

Felony Driving While Impaired 2004 Report

January 2004

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Executive Summary

This report fulfills the legislative mandate requiring the Department of Corrections (DOC) to submit a report on the implementation effects of the felony-level driving while impaired (DWI) offense (Special Session Laws 2002, Chapter 220, article 6, Sec. 14).

Demographic Information

- ◆ Between August 1, 2002, and June 30, 2003, there has been a total of 504 felony-level DWI sentences. Four hundred and twenty three (84%) of these sentences have been stays of execution while 62 (12%) have resulted in executed prison sentences. Nineteen of the 504 sentences (4%) resulted in a stay of imposition.
- ◆ Data from the Minnesota Supreme Court shows that 22 felony DWI trials were taken to verdict. Nine of these were tried by a judge, and all resulted in a conviction. Thirteen were tried by a jury, and most (10) resulted in a conviction while only three ended in acquittal.
- ◆ Most of the sentences have been given to men under the age of 45 from the following counties: Hennepin (18%), Ramsey (9%), Dakota (9%), St. Louis (6%), and Anoka (6%).

Criminal History

- ◆ One indication of an offender's criminal history is his/her sentencing guidelines criminal history score. **Overall**, the felony DWI sentences are based on criminal history scores¹ between zero and 12 with an average score of two. Forty percent (N = 199) of the sentences are based on a criminal history score of one.
- ◆ Four hundred and six of the 423 sentences (96%) resulting in a **stay of execution** are based on criminal history scores of three or less. Stay of execution sentences have an average criminal history score of one.
- ◆ Fifty-five of the 62 (88%) **executed prison** sentences are based on criminal history scores of three or more. Executed prison sentences have an average criminal history score of four.
- ◆ An additional indication of past criminal history is prior conviction and incarceration information. This information was available only for those offenders who have been incarcerated. Sixty-seven of the 69 (97%) currently **incarcerated** offenders have at least one prior conviction. In total, incarcerated offenders have 493 prior convictions of which more than four in ten (46%) were traffic-related offenses. Thirty-one of the 69 (45%) incarcerated felony DWI offenders have only been incarcerated for this current DWI offense. Nineteen (28%) have been incarcerated twice.

Sentencing

- ◆ All sentences resulting in a stay of execution received probation time, imposed jail days, and stayed prison time. Two hundred and sixty-three of the 423 (62%) **stay of execution** sentences received 84 months of probation while 27% (N = 116) received 60 months probation. Forty-three percent of this group (N = 177) also received 121 to 180 days of imposed jail time. One hundred and twenty-five received (31%) 365 days of imposed jail time. Two hundred and sixty of the 423 (62%) stay of execution sentences were given between 40 and 49 months of stayed prison time. One hundred and thirty-three of the 423 (31%) imposed a stayed prison sentence of 30 to 39 months.

¹ Criminal history scores are based on Minnesota's sentencing guidelines system and an offender's conviction offense severity and criminal history. The scores are used to create a more uniform and determinate sentencing system.

- ◆ Eleven of the 19 sentences that resulted in a **stay of imposition** received 84 months of probation, and four each received 36 or 60 months of probation. Eight of the 19 received 180 jail days while seven received 365 jail days. The other three sentences received between 210 and 270 imposed jail days.
- ◆ Thirty-two percent (N = 20) of **executed prison** sentences are for 50 to 59 months, and 27 percent (N = 17) are for 30 to 39 months. The average executed prison sentence length is 49 months. Because of the long sentences, only one felony DWI offender has currently been released from prison and is on conditional release². This offender is on intensive supervised release and at the time of this report has not committed any release violations.

Revoked Felony DWI Offenders

- ◆ Since the inception of the law, nine offenders originally given a stay of execution have violated their probation, were revoked, and sent to prison. Currently, there is no data system in place for capturing the reasons for revocation. One of the offenders is deceased, and the rest are serving their prison sentences. Their executed prison sentences span 36 to 75 months; three each received 42 months, an additional three received 48 months, two received 36 months, and one received 75 months.

Treatment of Incarcerated Offenders

- ◆ Every incarcerated felony DWI offender has received a comprehensive chemical dependency assessment. The results show that almost seven in ten incarcerated felony DWI offenders are alcohol dependents while almost one-quarter abuses alcohol. Incarcerated felony DWI offenders also have issues with other chemicals such as cocaine, cannabis, and amphetamine dependence. As a result of these assessments, all of the incarcerated felony DWI offenders have been directed to participate in chemical dependency treatment. Incarcerated DWI offenders receive treatment priority. At the time of this report, 66 percent of offenders were on a waiting list to receive treatment, while thirty-one percent had entered treatment. Sixteen of those who have entered treatment have completed it, and most (11) have completed treatment successfully.
- ◆ The cost of treating DWI offenders is the same as treating other types of offenders and is based on the average yearly per diem. In fiscal year 2003, the average male per diem was \$79.95 and the average per diem for female offenders was \$86.99.

² The law stipulates that released felony DWI offenders be placed on conditional release for five years.

Introduction

What is the felony driving while impaired offense?

In June of 2001, the Minnesota Legislature authorized a felony offense penalty for individuals who have a fourth driving while impaired (DWI) conviction within a ten-year time frame. In addition, any additional DWI conviction after a felony conviction is automatically a felony.

The law requires a mandatory three-year sentence with a maximum sentence of seven years. Felony DWI offenders with executed prison sentences must complete a prison-based mandatory chemical dependency treatment program before they can be considered for programs such as work release or the Challenge Incarceration Program. In addition, once released from prison, felony DWI offenders are to be placed on conditional release for five years, which includes a period of intensive supervision along with any other condition the commissioner of corrections deems appropriate. Failure to comply with the conditional release can result in revocation of an offender's conditional release status with all or some of the conditional release time to be served in prison.

While the courts may not give a sentence of less than three years, the courts may issue a stay of execution of sentence. Sentencing guidelines presume a stayed sentence if an offender has a criminal history score of less than three. If the court stays the execution of the prison sentence, the following must be imposed:

- ⇒ If this is a fourth conviction, the DWI offender must serve a minimum of 180 days in a local jail, serving at least 30 consecutive days, and a maximum of 150 days on home detention³
- ⇒ If this is the fifth or more DWI conviction, he or she must serve a minimum of one year in a local jail, serving at least 60 consecutive days
- ⇒ All offenders with a stayed execution of sentence will have his or her driver's license revoked
- ⇒ All offenders with a stayed execution of sentence must also receive the care recommended by a chemical use assessment

In addition, the new law increased the fee for license reinstatement from \$290 to \$630 as of July 1, 2003. This increase applies to all DWI violators, not just felony-level offenses.

Current Research Methods

The information in this report is based on all felony DWI sentences between the inception of the law on August 1, 2002, and June 30, 2003. The report, based on Sentencing Guidelines information, is supplemented with additional data from the Bureau of Criminal Apprehension and the DOC's Correctional Offender Management System (COMS). Because offenders can have more than one offense and there is no unique identifier to denote individuals, the majority of information in this report is based on sentences, not individual offenders. The exception to this is those offenders given an executed prison sentence. All incarcerated offenders are given a unique number, which allows the DOC to accurately identify individuals.

Because offender experiences differ based on the result of sentencing, the information in this report is broken out into three groups: those given a stay of execution, those given a stay of imposition, and those who received an executed prison sentence. Additionally, nine offenders have had their stay of execution revoked and their prison sentence executed. Information on these nine offenders is included with the prison information when appropriate.

