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**OFFICE OF THE LEGISLATIVE AUDITOR**  
STATE OF MINNESOTA

**PROGRAM EVALUATION REPORT**

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# **Chronic Offenders**



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## OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

February 22, 2001

Members  
Legislative Audit Commission

In April 2000, the Legislative Audit Commission directed us to study several issues relating to chronic adult offenders in Minnesota. Legislators were concerned about the way the criminal justice system deals with chronic offenders, particularly its sentencing policy and practices. Legislators specifically asked us to assess the costs and benefits of various strategies that might reduce the impact of chronic offenders, including increased incarceration.

We found that a small number of offenders are responsible for a large proportion of crimes. Compared with all other offenders, chronic offenders had about eight times the number of convictions for property offenses and six times more convictions for violent crimes. We also found that Minnesota's sentencing guidelines sometimes permit some chronic offenders to avoid lengthy incarceration. Unfortunately, research studies do not clearly establish whether increased incarceration or other types of sanctions would be cost-effective strategies for dealing with chronic offenders.

This report was researched and written by John Yunker (project manager), Valerie Bombach, and Carrie Meyerhoff. We received the full cooperation of the Department of Corrections, the Minnesota Sentencing Guidelines Commission, the Bureau of Criminal Apprehension, the State Court Administrator's Office, and county judicial and corrections officials.

Sincerely,

/s/ James Nobles

James Nobles  
Legislative Auditor

/s/ Roger Brooks

Roger Brooks  
Deputy Legislative Auditor



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# Summary

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## Major Findings:

- Over a recent four-year period, 5 percent of offenders were responsible for 19 percent of the criminal convictions in Minnesota, including 37 percent of the felonies (p. 13).
- Compared with other offenders, these “chronic” offenders had an average of eight times more convictions for property offenses and six times more convictions for violent crimes (p. 14).
- Chronic offenders appear to be a statewide problem, although chronic offenders in the Twin Cities area commit more serious crimes (p. 19).
- Most chronic offenders commit more than one type of crime and commit their crimes in more than one county (pp. 17 and 20).
- Minnesota’s sentencing guidelines and statutes generally work as intended, but they tend to permit some chronic offenders, particularly property offenders, to avoid lengthy incarceration (pp. 34-35 and 38-40).
- While some increased use of incarceration may be an appropriate response to the chronic offender problem, cost-benefit studies have not clearly established that would be the most cost-effective approach (pp. 79-84).



- But it is also unclear how effective less costly strategies would be. Options such as graduated sanctions or work crew participation for chronic offenders not going to prison would have to be implemented and evaluated to determine their effectiveness (p. 91).
- The lack of a statewide integrated database limits the effectiveness of the criminal justice system in dealing with chronic offenders (p. 89).

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**Chronic offenders cause significant problems, but designing cost effective strategies for dealing with them will not be easy.**

## Report Summary

Some policy makers have questioned whether Minnesota’s criminal justice system adequately deals with chronic offenders. In this report, we provide estimates of the number and types of chronic offenders in Minnesota. To the extent possible, we examine the types of sentences received by those with significant criminal records and compare their sentences with those received by other offenders. We also review what existing research suggests about the economic benefits and costs of incarcerating more offenders and discuss less costly alternatives than imprisonment.

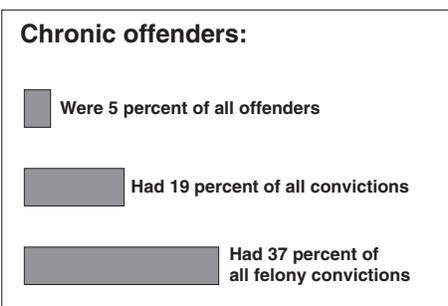
Considering the share of convictions for which chronic offenders are responsible, there may be cost effective ways to reduce crime. But, existing research does not clearly indicate what approach policy makers should take. Studies are inconclusive about whether significantly greater imprisonment of offenders would reduce the costs of crime to victims and communities more than it would cost taxpayers. Whether more modest changes in sentencing or correctional programs, or efforts targeted at certain types of chronic offenders, would have an impact on their behavior is also uncertain.

Despite the uncertainty, policy makers may wish to consider funding some pilot programs that attempt to address problems with chronic offenders. A comprehensive integrated data system and an increased emphasis on performance measurement and evaluation should also be priorities for the criminal justice system.

**Chronic offenders are responsible for more than one-third of all felony convictions.**

## A Small Share of Offenders Commit a Significant Share of the Serious Crimes

A relatively small share of offenders are responsible for a disproportionately large share of the criminal convictions in Minnesota. In a recent four-year period (1996-99), 5 percent of the offenders were convicted of at least three felonies or had five or more total convictions, including misdemeanors and gross misdemeanors. These 11,600 “chronic” offenders accounted for 19 percent of all convictions, and 37 percent of all felony convictions.



Compared with other offenders, a much larger share of the crimes committed by chronic offenders are property crimes such as theft, burglary, or financial card fraud. But most chronic offenders do not specialize in only one broad type of crime like property crimes. More than three-fourths of the chronic offenders were convicted of more than one type of crime.

## Chronic Offenders Appear to Be a Statewide Problem

Data on convictions suggest that chronic criminal behavior is a concern throughout the state. Contrary to expectations, fewer than half of chronic offenders’ convictions occurred in the Twin Cities metropolitan area. A majority of the felony convictions were in the Twin Cities area, but close to two-thirds of

chronic offenders' misdemeanor convictions occurred outside the Twin Cities area. Chronic offenders also cross county lines, complicating the criminal justice system's response to their behavior. About 62 percent of chronic offenders had convictions in more than one county.

It is not certain that conviction data provide an accurate picture of the incidence of chronic offenders around the state. Hennepin County and, to a lesser degree, Ramsey County have a smaller share of the state's convictions than their share of reported crime or arrests. Thus, their share of problems with chronic offenders may be understated by data on convictions. Hennepin County also has a more significant share of the chronic offenders if we use jail bookings rather than convictions as a measure of criminal activity.

### **Minnesota's Sentencing Policies Generally Work as Intended But Have Some Weaknesses**

Generally, sentencing policies have worked to ensure that the sanctions received by a convicted felon increase with the severity of the crime committed and the offender's criminal history. But, because sentencing policies emphasize imprisonment of violent offenders, property offenders are less likely to be incarcerated than other offenders. Felony property offenders must be convicted of more offenses than most other types of offenders before the sentencing guidelines recommend imprisonment. It is probably not coincidental that 44 percent of the offenses committed by chronic offenders are property crimes, compared with 25 percent of the offenses committed by non-chronic offenders.

The use of concurrent sentencing also creates some problems in holding chronic offenders responsible for each of their offenses. Offenders committing frequent crimes may serve time in jail or prison for only the most serious crime committed, even when some of those crimes are committed in separate behavioral incidents in different counties. Limits placed on the timing of prior convictions that can be used to justify longer sentences under the "career offender statute" also tend to benefit frequent offenders. Property offenders are probably more likely to benefit from these state laws because they tend to be more frequent offenders.

### **Studies on the Economic Benefits and Costs of Incarcerating More Offenders Are Inconclusive**

Some studies have presented evidence suggesting that the high taxpayer-supported costs of imprisoning offenders may be outweighed by the economic benefits of lower crime rates to crime victims and communities. However, not all studies and researchers agree with these conclusions. In addition, there is a high degree of uncertainty involved in measuring the benefits of reduced crime rates. Because many crimes are not reported and convictions do not occur for most reported crimes—particularly property crimes—there is also uncertainty involved in estimating the number of offenses that would have been committed by offenders if they had not been imprisoned. Although Minnesota has the lowest imprisonment rate in the nation, it is unclear whether a significant increase in that rate would save more for crime victims and communities than it would cost Minnesota's taxpayers. A more targeted approach directed at chronic offenders, particularly those with any

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**Current sentencing policies do not adequately deal with certain types of chronic offenders.**

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**The Legislature may wish to encourage local pilot programs that target chronic offenders.**

violent behavior in their history, may have greater merit.

**Less Costly Options Have Yet to Be Tested**

Other options might include a more formalized system of graduated sanctions for chronic offenders not going to prison, an assessment of the needs and problems of certain chronic offenders, and additional funding for police and prosecution to focus on known frequent offenders. Hennepin County is preparing a pilot program that would attempt to deal more quickly with chronic offenders, place certain chronic offenders on work crews, create incentives for chronic offenders to comply with court orders, and assess and appropriately address the needs of some offenders who may have mental health, chemical dependency, or other problems. The program could also result in greater use of jail or prison for those chronic offenders who do not comply with program requirements or who commit a new offense.

It remains to be seen how effective these types of programs will be in changing the behavior of chronic offenders or at least incapacitating them if they do not change their behavior. Given the share of serious crimes committed by chronic offenders, however, the Legislature may wish to encourage other counties or local criminal justice agencies to implement pilot programs.

Efforts to deal with chronic offenders would be enhanced by the development and implementation of a comprehensive integrated criminal justice database. Because many chronic offenders cross county lines and existing state databases do not provide information on some offenses, the implementation of a

comprehensive statewide database would help district court judges and local criminal justice agencies to deal more effectively with chronic offenders. Development of a statewide database has begun but will require substantial funding before it can be completed and implemented.

The Minnesota criminal justice system would also benefit from an increased internal emphasis on evaluation of programs and performance. It is difficult to formulate strategies for dealing with chronic offenders because little is known about the effectiveness of graduated sanctions or other options. If the goal is to develop and implement effective strategies to address chronic criminal behavior, criminal justice agencies will need to evaluate whether their efforts are working.

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# Introduction

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**M**innesota's criminal justice system emphasizes imprisonment for violent offenders. Nonviolent property and drug offenders generally must have an extensive felony criminal history before they are imprisoned in a state correctional facility. Most of the nonviolent felony offenders and 75 to 80 percent of all offenders convicted of a felony are placed on probation. Most of the felony offenders not sent to prison spend some time in a county jail or workhouse.

Minnesota's approach has held down the public costs of the criminal justice system by limiting the number of offenders sent to prison. Minnesota has consistently spent less per capita on criminal justice than most other states and now has fewer inmates in state prisons per state resident than any other state. In addition, Minnesota has the fourth lowest rate of incarceration in local jails. In contrast, among the 50 states, Minnesota has the sixth highest number of offenders on probation per state resident. Despite higher than average per diem prison costs, Minnesota's per capita criminal justice costs are considerably lower than those in most states because the cost per probationer is much lower than the cost per prison inmate.

Some policy makers have questioned whether Minnesota's approach is fair. They argue that individual citizens and communities bear heavy costs from the crimes committed by chronic offenders. They are concerned that chronic offenders commit numerous misdemeanors and/or felonies but are repeatedly cycled through Minnesota's criminal justice system. They also believe that judges may too often depart from the state's sentencing guidelines for felonies and thus allow offenders to escape appropriate punishment and incapacitation.

In response to these concerns, this report addresses the following questions:

- **What do available data tell us about the number of chronic offenders in Minnesota and their criminal activities?**
- **How does Minnesota's criminal justice system deal with offenders, particularly chronic offenders? Do chronic offenders receive longer prison or jail sentences than other offenders receive for similar crimes?**
- **Would the benefits of incarcerating more offenders, particularly chronic offenders, outweigh the high costs of incarceration?**
- **What other approaches for dealing with chronic offenders could the Legislature and local criminal justice agencies consider?**

To answer these questions, we collected and analyzed available data, reviewed existing research, examined court and probation files of offenders, and interviewed criminal justice system officials. We used data from a wide variety of sources including the Bureau of Criminal Apprehension, the Department of Corrections, the State Court Administrator's Office, the Sentencing Guidelines Commission, and Hennepin and Ramsey counties. Details on the types of data and analyses used are provided later in the report.

Chapter 1 of this report estimates the number of chronic offenders in Minnesota and their incidence across the state using several different approaches. In addition, this chapter provides information on the types and severity of crimes committed by chronic offenders, as well as by less frequent offenders. Chapter 2 examines the frequency with which chronic and other offenders are incarcerated and the length of their prison and jail sentences. Although our principal focus is on sentencing for felony offenses, this chapter also presents some limited information on sentencing for misdemeanor and gross misdemeanor offenses. Chapter 3 considers whether greater incarceration of chronic offenders might have crime reduction benefits that exceed the costs of incarceration. This chapter focuses on whether previous research has been able to convincingly estimate the amount of reduced crime that would result from greater incarceration and the monetary benefits of reducing particular types of crime. Finally, Chapter 4 discusses the approaches that the Legislature and the criminal justice system could consider to deal more effectively with chronic offenders.

# Identifying Chronic Offenders

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## SUMMARY

*About 5 percent of offenders were responsible for 19 percent of the criminal convictions in Minnesota over the last four years, including 37 percent of the convictions for felony offenses. These “chronic” offenders were much more likely than non-chronic offenders to have committed property crimes and, to a lesser extent, violent crimes. More than three-fourths of chronic offenders had convictions for more than one type of offense. About 62 percent of chronic offenders were convicted in more than one county.*

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The first task in assessing how Minnesota’s criminal justice system deals with chronic offenders is to define what is meant by the term “chronic offender.” The second is to estimate the extent of chronic criminal behavior in Minnesota. In this chapter, we provide information on chronic offenders in our state and address the following questions:

- **How is the term “chronic offender” defined? What limitations do existing data place on our ability to examine chronic criminal behavior?**
- **How many chronic offenders are there in Minnesota and where do they commit crimes? To what extent do chronic offenders cross county boundaries in committing crimes?**
- **How do the types and severity of crimes committed by chronic offenders compare with those committed by non-chronic offenders?**
- **To what extent do chronic offenders specialize in committing particular types of crimes?**
- **What is known about the characteristics of chronic offenders?**

In this chapter, we first discuss the difficulties we faced in defining and measuring chronic criminal behavior. Second, we present the results obtained by using jail booking data to measure the number of chronic offenders in Minnesota. Third, we examine estimates of the number of chronic offenders identified by using data on convictions for felony, gross misdemeanor, and misdemeanor offenses.<sup>1</sup> Finally,

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<sup>1</sup> A felony is a crime for which a sentence of imprisonment for more than one year may be imposed. A misdemeanor is a crime for which a sentence of not more than 90 days in jail or a fine of not more than \$1,000, or both, may be imposed. A gross misdemeanor is any crime that is neither a felony nor a misdemeanor and calls for no more than 365 days in jail or a fine of no more than \$3,000, or both. *Minn. Stat.* (2000) §609.02, subd. 1-4. The 2000 Legislature increased the maximum fine amount for misdemeanor offenses from \$700 to \$1,000. *Minn. Laws* (2000) ch. 488, art. 5, sec. 5.

we discuss what our analyses and other sources say about other characteristics of chronic offenders.

## MEASUREMENT ISSUES

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### Available data understate the criminal activity of chronic offenders.

The term “chronic offender” is generally used to refer to individuals who frequently or persistently violate criminal laws. Estimating the number of chronic offenders and the extent of their criminal behavior is difficult, however, for a variety of reasons. First:

- **Most crimes cannot be traced to a particular offender.**

This happens because most crimes are not reported to police and arrests are not made for most reported crimes. According to nationwide data, more than half of the violent crimes and about two-thirds of the property crimes committed in the United States are not reported to police.<sup>2</sup> In addition, arrests are made for only about 20 to 25 percent of serious crimes reported to police in Minnesota.<sup>3</sup> Among serious crimes, arrest rates are higher for crimes that are violent and more likely to have witnesses, such as murder, manslaughter, rape, and aggravated assault. Arrest rates for burglary are lower due to the absence of witnesses and perhaps the higher priority placed on solving violent crimes.

Even when an arrest is made for a particular crime or a suspected offender is booked into jail, it is not possible to definitively link the crime to that individual unless the person is convicted of the crime. Some of those arrested are never prosecuted, and others are prosecuted but found not guilty.<sup>4</sup> National data indicate that about 30 percent of those prosecuted for felonies are not convicted of any offense.<sup>5</sup>

Second:

- **In Minnesota, information on criminal activity is scattered among several databases, making it difficult to compile a complete criminal history of each offender.**

The Bureau of Criminal Apprehension (BCA) maintains a criminal history database that includes records of arrests and convictions for felonies, gross misdemeanors, and selected misdemeanors. Records are included in this database

<sup>2</sup> Bureau of Justice Statistics, United States Department of Justice, *Criminal Victimization 1999: Changes 1998-99 with Trends 1993-99* (Washington, D.C., August 2000), 11.

<sup>3</sup> Serious, or Part I, crimes include murder/manslaughter, rape, aggravated assault, robbery, burglary, larceny, motor vehicle theft, and arson. Arrest rates for less serious crimes (Part II crimes) are considerably higher. In Minnesota, arrests are made for about two-thirds of Part II crimes.

<sup>4</sup> See Minnesota Planning, *Tracking Crime: Analyzing Minnesota Criminal History Records* (St. Paul, 1998) for data on the percentage of arrests that result in prosecution and conviction for the offenses of domestic abuse, firearm offenses, criminal sexual conduct, and vulnerable person abuse. The report indicates that between 46 and 61 percent of people arrested are prosecuted and about 80 percent of those prosecuted are convicted.

<sup>5</sup> Bureau of Justice Statistics, United States Department of Justice, *Sourcebook of Criminal Justice Statistics* (Washington, D.C., 1999), 460. This figure applies to felony defendants in the nation’s 75 largest counties. Comparable information on misdemeanor offenses is not available.

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**Fragmented data systems make it difficult to access complete information on an offender's criminal history.**

only if they are accompanied by a fingerprint providing definitive identification of an offender. Records without a fingerprint are maintained in the BCA "suspense files," a separate database that is not available to the public. Comprehensive data on misdemeanor cases can only be obtained from the courts. The State Court Administrator's Office has information on misdemeanor convictions for most of the state, except Hennepin and Scott counties. In addition, information on the probation status of offenders is not centralized, although the Department of Corrections (DOC) is developing a statewide database. Information on prison and jail sentences can be obtained from BCA and court records but does not reflect actual time served. Data on the time served by prison inmates must be obtained from DOC. Information on actual time served by offenders in local jails and correctional facilities is not available from a single statewide source.

Although efforts are underway to develop an integrated database, criminal justice agencies are currently unable to access complete information on an offender's criminal history. Similarly, the lack of an integrated database makes it difficult to provide comprehensive research information to policy makers on important criminal justice issues. The lack of a centralized data source was a problem for this study as well. We could estimate the number of chronic offenders and the extent of their criminal activity only by first compiling a criminal history of each offender from the various data sources.

Compiling a criminal history for each offender is complicated by offenders' use of aliases. Linking an individual's criminal activity across databases, or even within some databases, can be difficult. Some offenders have lengthy lists of aliases, and some offenders use the same alias. Although we attempted to match records appropriately, perfect matching is not possible given the current information systems.

Finally, estimating the number of chronic offenders can be methodologically challenging due to other factors. For example, data limitations make constructing complete criminal histories infeasible. The analysis in this chapter is limited to criminal activity over the last five years. Going back much further than five years was not possible due to limits on the data available on misdemeanor convictions and questions regarding the completeness of other records.

Given these data limitations, our analyses may understate the number of chronic offenders or the extent of their prior criminal activity. Since some offenders may have been in prison during the entire five-year period, their propensity to commit crimes upon release is not reflected in the available data. Similarly, to the extent that offenders spent some of the five-year period in prison or jail, our analysis will understate the frequency with which offenders commit crimes when not incarcerated. The number of chronic offenders and their criminal activity could also be understated if chronic offenders are more successful than non-chronic offenders at avoiding arrests and convictions.

With these limitations in mind, we estimated the number of chronic offenders and the extent of their criminal activity over a five-year period, 1995-99. We used

data on both jail bookings and convictions to make our estimates.<sup>6</sup> We considered an offender to be “chronic” if the offender was booked into a jail facility ten or more times from 1995 through 1999. Alternatively, we labeled an offender as “chronic” if the offender had five or more convictions of any type or three or more felony convictions over the period. Our analysis of conviction data was limited to a four-year period, 1996-99, due to some data reporting problems we found with the 1995 data. Much of the rest of this chapter presents the results of our analyses of jail booking and conviction data.

