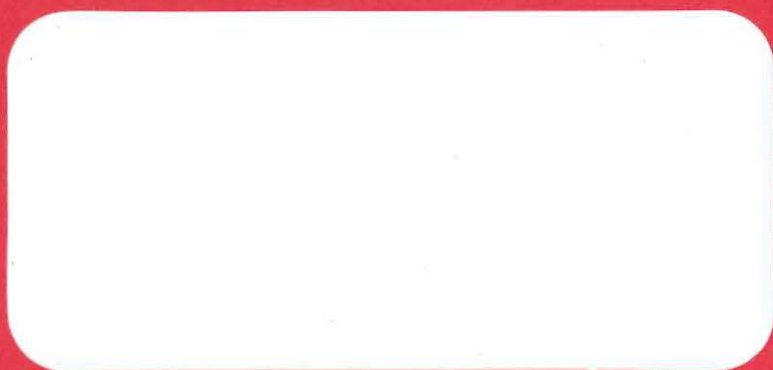


Minnesota Sentencing Guidelines Commission





Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

January, 1997

This information will be made available in an alternative format upon request.

The total cost of salaries, printing, and supplies incurred in development and preparation of this report was \$2,371 (reported as required by Minn. Stat. § 3.197).

MINNESOTA SENTENCING GUIDELINES COMMISSION

*University National Bank Building
200 University Avenue West
Suite 205
St. Paul, Minnesota 55103*

*Voice: (612) 296-0144
MN Relay Service TDD: (612) 297-5353*

FAX: (612) 297-5757

Members

*Stanley J. Suchta, Chairman and Probation Officer Representative, Ramsey County
Sandra Gardebring, Justice, Minnesota Supreme Court
Mary T. Howard, Citizen Representative
Roger M. Klaphake, Judge, Court of Appeals
Gothriel J. La Fleur, Commissioner of Corrections
Scott Mattison, Law Enforcement Representative, Swift County
Raymond Schmitz, County Attorney, Olmsted County
Donald E. Streufert, Citizen Representative
Jenny L. Walker, Chief Public Defender, Tenth Judicial District
T. Williams, Citizen Representative
Edward S. Wilson, District Court Judge, Second Judicial District*

Staff

*Debra L. Dailey, Executive Director
Susan D. Carter, Research Analysis Specialist, Senior
Cheryl DeWolfe, Clerk Typist II
Jodi Ehlenz, Administrator
Jill Haselmann, Research Analyst
Stephen Schele, Employee Development Specialist II
Anne Wall, Research Analysis Specialist*

TABLE OF CONTENTS

I.	BACKGROUND INFORMATION	1
II.	GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1996 OR SPECIAL EFFECTIVE DATE	2
A.	Ranking of New or Amended Crimes	2
B.	Adopted Modifications to Clarify or Correct Technical Errors	4
C.	Adopted Modifications Reviewed by the 1996 Legislature	5
III.	1996 ADOPTED MODIFICATIONS - EFFECTIVE AUGUST 1, 1997	8
	AFTER REVIEW BY THE 1997 LEGISLATURE	
IV.	SPECIAL PROPOSAL TO MODIFY STATE LAW AND THE SENTENCING GUIDELINES TO ADDRESS STATE V. GIVENS	10
A.	How Does the Case Affect the Sentencing Guidelines System?	10
B.	What Can the Commission Do to Address the Effect of the Decision?	12
V.	COUNTY ATTORNEY REPORTS ON CRIMINAL CASES INVOLVING FIREARMS	15
	APPENDIX	17
A.	LANGUAGE CHANGES TO CLARIFY CONSECUTIVE SENTENCING POLICY ...	18
B.	SENTENCING GUIDELINES GRID, EFFECTIVE AUGUST 1, 1996	26
C.	CHANGES RELATED TO COMBINING THEFT AND THEFT RELATED CRIMES .	27
D.	ADOPTED DURATION ADJUSTMENTS	30
E.	COUNTY ATTORNEY REPORTS ON CRIMINAL CASES INVOLVING FIREARMS BY COUNTY	31

I. BACKGROUND INFORMATION

Minnesota adopted a sentencing guidelines system effective May 1, 1980. The guidelines were created to ensure uniform and determinate sentencing. The goals of the guidelines are: (1) To enhance public safety; (2) To promote uniformity in sentencing so that offenders who are convicted of similar types of crimes and have similar types of criminal records are similarly sentenced; (3) To establish proportionality in sentencing by emphasizing a "just deserts" philosophy. Offenders who are convicted of serious violent offenses, even with no prior record, those who have repeat violent records, and those who have more extensive nonviolent criminal records are recommended the most severe penalties under the guidelines; (4) To provide truth and certainty in sentencing; and (5) To enable the Legislature to coordinate sentencing practices with correctional resources.

A sentencing guidelines system provides the legislature and the state with a structure for determining and maintaining rational sentencing policy. Through the development of the sentencing guidelines, the legislature determines the goals and purposes of the sentencing system. Guidelines represent the general goals of the criminal justice system and indicate specific appropriate sentences based on the offender's conviction offense and criminal record.

Judges may depart from the presumptive guideline sentence if the circumstances of the case are substantial and compelling. The judge must state the reasons for departure and either the prosecution or the defense may appeal the pronounced sentence. While the law provides for offenders to serve a term of imprisonment equal to two-thirds of their total sentence and a supervised release period equal to up to one-third of their total sentence if there are no disciplinary infractions, the sentence length is fixed. There is no mechanism for "early release due to crowding" that other states have been forced to accept because of disproportionate and overly lengthy sentences.

Judges pronounce sentences and are accountable for sentencing decisions. Prosecutors also play an important role in sentencing. The offense that a prosecutor charges directly affects the recommended guideline sentence if a conviction is obtained.

The Minnesota Sentencing Guidelines Commission is responsible for maintaining the sentencing guidelines. There are 11 members on the Commission who represent the criminal justice system and citizens of the State of Minnesota. The Commission meets monthly and all meetings are open to the public. Meeting minutes are available upon request.

A constant flow of information is gathered on sentencing practices and made available to the Commission, the legislature, and others interested in the system. The Commission modifies the guidelines, when needed, to take care of problem areas and legislative changes. This report outlines the work of the Commission in 1996.

