

SENTENCING PRACTICES: DRUG OFFENDERS SENTENCED IN 1997

There were 2,127 offenders sentenced for felony level drug offenses in 1997. This was a 25% increase over the number sentenced in 1996. While increases were observed in most areas of the state, the increase in the number of cases was particularly striking in Hennepin County which instituted a Drug Court in 1997. The number of drug offenses sentenced in Hennepin County in 1997 increased by 57% and this accounted for 58% of the statewide increase in the volume of cases sentenced.

The number of offenders sentenced for drug offenses increased 163% between 1981 and 1997. African Americans are the racial group for whom drug offenses have increased the most. Since 1987, the number of whites sentenced for drug offenses increased by 66% while the number of African Americans sentenced increased by 1,004%. In 1997, the number of white offenders sentenced for drug offenses increased by 21% as compared to 1996 while the number of African American offenders sentenced increased by 37%.

Half of the drug cases sentenced in 1997 were for cocaine. Over 70% of the cocaine cases were for crack cocaine. Between 1988 and 1994, marijuana cases had accounted for approximately 30% of the drug cases sentenced each year, but in 1995 marijuana accounted for only 21% of the cases and in 1997 it accounted for 20% of the cases. In the early 90's, the percent of cases sentenced that were for amphetamines ranged from 5-8%. In 1995 this percentage rose to 16%, with the increase being particularly noticeable in Ramsey County. In 1997, there was a further rise in the percent of cases that were for amphetamines and that drug now makes up 18% of the cases.

African Americans accounted for 65% of the cocaine cases sentenced, while 66% of the offenders sentenced for marijuana offenses were white. Overall, 38% of the drug offenders sentenced in 1997 were African Americans as compared to 26% of offenders sentenced for other types of offenses.

In 1997, 89% of drug offenders received sentences which included incarceration in a state prison or local jail. The average pronounced prison sentence was 42 months and the average pronounced period of local incarceration was 105 days. Departure rates for drug cases increased over those observed in 1996. The mitigated dispositional departure rate for presumptive commits increased from 47% to 55%. The mitigated durational departure rate for executed sentences increased from 31% to 36%.

As compared to other types of offenders, drug offenders tend to be slightly older, a higher percentage are male, and a higher percentage are minorities, particularly African Americans. Drug offenses are more concentrated in Hennepin and Ramsey counties than are other types of offenses.

Drug offenders are somewhat more likely than other offenders to have a prior felony conviction, particularly a prior drug conviction. Among the drug offenders, those convicted of the less serious offenses (fifth degree and sale of a simulated controlled substance) are more likely to have a prior felony conviction than those convicted of the first, second or third degree offenses.

This report summarizes the statutes and sentencing policies dealing with drug offenses, and contains information on case volume, offenses and offender characteristics, and sentencing practices.

DRUG OFFENSE STATUTES: GENERAL STRUCTURE

Under Minnesota law, most felony level drug offenses are categorized into five degrees, with first degree being the most serious. This basic structure has been in effect since August 1, 1989, and applies to offenses committed on or after that date. Since January of 1992, the same penalty thresholds for drug amounts have applied to crack and powder cocaine offenses.

The classification of offenses into degrees is based on a combination of factors:

- the type of drug involved;
- the amount of drug involved;
- whether the offense involved possession of drugs or sale/possession with intent to sell

In addition to the First through Fifth Degree offenses, there are two other felony level drug offenses: Importing Controlled Substances Across State Borders and Sale of a Simulated Controlled Substance.

A table that lists the specific provisions for each Drug Degree is included at the end of this report.

SENTENCING POLICY

Minnesota adopted a sentencing guidelines system effective May 1, 1980, in an effort to create a more uniform and determinate sentencing system. The guidelines provide a structure for district courts to use in sentencing people convicted of felony level offenses.

The guidelines recommend sentences for the typical case based on the severity of the offense of conviction and the offender's criminal record. Judges may depart from the recommended sentence if the circumstances of a case are substantial and compelling. The court must provide reasons for the departure. Both the prosecution and the defense may appeal the pronounced sentence.

Regardless of whether the judge follows the guidelines, the sentence is fixed. An offender who is sentenced to prison will serve a term of imprisonment equal to two-thirds of the pronounced executed sentence. The remaining one-third of the sentence will be served on supervised release. The actual time the offender is incarcerated may be increased (up to the total sentence) if the offender violates disciplinary rules.

A more detailed explanation of how the sentencing guidelines work is included at the end of this report.

SENTENCING GUIDELINES FOR DRUG OFFENDERS

All First Degree Controlled Substance Offenses and Importing Controlled Substances Across State Borders are ranked at severity level VIII and are recommended prison, regardless of the offender's criminal history score. The length of the recommended sentence ranges from 86 months at a history score of zero to 158 months at a score of six.

All Second Degree Offenses are ranked at severity level VII and are recommended prison regardless of the offender's criminal history score. The length of the recommended sentence ranges from 48 months at a history score of zero to 108 months at a score of six.

Most Third Degree offenses are ranked at severity level VI. At this severity level, offenders with a criminal history score of 3 or more are recommended imprisonment. The presumptive disposition for offenders with a criminal history score of less than 3 is probation, unless they have a prior conviction for a felony level

drug offense. Those with prior convictions are recommended imprisonment, regardless of their criminal history score.

All Fourth Degree offenses are ranked at severity level IV, all Fifth Degree offenses are ranked at severity level II and Sale of a Simulated Controlled Substance is ranked at severity level I. At these severity levels, the presumptive disposition (whether the offender is recommended imprisonment or a stayed sentence) is dependent on the offender's criminal history score. The Sentencing Guidelines Grid is included at the end of this report.

In addition to the sentencing guidelines, there are also some statutory provisions which directly affect the sentencing of drug offenders.

MANDATORY MINIMUM SENTENCES

The following mandatory minimums exist in statute:

- **Mandatory Minimums for Second or Subsequent Controlled Substance Offenses:**
 - First Degree 4 years
 - Second Degree 3 years
 - Third Degree 2 years
 - Fourth Degree 1 year
 - Fifth Degree 6 months
- **Controlled Substance offenses committed while using or possessing a dangerous weapon are subject to the mandatory sentencing provisions of M. S. § 609.11:**
 - Possession or use of firearm - 36 months
 - Use of other dangerous weapon - 1 yr & 1 day
 - Second or subsequent controlled substance offense committed while using or possessing a dangerous weapon - mandatory minimums are to be consecutive

When a mandatory minimum prison term of a year and a day or greater applies, the recommended disposition under the sentencing guidelines is always prison; the recommended duration is the mandatory minimum or the time on the sentencing grid, whichever is greater. For most offenses involving second or subsequent drug offenses, the recommended sentence under the guidelines is greater than the mandatory minimum provided in statute.

When a mandatory term of less than a year and a day applies, the Commission interprets the minimum to mean any incarceration including time spent in local confinement as a condition of a stayed sentence. The presumptive disposition would not be commitment to a state prison unless the case falls above the dispositional line on the Sentencing Guidelines Grid.

