

# **Minnesota Felony Driving While Impaired Report December 2010**



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## **EXECUTIVE SUMMARY**

This is the second legislatively-mandated report (M.S. §244.085) on felony driving while impaired (DWI) offenders committed to the commissioner of corrections. Prior to 2010, reports included all persons convicted of a felony DWI. In 2009, the legislature amended the statute, narrowing the scope of the report to only those felony DWI offenders admitted to prison.

### **Incidence and County Characteristics**

- Between September 1, 2002, and June 30, 2010, 1,602 offenders were admitted to prison once as a new commitment for a felony DWI offense and 131 offenders were admitted to prison twice as a new commitment for a felony DWI offense. Two offenders were admitted to prison three times for three separate felony DWI offenses.
- Admissions increased sharply in the first few months after the law went into effect and then continued to increase gradually until the end of fiscal year 2007 when admissions appeared to level off and perhaps decline slightly.
- An average of 11 offenders was admitted each month as a new court commitment compared to an average of 8 offenders admitted each month as a probation violator.
- The state's two most populous counties, Hennepin and Ramsey, together account for 28.1 percent of the offenders admitted to prison for a felony DWI offense, which is slightly less than the percentage of the population (33.1%) residing in those counties.
- Counties from outside of the Twin Cities metropolitan area were responsible for nearly 59 percent of the offenders admitted to prison for a felony DWI yet roughly 44 percent of the state's population reside in these counties.

### **Offender Characteristics**

- The typical felony DWI offender admitted to prison is a male in his 30s or 40s.
- Felony DWI offenders have been convicted of an average of four non-felony DWI offenses prior to prison admission. Most have not had a prior felony DWI conviction. Many of these offenders have received convictions for other criminal behavior that does not involve drinking and driving. On average, these offenders have been convicted of a total of roughly nine non-felony offenses and two felony offenses prior to admission.

### **Sentencing Characteristics**

- On average, new court commitments received a sentence of 50.6 months while probation violators received a sentence of 45.1 months.
- Half (49.9%) of the offenders given an executed sentence and committed to prison as a new court commitment received a sentence of 49 months or more compared to 17.3 percent of those given an executed sentence upon revocation of probation.
- Offenders can have their probation revoked for multiple reasons, and all revocation reasons were collected for those admitted as a probation violator. Alcohol use was cited for more than half (55.9%) of the probation violators, and use of drugs was cited for almost 20 percent (18.5%). Commission of a new offense was cited for 40.3 percent of the cases. Refusing chemical dependency treatment or failing to complete chemical dependency treatment was cited as a revocation reason for 22.9 percent of the cases.

### **Prison-Based Treatment and Post-Release Supervision**

- Just over three-fourths (78.4%) of the felony DWI offenders admitted to prison have entered a primary chemical dependency treatment program. Most of the remaining offenders have been assessed as chemically dependent or abusive of one or more substances and are awaiting treatment.
  - Of the 1,465 offenders who have entered a primary chemical dependency treatment program in prison, 77 of these offenders (5.3%) entered a primary treatment program twice, and three (0.2%) entered a primary treatment program three times.
  - Roughly 64 percent of primary treatment episodes were completed.
- A total of 1,355 (72.5%) of the 1,868 felony DWI offenders admitted to prison during the timeframe examined was released from prison. Approximately 15 percent (15.3%) were placed in the Challenge Incarceration Program (CIP), and less than two percent (1.8%) were released to intensive supervised release (ISR). Most were placed on supervised release or another form of community supervision, such as work release, at the time of release from prison.
  - Of those released to supervision, 35 percent were returned to prison for violating one or more conditions of his or her supervision.
  - Of those released to supervision, 10 percent were returned to prison for a new felony sentence.
- A total of 288 offenders, accounting for 15.4 percent of all felony DWI offenders incarcerated, entered the Challenge Incarceration Program (CIP).
  - As of June 30, 2010, 89 of these offenders were in one of the three phases of the program, 129 had completed the program, and 70 had failed.
  - Failure rates were slightly higher in Phases I and II than Phase III: Failure rates for Phases I and II were 11.4 and 11.7 percent, respectively, compared to 8.5 percent for Phase III.

## **INTRODUCTION**

In June 2001, the Minnesota Legislature amended the state's DWI laws by creating a felony-level offense. The felony offense applies to individuals who violate the state's DWI laws and have prior convictions for three or more DWIs within the last ten years, a previous conviction for a felony DWI, or a previous conviction for criminal vehicular homicide or injury. The law stipulates a mandatory sentence that can be no less than three years but no greater than seven years, and the court may stay execution but not imposition of the sentence.

