

MINNESOTA SENTENCING GUIDELINES COMMISSION

Report to the Legislature

January 15, 2016



Minnesota Sentencing Guidelines Commission

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Introduction

This report is prepared and submitted to the Legislature to satisfy the requirements of Minn. Stat. § 244.09, subds. 6, 11, and 14:

- To “make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing”;
- To “identif[y] and explain[] all modifications made during the preceding 12 months and all proposed modifications that are being submitted to the legislature” in 2016; and
- To “summar[ize] and analy[ze] ... reports received from county attorneys under section 609.11, subdivision 10.”

As in past years, the Commission also takes this opportunity to highlight topics that may be of interest to the Legislature, including sentencing and departure trends, and updates on Commission and staff activities.

In 1980, 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.

When establishing and modifying the Minnesota Sentencing Guidelines, the Commission’s primary consideration is **public safety**. Minn. Stat. § 244.09, subd. 5. Other considerations are current sentencing and release practices; correctional resources, including, but not limited to, the capacities of local and state correctional facilities; and the long-term negative impact of crime on the community. *Id.* The Commission has stated that the purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that reduce sentencing disparity and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender’s criminal history. Minn. Sentencing Guidelines § 1.A. The Sentencing Guidelines embody principles including that sentencing be neutral, rational, consistent, and uniform, and that departures from the presumptive sentences should only be made when substantial and compelling circumstances can be identified and established.

In 2014, Minnesota’s imprisonment rate—194 prisoners per 100,000 Minnesota residents—was less than half the national state imprisonment rate.¹ Minnesota’s imprisonment rate grew by 2.5 percent from 2013 to 2014, and is now at its highest level since the Sentencing Guidelines were established.² From 2013 to 2014, nine states’ imprisonment rates grew by a higher percentage than Minnesota’s; 12 states’ imprisonment rates grew by a lower percentage; and

¹ The national state imprisonment rate was 412 prisoners per 100,000 U.S. residents. Neither rate includes inmates of federal prisons or local correctional facilities. See note 3.

² Minnesota’s imprisonment rate was 49 per 100,000 in 1980. See note 4.

28 states' imprisonment rates fell. The national state imprisonment rate fell by 1.1 percent.³ From 1980 until 2013, Minnesota's imprisonment rate ranked among the three lowest in the nation. In 2014, Minnesota was fourth lowest.⁴

This report details the work of the Minnesota Sentencing Guidelines Commission in 2015, and provides an overview of sentencing practices and trends in the criminal justice system. The sentencing data included in this report are from calendar year 2014, the most recent full year of sentencing data. Additional reports on overall data trends in 2014 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 an unranked offense report and a probation revocation report—are available on the Commission's website at <http://mn.gov/sentencing-guidelines/reports/>.

³ Carson, E. Ann. Bureau of Justice Statistics. Prisoners in 2014 (NCJ 248955). September 2015. Retrieved Dec. 1, 2015, at <http://www.bjs.gov/content/pub/pdf/p14.pdf>.

⁴ 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, 1978-2014. July 30, 2015. Retrieved Dec. 1, 2015, at http://www.bjs.gov/nps/resources/documents/QT_imprisonment%20rate_total.xlsx.

Executive Summary

Recommendations to the Legislature (p. 6): In this Report, the Commission makes two recommendations to the Legislature, both related to controlled substance crimes. First, the Commission recommends that the Legislature create enhanced crimes for possession of drugs in quantities significantly greater than those reflected in the existing first-degree thresholds. Second, the Commission recommends that the Legislature reduce possession of a trace amount of a controlled substance from a felony to a gross misdemeanor.

Commission's 2015 Guidelines Modifications (p. 10): The Commission made a number of changes to the Guidelines in 2015. The new felony offense of wrongful employment at a child care center, over \$5,000 and \$5,000 or less, was ranked at severity levels 3 and 2, respectively. The Commission made decisions to modify, or not to modify, the Guidelines to conform to changes to the following crimes: fourth-degree assault (extending protections to employees supervising and working directly with mentally-ill and dangerous patients); engaging in, hiring, or agreeing to hire a minor to engage in prostitution; fifth-degree criminal sexual conduct; certain persons not to have firearms (to include ammunition); firearm silencer (to be entitled “firearm suppressor”); financial transaction card fraud (to include trafficking of supplemental nutrition assistance benefits); reckless driving (new gross misdemeanor offense proposed to be treated like non-traffic gross misdemeanors for purposes of criminal history score); and terroristic threats (to be entitled “threats of violence”). The Commission ranked medical assistance fraud over \$35,000 at severity level 6; added language in the Guidelines and commentary clarifying the application of the Guidelines upon the revocation of stay of adjudication; added language in Guidelines and commentary classifying a sentence executed pursuant to an offender’s right to demand execution as not a dispositional departure; and amended the nonexclusive list of mitigating factors in the Guidelines and commentary to include particular amenability to probation. The Commission adopted modifications to update offense titles for damage to property and to delete expired statutory language related to expunged records.

Commission's 2016 Guidelines Modifications, Subject to Legislative Review (p. 14): On December 23, 2015, the Commission held a public hearing on proposed comprehensive modifications to drug sentencing in the Sentencing Guidelines, and adopted those modifications on December 30, 2015. Specifically, the Commission adopted a new drug sentencing grid that establishes new presumptive sentences for first-degree drug sales of 65 to 125 months, depending on the criminal history score of the offender, and reduces the severity levels for first-degree drug possession and second-degree drug possession controlled substance crimes. The Commission also adopted new aggravating factors and a new mitigating factor applicable to controlled substance crimes. The modifications are the culmination of many years of discussion at the Commission, and reflect its collective judgment of the changes needed in drug sentencing that not only promote public safety, but also address the different culpabilities of drug dealers and drug users. On the one hand, the modifications give prosecutors the tools to seek greater sentences against drug dealers. On the other hand, they give the parties and the courts tools to send drug users who are truly chemically dependent to obtain the treatment they need.

Additionally, the modifications will promote greater uniformity in sentencing. The details and explanation of the modifications are set forth on pages [14-17](#) of this Report.

The Commission also adopted proposed modifications relating to consecutive sentencing policy. The Commission adopted uniform standards establishing how consecutive supervised release terms are to be served when two sentences are consecutively executed at the same time, at different times, or when the offender had already been placed on supervised release for the earlier sentence. The adopted modifications also limit the circumstances under which consecutive sentences are presumptive. Finally, the Commission adopted technical and clarifying changes to the Guidelines and commentary with respect to consecutive sentencing policy.

These proposed modifications will take effect August 1, 2016, unless the Legislature by law provides otherwise.

Staff Activities (p. 19): The staff performed the following activities: answered over 2,000 phone calls and email inquiries; trained 500 practitioners in traditional classroom and online settings; provided 43 fiscal impact statements for introduced legislation; compiled sentencing information for almost 250 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 16,000 sentencing records; published the annual edition of the Guidelines and commentary; and provided reports on sentencing practices to the public.

Sentencing Trends (p. 22): Minnesota courts sentenced 16,145 felony offenders in 2014, an increase of 5.4 percent. Of the total volume, person offenses accounted for 30.4 percent (4,905 offenders), property offenses accounted for 28.4 percent (4,589 offenders), and drug offenses accounted for 27 percent (4,363 offenders). Significant growth occurred from 2010 to 2014, when the overall volume of felony offenders sentenced increased by 13 percent. This is attributable to the growth in drug offenders at 31 percent, non-CSC sex offenses⁵ at 17 percent, and “other”⁶ offenders at 18 percent. The specific offense that contributed to the growth in the “other” category the most was possession of a firearm by a felon convicted of a crime of violence, which grew by 59 percent from 2010 to 2014—from 234 offenders to 371 offenders. In 2014, 92 percent of felony offenders served some time in a local correctional facility or prison setting: 66 percent served time in a local correctional facility as part of their stayed sentence, while 26 percent were sentenced to state prison. The average pronounced prison sentence was 45.5 months, which is a slight increase over 2013. Statewide, 72 percent of felony offenders received the presumptive Guidelines sentence. The rate varied by gender, race/ethnicity, judicial district, and offense type.

⁵ “Non-CSC sex offenses” are offenses on the sex offender grid other than criminal sexual conduct (chiefly failure to register as a predatory offender and possession and dissemination of child pornography).

⁶ “Other” category includes: 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. “Other” included DWI before 2004 and non-CSC sex offenses before 2010.

County Attorney Firearms Reports (p. 39): 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 1996, when the mandate began, county attorneys have annually reported an average of 769 cases allegedly involving a firearm. The total number of reported firearms cases for fiscal year 2015 was 1,211. This number has risen every year since 2010, and represents an increase of 11 percent (122 cases) over fiscal year 2014.

Recommendations to the Legislature

The Legislature invites the Minnesota Sentencing Guidelines Commission to provide it, from time to time, with recommendations regarding changes to criminal law, criminal procedure, and other aspects of sentencing. Minn. Stat. § 244.09, subd. 6. The Commission makes the following recommendations to the Legislature:

Recommendation One. The Commission passed a motion on a vote of 7 to 2 to recommend that the Legislature amend Minn. Stat. § 152.021 to add two offenses—enhanced possession of controlled substance in the first degree; and more enhanced possession of controlled substance in the first degree—with drug quantity thresholds two and three times greater, respectively, than the threshold quantities reflected in the existing first-degree possession statute.

Recommendation One – Discussion. The author of the motion indicated the following reasoning in support of the motion. The Commission was informed by law enforcement and prosecutors that the U.S. Attorney’s decision to focus its resources on the prosecution of drug offenses involving more than 100 grams has resulted in more law enforcement responsibility falling to the State. Currently, the presumptive sentence for first-degree possession is the same whether the offender possesses 25 grams or a significantly higher amount. The proposed amendments to the criminal code will aid the State’s efforts in prosecuting drug king-pins. Specifically, the amendments to the criminal code create two new offenses for possession of 50 grams or more, and 75 grams or more. These enhanced possession offenses allow law enforcement to seek higher sentences for offenders conviction of possessing these higher amounts.

Recommendation One – Statutory Language: It is recommended that Minn. Stat. § 152.021 be amended to read:

152.021 CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.

Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the first degree if:

- (1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing cocaine, heroin, or methamphetamine;
- (2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;
- (3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 200 or more dosage units; or
- (4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 kilograms or more containing marijuana or Tetrahydrocannabinols, or one or more

mixtures of a total weight of 25 kilograms or more containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public housing zone, or a drug treatment facility.

Subd. 2. Possession crimes. (a) A person is guilty of a controlled substance crime in the first degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 100 kilograms or more containing marijuana or Tetrahydrocannabinols.

(b) For the purposes of this subdivision, the weight of fluid used in a water pipe may not be considered in measuring the weight of a mixture except in cases where the mixture contains four or more fluid ounces of fluid.

(c) A person is guilty of enhanced possession of a controlled substance in the first-degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 1000 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 1000 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 1000 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 200 kilograms or more containing marijuana or Tetrahydrocannabinols.

(d) A person is guilty of more enhanced possession of a controlled substance in the first-degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of 75 grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 1500 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 1500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 1500 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of 300 kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 2a. **Methamphetamine manufacture crime.** (a) Notwithstanding subdivision 1, sections 152.022, subdivision 1, 152.023, subdivision 1, and 152.024, subdivision 1, a person is guilty of controlled substance crime in the first degree if the person manufactures any amount of methamphetamine. * * *

Subd. 3. **Penalty.** (a) A person convicted under subdivisions 1 to 2a, paragraph (a), may be sentenced to imprisonment for not more than 30 years or to payment of a fine of not more than \$1,000,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivisions 1 to 2a, paragraph (a), shall be committed to the commissioner of corrections for not less than four years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$1,000,000.

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

Recommendation Two. The Commission passed a motion on a vote of 8 to 2 to recommend that the Legislature reduce Controlled Substance Crime in the Fifth Degree – Possession, Minn. Stat. § 152.025, subd. 2, in a case involving possession of a trace amount of a controlled substance, to a gross misdemeanor rather than a felony.

Recommendation Two – Discussion: Trace cases are prosecuted inconsistently across the state. Some jurisdictions do not prosecute any trace amount cases, while other jurisdictions charge them zealously and impose mandatory minimum periods for subsequent offenses. This creates an onerous sentence for defendants who are very likely addicts and would receive no criminal intervention if they committed the offense in a different county. Because these are considered low-level offenses, few probation resources are allocated to these offenders who with frequency either fail on probation and are revoked or grow so frustrated with probation violations that they opt for execution of their sentence. These offenders are often committed to the custody of the Commissioner of Corrections for periods too short to allow for chemical dependency services within the Department of Corrections (DOC). By treating these cases as gross misdemeanors, the Legislature would eliminate the possibility of a prison commit for a trace amount of drugs and blunt the inequity across district and county lines. In fiscal year 2015, the DOC had 501 inmates serving sentences for 5th Degree Controlled Substance crimes. The DOC would see a decrease in short-term beds and supervised-release clients. County corrections programs may see an increase in local incarceration, though the typical 180-day mandatory minimum is already being served locally.

Recommendation Two – Statutory Language: It is recommended that Minn. Stat. §§ 152.025 and 388.051, subd. 2(c), be amended to read:

152.025 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE.

* * * Subd. 2. **Possession and other crimes.** (a) A person is guilty of controlled substance crime in the fifth degree and if convicted may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both if:

(1) the person unlawfully possesses a measurable amount of one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana; * * *

Subd. 3. Possession of trace amounts. A person is guilty of a controlled substance crime in the fifth degree and if convicted may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the person unlawfully possesses a trace amount of one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana.

388.051 DUTIES.

* * * Subd. 2 * * * (c) The county attorney shall prosecute failure to report physical or sexual child abuse or neglect as provided under section 626.556, subdivision 6, violations of fifth-degree criminal sexual conduct under section 609.3451, ~~and~~ environmental law violations under sections 115.071, 299F.098, and 609.671, and controlled substance crime in the fifth degree, possession of trace amounts, as provided under section 152.025, subdivision 3. * * *

The Commission's Activities in 2015

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 public members, 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 Chief Justice's designee is the Associate Supreme Court Justice Christopher Dietzen, whom the Governor appointed to serve as Chair. The Court of Appeals judge is Judge Heidi Schellhas and the district court judge is Judge Caroline Lennon, First Judicial District. The remaining Commission members are selected by the Governor. The public defender member is Cathryn Middlebrook, Chief Appellate Public Defender; the county attorney member is Jeffrey Edblad, Isanti County Attorney; Tom Roy is the Commissioner of Corrections; the peace officer member is Sgt. Paul Ford; the probation officer seat is currently vacant; and the public members are Angela Champagne-From, Yamy Vang, and Senior Judge Mark Wernick.

One of the fundamental responsibilities of the Commission is to maintain the Guidelines by annually amending them in response to legislative changes, case law, and issues raised by various parties. In order to meet this responsibility, the Commission met eleven times during 2015 and held two public hearings, on July 15 and December 23, 2015. The Guidelines modifications made in 2015 are described below. A description of the proposed 2016 Guidelines modifications now submitted to the Legislature—including the modifications to drug sentencing—begins on page 14.

1. Adopted Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2015

The Commission adopted modifications to the Sentencing Guidelines and Commentary resulting from amended and new legislation, and other non-legislative policy considerations. These modifications took effect August 1, 2015. All modifications are set forth in [Appendix 2.1](#).

A. New Legislation (New Offense from the 2015 Legislative Session)

The Commission reviewed one felony offense that was enacted by the 2015 Legislature, and adopted severity-level rankings, as follows.

- **Wrongful Employment at a Child Care Center**

Description: A new felony for wrongful employment at a child care center was codified at [Minn. Stat. § 609.816](#). This applies to persons who require child care center applicants or employees to have one or more children who are eligible for or receive child care assistance. The crime is punishable under the theft penalty provisions in [Minn. Stat. § 609.52](#), subd. 3, clauses (1) to (5), which range from misdemeanor to felony depending on the monetary value of the theft.

Adopted Modifications: Add “609.816, Wrongful Employment at a Child Care Center” to the Theft Offense List in § 7, and reference the new offense in § 5.B at Severity Level 3 (Over \$5,000) and Severity Level 2 (\$5,000 or less).

B. Modified Legislation—Modified Offenses from the 2015 Legislative Session

The following are felony offenses (unless otherwise noted) modified by the 2015 Legislature. In some cases, the modifications expanded definitional statements; in others, the modifications expanded the scope of the offense. For each item listed below, taking the modification into consideration, the Commission decided if the Guidelines needed amending including whether offenses should be re-ranked and whether there should be any modifications to the permissive consecutive offense list in Guidelines § 6.

1. Extended Protection and Mandatory Minimum, Fourth-Degree Assault

Description: Fourth-degree assault protections were extended to employees supervising and working directly with mentally-ill and dangerous patients by modifying [Minn. Stat. § 609.2231](#), subd. 3a.

Adopted Modifications: 1) Maintain Severity Level 1 ranking in § 5 because the statutory maximum remained two years; 2) keep assault in the fourth degree on the list of offenses in § 6 which are eligible for permissive consecutive sentences; 3) update fourth-degree assault offense titles, as listed in § 5.B, to reflect statutory changes to fourth-degree assault enacted since 2004; 4) update Appendix 1; and 5) revise the footnote in § 5.B pertaining to fourth-degree assault.

2. Engage or Hire Minor to Engage in Prostitution Elements Revised

Description: The prostitution statute was modified making the hiring of an adult prostitute a felony if the patron reasonably believes the prostitute to be a child under Minn. Stat. § 609.324, subd. 1(c). The fact that an undercover operative or law enforcement officer was involved is not a defense.

No modifications to the Guidelines were proposed.

3. Fifth-Degree Criminal Sexual Conduct Elements Revised

Description: Fifth-degree criminal sexual conduct (CSC 5) under Minn. Stat. § 609.3451, subd. 1, was expanded to include intentionally touching the body or clothing with semen.

No modifications to the Guidelines were proposed.

4. Change Offense Title to Include Ammunition, Certain Persons Not to Have Firearm

Description: A definition for ammunition under Minn. Stat. § 609.02, subd. 17, was added. Persons who are not allowed to possess firearms are not allowed to possess ammunition, and felons previously convicted of a crime of violence who do so are subject to the five-year mandatory minimum prison sentence under Minn. Stat. § 609.11.

Adopted Modifications: Modify § 5.A, 5.B, comment 2.E.03, and Appendix 2, to add “or Ammunition” after “Certain Persons Not to Have Firearms” in the existing offense titles.

5. Change Offense Title, Firearm Suppressor

Description: The bill permits firearm suppressors (formerly known as “silencers”) to be possessed if lawfully possessed under federal law. The bill also amends the title of the reckless discharge offense under Minn. Stat. § 609.66 by striking “silencers” and inserting “suppressors.” The law clarifies that it is lawful to carry a firearm in the Capitol area provided there was an issuance of a permit to carry.

Adopted Modifications: Modify § 5.A and 5.B to strike “silencer” and add “suppressor” in the existing offense titles.

6. Financial Transaction Card Fraud Expanded to Include Trafficking of SNAP Benefits

Description: Financial Transaction Card Fraud was amended to include trafficking of Supplemental Nutrition Assistance Program (SNAP) benefits.

No modifications to the Guidelines were proposed.

7. Treat New Gross Misdemeanor Reckless Driving Like Non-Traffic Gross Misdemeanors for Purposes of Criminal History Score

Description: The crime of reckless driving under Minn. Stat. § 169.13, subd. 1(a) was amended to read: “A person who drives a motor vehicle while aware of and consciously disregarding a substantial and unjustifiable risk that the driving may result in harm to another or another’s property is guilty of reckless driving. The risk must be of such a nature and degree that disregard of it constitutes a significant deviation from the standard of conduct that a reasonable person would observe in the situation.” A new gross misdemeanor was established if a person causes great bodily harm or death to another person.

Adopted Modifications: 1) An offender will receive a custody status point for being in a custody status for gross misdemeanor reckless driving; and 2) an offender will receive one unit for a prior conviction of gross misdemeanor reckless driving.

8. Change Offense Title, Terroristic Threats

Description: The modification did not affect the criminal provisions, but created the need to change several references in the Guidelines. The headnote of Minn. Stat. § 609.713 was changed from “Terroristic Threats” to “Threats of Violence.”

Adopted Modifications: Authorized technical changes to the Guidelines.

C. Non-Legislative Modifications

The following non-legislative modifications to the Guidelines were adopted by the Commission.

1. Rank Medical Assistance Fraud Over \$35,000 at Severity Level 6

Description: The Guidelines rank particular theft offenses that exceed \$35,000, at a severity level higher than Severity Level 3.

Adopted Modifications: Rank medical assistance fraud over \$35,000 at Severity Level 6, and remove it from the Theft Offense List.

