Prison releasees were more likely to be convicted for a drug (10%) or “other” (8%) offense.

- For both groups, new conviction rates increased as criminal history score and LSI-R³ risk level increased.



History of Controlled Substance Offenses

When the Guidelines went into effect, the statutory scheme prohibited sale and possession of controlled substances, regardless of the amount of drug. Minn. Stat. § 152.09 (1980). The Guidelines recommended probation for all first-time offenders, and allowed an aggravating factor, “major controlled substance offense,” for the atypical case. In 1989, a five-degree scheme was created under Minn. Stat. §§ 152.021-.025 (1989). High statutory maximums and the need to maintain a spread between lesser and more serious degrees led MSGC to rank first-degree offenses at a severity level alongside first-degree criminal sexual conduct and first-degree assault. The rankings were based on the thresholds in effect at the time, which were higher for powder cocaine than those in effect today. In 1991, the MN Supreme Court found the lower thresholds for crack cocaine vs. powder cocaine unconstitutional. The MN Legislature responded by lowering the powder cocaine thresholds to that for crack. The Commission did not change its rankings.

Drug Threshold Amounts for Cocaine

Deg	1989				Today	
	Sale		Poss'n		Sale	Poss'n
1st	10 g	50 g	25 g	500 g	10 g	25 g
2nd	3 g	10 g	6 g	50 g	3 g	6 g
3rd	Any	Any	3 g	10 g	Any	3 g

³ The Level of Services Inventory-Revised (LSI-R) is a risk assessment tool used by probation officers.