



MINNESOTA

SENTENCING GUIDELINES COMMISSION

2023 REPORT TO THE LEGISLATURE

JANUARY 13, 2023

658 Cedar Street, Suite G-58

Saint Paul, MN 55155

Website: <http://mn.gov/sentencing-guidelines>

Email: sentencing.guidelines@state.mn.us

Voice: (651) 296-0144 • Minnesota Relay: 711

COMMISSION MEMBERS

Kelly Lyn Mitchell, Chair and Public Member

Valerie Estrada, Vice-Chair and Corrections Unit Supervisor,
Hennepin County Community Corrections & Rehabilitation

Tonja Honsey, Public Member

Mohamoud Ibrahim, Minneapolis Police Officer

David Knutson, First Judicial District Court Judge

Kyra Ladd, Wadena County Attorney

Michelle A. Larkin, Minnesota Court of Appeals Judge

Cathryn Middlebrook, Chief Appellate Public Defender

Gordon L. Moore, III, Minnesota Supreme Court Justice

Brooke Morath, Public Member

Paul Schnell, Commissioner of Corrections

COMMISSION STAFF

Nathaniel J. Reitz, Executive Director

Kathleen Madland, Research Analyst Intermediate

Linda McBrayer, Management Analyst 4

Shanna Mohabir, Research Analyst

Jill Payne, Senior Research Analysis Specialist

Anne Wall, Senior Research Analysis Specialist

This information will be made available in an alternative format upon request. The total cost of development and preparation for this report was \$4,167. (Reported as required by Minn. Stat. § 3.197.)

Table of Contents

Introduction	1
Executive Summary	3
The Commission’s Work in 2022	4
Changing the Calculation of the Custody Status Point	5
Reviewing How the Sentencing Guidelines Address Sex Trafficking	6
Other Work in 2022	9
MSGC Staff’s Work in 2022	11
2021 Sentencing Practices Data Summary	13
Felony Case Volume and Distribution.....	13
Change in Felony Case Volume by Offense Type.....	14
Distribution of Felony Cases by Gender, Race/Ethnicity and Judicial District	17
Felony Incarceration Rates	20
Average Pronounced Felony Sentences (Durations)	24
Departures from the Sentencing Guidelines	25
County Attorney Firearms Reports	37
Appendices	43
Appendix 1. 2023 Proposed Guidelines Modifications.....	43
Appendix 2. Recommendations to the Legislature.....	54
Appendix 3. Sentencing Guidelines Grids	56
Appendix 4. Minnesota Judicial District Map	59

Table of Figures

Figure 1. All-State and Minnesota Imprisonment Rates, 1978–2021, and Violent Crime Rates, 1985–2020	2
Figure 2. Number of Cases Sentenced for Felony Convictions, 1981–2021.....	13
Figure 3. Annual Percent Change in Number of Cases Sentenced for Felony Convictions, 1982–2021	14
Figure 4. Number of Cases Sentenced by Offense Type, 2005–2021	16
Figure 5. Distribution of Cases by Race/Ethnicity, 1981–2021	18

Figure 6. Distribution of Cases and Population by Race and Judicial District, 2021	18
Figure 7. Actual & Presumptive Incarceration Rates, 1982, 1984, 1986, 1988, 1990, 1992–2021.....	20
Figure 8. Records Set in 2021 – Rate Recommended Prison, Rate of Mitigated Dispositional Departures Among Those Cases, & Median Case Age.....	21
Figure 9. Actual & Presumptive Incarceration Rates by Gender & Race/Ethnicity, 2021	23
Figure 10. Actual & Presumptive Incarceration Rates by Judicial District, 2021.....	23
Figure 11. Average Pronounced Prison Sentences and Local Confinement, 1981–2021	25
Figure 12. Total Departure Rates, All Cases, 2021	26
Figure 13. Dispositional Departure Rates, 1982, 1984, 1986, 1988, 1990, 1992–2021.....	26
Figure 14. Mitigated Dispositional Departure Rates for Selected Offenses Compared to Total Rate, 2021	28
Figure 15. Court-Cited Position of Prosecutor for Mitigated Dispositional Departures, Selected Offenses, 2021.	29
Figure 16. Durational Departure Rates for Cases Receiving an Executed Prison Sentence, 1982, 1984, 1986, 1988, 1990, 1992, 1994–2021	31
Figure 17. Durational Departure Rates, Cases Receiving Executed Prison Sentences, Selected Offenses, 2021 ...	33
Figure 18. Court-Cited Position of Prosecutor, Mitigated Durational Departures, Executed Prison Sentences, Selected Offenses, 2021	33
Figure 19. Mitigated Departure Rates by Gender & Race/Ethnicity, 2021	35
Figure 20. Mitigated Departure Rates by Minnesota Judicial District, 2021.....	36
Figure 21. Cases Allegedly Involving a Firearm, FY 1996 to FY 2022.....	37
Figure 22. Disposition of Cases, Alleged Designated Offenses Involving Firearms, as Reported by County Attorneys, Cases Disposed of Between July 1, 2021, and June 30, 2022.....	39

Table of Tables

Table 1. Cases Sentenced, Percent Change from Previous Year, by Offense Type, 2001–2021	17
Table 2. Cases Sentenced, 2021, by Gender, Race/Ethnicity, and Judicial District, Compared to 2021 Estimated Adult Population.....	19
Table 3. Incarceration Rates by Gender, Race/Ethnicity, and Judicial District, 2021.....	22
Table 4. Dispositional Departures by Presumptive Disposition, by Gender, Race/Ethnicity, & Judicial District, 2021	27
Table 5. Durational Departures, Executed Prison Sentences, by Gender, Race/Ethnicity, & Judicial Dist., 2021 ..	34
Table 6. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm, by Minn. County, Cases Disposed of Between July 1, 2021, and June 30, 2022.....	40

Introduction

The Minnesota Sentencing Guidelines Commission submits this report to the Legislature to fulfill its three statutory¹ 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 2023; and
- To summarize and analyze reports received from county attorneys on criminal cases involving a firearm.

The Commission also takes this opportunity to report on a legislatively mandated review; to recommend changes in the Criminal Code; and 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 Legislature created the Minnesota Sentencing Guidelines Commission (MSGC) 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.² 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.³ 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.⁴ 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.⁵

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 40 years the Guidelines were in effect—from 1980 through 2019—Minnesota ranked nationally among the fifth states with the lowest imprisonment rates. In 2020 and 2021, Minnesota was sixth-lowest.⁶

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

² [Minn. Stat. § 244.09](#), subd. 5.

³ *Id.*

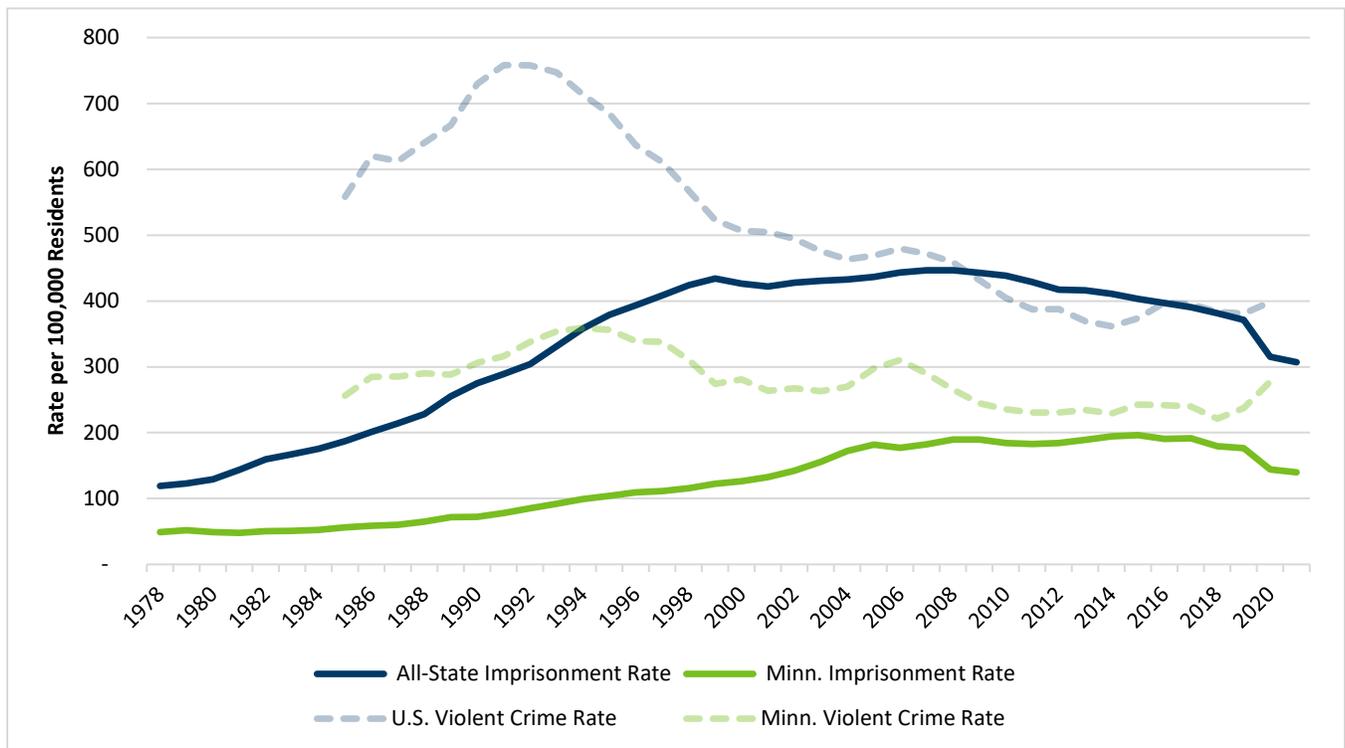
⁴ [2021 Minn. Sentencing Guidelines & Commentary](#) section 1.A.

⁵ *Id.*

⁶ Minnesota had the 6th-lowest imprisonment rate in 2020 & 2021; the 5th-lowest in 2017; the 4th-lowest in 2014, 2018, & 2019; and the 1st-, 2nd-, or 3rd-lowest in the other years. E. Ann Carson, “Prisoners in 2021 – Statistical Tables” (NCJ 305125) (Bureau of Justice Statistics (BJS), Dec. 2022), Table 7 (retrieved Dec. 20, 2022, at <https://bjs.ojp.gov/content/pub/pdf/p21st.pdf>); E. Ann Carson, “Imprisonment Rate of Sentenced Prisoners under the

Minnesota’s 2021 rate—140 prisoners per 100,000 residents, down from a rate of 144 in 2020—was the lowest imprisonment rate since the early 2000s (Figure 1).⁷ Minnesota joined 35 other states with falling imprisonment rates from 2020 to 2021, causing the U.S. state imprisonment rate to fall by 2.5 percent.⁸ Minnesota’s imprisonment rate continues to be less than half the national state imprisonment rate.⁹

Figure 1. All-State and Minnesota Imprisonment Rates, 1978–2021, and Violent Crime Rates, 1985–2020



Sources: Bureau of Justice Statistics and Federal Bureau of Investigation

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.¹⁰ Minnesota’s sixth-lowest imprisonment rate stands in contrast to its probation rate, which, in 2020, was the fifth highest among all states.¹¹

Jurisdiction of State or Federal Correctional Authorities per 100,000 U.S. Residents, Dec. 31, 1978–2019” (BJS, Oct. 14, 2020) (retrieved Dec. 20, 2022, at https://csat.bjs.ojp.gov/assets/documents/QT_imprisonment%20rate_total.xlsx).

⁷ Minnesota’s 2001 and 2002 imprisonment rates were 133 and 142 prisoners per 100,000 residents, respectively. By comparison, its 1980 rate was 49 per 100,000.

⁸ “Prisoners in 2021,” tables 5 & 7.

⁹ The 2021 imprisonment rate for all states was 307 prisoners per 100,000 U.S. residents. Neither rate includes inmates of federal prisons or local correctional facilities. “Prisoners in 2021,” Table 5.

¹⁰ For a discussion of the five-year presumptive probation cap established in 2020, see p. 25.

¹¹ About 1 in 51 (1,952 in 100,000) Minnesotans was on probation in 2020, compared to about 1 in 85 (1,181 in 100,000) residents of all states. Danielle Kaebler, “Probation and Parole in the United States, 2020” (NCJ 303102) (BJS, July 2021), Appendix Table 6 (retrieved Nov. 14, 2022, at <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>).

Executive Summary

The Commission's Work in 2022 (p. 4)

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 2022 and held one public hearing. Its most significant actions were—

- Developing a solution to the half custody status point problem, resulting in a proposed change to how the Sentencing Guidelines calculate the custody status point for some offenses (p. 5).
- Completing its mandated review of sex-trafficking sentencing guidelines, resulting in several proposed changes to the Sentencing Guidelines (p. 6).
- Other work, including its continued review of how the Sentencing Guidelines comply with its policy on neutrality with respect to race, gender, social, or economic status (p. 9).

In addition, the Commission is recommending that the Legislature make three changes to the Criminal Code (p. 8) and is submitting its agency rulemaking docket (p. 10).

MSGC Staff's Work in 2022 (p. 11)

In 2022, staff provided Sentencing Guidelines guidance to an average of 100 practitioners per month; provided the Legislature with 51 fiscal impact statements and 5 demographic impact statements for pending crime bills; compiled and reported sentencing information for over 500 individual data requests; participated in various criminal justice boards, forums and committees; processed and ensured the accuracy of over 14,000 sentencing records; worked with the Department of Corrections to generate prison bed projections; and published the annual edition of the Minnesota Sentencing Guidelines and Commentary.

2021 Sentencing Practices Data Summary (p. 13)

Some 2021 data highlights include:

- A sharp rebound in the volume of felony cases sentenced (+25%) following the 2020 drop (-34%)
- A record-high rate at which the Sentencing Guidelines recommended executed prison (36.1%);
- Among those prison-recommended cases, a record-high mitigated dispositional departure rate (45.7%);
- A record-high average pronounced prison sentence length (54 months); and
- Continued variations, by race and geography, in case volume, actual incarceration rates, and presumptive imprisonment rates.

County Attorney Firearms Reports (p. 37)

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 2022, county attorneys reported disposing of 1,587 such firearms cases, the largest number since the reporting mandate began.

The Commission's Work in 2022

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 Honsey¹² and Brooke Morath. 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, Minneapolis Police Officer Mohamoud Ibrahim;¹³
- 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:

- First Judicial District Court Judge David Knutson;
- Court of Appeals Judge Michelle A. Larkin; and
- Associate Supreme Court Justice Gordon L. Moore, III.

One of the fundamental responsibilities of the Commission is to maintain the Guidelines by amending them in response to legislative changes, case law, and issues raised by various parties. The Commission met eleven times in 2022 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 one public hearing, on December 15.

The Commission holds public meetings monthly in Saint Paul, with some Commission members and members of the public participating by telephone or Webex interactive technology. The Commission publishes videos of these hybrid meetings on its [YouTube channel](#) and links to them from its website's meeting page: <https://mn.gov/sentencing-guidelines/meetings/previous>.

¹² Tonja Honsey resigned from the Commission effective January 13, 2023.

¹³ Metro Transit Police Officer Brooke Blakey was the Commission's peace officer member until her resignation effective March 8, 2022. Effective July 5, 2022, Governor Walz appointed Officer Ibrahim as Officer Blakey's successor.

Changing the Calculation of the Custody Status Point

From 2020 through 2022, the Commission worked to solve a challenging problem regarding how the Sentencing Guidelines' recommended sentences reflect custody status at the time of the offense. Despite the Commission's focused efforts to resolve the problem in 2022, it was unable to arrive at a consensus solution and will continue working on the problem in 2023.

The One-Half Custody Status Point Problem

The Minnesota Sentencing Guidelines rely primarily on two factors in recommending a presumptive sentence—the severity of the crime and the criminal history of the person who committed it—depicted as the two axes of a grid (see Appendix 3, p. 56). The criminal history score—the sentencing grid's horizontal axis—is the sum of points from four different components: prior felonies; custody status at the time of the offense; prior misdemeanors and gross misdemeanors; and prior juvenile adjudications.

The Commission last changed how the custody status point was calculated in 2018. To avoid situations in which a prior offense's custody status contributes a greater weight to the criminal history score than the actual commission of the offense itself, the 2018 Commission halved the weight of custody status points when custody status is derived from custody offenses that contribute less than a point to criminal history—misdemeanors, gross misdemeanors, and less-severe felonies.¹⁴

Due to a staff drafting error, however, the 2018 policy change was not implemented as intended, resulting in uncertainty about what to do with one-half custody status point. In 2020 and 2021, the Commission explored different ways to solve the problem, but consensus was elusive. In January 2022, the Commission issued interim guidance while it continued to develop a workable solution to the problem.¹⁵ In April, the Court of Appeals adopted the reasoning of the Commission's interim guidance,¹⁶ formally nullifying, for the time being, any criminal history score impact of custody status deriving from misdemeanors, gross misdemeanors, and less-severe felonies.¹⁷

While the Court of Appeals' decision brought temporary resolution to the problem, the Sentencing Guidelines themselves still contain the error. This created a new problem: A tension between what the Sentencing Guidelines say and how the Guidelines are, in law and in practice, implemented.

¹⁴ That is, custody status arising from a prior [targeted misdemeanor](#), non-traffic gross misdemeanor, gross misdemeanor DWI, or felony ranked at severity level 1, 2, D1, or D2.

¹⁵ For a detailed explanation of the half custody status point problem and the Commission's efforts, in 2020 and 2021, to solve it, refer to Minn. Sentencing Guidelines Comm'n, [Report to the Legislature \(Jan. 14, 2022\)](#), pp. 11–13.

¹⁶ *State v. Beganovic*, 974 N.W.2d 278, 288 (Minn. App. 2022), *review granted on other grounds* (Minn. June 29, 2022) (“We now adopt the reasoning of the commission's interim guidance and hold that a partial custody-status point should be disregarded when calculating the presumptive sentence.”).

¹⁷ The prior convictions continue to influence the Guidelines' recommended sentence through the other components of the criminal history score, but the fact of being in a custody status—typically probation—for these lesser-severity offenses does not, for the time being, contribute to the criminal history score.