## JAIL BOOKINGS

We used information on jail bookings from three sources. Information from the Department of Corrections covers the booking activity in most of the local detention facilities in Minnesota except the Hennepin and Ramsey county jails.<sup>7</sup> We obtained information on bookings directly from those counties. We counted each booking occurrence as a single booking, even if a person was booked on multiple charges. We also tried to eliminate duplicate, juvenile, and transfer records from the booking databases.




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**Using jail bookings to identify chronic offenders has advantages and disadvantages.**

Bookings can be a useful way of looking at chronic offenders and their criminal activity because bookings provide a broader look at criminal activity than is represented by convictions. However, using booking information in this way is open to certain criticisms. First, bookings may overstate criminal activity because people who are booked for a crime may be innocent. Second, law enforcement agencies may have different booking practices. Some may be less likely to book suspects than others. In addition, some law enforcement agencies may book fewer people and rely on citations requiring people to appear before the court instead.<sup>8</sup> Finally, people may be booked into a facility for reasons other than being suspected of a new offense.

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<sup>6</sup> A jail booking is a procedure for admitting a person into a local jail or detention facility. Booking procedures include fingerprinting, photographing, and collecting personal history information. We used jail bookings instead of arrests due to concerns about the completeness of available data on arrests. However, while we were able to obtain comprehensive data on jail bookings using three sources, it should be recognized that jail bookings include fewer potential offenders than arrests. Every offender booked at a jail has been arrested, but some offenders who are arrested are never admitted to a local jail.

<sup>7</sup> In this section, we are using the term “jail” somewhat loosely to apply to any holding facility or adult detention center that is used to detain adults prior to trial or sentencing. Some jails also house sentenced inmates. We did not obtain booking data from the local adult correctional facilities—such as those in Hennepin, Ramsey, and St. Louis counties—that only incarcerate sentenced inmates. If an offender was sentenced to report to one of these facilities without first having been booked into a jail, we will not have a record for the offender. Also, we did not obtain booking data from municipal police facilities that can only detain suspects for up to six hours. Neither the adult correctional facilities nor the municipal police facilities regularly report their activities for inclusion in the DOC booking data.

<sup>8</sup> A citation is a written order to appear in court.

Because we were using booking data as an estimate of offenders' criminal activity, we attempted to eliminate records that would artificially inflate individuals' bookings. For example, if an offender received a sentence to be served only on weekends, the offender would be booked every weekend until his or her sentence was complete. Since the multiple bookings would be a result of the original sentence, not new offenses, we eliminated the subsequent bookings that we could identify as such.

However, it was not possible to eliminate all bookings that involved activity other than new criminal activity.<sup>9</sup> Because we were using data from three different sources—and within the DOC data, from over 100 different facilities—similar activities could have been recorded differently. It is possible that our findings would be different if we had been able to make the booking data from all the facilities perfectly comparable.

We defined an offender as chronic if he or she was booked 10 or more times from 1995 through 1999. In order to use booking information to identify chronic offenders, we matched bookings to offenders based on their first name, last name, and birth date. Unlike the DOC database, data from Hennepin and Ramsey counties included matches based on fingerprints. However, we found that using the fingerprint information to supplement our matching procedures did not affect the overall results or our conclusions about the distribution of chronic offenders across the state.

## Findings

For the five-year period, 1995-99, we estimated that over 336,000 people were booked into Minnesota's local adult detention centers and holding facilities. We found that:

- **Most individuals who were booked into a jail during the last five years were only booked once.**

Although individuals averaged almost 2.7 bookings each, Table 1.1 shows that 55 percent of people booked between 1995 and 1999 were booked only one time. But, these offenders accounted for only 21 percent of the statewide bookings.

In contrast:

- **A relatively small share of suspected offenders accounted for a disproportionately large share of all bookings.**

Table 1.1 also shows that 14 percent of offenders (about 48,000 individuals) were booked five or more times over the last five years. They accounted for close to half of the jail bookings statewide between 1995 and 1999.

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<sup>9</sup> For example, if an individual was booked for an offense, released pending his or her court appearance, and then booked after being sentenced for the offense, he or she would have had two bookings for the same offense. We were not able to identify with certainty cases in which a second booking was for the same offense and therefore we did not eliminate the second booking from our analysis.

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**A small share of suspected offenders accounted for more than one-fourth of all bookings statewide.**

**Table 1.1: Suspected Offenders and Bookings by Number of Times Booked, 1995-99**

<u>Number of Times Booked</u>	<u>Percentage of Offenders</u>	<u>Percentage of Bookings</u>
1	55%	21%
2	17	13
3	8	9
4	5	8
5 to 9	10	23
10 or more	4	26

SOURCES: Office of the Legislative Auditor's analyses of booking data from the Department of Corrections and Hennepin and Ramsey counties.

The individuals we identified as “chronic”—those booked ten or more times in five years—represented 4 percent of the suspected offenders (over 15,000 individuals) and accounted for 26 percent of bookings statewide. Chronic offenders were booked an average of 15 times from 1995 through 1999, with some offenders having been booked over 70 times during the five-year period.

**Over a five-year period, most “chronic” offenders were booked in more than one county.**

Seventy-nine percent of those booked between 1995 and 1999 were booked in only one county. However, chronic offenders were more likely—in part due to their greater number of bookings—to be booked in more than one county. In fact:

- **Chronic offenders—those people booked ten or more times in five years—were booked in an average of three counties.**

As Table 1.2 shows, only 18 percent of chronic offenders were booked in one county, and close to one-third were booked in four or more counties. This suggests that chronic offenders cross county lines to commit offenses.

**Table 1.2: Number of Counties in Which an Offender Was Booked, 1995-99**

<u>Number of Counties</u>	<u>Percentage of Chronic Offenders</u>	<u>Percentage of Non-Chronic Offenders</u>
1	18%	82%
2	26	14
3	24	3
4	16	1
5 or more	15	<1

SOURCES: Office of the Legislative Auditor's analyses of booking data from the Department of Corrections and Hennepin and Ramsey counties.

Also of concern is the distribution of chronic offenders across the state. In the last year, some media attention focused on the number of chronic offenders in the Twin Cities metropolitan area. However, policy makers are interested in knowing the extent to which various parts of the state have chronic offenders. In general, we found that:

- **Hennepin County appears to have a larger share of chronic offender bookings than its share of all bookings, serious crimes, and the adult population.**

Table 1.3 shows that, while Hennepin County had 32 percent of jail bookings statewide, it had 40 percent of the bookings for chronic offenders.<sup>10</sup> Its share of chronic offender bookings was also higher than its share of Minnesota’s adult population (24 percent) and its share of serious crimes (35 percent).

**Table 1.3: Bookings by Region, 1995-99**

Region	Percentage of Chronic Offender Bookings	Percentage of All Bookings	Percentage of Serious Crimes (1999) <sup>a</sup>	Percentage of 1998 Population, Ages 18-64
<b>Twin Cities Metropolitan Area</b>	<b>72%</b>	<b>63%</b>	<b>68%</b>	<b>56%</b>
Hennepin County	40%	32%	35%	24%
Ramsey County	13	11	15	10
Other Metropolitan Area Counties	20	20	18	21
<b>Outstate</b>	<b>28</b>	<b>37</b>	<b>32</b>	<b>44</b>
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>a</sup>Serious, or Part I, crimes include murder/manslaughter, rape, aggravated assault, robbery, burglary, larceny, motor vehicle theft, and arson. We present only the percentage for serious crimes because the St. Paul Police Department does not report all Part II (less serious) crimes, only “other assaults.”

SOURCES: Office of the Legislative Auditor’s analyses of booking data from the Department of Corrections and Hennepin and Ramsey counties, crime statistics from the Bureau of Criminal Apprehension, and population data from the United States Census Bureau.

**Hennepin County had a disproportionately large share of chronic offender bookings.**

In contrast, outstate Minnesota had fewer chronic offender bookings than expected based on crime rates and its shares of the adult population and total bookings. About 28 percent of the chronic offender bookings were in outstate Minnesota, compared with 37 percent of all bookings, 32 percent of serious crimes, and 44 percent of the adult population.

An alternative way of examining the distribution of chronic offenders across the state is to determine where each chronic offender has been booked most often. We assigned each offender a “primary county” if at least half of his or her bookings occurred in one county.<sup>11</sup> As Table 1.4 shows, Hennepin County was the primary county for 38 percent of chronic offenders. In contrast, only 27 percent of all offenders had Hennepin County as their primary county.

Outstate counties and Twin Cities area counties other than Hennepin and Ramsey generally had a smaller share of the chronic offender population than their shares of all offenders. However, these regions tended to have chronic offenders that were somewhat more mobile than those in Hennepin and Ramsey counties. Approximately 12 percent of the chronic offenders with a primary county outside

<sup>10</sup> In addition, Hennepin County had 49 percent of the bookings for offenders with 20 or more bookings.

<sup>11</sup> We did not assign a primary county to offenders if their bookings were equally split between two counties.

**Table 1.4: Offenders by Primary County, 1995-99**

Region	Percentage of Chronic Offenders	Percentage of All Offenders
<b>Twin Cities Metropolitan Area</b>	<b>62%</b>	<b>54%</b>
Hennepin County	38%	27%
Ramsey County	11	9
Other Metropolitan Area Counties	13	18
<b>Outstate</b>	<b>19</b>	<b>38</b>
<b>No Primary County</b>	<b>19</b>	<b>8</b>
TOTAL	100%	100%

NOTE: A “primary county” was assigned if at least half of an offender’s bookings occurred in one county. We did not assign a primary county to individuals whose bookings were equally split between two counties.

SOURCES: Office of the Legislative Auditor’s analyses of booking data from the Department of Corrections and Hennepin and Ramsey counties.

of Hennepin and Ramsey counties were booked in only one county, compared with 33 percent of the Hennepin County chronic offenders and 16 percent of the Ramsey County chronic offenders. In addition, outstate Minnesota and the Twin Cities area counties other than Hennepin and Ramsey tended to have a larger share of the bookings from the fairly mobile group of chronic offenders without a primary county.<sup>12</sup>

## CONVICTIONS

**Convictions provide another way of measuring chronic offender activity.**

As an alternative approach to identifying chronic adult offenders, we analyzed data on criminal convictions in Minnesota between 1996 and 1999.<sup>13</sup> Similar to our analysis of statewide booking data, we determined offenders’ total number of convictions by matching offenders’ names and dates of birth as reported in criminal records. In contrast to bookings, convictions represent criminal activities for which an offender has either pleaded guilty to or been found guilty of an offense following arrest, prosecution, and judicial disposition.<sup>14</sup> For our analysis, we included convictions for felony, gross misdemeanor, and

<sup>12</sup> Outstate counties had 44 percent of the bookings from chronic offenders without a primary county but only 28 percent of all chronic offender bookings. The five Twin Cities metropolitan area counties (Anoka, Carver, Dakota, Scott, and Washington) surrounding Hennepin and Ramsey counties had 27 percent of the bookings from chronic offenders without a primary county and 20 percent of the bookings for all chronic offenders.

<sup>13</sup> We used conviction data from the BCA’s criminal history database and the BCA’s “suspense” file. We also used data from the State Court Administrator’s Office and Hennepin County District Court on misdemeanor convictions. These misdemeanor records included only the first disposition for each count; they did not include disposition information from subsequent court activity, such as probation revocations or appeals. We also used BCA data on offenders’ reported aliases to help build offenders’ conviction histories. Although our analysis of offender bookings included data for 1995-99, we restricted our analysis of conviction data to 1996-99 when we found possible underreporting of felony and gross misdemeanor convictions by Hennepin County in 1995. Due to time limitations for this study, we did not include Scott County’s misdemeanor conviction data, which are not available from the State Court Administrator’s Office.

<sup>14</sup> *Minn. Stat.* (2000) §609.02, subd. 5.

misdemeanor offenses.<sup>15</sup> We treated each conviction on a criminal count, or charge, as a separate conviction—even if there were multiple counts in a single case.<sup>16</sup>

For our analysis, we excluded convictions for certain misdemeanor offenses, such as traffic-related offenses, housing violations, license violations, juvenile offenses, and cases filed as petty misdemeanors.<sup>17</sup> We did this because we found that many convictions for these offenses, such as speeding or underage consumption of alcohol, were for one-time offenders. We also excluded convictions arising out of local ordinances when we were able to identify the offense as such.<sup>18</sup>

## Data Issues

The results of our study rely on the accuracy of reporting by the district courts to the State Court Administrator’s Office. In addition, whether an offense results in a conviction depends on law enforcement strategies, prosecution practices, and judges’ decisions. Each of these factors may vary across jurisdictions and affect the extent to which offenders’ conviction records reflect the offenses they have committed.

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**But there are some problems in using conviction data.**

Of particular concern is the fact that the Twin Cities metropolitan area has a smaller share of convictions than either its share of population or its share of reported Part I (serious) crimes. As Table 1.5 indicates, the Twin Cities area has about 56 percent of the state’s adult population (ages 18 to 64) and 68 percent of the reported Part I crimes. But, for the period 1996-99, the Twin Cities metropolitan area had only 45 percent of the total convictions in our database, including 57 percent of the felonies, 49 percent of the gross misdemeanors, and 42 percent of the misdemeanors.

It is not entirely clear why the Twin Cities area’s share of convictions lags behind its shares of reported serious crimes. There are a number of factors that may explain these differences. First, prosecutors in Hennepin and Ramsey counties use pretrial diversion more frequently than prosecutors in other parts of the state. This practice may reduce reported convictions in these counties relative to reported crimes since, under pretrial diversion, prosecutors can dismiss criminal charges provided offenders satisfactorily complete the terms of their sentences.

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<sup>15</sup> Throughout this report, we use the terms “felony convictions,” “gross misdemeanor convictions,” and “misdemeanor convictions” to mean convictions for felony, gross misdemeanor, or misdemeanor offenses, respectively.

<sup>16</sup> While some agencies analyze conviction data based on the number of criminal court cases, a case-level approach may result in inconsistencies in conviction totals due to statewide variations in prosecutors’ charging and case-filing practices. For example, some prosecutors may file multiple charges in a single case, while others may file a separate case for each charge.

<sup>17</sup> Due to the differences in recordkeeping among our data sources, we may not have identified some convictions for these offenses and inadvertently included them in our analysis. We also deleted duplicate convictions from our dataset when we were able to identify the record as such. Currently, a petty misdemeanor is not a crime but an activity prohibited by statute or local ordinance. It is punishable by a maximum fine of \$300. *Minn. Stat.* (2000) §609.02, subd. 4a. In 2000 Legislature increased the maximum fine amount for petty misdemeanors from \$200 to \$300. *Minn Laws* (2000), ch. 488, art. 5, sec. 6.

<sup>18</sup> The number, type, and severity level of local ordinances vary among jurisdictions, so we excluded these convictions from our analysis and instead examined violations of criminal statutes, which have statewide application.

**Table 1.5: Convictions, Reported Serious Crimes, and Population by Region, 1996-99**

Region	Percentage of Convictions, 1996-99	Percentage of Felony and Gross Misdemeanor Convictions (1999)	Percentage of Serious Crimes (1999) <sup>a</sup>	Percentage of 1998 Population, Ages 18-64
<b>Twin Cities</b>	<b>45%</b>	<b>51%</b>	<b>68%</b>	<b>56%</b>
<b>Metropolitan Area</b>				
Hennepin County	21%	25%	35%	24%
Ramsey County	9	10	15	10
Other Metropolitan Area Counties	15	17	18	21
<b>Outstate</b>	<b>55</b>	<b>49</b>	<b>32</b>	<b>44</b>
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>a</sup>Serious, or Part I, crimes include murder/mauslaughter, rape, aggravated assault, robbery, burglary, larceny, motor vehicle theft, and arson. We present only the percentage for serious crimes because the St. Paul Police Department does not report all Part II (less serious) crimes, only "other assaults."

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court; crime data from the Bureau of Criminal Apprehension; and population data from the United States Census Bureau.

Second, underreporting of convictions may also play a role. We found some evidence of underreporting of felony and gross misdemeanor convictions by Hennepin County in 1995 and, as a result, we limited our analysis to the period, 1996-99. We also learned of technical problems with the electronic transfer of that district's data to the BCA. Our exclusion of Scott County misdemeanor convictions from our database also reduced the Twin Cities area's share of convictions. But, this factor is unlikely to explain much of the differences between the Twin Cities area and the rest of the state.

Finally, differences in policing, prosecution, and sentencing practices may also be a factor. If practices in the Twin Cities area result in fewer reported crimes being solved and successfully prosecuted, the area's share of convictions would be less than its share of reported crimes. Whether differences in these practices play a significant role in explaining the distribution of convictions across the state is unknown. The lack of adequate statewide data and time limitations prevented us from examining these practices in detail.

## Chronic Offenders and Their Convictions

We grouped offenders according to the frequency and severity level of their convictions between 1996 and 1999.<sup>19</sup> Table 1.6 shows the percentage of

<sup>19</sup> We identified offense levels according to the Minnesota Offense Code (MOC) or statutory definitions. When MOC or statute data were inadequate, we relied on sentencing data to define the offense level. We recognize that offense level as defined by a sentence may not always agree with the offense level as found by a jury or as pleaded by a defendant; however, we had to rely on sentencing information for a relatively small proportion of statewide convictions. Using this methodology, we identified offense levels for 99.9 percent of the convictions in our dataset.

**Most chronic offenders had convictions for serious crimes, but some have only been convicted of low-level crimes.**

**Table 1.6: Chronic Offenders by Group, 1996-99**

Offender Group	Percentage of Chronic Offenders
Five or more convictions (misdemeanor offenses only)	18%
Five or more convictions (including at least one gross misdemeanor offense but no felony offenses)	22
Five or more convictions (including one or two felony offenses)	30
Three or more convictions for felony offenses	31
All chronic offenders	100%

SOURCES: Office of the Legislative Auditor’s analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

offenders we identified as chronic using four different definitions. We classified an offender as “chronic” if the offender’s criminal history included at least one of four combinations of convictions: (1) five or more convictions for misdemeanor offenses, but no offenses above the misdemeanor level, (2) five or more convictions, including at least one gross misdemeanor offense but no felony offenses, (3) five or more convictions, including at least one but no more than two felony offenses, or (4) at least three convictions for felony offenses. We refer to all offenders not in any of these four chronic offender groups as “non-chronic” offenders.

Over the four-year period we studied, there were about 233,000 offenders with convictions in Minnesota. These offenders had a total of about 388,000 convictions, or about 1.7 convictions each. Approximately 11,600 of these offenders were chronic offenders. Chronic offenders had about 74,000 convictions in four years, or an average of more than 6 convictions each. Overall, we found that:

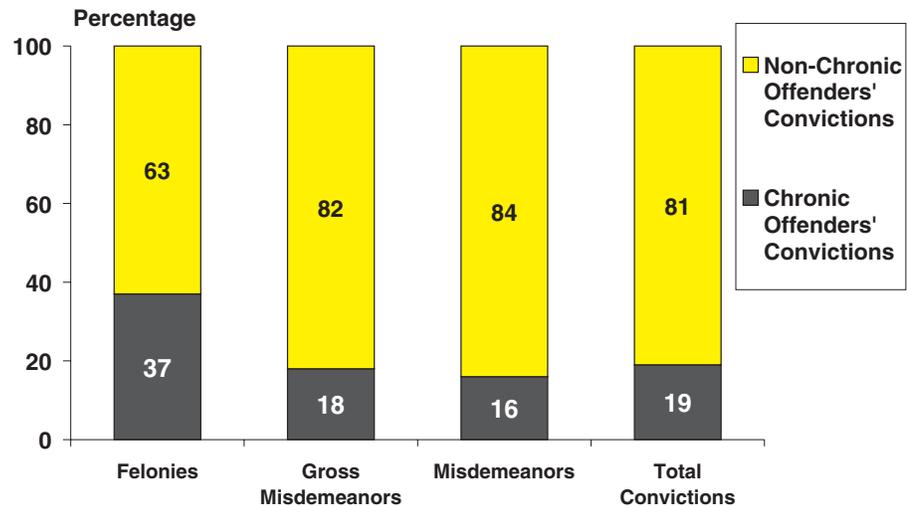
- **While most offenders had only one conviction in four years, the 5 percent of offenders whom we identified as “chronic” accounted for 19 percent of all convictions between 1996 and 1999.**

According to our data, these chronic offenders had between 3 and 41 convictions each during this time period. As Figure 1.1 indicates, we found that:

- **While chronic offenders accounted for 19 percent of convictions, they accounted for 37 percent of convictions for felony offenses and 18 percent of convictions for gross misdemeanor offenses.**

While some policy makers have suggested that chronic offenders typically commit only low-level crimes, we found that chronic offenders tended to have more convictions for serious crimes than non-chronic offenders. On average, chronic offenders had 11 times more convictions for felony offenses, 4 times more convictions for gross misdemeanor offenses, and 4 times more convictions for misdemeanor offenses, than non-chronic offenders. These differences are partly due to the greater number of convictions for chronic offenders than for

**Figure 1.1: Offenders' Shares of All Convictions by Offense Level, 1996-99**



Five percent of the offenders were responsible for more than one-third of the felony convictions.

