

MINNESOTA SENTENCING GUIDELINES COMMISSION

Report to the Legislature

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Minnesota Sentencing Guidelines Commission

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Introduction

In 1981, Minnesota became the first state to implement a sentencing guidelines structure. The Minnesota Sentencing Guidelines Commission is a legislatively created body whose purpose is to maintain the guidelines, evaluate outcomes of changes in sentencing policy, analyze trends and make appropriate recommendations, and provide education on sentencing law and policy.

The primary consideration of the Minnesota Sentencing Guidelines is **public safety**. Other considerations are:

- To promote **uniformity** in sentencing so that offenders who are convicted of similar types of crimes and who have similar criminal records are similarly sentenced.
- To provide **rationality** and **predictability** in sentencing.
- To establish **proportionality** in sentencing so that the severity of the sanction increases in direct proportion to an increase in the offense severity or the convicted felon's criminal history, or both.

Since the Guidelines went into effect, Minnesota has undergone significant changes in population. Minnesota's rate of imprisonment remains the second-lowest in the United States. From 1993 to 2013, Minnesota's imprisonment rate doubled (from 92 to 189 inmates per 100,000 residents), a time during which the nationwide state imprisonment rate increased by 26 percent (from 331 to 417 inmates per 100,000 residents).¹ The Guidelines continually strive to maintain balance between appropriate sentencing policy and **correctional resources**.

This report details the work of the Minnesota Sentencing Guidelines Commission in 2014, and provides an overview of sentencing practices and trends in the criminal justice system. The sentencing data included in this report is from calendar year 2013, the most recent full year of sentencing data. Additional reports on overall data trends in 2013 and sentencing practices for specific offenses—including assaults and violations of restraining orders, controlled substances, criminal sexual conduct, criminal vehicular homicide and injury, dangerous weapons, failure to register as a predatory offender, and felony DWI—as well as an unranked offense report and a probation revocation report, are available on the Commission's website at mn.gov/sentencing-guidelines/reports. Please direct any comments or questions regarding any of these reports to the Minnesota Sentencing Guidelines Commission staff.

¹ Carson, E. Ann. Bureau of Justice Statistics. Imprisonment Rate of Sentenced Prisoners under the Jurisdiction of State or Federal Correctional Authorities per 100,000 U.S. Residents, Dec. 31, 1978-2013. August 7, 2014. Retrieved December 10, 2014 at <http://go.usa.gov/GJeA>.

Executive Summary

The Commission's 2015 Report to the Legislature contains two required reports: modifications to the Guidelines, and use of firearms in crimes as reported by Minnesota's County Attorneys. As in past years, the Commission also takes this opportunity to highlight topics that may be of interest to the legislature: sentencing and departure trends; a special review of controlled substance departures; and updates on Commission and staff activities.

Sentencing Trends (p. 4): Minnesota courts sentenced 15,318 felony offenders in 2013, an overall increase of 0.7 percent. Of the total volume, person offenses accounted for 32 percent (4,836 offenders), property offenses accounted for 30 percent (4,528 offenders), and drug offenses accounted for 25 percent (3,821 offenders). The number of offenders sentenced decreased in the person, property, and DWI categories, but increased in the drug (7.6 percent increase) and "other" categories. Overall, 92.5 percent of felony offenders served some time in a local correctional facility or prison setting: 65.1 percent served time in a local correctional facility while 27.4 percent were sentenced to a Minnesota Department of Corrections (DOC) prison facility. The State prison rate has seen a slight and incremental increase each year in the past five years, and the rates of imprisonment and overall incarceration (prison plus local correctional facilities) were slightly higher than any rate previously seen since the Guidelines went into effect in 1980. The average pronounced prison sentence was 45.2 months. Statewide, 72 percent of felony offenders received the presumptive Guidelines Sentence, but this rate varied by judicial district.

First- and Second-Degree Controlled Substance Offenses: Descriptive Statistics and Regression Analysis (2009 – 2012) (p. 21): From 2009 to 2012, descriptive statistics demonstrated high departure rates for first- and second-degree controlled substance offenses. The rates varied based on an offender's criminal history score, race, drug amounts, and where the offender was sentenced. The Commission directed its staff to perform a regression analysis to explore the relationship between departures and these factors. Consistent with the descriptive statistics, four statistically significant findings were confirmed: (1) Hispanic offenders were less likely to receive departures than white offenders; (2) offenders with higher criminal history scores were less likely to get departures; (3) offenders with double the controlled substance threshold amount or more were less likely to get departures; and (4) departure rates were highly variable by judicial district.

Commission's 2014 Guidelines Modifications (p. 26): Specific offenses were amended by the 2014 Legislature. For each offense, the Commission determined if the Guidelines needed to be modified. No changes were made to lawful gambling fraud under Minn. Stat. § 609.763; fraudulent finance statements under Minn. Stat. § 609.7475; crimes of violence under Minn. Stat. § 624.712 (affecting firearm possession by ineligible persons under Minn. Stat. §§ 609.165 & 624.713, subd. 1(2)); accidents under Minn. Stat. §§ 169.09 & 609.2112; predatory offender registration under Minn. Stat. § 243.166; criminal vehicular homicide and operation under Minn. Stat. §§ 609.2112, 609.2113, & 609.2114; and perjury under Minn. Stat. § 609.48. Laws related to the expungement of criminal records were also amended, and the Commission addressed

changes in the commentary. The Commission changed severity-level rankings for two offenses: certain third-degree criminal sexual conduct offenses under Minn. Stat. § 609.344, subdivision 1, paragraph b, with reference to subdivision 2(2); and all fifth-degree criminal sexual conduct under Minn. Stat. § 609.3451. The Commission also assigned severity-level rankings to violations of the newly enacted medical cannabis laws under Minn. Stat. § 152.33.

Additional Commission Activities (p. 29): In addition to maintaining the Guidelines, the Commission studied the administration of consecutive sentences and compared the revised federal guidelines with Minnesota's Guidelines' treatment of drug sales.

Staff Activities (p. 30): The staff performed the following activities: answered approximately 3,000 phone calls and email inquiries; trained 450 practitioners in traditional classroom and online settings; provided 42 fiscal impact statements for introduced legislation; compiled sentencing information for almost 200 individual data requests; worked with the Department of Corrections to generate prison bed projections; participated in various criminal justice boards, forums and committees; processed and ensured the accuracy of over 15,000 sentencing records; published annual Guidelines and commentary; and provided reports on sentencing practices.

County Attorney Firearms Reports (p. 33): County attorneys collect and maintain information on crimes for which a defendant is alleged to have possessed or used a firearm. The Commission is required to include in its annual report a summary and analysis of the reports received. Since the mandate began, there have been an annual average of 746 cases allegedly involving a firearm. The total number of reported firearms cases from July 2013 to June 2014 was 1,089. This number has risen every year since 2010, and represents an increase of 7 percent (73 cases) over fiscal year 2013.

2013 Sentencing Practices Data Summary

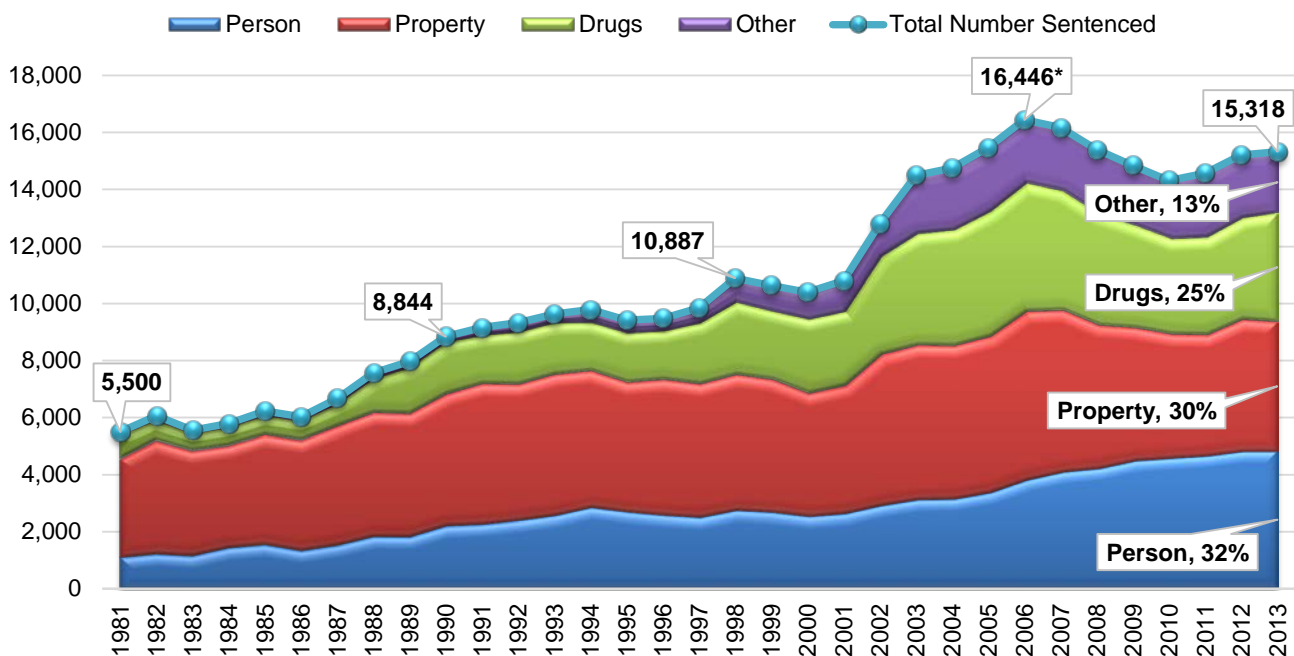
The following data summarizes information about sentencing practices and case volume and distribution. The recommended sentence under the Guidelines is based primarily on the severity of the offense of conviction and secondarily on the offender's criminal record. The majority of offenders receive the recommended sentence.

Sentencing practices are very closely related to the recommended Guidelines sentence. It is very important, therefore, to be aware of the effect of differences in offense severity and criminal history when evaluating sentencing practices. This is particularly important when comparing groups of offenders (e.g. by gender, race/ethnicity and judicial district). For example, if in a particular district the proportion of serious person offenders is fairly high, the imprisonment rate for that district will likely be higher than for districts with predominantly lower severity-level offenses.

Case Volume, Distribution, and Percent Change: Overall and by Offense Type

Minnesota courts sentenced 15,318 felony offenders in 2013, an increase of 0.7 percent from 2012. As a proportion of all offenders sentenced, person offenders accounted for 32 percent (4,836 offenders) and property accounted for 30 percent (4,528 offenders) (Figure 1).

Figure 1. Total Number of Offenders Sentenced and Volume of Offenders Sentenced by Offense Type: 1981-2013



*The growth between 2001 and 2006 can be attributed to the implementation of the felony driving while impaired (DWI) law and increases in the number of drug crimes sentenced, particularly methamphetamine cases.

Compared to 2012, the number of offenders sentenced decreased in the property and DWI categories, increased in the drug, non-person sex offense, and “other”^{2,3} categories, and remained nearly constant in the person category (Figure 2).

Offenders in the drug category increased the most, with a 7.6 percent rise. Overall, the number of offenders in the non-person sex offense category increased by 4.6 percent. Failure to register as a predatory offender increased by 20 offenders (from 391 to 411) and dissemination and possession of child pornography increased by three (from 104 to 107). The number sentenced for the remaining offenses in the “other” category increased by two percent. The most noticeable increases were in ineligible felon in possession of a firearm (from 321 to 372) and fleeing police (from 377 to 404).

Figure 2. Percent Change by Offense Type: 1999-2013
(Felony DWI and Non-Person Sex Offenses Separated from “Other”)

Year Sentenced	Person	Property	Drug	Other	Felony DWI*	Non-Person Sex Offenses**	Total
1999	-2.5%	-2.1%	-5.9%	7.8%			-2.3%
2000	-5.1%	-7.4%	8.6%	4.2%			-2.2%
2001	3.6%	4.2%	0.0%	13.9%			3.9%
2002	10.6%	17.9%	31.9%	15.7%			20.2%
2003	6.8%	2.3%	13.8%	0.7%			11.7%
2004	0.9%	-0.9%	3.5%	6.9%	6.2%		1.8%
2005	6.8%	2.0%	8.1%	6.6%	-3.0%		4.8%
2006	13.1%	7.9%	2.7%	2.3%	-5.5%		6.4%
2007	7.3%	-4.2%	-7.1%	3.5%	-7.2%		-1.7%
2008	3.0%	-11.5%	-6.9%	-0.3%	-6.0%		-4.8%
2009	6.2%	-7.0%	-7.7%	-6.2%	-9.6%		-3.6%
2010	2.0%	-6.8%	-7.0%	-2.7%	-5.3%	3.1%	-3.6%
2011	1.7%	-2.4%	2.5%	17.1%	-1.0%	9.9%	1.8%
2012	3.5%	8.8%	4.2%	-2.8%	-4.4%	4.0%	4.4%
2013	-0.1%	-1.7%	7.6%	2.0%	-19.0%	4.6%	0.7%

* 2003 was the first full year in which this offense existed; percent change is provided for 2004 and beyond.

** Offenses excluded from the percent change calculation between 2009 and 2010 for the “other” category.

² “Other” category includes: Failure to register as a predatory offender, possession or dissemination of child pornography, possession of a firearm by a felon convicted of a crime of violence, fleeing police, escape, discharge of a firearm, and other offenses of less frequency.

³ In 2010, the “other” offense category was separated so that data about felony DWI and sex offenses without a direct victim (failure to register as a predatory offender and possession and dissemination of child pornography) could be analyzed separately. The number of offenders sentenced for Felony DWI peaked in 2004 at 860 and has declined in most years since. In 2012, the number of offenders sentenced for felony DWIs (631) decreased by four percent, a larger decrease than that seen in 2011.

The number of offenders sentenced for Felony DWI peaked in 2004 at 860 and has declined in most years since then. In 2013, the number of offenders decreased by 19 percent, to 510, the largest decrease ever seen.⁴

The increase in felony sentences is likely related to an overall increase in reported crime. Data published by the Minnesota Department of Public Safety indicated that the crime rate for “index crimes” has fluctuated since 1981, but had declined in the five years prior to 2012. Then, in 2012, the crime rate increased by 0.7 percent. The 2013 rate of 2,652 crimes per 100,000 in population represented a decrease of 4.4 percent from the 2012 rate. In 2013 there were 12,469 reported “violent crimes” in Minnesota, an increase of 1.2 percent from the 12,323 violent crimes reported in 2012.⁵

Minnesota’s crime-rate trends appeared consistent with that of national figures. The Bureau of Justice Statistics reported that in 2011 and 2012, violent and property crime rates rose for U.S. residents; however, in 2013, incidents in both categories declined. Also, in 2013, there was no change in the rate of serious violent crimes (rape or sexual assault, robbery, and aggravated assault) from the previous year.⁶

Distribution of Offenders by Race and Judicial District

Figure 3 shows the racial composition of Minnesota’s felony offender population from 1981 through 2013. The percentage of offenders who are white has decreased by roughly 25 percent since 1981. This is largely due to an increase in the percentage of black offenders, though the percentage of other minority offenders (particularly Hispanic offenders) has also increased.

For comparison purposes, Figure 4 shows the distribution of felony offenders by race compared to Minnesota’s total population of people ages 18 years and over, in 1980,⁷ 1990, 2000, and 2010.⁸ According to the U.S. Census, Minnesota’s 2010 population was 86.1 percent white, 4.3 percent black; 3.7 percent Hispanic; 3.7 percent Asian; 1 percent American Indian; and 1.2 percent people who identify themselves with two or more races or another race (“Other”). For further comparison, Figure 5 illustrates the 2010 U. S. Census data for Minnesota’s total population of people ages 18 years and over, compared to the distribution of felony offenders for each of Minnesota’s ten judicial district. (See Appendix 1 for a map of Minnesota’s ten judicial districts.)