VOLUME OF CASES

There were 2,127 offenders sentenced for felony level drug offenses in 1997, an increase of 25% over the number sentenced in 1996. This was the largest single year increase in the number of offenders sentenced for drug offenses since 1989. This number has increased 163% since 1981, 178% since 1987, and 17% since 1990. The graph on page 4 presents information on the number of drug offenders sentenced since 1981

Increases in the number of offenders sentenced for drug offenses between 1996 and 1997 were observed in most areas of the state, but the increase was most dramatic in Hennepin County which instituted a Drug Court in 1997.

Statewide, there were 432 more offenders sentenced for drug offenses in 1997 than in 1996. In Hennepin County the number increased by 252. Therefore Hennepin County accounts for 58% of the statewide increase in the number of cases sentenced. The table below displays the number of offenders sentenced for drug offenses in 1996 and 1997 and the percent change by region.

Volume of Cases Sentenced and Percent Change 1996-1997 - By Region

Region	1996	1997	% Change
Hennepin	438	690	57.5%
Ramsey	434	510	17.5%
Other Metro Counties	236	267	13.1%
Rest of State	587	660	12.4%
Total	1,695	2,127	25.5%

The increase in the volume of cases sentenced in the last decade, to some extent, is explained by increases in arrests for drug offenses. Unfortunately, accurate data on the number of adult offenders arrested is not available for the years 1983-1989. The data for those years understates the number of arrests made in Hennepin County. Since 1990, arrests have increased 123%. The graphs on page 5 show the increase in arrests and cases sentenced since 1990. Although the exact number of adults arrested in the years 1987, 1988, and 1989 is not available, the information that is available shows that arrests rose in each of those years. The number of offenders sentenced rose sharply in every year from 1987-1990. Since 1990, the number

of offenders arrested increased in every year except 1991, whereas there were only minor fluctuations in the number of cases sentenced with decreases in some years. The number of adults arrested for drug offenses increased between 1996 and 1997, but not as dramatically as the number sentenced. The increase in arrests was 18.5%

GEOGRAPHIC DISTRIBUTION

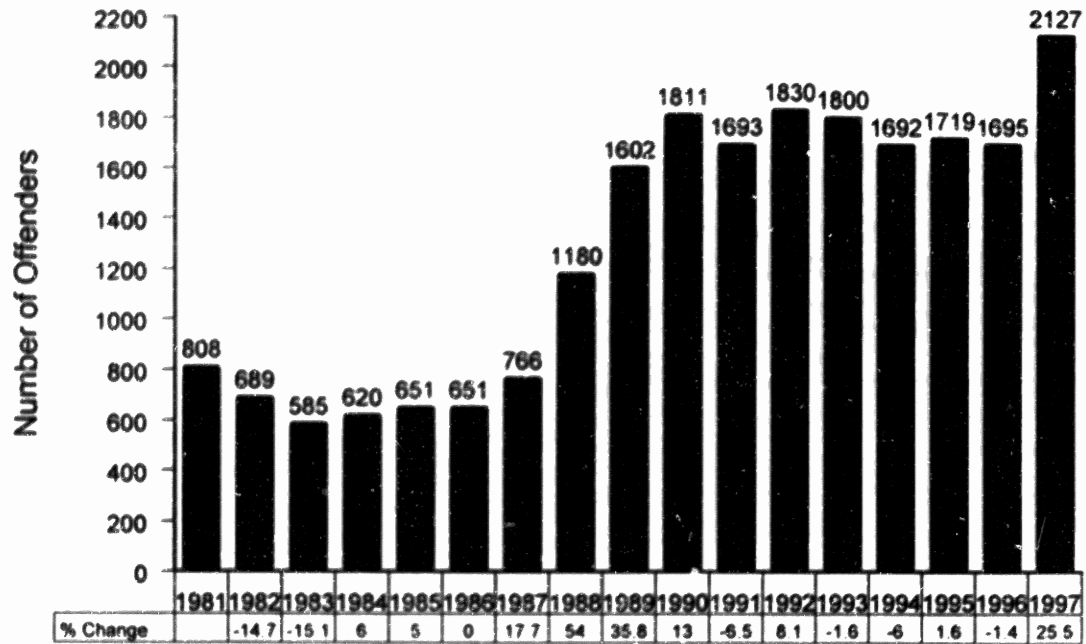
Drug offense cases are more concentrated in Hennepin and Ramsey County (the Fourth and Second Judicial Districts) than are other offenses. This is especially true for cocaine offenses. Fifty-six percent of the drug cases sentenced in 1997 were sentenced in Hennepin and Ramsey counties compared with 38% of the other types of cases. Among the drug cases, 78% of all cocaine cases and 94% of the crack cocaine cases were sentenced in those two counties.

The table below displays the number and percentage of drug offense cases sentenced in each judicial district. For purposes of comparison, the figures for other offenses are also included.

Distribution of Cases by Judicial District

Judicial District	Drug Offenses	Other Offenses
1 (953)	6% (131)	11% (822)
2 (1,647)	24% (510)	15% (1,137)
3 (526)	3% (69)	6% (457)
4 (2,449)	32% (690)	23% (1,759)
5 (424)	3% (60)	5% (364)
6 (577)	6% (122)	6% (455)
7 (897)	6% (126)	10% (771)
8 (234)	2% (50)	2% (184)
9 (750)	6% (129)	8% (621)
10 (1,390)	11% (240)	15% (1,150)
All (9,847)	100% (2,127)	100% (7,720)

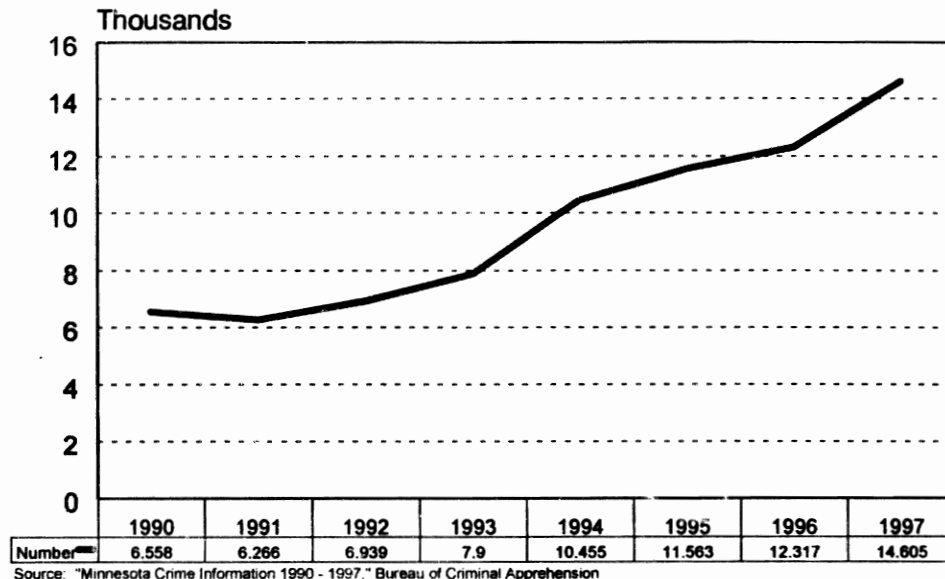
Number of Offenders Sentenced For Felony Drug Convictions, With % Change 1981 - 1997



