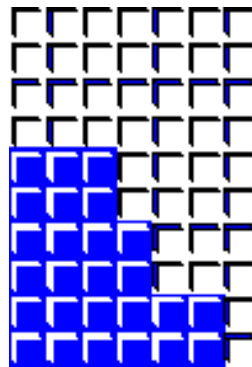


MINNESOTA SENTENCING
GUIDELINES COMMISSION

Report to the Legislature

January 2009



Minnesota Sentencing Guidelines Commission
Capital Office Building
525 Park Street, Suite 220
St. Paul, MN 55103

Voice: 651.296.0144 Fax: 651.297.5757
TTY: 1-800-627-3529, ask for 651.296.0144

Website: <http://www.msgc.state.mn.us>
E-mail: sentencing.guidelines@state.mn.us

Reports are available in alternative formats upon request.

MEMBERS

Jeffrey Edblad, Chair, Isanti County Attorney
Robert Battle, Citizen Member, St. Paul
Darci Bentz, Public Defender, Fairmont
Kari Berman, Citizen Member, Minneapolis
Edward Cleary, District Court Judge, Ramsey County
Joan Fabian, Commissioner of Corrections
Brad Gerhardt, Sheriff, Martin County
Tracy D. Jenson, Probation Officer, Washington County
Connie Larson, Citizen Member, Waseca
Helen Meyer, Justice, Minnesota Supreme Court
Gordon Shumaker, Judge, Court of Appeals

STAFF

Suzanne Alliegro, Executive Director*
Bethany Habinek, Research Analyst
Jeffrey P. Holtz, Research Analyst
Jacqueline Kraus, Research Analysis Specialist
Linda McBrayer, Management Analyst 4
Jill Payne, Research Analysis Specialist, Senior
Anne Wall, Research Analysis Specialist, Senior

* This report was prepared under the direction of retired Executive Director Isabel Gomez.

This information will be made available in an alternative format upon request. The total cost of development and preparation for this report was \$4,451.64 (Reported as required by Minn. Stat. § 3.197.)

Table of Contents

Minnesota Sentencing Guidelines Commission

Introduction	1
Executive Summary	2
2007 Sentencing Practices Data Summary	3
Felony Driving While Impaired – A Summary of Cases Sentenced in 2007	8
The Commission’s Activities in 2008	14
Racial-Impact Notes	14
Racial Disparity Research	15
Legislative Working Group on Controlled Substance Laws.....	16
Maintaining Guidelines	16
Staff Activity.....	16
Sentencing Guidelines Modifications	18
New Crimes Passed by the Legislature – Eff. August 1, 2008	18
Custody Status Point Clarification – Eff. August 1, 2008.....	18
Technical Modifications – Eff. August 1, 2008.....	18
Calculation of Juvenile Point – Eff. August 1, 2009.....	19
Drug Offenders Revoked to Prison – A Summary of Cases Sentenced in 2004 and 2005	20
Reentry Programs and Drug Courts	32
County Attorney Firearms Reports	33
APPENDICES.....	39
Appendix A: New and Amended Crimes Passed by the Legislature – Eff. August 1, 2008.....	40
Appendix B: Non-Legislative Modifications – Eff. August 1, 2008	42
Appendix C: Technical Modifications – Eff. August 1, 2008	44
Appendix D: Non-Legislative Modifications – Eff. August 1, 2009	73
Appendix E: Reentry Grant Summaries.....	76

FIGURES

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2007	3
Figure 2. Number of Offenders Sentenced for Felony Convictions (% Change): 1982-2007	4
Figure 3. Number of Offenders Sentenced by Offense Type (% Change): 1999-2007	5
Figure 4. Distribution of Assault Offenses: 2001-2007	6
Figure 5. Volume of Offenders Sentenced by Offense Type: 1981-2007	7
Figure 6. Number of Felony DWI Offenders Sentenced: 2002-2007	8
Figure 7. Distribution of Felony DWI Offenders by Race	9
Figure 8. Distribution of Felony DWI Offenders by Region	9
Figure 9. Comparison of Racial Composition Among Populations: 2007	15
Figure 10. Drug Offenders Entering Prison Thru 2007: Sentenced 2004-2005	22
Figure 11. Drug Probationers Revoked – CHS	23
Figure 12. Drug Probationers Revoked – Prior Person Offenses	23
Figure 13. Drug Probationers Revoked – Controlled Substance Offense Level	24
Figure 14. Drug Probationers Revoked – Guidelines Recommended Prison	25
Figure 15. Drug Probationers Revoked by CHS – Guidelines Recommended Prison.....	25
Figure 16. Firearms Reports – Cases Allegedly Involving a Firearm.....	33
Figure 17. Firearms Reports – Cases Charged	34
Figure 18. Firearms Reports – Case Outcomes	34
Figure 19. Firearms Reports – Cases Convicted of Designated Offense	35
Figure 20. Firearms Reports – Firearm Established on the Record	35

TABLES

Table 1. Felony DWI Incarceration Rates by County.....	10
Table 2. Drug Offenders Entering Prison Thru 2007 by MN Judicial District	26
Table 3. Drug Offenders Entering Prison Thru 2007 by MN County.....	27
Table 4. Firearms Reports – Cases Allegedly Involving a Firearm by MN County	36

Introduction

In 1978, Minnesota created the nation's first sentencing guidelines commission. In 1981, Minnesota became the first state to implement a sentencing guidelines structure. Over the past 25 years, the guidelines system has proven capable of providing sound data to inform policy-makers and effectuating their decisions. While the number of felons sentenced in this state, as in every American jurisdiction, has greatly increased, the growth has been less than in states with indeterminate sentencing systems. A 2008 study by the National Center for State Courts concluded that our guidelines system has made sentences predictable, limited undesirable sentencing disparity and made sentencing transparent (Ostrom, Brian J., Ostrom, Charles W., Hanson, Roger A. et al. *Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States* (2008)).

The state's guidelines make it possible to give citizens an honest, front-end account of sentences actually to be served. They allow us to capture and analyze precise details about every felony punishment, so as to accurately describe sentencing trends and predict the impact of statutory changes on prison resources. They have enabled judges to "make the punishment fit the crime," by providing the most severe sentences for the most serious offenses, while taking into account important differences among offenders. Throughout the time the guidelines have existed, Minnesota has undergone significant changes in population, while both its crime rate and its rate of imprisonment per capita have remained among the lowest in the United States.

A balancing of flexibility and constraint is at the heart of our guidelines' success and enduring value. Today, other jurisdictions continue to look to Minnesota for ideas about how their sentencing might be improved. In 2007, the Guidelines Commission decided to provide our Legislature with reports predicting the racial impact of proposed changes in criminal law, in addition to the fiscal notes we have always provided. Since then, the Iowa and Connecticut legislatures have mandated racial-impact notes; those states and others are using Minnesota's reports as models. In 2008, after two trips to Minnesota, a British task force comprised of judges, researchers and members of Parliament recommended our sentencing guidelines structure as the best solution for Great Britain's prison overcrowding crisis. South Korea has a new sentencing commission that plans to implement guidelines patterned on Minnesota's for sex offenses and robbery by the end of 2008; we had the pleasure of hosting one of their experts on sentencing in November.

Throughout its history, the agency has lived up to its mission by collaborating with criminal justice partners and by utilizing and promoting advances in information technology. In this way, the Minnesota Sentencing Guidelines Commission (MSGC) has maintained its position as one of the least expensive and most effective sentencing commissions in the United States. The strategies of collaboration and efficient utilization of technology have made it possible for the agency to manage and analyze data about more than 16,000 cases in 2007 on a budget not much greater than that we had when there were half as many sentences. We are confident that our value to Minnesota's criminal justice system will continue to grow in the coming years.

Executive Summary

The 2009 Report to the Legislature contains information for which the Commission is required to report: modifications to the sentencing guidelines; effectiveness of reentry programs and drug courts; and use of firearms in crimes as reported by Minnesota's County Attorneys. As in past years, the Commission also took this opportunity to highlight topics which may be of interest to the Legislature: sentencing trends; revocation of drug offenders to prison, and Commission activities. Presented below is a summary of the sections contained in the report.

Sentencing Trends – Minnesota experienced its first decrease in the number of felons sentenced since the year 2000. There were 16,168 felony offenders sentenced in 2007; a decrease of 1.7 percent from 2006. The trend appears to be the result of the decline in both the number of felony DWI offenders sentenced and the number of drug offenders sentenced, namely meth offenders.

Commission Activities – As referenced in the introduction, the Commission focused on revising the sentencing guidelines to reflect law changes, and continued to provide fiscal notes, as well as racial-impact analyses, whenever new crime legislation was introduced. It hosted a delegation from Great Britain which reviewed Minnesota's sentencing guidelines in response to their prison overcrowding. MSGC staff processed and ensured the accuracy of over 16,000 sentencing records; collaborated with the Department of Corrections (DOC) on prison population projections; and provided training to over 1,000 probation officers, lawyers, and judges.

Sentencing Guidelines Modifications – The Commission ranked one new crime, disarming a peace officer (§ 609.504), at severity level three; clarified how the custody status point is calculated; and made several technical modifications to the guidelines. These modifications became effective August 1, 2008. The Commission also adopted a proposal to amend the juvenile point which will go into effect August 1, 2009, provided the Legislature does not pass a law to the contrary.

Drug Offenders Revoked to Prison – For the first time, the Commission reported on drug offenders who were put on probation in order to determine how many were revoked to prison. Of the probationers, 19.5% were revoked within two years of sentencing. When the number of offenders revoked to prison was added to the number of offenders initially sentenced to prison, 39% of those sentenced to either probation or prison in 2004 and 2005 entered prison by the end of 2007.

Reentry Programs and Drug Courts – The 2007 Legislature mandated that the Commission study the effectiveness of reentry programs and drug courts. As was stated in the Commission's 2008 report, thorough evaluations take from 18 months to several years. The DOC oversees reentry evaluations; and the Statewide Drug Court Evaluation Committee continues to meet to discuss the implementation of the statewide drug court evaluation.

County Attorney Firearms Reports – Current law directs County Attorneys to collect and maintain information on crimes for which a defendant is alleged to have possessed or used a firearm. The Commission is required to include in its annual report a summary and analysis of the reports received. Since the mandate began, the average number of cases has been 657.

2007 Sentencing Practices Data Summary

The recommended sentence under the guidelines is based primarily on the severity of the offense of conviction and secondarily on the offender’s criminal record. The majority of offenders receive the recommended sentence.

Sentencing practices are very closely related to the recommended guideline sentence. It is very important, therefore, to be aware of the effect of differences in offense severity and criminal history when evaluating sentencing practices. This is particularly important when comparing groups of offenders (e.g. by gender, race/ethnicity and judicial district). For example, if in a particular district the proportion of serious person offenders is fairly high, the imprisonment rate for that district will likely be higher than for districts with predominantly lower severity level offenses. It is also important to take significant changes to the sentencing guidelines into account. For instance, a new severity level was inserted into the grid to accommodate felony driving while impaired (DWI), which became law August 1, 2002. In order to group offenses together when reporting data, the new severity levels I – XI are used in tables where severity levels are reported. In addition, the new Sex Offender Grid effective for sex offenses committed on or after August 1, 2006, is referenced separately.

There were 16,168 felony offenders sentenced in 2007 (Figure 1); a decrease of 1.7 percent from 2006 (Figure 2). This was the first decrease since 2000. The large growth experienced between 2001 and 2004 can be attributed to the implementation of the felony DWI law and increases in the number of drug crimes sentenced, particularly methamphetamine cases. Both trends appear to have leveled off.

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2007

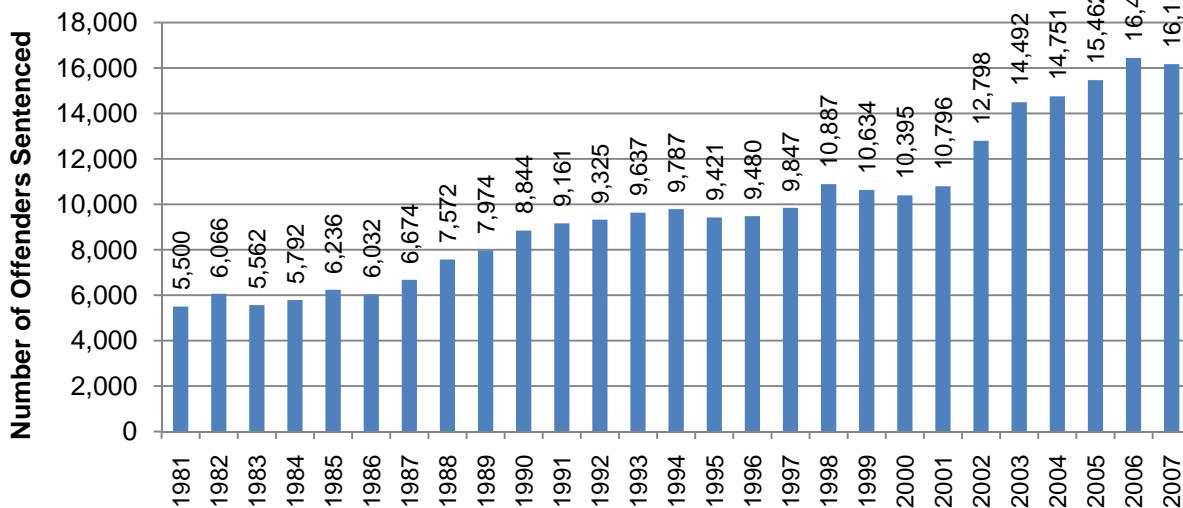
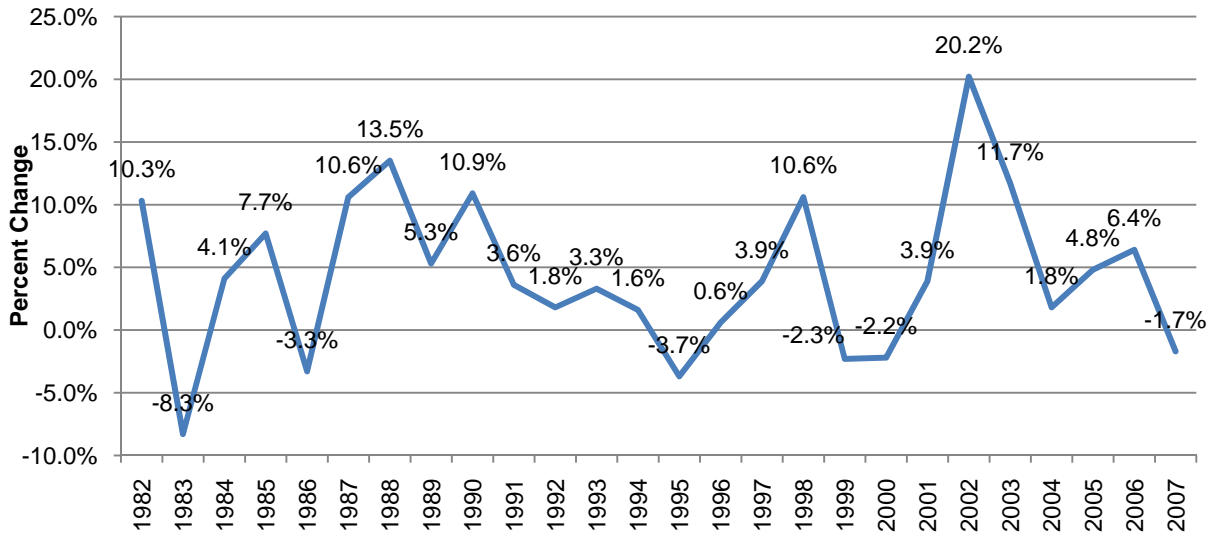


Figure 2. Percent Change in Number of Offenders Sentenced for Felony Convictions: 1982-2007

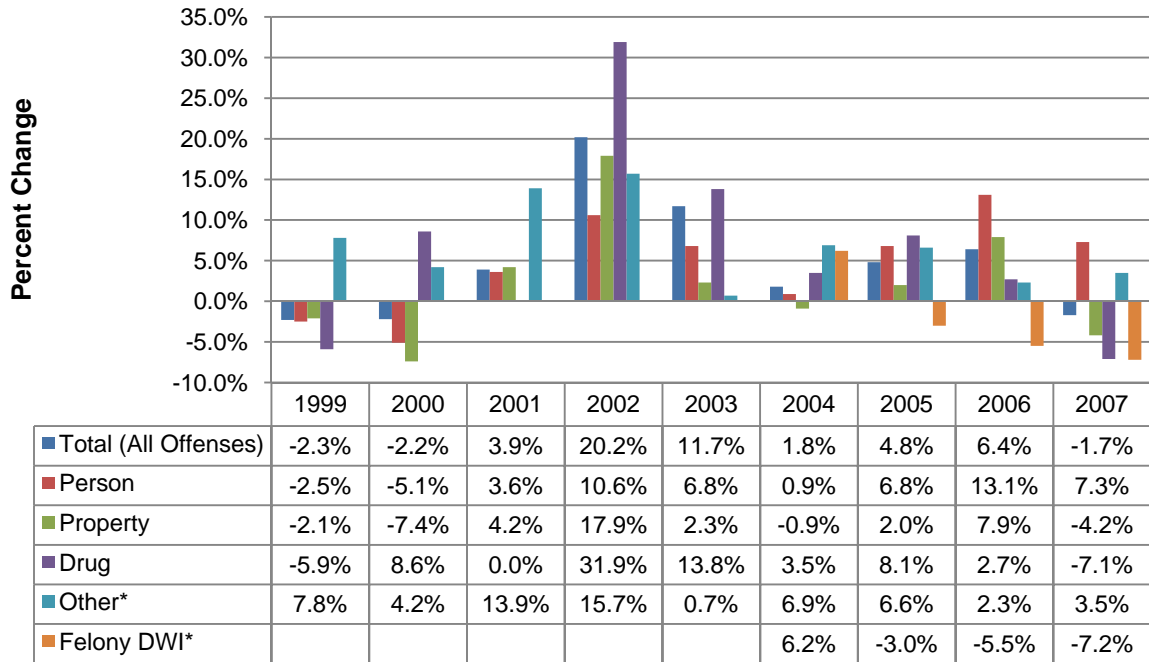


The “Person Crime” category had the most growth in 2007, with a growth rate of over 7 percent following a growth rate of over 13 percent in 2006. The number of offenders sentenced in every other offense category declined (Figure 3). Part of this growth resulted from the fact that 2006 was the first full 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; 23 were sentenced in 2007.

