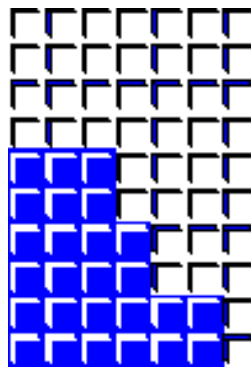


MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Criminal Vehicular Homicide & Injury Offenses
Sentenced in 2010

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Summary of 2010 Data

In 2010, 28 offenders were sentenced for criminal vehicular homicide (CVH). Eighty-six percent of offenders received a sentence that included incarceration (prison or jail), with 54 percent receiving a prison sentence. The average pronounced prison sentence was 71 months, an increase from the average of 52 months in 2009.

Ninety-six offenders were sentenced for criminal vehicular injury (CVI). Thirty-two percent of CVH offenders were required to serve time in local facilities. The average local jail time pronounced was 317 days. The total incarceration rate for CVI was 91 percent. The majority (80%) of CVH and CVI offenders sentenced had no prior DWIs, CVIs, or CVHs listed on their sentencing worksheets.

The following report and tables summarize sentencing policies and practices for offenders convicted and sentenced for criminal vehicular homicide and injury in 2010. A summary of how the sentencing guidelines work and a copy of the Sentencing Guidelines Grid are included at the end of the report.

Presumptive Sentences & Legislative History

Under [Minn. Stat. § 609.21](#), a person may be charged with either criminal vehicular homicide (CVH), which involves operating a motor vehicle in a manner that causes the death of a human being, or criminal vehicular injury (CVI), which involves operating a motor vehicle in a manner that causes some level of bodily harm.

Criminal Vehicular Homicide

When the guidelines were first implemented in 1980, CVH was ranked at severity level V and the guidelines recommended a stayed sentence for offenders with a criminal history score of two or less. Effective August 1, 1989, the Commission raised CVH to severity level VI. The Commission also decided that the presumptive sentence should be prison, regardless of the offender's criminal history score.

The 1990 Legislature revised the CVH statute (Minn. Stat. § 609.21), removing the phrase "in a negligent manner" from the clause relating to driving while over the legal limit, and adding a new clause for having an alcohol concentration at or above the legal limit within two hours of driving. The Commission believed that these clauses were less serious than those involving gross negligence or negligence, and therefore increased the rankings for the gross negligence and negligence clauses to severity level VII. In response to a directive from the 1994 Legislature, the Commission increased the severity level for all CVH offenses to VII.

The 1996 Legislature amended CVH to include leaving the scene of an accident resulting in death. The Commission acknowledged the legislative intent to treat these offenses similarly to CVH by maintaining its ranking. In 2002, in order to accommodate the new felony DWI crime, the Commission created a new severity level between VI and VII. As a result, CVH was reclassified to severity level VIII; however, the presumptive durations were unchanged.

Today, all persons convicted of criminal vehicular homicide (CVH) are recommended prison (effective for offenses occurring on or after August 1, 1989). The recommended sentence durations depend on the offender's criminal record.

