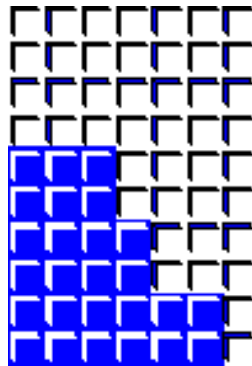


MINNESOTA SENTENCING
GUIDELINES COMMISSION

MSGC Report to the
Legislature

MSGC Report to the Legislature, January 2011



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Introduction

In 1978, Minnesota created the nation's first sentencing guidelines commission to develop a model for rational and consistent sentencing standards for felony offenders. In 1981, Minnesota became the first state to implement a sentencing guidelines structure. Over the years, the guidelines system has proven capable of providing sound data to inform policy-makers. 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. In a 2008 comparison, the Bureau of Justice Statistics determined that Minnesota's prison incarceration rate was the second-lowest of all states in the nation with a 179 inmate per 100,000 resident ratio.

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 14,840 felony convictions in 2009 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.

This report details the work of the Minnesota Sentencing Guidelines Commission during 2010 and provides an overview of sentencing practices and trends in the criminal justice system. Please direct any comments or questions regarding the report to the Minnesota Sentencing Guidelines Commission Office. Additional reports on overall data trends in 2009 and sentencing practices for specific offenses including assault offenses and violations of restraining orders, controlled substance, criminal sexual conduct, criminal vehicular homicide and injury, dangerous weapons, failure to register as a predatory offender and felony DWI, as well as an unranked offense report and probation revocation report are available on the commission's website at <http://www.msgc.state.mn.us>.

Executive Summary

The 2011 Report to the Legislature contains information for which the commission is required to report: modifications to the sentencing guidelines 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; commission and staff activities; and two new sentencing practices reports.

Sentencing Trends (p. 3) – Minnesota continued to experience a decrease in the number of felons sentenced which began in 2007. There were 14,840 felony offenders sentenced in 2009, a 3.6% decrease from 2008. 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. The only crime category exhibiting growth was “person,” at a rate of 6%, with much of that growth from domestic assault-related offenses as well as first-degree assaults.

New Crime Legislation (p. 8) – In response to new legislation, the commission ranked one new crime, identity theft – unlawful possession or use of a scanning device or reencoder (M.S. § 609.527), at severity level 2; and raised the severity level for possession of a dangerous weapon on school property to severity level 4.

Non-Legislative Modifications (p. 8) – The commission included in the sentencing guidelines a reference to military veterans; it modified the guidelines to clarify that a prior controlled substance conviction or stay of adjudication cannot “trigger” a prison sentence for a subsequent first- through third-degree controlled substance offense after 10 years have passed; and it modified the guidelines to consistently reference the three exceptions to the “*Hernandez*” rule.

Staff Activities (p. 9) – The staff performed the following activities: trained over 500 probation officers and lawyers; provided 28 fiscal impact statements for introduced legislation and 24 requests for draft legislation; worked with Department of Corrections to generate prison bed projections; served on various criminal justice boards, forums and committees; processed and ensured accuracy of over 14,000 sentencing records; published annual guidelines and commentary and provided reports on sentencing practices.

The Impact of Selected Statutory Enhancements (p. 11) – The commission produced a new report on the impact of selected statutory enhancements which have had the most impact of correctional resources. Specifically, the report focuses on fourth-degree assault, felon in possession, failure to register as a predatory offenders and driving while impaired (DWI).

The Impact of *Blakely* and Expanded Ranges (p. 12) – The commission produced a new report on the impact of *Blakely v. Washington*, and the adoption of grids with expanded ranges. Three areas are examined: the number of offenders sentenced at the lower or upper limits of the ranges, the number of durational departures, and average pronounced sentence durations.

County Attorney Firearms Reports (p. 16) – County Attorneys 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 689.

2009 Sentencing Practices Data Summary

The following data summarizes information about sentencing practices and case volume and distribution. 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.

There were 14,840 felony offenders sentenced in 2009; a decrease of 3.6 percent from the number sentenced in 2008. Figures 1 and 2 illustrate a large growth in the number of offenders sentenced for felony convictions between 2001 and 2004. This growth can be attributed to the implementation of the felony driving while impaired (DWI) law and increases in the number of drug crimes sentenced, particularly methamphetamine cases. Both trends appear to have leveled off. The number of felony DWI offenders sentenced actually declined in the years 2005-2009. The number of felony DWI offenders sentenced in 2009 was 704, 75 fewer than the number sentenced in 2008, and eighteen percent lower than the number sentenced in 2004 (860) when the number of offenders sentenced for felony DWIs peaked. In 2009, the number of drug offenders sentenced decreased by 7.7 percent. This follows decreases of seven percent in 2007 and 2008. The 2007 decrease was the first time the number of drug offenders sentenced had decreased since 1999. As a proportion of total crimes sentenced, drug crimes decreased in 2006 for the first time since 2001 and further declined in 2007-2009 (Figure 4).

