

Senate Counsel & Research

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX (651) 296-7747

JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

COUNSEL

PETER S. WATTSON
JOHN C. FULLER
BONNIE L. BEREZOVSKY
DANIEL P. MCGOWAN
KATHLEEN E. PONTIUS
PATRICIA A. LIEN
KATHERINE T. CAVANOR
CHRISTOPHER B. STANG
KENNETH P. BACKHUS
CAROL E. BAKER
JOAN E. WHITE
THOMAS S. BOTTERN
ANN MARIE BUTLER

TO: Senator Jane B. Ranum

FROM: Kenneth P. Backhus, Senate Counsel (651/296-4396)

DATE: January 5, 2005

RE: Overview of 2004 Senate/House Sex Offender Proposals

KB

LEGISLATIVE ANALYSTS

DAVID GIEL
DORRY C. KNOPFF
Mr. HEW GROSSER
DANIEL L. MUELLER
JACK PAULSON
CHRIS L. TURNER
AMY M. VENNEWITZ
MAJA WEIDMANN

Attached please find the comparison of the 2004 Senate/House sex offender proposals that Andrea Sternberg requested.

I hope you find these documents helpful. Please do not hesitate to contact me for additional information about this or any other matter.

KPB:ph
Attachments

House

Article 2: Mandatory Life Sentences and Indeterminate Sentences for Sex Offenders; Other Sex Offender Sentencing Changes and Article 3: Minnesota Sex Offender Review Board

Articles 2 and 3 accomplish the following main objectives.

- Requires a mandatory life without release sentence for certain first-degree criminal sexual conduct offenses (including attempts, but not necessarily including certain intra-familial sex abuse where a stayed sentence is authorized). Note: this sentence is a determinate, not an indeterminate, one. The mandatory life without release sentence applies to a person who sexually penetrates a victim and (1) causes the victim to fear immediate, significant bodily harm; (2) uses a dangerous weapon; (3) personally injures the victim while using force or coercion or when the victim is impaired or helpless; (4) is assisted by another who uses force or coercion or a dangerous weapon; or (5) is a family member of a victim under 16 years of age and forces or coerces the victim, personally injures the victim, or sexually abuses the victim over a period of time.
- Increases the statutory maximum sentences for first- to fourth-degree criminal sexual conduct offenses to life.
- Requires indeterminate sentences for certain second-, third-, and fourth-degree criminal sexual conduct offenses (including attempts). The indeterminate sentence requires the court to set a minimum term of imprisonment and a life maximum sentence. Of note, the indeterminate sentence applies only to offenses where: the sentencing guidelines presume an executed sentence; the repeat sex offender sentencing law imposes a mandatory minimum sentence, or the guidelines presume a stayed sentence but the court imposes an upward dispositional departure. If the indeterminate sentence does not apply, a second-, third-, or fourth-degree criminal sexual conduct offender will be sentenced to a determinate sentence similar to under current law.
- Creates a new crime of criminal sexual predatory conduct. This crime occurs if a person commits a predatory crime (a defined term) that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. Requires an offender convicted of this offense receive an indeterminate sentence with a minimum term of imprisonment of double the minimum term of imprisonment that would apply to the underlying predatory crime (and a maximum sentence of life). Requires an offender convicted of an attempted violation of this offense to receive an indeterminate sentence with a minimum term of imprisonment of what would apply to the underlying predatory crime (and a maximum sentence of life).

- Provides that offenders convicted of first- to fourth-degree criminal sexual conduct involving intra-familial sex abuse may (similar to current law) receive a stayed sentence. However, if the offender violates the stayed sentence, the offender will receive an indeterminate sentence.
- Repeals and reenacts the repeat sex offender sentencing law and the predatory offender sentencing law, with certain changes, in a statutory location closer to the criminal sexual conduct offenses.
- Directs the Sentencing Guidelines Commission to review the new and increased penalties for the various crimes in the bill and to ensure that the presumptive sentences under the guidelines reflect the Legislature's assessment of the severity of these crimes. Requires the Commission to increase the severity level ranking of various crimes and set new increased presumptive sentences, if necessary.
- Creates the Minnesota Sex Offender Review Board, consisting of five members (the Commissioners of Corrections and Human Services, a retired judge, a treatment professional, and a public member). Gives the board the authority to grant conditional release to offenders sentenced to indeterminate sentences. Specifies the factors the board must consider when making their release decision. Details items such as the length of appointed members' terms, decision-making timetables, administrative matters, hearing requirements, etc.
- Requires the Commissioner of Corrections to establish criteria and procedures for the Minnesota Sex Offender Review Board to use in making release decisions on inmates serving indeterminate sentences. Requires the commissioner to seek input from specified parties. The criteria and procedures must be reported to the Legislature by November 15, 2004, and go into effect unless the Legislature takes contrary action by June 1, 2005.
- Requires the Commissioner of Corrections to report instances where the commissioner failed to give the notice required by law to county attorneys regarding the release of sex offenders.

Senate

Article 15: Sex Offender; Mandatory Life Sentences for Repeat Sex Offenses; Other Sentencing Changes

Article 15 accomplishes the following main objectives.

- Increases the statutory maximum sentences for first- to fourth-degree criminal sexual conduct offenses. First-time violations are given 60-year maximums and repeat offenses are given life maximums.
- Requires indeterminate sentences for repeat first-, second-, third-, and fourth-degree criminal sexual conduct offenses (including attempts). The indeterminate sentence requires the court to set a minimum term of imprisonment and a life maximum sentence. The Commissioner of Corrections will make the decision on when the offender will be released from prison (if at all), once the minimum term of imprisonment has been served.
- Creates a new crime of criminal sexual conduct in the sixth degree. This crime occurs if a person commits a predatory crime (a defined term) that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. Provides a statutory maximum criminal penalty for this offense of 60 years imprisonment and/or a \$20,000 fine. Requires a repeat offender convicted of this offense to receive an indeterminate sentence with a minimum term of imprisonment specified by the court and a life maximum.
- Modifies the patterned and predatory offender sentencing law.

Comparison

Similarities on Major Issues

Indeterminate Sentences

Both the Senate and House require indeterminate sentences for certain sex offenders. An offender sentenced to an indeterminate sentence under these provisions will receive a maximum life sentence. In addition, the sentencing court must impose a minimum sentence that will essentially be based on current sentencing practices (i.e., the presumptive sentencing guidelines sentence, applicable mandatory sentencing provisions, etc.). The sentencing court may impose a sentence of a longer or shorter duration based on applicable law but must sentence the offender to prison. An offender sentenced to an indeterminate sentence may be released from prison only after serving the minimum sentence as imposed by the sentencing court. However, there is no guarantee of release and the offender may spend the offender's entire life in prison.

New Sexual Conduct Crime

Both the Senate and House create a new sexual conduct crime that is nearly substantively identical. The House calls this new crime "criminal sexual predatory conduct" while the Senate calls it "sixth-degree criminal sexual conduct." The substance of the crime (i.e., that the offender commit a predatory crime that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal) is identical. One difference is that the Senate's definition of "predatory crime" is slightly broader than the House's (it includes arson and witness tampering and accordingly is more similar to the definition of the term in the current patterned and predatory sex offender sentencing law from which it originates). The House requires an indeterminate sentence for an offender who commits or attempts to commit this offense. Thus, the statutory maximum for the House version of this offense is life. The Senate, consistent with its general approach to sex offense sentencing in its bill, provides for a 60-year statutory maximum sentence for a violation of this offense by a first-time offender. A violation by a repeat offender triggers a life sentence. A nonrepeat sex offender who commits this offense will be sentenced to a traditional determinate sentence under the Senate plan. A repeat offender who commits this offense will receive an indeterminate sentence.

Increased Statutory Maximums

Both the Senate and House increase statutory maximum sentences for sex offenses. Currently the statutory maximum sentences for sex offenses are as follows: first-degree criminal sexual conduct - 30 years; second-degree criminal sexual conduct - 25 years; third-degree criminal sexual conduct - 15 years; and fourth-degree criminal sexual conduct - ten years. The Senate increases the statutory maximum sentence for these crimes when committed by nonrepeat offenders to 60 years. If the offense is committed by a repeat offender, the statutory maximum sentence is life. The House increases the statutory

maximum sentences for these offenses to life regardless of whether the offense is committed by a first-time or repeat offender.

Differences on Major Issues

House-Only Provisions

The Senate does not:

- provide for a mandatory life without release sentence for certain first-degree criminal sexual conduct offenders;
- provide for indeterminate sentences for first-time sex offenders (the House provides for indeterminate sentences for certain first-time offenders if the sentencing guidelines presume an executed sentence for the offense or the court imposes an upward dispositional departure for the offense) (however, based on how the Senate defines repeat offender, it would require an indeterminate sentence for an offender charged with multiple current offenses upon the first conviction – see discussion below);
- create a separate entity to make release decisions for sex offenders sentenced to indeterminate sentences;
- direct the Sentencing Guidelines Commission to make changes to the guidelines grid based on the changes being made in this bill;
- repeal and recodify the repeat sex offender sentencing law and the patterned and predatory offender sentencing law while making changes to them (rather, the Senate simply amends these laws);
- require the Commissioner of Corrections to establish and report to the Legislature criteria and procedures to be used in making release decisions for sex offenders sentenced to indeterminate sentences; or
- require the Commissioner of Corrections to report instances where the commissioner failed to give the notice required by law to county attorneys regarding the release of sex offenders.

Release Mechanism

The House creates an independent entity known as the Minnesota Sex Offender Review Board which consists of five members (the Commissioners of Corrections and Human Services, a retired judge, a treatment professional, and a public member), and gives the board the authority to grant conditional release to offenders sentenced to indeterminate sentences. The Senate, in a manner more consistent with current law, makes it the responsibility of the Commissioner of Corrections to decide whether to give supervised

release to an offender serving an indeterminate sentence. The Senate's and House's criteria for release are largely similar. The House specifically requires the Commissioner of Corrections to establish criteria and procedures for the board to use when making release decisions. While the Senate does not specifically address this, the Commissioner of Corrections has general authority under law to promulgate rules regarding release decisions and would presumably use this if necessary. Given that the House is creating a new entity (i.e., the review board), it by necessity includes language relating to the board that the Senate does not have (i.e., the membership of the board, length of appointed members' terms, decision-making timetables, administrative matters, hearing requirements, etc.). The Senate does not include similar language because it relies on existing law related to the commissioner's authority to grant supervised release to certain inmates serving life sentences to address such issues.

Indeterminate Sentences for First-Time Offenders

The Senate does not authorize indeterminate sentences for offenders unless the offense is considered a second or subsequent sex offense. Of note, the Senate defines "second or subsequent sex offense" in a manner that allows an offender who commits more than one sex offense, prior to being convicted, to be considered a repeat offender. That is, an offender who commits multiple offenses can, after conviction for the first offense, be considered as a repeat offender for the other offenses. In addition, the Senate indeterminate sentencing requirement applies regardless of how the sentencing guidelines would treat the offense (i.e., it is an automatic indeterminate sentence if the offense is considered a repeat offense).

In contrast, the House indeterminate sentencing provision (except as it relates to the new criminal sexual predatory conduct crime – see discussion below) applies to certain first-time sex offenses. It is triggered when:

- the sentencing guidelines presume an executed sentence for the offense;
- the repeat sex offender sentencing provision applies; or
- the sentencing guidelines presume a stayed sentence for the offense but the court imposes an upward dispositional departure.

In addition to requiring indeterminate sentences for certain first-time offenders, the House (similar to the Senate) requires indeterminate sentences for repeat offenders. However, given the definition of "previous sex offense conviction" in the House's repeat sex offender sentencing law, the offender must have been convicted of a sex offense before the commission of the present offense of conviction to be considered a repeat offender. That is, if an offender commits multiple sex offenses but has not been convicted of a sex offense, the offender is not considered a repeat offender. Thus, in this instance under the House provision (unlike the Senate) the offender would not be subject to an indeterminate sentence

as being a repeat offender. However, the offender still may be subject to an indeterminate sentence if the guidelines' presumptive sentence is commitment to prison or the sentencing court sentences the offender to an upward dispositional departure.

Another difference between the House and Senate indeterminate sentencing provisions is that the House requires an indeterminate sentence for a violation or an attempt to violate its new criminal sexual predatory conduct crime. The Senate treats a violation of its version of this crime (called sixth-degree criminal sexual conduct) in a matter consistent with its treatment of other sex offenses (i.e., requiring an indeterminate sentence only if the offense is considered a repeat offense; if the offense is considered a first offense, the offender would receive a determinate sentence).

Patterned and Predatory Sex Offender Sentencing Law

The House repeals and reenacts this provision (in a statutory location in closer proximity to the criminal sexual conduct offenses). The Senate does not do this. Both the House and Senate make substantive changes to this law.

Currently, the law requires a court to sentence an offender to not less than double the presumptive prison sentence (but not more than the statutory maximum) when the court is executing a sentence on an offender for a predatory crime (a defined term) and the court reasonably believes the crime is motivated by the defendant's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal and the court finds that the defendant is a danger to public safety (a defined concept) and the court finds that the defendant needs long-term treatment or supervision beyond the presumptive term of imprisonment and supervised release. In addition, the law authorizes an increased statutory maximum sentence for a person being sentenced under this law (40 years) if the fact finder determines that the predatory offense was motivated by, committed in the course of, or committed in furtherance of sexual contact or penetration. However, the Minnesota Supreme Court struck down this increased statutory maximum provision (at least when applied to a defendant where the original elements of the law were not proven beyond a reasonable doubt). Thus, currently a court can sentence a person to double the guidelines' presumptive sentence if the provisions of the patterned and predatory sex offender sentencing law have been established. However, this sentence may not exceed the statutory maximum for the offense unless, perhaps, all the elements have been established beyond a reasonable doubt.

Both the House and Senate have reacted to the Supreme Court decision by moving part of the sentencing law to a new stand-alone crime of criminal sexual predatory conduct/sixth-degree criminal sexual conduct. Thus, if an offender commits a predatory crime that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal, the offender can be convicted of the new stand-alone crime and sentenced accordingly (in the House to an indeterminate sentence and in the Senate to a determinate sentence for a nonrepeat offender or to an indeterminate sentence for a repeat offender). Both the House and Senate essentially leave the other provisions of the

patterned and predatory sex offender law on the books (and by virtue of having increased the criminal sexual conduct statutory maximums “fixed” the constitutional infirmity addressed by the Supreme Court decision). This law could be used in both the House and Senate versions to establish a mandatory minimum sentence for an offender not subject to an indeterminate sentence or to serve as the floor (i.e., the minimum term of imprisonment) for an offender subject to an indeterminate sentence.

The House deletes the subdivision of the law relating to conditional release for offenders subject to it because the House consolidates the various conditional release provisions for sex offenders in a stand-alone section.

Repeat Sex Offender Sentencing Law

The House repeals and reenacts this provision in a statutory location in closer proximity to the criminal sexual conduct offenses. The Senate does not do this. Both the House and Senate make changes to this law.

The House removes the current requirement that for the law to apply to a repeat offender, the offense for which the offender is currently being sentenced must have occurred within 15 years of a prior conviction. This is significant because more offenders will be subject to the law and by extension to the indeterminate sentencing requirement in the House bill. In addition, the House adds a new five-year mandatory sentence for situations where a person commits a second or subsequent criminal sexual conduct offense within five years of discharge from sentence for a previous sex offense conviction. The House also makes conforming changes to the law to account for its indeterminate sentencing provision. Finally, the House deletes the law’s conditional release provision because the House consolidates the various conditional release provisions for sex offenders in a stand-alone section.

The Senate does not repeal and reenact this law. Instead, it simply amends it. The Senate’s amendments are essentially conforming changes to account for the substantive sex offender sentencing changes made elsewhere. The Senate does require the Commissioner of Corrections to develop a plan addressing how the cost of treatment for sex offenders on conditional release under the provision will be paid. The House contains a similar provision to this in its consolidated sex offender conditional release section.

Structural/Drafting Issues

In addition to the substantive differences between the Senate and House provisions, they are structured differently. In some respects, the Senate and House accomplish similar substantive objectives albeit in a much different way. For example, the House contains a separate stand-alone statutory section providing for indeterminate sentences for sex offenders.

The Senate’s indeterminate sentencing provisions are included as part of the sentencing provisions of the substantive sex offenses. The House adds separate stand-alone statutory

sections providing for the conditional release of sex offenders. The Senate accomplishes much the same by amending current existing statutory provisions and by relying on current law (without amendments). The House repeals and reenacts, in a statutory location in closer proximity to the criminal sexual conduct offenses, the repeat sex offender sentencing law and the patterned and predatory offender sentencing law while making certain changes. As explained above, the Senate does not repeal and reenact these laws, however, it does amend them.

Bill Comparison Summary of Policy Provisions of House File 2028, Third Engrossment (H2028-3)/House File 2028, Second Unofficial Engrossment (UEH2028-2)

Prepared by:
House Research and Senate Counsel and Research
Judie Zollar Ken Backhus
Jeff Diebel
Emily Shapiro

May 6, 2004

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Sex Offender Sentencing Provisions: General Overview		
HOUSE		SENATE
<p>Requires a mandatory life without release sentence for certain first-degree criminal sexual conduct offenses (including attempts, but not necessarily including certain intra-familial sex abuse where a stayed sentence is authorized). Note: this sentence is a determinate, not an indeterminate, one. The mandatory life without release sentence applies to a person who sexually penetrates a victim and (1) causes the victim to fear immediate, significant bodily harm; (2) uses a dangerous weapon; (3) personally injures the victim while using force or coercion or when the victim is impaired or helpless; (4) is assisted by another who uses force or coercion or a dangerous weapon; or (5) is a family member of a victim under 16 years of age and forces or coerces the victim, personally injures the victim, or sexually abuses the victim over a period of time.</p> <p>Increases the statutory maximum sentences for first- through fourth-degree criminal sexual conduct offenses to life.</p> <p>Requires indeterminate sentences for <u>certain</u> first-, second-, third-, and fourth-degree criminal sexual conduct offenses (including attempts). The indeterminate sentence requires the court to set a minimum term of imprisonment and a life maximum sentence. Of note, the indeterminate sentence applies only to offenses where: the sentencing guidelines presume an executed sentence; the repeat sex offender sentencing law imposes a mandatory minimum sentence, or the guidelines presume a stayed sentence but the court imposes an upward dispositional departure. If the indeterminate sentence does not apply, a first-, second-, third-, or fourth-degree</p>		<p>Increases the statutory maximum sentences for first- to fourth-degree criminal sexual conduct offenses. First-time violations are subject to 60-year maximums and repeat offenses are subject to life maximums.</p> <p>Requires indeterminate sentences for <u>repeat</u> first-, second-, third-, and fourth-degree criminal sexual conduct offenses (including attempts). The indeterminate sentence requires the court to impose a minimum term of imprisonment and a life maximum sentence. The Commissioner of Corrections will make the decision on when the offender will be released from prison (if at all), once the minimum term of imprisonment has been served.</p> <p>Increases the statutory maximum sentences for first- to fourth-degree criminal sexual conduct offenses. First-time violations are subject to 60-year maximums and repeat offenses are subject to life maximums.</p> <p>Requires indeterminate sentences for <u>repeat</u> first-, second-, third-, and fourth-degree criminal sexual conduct offenses (including attempts). The indeterminate sentence requires the court to impose a minimum term of imprisonment and a life maximum sentence. The Commissioner of Corrections will make the decision on when the offender will be released from prison (if at all), once the minimum term of imprisonment has been served.</p> <p>Creates a new crime of criminal sexual conduct in the sixth degree. This crime occurs if a person commits a predatory crime (a defined term) that was motivated by the offender's sexual</p>

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Provides that offenders convicted of first- to fourth-degree criminal sexual conduct involving intra-familial sex abuse may (similar to current law) receive a stayed sentence. However, if the offender violates the stayed sentence, the offender will receive an indeterminate sentence.

Repeals and reenacts the repeat sex offender sentencing law and the predatory offender sentencing law, with certain changes, in a statutory location closer to the criminal sexual conduct offenses.

Creates the Minnesota Sex Offender Review Board, consisting of five members (the Commissioners of Corrections and Human Services, a retired judge, a treatment professional, and a public member). Gives the board the authority to grant conditional release to offenders sentenced to indeterminate sentences. Specifies the factors the board must consider when making its release decision.

impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. Provides a statutory maximum criminal penalty for this offense of 60 years imprisonment and/or a \$20,000 fine. Requires a repeat offender convicted of this offense to receive an indeterminate sentence with a minimum term of imprisonment specified by the court and a life maximum.

Modifies the patterned and predatory offender sentencing law.

Comparison of Sex Offender Sentencing Procedures

Similarities on Major Issues

Indeterminate Sentences

Both the Senate and House require indeterminate sentences for certain sex offenders. An offender sentenced to an indeterminate sentence under these provisions will receive a maximum life sentence. In addition, the sentencing court must impose a minimum sentence that will essentially be based on current sentencing practices (i.e., the presumptive sentencing guidelines sentence, applicable mandatory sentencing provisions, etc.). The sentencing court may impose a sentence of a longer or shorter duration based on applicable law but must sentence the offender to prison. An offender sentenced to an indeterminate sentence may be released from prison only after serving the minimum sentence as imposed by the sentencing court. However, there is no guarantee of release and the offender may spend the offender's entire life in prison.

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Both the Senate and House create a new sexual conduct crime that is nearly substantively identical. The House calls this new crime "criminal sexual predatory conduct" while the Senate calls it "sixth-degree criminal sexual conduct." The substance of the crime (i.e., that the offender commit a predatory crime that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal) is identical. One difference is that the Senate's definition of "predatory crime" is slightly broader than the House's (it includes arson and witness tampering and accordingly is more similar to the definition of the term in the current patterned and predatory sex offender sentencing law from which it originates). The House requires an indeterminate sentence for an offender who commits or attempts to commit this offense. Thus, the statutory maximum for the House version of this offense is life. The Senate, consistent with its general approach to sex offense sentencing in its bill, provides for a 60-year statutory maximum sentence for a violation of this offense by a first-time offender. A violation by a repeat offender triggers a life sentence. A nonrepeat sex offender who commits this offense will be sentenced to a traditional determinate sentence under the Senate plan. A repeat offender who commits this offense will receive an indeterminate sentence.

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Both the Senate and House increase statutory maximum sentences for sex offenses. Currently the statutory maximum sentences for sex offenses are as follows: first-degree criminal sexual conduct B 30 years; second-degree criminal sexual conduct B 25 years; third-degree criminal sexual conduct B 15 years; and fourth-degree criminal sexual conduct B ten years. The Senate increases the statutory maximum sentence for these crimes when committed by nonrepeat offenders to 60 years. If the offense is committed by a repeat offender, the statutory maximum sentence is life. The House increases the statutory maximum sentences for these offenses to life regardless of whether the offense is committed by a first-time or repeat offender.

Differences on Major Issues

House-Only Provisions

The Senate does not:

- X provide for a mandatory life without release sentence for certain first-degree criminal sexual conduct offenders;
- X provide for indeterminate sentences for first-time sex offenders (the House provides for indeterminate sentences for certain first-time offenders if the sentencing guidelines presume an executed sentence for the offense or the court imposes an upward dispositional departure for the offense) (however, based on how the Senate defines repeat offender, it would require an indeterminate sentence for an offender charged with multiple current offenses upon the first conviction B see discussion below);
- X create a separate entity to make release decisions for sex offenders sentenced to indeterminate sentences;
- X direct the Sentencing Guidelines Commission to make changes to the guidelines grid based on the changes being made in this bill;
- X repeal and recodify the repeat sex offender sentencing law and the patterned and predatory offender sentencing law while making changes to them (rather, the Senate simply amends these laws);
- X require the Commissioner of Corrections to establish and report to the Legislature criteria and procedures to be used in making release decisions for sex offenders sentenced to indeterminate sentences; or
- X require the Commissioner of Corrections to report instances where the commissioner failed to give the notice required by law to county attorneys regarding the release of sex offenders.

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Indeterminate Sentences for First-Time Offenders

The Senate does not authorize indeterminate sentences for offenders unless the offense is considered a second or subsequent sex offense. Of note, the Senate defines "second or subsequent sex offense" in a manner that allows an offender who commits more than one sex offense, prior to being convicted, to be considered a repeat offender. That is, an

offender who commits multiple offenses can, after conviction for the first offense, be considered as a repeat offender for the other offenses. In addition, the Senate indeterminate sentencing requirement applies regardless of how the sentencing guidelines would treat the offense (i.e., it is an automatic indeterminate sentence if the offense is considered a repeat offense).

In contrast, the House indeterminate sentencing provision (except as it relates to the new criminal sexual predatory conduct crime B see discussion below) applies to certain first-time sex offenses. It is triggered when:

- X the sentencing guidelines presume an executed sentence for the offense;
- X the repeat sex offender sentencing provision applies; or
- X the sentencing guidelines presume a stayed sentence for the offense but the court imposes an upward dispositional departure.

In addition to requiring indeterminate sentences for certain first-time offenders, the House (similar to the Senate) requires indeterminate sentences for repeat offenders. However, given the definition of "previous sex offense conviction" in the House's repeat sex offender sentencing law, the offender must have been convicted of a sex offense before the commission of the present offense of conviction to be considered a repeat offender. That is, if an offender commits multiple sex offenses but has not been convicted of a sex offense, the offender is not considered a repeat offender. Thus, in this instance under the House provision (unlike the Senate) the offender would not be subject to an indeterminate sentence as being a repeat offender. However, the offender still may be subject to an indeterminate sentence if the guidelines' presumptive sentence is commitment to prison or the sentencing court sentences the offender to an upward dispositional departure.

Another difference between the House and Senate indeterminate sentencing provisions is that the House requires an indeterminate sentence for a violation or an attempt to violate its new criminal sexual predatory conduct crime. The Senate treats a violation of its version of this crime (called sixth-degree criminal sexual conduct) in a matter consistent with its treatment of other sex offenses (i.e., requiring an indeterminate sentence only if the offense is considered a repeat offense; if the offense is considered a first offense, the offender would receive a determinate sentence).

Patterned and Predatory Sex Offender Sentencing Law

The House repeals and reenacts this provision (in a statutory location in closer proximity to the criminal sexual conduct offenses). The Senate does not do this. Both the House and Senate make substantive changes to this law.

Currently, the law requires a court to sentence an offender to not less than double the presumptive prison sentence (but not more than the statutory maximum) when the court is executing a sentence on an offender for a predatory crime (a defined term) and the court reasonably believes the crime is motivated by the defendant's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal and the court finds that the defendant is a danger to public safety (a defined concept) and the court finds that the defendant needs long-term treatment or supervision beyond the presumptive term of imprisonment and supervised release. In addition, the law authorizes an increased statutory maximum sentence for a person being sentenced under this law (40 years) if the fact finder determines that the predatory offense was motivated by, committed in the course of, or committed in furtherance of sexual contact or penetration. However, the Minnesota Supreme Court struck down this increased statutory maximum provision (at least when applied to a defendant where the original elements of the law were not proven beyond a reasonable doubt). Thus, currently a court can sentence a person to double the guidelines' presumptive sentence if the provisions of the patterned and predatory sex offender sentencing law have been established. However, this sentence may not exceed the statutory maximum for the offense unless, perhaps, all the elements have been established beyond a reasonable doubt.

Both the House and Senate have reacted to the Supreme Court decision by moving part of the sentencing law to a new stand-alone crime of criminal sexual predatory conduct/sixth-degree criminal sexual conduct. Thus, if an offender commits a predatory crime that was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal, the offender can be convicted of the new stand-alone crime and sentenced accordingly (in the House to an indeterminate sentence and in the Senate to a determinate sentence for a nonrepeat offender or to an indeterminate sentence for a repeat offender). Both the House and Senate essentially leave the other provisions of the patterned and predatory sex offender law on the books (and by virtue of having increased the criminal sexual conduct statutory maximums "fixed" the constitutional infirmity addressed by the Supreme Court decision). This law could be used in both the House and Senate versions to establish a mandatory minimum sentence for an offender not subject to an indeterminate sentence or to serve as the floor (i.e., the minimum term of imprisonment) for an offender subject to an indeterminate sentence.

The House deletes the subdivision of the law relating to conditional release for offenders subject to it because the House consolidates the various conditional release provisions for sex offenders in a stand-alone section.

Repeat Sex Offender Sentencing Law

The House repeals and reenacts this provision in a statutory location in closer proximity to the criminal sexual conduct offenses. The Senate does not do this. Both the House and Senate make changes to this law.

The House removes the current requirement that for the law to apply to a repeat offender, the offense for which the offender is currently being sentenced must have occurred within 15 years of a prior conviction. This is significant because more offenders will be subject to the law and by extension to the indeterminate sentencing requirement in the House bill. In addition, the House adds a new five-year mandatory sentence for situations where a person commits a second or subsequent criminal sexual conduct offense within five years of discharge from sentence for a previous sex offense conviction. The House also makes conforming changes to the law to account for its indeterminate sentencing provision. Finally, the House deletes the law's conditional release provision because the House consolidates the various conditional release provisions for sex offenders in a stand-alone section.

The Senate does not repeal and reenact this law. Instead, it simply amends it. The Senate's amendments are essentially conforming changes to account for the substantive sex offender sentencing changes made elsewhere. The Senate does require the Commissioner of Corrections to develop a plan addressing how the cost of treatment for sex offenders on conditional release under the provision will be paid. The House contains a similar provision to this in its consolidated sex offender conditional release section.

Structural/Drafting Issues

In addition to the substantive differences between the Senate and House provisions, they are structured differently. In some respects, the Senate and House accomplish similar substantive objectives albeit in a much different way. For example, the House contains a separate stand-alone statutory section providing for indeterminate sentences for sex offenders. The Senate's indeterminate sentencing provisions are included as part of the sentencing provisions of the substantive sex offenses. The House adds separate stand-alone statutory sections providing for the conditional release of sex offenders. The Senate accomplishes much the same by amending current existing statutory provisions and by relying on current law (without amendments). The House repeals and reenacts, in a statutory location in closer proximity to the criminal sexual conduct offenses, the repeat sex offender sentencing law and the patterned and predatory offender sentencing law while making certain changes. As explained above, the Senate does not repeal and reenact these laws, however, it does amend them.