Continued Work on Resolving the Problem in 2022

During several of its meetings in 2022, the Commission continued to work on crafting a workable solution to this problem. This work culminated in July, when the Commission hosted a roundtable, facilitated by University of Minnesota Law School Professor Kevin Reitz, on the custody status component of the criminal history score. In addition to Commission members, roundtable participants included representatives of the Legislature and of organizations focused on criminal defense, criminal prosecution, probation, crime victims, and public interest research. Roundtable participants discussed the rationale for including custody status in the criminal history score. Although different viewpoints were expressed at the roundtable, some expressed hope that a middle-ground, compromise proposal could be identified.¹⁸

In November 2022, a Commission member proposed to repeal the 2018 policy establishing one-half custody status point for prior misdemeanors, gross misdemeanors, and lower-level felonies.¹⁹ In its place, the member proposed to restore a full custody status point for such custody status, but only when the total criminal history score is at the grid maximum or when the custody status was the result of a prior mitigated dispositional departure. The Commission, on a vote of six to four, advanced this compromise proposal to a public hearing.

At a December 2022 public hearing, the Commission received over a dozen written and oral statements from the public, both for and against the compromise proposal.

On January 12, 2023, after considering the public hearing record, the Commission chose, on a vote of 7 to 4, not to adopt the compromise proposal and will continue working on the problem in 2023.

Reviewing How the Sentencing Guidelines Address Sex Trafficking

Legislative Mandate

On June 30, 2021, the Legislature required the Commission to “comprehensively review and consider modifying how the Sentencing Guidelines and the sex offender grid address the crimes described in Minnesota Statutes, section 609.322,” the statute prohibiting sex trafficking.²⁰ The Commission conducted this review in 2022, and now proposes several sex-trafficking related changes to the Sentencing Guidelines.

Commission’s Sex Trafficking Review in 2022

Over the course of nine meetings and a public hearing in 2022, the Commission reviewed how the Guidelines address sex trafficking. The Commission’s review included—

- A review of the mandate’s legislative history, including the proponents’ intent;
- A review of current sex trafficking sentencing practices;

¹⁸ Links to the custody-status roundtable [minutes](#) and [video](#) are available at the roundtable’s web page: <https://mn.gov/sentencing-guidelines/meetings/previous/#21july2022>

¹⁹ See footnote 14, above.

²⁰ [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 54.](#)

- Testimony from the Central Minnesota Human Trafficking Task Force and the Advocates for Human Rights;
- An analysis of the characteristics of offenses on the Sentencing Guidelines’ Severe Violent Offense List; and
- A thorough consideration of possible Sentencing Guidelines modifications.

Unfinished Work: Expanding the Review to Prostitution Offenses

At the recommendation of the Central Minnesota Human Trafficking Task Force, the Commission considered expanding the scope of its review beyond sex trafficking, to include how the Guidelines address the felony prostitution offenses described in Minn. Stat. § 609.324. Because the Commission lacked time in 2022 to complete such an expanded review, the scope of this report is limited to the legislatively mandated review of sex-trafficking sentencing guidelines. Nevertheless, the Commission intends to continue studying prostitution sentencing guidelines in 2023.

Commission’s Action: Proposed Changes to How the Sentencing Guidelines Address Sex Trafficking

In November 2022, the Commission unanimously advanced two proposals to a public hearing. No comments were received, either for or against the proposals, at a December 2022 public hearing. On January 12, 2022, the Commission unanimously adopted these proposals.

The first proposed change will rank aggravated sex trafficking on the Sex Offender Grid.

Aggravated sex trafficking is sex trafficking where any of the following aggravating circumstances is proven:

- A prior human-trafficking conviction;
- A victim suffering bodily harm;
- Debt bondage or forced labor or services for over 180 days; or
- Multiple victims.

The Sentencing Guidelines now treat aggravated sex trafficking as a sentence modifier, adding 48 months to the presumptive sentence that would apply if the offense were not aggravated. Although a typical sentence modifier may apply to many offenses—the benefit-of-a-gang modifier, for example, may modify the sentence of any felony—the aggravated-sex-trafficking modifier is unusual in that applies only to one offense, sex trafficking.

The Commission proposes to replace this unusual sentence modifier with a standard offense-ranking structure. Aggravated Sex Trafficking 1st Degree—which applies to child sex-trafficking victims—will be ranked at the top of the Sex Offender Grid, at Severity Level A, with presumptive prison sentences ranging from 12 years to 30 years, depending on criminal history. Aggravated Sex Trafficking 2nd Degree—which applies to adult victims—will be ranked on the Sex Offender Grid at Severity Level B, with presumptive sentences ranging from 7½ to 25 years, depending on criminal history.²¹

²¹ The Sex Offender Grid is reproduced in Appendix 3.2 (p. 57).

This proposal has several advantages over the present Sentencing Guidelines. First, by eliminating a single-offense sentence modifier, it will make the Sentencing Guidelines simpler and more coherent. Second, it will expand the presumptive sentencing range for aggravated sex trafficking in compliance with the statutory requirement of providing a 15-percent decrease and a 20-percent increase from the presumptive sentence—something the 48-month modifier failed to do. Third, at many (but not all) criminal history scores, the proposal will provide for a greater presumptive penalty. For those criminal history scores where the presumptive sentences themselves are not increased, the expanded presumptive ranges will give district court judges sufficient ability to fashion an appropriate sentence.

The second proposed change will add select sex trafficking offenses to the Severe Violent Offense List.

Established in 2019, the Severe Violent Offense List is a list of select offenses that the Sentencing Guidelines generally classify as very severe and which have an element of violence. If a severe violent offense is committed by someone who has previously been convicted of a severe violent offense, the new offense’s presumptive sentence increases by 12, 18, or 24 months, depending on the number of prior severe violent offense convictions.

While the Commission did not originally include sex trafficking offenses on the Severe Violent Offense List, it took the opportunity to reconsider this decision during its 2022 review. The Commission concluded that aggravated sex trafficking offenses involving bodily harm, debt bondage, or forced labor or services are inherently violent and warrant inclusion on the list. In addition, because of the violence inherent in sexually trafficking a minor, the Commission concluded that all Sex Trafficking 1st Degree offenses, whether aggravated or not, should also appear on the list.

These proposed changes to the Sentencing Guidelines, both of which are set forth in Appendix 1.1 (p. 43) and are now submitted to the Legislature, will take effect August 1, 2023, unless the Legislature by law provides otherwise.

Legislative Recommendations Arising from the Sex Trafficking Review

During its review of sex-trafficking sentencing guidelines, the Commission identified several areas—not all of which directly involve sex trafficking—in which the Criminal Code ought to be amended. Pursuant to its standing mandate to make recommendations to the Legislature regarding changes to the Criminal Code, the Commission now recommends that the Legislature take the following three actions.²²

- The aggravated sex-trafficking statute does not define the important, technical terms “debt bondage” and “forced labor or services”—terms the Legislature has carefully defined in the context of labor trafficking. The Commission unanimously recommends that the Legislature **amend the labor-trafficking definitions to cross-reference the sex trafficking statute.**
- When the 2021 Legislature globally updated criminal sex-related “under/at least 13” age thresholds to “under/at least 14,” it apparently missed one. As a result, the prostitution statute now provides two

²² The Commission’s [2020 recommendation](#)—that the Legislature statutorily define the minimum term of imprisonment that applies to mandatory life sentences for Murder of Unborn Child in the First Degree—remains outstanding.

conflicting penalties for the same crime—hiring a person believed to be a 13-year-old child for sex. The Commission unanimously recommends that the Legislature **replace “at least 13” with “at least 14” in the prostitution statute.**

- The statutory “violent crime” list includes First-Degree Witness Tampering, but excludes the more-violent *Aggravated* First-Degree Witness Tampering. To reconcile the list with the degrees of violence inherent in these crimes, the Commission unanimously recommends that the Legislature **amend the “violent crime” list either by adding Aggravated First-Degree Witness Tampering to the list, or by replacing First-Degree Witness Tampering with Aggravated First-Degree Witness Tampering.**

The technical details of these recommendations may be found in Appendix 2 (p. 54).

Other Work in 2022

Continuation of Neutrality Review

The Commission’s review of the Sentencing Guidelines for compliance with its policy on neutrality with respect to race, gender, social, or economic status—began in 2020—was slowed in 2022 by the Commission’s time-sensitive work on the custody-status policy and its required review of sex-trafficking sentencing guidelines. In June, however, the Commission heard a presentation from two University of Minnesota researchers: Dr. Chris Uggen, Regents Professor of Sociology & Law, and Hannah Schwendeman, a sociology Ph.D. student. The two presented the Commission with the findings of their research into the reasons behind, and the changes in, disparities in Minnesota sentencing by race, sex, and geography.

By each of those measures—by racial group, by sex, and by judicial district—differences were apparent in the number of people sentenced for felonies, the likelihood of receiving prison sentences, and the length of prison. The researchers noted that criminal history was a key determinant, that criminal history scores also differed by race—and that criminal history scores have risen markedly for all groups over the past two decades.

The researchers then reported on what disparities remained after adjusting for race, sex, individual points, modifiers, offense year, district, criminal history, offense severity, and criminal history in conjunction with offense severity. Adjusting for all these factors, they reported that non-white Minnesotans were less likely to receive mitigated dispositional departures (probation when the Guidelines recommend prison), and more likely to go to prison, but also more likely to receive mitigated durational departures (less prison than the Guidelines recommend), than white Minnesotans.

The Commission intends to continue its neutrality review in 2023.

Proposed Technical Modifications to the Sentencing Guidelines

The Commission proposes technical modifications to the Sentencing Guidelines: Removing an unnecessary word in an aggravated departure factor and listing Sexual Extortion as a conditional-release offense. These changes are set forth in Appendix 1.2 (p. 51) and are now submitted to the Legislature. They will take effect August 1, 2023, unless the Legislature by law provides otherwise.

Proposed Changes to the Commentary

The 2022 Legislature changed the rules governing adult criminal proceedings when competency to stand trial is at issue. The changes most directly affecting criminal procedure and sentencing will take effect July 1, 2023.²³ Among these provisions is a new jail-credit rule, codified at [Minn. Stat. § 611.51](#), requiring a sentencing court to award jail credit for any time spent confined in a secured setting while being assessed and restored to competency.

The Sentencing Guidelines and Commentary address jail credit in section 3.C. While section 3.C. does not purport to list all the “statute[s,] ... rule[s,] and [the] great deal of case law” that govern jail credit, it does list some. Because it would be helpful to reference the new jail-credit rule in the commentary to section 3.C, the Commission, on December 15, 2022, unanimously adopted a change to Comment 3.C.01 referencing the new jail-credit rule and making a technical correction. These changes are set forth in Appendix 1.3 (p. 53) and are now submitted to the Legislature. They will take effect August 1, 2023, unless the Legislature by law provides otherwise.

2022 Changes to the Sentencing Guidelines

The Commission’s annual Report to the Legislature ordinarily identifies and explains all changes to the Minnesota Sentencing Guidelines and Commentary in the previous calendar year. In 2022, however, the Commission initiated no Guidelines changes, and the Legislature made no changes related to sentencing effective in 2022.²⁴ The Commission therefore reports no changes to the Minnesota Sentencing Guidelines and Commentary in 2022.

MSGC Rulemaking Docket

In compliance with [Minn. Stat. § 14.116\(a\)](#), the following rulemaking docket is hereby submitted to the Legislature.

Subject: The Minnesota Sentencing Guidelines Commission is considering amending the rules governing the promulgation of modifications to the Sentencing Guidelines, [Minnesota Rules chapter 3000](#). Notably, the Commission is considering modernizing the rules by, for example, eliminating the requirement of contact by U.S. mail, and streamlining the public notice-and-comment requirements for a modification that relates to a crime created or amended by the Legislature in a preceding session, or a modification that the Legislature mandated or authorized. For Commission-initiated modifications to Sentencing Guidelines policy, however, no such streamlining of the public notice-and-comment process is being considered.

Status: The Commission has made no decision about whether to propose such a change, and has established no timetable for such a proposal. It may take up the issue in 2023.

²³ [2022 Minn. Laws ch. 99, art. 1, §§ 26–37](#).

²⁴ Sentencing Guidelines modifications often “relat[e] to a crime created or amended by the legislature in the preceding session,” [Minn. Stat. § 244.09, subd. 11](#), but the 2022 legislative session produced no such changes, other than as noted in the preceding section (“Proposed Changes to the Commentary,” discussing a 2022 change made effective in 2023). The Minnesota Code of Military Justice was modified by [2022 Minn. Laws ch. 89](#), but the Sentencing Guidelines do not apply to courts-martial.

MSGC Staff's Work in 2022

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 2022 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.²⁵

Teleworking since March 2020, MSGC staff returned to the office for 20 percent of the workweek in 2022. In addition, staff continues to facilitate hybrid Commission meetings in-person. Staff maintains business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, and is available by mail, email, and telephone.

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.²⁶ 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 2021. Additionally, staff published the annual edition of the Sentencing Guidelines and Commentary.

Training & Assistance

Staff conducted fifteen trainings in 2022, all but one of which were online. Trainings included the Department of Corrections' Agent Academy and the Criminal Justice Institute. In addition, two webinars were posted on the Commission's YouTube channel. On average, the staff fields 100 phone calls and emails monthly. The majority of questions come from judges, attorneys, and probation officers asking about the application of the Guidelines to their felony cases.

Website & Data Requests

The Commission's website receives over 10,000 views each month. Most visitors were new, and most 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. Personalized information requests can be submitted online and staff typically responds within two weeks.

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 over 500 data requests in 2022. The number of requests were up from 2021, when staff prepared nearly 400 requests.

²⁵ [Minn. Stat. § 244.09](#), subd. 6.

²⁶ Beginning in 2005 and 2006, MSGC began maintaining data on life sentences, even if not governed by the Guidelines.

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 2022, MSGC staff served on the Executive Committee of the National Association of Sentencing Commissions and the Criminal and Juvenile Justice Information Advisory Group. Staff also presented to the Criminal Justice Institute and conducted trainings arranged by the Department of Corrections.

Fiscal Impact Statements & Demographic Impact Statements

During the 2022 legislative sessions, staff provided fiscal impact statements for 51 bills. 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 statements²⁷ 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 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.²⁸

During the 2022 Legislative Sessions, five legislative policy proposals met the criteria for preparing a demographic impact statement:

- [Senate File 2850](#) (extending the minimum terms of imprisonment; for all committed to prison from two-thirds of their executed sentences to three-fourths of their executed sentences);
- [House File 1474 \(version 2UE\)](#) (adding requirements for criminal liability in cases of aiding and abetting first- and second-degree felony murder);
- [House File 1355 \(version 1UE\)](#) (amending the “small amount” of marijuana definition and establishing a gross misdemeanor threshold for marijuana possession);
- [Senate File 2576](#) (repealing waiver of mandatory minimums under Minn. Stat. § 609.11); and
- [Senate File 2673](#) (limiting waiver of mandatory minimums under Minn. Stat. § 609.11 to cases involving the use of a non-firearm dangerous weapon).

²⁷ These had previously been referred to as “racial-impact statements.”

²⁸ Full statements are available at <https://mn.gov/sentencing-guidelines/reports/#1>.

2021 Sentencing Practices Data Summary

The following data summarize information about sentencing practices and case volume and distribution in 2021. 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 high, the imprisonment rate for that district will likely be higher than for districts with predominantly lower-severity offenses.

Felony Case Volume and Distribution

In 2021, 14,429 people were sentenced for felony offenses in Minnesota, which is a 25 percent increase from the 11,519 people sentenced in 2020. This was the largest single-year increase in MSGC history, and followed 2020's largest single-year decline in MSGC history (-34%). All seven offense categories increased from 2020 to 2021. By category, this increase ranged from 20.3 percent to 33.3 percent. Weapon offenses increased more than other categories (33.3%), followed by property offenses (32.4%). The total volume of cases sentenced over time is illustrated in Figure 2 (p. 13), and changes in annual growth rates, are illustrated in Figure 3 (p. 14).

Figure 2. Number of Cases Sentenced for Felony Convictions, 1981–2021

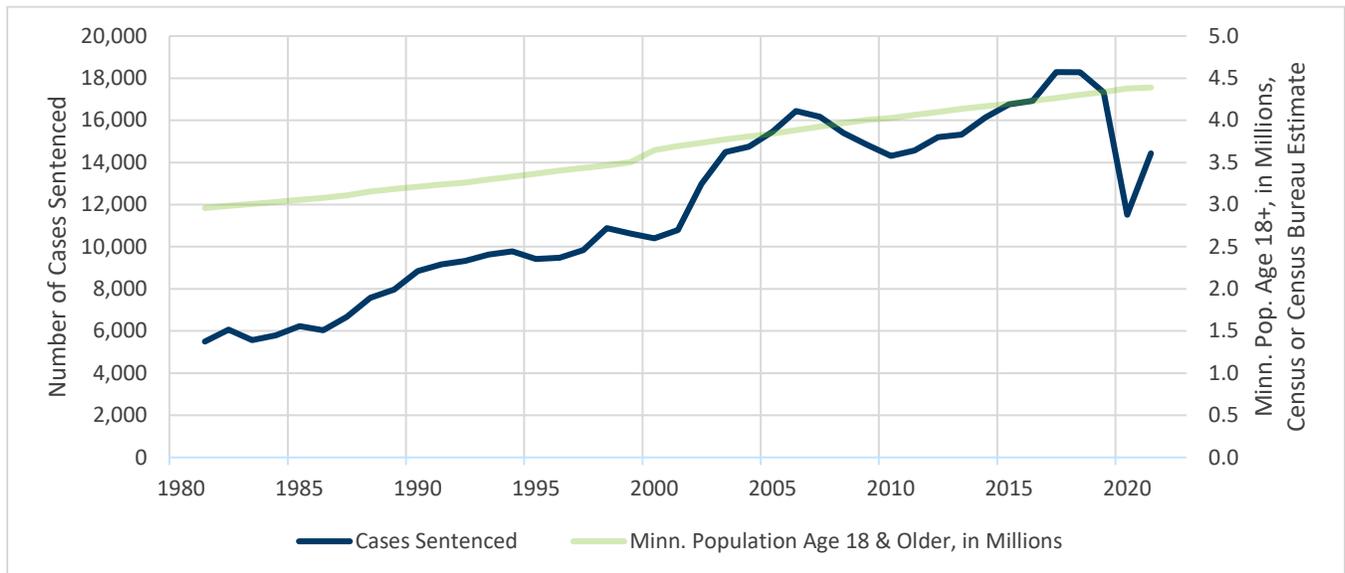
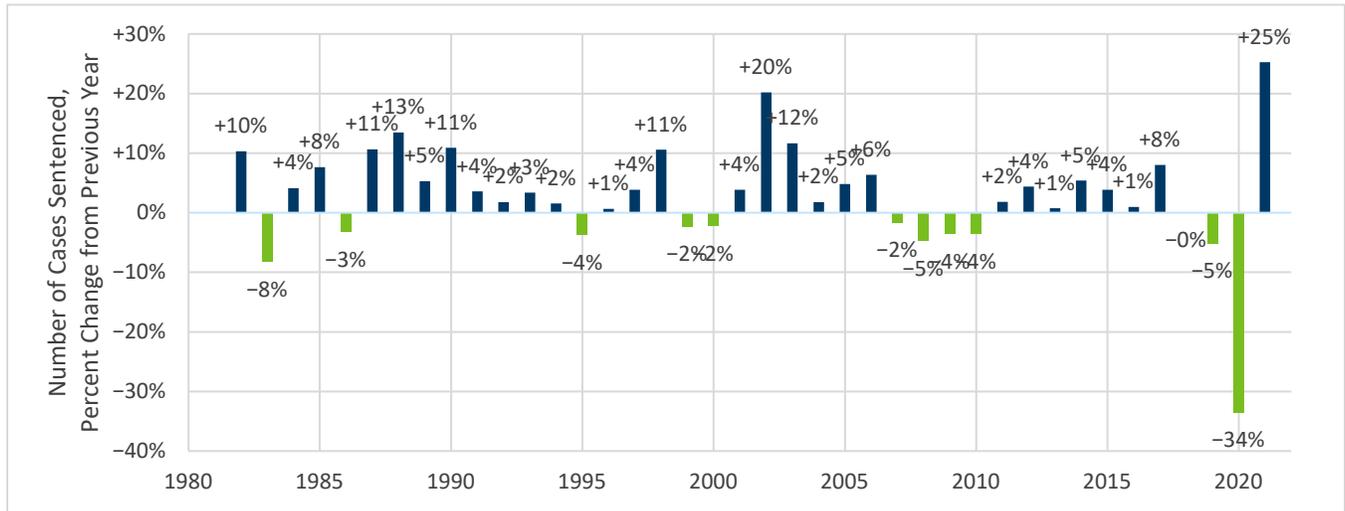


Figure 3. Annual Percent Change in Number of Cases Sentenced for Felony Convictions, 1982–2021



According to Department of Public Safety data, Minnesota’s index crime rate²⁹ has fluctuated over time, but was generally falling between 1996 and 2017. Between 2018 and 2021, however, the index crime rate rose.³⁰

Change in Felony Case Volume by Offense Type

Figure 4 (p. 16) shows recent trends in felony case volume by offense types. 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;**
- Felony DWI;
- Non-CSC sex offenses³¹;
- Weapon offenses³²; and
- Other offenses.³³

²⁹ “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.

