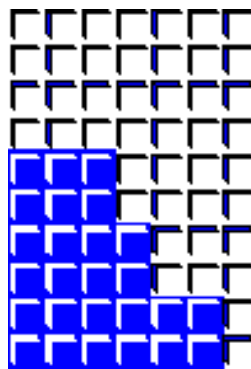


MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Failure to Register Offenses Sentenced in 2010

Published December 2011



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Summary of 2010 Data

In 2010, the number of offenders sentenced for failure to register (338) decreased by seven percent from the number sentenced in 2009 (363) (Figure 1). Although all failure-to-register offenses carry a mandatory minimum term of imprisonment, just over half of the offenders were sentenced to prison. With jail time included, the total incarceration rate was 92 percent, with 54 percent receiving a prison sentence and 38 percent receiving time in a local facility as a condition of probation (Table 1). The average pronounced prison sentence was roughly 20 months, which was slightly higher than the 19-month average observed in 2009 (Table 2). Mitigated dispositional departure rates decreased from 50 percent in 2009 to 46 percent in 2010, while mitigated durational departure rates increased from 35 percent in 2009 to 40 percent in 2010 (Table 4).

Presumptive Sentences for Failure to Register Offenses

Minn. Stat. § 243.166, sets forth the offenses of conviction under which an offender is required to register as a predatory offender. These include murder, kidnapping, criminal sexual conduct, indecent exposure, possession or dissemination of child pornography, and use or solicitation of a minor in various sex offenses. The statute makes failure to register a felony.

Beginning in August of 2000, the Legislature established a statutory mandatory minimum penalty of a year and a day in prison for a first offense and 24 months in prison for a subsequent offense.

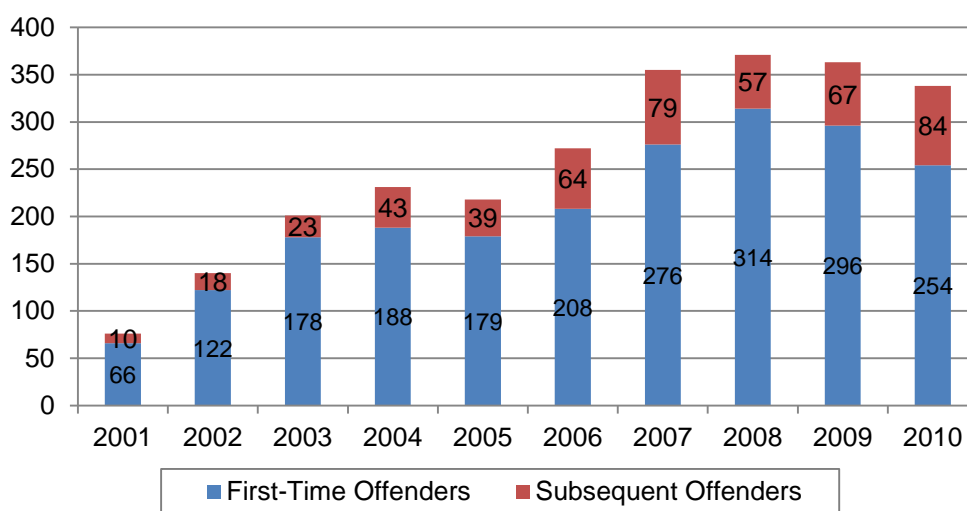
Failure to register was an unranked offense (no severity level assigned) until August 1, 2003. Effective for crimes committed on or after that date, the commission ranked first offenses at severity level I and subsequent offenses at severity level III, based largely on the actual sentences judges were imposing for the crime. Offenses committed on or after August 1, 2006 are ranked at severity level H on a separate sex offender grid. Of the 338 offenders sentenced in 2010, 328 (97%) were eligible for the presumptive sentences on the sex offender grid.

Case Volume & Distribution¹

Volume of Cases

The number of offenders sentenced for failure to register increased in almost every year from 2001 to 2008. There was a slight decrease in 2009, and in 2010, the number of offenders decreased again by seven percent (from 363 in 2009 to 338 in 2010). Of the 338 sentenced in 2010, 254 were first-time offenders and 84 were sentenced for a second or subsequent offense.