Minnesota sentencing guidelines presume an executed sentence of imprisonment for offenders convicted of a felony DWI who have a criminal history score greater than two or those who have a previous felony DWI conviction regardless of criminal history score. Offenders who receive an executed sentence also are placed on conditional release for an additional five years after their release from prison. Failure to comply with conditions of release may result in revocation and return to prison. Sentencing guidelines presume a stayed sentence for offenders who have a criminal history score of two or less. The court must apply the mandatory penalties for non-felony DWI offenses for those who receive a stayed sentence, which may include a jail term, intensive supervised release, long-term alcohol monitoring, and any chemical dependency treatment recommended. The court may order the stayed sentence to be executed if any conditions are violated; if so, the offender is committed to the commissioner of corrections and incarcerated in prison.

This is the second report submitted on felony DWI offenders committed to the commissioner of corrections. In 2009, the legislature amended the statute requiring the commissioner submit a report on the effects of the felony DWI offense (M.S. §244.085) by narrowing the scope of the report.<sup>1</sup> Specifically, the scope of the report was reduced from all persons convicted of a felony DWI to those convicted of a felony DWI and sentenced to prison, which includes offenders given an executed sentence (new court commitments) as well as those whose stayed sentence was executed following a probation violation (probation violators).

## **DATA AND METHODS**

The felony DWI law went into effect on August 1, 2002, and the first felony DWI offender was admitted to prison in September 2002. A total of 1,735 offenders was admitted to prison 1,868 times as either a new court commitment or a probation violator between September 1, 2002, and June 30, 2010. An additional 465 admissions of release violators occurred during this time; these offenders are not included in the primary analysis for this report but are included in the section addressing release violation rates. A portion of the data on offenders incarcerated prior to July 1, 2007, was obtained from the 2007 report submitted by the commissioner of corrections (Minnesota Department of Corrections, 2007) and the database created for that report. Reasons for probation revocation were collected from the counties in which the offender was convicted, and all other data were derived from the Department of Corrections' (DOC) Correctional Operations Management System (COMS). All data were collected prior to July 1, 2010.

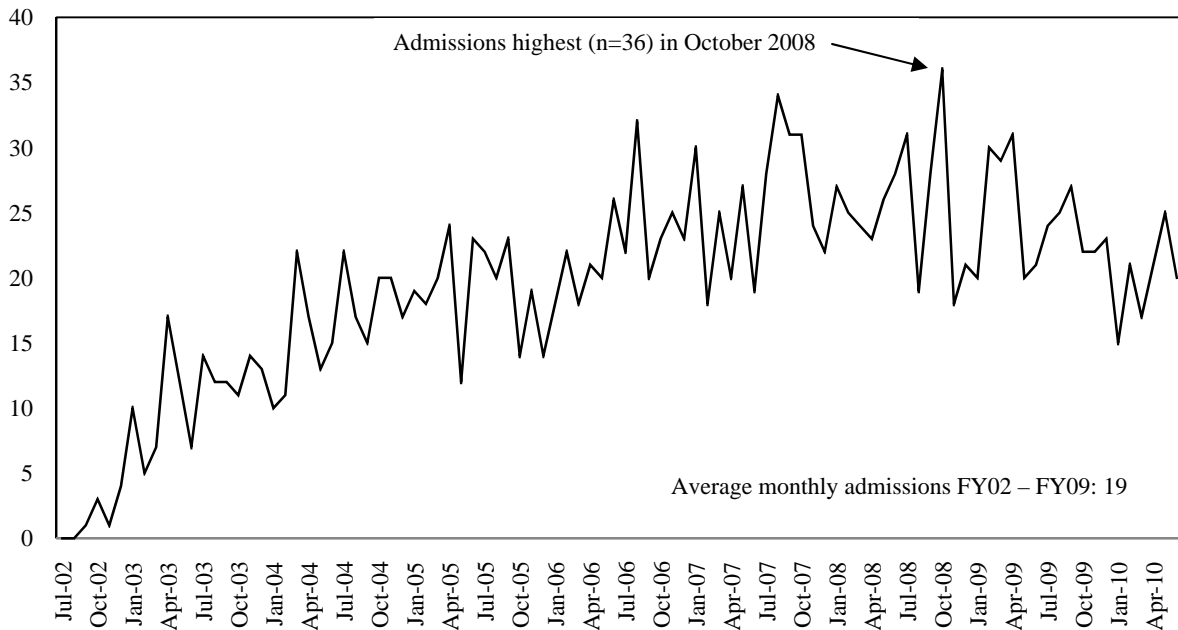
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<sup>1</sup> As required by the original legislation, the DOC published annual reports on all offenders convicted of felony DWI between fiscal years 2003 and 2007.