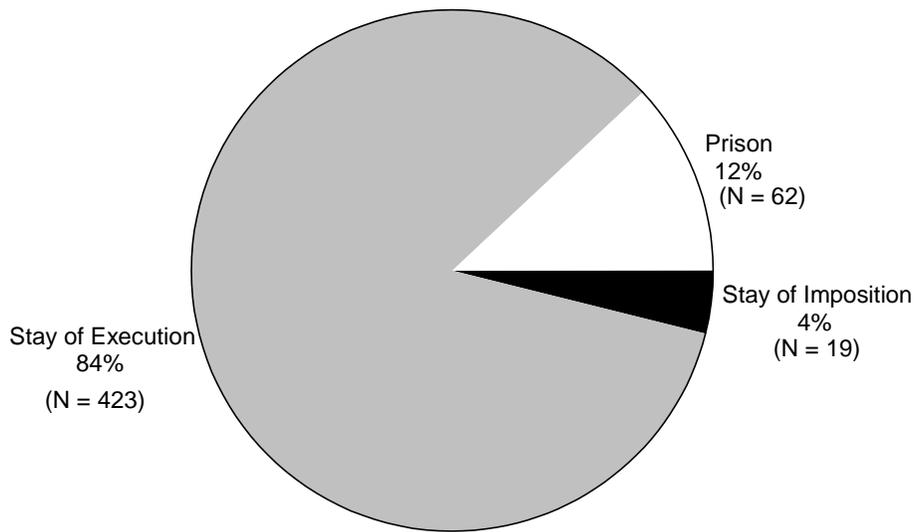
³ Unless sentenced to an intensive supervision program for DWI offenders.

Overall Demographic Information

This section of the report details information on all of the sentences given between August 1, 2002, and June 30, 2003. It is important to understand that individuals can be convicted of multiple felony DWI offenses and receive more than one sentence. The lack of a unique identifier makes it impossible to ensure, with confidence, the actual number of individuals. Therefore, the information in this section is based on the number of sentences, not individual offenders.

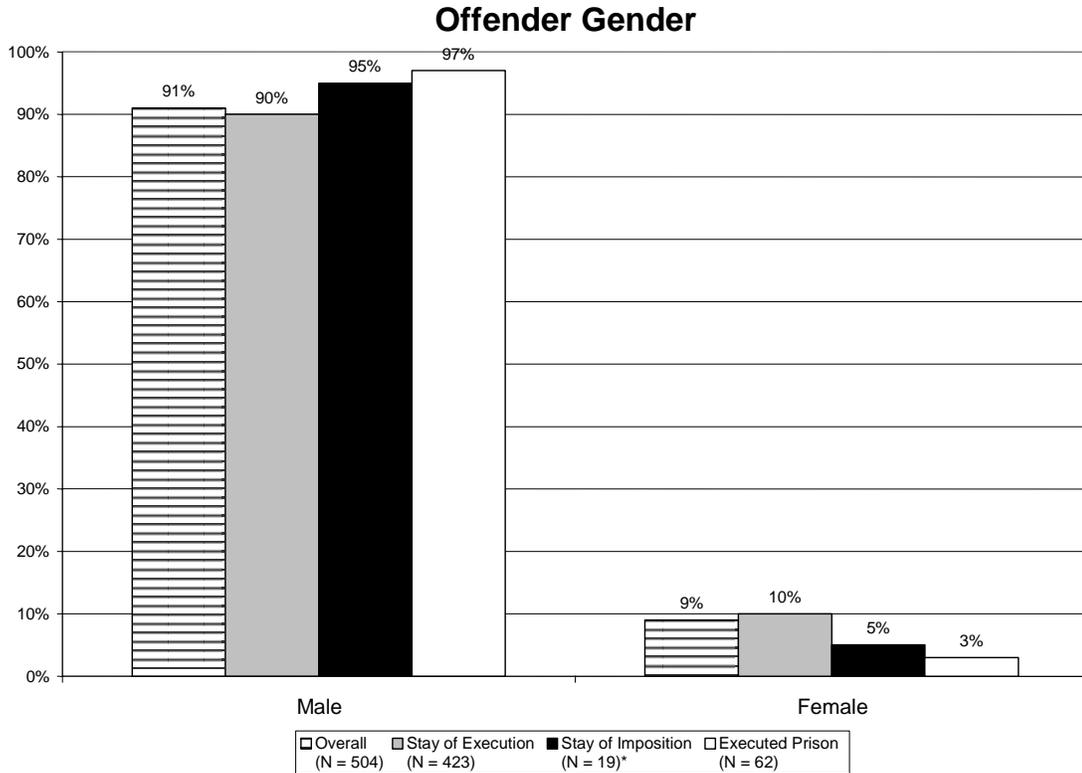
FIGURE 1

Sentencing Outcome (N = 504)



- ◆ A total of 504 felony level DWI sentences has been issued between August 1, 2002, and June 30, 2003 (Figure 1). More than eight in ten (84%) of these sentences were **stays of execution** while slightly more than one in ten (12%) were **executed prison** sentences. Far fewer resulted in a **stay of imposition** (4%).
- ◆ Data from the Minnesota Supreme Court shows that 22 felony DWI trials have been taken to verdict. Nine of these were tried by a judge, and all resulted in a conviction. Thirteen were tried by a jury, and most (10) resulted in a conviction while only three ended in acquittal.

FIGURE 2

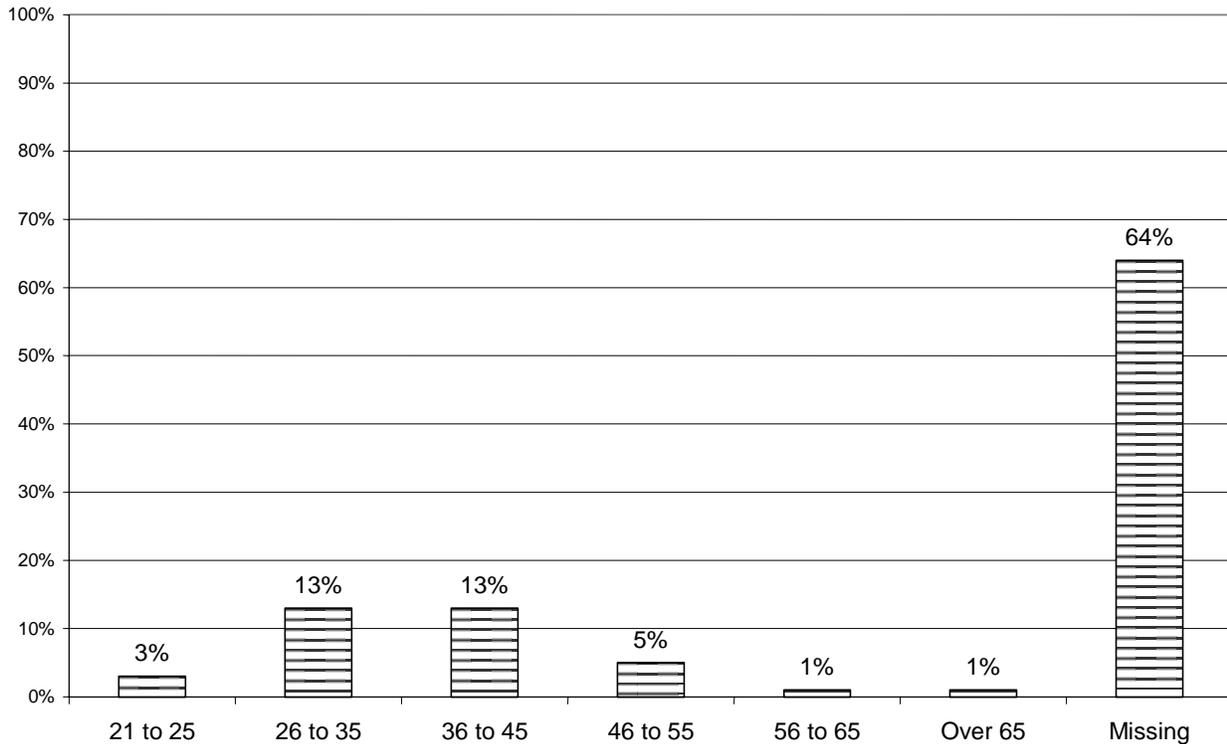


*Because of the small number of felony DWI offenders who received a stay of imposition sentence between August 1, 2002, and June 30, 2003, caution should be taken when interpreting the information on this group.

- ◆ Almost all sentences overall and in each of the sentencing groups were given to male offenders (Figure 2). Ten percent or less of the felony DWI sentences in all groups were given to female offenders.