Criminal Vehicular Injury

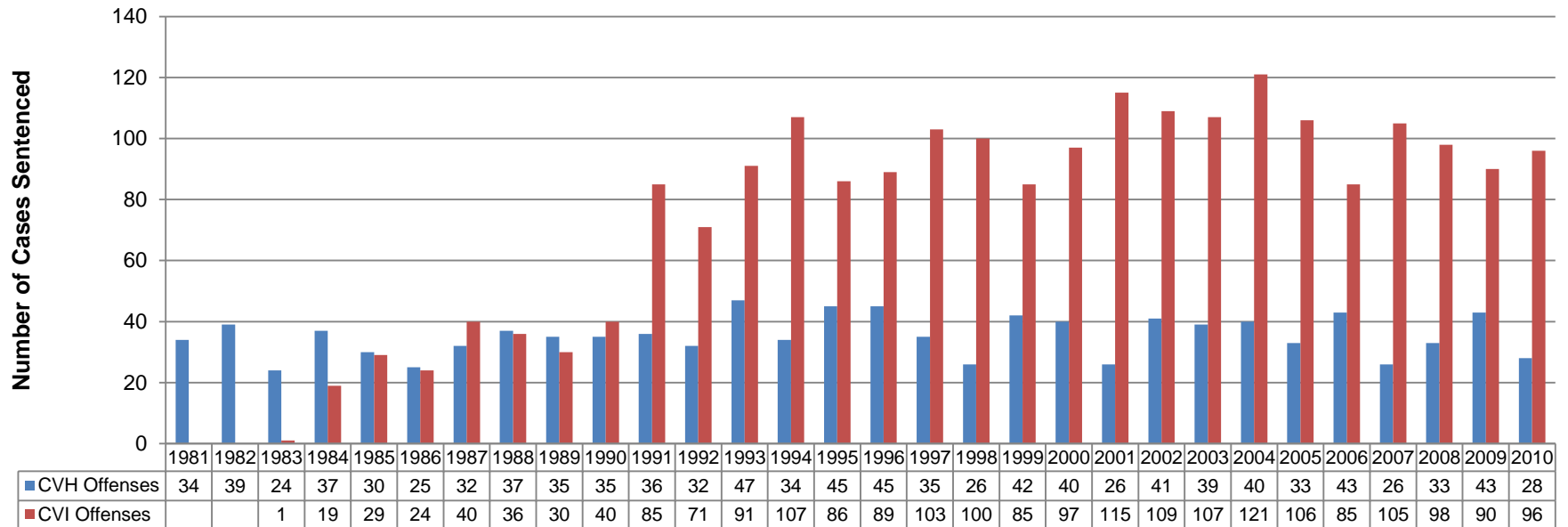
When the guidelines were implemented in 1980, there were no felony statutory provisions for CVI. Effective July 1, 1983, the legislature added a provision for CVI resulting in great bodily harm. This provision was ranked at severity level III. When the severity levels were increased for CVH in 1989, the severity level for CVI-GBH was also increased from III to V. In 1990, a felony provision for offenses resulting in substantial bodily harm was added. The Commission ranked this offense at severity level III.

In 1996, CVI was amended to include leaving the scene of an accident. As with CVH, the severity level rankings were maintained, acknowledging the legislative intent to treat this offense similarly to CVI. Today, criminal vehicular injury (CVI) is ranked at severity level V if the offense results in great bodily harm (GBH) and severity level III if the offense results in substantial bodily harm (SBH). At severity level V, the guidelines recommend a probationary sentence if the offender's criminal history score is two or less. At severity level III, the guidelines recommend probation at a criminal history score of three or less.

Case Volume & Distribution¹

In 2010, 28 offenders were sentenced for CVH, a decrease from the 43 offenders in 2009. None of the CVH offenders were convicted of leaving the scene of an accident. The number of offenders sentenced each year for CVH has varied, but has never exceeded 50 (Figure 1). There were 96 offenders sentenced for CVI, a slight increase from the 90 sentenced in 2009. Of the 96 cases sentenced, 23 involved great bodily harm (GBH) and 73 were for substantial bodily harm (SBH). Eleven of the CVI-SBH offenders were convicted of leaving the scene of an accident, an increase from two offenders in 2009.

Figure 1. Number of CVH / CVI Cases Sentenced: 1981-2010



¹ Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

Distribution of Cases

The gender make-up of CVH/CVI offenders is similar to that of the total felony population, with 81 percent of offenders being male (compare to 83% male in the total felony population). The average offender age is 33-years old, compared to 31-years old for the total felony population.

A much higher percentage of CVH/CVI offenders are white compared with the total felony population (Figure 2). CVH/CVI offenses occur more frequently in Greater Minnesota than in the Metro area (Figure 3).