## COMMITMENTS TO PRISON

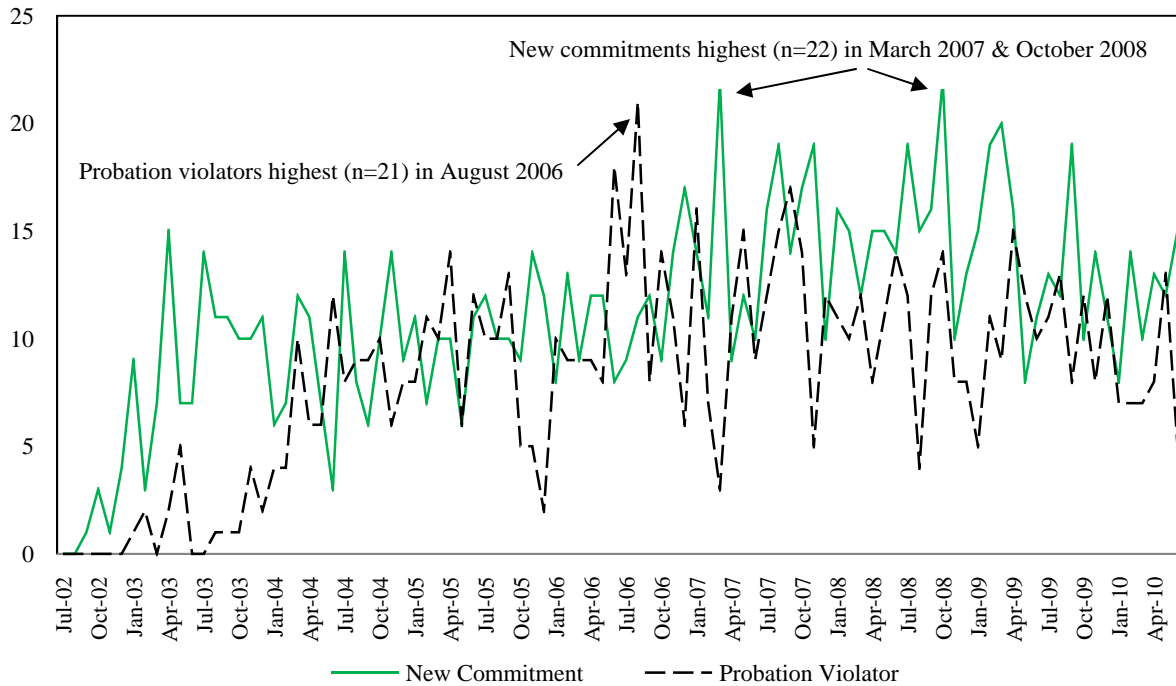
Figure 1 shows the total number of offenders admitted to prison by month of admission for a felony DWI offense as either a new court commitment or a probation violator.<sup>2</sup> The graph reveals fluctuations from month to month but also a gradual increase over time until the end of fiscal year 2007. Around that time, admissions level off until the latter part of 2009 when admissions appear to decline slightly. Admissions peaked in October of 2008 when 36 offenders were admitted for a felony DWI offense.

**Figure 1. Prison Admissions by Month**



<sup>2</sup> Offenders returned to prison for violating release conditions who initially were incarcerated for a felony DWI offense – release violators – are not included in this chart but are included in a later section of this report.

**Figure 2. Prison Admissions by Month and Admission Type**



Disaggregating total monthly admissions into new court commitments and probation violators reveals slightly different trends for these two admission types. As shown in Figure 2, new court commitments increased rapidly after the felony DWI law went into effect and then remained fairly stable until the end of fiscal year 2006. At this time, the number of new court commitments increased slightly again but then stayed at the new, higher level through fiscal year 2009. Data collected since that time suggest that the number of new court commitments may be on the decline, but additional admission data are needed to determine the actual trend.

As expected, only a small number of offenders was admitted as probation violators initially. In 2004, however, admissions of probation violators began to increase. Monthly admissions of probation violators peaked at 21 in August of 2006. Subsequently, monthly admissions declined and remained at this level.