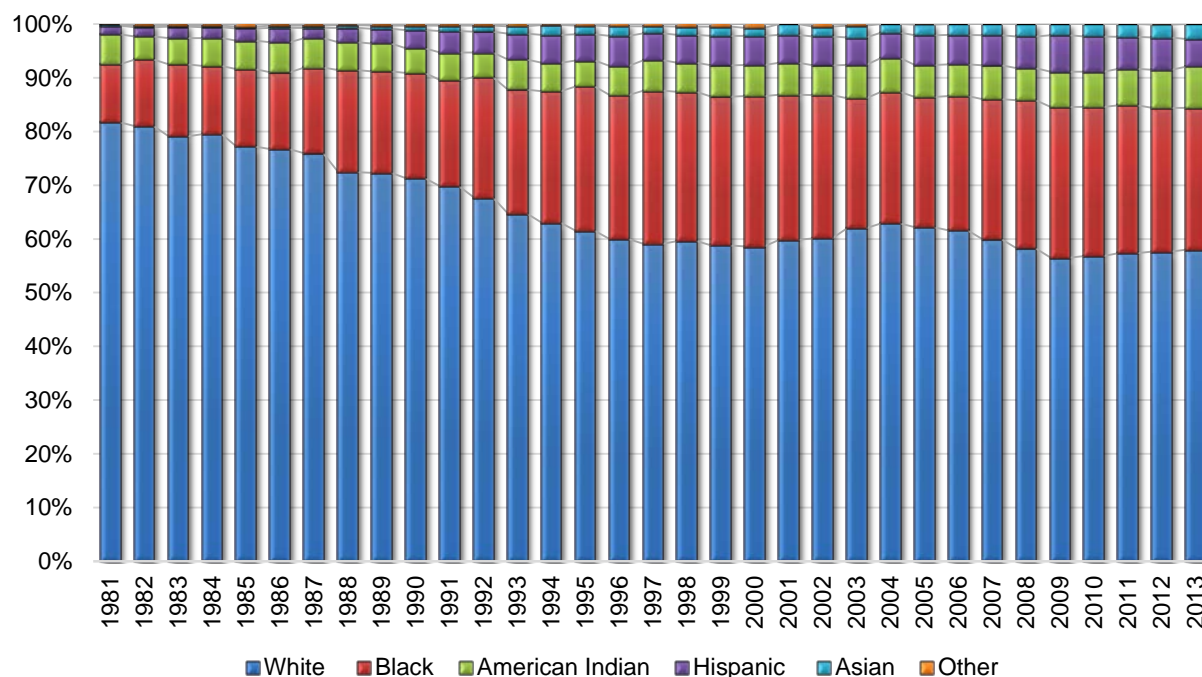
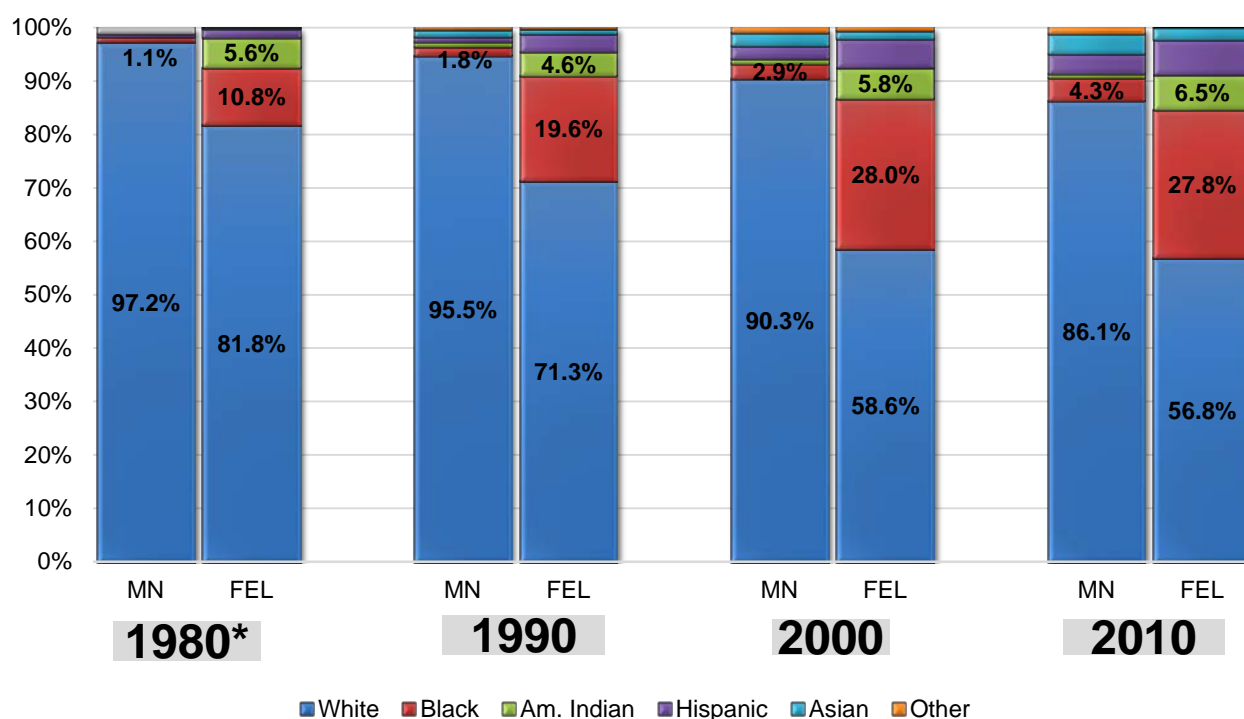
⁴ For comparison purposes, the overall number of impaired-driving incidents entered onto people’s driving records decreased from 2012 to 2013 by 9 percent in Minnesota. [Minnesota Impaired Driving Facts 2013](#), State of Minnesota, Department of Public Safety, August 2014, p.1.

⁵ “Index Crimes” are Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny, Motor Vehicle Theft, and Arson. “Violent Crimes” are Murder, Forcible Rape, Robbery, and Aggravated Assault. [2013 Uniform Crime Report](#), State of Minnesota, Department of Public Safety, July 2014, p.10.

⁶ *Criminal Victimization, 2014* (NCJ 247648), Bureau of Justice Statistics, September 2014 at <http://www.bjs.gov/content/pub/pdf/cv13.pdf>.

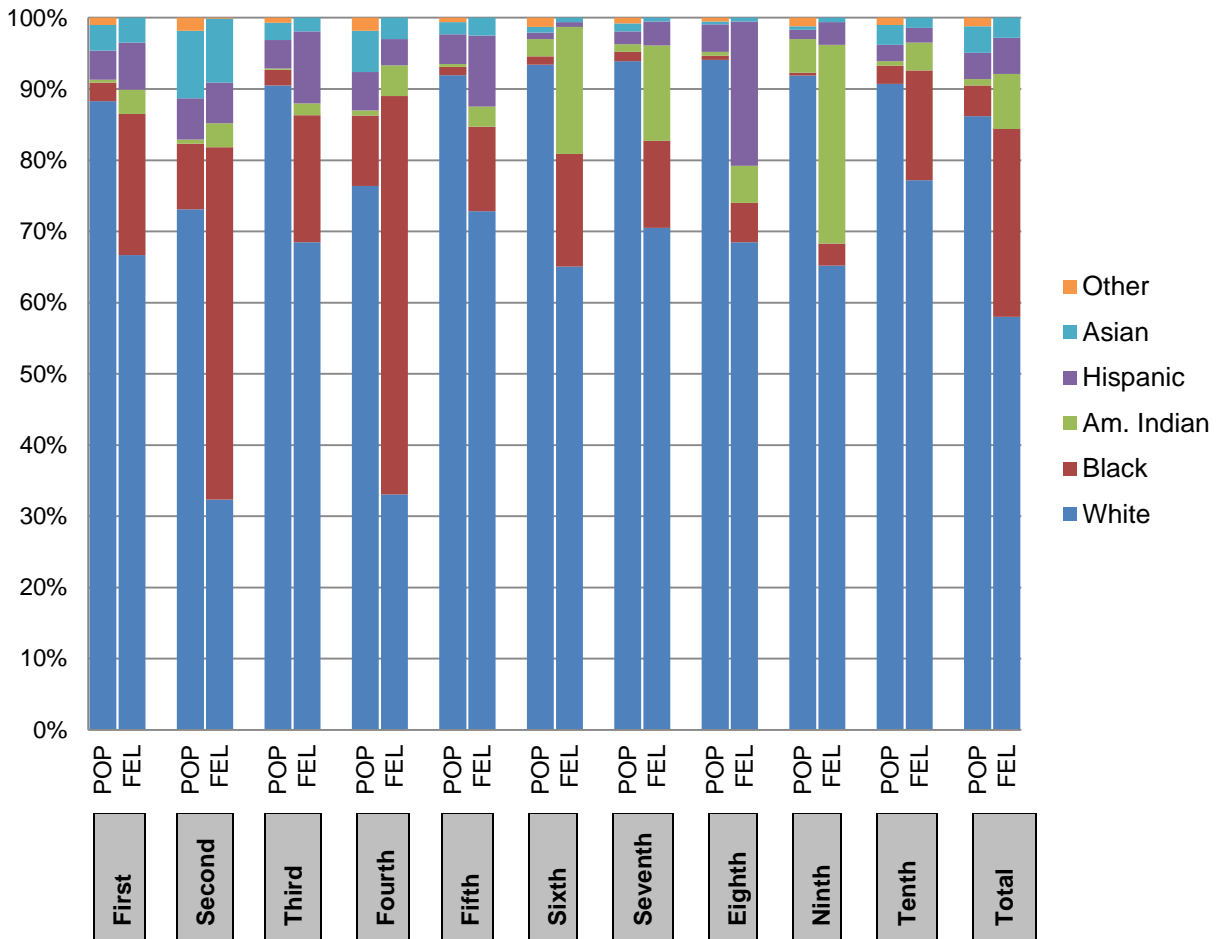
⁷ In 1980, the census information for people 18 years of age and older was broken into three racial categories: white, black, and Hispanic. The grey block at the top indicates people who were not in one of these three racial categories.

⁸ Source for “Total MN Population 18 years and older”: U.S. Census Bureau; Census 2010, Summary File 1, Table 11; generated by Sarah Welter, Kathleen Madland, and Jill Payne (November 2013).

Figure 3. Distribution of Felony Offenders by Race: 1981-2013**Figure 4. Distribution of MN Population by Race (MN) Compared to Distribution of Felony Offenders (FEL): 1980, 1990, 2000, 2010**

* In 1980, the census information for people 18 years of age and older was broken into three racial categories: white, black, and Hispanic. The grey block at the top indicates people who were not in one of these three racial categories.

**Figure 5. Distribution of 2010 MN Population by Race (MN)
Compared to Distribution of 2013 Felony Offenders (FEL) by Judicial District**



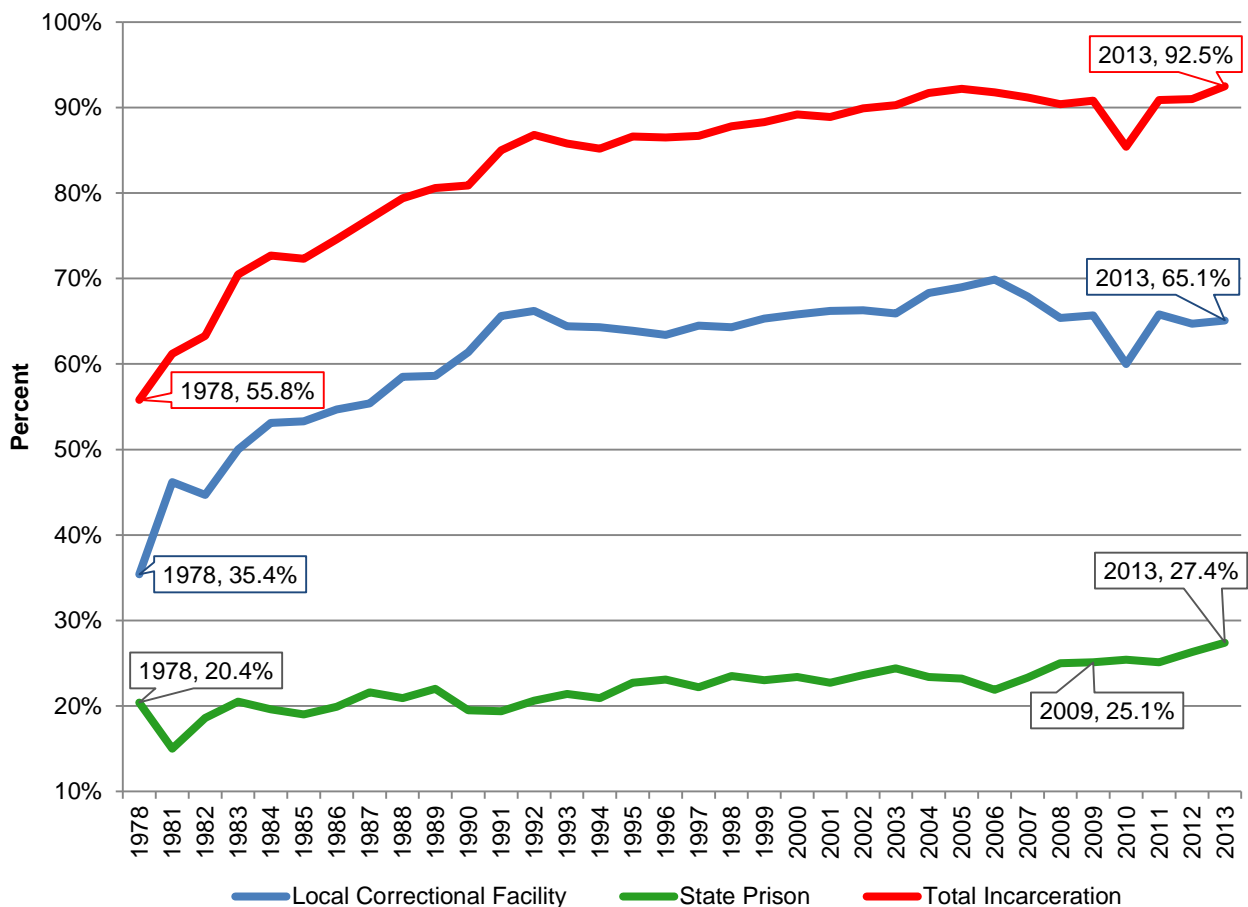
Incarceration Rates

Under Minn. Stat. § [609.02](#), a felony sentence must be at least 366 days long in Minnesota. Sentences of one year or less are gross misdemeanors or misdemeanors and are served in local correctional facilities.

The Guidelines presume who should go to state correctional institutions (prison) and for how long. Imprisonment rates are related to the Guideline recommendations and are based on the seriousness of the offense and the offender's criminal history score. In cases in which prison sentences are stayed, the court usually places the offender on probation. As a condition of probation, the court may impose up to one year of incarceration in a local correctional facility. Probationers usually serve time in a local correctional facility and are often given intermediate sanctions such as treatment (residential or nonresidential), restitution, and fines.

In 2013, 92.5 percent of felony offenders served some time in a local correctional facility or prison setting (*Total Incarceration*, Figure 6). Slightly over 65 percent served time in a local correctional facility as part of their stayed sentence (*Local Correctional Facility*, Figure 6) while 27.4 percent were sentenced to a Minnesota Department of Corrections (DOC) prison facility (*State Prison*, Figure 6) which is reflected in the overall incarceration rate of 92.5 percent. The State prison rate has seen a slight and incremental increase each year in the past five years, and the rates of imprisonment and overall incarceration (prison plus local correctional facilities) were slightly higher than any rate previously seen since the Guidelines went into effect in 1980.

Figure 6. Overall Incarceration Rates: 1978; 1981-2013



When comparing imprisonment rates across various groups (sex, race or judicial district) it is important to note that much of the variation is directly related to the proportion of offenders in any particular group who are recommended a prison sentence by the Guidelines based on the severity of the offense and the offender's criminal history.

Table 1, below, provides total incarceration information for offenders sentenced in 2013. The total incarceration rate describes the percentage of offenders who received a sentence that included incarceration in a state prison or local correctional facility, following conviction.

Race

The total incarceration rate varies across racial groups (ranging from 91.3% for white offenders to 95.5% for Asian offenders). However, there is greater variation by race in the separate rates for prison and local confinement. For example, white offenders were imprisoned at the lowest rate (23.5%) whereas black offenders were imprisoned at the highest rate (34.5%).

Judicial District

Variation was also observed in incarceration rates by Judicial District. The Second Judicial District, which includes St. Paul, had the highest total incarceration rate (99.5%) and the Third Judicial District, which includes the cities of Albert Lea and Rochester, had the lowest total incarceration rate (83.3%). This variation continues with respect to the separate rates for prison and local confinement. For example, the Second Judicial District, had the highest imprisonment rate (33.3%) and the First Judicial District, which includes the cities of Hastings and Shakopee, had the lowest imprisonment rate (20.8%). With regard to use of local confinement, the Tenth Judicial District, which includes the cities of Anoka and Stillwater, had the highest rate (72.6%) and the Third Judicial District had the lowest rate (55.1%).