The “Person Crime” growth rate may also be attributable to a relatively new felony crime, domestic assault by strangulation (Figure 4). In 2005, the Legislature made it a felony to assault a family or household member by strangulation; previously, the offense was an enhanceable misdemeanor. The felony went into effect August 1, 2005, and there were 20 offenders sentenced by the end of December. In 2006, there were 264 offenders sentenced. In 2007, there were 315 offenders sentenced. It seems clear that the domestic assault by strangulation offenses are largely cases that would not have been felony offenses before the statutory change.

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.

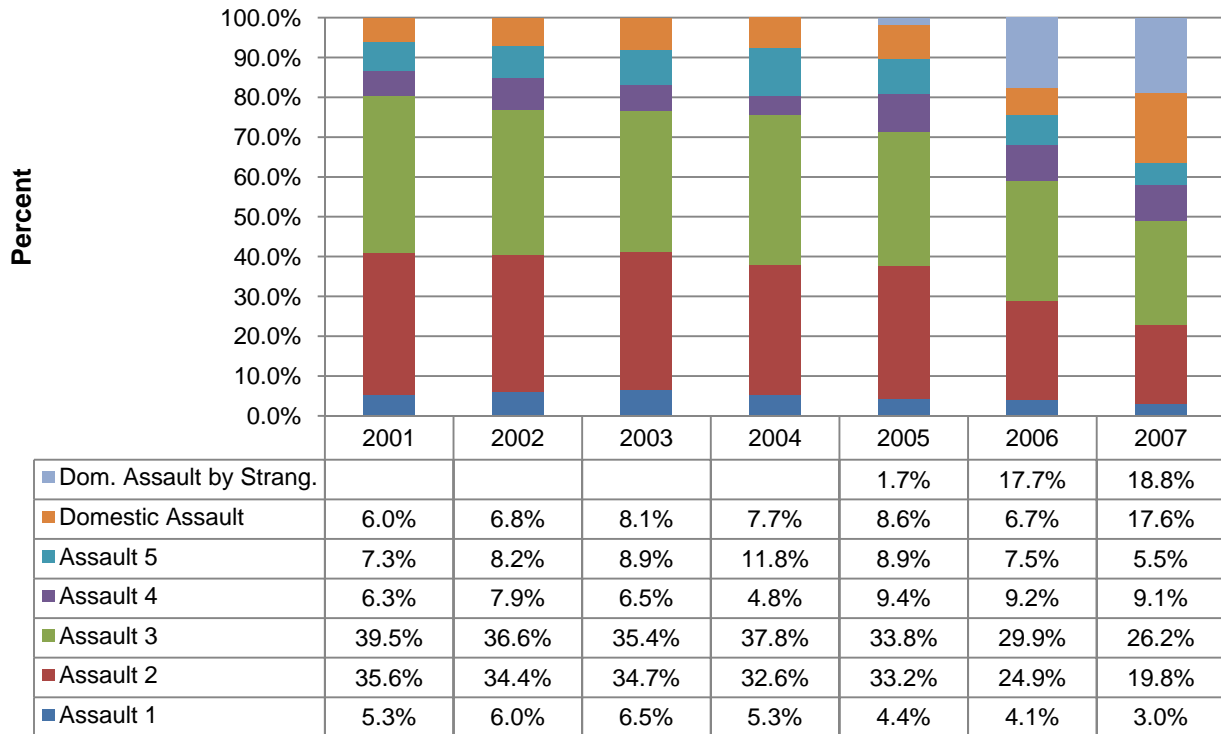
**Figure 3. Percent Change by Offense Type: 1999-2007
(Felony DWI Separated from Other Category)**



*Offenses in the "Other" Category are: discharge of a firearm; felon in possession of a weapon; bribery; perjury; escape; fleeing a peace officer; aiding an offender; accomplice after the fact; obstructing legal process; lottery fraud; fail to register as a predatory offender; possession of, dissemination of, child pornography; failure to appear in court; weapon-related offenses.

**Felony DWI went into effect August 1, 2002. Since 2003 was the first full year in which this offense existed, percent change for this category is only provided for 2004 and beyond.

Figure 4. Distribution of Assault Offenses: 2001-2007

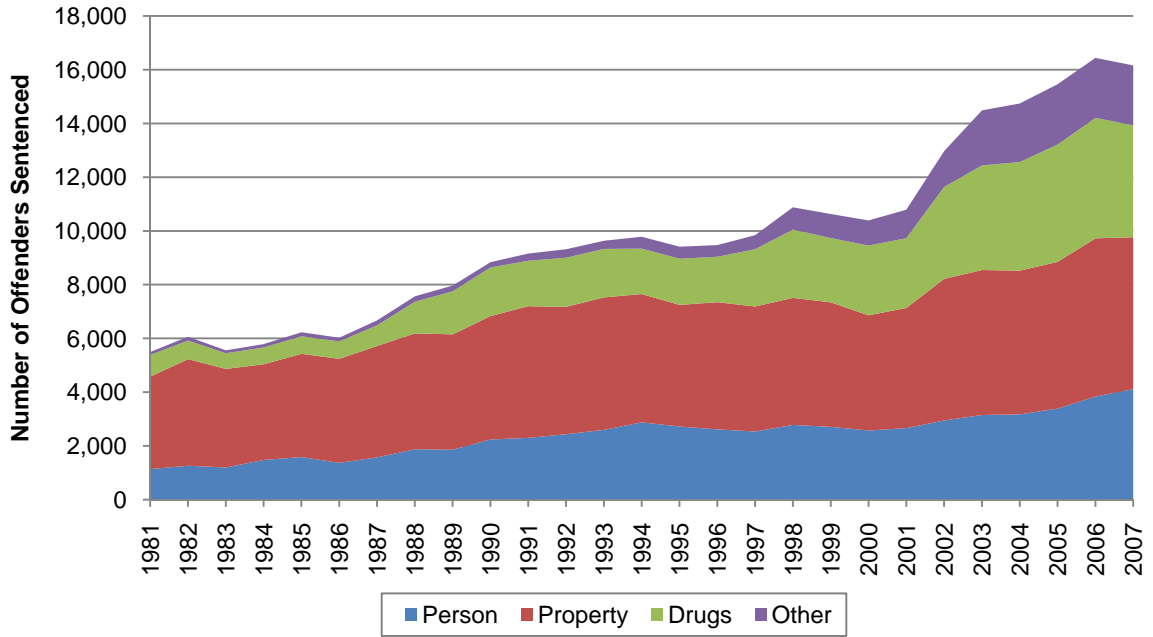


While the number of offenders sentenced for first-, second-, and third-degree assault decreased by 6.7 percent in 2007, the number of offenders sentenced for non-strangulation felony domestic assaults increased by almost 200 percent—from 100 offenders in 2006 to 295 offenders in 2007.

Person offenses accounted for 25.5 percent of all offenses sentenced (Figure 5). This was the highest proportion of person offenses observed since 1999. As a proportion of total crimes sentenced, drug crimes decreased in 2006 for the first time since 2001 and further declined in 2007. There were decreases in the “Property” category and the “Other” category. If felony DWI is excluded from the “Other” category, there was a 3.5 percent increase.

Data from *Minnesota Crime Information 2007*, published by the Minnesota Department of Public Safety, indicates that the overall crime rate for index crimes has fluctuated since 1981. The 2007 rate of 3,257 crimes per 100,000 in population represents a 3.2 percent decrease from the 2006 crime rate of 3,366 and a 4.5 percent decrease from the 2005 rate of 3,410. In 2007, there were 15,228 reported violent crimes in Minnesota, a 9.0 percent decrease from the 16,727 violent crimes reported in 2006.

**Figure 5. Volume of Offenders Sentenced by Offense Type:
1981-2007**

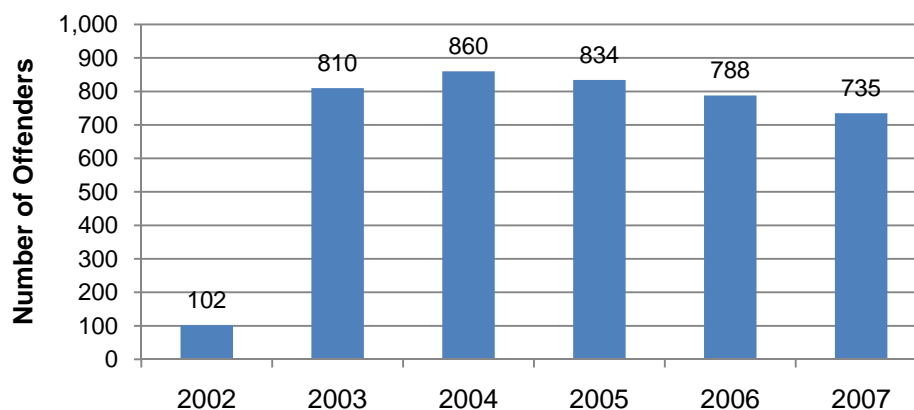


Felony Driving While Impaired – A Summary of Cases Sentenced in 2007

The Commission has highlighted sentencing practices data on felony DWI in this report since it was passed into law in 2002. Please visit our website at www.msgc.state.mn.us to view a full report.

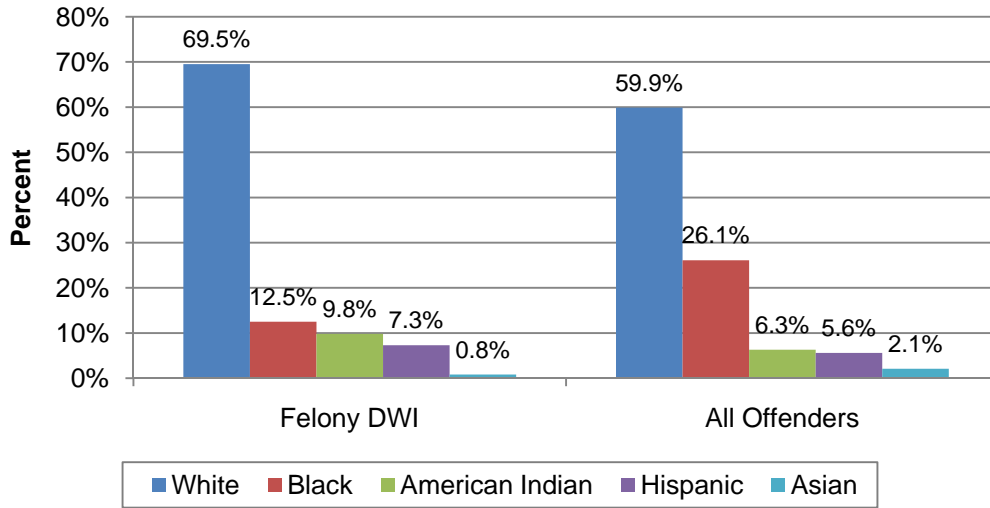
There were 735 offenders sentenced for felony DWI offenses in 2007. This figure is 6.7 percent lower than the number of offenders sentenced for felony DWI offenses in 2006 (788), and is the lowest number of offenders sentenced in a full calendar year since felony Driving While Impaired (DWI) went into effect August 1, 2002 (Figure 6).

**Figure 6. Number of Offenders Sentenced:
2002 - 2007**



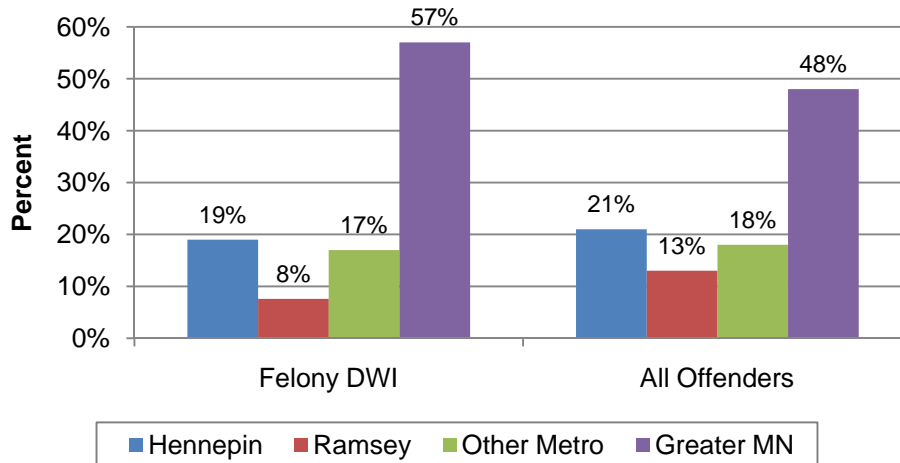
Felony DWI offenders were more likely to be white, Hispanic, or American Indian males than were offenders sentenced for other offenses in 2007 (Figure 7). On average, they were older than other offenders and more likely to be sentenced in greater Minnesota (Figure 8).

Figure 7. Distribution of Offenders by Race



As seen in Figure 8, Hennepin County sentenced nineteen percent of the felony DWI cases in the state, compared to twenty-one percent of all felony cases sentenced. Ramsey County sentenced eight percent of the felony DWI cases, compared to thirteen percent of all felony cases. The other metro counties had only a single percent difference in the percentages for each category (17% and 18%). Conversely, Greater Minnesota sentenced a larger proportion of felony DWIs (57%) than its share of all felonies sentenced in 2005 (48%).

Figure 8. Distribution of Offenders by Region



Ninety-six percent of offenders received sentences that included incarceration in a state prison (25%) or local jail (71%). Table 1 below displays this information for each Minnesota County.

Where the guidelines recommended imprisonment, 71 percent of offenders received an executed prison sentence. The average pronounced prison sentence was 50 months. The downward (mitigated) dispositional departure rate in 2007 for presumptive commitments was 26 percent, a decrease from the 32 percent rate observed in 2006 and from the 35 percent rate observed in 2005.

The durational departure rate for offenders receiving executed prison sentences was 26 percent, all of which were mitigated. The average pronounced jail time for offenders receiving local jail time as a condition of probation was 211 days.

A total of 461 felony DWI offenders have been admitted to prison on probation revocations, as opposed to new convictions, through 2007. Since the law went into effect, 3,387 felony DWI offenders have been placed on probation. The revocation rate through the end of 2007 is 13.6 percent.

Table 1. 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	41	7 (17%)	33 (81%)	1 (2%)
Becker	18	4 (22%)	14 (78%)	0
Beltrami	15	4 (27%)	10 (67%)	1 (7%)
Benton	5	1 (20%)	4 (80%)	0
Blue Earth	11	0	10 (91%)	1 (9%)
Brown	4	0	4 (100%)	0
Carlton	10	3 (30%)	7 (70%)	0
Carver	5	0	5 (100%)	0
Cass	8	0	8 (100%)	0
Chippewa	0	0	0	0
Chisago	10	4 (40%)	6 (60%)	0
Clay	21	4 (19%)	17 (81%)	0

County	# of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Clearwater	4	3 (75%)	1 (25%)	0
Cook	1	0	1 (100%)	0
Cottonwood	0	0	0	0
Crow Wing	9	1(11%)	7 (78%)	1 (11%)
Dakota	51	9 (18%)	41 (80%)	1 (2%)
Dodge	2	0	1 (50%)	1 (50%)
Douglas	4	1 (25%)	3 (75%)	0
Faribault	2	1 (50%)	1 (50%)	0
Fillmore	1	0	1 (100%)	0
Freeborn	2	0	2 (100%)	0
Goodhue	5	1 (20%)	4 (80%)	0
Grant	1	0	1 (100%)	0
Hennepin	138	36 (26%)	97 (70%)	5 (4%)
Houston	1	0	1 (100%)	0
Hubbard	3	1 (33%)	2 (67%)	0
Isanti	11	3 (27%)	8 (73%)	0
Itasca	11	3 (27%)	8 (73%)	0
Jackson	5	1 (20%)	4 (80%)	0
Kanabec	2	0	2 (100%)	0
Kandiyohi	4	2 (50%)	2 (50%)	0
Kittson	0	0	0	0
Koochiching	4	1 (25%)	2 (50%)	1 (25%)
Lac Qui Parle	0	0	0	0
Lake	0	0	0	0
Lake of the Woods	1	0	1 (100%)	0
LeSueur	8	3 (38%)	5 (62%%)	0
Lyon	4	1 (25%)	2 (50%)	1 (25%)

County	# of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
McLeod	3	1 (33%)	2 (67%)	0
Mahnomen	10	5 (50%)	5 (50%)	0
Marshall	3	1 (33%)	2 (67%)	0
Martin	4	0	4 (100%)	0
Meeker	1	0	1 (100%)	0
Mille Lacs	10	2 (20%)	8 (80%)	0
Morrison	6	1 (17%)	5 (83%)	0
Mower	2	0	1 (50%)	1 (50%)
Murray	2	2 (100%)	0	0
Nicollet	2	0	2 (100%)	0
Nobles	9	3 (33%)	6 (67%)	0
Norman	1	0	1 (100%)	0
Olmsted	18	7 (39%)	10 (56%)	1 (6%)
Otter Tail	8	5 (63%)	3 (38%)	0
Pennington	2	0	2 (100%)	0
Pine	13	5 (39%)	7 (54%)	1 (8%)
Pipestone	3	2 (67%)	1 (33%)	0
Polk	16	4 (25%)	10 (63%)	2 (13%)
Pope	1	0	1 (100%)	0
Ramsey	56	12 (21%)	44 (79%)	0
Red Lake	1	0	1 (100%)	0
Redwood	2	2 (100%)	0	0
Renville	5	0	3 (60%)	2 (40%)
Rice	5	1 (20%)	4 (80%)	0
Rock	1	0	1 (100%)	0
Roseau	4	1 (25%)	3 (75%)	0
St Louis	22	6 (27%)	15 (68%)	1 (5%)

County	# of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Scott	11	3 (27%)	7 (64%)	1 (9%)
Sherburne	17	5 (29%)	10 (59%)	2 (12%)
Sibley	1	0	1 (100%)	0
Stearns	15	5 (33%)	9 (60%)	1 (7%)
Steele	8	3 (38%)	5 (62%)	0
Stevens	0	0	0	0
Todd	3	0	3 (100%)	0
Wabasha	2	0	2 (100%)	0
Wadena	2	1 (50%)	1 (50%)	0
Waseca	2	0	1 (50%)	1 (50%)
Washington	17	7 (41%)	10 (59%)	0
Watsonwan	2	0	1 (50%)	1 (50%)
Wilkin	2	0	2 (100%)	0
Winona	6	2 (33%)	4 (67%)	0
Wright	11	2 (18%)	9 (82%)	0
Yellow Medicine	0	0	0	0
Total	735	183 (25%)	525 (71%)	27 (4%)

The Commission's Activities in 2008

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.

Racial-Impact Notes

The Commissioners agreed that it would be appropriate to begin providing the Legislature racial-impact notes on proposed crime bills, in addition to the fiscal notes MSGC has always provided. Minnesota became the first state in the nation to prepare estimates of racial impact for legislators. Subsequently, both Connecticut and Iowa enacted laws requiring such estimates. Both states have used Minnesota's notes as patterns.