Section	References are to H.F. No. 2028 (H2028-3) the third engrossment, unless otherwise noted)		(References are to H.F. No. 2028 (UEH2028-2) the second unofficial engrossment, unless otherwise noted)
	HOUSE	See Pages 4-7 for Comparison	SENATE
	Article 2: Sex Offender Sentencing Changes: Specific Summary		
1	<p>Legislative findings and purpose. States the legislature’s findings and purpose in enacting this legislation. Notes that the legislature finds that sex offenders pose a significant threat to public safety, are unique in their psychological makeup, and are particularly likely to continue to be dangerous after their release from imprisonment. Also recognizes that sex offenders inflict longstanding psychological harm on their victims and undermine victim and community safety to a greater extent than most other criminal offenses. States that, based on these findings, the legislature believes sex offenders need long-term treatment and supervision beyond that provided other offenders and that this treatment and supervision is best provided in a secure correctional facility.</p> <p>Also notes that the legislature’s purpose in enacting this legislation is to provide courts and corrections and treatment professionals with the tools necessary to protect public safety through use of longer, more flexible sentences than currently available. States the legislature’s intent that a sex offender’s past and future dangerousness be considered in both sentencing and release decisions.</p>		<p>Article 15, section 1, states the legislative findings and intent related to this article. Of note, specifies that the future dangerousness of sex offenders is one reason they merit longer-term supervision and treatment than do other types of criminal offenders and that their future dangerousness must be taken into consideration in sentencing and release decisions.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
2	<p>Definitions. Defines a number of terms for the purpose of the conditional release and indeterminate sentencing provisions in the bill (section 4 and article 3). Defines “conditional release,” “first eligible for release,” “minimum term of imprisonment,” “Minnesota Sex Offender Review Board,” and “sex offense.”</p>		<p>No comparable provision.</p>
	<p>No comparable provision.</p>		<p>Article 15, section 2, provides that an offender serving a mandatory life sentence under the indeterminate sentencing provisions of this article (see article 15, sections 10, 12, 14, 16, and 18, applying to repeat sex offenders convicted of criminal sexual conduct in the first, second, third, fourth, or sixth degree) may not be given supervised release without having served the minimum term of imprisonment as specified by the sentencing court.</p>
3	<p>Supervised release; life sentence. Strikes a reference to a statute repealed under the bill. Requires preparation of a community investigation report on sex offenders subject to conditional release under the indeterminate sentencing provisions of the bill. This report currently is prepared only for individuals who are subject to a life sentence and eligible for <i>supervised release</i> after serving the term of imprisonment specified in this statute. Also requires the commissioner to submit the community investigation report to the Minnesota Sex Offender Review Board at least six months before the sex offender is first eligible for release. Also requires the commissioner to give the board information gathered in compiling the report.</p>		<p>Article 15, section 3, requires the Commissioner of Corrections, when considering whether to give supervised release to an offender serving a life sentence under the indeterminate sentencing provisions of this article, to consider at a minimum:</p> <ul style="list-style-type: none"> § the risk the offender poses to the community if released; § the offender=s progress and treatment; § the offender=s behavior while incarcerated; § psychological or other diagnostic evaluations of the offender;

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	HOUSE	See Pages 4-7 for Comparison	SENATE
			<p>§ the offender=s criminal history; and</p> <p>§ any other relevant conduct of the offender while incarcerated or before incarceration.</p> <p>Also makes a conforming change relating to article 15, section 2.</p>
4	<p>Conditional release term for sex offenders. Creates a new section of law that applies specifically to conditional release of sex offenders.</p> <p>Subd. 1. Conditional release required. Requires every inmate sentenced for a sex offense to serve a conditional release term upon the person’s release from a state correctional facility.</p> <p>Subd. 2. Relationship to supervised release. Clarifies that the provisions applicable to supervised release under section 244.05 apply to conditional release, except as otherwise provided.</p> <p>Subd. 3. Minimum imprisonment; life sentence. Provides that an inmate serving a mandatory life sentence for first-degree criminal sexual conduct shall not be given conditional release unless the person is serving an indeterminate sentence. Provides that an inmate serving an indeterminate sentence shall not be given conditional release without first serving the minimum term of imprisonment specified by the court. An inmate sentenced as a repeat sex</p>		<p>No comparable provision.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>offender under section 20 may not be given conditional release until serving a minimum of 30 years imprisonment.</p> <p>Subd. 4. Conditional release; life sentence. Allows the Minnesota sex offender review board established in article 3 to give conditional release to an inmate serving a life sentence under the indeterminate sentencing provisions after the inmate has served the minimum term of imprisonment. The board may give an inmate sentenced under the repeat sex offender law (section 20) conditional release after the inmate has served a minimum of 30 years imprisonment. Specifies that the terms of conditional release are governed by this section and section 609.3459, a new section dealing exclusively with conditional release.</p>		
5	<p>End-of-confinement review committee. Amends language in the community notification law to require the commissioner of corrections to convene the appropriate end-of-confinement review committee at least nine months before an offender subject to an indeterminate sentence is first eligible for release. Identifies the procedure to follow in cases where the inmate is received for confinement with fewer than nine months remaining before the person is first eligible for release. Requires the committee to give the assessment report to the offender, the commissioner, and the Minnesota Sex Offender Review Board at least six months before the offender is first eligible for release.</p>		<p>Article 17, section 4, provides timetables for the actions of the end of confinement review committees relating to offenders subject to indeterminate sentences under article 15.</p>
	<p>Also requires the end-of-confinement review committee to review the risk level of an offender granted conditional</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>release by the Sex Offender Review Board at its first regularly scheduled meeting after the decision to release the inmate is made. Requires the commissioner of corrections to make reasonable efforts to ensure that the offender's earlier risk level determination is reviewed and confirmed or reassigned at least 60 days before the offender's release date. Specifies that the assessment report shall be given to the offender and law enforcement agency at least 60 days before the offender is released from confinement.</p>		
6	<p>Report. Requires the commissioner of corrections to file a report with the legislature each fiscal year. The report must identify the instances where the commissioner failed to notify properly the appropriate county attorney when the commissioner releases a sex offender who should be considered for civil commitment. In order to provide proper notice, the commissioner must provide 12-month advance notice for inmates held longer than one year and must merely provide advance notice for inmates held less than one year.</p>		<p>No comparable provision.</p>
7	<p>Conditional release. Amends the definitions in the criminal sexual conduct section of the criminal code by adding the definition of conditional release created in section 2 of this article.</p>		<p>No comparable provision.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
8	<p>First eligible for release. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of “first eligible for release.” “First eligible for release” means the day after the offender has served the entire minimum term of imprisonment, plus any disciplinary time imposed by the commissioner of corrections. Or, if the person was sentenced to life under the repeat sex offender law, the person is first eligible the day after the inmate has served 30 years imprisonment.</p>		<p>No comparable provision.</p>
9	<p>Minimum term of imprisonment. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of “minimum term of imprisonment.” “Minimum term of imprisonment” means the minimum length of time an offender is incarcerated under an indeterminate sentence and is equal to two-thirds of the sentence length called for by the presumptive sentence under the appropriate cell of the sentencing guidelines grid, plus any disciplinary time imposed by the commissioner of corrections. States that, if the sentencing guidelines do not provide the presumptive sentence for the offense, the minimum term of imprisonment is as provided by statute or, if not so provided, as determined by the court.</p>		<p>No comparable provision.</p>
10	<p>Predatory crime. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of “predatory crime.” A predatory crime means any felony violation of, or felony attempt to violate, the following crimes: first-, second-, and third-degree murder; manslaughter in the first and second degree; first-, second-,</p>		<p>Article 15, section 9, defines a predatory crime@ for purposes of the criminal sexual conduct laws. Of note, this definition is nearly identical to the definition of predatory crime stricken from the Patterned and Predatory Offender Sentencing Law in article 15, section 5. The only difference is that the new definition does not include criminal sexual conduct in the first</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	and third-degree assault; simple and aggravated robbery; kidnapping; false imprisonment; incest, or first-degree burglary.		through fourth degrees, because a reference to these crimes is unnecessary under the changes made by the article.
	This definition of predatory crime is similar to the definition of predatory crime under the current predatory and patterned offender law (section 609.108), which is amended by this article, except that it does not include first- through fourth-degree criminal sexual conduct, arson, and witness tampering. This definition is used for the purpose of the criminal sexual predatory conduct crime in section 17.		
11	Sex offense. Amends the definitions in the criminal sexual conduct section of the criminal code by adding a definition of "sex offense." States that, unless otherwise provided, "sex offense" means any violation of, or attempt to violate, first-through fourth-degree criminal sexual conduct, criminal sexual predatory conduct (see section 17), or any similar statute of the United States or any other state.		Article 15, section 7, defines Asex offense@ for purposes of the criminal sexual conduct laws to include violations/attempts to violate criminal sexual conduct in the first, second, third, fourth, or sixth degree, or similar federal or state laws.
	No comparable provision.		Article 15, section 8, defines Asecond or subsequent sex offense@ for purposes of the criminal sexual conduct laws. Of note, this definition does not require an offender to commit and be convicted of a sex offense before the offender commits a subsequent sex offense in order to be considered a repeat offender. Instead, this definition allows an offender who commits more than one sex offense prior to being convicted as being considered a repeat offender (i.e., an offender who commits multiple offenses before being charged and convicted of anything can, after conviction for the first

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	HOUSE	See Pages 4-7 for Comparison	SENATE
			offense, be considered as a repeat offender for the other offenses).
12	<p>Criminal sexual conduct in the first degree.</p> <p>Subd. 1. Crime defined. No changes.</p> <p>Subd. 2. Penalty. Increases the statutory maximum penalty for first-degree criminal sexual conduct from 30 years to life. An offender is subject to a life sentence without the possibility of release when the offender commits sexual penetration with force, coercion, violence, or a dangerous weapon; causes personal injury to the victim; or commits multiple acts over an extended period of time.</p> <p>For all other types of first-degree criminal sexual conduct, the offender is subject to a mandatory life sentence and indeterminate sentencing under section 18. These offenses involve situations where the victim's age or the victim's and offender's age are elements of the offense. The law continues to call for a presumptive executed sentence of 144 months for these first-degree criminal sexual conduct offenders. For the purpose of indeterminate sentencing, the minimum term of imprisonment is 96 months for a completed offenses and 48 months for an attempted offense. The maximum sentence is life.</p> <p>Subd. 3. Stay. Retains the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. The stay does not apply if the person is</p>		<p>Article 15, section 10, amends the penalty subdivision of criminal sexual conduct in the first degree to increase the statutory maximum penalty for this crime to 60 years (currently, the statutory maximum penalty for this offense is 30 years).</p> <p>This section also requires a life sentence for offenders who commit this crime where the offense is considered a second or subsequent sex offense as defined in article 15, section 8 (i.e., the offender is a repeat offender). Requires the court to specify a minimum term of imprisonment that must be served before the offender may be considered for supervised release. Thus, this section, in conjunction with article 15, sections 2 and 3, create an indeterminate sentencing system for repeat sex offenders where the offender will serve anywhere from the minimum term specified by the sentencing court to the remainder of the offender's life.</p> <p>Article 15, section 11, makes a cross-reference change consistent with this article.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	subject to a life sentence (minimum of 30 years of imprisonment) as a repeat sex offender.		
13	<p>Criminal sexual conduct in the second degree.</p> <p>Subd. 1. Crime defined. No changes.</p> <p>Subd. 2. Penalty. Increases the statutory maximum penalty for second-degree criminal sexual conduct from 25 years to life. Requires the court to sentence the person to an indeterminate sentence if section 18 applies. Specifies that, if the indeterminate sentencing law does not apply, then the person shall be sentenced to an executed sentence of 90 months if the offense involved force, coercion, injury, etc. (non-age related offenses).</p> <p>If the indeterminate sentencing law applies, the court must presume a minimum term of imprisonment of 60 months if the offender is convicted of a non age-related offense and 30 months if the offender is convicted of an attempted violation of a non age-related offense, unless the law otherwise requires a longer sentence for the offense.</p> <p>Subd. 3. Stay. Amends the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. Allows the court to stay the sentence except when imprisonment is required under the patterned and dangerous offender law or law providing penalties for repeat or aggravated offenses (sections 19 and 20). Current law permits the stay except when the person is a repeat offender</p>		<p>Article 15, section 12, amends the penalty subdivision of criminal sexual conduct in the second degree to increase the statutory maximum penalty for this crime to 60 years (currently, the statutory maximum penalty for this offense is 25 years).</p> <p>This section also requires a life sentence for offenders who commit this crime where the offense is considered a second or subsequent sex offense as defined in article 15, section 8 (i.e., the offender is a repeat offender). Requires the court to specify a minimum term of imprisonment that must be served before the offender may be considered for supervised release. Thus, this section, in conjunction with article 15, sections 2 and 3, create an indeterminate sentencing system for repeat sex offenders where the offender will serve anywhere from the minimum term specified by the sentencing court to the remainder of the offender=s life.</p> <p>Article 15, section 13, makes a cross-reference change consistent with this article.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	or has committed a sex crime where the court imposes an upward departure under the sentencing guidelines.		
	Specifies that, if a person receiving a stay under this subdivision violates the stay, the person shall be subject to an indeterminate sentence under section 18.		
14	<p>Criminal sexual conduct in the third degree.</p> <p>Subd. 1. Crime defined. No changes.</p> <p>Subd. 2. Penalty. Increases the statutory maximum penalty for third-degree criminal sexual conduct from 15 years to life. Requires the court to sentence the person to an indeterminate sentence if section 18 applies. Specifies that, if the indeterminate sentencing law does not apply, then the person shall be sentenced to the presumptive sentence under the sentencing guidelines for the offense.</p> <p>Subd. 3. Stay. Amends the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. Allows the court to stay the sentence except when imprisonment is required under the patterned and dangerous offender law or law providing penalties for repeat or aggravated offenses (sections 19 and 20). Current law permits the stay except when the person is a repeat offender or has committed a sex crime where the court imposes an upward departure under the sentencing guidelines.</p> <p>Specifies that, if a person receiving a stay under this</p>		<p>Article 15, section 14, amends the penalty subdivision of criminal sexual conduct in the third degree to increase the statutory maximum penalty for this crime to 60 years (currently, the statutory maximum penalty for this offense is 15 years).</p> <p>This section also requires a life sentence for offenders who commit this crime where the offense is considered a second or subsequent sex offense as defined in article 15, section 8 (i.e., the offender is a repeat offender). Requires the court to specify a minimum term of imprisonment that must be served before the offender may be considered for supervised release. Thus, this section, in conjunction with article 15, sections 2 and 3, create an indeterminate sentencing system for repeat sex offenders where the offender will serve anywhere from the minimum term specified by the sentencing court to the remainder of the offender=s life.</p> <p>Article 15, section 15, makes a cross-reference change consistent with this article.</p>

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	subdivision violates the stay, the person shall be subject to an indeterminate sentence under section 18.		
15	<p>Criminal sexual conduct in the fourth degree.</p> <p>Subd. 1. Crime defined. No changes.</p> <p>Subd. 2. Penalty. Increases the statutory maximum penalty for fourth -degree criminal sexual conduct from 15 years to life. Requires the court to sentence the person to an indeterminate sentence if section 18 applies. Specifies that, if the indeterminate sentencing law does not apply, then the person shall be sentenced to the presumptive sentence under the sentencing guidelines for the offense.</p> <p>Subd. 3. Stay. Amends the subdivision allowing a court to stay imposition or execution of sentence when the offense is a certain type of criminal sexual conduct occurring within a family context. Allows the court to stay the sentence except when imprisonment is required under the patterned and dangerous offender law or law providing penalties for repeat or aggravated offenses (sections 19 and 20). Current law permits the stay except when the person is a repeat offender or has committed a sex crime where the court imposes an upward departure under the sentencing guidelines.</p> <p>Specifies that, if a person receiving a stay under this subdivision violates the stay, the person shall be subject to an indeterminate sentence under section 18.</p>		<p>Article 15, section 16, amends the penalty subdivision of criminal sexual conduct in the fourth degree to increase the statutory maximum penalty for this crime to 60 years (currently, the statutory maximum penalty for this offense is ten years).</p> <p>This section also requires a life sentence for offenders who commit this crime where the offense is considered a second or subsequent sex offense as defined in article 15, section 8 (i.e., the offender is a repeat offender). Requires the court to specify a minimum term of imprisonment that must be served before the offender may be considered for supervised release. Thus, this section, in conjunction with article 15, sections 2 and 3, create an indeterminate sentencing system for repeat sex offenders where the offender will serve anywhere from the minimum term specified by the sentencing court to the remainder of the offender=s life.</p> <p>Article 15, section 17, makes a cross-reference change consistent with this article.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
16	<p>Definition. Changes the definition of “sex offense” in the law requiring sex offender assessments to include a violation of the criminal sexual predatory conduct law (section 17).</p>		<p>No comparable provision.</p>
17	<p>Criminal sexual predatory conduct.</p> <p>Subd. 1. Crime defined. Provides that a person is guilty of criminal sexual predatory conduct if the person commits a predatory crime and the predatory crime was motivated by the offender’s sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. “Predatory crime” is defined in section 10.</p> <p>A somewhat different version of this crime exists in section 609.108 of current law. The current version of the law is unconstitutional under <i>State v. Grossman</i>, 636 N.W.2d 545 (Minn. 2001). (See note under section 19.)</p> <p>Subd. 2. Penalty. Specifies that a person convicted under subdivision 1 or for an attempted violation of subdivision 1 is subject to indeterminate sentencing under section 18. Calls for a fine of not more than \$30,000. Provides that the minimum term of imprisonment for a conviction under subdivision 1 is double the minimum term of imprisonment that would apply to the predatory crime. The minimum term of imprisonment for an attempted violation is the minimum term of imprisonment that would apply to the predatory crime.</p>		<p>Article 15, section 18, creates a new crime of criminal sexual conduct in the sixth degree, which occurs if an offender commits a predatory crime (see definition in article 15, section 9) that was motivated by the offender’s sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. Provides a statutory maximum criminal penalty for this offense of 60 years imprisonment and/or a \$20,000 fine. Requires that an offender convicted of this crime where the offense is considered a second or subsequent sex offense as defined in article 15, section 8 (i.e., a repeat offender), must be sentenced to life imprisonment. The court must specify a minimum term of imprisonment that must be served before the offender may be considered for supervised release. Thus, a person convicted of this new crime who is a repeat sex offender will receive the same type of indeterminate sentence as repeat first through fourth-degree criminal sexual conduct offenders.</p>
18	<p>Indeterminate sentences for sex offenses.</p>		<p>No comparable provision.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>Subd. 1. Applicability. Identifies the offenders who are subject to indeterminate sentencing for a sex offense. This section applies to criminal sexual predatory conduct offenses and attempted criminal sexual predatory conduct offenses. It also applies to an offender convicted of a violation or attempted violation of first-degree criminal sexual conduct (age-related offenses only) and second- through fourth-degree criminal sexual conduct when:</p> <ul style="list-style-type: none"> ▶ the sentencing guidelines presume an executed sentence for the offense, ▶ the law for repeat or aggravated offenses applies (section 20), or ▶ the sentencing guidelines presume a stayed sentence for the offense and the court imposes an upward dispositional departure. <p>This provision also applies to offenders convicted of certain first- through fourth- degree criminal sexual conduct offenses occurring within the family context when the offender previously received a stay of imposition or execution of sentence and violated a condition of the stayed sentence.</p> <p>Requires the court to sentence an offender covered by this subdivision to a minimum and maximum term of imprisonment.</p>		
	<p>Subd. 2. Minimum and maximum term of imprisonment. Specifies that the minimum term of</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>imprisonment for an offense shall be the minimum term of imprisonment for the offense committed or, in the case of an upward dispositional departure, the minimum term of imprisonment set by the court, unless a longer mandatory minimum sentence is otherwise required by law.</p> <p>Requires a court sentencing an offender under this section to consider whether a longer mandatory minimum sentence is required under the second degree criminal sexual conduct law, the patterned and dangerous offender law (section 19), or the law providing penalties for offenders committing repeat and aggravated offenses (section 20). Clarifies that the minimum term of imprisonment must be served before the offender may be granted conditional release.</p> <p>Specifies that the maximum sentence for an offender sentenced under subdivision 1 is life. Prohibits the court from staying imposition or execution of sentence under this section and provides that an offender committed to the commissioner's custody under this section may not be released from incarceration except as provided by the conditional release and medical release provisions in chapter 244.</p> <p>Allows the prosecutor to file a motion for a downward durational departure under the sentencing guidelines. The court may grant this motion if substantial and compelling reasons support the departure.</p>		
	<p>Subd. 3. Conditional release. Specifies that a person</p>		

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	released from a state correctional facility after receiving an indeterminate sentence shall be subject to conditional release for the remainder of the person's life.		
19	<p>Mandatory minimum sentences for certain dangerous, patterned sex offenders; no previous conviction required. This section creates a new patterned and dangerous offender law, to replace the current version in section 609.108, parts of which have been declared unconstitutional. Most of section 609.108 is amended and moved to this section. This article separately amends the predatory offender part of the law, which becomes the new criminal sexual predatory conduct crime in section 17. The amendments to this section (1) address constitutional defects in section 609.108, as explained below, and (2) provide references to the indeterminate sentencing law (section 18).</p> <p>Subd. 1. Mandatory increased sentence. Contains language from section 609.108, subdivision 1, as amended. Requires the court to commit a person to the commissioner of corrections for a period of time not less than double the presumptive Sentencing Guidelines sentence and not more than the statutory maximum, or if the statutory maximum is less than double the presumptive sentence, for a period of time equal to the statutory maximum if:</p> <ul style="list-style-type: none"> ▶ the court is imposing an executed sentence on a person convicted of committing or attempting to commit a violation of first-, second-, third-, and fourth-degree criminal sexual conduct or criminal sexual predatory 		<p>Article 15, section 4, amends the Patterned and Predatory Offender Sentencing Law to add a cross-reference to the new crime of sixth-degree criminal sexual conduct in article 15, section 18. Strikes language from the provision no longer necessary in light of the changes made by this article.</p> <p>Article 15, section 5, amends the Patterned and Predatory Offender Sentencing Law to strike the definition of A predatory crime.@ Replaces this with a cross-reference to what is essentially the same definition in article 15, section 9.</p> <p>Article 15, section 19, repeals a provision of the patterned and predatory offender sentencing statute providing for an increased statutory maximum penalty. This provision is no longer necessary based upon the changes made in this article.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>conduct;</p> <ul style="list-style-type: none"> ▶ the court finds the offender is a danger to public safety; and ▶ the court finds the offender needs long-term treatment or supervision beyond the presumptive term of imprisonment and supervised release. <p>This language is the same as the language that currently exists in section 609.108, subdivision 1 except that it removes a provision allowing a court to make a finding that the crime was motivated by the offender's sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. This language was ruled unconstitutional in <i>State v. Grossman</i>, 636 N.W.2d 545 (Minn. 2001) under <i>Apprendi v. New Jersey</i>, 530 U.S. 466 (2000). In <i>Apprendi</i>, the United States Supreme Court held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." The <i>Grossman</i> court determined that allowing a court to make a finding on an offender's sexual motivation was unconstitutional under the reasoning of <i>Apprendi</i> and held the provision unconstitutional. (Another provision in section 609.108, which is repealed by this bill, allows the court to impose a sentence in excess of the statutory maximum for various crimes if various criteria are satisfied.)</p> <p>Also adds language stating that, if a person sentenced under</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>this subdivision is subject to indeterminate sentencing, the minimum term of imprisonment will be two-thirds of the minimum sentence specified by this subdivision, plus disciplinary time.</p> <p>Subd. 2. Danger to public safety. Contains the language from section 609.108 that may be used to determine a person is a danger to public safety under subdivision 1.</p> <p>Subd. 3. Departure from guidelines. Retains language from section 609.108 specifying that a sentence imposed under subdivision 1 is a departure from the sentencing guidelines.</p>		
20	<p>Mandatory minimum sentences for repeat or aggravated sex offenses. This law currently exists as section 609.109, but is moved to section 609.3458 so that it is placed in the criminal sexual conduct section of the criminal code. This section also changes the penalty provision for one repeat criminal sexual conduct offense and provides a new penalty for another situation where the offender has repeat criminal sexual conduct offenses within a five-year period of discharge from sentence. Finally, the section is amended to require sentencing under the indeterminate sentence provision when appropriate.</p> <p>Subd. 1. Definition; conviction of offense. Defines “offense” to mean a completed offense or attempt to commit an offense.</p> <p>Subd. 2. Presumptive executed sentence. Provides that</p>		<p>Article 15, section 6, amends the conditional release provision of the Repeat Sex Offender Sentencing Law to add references to the new crime of sixth-degree criminal sexual conduct in article 15, section 18, and the new definition of Asecond or subsequent sex offense@ in article 15, section 8. Also requires the Commissioner of Corrections to develop a plan addressing how the cost of treatment for sex offenders conditionally released under this provision will be paid.</p> <p>Article 17, sections 5 and 6, make technical and conforming changes to the Repeat Sex Offender Sentencing Law necessitated by the substantive changes made in article 15.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>a person convicted of second- through fourth-degree criminal sexual conduct who has a previous sex offense conviction shall be committed to the commissioner of corrections for a minimum sentence of not less than three years. Under current law, this penalty applies only if the second or subsequent offense occurs within 15 years of the time of the first conviction.</p> <p>This subdivision also adds a new five-year felony penalty for situations where a person commits a second or subsequent criminal sexual conduct offense within five years of discharge from sentence for a previous sex offense conviction.</p> <p>A court may stay execution of sentence under this subdivision only if indeterminate sentencing does not apply to the offense (all offenses will be covered) and a professional assessment indicates the offender is accepted by and can respond to a long-term inpatient treatment program for sex offenders, which has been approved by the commissioner of corrections. If the court stays execution of sentence, it must impose some incarceration time in a local correctional facility and a requirement that the offender successfully complete the treatment program as conditions of probation.</p> <p>Finally, this subdivision provides that the minimum term of imprisonment for a sentence imposed under this section is two-thirds of the sentence, unless a longer minimum sentence applies. The maximum term of imprisonment is life.</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>Subd. 3. Mandatory life sentence. Requires the court to sentence a person to imprisonment for life if:</p> <ul style="list-style-type: none"> ▶ the person is convicted of first-degree criminal sexual conduct; and ▶ the court determines that the person has previously been sentenced as a repeat offender, or the person has two previous first-, second-, or third-degree criminal sexual conduct offenses, or the person has one previous first-, second-, or third-degree criminal sexual conduct offense for which the person was sent to prison under an upward durational departure with a resulting sentence at least twice the sentencing guidelines presumptive sentence. Under the life penalty, the person is eligible for release by the Minnesota Sex Offender Review Board after 30 years. The court may not stay this sentence. <p>Subd. 4. Mandatory minimum 30-year sentence. Requires the court to commit a person to the commissioner of corrections for a minimum sentence of not less than 30 years if the person is convicted of a listed violent first- or second-degree criminal sexual conduct offense, the court determines that the crime involved an aggravating factor under the sentencing guidelines, and the person has a previous conviction for first-, second-, or third-degree criminal sexual conduct or attempted first-, second-, or third-degree criminal sexual conduct. A court may not stay a sentence under this subdivision. Under the indeterminate sentencing provision, the minimum term of imprisonment for this offense is two-</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>thirds of the minimum sentence unless a longer minimum term of imprisonment is otherwise required for the offense. The maximum term of imprisonment is life.</p> <p>Subd. 5. Previous sex offense conviction. Provides that an offense is a previous sex offense conviction if the person was convicted of a sex offense before the commission of the present offense of conviction.</p> <p>Subd. 6. Mandatory minimum departure for sex offenders. Requires the court to sentence a person to at least twice the presumptive sentence recommended under the sentencing guidelines if the person is convicted for a listed violent first-, second-, or third-degree criminal sexual conduct offense and the court determines that the crime involved an aggravating factor that would provide grounds for an upward departure under the sentencing guidelines. Provides that, if an indeterminate sentence applies, the minimum term of imprisonment is two-thirds of the sentence imposed, unless a longer minimum term of imprisonment is required for the offense. The maximum term of imprisonment is life.</p>		
21	<p>Conditional release for sex offenders.</p> <p>Subd. 1. Applicability. Provides that this provision applies to those who commit a sex offense, as defined in section 11.</p> <p>Subd. 2. Length of conditional release. Requires a court sentencing a person to the commissioner of corrections</p>		No comparable provision.

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>for first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct (including attempts) to provide that the commissioner of corrections must place the person on conditional release upon the person's release from a state correctional facility. This provision applies notwithstanding the statutory maximum sentence for an offense or any provision of the sentencing guidelines</p> <p>Provides a five-year conditional release period if the person was convicted for a violation or attempted violation of second-, third-, or fourth-degree criminal sexual conduct and the person was not sentenced under the indeterminate sentencing provision. A ten-year conditional release period applies if the person is convicted for a violation or attempted violation of second-, third-, or fourth-degree criminal sexual conduct after a previous sex offense conviction or the person was sentenced to a mandatory departure under section 609.3458, subdivision 5 (section 20), and the person was not sentenced under the indeterminate sentencing provision.</p> <p>A person sentenced under the indeterminate sentencing provision who is granted conditional release is subject to conditional release for life.</p> <p>Subd. 3. Terms of conditional release. Specifies that the conditions of release may include various requirements, including those set by the commissioner of corrections. (These requirements are the same requirements provided in sections 609.108 and 609.109 of current law.) Specifies that, if an offender fails to meet any condition of release, the</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>commissioner may revoke the offender's conditional release and order that the person serve the remaining portion of the conditional release term in prison.</p> <p>Specifies that conditional release under this section is governed by provisions related to supervised release, except as otherwise provided. Also provides that conditional release is governed by section 4. Requires the commissioner to develop a plan to pay the cost of treatment for sex offender parolees.</p>		
22	<p>Instruction to Sentencing Guidelines Commission. Directs the Minnesota Sentencing Guidelines Commission to review the new and increased penalties for various crimes in this bill to ensure the presumptive sentences under the sentencing guidelines reflect the legislature's assessment of the severity of those crimes. If the presumptive sentences do not reflect the legislature's assessment of the severity of the crimes, the commission shall increase the level at which various crimes are ranked and set new presumptive sentences for the crimes, if necessary.</p>		<p>No comparable provision.</p>
23	<p>Repealer. Repeals sections 609.108 and 609.109 and requires the revisor to include a note accompanying the repeal to inform the reader that the statutes have been amended and recodified as set forth in sections 19 and 20.</p>		<p>Article 15, section 19, repeals a provision of the patterned and predatory offender sentencing statute providing for an increased statutory maximum penalty. This provision is no longer necessary based upon the changes made in this article.</p>

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	Article 3: Minnesota Sex Offender Review Board		
1	Predatory offenders; Minnesota Sex Offender Review Board. Amends the Data Practices Act to specify that certain data are made accessible to the Minnesota Sex Offender Review Board under section 244.0515 (section 3).		No comparable provision.
2	Exceptions. Creates an exception to the Minnesota Open Meeting Law to permit meetings of the Minnesota Sex Offender Review Board (hereafter "board") to remain closed to the public.		No comparable provision.
3	Exceptions. Creates an exception to the Minnesota Open Meeting Law to permit meetings of the Minnesota Sex Offender Review Board (hereafter "board") to remain closed to the public.		No comparable provision.
4	<p>Minnesota Sex Offender Review Board. Establishes the board to review and approve the conditional release of sex offenders who are sentenced to an indeterminate sentence under sections 609.3455 and 609.3458, subdivision 3.</p> <p>Subd. 1. Definitions. Defines the following terms used in this section:</p> <ul style="list-style-type: none"> ▶ "board" means the Minnesota Sex Offender Review Board; ▶ "end-of-confinement review committee" means the committee within the Department of Corrections that classifies offenders' risk levels under the community 		No comparable provision. However, see article 15, section 3, for the criteria for the release of sex offenders sentenced to indeterminate sentences.