Table 1. Total Incarceration Rates by Gender, Race / Ethnicity, and Judicial District

		Total Cases	Total Incarceration		State Prison		Conditional Confinement	
Gender	Male	12,797	11,952	93.4%	3,875	30.3%	8,077	63.1%
	Female	2,521	2,220	88.1%	318	12.6%	1,902	75.4%
Race/ Ethnicity	White	8,884	8,110	91.3%	2,092	23.5%	6,018	67.7%
	Black	4,050	3,845	94.9%	1,398	34.5%	2,447	60.4%
	American Indian	1,177	1,078	91.6%	339	28.8%	739	62.8%
	Hispanic	780	731	93.7%	260	33.3%	471	60.4%
	Asian	426	407	95.5%	104	24.4%	303	71.1%
	Other/Unknown	1	1	100.0%	0	0.0%	1	100.0%
Judicial District	First	1,806	1,667	92.3%	375	20.8%	1,292	71.5%
	Second	1,925	1,916	99.5%	641	33.3%	1,275	66.2%
	Third	1,333	1,110	83.3%	375	28.1%	735	55.1%
	Fourth	2,983	2,747	92.1%	931	31.2%	1,816	60.9%
	Fifth	763	707	92.7%	163	21.4%	544	71.3%
	Sixth	964	828	85.9%	226	23.4%	602	62.4%
	Seventh	1,543	1,499	97.1%	469	30.4%	1,030	66.8%
	Eighth	384	367	95.6%	104	27.1%	263	68.5%
	Ninth	1,407	1,209	85.9%	392	27.9%	817	58.1%
	Tenth	2,210	2,122	96.0%	517	23.4%	1,605	72.6%
Overall		15,318	14,172	92.5%	4,193	27.4%	9,979	65.1%

Average Pronounced Prison Sentences and Confinement in a Local Correctional Facility

In 2013, the average prison sentence was 45.2 months. The average has fluctuated over time (Table 2). Numerous changes in sentencing practices and policies, as well as changes in the distribution of cases, can affect the average. The average prison sentence increased after 1989 when the Commission doubled the recommended prison sentences for the higher severity-level offenses. The average amount of confinement in a local correctional facility pronounced as a condition of probation was 106 days (Table 3). The average has remained largely constant since 1988.

Table 2. Average Pronounced Prison Sentence

Executed Prison Sentences (in months)

2013	45.2
2012	47.3
2011	45.6
2010	46.5
2009	42.8
2008	45.0
2007	44.8
2006	44.8
2005	45.7
2004	45.1
2003	51.2
2002	47.2
2001	49.8
2000	49.7
1999	47.9
1998	47.0
1997	44.5
1996	47.4
1995	48.5
1994	51.3
1993	46.9
1992	48.6
1991	45.2
1990	45.7
1989	37.7
1988	38.1
1987	36.3
1986	35.4
1985	38.4
1984	36.2
1983	36.5
1982	41.0
1981	38.3

Table 3. Average Pronounced Confinement

Local Correctional Facility (in days)

2013	106
2012	108
2011	107
2010	110
2009	107
2008	109
2007	109
2006	111
2005	110
2004	112
2003	112
2002	106
2001	105
2000	104
1999	103
1998	107
1997	107
1996	107
1995	108
1994	113
1993	112
1992	109
1991	106
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1989	110
1988	108
1987	116
1986	113
1985	120
1984	126
1983	132
1982	144
1981	166

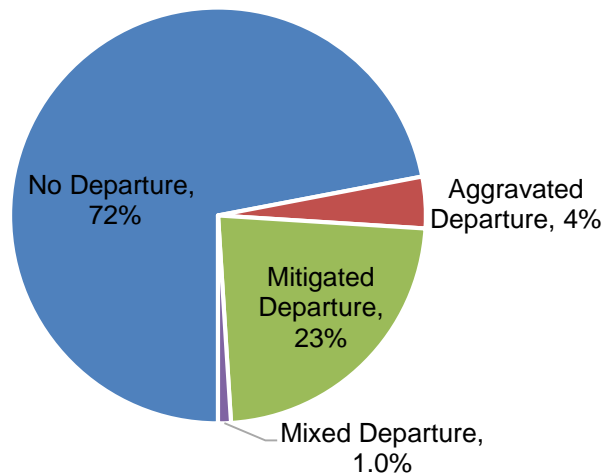
Departures from the Guidelines

A “departure” is a pronounced sentence other than that recommended in the appropriate cell of the applicable Guidelines 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 commonly 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 may be 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.

In 2013, 72 percent of all felony offenders sentenced received the presumptive Guidelines sentence. The remaining 28 percent received some type of departure (Figure 7).

Figure 7. Overall Departure Rates



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.

In 2013, the overall dispositional departure rate was 15 percent: 11 percent mitigated; and four percent aggravated (Figure 8). Most aggravated dispositional departures occur when an offender with a presumptive stayed sentence requests an executed prison sentence or agrees to the departure as part of a plea agreement. This request is usually made in order for the offender to serve the sentence concurrently with another prison sentence. The Commission has generally included these cases in the departure figures because, for the given offense, the sentence is not the presumptive Guidelines sentence. However, if requests for prison are not included in the analysis, the aggravated dispositional departure rate is one percent (Figure 8-Inset). Because aggravated dispositional departures represent such a small percentage of cases, the remainder of this analysis on departures will focus on mitigated dispositional departures.

**Figure 8. Dispositional Departures
with and without Requests for Prison from Defendant**

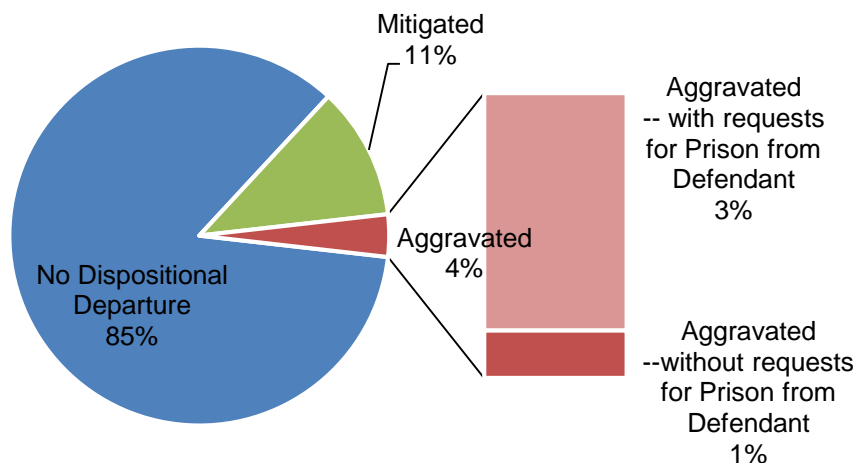


Table 4 illustrates dispositional departure rates based on presumptive disposition by gender, race, and judicial district. The aggravated dispositional departure rate for offenders recommended a stayed sentence (“Number Presumptive Stays”) was almost six percent (5.8%). The mitigated dispositional departure rate for offenders who were recommended prison (“Number Presumptive Commits”) was a little over 32 percent (32.2%).

The mitigated dispositional departure rate for presumptive prison cases is higher for women (51%) than men (30.5%). When examined by racial composition, the mitigated dispositional departure rate ranged from a low of 25.2 percent for Hispanic offenders to a high of 34.7 percent for white offenders. There was also variation in the rate by judicial district, ranging from lows of 24.2 percent in the Seventh District (includes the cities of Moorhead and St. Cloud), and 24.4 percent in the Second District (includes the city of St. Paul) to a high of 44.4 percent in the Fifth Judicial District (includes the city of Mankato).

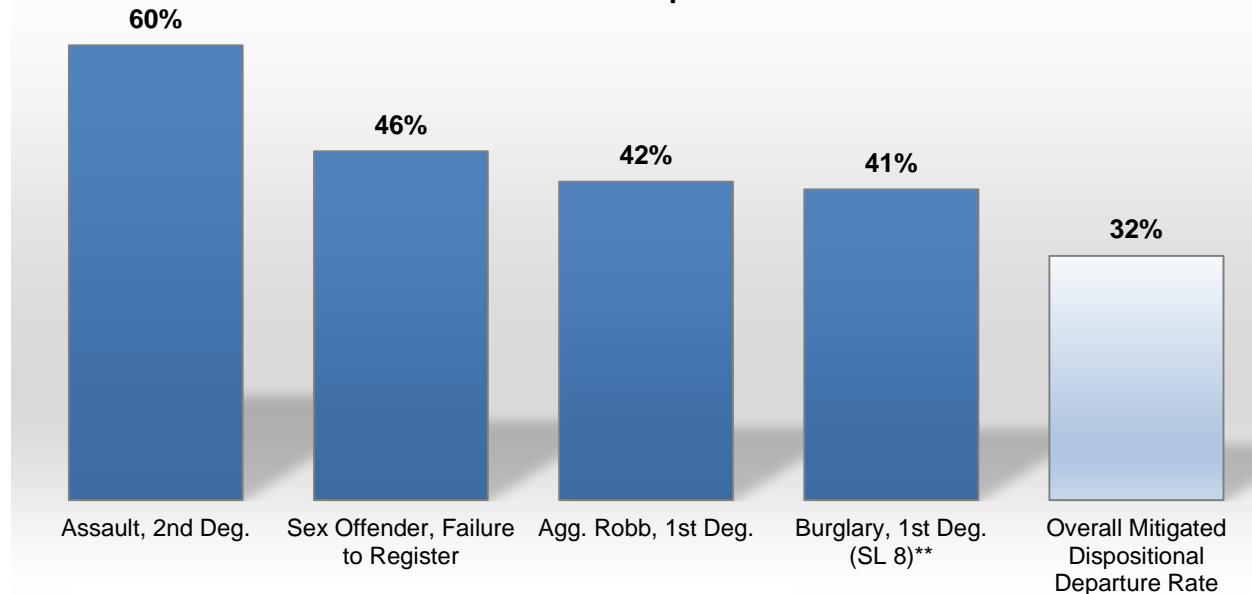
When reviewing Table 4, note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across racial groups or across regions, and differences in the criminal history scores of offenders across racial groups or across regions.

Table 4. Dispositional Departure Rates by Gender, Race, and Judicial District

		Total Cases	Number Presumptive Stays	Aggravated Dispositional Departures		Number Presumptive Commits	Mitigated Dispositional Departures	
Gender	Male	12,797	7,919	484	6.1%	4,878	1,487	30.5%
	Female	2,521	2,068	96	4.6%	453	231	51.0%
Race/ Ethnicity	White	8,884	6,225	355	5.7%	2,659	922	34.7%
	Black	4,050	2,230	133	6.0%	1,820	555	30.5%
	American Indian	1,177	764	53	6.9%	413	127	30.8%
	Hispanic	780	466	25	5.4%	314	79	25.2%
	Asian	426	301	14	4.7%	125	35	28.0%
	Other/Unknown	1	1	0	0.0%	0	0	0.0%
Judicial District	First	1,806	1,300	56	4.3%	506	187	37.0%
	Second	1,925	1,135	44	3.9%	790	193	24.4%
	Third	1,333	898	70	7.8%	435	130	29.9%
	Fourth	2,983	1,682	89	5.3%	1,301	459	35.3%
	Fifth	763	538	38	7.1%	225	100	44.4%
	Sixth	964	635	38	6.0%	329	141	42.9%
	Seventh	1,543	1,010	65	6.4%	533	129	24.2%
	Eighth	384	275	27	9.8%	109	32	29.4%
	Ninth	1,407	962	79	8.2%	445	132	29.7%
	Tenth	2,210	1,552	74	4.8%	658	215	32.7%
Overall		15,318	9,987	580	5.8%	5,331	1,718	32.2%

Dispositional departure rates vary for the type of offense. Included in Figure 9 are offenses with the highest rates of mitigated dispositional departures compared to the overall rate of 32 percent.*

Figure 9. High Mitigated Dispositional Departure Rates for Selected Offenses Compared to Overall Rate*



** Burglary with assault or dangerous weapon.

Two of the offenses highlighted in Figure 9, assault in the second degree and failure to register as a predatory sex offender, have mandatory minimum sentences specified in statute and also have statutory provisions allowing for departure from the mandatory minimum. Assault in the second degree, by statutory definition, involves the use of a dangerous weapon and carries a mandatory minimum prison sentence. However, injury to the victim may or may not occur. The type of dangerous weapon involved can vary widely, from a pool cue to a knife to a firearm. Circumstances surrounding the offense can also vary significantly, from barroom brawls to unprovoked confrontations. The mandatory minimum statute specifically permits the court to sentence without regard to the mandatory minimum, provided that substantial and compelling reasons are presented by the court or the prosecutor (Minn. Stat. § [609.11](#), subd. 8). It is to be expected that there will be many departures in sentencing a crime that can be committed in many different ways.

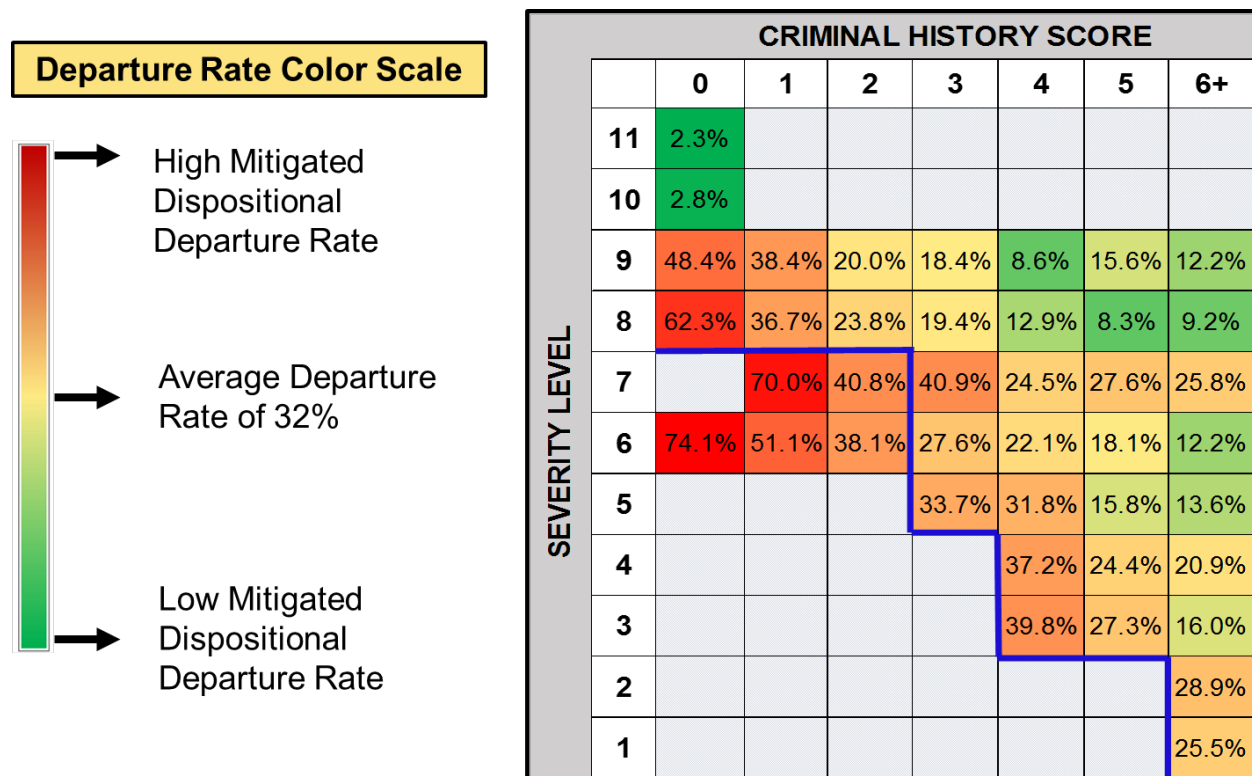
Failure to register as a predatory sex offender also has a statutory mandatory minimum sentence, accompanied by a statutory provision that allows for sentencing without regard to the mandatory minimum (Minn. Stat. § [243.166](#), subd. 5(d)).

* Selected based on criteria that there were 50 or more "presumptive commitment" cases and the mitigated dispositional departure rate was over 40 percent; this compared to the overall mitigated dispositional departure rate of 32 percent.

Mitigated dispositional departure rates for presumptive commitment offenses vary by Severity Level and Criminal History Score (Figure 10). Departure rates were highest at Severity Levels 6, 7 and 8 with Criminal History Scores of 0 and 1 (Figure 10, red cells). Rates were well above the average rate of 32 percent.

Common Severity Level 6 offenses that fall within the stayed section of the Grid (below the blue dispositional line) are assault in the second degree (dangerous weapon), felon in possession of a weapon, and subsequent third-degree controlled substance offenses. All three offenses carry statutory mandatory minimums that require a prison sentence. Only three offenses are ranked at Severity Level 7; felony driving while impaired (DWI) is the most common, with subsequent felony DWI being a presumptive commitment offense according to the Guidelines. Common Severity Level 8 (above the dispositional line) offenses are second-degree controlled substance offenses, aggravated robbery, and burglary in the first degree with a weapon or assault. Common Severity Level 9 offenses are first-degree controlled substance and assault in the first degree (great bodily harm).

