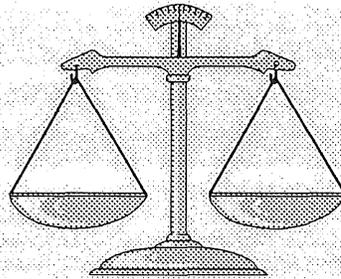


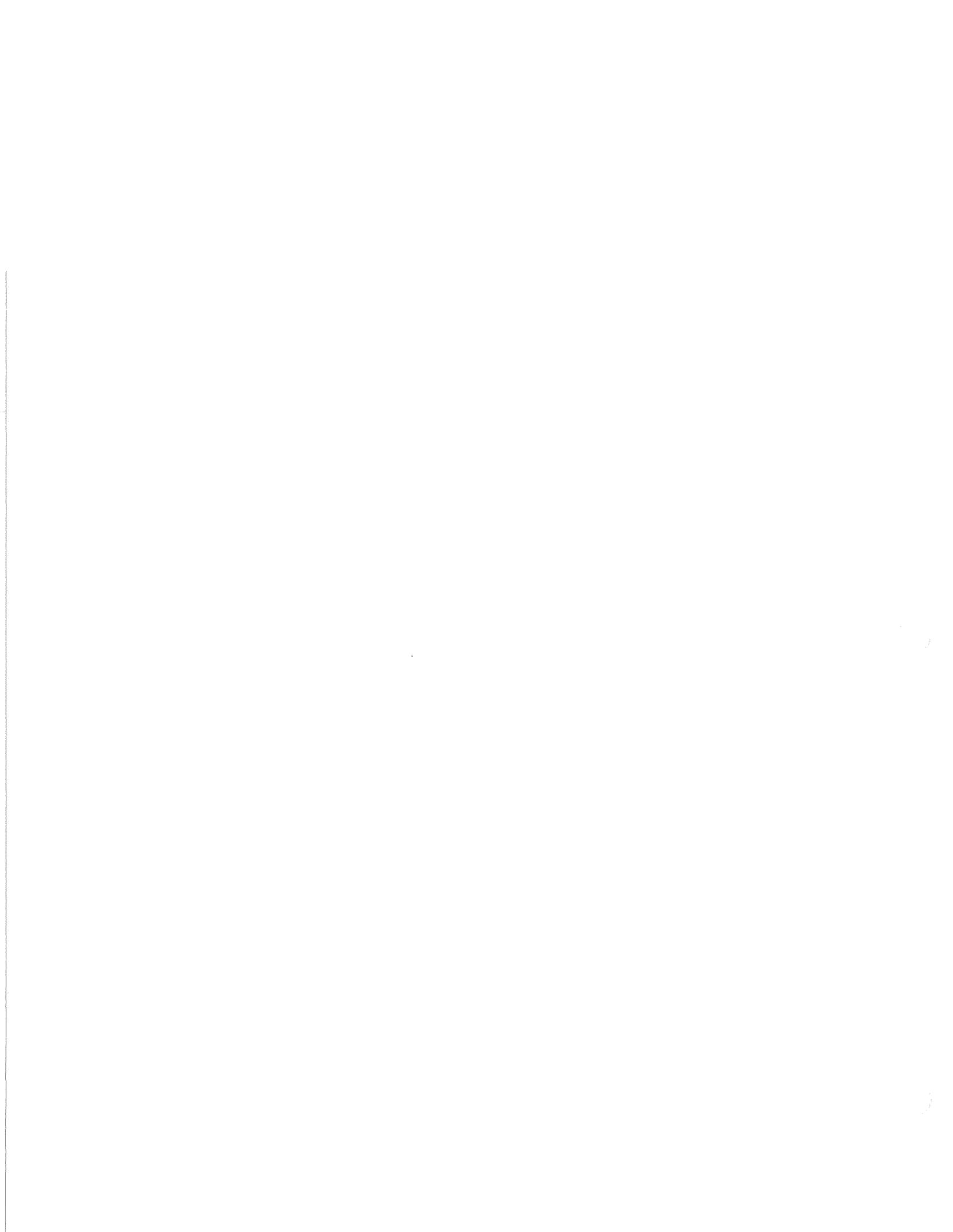
MINNESOTA SENTENCING GUIDELINES COMMISSION



Summary of 1989 Sentencing Practices

For Felony Drug Offenders

April, 1991



MINNESOTA SENTENCING GUIDELINES COMMISSION

Meridian National Bank Building

205 Aurora Avenue

Suite 205

St. Paul, Minnesota 55103

Telephone: (612) 296-0144

Members

Daniel Cain, Chairman and Citizen Representative

Stephen C. Rathke, County Attorney, Crow Wing County

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Susan D. Carter, Research Analysis Specialist

Anne Wall, Research Analyst

Julie Hayer, Administrator

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The issue of drugs continues to be a major concern among Minnesotans. When addressing this complex issue it is important to keep in mind that there are many components to be considered, including education, prevention, treatment, prosecution, and sentencing. This report focuses on only the last component - sentencing. The report updates the 1988 report and provides a summary of the 1989 sentencing practices for drug offenders. As much has been done in the recent past to modify the sentencing policy for drug offenders through changes in the law and the sentencing guidelines it is important to continue to report on what is actually happening. In the future, as information is collected on drug cases prosecuted under the new law and new guidelines, we can evaluate the effect of these changes by comparing the new sentencing practices with the ones described in this report.

Several of the findings contained in this report are of particular interest. First, the overall volume of drug offenders sentenced in 1989 continued to increase substantially - by 36% over the volume in 1988. The greatest increase occurred in the metro area counties other than Hennepin County and Ramsey County. In these other metro area counties the number of drug offenders sentenced in 1989 increased by 50% over 1988.

Second, the vast majority of drug offenders spend some time in a prison or jail for their offense. Over 88% of all drug offenders and over 90% of all drug sellers served time in a prison or jail.

Third, while most of the drug offenses continued to involve marijuana or cocaine, there was a 116% increase in the number of crack cocaine cases from 1988 to 1989.

Fourth, while incarceration was the number one sanction imposed on drug offenders, other types of sanctions were also imposed such as fines, restitution, community work service, treatment requirements, and drug testing. These other types of sanctions could be expanded significantly as they have been used far less frequently than incarceration. None of these types of sanctions were used in more than 40% of the cases where a prison sentence was not executed.

Fifth, the use of drug testing increased significantly from 15% of the offenders in 1988 with stayed sentences to 25% in 1989.

Last, of the offenders who were given stayed sentences, to date, only 76 offenders or 6.0% had their stayed sentence revoked and were sent to prison.

Our thanks to those probation officers who participated in the study by completing and returning the surveys that provided much of the information in this report. We would also like to thank the Department of Corrections, Hennepin County, Ramsey County, and the Northeast Regional Corrections Center for their help in providing us information on the amount of jail time served by each individual drug offender.