II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1996 (or with Special Effective Dates as noted)

A. RANKING OF NEW OR AMENDED CRIMES

1. *The Commission adopted the following severity level rankings:*

Severity Level X

Murder 2 (intentional murder, drive-by shootings) - 609.19 ~~(1)~~, subd. 1

Severity Level IX

Murder 2 (unintentional murder) - 609.19 ~~(2) & (3)~~, subd. 2

Severity Level IV

~~Accidents - 169.09, subd. 14 (a) (1)~~

~~Certain Persons Not to Have Firearms - 624.713, subd. 1 (b); 609.165, subd. 1b~~

Criminal Sexual Conduct 5 - 609.3451, subd. 3

Indecent Exposure in Presence of Minor - 617.23, (c)

Severity Level III

~~Accidents - 169.09, subd. 14 (a) (2)~~

~~Dangerous Weapons/Certain Persons Not to Have Firearms - 609.67, subd. 2; 624.713, subd. 1(a) & (b); 609.165, subd. 1b~~

~~Firearm Silencer (public housing, school zone, or park zone) - 609.66, subd. 1a (b) (a) (1)~~

Possession of Code Grabbing Devices - 609.586, subd. 2

Severity Level II

~~Accidents - 169.09, subd. 14 a (3) & (b) (1)~~

Cellular Counterfeiting 1 - 609.894, subd. 4

~~Discharge of Firearm (public housing, school zone, or park zone) - 609.66, subd. 1a(b)(1) (a)(2) & (3)~~

Discharge of Firearm (intentional) - 609.66, subd. 1a (a) (2)

Severity Level I

Accidents - 169.09, subd. 14 (a) ~~(b)~~ (2)
Assault 4 - 609.2231, subd. 1, 2 & 3
Cellular Counterfeiting 2 - 609.894, subd. 3
Discharge of Firearm (reckless) - 609.66, subd. 1a (a) ~~(2)~~ & ~~(3)~~

2. ***The Commission considered the changes made by the 1996 Legislature to the following crimes and will continue to rank these crimes at the current severity levels, unless otherwise noted above:***

Accomplice After the Fact, Aiding an Offender to Avoid Arrest, Assault 5, Criminal Vehicular Homicide and Injury, Defrauding Insurer, Discharge of Firearm at Transit Vehicle/Facility, Killing a Police Dog, Manslaughter 1, Registration of Predatory Offenders, and Theft Crimes.

3. ***The following crimes were added to the Misdemeanor and Gross Misdemeanor Offense List:***

Assault in the Fourth Degree
609.2231, subd. 2; 2a, 4, 5, & 6

Certain Persons Not to Possess Firearms
624.713, subd. 2

Criminal Vehicular Homicide and Injury (bodily harm)
609.21, subd. 2b

Harassment/Stalking
609.749, subd. 2 & 8

B. ADOPTED MODIFICATIONS TO CORRECT TECHNICAL ERRORS

1. ***Section II.B.407. was deleted from the guidelines because it is outdated and no longer necessary.***

~~II.B.407. Under Laws of 1980, Chapter 580, sec. 16 (amends Minn. Stat. § 260.161, subd. 1), juvenile courts are required to maintain juvenile records until the offender reaches the age of 23, and release those records to requesting adult courts. The adult courts are authorized to use juvenile information to determine a proper sentence.~~

2. ***The following technical change was made to section II.B.6.:***

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related offenses, the prior conviction(s) upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.

3. ***Section II.E. is modified to simplify the explanation of how mandatory minimums are applied under the guidelines.***

E. Mandatory Sentences: When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment to the Commissioner of Corrections. ~~†The presumptive duration of the prison sentence should be the mandatory minimum sentence according to statute one year and one day or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.~~

~~When an offender has been convicted of an offense with a mandatory minimum sentence of three years, the presumptive duration of the prison sentence should be 36 months or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer:~~

~~When an offender has been convicted of an offense with a mandatory minimum sentence of five years, the presumptive duration of the prison sentence should be 60 months or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.—First degree murder, and certain sex offenders convicted under Minn. Stat. § 609.346, subd. 2a, which have a mandatory life imprisonment sentence, are excluded from offenses covered by the sentencing guidelines.~~

C. ADOPTED MODIFICATIONS REVIEWED BY THE 1996 LEGISLATURE

1. ***A felony offense was discovered that had not been considered for ranking by the Commission. This crime was technically unranked. The Commission added the crime to the Unranked Offense List.***

Issuing a second receipt without "duplicate" on it - 227.52

2. ***Sections II.B.2. and II.B.201. were modified to clarify that supervised release and conditional release are to be considered as types of custody.***

2. The offender is assigned one point if he or she was on probation, or parole, supervised release, conditional release, or confined in a jail, workhouse, or prison following conviction of a felony or gross misdemeanor or an extended jurisdiction juvenile conviction, or released pending sentence at the time the felony was committed for which he or she is being sentenced. . . .

II.B.201.. . Criminal justice custodial status includes probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following conviction of a felony or gross misdemeanor, or release pending sentence following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor. . . .

3. ***Section II.C. is modified to clarify that the Commission's intent is to only include severity level VI drug crimes when applying this policy.***

C. **Presumptive Sentence:** . . . Similarly, when the current conviction offense is a severity level VI drug crime ~~or sale of cocaine~~ and there was a previous adjudication of guilt for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or was convicted elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (see Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. . . .

4. The Commission adopted a proposal to amend the section on consecutive sentencing to reflect policy that is less confusing, more consistent, and easier to apply. Highlights of the new policy include:

- Lessens confusion and increases consistency by having all offenses sentenced in the order in which they occurred, regardless of whether the sentences are consecutive or concurrent.
- Clarifies that only offenses that are presumptive commit under the guidelines will be presumptive or permissive consecutive.
- Eliminates the requirement that consecutive sentencing involve separate victims. It will be permissive to sentence current separate crimes against a person consecutively regardless of whether the crimes involve the same victim.
- Expands criteria for permissive consecutive sentences: any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections can be made consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offense was confined.
- To ensure that escapes involving violence would always be covered under the permissive consecutive policy, the severity level for escapes with violence was increased from severity level VI to severity level VII.

The language changes are found in the appendix.