FIGURE 3

Offender Age at Sentencing
(N = 504)

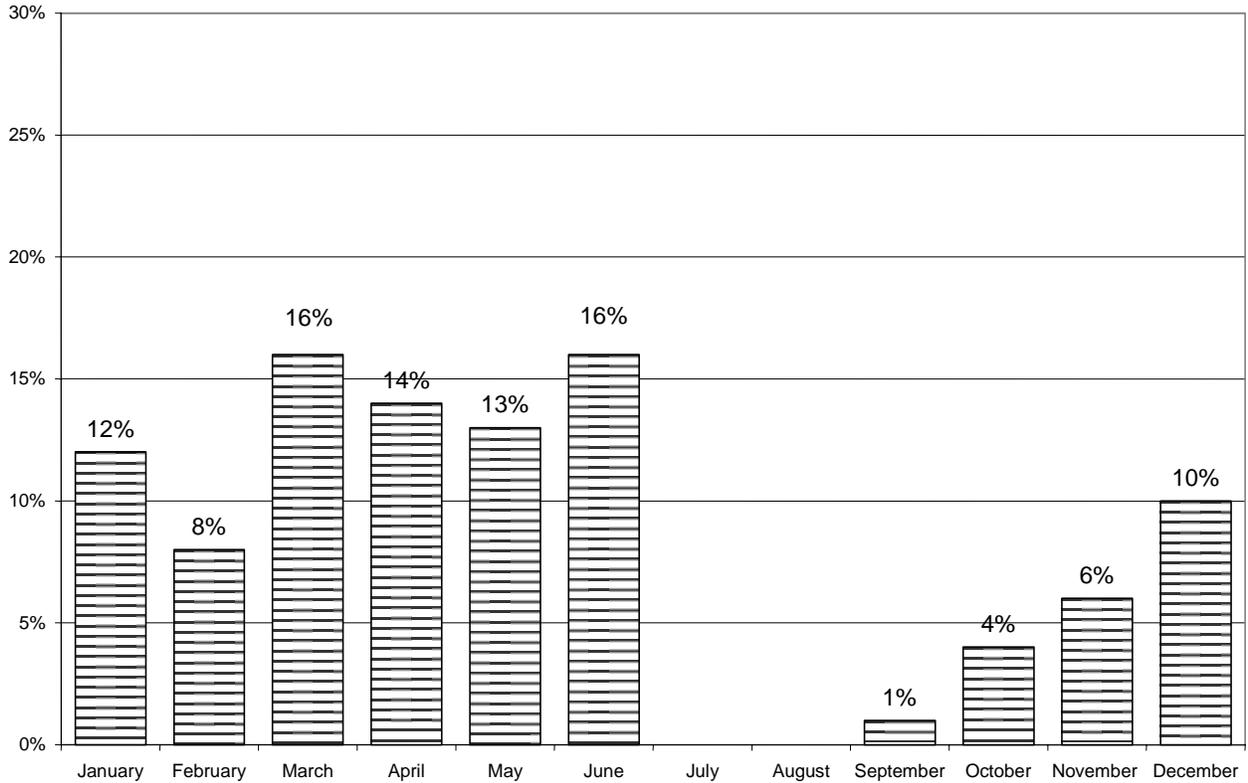


* Information for calculating the age at sentencing was not available for many of the offenders.

- ◆ In order to calculate an offender's age at sentencing, his or her date of birth was subtracted from his or her sentencing date (Figure 3). Unfortunately, date of birth was not available for almost two-thirds (64%=missing) of the sentences **overall**.
- ◆ Although not depicted in Figure 3, age at sentencing was also calculated for all **executed prison** sentences because date of birth for all prisoners is contained in the DOC's offender management system. Almost half (48%) of this group was between 21 and 35 years old or were 36 to 55 years old (50%) at sentencing. Far fewer (3%) were 56 or older.

FIGURE 4

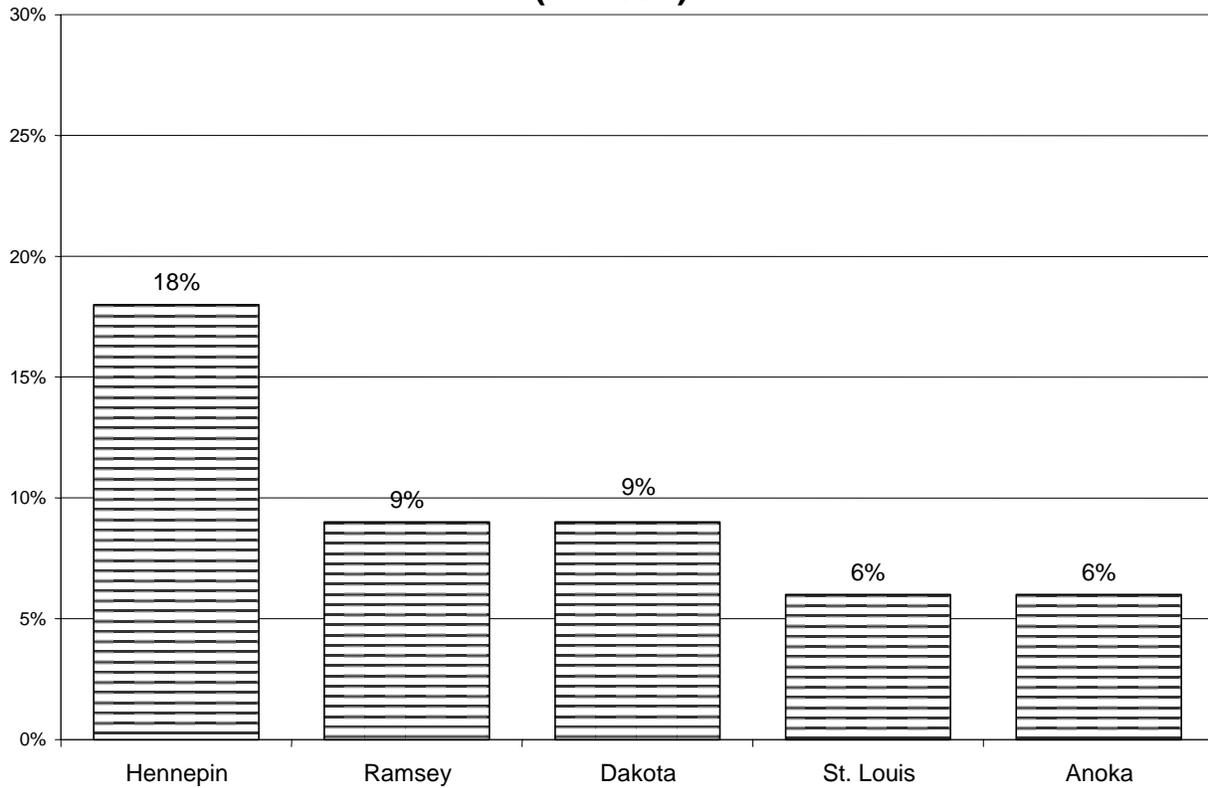
Month of Sentencing
(N = 504)



- ◆ **Overall**, 16 percent each of felony DWI sentences were issued in March or June (Figure 4). More than one in ten were given in the following months:
 - April (14%)
 - May (13%)
 - January (12%)
- ◆ Although each separate sentencing group is not depicted in Figure 4, 16 percent each of **stay of execution** sentences were given in March or June. One in ten or more were sentenced in:
 - April (13%)
 - May (13%)
 - January (12%)
 - December 10%
- ◆ The highest percentage (21%) of **stays of imposition** were sentenced in March. Sixteen percent each were sentenced in June, November, or December.
- ◆ Almost-one quarter (24%) of **executed prison** sentences took place in April, while more than one in ten took place in:
 - January (16%)
 - March (15%)
 - June (14%)
 - May (11%)