³⁰ From 2020 to 2021, the index crime rate rose by 1% (from a population-adjusted rate of 1347.9 to 1362.5), still a bit over half the 1990s rates. Minn. Uniform Crime Report – 2021, Minn. Dep’t of Public Safety (retrieved Dec. 1, 2022, at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2021-Minnesota-Uniform-Crime-Report.pdf> & <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/Historical-Index.xls>).

³¹ “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).

³² “Weapon” category includes: Possession of a firearm by a felon convicted of a crime of violence, discharge of firearm, and other weapon-related offenses.

³³ “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.

Person Offenses

At 30.8 percent of all cases, person offenses made up the largest offense category in 2021. Except for a slight decrease in 2013 and a decrease of 2.5 percent in 2016, the number of person offenses increased every year from 2001 to 2018, including a 1.5-percent increase in 2018. In 2019, the number decreased by almost five percent. In 2020, all offense type categories decreased,³⁴ with person offenses declining by 33.6 percent. In 2021, all offense type categories increased, with person offenses increasing by 25.3 percent.

Drug Offenses

In 2021, there was an increase in all offense type categories, with drug offenses increasing by 22.1 percent (Figure 4, p. 16). Drug offenses grew for seven consecutive years from 2010 to 2017, making drug offenses the largest offense category from 2016 through 2019 (Figure 4, p. 16). That changed in 2020, when person offenses reclaimed the status of the largest offense category. The 2020 drug-offense case volume (3,205 cases) was a 38-percent decrease from 2019.

Property Offenses

As a share of all felony cases, the property offense category fell from 30 percent in 2013 to 26 percent in 2021. The property offense category has declined in most years since 2006 (Table 1 displays the year-to-year percent change in case volume by offense type). After increasing in 2017 and 2018, and decreasing by five percent in 2019, the volume of property offenses decreased by 39 percent in 2020. In 2021, there was an increase in all offense type categories, with property offenses increasing by 32.4 percent.

Felony DWI

The number of felony DWI cases peaked in 2004, at 860, and has declined in most years since. The 2021 volume, 525 cases, was 61 percent of that peak volume and 29 percent higher than the 2020 DWI volume. In the five years between 2012 and 2017, the numbers fluctuated sharply, possibly in connection with the timing of legal challenges to DWI laws and evidence-collection practices. The decreases in 2018 and 2019 (of 2.6% and 3.8%, respectively) were less dramatic than the changes seen in the previous five years.

Non-CSC Sex Offenses

In 2021, there was an increase in all offense type categories, with offenses in the non-CSC sex offense category increasing by 28 percent, following a decrease in 2020 of 31 percent. The most common offense in this category, failure to register as a predatory offender, increased by twenty-five percent (from 234 in 2020 to 293 in 2021). The 2020 child pornography case volume was the lowest ever observed (61 cases), a 24 percent decrease from the 2019 volume (80 cases).

³⁴ Due to the COVID-19 health pandemic, case volume data in 2020 are not typical and should be reviewed in that context. The Minnesota Judicial Branch limited in-person judicial proceedings in 2020 and reported a 32-percent increase in its major criminal case backlog due to the pandemic. Because 2020 appears to have been an atypical year, the 2020 data presented is assumed to be anomalous.

Other Offenses

The number of cases in the “other” offense category—largely crimes against the government—increased by 29 percent. Fleeing a peace officer, the most common offense in this category, increased from 476 cases in 2020 to 637 cases in 2021 (up 34%). Tax offenses saw an increase to 23 cases from 8 cases in 2020. Following an 81 percent increase from 2015 to 2017 (from 64 to 116 cases), the number of escape from custody cases decreased in 2018 and 2019, and again in 2020 by 43 percent (from 91 cases in 2019 to 52 cases in 2020). In 2021, the number of escape from custody cases also decreased from 52 cases in 2020 to 44 cases (a decrease of 15 percent).

Figure 4. Number of Cases Sentenced by Offense Type, 2005–2021

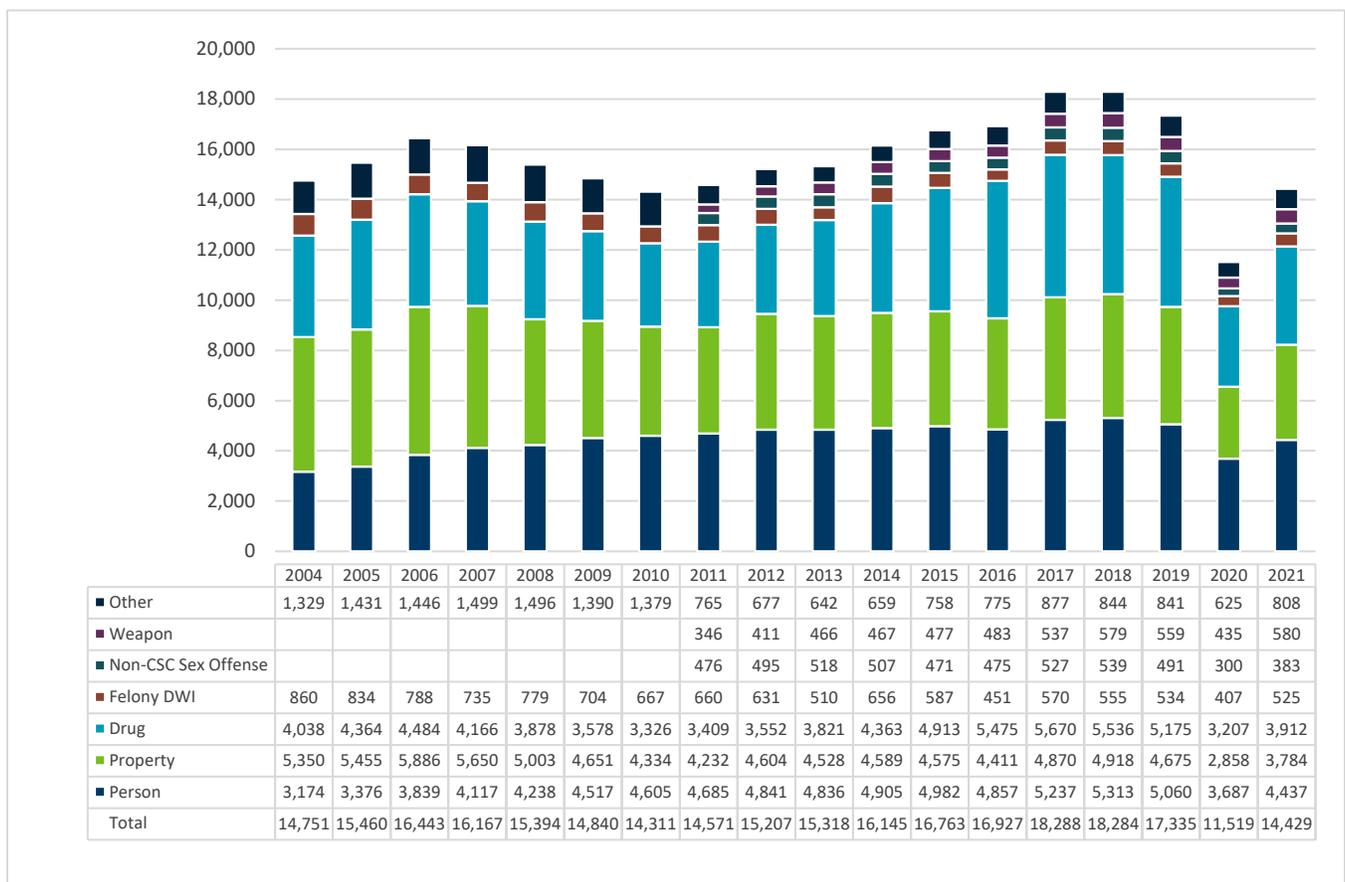


Table 1 displays the year-to-year percent change in case volume by offense type.

Table 1. Cases Sentenced, Percent Change from Previous Year, by Offense Type, 2001–2021

Year Sentenced	Total (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	-33.5%	-27.1%	-38.9%	-38.0%	-23.8%	-38.9%	-22.2%	-25.7%
2021	+25.3%	+20.3%	+32.4%	+22.0%	+29.0%	+27.7%	+33.3%	+29.3%

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

Of those sentenced in 2021, 81.2 percent were male (Table 2). At 18.8 percent, the female percentage was slightly higher than in 2020 (17.8%), but not as high as in 2018, the only year when females accounted for more than 20 percent of cases.

Figure 5 shows the racial or ethnic composition of those sentenced from 1981 through 2021. The white percentage decreased by 25 points between 1981 (81.8%) and 2009 (56.5%). This was largely due to an increase in the black percentage, although the percentages of other races or ethnicities (particularly Hispanic) also increased. From 2020 to 2021, the white percentage increased from 56.6 percent to 56.9 percent. The black percentage decreased from 26.0 percent in 2020 to 25.5 percent in 2021. The percentage of other races or ethnicities remained similar to that seen in 2020.

Figure 5. Distribution of Cases by Race/Ethnicity, 1981–2021

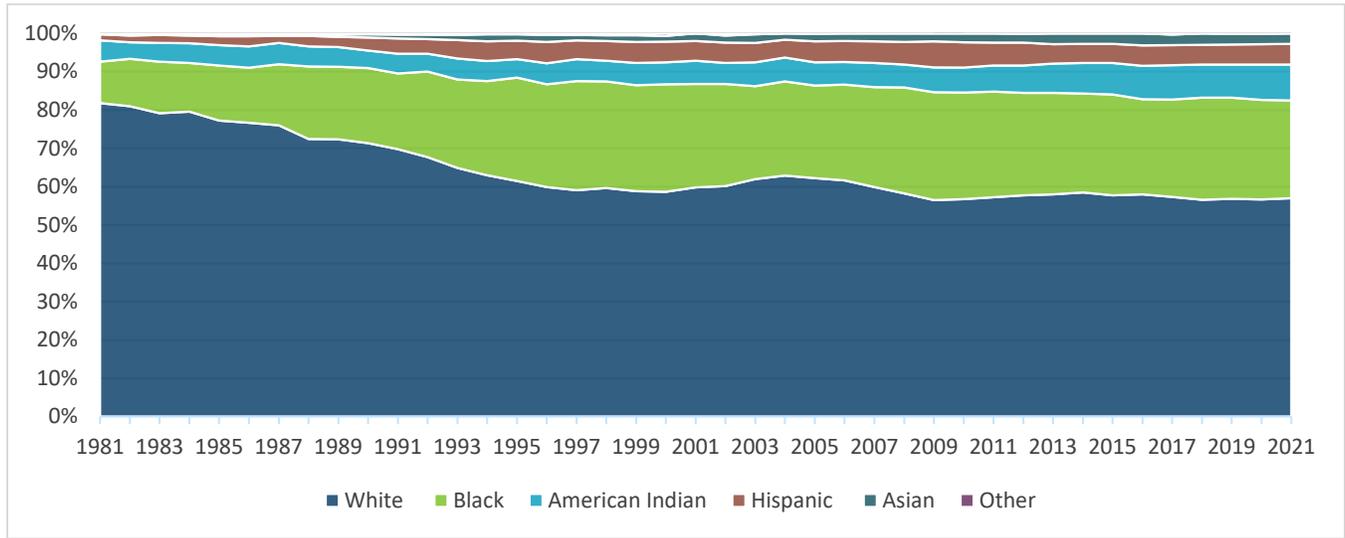
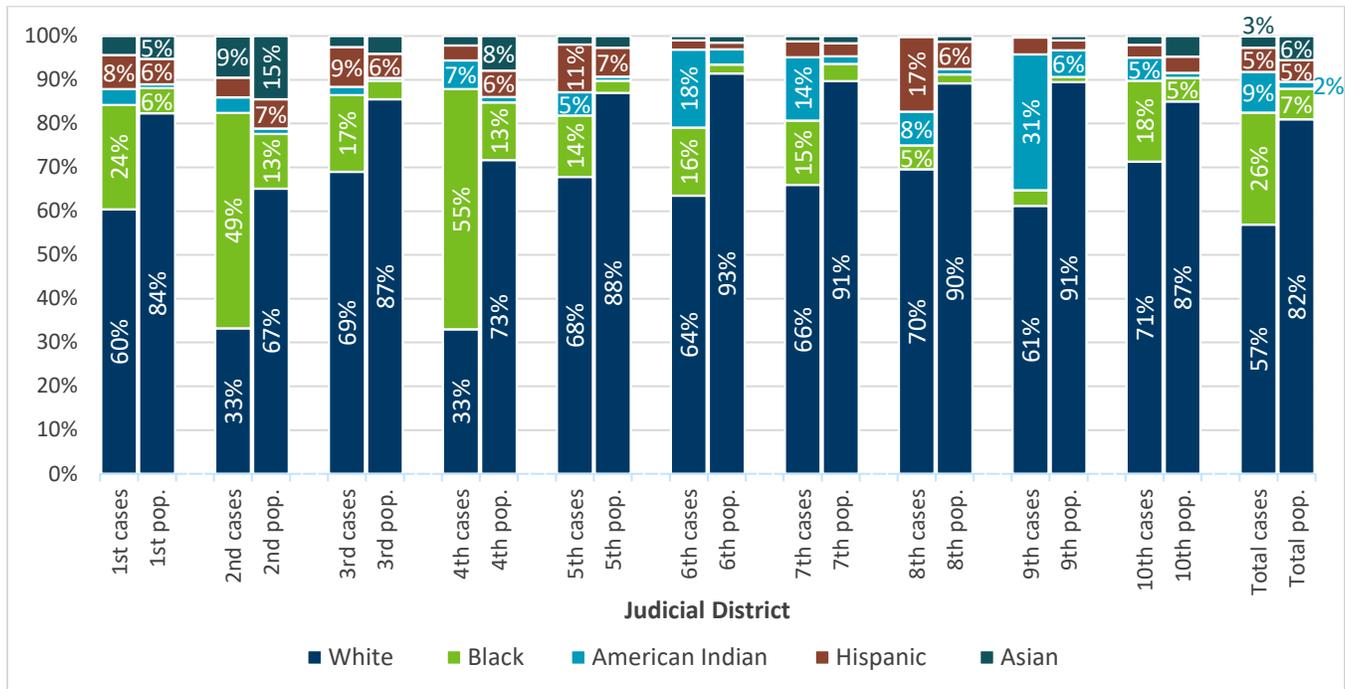


Figure 6 displays the distribution of the racial or ethnic composition of those sentenced in 2021 by Minnesota judicial district, with the racial or ethnic composition of each district’s residential population shown for comparison. The districts with a nonwhite majority of cases were the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County). A map of the judicial districts can be found in Appendix 4 (p. 59).

Figure 6. Distribution of Cases and Population by Race and Judicial District, 2021



Residential population age 15 or older as of July 1, 2021, as estimated by the U.S. Census Bureau (Nov. 2022). The sums of the residential population percentages exceed 100 percent because, except for Hispanic residents, residents of more than one race are counted in more than one category. For judicial districts, values below 5.0 percent are not displayed.

Table 2 compares, by the categories of sex, race or ethnicity, and judicial district, the population of felony cases sentenced in 2021 with the estimated state adult population on July 1. Within those comparison categories, Table 2 also calculates the rate of cases sentenced per 100,000 Minnesota adult residents.

Table 2. Cases Sentenced, 2021, by Gender, Race/Ethnicity, and Judicial District, Compared to 2021 Estimated Adult Population

	People Sentenced in 2021		U.S. Census Category	2021 Estimated Adult Population		People Sentenced per 100,000	
	MSGC Category	Number		Percent	Number		Percent
	Male	11,715	81.2	Male	2,186,757	49.8	536
	Female	2,712	18.8	Female	2,203,066	50.2	123
Race & Ethnicity	White	8217	56.9	White*	3,641,299	82.9	226
	Black	3684	25.5	Black or African American*	300,962	6.9	1,224
	American Indian	1348	9.3	American Indian*	68,156	1.6	1,978
	Hispanic**	788	5.5	Hispanic**	211,201	4.8	373
	Asian	389	2.7	Asian/Pacific Islander*	242,980	5.5	160
	Other/Unknown	1	0.0	--	--	--	***
Judicial District	First	2,061	14.3	First	628,428	14.3	328
	Second	1,352	9.4	Second	416,939	9.5	324
	Third	955	6.6	Third	377,090	8.6	253
	Fourth	2,541	17.6	Fourth	991,412	22.6	256
	Fifth	964	6.7	Fifth	223,999	5.1	430
	Sixth	702	4.9	Sixth	203,550	4.6	345
	Seventh	1,693	11.7	Seventh	382,192	8.7	443
	Eighth	532	3.7	Eighth	124,011	2.8	429
	Ninth	1,490	10.3	Ninth	264,605	6.0	563
	Tenth	2,139	14.8	Tenth	777,597	17.7	275
	Total	14,429	100.0%	Total	4,389,823	100.0%	329

Source of July 1, 2021, population estimate: U.S. Census Bureau (Nov. 2022).