2. Clarify Application of Guidelines Upon Revocation of Stay of Adjudication

Description: If the initial sentence following felony conviction is commitment to the Commissioner of Corrections and the Guidelines recommend a stayed sentence, the decision to sentence to prison is an aggravated dispositional departure. This is true even if the felony conviction results from the revocation of a previously granted stay of adjudication.

Adopted Modifications: Modify the Guidelines to make it explicit that a revocation of a stay of adjudication to a prison commitment is an aggravated dispositional departure if a stayed sentence is presumptive.

3. Classify Sentence Executed Pursuant to Offender's Right to Demand for Execution As Not a Dispositional Departure

Description: An offender generally has the right to demand execution of sentence.

Adopted Modifications: Modify the Guidelines making it explicit that a sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure.

4. List Particular Amenability to Probation as Mitigating Factor

Description: The Minnesota Supreme Court emphasized that mere amenability to probation does not justify a departure, but that a defendant must be *particularly* amenable to probation. State v. Soto, 855 N.W.2d 303 (Minn. 2014).

Adopted Modifications: Add "particularly amenable to probation" to § 2.D.3 regarding mitigating factors that may be used as reasons for departure.

D. Technical Modifications

The following technical modifications to the Guidelines were adopted by the Commission.

1. Update Offense Titles for Criminal Damage to Property

Description: Absent a risk of bodily harm, felony criminal damage to property in the first degree is ranked at Severity Level 2. Criminal damage to property in the second degree involves the intentional causes to damage because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability. Because the descriptive titles in § 5 are incomplete, they may cause confusion.

Adopted Modifications: Update offense titles for damage to property in § 5.

2. Delete Expired Statutory Language Related to Expunged Records

Description: A portion of a comment in § 2.B related to access to expunged records is no longer in effect.

Adopted Modifications: Delete the reference to expired statutory language.

2. Adopted Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2016

Pursuant to Minn. Stat. § 244.09, the Commission adopted proposed modifications to the Sentencing Guidelines and Commentary related to controlled substance offenses and consecutive sentences. These modifications become effective August 1, 2016, unless the Legislature by law provides otherwise. All modifications are set forth in Appendix 2.2.

A. Non-Legislative Modifications to Controlled Substance Offenses

Description: The Commission adopted a motion on a vote of 7 to 3 to create a new drug sentencing grid that establishes new presumptive sentences for first-degree sales of 65 to 125 months, depending on the criminal history score of the offender, and reduces the severity levels for first-degree and second-degree possession controlled substance crimes. Additionally, the Commission adopted both new aggravating factors and a mitigating factor applicable to controlled substance crimes. The new Drug Offender Grid is found in Appendix 2.2 at page 80. For comparison, the old sentencing grid is on page 79 and in Appendix 3. The new aggravating factors and the new mitigating factor are found on pages 70-71. The remaining modifications to the text of the Guidelines resulting from the changes are found on pages 71-78.

Discussion: The Commission has considered the topic of drug sentencing for many years. Between 1989 and 1998, through a series of legislative and Guidelines changes, the severity of Minnesota's criminal drug penalties grew significantly. The Commission began examining options for drug sentencing reform as early as 1995, and repeatedly

thereafter. In 2003, the Legislature directed the Commission to report drug sentencing findings and recommendations.⁷ In 2007, the Legislature directed the Commission to propose changed rankings for drug offenses.⁸ In 2008, the Legislature created a working group on controlled substance laws, with directions to report its findings and recommendations.⁹ During these years, neither the Commission nor the Legislature made policy changes related to drug sentencing reform.

MSGC staff presented a summary of recent statistical data which indicates that the downward dispositional and durational departure rates for sentences imposed for first- and second-degree drug offenses are quite high, particularly in Hennepin County. For example, in 2013, only 37 percent of the defendants statewide received the presumptive for a first-degree controlled substance conviction. See “Drug Sentencing Reform Compromise Proposal,” Attachment 1 (bar graph of actual sentencing practices in first- and second-degree offenses from 2011 to 2013).¹⁰

In October 2013, the Commission held a round table to discuss the most recent data on first- and second-degree controlled substances and to seek feedback from various stakeholders in the criminal justice community. The explanation given for these downward departures was that the prosecutor settled the case (1) in exchange for help in pursuing a drug case against a dealer, or (2) to resolve a case that had evidentiary issues. The net result, however, is a perceived lack of uniformity in that an offender in Hennepin County gets a better deal than an offender in greater Minnesota.¹¹ Since the workshop, the Commission has discussed the topic of drug sentencing at several meetings. During the 2015 legislative session, the drug reform proposals set forth in House File 2107 and Senate Files 773 and 1382 never made it out of committee. Several legislators have indicated that they intend to renew these proposals during the 2016 legislative session.

When the Legislature failed to act on drug sentencing reform, the Commission more earnestly discussed the topic. At its August 2015 meeting, the Commission decided it would formally discuss drug sentencing reform at its September and October meetings and determine what formal action, if any, should be taken. The Commission, at its meeting on November 18, 2015, voted 7 to 3 in favor of the modifications set forth in the new Drug Offender Grid, the new aggravating factors, a new mitigating factor, and related changes, all of which are set forth in Appendix 2.2. The majority adopted the modifications on the basis that they promote the goals of the Commission “to assure public safety, promote uniformity and proportionality in sentencing, provide greater

⁷ 2003 Minn. Laws ch. 2, art. 1, § 14.

⁸ 2007 Minn. Laws ch. 54, art. 1, § 15. The Commission did not propose the requested changes at that time for reasons described in its 2008 Report to the Legislature.

⁹ 2008 Minn. Laws ch. 299, § 27. The report is at: <http://archive.leg.state.mn.us/docs/2009/mandated/090252.pdf>.

¹⁰ This document, dated Nov. 10, 2015, is available on the MSGC website under the meeting materials pertaining to the November 18, 2015, MSGC meeting, and was retrieved Jan. 4, 2016, at http://mn.gov/sentencing-guidelines/assets/4C%20Dietzen%20Submission_tcm30-91000.pdf.

¹¹ See “Sentencing Practices: Controlled Substance Offenses Sentenced in 2014,” figures 19 and 20 (available on the MSGC web site under annual summary reports).

honesty or ‘truth in sentencing,’ and coordinate sentencing practices with correctional resources.” *Taylor v. State*, 670 N.W.2d 584, 586 (Minn. 2003) (citations omitted). The author of the motion presented four reasons in support of this conclusion.

First, the modifications add a new mitigating factor that allows a judge who finds the offender truly chemically dependent to put the person on probation and send him or her to receive treatment. Currently, when an offender is convicted of first-degree controlled substance crime—sale and possession with a zero criminal history score—the presumptive sentencing disposition is incarceration. The proposal adds a new mitigating factor that allows a judge who finds the offender truly chemically dependent to put the person on probation and send him or her to drug treatment under Minn. Stat. § 152.152. For second-degree controlled substance crime, the presumptive disposition is changed from incarceration to probation.

Importantly, the modifications for the first time set forth separate presumptive sentences for first-degree drug possession and first-degree drug sale. Currently, individuals who are convicted of first-degree drug possession or sale receive the same presumptive executed sentence of 86 months. The proposal separates the sentences for first-degree drug possession and sale on the basis that drug possession is less culpable than drug dealing. The sentence for first-degree drug possession is reduced from 86 months to 48 months.

Most people agree that long prison sentences for drug users who are chemically dependent do not help them get better. Recent data indicate that, with respect to first-time drug users, long prison sentences not only fail to deter the drug users’ short-sighted and impulsive behavior, but also long sentences transform first-time drugs users into hardened career criminals. Moreover, as one writer observed, over-imprisonment of first-time drug users impacts the building blocks of our society by “excessively disrupt[ing] work, families and communities.” Stephanos Bibas, “Prisoners without Prisons: Incarceration is Important, but Sometimes Alternatives Work Better,” *National Review*, Sept. 21, 2015.

Second, the modifications promote both truth in sentencing and uniformity in sentencing. The modifications adjust the presumptive sentence for first-degree drug sale from 86 months to 65 months to reflect the sentence actually given to first-time drug dealers. The adjustment is necessary to achieve the goal of truth in sentencing. MSGC staff studied the sentence actually given for a first-time drug offender with a zero criminal history score and determined that, when an executed sentence was imposed, it was significantly lower than the Guidelines recommendation. Therefore, the presumptive

sentence was adjusted.¹² Further, the adjustment was necessary to correct a geographic disparity in sentencing.

To offset for the adjustment, the modifications add several aggravating factors that allow the court to significantly increase the sentence. For example, if the offender is convicted of first-degree sale and the State proves two or more of the aggravating factors, the sentence could be increased from 65 to 130 months. In short, the presumptive sentence for first-degree drug sale is adjusted from 86 to 65 months, but the new aggravating factors give the prosecutors the tools to secure an upward durational departure that would increase the sentence to 130 months.

Third, the proposal will positively affect public safety. A scheme that allows persons to address their chemical dependency benefits not only the individual, but also the State. Currently, drug users are convicted of drug possession offenses, and the related offenses of theft and burglary to support their habit. The downhill spiral of the drug user's life takes down the family through job loss and often abuse and neglect of their children. The proposal will give drug users who are truly chemically dependent the treatment they need to get better, and to take their lives back. The benefit to public safety is clear. The drug user who stops using drugs will be able to rebuild his or her life and become a productive member of society. When this happens the overall number of drug users and the crime rate attributable to drug use will drop. In sum, offenders need to be punished for the crimes they commit. But longer prison sentences don't help those who are chemically dependent get better, and become productive members of society. Additionally, the proposal will give law enforcement and prosecutors additional tools to go after drug dealers. The new aggravating factors allow the prosecutors to seek high sentences against drug dealers. Moreover, we request that the Legislature amend the criminal code to add two enhanced first-degree possession offenses to increase the sentences for those found with higher amounts of drugs.

Fourth, we have seen an increase in the number of individuals who are incarcerated for drug offenses. Minnesota's prison population has increased from 5,485 in 1995 to 10,090 in 2015, which is an 84 percent increase. During the same time period, the prison population for drug offenses increased from 704 to 1,911, which is a 171 percent increase.¹³ Commissioner Roy has indicated that our state prison facilities are full.

Impact: MSGC staff estimates that the adopted proposal would have a long-term prison-bed savings of 523 beds, and that 76 offenders would shift from a prison sentence to probation supervision. The complete impact analysis is in Appendix 2.3, on page 91.

¹² For a detailed explanation of how the adjusted severity level's sentences were derived from actual sentencing data, refer to "Explanation of Staff-Proposed Durations in Proposed Severity Level D9," retrieved January 11, 2016, at <http://go.usa.gov/cnFXe>.

¹³ See "Drug Sentencing Reform Compromise Proposal," Attachment 4, showing Minnesota's prison population by offense type from 1998 to 2015. Source: Minn. Dep't of Corrections adult inmate profiles, retrieved July 30, 2015, at <http://www.doc.state.mn.us/PAGES/index.php/about/statistics/>.

B. Non-Legislative Modifications to Consecutive Sentencing Policies

Description: The Commission adopted a motion on a vote of 9 to 1 to modify the consecutive sentencing policy.

Adopted Modifications: The Commission adopted uniform standards establishing how consecutive supervised release terms are to be served when two sentences are consecutively executed at the same time, at different times, or when the offender had already been placed on supervised release for the earlier sentence. The adopted modifications also limit the circumstances under which consecutive sentences are presumptive. Finally, the Commission adopted technical and clarifying changes to the Guidelines and commentary with respect to consecutive sentencing policy.

Discussion: The Guidelines provide circumstances in which two sentences may be sentenced consecutively to each other. Consecutive terms of imprisonment are straightforward: one is served immediately after the other. Consecutive supervised release terms are less straightforward. Currently, Minnesota Sentencing Guidelines comment 2.F.02 describes the manner in which consecutive supervised release terms were intended to be served: aggregated, and served after the end of the aggregated term of imprisonment. The Commission learned, however, that the Department of Corrections, unable to construe mere commentary as binding, enforces consecutive supervised release terms in a different manner, resulting in actual sentences that differ from what sentencing courts—relying on the Guidelines—may have anticipated. To eliminate this confusion, the Commission adopted proposed modifications to the Guidelines.

In cases where two consecutive sentences are imposed on the same day by the same sentencing court, the modifications move the existing policy—to aggregate the consecutive terms of imprisonment and the consecutive supervised release terms—from the commentary to the Guidelines themselves. The modifications also establish separate policies for those situations when consecutive sentences are imposed and executed at different times, or when the offender is given a consecutive sentence after already starting to serve the first term of supervised release.

The Commission made other changes to consecutive sentencing policy as well. Most of these were technical, but one change limited the circumstances under which consecutive sentences would be presumptive. Under the current rule, when an offender commits an offense on supervised release, consecutive sentencing is presumptive unless concurrent sentencing is longer. By requiring the sentencing court to determine which sentence would be longer, this rule puts the court in the difficult (and arguably improper) position of speculating as to what disciplinary sanction the Department of Corrections will impose for committing the new offense while on supervised release. The

new rule will remove this conflict by eliminating presumptive consecutive sentencing for offenders on supervised release or conditional release.

Impact: If the changes to consecutive supervised release policies are permitted to take effect, preliminary estimates from the Department of Corrections (DOC) do not project an appreciable impact to prison beds and/or supervision caseloads within the next four years. The impact to prison beds and/or supervision caseloads beyond the next four years has not been estimated.

DOC staff are projecting an immediate fiscal impact on the DOC to ensure accurate reflection of court-imposed sentences, as they relate to release and supervision dates, in the DOC Correctional Operations Management System (COMS). The significant information-technology programming changes required could take an estimated 9 to 18 months to complete, at an estimated cost between \$196,000 and \$392,000, with a mid-range estimate of \$294,000, distributed between FY2017 and FY2018.

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.¹⁴ 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 16,000 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 email and telephone assistance for judges, attorneys, and probation officers in determining appropriate presumptive

¹⁴ Beginning in 2006, first-degree murder offenses were included in the Commission's data. Previously, only attempted first-degree murder and conspiracy to commit first-degree murder had been included. First-degree murder has a mandatory life sentence; the presumptive sentence is not determined by the Sentencing Guidelines. It was decided to include first-degree murder in the Commission's data following the Legislature's creation of life sentences for certain sex offenses in 2005. The MSGC now maintains data on all life sentences pronounced.

sentences. On average, the staff fielded nearly 200 phone calls per month in 2015; the majority of which were questions from practitioners about the application of the Guidelines.

In 2015, staff trained 300 practitioners in eight 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. These trainings allow Commission staff to focus the training on a single topic, giving practitioners a more in-depth view of advanced policies. It also allowed Commission staff to train large groups in Greater Minnesota while avoiding the time and expense of travel. MSGC training staff has also made available recorded training sessions that practitioners can access when their schedule permits, making the training more accessible to all practitioners. MSGC staff also served as faculty at the 2015 Criminal Justice Institute. All of the above services are offered in an effort to promote the accurate application of the Guidelines.

Website

The Commission's website receives an average 3,800 visits each month, up 34 percent over the previous year. The website includes easily accessible email signup for upcoming trainings, public hearing notices, and Commission meeting notices. One-click data requests makes getting sentencing information quick and 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 2015, MSGC staff responded to over 250 data requests totaling a little more than 600 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.

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 and the Prison Population Task Force.

Fiscal/Racial-Impact Statements

During the 2015 Legislative Session, staff provided 43 fiscal impact statements for introduced legislation during the 2015 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.

In 2008, the staff of the Minnesota Sentencing Guidelines Commission began providing the Minnesota Legislature racial-impact notes on proposed crime bills when a disparate impact was anticipated. When MSGC staff identifies a disparate racial impact in the course of preparing a required fiscal impact statement, it sends a racial-impact note to the chairs of the crime committees in the Senate and the House. This is done separately from the required fiscal-impact statements. In April 2015, staff formalized the criteria and process for conducting racial impact statements.¹⁵

During the 2015 Legislative Session, one legislative policy change met the new criteria for preparing a racial-impact statement: Senate File 878, Amendment SCS0878A550, added ammunition to the provisions prohibiting certain persons from possessing firearms. For felons with a prior conviction for a crime of violence, possession of ammunition is now subject to the same 5-year mandatory minimum as possession of a firearm. The policy change was enacted May 22, 2015.¹⁶

The racial-impact statement¹⁷ concluded that, compared to the racial disparity now existing in Minnesota's felony and prison populations, it appeared the enacted amendment will exacerbate the racial disparity of both the offender population and the prison population for black offenders.

¹⁵ The document describing the agency's criteria and process for conducting racial impact statements is available at <http://go.usa.gov/cNEPe> (retrieved Jan. 5, 2016).

¹⁶ Amendment SCS0878A550 was a floor amendment to an amendment to Senate File No. 878, 89th Minnesota Legislature, adopted Apr. 23, 2015, which, as further amended, was enacted on May 22, 2015. The provisions relevant to this statement are 2015 Minn. Laws ch. 65, art. 3, §§ 18, 26, & 28.

¹⁷ The full statement is available at <http://go.usa.gov/cNmaA> (retrieved Jan. 5, 2016).

2014 Sentencing Practices Data Summary

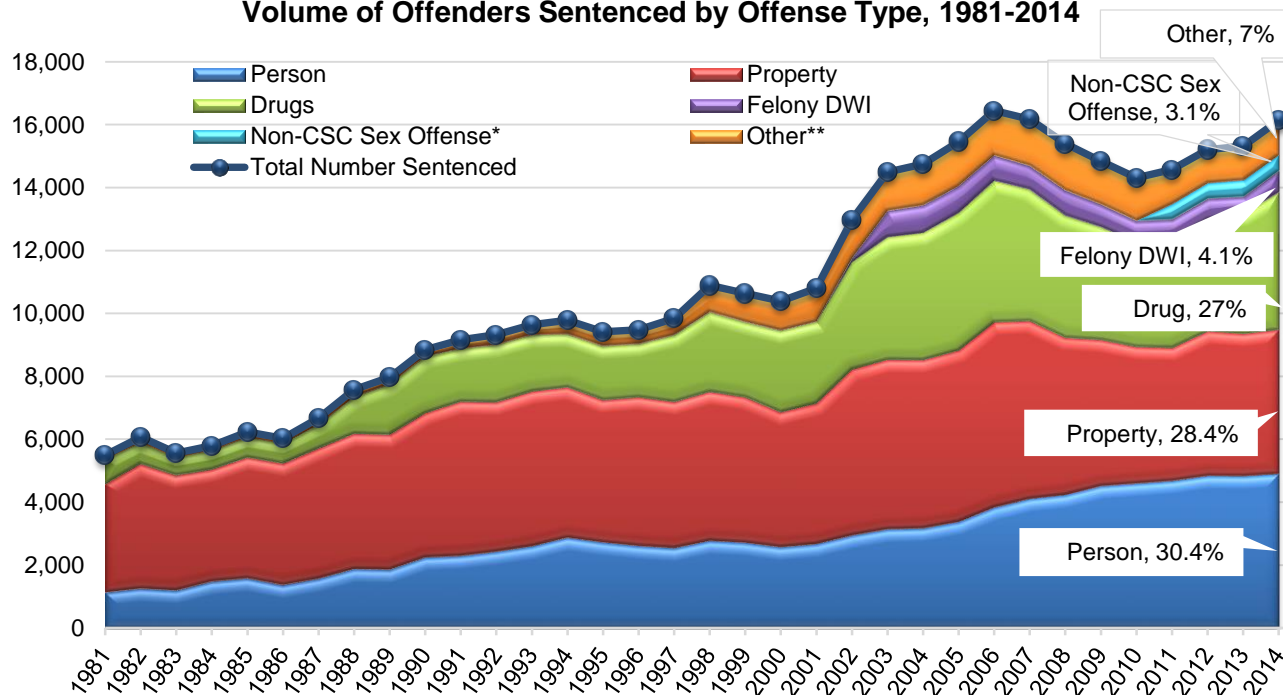
The following data summarize information about sentencing practices and case volume and distribution. The recommended sentence under the Guidelines is based primarily on the severity of the offense of conviction and secondarily on the offender's criminal record. The majority of offenders receive the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

In Minnesota, sentencing of felony offenders is governed by the Sentencing Guidelines. It is 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 16,145 felony offenders in 2014, an increase of 5.4 percent from 2013. As a proportion of all offenders sentenced, person offenders accounted for 30.4 percent (4,905 offenders) and property accounted for 28.4 percent (4,589 offenders) (Figure 1).