MINNESOTA SENTENCING GUIDELINES COMMISSION

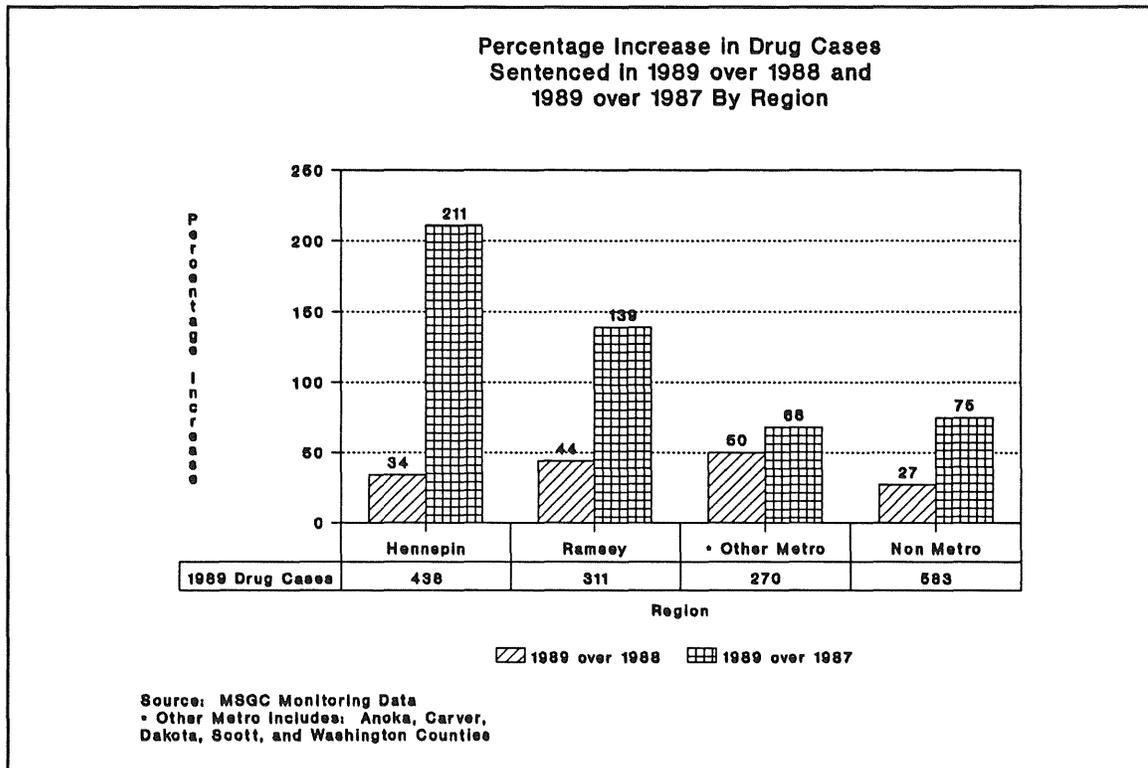
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I. ALL DRUG OFFENDERS

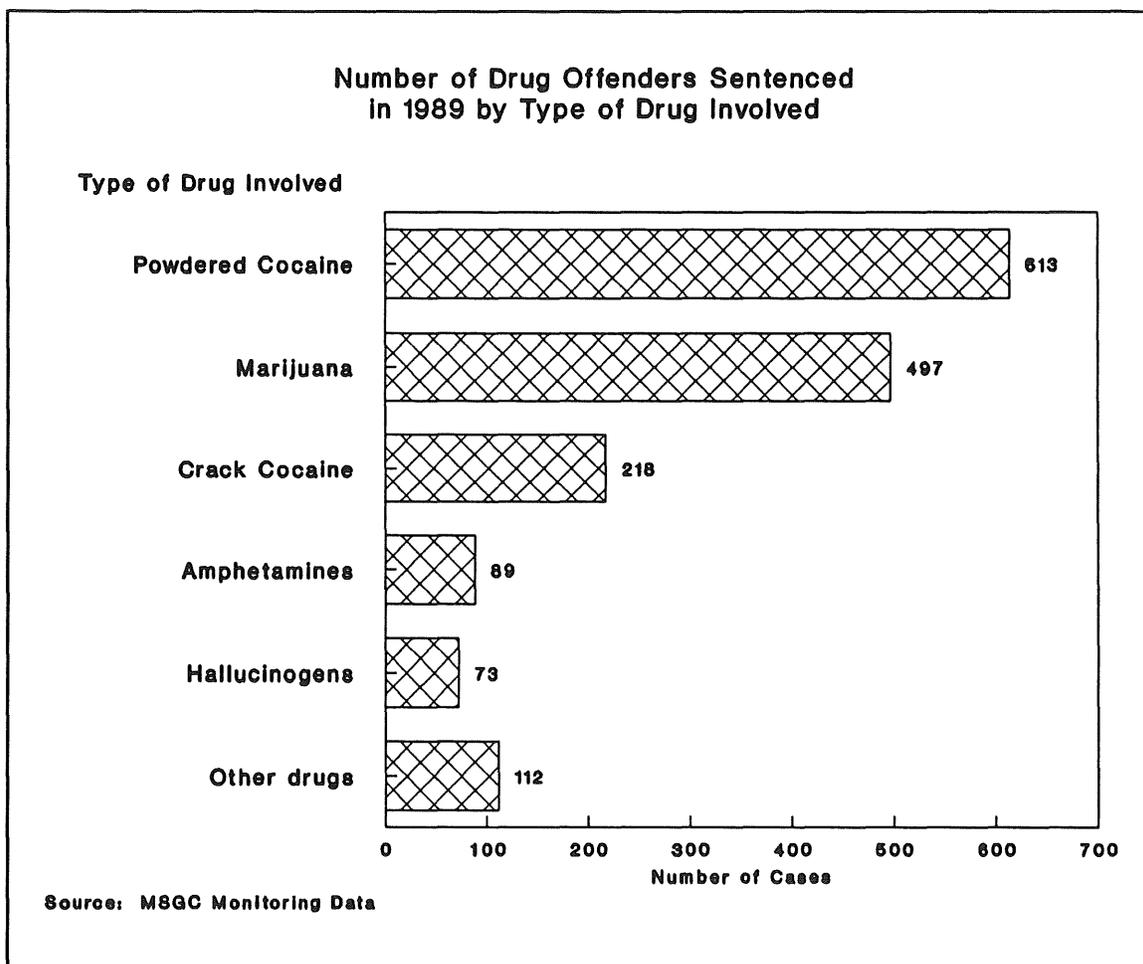
The volume of drug cases continued to increase, from 1,180 drug offenders sentenced in 1988 to 1,602 drug offenders sentenced in 1989. This represents a 36% increase from 1988 to 1989 and a 109% increase from 1987 to 1989. The greatest percentage increase in drug cases from 1988 to 1989 occurred in the metro area counties (50%) other than Hennepin or Ramsey counties, although drug cases increased by 34% in Hennepin County and by 44% in Ramsey county. The percentage increase in drug cases from 1988 to 1989 was the lowest at 27% in the non metro area of the state. The percentage increases from 1987 to 1989 were dramatic. The graph below (Figure 1) displays these percentage increases by region and demonstrate that Hennepin and Ramsey counties had the most extreme increases in drug cases over this two year period.

Figure 1



As was the case in 1988, most (72%) of the drug cases involved the sale or possession of marijuana (497 cases) or the possession or sale of powdered cocaine (613 cases). There were also 218 cases involving crack cocaine which represents a 116% increase in crack cocaine cases from 1988 (101 cases) to 1989. There were relatively few cases involving other types of controlled substances: 89 cases involving amphetamines, 73 cases involving hallucinogens, 49 cases involving synthetic narcotics, 23 cases involving schedule IV controlled substances, 2 cases involving barbiturates, 19 cases involving simulated controlled substances, 15 cases involving heroin, 1 case involving opium, and 3 cases where the type of drug could not be determined. The distribution of drug cases by the type of drug is displayed below in Figure 2.