*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 (101.7%) because residents of more than one race are counted in more than one category.

**This table lists all Hispanic people as Hispanic, regardless of race.

See Appendix 4 (p. 59) for a map of Minnesota's ten judicial districts.

Felony 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 2021. 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 2021, the Sentencing Guidelines recommended imprisonment in a record high 36.1 percent of cases, compared to the actual imprisonment rate of 21.5 percent. The difference between these two rates—of 14.6 percentage points—was easily the largest disparity between presumptive and actual imprisonment rates on record, surpassing the 2020 record of 12.9 percentage points.

Figure 7. Actual & Presumptive Incarceration Rates, 1982, 1984, 1986, 1988, 1990, 1992–2021

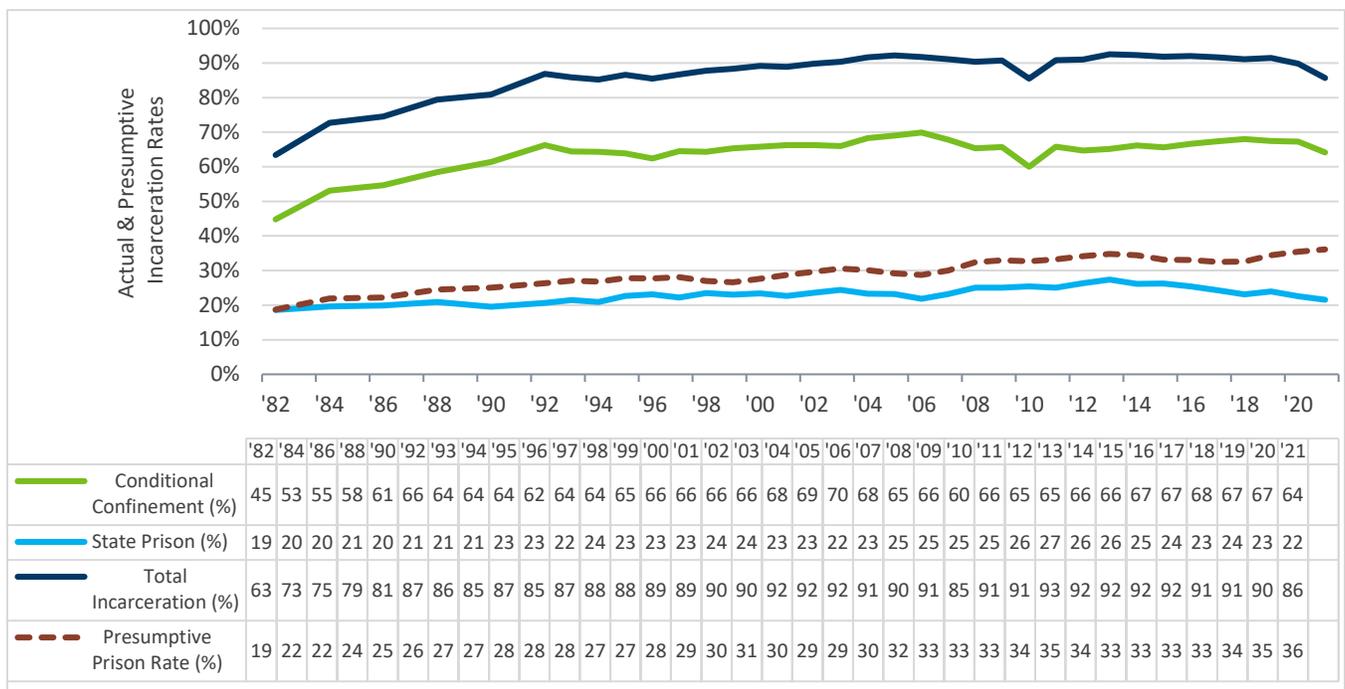
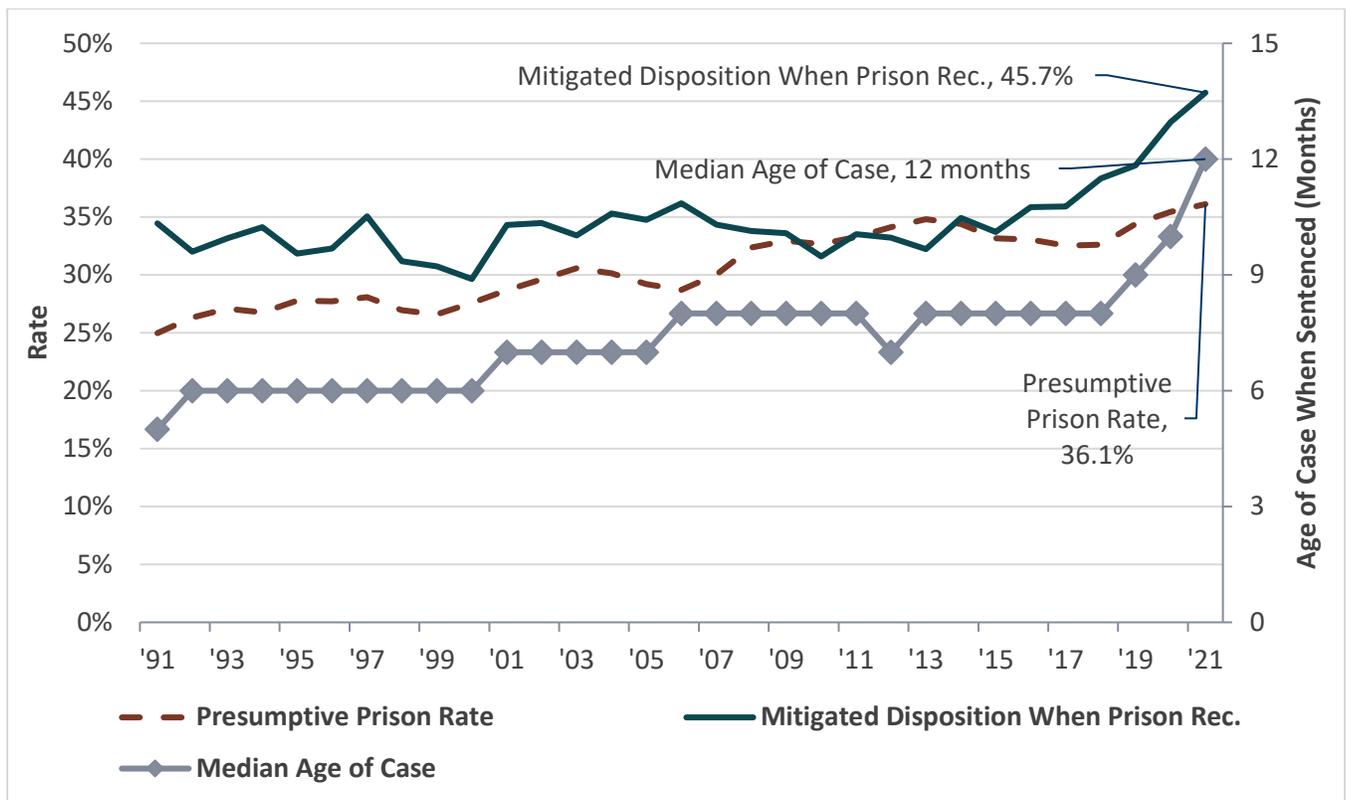


Figure 8 places 2021’s record-high rate at which the sentencing Guidelines recommended prison (36.1%) next to another, related, record-high number, discussed in greater detail beginning on page 27: the rate at which defendants received a mitigated dispositional departure from the Guidelines prison recommendation (45.7% of prison-recommended cases). The figure displays the rise in these rates from 1991 through 2021, together with another, possibly related rising number: The median age of felony cases, which has climbed significantly in recent years, from eight months in 2018 to twelve months in 2021. It is possible that all three of these high 2021 numbers may be related to the justice system’s response to the COVID-19 pandemic.

Figure 8. Records Set in 2021 – Rate Recommended Prison, Rate of Mitigated Dispositional Departures Among Those Cases, & Median Case Age



Note: Median age of case refers to the median difference, in months, between the date of sentence and the date of offense.

Table 3 provides total incarceration information for cases sentenced in 2021. “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 3. Incarceration Rates by Gender, Race/Ethnicity, and Judicial District, 2021

	Total Number	Total Incarceration		Local Confinement		State Prison				
		Number	Rate (%)	Number	Rate (%)	Number	2021 Rate (%)	2016–20 5-Yr. Rate	2017–21 5-Yr. Rate	
Male	11,715	10,195	87.0	7,294	62.3	2,901	24.8	27.1	26.4	
Female	2,712	2,167	79.9	1,964	72.4	203	7.5	10.9	9.9	
Race & Ethnicity	White	8,217	6,981	85.0	5,390	65.6	1,591	19.4	21.0	20.4
	Black	3,684	3,142	85.3	2,236	60.7	906	24.6	29.9	28.6
	American Indian	1,348	1,185	87.9	862	63.9	323	24.0	24.9	24.3
	Hispanic	788	713	90.5	511	64.8	202	25.6	27.4	26.2
	Asian	389	340	87.4	258	66.3	82	21.1	21.7	21.3
	Other/Unknown	1	1	100.0	1	100.0	0	0.0	10.5	11.0
Judicial District	First	2,061	1,790	86.9	1,404	68.1	386	18.7	19.4	19.1
	Second	1,352	1,292	95.6	1,004	74.3	288	21.3	25.0	23.6
	Third	955	766	80.2	551	57.7	215	22.5	24.5	24.1
	Fourth	2,541	1,897	74.7	1,330	52.3	567	22.3	26.5	25.3
	Fifth	964	848	88.0	641	66.5	207	21.5	20.8	20.7
	Sixth	702	592	84.3	463	66.0	129	18.4	21.7	21.1
	Seventh	1,693	1,582	93.4	1,153	68.1	429	25.3	27.5	26.7
	Eighth	532	486	91.4	377	70.9	109	20.5	26.2	24.2
	Ninth	1,490	1,199	80.5	818	54.9	381	25.6	25.6	25.6
	Tenth	2,139	1,910	89.3	1,517	70.9	393	18.4	21.5	20.6
Total	14,429	12,362	85.7	9,258	64.2	3,104	21.5	24.0	23.2	

Race/Ethnicity

Some variation in the 2021 total incarceration rate was observed across the five racial or ethnic groups, ranging from 85 percent (observed in the white group) to 90.5 percent (observed in the Hispanic group) (Figure 9, p. 23). Greater variation existed in the separate rates for imprisonment and local confinement. The white group had the lowest imprisonment rate at 19.4 percent. (For this group, the “presumptive prison rate”—the rate at which prison is recommended—was 33.3%). The Hispanic group had the highest imprisonment rate at 25.6 percent. The Hispanic group had the highest presumptive prison rate at 35.7%) (Figure 9).

Figure 9. Actual & Presumptive Incarceration Rates by Gender & Race/Ethnicity, 2021

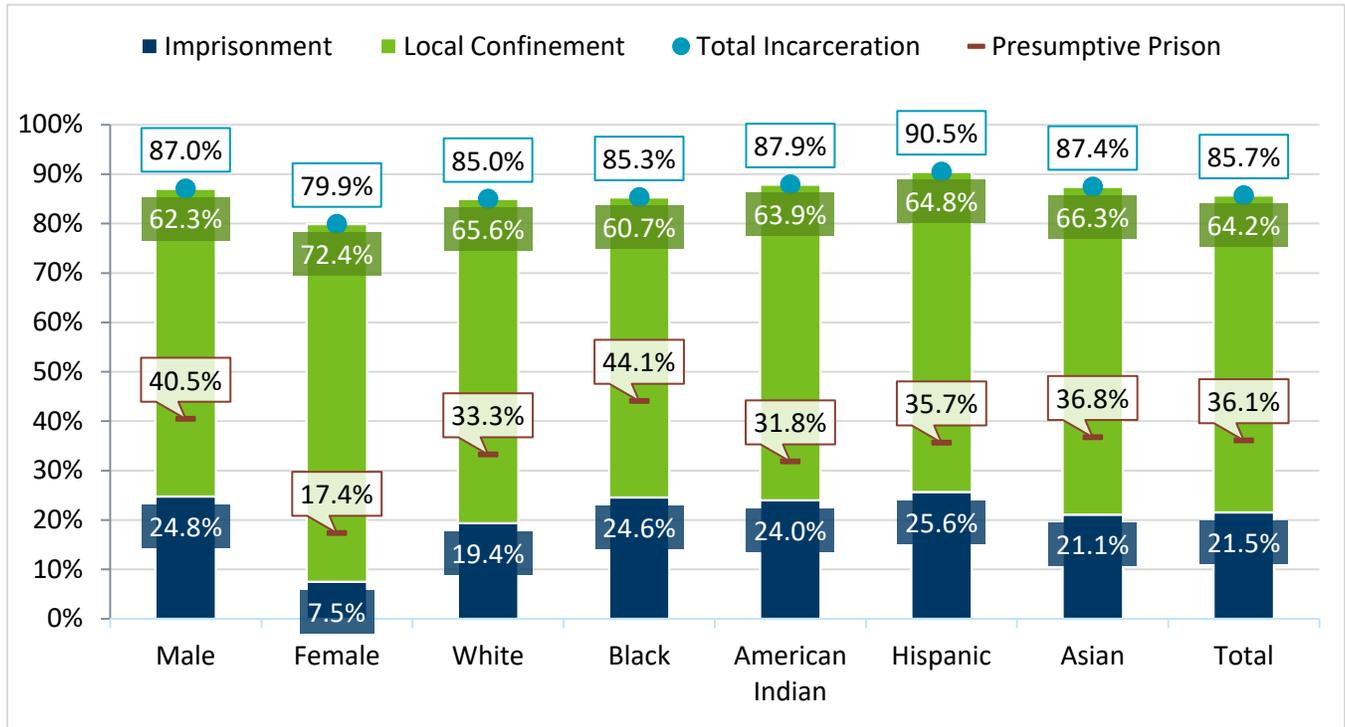
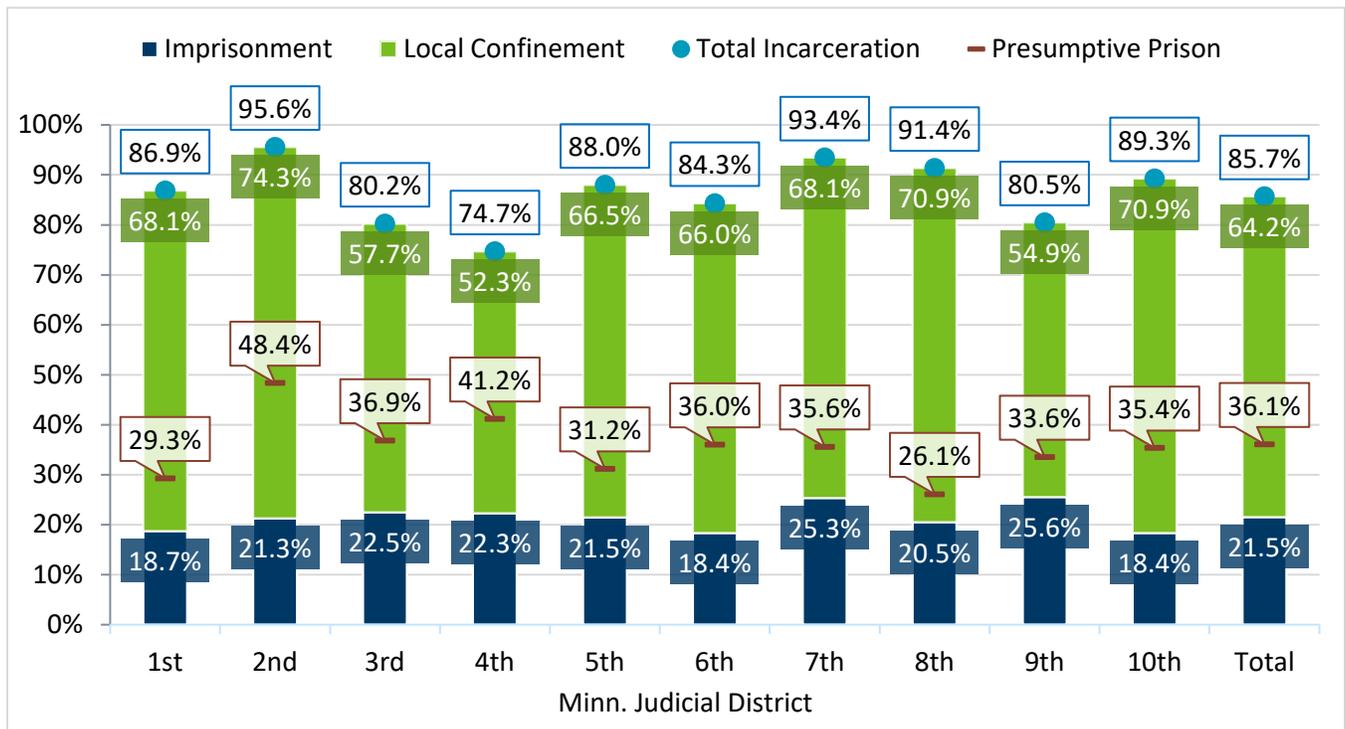


Figure 10. Actual & Presumptive Incarceration Rates by Judicial District, 2021



Judicial District

Variation in incarceration rates was also observed by judicial district (Figure 10, p. 23). The Second Judicial District (Ramsey County) had the highest total incarceration rate (95.6%) and the Fourth Judicial District had the lowest total incarceration rate (74.7%). Variation was also seen with respect to the separate rates for prison and local confinement. The Ninth and Seventh Judicial Districts (northwest Minnesota) had the highest imprisonment rates (25.6% and 25.3%, respectively), and the Sixth and Tenth Judicial Districts (northeast counties) had the lowest imprisonment rate (18.4%). With regard to use of local confinement, the Second District had the highest rate (74.3%), and the Fourth Judicial District had the lowest rate (52.3%). A map of the judicial districts can be found in Appendix 4 (p. 59).

Average Pronounced Felony Sentences (Durations)

State Prison

Among executed prison sentences in 2021, the average pronounced prison duration was 54 months, an increase from 2020 (Figure 11, p. 25). The average varied by applicable Grid: 50 months for cases on the Standard Grid; 93 months for cases on the Sex Offender Grid,³⁵ and 49 months for cases on the Drug Offender Grid.