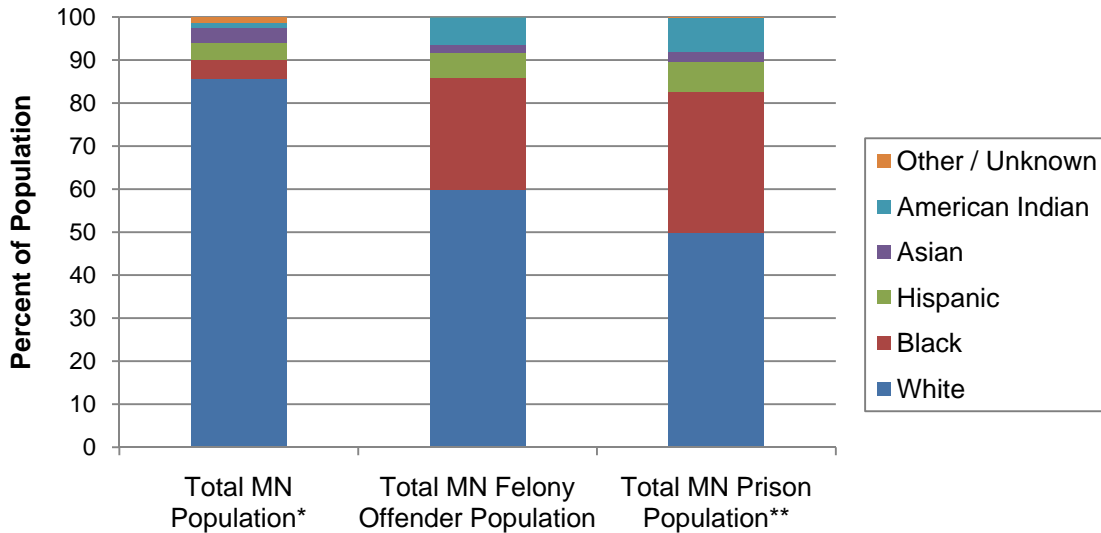
By providing this information, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant disparity in racial impact can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating that disparity. Just as with the Commission's fiscal impact notes, the agency does not comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2007 (the most current estimates available at this time), almost 86 percent of Minnesota's population is white. The composition of the remaining 14 percent is as follows: 4.3 percent black; 4.0 percent Hispanic; 3.5 percent Asian; 1.1 percent American Indian; and roughly one percent who identify themselves with two or more races.

In contrast, MSGC monitoring data shows the following racial make-up of the 2007 felony offender population: 59.9 percent white; 26.1 percent black; 6.3 percent American Indian; 5.6 percent Hispanic; 2.1 percent Asian, and .03 percent unknown/other.

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2007 was as follows: 49.9 percent white; 32.6 percent black; 8.0 percent American Indian; 7.1 percent Hispanic; 2.3 percent Asian; and .05 percent unknown/other (Figure 9).

Figure 9. Comparison of Racial Composition Among Populations: 2007



* Source for "Total MN Population": U.S. Census Bureau 2007 Population Estimates.

** Source for "Total MN Prison Population": MN Department of Corrections Adult Inmate Profile: 7/1/07.

Racial Disparity Research

Our Commissioners are determined to examine racial disparity in our prison populations in a sophisticated, statewide research project that will provide facts to allow real understanding of whether and how race affects imprisonment in Minnesota. We are collaborating with experts from the University of Minnesota Law School, and with State Court researchers on this project. We delayed the research in order to complete the collateral sanctions work assigned us by the Legislature in 2007; it will now proceed, using 2007 data.

Legislative Working Group on Controlled Substance Laws

The 2008 Minnesota Legislature created a working group on Controlled Substance Laws. The group was established following the Commission's recommendation that the Legislature appoint a bipartisan task force of knowledgeable criminal justice professionals 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. Appointments were made in July and the first meeting was convened in September. The working group was to report its findings and specific recommendations to the Legislature by January 15, 2009.

Staff from MSGC supported the working group by providing them sentencing practices data on controlled substance crimes. Agency staff also collected and analyzed additional information on drug amounts for relevant cases sentenced in 2007. This was necessary in order to do more accurate prison-bed estimates.

Maintaining Guidelines

The Commission made decisions concerning changes that should be made to the guidelines, based on changes in statutes, relevant case law, and recommendations from the criminal justice community. Modifications resulting from new and amended crime legislation and those that did not require legislative review were published in the annual revision of the guidelines, which took effect on August 1, 2008. Modifications to how the juvenile point is calculated are effective August 1, 2009, provided the Legislature does not pass a bill to the contrary. All modifications are set forth in the Appendix.

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; served on information technology boards, committees, and working groups to help ensure public safety; and provided assistance to hundreds of practitioners seeking help with the application of the sentencing guidelines. MSGC provided training to some 1,000 probation officers, lawyers and judges in half-day and full-day sessions throughout Minnesota.

MSGC has been able to make significant advances in information technology, and is close to some major breakthroughs in this area. Most of these required collaboration with other state agencies, as can be seen in the "Priority Initiatives" listed below.

MSGC Priority Initiatives

1. Re-Design Statewide Web-Based Application

The MN Department of Corrections (DOC) and the MN Sentencing Guidelines Commission collaborated to re-design an antiquated application developed over 10 years ago. The improved application will be part of the DOC's new Statewide Supervision System. Once fully implemented in FY 2010, it will offer more data quality checks, upgraded technology, and integrated data from the MN Court Information System (MNCIS). It is expected to provide an enhanced user experience and increased efficiencies for users statewide.

2. Reporting Sentencing Data

MSGC developed a new method for retrieving sentencing information from the State Court's Information System (MNCIS). Once the database is fully functional, the new method will prove more efficient than the current practice of manual data-entry, thereby reducing the amount of time it takes for MSGC to report annual sentencing statistics. Additional data are being collected and will prove valuable for additional research efforts.

3. Technology Infrastructure

MSGC replaced a network server that was over four years old – one year beyond that which is recommended by OET Life-Cycle Replacement standards. The replacement effort reduced operating risks and the potential for costly repairs while providing additional file storage.

4. Cost-Effective IT Support

MSGC returned to contracting with an IT consultant rather than employing an IT staff for an agency with 7.75 FTE.

5. Improved Communications System

The agency switched to Voice-Over IP (Internet Protocol) technology to improve the overall speed, reliability, and security of the agency's network; to eliminate telephone charges associated with DSL (Digital Subscriber Line); and become part of a statewide VoIP call network which allows toll-free dialing to many agency customers in Greater-Minnesota. Additionally, MSGC was awarded 14 phones free of charge (an estimated savings of \$4,200) as part of a special Office of Enterprise Technology (OET) initiative.

6. Enhanced Backup and Storage Services

MSGC contracted with OET to provide cost-effective backup and restore services which offer redundancy, encryption, and off-site storage. It is also possible to recover from a remote location in the event of a disaster which promotes the agency's business continuity plan.

Sentencing Guidelines Modifications

Changes to the sentencing guidelines related to new and amended crimes passed by the Legislature during the 2008 Session became effective August 1, 2008. Non-legislative changes which do not affect the sentencing guidelines grids or the calculation of the sentencing guidelines' presumptive sentence are effective August 1, 2008. Other modifications are effective August 1, 2009, provided that the legislature does not pass a bill to the contrary. The exact language of all changes is included in Appendices.

New Crimes Passed by the Legislature – Effective August 1, 2008

The Commission ranked one new crime, disarming a peace officer (§ 609.504), at severity level three. Prior to 2008, a provision for the crime existed in the obstructing legal process law (M.S. § 609.50). The definition was expanded to include all defensive devices, not just firearms. The statutory maximum was set at five years, the same as for obstructing legal process.

The Commission considered new and amended misdemeanors and gross misdemeanors passed by the 2008 Legislature and added the following to the Misdemeanor and Gross Misdemeanor Offense List: admission to an animal fight (gross misdemeanor); subsequent dangerous dog violations (gross misdemeanors); false emergency calls; trespass on critical public service facility (gross misdemeanor).

Custody Status Point Clarification – Effective August 1, 2008

The Commission adopted a proposal to clarify how to determine whether an offense was committed within the offender's initial term of probation, when a judge pronounces an indefinite length of probation (such as "not to exceed three years," "three to five years," or "up to the statutory maximum") and the offender is released from probation supervision prior to the end of the indefinite term. If an offender is given an initial term of probation that is definite – say, five years – and is released from probation early, it is clear that the initial term of probation was five years and that a new offense within that period will result in the addition of a custody status point to the offender's criminal history. It is the Commission's determination that, when an offender who was given an indefinite initial term of probation commits a new crime at any time prior to the end date of the pronounced range, he will be assigned a custody status point. Thus, an initial term of probation "not to exceed three years" is, for this purpose, three years; "three to five years" is five years; "up to the statutory maximum" is the statutory maximum.

Technical Modifications – Effective August 1, 2008

The Commission adopted a proposal to make several technical modifications in the sentencing guidelines intended to improve upon them.

Calculation of the Juvenile Point – Effective August 1, 2009

The Commission adopted a proposal to amend Guidelines Section II.B.4, providing that only juvenile adjudications rather than juvenile adjudications and continuances without adjudication be used in the calculation of a juvenile point. This was the policy in 1980, when the sentencing guidelines first went into effect.

The policy was changed in 1983 to include all “findings of fact” to accommodate some jurisdictions which had a policy of adjudicating juveniles delinquent the first time they entered the juvenile court, but not subsequently. In such jurisdictions, after an initial adjudication, whenever a juvenile was brought into court and admitted an offense, formal adjudication of delinquency on the basis of the offense was not made because already the juveniles would have been formally adjudicated delinquent. This practice has reportedly stopped.

Drug Offenders Revoked to Prison – A Summary of Cases Sentenced in 2004 and 2005

An analysis of drug offenders put on probation after receiving stayed sentences was performed to determine how many were revoked to prison. This was done in order to better understand what happens to drug-offender probationers. It was prepared at the request of District Court Judge Rodenberg and presented to the Statewide Drug Court Evaluation Committee in September 2008. It included an analysis of two categories of revocations: (1) “technical” revocations, namely, those for violations of probationary convictions other than convictions of new felonies (e.g., absconding, failure to comply with treatment, etc.); and (2) revocations as a result of new felony convictions.

To put the probation revocation information into context, the original analysis was expanded for this report to include information on drug offenders initially committed to prison, as well. Also explored was the influence that criminal history had on revocation rates.

Revoking Stayed Sentences

There are legal standards which must be met when a judge determines whether to continue an offender’s stayed sentence, or send him or her to prison. The court must specify which condition was violated; determine that the violation was intentional; and find that the need for prison outweighs the continuation of probation.² Additionally, the sentencing guidelines caution that a decision to revoke a stayed sentence should not be taken lightly nor should it be a knee-jerk reaction to technical violations.³

Data Limitations

- The analysis was not intended to be a recidivism study. It describes, in simple terms, revocation rates of drug offenders originally sentenced to probation.
- It does not statistically control for a variety of factors which may influence a probationer’s success.
- Drug offenders were tracked for two years following sentencing. It is unclear what the results would be if they were followed for three years, five years, etc.
- The revocation analysis only captured technical violations and new felony convictions; therefore, any previous attempts by the Court to “restructure” an offender’s stayed sentence using more restrictions, such as additional jail time, are not part of the study.
- Conditional jail time from 2 days to 365 days was pronounced in 91.1% of the probation cases. It is recognized that offenders who were incapacitated in jails were not in communities committing new felonies or otherwise violating their probation.

² M.S. § 609.14, and *State v. Austin*, 295 N.W.2d 246 (Minn. 1980).

³ 2008 *Minnesota Sentencing Guidelines and Commentary*, Section III.B.

Data Sources and Methodology

For the analysis of revocations to prison, MN Department of Corrections (DOC) admissions data through 2007 were obtained and matched to MN Sentencing Guidelines Commission (MSGC) monitoring data. This process took approximately 40 hours. Offenders were included in this analysis if they were convicted of a controlled substance offense and sentenced from January 1, 2004, to December 31, 2005. The revocation could either be a result of a new felony conviction or due to technical violations (e.g., absconding, failure to comply with treatment, etc.).

The data were standardized to ensure that all offenders were tracked for the same length of time. Probationers were monitored for two years from the date of their sentence to determine if a revocation to prison occurred within that time period. If no admission to prison occurred, the offender was considered part of the group “not revoked within two years.” For example, if an offender was sentenced to probation on January 1, 2004, and was not revoked to prison from January 1, 2004, to January 1, 2006, they would be included in the “not revoked within two years” category regardless of whether or not they were revoked following that observation period (i.e., from January 2, 2006 to December 31, 2007).

MSGC monitoring data are offender-based: Cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

Data Highlights

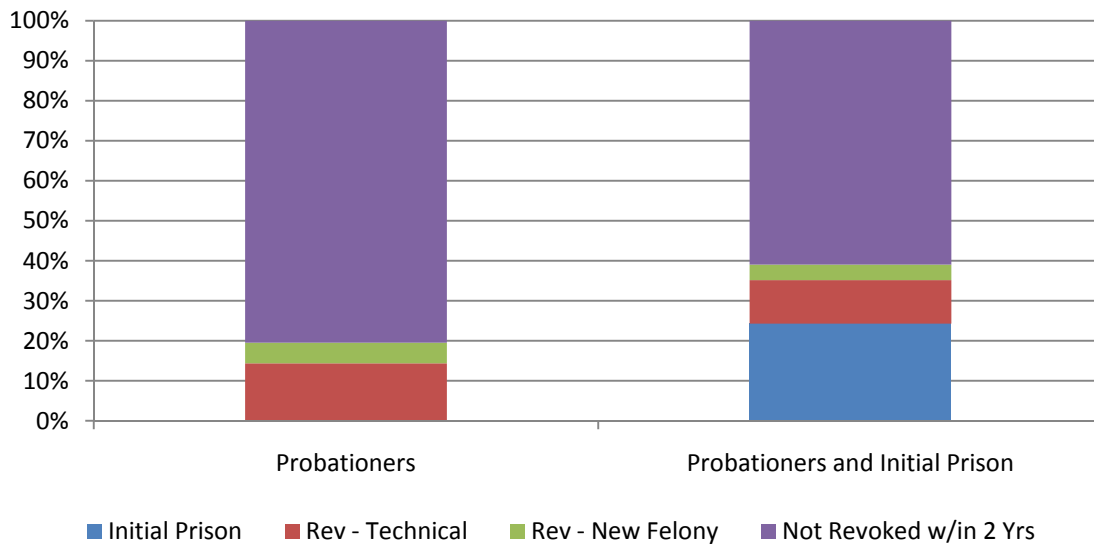
- There were 8,402 drug offenders sentenced in 2004 and 2005; 2,034 offenders (24.2%) were initially sentenced to prison, and 6,368 (75.8%) were given stayed sentences.
- 19.5% of probationers were revoked to prison within two years of their sentence; 14.4% were for technical reasons, and 5.1% were due to new felony convictions.
- When the number of offenders initially sentenced to prison was added to the number of offenders revoked to prison within two years of their sentence, 39% of drug offenders sentenced to probation or prison in 2004 and 2005 entered prison through 2007.
- Probationers with criminal history scores of one or more were revoked at higher rates than the other probationers: criminal history score of one to three was 23.5%; criminal history score of four or more was 35.4%.
- The revocation rate was higher than the overall rate for probationers with at least one person offense in their criminal history score: 30.7%
- Fifth-degree controlled substance offenders and ‘other’ drug offenders were revoked at a higher rate: fifth-degree was 22.7% and ‘other’ drug was 23.4%.
- Offenders who were supposed to go to prison according to the sentencing guidelines (presumptive commitments), but received probation at sentencing were revoked at a lower rate: 12.5%. However, those with criminal history scores of four or more were revoked at a higher rate of 30.5%.

Overall Results

There were 8,402 felony drug offenders sentenced in 2004 and 2005; 2,034 offenders (24.2%) were initially sentenced to prison, and 6,368 (75.8%) were given non-prison (stayed) sentences (i.e., probation, jail-only sentences). Of those receiving stayed sentences, 6,342 offenders were put on probation.

Of the probationers, 1,237 offenders (19.5%) were revoked within two years of sentencing; 911 offenders (14.4%) for technical reasons, and 326 offenders (5.1%) for new felony convictions. When the number of offenders revoked to prison was added to the number of offenders initially sentenced to prison, 3,271 drug offenders (39%) sentenced to either probation or prison in 2004 and 2005 entered prison through 2007 (Figure 10)⁴.

