



# **2022 REPORT TO THE LEGISLATURE**

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# Introduction

The Minnesota Sentencing Guidelines Commission submits this report to the Legislature to fulfill its three statutory<sup>1</sup> reporting requirements:

- To identify and explain all Sentencing Guidelines modifications made during the preceding twelve months;
- To identify, explain, and submit to the Legislature any modifications proposed to take effect in 2022; and
- To summarize and analyze reports received from county attorneys on criminal cases involving a firearm.

The Commission also takes this opportunity to highlight other topics that may be of interest to the Legislature, including updates on Commission activities, staff activities, and sentencing trends.

In 1980, Minnesota became the first state to implement a sentencing guidelines structure. The Minnesota Sentencing Guidelines Commission (MSGC) is a legislatively created body whose purpose is to establish and improve the Minnesota Sentencing Guidelines, evaluate outcomes of changes in sentencing policy, analyze trends, make appropriate recommendations, and provide education on sentencing law and policy.

When establishing and modifying the Guidelines, the Commission's primary consideration is public safety.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The Sentencing Guidelines embody principles including that sentencing should be neutral, rational, consistent, and uniform, and that departures from the presumptive sentences should be made only when substantial and compelling circumstances can be identified and articulated.<sup>5</sup>

Minnesota's imprisonment rates are related to Sentencing Guidelines recommendations—based on the seriousness of the offense and the criminal history score—as to who should go to prison and for how long. In each of the first 41 years the Guidelines have been in effect—from 1980 through 2020—Minnesota has ranked nationally among the five states with the lowest imprisonment rates. In 2020, Minnesota was fourth-lowest.<sup>6</sup>

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<sup>1</sup> [Minn. Stat. § 244.09](#), subds. 11 & 14; see also [Minn. Stat. § 609.11](#), subd. 10.

<sup>2</sup> [Minn. Stat. § 244.09](#), subd. 5.

<sup>3</sup> *Id.*

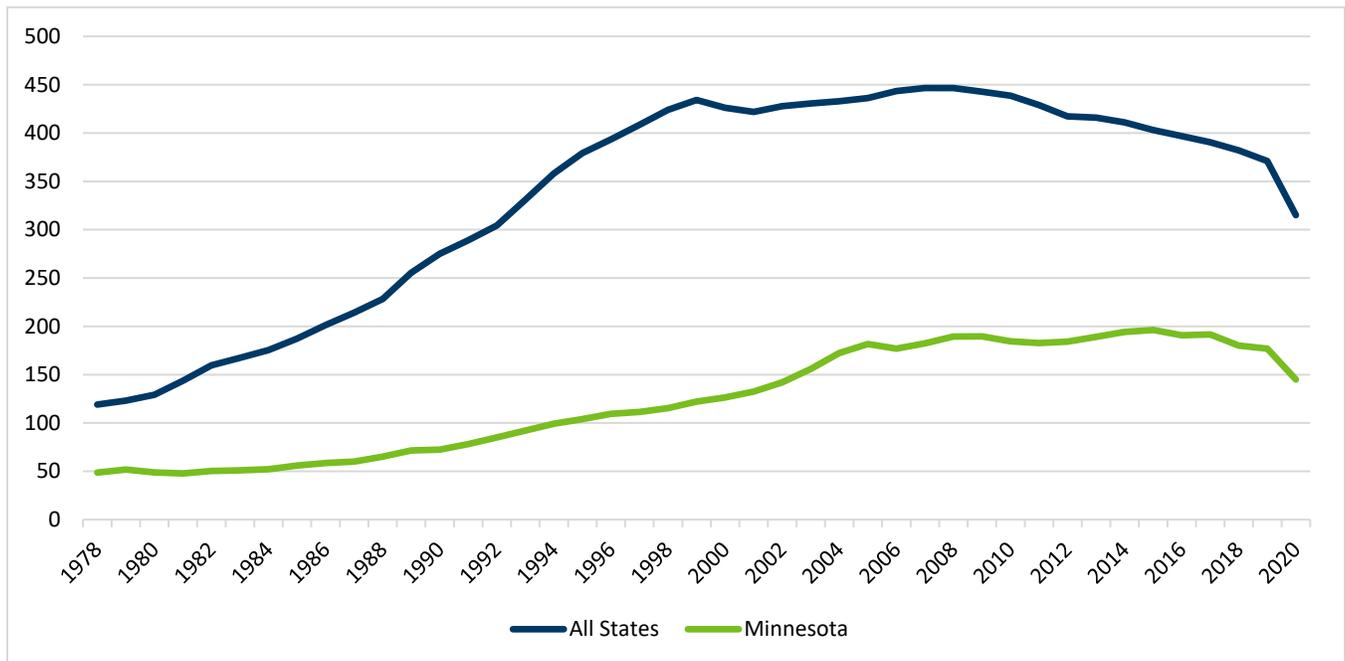
<sup>4</sup> [2021 Minn. Sentencing Guidelines & Commentary](#) section 1.A.

<sup>5</sup> *Id.*

<sup>6</sup> Fourth-place tie with New Jersey (both states at 145 prisoners per 100,000 residents in 2020). Minnesota had the 5th-lowest imprisonment rate in 2017; the 4th-lowest in 2014 & 2018–2020; and the 1st-, 2nd-, or 3rd-lowest in the other years. E. Ann Carson, "Imprisonment Rate of Sentenced Prisoners under the Jurisdiction of State or Federal Correctional Authorities per 100,000 U.S. Residents, Dec. 31, 1978–2018" (Bureau of Justice Statistics, Oct. 14, 2020) (retrieved Nov. 29, 2021, at [http://www.bjs.gov/nps/resources/documents/QT\\_imprisonment%20rate\\_total.xlsx](http://www.bjs.gov/nps/resources/documents/QT_imprisonment%20rate_total.xlsx)); E. Ann Carson, "Prisoners in 2020 – Statistical Tables" (NCJ 302776) (Bureau of Justice Statistics, Dec. 2021), Table 7 (retrieved Dec. 15, 2021, at <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>).

Minnesota’s 2020 rate—145 prisoners per 100,000 residents, down from a rate of 177 in 2019—returned Minnesota to an imprisonment rate last seen in 2002 (Figure 1).<sup>7</sup> Minnesota joined 48 other states with falling imprisonment rates from 2019 to 2020, causing the U.S. state imprisonment rate to fall by 15.1 percent.<sup>8</sup> Minnesota’s imprisonment rate continues to be less than half the national state imprisonment rate.<sup>9</sup>

Figure 1. Imprisonment Rate per 100,000 Residents, 1978–2020



Source: Bureau of Justice Statistics

In cases in which prison sentences are stayed, the court usually places the defendant on probation. Until 2020, the Sentencing Guidelines gave no specific guidance regarding the appropriate length of a period of probation.<sup>10</sup> Minnesota’s fourth-lowest imprisonment rate stands in contrast to its probation rate, which, in 2019, was the fifth highest among all states.<sup>11</sup>

<sup>7</sup> Minnesota’s 2002 imprisonment rate was 142 per 100,000. For purposes of comparison, its 1980 rate was 49 per 100,000.

<sup>8</sup> “Prisoners in 2020,” tables 5 & 7.

<sup>9</sup> The 2020 imprisonment rate for all states was 315 prisoners per 100,000 U.S. residents. Neither rate includes inmates of federal prisons or local correctional facilities. “Prisoners in 2020,” Table 5.

<sup>10</sup> For a discussion of the five-year presumptive probation cap established in 2020, see p. 28.

<sup>11</sup> About 1 in 44 (2,261 in 100,000) Minnesotans was on probation in 2019, compared to about 1 in 74 (1,358 in 100,000) residents of all states. Barbara Oudekerk, “Probation and Parole in the United States, 2019” (NCJ 256092) (Bureau of Justice Statistics, July 2021), Appendix Table 7 (retrieved Dec. 1, 2021, at <https://bjs.ojp.gov/content/pub/pdf/ppus19.pdf>).

# Executive Summary

## The Commission's Work in 2021 (p. 6)

To fulfill its statutory mission to improve the Sentencing Guidelines and research sentencing practices and other matters relating to the improvement of the criminal justice system, the Minnesota Sentencing Guidelines Commission met eleven times in 2021 and held two public hearings. Its most significant actions were—

- Continuation of its neutrality review (p. 7),
- Responding to the work of the 2021 Minnesota Legislature (p. 7), and
- Developing a solution to the half custody status point problem (p. 11).

## MSGC Staff's Work in 2021 (p. 15)

In 2021, staff provided Sentencing Guidelines guidance to an average of 100 practitioners per month; provided the Legislature with 55 fiscal impact statements and 2 demographic impact statements for pending crime bills; compiled and reported sentencing information for nearly 400 individual data requests; participated in various criminal justice boards, forums and committees; processed and ensured the accuracy of over 16,000 sentencing records; worked with the Department of Corrections to generate prison bed projections and developed new application reports for its Electronic Worksheet System; and published the annual edition of the Minnesota Sentencing Guidelines and Commentary.

## Preliminary 2020 Sentencing Practices Data Summary (p. 18)

While the 11,519 felony cases sentenced in 2020 (preliminary data) represent a record 33.6 percent decrease from the 2019 case volume, MSGC staff assumes this sharp drop is attributable, in whole or in large part, to the COVID-19 pandemic. Due to 2020's unusual nature, then, this data summary—unlike that of other years—avoids trend analysis.

In addition to the decline in case volume, some 2020 data highlights include:

- A record-high 35.4 percent presumptive imprisonment rate (and a record-high gap between presumptive and actual imprisonment rate);
- The continued rise of average pronounced prison sentence lengths; and
- Continued variations, by race and geography, in terms of case volume, actual incarceration rates, and presumptive imprisonment rates.

## County Attorney Firearms Reports (p. 30)

County attorneys must collect and report disposition information for specified crimes for which a defendant is alleged to have possessed or used a firearm, and the Commission must summarize and analyze that information in this report. In fiscal year 2021, county attorneys reported disposing of 1,074 firearms cases.

# The Commission's Work in 2021

The Minnesota Sentencing Guidelines Commission is an eleven-member body created by the Legislature. Three members are appointed by the Chief Justice of the Supreme Court: the Chief Justice's designee; a judge of the Court of Appeals; and a district court judge. Eight members are appointed by the Governor: a public defender; a county attorney; the Commissioner of Corrections; a peace officer; a probation officer; and three public members, one of whom must be a felony crime victim. The Governor also designates the Chair.

Public member Kelly Lyn Mitchell serves as the Commission's Chair by appointment of Governor Tim Walz. The other public members are Tonja Honsey and Brooke Morath.<sup>12</sup> The Governor's remaining appointees are: probation officer member Valerie Estrada, Corrections Unit Supervisor, Hennepin County Community Corrections & Rehabilitation and the Commission's Vice-Chair; the peace officer member, Metro Transit Police Officer Brooke Blakey;<sup>13</sup> the county attorney member, Wadena County Attorney Kyra Ladd; the public defender member, Cathryn Middlebrook, Chief Appellate Public Defender; and Commissioner of Corrections Paul Schnell.

The three appointees of Chief Justice Lorie S. Gildea are Associate Supreme Court Justice Gordon L. Moore, III;<sup>14</sup> Court of Appeals Judge Michelle A. Larkin; and First Judicial District Court Judge David Knutson.<sup>15</sup>

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. The Commission met eleven times in 2021 to fulfill its statutory responsibilities of improving the Sentencing Guidelines and conducting ongoing research into sentencing practices and other matters relating to the improvement of the criminal justice system. In addition, the Commission held two public hearings, on September 1 and December 16.<sup>16</sup>

From January through June, the Commission continued to hold its monthly public meetings remotely,<sup>17</sup> as the ongoing COVID-19 health pandemic and peacetime emergency<sup>18</sup> made in-person meetings infeasible. From July through December, the Commission resumed in-person meetings in Saint Paul, with some Commission members and members of the public participating by telephone or Webex interactive technology.<sup>19</sup> The Commission has published videos of these hybrid meetings on its [YouTube channel](#), and has placed links to those videos on its website at <https://mn.gov/sentencing-guidelines/meetings/previous>.

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<sup>12</sup> Abby Honold was a public member of the Commission, in the seat reserved for a felony crime victim, until her resignation effective August 7, 2021. Effective November 19, 2021, Governor Walz appointed Brooke Morath as Abby Honold's successor.

<sup>13</sup> Saint Paul Police Commander Salim Omari was the Commission's peace officer member until his resignation effective January 15, 2021. Effective March 1, 2021, Governor Walz appointed Officer Blakey as Commander Omari's successor.

<sup>14</sup> Retired Associate Supreme Court Justice Christopher J. Dietzen resigned from the Commission effective September 2, 2021. By appointment of Chief Justice Gildea, Justice Moore immediately succeeded Justice Dietzen.

<sup>15</sup> Chief Judge Kevin Mark resigned from the Commission effective July 26, 2021. By appointment of Chief Justice Gildea, Judge Knutson immediately succeeded Judge Mark.

<sup>16</sup> December 16 was both a public hearing and meeting date. The meeting was held immediately following the hearing.

<sup>17</sup> See [Minn. Stat. § 13D.021 \(2020\)](#).

<sup>18</sup> For context, refer to the emergency executive orders Governor Walz issued from March 13, 2020, to June 14, 2021, at <https://www.lrl.mn.gov/execorders/eoresults?gov=44&title=Emergency> (retrieved Dec. 2, 2021).

<sup>19</sup> See [Minn. Stat. § 13D.015](#).

## Sentencing Guidelines Neutrality Review and 2021 Workplan

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The Commission continued its neutrality review that began in 2020<sup>20</sup> and prioritized its annual work plan to be consistent with that review. The Commission acknowledged that a neutrality review should be made part of the standard operating procedure when reviewing policies and information.<sup>21</sup> Because of staffing shortages and the Commission's desire to continue with its neutrality review, Professor of Sociology and Law Christopher Uggen and Graduate Student Hannah Schwendeman from the University of Minnesota, College of Liberal Arts, Department of Sociology were brought into the project to collaborate with the Commission and conduct a study using the Commission's data. The project will assess disparities across the main social indicators of gender, race & ethnicity, geography, and age and specifically look at the basic prison incarceration question and the length of incarceration; and departure data. Among other things, the Commission is interested in the impact the Guidelines and probation have on indigenous women; gender gaps; mandatory minimum offenses; specific offenses of possible disparity; criminal history scores; how to impact disparities without impacting public safety; socio-economic disparities; and regional disparities.

Notwithstanding this workplan, circumstances compelled the Commission to focus the bulk of its 2021 work on two emergent issues: Responding to the work of the 2021 Minnesota Legislature (discussed below), and resolving a rounding error applicable to one-half custody status point in criminal history (discussed beginning on p. 11).

## Responding to the Work of the 2021 Minnesota Legislature

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The First Special Session of the 2021 Minnesota Legislature resulted in the most significant changes to criminal law—particularly to laws related to sex offenses—seen since at least 2016. Because of its duty to make related modifications to the Sentencing Guidelines, the Commission carefully monitored the regular-session legislative activity in the months leading up to these changes, all of which were ultimately enacted on June 30.

Because of its public-hearing timeline requirements,<sup>22</sup> the Commission recognized that it would be unable to publish Guidelines' modifications related to these criminal-law changes by the usual effective date of August 1. On June 3, the Commission recommended that the Legislature postpone, from August 1 to September 15, the effective dates of changes to crime and sentencing laws enacted in the upcoming special session. In its special-session legislation, the Legislature generally honored this recommended effective date.<sup>23</sup>

At its meeting on July 22, the Commission reviewed the results of the First Special Session and proposed a number of related changes to the Sentencing Guidelines. Following a September 1 public hearing, the

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<sup>20</sup> [Approved MSGC Meeting Minutes \(June 11, 2020\)](#), pp. 3–4. This was in response to a letter from Chair Mitchell to members of the Commission following the death of George Floyd on May 25, 2020. Mitchell, Kelly Lyn, Letter to Members of the Sentencing Guidelines Commission (retrieved Nov. 15, 2021, at <http://mn.gov/msgc-stat/documents/meeting%20materials/2020/June/2B-Mitchell%20Remarks%20for%20MSGC.pdf>).

<sup>21</sup> [Approved MSGC Meeting Minutes \(Feb. 11, 2021\)](#), pp. 3–6.

<sup>22</sup> See [Minn. R. ch. 3000](#). The statute governing the Guidelines modification process is Minn. Stat. § [244.09, subd. 11](#).

<sup>23</sup> See generally [2021 Minn. Laws 1st Sp. Sess. ch. 11](#). The Veterans Restorative Justice Act, [2021 Minn. Laws 1st Sp. Sess. ch. 12, art. 3, § 13](#), was made effective August 1, 2021. The Commission's standing mandate to make recommendations to the Legislature regarding changes to criminal law, criminal procedure, and sentencing, is found in Minn. Stat. § [244.09, subd. 6](#).

Commission unanimously adopted these modifications on September 9. These changes, summarized in Table 1, took effect September 15, 2021. The text of these modifications is reported in Appendix 1.1 (p. 37).

