

MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Failure-to-Register Offenses Sentenced in 2012

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Summary of 2012 Data

In 2012, the number of offenders sentenced for failure to register (391) increased by 11 percent from the number sentenced in 2011 (351 offenders) (Figure 1). Although all failure-to-register offenses carry a mandatory minimum term of imprisonment, just over half of the offenders were sentenced to prison. The total incarceration rate was 93 percent: 50 percent receiving a prison sentence; and 43 percent receiving time in a local facility as a condition of probation (Table 1). The average pronounced prison sentence was 20 months, which is the same average observed in 2011 (Table 2). Mitigated dispositional departure rates increased from 44 percent in 2011 to 50 percent in 2012 (Table 3). Mitigated durational departure rates also increased from 35 percent in 2011 to 42 percent in 2012 (Table 4).

Presumptive Sentences for Failure-to-Register Offenses

Minn. Stat. § [243.166](#), sets forth the offenses of conviction under which an offender is required to register as a predatory offender. These include murder, kidnapping, criminal sexual conduct, indecent exposure, possession or dissemination of child pornography, and use or solicitation of a minor in various sex offenses. The statute makes failure to register a felony.

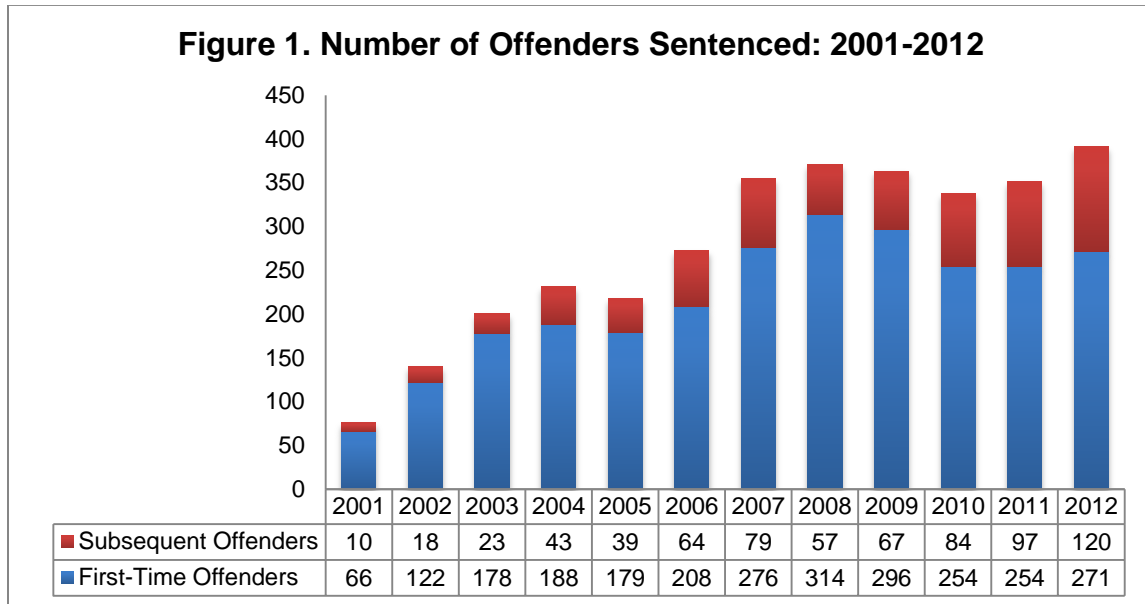
Beginning in August of 2000, the Legislature established a statutory mandatory minimum penalty of one year and one day in prison for a first offense and 24 months in prison for a subsequent offense.

Failure to register was an unranked offense (no severity level assigned) until August 1, 2003. Effective for crimes committed on or after that date, the Commission ranked first offenses at Severity Level 1 and subsequent offenses at Severity Level 3, based largely on the actual sentences being imposed for the crime. Offenses committed on or after August 1, 2006 are ranked at Severity Level H on the Sex Offender Grid. All 391 offenders sentenced in 2012 were eligible for the presumptive sentences on the Sex Offender Grid.

