

Minnesota Sentencing Guidelines Commission

Annual Report to the Legislature
January 15, 2008

Minnesota Sentencing Guidelines Commission

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Introduction

In 1978, the Minnesota Sentencing Guidelines Commission (MSGC) was established, and Minnesota became the first state to implement a sentencing guidelines structure. Since then, MSGC has been responsible for revising the guidelines so as to incorporate statutory changes, monitoring the application of the guidelines to individual cases, and providing guidelines training to judges, lawyers, and probation officers. MSGC maintains a remarkable database on all Minnesota felony offenders from 1981 to the present. The Commission uses these data to inform sentencing policy and to facilitate the coordination of sentencing practices with correctional resources. The agency works with the Department of Corrections to calculate accurate projections of the need for prison beds. MSGC's data are the foundation for carrying out its mission to support and promote criminal sentencing that is consistent statewide, proportionate, and free from irrational disparities. Throughout its work, the agency is mindful of the overarching requirement that sentencing promote public safety.

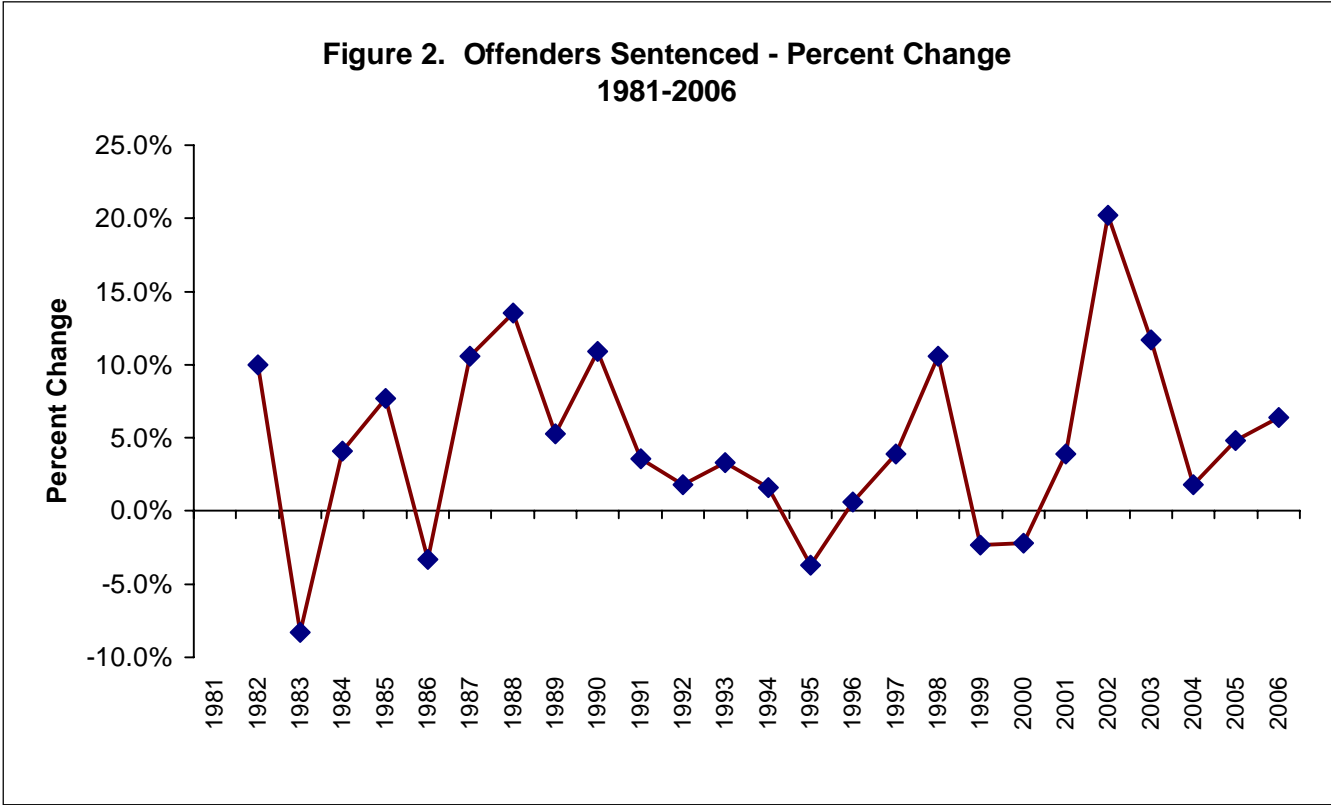
Each January, MSGC submits this annual Report to the Legislature. The report sets forth modifications to the sentencing guidelines, nearly all of which are necessitated by changes in criminal statutes or by new caselaw created by Minnesota's appellate courts. These modifications are effective on August 1 of the year in which they are reported, unless the Legislature passes a law negating them. The report also contains a variety of sentencing information, including a summary of annual data, analysis of felony DWI sentences throughout the state, and data provided by County Attorneys concerning firearms cases.

The Minnesota Sentencing Guidelines Commission hopes that the information found in the report will be both informative and useful. Commission staff is available to answer any questions concerning felony sentencing in Minnesota, or to provide additional Minnesota data. Several additional reports on overall data trends and sentencing for specific offenses are available on our website at: www.msgc.state.mn.us.

Data Summary

There were 16,446 felony offenders sentenced in 2006; an increase of roughly six and a half percent over 2005. The large growth experienced between 2004 and 2005 can be attributed to the implementation of the felony Driving While Impaired (DWI) law and increases in the number of drug crimes sentenced, particularly methamphetamine cases. Both trends appear to have leveled off. The number of felony DWI offenders sentenced actually declined in both 2005 and 2006, while the growth in the number of drug offenders was less than the growth in person offenses and property offenses. As a proportion of total crimes sentenced, drug crimes decreased for the first time since 2001.

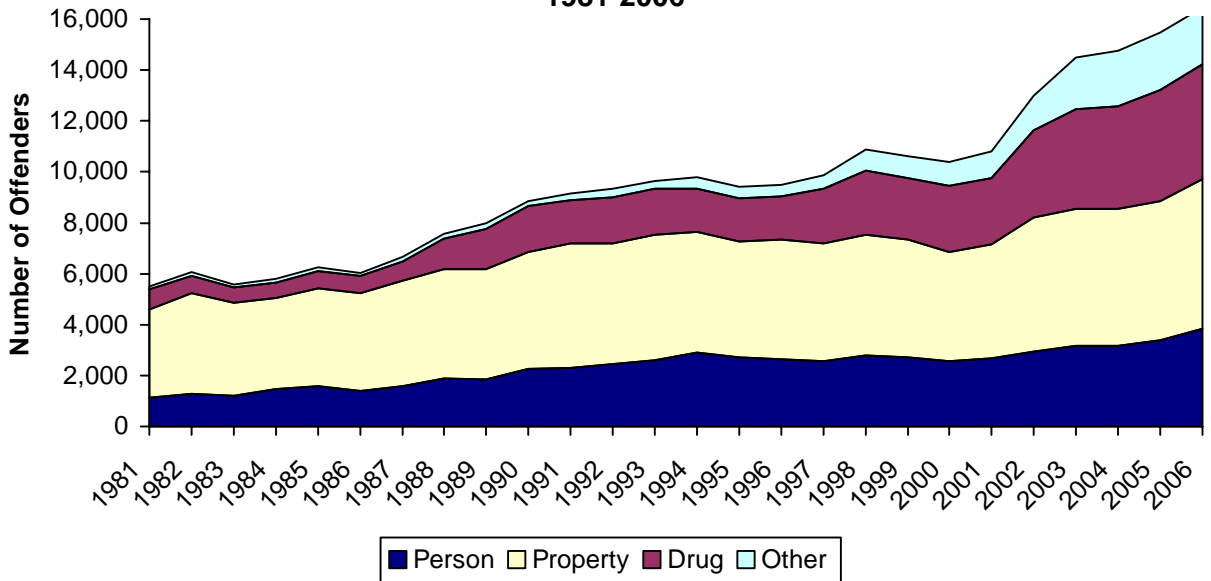




The crime category with the most growth in 2006 was “person” with a growth rate of over 13 percent. Part of this growth can be attributed to the fact that 2006 was the first full year in which first-degree murder offenses were included in the Commission’s data.¹ In 2006 there were 25 completed first-degree murders sentenced. If those cases are excluded from the figure, person crimes have increased by 12.4 percent. The crime with the most impact on the growth rate of person crimes was domestic assault by strangulation. In 2005, the Legislature made it a felony to assault a family or household member by strangulation. The crime went into effect August 1, 2005 and there were 20 offenders sentenced by the end of December. In 2006, there were 264 offenders sentenced. The number of offenders sentenced for other felony domestic assaults was the same in 2006 as in 2005 and the number of offenders sentenced for third-degree assault and felony fifth-degree assault increased; so it seems clear that the domestic assault by strangulation offenses are largely cases that would not have been felony offenses before the statutory change. Without both first-degree murder offenses and domestic assault by strangulation offenses, the growth rate of person crimes was 5.2 percent.

¹ Before August 1, 2005, first-degree murder was not included in the MSGC’s dataset; first-degree murder is excluded from the sentencing guidelines by law and continues to have a mandatory life sentence.

**Figure 3. Number of Offenders Sentenced by Offense Type
1981-2006**



The Commission's Activities in 2007

The Minnesota Sentencing Guidelines Commission consists of eleven members, of whom three are judges appointed by Minnesota's Chief Justice and eight are citizens appointed by the Governor. Currently, the Governor's appointees are: Commission Chair Jeffrey Edblad, Isanti County Attorney; Rev. Robert Battle, citizen member, St. Paul; Fifth Judicial District Assistant Public Defender Darci Bentz; Kari Berman, citizen member, Minneapolis; Commissioner of Corrections Joan Fabian; Martin County Sheriff Brad Gerhardt; Washington County Community Corrections Supervisor Tracy Jenson; and Connie Larson, citizen member, Waseca. The judicial representatives are Second Judicial District Judge Edward Cleary, Supreme Court Justice Helen Meyer, and Court of Appeals Judge Gordon Shumaker.

The Commission makes policy decisions concerning felony sentencing. These are implemented by a staff supervised by an executive director.

2007 Legislative Session

Four new assignments were given to the Commission by the 2007 Legislature. Each required a report to the legislature in 2008.

The Commission was directed to re-rank controlled substance offenses on the sentencing guidelines grid, making presumptive sentences more proportional to the sentences for other crimes in Minnesota and more similar to drug sentencing provisions in jurisdictions throughout the United States, including the Federal system. It was also required to report the following data: the average and the range of criminal history scores for each level of drug offender currently incarcerated in Minnesota's prisons; the criminal history of offenders who would be impacted by the Commission's recommendations; the type and quantity of Minnesota correctional resources that are dedicated to all drug offenders; and the projected annual cost to the Department of Corrections of incarcerating all drug offenders in state prisons over the next ten years, under present grid rankings and under the proposed grid rankings. Proposed modifications were to be submitted to the Legislature by January 15. Like all modifications incorporated in MSGC's annual report, they become effective August 1, unless the legislature provides otherwise.

The 2007 Legislature created a Collateral Sanctions Committee to be chaired by the Executive Director of the Sentencing Guidelines Commission. The Committee was staffed by MSGC, with assistance from the Department of Corrections and Department of Public Safety. Although it was chaired and staffed by MSGC, the Guidelines Commissioners did not participate in the work and took no part in creating its final report. Its charge was to study issues related to how criminal convictions and adjudications affect employment and professional licensing opportunities. In addition, it was to investigate how collateral sanctions are addressed in other states and determine best practices. The group consisted of 20 appointees, including criminal justice professionals, housing and employment experts, an ex-criminal offender and a member

from a community of color. This project is the Legislature's and is fully funded by that body. They are also to report by February 1, 2008, recommended changes to Human Services' background studies, set-aside policies, and variance policies.

The MSGC was required to study the effectiveness of re-entry programs and drug courts. It was assigned to assess the impact drug courts and specified programs have on recidivism. The Commission worked with the Department of Corrections and the State Court Administrator's Office and filed a preliminary report before January 15, 2008. A final report is due January 15, 2009.

Research

The Minnesota Sentencing Guidelines Commission, in collaboration with the University of Minnesota College of Law's Institute on Race and Poverty, has determined to go forward with a study designed to address the unacceptable overrepresentation of racial and ethnic minorities in Minnesota's correctional populations. The project was designed by the two agencies' staff, together with sentencing experts on the faculty of the University College of Law and skilled researchers from the Minnesota State Court. The participants are motivated by the desire to identify, and to enact, specific changes in law, policy, and practice that will appreciably reduce racial disparity.

This pioneering work will begin with mining the Commission's extraordinary data bank, which contains details of every felony conviction and sentence in the state since 1978. The Commission's data will be merged with State Court data that includes initial charges and dismissals. The project will thoroughly evaluate sample populations of African-Americans, Native Americans, Hispanics and Asians throughout Minnesota; for those minority groups, detailed information about arrests, crime facts, race of victim, co-defendants and offenders' personal/social history will be collected and analyzed. Interviews of criminal justice professionals, educators, public health officials and community leaders will enrich the study.

The Institute on Race and Poverty will trace offenders back to the schools they attended and the neighborhoods in which they were living when arrested to evaluate a variety of questions about the impact of environmental factors on conviction rates. While it is clear enough that there are links from segregation and poverty to a wide range of dysfunctions, very little work has been done to establish directly the effects of school and neighborhood characteristics on conviction rates.