*Table 1. Summary of Guidelines Modifications Resulting from Legislative Amendments to Crime Laws – 2021 1st Special Session*

No.	Guidelines Modification	Resulting from 2021 Minn. Laws 1st Sp. Sess.	Amending Guidelines section(s)
1.	Rank Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force) at Severity Level 11	<a href="#">ch. 11, art. 2, § 31</a>	5.A & 5.B
2.	Rank Assault 1st Degree (Great Bodily Harm Upon Official) at Severity Level 10	<a href="#">ch. 11, art. 2, § 31</a>	5.A & 5.B
3.	Rank Child Torture at Severity Level 8	<a href="#">ch. 11, art. 2, § 39</a>	5.A & 5.B
4.	Rank Patrons of Prostitution (2nd or Subsequent Violation) at Severity Level 3	<a href="#">ch. 11, art. 2, § 34</a>	5.A & 5.B
5.	Rank the new Criminal Sexual Conduct force offenses involving infliction of bodily harm at Severity Level A (Criminal Sexual Conduct First Degree) and Severity Level B (Criminal Sexual Conduct Second Degree) and add those offenses to the Severe Violent Offense List	<a href="#">ch. 11, art. 4, §§ 6, 16, &amp; 17</a>	5.A, 5.B, & 8
6.	Rank prohibited occupational relationship Criminal Sexual Conduct offenses at Severity Level C (Criminal Sexual Conduct Third Degree) and Severity Level E (Criminal Sexual Conduct Fourth Degree)	<a href="#">ch. 11, art. 4, §§ 12, 18, &amp; 19</a>	5.A & 5.B
7.	Rank Sexual Extortion at Severity Level C (penetration) or Severity Level E (contact), and add the offense to the list of exceptions to the limitation on the pronounced length of stay	<a href="#">ch. 11, art. 4, § 22</a>	3.A.2.d, 5.A, & 5.B
8.	Maintain existing rankings for those Criminal Sexual Conduct offenses involving force by attempt or threat, and for those Criminal Sexual Conduct coercion offenses uncoupled from force	<a href="#">ch. 11, art. 4, §§ 6, 16–19</a>	5.A & 5.B

No.	Guidelines Modification	Resulting from 2021 Minn. Laws 1st Sp. Sess.	Amending Guidelines section(s)
9.	Make no Guidelines changes, other than conforming changes, as a result of statutory changes to age gaps in Criminal Sexual Conduct offenses, and statutory changes to age thresholds in Criminal Sexual Conduct, prostitution, and child pornography offenses	<a href="#">ch. 11, art. 4, §§ 5, 16–19, 24–28</a>	5.A & 5.B
10.	Treat reorganized Criminal Sexual Conduct offenses in the same way that corresponding offenses with identical elements are treated in the existing Guidelines	<a href="#">ch. 11, art. 4, §§ 16–19</a>	2.G.5, 5.A, 5.B, & 8
11.	Increase the severity levels of Use of Minors in Sexual Performance as legislatively adopted <sup>24</sup>	<a href="#">ch. 11, art. 2, § 52</a>	5.A & 5.B
12.	Increase the severity levels of enhanced child pornography dissemination and possession offenses as legislatively directed	<a href="#">ch. 11, art. 2, § 52</a>	5.A & 5.B
13.	Rank Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) at Severity Level H, but shaded at criminal history scores of 0 through 4 and capped at 24-month durations due to the statutory maximum	<a href="#">ch. 11, art. 4, § 20</a>	4.B, 5.A, & 5.B
14.	Create a new Severity Level I, identical to the existing Severity Level H, for Failure to Register as a Predatory Offender	<a href="#">ch. 11, art. 4, § 20</a>	4.B, 5.A, & 5.B
15.	Assign to a prior felony sentence for Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) a weight of 1 or ½ point, depending on whether the current offense is on the Sex Offender Grid or not	<a href="#">ch. 11, art. 4, § 20</a>	2.B.1

<sup>24</sup> On January 14, 2021, as a result of its review of its child pornography sentencing guidelines and after a public hearing, the Commission, on a vote of 11 to 0, adopted a proposal to increase the severity levels assigned to Use of Minors in Sexual Performance (Minn. Stat. § 617.246). This included child pornography production (subd. 2); ownership or operation of a child pornography dissemination or reproduction business (subd. 3); and dissemination of child pornography for profit (subd. 4). The proposal was submitted to the Legislature in January 2021 (Minn. Sentencing Guidelines Comm’n, [Report to the Legislature \(Jan. 15, 2021\)](#), pp. 85–86). As proposed to the Legislature, the modifications had a specified effective date of August 1, 2021, but the Legislature legally adopted them effective September 15, 2021.

No.	Guidelines Modification	Resulting from 2021 Minn. Laws 1st Sp. Sess.	Amending Guidelines section(s)
16.	Add Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) and Child Torture to the list of Offenses Eligible for Permissive Consecutive Sentences	<a href="#">ch. 11, art. 2, § 39;</a> <a href="#">art. 4, § 20</a>	6
17.	Reference the Veterans Restorative Justice Act in the Guidelines' policy on military veterans	<a href="#">ch. 12, art. 3, § 13</a>	3.F
18.	Incorporate the Veterans Restorative Justice Act's statutory departure factor within the Guidelines' list of departure factors	<a href="#">ch. 12, art. 3, § 13</a>	2.D.3.a
19.	Amend Appendix 1 to refer to the new mandatory minimums for Assault 1st Degree	<a href="#">ch. 11, art. 2, § 31</a>	Appendix 1
20.	Make conforming, clarifying, distinguishing, technical, and editorial amendments	<a href="#">ch. 11, art. 2, §§ 31 &amp; 52;</a> <a href="#">art. 4, §§ 4, 6, 12, 16–19, 20 &amp; 22</a>	1.B.17, 2.B.1, 4.A, 4.B, 5.A, 5.B, & 6; Appendix 3; & comments 2.B.202 & 2.B.406

The September 1 public hearing also considered conforming and technical amendments relating to identity theft and assault in the fourth degree against secure treatment facility personnel. These modifications, also unanimously adopted on September 9, 2021, also took effect September 15, 2021. The text of all 2021 modifications—including proposals previously submitted to the Legislature—are reported in Appendix 1, which begins on page 36.

# Resolving the Half Custody Status Point Problem

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## History of the Half Custody Status Point

Established in 1980, the Minnesota Sentencing Guidelines have always relied primarily on two factors in recommending a presumptive sentence: The severity of the crime, and the criminal history of the person who committed it. These two factors are depicted as the two axes of a grid (see Appendix 2, p. 63). The criminal history score—the grid’s horizontal axis—has always consisted of the sum of points from four different components: prior felonies; custody status<sup>25</sup> at the time of the offense; prior misdemeanors and gross misdemeanors; and prior juvenile adjudications.

In the beginning, each criminal history component was carefully designed to contribute only a whole number to the criminal history score; the sentencing grids do not accommodate partial points. This changed in 1989, when the Commission, intending to improve proportionality, assigned different weights to prior felonies according to their severity. The weights ranged from ½ point to 2 points, incremented by ½ point. To avoid partial points in the final criminal history score, the commentary clarified that if the sum of points from prior felonies contained a fraction, the fraction would be ignored in the final criminal history score. This rule is now articulated as a rounding-down rule in the “Prior Felonies” section of the Guidelines.<sup>26</sup>

From 2016 through 2018, the Commission undertook a study of how the Guidelines use criminal history in calculating the presumptive sentence. The custody-status policy, in particular, received a great deal of scrutiny. Although repeal was considered, the 2018 Commission opted, instead, to reform the custody-status policy in several ways. One of these was similar to the 1989 change to prior felonies: To assign a lesser weight to custody status deriving from less-severe custody offenses (*i.e.*, misdemeanors, gross misdemeanors, and less-severe felonies). If custody status were derived solely from one of these less-severe offenses, then one-half custody status point would be assigned, rather than a whole point. In December 2018, the Commission unanimously adopted this change as part of larger, consensus-based reform package. The change took effect August 1, 2019.<sup>27</sup>

## Discovery of the Problem

More than one year after the change’s effective date—in August 2020—an alert judge brought to MSGC staff’s attention the fact that the Guidelines’ only rounding rule is found in the “Prior Felonies” section of the Guidelines, and thus does not apply to the criminal history score generally. This was the result of a staff drafting error in 2018: The “Prior Felonies” rounding-down rule was not rewritten to apply to the criminal history score in general. As a consequence of this error, the Guidelines offer no guidance as to what to do with one-half custody status point.

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<sup>25</sup> “Custody” should not be understood as physical confinement only. Probation, for example, is a qualifying custody status—and is by far the most common custody status to contribute to the criminal history score.

<sup>26</sup> “Total Felony Points. The felony point total is the sum of the felony weights. If the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number.” 2021 Minn. Sentencing Guidelines & Commentary section 2.B.1.i.

<sup>27</sup> For greater historical detail and links to supporting documents, see MSGC Staff Information Paper, “[A Brief Chronology of the Half Custody Status Point](#)” (Sept. 2, 2021) (Sept. 9, 2021, MSGC meeting materials).

The judge’s case illustrates the problem: A defendant has 1½ felony points and ½ custody status point. Should not the 1½ felony points be rounded down to 1 felony point under the “Prior Felonies” rounding-down rule? Adding ½ custody status point to the result yields a criminal history score of 1½, to which no rounding rule applies but which the sentencing grids do not accommodate. The judge questioned why a case involving 1½ felony points and ½ custody status point should not be treated as if the total criminal history score were 1, rather than 2.<sup>28</sup>

## Attempts to Resolve the Problem

Staff brought the issue to the Commission’s attention in September 2020, recommending that the Commission move the rounding-down rule out of the “Prior Felonies” section of the Guidelines so that felony points and custody status points would be added together before rounding down. In October, the Commission adopted staff’s recommendation, subject to a public hearing. Although the decision was initially not controversial—garnering eight votes in favor, no opposing votes, and one abstention—support appeared to wane at the Commission’s December meeting, and, by the time of the final vote in January 2021, the Commission unanimously rejected the staff proposal.

Consensus remained that the half custody status point problem required solution, and the Commission devoted a significant share of its 2021 meeting time to finding that solution. A subcommittee, which met during the spring and summer, brought the Commission four potential solutions to its September meeting. The proposed solutions ranged from developing a technical solution to full repeal of the custody-status policy. From its September discussion, Commission members developed three more ideas to address the custody status issue, and the Commission spent most of the October meeting discussing and weighing the merits of seven proposals. For the November 4 meeting, the Commission honed in on the following three options:

1. **Display Half Points on the Grid**—Retain custody status as a factor in the calculation of criminal history—leaving the 2019 custody-status modifications unchanged—but alter the sentencing grids to establish presumptive sentences for criminal history scores that contain partial points. Between each pair of neighboring columns on the existing sentencing grids, add a new column for criminal history scores ending in “½.” Each new cell’s presumptive duration is the average (rounded down) of the presumptive durations of its neighboring whole-point cells. Its presumptive disposition is that of its neighboring cell to the left. Presumptive ranges are calculated consistent with current methodology.
2. **Repeal Custody Status without Replacement**—Eliminate custody status from the calculation of the presumptive sentence by repealing the existing custody-status policy, without replacement.
3. **Replace Custody Status with a One-Cell Aggravator**—Repeal the existing custody-status policy and replace it with a factor that may—but is not required to—be used as a reason for an aggravated departure: That the crime was committed while in a custody status, defined consistent with current policy. Add the proviso that this aggravating factor, by itself, may not be used to support a duration or disposition more severe than the duration or disposition that would apply to an offender whose criminal

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<sup>28</sup> The judge’s approach—which has since received support from the Court of Appeals (see footnote 30) and the Commission (see “Interim Decision” section on page 13)—would always round one-half custody status point down, thus always nullifying the half custody status point’s weight in criminal history. Whatever the merits of this approach may have been, the Guidelines were silent on them—or on the merits of any other approach to addressing the problem.

history score was one point greater than the offender’s criminal history score—two points greater, if both the current offense and the custody offense are sex offenses ranked at H or greater.

After a lengthy discussion at the November meeting, the Commission advanced the proposed repeal of the custody-status policy to a public hearing in on a vote of six to four.

## Interim Decision

The Commission held a public hearing on the proposed repeal of the custody status policy on December 16, 2021. Twenty-nine members of the public testified in person or via Webex. Additionally, thousands of individuals submitted written comments totaling 3,600 pages.<sup>29</sup> On January 13, 2022, after considering the entire public-hearing record, the eleven-member Commission unanimously adopted the following resolution:

1. That action on the custody status point issue is withdrawn at this time for the Commission to continue its study of the custody status point as a sentencing policy;
2. That the Commission will make concerted efforts to engage and educate community members, system stakeholders, and legislators as we further assess the implications of the custody status point policy; and
3. To address the handling of the half point issue, that the Commission will issue interim guidance to criminal justice practitioners that aligns with the nonprecedential Minnesota Court of Appeals case *State v. Eubanks*<sup>30</sup> to direct that whenever one-half custody status point is calculated, the half point shall be rounded down for purposes of determining the criminal history score.

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<sup>29</sup> The entire public-hearing record is at <https://mn.gov/sentencing-guidelines/meetings/previous/#Dec162021PH> (retrieved Jan. 13, 2022).

<sup>30</sup> *State v. Eubanks*, No. [A19-2042](#), 2021 WL 318260 (Minn. Ct. App. Feb. 1, 2021) (nonprecedential) (“Since Eubanks has only one-half of a felony point, with rounding down, his total felony points are zero. With the recent amendments to the sentencing guidelines, he is left with only one-half of a custody point, which is also rounded down. This leaves him with a criminal history score of zero ...”). See also *State v. Shappell*, No. [A20-0408](#), 2021 WL 416709 (Minn. Ct. App. Feb. 8, 2021) (nonprecedential) (“The state incorrectly contends that Shappell’s final, revised score would be seven rather than 6.5 because the state fails to recognize that Shappell’s 6.5 felony points would still be rounded down to six under Minn. Sent. Guidelines 2.B.1.i.”); *State v. Anderson*, No. [A20-1591](#), 2021 WL 5047509 (Minn. Ct. App. Nov. 1, 2021) (nonprecedential) (“Because this involves a partial point, his felony-point total should have been rounded down to one before being added to the one-half custody-status point, for a criminal-history score of 1.5, not 2. The district court therefore erred in sentencing Anderson based on a criminal-history score of two, and Anderson is entitled to be resentenced.”). Nonprecedential opinions of the Court of Appeals are not binding authority on other cases, but they may be cited as persuasive authority. See [Minn. R. Civ. App. Proc.](#) 136.01, subd. 1(c); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. Ct. App. 1993). No party to *Eubanks*, *Shappell*, or *Anderson* filed a petition in the Minnesota Supreme Court seeking review of the decision. See Minn. R. Civ. P. App. 117.

## Sex Trafficking Review Mandate

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The Commission respectfully acknowledges receipt of the Legislature’s June 30, 2021, mandate to comprehensively review and consider modifying how the Sentencing Guidelines and the sex offender grid address the crimes described in Minn. Stat. § 609.322.<sup>31</sup> Due to the emergent issues described in the previous sections and the staffing shortage described in the following section, the Commission was unable to begin this review in 2021.

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<sup>31</sup> [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 54.](#)

# MSGC Staff's Work in 2021

The work of the Commission—described on the preceding pages—is directly facilitated by the support and research of its six-person staff. This section describes the additional work of MSGC staff throughout 2021 to further the Commission's goals and purposes. In particular, staff assists the Commission in fulfilling its statutory charter to serve as the state's clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on sentencing practices.<sup>32</sup>

Staff generally continued to telework due to the COVID-19 health pandemic,<sup>33</sup> visiting the worksite to pick up mail, facilitate hybrid Commission meetings, and as otherwise required. Anticipating a more permissive telework policy after the pandemic, the agency reduced the size of its leased office space by 20 percent beginning July 1.

Due to the resignation of a full-time research analyst at the beginning of the year and an Executive Branch hiring freeze in effect through June, the agency experienced a staffing shortage from January until November. This shortage, coupled with the need to respond to a high volume of legislative and Commission-related activity, impaired staff's ability to complete its work in a timely manner in 2021.

## Monitoring Sentencing Data

One of the primary functions of the MSGC staff is to monitor sentencing practices. The monitoring system is designed to maintain data on felony sentences under the Guidelines.<sup>34</sup> 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, MSGC staff collected and analyzed data of over 14,000 felony cases in 2020 and over 16,000 felony cases by the end of the third quarter of 2021. Additionally, staff published the annual edition of the Sentencing Guidelines and Commentary.

## Training & Assistance

The staff provides training and assistance in a variety of ways: a recorded webinar posted on the Commission's YouTube channel, six WebEx trainings tailored to specific practitioner audiences, available website training materials, and email and telephone assistance. In an average month, the staff fields 100 phone calls and emails. The majority of questions come from judges, attorneys, and probation officers asking about the application of the Guidelines to their felony cases.

In October, Department of Corrections' Information Technology staff implemented an MSGC staff initiative to run nightly data reports automatically identifying potential sentencing worksheet errors in its online application. This project has reduced the number of worksheet errors undetected by MSGC staff by 81 percent, ensuring accurate sentencing worksheets are provided to all criminal justice system participants prior to sentencing hearings. These reports are available to MSGC staff and probation supervisors statewide.

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<sup>32</sup> [Minn. Stat. § 244.09](#), subd. 6.

<sup>33</sup> See footnote 18.