Case Volume and Distribution¹

Volume of Cases

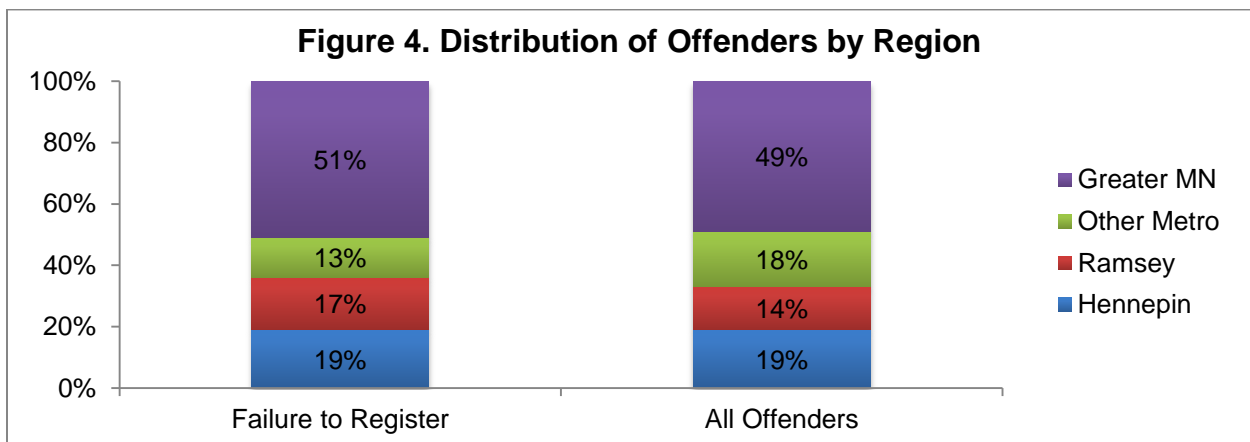
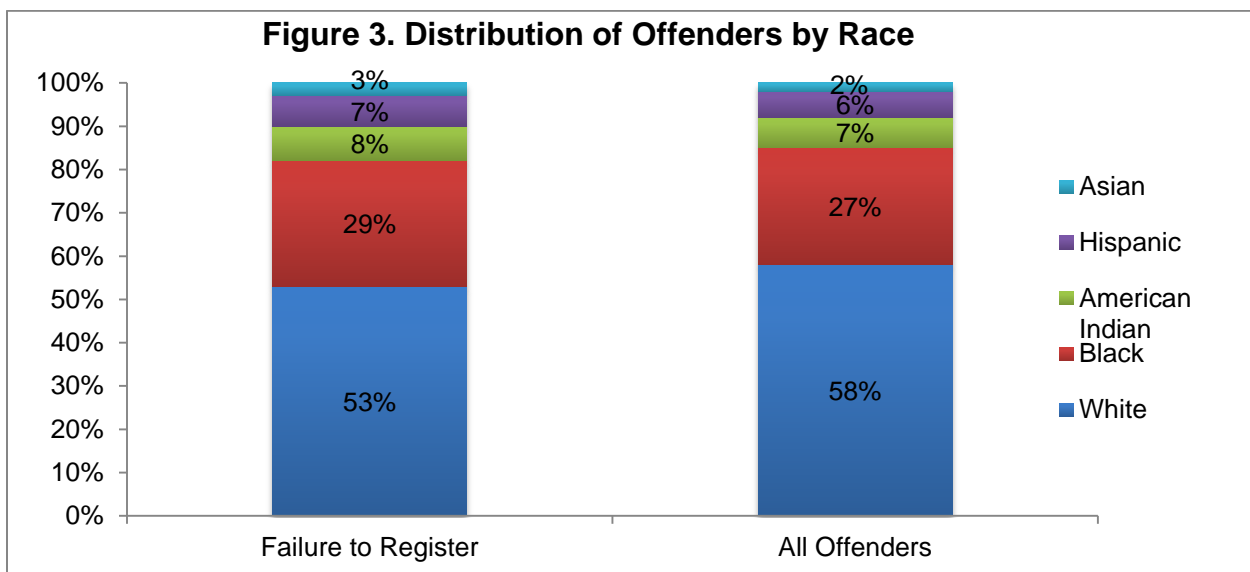
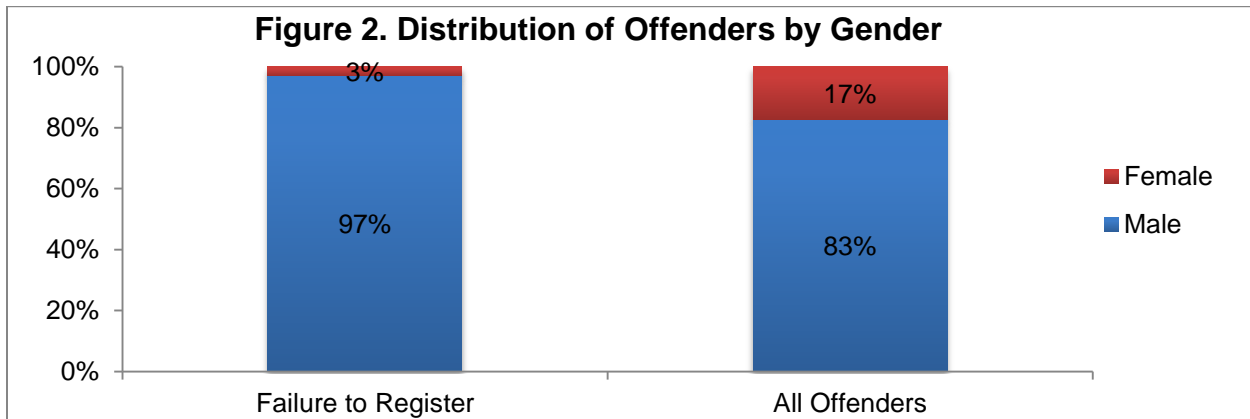
The number of offenders sentenced for failure to register increased in almost every year from 2001 to 2008. In 2012, failure-to-register offenses reached its highest level, an increase of 11 percent from that in 2011. Of the 391 sentenced in 2012, 271 were first-time offenders and 120 were sentenced for a second or subsequent offense.