Figure 1. Total Number of Offenders Sentenced and Volume of Offenders Sentenced by Offense Type, 1981-2014

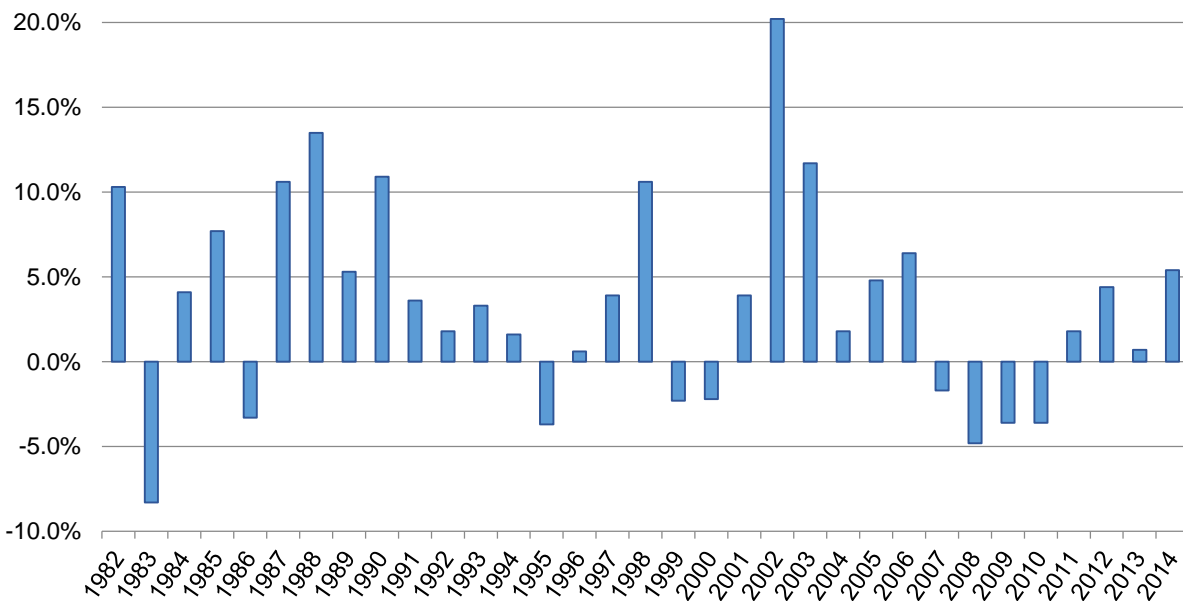


* See note 18 below.

** See note 19 below.

The number of offenders sentenced for felony convictions grew significantly between 2001 and 2006 (Figure 2). This growth 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. Significant growth also occurred from 2010 to 2014 (Figure 2), when the overall volume of felony offenders increased by 13 percent. This is attributable to the growth in drug offenders at 31 percent (again, particularly methamphetamine cases), non-CSC sex offenders¹⁸ at 17 percent, and “other”¹⁹ offenders at 18 percent (Figure 3). The specific offense that contributed the most to the growth in the “other” category was possession of a firearm by a felon convicted of a crime of violence, which grew from 234 offenders in 2010 to 371 offenders in 2014, a 59 percent growth rate.

Figure 2. Percent Change in Number of Offenders Sentenced for Felony Convictions, 1982-2014



By comparison, the overall crime rate for “index crimes”²⁰ has fluctuated over time. It had declined in the five years prior to 2012, then grew by 0.7 percent. The rates in both 2013 and 2014 represented declines. The 2014 rate—2,531 crimes per 100,000 residents—represents a decrease of 4.6 percent from the 2013 rate.²¹ In 2014, 12,352 “violent crimes”²⁰ were reported in Minnesota, a decrease of 0.1 percent from the 12,469 violent crimes reported in 2013.

¹⁸ “Non-CSC sex offenses” are offenses on the sex offender grid other than criminal sexual conduct (chiefly failure to register as a predatory offender and possession and dissemination of child pornography).

¹⁹ “Other” category: 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.

²⁰ “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. Obtained July 2015, at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2014-MN-Crime-Book.pdf>, p.11.

²¹ State of Minnesota, Department of Public Safety. 1995 to 2014 Uniform Crime Reports. Obtained July 2015, at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Pages/uniform-crime-reports.aspx>.

Figure 3 shows the percent change, by offense type, in the number of offenders sentenced between 2001 and 2014. Between 2013 and 2014, the number of offenders sentenced decreased slightly for non-person sex offenses, while the number of offenders sentenced increased for all other categories. Felony DWI offenses grew the most, with an increase of 28.6 percent.

Figure 3. Year-by-Year Percent Change by Offense Type, 2001-2014

Year Sentenced	Total (All Offenses)	Person	Property	Drug	Felony DWI	Non-CSC Sex Offenses ²²	Other ^{23,24}
2001	3.9%	3.8%	4.2%	0.0%			13.3%
2002	20.2%	10.4%	17.9%	31.9%			16.3%
2003	11.7%	6.2%	2.4%	13.8%			2.2%
2004	1.8%	1.1%	-0.8%	3.6%	6.2%		6.2%
2005	4.8%	6.4%	2.0%	8.1%	-3.0%		7.6%
2006	6.4%	13.7%	7.9%	2.7%	-5.5%		1.1%
2007	-1.7%	7.3%	-4.0%	-7.1%	-6.7%		3.7%
2008	-4.8%	2.9%	-11.5%	-6.9%	6.0%		-0.1%
2009	-3.6%	6.6%	-7.0%	-7.7%	-9.6%		-7.0%
2010	-3.6%	2.0%	-6.8%	-7.0%	-5.3%	3.1%	-2.7%
2011	1.8%	1.7%	-2.4%	2.5%	-1.0%	9.9%	17.1%
2012	4.4%	3.5%	8.8%	4.2%	-4.4%	4.0%	-2.8%
2013	0.7%	-0.1%	-1.7%	7.6%	-19.2%	4.6%	2.0%
2014	5.4%	1.4%	1.3%	14.2%	28.6%	-2.1%	1.8%

Distribution of Offenders by Gender, Race/Ethnicity and Judicial District

Males have always accounted for more than 80 percent of the felony offenders in Minnesota (Table 1). In 2014, 82 percent of the offenders sentenced were male and 18 percent were female, a slight increase from 2013 (16.5%). Figure 6 shows the racial and ethnic composition of the felony offender population from 1981 through 2014. 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 non-white offenders (particularly Hispanic offenders) has also increased over time.

The percent of offenders who are black decreased slightly from 26.4 percent in 2013 to 25.8 percent in 2014. The percent who are white increased slightly from 58 percent to 58.5 percent. The percent who are American Indians increased, while the percent who are Hispanic or Asian remained similar to that seen in 2013.

²² See note 18.

²³ See note 19.

²⁴ "Other" includes DWI before 2004 and non-CSC sex offenses before 2010.

Figure 6. Distribution of Felony Offenders by Race/Ethnicity, 1981-2014

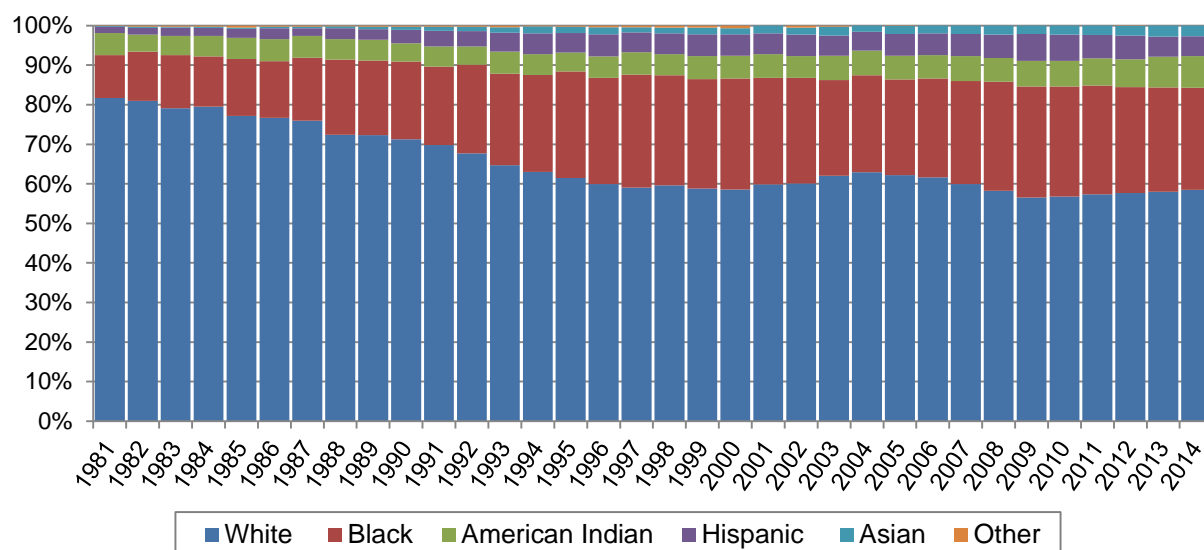
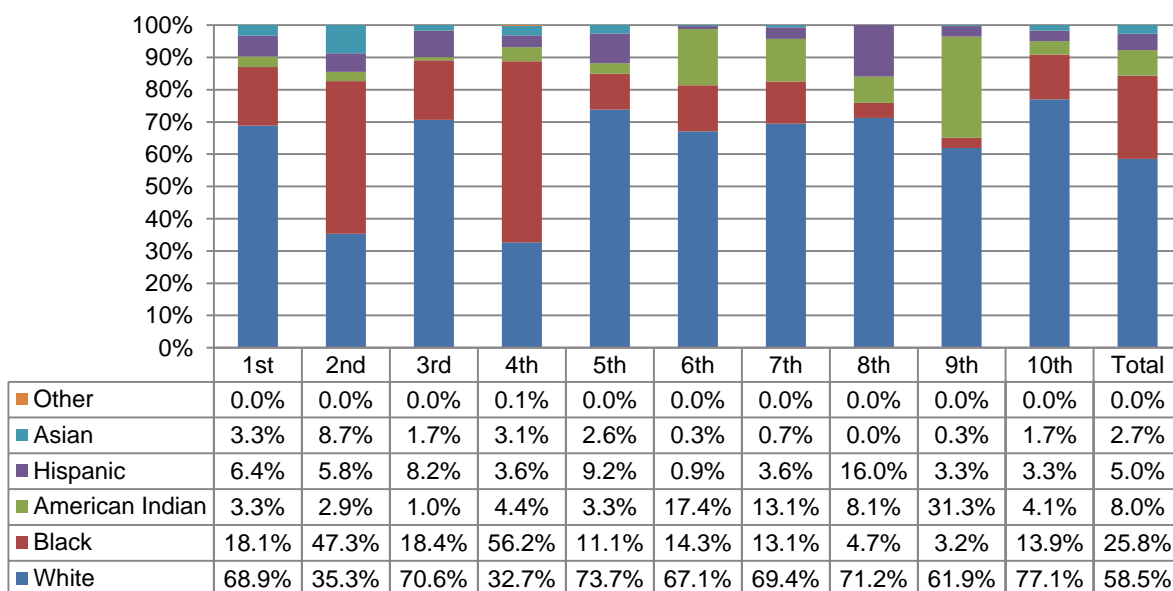


Figure 7 displays the 2014 distribution of the racial and ethnic composition by Minnesota Judicial District. The largest populations of black offenders are in the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County). These districts include the cities of St. Paul and Minneapolis.

Figure 7. Distribution of Felony Offenders by Race and Judicial District, 2014



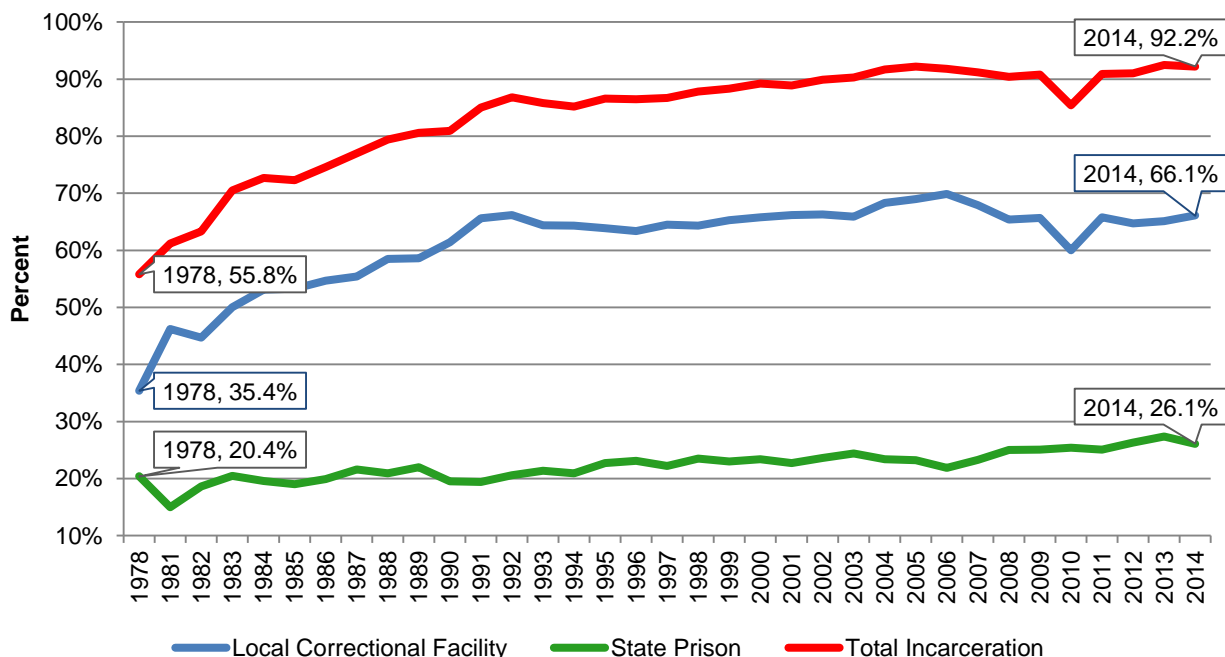
Incarceration Rates

Under Minn. Stat. § 609.02, a felony sentence must be at least 366 days long.

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. There are no specific Guidelines to the court regarding the imposition of these intermediate sanctions.²⁵

In 2014, 92.2 percent of felony offenders served some time in a local correctional facility or prison setting (*Total Incarceration*, Figure 8). Slightly over 66 percent served time in a local correctional facility as part of their stayed sentence (*Local Correctional Facility*, Figure 8) while a little over 26 percent were sentenced to a Minnesota Department of Corrections (DOC) prison facility (*State Prison*, Figure 8), which is reflected in the overall incarceration rate of 92.2 percent. The imprisonment rates for 2012 to 2014 were the three highest rates observed since the Guidelines were implemented.

Figure 8. Total Incarceration Rates: 1978, 1981-2014



²⁵ While the Commission is authorized to establish, within the Sentencing Guidelines, sanctions for offenders for whom imprisonment is not proper (Minn. Stat. § 244.09, subd. 5), it has chosen not to develop specific Guidelines for the sanctions and other conditions of stayed sentences. The determination of such sanctions and conditions is left to district courts, with general guidance provided in Minnesota Sentencing Guidelines § 3.A.2.

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 2014. 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/Ethnicity

The total incarceration rate varies somewhat across racial groups (ranging from 91% for white offenders to 94.5% for black offenders). Greater variation by race exists in the separate rates for prison and local confinement. White offenders were imprisoned at the lowest rate (22.7%) whereas black offenders were imprisoned at the highest rate (31.9%).

Judicial District

Variation was also observed in incarceration rates by Judicial District. (Refer to Appendix 1 for a map of the state's ten judicial districts.) The Second Judicial District (Ramsey County) had the highest total incarceration rate (99.3%) and the Third Judicial District (southeast Minnesota) had the lowest total incarceration rate (81.1%). This variation continues with respect to the separate rates for prison and local confinement. The Fourth Judicial District (Hennepin County) had the highest imprisonment rate (31%), and the First Judicial District (south metro) had the lowest imprisonment rate (20.8%). With regard to use of local confinement, the Tenth Judicial District (north metro) had the highest rate (72.7%), and the Third Judicial District had the lowest rate (55.5%).

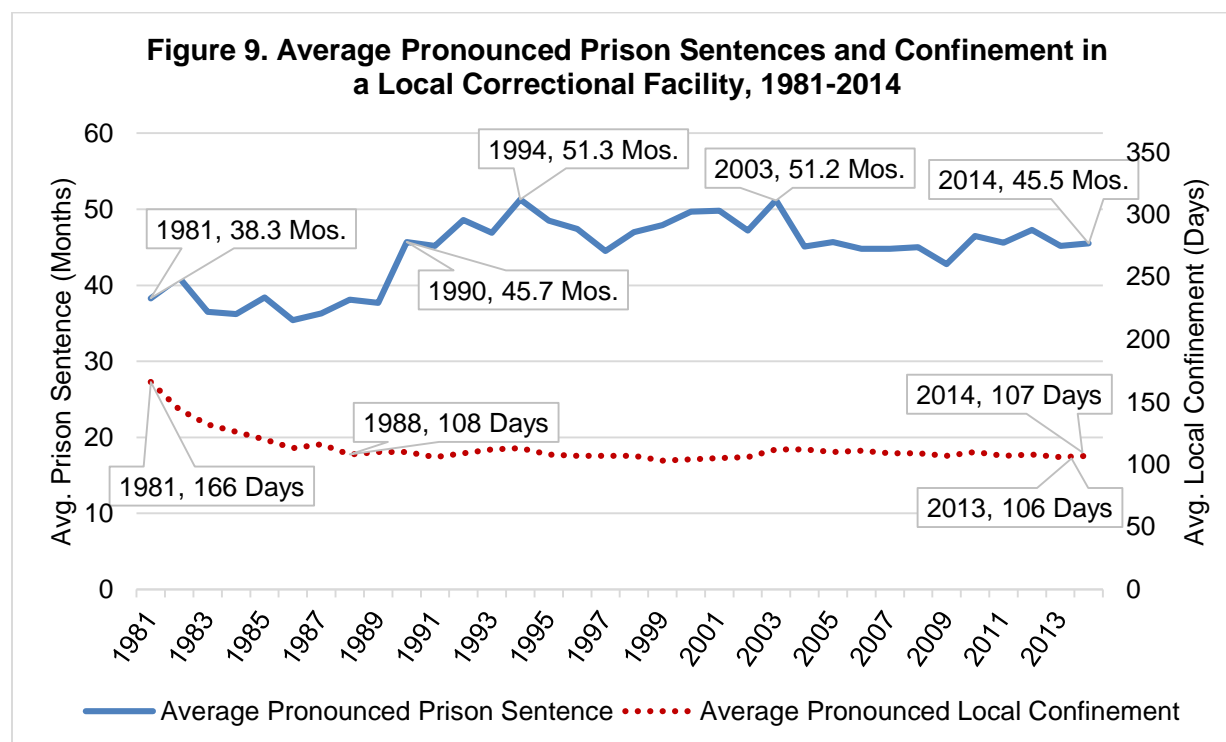
Table 1. Total Incarceration Rates by Gender, Race / Ethnicity, and Judicial District, 2014

		Total Cases	Total Incarceration		State Prison		Conditional Confinement	
Gender	Male	13,219	12,352	93.4%	3,839	29.0%	8,517	64.4%
	Female	2,926	2,540	86.8%	379	13.0%	2,161	73.9%
Race/ Ethnicity	White	9,443	8,592	91.0%	2,140	22.7%	6,455	68.4%
	Black	4,163	3,933	94.5%	1,328	31.9%	2,606	62.6%
	American Indian	1,296	1,198	92.4%	401	30.9%	797	61.5%
	Hispanic	802	754	94.0%	241	30.0%	513	64.0%
	Asian	439	413	94.1%	108	24.6%	305	69.5%
	Other/Unknown	2	2	100.0%	0	0.0%	2	100.0%
Judicial District	First	1,864	1,688	90.6%	388	20.8%	1,300	69.7%
	Second	2,008	1,994	99.3%	538	26.8%	1,456	72.5%
	Third	1,264	1,025	81.1%	324	25.6%	701	55.5%

		Total Cases	Total Incarceration		State Prison		Conditional Confinement	
Judicial District	Fourth	3,192	2,975	93.2%	988	31.0%	1,988	62.3%
	Fifth	871	807	92.7%	198	22.7%	609	69.9%
	Sixth	967	820	84.8%	224	23.2%	596	61.6%
	Seventh	1,708	1,657	97.0%	500	29.3%	1,158	67.8%
	Eighth	430	403	93.7%	107	24.9%	298	69.3%
	Ninth	1,510	1,286	85.2%	408	27.0%	878	58.1%
	Tenth	2,331	2,237	96.0%	543	23.3%	1,694	72.7%
Total		16,145	14,892	92.2%	4,218	26.1%	10,678	66.1%

Average Pronounced Prison Sentences and Confinement in a Local Correctional Facility

The average pronounced prison sentence in 2014 was 45.5 months, a slight increase over 2013 (Figure 9). 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 increased—in some cases, doubled—recommended prison sentences for higher severity-level offenses. The average amount of local confinement pronounced as an interim sanction was 107 days in 2014, compared to 106 days in 2013 (Figure 9). The average has remained largely constant since 1988.