Figure 10. Drug Offenders Entering Prison Thru 2007 Sentenced 2004 and 2005



Criminal History Factors

An offender’s criminal history score includes: a weighted measure of prior felony sentences; a limited measure of prior misdemeanor/gross misdemeanor sentences; a limited measure of the prior serious juvenile record; and a measure of “custody status,” indicating if the offender was on probation, parole, supervised release, or conditional release when the current offense was committed. The revocation rate for offenders with criminal history scores of at least one were higher than the overall rate: criminal history score of one to three was 23.5 percent; and criminal history score of four or more was 35.4 percent (Figure 11). Offenders with at least

⁴ Percentages for “Probationers” based on 6,342 offenders put on probation. “Probationers and Initial Prison” used numbers of offenders sentenced (8,402) minus 26 offenders sentenced to jail-only sentences.

one prior person offense had a revocation rate of 30.7 percent, which was higher than the overall rate (Figure 12).⁵

Figure 11. Drug Probationers Revoked to Prison by Criminal History Score (CHS)

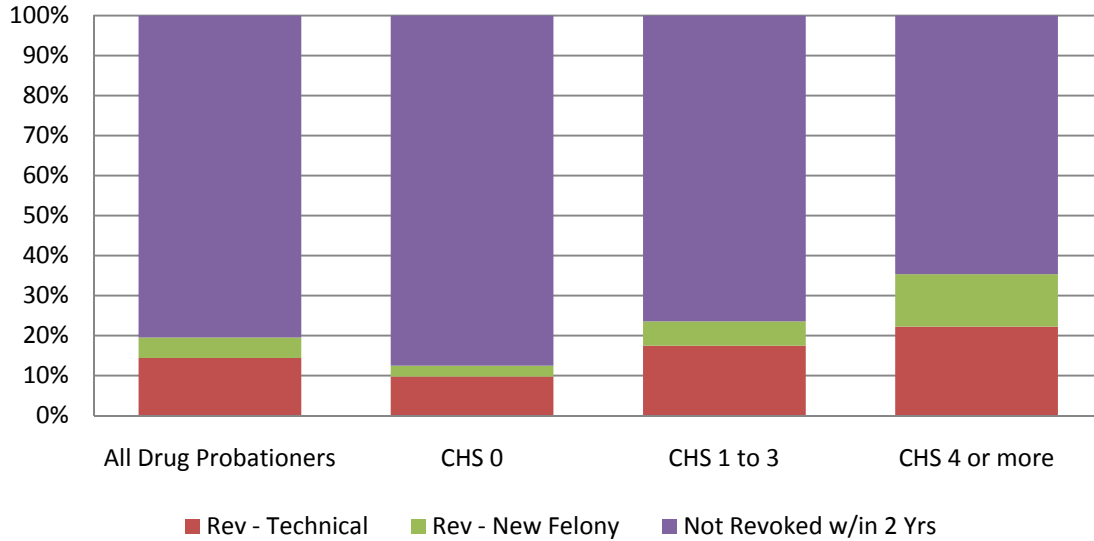
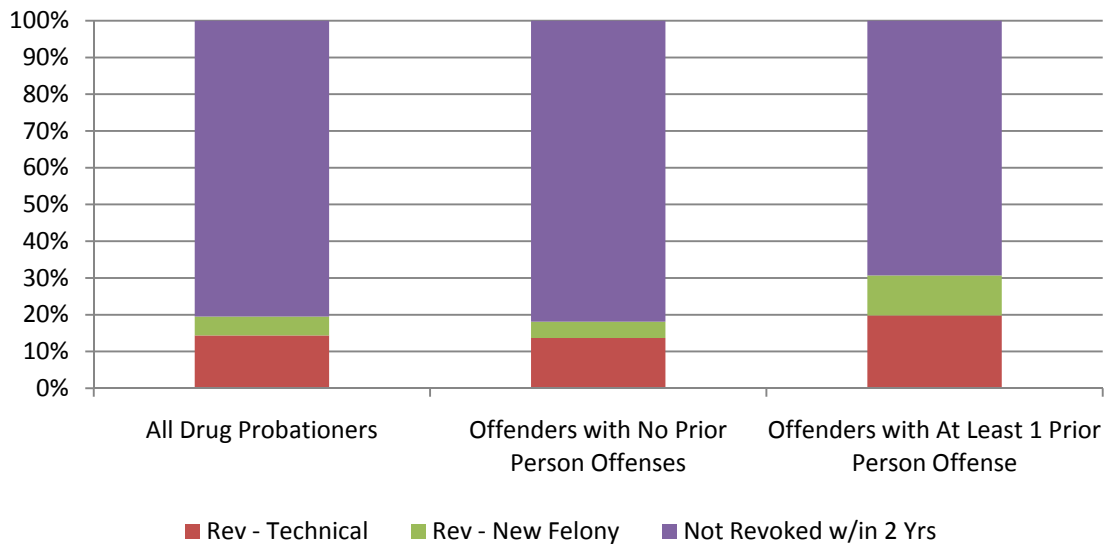


Figure 12. Drug Probationers Revoked to Prison by Prior Person Offenses



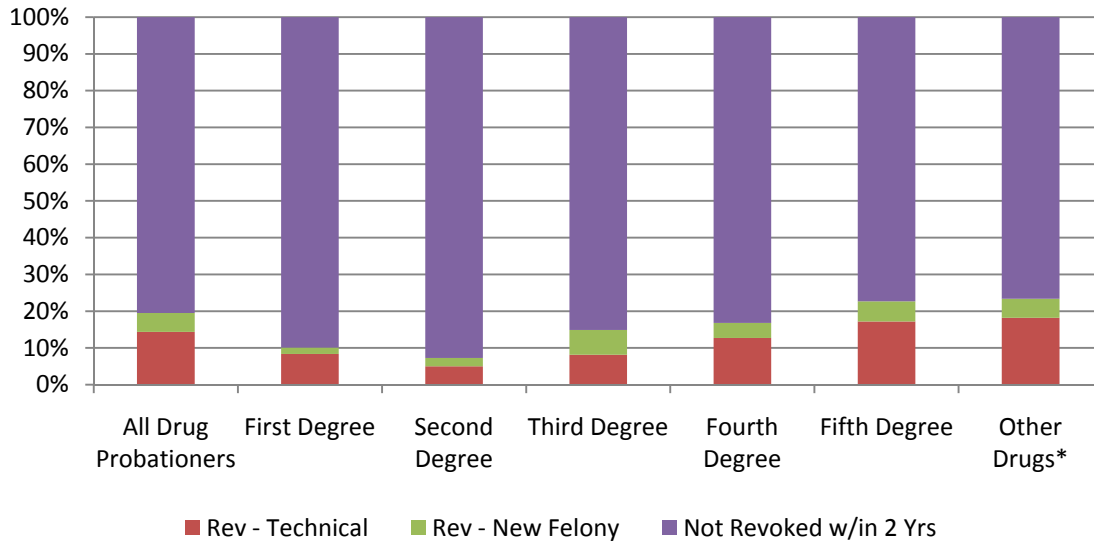
⁵ Person offenses are defined by MSGC as Murder/Manslaughter, felony Assaults, Burglary with Assault, felony Criminal Sexual Conduct, Robbery, Terroristic Threats/Stalking, Criminal Vehicular Injury, Kidnapping, False Imprisonment, Drive-By Shooting, Violating a Restraining Order, and others.

Controlled Substance Offense Levels

Figure 13 displays revocation information by controlled substance offense levels (i.e., 1st – 5th degrees). Revocation rates for fifth-degree and ‘other’ drugs were higher than the overall rate: fifth-degree was 22.7 percent; and ‘other’ drug was 23.4 percent.⁶

All first-degree and second-degree offenses are recommended prison according to the sentencing guidelines grid regardless of an offender’s criminal history score. Third-degree through fifth-degree, and ‘other’ drugs, are set within the shaded area of the sentencing guidelines grid. Offenders are recommended stayed sentences unless they have more extensive criminal history.

Figure 13. Drug Probationers Revoked to Prison by Controlled Substance Offense Level



Presumptive Prison Cases

Figure 14 and 15 display revocation rates for drug offenders who were supposed to go to prison according to the sentencing guidelines (presumptive prison cases), but instead received probationary sentences. Giving probation in these cases resulted in mitigated (downward) dispositional departures.

⁶ “Other Drugs” are Att. Manufacture of Meth (Sev. Level 3); Sale Simulated (Sev. Level 1); Anhydrous Ammonia Tampering (Sev. Level 3); Meth Crimes w/Children Present (Sev. Level 3).

Figure 14 shows that there were 1,088 presumptive prison drug offenders who received probation; 952 offenders (87.5%) were not revoked, and 136 offenders (12.5%) were revoked. Of those revoked, 91 offenders (8.4%) were revoked for technical reasons, and 45 offenders (4.1%) were revoked for new felony convictions.

**Figure 14. Drug Probationers Revoked
Sentencing Guidelines Recommended Prison**

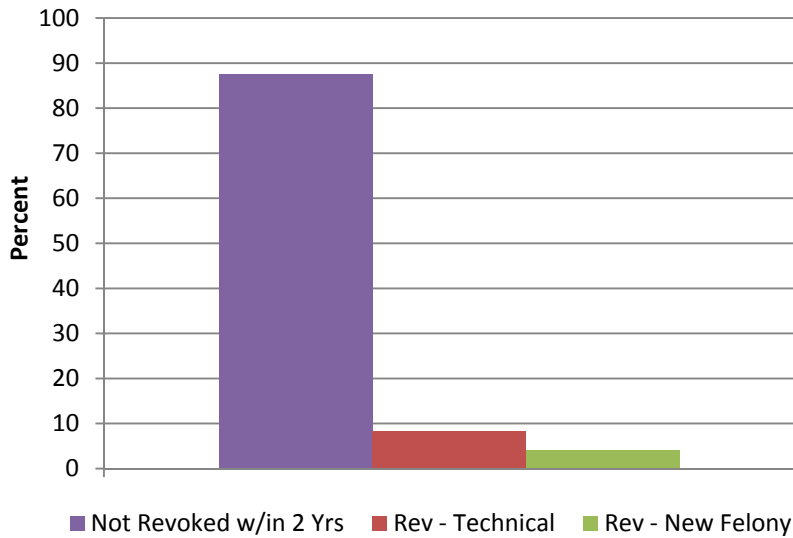
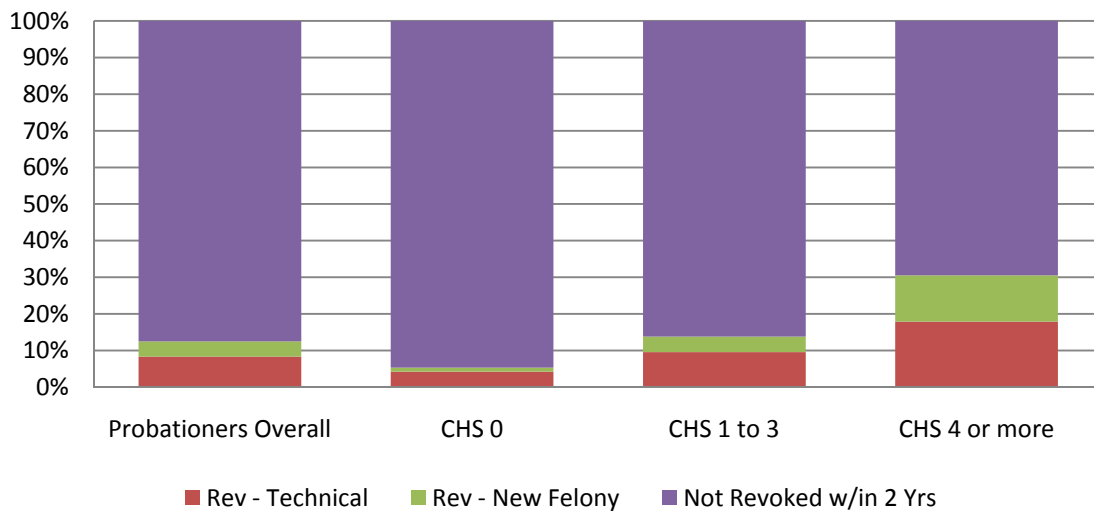


Figure 15 displays this information by criminal history score. Offenders with no criminal history score were revoked at a lower rate: 5.3 percent. Offenders with criminal history scores of four or more were revoked at a higher rate: 30.5 percent.

**Figure 15. Drug Offenders Revoked by Criminal History Score (CHS)
Sentencing Guidelines Recommended Prison**



Initial Prison and Probation Revocations – Statewide Results

Table 2. Drug Offenders Sentenced in 2004 and 2005 Entering Prison thru 2007 by MN Judicial District*

Judicial District		Initial Prison	Rev – Technical	Rev – New Felonies	Not Revoked w/in 2 Yrs	Total
First	Count	214	64	39	632	949
	Percent	22.6%	6.7%	4.1%	66.6%	100.0%
Second	Count	265	157	44	639	1105
	Percent	24.0%	14.2%	4.0%	57.8%	100.0%
Third	Count	204	106	27	425	762
	Percent	26.8%	13.9%	3.5%	55.8%	100.0%
Fourth	Count	314	174	81	920	1489
	Percent	21.1%	11.7%	5.4%	61.8%	100.0%
Fifth	Count	133	39	7	216	395
	Percent	33.7%	9.9%	1.8%	54.7%	100.0%
Sixth	Count	89	51	11	403	554
	Percent	16.1%	9.2%	2.0%	72.7%	100.0%
Seventh	Count	231	64	33	449	777
	Percent	29.7%	8.2%	4.2%	57.8%	100.0%
Eighth	Count	78	26	5	109	218
	Percent	35.8%	11.9%	2.3%	50.0%	100.0%
Ninth	Count	210	76	22	407	715
	Percent	29.4%	10.6%	3.1%	56.9%	100.0%
Tenth	Count	296	154	57	905	1412
	Percent	21.0%	10.9%	4.0%	64.1%	100.0%
Total	Count	2034	911	326	5105	8376
	Percent	24.3%	10.9%	3.9%	60.9%	100.0%

* Percentages based on drug offenders sentenced (8,402) minus 26 offenders sentenced to jail-only sentences.

**Table 3. Drug Offenders Entering Prison thru 12/2007
by MN County***

County		Initial Prison	Rev - Technical	Rev - New Felony	Not Revoked w/in 2 Yrs	Total
Aitkin	Count	17	3	2	27	49
	Percent	34.7%	6.1%	4.1%	55.1%	100.0%
Anoka	Count	76	78	26	356	536
	Percent	14.2%	14.6%	4.9%	66.4%	100.0%
Becker	Count	7	12	0	29	48
	Percent	14.6%	25.0%	0.0%	60.4%	100.0%
Beltrami	Count	19	7	4	34	64
	Percent	29.7%	10.9%	6.3%	53.1%	100.0%
Benton	Count	24	7	1	30	62
	Percent	38.7%	11.3%	1.6%	48.4%	100.0%
Big Stone	Count	2	0	0	1	3
	Percent	66.7%	0.0%	0.0%	33.3%	100.0%
Blue Earth	Count	19	11	3	35	68
	Percent	27.9%	16.2%	4.4%	51.5%	100.0%
Brown	Count	8	0	0	14	22
	Percent	36.4%	0.0%	0.0%	63.6%	100.0%
Carlton	Count	9	1	0	59	69
	Percent	13.0%	1.4%	0.0%	85.5%	100.0%
Carver	Count	14	2	1	59	76
	Percent	18.4%	2.6%	1.3%	77.6%	100.0%
Cass	Count	12	3	2	33	50
	Percent	24.0%	6.0%	4.0%	66.0%	100.0%
Chippewa	Count	11	3	0	16	30
	Percent	36.7%	10.0%	0.0%	53.3%	100.0%
Chisago	Count	32	10	3	74	119
	Percent	26.9%	8.4%	2.5%	62.2%	100.0%
Clay	Count	37	13	3	63	116
	Percent	31.9%	11.2%	2.6%	54.3%	100.0%
Clearwater	Count	5	2	0	6	13
	Percent	38.5%	15.4%	0.0%	46.2%	100.0%
Cook	Count	2	0	0	1	3
	Percent	66.7%	0.0%	0.0%	33.3%	100.0%
Cottonwood	Count	5	2	0	27	34

* Percentages based on drug offenders sentenced (8,402) minus 26 offenders sentenced to jail-only sentences.

County		Initial Prison	Rev - Technical	Rev - New Felony	Not Revoked w/in 2 Yrs	Total
	Percent	14.7%	5.9%	0.0%	79.4%	100.0%
Crow Wing	Count	40	25	4	69	138
	Percent	29.0%	18.1%	2.9%	50.0%	100.0%
Dakota	Count	100	47	34	387	568
	Percent	17.6%	8.3%	6.0%	68.1%	100.0%
Dodge	Count	14	7	2	10	33
	Percent	42.4%	21.2%	6.1%	30.3%	100.0%
Douglas	Count	12	1	1	28	42
	Percent	28.6%	2.4%	2.4%	66.7%	100.0%
Faribault	Count	11	2	1	14	28
	Percent	39.3%	7.1%	3.6%	50.0%	100.0%
Fillmore	Count	8	2	1	9	20
	Percent	40.0%	10.0%	5.0%	45.0%	100.0%
Freeborn	Count	23	18	2	67	110
	Percent	20.9%	16.4%	1.8%	60.9%	100.0%
Goodhue	Count	8	2	1	43	54
	Percent	14.8%	3.7%	1.9%	79.6%	100.0%
Grant	Count	0	1	0	5	6
	Percent	0.0%	16.7%	0.0%	83.3%	100.0%
Hennepin	Count	314	174	81	920	1489
	Percent	21.1%	11.7%	5.4%	61.8%	100.0%
Houston	Count	4	2	0	6	12
	Percent	33.3%	16.7%	0.0%	50.0%	100.0%
Hubbard	Count	3	0	0	13	16
	Percent	18.8%	0.0%	0.0%	81.3%	100.0%
Isanti	Count	19	3	3	59	84
	Percent	22.6%	3.6%	3.6%	70.2%	100.0%
Itasca	Count	21	9	3	52	85
	Percent	24.7%	10.6%	3.5%	61.2%	100.0%
Jackson	Count	7	2	0	4	13
	Percent	53.8%	15.4%	0.0%	30.8%	100.0%
Kanabec	Count	11	6	0	21	38
	Percent	28.9%	15.8%	0.0%	55.3%	100.0%
Kandiyohi	Count	23	16	1	33	73
	Percent	31.5%	21.9%	1.4%	45.2%	100.0%
Kittson	Count	0	1	0	10	11
	Percent	0.0%	9.1%	0.0%	90.9%	100.0%
Koochiching	Count	8	4	0	12	24

County		Initial Prison	Rev - Technical	Rev - New Felony	Not Revoked w/in 2 Yrs	Total
	Percent	33.3%	16.7%	0.0%	50.0%	100.0%
Lac Qui Parle	Count	0	0	0	3	3
	Percent	0.0%	0.0%	0.0%	100.0%	100.0%
Lake	Count	4	1	3	14	22
	Percent	18.2%	4.5%	13.6%	63.6%	100.0%
Lake of the Woods	Count	1	1	0	4	6
	Percent	16.7%	16.7%	0.0%	66.7%	100.0%
LeSueur	Count	36	3	2	20	61
	Percent	59.0%	4.9%	3.3%	32.8%	100.0%
Lincoln	Count	0	0	0	2	2
	Percent	0.0%	0.0%	0.0%	100.0%	100.0%
Lyon	Count	9	1	0	20	30
	Percent	30.0%	3.3%	0.0%	66.7%	100.0%
McLeod	Count	18	4	0	40	62
	Percent	29.0%	6.5%	0.0%	64.5%	100.0%
Mahnomen	Count	7	0	3	35	45
	Percent	15.6%	0.0%	6.7%	77.8%	100.0%
Marshall	Count	6	0	0	2	8
	Percent	75.0%	0.0%	0.0%	25.0%	100.0%
Martin	Count	17	9	1	25	52
	Percent	32.7%	17.3%	1.9%	48.1%	100.0%
Meeker	Count	6	4	0	11	21
	Percent	28.6%	19.0%	0.0%	52.4%	100.0%
Mille Lacs	Count	16	3	4	64	87
	Percent	18.4%	3.4%	4.6%	73.6%	100.0%
Morrison	Count	29	14	4	45	92
	Percent	31.5%	15.2%	4.3%	48.9%	100.0%
Mower	Count	18	13	1	30	62
	Percent	29.0%	21.0%	1.6%	48.4%	100.0%
Murray	Count	10	0	0	7	17
	Percent	58.8%	0.0%	0.0%	41.2%	100.0%
Nicollet	Count	6	2	0	13	21
	Percent	28.6%	9.5%	0.0%	61.9%	100.0%
Nobles	Count	10	2	1	26	39
	Percent	25.6%	5.1%	2.6%	66.7%	100.0%
Norman	Count	3	1	0	3	7
	Percent	42.9%	14.3%	0.0%	42.9%	100.0%