Figure 2. Distribution of Offenders by Race

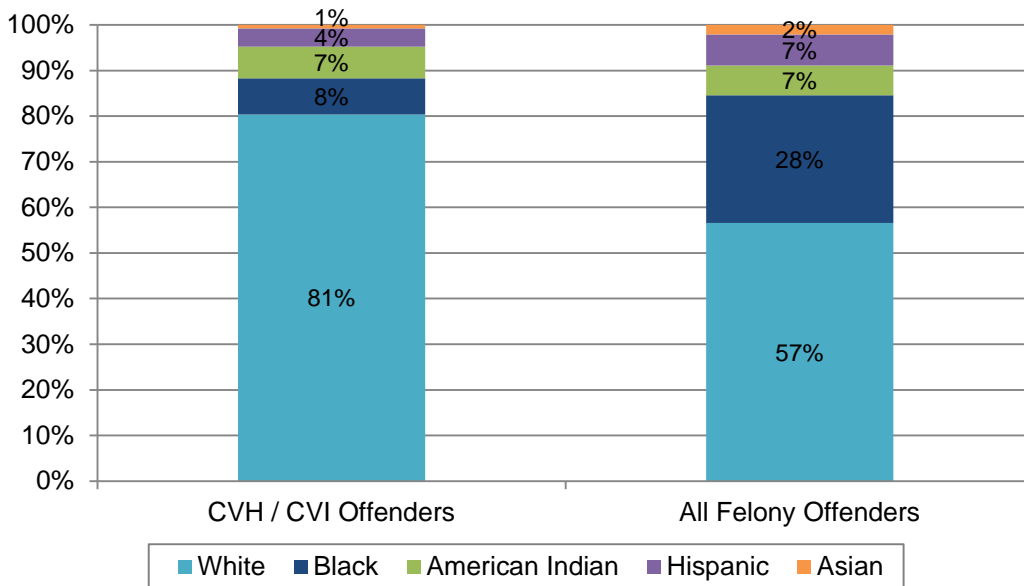
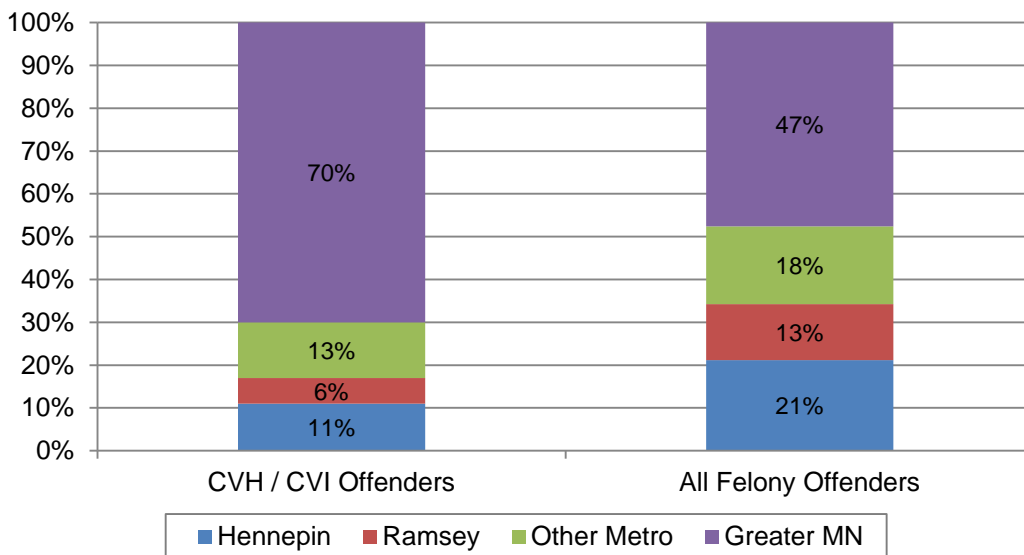


