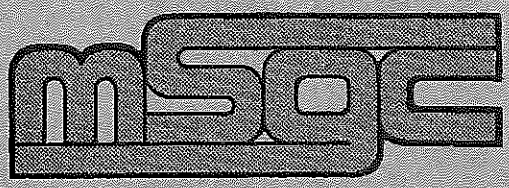
Minnesota Sentencing Guidelines Commission



Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

January, 1999

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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 1998.

II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1998

A. RANKING OF NEW OR AMENDED CRIMES

1. The Commission adopted the proposal to rank the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:

Severity Level X

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

Severity Level VIII

~~Receiving Profit Derived from Prostitution - 609.323, subd. 1~~
Solicits, Promotes, or Receives Profit Derived from Prostitution; Indiv. Under 16
~~Solicitation of Prostitution~~ - 609.322, subd. 1

Severity Level VII

~~Solicitation of Prostitution (force) - 609.322, subd. 1a (2) & (4)(b)~~

Severity Level V

~~Receiving Profit Derived from Prostitution - 609.323, subd. 1a~~
~~Solicitation of Prostitution - 609.322, subd. 1a(1), (3), & (4)(a)&(c)~~
Solicits, Promotes, or Receives Profit Derived from Prostitution - 609.322, subd. 1a

Severity Level IV

Indecent Exposure ~~in Presence of Minor~~ - 617.23, ~~(c)~~ subd. 3

Severity Level III

~~Receiving Profit Derived From Prostitution - 609.323, subd. 2~~
~~Solicitation of Prostitution - 609.322, subd. 2~~

Severity Level I

Failure to Appear in ~~Juvenile~~ Court -; 609.49, ~~subd. 1a~~ ;588.20, subd. 1
Prostitution Crimes (gross misdemeanor level) Committed in School or Park Zones - 609.3242, subd. 2 (2)
~~Solicitation of Prostitution - 609.322, subd. 3~~

2. ***The Commission considered the changes made by the 1998 Legislature to the following crimes and adopted the proposal to continue the existing severity level rankings in Section V. OFFENSE SEVERITY REFERENCE TABLE, unless otherwise noted above:***

Burglary Crimes; Controlled Substance Crimes; Criminal Sexual Conduct Crimes; Harassment/Stalking; Importing Controlled Substances Across State Borders; Obstructing Legal Process, Arrest, or Firefighting; Prostitution (Patron); Tampering with Witness, Aggravated First Degree; Tampering with Witness in the First Degree; Theft Crimes; and Violation of an Order for Protection

3. ***The Commission adopted the proposal to place the following crime on the Unranked Offense List in Section II.A.03. of the Commentary:***

Registration of predatory offenders - 243.166, subd. 5

B. ADOPTED MODIFICATIONS TO ADDRESS OTHER LEGISLATIVE CHANGES

The Commission adopted the proposal to make the following technical changes to various sections of the Sentencing Guidelines and Commentary to account for the statutes recodified by the 1998 Legislature relating to increased sentences for certain dangerous or repeat offenders:

II.D. Departures from the Guidelines:. . .

(7) Offender is a "patterned sex offender" (See Minn. Stat. § ~~609.1352~~ 609.108).

II.D.204. *A special sentencing provision was established by the legislature under Minn. Stat. § ~~609.1352~~ 609.108 that is available to judges when sentencing certain sex offenders. The use of this sentencing provision would constitute a departure under the sentencing guidelines and a judge must provide written reasons which specify the substantial and compelling nature of the circumstances.*

II. E. Mandatory Sentences: . . .

First degree murder, and certain sex offenders convicted under Minn. Stat. § ~~609.346, subd. 2a~~ 609.109, subd. 3, which have a mandatory life imprisonment sentence, are excluded from offenses covered by the sentencing guidelines. . . .

When an offender is sentenced according to Minn. Stat. § ~~609.196~~ 609.107, Mandatory Penalty for Certain Murderers, the statutory provision determines the presumptive sentence.

. . .

When an offender is sentenced according to Minn. Stat. § ~~609.152, subd. 2a~~ 609.1095, subd. 3, the presumptive disposition is commitment to the commissioner and the court must impose and execute the presumptive duration unless a longer mandatory minimum sentence is otherwise required by law or the court imposes a longer aggravated durational departure.

II.E.04. *In State v. Feinstein, 338 N.W.2d 244 (Minn. 1983), the Supreme Court held that judges had the authority to stay execution of mandatory three year prison sentences for second or subsequent sex offenses ~~established by Minn. Stat. § 609.346~~. . . .*

II.E.05. *M.S. § ~~609.346~~ 609.109 requires that when a court sentences a person to prison for a violation of section 609.342, 609.343, 609.344, or 609.345, the court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release for five years, minus the time the person served on supervised release. If the person was convicted for a violation of one of those sections a second or subsequent time, or sentenced to a mandatory departure pursuant to section ~~609.346, subd. 4~~ 609.109, subd. 6, the person shall be placed on conditional release for ten years, minus the time served on supervised release.*

C. ADOPTED MODIFICATIONS TO CLARIFY OR CORRECT TECHNICAL ERRORS

1. The Commission adopted the proposal to amend and relocate language in several sections of Section II of the Sentencing Guidelines and Commentary to eliminate some of the confusion regarding monetary thresholds used to determine offense classification for the purpose of calculating the criminal history score:

a) The Commission adopted the proposal to move the following language up in the section on "out-of-state" convictions as part of a more general paragraph.