Source MSGC Monitoring System

Number of Adults Arrested for Drug Offenses in Minnesota

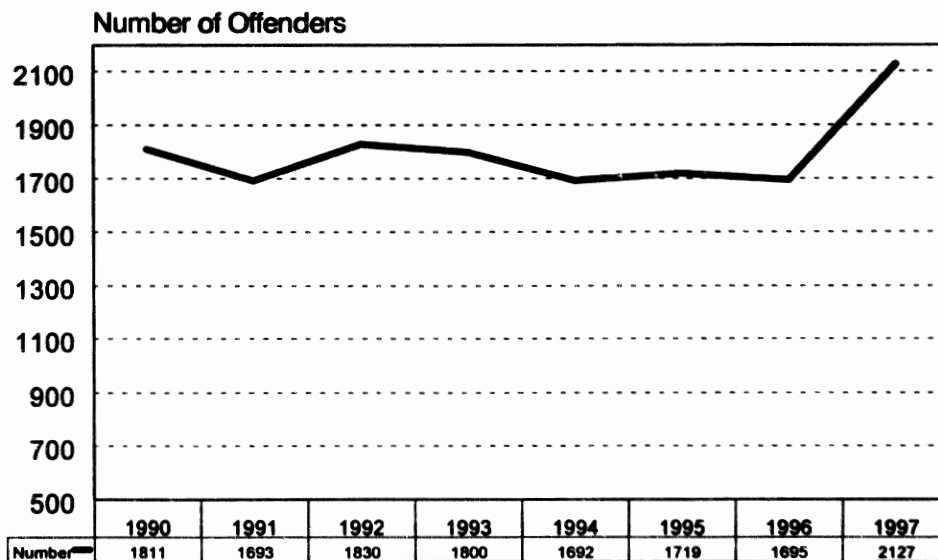
1990-1997



Source: "Minnesota Crime Information 1990 - 1997," Bureau of Criminal Apprehension

Number of Adults Sentenced for Drug Offenses in Minnesota

1990-1997



Source: MSGC Monitoring Data

OFFENSE CHARACTERISTICS

DRUG TYPE

Half the drug cases sentenced in 1997 were cocaine cases. The table below displays the number of cases sentenced by drug type for selected years since 1988. Since 1989, the percent of cases that were cocaine has been fluctuating at around 50% and the percent that were marijuana, until 1995, had hovered at 30%. In 1995, the percent of cases that are marijuana declined to 21% and the percent of cases that were amphetamines increased to 16%, the first time such a level was seen. In 1997 18% of the cases sentenced were for amphetamines. Since 1990 the number of amphetamine cases sentenced has increased by more than 300%.

Cocaine accounted for 80% of the more serious cases sentenced in 1997. Cocaine was the drug type for 83% of the First Degree Cases, 80% of the Second Degree cases and 78% of the Third Degree cases.

While the percent of drug cases that were cocaine has remained fairly stable since 1989, the breakdown of cocaine cases between crack and powder has changed dramatically. In 1988, 20% of the cocaine cases were crack. By 1997, 71% of the cocaine cases were crack.

While state wide information on drug type is not available for the years 1991-1993, information is available for cases sentenced in Hennepin and Ramsey counties in 1991 and 1992. The tables on pages 8 and 9 display information on drug type for cases sentenced in those two counties since 1988 for every year except 1993.

This data shows that in these two counties by 1988 cocaine accounted for more than half of the cases sentenced and the percent that are cocaine has grown since then to over 70% of the cases by 1992. In Hennepin County in 1996 and 1997 the percent of sentenced drug cases that were for cocaine climbed to 78%. In Ramsey County the percent of drug cases that were cocaine cases reached a high of 76% in 1992, but since then, this percentage has been declining because of a sharp increase in the number of amphetamine cases sentenced. The actual number of cocaine cases sentenced in Ramsey County decreased for the first time in 1996 and rose slightly in 1997.

Before 1997, the number of drug cases sentenced in Hennepin County peaked in 1992 and had been declining since then. In 1996 there was a slight increase. In 1994 and 1995, more drug cases were sentenced in Ramsey County than in Hennepin County. In 1996, the number of cases sentenced in these two counties was almost identical. While there were increases in the number of drug cases sentenced in both counties in 1997, the increase in Hennepin (58%) was far greater than the increase in Ramsey (18%).

In both of these counties there has been a marked change in the distribution of cocaine cases between powder and crack. In 1988 approximately 30% of the cocaine cases were crack and by 1994, 80% of the cases were crack. In Hennepin County in 1996, 92% of the cocaine cases sentenced were crack cases. In 1997 in Hennepin County, the percentage of cocaine cases that were crack decreased to 87%.

**Distribution of Cases by Drug Type
State Wide - Selected Years**

	1988	1989	1990	1994	1995	1996	1997
Cocaine	44% (524)	52% (831)	49% (893)	49% (823)	52% (884)	48% (812)	50% (1071)
Marijuana	31% (365)	31% (497)	31% (564)	30% (509)	21% (355)	24% (412)	20% (432)
Amphet.	7% (84)	6% (89)	5% (95)	5% (95)	16% (276)	14% (236)	18% (381)
Halluc.	4% (47)	5% (73)	5% (92)	4% (66)	3% (45)	3% (53)	3% (61)
Other	7% (87)	7% (109)	9% (166)	5% (89)	6% (103)	5% (90)	5% (114)
Unknown	6% (73)	0% (3)	0% (1)	5% (78)	3% (55)	5% (92)	3% (68)
Total	100% 1,180	100% 1,602	100% 1,811	100% 1,692	100% 1,718	100% 1,695	100% 2,127

**Distribution of Cases by Drug Type
Hennepin County - Selected Years**

Drug Type	1988	1989	1990	1991	1992	1994	1995	1996	1997
Cocaine	60% (197)	69% (304)	70% (356)	67% (305)	72% (397)	70% (313)	77% (322)	78% (340)	78% (537)
Marijuana	18% (60)	15% (67)	14% (71)	16% (75)	13% (73)	13% (56)	7% (31)	5% (20)	6% (44)
Amphet.	4% (12)	2% (8)	1% (4)	1% (4)	2% (11)	0% (1)	2% (8)	0.5% (2)	4% (29)
Halluc.	5% (15)	3% (11)	4% (21)	5% (24)	5% (30)	2% (9)	1% (6)	1.0% (6)	1% (8)
Other	10% (31)	11% (48)	11% (56)	11% (50)	8% (44)	4% (17)	6% (24)	4% (16)	6% (38)
Unknown	3% (11)	-- (0)	0% (1)	-- (0)	-- (0)	11% (50)	6% (26)	12.3% (54)	5% (34)
Total	100% (326)	100% (438)	100% (509)	100% (458)	100% (555)	100% (446)	100% (417)	100% (438)	100% (690)