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

non-chronic offenders; chronic offenders had, on average, about 4.5 times the number of convictions that non-chronic offenders had. These figures do not necessarily represent every chronic offender's criminal history since the frequency of offenses varies greatly among chronic offenders. As Figure 1.2 shows, convictions for all chronic offenders consisted of about 26 percent felonies, 16 percent gross misdemeanors, and 59 percent misdemeanor offenses. By contrast, convictions for all non-chronic offenders included 10 percent felonies, 17 percent gross misdemeanors, and 73 percent misdemeanor offenses.

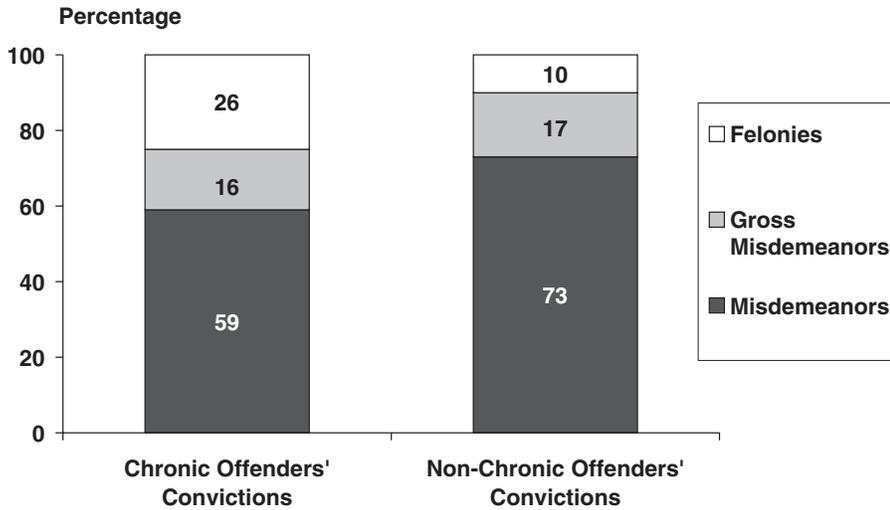
We also examined the types of offenses for which offenders had convictions.<sup>20</sup> We classified convictions according to the following five general offense categories: person, property, drug, driving while impaired (DWI), and "other." (The "other" category included offenses such as escape from incarceration, gambling, and loitering.) Data for 1996-99 indicate that:

- **Compared with non-chronic offenders, chronic offenders had an average of nearly 8 times more convictions for property offenses and 6 times more convictions for person offenses, but only 1.5 times the number of DWI convictions.**

Figure 1.3 shows that only 12 percent of all chronic offenders' convictions were for DWI-related offenses, while 37 percent of the convictions for non-chronic offenders were for DWI-related offenses. In contrast, 44 percent of chronic

<sup>20</sup> Using statute information, we identified offense types for about 96 percent of the convictions in our dataset.

**Figure 1.2: Offenders' Convictions by Offense Level, 1996-99**

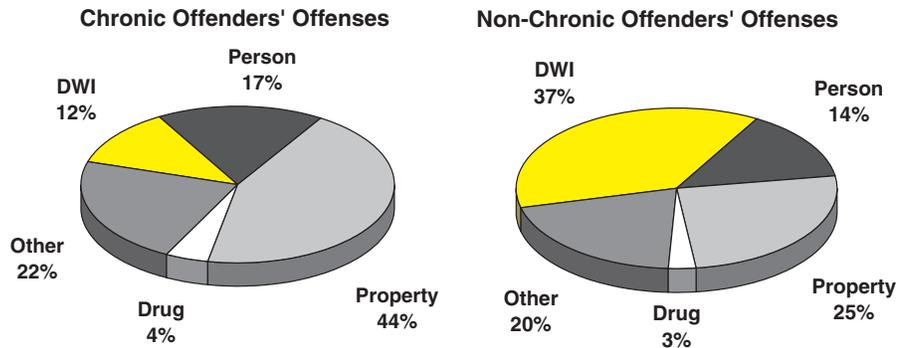


NOTE: Percentages may not sum to 100 due to rounding.

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

**Figure 1.3: Offenders' Convictions by Offense Type, 1996-99**

**About 44 percent of chronic offenders' convictions were for property crimes.**



NOTE: Percentages may not sum to 100 due to rounding.

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

**Chronic offenders accounted for a disproportionately large share of violent crimes.**

offenders' convictions were property offenses (such as theft and burglary) and 17 percent were person crimes, compared with 25 percent and 14 percent respectively for all non-chronic offenders.

We also grouped convictions into 22 more detailed offense categories, such as assault, forgery, burglary, sex offenses, and weapons crimes.<sup>21</sup> Compared with non-chronic offenders, chronic offenders had, on average, more convictions for serious person crimes. For example, they had 11 times more homicide convictions, 15 times more robbery convictions, 5 times more assault convictions, and 9 times more convictions for violating orders for protection. Table 1.7 shows the average number of convictions for offenders for a selection of offenses.

**Table 1.7: Average Number of Convictions per Offender Group, by Offense Categories, 1996-99**

Offense Category	Average Number of Convictions for:		Convictions per Offender:	Chronic Offenders' Share of Convictions
	All Chronic Offenders	All Non-Chronic Offenders	Chronic Offenders to Non-Chronic Offenders	
Theft	1.028	.123	8:1	31%
Assault	.631	.136	5:1	20
Burglary	.247	.013	19:1	49
Violation of Order for Protection	.106	.012	9:1	31
Sex Offense	.082	.014	6:1	24
Robbery	.062	.004	15:1	44
Homicide	.022	.002	11:1	37
Kidnapping	.01	.0005	21:1	53

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

As discussed earlier, we classified the 5 percent of offenders labeled as "chronic" into four groups based largely on the offense level of their convictions. Of all chronic offenders, 31 percent had three or more convictions for felony offenses and 30 percent had five total convictions with one or two felonies over the 1996-99 period. The other two groups, which include chronic offenders without felony convictions, accounted for about 40 percent of all chronic offenders.<sup>22</sup>

We looked at the convictions for each of our four chronic offender groups to determine the types of crimes they committed. As Table 1.8 shows, offenders with felony convictions generally had person, property, or drug crimes as part of

<sup>21</sup> The 22 offense categories include the person crimes of assault, homicide, robbery, kidnapping, sex offense, violation of an order of protection, and other person; the property crimes of forgery, fraud, theft, receiving stolen property, arson, burglary, property damage, and other property; drug crimes; DWIs; and other offenses including justice crimes, weapons crimes, gambling, family offenses, and escape.

<sup>22</sup> The variation in the size of these four chronic offenders groups may be partly due to our methodology, offenders' use of alias names, and the following differences in data recordkeeping. The BCA uses fingerprint data, not reported names, aliases, or dates of birth, to build offenders' criminal histories. In contrast, the State Court Administrator's Office and Hennepin County District Court keep data only on a criminal case-level basis and not at the offender level. Because of these differences in recordkeeping, it is likely we matched more records for offenders with felony or gross misdemeanor convictions, and undermatched offenders with only misdemeanor convictions.

**Table 1.8: Chronic Offenders’ Convictions by Offense Type, 1996-99**

Offense Type	Percentage of Convictions of Chronic Offenders with: Five or More Convictions (Misdemeanors Only)	Any Felony Conviction <sup>a</sup>
Person	9%	20%
Property	54	47
Drug	<1	7
Other <sup>b</sup>	27	19
Driving While Impaired	10	8
Total Convictions	100%	100%

<sup>a</sup>Includes offenders with five or more convictions, including one or two felony offenses, and offenders with three or more convictions for felony offenses.

<sup>b</sup>Examples of “other” offenses include loitering, gambling, and disorderly conduct.

SOURCES: Office of the Legislative Auditor’s analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

their criminal history. Offenders with convictions for only misdemeanor offenses generally committed property crimes and “other” offenses, such as loitering, gambling, and disorderly conduct. These differences can be explained in part by the severity of offenses as defined by statutes. Person and drug crimes tend to be classified as gross misdemeanor or felony offenses.

**Most chronic offenders do not specialize in committing one type of offense.**

Some policy makers suggest that jurisdictions should develop strategies, such as special correctional programs or sentencing guidelines, for handling chronic offenders. Currently, some correctional programs are designed to treat offenders for one type of offense, such as driving while impaired. According to our data, however, most chronic offenders’ criminal histories included more than one type of offense. We found that:

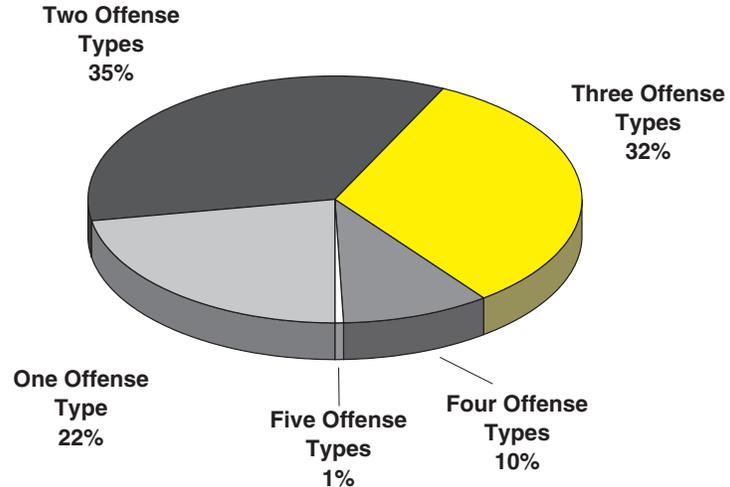
- **About 78 percent of all chronic offenders had convictions in at least two of the five general offense categories we examined.**

More than 40 percent of all chronic offenders had convictions for three or more offense types. As Figure 1.4 shows, only 22 percent of chronic offenders had convictions limited to one offense type.

Most chronic offenders convicted of only one offense type had convictions limited to property offenses. As Table 1.9 shows, chronic offenders with felony convictions were more likely than other chronic offenders to have convictions limited to either person or drug crimes.

Chronic offenders with convictions for more than one offense type (about 4 percent of all offenders) accounted for 15 percent of all convictions statewide. Table 1.10 shows the percentage of offenders with convictions for each type of offense that also had convictions for other offense types. For example, 64 percent of chronic offenders with convictions for person crimes also had property convictions and 63 percent of chronic offenders with drug convictions also

**Figure 1.4: Percentage of Chronic Offenders by Number of Offense Types, 1996-99**



NOTE: The five offense types are: person, property, drug, DWI, and other.

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, The State Court Administrator's Office, and Hennepin County District Court.

**Most chronic offenders had at least one conviction for a property offense.**

had property convictions. Of all chronic offenders with DWI convictions, just 3 percent had *only* DWI convictions; 61 percent also had property convictions, and 71 percent also had convictions for “other” offenses.

To further illustrate the variations in chronic offenders’ criminal histories, of those chronic offenders with convictions for more than one type of offense, we found that about 14 percent had convictions for person, property, and “other” offenses.

**Table 1.9: Chronic Offenders with Convictions for Only One Offense Type, by Offense Type, 1996-99**

Offense Type	Percentage of Chronic Offenders without Felony Convictions	Percentage of Chronic Offenders with Felony Convictions <sup>a</sup>
Person only	5%	23%
Property only	73	66
Drug only	0	10
DWI only	12	0
Other only	11	2
All Chronic Offenders	100%	100%

NOTE: Percentages may not sum to 100 due to rounding.

<sup>a</sup>Most “other” offenses are either misdemeanor or gross misdemeanor offenses. Therefore it is less likely offenders with felony convictions will have offenses limited to “other” types.

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

**Table 1.10: Chronic Offenders’ Offense Types, 1996-99**

Chronic Offenders with This Offense Type:	Percentage with Only One Type of Offense	Percentage Who Also Had a Conviction for a:				
		Person Crime	Property Crime	Drug Crime	DWI Crime	Other Crime
Person (N = 5,371)	8%	--	64%	13%	38%	64%
Property (N = 8,507)	21	40%	--	14	31	56
Drug (N = 1,855)	8	37	63	--	28	56
DWI (N = 4,303)	3	48	61	12	--	71

SOURCES: Office of the Legislative Auditor’s analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

Nearly 8 percent had convictions for person, property, DWI, and “other” offenses, and about 3 percent had convictions for property, drug, and “other” offenses.

## Location of Chronic Offenders

We also examined convictions by geographic region to determine the prevalence of chronic offenders around the state, as well as the extent to which chronic offenders are convicted of crimes in multiple counties.<sup>23</sup> As discussed earlier in this chapter, we found that the Twin Cities metropolitan area had a smaller share of convictions than its share of reported serious crime or adult population. We emphasize that our findings on the geographic distribution of chronic offenders and their convictions across the state are based on reported criminal convictions; they may not represent true differences in the degree of chronic offender activity across the state.

### Chronic offenders are a statewide problem.

Overall, about 45 percent of chronic offenders’ convictions and 46 percent of other offenders’ convictions occurred in the Twin Cities metropolitan area. But, it appears that the Twin Cities area had more of the serious chronic offender activity. In particular, Table 1.11 shows that:

- **A majority of the chronic offenders’ felony convictions occurred in the Twin Cities metropolitan area, while close to two-thirds of their misdemeanor convictions occurred outside the Twin Cities area.**

During the 1996-99 period, 54 percent of chronic offenders’ felony convictions occurred in the Twin Cities metropolitan area, compared with 47 percent of gross misdemeanor convictions and 37 percent of misdemeanor convictions. Hennepin County accounted for much of this difference. About 28 percent of chronic offenders’ felony convictions occurred in Hennepin County but only 23 percent of gross misdemeanor convictions and 16 percent of misdemeanor convictions occurred in Hennepin County.

<sup>23</sup> We were able to identify county information for 99.9 percent of the convictions in our dataset.

**Table 1.11: Chronic Offenders' Convictions by Region and Offense Type, 1996-99**

**Chronic offenders in the Twin Cities area tend to commit more serious crimes than chronic offenders elsewhere in the state.**

Region	Percentage of Felonies	Percentage of Gross Misdemeanors	Percentage of Misdemeanors	Percentage of 1998 Population, (Ages 18-64)
<b>Twin Cities Metropolitan Area</b>	<b>54%</b>	<b>47%</b>	<b>37%</b>	<b>56%</b>
Hennepin County	28%	23%	16%	24%
Ramsey County	11	10	9	10
Other Metropolitan Area Counties	16	15	13	21
<b>Outstate</b>	<b>46</b>	<b>53</b>	<b>63</b>	<b>44</b>
<b>Total Convictions</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

According to our data:

- **While less than half of the state's adult population (ages 18 to 64) lived in outstate Minnesota, the majority of all chronic offenders' convictions (about 55 percent) occurred in that region.**

As Table 1.11 shows, chronic offenders' convictions in outstate Minnesota included 46 percent of the felonies, 53 percent of the gross misdemeanors, and 63 percent of the misdemeanors.

We also examined the extent to which chronic offenders were convicted of crimes in different jurisdictions. As was the case with our analysis of jail bookings, most chronic offenders crossed county boundaries to commit offenses. Table 1.12 shows that:

- **About 62 percent of chronic offenders had convictions in more than one county.**

**Table 1.12: Number of Counties in Which an Offender Had a Conviction, 1996-99**

Number of Counties	Percentage of Chronic Offenders	Percentage of All Non-Chronic Offenders
1	38%	91%
2	34	9
3	18	1
4	7	<1
5 or more	3	0

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

In fact, 10 percent of chronic offenders (about 1,100 offenders) had convictions in four or more counties between 1996 and 1999. On average, chronic offenders had convictions in two counties. In contrast, 91 percent of non-chronic offenders had convictions in only one county.

We also studied how chronic offenders across the state vary in terms of the level and type of their convictions. To examine the variation across the state, we assigned each offender a “primary” county if 50 percent or more of his or her convictions were from a particular county.<sup>24</sup> About 87 percent of chronic offenders had a primary county.

Consistent with our previous results, Table 1.13 shows that chronic offenders with only misdemeanor convictions tended to have a primary county in regions outside the Twin Cities metropolitan area. Only 20 percent of these chronic offenders had a primary county in the Twin Cities metropolitan area. But, 43 percent of chronic offenders with more serious convictions had at least half of their convictions in a Twin Cities area county.

**Outstate Minnesota has a disproportionately high share of low-level chronic offenders.**

**Table 1.13: Chronic Offenders by Level of Offense and Primary County, 1996-99**

Region	Percentage of Misdemeanor-only Chronic Offenders	Percentage of Other Chronic Offenders
<b>Twin Cities Metropolitan Area</b>	<b>20%</b>	<b>43%</b>
Hennepin County	10%	22%
Ramsey County	3	9
Other Metropolitan Area Counties	6	11
<b>Outstate</b>	<b>71</b>	<b>44</b>
<b>No Primary County</b>	<b>9</b>	<b>14</b>
<b>Total Offenders</b>	<b>100%</b>	<b>100%</b>

NOTE: Percentages may not sum to 100 due to rounding.

SOURCES: Office of the Legislative Auditor’s analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

As discussed earlier, we found that most chronic offenders did not specialize in committing one particular type of offense. As Table 1.14 shows, chronic offenders with some types of convictions were disproportionately represented in particular regions of the state. For example, chronic offenders with drug convictions were disproportionately represented in Hennepin and Ramsey counties when compared with those counties’ proportions of all chronic offenders. The Twin Cities metropolitan area, and Hennepin County in particular, also had a disproportionately high share of the chronic offenders with only person crime convictions. Chronic offenders with DWI convictions were disproportionately represented in outstate counties.

<sup>24</sup> We did not assign primary counties to those offenders with convictions equally split between two counties.

**Table 1.14: Selected Chronic Offender Profiles by Primary County, 1996-99**

Chronic Offender Profiles	Percentage of Chronic Offenders by Primary County				Total
	Outstate Counties	Hennepin County	Ramsey County	Other Metropolitan Area Counties	
All chronic offenders ( <i>N</i> = 10,162)	56%	23%	10%	12%	100%
Person only ( <i>N</i> = 394)	38	37	8	16	100
Property only ( <i>N</i> = 1,490)	67	21	5	8	100
Drug only ( <i>N</i> = 149)	38	39	15	8	100
DWI only ( <i>N</i> = 118)	78	10	4	8	100
Any person ( <i>N</i> = 4,786)	52	25	10	13	100
Any property ( <i>N</i> = 7,245)	57	22	10	11	100
Any drug ( <i>N</i> = 1,655)	38	31	18	13	100
Any DWI ( <i>N</i> = 3,719)	62	18	7	14	100

NOTE: Includes only those chronic offenders whom we were able to assign a primary county. "Primary county" indicates that at least 50 percent of the offender's convictions were in that county. We did not assign a primary county to offenders whose convictions were equally split between two counties.

SOURCES: Office of the Legislative Auditor's analyses of 1996-99 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

## OTHER CHARACTERISTICS

It would be useful for policy makers, as well as criminal justice agencies dealing with chronic offenders, to have additional information on chronic offenders. We were able to obtain only limited statewide data on offenders' characteristics, such as gender and race. Compared to all individuals booked, the data showed that males and African Americans were disproportionately represented among individuals booked frequently over the last five years. Of people for whom we had gender data, 79 percent of people booked were male, while 89 percent of people booked ten or more times were male.<sup>25</sup> Among those for whom race information was available, 74 percent of all offenders were white, while 54 percent of individuals booked ten or more times were white.<sup>26</sup> African Americans, who accounted for 15 percent of all people booked, accounted for 36 percent of people booked ten or more times. Between 1995 and 1999, 4 percent of all people booked were American Indian and 5 percent were Hispanic. In contrast, among those booked ten or more times, 7 percent were American Indian, and 2 percent were Hispanic.