County		Initial Prison	Rev - Technical	Rev - New Felony	Not Revoked w/in 2 Yrs	Total
Olmsted	Count	71	35	12	124	242
	Percent	29.3%	14.5%	5.0%	51.2%	100.0%
Otter Tail	Count	16	1	2	56	75
	Percent	21.3%	1.3%	2.7%	74.7%	100.0%
Pennington	Count	10	2	1	31	44
	Percent	22.7%	4.5%	2.3%	70.5%	100.0%
Pine	Count	36	1	4	41	82
	Percent	43.9%	1.2%	4.9%	50.0%	100.0%
Pipestone	Count	11	1	1	6	19
	Percent	57.9%	5.3%	5.3%	31.6%	100.0%
Polk	Count	49	17	3	64	133
	Percent	36.8%	12.8%	2.3%	48.1%	100.0%
Pope	Count	9	0	2	9	20
	Percent	45.0%	0.0%	10.0%	45.0%	100.0%
Ramsey	Count	265	157	44	639	1105
	Percent	24.0%	14.2%	4.0%	57.8%	100.0%
Red Lake	Count	2	0	0	3	5
	Percent	40.0%	0.0%	0.0%	60.0%	100.0%
Redwood	Count	11	1	0	8	20
	Percent	55.0%	5.0%	0.0%	40.0%	100.0%
Renville	Count	8	1	0	11	20
	Percent	40.0%	5.0%	0.0%	55.0%	100.0%
Rice	Count	15	9	0	78	102
	Percent	14.7%	8.8%	0.0%	76.5%	100.0%
Rock	Count	4	4	0	7	15
	Percent	26.7%	26.7%	0.0%	46.7%	100.0%
Roseau	Count	7	0	0	9	16
	Percent	43.8%	0.0%	0.0%	56.3%	100.0%
St. Louis	Count	74	50	8	329	461
	Percent	16.1%	10.8%	1.7%	71.4%	100.0%
Scott	Count	27	6	1	67	101
	Percent	26.7%	5.9%	1.0%	66.3%	100.0%
Sherburne	Count	27	7	4	78	116
	Percent	23.3%	6.0%	3.4%	67.2%	100.0%
Sibley	Count	11	0	0	16	27
	Percent	40.7%	0.0%	0.0%	59.3%	100.0%
Stearns	Count	73	11	14	119	217
	Percent	33.6%	5.1%	6.5%	54.8%	100.0%

County		Initial Prison	Rev - Technical	Rev - New Felony	Not Revoked w/in 2 Yrs	Total
Steele	Count	15	7	4	28	54
	Percent	27.8%	13.0%	7.4%	51.9%	100.0%
Stevens	Count	1	1	1	3	6
	Percent	16.7%	16.7%	16.7%	50.0%	100.0%
Swift	Count	3	0	1	3	7
	Percent	42.9%	0.0%	14.3%	42.9%	100.0%
Todd	Count	8	3	2	6	19
	Percent	42.1%	15.8%	10.5%	31.6%	100.0%
Traverse	Count	2	0	0	1	3
	Percent	66.7%	0.0%	0.0%	33.3%	100.0%
Wabasha	Count	7	3	1	26	37
	Percent	18.9%	8.1%	2.7%	70.3%	100.0%
Wadena	Count	9	0	2	9	11
	Percent	81.8%	0.0%	18.2%	81.8%	100.0%
Waseca	Count	3	1	0	9	13
	Percent	23.1%	7.7%	0.0%	69.2%	100.0%
Washington	Count	60	38	11	147	256
	Percent	23.4%	14.8%	4.3%	57.4%	100.0%
Watsonwan	Count	5	2	0	8	15
	Percent	33.3%	13.3%	0.0%	53.3%	100.0%
Wilkin	Count	7	0	0	5	12
	Percent	58.3%	0.0%	0.0%	41.7%	100.0%
Winona	Count	26	9	4	38	77
	Percent	33.8%	11.7%	5.2%	49.4%	100.0%
Wright	Count	35	10	6	129	180
	Percent	19.4%	5.6%	3.3%	71.7%	100.0%
Yellow Medicine	Count	6	0	0	8	14
	Percent	42.9%	0.0%	0.0%	57.1%	100.0%
Total	Count	2034	911	326	5105	8376
	Percent	24.3%	10.9%	3.9%	60.9%	100.0%

Reentry Programs and Drug Courts

The 2007 Legislature mandated that MSGC study the effectiveness of reentry programs and drug courts to assess the impact they have on recidivism. The Commission was to collaborate with the Department of Corrections (DOC) and the State Court Administrator's Office (SCAO) to file a preliminary report by January 15, 2008, and a final report by January 15, 2009. This section of the annual report is intended to serve as the final report. The total cost of development and preparation was \$2,593.28. (Reported as required by Minn. Stat. § 3.197.)

The Commission's preliminary report included an overview of evaluation, a description of Minnesota's reentry programs, and a progress report for Minnesota's statewide drug court evaluation effort. This report is available on our website at: www.msgc.state.mn.us.

As was stated in the Commission's 2008 report, it should be noted that, with both the reentry programs and drug courts, thorough evaluations take from 18 months to several years. There needs to be sufficient time for programs and courts to be established, for participants to complete the programs, and for researchers to track the participants' post-program behavior, measured in terms of recidivism rates.

Reentry Programs

As described in the Commission's initial report, offender reentry services were provided by the Minnesota Department of Corrections (DOC) through the Minnesota Comprehensive Offender Reentry Plan (MCORP). MCORP's comprehensive strategy includes preparing offenders for successful release, beginning early in their prison incarceration based on individualized caseplans. Upon release, they receive intensive help in transitioning back into the community (e.g., housing, employment, treatment, family and community relationships, etc.) and remaining law abiding and productive citizens. Services were directed to offenders who were released to pilot counties and were medium to high risk. The DOC oversees the evaluations.

The reentry program grants were administered by the DOC; each grant included either an independent evaluation or report by the DOC. A summary report of MCORP reentry services and reentry program grants was prepared by the DOC, and is included in this report as Appendix E.

Minnesota Drug Courts

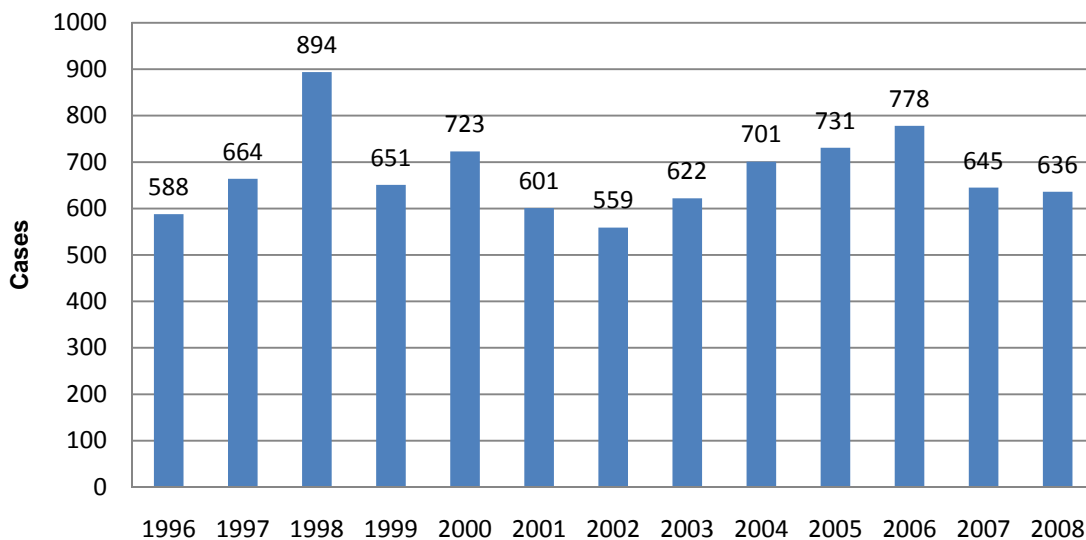
In 2008, the Statewide Drug Court Evaluation Committee continued to meet once per month to discuss the implementation of the statewide drug court evaluation. Data collection from adult drug court participants began, and the committee's focus turned to constructing a comparison group for the study. Committee members were from the Judicial Branch's State Court Administrator's Office (SCAO) and Drug Courts, Department of Corrections, Department of Public Safety, Minnesota Sentencing Guidelines Commission, and an independent drug court evaluator. Please contact the SCAO for further information about the Statewide Drug Court Evaluation Plan.

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 9.⁷ 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.

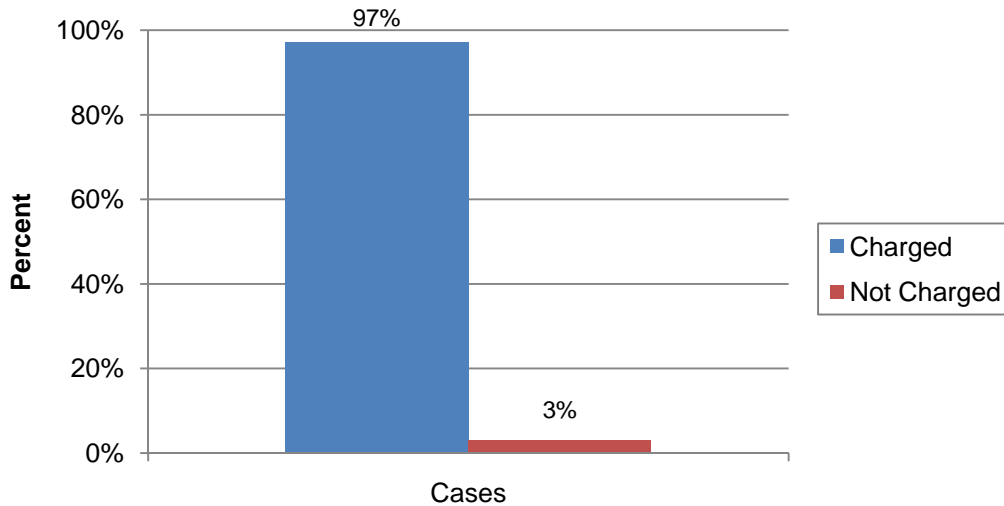
Since the mandate began in 1996, the average number of annual cases involving firearms statewide has been 657. Between July 1, 2007 and July 1, 2008, there were 636 cases allegedly involving a firearm (Figure 16). Figure 17 displays that prosecutors charged 617 cases (97%).

**Figure 16. Cases Allegedly Involving a Firearm
1996 to 2008**



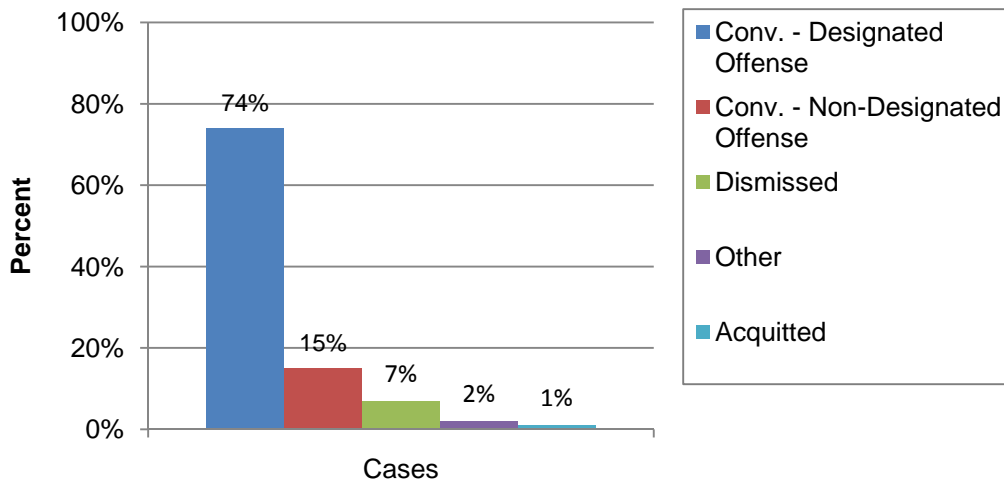
⁷ The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter 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.

Figure 17. Cases Charged



Of those charged, 458 (74%) were convicted of offenses designated in M.S. § 609.11. Ninety-five (15%) were convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 45 (7%) had all charges dismissed; 11 (2%) were “other” cases, such as federal prosecutions and civil commitment; and eight (1%) were acquitted on all charges (Figure 18).

Figure 18. Case Outcome



In 423 (92%) of the 458 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 19). In the cases in which the firearm was established on the record, 287 offenders (68%) were sentenced to the mandatory minimum prison term (Figure 20).

Figure 19. Cases Convicted of Designated Offense

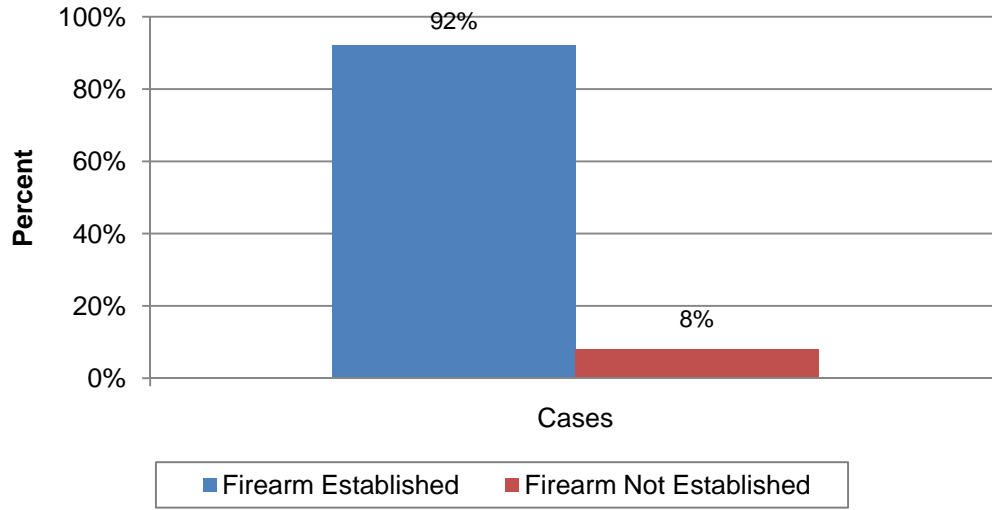


Figure 20. Firearm Established on the Record

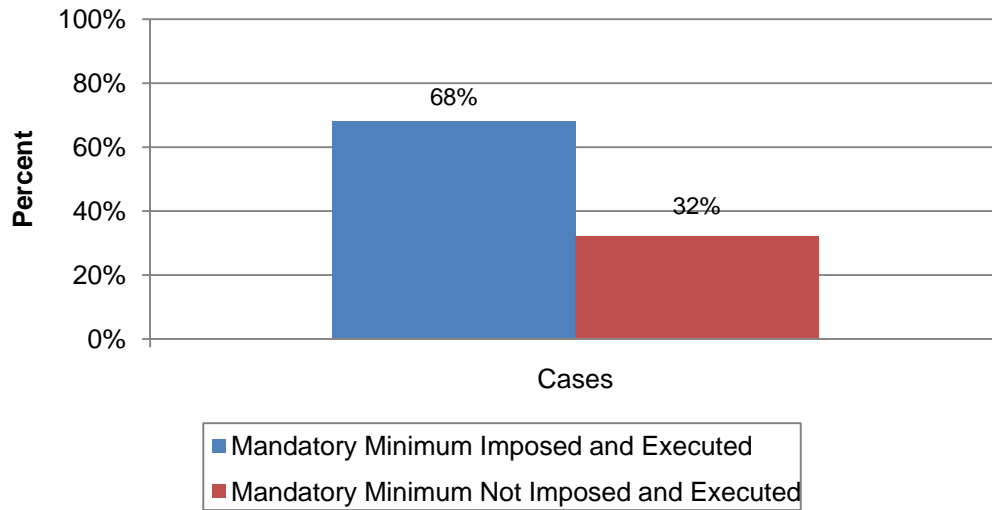


Table 4. County Attorney Firearms Reports on Criminal Cases Involving Firearms by County
 Cases Disposed from July 1, 2007 to July 1, 2008

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	4	2	1	1
Anoka	48	46	28	28	12
Becker	7	7	7	6	3
Beltrami	5	2	2	2	2
Benton	7	7	2	1	1
Big Stone	0	0	0	0	0
Blue Earth	4	4	3	2	2
Brown	0	0	0	0	0
Carlton	1	1	1	1	0
Carver	0	0	0	0	0
Cass	7	7	2	1	0
Chippewa	2	2	0	0	0
Chisago	6	6	3	3	2
Clay	4	3	3	3	1
Clearwater	5	4	1	0	0
Cook	0	0	0	0	0
Cottonwood	3	3	3	3	3
Crow Wing	3	3	3	2	2
Dakota	31	31	25	24	13
Dodge	5	4	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	6	6	3	1	0
Grant	0	0	0	0	0
Hennepin	122	122	110	110	84
Houston	1	1	1	1	0
Hubbard	0	0	0	0	0
Isanti	3	3	3	2	2
Itasca	14	14	10	10	5
Jackson	1	1	1	1	1
Kanabec	3	2	1	1	1
Kandiyohi	3	3	2	2	2
Kittson	0	0	0	0	0
Koochiching*	---	---	---	---	---

* 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
Lac Qui Parle	1	1	0	0	0
Lake	7	7	6	2	2
Lake of the Woods	0	0	0	0	0
LeSueur	1	1	0	0	0
Lincoln	0	0	0	0	0
Lyon	4	4	3	3	1
McLeod	2	2	0	0	0
Mahnomen	1	1	1	1	1
Marshall	0	0	0	0	0
Martin	2	2	2	2	0
Meeker	1	1	0	0	0
Mille Lacs	6	6	2	2	2
Morrison	2	2	2	2	2
Mower	0	0	0	0	0
Murray	1	1	0	0	0
Nicollet	0	3	3	2	2
Nobles	3	3	0	0	0
Norman	1	1	0	0	0
Olmsted	20	18	14	11	10
Otter Tail	7	7	4	3	1
Pennington	1	1	1	0	0
Pine	1	1	1	1	0
Pipestone	3	2	1	0	0
Polk	14	14	9	8	1
Pope	1	1	1	1	0
Ramsey	129	129	105	105	83
Red Lake	0	0	0	0	0
Redwood	4	4	1	1	0
Renville	1	1	1	1	0
Rice	5	4	1	1	0
Rock	0	0	0	0	0
Roseau	5	5	5	4	2
Scott	1	1	1	1	0
Sherburne	7	7	6	3	2
Sibley	0	0	0	0	0
St. Louis	38	30	25	22	14
Stearns	21	21	17	15	10
Steele	8	8	4	4	4
Stevens	4	4	2	2	2
Swift	3	3	2	2	2
Todd	0	0	0	0	0
Traverse	0	0	0	0	0

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	3	3	1	1	0
Wadena	6	5	2	2	1
Waseca	1	1	1	1	0
Washington	11	11	10	7	3
Watonwan	1	1	0	0	0
Wilkin	0	0	0	0	0
Winona	7	7	4	4	2
Wright	7	7	4	4	3
Yellow Medicine	0	0	0	0	0
Total	636	617	458	423	287

Appendices

Appendix A: Modifications to the Sentencing Guidelines Based on New and Amended Crimes Passed by the Legislature – Effective August 1, 2008

1. The Commission adopted the proposal to modify Guidelines Section V. Offense Severity Reference Table related to new crime legislation:

.....