FIGURE 5

**Top Sentencing Counties
(N = 504)**



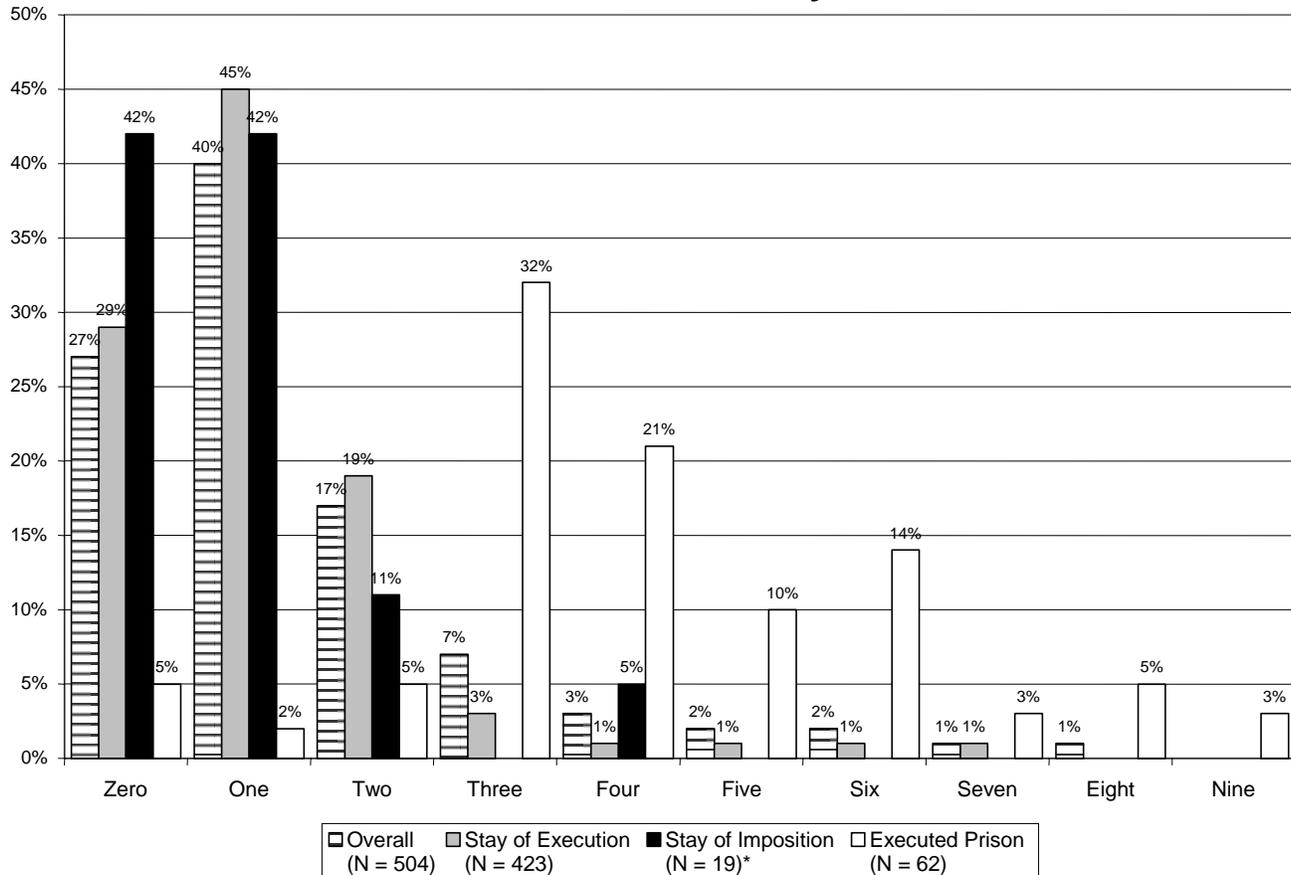
- ◆ **Overall**, almost eight in ten (18%) felony DWI sentences came from Hennepin County (Figure 5). Other top sentencing counties include:
 - Ramsey (9%)
 - Dakota (9%)
 - St. Louis (6%)
 - Anoka (6%)
- ◆ Figure 5 does not show the individual sentencing groups; however, **stay of execution** sentences follow the same trend as the overall sentences. Almost two in ten (18%) are from Hennepin County, while approximately one in ten is from Ramsey (10%) or Dakota (9%) County.
- ◆ The top three counties with sentences resulting in a **stay of imposition** are St. Louis, Clay, and Goodhue (11% each).
- ◆ Approximately two in ten (18%) **executed prison** sentences are from Hennepin County. Approximately one in ten are sentenced from:
 - Ramsey (10%)
 - Polk (8%)
 - Dakota (7%)
 - St. Louis (7%)

Criminal History Information

The legislation governing this report requested a variety of information on past criminal behavior, including impaired driving histories. Unfortunately, that information is only available for those offenders for whom there is a state identification number. This number was only available for those offenders who have been incarcerated. Therefore, this report provides criminal history scores for **all** sentenced offenders (see Figure 6 below) and prior convictions and incarcerations for those sixty-nine offenders who were either sentenced directly to prison or who were revoked and sent to prison (see Figures 7 and 8).

FIGURE 6

Offender Criminal History Score

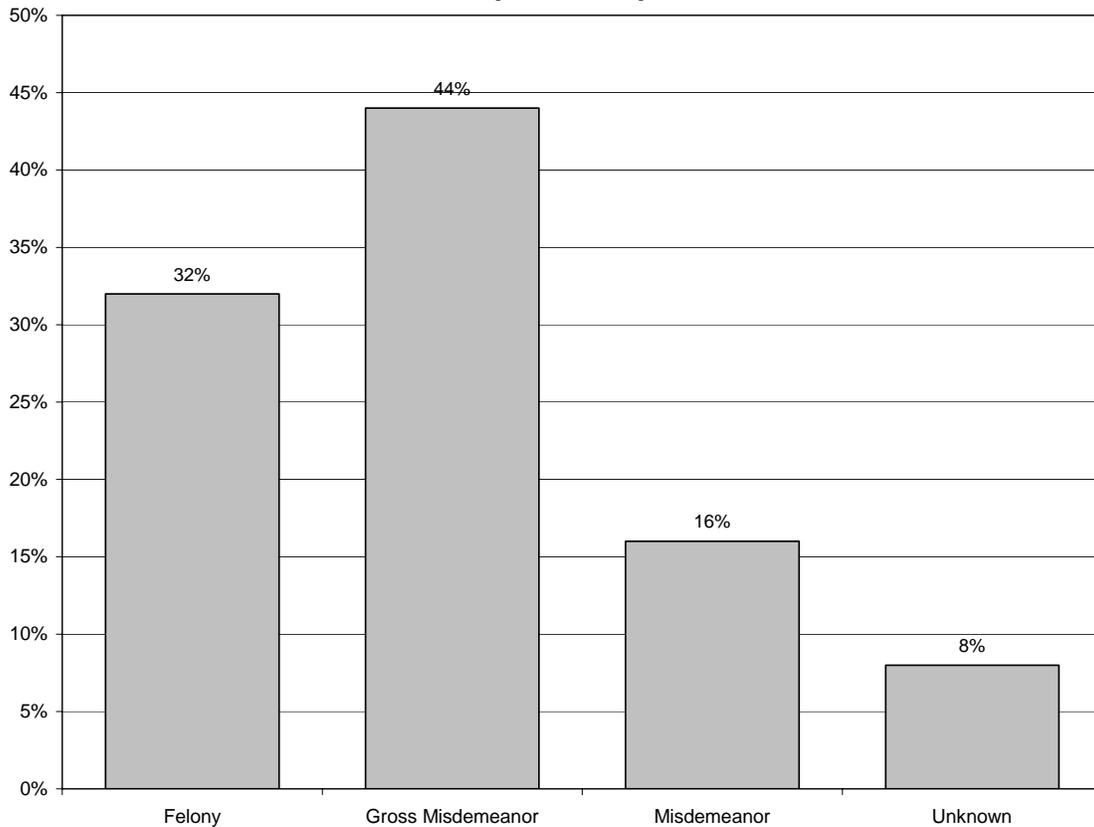


*Because of the small number of felony DWI offenders who received a stay of imposition sentence between August 1, 2002, and June 30, 2003, caution should be taken when interpreting the information on this group.

- ◆ **Overall**, four in ten (40%) felony DWI sentences between August 1, 2002, and June 30, 2003, were based on a criminal history score of one (Figure 6). Slightly more than one-quarter (27%) were given to felony DWI offenders with a criminal history score of zero.
- ◆ Sentencing guidelines presume a stayed sentence for offenders with a criminal history score of less than three. Almost all (96%) of the **stay of execution** sentences are based on a criminal history of three or less, while almost all (88%) of the **executed prison** sentences are based on a criminal history score between three and nine.