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, most sentences pronounced by the court are based on judicial acceptance of plea agreements between prosecutors and defendants after victim input. 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. In 2014, prosecutors did not object to at least 61 percent of mitigated dispositional departures, nor to at least 75 percent of mitigated durational departures.²⁶ 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.

When there is departure from the presumptive sentence, the court is required to submit substantial and compelling reasons for the departure to the Commission.²⁷ Along with reasons for departure, the court may supply information about the position of the prosecutor regarding the departure. In 2014, the Commission received departure reasons and/or information about the position of the prosecutor—disclosed in either a departure report or a sentencing order—in 95 percent of the cases involving a departure. In 2014, 97 percent of felony convictions were settled without a trial. The Commission recognizes the need to balance the importance of plea agreements with the goals of the Guidelines. In the case of a plea agreement, the Commission asks courts to explain the underlying reasons for the plea agreement or for the court’s acceptance of it.²⁸

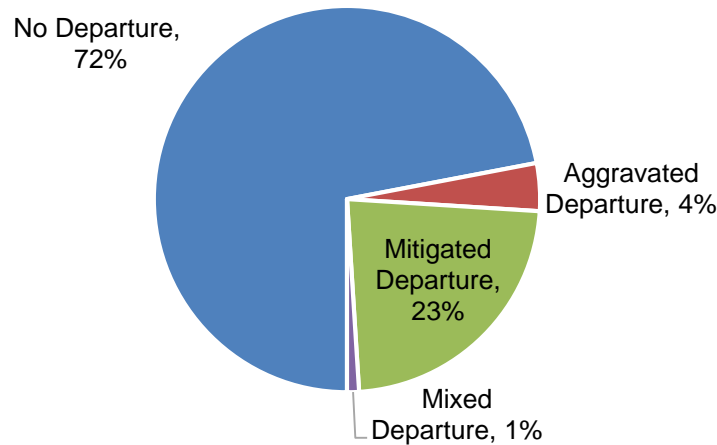
²⁶ See figures 13 and 15 on pages 34 and 37.

²⁷ Minn. R. Crim. P. 27.03, subd. 4(C). The reasons for departure may also be stated in the sentencing order. The reasons must disclose the particular substantial and compelling circumstances that made the departure more appropriate than the presumptive sentence. Minn. Sentencing Guidelines § 2.D.1.(c).

²⁸ See Minn. Sentencing Guidelines comment 2.D.104 (“Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the Guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to make informed policy decisions or to ensure consistency, proportionality, and rationality in sentencing. Departures and their reasons highlight both the success and problems of the existing Guidelines. When a plea agreement involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain its reasons for accepting the negotiation.”).

In 2014, 72 percent of all felony offenders sentenced received the presumptive Guidelines sentence. The remaining 28 percent received some type of departure (Figure 10).

Figure 10. Combined Dispositional and Durational Departure Rates, 2014



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 an executed prison sentence. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence.

In 2014, the combined mitigated and aggravated dispositional departure rate was approximately 16 percent: 12 percent mitigated and almost four percent aggravated (Figure 11). Most aggravated dispositional departures (87% in 2014) 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 historically included these cases in the departure figures because, for the given offense, the sentence is not the presumptive Guidelines sentence.²⁹ If requests for prison are not included in the analysis, the aggravated dispositional departure rate—as a measure of judicial compliance—is less than one percent (Figure 11, Inset). Because aggravated dispositional departures represent such a small

²⁹ Effective with the 2015 modifications to Minnesota Sentencing Guidelines § 2.D.1, a sentence that is executed pursuant to an offender’s right to demand execution will no longer be considered an aggravated dispositional departure. None of the cases in this report fell within the scope of the amended rule.

percentage of cases, the remainder of this analysis will focus on mitigated dispositional departures.

**Figure 11. Dispositional Departure Rates
with and without Requests for Prison from Defendant, 2014**

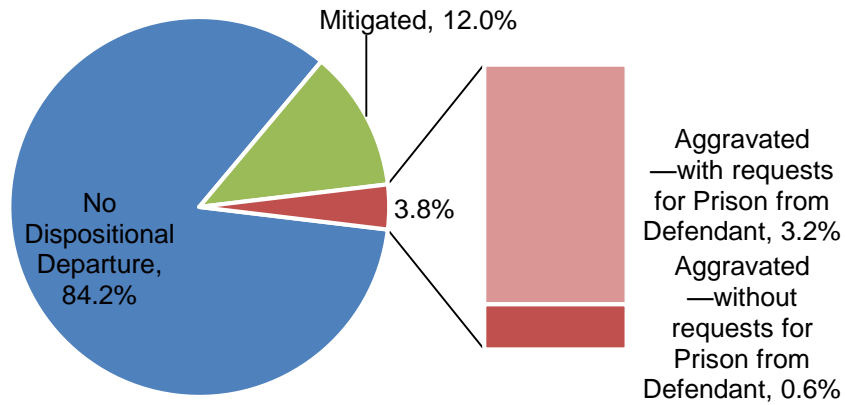


Table 2 illustrates dispositional departure rates based on presumptive disposition by gender, race, and judicial district. The aggravated dispositional departure rate for offenders recommended a stayed sentence (“Presumptive Stays”) was 5.7 percent. The mitigated dispositional departure rate for offenders who were recommended prison (“Presumptive Commits”) was 34.9 percent.

The mitigated dispositional departure rate for presumptive prison cases is higher for women (54%) than men (32.9%). When examined by racial composition, the mitigated dispositional departure rate ranged from a low of 27.9 percent for American Indian offenders to a high of 38.5 percent for white offenders. There was also variation in the rate by Minnesota Judicial District, ranging from lows of 28.8 percent in the Eighth District (includes the City of Willmar) and 29.2 percent in the Seventh District (includes the cities of Moorhead and St. Cloud) to a high of 42.7 percent in the Sixth Judicial District (includes the cities of Duluth, Hibbing, and Virginia). When reviewing Table 2, note that the observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced and criminal history scores of offenders across racial groups or across regions.

Table 2. Dispositional Departure Rates by Gender, Race/Ethnicity, and Judicial District, 2014

		Total Cases	Presumptive Stays			Presumptive Commits		
			Total	Aggravated Dispositional Departure		Total	Mitigated Dispositional Departure	
				No.	Rate		No.	Rate
Gender	Male	13,219	8,204	473	5.8%	5,015	1,649	32.9%
	Female	2,926	2,389	132	5.5%	537	290	54.0%
Race/ Ethnicity	White	9,443	6,585	383	5.8%	2,858	1,101	38.5%
	Black	4,163	2,368	112	4.7%	1,795	579	32.3%
	American Indian	1,296	834	68	8.2%	462	129	27.9%
	Hispanic	802	493	26	5.3%	309	94	30.4%
	Asian	439	311	16	5.1%	128	36	28.1%
	Other/ Unknown	2	2	0	0.0%	0	0	0.0%
Judicial District	First	1,864	1,330	72	5.4%	534	218	40.8%
	Second	2,008	1,245	51	4.1%	763	276	36.2%
	Third	1,264	863	58	6.7%	401	135	33.7%
	Fourth	3,192	1,845	97	5.3%	1,347	456	33.9%
	Fifth	871	612	44	7.2%	259	105	40.5%
	Sixth	967	623	27	4.3%	344	147	42.7%
	Seventh	1,708	1,099	69	6.3%	609	178	29.2%
	Eighth	430	305	18	5.9%	125	36	28.8%
	Ninth	1,510	1,038	91	8.8%	472	155	32.8%
	Tenth	2,331	1,633	78	4.8%	698	233	33.4%
Total		16,145	10,593	605	5.7%	5,552	1,939	34.9%

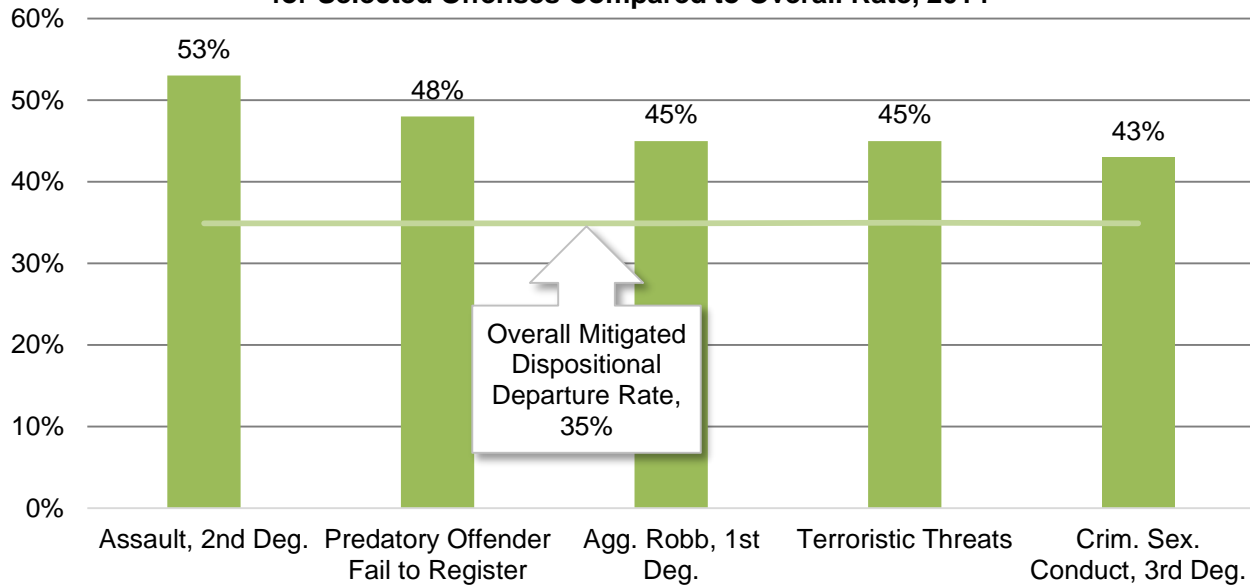
Dispositional departure rates vary for the type of offense. Figure 12 displays the offenses with the highest rates of mitigated dispositional departure compared to the overall rate of 35 percent, and Figure 13 displays the position of the prosecutor as cited by the court.³⁰ In all offense categories, amenability to probation and amenability to treatment were the most frequently cited substantial and compelling reasons for departure recorded.

In 61 percent of all mitigated dispositional departures in 2014, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 14 percent of these cases, the court stated that the prosecutor objected to the

³⁰ The offenses were selected based on criteria that there were 50 or more "presumptive commitment" cases and the mitigated dispositional departure rate was over 40 percent.

departure (Figure 13, “Overall”). The court did not supply information on the prosecutor’s position in 25 percent of these departures.

Figure 12. High Mitigated Dispositional Departure Rates for Selected Offenses Compared to Overall Rate, 2014



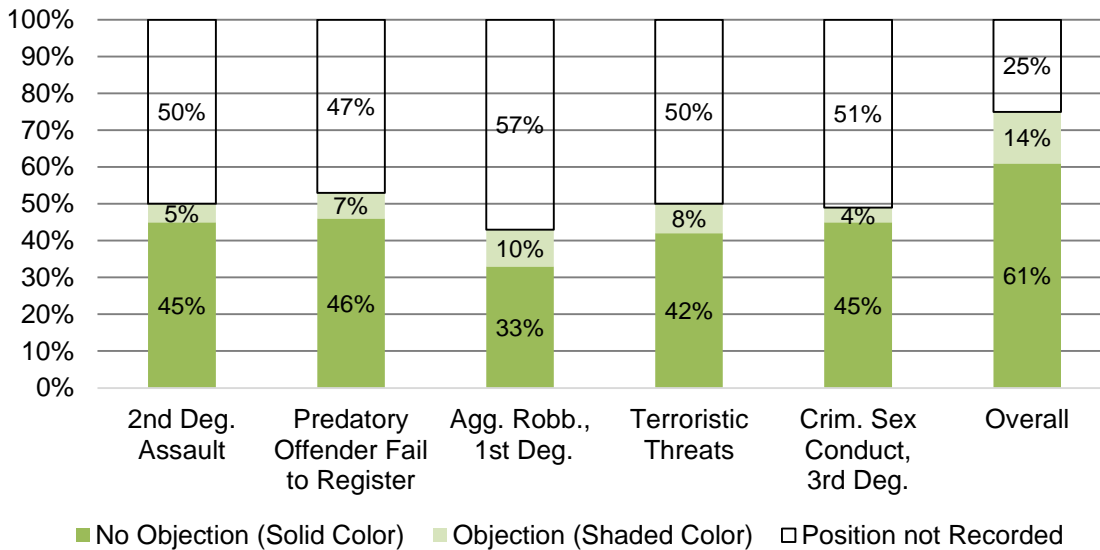
Two of the selected³¹ offenses in Figures 12 and 13, assault in the second degree and failure to register as a predatory offender, have mandatory minimum sentences specified in statute, with provisions allowing for departure from those mandatory minimums.

Assault in the second degree, by definition, involves the use of a dangerous weapon and therefore carries a mandatory minimum prison sentence (Minn. Stat. § 609.11, subds. 4, 5 & 9). The second-degree assault statute proscribes a broad range of misbehavior: Injury to the victim may or may not occur, and 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 present (Minn. Stat. § 609.11, subd. 8). It is perhaps unsurprising to find many departures in the sentencing of 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)).

³¹ See note 30 for selection criteria.

Figure 13. High Mitigated Dispositional Departure Rates, Court-Cited Position of Prosecutor for Selected Offenses, 2014



Note: Departure reports do not always include information on the prosecutor's position, which is why the colored segments do not add up to 100% for each offense.

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 2014, the mitigated durational departure rate for offenders receiving executed prison sentences was lower than observed in 2013, at approximately 26 percent (26.1% compared to 27.3%). The aggravated durational departure rate increased slightly, from 2.5 percent in 2013 to 2.8 percent. The trend in lower aggravated durational departure rates since the mid-2000s likely 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), which required a jury to find all facts—other than the fact of a prior conviction or those facts agreed to by the defendant—used to enhance a sentence under mandatory sentencing guidelines.³²

³² The Minnesota Supreme Court determined that *Blakely's* jury requirements applied to aggravated departures under the Minnesota Sentencing Guidelines. *State v. Shattuck*, 704 N.W.2d 131 (Minn. 2005). For a discussion of the mechanics of aggravated departures, see page 38.

In response to the *Blakely* decision, the 2005 Legislature widened the ranges on the Standard Grid to 15 percent below and 20 percent above the presumptive fixed sentenced, 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 offenders and offenders with prior criminal history records.³³

Table 3 illustrates durational departure rates for executed prison sentences by gender, race/ethnicity, and Minnesota Judicial District. The mitigated durational departure rate for males sentenced in 2014 was higher than for females (26.7% vs. 20.3%). When the departure rate is examined by racial and ethnic composition, the rate varies from a low of 17.7 percent for American Indian offenders to a high of 38.0 percent for Asian offenders. There is also considerable variation in mitigated durational departure rates by Minnesota Judicial District, ranging from a low of 6.5 percent in the Eighth Judicial District to a high of 51.1 percent in the Fourth Judicial District.

When reviewing the information in Table 3, it is important to note that the observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced and criminal history scores of offenders across racial groups or across regions.

Table 3. Durational Departures by Gender, Race, and Judicial District, Executed Prison Sentences Only, 2014

		Executed Prison	Total Durational Dep. Rate	Executed Prison Sentences Only					
				No Departure		Aggravated Durations		Mitigated Durations	
Gender	Male	3,839	29.5%	2,705	70.5%	110	2.9%	1,024	26.7%
	Female	379	22.2%	295	77.8%	7	1.8%	77	20.3%
Race/ Ethnicity	White	2,140	22.5%	1,659	77.5%	52	2.4%	429	20.0%
	Black	1,328	41.1%	782	58.9%	43	3.2%	503	37.9%
	American Indian	401	20.9%	317	79.1%	13	3.2%	71	17.7%
	Hispanic	241	26.6%	177	73.4%	7	2.9%	57	23.7%
	Asian	108	39.8%	65	60.2%	2	1.9%	41	38.0%
	Other/Unk.	0	---	---	---	---	---	---	---
Judicial District	First	388	20.6%	308	79.4%	14	3.6%	66	17.0%
	Second	538	37.7%	335	62.3%	14	2.6%	189	35.1%
	Third	324	11.4%	287	88.6%	4	1.2%	33	10.2%
	Fourth	988	55.1%	444	44.9%	39	3.9%	505	51.1%
	Fifth	198	20.7%	157	79.3%	5	2.5%	36	18.2%
	Sixth	224	25.4%	167	74.6%	10	4.5%	47	21.0%
	Seventh	500	22.6%	387	77.4%	3	0.6%	110	22.0%
	Eighth	107	7.5%	99	92.5%	1	0.9%	7	6.5%
	Ninth	408	11.3%	362	88.7%	6	1.5%	40	9.8%
	Tenth	543	16.4%	454	83.6%	21	3.9%	68	12.5%
Total		4,218	28.9%	3,000	71.1%	117	2.8%	1,101	26.1%

³³ For a deeper 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/reports/>.

As with dispositional departures, it can be helpful to look at offenses with higher than average durational departure rates. Figure 14 displays offenses with the highest durational departure rates and Figure 15 displays the position of the prosecutor as cited by the court.³⁴

Aggravated durational departure rates were highest for assault in the first degree and murder in the second degree. Mitigated durational departure rates were highest for controlled substance crime in the first degree, failure to register as a predatory offender, aggravated robbery in the first degree, terroristic threats (a crime now known as “threats of violence”), and certain persons prohibited from possessing a firearm (“Felon with Gun”).

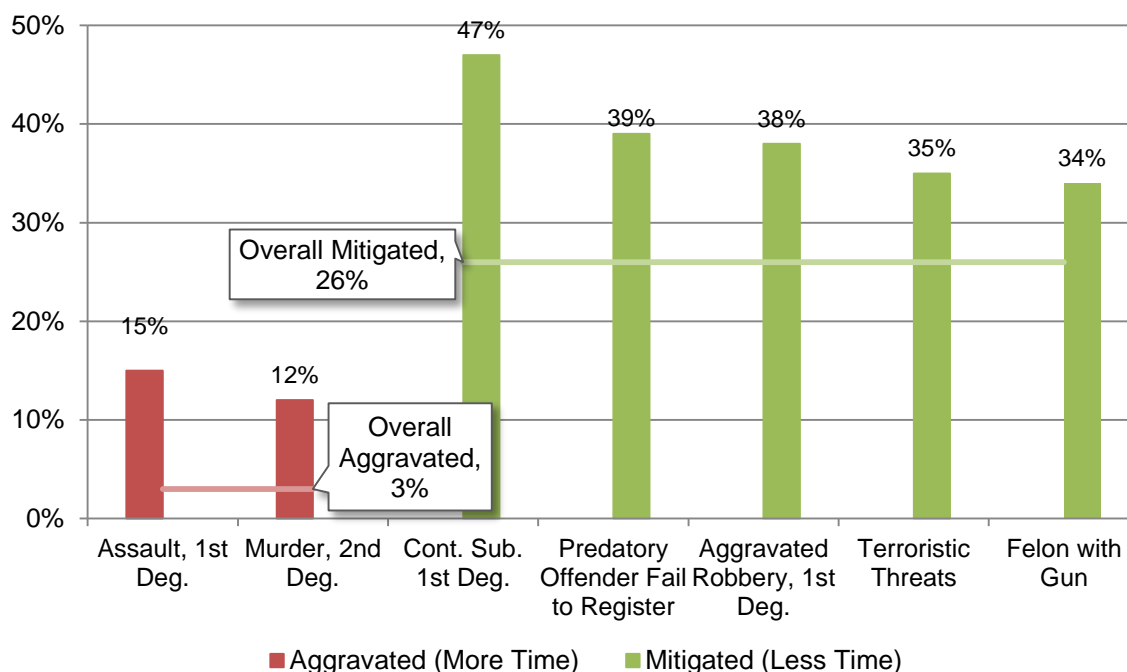
In 75 percent of all mitigated durational departures in 2014, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure (Figure 15, “Overall”). In six percent of these cases, the court stated that the prosecutor objected to the departure. In 19 percent of the mitigated durational departures, the court did not provide information on the position of the prosecutor.

In 64 percent of all aggravated durational departures in 2014, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 36 percent of the aggravated durational departures, the court did not provide information on the position of the prosecutor. There were no cases in which the court stated that the prosecutor objected to the aggravated durational departure.

