



Report to the Legislature on Drug Offender Sentencing Issues

January 15, 2004

Minnesota Sentencing Guidelines Commission



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Capitol Office Building
525 Park Street, Suite 220
Saint Paul, MN 55103

Phone: 651-296-0144
Fax: 651-297-5757
Email: sentencing.guidelines@state.mn.us
Website: www.msgc.state.mn.us
MN Relay Service TTY: 1-800-627-3529 (ask for 651-296-0144)



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Darci Bentz, Public Defender Representative
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Staff

Barbara Tombs, Executive Director
Matt Berger, Research Analyst
Cheryl DeWolfe, Office Administrative Specialist, Principal
Linda McBrayer, State Program Administrator
Jill Payne, Research Analysis Specialist
Scott Van Cleave, Research Analyst Intermediate
Anne Wall, Research Analysis Specialist, Senior

Minnesota Sentencing Guidelines Commission

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Executive Summary

The 2003 Minnesota Legislature directed the Sentencing Guidelines Commission to undertake a comprehensive review and analysis of numerous issues related to the sentencing and incarceration of drug offenders in the state. The specific tasks set forth in the directive included a historical analysis of drug sentencing laws, sentencing trends over time for drug offenders, the proportionality of drug sentences to other felony sentences in Minnesota and to drug laws in other states, the effectiveness of alternative programs to incarceration for this offender group, and the impact on state resources of our current drug sentencing policy. This report presents the findings and results of that study and identifies options to be considered by the legislature related to those findings.

In reviewing sentencing and incarceration data for drug offenders, one of the findings identified through analysis of trend data is that the number of offenders sentenced for felony drug offenses has grown from 801 in 1981 to 3,425 in 2002. Between 2001 and 2002 alone, the number of felony drug sentences increased 32%. The number of drug offenders sentenced in 2002 increased more than the number of offenders in any other offense group.

In addition, the number of drug offenders admitted to Minnesota correctional facilities reached an historic high in 2002. In 1990, drug offenders represented 11.8% of prison admissions, but by 2002 that percentage totaled 30.1%. The composition of offenders in state prisons has also significantly changed over time. Drug offenders accounted for 9% of the prison population in 1990; however, they represented 23% of the total prison population in 2002.

A comparison of Minnesota drug sentencing laws with other midwestern states, as well as other sentencing guidelines states indicate that Minnesota, in all but a few cases, has lower drug threshold amounts for possession and sale offenses and higher statutory maximum sentences for drug offenses, making Minnesota's drug sentences somewhat disproportionate to other states. With the enactment of the five drug degrees and their subsequent rankings on the sentencing grid in 1989, sentences for most drug offenses were lengthened. This statutory change contributed to the increase in the average length of pronounced sentences from 22.9 months in 1988 to 50.2 months in 2002.

Departure rates under the sentencing guidelines are higher for drug offenses than any other offense category. A review of first and second degree drug offenses indicate a mitigated (downward) departure rate in excess of 60%, resulting in only slightly more than a third of what are intended to represent the most serious drug offenders receiving the presumptive sentence. When departure rates for Minnesota are compared with other sentencing guidelines states, Minnesota has one of the highest mitigated departure rates of all states examined. This high mitigated departure rate for drug offenses, especially those classified as the most serious drug offenses, raise questions as to the appropriateness of the presumptive sentences.

The notable growth of drug offenders in the state's correctional system is partially due to fragmented statutory changes to the state's drug laws over time that resulted in a combination of intended and unintended consequences. No one single factor is responsible the rise in number of drug offenders in state prisons but rather a combination of factors interacting with each other. In addition, reductions in treatment resources at both the state and local levels have contributed to a growing number of drug offenders recycling through our criminal justice system.

Several options were identified by the commission for consideration by the legislature regarding the current sentencing policies for drug offenders. They include: continuation of current sentencing practices and the expansion and funding of additional prison beds; revisit threshold amounts imposed in 1989 and



either reinstating prior threshold or modifying in some manner current thresholds; review the ranking of current drug offenses; develop and adequately fund a comprehensive continuum of community based drug treatment options to address increased prison admissions resulting from revocations; and finally, develop a comprehensive statewide sentencing policy targeting drug offenders. This policy should ensure that drug offenders are sentenced proportionally to other crimes and that the most serious drug offenders are sentenced to prison for an appropriate amount of time, while developing a meaningful and appropriate array of community based punishment and treatment options for those drug offenders who pose a limited threat to public safety.



Introduction and Study Purpose

Introduction

The Minnesota Sentencing Guidelines Commission is a policy development body created by the legislature in 1978. The membership of the commission includes 11 representatives from various segments of the criminal justice system including: Three judges, a county attorney, a public defender, a probation officer, a law enforcement official, the commissioner of corrections and three citizen representatives. The commission is charged with developing and maintaining a model for rational and consistent sentencing standards, collecting and analyzing information on felony sentencing practices, evaluating the effectiveness of the sentencing guidelines, and modifying the guidelines annually in response to legislative changes and other issues that arise.

The work of the commission resulted in drafting and enacting of the Minnesota Sentencing Guidelines by the legislature in 1980. The guidelines were developed with the goals of ensuring public safety, providing truth and certainty in sentencing, promoting consistency and proportionality in sentencing, and coordinating sentencing practices with correctional resources. The guidelines changed sentencing in Minnesota from an indeterminate sentencing model to a determinate sentencing model in which the sentence imposed by the judge consists of two parts: a fixed term of imprisonment and a period of supervised release. The type and length of sentence imposed are based primarily on the severity of the current offense and the offender's criminal history using a grid format (see sentencing guidelines grid, Appendix A).

Offenders convicted of felonies and not sent to prison are generally placed on probation. Conditions of probation typically include time in a local jail and restitution, fines, substance abuse treatment and community work service. Failure of an offender to abide by the conditions of probation may result in a revocation of probation and subsequent imprisonment.

The sentencing guidelines incorporated "departures" as a sentencing option available to judges. Departures were designed to accommodate atypical cases where specific circumstances surrounding the commission of a felony warrant a change from either the type or duration of sentence recommended under the guidelines. Departures were intended to allow for judicial discretion in sentencing, as well as, to provide a means to address exceptional circumstances.

Sentencing patterns for felony drug offenders have demonstrated some notable changes over the past twenty years. The number of offenders sentenced for felony drug offenses has grown from 808 in 1981 to 3,425 in 2002. Between 2001 and 2002 alone, the number of felony drug sentences increased from 2,596 to 3,424, reflecting a 32% increase. The number of drug offenders sentenced in 2002 increased more than any other offense group.

Not only are more drug offenders being sentenced, the distribution of offenses by drug crime degrees has also shifted, with a significant growth in first and second degree offenses that receive longer sentences. The number of first degree drug offenders increased 62% between 2001 and 2002. Second degree drug offense sentences show a 43% increase for that same time period.

Correspondingly, the number of drug offenders entering state correctional facilities has shown a marked increase. In 1990, drug offenders made up 11.8% of the offenders admitted to state prisons. By 2002 that percentage had grown to 30.1% of the new court commitments.

To further complicate issues related to the sentencing of drug offenders, data indicate that more than a



third (34%) of all drug sentences involve departures, compared to a 24% departure rate for non-drug sentences. A total of 25% of the sentences in drug offenses were mitigated departures. When departure rates are examined by individual drug crime degrees, first degree drug offenses show a 64% mitigated departure rate, with second degree drug offenses having a 61% mitigated departure rate.

With the marked increase in the number of felony drug sentences and number of drug offenders admitted to state prisons, the amount of state resources expended on this specific offender population continues to rise. Whether the offender is placed under supervision in the community or admitted to a state correctional facility, there are an insufficient number of substance abuse programs to adequately address the needs of this offender group. Insufficient program capacity, long waiting lists, and recidivism rates for this offender population directly impacts the limited resources of law enforcement, the courts, and the correctional system at both the state and local levels.

Study Purpose

During the 2003 Special Legislative Session, Senate File 2, Section 14 directed the Minnesota Sentencing Guidelines Commission, in consultation with the commissioner of corrections, to study various sentencing issues related to drug offenders including: the evolution of Minnesota drug laws and their proportionality to other states; the effectiveness of alternative to incarceration programs for drug offenders; an analysis of drug offenders currently in state correctional facilities and the associated costs; and the proportionality of drug sentences to non-drug sentences in Minnesota. In addition, it requested a cost analysis associated with diverting non-violent drug offenders to non-custodial drug treatment be included. A copy of the legislative directive can be found in Appendix B of this report.

This report responds to the legislative directive related to drug offender sentencing issues. The report is divided into three sections. The first section provides an overview of the evolution of Minnesota's drug sentencing laws, provides an analysis of drug offenders sentenced and incarcerated in correctional institutions, and discusses the associated costs of incarcerating drug offenders under the state's current sentencing policy and practices. Section two presents an analysis of departures from the sentencing guidelines for drug sentences, a discussion and comparison between Minnesota drug sentences and other Minnesota sentences, and a comparison between Minnesota's drug offenses and other states' drug offenses. Section three summarizes the effectiveness of alternatives to incarceration programs for drug offenders, such as drug courts and substance abuse treatment programs, and calculates monetary savings from diverting a target group of drug offenders from state incarceration. Finally, in the summary and conclusion section, the report discusses significant drug sentencing trends and the impact of current sentencing policy, and identifies sentencing issues to be considered by the legislature.



Section One



History of Minnesota's Drug Sentencing Laws

This chapter is based on an article prepared for the commission by Scott G. Swanson, former public defender representative and executive director, with additions made by MSGC staff. It describes the history of controlled substance crimes in Minnesota, and attempts to describe some of the case law that has had an impact on the severity of the sentences given to drug offenders.

In the following narrative, at each point of the history where a significant change in the law has occurred, the law is applied to a hypothetical offender. That offender (referred to as John Smith) is a person who possesses one-half an ounce of powder cocaine (about 13 grams or approximately \$1,200 worth of the drug). John admits to selling cocaine, but he also uses the drug. He has no criminal history.

Initial Sentencing Guidelines

On May 1, 1980, when the Minnesota Sentencing Guidelines were enacted, there was a fairly simple statutory scheme prohibiting sale and possession of controlled substances. It was unlawful to sell (under a wide variety of definitions, including "possess with intent to sell") or possess a variety of controlled substances. Minn. Stat. §152.09 (1980). The Minnesota Sentencing Guidelines reflected this simple statutory scheme (all controlled substance sale crimes were ranked at Severity Levels II, III, or VI, as shown in Table 1). In 1982 the severity level for sale of cocaine was increased to IV.

Table 1. 1982 Sentencing Guidelines

Severity Level	SENTENCE (MONTHS)	OFFENSES
VI	21, STAYED	SALE OF HEROIN, LSD, OTHER NARCOTICS, AND HALLUCINOGENS
IV	12, 1 DAY STAYED	SALE OF COCAINE
III	12, 1 DAY STAYED	SALE OF OTHER NON-NARCOTICS; POSSESSION OF LSD, HEROIN, OTHER NARCOTICS, AND HALLUCINOGENS
II	12, 1 DAY STAYED	SALE OF MARIJUANA
I	12, 1 DAY STAYED	POSSESSION OF COCAINE, MARIJUANA, AND NON-NARCOTICS



Neither the severity level ranking, nor the offense itself, was based on the amount of the particular controlled substance that was sold. Because of this, the sentencing guidelines commission created an aggravated (upward) sentencing departure category for a "major controlled substance offense" when it first promulgated the guidelines. Under Minnesota Sentencing Guidelines §II.D.2.b.(5), a court was allowed an aggravated departure from the presumptive guidelines sentence when:

The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:

- a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so; or
- b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or
- c) the offense involved the manufacture of controlled substances for use by other parties; or
- d) the offender knowingly possessed a firearm during the commission of the offense; or
- e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or
- f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or
- g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g. pharmacist, physician, or other medical professional)

John Smith's sentence: 12 months, 1 day stayed. John Smith has admitted to possession with intent to sell cocaine. This offense, a Severity Level IV offense (Severity Level III before August 1, 1982), carries a 12-month, 1 day stayed sentence, so John would receive probation. There do not appear to be any grounds for departure to a greater duration, although one might argue that this could have been an intended sale of an amount larger than for personal use.

1986 Changes

In 1986, the Minnesota Legislature amended the sale portion of the drug crimes statute. The legislature created two levels of drug offenses:



- **Sale of larger amounts of drugs.** The more serious level drug offense involving sale of seven or more grams of narcotics (for those drugs sold by weight) or sale of ten or more dosage units (things like LSD) was ranked by the sentencing guidelines commission as a Severity Level VII offense. At that time, a Severity Level VII offense carried a sentence of 24 months, but this sentence was presumed to be executed; for the first time, the guidelines presumed imprisonment for a drug offense at a criminal history score of 0.
- **Other Sales of Drugs.** Sale of smaller amounts of most drugs remained at Severity Level VI (21 months stayed). The severity level of sale of a small amount of cocaine was increased. It had been a Severity Level IV offense since 1982, but was increased to a Severity Level VI offense. The punishment: 21 months (stayed).
- **Possession of Cocaine.** The sentencing guidelines commission increased the severity level for cocaine possession from I to III.

John Smith's sentence: 24 months in prison. Since John Smith possessed more than seven grams of cocaine, and intended to sell cocaine, he was, per the guidelines, sent to prison for 24 months.

1987 Changes

In 1987, for the first time, the Minnesota Legislature implemented different threshold levels with harsher penalties for powder and crack cocaine sales. The threshold for the higher penalty was set at three grams for crack and ten grams (sold on one or more occasions within a 90-day period) for powder.

The commission continued to rank sales of the larger amounts of drugs at Severity Level VII and the other sales at Severity Level VI.

John Smith's sentence: 24 months in prison. Since John Smith possessed more than ten grams of cocaine, and intended to sell cocaine, his sentence remained the same.

1989 Changes

In 1989, the Minnesota Legislature dramatically altered the controlled substance statutory scheme. It created several levels of controlled substance offenses: First, second, third, fourth, and fifth degree offenses (in decreasing order of severity). See 1989 Minn. Laws Ch. 290, art. 3, §§8-12, codified at Minn. Stat. §152.01-.028.

According to the legislative history, all first, second, and third degree offenders were presumed to be people who were drug dealers -- whether or not the person convicted of the offense was convicted of actually selling drugs, or simply had possessed the drugs in question. For example, a person was guilty of a first degree "sale" crime if the person sold 50 grams of a narcotic drug; a person would also be guilty of a first degree "possession" crime if that person possessed 500 grams of a narcotic drug. The latter possession crime was treated the same as a sale crime because the statutory scheme presumed the latter person was a drug dealer.

The rationale for treating these two offenses (sale of 50 grams versus possession of 500 grams) identically was that they involved, in reality, the same type of offender. The person who possessed 500 grams was a drug wholesaler who typically sold in smaller amounts (about 50 grams). The intent to sell on the part of the possessor of 500 grams was presumed.

This logic held true for all first, second, and third degree offenses. The first degree offenders were major drug wholesalers, the second degree offenders were mid-level drug dealers, and the third-degree offenders were street-level drug dealers. The statutory scheme presumed a certain level of "dealership" (relative position within the drug hierarchy) whether or not the person sold drugs at all.

Two critically important things changed with this new statutory scheme. First, *all* individuals who either possessed or sold drugs at the levels indicated for first, second, or third degree offenses were presumed to be drug dealers. Second, because of this, the definition of "sale" of drugs no longer included



"possession with intent to sell." This was because of the presumption that a person was a drug dealer if he or she possessed a certain amount of drugs; defining "sale" to include "possession with intent to sell" would have been redundant (and would have improperly increased the punishment of certain offenders).

A logical difficulty arose, however, in applying the aggravated departure grounds (the ones promulgated under the old statutory scheme) to the new offenses. The aggravated departure grounds seem to have actually been integrated into the new statutory scheme. If, for example, a person was convicted of a first degree offense, the statute presumed that the person was a major drug wholesaler. Under the guidelines, however, the court could depart (based on the old statute) because:

- b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or
- e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy[.] (§II.D.2.b.(5))

The sentencing guidelines commission did not change the departure grounds, despite the fact that many of the departure grounds were now presumed to be inherent in the statutory scheme.

Currently, then, the sentencing guidelines allow the courts to depart from the presumptive sentence based on factors that are presumed in the controlled substances statutory scheme. See, e.g., *State v. Stevens*, C0-94-221 (Minn. App. April 12, 1994)(unpublished)(affirming durational departure).

The commission did, however, increase penalties for these new offenses.

First degree offenses were ranked at Severity Level VIII. These were, in the words of the legislative history, the true drug kingpins, the drug wholesalers. These people, who possessed 500 grams of powder cocaine (roughly one pound), or were selling 50 grams of powder cocaine (roughly two ounces) at a time, were viewed to be similar to a person who raped someone using a threat of serious bodily injury. Severity Level VIII offense punishments were increased during this same period, so this offense carried a presumptive sentence of 86 months in prison.

Second degree offenses. People who possessed 50 grams (roughly two ounces), or who sold ten grams, were guilty of a second degree offense. This offense was ranked at Severity Level VII, which carried a newly increased sentence of 48 months in prison.

Third degree offenses. People who possessed ten grams of cocaine, and who sold any amount of cocaine, were guilty of a third degree offense. The presumed sentence was 21 months (stayed).

John Smith's sentence: 21 months, stayed. John Smith's presumptive sentence actually decreased at this point, primarily because the definition of "sell" no longer included "possession with intent to sell." Therefore, his offense would be considered a third degree offense.

Powder vs. Crack Cocaine –*State v. Russell*

In setting up the new statutory scheme in 1989, the Minnesota Legislature decided to set the thresholds for powder cocaine offenses much higher than those for crack cocaine offenses. (See table 2) That is, a person who possessed 25 grams (one ounce) of crack cocaine would be treated the same as a person who possessed 500 grams (roughly one pound) of powder cocaine. That person would go to prison for 86 months.



Table 2. 1989 Thresholds for Cocaine Offenses

Degree	Sale		Possession	
	Crack	Powder	Crack	Powder
First	10 grams	50 grams	25 grams	500 grams
Second	3 grams	10grams	6 grams	50 grams
Third	Any amt.	Any amt.	3 grams	10 grams

This system, which mirrored the punishments set up for federal cocaine offenses, had a disparate impact on minority (primarily African American) offenders. The bulk of people prosecuted for crack cocaine offenses were African Americans, while the bulk of people prosecuted for powder cocaine offenses were white. Crack cocaine offenders were going to prison; powder cocaine offenders were not.

In *State v. Russell*, 477 N.W.2d 886 (Minn. 1991), the Minnesota Supreme Court declared that this disparate treatment of powder cocaine and crack cocaine was unconstitutional under the Minnesota Constitution. The court ruled that because of the disparate impact of the law (treating crack cocaine far more harsh) on African American offenders, there had to be a compelling rationale for the different treatment. The court also suggested (without actually ruling) that the presumption that all people possessing drugs at the first, second, and third degree levels were drug dealers might also be unconstitutional.

The net result: The court decreased penalties for crack cocaine offenders, categorizing them at the same level as powder cocaine offenders. The court also called into question the legitimacy of one of the cornerstones of the new drug scheme: Assuming that people who possessed certain amounts of drugs were actually selling smaller amounts of those drugs.

The legislature responded quickly. In a near unanimous move (one spurred primarily by a sense that the Minnesota Supreme Court had overstepped its bounds in issuing *Russell*), the legislature did two things that dramatically increased penalties for drug offenses.

1. Increased penalties for powder cocaine to those formerly set for crack cocaine. To deal with the court's concern about the disparity in the punishment of the two types of cocaine offenses, the legislature simply set up a new system that punished both offenses the same, going back to the old system for crack cocaine (possessing 25 grams was a first degree offense), and lowering the thresholds for powder cocaine (possession of 25 grams or sale of 10 grams now became a first degree offense).

This meant that for powder cocaine offenses, the legislature had abandoned the notion that the first degree offenders were the "true drug wholesalers" in the system. This does not appear to have been based on any policy decision to abandon that rationale for the statutory scheme.

2. Added "possession with intent to sell" back into the definition of "sell." This change addressed the concern expressed in *Russell* that the drug statutes presumed intent to sell for certain levels of possession. This also increased (unintentionally) the severity level of most offenses. Since the statutory scheme assumed you were dealing drugs if you possessed larger amounts, and police officers could testify as "experts" on the amount of drugs that a drug dealer normally possesses, all second degree possessory offenses could become first degree sale offenses. See *State v. Collard*, 414 N.W.2d 733 (Minn. App. 1987)(police may testify as to amounts of drugs usually possessed by users as opposed to amounts possessed by drug dealers), *pet. for rev. denied* (Minn. Jan. 15, 1988).

This latter increase in the severity of offenses turned out, in a subsequent opinion, to have been unnecessary: The Minnesota Supreme Court ruled that the "irrebuttable presumption" contained in the statutory scheme was proper. *State v. Clausen*, 493 N.W.2d 113 (Minn. 1992).



John Smith's sentence: 86 months in prison. John possessed more than ten grams of cocaine, and John "sold" that cocaine (since he possessed it with intent to sell), so his offense transformed into a first degree offense.

Heroin and Methamphetamine

When the controlled substance statutes were amended in 1989, the thresholds for offenses involving heroin and methamphetamine were set to be the same as those for powder cocaine. First degree offenses involved the sale of 50 grams or possession of 500 grams of the substance. Second degree offenses involved the sale of 10 grams or possession of 50 grams of the substance. When the legislature responded to the *Russell* decision by lowering the thresholds for powder cocaine offenses to be equal to those for crack cocaine, the thresholds for heroin and methamphetamine were not changed. In subsequent years, the thresholds for offenses involving these substances were also lowered to be equal to those for cocaine offenses. First degree offenses now involve the sale of 10 grams or possession of 25 grams of the substance and second degree offenses involve the sale of 3 grams or possession of 6 grams. These changes took effect in August of 1997 for heroin and January of 1999 for methamphetamine. Also effective January of 1999, first degree offenses included the manufacture of any amount of methamphetamine.

Effective August 1, 2002, the legislature added a provision to the first degree statute prohibiting the possession of methamphetamine precursor substances with intent to manufacture. However, the statutory maximum for this offense was set at 3 years, so the commission ranked the offense at Severity Level III.

Proportionality Issues and Mandatory Minimums

Before the 1989 statutory changes, the sentencing guidelines commission ranked sale of certain drugs, including cocaine, at Severity Level VI, where offenders with a criminal history score of less than 3 are recommended probationary sentences. In 1985, the commission amended this policy to state that a second sale of those drugs was a presumptive prison offense, regardless of where the offense fell on the sentencing guidelines grid. When the legislature enacted different penalties for sales of larger amounts of drugs in 1987, the commission ranked those offenses at Severity Level VII where all offenders were recommended a prison sentence regardless of their criminal history scores.

When the drug degrees were established, several factors guided the commission in its ranking decisions: The relatively lengthy statutory maximums set for these offenses, the larger quantities of drugs involved for all substances except crack, and the constraints imposed by the existing sentencing guidelines grid. There was a strong desire to maintain the existing ranking for street level sales of cocaine (ranked at Severity Level VI). In the new scheme, these offenses were made third degree offenses. Therefore, in order to rank the first and second degree offenses at higher levels and higher than each other, the first degree offenses were ranked at the old Severity Level VIII (now Severity Level IX) and the second degree offenses at the old Severity Level VII (now Severity Level VIII). This put the first degree offenses at the same severity level as first degree criminal sexual conduct and first degree assault. This was viewed as appropriate, given that during the enactment of this scheme, the first degree drug offenders were described as "major dealers," and, the high thresholds set in statute for offenses other than crack (sale of 50 grams/possession of 500 grams; or sale of 200 dosage units/possession of 500 dosage units). Proportionality concerns arose when the thresholds for powder were made equal to those for crack. Without any action by the commission, the penalties for the sale of 10 grams or possession of 25 grams of cocaine were now equivalent to those recommended for those serious person offenses.

When the legislature established the five degree structure for drug offenses in 1989, it also set mandatory minimums for subsequent offenses at each degree. These mandatory minimums are: 48 months for first degree offenses, 36 months for second degree offenses, 24 months for third degree offenses, 1 year for fourth degree offenses and 6 months for fifth degree offenses. However, given the severity level rankings



for the first and second degree offenses, the presumptive sentence for first offenses at those degrees were substantially longer than the mandatory minimum for subsequent offenses: First degree-86 month presumptive for first offenses, 48 month mandatory minimum for subsequent offenses; second degree-48 month presumptive for first offenses, 36 month mandatory minimum for subsequent offenses. If the mandatory minimums for subsequent offenses are an indication of legislative intent regarding appropriate sentences for those offenses, it would seem that the presumptive sentences for first offenses are disproportional.



Trend Data on Felony Drug Offenders Sentenced in Minnesota

One of the primary functions of the sentencing guidelines commission is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the guidelines. A case is recognized when conviction data are received from the probation officer and matched with sentencing data from the state court system. Cases generally represent offenders. An offender sentenced in the same county for more than one offense within a thirty-day period is counted as one case; information on the most serious offense is included in MSGC monitoring data. This chapter discusses trends in the volume of cases sentenced and sentencing practices for drug offenses, and compares them to trends for non-drug cases.

Volume of Cases

The number of felony offenders sentenced in 2002 totaled 12,978, a 20.2% increase in the number of offenders sentenced from 2001 (Figures 1 and 2). This was the largest percentage increase in one year since the sentencing guidelines went into effect. A portion of this increase is explained by the significant increase in the number of drug offenders sentenced. The number of drug offenders sentenced increased from 2,596 in 2001 to 3,424 in 2002, an increase of 32% and also the largest one year percentage increase seen for this particular offender group (Figures 3 and 4). The number of non-drug offenders sentenced grew by 17%.

Figure 1. Number of Offenders Sentenced for Felony Convictions: 1981-2002

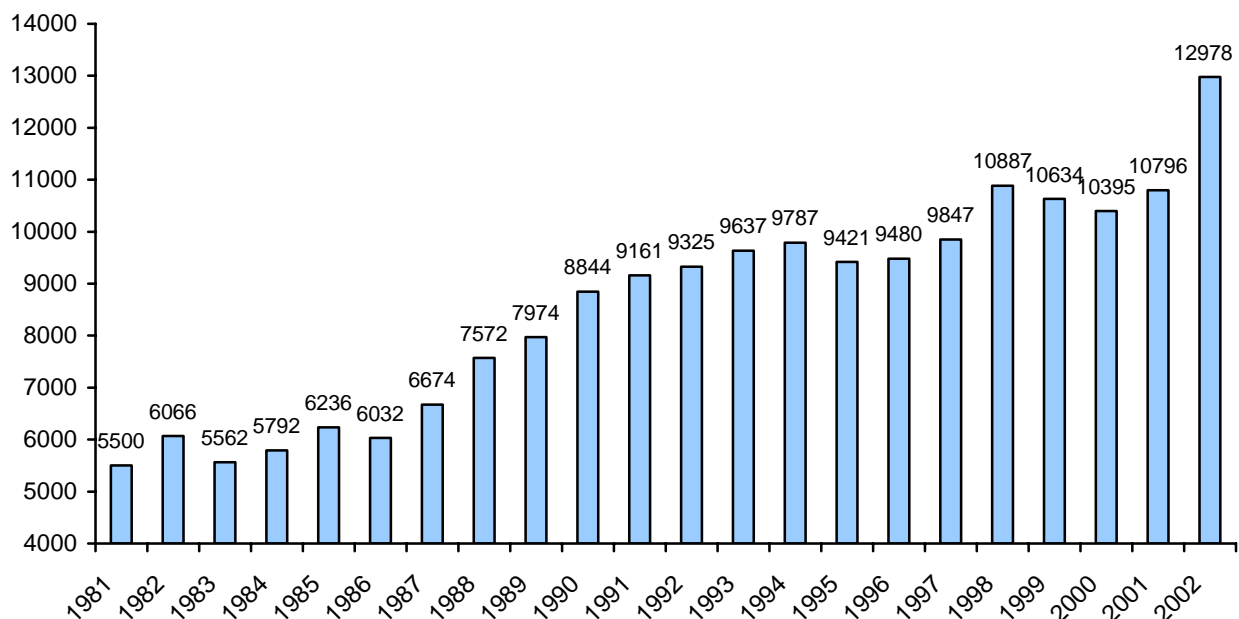




Figure 2. Percent Change in Number of Offenders Sentenced for Felony Convictions: 1982-2002

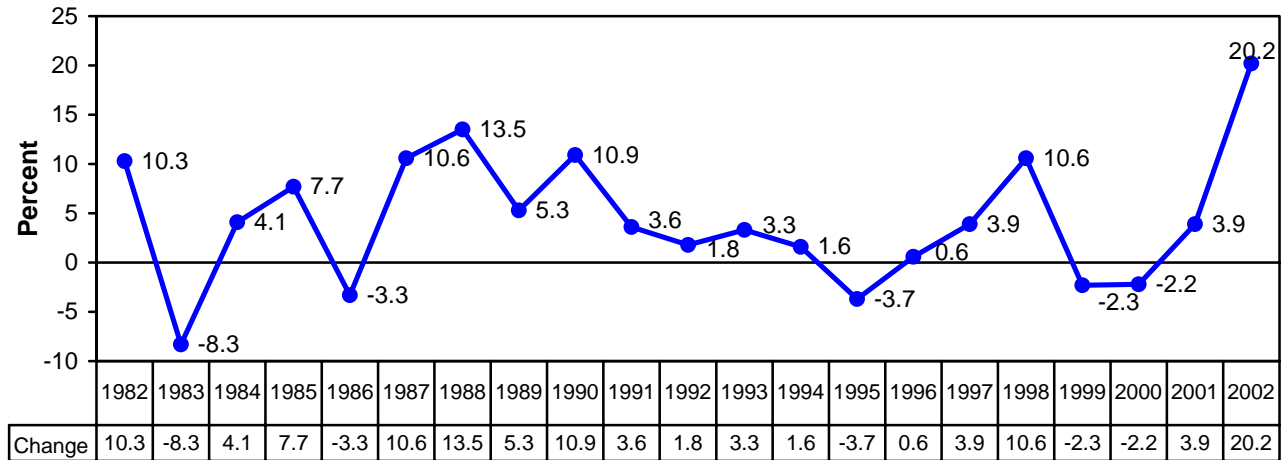


Figure 3. Number of Offenders Sentenced for Felony Drug Convictions: 1991-2002

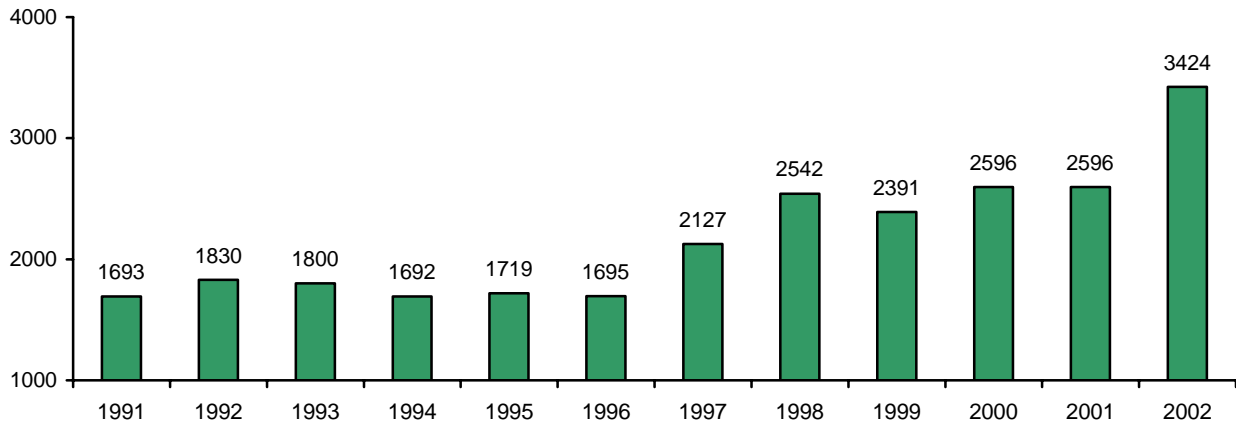


Figure 4. Percent Change in Number of Offenders Sentenced for Felony Drug Convictions: 1992-2002

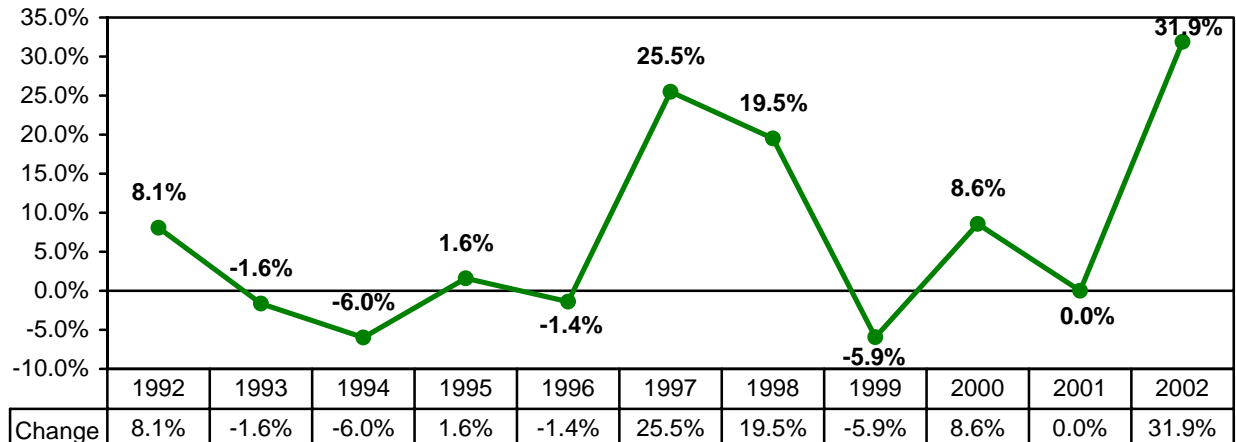
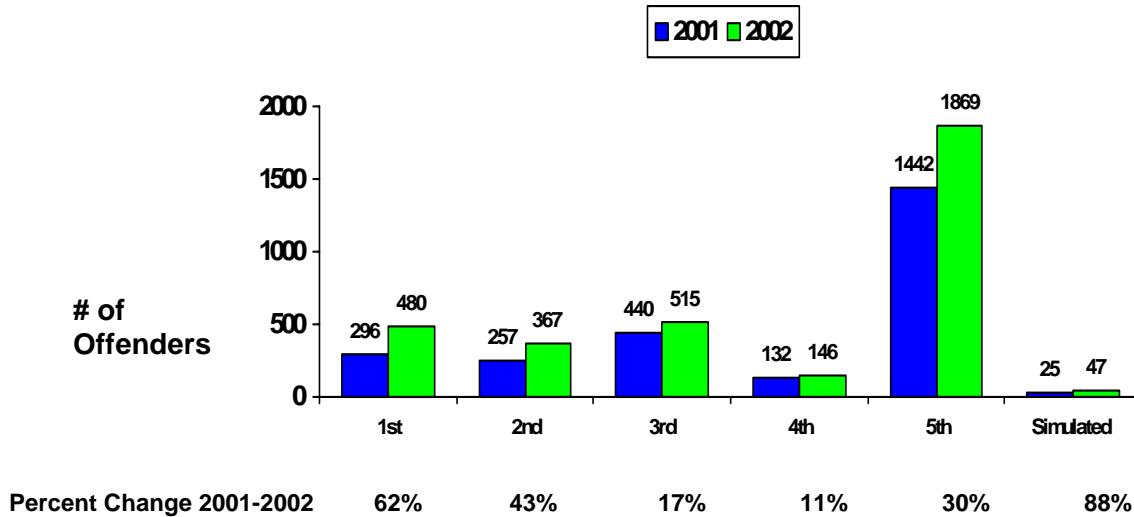




Figure 5 shows that the increase in the number of drug offenders sentenced was greatest among the most serious drug offenses, those at first and second degree (except for sale of simulated controlled substances, which represents only a small number of offenders). The number of first degree offenders increased by 62%, which included a 49% increase in the number of offenders sentenced for manufacture of methamphetamine (from 109 in 2001 to 162 in 2002) and a 70% increase in the number of offenders sentenced for first degree sale and possession offenses.