5. The Commission modified the sentencing guidelines grid to display severity levels in descending order. This reversed grid will more clearly reflect the emphasis of the sentencing guidelines to sanction more harshly the serious violent offenders. The text of the guidelines was also modified in appropriate places to properly reference whether policies apply to "above" or "below" the dispositional line. A copy of the revised grid is found in the appendix.

6. The Commission increased the severity levels for Assault 3, involving minors, and Assault 5, involving repeated assaults on same victim. The Commission also increased the severity level rankings for certain Escape from Custody and Receiving Stolen Property, involving firearms. The Commission eliminated the distinction between Theft and Theft Related Offenses and now all theft type crimes are included on the Theft Offense List. Theft Crimes are ranked at severity level II or III depending on the dollar loss. The language changes are found in the appendix.

Severity Level VII

Escape from Custody - 609.485, subd. 4(b)

Severity Level VI

~~Escape from Custody - 609.485, subd. 4(b)~~

Severity Level IV

Assault 3 - 609.223, subd. 1, 2, & 3

Assault 5 (3rd or subsequent violation) - 609.224, subd. 4

~~Receiving Stolen Goods (over \$2,500) - 609.53~~

~~Receiving Stolen Property (firearm) - 609.53~~

~~Theft Crimes - Over \$2,500 (See Theft Offense List)~~

Severity Level III

~~Receiving Stolen Goods (\$2,500 or less) (over \$2,500) - 609.53~~

~~Receiving Stolen Property (firearm) - 609.53~~

~~Theft Crimes - Over \$2,500 (See Theft Offense List)~~

~~Theft Related Crimes - Over \$2,500 (See Theft Related Offense List)~~

Severity Level II

~~Receiving Stolen Goods (\$2,500 or less) - 609.53~~

~~Theft Crimes - \$2,500 or less (See Theft Offense List)~~

~~Theft Related Crimes - \$2,500 or less (See Theft Related Offense List)~~

Severity Level I

~~Assault 3 - 609.223, subd. 2 & 3~~

~~Assault 5 (3rd or subsequent violation) - 609.224, subd. 4~~

~~Nonsupport of Spouse or Child - 609.375, subd. 2a~~

7. ***The Commission adopted the proposal to adjust increases in durations across criminal history at severity levels I through VI to be more consistent with durational increases at severity level VII through X. These changes will go into effect August 1, 1997, as directed by the 1996 Legislature in the Omnibus Crime Bill.***

The increases in durations across criminal history will be at uniform intervals with increases by increments of two months at severity levels I, II, and III; three months at severity level IV; five months at severity level V; and six months at severity level VI. Current increments at the remaining severity levels are as follows: ten months at severity level VII; twelve months at severity level VIII; fifteen months at severity level IX; and twenty months at severity level X. These specific changes are found in the appendix.

III. 1996 ADOPTED MODIFICATIONS - EFFECTIVE AUGUST 1, 1997, AFTER REVIEW BY THE 1997 LEGISLATURE

- 1. The Commission adopted the proposal to place the following inadvertently unranked crime on the list of unranked crimes:**

Refusal to assist - 6.53

- 2. The Commission adopted the proposal to place the following crime on the Misdemeanor and Gross Misdemeanor Offense List:**

Malicious Punishment of a Child
609.377

- 3. The Commission adopted the proposal to clarify that the policy for calculating adult felony criminal history points when circumstances involve a single behavioral incident with multiple victims, also applies to the juvenile and misdemeanor point calculation.**

II.B.307. In order to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile findings.

II.B.407. In order to provide a uniform and equitable method of computing criminal history scores for all cases of multiple felony offenses with findings arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense with a finding for purposes of computing criminal history. When there are multiple felony offenses with findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.

5. ***The Commission adopted the proposal to clarify that Minnesota felony level offenses that can only be committed by juveniles should be included in calculating juvenile criminal history points.***

4. The offender is assigned one point for every two offenses committed and prosecuted as a juvenile that ~~would have been felonies if committed by an adult~~ are felonies under Minnesota law, provided that: . . .

II.B.402. ~~First, only juvenile offenses that would have been felonies if committed by an adult~~ are felonies under Minnesota law will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration. . . .

6. ***The Commission adopted the proposal to clarify that Federal felony offenses that have no equivalent or similar offense in Minnesota should be included in the criminal history score.***

II.B.503. It was concluded, therefore, that designation of out-of-state offenses as felonies or lesser offenses, for purposes of the computation of the criminal history index score, must properly be governed by Minnesota law. The exception to this would be Federal felony crimes for which there is no comparable Minnesota Felony offense. Sentences given for these crimes that are felony level sentences according to Minnesota law shall be given a weight of one point for purposes of calculating the criminal history score.

IV. SPECIAL PROPOSAL TO MODIFY STATE LAW AND THE SENTENCING GUIDELINES TO ADDRESS *State v. Givens*

A. HOW DOES THE CASE AFFECT THE SENTENCING GUIDELINES SYSTEM?

1. *Why Do We Have Sentencing Guidelines?*

The sentencing guidelines embody the goals of the criminal justice system as determined by the citizens of the state through their elected representatives. This system promotes uniform and proportional sentences for convicted felons and helps to ensure that sentencing decisions are not influenced by factors such as race, gender, or the exercise of constitutional rights by the defendant. The guidelines serve as a model for the criminal justice system as a whole to aspire to, as well as provide a standard to measure how well the system is working.

The guidelines recommend sentences based on the seriousness of the conviction offense and the prior criminal record of the offender. Offenders who are convicted of similar crimes and have similar criminal backgrounds are to receive similar sentences under the guidelines. Offenders who commit the most serious and violent offenses or have more extensive criminal records are to receive the harshest sentences under the guidelines. Offenders with substantial and compelling circumstances surrounding their cases are to receive sentences that are departures from the presumptive sentences under the guidelines.

The guidelines also promote truth and certainty in sentencing and increase predictability, enabling the Legislature to analyze and forecast the allocation of limited correctional resources.

2. *What Is the Decision?*

The recent Minnesota Supreme Court decision, *State v. Givens*, 544 N.W.2d 774, has a profound impact on the goals of the sentencing guidelines system. The decision effectively creates a new sentencing system by declaring that a defendant has the right to waive the sentencing guidelines in connection with a plea negotiation. If the sentencing guidelines are waived, any sentence can be agreed upon and no other reasons need to be provided to account for the sentence pronounced by the judge. This decision also effectively removes the right to appeal the sentence when the sentence is part of a plea negotiation and the guidelines are waived. This impact may not have been the intent of the Supreme Court but early information on specific cases shows that this broad interpretation of the decision is taking place among practitioners.