The multifaceted and cumulative nature of racial disparity that is ultimately reflected in criminal sentences calls for the multifaceted, collaborative and broad approach employed in this project. Looking beyond the relatively narrow confines of court processing expands the range of possible remedies that the research can suggest to policy makers in Minnesota's legislature, schools, cities, and counties.

Maintaining Guidelines

The Commission made numerous decisions concerning changes that should be made to the guidelines, based on changes in statutes. It also incorporated relevant Supreme Court decisions into the guidelines. All modifications are set forth in the Appendix, beginning on p. 40. They were published in the annual revision of the guidelines, which took effect on August 1.

Staff Activity

As part of the agency's core functions, Commission staff processed and ensured the accuracy of over 16,000 sentencing records; published annual editions of the sentencing guidelines and commentary and reports to the legislature; produced fiscal notes which help predict the impact of proposed change in criminal statutes; collaborated with the Department of Corrections to generate prison-bed projections each year; coordinated information technologies with other criminal and juvenile justice agencies (i.e., CriMNet) to ensure public safety; and provided assistance to hundreds of practitioners seeking help with the application of the sentencing guidelines. MSGC provided training to approximately 900 probation officers, lawyers and judges in half-day and full-day sessions throughout Minnesota.

A new method for retrieving sentencing records from the State Courts is being developed. This was precipitated by the implementation of the Court's new Information System (MNCIS). Once fully developed, it is hoped that the new method will prove more efficient than the current practice (i.e., instantaneous retrieval of sentencing data will replace the staff's need to manually look up an estimated 16,000 records annually). Additional data will be collected for further research, as well.

Sentencing Guidelines Modifications

A. Legislative Directive Regarding Controlled Substance Rankings

Following the 2007 session of the Minnesota Legislature, the Minnesota Sentencing Guidelines Commission was directed by legislative action as follows:

Changes to Grid for Controlled Substance Offenses. The Commission shall propose changed rankings for controlled substance offenses on the sentencing guidelines grid. The proposal must encompass the following factors:

1. the proportionality of Minnesota's drug sentencing provisions when compared to sentencing provisions for other crimes in Minnesota;
2. the proportionality of Minnesota's drug sentencing provisions when compared to drug sentencing provisions throughout the United States, including the Federal system;
3. the average and the range of criminal history scores for each level of drug offender currently incarcerated in Minnesota's prisons;
4. the criminal history of offenders who would be impacted by the Commission's recommendations;
5. the type and quantity of Minnesota correctional resources that are dedicated to all drug offenders; and
6. the projected annual cost to the Department of Corrections of incarcerating all drug offenders in state prisons over the next ten years, under present grid rankings and under the proposed grid rankings. The Commission's proposal shall not take effect, except as provided in Minnesota Statutes, section 244.09, subdivision 11.

In response to the above action of the Minnesota Legislature, the Minnesota Sentencing Guidelines Commission debated four proposals for the re-ranking of controlled substance offenses. A public hearing was held on November 1, 2007, to take testimony on a proposal to leave First-Degree Controlled Substance Sale offenses, Second-Degree Controlled Substance Sale offenses and First-Degree Controlled Substance-Manufacture of Methamphetamine offenses at their current severity levels on the Minnesota Sentencing Guidelines Grid but re-rank First-Degree Controlled Substance Possession offenses and Second-Degree Controlled Substance Possession offenses by reducing their severity level by one on the Minnesota Sentencing Guidelines Grid. (See, Appendix A., for a description of the four proposals considered.)

At the public hearing, the proposal received strong support from the Minnesota Association of Criminal Defense Lawyers and the Office of the Minnesota State Public Defender, as well as some support from the public. The proposal was strongly opposed by the Minnesota Law Enforcement Coalition representing the Minnesota County Attorneys

Association, the Minnesota Chiefs of Police Association, the Minnesota Sheriffs Association and the Minnesota Police and Peace Officers Association. Several individuals and representatives from neighborhood organizations also spoke against the proposal.

On November 14, 2007, the Honorable Tim Pawlenty, Governor of the State of Minnesota, wrote a letter to the Commission, agreeing with the concerns expressed by the Minnesota Law Enforcement Coalition. The Governor opposed enactment of the proposal to re-rank First-Degree Controlled Substance Possession offenses and Second-Degree Controlled Substance Possession offenses. The Guidelines Commission met on November 15, 2007, to address and finalize the proposed Guidelines modifications re-ranking First-Degree and Second-Degree Controlled Substance Possession offenses. As a result of the public testimony and exhibits it had received, the Commission rejected the re-ranking proposal. The decision was made after discussion on the information submitted and a consideration of Minnesota Statutes, section 244.09 Subd. 5, which states, in part: "In establishing and modifying the Sentencing Guidelines, the primary consideration of the commission shall be public safety." The Minnesota Sentencing Guidelines Commission believes that more thorough and comprehensive review should be given to the entire controlled substance offense sentencing structure and policy prior to a thoughtful and responsible decision on the re-ranking of controlled substance offenses.

Background

It should be noted that there was a misconception that the Commission's January 15, 2004, *Special Report to the Legislature on Drug Offender Sentencing Issues*, and January 31, 2007, *Updated Drug Report*, "recommended" that Minnesota's controlled substance offense sentences be re-ranked by moving them down one severity level on the Minnesota Sentencing Guidelines Grid. This is not accurate. The re-ranking option was included in the reports as one of several options the legislature could consider and debate in deciding if drug laws and sentences need reform. Because they were options and not recommendations, Minnesota Sentencing Guidelines Commission members did not fully debate the data presented or the pros and cons of implementing various changes. It was the Commission's belief that this review would happen prior to any changes. The Updated 2007 drug report definitively states (pg. 2) "it is for our elected representatives in the legislature to decide whether the time has come to overhaul Minnesota's drug laws." "Any major change should be based on a thorough consideration of the entire legal structure in light of current data and research." A "thorough consideration of the entire legal structure," with an opportunity for public input, has not yet occurred.

The Minnesota Sentencing Guidelines Commission feels it would be arbitrary to take action to re-rank any drug sentences before a comprehensive study and debate is conducted. A piecemeal approach to the issue is ill-advised, since the problems existing in the drug-sentencing structure have not been adequately defined. A patch work alteration could have serious unintended consequences.

Recommendations

The Minnesota Sentencing Guidelines Commission respectfully recommends that the Minnesota Legislature appoint a bipartisan task force of knowledgeable criminal justice professionals, including one Sentencing Guidelines commissioner, to conduct a comprehensive review of Minnesota's controlled substance laws, including sentencing Guidelines and policies, to determine if changes to these laws should be made.

This approach would provide an opportunity to fully review and debate the policy issues related to controlled substance offenses and to make informed recommendations concerning appropriate changes. Areas for possible review include, but are not limited to:

1. Statutory changes – defining drug offenses more specifically;
2. Examine threshold amounts for various drugs;
3. The option of creating a separate sentencing guidelines grid for drug offenses;
4. Need for additional aggravating factors to identify drug kingpins and other dangerous offenders;
5. Debate on the significance of departure rates – an indication of belief sentences are too severe or a tool to exercise discretion?;
6. *Blakely v. Washington*, 1264 S.Ct. 2531 (2004) considerations;
7. Discussion of challenges of collecting and analyzing comparison data of Minnesota drug sentencing and other states/systems;
8. Disparity issues;
9. Proportionality of drug sentences to other serious offender sentences;
10. Review of best alternatives for drug offender probation revocations and supervised release violations;
11. Alternative programs and resources currently available for drug offenders;
12. Appropriate level of accountability for violent and entrepreneurial drug offenders;
13. Effect of any changes on victims, witnesses and neighborhoods;
14. Effect of change on law enforcement, prosecution, and public defenders ability to do their jobs;
15. The effectiveness, availability, funding of CD treatment and other intervention strategies;
16. Revising criminal history point calculations for repeat drug offenders;
17. Look at unintended consequences of any changes recommended.

Proportionality with other Minnesota Offenses

The philosophy of rational and consistent sentencing policy assumes that offenses ranked at the same severity level are equally serious, and that an offense is more severe than offenses ranked below it. However, as currently ranked, first-degree drug offenses (the sale of 10 grams or possession of 25 grams of cocaine or methamphetamine) are equated with offenses such as third-degree murder, first-degree assault, and other offenses that cause great bodily harm or death to the victim. Second-degree drug offenses (the sale of 3–10 grams or possession of 6-25 grams of cocaine or methamphetamine) are also ranked with several offenses that involve severe personal harm or death, such as criminal vehicular homicide and drive-by shooting. Although high-level drug offenses are serious crimes, not all of those drug offenses present the same risk to public safety as the person offenses mentioned above.

Table 1. Severity Rankings for Various Minnesota Felony Offenses
(For offenses committed on/after August 1, 2007)

Current Severity Level Ranking	Presumptive Sentence (Criminal History Score = 0)	Offense
IX	86 months - prison	First-Degree Controlled Substance
		Third-Degree Murder
		First-Degree Manslaughter
		First-Degree Assault
		Kidnapping (great bodily harm)
B	90 months – prison	Second-Degree Criminal Sexual Conduct (subd. c, d, e, f, h)
VIII	48 months - prison	Second-Degree Controlled Substance
		Criminal Vehicular Homicide
		First-Degree Aggravated Robbery
		Burglary (with assault or weapon)
		Drive-By Shooting
C	48 months – prison	Third-Degree Criminal Sexual Conduct (subd. c, d, g-n)
VI	21 months - stayed	Third-Degree Controlled Substance
		Second-Degree Aggravated Robbery
		Kidnapping (safe release)
		Burglary (of an occupied dwelling)
E	24 months – stayed	Dissemination of Child Pornography
IV	12 months + 1 day - stayed	Fourth-Degree Controlled Substance
		Third- and Fifth-Degree Assault
		Felony Domestic Assault
		Terroristic Threats
		Harassment/Stalking
II	12 months + 1 day - stayed	Fifth-Degree Controlled Substance

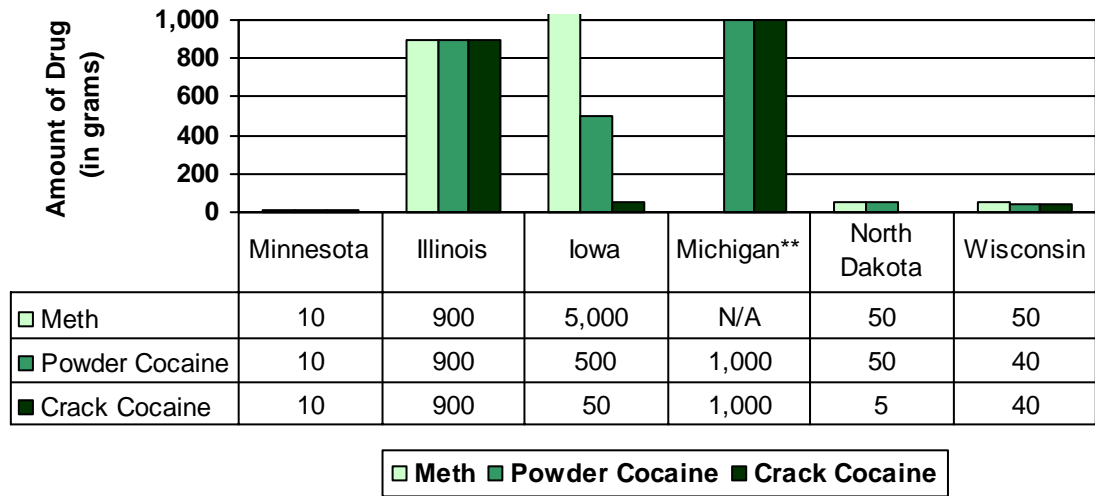
Current Severity Level Ranking	Presumptive Sentence (Criminal History Score = 0)	Offense
		Theft-Related Offenses (<\$5,000)
		Criminal Damage to Property
		Aggravated Forgery (non-check)

Proportionality with Drug Sentence Provisions throughout the United States

Comparing drug offense sentencing provisions among states presents many challenges. Minnesota is currently the only state in the upper Midwest to have a comprehensive sentencing guidelines system in place, making it impossible to compare recommended sentences and departure rates with our neighboring states. Wisconsin recently re-established its sentencing guidelines commission, but their guidelines currently apply to only a select number of felony offenses, including the most serious drug offenses. Additionally, every state defines offenses differently. States differ dramatically in their definition of drug offenses relating to criminal act (sale, manufacture, possession), type of drug involved (powder cocaine, crack cocaine, methamphetamine, etc.) and the amount of drug involved.

The Commission studied drug offense provisions throughout the United States. South Dakota was excluded from the comparison because it does not distinguish between different levels of drug offense; all drug possession/sale/manufacture offenses in that state carry a statutory maximum of 10 years, regardless of drug amount. Because these states do not have comprehensive sentencing guidelines to govern sentencing, it is impossible to compare presumptive sentences. Instead, the Commission compared the most serious drug offenses in each jurisdiction. Since most felony-level drug offenses in Minnesota involve powder cocaine, crack cocaine, or methamphetamine, the following information focuses on offenses involving these drugs. Figure 4 illustrates the threshold amounts for the most serious sale offenses in the Midwestern states.