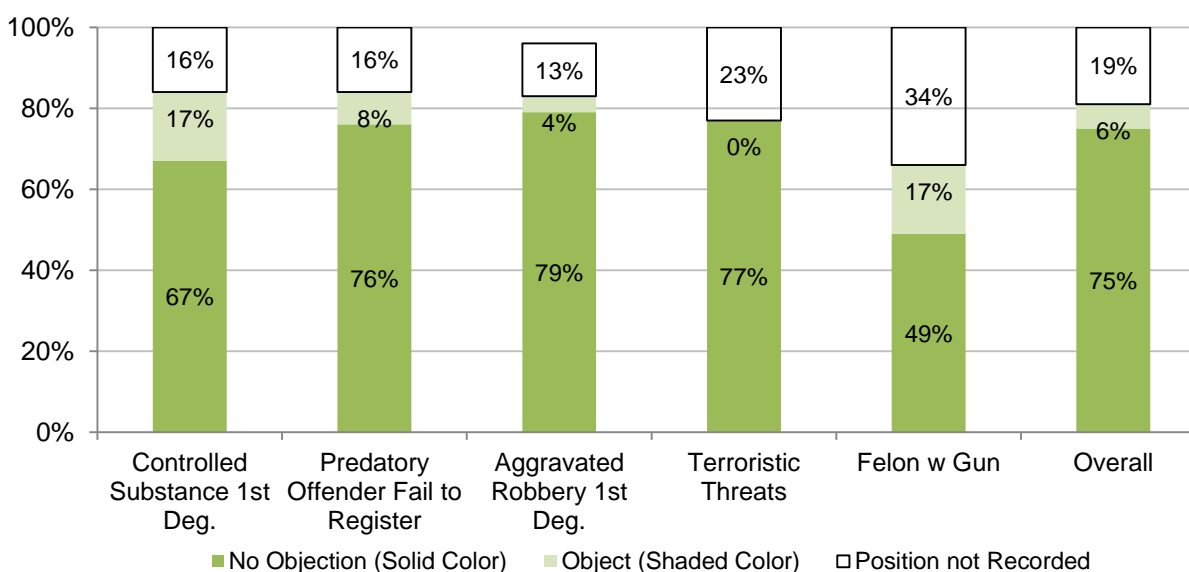
The discussion on page 33 regarding mandatory minimums applies here: The mandatory minimum provisions applicable to two of the high-durational-departure crimes—certain persons prohibited from possessing a firearm (“Felon with Gun”) and failure to register as a predatory offender—allow for sentencing without regard to the mandatory minimum prison term (Minn. Stat. §§ 609.11, subd. 8, & 243.166, subd. 5(d)), and the wide variety of ways in which both crimes can be committed may lend themselves to the application of discretion in prosecutorial or judicial sentencing practice.

³⁴ Selected based on criteria that there were 40 or more executed prison sentences and the aggravated durational departure rate was 10 percent or more, or the mitigated durational departure rate was 34 percent or more.

**Figure 14. High Durational Departure Rates for Selected Offenses Compared to the Overall Rate, 2014
(Executed Prison Sentences Only)**



**Figure 15. High Mitigated Durational Departure Rates for Selected Offenses Compared to the Overall Rate, Court-Cited Position of Prosecutor, 2014
(Executed Prison Sentences Only)**



Note: Departure reports do not always include information on the prosecutor's position, which is why the colored segments do not add up to 100% for each offense.

Mechanics of Aggravated Departures

The Minnesota Sentencing Guidelines contain a list of aggravating factors that may be used, under substantial and compelling circumstances, as reasons to support an aggravated departure. The non-exclusive list contains fifteen different aggravating factors.³⁵ Two of those factors—major economic offense and major controlled substance offense—contain their own lists of circumstances that support that particular factor.

In terms of procedural protections afforded to a criminal defendant, an aggravating factor is treated much like an element of the crime itself.³⁶ The prosecutor must notify the defendant of the aggravating factor, disclose evidence related to the aggravating factor, and prove the existence of the aggravating factor to a jury.³⁷ The defendant may challenge the aggravating factor before trial, and, unless a jury finds the aggravating factor at trial, must admit the facts supporting the aggravating factor, or permit the judge to find those facts, before the aggravating factor may be used to sentence.³⁸ As a result of these procedural requirements, the rates of aggravated departures—demands for executed sentence excepted—have been quite low, as discussed on page 34.

For example, in 2000, the Commission amended the list to include the following bias-related aggravating factor, now found in § 2.D.3.b.(11) of the Sentencing Guidelines:

The offender intentionally select[ed] the victim or the property against which the offense [was] committed, in whole or in part, because of the victim's, the property owner's[,], or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age or national origin.

In the fifteen years since this bias-related aggravating factor was created, the Commission has record of its use in only two aggravated departures.³⁹ The first sentencing occurred in 2002, and the second in 2004, a few months after the *Blakely* decision.

³⁵ Minn. Sentencing Guidelines § 2.D.3.b.

³⁶ For legal background, including a discussion of the *Blakely* case, see note 32 and accompanying text.

³⁷ Minn. R. Crim. P. 7.03, 9.01, subd. 1(7), & 26.03.

³⁸ Minn. R. Crim. P. 11.04, subd. 1, & 26.01.

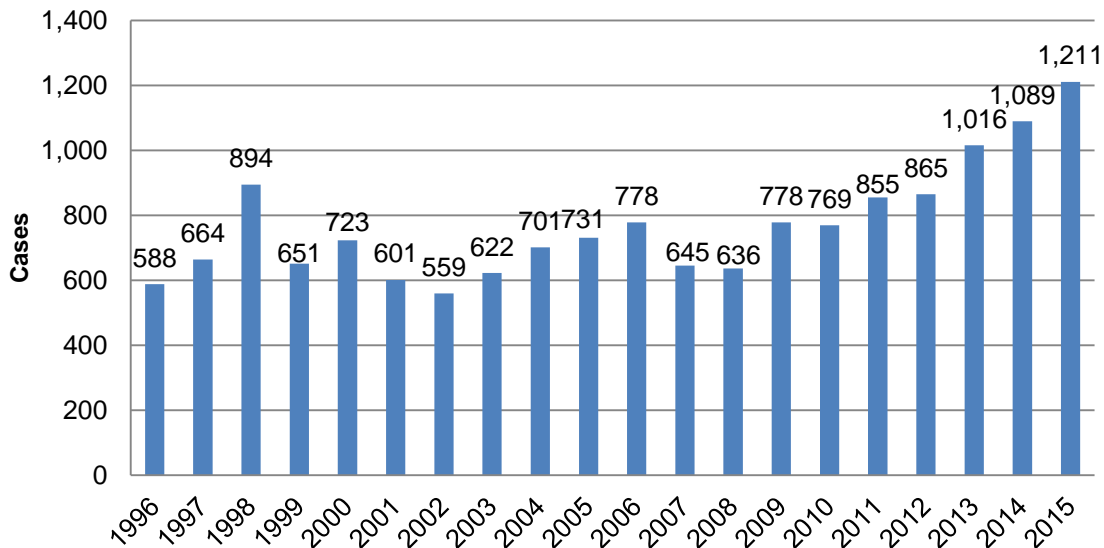
³⁹ The factor may have been used in other cases in which the prosecution ultimately did not obtain an aggravated departure. It is also possible that the factor was used, but omitted from the departure report, by the sentencing court.

County Attorney Firearms Reports

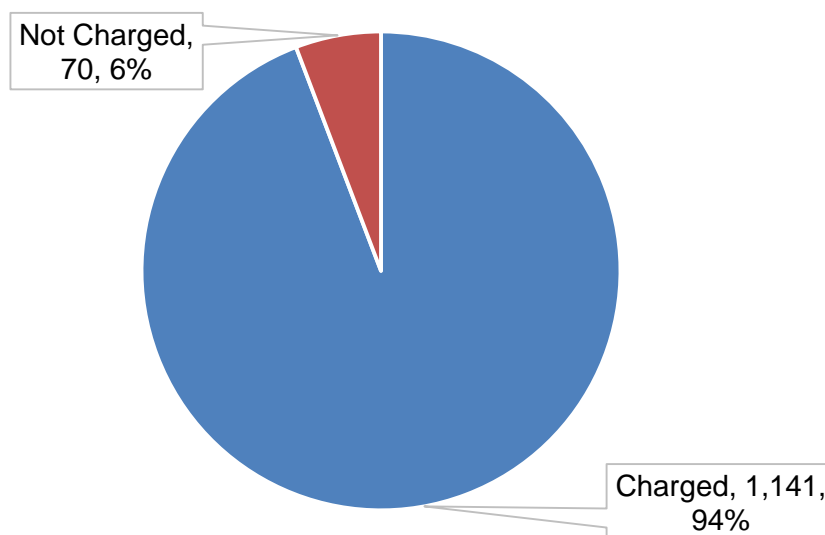
Current law requires all county attorneys in Minnesota, by July 1 of each year, to submit to the Commission its data regarding felony cases in which defendants allegedly possessed or used a firearm and committed offenses listed in Minn. Stat. § 609.11, subdivision 9.⁴⁰ The Commission is required to include 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 MSGC staff to County attorneys. Although MSGC 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 769 yearly. Between July 1, 2014 and June 30, 2015 (FY 2015), there were 1,211 cases allegedly involving a firearm (Figure 17). This was an 11 percent increase (122 cases) over the 1,089 cases reported in FY 2014. As shown in Figure 18, of those 1,211 cases, prosecutors charged 1,141 cases (94%) while 70 cases (6%) were not charged.

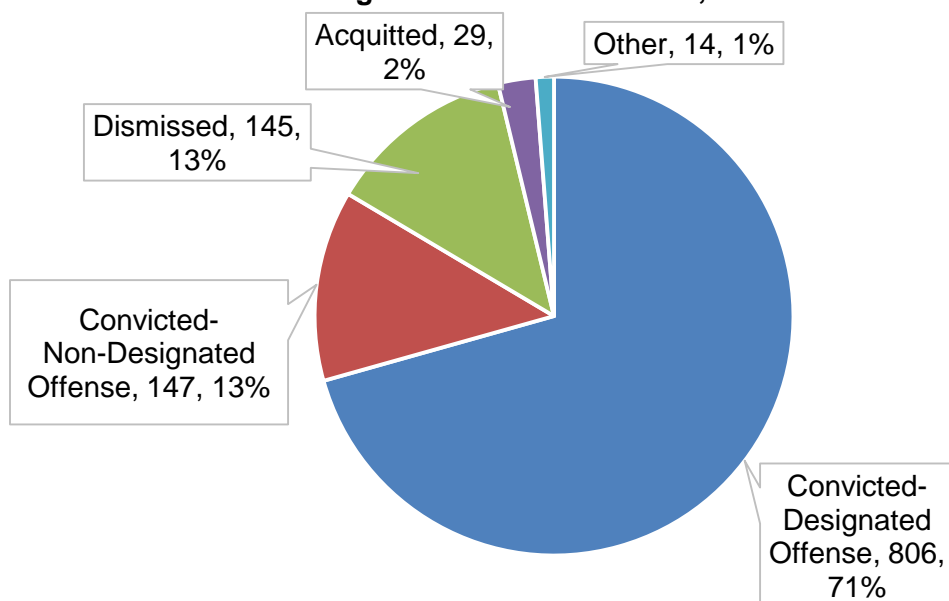
**Figure 17. Cases Allegedly Involving a Firearm
1996 to 2015**



⁴⁰ 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 18. Cases Charged, 2015

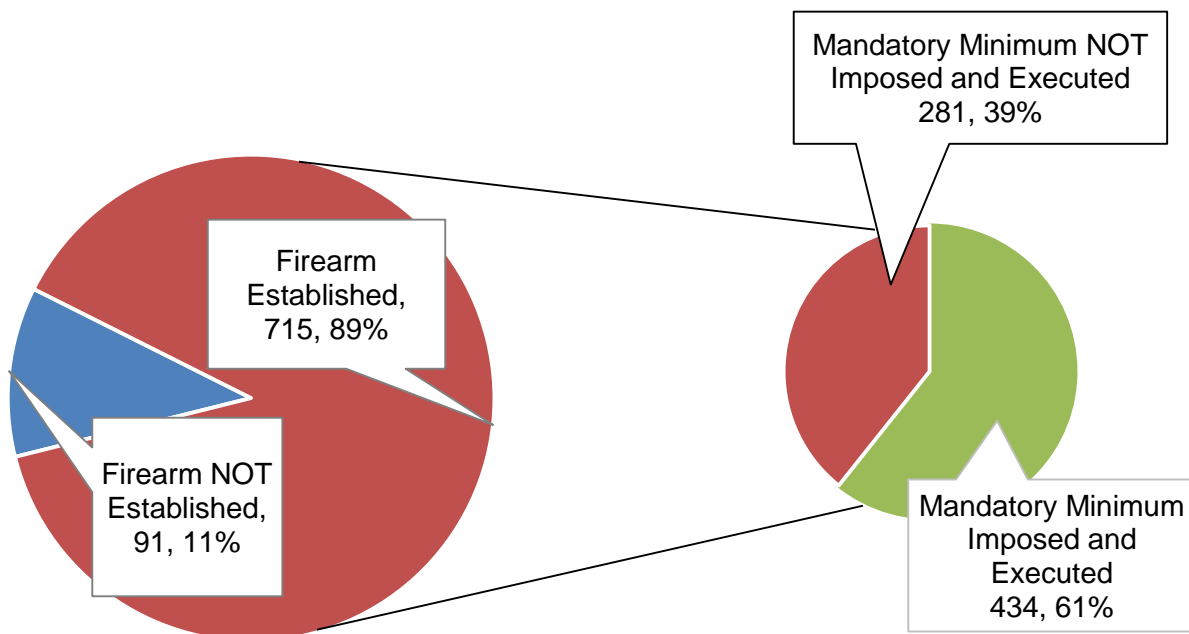
Of the 1,141 cases charged, 806 (71%) were convicted of offenses designated in Minn. Stat. § 609.11; 147 (13%) were convicted of offenses not covered by the mandatory minimum (e.g., threats of violence under Minn. Stat. § 609.713); 145 (13%) had all charges dismissed; 29 (2%) were acquitted on all charges; and 14 (1%) were “other” cases including federal prosecutions and stays of adjudication (Figure 19).

Figure 19. Case Outcomes, 2015

In 715 (89%) of the 806 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 20). 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, 434 offenders (61%)⁴¹ were sentenced to the mandatory minimum prison term (Figure 20, 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 20. Cases Convicted of Designated Offense,
Firearm Established on the Record (Inset), 2015**



⁴¹ County attorneys' data for fiscal year 2015 (ending June 30, 2015). According to MSGC monitoring data from calendar year 2014, of those offenders whose sentencing worksheets reflected the use or possession of a firearm requiring a mandatory prison sentence under Minn. Stat. § 609.11, 43 percent (297 offenders) received both the mandatory prison disposition and the mandatory minimum duration. In addition, 19 percent (129 offenders) received the mandatory prison disposition, but less than the mandatory minimum duration.

Table 4. County Attorney Firearms Reports on Criminal Cases Allegedly, Involving a Firearm by MN County, Cases Disposed from July 1, 2014 to June 30, 2015

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	10	10	7	7	5
Anoka	49	49	31	31	22
Becker	7	3	1	1	0
Beltrami	19	12	11	11	11
Benton	13	12	6	5	5
Big Stone	1	1	0	0	0
Blue Earth	6	6	4	2	2
Brown	9	9	6	1	0
Carlton*	---	---	---	---	---
Carver	1	1	1	1	1
Cass	13	13	5	3	2
Chippewa	4	4	2	2	2
Chisago	2	2	1	1	1
Clay	2	2	1	0	0
Clearwater	7	7	6	6	5
Cook	1	1	0	0	0
Cottonwood	1	1	0	0	0
Crow Wing	0	0	0	0	0
Dakota	50	48	35	35	23
Dodge	0	0	0	0	0
Douglas	8	8	4	4	4
Faribault	0	0	0	0	0
Fillmore	3	3	2	2	2
Freeborn	0	0	0	0	0
Goodhue	4	4	2	2	0
Grant	0	0	0	0	0
Hennepin	382	382	281	281	175
Houston	1	1	1	1	0
Hubbard	1	1	1	1	1
Isanti	3	3	2	2	0
Itasca	27	20	14	14	4
Jackson	0	0	0	0	0
Kanabec	20	6	3	1	0
Kandiyohi	7	5	4	4	3
Kittson	0	0	0	0	0
Koochiching	0	0	0	0	0
Lac Qui Parle	1	1	1	1	0
Lake	3	2	2	2	1

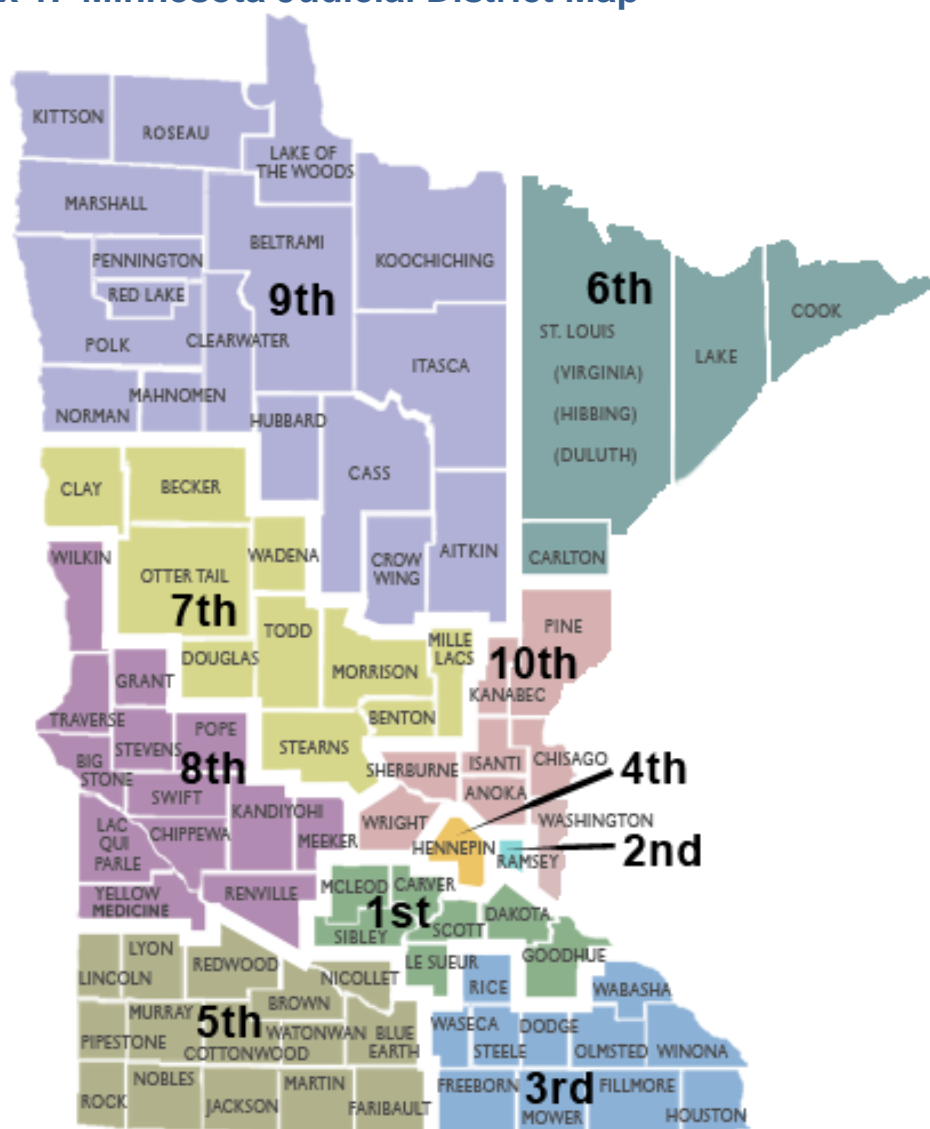
* Not reported as of January 11, 2016.

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
Lake of the Woods	4	4	3	3	2
Le Sueur	4	4	4	3	1
Lincoln*	---	---	---	---	---
Lyon*	---	---	---	---	---
McLeod	4	4	2	2	2
Mahnomen	0	0	0	0	0
Marshall	10	10	10	10	5
Martin	1	1	1	1	0
Meeker	70	67	49	0	0
Mille Lacs	36	35	15	11	7
Morrison	7	7	7	7	2
Mower	11	11	9	7	6
Murray	0	0	0	0	0
Nicollet	1	1	0	0	0
Nobles	5	4	1	0	0
Norman	1	1	1	1	1
Olmsted	20	12	5	4	4
Otter Tail	3	1	1	1	0
Pennington	4	4	1	1	1
Pine	2	2	1	0	0
Pipestone	1	1	0	0	0
Polk	12	12	12	12	5
Pope	2	2	2	0	0
Ramsey	144	144	110	110	59
Red Lake	3	3	1	1	1
Redwood	0	0	0	0	0
Renville	2	0	0	0	0
Rice	17	17	11	9	3
Rock	0	0	0	0	0
Roseau	9	9	2	0	0
Scott	14	14	12	12	10
Sherburne	20	20	14	11	11
Sibley	0	0	0	0	0
St. Louis	50	48	36	34	20
Stearns	29	29	24	22	11
Steele	3	3	1	1	1
Stevens	0	0	0	0	0
Swift	1	1	0	0	0
Todd	0	0	0	0	0
Traverse*	---	---	---	---	---
Wabasha	4	4	3	1	1
Wadena	17	4	4	4	1

* Not reported as of January 11, 2016.