Figure 10. Dispositional Departure Rates by Cell on Standard Grid (Presumptive Commitment Offenses Only: Sentenced in 2011-2013⁹)



⁹ Cells with fewer than 25 presumptive commitment cases were excluded. Combined 2011-2013 data used to reflect the rates in more cells. Average departure rate of 32%. Departure rates that fall below the average are shaded yellow to green, and rates above the average are shaded yellow to red. Above the blue line denotes presumptive commitment sentences and below the line denotes presumptive stayed sentences.

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.

In 2013, the mitigated durational departure rate was 27.3 percent. The aggravated durational departure rate was two and a half percent. The low aggravated durational departure rate in recent years reflects the impact of increased presumptive sentences over the past years and issues related to the U.S. Supreme Court ruling in *Blakely v. Washington*, 542 U.S. 296 (2004), holding that a defendant’s Sixth Amendment right to a jury trial was violated when the sentence imposed was above the stated statutory maximum sentence. In response to the *Blakely* decision, the 2005 Legislature widened the ranges on the Standard Grid to 15 percent downward and 20 percent upward, within which the court may sentence without departure. In 2006, a Sex Offender Grid was adopted. The Sex Offender Grid introduced higher presumptive sentences for repeat sex offenders and sex offenders with prior criminal history records.¹⁰

Table 5 illustrates durational departure rates for executed prison sentences by gender, race, and judicial district. When the departure rate is examined by racial composition, the total rate varies from a low of 23.3 percent for American Indians and 23.5 percent for white offenders to a high of 40 percent for black offenders. There is also considerable variation in durational departure rates by judicial district, ranging from a low of 10.4 percent in the Third Judicial District, which includes the cities of Austin and Owatonna, to a high of 54 percent in the Fourth Judicial District, which includes the city of Minneapolis.

When reviewing the information in Table 5, it is important to note that the observed variations may be partly explained by differences in case volume, charging practices, plea agreement practices, the types of offenses sentenced for offenders across racial groups or across regions, and differences in the criminal history scores of offenders across racial groups or across regions.

¹⁰ For a more in-depth examination of the effect of the *Blakely* decision on sentencing practices, see the MSGC special report: *Impact of Blakely and Expanded Ranges on Sentencing Grid*, at <http://mn.gov/sentencing-guidelines/images/Expanded%2520Ranges.pdf>.

Table 5. Durational Departure Rates for Executed Prison Sentences by Gender, Race, and Judicial District

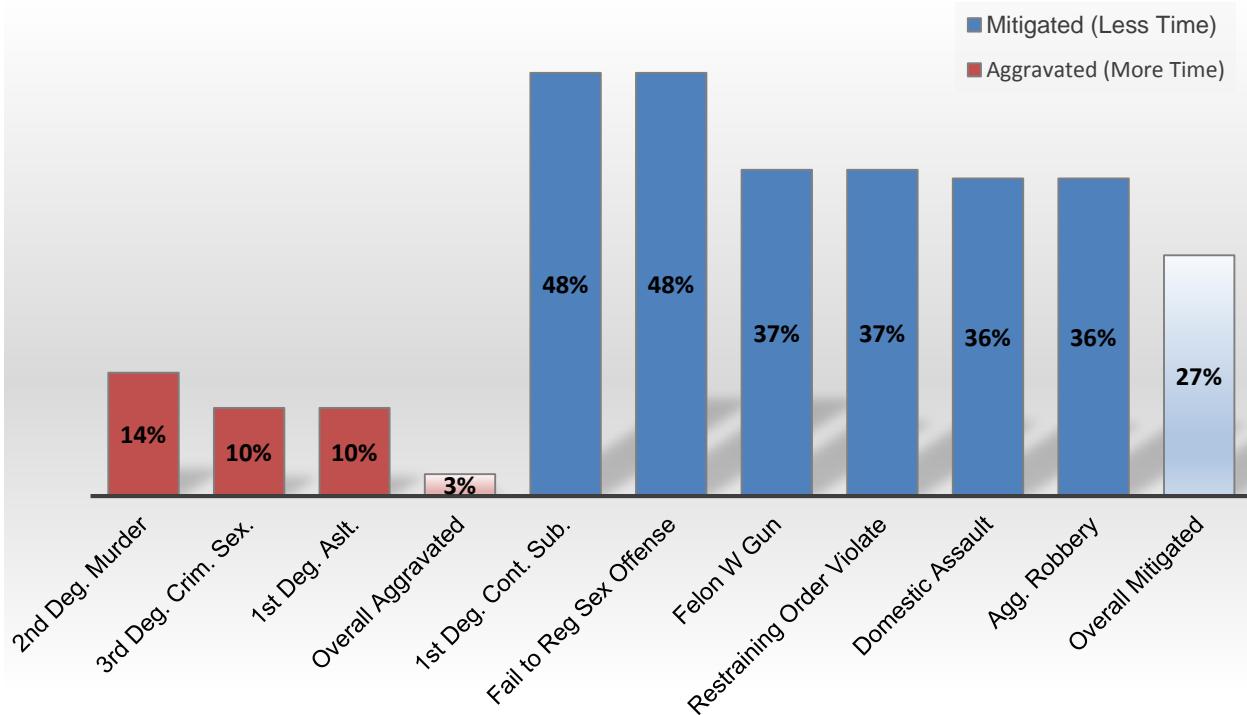
		Executed Prison	Total Durational Dep. Rate	No Departure		Aggravated Durations		Mitigated Durations	
Gender	Male	3,875	30.0%	2,713	70.0%	101	2.6%	1,061	27.4%
	Female	318	28.3%	228	71.7%	5	1.6%	85	26.7%
Race/ Ethnicity	White	2,092	23.5%	1,600	76.5%	37	1.8%	455	21.7%
	Black	1,398	40.0%	839	60.0%	47	3.4%	512	36.6%
	American Indian	339	23.3%	260	76.7%	9	2.7%	70	20.6%
	Hispanic	260	32.3%	176	67.7%	10	3.8%	74	28.5%
	Asian	104	36.5%	66	63.5%	3	2.9%	35	33.7%
	Other/ Unknown	0	0.0%	---	---	---	---	---	---
Judicial District	First	375	30.1%	262	69.9%	14	3.7%	99	26.4%
	Second	641	43.1%	365	56.9%	17	2.7%	259	40.4%
	Third	375	10.4%	336	89.6%	6	1.6%	33	8.8%
	Fourth	931	54.0%	428	46.0%	32	3.4%	471	50.6%
	Fifth	163	25.2%	122	74.8%	1	0.6%	40	24.5%
	Sixth	226	20.8%	179	79.2%	5	2.2%	42	18.6%
	Seventh	469	19.2%	379	80.8%	6	1.3%	84	17.9%
	Eighth	104	14.4%	89	85.6%	5	4.8%	10	9.6%
	Ninth	392	13.0%	341	87.0%	8	2.0%	43	11.0%
	Tenth	517	14.9%	440	85.1%	12	2.3%	65	12.6%
Overall		4,193	29.9%	2,941	70.1%	106	2.5%	1,146	27.3%

As with dispositional departures, it can be helpful to look at offenses with higher than average durational departure rates. Figure 11 displays offenses with the highest durational departure rates among offenses with at least 45 executed prison cases.*

Aggravated durational departure rates were highest for second-degree murder, third-degree criminal sexual conduct, and first-degree assault compared to the overall aggravated rate of three percent. Mitigated durational departure rates were highest for first-degree controlled substance, failure to register as a sex offender, felon in possession of a gun, a violation of a restraining order, felony domestic assault, and aggravated robbery compared to the overall mitigated rate of 27 percent.

* Selected based on criteria that there were 45 or more “presumptive commitment” cases and the aggravated durational departure rate was 10 percent or more; or the mitigated durational departure rate was 36 percent or more.

**Figure 11. High Durational Departure Rates
for Selected Offenses Compared to Overall Rate***

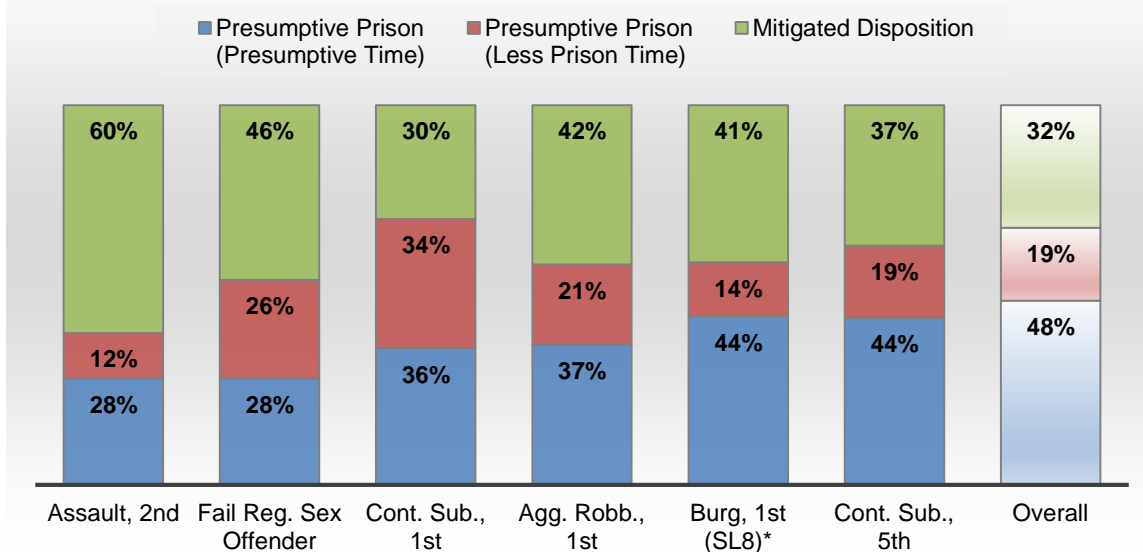


* Selected based on criteria that there were 45 or more “presumptive commitment” cases and the aggravated durational departure rate was 10 percent or more; or the mitigated durational departure rate was 36 percent or more.

Overall, offenders for whom the Guidelines presumed commitment to the Commissioner of Corrections received both their presumptive disposition (prison) and presumptive duration (presumptive time) about half of the time (48%). Included in Figure 12 are presumptive commitment offenses with 50 or more cases that have a combined higher than average mitigated dispositional departure rate and mitigated durational departure rate. For these six offenses (with 50 or more presumptive commitment cases), the Guidelines were followed for both disposition and duration 44 percent or less of the time. Those offenses were second-degree assault, failure to register as sex offender, first-degree controlled substance offense, first-degree aggravated robbery, first-degree burglary, and fifth-degree controlled substance.

As was pointed out for Figure 9, it is important to note that provisions in law allow for sentencing without regard to mandatory minimums for assault in the second degree, felon with a gun, and failure to register as a sex offender (Minn. Stat. § [609.11](#), subd. 8; § [243.166](#), subd. 5(d)).

**Figure 12. High Departure Rates
for Selected Offenses**

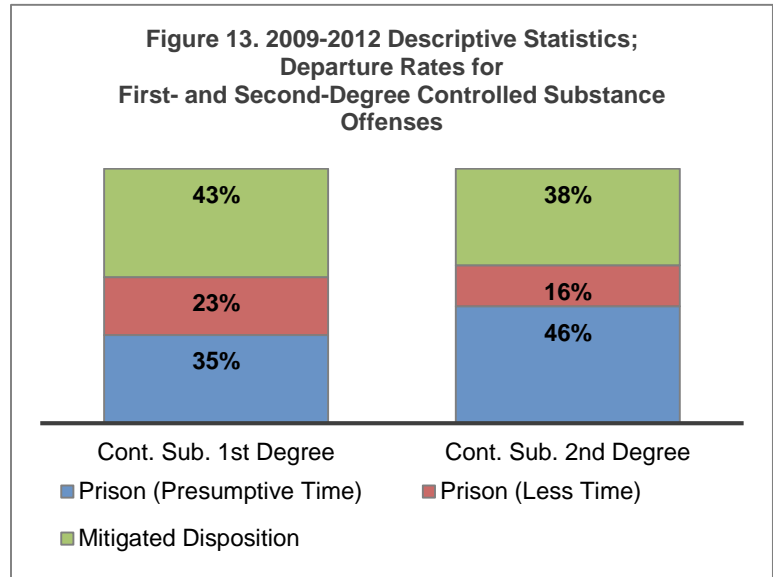


*Burglary with assault or dangerous weapon.

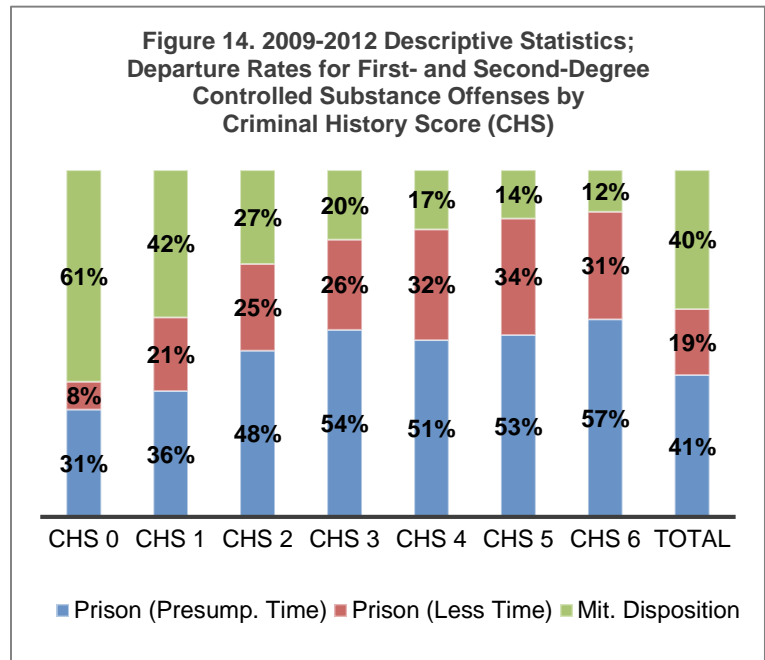
First- and Second-Degree Controlled Substance Offenses: Descriptive Statistics and Regression Analysis (2009-2012)

The Commission annually reviews sentencing data to determine if there were any patterns or trends that warranted further study. From 2009 to 2012, descriptive statistics demonstrated high departure rates for first- and second-degree controlled substance offenses. The rates also varied based on an offender's criminal history score, race, drug amounts, and where the offender was sentenced.

- Less than half first- and second-degree controlled substance offenders received the presumptive Guidelines sentence. Descriptive statistics were used to demonstrate that departure rates were very high (Figure 13).

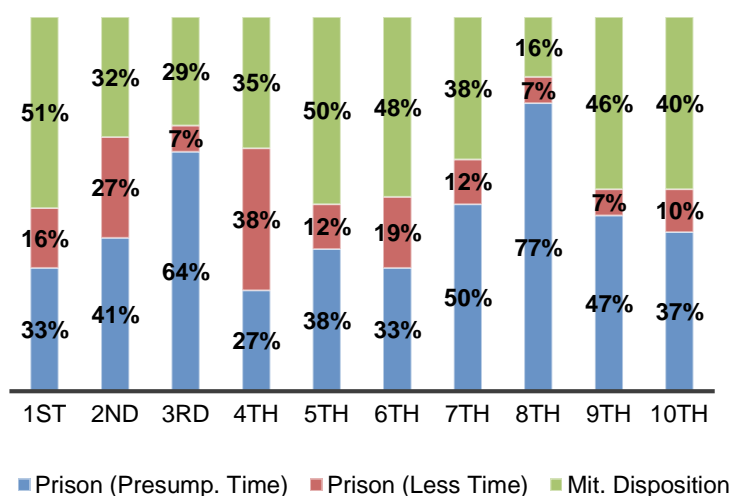


- Departure rates were higher for offenders with lower criminal history scores (Figure 14).
- Thirty-one percent of the offenders with a Criminal History Score of zero received the combined presumptive disposition and duration.
- More than half of the offenders with a Criminal History Score of 6 or more received the combined presumptive disposition and duration.