Life Sentences

Ten people received life sentences in 2021, the same number seen in 2020. Of the ten life sentences, eight were for first-degree murder, and two were for first-degree criminal sexual conduct. For nine of those life sentences, no release will ever be possible because the conviction was of premeditated first-degree murder³⁶ or, in one case, first-degree criminal sexual conduct with mandatory life sentence for two or more heinous elements or is a repeat offender. The one life sentence with possibility of release resulted from a conviction of first-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

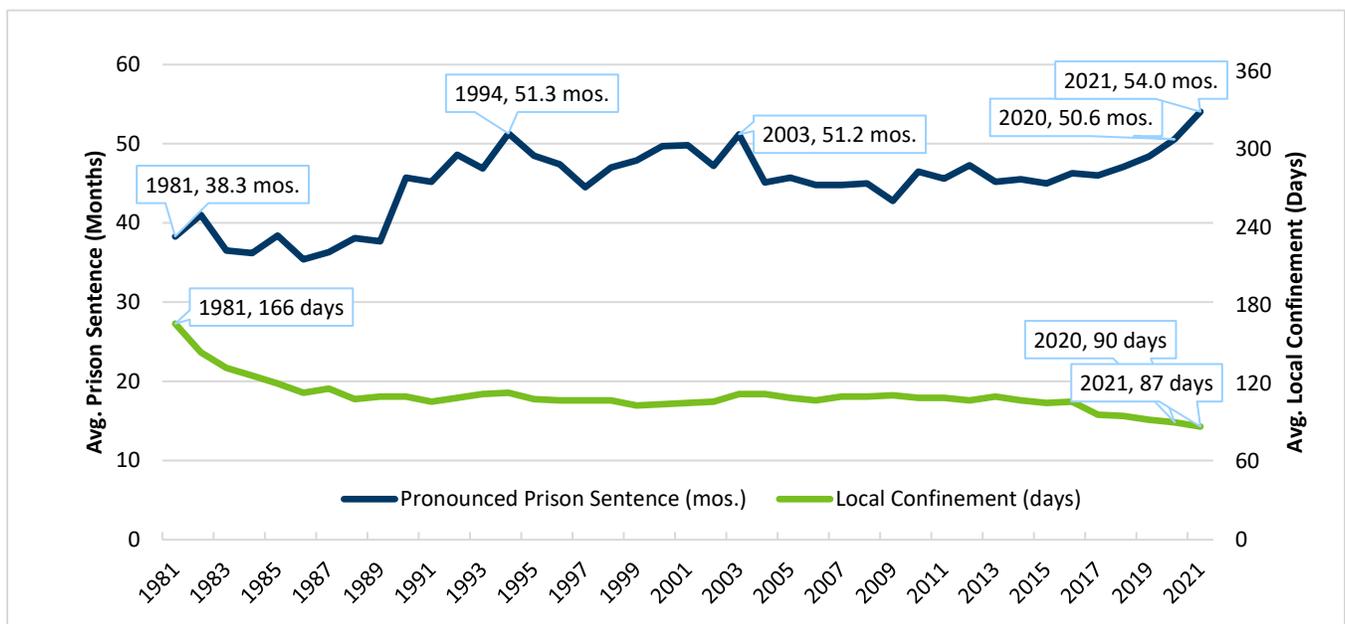
³⁵ In 2021, 16 cases (0.1%) were sentenced in which the offense was committed before August 1, 2005, eight of which were sex offenses. The applicable pre-2005 Standard Grid was therefore used to determine the presumptive sentence. Four of these 16 cases received prison sentences with an average pronounced sentence of 40 months.

³⁶ 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 87 days in 2021, which is the lowest average on record, surpassing the 2020 record-low of 90 days. 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 11).

Figure 11. Average Pronounced Prison Sentences and Local Confinement, 1981–2021



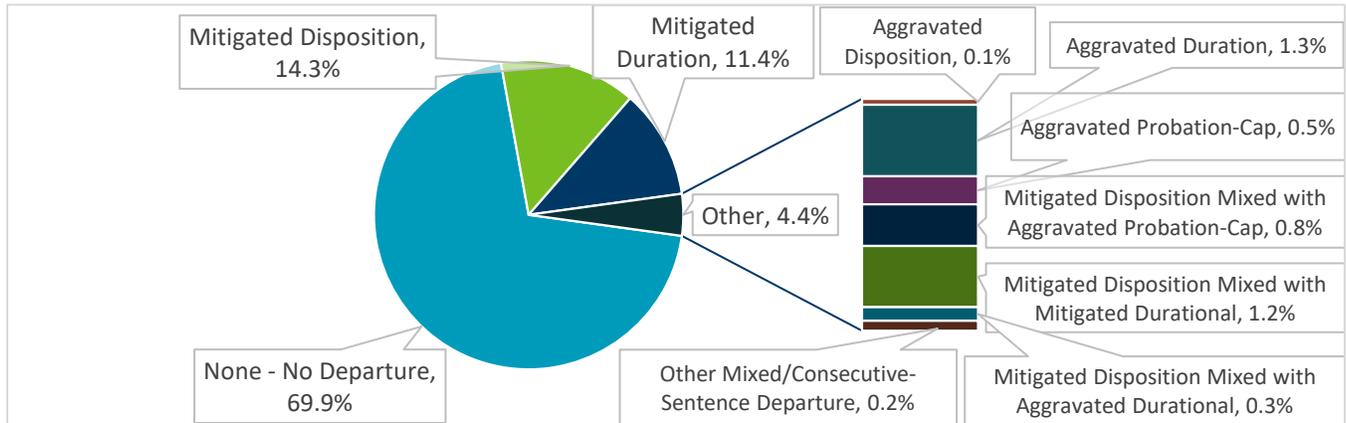
Departures from the Sentencing Guidelines

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.

Total Departures

In 69.9 percent of cases in 2021, the sentence imposed was not a departure from the presumptive, Guidelines-recommended sentence (10,092 cases). In the remaining 30.1 percent of cases, there was some type of departure; *i.e.*, mitigated, aggravated, or mixed (Figure 12). Among the aggravated departures was a new type of departure, effective for crimes committed on or after August 1, 2020 (44% of the 2021 cases): a departure from the new five-year presumptive probation cap. Such a departure occurred in 1.3 percent of the 2021 cases.

Figure 12. Total Departure Rates, All Cases, 2021

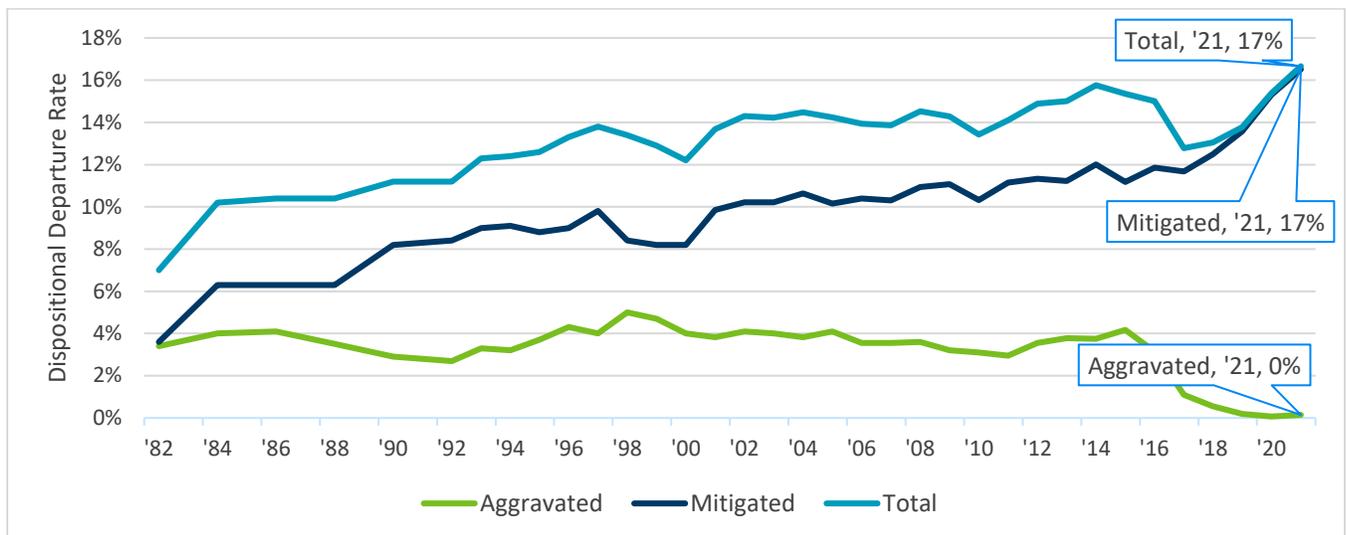


Dispositional Departures

While Figure 12, above, reports both the dispositional and durational departure rates among all cases, this section examines only dispositional departures. A “dispositional departure” occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types: aggravated and mitigated. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces an executed prison sentence. A mitigated dispositional departure occurs when the Guidelines recommend an executed prison sentence but the court pronounces a stayed sentence.

In 2,404 cases (16.6%) in 2021, the sentence was a dispositional departure from the Guidelines. In 21 cases (0.1%), the sentence was to prison when the Guidelines recommended probation (“aggravated dispositional departure”). In 2,383 cases (16.5%), the sentence was to probation when the Guidelines recommended prison (“mitigated dispositional departure”). The majority of the increase in the total departure rate since 1981 has resulted from increases in the mitigated dispositional departure rate (Figure 13, p. 26).

Figure 13. Dispositional Departure Rates, 1982, 1984, 1986, 1988, 1990, 1992–2021



Mitigated Dispositional Departure Rates by Gender, Race/Ethnicity, and Judicial District

Table 4 (p. 27) lists dispositional departure rates by gender, race or ethnicity, and judicial district for presumptive commitment offenses. As discussed on page 21, 2021’s total mitigated dispositional departure rate—45.7 percent of presumptive commitment offenses—was the highest such rate on record. The mitigated dispositional departure rate is higher for females (66.5%) than males (43.7%). When examined by racial or ethnic group, the mitigated dispositional departure rate ranged from a low of 33.6 percent for the American Indian group to a high of 49.7 percent for the Asian group. There was also variation in the rate by judicial district, ranging from a low of 33.1 percent in the Eighth Judicial District (includes west-central counties) to a high of 58.4 percent in the Second Judicial District (Ramsey County).

Table 4. Dispositional Departures by Presumptive Disposition, by Gender, Race/Ethnicity, & Judicial District, 2021

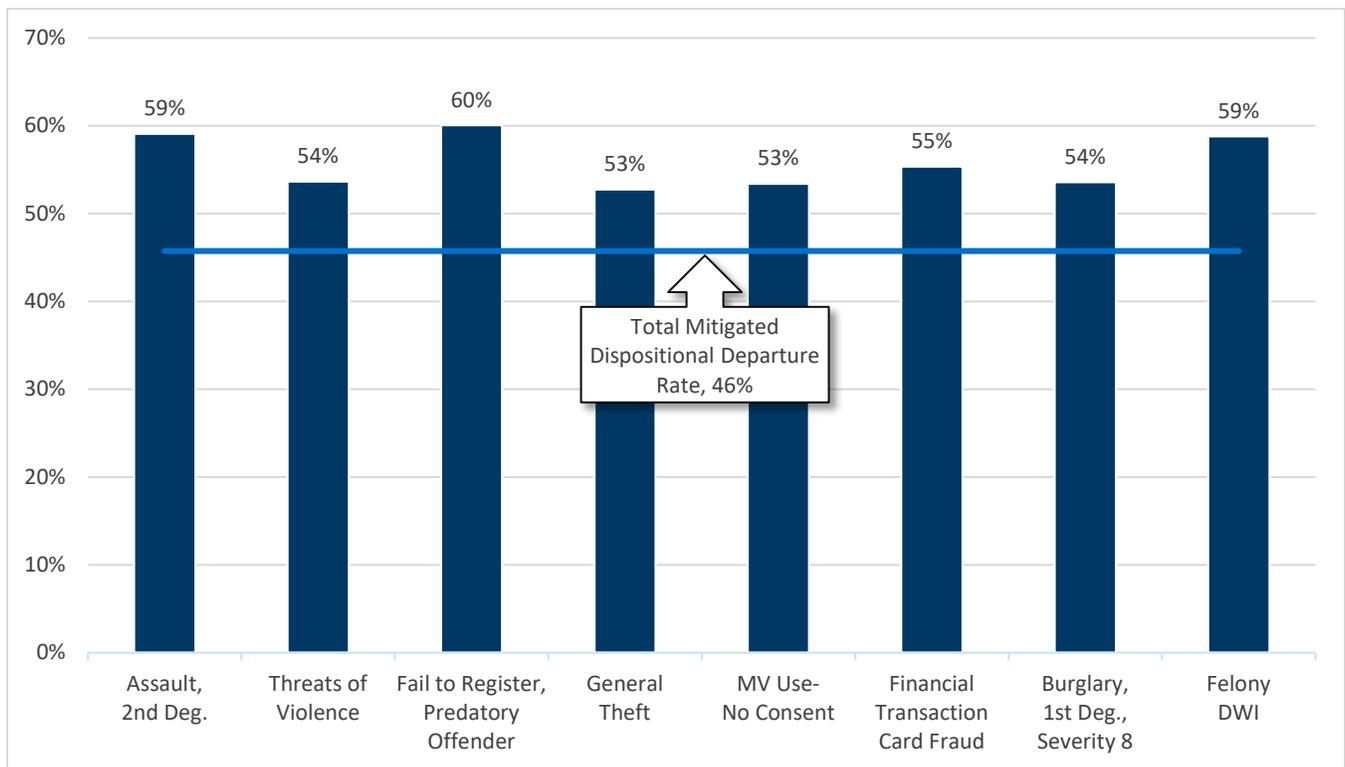
		Total Number	Presumptive Stays			Presumptive Commitments			
			Total	Aggravated Dispositional Departure		Total	Mitigated Dispositional Departure		
				Number	Rate (%)		Number	2021 Rate (%)	2017–21 5-Yr. Rate
	Male	11,715	6976	20	0.3	4739	2070	43.7	38.3
	Female	2,712	2241	1	0.0	471	313	66.5	58.3
Race/Ethnicity	White	8,217	5484	13	0.2	2733	1304	47.7	43.1
	Black	3,684	2,060	5	0.2	1,624	766	47.2	37.9
	American Indian	1,348	919	2	0.2	429	144	33.6	33.1
	Hispanic	788	507	1	0.2	281	98	34.9	35.2
	Asian	389	246	0	0.0	143	71	49.7	44.0
	Other/Unknown	1	1	0	0.0	0	---	---	64.7
	Judicial District	First	2,061	1,457	4	0.3	604	255	42.2
Second		1,352	698	2	0.3	654	382	58.4	49.0
Third		955	603	0	0.0	352	163	46.3	42.0
Fourth		2,541	1,494	6	0.4	1,047	497	47.5	38.0
Fifth		964	663	2	0.3	301	124	41.2	41.5
Sixth		702	449	1	0.2	253	132	52.2	46.5
Seventh		1,693	1,090	3	0.3	603	222	36.8	32.3
Eighth		532	393	0	0.0	139	46	33.1	31.0
Ninth		1,490	990	1	0.1	500	178	35.6	33.9
Tenth		2,139	1,382	2	0.1	757	384	50.7	43.3
	Total	14,429	9,219	21	0.2	5,210	2,383	45.7	40.2

When reviewing Table 4, note that observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced, criminal history scores of offenders across racial groups or across regions, and available local correctional resources. (See Appendix 4 on page 59 for a map of Minnesota’s ten judicial districts.)

Mitigated Dispositional Departure Rate for Selected Offenses

Dispositional departure rates vary for the type of offense. Figure 14 (p. 28) displays the highest rates of mitigated dispositional departure compared to the total rate of 45.7 percent. The selected offenses were those with 50 or more presumptive commitment cases and a mitigated dispositional departure rate of 50 percent or more.

Figure 14. Mitigated Dispositional Departure Rates for Selected Offenses Compared to Total Rate, 2021



Note: Offenses were selected based on criteria that there were 50 or more presumptive commitment cases and the mitigated dispositional departure rate was 50 percent or more.

Two of the offenses highlighted in Figure 14, assault in the second degree and failure to register as a predatory offender, have mandatory minimum sentences specified in statute, with provisions allowing for departure from those mandatory minimums.

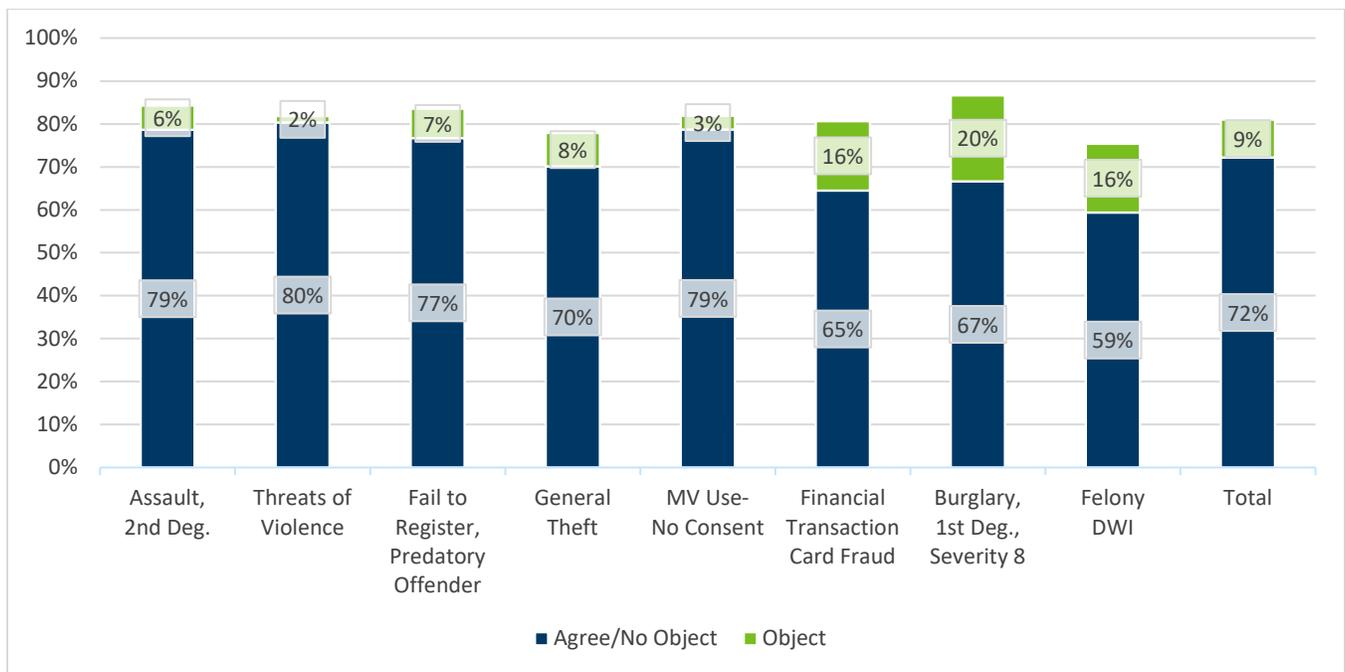
Assault in the second degree, by definition, involves the use of a dangerous weapon and therefore carries a mandatory minimum prison sentence (Minn. Stat. § 609.11, subs. 4, 5, and 9). The second-degree assault statute proscribes a broad range of misbehavior: Injury to, or physical contact with, the victim may or may not occur, and the type of dangerous weapon involved can vary widely, from a pool cue to a knife to a firearm.