3. *What is the Effect of Waiving the Sentencing Guidelines?*

While plea and sentence negotiations and departures from the sentences recommended by the guidelines occurred prior to the Givens decision, the guidelines, none the less, served as a standard. The outcomes of these negotiations and sentencing decisions could be measured against that standard. Although the system did not always operate in accordance with those goals, the goals were explicit and clear, the system could be appraised in light of those standards, and the legislature and the criminal justice system could continue to make improvements to try to more completely achieve these goals.

The Givens decision, in effect, removes the standard by allowing the sentencing guidelines to be waived. The decision allows plea negotiations to be made without regard to the standards and goals set by the guidelines. Sentencing decisions are no longer made within the structured context of the values embodied in the guidelines, values which represent the interests and concerns of the citizens of the state.

4. *What Additional Impact Does the Decision Have on the Sentencing Guidelines System?*

In addition to allowing the sentencing guidelines to be waived, the Givens case also overrules the *Garcia* decision which stated that "plea negotiation" was not an acceptable reason for departure. Under Givens and subsequent appeals decisions, the use of "plea agreement" as the sole reason for departure is acceptable. Allowing plea negotiation to be the sole reason for departure creates the same problems that are created by waiving the sentencing guidelines. "Plea agreement" as a reason for departure does not allow the sentencing decision to be evaluated against the goals and values of the sentencing guidelines. It cannot be determined whether substantial and compelling reasons existed to warrant a departure. Just as is true when the guidelines are waived, citing the plea agreement as the only reason for departure ignores the guidelines as a scale to measure the degree to which justice is achieved.

B. WHAT CAN THE COMMISSION DO TO ADDRESS THE EFFECT OF THIS DECISION?

1. *The Commission Recommends Legislative Change.*

The Commission will pursue legislative action to change state law. Attached is possible statutory language clarifying that the application of the sentencing guidelines system is not a right that a defendant may waive.

2. *The Commission Proposes Changes to The Sentencing Guidelines.*

The Givens Case highlights a problem with sentence negotiations that to some extent already exists. Even if a defendant cannot waive the sentencing guidelines, if "plea negotiation" can be the sole reason for departure, the goals of the sentencing guidelines are in jeopardy. The Commission proposes to add "plea agreement" to the list of factors that should not be used as reasons for departure. This proposal will be included in the July, 1997 public hearing process.

A bill for an act

relating to sentencing guidelines; clarifying that the application of the sentencing guidelines system is not a right that a defendant may waive; amending Minnesota Statutes 1996, section 244.09, subdivision 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 244.09, subdivision 5, is amended to read:

Subd. 5 The commission shall, on or before January 1, 1980, promulgate sentencing guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

- (1) The circumstances under which imprisonment of an offender is proper; and
- (2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15 percent in the presumptive, fixed sentence.

Although the sentencing guidelines are advisory to the district court, the court shall follow the procedures of the guidelines when it pronounces sentence in a proceeding to which the guidelines apply by operation of statute. Sentencing pursuant to the sentencing guidelines is not a right that accrues to a person convicted of a felony; it is a procedure based on state public policy to maintain uniformity, proportionality, rationality, and predictability in sentencing.

In addition to the necessary legislative changes above, the Commission proposes the following modifications to the Sentencing Guidelines:

1. Factors that should not be used as reasons for departure: The following factors should not be used as reasons for departing from the presumptive sentences provided in the Sentencing Guidelines Grid:

- f. Plea agreement.

II.D.104. The sentencing guidelines are based upon state public policy to maintain uniformity, proportionality, rationality, and predictability in sentencing. Departures from the presumptive sentence are appropriate when supported by substantial and compelling circumstances. The term "plea agreement" as a reason for departure does not allow the sentencing decision to be evaluated against the goals and values of the sentencing guidelines. It cannot be determined whether substantial and compelling reasons exist to warrant a departure. When a plea agreement is made that involves a departure from the presumptive sentence, the court should cite the substantial and compelling reasons for departure that underlie the plea agreement.

The Commission decided not to hold a special public hearing on this single proposal and will include this proposal in the public hearing process to be held in the summer of 1997. The proposal is included in this report to the Legislature to give proper notice of the Commission's intentions to modify the guidelines. If the Legislature does nothing to keep this change from going into effect and the Commission adopts the proposal after the summer public hearing process, this proposed modification will go into effect on August 1, 1997.

V. COUNTY ATTORNEY REPORTS ON CRIMINAL CASES INVOLVING FIREARMS

The 1994 Legislature passed a law (M.S. § 609.11, subd. 10) directing county attorneys to report information to the sentencing guidelines commission on criminal cases involving a firearm. This new law reads as follows:

Subd. 10. [Report on Criminal Cases Involving a Firearm]

Beginning on July 1, 1994, every county attorney shall collect and maintain the following information on criminal complaints and prosecutions within the county attorney's office in which the defendant is alleged to have committed an offense listed in subdivision 9 while possessing or using a firearm:

- (1) whether the case was charged or dismissed;*
- (2) whether the defendant was convicted of the offense or a lesser offense;*
- (3) whether the mandatory minimum sentence required under this section was imposed and executed or was waived by the prosecutor or court.*

No later than July 1 of each year, beginning on July 1, 1995, the county attorney shall forward this information to the sentencing guidelines commission upon forms prescribed by the commission.

Pursuant to M.S. § 244.09, subd. 14, the sentencing guidelines commission is required to include in its annual report to the legislature a summary and analysis of the reports received from county attorneys.

Commission staff revised the firearms report for 1996 to help clarify certain problem area of the form encountered last year. Each county attorney was provided with a copy of the form, an illustration of how to complete the form, and a memo describing the ongoing mandate by the legislature. There continued to be some problems and confusion regarding what cases to include in each of the boxes and how to interpret some of the terminology of the form, however, it was much less than in the first year of reporting. There also continued to be difficulties in setting up reliable tracking systems.