**Distribution of Cases by Drug Type
Ramsey County - Selected Years**

Drug Type	1988	1989	1990	1991	1992	1994	1995	1996	1997
Cocaine	63% (135)	74% (231)	68% (179)	71% (252)	76% (324)	76% (324)	63% (377)	63% (273)	58% (298)
Marijuana	16% (34)	10% (30)	12% (50)	14% (49)	11% (48)	11% (48)	10% (58)	13% (58)	12% (60)
Amphet.	14% (31)	8% (26)	9% (36)	6% (22)	3% (13)	10% (48)	20% (116)	17% (75)	21% (107)
Halluc.	2% (5)	2% (5)	2% (6)	2% (7)	2% (8)	1% (4)	1% (4)	1% (3)	2% (11)
Other	5% (11)	6% (19)	10% (41)	7% (23)	8% (33)	6% (29)	6% (37)	5% (21)	3% (30)
Unknown	-- (0)	-- (0)	-- (0)	-- (0)	-- (0)	0% (2)	1% (4)	1% (4)	1% (4)
Total	100% (216)	100% (311)	100% (412)	100% (353)	100% (426)	100% (481)	100% (596)	100% (434)	100% (510)

**Distribution of Cocaine Cases by Cocaine Type
State Wide - Selected Years**

	1988	1989	1990	1994	1995	1996	1997
Powder	81% (423)	74% (613)	65% (580)	31% (256)	29% (259)	27% (219)	28% (298)
Crack	19% (101)	26% (218)	35% (313)	67% (548)	69% (612)	71% (580)	71% (761)
Unknown	-- (0)	-- (0)	-- (0)	2% (19)	2% (13)	1.6% (13)	1.1% (12)

**Distribution of Cocaine Cases by Cocaine Type
Hennepin County - Selected Years**

	1989	1988	1990	1991	1992	1994	1995	1996	1997
Powder	69% (135)	57% (174)	50% (177)	42% (128)	33% (129)	15% (46)	10% (32)	4% (13)	11% (60)
Crack	31% (62)	43% (130)	50% (179)	58% (177)	67% (268)	80% (250)	86% (278)	92% (314)	87% (467)
Cocaine Type Unk.	-- (0)	-- (0)	-- (0)	-- (0)	-- (0)	5% (17)	4% (12)	4% (13)	2% (10)

**Distribution of Cocaine Cases by Cocaine Type
Ramsey County - Selected Years**

	1988	1989	1990	1991	1992	1994	1995	1996	1997
Powder	71% (96)	62% (143)	55% (154)	43% (109)	29% (93)	20% (70)	20% (76)	17% (46)	17% (52)
Crack	29% (39)	38% (88)	45% (125)	54% (137)	69% (222)	80% (276)	80% (301)	83% (227)	83% (246)
Cocaine Type Unk.	-- (0)	-- (0)	-- (0)	2% (6)	3% (9)	-- (0)	-- (0)	-- (0)	-- (0)

OFFENSE TYPE AND DEGREE LEVEL

Most felony level drug offenses are categorized into five degrees. The following table displays the number of cases sentenced in 1997 for each degree and whether the offense was possession or sale. Cases involving possession with intent to sell are, by statutory definition, categorized with the sale offenses. In 1997, there was one case of Importing a Controlled Substance Across State Borders. This case is included with the First Degree offenses because, by statutory definition, it involves drug amounts that conform with those applicable to the First Degree offenses, and are ranked at the same severity level as the First Degree offenses. There were also 27 cases sentenced in 1997 that involved Sale of a Simulated Controlled Substance. These offenses are ranked at severity level I and are excluded from the following table.

Distribution of Cases by Degree Level and Offense Type

Degree	Sale	Possession	Percent of all Drug Cases
First (179)	64% (115)	36% (64)	8.4% (179)
Second (179)	42% (75)	58% (104)	8.4% (179)
Third (283)	52% (146)	48% (137)	13.3% (283)
Fourth (137)	60% (82)	40% (55)	6.4% (137)
Fifth (1,321)	15% (194)	85% (1,127)	62.1% (1,321)

Over 60% of the cases involve Fifth Degree offenses, the least serious of the five Degrees. At the first, third and fourth degree level offenses, more of the cases involve sale offenses.

OFFENDER CHARACTERISTICS

In comparison to other offenders, people convicted of drug offenses tend to be slightly older, a higher percentage are males, and a much higher percentage are minorities.

AGE AND SEX

The average age of all felony offenders sentenced in 1997 was 28. The average age of offenders convicted of a drug offense was not much different (30 years). However, as shown in the table below, when compared

to offenders in other offense groups, a smaller percentage were under 21 when they committed their offense.

Drug offenders are similar to person offenders in the proportion that are over 30 at the time of offense. A smaller percentage of property offenders were over the age of 30 at the time they committed their offense.

Age at Time of Offense by Offense Type

	Drug	Property	Person	Other
Av. Age	29.5	27.5	29.4	28.0
Under 21	16%	30%	24%	24%
Over 30	43%	34%	41%	32%
50 or Older	2%	2%	4%	2%

In 1997, 84% of drug offenders were male, as compared to 81% of offenders sentenced for other offenses. A higher proportion of drug offenders than property offenders were male, while a smaller proportion of drug offenders than person offenders were male.

Distribution of Cases by Sex and Offense Type

	Drug	Property	Person	Other
Male	84%	74%	93%	92%
Female	16%	26%	7%	8%

RACE

Half of the offenders sentenced for drug offenses in 1997 were minorities, whereas 62% of the offenders sentenced for other offenses were white. The greatest difference is in the percent of offenders who were African Americans: 38% of the drug offenders and 26% of offenders sentenced for other offenses.

Distribution of Cases by Race

	Drug	Property	Person	Other
White	50%	67%	54%	49%
Af. Am.	38%	23%	29%	38%
Nat. Am.	3%	5%	8%	8%
Hispanic	8%	3%	7%	3%
Asian	0.5%	2%	2%	2%
Other	0.5%	0.5%	0.5%	0.2%

The graphs on the following page display the number of drug offenders arrested and sentenced each year by racial group. While the number of white offenders sentenced has declined since 1990, the number sentenced has increased for every other racial group. There has been an increase of 69% in the number of African Americans sentenced for drug offenses since 1990. The increase since 1987 is even more dramatic. During the last decade, the number of whites sentenced for drug offenses has increased by 66% while the number of African Americans has increased 1,004%.