Aggregating admission figures by fiscal year further illustrates the changes that have occurred in felony DWI prison admissions since the inception of the law in 2002. Table 1 shows a rapid increase in felony DWI admissions occurring in the first three fiscal years after the law went into effect. Total admissions continued to increase, but more slowly, peaking at 323 in fiscal year 2008. Fiscal year 2009 was the first year in which total felony DWI admissions decreased. In that year, the overall decline was due to a drop in probation violator admissions. Admissions of probation violators dropped from 141 in 2008 to 119 in 2009. In fiscal year 2010, admissions of both new court commitments and probation violators decreased, contributing to an even greater decline in total admissions than seen in the previous fiscal year.

Table 1 also shows that, on average, 234 offenders were admitted to prison for a felony DWI offense each year for the last eight fiscal years. Fifty-eight percent of these admissions were new court commitments.

**Table 1. Prison Admissions by Fiscal Year and Admission Type**

| <b>Fiscal Year</b> | <b>New Court Commitment</b> |                | <b>Probation Violator</b> |                | <b>Total</b>  |                |
|--------------------|-----------------------------|----------------|---------------------------|----------------|---------------|----------------|
|                    | <i>Number</i>               | <i>Percent</i> | <i>Number</i>             | <i>Percent</i> | <i>Number</i> | <i>Percent</i> |
| 2003               | 57                          | 85.1           | 10                        | 14.9           | 67            | 100.0          |
| 2004               | 113                         | 68.9           | 51                        | 31.1           | 164           | 100.0          |
| 2005               | 116                         | 51.1           | 111                       | 48.9           | 227           | 100.0          |
| 2006               | 129                         | 54.4           | 108                       | 45.6           | 237           | 100.0          |
| 2007               | 150                         | 52.8           | 134                       | 47.2           | 284           | 100.0          |
| 2008               | 182                         | 56.3           | 141                       | 43.7           | 323           | 100.0          |
| 2009               | 185                         | 60.9           | 119                       | 39.1           | 304           | 100.0          |
| 2010               | 151                         | 57.6           | 111                       | 42.4           | 262           | 100.0          |
| Total              | 1,083                       | 58.0           | 785                       | 42.0           | 1,868         | 100.0          |
| Average            | 135                         | --             | 98                        | --             | 234           | --             |

## COUNTY OF COMMITMENT

Table 2 shows the ten counties accounting for the greatest proportion of felony DWI prison admissions as well as the percent of the state's population residing in each county. Hennepin and Ramsey, the state's two most populous counties, together are responsible for 28.1 percent of the offenders admitted to prison for a felony DWI offense. This figure is slightly less than the percentage of the population (33.1%) residing in those counties. Many of the counties in the table are the most populous counties in the state, and five of the ten (Hennepin, Ramsey, Dakota, Anoka, and Washington) are in the Twin Cities metropolitan area.

**Table 2. Prison Admissions by Committing County**

| <b>County</b>      | <i>Number</i> | <i>Percent</i> | <i>Percent of Population</i> |
|--------------------|---------------|----------------|------------------------------|
| Hennepin           | 333           | 17.8           | 22.7                         |
| Ramsey             | 192           | 10.3           | 10.4                         |
| Dakota             | 87            | 4.7            | 7.2                          |
| St. Louis          | 87            | 4.7            | 4.1                          |
| Anoka              | 82            | 4.4            | 6.1                          |
| Clay               | 62            | 3.3            | 1.0                          |
| Olmsted            | 55            | 2.9            | 2.5                          |
| Polk               | 53            | 2.8            | 0.6                          |
| Becker             | 46            | 2.5            | 0.6                          |
| Washington         | 45            | 2.4            | 4.1                          |
| Remaining Counties | 826           | 44.2           | 40.7                         |
| Total              | 1,868         | 100.0          | 100.0                        |

Source: U.S. Census Bureau (2000). *Census 2000*. Washington, D.C.

Prison admissions for felony DWI disproportionately originate in non-metropolitan counties (Table 3). The seven counties comprising the Twin Cities metropolitan area – Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington – contain nearly 56 percent of the state's



population but were responsible for just 41 percent of the offenders admitted to prison for a felony DWI offense. Counties from outside of the metropolitan area were responsible for roughly 59 percent of the offenders admitted to prison for a felony DWI, yet 44 percent of the state's population reside in these counties.