Circumstances surrounding the offense can also vary significantly, from barroom brawls to unprovoked confrontations. The mandatory minimum statute specifically permits the court to sentence without regard to the mandatory minimum, provided that substantial and compelling reasons are present (Minn. Stat. § [609.11](#), subd. 8). It is perhaps unsurprising to find many departures in the sentencing of a crime that can be committed in many different ways.

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

In 72 percent of the mitigated dispositional departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 9 percent of these cases, the court stated that the prosecutor objected to the departure (Figure 15, “Total”). The court did not supply information on the prosecutor’s position in 19 percent of these departures. Prosecutor agreement can vary by offense (Figure 15). In all offense categories, amenability to probation and amenability to treatment were the most frequently cited substantial and compelling reasons for departure recorded.

Figure 15. Court-Cited Position of Prosecutor for Mitigated Dispositional Departures, Selected Offenses, 2021



Notes: Departure reports do not always include information on the prosecutor’s position, which is why the columns do not add up to 100% for each offense. Offenses were selected based on criteria that there were 50 or more presumptive commitment cases and the mitigated dispositional departure rate was 50 percent or more. “Total” refers to the total 2,383 cases receiving mitigated dispositional departures.

Durational Departures

A “durational departure” occurs when the court orders a sentence with a duration that is other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of

durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

This section focuses on departures for executed prison sentences (those for whom a prison sentence was imposed), which are shown in Figure 16 (p. 31). Since the enactment of the Guidelines, the mitigated durational departure rate has consistently been higher than the aggravated durational departure rate.

Both mitigated and aggravated durational departures increased until the early 2000s. The increase in mitigated durational departures was particularly striking in 1997 and in the period immediately following the 1989 increases in presumptive durations. In 2001 and 2002, the mitigated durational departure rate, at almost 30 percent, was the highest since the enactment of the Guidelines. Since then, the rate has generally declined, though fluctuating from year to year. The percentage of mitigated durational departures appears to have settled in the mid- to low-20s, although five of the last seven years have seen declines. Likewise, after reaching a high of 12 percent in 2000, the aggravated durational departure rate slowly declined, but appears to have leveled off around three percent.

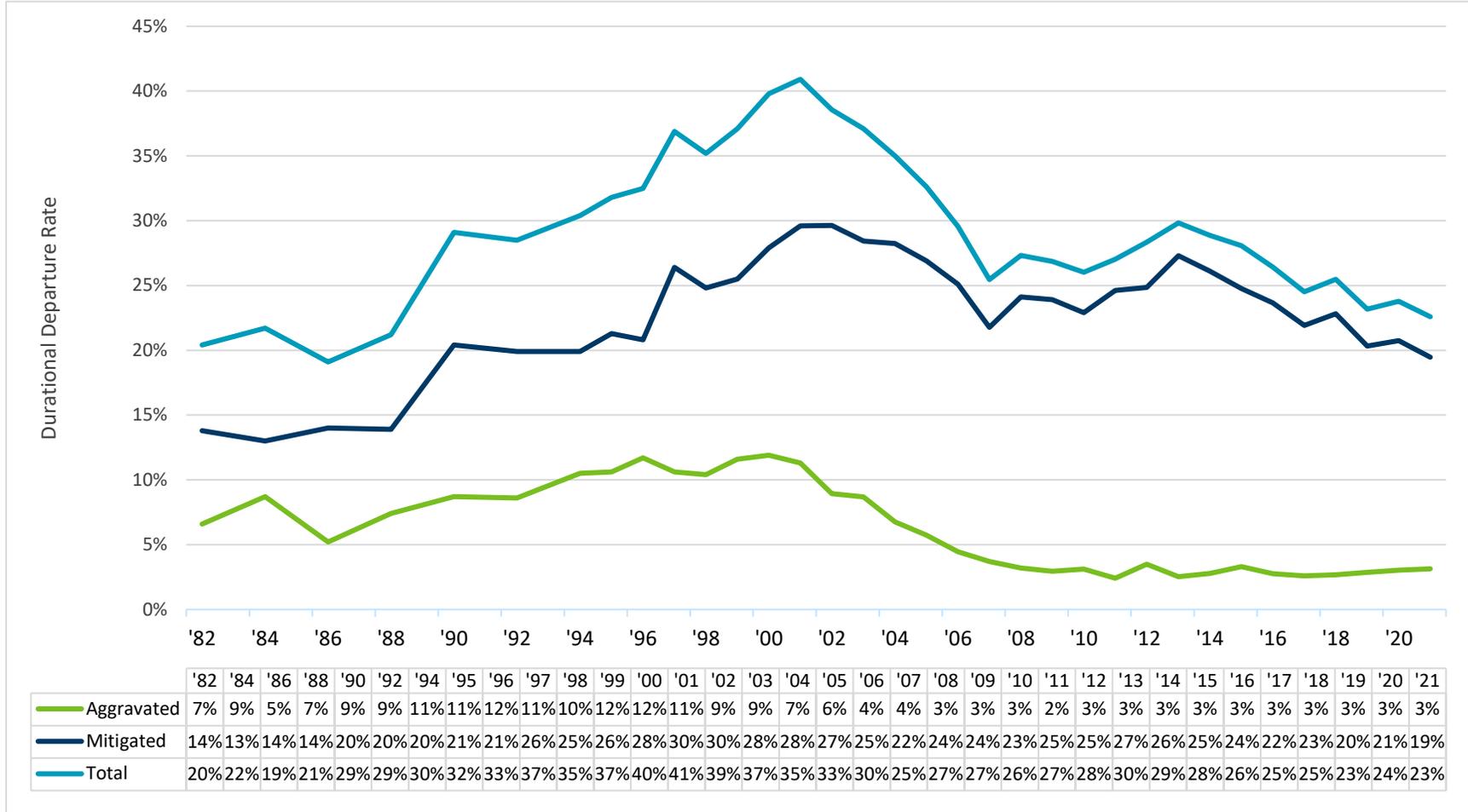
From 2020 to 2021, the mitigated durational departure rate fell, from 20.8 percent to 19.5 percent (the lowest rate since the mid-1980s). The aggravated durational departure rate rose slightly, from 3.0 percent to 3.1 percent.

The trend in lower aggravated durational departure rates since the mid-2000s likely reflects the impact of increased presumptive sentences over the past years and issues related to the U.S. Supreme Court ruling in *Blakely v. Washington*, 542 U.S. 296 (2004), which required a jury to find all facts—other than the fact of a prior conviction or those facts agreed to by the defendant—used to enhance a sentence under mandatory sentencing guidelines.³⁷ In response to the *Blakely* decision, the 2005 Legislature widened the ranges on the Standard Grid to 15 percent below and 20 percent above the presumptive fixed sentence, within which the court may sentence without departure. In 2006, a Sex Offender Grid was adopted. The Sex Offender Grid introduced higher presumptive sentences for repeat offenses and those with criminal history.³⁸

³⁷ The Minnesota Supreme Court determined that *Blakely's* jury requirements applied to aggravated departures under the Sentencing Guidelines. *State v. Shattuck*, 689 N.W.2d 785 (Minn. 2004), *modified on reh'g*, 704 N.W.2d 131 (Minn. 2005).

³⁸ For a deeper examination of the effect of the *Blakely* decision on sentencing practices, see the MSGC special report: "Impact of *Blakely* and Expanded Ranges on Sentencing Grid," at <http://mn.gov/sentencing-guidelines/reports>.

Figure 16. Durational Departure Rates for Cases Receiving an Executed Prison Sentence, 1982, 1984, 1986, 1988, 1990, 1992, 1994–2021



Durational Departure Rates by Gender, Race/Ethnicity and Judicial District

Table 5 (p. 34) lists durational departure rates for executed prison sentences by gender, race or ethnicity, and Minnesota Judicial District. These rates are illustrated graphically in Figure 19 (p. 35) and Figure 20 (p. 36). The mitigated durational departure rate for males sentenced in 2020 was higher than for females (21% vs. 17%). When examined by racial or ethnic group, the durational departure rate varies from lows of 15.1 percent for the American Indian group and 15.9 percent for the white group to highs of 32.1 percent for the Asian group and 29.8 percent for the black group. Mitigated durational departure rates also vary considerably by Minnesota Judicial District, ranging from a low of 5.3 percent in the Eighth Judicial District to a high of 42.8 percent in the Fourth Judicial District. See Appendix 1 for a map of Minnesota's ten judicial districts.

Durational Departures by Offense Type

Offenses in the non-criminal sexual conduct (non-CSC sex offense) category have higher mitigated durational departure rates and lower aggravated durational departure rates than other offense types. The offense in the non-CSC sex offense category with the highest mitigated durational departures (excluding an offense with very few cases) is failure to register as a predatory offender. Person offenses had the highest aggravated durational departure rate at 4.9 percent.

Figure 17 (p. 33) displays those offenses with at least 40 executed prison cases that had the highest durational departure rates. Included in this graph are offenses with a mitigated durational departure rate of 25 percent or more; or an aggravated durational departure rate of nine percent or more.

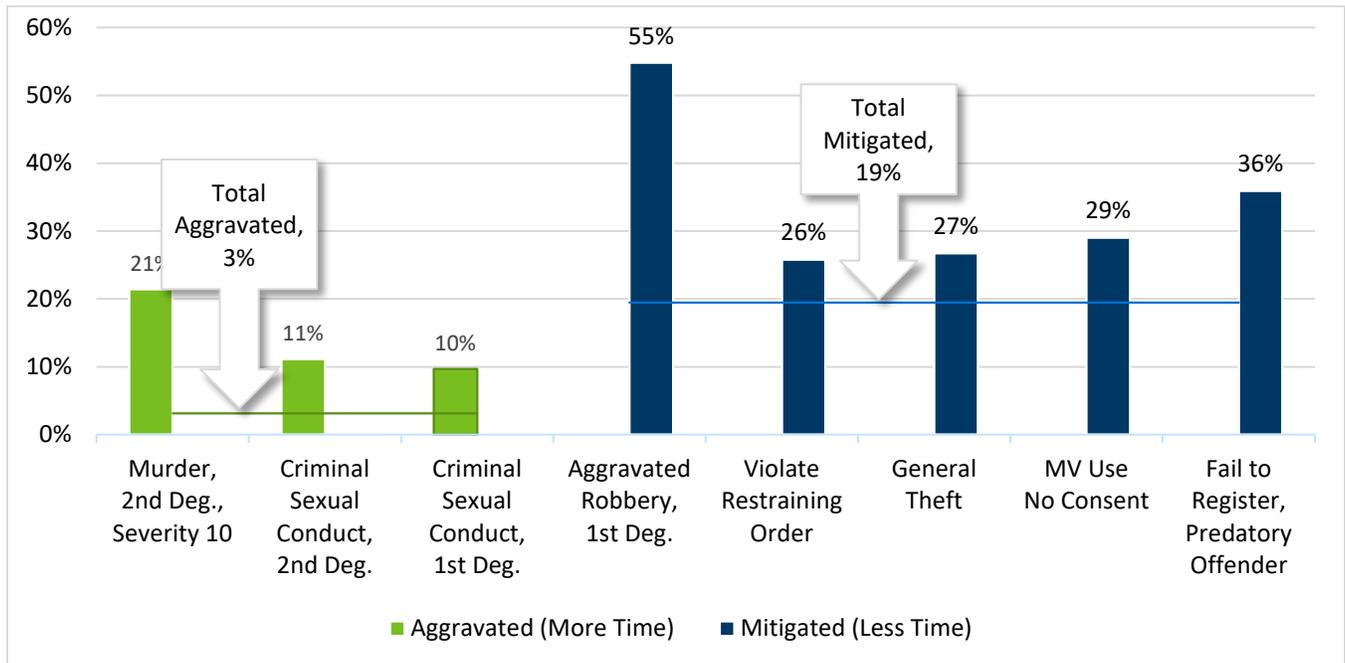
Aggravated durational departure rates were highest for first-degree criminal sexual conduct and second-degree criminal sexual conduct. Mitigated durational departure rates were highest for aggravated robbery in the first degree, felony domestic assault, and failure to register as a predatory offender.

For both mitigated and aggravated durational departures, plea agreement or recommendation of the prosecutor were the most frequently cited reasons for departure for all offense types.

In 74 percent of the mitigated durational departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In six percent of these cases, the court stated that the prosecutor objected to the departure. In 20 percent of the mitigated durational departures, the court did not provide information on the position of the prosecutor. For the offenses with at least 40 executed prison cases that had the highest durational departure rates, the position of the prosecutor is shown in Figure 18 (p. 33).

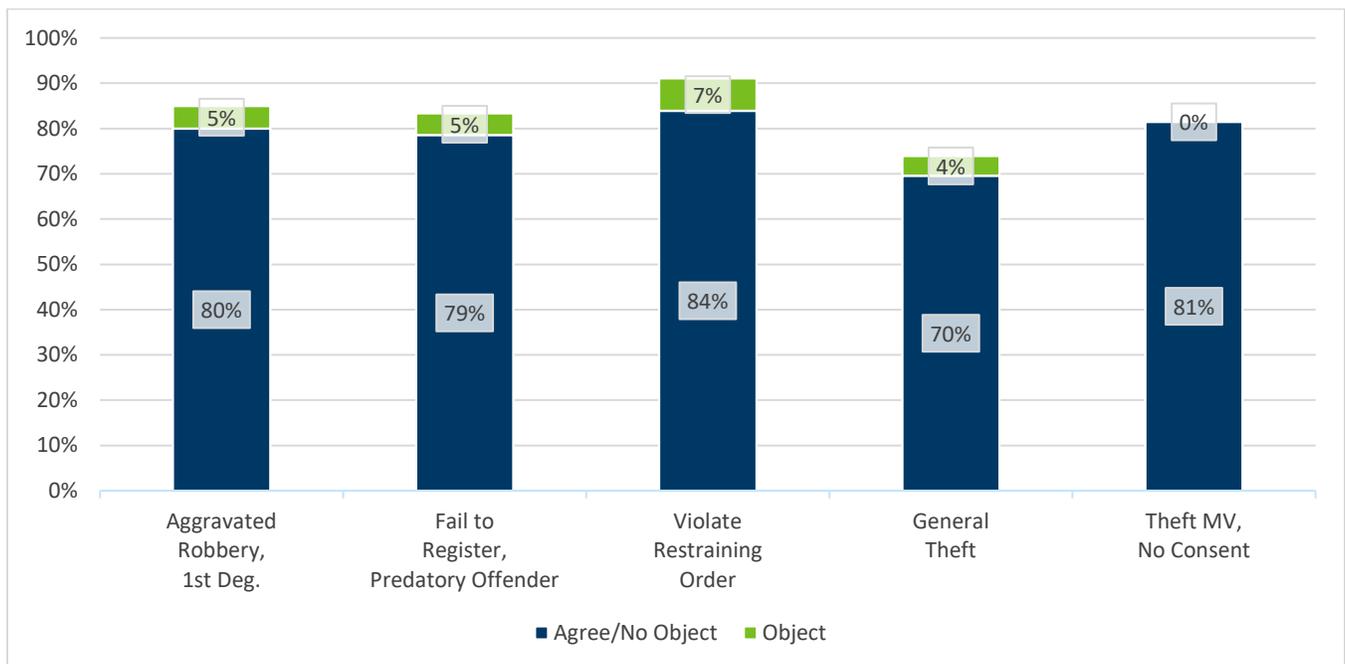
In 67 percent of the aggravated durational departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 33 percent of the aggravated durational departures, the court did not provide information on the position of the prosecutor. There were no cases in which the court stated that the prosecutor objected to the aggravated durational departure.

Figure 17. Durational Departure Rates, Cases Receiving Executed Prison Sentences, Selected Offenses, 2021



Note: Offenses were selected based on criteria that there were 40 or more executed prison cases and the aggravated durational departure rate was 9 percent or more or the mitigated durational departure rate was 25 percent or more.

Figure 18. Court-Cited Position of Prosecutor, Mitigated Durational Departures, Executed Prison Sentences, Selected Offenses, 2021



Notes: Departure reports do not always include information on the prosecutor's position, which is why the columns do not add up to 100 percent for each offense type. Offenses were selected based on criteria that there were 40 or more executed prison cases and the mitigated durational departure rate was 25 percent or more.

Durational Departure Rates by Gender, Race/Ethnicity and Judicial District

Table 5 (p. 34) lists durational departure rates for executed prison sentences by gender, race or ethnicity, and Minnesota Judicial District. These rates are illustrated graphically in Figure 19 (p. 35) and Figure 20 (p. 36). The mitigated durational departure rate for males sentenced in 2021 was higher than for females (20% vs. 15%). When the departure rate is examined by racial or ethnic group, the rate varies from a low of 15.3 percent for the Hispanic group to a high of 31.7 percent for the Asian group. There is also considerable variation in mitigated durational departure rates by Minnesota Judicial District, ranging from a low of 4.6 percent in the Eighth Judicial District to a high of 47.2 percent in the Second Judicial District.

When reviewing the information in Table 5, it is important to note that the observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced and criminal history scores of offenders across racial groups or across regions. A map of Minnesota’s ten judicial districts can be found in Appendix 4 (p. 59).