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2009

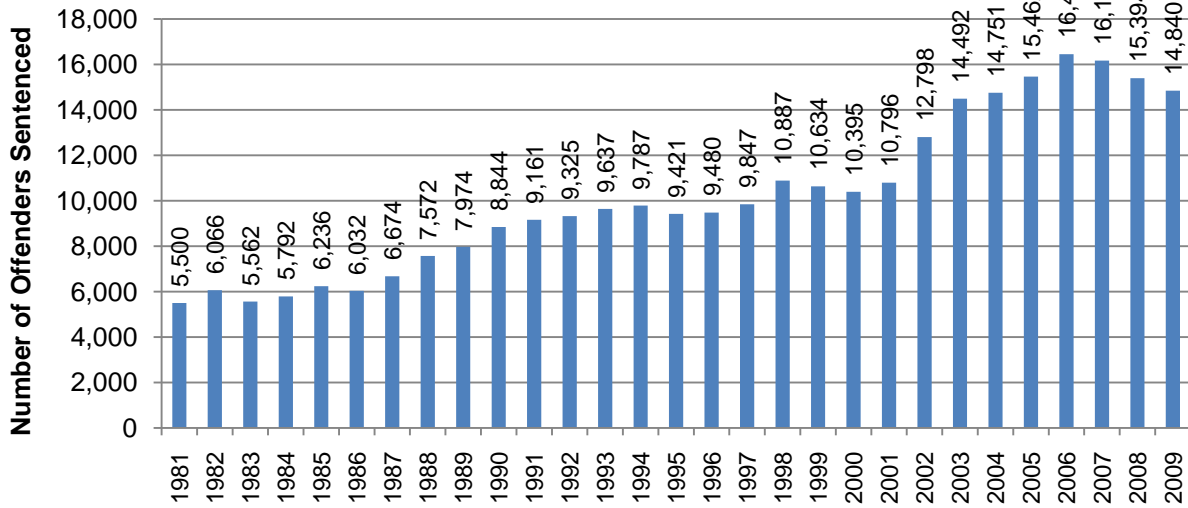
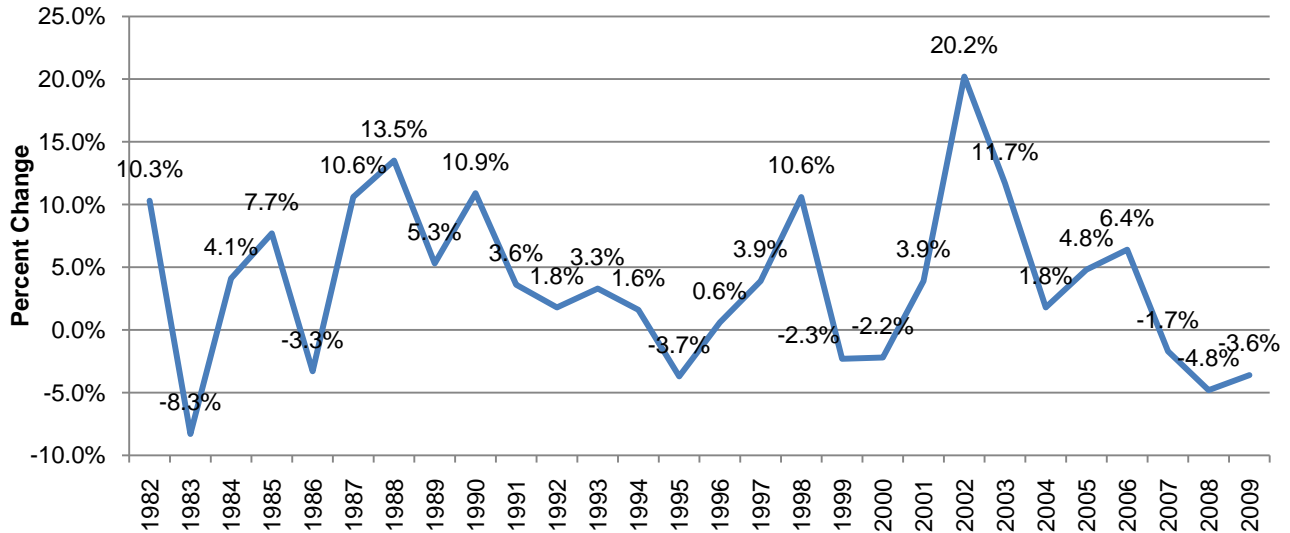
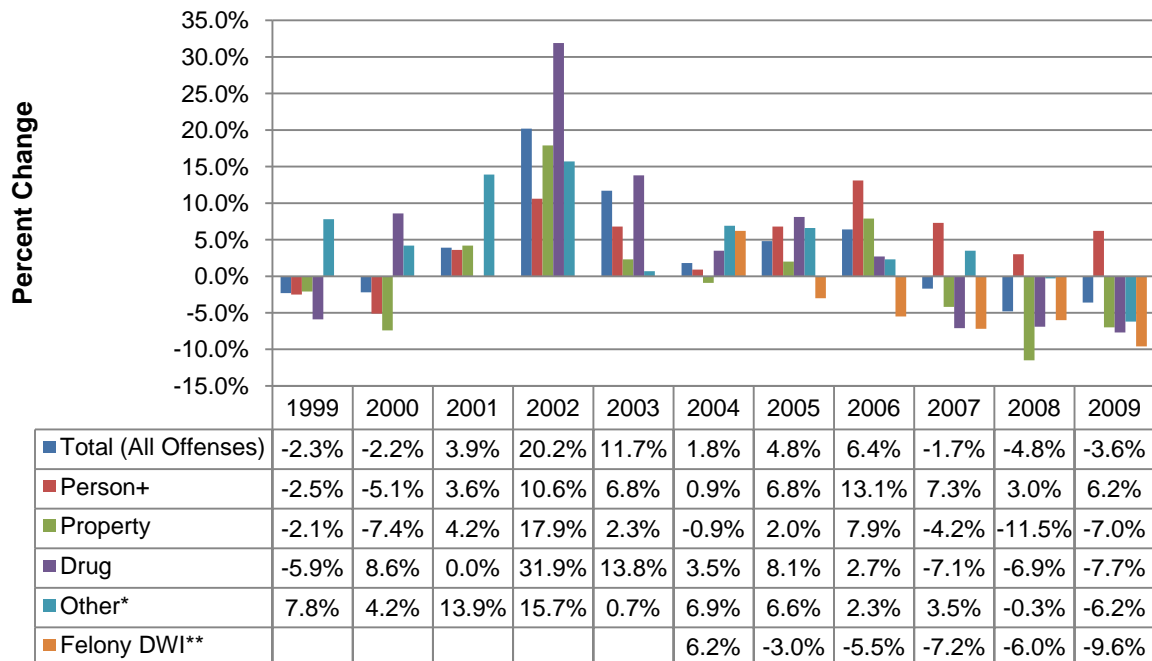


Figure 2. Percent Change in Number of Offenders Sentenced for Felony Convictions: 1982-2009



The only crime category exhibiting growth in 2009 was “person,” with a growth rate of about six percent. This follows a growth rate of three percent in 2008, over seven percent in 2007, and 13 percent in 2006 (Figure 3). In 2009, approximately 30 percent of the offenses sentenced were person offenses, which is the highest percentage since the guidelines went into effect.

**Figure 3. Percent Change by Offense Type: 1999-2009
(Felony DWI Separated from Other Category)**

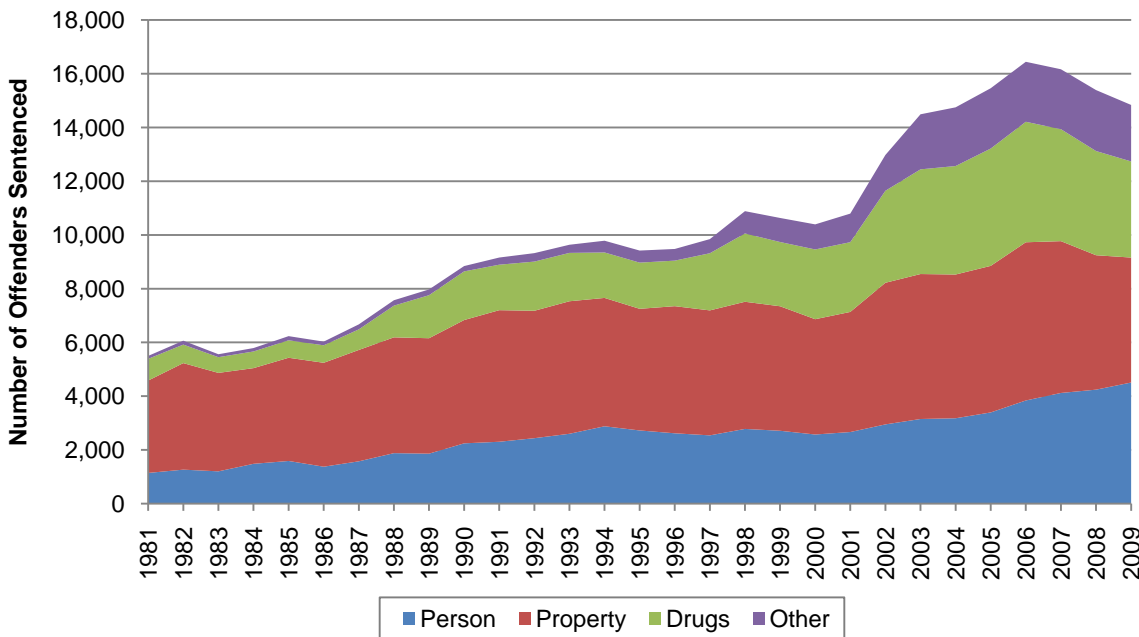


+Offenses in the “Person” Category include: murder, manslaughter, criminal vehicular homicide and injury, assault, robbery, kidnapping, false imprisonment, criminal sexual conduct, solicitation of a minor, malicious punishment of a child, terroristic threats, drive-by shooting, stalking, and violation of a restraining order.