Figure 2



In 1989, 13.7% or 220 drug offenders were sentenced to prison, with an average prison sentence of 26.1 months. This imprisonment rate is higher than the 1988 rate of 10.7% and the average prison sentence is also significantly higher than the 1988 average of 22.3 months. These increases reflect more convictions for the types of drug crimes that are recommended harsher sentences under the guidelines modifications adopted in 1986 and 1987. These changes to the sentencing guidelines differentiated the penalties on the basis of the type of drug and the amount of drug involved. However, the major changes that were made to the drug laws by the 1989 Legislature and the subsequent changes to the sentencing guidelines are not reflected by the cases reported at this time. The overwhelming majority of drug offenders sentenced in 1989 (96%), committed their offenses prior to the effective date of the 1989 law changes. We expect that the 1990 sentencing data will provide a pool of cases that will allow us to begin analyzing the impact of the 1989 law changes.

Among those drug offenders who were sentenced to prison, 26.4% received a departure on the length of the sentence. In 4.1% of the executed sentences (9 cases), the prison sentence was greater than what the guidelines had recommended. In only one of these 9 cases, the reason for the aggravated duration was because the offense had been determined by the judge to be a "major drug offense". In 22.3% of the executed sentences (49 cases), the prison sentence was less than what the guidelines had recommended. In 15 of these 49 cases, the reason for departure was "plea negotiation". In 1988 the rate of aggravated durational departures was slightly more (6.3%) and conversely the rate of mitigated durational departures was considerably less (16.7%).

There was a 7.9% overall dispositional departure rate with a 3.2% aggravated dispositional departure rate and a 4.7% mitigated dispositional departure rate. This overall dispositional departure rate was the same as it was in 1988 except that there were more mitigated dispositional departures in 1989 (4.0% in 1988 as compared to 4.7% in 1989) and fewer aggravated dispositional departures in 1989 (3.8% in 1988 as compared to 3.2% in 1988). Most of the aggravated dispositional departures (70%) were requests by the offender to be sentenced to prison, typically because the offender was already going to prison for a different felony offense.

Most of the convictions for drug offenses were presumptive stayed sentences under the guidelines as the majority of the cases involve the possession or sale of small amounts of marijuana or powdered cocaine. The guidelines recommended a prison sentence in 244 cases, or a rate of 15.2%. This is a higher rate than the 1988 rate of 10.8%. Among the 244 presumptive commitment cases, 76 cases or 31.1% were mitigated dispositional departures where the judge stayed the prison sentence and placed the offender on probation with conditional sanctions. Specifically there were 93 offenders convicted of a severity level VII drug offense (guidelines recommend prison) and 35 or 37.6% received a mitigated dispositional departure and were placed on probation with conditional sanctions. This departure rate was lower than the 1988 rate of 47.8% and the most common reasons cited for departure were "treatment considerations."

For those drug offenders who did not receive a prison sanction, most still spent some time incarcerated. Judges pronounced jail as a condition of the stayed sentence in 69.3% of all the drug cases in 1989, about the same as in 1988 (71.1%). In 1989, the prison and pronounced jail figures totaled an incarceration rate of 83%, approximately the same as in 1988 (82%). However, offenders can spend a significant amount of time in jail prior to the sentence. This time is often credited to any post sentence jail or prison time the offender may subsequently receive. Data were collected on the actual amount of jail time served, both pre and post sentence. Over **88% of all offenders sentenced for a felony drug conviction did time in a jail or prison** in 1989. Commission staff was unable to verify whether 126 offenders had served any jail time.

It is difficult to collect data on the actual time served in a jail or workhouse. The Department of Corrections maintains a data base on jail use around the state. However, their data base does not include most Hennepin or Ramsey county facilities or the Northeast Regional Corrections Center. These facilities must be contacted individually and each facility has its own method of tracking and accounting for individual offenders. The task of finding out how much time each individual offender served in jail is further complicated by the practice of counties using facilities in other counties when space problems occurred. Therefore, the monitoring data may indicate that an individual was sentenced in a particular county yet that offender could have served time in a jail in a different county. Staff made an attempt to check for this but it is quite possible that some of the 126 drug offenders for whom jail time could not be verified, did actually serve some time.

Of the 1,194 drug offenders who did not receive a prison sentence but did serve time in jail, 24.0% or 286 offenders spent time in jail only prior to the pronouncement of the sentence. The average time served was 27 days and about 39% of the offenders served 3 days or less. The remaining 76.0% or 908 offenders spent time in jail after the sentence was pronounced with 736 of those offenders spending some time in jail prior to the sentence as well. These data indicate a tremendous increase in the number of offenders with stayed sentences who spent time in jail prior to sentencing; 86% in 1989 compared to 44% in 1988. It is not clear what might be the reason(s) for this increase in pre-sentence incarceration. The average time served among those who served post sentence time was 85 days and only 11 of the 908 offenders served 3 days or less.

Surveys requesting additional information on the amount of controlled substance involved with the case, the actual sanctions imposed and served by the offenders, and whether a violation report was filed, were distributed to the probation officers who were supervising those drug offenders given stayed sentences in 1989. Of the 1,383 drug offenders who received a probationary sentence, we received completed surveys on 1,264 offenders or 91% of the stayed cases. The 119 cases for which staff did not receive a completed survey were generally distributed among several counties, and for each of these counties, most of the surveys had been returned. Staff also collected additional information on those cases where the offender was given a prison sentence.

Of those offenders for whom surveys were completed, information is available on treatment, fines, restitution, community work service, drug testing, and violation reports. Fines were used in 29.1% (368 cases) of the stayed cases, ranging from \$25 to \$5,540. The average fine was \$760 but as averages can be skewed by extreme upper or lower amounts, the median fine of \$530 is also important to note. Restitution or requirements to pay back drug buy monies were given in 23.2% (293 cases) of the stayed cases, ranging from \$20 to \$5,000. The average was \$401 and the median was \$300. Community work service was used in 15.2% (192) of the stayed cases, ranging from 25 hours to 500 hours. The average number of hours required was 138 and the median was 100 hours. The categories are not mutually exclusive; offenders could have received multiple sanctions.

Data on treatment were available for 1,267 stayed cases. About 61% or 774 offenders were given a chemical dependency evaluation. There were 511 offenders (40.3% of all stayed cases) that were placed in some type of treatment program with about 48% in residential programs and 52% in non-residential programs (the type of program was unknown for 6 offenders). Approximately 62% of those placed in treatment completed the program and about 24% did not. About 60 offenders or 12% were still in treatment and data was incomplete regarding completion of treatment for 7 offenders.

There were 315 offenders for whom survey information indicated drug testing was conducted at least once. This represents approximately 25% of all stayed cases with survey information. Among those tested at least once, 106 offenders or about 34% failed at least once. These figures show an increase from 1988 (15%) to 1989 (25%) in the percentage of drug offenders that were required to submit to drug testing, but the percentage of offenders that had failed at least once was the same in both years.

By the end of 1990, violations of probation occurred in 27.7% of the stayed cases or for 350 offenders. The most common reason for a violation report to be filed was related to chemical dependency problems (204 cases). Two other common reasons for filing a violation report included a new or alleged offense (157 cases) and failure to cooperate with the probation officer (120 cases). Offenders could have committed more than one violation per report. Among the 350 offenders for whom a violation report was filed, 76 offenders were revoked and sent to prison, 179 offenders had additional intermediate sanctions imposed on them, 59 offenders have additional intermediate sanctions pending, and 28 offenders have a revocation of their stayed sentence pending.

Of the 179 offenders for whom information is available on the new intermediate sanctions imposed, 112 or 63% received further incarceration in a local jail. Other sanctions included treatment, drug education and urinalysis testing requirements, changing the stay from a stay of imposition to a stay of execution, and restructuring the financial obligations. Offenders could have received multiple additional intermediate sanctions.