FIGURE 7

Prior Conviction Types (N = 493)



*This information is based on the total number of prior convictions.

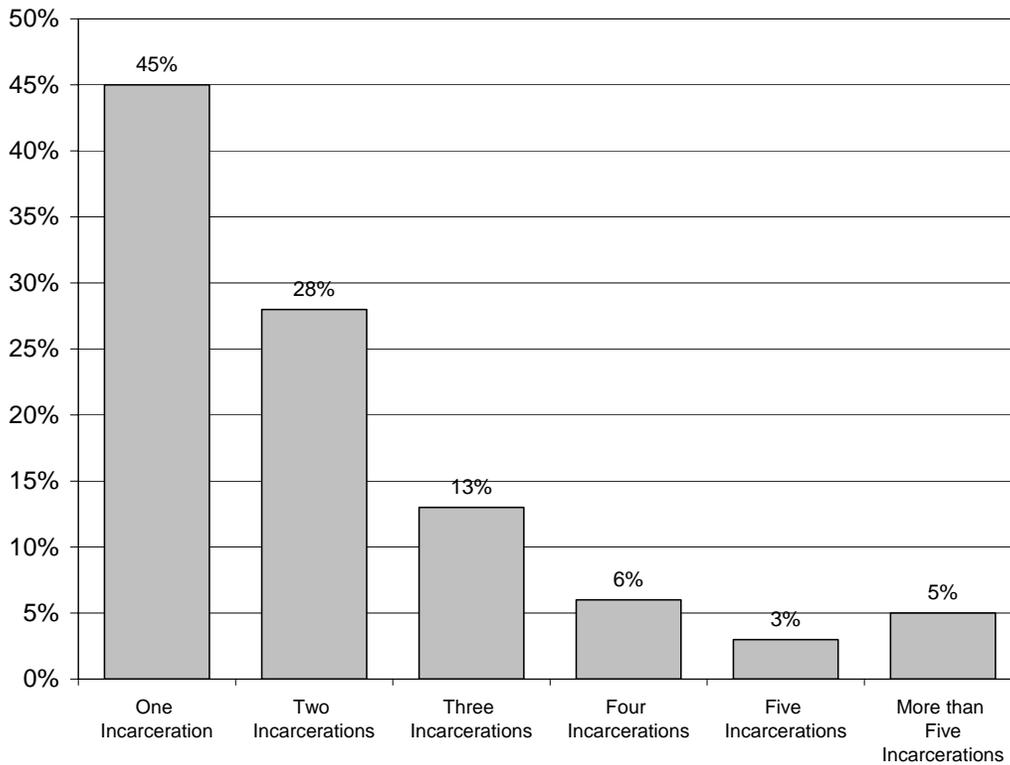
- ◆ Sixty-seven of the 69 felony DWI offenders who are currently incarcerated have had prior criminal convictions. As shown in Figure 7 above, these 67 offenders had a total of 493 prior convictions⁴. More than four in ten (44%) of these were convictions for gross misdemeanors, while almost one-third (32%) were for felonies.
- ◆ More than four in ten (46%) of the 493 prior convictions were for traffic-related offenses including driving under the influence of liquor and aggravated violations. However, only six of the traffic-related convictions were felony level offenses⁵.

⁴ This data does NOT include the felony DWI conviction for which they were incarcerated.

⁵ The data in this bullet is not depicted graphically.

FIGURE 8

**Total Number of Incarcerations
(N = 69*)**



*This graph is based on the total number of offenders sentenced to prison, not the total number of sentences. This includes those who were originally sentenced to prison (N = 60) and those who were revoked and had their stayed prison sentenced executed (N = 9).

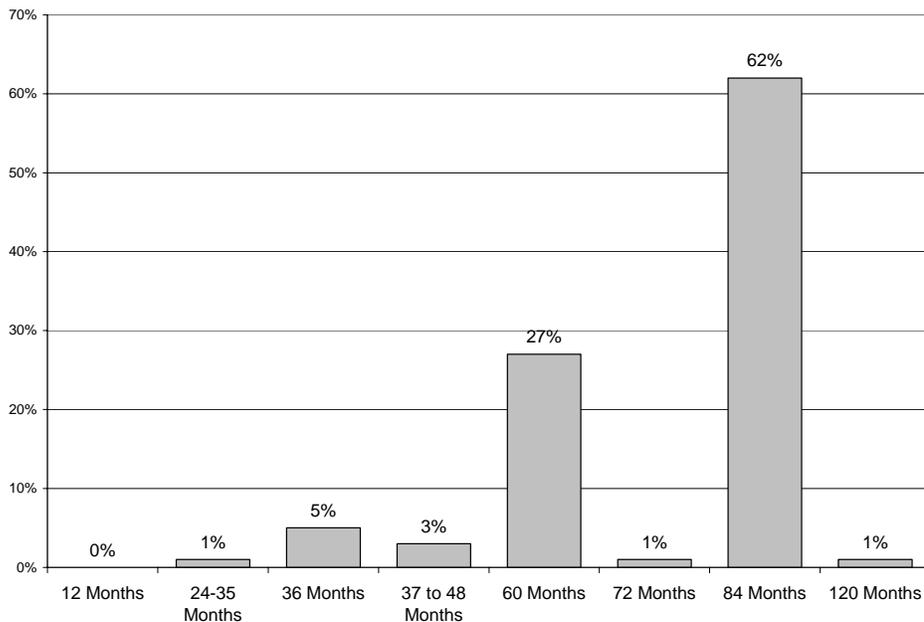
- ◆ In addition to criminal history score, another measure of past criminal behavior is the number of times currently incarcerated felony DWI offenders have been imprisoned in the past (Figure 8). This is the first incarceration for almost half (45%) of the felony DWI offenders who were either originally sentenced to prison or who were revoked and sent to prison (Figure 8). Almost three in ten (28%) have been incarcerated two times, and slightly more than one in ten (13%) has had three incarcerations. This information is based on three incarceration types: new court commitment, release return, and release return with a new sentence.

Sentencing Information

Stay of Execution Sentencing

FIGURE 9

**Stay of Execution Probation Length
(N = 423)**



- ◆ More than six in ten (62%) sentences that received a **stay of execution** included 84 months of probation (Figure 9). More than one quarter (27%) received 60 months of probation.
- ◆ Slightly less than one in ten (8%) sentences received 36 to 48 months of probation.

FIGURE 10

**Stay of Execution Jail Days Imposed
(N = 408)**

- ◆ More than four in ten (43%) sentences that resulted in a **stay of execution** received 121 to 180 days of imposed jail time, while almost one-third (31%) received 365 days of jails of time (Figure 10).
- ◆ Ten percent of **stay of execution** sentences resulted in 120 or fewer days of imposed jail time.