<sup>25</sup> Because we matched offender records by last name, first name, and date of birth, it is possible we failed to identify some female offenders as chronic if they married and changed their last name during our period of analysis. However, in order to avoid identification as a chronic offender, these female offenders could not have had ten or more bookings under either of their last names.

<sup>26</sup> It should be noted that race data were not always consistent for offenders. Even the Hennepin County data, which matches offender booking records by fingerprint, did not always have the same race information for the same offender. Sex and race could not be established for 7 percent of all offenders and 2 percent of those booked ten or more times. Nearly all of the individuals for whom we did not have sex or race information were from Ramsey County.

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**There is very little statewide information on offenders' characteristics.**

Based on our 1996-99 conviction data, of people for whom we had gender data, 79 percent of all offenders were male, while 86 percent of offenders meeting one of our four definitions of chronic were male. Among those for whom race information was available, nearly 74 percent of all offenders with convictions were white, compared with 67 percent of chronic offenders. While 19 percent of all offenders with convictions were African American, about 25 percent of chronic offenders were identified as such. Our data also indicated that about 5 percent of all offenders were American Indian, and 3 percent were either Hispanic or Asian. Among our chronic offenders, about 8 percent were American Indian, and less than 1 percent were identified as either Hispanic or Asian.<sup>27</sup>

Information on offenders' chemical dependency and mental health problems, housing status, employment history, and marital status may help policy makers formulate better strategies for addressing the problem of chronic recidivism. However, there is very little centralized or computerized information on these characteristics of chronic or non-chronic offenders. Some information is available as a result of a recent study of chronic offenders in Hennepin County.<sup>28</sup> The study found that 72 percent of the chronic offenders identified on the basis of their criminal convictions were unemployed and 16 percent were homeless or living in a shelter. Three-fourths of the chronic offenders had never been married.

The study also examined offenders who had been booked at the Hennepin County Adult Detention Center five or more times during 1998. Using information provided by other Hennepin County agencies, the study found that about half of these chronic offenders had been chemically dependent at one time or another. About one-fourth had some indication of a mental health issue in their case file, although the report did not indicate the nature or severity of the problems experienced by chronic offenders. In our review of a limited number of case files in Hennepin County, we also noted a high rate of chemical dependency among the most chronic offenders but a lower rate of mental health problems.

This information on chronic offenders in Hennepin County may be useful in understanding the challenges faced in that county. However, without analyzing similar data elsewhere in the state, the results should not be considered representative of chronic offenders statewide.

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<sup>27</sup> Based on our conviction data, we could establish gender for only 48 percent of all offenders and 85 percent of the offenders meeting one of our four definitions of "chronic." In addition, we were able to establish race for only 43 percent of all offenders and 83 percent of all chronic offenders. We caution that these findings may not be representative of offenders' race statewide. We were able to establish race for 81 percent of offenders with Hennepin County as primary county, but only 38 percent of offenders with Ramsey County as a primary county, 36 percent of offenders whose primary county was a Twin Cities metropolitan county other than Hennepin or Ramsey, and 29 percent of offenders with a primary county outside the Twin Cities metropolitan area.

<sup>28</sup> Executive Strategic Planning Group of the Hennepin County Criminal Justice Coordinating Committee, *Chronic Offenders in Hennepin County: A Management Framework* (Minneapolis, September 2000). The study identified an offender as "chronic" if the offender had five or more criminal convictions, or three or more felony convictions, over a three-year period (1996-98).

## DISCUSSION

The findings in this chapter highlight several characteristics of chronic offenders. First, when defining chronic offenders by their number of bookings or their number of convictions, it is apparent that many chronic offenders do not restrict their criminal activities to a single jurisdiction. On average, chronic offenders were booked in three counties, while on average they were convicted in two counties. These findings illustrate some of the challenges agencies face when developing strategies for identifying and managing chronic offenders. If policy makers or criminal justice agencies want to focus efforts on chronic offenders, it is important to be able to identify who they are. The fact that many chronic offenders commit crimes in several counties, combined with incomplete data and fragmented data systems across the state, makes it difficult for criminal justice personnel to develop comprehensive pictures of offenders' criminal activities around the state.

Second, chronic offenders seldom commit only one type of offense. We found that a fairly small portion of chronic offenders (22 percent) had convictions limited to one offense type. For example, only 3 percent of chronic offenders convicted of driving while impaired (DWI) had only DWI convictions and only 8 percent of chronic offenders with drug convictions had only drug convictions. We do not present this information as evidence that offense-specific programs or guidelines should be abandoned or that people are unaware of or do not consider offenders' histories during sentencing. We are simply illustrating how diverse chronic offenders' histories can be and the complexities of determining appropriate sanctions. In addition, all jurisdictions may not agree on what the appropriate sanctions are for some of these offenders. For example, some jurisdictions might focus on substance abuse issues of an offender and emphasize substance abuse treatment over incarceration, while others might focus on the same offender's threat to public safety and favor incarceration.

Overall, these findings may prove useful to policy makers when considering programs or strategies for handling offenders. Some policy makers and members of the criminal justice community suggest that there should be special programs or sentencing guidelines for chronic offenders. Some programs already focus on offenders who repeatedly commit certain types of crime, such as DWI-related offenses. The Minnesota Sentencing Guidelines Commission is considering and evaluating options regarding sentencing policy for felony drug offenders. And some judicial districts have case-management systems or practices that include tracking and processing offenders who commit certain types of offenses.

# Sentencing Chronic Offenders

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## SUMMARY

*Generally, the sanctions received by a convicted felon increase with the severity of the crime committed and the offender's criminal history. But because Minnesota's sentencing guidelines emphasize imprisoning violent offenders, property offenders often become chronic offenders or commit a violent offense before being sent to prison. Compared with other types of felony offenders, property offenders also receive shorter prison and jail sentences. Among offenders with extensive criminal histories, drug offenders are most likely to avoid prison even when the guidelines call for a prison sentence. Many of these drug offenders have committed and subsequently commit other types of crimes, particularly property crimes.*

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Minnesota's criminal justice system does not label frequent offenders as "chronic offenders." However, for felons, Minnesota has guidelines that recommend sentences to judges based, in part, on offenders' criminal histories. In addition, a limited number of felons each year are eligible to be sentenced under the state's "career offender" statute. Minnesota does not have sentencing guidelines for offenders convicted of misdemeanor or gross misdemeanor offenses. Generally speaking, judges are not required to consider these offenders' criminal histories when sentencing them.

In this chapter, we address the following questions:

- **How do sentences for felony offenders with high criminal history scores differ from sentences for offenders with lower scores?**
- **To what extent do judges depart from the sentences recommended by the sentencing guidelines, particularly for offenders with high criminal history scores?**
- **How well does Minnesota's career offender statute work?**
- **To what extent is the criminal history score that is used in sentencing felons an accurate reflection of their past criminal involvement?**
- **What is the recidivism rate for felony offenders who are put on probation, particularly offenders with higher criminal history scores?**
- **How do sentences for chronic offenders convicted of misdemeanor or gross misdemeanor offenses differ from sentences for non-chronic offenders convicted of the same offenses?**

We examined the sentencing of felons and career offenders in Minnesota during 1997 and 1998 using data from the Minnesota Sentencing Guidelines Commission (MSGC). We used the criminal history score calculated by the MSGC as a measure of offenders' criminal histories. Although data for 1999 are now available and are sometimes cited in this chapter, they were not available early enough for us to use in preparing much of this chapter.

It was more difficult to examine whether chronic offenders received different sentences than non-chronic offenders for misdemeanor and gross misdemeanor offenses. Available sentencing data on these offenses do not include any measure of offenders' past records. As a result, we examined the sentences given to chronic offenders who were convicted of selected misdemeanor or gross misdemeanor offenses in 1999 and compared them to the sentences given to non-chronic offenders. As discussed in Chapter 1, we defined chronic offenders as offenders who were convicted of five offenses of any level or three felony-level offenses during a four-year period.

## FELONIES

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**Minnesota has used sentencing guidelines for felony cases since 1980.**

Minnesota adopted sentencing guidelines in 1980 to replace an indeterminate sentencing system that gave judges considerable freedom in sentencing convicted felons. The guidelines serve several purposes. First, the guidelines promote uniformity in the sentencing of felons. Second, they attempt to provide sentences that are proportional to the severity of the offense as determined by the Legislature and the Minnesota Sentencing Guidelines Commission (MSGC) and the offender's criminal history score. Third, the guidelines are designed to improve understanding of the connection between sentencing decisions and the state's prison capacity. The guidelines also require that sentences should be neutral with respect to the race, gender, and social or economic status of convicted felons.

## Background

Minnesota's sentencing guidelines recommend a prison sentence of either a specific number of months or a range of months. The guidelines also recommend whether an offender should be required to serve the prison sentence or be sentenced to probation instead. The recommendations are based on the severity of the offense and the criminal history score of the offender.

### Sentencing Guidelines Grid

The guidelines are in the form of a grid. As shown in Figure 2.1, the left side of the grid indicates ten offense severity levels. Across the top of the grid are seven categories of criminal history score ranging from zero to six or more. Each cell in the grid shows the recommended prison sentence based on the severity level of an offense and the criminal history score of an offender.

The non-shaded cells on the grid indicate the severity level/criminal history score combinations for which the guidelines recommend a felon serve a prison sentence.

**Figure 2.1: Sentencing Guidelines Grid, Presumptive Sentence in Months, August 2000<sup>a</sup>**

Common Offenses	Severity Level	Criminal History Score						
		0	1	2	3	4	5	6 or More
Murder, 2 <sup>nd</sup> Degree (intentional murder or 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
Murder, 3 <sup>rd</sup> Degree Murder, 2 <sup>nd</sup> Degree (unintentional murder)	IX	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
Controlled Substance Crime, 1 <sup>st</sup> Degree Criminal Sexual Conduct, 1 <sup>st</sup> Degree <sup>b</sup>	VIII	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
Controlled Substance Crime, 2 <sup>nd</sup> Degree Aggravated Robbery, 1 <sup>st</sup> Degree	VII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
Assault, 2 <sup>nd</sup> Degree Controlled Substance Crime, 3 <sup>rd</sup> Degree	VI	21	27	33	39 37-41	45 43-47	51 49-53	57 55-59
Residential Burglary Criminal Sexual Conduct, 3 <sup>rd</sup> Degree	V	18	23	28	33 31-35	38 36-40	43 41-45	48 46-50
Nonresidential Burglary Assault, 3 <sup>rd</sup> Degree	IV	12 <sup>c</sup>	15	18	21	24 23-25	27 26-28	30 29-31
Motor Vehicle Use Without Consent Theft Crimes (over \$2,500)	III	12 <sup>c</sup>	13	15	17	19 18-20	21 20-22	23 22-24
Theft Crimes (\$2,500 or less) Controlled Substance Crime, 5 <sup>th</sup> Degree	II	12 <sup>c</sup>	12 <sup>c</sup>	13	15	17	19	21 20-22
Fleeing Police	I	12 <sup>c</sup>	12 <sup>c</sup>	12 <sup>c</sup>	13	15	17	19 18-20

<sup>a</sup>In the shaded portion of the grid, the guidelines generally presume that an offender will be placed on probation and may, at the judge's discretion, receive non-prison sanctions including up to one year in jail. Some offenses within this section of the grid may have presumptive prison sentences due to state law. In the non-shaded areas, the guidelines presume that the offender will be sent to prison. Any prison sentence outside of the listed range of months is considered a departure. By law, prison inmates generally serve two-thirds of their sentence in prison and the other third on probation.

<sup>b</sup>By law, the presumptive prison sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months.

<sup>c</sup>The presumptive sentence in this cell of the grid is one year and one day.

SOURCE: Minnesota Sentencing Guidelines Commission.

The shaded cells show circumstances in which the guidelines recommend that an offender serve a probation sentence instead of the prison sentence.<sup>1</sup> The judge may sentence an offender to up to one year in jail and/or other non-jail sanctions as conditions of probation.<sup>2</sup>

For about 73 percent of the more than 20,000 felony offenders sentenced in 1997 and 1998, the guidelines recommended probation instead of prison. For the other 27 percent, prison was recommended.<sup>3</sup>

### Severity Levels

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**The guidelines take into account the severity of the crime committed and the offender's criminal history.**

The Sentencing Guidelines Commission ranks most felony crimes by severity level, with level I being the least severe and level X being the most severe. Table 2.1 shows the most common felony convictions between 1997 and 1998 and their severity levels. Together, these 26 offenses accounted for almost four-fifths of all felonies. The felonies ranked at severity levels IX and X—nearly all murders—are not listed in the table because none of them accounted for more than 0.4 percent of all felonies committed in 1997 and 1998. First degree murder is excluded from the guidelines by law and carries a mandatory life sentence.

As the table suggests, violent (or person) crimes are generally ranked at higher severity levels than other types of crimes, followed by drug crimes, then property crimes, and finally other crimes. However, the severity levels of all of these types of crimes overlap to some degree.

A majority of the felons sentenced in 1997 and 1998 were convicted of an offense ranked at a relatively low severity level. Only 10 percent were convicted of an offense ranked at a severity level of VII or higher—levels for which the guidelines would call for a prison sentence regardless of an offender's criminal history score. Table 2.2 shows the percentage of convicted felons sentenced at each severity level in 1997 and 1998.

### Criminal History Scores

The criminal history score provides a measure of offenders' prior criminal activity. An offender's criminal history score is a number of points based on the offender's prior felony record, whether the offender was under custody at the time of the offense, and the offender's prior misdemeanor and gross misdemeanor record. The offender's juvenile record after age 13 is also a factor if he or she was a young adult when the current felony offense was committed.

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<sup>1</sup> For some offenses that would otherwise fall in the shaded portion of the grid based on their severity level, prison is recommended instead of probation because of state law. 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.

<sup>2</sup> Prisons are facilities operated by the Minnesota Department of Corrections for housing felony offenders with sentences of incarceration exceeding one year. We use the term "jail" here to refer to those local facilities that house offenders with sentences of incarceration of one year or less. Jails are operated by counties.

<sup>3</sup> About one-sixth of the offenders for whom prison was the recommended sentence were convicted of offenses in the shaded portion of the grid. Prison is the recommended sentence for these offenders because of state law and not the sentencing guidelines.

**Table 2.1: Common Types of Felony Convictions by Severity Level, 1997-98**

Severity Level	Offense	Offense Type				Number, 1997-98	Percentage of All Felonies, 1997-98
		Person	Property	Drug	Other		
VIII	1 <sup>st</sup> Degree Controlled Substance Crime			✓		346	1.7%
	1 <sup>st</sup> Degree Criminal Sexual Conduct	✓				285	1.4
VII	2 <sup>nd</sup> Degree Controlled Substance Crime			✓		443	2.1
	1 <sup>st</sup> Degree Aggravated Robbery	✓				305	1.5
VI	2 <sup>nd</sup> Degree Assault	✓				696	3.4
	3 <sup>rd</sup> Degree Controlled Substance Crime			✓		604	2.9
	2 <sup>nd</sup> Degree Criminal Sexual Conduct	✓				344	1.7
V	2 <sup>nd</sup> Degree Burglary		✓			657	3.2
	3 <sup>rd</sup> Degree Criminal Sexual Conduct	✓				275	1.3
	Simple Robbery	✓				204	1.0
IV	3 <sup>rd</sup> Degree Burglary		✓			947	4.6
	Terroristic Threats	✓				745	3.6
	3 <sup>rd</sup> Degree Assault	✓				630	3.0
	4 <sup>th</sup> Degree Controlled Substance Crime			✓		291	1.4
	Felon with Gun				✓	282	1.4
III	Motor Vehicle Use		✓			916	4.4
	Theft over \$2,500		✓			699	3.4
	Wrongfully Obtaining Public Assistance <sup>a</sup>		✓			562	2.7
	Receiving Stolen Property		✓			304	1.5
II	5 <sup>th</sup> Degree Controlled Substance Crime			✓		2,918	14.1
	Theft of \$2,500 or less		✓			1,303	6.3
	Check Forgery (\$200 to \$2,500)		✓			1,152	5.6
	Criminal Damage to Property		✓			391	1.9
	Wrongfully Obtaining Public Assistance <sup>a</sup>		✓			387	1.9
	Receiving Stolen Property		✓			302	1.5
	I	Fleeing a Police Officer				✓	415
<b>TOTALS</b>						<b>16,403</b>	<b>79.1%</b>

NOTE: Includes only those crimes for which there were more than 200 offenders convicted in the two-year period. There were no such crimes at severity levels IX and X.

<sup>a</sup>Includes wrongfully obtaining assistance from a public program.

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

**Table 2.2: Percentage of Offenders Sentenced for Felonies by Severity Level of Offense, 1997-98**

**Most offenders commit crimes ranked low in severity.**

<u>Severity Level</u>	<u>Percentage</u>
X	<1%
IX	<1
VIII	4
VII	6
VI	10
V	6
IV	19
III	16
II	33
I	5

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

In calculating the criminal history score, an offender's prior felonies are assigned points, ranging from a ½ point to 2 points, depending on the severity levels of the offenses.<sup>4</sup> After the total number of felony points is determined, only whole points contribute to an offender's criminal history score. For example, if an offender had 1½ total points for prior felonies, only 1 point would count toward his or her criminal history score. Prior felonies are not counted if a period of at least 15 years has elapsed from the date of discharge or expiration of the sentence to the date of the current offense.

Generally, a custody status point is added to the felon's criminal history score if he or she was on probation, parole, supervised or conditional release, or confined in a jail or prison following conviction for a felony, gross misdemeanor, or an extended jurisdiction juvenile conviction when the current offense was committed. A point is also given if the offender was released pending sentencing at the time the current felony was committed.

The MSGC has a list of misdemeanor and gross misdemeanor offenses that can also contribute to an offender's criminal history score. Most allowable misdemeanor and gross misdemeanor offenses are counted as ¼ point. Generally, an offender may receive only one point for prior offenses below the felony level. However, there is no limit to the number of points that an offender may receive for prior driving-while-impaired (DWI) convictions if the current conviction is for criminal vehicular homicide or injury. In addition, these prior DWIs each count ½ point. As with felony points, only full points contribute to the criminal history score; if the offender has only a partial misdemeanor/gross misdemeanor point it will not count. Prior offenses below the felony level are not counted at all if ten years have passed from the conviction date for the prior offense to the sentencing date for the current offense.

<sup>4</sup> Prior convictions at levels I and II count ½ point each, convictions at levels III through V count 1 point each, convictions at levels VI and VII count 1½ points each, and convictions at levels VIII through X and for first degree murder count 2 points each. Before 1989, each prior felony counted as one point in calculating an offender's criminal history score.



Finally, an offender is assigned a point for every two felony-level offenses committed and prosecuted as a juvenile, provided that the prior offenses were committed after the offender turned 14 and the current offense was committed before the offender was 25 years old. Each offense counted must be a separate behavioral incident or involve separate victims. Generally, an offender may receive only one point for prior juvenile offenses. However, the limit does not apply to offenses for which the sentencing guidelines would have called for imprisonment had the offender not been adjudicated as a juvenile.

Overall, prior felonies are the largest contributor to criminal history scores. As Table 2.3 shows, prior felonies accounted for 73 percent of the criminal history points assigned to felons sentenced in 1997 and 1998. The next highest contributor, custody status, accounted for 18 percent of the points. Misdemeanor/gross misdemeanor records and juvenile records accounted for only 5 percent and 4 percent, respectively.

**Prior felonies contribute the most points to offenders' criminal history scores.**

**Table 2.3: Contribution of Various Factors to Criminal History Scores, 1997-98**

Factor	Percentage of All Criminal History Points	Percentage of Offenders with:		
		No Points Counted	One Point Counted	Two Points Counted
Prior Felonies	73%	55%	18%	27%
Custody Status	18	70	30	NA
Prior Misdemeanors and Gross Misdemeanors	5	92	8	<1
Juvenile Record	4	94	6	<1

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

The table also shows that very few offenders received a misdemeanor/gross misdemeanor point (8 percent) or a juvenile record point (6 percent). In contrast, 45 percent of offenders were assigned one or more points due to their prior felony record, and 30 percent received a custody status point.