III Disarming a Peace Officer – 609.504

.....

2. The Commission adopted the following proposal to modify the Misdemeanor and Gross Misdemeanor Offense List:

Misdemeanor and Gross Misdemeanor Offense List

.....

Animal Fighting – Admission to an animal fight (gross misdemeanor)
343.31 (c)

Dangerous Dogs – Subsequent violations (gross misdemeanor)
347.55 (c)

Dangerous Dogs – Dog ownership prohibited (gross misdemeanor)
347.55 (d)(e)

Emergency Calls and Communications
609.78, subd. 1

Emergency Calls and Communications – Interference with Emergency Calls and Communications (gross misdemeanor)
609.78, subd. 2

Trespass on Critical Public Service Facility, Utility, or Pipeline – Without claim of right or consent (gross misdemeanor)
609.6055, subd. 2(a)

Trespass on Critical Public Service Facility, Utility, or Pipeline – Underground structure not open to the public (gross misdemeanor)
609.6055, subd. 2(b)

.....

3. The Commission adopted the following proposal to make the following technical modification to reflect an amended notation:

┌

Unranked Animal Fighting – 343.31 (a)(b)

└

Appendix B: Non-Legislative Modifications – Effective August 1, 2008

Custody Status Point after Discharge from Indeterminate Probation Sentence

The Commission adopted a proposal to clarify how to determine whether an offense was committed within the offender's initial term of probation, when a judge pronounces an indefinite length of probation (such as "not to exceed three years," "three to five years," or "up to the statutory maximum") and the offender is released from probation supervision prior to the end of the indefinite term.

Guidelines Section II.B.2.c:

....

2. One point is assigned if the offender:

- c. committed the current offense within the period of the initial probationary sentence. If an offender is given an initial term of probation that provides a range of years (e.g. "not to exceed three years," "three to five years," "up to the statutory maximum"), rather than a specified number of years, and commits a new crime at any time prior to the end date of the pronounced range, a custody status point will be assigned. ~~length-of-stay pronounced by the sentencing judge for a~~ This policy applies to 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

....

Comment

II.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody when the offense was committed for which they are now being sentenced. The Commission has determined that the potential for a custody status point should remain for the entire period of the probationary sentence. If an offender receives an initial term of probation that is definite, is released from probation prior to the expiration of that term and commits a new crime within the initial term, it is clear that a custody point will be assigned. For example: the offender is put on probation for five years, is released from probation in three years, and commits a new crime in year four; a custody status point will be added to the individual's*

~~*criminal history. When an offender is given an indefinite initial term of probation and commits a new crime at any time prior to the end date of the pronounced range, he will be assigned a custody status point. Thus, an initial term of probation “not to exceed three years” is, for this purpose, three years; “three to five years” is five years; “up to the statutory maximum” is the statutory maximum. The Commission believes that the potential for a custody status point should remain for the entire period of the initial length of stay pronounced by the sentencing judge. An offender who is discharged early but subsequently is convicted of a new felony within the period of the initial length of stay should still receive the consequence of a custody status point. If probation is revoked and the offender serves an executed sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence.*~~

Appendix C: Technical Modifications – Effective August 1, 2008

1. The Commission adopted a proposal to make the following technical modifications to Section II of the Minnesota Sentencing Guidelines and Commentary:

- i. Move “Weighting” Language within II.B.1

Guidelines Section II.B.1:

B. Criminal History:

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

1. Subject to the conditions listed below, the offender is assigned a particular weight for every extended jurisdiction juvenile conviction and for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. Multiple offenses are sentenced in the order in which they occurred. For purposes of this section, prior extended jurisdiction juvenile convictions are treated the same as prior felony sentences.

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

- a. If the current offense is not a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

Severity Level I - II = ½ point;

Severity Level III - V = 1 point;

Severity Level VI - VIII = 1 ½ points;

Severity Level IX - XI = 2 points;

Murder 1st Degree = 2 points;
Severity Level A = 2 points;
Severity Level B – E = 1 ½ points;
Severity Level F – G = 1 point; and
Severity Level H = ½ point for first offense
and 1 point for subsequent offenses.

- b. If the current offense is a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

Severity Level I - II = ½ point;
Severity Level III - V = 1 point;
Severity Level VI - VIII = 1 ½ points;
Severity Level IX - XI = 2 points;
Murder 1st Degree = 2 points;
Severity Level A = 3 points;
Severity Level B – C = 2 points;
Severity Level D – E = 1 ½ points;
Severity Level F – G = 1 point; and
Severity Level H = ½ point for first offense
and 1 point for subsequent offenses.

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

- ii. **Remove Outdated Example, Obsolete Comment and Renumber Comment Section II.B.1**

Guidelines Section II.B.1:

Comment

II.B.101. . . .

II.B.102. *The Commission determined that it was important to establish a weighting scheme for prior felony sentences to assure a greater degree of proportionality in the current sentencing. Offenders who have a history of serious felonies are considered more culpable than those offenders whose prior felonies consist primarily of low severity, nonviolent offenses.*

II.B.103. *The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. If an offense has been repealed but the elements of that offense have been incorporated into another felony statute, the appropriate severity level shall be based on the current severity level ranking for the current felony offense containing those similar elements. This policy also applies to offenses that are currently assigned a severity level ranking, but were previously unranked and excluded from the Offense Severity Reference Table. ~~For example, Unauthorized Use of a Motor Vehicle had been ranked at severity level I but was repealed in 1989. The elements of that offense were moved by the legislature to another statute and the new offense was ranked at severity level III. Therefore, the appropriate severity level that should be used to determine the weight of any prior felony sentences for Unauthorized Use of a Motor Vehicle is severity level III.~~*

II.B.104. *Similarly, ~~if~~ an offense has been redefined by the legislature, the appropriate severity level shall be based on how the prior felony offense would currently be ranked in consideration of any new or removed elements. For example, in 1989, the controlled substance laws were restructured and the current severity level rankings are in most situations determined on the basis of the amount and type of controlled substance involved in the conviction. For prior Minnesota controlled substance crimes committed before August 1, 1989, and all prior ~~foreign~~ out-of-state controlled substance convictions, the amount and type of the controlled substance should, therefore, be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense. In those instances where multiple severity levels are possible for a prior felony sentence but the information on the criteria that determine the severity level ranking is unavailable, the lowest possible severity level should be used. However, for prior controlled substance crimes committed on or after August 1, 1989, the current severity level ranking for the degree of the prior controlled substance conviction offense should determine the appropriate weight. This particular policy application is necessary to take into account any plea negotiations or evidentiary problems that occurred with regard to the prior offense. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.*

II.B.105. *In cases of multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense, only the offense at the highest severity level should be considered. The phrase "before the*

current sentencing" means that in order for prior convictions to be used in computing criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same judge, sentencing shall occur in the order in which the offenses occurred. The dates of the offenses shall be determined according to the procedures in Section II.A.b.

II.B.106. When the judge determines that permissive consecutive sentences will be imposed or determines that a departure regarding consecutive sentences will be imposed, the procedure in Section II.F shall be followed in determining the appropriate sentence duration under the guidelines.

II.B.107. II.B.102. ~~In addition, the~~ The Commission established policies to deal with several specific situations which arise under Minnesota law: ~~The first deals with a~~ conviction under Minn. Stat. § 152.137, under which persons convicted of methamphetamine-related crimes involving children and vulnerable adults are subject to conviction and sentence for other crimes resulting from the same criminal behavior; Minn. Stat. § 609.585, under which persons committing theft or another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony; ~~and or~~ a conviction under Minn. Stat. § 609.251 under which persons who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minn. Stats. §§ 152.137, 609.585, or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved.

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

II.B.108. II.B.103. To limit the impact of past variability in prosecutorial discretion, the Commission decided that for prior multiple felony sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses. For example, if an offender had robbed a crowded liquor store, he could be convicted of and sentenced for the robbery, as well as one count of assault for every person in the store at the time of the offense. Past variability in prosecutorial charging and negotiating practices could create substantial variance in the number of felony sentences arising from comparable criminal behavior. To prevent this past disparity from entering into the computation of criminal histories, and to prevent manipulation of the system in the future, the Commission limited consideration to the two most severe offenses in such situations. This still allows differentiation between those getting multiple sentences in such situations from those getting single sentences, but it prevents the perpetuation of gross disparities from the past.

This limit in calculating criminal history when there are multiple felony sentences arising out of a single course of conduct with multiple victims also applies when such sentences are imposed on the same day.

II.B.109. ~~II.B.104.~~ When an offender was convicted of a felony but was given a misdemeanor or gross misdemeanor sentence, the offense will be counted as a misdemeanor or gross misdemeanor for purposes of computing the criminal history score. The Commission recognized that the classification of criminal conduct as a felony, misdemeanor, or gross misdemeanor is determined, legally, by the sentence given rather than the conviction offense. They also recognized that where such sentences were given, it was the opinion of the judge that the offending behavior did not merit felonious punishment, or other circumstances existed which justified a limit on the severity of the sanction.

II.B.110. ~~II.B.105.~~ The decision to stay execution of sentence rather than to stay imposition of sentence as a means to a probationary term following a felony conviction is discretionary with the judge. Considerable disparity appears to exist in the use of these options. In the case of two similar offenders it is not uncommon for one to receive a stay of execution and another to receive the benefit of a stay of imposition. There is also geographical disparity with stays of imposition much less common in Ramsey County, for example, than in most other counties. As a result of the disparity that exists in the use of stays of imposition, the Commission determined that stays of execution and stays of imposition shall be treated the same with respect to criminal history point accrual. Similar treatment has the additional advantage of a simplified procedure for computing criminal history scores.

II.B.111. ~~II.B.106.~~ Finally, ~~the~~ Commission established a "decay factor" for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences and stays of imposition, but also the age of the sentences and stays of imposition. A person who was sentenced for three felonies within a five-year period is more culpable than one sentenced for three felonies within a twenty-five year period. The Commission decided that the presence of old felony sentences and stays of imposition should not be considered in computing criminal history scores after a significant period of time has elapsed. A prior felony sentence or stay of imposition would not be counted in criminal history score computation if fifteen years had elapsed from the date of discharge or expiration of that sentence or stay of imposition to the date of the current offense. While this procedure does not include a measure of the offender's subsequent criminality, it has the overriding advantage of accurate and simple application.

II.B.107. ~~A felony sentence imposed for a criminal conviction treated pursuant to Minn. Stat. Ch. 242 (Youth Conservation Commission and later Youth Corrections Board, repealed 1977) shall be assigned its appropriate weight in computing the criminal history score according to procedures in II.B.1.~~

II.B.112. ~~II.B.108.~~ An offense upon which a judgment of guilty has not been entered before the current sentencing; i.e., e.g., pursuant to Minn. Stat. § 152.18, subd. 1, shall not be assigned any weight in computing the criminal history score.

II.B.113. ~~**II.B.109.**~~ Under Minn. Stat. § 260B.130, a child alleged to have committed a felony offense under certain circumstances may be prosecuted as an extended jurisdiction juvenile. If the prosecution results in a guilty plea or finding of guilt and the court imposes a disposition according to Minn. Stat. § 260B.130, subd. 4 (a), the extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony sentence for purposes of calculating the prior felony record component of the criminal history score. All of the policies under ~~§~~Sections II.B.1.a – f₁ and corresponding commentary apply to extended jurisdiction juvenile convictions. If the extended jurisdiction juvenile conviction resulted in execution of the stayed adult prison sentence, the offense can only be counted once in the criminal history.

iii. **Renumber Comment Section II.B.2**

Guidelines Section II.B.2:

Comment

II.B.201.

II.B.202. Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. Commitments under Minn. R. Crim. P. 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony or gross misdemeanor which resulted in the individual being under such status. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile conviction. Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded. Probation, parole, and supervised release will be the custodial statuses that most frequently will result in the assignment of a point.

II.B.203. It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony or gross misdemeanor. Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.

~~**II.B.202.**~~ **II.B.204.** As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. Given the increased penalties associated with driving while impaired offenses and serious impact on public safety, the Commission determined that these offenses should be considered for custody status points in the same manner as non-traffic offenses.

II.B.203. **II.B.205.** *The most problematic consequence of a criminal history score in excess of the maximum points differentiated by the Sentencing Guidelines Grids is that no additional penalty accrues for engaging in felonious behavior while under custody supervision. For example, if an offender has a criminal history score of seven and is released pending sentencing for a severity level three offense, and he or she commits another severity level three offense while awaiting sentencing, the presumptive sentence for the most recent offense is the same as for the prior offense. There is a presumption against consecutive sentences for property offenses, and therefore no additional penalty is provided when this type of situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.*

II.B.206. *While the Commission believes that the impact of the custody status provision should be maintained for all cases, incrementing the sanction for each criminal history point above that displayed by the Sentencing Guidelines Grids is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current offense of conviction. Criminal history is of secondary importance and the Commission believes that proportionality in sentencing is served sufficiently with the criminal history differentiations incorporated in the Sentencing Guidelines Grids and with the special provision for maintaining the impact of the custody status provision. Further differentiation is deemed unnecessary to achieve proportionality in sentencing.*

II.B.204. **II.B.207.** *The Commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, the offender should receive a custody status point if they become subject to one of the criminal justice supervision statuses outlined in 2.a at any point during the time period in which the offenses occurred. While the Commission recognizes that its policy for determining the presumptive sentence states that for aggregated offenses, the earliest offense date determines the date of offense, it believes that eligibility for a custody status point should not be limited to the offender's status at the time of the earliest date of offense.*

II.B.205. **II.B.208.** *When an offender who is on any custody status condition listed above 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).*

iv. **Renumber Comment Section II.B.3**

Guidelines Section II.B. 3:

Comment

II.B.301.

II.B.302. *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 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 operation or first degree (felony) driving while impaired.*

II.B.303. *The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which receive 1/2 point each. In addition, with the continued creation of new gross misdemeanors that are by definition nearly identical to misdemeanors, it is becoming increasingly difficult to discern whether a prior offense is a gross misdemeanor or a misdemeanor. The Commission believes that in light of these recording problems, a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.*

II.B.304. *The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one unit in computing the criminal history. Effective for crimes occurring on or after August 1, 1997, all fleeing a peace officer in a motor vehicle offenses are felonies. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned the appropriate weight for each sentence subject to the provisions in II.B.1.).*

II.B.302-II.B.305. . . .

II.B.306. *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or 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 operation (CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVO misdemeanor units. If there are less than four units, add in any DWI/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/CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/CVO units, the theft would be added to the two DWI/CVO units to equal one point. The remaining four DWI/CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVO units, the first four theft units would equal one point. Four of the DWI/CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CVO units for a third point. The total misdemeanor score would be two.*

II.B.307. *The Commission has not included certain common misdemeanors in the Misdemeanor and Gross Misdemeanor Offense List because it is believed that these*

offenses are not particularly relevant in the consideration of the appropriate guideline sentence. This limiting was also done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias. For offenses defined with monetary thresholds, the threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.

~~II.B.303-II.B.308~~ . . .

~~II.B.304-II.B.309~~ . . .

~~II.B.305-II.B.310~~ . . .

~~II.B.306-II.B.311~~ . . .

~~II.B.307-II.B.312~~ . . .

v. **Renumber Comment Section II.B.4**

Guidelines Section II.B.4:

Comment

II.B.401. *The juvenile history item is included in the criminal history index to identify those young adult felons whose criminal careers were preceded by repeated felony-type offenses committed as a juvenile. The Commission held several public hearings devoted to the issue of using juvenile records in the criminal history index. Those hearings pointed out differences in legal procedures and safeguards between adult and juvenile courts, differing availability of juvenile records, and differing procedures among juvenile courts. As a result of these issues, the Commission originally decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

Effective January 1, 1995, the Legislature enacted many substantive changes to the juvenile justice system. Included in these changes are the right to effective assistance of counsel in connection with a proceeding in juvenile court and the right to a jury trial on the issue of guilt for a child who is prosecuted as an extended jurisdiction juvenile. Because these rights are now afforded to juveniles, the standards regulating the consideration of juvenile records in computing the criminal history score are broadened.

II.B.402. ~~First, e~~ Only juvenile offenses that are felonies under Minnesota law will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration.

II.B.403. Consistent with Minn. Stat. § 609.035, which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.

II.B.403. II.B.404. ~~Second, t~~ The juvenile offenses must have been committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date the findings were made by the court to eliminate variability in application based on differing juvenile court practices.

II.B.404. II.B.405. ~~Third, j~~ Juvenile offenses will be considered in computing the criminal history score only for adult offenders who had not attained the age of 25 at the time the felony was committed for which they are now being sentenced. Again, the Commission chose to examine the age of the offender at the time of the offense rather than at time of sentencing to prevent disparities resulting from system processing variations.

II.B.405. II.B.406. ~~Fourth, t~~ The Commission decided that, provided the above conditions are met, it would take two juvenile offenses to equal one point on the criminal history score, and generally, an offender may not receive more than one point on the basis of prior juvenile offenses. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the guidelines would presume imprisonment. The presumptive disposition for a prior juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment regardless of criminal history. Included in this determination are any mandatory minimum laws that apply to the offense or any other applicable policies under ~~s~~Section II.C., Presumptive Sentence. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile offenses are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile offense meeting the above criteria would receive no point on the criminal history score.

II.B.406. II.B.407. Only those juvenile offenses where findings were made after August 1, 1989, can contribute to a juvenile history score of more than one. The Commission was concerned with possible past disparities in the procedures used in the various juvenile courts. This effective date for the prior findings corresponds to the Commission's previous policy which allowed for more than one juvenile point when there were certain prior serious violent offenses on the juvenile record. Retaining this effective date for the new policy continues to give proper notice that in the future, the juvenile history can result in more than one criminal history point.