Figure 3. Distribution of Offenders by Region



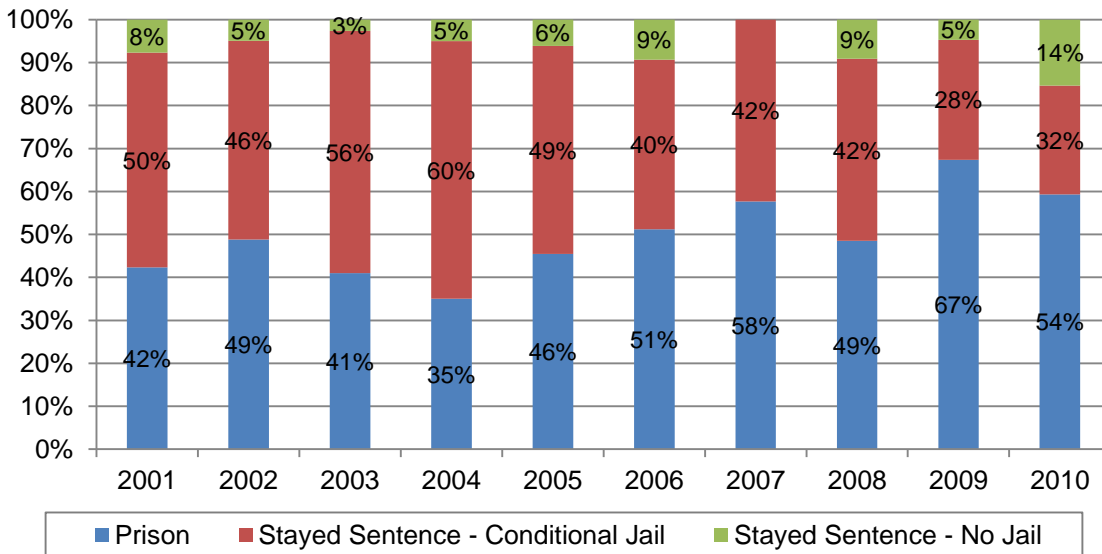
Sentencing Practices

Criminal Vehicular Homicide

Incarceration Rates

Because CVH is ranked at Severity Level VIII on the Sentencing Grid, all offenders are recommended prison, regardless of criminal history. In 2010, 24 of the 28 CVH offenders received incarceration as part of their sentence (86%); 54 percent received prison sentences and 32 percent received jail terms as a condition of probation (Figure 4). The imprisonment rate declined from 67 percent in 2009 which was the highest ever observed for CVH since the guidelines went into effect. Frequently cited reasons for departure from the recommended prison sentence can be found in the Departures section of this report (p.15).

Figure 4. Type of Sentence Pronounced for CVH Cases: 2001-2010



Sentence Durations

The average pronounced prison sentence was 71 months, a 37 percent increase from the 52-month average in 2009 and the longest average sentence ever observed. The average jail term pronounced as a condition of probation was 317 days, an increase from the average of 275 days in 2009.

Table 1. Length of Pronounced Sentence for CVH Cases, Sentenced 1981-2010

Sentencing Year	Pronounced Prison Sentence		Pronounced Conditional Confinement	
	Number of Cases	Avg. Length (in months)	Number of Cases	Avg. Length (in days)
1981	1	18.0	20	207
1982	5	31.8	25	248
1983	2	39.0	20	182
1984	7	35.6	27	169
1985	1	18.0	26	222
1986	4	23.3	21	179
1987	1	18.0	30	217
1988	2	29.5	32	226
1989	5	35.8	30	233
1990	7	24.6	24	258
1991	18	38.2	16	207
1992	17	47.3	15	293
1993	29	49.9	16	261
1994	15	49.7	17	289
1995	26	46.8	18	305
1996	20	62.0	22	275
1997	18	54.9	16	303
1998	9	61.2	16	308
1999	30	59.8	12	329
2000	20	52.6	17	338
2001	11	58.2	13	329
2002	20	63.6	19	341
2003	16	54.1	22	312
2004	14	51.7	24	312
2005	15	67.3	16	319
2006	22	53.4	17	288
2007	15	58.6	11	327
2008	16	69.3	14	308
2009	29	52.3	12	275
2010	15	71.2	9	317

Criminal History Scores

It is often thought to be interesting to review the prior offenses that make up a criminal vehicular homicide offender’s criminal history score to see if they are possibly alcohol-related driving offenses. Eight (29%) of the 28 CVH offenders had one or more misdemeanor or gross misdemeanor DWI or CVI convictions listed as prior offenses on their sentencing worksheets. None of the CVH offenders had a prior felony DWI conviction or a prior felony CVH or CVI conviction on his/her sentencing worksheet.