II.B.502. *The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history index score. It was recognized, however, that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. There is no uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor." Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current Minnesota offense definitions and sentencing policies. Exceptions to this are offenses in which a monetary threshold determines the offense classification. In these situations, the monetary threshold in effect at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*

~~***II.B.504.*** *Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current offense definitions. An exception to this are offenses in which a monetary threshold determines the offense classification. The monetary threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*~~

b) ***The Commission also adopted the proposal to repeat the language in II.B.504. at the beginning of the criminal history section to clarify that this policy applies to all prior offenses and not just out-of-state crimes.***

B. Criminal History: . . .

II.B.04. *Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current Minnesota offense definitions and sentencing policies. Exceptions to this are offenses in which a monetary threshold determines the offense classification. In these situations, the monetary threshold in effect at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*

c) ***The Commission also adopted the proposal to delete the very specific language found in section II.B.107.(section describing criminal history policies for felonies) and summarize it in a new comment II.B.04. at the beginning of the criminal history section. It is more appropriate in the general section because it applies to all prior offenses and not just felonies. It will be more practical to remove the very specific detail currently found in the commentary and present it instead in training materials.***

~~***II.B.107.*** *If the offender's prior record involves convictions of offenses that were committed prior to August 1, 1983, for which fines were the only sanction given, use the following schedule to determine whether the offense should be characterized as a misdemeanor, gross misdemeanor, or felony for purposes of computing criminal history scores:*~~

~~*If fine imposed is between:*~~	~~*Classify offense as:*~~
~~*$101 - $500*~~	~~*Misdemeanor*~~
~~*$501 - $1,000*~~	~~*Gross Misdemeanor*~~
~~*more than $1,000*~~	~~*Felony*~~

~~*If the offender's prior record involves convictions of offenses that were committed on or after August 1, 1983, for which fines were the only sanctions given, use the following schedule to determine whether the offense should be characterized as a misdemeanor, gross misdemeanor, or felony for purposes of computing criminal history scores:*~~

~~*If fine imposed is between:*~~	~~*Classify offense as:*~~
~~*$101 - $700*~~	~~*Misdemeanor*~~
~~*$701 - $3,000*~~	~~*Gross Misdemeanor*~~
~~*more than $3,000*~~	~~*Felony*~~

~~*If the offender's prior record involves convictions of offenses that were committed on or after August 1, 1987, for which fines of $201 -- $700 were the only sanction given, the conviction would count as a misdemeanor for purposes of computing criminal history scores.*~~

~~*If a fine is the only penalty provided by statute for the offense of conviction, and the fine imposed was in excess of $500, or in excess of $700 if the offense occurred on or after August 1, 1983, then the offense would be counted as a gross misdemeanor.*~~

~~*If a fine was given that was less than the misdemeanor level of fine as classified above, and that was the only sanction imposed, the conviction would be deemed a petty misdemeanor under Minn. R. Crim. P. 23.02, and would not be used to compute the criminal history score. Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, will not be used to compute the criminal history score.*~~

II.B.04. . . .

If a fine was given that was less than the misdemeanor level of fine classified by the laws in effect at the time the offense was committed, and that was the only sanction imposed, the conviction would be deemed a petty misdemeanor under Minn. R. Crim. P. 23.02, and would not be used to compute the criminal history score. Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, will not be used to compute the criminal history score.

2. The Commission adopted the proposal to amend Section II.C. Presumptive Sentence to clarify the current policy on burglary of an occupied dwelling by changing the term "adjudication of guilt" to "conviction":

C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis....

When the current conviction offense is burglary of an occupied dwelling (Minn. Stat. § 609.582, subd.1 (a)) and there was a previous ~~adjudication of guilt~~ conviction for a felony burglary before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid.

3. The Commission adopted a proposal to clarify an example in comment II.E.02, regarding mandatory minimum sentences and the severity level ranking for Assault in the Second Degree:

II.E.02. *. . . For example, according to Minn. Stat. § 609.11, the mandatory minimum prison sentence for Assault in the Second Degree involving a knife is one year and one day. However, according to the guidelines, the presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell of the grid, whichever is longer. Therefore, ~~F~~for someone convicted of Assault in the Second Degree with no criminal history score, the guidelines ~~recommend~~ presume a 21 month prison ~~sentence~~ duration based on the appropriate cell of the grid found at severity level VI ~~ranking~~. The Commission believes this ~~sentence~~ duration is more appropriate than the 48 month prison ~~sentence~~ duration that would be recommended if this crime were ranked at severity level VII which is the first severity level ranked completely above the dispositional line.*

4. The Commission adopted the proposal to amend the language in Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers regarding convictions for Crimes Committed for Benefit of a Gang to address the new mandatory minimum passed by the 1998 Legislature and to clarify how to add on the additional time to the presumptive duration:

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

For persons sentenced under Minn. Stat. § 609.229, subd. 3 (a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive disposition is always commitment to the Commissioner of Corrections due to the mandatory minimum under Minn. Stat. § 609.229, subd. 4. The presumptive duration ~~sentence~~ is determined by the duration contained in ~~locating~~ the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, ~~and the duration contained therein~~ or the mandatory minimum, whichever is greater, plus an additional 12 months. ~~If the underlying crime carries a mandatory minimum prison sentence, the 12 months is added to the mandatory minimum or the duration in the appropriate cell, whichever is greater.~~ If the underlying crime is an attempt, the presumptive duration includes an additional 6 months rather than 12 ~~the 12 months is added to the respective duration first and then divided by two, but the duration shall not be less than one year and one day~~.

5. ***The Commission adopted the proposal to make the following technical changes to comment III.A.102. of the Sentencing Guidelines and Commentary in order for the language to be consistent with previous changes to the severity level rankings for theft crimes:***

III.A.102. *When a judge grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell of the Sentencing Guidelines Grid, and may be as long as the statutory maximum for the offense of conviction. Thus, for an offender convicted of Theft, <u>over</u> $2,500 ~~or less~~ (severity level III), with a criminal history score of 1, the duration of the stay could be up to ~~five~~ <u>ten</u> years. . .*

6. ***The Commission adopted the proposal to make the following technical changes to the Theft Offense List to correct statutory cite changes that became effective August 1, 1997:***

Theft by Check
609.52, subd. 2(3) (a<u>i</u>)

Theft by False Representation
609.52, subd. 2 (3), (b<u>ii</u>), (c<u>iii</u>), (d<u>iv</u>), & (e<u>v</u>)