<sup>34</sup> Beginning in 2005 and 2006, MSGC began maintaining data on life sentences, even if not governed by the Guidelines.

## Website & Data Requests

The Commission's website receives over 9,000 views each month. The majority of visitors were new and the majority of visitors were interested in accessing the Sentencing Guidelines. The website includes easily accessible email signup for upcoming trainings, public hearing notices, and Commission meeting notices. One-click data requests make getting sentencing information quick and easy.

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. MSGC staff responded to nearly 400 data requests in 2021. The number of requests were up from 2020 when staff prepared 250 requests.<sup>35</sup>

Requests are most often made by lawyers or corrections agents to show evidence of 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 policy 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. In 2021, MSGC staff served on the Executive Committee of the National Association of Sentencing Commissions, the Criminal and Juvenile Justice Information Advisory Group, the Predatory Offender Statutory Framework Working Group, and the Aiding and Abetting Felony Murder Task Force. Staff also presented to the Criminal Justice Institute and conducted trainings arranged by the Minnesota County Attorneys Association and Minnesota Corrections Association.

## Fiscal Impact Statements & Demographic Impact Statements

During the 2021 legislative sessions, staff provided fiscal impact statements for 55 bills (compared to 19 bills in the previous session). These impact statements include long-term fiscal considerations for projected increases or decreases in felony populations, the estimated net increase in state prison beds, and the impact on confinement in local jails. Staff provided all requested information within the time requirements set by the Legislature.

In 2008, MSGC staff began providing the Minnesota Legislature demographic impact statements<sup>36</sup> on certain crime bills when such a statement was anticipated to be helpful to the Legislature. When, in the course of preparing a required fiscal impact statement, MSGC staff identifies a bill that meets its criteria for preparing a demographic impact statement, it prepares such a statement and sends it to the chairs of the crime committees

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<sup>35</sup> Requests may have been down in 2020 due to the COVID-19 health pandemic. See footnote 18.

<sup>36</sup> These had previously been referred to as "racial-impact statements."

in the Senate and the House. This is done separately from the required fiscal-impact statements. The full demographic impact statements are available on the MSGC web site.<sup>37</sup>

During the 2021 Legislative Sessions, two legislative policy proposals met the criteria for preparing a demographic impact statement:

- [House File 613](#) (version 1UE, reflecting language that appears in the first unofficial engrossment of [Senate File 970](#)): increases penalties for certain human trafficking offenses, patrons of prostitutes, solicitation of children to engage in sexual conduct, and certain trespassing offenses by amending Minn. Stat. §§ 609.1095, subd. 1; 609.131, subd. 2; 609.322, subd. 1, 1a; 609.324, subd. 2, 4; 609.3241; 609.352, subd. 4; 609.605, subd. 2; and repealing Minn. Stat. § 609.324, subd. 3; and
- [House File 707](#) (second engrossment): amends Minn. Stat. §§ 609.2325 (Criminal Abuse); 609.341 (Definitions); 609.342 (First-Degree Criminal Sexual Conduct (CSC)), 609.343 (Second-Degree CSC); 609.344 (Third-Degree CSC); 609.345 (Fourth-Degree CSC); 609.3451 (Fifth-Degree CSC); and 609.3455 (Dangerous Sex Offenders; Life Sentences; Conditional Release); and proposes a new law under Minn. Stat. § 609.3458 for Sexual Extortion.

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<sup>37</sup> Full statements are available at <https://mn.gov/sentencing-guidelines/reports/#1>.

# Preliminary 2020 Sentencing Practices Data Summary

Because MSGC typically finalizes sentencing practices data in the calendar year after sentencing, a summary of 2020 sentencing data would ordinarily be ready for presentation to the Legislature by the end of 2021. Unfortunately, MSGC experienced unusual staffing shortages and demands in 2021 (see discussion on page 15), as well as an unusual delay in obtaining some departure data (see discussion on page 28). As a result, the 2020 data set is not final as of the date of this report.

A summary of finalized 2020 data, including information on departures from the Sentencing Guidelines, will be published on the Commission's website in the first half of 2022.<sup>38</sup> In the meantime, MSGC presents the following summary of preliminary data for the Legislature's information. As preliminary data, they are subject to change.

The following preliminary data summarize information about sentencing practices and case volume and distribution in 2020. The recommended sentence under the Guidelines is based primarily on the severity of the offense of conviction and secondarily on criminal history. In most cases, the recommended sentence is applied.

In Minnesota, sentencing of felony offenses 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 cases (e.g., by gender, race/ethnicity, or judicial district). For example, if in a particular district the proportion of serious person offenses is fairly high, the imprisonment rate for that district will likely be higher than for districts with predominantly lower-severity offenses.

## Pandemic Impacts on 2020 Sentencing Data

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Due to the ongoing COVID-19 health pandemic,<sup>39</sup> case volume data in 2020 are not typical and should be reviewed in that context.

On March 20, 2020, the Minnesota Judicial Branch (MJB) issued a statewide order continuing operations of the courts under a statewide peacetime declaration of emergency, limiting in-person access in some cases.<sup>40</sup> While courts continued operations, some delays in processing felony cases occurred which, by August 2020, had led to a higher number of pending felony cases than normal.<sup>41</sup> By September 2020, the number had gone up slightly, and MJB had "employed several strategies to help clear cases."<sup>42</sup>

Because 2020 appears to have been an atypical year, the data presented below are assumed to be anomalous. Unlike a typical report, this year's report will avoid analysis of data trends. Data from prior years are reported,

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<sup>38</sup> The 2020 Sentencing Practices Data Reports will be published at <https://mn.gov/sentencing-guidelines/reports>.

<sup>39</sup> See footnote 18.

<sup>40</sup> Chief Justice Lorie S. Gildea, [Statewide Order, ADM20-8001](#) (March 20, 2020).

<sup>41</sup> In August 2020, there were 28,000 pending felony cases, which was "a higher-than-normal pending caseload by about 6,000 cases due to COVID-19..." G. Hoheisel (personal communication to P. Schnell (DOC), August 3, 2020).

<sup>42</sup> In Sept. 2020, the number of pending cases had gone up to 29,000. Examples of strategies used to reduce pending cases were "active engagement/communication with criminal justice partners, identifying barriers, ensuring resource availability, court calendar changes, etc." G. Hoheisel (personal communication to V. Clark (DOC), Sept. 17, 2020).

not to illustrate long-term trends, but to place this unique year in context with prior years' trends.

## Case Volume and Distribution

In 2020, 11,519 people were sentenced for felony offenses in Minnesota, which is a 33.6 percent decrease from the 17,335 people sentenced in 2019 and easily the largest single-year decline in MSGC history. All seven offense categories decreased from 2019 to 2020. By category, this decrease ranged from 22.2 percent to 38.9 percent. Property and Non-CSC sex offenses decreased more than other categories (-38.9%), followed by drug offenses (-38%). The total volume of cases sentenced over time is illustrated in Figure 2 (p. 19), and changes in annual growth rates, are illustrated in Figure 3 (p. 19).

Figure 2. Number of Cases Sentenced for Felony Convictions, 1981–2020

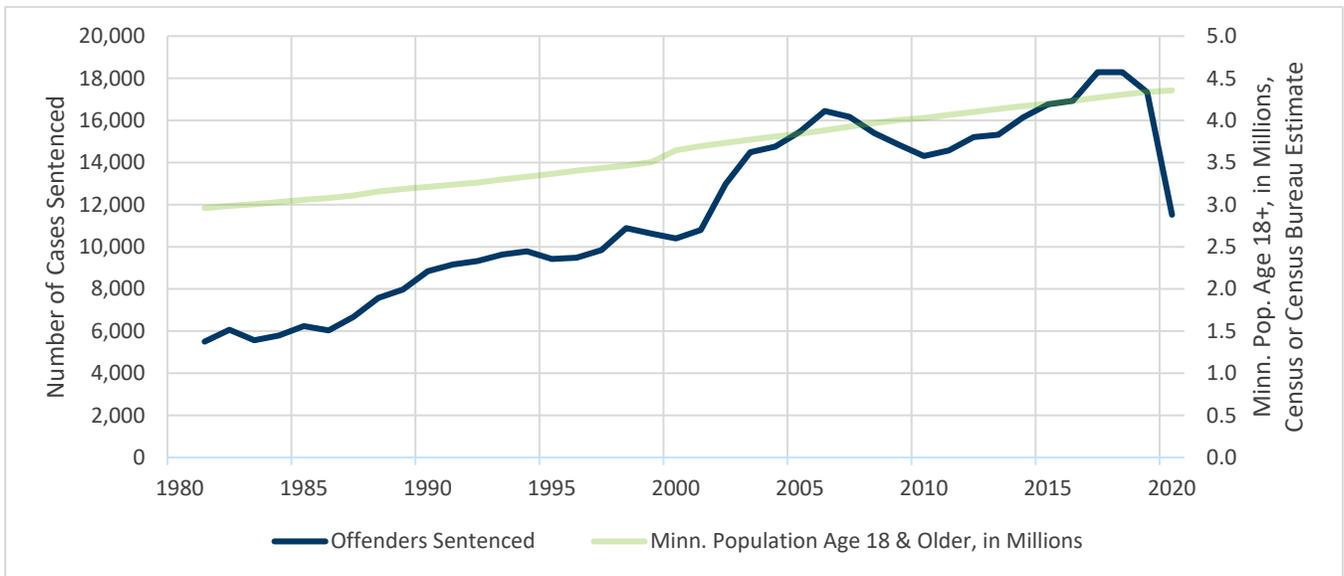
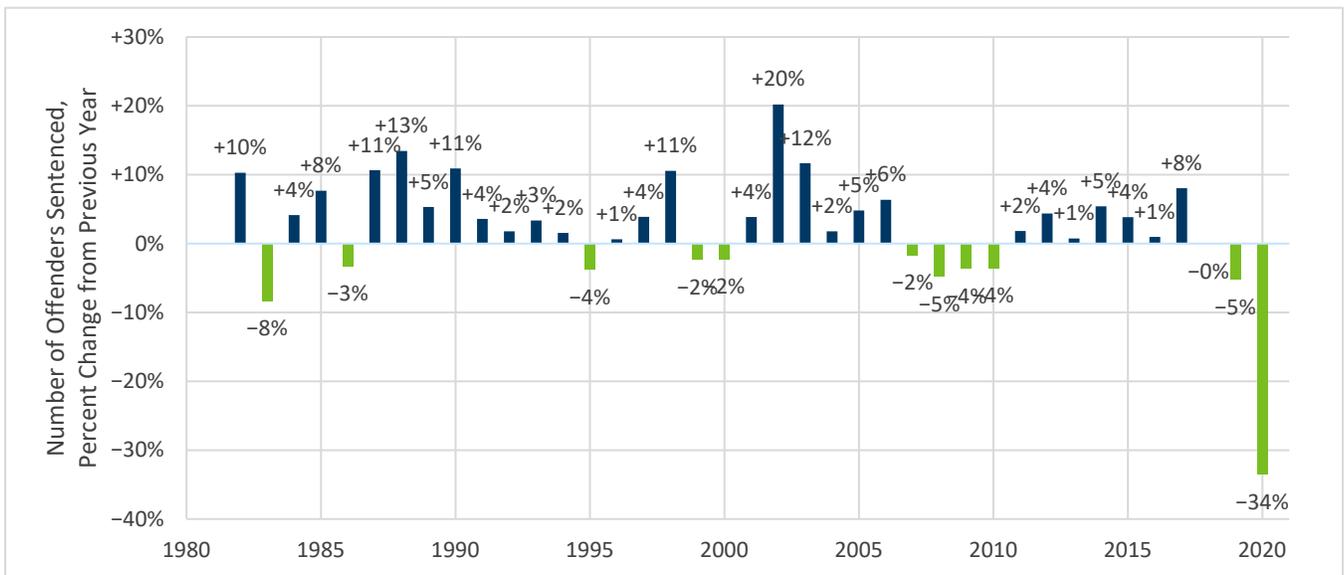


Figure 3. Annual Percent Change in Number of Cases Sentenced for Felony Convictions, 1982–2020

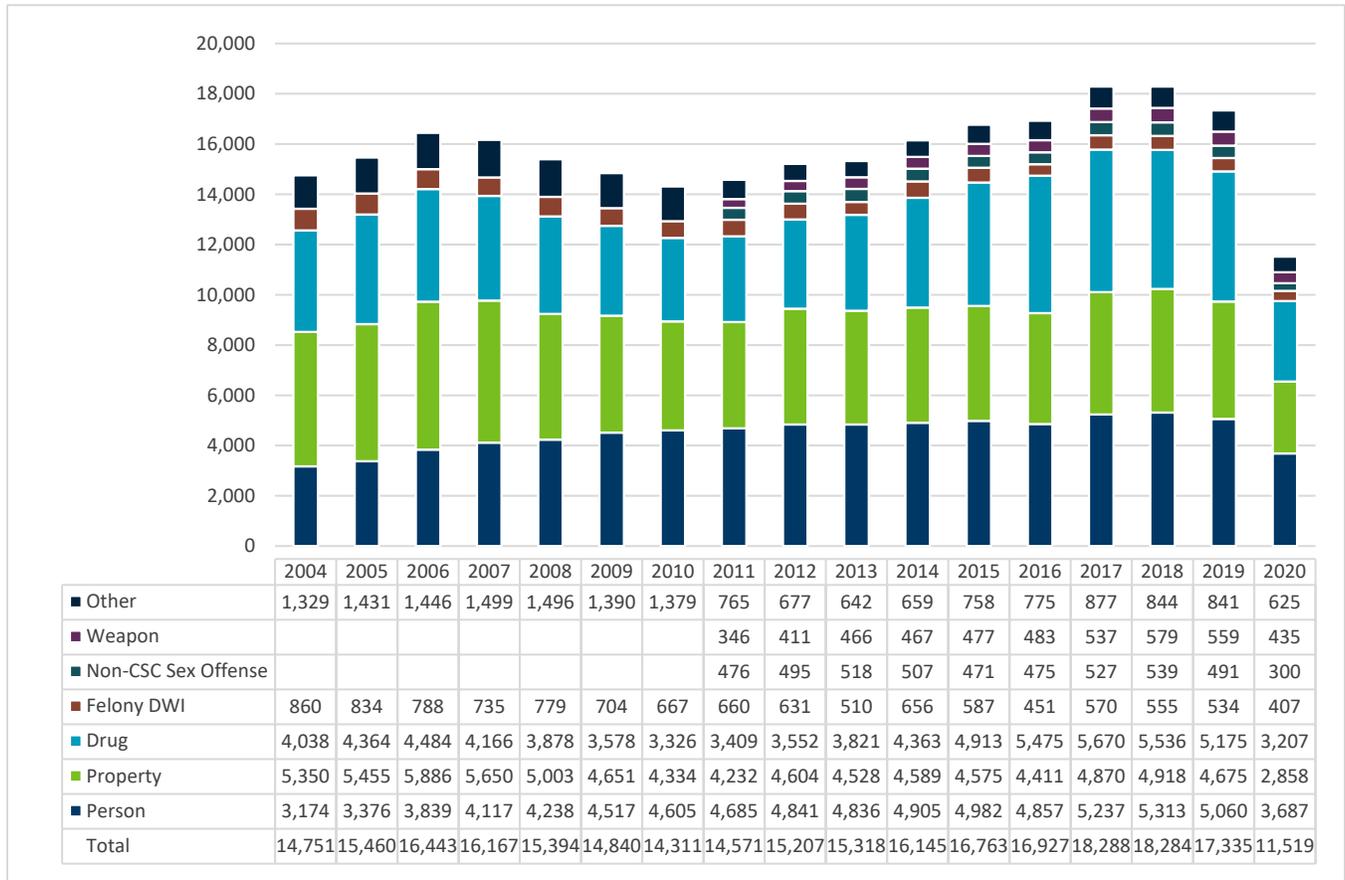


According to Department of Public Safety data, Minnesota’s index crime rate<sup>43</sup> has fluctuated over time, but was generally falling between 1996 and 2017. Between 2018 and 2020, however, the index crime rate rose.<sup>44</sup>

## Change in Case Volume by Offense Type

Figure 4 shows recent trends in felony case volume by offense types.

Figure 4. Number of Cases Sentenced by Offense Type, 2004–2020



While cases are divided into seven offense types, the first three offense categories (in bold) generally total at least 85 percent of each year’s case volume:

- **Person offenses** (including criminal sexual conduct (CSC));
- **Drug offenses;**
- **Property offenses;**

<sup>43</sup> “Index crimes” are comprised of “violent crimes” (Murder, Forcible Rape, Robbery, Aggravated Assault, & Human Trafficking) and “property crimes” (Burglary, Larceny, Motor Vehicle Theft, & Arson). The rate is population-adjusted.

<sup>44</sup> From 2019 to 2020, the index crime rate rose by 3.1% (from a population-adjusted rate of 2,311.7 to 2,384.2), still a bit over half the 1990s rates. Minn. Uniform Crime Report – 2020, Minn. Dep’t of Public Safety (retrieved Dec. 1, 2021, at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2020-Minnesota-Uniform-Crime-Report.pdf> & <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2020UCR-HistoricalCrimeIndex.xls>).

- Felony DWI;
- Non-CSC sex offenses;<sup>45</sup>
- Weapon offenses;<sup>46</sup> and
- Other offenses.<sup>47</sup>

Table 2 displays the year-to-year percent change in case volume by offense type.