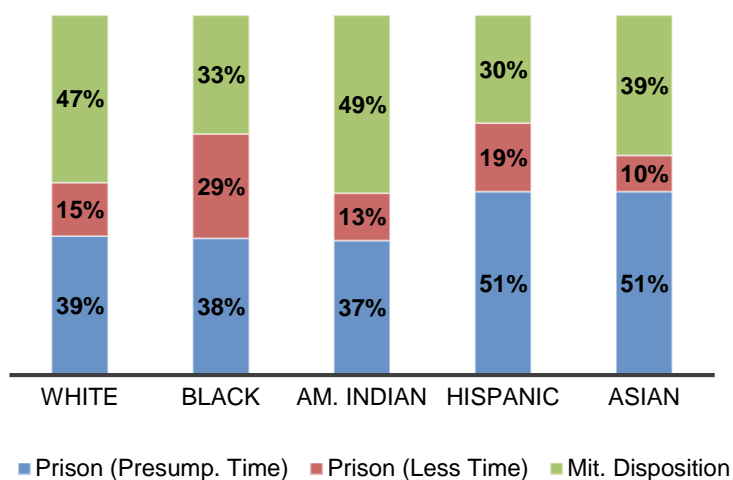
- Departure rates varied by Minnesota's ten Judicial Districts (Figure 15).
- Only 27 percent of offenders received the combined presumptive disposition and duration in the Fourth Judicial District.
- Seventy-seven percent of offenders received the combined presumptive disposition and duration in the Eighth Judicial District.

**Figure 15. 2009-2012 Descriptive Statistics;
Departure Rates for First- and Second-Degree
Controlled Substance Offenses by Judicial District**

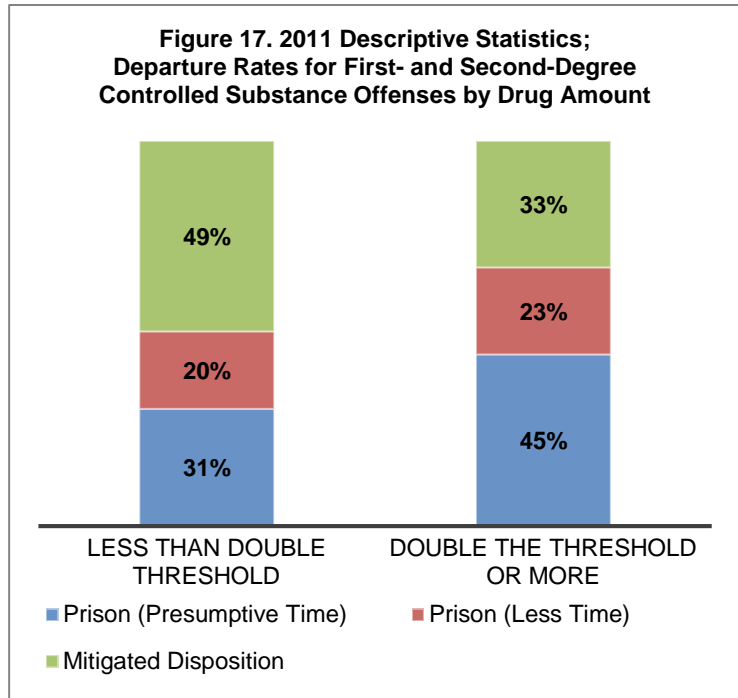


- Departure rates varied by race and ethnicity (Figure 16).
- Departures were highest among blacks, whites, and American Indian offenders.
- Fifty-one percent of both Hispanic offenders and Asian offenders received the combined presumptive disposition and duration.

**Figure 16. 2009-2012 Descriptive Statistics;
Departure Rates for First- and Second-Degree
Controlled Substance Offenses by Race/Ethnicity**



- Data collected from 488 criminal complaints of defendants sentenced in 2011 demonstrated that departure rates varied by the amount of controlled substance involved in the conviction offense (Figure 17).
- Thirty-one percent of offenders with less than double the threshold amount received the combined presumptive disposition and duration.
- Forty-five percent of offenders with double the threshold amount or more received the combined presumptive disposition and duration.



Based on the descriptive statistics, the Commission directed its staff to perform a regression analysis to explore the relationship between departures and the various independent factors that seemed significant, but could not be confirmed using descriptive statistics alone.

To help guide development of the regression model, staff reviewed scholarly articles that used regression to study similar topics. Commission staff used logistic regression to predict the odds of receiving a departure based on selected independent variables: race, criminal history score, judicial district, and drug amounts. Data collected from 488 offenders sentenced in 2011 for first- or second-degree controlled substance offenses were used in the logistic regression because these cases included detailed information about the amount of controlled substances involved in the conviction offenses. Drug amounts were not available in the annual MSGC Monitoring data.

Three models were constructed to summarize selected effects. Model 1 summarized the effects for race and ethnicity, criminal history score and drug amounts (Table 6). The results showed the following significant effects:

- Compared to white offenders, Hispanic offenders were 61.3 percent less likely to get a departure from either the presumptive disposition or presumptive duration;
- Offenders with a Criminal History Score of 1 or more were 65.2 percent less likely to get a departure; and
- Offenders with double the controlled substance threshold amount or more were 40.3 percent less likely to get a departure.

**Table 6. Summary of Model 1:
Effects for Race/Ethnicity, Criminal History Score and Drug Amounts**

Independent Variables	Direction of Correlation	% Change in Odds	Significance
(Compared to White Offenders)			
Race/Ethnicity=Black	Positive (+)	20.4%	0.455
Hispanic	Negative(-)	-61.3%	0.000**
Other include Am. Indian, Asian	Negative(-)	-26.2%	0.410
CHS =1 or more	Negative(-)	-65.2%	0.000**
Double Threshold or more	Negative(-)	-40.3%	0.013*

* p-value < .05 odds are due to chance.

** p-value < .01 odds are due to chance.

Model 2 summarized the effects for judicial district, criminal history score and drug amounts (Table 7). The results showed the following significant effects¹¹:

- Compared to the Tenth Judicial District¹², offenders sentenced in the Third Judicial District and the Eighth Judicial District were less likely to get a departure while offenders in the Fourth Judicial District were 129.1 percent more likely to get a departure;
- Offenders with a Criminal History Score of 1 or more were 56.7 percent less likely to get a departure; and
- Offenders with double the threshold amount or more were 40.4 percent less likely to get a departure.

**Table 7. Summary of Model 2:
Effects for Judicial District, Criminal History Score and Drug Amounts**

Displaying Only Significant Independent Variables	Direction of Correlation	% Change in Odds	Significance
(Compared to the 10 th Judicial District) ¹⁰			
3 rd Judicial District	Negative(-)	-78.2%	.004**
4 th Judicial District	Positive (+)	129.1%	.033*
8 th Judicial District	Negative(-)	-71.7%	.026*
CHS =1 or more	Negative(-)	-56.7%	.000**
Double Threshold or more	Negative(-)	-40.4%	.017*

* p-value < .05 odds are due to chance.

** p-value < .01 odds are due to chance.

¹¹ Table summarizes and displays significant effects only.

¹² The Tenth Judicial District was used for comparison because its departure rates were the most similar to the state's overall departure rates for first- and second-controlled substance offenses.

Model 3 summarized the effects for race and ethnicity, judicial district, criminal history score and drug amounts (Table 8). The results showed the following significant effects⁹:

- Compared to white offenders, Hispanic offenders were 64.4 percent less likely to get a departure;
- Compared to the Tenth Judicial District¹⁰, offenders sentenced in the Third Judicial District and the Eighth Judicial District were less likely to get a departure while offenders in the Fourth Judicial District were more likely;
- Offenders with a Criminal History Score of 1 or more were 65.3 percent less likely to get a departure; and
- Offenders with double the threshold amount or more were 38.1 percent less likely to get a departure.

**Table 8. Summary of Model 3:
Effects for Race/Ethnicity, Judicial District, Criminal History Score and Drug Amounts**

Displaying Only Significant Independent Variables	Direction of Correlation	% Change in Odds	Significance
(Compared to White Offenders) Race/Ethnicity=Hispanic	Negative(-)	-64.4%	0.000**
(Compared to the 10 th Judicial District) 3 rd Judicial District	Negative(-)	-72.4%	.017*
4 th Judicial District	Positive(+)	152.2%	.022*
8 th Judicial District	Negative(-)	-72.2%	.029*
CHS =1 or more	Negative(-)	65.3%	.000**
Double Threshold or more	Negative(-)	-38.1%	.030*

* p-value < .05 odds are due to chance.

** p-value < .01 odds are due to chance.

In summary, there were four statistically significant findings from the regression analysis of first- or second-degree controlled substance offenders: (1) Hispanic offenders were less likely to receive departures than white offenders; (2) Offenders with Criminal History Scores of 1 or more were less likely to get departures; (3) Offenders with double the controlled substance threshold amount or more were less likely to get departures; (4) Compared to the Tenth Judicial District, offenders sentenced in the Third Judicial District and the Eighth Judicial District were less likely to get departures while offenders in the Fourth Judicial District were more likely to get departures.¹³ These findings were consistent with the descriptive statistics initially prepared and reported.

¹³ The Tenth Judicial District was used for comparison because its departure rates were the most similar to the state's overall departure rates for first- and second-controlled substance offenses.

The Commission's Activities in 2014

The Minnesota Sentencing Guidelines Commission is an eleven-member body created by the Legislature. Eight members are appointed by the Governor: the Commissioner of Corrections, one peace officer, one prosecutor, one defense attorney, one probation officer, and three citizens, one of whom must be a crime victim. The Chief Justice of the Supreme Court also appoints three members representing the District Court, Court of Appeals, and Supreme Court.

Currently, the Governor's appointees are: Jeffrey Edblad, Chair and Isanti County Attorney; Jason Anderson, probation representative, Itasca County Probation Director; Sgt. Paul Ford, peace officer representative; Cathryn Middlebrook, Chief Appellate Public Defender; Tom Roy, Commissioner of Corrections; Yamy Vang, citizen representative; and Sarah Walker, citizen representative. The judicial representatives are Justice Christopher Dietzen, Vice-Chair and Minnesota Supreme Court Justice; Judge Caroline Lennon, First Judicial District Court; Judge Heidi Schellhas, Minnesota Court of Appeals.¹⁴

Modifications to the Sentencing Guidelines and Commentary

One of the basic responsibilities of the Commission is to maintain the Guidelines by annually modifying them in response to legislative changes, case law, and issues raised by various parties. In order to meet this responsibility, the Commission met ten times during 2014, held one public hearing, and approved a number of modifications to the Guidelines summarized in the section below.

Adopted Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2014

The Commission adopted modifications to the Sentencing Guidelines and Commentary resulting from amended and new legislation, and other non-legislative policy considerations. All modifications are set forth in Appendix 2.

- A. Amended Offenses:** Specific offenses were amended by the 2014 Legislature. In some cases, the amendments expanded definitional statements; in others, the amendments expanded the scope of the offense. For each offense, taking the amendment into consideration, the Commission decided if the Guidelines needed to be modified.

For each of the following amended offenses, the Commission adopted a proposal to maintain the current severity-level rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offense for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

¹⁴ John Stuart, former State Public Defender, was a member of the Commission until his retirement on June 30, 2014. The Governor appointed his replacement, Cathryn Middlebrook, effective October 11, 2014.

1. Lawful gambling fraud under Minn. Stat. § 609.763 – Unranked.
2. Fraudulent finance statements under Minn. Stat. § 609.7475 – Unranked.
3. Crimes of violence under Minn. Stat. § 624.712 (affecting firearm possession by ineligible persons under Minn. Stat. §§ 609.165 and 624.713, subd. 1(2)) – Severity Level 6.
4. Accidents under Minn. Stat. §§ 169.09; 609.2112 – various severity-level rankings.
5. Predatory offender registration under Minn. Stat. § 243.166 – Severity Level H.
6. Criminal vehicular homicide and operation under Minn. Stat. §§ 609.2112; 609.2113; 609.2114 – various severity-level rankings.
7. Perjury under Minn. Stat. § 609.48 – Severity Level 4 and Severity Level 5.

In addition, laws related to the expungement of criminal records were amended to allow the court to expunge juvenile arrest and delinquency proceedings if it determined that the expungement would benefit the subject and the benefit would not be detrimental to public safety. As a result, Guidelines Comment 2.B.03 was modified to clarify the procedures for the use of expunged records for sentencing purposes before January 1, 2015 and on or after January 1, 2015.

For the two following amended offenses, the Commission adopted a proposal to re-rank the Severity Level in Minn. Sentencing Guidelines § 5.

1. Fifth-degree criminal sexual conduct under Minn. Stat. § 609.3451 – Change to Severity Level F; and keep on the list of eligible offenses for permissive consecutive sentencing.
2. Third-degree criminal sexual conduct under Minn. Stat. § 609.344, subdivision 1, paragraph b with reference to subdivision 2(2) – Change to Severity Level G; and keep on the list of eligible offenses for permissive consecutive sentencing.

B. New Medical Cannabis Offenses: New laws for medical use of cannabis were enacted by the Legislature during the 2014 Legislative Session which allowed state-licensed manufacturers to produce medical cannabis for patients with qualifying medical conditions. Criminal penalties for violations are provided in Minn. Stat. § 152.33.

For each of the new offenses, the Commission adopted a proposal to rank the new offense. The Commission adopted a proposal not to add medical cannabis violations to the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

1. Medical cannabis violations (submission of false records) under Minn. Stat. § 152.33, subdivision 4 – Severity Level 2;
2. Medical cannabis violations (intentional diversion) under Minn. Stat. § 152.33, subdivision 1 – Severity Level 1; and
3. Medical cannabis violations (diversion by patient, registered designated caregiver, or parent) under Minn. Stat. § 152.33, subdivision 2 – Severity Level 1.

C. Non-Legislative Modifications: Non-legislative modifications were clarifications to existing Guidelines' policies and technical changes resulting from repealed laws, inadvertently unranked offenses, instructions from the Revisor of Statutes, and changes to the unofficial section of the Guidelines. A summary of these modifications are as follows:

1. Assigned a Severity Level 1 to fraudulent procurement of a certificate of title under Minn. Stat. § 508.80. The offense is a felony with a 5-year statutory maximum. It has been inadvertently left unranked in the Guidelines. The law has been in effect since 1905.
2. Changed custody status language to clarify that a sex offender who committed an offense within the original length of probation would qualify for two custody points.
3. Added definitions for “severity level” and “criminal history score.”
4. Rearranged severity level language, moving it from the general rule to the “severity level” definition.
5. Moved information referring to the most serious offense to the commentary.
6. Clarified that the shorter sentence for benefit of a gang applied only to the general conspiracy statute under Minn. Stat. § 609.175.
7. Clarified that the court must equate non-Minnesota offenses to Minnesota offenses.
8. Added an unofficial appendix that lists offenses in which the presumptive sentence duration may exceed the statutory maximum.
9. Removed references to repealed statutes from the Guidelines.

Additional Commission Activities*Consecutive Sentencing Policy Discussion*

Over the past year, the Commission studied how consecutive sentences are executed—that is, when and how the second or subsequent sentence is served in relation to the first sentence—and specifically, when the period of supervised release is served. The Commission discussed how the Department of Corrections’ administration of a consecutive sentence varied depending on the language of the Sentencing Order. The Commission raised concerns that the two methods of administration have created a situation in which consecutive sentences have not been uniformly applied throughout the state, and that the practice presents problems with transparency in sentencing. The Commission examined three proposals to address the problem including information on cost of supervision and prison-bed impact. The Commission intends to work toward resolution of this issue in 2015.

U.S. Sentencing Guidelines Changes

Effective November 1, 2014, the United States Sentencing Commission reduced federal sentencing guidelines levels for most drug trafficking offenses. The Minnesota Sentencing Guidelines Commission compared the revised federal guidelines with the Minnesota Sentencing Guidelines’ treatment of Minnesota drug sales.

Staff Activities

The following provides a summary of the activities performed by staff, in addition to providing support and research for the Guidelines modifications detailed in this report, to further the goals and purpose of the Commission.

Monitoring Sentencing Data

One of the primary functions of the Sentencing Guidelines Commission staff is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the Guidelines. A case is defined when a sentencing worksheet is received from the probation officer and matched with sentencing data from the District Court. As part of the agency's core functions, Commission staff collected and analyzed data for over 15,000 felony offenders. Additionally, staff published its annual edition of the Sentencing Guidelines and Commentary, Report to the Legislature, and various reports on sentencing practices and trends.

Training and Assistance

The staff provides assistance with the Guidelines in a variety of ways: traditional training seminars, website training materials and informational publications, and real-time email and telephone assistance for judges, attorneys, and probation officers in determining appropriate presumptive sentences. On average, the staff fielded nearly 250 phone calls per month in 2014; the majority of which were questions from practitioners about the application of the Guidelines.

In 2014, staff trained 250 practitioners in nine traditional classroom trainings. In addition to fulfilling training requests from probation agencies, public defenders, and prosecutors, this year's classroom trainings included the annual conference of Public Defenders, and training for new prosecutors conducted by the Minnesota Association of County Attorneys.