**Table 3. Prison Admissions by Committing County Location**

| <b>County</b>      | <i>Number</i> | <i>Percent</i> | <i>Percent of Population</i> |
|--------------------|---------------|----------------|------------------------------|
| Metro Counties     | 773           | 41.4           | 55.7                         |
| Non-Metro Counties | 1,095         | 58.6           | 44.3                         |
| Total              | 1,868         | 100.0          | 100.0                        |

Source: U.S. Census Bureau (2000)

Additional analysis, not shown here, which separated prison admissions into new court commitments and probation violators showed little difference between metropolitan and non-metropolitan counties. Specifically, new court commitments accounted for approximately 56 percent of the offenders committed by metropolitan counties and 58 percent of non-metropolitan counties.

## OFFENDER DEMOGRAPHICS

Table 4 shows the demographic characteristics of all felony DWI offenders admitted to prison between September 1, 2002, and June 30, 2010. The typical DWI offender admitted to prison is a white male in his 30s or 40s. The average age of these offenders at admission is 38.7 years.

**Table 4. Demographic Characteristics at Prison Admission**

| <i>Sex</i> | <i>Number</i> | <i>Percent</i> | <i>Race</i>     | <i>Number</i> | <i>Percent</i> | <i>Age</i>  | <i>Number</i> | <i>Percent</i> |
|------------|---------------|----------------|-----------------|---------------|----------------|-------------|---------------|----------------|
| Male       | 1,720         | 92.1           | White           | 1,218         | 65.2           | Under 25    | 63            | 3.4            |
| Female     | 148           | 7.9            | American Indian | 279           | 14.9           | 25 – 29     | 291           | 15.6           |
|            |               |                | Black           | 264           | 14.1           | 30 – 34     | 349           | 18.7           |
|            |               |                | Hispanic        | 93            | 5.0            | 35 – 39     | 352           | 18.8           |
|            |               |                | Other/unknown   | 14            | 0.8            | 40 – 44     | 346           | 18.5           |
|            |               |                |                 |               |                | 45 – 49     | 276           | 14.8           |
|            |               |                |                 |               |                | 50 and over | 191           | 10.2           |
| Total      | 1,868         | 100.0          |                 | 1,868         | 100.0          |             | 1,868         | 100.0          |

## CRIMINAL HISTORY

Data on offenders' prior criminal offenses were obtained through COMS. Prior offense information was obtained for all but 14 (0.7%) of the 1,868 offenders in this study. Table 5 shows that offenders had been convicted of an average of roughly nine non-felony (i.e., misdemeanor or gross misdemeanor) offenses and two felony offenses prior to admission for a felony DWI. The average number of prior non-felony, impaired-driving convictions was just over four; the average number of prior felony, impaired-driving convictions was less than one. Most of the offenders (82%) had not had a prior felony DWI conviction, and all of those who had three or more prior felony DWI convictions had numerous convictions in the neighboring states of Iowa and South Dakota. Only convictions for driving while impaired or refusal to

submit to testing that resulted in a conviction for driving while impaired were included. Convictions for other offenses, which often but not always involve impaired drivers (e.g., careless driving or criminal vehicular operation), were not included. Offenses that often occur after an impaired driving offense, including driving after license suspension or driving after license revocation, also were not included.

**Table 5. Criminal Histories at Prison Admission**

|         | <b>All Offenses</b> |               | <b>Impaired Driving Offenses</b> |               |
|---------|---------------------|---------------|----------------------------------|---------------|
|         | <i>Non-Felony</i>   | <i>Felony</i> | <i>Non-Felony</i>                | <i>Felony</i> |
| Minimum | 3                   | 0             | 3                                | 0             |
| Maximum | 40                  | 20            | 19                               | 8             |
| Average | 8.5                 | 2.4           | 4.1                              | 0.3           |

## SENTENCES

Table 6 shows the pronounced sentence length of the 1,868 offenders admitted to prison for a felony DWI offense by admission type. The data reveal that sentence lengths for offenders given an executed prison sentence typically were longer than those who initially received a stay of imposition or stay of execution. Half (49.9%) of the offenders given an executed sentence and committed to prison as a new court commitment received a sentence of 49 months or more compared to 17.3 percent of those given an executed sentence upon revocation of probation. On average, new court commitments received a sentence of 50.6 months while probation violators received a sentence of 45.1 months.

