

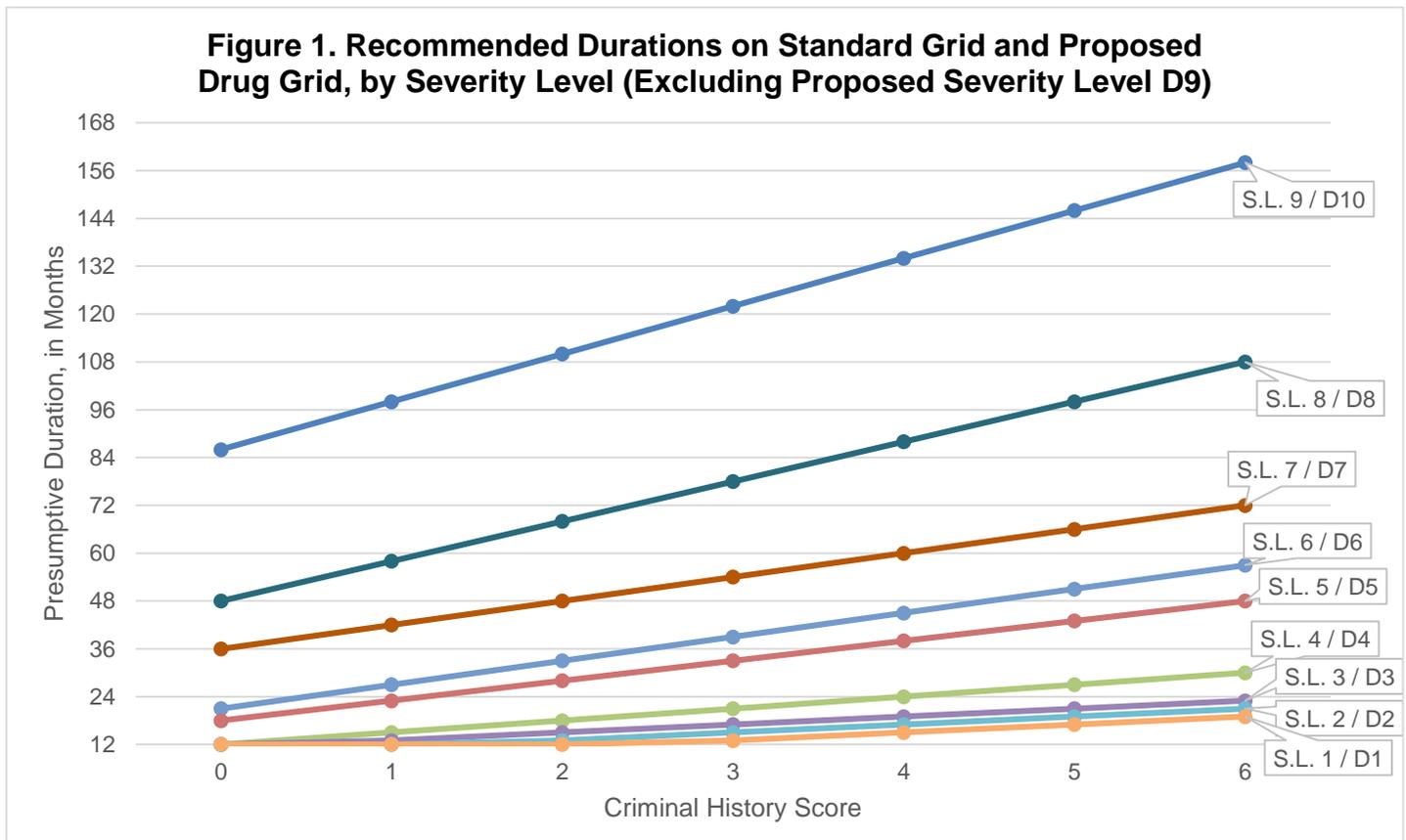
MINNESOTA SENTENCING GUIDELINES COMMISSION

Explanation of Staff-Proposed Durations in Proposed Severity Level D9

Information Requested: A more complete explanation of staff’s proposed durations for the new severity level proposed for first-degree drug sale (“D9”), forwarded by the MSGC for public comment on November 18, 2015.