Nearly 200 additional practitioners were trained statewide via the online training service WebEx made available on the Commission's website. These trainings allow Commission staff to focus the training on a single topic, giving practitioners a more in-depth view of advanced policies. MSGC training staff has also made available five pre-recorded training sessions that practitioners can access when their schedule permits, making the training more accessible to all practitioners. Finally, the Commission staff published four issues of its newsletter, *The Guideliner*, directed primarily at probation officers, prosecutors, and defense attorneys. All of the above services are offered in an effort to promote the accurate application of the Guidelines.

Website

The Commission's newly designed website was launched in mid-2013. Since then, visits have gone up by 13 percent with an average 2,500 to 3,000 visits each month. The website includes easily accessible email signup for quarterly newsletters, upcoming trainings, public

hearing notices, and Commission meeting notices. One-click data requests makes getting sentencing information easy.

Data Requests

One of the important ways in which the Commission's staff works with fellow agencies and criminal justice practitioners across the state is researching and compiling statistical data in response to information requests. In 2014, MSGC staff responded to almost 200 data requests totaling a little more than 400 hours. These requests are most often made by lawyers or corrections agents to show specific sentencing practices to the court. However, the requests are also made by academics, students, other state agencies, legislative staff, law enforcement, and the press for other purposes. The topics range from departure data for a single type of offense within a given county to comparative data on how an offense has been sentenced from one jurisdiction to another. Requests for data have doubled over the last year. One reason may be the ease at which people can request data from the website, as noted above.

Fiscal/Racial-Impact Statements

During the 2014 Legislative Session, staff provided 42 fiscal impact statements for introduced legislation during the 2014 Legislative Session. These impact statements include details as to any increase or decrease in adult offender populations, the estimated net increase in state correctional facility beds, and the impact on confinement in local correctional facilities. Staff provided the requested information within the time requirements set by the legislature.

Almost ten years ago, the Commission began providing the legislature with racial-impact notes on proposed crime bills when a disparate impact was anticipated. Since that time, several states have enacted laws requiring such estimates. Minnesota's notes are often used as a pattern. There were no racial-impact notes prepared during the 2014 Legislative Session.

During the 2013 Legislative Session, one racial-impact note was prepared: House File 285, proposed to amend the list of offenses defined as crimes of violence in Minn. Stat. § 624.712. The expansion of this list would have increased racial disparity in Minnesota's prison population because a disproportionate number of offenders sentenced to felony fifth-degree assault, felony domestic assault, domestic assault by strangulation, and juveniles not to possess firearms, are black or American Indian as compared to the overall felony population in Minnesota. This bill was not enacted.

Collaboration with Criminal Justice Agencies

The staff's knowledge of felony sentencing and practice makes it a valued contributor to criminal justice policy discussions. Each year, Commission staff works with the Department of Corrections to generate prison bed projections. MSGC staff also serves on the Criminal and Juvenile Justice Information Task Force.

Electronic Sentencing Worksheet

The Electronic Worksheet System (EWS) assists probation officers in creating the Guidelines sentencing worksheet. In March 2013, the Commission began a one-year project to re-design the EWS system with technical assistance from the Department of Corrections. The project was supported by Minnesota's criminal justice community and was funded, in part, by an appropriation from the 2013 Legislature.

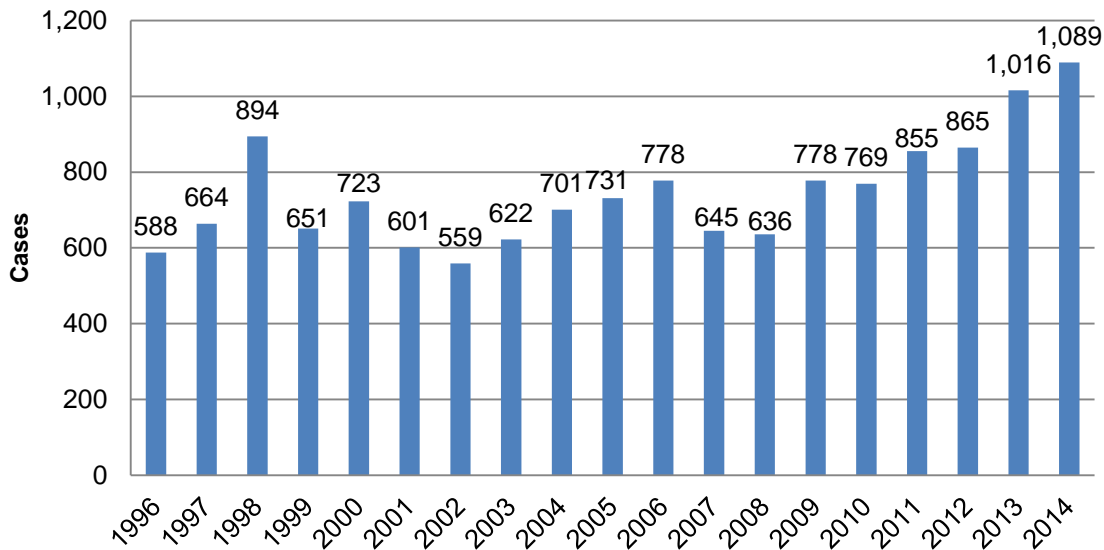
The new EWS successfully launched statewide to over 800 users in the spring of 2014. New EWS includes a presumptive sentence calculator, a worksheet copy feature, data integration with the Minnesota Court Information System (MNCIS), and user email notifications. EWS is reducing errors, making errors more identifiable, and improving the reliability of worksheets that are presented to the court. The project official closed in October of 2014 after a major maintenance release.

County Attorney Firearms Reports

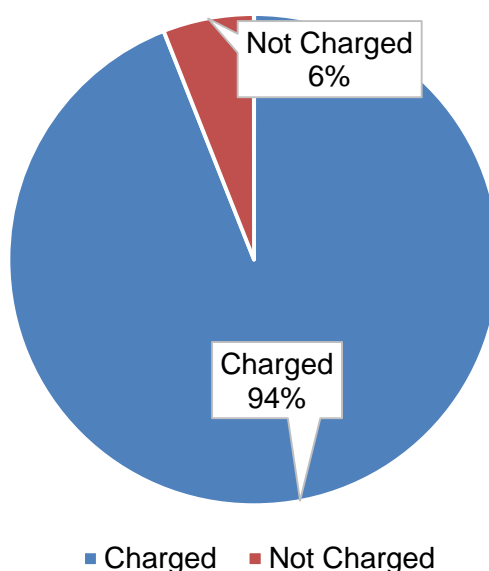
Current law requires all county attorneys in Minnesota, by July 1 of each year, to submit to the Commission its data regarding felony cases in which defendants allegedly possessed or used a firearm and committed offenses listed in Minn. Stat. § [609.11](#), subdivision 9.¹⁵ Pursuant to Minn. Stat. § [244.09](#), subdivision 14, the Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received. Memoranda describing the mandate, along with forms on which to report, are distributed by the Commission to County attorneys. Although the Commission's staff clarifies inconsistencies in the summary data, the information received from the County Attorneys is reported directly as provided.

Since the mandate began in 1996, the average number of cases involving firearms statewide has been 746 yearly. Between July 1, 2013 and June 30, 2014, there were 1,089 cases allegedly involving a firearm (Figure 18). This was a seven percent increase (73 cases) over the 1,016 cases reported in FY 2013. As shown in Figure 19, of those 1,089 cases, prosecutors charged 1,024 cases (94%) while 65 cases (6%) were not charged.

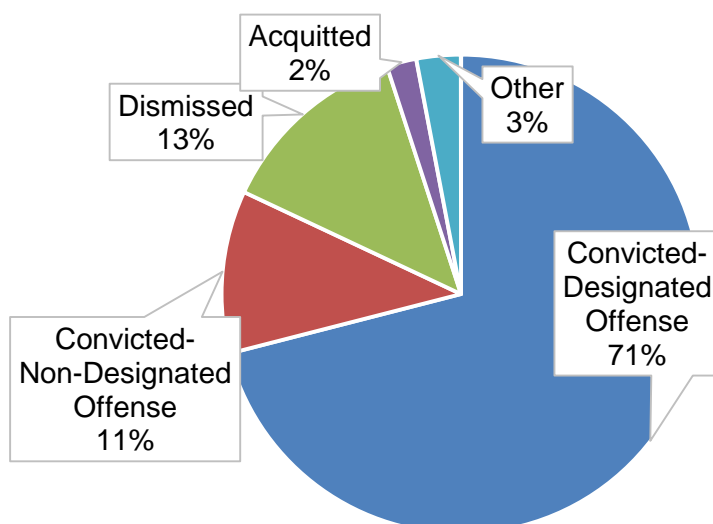
**Figure 18. Cases Allegedly Involving a Firearm
1996 to 2014**



¹⁵ The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; some criminal sexual conduct offenses; escape from custody; arson in the first, second, or third degree; felony drive-by shooting; aggravated harassment and stalking; felon in possession of a firearm; and felony controlled substance offenses.

Figure 19. Cases Charged

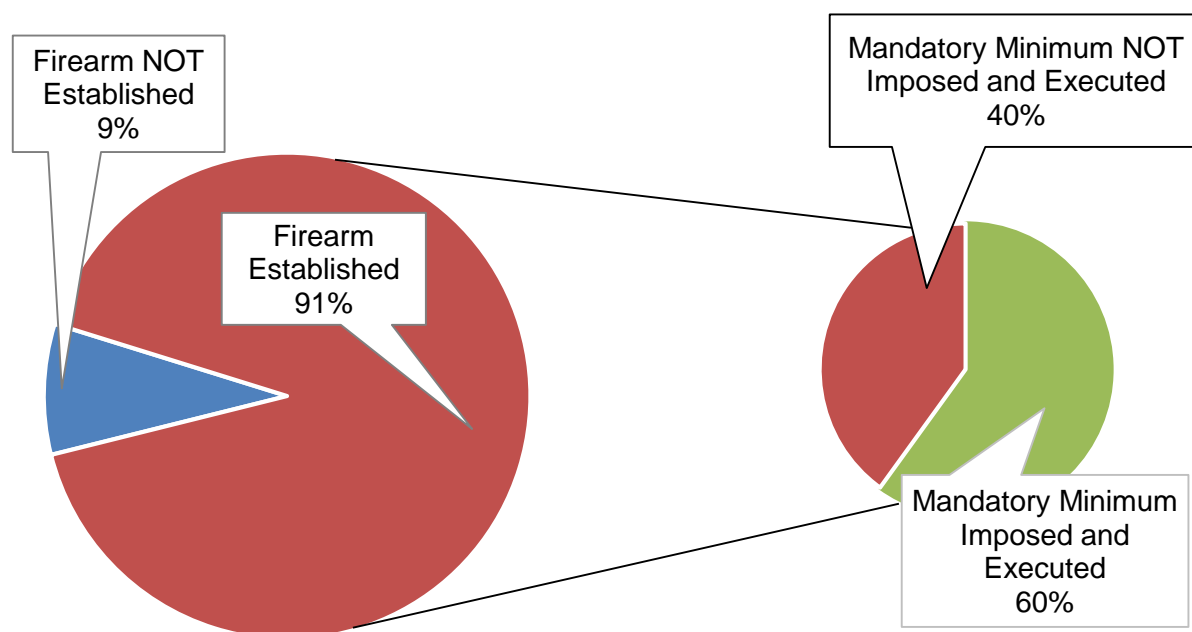
Of the 1,024 cases charged, 725 (71%) were convicted of offenses designated in Minn. Stat. § 609.11; 115 (11%) were convicted of offenses not covered by the mandatory minimum (e.g., terroristic threats); 137 (13%) had all charges dismissed; 18 (2%) were acquitted on all charges; and 29 (3%) were “other” cases including federal prosecutions and stays of adjudication (Figure 20).

Figure 20. Case Outcomes

In 662 (91%) of the 725 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 21). The fact-finder, i.e., the judge or jury, must establish whether the defendant or an accomplice used or possessed a firearm in the commission of the offense at the time of conviction. Minn. Stat. § [609.11](#), subdivision 7.

In the cases in which the firearm was established on the record, 397 offenders (60%)¹⁶ were sentenced to the mandatory minimum prison term (Figure 21, inset). The statute specifically allows the prosecutor to file a motion to have the defendant sentenced without regard to the mandatory minimum. The prosecutor must provide a statement as to the reasons for the motion. If the court finds substantial mitigating factors, with or without a motion by the prosecutor, the defendant may be sentenced without regard to the mandatory minimum. Minn. Stat. § [609.11](#), subdivision 8.

**Figure 21. Cases Convicted of Designated Offense;
Firearm Established on the Record (Inset)**



¹⁶ County attorneys' data for fiscal year 2014 (ending June 30, 2014). According to MSGC monitoring data from calendar year 2013, of those offenders whose sentencing worksheets reflected the use or possession of a firearm requiring a mandatory prison sentence under Minn. Stat. § 609.11, 49 percent (344 offenders) received both the mandatory prison disposition and the mandatory minimum duration. In addition, 16 percent (104 offenders) received the mandatory prison disposition, but less than the mandatory minimum duration.

Table 9. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm by MN County

Cases Disposed from July 1, 2013 to June 30, 2014

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Aitkin	8	8	4	0	0
Anoka	43	43	33	28	9
Becker	9	9	8	7	6
Beltrami*	---	---	---	---	---
Benton*	---	---	---	---	---
Big Stone	0	0	0	0	0
Blue Earth	3	3	1	1	1
Brown	6	4	1	1	1
Carlton	9	8	6	5	1
Carver	0	0	0	0	0
Cass	5	5	3	3	1
Chippewa	0	0	0	0	0
Chisago	2	2	1	1	1
Clay	5	5	5	5	5
Clearwater	2	2	0	0	0
Cook*	---	---	---	---	---
Cottonwood	2	2	2	2	1
Crow Wing	7	7	4	1	1
Dakota	47	44	29	29	20
Dodge	4	4	0	0	0
Douglas*	---	---	---	---	---
Faribault	1	1	0	0	0
Fillmore	2	2	1	1	1
Freeborn	4	4	4	3	1
Goodhue	1	1	0	0	0
Grant	2	2	2	1	0
Hennepin	355	355	257	257	149
Houston	2	2	1	1	1
Hubbard	7	2	1	1	0
Isanti	3	3	2	2	1
Itasca	13	11	8	8	0
Jackson	1	1	0	0	0
Kanabec	6	5	4	3	0
Kandiyohi	6	6	4	3	2

* Not reported as of December 18, 2014.