This discrepancy is only partially explained by different rates of increase in arrests. Since 1990, the number of whites arrested for drug offenses increased 128% while the number of African Americans arrested increased 138%. The number of white offenders sentenced for drug offenses had declined every year between 1990 and 1995, but the number of white offenders arrested for drug offenses has been increasing since 1991. For African Americans, the number of offenders arrested and sentenced has increased in most years since 1991. However, from 1994 to 1995, the number of African Americans arrested decreased and the number sentenced increased. The number of black offenders arrested for drug offenses in 1996 was virtually identical to the number arrested in 1995, but the number of black offenders sentenced for drug offenses declined. For whites, the number of offenders arrested in 1996 was higher than the number arrested in 1995, and for the first time since 1990, the number of offenders sentenced increased.

In 1997, the number of offenders arrested for drug offenses increased for both whites and blacks, as did the number of offenders sentenced for drug offenses. However while the rates of increase for arrests and sentencings were similar for whites, for blacks the increase in sentencings was much larger than the increase in arrests.

Arrests and Volume of Cases Sentenced

		1996	1997	%Change
Arrest	White	8,807	10,816	22.8%
	Black	3,048	3,203	5.1%
Sent	White	881	1,069	21.3%
	Black	590	806	36.6%

There are time lapses between when an offender is arrested and when they are sentenced which may explain some of these discrepancies, but given the trends over the last four years, it seems possible that a higher percentage of white offenders are being

directed to diversion programs. In 1993, the Legislature passed a bill which directed County Attorneys in community corrections act counties to establish pretrial diversion programs for adults by July 1, 1994. Offenders are eligible for the programs authorized under this law (M.S. §401.065) if they have not been charged with or previously been convicted of a person offense. While the number and capacity of diversion programs has grown in recent years, there is no state wide data available on the number or racial makeup of offenders entering such programs.

While 38% of all drug offenders are African Americans, an even higher percentage of the offenders at the three most serious degrees are African Americans.

Distribution of Cases by Degree Level and Race

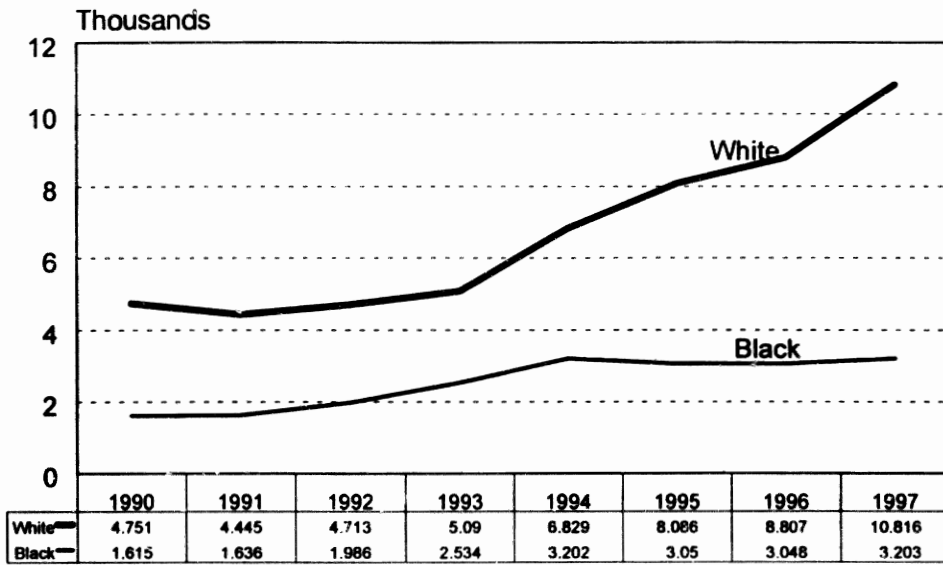
Deg	White	A.A.	N.A.	Hisp	Asian	Other
First (179)	36% (65)	44% (79)	(0)	17% (31)	2% (3)	0.6% (1)
Sec. (179)	32% (58)	53% (94)	1% (2)	14% (25)	(0)	(0)
Third (283)	27% (76)	60% (169)	1% (2)	12% (34)	0.5% (1)	0.5% (1)
Fourth (137)	67% (92)	21% (29)	4% (5)	8% (11)	(0)	(0)
Fifth (1,321)	59% (774)	31% (412)	4% (55)	5% (69)	0.5% (4)	0.5% (7)

Eighty-seven percent of the African Americans sentenced for drug offenses in 1997 were sentenced for cocaine offenses while only 26% of the white offenders were sentenced for cocaine offenses. African Americans make up 65% the cocaine offenders sentenced. The following table shows the distribution of cases by race for each drug type.

Distribution of Cases by Drug Type and Race

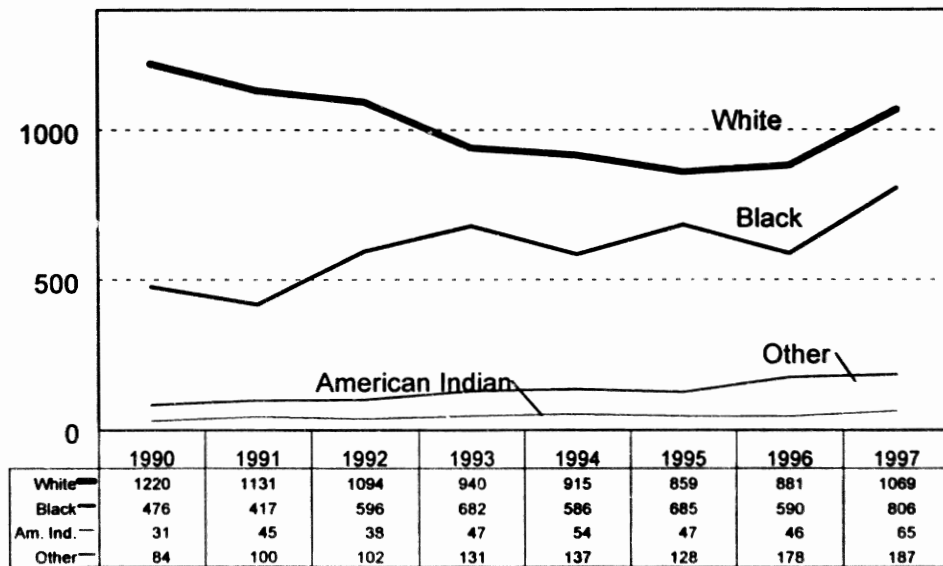
Type	Wh.	A.A.	N.A.	Hisp	Asian	Other
Cocaine (1,071)	26% (276)	65% (699)	2% (16)	7% (77)	0.1% (1)	0.2% (2)
MJ (432)	66% (286)	12% (52)	7% (30)	14% (59)	0.2% (1)	1% (4)
Amphet (381)	92% (351)	1% (3)	2% (9)	4% (16)	0.5% (1)	0.5% (1)
Halluc (61)	92% (56)	(0)	5% (3)	2% (1)	(0)	2% (1)
Other (114)	37% (42)	41% (47)	3% (3)	14% (16)	4% (5)	1% (1)
Unk. (68)	85% (58)	7% (5)	6% (4)	2% (1)	(0)	(1)
Total 2,127	50% 1069	38% 806	3% 65	8% 170	0.5% 8	0.5% 9

Number of Adults Arrested for Drug Offenses in Minnesota by Race 1990-1997



Source: "Minnesota Crime Information 1990 - 1997." Bureau of Criminal Apprehension

Number of Adults Sentenced for Drug Offenses in Minnesota by Race 1990-1997



Source: MSG Monitoring Data

PRIOR RECORD

Slightly over half of the offenders sentenced for felony level drug offenses had a prior felony offense listed on their worksheet. Thirty percent had a prior felony drug offense listed. The figures do vary by the degree of drug offense. Those sentenced for Fifth Degree offenses and Sale of a Simulated Controlled Substance were more likely to have a prior felony offense of any type including a prior felony drug offense.