Criminal Vehicular Injury

Incarceration Rates

Criminal vehicular injury comprises two felony offenses: operating a motor vehicle in a manner that causes great bodily harm (GBH); and operating a motor vehicle in a manner that causes substantial bodily harm (SBH). In 2010, the total incarceration rate (both offenders sentenced to prison and local jail) for all CVI sentences was 91 percent (87 offenders), slightly higher than the 2009 rate of 87 percent. Twenty-one CVI-GBH offenders (91%) received stayed sentences that included jail as a condition of probation, an increase from the rate observed in 2009 (Figure 5). One offender (4%) received an executed prison sentence, the same as in 2009. Sixty CVI-SBH offenders (82%) received jail time, almost the same percent as in 2009 (Figure 6). Five CVI-SBH offenders (7%) were sentenced to prison, up from five percent in 2009.

Figure 5. Type of Sentence Pronounced for CVI (GBH) Cases: 2001-2010

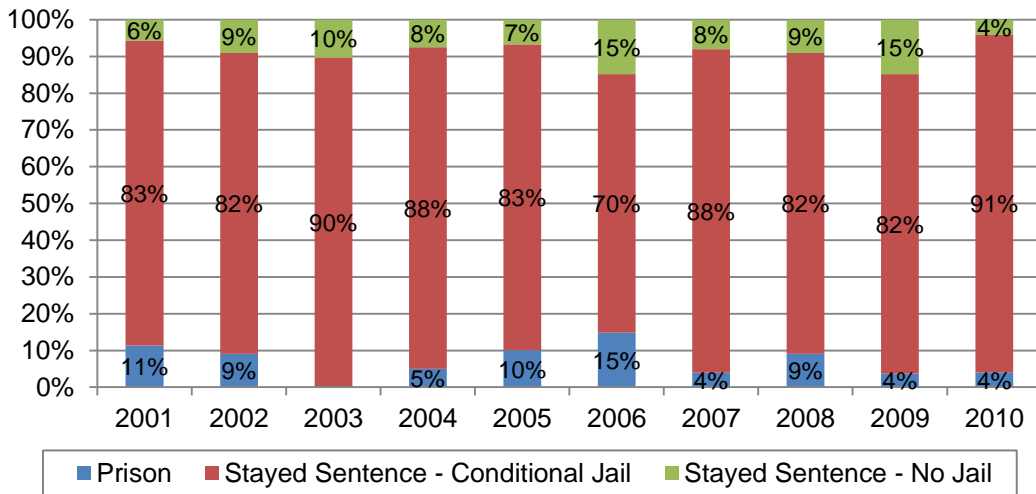
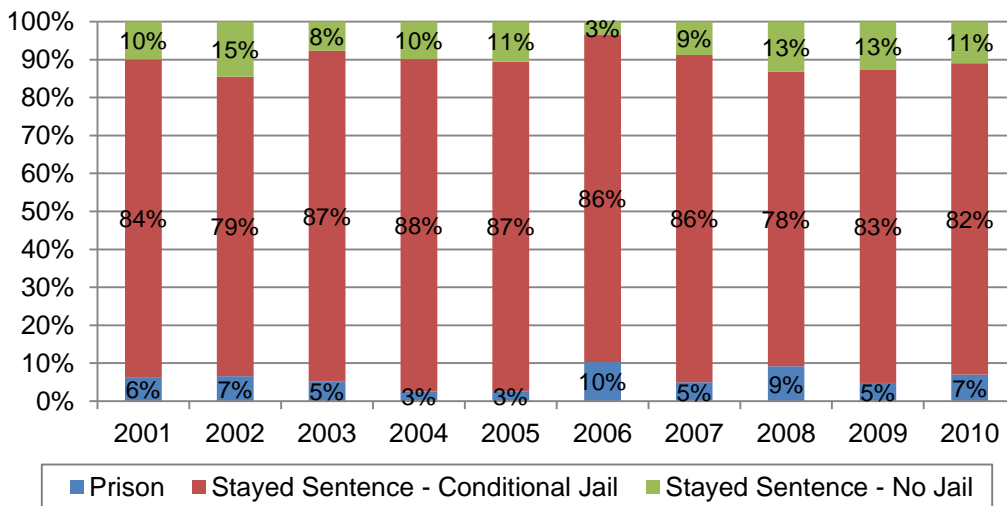