Table 2. Cases Sentenced, Percent Change from Previous Year, by Offense Type, 2001–2020

Year Sentenced	All Offenses	Person	Property	Drug	Felony DWI	Non-CSC Sex Offense	Weapon	Other
2000	-2.2%	-5.1%	-7.4%	+8.6%				+4.2%
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%	-1.3%	-3.0%
2011	+1.8%	+1.7%	-2.4%	+2.5%	-1.0%	+9.9%	+9.8%	+20.3%
2012	+4.4%	+3.5%	+8.8%	+4.2%	-4.4%	+4.0%	+18.8%	-11.5%
2013	+0.7%	-0.1%	-1.7%	+7.6%	-19.2%	+4.6%	+13.4%	-5.2%
2014	+5.4%	+1.4%	+1.3%	+14.2%	+28.6%	-2.1%	+0.2%	+2.6%
2015	+3.8%	+1.6%	-0.3%	+12.6%	-10.5%	-7.1%	+2.1%	+15.0%
2016	+1.0%	-2.5%	-3.6%	+11.4%	-19.1%	-4.3%	+1.3%	+2.2%
2017	+8.0%	+7.8%	+10.4%	+3.6%	+20.0%	+16.9%	+11.2%	+13.2%
2018	-0.0%	+1.5%	+1.0%	-2.4%	-2.6%	+2.3%	+7.8%	-3.8%
2019	-5.2%	-4.8%	-4.9%	-6.5%	-3.8%	-8.9%	-3.5%	-0.4%
2020	-33.6%	-27.1%	-38.9%	-38.0%	-23.8%	-38.9%	-22.2%	-25.7%

<sup>45</sup> “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).

<sup>46</sup> “Weapon” category includes: Possession of a firearm by a felon convicted of a crime of violence, discharge of firearm, and other weapon related offenses.

<sup>47</sup> “Other” category includes: Fleeing police, escape, voting violations, tax evasion laws, and other offenses of less frequency. “Other” category also includes DWI before 2004 and non-CSC sex offenses and weapon offenses before 2010.

## Distribution of Cases by Gender, Race/Ethnicity and Judicial District

Of those sentenced in 2020, 82.2 percent were male and 17.8 percent were female (Table 3). Figure 5 shows the racial or ethnic composition of those sentenced from 1981 through 2020. Figure 6 displays the distribution of the racial or ethnic composition of those sentenced in 2020 by Minnesota judicial district (map on p. 66).

Figure 5. Distribution of Cases by Race/Ethnicity, 1981–2020

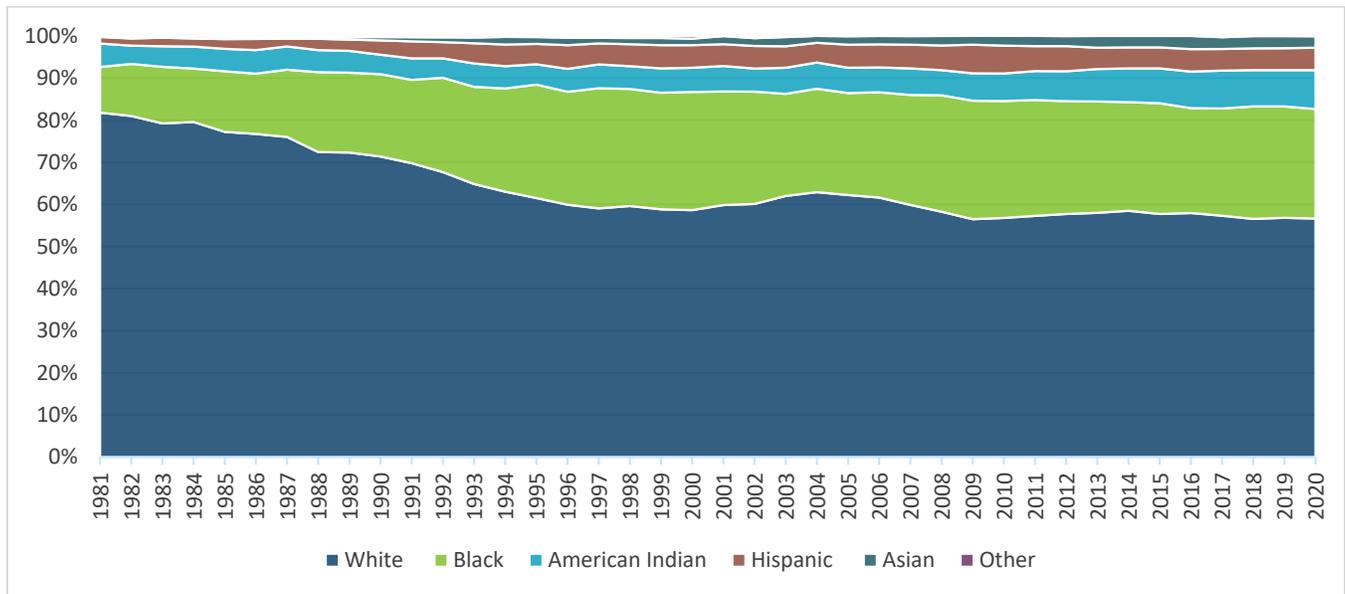


Figure 6. Distribution of Cases by Race and Judicial District, 2020

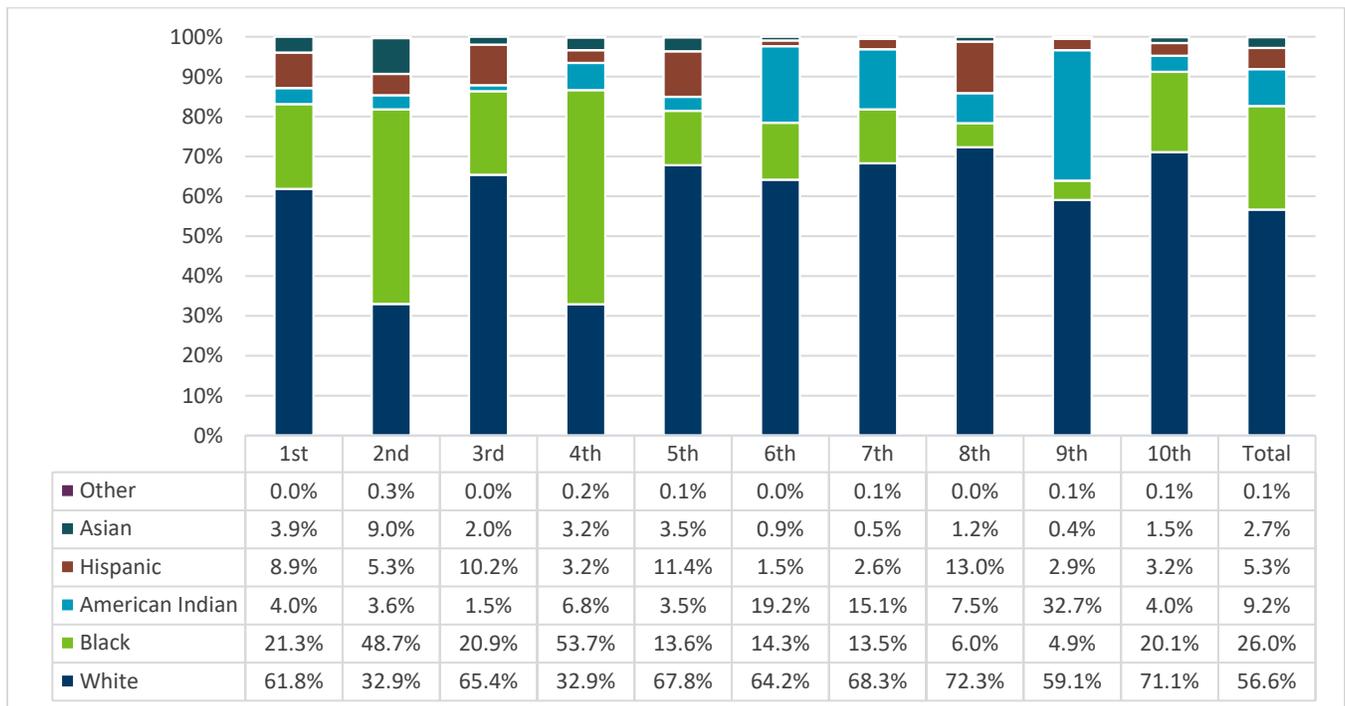


Table 3 compares, by the categories of sex, race or ethnicity, and judicial district, the population of felony cases sentenced in 2020 with the estimated state adult population on July 1. Within those comparison categories, Table 3 also calculates the rate of cases sentenced per 100,000 Minnesota adult residents.

*Table 3. Cases Sentenced, 2020, by Gender, Race/Ethnicity, and Judicial District, Compared to 2020 Estimated Adult Population*

	MSGC Category	People Sentenced in 2020		U.S. Census Category	2020 Estimated Adult Population		People Sentenced per 100,000
		Number	Percent		Number	Percent	
	Male	9,472	82.2%	Male	2,154,092	49.4%	440
	Female	2,046	17.8%	Female	2,202,031	50.6%	93
Race & Ethnicity	White	6,525	56.6%	White*	3,630,880	83.4%	180
	Black	2,993	26.0%	Black or African American*	289,914	6.7%	1,032
	American Indian	1,064	9.2%	American Indian*	67,009	1.5%	1,589
	Hispanic**	614	5.3%	Hispanic**	202,597	4.7%	303
	Asian	310	2.7%	Asian*	232,313	5.3%	133
	Other/Unknown	12	0.1%	Native Hawaiian/Other Pacific Islander*	5,147	0.1%	***
Judicial District	First	1,470	12.8%	First	614,374	14.1%	239
	Second	956	8.3%	Second	420,793	9.7%	227
	Third	864	7.5%	Third	373,423	8.6%	231
	Fourth	2,299	20.0%	Fourth	993,424	22.8%	231
	Fifth	851	7.4%	Fifth	220,999	5.1%	385
	Sixth	547	4.8%	Sixth	202,263	4.6%	271
	Seventh	1,280	11.1%	Seventh	380,274	8.7%	337
	Eighth	332	2.9%	Eighth	122,196	2.8%	272
	Ninth	1,153	10.0%	Ninth	265,074	6.1%	435
	Tenth	1,767	15.3%	Tenth	763,303	17.5%	231
	<b>Total</b>	<b>11,519</b>	<b>100.0%</b>	<b>Total</b>	<b>4,356,123</b>	<b>100.0%</b>	<b>264</b>

Source of July 1, 2020, population estimate: U.S. Census Bureau (Nov. 2021).

\*Not Hispanic, alone or in combination with one or more other races. The sum of percentages of residents in each racial or ethnic category exceeds 100 percent (101.6%) because residents of more than one race are counted in more than one category. \*\*Table 3 lists all Hispanic offenders and residents as Hispanic, regardless of race.

\*\*\*The MSGC category of "Other/Unknown" is not a valid comparison group to the U.S. Census category of "Native Hawaiian/Other Pacific Islander."

See Appendix 3 (p. 66) for a map of Minnesota's ten judicial districts.

## Incarceration Rates

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

The Guidelines presume who should go to state correctional institutions (prison) and for how long. Imprisonment rates are related to the Guidelines recommendations and are based on the seriousness of the offense and the criminal history score. In cases in which prison sentences are stayed, the court usually places the defendant 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 facility and are often given intermediate sanctions such as treatment (residential or nonresidential), restitution, and fines. There are few specific guidelines to the court regarding the imposition of these intermediate sanctions (see Guidelines section 3.A).

### Total Incarceration

The total incarceration rate describes the percentage of cases in which the sentence included incarceration in a state prison or local correctional facility. Figure 7 shows the total incarceration rate, as well as the separate rates for prison and local confinement, from 1982 to 2020. For comparison, Figure 7 also displays the Guidelines-recommended (“presumptive”) imprisonment rate over time. More cases are recommended imprisonment than actually receive prison sentences. In 2020, the Sentencing Guidelines recommended imprisonment in a record 35.4 percent of cases, compared to the actual imprisonment rate of 22.6 percent. The difference between these two rates—of 12.9 percentage points—was easily the largest disparity between presumptive and actual imprisonment rates on record, surpassing the 2019 record of 10.4 percentage points.

Figure 7. Actual & Presumptive Incarceration Rates, 1982, 1984, 1986, 1988, 1990–2020

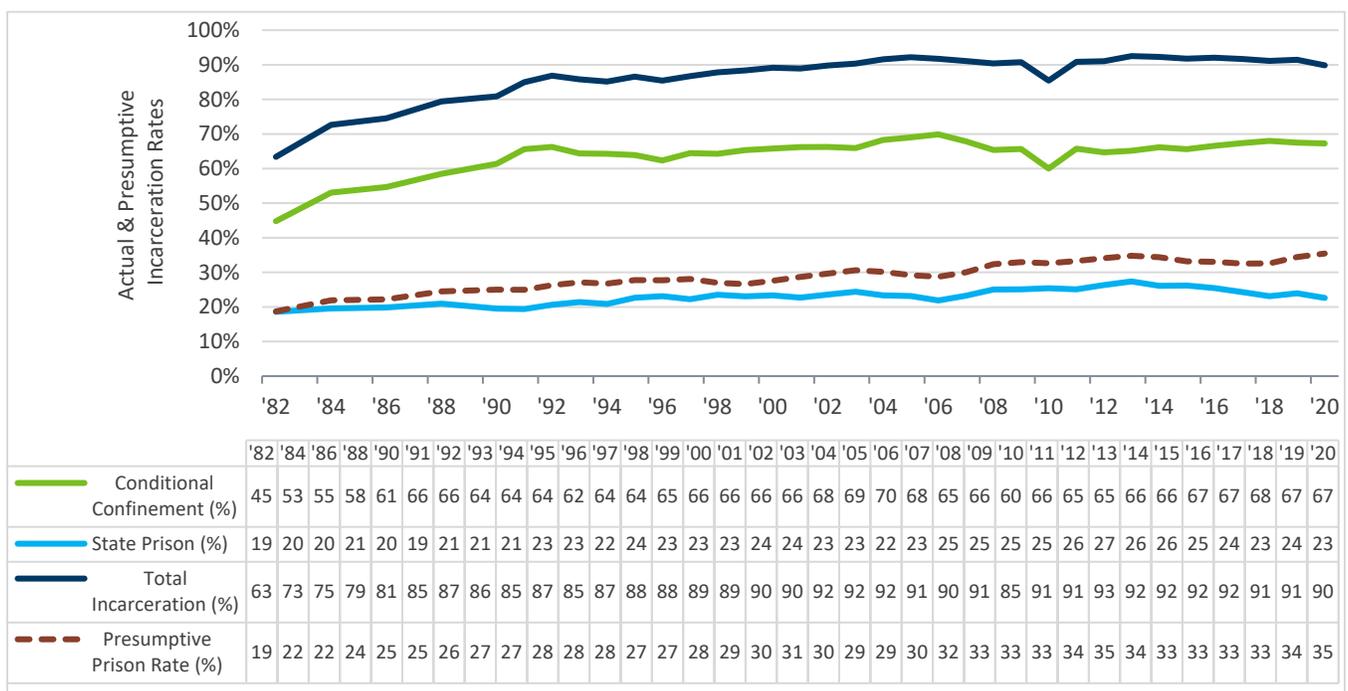


Table 4 provides total incarceration information for cases sentenced in 2020. “Total Incarceration” includes all sentences that included a prison sentences or local confinement time as a condition of a stayed sentence. When comparing imprisonment rates across various demographic groups (sex, race/ethnicity, or judicial district), it is important to note that much of the variation is directly related to the proportion of cases in any particular group recommended a prison sentence by the Guidelines.

Table 4. Incarceration Rates by Gender, Race/Ethnicity, and Judicial District, 2020

	Total Number	Total Incarceration		Local Confinement		State Prison				
		Number	Rate (%)	Number	Rate (%)	Number	2020 Rate (%)	2015–19 5-Yr. Rate	2016–20 5-Yr. Rate	
Male	9,472	8,588	90.6	6,179	65.2	2,409	25.4	27.8	27.1	
Female	2,046	1,764	86.2	1,571	76.8	193	9.4	11.4	10.9	
Race & Ethnicity	White	6,526	5,774	88.5	4,460	68.3	1,314	20.1	21.5	21.0
	Black	2,993	2,748	91.8	1,919	64.1	829	27.7	30.7	29.9
	American Indian	1,065	980	92.0	729	68.5	251	23.6	25.3	24.9
	Hispanic	614	565	92.0	413	67.3	152	24.8	27.9	27.4
	Asian	310	276	89.0	220	71.0	56	18.1	22.7	21.7
	Other/Unknown	12	9	75.0	9	75.0	0	0.0	12.2	10.5
	Judicial District	First	1,470	1,324	90.1	1,025	69.7	299	20.3	19.6
Second		956	944	98.7	711	74.4	233	24.4	25.4	25.0
Third		864	725	83.9	523	60.5	202	23.4	24.6	24.5
Fourth		2,299	1,987	86.4	1,447	62.9	540	23.5	27.8	26.5
Fifth		851	778	91.4	607	71.3	171	20.1	20.8	20.8
Sixth		548	482	88.0	383	69.9	99	18.1	21.8	21.7
Seventh		1,280	1,225	95.7	915	71.5	310	24.2	28.6	27.5
Eighth		332	310	93.4	234	70.5	76	22.9	27.8	26.2
Ninth		1,154	939	81.4	616	53.4	323	28.0	25.4	25.6
Tenth		1,767	1,638	92.7	1,289	72.9	349	19.8	22.3	21.5
<b>Total</b>	<b>11,519</b>	<b>10,352</b>	<b>89.9</b>	<b>7,750</b>	<b>67.3</b>	<b>2,602</b>	<b>22.6</b>	<b>24.6</b>	<b>24.0</b>	

### Race/Ethnicity

Some variation in the 2020 total incarceration rate was observed across the five racial or ethnic groups, ranging from 88.5 percent (observed in the white group) to 92 percent (observed in the American Indian and Hispanic groups) (Figure 8, p. 26). Greater variation existed in the separate rates for imprisonment and local confinement. The Asian group had the lowest imprisonment rate at 18.1 percent. (For this group, the “presumptive prison rate”—the rate at which prison is recommended—was 31.3%). The Black group had the highest imprisonment rate at 27.7 percent (and the highest presumptive prison rate at 44.8%) (Figure 8).