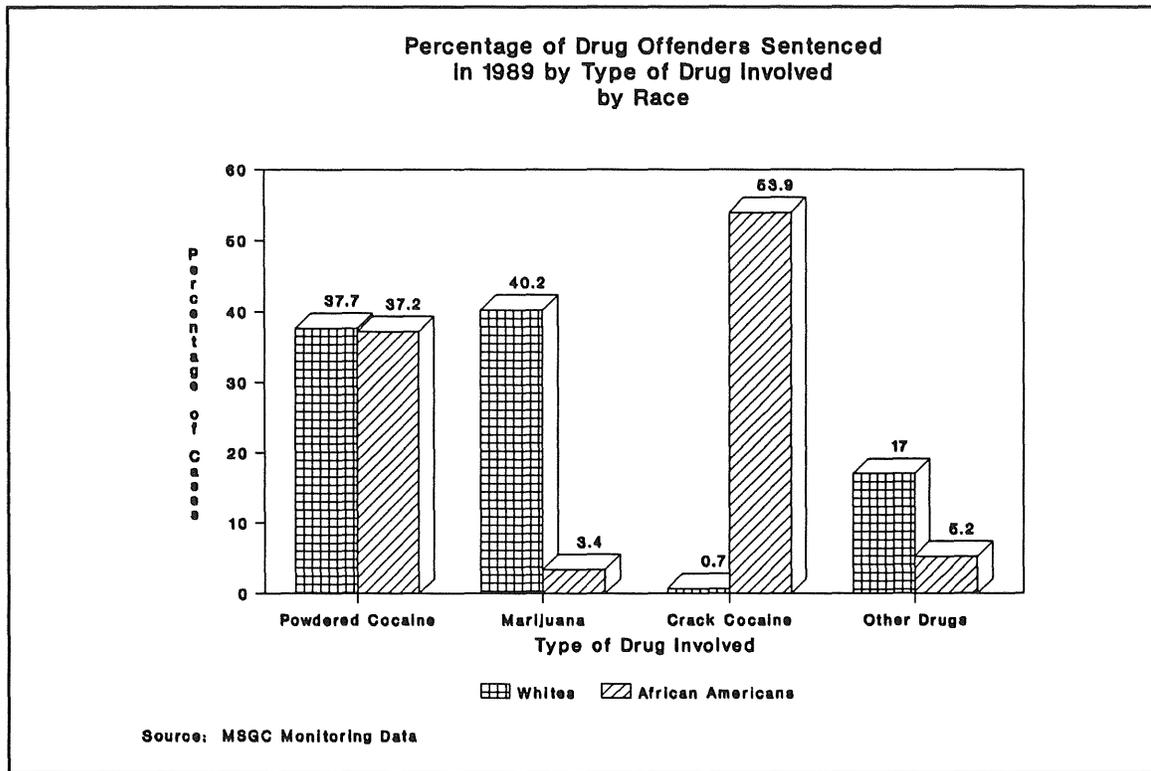
II. GENDER AND RACE

About 83% of the offenders convicted and sentenced for drug offenses were males and 17% were females. This is the same distribution of males and females overall who were convicted and sentenced for felony offenses in 1989. However, when examining the distribution by racial groups, there was a larger proportion of African Americans convicted of drug offenses than overall; 24% of all drug offenders were African Americans compared to 19% of the overall number of felony offenders sentenced in 1989. There was a lower proportion of whites and American Indians convicted of drug crimes compared to the overall proportions in 1989.

There was not a great deal of difference in the types of drugs involved with males compared to females. A slightly higher proportion of females were convicted of drug crimes involving crack cocaine (15.6% for females compared to 13.2% for males) and drugs other than powdered cocaine and marijuana; eg., heroin, hallucinogens, and amphetamines (16.7% for females compared to 13.3% for males).

There were dramatic differences in the types of drugs involved when comparing the figures by race. Most of the convictions for whites involved marijuana (40.2% or 447 cases) or powdered cocaine (37.7% or 419 cases). The majority of convictions for African Americans involved crack cocaine (53.9% or 207 cases) followed by powdered cocaine (37.2% or 143 cases). Very few convictions for white offenders involved crack cocaine, less than 1% (8 cases) and very few convictions for African Americans involved marijuana, about 3% (13 cases). There were only a small number of American Indians convicted of drug crimes in 1989 (34 cases), with most of the cases involving marijuana (52.9% or 18 cases). The other racial groups, which include Hispanics and Asians, were convicted of drug crimes that primarily involved powdered cocaine (61.6% or 45 cases). The graph below displays the percentage of drug offenders sentenced in 1989 by the type of drug involved for white offenders and African American offenders.

Figure 3



Females convicted of drug offenses were given a prison sentence significantly less often than males, 9.3% for females compared to 14.6% for males. To some extent, these differences can be explained by the criminal history scores of each group. About 57% of females had no criminal history score and only about 10% had criminal history scores of 3 or more. About 19% of males had criminal history scores of 3 or more and around 51% had a zero criminal history score.

Males also had a higher average prison duration than females. There were 195 males sentenced to prison for drug offenses in 1989 with an average prison sentence of 26.8 months. There were only 25 females sentenced to prison for drug offenses in 1989 with an average prison sentence of 20.2 months.

African Americans convicted of drug offenses had a higher imprisonment rate than white drug offenders, 19.8% and 11.7% respectively. There are two factors that appear to contribute to this difference. First, most of the convictions for whites involved marijuana while most of the convictions for African Americans involved cocaine. The imprisonment rate for marijuana offenders was considerably lower than the imprisonment rate for other types of drug offenders. The imprisonment rate for white marijuana offenders is 4.3% and although there were relatively few minorities convicted of marijuana offenses, none were sentenced to prison.

The second factor that contributed to the differences in the imprisonment rates for whites and African Americans is illustrated by the imprisonment rate for powdered cocaine offenders. The imprisonment rate for white powdered cocaine offenders was 15.3% compared to 23.1% for African Americans, 16.7% for American Indians, and 15.6% for other racial minorities. African American offenders tended to have higher criminal history scores than the white offenders. Among those offenders convicted of powdered cocaine offenses, about 59% of the whites had no criminal history score and about 15% had a criminal history score of 3 or more. In contrast, only 46% of the African Americans had no criminal history score and about 22% had a criminal history score of 3 or more.

The imprisonment rate for African Americans convicted of crack cocaine (19.8%) was lower than the rate for powdered cocaine (23.1%). The reason this imprisonment rate was lower than for powdered cocaine offenses is because a smaller proportion of the crack cocaine cases (23.7%) were for sale than powdered cocaine offenses (40.6%). Sale of a drug typically carries a more severe presumptive sentence under the guidelines. There were only 8 white offenders convicted of offenses involving crack cocaine and half went to prison. Five of the eight offenders, however, were convicted of sale of crack cocaine.

Although the imprisonment rate was higher for African Americans than for whites, the average prison sentence was higher for whites. There were 130 whites sentenced to prison in 1989 for drug offenses for an average sentence of 27.3 months compared to 23.7 months for the 76 African Americans sentenced to prison. There were only 8 American Indians sentenced to prison in 1989 for drug offenses for an average of 15.2 months and only 8 other racial minority offenders were sentenced to prison for drug offenses for an average sentence of 36.6 months.