**Figure 4. Comparison of Midwestern States:
Drug Thresholds for Most Serious Sale Offenses**



**In Michigan, the sale of any amount of meth is a felony, carrying a statutory maximum of 20 years.

As was done in the 2007 Updated Drug Report, the Commission has also compared presumptive sentences (or minimum sentences) across various states for two different offenders: offender A is convicted of selling 10 grams of cocaine (Figure 5), while offender B is convicted of possessing 25 grams of the same drug (Figure 6). It is assumed that offenders A and B have no prior criminal history. In Minnesota, both of these offenses qualify as first-degree drug offenses, carrying a presumptive sentence of 86 months under the current guidelines.

The figures illustrate that, while there is wide variation in how states deal with offenders at these threshold levels, Minnesota's presumptive sentence length is much longer than the sentences imposed for comparable crimes in many other states. In examining Figures 5 and 6, it is apparent that other states tend to have lower presumptive/minimum sentences for the possession offense than Minnesota has.

Figure 5. Presumptive (Minimum) Sentence Lengths for Offender A: Sale of 10 grams

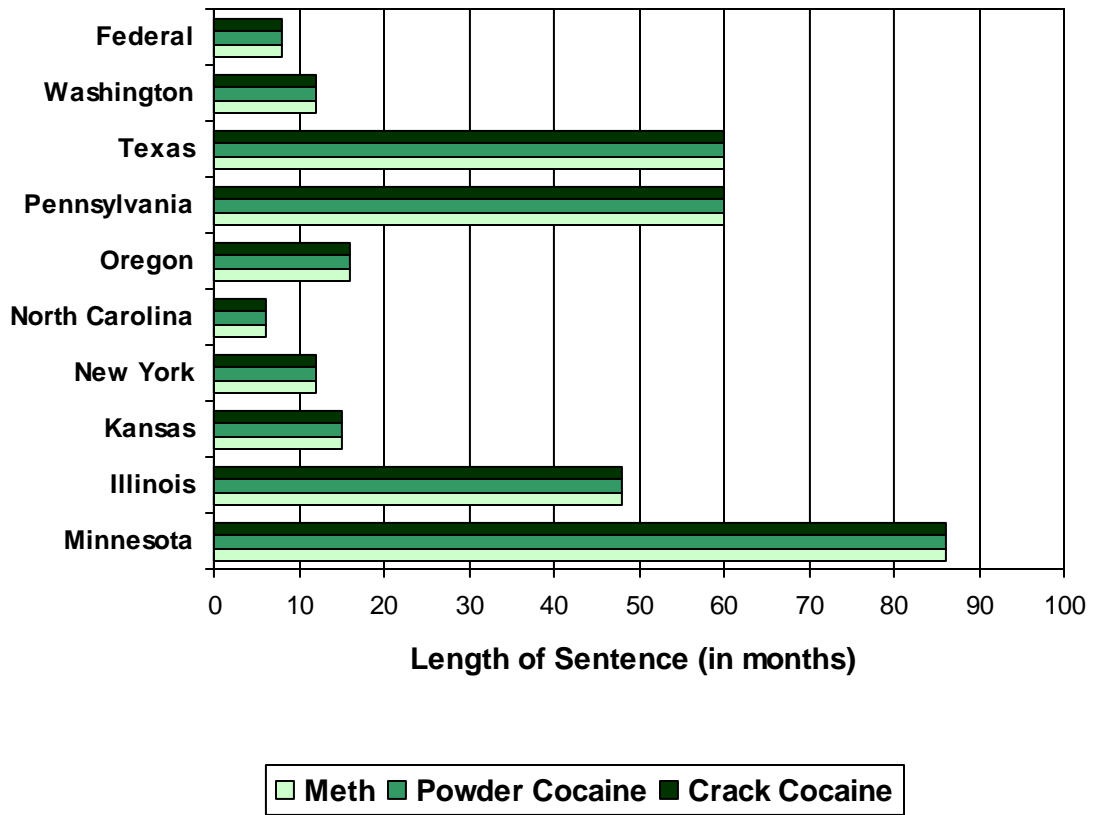
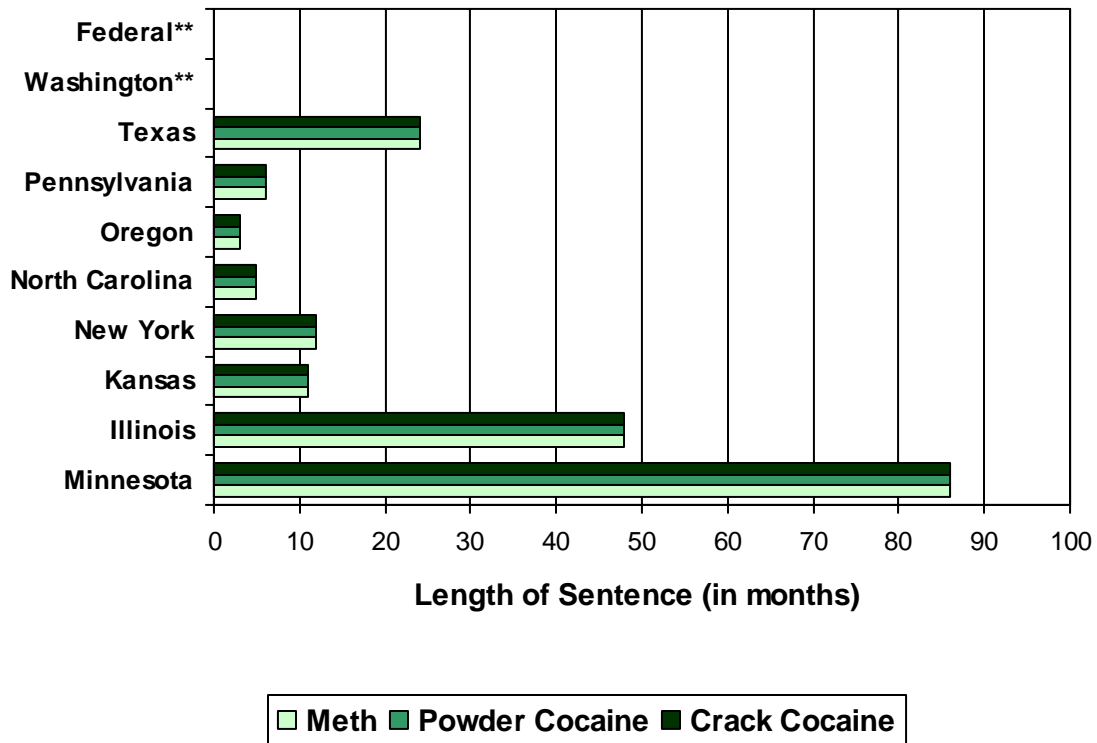


Figure 6. Presumptive (Minimum) Sentence Lengths for Offender B: Possession of 25 grams



**The Federal Sentencing Guidelines and the state of Washington call for a misdemeanor sentence of 0-6 months for offenders with no criminal history.

It is also worth noting that many other states have several threshold levels above Minnesota’s highest threshold level. For example, in Illinois, there are six threshold levels in statute, four of which are higher than Minnesota’s first-degree threshold level: 1.) less than one gram; 2.) one gram or more, but less than 15 grams; 3.) 15 grams or more, but less than 100 grams; 4.) 100 grams or more, but less than 400 grams; 5.) 400 grams or more, but less than 900 grams; and 6.) 900 grams or more. Accordingly, the mandatory minimums increase at each level to establish proportionality, so that offenders selling more than 900 grams of cocaine have a much more severe sentence than offenders selling 10 grams.

Offender Criminal History Scores

A.) Average and Range of Offenders Currently Incarcerated in Minnesota’s Prisons

The Legislature asked the Commission to report on the average and range of criminal history scores for all drug offenders currently incarcerated in Minnesota’s prisons. Given the nature of MSGC’s data, it is not possible to report criminal history information in this fashion; MSGC does not track which offenders are currently imprisoned. However, MSGC is able to report on the criminal history scores of offenders who received a prison sentence in a given year, as well as those offenders for whom probation was revoked and were sent to prison. Given that these two populations are quite different, MSGC is reporting criminal history

information separately for each group. As the tables below illustrate, the average criminal history score for drug offenders who were first given a probationary sentence are noticeably lower than the average score for drug offenders who received prison sentences.

Table 2. Average and Range of Criminal History Score for Drug Offenders Sentenced to Prison in 2006

Degree of Drug Offense	Number of Offenders Sentenced	Average Criminal History Score	Range of Criminal History Score (Minimum-Maximum)
First	185	1.65	0-13
Second	210	2.00	0-11
Third	138	3.83	0-10
Fourth	29	3.72	0-9
Fifth	337	3.79	0-15
Simulated Cont. Sub.	1	10.00	10-10
Anhydrous Ammonia	1	4.00	4-4
Poss. w/ Intent to Manufacture Meth	11	2.46	0-5
TOTAL	912	2.94	0-15

Table 3. Average and Range of Criminal History Score for Drug Offenders Revoked from Probation and Sent to Prison in 2006

Degree of Drug Offense	Number of Offenders Sentenced	Average Criminal History Score	Range of Criminal History Score (Minimum-Maximum)
First	34	1.21	0-7
Second	20	2.35	0-12
Third	89	0.84	0-7
Fourth	27	1.44	0-7
Fifth	501	1.54	0-13
Simulated Cont. Sub.	5	1.40	0-3
Anhydrous Ammonia	2	0.50	0-1
Poss. w/ Intent to Manufacture Meth	8	0.89	0-2
TOTAL	686	1.44	0-13

B.) Criminal History Score of Offenders Affected by the Commission's Recommendations

It is not possible yet to complete this calculation because the Commission felt a comprehensive study needed to be completed before re-ranking could occur.

Correctional Resources

Because of the complexity of this information and the number of jurisdictions which would need to report data, it was not possible to fulfill this request in the time allotted.

Projected Costs

According to the Department of Corrections (DOC), the current per diem rate for inmates is \$86.14. DOC estimates the following cost projections for drug offenders through 2016:

Year	Projected Population of Drug Offenders	Total Projected Costs
2007 – Jan.	1858*	
2008 – Dec.	1904	\$58,982,320
2009 – Dec.	1997	\$60,508,270
2010 – Dec.	2054	\$61,988,096
2011 – Dec.	2094	\$63,038,107
2012 – Dec.	2149	\$64,070,542
2013 – Dec.	2216	\$65,377,272
2014 – Dec.	2279	\$66,725,465
2015 – Dec.	2337	\$67,976,958
2016 – Dec.	2404	\$69,307,139

*Actual population of drug offenders; serves as “base” for projections

Bed Impact Assumptions:

- Average adult per diem for FY07 of \$86.14 was used to calculate the base cost of the current drug offender prison population.
- Base costs of the current drug offender prison population do not include inflationary increases for subsequent years.
- Projected costs for the increases in prison beds for drug offender are based on a marginal cost per diem for each fiscal year. The annual per diems are as follows: FY07 \$61.34, FY08 \$53.73, FY09 \$54.96, FY10 \$56.00, and FY11-FY16 \$57.27. This includes marginal costs for all facility, private and public bed rental, health care and support costs.
- In order to estimate the annual cost the number of prison beds needed for drug offenders is phased in on a quarterly basis. Multiplying the number of beds each quarter by the subsequent annual per diem determines the estimate for the annual costs of prison beds.

Since the Commission felt a comprehensive study needed to be completed before re-ranking could occur, it is not possible to estimate any cost savings for the Department of Corrections.

B. Ranking of Offenses

Changes to the sentencing guidelines related to new and amended crimes passed by the Legislature during the 2007 Session became effective August 1, 2007. The exact language of all changes is included in the Appendix.

Based on new and amended crime legislation in the 2007 Legislative Session, the Commission adopted the following severity level rankings:

1. Severity Levels C & E – Criminal Sexual Conduct in the Third-Degree and Fourth-Degree: The Legislature added the performance of massage or bodywork for hire to an offense category. The Commission ranked these offenses similar to others for which the actor is in a specified occupation.
2. Severity Levels VIII, V & III – Criminal Vehicular Homicide or Operation: A new provision was added for a driver who knowingly operates a defective motor vehicle and causes death or injury as a result. The Commission adopted a proposal to retain the current rankings.
3. Severity Level V – Burglary in the Second Degree: The statute is expanded to include a provision for offenders who enter a government building, religious establishment, historic property, or school building, and commit or intend to commit theft or criminal damage to property. The Commission ranked the new provision with other similar burglary crimes.
4. Severity Level IV – Violation of a Domestic Abuse No Contact Order: The Legislature created a felony penalty for violating a domestic abuse no contact order after having two or more similar violations or while possessing a dangerous weapon. The ranking selected is the same as for violation of an order for protection and violation of a harassment restraining order.
5. Severity Level III – Damage or Theft to Energy Transmission, Telecommunications: This was ranked in relation to existing felony offenses where there is a risk of bodily harm.
6. Severity Level II – Theft; \$1,000 or less (risk of bodily harm): The penalty provisions for misdemeanor/gross misdemeanor thefts are enhanced to felonies when there is “a reasonably foreseeable risk of bodily harm to another.”
7. Severity Level II – Residential Mortgage Fraud: A felony offense is created for lenders who knowingly misstate, misrepresent, or omit information to a mortgage lender, borrower, or other party in the mortgage process. The Commission ranked this new provision similar to theft over \$1,000, but less than \$5,000.
8. Elevated Severity Level – Foreseeable Risk of Bodily Harm over \$1,000: The Commission adopted a proposal indicating that violations which create a reasonably foreseeable risk of bodily harm are elevated by one severity level.