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
Waseca	1	1	0	0	0
Washington	23	23	19	16	9
Watonwan	1	1	1	1	1
Wilkin	0	0	0	0	0
Winona	11	11	7	7	0
Wright	9	9	3	2	1
Yellow Medicine	0	0	0	0	0
Total	1,211	1,141	806	715	434

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

Appendix 2.1. Adopted Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2015

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

A. New Legislation (New Offense from the 2015 Legislative Session)

The Commission reviewed one felony offense that was newly enacted by the 2015 Legislature, and adopted severity-level rankings, as follows.

- **Wrongful Employment at a Child Care Center**

Reference: 2015 Minn. Laws ch. 78, § 59; Minn. Stat. § 609.52 (2014).

Description: A new felony for wrongful employment at a child care center was codified at Minn. Stat. § 609.816. This applies to persons who require child care center applicants or employees to have one or more children who are eligible for or receive child care assistance. The crime is punishable under the theft penalty provisions in Minn. Stat. § 609.52, subd. 3, clauses (1) to (5), which range from misdemeanor to felony depending on the monetary value of the theft.

Adopted Modifications: Add “609.816, Wrongful Employment at a Child Care Center” to the Theft Offense List in § 7, and reference the new offense in § 5.B at Severity Level 3 (Over \$5,000) and Severity Level 2 (\$5,000 or less), as follows.

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
<u>609.816</u>	<u>Wrongful Employment at a Child Care Center (Over \$5,000)</u>	<u>3</u>
<u>609.816</u>	<u>Wrongful Employment at a Child Care Center (\$5,000 or Less)</u>	<u>2</u>

* * *

Section 7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes (\$5,000 or less and over \$5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

- Severity Level 2. When the monetary value of the Theft Crime is \$5,000 or less, the penalty statute is Minn. Stat. § 609.52, subdivision 3(3)(a).
- Severity Level 3. When the monetary value of the Theft Crime is over \$5,000, the penalty statute is Minn. Stat. § 609.52, subdivision 3(2).

* * *

Statute Number	Offense Title
<u>609.816</u>	<u>Wrongful Employment at a Child Care Center</u>

* * *

B. Modified Legislation—Modified Offenses from the 2015 Legislative Session

The following are felony offenses (unless otherwise noted) modified by the 2015 Legislature. In some cases, the modifications expanded definitional statements; in others, the modifications expanded the scope of the offense. For each item listed below, taking the modification into consideration, the Commission decided if the Guidelines needed amending including whether offenses should be re-ranked and whether there should be any modifications to the permissive consecutive offense list in Guidelines § 6.

1. Extended Protection and Mandatory Minimum, Fourth-Degree Assault

Reference: 2015 Minn. Laws ch. 23 § 1; Minn. Stat. § 609.2231 (2014).

Description: Fourth-degree assault protections were extended to employees supervising and working directly with mentally-ill and dangerous patients by modifying Minn. Stat. § 609.2231, subd. 3a.

Adopted Modifications: 1) Maintain Severity Level 1 ranking in § 5 because the statutory maximum remained two years; 2) keep assault in the fourth degree on the list of offenses in § 6 which are eligible for permissive consecutive sentences; 3) update fourth-degree assault offense titles, as listed in § 5.B, to reflect statutory changes to fourth-degree assault enacted since 2004; 4) update Appendix 1; and 5) revise the footnote in § 5.B pertaining to fourth-degree assault. The adopted modifications follow.

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.2231 subd. 1	Assault 4th Degree (Bodily Harm, Peace Officer)	1
609.2231 subd. 2	Assault 4th Degree (Bodily Harm, Firefighters and Emergency Medical Personnel)	1
609.2231 subd. 3	Assault 4th Degree (Bodily Harm, Corrections Employee, Prosecutor, Judge, Probation Officer)	1 *
609.2231 subd. 3a	Assault 4th Degree (Bodily Harm, Secure Treatment Facility Personnel)	1 *

* See section 2.C and Appendix 1 to determine the presumptive disposition for a ~~felony~~ assault committed by an ~~State prison inmate serving an executed term of imprisonment~~ or for assault on secure treatment facility personnel by persons committed to the Minnesota Sex Offender Program.

* * *

Appendix 1. Mandatory and Presumptive Sentences Reference Table

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

* * *

Statute	Offense	Prerequisite or Conditions	Minimum Duration
609.221, 609.222, 609.223, = 609.2231 or 609.224	Assault <u>1st through 5th Degree</u>	Committed by <u>State prison inmate while confined</u> (609.2232) Must commit during "Term of	Grid Time, <u>Consecutive</u>

Statute	Offense	Prerequisite or Conditions	Minimum Duration
		Imprisonment" portion of executed sentence	
<u>609.2231, subd. 3a(b)</u>	<u>Assault 4th Degree</u>	<u>Committed by person committed to the Minnesota Sex Offender Program</u>	<u>Grid Time</u>

* * *

2. Engage or Hire Minor to Engage in Prostitution Elements Revised

Reference: 2015 Minn. Laws ch. 65, art. 6, §§ 11-12; Minn. Stat. § 609.324 (2014).

Description: The prostitution statute was modified making the hiring of an adult prostitute a felony if the patron reasonably believes the prostitute to be a child under Minn. Stat. § 609.324, subd. 1(c). The fact that an undercover operative or law enforcement officer was involved is not a defense.

No modifications to the Guidelines were proposed.

3. Fifth-Degree Criminal Sexual Conduct Elements Revised

Reference: 2015 Minn. Laws ch. 65, art. 6, § 14; Minn. Stat. § 609.3451 (2014).

Description: Fifth-degree criminal sexual conduct (CSC 5) under Minn. Stat. § 609.3451, subd. 1, was expanded to include intentionally touching the body or clothing with semen.

No modifications to the Guidelines were proposed.

4. Change Offense Title to Include Ammunition, Certain Persons Not to Have Firearms

Reference: 2015 Minn. Laws ch. 65, art. 3, §§ 16-20, 26, & 33; Minn. Stat. §§ 609.02, 609.11, 609.165, 624.713, & 624.715 (2014).

Description: A definition for ammunition under Minn. Stat. § 609.02, subd. 17, was added. Persons who are not allowed to possess firearms are not allowed to possess ammunition, and felons previously convicted of a crime of violence who do so are subject to the 5-year mandatory minimum prison sentence under Minn. Stat. § 609.11.

Adopted Modifications: Modify §§ 5.A, 5.B, comment 2.E.03, and Appendix 2, to add “or Ammunition” after “Certain Persons Not to Have Firearms” in the existing offense titles, as follows.

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
6	Certain Persons Not to Have Firearms <u>or Ammunition</u>	624.713, subd. 2(b); 609.165, subd. 1b
3	Dangerous Weapons/Certain Persons Not to Have Firearms <u>or Ammunition</u>	609.67, subd. 2; 624.713, subd. 2(a)

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.165 subd. 1b	Certain Persons Not to Have Firearms <u>or Ammunition</u>	6
624.713 subd. 2(a)	Certain Persons Not to Have Firearms <u>or Ammunition</u>	3
624.713 subd. 2(b)	Certain Persons Not to Have Firearms <u>or Ammunition</u>	6

* * *

2.E.03. *Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: Assault in the Second Degree under Minn. Stat. § 609.222; Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b; Drive-By Shootings under Minn. Stat. § 609.66; and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under*

*Minn. Stat. § 609.749, subd. 3(a)(3). The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is longer. * * **

Appendix 2. Dangerous Weapons Offense Reference Table

* * *

Dangerous Weapons – Minn. Stat. § 609.11			
Statute	Offense	Prerequisite or Conditions	Minimum Duration
609.11, subd. 5(b)	Certain Persons not to have Firearms <u>or Ammunition</u>	Current conviction under Minn. Stat. § 609.165 or Minn. Stat. § 624.713 subd. 1(2)	60 Months

* * *

5. Change Offense Title, Firearm Suppressor

Reference: 2015 Minn. Laws ch. 65, art. 3, §§ 19-20; Minn. Stat. § 609.66 (2014).

Description: The bill permits firearm suppressors (formerly known as “silencers”) to be possessed if lawfully possessed under federal law. The bill also amends the title of the reckless discharge offense under Minn. Stat. § 609.66 by striking “silencers” and inserting “suppressors.” The law clarifies that it is lawful to carry a firearm in the Capitol area provided there was an issuance of a permit to carry.

Adopted Modifications: Modify §§ 5.A and 5.B to strike “silencer” and add “suppressor” in the existing offense titles, as follows.

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
2	Firearm Silencer <u>Suppressor</u>	609.66 subd. 1a(a)(1)

Severity Level	Offense Title	Statute Number
3	Firearm Silencer Suppressor (Public Housing, School or Park Zone)	609.66 subd. 1a(a)(1)

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.66 subd. 1a(a)(1)	Firearm Silencer Suppressor	2
609.66 subd. 1a(a)(1)	Firearm Silencer Suppressor (Public Housing, School or Park Zone)	3

* * *

6. Financial Transaction Card Fraud Expanded to Include Trafficking of SNAP Benefits

Reference: 2015 Minn. Laws ch. 78 § 60; Minn. Stat. § 609.52 (2014).

Description: Financial Transaction Card Fraud was amended to include trafficking of Supplemental Nutrition Assistance Program (SNAP) benefits.

No modifications to the Guidelines were proposed.

7. Treat New Gross Misdemeanor Reckless Driving Like Non-Traffic Gross Misdemeanors for Purposes of Criminal History Score

Reference: 2015 Minn. Laws ch. 65, art. 6, § 3; Minn. Stat. § 169.13, subd. 1 (a) (2014).

Description: The crime of reckless driving under Minn. Stat. §169.13, subd. 1 (a) was amended to read: “A person who drives a motor vehicle while aware of and consciously disregarding a substantial and unjustifiable risk that the driving may result in harm to another or another’s property is guilty of reckless driving. The risk must be of such a nature and degree that disregard of it constitutes a significant deviation from the standard of conduct that a reasonable person would observe in the situation.” A new gross misdemeanor is established if a person causes great bodily harm or death to another person.

Adopted Modifications: 1) An offender will receive a custody status point for being in a custody status for gross misdemeanor reckless driving; and 2) an offender will receive one unit for a prior conviction of gross misdemeanor reckless driving. The adopted modifications are as follows.

Section 2.B. Criminal History

* * *

1. Custody Status at the Time of the Offense.

- a. One Custody Status Point. Assign **one** custody status point when the conditions in paragraphs (1) through (3) are met:

* * *

- (1) The offender was under one of the custody statuses in paragraph (1) for one of the following:

- (i) a felony;
- (ii) extended jurisdiction juvenile (EJJ) conviction;
- (iii) non-traffic gross misdemeanor;
- (iv) gross misdemeanor driving while impaired, ~~or~~ refusal to submit to a chemical test, or reckless driving; or
- (v) targeted misdemeanor.

* * *

2. Prior Gross Misdemeanors and Misdemeanors. Prior gross misdemeanor and misdemeanor convictions count as units comprising criminal history points. Four units equal one criminal history point; give no partial point for fewer than four units. Determine units as specified in this section.

- a. General Assignment of Units. If the current conviction is for an offense other than criminal vehicular homicide or operation or felony driving while impaired (DWI), assign the offender one unit for each prior conviction of the following offenses provided the offender received a

stayed or imposed sentence or stay of imposition for the conviction before the current sentencing:

* * *

(4) gross misdemeanor refusal to submit to a chemical test;

(5) gross misdemeanor reckless driving;

(6) a felony conviction resulting in a misdemeanor or gross misdemeanor sentence. * * *

* * *

2.B.205. *The custodial statuses covered by this policy are those occurring after conviction of a felony, non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test, gross misdemeanor reckless driving, or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). Thus, an offender who commits a new felony while on pre-trial diversion or pre-trial release on another charge does not get a custody status point. Likewise, offenders serving a misdemeanor sentence for an offense not on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), do not receive a custody status point, even if the court imposed the misdemeanor sentence upon conviction of a gross misdemeanor or felony.* * * *

* * *

2.B.303. *The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done because, with no limit on point accrual, offenders with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and thus be subject to inappropriately severe sentences upon their first felony conviction. The Commission limited consideration of misdemeanors to particularly relevant misdemeanors under existing state statute. Offenders whose criminal record includes at least four prior sentences for misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), non-*

*traffic gross misdemeanors, gross misdemeanor reckless driving, and gross misdemeanor driving while impaired or refusal to submit to a chemical test are considered more culpable and are given an additional criminal history point. * * **

8. Change Offense Title, Terroristic Threats

Reference: 2015 Minn. Laws ch. 21, art. 1, § 109, subd. 10; Minn. Stat. § 609.713 (2014).

Description: The modification did not affect the criminal provisions, but created the need to change several references in the Guidelines. The headnote of Minn. Stat. § 609.713 was changed from "Terroristic Threats" to "Threats of Violence."

Adopted Modifications: Authorized technical changes to the Guidelines, as follows.

Section 2.C. Presumptive Sentence

** * **

2.C.06. *There are rare instances where the presumptive sentence length exceeds the statutory maximum sentence. If this situation occurs, the statutory maximum sentence becomes the presumptive sentence. For example, Terroristic Threats of Violence under Minn. Stat. § 609.713, subd. 3(a)(1) or (2) carries a statutory maximum sentence of 12 months and 1 day. * * **

Section 2.D. Departures from the Guidelines

** * **

2.D.105. *Under Minn. Stat. § 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the appropriate range on the applicable Grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure.*

In contrast, if the prosecutor amends the charge to a gross misdemeanor or misdemeanor offense prior to conviction, a gross misdemeanor or misdemeanor

*sentence will not be a departure because the sentence will be consistent with the level of the charge. When the prosecutor amends the charge, the prosecutor must amend it to an existing offense. For example, there is no gross misdemeanor version of ~~terroristic threats~~ of violence (Minn. Stat. § 609.713) in statute, so a ~~terroristic threats~~ charge of threats of violence cannot be amended from a felony to a gross misdemeanor. * * **

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
4	Terroristic Threats of Violence (Terror/Evacuation)	609.713, subd. 1
2	Terroristic Threats of Violence (Bomb Threat)	609.713, subd. 2
1	Terroristic Threats of Violence (Replica Firearm)	609.713, subd. 3(a)

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.713, subd. 1	Terroristic Threats of Violence – Violence Threat (Terror/Evacuation)	4
609.713, subd. 2	Terroristic Threats of Violence – (Bomb Threat)	2
609.713, subd. 3(a)	Terroristic Threats of Violence – (Replica Firearm)	1**

** 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. * * *

Section 6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
609.713, subd. 1	Terroristic Threats of Violence – Violence Threat (Terror/Evacuation)
609.713, subd. 2	Terroristic Threats of Violence – (Bomb Threat)
609.713, subd. 3(a)	Terroristic Threats of Violence – (Replica Firearm)

* * *

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

* * *

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.713, subd. 3(a)	Terroristic Threats of Violence – (Replica Firearm)	1	12, and 1 Day	CHS 3

* * *

C. Non-Legislative Modifications

The following are non-legislative modifications to the Guidelines that were adopted by the Commission.

1. Rank Medical Assistance Fraud Over \$35,000 at Severity Level 6

Description: The Guidelines rank particular theft offenses that exceed \$35,000, at a severity level higher than Severity Level 3.

Adopted Modifications: Rank medical assistance fraud over \$35,000 at Severity Level 6, and remove it from the theft offense list, as follows.

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
<u>6</u>	<u>Medical Assistance Fraud (Over \$35,000)</u>	<u>609.466</u>

Severity Level	Offense Title	Statute Number
<u>3</u>	<u>Medical Assistance Fraud (Over \$5,000)</u>	<u>609.466</u>
<u>2</u>	<u>Medical Assistance Fraud (\$5,000 or Less)</u>	<u>609.466</u>

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.466	Medical Assistance Fraud (Over \$35,000)	<u>6</u>
609.466	Medical Assistance Fraud (Over \$5,000)	3
609.466	Medical Assistance Fraud (\$5,000 or Less)	2

* * *

Section 7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes (\$5,000 or less and over \$5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

- Severity Level 2. When the monetary value of the Theft Crime is \$5,000 or less, the penalty statute is Minn. Stat. § 609.52, subdivision 3(3)(a).
- Severity Level 3. When the monetary value of the Theft Crime is over \$5,000, the penalty statute is Minn. Stat. § 609.52, subdivision 3(2).

* * *

Statute Number	Offense Title
609.466	Medical Assistance Fraud

* * *

2. Clarify Application of Guidelines Upon Revocation of Stay of Adjudication

Description: If the initial sentence following felony conviction is commitment to the Commissioner of Corrections and the Guidelines recommend a stayed sentence, the decision to sentence to prison is an aggravated dispositional departure. This is true even if the felony conviction results from the revocation of a previously granted stay of adjudication.

Adopted Modifications: Modify the Guidelines to make it explicit that a revocation of a stay of adjudication to a prison commitment is an aggravated dispositional departure if a stayed sentence is presumptive, as follows.

Section 2.C. Presumptive Sentence

* * *

2.C.10. *Because a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered.** * *

Note: The modifications in the first paragraph of § 2.D.1, below, are intended to clarify the general departure language and are unrelated to stays of adjudication.

Section 2.D. Departures from the Guidelines

1. Departures in General. The sentences ~~ranges~~ provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departuresentence outside the appropriate range on the applicable Grid.

* * *

e. Revoked Stay of Adjudication. When a felony stay of adjudication is

vacated and conviction is entered, the Guidelines must be applied. To the extent that the sentence pronounced immediately following a revocation of a stay of adjudication is contrary to the Guidelines presumptive sentence, that sentence is a departure.* * *

2.D.106. The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and Comment 2.C.10). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and "revocation of a stay of adjudication" will be noted as the reason for departure, unless the court offers another explanation.

* * *

3. Classify Sentence Executed Pursuant to Offender's Right to Demand for Execution As Not a Dispositional Departure

Description: An offender generally has the right to demand execution of sentence.

Adopted Modifications: Modify the Guidelines making it explicit that a sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure, as follows:

Section 2.D. Departures from the Guidelines

1. Departures in General.* * *

- f. Offender's Demand for Execution.** A sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure.* * *

2.D.107. An offender generally has the right to demand execution of sentence. State v. Rasinski, 472 N.W.2d 645, 651 (Minn. 1991); see also Minn. Stat. § 609.135, subd. 7. The Commission does not regard the execution of a presumptively stayed sentence as a departure from the Guidelines if the record, or the Court's communication to the Commission, reflects that the sentence was executed upon the offender's peremptory demand.* * *

3.A.202. While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important

*for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states ~~that~~ when an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration. * * **

4. List Particular Amenability to Probation as Mitigating Factor

Description: The Minnesota Supreme Court emphasized that mere amenability to probation does not justify a departure, but that a defendant must be *particularly* amenable to probation. State v. Soto, 855 N.W.2d 303 (Minn. 2014).

Adopted Modifications: Add to § 2.D.3 regarding mitigating factors that may be used as reasons for departure, as follows.

Section 2.D. Departures from the Guidelines

3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:
 - a. Mitigating Factors. * * *

(7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting. * * *

2.D.303. *The requirement that a defendant be “particularly” amenable to probation ensures that the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances necessary to justify a departure. State v. Soto, 855 N.W.2d 303, 309 (Minn. 2014). While social or economic factors cannot justify a departure, such facts may be relevant to determining whether a defendant is particularly amenable to probation. Id at 312. In determining whether a*

*defendant is particularly suitable to individualized treatment in a probationary setting, for example, a court is permitted to consider the defendant's age, prior record, remorse, cooperation, attitude before the court, and social support. State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982). * * **

2.D.303304. * * *

2.D.304305. * * *

2.D.305306. * * *

2.D.306307. * * *

D. Technical Modifications

The following are technical modifications to the Guidelines that were adopted by the Commission.

1. Update Offense Titles for Criminal Damage to Property

Description: Absent a risk of bodily harm, felony criminal damage to property in the first degree is ranked at Severity Level 2. Criminal damage to property in the second degree involves the intentional causes to damage because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability. Because the descriptive titles in § 5 are incomplete, they may cause confusion.

Adopted Modifications: Update offense titles for damage to property in § 5, as follows.

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
2	Damage to Property (Over \$500/Service to Public, Over \$1,000, Over \$500 and Subsequent)	609.595, subd. 1(2), (3), & (4)

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.595 subd. 1(2)(3)(4)	Damage to Property (Over \$500/Service to Public, Over \$1,000, Over \$500 and Subsequent)	2

* * *

2. Delete Expired Statutory Language Related to Expunged Records

Description: A portion of a comment in § 2.B related to access to expunged records is no longer in effect.