Figure 6. Type of Sentence Pronounced for CVI (SBH) Cases: 2001-2010



Sentence Durations

As Table 2 demonstrates, the one offender sentenced to prison for CVI–GBH received a pronounced sentence of 57 months which is the longest average prison sentence ever observed. The average jail term pronounced for CVI–GBH offenders sentenced to jail as a condition of probation was 147 days, an increase from 112 days in 2009. Table 3 shows that for CVI–SBH offenders, the average pronounced prison sentence was 21 months, a decrease from the 26 months observed in 2009. The average jail term was 88 days, a decrease from the 2009 average of 101 days.

Table 2. Length of Pronounced Sentence for CVI - GBH Cases Sentenced 1984-2010

Sentencing Year	Pronounced Prison Sentence		Pronounced Conditional Confinement	
	Number of Cases	Avg. Length (in months)	Number of Cases	Avg. Length (in days)
1984	1	13.0	15	131
1985	0	---	24	110
1986	2	21.0	18	111
1987	4	19.5	27	138
1988	3	21.0	29	159
1989	1	19.0	31	150
1990	5	33.0	31	171
1991	8	38.8	37	168
1992	2	28.0	27	217
1993	2	27.0	33	239
1994	1	30.0	26	204
1995	5	45.4	18	137
1996	5	39.8	20	202
1997	4	35.5	27	204
1998	2	47.5	30	200
1999	3	28.0	21	214
2000	0	---	26	207
2001	4	30.0	29	174
2002	3	28.6	27	173
2003	0	---	26	178
2004	2	40.5	35	185
2005	3	40.7	25	157
2006	4	32.0	19	153
2007	1	23.0	22	125
2008	2	33.0	18	156
2009	1	18.0	22	112
2010	1	57.0	21	147

Table 3. Length of Pronounced Sentence for CVI - SBH Cases Sentenced 1990-2010²

Sentencing Year	Pronounced Prison Sentence		Pronounced Conditional Confinement	
	Number of Cases	Avg. Length (in months)	Number of Cases	Avg. Length (in days)
1990	0	---	2	83
1991	1	15.0	38	128
1992	1	19.0	36	135
1993	3	21.7	51	125
1994	4	22.8	65	131
1995	3	15.7	50	134
1996	0	---	53	102
1997	5	18.4	60	137
1998	4	19.8	61	109
1999	4	25.5	49	115
2000	2	17.5	57	98
2001	5	19.0	67	109
2002	5	20.6	60	113
2003	4	20.5	68	93
2004	2	16.5	71	113
2005	2	22.5	66	93
2006	6	18.3	50	84
2007	4	18.0	69	96
2008	7	17.6	59	100
2009	3	26.3	52	101
2010	5	21.0	60	88

Criminal History Scores

As with criminal vehicular homicide offenders, it may be of interest to review the prior offenses that make up an offender’s criminal history score to see if they are possibly alcohol-related driving offenses. Eighteen (19%) of the 96 CVI offenders had one or more prior misdemeanor or gross misdemeanor DWI or CVI offense listed on their sentencing worksheet. One of the CVI offenders had a prior felony DWI conviction and one had prior felony CVH or CVI convictions on the sentencing worksheet.