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>notification act; and</p> <ul style="list-style-type: none"> ▶ “victim” means the person who suffered harm due to the inmate’s crime or, if deceased, that person’s surviving spouse or next of kin. <p>Subd. 2. Board; establishment. Creates the five-member board and provides that it will be governed by the statute that applies to other state-level administrative boards.</p> <p>Subd. 3. Members. Provides that the board’s membership consists of the following members:</p> <ul style="list-style-type: none"> ▶ the commissioner of corrections or designee; ▶ the commissioner of human services or designee; ▶ a retired judge appointed by the governor; ▶ a sex offender treatment professional appointed by the governor who is not employed by DOC or DHS; and ▶ a public member appointed by the governor. <p>Also provides that the governor will designate one of the board members to serve as chair.</p> <p>Subd. 4. Appointment terms. Provides four-year terms for board members and specifies procedures for the appointment of successors.</p> <p>Subd. 5. Responsibilities. Describes the hearing process</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>the board must follow in determining whether an inmate should be granted conditional release from prison. Requires the board to hold a conditional release hearing at least 90 days before an inmate becomes eligible for release. Also requires the board to hold a hearing whenever an inmate petitions for one under subdivision 6. Requires the board to consider the following in making its decisions:</p> <ul style="list-style-type: none"> ▶ the risk assessment report prepared by the DOC's end-of-confinement review committee and the information the committee reviewed in making its decision; ▶ the community investigation report prepared by the DOC in advance of the inmate's release and the information gathered for use in compiling it; ▶ the inmate's criminal offense history; ▶ the inmate's behavior while in prison; ▶ the inmate's participation in and completion of appropriate treatment; ▶ the inmate's need for additional treatment, training, or supervision; ▶ the danger the inmate poses to the public if released; and ▶ any other information deemed relevant. <p>Requires the board to make a decision whether or not to grant conditional release within 14 days of the hearing. Sets forth</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>procedures the board must follow if it decides not to grant conditional release. Provides that if the board decides to grant an inmate conditional release at the inmate's first hearing before the board, the commissioner of corrections must release the inmate at the time the inmate is first eligible for release. If conditional release is granted at a later hearing, the commissioner must release the inmate within 90 days of the board's release decision. Prohibits releasing an inmate on a weekend or holiday.</p> <p>Identifies the data the board may have access to in making a release decision.</p> <p>Subd. 6. Petition for release. Permits an inmate to petition the board for conditional release once the inmate has served the minimum term of imprisonment. Unless otherwise authorized by the board, prohibits an inmate from petitioning for release unless either two years have passed since the board's last release decision concerning the inmate or the inmate has satisfied all of the conditions set by the board when it previously denied release. Prohibits an inmate who is released by the board and subsequently reincarcerated from petitioning for release until two years have passed since the offender was reincarcerated, unless the commissioner grants the prisoner leave to file a petition sooner.</p> <p>Subd. 7. Release hearing. Requires the commissioner of corrections to notify various individuals of the time and place of an inmate's release hearing within 45 days after the inmate becomes eligible for or petitions for release. The parties</p>		

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>entitled to advance notice include the inmate, the sentencing court, the county attorney’s office involved in the prosecution of the case, and the victim. Permits the victim to make an oral or written statement at the hearing summarizing the victim’s harm and giving the victim’s recommendation concerning release. Requires the board to consider the victim’s statement when making this decision. Sets forth other procedural requirements for the hearing.</p> <p>Subd. 8. Administrative services. Requires the commissioner of corrections to provide administrative support services for the board.</p> <p>Subd. 9. Administrator. Authorizes the board to hire an administrator and other staff.</p> <p>Subd. 10. Exemption from chapter 14. Allows the board and commissioner of corrections to adopt expedited rules when proceeding under this section and sections 244.0514 and 609.3459. Otherwise provides that chapter 14 does not apply to the board and commissioner of corrections for the purposes of this section.</p>		
5	<p>Direction to commissioner of corrections. Requires the commissioner of corrections to develop criteria and procedures governing the board’s conditional release decisions. Requires the commissioner to seek input from various parties, including the end-of-confinement review committee at each state correctional and treatment facility where predatory offenders are confined, as well as</p>		No comparable provision.

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	HOUSE	See Pages 4-7 for Comparison	SENATE
	<p>individuals who are knowledgeable in health and human services; public safety; Minnesota's Sex Offender Treatment Program; treatment of sex offenders; crime victim issues; criminal law; sentencing guidelines; law enforcement; and probation; supervised release; and conditional release. Requires the commissioner to establish these criteria and procedures by November 15, 2004, and provides that they will become effective on June 1, 2005, unless the legislature takes contrary action before that time. Requires the commissioner to report to the legislature by November 15, 2004, on the input gathered to develop these criteria and procedures and on the commissioner's proposed criteria and procedures. (Effective the day following enactment.)</p>		

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	<p>Article 4: Predatory Offender Registration and Community Notification Provisions</p>		
1	<p>Registration of predatory offenders. This section makes numerous substantive and technical changes to the Predatory Offender Registration Law.</p> <p>Subd. 1. Registration required. Repeals current language in this subdivision in order to recodify it in the newly-created subdivision 1b. The purpose of this recodification is to relocate all of the law's definitions at the</p>	<p>Similar.</p> <p>The Senate provision does not:</p> <ul style="list-style-type: none"> require the BCA and the local law enforcement authority to immediately investigate a level III offender's location when the offender fails to return a signed form to the BCA verifying the 	<p>Article 16, section 1. makes numerous changes to the Predatory Offender Registration (POR) Law. The primary substantive changes involve homeless predatory offenders, for whom there is presently no clearly applicable registration procedure. Requires homeless predatory offenders who lack a primary address or who leave a primary address without having a new primary address to register with the law enforcement authority of the area in which the offender is</p>

III. Adopted Modifications Related to Sex Offenses

SEX OFFENSE GRID EXPLANATION

Grid Design Principles:

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

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

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

Structure of the Sex Offense Grid:

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

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

Custody Status Points:

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

Consecutive Sentences and Departures:

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

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

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

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

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

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

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

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

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

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

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

Offense	Statutory Provisions Statutory Maximum	Severity Level	Stat. Max.	Weight of Prior	Current Weight
CSC 1	Penetration- 609.342, all clauses	A	30	3	2
CSC 1	Contact-victims under 13 (def. in 609.341 subd.11)	A	30	3	1.5
CSC 2	Contact with Force- 609.343 subd. 1 c, d, e, f, h	B	25	2	1.5
CSC 3	Penetration – Force or prohibited occupation 609.344 subd. 1 c, d, g, j, k, m, n	C	15	2	1.5
CSC 2	Contact with minors- 609.343 subd. 1 a, b, g	D	25	1.5	1.5
CSC 3	Penetration – minors or some occupation 609.344 subd. 1 b, e, f, h, i, l	D	15	1.5	1
CSC 4	Contact – Force or prohibited occupation: 609.345 subd. 1 c, d, g, j, k, m, n	E	10	1.5	1.5
Use Minors Sexual Perform.	617.246 subd. 2,3,4	E	10	1.5	Unranked
CSC 4	Contact – minors or some occupations 609.345 subd. 1 b, e, f, h, i, l	F	10	1	1
Dissemination Pornography	617.247 subd. 3	F	7	1	Unranked
CSC 5	Repeat G.Misd offenses involving minors 609.3451 subd.3	G	5	1	1
Indecent Exposure	Repeat G.Misd offenses 617.23 subd. 3	G	5	1	1
Possession Pornography	617.247 subd.4	G	5	1	Unranked
Incest	609.365	Unranked	10	Unranked	Unranked
Solicit Children Sexual Conduct	609.352 subd. 2	G	3	1	1
Failure to Register	243.166 subd 5b 243.166 Subd 5c (subsequent offense)	H	5	0.5 1.5	0.5 1

Estimated Prison Bed Impact of Changes for Sentencing Sex Offenses

Number of Sex Offenders Sentenced in 2003: 884

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

Eventual Prison Bed Impact: 580 additional beds needed per year

Assumptions:

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

Estimated Impact by Type of Change to Presumptive Sentence

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

Timing of Prison Bed Impact

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

Estimated Impact by Offense and New Severity Level

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

Modifications to Implement Sex Offender Sentencing Grid

II. Determining Presumptive Sentences

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

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

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

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

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

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

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

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

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

Severity Level VI - VIII = 1 ½ points;

Severity Level IX - XI = 2 points;

Murder 1st Degree = 2 points;

Severity Level A = 3 points;

Severity Level B - C = 2 points;

Severity Level D - E = 1 ½ points;

Severity Level F - G = 1 point; and

Severity Level H = ½ point for first offense
and 1 ½ points for subsequent offenses

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

2. One point is assigned if the offender:

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

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

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

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

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

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

Comment

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

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

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

...

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

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

Pursuant to M.S. § 609.312, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months.

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

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

...

Comment

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

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

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

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

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

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

...

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

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

...

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

Comment

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

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

...

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



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

Proposed Sex Offender Grid

Severity Level of Conviction Offense		I. Criminal History Score						
		0	1	2	3	4	5	6 or more
CSC 1 st Degree	A	144 144-165	180 153-207	200 170-230	240 204-276	280 238-322	320 272-360	360 326-360
CSC 2 nd Degree - Contact with force	B	90 77-103	120 102-138	160 136-184	200 170-230	230 196-264	270 230-310	300 255-300
CSC 3 rd Degree - Penetration with force or by some occupations	C	48 41-55	60 51-69	90 77-103	120 102-138	140 119-161	160 136-184	180 153-180
CSC 2 nd degree - Contact with minors CSC 3 rd Degree - Penetration of minors or by some occupations	D	36	48	60 51-69	94 80-108	102 87-117	120 102-138	140 119-161
CSC 4 th Degree - Contact with force or by some occupations Use Minors in Sexual Performance	E	21	40	35	60 68-92	95 81-109	110 94-126	120 102-120
CSC 4 th Degree - Contact with minors or by some occupations Dissemination Child Pornography	F	18	36	48	60 51-69	70 60-80	80 68-92	90 77-103
CSC 5 th Degree Indecent Exposure Possession Child Pornography Solicit Children for Sexual Conduct	G	15	20	30	40	46 40-52	52 45-59	60 51-60
Registration Of Predatory Offenders	H	12 ¹ 12 ¹ -13	15 13-17	18 16-20	21 18-24	24 21-27	30 26-34	36 31-41



Presumptive commitment to state imprisonment. See section I.E. Mandatory Sentences for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.



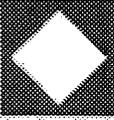
Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include same second and subsequent Criminal Sexual Conduct offenses and Failure to Register as a Predatory Offender. See sections I.C. Presumptive Sentence and I.E. Mandatory Sentences.

One year and one day

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

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

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



V. OFFENSE SEVERITY REFERENCE TABLE

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

SPECIFIED SEX OFFENSES

- A Criminal Sexual Conduct 1 - 609.342

- B Criminal Sexual Conduct 2 - 609.343 subd. 1 (c), (d), (e), (f), (h)

- C Criminal Sexual Conduct 3 - 609.344 subd. 1 (c), (d), (g), (i), (k), (m), (n)

- D Criminal Sexual Conduct 2 - 609.343 subd. 1 (a), (b), (g)
Criminal Sexual Conduct 3 - 609.344 subd. 1 (b), (e), (f), (h), (j), (l)

- E Criminal Sexual Conduct 4 - 609.345 subd. 1 (c), (d), (g), (i), (k), (m), (n)
Use Minors in Sexual Performance - 617.246 subd. 2, 3, 4

- F Criminal Sexual Conduct 4 - 609.345 subd. 1 (b), (e), (f), (h), (j), (l)
Dissemination of Child Pornography - 617.247 sub. 3

- G Criminal Sexual Conduct 5 - 609.3451 subd. 3
Indecent Exposure - 617.23 subd. 3
Possession of Child Pornography - 617.247 subd. 4

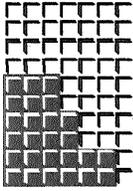
- H Failure to Register as a Predatory Offender - 243.166 subd. 5(b), (c)

NUMERICAL REFERENCE OF FELONY STATUTES

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

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

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



Sentencing Practices Criminal Sexual Conduct (CSC) Offenses Offenders Sentenced in 2003

There were 607 offenders sentenced for Criminal Sexual Conduct offenses in 2003. This figure is 89% higher than the number of offenders sentenced for sex offenses in 1981 (321). The number of sex offenders sentenced has fluctuated during this time period, peaking with 880 offenders sentenced in 1994 (31% greater than the number sentenced in 2003). The 2003 total is 9% higher than the 2002 number (558), but continues a trend of fewer sex offenders being sentenced in recent years than in the early 1990's. Almost all of the growth since 1981 has been in the CSC Child provisions [Intra-Familial Sex Abuse (IFSA) and provisions specifying the age of the victim]. The number of offenders sentenced for CSC Force offenses in 2003 (152) while higher than the number sentenced in 2002 (99 – the lowest number since the guidelines went into effect) was still lower than in any year between 1988 and 1995.

In 2003, 93% of offenders sentenced for CSC offenses received sentences that included incarceration in a state prison (41%) or local jail (52%). That imprisonment rate is the highest ever observed since the Guidelines went into effect. In CSC cases where the guidelines recommended imprisonment, 71% of offenders received an executed prison sentence. Imprisonment rates were higher for offenders with a prior CSC offense; 89% of offenders sentenced for CSC offenses in 2003 who had a "true prior" sex offense received an executed prison sentence.

Mitigated dispositional departures occur when an offender who is recommended a prison sentence under the guidelines instead receives a probationary sentence. The overall mitigated dispositional departure rate in 2003 was 29%, slightly higher than the 25% rate in 2002. These rates have consistently been higher for IFSA offenses than for other types of sex offenses (generally varying between 45 and 50 percent through the 1990s). The mitigated dispositional departure rate for IFSA cases in 2003 (48%) returned to its historical pattern from the lower rate observed in 2002 (31%).

Average pronounced prison sentences have increased dramatically since 1989, when recommended sentence durations under the guidelines were increased. The average pronounced prison sentence was 54 months in 1988 and 116 months in 2003, the highest average sentence since the guidelines were enacted. This increase is the result of both an increase in presumptive sentence durations and an increase in aggravated durational departure rates. The average pronounced sentence for the most serious CSC Force offenses (Severity Level 9) increased from 84 months in 1988 to 177 months in 2003.

For First Degree CSC offenses committed on or after August 1, 2000, offenders were subject to the 144-month presumptive sentence enacted by the Legislature. In 2002, 60% of all First Degree CSC offenders sentenced were subject to the 144-month presumptive sentence, whereas in 2003, 72% were eligible. In 2003, 73% of the offenders eligible for the 144 month presumptive sentence received executed prison sentences with an average duration of 176 months. The average pronounced sentence in 2003 for First Degree CSC offenses committed before August 1, 2000 was 173 months; 71% of those offenders received executed prison sentences. Among First Degree CSC offenders who received executed prison sentences in 2003, those subject to the 144-month presumptive sentence had lower aggravated durational departure and higher mitigated durational departure rates than First Degree offenders not subject to the 144-month presumptive sentence. Eleven of the offenders sentenced in 2003 were subject to the 90-month presumptive sentence that took effect May 22, 2002 for some second-degree CSC offenses.

This report summarizes sentencing practices for felony sex offenses sentenced in 2003. Information on sentencing practices from 1988-2003 is provided in the tables. This report also contains information on the use of special statutory sentencing provisions (including the patterned sex offender provision).

Data Sources

The data examined in this summary are from the MSGC monitoring system containing cases sentenced in 2003. One of the primary functions of the MSGC 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 presumptive sentence data are received from the probation officer and matched with sentencing data from the State Judicial Information System. Cases generally represent offenders; an offender sentenced in the same county on more than one offense within a 30-day period is counted as one case. Reported here are cases where Criminal Sexual Conduct was the most serious offense sentenced.

Sex Offense Statutes and Sentencing Policy

Minnesota adopted a sentencing guidelines system effective May 1, 1980, in an effort to create a more uniform and determinate sentencing system. The guidelines provide a structure for district courts to use in sentencing individuals convicted of felony-level offenses.

The guidelines recommend sentences for the typical case based on the severity of the offense of conviction and the offender's criminal record. Judges may depart from the recommended sentence if the circumstances of a case are substantial and compelling. The court must provide reasons for the departure. Both the prosecution and the defense may appeal the pronounced sentence.

Regardless of whether the judge follows the guidelines, the sentence is fixed. An offender who is sentenced to prison will serve a term of imprisonment equal to at least two-thirds of the pronounced executed sentence. The remaining portion of the sentence will be served on supervised release. The actual time the offender is incarcerated may be increased (up to the total sentence) if the offender violates disciplinary rules.

In addition to the sentencing guidelines, a number of statutory provisions directly affect the sentencing of sex offenders. One of these provisions is the conditional release statute. This statute requires that at sentencing, the court must pronounce a period of conditional release for sex offenders receiving prison sentences. The period of conditional release is five years for first time sex offenders and ten years for second or subsequent sex offenders.

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.

(See Table 10 for a distribution of the number of cases by statutory provision.)

Most of the provisions at first degree involve penetration and focus on 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 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 13, as defined in M.S. 609.341 subdivision 11.

Third-degree offenses involve penetration and focus on children who are slightly older and on cases where 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.

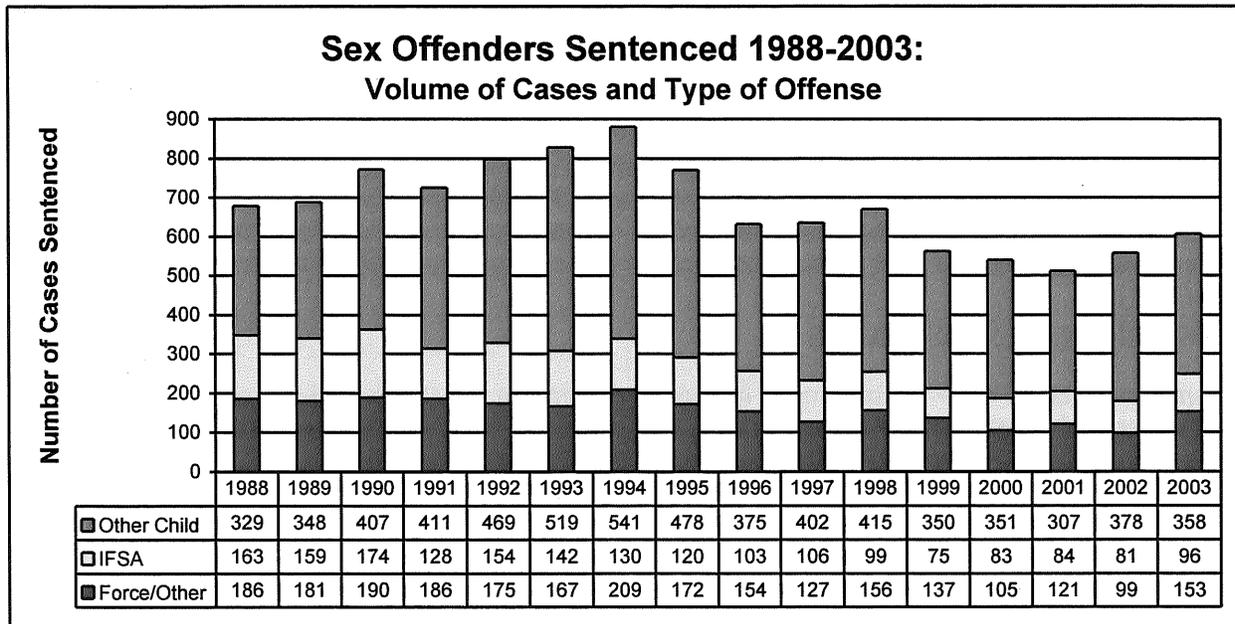
Relationship Based Classifications

Sentencing practices differ based on the relationship between the victim and the offender. To assist in analyzing and interpreting information on sentencing patterns, sex offense cases examined for this report were assigned to the following categories, based on the statute of conviction:

- 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 be in a position of authority over the victim are included here because, in addition to parents, those offenses include persons acting in the place of a parent.
- CSC Force or Other: Force or a weapon was involved, or the offense involved abuse by a psychotherapist, health care professional, or clergy. 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.

It is important to note that an offense may fit into more than one category. For example, 25% of the Other Child offenses sentenced in 2002 involved family members, as did 12% of the Force/Other cases. In 39% of the CSC Force cases, the victim was under the age of 18. For a complete breakdown of sex offenders sentenced since 1988 by type of offense, see Figure 1 below.

Figure 1



Sentencing Guidelines for Sex Offenders

All first-degree CSC offenses that involve penetration are ranked at severity level 9 and are recommended prison, regardless of the offender's criminal history score. The length of the recommended sentence previously ranged from 86 months at a history score of zero to 158 months at a score of six. Effective August 1, 2000, the presumptive sentence for all first-degree offenses was increased to a minimum of 144 months. Of the 170 first-degree offenders sentenced in 2003, 122 (72%) had offense dates after August 1, 2000 and therefore had a presumptive sentence of at least 144 months.

In 2003, there were five first-degree CSC offenses that involved sexual contact with children under the age of 13. These cases are ranked at severity level 8, one severity level lower than the first-degree CSC offenses that involve penetration, but prison is still the presumptive disposition for all of these cases regardless of the offender's criminal history score. The length of the recommended sentence changed from 48 months at a history score of zero to 108 months at a score of six. The presumptive sentence for these offenses also became 144 months on August 1, 2000.

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, which involve force, are ranked at severity level 8 and are recommended prison, regardless of the offender's criminal history score. The length of the recommended sentence ranges from 48 months at a history score of zero to 108 months at a score of six. Second degree offenses that involve force or violence became subject to a statutorily defined 90 month presumptive sentence effective May 22, 2002. In 2003, 29 of the 133 second degree cases were for the force offenses subject to the 90 month presumptive sentence, and 11 (38%) of them had dates of offense making them eligible for the 90 month presumptive sentence.

The following table displays the Severity Level, presumptive sentence and number of cases sentenced in 2003 for the offenses at each degree. For a distribution of cases sentenced in 2003 by statute clause, see Table 10.

Table 1

Degree	Statutory Provisions	Severity Level	# of Cases Sentenced-2003	Presumptive Sentence Criminal History Score of 0
First	Penetration- 609.342, all clauses	9	165	Prison 144 months (86 months if Offense Date prior to 8/1/2000)
First	Contact-victims under 13 (def. in 609.341 subd.11)	8	5	Prison 144 months (48 months if Offense Date prior to 8/1/2000)
Second	Contact with Force- 609.343 subd. 1 c,d,e,f,h	8	29	Prison 90 months (48 months if Offense Date prior to 5/22/2002)
Second	Contact with minors- 609.343 subd. 1 a,b,g	6	104	21 months Stayed (Prison at Criminal History of 3 or more)
Third	Penetration – Force or prohibited occupation 609.344 subd. 1 c, d, g-n	8	57	Prison 48 months
Third	Penetration – minors 609.344 subd, 1 b,e,f	5	132	18 months – Stayed (Prison at Criminal History of 3 or more)
Fourth	Contact – Force or prohibited occupation 609.344 subd. 1 c, d, g-n	6	53	21 months Stayed (Prison at Criminal History of 3 or more)
Fourth	Contact – minors 609.344 subd, 1 b,e,f	4	58	1 year and 1 day - Stayed (Prison at Criminal History of 4 or more)
Fifth	Repeat G.Misd offenses involving minors	4	4	1 year and 1 day - Stayed (Prison at Criminal History of 4 or more)

Distribution of Cases

The number of offenders sentenced for sex offenses in 2003 (607) increased by 9% from the 558 sentenced in 2002. This follows another 9% increase in the number of sex offenders sentenced between 2001 and 2002, for a two-year increase of 18%. However, the number of sex offenders sentenced continues to be substantially smaller than the number sentenced in 1994 (880), when the number of sentenced sex offenders peaked. The increase in number of cases sentenced for all types of offenses between 2002 and 2003 was 11.7%, (6.3% increase if felony DWIs are excluded).

Type of Offense

The distribution of cases between the relationship categories has remained fairly stable over the last decade, with the Force/Other category making up approximately 20-25% of the CSC offenses. In 2003, 153 (25%) of the cases sentenced were in the Force/Other category whereas in 2002, only 99 of the 558 cases sentenced (18%) were in the Force/Other category. In 2003, 96 cases (16%) were IFSA, and 358 cases (59%) were Other Child. In the Force/Other category, 152 of the 153 cases were offenses involving force. The remaining case in the "Other" category was a third-degree case involving a correctional employee.

The distribution of cases among the five statutory degrees has also remained fairly consistent from year to year. Between 1991 and 1999, first-degree offenses comprised between 20-25% of the cases sentenced. However, in 2003, 28% of the CSC offenses sentenced were first-degree offenses, the highest percentage for the first-degree cases in the last 13 years. In 2003, 22% of the cases sentenced were second-degree offenses, 31% were third-degree offenses, and 18% were fourth-degree offenses. There were four felony fifth-degree offenses sentenced in 2003.

Victim Characteristics

Information on victim characteristics is derived primarily from the Minnesota Offense Codes (MOC). If available, the information was taken from the statute of conviction in cases where the MOC information was unclear or missing. In 2003, in 84% of the cases sentenced the victims were minors (32% involved victims under the age of 13, 52% involved victims who were 13-17 years old) and in 15% of the cases the victims were adults. Eighty-eight percent of the victims were female, and 12% were male.

A relatively small percentage of these cases involved strangers (7%). In 50% of the cases, the offender was an acquaintance, 8% of the cases involved offenders who were in a position of authority, and 32% of the cases involved family members. Of the cases sentenced under the force provisions, 24% involved assaults by strangers. (see Tables 9 and 10 for information on victim age and relationship with offender broken down by CSC Degree).

True Prior Record

Most offenders sentenced for felony-level sex offenses do not have "true" prior sex offenses in their criminal record. "True priors" are prior offenses with a conviction date prior to the date the current offense was committed. In 2003, 9% of sex offenders had a true prior felony sex offense listed on their sentencing worksheet. This figure varies slightly by the type of sex offense. Fourteen percent of the offenders in the Force category, 7% of the offenders in the Other Child category and 9% of offenders in the IFSA category had a true prior sex offense listed on their worksheet.

Sentencing Practices

The recommended sentence under the guidelines varies by the severity level of the conviction offense and the offender's criminal history. These differences make it difficult to interpret overall sentencing information for sex offenders. Therefore, in addition to reporting overall statistics, this section of the report presents data for presumptive commits (cases for which the guidelines recommend prison) and for presumptive stays (cases where the guidelines recommend probation) separately. Information on sentence durations is presented by severity level and type of sex offense.

Incarceration Rates

Information is presented on the number of offenders incarcerated in state prison or in local workhouses and jails. Offenders who receive a probationary sentence can have up to one year of local jail time pronounced as a condition of their probation. The total incarceration rate for sex offenders sentenced in 2002 was 93%; this rate has been greater than 90% throughout the past 15 years.

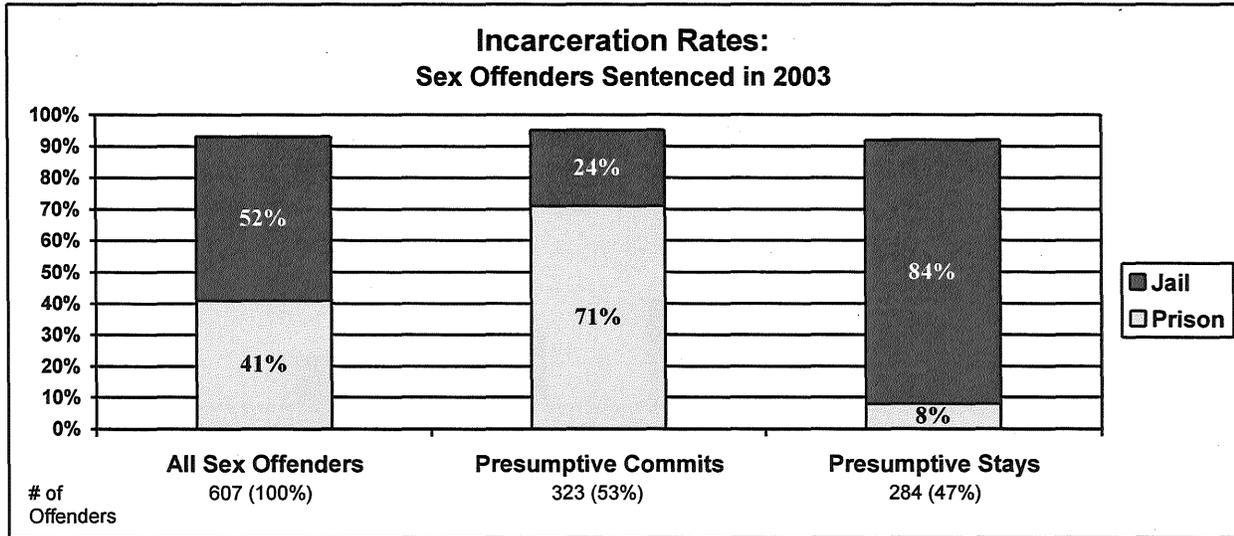
The percent of offenders sentenced to prison fluctuated around 30% in the early and mid 1990s. In 1998 that rate rose to 38%, in 1999 it was 34%, 36% in 2000, 38% in 2001 and 35% in 2002. In 2003, 41% of the offenders sentenced for sex offenses received an executed prison sentence, the highest imprisonment rate ever observed for sex offenders since the Guidelines went into effect. The imprisonment rate in 2003 is higher than in previous years mainly because a larger percentage of the CSC cases sentenced in 2003 were recommended a prison sentence by the Guidelines (53%) than in earlier years (43 % in 2002 and 48% in 2001).