As drafted, the compromise proposal established a new drug grid whose durations were modeled after durations found on the standard grid, with one exception. That exception was a new severity level (which will be referred to as “D9” in this report), to be used for first-degree drug sale offenses. The D9 durations, as originally proposed, were modeled after the past eleven years of empirical sentencing data for first-degree drug sale offenses where executed sentences were imposed—about 62 percent of all first-degree sale cases sentenced. Severity level D9 was to be a presumptive prison commitment at all criminal history scores, and its durations were to fall between severity level D8 (modeled after severity level 8 on the standard grid) and severity level D10 (modeled after severity level 9 on the standard grid).

Existing Grid Structure. The recommended durations in each severity level on the standard grid—and, by extension, each severity level on the proposed drug grid except the originally proposed D9—are linear; that is, within each severity level, the duration rises by a fixed increment of months in prison as the criminal history score increases by one point. These lines are subject to a rule that no duration may be 12 months or less. Figure 1 illustrates the linear nature of these nine severity levels, consistent with the sentencing philosophy that sentences for offenders with greater criminal history scores should be rationally and uniformly more severe than for offenders with lesser criminal history scores.



For each severity level on the standard grid, the interval between criminal history points (i.e., the slope of each line) is never greater than the interval for the severity level above it, nor less than the interval for the severity level below it, as shown in Table 1. As a result of this policy, no line would ever have a tendency to intersect the line above or below it, consistent with the sentencing philosophy that those who commit more severe

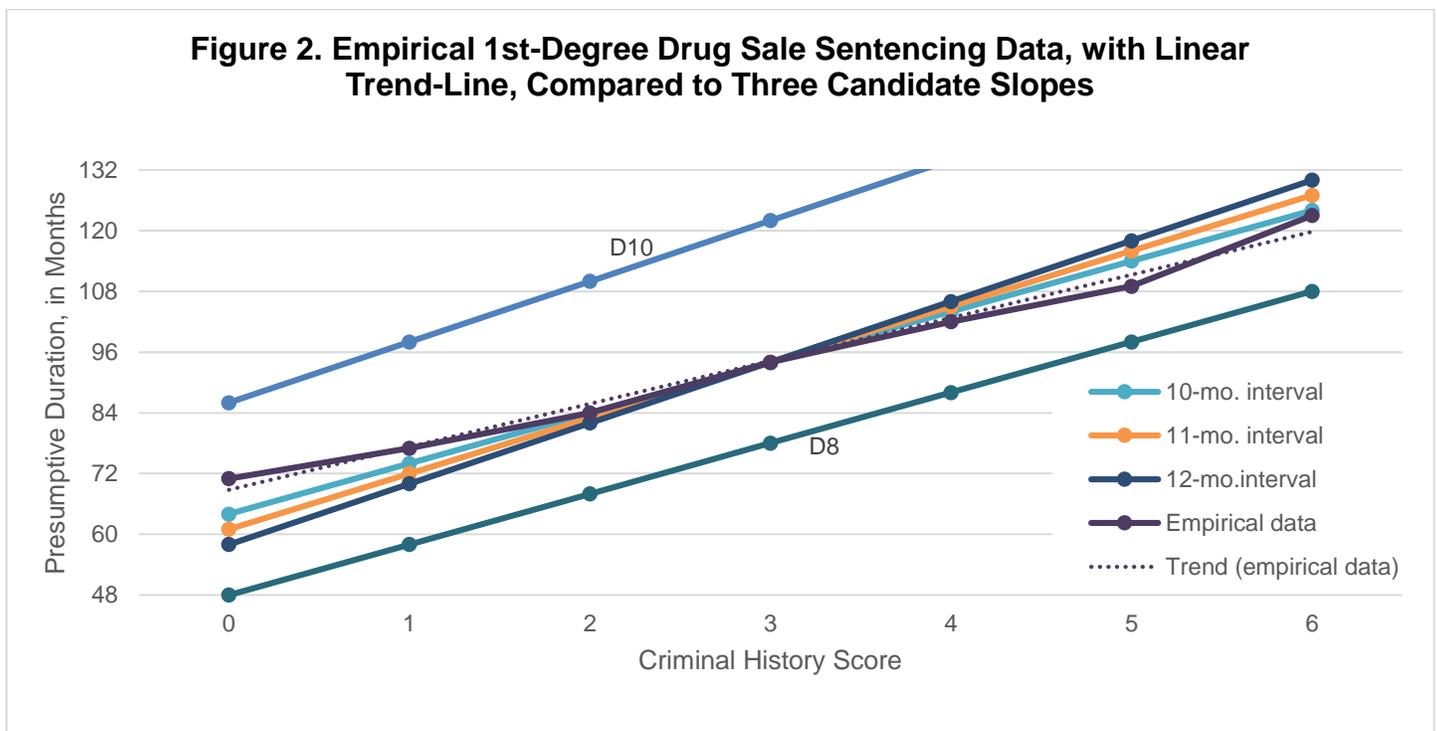
offenses should receive a penalty for each criminal history point that is as great as, or greater than, the marginal penalty for those who commit less severe offenses.