**Distribution of Cases by Type of Prior Record
Drug Offenses by Degree**

Degree	Number Of Cases	Percent with No Prior Drug Offenses	Percent with No Prior Felony Offenses
First	179	78%	65%
Second	179	76%	56%
Third	283	67%	46%
Fourth	9137	75%	54%
Fifth	1,321	69%	43%
Sale Sim.	27	52%	19%
All Drug Offenses	2,127	70%	47%

Drug offenders were more likely than other offenders to have a prior felony offense. Among offenders sentenced for all other types of offenses, 91% had no prior drug offenses and 55% had no prior offenses of any type.

The following table displays the percent of offenders who had no prior offenses by offense type. Offenders convicted of offenses in the "Other" category were the most likely to have a prior felony conviction and the percentages of drug and property offenders who had prior felony convictions is very close.

**Distribution of Cases by Type of Prior Record
and Offense Type**

Offense Type	Number Of Cases	Percent with No Prior Drug Offenses	Percent with No Prior Felony Offenses
Drug	2,127	70%	47%
Property	4,651	91%	53%
Person	2,543	93%	62%
Other	526	81%	40%
Total	9,847	86%	54%

SENTENCING PRACTICES

Incarceration Rates

Eighty-nine percent of the drug offenders sentenced in 1997 received a sentence that included incarceration, 16% in a state prison and 73% in a local jail or workhouse. For cocaine offenders, the imprisonment rate was 20%.

The following tables display incarceration rates for drug offenses sentenced in 1997 by degree for all drug offenders and for those who had a prior felony drug conviction.

For offenders who had a prior felony drug offense, the total incarceration rate was 93% with 24% receiving a prison sentence and 68% getting pronounced jail time as a condition of probation. Twenty-seven percent of cocaine offenders who had a prior felony drug offense were sentenced to state prison.

Incarceration Rates by Degree

Degree	State Prison	Local Jail Pronounced	Total Incarceration
First (179)	46% (83)	49% (87)	95% (170)
Second (179)	39% (70)	54% (97)	93% (167)
Third (283)	23% (66)	65% (184)	88% (250)
Fourth (137)	14% (19)	80% (110)	94% (129)
Fifth (1,321)	8% (106)	80% (1,055)	88% (1,161)
Sale Sim. Sub (27)	7% (2)	85% (23)	93% (25)
All Drug Offenses (2,127)	16% (341)	73% (1,556)	89% (1,902)

**Incarceration Rates by Degree
Drug Offenders Who had a Prior Felony Drug Offense**

Degree	State Prison	Local Jail Pronounced	Total Incarceration
First (40)	65% (26)	25% (10)	90% (36)
Second (43)	58% (25)	37% (16)	95% (41)
Third (93)	48% (45)	52% (48)	100% (93)
Fourth (34)	27% (9)	74% (25)	100% (34)
Fifth (414)	12% (48)	79% (328)	91% (376)
Sale Sim. (13)	15% (2)	69% (9)	85% (11)
All Drug Offenses (637)	24% (155)	68% (436)	93% (591)

Average Durations

The average pronounced prison sentence for drug offenders sentenced in 1997 was 42 months. The average pronounced period of conditional confinement was 105 days.

The tables below display the average pronounced prison sentence and period of local incarceration by degree.

Average Pronounced Prison Sentence by Degree

Degree	Number of Cases	Average Pronounced Prison Sentence
First	83	75 months
Second	70	55 months
Third	66	33 months
Fourth	19	24 months
Fifth	106	17 months
Sale Sim.	2	16 months
All Drug Offenses	346	42 months

Average Pronounced Local Confinement by Degree

Degree	Number of Cases	Average Pronounced Local Confinement
First	87	303 days
Second	97	217 days
Third	184	127 days
Fourth	110	115 days
Fifth	1,055	74 days
Sale Sim.	23	59 days
All Drug Offenses	1,556	105 days

Departures

Aggravated dispositional departures occur when the guidelines recommend a stayed sentence and the judge decides to pronounce a prison sentence. There were very few aggravated dispositional departures for the drug cases sentenced in 1997, (4% of the cases) and of those, 72% occurred as a result of a request by, or the agreement of, the offender.

Mitigated dispositional departures occur when the guidelines recommend prison and instead, intermediate sanctions (probation, local incarceration, community work, treatment, financial sanctions, etc.) are imposed.

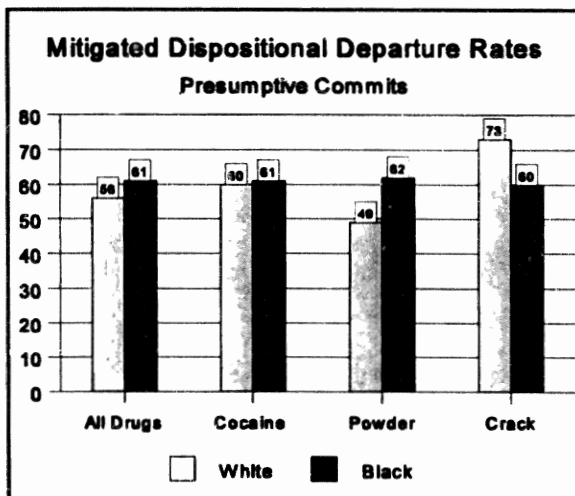
In 1997, 15% of the drug cases involved a mitigated dispositional departure. Of those cases for which the guidelines recommend prison (presumptive commits) the mitigated dispositional departure rate was 55%. This is an increase over the 1996 rate which was 47%. The table below displays the mitigated dispositional departure rates by degree. The presumptive disposition is imprisonment for all first and second degree offenses. The mitigated dispositional departure rate for First Degree offenses was unchanged from the rate observed 1996. For all other degrees, this departure rate is higher in 1997 than in 1996.