The imprisonment rate for offenders sentenced in 2003 who had a true prior sex offense was 89%. Imprisonment rates were higher for those sentenced for offenses involving force than for those sentenced for IFSA or Other Child offenses. Fifty-eight percent of offenders sentenced for CSC Force offenses received an executed prison sentence.

In 2003, 89% of the sex offenders who received a stayed sentence also received pronounced jail time as a condition of probation.

(See Tables 4 and 5 for historical information on incarceration)

Figure 2



Sentence Durations: Prison Sentences

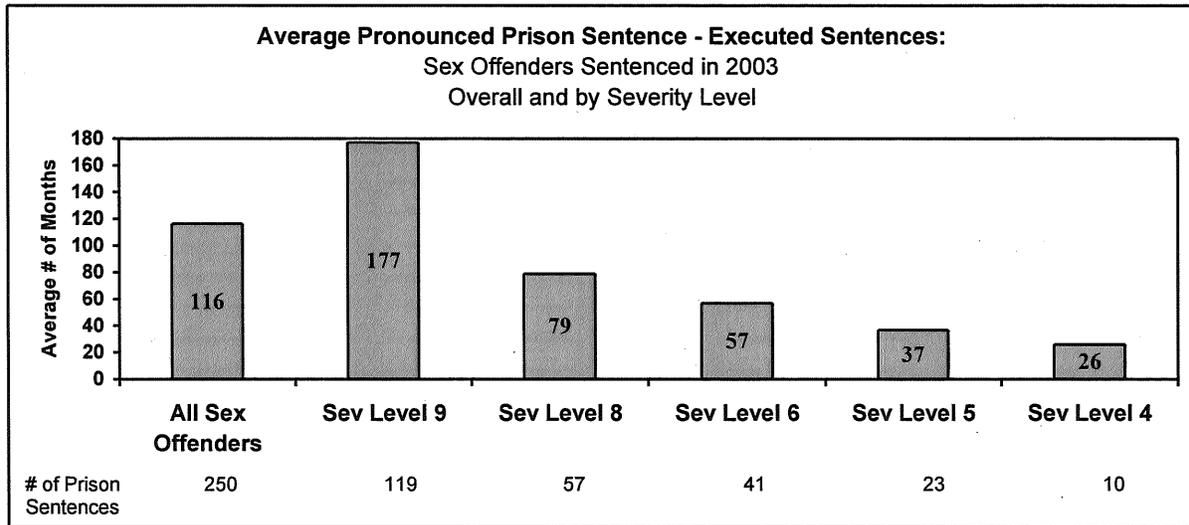
The average pronounced duration in months is presented for offenders who received executed prison sentences. The MSGC substantially increased presumptive durations for the most serious sex offenses committed on or after August 1, 1989. The average duration of prison sentences for offenders sentenced in 1988, before any of those changes were effective, was 54 months. The average pronounced prison sentence for sex offenders sentenced in 2003 was 116 months, more than a 12 month increase above 103 month average in 2002 and the highest it has been since the Guidelines were enacted. From 1990 through 2000, the average duration ranged from 78 to 89 months.

Offenders convicted of severity level 9 offenses received significantly longer sentences than those received by offenders convicted of lesser severity level offenses (see Figure 3 below). In 2003, the average pronounced sentence for severity level 9 offenders was 177 months, an increase from the 2002 average of 155 months. The presumptive sentence was increased to at least 144 months for first-degree offenses committed on or after August 1, 2000. This explains some of the overall increase in pronounced sentences. In 2003, 119 (72%) of the 165 severity level 9 first-degree offenders had a presumptive sentence of at least 144 months. The average pronounced sentence for the severity level 9 offenders who received executed prison sentences was 178 months for those eligible for the 144-month minimum presumptive sentence and 176 months for those not eligible. In 2002, only 58% of the 124 severity level 9 first-degree offenders had a presumptive sentence of at least 144 months. The average pronounced sentence in 2002 for the severity level 9 offenders who received executed prison sentences was 174 months for those eligible for the 144-month minimum presumptive sentence and 131 months for those not eligible.

The average pronounced duration increased in 2003 for offenses at severity level 8 also. In 2003, the average pronounced sentence for severity level 8 offenders who received executed prison sentences was 79 months, a year longer than the average pronounced sentence of 67 months observed in 2002. In 2003 there were 57 severity level 8 offenders who received executed prison sentences. Four of these

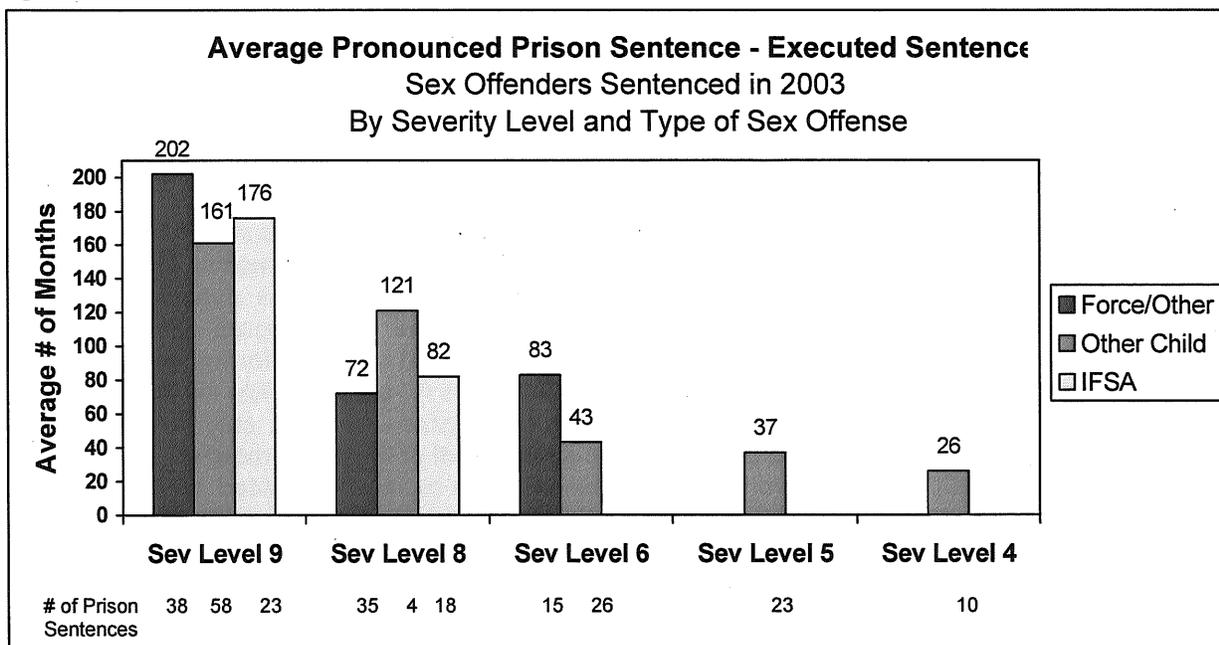
offenders were first degree offenders and three of them were eligible for the 144-month presumptive sentence and had an average pronounced sentence of 137 months. Eighteen of the 57 were second degree offenders. Eight of those 18 were eligible for the 90 month presumptive sentence and had an average pronounced sentence of 88 months. The average pronounced sentence for the 10 second degree offenders not eligible for the 90 month presumptive was 70 months. The remaining 35 severity level 8 offenders sent to prison were third degree offenders with an average pronounced sentence was 74 months. (For more detailed information on past sentence durations, see Tables 4, 5, and 6.)

Figure 3



Even within a severity level, there are differences in the average pronounced sentences among the various types of sex offenses. In 2003, at severity levels 9 and 6, the average pronounced sentence for the Force offenses are longer than those for the other offense types. At severity level 8, the average pronounced sentence was longest for offenders in the Other Child category. (see Figure 4).

Figure 4



The average sentence duration is effected by both departures from the sentencing guidelines and the use of consecutive sentences. When consecutive sentences are given for multiple current offenses, the total pronounced sentence to be served is increased. The following table presents information on the average pronounced prison sentence for each severity level, by whether the offender received a consecutive sentence and/or a durational departure.

2003 Av. Pronounced Sentence by Sentence Type and Severity: Executed Sentences

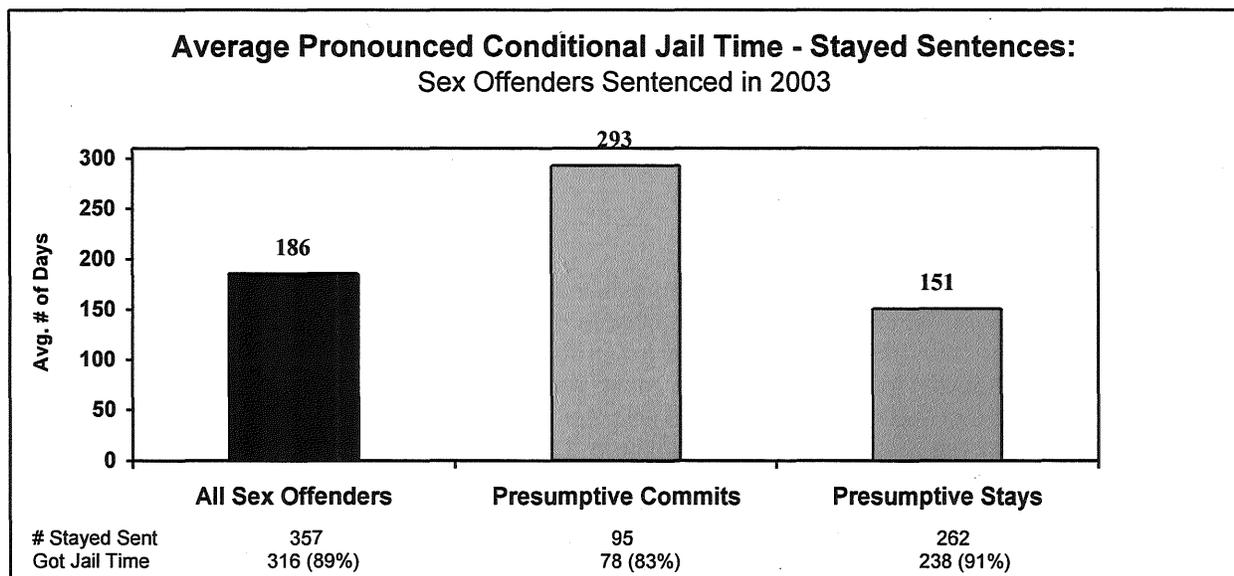
Table 2

Severity Level	Mitigated Durations		No Departure		Consecutive Sentences		Aggravated Durations		Aggravated Duration & Consecutive	
	#	Av.	#	Av.	#	Av.	#	Av.	#	Av.
9	29	95 months	49	132 months	10	212 months	20	264 months	11	405 months
8	10	58 months	32	67 months	4	123 months	10	113 months	1	145 months
6	7	32 months	23	35 months	1	36 months	9	133 months	1	98 months
5	2	29 months	18	32 months	0		3	69 months	0	
4	0		7	25 months	1	1 yr & 1 day	2	35 months		
Total	48	75 months	129	79 months	16	166 months	44	179 months	13	361 months

Sentence Durations: Probation Sentences

For offenders who received conditional jail time, the average pronounced duration in days is presented below. The average pronounced conditional jail time for sex offenders sentenced in 2003 totaled 186 days. This jail time was longer for offenders convicted of offenses involving a presumptive commitment to state imprisonment (see Figure 5 below).

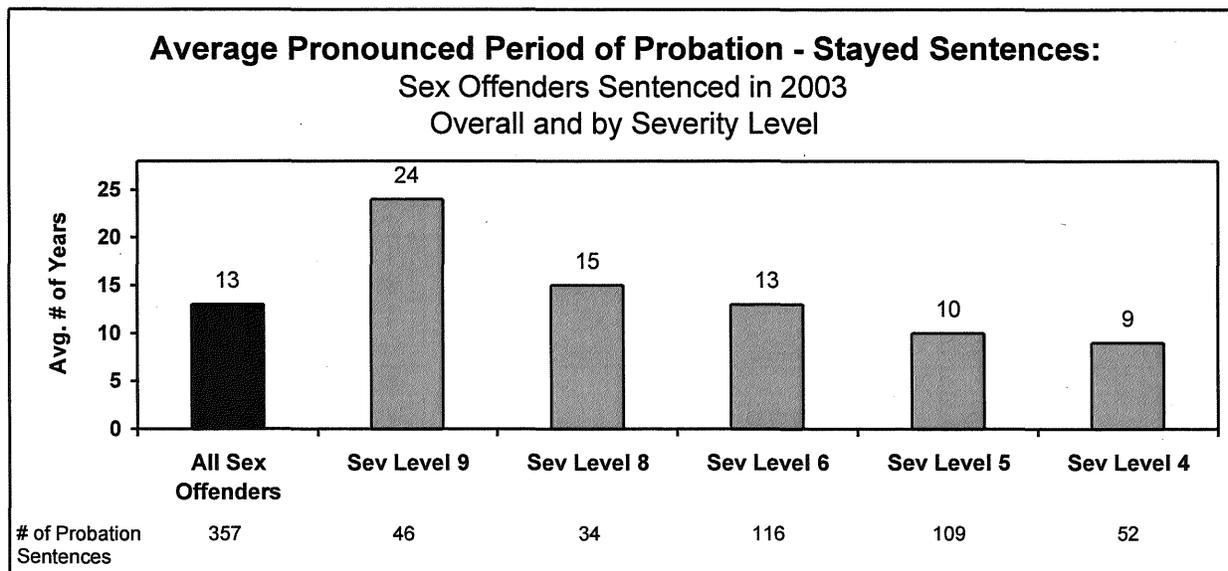
Figure 5



Length of Probation

The average length of pronounced supervision is presented in years for those offenders who received probation. The average pronounced period of probation for sex offenders sentenced in 2003 was 13 years. The average probation period for offenders convicted of severity level 9 offenses was 24 years (see Figure 6 below).

Figure 6



Departures from the Guidelines:

Information is presented on the number of departures by type of sex offense type for dispositional departures and by severity level for durational departures.

Dispositional Departures

Dispositional departures occur when the guidelines recommendation for a term of imprisonment or a stayed sentence is not imposed. Mitigated dispositions occur when the guidelines recommendation is for imprisonment, but the offender is given a probationary sentence. When the guidelines recommend a stayed sentence and the offender receives a prison sentence, it is referred to as an aggravated disposition.

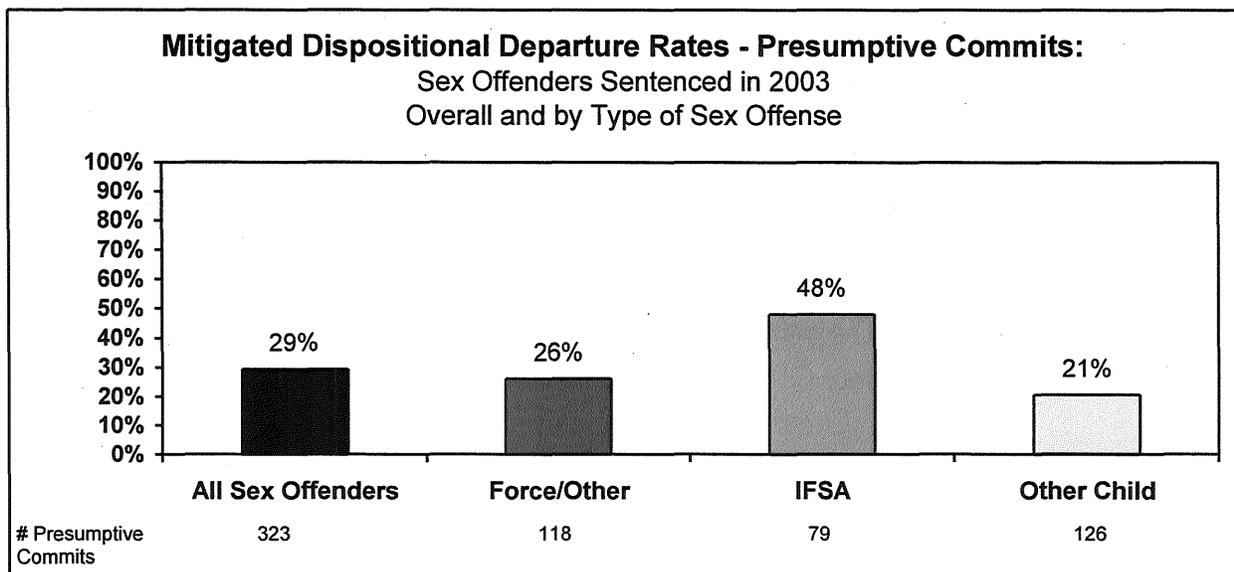
Mitigated Dispositions

The most common reasons cited for mitigated dispositional departures involve placing the offender in sex offender treatment programs, other types of treatment (e.g., chemical dependency), recommendations by court services, placing the offender on long term probation supervision to ensure compliance with conditions, and amenability to probation. For most years, in about 15% of these cases, the court indicated that the victim or victim's family agreed with the departure. In 2003, the court reported support for the departure from the victim or victim's family in 17% of the mitigated dispositions and that the departure was made to spare the victim from testifying in 16% of these departures. In 59% of the mitigated dispositions, the court indicated either that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure. In six percent of the mitigated

dispositions, the court reported that the prosecutor objected to the departure.

Mitigated dispositional departure rates are presented (see Figure 7 below) for presumptive commits (guidelines recommendation is imprisonment) by type of sex offense. The overall mitigated dispositional departure rate in 2003 was 29%, slightly higher than the 25% rate observed in 2002, when that rate was the lowest seen in the last fifteen years. For the majority of the 1990s, this rate ranged from 35-40 percent. In 1998 the rate fell to 26 percent, the lowest this rate had been in the preceding ten years. The decrease in 1998 was largely attributed to a decline in the mitigated dispositional departure rate for the IFSA cases. While the dispositional departure rate for these cases in 1998 (31%) was still higher than those for the other types of sex offense cases, this rate was lower than it had been in the past. In the 1990s the mitigated dispositional departure rate for IFSA cases was usually higher than 45%, and in some years exceeded 50 percent. In 1999, the mitigated dispositional departure rate for IFSA cases returned to 45%. However, in 2001, this rate fell to 34%. In 2002, the mitigated dispositional departure rate for IFSA cases again fell to 31%, but in 2003, it returned to a level more commonly experienced (48%). In 2003, the mitigated dispositional departure rates for presumptive commits in the Force/Other (26%) and Other Child (21%) categories were identical to the rates in those categories in 2002.

Figure 7



Aggravated Dispositions

In 2003, 22 offenders recommended probation under the guidelines received a prison sentence (a departure rate of 8% of the 284 presumptive stays). In 16 (74%) of these cases, the offender either agreed to the departure or requested a prison sentence. The other most frequently cited reasons for aggravated dispositions included: the vulnerability of the victim, multiple incidents, position of authority, and injury or psychological harm to the victim.

Durational Departures

Durational departures occur when the length of the pronounced sentence differs from the recommended guidelines duration. Durational departure rates are presented by severity level for executed sentences only.

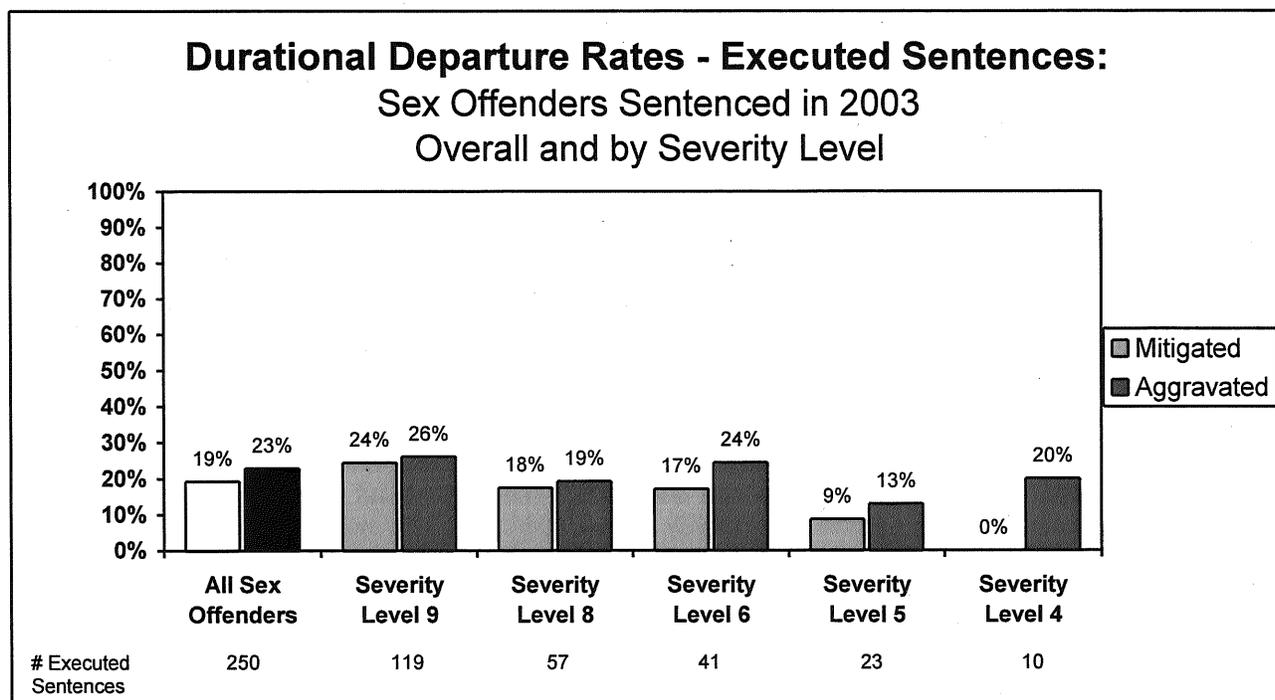
In the 1990s, aggravated departures occurred in 18% to 27% of executed prison sentences. In 2003, 57 sex offenders (23% of executed prison sentences) received sentences longer than the recommended

guidelines sentence. The most frequent reasons cited for the upward durational departures involved particular cruelty, victim vulnerability, multiple victims or multiple incidents per victim, victim injury or psychological harm, position of trust or authority, and crime was committed in the victim's zone of privacy. Six of the upward durational departures for persons sentenced for sex offenses involved offenders sentenced under the patterned sex offender provision. The court indicated that there was a plea agreement for an aggravated duration in 33% of the upward durational departures.

In 2003, 48 sex offenders received prison sentences shorter than the recommended guidelines sentence. This represents 19% of the offenders who received executed sentences. In the 1990s, this rate ranged from 10% to 22%. The most frequently cited reason for the downward durational departures was to prevent trauma to the victim from testifying. In 13 (27%) of these cases, the court indicated that the victim or victim's family agreed with the departure. In 33 of these cases (69%), the court indicated either that there was a plea agreement for a mitigated duration or that the prosecutor recommended or did not object to the departure. As can be seen in Figure 8 below, aggravated durational departures are more common than mitigated durational departures for most severity levels.

Among first degree offenders who received executed prison sentences, those subject to the 144-month presumptive sentence had lower aggravated durational departure rates and higher mitigated durational departure rates than the first-degree offenders not subject to the 144-month presumptive sentence. Among offenders subject to the 144-month minimum presumptive sentence, 26% received a sentence that was shorter than that recommended by the Guidelines and 24% received a sentence longer than that recommended. For first-degree offenders not eligible for the 144-month minimum presumptive sentence, the mitigated durational departure rate was 21% and the aggravated durational departure rate was 32%.

Figure 8



(For more detailed information on durational and dispositional departures over the past 12 years, see Table 7).

Mandatory Minimums and Special Sentencing Provisions

There are a number of mandatory minimum and special sentencing provisions defined in statute for sex offenders. Those provisions are described in Table 11, below. In addition, the table displays information about cases sentenced in 1998, 1999, 2000, 2001, 2002 and 2003 that appear to qualify for some of these provisions. There is considerable overlap among these provisions, so offenders may be included in more than one category. The available data does not allow for identification of cases which involve aggravating factors but which did not actually receive an aggravated departure sentence. Patterned sex offender cases were identified based on the departure reasons supplied by the courts. If the court doubled the sentence but did not specify in the departure information received by the MSGC that the patterned sex offender sentencing provision was being applied, the case would not be categorized as a Patterned Sex Offender case.

Double Departures and History of Use of Patterned Sex Offender Sentencing Provision

The patterned sex offender provision has been in existence since 1989 and is applicable to offenses committed on or after August 1, 1989. That statute designates a sentence that is at least twice the length of the presumptive sentence. Table 1 below displays the number of sex offenders since 1990 that received durational departures that were at least twice the presumptive sentence for that case. Also displayed is the number of offenders for whom departure data indicate that they were sentenced as patterned sex offenders.

Aggravated Durational Departures: 1990-2003

Pronounced Sentence is at Least Double the Presumptive Sentence

Table 3

Year	# Sex Offenses with Departures of Double or More	# Patterned Sex Offender Cited	# Other Reasons Cited
1990	13	5	8
1991	24	11	13
1992	29	19	10
1993	25	7	18
1994	29	10	19
1995	26	5	21
1996	24	4	20
1997	19	9	10
1998	30	12	18
1999	19	7	12
2000	25	8	17
2001	20	5	15
2002	20	6	14
2003	40	6	34

In 2003, more offenders received sentences of double or more than double their presumptive sentence than in any year in the past. Forty (70%) of the 57 offenders sent to prison with aggravated departures, received such sentences. In 2003, six sex offenders were sentenced as patterned sex offenders. The average pronounced sentence for the six offenders sentenced in 2003 who were designated as

patterned sex offenders was 382 months. Two of these offenders received sentences of 30 years or more (one received a sentence of 40 years, and through the use of consecutive sentencing, one offender received a sentence of 70 years). The average pronounced sentence for the 34 sex offenders sentenced in 2003 who also received durational departures that were at least twice the presumptive sentence but were not designated as patterned sex offenders was 243 months. Eight of these offenders received sentences of 30 years or longer. Through the use of departure combined with consecutive sentencing, four of these offenders received sentences of 32,36,40,and 44 years.