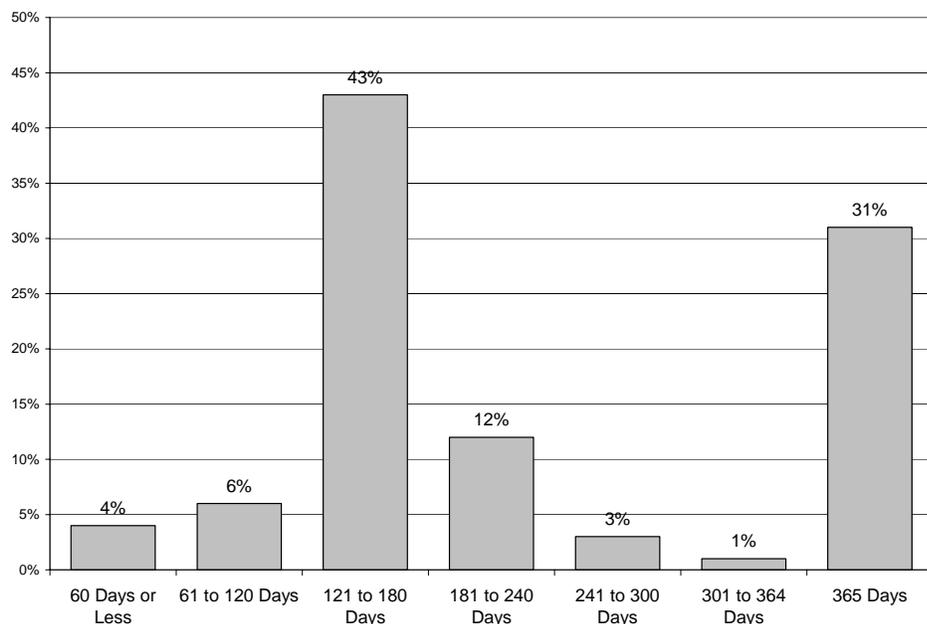
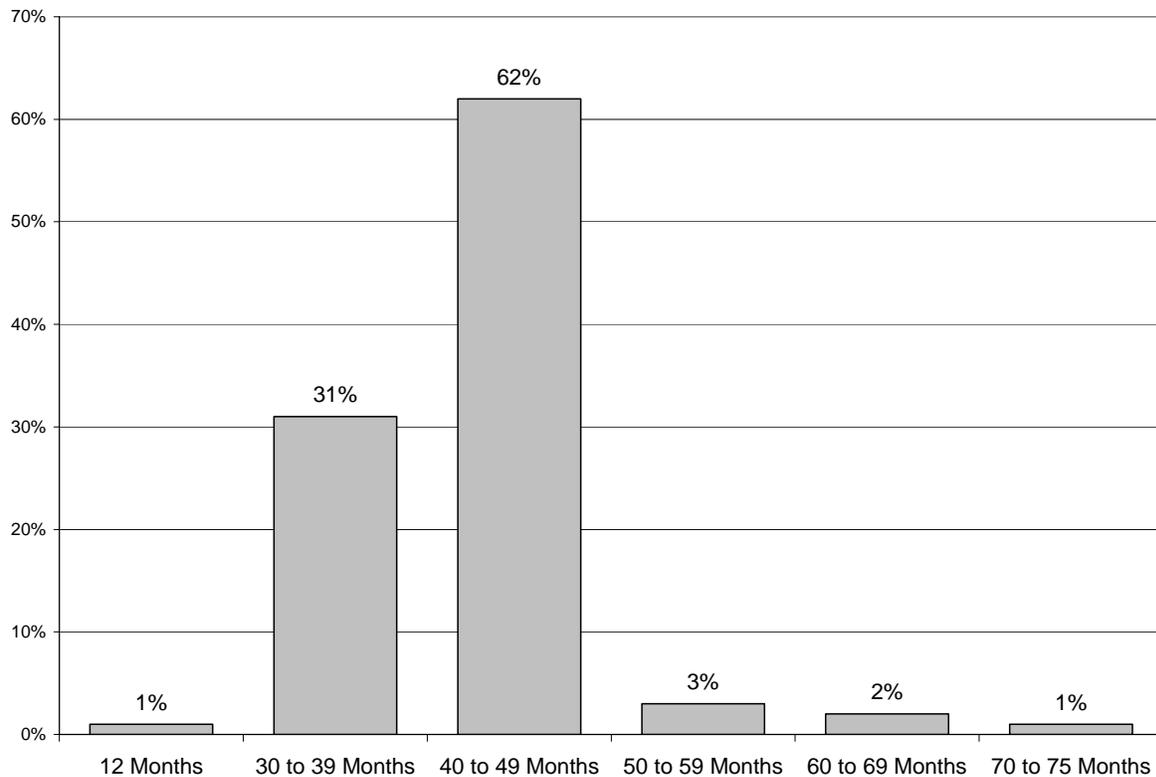


FIGURE 11

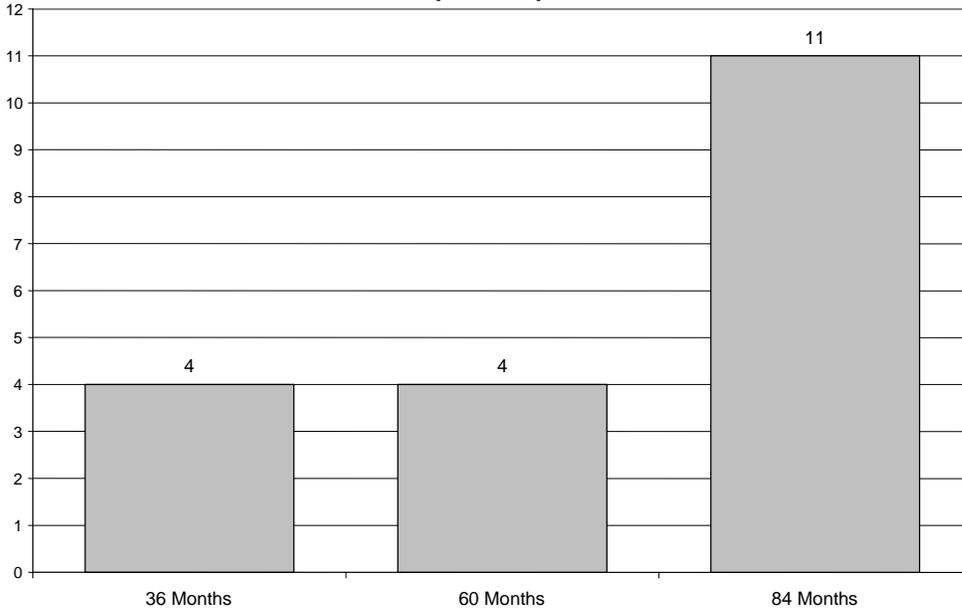
Stay of Execution Pronounced Prison Sentence
(N = 423)



- ◆ In **stay of execution** sentences, the prison sentence is pronounced but delayed until a future time so long as the offender complies with the conditions imposed by the court. Figure 11 shows that almost two-thirds (62%) of the felony DWI sentences that received a **stay of execution** have a pronounced prison sentence of 40 to 49 months (43% of the prison sentences in this group are for 42-month sentences).
- ◆ Almost one-third (31%) of the sentences with a stay of execution have a pronounced prison sentence of 30 to 39 months. Almost all of the prison sentences in this group are for 36-month sentences.

FIGURE 12

Stay of Imposition Probation
(N = 19)*



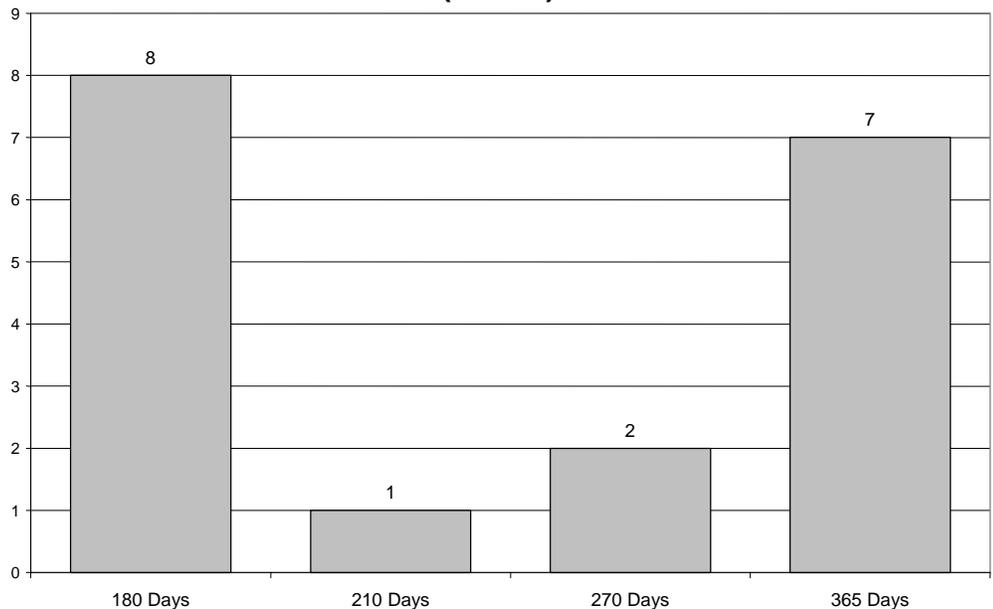
- ◆ All **stay of imposition** sentences involved probation (Figure 12). The highest number of sentences (11) included 84 months of probation.
- ◆ Four sentences each received 36 months or 60 months of probation.