D. ADOPTED MODIFICATIONS REVIEWED OR FORMALLY APPROVED BY THE 1998 LEGISLATURE

1. The Commission adopted the following language and the 1998 Legislature formally approved the language in passage of the 1998 Omnibus Crime Bill. This new language in Section II. D. of the Commentary emphasizes the importance of providing a comprehensive explanation for a sentence departure rather than only indicating that the case involved a plea agreement:

II.D.04. *Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the sentencing guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to provide for informed policy making or to ensure consistency, proportionality, and rationality in sentencing. Departures and their reasons highlight both the success and problems of the existing sentencing guidelines. When a plea agreement is made that involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain the reasons the negotiation was accepted.*

2. The Commission adopted the proposal to modify Section II. F. Concurrent/Consecutive Sentences to clarify the permissive consecutive policy regarding current offenses sentenced consecutively to prior offenses:

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 . . .

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. In addition, consecutive sentences are permissive under 1. above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C.

3. The Commission adopted the proposal to modify Section II.F.04. of the Commentary to clarify that it is permissive to give consecutive sentences where there are multiple current felony convictions for crimes involving the same person in a single course of conduct:

II.F.04. *The Commission's policy on permissive consecutive sentencing outline . . .*

It is permissive for multiple current felony convictions against persons to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section ***II.C. Presumptive Sentence.*** *Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissive under these circumstances when the court has given an upward durational departure on any of the current offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.*

4. The Commission adopted the proposal to modify Section III.C. Jail Credit to more clearly establish the rules and principles regarding jail credit supported by case law that are in agreement with the philosophy of the sentencing guidelines:

C. Jail Credit: Pursuant to Minn. Stat. § 609.145, subd. 2, and Minn. R. Crim. P.27.03, subd. 4(b), when a convicted felon is committed to the custody of the Commissioner of Corrections, the court shall assure that the record accurately reflects all time spent in custody ~~between arrest and sentencing~~ in connection with the offense, including examinations under Minn. R. Crim. P. 20 or 27.03, subd.1(A), for the offense or behavioral incident for which the person is sentenced, which time shall be deducted by the Commissioner of Corrections from the sentence imposed by subtracting the time from the specified minimum term of imprisonment and if there is any remaining time, subtracting such time from the specified maximum period of supervised release. ~~Time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender committed to the custody of the Commissioner of Corrections shall be included in the above record, and shall be deducted from the sentence imposed. Time spent in confinement under Huber Law (Minn. Stat. § 631.425) shall be awarded at the rate of one day for each day served.~~ Jail credit shall be awarded based on the following criteria:

1. Jail credit for time spent in custody shall not turn on matters subject to manipulation by the prosecutor.

2. Jail credit shall not result in double credit when applied to consecutive sentences.

3. Jail credit shall reflect time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender is committed to the custody of the Commissioner of Corrections. Such credit is limited to time spent in jails, workhouses, and regional correctional facilities.

4. Jail credit shall be awarded at the rate of one day for each day served for time spent in confinement under Huber Law (Minn. Stat. § 631.425).

Comment

III.C.01. ~~*The Commission believes that offenders should receive jail credit for time spent in custody between arrest and sentencing. During that time, the defendant is presumed innocent. There is evidence that the poor and members of racial minorities are more likely to be subject to pre-trial detention than others. Granting such jail credit for those receiving executed sentences makes the total periods of incarceration more equitable.*~~

In order to promote the goals of the sentencing guidelines, it is important to ensure that jail credit is consistently applied to reflect all time spent in custody in connection with the offense. 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 a person 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. The Commission believes that greater uniformity in the application of jail credit can be achieved by following the general criteria noted above in section ***III.C. Jail Credit.***

III.C.02. *Determining the appropriate application of jail credit for an individual can be very complicated, particularly when multiple offenses are involved. While the Commission recognizes the difficulty in interpreting individual circumstances, it believes that the court should award jail credit so that it does not turn on matters that are subject to the manipulation by the prosecutor. The purpose of this criteria is to ensure that if the intent of the court is to give concurrent sentences, the withholding of jail credit does not result in de facto consecutive sentences.*

III.C.03. *The Commission is equally concerned that if the intent of the court is to give consecutive sentences, the awarding of jail credit should not result in de facto concurrent sentences. Therefore, when applying jail credit to consecutive sentences, credit is only applied to the first sentence in order to avoid awarding double credit. In order to avoid de facto concurrent sentences when a current offense is sentenced consecutive to a prior offense for which the offender is already serving time in a prison or jail, no jail credit shall be awarded on the current offense.*

III.C.~~02~~ 04. *The Commission also believes that jail credit should be awarded for time spent in custody as a condition of a stay of imposition or stay of execution when the stay is revoked and the offender is committed to the Commissioner of Corrections. The primary purpose of imprisonment is punishment, and the punishment imposed should be proportional to the severity of the conviction offense and the criminal history of the offender. If, for example, the presumptive duration in a case is 18 months, and the sentence was initially executed by means of a departure the specified minimum term of imprisonment would be 12 months. If the execution of the sentence had initially been stayed and the offender had served four months in jail as a condition of the stay, and later the stay was revoked and the sentence executed, the offender would be confined for 16 months rather than 12. By awarding jail credit for time spent in custody as a condition of a stay of imposition or execution, proportionality is maintained.*

~~*Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of one day for each day served. When a condition of jail time is that it be served on week-ends, the actual time spent in jail rounded to the nearest whole day, should be credited. For example, if an offender arrives at jail at 6:00 p.m. Friday and leaves at 8:00 p.m. Sunday, 50 hours have been served and that time would be rounded to two days of jail credit if the stay were later revoked and the sentence executed.*~~

Credit for time spent in custody as a condition of a stay of imposition or stay of execution is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should not be extended for time spent in residential treatment facilities or on electronic monitoring as a condition of a stay of imposition or stay of execution.