Sentencing Practices:

Incarceration Rates and Average Pronounced Duration

Table 4

Sex Offenders Sentenced 1988-2003

Year	# Cases	Incarceration							
		Total Incarceration		Prison		Avg. Duration	Jail		Avg. Duration
1988	677	609	90%	180	27%	54 months	429	63%	178 days
1989	688	630	92%	217	32%	58 months	413	60%	186 days
1990	771	712	92%	231	30%	78 months	481	62%	191 days
1991	725	670	92%	227	31%	82 months	443	61%	200 days
1992	798	749	94%	239	30%	89 months	510	64%	186 days
1993	828	764	92%	244	30%	84 months	520	63%	183 days
1994	880	827	94%	279	32%	83 months	548	62%	195 days
1995	770	714	93%	249	32%	87 months	465	60%	183 days
1996	632	599	94%	236	37%	84 months	354	56%	206 days
1997	635	599	94%	201	32%	81 months	398	63%	196 days
1998	670	636	95%	255	38%	88 months	381	57%	192 days
1999	567	529	94%	189	34%	86 months	340	60%	173 days
2000	539	509	94%	194	36%	80 months	315	58%	185 days
2001	512	481	94%	194	38%	99 months	287	56%	196 days
2002	558	531	95%	197	35%	103 months	334	60%	179 days
2003	607	566	93%	250	41%	116 months	316	52%	186 days

**Incarceration Rates and Average Pronounced Duration By Degree
Sex Offenders Sentenced 1997-2003**

Table 5

Year	Degree	# Cases	Total Incarceration	Prison	Average Duration	Jail as a Probation Condition	Average Jail Time Pronounced
1997	All Cases	635	599 94%	201 32%	81 mos.	398 92%	196 days
	First	146	145 99%	88 60%	125 mos.	57 98%	322 days
	Second	186	164 88%	45 24%	61 mos.	119 84%	189 days
	Third	186	177 95%	43 23%	43 mos.	134 94%	178 days
	Fourth	114	110 96%	23 20%	33 mos.	87 96%	152 days
	Fifth	3	3 100%	2 67%	27 mos.	1 100%	114 days
1998	All Cases	670	636 94%	255 38%	88 mos.	381 92%	192 days
	First	160	155 96%	115 72%	129 mos.	40 89%	306 days
	Second	197	181 91%	60 31%	53 mos.	121 88%	205 days
	Third	197	189 95%	66 34%	59 mos.	123 94%	187 days
	Fourth	112	108 96%	13 12%	41 mos.	95 96%	134 days
	Fifth	5	3 60%	1 25%	41 mos.	2 67%	183 days
1999	All Cases	562	529 94%	189 34%	86 mos.	340 91%	173 days
	First	125	119 95%	82 66%	123 mos.	37 86%	314 days
	Second	153	147 96%	36 24%	72 mos.	111 95%	185 days
	Third	183	169 92%	50 27%	56 mos.	119 90%	151 days
	Fourth	101	94 93%	21 21%	36 mos.	73 91%	120 days
2000	All Cases	539	509 94%	194 36%	80 mos.	315 91%	185 days
	First	105	102 97%	73 70%	123 mos.	29 91%	332 days
	Second	155	149 96%	46 30%	63 mos.	103 95%	196 days
	Third	171	157 91%	55 32%	55 mos.	102 88%	153 days
	Fourth	104	98 94%	17 16%	33 mos.	81 93%	160 days
	Fifth	4	3 75%	3 75%	34 mos.	0	0 days
2001	All Cases	512	481 93%	194 38%	99 mos.	287 90%	196 days
	First	139	135 97%	96 69%	133 mos.	39 91%	313 days
	Second	128	118 92%	39 31%	80 mos.	79 89%	204 days
	Third	162	151 93%	45 28%	59 mos.	106 91%	185 days
	Fourth	79	73 92%	14 18%	47 mos.	59 91%	130 days
	Fifth	4	4 100%	0		4 100%	133 days
2002	All Cases	558	531 95%	197 35%	103 mos.	334 93%	179 days
	First	138	136 98%	108 78%	148 mos.	28 93%	309 days
	Second	148	136 91%	34 23%	56 mos.	102 90%	183 days
	Third	178	174 97%	39 22%	50 mos.	135 97%	172 days
	Fourth	94	85 90%	16 17%	29 mos.	69 89%	134 days
2003	All Cases	607	566 93%	250 41%	116 mos.	316 52%	186 days
	First	170	160 94%	123 72%	175 mos.	37 22%	327 days
	Second	133	124 93%	44 33%	57 mos.	80 60%	194 days
	Third	189	175 93%	58 31%	60 mos.	117 62%	171 days
	Fourth	111	103 93%	24 22%	61 mos.	79 71%	137 days
	Fifth	4	4 100%	1 25%	30 mos.	3 75%	60 days

Prison Rates and Average Pronounced Durations

Table 6

First Degree Cases at Severity Level 9 (Excludes 1st Degree Contact Cases)

Year	# Cases	Prison		Avg. Duration
1988	136	85	63%	75 months
1989	165	111	67%	78 months
1990	196	122	62%	104 months
1991	182	108	60%	118 months
1992	167	100	60%	126 months
1993	194	118	61%	118 months
1994	193	118	61%	131 months
1995	154	98	64%	140 months
1996	134	90	67%	138 months
1997	135	81	60%	130 months
1998	150	108	72%	132 months
1999	113	74	66%	130 months
2000	95	67	71%	129 months
2001	130	89	69%	134 months
2002	124	97	78%	155 months
2003	165	119	72%	177 months

Table 7

**Departure Rates
1988-2003**

Year	# Cases	Mitigated Dispositional Departures				Durational Departures Executed Sentences				
		# 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%

Table 8

Departure Rates: 1997-2003 by Degree

Year	Degree	# Cases	Mitigated Dispositional Departures			Durational Departures Executed Sentences				
			# Presumptive Commits	# Receiving Probation		# Executed Sentences	Aggravated Duration		Mitigated Duration	
1997	All Cases	635	288	107	37%	201	41	20%	44	22%
	First	146	146	58	40%	88	20	23%	20	23%
	Second	186	52	13	25%	45	10	22%	10	22%
	Third	186	69	29	42%	43	6	14%	9	21%
	Fourth	114	21	7	33%	23	4	17%	5	22%
	Fifth	3	0	0		2	1	50%	0	
1998	All Cases	670	326	86	26%	255	55	22%	32	13%
	First	160	160	45	28%	115	28	24%	12	10%
	Second	197	65	15	23%	60	14	23%	7	12%
	Third	197	88	24	27%	66	9	14%	12	18%
	Fourth	112	12	2	17%	13	4	31%	1	8%
	Fifth	5	1	0		1	0		0	
1999	All Cases	562	245	80	33%	189	45	24%	18	10%
	First	125	125	43	34%	82	18	22%	11	13%
	Second	153	34	9	27%	36	13	36%	1	3%
	Third	183	73	27	37%	50	12	24%	4	8%
	Fourth	101	13	1	8%	21	2	10%	2	10%
	Fifth	0				0	0		0	
2000	All Cases	539	248	67	27%	194	46	24%	39	20%
	First	105	105	32	31%	73	19	26%	17	23%
	Second	155	50	11	22%	46	14	30%	6	13%
	Third	171	72	21	29%	55	9	16%	12	22%
	Fourth	104	18	2	11%	17	2	12%	4	24%
	Fifth	4	3	1	33%	3	2	67%	0	0%
2001	All Cases	512	250	66	26%	194	49	25%	36	19%
	First	139	139	43	31%	96	23	24%	19	20%
	Second	128	42	9	21%	39	13	33%	4	10%
	Third	162	58	13	22%	45	8	18%	11	24%
	Fourth	79	11	1	9%	14	5	36%	2	14%
	Fifth	4	0	0		0	0		0	
2002	All Cases	558	241	60	25%	197	41	21%	36	18%
	First	138	138	30	22%	108	25	23%	21	19%
	Second	148	39	10	26%	34	9	27%	4	12%
	Third	178	52	19	37%	39	6	15%	8	21%
	Fourth	94	12	1	8%	16	1	6%	3	19%
	Fifth	0								

Year	Degree	# Cases	Mitigated Dispositional Departures		Durational Departures Executed Sentences		
			# Presumptive Commits	# Receiving Probation	# Executed Sentences	Aggravated Duration	Mitigated Duration
2003	All Cases	607	323	95 29%	250	57 23%	48 19%
	First	170	170	47 28%	123	33 27%	30 24%
	Second	133	51	17 33%	44	10 23%	8 18%
	Third	189	77	27 35%	58	9 16%	8 14%
	Fourth	111	24	4 17%	24	5 21%	2 8%
	Fifth	4	1	0	0	1	0

Victim Age by Child/Other Statutory Provisions: Criminal Sexual Conduct Offenders Sentenced in 2003

In the following tables, the criminal sexual conduct offenses are grouped within each degree by statutory provisions that specify that the victim is a child and those that do not specify the victim's age.

Table 9

Degree	Provision	Age of Victim				Total # Cases
		Less than 13	13-17	Adult	Unknown	
First	Child	87 (68%)	41 (32%)	0	0	128 (75%)
	Other	2 (5%)	10 (24%)	28 (67%)	2 (5%)	42 (25%)
	Total	89 (52%)	51 (30%)	28 (17%)	2 (1%)	170 (100%)
Second	Child	90 (70%)	38 (30%)	0	0	128 (96%)
	Other	1 (20%)	1 (20%)	3 (60%)	0	5 (4%)
	Total	91 (68%)	39 (29%)	3 (2%)	0	133 (100%)
Third	Child	3 (2%)	132 (98%)	0	0	135 (71%)
	Other	2 (4%)	26 (48%)	26 (48%)	0	54 (29%)
	Total	5 (3%)	158 (84%)	26 (14%)	0	189 (100%)
Fourth	Child	4 (7%)	54 (92%)	0	1 (2%)	59 (53%)
	Other	3 (6%)	15 (29%)	31 (60%)	3 (6%)	52 (47%)
	Total	7 (6%)	69 (62%)	31 (28%)	4 (4%)	111 (100%)
Fifth	Child	1 (25%)	1 (25%)	0	2 (50%)	4 (100%)
Total	Child	185 (41%)	266 (59%)	0	3 (7%)	454 (75%)
	Other	8 (5%)	52 (34%)	88 (58%)	5 (3%)	153 (25%)
	Total	193 (32%)	318 (52%)	88 (15%)	8 (1%)	607 (100%)

Victim-Offender Relationship by Child/Other Statutory Provisions: Criminal Sexual Conduct Offenders Sentenced in 2002

In the following tables, the criminal sexual conduct offenses are grouped within each degree by statutory provisions that specify that the victim is a child and those that do not specify the victim's age. The Occupation Category refers to statutes which specify the occupation of the offender.

Table 10

Degree	Provision	Relationship Between Victim and Offender						Total # Cases
		Family	Position Authority	Occupation	Acquaintance	Stranger	Unknown	
First	Child	74 (58%)	15 (12%)	0	35 (27%)	1 (1%)	3 (2%)	128 (75%)
	Other	5 (12%)	1 (2%)	0	16 (38%)	19 (45%)	1 (2%)	42 (25%)
	Total	79 (47%)	16 (9%)	0	51 (30%)	20 (12%)	4 (2%)	170 (100%)
Second	Child	71 (56%)	14 (11%)	2 (2%)	35 (27%)	1 (1%)	5 (4%)	128 (96%)
	Other	2 (40%)	0	0	0	3 (60%)	0	5 (4%)
	Total	73 (55%)	14 (11%)	2 (2%)	35 (26%)	4 (3%)	5 (4%)	133 (100%)
Third	Child	12 (9%)	5 (4%)	0	108 (80%)	4 (3%)	6 (4%)	135 (71%)
	Other	5 (9%)	2 (4%)	1 (2%)	41 (76%)	5 (9%)	0	54 (29%)
	Total	17 (9%)	7 (4%)	1 (0.5%)	149 (79%)	9 (5%)	6 (3%)	189 (100%)
Fourth	Child	16 (27%)	8 (14%)	0	33 (56%)	1 (2%)	1 (2%)	59 (53%)
	Other	6 (12%)	2 (4%)	0	32 (62%)	9 (17%)	3 (6%)	52 (47%)
	Total	22 (20%)	10 (9%)	0	65 (57%)	10 (9%)	4 (4%)	111 (100%)
Fifth	Child	0	0	0	1 (25%)	2 (50%)	1 (25%)	4 (100%)
Total	Child	173 (38%)	42 (9%)	2 (0.4%)	212 (47%)	9 (2%)	16 (4%)	454 (75%)
	Other	18 (12%)	5 (3%)	1 (1%)	89 (58%)	36 (24%)	4 (3%)	153 (25%)
	Total	191 (32%)	47 (8%)	3 (0.5%)	301 (50%)	45 (7%)	20 (3%)	607 (100%)

**Number of Offenders Sentenced for Criminal Sexual Conduct Offenses:
2000-2003 by Statutory Provision**

Table 11

Offense Severity Level Presumptive Sentence (no Crim. History)	Statute Number	Offense	# Offenders Sentenced			
			2000	2001	2002	2003
First Degree Penetration Severity Level 9 144 Months	609.342 subd. 1(a)	Victim under 13, Actor 3 years older	43	56	58	65
	609.342 subd. 1(b)	Victim 13-16, Actor 4 years older & Pos. Authority	9	5	14	9
	609.342 subd. 1(c)	Fear Great Bodily Harm	9	9	8	21
	609.342 subd. 1(d)	Dangerous Weapon	5	4	2	5
	609.342 subd. 1(e)(i)	Personal Injury and Uses Force or Coercion	9	8	8	13
	609.342 subd. 1(e)(ii)	Personal Injury and Victim Impaired/Incapacitated	0	4	0	2
	609.342 subd. 1(f)(i)	Accomplice and use Force or Coercion	0	4	4	1
	609.342 subd. 1(f)(ii)	Accomplice and Dangerous Weapon	0	0	0	0
	609.342 subd. 1(g)	Victim under 16, Significant Relationship	16	25	22	34
	609.342 subd. 1(h)(i)	Under 16, Sig. Relation. and Force or Coercion	0	0	0	0
609.342 subd. 1(h)(ii)	Under 16, Sig. Relation. and Personal Injury	0	2	0	1	
609.342 subd. 1(h)(iii)	Under 16, Sig. Relation. and Multiple Acts	4	12	8	14	
First Degree Contact Severity Level 8 144 Months	609.342 subd. 1(a)	Criminal Sexual Conduct 1 – Contact, Victim under 13, genital to genital contact as defined in 609.341 subd. 11 (c)	10	9	14	5
Second Degree Contact Severity Level 6 21 Months (Stayed)	609.343 subd. 1(a)	Contact Victim under 13, Actor 3 years older	97	82	89	74
	609.343 subd. 1(b)	Victim 13-16, Actor 4 years older & Pos. Authority	9	5	12	16
	609.343 subd. 1(g)	Victim under 16, Significant Relationship	30	22	23	14
Second Degree Contact Severity Level 8 90 Months	609.343 subd. 1(c)	Fear Great Bodily Harm	3	2	0	2
	609.343 subd. 1(d)	Dangerous Weapon	0	1	2	0
	609.343 subd. 1(e)(i)	Personal Injury and Uses Force or Coercion	0	4	4	3
	609.343 subd. 1(e)(ii)	Personal Injury and Victim Impaired/Incapacitated	0	0	0	0
	609.343 subd. 1(f)(i)	Accomplice and use Force or Coercion	0	1	0	0
	609.343 subd. 1(f)(ii)	Accomplice and Dangerous Weapon	0	0	0	0
	609.343 subd. 1(h)(i)	Under 16, Sig. Relation. and Force or Coercion	3	1	0	4
	609.343 subd. 1(h)(ii)	Under 16, Sig. Relation. and Personal Injury	0	0	1	0
	609.343 subd. 1(h)(iii)	Under 16, Sig. Relation. and Multiple Acts	15	10	17	20

Offense Severity Level Presumptive Sentence (no Crim. History)	Statute Number	Offense	# Offenders Sentenced			
			2000	2001	2002	2003
Third Degree Penetration Unranked	609.344 subd. 1(a)	Criminal Sexual Conduct 3 – Penetration Victim under 13, perpetrator must be a juvenile	0	0	0	0
Third Degree Penetration Severity Level 5 18 Months (Stayed)	609.344 subd. 1(b)	Victim 13-16, Actor 2 years older	119	115	138	128
	609.344 subd. 1(e)	Victim 16-18, Actor 4 years older & Pos. Authority	6	2	3	2
	609.344 subd. 1(f)	Victim 16-18, Significant Relationship	5	4	3	2
Third Degree Penetration Severity Level 8 48 Months	609.344 subd. 1(c)	Force or Coercion	24	26	18	32
	609.344 subd. 1(d)	Victim Mentally Impaired\Incapacitated	14	13	13	21
	609.344 subd. 1(g)(i)	Sig. Relation. and Force or Coercion	0	0	0	0
	609.344 subd. 1(g)(ii)	Sig. Relation. and Personal Injury	0	0	0	0
	609.344 subd. 1(g)(iii)	Sig. Relation. and Multiple Acts over Time	3	1	1	3
	609.344 subd. 1(h)	Psychotherapist - Patient	0	0	0	0
	609.344 subd. 1(i)	Psychotherapist-Former Patient Emot. Dependent	0	0	0	0
	609.344 subd. 1(j)	Psychotherapist & Therapeutic Deception	0	0	0	0
	609.344 subd. 1(k)	Deception/False Rep. for Medical Purpose	0	0	0	0
	609.344 subd. 1(l)	Clergy	0	1	0	0
	609.344 subd. 1(m)	Correctional Employee	0	0	1	1
609.344 subd. 1(n)	Special Transportation Service	0	0	0	0	
Fourth Degree Contact Unranked	609.345 subd. 1(a)	Criminal Sexual Conduct 4 - Contact Victim under 13, perpetrator must be a juvenile	0	0	0	0
Fourth Degree Contact Severity Level 4 1Yr, 1Day (Stayed)	609.345 subd. 1(b)	Victim 13-16, Actor 4 years older or Pos. Authority	54	33	45	53
	609.345 subd. 1(e)	Victim 16-18, Actor 4 years older & Pos. Authority	5	2	5	2
	609.345 subd. 1(f)	Victim 16-18, Significant Relationship	4	1	2	3

Offense Severity Level Presumptive Sentence (no Crim. History)	Statute Number	Offense	# Offenders Sentenced			
			2000	2001	2002	2003
Fourth Degree Contact Severity Level 6 21 Months (Stayed)	609.345 subd. 1(c)	Force or Coercion	18	20	19	26
	609.345 subd. 1(d)	Victim Mentally Impaired\Incapacitated	20	20	19	26
	609.345 subd. 1(g)(i)	Sig. Relation. and Force or Coercion	0	0	2	1
	609.345 subd. 1(g)(ii)	Sig. Relation. and Personal Injury	0	0	1	0
	609.345 subd. 1(g)(iii)	Sig. Relation. and Multiple Acts over Time	2	3	1	0
	609.345 subd. 1(h)	Psychotherapist - Patient	0	0	0	0
	609.345 subd. 1(i)	Psychotherapist-Former Patient Emot. Dependent	0	0	0	0
	609.345 subd. 1(j)	Psychotherapist & Therapeutic Deception	0	0	0	0
	609.345 subd. 1(k)	Deception/False Rep. for Medical Purpose	0	0	0	0
	609.345 subd. 1(l)	Clergy	1	0	0	0
	609.345 subd. 1(m)	Correctional Employee	0	0	0	0
	609.345 subd. 1(n)	Special Transportation Service	0	0	0	0
	Fifth Degree Contact Severity Level 4 1Yr, 1Day (Stayed)	609.3451 subd. 3	Criminal Sexual Conduct 5 Violate 609.3451 Subd. 1, clause (2) after previous conviction	4	4	0

Table 12

Statutory Special Sentencing Provisions for Sex Offenders

Statutory Provision	Summary of Sentencing Practices for Offenders Sentenced From 1998 through 2003																								
<p>M.S. 609.109 subd. 2 Second or Subsequent Sex Offense</p> <p>36 Month Mandatory Minimum</p> <p><i>Applies to: Repeat First through Fourth Degree offenders (were previously convicted of a sex offense before committing the current offense)</i></p>	<p align="center"><u>Number Appearing to be Eligible</u></p> <table border="0"> <tr><td align="right">2003</td><td align="right">52</td></tr> <tr><td align="right">2002</td><td align="right">38</td></tr> <tr><td align="right">2001</td><td align="right">46</td></tr> <tr><td align="right">2000</td><td align="right">55</td></tr> <tr><td align="right">1999</td><td align="right">53</td></tr> <tr><td align="right">1998</td><td align="right">80</td></tr> </table> <p><i>Offenders identified as eligible if they had a "true" prior sex offense in their criminal history and the worksheet indicated a presumptive sentence of commit for at least 36 months.</i></p> <p align="center"><u>Percent Receiving Executed Prison Sentence</u></p> <table border="0"> <tr><td align="right">2003</td><td align="right">90% (47)</td></tr> <tr><td align="right">2002</td><td align="right">87% (33)</td></tr> <tr><td align="right">2001</td><td align="right">91% (42)</td></tr> <tr><td align="right">2000</td><td align="right">87% (48)</td></tr> <tr><td align="right">1999</td><td align="right">93% (49)</td></tr> <tr><td align="right">1998</td><td align="right">88% (70)</td></tr> </table> <p><u>Average Pronounced Executed Prison Duration:</u></p> <p>2003: Mean: 137 months Median: 88 months <i>All but 4 of the 47 received sentences of 36 months or more</i></p> <p>2002: Mean: 123 months Median: 72 months <i>All but 2 of the 33 received sentences of 36 months or more</i></p> <p>2001: Mean: 116 months Median: 67 months <i>All but 4 of the 42 received sentences of 36 months or more.</i></p> <p>2000: Mean: 103 months Median: 56 months <i>All but 4 of the 48 received sentences of 36 months or more.</i></p> <p>1999: Mean: 114 months Median: 75 months <i>All but 1 of the 49 received sentences of 36 months or more.</i></p> <p>1998: Mean: 99 months Median: 60 months <i>All but 2 of the 70 received sentences of 36 months or more</i></p>	2003	52	2002	38	2001	46	2000	55	1999	53	1998	80	2003	90% (47)	2002	87% (33)	2001	91% (42)	2000	87% (48)	1999	93% (49)	1998	88% (70)
2003	52																								
2002	38																								
2001	46																								
2000	55																								
1999	53																								
1998	80																								
2003	90% (47)																								
2002	87% (33)																								
2001	91% (42)																								
2000	87% (48)																								
1999	93% (49)																								
1998	88% (70)																								

Statutory Provision	Summary of Sentencing Practices for Offenders Sentenced From 1998 through 2003														
<p>M.S. 609.108 - Patterned Sex Offender</p> <p><i>At least double the sentence normally recommended under the guidelines.</i></p> <p><i>Applies if:</i></p> <ol style="list-style-type: none"> 1. <i>The offender is being sentenced to prison for a felony sex offense (or other sexually motivated offense); and</i> 2. <i>The court finds that the offender is a danger to public safety and in need of long-term treatment or supervision beyond the presumptive term of imprisonment and supervised release.</i> 	<table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td colspan="2" style="text-align: center;">Number Sentenced as Patterned Sex Offender</td> </tr> <tr> <td style="text-align: right;">2003</td> <td style="text-align: right;">6</td> </tr> <tr> <td style="text-align: right;">2002</td> <td style="text-align: right;">6</td> </tr> <tr> <td style="text-align: right;">2001</td> <td style="text-align: right;">6</td> </tr> <tr> <td style="text-align: right;">2000</td> <td style="text-align: right;">8</td> </tr> <tr> <td style="text-align: right;">1999</td> <td style="text-align: right;">7</td> </tr> <tr> <td style="text-align: right;">1998</td> <td style="text-align: right;">12</td> </tr> </table> <p style="text-align: center;"><i>Offenders are those for whom the court cited the Patterned Sex Offender Sentencing Provision as a reason for departure.</i></p> <p><u>Average Pronounced Executed Prison Duration:</u></p> <p>2002: Mean: 382 months Median: 294 months</p> <ul style="list-style-type: none"> • <i>2 of the 6 received sentences greater than 30 years; one got a sentence of 40 years, and through consecutive sentencing, one got a sentence of 70 years</i> <p>2002: Mean: 229 months Median: 230 months</p> <ul style="list-style-type: none"> • <i>1 of the 6 received sentences of 30 years or more</i> <p>2001: Mean: 320 months Median: 240 months</p> <ul style="list-style-type: none"> • <i>2 of the 6 received sentences of 30 years or more</i> • <i>1 of the 6 received a sentence that was less than double the presumptive sentence</i> <p>2000: Mean: 294 months Median: 300 months</p> <ul style="list-style-type: none"> • <i>4 of the 8 received sentences of 30 years or more</i> <p>1999: Mean: 349 months Median: 360 months</p> <ul style="list-style-type: none"> • <i>4 of the 7 received sentences of 30 years or more</i> <p>1998: Mean: 264 months Median: 237 months</p> <ul style="list-style-type: none"> • <i>All but 2 of the 12 offenders received sentences that were at least twice the presumptive guidelines duration.</i> • <i>Four received sentences of 30 years or more.</i> 	Number Sentenced as Patterned Sex Offender		2003	6	2002	6	2001	6	2000	8	1999	7	1998	12
Number Sentenced as Patterned Sex Offender															
2003	6														
2002	6														
2001	6														
2000	8														
1999	7														
1998	12														

Statutory Provision	Summary of Sentencing Practices for Offenders Sentenced From 1998 through 2003												
<p>M.S. 609.109 subd. 6 – Minimum Double Departure</p> <p><i>At least double the sentence normally recommended under the guidelines.</i></p> <p><i>Applies if:</i></p> <ol style="list-style-type: none"> 1. <i>Aggravating factors exist; and</i> 2. <i>The conviction is for Criminal Sexual Conduct in the First, Second, or Third degree under the provisions specifying force or violence.</i> 	<p style="text-align: center;"><u>Number Appearing to be Eligible</u></p> <table style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: right;">2003</td><td>18</td></tr> <tr><td style="text-align: right;">2002</td><td>9</td></tr> <tr><td style="text-align: right;">2001</td><td>13</td></tr> <tr><td style="text-align: right;">2000</td><td>13</td></tr> <tr><td style="text-align: right;">1999</td><td>22</td></tr> <tr><td style="text-align: right;">1998</td><td>19</td></tr> </table> <p><i>Offenders identified as eligible if convicted of one of the applicable statutes and received an aggravated duration for an executed prison sentence.</i></p> <p><u>Average Pronounced Executed Prison Duration:</u></p>	2003	18	2002	9	2001	13	2000	13	1999	22	1998	19
2003	18												
2002	9												
2001	13												
2000	13												
1999	22												
1998	19												
<p>2000: Mean: 208 months Median: 182 months</p> <ul style="list-style-type: none"> • <i>2 of these 13 received double their presumptive sentences</i> • <i>6 received more than double their presumptive sentences (one of these sentenced as patterned sex offender)</i> • <i>5 received departures that were less than double</i> <p>1999: Mean: 150 months Median: 120 months</p> <ul style="list-style-type: none"> • <i>3 of these 22 received double their presumptive sentences</i> • <i>4 received more than double their presumptive sentences (one of these sentenced as patterned sex offender)</i> • <i>15 received departures that were less than double</i> <p>1998: Mean: 216 months Median: 168 months</p> <ul style="list-style-type: none"> • <i>3 of these 19 received double their presumptive sentences (one of these was sentenced as a patterned sex offender)</i> • <i>5 received more than double their presumptive sentences</i> • <i>11 received departures that were less than double</i> 	<p>2002: Mean: 271 months Median: 288 months</p> <ul style="list-style-type: none"> • <i>3 received sentences that were double their presumptive sentences</i> • <i>9 received sentences that were more than double their presumptive sentences, one of whom was sentenced as a patterned sex offender</i> • <i>6 received departures that were less than double</i> <p>2002: Mean: 159 months Median: 142 months</p> <ul style="list-style-type: none"> • <i>1 of these 13 received double their presumptive sentences and was sentenced as patterned sex offender</i> • <i>5 received more than double their presumptive sentence</i> • <i>7 received departures that were less than double</i> <p>2001: Mean: 205 months Median: 152 months</p> <ul style="list-style-type: none"> • <i>4 of these 13 received double their presumptive sentences (one of these sentenced as patterned sex offender)</i> • <i>5 received more than double their presumptive sentences (three of these sentenced as patterned sex offender)</i> • <i>4 received departures that were less than double</i> 												

Statutory Provision	Summary of Sentencing Practices for Offenders Sentenced From 1998 through 2003												
<p>M.S. - 609.109 subd. 4 - Mandatory 30 year Departure</p> <p><i>A minimum of 30 years.</i></p> <p><i>Applies if:</i></p> <ol style="list-style-type: none"> 1. <i>Aggravating factors exist; and</i> 2. <i>The conviction is for Criminal Sexual Conduct in the First or Second Degree under the provisions specifying force or violence; and</i> 3. <i>The offender has a prior First, Second or Third Degree Criminal Sexual Conduct conviction</i> 	<p style="text-align: center;"><u>Number Appearing to be Eligible</u></p> <table style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: right;">2003</td><td style="text-align: right;">3</td></tr> <tr><td style="text-align: right;">2002</td><td style="text-align: right;">2</td></tr> <tr><td style="text-align: right;">2001</td><td style="text-align: right;">1</td></tr> <tr><td style="text-align: right;">2000</td><td style="text-align: right;">3</td></tr> <tr><td style="text-align: right;">1999</td><td style="text-align: right;">2</td></tr> <tr><td style="text-align: right;">1998</td><td style="text-align: right;">3</td></tr> </table> <p><i>Identified as eligible if convicted of one of the applicable statutes, had a prior First, Second or Third degree conviction, and received an aggravated duration.</i></p> <p><u>Pronounced Sentences:</u></p> <p>2003:</p> <ul style="list-style-type: none"> • <i>All 3 received a sentence of 360 months</i> <p>2002:</p> <ul style="list-style-type: none"> • <i>One received a sentence of 360 months- (sentenced as patterned sex offender)</i> • <i>One received a sentence of 288 months – (double the presumptive sentence; sentenced as patterned sex offender)</i> <p>2001:</p> <ul style="list-style-type: none"> • <i>One received a sentence of 360 months</i> <p>2000:</p> <ul style="list-style-type: none"> • <i>All three received sentences of 360 months</i> <p>1999:</p> <ul style="list-style-type: none"> • <i>One received a sentence of 330 months – (more than double the presumptive sentence; sentenced as patterned sex offender)</i> • <i>One received a sentence of 300 months – (more than double the presumptive)</i> <p>1998:</p> <ul style="list-style-type: none"> • <i>One received two consecutive 30-year sentences - 720 months</i> • <i>One received a double departure -254 months</i> • <i>One received a departure that was less than double the presumptive sentence (this offense was an attempt) - 104 months</i> 	2003	3	2002	2	2001	1	2000	3	1999	2	1998	3
2003	3												
2002	2												
2001	1												
2000	3												
1999	2												
1998	3												



Minnesota Sentencing Guidelines Commission

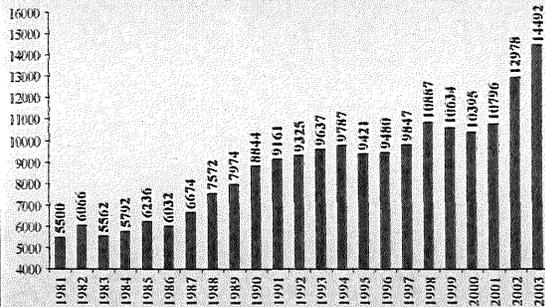
Sex Offender Sentencing Practices and Recommendations

Presented
to:
Minnesota Senate
February 2, 2005

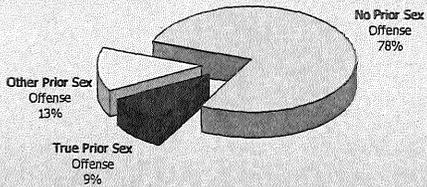


Sex Offender Sentencing Trends

Number of Felony Offenders Sentenced

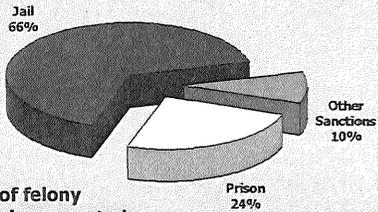


Percent of Sex Offenders That Are Repeat Sex Offenders



Source: MSGC Monitoring Data

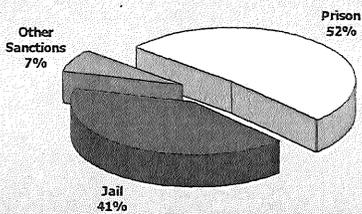
2003 Incarceration Rate



In 2003, 90% of felony offenders were incarcerated.