*Due to the small number of stay of imposition sentences, these graphs are based on numbers, not percentages.

**Because of the small number of felony DWI offenders who received a stay of imposition sentence between August 1, 2002, and June 30, caution should be taken when interpreting the information on this group.

FIGURE 13

Stay of Imposition Jail Days Imposed
(N = 18)*



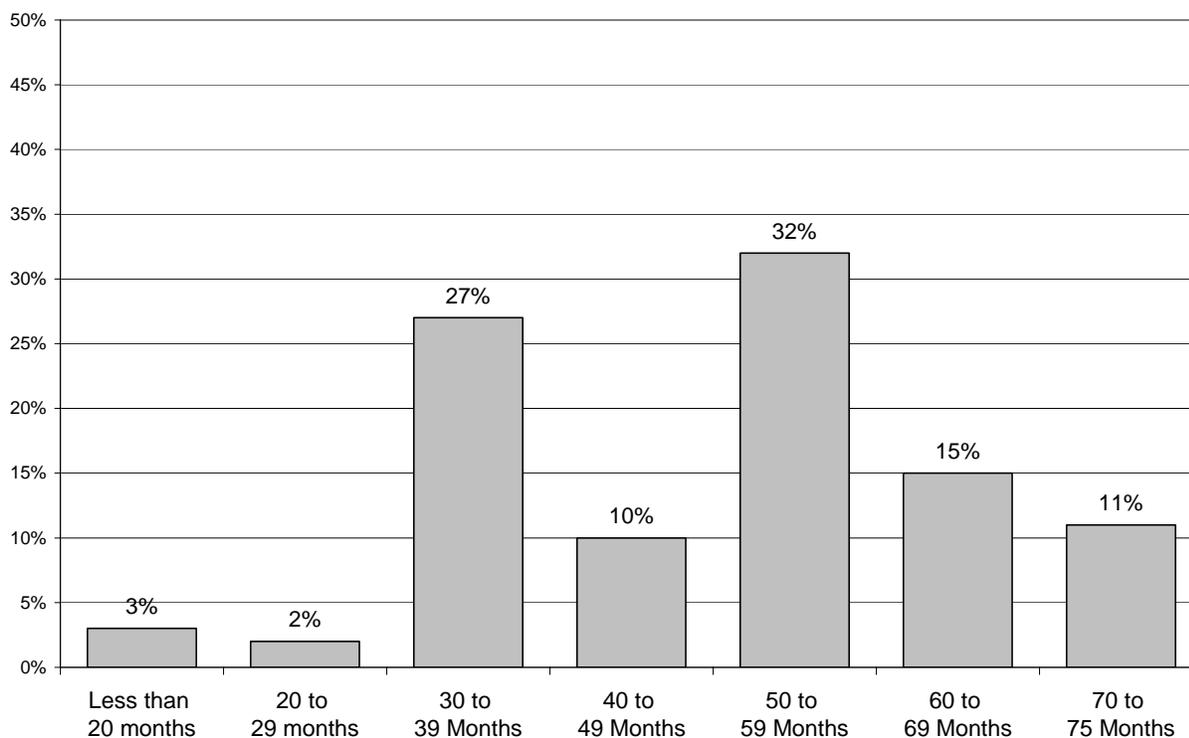
- ◆ Eighteen of the nineteen **stay of imposition** sentences involved jail time (Figure 13). Eight sentences had 180 days of imposed jail time, while seven had 365 jail days imposed.
- ◆ Far fewer sentences resulted in 270 days (2) or 210 days (1).

*One sentence resulting in a stay of imposition did not include any jail time.

**Due the small number of stay of imposition sentences, these graphs are based on numbers, not percentages.

***Because of the small number of felony DWI offenders who received a stay of imposition sentence between August 1, 2002, and June 30, 2003, caution should be taken when interpreting the information on this group.

FIGURE 14
Prison Sentence Length
(N = 62)



- ◆ Almost one-third (32%) of **executed prison** sentences are for 50 to 59 months (Figure 14). Eighteen percent of the sentences in this range are for 51 months.
- ◆ Over one-quarter (27%) of **executed prison** sentences are for 30 to 39 months. Most of these (24%) are for 36-month sentences.
- ◆ The average sentence length for **executed prison** sentences is 49 months.
- ◆ Minnesota's felony DWI statute indicates that when a felony DWI offender sentenced to prison is released, he or she is to be placed on conditional release for five years. During this time, the commissioner of corrections may impose any conditions deemed appropriate including an intensive supervision program. Currently, only one felony DWI offender with an executed prison sentence has been released. This offender has been placed on intensive supervision and has not committed any release violations.

Revoked Offenders' Information

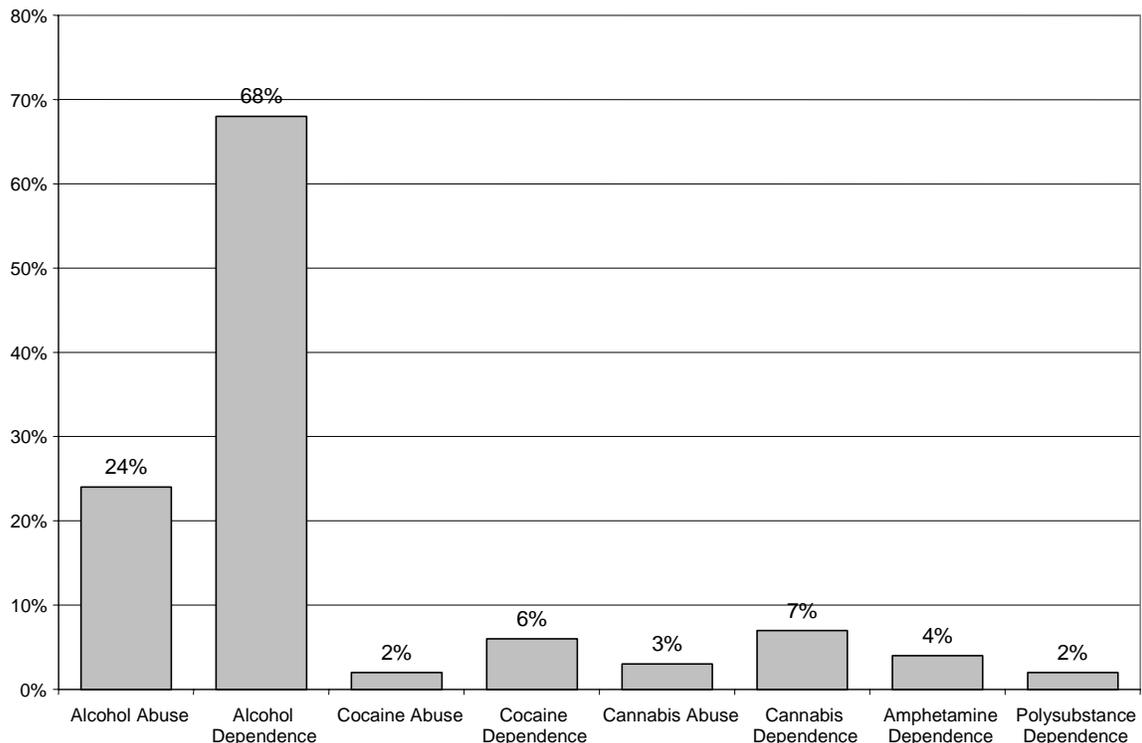
- ◆ Between August 1, 2002, and June 30, 2003, nine offenders who were sentenced with a stay of execution were revoked and had their prison sentence executed⁶. One of these offenders is deceased. All others are currently incarcerated at a Minnesota correctional facility (MCF); seven are at the MCF-Faribault and one is at the MCF-Lino Lakes.
- ◆ Two of the nine revoked offenders have a criminal history score of zero. Three each have a score of one or two, and one offender has a criminal history score of six.
- ◆ Revoked offenders range in age from 25 to 47. The average age of the nine revoked offenders is 37.
- ◆ Two of the revoked offenders were originally sentenced in Anoka County. Another two were originally sentenced from Clay County. One each of the revoked offenders was sentenced from Chisago, Hennepin, Martin, Ramsey, and St. Louis Counties.
- ◆ Three of the revoked offenders were originally sentenced in March and two in September. One each was sentenced in May, October, November, and December.
- ◆ The prison sentences executed for revoked felony DWI offenders span 36 to 75 months; three revoked offenders each received a prison sentence length of 42 or 48 months, two received 36-month sentences, and one received a 75-month sentence.
- ◆ All eight revoked offenders who are currently incarcerated were given a chemical dependency assessment. Two abuse alcohol and six are alcohol dependent. In addition, one offender is dependent on amphetamines and another offender abuses cocaine and cannabis.
- ◆ As a result of the assessment, all eight revoked felony DWI offenders were given a recommendation to complete treatment while incarcerated. One offender is currently participating in treatment, one has refused participation, and five are awaiting an opening in a program so that they may participate.