Demographic Characteristics

The average age for first-time offenders was 31-years old (same age as for overall felony offenders) and slightly higher (33-years old) for subsequent offenders. Although the total felony population was about 83 percent male and 17 percent female, failure-to-register offenders were more likely to be male (97% male vs. 3% female) (Figure 2). The racial and geographic distributions of failure-to-register offenders were similar to that for all felony offenders, except that failure-to-register offenders were less likely to be White (Figure 3). The number of failure-to-register offenders sentenced was slightly higher in the Greater Minnesota region and Ramsey County, and lower in the Other Metro region (Figure 4).

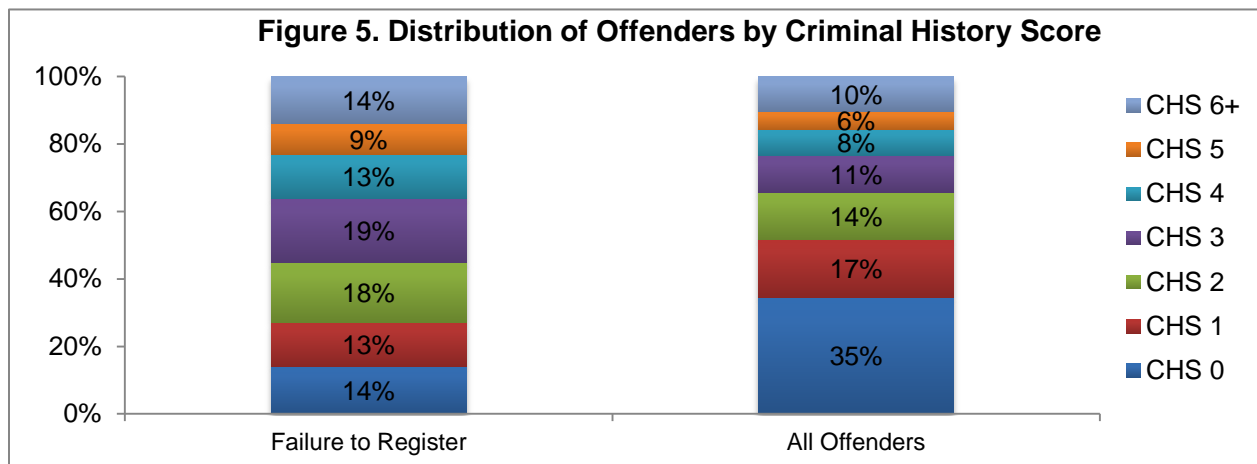
¹ It should be noted that the Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.



Criminal History Scores

As described in the section, “How the Guidelines Work,” the criminal history score measures the offender’s prior criminal record and consists of: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a “custody status” measure which indicates whether the offender was confined or was on probation or parole when the current offense was committed.

The average criminal history score (CHS) is higher for failure-to-register offenders than the overall felony population (average CHS 3.0 vs. CHS 2.2, respectively) (Figure 5). The average criminal history score is slightly higher for subsequent offenders than it is for first-time offenders (CHS 3.3 vs. CHS 2.9, respectively).



Sentencing Practices

Incarceration Rates

As mentioned above, failure-to-register offenses carry a statutory mandatory minimum penalty of one year and one day in prison for a first offense and 24 months in prison for a subsequent offense. Although all failure-to-register offenders should receive a prison sentence, in 2012 just 50 percent of failure-to-register offenders received prison sentences, which was a decrease from the overall rate in 2011 of 56 percent. A greater proportion of subsequent offenders than first-time offenders were sentenced to prison (64% vs. 44%, respectively) (Table 1). Overall, conditional confinement time was imposed in 43 percent of the cases, which is higher than the rate observed in 2011 (39%). Taking into account both conditional confinement (following sentencing) and prison time, the total incarceration rate was 93 percent.

Table 1. Total Incarceration Rate

Type	# Offenders	Prison	Conditional Confinement	Other Sanctions
First-Time Offenders	271	120 (44%)	131 (48%)	20 (7%)
Subsequent Offenders	120	77 (64%)	38 (32%)	5 (4%)
Total	391	197 (50%)	169 (43%)	25 (6%)

Table 2 displays the average pronounced durations for prison sentences and conditional confinement time for first-time and subsequent offenders. The overall average prison sentence pronounced was 20 months, which is the same as the average pronounced prison sentence in 2011. Average pronounced prison sentences have increased with the implementation of the Sex Offender Grid for offenses that occur on or after August 1, 2006. All 197 offenders who received executed prison sentences in 2012 were eligible for the presumptive sentences on the Sex Offender Grid rather than the Standard Grid.

**Table 2. Average Pronounced Durations:
By First or Subsequent Offense**

Type	Prison	Conditional Confinement
First-Time Offenders	19 months	119 days
Subsequent Offenders	21 months	137 days
Total	20 months	123 days

Departure Rates

Departure information is presented for first-time and subsequent offenders. The 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, however, the court may depart from the Guidelines when substantial and compelling circumstances exist. A "departure" is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures – dispositional and durational – as further explained below. 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.

While the court ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the courts 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. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is typically agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

Dispositional Departures

A "dispositional departure" occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: aggravated dispositional departures and mitigated dispositional departures. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence.