Figure 8. Actual & Presumptive Incarceration Rates by Gender & Race/Ethnicity, 2020

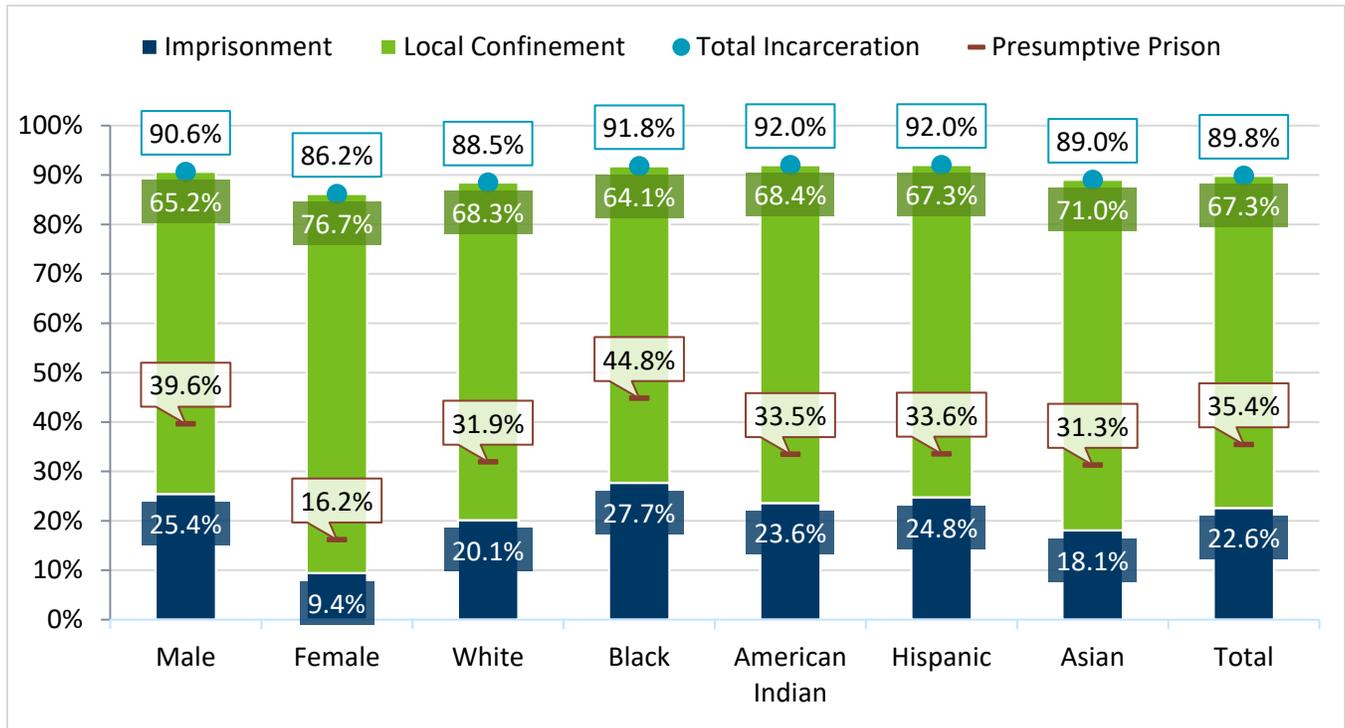
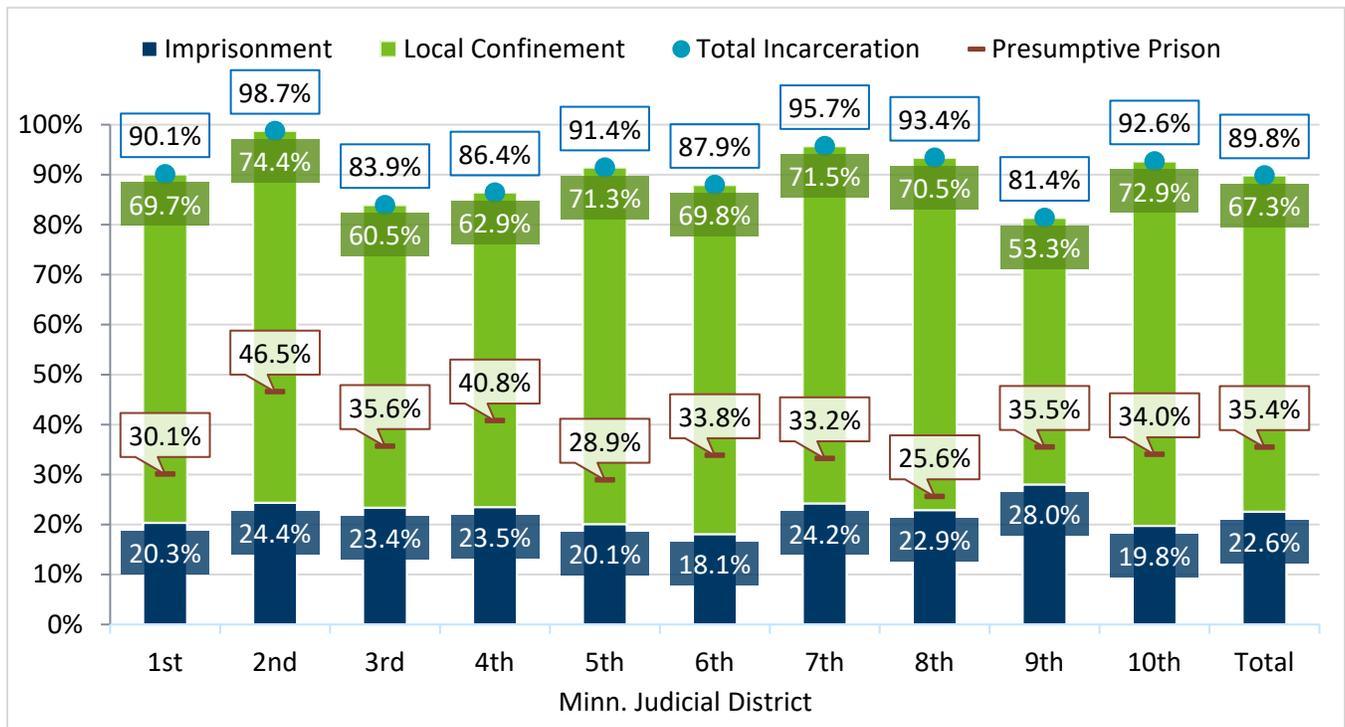


Figure 9. Actual & Presumptive Incarceration Rates by Judicial District, 2020



## Judicial District

Variation in incarceration rates was also observed by judicial district (Figure 9, p. 26). The Second Judicial District (Ramsey County) had the highest total incarceration rate (98.7%) and the Ninth Judicial District (northwest Minnesota) had the lowest total incarceration rate (81.4%). Variation was also seen with respect to the separate rates for prison and local confinement. The Ninth Judicial District had the highest imprisonment rate (28.0%), and the Sixth Judicial District (northeast counties) had the lowest imprisonment rate (18.1%). With regard to use of local confinement, the Second District had the highest rate (74.4%), and the Ninth Judicial District had the lowest rate (53.3%). A map of the judicial districts can be found in Appendix 3 (p. 66).

## Average Pronounced Sentences (Durations)

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### State Prison

Among executed prison sentences in 2020, the average pronounced prison duration was 50.6 months, an increase from 2019 (Figure 10, p. 28). The average varied by applicable Grid: 44 months for cases on the Standard Grid; 91 months for cases on the Sex Offender Grid;<sup>48</sup> and 49 months for cases on the Drug Offender Grid.

### *Life Sentences*

Ten people received life sentences in 2020, up from eight in 2019. Of the ten life sentences, eight were for first-degree murder, one was for first-degree criminal sexual conduct, and one was for second-degree criminal sexual conduct. For seven of those life sentences, no release will ever be possible because the conviction was of premeditated first-degree murder<sup>49</sup> or, in one case, first-degree intentional murder of an official. The three life sentences with possibility of release resulted from convictions of first-degree murder, first-degree criminal sexual conduct, and second-degree criminal sexual conduct. Life sentences are excluded from the average pronounced prison sentences reported here.

### Local Confinement (i.e., County Jails, Local Correctional Facilities and Workhouses)

Although information is available in the monitoring system regarding the amount of local confinement a judge pronounces as a condition of probation, case data on the actual amount of time served are not. The average term of local confinement pronounced as a condition of probation does not always provide a complete picture of how much time people are spending in local confinement. For a variety of reasons, many will not serve the full amount of time pronounced by the judge. Some who have served time prior to sentencing may receive

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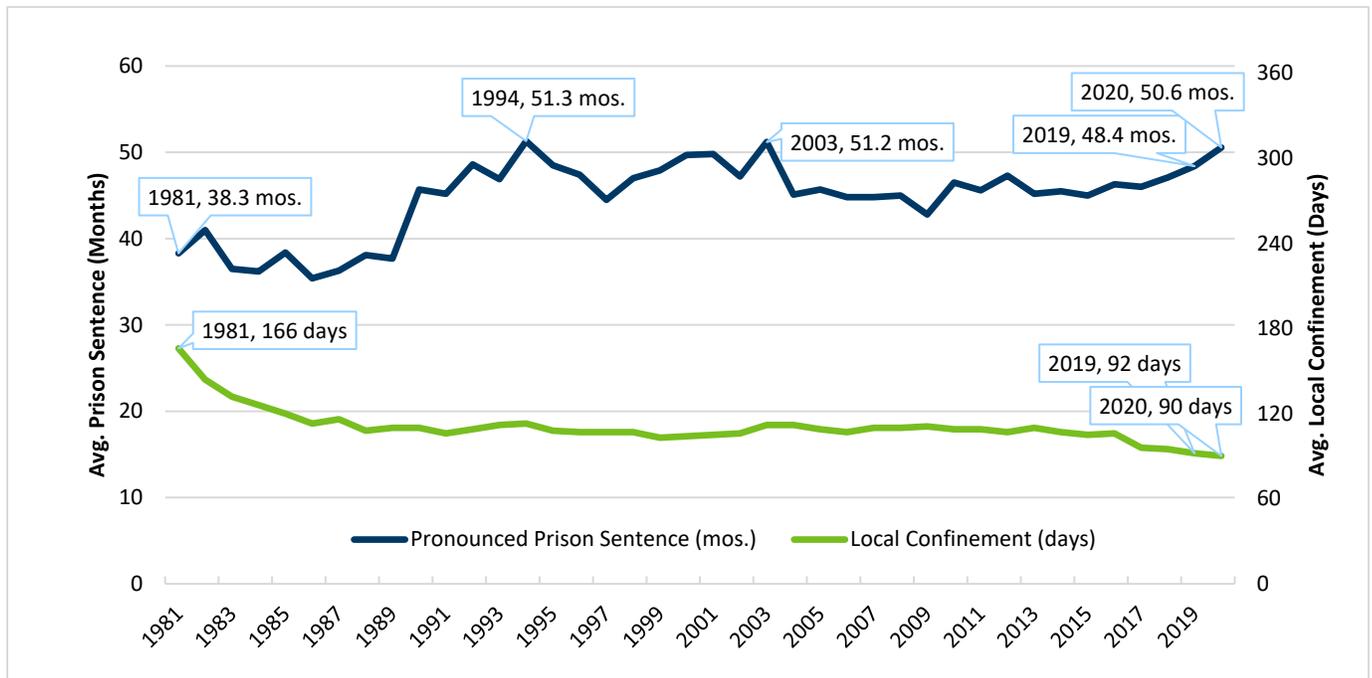
<sup>48</sup> In 2020, nine cases (0.1%) were sentenced in which the offense was committed before August 1, 2005, some of which were sex offenses. The applicable pre-2005 Standard Grid was therefore used to determine the presumptive sentence. Three of these nine cases received prison sentences with an average pronounced sentence of 211 months. This is higher than the average on the Standard Grid and Drug Offender Grid because one of the prison sentences were for second-degree murder, and one was for first-degree criminal sexual conduct. The third offense that received prison was a drug offense that received 45 months' imprisonment.

<sup>49</sup> Life imprisonment without possibility of release has been the mandatory sentence for premeditated murder and certain sex offenses since 2005. [2005 Minn. Laws ch. 136](#), art. 2, §§ 5 & 21, & art. 17, § 9.

credit for this time off of the post-sentence time. For some, this credited time will constitute the entire period of local confinement. Others may be released to a treatment program.

The average amount of local confinement pronounced was 90 days in 2020, the lowest average on record. The average amount of local confinement was also less than 100 days in 2019, 2018, and 2017, and had remained in a fairly narrow range—between 103 and 113 days—from 1988 through 2016 (Figure 10).

Figure 10. Average Pronounced Prison Sentences and Local Confinement, 1981–2020



## Departures from the Sentencing Guidelines

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

As mentioned on page 18, above, MSGC staff experienced an unusual delay in obtaining some 2020 departure data.<sup>50</sup> As a result of this delay, approximately ten percent of the state’s 2020 departure information was not available in time for inclusion in this report. Rather than report incomplete and potentially misleading information, this report will not summarize 2020 sentencing departures data. Instead, please refer to the summary of finalized data to be published on the Commission’s website in the first half of 2022.<sup>51</sup>

<sup>50</sup> The delay was caused by an administrative error outside the agency’s direct control.

<sup>51</sup> The “2020 Sentencing Practices Data Reports” will be published at <https://mn.gov/sentencing-guidelines/reports>.

## Five-Year Presumptive Probation Cap

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In 2020, the Commission amended the Sentencing Guidelines to provide for a presumptive probation term, subject to departure, of up to five years or the statutory maximum sentence, whichever is less, for most felony offenses.<sup>52</sup> Because it applied only to offenses committed on or after August 1, 2020, the policy affected very few cases that were sentenced by December 31, 2020. While early data suggest that the new policy is perhaps generally being followed,<sup>53</sup> it remains too early to make any conclusions. MSGC will be able to report a more definitive picture of the criminal justice system's response to the policy in 2023.

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<sup>52</sup> Unless it is an exempted offense described in 2021 Minn. Sentencing Guidelines and Commentary section 3.A.2.d.

<sup>53</sup> Among 932 cases with offense dates between August 1, 2020 and May 28, 2021, and sentence dates through July 28, 2021, for which a sentencing worksheet was submitted to MSGC and for which MSGC received sentencing data in time for this report, over 90% (902 cases) received a probation term of no more than five years (or the statutory maximum, whichever is less). This should not be regarded a representative sample of cases, however.

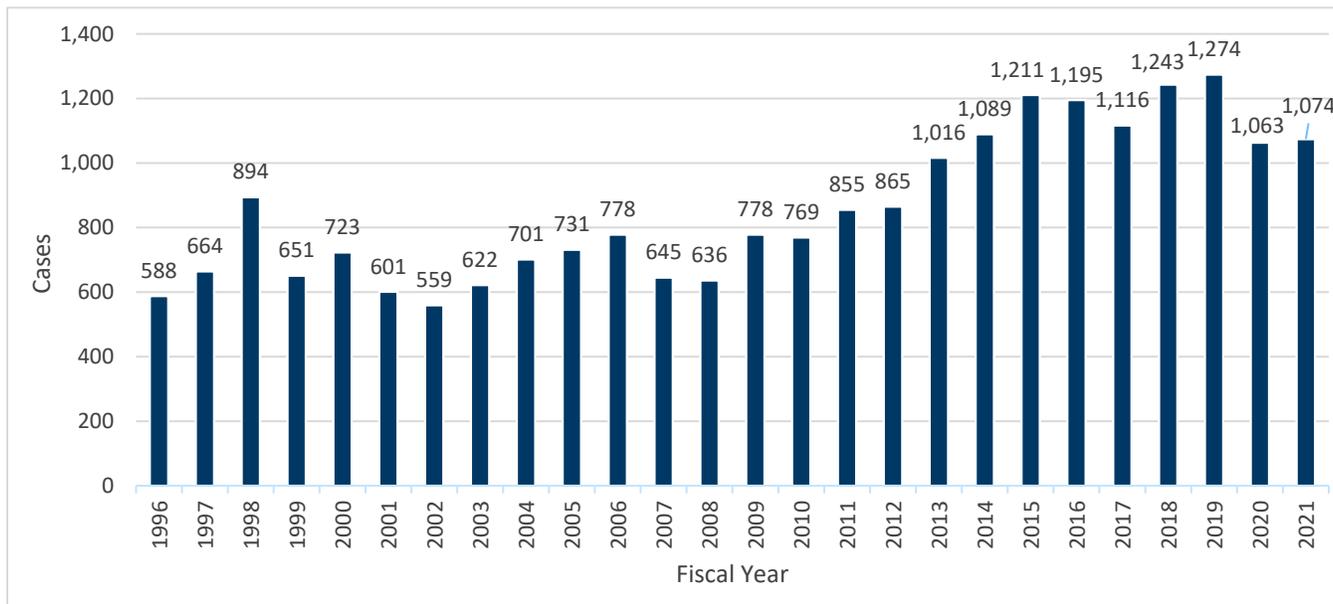
# County Attorney Firearms Reports

Current law requires all county attorneys in Minnesota, by July 1 of each year, to submit to the Commission their data regarding felony cases in which defendants allegedly possessed or used a firearm and committed offenses listed in [Minn. Stat. § 609.11](#), subdivision 9.<sup>54</sup> 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 report forms, 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.