Table 5. Durational Departures, Executed Prison Sentences, by Gender, Race/Ethnicity, & Judicial Dist., 2021

		Number Executed Prison	Total Durational Departure Rate (%)	Durational Departures, Executed Prison Sentences Only						
				No Departure		Aggravated		Mitigated		
				Number	Rate	Number	Rate	Number	2021 Rate	2017–21 5-Yr. Rate
	Male	2901	22.8	2,239	77.2	89	3.1	573	19.8	21.4
	Female	203	19.2	164	80.8	8	3.9	31	15.3	19.3
Race/Ethnicity	White	1,591	18.5	1,296	81.5	47	3.0	248	15.6	16.8
	Black	906	30.8	627	69.2	33	3.6	246	27.2	29.3
	American Indian	323	18.3	264	81.7	6	1.9	53	16.4	17.6
	Hispanic	202	19.3	163	80.7	8	4.0	31	15.3	17.9
	Asian	82	35.4	53	64.6	3	3.7	26	31.7	25.5
	Other/Unknown	0		---		---		---		
Judicial District	First	386	22.3	300	77.7	19	4.9	67	17.4	17.2
	Second	288	48.3	149	51.7	3	1.0	136	47.2	39.6
	Third	215	10.7	192	89.3	7	3.3	16	7.4	8.3
	Fourth	567	41.8	330	58.2	25	4.4	212	37.4	39.2
	Fifth	207	12.1	182	87.9	8	3.9	17	8.2	15.3
	Sixth	129	10.9	115	89.1	1	0.8	13	10.1	11.0
	Seventh	429	16.6	358	83.4	11	2.6	60	14.0	15.3
	Eighth	109	7.3	101	92.7	3	2.8	5	4.6	4.8
	Ninth	381	11.3	338	88.7	7	1.8	36	9.4	10.7
	Tenth	393	14.0	338	86.0	13	3.3	42	10.7	11.4
	Total	3,104	22.6	2,403	77.4	97	3.1	604	19.5	21.2

Mitigated Departures: Gender, Race/Ethnicity, & Judicial Districts

Previous sections discussed variations—by gender, race or ethnicity, and judicial district—in mitigated dispositional departure rates for presumptive commitment offenses (p. 27) and in mitigated durational departure rates for executed prison sentences (p. 34). Figure 19 and Figure 20, present a combined illustration of these variations. Among racial or ethnic groups whose members were sentenced in 2021 (Figure 19)—

- The white group had a higher mitigated dispositional departure rate than the total rate, but a lower durational departure rate;
- The black and Asian groups had higher mitigated dispositional and durational departure rates than the total rate;
- The American Indian and Hispanic groups had lower mitigated dispositional and durational departure rates than the total rate.

Recall from Figure 6 (p. 1818) that racial or ethnic composition varies by Minnesota judicial district. When reviewing Figure 20, p. 36, note that the observed variations may be partly explained by regional differences in charging, plea agreement, and sentencing practices, as well as by regional differences in case volume, the types of offenses sentenced, criminal history scores across racial groups, and available local correctional resources. (See Appendix 4, p. 59, for a map of Minnesota’s ten judicial districts.)

Figure 19. Mitigated Departure Rates by Gender & Race/Ethnicity, 2021

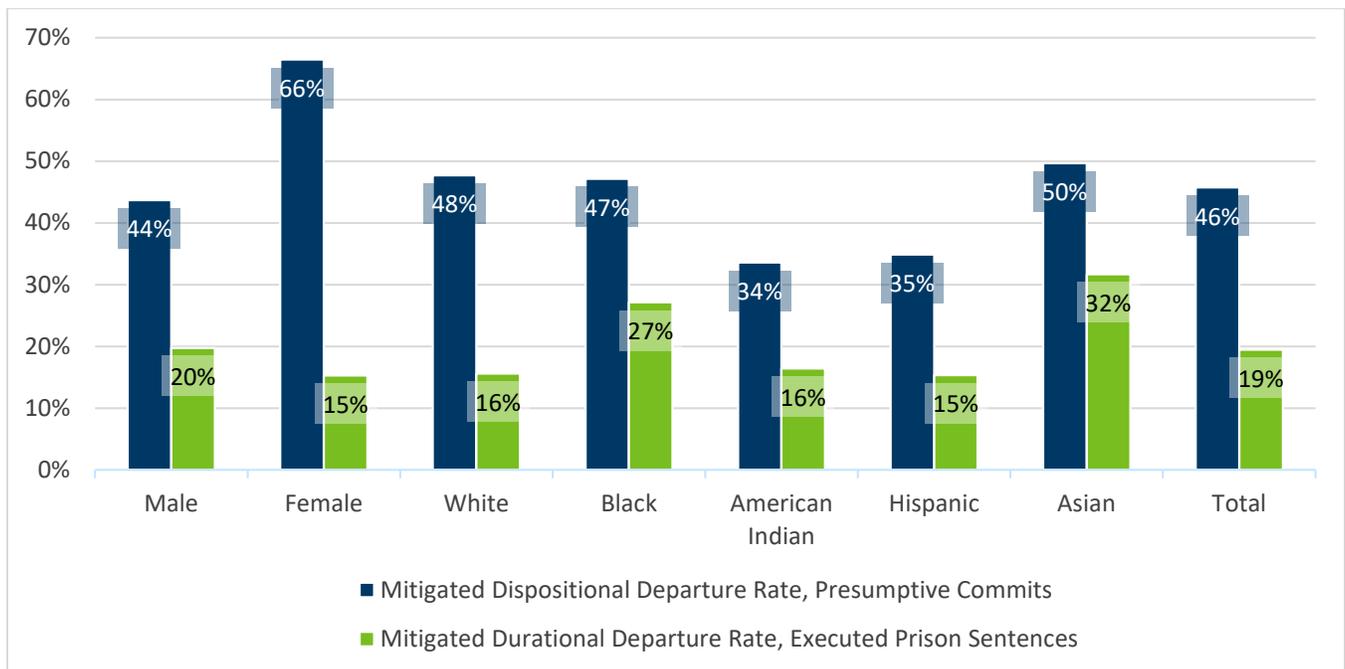
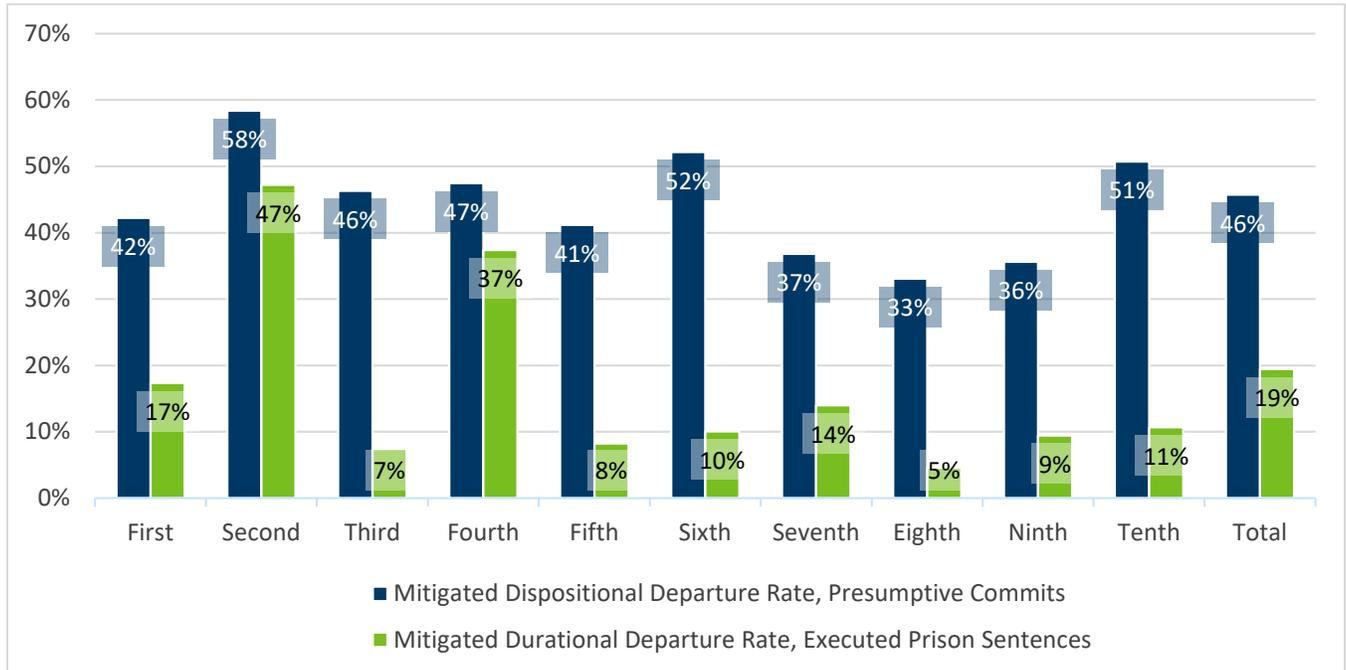


Figure 20. Mitigated Departure Rates by Minnesota Judicial District, 2021



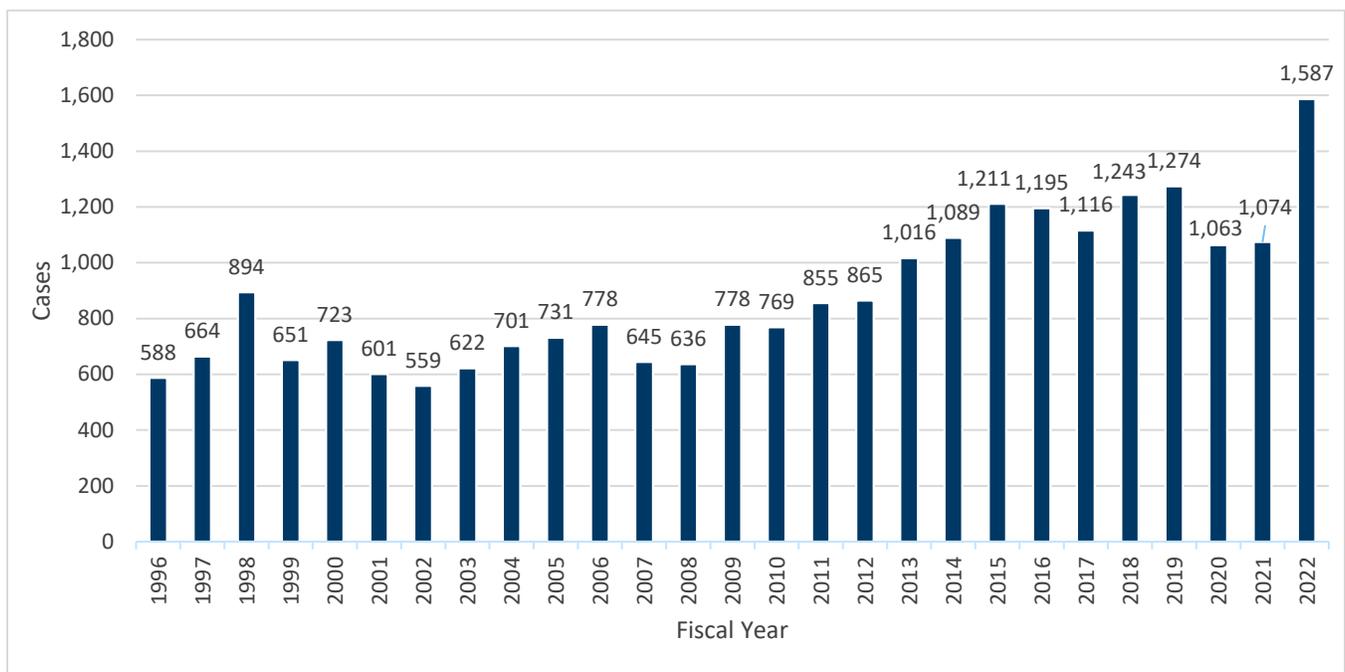
County Attorney Firearms Reports

Minnesota law requires all county attorneys, 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 9.³⁹ 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 2022

Since the mandate began in 1996, the average number of annual cases allegedly involving firearms statewide has been 879. In fiscal year (FY) 2022 (July 1, 2021, through June 30, 2022), county attorneys report disposing of 1,587 cases allegedly involving a firearm (Figure 21). This was a 48 percent increase from FY 2021, and the largest number of cases reported in the 27 years of the mandate.

Figure 21. Cases Allegedly Involving a Firearm, FY 1996 to FY 2022



³⁹ 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.

Cases Charged, 2022

Of the 1,587 cases in which defendants allegedly possessed or used firearms, prosecutors charged 1,539 cases (97%), while 48 cases (3%) were not charged (Figure 22, “Charged” and “Not Charged”).

Case Outcomes, 2022

Of the 1,539 cases charged, 930 (60%) were convicted of offenses designated in [Minn. Stat. § 609.11](#); 198 (13%) were convicted of non-designated offenses (not covered by the mandatory minimum (*e.g.*, threats of violence under [Minn. Stat. § 609.713](#))); 287 (19%) had all charges dismissed; 20 (1%) were acquitted on all charges; and 104 (7%) were “other” cases, including federal prosecutions and stays of adjudication (Figure 22).

Cases Convicted of Designated Offense & Firearm Established on the Record, 2022

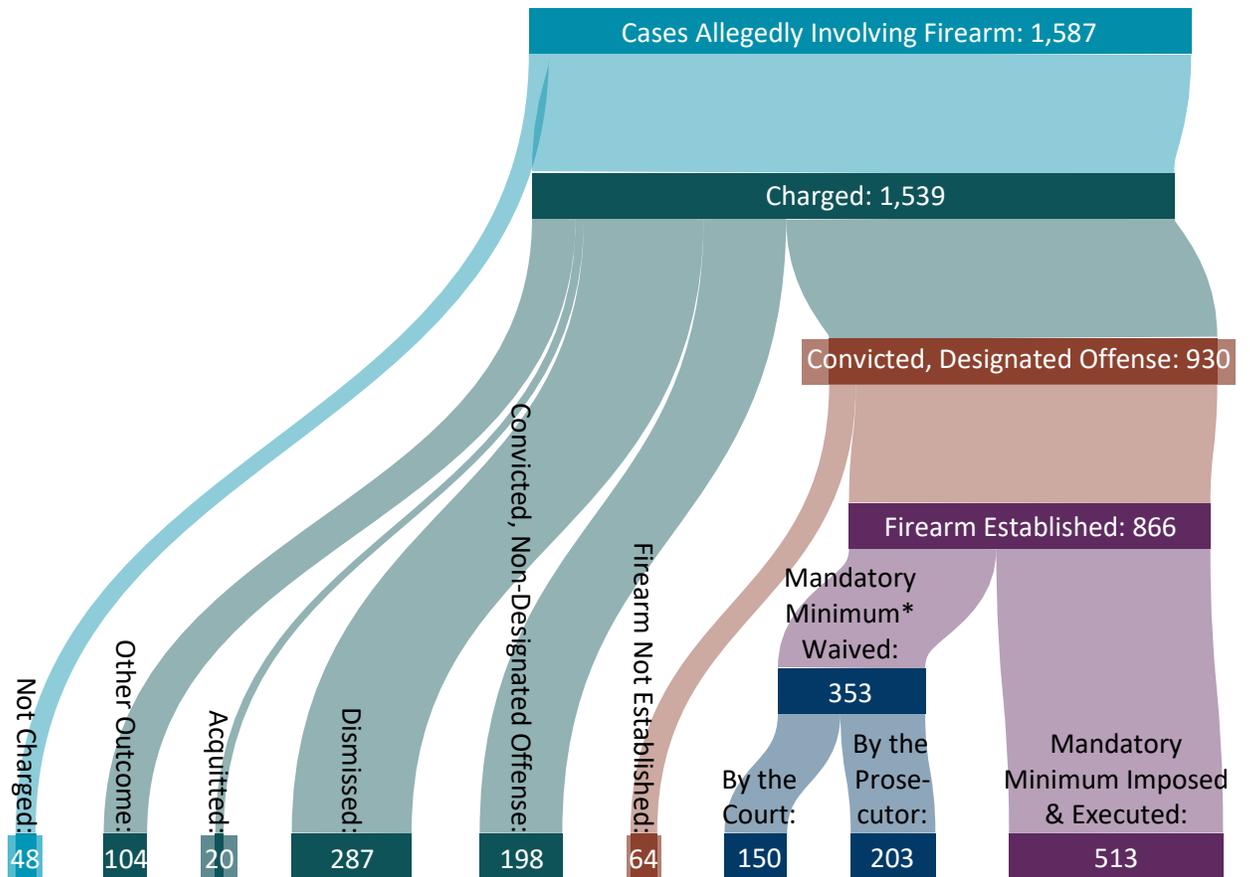
In 866 (93%) of the 930 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 22, “Firearm Established”). The fact-finder, *i.e.*, the judge or jury, must establish whether the defendant or an accomplice used or possessed 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, 513 cases (59%)⁴⁰ were sentenced to the mandatory minimum prison term (Figure 22, “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 8.⁴¹

⁴⁰ County attorneys’ data for fiscal year 2022 (ending June 30, 2022). According to MSGC monitoring data from calendar year 2021, of the 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, 47 percent (343 cases) received both the mandatory prison disposition and the mandatory minimum duration or longer. In addition, 12 percent (84 cases) received the mandatory prison disposition, but less than the mandatory minimum duration.

⁴¹ 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 22. Disposition of Cases, Alleged Designated Offenses Involving Firearms, as Reported by County Attorneys, Cases Disposed of Between July 1, 2021, and June 30, 2022



*For an explanation of the term “mandatory minimum,” see footnote 41.