*Offenses in the “Other” Category include: 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. Volume of Offenders Sentenced by Offense Type: 1981-2009

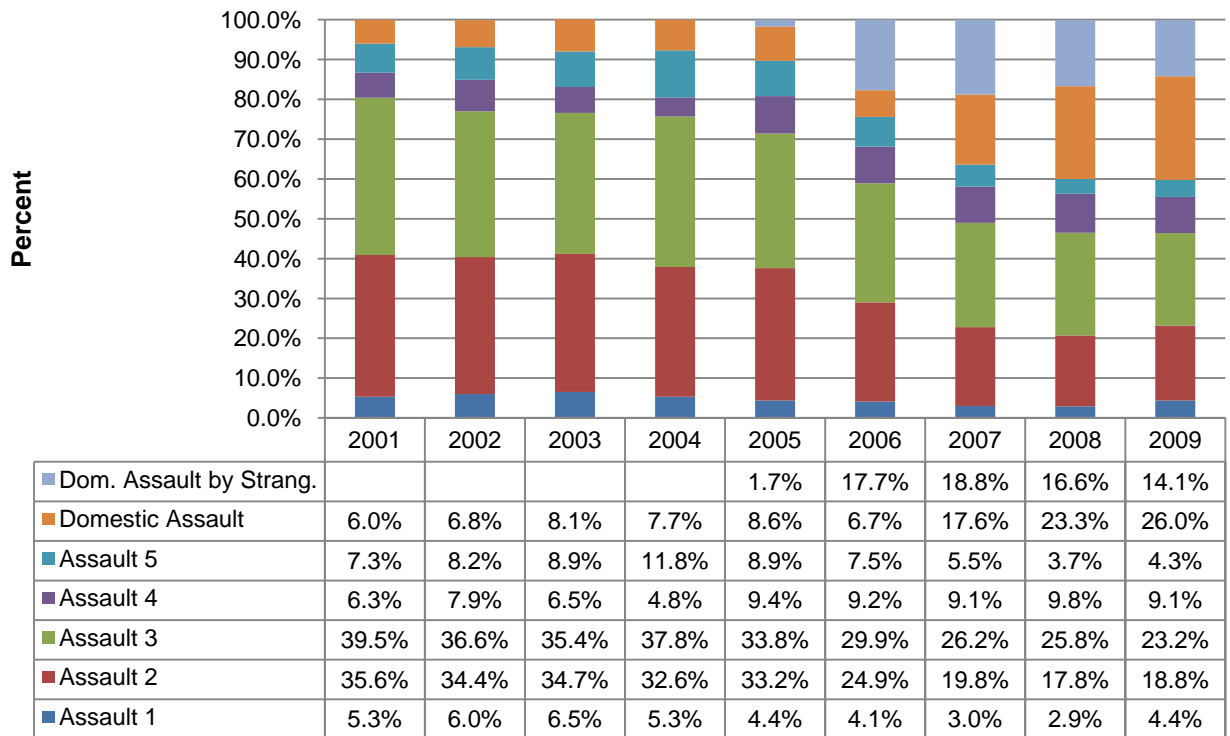


Domestic Assault-Related Offenses

Much of the growth in person crimes can be attributed to the increase in certain domestic assault-related offenses, including domestic assault, domestic assault by strangulation, and violations for restraining orders. There was also a large increase in the number of first-degree assaults sentenced in 2009 (Figure 5). For a more detailed discussion of the growth in these offense categories, please see MSGC's report entitled *Assault Offenses & Violations of Restraining Orders Sentenced in 2009*. This report is available through the MSGC website (<http://www.msgc.state.mn.us>).

Data from *Minnesota Crime Information 2009*, published by the Minnesota Department of Public Safety, indicates that the overall crime rate for index crimes has fluctuated since 1981, but has decreased for the last three years. The 2009 rate of 2,894 crimes per 100,000 in population represents a decrease of almost seven percent from the 2008 rate. In 2009, there were 13,036 reported violent crimes in Minnesota, a decrease of more than seven percent from the 14,085 violent crimes reported in 2008.

Figure 5. Distribution of Assault Offenses: 2001-2009



Criminal Sexual Conduct Offenses

There were 579 offenders sentenced for criminal sexual conduct (CSC) offenses in 2009, a slight decrease from the number sentenced in 2008 (582). Over 92 percent of offenders sentenced for CSC offenses received sentences that included incarceration in a state prison (33%) or local jail (60%). In CSC cases where the guidelines recommended imprisonment, 70 percent of offenders received an executed prison sentence. The average pronounced sentence was 100 months, a decrease from 110 months in 2008. One reason for the decrease in the average sentence length was a decrease in the number of offenders sentenced for first-degree CSC; from 144 offenders in 2008 to 105 offenders in 2009. The average pronounced sentence for first-degree CSC (the most serious offense category) was 149 months. Average pronounced prison sentences have increased dramatically since 1989, when recommended sentence durations under the sentencing guidelines were lengthened. The average pronounced prison sentence was 54 months in 1988 and 116 months in 2003, the highest average sentence since the guidelines were enacted.

For more detailed information on this topic, please see MSGC’s report entitled *Criminal Sexual Conduct Offenses Sentenced in 2009*. This report is available through the MSGC website (<http://www.msgc.state.mn.us>).

The Commission's Activities in 2010

The Minnesota Sentencing Guidelines Commission consists of eleven members, of whom eight are appointed by the Governor and three are judges appointed by Minnesota's Chief Justice. 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.

One of the basic responsibilities of the commission is to maintain the guidelines structure by annually modifying the sentencing guidelines in response to legislative changes, case law, and issues raised by various parties. In order to meet this responsibility, the commission met five times during 2010, held one public hearing and approved a number of modifications to the sentencing guidelines which are summarized below. All modifications are set forth in the Appendix.

New Crime Legislation – Effective August 1, 2010

Identity theft (M.S. § 609.527) was amended to include scanning devices and reencoders. The commission ranked the new crime of unlawful possession or use of a scanning device or reencoder, at severity level 2. The commission also raised the severity level ranking for possession of a dangerous weapon on school property to severity level 4, after the statutory maximum was raised from two years to five years.

The commission considered amendments made to third- and fourth-degree criminal sexual conduct – employees of secure treatment facilities (M.S. §§ 609.344, subd. 1(m) and 609.345, subd. 1(m)) and adopted a proposal to maintain the current severity level rankings and maintain the list of offenses eligible for consecutive sentencing.

Following several legislative amendments to domestic abuse-related provisions, the commission adopted technical modifications to domestic abuse-related offenses listed in the sentencing guidelines, removing the terms “harassing” and “harassment” from stalking provisions.

Non-Legislative Modifications – Effective August 1, 2010

The commission placed a reference in the sentencing guidelines related to military veterans so that more sentencing professionals were made aware of its existence and so that it was contained in the MN Rules of Court. M.S. § 609.115, subd. 10, regarding military veterans, was passed by the 2008 Legislature, and directed the court to: 1) determine the military status of a convicted defendant; and 2) if the defendant is currently serving in or is a veteran of the armed forces and has been diagnosed as having a mental illness, the court can “consider the

treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.”

The commission modified the sentencing guidelines to clarify that a prior controlled substance conviction or stay of adjudication cannot “trigger” a prison sentence for a subsequent first- through third-degree controlled substance offense after 10 years have passed; consistent with M.S. § 152.01, subd. 16a.

The commission also modified the sentencing guidelines to consistently reference the three exceptions to the “*Hernandez*” rule and amend the commentary to clarify its actions are deliberate. The modification is consistent with a MN Supreme Court case. The commission also amended the presumptive sentence section to be consistent with a recent MN Supreme Court decision related to certain repeat sex offenders.

Technical Modifications – Effective August 1, 2010

The commission adopted a proposal to make an entry on the numerical reference of felony statutes table for aggravating factors for solicitation or promotion of prostitution; sex trafficking. The reference directs readers to section II.G, which describes how to apply the four-year enhancement for the offense.

The Staff’s Activities in 2010

The following provides a summary of the activities performed by staff to further the goals and purpose of the commission.