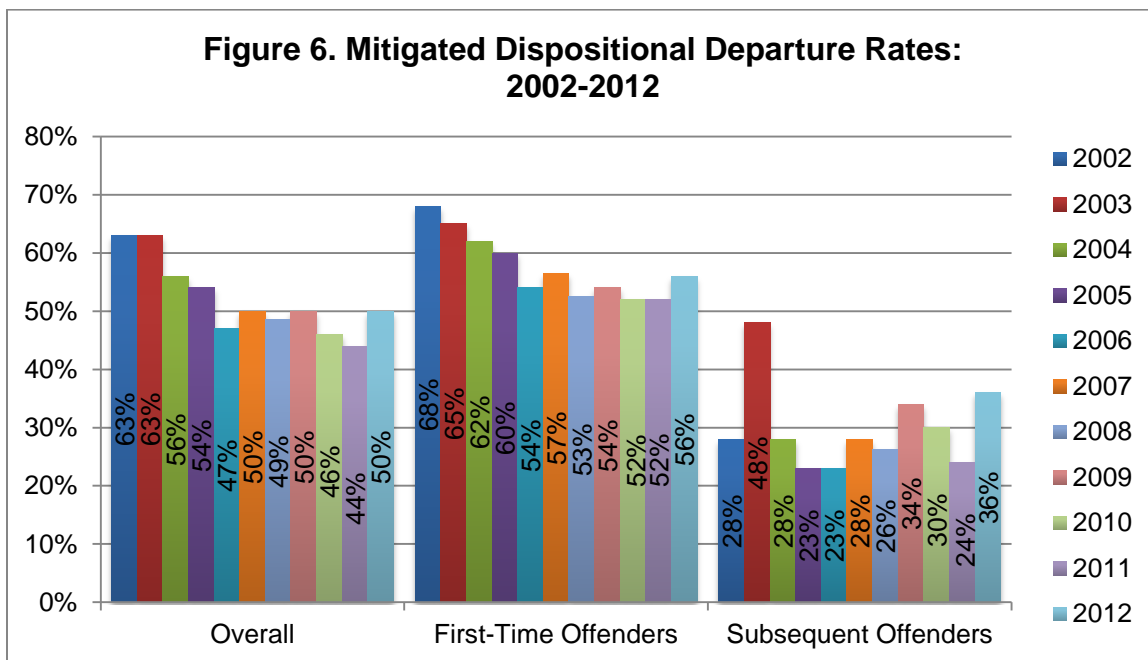
Minn. Stat. § [243.166](#), subd. 5(a) through (c) sets forth a mandatory period of incarceration in a state correctional facility for a conviction for failure to register. Minn. Stat. § 243.166, subd.5(d) allows sentencing without regard to the mandatory minimum and provides that such a sentence is considered a departure from the Guidelines.

In 2012, 50 percent of the offenders sentenced received a non-prison sentence as the result of a mitigated dispositional departure, with first-time offenders receiving dispositional departures at a higher rate of 56 percent.

Table 3. Dispositional Departure Rates

Type	# Offenders	Prison	Mitigated Dispositional Departure
First-Time Offenders	271	120 (44%)	151 (56%)
Subsequent Offenders	120	77 (64%)	43 (36%)
Total	391	197 (50%)	194 (50%)

The mitigated dispositional departure rate in 2012 increased from the previous year for both first-time and subsequent offenders. Subsequent offenders had a particularly sharp increase of 12 percent. Figure 6 displays the mitigated dispositional departure rates from 2002 through 2012.



Durational Departures

A “durational departure” occurs when the court orders a sentence with a duration that is other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces

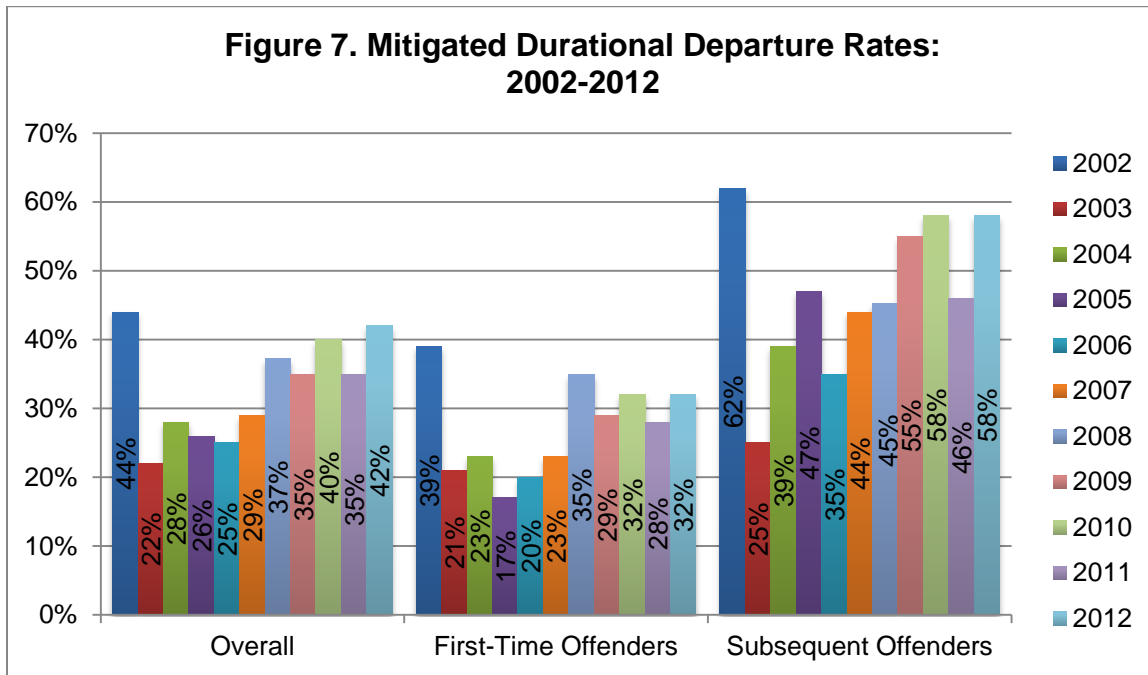
a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

Of the offenders who received the mandatory prison sentence, 42 percent received a mitigated durational departure in which the offender was sentenced to less time in prison than recommended by the Guidelines. Subsequent offenders had higher durational departure rates (58%) than first-time offenders (32%). As described in the “Criminal History Scores” section, both first-time and subsequent failure-to-register offenders had higher criminal history scores than the overall average, with subsequent offenders having a higher average criminal history score at 3.3 versus 2.9 for first-time offenders. However, for those offenders receiving prison sentences, but a mitigated durational departure, subsequent offenders actually had a lower average criminal history score than first-time offenders (CHS 4.0 vs. CHS 4.5, respectively). This may help explain why subsequent offenders were more likely to receive a mitigated durational departure.

Table 4. Durational Departure Rates for Prison Sentences: First or Subsequent Offense and Average Criminal History Score (CHS)

Type	# Prison Sentences	# Mitigated Durational Departure (%)	Average CHS
First-Time Offenders	120	38 (32%)	4.5 CHS
Subsequent Offenders	77	45 (58%)	4.0 CHS
Total	197	83 (42%)	4.3 CHS

The mitigated durational departure rate increased for both first-time offenders and subsequent offenders in 2012 from the rates observed in 2011. Figure 7 displays the mitigated durational departure rates from 2002 through 2012. Aggravated durational departures are infrequent in each year, so no trend information is provided on these departures. There was one aggravated durational departures in 2012.



Departure Reasons

Mitigated Dispositions

In 2012, dispositional departures occurred in 50 percent of the cases sentenced. Of the 194 cases that received mitigated dispositional departures, 121 (62%) resulted from a plea agreement in which the prosecutor recommended or did not object to the sentence.