III.C.05. *In computing jail time credit, each day or portion of a day in jail should be counted as one full day of credit. For example, a defendant who spends part of a day in confinement on the day of arrest and part of a day in confinement on the day of release should receive a full day of credit for each day. Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of one day for each day served.*

III.C.~~03~~ 06. *In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody shall be computed by the Commissioner of Corrections and subtracted from the specified minimum term of imprisonment. If there is any remaining jail credit left over, it should be subtracted from the specified maximum period of supervised release. For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody shall be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.*

Commission policy is that sentencing should be neutral with respect to the economic status of felons. When credit for time spent in custody is immediately deducted from the total sentence, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond. ~~In order to correct this incongruity, computation of projected good time shall be made by the Commissioner of Corrections at time of admission to prison and shall be subtracted from the sentence prior to crediting an offender for time spent in custody.~~

III. 1998 ADOPTED MODIFICATIONS - EFFECTIVE JANUARY 1, 1999

The Commission adopted the proposal to rank the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:

Severity Level VII

Drive-By Shooting (toward a person or occupied motor vehicle or building) - 609.66, subd. 1e (b)

Severity Level VI

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

~~Drive-By Shooting (toward a person or occupied motor vehicle or building) - 609.66, subd. 1e (a)~~

Severity Level IV

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

IV. REPORT ON SENTENCE TO WORK PROGRAM FOR CERTAIN OFFENDERS (CAMP RIPLEY) § 609.113

The 1997 Legislature passed a law creating a mandatory work program for certain offenders. The new law required the Department of Corrections to establish a four-year pilot project work program at Camp Ripley in Little Falls, Minnesota, with certain program requirements. The program is mandatory for offenders meeting the following complete set of criteria:

1) adult male
2) committed crime on or after August 1, 1997
3) convicted of a first or second time nonviolent felony
4) no prior convictions or adjudications for crimes against the person
5) does not have a debilitating chemical dependency problem, a serious mental health problem, or a chronic medical condition
6) was not originally charged with a crime against the person.

In addition, the statute provides for permissive use of the work camp for certain gross misdemeanants and other repeat nonviolent felons who are not going to be sent to prison.

The statute requires the Minnesota Sentencing Guidelines Commission, to report each year, beginning in January 1999, to the chairs of the senate and house committees and divisions having jurisdiction over criminal justice policy and funding and summarize information received from the courts required under this law (§ 609.113, subd. 1(b)). Specifically, if the court determines that a person who is mandated to be sent to the work program should receive a more appropriate sanction, the court shall make written findings as to the reasons for not using the work program and forward these findings to the sentencing guidelines commission. The court is also required in these situations to sentence the offender to a sanction of equivalent or greater severity than the work program.

When a new law is passed by the Legislature, especially with complex mandatory provisions, it is often difficult to set up and coordinate the sharing of necessary information and to institute all of the procedural changes that must take place in order to fully implement and monitor the new law. This is due in part to the extraordinary large number of agencies, jurisdictions, and individuals that must fully understand the complexity of the new law and be involved in the implementation process. Enormous effort has taken place on the part of the Department of Corrections (DOC), the Conference of Chief Judges, the Sentencing Guidelines Commission and many others to implement this work program. Yet because of its complexity and the many unresolved questions generated since the start-up of the program, the criminal justice community has experienced difficulties. One of the difficulties has been confusion over how to report information to the Sentencing Guidelines Commission.

To help eliminate some of this confusion, a subcommittee of the Conference of Chief Judges, chaired by Judge John Stanoch, was created to coordinate a comprehensive effort to provide all of the necessary information on the Camp Ripley program and its requirements to the criminal justice community. Judge Stanoch invited a wide range of criminal justice practitioners to be involved in the subcommittee, including county attorneys, public defenders, judges, probation officers, community corrections administrators, and others. In October, mailings from the DOC, which included instructions and a form on how to report information to the Sentencing Guidelines Commission, went out to all of the judges, county attorneys, chief public defenders, DOC district supervisors, and CCA directors and court services

administrators. Also, the Supreme Court provided each judge with an electronic version of the form to assist in the ease of completion. Since this last effort, the Commission has begun to receive the information from the courts as required by the statute. At this time, information is very limited but a brief summary is presented below.

We received information on 145 cases up through the middle of November. In 24 cases, the offender did not qualify as mandatory for disqualifying factors such as: date of offense committed prior to 8/1/97, offender was female, offender was committed to prison, or the offender simply did not meet the criteria for mandatory consideration of the program. In 21 cases, the offender was ineligible for the program because the current conviction or original charge was a person against a person. There were 32 cases where the offender was ineligible because of a prior crime against a person. There were also 33 cases were the offender was ineligible as a result of a physical, mental health, or chemical dependency condition.

There were 35 remaining cases where the program was mandatory and the offender was not disqualified for any of the above reasons. This is the actual set of cases that the Commission is required by statute to monitor. The most common reason for not sending these offenders to the program was because the offender was employed. Other factors cited included: offender given more severe sanctions locally, keep the offender in school, offender has sole responsibility for family, and constitutional concerns. Of these offenders, nearly 80% were required to serve time in a local jail, typically for 30, 45 or 60 days.

In order to ensure greater compliance with these reporting requirements in the future, it appears the Commission will need to make additional special efforts to train probation officers on their role in providing information to the court and will need to communicate again directly with the judges on the forms that must be completed.

In addition, several important questions and concerns were raised in discussions on Camp Ripley at meetings of the subcommittee of the Conference of Chief Judges, chaired by Judge Stanoch (noted above). The Commission is also concerned about the following issues and believes that if legislative changes were made to address these concerns, there would likely be increased use of the program.

1) Should the program be available for probation violators?
2) Is there a constitutional problem with the program only being mandatory for males?
3) Should there be greater flexibility in the program durations?
4) Should credit be allowed for time served at Camp Ripley?
5) Should there be a decay factor on prior crimes against the person for eligibility purposes?
6) Clarify the definition of "nonviolent" for eligibility purposes.
7) Revisit the issue of cost to the counties.