Figure 5. Distribution of Drug Offenders Sentenced in 2001 and 2002 by Degree

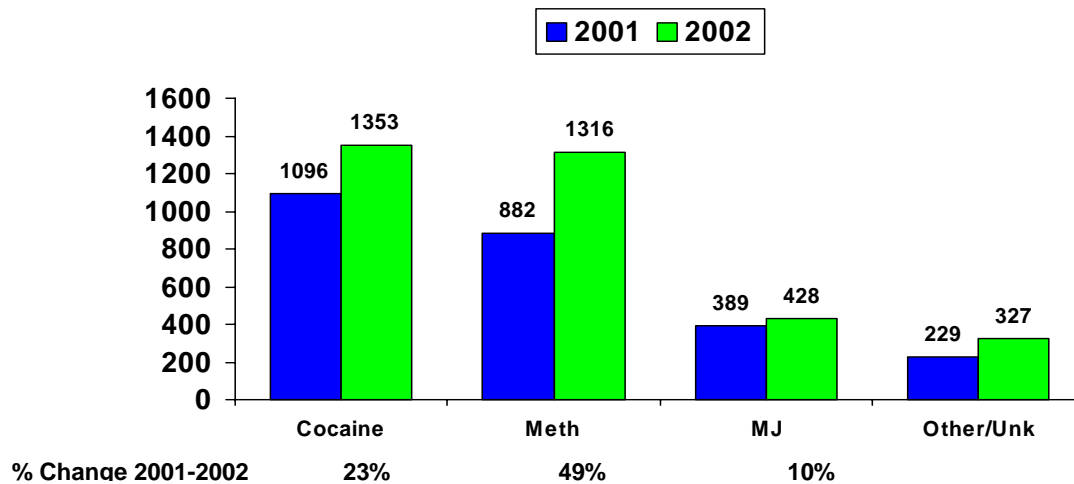


Drug Type, Region, and Race

While the number of drug cases that were sentenced increased for all drug types, the growth was greatest for methamphetamine cases (Figure 6). The growth in methamphetamine cases has been an ongoing trend over the last six years, and as a result, the distribution of cases among drug types has changed significantly in recent years. In 1996, 48% of the cases sentenced involved cocaine, 24% were marijuana, 14% were unknown or of some other drug type and 14% were amphetamines. In 2002, cocaine was still the drug type with the highest number of cases (40%), but the amphetamine/methamphetamine category grew to 38%, marijuana decreased to 13%, and 10% were of other drug types or unknown. While the percentages have shifted, there were more drug cases in each drug type in 2002 than in 2001 or 1996.



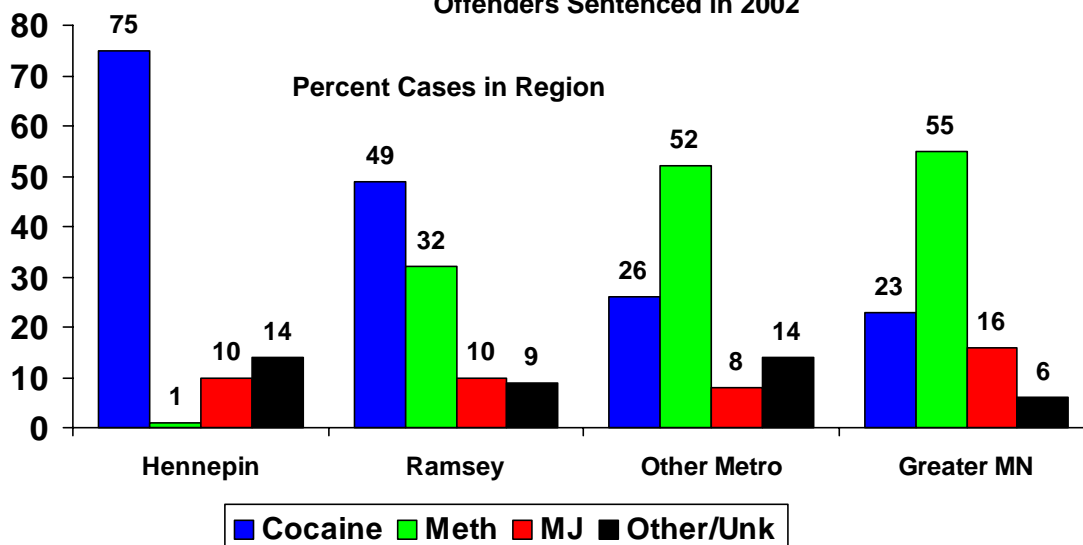
Figure 6. Distribution of Drug Offenders Sentenced in 2001 and 2002 by Drug Type



The growth in methamphetamine cases is reflected in a change in the regional distribution of drug cases. The number of drug cases outside of the metro area has grown more than the number of drug cases sentenced in the metro counties. In 1996, 35% of the drug cases sentenced were in Greater Minnesota, whereas in 2002, that percentage had grown to 45%. In both 1996 and 2002, 45-46% of the non-drug cases were from greater Minnesota.

There are differences among the regions in the distribution of cases by drug type (Figure 7). Cocaine was still the drug type found most frequently in Hennepin and Ramsey counties in 2002, whereas methamphetamine was the most common drug type in both greater Minnesota and the other metro counties. Methamphetamine was involved in almost one-third of the Ramsey County cases, but only 1% of the Hennepin County cases.

**Figure 7. Distribution of Drug Offenders by Drug Type in Each Region
 Offenders Sentenced in 2002**

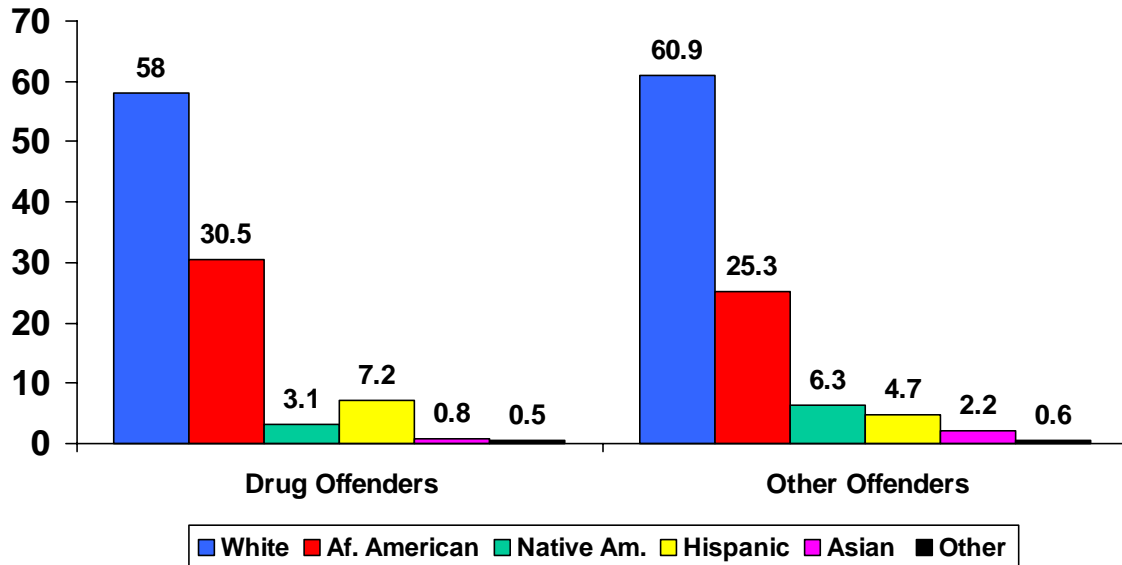


The growth in methamphetamine cases has, to an extent, negated some of the racial disparity in the number of drug cases sentenced (Figure 8). Before the growth in methamphetamine cases, minorities



were over represented among drug offenses when compared to other offenses. While that is still true, the disparity has decreased. In both 1999 and 2002, 61% of offenders in other offense groups were white and 25% were African American. In 1999, 51% of drug offenders were white and 36% were African American. In 2002, 58% of the drug offenders were white and 36% were African American. Sentencing data reveal that methamphetamine is predominantly a drug of choice for White offenders and is directly impacting the racial make-up of drug offenders in Minnesota.

**Figure 8: Distribution of Offenders by Race
 Drug Offenses Compared to Other Offenses
 Offenders Sentenced in 2002**



Sentencing Practices

Incarceration in State Prison

Table 3 shows that 27% of the drug offenders sentenced in 2002 received executed prison sentences, compared to 22% of non-drug offenders. The imprisonment rate for drug offenders has been increasing in recent years as the percentage of cases in the most serious drug degrees has increased. In 2000 and 2001, the imprisonment rate for drug offenders was 24% compared to 22% in 1998 and 1999. From 1993 through 1997, the rate fluctuated between 16% and 19%, and in 1991 it was only 13%. The imprisonment rate for non-drug offenders has been more stable during this era. In 1991, the imprisonment rate for non-drug offenses was 21%, and over the years 1992-2001, it has only fluctuated between 22% and 24%.

The average pronounced prison duration in 2002 was longer for drug offenders (50 months) than that for non-drug offenders (46 months). Like imprisonment rates, sentence lengths for drug offenses have been increasing in recent years. In 2000 and 2001, the average sentence was 47 months. It fluctuated between 38 months and 44 months in 1992 through 1998, and in 1991 it was only 35 months. The average sentence for non-drug offenses has ranged from 46 to 51 months during that same time period.

Since the drug statutes were revised in 1989, the number of drug offenders sentenced has increased dramatically, as have imprisonment rates and average pronounced sentences. While the number of offenders sentenced for other crimes has also increased during that time period, the increase has not been as dramatic and the imprisonment rates and average pronounced sentences have remained



relatively stable. In 1991, 217 drug offenders received executed prison sentences with an average pronounced sentence of 35 months. By 2001, those numbers had grown to 623 drug offenders receiving executed prison sentences with an average pronounced sentence of 47 months. Between 2001 and 2002, all three factors (number of drug offenders, imprisonment rate and average sentence) continued to increase, with 938 drug offenders sentenced to prison in 2002 with an average pronounced sentence of 50 months. Department of corrections data on the number of drug offender prison admissions to date this year suggests that the number of drug cases will continue to show growth in 2003.

Table 3. Imprisonment Rates and Average Pronounced Durations: Drug and Non-Drug Offenses

Year Sentenced	Drug Cases			Non-Drug Cases		
	Total # Cases	Prison Rate	Av. Duration	Total # Cases	Prison Rate	Av. Duration
1991	1,693	13%	35 months	7,468	21%	46 months
1992	1,830	14%	38 months	7,495	22%	49 months
1993	1,800	19%	42 months	7,837	22%	47 months
1994	1,692	17%	44 months	8,095	22%	51 months
1995	1,719	19%	41 months	7,702	24%	46 months
1996	1,695	17%	42 months	7,785	24%	47 months
1997	2,127	16%	42 months	7,720	24%	44 months
1998	2,542	22%	40 months	8,345	24%	47 months
1999	2,391	22%	42 months	8,243	23%	48 months
2000	2,596	24%	47 months	7,799	23%	49 months
2001	2,596	24%	47 months	8,200	22%	48 months
2002	3,424	27%	50 months	9,554	22%	46 months

Probation Cases

The rise in the number of drug cases has also resulted in an increase in the number of drug offenders sentenced to probation and an increase in the number of drug offenders serving time in local jails and workhouses as a condition of probation. In 2002, 2,486 offenders received probation sentences for drug offenses, an increase of 68% over the number receiving probation sentences in 1991 (Table 4). In comparison, the number of non-drug offenders serving probation sentences increased by 26% during this time period.

Offenders placed on probation for a felony offense can receive up to a year of local jail or workhouse time as a condition of probation. The vast majority of offenders placed on felony probation do serve conditional jail time. Since 1991, more than 80% of felony probationers have had jail time imposed as a condition of probation and drug offenders have had jail time pronounced at a slightly higher rate than non-drug offenders. In the 1990's, between 86% and 88% of drug offenders had jail time imposed, and since 2000, the percentage has been 90% or higher. Non-drug offenders have had slightly lower rates of imposed jail time. For both groups, the average jail time pronounced has been close to, or slightly greater than, 100 days. Information on how much of that jail time imposed was actually served is not available.

Table 4. Jail Rates and Average Pronounced Conditional Confinement: Drug and Non-Drug Offenses

Year Sentenced	Drug Cases			Non-Drug Cases		
	# Stayed Cases	Jail Rate	Av. Pronounced Duration	# Stayed Cases	Jail Rate	Av. Pronounced Duration
1991	1,476	86%	90 days	5,908	80%	110 days
1992	1,575	87%	101 days	5,825	83%	111 days
1993	1,459	86%	116 days	6,114	81%	112 days
1994	1,412	87%	98 days	6,332	80%	117 days



1995	1,398	87%	101 days	5,887	82%	110 days
1996	1,404	83%	104 days	5,887	81%	108 days
1997	1,781	87%	105 days	5,877	82%	107 days
1998	1,192	88%	99 days	6,334	83%	110 days
1999	1,872	88%	99 days	6,311	84%	104 days
2000	1,982	90%	101 days	5,985	85%	106 days
2001	1,973	91%	108 days	6,374	84%	104 days
2002	2,486	90%	114 days	7,435	86%	103 days



Trend Data on Felony Drug Offenders Incarcerated in Minnesota

This chapter analyzes data on drug offenders incarcerated in state correctional institutions in Minnesota. The analysis focuses on both prison admissions and stock population, with a more in-depth focus on 2002 data trends. Information on overall admissions, drug admissions, and other offense categories is presented to provide background and develop a contextual framework for trend changes related to drug offenders. A combination of admission data from the department of corrections and MSGC monitoring data are used for the analysis in this chapter.

The term “drug offender” can take on various meanings within the criminal justice system. In an attempt to accurately analyze the impact drug offenders have on our correctional system, it was necessary to classify drug offenders into three separate groups. The primary group consists of offenders whose governing sentence (sentence that determines a release date) is for a drug offense. The second group of drug offenders is identified as being sentenced for a non-drug offense as their governing sentence, but have a drug offense as a secondary sentence. For instance, the offender may have a sentence for robbery and a secondary sentence for drug possession, with the robbery sentence being the governing sentence. The third group of drug offenders incarcerated in state correctional facilities would represent offenders who were not sentenced for any drug offenses, but have an identifiable substance abuse problem which may result in correctional resources being spent on substance abuse treatment program participation.

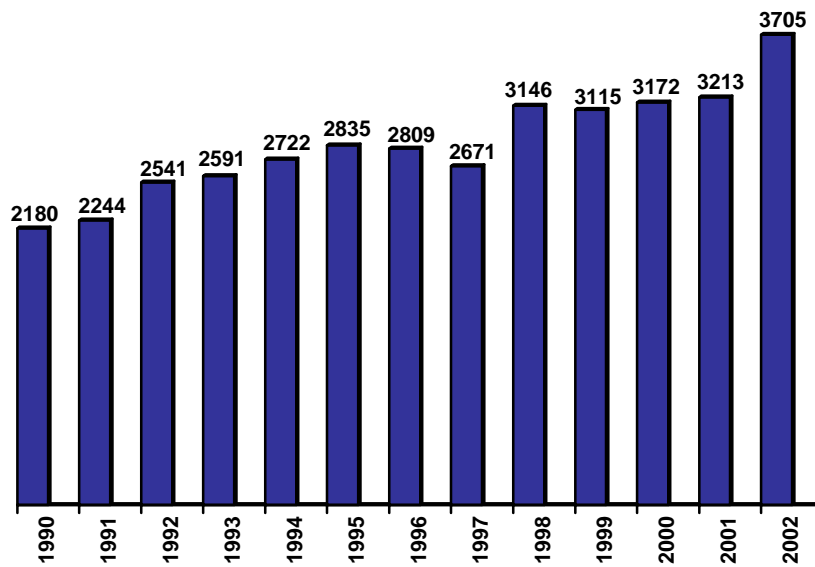
Groups one and two can be identified from available data. Group three, however, is more difficult to quantify since assessment or identification of a substance abuse problem is not a specific variable in our data systems. National research indicates that between 60% and 80% of all offenders incarcerated in correctional institutions have some degree of substance abuse problems. This finding indicates the pervasiveness of substance abuse among the offender population even when it is not represented by their crime of conviction. For the purpose of this analysis, only offenders whose governing crime of conviction or non-governing crime of conviction is a drug offense are included.

New Commitments to Prison

Overall, the number of new commitments to prison has shown a steady increase since the early 1980s. New commitments to prison include both direct court commitments and probation violators admitted to prison as the result of a revocation of their probation sentence. Figure 9 summarizes new court commitments from 1990 through 2002.



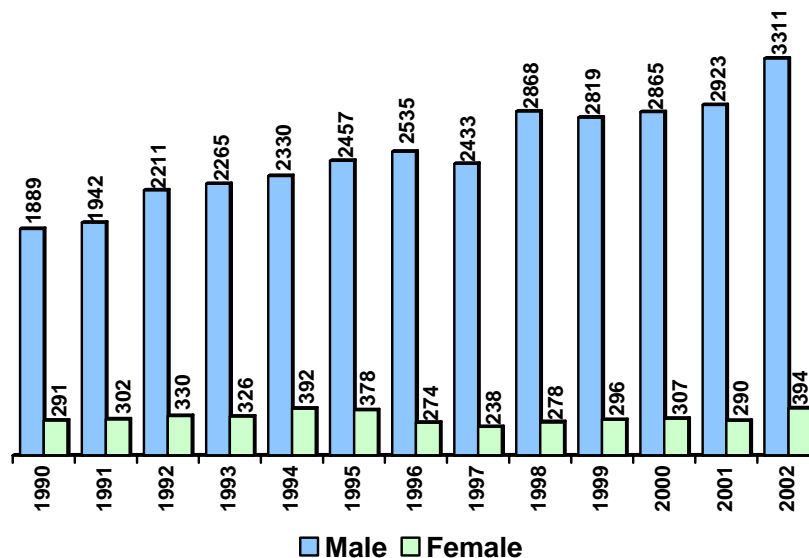
Figure 9. Minnesota Department of Corrections Admissions - New Court Commitments (Initial Court Commits and Probation Revocations)



Overall, new court commitments have increased from 2,180 in 1990 to 3,705 in 2002, resulting in 1,525 more offenders a year being admitted to prison in 2002 than twelve years earlier. The data indicate that the single largest growth in admissions was between 2001 and 2002, accounting for 32% of the total growth over the twelve year period. Preliminary data for 2003 show new court commitments totaling 3,154 at the end of September. If the current growth rate in admissions continues, admissions will easily exceed 2002 figures by the end of 2003.

Along with overall new court commitments reaching unprecedented highs, the number of females admitted to prison also reached an historic high. The increase for males was 13% between 2001 and 2002, while the increase for females was 36%. Trend data on male and female new court commitments are presented in Figure 10 below.

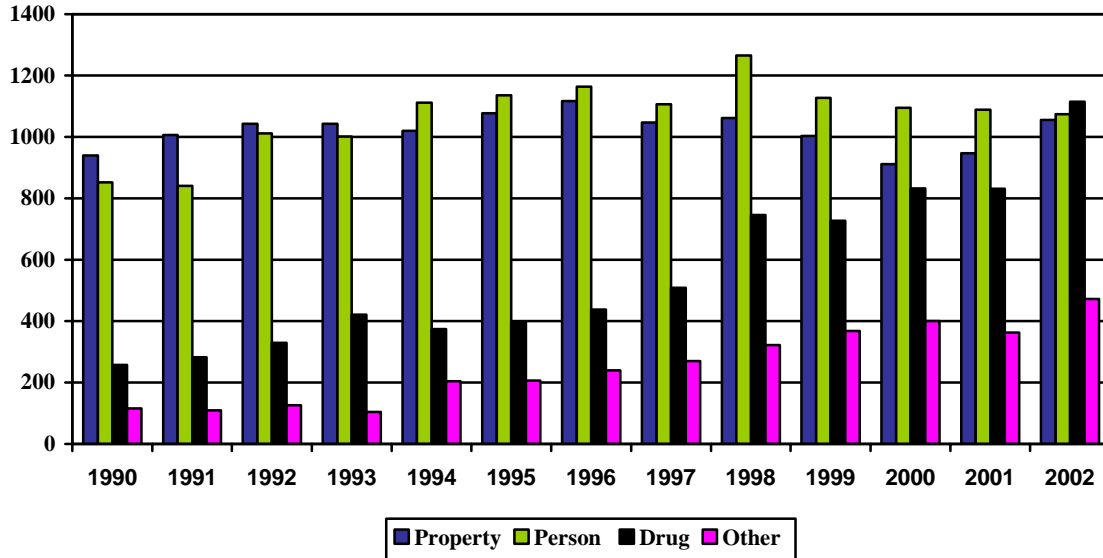
Figure 10. Minnesota Department of Corrections Adult Male and Female—New Court Commitments





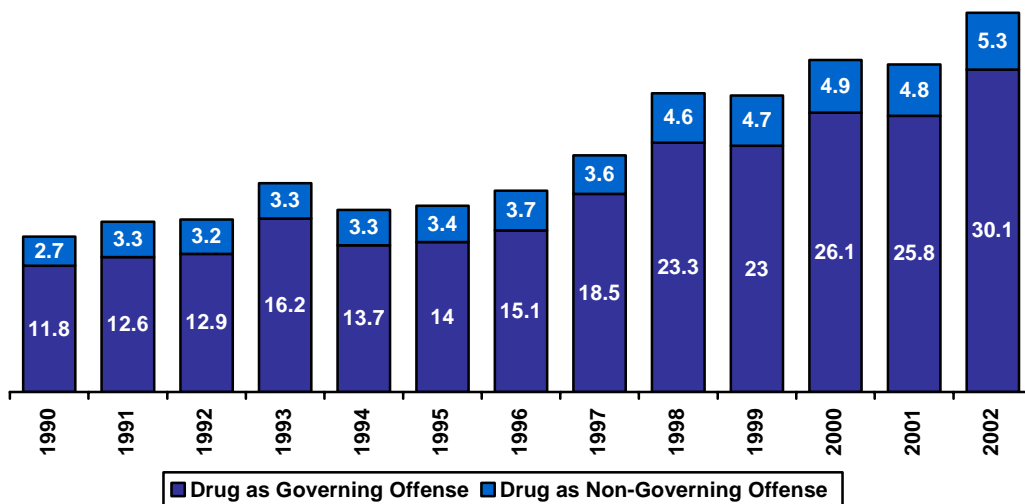
When admissions to prison are examined by offense types, some clearly emerging trends can be identified. The number of offenders admitted for person offenses peaked in 1998 and has declined gradually since that time. Property offenders remained fairly stable until 1997, when the data show a decline until 2000, when an increase in that offense category is observed. However, admissions for drug offenses show a steady increase since 1994. In 2002, the number of drug offenders admitted to prison exceeded admissions for all other offense categories, including person, property and the “other” category, for the first time (Figure 11). (The most frequently occurring offenses in the other category are failure to register as a predatory offender, escape, fleeing police, and possession of a firearm by a prohibited felon.)

**Figure 11. Minnesota Department of Corrections
 Adult New Court Commitments by Offense Type**



The impact of drug offenses becomes even more pronounced when examining total number of drug offenders admitted to prison (including those with a drug offense as a governing offense and offenders with a drug offense as a non-governing offense) by percentage of total admissions versus number of admissions. In 1990, the percentage of offenders admitted with a drug offense as the governing offense was only 11.8%, with another 2.7% of the offenders admitted with a drug offense as a non-governing offense, for a total of 14.5% of the total admissions. By 2002, the percentage of offenders admitted with a drug offense as the governing offense had climbed to 30.1% with another 5.3% of the offenders admitted with a drug offense as a non-governing offense to total 35.4% of all admissions. The percentage has doubled for each category of drug offenders (governing and non-governing) in that time period (Figure 12).

Figure 12. MN DOC Adult New Court Commitments—Percent With Drug Offense





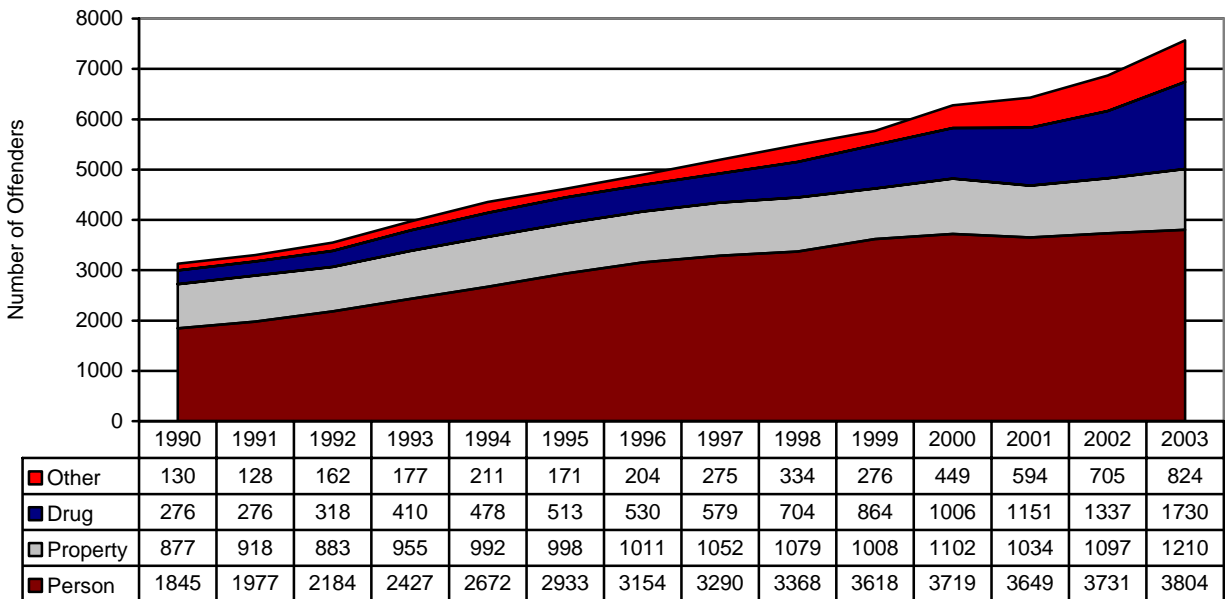
In reviewing overall admissions to prison from 1990 through 2002, admissions show a steady increase, with admissions for females reaching an historical high. However, admissions growth by offense category reveals mixed patterns of growth over time. Person crimes show growth until 1998, then a slight decline through 2002. Property offense admissions peak in 1996, then show a relatively stable pattern until 2002 when there is a marked increase. The “other” offense group demonstrates gradual growth over the time frame of the analysis, which can, in part, be explained by the number of admissions attributed to offenses reclassified as felonies or relatively new offenses included in this category, such as failure to register (as a sex offender), felony DWI, and fleeing law enforcement. Prison admissions attributed to drug offenses clearly show a steady increase both where a drug offense is the governing and non-governing offense. The data indicate that our state correctional system is admitting more offenders convicted of drug offenses yearly, in both numbers and percent of total admissions, than offenders convicted of person, property, and other types of offenses.

Drug Offenders in the Prison Population

In analyzing the impact of drug offender sentencing issues, admissions to prison must be examined in conjunction with the percentage of drug offenders in the prison population to realize the impact of sentence length. Prison stock population represents a snapshot of who is in prison on a given day, and is usually taken the first day of each fiscal year. Both the number of admissions and the length of sentence impact the prison population. Consequently, the percentage of admissions attributed to an offense category will not generally equal the percentage that same offense category represents in the prison population.

When the prison population over the period of analysis for this study is examined (Figure 13), person offenses clearly represent the largest portion of the population from FY 1990 through 2003. This finding is directly correlated with the lengthy sentences imposed since the number of offenders convicted of person offenses admitted to prison has shown a slight decline since FY 1998.