⁶ While the legislation governing this report asks for the reasons for revocation, these reasons are not readily available and cannot be reported.

Incarcerated Offenders' Treatment Information

Earlier information in this report on felony DWI offenders in prison was based on 62 originally executed prison sentences. This section is based on individual offenders, not sentences, and includes information from felony DWI offenders who have been revoked and sent to prison. In total, 69 of the felony DWI offenders sentenced between August 1, 2002, and June 30, 2003, have been incarcerated either originally or as a revocation. One of these offenders is deceased, one had his conviction vacated and was discharged, and one is currently on conditional release. The information in this section excludes the offender who died, as he did not have the opportunity to participate in chemical dependency treatment.

FIGURE 15
Chemical Dependency Assessment Results
(N = 68*)

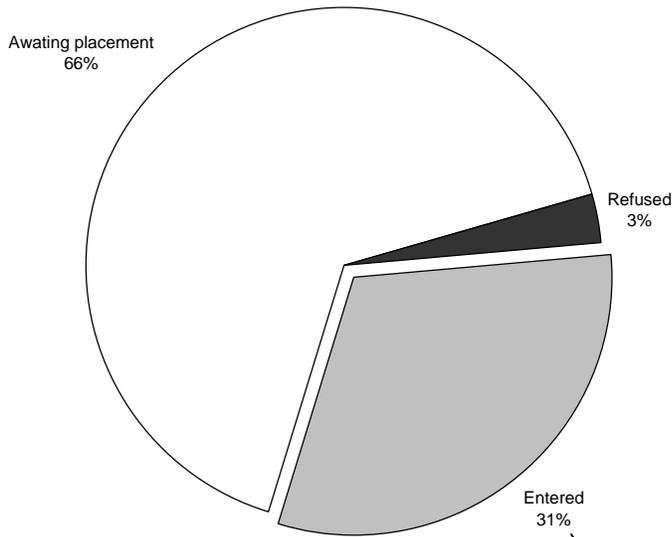


*Felony DWI offenders could be given more than chemical dependency diagnosis.

- ◆ Every felony DWI offender incarcerated in a DOC facility is given a comprehensive chemical dependency assessment (Figure 15). This assessment found that more than two-thirds (68%) of incarcerated felony DWI offenders are dependent on alcohol while another quarter (24%) abuse alcohol.
- ◆ Less than one in ten incarcerated felony DWI offenders is dependent on cannabis (7%) or cocaine (6%).

FIGURE 16

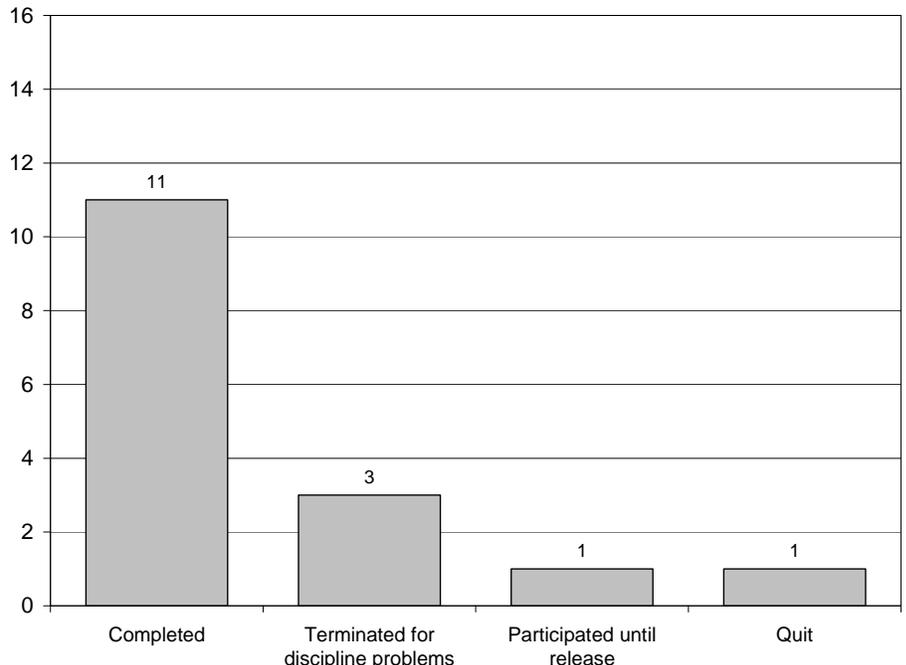
**Current Treatment Status
(N = 68)**



- ◆ Based on the results of the comprehensive chemical dependency assessment, all felony DWI offenders were directed to participate in chemical dependency treatment (Figure 16). Currently, two-thirds (66%) of the offenders are awaiting placement in a program, and slightly less than one-third (31%) have entered a program.
- ◆ Three percent of the felony DWI offenders have refused to participate in chemical dependency programming.
- ◆ The per diem cost for incarcerating felony DWI offenders is no different from the cost of incarcerating other types of offenders. In fiscal year 2003, the average per diem for incarcerating an adult male was \$79.95 and an adult female was \$86.99. These per diems include the cost of treatment.

FIGURE 17

**Treatment Discharge Status
(N = 16)**



- ◆ Sixteen of the felony DWI offenders who entered treatment have been discharged from treatment (Figure 17). Most (11) were discharged successfully, while far fewer were discharged for discipline problems (3).
- ◆ The offender who had his conviction vacated participated until his release but did not complete the program.

Discussion

While the effects of the felony DWI law on recidivism have not been determined, the information in this report does show that sentencing for felony-level DWI offenses is, for the most part, following the guidelines. Offenders with higher criminal history scores are being sent to prison, while most felony-level DWI offenders are receiving a stay of execution and serving their sentence on probation. In addition, almost all of the DWI cases taken to trial resulted in a conviction.

Most of the sentences given so far were for male offenders under the age of 45. This is not surprising as the literature suggests that only about 11 percent of the general DWI population is female (Cavaiola & Wuth, 2002). In comparison to other types of offenders, the average DWI population tends to be older, more educated, white and male (Maruschak, 1999). However, Cavaiola & Wuth (2002) find that most *repeat* DWI offenders have many of the same traits as the general offending population; they are more impulsive, isolated, suspect people of being hostile toward them, and are unemployed or under-employed. This similarity is very evident in Minnesota's incarcerated felony-level DWI population. Most of these offenders have multiple prior convictions for a variety of offense types, and over half have been incarcerated two or more times.

During the time period of this study, only nine offenders have been revoked from probation and sent to prison. The DOC is currently unable to determine the reasons for their revocation and how they differ from other offenders who violate their probation conditions and receive a restructure instead of revocation. If reasons for revocation are to be reported, a data system for capturing this reason in a quantified, consistent manner would need to be funded and developed.

Minnesota's felony-level DWI offenders sentenced to prison are receiving comprehensive chemical dependency assessments and are given treatment priority. Because only one offender has been released from prison, it is too soon to fully examine offender experiences under conditional release or to examine recidivism.

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Maruschak, L.M. (June 1999). *DWI offenders under correctional supervision* (Bureau of Justices Statistics Special Report publication number NCJ 172212).