Table 6. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm, by Minn. County, Cases Disposed of Between July 1, 2021, and June 30, 2022

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Aitkin	14	13	3	7	2	2	2
Anoka	84	78	11	21	43	43	23
Becker	11	11	0	1	10	10	7
Beltrami	12	11	1	0	8	7	7
Benton	15	15	7	3	4	4	1
Big Stone	0	0	0	0	0	0	0
Blue Earth	3	3	0	0	3	3	2
Brown	3	3	0	0	3	3	2
Carlton	3	3	2	0	1	1	1
Carver	0	0	0	0	0	0	0
Cass	13	7	1	3	3	3	2
Chippewa	3	3	0	0	2	2	1
Chisago	6	6	2	0	4	4	2
Clay	1	1	0	0	1	1	0
Clearwater	1	1	0	0	1	1	0
Cook	1	1	0	0	1	0	0
Cottonwood	1	1	0	0	1	1	0
Crow Wing	37	33	3	9	16	13	7
Dakota	59	59	14	5	36	35	15
Dodge	0	0	0	0	0	0	0
Douglas	9	9	0	1	1	1	1
Faribault	2	2	0	0	2	2	2
Fillmore	4	4	1	1	2	1	1
Freeborn	7	6	0	4	2	1	0
Goodhue	11	11	2	1	7	5	0
Grant	1	1	0	1	0	0	0
Hennepin	638	638	137	37	402	397	232
Houston	0	0	0	0	0	0	0
Hubbard	8	4	0	2	1	1	1

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Isanti	3	3	0	0	2	2	2
Itasca	8	8	0	0	8	8	7
Jackson	0	0	0	0	0	0	0
Kanabec	5	5	1	1	3	1	1
Kandiyohi	3	3	0	3	0	0	0
Kittson	0	0	0	0	0	0	0
Koochiching	2	1	0	1	0	0	0
Lac qui Parle	0	0	0	0	0	0	0
Lake	7	7	0	1	4	4	2
Lake of the Woods	2	2	1	0	1	1	0
Le Sueur	1	1	0	0	1	1	1
Lincoln	2	2	2	0	0	0	0
Lyon	5	5	0	1	4	4	4
McLeod	3	3	2	1	0	0	0
Mahnomen	0	0	0	0	0	0	0
Marshall	0	0	0	0	0	0	0
Martin	6	6	0	1	5	1	0
Meeker	3	3	0	0	3	3	3
Mille Lacs	39	33	9	7	6	5	3
Morrison	11	11	3	4	3	3	0
Mower	15	15	1	1	13	10	10
Murray	0	0	0	0	0	0	0
Nicollet	5	5	0	1	4	3	2
Nobles	13	12	0	3	9	7	3
Norman	1	1	0	0	1	1	1
Olmsted	15	9	3	0	5	5	1
Otter Tail	15	15	4	3	8	8	4
Pennington	1	1	0	0	1	0	0
Pine	9	9	2	1	6	5	4

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Pipestone	3	2	0	1	1	1	0
Polk	11	11	0	0	10	8	8
Pope	0	0	0	0	0	0	0
Ramsey	169	169	44	21	100	94	49
Red Lake	0	0	0	0	0	0	0
Redwood	0	0	0	0	0	0	0
Renville	2	2	0	0	2	0	0
Rice	15	14	1	8	3	3	2
Rock	2	2	0	1	1	0	0
Roseau	3	3	1	0	2	1	1
Scott	15	15	4	1	9	9	7
Sherburne	14	10	0	1	9	7	4
Sibley	3	2	0	1	1	1	1
St. Louis	50	47	2	13	31	31	30
Stearns	45	45	6	3	35	30	15
Steele	11	10	1	0	9	7	4
Stevens	1	1	0	0	1	0	0
Swift	0	0	0	0	0	0	0
Todd	6	6	2	0	4	1	1
Traverse	0	0	0	0	0	0	0
Wabasha	2	2	0	0	2	0	0
Wadena	8	8	0	0	6	6	5
Waseca	1	1	1	0	0	0	0
Washington	20	20	1	3	14	12	7
Watonwan	3	3	0	2	1	1	0
Wilkin	7	7	0	3	4	3	1
Winona	17	17	4	3	7	4	1
Wright	27	27	6	5	16	15	3
Yellow Medicine	7	7	1	1	4	4	4
Total	1,587	1,539	287	198	930	866	513

Appendices

Appendix 1. 2023 Proposed Guidelines Modifications

The following proposed modifications have been adopted by the Minnesota Sentencing Guidelines Commission and are hereby submitted to the Legislature. Each modification is to the August 1, 2022, edition of the Minnesota Sentencing Guidelines and Commentary, and each modification will be effective August 1, 2023, unless the Legislature by law provides otherwise.

Appendix 1.1. Modifications Related to Sex Trafficking

Proposed Modifications: On January 12, 2023, as a result of its legislatively mandated review of how the Sentencing Guidelines address Sex Trafficking ([2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 54](#)) and after a public hearing, the Commission unanimously proposed—

- To rank Aggravated Sex Trafficking 1st Degree on the Sex Offender Grid at Severity Level A;
- To rank Aggravated Sex Trafficking 2nd Degree on the Sex Offender Grid at Severity Level B; and
- To repeal the existing 48-month sentence modifier that now applies to Aggravated Sex Trafficking.

The Commission also proposes to add the following offenses to the Severe Violent Offense List:

- Sex Trafficking 1st Degree;
- Aggravated Sex Trafficking 1st Degree; and
- Aggravated Sex Trafficking 2nd Degree (Bodily Harm/Debt Bondage/Forced Services).

Proposed modifications to 2022 Minn. Sentencing Guidelines and Commentary sections 2, 2.G, 4.B, 5.A, 5.B, 6, and 8; and Appendix 3; all effective August 1, 2023:

Minnesota Sentencing Guidelines and Commentary

* * *

2. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by the Sentencing Guidelines in effect on the date of the conviction offense, except that:

- If multiple offenses are an element of the conviction offense, the date of the conviction offense must be determined by the factfinder.

- If offenses have been aggregated under one of the following statutes, or as otherwise permitted by statute, the date of the earliest offense should be used as the date of the conviction offense:

Statute Number	Offense Title
349.2127, subds. 2 and 6	Gambling Regulations
609.322, subd. 1c	Solicitation, Promotion, and Inducement of Prostitution; Sex Trafficking
* * *	

* * *

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

* * *

~~9. Solicitation or Promotion of Prostitution; Sex Trafficking. When an offender is sentenced for Solicitation or Promotion of Prostitution or Sex Trafficking under Minn. Stat. § 609.322, subd. 1(b), the presumptive sentence is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender’s criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:~~

~~a. 48 months, if the underlying crime was completed; or~~

~~b. 24 months, if the underlying crime was an attempt or conspiracy.~~

~~9. 10. Offense Committed for the Benefit of a Gang. * * *~~

~~10. 11. Felony Assault Motivated by Bias. * * *~~

~~11. 12. Criminal Vehicular Homicide (Death or Death to an Unborn Child, and Qualified Prior Conviction). * * *~~

~~12. 13. Attempt or Conspiracy to Commit First-Degree Murder. * * *~~

13. 14. Second or Subsequent Severe Violent Offense.

* * *

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>	A	144 <i>144²-172</i>	156 <i>144²-187</i>	168 <i>144²-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360²³</i>
<i>CSC 2nd Degree-1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i) (e.g., contact & force with bodily harm)</i>	B	90 <i>90²³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 217-300 <u>306</u>	300 255-300² <u>360</u>
* * *								
<i>CSC 4th Degree-1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., contact & coercion/occupation)</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120²³</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>51-60²³</i>
<i>CSC 5th Degree-3(a) (nonconsensual penetration)</i>	H	12 ¹	14	16	18	24	24 ²³ <i>24-24</i>	24 ²³ <i>24-24</i>
<i>Failure to Register as a Predatory Offender</i>	I	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

* * *

² Sex Trafficking is not subject to a 144- or 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (For Severity Level A, Criminal History Scores 0, 1, & 2, the ranges are 123-172, 133-187, & 143-201, respectively. For Severity Level B, Criminal History Score 0, the range is 77-108.)

²³ 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.

³ ~~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
* * *		
A	<u>Aggravated Sex Trafficking 1st Degree</u>	<u>609.322, subd. 1(a) with ref. to subd. 1(b)</u>
	Criminal Sexual Conduct 1st Degree	609.342
B	<u>Aggravated Sex Trafficking 2nd Degree</u>	<u>609.322, subd. 1a with ref. to subd. 1(b)</u>
	Criminal Sexual Conduct 2nd Degree	609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	609.322, subd. 1(a)
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)	617.247, subd. 3(b)
	Sexual Extortion (Penetration)	609.3458, subd. 1(b)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	609.322, subd. 1a
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)	617.246, subd. 2(b), 3(b), 4(b)

Severity Level	Offense Title	Statute Number
* * *		

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
* * *		
609.2112, subd. 1(b)	Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)	8*
* * *		
609.2114, subd. 1(b)	Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)	8*
* * *		
609.2233	Felony Assault Motivated by Bias	See Note ⁴²
* * *		
609.229 subd. 3(a)	Crime Committed for Benefit of Gang	See Note ⁴⁴
* * *		
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B**
<u>609.322 subd. 1(a) with ref. to subd. 1a</u>	<u>Aggravated Sex Trafficking 1st Degree</u>	A

* See section ~~2.G.12~~ 2.G.11 to determine the presumptive sentence.

⁴² See section ~~2.G.11~~ 2.G.10 to determine the presumptive sentence.

⁴⁴ See section ~~2.G.10~~ 2.G.9. 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
609.322 subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking	See Note ⁴
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C
609.322 subd. 1(b) with ref. to subd. 1a	Aggravated Sex Trafficking 2nd Degree	<u>B</u>
* * *		
609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)	Criminal Sexual Conduct 2nd Degree	B**
* * *		
609.3453	Criminal Sexual Predatory Conduct	See Note ⁴⁴⁶
* * *		
609.493	Solicitation of Mentally Impaired Persons	See Note ⁵⁴⁷
609.494 subd. 2(b)	Solicitation of Juveniles	See Note ⁶⁴⁸
* * *		
609.495 subd. 4	Taking Responsibility for Criminal Acts	See Note ⁷⁴⁹
* * *		
609.714	Offense in Furtherance of Terrorism	See Note ⁸⁵⁰
* * *		

⁴ See Guidelines section 2.G to determine the presumptive sentence.

⁴⁴⁶ See section 2.G.8 to determine the presumptive sentence.

⁵⁴⁷ See section 2.G.3 to determine the presumptive sentence.

⁶⁴⁸ See section 2.G.3 to determine the presumptive sentence.

⁷⁴⁹ See section 2.G.6 to determine the presumptive sentence.

⁸⁵⁰ See section 2.G.7 to determine the presumptive sentence.

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
* * *	
609.322, subd. 1(a)	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 1st Degree
<u>609.322, subd. 1(a) with ref. to subd. 1(b)</u>	<u>Aggravated Sex Trafficking 1st Degree</u>
609.322, subd. 1a	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 2nd Degree
<u>609.322, subd. 1a with ref. to subd. 1(b)</u>	<u>Aggravated Sex Trafficking 2nd Degree</u>
* * *	

* * *

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.~~ 2.G.13. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

Statute Number	Offense Title
* * *	
<u>609.322, subd. 1(a)</u>	<u>Sex Trafficking 1st Degree</u>
<u>609.322, subd. 1(a) with ref. to subd. 1(b)</u>	<u>Aggravated Sex Trafficking 1st Degree</u>
<u>609.322, subd. 1a with ref. to subd. 1(b)(2) or (3)</u>	<u>Aggravated Sex Trafficking 2nd Degree (Bodily Harm/Debt Bondage/Forced Services)</u>
* * *	

* * *

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.

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
* * *				
<u>609.322 subd. 1(a)</u>	<u>Sex Trafficking 1st Degree</u>	<u>B</u>	<u>300</u>	<u>CHS 5 (upper-range)</u>
<u>609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)</u>	<u>Criminal Sexual Conduct 2nd Degree</u>	<u>B</u>	<u>300</u>	<u>CHS 5 (upper-range)</u>
* * *				

* * *

Appendix 1.2. Technical Modifications

Proposed Modifications: On January 12, 2023, after a public hearing, the Commission unanimously proposed to remove an unnecessary word in an aggravated departure factor and to list Sexual Extortion as a conditional-release offense.

Proposed modifications to 2022 Minn. Sentencing Guidelines and Commentary sections 2.D.3.b(3) and 2.E.3, effective August 1, 2023:

Minnesota Sentencing Guidelines and Commentary

2. Determining Presumptive Sentences

* * *

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: * * *

b. Aggravating Factors. * * *

(3) The current conviction is for a criminal sexual conduct offense, or an offense in which the victim was otherwise injured, and ~~is~~ the offender has a prior felony conviction for a criminal sexual conduct offense or an offense in which the victim was otherwise injured.

* * *

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).
- First- through fourth-degree criminal sexual conduct, sexual extortion, and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. ~~6-8~~. 6-8.
- Use of minors in sexual performance. Minn. Stat. § 617.246, subd. 7.
- Child pornography. Minn. Stat. § 617.247, subd. 9.

* * *

Appendix 1.3. Changes to the Commentary

Proposed Modifications: On December 15, 2022, the Commission unanimously proposed to modify Comment 3.C.01 to reference a new statutory jail credit rule and to make a technical correction to the reference to the Rules of Criminal Procedure.

Proposed modifications to 2022 Minn. Sentencing Guidelines and Commentary, Comment 3.C.01, effective August 1, 2023:

Minnesota Sentencing Guidelines and Commentary

* * *

Comment

3.C.01. *Jail credit is governed by statute and rule – see, e.g., Minn. Stat. §§ 609.145 & 611.51 and Minn. R. Crim. P. 27.03, subd. 4~~(b)~~ 4(B) – and a great deal of case law. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that an offender in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial.*

* * *

Appendix 2. Recommendations to the Legislature

Pursuant to its standing mandate, “from time to time[, to] make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing,”⁵¹ the Minnesota Sentencing Guidelines Commission, by a November 3, 2022, unanimous vote, makes the following three recommendations to the Legislature. These recommendations are discussed further on page 8, above.

Appendix 2.1. Cross-Reference the Sex Trafficking Statute in Labor Trafficking Definitions

Recommendation. To avoid the important, technical terms “debt bondage” and “forced labor or services” being undefined in the Sex Trafficking statute—terms the Legislature has carefully defined in the context of Labor Trafficking—the Labor Trafficking definitions should cross-reference the Sex Trafficking statute. To accomplish this, the Commission unanimously recommends that the Legislature amend Minn. Stat. § 609.281, subd. 1, by adding the phrase “, and 609.322” before the comma.

Text. Amend Minn. Stat. § 609.281, subd. 1 (2022), to read as follows: “Subdivision 1. Generally. As used in sections 609.281 to 609.284, and 609.322, the following terms have the meanings given.”

Staff Note. *Although it uses different language than that suggested by the Commission, [House File 42, as amended in committee on January 12, 2023](#), accomplishes the intent of this recommendation, in the opinion of MSGC staff.*

Appendix 2.2. Reconcile Age Thresholds for Prostitution

Recommendation. To make consistent the age thresholds for the crime of Prostitution, the Commission recommends that the Legislature amend Minn. Stat. § 609.324, subd. 1(b)(3), by replacing the number “13” with the number “14.”

Text. Amend Minn. Stat. § 609.324, subd. 1(b)(3) (2022) to read as follows: “(b) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both: ... (3) hires or offers or agrees to hire an individual who the actor reasonably believes to be under the age of 16 years but at least ~~13~~ 14 years to engage in sexual penetration or sexual contact.”

Appendix 2.3. Reconcile a Statutory Violent Crime List with First Degree Witness Tampering

Recommendation. To reconcile a statutory list of violent crimes with the different degrees of violence inherent in the two forms of first-degree witness tampering, the Commission unanimously recommends that the Legislature amend the statutory violent crime list found in Minn. Stat. § 609.1095, subd. 1(d) (2022), by taking one of the following two actions:

- Adding Aggravated First-Degree Witness Tampering to the violent crime list by inserting “or 1b” after “609.582, subdivision 1”; or

⁵¹ [Minn. Stat. § 244.09, subd. 6.](#)

- Replacing First-Degree Witness Tampering with Aggravated First-Degree Witness Tampering on the violent crime list by replacing “~~609.582, subdivision 1~~” with “609.582, subdivision 1b.”

Appendix 3. Sentencing Guidelines Grids

Appendix 3.1. Standard Sentencing Guidelines Grid – Effective August 1, 2022

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

¹ 12¹=One year and one day

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

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

Appendix 3.2. Sex Offender Grid Effective August 1, 2022

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</i> ²
<i>CSC 2nd Degree–1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i) (e.g., contact & force with bodily harm)</i>	B	90 <i>90</i> ³ -108	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
<i>CSC 3rd Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., penetration & 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 & 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</i> ²
<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</i> ²
<i>CSC 5th Degree–3(a) (nonconsensual penetration)</i>	H	12 ¹	14	16	18	24	24 ² <i>24-24</i>	24 ² <i>24-24</i>
<i>Failure to Register as a Predatory Offender</i>	I	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day

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

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

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

³ 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 3.3. Drug Offender Grid – Effective August 1, 2022

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

¹ 12¹=One year and one day

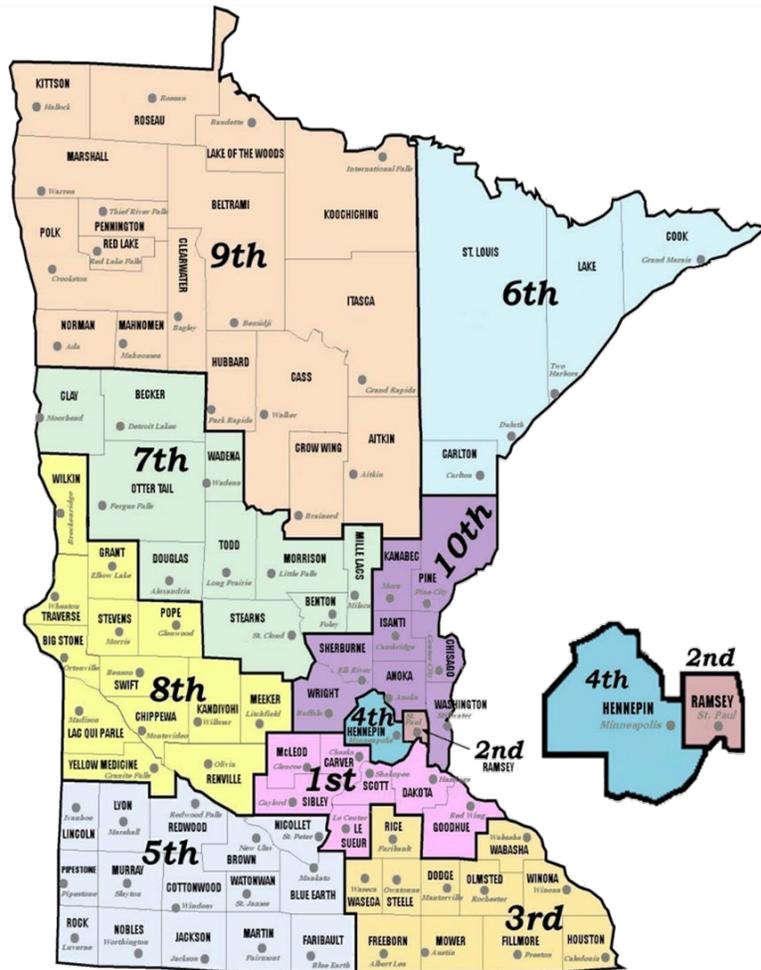


Presumptive commitment to state imprisonment.



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

Appendix 4. 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		Olmsted		Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Otter Tail	Pope	Itasca	Washington
		Steele		Martin		Stearns	Renville	Kittson	Wright
		Wabasha		Murray		Todd	Swift	Koochiching	
		Waseca		Nicollet		Wadena	Traverse	Lake of the Woods	
		Winona		Nobles			Wilkin	Mahnomen	
				Pipestone			Yellow Medicine	Marshall	
				Redwood				Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	

Source: Minn. Judicial Branch.