Figure 13. July 1 Minnesota Prison Population by Offense Type

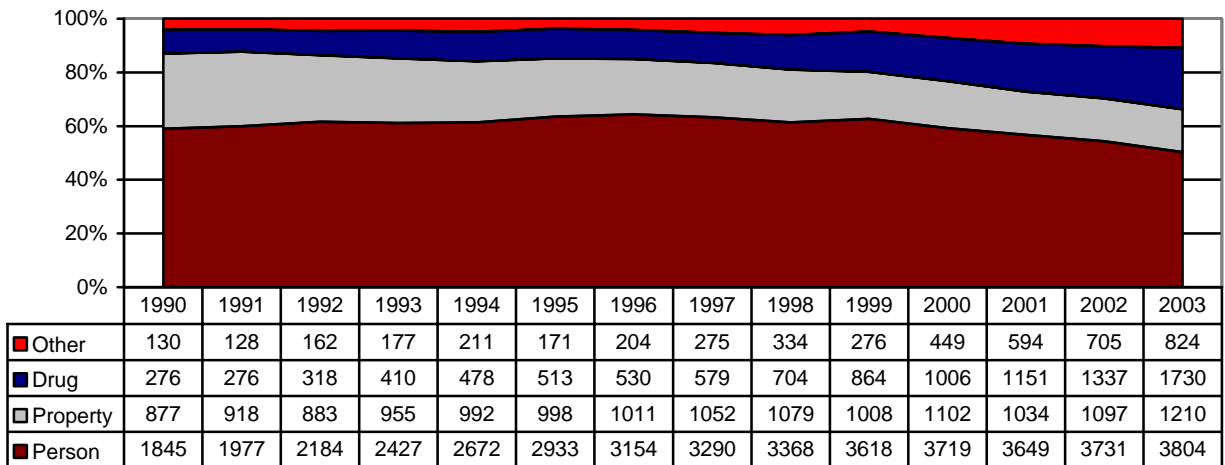


The number of offenders convicted of person offenses housed in state correctional facilities totaled 3,804 at the end of FY 2003, representing only an increase of 73 offenders over the previous year. However, when drug offenders are viewed in the context of the prison population from FY 2002 to FY 2003, there is an increase of 393 offenders, significantly higher than any other offense category.



If the various offense categories are viewed as percentages of the total prison population over time, increases are present in both the drug and “other” offense categories. Person and property offense categories demonstrate a percentage decline of the total prison population in recent years (Figure 14), even though the overall number of offenders admitted to prison in these categories continues to increase. Property offenses show a large decrease since FY 1990, whereas, person offenses indicate more of a gradual decline since FY 1999. Drug offenses, in particular, represent the largest percentage increase in the prison population since FY 1999.

Figure 14. Percentage of Various Offenders in Minnesota Prison Population on July 1



As noted above, offense category representation in the prison population results from a combination of both numbers of offenders admitted to prison and the lengths of sentences imposed. If the composition of the FY 1990 prison population is compared to that of FY 2003, there is an apparent change in the make-up of what offense categories constitute the state’s prison population. In FY 1990, person offenses made up 59% of the prison population and drug offenses only 9% (Figure 15). By FY 2003, person offenses represent only 50% of the prison population, but drug offenses have risen to represent 23% of the total prison population, indicating a shift in the type of offender the state is expending correctional resources to incarcerate (Figure 16).

Figure 15. Breakdown of Minnesota Prison Population - July 1, 1990

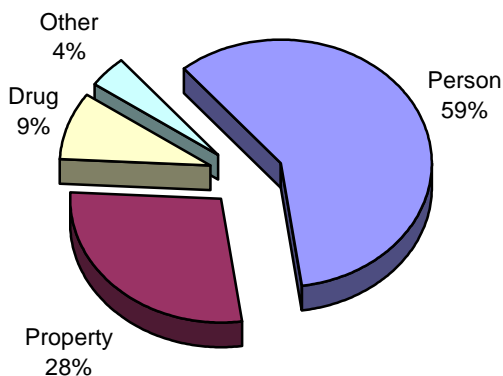
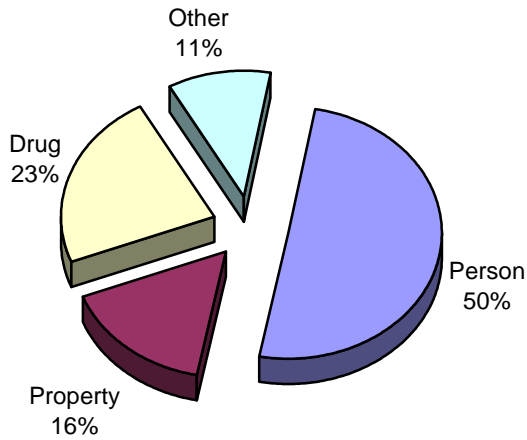


Figure 16. Breakdown of Minnesota Prison Population - July 1, 2003

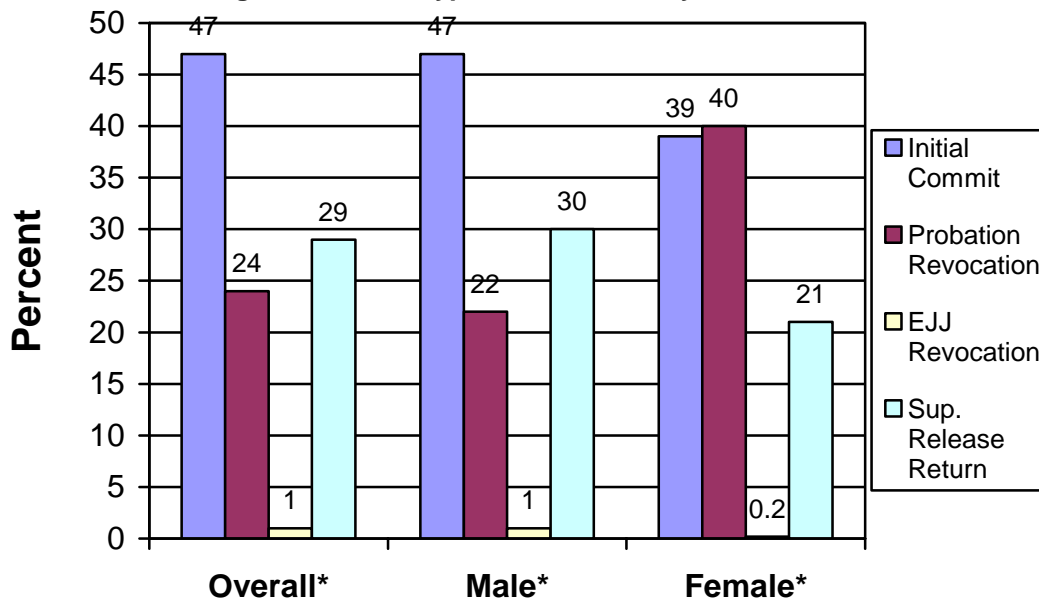


Composition of the state's prison population mirrors prison admissions for drug offenses and the "other" offense category demonstrating an increase in recent years in both number of offenders incarcerated and increased percentage of prison population. Person offenses still continue to account for the largest percentage of the prison population, but reflect a decrease in admissions similar to property offenses, with the exception of 2002 property offense admissions. The data demonstrate that imprisonment is increasingly being used as a sentencing option for drug offenders.

2002 Drug Offender Data

An analysis of 2002 sentencing data for drug offenders provides a review of the most current data available, while identifying specific sentencing patterns. Offenders enter state correctional facilities in one of four ways: 1) An initial commit from the courts; 2) A probation revocation; 3) An extended juvenile jurisdiction (EJJ) revocation; or 4) A supervised release return. When total admissions to prison are examined, initial commits represent the single largest admission source, accounting for 47% of all admissions (Figure 17). However when combined, revocations and supervised release returns account for 53% of admissions, surpassing the percentage attributed to initial commits. When admissions are separated by gender, probation revocations of females alone actually surpass the number of females who enter prison as an initial commit. The distribution of prison admissions by type is important to note because the increase in the number of prison admissions is not solely due to the number of offenders sentenced to prison by the courts, but is also impacted by the number of probation revocations and the number of supervised released returns to prison.

Figure 17. 2002 Type of Admission by Gender



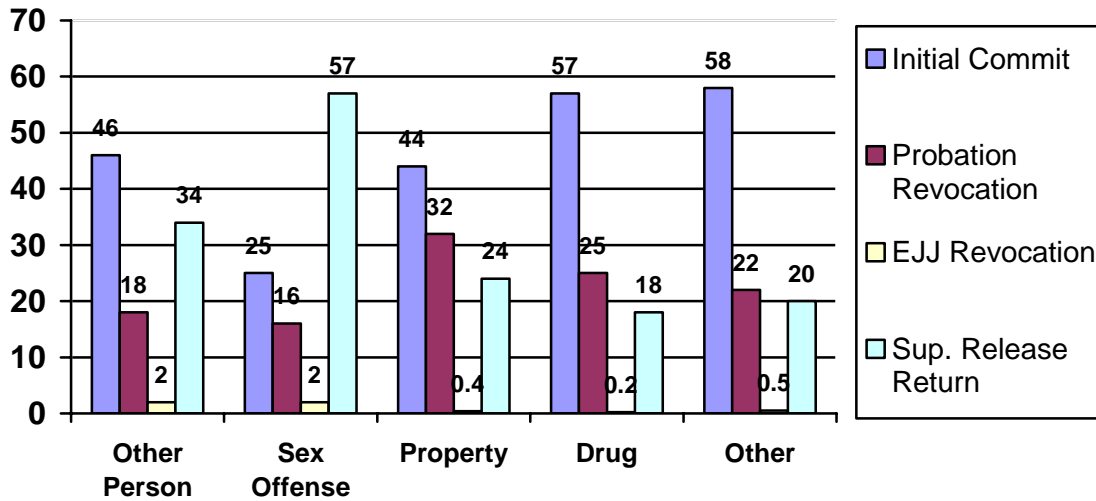


Admissions to prison in 2002 by offense category and type of admission demonstrate variations in the patterns in which offenders are admitted to prison. For drug offenders and the “other” offense category, initial court commits account for over 50% of the admissions (Figure 18). However, supervised release returns represent 57% of the admissions for sex offenders and 34% of the admissions for other person offenses. Probation revocations also account for 20% or higher of the admissions for drug, property and the “other” offense category.

*A total of 5,258 offenders were admitted to prison in the year 2002. Of these offenders, 4,754 were male and 504 were female.

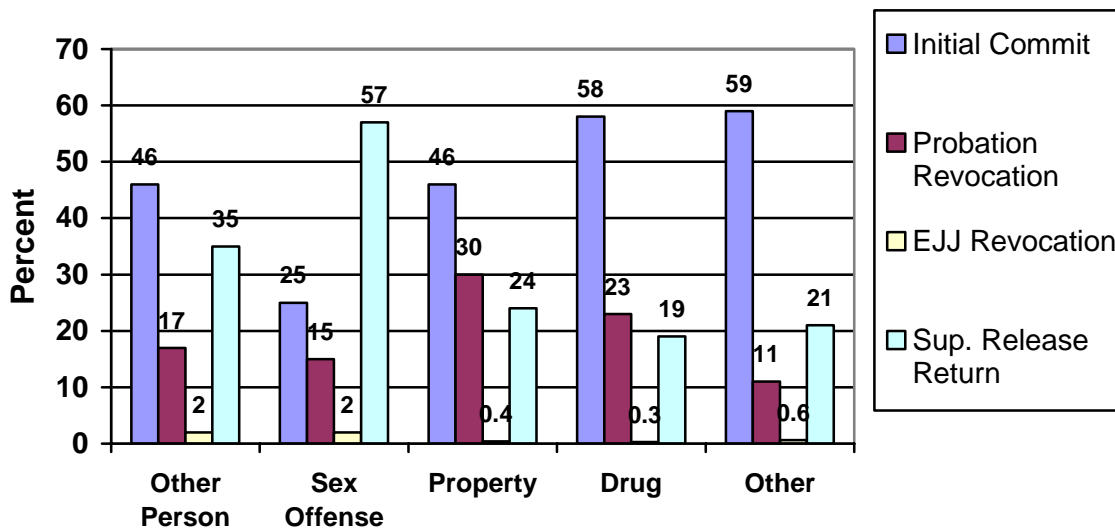


Figure 18. 2002 Type of Admission by Offense



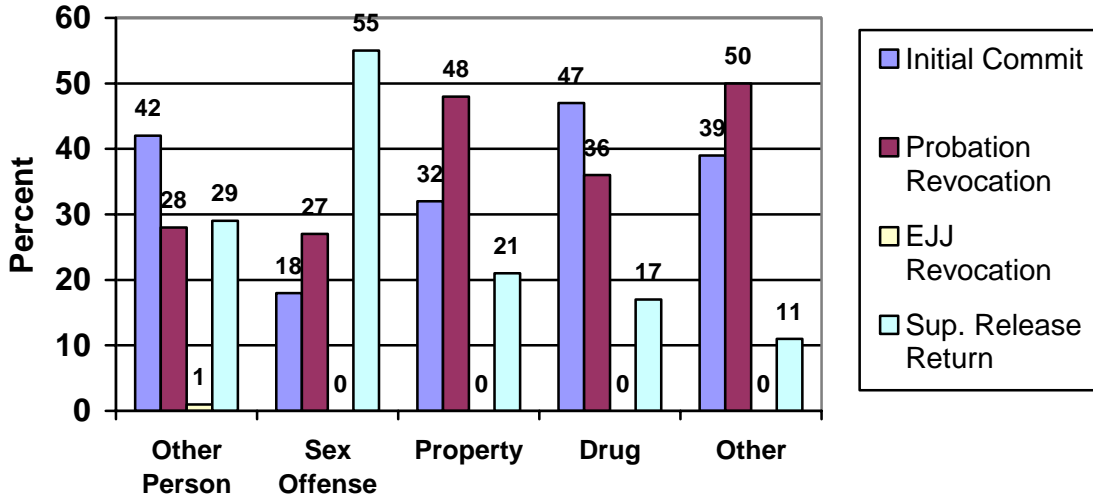
The impact of probation revocations and supervised release returns is even more dramatic when prison admissions are examined by gender (Figures 19 and 20). Although females represent a smaller portion of the prison population than males, the impact of revocations on female admissions is much more pronounced than on the male population. This high number of probation revocations and supervised release returns among the female offender population could be the result of a couple of factors. First, community based programs may not adequately address the specific needs of female offenders, such as child care, parenting issues and various other domestic issues, impacting their chance of success on probation. Second, female offenders may be considered more frequently for non-prison sanctions, thus resulting in a higher risk pool of probationers for revocations than their male counterparts. It is not within the scope of this analysis to identify the specific cause of the impact of revocations on female offenders, but rather to present the data related to the differences between males and females.

Figure 19. 2002 Type of Admission by Offense Type—Males





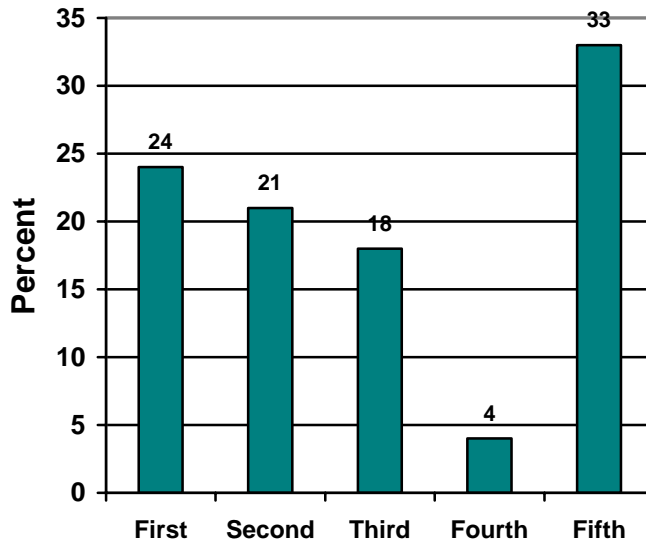
**Figure 20. 2002 Type of Admission by Offense Type—
Females**



Although prison admissions indicate a marked growth over the recent years, it is important to note that a high percentage of the growth in admissions is related to probation revocations and supervised release returns, specifically for property, sex and other person offenses. The high percentages of non-initial commit admissions for females may indicate a disparate impact on females admitted to prison in 2002, especially for property, drug, and the “other” offense category.

In 2002, 1,356 offenders were admitted to prison for first through fifth degree drug offenses, with an additional 15 drug offense admissions attributed to sale of a simulated controlled substance. Fifth degree drug offenses accounted for 33% of the drug admissions to prison, followed by first degree offenses representing 24% of all drug offenders admitted to prison (Figure 21).

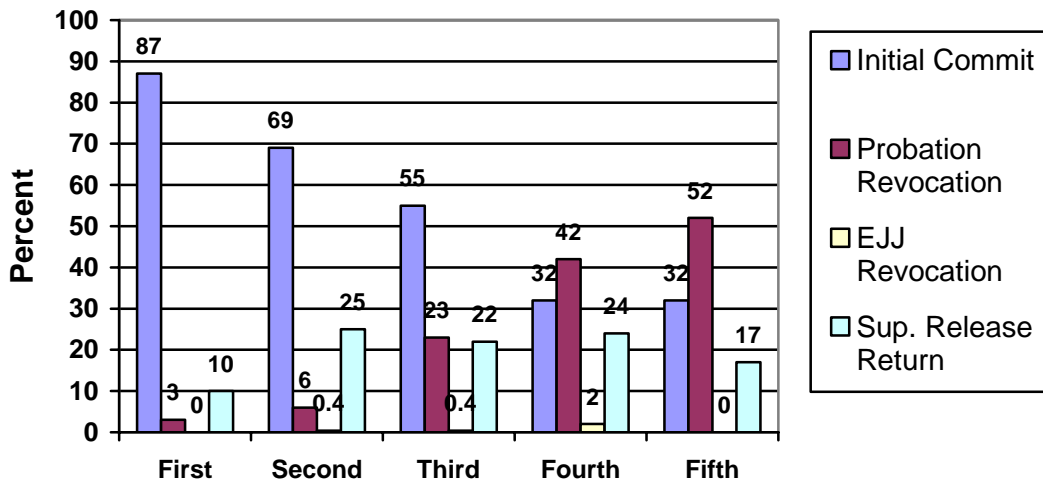
Figure 21. Drug Offenders: 2002 Admissions by Drug Degree





Under the sentencing guidelines, fifth degree drug offense convictions are primarily designated a non-prison or probation sentence. The high prison admission rate for fifth degree offenses is directly correlated with the large number of probation revocations and supervised release returns that account for approximately 69% of the admissions for that drug degree (Figure 22). By contrast, 87% of first degree drug offenders enter prison as initial commits, reflecting the designated presumptive prison sentence set forth under the sentencing guidelines. Third and fourth degree drug offenses also have revocation and supervised release return rates in excess of 40%.

Figure 22. Drug offenders: Admission Type by Drug Degree



The significance of the high revocation rates for the lower drug degrees impacts the allocation of limited prison beds. In 2002, there were 1,235 probation revocations that resulted in an offender being admitted to prison. Of that total, 27% (339) were for drug offenses; whereas only 26% (324) were for person offenses. Property offenders accounted for 36% (448) of the total number of probation revocations.

In addition to the large number of drug offenders entering prison as probation violators, the data indicate that 48% of the drug probation revocations occur within one year of sentencing, compared to 38% overall, making drug offense revocation rates higher than any other offense category for that time frame (Figure 23). Probation revocations result in an average pronounced sentence of 19.7 months in a state correctional facility.

Figure 23. Number of Months on Probation Before Revocation-All Offenses

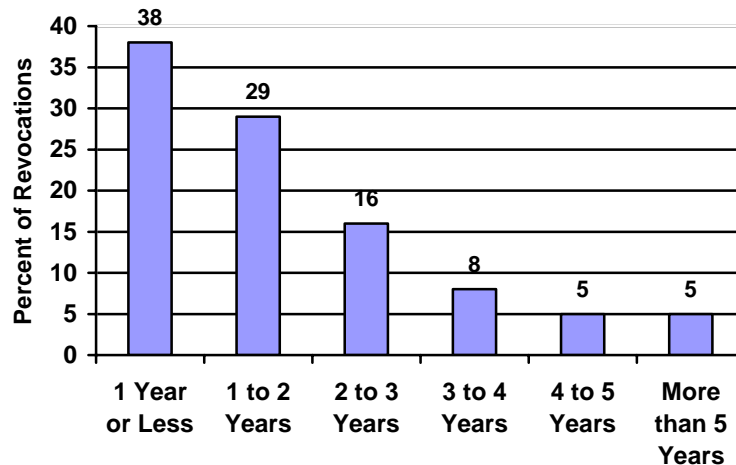
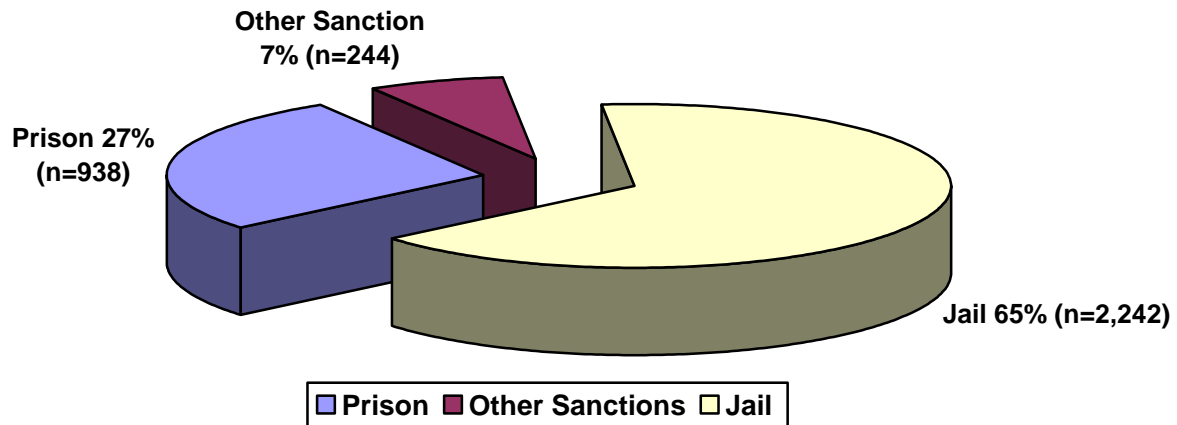


Figure 24 shows that, overall 92% of convicted drug offenders in Minnesota are incarcerated; 27% receiving state prison sentences and 65% incarcerated in local correctional facilities in addition to the imposition of other sanctions. Only 7% of convicted felony drug offenders are sentenced to other sanctions that do not include some form of incarceration

Figure 24. Incarceration Rates Convicted Drug Offenders Sentenced in 2002



Incarceration of felony drug offenders at the state level has increased significantly over the past decade, at a higher rate than for any other offense category. The increase is twofold: A larger total number of drug offenders being admitted to prison and a greater proportion of the state prison population than a decade ago. The latter change can be attributed partly to the length of sentence imposed for drug offenses. The number of drug offenders entering prison as initial commits has increased, as have the number of probation violators and supervised release returns. The data indicate that probation revocations for drug offenses have had a disproportionate impact on female offenders. Finally, the imprisonment rate for drug offenders increased from 24% in 2001 to 27.4% in 2002, a 3.4% increase in a single year. In summary, more drug offenders are now being admitted to prison for longer periods of time than a decade ago. This directly impacts the amount of correctional resources required to accommodate this offender population.

Criminal History Scores for Drug Offenders

Criminal history scores are examined for drug offenders in the prison population as of July 1, 2003. These are offenders whose most serious offense is a drug offense. An offender's criminal history score has four components: 1) A weighted measure of prior felony sentences; 2) A limited measure of prior misdemeanor/gross misdemeanor sentences; 3) A limited measure of prior serious juvenile record; and 4) A measure of "custody status", indicating if the offender was on probation or parole when the current offense was committed. The average criminal history score for all drug offenders was three, with a minimum score of zero and a maximum score of eighteen. There are variations in the average criminal history score based on admission type and drug offense type. Since all first and second degree drug offenders are recommended a prison sentence under the guidelines, regardless of criminal history score, those offenders tend to have lower criminal history scores than those convicted of less serious offenses. Table 5 shows that those committed to prison as probation revocations tend to have lower criminal history scores than those with an initial prison sentence or those who are release returnees.

**Table 5. Average and Range of Criminal History Scores
 By Drug Degree and Admission Type**

Drug Degree	Probation Revocations			Initial Commits and Release Returns		
	Average	Minimum	Maximum	Average	Minimum	Maximum
First	1	0	5	2	0	14
Second	1	0	5	3	0	14
Third	1	0	8	4	0	18
Fourth	2	0	5	4	0	8
Fifth	3	0	13	4	0	12
Sale Sim.	3	1	4	8	8	8
Total	2	0	13	3	0	18

The distribution of drug offenders by criminal history score is displayed in Table 6 and 7 below. Thirty-four percent of the probation revocations had a criminal history score of zero, as did 25% of the initial commits and release returnees.

Table 6. Distribution of Criminal History Scores – Probation Revocations

Drug Degree	Criminal History Score						
	0	1	2	3	4	5	6
First	16 (50%)	7 (22%)	6 (19%)	2 (6%)	0	1 (3%)	0
Second	17 (42%)	12 (29%)	4 (10%)	5 (12%)	2 (5%)	1 (2%)	0
Third	30 (38%)	23 (29%)	12 (15%)	8 (10%)	2 (3%)	0	4 (5%)
Fourth	3 (25%)	3 (25%)	4 (33%)	1 (8%)	0	1 (8%)	0
Fifth	29 (25%)	10 (9%)	20 (17%)	12 (10%)	11 (10%)	24 (21%)	10 (9%)
Sale Sim.	0	1 (50%)	0	0	1 (50%)	0	0
Total	95 (34%)	56 (20%)	46 (16%)	28 (10%)	16 (6)	27 (10%)	14 (5%)

Table 7. Distribution of Criminal History Scores – Initial Commits and Release Returns

Drug Degree	Criminal History Score						
	0	1	2	3	4	5	6
First	207(34%)	86 (14%)	104(17%)	77 (13%)	57 (9%)	28 (5%)	50 (8%)
Second	96 (22%)	64 (14%)	86 (19%)	69 (16%)	39 (9%)	37 (8%)	53 (12%)
Third	10 (5%)	17 (9%)	20 (11%)	39 (21%)	36 (19%)	23 (12%)	42 (23%)
Fourth	1 (6%)	3 (17%)	1 (6%)	2 (11%)	4 (22%)	0	7 (39%)
Fifth	18 (19%)	12 (13%)	5 (5%)	9 (10%)	6 (6%)	10(11%)	35 (37%)
Sale Sim.	0	0	0	0	0	0	1(100%)
Total	332(25%)	182(13%)	216(16%)	196(15%)	142(11%)	98 (7%)	188(14%)

The analysis of drug offenders admitted to prison by criminal history score demonstrates that, 38% of initial commits and supervised release returns and 54% of probation revocations involve offenders who have criminal history scores of one or less. These percentages reflect very limited prior criminal activity for many drug offenders entering state correctional facilities. This finding may be attributed to several factors, including the limited ability of the criminal justice system to address the complexity of issues surrounding drug abuse and addiction; the reclassification of numerous drug sentences designating presumptive commits to prison; and the resource constraints faced by local communities to address offenders who violate the conditions of their probation.



Cost of Incarcerating Drug Offenders in Minnesota

In determining the current cost to incarcerate drug offenders in Minnesota state correctional facilities, several factors should be considered. Incarceration costs may vary by custody classification status, which is not solely correlated with the offense of conviction, but also takes into consideration an offender's behavior while incarcerated. In addition, participation in various institutional programs, such as drug treatment, education and vocational training, should be taken into account, as well as the offender's length of incarceration. Since this type of information varies from offender to offender, incarceration costs were calculated on an annual basis using an average daily per diem cost per drug offender. This chapter examines costs associated with incarcerating drug offenders and the various resources expended by the Minnesota Department of Corrections on drug offenders.

Cost to Incarcerate Drug Offenders

In determining the cost to incarcerate an offender, the department of corrections uses one of two per diem rates, depending on whether the cost calculated is intended to reflect the current cost of incarceration or intended to serve as a projected cost of incarceration for a future time period. The department of corrections FY03 final adult facility average daily per diem of incarcerating an offender in a state correctional facility is \$80.52 per day resulting in an annual incarceration cost of \$29,389.80. In projecting cost associated with future incarceration of offenders, an average marginal per diem of \$59.79 per day or \$21,823.35 annually is used by the department of corrections as the future cost to incarcerate an offender in a state correctional facility. The basic difference between the two per diem amounts is based upon capacity. The current average per diem of \$80.52 per day reflects costs calculated using the number of prison beds currently available within the state correctional system. When the number of prison beds is expanded within a correction system, as would be the case in the future, the daily average cost of incarceration is reduced, because many operational costs will then be distributed among a larger offender population resulting in a reduced per offender incarceration cost. Incarceration costs provided by the department of corrections represent the cost to incarcerate any offender in state prison; costs specific to drug offenders only are not available.

In projecting the annual cost to the department of corrections to incarcerate drug offenders over a 10 year forecast period, several assumptions were made. First, the analysis assumes that current sentencing and incarceration policies and practices would continue unchanged. Second, it is assumed that the imprisonment rate in 2002 for both initial commits and probation revocations would remain constant over the 10 year forecast period. Third, it is assumed that sentence durations and the mix of cases would remain the same as in 2002, but factoring in a 2% increase in the total volume of cases annually. Incorporating the appropriate average marginal per diem and the assumptions previously described, Table 8 projects the costs over the ten year forecast period.



**Table 8. Projected Prison Beds and Cost of Incarcerating Drug Offenders
 Ten Year Forecast Period**

Fiscal Year	Projected Number of Prison Beds	Projected Annual Cost*
2003	925	\$27,185,565
2004	1,531	\$44,995,784
2005	1,925	\$42,009,948
2006	2,173	\$47,422,139
2007	2,348	\$51,241,225
2008	2,418	\$52,768,860
2009	2,507	\$54,711,138
2010	2,533	\$55,278,545
2011	2,610	\$56,958,943
2012	2,667	\$58,202,874

*Projected annual cost of incarceration for 2003 and 2004 used the current average daily per diem of \$80.52, for years 2005 through 2012 the marginal per diem of \$59.79 was used

Correctional Resources Expended on Drug Offenders

The department of corrections dedicates resources to a variety of programs that center on drug offenders, from the Challenge Incarceration Program to various chemical dependency assessment and treatment programs. These programs focus on offenders with drug abuse problems, whether they be convicted of governing-offense drug crimes, non-governing drug crimes, or offenders determined to have a significant substance abuse problem.

Challenge Incarceration Program

The Challenge Incarceration Program (CIP) is located in the Minnesota Correctional Facility at Willow River. It was mandated by the 1992 Minnesota Legislature (M.S. §244.17) as an alternative to longer-term incarceration for offenders who meet the legislatively imposed eligibility criteria. CIP is an intensive, rigorous, highly structured and disciplined program for selected non-dangerous drug and property offenders that require a high level of offender control and accountability.

The CIP program has three phases: A minimum six month institution phase (Phase I); a six month highly supervised community phase under intensive surveillance (Phase II); and a supervised release community phase which is the equivalent of supervised release (Phase III). The goals of the program, as set forth in statute, include: To punish and hold the offender accountable; to protect the safety of the public; to treat offenders who are chemically dependent; and to prepare the offender for successful reintegration into society.

The program is located at a minimum security facility and is designed for a capacity of 90 offenders. Participants can be male or female, and participation in the program is voluntary. In addition to substance abuse education, the program focuses on education, life skill development, job seeking skills, and other release preparation skills.