Training and other Assistance

The commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via e-mail and telephone. The commission offers training and educational opportunities in an effort to promote the accurate application of sentencing guidelines. During 2010, 25 training sessions were held in various locations throughout the state for over 500 criminal justice practitioners. Additionally, staff participated in seven sentencing training seminars for judges and court staff sponsored by the State Court Administrator’s Office and offered two webinars to the County Attorneys Association. Recognizing both time and money constraints for training, staff developed and made available on the website various training materials including a narrated PowerPoint training. In addition to providing training and education programs, staff answers phone calls and e-mails on a daily basis in response to questions regarding guidelines application.

Data Requests

One of the important ways in which the commission works with fellow agencies and departments across the state is researching and compiling statistical data in response to information requests. During 2010, MSGC staff responded to data requests for a total of 125 hours. These requests are most often made by lawyers or corrections agents to show specific sentencing practices to the court. However, the requests are also made by academics, students, other state agencies, legislative staff, law enforcement, and the press for other purposes. The topics range from departure data for a single type of offense within a given county to comparative data on how an offense has been sentenced from one county to another during a specific timeframe.

Fiscal/Racial-Impact Statements

During the 2010 Legislative Session, commission staff prepared 28 fiscal impact statements for any proposed legislation that may result in a net increase in state correctional facility beds. These impact statements include details as to any increase or decrease in adult offender populations as well as the impact on local jails. Staff provided the requested information within time requirements set by the legislature. Additionally, staff prepared 24 fiscal impact statements in response to draft legislation. In 2006, the commission agreed that it would be appropriate to begin providing the legislature with racial-impact notes on proposed crime bills when a disparate impact was anticipated. In 2010, no racial-impact notes were prepared. 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 using Minnesota's notes as patterns.

Collaboration with Criminal Justice Agencies

Each year staff works with the Department of Corrections to generate prison bed projections. In other examples of collaborations to further the goals and work of the criminal justice system, MSGC staff served on the Criminal and Juvenile Justice Information Task Force, Supreme Court Criminal Justice Forum, Department of Corrections Evidence Based Practices Committee, State Court Administration Drug Court Evaluation Committee, MNCASA Public Policy Committee and Supreme Court Racial Fairness Subcommittee on Drug Offenses.

Other Activities

Additionally, as part of the agency's core functions, commission staff processed and ensured the accuracy of over 14,000 sentencing guidelines worksheets; published annual editions of the sentencing guidelines and commentary and report to the legislature; collected and analyzed data and provided reports on sentencing practices and trends; produced two new sentencing practices reports and implemented a new method for retrieving sentencing information from the State Court's Information System (MNCIS).

The Impact of Selected Statutory Enhancements

Each year, the Minnesota Sentencing Guidelines Commission (MSGC) updates a list of select felony sentencing enhancements from 1987 through the current year.¹ Although it is not meant to be exhaustive, it highlights the most notable enhancements to felony offenses over the last 23 years. The statutory enhancement report examines some of those enhancements which have had the most impact on correctional resources. Specifically, it focuses on fourth-degree assault, felon in possession of a firearm, failure to register as a predatory offender, and driving while impaired (DWI). The paragraphs below briefly highlight the impact of these statutory enhancements.

Statutory enhancements were made to fourth-degree assault in 2004 and 2005. These enhancements relate to both the acts involved in the assault, and the victims protected by this statute. Since 2004, the number of offenders sentenced for this offense has increased by more than 200 percent. This resulted in a need for 139 new prison beds and 100 new jail beds over time.

Mandatory minimum sentences were added to felon in possession in 1996 and 1999. In 1996, a mandatory prison sentence of 18 months was created for first offenses, 60 months for subsequent offenses. The mandatory minimum for first offenses was increased to 60 months in 1999. Between 1999 and 2009, the number of offenders sentenced for this offense increased by roughly 65 percent. During this same timeframe, there was a 29 percent increase in the average sentence duration for offenders sentenced to prison. This resulted in a need for 4,415 new prison beds and 310 new jail beds.

The offense, failure to register as a predatory offender, was enhanced to a felony for subsequent offenses in 1995. In 2000, all failure to register offenses became felonies, with mandatory minimum sentences (12 months and one day for first-time offenders; 24 months for subsequent offenders). Though no enhancements have occurred since 2000, the number of offenders sentenced for this offense has increased by 67 percent in the last five years. This resulted in a need for 1,021 new prison beds and 212 new jail beds.

In 2002, a felony provision was added to the driving while impaired (DWI) statute. For offenses committed on or after August 1, 2002, a fourth DWI within 10 years is elevated to a felony offense. Since the felony was enacted, approximately 5,600 offenders have been sentenced; 696 of those for subsequent felony DWI offenses. These offenders have required the need for an estimated 3,309 additional prison beds and 1,696 jail beds.

In addition to the offenses discussed in this report, there have been significant increases in the number of offenders sentenced for felony domestic-violence-related offenses. Due to the size of the impact realized by these offenses, MSGC staff created a separate report to discuss them, which is available on the agency's website.²

¹ The report on statutory enhancements is available online at: http://www.msgc.state.mn.us/msgc5/reports.htm#special_guidelines_reports

² The report on assault offenses is available online at: http://www.msgc.state.mn.us/msgc5/sentencing_practices.htm

The Impact of *Blakely* and Expanded Ranges

Background

On June 24, 2004, the United States Supreme Court handed down a ruling in *Blakely v. Washington*, 1264 S. Ct. 2531 (2004), that impacted criminal sentencing throughout the United States, including Minnesota. The Court reaffirmed and clarified its prior holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which stated that under the Sixth Amendment of the United States Constitution, any fact other than prior criminal convictions that enhances a defendant's sentence beyond the statutory maximum must be presented to a jury and proven beyond a reasonable doubt. In *Blakely*, the Supreme Court held that a defendant's Sixth Amendment right to a jury trial could be violated even when the sentence imposed is below the stated statutory maximum sentence. The court treated the presumptive sentence, rather than the statutory maximum sentence, as the punishment that could not be increased without a jury's input.

The sentencing guidelines grid contains ranges of sentences within which a pronounced sentence is not considered a departure. Minnesota statutes allowed the commission discretion to provide ranges of up to 15 percent of the presumptive sentence in each direction. The grid in existence at the time of the *Blakely* decision provided smaller ranges than authorized by statute. In response to *Blakely*, the legislature adopted statutory language requiring the commission to provide ranges of 15 percent downward and 20 percent upward from the presumptive sentence. That grid became effective for crimes committed on or after August 1, 2005.