The following sets of tables summarize statewide information. The data indicate that prosecutors charged offenders in almost all of the cases disposed of in FY 1996 that involved a firearm (98%). Among those cases charged, a majority (64%) of the offenders were convicted of an applicable offense pursuant to § 609.11, subd. 9 and a firearm was established on the record. In those cases where the mandatory minimum applied, a prison sentence was pronounced 66% of the time. The data for FY 1996 show an increase in volume from FY 1995. The total number of cases where reporting was required under the statute increased from 400 cases to 588 cases, a 47% increase. The case volume increased by 43% for cases where the mandatory minimum is required. For these same cases, there was an increase from 58% to 66% in the percent of cases receiving the mandatory minimum. Tables providing FY 1996 information by individual county are included in the appendix.

**County Attorney Report on Criminal Cases Involving Firearms
Statewide Summary (Excluding Counties with Missing Information)**

Cases Disposed from July 1, 1995 to July 1, 1996

**Cases Where Reporting Is Required
by M.S. § 609.11, Subd. 10 - Cases Charged and Not Charged**

	Total Number of Cases Where Reporting Is Required	Cases Charged	Cases Not Charged
Percent of Cases	100%	98%	2%
Number of Cases	(588)	(576)	(12)

Outcome of Cases Charged

	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Percent of Cases	100%	58%	6%	23%	2%	10%	1%
Number of Cases	(576)	(334)	(36)	(131)	(12)	(59)	(4)

Convictions for Offenses Covered by M.S. § 609.11 - Establishment of Firearm on the Record

	Total Number of Cases	Firearm Established	Firearm Not Established
Percent of Cases	100%	90%	10%
Number of Cases	(370)	(334)	(36)

Sentences for Cases Where a Mandatory Minimum for a Firearm was Required

	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Not Imposed
Percent of Cases	100%	66%	34%
Number of Cases	(334)	(222)	(112)

APPENDIX

A. LANGUAGE CHANGES TO CLARIFY CONSECUTIVE SENTENCING POLICY

F. Concurrent/Consecutive Sentences: When an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentences shall be given in all cases not covered below. ~~The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence.~~

~~Consecutive sentences may be given only in the following cases:~~

- ~~1. When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or~~
- ~~2. When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or~~
- ~~3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, unless the offender escaped from an executed prison sentence. If the escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid.~~

~~When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, and the offender escaped from an executed prison sentence, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the new escape offense was committed. The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence.~~

~~It is also presumptive for the sentence for a felony conviction resulting from a crime committed by an inmate serving an executed prison sentence at a state correctional facility, or while on escape status from such a facility, to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.~~

There are two situations in which consecutive sentences are presumptive; there are four situations in which consecutive sentences are permissive. The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

When consecutive sentences are imposed, offenses are sentenced in the order in which they occurred.

~~For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.~~

~~For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.~~

~~When a current conviction is sentenced consecutive to a prior indeterminate or presumptive sentence, the presumptive duration for the current conviction is determined by locating the severity level appropriate to the current conviction offense and the zero criminal history column or the mandatory minimum, whichever is greater.~~

For persons who, while on probation, parole, or incarcerated, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising from the prior sentence.

Presumptive Consecutive Sentences

Consecutive sentences are presumptive in the following cases:

1. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485 and the offender escaped from an executed prison sentence; or
2. When the conviction is for a crime committed by an inmate serving, or on escape status from, an executed prison sentence.

Consecutive sentences are presumptive under the above criteria only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. The presumptive disposition for escapes from executed sentences, however, is always commitment to the Commissioner of Corrections.

Under the circumstances above, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the escape or other new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

For each presumptive consecutive offense sentenced consecutive to another offense(s), a criminal history score of one, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing.

Permissive Consecutive Sentences

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or
2. Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other; or
3. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or
4. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a nonexecuted felony sentence may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined.

Consecutive sentences are permissive under the above criteria only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B.

II.F.01. . . For felony convictions committed while an offender is serving, or on escape status from, an executed prison sentence at any correctional facility or while on escape status from such a facility, it is presumptive to impose the sentence for the current offense consecutive to the sentence to the sentence for which the inmate was confined at the time the new offense was committed. . . .

In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.

~~II.F.02. The guidelines provide that when one judge gives consecutive sentences in cases involving multiple current convictions, sentence durations shall be aggregated into a single fixed presumptive sentence. Moreover, the Commission recommends that when an offender is charged with multiple offenses within the same judicial district the trials or sentencings be consolidated before one judge, whenever possible. This will allow the judge to perform the aggregation process described in the guidelines if consecutive sentences are given.~~

The order of sentencing when consecutive sentences are imposed by the same judge is to sentence the most severe conviction offense first in the order in which the offenses occurred. For persons given permissive consecutive sentences, ~~the~~ presumptive duration for the ~~conviction~~ each offense sentenced consecutive to another offense(s) is determined by the severity level appropriate to the conviction offense at the zero criminal history score of the offender column, or the mandatory minimum, whichever is greater.

For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid, or the mandatory minimum, whichever is greater. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively would include additional months as outlined under Section II.G. and using the respective criminal history score appropriate for consecutive sentencing. When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses occurred. A zero criminal history score shall be used in determining the presumptive duration for each subsequent offense sentenced consecutively.

~~When concurrent and consecutive sentences are imposed for different offenses, the most severe offense involving consecutive sentencing shall be sentenced first. When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses occurred. The presumptive duration for each offense sentenced consecutively shall be based on a zero criminal history score. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B.~~

~~If multiple trials or sentencings cannot be consolidated before one judge, and if two or more judges give presumptive sentences some of which are given consecutively to others, the following method can be used.~~

~~The second or subsequent judge can pronounce the durations indicated in the Sentencing Guidelines Grid at the zero criminal history column for the severity level for the current offense, and can state that this sentence would be consecutive to the previous presumptive sentence. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The institutional records officer will aggregate the separate durations into a single fixed presumptive sentence, as well as aggregate the terms of imprisonment and the periods of supervised release. For example, if the Judge A executed a 44 month fixed presumptive sentence, and Judge B later executes a 24 month fixed presumptive sentence to be served consecutively to the first sentence, the records officer has the authority to aggregate these the sentences into a single 68 month fixed presumptive sentence, with a specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release.~~

~~Under this method, if the most severe current offense is sentenced first, the resulting aggregated sentence lengths would be the same as if one judge had sentenced the offenses consecutively.~~