C. Misdemeanor and Gross Misdemeanor Offense List

The Commission considered new and amended misdemeanors and gross misdemeanors and added “Dealers in Scrap Metal; Records, Reports, and Registration” to the list of offenses that can be used to calculate criminal history scores.

D. Offenses Eligible for Permissive Consecutive Sentences

Based on new and amended crime legislation, the Commission adopted a proposal to include Violation of a Domestic Abuse No Contact Order and Solicitation of Children to Engage in Sexual Conduct (internet or computer) on the list of offenses eligible to receive permissive consecutive sentences.

E. Other Legislative-Related Modifications

The Commission authorized staff to change references in the sentencing guidelines due to the re-codifications of criminal vehicular operations and burglary in the second-degree, and the new theft thresholds.

The Commission re-ranked the precious metal dealer statute (M.S. § 609.526) after the Legislature’s decision to expand it to include scrap metal dealers, to raise some thresholds, and reduce the statutory maximum thresholds for some provisions.

F. Other Non-Legislative Modifications

The Commission responded to a question raised about the application of a second custody status point for sex offenders. The guidelines were modified, making sex offenders eligible for a second point under any custody status condition listed in the guidelines rather than only probation, supervised release, or conditional release, as was previously the policy.

The Commission established a policy which makes it a presumptive commitment to the Commissioner of Corrections for a felony DWI offender who has a prior felony alcohol-related criminal vehicular operation. This rule is the same as that for a felony DWI offender with a prior felony DWI.

Several other clarifications and technical modifications were made to the sentencing guidelines and commentary. The exact language of all changes is found in Appendix E.

Felony Driving While Impaired

Cases Sentenced in 2006

Sentencing Policy

Felony Driving While Impaired (DWI) went into effect August 1, 2002. Minn. Stat. § 169A.276, subdivision 1(a) created a minimum 36-month felony sentence of imprisonment for this offense, while subdivision 1(b) allows for a stay of execution of that sentence, but specifically forbids a stay of imposition or stay of adjudication. This means that the court is required to pronounce a period of incarceration, even if the court imposes a probationary sentence.

The sentencing guidelines provide 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.

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 actual time the offender is incarcerated may be increased (up to the total sentence) if the offender violates rules in prison or conditions of release. An offender receiving a prison sentence for a felony DWI is also subject to a five-year term of conditional release (Minn. Stat. § 169A.276, subd. 1(d); Guidelines Section II.E).

The guidelines presume a minimum 36-month sentence for all felony DWI cases (Guidelines Section II.E). For a person with a criminal history score of 2 or less, the guidelines presume a stayed (probationary) sentence. However, if a person has a prior felony DWI conviction, the presumption is imprisonment, regardless of criminal history (Guidelines Section II.C).

Offenders receiving stayed sentences can get up to one year of local jail time as a condition of probation and are subject to mandatory penalty provisions specified in Minn. Stat. § 169A.275. This statute provides that fourth-time DWI offenders must be incarcerated for 180 days and fifth-time (or more) offenders for one year, unless they are placed in an intensive supervision program. The statute also allows a portion of the mandatory jail time to be served on electronic monitoring.

Volume of Cases and Offender Characteristics

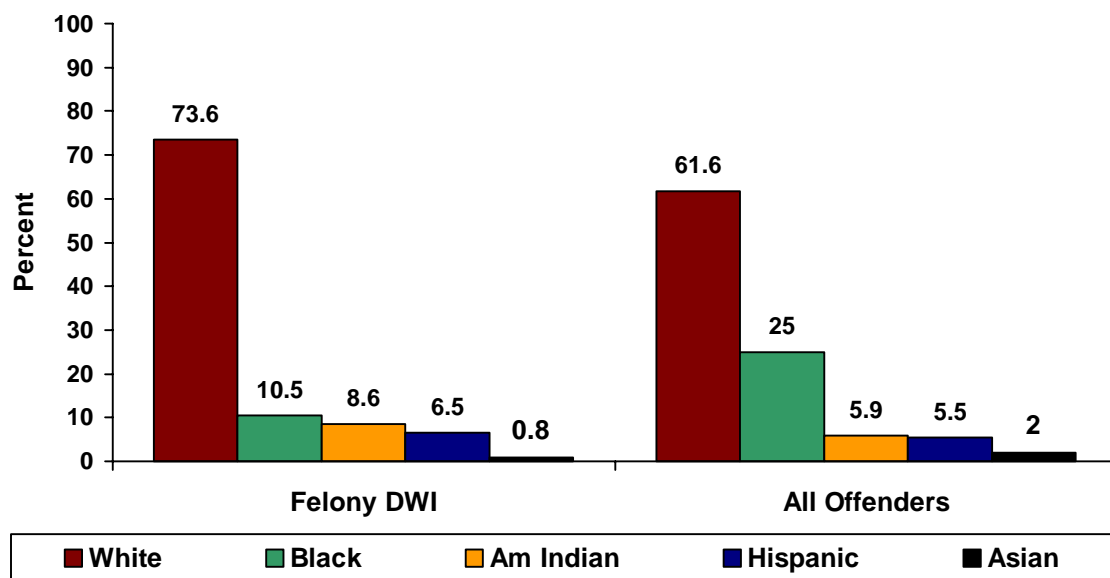
There were 788 offenders sentenced for felony DWI in 2006. This figure is 5.5 percent lower than the number of offenders sentenced for Felony DWI offenses in 2005 (834), and is the lowest number of offenders sentenced in a full calendar year since Felony Driving While

Impaired (DWI) went into effect August 1, 2002. Since the felony DWI law went into effect on August 1, 2002, 3,394 offenders have been sentenced: 102 in 2002; 810 in 2003; 860 in 2004; 834 in 2005; and 788 in 2006. Five hundred fifty-nine of those offenders were committed directly to state prison, while 2,835 received probationary sentences, almost all of which included incarceration in local jails. A total of 327 felony DWI offenders have been admitted to prison as probation revocations through 2006. The revocation rate through the end of 2006 was 11.5 percent.

Demographic Characteristics

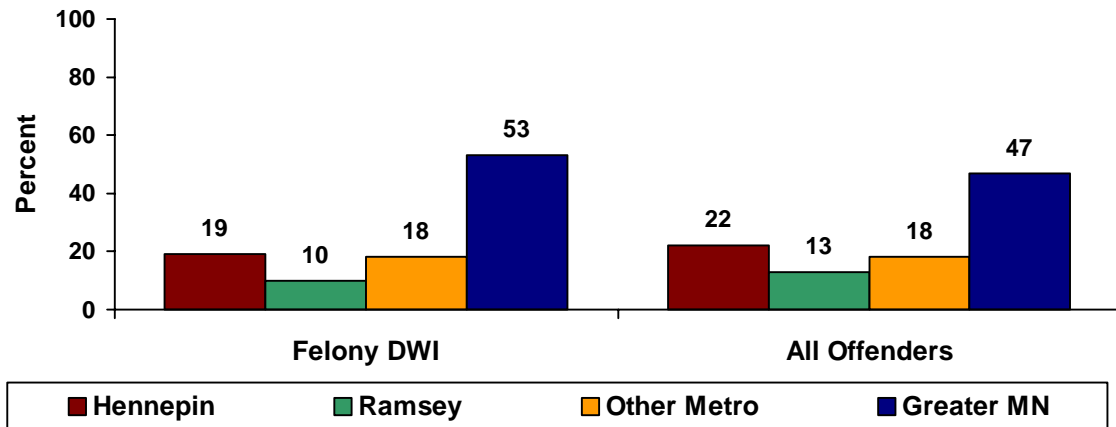
Felony DWI offenders are more likely to be male and white, Hispanic, or American Indian than the overall offender population. The average age at time of offense was 36, as compared to 31 for offenders overall.

**Figure 1. Distribution of Offenders by Race:
Felony DWI Offenders Compared to All Offenders**



Hennepin County sentenced nineteen percent of the felony DWI cases in the state, compared to 22 percent of all felony cases sentenced. Ramsey County sentenced ten percent compared to thirteen percent of all felony cases. The other metro counties had the same percentages for each respective category (18%). Greater Minnesota sentenced a larger proportion of felony DWIs (53%) than its share of all felonies sentenced (47%).

**Figure 2. Distribution of Offenders by Region:
Felony DWI Offenders Compared to All Offenders**

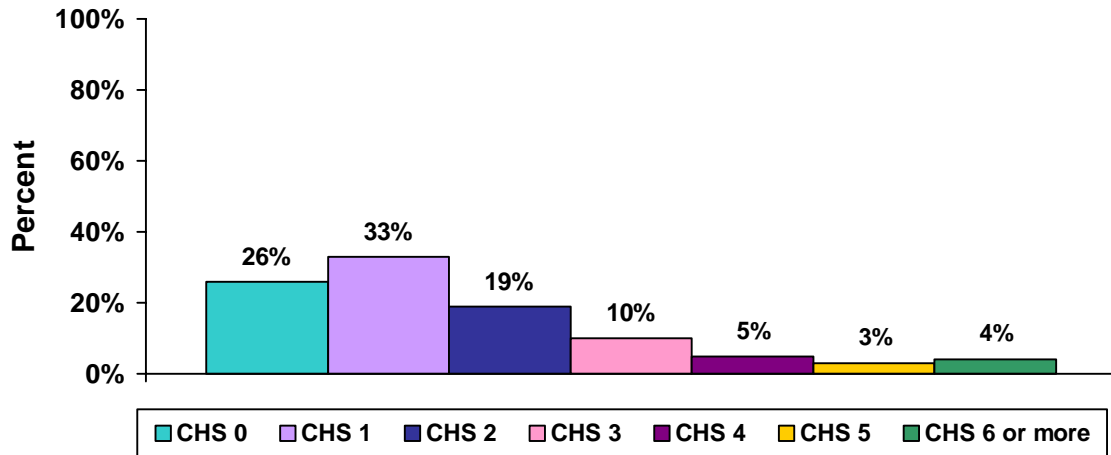


Criminal History

All felony DWI offenders have, at a minimum, three prior alcohol-related driving offenses on their records. According to case law and the sentencing guidelines, the same offenses used to reach the felony level are not used in calculating an offender's criminal history score (Guidelines Section II.B.6). Thus, a first-time felony DWI offender may be sentenced at a criminal history score of zero.

In 2006, most DWI offenders were sentenced at a criminal history score of one or zero. The vast majority (78%) were sentenced at a score of two or less, so most had presumptive probationary sentences. However, 52 of the offenders with only one or two criminal history points had presumptive prison sentences because of a prior felony DWI. When all 788 DWI offenders, regardless of criminal history, are considered, 111 (14%) were sentenced for a subsequent felony DWI. More than half (63%), were under some kind of supervision (e.g., probation, release pending sentence, supervised release from prison) at the time they committed the current offense.

Figure 3. Distribution of Offenders by Criminal History Score



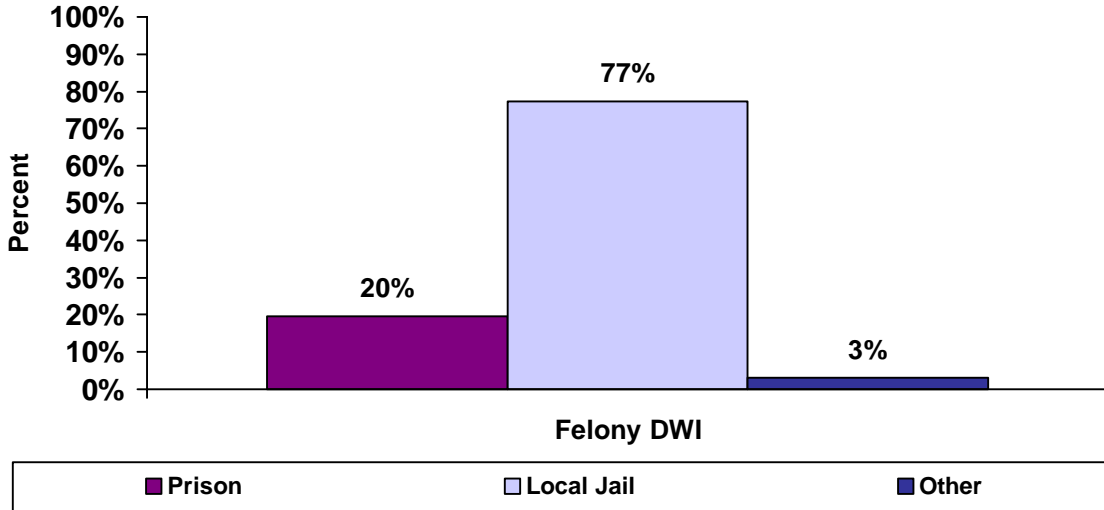
Sentencing Practices

Incarceration Rates

At the time of sentencing, the court can impose several different types of sentences, the most restrictive being a sentence of imprisonment in a state facility for a period exceeding a year. The court may instead impose a sentence of local incarceration for a period of up to one year as a condition of probation, as well as other sanctions including community work service, court-ordered treatment, and fines.