Table 5. Plea Information for Offenders Receiving Dispositional Departures

Position of Prosecutor, as Cited by Court in Departure Report				
	Number of Mitigated Dispositions	Plea Agreement or Prosecutor Recommends/ Does Not Object	Prosecutor Objects	No Information Given
First-Time Offenders	151	97 (64%)	12 (8%)	42 (28%)
Subsequent Offenders	43	24(56%)	7 (16%)	12 (28%)
Total	194	121 (62%)	19 (10%)	54 (28%)

Table 6 lists a summary of the reasons stated for the imposition of mitigated dispositional departures. The most frequently-cited reason (other than plea agreement) was that the offender was “amenable to probation” (60%), followed by “offender showed remorse” (47%) and “offense was less onerous” than the typical offense (31%). These were the same departure reasons that were most frequently cited in the 2001-2011 departure data.

Table 6. Frequently Cited Departure Reasons for Dispositional Departures

Departure Reasons	Number of Cases	Percentage of All Dispositional Departures
Amenable to Probation	116	60%
Shows Remorse/Accepts Responsibility	92	47%
Offense Less Onerous than Typical	60	31%
Amenable to Treatment	31	16%
Recommended by Court Services	26	13%
Ensure Compliance with Conditions of Probation	18	9%
Lacked Substantial or Reasonable Capacity for Judgment	9	5%

Durational Departures

For offenders sentenced to prison, 42 percent received mitigated durational departures. In 70 percent of the mitigated durational departure cases, the prosecutor either recommended or did not object to the departure (Table 7). Table 8 displays the reasons most frequently cited for mitigated durational departures (other than plea agreement): “shows remorse/accepts responsibility” and “crime less onerous than usual.”

Table 7. Plea Information for Offenders that Received Durational Departures (Executed Sentences Only)

	Position of Prosecutor as Cited by Court in Departure Report				
	Type	Number of Durational Departures	Plea Agreement or Prosecutor Recommends/ Does Not Object	Prosecutor Objects	No Information Given
Mitigated Departures	First-Time Offenders	38	25 (66%)	1 (3%)	12 (32%)
	Subsequent Offenders	45	33 (73%)	2 (4%)	10 (22%)
	Total	83	58 (70%)	3 (4%)	22 (27%)

Table 8. Frequently Cited Departure Reasons for Durational Departures

	Departure Reason	Number of Cases	Percentage of Durational Departures
Mitigated Departures	Shows Remorse/Accepts Responsibility	31	37%
	Offense Less Onerous than Typical Offense	19	23%
	Judicial Efficiency/Save on Cost of Trial and Other Costs	11	13%

How the Guidelines Work

Minnesota's Guidelines are based on a grid structure. The vertical axis of the grid represents the severity of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's criminal history. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the Offense Severity Reference Table (2012 Minn. Sentencing Guidelines § 5.A).

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was confined, or was on probation or parole when the current offense was committed.