The Commission also believes that the program is not being used because of its mandatory nature. The criminal justice community does not want to send the mandated offenders because they are the same offenders for which many counties already have available sanctioning options for in the community. This is especially a problem if the offender is employed. Sending the offender to Camp Ripley means a loss of income and the offender may not be able to pay restitution, fines, or support his family. Judges may be more willing to send offenders to Camp Ripley if they saw it as an option to use when local sanctions are not viable. Specifically, probation violators and repeat DWI offenders have been discussed as more appropriate candidates for Camp Ripley.

V. COUNTY ATTORNEY REPORTS ON CRIMINAL CASES INVOLVING FIREARMS

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

Memorandums describing the ongoing mandate by the legislature along with forms on which to report their county's cases were distributed to Minnesota's county attorneys. All 87 counties responded to the commission's data request. This was the first year since the mandate began that all counties are included in the report.

Figure 1 below displays a historical summary of cases since the mandate began. The data in FY 1998 show an increase in volume from FY 1997. The total number of cases where reporting was required under the statute increased to 894 cases in FY 1998 from 664 cases in FY 1997, a 35 percent increase in volume. The volume increased 28 percent over last year for cases requiring the mandatory minimum and 21 percent for cases receiving the mandatory minimum sentence when it was required.

Figures 2 through 5 summarize statewide information for FY 1998. Tables providing FY 1998 information by individual county are included in the appendix. The data indicate that prosecutors charged offenders in 98 percent of the cases disposed of in FY 1998 that involved firearms. Among those cases charged, the majority (63%) of the offenders were convicted of an applicable offense pursuant to § 609.11, subdivision 9, and a firearm was established on the record. This figure was lower than in FY 1997 when it was 66 percent. Of those cases where the mandatory minimum applied, a prison sentence was pronounced 62 percent of the time. This figure dropped from 66 percent recorded in both FY 1996 and FY 1997.