Twenty percent (155 offenders) were sentenced to imprisonment in a state facility; the average pronounced sentence was 51 months. Seventy-seven percent (608 offenders) were sentenced to local incarceration, for an average of 212 days, as a condition of probation. The total incarceration rate (both offenders sentenced to prison and local incarceration) was 97 percent. The remaining three percent (25 offenders) received other sanctions imposed by the court at sentencing. Eighty percent (633 offenders) were placed on probation. All offenders were placed on probation for at least 24 months. Most (67%) received a probation period equal to the statutory maximum of seven years (84 months); the average length of probation was 75 months.

Figure 4. Type of Incarceration



Incarceration Rates and Distribution of Cases by County

By far, the highest number of cases sentenced was in Hennepin County, followed by Ramsey County, Dakota County, St. Louis County, and Anoka County. These counties accounted for 39 percent of all felony DWI cases sentenced in the state. Other counties with more than twenty felony DWI cases sentenced included Carlton, Olmsted, and Washington.

Incarceration Rates by County

County	# of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Aitkin	4	1 (25%)	3 (75%)	0
Anoka	39	4 (10%)	33 (85%)	2 (5%)
Becker	18	8 (44%)	9 (50%)	1 (6%)
Beltrami	14	0	14 (100%)	0
Benton	12	2 (17%)	10 (83%)	0
Blue Earth	13	1 (8%)	12 (92%)	0
Brown	2	0	2 (100%)	0
Carlton	20	0	18 (90%)	2 (10%)

County	# of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Carver	10	2 (20%)	8 (80%)	0
Cass	8	0	5 (63%)	3 (38%)
Chippewa	2	1 (50%)	1 (50%)	0
Chisago	5	1(20%)	3 (60%)	1 (20%)
Clay	11	1 (9%)	10 (91%)	0
Clearwater	3	1 (33%)	2 (67%)	0
Cottonwood	2	0	2 (100%)	0
Crow Wing	10	1(10%)	9 (90%)	0
Dakota	55	8 (15%)	47 (86%)	0
Dodge	2	1(50%)	0	1(50%)
Douglas	4	0	4 (100%)	0
Faribault	1	0	1 (100%)	0
Freeborn	8	0	8(100%)	0
Goodhue	7	1 (14%)	6 (86%)	0
Hennepin	146	35 (24%)	105 (72%)	6 (4%)
Houston	2	0	0	0
Hubbard	0	0	0	0
Isanti	11	1 (9%)	10 (91%)	0
Itasca	10	3 (30%)	7 (70%)	0
Kanabec	3	0	3 (100%)	0
Kandiyohi	4	1 (25%)	3 (75%)	0
Kittson	2	0	2 (100%)	0
Koochiching	2	1 (50%)	1 (50%)	0
Lac Qui Parle	1	1 (100%)	0	0
Lake	1	0	1 (100%)	0
Lake of the Woods	1	0	1 (100%)	0
LeSueur	1	0	1 (100%)	0
Lyon	5	1 (20%)	4 (80%)	0

County	# of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
McLeod	10	4 (40%)	6 (60%)	0
Mahnomen	5	0	5 (100%)	0
Marshall	4	0	4 (100%)	0
Martin	4	0	4 (100%)	0
Meeker	1	1 (100%)	0	0
Mille Lacs	7	2 (29%)	5 (71%)	0
Morrison	10	3 (30%)	7 (70%)	0
Mower	5	2 (40%)	3 (60%)	0
Nicollet	4	3 (75%)	1 (25%)	0
Nobles	2	1 (50%)	1 (50%)	0
Norman	1	0	1 (100%)	0
Olmsted	21	7 (33%)	14 (67%)	0
Otter Tail	10	4 (40%)	6 (60%)	0
Pennington	4	1 (25%)	3 (75%)	0
Pine	5	0	4 (80%)	1 (20%)
Pipestone	1	0	1 (100%)	0
Polk	7	1 (14%)	5 (71%)	1 (14%)
Pope	3	1 (33%)	2 (67%)	0
Ramsey	77	18 (23%)	59 (77%)	0
Red Lake	2	0	1 (50%)	1 (50%)
Redwood	3	0	3 (100%)	0
Renville	2	0	2 (100%)	0
Rice	4	0	3 (75%)	1 (25%)
Rock	1	0	1 (100%)	0
Roseau	4	0	4 (100%)	0
St Louis	44	6 (14%)	37 (84%)	1 (2%)
Scott	16	4 (25%)	10 (63%)	2 (13%)
Sherburne	12	1 (8%)	11 (92%)	0

County	# of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Sibley	2	0	2 (100%)	0
Stearns	13	2 (15%)	11 (85%)	0
Steele	7	0	7 (100%)	0
Stevens	1	0	1 (100%)	0
Todd	3	3 (100%)	0	0
Wabasha	3	0	2 (67%)	1 (33%)
Wadena	1	0	1 (100%)	0
Washington	25	9 (36%)	16 (64%)	0
Wilkin	3	1 (33%)	2 (67%)	0
Winona	8	2 (25%)	5 (63%)	1 (13%)
Wright	13	2 (15%)	11 (85%)	0
Yellow Medicine	4	0	4 (100%)	0
Total	788	155 (20%)	608 (77%)	25 (3%)

Departure Rates

A departure occurs when the court imposes a sentence that is different from that presumed under the sentencing guidelines. A departure can be dispositional (i.e., whether the prison sentence is stayed or imposed) or durational (i.e., concerning the length of sentence). An “aggravated” departure involves either imposing a prison sentence when a stayed sentence is presumed by the guidelines, or imposing a greater amount of time than that presumed. A “mitigated” departure means either imposing a stayed probationary sentence when prison is presumed, or imposing less time than the time presumed.

Dispositional Departures

Of the 788 cases sentenced in 2006, 224 (28%) were presumptive prison sentences under the sentencing guidelines. Of those 224 cases, 152 (68%) were given the presumptive sentence and committed to prison. The remaining 72 cases (32%) were given a mitigated dispositional departure and placed on probation. This was a decrease from the 35 percent mitigated dispositional departure rate for felony DWI cases sentenced in 2005. The mitigated dispositional departure rate for first-time felony DWI offenders was 37 percent, while the mitigated dispositional departure rate for subsequent felony DWI offenders was 27 percent.

Of the 564 cases where the sentencing guidelines presumed a stayed sentence, three (less than 1%) were given an aggravated dispositional departure and committed to prison. The

remaining 561 cases received the presumptive stayed sentence and were placed on probation. As noted above, a stayed sentence where the offender is placed on probation might include up to a year of incarceration in a local facility as a condition of the probation.

Dispositional Departures

Presumptive Disposition	Sentence Received		Departure Rate
	Prison	Probation	
Prison = 224	152 (68%)	72 (32%)	Mitigated = 32%
Probation = 564	3 (<1%)	561 (99%)	Aggravated = <1%
Total = 788	155 (20%)	608 (77%)	Total Dispositional =10%

The most frequently cited reasons for the mitigated dispositional departures included amenability to probation (51%) and treatment (56%). In 31 percent of these departures, the court cited the defendant's show of remorse or acceptance of responsibility as a reason for departure and in 13 percent, placing the offender on long term supervision was cited as a reason for departure. In 38 percent of the mitigated dispositional departures, the court cited a plea negotiation, recommendation by the prosecutor, or failure by the prosecutor to object as a reason for departure, down from a rate of 47 percent in 2005. The court stated that the prosecutor objected to the mitigated disposition in 15 percent of these cases. Of the three cases where a prison sentence was imposed even though the presumptive disposition was probation, two were the result of the defendant's request for a prison sentence.

Durational Departures on Prison Cases

Of the 155 cases sentenced to prison, 108 (70%) received the sentence duration recommended under the sentencing guidelines. One case received a sentence longer than recommended (less than 1%). 46 cases (30%) received a sentence that was shorter than that recommended by the sentencing guidelines. This is an increase from the 27 percent mitigated durational departure rate observed for felony DWI cases sentenced in 2005. In 59 percent of the mitigated durational departures sentenced in 2006, the court cited plea agreement or recommendation or lack of objection by the prosecutor as a reason for departure, down from 68 percent in 2005. In three cases, the court stated that the prosecutor objected to mitigated durations. Other frequently cited reasons for mitigated durations included: the offenders showed remorse or accepted responsibility (39%), amenability to treatment (17%), and recommendations by court services (9%).

Durational Departures: Executed Sentences

Number of Executed Sentences	No Departure	Aggravated Departures	Mitigated Departures	Total Departure Rate
155	108 (70%)	1 (<1%)	46 (30%)	30%

Total Departure Rate

The total dispositional departure rate for all 788 cases was ten percent. For presumptive prison cases, the rate was higher at 32 percent, and for presumptive stayed cases it was lower at less than one percent. The total durational departure rate for all 788 cases was eleven percent. For presumptive prison cases the rate was higher at 26 percent, and for presumptive stayed cases it was five percent.

Any individual sentence might contain more than one kind of departure. A case where the sentencing guidelines presumes probation, if sentenced to prison but for a shorter duration than called for under the sentencing guidelines would be both an aggravated dispositional departure and a mitigated durational departure. Less than two percent of all 788 cases were given a sentence that represented both a dispositional and a durational departure.

The overall total departure rate (combining both dispositional and durational departures) was 19 percent, or 151 of the 788 cases sentenced received one or more departures. For presumptive prison cases, the total departure rate was the highest at 53 percent. For presumptive stayed cases, the total departure rate was just six percent.

Total Departure Rate

Presumptive Disposition	Dispositional Departure	Durational Departure	Both	Total Departure Rate
Prison = 224	72 (32%)	59 (26%)	12 (5%)	119 (53%)
Probation = 564	3 (0.5%)	29 (5%)	0 (0%)	32 (6%)
Total = 788	75 (10%)	88 (11%)	12 (1.5%)	151 (19%)

Revocations to Prison

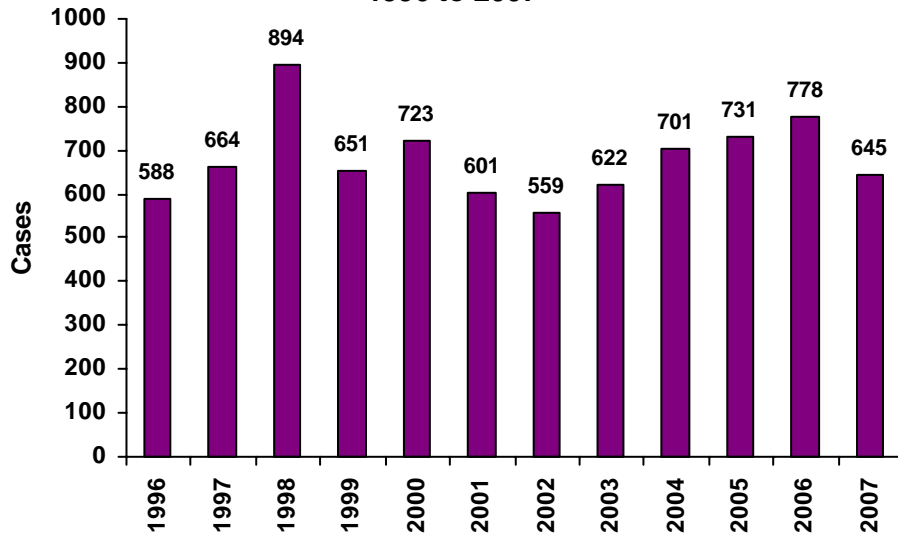
A revocation occurs when an offender placed on probation violates the conditions of that probation. A revocation can add additional sanctions to an offender's sentence or can result in the offender being sent to prison to serve their sentence. Information from the Department of Corrections indicates that 147 felony DWI offenders were admitted in 2006 as probation revocations. There were 93 probation revocations in 2005, 63 in 2004, and 24 in 2003, for a total of 327 revocations. Since the felony DWI law went into effect, (August 1, 2002) 3,394 offenders have been sentenced (102 in 2002, 810 in 2003, 860 in 2004, 834 in 2005, and 788 in 2006) and 3,165 offenders have been placed on probation. With 327 probation revocations, the revocation rate through the end of 2006 is 10.3 percent.

County Attorney Firearms Reports

Current law directs County Attorneys to collect and maintain information on criminal complaints and prosecutions in which a defendant is alleged to have committed an offense while possessing or using a firearm, as described in M.S. § 609.11, subdivision 9.² This information is supposed to be forwarded to the Sentencing Guidelines Commission no later than July 1 of each year. Pursuant to M.S. § 244.09, subdivision 14, the Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received. Memoranda describing the mandate, along with forms on which to report, are distributed by the Commission to County Attorneys. Although the Commission's staff clarifies inconsistencies in the summary data, the information received from the County Attorneys is reported directly as provided.

Since the mandate began in FY 1996, the average number of annual cases involving firearms statewide has been 658. Between July 1, 2006 and July 1, 2007, there were a total of 645 cases allegedly involving a firearm. Prosecutors charged 630 cases (-17%).

**Figure 1: Cases Allegedly Involving a Firearm –
1996 to 2007**



² The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first degree or aggravated first degree witness tampering; some criminal sexual conduct offenses; escape from custody; arson in the first, second, or third degree; felony drive-by shooting; aggravated harassment and stalking; felon in possession of a firearm; and felony controlled substance offenses.

Of the individuals charged, 428 (68%) were convicted of offenses designated in M.S. § 609.11. One hundred fourteen individuals (18%) were convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 19 (3%) were acquitted on all charges; 59 (9%) had all charges dismissed; and 10 (2%) were “other” cases, such as federal prosecutions and civil commitment. In 396 (93%) of the 428 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record. In the cases in which the firearm was established on the record, 260 offenders (66%) were sentenced to the mandatory minimum prison term.