Source: MSGC Monitoring Data

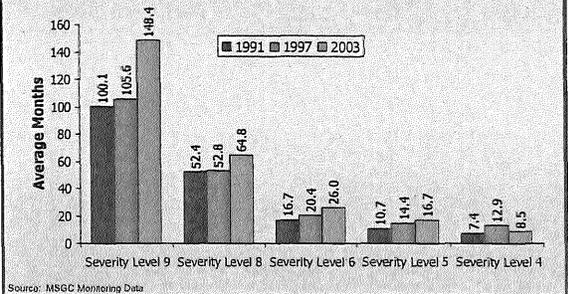
2003 Incarceration Rate for Sex Offenders



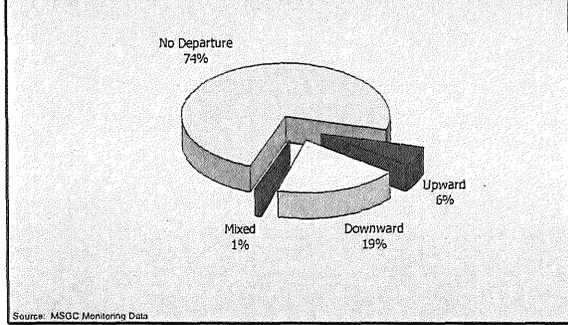
In 2003, 93% of felony sex offenders were incarcerated.

Source: MSGC Monitoring Data

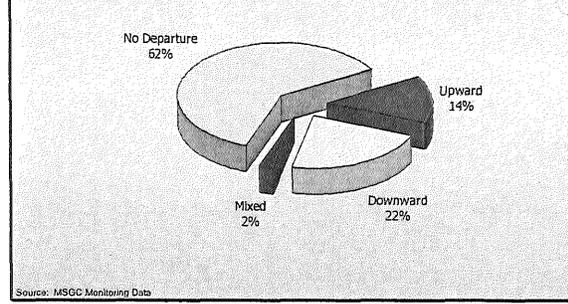
Average Pronounced Sentence by Severity Level Sex Offenders Sentenced to Prison



Overall Departure Rate



Overall Departure Rate for Sex Offenders





Commission Recommendations

Subcommittee Members

- Connie Larson, Chair, Citizen Representative
- Darci Bentz, Assistant Public Defender, Fairmont
- Jeff Edblad, Isanti County Attorney
- Commissioner Joan Fabian, Commissioner of Corrections
- Honorable Isabel Gomez, Fourth Judicial District

Design Principles

- Recognize the public safety issue posed by sex offenders
- Maintain Determinate Sentencing Structure
 - Reduced racial, gender, economic, and geographic disparity
 - Proportionality in sentencing
 - Certainty in sentencing
 - Victim impact
 - Prison population predictability
- Preserve "truth in sentencing"
- Sentence lengths based on combination of presumptive sentences and statutory mandatory minimums

Grid Structure

- Severity levels A (most serious) through H (least serious)
- Presumptive sentence for Criminal History Score of 0 equals or exceeds the mandatory minimum or statutory presumptive sentence for the offense.
- Presumptive sentence for Criminal History Score of 6 or more is typically the statutory maximum.
- Presumptive sentence for Criminal History Score of 3 is 2/3 of the statutory maximum for most offenses.
- No presumptive sentences are reduced from the current Sentencing Guidelines.

Criminal History Score

- Acknowledges the danger posed by repeat sex offenders
- Proposes increased weights for prior sex offenses when current offense is a sex offense
- A second custody status point is assigned when the current sex offense is committed while on supervision for a prior sex offense
- Effect of criminal history score changes:
 - A new sex offense committed while on supervision for prior sex offense result in at least 2/3 of the statutory maximum sentence.
 - A new sex offense with prior 1st Degree Criminal Sexual Conduct offense result in at least 2/3 of the statutory maximum sentence.
 - A new sex offense with 2 prior 1st Degree Criminal Sexual Conduct offenses result in statutory maximum sentence.

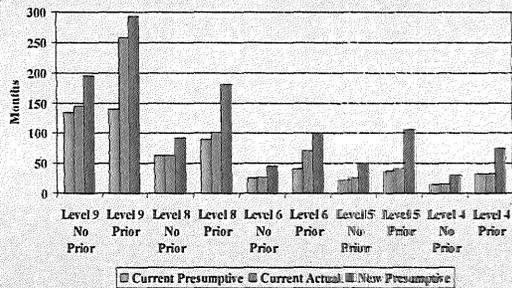
Failure to Register as a Predatory Offender

- The Commission decided that although Failure to Register as a Predatory Offender offenses are not technically sex offenses, these offenders posed similar threats to the public safety and should be included in the sex offender sentencing proposal.
- Failure to Register is the only offense ranked at Severity Level H on the proposed grid, reflecting the lower statutory maximum and mandatory minimum sentence for this offense.
- Despite being ranked at the bottom of the grid, the Commission made all Failure to Register offenses presumptive prison sentences due the mandatory minimum sentence for this offense.

Current Sentencing Factors

- Aggravated departures remain available when there are "substantial and compelling reasons" to support the enhanced sentence.
- Consecutive sentencing remains available when the offender has a prior sentence with time remaining or multiple current offenses being sentenced.

Average Sentence Length Comparison



Projected Prison Bed Impact

- **Sex Offender Grid**
 - Additional 580 prison beds needed per year after 20 years
 - 196 offenders per year will receive longer sentences
- **Off-Grid Sex Offense**
 - Additional 492 prison beds needed per year after 20 years (assuming no offenders are paroled)
 - 24 offenders per year will receive longer sentences

Proposed Sex Offender Grid

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



Presumptive commitment to state imprisonment. See section II.E. Mandatory Sentences for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include second and subsequent Criminal Sexual Conduct offenses and Failure to Register as a Predatory Offender. See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

¹ One year and one day

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

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

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



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



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

¹ One year and one day

² Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers).

Governor's Commission on Sex Offender Policy

Final Report

**Esther M. Tomljanovich
Chairperson**

Members

**Brian Schlueter
Jerry Soma
Steven Strachan
John Stuart
Susan Voigt**

**James Backstrom
Laura Budd
Terry Dempsey
Carla Ferrucci
Kris Flaten
Gerald Kaplan**

January 2005

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Section I Executive Summary of Recommendations

When making his appointments to this Commission, Governor Pawlenty asked Members to focus on the current and best practices in six distinct areas: (1) Minnesota's practices for sentencing offenders for criminal sexual conduct; (2) the practices for supervising those with a history of sex offenses; (3) the process for civilly committing offenders under Minnesota's Sexually Dangerous Person (SDP) and Sexual Psychopathic Personality (SPP) statutes; (4) the circumstances under which the placement in health care settings of elderly and disabled persons, who have a criminal history of sex offenses, can be restricted; (5) the procedures for the conditional medical release of inmates, who have a criminal history of sex offenses, to health care settings in the community; and (6) the practice of granting those with a history of criminal misconduct special waivers for later employment in settings that are regulated by the State of Minnesota.

Between September 8, 2004 and January 4, 2005 the Governor's Commission on Sex Offender Policy convened 14 hearings and held 3 off-site seminars. During these meetings the Commission heard from 50 expert witnesses on matters relating to the sentencing, supervision, treatment and registration of sex offenders. (*See*, Appendix C)

In drafting sessions on October 20, November 24, December 1 and January 4, the Commission developed a series of recommendations for review by Governor Pawlenty and the Minnesota Legislature. Briefly stated, the Commission's recommendations are:

Sentencing Practices:

The Commission recommends:

- Development of a blended determinate-indeterminate sentencing system for sex offenders. Key features of this plan include improving public safety by doubling of the current statutory maximum sentences for criminal sexual conduct crimes, and vigorous, politically-independent reviews of the offender's response to treatment while in custody.
- Creating a Sex Offender Release Board that would have the authority to review an offender's confinement record, including treatment progress, and all other relevant factors to determine when sex offenders should be released from prison. The Sex Offender Release Board would establish release and supervision conditions for any sex offender on supervised release.
- Increasing the statutory maximum indeterminate sentence to life for those offenders with a prior history of criminal sexual conduct. A potential life sentence maximum for repeat offenders, represents the right balancing of competing public safety interests.

- Increasing the penalty for indecent exposure to an unaccompanied minor under the age of 13 from a gross misdemeanor to a felony. Believing that such exposure crimes represent particularly dangerous sexualizing of young children, and that this conduct is a precursor to very egregious offenses, Commission Members urge the Legislature to meet this conduct with more serious consequences than the current law provides.

Supervision Practices:

The Commission recommends:

- The use – wherever it is practicable – of specialized sex offender caseloads for state and county supervision agents. Specialized training in sex offender supervision techniques and routine experience with the methods and deceptions used by this type of offender, will promote more effective supervision of offenders.
- Granting judges discretion to set aside sex offender registration requirements for a limited class of juvenile offenders. Judges in Juvenile Court should be afforded more discretion to balance the benefits of having particular juveniles register as sex offenders, against efforts to re-integrate those juveniles back into society.
- Establish a layered, three-pronged approach to ensuring the timely disclosure of sex offender registry information. To ensure that health care facilities have all information that is relevant to admission, transfer and abuse prevention decisions, at an early point in the admission process, modify Minnesota law so as to:
 - (1) Codify the current Department of Corrections’ policy – which requires a supervising agent to notify a health care facility if he or she knows that a supervised offender is receiving in-patient care – into statute; thereby making this best practice binding upon all state and local corrections agents.
 - (2) Require local law enforcement agencies to disclose a registrant’s status to the administration of a health care facility, if law enforcement officials are aware that a registered offender is receiving in-patient care.
 - (3) Add to the existing requirements of the Predatory Offender Registry statute a requirement obliging registered offenders to disclose to the administration of any health care facility, upon admittance, his or her status as a registering predatory offender – and punishing the failure to disclose with a felony penalty.
- Establishing an ongoing Sex Offender Policy Board, with members appointed by the Governor to four-year staggered terms. The timeline established for this Commission did not permit development of some needed and useful policy recommendations. This work should continue on with another, formalized panel.

Civil Commitment Practices:

The Commission recommends:

- Developing methods of segregating patients who refuse treatment would improve results. Commission Members believe that if the Minnesota Sex Offender Program (MSOP) is to effectively operate as a treatment setting, those who refuse treatment should be segregated and securely confined.
- Establishing a Continuum of Structured Treatment Options. Commission Members believe that any patients transitioning from civil commitment should be bounded at all times by a strong and mutually reinforcing set of security measures – including supervision agents; highly structured living facilities; and electronic monitoring, Global Positioning Services and polygraph services.
- Replicating the Department of Human Service-Dakota County Community Corrections contract for supervision. When patients who have been civilly committed as Sexual Psychopathic Personalities or Sexually Dangerous Persons successfully complete treatment, and are transitioning back to community settings, they need to be supervised by effective and well-trained corrections agents. The Legislature should formalize these methods in statute, and thereby improve the overall effectiveness, safety and viability of “pass-eligible” status and provisional discharges.
- Amending the felony escape statute to include civil commitment patients who abscond from the treatment program prior to discharge. So as to facilitate the extradition and return of those patients committed under the SDP or SPP laws, who flee before their discharge from the program, the Commission recommends this change in the law.
- Transferring the process of screening of sex offenders for possible civil commitment to an independent panel. Mindful that several bills from the 2004 Legislative Session would have added additional personnel, tenure protections, or both, to the civil commitment review process, the Commission suggests that a Sex Offender Release Board would be well suited to perform this function.
- Encouraging the Minnesota Supreme Court to use existing statutory authority to establish a specialized panel for civil commitments. In the judgment of the Commission, such a statewide judicial panel would result in the development of valuable expertise and efficient economies of scale.
- Transferring the civil commitment transition process to an independent panel. In the Commission’s view, having a cabinet-level official involved in approving patient trips outside of the facility threatens to overly politicize the process. The Commission suggests that the Sex Offender Release Board would be transparent; insulated from political pressure; and trusted by patients, treatment staff and the public.

Offender Health Care Practices:

The Commission recommends:

- Modifying Minnesota law so as to make clear that any registered predatory offender who does not disclose his or her status upon admission to a health care facility, and is subject to transfer or discharge when this fact is later discovered, may not rely upon the anti-discharge protections of state law to remain in the facility. One possible reading of *Minnesota Statutes* § 144A.135 is that it permits predatory offenders to receive a 30-day notice and to remain in health care settings, pending an appeal of their transfer or discharge, even when the health care facility could not adequately account for the added security risk of such patients.
- Modifying Minnesota law so as to make clear that details of a patient's criminal history that are public information are not given a different and higher classification as confidential medical data when included in the patient's health care records. The classification and permitted uses of criminal history data should be uniform across settings and agencies – and should not particularly disadvantage health care providers.
- Developing partnerships to provide medical care in a secure setting to those with a criminal history of sex offenses. State government has an interest in developing the infrastructure of willing providers that can deliver health care – at varying levels of security – to those with a criminal history.
- Supporting the development of secure health care settings by having the state assist in the site selection process. In order to overcome local controversies as to the placement of such facilities, state participation in the site development process may be necessary.

Conditional Medical Release Practices:

The Commission recommends:

- Closely tracking the experience of Federal Medical Center-Fort Worth in administering secure hospice care facilities. As the demographics of Minnesota's inmate population change, the state may find it useful to develop a lower-cost, long-term care facility within the corrections system. The FMC-Fort Worth facility has developed links between its hospice program and the prison's Medical Center that appear promising.

Variance and Set-Aside Practices:

The Commission recommends:

- Streamlining Minnesota’s varied and disparate background check standards with a single, comprehensive standard. One possibility for eliminating gaps and confusion in Minnesota’s various background check processes would be to use the same list of criminal offenses – such as those listed in *Minnesota Statutes* § 245C.15 – as the trigger for employment disqualification.
- Dissemination of a list of the “collateral consequences” that attend conviction of a crime of criminal sexual conduct. Because the various registration requirements, restrictions on legal rights and disqualifications for employment that follow a criminal conviction for sexual misconduct are placed in different sections of Minnesota law, it would be a useful resource for judges, prosecutors, offenders, victims, employers and the public at large to have a short compilation of these consequences in one place.

Funding Issues:

The Commission recommends:

- Moving toward a statewide approach to sex offender management. The Legislature should work toward achieving greater uniformity across Minnesota in supervision practices, treatment options, treatment infrastructure and the assessment of sex offenders.
- Examining in detail how the resources that are spent to prosecute and incarcerate sex offenders compare with the amount of public resources that are available to treat the victims of sex crimes and to prevent further sexual offending. As with other public safety programs, the Legislature should pursue a more uniform set of services across the state.
- Following any statutory changes to sex offender management practices with accompanying budgetary support that is expressed in separate line items. In the interests of transparency and accountability, the Legislature should designate separate budget line items for each of the improvements it makes to the sex offender management system.

The Next Frontiers:

The Commission recommends:

- Increasing attention to the prevention of sex crimes. While the potential long-term cost savings to the public health system from preventing sex crimes are large – as is the potential to avoid suffering by victims – specific strategies on how to break cycles of offending are less clear. The Department of Health’s work on violence prevention is a valuable start; and more should be done to develop, research and discover effective prevention strategies.
- Increasing attention to the rise in the number of sexually dangerous offenders who are committed from the juvenile system. Given the fact that roughly 20 percent of the patients civilly committed to the MSOP as Sexual Psychopathic Personalities or Sexually Dangerous Persons are young men between the ages of 18 to 25, greater emphasis should be placed on early treatment responses to young, sexually-dangerous offenders. The alternative – namely, civil commitments that could span the lifetime of these patients – is both costly and tragic.

Section II Formation and Background of the Governor's Commission on Sex Offender Policy

In August of 2004, Governor Tim Pawlenty declared that “recent events have highlighted that Minnesota's laws regarding sex offenders need to be improved. We can and should do more to strengthen our laws and policies to better deal with these offenders.”

The recent events referred to by Governor Pawlenty were the abduction and murder of a Minnesota college student, and later, a set of offenses by nursing home patients who had histories of criminal sexual conduct. Continued Governor Pawlenty, “protecting the public is a top priority of state government. We must do everything we can to ensure that our laws and policies provide the best possible tools to deal with sex offenders.”



With this statement, Governor Pawlenty appointed a 12-member, all-volunteer Commission of experienced professionals to review relevant policies and suggest improvements. To assure the public that the Commission's inquiry would be an “arms-length review” of state and local practices, none of the Members appointed to the Commission were current state policy-makers. (*See*, Appendix E).

Governor Pawlenty asked Members to focus on the current and best practices in six distinct areas: (1) Minnesota's practices for sentencing offenders for criminal sexual conduct; (2) the practices for supervising those with a history of sex offenses; (3) the process for civilly committing offenders under Minnesota's Sexually Dangerous Person (SDP) and Sexual Psychopathic Personality (SPP) statutes; (4) the circumstances under which the placement in health care settings of elderly and disabled persons, who have a criminal history of sex offenses, can be restricted; (5) the procedures for the conditional medical release of inmates who have a criminal history of sex offenses to health care settings in the community; and (6) the practice of granting those with a history of criminal misconduct special waivers for later employment in settings that are regulated by the State of Minnesota.

As Justice Esther M. Tomljanovich, Chairwoman of the Commission, summarized: “The issue of sex offenders is certainly a high-profile public concern, but it is also a very complex one as well.” In undertaking its work, Commission Members convened weekly hearings – which included testimony from a wide range of experts, from Minnesota and across the country – as well as detailed reviews of statutes, regulations, scholarly literature, court opinions and study results.¹ The material that follows is the Commission's summary and assessment of this broad range of items.

¹ Additional material regarding the Commission's meetings and work is available on the internet at <http://www.doc.state.mn.us/commissionsexoffenderpolicy/default.htm>

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Section III Sentencing Practices in Minnesota
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Background on Determinate Sentencing in Minnesota

For nearly a quarter-century, Minnesota has been a “determinate sentencing” state. As the label implies, under determinate sentencing, the offender is sentenced to serve a specified number of months in prison.

Ordinarily, under current law, the average offender who is committed to a state correctional institution will serve two-thirds of the pronounced sentence in prison. The remaining one-third of the pronounced sentence will be served by the offender on “supervised release” – a transitional phase, where the offender lives in the community but is under the supervision and control of state or county corrections agents.

Determinate sentences in Minnesota are arrived at through application of the state’s Sentencing Guidelines. The Guidelines establish a narrow range of possible sentences to be imposed by the courts for individual offenders in specific cases. The recommended sentences are based upon matching a specific offense with a score derived from the offender’s prior criminal record. In this way, the guidelines increase punishments upon offenders who have a prior history of misconduct and those who commit more serious offenses.

Minnesota’s sentencing guidelines system became effective on May 1, 1980 – and it quickly became a model for other states and the Federal Government to use in establishing their own determinate sentencing systems.

Key features of the determinate sentencing practice include the ability to: (1) assure the public that offenders who are convicted of similar types of crimes, and who have similar types of criminal records, are similarly sentenced; (2) inform the victims of crime, with some certainty, how long the offender will remain incarcerated; (3) maintain, through a global, system-wide perspective, rough proportionality among criminal sentences; and (4) implement changes to criminal sentencing practice quickly and uniformly throughout the criminal justice system by modifying the state’s Sentencing Guidelines.

A Key Shortcoming: When Offenders Serve to Expiration and are Still Dangerous

Like any complex system, Minnesota’s sentencing practice has its limitations.

To be sure, Minnesota’s determinate sentencing laws provide real value by assuring the public that our state’s criminal sentences are applied evenly, proportionately and without racial animus. Yet, it is also true that the state’s options for handling sex offenders who remain dangerous at the end of their determinate sentences are too limited. The one formal option in these cases is to

attempt to civilly commit the inmate to the Minnesota Sex Offender Program² – a matter that can be legally difficult and is not, for constitutional reasons, available in a wide range of sex offense cases. (Further description and recommendations about Minnesota’s civil commitment process can be found in Section V, below.)

For these reasons, the Commission proposes a plan that blends the very best features of Minnesota’s pioneering determinate sentencing laws with other, indeterminate sentencing features that maximize public safety.

The Commission Outlines a New Approach

Under the Commission’s plan, Minnesota’s current Sentencing Guidelines should be the beginning point of any imposed sentence for criminal sexual conduct. Further, the exact amount of time served by any one offender would be indeterminate, up to a new statutory maximum, which would be double that of current Minnesota law. In addition to pronouncing the indeterminate sentence maximum, the sentencing court would also establish a minimum sentence. This minimum sentence would either be the mandatory minimum penalty provided by law for the crime, if any, or two-thirds of the presumptive sentence that has been established for the crime under the current Minnesota Sentencing Guidelines, whichever is greater.³ Offenders would be eligible to petition for release from prison after serving the minimum sentence, and, if denied release, permitted thereafter to periodically renew the application for release.

For example, a first-time sex offender given the presumptive sentence for Criminal Sexual Conduct in the First Degree, under the Commission’s plan, would serve a minimum of 96 months before being eligible to request release (two-thirds of the 144-month minimum sentence established by Minnesota Law for this crime), but could be held in custody up to a maximum of 60 years. Also important, is that the proposed minimum sentence under the blended approach to sentencing of sex offenders proposed by the Commission in no way guarantees the release from prison of a convicted sex offender at this time, but only marks the beginning date upon which the offender can petition the Sex Offender Release Board to consider the offender’s release. Such release will not occur unless adequate treatment progress has been made and, in the judgment of the Sex Offender Release Board, the offender no longer poses a risk to public safety.

In the view of Commission Members, the move to a blended determinate-indeterminate sentencing system for sex offenses makes good sense; particularly because it solves four key shortcomings of the current sentencing system:

² See, *Minnesota Statutes* § 253B.02, Subdivisions 18b and 18c (2004).

³ A minority of Commission Members believe that offenders should be eligible to petition the Sex Offender Release Board for release after serving one-half of the mandatory minimum penalty provided by law for the crime or one-half of the presumptive sentence that has been established for the crime under the current Minnesota Sentencing Guidelines. See, Appendix B.

- First, indeterminate sentencing would increase the ability of state correctional officials to hold, in custody, those offenders who present real dangers to the public at large. Offenders who cannot clearly demonstrate success in treatment, and who remain grave threats to public safety, would remain in custody up to the new, heightened maximum sentence.
- Second, an indeterminate sentencing plan would reduce pressures to civilly commit still-dangerous offenders to the more resource-intensive Minnesota Sex Offender Program (“MSOP”), at the end of their sentences. *See*, Section V, below.
- Third, an indeterminate sentencing program increases the incentives for sex offenders to actively participate in sex offender treatment options while in prison. Because of economies of scale, these treatment programs are more cost-effectively provided in a prison setting than they are in the MSOP.
- Lastly, with respect to upward departures for dangerous offenders, an indeterminate sentencing plan clears the constitutional hurdles that were highlighted by the United States Supreme Court in the case of *Blakely v. Washington*.⁴ In August and September of 2004, the Minnesota Sentencing Guidelines Commission developed detailed modifications to our state’s sentencing laws so as to address key holdings of that case.⁵

Sharing Governor Pawlenty’s concerns that a crime victim might be required to re-live painful memories each time that their indeterminately-sentenced attacker petitions for release from prison, in their recommendations, Commission Members were eager to balance the competing interests of crime victims and the larger correctional system. Accordingly, in the Commission’s view, the best balancing of these different interests would make six points clear: (1) indeterminately-sentenced offenders would have the opportunity to request a hearing on their release once each year; (2) no Release Hearing would be necessary, if a review of the paper file were sufficient to deny parole; (3) no indeterminately-sentenced offender would ever be released to supervision in the community unless a release hearing were completed; (4) the crime victim would receive sufficient advance notice of the release hearing, if the Board scheduled a hearing on an offender’s request; (5) the crime victim, at the victim’s election, would be permitted to

⁴ In *Blakely v. Washington*, Mr. Blakely had originally been charged with first-degree kidnapping, but the charge was reduced upon reaching a plea agreement. He pled guilty to second-degree kidnapping involving domestic violence and use of a firearm. Under Washington law, second-degree kidnapping was a crime that was punished by a sentence between 49 and 53 months. The Washington statute, however, permitted the judge to impose a sentence above that range upon finding of “substantial and compelling reasons justifying an exceptional sentence.” During the defendant’s sentencing proceeding, the state court judge imposed an “exceptional sentence” of 90 months. On appeal, the United States Supreme Court held that the Sixth Amendment right to jury trial makes unconstitutional the imposition of any sentence above the statutory maximum prescribed by the facts found by a jury or admitted by the defendant. The *Blakely* Court held that beyond the elements of the crime, “every defendant has the right to insist that the prosecutor prove to a jury all facts legally essential to the punishment.” *Blakely*, 124 S. Ct. 2538, 2543 (2004).

⁵ *See*, http://www.msgc.state.mn.us/Data%20Reports/blakely_shortterm.pdf (Short Term Report) and http://www.msgc.state.mn.us/Data%20Reports/blakely_longterm.pdf (Long Term Report).

submit testimony to the Release Board in person or in writing; and (6) if the Board denied earlier requests to schedule a release hearing, at a minimum, an indeterminately-sentenced offender would be permitted one release hearing every three years. In the Commission's view, such a plan would simultaneously provide shelter to crime victims, accord due process and encourage genuine change among offenders.

The Commission Proposes a Sex Offender Release Board

In order to steer incarcerated sex offenders toward meaningful changes in treatment, Commission Members felt strongly that a highly specialized panel would be needed to assess the progress of these offenders. Accordingly, the Commission recommends creation of a Board that would have the authority to review an offender's confinement record (including treatment progress, risk assessment data, psychological evaluations, and all other relevant factors), to determine when sex offenders should be released from prison. An offender would be eligible to petition the Sex Offender Release Board for release from prison after serving the minimum sentence term given by the sentencing judge and, if denied release, could renew the request for release annually thereafter. The Sex Offender Release Board would also set conditions for these same offenders during the period of any supervised release in the community.⁶

Because the work of such a Release Board would involve detailed assessments of psychological and behavioral changes, in cases that could be politically charged, the Commission further recommends that professionals with relevant forensic and sex offender management experience be appointed to the panel and that certain tenure protections be provided to those who serve. In the Commission's view, the Release Board should: (a) comprise five members; (b) provide for three Gubernatorial appointments, including the Chairperson; (c) provide for two appointments to be made by the Chief Justice of the Minnesota Supreme Court; (d) beyond the initial term, provide for staggered, six-year terms for Release Board members; and (e) include sufficient provisions of staff support from the Department of Corrections.

The Commission Proposes a Short List of Statutory Changes

Believing that the greatest and most beneficial advances in Minnesota's sentencing practices could be made by developing and implementing an indeterminate sentencing system, the Commission only recommends a few specific changes to the state's sentencing laws. Those modifications include:

⁶ As a further efficiency, the Commission suggests that a Release Board could undertake useful work immediately if the release violation proceedings for sex offenders were transferred to such a panel. *See, Minnesota Statutes* §§ 243.05 and 244.05 (2004).

- Increasing the statutory maximum indeterminate sentence to life for those offenders with a prior history of criminal sexual conduct. Commission Members believed that their combination of doubling the statutory maximums for Criminal Sexual Conduct, and indeterminate sentencing, would result in very lengthy prison sentences for especially violent first-time criminals. Given the strength of these recommendations, it was further agreed that a possible life-sentence maximum for repeat offenders, represented the right balancing of competing public safety interests.⁷
- Increasing the penalty for indecent exposure to an unaccompanied minor under the age of 13 from a gross misdemeanor to a felony. Believing that such exposure crimes represent particularly dangerous sexualizing of young children, and this conduct is a precursor to very egregious offenses, Commission Members urge the Legislature to meet this conduct with more serious consequences than current law provides.⁸
- Amending the felony escape statute to include civil commitment patients who abscond from the treatment program prior to discharge. So as to facilitate the extradition and return of those SDP or SPP civil commitment patients who flee before their discharge from the program, the Commission recommends this change in the law. (Further detail on this recommendation follows in Section V of this Report.)

⁷ Half of the Commission membership believes that the statutory maximum for certain first-time offenses should be life in prison, in addition to this sanction being applied to repeat offenders. *See*, Appendix A.

⁸ One possible refinement to this plan, so as to balance the cost impact of increasing the sentences for this crime, would be to simultaneously reduce the penalty for exposure to accompanied minors over the age of 13 to a misdemeanor. This crime was punished as a misdemeanor as late as 1994. *See*, *Laws of Minnesota*, Chapter 636, Art. 2, § 54 (1994). Yet, because the 1995 change to the law treats all minors under the age of 16, whether accompanied or not, in the same way, it does not properly account for the more serious threat posed by those who expose themselves to unaccompanied young children. *Compare*, *Minnesota Statutes* § 617.23 (2) (2004).

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**Section IV
Supervision Practices in Minnesota**

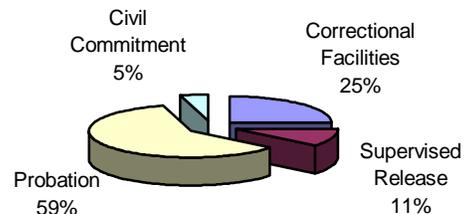
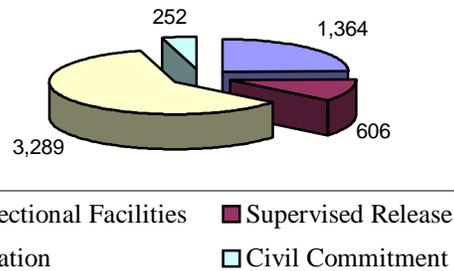
Supervision of sex offenders in the community is a key part of any public safety solution for Minnesota in the near term. First, Minnesota’s sentencing guidelines do not make prison a presumption for all instances of criminal sexual conduct – for some crimes, the guidelines presume that the offender will be sentenced to probation in the community. Indeed, only one-third of those who are convicted of criminal sexual conduct in Minnesota are committed to state prison. Over a fifteen-year period, the number of sex offenders that have been sentenced to prison in Minnesota has hovered between 30 and 38 percent of all convicted sex offenders. Therefore, for the “average offender” some local jail time and probation in the community is the more likely result.

Additionally, and equally important, is that most offenders who have been sentenced to prison under Minnesota’s determinate sentencing laws, will, in all likelihood, serve the last third of their pronounced sentence on supervised release in the community.⁹ As of this writing, there are approximately 3,900 offenders with a “governing offense” of criminal sexual conduct that are being supervised in our communities.¹⁰

Moreover, as prison sentences lengthen, and supervision periods such as “Conditional Release” are extended, the periods that offenders will be under supervision by corrections officials likewise expand.

Because so many sex offenders are being supervised in the community, effective supervision practices are an essential element of public safety.

Statistical Profile of Sex Offenders in Minnesota



⁹ For offenders committed to the Commissioner of Corrections’ custody on or after August 1, 1993, the period of supervised release is one-third of the total executed sentence pronounced by the court, minus any disciplinary time imposed on the offender in prison. The Commissioner establishes conditions, which the offender must obey during supervised release. If those conditions are violated, the Commissioner may revoke the supervised release and return the offender to prison for a period of time not to exceed the length of time left on the sentence.