The average convicted felon had about 1½ total criminal history points. As Table 2.4 shows, 45 percent of all offenders had a criminal history score of zero. Some of them probably had a prior record, but they had no more than one prior felony at severity levels I or II and no more than three misdemeanors or gross misdemeanors of the types that the MSGC counts. Another 16 percent of convicted felons had one criminal history point. Only 7 percent had a criminal history score of six or more—a score for which the guidelines automatically recommend an offender serve a prison sentence.

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**Most felons have low criminal history scores.**

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**Table 2.4: Percentage of Offenders Sentenced for Felonies by Criminal History Score, 1997-98**

<u>Criminal History Score</u>	<u>Percentage</u>
6 or more	7%
5	4
4	6
3	9
2	13
1	16
0	45

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

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In the remainder of our discussion on felony sentencing, we use the criminal history score as a measure of offenders' prior criminal activity even though the way the score is calculated means it is not a precise measure of this.

### **Emphasis on Violent Crimes**

It is important to recognize that:

- **By design, the guidelines emphasize more severe sentences for violent crimes than for other types of crimes.**

This emphasis on violent crimes is achieved in several ways. First, as we pointed out earlier, the guidelines generally place violent crimes at higher severity levels than other crimes. Second, the calculation of the criminal history score counts prior felonies more if they were at higher severity levels. Thus, offenders committing violent offenses and having prior convictions for violent or person offenses will generally receive more severe sentences than property offenders with prior property convictions. Finally, the limited contribution of misdemeanors and gross misdemeanors to the criminal history score reduces the emphasis on property and certain other types of offenses below what would result if all non-felony offenses counted and received greater weight in the criminal history score.

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**The guidelines emphasize imprisonment for violent offenders.**

Generally, felony property offenders must be convicted of more offenses than most other types of offenders before the sentencing guidelines recommend imprisonment. For example, an offender specializing in theft crimes of \$2,500 or less would need to have 12 prior felony theft convictions in order for the guidelines to recommend a prison sentence, unless the offender also received custody, misdemeanor/gross misdemeanor, or juvenile points or a judge revoked the offender's probation on one of the previous offenses and sent the offender to prison. In contrast, an offender committing the crime of criminal vehicular homicide and injury (severity level V) would need to have three prior convictions for the same offense in order for the guidelines to recommend imprisonment. Crimes at severity level VII or higher, such as a drive-by shooting toward a person or occupied vehicle or building, have a recommended prison sentence even if the offender has no criminal history.<sup>5</sup>

## Incarceration

In this section, we examine the extent to which felons sentenced in Minnesota during 1997 and 1998 were incarcerated. Because of the considerable data collected by the MSGC staff, we were able to analyze how incarceration rates and sentence lengths varied by criminal history score, severity level, offense type, and judicial district.

It should be noted that the percentage of felons sent to prison has grown slightly from 20 percent in 1978, prior to the implementation of the guidelines, to 23 percent in 1999. As Figure 2.2 shows, the percentage of felons receiving a jail sentence has grown significantly from 35 percent in 1978 to 65 percent in 1999, although most of this growth occurred during the 1980s. In 1999, only 12 percent of convicted felons were not incarcerated in either prison or jail. The share of felons not incarcerated has declined significantly from 44 percent in 1978 and 19 percent in 1990.

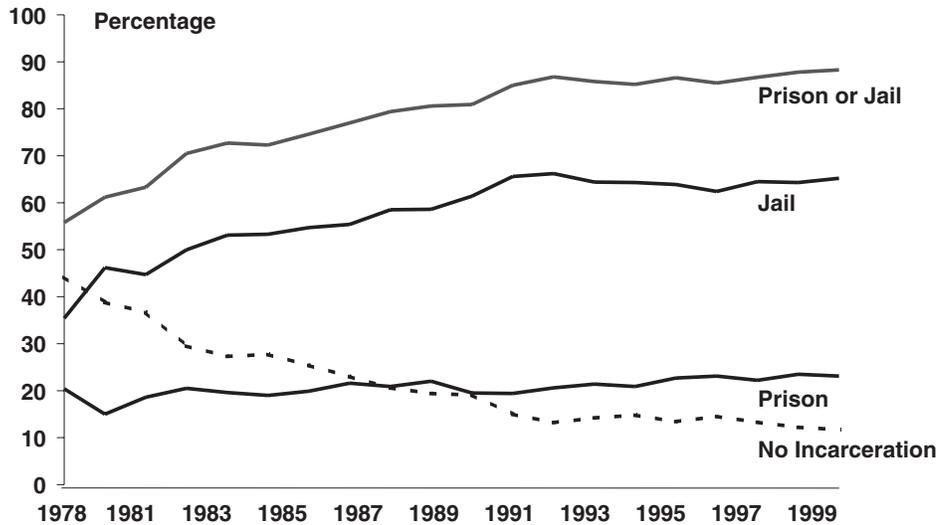
These prison incarceration figures reflect the incarceration ordered immediately following a felony conviction. They do not include felons who were initially placed on probation but who were later sent to prison following revocation of their probation. Data from the MSGC indicate about 7 to 10 percent of felons placed on probation from 1986 to 1993 were subsequently sent to prison within five years after being placed on probation. It also appears that this percentage is growing and will be higher than 10 percent for more recent years. While 23 percent of felons were initially sent to prison in 1999, the percentage of felons sent to prison within five years of sentencing (including revocations) is likely to exceed 30 percent.

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<sup>5</sup> These examples are based on a strict reading of the guidelines but probably overstate the number of felony convictions that offenders usually accrue before being sent to prison. About 10 percent of convicted felons placed on probation are sent to prison within five years after their felony conviction because a judge revokes their probation. Although violent offenders appear more likely to have their probation revoked, the above example probably overstates the number of felony convictions it takes before an offender is sent to prison and the differences between property and violent offenders.

The percentage of felons sent to prison or jail has increased slightly during the 1990s.

**Figure 2.2: Percentage of Felons Incarcerated in Prison or Jail, 1978-99**



NOTE: The years 1979 and 1980 are not depicted in this figure.

SOURCE: Minnesota Sentencing Guidelines Commission.

**Incarceration Rates by Offense Severity and Criminal History Score**

The guidelines suggest that felons who commit more serious crimes and/or have more significant criminal histories should be sent to prison at a higher rate than other felons. Tables 2.5 and 2.6 indicate that the guidelines tend to work as intended. In particular:

**Table 2.5: Percentage of Felons Incarcerated by Severity Level, 1997-98**

Severity Level	Percentage of Offenders:			Total
	Sent to Prison	Sent to Jail	Not Incarcerated	
X	95%	4%	1%	100%
IX	94	6	0	100
VIII	63	34	3	100
VII	60	36	4	100
VI	32	61	7	100
V	24	69	7	100
IV	22	68	10	100
III	18	62	20	100
II	11	77	17	100
I	13	73	14	100
Overall Average	23%	64%	13%	100%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

**Table 2.6: Percentage of Felons Incarcerated by Criminal History Score, 1997-98**

Criminal History Score	Percentage of Offenders:			Total
	Sent to Prison	Sent to Jail	Not Incarcerated	
6 or more	82%	15%	3%	100%
5	61	34	5	100
4	55	39	6	100
3	31	62	6	100
2	22	69	9	100
1	14	76	10	100
0	8	73	19	100
Overall Average	23%	64%	13%	100%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

- **Felons who committed more serious crimes or had higher criminal history scores were more likely than other felons to be sent to prison and less likely to avoid incarceration in either a prison or jail.**

**Felons that commit more serious crimes or have higher criminal history scores are more likely to be incarcerated.**

Generally, the guidelines and judges' use of them appear to have worked as intended to more severely sanction those offenders who commit more serious crimes and have more significant criminal histories. It may be of concern that a small percentage of offenders with high criminal history scores received no incarceration. However, it should be noted that two-thirds of those not incarcerated had a criminal history score of zero, and 90 percent had a score of two or less.

Table 2.7 provides even greater detail on the percentage of felony offenders sent to prison in 1997 and 1998. This table shows how prison incarceration rates vary across the cells of the sentencing guidelines grid. Generally, the table shows that each additional criminal history point and each additional severity level result in greater rates of imprisonment. Of course, there are significant increases in imprisonment as the grid goes from the shaded area, in which probation is the recommended sentence, to the non-shaded area, in which prison is recommended. The small number of offenses in some cells of the grid—particularly at high severity levels—can occasionally result in a decline in the imprisonment rate as criminal history scores or severity levels increase.

As the sentencing guidelines grid presented earlier in Figure 2.1 shows, the length of prison sentences recommended for felons is generally expected to be longer for offenders with higher criminal history scores. Table 2.8 shows that the average prison sentence received by convicted felons in 1997 and 1998 was 46 months. The average sentence tends to overstate the sentence received by the typical felon because of the long sentences received by a small percentage of convicted felons. The median sentence in 1997 and 1998 was only 27 months. The median indicates that half of those sent to prison received a prison sentence less than or equal to 27 months and half received a sentence greater than or equal to 27 months.

**Table 2.7: Percentage of Felony Offenders Sent to Prison, 1997-98**

Severity Level	Criminal History Score							Averages
	0	1	2	3	4	5	6 or More	
X	93%	88%	100%	100%	100%	N/A	100%	95%
IX	95	100	100	100	80	100%	67	94
VIII	52	65	78	72	88	85	83	63
VII	44	63	69	78	87	91	96	60
VI	13	25	41	65	80	86	82	32
V	2	9	15	64	84	82	91	24
IV	1	9	23	27	69	82	84	22
III	0	5	11	25	74	78	87	18
II	2	4	10	15	23	31	72	11
I	2	8	15	7	30	29	74	13
Averages	8%	14%	22%	31%	55%	61%	82%	23%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

**The median prison sentence for felons is 27 months, but they typically serve 18 months.**

**Table 2.8: Length of Prison Sentence by Criminal History Score, 1997-98**

Criminal History Score	Average Prison Sentence (in Months)	Median Prison Sentence (in Months)
6 or more	40	25
5	41	23
4	41	24
3	38	21
2	47	24
1	48	36
0	64	47
Overall Average	46	27

NOTE: Inmates generally serve two-thirds of their prison sentences in prison and the remaining one-third on probation. Some inmates may be released earlier through a work release program, while others serve more than two-thirds of their sentence in prison due to their behavior while in prison.

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

Table 2.8 also indicates that the median prison sentence was longer for offenders with a criminal history score of one or less than for offenders with higher criminal history scores. This anomaly results because most of those going to prison with low criminal history scores had committed a violent crime at a high severity level. More of the felons going to prison with high criminal scores were property offenders who committed lower level offenses. Table 2.9 shows that:

**Table 2.9: Median Prison Sentence Length in Months by Criminal History Score and Severity Level for Felony Offenders Sent to Prison, 1997-98**

Severity Level	Criminal History Score							Overall Median
	0	1	2	3	4	5	6 or More	
X	306	164	340	347.5	306	NA	333	306
IX	150	157.5	180	222	192	231	217	180
VIII	81	98	110	105	136.5	141	158	86
VII	48	54	64	65	84	86	108	52
VI	27	27	33	36	44	48.5	58	36
V	18	23	27.5	30	36	43	48	36
IV	18	15	18	21	24	26	33	21
III	12 <sup>a</sup>	13	15	17	19	21	24	19
II	12 <sup>a</sup>	12 <sup>a</sup>	13	15	17	19	20	17
I	12 <sup>a</sup>	12 <sup>a</sup>	12 <sup>a</sup>	12 <sup>a</sup>	15	17	19	15
Overall Median	47	36	24	21	24	23	25	27

NOTE: Some cells represent a very small number of offenders with widely varying sentence lengths.

<sup>a</sup>The median for this cell is actually 12 months and one day.

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

**Offenders with higher criminal history scores tend to serve longer sentences in either prison or jail.**

- **At any particular severity level, the typical prison sentence received by offenders tended to be longer for those with higher criminal history scores.**

While the sentence lengths in Table 2.9 reflect the sentences received by offenders between 1997 and 1998, some cells in the grid represent a small number of offenders with widely varying sentence lengths. For example, there were only four offenders with a criminal history score of three who were convicted of offenses of severity level X. Their sentences ranged from 75 to 480 months.

Available data also show that among those felons who received jail sentences:

- **Jail sentences were generally longer for felons who had higher criminal history scores.**

In 1997 and 1998, felons with a criminal history score of zero received an average jail sentence of 88 days, compared with 200 days for felons with a criminal history score of six or more. It should be noted that these data on jail sentences only reflect the sentences given to convicted felons. They do not reflect actual time served, which could be substantially different (generally lower) than the length of the sentence. Data on actual time served are not available from a centralized data source.

### Incarceration and Offense Type

As we noted earlier, the guidelines generally rank property-related felonies lower in severity than other types of felonies. In addition, the severity level of offenses plays a more significant role in sentences than the criminal history score of the offender. Property-related felonies tend to have relatively low severity rankings, so they tend to count less toward an offender’s criminal history score than person or violent felonies. As a result, repeat property offenders have to commit more crimes than violent offenders to reach a particular criminal history score.

Table 2.10 shows that 34 percent of the offenders sentenced in 1997 and 1998 for committing a person-related crime were sent to prison. Only 18 percent of property offenders and 19 percent of drug offenders went to prison. About 31 percent of the remaining felons received a prison sentence. The table also indicates that property felons were less likely than other types of offenders to be incarcerated in either a jail or prison. About 17 percent of property felons were not incarcerated, compared with 7 percent of person felons, 10 percent of drug felons, and 12 percent of other felons.

**Property and drug offenders are less likely than other felons to be sent to prison.**

**Table 2.10: Incarceration of Sentenced Felons by Offense Type, 1997-98**

Type of Incarceration	Percentage of:			
	Person Offenders	Property Offenders	Drug Offenders	Other Offenders
Sent to Prison	34%	18%	19%	31%
Sent to Jail	59	65	71	58
Not Incarcerated	7	17	10	12
TOTALS	100%	100%	100%	100%

SOURCE: Office of the Legislative Auditor’s analysis of Minnesota Sentencing Guidelines Commission data.

As shown in Table 2.11, felons who committed property offenses accounted for 45 percent of all felons in 1997-98 and 32 percent of all felons sent to prison. Sixty-two percent of the felons who were *not* incarcerated were property offenders.

Though a smaller percentage of all property offenders were sentenced to prison when compared to felons convicted of person and “other” offenses, Table 2.12 demonstrates that:

- **Within each of the major offense types, felons with higher criminal history scores were more likely to be sentenced to prison.**
- **But, among offenders with extensive criminal histories, drug offenders were much less likely to be sent to prison.**

While only 8 percent of convicted felons with a criminal history score of zero were sent to prison, 82 percent of those with a criminal history score of six or more served time in prison. Among this latter group with the most extensive

**More than 60 percent of the felons not incarcerated are property offenders.**

**Table 2.11: Type of Incarceration for Felons by Offense Type, 1997-98**

Offense Type	Percentage of All Felons	Percentage of Felons Sent to Prison	Percentage of Felons Sent to Jail	Percentage of Felons Not Incarcerated
Person	26%	38%	24%	15%
Property	45	35	46	62
Drug	23	19	25	17
Other	7	9	6	6
TOTALS	100%	100%	100%	100%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

**Table 2.12: Percentage of Felons Sent to Prison by Criminal History Score and Offense Type, 1997-98**

Criminal History Score	Offense Type				Overall Average
	Person	Property	Drug	Other	
6 or more	86%	85%	54%	94%	82%
5	84	60	41	63	61
4	77	51	35	65	55
3	50	21	27	40	31
2	39	8	24	37	22
1	29	4	12	22	14
0	17	1	12	5	8
Overall Average	34%	18%	19%	31%	23%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

criminal histories, only 54 percent of offenders whose latest offense was a drug offense went to prison.

Because property felonies are generally ranked at lower severity levels, felons convicted of a property offense generally must have much higher criminal history scores than other felons to be sent to prison. Table 2.13 shows that, among felons sentenced to prison, property offenders had an average criminal history score of about 4.7, while person and drug offenders had average scores of 2.5 and 2.3, respectively.

Table 2.13 also shows that:

- **On average, felons sent to prison for person or drug crimes received longer prison sentences than felons sent to prison for property and other crimes.**

The median prison sentence received by a felon convicted of a person crime was more than twice as long as the median sentence received by property felons sent

**Table 2.13: Median Prison Sentence Length for Felons Sent to Prison by Offense Type, 1997-98**

Offense Type	Sentence Received (in Months)	Expected Sentence Served (in Months)	Average Criminal History Score
Person	45	30	2.5
Property	21	14	4.7
Drug	36	24	2.3
Other	18	12	3.5
Overall Average	27	18	3.3

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

**Violent and drug offenders serve longer prison sentences than do property offenders.**

to prison in 1997 and 1998. Drug felons were sentenced to serve more time than property offenders but significantly less time than those who had committed person crimes.

This table also indicates that:

- **Median prison sentences were generally short in duration.**

Since inmates generally serve two-thirds of their sentences in prison, the median time served in prison for inmates sentenced in 1997-98 was expected to be 18 months. The median expected time served was longer for person (30 months) and drug (24 months) offenders but shorter for those convicted of property (14 months) and other (12 months) offenses.

Available data also indicate that:

- **Felons who committed person crimes generally received the longest jail sentences, and property felons received the shortest jail sentences.**

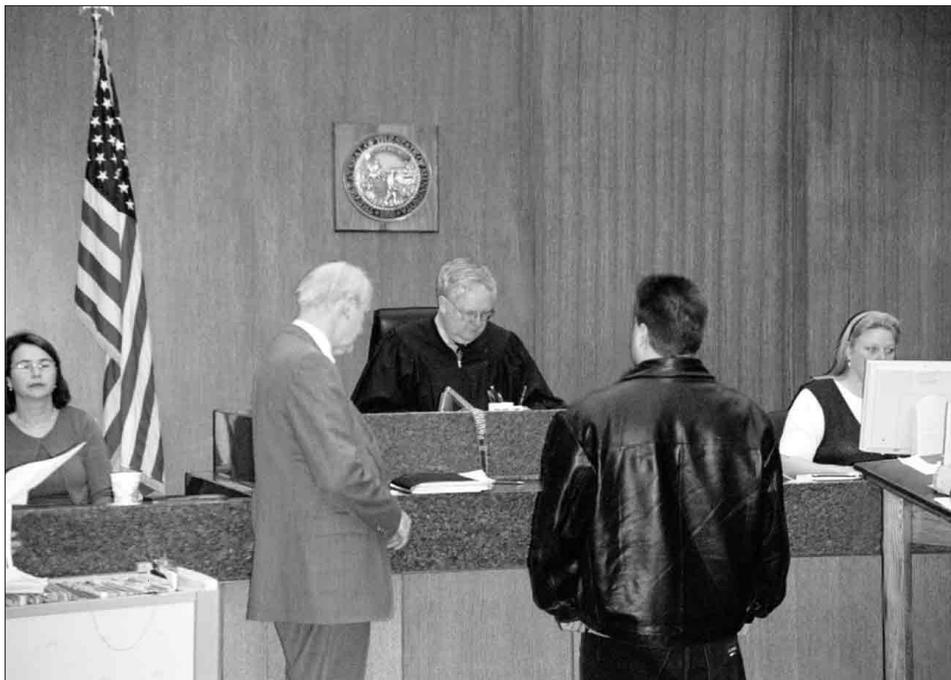
On average, person offenders sentenced in 1997 and 1998 received a 159 day jail sentence. In contrast, property offenders received an average jail sentence of 83 days. The averages for drug and other offenders were 102 and 100 days, respectively.<sup>6</sup>

## Departures from Sentencing Guidelines

Generally, it is expected that judges will follow the sentences recommended by the sentencing guidelines. However, a district court judge may depart from the guidelines if he or she finds substantial and compelling circumstances to justify the departure. Judges may not use certain factors as reasons for departures. Among those excluded factors are race, sex, current employment or employment history, educational attainment, living arrangements, length of residence, and marital status. In addition, a judge may not use the exercise of constitutional rights by the defendant during the adjudication process as a reason for a sentencing departure.