Judges pronounced jail as a condition of probation more frequently for males than females, 70.9% compared to 61.1%. It is also the case among the entire population of sentenced felons in 1989 that males were more frequently given jail as a condition of probation than females. If the imprisonment rate is added to the jail rate for an overall percentage of offenders incarcerated, again males are incarcerated at a higher rate than females, 85.5% compared to 70.4%.

Racially, African Americans had the lowest rate of pronounced jail time at 61.5% compared to 71.1% for whites, 73.5% for American Indians, and 80.8% for other racial minorities. The overall incarceration rates, however, were very similar for whites and African Americans, 82.8% and 81.3% respectively. The percentage of American Indians and other racial minorities with pronounced jail or prison was higher at 91.1% and 91.8% respectively.

As was mentioned above, it is important to look at the percentage of offenders who actually served time in jail to provide a complete picture of who was incarcerated. Some

offenders may have served a significant amount of time in jail prior to sentence and therefore the judge may not have pronounced any additional jail to serve after sentencing. **Nearly 90% of the males and 80% of the females served time in either prison or jail.** Looking at these figure by race, **87% of the whites, 92% of the African Americans, 88% of the American Indians, and 92% of the other racial minorities served time in either prison or jail.**

Among those offenders who served time in jail, 23% of the males and 31% of the females served time prior to sentence only. The average time served was 30 days for males and 15 days for females. The racial breakdown among those offenders who served time in jail also varied with 19% of the whites, 40% of the African Americans, 29% of the American Indians, and 20% of the other racial minorities serving time in jail prior to the sentence only. While the percentage of racial minorities who served pre sentence jail time only was greater than for whites, the average time served was also greater; 13 days for whites, 42 days for African Americans, 60 days for American Indians, and 49 days for other racial minorities.

Among those offenders who served post sentence jail time, the average time served varied by sex and race but not as greatly as for pre sentence time. Males served an average of 88 days compared to 71 days for females. Whites served an average of 82 days compared to 95 days for African Americans, 87 days for American Indians, and 95 days for other racial minorities.

Among cases with stayed sentences where completed surveys were available, fines were pronounced in 31.1% of cases (324) for males and in 19.7% of the cases (44) for females. The fines for males ranged from \$25 to \$5,000 with an average fine of \$759 and a median fine of \$550. The fine amounts for females were about the same as for males ranging from \$45 to \$5,540, with an average of \$766 and a median fine of \$500. White drug offenders were fined in 37.5% of the cases (335) while African Americans were only fined in 4.9% of the cases (14). While 42.3% of American Indians were fined, this represents only 11 cases.

Restitution was pronounced at about the same rate for both males and females, 23.3% for males and 22.4% for females. Restitution ranged from \$20 to \$5,000 for males and from \$20 to \$972 for females. The average amount of restitution and the median were lower for females; males averaged \$425 with a median of \$300 and females averaged \$283 with a median of \$225. Again, judges more often pronounced restitution for whites than for African Americans, 28.2% and 4.0% respectively.

Community work service was pronounced more frequently for females than for males, 27.8% for females compared to only 12.5% for males. The rate for whites was slightly higher (16.6%) than the rate for African Americans (12.3%). The median number of hours was the same for males and females at 100 hours and the median number of hours was higher for whites at 100 hours than for African Americans at 80 hours.

Among those cases with stayed sentences where completed surveys were available, chemical evaluations were given more often for females (70.4%) than males (59.1%). In addition, more females than males were required to complete some type of chemical dependency program, about 49% for females compared to nearly 39% for males.

Among those offenders who did participate in treatment, a higher proportion of females did not successfully complete the program compared to males, 30.3% and 24.6% respectively. It is also the case that a greater proportion of females who were required to participate in treatment were in residential treatment than males, 53.2% for females compared to 46.5% for males. This, however, does not appear to explain why females may not complete treatment as often as males because such differences continue to be seen when looking just at those offenders who participated in residential treatment.

There are two shortcomings in the data that need to be noted. First it should be clear that references to "successful completion" of a treatment program do not necessarily mean long term success. Second, it is beyond the scope of this study to determine why some offender groups may have completed treatment more often than other groups. The data are unavailable to analyze successful completion by the type of treatment program.

Racially, whites had the highest percentage of chemical evaluations at 63.9% compared to 55.8% of African Americans, 50.0% of American Indians, and 49.2% of the other racial minorities. Also, about 42.6% of whites and 36.5% of African Americans were required to complete some type of chemical dependency program compared to 30.8% of American Indians and 28.8% of other racial minorities. African Americans had the highest rate of not completing the treatment program at 50% compared to 19.6% for whites. (There were only 8 American Indians and 17 other racial minorities required to participate in treatment.) As was true with females, a greater proportion of African Americans who were required to participate in treatment were placed in residential treatment programs, 67.3% for African Americans compared to 42.7% for whites. Yet, this does not explain the differences in completion rates.

Drug testing was pronounced at a slightly higher rate for females (27.4%) than males (24.4%) with males failing at least once at a higher rate than females; 35% and 27.9% respectively. Whites were required to be tested for drugs at a higher rate (27.5%) than African Americans (20.0) but the percentage of African Americans that failed at least once was more than twice as high as for white offenders; 66.7% of the African Americans tested for drugs failed at least once compared to 25.2% of the whites.

By the end of 1990, violation reports had been filed on 28.8% of the males who were given a stayed sentence and for whom we received surveys on compared to 22.4% of the females. Among the 300 males and 50 females who had violation reports filed, 22 males and 20 females were revoked to prison. A higher percentage of violation reports were filed for African Americans than for whites, 47.7% and 20.7% respectively. Among

the 185 whites and 136 African Americans who had violation reports filed, 30 whites and 45 African Americans were revoked to prison. The primary reasons for violation being filed among all the groups was for treatment problems, new convictions or alleged offenses, and lack of cooperation while under supervision.

III. DRUG SELLERS

In 1989, 50% (801) of all drug offenders were convicted of selling controlled substances. While nearly 71% (351) of all drug cases involving marijuana were for sale of marijuana, only about 50% (306) of the drug cases involving powdered cocaine and only about 25% (54) of the cases involving crack cocaine were for sale. Therefore, about 44% of all drug sale cases involved the sale of marijuana and about 38% involved powdered cocaine and only about 7% involved crack cocaine.

It is also interesting to note that of the 749 offenders who were convicted of possession of a controlled substance, 26.4% (198) had an original charge involving the sale of a controlled substance that would have placed the offender at a higher severity level had they been convicted of the sale offense. The majority of these original sale charges were actually for "possession with intent to sell" which has traditionally been regarded to be as serious of an offense as the actual sale. However, it is sometimes difficult to prove that an offender is possessing a particular amount of controlled substance for the purpose of sale. It may be that many of the "possession with intent to sell" charges were dropped because of a lack of evidence.

The new drug laws passed by the 1989 legislature should make it easier for prosecutors to convict offenders of the more serious possible charge because an offender could be charged with simple possession of a drug at the higher severity level on the basis of the amount only. There is no longer a need to prove possession with intent to sell. However, of drug offenders sentenced in 1989, only 4% were sentenced under the new drug laws. The following is a summary of the percentage of possession cases where there was an original sale charge that would have placed the offender at a higher severity level by the type of drug: marijuana - 72 offenders or 49.3%; powdered cocaine - 78 offenders or 25.5%; and crack cocaine - 19 offenders or 11.6%.