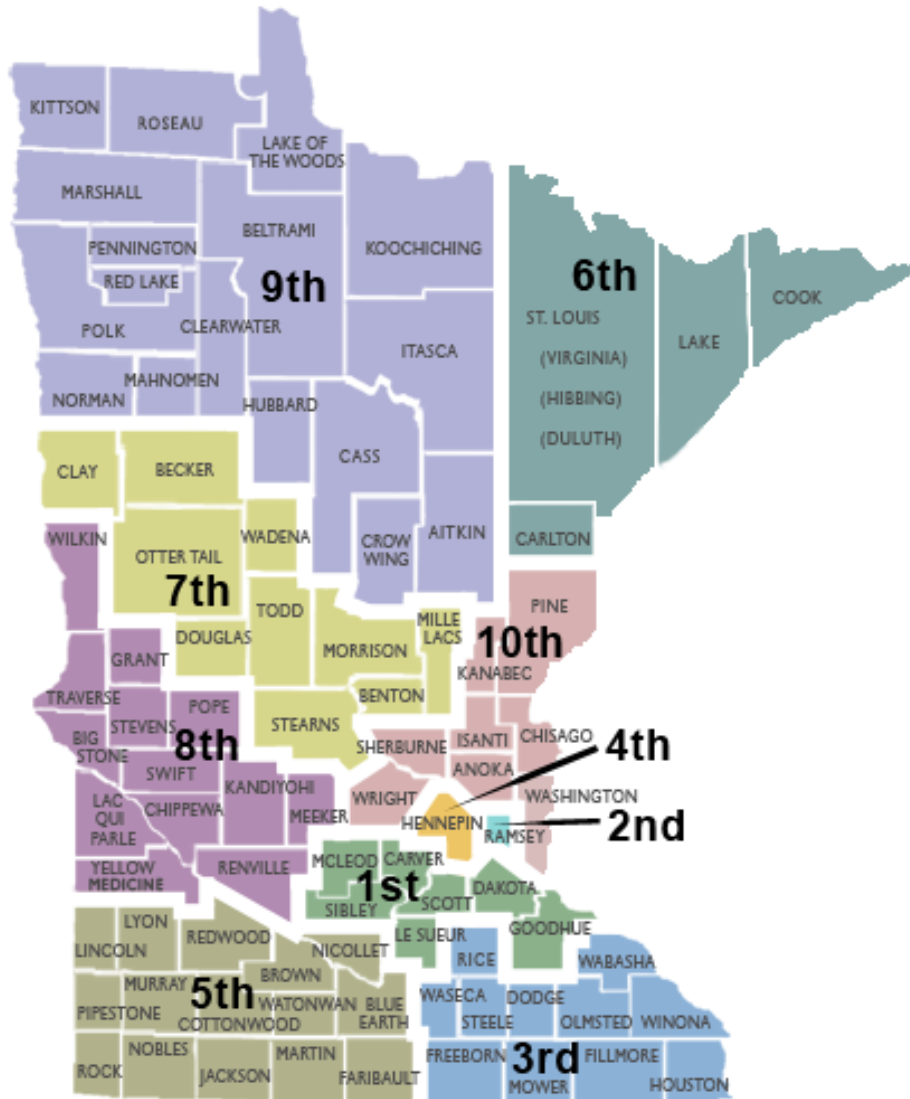
The recommended (presumptive) Guideline sentence is found in the appropriate cell of the applicable Grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the Grid.

The Guidelines generally recommend a stayed sentence for cells in the shaded areas. When a sentence is stayed, the court typically places the offender on probation and may require up to one year of conditional confinement in a local correctional facility (jail or workhouse). Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).

The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the Grid, the Guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the Guidelines.

It is not possible to fully explain all of the policies in this brief summary. Additional information on the Guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at mn.gov/sentencing-guidelines.

Minnesota Judicial District Map




<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Fifth</u>	<u>Sixth</u>	<u>Seventh</u>	<u>Eighth</u>	<u>Ninth</u>	<u>Tenth</u>
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota		Fillmore		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
LeSueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Mille Lacs	LacQuiParle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Otter Tail	Pope	Itasca	Washington
		Steele		Martin		Stearns	Renville	Kittson	Wright
		Wabasha		Murray		Todd	Swift	Koochiching	
		Waseca		Nicollet		Wadena	Traverse	Lake-Woods	
		Winona		Nobles			Wilkin	Mahnomen	
				Pipestone			Yellow Medicine	Marshall	
				Redwood				Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	


Minnesota Judicial Branch at <http://mncourts.gov/?page=238>

Sentencing Guidelines Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480</i> ²	426 <i>363-480</i> ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> ²
<i>Controlled Substance Crime, 3rd Degree</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

12¹=One year and one day


² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.


Sex Offender Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
CSC 1 st Degree	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
CSC 2 nd Degree– (c)(d)(e)(f)(h) Prostitution; Sex Trafficking ³ 1 st Degree–1(a)	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
CSC 3 rd Degree–(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2 nd Degree–1a	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> ²
CSC 2 nd Degree–(a)(b)(g) CSC 3 rd Degree–(a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
CSC 4 th Degree–(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
CSC 4 th Degree– (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
CSC 5 th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
Registration Of Predatory Offenders	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.

³ Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)