<sup>6</sup> As previously noted, these figures do not reflect actual time served, which could be substantially different than the length of the sentence.

Departures from the guidelines can be either “dispositional departures” or “durational departures.” A dispositional departure occurs when a judge does not follow the recommendation of prison or probation suggested by the sentencing guidelines. A durational departure occurs when the sentence length received by a convicted felon is outside the range recommended by the guidelines. In this section, we examine the extent to which judges departed from the guidelines’ recommendations when sentencing felons in 1997 and 1998.



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**Judges are permitted to depart from the sentencing guidelines.**

### **Dispositional Departures**

A **downward dispositional departure** occurs when a judge does not send an offender to prison when the guidelines recommend a prison term. An **upward dispositional departure** occurs when an offender is sent to prison when the guidelines recommend probation. We found that:

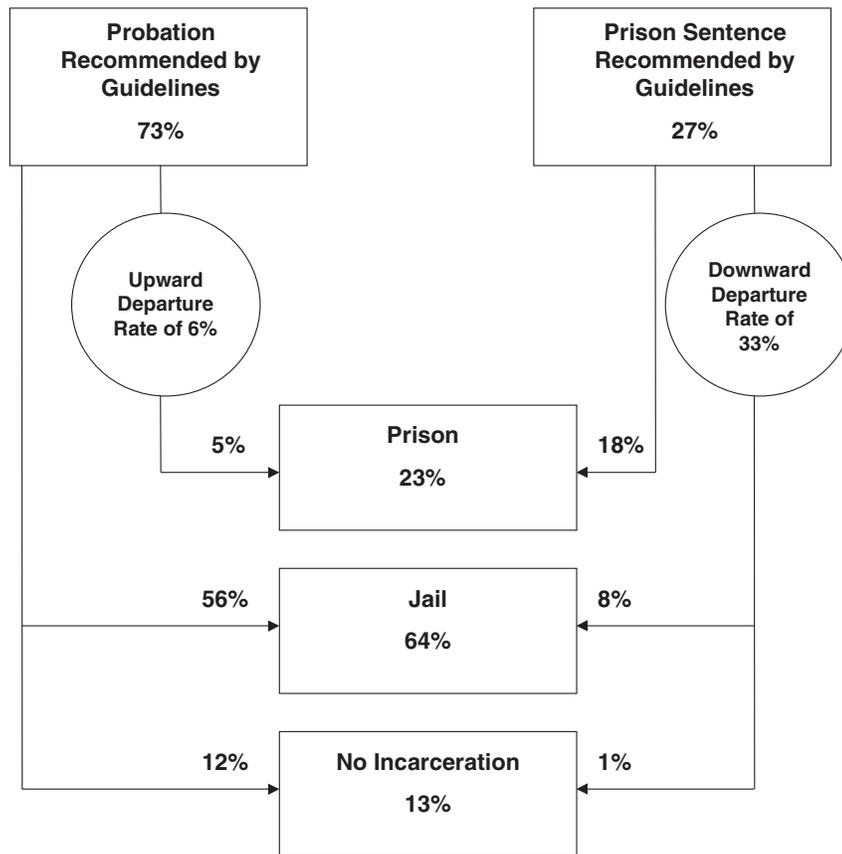
- **For 1997 and 1998, 33 percent of the felons for whom the guidelines called for a prison sentence were not sent to prison; and**
- **About 6 percent of the felons for whom the guidelines recommended probation were sentenced to prison in 1997 and 1998.**

The guidelines recommended that 27 percent of convicted felons in 1997 and 1998 be sent to prison. Judges sent two-thirds of them—18 percent of all felons—to prison. The other third received sentences that were downward departures: instead of being sent to prison, the felons were placed on probation and either went to jail or were not incarcerated at all. The guidelines recommended that about 73 percent of the convicted felons serve probation sentences instead of going to prison. Judges departed upward and sent about 6 percent of these felons to prison, representing 5 percent of all felons.

**While the guidelines recommended imprisonment for 27 percent of the felons sentenced in 1997-98, only 23 percent were sent to prison.**

Figure 2.3 illustrates the process whereby 23 percent of convicted felons were sentenced to prison in 1997 and 1998. The 23 percent of felons sentenced to prison included the 18 percent for whom the guidelines recommended a prison sentence and who were actually sent, and the 5 percent for whom the guidelines recommended probation but who were sent to prison instead. The total percentage sent to prison (23 percent) was less than the total percentage recommended to prison (27 percent) because the downward departure rate was much higher than the upward departure rate.

**Figure 2.3: Flowchart of Dispositional Departures for Felonies, 1997-98**



NOTE: Each percentage listed in this figure except those referring to departure rates is a percentage of all convicted felons sentenced in 1997-98.

SOURCE: Office of the Legislative Auditor analysis of Minnesota Sentencing Guidelines Commission data.

*By Criminal History Score and Severity Level*

Table 2.14 shows that:

- **Downward departure rates were higher for offenders with lower criminal history scores, and upward departure rates were higher for offenders with higher criminal history scores.**

**About one-third of felons for whom the guidelines recommended a prison sentence were not sent to prison.**

**Table 2.14: Dispositional Departure Rates by Criminal History Score, 1997-98**

<u>Criminal History Score</u>	<u>Downward Departure Rate</u>	<u>Upward Departure Rate</u>
6 or more	18%	NA
5	17	30%
4	24	24
3	30	17
2	31	11
1	41	5
0	56	1
Overall Average	33%	6%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

During 1997 and 1998, the downward departure rate was highest (56 percent) for felons having a criminal history score of zero. The rate dropped to 17 percent for those with a score of five and 18 percent for those with a score of six or more. The upward departure was very low for offenders with criminal history scores of zero or one but was 30 percent for offenders with scores of five. Table 2.15 indicates that:

- **There was no consistent pattern between dispositional departure rates and severity levels.**

Downward dispositional departure rates were very low at the highest severity levels, relatively high at severity levels VI through VIII, and below average at lower severity levels. This suggests that there are some crimes at relatively high severity levels for which judges are more likely to depart downward from the

**Table 2.15: Dispositional Departure Rates by Severity Level, 1997-98**

<u>Severity Level</u>	<u>Downward Departure Rate</u>	<u>Upward Departure Rate</u>
X	5%	N/A
IX	6	N/A
VIII	37	N/A
VII	40	N/A
VI	47	6%
V	20	4
IV	24	6
III	19	5
II	29	7
I	26	8
Overall Average	33%	6%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

recommended prison sentence. As we will see below, these offenses include drug crimes and certain person crimes.

*By Offense Type*

Data for 1997 and 1998 indicate that:

- **There were significant differences in downward departure rates for different types of offenses.**

As Table 2.16 shows, judges were much more likely to depart downward for drug offenses and 2<sup>nd</sup> degree assault. The downward departure rate for 2<sup>nd</sup> degree assault was 56 percent in 1997 and 1998. This type of assault involves a deadly weapon and carries by law a mandatory minimum prison term. The MSGC ranks the offense at severity level VI, which does not normally result in a recommended prison term unless the offender has a criminal history score of three or more. The departure rate for 2<sup>nd</sup> degree assault is generally explained by the differing circumstances in assault cases involving a deadly weapon. The weapon can vary significantly from a pool cue to a knife or gun. In addition, sometimes the victim was the initial aggressor, and the judge is less inclined to send the defendant to prison.

**This type of downward departure occurred more frequently in drug and second degree assault cases.**

**Table 2.16: Dispositional Departure Rates by Offense Type, 1997-98**

Offense Type	Downward Departure Rate	Upward Departure Rate
Person	36%	6%
Assault 2 <sup>nd</sup> Degree	56	N/A
Intrafamilial Sexual Abuse	43	1
Other Person	27	6
Property	20	5
Drug	48	7
Other	22	9
Overall Average	33%	6%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

There are several arguments that people use to justify high downward departure rates for felony drug offenders. Some people argue that drug offenses have no victims other than the offender. Others have suggested that Minnesota's strong penalties for drugs help contribute to very high imprisonment rates for African American males. In addition, it has been suggested that Minnesota's drug statutes rely heavily on the amount of drugs with which an offender is caught to determine the severity of punishment rather than the amount of harm the offender is causing a community or whether the offender is a dealer or user. Currently, the MSGC is studying whether changes in the sentencing policy for drug crimes would be desirable.

Because of this controversy, we examined the downward departure rates for drug crimes in more detail and, using the database of convictions that we constructed to identify chronic offenders, reviewed the criminal history of certain felony drug offenders. A comparison of downward departure rates for drug crimes to all other crimes suggests that the main sources of the higher downward departure rates for drug crimes were high departure rates for: 1) felons with significant criminal histories who were being sentenced for a low-level drug possession crime, and 2) felons with a low criminal history score who were being sentenced for high severity level drug offenses. These groups include more than half the offenders for whom the guidelines recommended commitment to prison for drug offenses in 1997 and 1998.<sup>7</sup>

Because of our interest in chronic offenders, we focused on how the downward departure rates for drug crimes and all other types of crimes varied by criminal history score. Table 2.17 shows that:

- **For felons with significant criminal histories, the downward dispositional departure rate for drug crimes was significantly higher than that for all other crimes.**

The downward dispositional departure rate for drug felons with a criminal history score of six or more was 46 percent in 1997 and 1998, compared with a downward departure rate of 14 percent for all other types of felons.

Two-thirds of the drug crimes committed by offenders with a criminal history score of six or more were at severity level II (5<sup>th</sup> degree possession). We examined the criminal activities of these drug offenders in greater detail provided they had received a downward dispositional departure in 1997 or 1998. We wondered whether the criminal activity of these offenders had focused solely on drug crimes or whether they had involvement in other types of crimes.<sup>8</sup> Included in our review were any felony or gross misdemeanor convictions they received in

**In 1997 and 1998, there was a relatively high downward departure rate for drug felons with extensive criminal histories.**

**Table 2.17: Downward Dispositional Departure Rates for Drug and Other Felonies, 1997-98**

<u>Criminal History Score</u>	<u>Drug Felonies</u>	<u>All Other Felonies</u>
6 or more	46%	14%
5	19	17
4	30	23
3	37	28
2	38	28
1	54	37
0	58	55
Overall Average	48%	29%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

<sup>7</sup> The group includes felons convicted of 5<sup>th</sup> degree drug possession with a criminal history score of six or more and felons convicted of a first or second degree drug crime (severity levels VII or VIII) and having a criminal history score of zero or one.

<sup>8</sup> There were 63 offenders who met the criteria. We were able to find prior convictions for 56 of them.

1990 through 1999 and any misdemeanor convictions they had in 1995 through 1999. We found that:

- **Many of these low-level drug felons who had high criminal history scores but were not sent to prison had prior felony convictions for other types of crimes, particularly property crimes.**

Table 2.18 shows that 76 percent of the drug felons whose felony records we could locate had at least one prior felony conviction for a property crime, while 24 percent had at least one prior felony conviction for a person crime. Since only 49 percent of these offenders had a prior felony drug conviction, at least half of them had been convicted only of non-drug crimes prior to the drug crime for which they were convicted in 1997 or 1998.

**Many of these drug felons had previously committed other types of felonies, particularly property crimes.**

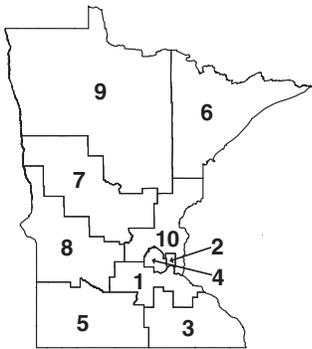
**Table 2.18: Percentage of Certain Drug Felons with Prior Felony Convictions for Particular Types of Crimes, 1997-98**

<u>Offense Type</u>	<u>Percentage with Prior Convictions</u>
Person	24%
Property	76
Drug	49
Other	22

SOURCES: Office of the Legislative Auditor's analyses of data from the Minnesota Sentencing Guidelines Commission and the Bureau of Criminal Apprehension.

Since we had data on convictions through 1999, we looked to see if these drug offenders sentenced in 1997 and 1998 were convicted again during the following one- to three-year period. Our data show that 52 percent had a subsequent conviction, including 32 percent who had a subsequent felony conviction. Those with a subsequent conviction were more likely to have a property (42 percent) or other (76 percent) type of felony conviction than to have a drug (30 percent) or person crime (12 percent) conviction.

*By Judicial District*



Minnesota's Judicial Districts

As Table 2.19 shows, there is also variation in departure rates across judicial districts, particularly downward dispositional departure rates. In 1997 and 1998, Districts 4 (Hennepin County) and 6 (northeastern Minnesota) had downward departure rates that were at least six percentage points above the statewide average. Three districts—District 5 (southwestern Minnesota), District 7 (west central-northern Minnesota), and District 2 (Ramsey County)—had downward departure rates at least six percentage points below the statewide average.

In Hennepin County, downward dispositional departure rates do not appear to be significantly higher than the statewide averages except for drug felonies. Hennepin County judges had a 62 percent downward dispositional departure rate for drug felonies, while the statewide average was 48 percent. Hennepin County's

**Table 2.19: Dispositional Departure Rates by Judicial District, 1997-98**

Judicial District	Downward Departure Rate	Upward Departure Rate
District 1 (South Metropolitan Minnesota)	32%	5%
District 2 (Ramsey County)	27	5
District 3 (Southeastern Minnesota)	31	7
District 4 (Hennepin County)	39	8
District 5 (Southwestern Minnesota)	23	4
District 6 (Northeastern Minnesota)	40	4
District 7 (North Central Minnesota)	25	5
District 8 (West Central Minnesota)	28	7
District 9 (Northwestern Minnesota)	28	9
District 10 (North Metropolitan and East Central Minnesota)	35	6
Overall Average	33%	6%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

### The rate of departures from sentencing guidelines varies across the state.

higher than average overall departure rate is explained by the combination of its higher departure rate for drug felonies and Hennepin County's relatively high share (45 percent) of the state's drug felons whom the guidelines recommended be sent to prison.

The higher than average downward departure rate in District 6 appears to have been due to its higher than average departure rates for 2<sup>nd</sup> degree assault and other person crimes. District 6's departure rate for 2<sup>nd</sup> degree assault was 73 percent in 1997 and 1998 compared with a statewide average of 56 percent.

It should be noted that the statewide downward dispositional departure rate declined to 31 percent in 1999, and the disparity among most districts was reduced. District 4 (33 percent) and District 6 (36 percent) still had above average departure rates, but five other districts had departure rates between 29 percent and 34 percent.

### Durational Departure Rates

For those convicted felons sent to prison, the sentencing guidelines recommend a particular sentence length or range of months. As mentioned earlier, a durational departure occurs when the length of sentence received by a convicted felon is outside the range recommended by the guidelines. A **downward durational departure** is a sentence that is shorter than the recommended sentence, while an **upward durational departure** is a sentence that is longer than the recommended sentence.

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**Judges followed the guidelines' recommendations on prison sentence length in 64 percent of the cases in 1997 and 1998.**

During 1997 and 1998:

- **Judges departed downward from the guidelines more frequently than they departed upward in the length of the prison sentences they gave to convicted felons.**

Judges went along with the guideline recommendations on the length of prison sentences in 64 percent of the cases. They departed upward in 10 percent of the cases and departed downward 26 percent of the time.

*By Criminal History Score*

Table 2.20 shows that:

- **Judges were slightly more likely to depart downward from the guidelines on the length of prison sentences for felons with high criminal history scores than for those with low scores.**

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**Table 2.20: Durational Departure Rates by Criminal History Score, 1997-98**

<u>Criminal History Score</u>	<u>Downward Departure Rate</u>	<u>Upward Departure Rate</u>
6 or more	27%	11%
5	28	10
4	24	10
3	29	10
2	27	9
1	22	9
0	22	12
Overall Average	26%	10%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

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Thus, offenders with more lengthy criminal histories had a slightly better chance than those with little or no criminal history to receive a shorter sentence than recommended by the guidelines. It is not entirely clear why this occurs.<sup>9</sup>

Table 2.21 shows that:

- **Felons who committed crimes that are ranked at higher severity levels were more likely than others to receive either an upward or downward departure in the length of their prison sentence.**

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<sup>9</sup> It appears that downward durational departure rates for most types of felonies, except drug crimes, are slightly higher at higher criminal history scores. This could be occurring because the recommended prison sentences are longer at higher criminal history scores. Judges might be more likely to depart downward from a long recommended prison sentence than from a short sentence. While this explanation is plausible, it is unclear whether it is valid. Most of the incoming prison inmates with low criminal history scores are violent offenders who receive longer sentences than the incoming prison inmates with high criminal scores, who are more likely to be property offenders.

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**Table 2.21: Durational Departure Rates by Severity Level, 1997-98**


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**Downward departures from the recommended sentence length were more frequent than upward departures.**

<u>Severity Level</u>	<u>Downward Departure Rate</u>	<u>Upward Departure Rate</u>
X	31%	22%
IX	27	25
VIII	34	16
VII	30	10
VI	24	14
V	26	10
IV	25	8
III	21	10
II	23	6
I	16	9
Overall Average	26%	10%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

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This pattern may result because the facts weighed by judges in higher severity crimes are more likely to vary significantly. Assault, murder, and even drug crimes have very different facts and scenarios that may cause judges to view these cases quite differently.

#### *By Offense Type*

As Table 2.22 shows:

- **Drug felons were more likely than others to receive a downward departure in the length of their prison sentences.**

In 1997 and 1998, the downward durational departure rate for drug felons was 34 percent, compared with a statewide average of 26 percent for all types of offenses. The reasons judges make durational departures for drug crimes may be similar to the reasons we discussed earlier in connection with downward dispositional departures.

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**Table 2.22: Durational Departure Rates by Offense Type, 1997-98**

<u>Offense Type</u>	<u>Downward Departure Rate</u>	<u>Upward Departure Rate</u>
Person	23%	16%
Property	23	9
Drug	34	4
Other	28	7
Overall Average	26%	10%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

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*By Judicial District*

Durational departure rates also vary across the state (see Table 2.23). District 4 (Hennepin County) and District 1 (southern Twin Cities metropolitan area) had the highest downward durational departure rates in 1997 and 1998. In fact, these two districts were the only ones with higher than average downward departure rates. They also had higher than average upward durational departure rates, but these rates were closer to the statewide averages than were their downward departure rates.<sup>10</sup> Both of these districts had above average departure rates for each of the four major types of offenses, as shown in Table 2.24.

**Two judicial districts departed downward from recommended sentence lengths in more than one-third of their cases.**

**Table 2.23: Durational Departure Rates by Judicial District, 1997-98**

Judicial District	Downward Departure Rate	Upward Departure Rate
District 1 (South Metropolitan Minnesota)	36%	14%
District 2 (Ramsey County)	21	8
District 3 (Southeastern Minnesota)	14	12
District 4 (Hennepin County)	38	12
District 5 (Southwestern Minnesota)	15	8
District 6 (Northeastern Minnesota)	21	8
District 7 (North Central Minnesota)	12	10
District 8 (West Central Minnesota)	22	10
District 9 (Northwestern Minnesota)	18	7
District 10 (North Metropolitan and East Central Minnesota)	17	9
Overall Average	26%	10%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

**Table 2.24: Downward Durational Departure Rates by District and Offense Type, 1997-98**

Offense Type	District 1 (South Metropolitan)	District 4 (Hennepin County)	All Other Districts
Person	26%	33%	18%
Property	38	36	15
Drug	46	50	24
Other	43	42	16
Overall Average	36%	38%	18%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

<sup>10</sup> These conclusions are unchanged for 1999. The statewide downward durational departure rate was 26 percent in 1999. District 1 (39 percent) and District 4 (37 percent) were the only districts with downward durational departure rates above the statewide average.

## All Departures

Overall, judges followed the sentencing guidelines in nearly 80 percent of the cases in the two-year period, 1997-98. But, Table 2.25 shows that judges were twice as likely to depart downward from the guidelines for either dispositional or durational purposes than they were likely to depart upward. In 14 percent of the felony cases, judges made either a downward dispositional departure or a downward durational departure that resulted in offenders serving less time in prison than recommended by the guidelines. Only 7 percent of the felons received an upward departure of either type that resulted in them serving more time than recommended by the guidelines.

