

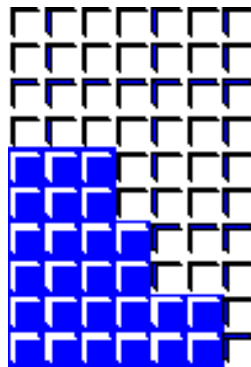
# MINNESOTA SENTENCING GUIDELINES COMMISSION

## Sentencing Practices

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### DWI Offenses Sentenced in 2010

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## Summary of 2010 Data

There were 667 offenders sentenced for felony DWI in 2010 (Figure 1). This is five percent lower than in 2009. Twenty percent of the DWI offenders sentenced in 2010 were sentenced for a subsequent felony DWI offense compared to 26 percent in 2009.

Felony DWI offenders were more likely to be white or American Indian males than were offenders sentenced for other offenses (Figure 2). On average, they were five years older than other offenders (Page 6), and more likely to be sentenced in greater Minnesota (Figure 3).

Ninety-two percent of offenders sentenced for felony DWI received incarceration in either a state prison (25%) or local jail (67%) (Table 2). The state prison rate was a decrease from 28 percent in 2009.

The average pronounced prison sentence was 53 months (Table 3), which is similar to the average sentences pronounced in 2008 and 2009. The number of DWI offenders who were recommended prison was 36 percent (Page 10).

The mitigated dispositional departure rate for presumptive commitments was 32 percent, which is a decrease from the rate in 2009 (34%) (Figure 5). The mitigated durational departure rate for offenders receiving executed prison sentences was 17 percent, a decrease from the 2009 rate of 27 percent and the lowest rate ever observed (Figure 6). The average pronounced jail period for offenders receiving local jail as a condition of probation was 199 days (Table 3).

Information on DWI revocations to prison is now located in MSGC's *Technical Revocations to Prison* report, available online at: <http://www.msgc.state.mn.us>.

## Sentencing Policy

Felony Driving While Impaired (DWI) went into effect August 1, 2002. Minn. Stat. § [169A.276](#), subdivision 1(a) created a minimum 36-month felony sentence of imprisonment for this offense, while subdivision 1(b) allows for a stay of execution of that sentence but specifically forbids a stay of imposition or stay of adjudication. This means that the court is required to pronounce a period of incarceration even if the court intends to pronounce a probationary sentence.

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.

An offender who is sentenced to prison will serve a term of imprisonment equal to at least two-thirds of the pronounced executed sentence. Minn. Stat. § [244.101](#). The actual time an offender is incarcerated may be increased (up to the total sentence) if disciplinary rules are violated. An offender receiving a prison sentence for a felony DWI is also subject to a 5-year term of conditional release. Minn. Stat. § [169A.276](#), subd. 1(d); Minn. Sentencing Guidelines 2.E.

The sentencing guidelines presume a minimum 36-month sentence for this offense (Minn. Sentencing Guidelines 2.E.). For a person convicted of a felony DWI who has a criminal history score of 2 or less, the guidelines presume a stayed sentence; however, if a person has a prior felony DWI conviction, or a prior conviction for criminal vehicular homicide or operation, the sentence is presumed to be an executed sentence of imprisonment, regardless of criminal history (Minn. Sentencing Guidelines 2.C).