Figure 2: Cases Allegedly Involving a Firearm – Charged?

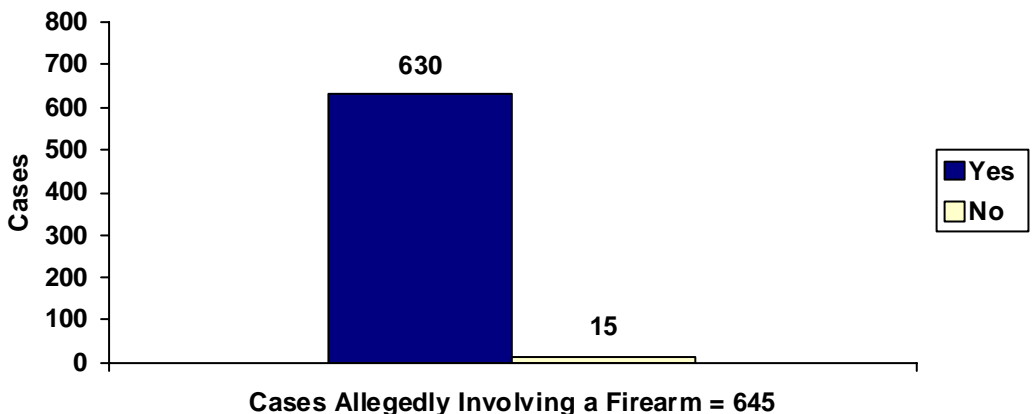


Figure 3: Cases Charged – Case Outcome

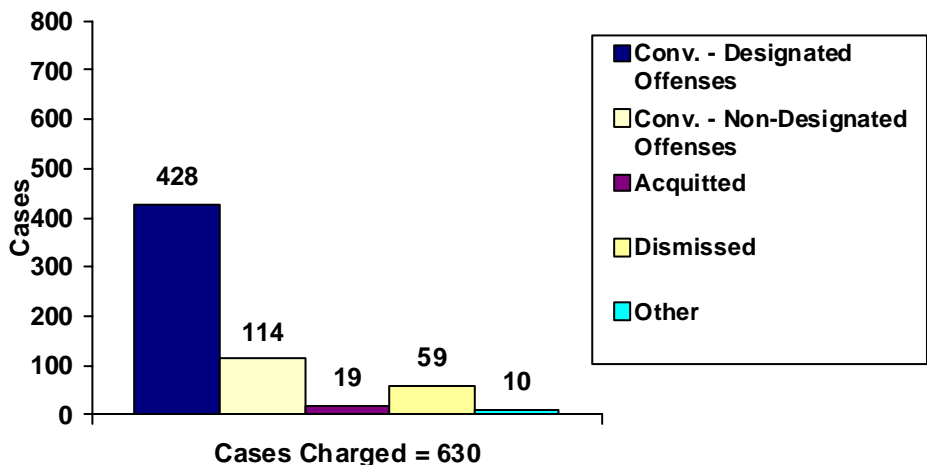


Figure 4: Cases Convicted of Designated Offenses – Firearm Established on the Record?

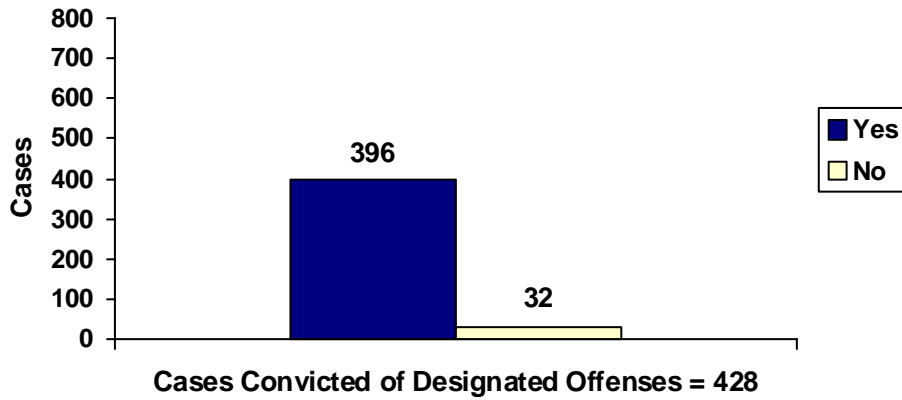
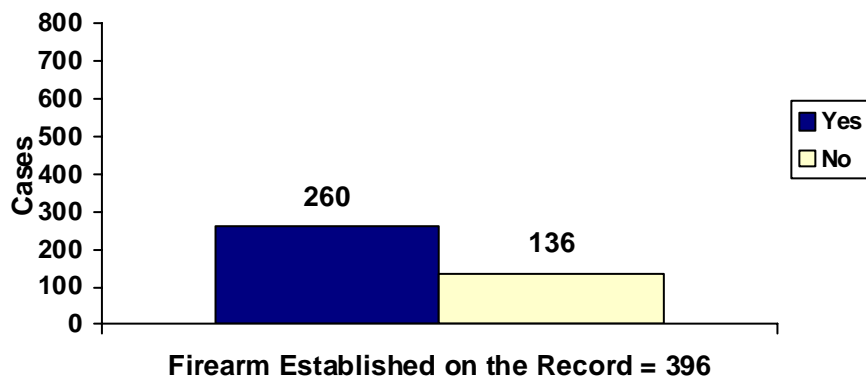


Figure 5: Firearm Established on the Record – Mandatory Minimum Sentence Imposed and Executed?



County Attorney Reports on Criminal Cases Involving Firearms by County
Cases Disposed from July 1, 2006 to July 1, 2007

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Aitkin	4	3	0	0	0
Anoka	48	47	34	34	13
Becker	11	11	9	9	6
Beltrami	3	3	1	1	1
Benton	8	8	7	7	6
Big Stone	1	1	1	1	0
Blue Earth	7	7	3	3	2
Brown	0	0	0	0	0
Carlton	0	0	0	0	0
Carver	3	3	3	3	1
Cass	8	8	4	4	3
Chippewa	0	0	0	0	0
Chisago	5	5	3	3	3
Clay	10	10	5	5	5
Clearwater	0	0	0	0	0
Cook	0	0	0	0	0
Cottonwood	1	1	1	1	1
Crow Wing	8	8	3	3	1
Dakota	28	28	18	18	11
Dodge	0	0	0	0	0
Douglas	0	0	0	0	0
Faribault	0	0	0	0	0
Fillmore	0	0	0	0	0
Freeborn	0	0	0	0	0
Goodhue	8	8	3	2	1
Grant	0	0	0	0	0
Hennepin	149	149	116	116	87
Houston	0	0	0	0	0
Hubbard	2	2	1	1	1
Isanti	7	7	5	3	1
Itasca	10	10	6	5	0
Jackson	1	1	1	0	0
Kanabec	2	1	0	0	0
Kandiyohi	5	5	3	3	1
Kittson	1	1	1	1	0
Koochiching	2	2	0	0	0
Lac Qui Parle	1	1	0	0	0
Lake	5	5	3	2	2

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Lake of the Woods	2	2	0	0	0
Le Sueur	1	1	1	1	1
Lincoln	0	0	0	0	0
Lyon	3	3	2	2	0
McLeod	4	4	1	1	0
Mahnomen	1	1	0	0	0
Marshall	0	0	0	0	0
Martin	1	1	1	0	0
Meeker	0	0	0	0	0
Mille Lacs	5	5	4	1	1
Morrison	3	3	3	1	1
Mower	7	7	4	3	3
Murray	4	4	2	2	2
Nicollet *	--	--	--	--	--
Nobles	3	3	2	1	1
Norman	0	0	0	0	0
Olmsted	16	16	12	12	9
Otter Tail	10	10	4	4	2
Pennington	2	2	2	1	0
Pine	1	1	0	0	0
Pipestone	2	2	1	0	0
Polk	8	8	4	4	4
Pope	0	0	0	0	0
Ramsey	104	104	85	85	62
Red Lake	0	0	0	0	0
Redwood	4	4	3	1	1
Renville	3	3	1	1	0
Rice	7	7	2	2	1
Rock	1	1	0	0	0
Roseau	4	4	2	2	2
Scott	4	4	2	2	1
Sherburne	7	7	5	5	5
Sibley	1	0	0	0	0
St. Louis	51	41	27	18	9
Stearns	9	9	6	6	2
Steele	2	2	2	2	2
Stevens	0	0	0	0	0
Swift	3	2	1	1	0
Todd	1	1	0	0	0
Traverse	0	0	0	0	0

* Not reported.

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Wabasha	7	7	2	2	0
Wadena	2	2	1	1	0
Waseca	0	0	0	0	0
Washington	13	13	8	8	5
Watonwan	0	0	0	0	0
Wilkin	1	1	1	1	0
Winona	4	4	1	1	0
Wright	6	6	5	0	0
Yellow Medicine	0	0	0	0	0
Total	645	630	428	396	260

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APPENDICES

Appendix A: Drug Re-Ranking Proposals Considered

Below are drug re-ranking proposals which were considered by the Minnesota Sentencing Guidelines Commission on September 20, 2007. The fourth proposal was forwarded to a public hearing held November 1, 2007.

1. Move first-degree controlled substance crimes from severity level nine to severity level eight; and second-degree controlled substance crimes from severity level eight to severity level seven.
2. Re-rank first-degree and second-degree sale and possession crimes as stated above, and leave manufacture of methamphetamine at its current ranking of severity level nine.
3. Re-rank first-degree possession at severity level eight and second-degree sale and possession at severity level seven, and leave first-degree sale and manufacture of methamphetamine at their current rankings of severity level nine.
4. Re-rank first-degree possession at severity level eight and second-degree possession at severity level seven, and leave first-degree sale and manufacture of methamphetamine at severity level nine, and second-degree sale at severity level eight.

Appendix B: How the Sentencing Guidelines Work

Minnesota's sentencing guidelines are contained in two grids and a set of sentencing rules updated and published annually by the Guidelines Commission. The Sex Offender Grid is used for sentencing felony sex offenses and sex-related crimes, such as possession of child pornography and failure to register as a predatory offender. Sex offenders convicted under M.S. § 609.3455 were taken out of the guidelines scheme by the 2005 Legislature. These "worst of the worst" individuals receive either life without possibility of release or "life sentences" whose actual duration is determined by the Department of Corrections. The original Sentencing Guidelines Grid is applied to all other felony sentences, except murder in the first degree. First-degree murderers, like the sex offenders not covered by the guidelines, are sentenced to life with or without possibility of release.

On the left side of each grid is a vertical scale on which each felony is ranked according to its seriousness. A few felonies are unranked, because they are new offenses or are seldom charged. These crimes are given a ranking when there are enough convictions to make it possible to see some agreement among practitioners as to how they should be sentenced. In the meantime, judges may rank these crimes at the degree of seriousness they deem appropriate.

Across the top of each grid is a horizontal scale of criminal history scores starting at zero. When a felon is sentenced, a criminal history is calculated according to the rules printed in *Sentencing Guidelines and Commentary*, and the crime being sentenced is located on the ranking scale. The box at the intersection of criminal history and felony rank contains a presumptive sentence that is either a specific number of months, or a range within which a sentencing judge may choose a specific number of months. Some of the boxes are shaded; sentences that appear in those areas are stayed, or probationary, sentences. In these cases, it is presumed that the offender will be required to meet certain conditions, which may include up to 365 days in a local jail; if the offender does not comply with the conditions of probation, he may be sent to prison. Sentences in the unshaded area of each grid are presumed commitments, in which the offender is sent to a state prison. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is located on the Sentencing Guidelines Grid, e.g. some crimes involving dangerous weapons and certain second-time drug and burglary cases.

Judges must impose the presumptive sentence, unless there are substantial and compelling reasons to give a more or less severe punishment. Judges are able to consider characteristics of an offender, or of a particular crime, that they believe make a case different from the typical offense of its kind when they determine sentences. They are required to explain their reasons for upward or downward departures, which are governed by legal principles and may be appealed by either the defendant or the prosecutor. Over the years, decisions of the Supreme Court and the Court of Appeals have defined what characteristics are fair for a judge to consider and have provided guidance as to what kinds of departures are legally appropriate.