~~It is permissive for a sentence for an escape conviction from a nonexecuted prison sentence to be consecutive to any other current sentence and any prior sentence regardless of whether the other sentences are for crimes against the person. It is presumptive for a sentence for an escape conviction from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. If the sentencing judge determines that the sentence for an escape conviction is to be consecutive with sentences for other current felony convictions, the escape conviction should be sentenced last with the presumptive duration found at the zero criminal history column and the appropriate severity level. For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.~~

~~In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.~~

~~II.F.03. For cases with a prior felony sentence, which has neither expired nor been discharged, and a single current conviction, and when the current conviction is sentenced consecutive to the prior, the presumptive duration for the current conviction is found at the zero criminal history column and the appropriate severity level, unless the consecutive sentence is presumptive. For person given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.~~

~~If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the pre-guidelines offense.~~

The presumptive disposition for escapes from executed sentences is commitment to the Commissioner of Corrections. It is presumptive for an escape from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving, or on escape status from, an executed prison sentence if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C..

In certain situations a concurrent sentence would result in an offender serving longer in prison than a consecutive sentence and in such situations a concurrent sentence is presumptive. For example, an inmate has four months left to serve before release on the first offense. The new offense is a severity level IV crime and the inmate's criminal history score is five. If sentenced concurrently, the presumptive duration would be 32 months, the term of imprisonment would be 21½ months and because the sentence runs concurrently with the first offense, the total time to be served would be 21½ months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or 7½ months less than the time to be served under concurrent sentencing. In a situation like this example, concurrent sentencing would be presumptive.

For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.

~~II.F.04. The sentencing guidelines provide that sentences must be stayed or imposed if they are to be used in computing the criminal history score. When multiple convictions are sentenced concurrently, separate sentences arising out of separate behavioral incidents must be stayed or imposed on each conviction if they are to be used in computing future criminal history scores. If an offender is convicted of two offenses arising from separate behavioral incidents, but the judge stayed or imposed a sentence for only one conviction, only one point would accrue to the prior felony sentences item in the computation of a future criminal history score. If the judge stayed or imposed a sentence for each conviction offense in this example, then two points would accrue to the prior felony sentences item in future criminal history score computation.~~

~~The phrase "multiple current felony convictions" means two or more cases in which the defendant has been found guilty by verdict or by a finding of the Court following trial, or in which the defendant has entered a plea of guilty, and for which sentences have not been stayed or imposed. Multiple current convictions may occur before one Court or two or more Courts.~~

The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D. of the guidelines.

If the presumptive disposition for an escape conviction from a nonexecuted prison sentence is commitment to the Commissioner of Corrections, it is permissive for the sentence to be consecutive to the offense for which the offender was confined regardless of whether the other sentence is for a crime against the person. The presumptive duration for the escape is found at the zero criminal history column and the appropriate severity level. In addition to making the sentence for the escape offense consecutive to the sentence for which the offender was confined, it is also permissive to pronounce a sentence for any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections, consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offender was confined.

II.F.05. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.

II.F.05: 06. Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of \$3000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery in the First Degree with use of a gun and had a zero criminal history score, the mandatory minimum sentence and the presumptive sentence for the offense would be 36 48 months; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.

II.F.06. The criterion that crimes must be against different persons for permissive consecutive sentencing is designed to exclude consecutive sentences in two types of situations. One type involves multiple offenses against a victim in a single behavioral incident such as burglary with a dangerous weapon and aggravated robbery with bodily harm. The requirement of different victims is also intended to exclude consecutive sentences

~~in domestic abuse and child abuse situations when there are multiple incidents perpetrated against a victim over time. Assault, criminal sexual conduct, and incest are the conviction offenses most frequently found in domestic abuse and child abuse cases. Multiple incidents against a victim typifies these types of situations. In fact, one criminal sexual conduct provision delineates multiple incidents as an element of the offense. The high severity rankings assigned to offenses that tend to involve very young victims reflect the understanding that multiple incidents generally occur in these kinds of situations. The Commission believes that a uniform policy reflected in high severity rankings provides the best approach in sentencing these cases. Permissive consecutive sentences would result in enormous disparity based on varying charging practices of prosecutors and discretionary judicial decisions.~~

~~There are rare instances in which multiple person crimes are committed at different times against a victim in other than a domestic abuse or child abuse situations. For example, a pharmacist could be a victim of an aggravated robbery at one point and some time later be robbed by the same offender a second time. Circumstances such as these are clearly atypical. In the rare instances in which this type of situation occurs, consecutive sentencing is permissive under the guidelines.~~

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in <i>italics</i>)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-</i> <i>shootings</i>)	X	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>)	IX	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Criminal Sexual Conduct,</i> <i>1st Degree</i> <i>Assault, 1st Degree</i>	VIII	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Aggravated Robbery 1st Degree</i>	VII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
<i>Criminal Sexual Conduct,</i> <i>2nd Degree (a) & (b)</i>	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	25 24-26	32 30-34	41 37-45
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 18-20	22 21-23	25 24-26
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 20-22
<i>Sale of Simulated</i> <i>Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 18-20



Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E. **Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to a state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections II.C. **Presumptive Sentence** and II.E. **Mandatory Sentences**.

¹ One year and one day

C. CHANGES RELATED TO COMBINING THEFT AND THEFT RELATED CRIMES

Theft Offense List

Defeating Security on Personalty
609.62

Defeating Security on Realty
609.615

Defrauding Insurer
609.611

False Representations
268.18, subd. 3

Federal Food Stamp Program
393.07, subd. 10

Financial Transaction Card Fraud
609.821, subd. 2(1), (2), (5), (6), (7), & (8)

Fraud in Obtaining Credit
609.82

Medical Assistance Fraud
609.466

Presenting False Claims to Public Officer or Body
609.465

Refusing to Return Lost Property
609.52, subd. 2(6)

Taking Pledged Property
609.52, subd. 2(2)

Telecommunications and Information Services Fraud
609.893, subd. 1

Temporary Theft
609.52, subd. 2(5)

Theft by Check
609.52, subd. 2(3) (a)

Theft by False Representation
609.52, subd. 2 (3), (b), (c), (d), & (e)

Theft of Cable TV Services
609.52, subd. 2(12)

Theft of Leased Property
609.52, subd. 2(9)

Theft of Services
609.52, subd. 2(13)

Theft of Telecommunications Services
609.52, subd. 2(14)

Theft from Coin Operated Machines
609.52, subd. 2 (7)

Workers Compensation Fraud
176.178

Wrongfully Obtaining Assistance
256.98

The entire Theft Related Offense List is deleted because the crimes contained in the list become part of the Theft Offense List.