Figure 1. Number of Offenders Sentenced: 2001-2010



Demographic Characteristics

The average age for all first-time felony offenders was 31. When looking at failure-to-register offenders specifically, the average age for first-time offenders was 32 and the average age for offenders with a subsequent offense was 34. Although the total felony population was about 83 percent male and 17 percent female, failure-to-register offenders were more likely to be male (98% male and 2% female) (Figure 2). The racial and geographic distributions of failure-to-register offenders were similar to the racial and geographic distributions for all felony offenders, except that failure-to-register offenders were slightly more likely to be American Indian and slightly less likely to be Hispanic (Figure 3), and the number of failure-to-register offenders sentenced was slightly higher in the Greater Minnesota region and slightly lower in the Other Metro region (Figure 4).

¹ 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.

Figure 2. Distribution of Offenders by Gender

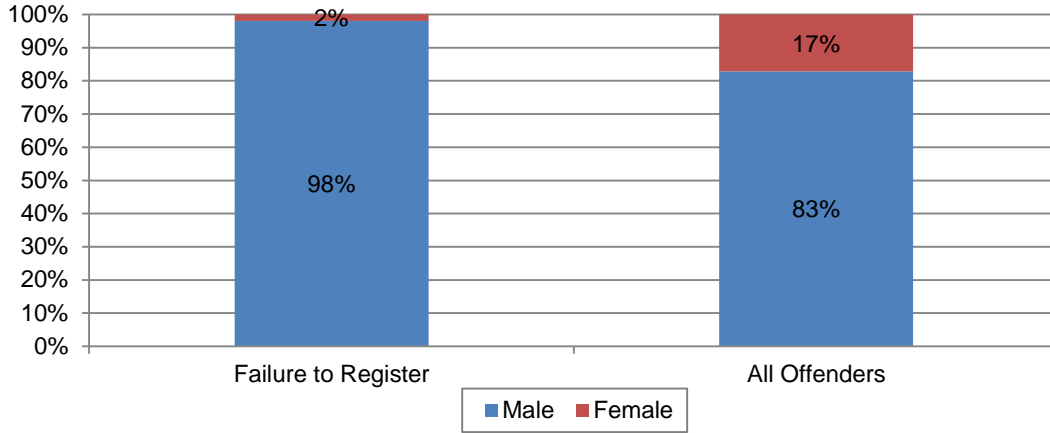


Figure 3. Distribution of Offenders by Race

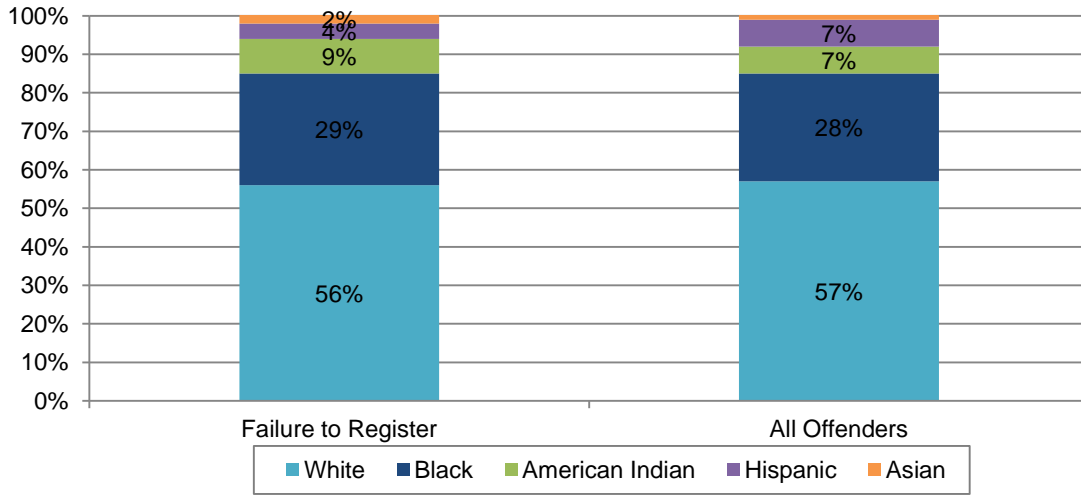
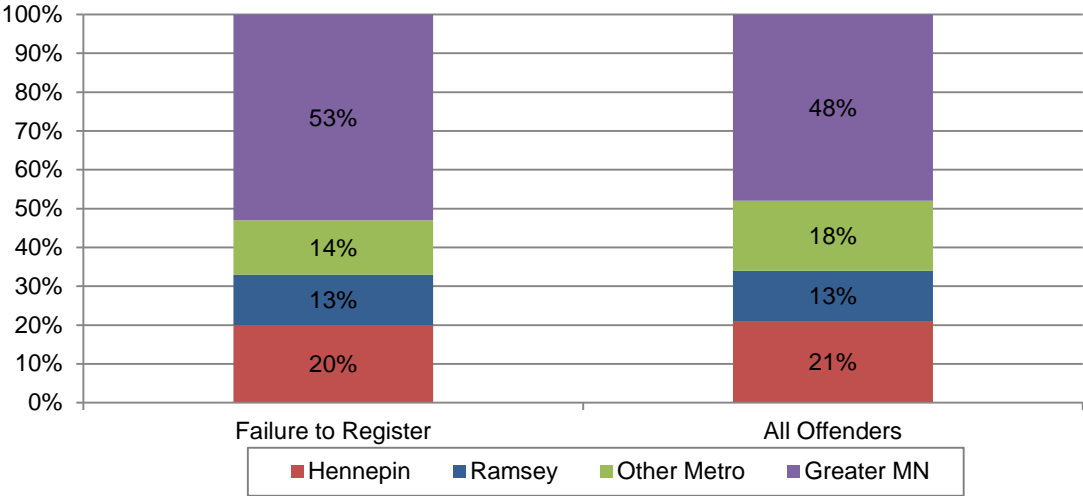


Figure 4. Distribution of Offenders by Region



Sentencing Practices

Incarceration Rates

As mentioned above, failure to register offenses carry a statutory mandatory minimum penalty of a year and a day in prison for a first offense and 24 months in prison for a subsequent offense. Overall, 54 percent of failure-to-register offenders received prison sentences in 2010, an increase from the 2009 rate of 50 percent. Imprisonment rates increased from those observed in 2009 for both first-time offenders (from 46% in 2009) and for offenders sentenced for a second or subsequent conviction (from 66% in 2009). Since the imprisonment rates increased for both groups, the local