² Effective for cases occurring on or after August 1, 1990, Criminal Vehicular Injury-Substantial Bodily Harm is ranked at Severity Level III. The provisions dealing with Substantial Bodily Harm were added August 1, 1990. In cases in which the Court does not sentence an offender to prison, the judge may pronounce any number of intermediate sanctions. Intermediate sanctions include: probation, local incarceration (jail/workhouse) time, residential and/or non-residential treatment, restitution, community work service, fines, and other types of sanctions.

Departures from the Guidelines

Departure information is presented separately for CVH and CVI offenses. It is important to recognize that while the judge ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the judge regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that when a judge pronounces a particular sentence, there is usually agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

Dispositional departures occur when the court orders a disposition other than that recommended by the guidelines. Mitigated dispositional departures occur when the guidelines recommend prison, but the offender is given a probationary sentence. Aggravated dispositional departures occur when the guidelines recommend a stayed sentence, but the offender receives a prison sentence.

Durational departures occur when the length of the pronounced sentence differs from the recommended guidelines duration. Mitigated durational departures occur when an offender is given less than the recommended sentence; aggravated durational departures occur when an offender is given more time than recommended.

Criminal Vehicular Homicide

The mitigated dispositional departure rate for CVH offenses has consistently been higher than the overall departure rate for all felony offenses that are recommended prison according to the sentencing guidelines. In 2010, the mitigated dispositional departure rate for CVH offenses was 46 percent (Figure 7) while the overall departure rate for all felony offenses was 32 percent. Table 4 provides the most commonly cited reasons for departure in cases of mitigated dispositional departure. Table 4 also contains plea agreement information: The court stated either that there was a plea agreement for the departure or that the prosecutor recommended the departure or did not object to the departure in 9 (69%) of the 13 mitigated dispositional departures.

For the 15 CVH offenders who received prison sentences, one received an aggravated durational departure and three received mitigated durational departures. No departure report was submitted to MSGC for the aggravated durational departure. For the mitigated durational departures, the reasons cited were: recommendation of the victim or victim's family, recommendation of court services, and shows remorse / accepts responsibility. In all three cases, the court cited plea negotiation as a reason for departure.

**Figure 7. Mitigated Dispositional Departure Rates for CVH:
2001-2010**

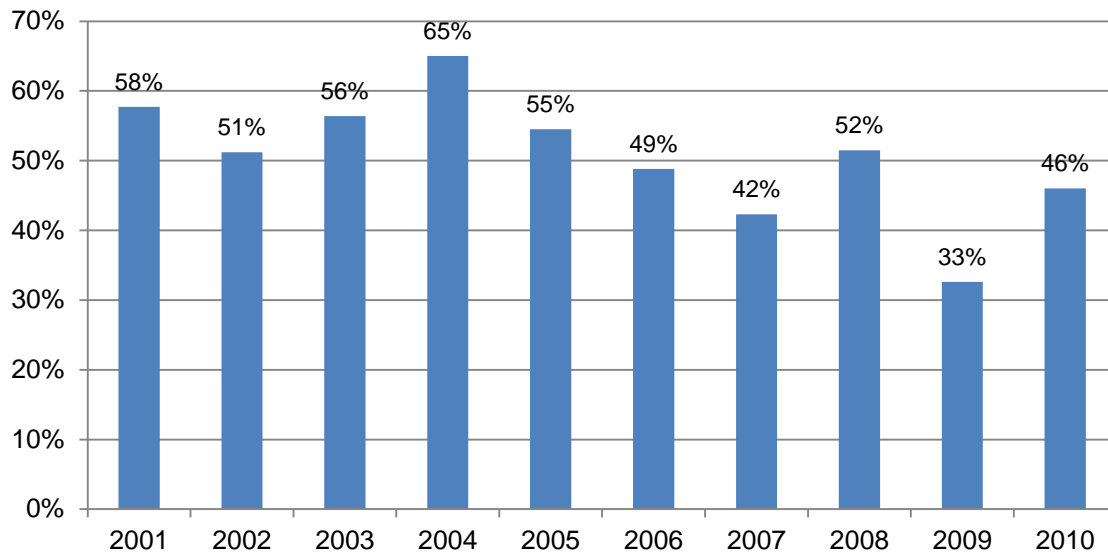


Table 4. Reasons Cited for Mitigated Dispositional Departures in CVH Cases Sentenced 2001-2010³