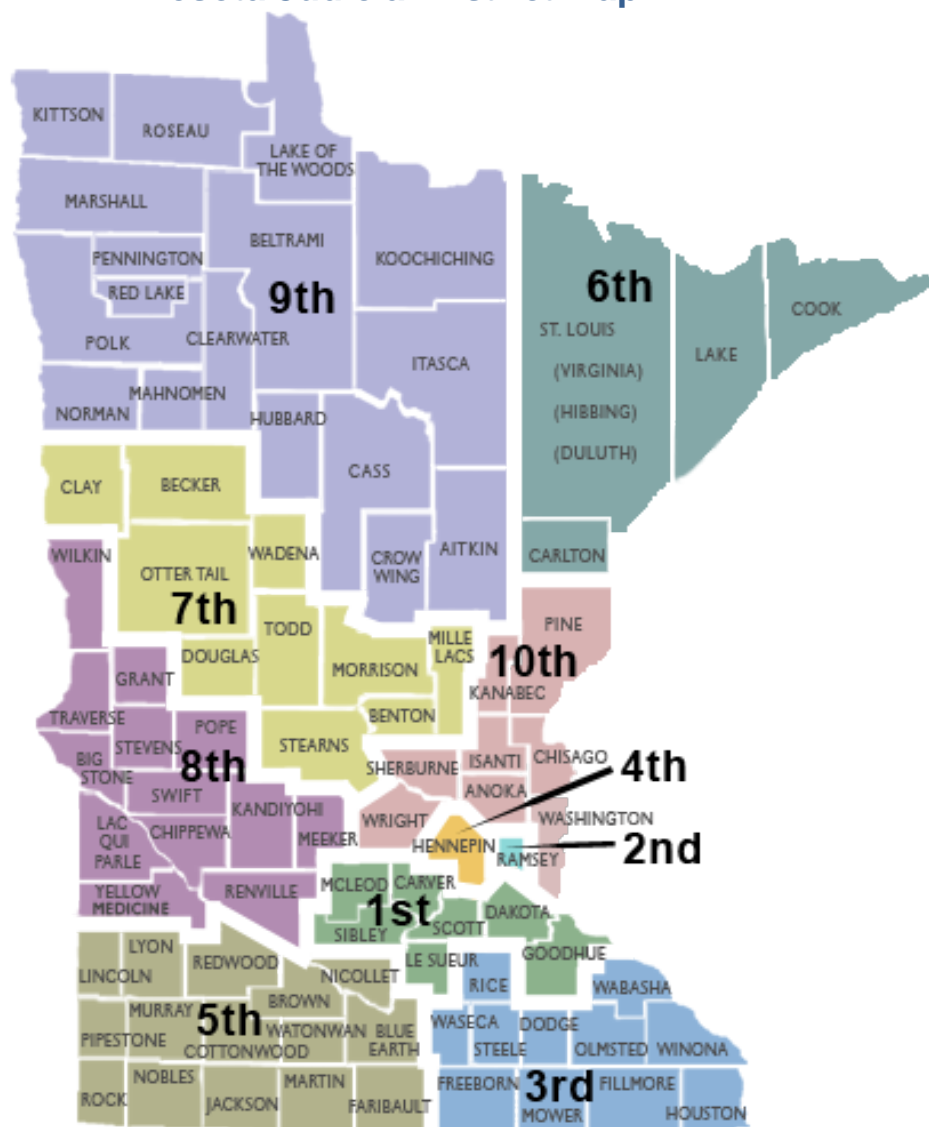
County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Kittson	0	0	0	0	0
Koochiching	0	0	0	0	0
Lac Qui Parle	4	4	3	2	2
Lake	4	4	2	2	1
Lake of the Woods	2	2	1	1	1
LeSueur	2	2	2	2	0
Lincoln	0	0	0	0	0
Lyon	9	4	2	1	1
McLeod	4	4	3	3	1
Mahnomen	0	0	0	0	0
Marshall	2	2	0	0	0
Martin	1	1	0	0	0
Meeker	0	0	0	0	0
Mille Lacs	27	27	11	8	6
Morrison	4	4	4	4	2
Mower	11	11	8	6	5
Murray	1	1	1	1	1
Nicollet	9	8	3	2	0
Nobles	5	5	0	0	0
Norman	0	0	0	0	0
Olmsted	7	6	3	2	2
Otter Tail	3	2	1	1	0
Pennington	2	2	0	0	0
Pine	6	6	4	0	0
Pipestone	5	5	4	1	0
Polk	31	30	28	21	15
Pope	29	0	0	0	0
Ramsey	181	181	141	141	92
Red Lake	2	2	1	1	0
Redwood	4	4	4	4	4
Renville*	---	---	---	---	---
Rice	5	5	4	4	4
Rock	1	1	1	1	0
Roseau	1	1	0	0	0
Scott	2	2	2	2	1
Sherburne	15	15	13	9	8
Sibley	0	0	0	0	0
St. Louis	42	37	23	18	15

* Not reported as of December 18, 2014.

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted – Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Stearns	32	32	27	26	16
Steele	2	2	1	1	0
Stevens	0	0	0	0	0
Swift	3	2	0	0	0
Todd	0	0	0	0	0
Traverse*	---	---	---	---	---
Wabasha	4	4	3	1	1
Wadena	12	6	6	4	2
Waseca	0	0	0	0	0
Washington	27	27	20	19	12
Watsonwan	2	2	1	0	0
Wilkin	0	0	0	0	0
Winona	22	21	9	5	2
Wright	9	9	8	6	4
Yellow Medicine	0	0	0	0	0
Total	1,089	1,024	725	662	397

* Not reported as of December 18, 2014.

Appendix 1. 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	Lac Qui Parle	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	Stevens	Koochiching	
		Waseca		Nicollet		Wadena	Swift	Lake-Woods	
		Winona		Nobles			Traverse	Mahnomen	
				Pipestone			Wilkin	Marshall	
				Redwood			Yellow Medicine	Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	

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

Appendix 2. Adopted Modifications to the Sentencing Guidelines and Commentary – Effective for Crimes Committed on or after August 1, 2014

The Minnesota Sentencing Guidelines Commission adopted the following proposed modifications to the Sentencing Guidelines and Commentary resulting from new and amended legislation and other policy considerations.

A. Legislative Modifications –Amended Offenses from the 2014 Legislative Session.

The following existing offenses were amended by the 2014 Legislature. In some cases, the amendments expanded definitional statements; in others, the amendments expanded the scope of the offense. For each offense listed below, taking the amendment into consideration, the Commission decided if the Guidelines needed modification including whether offenses should be re-ranked and whether there should be any amendments to the permissive consecutive offense list in Guidelines § 6.

1. Amended Lawful Gambling Fraud (Minn. Stat. § 609.763).

Reference: [Minn. Session Laws, Chapter 240.](#)

Description: Gambling fraud was expanded to include anyone who: a) knowingly tampers with or attempts to alter a component or device used in the conduct or play of electronic pull-tabs or electronic linked bingo as authorized under chapter 349 or attempts to convert legal gambling into illegal gambling at an establishment licensed under chapter 340A; or b) has unauthorized possession of an electronic pull-tab device, an electronic linked bingo device, or other component used in electronic pull-tabs or electronic linked bingo as authorized under chapter 349.

Adopted Modifications: The Commission adopted a proposal to leave the offense unranked in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

2. Amended Fraudulent Finance Statements (Minn. Stat. § 609.7475).

Reference: [Minn. Session Laws, Chapter 306.](#)

Description: Fraudulent financial statements under Minn. Stat. § 609.7475 was amended to expand the list of victims for which the penalty would be enhanced from a gross misdemeanor to a felony. Under current law it is a gross misdemeanor to file or promote the filing of a record with the intent to harass or defraud another person. Under current law, the penalty is enhanced to a five-year felony if the person commits the offense with the intent to influence a juror; retaliate against a judicial officer, prosecutor, defense attorney, or officer of the court, because of that person's performance in a judicial proceeding; retaliate against a sheriff or deputy sheriff because of that person's performance of official duties; or retaliate against a county recorder because of that person's performance of official duties. The felony enhancement list was expanded to include police officers, chiefs of police, and employees of the Department of Corrections or a local correctional agency.

Adopted Modifications: The Commission adopted a proposal to leave the offense unranked in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

3. Amended Fifth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.3451).

Reference: [Minn. Session Laws, Chapter 270](#).

Description: Fifth-degree criminal sexual conduct offenses were amended in the following manner: a) Minn. Stat. § 609.135, subdivision 2, raised the length of stay for convictions of gross misdemeanor fifth-degree CSC from two years to six years; b) the statutory maximum for felony fifth-degree CSC was raised from five years to seven years; and c) the definition of prior offenses that elevate a fifth-degree CSC offense to a felony to include: anyone who has two previous convictions for gross misdemeanor fifth-degree CSC, a felony provision of indecent exposure (Minn. Stat. § 617.23), any first- through fourth-degree CSC (Minn. Stats. §§ 609.342 to 345), criminal sexual predatory conduct (Minn. Stat. § 609.3453), and possession or dissemination of child pornography (Minn. Stat. § 617.247).

Adopted Modifications: The Commission adopted a proposal to re-rank fifth-degree CSC at Severity Level F in Minn. Sentencing Guidelines § 5, and keep fifth-degree criminal sexual conduct on the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6. The modifications are outlined below.

Modifications to Section 4.B. Sex Offender Grid.

* * *

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or More
<i>CSC 4th Degree— (a)(b)(e)(f); CSC 5th Degree; Possession of Child Pornography (Subsequent or by Predatory Offender)</i>	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
CSC 5th Degree <i>Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct²</i>	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²

* * *

Modification to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
<u>F</u>	<u>Criminal Sexual Conduct 5th Degree</u>	<u>609.3451, subd. 3</u>
G	Criminal Sexual Conduct 5th Degree	609.3451, subd. 3

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
<u>609.3451, subd. 3</u>	<u>Criminal Sexual Conduct 5th Degree</u>	<u>F</u>
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree	G

* * *

4. Amended List of Crimes of Violence (Minn. Stat. § 624.712).

Reference: [Minn. Session Laws, Chapter 260](#).

Description: The list of crimes of violence contained in Minn. Stat. § 624.712, was expanded to include felony assault in the fifth degree under Minn. Stat. § 609.224, subd. 4; felony domestic assault under Minn. Stat. § 609.2242, subd. 4; and domestic assault by strangulation under Minn. Stat. § 609.2247. A person convicted of committing a crime of violence is prohibited from possession of firearms under Minn. Stat. § 609.165 or Minn. Stat. § 624.713, subd. 1(2).

Three offenses that were on the list of crimes of violence were removed: motor vehicle theft; theft from an abandoned, burning, or vacant building or from an area of destruction caused by civil disaster, riot, bombing or the proximity of battle; and third-degree burglary.

Adopted Modifications: The Commission adopted a proposal to leave the offense of prohibited persons from possession of a firearm under Minn. Stat. § 609.165 and Minn. Stat. § 624.713, subd. 1(2), ranked at Severity Level 6 in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

5. Amended Accidents (Minn. Stat. § 169.09; §609.2112).

Reference: [Minn. Session Laws, Chapter 186](#).

Description: Terminology changed from “accident” to “collision” in Minn. Stat. § 169.09 for accidents and Minn. Stat. § 609.2112 for criminal vehicular homicide.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

6. Amended Predatory Offender Registration (Minn. Stat. § 243.166).

Reference: [Minn. Session Laws, Chapter 259](#).

Description: The statute requiring predatory offenders to register was amended to clarify that offenders must register if they commit any prostitution offense involving a minor under Minn. Stats. §§ 609.322 or 344. It also provides that offenders who are civilly committed under Minn. Stat. § 253B.185 are required to register, as well as those committed under Chapter 253D.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

7. Amended Third-Degree Criminal Sexual Conduct (§ 609.344).

Reference: [Minn. Session Laws, Chapter 259](#).

Description: Third-degree criminal sexual conduct (CSC) under Minn. Stat. § 609.344 was amended to move an offense with a five-year statutory maximum from the definition section into the penalty section. The general statutory maximum for third-degree CSC is 15 years. However, if the person was convicted under subdivision 1, paragraph b, and was at least 24 months older than the complainant, but not more than 48 months older, the statutory maximum is five years. The penalties are now separated into two distinct paragraphs in the penalty section.

Adopted Modifications: The Commission adopted a proposal to rank third-degree CSC under subdivision 1, paragraph b at Severity Level G in Minn. Sentencing Guidelines § 5, and to keep the offense on the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6. The modifications are outlined below.

Modifications to Section 4.B. Sex Offender Grid.

* * *

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
CSC 2 nd Degree—(a)(b)(g) CSC 3 rd Degree—(a)(b) ² (e)(f) or(b)with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 51-72	70 60-84	91 78-109	119 102-142	140 119-168

* * *

* * *

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
CSC 3 rd Degree—(b)with subd. 2(2); Indecent Exposure Possession of Child Pornography; Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²

* * *

Modifications to Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
D	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(a)(b)(e)(f) or subd. 1(b) with ref. to subd. 2(1)
<u>G</u>	<u>Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)</u>	<u>609.344, subd. 1(b) with ref. to subd. 2(2)</u>

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.344, subd. 1(a)(b)(e)(f) or subd. 1(b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
609.344, subd. 1(b) with ref. to subd. 2(2)	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)	G

* * *

8. Amended Criminal Vehicular Homicide and Operation (Minn. Stat. §§ 609.21; 2112; 2113; 2114).

Reference: [Minn. Session Laws, Chapter 180.](#)

Description: Mostly technical amendments were made, separating language for criminal vehicular homicide from language for criminal vehicular operation by level of harm.

The amendment created new statutes under Minn. Stat. §§ 609.2112; 2113; 2114. Offenses involving unborn children were moved to the new statute, Minn. Stat. § 609.2114, Criminal Vehicular Operation; Unborn Child. Subdivision 1 of this new section describes criminal vehicular operation resulting in death to an unborn child. Subdivision 2 describes criminal vehicular operation resulting in injury to an unborn child.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6. The modifications are outlined below.

Modifications to Section 2.B.3.g.

* * *

- g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minn. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, ~~or 609.2112,~~

609.2113, or 609.2114 two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes.

* * *

2.B.304. *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first-degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, ~~or 609.2112~~, 609.2113, or 609.2114 are also more culpable, and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation (CVO) violations....*

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
8	Criminal Vehicular Homicide or Operation (Death)	609.2112, subd. 1a(a)
<u>8</u>	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>	<u>609.2114, subd. 1</u>
5	Criminal Vehicular Homicide or Operation (Great Bodily Harm)	609.2113, subd. 1a(b)
<u>5</u>	<u>Criminal Vehicular Operation (Injury to an Unborn Child)</u>	<u>609.2114, subd. 2</u>
3	Criminal Vehicular Homicide or Operation (Substantial Bodily Harm)	609.2113, subd. 2 1a(e)

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
609.21 <u>12</u> , subd. 1a(a)	Criminal Vehicular Homicide or Operation (Death)	8
609.21 <u>13</u> , subd. 1a(b)	Criminal Vehicular Homicide or Operation (Great Bodily Harm)	5
609.21 <u>13</u> , subd. <u>2</u> 1a(c)	Criminal Vehicular Homicide or Operation (Substantial Bodily Harm)	3
<u>609.2114</u> , subd. 1	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>	<u>8</u>
<u>609.2114</u> , subd. 2	<u>Criminal Vehicular Operation (Injury to an Unborn Child)</u>	<u>5</u>

* * *

Modifications to Section 6. Offenses Eligible for Permissive Consecutive Sentences.

* * *

Statute Number	Offense Title
609.21 <u>12</u> , subd. 1a(a)	Criminal Vehicular Homicide (Death)
609.21 <u>13</u> , subd. 1a(b)	Criminal Vehicular Homicide or Operation (Great Bodily Harm)
609.21 <u>13</u> , subd. <u>2</u> 1a(c)	Criminal Vehicular Homicide or Operation (Substantial Bodily Harm)
<u>609.2114</u> , subd. 1	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>
<u>609.2114</u> , subd. 2	<u>Criminal Vehicular Operation (Injury to an Unborn Child)</u>

* * *

9. Amended Criminal Record Expungement (Minn. Stat. § 609A.20).

Reference: [Minn. Session Laws, Chapter 246](#).

Description: Laws related to the expungement of criminal records were amended to allow the court to expunge juvenile arrest and delinquency proceedings if it determined that the expungement would benefit the subject and the benefit would not be detrimental to public safety. Business screening services were ordered to delete criminal records if it was known that the record had been sealed, expunged, or was the subject of a pardon. The eviction law was amended giving the court authority to expunge actions in which the defendant prevailed without an additional action required.

Certain records will be automatically expunged without filing a petition when the prosecutor agrees unless the court finds that it would be detrimental to public safety. The law requires court administration to notify the petitioner of entities receiving the expungement order. Those entities are then required to send a letter to the petitioner confirming that the record was expunged.

The circumstances under which a person may petition to have his or her criminal record expunged were expanded to a petitioner who 1) successfully completed a diversion program or stay of adjudication and has not been charged with a new crime for at least one year since completion of the program or stay of adjudication; 2) was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor and has not been convicted of a new crime for at least two years since discharge of the sentence; 3) was convicted of or received a stayed sentence for a gross misdemeanor and has not been convicted of a new crime for at least four years since discharge of the sentence; or 4) was convicted of or received a stayed sentence for certain felony offenses and has not been convicted of a new crime for at least five years since discharge of the sentence.

Expungement orders effective on or after January 1, 2015, “may be opened, used or exchanged between criminal justice agencies *without a court order* for purposes of initiating, furthering or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services.” Ex parte orders are necessary until that time.

Adopted Modifications: The Commission adopted a proposal to modify the commentary to clarify the procedures for the use of expunged records for sentencing purposes before January 1, 2015 and on or after January 1, 2015, as outlined below.

Modifications to Section 2.B.

2.B.03. Effective before January 1, 2015, Minn. Stat. § 609A.03, subd. 7(b) applies to expungement orders subject to its limitations, and provides that:

Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph....

Effective January 1, 2015, Minn. Stat. § 609A.03, subd. 7a(b) provides that:

Notwithstanding the issuance of an expungement order:

(1) except as provided in clause (2), an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correction services;

(2) when a criminal justice agency seeks access to a record that was sealed under section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte court order after stating a good-faith basis to believe that opening the record may lead to relevant information;

10. Amended Perjury (Minn. Stat. § 609.48).

Reference: [Minn. Session Laws, Chapter 180.](#)

Description: A new law related to court documents was enacted under Minn. Stat. § 358.166. The law states that a court document does not need to be notarized. Signing a document filed with the court constitutes “verification upon oath or affirmation.” A person who signs a court document knowing that it is false is guilty of perjury under Minn. Stat. § 609.48.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

B. Legislative Modifications – New Medical Cannabis Offenses (Minn. Stat. § 152.33).

Reference: [Minn. Session Laws, Chapter 311.](#)

Description: New laws for medical use of cannabis were enacted by the Legislature during the 2014 Legislative Session which allowed state-licensed manufacturers to produce medical cannabis for patients with qualifying medical conditions. Criminal penalties for violations are provided in Minn. Stat. § 152.33.