There have been a total of 1,689 offenders admitted to CIP from the start of the program in 1992 through December 5, 2003. Ninety percent of the admissions have been males and ten percent females. Currently there are 260 offenders participating in the CIP program, with 87 offenders in Phase I; 105 offenders in Phase II; and 68 offenders in Phase III. Summarized in Table 9 below is discharge information for the CIP program by individual phases.



Table 9. Challenge Incarceration Program – Discharge Information

CIP Program	Phase I	Phase II	Phase III
# Discharged	1602	1127	854
TYPE OF DISCHARGE			
Completed Phase	1232	922	746
Failures	196	200	108
Rescinded CIP Status	62	2	0
Voluntary Terminations	112	0	0
Deceased	0	3	0

Drug offenses were the governing crime of conviction for 62% of the CIP program participants, burglary represented another 20%, and 10% had a governing offenses of theft. The remaining participants had a variety of property crimes, including forgery, worthless checks, gambling, etc.

The cost figures to operate the CIP program provided by the department of corrections (DOC) are from 1997. Although the current costs associated with the program may vary slightly from the 1997 figures, they do provide a basis on which to calculate expenditures of DOC resources. From the information provided, the average daily cost to house and supervise a CIP graduate (from prison admission to supervised release date) is \$42.83. That same cost for an offender who is terminated from the CIP program is \$77.38. The estimated cost to incarcerate a CIP participant if the program had not been available is estimated to be \$74.54. Even if 1997 cost figures are used without any adjustments for inflation or economies of scale, the cost saving of an offender's participation in CIP versus traditional incarceration in a state correctional facilities are recognizable.

Facility Based Substance Abuse Programs

The department of corrections operates numerous chemical dependency assessment and treatment programs at various correctional facilities including Lino Lakes, Stillwater, Faribault, St. Cloud, Shakopee, Red Wing and Willow River. The programs vary in target population, program length, and program capacity. From information provided by the department of corrections, there are currently approximately 691 beds system wide designated to various levels of substance abuse treatment.

The largest number of substance abuse treatment beds is located at the Lino Lakes Correctional Facility as part of a program entitled TRIAD, which includes short-term, medium-term, and long-term treatment. The program also provides treatment that incorporates mental health issues with substance abuse treatment and an aftercare program. Approximately 411 treatment beds are designated at this correctional facility, but that number can fluctuate based on the needs of the offenders referred.

The Faribault correctional facility utilizes the New Dimensions treatment program, which focuses on short-term treatment that incorporates psycho-educational modules and has a capacity of 106 beds. The remaining correctional facilities that provide substance abuse treatment have smaller program capacities and are more focused on the type of substance abuse treatment provided. Appendix C provides a detailed summary of the types of substance abuse treatment programs provided by correctional facilities.

Operational costs for facility-based treatment programs vary depending on the size and duration of the program. The department of corrections currently spends about \$4,447,000 per year on substance abuse treatment at various correctional facilities. Substance abuse treatment expenditures by individual facility are listed below in Table 10 and include salary and current expense dollars.

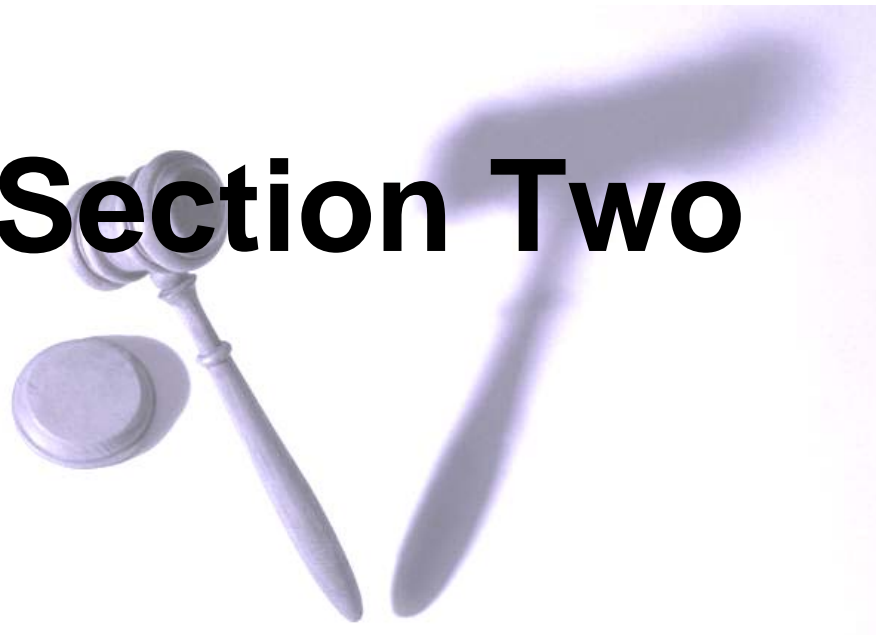


Table 10. DOC Substance Abuse Treatment Expenditures

DOC Facility	Expenditures
Lino Lakes	\$3,000,000
Stillwater	\$ 325,000
St. Cloud	\$ 478,000
Faribault	\$ 121,000
Shakopee	\$ 331,000
Red Wing	\$ 192,000



Section Two



Departure Rates for Drug Sentences

This chapter defines the various departure sentences present in the Minnesota Sentencing Guidelines and discusses departure rates for drug cases. In addition, drug departure rates are compared between drug and non-drug offenses.

Role and Definition of Departures in the Sentencing Guidelines System

The sentencing guidelines establish a presumptive sentence for felony offenses based on the severity of the offense and the offender's criminal history score. The presumptive sentence is based on "the typical case." A judge may depart from the sentencing guidelines when substantial and compelling circumstances exist. The judge must state the reasons for departure on the record and either the prosecution or the defense may appeal the pronounced sentence. Since the presumptive sentence is based on "the typical case," the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

It is also important to recognize that while the judge ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision process. Probation officers make recommendations to the judge regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well.

Description of Various Types of Departures

Dispositional departure refers to the decision to send an offender to state prison or to place the offender on probation (usually with some time in a local jail pronounced as a condition of that probation). *Aggravated dispositional* departures occur when the sentencing guidelines recommend a stayed (probationary) sentence and the judge decides to send the offender to prison. These types of departures happen relatively infrequently compared to other types of departures (in only 6% of the cases in 2002 where a stayed sentence was the presumptive sentence). Most aggravated dispositional departures occur when an offender requests an executed prison sentence or agrees to the departure as part of a plea agreement. In 2002, this situation represented 90% of the aggravated dispositional departures, excluding cases where the departure reason was "unknown." This request is usually made in order to allow the offender to serve the sentence concurrently with another prison sentence. The commission has generally included these cases in the departure figures because, for the given offense, the sentence pronounced is not the presumptive guidelines sentence. As a measure of judicial compliance, however, the inclusion of these cases inflates the overall and aggravated dispositional departure rates. These departure rates will not be discussed further in this report.

Mitigated dispositional departures occur when the sentencing guidelines recommend prison and the judge decides not to send the person to prison, but instead, imposes intermediate sanctions (probation, local incarceration, community work, treatment, financial sanctions, etc). The mitigated dispositional departure rates discussed in this report are based on the percent of offenders for whom a prison sentence is recommended by the guidelines. These offenders are termed *presumptive commits*.



Durational departures: The sentencing guidelines recommend an appropriate length of incarceration for those offenders who receive an executed prison sentence. Just as the severity level of the conviction offense and the criminal history score of the offender determine the presumptive disposition, the recommended duration of a sentence is also determined by these factors. The durational departure rates discussed in this report are for offenders who receive executed prison sentences.

The guidelines provide both a presumptive duration and a narrow range of months around the presumptive duration that a judge may pronounce and still be within the guidelines. If the judge pronounces a prison sentence that is greater or less than the upper and lower ranges, it constitutes a departure and the sentencing judge must cite the substantial and compelling circumstances that warranted the durational departure. If the judge pronounces a prison sentence that is greater than the upper end of the range, an *aggravated durational departure* results; a sentence less than the lower end of the range results in a *mitigated durational departure*.

Departure Rates for Drug Offenses vs. Non-Drug Offenses

Total Departure Rates: Figures 25 and 26 show that, in 2002, the total departure rate for drug cases was 34%, whereas the total departure rate for non-drug cases was 24%. The downward departure rate was 25% for drug cases and 16% for non-drug cases.

Figure 25.

Drug Cases Sentenced in 2002

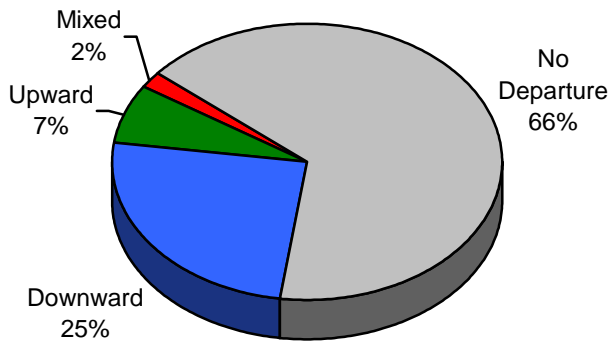
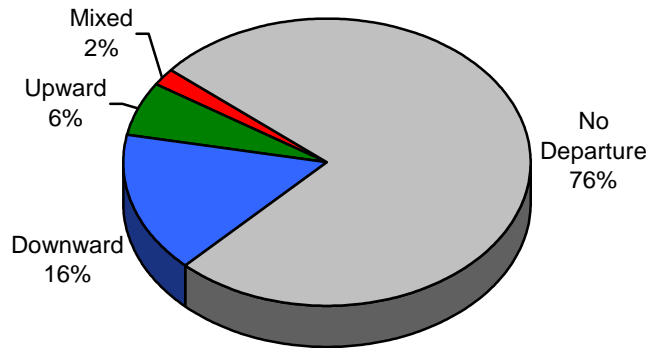


Figure 26.

Non Drug Cases Sentenced in 2002

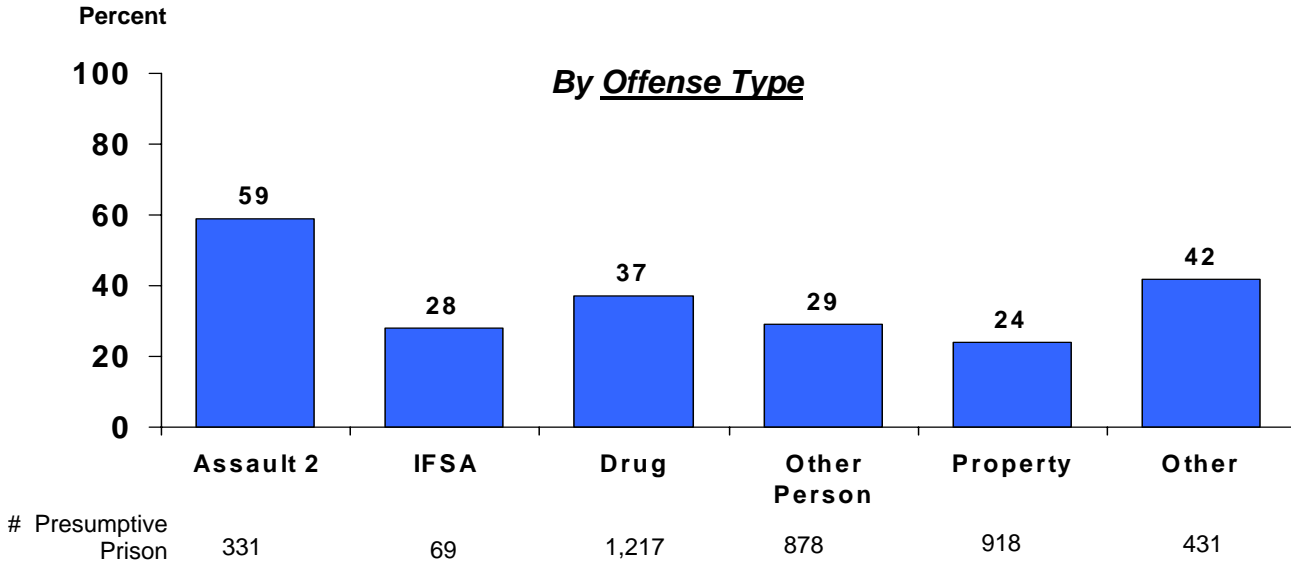


Total downward departure rates are much more pronounced for some individual drug crime degrees, reaching 60% or higher for some degrees. The total downward departure rate was 64% for first degree drug offenses and 61% for second degree offenses, while the upward rate was only 3% for the first degree offenses and 2% for the second degree offenses.

Mitigated Dispositional Departures – Presumptive Commits: Figure 27 shows that, in 2002, 37% of the drug offenders for whom the guidelines recommended prison, received a non-prison sentence. The mitigated dispositional departure rate for non-drug offenses that were presumptive prison cases was 33%. Departure rates vary by offense type. The only offenses with mitigated dispositional departure rates higher than drug offenses were second degree assault and offenses in the “other” category. The two offenses in this category with the largest number of departures were failure to register (as a sex offender) (140 cases, mitigated dispositional departure rate of 63%) and felon in possession of a firearm (164 cases, mitigated dispositional departure rate of 33%). Both of these offenses have mandatory minimum sentences prescribed by statute and both have statutory provisions that allow for sentencing without regard to the mandatory minimum.

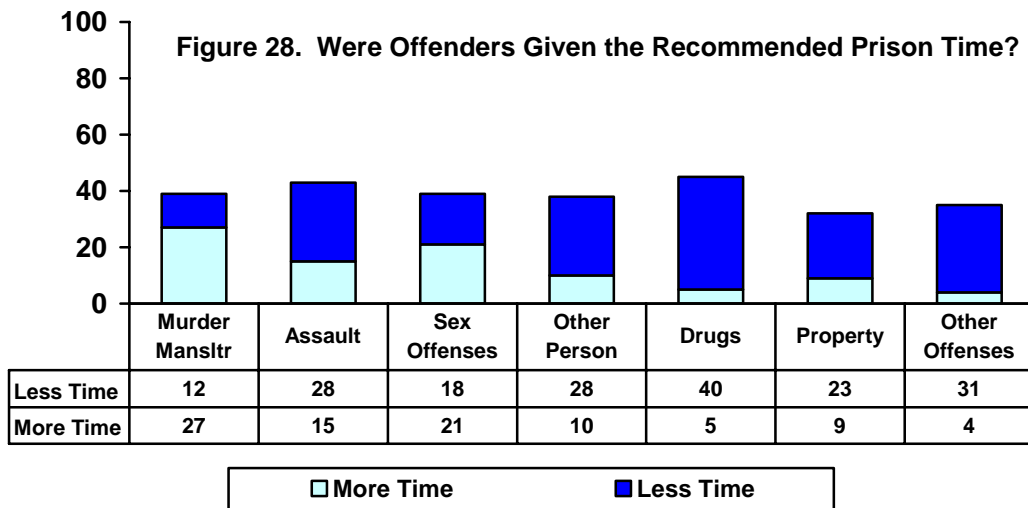


Figure 27. Offenders Receiving Probation when Sentencing Guidelines Call for Prison



Amenability to treatment and probation were the most frequently cited departure reasons for the mitigated dispositions in drug cases. In a large percentage of these cases, the court noted that either there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure. In 2002, that was more likely to be true for non-drug than for drug cases. The court indicated that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure in 49% of the mitigated dispositions for drug cases and in 67% of the mitigated dispositions for non-drug cases. Information provided by the court revealed that the prosecutor was more likely to object to the mitigated disposition in drug cases (19%) than in non-drug cases (6%).

Durational Departure Rates – Prison Cases: The mitigated durational departure rate for drug offenders who received executed prison sentences in 2002 was 40%. The rate for non-drug offenders was 25%. The aggravated durational departure rate was 5% for drug offenders and 11% for non-drug cases. Figure 28 shows that these rates also vary by offense type; the mitigated durational departure rate for drug offenses was higher than for any other offense type and the aggravated durational departure rate was lower than for any offense type except the “other” offense group. The two offenses in this category with the largest number of prison sentences were failure to register (as a sex offender) (52 cases, no aggravated durations) and felon in possession of a firearm (109 cases, one aggravated duration).





“Plea agreement” was the most frequently cited reason for mitigated durational departures in drug cases (under the case of *State v. Misquadace* (644 N.W.2d 65 (Minn. 2002) a plea agreement for a departure must nevertheless disclose the substantial and compelling reasons for departure; it is no longer permitted just to bargain for a departure without appropriate independent reasons to justify the departure). The court stated that either there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure in a larger portion of the mitigated durations than the mitigated dispositions, particularly in drug cases. In 2002, the court indicated that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the mitigated durational departure slightly more often in drug cases (76%) than in non-drug cases (71%). The court reported that the prosecutor was slightly more likely to object to the mitigated duration in drug cases (4%) than in non-drug cases (2%).

Trends in Departure Rates for Drug Cases

The total mitigated departure rates have increased since the early 1990s. Figure 29 shows that, in the last five years the mitigated *dispositional* rate has stabilized at a slightly lower rate than in the mid-1990s. Figure 30 shows that the mitigated *durational* departure rate continued to increase through the 1990s. It decreased slightly in 2002 from 2000 and 2001 levels. Aggravated durational departure rates have consistently been very low.

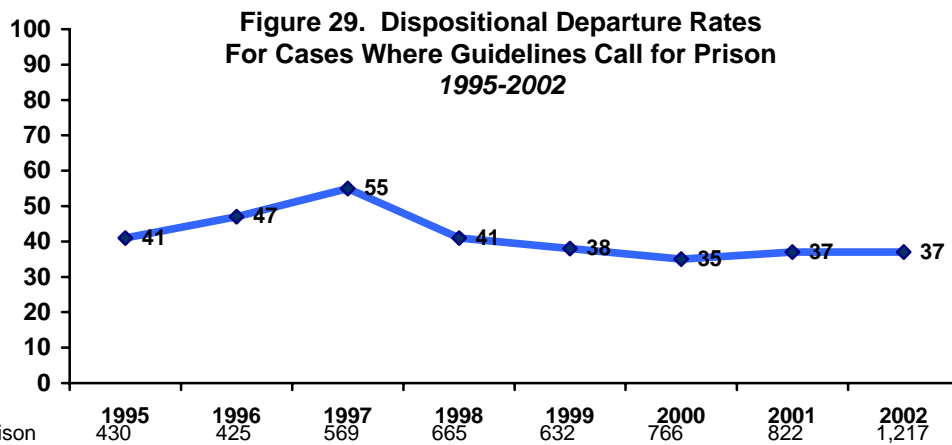
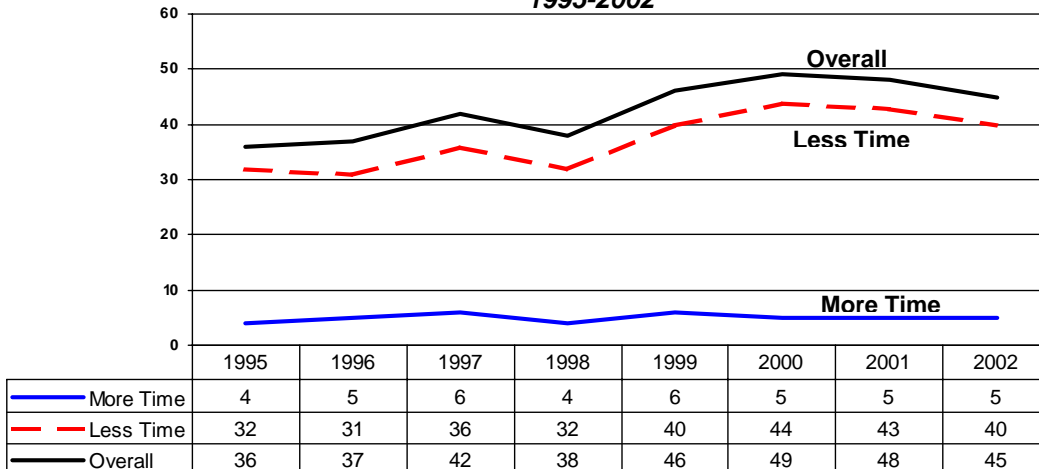


Figure 30. Durational Departure Rates For Cases Where Guidelines Call for Prison 1995-2002





Departure Rates for Drug Cases by Region

While departure rates fluctuate from year to year and vary by region, they are high in most areas of the state. Figure 31 shows that, in 2002, the mitigated dispositional departure rate for presumptive commits was greater than 40% in the metro area counties. In Hennepin County, the rate has consistently been greater than 50%. Dispositional departure rates have been the lowest in greater Minnesota.

Figure 31. Dispositional Departure Rates by Region For Cases Where Guidelines Call for Prison

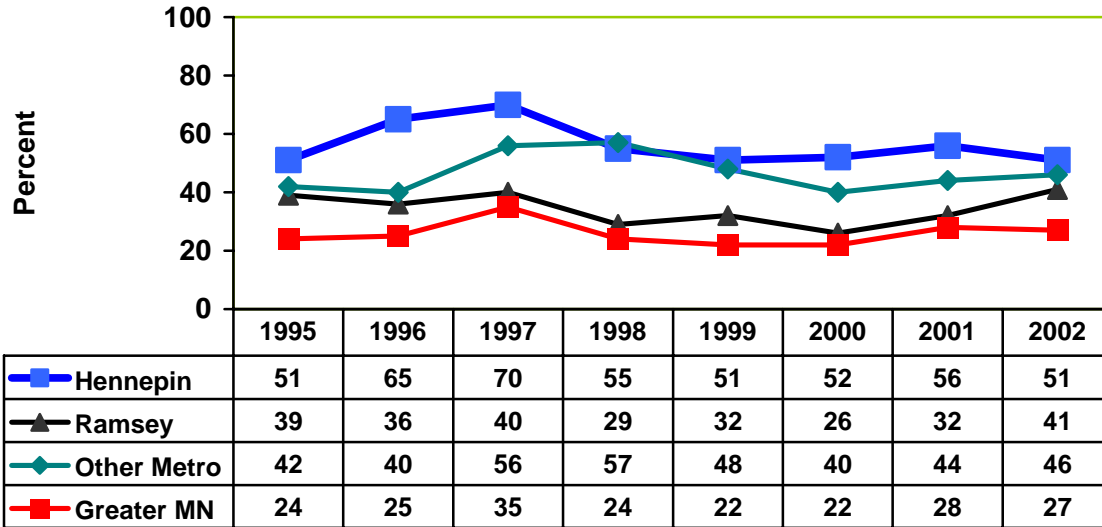
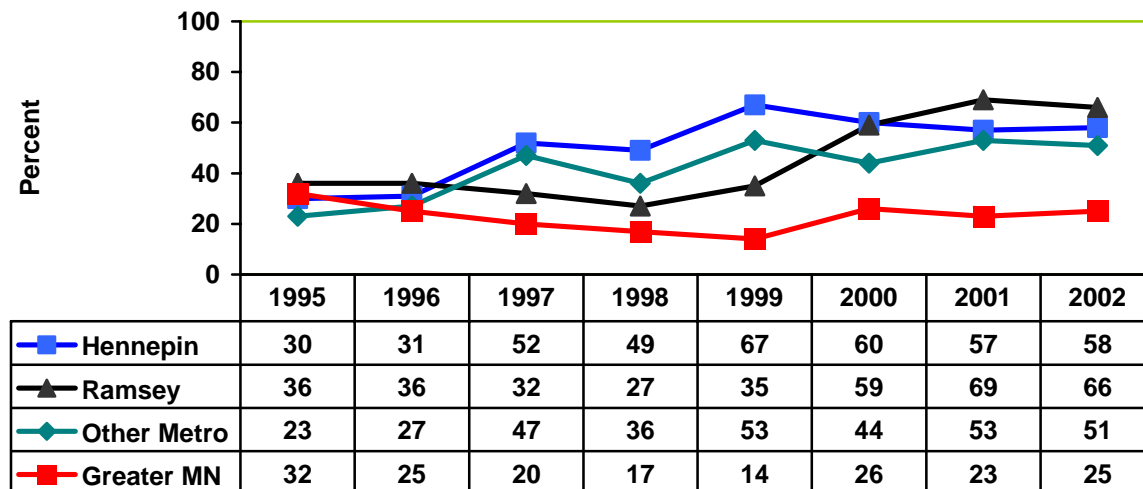


Figure 32 shows that, in 2001 and 2002, the mitigated durational departure rate for executed sentences was greater than 50% in the metro area counties. The rate in Ramsey County was higher than the rate in Hennepin County in the last two years.

Figure 32. Mitigated Durational Departure Rates by Region For Cases Where Guidelines Call for Prison





Departure Rates for Drug Cases by Drug Degree and Drug Type

Figure 33 shows that the mitigated dispositional departure rates were over 30% for all drug degrees. Mitigated dispositional departure rates were 32% for first degree offenses and 41% for second degree offenses. Among offenders with a criminal history score of zero, the mitigated dispositional departure rate was 41% for first degree cases and 61% for second degree cases.

**Figure 33: 2002 Mitigated Dispositional Departure Rates
Drug Offenses by Degree**

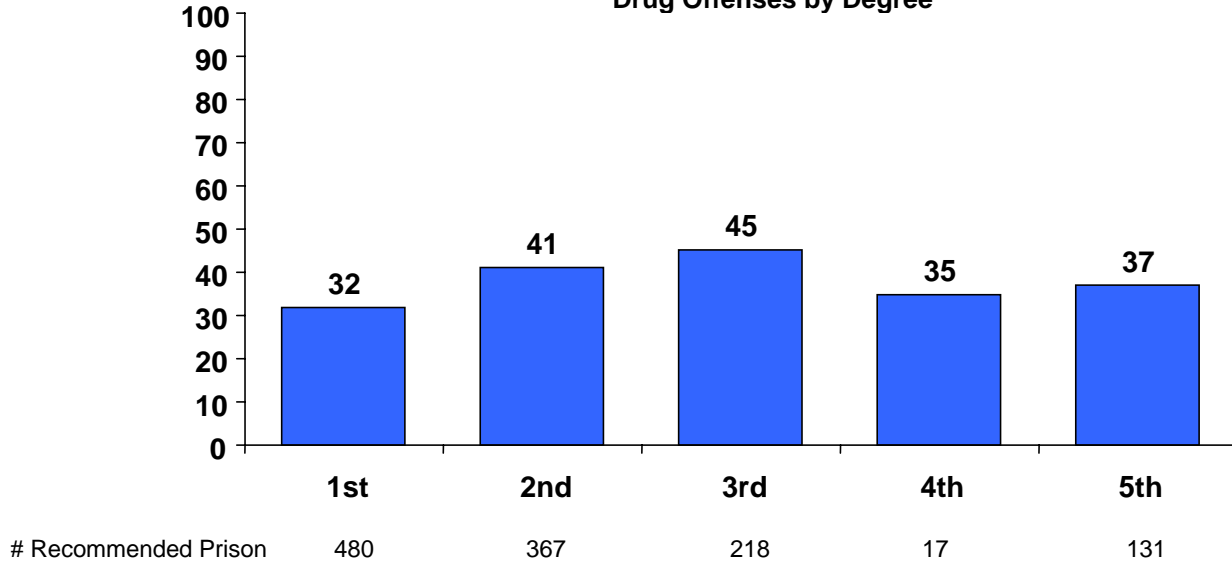
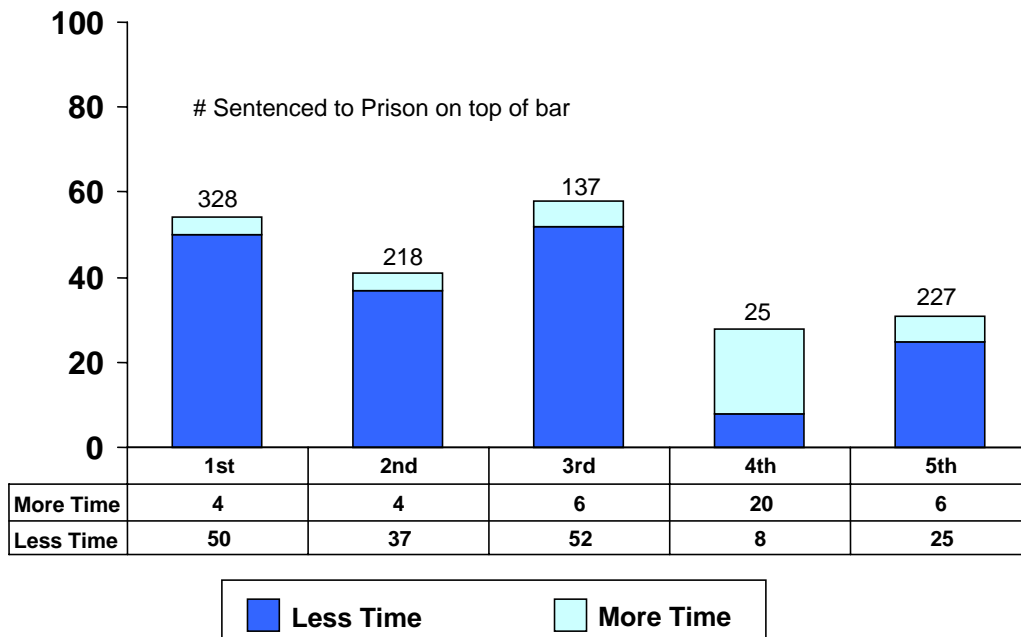


Figure 34 shows that mitigated durational departure rates were 37% for second degree offenses, and 50% or more for first and third degree offenses. The average reduction in sentence length from the presumptive sentence was 34 months for first degree cases, 26 months for second degree cases, and 15 months for third degree cases.

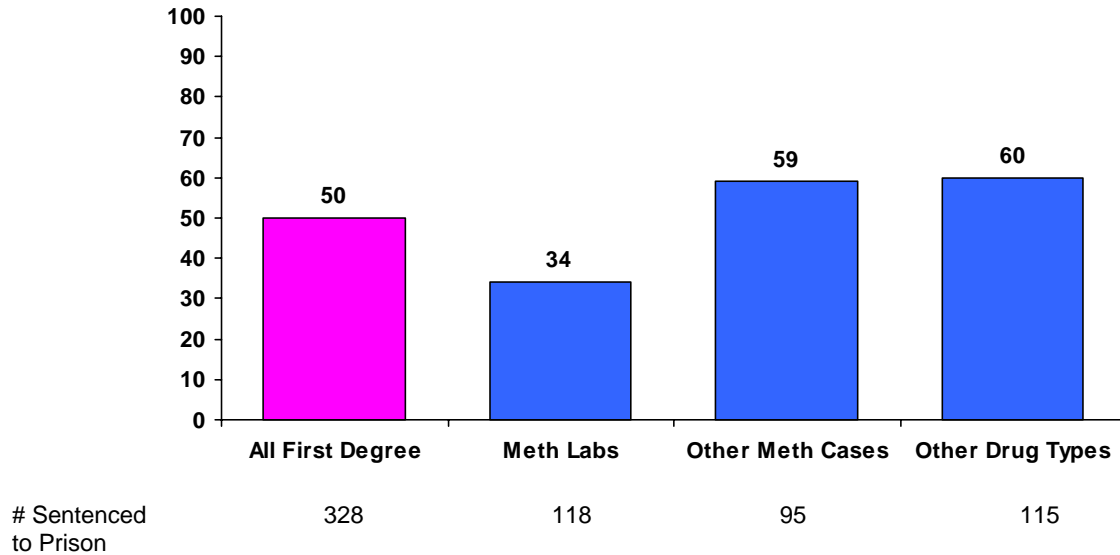
**Figure 34. Durational Departure Rates
Drug Offenses by Degree
Includes Only Offenders Sentenced to Prison in 2002**





Durational departure rates are lower for methamphetamine cases than for other drug types at all degrees. Among the first degree cases, the mitigated durational departure rate was lower for manufacture of methamphetamine than for other offenses, but the rate for sale or possession of methamphetamine was virtually identical to that for sale and possession of other drugs (Figure 35).