Departure Reasons	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Amenable to Treatment	27%	29%	50%	69%	28%	38%	55%	29%	38%	54%
Amenable to Probation	27%	48%	59%	69%	61%	62%	91%	65%	64%	85%
Recommended by Victim's Family	33%	62%	23%	35%	33%	10%	27%	24%	21%	15%
No Prior Record	13%	14%	5%	12%	---	---	---	12%	---	---
Ensure Compliance with Probation or Allow Longer Supervision	33%	33%	18%	35%	6%	24%	---	18%	21%	8%
Ensure Restitution & Financial Penalties Paid	7%	10%	5%	19%	17%	---	9%	6%	---	8%
Shows Remorse/Accepts Responsibility	33%	19%	36%	46%	44%	24%	73%	41%	71%	85%
Prosecutor Objects	7%	10%	14%	19%	9%	10%	29%	12%	14%	15%
Prosecutor does not Object	7%	10%	9%	15%	18%	21%	14%	12%	14%	--
Recommended by Prosecutor	13%	33%	27%	15%	27%	50%	14%	18%	14%	46%
Plea Negotiation	40%	52%	59%	31%	82%	71%	57%	59%	57%	69%
Number of Mitigated Dispositional Departures	15	21	22	26	18	21	11	17	14	13

³The most common reasons cited for dispositional departures, as submitted by sentencing judges and coded by MSGC staff. Up to four departure reasons and three plea agreement reasons are coded. Percentages are for reasons cited. For example, 54 percent of the mitigated dispositional departure reports in 2010 cited "amenable to treatment" as a reason justifying the departure.

Criminal Vehicular Injury

There were six CVI offenders for which the presumptive disposition was prison; and all of these offenders received prison sentences (so there were no mitigated dispositional departures). Since 2001, there have never been more than ten cases of CVI where the presumptive disposition is prison. Because the number of offenders with presumptive prison sentences is relatively low, it is not very meaningful to discuss “trends” in the dispositional departure rates as they can fluctuate greatly from year-to-year.

There were no durational departures for CVI cases in 2010.

How the Guidelines Work

Minnesota's guidelines are based on a grid structure. The vertical axis of the grid represents the **severity** of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's **criminal history**. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the **Severity Reference Table** in the *Minnesota Sentencing Guidelines and Commentary*.

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was on probation or parole when the current offense was committed.

The recommended (presumptive) guideline sentence is found in the cell of the sentencing grid in which the offender's criminal history score and severity level intersect. The guidelines recommend imprisonment in a state prison in the non-shaded cells of the grid.

The guidelines generally recommend a stayed sentence for cells in the shaded area of the grid. When a sentence is stayed, the court typically 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 applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the guidelines grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).

The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the grid, the guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the guidelines.

It is not possible to fully explain all of the policies in this brief summary. Additional information on the sentencing guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at <http://www.msgc.state.mn.us>.

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 non-imprisonment 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)	XI	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480³</i>	426 <i>363-480³</i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime,</i> <i>1st Degree</i>	IX	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery 1st Degree</i> <i>Controlled Substance Crime,</i> <i>2nd Degree</i>	VIII	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i>	VII	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-86</i>
<i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i>	VI	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<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 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>



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.



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 state prison. See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

¹ One year and one day

² M.S. § 244.09 requires the Sentencing Guidelines to provide a range of 15% downward and 20% upward from the presumptive sentence. However, because the statutory maximum sentence for these offenses is no more than 40 years, the range is capped at that number.