Mitigated Dispositional Departures by Degree

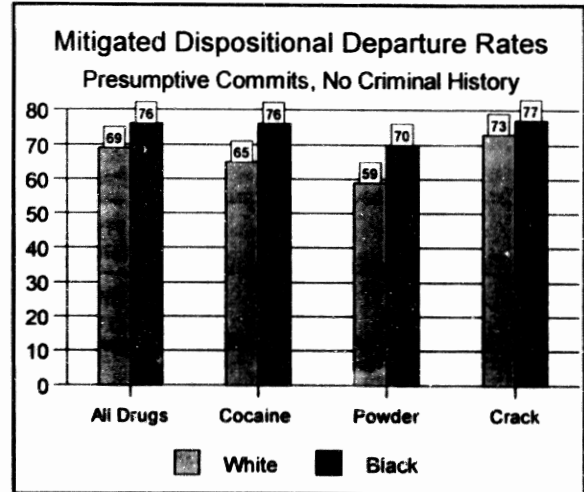
Degree	Number of Presumptive Commits	Number of Mit. Disp. Departures	Mit. Disp. Departure Rate
First	179	96	54%
Second	179	109	61%
Third	107	52	49%
Fourth	17	6	35%
Fifth	82	48	59%
Sale Sim.	5	4	80%
All Drug Offenses	569	315	55%

The graph below shows the mitigated dispositional departure rates for blacks and whites. While the rate for whites for all drug cases is slightly lower, for cocaine cases, the rates are nearly identical. This is partially explained by the fact that for blacks, almost all of the presumptive commits are cocaine cases (95%). For whites, only 48% of the presumptive commit cases involve cocaine, and for some of the other drug types, the mitigated dispositional departure rates are lower than for the cocaine cases. For whites there were mitigated dispositional departures in 53% of the marijuana cases (8 of 15 presumptive commits) and 39% of the amphetamine cases (21 of 54 presumptive commits). The mitigated dispositional departure rate for whites for hallucinogens was 77% (13 of 17 presumptive commits) which is higher than the rate for cocaine cases.

The mitigated dispositional departure rate was higher for whites than for blacks for crack cases, but there were many fewer presumptive commit cases involving crack for whites (40) than for blacks (224).



The following graph displays the same mitigated dispositional departure rates by race for offenders who had a criminal history score of zero. These are the offenders most likely to receive this type of departure. For these cases, blacks have a higher departure rate for all drug cases and for the cocaine cases.



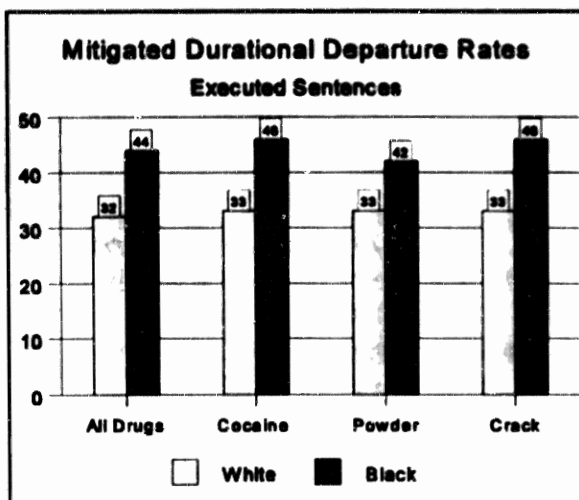
Durational departures occur when the number of months pronounced is different from that called for under the Guidelines. The overall aggravated durational departure rate for drug cases sentenced in 1997 was 5%. The overall mitigated durational departure rate was 10%.

Durational departures are most meaningful for those offenders who receive an executed prison sentence. The aggravated durational departure rate for drug offenders sentenced to prison in 1997 was 6% and the mitigated rate was 36%. The table below displays the aggravated and mitigated departure rates by degree for offenders who received executed sentences. The mitigated dispositional departure rate increased from the 1996 rate of 31%. There was an increase in this departure rate for First, Second and Third Degree offenses and a decrease in this departure rate for the Fourth and Fifth Degree offenses.

Durational Departures by Degree

Degree	Number of Executed Sentences	Aggravated Durational Departures	Mitigated Durational Departures
First	83	1% (1)	55% (46)
Second	70	4% (3)	43% (30)
Third	66	9% (6)	42% (28)
Fourth	19	5% (1)	11% (2)
Fifth	106	7% (6)	19% (20)
Sex Sim.	2	50% (1)	(0)
All Drug Offenses	346	6% (19)	36% (126)

African Americans had a higher mitigated durational departure rate than whites (32% versus 44%) for all drug offenses. When cocaine cases are examined alone, the mitigated durational departure rates are also higher for blacks for both powder and crack offenses. For black offenders, 95% of the executed sentences were for cocaine offenses, whereas only 38% of the executed sentences for whites were for cocaine. For whites, the mitigated durational departure rates for drug types other than hallucinogens were about the same or lower than the rate for cocaine.



SENTENCING GUIDELINES: HOW THEY WORK

Minnesota's sentencing guidelines are based on a grid structure. The vertical axis of the grid represents the severity of the offense of conviction and the horizontal axis represents a measure of the offender's criminal history.

Conviction offenses are ranked according to their severity on a scale from one to ten, with ten being the most severe. The criminal history score represents a weighted measure of the offender's prior felony record, a limited measure of the offender's prior misdemeanor, gross misdemeanor and juvenile record, and a measure of whether the offender was under some type of custody or supervision when the offense was committed (e.g., on probation).

The recommended (presumptive) guideline sentence is generally found by locating the cell of the sentencing grid where the offender's criminal history score and severity level intersect. For cells below and to the left of the solid line, the guidelines generally recommend a stayed sentence. When a sentence is stayed, the court places the offender on probation and may require up to a year of conditional confinement in a local facility (jail or workhouse). Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be placed on the offender.

For cells above and to the right of the solid line, the guidelines recommend imprisonment in a state prison. There are, however, a number of offenses which carry a presumptive prison sentence regardless of where the offender is on the guidelines grid, including any second or subsequent third degree drug offense and any offense carrying a mandatory minimum prison term pursuant to M.S. § 609.11.

A copy of the full sentencing grid is included at the end of this report. The numbers in the cells of the grid are the recommended prison sentence in months. For cases where a mandatory minimum prison term applies, the presumptive duration under the guidelines is the mandatory minimum or the cell time, whichever is greater.

A judge may depart from the presumptive sentence if there are substantial and compelling circumstances. The judge must state the reasons for departure on the record and either the prosecution or the defense may appeal any pronounced sentence.

Regardless of whether the judge follows the guidelines, the sentence is fixed. An offender who is sentenced to prison will serve a term of imprisonment equal to two-thirds of the pronounced executed sentence. The remaining one-third of the sentence will be served on

supervised release. The actual time the offender is incarcerated may be increased (up to the total sentence) if the offender violates disciplinary rules. An important characteristic of the guidelines system in Minnesota is that there is no parole board to grant early release from prison.

DATA SOURCES

Most of the data examined in this summary are from the MSGC monitoring system containing cases sentenced in 1997. To help identify trends and patterns, monitoring data from 1981 through 1997 are examined.

One of the primary functions of the Sentencing Guidelines Commission is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the guidelines. A case is defined when conviction data are received from the probation officer and matched with sentencing data from the State Judicial Information System. Cases generally represent offenders. An offender sentenced in the same county on more than one offense within a thirty day period is counted as one case.