**Overall, 14 percent of felons received less prison time than recommended by the guidelines, while 7 percent received more than the recommended time.**

**Table 2.25: Prison Sentences Received by Felons Compared with Prison Sentences Recommended by the Sentencing Guidelines, 1997-98**

Guidelines Recommendation	Actual Sentence	Percentage of Felony Offenders
No Prison	No Prison	68%
Prison	Prison Sentence of Recommended Length	11
	<b>Subtotal: Guidelines Followed</b>	<b>79%</b>
Prison	No Prison	9
Prison	Prison, But Less Time Than Recommended	5
	<b>Subtotal: Less Prison Time Than Recommended</b>	<b>14</b>
No Prison	Prison	5
Prison	Prison, But More Time Than Recommended	2
	<b>Subtotal: More Prison Time Than Recommended</b>	<b>7</b>
Total		100%

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

Table 2.26 indicates that, when downward departures of both types are considered together, they are more common at higher criminal history scores. About 41 percent of felons with a criminal history score of six or more received a downward dispositional or durational departure. In contrast, only about 10 percent of felons with criminal history scores between zero and two received a downward departure of either type. Upward departures are also somewhat more common at higher criminal history scores.

Overall compliance with the guidelines is significantly higher at lower criminal history scores. Judges follow the guidelines more than 80 percent of the time for felons with criminal history scores between zero and two but only 50 to 60 percent of the time for felons with criminal history scores of four or more.

While the extent of noncompliance may seem high at higher criminal history scores, this is not entirely unexpected. For most felons with low criminal history scores, the guidelines do not recommend a prison sentence. As a result, they cannot serve less prison time than recommended. For felons with high criminal history scores, the guidelines are more likely to recommend a prison sentence. In

**Table 2.26: Dispositional and Durational Departures from the Recommended Prison Sentence by Criminal History Score, 1997-98<sup>a</sup>**

<u>Criminal History Score</u>	<u>Percentage with No Departure</u>	<u>Percentage with a Downward Departure</u>	<u>Percentage with an Upward Departure</u>	<u>Total</u>
6 or more	50%	41%	9%	100%
5	57	25	18	100
4	60	25	15	100
3	71	15	15	100
2	80	10	10	100
1	86	9	5	100
0	87	11	2	100
Overall Average	79%	14%	7%	100%

<sup>a</sup>Durational departures from a recommended probation sentence are not included.

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

fact, prison is recommended for all of those with scores of six or more. As a result, they are more likely to serve less than the recommended time than are felons with low criminal history scores for whom the guidelines do not recommend a prison sentence.

### Reasons for Departures

It should be noted that, while judges make the final decisions in sentencing felons, judges are not always solely responsible for departures from the sentencing guidelines. Many of the departures, whether dispositional or durational, are the result of plea agreements that are brought to court by prosecutors. Plea agreements involving downward departures may be used by prosecutors in cases that have weaker evidence, witnesses unwilling to testify, or compelling circumstances justifying a downward departure.

In 56 percent of the downward dispositional departures in 1997 and 1998, judges cited a plea agreement as the reason for not sending felons to prison. Other reasons frequently cited included the offender's suitability for probation (38 percent), the offender's need or suitability for treatment programs (30 percent), and the recommendation of court services or treatment professionals (14 percent).<sup>11</sup>

Plea agreements were also the most commonly cited reason that judges sentenced felons to less prison time than recommended by the sentencing guidelines. Judges cited plea agreements in 66 percent of the downward durational departures occurring in 1997 and 1998. The next most frequently cited reason was that the downward departure was an error or was done inadvertently. This happened in

<sup>11</sup> This information is reported annually by judges to the Minnesota Sentencing Guidelines Commission. Because judges may cite more than one reason for a departure, these percentages add to more than 100 percent.

**Plea agreements are involved in more than half of the departures from the sentencing guidelines.**

17 percent of downward durational departures, including 25 percent of the downward departures in property offense cases. This high rate of error merits further investigation by the Minnesota Sentencing Guidelines Commission.

Plea agreements were also the most common reason why offenders were sent to prison for longer terms than recommended by the guidelines. This may have happened because an offender was pleading to a lesser charge than the original charge or the prosecutor agreed to drop other charges in return for a plea on the charge in question. Judges also cited particular cruelty on the part of the offender and the vulnerability of the victim as other reasons for upward durational departures.

## Other Issues

In this section, we examine a number of issues that affect the sentencing of chronic and other offenders. We first examine the so-called “career offender” statute that allows judges to sentence certain repeat felony offenders up to the maximum statutory term of imprisonment, which generally exceeds the prison sentence recommended by the sentencing guidelines. Next, we discuss the use of concurrent rather than consecutive sentences. Finally, we examine the current limitations on counting past misdemeanors and gross misdemeanors in calculating a convicted felon’s criminal history score.

### Career Offender Statute

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**The “career offender” statute can be used to lengthen the prison sentences of certain chronic felons.**

Since 1989, Minnesota’s “career offender” statute has permitted judges to sentence certain convicted felons to a longer prison term than is called for under the sentencing guidelines. The career offender statute permits a judge to depart upward from the prison sentence recommended under the guidelines—up to the statutory maximum for the offense—without citing any aggravating factors other than the defendant’s prior criminal history. Currently, the career offender statute may be applied to a person convicted of a felony who has five prior felonies and whose present offense was committed as part of a pattern of criminal conduct.<sup>12</sup> The current felony must be one for which the sentencing guidelines recommends commitment to prison.

The rationale for the statute is a desire to incapacitate for a longer period of time those offenders who show a repeated pattern of criminal behavior. In addition, some have argued that the statute is needed because the sentencing guidelines call for relatively low prison sentences for offenses at severity levels I through V, even for offenders with high criminal history scores. Under the guidelines, an offender with a criminal history score of six or more would serve between 13 and 33 months in prison for offenses at severity levels I through V.

The career offender statute is probably largely directed at property offenders. A related statute—the dangerous offender statute—permits a judge to sentence a dangerous felon up to the statutory maximum if the felon is being sentenced for a third violent felony, was at least 18 years old at the time the current violent felony

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<sup>12</sup> *Minn. Stat.* (2000) §609.1095, subd. 4.

was committed, and is determined to be a danger to public safety.<sup>13</sup> The court may find that the felon is a danger to public safety based on the offender's past criminal behavior (including juvenile adjudications) or an aggravating factor in the present offense that would justify an upward durational departure from the guidelines.

Table 2.27 shows that:

- **The use of the career offender statute has increased over the last three years, particularly in Hennepin County during 1999.**

**Use of the "career offender" statute has increased but is limited by the Appeals Court's interpretation of a "prior conviction."**

**Table 2.27: Number of Cases in Which Judges Used the Career Offender and Dangerous Offender Statutes by Judicial District, 1997-99**

Judicial District	Career Offender Statute			Dangerous Offender Statute		
	1997	1998	1999	1997	1998	1999
District 1 (South Metropolitan Minnesota)	3	3	7	1	0	0
District 2 (Ramsey County)	5	9	3	0	0	0
District 4 (Hennepin County)	4	5	27	1	3	4
District 10 (North Metropolitan and East Central Minnesota)	1	3	4	1	0	1
All Other Districts	<u>4</u>	<u>6</u>	<u>5</u>	<u>1</u>	<u>1</u>	<u>1</u>
Statewide Totals	17	26	46	4	4	6

SOURCE: Office of the Legislative Auditor's analysis of Minnesota Sentencing Guidelines Commission data.

In 1997, judges cited the career offender statute as a basis for their upward durational departures in 17 felony cases. This number grew to 26 in 1998 and 46 in 1999. Most of the growth is attributable to an increase in Hennepin County, where a new county attorney made use of the career offender statute a priority. The number of cases in which judges cited the dangerous offender statute as the basis for an upward departure has been small in recent years, with Hennepin County accounting for most of the cases.

There most likely are additional cases in which prosecutors used the career offender statute to argue for an upward durational departure but district court judges cited other aggravating factors as justification for an upward departure. It is not possible to easily identify the number of these cases from existing data.

While the use of the statute has increased:

- **Some county attorneys are concerned about the way that the Minnesota Court of Appeals has interpreted the career offender statute.**

In January 2000, the Court interpreted the career offender statute to read that the five prior offenses and convictions must have occurred in a particular sequential

<sup>13</sup> Minn. Stat. (2000) §609.1095, subd. 2.

order.<sup>14</sup> The Court of Appeals ruled that a felony conviction must have occurred before the next felony offense was committed in order for the conviction to count toward the five felony convictions required to use the statute. In other words, for a prior felony to count, the offender must have committed and been convicted of the offense before committing the next felony being considered as one of the five prior convictions. If the offender was convicted for the first offense *after* committing the next felony offense, one of the two convictions would not count toward the five required prior felony convictions, even though the two felonies occurred at different times.

As a result, some county attorneys have recommended that the Legislature reexamine the definition of “prior conviction” that applies to the career offender statute. They argue that, because of the amount of time it takes from the date of offense to the date of conviction, career offenders often commit additional offenses before they are convicted in court on their earlier offense. It is not clear to these county attorneys why the statute should not apply to these frequent offenders.

Alternatively, some people have argued that the career offender statute should not be applied to criminals who might have numerous prior felonies on a single date or on a series of dates very close in time. They suggest that an offender should be given an opportunity, or several opportunities, for rehabilitation before the career statute is applied. Given the recent court decision, legislators and the Sentencing Guidelines Commission may wish to revisit the career offender statute and consider whether additional offenders should be subject to the statute.

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**The use of concurrent sentencing has advantages but also limits the extent to which chronic offenders are held responsible for each of their crimes.**

### **Concurrent Sentences**

Another potential problem in dealing with chronic offenders is that, for the most part, sentences in Minnesota are served concurrently rather than consecutively. This affects sentencing for felony offenses, as well as sentencing for misdemeanors and gross misdemeanors. Chronic offenders committing frequent crimes benefit from such a system when they are convicted of multiple crimes arising from separate behavioral incidents and are given concurrent jail or prison sentences. They may also receive jail credit on an offense in one county for time served on a different offense in a second county. Concurrent sentencing does not enable the criminal justice system to hold offenders accountable for each of their offenses and may not provide the needed incentives for offenders to reduce their criminal activity.

On the other hand, concurrent sentencing limits the degree to which prosecutors can stack cases against offenders. “Stacking” involves prosecutors charging an offender on each possible offense even if committed in the same behavioral incident. Preventing stacking may promote uniformity in sentencing since prosecutors might vary across the state, or even within the county, in the degree to which they would stack charges against offenders.

Changing our system from one using mostly concurrent sentences to one using consecutive sentences could be very costly. Policy makers might want to consider

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<sup>14</sup> State of Minnesota v. Mark Norman Lidke, Minnesota Court of Appeals, unpublished opinion, C1-99-1400, January 11, 2000.

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**The sentencing guidelines currently limit the contribution of non-felony convictions to an offender's criminal history score.**

whether a narrower use of consecutive sentencing aimed at certain chronic offenders might address some of the problems at a lower cost. For example, an additional exception to the presumption of concurrent sentencing could be created for certain types of offenders or offenses. Alternatively, the exception could be permissive rather than mandatory by permitting judges to use consecutive sentences under certain conditions.

### Calculation of Criminal History Scores

In this section, we raise two issues about how criminal history scores are calculated under the sentencing guidelines. Both issues deal with how the guidelines count misdemeanors and gross misdemeanors when calculating the criminal history score. The first issue concerns the types of misdemeanors and gross misdemeanors the guidelines permit to be counted. Namely:

- **The sentencing guidelines count certain misdemeanors and gross misdemeanors toward a felon's criminal history score but not others that may be of a similar nature.**

For example, the guidelines permit check forgery, receiving stolen property, and certain thefts to be counted, but financial transaction card fraud, other thefts, and the receipt of stolen property by precious metal dealers are not counted.<sup>15</sup> DWI convictions are counted without limitation and are given more weight than other misdemeanors or gross misdemeanors, but operating an aircraft while impaired is not counted. Other examples of misdemeanors and gross misdemeanors not counted under the guidelines include certain types of treatment, abuse, or neglect of confined persons; false imprisonment resulting in less than substantial bodily harm;<sup>16</sup> child neglect and endangerment resulting in less than substantial bodily harm; certain firearms offenses; and sale or possession of a small amount of marijuana or certain other drugs.

The Sentencing Guidelines Commission may wish to review its current list of misdemeanor and gross misdemeanor offenses to see if others should be added to the list of offenses that contribute to the criminal history score. We do not think that all excluded offenses should be added to the list. However, some are closely related to offenses already on the list and merit consideration.

A second issue concerns the one-point limit placed on misdemeanors and gross misdemeanors other than DWIs. While this limit may make sense given existing criminal justice data systems, it may not make sense if statewide data systems improve in the future. Without a statewide integrated database, it may be reasonable to limit the points received for misdemeanors since little or no statewide information on misdemeanors is available to probation officers who are

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<sup>15</sup> Thefts under *Minn. Stat.* (2000) §609.52, subd. 2 (1) may be counted. These thefts include the intentional taking, using, transferring, concealing, or retaining of possession of movable property without claim of right or the owner's consent and with the intention of permanently depriving the owner of possession of the property.

<sup>16</sup> *Minn. Stat.* (2000) §609.02, subd. 7a defines substantial bodily harm as "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member."

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**We looked at the subsequent convictions of felony offenders sentenced to probation in the first half of 1997.**

calculating an offender's criminal history score. If a statewide database is implemented, then this issue should be revisited.

## Recidivism of Felons Placed on Probation

Because most convicted felons are placed on probation and not sent to prison, we looked at the recidivism rates of those offenders using the database of convictions we constructed and used in Chapter 1 to identify chronic offenders. We examined the recidivism of felons who were convicted of a felony in the first half of 1997 and did not receive a prison sentence. Thirteen percent of this group of 3,676 offenders were offenders for whom the sentencing guidelines recommended a prison sentence but who did not receive one. Eighty-seven percent (about 3,200 offenders) were offenders for whom the guidelines recommended probation.<sup>17</sup> We used several methods to match these people to subsequent convictions recorded in the BCA, State Court Administrator's, and Hennepin County District Court data.<sup>18</sup> We found that:

- **Half of the felony offenders who were sentenced to probation in the first half of 1997 were convicted of another offense before the end of 1999.**

The 1,829 offenders who had subsequent convictions had 4,401 convictions, or about 2.4 convictions per offender. While about half of the subsequent convictions were for misdemeanor offenses, 34 percent (1,502) were for felony offenses.

We grouped the probationers by their criminal history score at the time of their sentencing in 1997 to see if those with a higher criminal history score—that is, those with a more extensive criminal history—differed from other probationers in their subsequent conviction rates. As Table 2.28 shows:

- **Among offenders placed on probation, offenders with lower criminal history scores were less likely to be reconvicted than were offenders with higher criminal history scores.**

While half of all probationers were convicted subsequent to their 1997 sentencing, 40 percent of the probationers with a criminal history score of zero were subsequently convicted. At all other criminal history scores, a majority of the offenders were convicted again. Almost three-quarters of probationers with a criminal history score of four or five were convicted again. Forty-one percent of the probationers with a criminal history score of six or more were convicted of another felony before the end of 1999.

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<sup>17</sup> We identified 3,819 people sentenced to probation in the first half of 1997. We were able to match 3,676 people with conviction records so our analysis is based on this smaller number of people.

<sup>18</sup> Because we knew that the offenders should have had a felony conviction in the BCA data that corresponded to the MSGC conviction record, we were less strict in our matching criteria than we were for analyses conducted for Chapter 1. We looked at subsequent convictions instead of subsequent offenses because about two-thirds of the records did not have offense dates. On the one hand, subsequent convictions may be for offenses that were actually committed before the original conviction. On the other hand, subsequent offenses may have been committed during our time period of analysis that led to convictions outside of our timeframe.

**Table 2.28: Reconviction Rates of Probationers by 1997 Criminal History Score and Level of Subsequent Offense, 1997-99**

**Half of the felons placed on probation in the first half of 1997 were convicted of another offense by the end of 1999 and one-fourth had a subsequent felony conviction.**

1997 Criminal History Score	Number of Original Offenders	Percentage of Probationers Subsequently Convicted of:		
		Any Offense	Gross Misdemeanor or Felony Offense	Felony Offense
6 or more	71	65%	49%	41%
5	63	73	51	38
4	142	73	58	38
3	262	63	45	33
2	438	59	42	32
1	689	58	39	30
0	2,011	40	23	17
Overall Average		50%	32%	24%

SOURCES: Office of the Legislative Auditor's analyses of data from the Minnesota Sentencing Guidelines Commission, Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

In 1997, our office issued a study on recidivism of adult felons. Part of that study looked at the three-year reconviction rates of felons sentenced to probation in 1992, but it considered only gross misdemeanor and felony convictions. The study found that 28 percent of felony probationers were subsequently convicted of a gross misdemeanor or felony in three years. Twenty percent were convicted of another felony.<sup>19</sup> For probationers sentenced in the first half of 1997, we computed slightly higher percentages of reconviction (32 and 24 percent respectively) than the rates reported in the previous report.<sup>20</sup>

We also found that:

- **The percentage of probationers who were reconvicted was slightly larger for offenders for whom the guidelines recommended probation than for offenders for whom the guidelines recommended prison.**

As Table 2.29 shows, 51 percent of the probationers for whom the guidelines recommended probation were convicted subsequent to the original conviction, while 42 percent of the probationers for whom the guidelines recommended prison were convicted again. The difference was smaller for offenders subsequently convicted of higher level offenses.

A possible explanation for the lower reconviction rate for offenders who were placed on probation instead of being given the recommended prison sentences is that they were given longer jail sentences than offenders for whom probation was recommended. On average, probationers for whom the guidelines recommended a commitment to prison received jail sentences four to five months longer than the

<sup>19</sup> Office of the Legislative Auditor, *Recidivism of Adult Felons*, (St. Paul, January 1997), 59-60.

<sup>20</sup> We do not know why our rates differ from those in our earlier report. The differences may result from variation in how we matched offenders to convictions or classified convictions into crime levels, or actual differences in the behavior of the groups of offenders we looked at. The 1997 study notes that its felony reconviction rate may understate the actual rate by 1 or 2 percentage points because of how the researchers used the suspense file records.

**Table 2.29: Reconviction Rates of Probationers by Recommended Sentence and Level of Subsequent Offense, 1997-99**

Sentence Recommended For 1997 Offense	Percentage of Probationers Subsequently Convicted of:		
	Any Offense	Gross Misdemeanor or Felony Offense	Felony Offense
Probation (N = 3,206)	51%	33%	24%
Prison (N = 470)	42	29	22
Overall Average	50%	32%	24%

SOURCES: Office of the Legislative Auditor’s analyses of data from the Minnesota Sentencing Guidelines Commission, Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

sentences received by offenders recommended for probation. The average jail sentence for the offenders recommended for probation was 69 days, while it was 213 days for the offenders recommended for commitment to prison.<sup>21</sup> Twenty percent of the offenders recommended for probation received no jail time, while 3 percent were given a jail sentence of one year. On the other hand, 11 percent of offenders for whom prison was recommended received no jail time, while 40 percent were sentenced to a year in jail.

**Property offenders were slightly more likely to reoffend.**

When we looked at subsequent convictions by the offense type of the original offense, we found that:

- **Offenders sentenced to probation in the first half of 1997 for a property crime were more slightly likely to be reconvicted before the end of 1999 than were offenders sentenced to probation for other types of crimes.**

As Table 2.30 shows, 54 percent of the offenders sentenced to probation for property offenses were convicted again before the end of 1999, while just under half of the offenders sentenced to probation for drug and “other” offenses and 41 percent of offenders sentenced for person offenses were subsequently convicted.

This finding is similar to a finding in our 1997 report on recidivism. That study found that probationers who had been convicted of a property crime were more likely to reoffend than probationers convicted of other types of crimes.<sup>22</sup>

<sup>21</sup> The median sentence lengths were 45 days and 180 days respectively. We did not have information on actual jail time served or how much jail time was credited to the offenders at the time of sentencing.

<sup>22</sup> Office of the Legislative Auditor, *Recidivism of Adult Felons*, 61. As with the earlier discussion of reconviction rates for all offenders, the current study found the reconviction rates for gross misdemeanors and/or felonies were higher for all offense types than was reported in the 1997 study.