Summary³

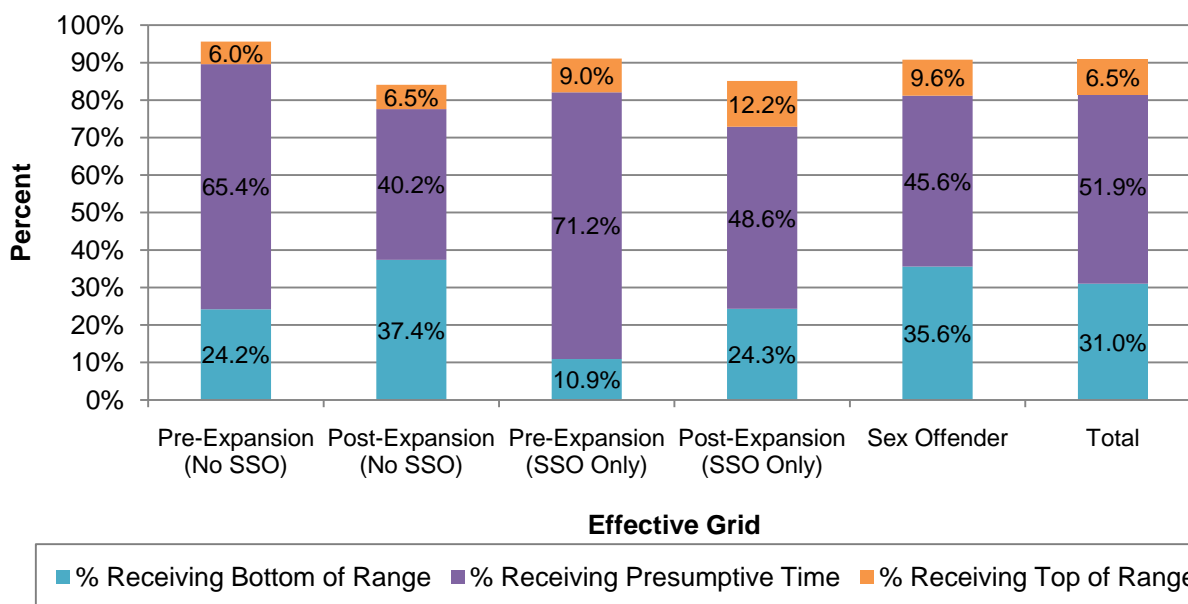
This report examines the impact of the adoption of grids with expanded ranges in three areas: the number of offenders sentenced at the lower or upper limits of the ranges, the number of durational departures, and average pronounced sentence durations. A new grid with expanded ranges was implemented for sex offenses effective for applicable crimes committed on or after August 1, 2006. As a result of these changes, there are three grids to examine in this analysis: the standard grid prior to expanding the sentencing ranges (referred to as "pre-expansion"), the standard grid after this expansion (referred to as "post-expansion"), and the sex offender grid.

The expansion of the ranges has resulted in a significant increase in the number of offenders receiving sentences at the lower end of the sentencing range for offenses with presumptive sentences on both the standard and sex offender grids (Figure 6). For offenses sentenced on the standard grid, there has been a very slight increase in the number of offenders sentenced at the upper end of the range post-expansion.

³ It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning 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.

For specified sex offenses⁴, the number of offenders sentenced at the upper end of the range increased slightly with the implementation of the post-expansion grid, but following the implementation of the sex offender grid, the percentage of offenders sentenced at the upper end of the range is only slightly greater than the percentage on the pre-expansion grid.

**Figure 6. Pronounced Sentences by Effective Grid:
Prison Sentences Only - Durational Departures Excluded⁵**



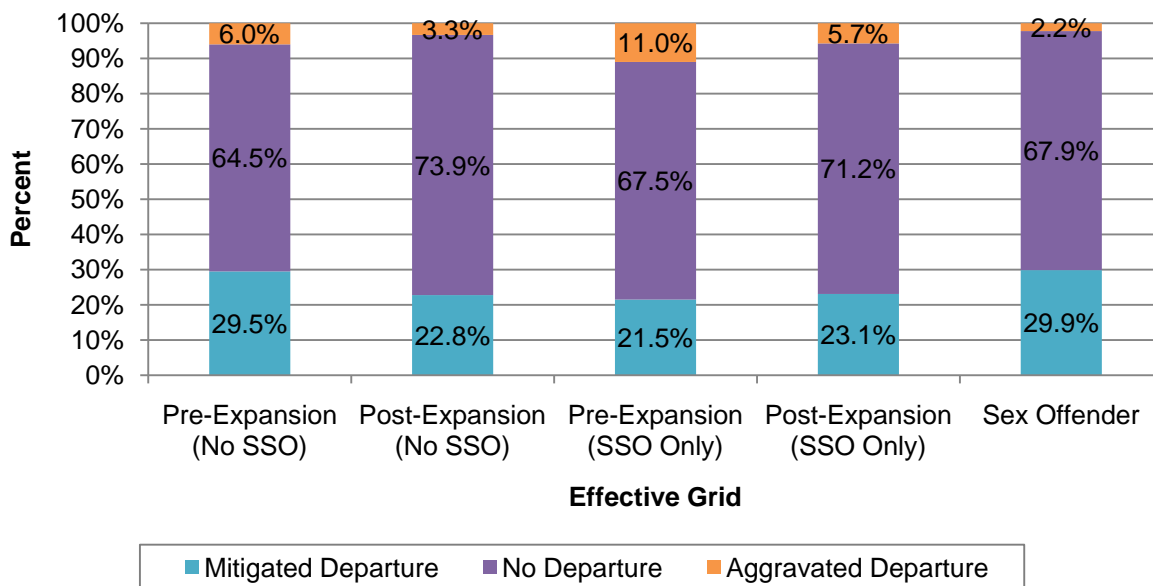
For offenders with presumptive sentences on the standard grid who received executed prison sentences, mitigated durational departure rates decreased from 30 to 23 percent with the expansion of the ranges and aggravated durational departures decreased from 6 to 3 percent (Figure 7). For the specified sex offenses, mitigated durational departure rates increased slightly following the implementation of the expanded grid (from 22 to 23 percent) and increased again following implementation of the sex offender grid (to 30 percent). Aggravated durational departures for those offenders decreased from 11 percent on the pre-expansion grid to 6 percent on the post expansion grid and 2 percent on the sex offender grid. While it is difficult to determine how much of the decrease in aggravated durational departures is attributable to the expansion of the ranges and how much is due to the *Blakely* decision, it does appear that aggravated durational departure rates were somewhat higher for offenders with presumptive

⁴ “Specified sex offenses” are defined as those offenses currently on the sex offender grid (first- through fifth-degree criminal sexual conduct, possession and dissemination of child pornography, use of minors in a sexual performance, indecent exposure, solicitation of children for sexual conduct, and failure to register as a predatory offender). These offenses are abbreviated as “SSO.”

⁵ Percentages in each row do not equal 100 percent due to offenders being sentenced somewhere within the range that is not the bottom, top, or mid-point.

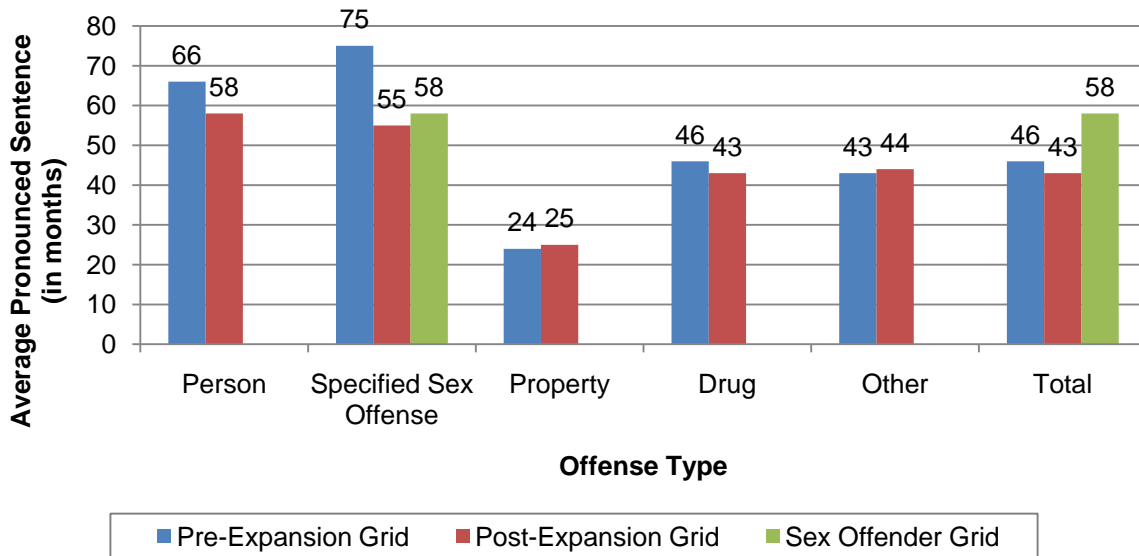
sentences whose sentence dates were prior to the *Blakely* effective date than the rates for offenders whose sentence dates are after the *Blakely* effective date.