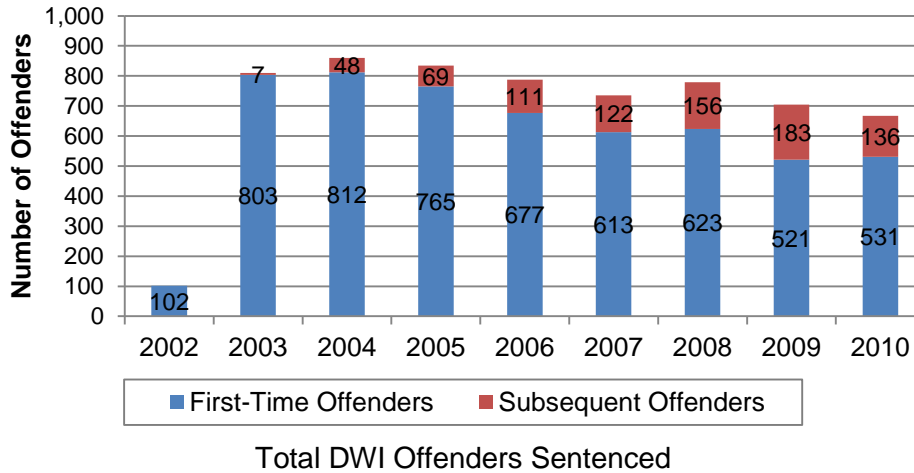
Offenders receiving stayed sentences can receive up to one year of local jail time as a condition of their probation and are subject to the mandatory penalty provisions specified in Minn. Stat. § [169A.275](#). This statute provides that fourth-time DWI offenders must be incarcerated for 180 days and fifth-time (or more) offenders for one year unless they are placed in an intensive supervision program. This statute also allows that a portion of this mandatory jail time may be served on electronic monitoring.

The data examined in this summary are from the MSGC monitoring system for cases sentenced in 2010. One of the primary functions of the MSGC 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 a sentencing worksheet is received from the probation officer and matched with sentencing data from the District Court. Cases generally represent offenders; an offender sentenced in the same county on more than one offense within a 30-day period is counted as one case. Reported here are cases where felony DWI was the most serious offense sentenced.

## Case Volume & Distribution<sup>1</sup>

There were 667 offenders sentenced for felony DWI in 2010. This marks a decrease of about five percent from the 704 offenders sentenced in 2009, and is a 22 percent decrease from the 861 offenders sentenced in 2004. Twenty percent of the offenders sentenced for a felony DWI in 2010 were sentenced for a subsequent offense (Figure 1).

**Figure 1. Number of Offenders Sentenced:  
2002 - 2010**



2002	2003	2004	2005	2006	2007	2008	2009	2010
102	810	860	834	788	735	779	704	667

### Demographic Characteristics

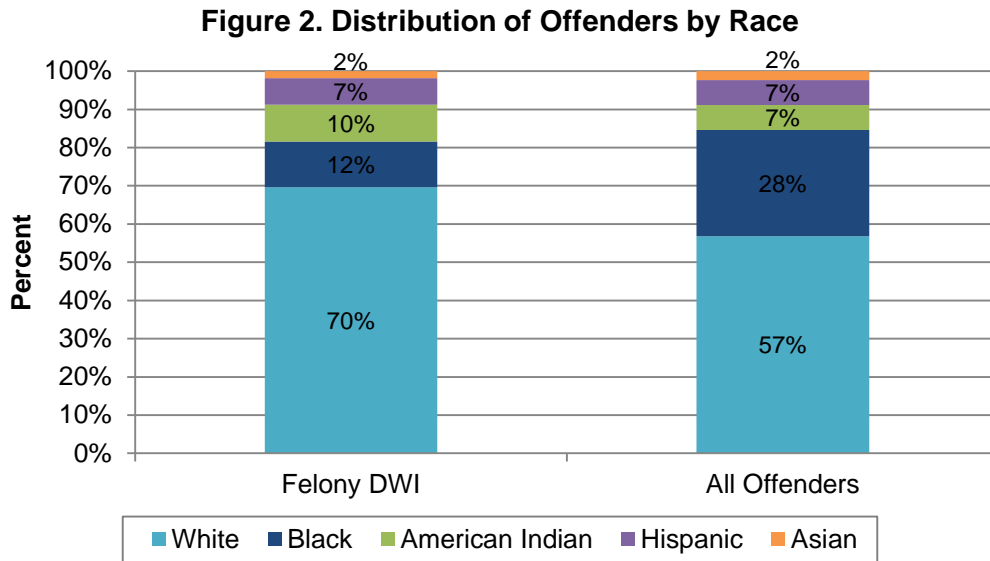
DWI offenders are slightly more likely to be male (88%) than in the overall felony population (83%). The average age at time of offense was 36 for felony DWI offenders, compared to 31 for offenders overall (Table 1).