jail rate decreased from about 46 percent for first-time offenders and from 28 percent for subsequent offenders in 2009. Overall, local jail time was imposed in 38 percent of the cases in 2010, which is slightly lower than the jail rate observed in 2009 (42%). Taking into account both jail and prison, the total incarceration rate in 2010 was 92 percent: 90 percent for first-time offenders and 95 percent for subsequent offenders.

Table 1. Total Incarceration Rate

Type	# Offenders	Prison	Local Jail Time	Other Sanctions
First-Time Offenders	254	122 (48%)	106 (42%)	26 (10%)
Subsequent Offenders	84	59 (70%)	21 (25%)	4 (5%)
Total	338	181 (54%)	127 (38%)	30 (9%)

Table 2 displays the average pronounced durations for prison sentences and conditional jail time for first-time and subsequent offenders according to the applicable grid. The overall average prison sentence pronounced was 20 months, which is slightly longer than the average pronounced prison sentence in 2009 (19 months). Average pronounced prison sentences have increased with the implementation of the sex offender grid for offenses that occur on or after August 1, 2006. Of the 181 offenders who received executed prison sentences in 2010, 176 (98%) were eligible for the presumptive sentences on the sex offender grid rather than the standard grid.

Sentences on the sex offender grid were higher than those on the standard grid for offenders with a criminal history score greater than zero; this was particularly true for first-time offenders. For first-time offenders, the average pronounced sentence was about 13 months for offenders whose presumptive sentence was found on the standard grid and 19 months for offenders whose presumptive sentence was found on the sex offender grid. In 2010, all subsequent offenders were subject to presumptive sentences found on the sex offender grid, and the average pronounced prison sentence was 23 months.