**Table 6. Sentence Length by Admission Type**

| <b>Sentence Length</b> | <b>New Court Commitment</b> |                | <b>Probation Violator</b> |                | <b>Total</b>  |                |
|------------------------|-----------------------------|----------------|---------------------------|----------------|---------------|----------------|
|                        | <i>Number</i>               | <i>Percent</i> | <i>Number</i>             | <i>Percent</i> | <i>Number</i> | <i>Percent</i> |
| Average                | 50.6 months                 |                | 45.1 months               |                | 48.3 months   |                |
| 24 months or less      | 11                          | 1.0            | 6                         | 0.8            | 17            | 0.9            |
| 25 to 36 months        | 157                         | 14.5           | 182                       | 23.2           | 339           | 18.1           |
| 37 to 48 months        | 375                         | 34.6           | 461                       | 58.7           | 836           | 44.8           |
| 49 to 60 months        | 369                         | 34.1           | 91                        | 11.6           | 460           | 24.6           |
| 61 months or more      | 171                         | 15.8           | 45                        | 5.7            | 216           | 11.6           |
| Total                  | 1,083                       | 100.0          | 785                       | 100.0          | 1,868         | 100.0          |

Table 7 shows the reasons cited for the 785 offenders who were admitted to prison following revocation of a probation sentence. Offenders can have their probation revoked for multiple reasons, and all reasons are included in the following table. Use of alcohol, the most common revocation reason, was cited for 55.9 percent of the cases; use of drugs was cited for 18.5 percent of the cases. Failing general probation rules was cited for 43.6 percent of the cases, and failing repeat DWI probation rules was cited for 16.2 percent. Commission of a new offense was noted for 40.3 percent of the cases. Combined, refusing to enter or failing to complete chemical dependency treatment was cited as a revocation reason for just under one-fourth (22.9%) of the cases. The average number of violations per offender was two.

**Table 7. Probation Revocation Reasons**

| <i>Reason</i>                     | <i>Number</i> | <i>Percent of Total Probation Revocations</i> |
|-----------------------------------|---------------|---|
| Use of alcohol                    | 439           | 55.9  |
| Failed general probation rules    | 342           | 43.6  |
| New offense                       | 316           | 40.3  |
| Use of drugs                      | 145           | 18.5  |
| Failed treatment                  | 135           | 17.2  |
| Failed repeat DWI probation rules | 127           | 16.2  |
| Refused treatment                 | 45            | 5.7   |
| Other                             | 25            | 3.2   |
| Unknown                           | 10            | 1.3   |

Note: Because an offender can have his or her probation revoked for multiple reasons, 1,584 reasons were identified for the 785 probation violators. The percentages presented in this table are based on the total number of probation revocations (N=785).

## **CHEMICAL DEPENDENCY TREATMENT IN PRISON**

The majority of felony DWI offenders entered primary chemical dependency treatment while in prison. Table 8 summarizes treatment and assessment data for the 1,868 offenders and classifies each offender according to the highest level achieved in the assessment and treatment continuum. As shown in Table 8, nearly eighty percent (78.4%) of the felony DWI offenders admitted to prison entered a primary chemical dependency treatment program. Approximately 16 percent (16.4%) were assessed as dependent on, or abusive of, one or more substances and presently are awaiting treatment. Only five percent (5.2%) had not been assessed as of June 30, 2010, or were assessed and determined unamenable to treatment.<sup>3</sup> Overall, the 1,465 offenders entered primary treatment in prison a total of 1,548 times. Seventy-seven of these 1,465 offenders (5.3%) entered a primary treatment program twice, and three (0.2%) entered a primary treatment program three times.

**Table 8. Chemical Dependency Treatment Status**

| <i>Treatment Status</i>                           | <i>Number</i> | <i>Percent</i> |
|---|---------------|----------------|
| Entered primary treatment                         | 1,465         | 78.4           |
| Awaiting treatment, assessed dependent or abusive | 306           | 16.4           |
| Not assessed/not entering primary treatment       | 97            | 5.2            |
| Total   | 1,868         | 100.0          |

Table 9 summarizes the outcomes of all treatment episodes for the felony DWI offenders who entered primary chemical dependency treatment and for whom the outcome of this treatment was known as of June 30, 2010. Findings show that roughly two-thirds (64.1%) of primary treatment episodes were completed or the offender participated in treatment until he or she was released;

<sup>3</sup> In the last eight years, only seven felony DWI offenders were assessed as chemically abusive or dependent and determined to be unamenable to treatment. Several entered pre-treatment programming and were removed for assaultive or other behavior requiring disciplinary action.

this is slightly lower than the completion rate for all incarcerated offenders.<sup>4</sup> Approximately 17 percent (16.7%) of offenders were terminated from the program by program staff, and roughly 15 percent (15.4%) of offenders quit.