Figure 1 HISTORICAL CASE SUMMARY

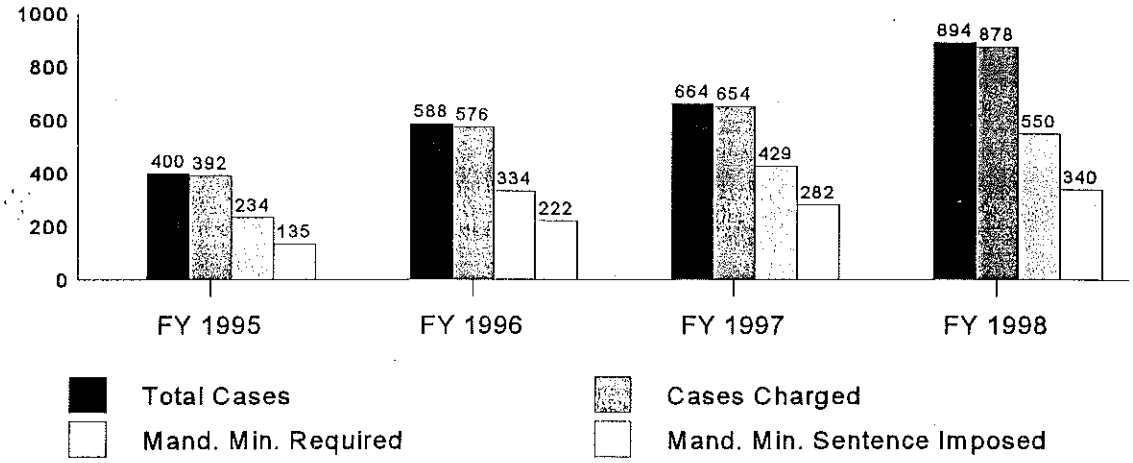


Figure 2 CASES REQUIRING REPORTING
CASES CHARGED VS. CASES NOT CHARGED

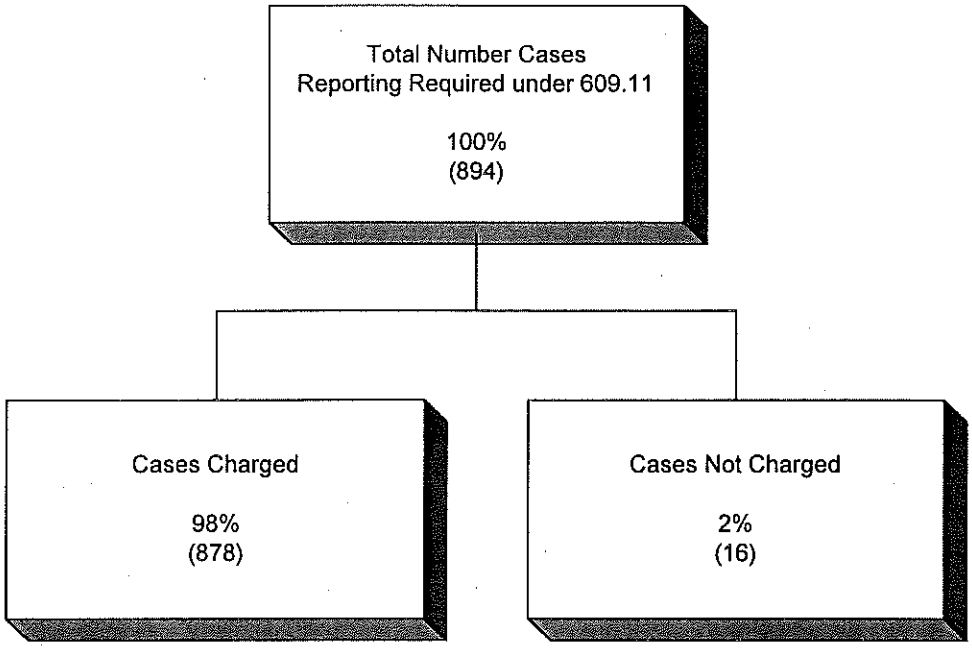


Figure 3 **CASE OUTCOME FOR CHARGED OFFENSES**

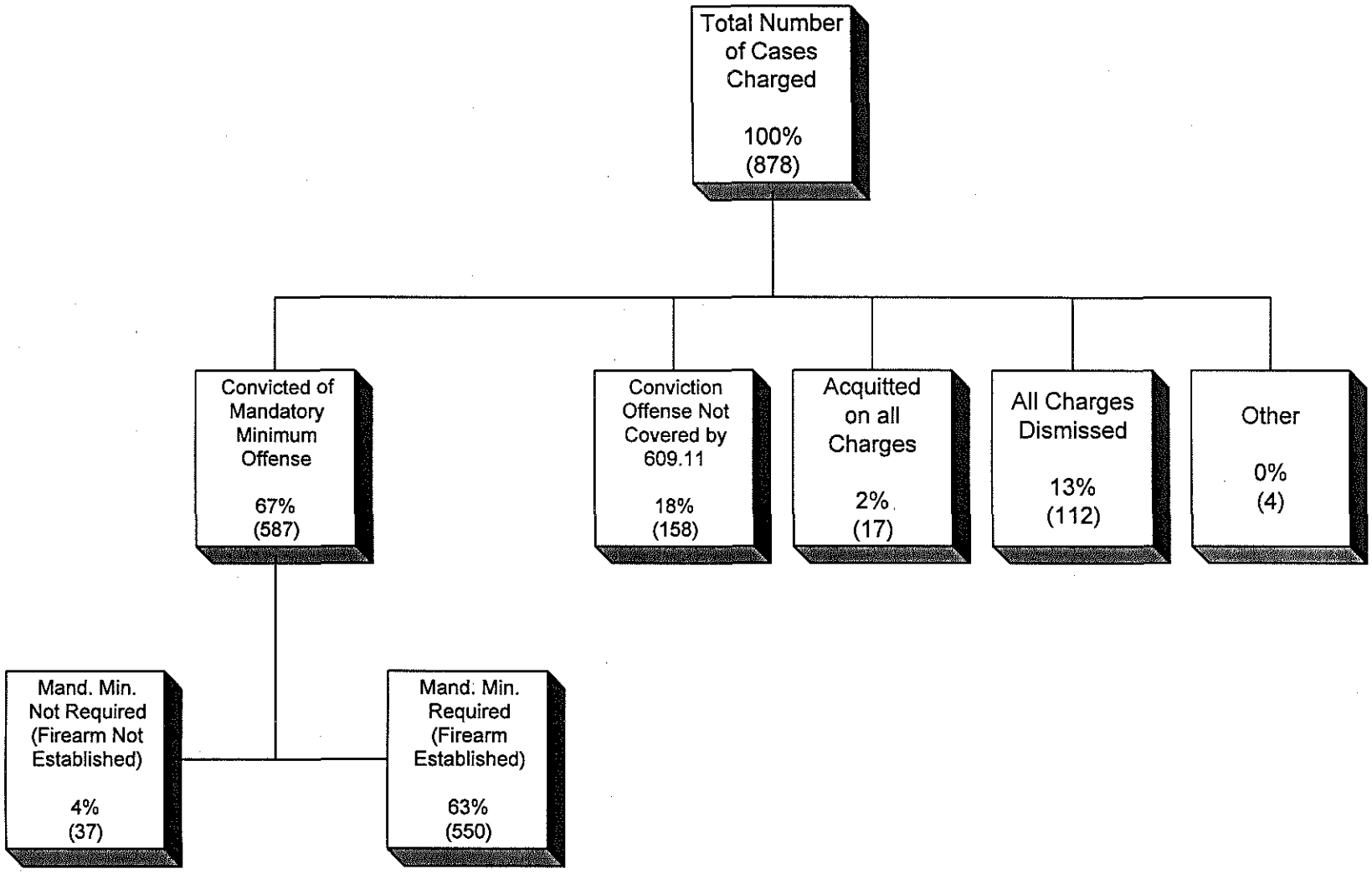


Figure 4 — Convictions for Mandatory Minimum Offenses Establishment of Firearm on the Record