**Table 1. Gender and Average Age**

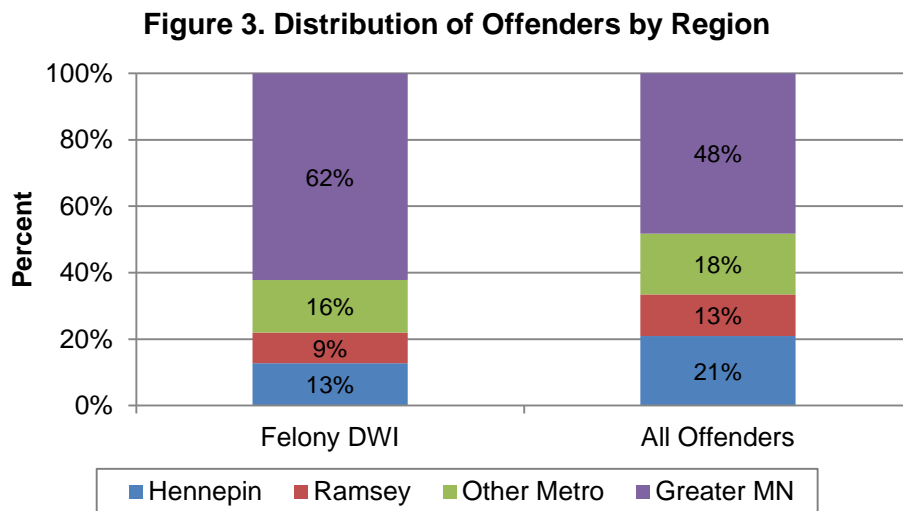
	Male	Female	Average Age
Felony DWI	584 (88%)	83 (12%)	36
All Offenders	1,1926 (83%)	2,385 (17%)	31

<sup>1</sup> It should be noted that the 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.

A greater proportion of felony DWI offenders are likely to be white (70%) or American Indian (10%) than in the overall felony offender population (57% and 7%, respectively) (Figure 2). The proportion of felony DWI offenders who are black (12%) is much lower than the proportion of black offenders in the overall felony population (28%).



Hennepin County sentenced thirteen percent of the felony DWI cases in the state, compared to twenty-one percent of all felony cases sentenced. Ramsey County sentenced nine percent of the felony DWI cases, compared to thirteen percent of all felony cases. The other metro counties had a similar percentage of felony DWI and total felony offenses (16% and 18%, respectively). Conversely, Greater Minnesota sentenced a larger proportion of felony DWIs (62%) than its share of all felonies sentenced in 2010 (48%) (Figure 3).



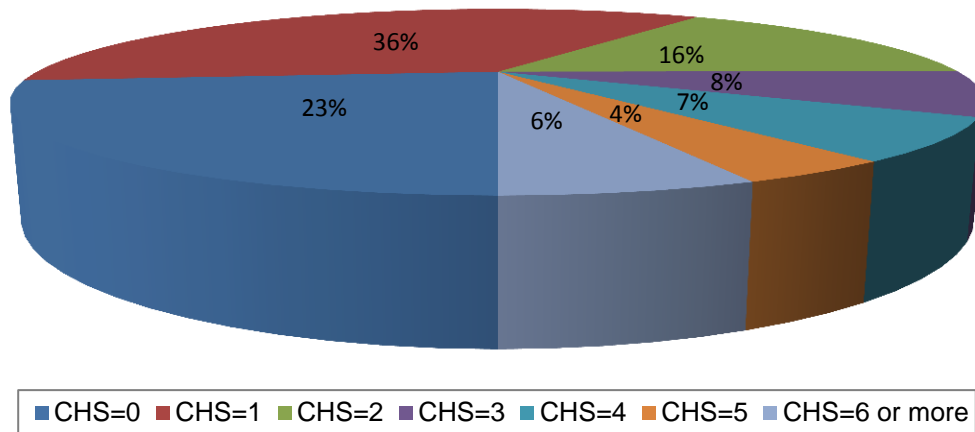
Forty-five percent of all felony DWI cases were sentenced in the following counties (in order of greatest number): Hennepin, Ramsey, St. Louis, Dakota, Anoka, Olmsted, and Clay. All other counties had less than 20 DWI sentences in 2010 (Table 8).