**Table 2. Average Pronounced Durations:
By Grid and First or Subsequent Offense**

	Grid	Prison	Local Jail
First-Time Offenders	Standard Grid	13 months	77 days
	Sex Offender Grid	19 months	138 days
	Total	18 months	135 days
Subsequent Offenders	Standard Grid ²	----	----
	Sex Offender Grid	23 months	147 days
	Total	23 months	147 days
Total – All Offenders		20 months	137 days

² It should be noted that there were no subsequent offenders sentenced on the standard grid in 2010.

Departure Rates

Departure information is presented for first-time and subsequent offenders. 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

A disposition refers to the decision to send an offender to prison or to place the offender on probation. Dispositional departures occur when the court pronounces 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 is given a prison sentence.

Minn. Stat. §243.166, subd. 5(a) through (c) sets forth a mandatory period of incarceration in a state correctional facility for a conviction for failure to register. Minn. Stat. §243.166, subd.5(d) allows sentencing without regard to the mandatory minimum and provides that such a sentence is considered a departure from the sentencing guidelines.

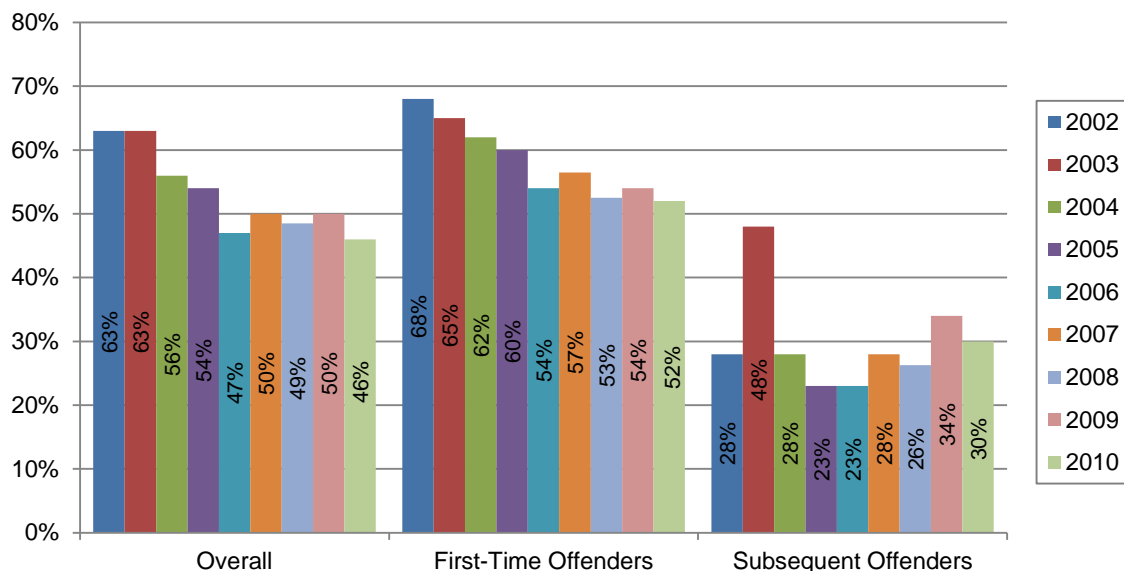
In 2010, 46 percent of the offenders sentenced received a non-prison sentence as the result of a mitigated dispositional departure, with first-time offenders receiving dispositional departures at a slightly higher rate of 52 percent.

Table 3. Dispositional Departure Rates

Type	# Offenders	Prison	Mitigated Dispositional Departure
First-Time Offenders	254	128 (48%)	132 (52%)
Subsequent Offenders	84	59 (70%)	25 (30%)
Total	338	181 (54%)	157 (46%)

The mitigated dispositional departure rate in 2010 decreased for both first-time and subsequent offenders. Figure 5 displays the mitigated dispositional departure rates from 2002 through 2010. The 2010 overall rate and the rate for first time offenders were the lowest ever observed.