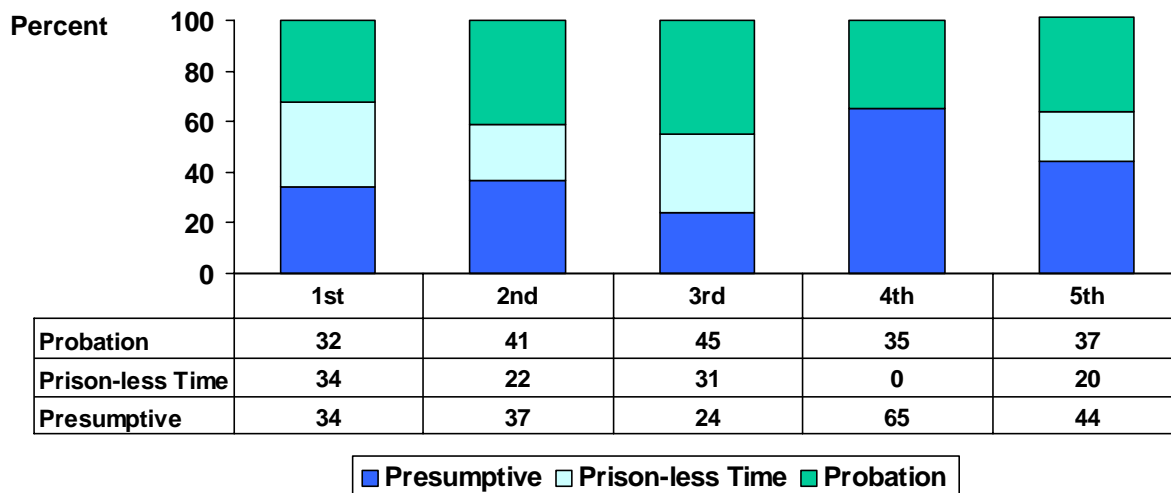
**Figure 35. First Degree Drug Offenses Sentenced in 2002
 Offenders Given Less than the Recommended Prison Time
 Executed Sentences Only**



Total Mitigated Departure Rates for the Most Serious Drug Cases

Presumptive Prison Cases: Departure rates are now so high that, among offenders recommended an executed sentence under the sentencing guidelines, more offenders receive departures than receive the recommended sentence. In 2002, only 35% of drug offenders recommended a prison sentence received the recommended sentence or longer; 37% received a probationary sentence and 28% received a prison sentence that reflected less time than called for under the guidelines. Figure 36 shows that only slightly more than a third of the first and second degree cases received the recommended sentence.

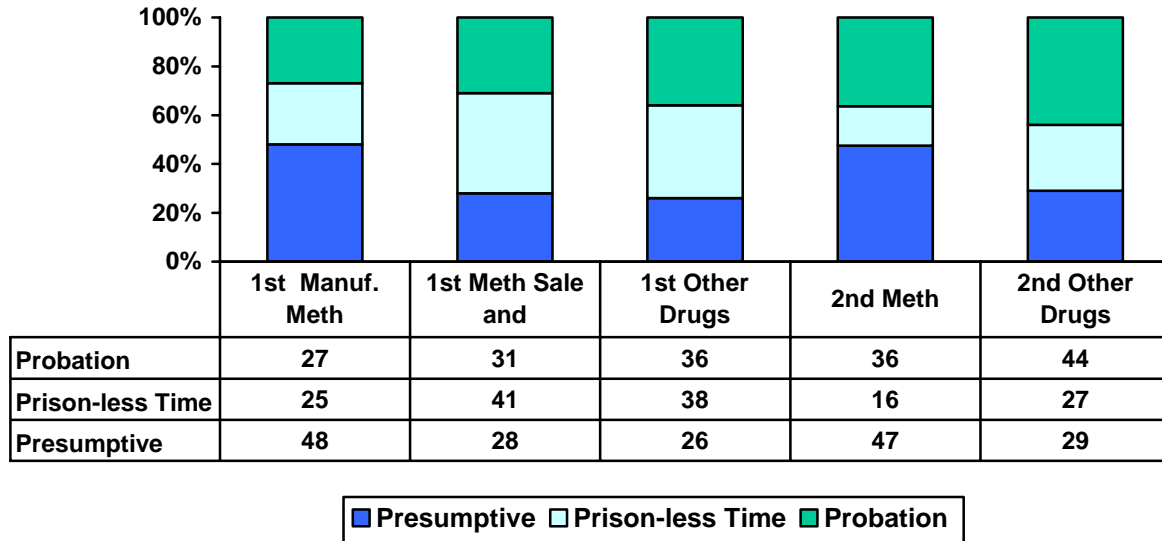
Figure 36. Sentence Imposed by Drug Degree – Presumptive Prison Cases





First and Second Degree Cases: The total mitigated departure rates are high for the first and second degree offenses, where all offenders, regardless of their criminal history score, are recommended prison sentences. While departure rates vary by drug type, they are high for all drug types, including the manufacture of methamphetamine. In 2002, only 48% of the first degree meth lab cases received the presumptive sentence, 27% received probation and 25% received a prison sentence that was shorter than that recommended by the guidelines (Figure 37).

**Figure 37. Sentence Imposed – First and Second Degree
 (All are Presumptive Prison)
 Methamphetamine Vs Other Drug Cases**



Proportionality Issues

The commission has been concerned about departure rates in drug cases for quite some time. Since the introduction of the degree-based drug sentencing structure, departure rates for drug cases have been higher than for most other types of offenses. Departure rates have been consistently high for drug offenses, with most of these departures being downward. The commission has questioned whether these departure rates should be viewed as expressing strong disagreement with its presumptive sentences for these offenses among various practitioners within the criminal justice system.

The area of greatest concern has been the departure rates for the first and second degree offenses. When only slightly more than one-third of those who are classified as the most serious drug offenders actually receive the presumptive sentence, the issue is raised whether this is a sign that the guidelines recommendations for these offenses need to be adjusted. Or perhaps it indicates that the current drug statutes, as they have evolved, may not adequately identify the most serious drug offenders and distinguish between the more serious and less serious offenders. Of offenses that had more than 50 cases sentenced in 2002 and where all offenders are recommended imprisonment, only two other offenses had smaller percentages of offenders who actually received the recommended sentence. These offenses are second degree assault and failure to register (as a sex offender). Both of those offenses have statutory mandatory minimum sentences, and therefore are presumptive commits under the guidelines, but are ranked at lower severity levels than the first and second degree drug offenses. Both offenses also have statutory provisions that allow for sentencing without regard to the mandatory minimum. The statutory maximums for these offenses are much shorter than those for the first and second degree drug offenses (10 years for second degree assault and 5 years for failure to register versus 30 years for the first degree and 25 years for the second degree drug offenses). No other offenses with more than 50 offenders sentenced in 2002, ranked at severity levels at which the first and second degree drug offenses are, and without mandatory minimums for first offenses had smaller



percentages of offenders who did not get at least the recommended prison sentence. Departure rates can fluctuate significantly from year to year for an offense in which a small number of cases are sentenced in any given year.



Comparison of Minnesota Drug Offenses to Other Minnesota Offenses

The Minnesota Sentencing Guidelines were created to provide rational and consistent sentencing policies. Sound policy requires that more severe punishments should be meted out for more serious crimes and to offenders with more severe criminal histories. The sentencing guidelines aim to quantify this principle by recommending appropriate sentences based on a typical offense. The sentencing guidelines commission assigns a severity level ranking to felony offenses in Minnesota; each severity level corresponds to a row on the sentencing guidelines grid that contains presumptive sentences that increase with the offender's criminal history score.

Chapter I of this report details how the drug laws in Minnesota have evolved since the inception of the sentencing guidelines in 1980. Subsequent chapters have detailed trends in drug offender sentencing leading to today, when only about one-third of drug offenders in Minnesota with presumptive prison sentences receive the sentence presumed under the sentencing guidelines. This chapter examines whether these changes have raised issues regarding the continued proportionality of the sentences for various types of offenses.

Severity Levels

Minnesota currently has five degrees of drug offenses, with first degree being the most severe and fifth degree being the least. The acts and amount of drugs constituting each offense are detailed in Appendix D. Table 11 (below) lists the severity level ranking for each drug offense and various other offenses included at the same severity level. The philosophy of rational and consistent sentencing policy assumes that offenses ranked at the same severity level are equally severe, and an offense is more severe than offenses ranked below it. Based on this premise, first degree drug offenses (the sale of 10 grams or simple possession of 25 grams of cocaine or methamphetamine) are equated with offenses that cause great bodily harm or death to the victim and the most severe sex offenses involving children under the age of 13 or force against the victim. Second degree drug offenses (sale of 3–10 grams or simple possession of 6–25 grams of cocaine or methamphetamine) are ranked with armed robbery, burglary with a dangerous weapon or assault, and offenses that result in the death of the victim.



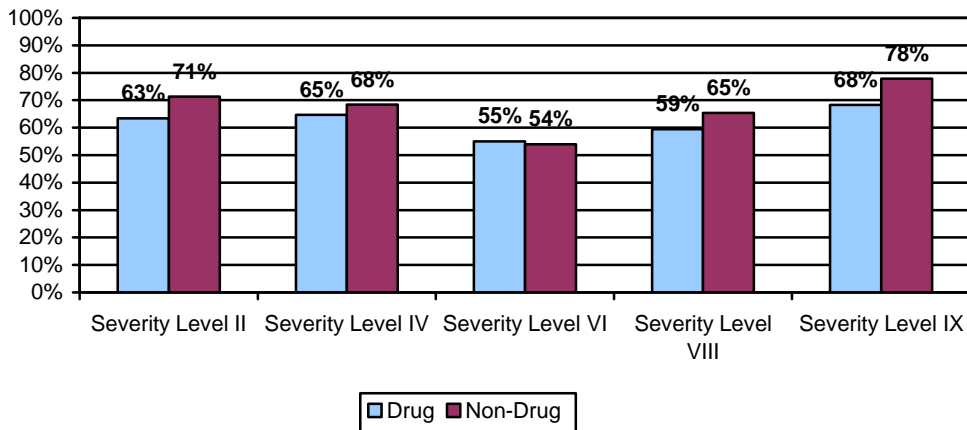
Table 11. Severity Level Rankings for Various Minnesota Felony Offenses

Severity Level IX	Severity Level VIII	Severity Level VI
1 st Degree Drug Offense	2 nd Degree Drug Offense	3 rd Degree Drug Offense
3 rd Degree Murder	Manslaughter	2 nd & 4 th Degree Sex Offenses
1 st Degree Manslaughter	Crim. Vehicular Homicide	2 nd Degree Assault
1 st Degree Sex Offense	2 nd & 3 rd Degree Sex Offenses	2 nd Degree Agg. Robbery
1 st Degree Assault	1 st Degree Agg. Robbery	Kidnapping
Kidnapping (great bodily harm)	Burglary (Assault or Weapon)	Burglary (Occupied Dwelling)
	Drive-By Shooting	Theft Over \$35,000
	1 st Degree Arson	
	Kidnapping (unsafe release or victim under 16)	
Severity Level IV	Severity Level II	
4 th Degree Drug Offense	5 th Degree Drug Offense	
3 rd & 5 th Degree Assault	Theft Related Offenses (\$501-2500)	
Domestic Assault	Damage to Property	
Terroristic Threats		
Harassment/Stalking		
Burglary		
Theft (from Person, of MV, of Firearm)		

Sentencing Practices

Data on actual sentencing practices reveals that drug offenders, particularly upper level drug offenders, are receiving sentences significantly different than other offenders at the same severity level. Figure 38 shows the imprisonment rates for drug and other offenders at the same severity level that are recommended an executed prison sentence under the sentencing guidelines.

Figure 38. Imprisonment Rates for Drug and Non-Drug Offenders Recommended an Executed Prison Sentence

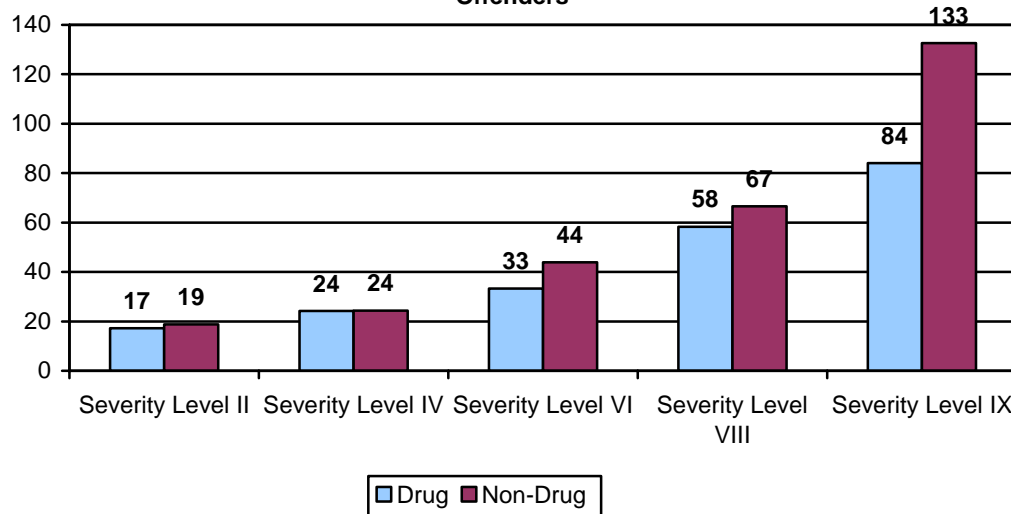




All offenses ranked at Severity Level VIII or above are presumed imprisonment, regardless of the offender’s criminal history score. For these offenses, first degree drug offenses are 10% less likely than similarly ranked non-drug offenses to be sentenced to imprisonment, while second degree drug offenses are 6% less likely to receive an executed prison sentence. For offenses ranked at the other severity levels, the offender’s criminal history score determines whether the presumptive sentence is recommended imprisonment or probation. Third degree drug offenders are slightly (1%) more likely than their non-drug counterparts to receive an executed prison sentence when the guidelines recommend imprisonment, fourth and fifth degree drug offenders are less likely (3% and 8% respectively) to be sentenced to imprisonment when recommended by the guidelines. Overall, sentencing judges are more likely to depart from the sentencing guidelines recommendation of imprisonment for drug offenders than for non-drug offenders.

Similar trends continue when looking at sentence durations for those offenders sentenced to imprisonment. Figure 39 shows the average sentence lengths for drug and non-drug offenders ranked at the same severity level.

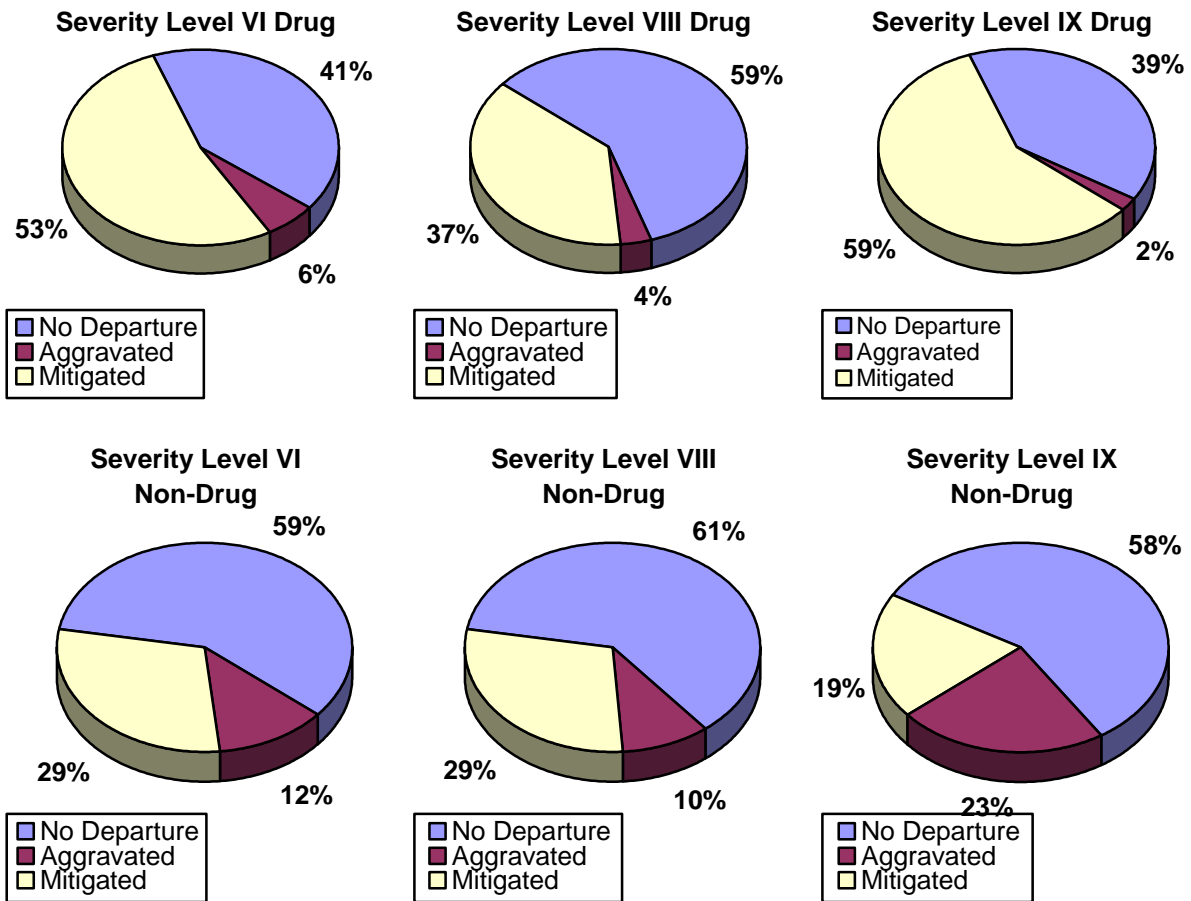
Figure 39. Average Sentence Length for Drug and Non-Drug Offenders



Several factors may influence the average sentence length for drug and non-drug offenders ranked at the same severity level. Because the recommended sentence is based on criminal history as well as offense ranking, differences in the criminal history scores of offenders could result in differences in average sentence lengths. Additionally, statutory changes have created 144-month presumptive sentences for first degree criminal sexual conduct offenses committed on or after August 1, 2000, despite the offense’s ranking at Severity Level IX. Even taking these factors into consideration, dramatic differences in durational departure rates between upper level drug offenses and the non-drug offenses at the same severity level appear to be a significant factor in the differences in average sentence length. Figure 40 shows durational departure rates for Severity Levels VI, VIII, and IX drug and non-drug offenders that received an executed prison sentence.



**Figure 40: Durational Departure Rates for Drug and Non-Drug Offenders
Ranked at Severity Levels VI – IX**



These graphs demonstrate that drug offenses are treated differently than non-drug offenses; drug offenders are far more likely to receive a shorter sentence than the presumptive sentence, and far less likely to receive a longer one, when compared to their non-drug counterparts.

The imprisonment rates, average sentence lengths, and departure rates for drug offenders raise the question as to whether Minnesota's drug offense sentencing provisions are disproportionate to the severity of the conduct generally involved. Appendix E details sentencing practices for some specific offenses ranked at the same severity level as drug offenses.

Comparison of Minnesota Drug Sentences to Other States

Comparing drug offense sentencing provisions among states presents many challenges. Minnesota is currently the only state in the upper midwest to have a sentencing guidelines system in place, making it impossible to compare recommended sentences and departure rates with our neighboring states (Wisconsin recently reestablished its sentencing guidelines commission and is beginning to review their sentencing practices). Additionally, every state defines offenses differently. States differ dramatically in their definition of drug offenses relating to criminal act (sale, manufacture, possession), drug involved (powder cocaine, crack cocaine, methamphetamine, etc.) and the amount of drug involved.

In order to compare the proportionality of Minnesota's drug sentencing structure to other states' sentencing provisions, the commission adopted a two-pronged approach. First, the commission examined the structure of drug offenses in other states in the upper midwest. Secondly, the commission collected information from other states that utilize a sentencing guidelines structure for criminal sentencing, examining statutory structure, recommended sentences, and departure rates from guidelines' sentences. This dual approach, though not perfect, provides the best means available to compare Minnesota's drug offense sentencing on a regional and national basis.

Minnesota In Relation to the Upper Midwest

The commission studied drug offense provisions from Illinois, Iowa, Michigan, North Dakota, South Dakota, and Wisconsin. Because these states do not have sentencing guidelines to govern sentencing, it is impossible to compare presumptive sentences from these states. Instead, the commission utilized statutory maximum sentences, as prescribed by the legislature of each state, to compare sentencing provisions. Because most felony-level drug offenses in Minnesota involve powder cocaine, crack cocaine, or methamphetamine, the following information focuses on drug offenses in the upper midwest involving these drugs.

It is important to emphasize that these sentences do not reflect the sentences actually being pronounced by judges in these states, but rather the cap on the sentence length established by statute. This approach allows for a comparison of the overall drug sentencing structure between these states; an offense with a 30-year statutory maximum sentence in Minnesota should be proportional to an offense with a similar statutory maximum sentence in other states. Because of the dramatic differences in the ways in which crimes are defined and the limited availability of actual sentencing practices data from other states, this approach is the best means available to compare Minnesota to neighboring states.

Minnesota

Minnesota's drug offenses are separated into five degrees, based on the amount of the drug involved. Powder cocaine, crack cocaine, and methamphetamine are generally treated equally under Minnesota drug provisions, with the same threshold amounts for each drug distinguishing between degrees. Table 12 breaks down the definition of Minnesota's drug offenses for powder cocaine, crack cocaine, and methamphetamine. Possession with intent to deliver offenses are treated as sale offenses under Minnesota's drug sentencing provisions. Fourth degree includes a small number of offenses that do not involve any of these drugs.



Table 12. Minnesota Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

	Stat. Max.	Sale Thresholds	Possession Thresholds
First Degree	30 years	10 grams or more	25 grams or more
Second Degree	25 years	3 grams – 10 grams	6 grams – 25 grams
Third Degree	20 years	Less than 3 grams	3 grams – 6 grams
Fourth Degree	15 years	---	---
Fifth Degree	5 years	---	Less than 3 grams

Minnesota is the only state among upper midwest comparative states that separates a manufacture offense from sale or distribution offenses. Under Minnesota statute, the manufacture of any amount of methamphetamine is classified as a first degree offense.

Illinois

Illinois separates drug offenses based on the amount of drug involved and uses the same threshold amounts for powder cocaine, crack cocaine, and methamphetamine. Table 13 breaks down Illinois' drug offenses involving these drugs. Possession with intent to deliver offenses are treated as sale/manufacture offenses under Illinois' drug sentencing provisions.

Table 13. Illinois Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds	Possession Thresholds
60 years	900 grams or more	---
50 years	400 grams – 900 grams	900 grams or more
40 years	100 grams – 400 grams	400 grams – 900 grams
30 years	15 grams – 100 grams	100 grams – 400 grams
15 years	1 gram – 15 grams	15 grams – 100 grams
7 years	Less than 1 gram	---
3 years	---	Less than 15 grams

Iowa

Iowa has three separate sale/manufacture offenses separated by the amount of drug involved in the offense. Separate threshold amounts are established for powder cocaine, crack cocaine, and methamphetamine. Simple possession of any amount of these three drugs is a non-felony offense with a statutory maximum sentence of one year in jail. Possession with intent to deliver offenses are treated as sale/manufacture offenses. Table 14 breaks down Iowa's drug offenses involving powder cocaine, crack cocaine, and methamphetamine.

Table 14. Iowa Sale/Manufacture Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds		
	Powder Cocaine	Crack Cocaine	Methamphetamine
50 years	More than 5,000 grams	More than 50 grams	More than 5,000 grams
25 years	500 grams – 5,000 grams	5 grams – 50 grams	5 grams – 5,000 grams
10 years	500 grams or Less	5 grams or Less	5 grams or Less



Michigan

Michigan separates offenses based on the amount of drug involved and uses the same threshold amounts for powder cocaine and crack cocaine. However, no threshold amounts are established for offenses involving methamphetamine; the sale or manufacture of any amount of methamphetamine carries a statutory maximum sentence of 20 years while the possession of any amount of methamphetamine carries a maximum sentence of 10 years. Table 15 breaks down Michigan's drug offenses involving these drugs. Possession with intent to deliver offenses are treated as sale/manufacture offenses under Michigan's drug sentencing provisions.

Table 15. Michigan Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds: Powder and Crack Cocaine	Possession Thresholds: Powder and Crack Cocaine
Life	1,000 grams or More	1,000 grams or More
30 years	450 grams – 1,000 grams	450 grams – 1,000 grams
20 years	Less than 450 grams	50 grams – 450 grams
4 years	---	Less than 50 grams
Stat. Max.	Sale/Manufacture Thresholds: Methamphetamine	Possession Thresholds: Methamphetamine
20 years	Any Amount	---
10 years	---	Any Amount

Michigan drug offense provisions separate an additional offense at the bottom end of both sale/manufacture and possession offenses involving powder and crack cocaine. Sale/Manufacture of 50 grams through 450 grams and sale/manufacture of less than 50 grams are defined as separate offenses, but both have the same 20-year statutory maximum sentence. Similarly, possession of 25 grams through 50 grams and possession of less than 25 grams have the same 4-year statutory maximum sentence.

North Dakota

In North Dakota, powder cocaine and methamphetamine are treated equally, while crack cocaine has a lower threshold amount. Drug categories have only one threshold for sale/manufacture and possession. Table 16 breaks down North Dakota's drug offenses involving these drugs. Possession with intent to deliver offenses are treated the same as sale/manufacture offenses.

Table 16. North Dakota Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds: Powder Cocaine and Methamphetamine	Possession Thresholds: Powder Cocaine and Methamphetamine
Life	50 grams or More	---
20 years	Less than 50 grams	---
10 years	---	50 grams or More
5 years	---	Less than 50 grams
Stat. Max.	Sale/Manufacture Thresholds: Crack Cocaine	Possession Thresholds: Crack Cocaine
Life	5 grams or More	---
20 years	Less than 5 grams	---
10 years	---	5 grams or More
5 years	---	Less than 5 grams



South Dakota

South Dakota’s drug offense provisions include only one offense that encompasses sale, manufacture, possession, and possession with intent to deliver; powder cocaine, crack cocaine, and methamphetamine are all included in this offense, which has a statutory maximum sentence of 10 years.

Wisconsin

Wisconsin utilizes an amount-based system for its sale/manufacture of drug offenses. Powder and crack cocaine are treated equally while methamphetamine has separate threshold amounts. Like Iowa, simple possession of any amount of these three drugs is a non-felony offense with a statutory maximum sentence of one year in jail. Possession with intent to deliver offenses are treated the same as sale/manufacture offenses. Table 17 breaks down Wisconsin’s drug offenses involving powder cocaine, crack cocaine, and methamphetamine.

Table 17. Wisconsin Sale/Manufacture Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds	
	Powder and Crack Cocaine	Methamphetamine
40 years	More than 40 grams	More than 50 grams
25 years	15 grams – 40 grams	10 grams – 50 grams
15 years	5 grams – 15 grams	3 grams – 10 grams
12.5 years	1 gram – 5 grams	3 grams or Less
10 years	1 gram or Less	- - -

In comparing Minnesota drug offenses to those in other upper midwestern states, a couple of differences seem striking. Minnesota is the only state in the region that treats the manufacture of a drug differently than the sale of that drug. Additionally, Michigan and Minnesota are the only regional states that disregard their amount-based sentencing structure for a methamphetamine-related offense (Minnesota for manufacture only and Michigan for all methamphetamine offenses). While Michigan provides for a statutory maximum sentence equal to the lowest level sale/manufacture provisions for these offenses, Minnesota equates them to the highest.

There also appear to be significant differences between Minnesota and other upper midwestern states in the threshold amounts used to distinguish drug offenses. While other regional states that use amount-based drug structures have their top-level thresholds between 40 grams in Wisconsin and 5,000 grams in Iowa, Minnesota’s first degree threshold is 10 grams for sale offenses and 25 grams for possession offenses. For all offenses with comparable statutory maximum sentences, Minnesota has the lowest thresholds amounts (most severe provisions) of any state in the upper midwest.

Minnesota in Relation to Other Sentencing Guidelines States

Comparing drug offense sentencing provisions among states that utilize sentencing guidelines offers greater insight into sentencing practices among various states. There are three types of sentencing guidelines structures. The first type involves mandatory guidelines where judges are required to pronounce the presumptive sentence or a sentence within the range called for by the guidelines. The second type is voluntary, where the guidelines recommend a sentence, but judges are not bound to the recommendation and are completely free to pronounce any sentence within the statutory limits for the offense. Finally, Minnesota and many other states utilize sentencing guidelines that lie between these two extremes. In Minnesota, the judge may depart from the guidelines’ presumptive sentence only when “substantial and compelling reasons” exist to justify the departure.



By studying sentencing provisions from other guidelines' states, we are able to compare the sentences actually deemed appropriate for drug offenses, rather than simply comparing the relative severity with which each state's legislature viewed the offense when assigning statutory maximum sentences. We can also gain insight into how judges in each state view the proportionality of the drug sentencing provisions and recommended sentences in their states by comparing departure rates among the various guidelines' states.

Table 18 outlines the most serious drug sale/possession with intent to sell offenses in states that utilize sentencing guidelines. The table includes the maximum sentence established by statute for the offense, the presumptive sentence for the offense (assuming an offender with no criminal history), and the amount of cocaine (all states included in the table treat powder and crack cocaine equally) and methamphetamine necessary for this offense. All of these values assume that the offense is a first-time drug offense with no aggravating factors (such as an aggravating factor of the offense occurring in a school zone) involved. Four of these states (Kansas, Missouri, Utah, and Washington) have drug offense provisions that are non-weight based; Missouri allows for intermediate sanctions in lieu of the guidelines presumptive duration indicated.

**Table 18. Comparison of Drug Sale/Possession with Intent Offenses
 Among States With Sentencing Guidelines**

	Statutory Maximum	Presumptive Duration	Cocaine Threshold	Meth Threshold
Minnesota	30 years	86 mos	10 grams	10 grams
Arkansas	Life	480 mos	400 grams	400 grams
Kansas	17 years	15 mos (stayed or executed)	N/A	N/A
Maryland	20 years	60 mos	448 grams	448 grams
Missouri	UNKNOWN	60-72 mos (I.S.)*	N/A	NA
North Carolina	23 years 3 mos	225-279 mos	400 grams	400 grams
Oregon	20 years	16-18 mos	10 grams	10 grams
Pennsylvania	20 years	60-78 mos	1,000 grams	1,000 grams
South Carolina	30 years	300-360 mos	400 grams	400 grams
Utah	15 years	Probation	N/A	N/A
Virginia	20 years-Life	20 years-Life	5,000 grams	100 grams
Washington	10 years	15-20 mos (cocaine) 21-27 mos (meth)	N/A	N/A

* I.S. indicates that alternative sanctions are possible in lieu of the sentence provided.

Table 19 outlines the same information for the most serious possession offenses in states that utilize sentencing guidelines. Kansas, Missouri, Pennsylvania, Utah, and Washington do not distinguish between drug amounts for simple possession offenses. Arkansas' statute assumes that possession of more than 1 gram of cocaine or 200 milligrams of methamphetamine involves intent to deliver, although this assumption may be challenged by the defense for any amount of drug. Maryland's statute states that quantities that reasonably indicate intent are treated as sale offenses, although no definitive amount is provided.



Table 19. Comparison of Drug Possession Offenses Among States With Sentencing Guidelines

	Statutory Maximum	Presumptive Duration	Cocaine Threshold	Meth Threshold
Minnesota	30 years	86 mos	25 grams	25 grams
Arkansas	UNKNOWN	3-10 mos (A.S.*)	NA	NA
Kansas	17 years	11 mos stayed	N/A	N/A
Maryland	UNKNOWN	Misdemeanor	NA	NA
Missouri	UNKNOWN	Probation or 12-24 mos	N/A	N/A
North Carolina	23 years, 3 mos	225-279 mos	400 grams	400 grams
Oregon	10 years	36 mos probation, 90 days jail	10 grams	10 grams
Pennsylvania	1 year	1 mo	N/A	N/A
South Carolina	30 years	300-360 mos	400 grams	400 grams
Utah	5 years	Probation	N/A	NA
Virginia	20 years-Life	20 years-Life	5,000 grams	100 grams
Washington	5 years	0-90 days (cocaine) 0-60 days (meth)	N/A	N/A

* A.S. indicates that alternative sanctions are possible in lieu of the sentence provided.