**Table 9. Chemical Dependency Primary Treatment Outcome**

| <i>Treatment Outcome</i>                  | <i>Number</i> | <i>Percent</i> |
|---|---------------|----------------|
| Completed                                 | 970           | 62.7           |
| Participated until released               | 22            | 1.4            |
| Terminated                                | 258           | 16.7           |
| Offender quit                             | 238           | 15.3           |
| Discharged by administration <sup>5</sup> | 60            | 3.9            |
| <b>Total</b>                              | <b>1,548</b>  | <b>100.0</b>   |

## RELEASES AND REINCARCERATIONS

A total of 1,355 (72.5%) of the 1,868 felony DWI offenders admitted to prison during the timeframe examined were released from prison. Shown in Table 10, roughly 15 percent (15.3%) entered the CIP. Only 25 of the 1,355 offenders, accounting for less than two percent of those released, were placed on ISR. The majority of offenders (81.2%) was released to the community under supervision such as supervised release or work release. Eighteen (1.3%) of the offenders were discharged by the court or an executive order and therefore could not be placed under supervision. Five offenders died while incarcerated.

Of the 1,332 offenders<sup>6</sup> released to supervision, 465 (34.9%) returned to prison on revocations for technical violations. In addition, 131 offenders (9.8%) were revoked after being sentenced for a new felony-level offense.

**Table 10. Supervision Status at First Release**

| <i>Supervision Status</i>           | <i>Number</i> | <i>Percent</i> |
|-------------------------------------|---------------|----------------|
| Challenge Incarceration Program     | 207           | 15.3           |
| Intensive supervised release        | 25            | 1.8            |
| Other community supervision         | 1,100         | 81.2           |
| Discharged by court/executive order | 18            | 1.3            |
| Deceased                            | 5             | 0.4            |
| <b>Total</b>                        | <b>1,355</b>  | <b>100.0</b>   |

<sup>4</sup> Chemical dependency treatment completion rates for all adult inmates were 68 percent in FY09 and 70 percent in FY10.

<sup>5</sup> Offenders who are discharged by administration are removed from treatment for a variety of non-disciplinary reasons and are not considered treatment failures. Unlike offenders who are terminated from treatment or those who quit, these offenders do not receive a sanction for leaving treatment.

<sup>6</sup> Offenders discharged by the court or executive order as well as those who died while incarcerated were excluded from this analysis.

## CHALLENGE INCARCERATION PROGRAM

Roughly one of every six felony DWI offenders admitted to prison entered CIP. Table 11 shows that 288 offenders, accounting for 15.4 percent of all felony DWI offenders incarcerated and released from prison at the end of fiscal year 2010, entered CIP. At the end of fiscal year 2010, 89 of these offenders were in one of the three phases of the program. Twenty-three of these offenders were in Phase I, the portion of the program which takes place while the offender is incarcerated; the remaining 66 offenders were in Phases II or III, the portions which take place in the community. A total of 129 offenders completed CIP and were placed on supervised release. Notably, none of these offenders have reached their sentence expiration; subsequently, all are still under supervision. A total of 70 offenders failed to complete CIP.

**Table 11. Status of Offenders Admitted to CIP**

|                       | <i>Number</i> |
|-----------------------|---------------|
| In CIP                |               |
| Phase I               | 23            |
| Phase II <sup>7</sup> | 37            |
| Phase III             | <u>29</u>     |
| Total                 | 89            |
| Completed CIP         | 129           |
| Failed CIP            | <u>70</u>     |
| Total                 | <u>288</u>    |

Table 12 shows the reasons offenders failed to complete CIP by the phase in which they failed.<sup>8</sup> Thirteen (40.6%) of the 32 offenders who failed in Phase I committed a program violation, were removed from the program, and returned to the general prison population. One-fourth quit, and approximately 28 percent (28.1%) were removed from the program administratively. Most of the latter were found to have a warrant outstanding, the presence of which was not known by DOC staff at the time program eligibility was determined. Only two (6.3%) offenders had mental or physical issues that precluded their participation in Phase I. All but one (96.0%) of the 25 offenders who failed in Phase II committed a program violation while under community supervision and were returned to prison. Just one (4.0%) offender was removed for an administrative reason. Finally, all of the 13 offenders who failed while on Phase III committed program violations while under community supervision and were returned to prison.