APPENDIX C: SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

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

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	XI	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	IX	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	VIII	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	VII	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ²
<i>Controlled Substance Crime, 3rd Degree</i>	VI	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5000)</i>	III	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$500 or less)</i> <i>Check Forgery (\$251-2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Sale of Simulated Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22



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



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

¹ One year and one day

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


APPENDIX D: SEX OFFENDER GRID


Presumptive Sentence Lengths in Months

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

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or more
CSC 1 st Degree	A	144 <i>144-173</i>	156 <i>144-187</i>	168 <i>144-202</i>	180 <i>153-216</i>	234 <i>199-281</i>	306 <i>260-360</i>	360 <i>306-360²</i>
CSC 2 nd Degree – (c)(d) (e)(f)(h)	B	90 <i>90-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300²</i>
CSC 3 rd Degree – (c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o)	C	48 <i>41-58</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>99-140</i>	153 <i>130-180</i>	180 <i>153-180²</i>
CSC 2 nd Degree – (a)(b)(g) CSC 3 rd Degree – (a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>77-109</i>	119 <i>101-143</i>	140 <i>119-168</i>
CSC 4 th Degree – (c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 <i>51-72</i>	78 <i>66-94</i>	102 <i>87-120</i>	120 <i>102-120²</i>
CSC 4 th Degree – (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 <i>38-54</i>	59 <i>50-71</i>	77 <i>65-92</i>	84 <i>71-101</i>
CSC 5 th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 <i>33-47</i>	51 <i>43-60</i>	60 <i>51-60²</i>
Registration Of Predatory Offenders	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-17</i>	16 <i>14-19</i>	18 <i>15-22</i>	24 <i>20-29</i>	30 <i>26-36</i>	36 <i>31-43</i>

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2 are excluded from the guidelines, because by law the sentence is mandatory imprisonment for life. See, Guidelines Section 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 offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See, Guidelines Sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

¹ One year and one day

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

Appendix E: Adopted Modifications to the
Minnesota Sentencing Guidelines and Commentary
August 2007

**a) New and Amended Crimes Passed by the 2007 Legislature –
Effective August 1, 2007**

1. Guidelines Section V. Offense Severity Reference Table

.....

VIII	<u>Criminal Vehicular Homicide or Operation – 609.21, subd. 1(8); 1a(a)</u>
V	<u>Burglary 2 – 609.582, subd. 2(b)</u> <u>Criminal Vehicular Homicide or Operation – 609.21, subd. 1(8); 1a(b)</u>
IV	<u>Violation of a Domestic Abuse No Contact Order – 518B.01, subd.22(d)</u>
III	<u>Damage or Theft to Energy Transmission, Telecommunications – 609.593</u> <u>Criminal Vehicular Homicide or Operation – 609.21, subd. 1(8); 1a(c)</u>
II	<u>Theft; \$1,000 or less (risk of bodily harm) – 609.52, subd. 3a</u> <u>Residential Mortgage Fraud – 609.822</u>
C	Criminal Sexual Conduct 3 - 609.344 subd. 1 (c), (d), (g), (h), (i), (j), (k), (l), (m), & (n) & <u>(o)</u>

E Criminal Sexual Conduct 4 - 609.345 subd. 1 (c), (d), (g), (h), (i), (j), (k), (l), (m), & (n).
& (o)

.....

2. Misdemeanor and Gross Misdemeanor Offense List

.....
Dealers in Scrap Metal; Records, Reports, and Registration
325E.21

3. Guidelines Section VI. Offenses Eligible for Permissive Consecutive Sentences

Statute Number	Offense
.....	
<u>518B.01, subd.22(d)</u>	<u>Violation of a Domestic Abuse No Contact Order</u>
<u>609.352, subd. 2a</u>	<u>Solicitation of Children to Engage in Sexual Conduct (Internet or computer)</u>

4. Adopted Modifications Due to New Theft Thresholds

.....

V Financial Exploitation of a Vulnerable Adult (over ~~\$2,500~~ \$5,000) - 609.2335

IV Financial Exploitation of a Vulnerable Adult (~~\$2,500~~ \$5,000 or less) – 609.2335

III Computer Damage over \$2,500 – 609.88
Computer Theft over \$2,500 – 609.89
Embezzlement of Public Funds over \$2,500 – 609.54
Financial Transaction Card Fraud over \$2,500 – 609.821, subd. 2(1), (2), (5), (6), (7), & (8)
Receiving Stolen Goods (over ~~\$2,500~~ \$5,000) – 609.53
Rustling and Livestock Theft over \$2,500 – 609.551

III Telecommunications and Information Services Fraud over \$2,500 – 609.893, subd. 1
Theft Crimes - Over ~~\$2,500~~ \$5,000 (See *Theft Offense List*)

II Computer Damage; \$2,500 or less – 609.88
Computer Theft; \$2,500 or less – 609.89
Embezzlement of Public Funds; \$2,500 or less – 609.54
Financial Transaction Card Fraud; \$2,500 or less – 609.821, subd. 2(1), (2), (5), (6), (7), & (8)
Receiving Stolen Goods (~~\$2,500~~ \$5,000 or less) – 609.53
Rustling and Livestock Theft; \$2,500 or less – 609.551
Telecommunications and Information Services Fraud; \$2,500 or less – 609.893, subd. 1
Theft Crimes - ~~\$2,500~~ \$5,000 or less (See *Theft Offense List*)

I Theft from Abandoned or Vacant Building (~~\$500~~ \$1,000 or less) - 609.52, subd. 3 (3) (d) (iii)

....

Theft Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES (~~\$2,500~~ \$5,000 or less and over ~~\$2,500~~ \$5,000) in the Offense Severity Reference Table.

....

~~Computer Damage~~
~~609.88~~

~~Computer Theft~~
~~609.89~~

~~Embezzlement of Public Funds~~
~~609.54~~

~~Financial Transaction Card Fraud~~
~~609.821, subd. 2(1), (2), (5), (6), (7), & (8)~~

~~Receiving Stolen Property~~
~~609.53~~

~~Rustling and Livestock Theft~~
~~609.551~~

~~Telecommunications and Information Services Fraud~~
~~609.893, subd. 1~~

....

III.A.102. When a judge grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell of the Sentencing Guidelines Grids, and may be as long as the statutory maximum for the offense of conviction. Thus, for an offender convicted of Theft over ~~\$2,500~~ 5,000 (severity level III), with a criminal history score of 1, the duration of the stay could be up to ten years. The 13 month sentence shown in the guidelines is the presumptive sentence length and, if imposed, would be executed if (a) the judge departs from the dispositional recommendation and decides to execute the sentence, or (b) if the stay is later revoked and the judge decides to imprison the offender.

II.B.601. There are a number of instances in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than ~~\$200~~ 500 but less than ~~\$500~~ 1,000 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.

5. Guidelines Section V. Offense Severity Reference Table is modified to treat precious metal dealers and scrap metal dealers the same.

....

VI Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) – 609.526, (1) –
Precious Metal Dealers, Receiving Stolen Goods (over \$300) –
609.526, 2nd or subs. Violations

IV Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (second or
subsequent violations) – 609.526
Precious Metal Dealers, Receiving Stolen Goods (\$301 – \$2,500) – 609.526 (1) & (2)

III Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (\$1,000 or more) –
609.526, subd. 2(1)

II Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (less than \$1,000)
- 609.526, subd. 2(2)
L
.....

6. **Guidelines Section II.A. is modified to address theft offenses with a reasonably foreseeable risk of bodily harm to another.**

Guidelines Section II.A. Offense Severity:

For persons sentenced under Minn. Stat. § 609.52, subd. 3a for which a violation involves a monetary value over \$1,000, and creates a reasonably foreseeable risk of bodily harm to another, the severity level ranking is elevated by one severity level from that listed on the Offense Severity Reference Table.

.....

b) Non-Legislative Modifications – Effective August 1, 2007

1. Second Custody Status Point for Sex Offenders

Guidelines Section II.B is modified, making sex offenders eligible for a second point under any listed custody status condition.

Guidelines Section II.B.2.

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, guilty verdict, or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case; or
- b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced; or
- c. 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
- d. 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.
- e. An additional custody status point shall be assigned if the offender was under any of the custody status conditions in a through d above ~~on probation, supervised release, or conditional release~~ for a specified sex offense, other than Failure to Register as a Predatory Offender (M.S. 243.166), and the current offense of conviction is a specified sex offense, other than Failure to Register as a Predatory Offender (243.166).

II.B.205. *When an offender who is on any custody status condition listed above ~~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. This*

policy does not apply to the offense of Failure to Register as a Predatory Offender (M.S. 243.166).

2. Presumptive Sentence for Felony DWI with Previous Criminal Vehicular Operations

Guidelines Sections II.C and E are modified to establish a policy for determining the presumptive sentence for a felony DWI with a prior felony alcohol-related criminal vehicular operations. The new policy is the same as that for a felony DWI with a prior felony DWI.

Guidelines Section II.C. Presumptive Sentence: When the current conviction is for felony DWI, and the offender had a previous conviction, as defined by Minn. Stat. § 609.02 subd. 5, for a felony DWI; or as defined by Minn. Stat. § 169A.24 subd. 1 (3), for a criminal vehicular homicide or operation, prior to commission of the current offense, the presumptive disposition is commitment to the Commissioner of Corrections.

....

Guidelines Section II.E. Mandatory Sentences: When an offender is sentenced for first-degree (felony) driving while impaired, the court must impose a sentence of at least 36 months. The presumptive disposition is determined by the dispositional line on the Sentencing Guidelines Grid. For cases contained in cells outside of the shaded areas of the grid, the sentence should be executed. For cases contained in cells within the shaded areas of the grid, the sentence should be stayed unless the offender had a previous conviction, as defined by Minn. Stat. § 609.02 subd. 5, for a felony DWI; or as defined by Minn. Stat. § 169A.24 subd. 1 (3), for a criminal vehicular homicide or operation prior to commission of the current offense, in which case the presumptive disposition is commitment to the Commissioner of Corrections.

....

c) Technical Modifications – Effective August 1, 2007

1. Modifications Resulting from the Re-Codification of Burglary in the Second Degree and Criminal Vehicular Operations

V. Offense Severity Reference Table

....

VIII	Criminal Vehicular Homicide and Injury <u>or Operation</u> – 609.21, subd. 4 & 3 <u>1a(a)</u>
V	Criminal Vehicular Homicide and Injury <u>or Operation</u> – 609.21, subd. 2 & 4 <u>1a(b)</u> Burglary 2 – 609.582, subd. 2(a) & (b) <u>(1) & (2)</u>
IV	Burglary 2 – 609.582, subd. 2(a) (c) & (d) <u>(3) & (4)</u>
III	Criminal Vehicular Homicide and Injury <u>or Operation</u> - 609.21, subd. 2a <u>1a(c)</u>

....

VI. Offenses Eligible for Permissive Consecutive Sentences

Statute Number	Offense
....	
609.21, subd. 4 & 3 <u>1a(a)</u>	Criminal Vehicular Homicide
609.21, subd. 2 & 4 <u>1a(b)</u>	Criminal Vehicular Operation - Great Bodily Harm
609.21, subd. 2a <u>1a(c)</u>	Criminal Vehicular Operation – Substantial Bodily Harm
609.582, subd. 2(a) <u>(1)</u>	Burglary Second Degree - Dwelling
609.582, subd. 2(b) <u>(a)(2)</u>	Burglary Second Degree – Bank
....	

Guidelines Section II.B. Criminal History:

-
3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of

imposition of sentence was given before the current sentencing. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units. Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions. There is the following exception to this policy when the current conviction is for criminal vehicular homicide or ~~injury~~ operation or first degree (felony) driving while impaired: previous violations of section 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or ~~injury~~ operation violations.

II.B.301. . . .

As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, driving while impaired traffic offenses have particular relevance to the offenses of criminal vehicular homicide or ~~injury~~ operation and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or ~~injury~~ operation or first degree (felony) driving while impaired.

II.B.302. . . .

The Commission believes that offenders whose current conviction is for criminal vehicular homicide or ~~injury~~ operation or first degree (felony) driving while impaired, and who have prior violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or ~~injury~~ operation (~~CVI~~ CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/~~CVI~~ CVO misdemeanor units. If there are less than four units, add in any DWI/~~CVI~~ CVO units. Four or more units would equal one point. Only DWI/CVO units can be used in calculating additional points. Each set of four DWI/~~CVI~~ CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/~~CVI~~ CVO units, the theft would be added to the two DWI/~~CVI~~ CVO units to equal one point. The remaining four DWI/~~CVI~~ CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/~~CVI~~ CVO units, the first four theft units would equal one point. Four of the DWI/~~CVI~~ CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/~~CVI~~ CVO units for a third point. The total misdemeanor score would be two.

2. Released Pending Sentencing Custody Status

Guidelines Section II.B is modified to clarify that “released pending sentencing” means released pending sentencing following a guilty plea or conviction.

Guidelines Section II.B

....

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, guilty verdict, or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case; or
 - b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction; or

....

3. Exclusion of Criminal History Used to Enhance Current Offense

Guidelines Section II.B.6 is modified to clarify that prior felony offenses should not be excluded, even when they are the basis for the enhancement.

Guidelines Section II.B.6.

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, the prior gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score. For instance, if the current offense is a first degree (felony) driving while impaired (DWI) offense and the offender has a prior felony DWI offense, the prior felony DWI shall be used in computing the criminal history score, but the prior misdemeanor and gross misdemeanor offenses used to enhance the prior felony DWI cannot be used in the offender's criminal history. Similarly, if the current offense is any other enhanced felony, prior misdemeanor and gross misdemeanor offenses used to enhance the current offense to a felony shall be

excluded from computing the criminal history score (other than the custody status point), but prior felony offenses used for enhancement shall be included.

Comment

II.B.601. *There are a number of instances in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior misdemeanor or gross misdemeanor offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than \$200 but less than \$500 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.*

A first-time first degree (felony) driving while impaired (DWI) offense involves a DWI violation within ten years of the first of three or more prior impaired driving incidents. Because the DWI priors elevated this offense to the felony level, they should be excluded from the criminal history score. Those predicate misdemeanor and gross misdemeanor offenses should also be excluded for a ~~current~~ subsequent felony DWI ~~that is a felony because the offender has a prior felony DWI~~, but any ~~the~~ prior Felony DWI would be counted as part of the felony criminal history score.