*Criminal History*

By definition, a felony DWI is a fourth offense within ten years ([Minn. Stat. § 169A.24](#)). Therefore, all felony DWI offenders have, at a minimum, three prior alcohol-related driving offenses on their records. But under the sentencing guidelines, the same offenses used to reach the felony DWI level are not necessarily used in calculating an offender’s criminal history score (Minn. Sentencing Guidelines 2.B.6). Thus, a first-time felony DWI offender may be sentenced at a criminal history score of zero even though the individual has prior DWI offenses.

Most DWI offenders were sentenced at a criminal history score of one or zero. The vast majority (75%) were sentenced at a score of two or less, so most had presumptive probationary sentences; 60 of these, however, had presumptive prison sentences because of a prior felony DWI. When all 667 DWI offenders, regardless of criminal history, are considered, 136 (20%) were sentenced for a subsequent felony DWI. More than half of all DWI offenders (66%) were under some kind of supervision (e.g., probation, release pending sentence, supervised release from prison) at the time they committed the current offense.

**Figure 4. Distribution of Offenders by Criminal History Score (CHS)**



## Sentencing Practices

### *Incarceration Rates*

At the time of sentencing, the court can impose one or more of several different types of sentences, the most restrictive being a sentence of imprisonment in a state facility for a period exceeding a year. The court may also impose a sentence of confinement in a local jail for a period of up to one year as a condition of probation, as well as other sanctions including community work service, court-ordered treatment, and fines. As used in this report, “total incarceration rate” refers to the percentage of offenders who received a sentence that included incarceration in a state prison or local facility (i.e., jail or workhouse).

Twenty-five percent were sentenced to imprisonment in a state facility; the average pronounced sentence was 53 months. Sixty-seven percent were sentenced to local jail time, for an average of 199 days, as a condition of probation. (See Table 3 for historical information on incarceration rates.) The total incarceration rate (both offenders sentenced to prison and local jail) was 92 percent. The remaining eight percent received other sanctions imposed by the court at sentencing. Seventy-five percent (500 offenders) were placed on probation. All but one offender received probation terms of at least 36 months. Most (76%) received a probation period equal to the statutory maximum of seven years (84 months); the average length of probation was 79 months (Table 4).

**Table 2. Total Incarceration Rate**

	# Offenders	Prison	Local Jail Time	Other Sanctions
First-Time Offenders	531	68 (13%)	414 (78%)	49 (9%)
Subsequent Offenders	136	99 (73%)	31 (23%)	6 (4%)
Total	667	167 (25%)	445 (67%)	55 (8%)

In 2010, the average pronounced prison sentence was just over 53 months. Except for 2002 when the average pronounced prison sentence for DWI offenders was also just over 53 months, the average sentence has consistently fluctuated between 50 and 52 months (Table 3).

**Table 3. Incarceration Rates and Average Durations by Year**

Year	Number of Offenders	Prison	Average Pronounced Sentence (months)	Local Jail Time	Average Pronounced Jail Time (days)
2002	102	7 (7%)	53	91 (89%)	237
2003	810	116 (14%)	50	672 (83%)	233
2004	860	131 (15%)	52	707 (82%)	229
2005	834	150 (18%)	52	669 (80%)	215
2006	788	155 (20%)	51	608 (77%)	212
2007	735	183 (25%)	50	525 (71%)	211
2008	779	202 (26%)	51	538 (69%)	202
2009	704	196 (28%)	51	477 (68%)	191
2010	667	167 (25%)	53	445 (67%)	199
Total	6,279	1,307 (21%)	51	4,732 (75%)	214

**Table 4. Length of Probation**

Pronounced Probation Duration in months	Number	Percent
Less than 36 Months	1	0.2%
36 months	14	2.8%
48 months	15	3.0%
54 months	1	0.2%
60 months	79	15.8%
72 months	3	0.6%
84 months	379	75.8%
More than 84 months	8	1.6%

*Departure Rates*

A departure occurs when the court imposes a sentence that is different from that presumed under the sentencing guidelines. A departure can be from the presumed disposition of the sentence (i.e., whether the guidelines calls for a stayed probationary sentence or a commitment to prison) or from the presumed duration of the sentence, measured in months. An “aggravated” departure involves either imposing a prison sentence on a presumptive stayed probationary sentence, or imposing a greater amount of time than that presumed by the sentencing guidelines. A “mitigated” departure means either imposing a stayed probationary sentence on a presumed prison sentence, or imposing a shorter duration than that presumed under the sentencing guidelines.