~~Theft Related Offense List~~

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT RELATED GRIMES (\$2,500 or less and over \$2,500) in the Offense Severity Reference Table:

~~Defeating Security on Personalty~~
~~609.62~~

~~Defeating Security on Realty~~
~~609.615~~

~~Defrauding Insurer~~
~~609.611~~

~~False Representations~~
~~268.18, subd. 3~~

~~Federal Food Stamp Program~~
~~393.07, subd. 10~~

~~Financial Transaction Card Fraud~~
~~609.821, subd. 2(1), (2), (5), (6), (7), & (8)~~

~~Fraud in Obtaining Credit~~
~~609.82~~

D. ADOPTED DURATIONAL ADJUSTMENTS, EFFECTIVE AUGUST 1, 1997

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder, drive-by-shootings)	X	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	IX	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Criminal Sexual Conduct, 1st Degree</i> <i>Rape, 1st Degree</i>	VIII	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Aggravated Robbery 1st Degree</i>	VII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
<i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i>	VI	21 18-24	26 23-29	30 27-33	34 33-35 39 37-41	44 42-46 45 43-47	54 50-58 51 49-53	65 60-70 57 55-59
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18 15-21	23 20-26	27 24-30	30 29-31 33 31-35	38 36-40	46 43-49 43 41-45	54 50-58 48 46-50
<i>Nonresidential Burglary</i>	IV	12 ¹ 10-14	15 12-18	18 15-21	21 18-24	25 24-26 24 23-25	32 30-34 27 26-28	44 37-45 30 29-31
<i>Left Crimes (Over \$2,500)</i>	III	12 ¹ 10-14	13 11-15	15 13-17	17 15-19	19 18-20	22 21-23 21 20-22	25 24-26 23 22-24
<i>Left Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-500)</i>	II	12 ¹ 10-14	12 ¹ 10-14	13 11-15	15 13-17	17 15-19	19 17-21	21 20-22
<i>Possession of Simulated Controlled Substance</i>	I	12 ¹ 10-14	12 ¹ 10-14	12 ¹ 10-14	13 11-15	15 13-17	17 15-19	19 18-20

E. COUNTY ATTORNEY REPORTS ON CRIMINAL CASES INVOLVING FIREARMS BY COUNTY

County Attorney Report on Criminal Cases Involving Firearms

Cases Where Reporting Is Required
by M.S. § 609.11, Subd. 10
Cases Disposed from July 1, 1995 to July 1, 1996

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Aitkin	8	0	8
Anoka	22	1	21
Becker	5	0	5
Benton	4	0	4
Big Stone	0	0	0
Blue Earth	12	2	10
Brown	0	0	0
Carlton	4	0	4
Carver	8	0	8
Cass	13	0	13
Chippewa	2	0	2
Chisago	8	1	7
Clay	6	1	5
Clearwater	1	0	1
Cook	0	0	0
Cottonwood	1	0	1
Crow Wing	2	0	2
Dakota	20	0	20
Dodge	3	0	3
Douglas	3	0	3
Faribault	1	0	1
Fillmore	1	0	1
Freeborn	1	0	1
Goodhue	5	0	5
Grant	0	0	0
Hennepin	198	0	198

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Houston	1	0	1
Hubbard	3	0	3
Isanti	5	0	5
Itasca	4	0	4
Jackson	0	0	0
Kanabec	4	0	4
Kandiyohi	3	0	3
Kittson	0	0	0
Koochiching	4	0	4
Lac Qui Parle	0	0	0
Lake	0	0	0
Lake of the Woods	0	0	0
Lesueur	1	0	1
Lincoln	1	0	1
Lyon	2	0	2
Mcleod	2	0	2
Mahnomen	3	0	3
Marshall	0	0	0
Martin	4	0	4
Meeker	2	2	0
Mille Lacs	2	0	2
Morrison	2	0	2
Mower	0	0	0
Murray	3	0	3
Nicollet	1	0	1
Nobles	1	0	1
Olmsted	15	0	15
Otter Tail	3	0	3
Pennington	1	0	1
Pine	3	0	3
Pipestone	3	0	3
Polk	2	0	2
Pope	0	0	0
Ramsey	103	0	103

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Red Lake	0	0	0
Redwood	7	0	7
Renville	1	0	1
Rice	2	0	2
Rock	0	0	0
Roseau	2	0	2
St. Louis	26	4	22
Scott	10	1	9
Sherburne	5	0	5
Sibley	0	0	0
Stearns	7	0	7
Steele	1	0	1
Stevens	0	0	0
Swift	0	0	0
Todd	3	0	3
Traverse	1	0	1
Wadena	3	0	3
Waseca	0	0	0
Washington	6	0	6
Watonwan	2	0	2
Wilkin	1	0	1
Winona	5	0	5
Wright	0	0	0
Yellow Medicine	0	0	0
Total	588	12	576

County Attorney Report on Criminal Cases Involving Firearms

Cases Where Reporting Is Required by M.S. § 609.11, Subd. 10

Outcome of Cases Charged

Cases Disposed from July 1, 1995 to July 1, 1996

County	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Aitkin	8	2	0	5	0	0	1
Anoka	21	17	0	4	0	0	0
Becker	5	2	0	3	0	0	0
Benton	4	1	0	3	0	0	0
Big Stone	0	0	0	0	0	0	0
Blue Earth	10	4	0	6	0	0	0
Brown	0	0	0	0	0	0	0
Carlton	4	0	0	3	0	1	0
Carver	8	5	0	3	0	0	0
Cass	13	0	6	6	0	0	1
Chippewa	2	1	1	0	0	0	0
Chisago	7	2	3	0	0	2*	0
Clay	5	4	0	1	0	0	0
Clearwater	1	0	0	1	0	0	0
Cook	0	0	0	0	0	0	0
Cottonwood	1	1	0	0	0	0	0
Crow Wing	2	1	0	1	0	0	0
Dakota	20	17	0	1	2	0	0
Dodge	3	0	0	3	0	0	0
Douglas	3	1	2	0	0	0	0
Faribault	1	0	0	1	0	0	0
Fillmore	1	0	0	1	0	0	0
Freeborn	1	0	0	1	0	0	0
Goodhue	5	3	0	2	0	0	0
Grant	0	0	0	0	0	0	0
Hennepin	198	132	4	28	2	31	1
Houston	1	0	0	1	0	0	0
Hubbard	3	1	0	2	0	0	0