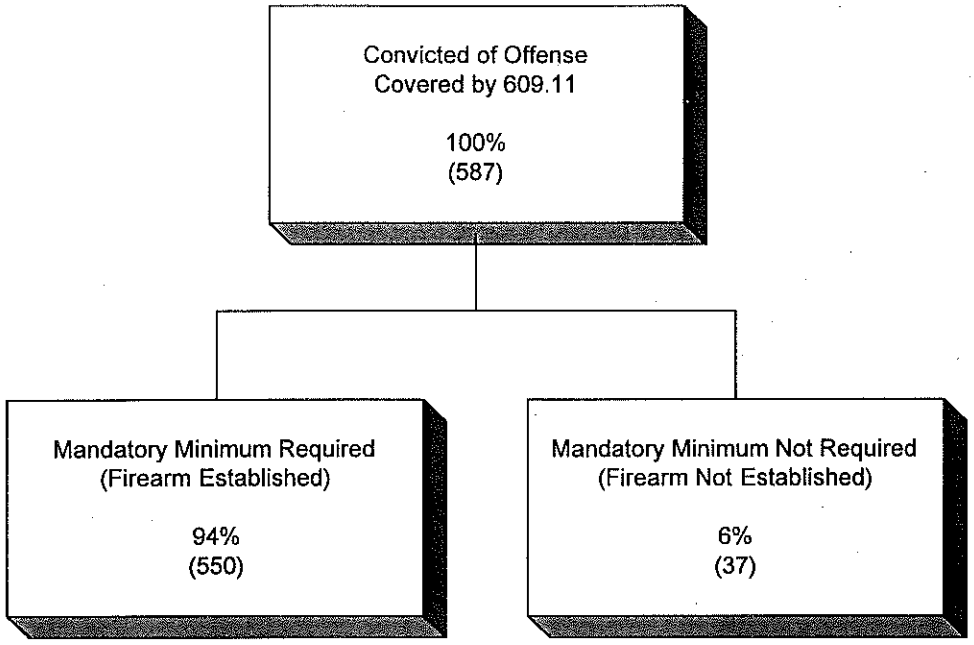
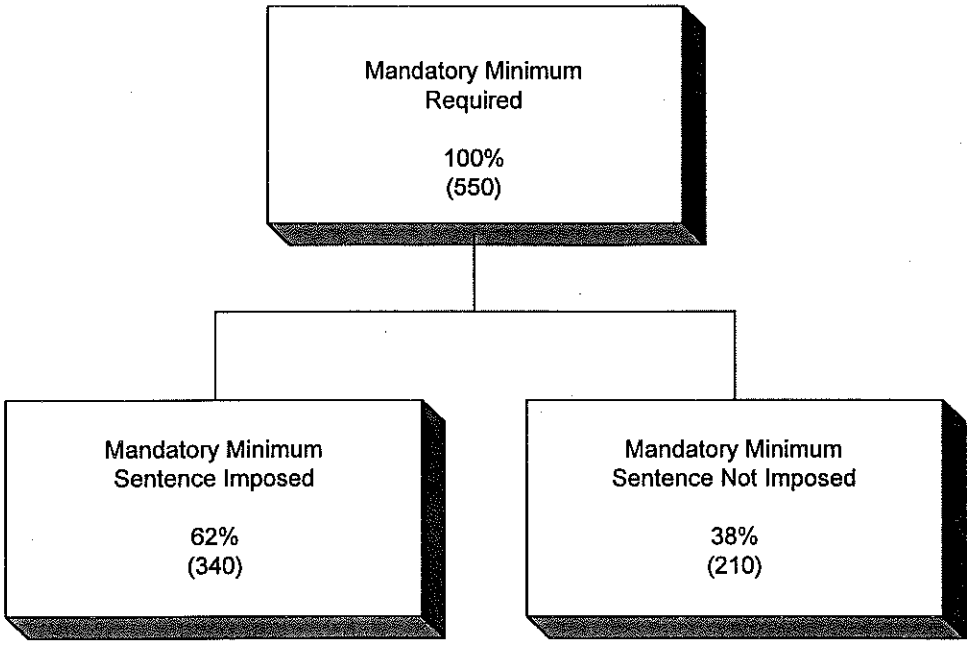


Figure 5 — Sentences for Cases Requiring Mandatory Minimum (Firearm Established on Record)



APPENDIX

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, 1997 to July 1, 1998

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Aitkin	4	0	4
Anoka	20	2	18
Becker	6	0	6
Beltrami	0	0	0
Benton	6	0	6
Big Stone	1	0	1
Blue Earth	5	2	3
Brown	1	0	1
Carlton	3	0	3
Carver	1	0	1
Cass	7	0	7
Chippewa	4	0	4
Chisago	6	1	5
Clay	7	0	7
Clearwater	3	0	3
Cook	1	0	1
Cottonwood	0	0	0
Crow Wing	8	0	8
Dakota	18	0	18
Dodge	0	0	0
Douglas	1	0	1
Faribault	4	0	4
Fillmore	1	0	1
Freeborn	0	0	0
Goodhue	7	0	7
Grant	1	0	1
Hennepin	411	0	411

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Houston	0	0	0
Hubbard	0	0	0
Isanti	2	0	2
Itasca	9	0	9
Jackson	2	0	2
Kanabec	2	0	2
Kandiyohi	8	0	8
Kittson	1	0	1
Koochiching	2	0	2
Lac Qui Parle	0	0	0
Lake	1	0	1
Lake of the Woods	0	0	0
LeSueur	0	0	0
Lincoln	0	0	0
Lyon	4	0	4
McLeod	2	0	2
Mahnomen	3	0	3
Marshall	0	0	0
Martin	0	0	0
Meeker	1	0	1
Mille Lacs	2	0	2
Morrison	2	0	2
Mower	3	0	3
Murray	3	0	3
Nicollet	2	0	2
Nobles	7	0	7
Norman	2	0	2
Olmsted	16	0	16
Otter Tail	5	0	5
Pennington	7	0	7
Pine	5	1	4
Pipestone	2	0	2
Polk	14	1	13
Pope	0	0	0
Ramsey	140	0	140

County	Total Number of Cases Where Reporting Is Required	Cases Not Charged	Cases Charged
Red Lake	3	0	3
Redwood	3	0	3
Renville	0	0	0
Rice	7	0	7
Rock	0	0	0
Roseau	2	0	2
St. Louis	44	6	38
Scott	1	0	1
Sherburne	3	0	3
Sibley	0	0	0
Stearns	15	0	15
Steele	3	2	1
Stevens	1	1	0
Swift	0	0	0
Todd	1	0	1
Traverse	0	0	0
Wabasha	1	0	1
Wadena	2	0	2
Waseca	0	0	0
Washington	15	0	15
Watonwan	3	0	3
Wilkin	0	0	0
Winona	10	0	10
Wright	6	0	6
Yellow Medicine	1	0	1
Total	**894**	**16**	**878**