Another effective way to compare drug offense provisions among guidelines' states is to compare the presumptive sentence among the various states for the same hypothetical offender. Table 20 does this for two hypothetical offenders. Offender A was convicted of selling 10 grams of cocaine and has no prior record; Offender B was convicted of possessing 25 grams of cocaine and also has no prior record. Both of these offenders would be guilty of a first degree drug offense in Minnesota.

Table 20. Comparison of Presumptive Sentences for Hypothetical Drug Offenders A and B

	Offender A (Sale of 10 grams)	Offender B (Possession of 25 grams)
Minnesota	86 months	86 months
Arkansas	120 months	3-10 months (I.S.*)
Kansas	15 months stayed or executed	11 months stayed
Maryland	6-36 months	Misdemeanor
Missouri	60-72 months (I.S.*)	Probation or 12-24 months
North Carolina	8-16 months (I.S.*)	4-8 months (I.S.*)
Oregon	16-18 months	36 mos. probation; 90 days jail
Pennsylvania	9-16 months (I.S.*)	1 month
South Carolina	36-120 months	36-120 months
Utah	16 months stayed	9 months stayed
Virginia	12 months	Probation
Washington	15-20 months	0-90 days

* "I.S." indicate that intermediate sanctions are possible in lieu of the sentence provided.

After comparing the presumptive sentences in these states, we can also compare the rate at which judges pronounce the recommended sentence. Table 21 provides the departure rates from the presumptive guidelines sentence for drug offenders in various states.



**Table 21. Departure Rates for Drug Offenders
 Among States With Sentencing Guidelines**

	Data Year	Upward Departure	Downward Departure	No Departure
Minnesota *	2002	7%	25%	66%
Arkansas	NO DATA AVAILABLE			
Kansas	FY2002	5%	12%	83%
Maryland	2001	4%	55%	42%
Missouri	FY2003	10%	3%	87%
North Carolina	NO DEPARTURES – MANDATORY GUIDELINES			
Oregon	1998	9%	15%	77%
Pennsylvania *	2000	5%	8%	82%
South Carolina	NO DATA AVAILABLE			
Utah				
Virginia	FY2002	10%	12%	78%
Washington	FY2002/2003	2%	2%	96%

* 2% of Minnesota drug offenders received a mixed departure (downward disposition and upward duration or vice versa). 4% of the drug offenders sentenced in Pennsylvania received a procedural departure.

This table shows that overall departure rates for drug offenses in other guidelines states are significantly less than the departure rate under the sentencing guidelines in Minnesota. Except for Maryland, drug offenders in all other sentencing guidelines states are at least 11% more likely to receive the presumptive guidelines sentence than Minnesota drug offenders.

Information presented on drug offense sentencing provisions in other sentencing guidelines states show that Minnesota’s drug laws are harsher than most other states. Looking at the most severe sale offenses, only Arkansas, North Carolina, South Carolina, and Virginia provide for longer presumptive sentences than Minnesota. Yet, the threshold amounts to reach the most severe sentence in these states are at least 40 times greater for powder or crack cocaine and 10 times greater for methamphetamine. Only Oregon has a threshold amount even remotely close to Minnesota for sale offenses, and Oregon’s presumptive sentence is approximately five times shorter than Minnesota’s. The gap between Minnesota’s drug sentencing provisions and those in other guidelines’ states is even more dramatic for possession offenses.

The disproportionality in drug laws between states becomes readily apparent when examining the recommended sentences for hypothetical drug offenders A (sale of 10 grams of cocaine) and B (possession of 25 grams of cocaine). Recommended sentences are almost universally longer in Minnesota than in other states. South Carolina provides for an 84-month range of recommended sentences (36-120 months) for both offenders, allowing a presumptive sentence to be either longer or shorter than Minnesota’s without a departure. Excluding South Carolina, only Arkansas provides for a longer presumptive sentence than Minnesota for Offender A; all other states have a recommended sentence at least 50 months shorter than Minnesota or allow the sentencing judge to pronounce alternative sanctions instead of imprisonment without departure. For Offender B, all other sentencing guidelines states (except South Carolina, which could again be either longer or shorter) have a presumptive sentence at least 50 months shorter than Minnesota. The significant differences in departure rates for drug offenses in Minnesota may be a reflection of the severity of our state’s drug sentencing provisions in relation to other states across the country.



Section Three





Effectiveness of Drug Courts

As the criminal justice system encounters a growing number of offenders involved in substance abuse and related criminal behaviors, the use of drug courts have been growing nationwide as an alternative to traditional incarceration and to reduce future recidivism. This chapter examines the structure and operation of drug courts and their effectiveness across the country, as well as in Minnesota.

Drug courts are a coordinated effort by treatment providers and the criminal justice community to address drug addiction as the root cause of criminal activity for a significant population of offenders. This approach was developed in response to the dramatic increase in the number of drug offenders entering the court system during the last 20 years. In 1980, only 6% of state prison inmates across the country were drug offenders. By 1998, that number had risen to 21%.¹ Faced with increasing prison populations, reduced resources, and skyrocketing administrative costs, drug courts have emerged as a means of easing the burden drug offenders place on the criminal justice system while targeting the unique needs of these offenders.

There are currently about 500 adult drug courts operating in the United States and U.S. territories, with hundreds more planned.² In Minnesota, five drug courts are in operation in Dodge, Hennepin, Ramsey, St. Louis, and Stearns counties. The typical drug court offender has a long history of drug use, prior drug treatment failures, a potentially high rate of health and social problems, and a large number of previous contacts with the criminal justice system.³ These addicts generally will not voluntarily enter a treatment program. Through mandated treatment, court supervision, regular drug testing, and rewards for successful steps in the treatment process, drug courts aim to provide the carrot and the stick necessary to motivate drug offenders to fight their addiction and break the destructive cycle of drug use.

There are many ways to measure the effectiveness of drug courts. Many evaluations focus on the recidivism rate of offenders handled by drug courts in relation to offenders handled through the traditional criminal justice system. Other studies examine the cost savings to the criminal justice system associated with drug courts. Because Minnesota's drug courts have been in operation for a relatively short period of time, only one evaluation has been completed. The Hennepin County Drug Court, which began operating in January 1997, completed a process and outcome evaluation in May 1999. Because of the limited availability of Minnesota data, national evaluations of recidivism and cost savings will be summarized to examine the effectiveness of drug courts.

Structure and Operation of Drug Courts

While specific drug court models differ significantly, drug courts generally share the same basic structure and many common components. Programs typically last from one to two years, followed by a period of aftercare and administrative probation. They include a continuum of drug treatment and life skill training to meet the individual needs of offenders, and feature graduated phases with varied degrees of supervision and drug testing. Because each phase generally includes clearly defined program and sobriety goals, the individual offender maintains personal responsibility for advancement to less restrictive phases.

¹ Office of National Drug Control Policy, *Drug Treatment in the Criminal Justice System* (Washington, D.C., March 2001) 1.

² Steven Blenko, *Research on Drug Courts: A Critical Review*, 2001 Update (New York: The National Center on Addiction and Substance Abuse at Columbia University, June 2001) 5.

³ *Ibid.* Pg. 1.



Drug courts also typically utilize immediate and highly structured sanctions for program violations. While reduced drug test frequency and less restrictive supervision offer incentives, local jail time and more frequent drug testing offer punishment for failed or missed drug tests, missed appointments, failure to complete treatment, new offenses, or other program violations. The severity of sanctions usually increases with the number of violations.

A description of the structure of Minnesota's five drug courts is provided in Appendix F.

Hennepin County Drug Court Evaluation

The Minnesota Citizens Council on Crime and Justice completed a process and outcome evaluation of the Hennepin County Drug Court in May 1999.⁴ The Hennepin County Drug Court Steering Committee articulated the following process and outcome goals, which provided the basis for the evaluation.

Process Goals

1. Time from booking to first appearance will not exceed two days;
2. Time from first appearance to disposition will not exceed three weeks, except for cases going to trial;
3. Total number of appearances will be lower than previous levels (5-6 appearances);
4. Offenders will enter treatment sooner and participate longer.

Outcome Goals

1. Drug court participants will reduce drug usage;
2. Program participants will be employed or in school while under judicial supervision;
3. Program participants will have lower rates of recidivism.

The following section summarizes the findings of the Citizens Council report. More detailed information is available in the *Evaluation of the Hennepin County Drug Court*.

Process Goals

The evaluation showed that three of the four process goals for the Hennepin County Drug Court were met. The average time from booking to first court appearance was reduced to 1.4 days. Court appearances by drug court defendants were reduced to an average of three appearances, half of the prior average. By reducing the time from booking to first court appearance, the drug court reduced the amount of time from booking until the offender enters treatment. The evaluation also showed that participants were more likely to complete their treatment program. While the drug court failed to meet its case length goal, the average time from first appearance to disposition was reduced to four weeks.

Drug Usage

Drug usage for drug court participants was assessed using treatment completion rates and drug testing results. During the first year of the drug court, 60.2% of clients completed drug treatment, compared with 50% of clients in the same programs the previous year. Drug testing results from the first court appearance were also compared to results of tests administered after the first appearance. While 95% of

⁴ Rebecca Ericson and Sarah Welter, *Evaluation of the Hennepin County Drug Court* (Minneapolis: Minnesota Citizens Council on Crime and Justice, 1999).



participants tested positive at their first appearance, the percentage of offenders testing positive on one or more later tests was reduced to 67%.

Employment Status

The evaluation was unable to obtain data on the employment status of drug court clients at the time of booking, making an examination of this goal impossible.

Recidivism

The evaluation found that drug court participants had statistically similar recidivism rates as the pre-drug court comparison group. Table 22 breaks down the recidivism rates reported in the evaluation. The Total Recidivism Rate includes new felony and gross misdemeanor charges, and misdemeanor convictions.

Table 22. Recidivism Rates from Hennepin County Drug Court Evaluation

	Drug Court	Pre-Drug Court
Total Recidivism Rate	21.5%	16.9%
New Felony and Gross Misd. Charges	13.9%	13.3%
New Felony Charges	12.2%	11.6%
New Felony Drug Charges	7.3%	8.2%

The recidivism rates from this evaluation should be considered preliminary, and may not reflect the changes produced by the drug court. Recidivism studies generally require longer periods of evaluation to reflect a participant’s true likelihood to re-offend. Additionally, the Minneapolis police began the CODEFOR initiative at about the same time the Hennepin County Drug Court began to operate. Not in effect during the time frame of the pre-drug court comparison group, CODEFOR, which targeted low-level livability offenses but was credited with an increase in felony arrests in Minneapolis, was examined for its effect on the drug court group. Detailed analysis on the impact of CODEFOR on the recidivism rates is not available, but estimates suggest felony recidivism rates as low as 8% (instead of 12.2%) without the CODEFOR initiative. Finally, the size of the targeted group and eligibility of participants may impact recidivism rates. A program, like Hennepin County’s, that accepts all drug offenders may be expected to have higher recidivism rates than programs with more selective participant criteria.

Cost Analysis

Hennepin County has not completed a thorough cost-benefit analysis of the drug court. However, it is estimated that the county saves about a quarter of a million dollars a year in local jail bed days. Additionally, indirect savings are attributed to judicial efficiency. In 1997, the drug court, staffed primarily by one judicial officer and various clerical staff, handled 31% of the felony cases filed in Hennepin County. The county does not currently have plans to conduct additional evaluations of the drug court.

National Evaluations

Accurately measuring the effectiveness of drug courts through recidivism rates or cost savings requires in-depth analysis over a significant period of time. Since most Minnesota programs are in their infancy, this type of analysis is not currently available. However, analyses from drug courts across the country are summarized below.

Recidivism

Drug court evaluations typically show reduced recidivism rates for drug court graduates. In 1997, the General Accounting Office reviewed 20 drug court studies. Eighteen of the 20 studies showed that drug

court graduates had lower recidivism rates as compared to offenders who dropped out or never entered a program.⁵ Both the Delaware Adult Drug Court and the Santa Clara County Drug Court evaluations reported fewer than 5% of participants were rearrested during treatment. The Ventura County evaluation showed a 12% re-arrest rate for drug court participants compared to a 32% re-arrest rate for the comparison group over an 8-month period. The Jackson County, Missouri evaluation found a 4% re-arrest rate for drug court participants compared to a 13% re-arrest rate for the comparison group over a 6-month period.⁶

More recent studies have focused on the distinction between program participation and program completion, and found that drug court graduation is the critical indicator of long-term success. In 2001, the National Drug Court Institute reviewed the North Carolina Drug Treatment Court evaluation and found that 18% of program graduates had been re-arrested 12 months after discharge compared to 41% of non-graduates, and 44% of the comparison group.⁷ The Dallas County DIVERT Court outcome evaluation showed arrest rates for graduates at 15.6%, compared to 39.5% for program dropouts and 48.7% for the comparison group.⁸

In October 2003, the New York State Adult Drug Court evaluation completed its survey of six courts located in the Bronx, Brooklyn, Queens, Suffolk, Syracuse, and Rochester.⁹ All six drug courts in the state had reduced post-arrest and post-program recidivism for at least a three-year period. Results varied from court to court. Queens drug court showed an almost 50% reduction in recidivism between groups (29% for drug court participants compared to 55% for the comparison group) while the Syracuse drug court showed only a 13% reduction (56% to 64%). In addition, the study showed that recidivism rates either declined or remained stable for drug court graduates during the one-year post-program period demonstrating long-term effects of drug court on graduates. In Brooklyn and Rochester, the only two courts tested, participants were shown to be less likely to recidivate at two years post-program.

Cost Analysis

National studies have also focused on the cost benefits of drug courts to the criminal justice system. Evaluations consistently show that drug courts are able to process cases more quickly than traditional courts. In a review of more than 20 evaluations, the National Center on Addiction and Substance Abuse at Columbia University concluded that drug courts conserve jail bed space by reducing pretrial detention.¹⁰ Cost savings are also realized from the faster case processing and reduction in number of appearances between charging and disposition.

Other evaluations have reported additional savings in probation supervision, police overtime, and other criminal justice system costs.¹¹ An evaluation of the Multnomah County Drug Court in Portland, Oregon, with 440 annual drug court client admissions, estimated criminal justice system cost savings at \$2,476,795 over a two-year period. Figuring in savings in victimization, theft reduction, public assistance and medical claims, the state of Oregon estimated a total savings of \$10,223,532. In Riverside County, California, the evaluation of the 102-client program estimated similar costs with a total state savings in one year of \$2,047,608. Evaluators from the Honolulu Drug Court estimated that 43% of drug court clients would have been incarcerated if not for the drug courts, amounting to an estimated cost savings of between \$677,000 and \$854,000.

⁵ U.S. General Accounting Office, *Drug Courts: Overview of Growth, Characteristics, and Results* (Washington D.C., 1997).

⁶ National Drug Court Institute, *Drug Court Review I*, no. 1 (Alexandria, VA: Summer 1998) 38.

⁷ National Drug Court Institute, *Drug Court Review IV*, no. 1 (Alexandria, VA: Summer 2002) 108-09.

⁸ National Drug Court Institute, *Drug Court Review II*, no. 2 (Alexandria, VA: Winter 2001) 119.

⁹ Michael Rempel et al., *The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts* (New York: Center for Court Innovation, October 2003).

¹⁰ Steven Blenko, *Research on Drug Courts: A Critical Review* (New York: The National Center on Addiction and Substance Abuse at Columbia University, 1998) 25 & 36.

¹¹ National Drug Court Institute, *Drug Court Review I*, no. 1 (Alexandria, VA: Summer 1998) 35.



The Dallas County DIVERT Court evaluation found in their cost benefit analysis that over a 40-month period, for every dollar spent on drug treatment through the DIVERT Court, \$9.43 of costs may be saved.¹² The Office of Justice Programs reported that the average cost of the treatment component of a drug court ranges between \$1,200 and \$3,000 per participant, while savings in jail bed days alone are estimated to be at least \$5,000 per defendant.¹³

¹² National Drug Court Institute, *Drug Court Review* IV, no. 1 (Alexandria, VA: Summer 2002) 106-07.

¹³ Office of Justice Programs, *Looking at a Decade of Drug Courts* (Washington, D.C.: U.S. Department of Justice, 1998).

Effectiveness of Alternatives to Incarceration Programs for Drug Offenders

Understanding the complex nature of drug abuse and addiction is often difficult but necessary in developing effective alternatives to incarceration that address the needs of the drug offender while protecting public safety. This chapter discusses the dynamics of substance abuse and the effectiveness of drug treatment demonstrated by various research studies. In addition, the costs associated with drug treatment programs are briefly outlined.

Substance abuse and addiction impact virtually every aspect of American society. We may choose to deny or ignore its presence, but its impact is all too apparent as families, schools, social services, the medical profession, and the criminal justice systems are forced to deal with the reality of the problem. Substance abuse and addiction involving illegal drugs is interwoven with an array of domestic problems faced by our state, including: Child abuse and neglect; domestic violence; teen pregnancy; medical conditions such as heart disease; AIDS; cirrhosis and cancer; chronic welfare; a rise in learning disabled and conduct-disordered children; disrupted classrooms; and criminal activity. It is estimated that 13 to 16 million people in this country need drug treatment in a given year, yet only three million (about 20%) receive services. This results in an 80% "treatment gap" generating waiting lists for treatment of up to six months.¹⁴ Every part of our society expends significant amounts of resources trying to deal with the aftermath of substance abuse.

A report issued by the National Center on Addiction and Substance Abuse at Columbia University analyzed the impact of substance abuse and addiction on the states' budgets and noted some stunning results.¹⁵ The report states that of the \$620 billion total dollars spent, \$81.3 billion, about 13.1%, was used to deal with substance abuse and addiction. In addition, of every dollar states spent on substance abuse and addiction, 96 cents went to cleaning up the aftermath of substance abuse and addiction, while only 4 cents was used to prevent or treat the problem. Finally, each American paid \$277 per year in state taxes to deal with the impact of substance abuse and addiction in social programs, but only \$10 a year for treatment and prevention.

These figures represent identified state costs only, and do not take into account the indirect costs such as federal matching funds, costs to local government for law enforcement activities, lost employee productivity, lost tax revenues generated, or human suffering experienced by addicts, their families, and victims of their offenses. Substance abuse continues to be an extremely complex problem that society cannot ignore, but struggles to find an effective means to overcome.

The impact of substance abuse and addiction is especially pronounced in the criminal justice system. It is estimated that over 60% of the offenders incarcerated in state correctional facilities have varying levels of substance abuse problems. In addition, offenders who receive non-prison sentences are often placed on waiting lists for participation in community based treatment programs or placed in substance abuse programs that do not adequately address the needs of the offender. Seldom is the continuum of substance abuse treatment options required for successful recovery available. Probation officers face

¹⁴ "LAC: Urge Congress to Increase Funding for Prevention, Treatment, and Education," June 17, 2003.

¹⁵ The National Center on Addiction and Substance Abuse at Columbia University, *Shoveling Up: The Impact of Substance Abuse on State Budgets* (Washington, D.C.: The National Press Club, January 29, 2001) can be accessed under publications, then newsletters at www.casacolumbia.org



daily the frustrations and the lack of resources to provide the necessary treatment and support services needed to assist offenders in avoiding relapse and maintaining a drug free lifestyle.

In a significant number of cases, the lack of options and resources lead to revocation of the non-prison sentences and incarceration in a state correctional facility. Even the revocation process itself consumes court and judicial time. Judges oversee probation revocation hearings and are faced with the frustration of dealing with repeated positive drug tests, failure to report issues and limited or non-existent treatment options. Often the judge is left with the choice to ignore the drug related behavior of the offender or to revoke the offender to prison with the hope or belief that the offender will receive drug treatment while incarcerated; the offender enters one of the state's correctional facilities.

Between 60% and 80% of the offenders under some type of criminal justice supervision are in need of drug treatment services.¹⁶ State correctional facilities are facing an increasing number of offenders admitted with substance abuse or addiction problems, with fiscal constraints limiting the number of treatment programs available. Merely incarcerating offenders with substance abuse problems, at an average cost of approximately \$29,000 per year, does little to reduce future criminal activity when the offender is released from prison with the same substance abuse problem that brought them to prison initially. Except for a small number of inmates, most offenders incarcerated in state correctional facilities will eventually be released back to their families, their communities, and to society as a whole. Without the proper treatment, an offender is at risk to continue to be drug dependent and commit new offenses, resulting in further injury to victims, loss of property, and the expenditure of limited resources to identify, apprehend, prosecute, and return the offender to confinement.

The Dynamics of Substance Abuse

Substance abuse and addiction are very complex disorders that can impact almost every aspect of a person's life, including family, work, and community. The diagnostic criteria for addiction used by the American Psychiatric Association and the World Health Organization include a presence of physical effects, such as a developed tolerance and symptoms of withdrawal. The physical effects are combined with psychological consequences such as cravings and a mental focus on obtaining and using drugs, even in the face of extremely negative consequences. This addiction fuels destructive behavior patterns that become increasingly difficult to break, often resulting in criminal behavior. Many individuals, though not technically "addicted," regularly use mind-altering drugs and find it difficult to simply cease using drugs. This group also faces varying degrees of the problems experienced with addiction.

The comprehensive approach to drug treatment recognizes that drug addiction begins with the act of taking a drug. Over time, an individual's ability to choose not to take drugs can be compromised. Drug seeking becomes compulsive, in large part, as a result of the effects of prolonged drug use on brain functioning and consequently on behavior. The compulsion to use drugs takes over the individual's life. Thus, the addiction often involves not only compulsive drug taking, but also results in a large number of dysfunctional behaviors. Since addiction is so multi-dimensional and disrupts so many aspects of an individual's life, treatment of this illness is not simple. Drug treatment must include stopping the drug usage and promoting a drug-free lifestyle, while simultaneously achieving a level of productive functioning in the family, at work, and in society. Since many people equate addiction with simply using drugs, there is an expectation that the addiction should simply be "cured" in a short period of time. However, because addiction is a chronic disorder, the goal should be a long-term abstinence from drug use that often requires sustained and repeated attempts at treatment, where episodes of relapse are common and treated as part of the overall rehabilitation process.

The criminal justice system views the behavior of the drug addict or abuser as a violation of criminal statute and subject to appropriate and designated sanctions, including incarceration. Although treatment is often prescribed for the offender's addiction or abuse problem, the incorporation of the relapse principle is not viewed as acceptable. It is often believed that if the individual had enough will power, the drug use

¹⁶ "Drug Treatment in the Criminal Justice System" Executive Office of the President, Office of National Drug Control Policy, March 2001 (NCJ-181857).



would simply stop; the use of drugs is viewed as just a bad habit resulting from some type of moral weakness or over indulgence. Others believe drug abusers simply do not want to stop because they enjoy it. Regardless, the criminal justice system is designed to hold an individual accountable for their behavior, even if the behavior is rooted in a biological cause. The source of the behavior is not the issue of contention; it is the illegal behavior itself that is the focus of the criminal justice system. Thus, control is exerted over the offender in the belief that the addiction can be cured, when in reality there is no known “cure” for drug addiction. What research has indicated is that drug addiction can be controlled through treatment; an individual’s genetic predisposition, social circumstances, personal behavior traits, and interpersonal relationships will affect the impact of treatment. The criminal justice system has a limited ability to impact all of these areas.

Research has demonstrated that substance abuse and addiction are treatable within the offender population and appropriate actions by criminal justice professionals can foster the effectiveness of treatment. This does involve a shift in the philosophy of how the criminal justice system handles offenders with substance abuse problems. The effectiveness of treatment is directly related to length of stay in treatment, and the use of criminal justice sanctions have been proven to be successful in motivating offenders to enter and remain in treatment programs. Offender accountability is another factor proven to be a contributing variable to successful treatment, including frequent drug testing and the immediate and consistent imposition of sanctions for violations of the treatment plan. Finally, access to the continuum of treatment options will allow an offender to participate in varying levels of substance abuse treatment dependent on the offender’s needs, and address the potential for relapse faced by all individuals with substance abuse or addiction problems.

Effectiveness of Drug Treatment

The goal of drug treatment is two-fold; besides helping the offender stop using drugs, there is a parallel goal of returning the offender to a productive level of functioning in the family, workplace, and community. Measures of effectiveness typically include levels of criminal behavior, family functioning, employability, and medical conditions. Overall, drug treatment has a success rate comparable to other chronic diseases, including diabetes, asthma, and hypertension. According to several studies, drug treatment can reduce drug usage by 40% to 60% and reduce criminal activity significantly both during and after treatment.

A study of therapeutic community treatment for drug offenders demonstrates that arrests for violent and nonviolent criminal acts were reduced by 40%. Methadone treatment has been shown to decrease criminal behavior by 50%. Research indicates that drug treatment reduces the risk of HIV infection, and that interventions to prevent HIV are much less costly than treating HIV-related illnesses. Finally, successfully completed drug treatment can improve employability by up to 40%.

Even with these positive research findings, there is still much skepticism and pessimism about whether drug treatment is truly effective. For drug treatment to be effective, several factors must be considered and incorporated into the treatment process. If these factors are absent the effectiveness and success of the drug treatment is severely compromised.

The basic principles of effective treatment are as follows:

1. No single treatment program is appropriate for all drug users – matching treatment type, setting and interventions to the needs of the offender is critical to success.
2. Treatment needs to be readily available – waiting lists for entry to treatment, or participating in treatment programs that have openings but do not meet the needs of the drug user, undermine treatment success.
3. Treatment should address multiple needs of the offender not just the drug usage since drug use is often associated with medical, psychological, family, or vocational problems.



4. The treatment plan needs to be assessed continually and modifications made to address an offender's changing needs.
5. Remaining in treatment for an adequate period of time is crucial – research indicates that for most patients, the threshold of significant improvement is three months and continuation in treatment past that time frame enhances an offender's chance of success.
6. Drug offenders with co-existing mental disorders should have both disorders treated in an integrated manner – it is very difficult to treat the drug abuse issue if the mental disorder is ignored or discounted.
7. Medical detoxification is only the first stage of drug treatment and by itself does very little to address long term drug usage – medical detoxification addresses the physical withdrawal symptoms but does little to help drug users achieve long term abstinence.
8. Treatment does not have to be voluntary to be effective – motivation can help with the success of treatment, but employers, family pressure, and the criminal justice system can help increase entry and retention into treatment, and raise treatment success rates.
9. Treatment must hold the offender accountable for continued drug usage through continuous monitoring and drug testing.
10. Treatment should include counseling or other behavioral therapies and medical attention for infectious diseases – a holistic approach needs to be incorporated to address drug users high risk behavior and improve on the person's ability to function in their family and community.
11. Recovery from drug addiction can be a long term process and require multiple attempts at successful treatment – relapse can occur during and after successful treatment. To fully achieve long term abstinence, several attempts at treatment are often necessary; relapse itself should not be viewed as failure.

Drug treatment programs that fail to incorporate these principles will have limited impact on successfully changing the behavior of drug addicts, either short or long term. Since drug abuse is categorized as a “chronic disorder,” effective treatment needs to address the physical, mental and behavioral aspects in order for an individual to reach a healthy level of functioning.

Impact of Effective Treatment

When drug treatment programs are properly developed, correctly implemented, sufficiently available, and adequately funded, positive results have been experienced nationwide in a variety of areas. Listed below is a brief summary of findings with respect to the impact of substance abuse and substance abuse treatment.

The National Treatment Improvement Evaluation Study (NTIES) found that with drug treatment: Drug selling decreased by 78%, shoplifting declined almost 82%, and assaults (defined as beating someone up) declined by 78%. Furthermore, there was a 64% decrease in arrests for any crime, and the percentage of people who largely supported themselves through illegal activity dropped by nearly half, showing a decrease of 48%¹⁷

In addition, the 1997 NTIES Study stated, “Treatment appears to be cost effective, particularly when compared to incarceration, which is often the alternative. Treatment costs ranged from a low of \$1,000

¹⁷ Center for Substance Abuse and Treatment, *National Treatment Improvement Evaluation Study 1997 Highlights (NTIES)*, 1/1/1997, from the web at <http://ncadi.samhsa.gov/govstudy/f027/>.

per client to a high of \$6,800 pre client.” To contrast, the average cost of incarceration in 1993 (the most recent year available) was \$23,406 per inmate per year.¹⁸ Drug Treatment decreased welfare use by 10.7% and increased employment by 18.7% after one year, according to the 1996 National Treatment Improvement Evaluation Study.¹⁹

The World Health Organization’s study of heroin maintenance in Switzerland concluded that the number of offenders and offenses decreased by 60% during the first six months of treatment; income from illegal and semi-illegal activities decreased significantly, from 69% of participants to 10% of participants. Illicit cocaine and heroin use declined greatly; fitness for work improved, with those obtaining permanent employment more than doubling from 14% to 32%; a third of the participants that were on welfare left welfare rolls, and the retention rate average for treatment programs was 89% over six months and 69% over 18 months. Finally, there were no overdoses from drugs prescribed by the program.²⁰

In January of 2001, the National Center on Addiction and Substance at Columbia University published an analysis of costs to states from tobacco, alcohol, and drug addiction. According to the report, “States report spending \$2.5 billion a year on treatment. States did not distinguish whether the treatment was for alcohol, illicit drug usage, or nicotine addiction. Of the \$2.5 billion total, \$695 million is spent through the departments of health and \$633 million through state substance abuse agencies. We believe that virtually all of these funds were spent on alcohol and illegal drug treatment.”²¹

That same report states that justice systems spend \$433 million on treatment: \$149 million for state prison inmates; \$103 million for those on probation and parole; \$133 million for juvenile offenders; \$46 million to help localities treat offenders; and \$1 million on drug courts. Treatment provided by mental health institutions for co-morbid patients totals \$241 million. The remaining \$492 million is for the substance abuse portion of state employee assistance programs (\$97 million), treatment programs for adults involved in child welfare services (\$4.5 million) and capital spending for the construction of treatment facilities (\$391 million).²²

Domestic enforcement costs four times as much as treatment for a given amount of user reduction, seven times as much for consumption reduction, and 15 times as much for societal costs reduction.²³ An additional cocaine control dollar generates societal cost savings of 15 cents if used for source country control, 32 cents if used for interdiction, and 52 cents if used for domestic enforcement. In contrast, the savings from treatment programs are larger than control costs: An additional cocaine control dollar generates societal cost savings of \$7.48 if used for treatment.²⁴

In 1996, the voters of Arizona passed an initiative, which mandated drug treatment instead of prison for non-violent drug offenders. At the end of the first year of implementation, Arizona’s Supreme Court issued a report which found that Arizona taxpayers saved \$2.6 billion in one year and 77.5% of drug possession probationers tested negative for drug use after the program. The court went on to state that passage of the initiative “allowed the judicial branch to build an effective probation model to treat and supervise

¹⁸ Center for Substance Abuse and Treatment, *National Treatment Improvement Evaluation Study 1997 Highlights (NTIES)*, 1/1/1997, from the web at <http://ncadi.samhsa.gov/govstudy/f027/>. Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics, 1996* (Washington DC; US Department of Justice, 1997). Pg. 4. (Average cost is based on an adult jail and prison population of 1,364,881, and total corrections expenditures of \$31,946,667,000 for 1993).

¹⁹ Center for Substance Abuse and Treatment, *National Treatment Improvement Evaluation Study* (Washington DC: US Government Printing Office, 1996). Pg. 11.

²⁰ *Report of the External Panel on the Evaluation of the Swiss Scientific Studies of the Medically Prescribed Narcotics to Drug Addicts* (New York, NY: The World Health Organization, April 1999).