County	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Isanti	5	1	0	1	0	3	0
Itasca	4	2	2	0	0	0	0
Jackson	0	0	0	0	0	0	0
Kanabec	4	4	0	0	0	0	0
Kandiyohi	3	1	0	1	0	1	0
Kittson	0	0	0	0	0	0	0
Koochiching	4	0	3	0	0	1	0
Lac Qui Parle	0	0	0	0	0	0	0
Lake	0	0	0	0	0	0	0
Lake of the Woods	0	0	0	0	0	0	0
Lesueur	1	0	1	0	0	0	0
Lincoln	1	0	0	1	0	0	0
Lyon	2	1	1	0	0	0	0
McLeod	2	2	0	0	0	0	0
Mahnomen	3	1	0	2	0	0	0
Marshall	0	0	0	0	0	0	0
Martin	4	0	3	1	0	0	0
Meeker	0	0	0	0	0	0	0
Mille Lacs	2	0	0	2	0	0	0
Morrison	2	1	0	0	0	1	0
Mower	0	0	0	0	0	0	0
Murray	3	0	0	3	0	0	0
Nicollet	1	0	0	1	0	0	0
Nobles	1	0	1	0	0	0	0
Olmsted	15	10	0	0	0	5	0
Otter Tail	3	2	0	1	0	0	0
Pennington	1	0	1	0	0	0	0
Pine	3	0	0	3	0	0	0
Pipestone	3	2	0	1	0	0	0

County	Total Number of Cases Charged	Convicted of Offense w/ a Mandatory Minimum		Conviction Offense Not Covered by M.S. § 609.11	Acquitted on all Charges	All Charges Dismissed	Other
		Firearm Established	Firearm Not Established				
Polk	2	2	0	0	0	0	0
Pope	0	0	0	0	0	0	0
Ramsey	103	65	2	16	6	13	1
Red Lake	0	0	0	0	0	0	0
Redwood	7	6	0	0	0	1	0
Renville	1	1	0	0	0	0	0
Rice	2	0	0	1	1	0	0
Rock	0	0	0	0	0	0	0
Roseau	2	0	0	2	0	0	0
St. Louis	22	16	0	6	0	0	0
Scott	9	6	0	2	1	0	0
Sherburne	5	3	0	2	0	0	0
Sibley	0	0	0	0	0	0	0
Stearns	7	6	0	1	0	0	0
Steele	1	0	0	1	0	0	0
Stevens	0	0	0	0	0	0	0
Swift	0	0	0	0	0	0	0
Todd	3	1	0	2	0	0	0
Traverse	1	0	0	1	0	0	0
Wadena	3	1	0	2	0	0	0
Waseca	0	0	0	0	0	0	0
Washington	6	3	3	0	0	0	0
Watsonwan	2	0	0	2	0	0	0
Wilkin	1	1	0	0	0	0	0
Winona	5	2	3	0	0	0	0
Wright	0	0	0	0	0	0	0
Yellow Medicine	0	0	0	0	0	0	0
Total	576	334	36	131	12	59	4

* Prosecuted and convicted federally.

County Attorney Report on Criminal Cases Involving Firearms

Sentences for Cases Where a Mandatory Minimum for a Firearm was Required Cases Disposed from July 1, 1995 to July 1, 1996

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Not Imposed
Aitkin	2	2	0
Anoka	17	9	8
Becker	2	2	0
Benton	1	1	0
Big Stone	0	0	0
Blue Earth	4	4	0
Brown	0	0	0
Carlton	0	0	0
Carver	5	3	2
Cass	0	0	0
Chippewa	1	0	1
Chisago	2	2	0
Clay	4	2	2
Clearwater	0	0	0
Cook	0	0	0
Cottonwood	1	1	0
Crow Wing	1	0	1
Dakota	17	11	6
Dodge	0	0	0
Douglas	1	0	1
Faribault	0	0	0
Fillmore	0	0	0
Freeborn	0	0	0
Goodhue	3	2	1
Grant	0	0	0
Hennepin	132	91	41
Houston	0	0	0

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Not Imposed
Hubbard	1	0	1
Isanti	1	0	1
Itasca	2	2	0
Jackson	0	0	0
Kanabec	4	3	1
Kandiyohi	1	1	0
Kittson	0	0	0
Koochiching	0	0	0
Lac Qui Parle	0	0	0
Lake	0	0	0
Lake of the Woods	0	0	0
Lesueur	0	0	0
Lincoln	0	0	0
Lyon	1	0	1
McLeod	2	2	0
Mahnomen	1	1	0
Marshall	0	0	0
Martin	0	0	0
Meeker	0	0	0
Mille Lacs	0	0	0
Morrison	1	1	0
Mower	0	0	0
Murray	0	0	0
Nicollet	0	0	0
Nobles	0	0	0
Olmsted	10	7	3
Otter Tail	2	0	2
Pennington	0	0	0
Pine	0	0	0
Pipestone	2	2	0

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Not Imposed
Polk	2	2	0
Pope	0	0	0
Ramsey	65	48	17
Red Lake	0	0	0
Redwood	6	4	2
Renville	1	0	1
Rice	0	0	0
Rock	0	0	0
Roseau	0	0	0
St. Louis	16	9	7
Scott	6	5	1
Sherburne	3	0	3
Sibley	0	0	0
Stearns	6	1	5
Steele	0	0	0
Stevens	0	0	0
Swift	0	0	0
Todd	1	0	1
Traverse	0	0	0
Wadena	1	1	0
Waseca	0	0	0
Washington	3	1	2
Watsonwan	0	0	0
Wilkin	1	1	0
Winona	2	1	1
Wright	0	0	0
Yellow Medicine	0	0	0
Total	334	222	112