II.B.407. II.B.408. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with findings arising from a single course of conduct when single victims are involved and when the findings

involved provisions of Minn. Stats. § 609.585 or 609.251, consideration should be given to the most severe offense with a finding for purposes of computing criminal history. When there are multiple felony offenses with findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.

vi. Make "Out-of-State" Language Consistent in Section II.B

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~~ out-of-state 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).

Comment

II.B.501. *Out-of-state convictions include convictions under the laws of any other state, or the federal government, including convictions under the Uniform Code of Military Justice, or convictions under the law of other nations.*

II.B.502. *The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history index score. It was recognized, however, that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. There is no uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor." Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current Minnesota offense definitions and sentencing policies. Exceptions to this are offenses in which a monetary threshold determines the offense classification. In these situations, the monetary threshold in effect at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*

II.B.503. *For prior out-of-state controlled substance convictions, the amount and type of the controlled substance should be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense.*

....

Guidelines Section II.B.1:

....

II.B.104. *Similarly, if an offense has been redefined by the legislature, the appropriate severity level shall be based on how the prior felony offense would currently be ranked in consideration of any new or removed elements. For example, in 1989, the controlled substance laws were restructured and the current severity level rankings are in most situations determined on the basis of the amount and type of controlled substance involved in the conviction. For prior Minnesota controlled substance crimes committed before August 1, 1989, and all prior ~~foreign~~ out-of-state controlled substance convictions, the amount and type of the controlled substance should, therefore, be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense. In those instances where multiple severity levels are possible for a prior felony sentence but the information on the criteria that determine the severity level ranking is unavailable, the lowest possible severity level should be used. However, for prior controlled substance crimes committed on or after August 1, 1989, the current severity level ranking for the degree of the prior controlled substance conviction offense should determine the appropriate weight. This particular policy application is necessary to take into account any plea negotiations or evidentiary problems that occurred with regard to the prior offense. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.*

vii. **Renumber Comment Section II.B.6****Guidelines Section II.B.6:***Comment***II.B.601. . . .**

II.B.602. *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 subsequent felony DWI, but any prior felony DWI would be counted as part of the felony criminal history score.*

viii. **Remove Obsolete Comment and Renumber Comment Section II.C****Guidelines Section II.C:***Comment***II.C.01. . . .****II.C.02. . . .**

II.C.03. *The presumptive duration listed on the grids, when executed, includes both the term of imprisonment and the period of supervised release. According to M.S. § 244.101, when the court sentences an offender to an executed sentence for an offense occurring on or after August 1, 1993, the sentence consists of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence; and a specified maximum supervised release term equal to one-third of the total executed sentence. A separate table following the Sentencing Guidelines Grids illustrate how executed sentences are broken down into their two components.*

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

II.C.03-II.C.04. *When a stay of execution is given, the presumptive sentence length shown in the appropriate cell should be pronounced, but its execution stayed. If the sentence length pronounced, but stayed, differs from that shown in the appropriate cell, that is a departure from the guidelines.*

~~**II.C.04-II.C.05.** When a stay of imposition is given, no sentence length is pronounced, and the imposition of the sentence is stayed to some future date. If that sentence is ever imposed, the presumptive sentence length shown in the appropriate cell should be pronounced, and a decision should be made on whether to execute the presumptive sentence length given. If the sentence length pronounced at the imposition of the sentence differs from that shown in the appropriate cell of the Sentencing Guidelines Grids, that is a departure from the guidelines.~~

~~**II.C.05-II.C.06.** If an offender is convicted of a felony, and no stayed sentence is given under Minn. Stat. § 609.13, through 609.14, and the judge imposes or stays a misdemeanor or gross misdemeanor sentence, that is a departure from the guidelines.~~

~~**II.C.06-II.C.07.** When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. § 609.17, or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.~~

~~**II.C.07.** The term "sale" as it relates to presumptive imprisonment for second or subsequent sale of a severity level VI drug or sale of cocaine encompasses all elements of Minn. Stat. § 152.09 subd. 1 (1) which reads "Manufacture, sell, give away, barter, deliver, exchange or distribute; or possess with intent to manufacture, sell, give away, barter, deliver, exchange or distribute, a controlled substance" or Minn Stat. § 152.01, subd. 15a which reads " 'Sell' means to sell, give away, barter, deliver, exchange, distribute or dispose of to another; or to offer or agree to do the same; or to manufacture", if the offense was committed after August 1, 1989.~~

~~**II.C.08. . . .**~~

II.C.09. Post-Blakely Sentencing Issues

The United States Supreme Court and the Minnesota Supreme and Appellate Courts have ruled that any fact other than a prior conviction that increases the penalty for the crime beyond the prescribed statutory maximum must be submitted to the jury and proven beyond a reasonable doubt. Sentencing procedures that fail to provide this process are unconstitutional and violate a defendant's Sixth Amendment right under the United States Constitution. Although the ruling by the court appears clear, there are multiple issues surrounding what constitutes an enhancement, as well as what constitutes a statutory maximum sentence, that are being addressed by the courts. The Sentencing Guidelines Commission, in an effort to assist practitioners involved in sentencing procedures, is providing a summary of court decisions to date involving Blakely sentencing issues. The information provided is not intended to be considered as an exhaustive list of relative cases, but rather intended to serve as a guide to assist in sentencing.

II.C.09.a. Statutory Maximum Sentence

Apprendi v. New Jersey, 530 U.S. 466 (2000). . . .

II.C.09.b. Presumptive Sentence

Blakely v. Washington, 1264 S.Ct. 2531 (2004). . . .
State v. Shattuck, 704 N.W. 2d 131 (Minn. 2005). . . .
State v. Allen, 706 N.W.2d 40 (Minn. 2005). . . .
State v. Conger, 687 N.W.2d 639 (Minn. App. 2004). . . .
State v. Mitchell, 687 N.W.2d 393 (Minn. App. 2004). . . .
State v. Fairbanks, 688 N.W. 2d 333 (Minn. App. 2004). . . .

II.C.09.c. Mandatory Minimum – Minn. Stat. § 609.11

. . . .

II.C.09.d. Custody Status Point

State v. Brooks, 690 N.W. 2d 160 (Minn. App. 2004). . . .

II.C.09.e. Retroactivity

State v. Petschl, 692 N.W.2d 463 (Minn. App. 2004). . . .
State v. Houston, 702 N.W.2d 268, 273 (Minn. 2005). . . .
State v. Beaty, 696 N.W.2d. 406 (Minn. App. 2005). . . .

II.C.09.f. Blakely Waiver Issues

State v. Hagen, 690 N.W.2d 155 (Minn. App. 2004). . . .
State v. Senske, 692 N.W. 2d 743 (Minn. App. 2005). . . .

ix. **Remove Unnecessary Language in Comment Section II.D**

Guidelines Section II.D:

Comment

II.D.102. ~~In addition,~~ *The Commission determined that the severity of offenders' sanctions should not vary depending on whether or not they exercise constitutional rights during the adjudication process.*

. . . .

II.D.206. *The aggravating factor involving bias motivation under sSection II.D.2.b.(11) cannot be used when a person has been convicted under a statute that elevated the crime to a felony offense because of bias motivation, e.g., Minn. Stat. §§ 609.2231, subd. 4 (fourth-degree assault), 609.595, subd. 1a(a) (criminal damage to property); 609.749, subd. 3(1) (harassment/stalking). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.*

Additionally, in determining when domestic violence, sexual assault and sexual abuse cases are motivated by a victim's sex and may be appropriately enhanced, proof must be shown of at least one factor, such as: Offender makes abusive or derogatory references based on gender; offender states hatred for a gender as a class; crime involves excessive violence, including mutilation; or victims are multiple and all of the same gender.

x. **Renumber Comment Section II.E**

Guidelines Section II.E:

Comment

II.E.01. . . .

II.E.02. . . .

II.E.03. *When the mandatory minimum sentence is for less than one year and one day, the Commission interprets the minimum to mean any incarceration including time spent in local confinement as a condition of a stayed sentence. The presumptive disposition would not be commitment to the Commissioner unless the case falls above the dispositional line on the Sentencing Guidelines Grids. An example would be a conviction for simple possession of cocaine, a Fifth Degree Controlled Substance Crime. If the person has previously been convicted of a controlled substance crime, the mandatory minimum law would require at least six months incarceration which could be served in a local jail or workhouse.*

~~II.E.03-II.E.04.~~ . . .

II.E.05. *There are some offenses that by statutory definition involve a dangerous weapon and, therefore, the mandatory minimum provision dealing with dangerous weapons always applies; for example, Assault in the Second Degree, Drive-By Shootings, and Certain Persons Not to Have Firearms. The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater.*

xi. **Reorganize Guidelines Section II.F**

Guidelines Section II.F:

F. Concurrent/Consecutive Sentences: Generally, when an offender is convicted of

multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentencing is presumptive. In certain situations consecutive sentences are presumptive; there are other situations in which consecutive sentences are permissive. These situations are outlined below. The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2, and Section II.D of these guidelines.

When consecutive sentences are imposed, offenses are sentenced in the order in which they occurred.

For persons who, while on probation, parole, or incarcerated, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising from the prior sentence.

Comment

II.F.01. Consecutive sentences are a more severe sanction because the intent of using them is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. Generally, the Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines.

For felony convictions committed while an offender is serving an executed prison sentence, or by an offender on supervised release, on conditional release, or on escape status from an executed prison sentence, it is presumptive to impose the sentence for the current offense consecutive to the sentence the offender was serving at the time the new offense was committed. As defined in Minn. Stat. § 244.101, "executed prison sentence" includes both the term of imprisonment and period of supervised release. The guidelines create a presumption against the use of consecutive sentences in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.

In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.

II.F.02. The order of sentencing when consecutive sentences are imposed by the same judge is to sentence in the order in which the offenses occurred.

II.F.03. For persons sentenced under Minn. Stat. § 609.229, subd. 3, where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively would include additional months as outlined under Section II.G, and using the respective criminal history score appropriate for consecutive sentencing.

II.F.04. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The institutional records officer will aggregate the separate durations into a single fixed sentence, as well as aggregate the terms of imprisonment and the periods of supervised release. For example, if the judge executed a 44-month fixed sentence, and a 24-month fixed sentence to be served consecutively to the first sentence, the records officer has the authority to aggregate the sentences into a single 68-month fixed sentence, with a specified minimum 45.3-month term of imprisonment and a specified maximum 22.7-month period of supervised release.

II.F.05. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and re-imprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980, or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the pre-guidelines offense.

II.F.06. Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of \$5,000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74, shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery in the First Degree with use of a gun and had a zero criminal history score, the presumptive sentence for the offense would be 48 months; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.

1. Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving an executed prison sentence, or by an offender on supervised release, on conditional release, or on escape status from an executed prison sentence.

Consecutive sentences are presumptive under the above criteria only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in §Section II.C. The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment, however, is always commitment to the Commissioner of Corrections.

Under the circumstances above, it is presumptive for the sentence(s) to be consecutive to the sentence being served by the offender at the time the escape or other new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

For each presumptive consecutive offense sentenced consecutive to another offense(s), a criminal history score of one, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3, where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G, and using the respective criminal history score appropriate for consecutive sentencing.

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 disposition is probation, the presumptive sentence for the felony DWI is a consecutive stayed sentence with a duration based on 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)).

Comment

II.F.101. For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.

II.F.102. The presumptive disposition for an escape from an executed sentence or a felony assault committed by an inmate serving an executed term of imprisonment is commitment to the Commissioner of Corrections. It is presumptive for sentences for these offenses to be consecutive to the sentence the inmate was serving at the time the new offense was committed.

II.F.103. Consecutive sentences are presumptive for a crime committed by an inmate serving, or on escape status from, an executed prison sentence if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C.

II.F.104. Sentences for offenses committed while on escape status from an executed sentence which have presumptive dispositions of commitment to the Commissioner of Corrections are presumptive consecutive to the sentence being served by the offender at the time of the escape.

II.F.105. In certain situations a concurrent sentence would result in an offender serving longer in prison than a consecutive sentence and in such situations a concurrent sentence is presumptive. For example, an inmate has four months left to serve before release on the first offense. The new offense is a severity level IV crime and the inmate's criminal history score is five. If sentenced concurrently, the presumptive duration would be 27 months, the term of imprisonment would be 18 months and because the sentence runs concurrently with the first offense, the total time to be served would be 18 months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or 4 months less than the

time to be served under concurrent sentencing. In a situation like this example, concurrent sentencing would be presumptive.

2. Permissive Consecutive Sentences

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

- 1a. A current felony conviction for a crime on the list of offenses eligible for permissive consecutive sentences found in Section VI may be sentenced consecutively to a prior felony sentence for a crime listed in Section VI which has not expired or been discharged; or
- 2b. Multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences found in Section VI may be sentenced consecutively to each other; or
- 3c. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or
- 4d. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a non-executed felony sentence may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined; or
- 5e. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from an executed felony sentence may be sentenced consecutively to the sentence for the escape; or
- 6f. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle as defined in Minn. Stat. § 609.487₁ or Criminal Sexual Conduct in the First through Fourth Degrees with force or violence as defined in Minn. Stat. § 609.342 through 609.345; or

- 7g. A current conviction for a felony assault committed while in a local jail or workhouse may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.

Consecutive sentences are permissive under the above criteria ~~numbers 1, 2, and 4~~ letters a, b, and d only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in ~~§~~Section II.C. In addition, consecutive sentences are permissive under ~~number 1~~ letter a, above only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in ~~§~~Section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

Consecutive sentences are always permissive under the above criteria ~~numbers 3, 5, 6, or 7~~ letters c, e, f, or g. There is no dispositional departure if the sentences are executed when consecutive sentences are pronounced under criteria ~~numbers 3, 5, 6, or 7~~ letters c, e, f, or g.

For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations. For persons sentenced under Minn. Stat. § 609.229, subd. 3, where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G, and

using the respective criminal history score appropriate for consecutive sentencing. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in Section II.B.

Comment

II.F.201. *For persons given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by the severity level appropriate to the conviction offense at the zero criminal history column, or the mandatory minimum, whichever is greater.*

II.F.202. *The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D, of the guidelines.*

II.F.203. *It is permissive for multiple current felony convictions for offenses on the eligible list to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C, of the guidelines. Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissive under these circumstances when the court has given an upward durational departure on any of the current offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.*

II.F.204. *If the presumptive disposition for an escape conviction from a non-executed prison sentence is commitment to the Commissioner of Corrections, it is permissive for the sentence to be consecutive to the offense for which the offender was confined. The presumptive duration for the escape is found at the zero criminal history score and the appropriate severity level. In addition to making the sentence for the escape offense consecutive to the sentence for which the offender was confined, it is also permissive to pronounce a sentence for any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections, consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offender was confined.*

Additionally, it is permissive to sentence any offense committed while on escape status from an executed sentence consecutive to the escape.

Comment

~~**II.F.01.** Consecutive sentences are a more severe sanction because the intent of using them is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. Generally, the Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines.~~

~~For felony convictions committed while an offender is serving, or on escape status from, an executed prison sentence, it is presumptive to impose the sentence for the current offense consecutive to the sentence the offender was serving at the time the new offense was committed. As defined in Minn. Stat. § 244.101, "executed prison sentence" includes both the term of imprisonment and period of supervised release. The guidelines create a presumption against the use of consecutive sentences in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.~~

~~In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.~~

~~**II.F.02.** The order of sentencing when consecutive sentences are imposed by the same judge is to sentence in the order in which the offenses occurred. For persons given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by the severity level appropriate to the conviction offense at the zero criminal history column, or the mandatory minimum, whichever is greater.~~

~~For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column of the grids, or the mandatory minimum, whichever is greater. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively would include additional months as outlined under Section II.G. and using the respective criminal history score appropriate for consecutive sentencing.~~

~~The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The institutional records officer will aggregate the separate durations into a single fixed sentence, as well as aggregate the terms of imprisonment and the periods of supervised release. For example, if the judge executed a 44 month fixed sentence, and a 24 month fixed sentence to be served consecutively to the first sentence, the records officer has the authority to aggregate the sentences into a single 68 month fixed sentence, with a specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release.~~

~~**II.F.03.** The presumptive disposition for an escape from an executed sentence or a felony assault committed by an inmate serving an executed term of imprisonment is commitment to the Commissioner of Corrections. It is presumptive for sentences for these offenses to be consecutive to the sentence the inmate was serving at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving, or on escape status from, an executed prison sentence if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C.~~

~~In certain situations a concurrent sentence would result in an offender serving longer in prison than a consecutive sentence and in such situations a concurrent sentence is presumptive. For example, an inmate has four months left to serve before release on the first offense. The new offense is a severity level IV crime and the inmate's criminal history score is five. If sentenced concurrently, the presumptive duration would be 27 months, the term of imprisonment would be 18 months and because the sentence runs concurrently with the first offense, the total time to be served would be 18 months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or 4 months less than the time to be served under concurrent sentencing. In a situation like this example, concurrent sentencing would be presumptive.~~

~~For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.~~

~~**II.F.04.** The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D. of the guidelines.~~

~~It is permissive for multiple current felony convictions for offenses on the eligible list to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C. Presumptive Sentence. Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissive under these circumstances when the court has given an upward durational departure on any of the current offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.~~

~~If the presumptive disposition for an escape conviction from a nonexecuted prison sentence is commitment to the Commissioner of Corrections, it is permissive for the~~

~~sentence to be consecutive to the offense for which the offender was confined regardless of whether the other sentence is for a crime against the person. The presumptive duration for the escape is found at the zero criminal history column and the appropriate severity level. In addition to making the sentence for the escape offense consecutive to the sentence for which the offender was confined, it is also permissive to pronounce a sentence for any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections, consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offender was confined.~~

~~Sentences for offenses committed while on escape status from an executed sentence which have presumptive dispositions of commitment to the Commissioner of Corrections are presumptive consecutive to the sentence being served by the offender at the time of the escape. In addition, it is permissive to sentence any offense committed while on escape status from an executed sentence consecutive to the escape.~~

~~**II.F.05.** The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and re-imprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.~~

~~If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the pre-guidelines offense.~~

~~**II.F.06.** Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of \$5,000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery in the First Degree with use of a gun and had a zero criminal history score, the presumptive sentence for the offense would be 48 months; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.~~

2. **The Commission adopted a proposal to make the following technical modifications in Section III of the Minnesota Sentencing Guidelines and Commentary:**

Rewrite and Reorder Comment Section III.C.06

Guidelines Section III.C:

III.C.01. In order to promote the goals of the sentencing guidelines, it is important to ensure that jail credit is consistently applied to reflect all time spent in custody in connection with the offense. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that a person in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial. The Commission believes that greater uniformity in the application of jail credit can be achieved by following the general criteria noted above in Section III.C., Jail Credit.