²¹ National Center on Addiction and Substance Abuse at Columbia University, *Shoveling Up: The Impact of Substance Abuse on State Budgets* (New York, NY CASA, Jan. 2001), Pg. 24.

²² *Ibid.* Pg. 24

²³ Rydell, C.P. & Everingham, S.S., *Controlling Cocaine*, prepared for the Office of National Drug Control Policy and the United States Army (Santa Monica, CA: Drug Policy Research Center, Rand Corporation 1994), Pg. Xvi,

²⁴ *Ibid.* Pg. 42.

substance abusing offenders...resulting in safer communities and more substance abusing probationers in recovery.”²⁵

The State of Washington recently modified sentences for drug offenders and established funding for drug treatment programs. The new legislation was, in part, an effort to address the impact of a 1980s law that doubled sentences for drug convictions. The new law is projected to save the state of Washington \$45 million per year. The new drug sentencing policy will provide treatment as well as incarceration for drug offenders.

Kansas passed legislation in 2003 mandating up to 18 months of treatment, instead of incarceration in state correctional facilities, for first and second time offenders (including probation violators) convicted of drug possession. The state appropriated \$6.6 million dollars of state general funds to develop a statewide continuum of drug treatment programs to adequately address the treatment needs of drug offenders. The new policy is projected to divert approximately 1,400 offenders per year from prison, a significant portion of the state’s 10,000 inmates.

According to the National Center for Addiction and Substance Abuse, the cost of proven treatment for inmates, accompanied by education, job training and health care would average about \$6,500 per inmate. For each inmate that becomes a law-abiding, tax paying citizen, the economic benefit is \$68,800. Even if only one in ten inmates became a law-abiding citizen after this investment, there would still be a net social gain of \$3,800 per successful offender.²⁶ Furthermore, treatment availability for drug and alcohol addicted prison inmates has declined over the past decade. Among those prisoners who had been using drugs in the month before their offenses, only 15% of both state and federal inmates said they had received drug treatment during their current prison term, down from a third of such offenders in 1991. Among offenders who were using drugs at the time of their offense, about 18% of both state and federal prisoners reported participation in drug treatment compared to about 40% in 1991.²⁷

The data presented in these studies demonstrate the impact that effective drug treatment can have on resources, criminal activities, social services, and the quality of life.

Drug Treatment for Offenders in Minnesota

The sentencing guidelines commission attempted to gather information on current community based drug treatment available to offenders in Minnesota by developing and distributing a survey to probation and community corrections officers (see Appendix G). Information was sought regarding the cost of treatment, cost of supervision, and types of drug treatment programs available by locality. Information regarding special program considerations made to offenders with a “presumptive commit” versus a “presumptive stay” under the sentencing guidelines was also sought.

A total of 66 counties responded to the survey. The vast majority of respondents were unable to provide specific costs associated with either treatment or supervision for drug offenders. Only two of the respondents indicated that special program considerations were made for drug offenders who were presumptive commits under the sentencing guidelines. The types of drug treatment programs available varied considerably by county, with urban counties having the most extensive array of treatment programs, followed by other metro counties. Rural areas were limited in the types of drug treatment programs available in their counties and sometimes relied on treatment programs in urban counties (see Appendix G). Information regarding treatment capacity and waiting time for entry was not available.

²⁵ State of Arizona Supreme Court, *Drug Treatment and Education Fund: Implementation Full Year Report; Fiscal Year 1997-1998*, 1999.

²⁶ National Center on Addiction and Substance Abuse at Columbia University, *Behind Bars: Substance Abuse and America’s Prison Population*, (New York, NY: National Center on Addiction and Substance Abuse, January 8, 1998)

²⁷ Bureau of Justice Statistics, *Substance Abuse and Treatment, State and Federal Prisoners, 1997* (Bureau of Justice Statistics, Washington, DC: US Department of Justice, January 1999. Pg. 10.



Although the survey did not provide an in-depth overview of the availability of drug treatment programs statewide, it did reveal that there is a varying range of treatment options in the state, and accessibility to treatment is dependent, to a degree, on location. This may lead to a level of disparity in who is revoked for violations of their probation and who is not. In addition, the survey responses indicate that there is not a continuum of drug treatment options that is often necessary for success in overcoming substance abuse.

Finally, the rural counties are facing a significant increase in the number of drug cases due to methamphetamine growth in the state. The increase in caseloads, combined with limited treatment resources (which can impact waiting periods for entry into treatment), places rural counties in a very volatile situation.

Cost of Drug Treatment for Offenders in Minnesota

Given that centralized data for the cost of community-based drug treatment for offenders is not readily available, a suitable alternative was explored. Information was obtained from the Minnesota Department of Human Services' Consolidated Chemical Dependency Treatment Fund for the time period July 1, 2002 through June 30, 2003 to calculate a cost to treat drug offenders.

The data contained in the Consolidated Chemical Dependency fund covers all individuals receiving drug treatment, not just offenders. However, the types of programs and costs associated with the various levels of drug treatment can serve as an estimate for projecting what drug treatment would cost for offenders.

Statewide, 25,765 individuals received drug treatment through the Consolidated Chemical Dependency fund. Treatment was broken down into several modalities, with a total amount and an average cost per treatment modality. A brief summary of expenditures is shown below in Table 23:

**Table 23. Minnesota Consolidated Chemical Dependency Treatment Fund
 Total Amount and Average Cost**

Treatment Type	# Patients	# Days	# Hours	Total Amount	Average Cost	Avg. Cost Per Unit
Hospital Inpatient	993	9,776	N/A	\$2,540,043.50	\$3,820	\$260
Primary Inpatient	4,481	90,073	N/A	\$20,059,141.00	\$5,159	\$223
Primary Outpatient	11,792	N/a	501,444	\$13,823,347.90	\$1,563	\$28
Methadone	1,094	N/a	125,936	\$1,340,536.01	\$1,322	\$11
Extended Care	2,416	91,767	N/A	\$13,292,224.03	\$6,548	\$145
Half Way House	4,760	210,908	N/A	\$14,973,198.14	\$3,677	\$71
Housing	229	6,310	N/A	\$464,344.10	\$2,537	\$74
Total	25,765	408,834	627,380	\$66,492,834.68		

Based on the treatment cost information provided, it is projected that the average cost of treatment per offender would range between \$1,600 and \$6,600 per year. If those figures are averaged, the estimated cost of treatment for the average drug offender calculates to be approximately \$4,100 per year. This figure is very comparable to the cost figure of \$4,300 per offender that was identified in a federal study conducted in the late 1990s²⁸.

It should be noted that numerous assumptions were made in determining the projected treatment costs for a drug offender in Minnesota. This figure is intended to represent an estimate only and it should not

²⁸ "Tight Budget May Impair Rehab Program," Los Angeles Times, April 7, 2003.



solely serve as the basis for any policy decision. More detailed research would need to be completed to establish a firm treatment cost. Given the timeline for the submission of this report and the limited resources of the sentencing guidelines commission, this figure represents the best estimate that could be made at this time.



Fiscal Impact of Diverting Non-Violent Drug Offenders from State Prison

The legislative directive for this study included a provision requesting “the cost savings to the department of corrections by not incarcerating nonviolent drug offenders and sending them to noncustodial drug treatment instead, providing that the length of their sentence is not reduced.” This Chapter defines a non-violent drug offender and expands on that definition to project cost savings to the department of corrections.

Definition of Non-Violent Drug Offender

The commission recognized immediately that identifying what constituted a “non-violent drug offender” was very complicated, since violence can be measured from varying perspectives. The commission decided to form a special subcommittee that allowed for input, and to hear concerns from different parts of the criminal justice system, treatment providers, and others involved with drug offenders. The twenty-member subcommittee included commission members, judges, prosecutors, law enforcement, probation, defense council, treatment providers, and representatives from the courts. The subcommittee decided that, given the various meanings that could be attributed to the term non-violent, the group would take the approach of defining what was considered to be a violent offender. For the purpose of this report, if an offender did not meet the criteria to be classified as violent, then the offender would be considered non-violent.

There were several issues, however, where consensus was not reached by the subcommittee. A major issue where consensus was not reached concerned whether current convictions or prior convictions for 1st and 2nd degree controlled substance convictions, other than those relating to manufacture or attempt to manufacture methamphetamines, should designate an offender as a violent offender. The subcommittee finally conceded that consensus would not be reached on this specific item and suggested that the report contain two scenarios defining a “non-violent drug offender” with the corresponding impact on the department of corrections.

Subcommittee’s Definition of Violent Drug Offender

1. A person who carries, possesses, or uses a firearm or other dangerous weapon (as defined by M.S. §609.11) in their current drug offense; or
2. Uses force against a person during their current drug offense; or
3. Death or serious bodily injury occurred during the current drug offense; or
4. The current offense is:
 - a. 1st Degree of Manufacture or Attempted Manufacture of Methamphetamine (M.S. §152.021, subd. 2a(a) or 2a(b)) or
 - b. Tampering, Theft, Transport Anhydrous Ammonia (M.S. §18D.331, subd. 5); or
5. The person has pending criminal charges for any of the specified crimes of violence; (see Appendix G); or



6. The person has a previous felony adult or EJJ conviction of one of the specified crimes of violence (see Appendix G). The 15 year Decay Factor for prior offenses as described in *Minnesota Sentencing Guidelines and Commentary* should be applied.

Scenarios to Project Fiscal Impact

It was decided that flexibility shall be extended to the sentencing judges to decide if the current offense or prior offense should be considered a violent offense based on individual circumstances, including the seriousness of the current or prior offenses and whether offenses should decay based on the person's intervening criminal conduct and the offender's prior juvenile record. In addition, various scenarios would be developed incorporating a range of percents (2%, 5%, or 10%) for offenders with pending violent offenses that would classify the offender as a violent drug offender. Estimates of the fixed savings of diverting non-violent drug offenders from prison are presented in Table 24 for the following six scenarios and for categories one and two overall.

Category One: 1st and 2nd Degree Offenders Considered Violent (Scenarios I-III)

- Do not include 1st and 2nd degree controlled substance offenses (considered violent crimes)
- Do not include offenders who have prior conviction(s) for 1st or 2nd degree controlled substance offense
- ❖ **Scenario I**
 - Assume an additional 2% of target group of non-violent drug offenders would be classified as violent at the discretion of the judge
 - Assume that 2% of the target group of non-violent offenders would have pending violent crimes that would negate the non-violent offender classification
- ❖ **Scenario II**
 - Assume an additional 5% of target group of non-violent drug offenders would be classified as violent at the discretion of the judge
 - Assume that 5% of the target group of non-violent offenders would have pending violent crimes that would negate the non-violent offender classification
- ❖ **Scenario III**
 - Assume an additional 10% of target group of non-violent drug offenders would be classified as violent at the discretion of the judge
 - Assume that 10% of the target group of non-violent offenders would have pending violent crimes that would negate the non-violent offender classification

Category Two: 1st and 2nd Degree Offenders Considered Non-Violent (Scenarios IV-VI)

- Include 1st and 2nd degree controlled substance offenses (not considered violent crimes)
- Include offenders who have prior conviction(s) for 1st or 2nd degree controlled substance offense
- ❖ **Scenario IV**
 - Assume an additional 2% of target group of non-violent drug offenders would be classified as violent at the discretion of the judge
 - Assume that 2% of the target group of non-violent offenders would have pending violent crimes that would negate the non-violent offender classification



❖ **Scenario V**

- Assume an additional 5% of target group of non-violent drug offenders would be classified as violent at the discretion of the judge
- Assume that 5% of the target group of non-violent offenders would have pending violent crimes that would negate the non-violent offender classification

❖ **Scenario VI**

- Assume an additional 10% of target group of non-violent drug offenders would be classified as violent at the discretion of the judge
- Assume that 10% of the target group of non-violent offenders would have pending violent crimes that would negate the non-violent offender classification

Estimated Prison Beds Saved From Not Incarcerating Non-Violent Drug Offenders

The per diem of \$59.79 used to calculate the savings is the average marginal per diem as supplied by the department of corrections. The number of offenders in each category is based on offenders receiving executed prison sentences in 2002. The estimated prison beds are based on the number of prison beds needed over time if the offenders serve two-thirds (normal term of imprisonment) of their pronounced sentences. The fixed savings are the cumulative savings over several years depending on which definition of violent offender is used.

Table 24. Estimated Cumulative Cost Savings of Diverting Non-Violent Drug Offenders

Scenario	Number Non-Violent Offenders Receiving Prison Sentences	Estimated Prison Beds Required	Prison Savings (Number of Beds x Per Diem of \$59.79 x 365)
Category One: 1st and 2nd Degree Considered Violent	203	240	\$5,237,604.00
I (2%+2% reductions)	195	230	\$5,019,371.00
II (5%+5% reductions)	183	216	\$6,348,197.00
III (10%+10% reductions)	162	192	\$4,713,844.00
Category Two: 1st and 2nd Degree Considered Non-Violent	576	1,521	\$33,193,315.00
IV (2%+2% reductions)	553	1,460	\$31,862,091.00
V (5%+5% reductions)	518	1,369	\$29,876,166.00
VI (10%+10% reductions)	461	1,217	\$26,559,016.00

Table 25 displays the distribution of drug offenders receiving prison sentences in 2002 who would be considered non-violent in each of the two categories previously described.



Table 25. Distribution of Imprisoned Non-Violent Offenders by Drug Degree

Drug Degree	Total # Drug Offenders	Total # Drug Offenders with Prison Sentences	# Non-Violent Offenders with Prison Sentences: Current and Prior 1st and 2nd Deg. Considered Violent	# Non-Violent Offenders with Prison Sentences: Current and Prior 1st and 2nd Deg. Considered Non-Violent
1	480	328	---	166
2	367	218	---	165
3	515	137	73	86
4	146	25	13	17
5	1,869	227	116	141
Sale simulated	47	3	1	1
Total	3,424	938	203	576

Total Fiscal Impact of a Diversion Program

The subcommittee placed great importance on stressing that resources are not currently available at the local and county level to accommodate a policy that would shift offenders from state prison to county responsibility. Given the current fragmentation of treatment programs and lack of a continuum of treatment statewide, treatment options would need to be expanded and adequately funded to not compromise public safety with this type of policy change. Presented below in Table 26 is a rough projected fiscal impact to the state if non-violent drug offenders were diverted from prison and the state assumes the cost of treatment at \$4,100 per offender.

Table 26. Fiscal Impact of Diverting Drug Offenders and Factoring in Drug Treatment Costs

Scenario	Number Non-Violent Offenders Receiving Prison Sentences	Estimated Prison Beds Required	Prison Savings (Number of Beds x Per Diem of \$59.79 x 365)	Treatment Costs (# Offenders Diverted X Avg. Cost of Treatment of \$4,100)	Projected Fiscal Impact to State
Category One: 1 st and 2 nd Degree Considered Violent	203	240	\$5,237,604.00	\$832,300.00	\$4,405,304.00
I (2%+2% reductions)	195	230	\$5,019,371.00	\$799,500.00	\$4,219,871.00
II (5%+5% reductions)	183	216	\$6,348,197.00	\$750,300.00	\$5,597,897.00
III (10%+10% reductions)	162	192	\$4,713,844.00	\$664,200.00	\$4,049,644.00
Category Two: 1 st and 2 nd Degree Considered Non-Violent	576	1,521	\$33,193,315.00	\$2,361,600.00	\$30,831,715.00
IV (2%+2% reductions)	553	1,460	\$31,862,091.00	\$2,267,300.00	\$29,594,791.00
V (5%+5% reductions)	518	1,369	\$29,876,166.00	\$2,123,800.00	\$27,752,366.00
VI (10%+10% reductions)	461	1,217	\$26,559,016.00		



reductions)				\$1,890,100.00	\$24,668,916.00
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In addition, concern was expressed about the ability of counties to absorb various non-treatment costs, including increased probation supervision and local jail or workhouse time, associated with maintaining these offenders in local communities. The commission believes that it is important that these costs be taken into consideration when the total potential fiscal savings to the state.

Representatives of the sentencing guidelines commission met with several members of community organizations who expressed concern that the definition of a non-violent offender adopted by the commission did not take into consideration the collateral effects that drug offenders have on communities, even if they are designated as non-violent. Concern was expressed that even when drug offenders are considered non-violent, activities associated with drug usage impact a local community through lower property value, the perception that illegal activities are acceptable, a heighten endangerment of children, and a sense of fear among community members. These collateral consequences can be devastating to communities, but are difficult to quantify when attempting to develop fiscal impacts. The commission acknowledges the impact drug offenders have on communities and recommends that the impact be factored into any proposed policy change.



Summary and Conclusion

The data analysis and research findings presented in this report provide a fairly comprehensive examination of drug sentencing patterns in Minnesota. The report contains historical, comparative, and proportionality issues related to sentencing of drug offenders, as well as current trend data. This multi-dimensional approach permits a better understanding of the complexity of issues surrounding the development of appropriate sentencing policy for drug offenders. Given the time constraints and the resources of the sentencing guidelines commission, the request for a recidivism study for drug offenders is not included in this report. A study of that nature is very complex and not quickly completed. The commission can complete this request with adequate time and resources allocated by the legislature.

From the information contained in this report, it is apparent that more drug offenders are being admitted to state correctional facilities and serving longer sentences in those same facilities than ever before in the history of Minnesota. There is no single factor responsible for this finding, but rather a combination of factors interacting with each other. The development of sentencing policy frequently results in a mixture of intended and unintended consequences. It would appear that issues surrounding current sentencing practices for drug offenders are, in fact, a combination of those intended and unintended consequences.

The increase in the number of drug offenders admitted to prison is related to several of the statutory changes to the state's drug laws since the enactment of the sentencing guidelines in 1980. Statutory changes in 1986 and 1987 resulted in presumptive prison sentences for offenders with no criminal history for sale of specified amounts of drugs and set different threshold levels with more severe penalties for powder and crack cocaine sales, impacting prison admissions.

One of the most significant statutory changes impacting admissions occurred in 1989, when the controlled substance statutory scheme was drastically altered, creating five degrees of drug offenses. The lengthy statutory maximums for some degrees guided the commission in ranking those offenses. The commission wanted to maintain the existing ranking for street level drug sales, but rank more serious drug crimes higher, since the understanding was that first degree drug offenders were to represent major, or kingpin, drug dealers. Due to the limitations of the existing grid, first degree offenses were ranked at Severity Level VIII.

When the *State v. Russell* decision was decided by the Minnesota Supreme Court, focusing on the disparity in sentencing between the thresholds for powder cocaine and crack, the legislature decreased the amount thresholds for powder cocaine to equal those established for crack cocaine and possession with intent to sell was also added back into the definition of a sale offense. The legislative action of lowering the threshold of other drugs to equal those of crack cocaine had the consequence of increasing the sentence severity for numerous drug offenses without the commission taking any action. Periodically, legislative modifications that affect presumptive sentences appear to be in conflict with the principles of proportionality and rationality that serves as the basis for the sentencing guidelines.

Admissions to prison have also been impacted by the high percentage of probation violators admitted due to violations of their community-based supervision, in many instances representing more admissions than direct commits to prison. As communities experience higher supervision caseloads and declining resources, both the quantity and quality of programs and services available to offenders are affected, which contributes to higher revocation rates and use of more limited state resources.

The impact of the growth in methamphetamine cases has also had a direct impact on prison admissions. In recent years, the number of offenders admitted to prison for methamphetamine has more than doubled



and has had the greatest impact on rural and non-urban communities. The growth in drug offense admissions between 2001 and 2002 clearly reflects the impact of this one drug offense.

When legislative changes are combined with increased revocation rates, the escalating impact of methamphetamine convictions, and growth in overall number of drug offenses, the result is a continual increase in the number of drug offenders admitted to prison that is not likely to level off in the near future without sentencing policy changes.

In addition to more drug offenders being admitted to prison, the findings contained in the report reveal that the sentences imposed for this increased number of prison admissions are significantly longer. With the establishment of the five drug degrees and the subsequent rankings on the sentencing guidelines grid, sentences for many drug offenses were lengthened. The average pronounced drug sentence has increased from 22.9 months in 1988 to 50.2 months in 2002. With the average drug sentence length more than doubling, the impact on prison beds required to incarcerate this offender group is significant.

More drug offenses have come to be classified as first degree drug offenses through lower thresholds for sale and possession and the addition of the manufacture of methamphetamine. These offenses have a presumptive prison sentence of 86 months for an offender with no criminal history and have contributed to the issue of increased sentence lengths, especially with the increased number of convictions for manufacture of methamphetamine.

In reviewing surrounding midwestern states and other sentencing guidelines states, Minnesota's maximum sentences by various thresholds appear to be disproportionate to those in other states. These lengthy sentences have a direct impact on the number of drug offenders represented in the state's prison population.

The impact of drug offenders in state correctional facilities is somewhat negated by the high number of mitigated durational and dispositional departures. The impact of departures is most apparent with first degree drug offenses for which the mitigated departure rate is in excess of 60%, meaning that only slightly more than one-third of what are intended to represent the most serious drug offenders are actually receiving the presumptive sentence. This finding could indicate that the current drug statutes may not adequately identify the most serious drug offender or distinguish adequately between the more serious and less serious drug offender.

Research contained in this report also indicates that Minnesota has one of the highest mitigated (or downward) departure rates for drug offenses of all guideline states examined. If the departure rate was lower and the recommended presumptive sentences were imposed, the impact of drug offenders on the correctional system would be enormous. The high departure rates do raise issues as to whether there is widespread disagreement among the various criminal justice practitioners that the presumptive sentences are appropriate.

The only way to alter the current impact that drug offenders are having on the department of corrections prison population is to decrease admissions or increase releases, neither of which are likely to occur under the current sentencing scheme. Any change in current policy would result in cost shifts from the state to local correctional agencies. Given the increased number of drug offender admissions to prison, the longer presumptive sentences, and the high number of mitigated departures, the following options are offered by the sentencing guidelines commission for consideration by the legislature.

Options for Consideration

1. Continue to sentence drug offenders under the state's current sentencing policy. If this option is chosen then additional appropriations will be necessary to fund the number of additional prison beds required for the projected growth in this specific offender population. It would also be necessary to fund additional expansion of current institutional based drug treatment programs to accommodate the projected growth in the number of drug offenders admitted to state prisons.



2. The second option for consideration would be for the legislature to revisit the threshold amounts for various drugs that were modified in 1989 and either reinstate the previous powder thresholds for all narcotics or establish new thresholds that would increase or modify, in some manner, the current drug thresholds. This modification would impact both the number of drug offenders admitted to prison, as well as, the length of presumptive sentences depending on the manner in which the thresholds were modified.
3. Another option for consideration by the legislature would include reviewing the current ranking of drug offenses. If the statutory maximums for first and second degree drug offenses were modified or re-adjusted, the severity level rankings could be adjusted accordingly and proportionality maintained under the guidelines. Since establishing the five drug degrees in 1989, an additional severity level has been added to the sentencing grid and reassignment of some offenses to different severity levels may be warranted at this time.
4. A fourth option would be to develop, implement, and adequately fund an infrastructure of community based punishment and treatments programs targeting drug offenders to address the growing number of probation revocations and supervised release returnees. This specific offender group has very complex and multiple needs that must be addressed if the offender is to remain under community supervision. There would be costs associated with developing a comprehensive continuum of drug treatment programs and implementing community punishment options that focus on offender accountability. However, these costs would be less per offender than the annual cost to incarceration an offender in a state correctional facility.
5. Develop a comprehensive sentencing policy targeted at drug offenders. The policy should be guided by the need to protect public safety, hold the offender accountable for his/her illegal behavior and provide a meaningful opportunity for the offender to address his/her substance abuse problem and drug related behavior. A comprehensive drug sentencing policy should clearly identify those drug offenders who pose the greatest threat to the community and ensure the availability of prison beds for a period of incarceration set forth under the policy. In addition, proposed changes in sentencing policy must recognize the significant fiscal impact on local communities that can result from shifting offenders currently under state supervision to supervision at the local level and ensuring adequate funding is appropriated.

The sentencing guidelines commission respectfully submits this report for your consideration and review. Please do not hesitate to contact the commission if there are any questions or a need for additional clarification on data or findings presented in this report.



Appendix A:

SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

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

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



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



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

¹ One year and one day

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

Appendix B: Drug Offender Sentencing Study Directive

SF 2 - Special Session

Sentencing Guidelines Appropriation and Drug Offender Sentencing Study

Sec. 14. SENTENCING GUIDELINES 436,000 436,000

[REPORT ON DRUG OFFENDER SENTENCING.]

The sentencing guidelines commission, in consultation with the commissioner of corrections, shall prepare a report and make recommendations regarding the following drug offender sentencing issues:

- (1) the evolution of Minnesota's drug sentencing laws, the annual proportion and number of prisoners incarcerated for drug crimes in Minnesota state prisons, the annual cost of incarcerating drug offenders in Minnesota state prisons, the effectiveness of drug courts, and current programs that employ alternatives to incarceration for drug offenders in Minnesota state prisons;
- (2) the average and the range of criminal history scores for each level of drug offender currently incarcerated in Minnesota state prisons;
- (3) the proportionality of Minnesota's drug sentencing provisions when compared to sentencing provisions for other crimes in Minnesota;
- (4) the proportionality of Minnesota's drug sentencing provisions when compared to other states' drug sentencing provisions;
- (5) the type and quantity of Minnesota correctional resources that are dedicated to all drug offenders;
- (6) the projected annual cost to the department of corrections of incarcerating all drug offenders in state prisons over the next ten years;
- (7) the cost savings to the department of corrections by not incarcerating nonviolent drug offenders and sending them to noncustodial drug treatment instead providing that the length of their sentence is not reduced; and
- (8) the recidivism rate for drug offenders, in Minnesota and other states, who are sent to noncustodial drug treatment rather than incarceration.

The sentencing guidelines commission must present the report and recommendations to the chairs and ranking minority members of the house and senate committees having jurisdiction over criminal justice policy and financing by January 15, 2004.

Appendix C: Substance Abuse Treatment Programs

MN Department of Corrections Chemical Dependency Programming, November 2003

Facility	Program	Services	Beds
MCF-LL	TRIAD	Intake/orientation to CD treatment	10-20
Please note that beds assigned to services at MCF-LL fluctuate based on the needs of the offenders referred.	TRIAD	MI/CD treatment at a slower pace to accommodate mental health issues. The length of time is determined individually, but is usually 3-6 months.	20
	TRIAD	Special Needs focus on mental health issues and adjustment and activities of daily living	10
	TRIAD	Short-term treatment is usually 3 months of psycho educational programming with some group psychotherapy.	75
	TRIAD	Medium-term treatment is 4-6 months and offers an increased level of group psychotherapy.	77
	TRIAD	Long-term treatment is 9-12 months with a focus on group psychotherapy with educational components for offenders that have a more complex presentation of substance abuse issues that take longer to address.	75
	TRIAD	Aftercare is up to 12 months with a focus on application of treatment tools to daily life and release planning.	134
MCF-LL	Sex Offender Treatment Program	Short and medium-term chemical dependency treatment coordinated with the sex offender treatment.	48
MCF-STW	Atlantis	Medium term treatment of 6-9 months with psycho educational and group psychotherapy components and aftercare.	36
MCF-FRB	New Dimensions	Short-term treatment consisting of psycho educational modules.	106
MCF-SCL	Reshape	Medium-term treatment of 4-6 months utilizing both psycho educational modules and group psychotherapy.	28
MCF-SHK	SHK	Short-term and Relapse Prevention lasting 7 weeks utilizing psycho educational modules and aftercare.	16
	SHK	Long-term treatment lasting 6-9 months in a therapeutic community utilizing psycho education, group and individual psychotherapy and aftercare.	16
RW		Medium-term with a minimum of nine months of competency based treatment.	60
CIP		Medium term treatment utilizing psycho educational modules and group psychotherapy.	90
MCF-SCL	Reshape	CD Assessment	N/A
Central Office		CD Assessment and systems management.	N/A

Appendix D: Controlled Substance Crimes: Acts and Amounts

Controlled Substance Offenses Occurring On or After January 1, 2004

Severity Level IX: First Degree Controlled Substance Crime (MN. Stat. § 152.021)

Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)

- (1) 10 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 50 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 grams or 200 or more dosage units PCP/Hallucinogen
- (4) 50 kilograms or more Marijuana or
25 kilos or more Marij. in Zone or Drug Treatment Facility

Possession (subd. 2)

- (1) 25 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 500 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 500 grams or 500 or more dosage units PCP/Hallucinogen
- (4) 100 kilograms or more Marijuana

Manufacture (Subd. 2a(a))

Manufacture ANY amount of Methamphetamine

Severity Level VIII: Second Degree Controlled Substance Crime (MN. Stat. § 152.022)

Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)

- (1) 3 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 10 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 10 grams or 50 or more dosage units PCP/Hallucinogen
- (4) 25 kilograms or more Marijuana
- (5) Cocaine/Narcotic to minor or employs minor
- (6) Any of the Following in Zone or Drug Treatment Facility:
 - (i) Schedule I & II Narcotics or LSD
 - (ii) Methamphetamine/Amphetamine
 - (iii) 5 kilograms or more Marijuana

Possession (subd. 2)

- (1) 6 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 50 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 grams or 100 or more dosage units PCP/Hallucinogen
- (4) 50 kilograms or more Marijuana

Severity Level VI: Third Degree Controlled Substance Crime (MN. Stat. § 152.023)

Sale/Possession With Intent (subd. 1)

- (1) A Narcotic Drug (Including Cocaine and Heroin)
- (2) 10 or more dosage units of Hallucinogen/PCP
- (3) Schedule I,II,III to minor - Not Narcotics
- (4) Schedule I,II,III employs minor - Not Narcotics
- (5) 5 kilograms Marijuana

Possession (subd. 2)

- (1) 3 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 10 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 or more dosage units of Narcotics
- (4) Sch. I & II Narc./5 or more d.u. LSD in Zone or Drug Treatment Facility
- (5) 10 kilograms Marijuana
- (6) Methamphetamine/Amphetamine in Zone or Drug Treatment Facility

Severity Level IV: Fourth Degree Controlled Substance Crime (MN. Stat. § 152.024)

Sale/Possession With Intent (subd. 1)

- (1) Schedule I,II,III (except Marijuana)
- (2) Schedule IV or V to minor
- (3) Employs minor to sell schedule IV or V
- (4) Marijuana in Zone or Drug Treatment Facility

Possession (subd. 2)

- (1) 10 or more dosage units of Hallucinogen/PCP
- (2) Schedule I,II,III (except Marij.) w/ intent to sell

Severity Level III: First Degree Controlled Substance Crime (MN. Stat. § 152.021)

Attempted Manufacture of Methamphetamine (subd. 2a(b))

- (1) Possession of Precursor Chemicals with Intent to Manufacture Methamphetamine

Severity Level II: Fifth Degree Controlled Substance Crime (MN. Stat. § 152.025)

Sale/Possession With Intent (subd. 1)

- (1) Marijuana
- (2) Schedule IV

Possession (subd. 2)

- (1) Possession of Schedule I,II,III,IV - Includes Marijuana
Also Includes: Crack/Cocaine/Narc./PCP/Halluc.
- (2) Procurement by fraud

Severity Level I: Sale of Simulated Controlled Substance (MN. Stat. § 152.097)

Sale

- (1) Sale of ANY amount of a simulated controlled substance

Appendix E: Sentencing Practices for Specific Offenses

The following table lists statistical data for the most common offenses ranked at the same severity levels as the five controlled substance offenses. Aggravated dispositional departure rates are based only on those offenders with a presumptive stayed sentence, and mitigated dispositional departure rates are based only on offenders with a presumptive executed sentence. The Prison Rate is the overall number of offenders that were sentenced to prison, regardless of the presumptive disposition. Durational departure rates and average sentence lengths are based only on offenders sentenced to imprisonment. The “Over Avg” column refers to the overall average sentence length, regardless of criminal history score or presumptive sentence length.