Figure 7. Durational Departure Rates by Effective Grid



The average pronounced duration for offenders receiving executed prison sentences was 46 months on the pre-expansion grid, 42 months on the post-expansion grid, and 58 months on the sex offender grid (Figure 8). It is expected that the average pronounced prison sentence on the sex offender grid will further increase as a larger percentage of the more serious sex offenses become eligible for sentences based on that grid. When the specified sex offenses are excluded, the average pronounced sentences decreased from 44 months to 42 months with the expansion of the ranges on the standard grid. Changes in average pronounced durations vary by severity level and offense, with some offenses at the higher severity levels showing increases in average pronounced durations.

Figure 8. Average Pronounced Sentence by Effective Grid and Offense Type (in months)

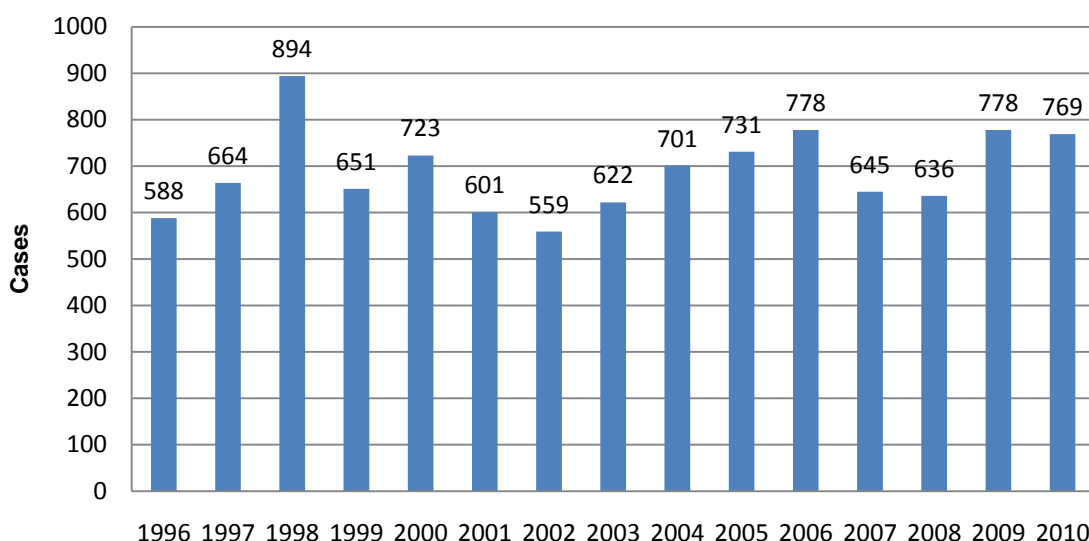


County Attorney Firearms Reports

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 9.⁶ This information is 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.

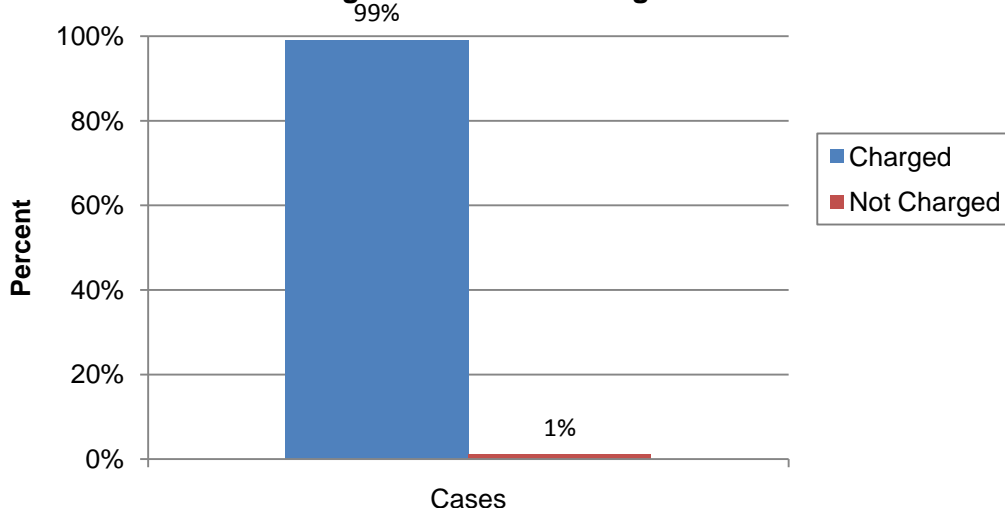
Since the mandate began in 1996, the average number of annual cases involving firearms statewide has been 689. Between July 1, 2009 and July 1, 2010, there were 769 cases allegedly involving a firearm (Figure 9). Figure 10 displays that prosecutors charged 755 cases (99%).

**Figure 9. Cases Allegedly Involving a Firearm
1996 to 2010**



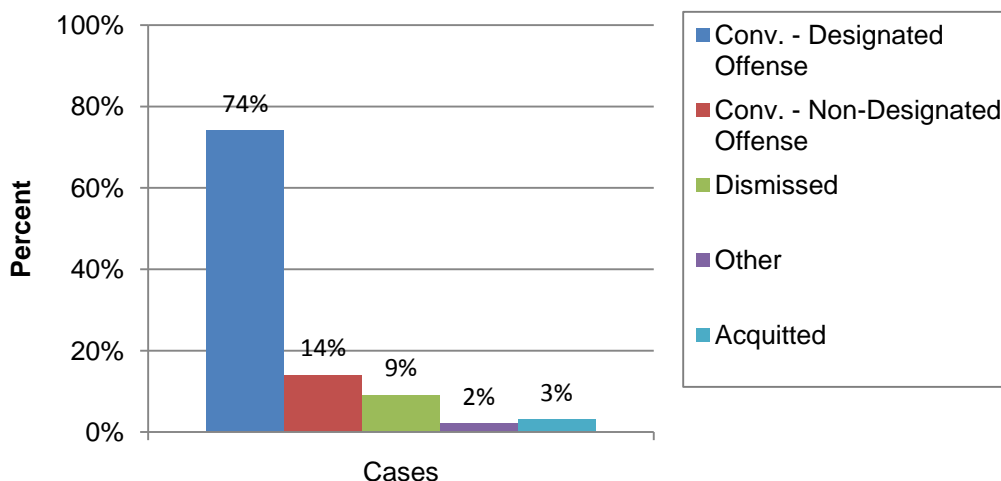
⁶ The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter 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 10. Cases Charged



Of those 755 charged, 556 (74%) were convicted of offenses designated in M.S. § 609.11. There were 101 (14%) convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 68 (9%) had all charges dismissed; 11 (2%) were “other” cases, such as federal prosecutions and civil commitment; and 17 (3%) were acquitted on all charges (Figure 11).

Figure 11. Case Outcomes



In 516 (93%) of the 556 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 12). In the cases in which the firearm was established on the record, 312 offenders (61%) were sentenced to the mandatory minimum prison term (Figure 13).