Table 1: Interval between Criminal History Points on Standard Grid and Proposed Drug Grid by Severity Level (Excluding Proposed Severity Level D9)

Severity Level on Standard/Proposed Drug Grid	Interval Between Criminal History Points (i.e., Slope of Line), in Months
9/D10	12
8/D8	10
7/D7	6
6/D6	6
5/D5	5
4/D4	3
3/D3	2
2/D2	2
1/D1	2

Proposed Severity Level D9. As originally proposed, the severity level now called “D9” was based on empirical data, and therefore followed no line. With an eye toward keeping the Guidelines as uniform as possible, MSGC staff questioned whether it would be possible to normalize severity level D9 so that it followed the rules of the grid discussed above, while also generally conforming to the empirical data. Those rules, as applicable to a severity level between 8/D8 and 9/D10, would require severity level D9 to take the shape of a line, with a fixed interval of 10, 11, or 12 months per criminal history point.

As Figure 2 shows, the lines with intervals of 11 and 12 months were steeper than the empirical data’s trend-line. The interval of 10 months—the same interval for the lower severity level D8—was therefore selected.



Staff then looked for a starting duration for the line with a fixed interval of 10 months that would most closely approximate the data. Three different lines were analyzed, shown on Figure 3 as D9 (the selected line, starting at 65 months for no criminal history score), D9-1 (starting at 64 months), and D9+1 (starting at 66 months).