## Cases Allegedly Involving a Firearm, 1996 to 2021

Since the mandate began in 1996, the average number of annual cases allegedly involving firearms statewide has been 851. Between July 1, 2020 and June 30, 2021 (FY 2021), county attorneys report disposing of 1,074 cases allegedly involving a firearm (Figure 11). This was a one percent increase from FY 2020. In early August 2020, soon after the FY 2020 reporting period ended, the Minnesota Judicial Branch reported higher than usual pending felony cases (by about 6,000 cases) due to the COVID-19 Health Pandemic. This backlog may have affected the ability of county attorneys to dispose of firearms cases.<sup>55</sup>

Figure 11. Cases Allegedly Involving a Firearm, FY 1996 to FY 2021



<sup>54</sup> The statute provides a mandatory minimum sentence of 3 years for the first conviction of a designated offense committed while the defendant or an accomplice possessed or used a firearm, and 5 years for a second. Minn. Stat. § 609.11, subd. 5(a). Designated 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.

<sup>55</sup> G. Hoheisel (personal communication with MSGC staff, August 3, 2020), discussing pending felony cases.

## Cases Charged, 2021

Of the 1,074 cases in which defendants allegedly possessed or used firearms, prosecutors charged 968 cases (90%), while 106 cases (10%) were not charged (Figure 12, “Charged” and “Not Charged”).

## Case Outcomes, 2021

Of the 968 cases charged, 586 (61%) were convicted of offenses designated in [Minn. Stat. § 609.11](#); 125 (13%) were convicted of non-designated offenses (not covered by the mandatory minimum (*e.g.*, threats of violence under [Minn. Stat. § 609.713](#))); 192 (20%) had all charges dismissed; 6 (1%) were acquitted on all charges; and 59 (6%) were “other” cases, including federal prosecutions and stays of adjudication (Figure 12).

## Cases Convicted of Designated Offense & Firearm Established on the Record, 2021

In 534 (91%) of the 586 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 12, “Firearm Established”). 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.

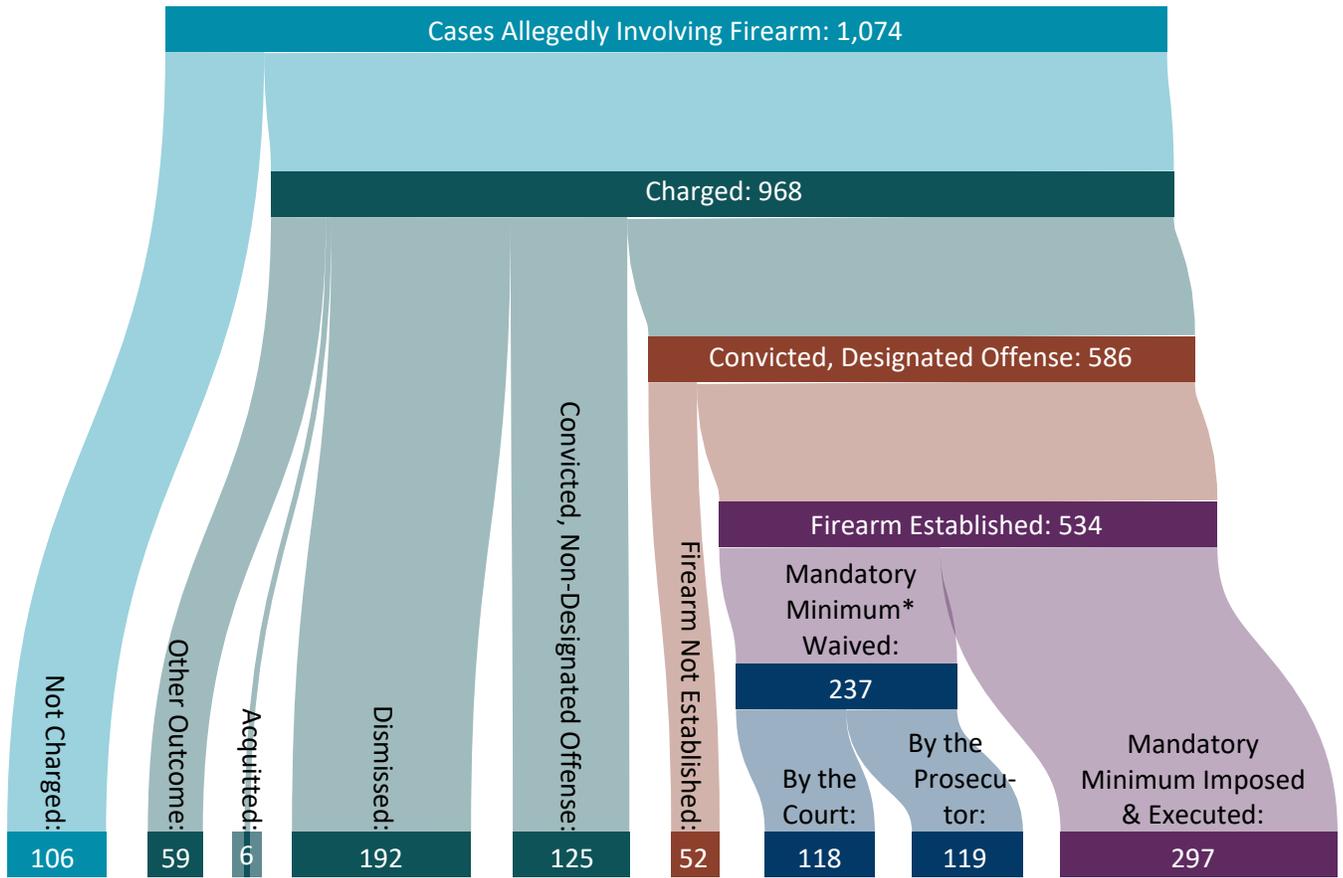
In the cases in which the firearm was established on the record, 297 offenders (56%)<sup>56</sup> were sentenced to the mandatory minimum prison term (Figure 12, “Mandatory Minimum Imposed & Executed”). The statute specifically allows the prosecutor to file a motion to have the defendant sentenced without 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.<sup>57</sup>

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<sup>56</sup> County attorneys’ data for fiscal year 2021 (ending June 30, 2021). According to preliminary MSGC monitoring data from calendar year 2020, of those offenders whose sentencing worksheets reflected the use or possession of a firearm or prohibited persons from possessing a firearm (excluding ammunition-only cases) requiring a mandatory prison sentence under Minn. Stat. § 609.11, 50 percent (321 offenders) received both the mandatory prison disposition and the mandatory minimum duration or longer. In addition, 7 percent (43 offenders) received the mandatory prison disposition, but less than the mandatory minimum duration.

<sup>57</sup> Although [Minn. Stat. § 609.11](#) uses the term “mandatory minimum” to describe the sentences it prescribes, the term includes cases in which the court, on the motion of the prosecutor or on its own motion, is statutorily permitted, when substantial and compelling reasons are present, to sentence a defendant without regard to those prescribed sentences. Minn. Stat. § 609.11, subd. 8(a); but see subd. 8(b) & 8(c) (the court is not permitted to sentence a defendant without regard to the mandatory minimum if the defendant was previously convicted of a designated offense in which the defendant used or possessed a firearm or other dangerous weapon, nor if the defendant or an accomplice used or personally possessed a firearm in the commission of a first- or second-degree sale of a controlled substance).

Figure 12. Disposition of Cases, Alleged Designated Offenses Involving Firearms, as Reported by County Attorneys, Cases Disposed of Between July 1, 2020, and June 30, 2021



\*For an explanation of the term "mandatory minimum," see footnote 57.

Table 5. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm, by Minn. County, Cases Disposed of Between July 1, 2020, and June 30, 2021

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Aitkin	7	6	0	5	1	1	1
Anoka	53	49	8	4	35	34	13
Becker	5	5	0	0	5	5	3
Beltrami	63	8	1	2	4	4	4
Benton	12	11	5	5	1	1	1
Big Stone	0	0	0	0	0	0	0
Blue Earth	3	3	0	0	3	3	2
Brown	1	1	1	0	0	0	0
Carlton	4	4	4	0	0	0	0
Carver	1	1	0	0	1	1	1
Cass	16	16	5	3	7	4	4
Chippewa	2	2	0	1	1	0	0
Chisago	5	5	1	1	3	3	3
Clay	21	21	5	6	9	8	6
Clearwater	2	2	1	1	0	0	0
Cook	0	0	0	0	0	0	0
Cottonwood	2	2	0	1	1	1	0
Crow Wing	29	18	2	7	8	8	2
Dakota	35	35	3	5	25	24	15
Dodge	0	0	0	0	0	0	0
Douglas*							
Faribault	0	0	0	0	0	0	0
Fillmore	4	3	0	2	1	1	1
Freeborn	7	7	0	2	5	4	3
Goodhue	10	10	0	1	8	8	4
Grant	4	4	0	2	1	0	0
Hennepin	334	334	87	17	194	191	96
Houston	3	3	2	0	1	0	0
Hubbard	11	9	0	6	3	3	2

\*Counties not reported.

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Isanti	4	3	1	2	0	0	0
Itasca	15	14	1	3	10	9	5
Jackson	3	2	0	0	2	2	0
Kanabec	12	7	0	0	7	6	3
Kandiyohi	3	2	0	0	2	2	2
Kittson	1	1	0	1	0	0	0
Koochiching	2	2	0	1	1	1	0
Lac qui Parle	0	0	0	0	0	0	0
Lake	2	1	0	0	1	1	0
Lake of the Woods*							
Le Sueur	2	2	0	0	2	2	2
Lincoln	1	1	1	0	0	0	0
Lyon	1	1	0	0	1	1	0
McLeod	5	5	0	4	1	1	1
Mahnomen	9	9	2	1	6	3	3
Marshall	0	0	0	0	0	0	0
Martin	3	3	1	2	0	0	0
Meeker	1	1	0	1	0	0	0
Mille Lacs	7	7	2	2	2	2	0
Morrison	4	4	0	1	1	1	1
Mower	15	15	1	1	13	10	10
Murray	1	1	1	0	0	0	0
Nicollet	3	3	1	1	1	1	0
Nobles	10	10	1	3	6	5	2
Norman	1	1	0	0	1	1	1
Olmsted	13	7	5	1	1	1	0
Otter Tail	5	3	2	0	1	1	0
Pennington	3	2	1	0	1	1	1
Pine	9	9	2	2	5	4	4

\*Counties not reported.

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Pipestone	4	4	0	1	3	1	0
Polk	10	10	2	1	7	6	4
Pope	2	0	0	0	0	0	0
Ramsey	123	122	25	8	82	74	41
Red Lake	0	0	0	0	0	0	0
Redwood	4	4	0	1	3	0	0
Renville	3	3	0	0	3	2	1
Rice	5	5	0	1	4	3	3
Rock	0	0	0	0	0	0	0
Roseau	3	3	1	0	2	1	1
Scott	17	14	0	4	9	9	6
Sherburne	8	7	0	1	6	5	1
Sibley	0	0	0	0	0	0	0
St. Louis	38	34	3	2	26	26	18
Stearns	25	25	1	0	21	19	10
Steele	13	13	3	1	7	5	5
Stevens	2	2	0	0	2	2	0
Swift	1	1	0	0	1	1	1
Todd	4	4	3	0	1	1	1
Traverse	0	0	0	0	0	0	0
Wabasha	8	8	0	2	6	2	0
Wadena	2	2	1	0	1	1	1
Waseca	5	5	1	1	3	2	1
Washington	14	14	1	2	11	11	4
Watsonwan	4	4	1	1	2	2	1
Wilkin	0	0	0	0	0	0	0
Winona*							
Wright	9	8	2	2	4	2	2
Yellow Medicine	1	1	1	0	0	0	0
<b>Total</b>	<b>1,074</b>	<b>968</b>	<b>192</b>	<b>125</b>	<b>586</b>	<b>534</b>	<b>297</b>

\*Counties not reported.

# Appendices

## Appendix 1. 2021 Guidelines Modifications

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This appendix reports all modifications made to the Minnesota Sentencing Guidelines and Commentary during the previous twelve months. Unless otherwise noted, each modification contained in this appendix has a specified effective date of September 15, 2021.<sup>58</sup> All modifications were published September 15, 2021.

This appendix has five parts:

- Appendix 1.1. Legislative Amendments to Crime Laws Affecting the Guidelines – 2021 1st Special Session (p. 37)
- Appendix 1.2. Legislative Amendments to Crime Laws Affecting the Guidelines – 2021 Regular Session (p. 58)
- Appendix 1.3. Technical Correction – Update Conditional Release Statutory Reference (p. 60)
- Appendix 1.4. Legislative Amendments to Crime Laws Affecting the Guidelines – 2020 Regular Session (p. 61)
- Appendix 1.5. Legislative Amendments to Crime Laws Affecting the Guidelines – 2020 1st Special Session (p. 62)

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<sup>58</sup> See 2021 Minn. Sentencing Guidelines & Commentary section 3.G for an explanation of how effective dates are implemented.

## Appendix 1.1. Legislative Amendments to Crime Laws Affecting the Guidelines – 2021 1st Special Session

On September 9, 2021, after public hearing, the Commission unanimously adopted the following proposals, which are summarized in Table 1 (p. 8). The Commission proposed these modifications at its meeting on July 22, 2021.

*Adopted modifications to 2020 Minn. Sentencing Guidelines & Commentary:*

### Minnesota Sentencing Guidelines and Commentary

#### 1. Purpose and Definitions \* \* \*

##### B. Definitions

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

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~~ nine severity levels, ranging from high (Severity Level A) to low (Severity Level H I). Drug offenses are arranged on the Drug Offender Grid into nine levels of severity, ranging from high (Severity Level D9) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious.

\* \* \*

#### 2. Determining Presumptive Sentences \* \* \*

##### 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, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	2
	B – E	1½
	F – G	1
	H	½
	H I	½ (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, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	3
	B – C	2
	D – E	1½
	F – G H	1
	H I	½ (for first offense); 1 (for subsequent offenses)

\* \* \*

Comment

\* \* \*

**2.B.202.** *The Commission intended to avoid criminal history scores in which a prior offense's custody status point outweighed the criminal history of the prior offense itself. Accordingly, when the criminal history weight of a prior felony is one-half point (but excluding severity level H or I offenses; see generally section 2.B.1) or the prior gross misdemeanor or misdemeanor contributes one or two misdemeanor units (see section 2.B.3), the custody status from that prior offense results in one-half, rather than one, custody status point.*

\* \* \*

**2.B.406.** *The Commission decided that it would take two juvenile adjudications to equal 1 point on the criminal history score, and generally, an offender may not receive more than 1 point on the basis of prior juvenile adjudications. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the Guidelines would presume imprisonment, regardless of criminal history, if committed by an adult. This includes offenses in the non-shaded portions of the applicable Grids at a Criminal History Score of 0 (e.g., Severity Level 8 or H I), offenses subject to mandatory minimum laws (e.g., Assault in the Second Degree), or any other applicable policies under section 2.C. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile adjudications are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication meeting the above criteria would receive no point on the criminal history score.*

\* \* \*

**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. \* \* \*

(9) In the case of a qualifying United States military service member or veteran, the offender is found by the district court to meet the criteria for particular amenability to probation found in Minn. Stat. § 609.1056, subd. 4.

\* \* \*

## **G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers \* \* \***

### 5. Attempt or Conspiracy to Commit Criminal Sexual Conduct in the First or Second Degree.

The Commission regards the provisions in Minn. Stat. § 609.342, subd. 2(b) and 609.343, subd. 2(b) as statutorily created presumptive sentences, not mandatory minimums. When an offender is sentenced for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree under Minn. Stat. § 609.342 or Criminal Sexual Conduct in the Second Degree under Minn. Stat. § 609.343, ~~subd. 1(c), (d), (e), (f), and (h)~~ subd. 1(a), 1(b), 1(c), 1(d), 1(e), 1a(a), 1a(b), 1a(c), 1a(d), 1a(h), or 1a(i), the presumptive duration is one-half of that found in the appropriate cell on the Sex Offender Grid for the underlying offense or any mandatory minimum, whichever is longer.