Figure 5. Mitigated Dispositional Departure Rates: 2002-2010



Durational Departures

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.

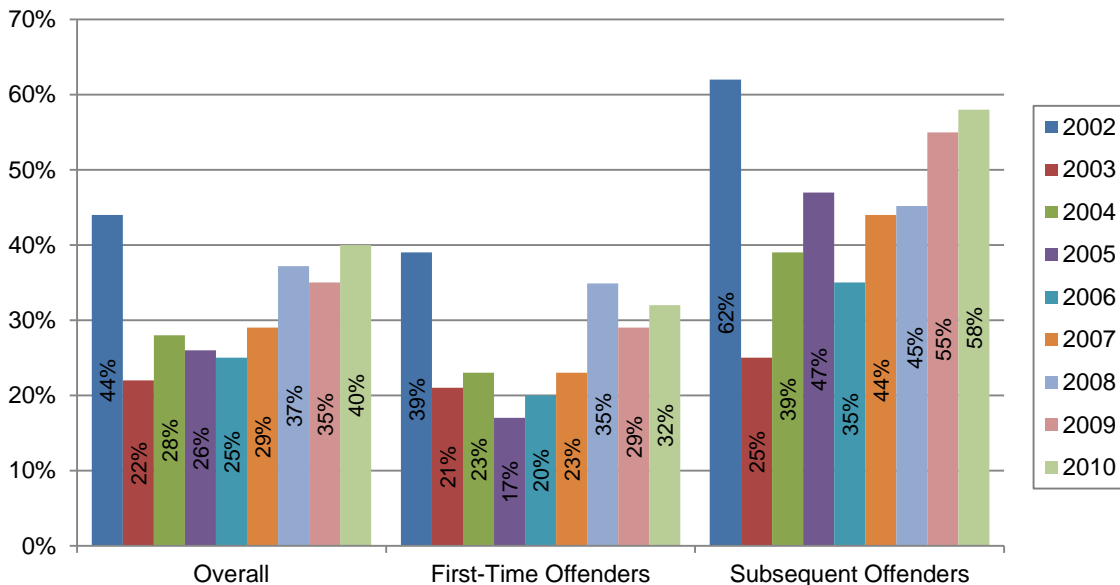
Of the offenders who received the mandatory prison sentence, 40 percent received a mitigated durational departure in which the offender was sentenced to less time in prison than recommended by the guidelines. Subsequent offenders had higher durational departure rates (58%) than first-time offenders (32%). Offenders with presumptive sentences on the sex offender grid had a mitigated durational departure rate of 42 percent. There were only 5 offenders with presumptive sentences on the standard grid who received prison sentences and none had a mitigated durational departure. The following table displays the mitigated durational departure rates for prison sentences for first-time and subsequent offenders according to the applicable grid.

Table 4. Durational Departure Rates for Prison Sentences: By Grid and First or Subsequent Offense

	Grid	# Prison Sentences	Mitigated Durational Departure
First-Time Offenders	Standard Grid	5	0
	Sex Offender Grid	117	39 (33%)
	Total	122	39 (32%)
Subsequent Offenders	Standard Grid	0	---
	Sex Offender Grid	59	34 (58%)
	Total	59	34 (58%)
Total – All Offenders		181	73 (40%)

The mitigated durational departure rate increased for both first-time offenders and subsequent offenders in 2010 from the rates observed in 2009. Figure 6 displays the mitigated durational departure rates from 2002 through 2010. Aggravated durational departures are infrequent in each year, so no trend information is provided on these departures. There were no aggravated durational departures in 2010.

Figure 6. Mitigated Durational Departure Rates: 2002-2010



*Departure Reasons*Mitigated Dispositions

In 2010, dispositional departures occurred in 46 percent of the cases sentenced. Of the 157 cases that received mitigated dispositional departures, 111 (71%) resulted from a plea agreement in which the prosecutor recommended or did not object to the sentence.