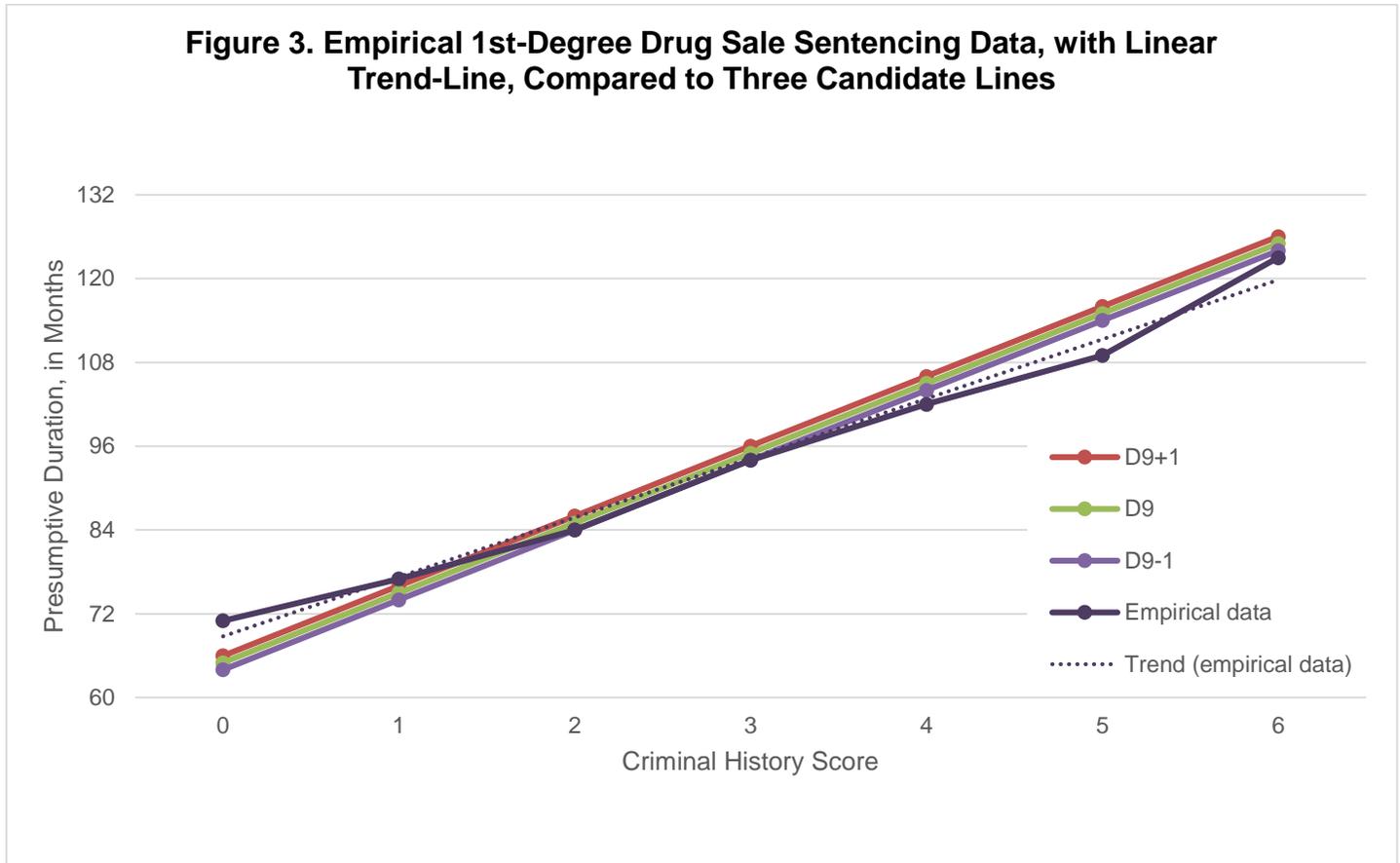


Table 2 shows how each of the three candidate lines varied from the empirical data.

Table 2: Variance between Three Candidate Lines and Empirical 1st-Degree Drug Sale Sentencing Data, by Criminal History Score

Criminal History Score	Average Pronounced Executed Sentences for First-Degree Drug Sale, 2004-2014 (Months)	D9 Durations (Months)	Variance from Empirical Data (Months)		
			D9-1	D9	D9+1
0	71	65	-7	-6	-5
1	77	75	-3	-2	-1
2	84	85	0	+1	+2
3	94	95	0	+1	+2
4	102	105	+2	+3	+4
5	109	115	+5	+6	+7
6	123	125	+1	+2	+3
Total Variance (Months):			-2	+5	+12

Staff selected D9 as the line best approximating the empirical data within the existing grid structure. Although the total variance for D9-1 was slightly less than D9 (-2 vs. +5), the variance in individual cells was more balanced, with no cell deviating from the empirical data by more than six months.

Calculated Regression Line. If the regression line (“best-fit” line, or trend-line) of the empirical data is calculated, that line has a fixed interval, or slope, of 8.5 months per criminal history point. An interval this low was disqualified from consideration because it would have been smaller than the fixed interval of the lower severity level D8 (10 months per criminal history point), thereby violating the principle that those who commit more severe offenses should, as discussed above, receive a penalty for each criminal history point as great as, or greater than, the penalty for those who commit less severe offenses. If this rule of the grid structure were ignored—or if severity level D8 were revised so that its fixed interval of months per criminal history point were equal to or less than the revised fixed interval for D9, but no less than 6 months per criminal history point—then the fixed interval for D9 could be set at 8 or 9 months per criminal history point. Such “best-fit” lines are shown in Figure 4, and their variance from the empirical data are shown in Table 3.