¹⁰ The governing offense is the offense that forms the basis of sentencing – even if certain types of misconduct could meet more than one category of criminal sexual conduct.

The good news is that aggressive supervision is a key element in lowering recidivism rates among sex offenders in Minnesota.

Local research confirms this point. In the early 1990s the Department of Corrections undertook tracking studies that suggested that offenders designated as Level III (the highest risk to re-offend) would, as a group, tend to re-offend at a rate between 52 and 63 percent of the time. This early comparison between various sample groups of offenders is shown below.

Later, the Department of Corrections reviewed the subsequent offense history of all sex offenders released in 1997, 1998 and 1999. The Department determined that as of March of 2002 roughly eight percent of the Level III offenders had been rearrested for a sex-related crime. While even one new sex crime in Minnesota is too many, this eight percent figure for Level III offenders compares favorably with the earlier estimates of what re-offense rates would likely be for Level I offenders – those with the least likelihood to re-offend.

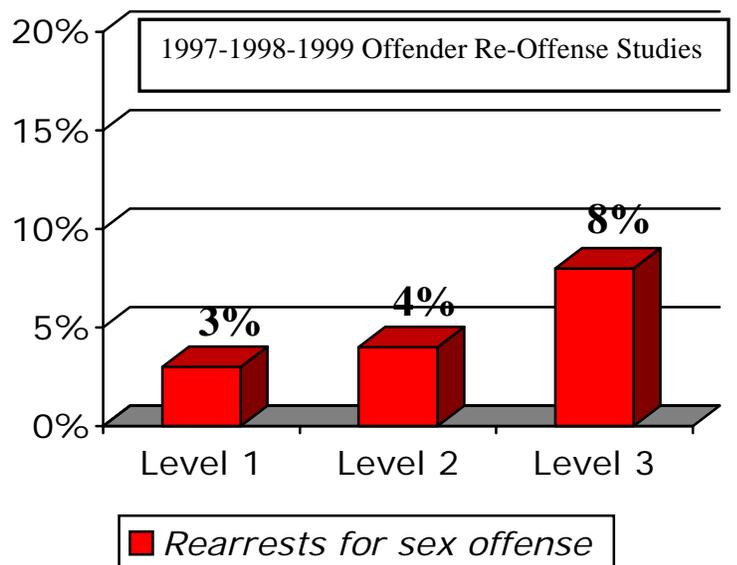
In the Commission’s view, aggressive supervision of offenders is a key part of the explanation of why re-offense rates are not nearly as high as 50 or 60 percent today.

In the Commission’s view, meeting the special public safety challenges that are presented by sex offenders requires experienced and well-trained supervision agents. Skilled agents are needed if communities hope to adequately assess the appropriateness of an offender’s place of residence and employment, restrict the offender’s contact with potential victims and effectively apply restrictions that reduce the likelihood of a re-offense. Elements of close and effective sex offender supervision strategies include:

- monitoring the offender’s activities though frequent, random checks at the offender’s home and place of employment;
- administration of unscheduled polygraph examinations;

Early Studies Predicted High Recidivism Rates - Yet Actual Recidivism Rates Were Much Lower

Risk Level	Early Estimates of Recidivism Rates		
	Minnesota 1988 and 1990 Sample	Minnesota Validation Sample	North Dakota Validation Sample
1	14%	10%	10%
2	31%	19%	28%
3	61%	52%	63%



- ensuring that the offender is actively engaged in approved treatment programs; and,
- maintaining regular contact with the offender’s family, friends, and other community members, so as to detect risk factors for re-offending.

As the Commission learned, the reasons why intensive supervision works to prevent subsequent offenses is that specially-trained agents can often detect preparations for a re-offense, or elements of offender’s pattern of criminal offenses, before a new crime is committed. Strict restructuring of the offender’s terms of release, or returning the offender to prison following a violation, is very effective in preventing new crimes. Still, notwithstanding the successes that Minnesota has enjoyed, more can be accomplished. In the Commission’s view, a few reforms show special promise.

The Commission Urges Increased Use of Specialized Sex Offender Caseloads

While acknowledging that many Community Corrections departments across Minnesota have “blended” caseloads that include sex offenders and other types of offenders, and they have successfully managed these caseloads, Commission Members believe that specialized caseloads is the better practice. Accordingly, where it is practicable and possible, the Commission urges the increased use of specialized caseloads for supervision agents. The witnesses testifying before the Commission were in broad agreement that specialized training in sex offender supervision techniques and routine experience with the methods and deceptions used by this type of offender, combines into a better supervision practice.¹¹

The Commission Urges Modifications to Juvenile Offender Registration Practices

The Commission supports a developed proposal by the Minnesota County Attorneys Association and the State Public Defender to give juvenile court judges greater discretion to avoid sex offender registration for a limited class of juvenile offenders. Not all juveniles convicted of sex crimes – particularly those committing less serious crimes – should be required to register as sex offenders. In the Commission’s view, judges should be afforded some discretion to evaluate the usefulness of this requirement in cases that do not involve either the certification of the juvenile as an adult or extended juvenile jurisdiction (EJJ).

Accordingly, the Commission recommends that Predatory Offender Registry requirements for juveniles convicted of sex crimes be modified so as to provide that registration would only apply to juveniles if any of five conditions was also satisfied: (1) the juvenile was certified as an adult for the criminal proceeding; (2) the juvenile was on Extended Juvenile Jurisdiction when the sex offense was committed; (3) the sex offense was part of a predatory pattern that had criminal sexual conduct as its goal; (4) the juvenile used a dangerous weapon in the commission of the

¹¹ See also, *Community Supervision of the Sex Offender: An Overview of Current and Promising Practices*, at 9 (Center for Sex Offender Management, January 2000).

offense; or (5) the judge, based upon factors set forth in current statute, determines that the juvenile is a danger to public safety.

The Commission Encourages Clarification of the Sex Offender Registration and Community Notification Laws

Among the thorniest and most difficult issues faced by the Commission during its review was access to health care by those who are listed on Minnesota's Predatory Offender Registry. In this area, more than others considered by the Commission, the tensions between state policy and federal law were the most acute.

While the Commission describes these matters in greater detail in Section VI below, one element of this problem relates directly to supervision practice: How should health-care settings meet the dual obligations of providing care to those who need it, while also protecting against the risk of harm presented by these offenders?

At its core, the problem relates to access and use of critical information. If, for example, John Smith is a registered sex offender, out of prison on supervised release, and he later presents himself to City Hospital for care, the admission desk at the hospital is not likely to know about Mr. Smith's registration status or offense history. Under such circumstances, the hospital's ability to develop an adequate abuse prevention plan that guards against misconduct by Mr. Smith is quite limited.¹²

The Commission did consider, but later rejected, proposing a requirement that health care facilities licensed by the State of Minnesota undertake a criminal background check of each new patient presenting himself or herself for admission. The suggestion was rejected as impractical for a number of reasons – not least among them the training and infrastructure that would be required before health care facilities could adequately access and use this information, as well as the complicated safeguards that would be needed to assure that Predatory Offender Registry data would be protected from unauthorized disclosure or alteration. Also a significant factor for the Commission was the volume of persons and records that would be implicated by a pre-admission background search requirement. The Commission received testimony that Minnesota nursing homes admit approximately 40,000 patients each year. If hospital admissions were added to the file search requirement, approximately 600,000 background checks would be needed each year.¹³

In the Commission's view, the better practice would be to add to the existing registration requirements of the Predatory Offender Registry statute an additional requirement obliging the offender to disclose to the administration of any health care facility upon admittance, his or her

¹² See, *Minnesota Statutes* § 626.557, Subdivision 14 (2002) ("Each facility... shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse...") (emphasis added). See, also, *Minnesota Statutes* § 243.166 (2002) (requirement for abuse prevention plans).

¹³ See, Hospital Admissions by Type (Minnesota Department of Health, 2000) (<http://www.health.state.mn.us/divs/hpsc/dap/hccis/admissions00.pdf>).

status as a registered predatory offender. The failure of the offender to so disclose could result in prosecution of the registrant or revocation of any supervised release status.

Likewise, in the Commission's view, there are no circumstances where the information that a particular patient has been designated as a predatory offender that would not be relevant and useful to abuse prevention plans. Yet, under *Minnesota Statutes* § 244.052, law enforcement has complete discretion as to whether it will disclose to health care administrators the fact that a given patient is a Level II offender.¹⁴ Moreover, as to Level I offenders, the same statute forbids disclosure of the offender's status by law enforcement to hospital administrators.¹⁵ Under the current law, health care administrators are only assured of learning of the placement of Level III offenders, as broad, community notification is undertaken.

The benefits of broader disclosure policy are clear. Armed with this added information at an early point in the admission process, the health care facility could effectively make all of the admission, transfer and abuse prevention decisions that are required under state and federal law.

The Commission recommends:

- Establishing a layered, three-pronged approach to ensuring the timely disclosure of sex offender registry information. So as to ensure that health care facilities have all information that is relevant to admission, transfer and abuse prevention decisions, at an early point in the admission process, modify Minnesota law so as to:
 - (1) Codify the current Department of Corrections' policy¹⁶ – which requires a supervising agent to notify a health care facility if he or she knows that a supervised offender is receiving in-patient care – into statute; thereby making this best practice binding upon all state and local corrections agents.
 - (2) Require local law enforcement agencies to disclose a registrant's status to the administration of a health care facility, if law enforcement officials are aware that a Level I, Level II or Level III offender is receiving in-patient care. In the Commission's view, there are no circumstances where this information would not be relevant and useful to abuse prevention plans, and therefore should be disclosed by law enforcement if they are in a position to do so.

¹⁴ See, *Minnesota Statutes* § 244.052 (4) (b) (1) ("if the offender is assigned to risk level II, the agency also may disclose the information to agencies and groups that the offender is likely to encounter for the purpose of securing those institutions and protecting individuals in their care while they are on or near the premises of the institution") (2004).

¹⁵ See, *Minnesota Statutes* § 244.052 (4) (b) (1) ("if the offender is assigned to risk level I, the agency may maintain information regarding the offender within the agency and may disclose it to other law enforcement agencies. Additionally, the agency may disclose the information to any victims of or witnesses to the offense committed by the offender. The agency shall disclose the information to victims of the offense committed by the offender who have requested disclosure and to adult members of the offender's immediate household") (2004).

¹⁶ See, e.g., DOC Policy 203.205 (2004) ("Predatory Offender Management In a Nursing Home").

- (3) Add to the existing requirements of the Predatory Offender Registry statute a requirement obliging registered offenders to disclose to the administration of any health care facility, upon admittance, his or her status as a registering predatory offender – and punishing the failure to disclose with a felony penalty.
- Modifying Minnesota law so as to prohibit the holding of Level III community notification meetings in a health care facility. Anticipating the future case where a Level III offender is receiving long-term care at a particular site, the Commission believes that it is not appropriate to conduct such a meeting at the facility. Community members and others should be notified at a nearby site in the community.

The Commission Proposes a Sex Offender Policy Board

During its survey of best practices, Commission Members were favorably impressed by the efforts in Colorado and Indiana to regularize and institutionalize the process of updating sex offender management practice. Colorado, for example, has had a Sex Offender Management Board to undertake development of uniform standards in the assessment, treatment and monitoring of sex offenders, since 1992. Colorado has recognized that the methods for managing and treating sex offenders are developing over time, and so it has impaneled the Management Board to follow developments in the scientific literature and to update the state's practices as necessary. Also, by creating a regular Policy Board, Colorado has found that changes in their law and procedures more often follow recognized improvements in best practices, than they do high-profile criminal cases. Colorado's most recent set of state standards is a testament to the breadth and seriousness of its ongoing work, as well as that state's leadership role in public safety.¹⁷

In the Commission's judgment, this is a model that Minnesota should likewise embrace. Particularly so, because there were several matters presented to the Commission as to which a single, comprehensive state policy would have meant better results; yet the timeline established for this Commission did not permit development of those policies in this setting. This work should continue on with another, formalized panel.

For instance, several witnesses testified as to both the barriers faced in Minnesota to the widespread use of polygraph services in the supervision of sex offenders, and the success that other states have had in increasing the availability of this technology. Polygraph services can be a valuable tool when delving into an offender's history of criminal sexual conduct – whether reported or unreported – and structuring community supervision plans accordingly. The New Mexico Sentencing Commission detailed in a 2003 Report, the wide range of offense information that can be made available to law enforcement through use of the polygraph:

¹⁷ See, *Standards and Guideline for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (Colorado Sex Offender Management Board, 2004)
http://dcj.state.co.us/odvsom/Sex_Offender/SO_Pdfs/ADULTSDJUNE2004.pdf

The frequency of sexual offense behaviors committed by sex offenders, when revealed through self-reporting and polygraph exams, is often many times higher than would be expected or identified through official criminal histories. A report on 23 rapists and 30 child molesters who were undergoing institutional treatment found that while in treatment, the rapists admitted to committing 5,090 various sex offenses, including 319 child molestations and 178 rapes, though each rapist had an average of 1.9 arrests for sex offenses. The child molesters had an average of 1.5 arrests each, though as a group admitted to 20,667 individual offenses including 5,891 child molestations and 213 rapes of adult women. A Colorado Department of Corrections study used polygraph examinations of incarcerated sex offenders and found that, on average, each offender admitted to committing 521 sex offenses on 182 victims in the years before they were identified as a sex offender. Of all of these offenses, less than 1% were reported in the offenders' official criminal records.¹⁸

While Commission Members surmise that greater use of polygraph services in Minnesota would improve our supervision practice, and further depress recidivism rates, the best methods to increase the availability and affordability of these services are not clear. A new panel, however, could help to identify the right methods to pursue.



Likewise, in Commission testimony, Hennepin County officials outlined the special challenges that it faces because large numbers of offenders on supervised release relocate to that community. The pyramiding issues that arise out of developing, and then distributing throughout the state, housing opportunities for offenders in transition, was beyond this Commission's charge; and yet it would be a worthwhile and important set of policy challenges for a new panel.

Similarly, while the Department of Corrections has completed a thorough set of regulatory standards for the operation of residential treatment centers (*see, e.g., Minnesota Statutes* § 241.021 (1) (2004) ("Licensing and supervision of institutions and facilities")), no certification standards exist for the operation of outpatient facilities providing services to sex offenders. As the Office of the Legislative Auditor remarked in 1994:

Over 60 percent of outpatient providers are not regulated by the state, except through professional licensing boards. Current licensing requirements do not contain specific qualifications for individuals providing sex offender treatment on an outpatient basis, yet two-thirds of the offenders receiving treatment were treated by outpatient providers. According to 30 percent of the probation officers we interviewed, their local outpatient

¹⁸ *See, Research Overview: Sex Offender Treatment Approaches and Programs*, at 6 (New Mexico Sentencing Commission, 2003) (footnotes omitted).

treatment program was inadequate due to poorly trained counselors, narrow program focus, or lack of intensity.

Sex Offender Treatment Programs, at xix (Office of Legislative Auditor, 1994). In the Commission's view, a Sex Offender Policy Board could help establish the missing treatment standards – a role that has been accomplished by the Board in Colorado.

While mindful that the Department of Human Services is considering impaneling independent Treatment Advisory Boards, in order to review the practices and protocols now in use at the Minnesota Sex Offender Program, Commission Members believe that this is a function that would be well suited to an independent policy board. A thorough review of treatment practices, and a candid comparison of Minnesota's practices to those in other states, requires both the professionalism and independence that a Policy Board could provide.

Lastly, Commission Members were especially impressed by the testimony of Indiana officials who recounted the success of their semi-annual Stakeholder Conference. Indiana officials detailed how they were able to develop early and far-reaching agreements on the development of sex offender policy and the contours of new legislation, simply by convening a Conference twice each year among key policymakers. In Indiana, the Stakeholder Conferences were scheduled so as to preview legislative proposals, receive helpful feedback, and solicit support for new initiatives from affected constituencies. Indiana officials reported that the Conferences help to develop working relationships among officials and to reduce conflict in policymaking relating to sex offenders. In the view of Commission Members, a semi-annual conference hosted by the state's Sex Offender Policy Board would be a useful and helpful contribution.

For all of these reasons, the Commission recommends:

- Establishing an ongoing Sex Offender Policy Board, with members appointed by the Governor to four-year, staggered terms to undertake the development of policy and professional standards.

The Commission further believes that the representative model used by Governor Pawlenty when naming this Commission, would work well for a successor Policy Board. The Commission recommends establishing a Policy Board with the broad range of training and professional experience as this Commission had – namely, Policy Board members with backgrounds in corrections, criminal law, health care, law enforcement, psychology, sex offender treatment, and victim services.

Section V

Civil Commitment Practices in Minnesota

As early as the 1930s, states began efforts to identify and segregate sex offenders who suffered from mental disorders from other offenders. Civil commitment statutes – often referred to as Mentally Disordered Sex Offender Statutes, or Sexual Psychopath Laws – soon followed. The State of Michigan was the first state to pass such legislation in 1937. Historically, these statutes had two purposes: First, to offer mentally ill offenders hospitalization in lieu of imprisonment; and second, to provide greater protection to the public at large by committing to secure hospitals those offenders whose psychological disorders blocked the ordinary paths to rehabilitation. By the 1960s, most of the states in the Union had enacted some form of civil commitment.

Minnesota’s Two Civil Commitment Statutes

The State of Minnesota uses two subdivisions of the Minnesota Commitment Act to civilly commit sex offenders for treatment – the Sexual Psychopathic Personality provision and the Sexually Dangerous Person provision. A court may commit a person for sex offender treatment if it determines that the individual is a “Sexual Psychopathic Personality,” a “Sexually Dangerous Person,” or both.

A Sexual Psychopathic Personality is a person who, as a result of a mental or emotional condition: (1) has engaged in a “habitual course of misconduct in sexual matters;” (2) has an “utter lack of power to control the person's sexual impulses;” (3) and, as a result of this inability to control his or her behavior is “dangerous to other persons.”¹⁹

A person can also be committed as a Sexually Dangerous Person. Unlike the Sexual Psychopathic Personality provision, a judge does not have to find that the person has an “inability to control the person's sexual impulses.” A Sexually Dangerous Person means a person who: (1) has “engaged in a course of harmful sexual conduct” that creates a “substantial likelihood of serious physical or emotional harm to another;” (2) the person has a sexual, personality or mental disorder; and (3) the person is likely to engage in harmful sexual conduct in the future.²⁰

Indefinite civil commitment of sex offenders has always been controversial. From the days immediately following enactment, these statutes have faced continuous and vigorous challenges on constitutional grounds. Sometimes, the Courts have responded by narrowing these statutes. For example, recognizing that indefinite civil commitment represents a dramatic limitation on a

¹⁹ See, *Minnesota Statutes* § 253B.02, Subdivisions 18b (2004).

²⁰ See, *Minnesota Statutes* § 253B.02, Subdivisions 18c (2004).

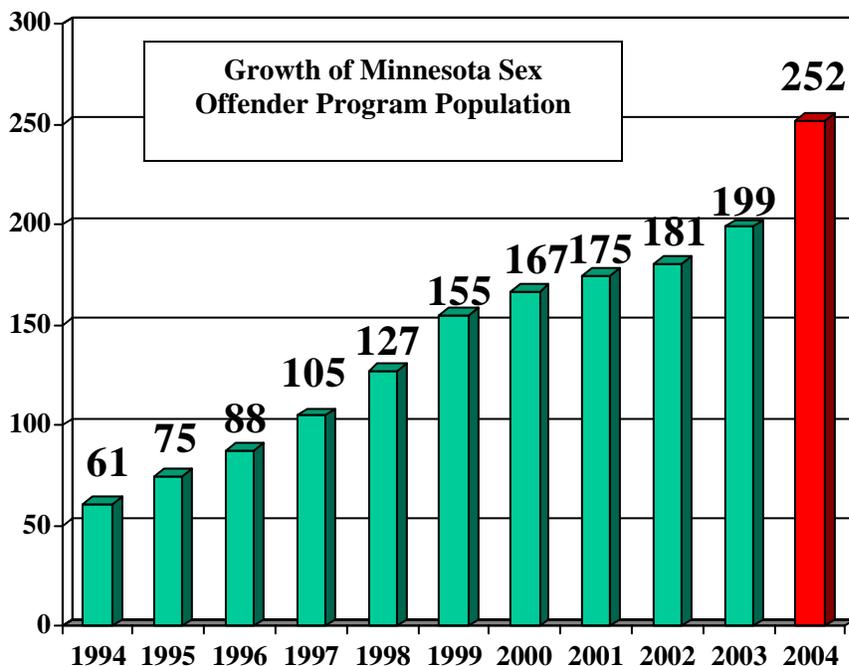
patient’s liberty, the United States Supreme Court insists that the higher standard of “clear and convincing” proof must be met before a person may be placed unwillingly into confinement.²¹

Moreover, civil commitment is resource-intensive. The reason is plain – for constitutional, statutory and regulatory reasons the MSOP operates like other treatment facilities in the state; it does not operate like a prison. While the MSOP does have rigorous security regimens, it has staffing ratios – approximately 1.66 staff for each patient – and rosters of treatment professionals that more closely resemble local hospitals than correctional facilities. These arrangements necessarily result in a higher per-diem cost.

Yet proponents of an aggressive civil commitment program are quick to assert that the MSOP represents a very valuable public safety “bargain” for Minnesota. As one Commission witness pointed out, for a few dollars per taxpayer the MSOP provides a year’s worth of secure treatment for the state’s most violent and dangerous sexual offenders. For proponents of civil commitment, even a high-cost program measures favorably against the avoidance of further victimization and misery.

Limited Options
Constrain the Civil
Commitment Program

In the Commission’s view, our state’s system of civilly committing highly disturbed and dangerous predators is of great value and should be maintained.



In the Commission’s view, the proper understanding of civil commitment is that it is just one part of a broad and segmented continuum of sex offender management services. This continuum extends from civil commitment of some patients in the Minnesota Sex Offender Program, at one end, to intensive supervision in the community of other patients, at the other end.

²¹ See, *Addington v. Texas*, 441 U.S. 418, 425 (1979) (“[The state] has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill.... Loss of liberty calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior. Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered.”)

Even within the MSOP, not all patients can be classified in the same way. Approximately 20 percent of those who have been civilly committed – are not, as is their right, participating in treatment. At best, these 50 patients account for a considerable amount of state resources each year but are not making progress in any way. At worst, many of those who refuse treatment also seek to block the progress and positive changes being made by fellow patients.

As it Plans Budgets and New Construction, the Commission Urges the Legislature to Consider Development of a Broader Continuum of Services

In the view of the Commission, a broader continuum of services could address these dual problems. Steps toward developing this broader array of services include:

- *During the Commitment Process:* Developing methods of segregating patients who refuse treatment would improve results. Some of the higher costs incurred by the MSOP, when compared to other secure settings, follow from staffing arrangements and design features that are required in a treatment facility. Commission Members believe that if the MSOP is to effectively operate as a treatment setting, those who refuse treatment should be segregated and securely confined. Moreover, as it is with the successful Department of Human Services – Department of Corrections collaborative at the Moose Lake facilities, Commission Members believe that a similar partnership between the agencies could result in lower-cost, secure containment of those patients who refuse treatment.
- *Near the End of the Commitment Process:* Establishing a Continuum of Structured Treatment Options. Commission Members were concerned that as civil commitment patients make their transition back into the community there are no highly-structured treatment facilities providing supervised living arrangements for patients in transition. Commission Members believe that a better model would be to have a series of treatment settings – beginning at the Minnesota Sex Offender Program, but proceeding along a true continuum – each of which included vigorous security regimens. Commission Members believe that any patients transitioning from civil commitment should be bounded at all times by a strong and mutually-reinforcing set of security measures; including supervision agents; highly structured living facilities; and electronic monitoring, Global Positioning Services and polygraph services.
- *Near the End of the Commitment Process:* The DHS Dakota County Community Corrections contract for supervision services is a good model and should be replicated. For all of their talents and skills, social workers and psychologists do not have the specialized training to be effective supervision agents. When patients who have been civilly committed successfully complete treatment, and are in transition back to community, they need to be vigorously supervised by well-trained agents. On the one occasion where supervision of a patient on provisional discharge by local corrections officials was tried, it worked well. Yet, this kind of arrangement may not come to pass again. No statute or regulation obliges local corrections officials to accept these patients, and the risks they represent, on to their supervision caseloads – even for a fee. For that

reason, the Legislature should formalize these methods in statute, and thereby ensure that there are effective controls when civilly committed SDP or SPP patients make their transitions back to the community.

- *Near the End of the Commitment Process: Amend the felony escape statute to include absconding while subject to a civil commitment.* So as to facilitate the extradition and return to Minnesota of SDP or SPP civil commitment patients who flee before their final discharge, the Commission recommends this change in the law. Commission Members urge the Legislature to meet this unauthorized – and potentially dangerous conduct – with more serious consequences than our current law provides.²²

Greater Insulation from Political Pressure Would Improve the Civil Commitment Process

There are no two ways about it: Those patients who have been civilly committed to the Minnesota Sex Offender Program are, by definition, the least able to control their sexually predatory behavior. The dangerousness of this population obliges very aggressive treatment regimens and confinement from the rest of society.

Yet, it is also true that for a variety of constitutional, budget and therapeutic reasons, those who have made progress in treatment should have an expectation that their confinement in civil commitment will end one day. In the Commission's view, the best civil commitment process would be one that is better insulated from political pressures.

- *The Legislature should transfer the process of screening of sex offenders for possible civil commitment to an independent panel.* Under *Minnesota Statutes* § 244.05 (7), the Commissioner of Corrections makes “a preliminary determination whether, in the commissioner's opinion” a civil commitment petition “may be appropriate.” Mindful that several bills from the 2004 Legislative Session would have added additional personnel, tenure protections, or both, to the civil commitment review process, the Commission suggests that the Sex Offender Release Board proposed in Section III of this Report would be well suited to perform this function.²³
- *The Legislature should encourage the Minnesota Supreme Court to use existing statutory authority to establish a specialized panel for civil commitments.* Under *Minnesota Statutes* § 253B.185 (4), the Minnesota Supreme Court is authorized to “establish a panel of district judges with statewide authority to preside over commitment proceedings of sexual psychopathic personalities and Sexually Dangerous Persons.” The court, however, has never seen fit to do so. In the judgment of the Commission, such a statewide judicial panel would result in the development of valuable expertise and efficient economies of scale.

²² Compare, *Minnesota Statutes* § 253B.15 (5) (2004).

²³ Compare, Section III above with Senate Files 1848, 2008, 2548 and House Files 2028 and 2876 (2004).

- The Legislature should transfer decisions regarding the transition of civilly committed sex offenders to an independent panel. Under *Minnesota Statutes* § 253B.18, ad hoc Special Review Boards are convened by the Department of Human Services to hear “all petitions for discharge, provisional discharge, and revocation of provisional discharge” and “make recommendations to the commissioner concerning them.” In the view of the Commission, having a cabinet-level official involved in approving passes for patient trips outside of the facility, and for provisional discharges, threatens to overly politicize the process. The Commission suggests that the Sex Offender Release Board proposed in Section III of this Report would be well suited to perform this function.²⁴ Such a panel would be transparent and insulated from potential political pressure.

²⁴ Compare, Section III, above.

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Section VI Offender Health Care Practices in Minnesota

At first glance, it may appear that the public only believes in one method of enhancing public safety: Longer prison sentences.

In truth, however, public attitudes about crime and punishment are more complex. There are a number of studies that suggest that when citizens have an opportunity to learn about different policy options, and to help chart the direction that these policies will take, they can support a wide range of approaches to public safety problems. In states as diverse as Alabama, North Carolina, New Hampshire, Pennsylvania and Vermont, researchers have found that there can be broad support for different alternatives – one need only to take the time to ask.²⁵

In the view of the Commission, it is this kind of openness to innovation that is required now – particularly as to the difficult set of issues surrounding offender health care. To be sure, in this Section, and throughout the remainder of this Report, the Commission recommends policy options that include segregating and containing some sex offenders for very long periods of time. But that is not the whole story of this Report. Like the views of the broader public, the Commission’s recommendations represent a broad and diverse set of problem-solving strategies.

Segregating Ex-Offenders From Non-Offenders is Not Likely in the Near Term

Even if it could be agreed that all of those who have a criminal history of sex offenses should be segregated from “everyone else,” when accessing health care, this would be difficult to accomplish.

The sheer numbers involved make this plain. There are approximately 13,000 registered offenders in Minnesota – roughly 4,000 of which are currently being supervised in the community.²⁶ In the coming year, approximately 900 sex offenders will reach the end of their confinement in prison and begin new periods of supervised release. Minnesota does not now have a separate infrastructure of hospitals, nursing homes and assisted-living facilities to serve those with criminal histories. Accordingly, the state needs a set of near-term and longer-term options that better reflects our current circumstances.

Improving the Current Practices

Commission Members believe that, at least in the near-term, offenders who are not incarcerated will need to access health care from community settings. Accordingly, the Commission focused

²⁵ See, *Public Opinion and the Criminal Justice System: Building Support for Sex Offender Management Programs*, at 3 (Center for Sex Offender Management, April 2000).

²⁶ For additional detail on the supervision of offenders in the community, see Section IV, above.

upon methods of making community-based delivery of health care safer and more sensible. The Commission recommends four key improvements to the state’s current practices:

- Obliging law enforcement officials to disclose to health care facilities the presence of any registered offender receiving in-patient care. (See, Section IV above).
- Adding to the existing requirements of the Predatory Offender Registry statute, an additional requirement obliging these offenders to disclose to the administration of any health care facility, upon admittance, his or her status as a registered predatory offender. As discussed in greater detail in Section IV above, if health care facilities have this information at an early point in the admission process, they can effectively make the admission, transfer and abuse prevention decisions required under state and federal law.
- Modifying Minnesota law so as to make clear that any registered predatory offender who does not disclose his or her status upon admission to a health care facility, and is subject to transfer or discharge when this fact is later discovered, may not rely upon the anti-discharge protections of state law to remain in the facility. One possible reading of *Minnesota Statutes* § 144A.135 is that it permits predatory offenders to receive a 30-day notice and to remain in health care settings, pending an appeal of their transfer or discharge, even when the health care facility could not adequately account for added security risk of such patients. Facilities should not be obliged to take a “wait and hope for the best” strategy when it comes to non-disclosing predatory offenders.
- Modifying Minnesota law so as to make clear that details of a patient’s criminal history that are public information are not given a different and higher classification as confidential medical data when included in the patient’s health care records. The classification and permitted uses of criminal history data should be uniform across settings and agencies – and should not particularly disadvantage health care providers.