Dispositional Departures

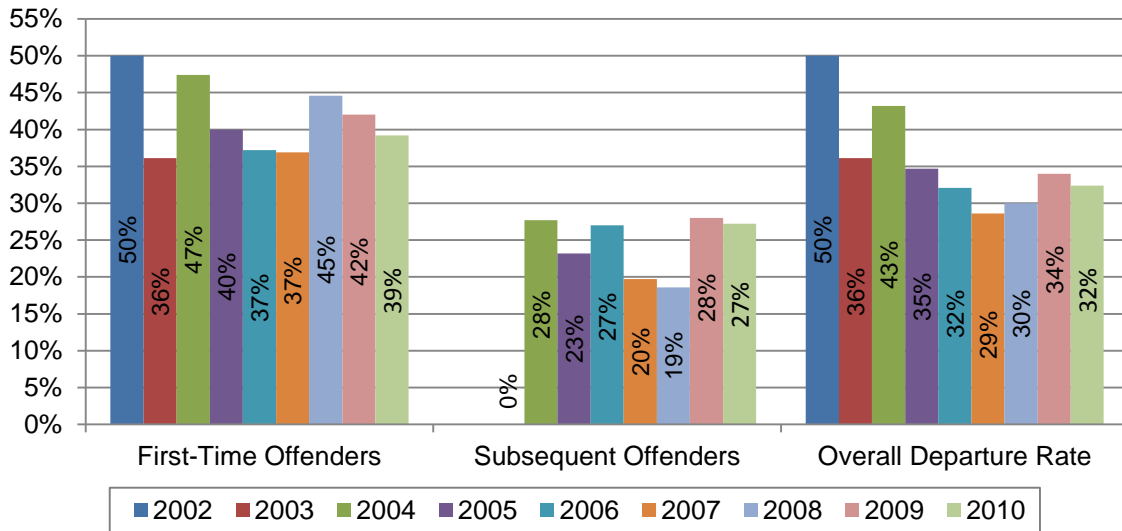
Of the 667 cases sentenced in 2010, 238 (36%) were recommended prison under the sentencing guidelines (Table 5). Of those, 161 (68%) were given the presumptive sentence and committed to prison. The remaining 77 cases (32%) were given a mitigated dispositional departure and placed on probation. Of the 429 cases where the sentencing guidelines presumed a stayed sentence, six (1.4%) were given an aggravated dispositional departure and committed to prison. Four of these departures were the result of a request by the offender for an executed sentence. The remaining 423 cases received the presumptive stayed sentence and were placed on probation. As noted above, a stayed sentence where the offender is placed on probation might include up to a year of incarceration in a local jail as a condition of probation.

**Table 5. Dispositional Departure Rates**

Presumptive Disposition	# Offenders	Sentence Received		Departure Rate
		Prison	Probation	
Prison	238	161 (68%)	77 (32%)	Mitigated-32%
Probation	429	6 (1.4%)	423 (98.6%)	Aggravated-1.4%
Total	667	167 (25%)	500 (75%)	81 (12 %)

Figure 5 shows that subsequent offenders are less likely to receive a mitigated dispositional departure than first-time offenders. In 2010, the mitigated dispositional departure rate for first-time felony DWI offenders was 39 percent, while the mitigated dispositional departure rate for subsequent offenders was 27 percent.

**Figure 5. Mitigated Dispositional Departure Rates: 2002-2010<sup>1</sup>**  
Presumptive Commits Only



<sup>1</sup> There were no subsequent felony DWI offenders sentenced in 2002. There were no mitigated dispositional departures among the seven subsequent felony DWI offenders sentenced in 2003.