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, 1997 to July 1, 1998

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	4	1	0	3	0	0	0
Anoka	18	6	0	10	0	2	0
Becker	6	5	0	1	0	0	0
Beltrami	0	0	0	0	0	0	0
Benton	6	1	0	5	0	0	0
Big Stone	1	0	0	1	0	0	0
Blue Earth	3	2	0	1	0	0	0
Brown	1	1	0	0	0	0	0
Carlton	3	2	0	1	0	0	0
Carver	1	0	0	1	0	0	0
Cass	7	2	0	5	0	0	0
Chippewa	4	1	2	1	0	0	0
Chisago	5	0	0	4	0	1	0
Clay	7	5	0	0	1	1	0
Clearwater	3	2	0	1	0	0	0
Cook	1	0	0	1	0	0	0
Cottonwood	0	0	0	0	0	0	0
Crow Wing	8	4	0	4	0	0	0
Dakota	18	15	0	3	0	0	0
Dodge	0	0	0	0	0	0	0
Douglas	1	1	0	0	0	0	0
Faribault	4	3	0	0	0	1	0
Fillmore	1	0	1	0	0	0	0
Freeborn	0	0	0	0	0	0	0
Goodhue	7	0	3	4	0	0	0
Grant	1	1	0	0	0	0	0
Hennepin	411	267	15	43	11	74	1
Houston	0	0	0	0	0	0	0
Hubbard	0	0	0	0	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	2	1	0	0	0	1	0
Itasca	9	4	0	5	0	0	0
Jackson	2	0	0	2	0	0	0
Kanabec	2	0	0	2	0	0	0
Kandiyohi	8	6	2	0	0	0	0
Kittson	1	0	0	1	0	0	0
Koochiching	2	0	2	0	0	0	0
Lac Qui Parle	0	0	0	0	0	0	0
Lake	1	0	0	0	0	0	1
Lake of the Woods	0	0	0	0	0	0	0
LeSueur	0	0	0	0	0	0	0
Lincoln	0	0	0	0	0	0	0
Lyon	4	3	0	1	0	0	0
McLeod	2	1	0	1	0	0	0
Mahnomen	3	0	1	2	0	0	0
Marshall	0	0	0	0	0	0	0
Martin	0	0	0	0	0	0	0
Meeker	1	0	0	1	0	0	0
Mille Lacs	2	1	1	0	0	0	0
Morrison	2	1	1	0	0	0	0
Mower	3	2	0	1	0	0	0
Murray	3	1	2	0	0	0	0
Nicollet	2	1	1	0	0	0	0
Nobles	7	0	1	5	0	1	0
Norman	2	2	0	0	0	0	0
Olmsted	16	9	0	1	0	6	0
Otter Tail	5	2	0	2	0	1	0
Pennington	7	4	0	1	0	0	2
Pine	4	3	0	0	0	1	0
Pipestone	2	0	2	0	0	0	0
Polk	13	9	2	1	1	0	0
Pope	0	0	0	0	0	0	0
Ramsey	140	118	0	5	3	14	0
Red Lake	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				
Redwood	3	1	0	2	0	0	0
Renville	0	0	0	0	0	0	0
Rice	7	1	0	6	0	0	0
Rock	0	0	0	0	0	0	0
Roseau	2	0	0	2	0	0	0
St. Louis	38	22	0	13	0	3	0
Scott	1	1	0	0	0	0	0
Sherburne	3	2	0	1	0	0	0
Sibley	0	0	0	0	0	0	0
Stearns	15	14	0	1	0	0	0
Steele	1	1	0	0	0	0	0
Stevens	0	0	0	0	0	0	0
Swift	0	0	0	0	0	0	0
Todd	1	1	0	0	0	0	0
Traverse	0	0	0	0	0	0	0
Wabasha	1	1	0	0	0	0	0
Wadena	2	1	0	0	0	1	0
Waseca	0	0	0	0	0	0	0
Washington	15	7	0	3	0	5	0
Watonwan	3	0	0	2	1	0	0
Wilkin	0	0	0	0	0	0	0
Winona	10	6	1	3	0	0	0
Wright	6	2	0	4	0	0	0
Yellow Medicine	1	1	0	0	0	0	0
Total	**878**	**550**	**37**	**158**	**17**	**112**	**4**

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, 1997 to July 1, 1998

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Not Imposed
Aitkin	1	0	1
Anoka	6	3	3
Becker	5	5	0
Beltrami	0	0	0
Benton	1	1	0
Big Stone	0	0	0
Blue Earth	2	2	0
Brown	1	0	1
Carlton	2	2	0
Carver	0	0	0
Cass	2	2	0
Chippewa	1	0	1
Chisago	0	0	0
Clay	5	4	1
Clearwater	2	2	0
Cook	0	0	0
Cottonwood	0	0	0
Crow Wing	4	1	3
Dakota	15	13	2
Dodge	0	0	0
Douglas	1	0	1
Faribault	3	1	2
Fillmore	0	0	0
Freeborn	0	0	0
Goodhue	0	0	0
Grant	1	0	1
Hennepin	267	158	109
Houston	0	0	0
Hubbard	0	0	0
Isanti	1	0	1

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Not Imposed
Itasca	4	1	3
Jackson	0	0	0
Kanabec	0	0	0
Kandiyohi	6	6	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	3	3	0
McLeod	1	0	1
Mahnomen	0	0	0
Marshall	0	0	0
Martin	0	0	0
Meeker	0	0	0
Mille Lacs	1	1	0
Morrison	1	1	0
Mower	2	2	0
Murray	1	0	1
Nicollet	1	1	0
Nobles	0	0	0
Norman	2	1	1
Olmsted	9	8	1
Otter Tail	2	1	1
Pennington	4	4	0
Pine	3	3	0
Pipestone	0	0	0
Polk	9	1	8
Pope	0	0	0
Ramsey	118	86	32
Red Lake	2	2	0

County	Number of Cases Where Mandatory Minimum Required	Mandatory Minimum Sentence Imposed	Mandatory Minimum Sentence Not Imposed
Redwood	1	1	0
Renville	0	0	0
Rice	1	1	0
Rock	0	0	0
Roseau	0	0	0
St. Louis	22	5	17
Scott	1	0	1
Sherburne	2	2	0
Sibley	0	0	0
Stearns	14	8	6
Steele	1	0	1
Stevens	0	0	0
Swift	0	0	0
Todd	1	0	1
Traverse	0	0	0
Wabasha	1	1	0
Wadena	1	0	1
Waseca	0	0	0
Washington	7	3	4
Watonwan	0	0	0
Wilkin	0	0	0
Winona	6	4	2
Wright	2	0	2
Yellow Medicine	1	0	1
Total	**550**	**340**	**210**