III.C.06. The Commission's policy is that sentencing should be neutral with respect to the economic status of felons. In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody shall be computed by the Commissioner of Corrections and subtracted from the specified minimum term of imprisonment. If there is any remaining jail credit left over, it should be subtracted from the specified maximum period of supervised release. If credit for time spent in custody were immediately deducted from the sentence instead, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond. For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody shall be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.

~~*Commission policy is that sentencing should be neutral with respect to the economic status of felons. When credit for time spent in custody is immediately deducted from the sentence, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond.*~~

3. **The Commission adopted a proposal to make the following technical modifications in Section V and to the Forgery Related Offense List:**

- i. **Inadvertently Unranked Offense – Low-Level Radioactive Waste Compact; Enforcement of Compact and Laws**

Guidelines Section V:

Unranked	<u>Midwest Interstate Low-Level Radioactive Waste Compact; Enforcement of Compact and Laws – 116C.835</u>
----------	---

ii. Amend Statutory References on the Offense Severity Reference Table

Guidelines Section V:

III	Damages; Illegal Molestation of Human Remains; Burials; Cemeteries – 307.08, subd. 2(a)
-----	---

iii. Remove References to Repealed Statutes

Forgery Related Offense List

~~Altering Packing House Certificate
 226.05
 [Repealed, 1990 c 426 art 1 s 26]~~

IV	False Statement by Corporate Officer (Perjury) – 300.61
	[Repealed, 2005 c 69 art 4 s 1]

I	Criminal Penalties Regarding the Activities of Corporations – 300.60
	[Repealed, 2005 c 69 art 4 s 1]

Appendix D: Non-Legislative Modifications – Effective August 1, 2009

Calculation of Juvenile Point

The Commission adopted a proposal to amend Guidelines Section II.B.4, providing that only juvenile adjudications rather than juvenile adjudications and continuances without adjudication be used in the calculation of a juvenile point.

Guidelines Section II.B.4:

4. The offender is assigned one point for every two adjudications ~~offenses~~ committed and prosecuted as a juvenile that are felonies under Minnesota law, provided that:
 - ~~a.~~ Findings were made by the juvenile court pursuant to an admission in court or after trial;
 - ~~a b.~~ Each adjudication ~~offense~~ represented a separate behavioral incident or involved separate victims in a single behavioral incident;
 - ~~b e.~~ The juvenile adjudications were pursuant to offenses occurring~~ed~~ after the offender's fourteenth birthday;
 - ~~c d.~~ The offender had not attained the age of twenty-five at the time the felony was committed for which he or she is being currently sentenced; and
 - ~~d e.~~ Generally, an offender may receive only one point for adjudications ~~offenses~~ committed and prosecuted as a juvenile that are felonies under Minnesota law. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the sentencing guidelines would presume imprisonment. The presumptive disposition of the juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment. This determination is made regardless of the criminal history score and includes those offenses that carry a mandatory minimum prison sentence

and other presumptive imprisonment offenses described in Section II.C., Presumptive Sentence.

Comment

.....

II.B.402. First, only juvenile adjudications for offenses that are felonies under Minnesota law will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration. Consistent with Minn. Stat. § 609.035 which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile adjudications for offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.

II.B.403. Second, the juvenile adjudications must result from offenses ~~must have been~~ committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date of adjudication ~~the findings were made by the court~~ to eliminate variability in application based on differing juvenile court practices.

II.B.404. Third, juvenile adjudications offenses will be considered in computing the criminal history score only for adult offenders who had not attained the age of 25 at the time the felony was committed for which they are now being sentenced. Again, the Commission chose to examine the age of the offender at the time of the offense rather than at time of sentencing to prevent disparities resulting from system processing variations.

II.B.405. Fourth, the Commission decided that, provided the above conditions are met, it would take two juvenile adjudications offenses to equal one point on the criminal history score, and generally, an offender may not receive more than one point on the basis of prior juvenile adjudications offenses. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the guidelines would presume imprisonment. The presumptive disposition for a prior juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment regardless of criminal history. Included in this determination are any mandatory minimum laws that apply to the offense or any other applicable policies under Section II.C., Presumptive Sentence. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile adjudications offenses are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication offense meeting the above criteria would receive no point on the criminal history score.

II.B.406. ~~Only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of more than one. The Commission was concerned with possible past disparities in the procedures used in the various juvenile courts. This effective date for the prior findings corresponds to the Commission's previous policy which allowed for more than one juvenile point when there were certain prior serious violent offenses on the juvenile record. Retaining this effective date for the new policy continues to give proper notice that in the future, the juvenile history can result in more than one criminal history point.~~

II.B.407. *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with adjudications findings arising from a single course of conduct when single victims are involved and when the adjudications findings involved provisions of Minn. Stats. § 609.585 or 609.251, consideration should be given to the most severe offense with an adjudication finding for purposes of computing criminal history. When there are multiple felony offenses with adjudications findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with adjudications findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.*

Appendix E: Reentry Grant Summaries

Submitted by: Gary R. Johnson, Director
Reentry Services Unit, MN Department of Corrections

MCORP Reentry Grant

The 2007 Legislature funded the Minnesota Comprehensive Offender Reentry Plan, the state's offender reentry initiative. MCORP is a strategic initiative between invested state agencies whose mission is to move forward reentry best practices, in an effort to reduce the rate of recidivism among reentering offenders across the state.

The MCORP Steering Committee has identified cost effective collaboration between agencies as an important goal of the initiative. To that end, several agreements between agencies have been developed as a result of involvement in MCORP. The DOC and DHS have partnered to fund a child support specialist position that operates at the DOC reception institutions to identify offenders who have child support arrears, counsel offenders on how collection works, how to obtain modifications of court orders where appropriate and engage offenders in carrying out their child support responsibilities. The DOC and the Department of Public Safety have collaborated, through Driver and Vehicle Services, to assist offenders in obtaining proper identification prior to release. Lack of proper identification for an offender has been identified as a significant barrier to successful reentry. During fiscal year 2008, 1179 state ID's and drivers licenses were obtained by returning offenders. Another collaborative effort has been in the works for several years and is nearing implementation. This effort by the DOC and the Department of Employment and Economic Development involves developing inmate access to the www.MinnesotaWorks.net website, so that inmates can job search prior to their release from prison. Implementation is complicated by the need to develop a secure, dead end, access to this website so that inmates do not have access to any other inter-net site. Yet another result of agency cooperation is the development of a pilot project by DEED at several metro-area Workforce Centers, where assistance is available specifically for ex-offenders who come into these two Workforce Centers to search for jobs. Since September of 2008, DEED has offered workshops to offenders to train them in use of the Workforce Center resources. There have been 19 offenders who have received a certificate of completion and 6 who have obtained jobs with an average wage of between \$12-\$13 per hour. The DOC and the State Public Defender's Office have created an interagency agreement to provide reentry legal services to female offenders at MCF-Shakopee, during incarceration and following their release. This project helps female offenders with legal issues like name changes, orders for protection, divorce and child custody and/or visitation matters.

As a result of legislative funding of MCORP, transition services provided by the DOC to inmates in prison have been expanded. Several Transition Coordinator positions have been added so that all releasing facilities now have this program available to inmates preparing for release. Transition Coordinators offer mandatory pre-release classes to inmates when they reach the six-month before release point in their incarceration. During fiscal year 2008, 3021 inmates attended pre-release classes. Transition Coordinators have Transition Fairs at their respective institutions where non-profit and government agencies make themselves available to inmates to answer questions about their community programs. There have been 7 transition

fairs held in fiscal year 2008. Transition Coordinators also facilitate employment seminars to assist inmates in preparing for their job search once released. There were 18 employment seminars provided during fiscal year 2008.

Through the MCORP initiative, evidence-based, best practices are being implemented and researched. The DOC and the counties of Hennepin, Ramsey, Dodge, Fillmore and Olmsted have implemented a pilot project to demonstrate use of these best practices. Grants have been awarded to each county to assist in the expansion of reentry services to targeted offenders. Services include, evidence-based assessments that result in the development of specific case plans that follow the offender through his/her prison stay and out into the community following release. The grants have allowed for expanded housing funding; employment readiness and job search services; family reunification counseling; mentoring and reentry stipends to assist offenders with basic necessities upon release.

To determine whether participation in MCORP has an impact on outcome measures such as recidivism, offenders who met the developed criteria were randomly assigned to either the experimental group or the control group. Those in the experimental group were assigned to MCORP institutional case managers and supervision agents, who work together to provide planning, support, and direction for offenders in an effort to address their strengths and needs, both in the institution and in the community. Those assigned to the control group, on the other hand, were exposed to standard, “business as usual” case management and supervision practices.

The first offenders released to the community, as part of this pilot, came out in February of 2008. Through the end of November of 2008, 189 offenders are participating in MCORP and 114 offenders have been assigned to the control group. To date, 156 members of the experimental group and 80 members of the control group have been released from prison. By the end of 2008, all of the remaining 67 target population offenders will be released to the community. In an attempt to examine the effectiveness of the MCORP pilot project, the evaluation will compare the two groups of offenders among a number of post-release outcomes, including recidivism, employment, and housing. Since most of the participating offenders in these two research groups have only recently been released from prison, much of the post-release data are not yet available. Once these data have been collected, the information will be analyzed by the Department of Corrections to assess whether MCORP has had an impact on post-release outcomes identified.

The MCORP Steering Committee has approved the implementation of Phase II of the MCORP Pilot Project. The extension of this study will allow the DOC to acquire continuing data over a longer period of time, as well the chance to expand the scope of the use of best practices.

Big Brothers/Big Sisters – Mentoring Grant

Big Brothers and Big Sisters of the Greater Twin Cities (BBBS) is providing one-to-one mentoring relationships for youth between the ages of seven and 13, who have a parent or significant family member who is incarcerated at any type of correctional facility, local, state or federal. To date, during the three grant-funded project years (beginning in January 2007 and

continuing through June 2009), BBBS has served 367 new children, matching them with a volunteer mentor, and supported a total of 558 matches involving Mentoring Children of Prisoners-eligible children.

Key program functions and activities that were undertaken under this grant include:

- Volunteer Recruitment and Intake/Screening (an in-person interview, criminal background check, personal references, an assessment by a professional staff person).
- Child/Family Intake (an interview and assessment of each child and their parent/caregiver).
- On-going support to assist in the development of the match relationship.
- Collaboration with the Search Institute, council on Crime and Justice to provide additional training and resources for staff and mentors.
- Collaboration with BBBS of Southern Minnesota to serve children in an expanded service area.
- Provide through CCJ, individual family plan and aftercare to youth, as needed.
- Provide match activities hosted by BBBS each month that cover a wide range of interests.
- Special recruitment activities designed to increase the numbers of men of color who agree to mentor children.

ARC – Productive Day Program Grant

Arrowhead Regional Corrections (ARC) is using their grant of \$150,000 to fund the Productive Day Program. The goal of the Productive Day Program is to develop basic life and work skills through training and education that will create opportunities for offenders to achieve more successful integration into the community upon their release. ARC is providing programming in three correctional programs: Northeast Regional Corrections Center (NERCC), Arrowhead Juvenile Center (AJC), and Bethel Women's Program.

NERCC's mission is to work with clients who are at low risk to re-offend by establishing short-term goals to transition them back to the community. In early 2008, a group for low risk clients was instituted. The group meets twice a week.

The staff develops case plans with all clients, and recently introduced a social skill and problem-solving curriculum. The case plans developed with the clients identify goals to be achieved in the facility and in the community. Regular contact with released clients is maintained to ensure that they are following their case plan and conditions of probation.

To date, 3 clients have been enrolled in college/post-secondary education and are scheduled to begin this fall. Seven clients have secured employment, 3 have obtained special certification (while at NERCC) towards employment, 7 have attended the money management course, 4 in the job basics course, 1 in intense career assessment, 4 were able to apply and obtain medical care upon release, while 5 obtained assistance with child support issues, and 4 are involved in chemical dependency treatment and aftercare, including AA and NA meetings.

After release, contact and support is continued once a week for the first three weeks and more frequently, if needed. There is contact once a month for three months after that or until no

contact can be made. The probation officer continues the case plan set with the client, follow-up and documents their progress.

Bethel Female Offender Program (Bethel FOP) provides the parity to the adult male programming at NERCC. Key findings include the high number of offenders who are unemployed (71%) as well as the rate of full time employment decreasing dramatically from 17% in 1999-2000 to 5% in 2003-2004. The women at Bethel FOP often lack the resources that will lead to successful education or employment, much like the other NERCC clients. The main issues continue to be lack of housing options, childcare issues, transportation needs, which create additional burdens as they try to return to the community. The program does active case planning, with career testing, skill development and employment assistance with 15 to 25 women, including active follow-up meetings. Probation officers attend staffings and are involved in developing the individualized case plan for each woman. They work in cooperation with the Bethel caseworker in preparing for reentry. They require that the women participate and successfully complete any programming needed, including aftercare. The goal of the program is to improve employment based programming to prepare 15 to 25 female offenders for successful reentry and to increase abilities to find and retain employment.

The AJC's mission is to promote public safety, to hold juvenile offenders accountable for their behavior and to promote the ability of the youth to live productively and responsibly in their community. This is being achieved through transition support, training in basic life skills and coordination of appropriate community resources and supports.

The staff, in collaboration with the client, probation officers, teachers, social workers and other professionals, develop case plans with their clients. The YLSI is used to determine the risk levels and needs of the client. Motivational interviewing techniques are used to assess the youth's readiness to change. The youths attend a variety of groups while they are in the facility, such as social skills, cognitive behavior change, independent living skills, and job readiness skills. Finally, staff members continue to conduct field visits and family meetings on a weekly basis for those clients who are in the community. Staff has phone contact once a week with clients in the community and face-to-face contact once a week.

Emerge – Northside Reentry Connection – Employment Grant

Emerge-Northside Reentry Connection (NRC) is a comprehensive 21 month pilot program that seeks to assist offenders in securing employment through integrated service delivery that emphasizes: (1) strong worker/client relationships, (2) aggressive job development, placement and career laddering approaches (including permanent, temporary to permanent, and transitional work experiences) and (3) partnerships with culturally competent organizations to help stabilize and support ex-offenders in the reentry process. Key program outcomes are focused on job placement and retention, connecting to community supports (including securing affordable housing and accessing treatment, if necessary) and recidivism reduction. NRC plans to provide services to 315 African American offenders living in North Minneapolis, Minnesota.

Towards the attainment of this goals, Emerge developed 4 objectives, they are:

- Develop and sustain a programmatic structure that encourages North Minneapolis-based comprehensive service delivery for re-entering offenders.
- Conduct outreach and enrollment activities to ensure program access and maximum participation.
- Enhance ex-offender's employment opportunities.
- Enhance ex-offender's access to services that result in stable housing, reduced substance abuse, improved health and enhanced education and training and spiritual growth.

The Northside Reentry Connection (NRC) facilitated the following services:

- Work Readiness – Based on participant assessments, NRC Case Managers worked with ex-offenders to prepare them for entering the workforce by addressing a number of areas including: interviewing skills, completing job applications and resumes, reviewing basic employer expectations, and developing strategies that take into account personal and scheduling needs and transportation to and from work.
- Skill Training – Assist participants in accessing two Emerge/City Skills customized trainings done in collaboration with local employers and a number of other external training opportunities.
- Chemical and Mental Health Referrals – NCR Case Managers facilitated and monitored participant connections to mental health and chemical assessments, relapse prevention and outpatient treatment and ongoing therapeutic counseling
- Housing Support – Case managers worked with participants to secure affordable housing, sustain housing and provide landlord/tenant advocacy.
- Job Placement – A job developer increased the number of potential employers via two distinct job development strategies including: 1) securing a growing number of social enterprise service contracts from businesses, non-profits and government unit to provide Emerge (Temporary) Staffing and StreetWerks community beautification services; and 2) developed a larger pool of employers to hire ex-offenders in permanent jobs.
- Job Retention Support – Once participants are placed in jobs, case managers provide job retention services to foster job and economic advancement. A heavy emphasis will be placed on worksite monitoring to ensure a successful transition into work.
- Formalized numerous partnerships with a wide variety of faith-based and community organizations, businesses and community corrections officials to meet the needs of ex-offenders reentering North Minneapolis.

The NRC program was able to meet or exceed the majority of contracted outcomes. Some of these include:

- Exceeding the average initial wage goal of \$8.50/hr during the 4th grant quarter.
- The number of participants placed in StreetWerks transitional employment.
- The goal of employing 10 additional participants at EMERGE Staffing worksites was achieved.
- Of the 147 program participants to date, only 22 are known to have been returned to prison, largely for technical violations of the conditions of release.

University of Minnesota – Domestic Abuse Reentry Grant

Through this grant, the Institute on Domestic Violence in the African American Community (IDVAAC), a specialized outreach center in the School of Social Work of the University of Minnesota, serves as a liaison to the Minnesota Department of Corrections and is training contracted partners on research-based and service delivery methods to: (1) reduce the incidence of domestic violence among offenders re-entering the community; (2) reduce occurrences of domestic violence, serious injury and death experienced by intimate partners in relationships with offenders recently released from jail or prison; and (3) reduce criminal recidivism due to domestic violence among offenders on level one work release.

IDVAAC has selected a group of Minnesota-based organizations to partner with for this project. These include: My Home, Inc., Oasis of Love, Family and Children's Services, the Domestic Abuse Project (DAP) and Lance Becker and Associates.

Key functions and activities undertaken under this grant include:

- My Home, Inc., provided reentry groups with enhanced emphasis on domestic violence to 48 level one work releases.
- My Home, Inc., and Oasis of Love are working together to identify and recruit partners of Level 1 Work Releases to participate in support groups.
- IDVAAC has worked with DAP to facilitate the delivery of domestic abuse prevention services to inmates at the Lino Lakes Facility. Twice-weekly education sessions with inmates are being planned. Promotional and informational materials that explain the program to inmates for recruitment purposes have been distributed.
- IDVAAC and DAP have worked together to develop and refine a curriculum suited for an inmate population. Key topics include: Identifying and addressing controlling behaviors the offenders may use with their partners while they have been incarcerated; helping offenders identify transformational experiences; defining relationship boundaries in and out of prison; and learning about the stress of transition from prison to family life.
- IDVAAC is developing a module that will be included in the pre-release handbook given to all DOC inmates released from correctional facilities. The module will help men identify issues that may be problematic upon their release related to domestic violence.
- Oasis of Love is contacting the partners of level one work releases that have expressed interest in participating in support groups. Using the protocols and intake forms IDVAAC developed.
- IDVAAC is in the process of scheduling a series of webcast trainings for reentry program, parole/community supervision, prison-based case managers and community organizations interested in reentry and domestic violence.

IDVAAC has been in communication with the DOC and the research unit to gather data on intimate partner violence among Minnesota's inmate population.