Adopted Modifications: The Commission adopted the following severity-level rankings in Minn. Sentencing Guidelines § 5 for violations of the medical cannabis laws. The Commission adopted a proposal not to add medical cannabis violations to the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
<u>2</u>	<u>Medical Cannabis Violations (Submission of False Records)</u>	<u>152.33, subd. 4</u>
<u>1</u>	<u>Medical Cannabis Violations (Intentional Diversion)</u>	<u>152.33, subd. 1</u>
<u>1</u>	<u>Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)</u>	<u>152.33, subd. 2</u>

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
<u>152.33, subd. 1</u>	<u>Medical Cannabis Violations (Intentional Diversion)</u>	<u>1</u>
<u>152.33, subd. 2</u>	<u>Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)</u>	<u>1</u>
<u>152.33, subd. 4</u>	<u>Medical Cannabis Violations (Submission of False Records)</u>	<u>2</u>

* * *

C. Non-Legislative Modifications

The following are non-legislative modifications to the Minn. Sentencing Guidelines.

1. Second Custody Status Point for Offenders Discharged Early from Probation.

Description: According to the Minn. Sentencing Guidelines § 2.B.2.b, an additional custody status point is assigned to an offender who was on custody status for a sex offense when they commit a sex offense. However, the Guidelines are unclear if a second point applies to an offender discharged early from probation under § 2.B.2.a(4).

Commission staff believed that this was an oversight; a result of the extensive Guidelines revisions that took effect August 1, 2012. The Commission's intent to assign a second Custody Status Point appeared clear in the 2011 Minn. Sentencing Guidelines, § 2.B.2.

Adopted Modifications: The Commission adopted a proposal to modify Minn. Sentencing Guidelines, § 2.B.2.b, to clarify that a sex offender committing an offense within the original length of probation qualifies for two custody points, as outlined below.

Modifications to Section 2.B.2.

* * *

b. Two Custody Status Points. Assign **two** custody status points if:

(1) the current conviction offense is an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (243.166);

(2) the offender qualifies for one custody status point, as described in section a, above, was under any of the custody statuses in paragraph a(1) for an offense currently found on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).

* * *

2. General Rule for Determining a Severity Level.

Description: The Commission added definitions for the terms "Severity Level" and "Criminal History Score" in the definitions found in § 1.B.

Further, § 2.A.1, the general rule for assigning a severity level, described a situation in which multiple convictions lead to the assignment of only one severity level. This language is intended to address the situation in which an offender is convicted of two or more felony offenses arising from the same behavioral incident. But it incorrectly stated that the severity level is determined by the most severe conviction offense when instead the court should sentence the most serious offense and then use the severity level assigned to that offense.

Adopted Modifications: The Commission adopted a proposal to modify the Minn. Sentencing Guidelines, by adding a definition for the terms "severity level" and "criminal history score" to section 1.B, moving language from the general rule for severity level application to the definition, and moving the information referring to the most serious offense to a comment as described below.

Modifications to Section 1.B.

(Note: Inserted new paragraphs 4 and 17 and renumber subsequent paragraphs.)

B. Definitions

As used in these Sentencing Guidelines (or “Guidelines”), the following terms have the meanings given.

* * *

4. Criminal History Score. The “criminal history score” is comprised of criminal history factors detailed in section 2.B. The horizontal axis on the applicable grid represents the offender’s criminal history score.

* * *

17. Severity Level. The “severity level” is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Offenses listed within each severity level are deemed equally serious.

* * *

Modifications to Section 2.A.

1. General Rule. The applicable offense severity level is determined by the conviction offense, not the charging offense. ~~When an offender is convicted of two or more felonies, the severity level is determined by the most severe conviction offense. Felony offenses, other than sex offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on a separate Sex Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Offenses listed within each severity level are deemed to be equally serious. The severity level for each felony offense is governed by~~ found in section 5A, Offense Severity Reference Table.

* * *

Modifications to Section 2.A.

* * *

2.A.07. When an offender is convicted of two or more felony offenses arising from a single behavioral incident, Minn. Stat. § 609.035 “contemplates that a defendant will be punished for the ‘most serious’ of the offenses.” State v. Kebaso, 713 N.W.2d 317, 322 (Minn. 2006). When this occurs, the applicable severity level to use in determining the presumptive sentence is the severity level assigned to the offense being sentenced, which is ordinarily the most serious offense.

* * *

3. Conspiracy to Commit Crime for the Benefit of a Gang.

Description: Because there are two forms of conspiracy under state law – general conspiracy, which cuts in half the sentence duration, and conspiracy to commit a controlled substance offense, which does not impact the sentence – it was unclear whether the term “conspiracy” in § 2.G.10, was meant to refer to both. The Commission voted to clarify that the shorter sentence for benefit of a gang applied only to the general conspiracy statute under Minn. Stat. § 609.175. References to the attempt statute were also added and the section was rearranged to put the “victim under the age of eighteen” paragraph last because it was an exception.

Adopted Modifications: The Commission adopted a proposal to modify Minn. Sentencing Guidelines, section 2.G.10, as follows.

Modifications to Section 2.G.10.

* * *

10. **Offense Committed for the Benefit of a Gang.** When an offender is sentenced for an offense committed for the benefit of a gang under Minn. Stat. § 609.229, subd. 3(a):
 - a. Pursuant to Minn. Stat. § 609.229, subd. 4, the presumptive disposition is always commitment; and
 - b. The presumptive duration is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender’s criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

- (1) ~~If the victim of the crime was under the age of eighteen: If the offense does not involve a victim or if the victim was eighteen or older:~~
- (i) ~~24-12~~ months, if the underlying offense was completed; or
 - (ii) ~~42-6~~ months, if the underlying offense was an attempt under Minn. Stat. § 609.17 or conspiracy under Minn. Stat. § 609.175; or
- (2) If the offense involves a victim ~~was eighteen or older~~ under the age of eighteen:
- (i) ~~42~~ 24 months, if the underlying offense was completed; or
 - (ii) ~~6~~ 12 months, if the underlying offense was an attempt under Minn. Stat. § 609.17 or conspiracy under Minn. Stat. § 609.175.

* * *

4. Non-Minnesota Convictions.

Description: The current language in § 2.B.5 does not emphasize the role that the court plays in equating non-Minnesota offenses to Minnesota offenses nor does it clearly outline the steps involved in equating a non-Minnesota offense.

Adopted Modifications: The Commission adopted a proposal to modify the language in § 2.B.5, as shown below.

Modifications to Section 2.B.5.

* * *

5. Convictions from Jurisdictions other than Minnesota.

- a. In General. The offense definitions in effect when the offense was committed govern the designation of convictions from jurisdictions other than Minnesota as felonies, gross misdemeanors, or misdemeanors. The court must make the final determination as to whether and how a prior non-Minnesota conviction should be counted in the criminal history score. The court should consider, but is not limited to, the factors in paragraphs b through e, below. Sections 2.B.1 through 2.B.7 govern the use of these convictions.

- b. Offense Equivalent How to Count. Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. ~~The court makes the final determination of the Minnesota offense that is equivalent to the non-Minnesota offense. Where~~ The section in which to place count the non-Minnesota offense in criminal history depends on:
- whether the non-Minnesota offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; and
 - the sentence imposed.

An offense may be counted as a felony only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence, which includes the equivalent of a stay of imposition. The offense definitions in effect when the offense was committed govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.

D. Technical Modifications

The following are technical modifications to the Minn. Sentencing Guidelines. Some of these modifications are a result of laws that have been repealed by the Legislature and must be reflected in the Guidelines. Some changes are to appendices in the Guidelines. Other changes are a result of instructions by the Revisor of Statutes.

1. Presumptive Sentence Durations that Exceed the Statutory Maximum.

Description: Twelve offenses assigned severity level rankings in § 5 have presumptive durations that may exceed the statutory maximum depending on the offender's Criminal History Score. Practitioners will often use the Guidelines to determine the presumptive sentence without checking the statutory maximum in statute for the offense. If practitioners did not check the statute, these offenses may receive a sentence that would exceed the statutory maximum.

Adopted Modifications: The Commission adopted a proposal clarifying the policy by adding an appendix to the Guidelines highlighting the offenses for which this may occur, amending the footnotes on the grids, adding a reference in § 2.C.2, to the new appendix (Appendix 3), and adding footnotes to the applicable offenses in § 5.B, as it is used by practitioners to quickly locate the severity levels for offenses. The proposed modifications are outlined below.

Modifications to Section 2.C.

* * *

2. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence. If the presumptive sentence duration in the appropriate cell on

the applicable Grid exceeds the statutory maximum sentence for the conviction offense, the statutory maximum is the presumptive sentence.

See Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Table in Appendix 3.

* * *

New Appendix 3:

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table.

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

<u>Statute</u>	<u>Offense</u>	<u>Severity Level</u>	<u>Statutory Maximum (Months)</u>	<u>Exceeds Statutory Maximum At:</u>
<u>609.2231 subd. 4(b)</u>	<u>Assault 4th Degree Motivated by Bias</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.322 subd. 1(a)</u>	<u>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree</u>	<u>B</u>	<u>240</u>	<u>CHS 5</u>
<u>609.352 subd. 2</u>	<u>Solicitation of Children to Engage in Sexual Conduct</u>	<u>G</u>	<u>36</u>	<u>CHS 4</u>
<u>609.352 subd. 2a</u>	<u>Solicitation of Children to Engage in Sexual Conduct (Electronic)</u>	<u>G</u>	<u>36</u>	<u>CHS 4</u>
<u>609.485 subd. 4(a)(2)</u>	<u>Escape, Mental Illness</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.485 subd. 4(a)(4)</u>	<u>Escape from Civil Commitment</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.595 subd. 1a(a)</u>	<u>Damage to Prop Motivated by Bias</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.597 subd. 3(3)</u>	<u>Assaulting or Harming Police Horse</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.662 subd. 2(b)(2)</u>	<u>Duty to Render Aid (Substantial Bodily Harm)</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>

<u>Statute</u>	<u>Offense</u>	<u>Severity Level</u>	<u>Statutory Maximum (Months)</u>	<u>Exceeds Statutory Maximum At:</u>
<u>609.713 subd. 3(a)</u>	<u>Terroristic Threats-Replica Firearm</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.776</u>	<u>Interference with Emergency Comm.</u>	<u>5</u>	<u>36 months</u>	<u>CHS 4</u>
<u>617.247 subd. 3</u>	<u>Dissemination of Pictorial Representation of Minors</u>	<u>E</u>	<u>84 months</u>	<u>CHS 5</u>

Modifications to Section 5.B.

* * *

Statute Number	Offense Title	Severity Level
609.2231 subd. 4(b)	Assault 4th Motivated by bias	1**
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1 st Degree	B**
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	G**
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G**
609.485 subd. 4(a)(2)	Escape, Mental Illness	1**
609.485 subd. 4(a)(4)	Escape from Civil Commitment	1**
609.595 subd. 1a(a)	Damage to Prop Motivated by Bias	1**
609.597 subd. 3(3)	Assaulting or Harming Police Horse	1**
609.662 subd. 2(b)(2)	Duty to Render Aid (SBH)	1**
609.713 subd. 3(a)	Terroristic Threats-Replica Firearm	1**
609.776	Interference with Emergency Communications	5**
617.247 subd. 3	Dissemination of Pictorial Representation of Minors	E**

** See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

* * *

Modifications to Section 4.A. Sentencing Guidelines Grid.

* * *

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{2,3}

³The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

* * *

2. Camping Contracts (Minn. Stat. §§ 82A.03; 13; 25).

Description: Registration requirements under Minn. Stat. § 82A.03 was removed as a criminal penalty from membership camping practices by the 2014 Legislature.

Reference: [Minn. Session Laws, Chapter 222.](#)

Adopted Modifications: The Commission adopted a proposal to delete reference to Minn. Stat. 82A.03, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
Unranked	Sale of Membership Camping Contracts	82A.03 ; 82A.13; 82A.25

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
82A.03; 82A.13; 82A.25	Sale of Membership Camping Contracts	Unranked

* * *

3. Rank Fraudulent Instrument or Entry for Procuring a Certificate of Title (Minn. Stat. § 508.80).

Reference: [1905 Laws of MN.](#)

Description: Fraudulently procuring a certificate of title under Minn. Stat. 508.80 is a felony with a 5-year statutory maximum. It has been inadvertently left unranked in the Guidelines. The law has been in effect since 1905.

Adopted Modifications: The Commission adopted a proposal to rank the offense at Severity Level 1, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
<u>1</u>	<u>Fraudulent Instrument or Entry for Procuring a Certificate of Title</u>	<u>508.80</u>

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
<u>508.80</u>	<u>Fraudulent Instrument or Entry for Procuring a Certificate of Title</u>	<u>1</u>

* * *

4. Pipeline Safety (Minn. Stat. § 299J).

Reference: [1987 Laws of MN.](#)

Description: The Guidelines list felony failure to report emergency release by a pipeline operator under Minn. Stat. § 299J.07, in the Guidelines. The offense has a 7-year statutory maximum. It is an unranked offense; however, another pipeline safety offense exists under Minn. Stat. § 299J.15: improper disposal of a pipeline, which has a 5-year statutory maximum.

Adopted Modifications: The Commission adopted a proposal to change the reference in Guidelines § 5A and 5B for pipeline safety to reference the entire chapter of 299J, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
Unranked	Pipeline Safety	299J.07, subd. 2

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
299J.07, subd. 2	Pipeline Safety	Unranked

* * *

5. Animal Fighting (Minn. Stat. § 343.31).

Description: Felony animal fighting, under Minn. Stat. § 343.31, is an unranked offense in the Guidelines. The citation in §§ 5A and 5B are incorrect. The statute was amended in 2005 and the felonies were moved to subdivision 1, paragraph (a).

Reference: [2005 Laws of MN.](#)

Adopted Modifications: The Commission adopted a proposal to correct the reference in Guidelines §§ 5A and 5B, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
Unranked	Animal Fighting	343.31 <u>subd. 1</u> (a)(b)

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
343.31 <u>subd. 1</u> (a)(b)	Animal Fighting	Unranked

* * *

6. Criminal Negligence (Minn. Stat. § 609.233).

Description: In 2013, the Revisor of Statutes changed the penalty citation for deprivation of vulnerable adults from subdivision 2a to subdivision 3. MSGC staff corrected the affected sections as instructed by the Revisor of Statutes.

Reference: [2013 Laws of MN, Chapter 125, Art. 1, Sec. 85.](#)

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
8	Deprivation of Vulnerable Adult (Great Bodily Harm)	609.233, subd. 2a <u>3</u> (1)
5	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	609.233, subd. 2a <u>3</u> (2)

* * *

Modifications to Section 5.B. Severity Level by Statutory Citation.

* * *

Statute Number	Offense Title	Severity Level
609.233, subd. 2a <u>3</u> (1)	Deprivation of Vulnerable Adult (Great Bodily Harm)	8
609.233, subd. 2a <u>3</u> (2)	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	5

* * *

Modifications to Section 6. Offenses Eligible for Permissive Consecutive Sentences.

* * *

Statute Number	Offense Title
609.233, subd. 2a <u>3</u>	Deprivation of Vulnerable Adult

* * *

Appendix 3: Standard Sentencing Guidelines Grid – Effective August 1, 2014

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

¹ 12¹=One year and one day



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 section 2.E, 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. See sections 2.C and 2.E.

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. See section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

Appendix 4. Sex Offender Sentencing Grid – Effective August 1, 2014

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	144 144-172	156 144-187	168 144-201	180 153-216	234 199-280	306 261-360	360 306-360 ²
CSC 2 nd Degree-(c)(d)(e)(f)(h) Prostitution; Sex Trafficking ³ 1 st Degree-1(a)	B	90 90 ³ -108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300	300 255-300 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 41-57	62 53-74	76 65-91	90 77-108	117 100-140	153 131-180	180 153-180 ²
CSC 2 nd Degree-(a)(b)(g) CSC 3 rd Degree-(a)(e)(f) or(b)with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 51-72	70 60-84	91 78-109	119 102-142	140 119-168
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 51-72	78 67-93	102 87-120	120 102-120 ²
CSC 4 th Degree- (a)(b)(e)(f); CSC 5 th Degree; Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
CSC 3 rd Degree-(b)with subd. 2(2); Indecent Exposure Possession of Child Pornography; Solicit Child for Sexual Conduct ²	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²
Registration Of Predatory Offenders	H	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43

12¹=One year and one day



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 section 2.E, 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. See sections 2.C and 2.E.

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. See section 2.C.1-2.

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.)