Adopted Modifications: Delete the reference to expired statutory language, as follows.

Section 2.B. Criminal History

* * *

~~**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, in part 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; ...

** * **

Appendix 2.2. Adopted Modifications to the Sentencing Guidelines and Commentary – Effective August 1, 2016

The Minnesota Sentencing Guidelines Commission adopted the following modifications to the Sentencing Guidelines and Commentary related to controlled substance offenses and consecutive sentences.

A. Non-Legislative Modifications to Controlled Substance Offenses

Description: The Commission adopted proposed modifications to the Guidelines relating to the sentencing of drug offenses.

Adopted Modifications: Established a new Drug Offender Grid with recommended prison sentences for first-degree controlled substance (sale) between 65 and 125 months, depending on criminal history. Reduced the severity levels assigned to first-degree controlled substance (possession) and second-degree controlled substance offenses. Added new aggravating factors and a new mitigating factor applicable to controlled substance crimes. The adopted modifications are as follows.

Section 1.B. Definitions

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

* * *

15. Sentencing Guidelines Grids. The “Sentencing Guidelines Grids” (or “Grids”) display presumptive sentences for felony offenses according to the severity level of the offense (vertical axis) and offender’s criminal history score (horizontal axis).

a. Sex Offender Grid. The “Sex Offender Grid” displays the presumptive sentences for criminal sexual conduct, failure to register as a predatory offender, and related offenses as shown on the Sex Offender Grid.

b. Drug Offender Grid. The “Drug Offender Grid” displays the presumptive sentences for controlled substance crime, failure to affix stamp, and related offenses as shown on the Drug Offender Grid.

- c. ~~b. Standard Grid.~~ The "Standard Grid" displays the presumptive sentences for felony offenses not on the Sex Offender Grid or Drug Offender Grid. * * *

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 and drug 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). Drug offenses are arranged on the Drug Offender Grid into ten levels of severity, ranging from high (Severity Level D10) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious.

* * *

Section 2.B Criminal History

* * *

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.

- a. Current Offense on Standard Grid or Drug Offender Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, <u>D1 – D2</u>	$\frac{1}{2}$
	3 – 5, <u>D3 – D5</u>	1
	6 – 8, <u>D6 – D8</u>	1 $\frac{1}{2}$
	9 – 11, <u>D9 – D10</u>	2
	Murder 1 st Degree	2
	A	2
	B – E	1 $\frac{1}{2}$
	F – G	1
	H	$\frac{1}{2}$ (for first offense); 1 (for subsequent offenses)

- b. Current Offense on Sex Offender Grid. If the current offense is on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, <u>D1 – D2</u>	$\frac{1}{2}$
	3 – 5, <u>D3 – D5</u>	1
	6 – 8, <u>D6 – D8</u>	1 $\frac{1}{2}$
	9 – 11, <u>D9 – D10</u>	2
	Murder 1 st Degree	2
	A	3
	B – C	2
	D – E	1 $\frac{1}{2}$
	F – G	1
	H	$\frac{1}{2}$ (for first offense); 1 (for subsequent offenses)

* * *

Section 2.C Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender's criminal history score is computed according to section 2.B above. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence.

Each cell on the ~~Standard Grid and the Sex Offender Grids~~ provides a fixed sentence duration. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence. The shaded areas of the grids do not display ranges. If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, 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. * * *

* * *

Section 2.D Departures from the Guidelines

3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:
 - a. Mitigating Factors.

(1) The victim was an aggressor in the incident.

- (2) The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.
- (3) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.
- (4) The offender's presumptive sentence is a commitment but not a mandatory minimum sentence, and either of the following exist:
 - (a) The current conviction offense is at Severity Level 1 or Severity Level 2 and the offender received all of his or her prior felony sentences during fewer than three separate court appearances; or
 - (b) The current conviction offense is at Severity Level 3 or Severity Level 4 and the offender received all of his or her prior felony sentences during one court appearance.
- (5) Other substantial grounds exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense.
- (6) The court is ordering an alternative placement under Minn. Stat. § 609.1055 for an offender with a serious and persistent mental illness.
- (7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.

(8) In the case of a controlled substance offense conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152 (2014).

b. Aggravating Factors.

* * *

(4) The offense was a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below ~~are~~ is an aggravating factors with respect to the offense:

* * *

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

- (a) the offense involved at least three separate transactions ~~wherein~~ in which controlled substances were sold, transferred, or possessed with intent to ~~do so~~ sell or transfer;
- (b) ~~the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use~~ offender or an accomplice possessed equipment, drug paraphernalia, or monies evidencing the

- offense was committed as part of wholesale trafficking of a controlled substance;
- (c) the offense involved the manufacture of controlled substances for use by other parties;
 - (d) the offender or an accomplice knowingly possessed a firearm or other dangerous weapon, as defined by Minn. Stat. § 609.02, during the commission of the offense;
 - (e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
 - (f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; ~~or~~
 - (g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician or other medical professional);
 - (h) the offense involved separate acts of sale or possession of a controlled substance in three or more counties;
 - (i) the offender has a prior conviction for a crime of violence, as defined in Minn. Stat. § 609.1095, subd. 1(d), other than a violation of a provision under Minn. Stat. chapter 152, including attempt or conspiracy, or was convicted of a similar offense by the United States or another state;
 - (j) the offense involved the sale of a controlled substance to a minor or vulnerable adult; and
 - (k) the defendant, or an accomplice, manufactured, possessed or sold a controlled substance in a school zone, park zone, public housing zone, federal, state, or local correctional facility, or drug treatment facility. * * *

2.D.304. The Commission recognizes that in the medical field the diagnosis “chemically dependent” has been superseded by the diagnosis “substance use

*disorder, mild, moderate or severe.” See The Diagnostic and Statistical Manual of Mental Disorders 5th ed.; (DSM-5); American Psychiatric Association, 2013. Because the chemically dependent diagnosis language remains prevalent in Minnesota Statutes, the Commission has not adopted the new substance use disorder diagnosis language. In the event that the Legislature changes the statutory language, the Commission will take appropriate action. * * **

2.D.304305. * * *

2.D.305306. * * *

2.D.306307. * * *

2.D.307308. * * *

Section 2.E Mandatory Sentence

* * *

2. Specific Statutory Provisions. The following mandatory minimum provisions should be imposed as indicated.

* * *

- c. Subsequent Drug Offenses Involving a Dangerous Weapon. If an offender is sentenced for a second or subsequent drug offense and is subject to Minn. Stat. § 609.11, subd. 5a, the presumptive duration is the longer of either:

- (1) the mandatory minimum sentence for the subsequent drug offense added to the mandatory minimum sentence for the dangerous weapon involvement; or

- (2) the presumptive duration for the subsequent drug offense provided in the appropriate cell on the Standard Drug Offender Grid. * * *

* * *

2.E.05. *Minn. Stat. § 609.11, subd. 5a, states that for a subsequent drug offense involving a weapon, the mandatory minimum duration for the drug offense and the mandatory minimum duration for the weapon offense are added together. The Guidelines presumptive duration is determined by comparing the total sum of the combined mandatory minimums and the duration found in the appropriate cell on the ~~Standard Drug Offender~~ Grid for the subsequent drug offense; the presumptive duration is the longer of the two. For example: A third-degree drug offender with a Criminal History Score of 3 is convicted of a subsequent controlled substance offense and was in possession of a firearm.*

*Mandatory Minimums: 24 months Mand. Min. (Minn. Stat. § 152.023, subd. 3(b))
+ 36 months Mand. Min (Minn. Stat. § 609.11, subd. 5(a))
= 60 months*

vs.

Grid Cell: =39 months (Severity Level D6; Criminal History Score of 3).

** * **

Section 5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law. * * *

Severity Level	Offense Title	Statute Number
9	Controlled Substance Crime 1st Degree	152.021
9	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a(a)
9	Importing Controlled Substances Across State Borders	152.0261
8	Controlled Substance Crime 2nd Degree	152.022

6	Controlled Substance Crime 3rd Degree	152.023
6	Failure to Affix Stamp on Cocaine	297D.09, subd. 1
6	Failure to Affix Stamp on Hallucinogens or PCP	297D.09, subd. 1
6	Failure to Affix Stamp on Heroin	297D.09, subd. 1
6	Failure to Affix Stamp on Remaining Schedule I & II Narcotics	297D.09, subd. 1
5	Possession of Substances with Intent to Manufacture Methamphetamine	152.0262
-4	Controlled Substance Crime 4th Degree	152.024
3	Anhydrous Ammonia (Tamper/Theft/Transport)	152.136
3	Methamphetamine Crimes Involving Children and Vulnerable Adults	152.137
2	Controlled Substance in the 5th Degree	152.025
2	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	297D.09, subd. 1
2	Medical Cannabis Violations (Submission of False Records)	152.33, subd. 4
2	Sale of Synthetic Cannabinoids	152.027, subd. 6(c)
1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	297D.09, subd. 1
1	Failure to Affix Stamp on Schedule IV Substances	297D.09, subd. 1
1	Medical Cannabis Violations (Intentional Diversion)	152.33, subd. 1
1	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	152.33, subd. 2

<u>1</u>	<u>Sale of Simulated Controlled Substance</u>	<u>152.097</u>
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* * *

Severity Level	Offense Title	Statute Number
<u>D10</u>	<u>Manufacture Any Amount of Methamphetamine</u>	<u>152.021, subd. 2a(a)</u>
	<u>Importing Controlled Substances Across State Borders</u>	<u>152.0261</u>
<u>D9</u>	<u>Controlled Substance Crime 1st Degree (Sale)</u>	<u>152.021, subd. 1</u>
<u>D8</u>	<u>Controlled Substance Crime 1st Degree (Possession)</u>	<u>152.021, subd. 2(a)</u>
<u>D7</u>	<u>Controlled Substance Crime 2nd Degree</u>	<u>152.022</u>
<u>D6</u>	<u>Controlled Substance Crime 3rd Degree</u>	<u>152.023</u>
	<u>Failure to Affix Stamp on Cocaine</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Hallucinogens or PCP</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Heroin</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Remaining Schedule I & II Narcotics</u>	<u>297D.09, subd. 1</u>
<u>D5</u>	<u>Possession of Substances with Intent to Manufacture Methamphetamine</u>	<u>152.0262</u>
<u>D4</u>	<u>Controlled Substance Crime 4th Degree</u>	<u>152.024</u>
<u>D3</u>	<u>Anhydrous Ammonia (Tamper/Theft/Transport)</u>	<u>152.136</u>
	<u>Methamphetamine Crimes Involving Children and Vulnerable Adults</u>	<u>152.137</u>
<u>D2</u>	<u>Controlled Substance Crime 5th Degree</u>	<u>152.025</u>

<u>D2</u>	<u>Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics</u>	<u>297D.09, subd. 1</u>
	<u>Medical Cannabis Violations (Submission of False Records)</u>	<u>152.33, subd. 4</u>
	<u>Sale of Synthetic Cannabinoids</u>	<u>152.027, subd. 6(c)</u>
<u>D1</u>	<u>Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Schedule IV Substances</u>	<u>297D.09, subd. 1</u>
	<u>Medical Cannabis Violations (Intentional Diversion)</u>	<u>152.33, subd. 1</u>
	<u>Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)</u>	<u>152.33, subd. 2</u>
	<u>Sale of Simulated Controlled Substance</u>	<u>152.097</u>

* * *

Section 5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law. * * *

Statute Number	Offense Title	Severity Level
<u>152.021, subd. 1</u>	<u>Controlled Substance Crime 1st Degree (Sale)</u>	<u>D9</u>
<u>152.021, subd. 2(a)</u>	<u>Controlled Substance Crime 1st Degree (Possession)</u>	<u>9D8</u>

152.021, subd. 2a(a)	Manufacture Any Amount of Methamphetamine	<u>9D10</u>
152.022	Controlled Substance Crime 2nd Degree	<u>8D7</u>
152.023	Controlled Substance Crime 3rd Degree	<u>D6*</u>
152.024	Controlled Substance Crime 4th Degree	<u>D4</u>
152.025	Controlled Substance Crime 5th Degree	<u>D2</u>
152.0261	Importing Controlled Substances Across State Borders	<u>9D10</u>
152.0262	Possession of Substances with Intent to Manufacture Methamphetamine	<u>D5</u>
152.027, subd. 6(c)	Sale of Synthetic Cannabinoids	<u>D2</u>
152.097	Sale of Simulated Controlled Substance	<u>D1</u>
152.136	Anhydrous Ammonia (Tamper/Theft/Transport)	<u>D3</u>
152.137	Methamphetamine Crimes Involving Children and Vulnerable Adults	<u>D3</u>
152.33, subd. 1	Medical Cannabis Violations (Intentional Diversion)	<u>D1</u>
152.33, subd. 2	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	<u>D1</u>
152.33, subd. 4	Medical Cannabis Violations (Submission of False Records)	<u>D2</u>
297D.09 subd. 1	Failure to Affix Stamp on Cocaine	<u>D6</u>
297D.09 subd. 1	Failure to Affix Stamp on Hallucinogens or PCP (Angel Dust), Incl. LSD	<u>D6</u>
297D.09 subd. 1	Failure to Affix Stamp on Heroin	<u>D6</u>

* See section 2.C and Appendix 1 to determine the presumptive disposition.

297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I and II Narcotics	<u>D6</u>
297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I, II, & III Non Narcotics	<u>D2</u>
297D.09 subd. 1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	<u>D1</u>
297D.09 subd. 1	Failure to Affix Stamp on Schedule IV Substance	<u>D1</u>

* * *

Section 4.A. Sentencing Guidelines Grid

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

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> <i>(intentional murder; drive-by-shootings)</i>	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> <i>(unintentional murder)</i>	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree; Controlled Substance Crime, 2nd Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84^{2,3}</i>
<i>Controlled Substance Crime, 3rd Degree</i> <i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary; Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i> <i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

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.)

Effective August 1, 2016

Section 4.C Drug Offender Grid

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

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Manufacture Any Amount of Methamphetamine</i>	D10	<u>86</u> <i>74-103</i>	<u>98</u> <i>84-117</i>	<u>110</u> <i>94-132</i>	<u>122</u> <i>104-146</i>	<u>134</u> <i>114-160</i>	<u>146</u> <i>125-175</i>	<u>158</u> <i>135-189</i>
<i>Controlled Substance Crime, 1st Degree Sale</i>	D9	<u>65</u> <i>56-78</i>	<u>75</u> <i>64-90</i>	<u>85</u> <i>73-102</i>	<u>95</u> <i>81-114</i>	<u>105</u> <i>90-126</i>	<u>115</u> <i>98-138</i>	<u>125</u> <i>107-150</i>
<i>Controlled Substance Crime, 1st Degree Possession</i>	D8	<u>48</u> <i>41-57</i>	<u>58</u> <i>50-69</i>	<u>68</u> <i>58-81</i>	<u>78</u> <i>67-93</i>	<u>88</u> <i>75-105</i>	<u>98</u> <i>84-117</i>	<u>108</u> <i>92-129</i>
<i>Controlled Substance Crime, 2nd Degree</i>	D7	<u>36</u>	<u>42</u>	<u>48</u>	<u>54</u> <i>46-64</i>	<u>60</u> <i>51-72</i>	<u>66</u> <i>57-79</i>	<u>72</u> <i>62-86</i>
<i>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i>	D6	<u>21</u>	<u>27</u>	<u>33</u>	<u>39</u> <i>34-46</i>	<u>45</u> <i>39-54</i>	<u>51</u> <i>44-61</i>	<u>57</u> <i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i>	D5	<u>18</u>	<u>23</u>	<u>28</u>	<u>33</u> <i>29-39</i>	<u>38</u> <i>33-45</i>	<u>43</u> <i>37-51</i>	<u>48</u> <i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i>	D4	<u>12¹</u>	<u>15</u>	<u>18</u>	<u>21</u>	<u>24</u> <i>21-28</i>	<u>27</u> <i>23-32</i>	<u>30</u> <i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	D3	<u>12¹</u>	<u>13</u>	<u>15</u>	<u>17</u>	<u>19</u> <i>17-22</i>	<u>21</u> <i>18-25</i>	<u>23</u> <i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i>	D2	<u>12¹</u>	<u>12¹</u>	<u>13</u>	<u>15</u>	<u>17</u>	<u>19</u>	<u>21</u> <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	D1	<u>12¹</u>	<u>12¹</u>	<u>12¹</u>	<u>13</u>	<u>15</u>	<u>17</u>	<u>19</u> <i>17-22</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment.



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.

Effective August 1, 2016

Examples of Executed Sentences (Length in Months) Broken Down by:

Term of Imprisonment and Supervised Release Term

Under Minn. Stat. § 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993 will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The court is required to pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court must also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

<u>Executed Sentence</u>	<u>Term of Imprisonment</u>	<u>Supervised Release Term</u>	<u>Executed Sentence</u>	<u>Term of Imprisonment</u>	<u>Supervised Release Term</u>
<u>12 and 1 day</u>	<u>8 and 1 day</u>	<u>4</u>	<u>58</u>	<u>38 2/3</u>	<u>19 1/3</u>
<u>13</u>	<u>8 2/3</u>	<u>4 1/3</u>	<u>60</u>	<u>40</u>	<u>20</u>
<u>15</u>	<u>10</u>	<u>5</u>	<u>65</u>	<u>43 1/3</u>	<u>21 2/3</u>
<u>17</u>	<u>11 1/3</u>	<u>5 2/3</u>	<u>66</u>	<u>44</u>	<u>22</u>
<u>18</u>	<u>12</u>	<u>6</u>	<u>68</u>	<u>45 1/3</u>	<u>22 2/3</u>
<u>19</u>	<u>12 2/3</u>	<u>6 1/3</u>	<u>72</u>	<u>48</u>	<u>24</u>
<u>21</u>	<u>14</u>	<u>7</u>	<u>75</u>	<u>50</u>	<u>25</u>
<u>23</u>	<u>15 1/3</u>	<u>7 2/3</u>	<u>78</u>	<u>52</u>	<u>26</u>
<u>24</u>	<u>16</u>	<u>8</u>	<u>85</u>	<u>56 2/3</u>	<u>28 1/3</u>
<u>27</u>	<u>18</u>	<u>9</u>	<u>86</u>	<u>57 1/3</u>	<u>28 2/3</u>
<u>28</u>	<u>18 2/3</u>	<u>9 1/3</u>	<u>88</u>	<u>58 2/3</u>	<u>29 1/3</u>
<u>30</u>	<u>20</u>	<u>10</u>	<u>95</u>	<u>63 1/3</u>	<u>31 2/3</u>
<u>33</u>	<u>22</u>	<u>11</u>	<u>98</u>	<u>65 1/3</u>	<u>32 2/3</u>
<u>36</u>	<u>24</u>	<u>12</u>	<u>105</u>	<u>70</u>	<u>35</u>
<u>38</u>	<u>25 1/3</u>	<u>12 2/3</u>	<u>108</u>	<u>72</u>	<u>36</u>
<u>39</u>	<u>26</u>	<u>13</u>	<u>110</u>	<u>73 1/3</u>	<u>36 2/3</u>
<u>42</u>	<u>28</u>	<u>14</u>	<u>115</u>	<u>76 2/3</u>	<u>38 1/3</u>
<u>43</u>	<u>28 2/3</u>	<u>14 1/3</u>	<u>122</u>	<u>81 1/3</u>	<u>40 2/3</u>
<u>45</u>	<u>30</u>	<u>15</u>	<u>125</u>	<u>83 1/3</u>	<u>41 2/3</u>
<u>48</u>	<u>32</u>	<u>16</u>	<u>134</u>	<u>89 1/3</u>	<u>44 2/3</u>
<u>51</u>	<u>34</u>	<u>17</u>	<u>146</u>	<u>97 1/3</u>	<u>48 2/3</u>
<u>54</u>	<u>36</u>	<u>18</u>	<u>158</u>	<u>105 1/3</u>	<u>52 2/3</u>
<u>57</u>	<u>38</u>	<u>19</u>			

B. Non-Legislative Modifications to Consecutive Sentencing Policies

Description: The Commission adopted proposed modifications relating to consecutive sentencing policy.

Adopted Modifications: Supervised release terms must be served consecutively by an offender sentenced consecutively in the same court proceeding, and the longest supervised release term must be served by an offender sentenced consecutively in separate court proceedings. Further, supervised release and conditional release statuses are removed from the criteria for imposing a presumptive consecutive sentence. The Court may sentence permissively under qualifying conditions. The adopted modifications are as follows.

Section 1.B. Definitions

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

1. Commitment. “Commitment” occurs when the offender is sentenced to the custody of the Commissioner of Corrections.
2. Concurrent Sentence. When the court orders sentences to be “concurrent,” the court is ordering that multiple sentences be served at the same time.
3. Consecutive Sentence. When the court orders sentences to be “consecutive,” the court is ordering that multiple sentences be served one after the other in the manner described in section 2.F.