Sentencing guidelines worksheets, completed by probation officers, contain information about the offender (e.g., date of birth, sex, race), the offenses for which the offender was convicted, the offender's criminal history and the presumptive guidelines sentence. The sentencing worksheet also contains a section where the probation officer is to indicate if a weapon was involved in the current offense (pursuant to M.S. § 609.11) and if so, whether the offense involved the use of a firearm, possession of a firearm, or use of another dangerous weapon.

In addition, information collected from special studies of drug cases was utilized in this report. These studies were conducted for all cases sentenced in 1988, 1989, and 1990 and for cases sentenced in Hennepin and Ramsey counties in 1991 and 1992. This information is used to identify drug type for those years. Between 1990 and 1992, revisions to the Minnesota Offense Codes (MOCs) were implemented which made drug type an element of those codes. However, because the revised codes were implemented at different times around the state, and because of the lag time between charging (when MOCs are first assigned) and sentencing, it appears that the codes for drug type can not be used until 1994. Therefore, information on drug type is not available for 1993, and not available for counties other than Hennepin and Ramsey for 1991 and 1992. For the years 1994 - 1997, when the MOC drug type is indicated as unknown, the statute for the offense

sentenced was used to categorize the drug type when that was possible.

OTHER RECENT REPORTS

Sentencing Practices: Offenses Involving Dangerous Weapons and Carrying Mandatory Minimum Prison Terms (M.S. § 609.11) (December, 1998)

Summary of 1997 Sentencing Practices for Convicted Felons, (December, 1998)

Sentencing Practices: Juvenile Offenders Sentenced for Felonies in Adult Court (December, 1998)

Report to the Legislature (January, 1998)

Sentencing Practices: Criminal Vehicular Homicide and Injury (November, 1998)

Report to the Legislature on Controlled Substance Offenses (February, 1992)

Report to the Legislature on the Mandatory Minimum Sentences for Weapons Offenses (November, 1991)

Report to the Legislature on Intermediate Sanctions (February, 1991)

Questions about this report and about the Sentencing Guidelines may be directed to:

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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.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		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>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, 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 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

MINNESOTA SENTENCING GUIDELINES COMMISSION

CONTROLLED SUBSTANCE OFFENSES
OCCURRING ON OR AFTER AUGUST 1, 1997

SEV.
LEVEL **WEIGHT**

- 8** **2** **CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE:** (MN. Stat. § 152.021)
- Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)
- (1) 10 or more grams Cocaine or Heroin
 - (2) 50 or more grams Narcotic other than Cocaine or Heroin
 - (3) 50 grams or 200 or more dosage units PCP/Hallucinogen/Methamphetamine
 - (4) 50 kilograms or more Marijuana or
25 kilos or more Marij. in a School, Park, Public Housing Zone, or Drug Treatment Facility
- Possession (subd. 2)
- (1) 25 or more grams Cocaine or Heroin
 - (2) 500 or more grams Narcotic other than Cocaine or Heroin
 - (3) 500 grams or 500 or more dosage units PCP/Hallucinogen/Methamphetamine
 - (4) 100 kilograms or more Marijuana
- 7** **1.5** **CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE:** (MN. Stat. § 152.022)
- Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)
- (1) 3 or more grams Cocaine or Heroin
 - (2) 10 or more grams Narcotic other than Cocaine or Heroin
 - (3) 10 grams or 50 or more dosage units PCP/Hallucinogen/Methamphetamine
 - (4) 25 kilograms or more Marijuana
 - (5) Cocaine/Narcotic to minor or employs minor
 - (6) Any of the Following in a School, Park, Public Housing Zone or Drug Treatment Facility:
 - (i) Schedule I & II Narcotics or LSD
 - (ii) Methamphetamine/Amphetamine
 - (iii) 5 kilograms or more Marijuana
- Possession (subd. 2)
- (1) 6 or more grams Cocaine or Heroin
 - (2) 50 or more grams Narcotic other than Cocaine or Heroin
 - (3) 50 grams or 100 or more dosage units PCP/Hallucinogen/Methamphetamine
 - (4) 25 kilograms or more Marijuana
- 6** **1.5** **CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE:** (MN. Stat. § 152.023)
- Sale/Possession With Intent (subd. 1)
- (1) A Narcotic Drug (Including Cocaine and Heroin)
 - (2) 10 or more dosage units of Hallucinogen/PCP
 - (3) Schedule I,II,III to minor - Not Narcotics
 - (4) Schedule I,II,III employs minor - Not Narcotics
 - (5) 5 kilograms Marijuana
- Possession (subd. 2)
- (1) 3 or more grams Cocaine or Heroin
 - (2) 10 or more grams Narcotic other than Cocaine or Heroin
 - (3) 50 or more dosage units of Narcotics
 - (4) Sch. I & II Narc./5 or more d.u. LSD in a School, Park, Public Housing Zone,
or Drug Treatment Facility
 - (5) 10 kilograms Marijuana
 - (6) Methamphetamine/Amphetamine in a School, Park, Public Housing Zone,
or Drug Treatment Facility

**SEV.
LEVEL**

WEIGHT

***UNRANKED**

*** CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE: (MN Stat § 152.023)
• AGGREGATED OFFENSES•**

Sale/Possession With Intent (subd. 1)

- (2) 10 or more dosage units of Hallucinogen/PCP
- (3) Schedule I,II,III to minor - Not Narcotics
- (4) Schedule I,II,III employs minor - Not Narcotics
- (5) 5 kilograms Marijuana

Possession (subd. 2)

- (1) 3 or more grams Cocaine or Heroin
- (2) 10 or more grams Narcotic other than Cocaine or Heroin
- (3) 50 or more dosage units of Narcotics
- (4) Sch. I & II Narc./5 or more d.u. LSD in a School, Park, Public Housing Zone, or Drug Treatment Facility
- (5) 10 kilograms Marijuana
- (6) Methamphetamine/Amphetamine in a School, Park, Public Housing Zone, or Drug Treatment Facility

4

1 CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE: (MN. Stat. § 152.024)

Sale/Possession With Intent (subd. 1)

- (1) Schedule I,II,III (except Marijuana)
- (2) Schedule IV or V to minor
- (3) Employs minor to sell schedule IV or V
- (4) Marijuana in a School, Park, Public Housing Zone, or Drug Treatment Facility

Possession (subd. 2)

- (1) 10 or more dosage units of Hallucinogen/PCP
- (2) Schedule I,II,III (except Marij.) w/ intent to sell

2

.5 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE: (MN. Stat. § 152.025)

Sale/Possession With Intent (subd. 1)

- (1) Marijuana
- (2) Schedule IV

Possession (subd. 2)

- (1) Possession of Schedule I,II,III,IV - Includes Marijuana
Also Includes: Crack/Cocaine/Narc./PCP/Halluc.
- (2) Procurement by fraud