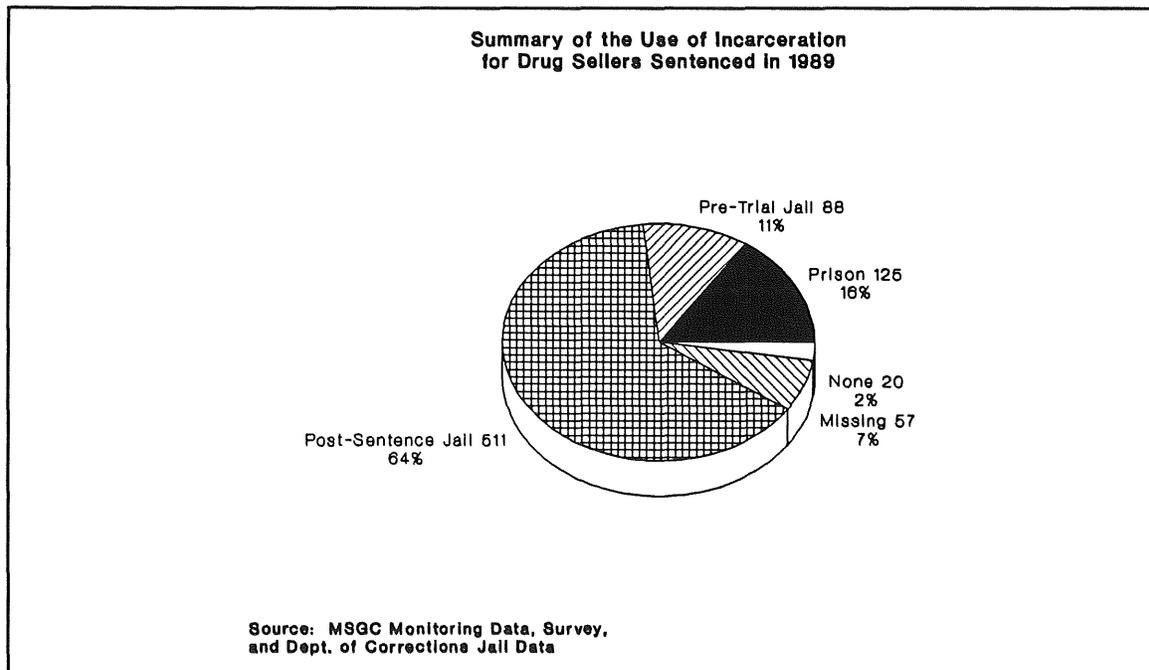
Over 15% (125 cases) of all offenders convicted of selling drugs received a prison sentence with an average sentence length of 31.7 months. This average is considerably greater than the 1988 average of 25.4 months. The average prison sentence length varied by the type of drug involved in the sale. For example, the average prison sentence was over 17 months for the 14 marijuana drug sellers, nearly 35 months for the 65 powdered cocaine sellers, and nearly 31 months for the 19 crack cocaine sellers.

In addition to the 15.6% of drug sellers who were incarcerated in prison, another 74.7% (598 offenders) were given jail as a condition of probation, thus, **over 90% of all drug sellers were required to serve time in a prison or jail**. The same percentage of offenders actually served time in jail or prison (599 offenders). There were 57 drug sellers for whom staff could not verify whether any time had been served.

Among the 599 offenders who served time in a local jail or workhouse, 14.7% or 88 spent time in jail prior to the sentence and the majority of offenders, 85.3% or 511 offenders, served time in jail after the sentence was pronounced. For the 88 offenders who served pre sentence jail time only, 44 also had pronounced jail time as a condition of probation, but staff could not verify whether these offenders had actually served any post sentence time. It is possible that these offenders were given credit for the time spent in jail prior to the sentence and thus were not required to serve additional time. The range of time served by these 88 offenders who served pre sentence time only was 1 day to 255 days, with an average time served of 31 days. Approximately 63% or 55 offenders served more than 3 days with the remaining 33 offenders serving 3 days or less.

For the 511 offenders who served post sentence time (most of these offenders, 409 or 80%, also served pre trial time), the actual time served ranged from 1 day to 366 days with an average of approximately 103 days. Only 6, or 1% of the 511 offenders, served 3 days or less in jail. A summary of the use of incarceration for drug sellers is presented below in Figure 4.

Figure 4



Among the 676 drug sellers who received a stayed sentence, surveys were returned on 621 cases. In about 37% (228) of the 621 stayed cases, the offender was required to pay a fine ranging from \$25 to \$5,000 with an average of \$797 and a median of \$550. Restitution or payments to the "drug buy" fund were required in 38.2% of the stayed cases or for 237 offenders. Restitution ranged from \$20 to \$3,400 with an average of \$391 and a median of \$300. Community work service was not used as frequently as fines and restitution. It was used in only 14.3% of the stayed cases (89). The range of community work hours was 30 to 500 with an average of 158 hours and a median of 120 hours.

Chemical dependency evaluations were conducted for 365 of the 621 stayed cases or 58.8%. There were 241 offenders (38.8% of the stayed cases) who were required to complete a chemical dependency treatment program. A majority (139 or 58%) of these drug sellers went to nonresidential treatment, with 102 or 42% of the offenders going to residential treatment. Over 70% of those who were sent to treatment completed the program with 23 offenders still in the program and 48 offenders or 19.9% not completing the program.

Drug testing was done at least once in 25.8% of the stayed cases or for 160 offenders. There were 46 offenders (28.8%) who were known to have failed at least once.

Of the 621 drug dealers with stayed sentences (for whom there is information), 148 or 23.8% had a violation report filed. Among these 148 offenders, 68 received new sanctions, 23 were revoked and sent to prison, 13 are pending new sanctions, and 7 are pending a revocation. The most common reasons for a violation report were chemical dependency related problems (84), new or alleged offenses (60), and lack of cooperation with the probation officer (36). Among the 68 offenders who received new sanctions, 61.8% or 42 offenders were given time in jail.

IV. MARIJUANA

There were 497 offenders sentenced in 1989 for a felony marijuana conviction. Most of the marijuana convictions were for sale, 351 cases or 70.6%. The amount of marijuana that was involved in these cases was nearly always under 5 kilos (over 92% of the cases where data was available; i.e., 385 out of 417 cases). Nearly half (47%) of those cases involving less than 5 kilos were actually for less than 1 ounce. There were 24 cases involving more than 1 kilo but less than 10 kilos of marijuana, 8 cases involving more than 10 kilos but less than 24. Under the new 1989 drug laws, the cases would have to involve an amount of 25 kilos or more to place the offense at the 1st or 2nd degree level. Thus there were no cases sentenced in 1989 that could have been charged at the 1st or 2nd degree levels of the new 1989 drug laws. There were 76 cases where staff could not determine the weight of the marijuana because the amount was indicated

in terms of the number of marijuana plants (8 cases), an amount was specified as "more than 1.5 oz" on the survey response (26 cases), or the information was missing (42 cases).

The imprisonment rate for marijuana cases was 3.8% (19 offenders) in 1989 with an average prison sentence of 17.8 months. In addition, 82.5% of all marijuana offenders (410) served some time in a local jail; thus, a total of over 86% were incarcerated. There were 42 offenders for whom staff could not verify whether they had done any time.

Of the 410 offenders who served time in jail, 17.8% or 73 offenders served their time prior to the sentence. These offenders served an average of 14 days and 40 of the 73 offenders served 3 days or less. There were 337 offenders or 82.2% who served jail time after the sentence was pronounced. Nearly 75% of these offenders also served pre trial jail time. The average time served was 71 days and 5 offenders served 3 days or less.

Among those offenders who sold marijuana (351), the total percentage of offenders who served time in prison or jail was 88.6% with 4.0% (14 offenders) serving time in prison and 84.6% (297 offenders) serving time in jail.