Three sentences were removed from the calculation of average sentence length because these sentences were significantly different than other sentences for that offense and skewed the data. These offenses included a first-degree sex offender (Severity Level IX) sentenced to 450 months, a first-degree burglary offender (Severity Level VIII) sentenced to 240 months, and a theft of motor vehicle offender (Severity Level IV) sentenced to 90 months.

	Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg (mos)	Average Sentence (months) by Criminal History						
			Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
Severity Level IX	1 st Deg Drug Offense	386	---	32.4% 125	67.6% 261	2.3% 6	58.2% 152	84.1	69.5 110	75.3 35	88.0 45	96.0 28	103.7 15	108.3 12	136.2 16
	Sex Offenses ¹	121	---	21.5% 26	78.5% 95	26.3% 25	14.7% 14	145.9	137.4 44	117.6 14	162.4 13	146.6 7	128.0 6	153.2 6	298.5 4
	1 st Deg Assault	54	---	25.9% 14	74.1% 40	17.5% 7	25.0% 10	102.6	90.5 20	84.4 7	102.0 3	111.5 2	96.0 1	86.0 1	165.0 6
Severity Level VIII	2 nd Deg Drug Offense	357	---	40.9% 146	59.1% 211	3.8% 8	37.4% 79	58.3	44.3 60	52.2 43	55.1 37	61.0 27	68.0 11	85.0 15	93.9 18
	1 st Deg Aggravated Robbery	122	---	29.5% 36	70.5% 86	9.3% 8	30.2% 26	73.4	41.4 19	52.6 16	53.5 4	71.0 16	76.0 7	89.4 7	127.8 17
	1 st Deg Burglary	74	---	35.1% 26	64.9% 48	6.3% 3	31.3% 15	60.7	49.1 17	58.0 3	53.9 10	67.8 8	82.7 3	68.7 3	103.7 6
	Sex Offenses ¹	70	---	38.6% 27	61.4% 43	9.3% 4	32.6% 14	65.1	56.8 24	64.2 10	79.5 4	79.3 3	92.0 1	0 1	144.0 1
	Criminal Vehicular Homicide	41	---	52.1% 21	48.8% 20	15.0% 3	10.0% 2	62.1	50.1 12	56.0 2	64.0 1	78.0 1	116.5 2	94.0 1	60.0 1
	1 st Deg Arson	21	---	66.7% 14	33.3% 7	14.3% 1	28.6% 2	48.9	52.0 5	41.0 2	0	0	0	0	0

	Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg (mos)	Average Sentence (months) by Criminal History						
			Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
	Drive-By Shooting	16	---	6.3% 1	93.8% 15	0% 0	33.3% 5	55.8	47.2 5	54.8 4	58.0 2	59.3 3	88.0 1	0	0
	Kidnapping	11	---	18.2% 2	81.8% 9	11.1% 1	44.4% 4	59.6	44.0 3	56.0 2	60.0 1	24.0 1	78.0 1	0	130.0 1
	Manslaughter	9	---	22.2% 2	77.8% 7	42.9% 3	0% 0	74.9	68.0 3	60.0 1	70.0 2	0	0	0	120.0 1
Severity Level VI	3 rd Deg Drug Offense	505	5.8% 17	46.7% 98	25.5% 129	6.2% 8	52.7% 68	33.3	26.3 8	26.2 12	30.4 23	31.9 29	33.7 27	37.1 14	44.8 16
	2 nd Deg Assault ²	323	---	59.8% 193	40.2% 130	15.4% 20	31.5% 41	36.0	28.3 38	33.3 20	33.8 22	37.8 13	37.5 17	50.0 7	55.1 13
	Felon with Gun ²	162	---	33.3% 54	66.7% 108	0.9% 1	35.2% 38	51.8	45.3 9	52.1 18	53.5 25	46.5 24	56.4 15	57.4 7	54.1 10
	Sex Offenses	160	4.2% 6	16.7% 3	13.1% 21	28.6% 6	4.8% 1	45.2	37.0 3	39.0 3	35.0 3	39.0 5	36.0 1	66.5 2	63.0 4
	1 st Deg Burglary	122	6.5% 5	35.6% 16	27.9% 34	8.8% 3	23.5% 8	42.6	21.0 2	27.0 1	33.6 5	37.9 8	43.8 6	56.3 4	52.4 8
	2 nd Deg Aggravated Robbery	42	4.0% 1	23.5% 4	33.3% 14	14.3% 2	28.6% 4	41.1	21.0 1	36.0 1	34.5 2	39.0 1	54.0 2	43.0 1	43.3 6
	Theft over \$35,000	34	0% 0	20.0% 2	23.5% 8	25.0% 2	25.0% 2	57.5	0	0	0	39.0 1	45.0 1	40.0 1	67.2 5
Severity Level IV	4 th Deg Drug Offense	145	10.9% 14	37.5% 6	16.6% 24	20.8% 5	8.3% 2	24.2	12.03 2	15.0 3	17.5 6	20.0 3	39.3 3	25.5 2	35.4 5
	Terroristic Threats	522	5.8% 27	38.9% 21	11.5% 60	8.3% 5	31.7% 19	21.9	12.03 6	15.0 3	15.6 11	19.4 7	21.2 14	27.7 9	34.1 10
	Burglary	475	5.2% 19	17.3% 19	23.2% 110	10.0% 11	20.0% 22	27.1	0	12.03 1	20.3 8	20.6 10	23.8 22	25.8 18	31.7 51
	3 rd Deg Assault	347	3.7% 11	45.1% 23	11.0% 38	21.1% 8	15.8% 6	25.6	12.03 3	12.03 1	18.0 4	29.0 5	25.7 12	28.0 7	33.7 6
	5 th Deg Assault/Domestic Assault	141	7.8% 8	44.7% 17	20.6% 29	6.9% 2	37.9% 11	21.9	0	15.0 3	19.0 3	18.0 2	22.7 13	24.5 4	26.0 4
	Violation Restraining Order	112	9.8% 8	36.7% 11	24.1% 27	3.7% 1	33.3% 9	21.2	0	0	16.3 3	18.8 5	20.6 7	26.6 5	21.7 7

	Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg (mos)	Average Sentence (months) by Criminal History						
			Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
	Theft from Person	56	2.6% 1	44.4% 8	19.6% 11	9.1% 1	45.5% 5	21.9	0	0	12.03 1	0	22.8 5	28.5 2	19.3 3
	Theft of Firearm/Motor Vehicle	50	11.4% 4	6.7% 1	36.0% 18	5.6% 1	22.2% 4	23.6	0	15.0 1	18.0 1	19.5 2	23.7 3	23.3 7	32.0 3
	Sex Offenses	49	9.3% 4	16.7% 1	18.4% 9	0% 0	22.2% 2	21.9	12.03 2	15.0 1	0	21.0 1	21.0 1	28.7 3	30.0 1
Severity Level II	5 th Deg Drug Offense	1,851	7.7% 133	38.4% 48	11.7% 216	6.5% 14	26.4% 57	17.2	17.3 35	14.3 23	14.3 34	17.2 22	15.4 16	17.8 22	19.8 64
	Theft/Receiving Stolen Property (\$501-2500)	965	3.9% 34	21.6% 21	11.4% 110	9.1% 10	29.1% 32	19.6	12.03 2	12.03 4	13.0 5	15.0 4	15.7 11	19.1 8	21.5 76
	Check Forg/Issue Dishonored Check (\$251-2500)	833	5.7% 43	28.6% 24	12.5% 104	5.8% 6	30.8% 32	18.3	12.03 2	14.3 4	13.0 9	14.5 13	16.6 10	17.3 6	20.8 60
	Criminal Damage to Property	306	3.3% 10	0% 0	5.6% 17	11.8% 2	29.4% 5	16.4	12.03 1	0	12.5 2	15.0 3	19.0 2	15.5 2	18.1 7
	Financial Transaction Card Fraud (\$501-2500)	168	7.6% 11	17.4% 4	17.9% 30	13.3% 4	20.0% 6	20.3	12.03 1	0	12.5 2	15.0 4	15.5 2	18.0 2	23.5 19
	Public Assistance Fraud (\$501-2500)	60	3.4% 2	100% 1	3.3% 2	0% 0	0% 0	14.5	12.03 1	0	0	0	17.0 1	0	0

1 Effective for offenses committed on or after August 1, 2000, statutory provisions require that the presumptive duration for First Degree Criminal Sexual Conduct offenses is 144 months; for crimes committed on or after May 22, the Second Degree Criminal Sexual Conduct Offenses ranked at Severity Level VIII require that the presumptive duration is 90 months. While this negates the durations in the Sentencing Guidelines Grid for most criminal history scores, the presumptive sentence for offenders with scores of 5 or more are still determined by the Sentencing Guidelines Grid.

2 Mandatory minimum sentencing provisions under M.S. §609.11 apply to these offenses and others involving the use of a dangerous weapon. This statute requires that an offense involving the use of a firearm be sentenced to at least 36 months in prison for a first offense (60 months for a second or subsequent) and an offense involving the use of any other dangerous weapon be sentenced to at least 12 months and 1 day in prison (36 months for a second or subsequent). Felon in Possession of a Firearm requires a 60-month sentence of imprisonment. While provisions exist allowing the court to sentence without regard to this mandatory minimum, this is a departure from the Sentencing Guidelines.

Appendix F: Structure of Minnesota Drug Courts

Dodge County Drug Court

Dodge County began planning for its drug court in July 2001, with operation of the adult court beginning in June 2003. All degrees of drug offenders that demonstrate moderate to heavy chemical addiction are considered for the program (first degree manufacture of methamphetamine cases are considered on an individual basis). Offenders with current or past violent offenses under the federal definition are not eligible. Offenders can enter the program after entering a plea or on probation violations, and must pay a \$250 program fee for each three-month period. The drug court program had a first year capacity of 25 participants, with the capacity doubling to 50 participants in subsequent years. Table 1 outlines the phases of the Dodge County Drug Court program.

Table 1. Dodge County Drug Court Phase Treatment Schedule

Phase	Emphasis	Length In Months	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I	Stabilization, Orientation, Assessment & Family Intervention	6	3 / week	2 / week	1 / week
II	Sobriety, Self-Esteem & Family Communications	6	2 / week	1 / week	3 / month
III	Peer Relationships, Decision Making, Education/Vocation	6	1 / week	2 / month	2 / month
IV	Aftercare	6	2 / month	1 / month	1 / month

- Phase I completion requires 30 consecutive days of both clean UA's and program participation without unexcused absences.
- Phase II completion requires meeting treatment goals and 60 consecutive days of both sobriety and service participation without unexcused absences. Phase II also requires spouse or significant other support group participation once a week.
- Phase III completion requires meeting education/vocation goals and 90 consecutive days of both sobriety and service participation without unexcused absences.
- Phase IV identifies drug-free support network, relapse prevention strategies, and continued educational and vocational goals.

Dodge County's first process evaluation is scheduled for June 2004, with an outcome evaluation to follow two years later.

Hennepin County Drug Court

Hennepin County began drug court operations in January 1997. The drug court handles all felony level drug offenses and existing companion charges. Drug offenders also charged with a felony person crime are not eligible for the program. Offenders are placed into one of three tracks: diversion, post conviction/non-treatment, and post conviction/treatment. The program has an average of 4,155 clients on any given day. Tables 2 through 4 outline the phases for each track.

Table 2. Hennepin County Drug Court Diversion Track Phase Treatment Schedule

Phases Emphasis	Length In Days	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I Education & Treatment	0 - 90	1 / week	Case by Case	1 / month
II Aftercare/Support Groups	91 - 365	Random	Case by Case	Optional

**Table 3. Hennepin County Drug Court Post Conviction – Non Treatment
Phase Treatment Schedule**

Phases Emphasis	Length In Days	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I Assessment/Employment	0 – 90	2 / week	2 / month	2 / month
II Employment or Structured Activities	91 - 180	1 / week	1 / month	1 / month
III Employment or Structured Activities	181 - 365	2 / month	Every other month	Every other month
IV Administrative Probation	366 - 730	none	None unless new offense	None unless new offense

- Phase I requires full time employment or a development plan w/job search.
- Phase II requires full time employment or minimum of 20 hours per week structured activity.
- Phase III requires full time employment or minimum of 32 hours per week structured activity.
- Phase IV offender is on administrative probation unless new offense.

The Post Conviction – Treatment track has four phases.

Table 4. Hennepin County Drug Court Post Conviction – Treatment Phase Treatment Schedule

Phases Emphasis	Length In Days	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I Treatment/Aftercare	0 - 90	2 / week	No contact until treatment completed	1 / month
II Aftercare/Support Group	91 - 180	1 / week	1 / month	1 / month
III Support Group	181 - 365	2 / month	Every other month	Every other month
IV Administrative Probation	366 - 730	none	None unless new offense	None unless new offense

- Phase I requires full time employment or a development plan w/job search.
- Phase II requires full time employment or minimum of 20 hours per week structured activity.
- Phase III requires full time employment or minimum of 32 hours per week structured activity.
- Phase IV offender is on administrative probation unless new offense.

This report included information on the process and outcome evaluation of the Hennepin County Drug Court completed in May 1999. No additional evaluations are currently planned.

Ramsey County Drug Court

The Ramsey County Adult Substance Abuse Court began operations in October 2002. The court targets only fourth and fifth degree drug offenders with a level three substance abuse problem under the Rule 25 Assessment Tool; first and second degree offenders are excluded, and third degree offenders are considered on a case by case basis. The court also accepts low-level property offenders if their crimes are drug related. Offenders with violence in current or past offenses and residential burglary offenders are not accepted. Offenders can enter the program under four tracks: diversion, deferred prosecution, post-plea, and probation violation. The program is limited to 125 participants, who are charged a \$15.00 monthly fee. The three phases of Ramsey County’s drug court are outlined in Table 5.

Table 5. Ramsey County Adult Substance Abuse Court Phase Treatment Schedule

Phase	Emphasis	Length In Months	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I	Assessment, Stabilization & Treatment	4	2 / week	1 / week	1 / week
II	Problem-Solving Aftercare	4	1 / week	Case by case	3 / month
III	Transition / Re- Entry	4	1-2 times / month	Case by case	1-2 / month

- Phase I emphasizes meeting housing and treatment needs.
- Phase II emphasizes problem solving skills with cognitive-behavioral programming and educational or employment readiness programs.

- Phase III emphasizes introduction into sober, mainstream society through employment or education and ends in graduation.

The Ramsey County Adult Substance Abuse Court is currently in the early stages of a process evaluation.

St. Louis County (Duluth) Drug Court

The Duluth Drug Court began planning in November 2001 and accepted its first clients in June 2002. The court targets only third through fifth degree drug offenders; first and second degree offenders, as well as offenders covered under the federal definition of “violent offender,” are not eligible for the program. Offenders can enter the program pre-plea, post-plea, or on probation violations. The court capped program participation at 80 offenders in the first year. Participants are required to pay a \$400 fee as a condition of the program. Table 6 outlines the four phases of the Duluth Drug Court program.

Table 6. Duluth Drug Court Phase Treatment Schedule

Phase	Emphasis	Length In Months	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I	Treatment / Cognitive Skills Training	2-3	5-8 / month	2-3 / week	1 / week
II	Aftercare	2-3	5-8 / month	1 / Week Random home and phone checks	Every other week
III	Monthly Reporting	6	3-5 / month	2 / month Random home and phone checks	1 / month
IV	Commencement	Remainder of Probation Term	2-3 / year	Supervised or Unsupervised Probation	None unless violation

- Phase I may include jail, work release or other sanctions and begins the period of treatment. Treatment must be successfully completed before progressing to the next phase.
- Phase II requires compliance with aftercare program and continued cognitive training skills.
- Phase III requires monthly court appearances.
- Phase IV is commencement & the offender moves to either supervised or unsupervised probation.

The Duluth Drug Court is in the process of completing a process evaluation.

Stearns County Drug Court

Planning for the Stearns County Drug Court began in October 2001, with the first clients accepted in July 2002. The court targets only chemically addicted third through fifth degree drug offenders; first and second degree offenders, as well as offenders covered under the federal definition of “violent offender,” are not eligible for the program. Offenders can enter the program pre-plea, post-plea, or on probation violations. Table 7 outlines the three phases of Stearns County’s Drug Court program.

Table 7. Stearns County Drug Court Phase Treatment Schedule

Phase	Emphasis	Minimum Length In Months	Minimum Urinalysis Testing	Minimum Meetings w/ Staff	Reviews with Drug Court Judge
I	Treatment	3	2 / week	2 / week	3 / month
II	Aftercare	3	2 / week	2 / week	2 / month
III	Education / Vocation	6	1 / week	2 / month	1 / month

- Phase I requires completion of primary chemical dependency treatment and three months w/o sanctions or dirty UA's.
- Phase II requires completion of all aftercare treatment requirements and a minimum of three months w/o sanctions or dirty UA's. Movement out of Phase II also requires a case disposition, which may include diversion.
- Phase III emphasizes educational and vocational goals and requires six months w/o sanctions or dirty U/A's.

Stearns County plans to conduct a process evaluation in June 2004 and a follow up process and outcome evaluation in 2005.

Appendix G: Alternative to Incarceration for Drug Offenders—Survey

MN Sentencing Guidelines Commission Survey: Drug Offenders

Technical Instructions: Please fill out the survey by tabbing through the form prompts and by clicking on each appropriate shaded area. Then save the completed form to an appropriate computer drive and send it as an attachment to: sentencing.guidelines@state.mn.us

Agency Name:
Agency Contact:

Contact Phone:

Note: For purposes of this survey, a “Drug Offender” is defined as an adult who was convicted, or adjudication was withheld, for a felony Controlled Substance Crime under M.S. §152.021-152.025.

1. What is the annual cost per drug offender to your jurisdiction?

If possible, please break down the annual cost by:
Treatment cost?
Supervision cost?

2. Does your jurisdiction have any programs that are designated specifically for drug offenders?

Yes No

3. Please check all applicable types of programs that are used in your jurisdiction for drug offenders.

- | | |
|---|---|
| <input type="checkbox"/> Day Reporting | <input type="checkbox"/> Half-Way House |
| <input type="checkbox"/> Drug Abuse Education | <input type="checkbox"/> House Arrest |
| <input type="checkbox"/> Drug Court (Pre-Plea) | <input type="checkbox"/> Intensive Outpatient Treatment |
| <input type="checkbox"/> Drug Court (Post-Plea) | <input type="checkbox"/> Residential Treatment |
| <input type="checkbox"/> Electronic Home Monitoring | <input type="checkbox"/> Standard Outpatient Treatment |
| | <input type="checkbox"/> Other: <Please Specify> |
| | <input type="checkbox"/> Not Applicable |

4. Please list the names of all drug treatment programs used in your jurisdiction for drug offenders (if applicable).

- | | |
|-----------|-----------|
| 1. _____ | 11. _____ |
| 2. _____ | 12. _____ |
| 3. _____ | 13. _____ |
| 4. _____ | 14. _____ |
| 5. _____ | 15. _____ |
| 6. _____ | 16. _____ |
| 7. _____ | 17. _____ |
| 8. _____ | 18. _____ |
| 9. _____ | 19. _____ |
| 10. _____ | 20. _____ |

5. Does your jurisdiction make any programming distinctions between drug offenders who are suppose to go to prison (presumptive commits) under the sentencing guidelines vs. those who are recommended stayed sentences (presumptive stays) under the sentencing guidelines?

Yes No

Thank you for completing this survey. Please return it by October 10, 2003 to MSGC at sentencing.guidelines@state.mn.us. Please contact Jill Payne at jill.payne@state.mn.us with any questions you may have regarding this survey.

Table 1. Alternative to Incarceration for Drug Offender—Results Summary

Agency Name	1a. Treatment Cost?	1b. Supervision Cost (per day)?	2. Drug Program?	3A. Day Report?	3B. Education	3C. Pre-Trial Drug Crt	3D. Post-Plea Drug Crt	3E. Electronic Monitoring	3F. Half-Way House	3G. House Arrest	3H. Intensive Treatment	3I. Residential Treatment	3J. Standard Outpatient Treatment	3K. Other-Private Non-Profit Chemical Dependency Cntr.	3L. Other-Federally Funded After-Care for Dual Diagnosis	3M. Other-Electronic Breathalysers	3N. Other-Methadone	3O. Other-Sober House	3P. Other-Job School/Workforce Center	3Q. Other-Acupuncture	3R. Other-In-House ABE/GED	3S. Group Supervision	4. (See Table 2)	5. Programming Distinctions
Anoka County CC	Unknown	\$2.00	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	No	No	No	No	No	No		No
Arrowhead Regional Corr.	\$7.05 (1/2 Total Cost)	\$7.05 (1/2 Total Cost)	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		Yes
Blue Earth County CC	\$0	Unknown	No	No	Yes	No	No	Yes	No	Yes	No	Yes	Yes	No	No	No	No	No	No	No	No	No		No
Dakota County CC	\$0	\$3.42	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		No
DOC-Albert Lea	Unknown	\$5-10	No	No	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No		No
DOC-Bemidji	Unknown	\$3-20	No	No	No	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		No
DOC-Center City	Unknown	\$3-20	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	No	No	No	No		No
DOC-Detroit Lakes	Unknown	\$3-20	No	No	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	No	No	No	No	No		No
DOC-Mankato	Unknown	\$3-20	No	No	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	No	No	No	No	No		No
DOC-Marshall	Unknown	\$3-20	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		No
DOC-Moorhead	Unknown	\$3-20	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		No
DOC-St. Cloud	Unknown	\$3-20	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		No
Hennepin County CC	\$6.34	\$2.28	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes- Presumptive Commits assigned high-risk status and receive programming accordingly.
Ramsey County CC	Unknown	Unknown	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	No	No	No		No
Rice County CC	Unknown	Unknown	No	No	Yes	No	No	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	No	No	No	Yes		No
Rock Nobles Counties	Unknown	(No Response)	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		No
Washington County CC	Unknown	\$2.00	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No		No

Appendix G: Alternative to Incarceration for Drug Offenders—Results Summary (Cont.)

Survey Question Number 4: Names of all Drug Treatment Programs Used in Jurisdiction

Anoka County CC	DOC-Bemidji (Cont.)	DOC-Detroit Lakes (Cont.)
Anoka Metro Regional Treatment Center	Northland Recovery	Juel Fairbanks
Grace Counseling Center	Northwest Recovery	Keystone Treatment Program
Rebuild Academy	Upper Mississippi Mental Health	Lake Region Halfway House
Riverplace Counseling Center		Lakes Counseling
Transformation House	DOC-Center City	Leech Lake Family Services
Unity Hospital	ADAP-Regions Hospital	MADD
	Central MN MH Center	Mash-ka-Wisen
Arrowhead Regional Corrections	Chisago Co. Relapse	New Beginnings
Duluth Bethel	Dellwood Recovery Center	Next Step
The Center for Alcohol and Drug Treatment	Fairview Hospital	Northland Recovery Center
	Four Winds	On-Belay
Blue Earth CC	Hazelden	Pear Lake Thunderbird House
Addiction Recovery Technology, Inc.	Isanti Co. Rehab & Prevention	Pine Manor
New Beginnings	Liberace	Rapids Counseling
Waseca Family Focus	Meadow Creek	Recovery Plus
	Mish-ka-wisen	Share House
Dakota County CC	New Beginnings	Teen Challenge
Avalon	Nirvanan	Thunderbird Halfway House
Clues	Operation Foresight	Twelve Step House
Cochran Program	Passage Home	Upper Mississippi Mental Health Center
Create	Professional Counseling Center	Vineland
Fairview Ridges and Riverside	Recovery Plus	Way 12 Halfway House
Hispanos en Minnesota	Riverplace	White Earth Chemical Dependency Program
Journey	Serenity Manor	
Lifestyles Counseling	Supports, Stability & Sobriety	DOC-Mankato
Margaret's House		Addiction Recovery Technology
River Ridge	DOC-Detroit Lakes	Chain of Lakes
St. Joseph's Hospital	Ahnji-Be-Mah-Diz Halfway House	House of Hope
Teen Challenge	American Indian Services	New Ulm Medical Center
Twin Town	Anthony Lewis Center	Sioux Trails Mental health
VA Hospital	Arrowhead Center	St. Regional Treatment Center
	Arrowhead Treatment	Sunrise Recovery
DOC-Albert Lea	Aurora	
Austin Behavioral-Austin Medical Cntr.	Bell Hill Recovery Center	DOC-Marshall
Fairview Hospital Systems	Cass Lake Halfway House	Lower Sioux Treatment-Redwood Falls
Family Focus	Serenity Manor	New Life Treatment Center-Woodstock
Fountain Lake Treatment Center	Chi-Ska-Wes-Eh Halfway House	Project Turnabout
Freeborn County Chem. Dep. Center	Cochran House	Rainbow Behavioral-Windom
Hiawatha Hall Halfway House	Douglas Place	Southwestern Mental Health-Windom, Worthington, Luverne
Hiawatha Valley Mental Health Center	Fergus Falls Regional Treatment Center	
	Focus Unit	DOC-Moorehead
DOC-Bemidji	Four Winds	Bell Hill Recovery, Wadena
Douglas Place Halfway House	Glenmore Halfway House	Brainerd Regional Treatment Center, Four Winds
Gilfillan Center-Juveniles	Glenmore Recovery Center	Cochoran House
Mash-ka-Wisen	Hope House	
Northern Winds	Journey Home	

DOC-Moorehead

Douglas Place Halfway House, East Grand Forks
 Drake Counseling
 DUI Education, Fergus Falls
 Fairview Deaconess, Minneapolis
 Fergus Falls Regional Treatment
 First Step Recovery, PLLP
 Fountain Center, Albert Lea
 Freedom Center
 Glenmore Halfway House, Crookston
 Glenmore Recovery Center

Gull Harbor
 Halt Unit, Breckenridge
 Hope Unit, Breckenridge
 Journey Home, St. Cloud
 Lake Region Halfway House, Fergus Falls
 Lakeland Mental Health Center
 lakes Counseling, Detroit Lakes
 lakes Counseling, Detroit Lakes
 Lakeview Mental Health
 Lost and Found Ministry
 Maskawisen, Sawyer
 Medallion, Willmar
 Merit Care Hospital, Fargo, ND
 Migrant Health Services
 Neighborhood Counseling Center
 Neighborhood Counseling Center, Wadena
 New Beginnings-Morris
 Next Step Halfway (juveniles), Staples
 Passage Home
 Pine Manor, Nevis

Prairie Psychiatric Services, Fargo, ND
 Project Turnabout
 Recovery Plus, St. Cloud
 Safe Harbor
 Serenity Manor, Barnesville
 Share House, Fargo, ND
 Southeast Mental health, Fargo, ND
 St. Francis Medical Center, Breckenridge
 Veteran's Admin. Chem. Dep. Unit
 Wellness Center, Moorhead

DOC-St. Cloud

4 Winds-Brainerd
 5 County Mental Health
 Anoka Metro Mental Health
 CEASE-Alexandria
 Central MN Mental Health-Monticello
 Delwood-Cambridge
 Focus 12
 Journey Home
 Lakeland Mental Health
 Liberalis-Moose Lake
 Mash-ka-Wisen

DOC-St. Cloud

New Beginnings-Waverly
 Recovery Plus-St. Cloud
 Riverplace-Elk River
 Rum River Recovery Plus-Princeton
 St. Cloud Hospital
 Transformation House
 Vet. Admin. Hospital-St. Cloud
 Wren House/Thunderbird House

Hennepin County Comm. Corr.

African American Family Services
 BASICS
 Cedar Ridge
 Chrysalis
 CLUES
 Create, inc.
 Eden Men's Program
 Eden Women's Program
 Hispanos en Minnesota
 HOC-Day by Day Program
 Park Avenue Men's Program
 Park Avenue Women's Program
 Prodigal House
 Recovery Resource Center
 RiverPlace
 Salvation Army Beacon Program
 Turning Point Men's Program
 Turning Point Mother's and Children's Program
 Twin Town Treatment Centers
 Wayside Residential

West Metro Recovery Services**Ramsey County Comm. Corr.**

African American Family Service
 Arrigoni House
 Chicanos Latinos Unidos En Servicio
 Fairview-University Medical Center
 Hazelden Fellowship Club
 Green House
 Juel Fairbanks
 Hart House
 HealthEast-St. Joe's
 Hispanos En Minnesota
 Lao Family Community of MN
 People Inc. / HealthEast
 Project Remand
 Regions ADAP
 Senior Chemical Dependency
 St. Anthony House
 South Metro Human Services
 Twin Town
 United Hospital
 Volunteers of America

Rice County CC

Family Focus of Faribault
 Omada Behavioral Health, Inc.

Rock Nobles CC

Fountin Center, Albert Lea
 Luverne Community Hospital, Luverne
 New Life Treatment Cntr, Woodstock
 Rainbow Behavioral, Windom
 Road to Recovery, Jackson
 Southwestern Mental Health, Worthington and Luverne

Washington County Comm. Corr.

ADAP
 Arrigoni House
 CLUES
 Cochran House
 Conceptual Counseling
 Detox (Ramsey and Hastings)
 Eden programs
 Fairview and Regions Hospitals
 Hazelden Programs
 HSI Programs (Adult Insight)
 Jules Fairbanks
 Kinnick Falls
 New Connections
 Operation Foresight
 Port VA Hospital
 Pride Institute
 Progress Valley
 Riverplace Wash. Co. In-Jail Tx Program
 St. Joseph's Hospital
 The Haven
 Twin Town
 WeCare; MADD

Appendix H: Prior Crimes of Violence

The following list is a slightly modified version of the violent crimes listed in M.S. §609.1095. The subcommittee discussed each of these offenses, and agreed that the ones checked in the column “Consensus” are prior offenses that would exclude an offender from being considered non-violent. There was no agreement reached on the offenses with a check in the “No Consensus” column.

Prior Crimes of Violence	Consensus to Include	No Consensus
518B.01, subd. 14(d) Violation Order for Protection	√	
18D.331, subd. 5 Tampering, Theft, Transport Anhydrous Ammonia	√	
609.165 and 624.713 Persons with Prior Violent Crime not to Possess Firearms	√	
609.185 Murder 1	√	
609.19 Murder 2	√	
609.195 Murder 3	√	
609.20 Manslaughter 1	√	
609.221-609.2242 All Felony Assaults including Domestic Assault	√	
609.228 Dist. Drugs – Great Bodily Harm		√
609.235 Use of Drugs to Injure or Facilitate	√	
609.24 Simple Robbery	√	
609.245 Aggravated Robbery	√	
609.25 Kidnapping	√	
609.255 False Imprisonment	√	
609.2661-268 Crimes Against Unborn		√
609.342 Criminal Sexual Conduct 1	√	
609.343 Criminal Sexual Conduct 2	√	
609.344 Criminal Sexual Conduct 3	√	
609.345 Criminal Sexual Conduct 4	√	
609.468 Crime while wearing Bullet Proof Vest	√	
609.498 S1 Aggravated Witness Tampering	√	
609.52 Theft of Firearm, Theft of Explosive	√	
609.561 Arson 1	√	
609.562 Arson 2	√	
609.582 S1 Burglary 1	√	
609.66 Reckless Use Firearm or Dangerous Weapons	√	
609.66 S1e Drive-By Shooting	√	
609.67 Machine Guns and Short-Barreled Shotguns	√	
609.687 Adulteration	√	
609.71 Riot	√	
609.713 Terroristic Threats	√	
609.748, subd. 6(d) Violation of Harassment Restraining Order	√	
609.855, subd. 5 Shooting at Transit Vehicle	√	
609.229 Crime Benefit Gang	√	
609.377 Malicious Punish. of a Child	√	
609.378 Child Endangerment	√	
617.246 Use of Minors in Sexual Performance	√	
Possession or Dissemination of Child Pornography	√	
609.749 Harassment Stalking	√	
152.021, subd. 2a(a) and 2a(b) 1 st Degree Manufacture or Attempted Manufacture of Methamphetamine	√	
152.021 (Other Provisions)		√
152.022 Cont. Substance 2		√
152.021-152.025 Cont. Substance Crimes subject to Mandatory Minimum in M.S. §609.11	√	