**Table 12. Reasons Offenders Failed CIP**

| Reasons                 | Phase I       |                | Phase II      |                | Phase III     |                |
|-------------------------|---------------|----------------|---------------|----------------|---------------|----------------|
|                         | <i>Number</i> | <i>Percent</i> | <i>Number</i> | <i>Percent</i> | <i>Number</i> | <i>Percent</i> |
| Offender quit           | 8             | 25.0           | 0             | 0.0            | 0             | 0.0            |
| Mental/physical issue   | 2             | 6.3            | 0             | 0.0            | 0             | 0.0            |
| Administrative decision | 9             | 28.1           | 1             | 4.0            | 0             | 0.0            |
| Revoked and returned    | 13            | 40.6           | 24            | 96.0           | 13            | 100.0          |
| Total                   | 32            | 100.0          | 25            | 100.0          | 13            | 100.0          |

<sup>7</sup> The Phase II total includes two offenders who absconded while in Phase II.

<sup>8</sup> Violation data are not available as only those violations that result in program failure are recorded in COMS.

Failure rates were calculated for each phase of the program and reported in Table 13. To compute failure rates by program phase, one first must determine how many offenders had the opportunity to complete (and thus are “eligible to fail”) each phase. For example, 263 offenders had the opportunity to complete Phase I, which was determined by subtracting the number of offenders currently in Phase I (23) from the total number of offenders entering the program (288). Offenders who had the opportunity to complete Phase II was determined in a similar manner, but also excluded those offenders who failed in Phase I.

A small number of offenders known to have failed CIP are excluded from the failure rate calculation as well. Since offenders currently in each phase are not included in the calculation, as explained above, offenders who failed each phase during the same timeframe also are excluded. For example, an offender who began Phase I after January 1, 2010, would still be in this phase by the end of the time period covered in this report (June 30, 2010), since each phase takes a minimum of six months to complete. Including this offender, if he or she failed, artificially would increase Phase I failure rates since his or her successful counterpart who began at the same time is not included. Similarly, offenders who failed in Phase II but entered CIP after July 1, 2009, are excluded as are offenders who failed in Phase III but entered CIP after January 1, 2009. Five offenders known to have failed are excluded from the failure rate analysis. Two of these offenders were in Phase I, two were in Phase II, and one was in Phase III.

As shown in Table 13, failure rates were similar in Phases I and II but slightly lower in Phase III. The failure rate was 11.4 percent for Phase I and 11.7 percent for Phase II compared to 8.5 percent for Phase III. All offenders who failed were removed from the program and returned to prison to serve their remaining sentence as determined by state statute.

**Table 13. Failure Rates by Phase for Offenders Admitted to CIP**

| Phase     | <i>Number Failed</i> | <i>Number<br/>“Eligible” to Fail</i> | <i>Failure Rate</i> |
|-----------|----------------------|--------------------------------------|---------------------|
| Phase I   | 30                   | 263                                  | 11.4                |
| Phase II  | 23                   | 196                                  | 11.7                |
| Phase III | 12                   | 141                                  | 8.5                 |

## PER DIEM

The legislation governing this report requests information on the costs associated with the incarceration and treatment of felony DWI offenders committed to the commissioner of corrections. Per diem information, however, is available only on incarcerated adult offenders in general and is not disaggregated by offense type. In the fiscal years since the inception of the felony DWI law, the average adult operational per diem, which includes treatment costs, was:

|                |                |
|----------------|----------------|
| \$80.52 (FY03) | \$86.14 (FY07) |
| \$77.09 (FY04) | \$89.77 (FY08) |
| \$76.43 (FY05) | \$89.24 (FY09) |
| \$80.11 (FY06) | \$83.95 (FY10) |

## **CONCLUSION**

A total of 1,868 offenders was admitted to prison for a felony DWI offense between September 1, 2002, and June 30, 2010. Admissions increased sharply at first, and then continued to increase but at a slower pace until 2007 when admissions appeared to level off. On average, 11 offenders are admitted each month to prison as a new court commitment and 8 are admitted following revocation of probation. Nearly 59 percent of all admissions come from counties outside the Twin Cities metropolitan area, although these counties account for just 44 percent of the state's population.

The typical felony DWI offender admitted to prison is a male in his 30s or 40s and has been convicted of a non-felony DWI four times prior to his incarceration. These offenders have committed other types of offenses as well, averaging a total of eight non-felony convictions and two felony convictions prior to admission. The average sentence received for those admitted as a new court commitment is 50.6 months compared to 45.1 months among probation violators. Many (78.4%) of the felony DWI offenders admitted to prison enter chemical dependency treatment while incarcerated. Among those who enter a primary treatment program, 62.7 percent successfully complete it.

Of those who have been released from prison, a total of 288 offenders (15.4%) entered CIP. Twenty-five offenders (1.8%) were placed on ISR. Just over one-third (34.9%) of offenders released were returned to prison for a technical violation, and 9.8 percent were returned for a new offense.