Figure 12. Cases Convicted of Designated Offense

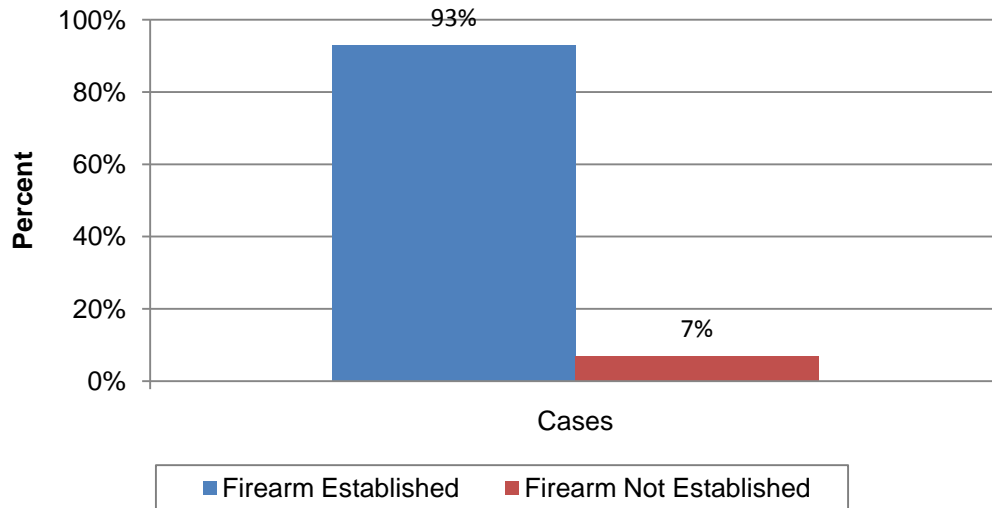


Figure 13. Firearm Established on the Record

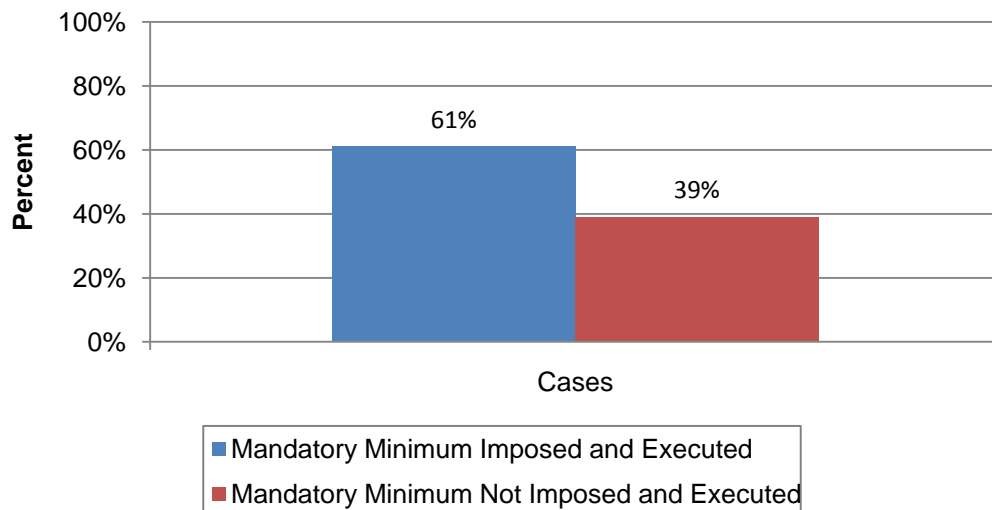


Table 1. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm by MN County
Cases Disposed from July 1, 2009 to July 1, 2010

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	0	0
Anoka	33	33	26	26	7
Becker	4	4	4	1	1
Beltrami	3	3	2	2	1
Benton	4	4	2	2	2
Big Stone	0	0	0	0	0
Blue Earth	4	4	1	1	0
Brown	0	0	0	0	0
Carlton	5	5	4	4	2
Carver	2	2	1	1	0
Cass	8	8	5	5	0
Chippewa	1	1	1	1	1
Chisago	5	5	4	4	2
Clay	9	8	8	5	5
Clearwater	3	3	3	1	1
Cook	3	3	3	0	0
Cottonwood	2	2	2	2	2
Crow Wing	7	7	2	2	1
Dakota	32	32	28	28	18
Dodge	0	0	0	0	0
Douglas	1	1	1	1	1
Faribault	1	1	1	1	0
Fillmore	0	0	0	0	0
Freeborn	0	0	0	0	0
Goodhue	3	3	0	1	0
Grant	0	0	0	0	0
Hennepin	251	251	212	212	122
Houston	4	4	1	1	0
Hubbard	5	5	3	3	3
Isanti	5	5	3	1	1
Itasca	17	17	10	10	4
Jackson	0	0	0	0	0
Kanabec	0	0	0	0	0
Kandiyohi	5	5	5	5	4
Kittson	0	0	0	0	0
Koochiching	1	1	0	0	0
Lac Qui Parle	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
Lake	2	2	0	0	0
Lake of the Woods	4	4	1	0	0
LeSueur	0	0	0	0	0
Lincoln*	---	---	---	---	---
Lyon	3	3	2	2	1
McLeod	3	3	0	0	0
Mahnomen	1	1	0	0	0
Marshall	1	1	0	0	0
Martin	1	1	0	0	0
Meeker	1	1	1	1	1
Mille Lacs	23	23	10	4	2
Morrison	3	3	0	0	0
Mower	15	15	9	2	2
Murray	0	0	0	0	0
Nicollet*	---	---	---	---	---
Nobles	3	3	1	1	0
Norman	0	0	0	0	0
Olmsted	23	23	17	16	12
Otter Tail	3	3	2	2	2
Pennington	0	0	0	0	0
Pine	2	2	2	1	1
Pipestone	3	3	3	3	0
Polk	6	6	5	5	1
Pope*	---	---	---	---	---
Ramsey	108	108	89	89	68
Red Lake	0	0	0	0	0
Redwood	1	1	0	0	0
Renville*	---	---	---	---	---
Rice	5	5	4	4	1
Rock	0	0	0	0	0
Roseau	2	2	1	0	0
Scott	1	1	1	1	0
Sherburne	11	11	5	3	1
Sibley	1	1	0	0	0
St. Louis	39	31	23	16	11
Stearns	20	17	14	14	10
Steele	2	2	2	2	2
Stevens	1	1	0	0	0
Swift	4	4	3	3	3

* 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
Todd	0	0	0	0	0
Traverse	0	0	0	0	0
Wabasha	3	3	0	0	0
Wadena	4	4	2	2	0
Waseca	4	4	3	3	0
Washington	17	17	8	8	7
Watonwan	2	2	1	1	1
Wilkin	0	0	0	0	0
Winona	12	10	6	6	3
Wright	11	11	5	5	3
Yellow Medicine	2	2	2	2	2
Total	769	755	556	516	312

Appendix A: New and Amended Crimes Passed by the Legislature – Effective August 1, 2010

1. Dangerous weapons on school property

Adopted July 22, 2010 – The commission adopted a proposal raising the severity level for possession of a dangerous weapon on school property to severity level 4.

Adopted Sentencing Guidelines Modifications:

V. OFFENSE SEVERITY REFERENCE TABLE

	I Dangerous Weapons on School Property – 609.66, 1d(a)
	IV <u>Dangerous Weapons on School Property - 609.66, subd. 1d(a)</u>

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.66 subd. 1d(a)	Dangerous Weapons on School Property	4 <u>4</u>

2. Identity theft

Adopted July 22, 2010 – The commission adopted a proposal ranking unlawful possession or use of scanning device or reencoder at severity level 2.

Adopted Sentencing Guidelines Modifications:

V. OFFENSE SEVERITY REFERENCE TABLE

II	<u>Unlawful possession or use of scanning device or reencoder - 609.527, subd. 5b</u>
----	---

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.527, subd. 5b	<u>Unlawful possession or use of scanning device or reencoder</u>	<u>2</u>

3. Domestic abuse-related provisions

Adopted July 22, 2010 – The commission adopted a proposal to make technical modifications to domestic abuse-related offenses.