Table 5. Plea Information for Offenders Receiving Dispositional Departures

Position of Prosecutor, as Cited by Court in Departure Report				
	Number of Mitigated Dispositions	Plea Agreement or Prosecutor Recommends/ Does Not Object	Prosecutor Objects	No Information given
First-Time Offenders	132	98 (74%)	5 (4%)	29 (22%)
Subsequent Offenders	25	13 (52%)	6 (24%)	6 (24%)
Total	157	111 (71%)	11 (7%)	35 (22%)

Listed below is a summary of the reasons stated for the imposition of mitigated dispositional departures. The most frequently-cited reason (other than plea agreement) was that the offender was “amenable to probation” (52%), followed by “offender showed remorse” (34%) and “offense was less onerous” than the typical offense (29%). These were the same departure reasons that were most frequently cited in the 2001-2009 departure data.

Table 6. Frequently Cited Departure Reasons for Dispositional Departures

Departure Reasons	Number of Cases	Percentage of All Dispositional Departures
Amenable to Probation	97	62%
Shows Remorse/Accepts Responsibility	53	34%
Offense Less Onerous than Typical	46	29%
Recommended by Court Services	18	12%
Ensure Compliance with Conditions of Probation	14	9%
Amenable to Treatment	14	9%
Lacked Substantial or Reasonable Capacity for Judgment	6	4%
Failure to Register Prior Less Serious or Old	5	3%

Durational Departures

For offenders sentenced to prison, 40 percent received mitigated durational departures. In 74 percent of the mitigated durational departure cases, the prosecutor either recommended or did not object to the departure. The reasons cited for these durational departures are similar to the reasons cited above for mitigated dispositional departures.

Table 7. Plea Information for Offenders that Received Durational Departures (Executed Sentences Only)

	Position of Prosecutor as Cited by Court in Departure Report				
		Number of Durational Departures	Plea Agreement or Prosecutor Recommends / Does Not Object	Prosecutor Objects	No Information given
Mitigated Departures	First-Time Offenders	39	26 (67%)	1 (3%)	12 (31%)
	Subsequent Offenders	34	28 (82%)	1 (3%)	5 (15%)
	Total	73	54 (74%)	2 (3%)	17 (23%)

Table 8. Frequently Cited Departure Reasons for Durational Departures

	Departure Reason	Number of Cases	Percentage of Durational Departures
Mitigated Departures	Shows Remorse/Accepts Responsibility	39	53%
	Offense Less Onerous than Typical Offense	15	21%
	Judicial Efficiency/Save on Cost of Trial and Other Costs	6	8%

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 Length 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)	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	10	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>	9	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>	8	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>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ²
<i>Controlled Substance Crime, 3rd Degree</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	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](#).

¹ One year and one day

² 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.

SEX OFFENDER GRID
Presumptive Sentence Length 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.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or More
CSC 1 st Degree	A	144 144-173	156 144-187	168 144-202	180 153-216	234 199-281	306 260-360	360 306-360 ²
CSC 2 nd Degree— (c)(d)(e)(f)(h) Prostitution; Sex Trafficking 1 st Degree—1(a)	B	90 90-108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300	300 255-300 ²
CSC 3 rd Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2 nd Degree—1a	C	48 41-58	62 53-74	76 65-91	90 77-108	117 99-140	153 130-180	180 153-180 ²
CSC 2 nd Degree—(a)(b)(g) CSC 3 rd Degree—(a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 51-72	70 60-84	91 77-109	119 101-143	140 119-168
CSC 4 th Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 51-72	78 66-94	102 87-120	120 102-120 ²
CSC 4 th Degree— (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 38-54	59 50-71	77 65-92	84 71-101
CSC 5 th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 33-47	51 43-60	60 51-60 ²
Registration Of Predatory Offenders	H	12 ¹ 12 ¹ -14	14 12 ¹ -17	16 14-19	18 15-22	24 20-29	30 26-36	36 31-43



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2 are excluded from the guidelines, because by law the sentence is mandatory imprisonment for life. See Guidelines Section 2.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 offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See, Guidelines Sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ One year and one day

² Minn.Stat. § 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.