Developing Infrastructure with Willing Partners

Looking forward into the future, the Commission believes that the development of some additional and separate facilities, aimed at treating those who still present a risk of re-offending, makes sense.

The Volunteers of America in Minnesota detailed a “concept plan” to address the medical needs of sex offenders in three different categories – those who were on supervised release following prison; those who were on probation; and those who were not on any form of supervision, but whose sex offense history was such that other facilities regarded them as “too risky” to serve. The concept for this kind of specialized and secure health care facility would include: (1) A closer segmenting of living units according to the medical and security needs of patients, than may be possible in state institutions today; and (2) voluntary agreements by the patients to receive services in a setting that includes secure perimeter fencing, staff escorts for all patients who travel between buildings, and the wearing of wristband monitoring devices while admitted to the facility.

Similarly, Liberty Healthcare detailed how, in several different states, it is offering private-sector alternatives to government-run health care facilities for offenders.

Commission Members were favorably impressed by the testimony of the officials from the Volunteers of America and Liberty Healthcare, and of the work of those two corporations in other states. No doubt there are other providers that would be willing to deliver health care services in Minnesota to ex-offenders in secure settings.

Accordingly, the Commission recommends:

- Developing partnerships to provide medical care in a secure setting to those with a criminal history of sex offenses. State government has an interest in developing the infrastructure of willing providers that can deliver health care – at varying levels of security – to those with a criminal history.
- Supporting the development of secure health care settings by having the state assist in the site selection process. In order to overcome local controversies as to the placement of such facilities, state participation in the site development process may be necessary.

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Section VII

Conditional Medical Release Practices in Minnesota

As of January 1, 2004, Minnesota had 622 inmates in custody that were age 50 or older – roughly 7.5 percent of its entire inmate population.²⁷ As a percentage of the total inmate population, this number is on the rise in Minnesota and other states. Nationally, the number of inmates over age 50 has more than doubled in the last 10 years.

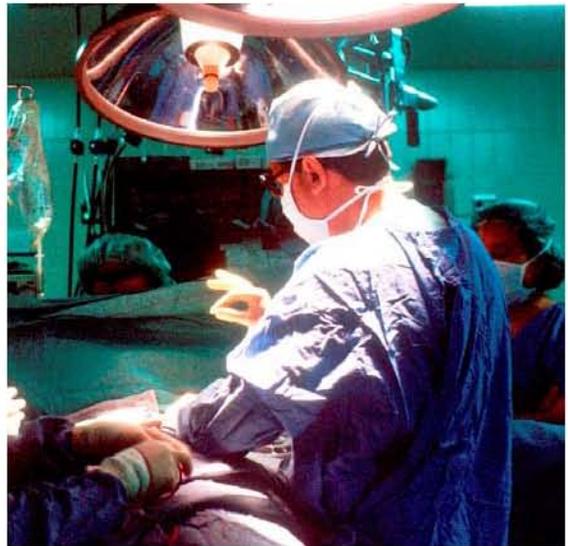
This aging of the prison population is the result of a number of factors: the overall graying of the “baby boom” generation; sentencing reforms which include longer sentences and significant mandatory minimum terms; and an increasing number of older people being convicted of serious violent crimes.

For Minnesota, and other states around the nation, an older prison population has significant policy and budget implications for the future. Not only do older inmates tend to require more intensive health care resources, they present both different health care needs than younger inmates and a wider range of health care needs than younger offenders.

Avoiding Inmate Health Care Expenses is Not a Viable Option

Addressing the medical needs of inmates is a requirement of federal law. Since 1976, the United States Supreme Court has held that “deliberate indifference to serious medical needs [of inmates] constitutes cruel and unusual punishment, which is prohibited by the 8th Amendment to the United State Constitution.”²⁸ In the years following this ruling, the consensus among the states is that if health care services are covered by Medicaid in the community, they must be provided to inmates on the same basis.²⁹

In fulfilling these requirements, the Department of Corrections has issued a similarly broad policy. The Department declares that:



²⁷ See, *Adult Inmate Profile*, Minnesota Department of Corrections (July 2004).

²⁸ See, *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

²⁹ See, generally, *Inmate Health Care Performance Audit Report*, at 2 (Georgia State Auditor, Oct. 2004); *Inmate Health Care Performance Audit Report*, at 23 (New Hampshire Department of Corrections, Jan. 2003).

The department will provide for a quality health care delivery system, including medical, mental health, dental and nursing services, for all offenders under the custody of the department. This system will be consistent department-wide so that available resources are utilized in the most efficient, cost-effective manner; opportunities are provided for offenders to improve their health status; populations with special health care needs are serviced; the rights of offenders are respected; and the regular and systematic means of communication between health service providers and facility administration is accomplished.

See, Department of Corrections Policy 500.10 (2004).

With respect to terminally ill inmates, the Department of Corrections meets its obligations under this policy by contracting with HealthEast's St. Joseph's Hospital to provide hospice care at the MCF-Oak Park Heights.

The Commissioner's Power to Access Community Services

In the event that the health care needs of any particular inmate cannot be met within the prison setting, the Commissioner of Corrections is authorized to draw upon health care resources in nearby communities. *Minnesota Statutes* § 244.05 (8) provides that "the commissioner may order that any offender be placed on conditional medical release before the offender's scheduled supervised release date or target release date if the offender suffers from a grave illness or medical condition and the release poses no threat to the public."

In fact, the Commissioner's Conditional Medical Release authority has been rarely used. Historically, these releases have included, on average, three or four inmates per year. As of this writing, there are only three inmates on Conditional Medical Release – and each of these is receiving treatment in the state's secure Ah-Gwah-Ching facility.

Yet, because releasing inmates from prison for treatment involves some risk to public safety, and the Ah-Gwah-Ching facility is not presently equipped to meet a wide variety of medical needs, in the near future, the state may wish to augment its capabilities for providing long-term care in a secure setting.³⁰

The model that witnesses before the Commission pointed to is a federal program in Texas.

The Program at the Federal Medical Center-Fort Worth Deserves Closer Study

Since its inception in 1994, the Inmate Hospice Program has helped to slim the federal government's costs in caring for terminally ill inmates in Texas. A key factor in the program's success is the strong link between the hospice program and the prison's Medical Center. As

³⁰ The Department of Human Services has proposed construction of a Forensic Nursing Facility. While the Commission did receive copies of the budget pages for the proposed facility, the Commission's time-line did not permit a detailed review of this proposal. *See*, <http://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-4352-ENG>

medical needs of the hospice patients are met in the Long-Term Care Unit, the number of trips to community health facilities has decreased dramatically, with commensurate savings. Further, the hospice program at the FMC-Fort Worth relies heavily upon the services of 50 healthy inmate volunteers from the general population of the prison. These prisoners provide staff support to the program's health care professionals and help to further reduce the costs of care.³¹

The Commission recommends that:

- The Department of Corrections should closely track the experience of the FMC-Fort Worth in administering secure hospice care facilities. As the demographics of Minnesota's inmate population change, the state may find it useful to develop a lower-cost, long-term care facility for elderly and infirm inmates modeled on this approach.

³¹ See also, A.M. Seidlitz, *FMC - Fort Worth: A Prison Hospice Model for the Future?*, National Prison Hospice Association News, Vol. 1, Issue 3 (Winter 1996-1997).

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Section VIII
Variance and Set-Aside Practices in Minnesota

Since 1991, the Department of Human Services (DHS) has been conducting criminal background checks on individuals who provide “direct contact services” at facilities licensed by the state. The requirements for these background studies appear in Chapter 245A, and have been broadened by the Legislature every year since they were first enacted. The current law also requires the:

(a) DHS to conduct background studies on individuals providing direct contact services in non-licensed personal care provider organizations.

(b) Minnesota Department of Health (MDH) to contract with the DHS for background studies on individuals who provide direct contact services in MDH-licensed facilities, nursing homes and boarding care homes.

(c) Department of Corrections to contract with the DHS for background studies on individuals who provide direct contact services in DOC-licensed residential and detention programs for youth.

If a disqualifying offense is discovered during the background check, the disqualified applicant may not be employed by the agency providing services, or be in a position to be in direct contact to persons served by the licensed program, unless a variance is granted to the facility or the disqualification of the person is set aside. Further, for those who are affiliated with home-based family child care, the Commissioner of Human Services has no authority to set aside a disqualification that follows from a conviction for criminal sexual conduct in the first through fourth degrees.

Persons who are disqualified from later employment because of a prior criminal history may, in some circumstances, request that the disqualification be “set aside.”³² Furthermore, the licensed entity may also seek a “variance” permitting employment of the ex-offender.³³ Variances may be subject to certain conditions being accepted by the employer and are typically reviewed at least once each year.

Commission Proposes a More Transparent Variance and Set-Aside Process

Following its review of current variance and set-aside practices, the Commission believes that the current process is effective, but could benefit from a few improvements. During the period between October 1, 1995 and June 30, 2004, for example, the Department of Human Services

³² See, e.g., *Minnesota Statutes* § 245C.22 (2004).

³³ See, e.g., *Minnesota Statutes* § 245C.30 (2004).

completed more than one million background studies of would-be employees to licensed facilities. Despite the breadth and reach of these inquiries, no person who was the subject of an employer variance has ever had a later conviction for criminal sexual conduct. The agencies' ten-year experience with set asides has similar results.³⁴

Likewise significant is the fact that the availability of stable work is an important factor in curbing recidivism among ex-offenders. One recent study of 400 sex offenders suggested that an ex-offender was 37 percent less likely to be convicted of a new crime if the offender had an employment history that was stable.³⁵ Moreover, this estimate is buttressed by two decades of additional research that links unstable work histories of offenders with subsequent criminal behavior.³⁶ In the view of the Commission, so long as public safety concerns can be addressed thoroughly and first, work for ex-offenders is a good thing. Stable employment contributes to our collective safety because it further reduces the risk of a re-offense.

For these reasons, the Commission recommends:

- Streamlining Minnesota's varied and disparate background check standards, with a single, comprehensive standard. One possibility for eliminating the gaps and complexity in Minnesota's pyramiding background check processes would be to use the same list of criminal offenses – such as those listed in *Minnesota Statutes* § 245C.15 – as the trigger for employment disqualification. The system would benefit from greater clarity and streamlined administration of the review process.
- Dissemination of a list of the “collateral consequences” that attend conviction of a crime of criminal sexual conduct. As the many registration requirements, restrictions on legal rights and disqualifications for employment that follow a criminal conviction for sexual misconduct are placed in different sections of Minnesota law, it would be a useful resource for judges, prosecutors, offenders, victims, employers and the public at large to have a short compilation of these consequences that is accessible in one place.

³⁴ See, *2004 Review of Human Services Background Study Process*, at 14-16 (DHS Licensing Division, August 2004).

³⁵ See, *Time to Work: Managing the Employment of Sex Offenders Under Community Supervision*, at 2 (Center for Sex Offender Management, January 2002).

³⁶ See, *id.*, at 1.

Section IX Funding Issues
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Commission Members are mindful that as they submit this Report, the State of Minnesota faces a projected \$700 million budget shortfall for Fiscal Years 2006 and 2007.³⁷ Given the budget shortfall, Commission Members have been asked whether those recommendations that have cost impacts are now untimely or inappropriate.

The reply of the Commission is three-fold: First, the original charter to the Commission from Governor Pawlenty was to search out and to identify the very best public safety practices. Commission Members took this charge seriously and developed a set of recommendations that they believe represents the best sex offender sentencing, supervision, treatment and management practices.

Second, a review of the recommendations in this Report makes clear that they are “scalable” to the budget negotiations. Some reforms can be implemented immediately with modest impacts to the state budget; other recommendations represent longer-term pathways for reform. Commission Members have every confidence that legislators can decide which items are which.

Lastly, it is clear that public safety programs are important priorities in Minnesota. This is true in times of budget surpluses and budget shortfalls; it is true in Republican, Democratic and Independent Administrations; and it is true regardless of which political parties control houses of the State Legislature. In Minnesota, good ideas for improving public safety get a fair hearing.

More Uniformity is Needed in Public Safety Practices

One theme recurred again and again during the Commission’s inquiries. During discussions on sentencing, supervision, assessments, treatment options and civil commitment – to name but a few – it is clear that practices vary widely from county to county.

For Commission Members, this fact is troubling. A certain minimum level of public safety services should be available to Minnesotans throughout the state and without respect to geography. The precise elements of this uniform “floor” of services could be developed over time, but it is a discussion that the Minnesota Legislature can, and should, begin now.

A Separate Budget Line Item is an Important Element in Future Progress

Likewise, Commission Members felt strongly that if any of the larger-scale proposals are accepted by the Governor, or enacted by the Minnesota Legislature, they should be accompanied

³⁷ See, *November 2004 Economic Forecast Summary* (Minnesota Department of Finance, 2004).

by their own budget line items. In the Commission's view, separate budget line items for these reforms are the best method of assuring that these reforms would be successful following enactment. Indeed, Commission Members fear that our current systems might be undermined if policymakers were to establish new statutory and regulatory mandates, but funding for this additional work did not follow.

Believing that adequate funding is a key to later successes in public safety, the Commission recommends:

- Moving toward a statewide approach to sex offender management. The Legislature should work toward achieving greater uniformity across Minnesota in supervision practices, treatment options, treatment infrastructure and the assessment of sex offenders.
- Examining in detail how the resources that are spent to prosecute and incarcerate sex offenders compare with the amount of public resources that are available to treat the victims of sex crimes and to prevent further sexual offending. Because of the public safety imperatives of having a sound corrections and supervision system, it seems to Commission Members that crime victim services and prevention programs are often under-funded. As with other public safety programs, the Legislature should pursue a more uniform set of services across the state.
- Following any statutory changes to sex offender management practices with accompanying budgetary support that is expressed in separate line items. Commission Members feel strongly that unfunded mandates compromise the ability of state agencies, and their partners in local government, to operate effectively. In the interests of efficiency, transparency and accountability, the Commission recommends that the Legislature designate separate budget line items for each of the improvements it makes to the sex offender management system.

For example, Commission Members believe that the Release Board should have a line item budget to fund the community resources necessary to ensure the safest transition for offenders being released from prison. The Commission believes that adequate funding for community supervision and treatment is a critical part of the proposed conditional release portion of the indeterminate sentences being recommended. A separate budget line item will help to ensure that the resources that are required to properly structure conditional releases will be available as they are needed.

Section X

The Next Frontiers

While many people believe that most sex offenders are caught, convicted and in prison, the truth of the matter is that only a fraction of those who commit sexual assault are apprehended and convicted for their crimes. The National Crime Victimization Surveys conducted in 1994, 1995 and 1998 all indicate that roughly one out of every three sexual assaults is ever reported to law enforcement. Still other studies suggest that an even smaller share of serious assaults is reported. Overall, the low rates of reporting have led researchers to conclude that less than ten percent of those who have committed sexual offenses are placed under the authority of corrections agencies in the United States.³⁸

The overall impact of reported and unreported misconduct is difficult to calculate. Examples of direct costs to the taxpayer might include costs for medical treatment, foster care in abuse cases, and expenses of the criminal justice system. Other cost impacts are more elusive. For example, researchers suggest that many victims of abuse are more likely to encounter difficulty at work and school, suffer mental health problems and have legal difficulties, following their abuse – but this is not true for all victims. Therefore, making an accurate tally of the costs is very difficult.

Whatever the precise impact is to government and our economy, the effects of sexual abuse are enormous. The Minnesota Department of Health, for example, estimates that the annual costs borne by adult victims of rape in the United States, is \$127 billion. To this figure, it projects an additional \$71 billion of annual costs arising out of sexually violent acts against children age 14 and younger.³⁹ The advocacy group Prevent Child Abuse America, makes a similar estimate. It pegs the nationwide impact of child abuse and neglect at \$94 billion a year.⁴⁰

For all of these reasons, the Commission is unanimous in its view that prevention of sexual abuse presents the next important set of important policy challenges. The Commission recommends:

- Increasing attention to the prevention of sex crimes. While the potential long-term cost savings to the public health system from preventing sex crimes is large – as is the potential to avoid suffering by victims – specific strategies on how to break cycles of offending are less clear. The Department of Health’s work on violence prevention is a valuable start; and more should be done to develop, research and discover effective prevention strategies.

³⁸ See, *Myths and Facts About Sex Offenders*, at 2 (Center for Sex Offender Management, June 2000).

³⁹ See, *Sexual Violence Basics: How Much Does Sexual Violence Cost*, at 1 (Minnesota Department of Health, 2000) (<http://www.health.state.mn.us/injury/pub/kit/basicscost.pdf>).

⁴⁰ See, S. Fromm, *Total estimated cost of child abuse and neglect in the United States*, at 3 (Prevent Child Abuse America, 2001) (http://www.preventchildabuse.org/learn_more/research_docs/cost_analysis.pdf).

- Increasing attention to the rise in the number of sexually dangerous offenders who are committed from the juvenile system. Given the fact that roughly 20 percent of the patients civilly committed to the MSOP as Sexual Psychopathic Personalities or Sexually Dangerous Persons are young men between the ages of 18 to 25, greater emphasis should be placed on early treatment responses to young, sexually-dangerous offenders. The alternative – namely, civil commitments that could span the lifetime of these patients – is both costly and tragic.

Appendix A

**First Minority Report
Recommendation on Eligibility for Life Sentences**

The Commission has recommended establishing life in prison as the statutory maximum sentence possible for repeat offenders.

We, the undersigned, support this recommendation, but continue to believe that a statutory maximum sentence of life in prison should also be applicable to certain first-time serious and violent sex offenders. Specifically, we believe that the statutory maximum sentence should be increased to life if:

- (1) A sex offender commits Criminal Sexual Conduct in the First, Second or Third Degrees, and the offender has previously been convicted of any felony-level sex-related offense, two misdemeanor or gross misdemeanor sex-related offenses, or any other felony-level criminal offense where sex was the motivating factor for the criminal conduct; or
- (2) A sex offender tortures, mutilates, or causes a life threatening injury to a victim while committing Criminal Sexual Conduct in the First, Second or Third Degrees; or
- (3) A sex offender kidnaps the victim and does not release the victim in a safe place as part of the criminal conduct resulting in the offender's commission of Criminal Sexual Conduct in the First, Second or Third Degrees; or
- (4) A sex offender uses a dangerous weapon or threatens the safety of a minor child to force or coerce the victim into submitting to sexual contact or penetration while committing Criminal Sexual Conduct in the First, Second or Third Degrees.

For the above described serious, violent and repeat criminal conduct, the statutory maximum penalty of life in prison is both appropriate and in the interests of justice.

Respectfully Submitted:

COMMISSIONER JAMES C. BACKSTROM
COMMISSIONER KRIS FLATEN
COMMISSIONER GERALD KAPLAN
COMMISSIONER BRIAN SCHLUETER
COMMISSIONER JERRY SOMA
COMMISSIONER STEVEN STRACHAN

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Appendix B

**Second Minority Report
Recommendation on Eligibility for Petitioning
for Release from an Indeterminate Sentence.**

The Commission has recommended an indeterminate sentencing plan under which the minimum sentence would either be the mandatory minimum penalty provided by law for the crime, if any, or two-thirds the presumptive sentence that has been established for the crime under the current Minnesota Sentencing Guidelines, whichever is greater.

We, the undersigned, disagree with the majority recommendation to require an offender to serve two-thirds of the presumptive sentence before being eligible to apply for release. We would permit an offender to apply for conditional release after having served one-half of his or her presumptive sentence.

The testimony we received emphasized that sex offender treatment works to protect public safety, especially when combined with intensive (state of the art) supervision practices that include the use of polygraphs. Therefore, we believe that those inmates who successfully complete sex offender treatment, maintain good behavior records in prison and are assessed as being at low risk of re-offending, could be safely released to the community, by the decision of the Sex Offender Review Board, after having served a minimum of at least half their sentence.

Under our recommendations most offenders will serve longer sentences resulting in significant growth in prison populations. A somewhat earlier release, for those exceptional offenders who vigorously engage in treatment and no longer present a risk to the community, would ease the swelling of the prison population while adequately protecting the public.

Respectfully Submitted:

COMMISSIONER LAURA BUDD
COMMISSIONER KRIS FLATEN
COMMISSIONER GERALD KAPLAN
COMMISSIONER JOHN STUART
COMMISSIONER ESTHER M. TOMLJANOVICH

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Appendix C

Listing of Witnesses who Testified Before the Governor's Commission on Sex Offender Policy

B. Jaye Anno, Ph.D., CCHP, Founder, Consultants in Correctional Care

Kenneth Backhus, Office of Senate Counsel, Minnesota State Senate

Jane Belau, former Member, Minnesota Corrections Board

Honorable David Bishop, State Representative (1982 – 2002)

Janis Bremer, Ph.D., Director of Adolescent Programming, Project Pathfinder

Yvonne Cournoyer, Program Director, Project Pathfinder

Patti Cullen, Vice President, Care Providers of Minnesota

Honorable Jack Davies, Minnesota Court of Appeals (Retired)

William B. Donnay, Director, Risk Assessment – Community Notification Unit, Minnesota Department of Corrections

Dennis M. Doren, Ph.D., Evaluation Director, Sand Ridge Secure Treatment Center, Madison, Wisconsin

C. Peter Erlinder, Professor of Law, William Mitchell College of Law

Michael S. Fall, Probation Supervisor, Minnesota Department of Corrections

Honorable Linda Finney, Superintendent, Bureau of Criminal Apprehension

Jim Golden, PhD, Chief Operating Officer of Midwest Center for HIPAA Education

Andrea Hern, M.A., Executive Director of Liberty Healthcare's Sex Offender Management and Monitoring Program

Sherry Hill, Probation Officer, Minnesota Department of Corrections

Richard G. Hodsdon, Assistant Washington County Attorney

Stephen J. Huot, Clinical Director, Minnesota Sex Offender Treatment Program – Moose Lake

John Hustad, Vice President for Public Affairs, Minnesota Health and Housing Alliance

Eric S. Janus, Professor of Law, William Mitchell College of Law

Honorable Douglas Johnson, Washington County Attorney

Gary Karger, Fiscal Analyst, Minnesota House of Representatives

Stephen King, Community Notification Manager, Minnesota Department of Corrections

John Kirwin, Assistant Hennepin County Attorney

Eric Knutson, Senior Special Agent, Bureau of Criminal Apprehension

Kathy Langer, Probation Officer, Todd-Wadena Community Corrections

Julie LeTourneau, CJIS Supervisor, Bureau of Criminal Apprehension

Warren G. Maas, Esq., Coordinator, Hennepin County Bar Association
Commitment Defense Project

Jeanne Martin, Program Manager, Dodge-Fillmore-Olmsted Sexual Assault Program

Anne McCabe, Manager for the Public Sector Development, Liberty Healthcare

Deborah McKnight, House Research Department, Minnesota House of Representatives

Michael Miner, Ph.D., L.P., Associate Professor of Family Practice and Community Health,
University of Minnesota

Richard Mulcrone, former Chairman, Minnesota Corrections Board

Craig S. Nelson, Freeborn County Attorney, and President of the Minnesota
County Attorneys Association

Michael Nichols, Probation Officer, Hennepin County Corrections

AnnMarie O'Neill, Program Administrator, Bureau of Criminal Apprehension

Samuel D. Orbovich, Esq., Orbovich & Gartner, Chartered

Mario Paporozzi, Ph.D., Associate Professor of Criminal Justice,
University of North Carolina at Pembroke

Jeff Peterson, Director of the Hearings and Release Unit, Minnesota Department of Corrections

Patty Rime, Dodge-Fillmore-Olmstead Community Corrections

Kate Santelmann, Program Director, Ramsey County Attorney's Office

Steven Sawyer, Executive Director, Project Pathfinder

Nan Schroeder, Director of Health Services, Minnesota Department of Corrections

Darrell Shreve, Director of Research and Regulations, Minnesota Health and Housing Alliance

Walter G. Suarez, MD, MPH, President and Chief Executive Officer of Midwest Center for
HIPAA Education

Barbara Tombs, Executive Director, Minnesota Sentencing Guideline Commission

H. Michael Tripple, Assistant Director of the Division of Health Policy, Information and
Compliance Monitoring, Minnesota Department of Health

Michael Webber, President and Chief Operating Officer, Volunteers of America of Minnesota

Sharon K. Zoesch, Ombudsman for Older Minnesotans

Judith Zollar, Research Department, Minnesota House of Representatives

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Appendix D

Minnesota's Sex Offender Policies and Practices: A System that Developed Over Time

Minnesota's policies for sentencing, supervising and treating sex offenders developed incrementally over the course of the last century. Below is a brief review of significant events in that timeline:

- 1939 – Civil Commitment: Minnesota enacts its Sexual Psychopathic Personality Law.
- 1979 – Determinate Sentencing: Minnesota enacts determinate sentences for criminal sexual conduct, according to a detailed set of Sentencing Guidelines.
- 1989 – Attorney General's Task Force: The Task Force recommends that sex crime sentences be lengthened for different types of offenders and that the existing psychopathic personality statute should be retained.
- 1989 – Sentences Increased: The Minnesota Legislature more than doubles prison terms for rape and increases the minimum time to be served on a life sentence from 17 years to 30 years.
- 1991 – Predatory Offender Registry: Minnesota establishes a computerized registry of predatory offenders.
- 1991 – DOC Report on Risk Assessment and Release Procedures for Violent Offenders and Sexual Psychopaths: The Department recommends changes in identification and supervision of high-risk sex offenders and begins the pre-screening of offenders and the referral of the most dangerous to counties for possible civil commitment. As a result, Minnesota became the second state in the Union to use civil commitment statutes to treat and confine sex offenders after offenders complete their sentence of imprisonment.
- 1994 – Legislative Auditor Report on the Psychopathic Personality Commitment Law: The Legislative Auditor recommends alternative policy options that included continuing to rely on civil commitments under the psychopathic personality statute; development of new civil commitment procedures; or removing sex offenses from sentencing guidelines and permitting indeterminate sentencing.
- 1994 – Legislative Task Force on Sexual Predators: The Task Force recommends language that forms the basis for the Sexually Dangerous Person statute. The Report also declares that: "The long-term goal of policymakers should be to diminish the use of that mental health system and increase the use of the criminal justice system to deal with these offenders."

- 1994 – SDP Statute Enacted: In a Special Session, the Minnesota Legislature unanimously broadens civil commitment law to include a new category – Sexually Dangerous Persons.
- 1996 – Community Notification: The Minnesota Legislature enacts a Community Notification Law.
- 1998 – Civil Commitment Study Group: The Study Group compared Minnesota’s civil commitment statutes to those of other states. The Group recommends few changes as it found that Minnesota’s laws compared favorably to the practices in other states.
- 2000 – Katie Poirer Law Enacted: The Minnesota Legislature establishes a lifetime registration requirement for some offenses, and adds a registration requirement for those with a criminal history of sex offense and who later commit a new offense against a person.
- 2000 – Sentences Increased: The Minnesota Legislature again doubles prison terms for first-degree criminal sexual conduct, this time to a minimum of 12 years.
- 2000 – The Minnesota Legislature enacts Minnesota Laws 2000, Chapter 359 directing the Department of Corrections, in collaboration with the Supreme Court, the Attorney General’s office, the Department of Human Services, and the Minnesota Sentencing Guidelines Commission, to “evaluate all aspects of the state's system of responding to sexual offenses; identify system problems and develop solutions; provide research and analysis for state and local policymakers and criminal justice and corrections agencies; and recommend policies and best practices that will reduce sexual victimization and improve public safety in the most cost-effective manner possible.”

Appendix E

Appointment and Membership of the Governor's Commission on Sex Offender Policy

MEMBERS OF SEX OFFENDER POLICY COMMISSION NAMED ~ Commission chaired by former Supreme Court Justice Esther Tomljanovich ~ September 3, 2004

Saint Paul -- Governor Tim Pawlenty's office today announced the members of the Sex Offender Policy Commission that was recently created. The Commission, which will be chaired by former Minnesota Supreme Court Justice Esther Tomljanovich, has been charged with reviewing current laws and policies to find ways to better protect the public from sex offenders.

The members of the commission include:

- Jim Backstrom -- Dakota County Attorney
- Brian Schlueter -- Otter Tail County Sheriff
- Steve Strachan -- Lakeville Chief of Police and former state representative
- Laura Budd -- Chair of the Public Defense Board
- John Stuart -- State Public Defender
- Kris Flaten -- Chair, State Advisory Council on Mental Health
- Terry Dempsey -- Minnesota Board of Aging
- Gerald Kaplan -- Executive Director, Alpha Human Services
- Jerry Soma -- Anoka County Human Services Director
- Susan Voigt -- Attorney, representative of care providers
- Carla Ferrucci -- Executive Director, Minnesota Coalition Against Sexual Assault

Governor Pawlenty directed the group, which will receive staff support from newly appointed State Sex Offender Policy Coordinator Eric Lipman, to review existing policies and laws regarding sex offenders, to recommend changes, and to identify best practices from around the country. The Governor has asked the group to focus first on the following areas: placement of elderly and disabled sex offenders; conditional medical release requirements; civil commitment procedures; and sex offender sentencing and supervision practices.

"Minnesota is not alone in finding our criminal justice and human services systems challenged by the complicated problem of sex offenders," said Governor Pawlenty. "Protecting the public is a top priority of state government. We must do everything we can to ensure that our laws and policies provide the best possible tools to deal with sex offenders. I am grateful that these experienced individuals are willing to serve on this important Commission."

The Commission's first meeting will be Wednesday, September 8 at 9:00 a.m. in Room 200 of the State Office Building in St. Paul.

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For additional information, please contact:

Eric Lipman
State Sex Offender Policy Coordinator
1450 Energy Park Drive Suite 200
Saint Paul, MN 55108-5219
Telephone: (651) 642-0255
Facsimile: (651) 632-5066
eric.lipman@state.mn.us

on the Internet at:

<http://www.doc.state.mn.us/commissionsexoffenderpolicy/>