* * *

2.F. Concurrent/Consecutive Sentences

Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.

This section sets forth the criteria for imposing consecutive sentences. Imposition of consecutive sentences in any situation not described in this section is a departure. When the court imposes consecutive sentences, the court must sentence the offenses in the order in which they occurred.

If two or more sentences are consecutively executed at the same time and by the same court, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence. The aggregate term of imprisonment must be served before the aggregate supervised release period.

If a sentence is executed consecutively to an earlier executed sentence (executed at an earlier time or by a different court), and the offender has not yet been placed on supervised release for the earlier executed sentence, the Commissioner of Corrections must aggregate both terms of imprisonment into a single, fixed term of imprisonment. The offender will serve the longer of the two supervised release terms.

If a sentence is executed consecutively to an earlier executed sentence after the supervised release date for the earlier sentence, any remaining supervised release term from the earlier executed sentence is tolled while the offender serves the consecutive term of imprisonment. The offender will serve what remains of the previously tolled supervised release term or the supervised release term for the consecutive sentence, whichever is longer. * * *

* * *

2.F.02. ~~*The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. When a sentence is executed consecutively to another executed sentence on the same day and before the same court, the Commissioner of Corrections aggregates the separate durations into a single fixed sentence. The two-thirds terms of imprisonment are aggregated and served consecutively; then, the one-third and the periods of supervised release terms are aggregated and served consecutively as well. For*~~

~~example, if a court executes a 44-month fixed sentence, and a 24-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections aggregates the sentences into a single 68-month fixed sentence, with a specified minimum 45.3-month term of imprisonment and a specified maximum 22.7-month period of supervised release.~~

~~44 months (first sentence)~~

~~+24 months consecutive (second sentence)~~

~~=68 months (fixed sentence)~~

~~45.3 months (2/3 – term of imprisonment)~~

~~22.7 months (1/3 – supervised release)~~

For example, if a court executes a 60-month fixed sentence, and, at the same time, executes a 21-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections must aggregate the 40-month and 14-month terms of imprisonment into a single 54-month fixed term of imprisonment, and must aggregate the supervised release terms of 20 months and 7 months into a single 27-month fixed term of supervised release to be served consecutively, as illustrated below:

<u>1st: 40-mo. term of imprisonment</u>		<u>1st: 20-mo. supervised release term</u>	
	<u>2nd: 14-mo. term of imp.</u>		<u>2nd: 7-mo. s.r.t.</u>
<u>= 54-mo. aggregate term of imprisonment</u>		<u>= 27-mo. agg. sup. rel. term</u>	

2.F.03. When two sentences are executed on different days or before different courts, the second sentence is consecutive to the first, and the offender has not yet been placed on supervised release for the first sentence at the time the second sentence is executed, then the terms of imprisonment will be aggregated. The first supervised release term will not run during the aggregate term of

imprisonment, but the supervised release terms will run at the same time as each other.

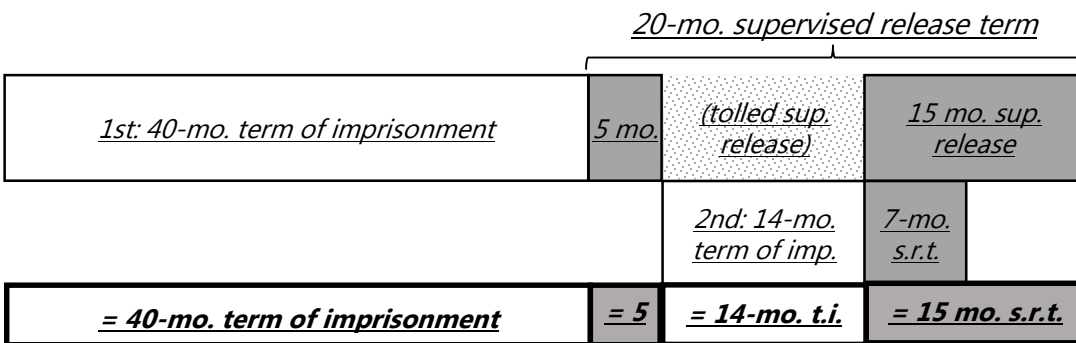
For example, Judge A sentences an offender to a 60-month executed sentence. Judge B later sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. Neither of the offender's two supervised release terms will begin until the offender has completed the term of imprisonment (including disciplinary confinement) for both offenses. When the supervised release terms do begin, they will not be aggregated, as they would have been if the consecutive sentences were executed by the same judge at the same time. Instead, the longer supervised term release will effectively control the duration and they will run simultaneously, as illustrated below:

<u>1st: 40-mo. term of imprisonment</u>		<u>1st: 20-mo. supervised release term</u>
	<u>2nd: 14-mo. term of imp.</u>	<u>2nd: 7-mo. s.r.t.</u>
<u>= 54-mo. aggregate term of imprisonment</u>		<u>= 20-mo. s.r.t.</u>

2.F.04. When an offender has already been placed on supervised release by the time the second, consecutive sentence is executed, the terms of imprisonment cannot be aggregated. In such a case, the first supervised release term stops running during the second term of imprisonment. When the offender is placed on supervised release for the consecutive sentence, the first supervised release term will resume; the offender will serve the remaining balance on the first supervised release term and the second supervised release term at the same time.

For example, Judge A sentences an offender to a 60-month executed sentence. The offender serves a 40-month term of imprisonment and is placed on supervised release for 20 months. Five months after being placed on supervised

release, Judge B sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. During the ensuing 14-month term of imprisonment (and any disciplinary confinement thereafter), the first sentence's supervised release term is tolled. Upon release, the offender will serve the remaining balance of the original supervised release term (now 15 months) simultaneous to the service of the consecutive sentence's supervised release term. The longer supervised release term will effectively control the duration, as illustrated below:



1. Presumptive Consecutive Sentences.

a. Criteria for Imposing a Presumptive Consecutive Sentence.

Consecutive sentences are presumptive (required under the Guidelines) when:

(1) the offender is was, at the time of the current offense:

- (i) serving an executed ~~prison sentence~~; term of imprisonment, disciplinary confinement, or reimprisonment; or
- (ii) on escape status from an executed ~~prison sentence~~ term of imprisonment, disciplinary confinement, or reimprisonment;
- ~~(iii) on supervised release; or~~
- ~~(iv) on conditional release following release from an executed prison sentence (see conditional release terms in section 2.E.3); and~~

- (2) the presumptive disposition for the current offense(s) is commitment. ~~The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment.~~
- b. Finding the Presumptive Disposition. The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment. In all other cases, the presumptive disposition is determined using the criteria in section 2.C.
- c. ~~b.~~ Finding the Presumptive Duration. For each offense sentenced consecutively to another offense(s) under this section, the presumptive duration is the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, or the mandatory minimum for the offense, whichever is longer.
- d. ~~c.~~ Exception When Presumptive Concurrent Sentence is Longer. If the criteria in paragraph 2.F.1.a have been met but the total time to serve in prison would be longer if a concurrent sentence were imposed, a concurrent sentence is presumptive. Otherwise, a concurrent sentence is a departure.
- e. Consecutive Sentences for Multiple Offenses. When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense. Permissive consecutive sentencing under section 2.F.2 is not a departure if it would result in a longer sentence than the sentence resulting from this rule.

- f. ~~d.~~ Departure Factor. If there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime, the court may depart from the presumptive consecutive sentence and impose a concurrent sentence.
- g. ~~e.~~ Felony Driving While Impaired (DWI). Minn. Stat. § 169A.28 subd. 1 requires a consecutive sentence when the court sentences an offender for a felony DWI and:
- (1) the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence; and
 - (2) the disposition for the current offense will be probation; **but not**
 - (3) when the disposition for the current offense will be commitment.

If the court pronounces a consecutive sentence, the presumptive duration is based on a Criminal History Score of 1. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense. * * *

* * *

2.F.103. *A concurrent sentence is presumptive if the result is that an offender will serve longer in prison. For example, an ~~offender inmate~~ with a Criminal History Score of 6 assaults a prison guard during his term of imprisonment and has only one month remaining until his supervised release term is scheduled to begin. ~~is on supervised release. The offender has one month remaining until the sentence expires when the offender commits a theft over \$5,000 (Severity Level 3).~~ The Guidelines would typically recommend that the ~~theft~~ assault run consecutively to the unexpired prior except that a concurrent sentence is longer; therefore, a concurrent sentence is presumptive.*

*1 month (before ~~expiration of sentence~~ scheduled supervised release date)
~~+13 months (Severity Level 3; Criminal History Score of 1)~~
~~=14 months consecutive~~*

~~vs.~~

~~23 months concurrent (Severity Level 3; Criminal History Score of 6)
+12 mos. and 1 day (Severity Level 1; Criminal History Score of 1)
=13 mos. and 1 day, consecutive~~

~~vs.~~

~~19 months, concurrent (Severity Level 1; Criminal History Score of 6).~~

2.F.104. ~~If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a presumptive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced presumptive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 1 (58 months), is divided in half—making the presumptive duration 29 months.~~

2. Permissive Consecutive Sentences.

- a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section. ~~For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.~~

- (1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment, as outlined in section 2.C, and paragraph (i), (ii), or (iii) applies. If the court pronounces a consecutive stayed sentence under one of these paragraphs, the stayed sentence is a mitigated dispositional departure, but the

consecutive nature of the sentence is not a departure. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

* * *

- b. Finding the Presumptive Duration. For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.

* * *

2.F.203. *If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a permissive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, ~~for~~ in the case of an attempted aggravated robbery offense sentenced permissive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half – making the presumptive sentence 24 months.* * * *

Appendix 2.3. Impact of Proposed Controlled Substance Sentencing Modifications

Description

The following analysis is an estimate by MSGC research staff of the fiscal impact of the proposed modifications to the Minnesota Sentencing Guidelines in the area of drug sentencing, as shown in Part A of Appendix 2.2. This analysis was designed to assist the MSGC as it made the considerations required in Minn. Stat. § 244.09, subd. 5, and was intended to replicate the standards applicable to an agency fiscal note that MSGC research staff might provide for a bill pursuant to Minn. Stat. § 3.98.

If permitted to take effect, this proposal would make the following modifications to controlled substance provisions:

1. A drug grid would be created for controlled substance offenses. First-degree sale of a controlled substance crime would be ranked at Severity Level D9 on the Drug Offender Grid, with new presumptive durations beginning at 65 months. First-degree possession of a controlled substance crime would be ranked at Severity Level D8 on the Drug Offender Grid, for which the presumptive sentences are the same as those at Severity Level 8 on the Standard Grid. Other offenses currently ranked at Severity Level 9 (e.g., first-degree manufacture of methamphetamine) would be ranked at Severity Level D10 on the Drug Offender Grid, for which the presumptive sentences are the same as those at Severity Level 9 on the Standard Grid. Second-degree controlled substance crime would be ranked at Severity Level D7 on the Drug Grid, for which the presumptive sentences are the same as those at Severity Level 7 on the Standard Grid. The drug grid would contain no changes to the existing presumptive sentences for other controlled substance-related offenses.
2. New aggravating factors would be added to the list of aggravating factors that can be cited when determining that an offense qualifies as a major controlled substance offense.
3. A new mitigating factor would be added to allow judges to impose downward dispositional departures if an offender is found to be chemically dependent.

Assumptions

The projected prison bed impact presented here is based on sentences imposed for controlled substance offenses sentenced in 2014. This analysis assumes that drug offenders sentenced in the future will resemble the drug offenders sentenced in 2014 with regard to the number of offenders sentenced at first and second degrees.

It is assumed that offenses that received dispositional departures when sentenced would continue to do so under the proposed changes. Similarly, it is assumed that offenses that move to a severity level with lower presumptive sentences will receive the applicable presumptive sentence based on the offender's Criminal History Score unless the offender currently received a mitigated durational departure resulting in a sentence that is less than what the new presumptive sentence would be.

It is assumed that the modifications would take effect for offenses committed on and after August 1, 2016.

First-Degree Offenses

Under the proposal, all first-degree drug offenders would continue to have a presumptive disposition of imprisonment, and therefore none would move from a presumptive prison sentence to a presumptive probation sentence. Of the 278 offenders sentenced for first-degree offenses in 2014, 11 were sentenced for manufacture of methamphetamine and those presumptive sentences would not change. First-degree sale offenses (146 in 2014) would move to a severity level with presumptive durations ranging from 64 months to 125 months, depending on criminal history score. First-degree possession offenses (121 in 2014) would move to a severity level with presumptive sentences ranging from 48 months to 108 months. It is assumed that any offenders who received a mitigated dispositional departure would continue to do so in the future. Of the 267 offenders who would move to a severity level with lower presumptive durations, 105 (39%) received a mitigated dispositional departure and, thus, would not contribute to the bed savings.

It is assumed that the 162 offenders who received prison sentences would receive the presumptive duration on the new drug grid corresponding to the applicable criminal history score, unless they currently received a mitigated durational departure resulting in a sentence that is less than the new presumptive sentence. Of those 162 offenders, 78 (48%) received a mitigated durational departure and 55 of those departures resulted in a sentence equal to, or less than, the sentence they would receive at the proposed severity levels and, thus, would not contribute to prison bed savings. In sum, under the provisions of this bill, 107 of the 278 first-degree offenders sentenced in 2014 (38%) would receive a prison sentence that is less than what they received in 2014.

Second-Degree Offenses

Under this proposal, all second-degree drug offenders would move to a severity level equivalent to Severity Level 7 on the Standard Grid. At that severity level, offenders with a criminal history of 0, 1, or 2 have a presumptive disposition of probation. Of the 427 offenders sentenced for a second-degree drug offense in 2014, 268 were located in cells that would have a presumptive stayed sentence under the proposed drug grid. However, any offenders who are subsequent drug offenders would continue to have a presumptive prison sentence because of the statutory mandatory minimum. Of the 268 offenders who would move to cells with a presumptive stayed sentence, 72 were subsequent offenders and therefore would continue to have a presumptive prison disposition. Of the 196 offenders remaining, 120 received a mitigated disposition and therefore would not contribute to prison bed savings. The remaining 76 offenders would have a presumptive probation disposition. In sum, of the 427 offenders sentenced for second-degree offenses in 2014, 76 (18%) would move from presumptive prison to presumptive probation who did not already receive probation.

Of the 427 second-degree offenders sentenced in 2014, 231 would continue to have a presumptive prison sentence. Of those 231 offenders, 42 received probation and therefore would not contribute to prison bed savings. It is assumed that the 189 offenders who received prison sentences would receive the presumptive duration on the new drug grid corresponding to the applicable criminal history score, unless they currently received a mitigated durational departure resulting in a sentence that is less than the new presumptive sentence. Of those 189 offenders, 70 (37%) received a mitigated durational departure and 54 of those departures resulted in a sentence equal to, or less than, the sentence they would receive at the proposed severity levels and, thus, would not contribute to prison bed savings.

In sum, of the 427 second-degree drug offenders sentenced in 2014, 76 (18%) would no longer receive a prison sentence and 135 (32%) would receive shorter prison sentences as a result of this proposal.

Estimated Prison Bed Impact

MSGC projects that the proposed modifications to the sentencing grids will eventually result in a prison bed savings of 523 beds each year: 38 beds in FY2017 and 523 beds in FY2028 and every year after. Table 1 displays the total bed savings, as well as the number of cases that shift from prison to probation, and the number of prison cases receiving shorter sentences. Tables 2 and 3 display the projected bed savings by race. Allowing a six-month delay for implementation, the timing of the projected bed savings is displayed in Table 4.

No estimate is made for the impact of the adoption of additional mitigating and aggravating departure factors. In 2014 5 (1%) of the 434 first- and second-degree offenders who received an executed prison sentence received an aggravated durational departure. If the number of offenders receiving such a departure in the future increases, the projected prison savings could be less than that estimated here. On the other hand, if the mitigated dispositional departure rate increases, that may offset any loss in projected beds due to increases in aggravated durational departures.

Table 1: Projected Prison Bed Savings

Offense	# of Cases	# Cases No Change	# Cases Shift to Probation	Prison Beds	# Cases Shorter Sentences	Prison Beds	Total Prison Bed Savings
Meth Manufacture	11	11 (100%)	0	0	0	0	0
First-Degree-Sale	146	96 (66%)	0	0	50 (34%)	81	81
First-Degree-Poss.	121	64 (53%)	0	0	57 (47%)	81	81
First-Degree Total	278	171 (62%)	0	0	107 (38%)	162	162
Second-Degree	427	216 (51%)	76 (18%)	212	135 (32%)	148	361
Totals	705	387 (55%)	76 (11%)	212	242 (34%)	311	523

Table 2: First- and Second-Degree Cases Affected Annually, by Race

Race	Total Cases	No Change	Cases Shifting to Probation	Cases With Shorter Sentences
White	423	232 (55%)	43 (10%)	148 (35%)
Black	152	93 (61%)	13 (9%)	46 (30%)
American Indian	26	14 (54%)	2 (8%)	10 (39%)
Hispanic	86	40 (47%)	17 (20%)	29 (34%)
Asian	18	8 (44%)	1 (6%)	9 (50%)
Totals	705	387 (55%)	76 (11%)	242 (34%)

Table 3: Projected Prison Bed Savings by Race

Race	Total Beds, 1st & 2nd Degree Offenses*		Shift to Probation		Shorter Sentences		Total Prison Bed Savings	
	# of Beds	% of Beds	# of Beds	% of Beds	# of Beds	% of Beds	# of Beds	% of Beds
White	1,027	56%	126	24%	182	35%	308	59%
Black	462	25%	33	6%	70	13%	104	20%
American Indian	59	3%	5	1%	10	2%	15	3%
Hispanic	221	12%	45	9%	38	7%	83	16%
Asian	50	3%	2	<1%	11	2%	14	3%
Totals	1,820	100%	212	41%	311	59%	523	100%

* Estimate, calculated as $\frac{2}{3}$ of all executed sentences, in years, pronounced in 2014.

Table 4: Timing of Projected Prison Bed Savings

Fiscal Year	Total Prison Bed Savings
2017	38
2018	108
2019	170
2020	255
2021	345
2022	391
2023	421
2024	463
2025	487
2026	506
2027	519
2028	523

Local Government Fiscal Impact

It is estimated that this bill will result in the shifting of 76 offenders from a prison sentence to probation supervision. In 2014, the average pronounced period of probation supervision for second-degree offenders who received probation was 149 months (excluding three cases that received unusually long pronounced probation lengths). Of the 162 second-degree offenders placed on probation, 86% received local confinement time as a condition of felony probation with an average pronounced duration of 199 days (serve 133 days i.e., two-thirds of the pronounced duration). Thus, it is estimated that there will be an increase in probation caseloads of 76 offenders each year, and the need for 24 additional jail beds statewide each year. Table 5 displays the distribution by county of the offenders sentenced in 2014 who would shift to probation under this proposal. It is meant to be illustrative, rather than predictive as the number of offenders sentenced in a particular county for second-degree offenses with the applicable criminal history scores is likely to vary from year to year.

Table 5: Distribution of Offenders Moving From Prison to Probation by County

County	Number	Percent
Anoka	2	2.6
Beltrami	3	3.9
Benton	1	1.3
Blue Earth	1	1.3
Brown	1	1.3
Chisago	1	1.3
Clay	1	1.3
Clearwater	1	1.3
Crow Wing	1	1.3
Dakota	3	3.9
Douglas	2	2.6
Faribault	2	2.6
Freeborn	1	1.3
Goodhue	1	1.3
Hennepin	11	14.5
Isanti	4	5.3
Itasca	1	1.3
Kandiyohi	2	2.6
Lyon	1	1.3
McLeod	2	2.6
Martin	1	1.3
Meeker	1	1.3
Mower	3	3.9
Olmsted	5	6.6
Polk	4	5.3
Ramsey	6	7.9
Redwood	1	1.3
Renville	1	1.3
St. Louis	3	3.9
Scott	1	1.3
Stearns	3	3.9
Steele	1	1.3
Todd	1	1.3
Washington	1	1.3
Watonwan	2	2.6
Total	76	100.0

Appendix 3: Section 4.A. Sentencing Guidelines Grid

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

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

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. Section 4.B. Sex Offender Grid

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
<i>CSC 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360²</i>
<i>CSC 2nd Degree—(c)(d)(e)(f)(h) Prostitution; Sex Trafficking³ 1st Degree—1(a)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300²</i>
<i>CSC 3rd Degree—(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2nd Degree—1a</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180²</i>
<i>CSC 2nd Degree—(a)(b)(g) CSC 3rd Degree—(a)(e)(f) or(b)with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree—(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography²</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120²</i>
<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 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree—(b) with subd. 2(2); Indecent Exposure Possession of Child Pornography; Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60²</i>
<i>Registration Of Predatory Offenders</i>	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=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.)