The most frequently cited reasons for mitigated dispositional departures included amenability to treatment (70%) and amenability to probation (64%). In 43 percent of these departures, the court cited the defendant’s remorse or acceptance of responsibility as a reason for departure and in 13 percent, placing the offender on long term supervision was cited as a reason for departure. In 48 percent of the mitigated dispositional departures, the court cited a plea negotiation, recommendation by the prosecutor, or failure by the prosecutor to object as a reason for departure, down from a rate of 54 percent in 2009. The court stated that the prosecutor objected to the mitigated disposition in 17 percent of these cases.

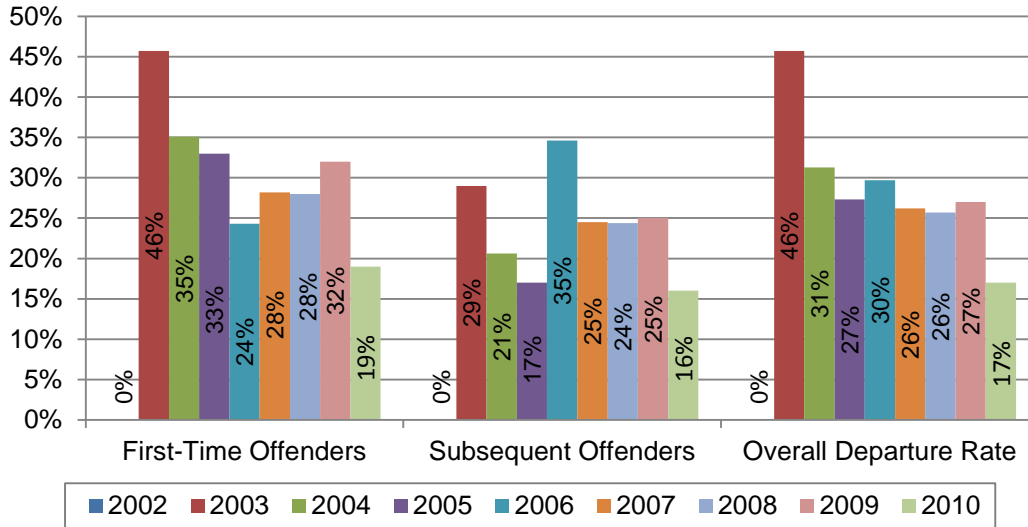
Durational Departures

Of the 167 cases sentenced to prison in 2010, 137 (82%) received the sentence duration recommended under the sentencing guidelines and 29 cases (17%) received a sentence that was shorter than that recommended by the sentencing guidelines (Table 6). This is lower than the 27 percent mitigated durational departure rate observed for felony DWI cases sentenced in 2009, and the lowest rate ever observed (Figure 6). One offender received an aggravated durational departure to prison

**Table 6. Durational Departure Rates: Executed Sentences**

# of Executed Sentences	No Departure	Aggravated Departure	Mitigated Departure	Total Departure Rate
167	137 (82%)	1 (0.6%)	29 (17%)	18%

**Figure 6. Mitigated Durational Departure Rates: 2002-2010<sup>1</sup>  
Executed Prison Sentences Only**



<sup>1</sup> There were no subsequent felony DWI offenders sentenced in 2002. Also, no felony DWI offenders sentenced to prison in 2002 received a durational departure.

In 76 percent of the mitigated durational departures, the court cited plea agreement or recommendation or lack of objection by the prosecutor as a reason for departure. In one case, the court stated that the prosecutor objected to the mitigated duration. Other frequently cited reasons for mitigated durations included: the offender showed remorse or accepted responsibility (55%); and the crime was less onerous than usual (10%).

Total Departure Rate

The total dispositional departure rate for all 667 cases was 12 percent. For presumptive prison cases, the dispositional departure rate was higher at 32 percent, and for presumptive stayed cases the rate was just over one percent. The total durational departure rate for all 667 cases was 7 percent. For presumptive prison cases the rate was higher at 12 percent, and for presumptive stayed cases it was 4 percent (Table 7).