Among the 478 marijuana offenders who were given a stayed sentence, there is information available on the intermediate sanctions given to 437 of those offenders. There were 194 offenders or 44.4% who were given a fine, ranging from \$25 to \$3,500. The average fine was \$732 and the median fine was \$550. A smaller percentage, 35.5% or 155 marijuana offenders, were required to pay restitution or to pay the "drug buy" fund, ranging from \$20 to \$2,135. The average amount of restitution was \$345 and the median was \$200. Community work service was used in 18.5% of the cases (81 offenders), ranging from 30 hours to 500+ hours. The average number of required hours was 130 and the median was 100 hours.

Chemical dependency evaluations were completed in 53.3% (234 offenders) of the stayed cases with returned surveys. Of the 439 stayed cases for which information was available, 129 offenders or 29.4% participated in a chemical dependency treatment program. Most of those who participated in a program, 88 offenders, were in a nonresidential program and 41 offenders participated in a residential program. A majority of those who participated in a treatment program also completed the program, 89 offenders or 69%. There were 15 offenders who were still in the program and 24 offenders had failed the program.

Drug testing was used in 25% (111) of the stayed cases for which surveys had been returned. Among these 111 offenders, it was reported that 29 or 26.1% failed at least one time.

By the end of 1990, violation reports were filed in 89 of the 437 stayed cases or 20.4%. Twelve of the 89 offenders were revoked and sent to prison, 43 offenders received new sanctions, 16 offenders have new sanctions pending, and 8 offenders have a revocation pending. The most common reasons for violating the stayed sentence were related to chemical dependency problems (54 cases) and new or alleged offenses (33 cases). Among the 43 offenders who received new sanctions, approximately 70% were given jail time.

V. POWDERED COCAINE

Powdered cocaine was involved in 613 of the 1,602 drug cases in 1989. While most of the marijuana cases had been for sale offenses, about half of cases involving powdered cocaine were for sale; 306 cases were for sale and 307 cases were for possession. Information on the amount of cocaine involved in the cases was available in 527 of the 613 cases. The vast majority of cases where the amount was known (70.2%) involved less than 10 grams of cocaine. There were 43 cases where the amount of cocaine ranged from 10 grams to under 50 grams, and there were 26 cases where the amount of cocaine ranged from 50 grams to 99 grams. There were 18 cases that involved 1 or more kilos.

The imprisonment rate for offenders sentenced for powdered cocaine offenses in 1989 was 17.1% or 105 offenders, up from 12.0% in 1988. The average prison sentence was 28.9 months or nearly 11 months more than the average sentence for marijuana prisoners. This average was higher than the 1988 average of 25.5 months. In addition to those sentenced to prison, a large majority of the offenders given a stayed sentence spent some time in jail, 438 offenders or 71.5%; thus, **88.6% of all powdered cocaine offenders served time in a jail or prison**. There were 52 offenders for whom it could not be verified whether any jail time was served.

Among the 438 offenders who served time in jail, 87 offenders or 19.9% served time prior to sentence only. These offenders served time ranging from 1 to 255 days with an average of 24 days and with 42 offenders serving 3 days or less. There were 351 offenders who served time after the sentence was pronounced ranging from 1 to 366 days with an average of 99 days and with only 4 offenders serving 3 days or less. Approximately 85% of those who served time in jail post sentence also served time in jail prior to the sentence as well.

Among those offenders who sold powdered cocaine (306), 91.8% served time in a prison or jail with 21.2% (65 offenders) serving time in prison and 70.6% (216 offenders) serving time in jail.

Of the 548 stayed cases, surveys were returned for 459 and the following is a summary of the intermediate sanctions imposed. A smaller percentage of powdered cocaine offenders than marijuana offenders were given financial sanctions. There were 119 powdered cocaine offenders or 25.9% who were given a fine as a condition of the stay, ranging from \$35 to \$5,000. The average fine was \$830 and the median was \$550. Restitution or a requirement to pay the "drug buy" fund was given in 21.6% of the cases or for 99 offenders, ranging from \$25 to \$5,000. The average amount of restitution was \$491 and the median was \$345. Community work service was used in 12.9% of the cases or for 59 offenders, ranging from 30 hours to 500 hours. The average number of hours given was 157 and the median was 100 hours.

A higher proportion of chemical dependency evaluations were completed for the powdered cocaine offenders than for the marijuana offenders with 292 offenders or 64% evaluated. A higher percentage participated in chemical dependency programs as well, 46% or 209 offenders. A slightly larger number of the 209 offenders participated in a nonresidential chemical dependency program (111 offenders) than a residential program (98 offenders). There were 142 offenders or 68% who completed a CD program with 20 offenders still in a program and 43 offenders failing a program.

Drug testing was used in 24.8% of the stayed cases with completed surveys or for 114 offenders. Thirty-three of the offenders failed at least once.

By the end of 1990, violation reports were filed in 117 of the 459 stayed cases. This represents 25.5% of the stayed cases, a slightly higher proportion than the marijuana cases. For 24 offenders, the stayed sentence was revoked and the offenders were sent to prison. In 49 of the cases, new sanctions were given, in 11 cases the new sanctions are still pending, and in 10 cases the revocation of the stayed sentence is pending. The most common reasons for violation were chemical dependency problems (64 cases), failure to cooperate with the probation officer (33 cases), and a new or alleged offense (49 cases). Of the 49 cases where new sanctions were reported, 49% or 24 offenders were given jail time.

VI. CRACK COCAINE

There were 218 offenders sentenced in 1990 for drug offenses involving crack cocaine. Seventy-five percent of these offenders (164) were convicted of possession of crack cocaine, with the remaining 25% (54) convicted of sale. In the majority of the cases (78%), the amount of crack involved was quite small, less than 3 grams. Most cases were less than 1 gram. There were 31 cases involving amounts ranging from 3 grams to less than 10 grams, 14 cases involving 10 grams to under 50 grams, and 2 cases involving 50 or more grams. Information on the amount of crack involved was missing for 1 of these cases.

Forty-five or 20.6% of those offenders sentenced for a crack cocaine offense were sentenced to prison with an average sentence of 23.3 months. The 1989 imprisonment rate is twice as high as the 1988 rate of 10.9%, but the average prison duration dropped somewhat from 28.7 months in 1988. A high percentage (78.0%) of offenders served time in a jail and thus, **a total of nearly 99% of all crack cocaine offenders served time in a prison or jail.** There was one offender for whom it could not be verified whether any time was spent in jail.

Among the 170 offenders who served time in a jail, 75 or 44.1% spent time in jail prior to the sentence. The amount of time ranged from 1 to 151 days with an average of 42 days and with only 11 offenders serving 3 days or less. There were 95 offenders or 55.9% who served time in jail after the sentence was pronounced. The time spent in jail ranged from 1 to 270 days with an average of 90 days and with no offenders serving 3 days or less.

Among those 54 offenders who sold crack cocaine, over 98% spent time in a prison or jail, with 19 or 35.2% doing prison time and 34 or 63.0% doing jail time.

Information on the intermediate sanctions placed on crack cocaine offenders are available for all but one of the 173 stayed cases. Financial sanctions were rarely used with crack cocaine cases as fines were given in 4 cases (2.3%) and restitution was given in 6 cases (3.5%). Fines ranged from \$200 to \$1,000 with an average of \$464 and a median of \$327. Restitution ranged from \$20 to \$2,400 with an average of \$560 and a median of \$153. Community work service was given in 11.0% (19 cases) of the stayed cases and ranged from 25 hours to 375 hours. In the 19 cases where community work service was given, the average number of hours was 108 and the median was 75 hours.