\* \* \*

## **3. Related Policies**

### **A. Establishing Conditions of Stayed Sentences \* \* \***

#### 2. Length of Stay.

- a. When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.

\* \* \*

- d. The limitation in section 3.A.2.a does not apply to a sentence for a violation of Minn. Stat. § 609.19 (Murder 2nd Degree), 609.195 (Murder 3rd Degree), 609.20 (Manslaughter 1st Degree), 609.2112 (Criminal Vehicular Homicide), 609.2662 (Murder of an Unborn Child 2nd Degree), 609.2663 (Murder of an Unborn Child 3rd Degree), 609.2664 (Manslaughter of an Unborn Child 1st Degree), 609.268 (Death or Injury of an Unborn Child in Comm. of Crime), 609.342 (Criminal Sexual Conduct 1st Degree), 609.343 (Criminal Sexual Conduct 2nd Degree), 609.344 (Criminal Sexual Conduct 3rd Degree), 609.345 (Criminal Sexual Conduct 4th Degree), ~~or 609.3451 (Criminal Sexual Conduct 5th Degree)~~, or 609.3458 (Sexual Extortion).

\* \* \*

## **F. Military Veterans**

Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision. Minn. Stat. § 609.1056 provides deferred judgment procedures for certain criminal offenses related to service-related disorders if the defendant is a United States military service member or veteran.

\* \* \*

#### 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 (Intentional; Drive-By-Shootings)</i>	<b>11</b> 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<sup>2</sup></i>	426 <i>363-480<sup>2</sup></i>
<i>Murder, 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	<b>10</b> 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>Murder, 3rd Degree (Controlled Substances) (Drugs)</i> <i>Assault, 1st Degree (Great Bodily Harm)</i>	<b>9</b> 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>

\* \* \*

#### 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.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	<b>A</b> 144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360<sup>2</sup></i>
<i>CSC 2nd Degree-1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i)(j)(h) (e.g., contact, &amp; force, &amp; injury with bodily harm)</i>	<b>B</b> 90 <i>90<sup>3</sup>-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300<sup>2</sup></i>
<i>CSC 3rd Degree-1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., penetration &amp; force coercion/occupation)</i>	<b>C</b> 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-<del>180</del>183</i>	180 <i>153-<del>180</del>216</i>
<i>CSC 2nd Degree-1a(e)(f)(a)(b)(g) (age) (e.g., contact &amp; victim under 13)</i> <i>CSC 3rd Degree-1a(a)(e)(f) or 1a(b) with 2(1) (age) (e.g., penetration &amp; child victim)</i>	<b>D</b> 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–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., contact &amp; force coercion/occupation) Dissemination of Child Pornography<sup>2</sup></i>	<b>E</b>	24	36	48	60 51-72	78 67-93	102 87-120	120 102-120 <sup>2</sup>
<i>CSC 4th Degree–1a(a)(b)(e)(f) (age) (e.g., contact &amp; child victim) CSC 5th Degree–3(b) (subsequent) Possession of Child Pornography (Subseq./Pred. Off./Under 13)</i>	<b>F</b>	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
<i>CSC 3rd Degree–1a(b) with 2(2) (i.e., penetration &amp; child victim 24–48 mo. younger) Possession of Child Pornography Solicit Child for Sexual Conduct<sup>2</sup></i>	<b>G</b>	15	20	25	30	39 34-46	51 44-60	60 51-60 <sup>2</sup>
<i>CSC 5th Degree–3(a) (nonconsensual penetration)</i>	<b>H</b>	<u>12<sup>1</sup></u>	<u>14</u>	<u>16</u>	<u>18</u>	<u>24</u>	<u>24<sup>2</sup></u> <u>24-24</u>	<u>24<sup>2</sup></u> <u>24-24</u>
<i>Failure to Register as a Predatory Offender</i>	<b>H I</b>	12 <sup>1</sup> 12 <sup>1</sup> -14	14 12 <sup>1</sup> -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43

<sup>1</sup> 12<sup>1</sup>=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.

<sup>2</sup> 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. For Severity Level H, all displayed durations, including the upper and lower ranges, are constrained by the statutory maximum at criminal history scores above 4.

<sup>3</sup> Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree 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.)

\* \* \*

### 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
11	Adulteration	609.687, subd. 3(1)
	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>	<u>609.221, subd. 4</u>
	Murder 2nd Degree (Intentional Murder; Unintentional Drive-By Shootings)	609.19, subd. 1
	Murder of an Unborn Child 2nd Degree	609.2662(1)
10	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>	<u>609.221, subd. 3</u>
	Fleeing a Peace Officer (Death)	609.487, subd. 4(a)
	Murder 2nd Degree (Unintentional Murder)	609.19, subd. 2
	Murder of an Unborn Child 2nd Degree	609.2662(2)
	Murder 3rd Degree	609.195(a)
	Murder of an Unborn Child 3rd Degree	609.2663
9	<u>Assault 1st Degree (Deadly Force Against Official)</u>	<u>609.221, subd. 2</u>
	<u>Assault 1st Degree (Great Bodily Harm)</u>	<u>609.221, subd. 1</u>
	Assault of an Unborn Child 1st Degree	609.267
	Criminal Abuse of Vulnerable Adult (Death)	609.2325, subd. 3(a)(1)
	Death of an Unborn Child in the Commission of Crime	609.268, subd. 1
	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(a)
	Kidnapping (Great Bodily Harm)	609.25, subd. 2(2)
	Manslaughter 1st Degree	609.20(1),(2) & (5)
	Manslaughter of an Unborn Child 1st Degree	609.2664(1) & (2)
	Murder 3rd Degree	609.195(b)

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
9	Tampering with Witness, Aggravated 1st Degree	609.498, subd. 1b
8	Aggravated Robbery 1st Degree	609.245, subd. 1
	Arson 1st Degree	609.561
	Burglary 1st Degree (w/Weapon or Assault)	609.582, 1(b) & (c)
	<u>Child Torture</u>	<u>609.3775</u>
	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	609.2325, subd. 3 <del>(a)</del> (2)
	* * *	
	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	609.66, <del>subd. 1e(b)</del> subd. 1e(a)(2) & (3)
* * *		
4	* * *	
	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	609.2325, subd. 3 <del>(a)</del> (3)
* * *		
3	* * *	
	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	609.66, subd. 1e(a) <u>(1)</u>
	* * *	
	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>609.324, subd. 2(b)</u>
* * *		
A	Criminal Sexual Conduct 1st Degree	609.342
B	Criminal Sexual Conduct 2nd Degree	<del>609.343 subd. 1(c)(d)(e)(f)(h)</del> <u>609.343, subd. 1(a)(b)(c)(d)(e) &amp; 1a(a)(b)(c)(d)(h)(i)</u>
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	609.322, subd. 1(a)

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
C	Criminal Sexual Conduct 3rd Degree	<del>609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)</del> 609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	<del>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)</del>	617.247, subd. 3(b)
	<del>Sexual Extortion (Penetration)</del>	609.3458, subd. 1(b)
	<del>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree</del>	609.322, subd. 1a
	<del>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)</del>	617.246, subd. 2(b), 3(b), 4(b)
D	<del>Criminal Sexual Conduct 2nd Degree</del>	609.343 subd. 1(a)(b)(g) 609.343, subd. 1a(e)(f)(g)
	Criminal Sexual Conduct 3rd Degree	609.344 subd. 1a(a)(e)(f) or subd. 1a(b) with ref. to subd. 2(1)
	<del>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</del>	617.247, subd. 3(b)
	<del>Use of Minors in Sexual Performance</del>	617.246, subd. 2(a), 3(a), 4(a)
	<del>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)</del>	617.246, subd. 2(b), 3(b), 4(b)
E	Criminal Sexual Conduct 4th Degree	<del>609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)</del> 609.345, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	<del>Dissemination of Child Pornography</del>	617.247, subd. 3(a)
	<del>Sexual Extortion (Contact)</del>	609.3458, subd. 1(a)
	<del>Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)</del>	617.247, subd. 4(b)
	<del>Use of Minors in Sexual Performance</del>	617.246, subd. 2(a), 3(a), 4(a)

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
F	Criminal Sexual Conduct 4th Degree	609.345 subd. 1 <u>a</u> (a)(b)(e)(f)
	Criminal Sexual Conduct 5th Degree ( <u>2nd or Subsequent Violation</u> )	609.3451, subd. 3( <u>b</u> )
	<del>Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</del>	<del>617.247, subd. 4(<u>b</u>)</del>
G	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and <u>36</u> <del>48</del> mos. older than Complainant)	609.344 subd. 1 <u>a</u> (b) with ref. to subd. 2(2)
	Indecent Exposure	617.23 subd. 3
	Possession of Child Pornography	617.247, subd. 4(a)
	Solicitation of Children to Engage in Sexual Conduct	609.352, subd. 2
	Solicitation of Children to Engage in Sexual Conduct (Electronic)	609.352, subd. 2a
	Surreptitious Observation Device (Minor Victim and Sexual Intent)	609.746, subd. 1(f)
<u>H</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>609.3451, subd. 3(a)</u>
<u>H</u> <u>1</u>	Failure to Register as a Predatory Offender	243.166 subd. 5(b)(c)
* * *		

## 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
* * *		
243.166 subd. 5(b)	Registration of Predatory Offenders	H I
243.166 subd. 5(c)	Registration of Predatory Offenders (2nd or Subsequent Violations)	H I
* * *		
609.221 subd. 1	Assault 1st Degree (Great Bodily Harm)	9
609.221 subd. 2	Assault 1st Degree (Deadly Force Against Official)	9
609.221 subd. 3	Assault 1st Degree (Great Bodily Harm Upon Official)	10
609.221 subd. 4	Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)	11*
* * *		
609.2325 subd. 3(a)(1)	Criminal Abuse of Vulnerable Adult (Death)	9
609.2325 subd. 3(a)(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	8
609.2325 subd. 3(a)(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4
* * *		
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B*
609.322 subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking	See Note <sup>59</sup>

\* 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.

\* 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.

<sup>59</sup> See Guidelines section 2.G to determine the presumptive sentence.

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C
609.324 subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution	9
609.324 subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution	5
609.324 subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution	3
<u>609.324 subd. 2(b)</u>	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>3</u>
609.3242 subd. 2(2)	Prostitution Crimes (Gross Misd. Level) Committed in School or Park Zones	1
609.342	Criminal Sexual Conduct 1st Degree	A
<u>609.343 subd. 1(a)(b)(c)(d)(e) &amp; 1a(a)(b)(c)(d)(h)(i)</u>	<u>Criminal Sexual Conduct 2nd Degree</u>	<u>B</u>
<del>609.343 subd. 1(a)(b)(g)</del> 609.343 subd. 1a(e)(f)(g)	Criminal Sexual Conduct 2nd Degree	D
<del>609.343 subd. 1(c)(d)(e)(f)(h)</del>	<del>Criminal Sexual Conduct 2nd Degree</del>	<del>B</del>
<u>609.344 subd. 1(a)(b)(c)(d) &amp; 1a(c)(d)(g)(h)(i)</u>	<u>Criminal Sexual Conduct 3rd Degree</u>	<u>C*</u>
609.344 subd. 1 <u>a</u> (a)	Criminal Sexual Conduct 3rd Degree (By Definition Perpetrator Must be a Juvenile)	D
609.344 subd. 1 <u>a</u> (e)(f) or subd. 1 <u>a</u> (b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
609.344 subd. 1 <u>a</u> (b) with ref. to subd. 2(2)	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and <u>36</u> <del>48</del> mos. older than Complainant)	G
<del>609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)</del>	<del>Criminal Sexual Conduct 3rd Degree</del>	<del>C</del>
<u>609.345 subd. 1(a)(b)(c)(d) &amp; 1a(c)(d)(g)(h)(i)</u>	<u>Criminal Sexual Conduct 4th Degree</u>	<u>E</u>

\* 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.

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
609.345 subd. 1 <u>a</u> (a)	Criminal Sexual Conduct 4th Degree (By Definition Perpetrator Must be a Juvenile)	F
609.345 subd. 1 <u>a</u> (b)(e)(f)	Criminal Sexual Conduct 4th Degree	F
<del>609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)</del>	<del>Criminal Sexual Conduct 4th Degree</del>	<del>E</del>
<u>609.3451 subd. 3(a)</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>H</u>
609.3451 subd. 3 <u>b</u>	Criminal Sexual Conduct 5th Degree ( <u>2nd or Subsequent Violation</u> )	F
609.3453	Criminal Sexual Predatory Conduct	See Note <sup>60</sup>
<u>609.3458 subd. 1(a)</u>	<u>Sexual Extortion (Contact)</u>	<u>E</u>
<u>609.3458 subd. 1(b)</u>	<u>Sexual Extortion (Penetration)</u>	<u>C</u>
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	G*
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G*
* * *		
<u>609.3775</u>	<u>Child Torture</u>	<u>8</u>
* * *		
609.66 subd. 1e(a) <u>1</u>	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	3
<del>609.66 subd. 1e(b)</del> <u>subd. 1e(a)(2) &amp; (3)</u>	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	8
* * *		
617.246 subd. 2(a) 3(a) 4(a)	Use of Minors in Sexual Performance	<del>E</del> D

<sup>60</sup> See section 2.G.8 to determine the presumptive sentence.

~~\* 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.~~

Statute Number	Offense Title	Severity Level
617.246 subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under <del>13</del> 14)	<del>D</del> <u>C*</u>
617.247 subd. 3(a)	Dissemination of Child Pornography	E*
617.247 subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under <del>13</del> 14)	<del>D</del> <u>C*</u>
617.247 subd. 4(a)	Possession of Child Pornography	G
617.247 subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under <del>13</del> 14)	<del>F</del> <u>E</u>

\* \* \*

## 6. Offenses Eligible for Permissive Consecutive Sentences

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B.** Under section 2.F.2.a(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

Statute Number	Offense Title
* * *	
609.342, <del>subd. 1</del>	Criminal Sexual Conduct 1st Degree
609.343, <del>subd. 1</del>	Criminal Sexual Conduct 2nd Degree
609.344, <del>subd. 1</del>	Criminal Sexual Conduct 3rd Degree
609.345, <del>subd. 1</del>	Criminal Sexual Conduct 4th Degree
609.3451, <del>subd. 3</del>	Criminal Sexual Conduct 5th Degree
609.3453	Criminal Sexual Predatory Conduct
609.3458	<u>Sexual Extortion</u>

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\* 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.

<b>Statute Number</b>	<b>Offense Title</b>
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Internet or Computer)
609.365	Incest
609.377	Malicious Punishment of Child
<u>609.3775</u>	<u>Child Torture</u>
* * *	
617.246, subd. 2(a), 3(a), 4(a)	Use of Minors in Sexual Performance
617.246, subd. 2(b), 3(b), 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under <del>13</del> <u>14</u> )
617.247, subd. 3(a)	Dissemination of Child Pornography
617.247, subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under <del>13</del> <u>14</u> )
617.247, subd. 4(a)	Possession of Child Pornography
617.247, subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under <del>13</del> <u>14</u> )
617.261, subd. 2(b)	Nonconsensual Dissemination of Private Sexual Images
624.732, subd. 2	Intentional Release of Harmful Substance
624.7191	Metal Penetrating Bullets
629.75, subd. 2(d)	Violation of a Domestic Abuse No Contact Order

\* \* \*

## 8. Severe Violent Offense List

Each of the following is a “severe violent offense” within the meaning of sections 2.B.2.e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

Statute Number	Offense Title
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195(a)	Murder 3rd Degree (Depraved Mind)
609.221	Assault 1st Degree
609.222, subd. 2	Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)
609.245, subd. 1	Aggravated Robbery 1st Degree
609.25, subd. 2(2)	Kidnapping (Great Bodily Harm/Unsafe Release/Victim Under 16)
609.2661	Murder of an Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree
609.282	Labor Trafficking
<del>609.342, subd. 1(c)(d)(e)(f)</del> <del>609.342, subd. 1(a)(b)(c)(d)(e) &amp; 1a(a)(b)(c)(d)(i)</del>	Criminal Sexual Conduct 1st Degree
<del>609.343, subd. 1(c)(d)(e)(f)</del> <del>609.343, subd. 1(a)(b)(c)(d)(e) &amp; 1a(a)(b)(c)(d)(i)</del>	Criminal Sexual Conduct 2nd Degree
609.498, subd. 1b	Tampering with Witness, Aggravated 1st Degree
609.561, subd. 1 or 2	Arson 1st Degree
<del>609.66, subd. 1e(b)</del> <del>subd. 1e(a)(2) &amp; (3)</del>	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

## 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.

- Presumptive disposition. Commitment.
- Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable Grid, whichever is longer.
- Attempts and Conspiracies. Mandatory sentences generally apply to attempted offenses under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the duration in the appropriate cell on the applicable Grid, whichever is longer. (See section 2.G for more information on convictions for attempts, conspiracies and offenses with other sentence modifiers.)