**Table 7. Total Departure Rates**

Presumptive Disposition	Dispositional Departure	Durational Departure	Both	Total Departure Rate
Prison=238	75 (32%)	29 (12%)	2 (0.8%)	106 (45%)
Probation=429	5 (1%)	15 (4%)	1 (0.2%)	21 (5%)
Total=667	80 (12%)	44 (7%)	3 (0.4%)	127 (19%)

Any individual sentence might contain more than one kind of departure. If an offender for whom the sentencing guidelines presume probation is sentenced to prison for a shorter duration than called for under the guidelines, there is an aggravated dispositional departure (prison, not probation) and a mitigated durational departure (fewer months than guidelines provide). Less than one percent of all 667 cases were given a sentence that represented both a dispositional and a durational departure (3 cases).

The overall total departure rate (combining both dispositional and durational departures) was 19 percent; 127 of the 667 cases sentenced received one or more departures. For presumptive prison cases, the total departure rate was 45 percent. For presumptive stayed cases, the total departure rate was just over five percent.

Table 8. Number of Cases Sentenced by County

County	# of Cases Sentenced	Percent
Aitkin	1	0.1%
Anoka	29	4.3%
Becker	13	1.9%
Beltrami	14	2.1%
Benton	9	1.3%
Big Stone	2	0.3%
Blue Earth	16	2.4%
Brown	2	0.3%
Carlton	7	1.0%
Carver	4	0.6%
Cass	11	1.6%
Chippewa	1	0.1%
Chisago	10	1.5%
Clay	23	3.4%
Clearwater	5	0.7%
Cook	1	0.1%
Cottonwood	2	0.3%
Crow Wing	10	1.5%
Dakota	38	5.7%
Dodge	5	0.7%
Douglas	2	0.3%
Faribault	2	0.3%
Fillmore	1	0.1%
Freeborn	5	0.7%
Goodhue	5	0.7%
Grant	0	0.0%
Hennepin	85	12.7%
Houston	6	0.9%
Hubbard	11	1.6%
Isanti	2	0.3%
Itasca	2	0.3%

County	# of Cases Sentenced	Percent
Jackson	1	0.1%
Kanabec	2	0.3%
Kandiyohi	5	0.7%
Kittson	0	0.0%
Koochiching	0	0.0%
Lac Qui Parle	3	0.4%
Lake	3	0.4%
Lake of the Woods	1	0.1%
LeSueur	4	0.6%
Lyon	4	0.6%
McLeod	8	1.2%
Mahnomen	4	0.6%
Marshall	2	0.3%
Martin	2	0.3%
Meeker	3	0.4%
Mille Lacs	13	1.9%
Morrison	2	0.3%
Mower	6	0.9%
Murray	1	0.1%
Nicollet	1	0.1%
Nobles	3	0.4%
Norman	0	0.0%
Olmsted	24	3.6%
Otter Tail	11	1.6%
Pennington	3	0.4%
Pine	6	0.9%
Pipestone	2	0.3%
Polk	15	2.2%
Pope	1	0.1%
Ramsey	62	9.3%
Red Lake	2	0.3%

County	# of Cases Sentenced	Percent
Redwood	2	0.3%
Renville	0	0.0%
Rice	1	0.1%
Rock	1	0.1%
Roseau	2	0.3%
St Louis	39	5.8%
Scott	16	2.4%
Sherburne	19	2.8%
Sibley	0	0.0%
Stearns	15	2.2%
Steele	7	1.0%
Stevens	1	0.1%

County	# of Cases Sentenced	Percent
Todd	3	0.4%
Wabasha	0	0.0%
Wadena	0	0.0%
Waseca	3	0.4%
Washington	18	2.7%
Watonwan	0	0.0%
Wilkin	1	0.1%
Winona	15	2.2%
Wright	5	0.7%
Yellow Medicine	0	0.0%
<b>Total</b>	<b>667</b>	<b>100.0%</b>

## 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	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 <sup>3</sup>	426 363-480 <sup>3</sup>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	IX	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	VIII	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	VII	36	42	48	54 46-64	60 51-72	66 57-79	72 62-86
<i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i>	VI	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	IV	12 <sup>1</sup>	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$2,500)</i>	III	12 <sup>1</sup>	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	II	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 18-25
<i>Sale of Simulated Controlled Substance</i>	I	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 17-22

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the guidelines by law. See Guidelines Section 2.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, Guidelines Sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

<sup>1</sup> One year and one day

<sup>2</sup> M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections 2.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and 2.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.