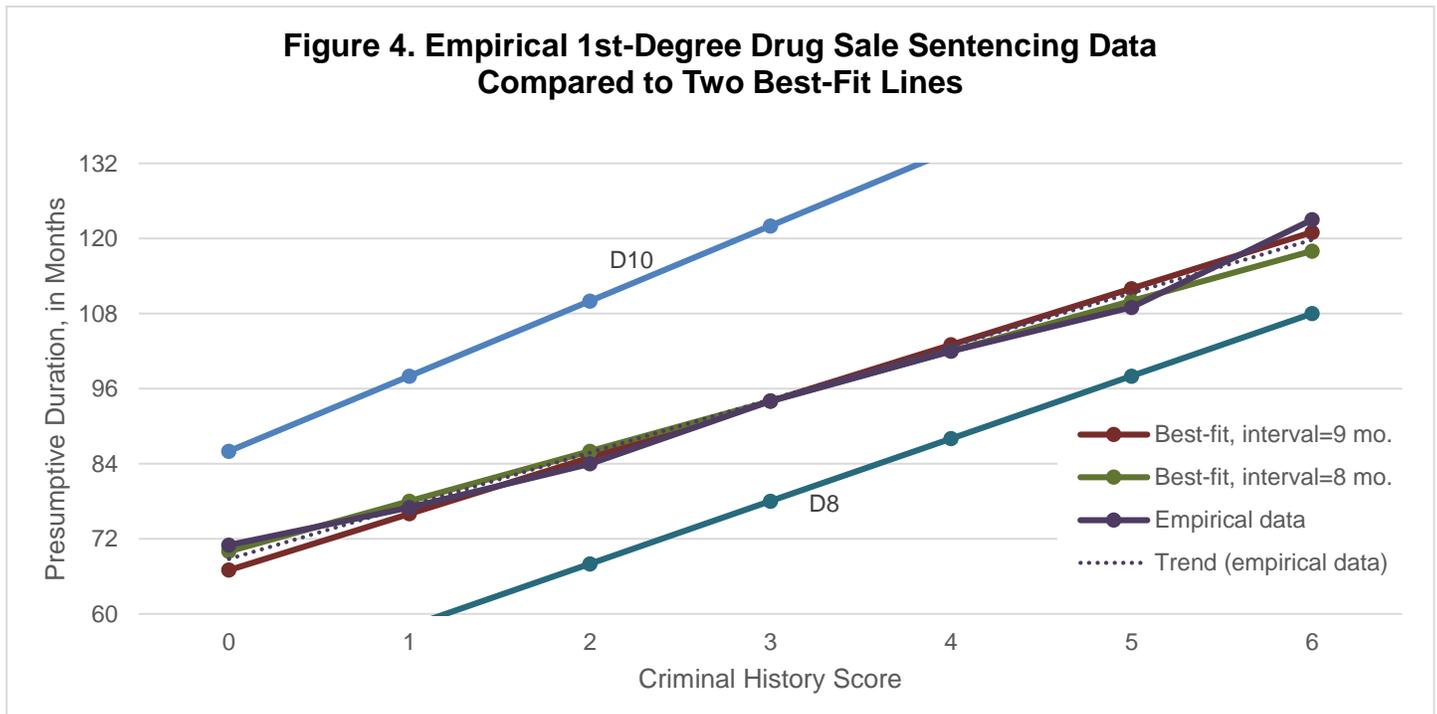


Table 3: Grid Durations if Two Best-Fit Lines Had Been Used for Severity Level D9, with Variance from Empirical 1st-Degree Drug Sale Sentencing Data, by Criminal History Score

Criminal History Score	Average Pronounced Executed Sentences for First-Degree Drug Sale, 2004-2014 (Months)	Best-Fit Lines, in Months, at Intervals between Criminal History Points of			
		8 Months		9 Months	
		Grid Duration	Variance from Data	Grid Duration	Variance from Data
0	71	70	-1	67	-4
1	77	78	+1	76	-1
2	84	86	+2	85	+1
3	94	94	0	94	0
4	102	102	0	103	+1
5	109	110	+1	112	+3
6	123	118	-5	121	-2
Total Variance (Months):			-2		-2