4. Decayed Priors Apply in Presumptive Commitment Policy

Guidelines Section II.C is modified to clarify that prior decayed offenses not used in calculating felony points can be used to determine the presumptive disposition.

Guidelines Section II.C. Presumptive Sentence:

When the current conviction offense is burglary of an occupied dwelling (Minn. Stat. § 609.582, subd. 1 (a)) and there was a previous conviction for a felony burglary before the current offense occurred, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. See *State v. Jones, 587 N.W.2d 854 (Minn. App. 1999)* A conviction too old to be used for criminal history may trigger the presumptive commitment. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid.

Similarly, When the current conviction offense is a ~~severity level VI drug~~ first, second, or

third-degree controlled substance crime and there was a previous conviction or a disposition under section 152.18, subd. 1 for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or ~~received~~ a similar conviction or disposition elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. A conviction or disposition too old to be used for criminal history may trigger the presumptive commitment. However, stays of adjudication must be distinguished from convictions and dispositions under Minn. Stat. § 152.18. A previous stay of adjudication under Minn. Stat. § 152.18, subd. 1 is not relevant if ten years have elapsed since discharge from the stay of adjudication (Minn. Stat. §152.01 Subd.16a). The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer. The ~~policy~~ requirement regarding previous dispositions under section 152.18 applies only if the previous dispositions occurred on or after August 1, 1999.

When the current conviction is for felony DWI, and the offender had a previous conviction, as defined by Minn. Stat. § 609.02, subd. 5, for a felony DWI prior to commission of the current offense, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. A conviction too old to be used for criminal history may trigger the presumptive commitment.

....

5. Presumptive Sentences that Exceed the Statutory Maximums

Guidelines Section II.H is modified to clarify presumptive sentences cannot exceed statutory maximums and that this occurs in cells other than those with criminal history scores of six or more.

Guidelines Section II.H.

Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence: If the presumptive sentence duration given in the appropriate cell of the Sentencing Guidelines

Grids exceeds the statutory maximum sentence for the offense of conviction, the statutory maximum sentence shall be the presumptive sentence.

Comment

II.H.01. There will be rare instances where the presumptive sentence length will exceed the statutory maximum sentence. ~~This will occur in a handful of cases each year for offenders with criminal history scores of six or more. If that situation occurs, the statutory maximum sentence becomes the presumptive sentence length.~~

6. Presumptive Consecutive Durations for Felony DWI

Guidelines Section II.F is modified to address presumptive consecutive durations for felony DWI offenders who are not given executed prison sentences.

Guidelines Section II.F:

Presumptive Consecutive Sentences

When an offender is sentenced for a felony DWI, a consecutive sentence is presumptive if the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence. The presumptive disposition for the felony DWI is based on the offender's location on the grid. If the ~~presumptive~~ disposition is probation, the presumptive sentence for the felony DWI is a consecutive stayed sentence with a duration based on ~~the appropriate grid time~~ a criminal history score of one. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense. If the disposition is commitment to prison, the requirement for consecutive sentencing does not apply (M.S. § 169A.28 subd. 1(b)).

. . . .

7. Out-of-State Adult Certified Priors

Guidelines Section II.B is modified to clarify that out-of-state offenses committed by persons under the age of 18 should not be included as prior adult felony criminal history unless it can be shown that the offense would have been certified had it been committed in Minnesota.

Guidelines Section II.B.5.

5. The designation of out-of-state convictions as felonies, gross misdemeanors, or misdemeanors shall be governed by the offense definitions and sentences provided in Minnesota law. The weighting of prior out-of-state felonies is governed by section II.B.1 (above) and shall be based on the severity level of the equivalent Minnesota felony offense; Federal felony offenses for which there is no comparable Minnesota offense shall receive a weight of one in computing the criminal history index score. The determination of the equivalent Minnesota felony for an out-of-state felony is an exercise of the sentencing court's discretion and is based on the definition of the foreign offense and the sentence received by the offender.

The determination as to whether a prior out-of-state conviction for a felony offense committed by an offender who was less than 18 years old should be included in the juvenile section or adult section of the criminal history score is governed by Minnesota law. The conviction should be included in the juvenile history section if it meets the requirements outlined in II.B.4. The prior can be included in the adult history section only if the factfinder determines that it is an offense for which the offender would have been certified to adult court if it occurred in Minnesota. See *State v. Marquetti*, 322 N.W.2d 316 (Minn. 1982).

8. Upper and Lower Ranges for Presumptive Commitment Offenses within Shaded Areas of the Grids

Guidelines Section II.I is created to clarify that ranges exist for presumptive commitment offenses that fall within the shaded areas of the grids.

Guidelines Section II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids: Minn. Stat. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment. Although the shaded areas of the grid do not display ranges, when a presumptive duration for commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum.

9. Date of Offense in Guidelines Text and Determined by Factfinder

Guidelines Section II.A is modified, moving language about determining the date of offense from the commentary into the text and amending it to reflect current case law.

Guidelines Section II.A

A. Offense Severity:

For those convicted of multiple offenses when theft and damage to property aggregation procedures are used for sentencing purposes or when multiple offenses are an element of the conviction offense, the following rules apply:

- a. If offenses have been aggregated under Minn. Stat. § 609.52, subd. 3(5), or § 609.595, the date of the earliest offense should be used as the date of the conviction offense;
- b. If multiple offenses are an element of the conviction offense, such as in subd. 1(h)(iii) of first degree criminal sexual conduct, the date of the conviction offense must be determined by the factfinder. See, *State v. DeRosier*, 719 N.W.2d 900 (Minn. 2006).

. . . .

Comment

II.A.02. The date of the offense is important because the offender's age at the time of the offense will determine whether or not the juvenile record is considered, the date of the offense might determine whether a custody status point should be given, and the date of offense determines the order of sentencing with multiple convictions. For those convicted of a single offense, there is generally no problem in determining the date of the offense. ~~For those convicted of multiple offenses when theft and damage to property aggregation procedures are used for sentencing purposes or when multiple offenses are an element of the conviction offense, the following rules apply:~~

- ~~a. If offenses have been aggregated under Minn. Stat. § 609.52, subd. 3(5), or § 609.595, the date of the earliest offense should be used as the date of the conviction offense.~~

~~b. If multiple offenses are an element of the conviction offense, such as in subd. 1(h)(iii) of first degree criminal sexual conduct, the date of the conviction offense must be determined. If there is a reasonable likelihood that all of the offender's multiple acts occurred before a date on which the presumptive sentence changed, the earlier presumptive sentence should be used. If there is no reasonable likelihood that all of the offender's multiple acts occurred before that date, the later presumptive sentence should be used. See State v. Murray, 495 N.W.2d 412, 415 (Minn. 1993)(articulating rule).~~

~~If the date of the offense is not specified in the complaint and cannot be ascertained with certainty, the judge shall establish the relative order of events, based on the information available, to determine whether or not the juvenile record is to be considered, whether or not a custody status point is to be assigned, and the order of sentencing.~~

~~If the date of offense established by the above rules is on or before April 30, 1980, the sentencing guidelines should not be used to sentence the case.~~

10. Mandatory Sentences for Certain Sex Offenses

Guidelines Sections are modified as a result of statutory changes.

Guidelines Section II.A. Offense Severity:

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 and sex offenses under Minn. Stat. § 609.3455, subdivision 2 are 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. The severity level for each felony offense is governed by Section V: Offense Severity Reference Table. Some offenses are designated as unranked offenses in the Offense Severity Reference Table. When unranked offenses are being sentenced, the sentencing judges shall exercise their discretion by assigning an appropriate severity level for that offense and specify on the record the reasons a particular level was assigned. If an offense is inadvertently omitted from the Offense Severity Reference Table, the offense shall be considered unranked and the above procedures followed.

V. OFFENSE SEVERITY REFERENCE TABLE

~~Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are is excluded from the guidelines by law, and continues to have a mandatory life sentence.~~

Guidelines Section II.C. Presumptive Sentence:

~~The sentencing guidelines do not apply to offenders sentenced under M.S. § 609.109, subdivision 3, which mandates a life sentence for certain repeat sex offenders. The minimum term of imprisonment for offenders sentenced under this statute is 30 years.~~

[Repealed, 2006 c 260 art 1 s 48]

Guidelines Section II.E. Mandatory Sentences:

First degree murder and sex offenders subject to Minn. Stat. § 609.109, subd. 3 and § 609.3455, subdivision 2, which have mandatory life imprisonment sentences, are excluded from offenses covered by the sentencing guidelines.

Comment

~~II.E.01. The types of offenses that may involve a mandatory minimum sentence or a mandatory sentence include offenses involving dangerous weapons, a second or subsequent criminal sexual conduct offense, a second or subsequent controlled substance offense, first degree (felony) driving while impaired, and certain 2nd and 3rd degree murder offenses when the offender has a prior conviction for a "heinous" offense as described by statute.~~

~~II.E.04. In State v. Feinstein, 338 N.W.2d 244 (Minn. 1983), the Supreme Court held that judges had the authority to stay execution of mandatory three year prison sentences for second or subsequent sex offenses. Although the Supreme Court decision authorized stays of execution for second or subsequent sex offenses, the presumptive disposition for second or subsequent sex offenses is still imprisonment. A stay of execution for such a case constitutes a dispositional departure and written reasons which specify the substantial and compelling nature of the circumstances and which demonstrate why the disposition selected is more appropriate, reasonable, or equitable than the presumptive disposition are required.~~

Guidelines Section II.D. Departures from the Guidelines:

2. Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which may be used as reasons for departure:

. . . .

- b. Aggravating Factors:

-
 (7) Offender is a “~~patterned sex offender~~” (See Minn. Stat. ~~§ 609.108~~) sentenced according to Minn. Stat. § 609.3455, subd. 3a (Mandatory sentence for certain engrained offenders).

- Subdivision 1.[Repealed, 2006 c 260 art 1 s 48]
- Subd. 2.[Repealed, 2005 c 136 art 2 s 23]
- Subd. 3.[Repealed, 2006 c 260 art 1 s 48]
- Subd. 4.[Repealed, 2006 c 260 art 1 s 48]
- Subd. 5.[Repealed, 2006 c 260 art 1 s 48]
- Subd. 6.[Repealed, 2006 c 260 art 1 s 48]
- Subd. 7.[Repealed, 2006 c 260 art 1 s 48]

11. Remove Repealed Statute and Mislabeled Value

Theft Offense List

~~Theft of Registered Bicycles~~
 168C.09
 [Repealed, 1Sp2005 c 6 art 2 s 48]

II	Coercion (\$300 <u>\$301</u> - \$2,500) - 609.27, subd. 1 (2), (3), (4), & (5)
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12. Grid Changes Resulting from Modifications

Guidelines Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:

SEVERITY LEVEL OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or More
Conspiracy/ Attempted Murder, 1st Degree	180 153-216	190 161.5-228	200 170-240	210 178.5-240 ¹	220 187-240 ¹	230 195.5-240 ¹	240 204-240 ¹

¹ M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower downward and 20% higher upward from the presumptive sentence than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections II.H Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids. However, because the statutory maximum sentence for these offenses is no more than 20 years, the range is capped at that number.

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 non-imprisonment felony sentences are subject to jail time according to law.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE
(Common offenses listed in italics)

		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	XI	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	IX	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	VIII	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	VII	36	42	48	54 46-64	60 51-72	66 57-79	72 62-86 84 ²
<i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i> <i>Controlled Substance Crime, 3rd Degree</i>	VI	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-51-2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Sale of Simulated</i> <i>Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22



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



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

¹ One year and one day


² M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower downward and 20% higher upward from the presumptive sentence than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids. However, because the statutory maximum sentence for these offenses is no more than 40 years, the range is capped at that number.


Effective August 1, 2007

SEX OFFENDER GRID
Presumptive Sentence Lengths in Months

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

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
CSC 1 st Degree	A	144 <i>144-173</i>	156 <i>144-187</i>	168 <i>144-202</i>	180 <i>153-216</i>	234 <i>199-281</i>	306 <i>260-360</i>	360 <i>306-360</i> ²
CSC 2 nd Degree – (c)(d)(e)(f)(h)	B	90 <i>90-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
CSC 3 rd Degree – (c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)	C	48 <i>41-58</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>99-140</i>	153 <i>130-180</i>	180 <i>153-180</i> ²
CSC 2 nd Degree – (a)(b)(g) CSC 3 rd Degree – (a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>77-109</i>	119 <i>101-143</i>	140 <i>119-168</i>
CSC 4 th Degree – (c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 <i>51-72</i>	78 <i>66-94</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
CSC 4 th Degree – (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 <i>38-54</i>	59 <i>50-71</i>	77 <i>65-92</i>	84 <i>71-101</i>
CSC 5 th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 <i>33-47</i>	51 <i>43-60</i>	60 <i>51-60</i> ²
Registration Of Predatory Offenders	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-17</i>	16 <i>14-19</i>	18 <i>15-22</i>	24 <i>20-29</i>	30 <i>26-36</i>	36 <i>31-43</i>

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2 are excluded from the guidelines, because by law the sentence is mandatory imprisonment for life. See, Guidelines Section 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 offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4, always carry a presumptive commitment to state prison. These offenses include second and subsequent Criminal Sexual Conduct offenses. (See, Guidelines Sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.)

¹ One year and one day

² M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections II.H Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and I.II Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids. Effective August 1, 2007