Adopted Sentencing Guidelines Modifications:

V. OFFENSE SEVERITY REFERENCE TABLE

V	<p>Harassment/Stalking (third or subsequent violations) – 609.749, subd. 4(b) Harassment/Stalking (pattern of <u>stalking</u> harassing conduct) - 609.749, subd. 5</p>
IV	<p>Harassment/Stalking (aggravated violations) - 609.749, subd. 3(a),(b) Harassment/Stalking (2nd or subsequent violation) - 609.749, subd. 4(a) Violation of a Domestic Abuse No Contact Order – <u>629.75, subd. 2(d)</u> 518B.01, subd. 22(d)</p>

VI. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

609.749, subd. 3	Harassment/Stalking (Aggravated Violations)
609.749, subd. 4	Harassment/Stalking (Subsequent Violations)
609.749, subd. 5	Harassment/Stalking (Pattern of Conduct)
<u>629.75, subd. 2(d)</u> 518B.01, subd. 22(d)	Violation of a Domestic Abuse No Contact Order

NUMERICAL REFERENCE OF FELONY STATUTES

609.749 subd. 3(a)(b)	Harassment/Stalking (aggravated violations)	4
609.749 subd. 4(a)	Harassment/Stalking (2 nd or subsequent violations)	4
609.749 subd. 4(b)	Harassment/Stalking (3 rd or subsequent violations)	5
609.749 subd. 5	Harassment/Stalking (pattern of conduct)	5
<u>629.75, subd. 2(d)</u> <u>518B.01 subd. 22(d)</u>	Violation of a Domestic Abuse No Contact Order	4

Targeted Misdemeanor List**(As provided for in Minn. Stat. § 299C.10, subd. 1(e))**

According to Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

Order for Protection Violation *

518B.01; 629.75

*According to the MN Bureau of Criminal Apprehension, this includes violations of domestic abuse no contact orders under M.S. § 518B.01, subd. 22, which was re-codified to M.S. § 629.75, effective August 1, 2010 (2010 Minn. Session Laws, Ch. 299, section 14).

Comment Section II.D

II.D.206. *The aggravating factor involving bias motivation under Section 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.*

4. Third- and fourth-degree criminal sexual conduct – employees of secure treatment facilities

Adopted July 22, 2010 – The commission considered amendments made to third- and fourth-degree criminal sexual conduct – employees of secure treatment facilities (M.S. §§ 609.344, subd. 1(m) and 609.345, subd. 1(m)) and adopted a proposal to maintain the current severity level rankings and maintain the list of offenses eligible for consecutive sentencing.

Appendix B: Non-Legislative Modifications – Effective August 1, 2010

1. Military veterans

Adopted July 22, 2010 – The commission adopted a proposal to add sentencing guidelines language in Section III, related to military veterans.

Adopted Sentencing Guidelines Modifications:

F. Military Veterans: The Commission recognizes that the 2008 Legislature established a provision in law relating to defendants who are military veterans which states:

“(a) When a defendant appears in court and is convicted of a crime, the court shall inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States. (b) If the defendant is currently serving in the military or is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

(1) order that the officer preparing the report under subdivision 1 consult with the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.” (See, Minn. Stat. § 609.115, subd. 10.)

F. G. Modifications: Modifications to the Minnesota Sentencing Guidelines and associated commentary will be applied to offenders whose date of offense is on or after the specified modification effective date. Modifications to the Commentary that relate to clarifications of existing policy will be applied to offenders sentenced on or after the specified effective date.

2. Prior controlled substance offenses

Adopted July 22, 2010 – The commission adopted a proposal to modify sentencing guidelines, Section II.C, clarifying that a prior controlled substance conviction or stay of adjudication cannot “trigger” a prison sentence for a subsequent first- through third-degree controlled substance offense after 10 years have passed; consistent with M.S. § 152.01, subd. 16a.

Adopted Sentencing Guidelines Modifications:

C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis of the appropriate grid....

When the current conviction offense is a first, second, or third-degree controlled substance crime and there was a previous conviction or a disposition under section 152.18, subd. 1 for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or a similar conviction or disposition elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. ~~A conviction or disposition too old to be used for criminal history may trigger the presumptive commitment. However, stays of adjudication must be distinguished from convictions and dispositions under Minn. Stat. § 152.18.~~ A previous stay of adjudication under Minn. Stat. § 152.18, subd. 1, or an earlier conviction is not relevant if ten years have elapsed since discharge from sentence orthe stay of adjudication (Minn. Stat. §152.01 Subd.16a)....

3. Exceptions to “Hernandez” criminal history policy

Adopted December 10, 2009 – The commission adopted a proposal to amend the criminal history section to consistently reference the three exceptions to the “Hernandez” rule and amend the commentary to clarify its actions are deliberate. The Commission’s proposal is consistent with a recent MN Supreme Court case.

Adopted Sentencing Guidelines Modifications:

Comment

....

***II.B.107.** The Commission established policies to deal with several specific situations which arise under Minnesota law: 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 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.

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission’s decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

3. Subject to the conditions listed below,
 - * b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, no offender shall be assigned more than one unit.

Comment

** **II.B.308.** 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. References are made to felony convictions under Minn. Stats. §§ 152.137, 609.585 and 609.251, in the event that they result in a misdemeanor or gross misdemeanor sentence.*

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

~~The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585, that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a one-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.~~

~~II.B.312. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor 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 purposes of computing~~

* Language from other adopted modifications is not reflected.

criminal history. These are the same policies that apply to felony convictions and juvenile adjudications.

Comment

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. §§ 152.137, 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.

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

4. Minimum term of prison for certain repeat sex offenders

Adopted December 10, 2009 – The commission adopted a proposal to amend the presumptive sentence section to be consistent with a recent MN Supreme Court decision related to certain repeat sex offenders.

Minn. Stat. § 609.3455, subd. 5, mandates life sentences with minimum terms of prison for certain repeat sex offenders. The law indicates that an offender must serve a minimum term of prison before being considered for release and that the prison term is “based on the sentencing guidelines or any applicable mandatory minimum sentence,…” (2005 Minn. Stat. § 609.3455, subd. 5.)

In a recent MN Supreme Court case, the procedures which should be used to determine the minimum term of imprisonment were in question. It was decided that it was proper to base the minimum prison term on the presumptive sentence absent the mandatory life sentence imposed by Minn. Stat. § 609.3455, subd. 4.

Adopted Sentencing Guidelines Modification:

....

Pursuant to M.S. § 609.3455, certain sex offenders are subject to mandatory life sentences. The sentencing guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release sentences under subdivision 2 of that statute. For offenders subject to life with the possibility of release sentences under subdivisions 3 and 4 of that statute, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines presumptive sentence as determined in Section II.C., or any applicable mandatory minimum sentence not contained in M.S. § 609.3455, that must be served before the offender may be considered for release.

Comment

....

II.C.08. *The 2005 Legislature enacted statutory changes allowing life sentences with the possibility of release for certain sex offenders. The statute requires the sentencing judge to pronounce a minimum term of imprisonment, based on the sentencing guidelines or and any applicable mandatory minimum not contained in M.S. § 609.3455, that the offender must serve before being considered for release. All applicable sentencing guidelines provisions, including the procedures for departing from the presumptive sentence, are applicable in the determination of the minimum term of imprisonment for these sex offense sentences. See, State v. Hodges, 770 N.W.2d 515 (Minn. 2009).*

Appendix C: Technical Modifications – Effective August 1, 2010

Aggravating factors for solicitation or promotion of prostitution; sex trafficking (M.S. § 609.322, subd. 1(b))

Adopted July 22, 2010 – The commission adopted a proposal to make an entry on the numerical reference of felony statutes table for aggravating factors for solicitation or promotion of prostitution; sex trafficking. The reference directs readers to section II.G, which describes how to apply the four-year enhancement for the offense.

Adopted Sentencing Guidelines Modifications:

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
<u>609.322 subd. 1(b)</u>	<u>Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking</u>	<u>see note *</u>

* See Guidelines Section II.G, Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.