A chemical dependency evaluation was conducted in 64% of the stayed cases and CD treatment was required for 42% or 72 of those given a stayed sentence. Most of those required to participate in chemical dependency treatment were sent to residential programs (50) with 22 offenders going to nonresidential programs. Thirty-five percent of those who entered treatment completed the program. This completion rate is the lowest of the three drug types reviewed in this report (marijuana, powdered cocaine, and crack cocaine). Nine offenders were still in a program and 38 or 53% failed a program.

Forty-one offenders or 24% were given random drug testing and 15 of those offenders failed at least once.

Crack cocaine offenders also violated their probation more frequently than marijuana or powdered cocaine offenders. By the end of 1990, over half (92) of all crack cocaine offenders who were given a stayed sentence violated their probation. Twenty-nine offenders were revoked and sent to prison, 40 offenders received new sanctions, 11 offenders have new sanctions pending, and 7 offenders have a revocation pending. As was the case with the other drug types, chemical dependency related problems was the

most common reason for a violation report (54). Other reasons were lack of cooperation with the probation officer (43) and a new or alleged offense (48). Twenty-five of the 40 offenders who received new sanctions were required to spend time in jail.

VII. OTHER DRUG TYPES

This report has provided detailed information on drug offenses involving marijuana, powdered cocaine, and crack cocaine. These are the most common drugs involved in the controlled substance convictions. In addition to these cases there were also 89 cases involving amphetamines, 73 cases involving hallucinogens, 49 cases involving synthetic narcotics, 23 cases involving schedule IV controlled substances, 2 cases involving barbiturates, 19 cases involving simulated controlled substances, 15 cases involving heroin, 1 case involving opium, and 3 cases where the type of drug could not be determined. There were also 51 cases involving the fraudulent procurement of controlled substances and one conviction for violation of the controlled substance tax stamp provisions. Please contact the Commission offices at 296-0144 if you would like more information on these other drug offenses.

APPENDIX

**INCARCERATION RATES
DRUG OFFENDERS SENTENCED IN 1989**

	PRISON	PRE-SENTENCE JAIL ONLY	POST OR PRE & POST SENTENCE JAIL	TOTAL JAIL	TOTAL INCARCERATION
ALL DRUG OFFENDERS (1602)	14% (220)	18% (286)	57% (908)	75% (1194)	88% (1414)
SALE (801)	16% (125)	11% (88)	64% (511)	75% (599)	90% (724)
POSSESSION (749)	12% (90)	25% (184)	50% (377)	75% (561)	87% (651)
ALL MARIJUANA OFFENDERS (497)	4% (19)	15% (73)	68% (337)	83% (410)	86% (429)
ALL POWDER COCAINE OFFENDERS (613)	17% (105)	14% (87)	57% (351)	72% (438)	87% (543)
ALL CRACK COCAINE OFFENDERS (218)	21% (45)	34% (75)	44% (95)	78% (170)	99% (215)

**AVERAGE PRISON AND JAIL DURATIONS
DRUG OFFENDERS SENTENCED IN 1989**

	PRONOUNCED PRISON	PRE-SENTENCE JAIL ONLY (SERVED)	POST OR PRE & POST SENTENCE JAIL (SERVED)	TOTAL JAIL (SERVED)
ALL DRUG OFFENDERS	26.1 months	27 days	85 days	71 days
SALE	31.7 months	31 days	103 days	93 days
POSSESSION	18.8 months	26 days	64 days	52 days
ALL MARIJUANA OFFENDERS	17.8 months	14 days	71 days	61 days
ALL POWDER COCAINE OFFENDERS	28.9 months	24 days	99 days	84 days
ALL CRACK COCAINE OFFENDERS	23.3 months	42 days	90 days	69 days

**PERCENT OF DRUG OFFENDERS SENTENCED IN 1989
WHO RECEIVED FINES, RESTITUTION OR COMMUNITY WORK SERVICE
(Figures based on offenders for whom a survey was returned)**

	FINES	RESTITUTION	COMMUNITY WORK SERVICE
ALL DRUG OFFENDERS (1264)	29% (368)	23% (293)	15% (192)
SALE (621)	37% (228)	38% (237)	14% (89)
POSSESSION (601)	22% (131)	9% (52)	16% (96)
ALL MARIJUANA OFFENDERS (437)	44% (194)	36% (155)	19% (81)
ALL POWDER COCAINE OFFENDERS (459)	26% (119)	22% (99)	13% (59)
ALL CRACK COCAINE OFFENDERS (172)	2% (4)	4% (6)	11% (19)

**AVERAGE AND MEDIAN AMOUNT OF FINES, RESTITUTION AND COMMUNITY WORK SERVICE
FOR DRUG OFFENDERS SENTENCED IN 1989
(Figures based on offenders for whom a survey was returned)**

		FINES	RESTITUTION	COMMUNITY WORK SERVICE
ALL DRUG OFFENDERS	Mean	\$760	\$401	138 Hours
	Median	\$530	\$300	100 Hours
SALE	Mean	\$797	\$391	158 Hours
	Median	\$550	\$300	120 Hours
POSSESSION	Mean	\$715	\$460	123 Hours
	Median	\$500	\$300	100 Hours
ALL MARIJUANA OFFENDERS	Mean	\$732	\$345	130 Hours
	Median	\$550	\$200	100 Hours
ALL POWDER COCAINE OFFENDERS	Mean	\$830	\$491	157 Hours
	Median	\$550	\$345	100 Hours
ALL CRACK COCAINE OFFENDERS	Mean	\$464	\$560	108 Hours
	Median	\$327	\$153	75 Hours

**PERCENT OF DRUG OFFENDERS SENTENCED IN 1989
WHO RECEIVED CHEMICAL DEPENDENCY EVALUATIONS OR TREATMENT
(Figures based on offenders for whom a survey was returned)**

	CD EVAL.	CD TREATMENT		
		PARTICIPATED IN TREATMENT	COMPLETED TREATMENT*	STILL IN TREATMENT*
ALL DRUG OFFENDERS (1264)	61% (774)	40% (511)	62% (320)	12% (61)
SALE (621)	59% (365)	39% (241)	71% (170)	10% (23)
POSSESSION (601)	62% (376)	40% (241)	56% (135)	12% (29)
ALL MARIJUANA OFFENDERS (437)	53% (234)	29% (129)	69% (89)	12% (15)
ALL POWDER COCAINE OFFENDERS (459)	64% (292)	46% (209)	68% (142)	10% (20)
ALL CRACK COCAINE OFFENDERS (172)	64% (110)	42% (72)	35% (25)	5% (9)

*Percentage of offenders who completed or are still in treatment is based on number of offenders who participated in a treatment program.

**DRUG TESTING
DRUG OFFENDERS SENTENCED IN 1989
(Figures based on offenders for whom a survey was returned)**

	TESTING CONDUCTED	OFFENDER FAILED DRUG TESTING AT LEAST ONCE*
ALL DRUG OFFENDERS (1264)	25% (315)	34% (106)
SALE (621)	26% (160)	29% (46)
POSSESSION (601)	24% (143)	39% (56)
ALL MARIJUANA OFFENDERS (437)	25% (111)	26% (29)
ALL POWDER COCAINE OFFENDERS (459)	25% (114)	29% (33)
ALL CRACK COCAINE OFFENDERS (172)	24% (41)	37% (15)

*Percent of offenders who failed a drug test at least once is based on the total number who received drug testing as a sanction.