<b>Statute</b>	<b>Offense</b>	<b>Prerequisite or Conditions</b>	<b>Minimum Duration</b>
152.021	Controlled Substance Crime 1st Degree	Prior felony conviction under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense.	48 Months
152.022	Controlled Substance Crime 2nd Degree	Prior felony conviction under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense.	36 Months
169A.24, subd. 1(2)	Driving while Intoxicated	Prior Felony DWI	Grid Time
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minn. Stat. § 609.2112.1(a)(2) thru (6); § 609.2113.1(2) thru (6); § 609.2113.2(2) thru (6); § 609.2114.1(a)(2) thru (6); § 609.2114.2(2) thru (6)	Grid Time
243.166, subd. 5(b)	Violation of Predatory Offender Registration		Grid Time
243.166, subd. 5(c)	Violation of Predatory Offender Registration – Subsequent offense	Prior felony Violation of Predatory Offender Registration	24 Months

<b>Statute</b>	<b>Offense</b>	<b>Prerequisite or Conditions</b>	<b>Minimum Duration</b>
609.1095, subd. 3	Dangerous Offender – 3rd Violent Felony	Statute Cited	Grid Time
609.221, subd. 2 <del>(b)</del>	Assault 1st Degree, (Deadly Force <u>Against Official</u> ) – <del>Peace Officer or Correctional Employee</del>		120 Months
<u>609.221, subd. 3</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>		<u>180 Months</u>
<u>609.221, subd. 4</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>		<u>300 Months</u>
609.221, 609.222, 609.223, 609.2231 or 609.224	Assault 1st through 5th Degree	Committed by State prison inmate while confined (609.2232)	Grid Time, Consecutive
609.2231, subd. 3a(b)	Assault 4th Degree	Committed by person committed to the Minnesota Sex Offender Program	Grid Time
609.3455, subd. 3a	Dangerous (Engrained) Sex Offender	Statute Cited	At least double the Grid Time
609.485	Escape	Escape from executed sentence	Grid Time
609.582, subd. 1(a)	Burglary 1st Degree	Prior felony burglary	Grid Time*

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\* Presumptive commitment per Guidelines section 2.C.

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

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

<b>Statute</b>	<b>Offense</b>	<b>Severity Level</b>	<b>Statutory Maximum (Months)</b>	<b>Exceeds Statutory Maximum At:</b>
<u>609.221, subd. 4</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>	<u>11</u>	<u>360</u>	<u>CHS 0 (upper-range)</u>
609.2231, subd. 4(b)	Assault 4th Degree Motivated by Bias	1	12, and 1 Day	CHS 3
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B	240	CHS 5
<u>609.344, subd. 1(a)(b)(c)(d) &amp; 1a(c)(d)(g)(h)(i)</u>	<u>Criminal Sexual Conduct 3rd Degree</u>	<u>C</u>	<u>180</u>	<u>CHS 5 (upper-range)</u>
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G	36	CHS 4
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	36	CHS 4
609.4751, subd. 3	Impersonating a Peace Officer	2	24	CHS 6 (upper-range)
609.485, subd. 4(a)(2)	Escape, Mental Illness	1	12, and 1 Day	CHS 3
609.485, subd. 4(a)(4)	Escape from Civil Commitment	1	12, and 1 Day	CHS 3
609.595, subd. 1a(a)	Damage to Prop Motivated by Bias	1	12, and 1 Day	CHS 3
609.597, subd. 3(3)	Assaulting or Harming Police Horse	1	12, and 1 Day	CHS 3
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)	1	12, and 1 Day	CHS 3
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)	1	12, and 1 Day	CHS 3
609.746, subd. 1(f)	Surreptitious Observation Device (Minor Victim and Sexual Intent)	G	48	CHS 5

<b>Statute</b>	<b>Offense</b>	<b>Severity Level</b>	<b>Statutory Maximum (Months)</b>	<b>Exceeds Statutory Maximum At:</b>
609.776	Interference with Emergency Comm.	5	36	CHS 4
<u>617.246, subd. 2(b)</u> <u>3(b) 4(b)</u>	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)</u>	<u>C</u>	<u>180</u>	<u>CHS 5 (upper-range)</u>
617.247, subd. 3(a)	Dissemination of Child Pornography	E	84	CHS 5
<u>617.247, subd. 3(b)</u>	<u>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)</u>	<u>C</u>	<u>180</u>	<u>CHS 5 (upper-range)</u>

\* \* \*

**Appendix 1.2. Legislative Amendments to Crime Laws Affecting the Guidelines –  
2021 Regular Session**

On September 9, 2021, after public hearing, the Commission unanimously adopted a proposal to make conforming and technical amendments related to Identity Theft in Guidelines sections 5.A and 5.B. The adopted modifications result from [2021 Minn. Laws ch. 25](#). The Commission proposed these modifications at its meeting on June 3, 2021.

*Modifications to 2020 Minn. Sentencing Guidelines & Commentary sections 5.A & 5.B:*

\* \* \*

**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.

\* \* \*

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
8	Identity Theft <u>(8 or More Direct Victims or Loss Over \$35,000)</u>	609.527, subd. 3(5)
	Identity Theft (Related to Child Pornography)	609.527, subd. 3(6)

\* \* \*

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
3	Identity Theft <u>(4–7 Direct Victims or Loss Over \$2,500)</u>	609.527, subd. 3(4)

\* \* \*

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
2	Identity Theft <u>(2–3 Direct Victims or \$501–\$2,500 Loss)</u>	609.527, subd. 3(3)

\* \* \*

## 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
609.527 subd. 3(3)	Identity Theft ( <u>2–3 Direct Victims or \$501–\$2,500 Loss</u> )	2
609.527 subd. 3(4)	Identity Theft ( <u>4–7 Direct Victims or Loss Over \$2,500</u> )	3
609.527 subd. 3(5)	Identity Theft ( <u>8 or More Direct Victims or Loss Over \$35,000</u> )	8
<u>609.527 subd. 3(6)</u>	<u>Identity Theft (Related to Child Pornography)</u>	<u>8</u>

\* \* \*

### Appendix 1.3. Technical Correction – Update Conditional Release Statutory Reference

On September 9, 2021, after public hearing, the Commission unanimously adopted a proposal related to a technical amendment made to a conditional release statutory reference for assault in the fourth degree against secure treatment facility personnel in Guidelines section 2.E.3. The adopted modification results from a 2015 statutory renumbering ([2015 Minn. Laws ch. 23](#)). The Commission proposed this modification at its meeting on April 8, 2021.

*Modifications to 2020 Minn. Sentencing Guidelines & Commentary section 2.E:*

\* \* \*

## 2. Determining Presumptive Sentences \* \* \*

### E. Mandatory Sentences \* \* \*

3. Conditional Release. Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:
  - First-degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
  - Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.
  - Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a(~~e~~)(d).
  - First- through fourth-degree criminal sexual conduct and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6-8.
  - Use of minors in sexual performance. Minn. Stat. § 617.246, subd. 7.
  - Child pornography. Minn. Stat. § 617.247, subd. 9.

\* \* \*

## Appendix 1.4. Legislative Amendments to Crime Laws Affecting the Guidelines – 2020 Regular Session

The following modification is to a list of offenses to which a mandatory minimum sentence always applies. Because Minn. Stat. § 609.749, subd. 3(a)(3), now requires the dangerous weapon to be used, not merely possessed, a conviction will now necessarily require application of the mandatory minimum. The adopted modifications result from [2020 Minn. Laws ch. 96](#). The Commission submitted these proposed modifications to the Legislature on January 15, 2021. They took effect August 1, 2021, by operation of Minn. Stat. § [244.09, subd. 11](#).

*Modifications to 2020 Minn. Sentencing Guidelines & Commentary, Comment 2.E.03:*

\* \* \*

**2.E.03.** *Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: Aggravated Controlled Substance Crime in the First Degree with a ~~Firearm~~ firearm under Minn. Stat. § 152.021, subd. 2b(1); Controlled Substance Crime in the First or Second Degree with a firearm under Minn. Stat. § 152.021, subd. 1(2)(i) or 2(a)(2)(i), or Minn. Stat. § 152.022, subd. 1(2)(i) or 2(a)(2)(i); Assault in the Second Degree under Minn. Stat. § 609.222; Harassment (Aggravated Violations) with a dangerous weapon under Minn. Stat. § 609.749, subd. 3(a)(3); Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b; and Drive-By Shootings under Minn. Stat. § 609.66. 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 1.5. Legislative Amendments to Crime Laws Affecting the Guidelines –  
2020 1st Special Session**

The following technical modifications relate to reporting child maltreatment under Minn. Stat. § 260E.06. They result from [2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 7, § 8](#). The Commission submitted these proposed modifications to the Legislature on January 15, 2021. They took effect August 1, 2021, by operation of Minn. Stat. § [244.09, subd. 11](#).

*Modifications to the 2020 Minn. Sentencing Guidelines & Commentary sections 5.A & 5.B:*

\* \* \*

**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.

\* \* \*

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
UNRANKED	Failure to Report <u>Danger to Child’s Health (Death)</u>	<del>626.556, subd. 6</del> <u>260E.08(c)</u>

\* \* \*

**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.

\* \* \*

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
<del>626.556, subd. 6</del> <u>260E.08(c)</u>	Failure to Report <u>Danger to Child’s Health (Death)</u>	Unranked

\* \* \*

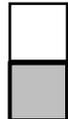
## Appendix 2. Sentencing Guidelines Grids

### Appendix 2.1. Standard Sentencing Guidelines Grid – Effective September 15, 2021

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 (Intentional; Drive-By-Shootings)</i>	<b>11</b>	306	326	346	366	386	406	426
		<i>261-367</i>	<i>278-391</i>	<i>295-415</i>	<i>312-439</i>	<i>329-463</i>	<i>346-480</i> <sup>2</sup>	<i>363-480</i> <sup>2</sup>
<i>Murder, 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	<b>10</b>	150	165	180	195	210	225	240
		<i>128-180</i>	<i>141-198</i>	<i>153-216</i>	<i>166-234</i>	<i>179-252</i>	<i>192-270</i>	<i>204-288</i>
<i>Murder, 3rd Degree (Drugs)</i> <i>Assault, 1st Degree (Great Bodily Harm)</i>	<b>9</b>	86	98	110	122	134	146	158
		<i>74-103</i>	<i>84-117</i>	<i>94-132</i>	<i>104-146</i>	<i>114-160</i>	<i>125-175</i>	<i>135-189</i>
<i>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	<b>8</b>	48	58	68	78	88	98	108
		<i>41-57</i>	<i>50-69</i>	<i>58-81</i>	<i>67-93</i>	<i>75-105</i>	<i>84-117</i>	<i>92-129</i>
<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	<b>7</b>	36	42	48	54	60	66	72
					<i>46-64</i>	<i>51-72</i>	<i>57-79</i>	<i>62-84</i> <sup>2,3</sup>
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	<b>6</b>	21	27	33	39	45	51	57
					<i>34-46</i>	<i>39-54</i>	<i>44-61</i>	<i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	<b>5</b>	18	23	28	33	38	43	48
					<i>29-39</i>	<i>33-45</i>	<i>37-51</i>	<i>41-57</i>
<i>Nonresidential Burglary</i>	<b>4</b>	12 <sup>1</sup>	15	18	21	24	27	30
						<i>21-28</i>	<i>23-32</i>	<i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	<b>3</b>	12 <sup>1</sup>	13	15	17	19	21	23
						<i>17-22</i>	<i>18-25</i>	<i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	<b>2</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21
								<i>18-25</i>
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	<b>1</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19
								<i>17-22</i>

<sup>1</sup> 12<sup>1</sup>=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.

<sup>2</sup> 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.

<sup>3</sup> 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 2.2. Sex Offender Grid – Effective September 15, 2021

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>Criminal Sexual Conduct (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>306-360<sup>2</sup></i>
<i>CSC 2nd Degree–1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i) (e.g., contact &amp; force with bodily harm)</i>	B	90 <i>90<sup>3</sup>-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300<sup>2</sup></i>
<i>CSC 3rd Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., penetration &amp; coercion/occupation)</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>131-183</i>	180 <i>153-216</i>
<i>CSC 2nd Degree–1a(e)(f)(g) (age) CSC 3rd Degree–1a(a)(e)(f) or 1a(b) with 2(1) (age)</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–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., contact &amp; coercion/occupation)</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120<sup>2</sup></i>
<i>CSC 4th Degree–1a(a)(b)(e)(f) (age) CSC 5th Degree–3(b) (subsequent)</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–1a(b) with 2(2) Possession of Child Pornography Solicit Child for Sexual Conduct</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60<sup>2</sup></i>
<i>CSC 5th Degree–3(a) (nonconsensual penetration)</i>	H	12 <sup>1</sup>	14	16	18	24	24 <sup>2</sup> <i>24-24</i>	24 <sup>2</sup> <i>24-24</i>
<i>Failure to Register as a Predatory Offender</i>	I	12 <sup>1</sup> <i>12<sup>1</sup>-14</i>	14 <i>12<sup>1</sup>-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>

<sup>1</sup> 12<sup>1</sup>=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.

<sup>2</sup> 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.

<sup>3</sup> Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree 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.)

### Appendix 2.3. Drug Offender Grid – Effective September 15, 2021

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>Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth</i>	<b>D9</b>	86	98	110	122	134	146	158
		<i>74*-103</i>	<i>84*-117</i>	<i>94*-132</i>	<i>104*-146</i>	<i>114*-160</i>	<i>125*-175</i>	<i>135*-189</i>
<i>Controlled Substance Crime, 1st Degree</i>	<b>D8</b>	65	75	85	95	105	115	125
		<i>56*-78</i>	<i>64*-90</i>	<i>73*-102</i>	<i>81*-114</i>	<i>90*-126</i>	<i>98*-138</i>	<i>107*-150</i>
<i>Controlled Substance Crime, 2nd Degree</i>	<b>D7</b>	48	58	68	78	88	98	108
				<i>58-81</i>	<i>67-93</i>	<i>75-105</i>	<i>84-117</i>	<i>92-129</i>
<i>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i>	<b>D6</b>	21	27	33	39	45	51	57
					<i>34-46</i>	<i>39-54</i>	<i>44-61</i>	<i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i>	<b>D5</b>	18	23	28	33	38	43	48
					<i>29-39</i>	<i>33-45</i>	<i>37-51</i>	<i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i>	<b>D4</b>	12 <sup>1</sup>	15	18	21	24	27	30
						<i>21-28</i>	<i>23-32</i>	<i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	<b>D3</b>	12 <sup>1</sup>	13	15	17	19	21	23
						<i>17-22</i>	<i>18-25</i>	<i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i>	<b>D2</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21
								<i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	<b>D1</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19
								<i>17-22</i>

\* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).

<sup>1</sup> 12<sup>1</sup>=One year and one day

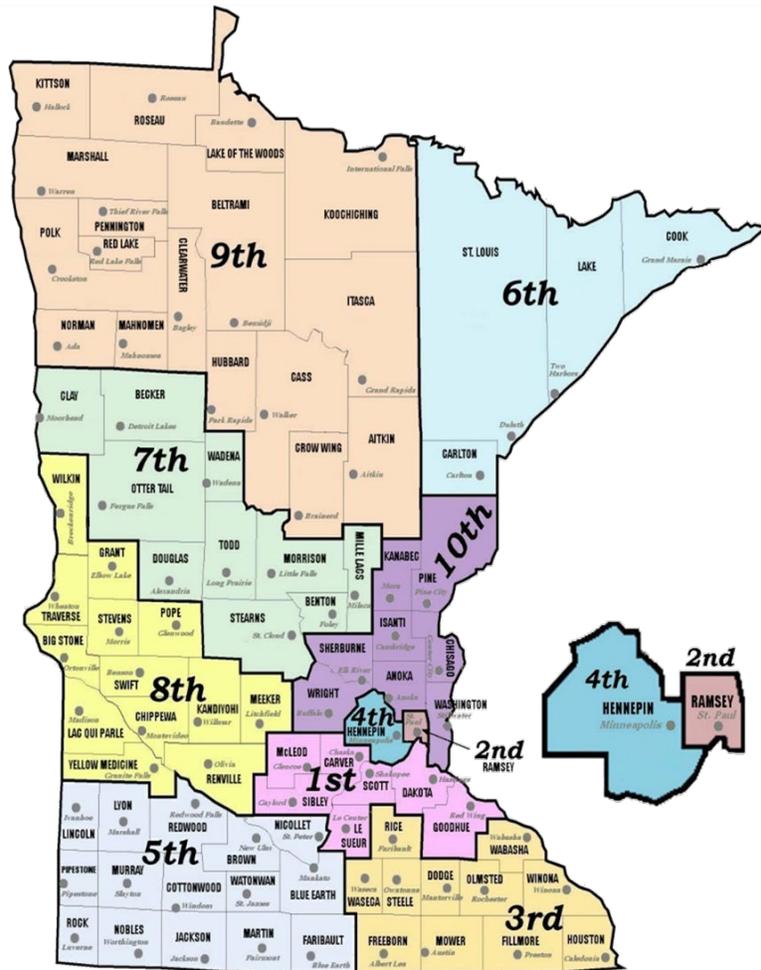


Presumptive commitment to state imprisonment.



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.

# Appendix 3. 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
Le Sueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Mille Lacs	Lac qui Parle	Crow Wing	Pine
Scott		Mower		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 of the Woods	
		Winona		Nobles			Traverse	Mahanomen	
				Pipestone			Wilkin	Marshall	
				Redwood			Yellow Medicine	Norman	
				Rock				Pennington	
				Watowan				Polk	
								Red Lake	
								Roseau	

Source: Minn. Judicial Branch.