**Table 2.30: Reconviction Rates of Probationers by Original Offense Type and Subsequent Offense Type, 1997-99**

Original Offense Type	Percentage of Probationers Subsequently Convicted of:				
	Any Crime	Person Crimes	Property Crimes	Drug Crimes	Other Crimes
Person (N = 841)	41%	15%	16%	3%	23%
Property (N = 1,851)	54	10	36	5	27
Drug (N = 844)	48	9	17	16	25
Other (N = 140)	49	15	18	9	29
Overall Average	50%	11%	26%	7%	25%

SOURCES: Office of the Legislative Auditor's analyses of data from the Minnesota Sentencing Guidelines Commission, Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

## MISDEMEANORS AND GROSS MISDEMEANORS

In addition to analyzing sentences for felony convictions, we also examined the sentences offenders received for certain gross misdemeanor and misdemeanor crimes.<sup>23</sup> Using data on 1999 convictions, we compared the fine amounts and pronounced jail time for misdemeanor theft, misdemeanor domestic assault, and gross misdemeanor driving-while-impaired (DWI) offenses.<sup>24</sup> We caution that our findings represent the *original* sentence only, and not the incarceration time the defendant actually served. Many factors can affect the amount of time the defendant actually serves in a jail. Depending on the circumstances surrounding the offenses, offenders that are convicted of multiple charges may be required to serve their sentences either consecutively or concurrently. Judges may also stay or suspend the ordered jail time on condition that the defendant complies with certain sentence provisions. For example, a defendant may have to serve only a small portion of the total pronounced sentence providing he or she complies with probation requirements, such as periodic reporting to a probation officer. Under certain circumstances, such as when an offender violates probation requirements, a judge may resentence the offender to serve additional jail time. Our analysis of

<sup>23</sup> In 1999, state law defined a misdemeanor as a crime for which a sentence of not more than 90 days in jail or a fine of not more than \$700, or both, could be imposed (*Minn. Stat.* (1999 Supplement) §609.02, subd. 3). The 2000 Legislature increased the maximum fine amount for misdemeanors from \$700 to \$1,000 (*Minn. Laws* (2000) ch. 488, art.5, sec. 5). A gross misdemeanor is a crime that is neither a felony nor a misdemeanor and calls for no more than 365 days in jail, or a fine of no more than \$3,000 or both (*Minn. Stat.* (2000) §609.02, subd. 4).

<sup>24</sup> Because of time limitations on this study, statewide variations in correctional programs, and differences in record keeping among our data sources, we were unable to adequately compare the frequency of stays of imposition, stays of execution, or the use of alternative sanctions. We were also unable to verify the extent to which offenders received credit for time served during pre-trial detention, or whether offenders sentenced for multiple offenses were ordered to serve their sentences concurrently or consecutively. Finally, "jail time" may include incarceration time ordered served in a local workhouse facility or time ordered served under home detention.

finances included fines only; it did not include restitution, court costs, fees, or other monetary sanctions.<sup>25</sup>

In examining offenders' sentences, we defined chronic offenders based on the *total* number of their convictions, as described previously in Chapter 1.<sup>26</sup> For each offense highlighted below, we included *any* offender (chronic or non-chronic) with a conviction for that offense. Our analysis treated each sentence for a criminal count, or charge, as a separate sentence.

First, we compared misdemeanor domestic assault sentences of chronic offenders and non-chronic offenders. Generally, misdemeanor domestic assault involves committing an act with the intent to cause fear of immediate bodily harm or death, or intentionally inflicting bodily harm, upon a family or household member.<sup>27</sup> Statewide, a higher share of chronic offenders' sentences than non-chronic offenders' sentences included some jail time, as shown in Table 2.31. On the

**Chronic offenders were slightly more likely than other offenders to receive a jail sentence for misdemeanor domestic assault.**

**Table 2.31: Pronounced Sentences for Misdemeanor Domestic Assault, 1999**

Geographic Region	Percentage of Offenders' Sentences That Included <sup>a</sup> :					
	Jail Time		Fines		No Jail Time or Fines	
	Chronic	Non-Chronic	Chronic	Non-Chronic	Chronic	Non-Chronic
<b>Twin Cities Metro Area</b>	<b>86%</b>	<b>63%</b>	<b>45%</b>	<b>54%</b>	<b>12%</b>	<b>32%</b>
Hennepin County	86%	56%	42%	43%	13%	43%
Ramsey County	100 <sup>b</sup>	92	56	79	0	6
Other Metro Area Counties	82	71	45	71	14	13
<b>Outstate</b>	<b>89</b>	<b>86</b>	<b>66</b>	<b>84</b>	<b>6</b>	<b>5</b>
<b>Statewide</b>	<b>86%</b>	<b>74%</b>	<b>57%</b>	<b>68%</b>	<b>9%</b>	<b>19%</b>

NOTE: Our analysis included misdemeanor domestic assault sentences for any offender with a conviction for that offense. We defined "chronic offender" based on offenders' total convictions, not total misdemeanor domestic assault convictions.

<sup>a</sup>Sentences in each of these three categories may have included alternative sanctions, such as restitution or probation.

<sup>b</sup>N = 16.

SOURCES: Office of the Legislative Auditor's analyses of 1999 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

<sup>25</sup> Generally, fines are monetary sanctions designed to punish the defendant for violating the law. Restitution is intended to compensate a victim or victim's family for damages suffered as a result of a criminal offense. Fees are intended to help defray criminal justice agencies' costs for their services.

<sup>26</sup> Because of incomplete data and problems identifying the precise charge associated with each conviction, our analysis included an unscientific selection of cases based on available statute information. As a result, the information presented in this section may not be representative of sentencing practices around the state. We used sentencing information from the BCA's criminal history database and the BCA's "suspense" file. We also used data from the State Court Administrator's Office and Hennepin County District Court on misdemeanor cases.

<sup>27</sup> *Minn. Stat.* (2000) §609.2242, subd.1.

other hand, a higher share of non-chronic offenders' sentences included fines in all regions except Hennepin County.<sup>28</sup>

The variations in sentences among jurisdictions may be partly due to variations in the availability of treatment programs or alternative sanctions around the state. For example, compared with the statewide average, a disproportionate share of non-chronic offenders' sentences ordered in Hennepin County did not include jail time or fines. This does not mean, however, that these offenders did not receive sanctions. These offenders' sentences (as well as sentences with jail time or fines) may have included probation, restitution, or other alternative sanctions.

We also examined sentences for gross misdemeanor DWI offenses, which include, but are not limited to, repeatedly driving while under the influence of alcohol or controlled substances within specific time frames.<sup>29</sup> We found that these sentences present a different picture than those for misdemeanor domestic assault. Statewide, a high share of all offenders' sentences included some jail time, with very few differences among chronic offenders and non-chronic offenders, as Table 2.32 shows. When compared with chronic offenders' sentences, a higher share of non-chronic offenders' sentences included fines.

**Nearly all sentences for gross misdemeanor DWI offenses included some jail time.**

**Table 2.32: Pronounced Sentences for Gross Misdemeanor Driving While Impaired, 1999**

Geographic Region	Percentage of Offenders' Sentences That Included <sup>a</sup> :					
	Jail Time		Fines		No Jail Time or Fines	
	Chronic	Non-Chronic	Chronic	Non-Chronic	Chronic	Non-Chronic
<b>Twin Cities Metro Area</b>	<b>96%</b>	<b>96%</b>	<b>74%</b>	<b>90%</b>	<b>3%</b>	<b>2%</b>
Hennepin County	99%	99%	82%	93%	<1%	<1%
Ramsey County	96	98	71	93	4	2
Other Metro Area Counties	92	89	63	84	7	4
<b>Outstate</b>	<b>95</b>	<b>98</b>	<b>80</b>	<b>93</b>	<b>5</b>	<b>1</b>
<b>Statewide</b>	<b>95%</b>	<b>97%</b>	<b>77%</b>	<b>92%</b>	<b>4%</b>	<b>1%</b>

NOTE: Our analysis included gross misdemeanor DWI sentences for any offender with a conviction for that offense. We defined "chronic offender" based on offenders' total convictions, not total DWI convictions.

<sup>a</sup>Sentences in each of these three categories may have included alternative sanctions, such as restitution or probation.

SOURCES: Office of the Legislative Auditor's analyses of 1999 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator's Office, and Hennepin County District Court.

We also reviewed sentences for misdemeanor theft. Generally, misdemeanor theft involves the taking of property (not exceeding \$250 in value) that belongs to another without the owner's consent.<sup>30</sup> Compared with sentences for

<sup>28</sup> As we mention above, these findings do not necessarily represent the amount of jail time defendants actually served, nor the fine amounts they actually paid. Depending on the conditions of the sentence, a defendant may not have served any jail time. And although a defendant may be under court order to pay a fine, it does not mean that the offender paid the fine.

<sup>29</sup> *Minn. Stat.* (1998; 1999 Supplement) §169.121.

<sup>30</sup> *Minn. Stat.* (1999 Supplement) §609.52, subd. 3, sec. 5.

misdemeanor domestic assault and gross misdemeanor DWI offenses, sentences for misdemeanor theft present the greatest contrast between jail time ordered for chronic offenders and jail time ordered for non-chronic offenders. Statewide, a larger share of chronic offenders’ sentences included some jail time than did sentences for non-chronic offenders. As Table 2.33 shows, compared with outstate Minnesota, a lower share of chronic offenders’ sentences in other Twin Cities metropolitan counties included fines.

**Chronic offenders were more likely than other offenders to receive a jail sentence for a misdemeanor theft offense.**

**Table 2.33: Pronounced Sentences for Misdemeanor Theft, 1999**

Geographic Region	Percentage of Offenders’ Sentences That Included <sup>a</sup> :					
	Jail Time		Fines		No Jail Time or Fines	
	Chronic	Non-Chronic	Chronic	Non-Chronic	Chronic	Non-Chronic
<b>Twin Cities Metro Area</b>	<b>88%</b>	<b>52%</b>	<b>57%</b>	<b>73%</b>	<b>5%</b>	<b>15%</b>
Hennepin County	85%	43%	52%	66%	5%	22%
Ramsey County	94	79	69	80	4	6
Other Metro Area Counties	84	53	48	80	5	8
<b>Outstate</b>	<b>84</b>	<b>69</b>	<b>66</b>	<b>88</b>	<b>7</b>	<b>4</b>
<b>Statewide</b>	<b>86%</b>	<b>60%</b>	<b>60%</b>	<b>80%</b>	<b>6%</b>	<b>10%</b>

NOTE: Our analysis included misdemeanor theft sentences for any offender with a conviction for that offense. We defined “chronic offender” based on offenders’ total convictions, not total misdemeanor theft convictions.

<sup>a</sup>Sentences in each of these three categories may have included alternative sanctions, such as restitution or probation.

SOURCES: Office of the Legislative Auditor’s analyses of 1999 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

In all three of these offense categories, we found that when comparing the average length of offenders’ jail sentences statewide, chronic offenders’ sentences generally included more jail time than did sentences for non-chronic offenders. As Table 2.34 shows, offenders convicted of misdemeanor theft or misdemeanor domestic assault received, on average, the longest sentences in Ramsey County. The length of sentences for gross misdemeanor DWI convictions varied only slightly among regions and between offender groups. These variations may be partly due to sentences for “enhanced gross misdemeanor” offenses, whereby an offender could have been sentenced to serve up to two years in a local correctional facility if the offender repeatedly violated DWI-related statutes within specific time frames.

Of those offenders’ sentences that included fines, the average fine amount varied depending on the offense. For misdemeanor domestic assault, chronic and non-chronic offenders’ sentences had similar averages statewide, as Table 2.35 shows. Although we found earlier that smaller shares of chronic offenders’ sentences included fines, for misdemeanor theft and gross misdemeanor DWI, chronic offenders’ sentences had slightly higher fine amounts. On average, Ramsey County ordered higher fine amounts than other regions of the state did.

**Chronic offenders tended to receive longer jail sentences than other offenders for selected non-felony offenses.**

**Table 2.34: Average Pronounced Jail Sentence Length for Selected Offenses, 1999**

Geographic Region	Misdemeanor Domestic Assault		Misdemeanor Theft		Gross Misdemeanor DWI <sup>a</sup>	
	Chronic	Non-Chronic	Chronic	Non-Chronic	Chronic	Non-Chronic
<b>Twin Cities Metro Area</b>	<b>76 days</b>	<b>67 days</b>	<b>54 days</b>	<b>37 days</b>	<b>317 days</b>	<b>274 days</b>
Hennepin County	71	67	49	36	326	297
Ramsey County	85 <sup>b</sup>	70	59	40	346	294
Other Metro Area Counties	78	67	55	35	292	222
<b>Outstate</b>	<b>70</b>	<b>68</b>	<b>52</b>	<b>37</b>	<b>324</b>	<b>290</b>
<b>Statewide Average</b>	<b>73 days</b>	<b>68 days</b>	<b>53 days</b>	<b>37 days</b>	<b>322 days</b>	<b>282 days</b>

<sup>a</sup>For our analysis, we were unable to calculate averages based on mandatory minimum sentences for repeat DWI offenses. Also, our analysis may have included some sentences for “enhanced gross misdemeanor” offenses, whereby an offender could have been sentenced to serve up to two years in a local correctional facility.

<sup>b</sup>N = 16.

SOURCES: Office of the Legislative Auditor’s analyses of 1999 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

**Table 2.35: Average Pronounced Fine Amounts for Selected Offenses, 1999**

Geographic Region	Misdemeanor Domestic Assault		Misdemeanor Theft		Gross Misdemeanor DWI	
	Chronic	Non-Chronic	Chronic	Non-Chronic	Chronic	Non-Chronic
<b>Twin Cities Metro Area</b>	<b>\$320</b>	<b>\$330</b>	<b>\$250</b>	<b>\$180</b>	<b>\$1,310</b>	<b>\$1,110</b>
Hennepin County	\$180	\$230	\$110	\$110	\$ 880	\$ 810
Ramsey County	470 <sup>a</sup>	510	360	290	2,400	1,960
Other Metro Area Counties	460	420	330	210	1,590	1,250
<b>Outstate</b>	<b>410</b>	<b>400</b>	<b>320</b>	<b>230</b>	<b>1,600</b>	<b>1,550</b>
<b>Statewide Average</b>	<b>\$370</b>	<b>\$370</b>	<b>\$280</b>	<b>\$200</b>	<b>\$1,490</b>	<b>\$1,340</b>

<sup>a</sup>N = 8.

SOURCES: Office of the Legislative Auditor’s analyses of 1999 conviction data from the Bureau of Criminal Apprehension, the State Court Administrator’s Office, and Hennepin County District Court.

Although these findings present only a limited picture of offenders’ sentences, the data suggest that jurisdictions handle chronic offenders differently than non-chronic offenders when ordering sentences for these three offenses. While the extent to which sentences varied depended on the offense type, we found that:

- **Statewide, criminal justice agencies appear to consider offenders’ criminal histories when sentencing offenders.**

We note, however, that sentences for similar offenses varied across regions. These differences may be partly due to the availability of alternative sanctions. For example, corrections agencies in outstate Minnesota may have limited treatment programs for domestic assault offenders. The extent to which jail sentences and fines varied across regions suggests that the criminal justice system does not always handle offenders similarly around the state.



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## SUMMARY

*Some studies have presented evidence suggesting that greater incarceration of offenders could be justified from a benefit-cost standpoint. There is considerable uncertainty, however, in estimating the costs of crime avoided and the number of offenses not committed if more offenders were to be incarcerated. It is unclear whether an increase in Minnesota's relatively low incarceration rate would save more for crime victims and communities than it would cost Minnesota's taxpayers.*

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In recent years, part of the debate over correctional policy has focused on how the costs of incarceration compare with the costs avoided when offenders are incarcerated. Some policy makers believe that Minnesota is too lenient with offenders, particularly repeat or chronic offenders. They cite Minnesota's relatively low rate of incarceration and suggest that incarcerating more offenders in state prisons or local jails would be worthwhile in spite of the relatively high costs of incarceration paid by the state or local governments. These policy makers say that incarcerating more repeat offenders would provide significant benefits to law-abiding state residents by reducing the amount of crime and the resulting costs borne by crime victims and public agencies.

This chapter examines the extent to which the costs of crime and the costs of incarceration can be measured, compared, and used to make decisions about correctional policy. In particular, we address the following questions:

- **How do Minnesota's incarceration and crime rates compare with those in other states?**
- **To what extent is it possible to measure the costs of crime?**
- **What have previous studies that compared the benefits of incarceration (or reduced costs of crime) with the costs of incarceration concluded about sentencing policies?**
- **Do previous studies provide any insight about the types of offenders for which incarceration makes more sense from a benefit-cost standpoint?**

For the most part, this chapter summarizes the work done by others to measure the costs of crime and compare the benefits and costs of incarceration. It was not feasible, given time and resource constraints, to attempt to measure the costs of crime exclusively for Minnesota. In addition, even with more time, it may not be

possible to provide better estimates than those provided by national studies, given the lack of adequate data at the state and local levels.

## INCARCERATION AND CRIME RATES

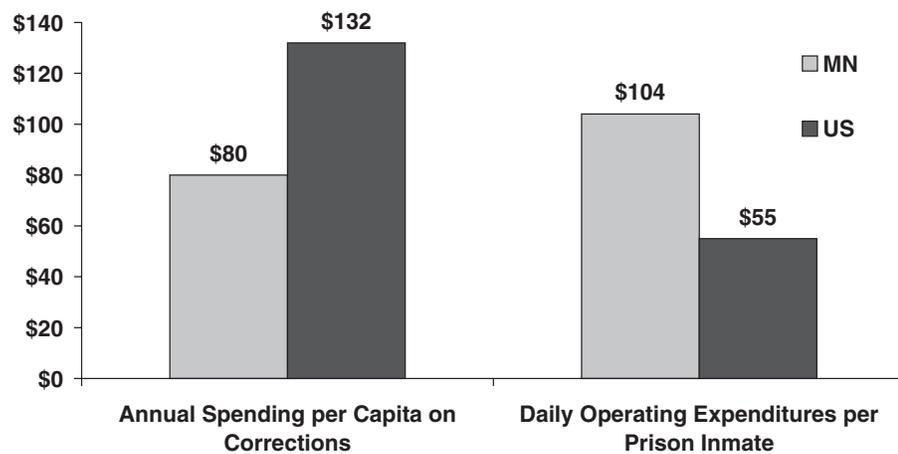
Minnesota has clearly chosen a different correctional policy than other states. Minnesota has a lower incarceration rate than nearly all other states but has a relatively high probation caseload. Minnesota spends less than many other states on corrections even though the percentage of Minnesota's population under correctional supervision is slightly higher than the national average and Minnesota's costs per prison inmate are significantly higher than those in nearly all other states.

### Spending

State and local governments in Minnesota have consistently spent less on corrections than most other states. Figure 3.1 shows that Minnesota spent about \$80 per state resident on prisons, jails, probation, and other correctional programs in fiscal year 1995. Minnesota's spending was about 39 percent below the national average of \$132 per capita.<sup>1</sup> However, Minnesota's average daily

**Minnesota consistently spends less on corrections than do most other states.**

**Figure 3.1: Correctional Spending, Minnesota and the United States, 1995-96**



SOURCE: Bureau of Justice Statistics.

<sup>1</sup> State and local governments in Minnesota also spent 18 percent less than the national average for police protection and 7 percent less than the average for judicial and legal expenditures. Unlike the correctional spending category, these two categories include spending that is not related to criminal activity. For example, judicial and legal expenditures include spending on civil litigation activity.

operating expenditures per prison inmate have consistently been much higher than the national average. In 1996, Minnesota spent \$104 per diem, which was 88 percent higher than the national average of \$55.<sup>2</sup>

## Incarceration

Despite Minnesota’s high costs per prison inmate, Minnesota’s correctional spending has remained well below the national average due to its very low use of incarceration as a criminal sanction. Table 3.1 shows that Minnesota incarcerates a much lower share of its population in both prisons and jails than the national average. Minnesota has the lowest prison incarceration rate in the nation, with its rate being only a little more than one-fourth the national rate. In addition, Minnesota’s jail incarceration rate is less than half the national average. Considering both prison and jail inmates, Minnesota’s overall incarceration rate is only one-third the national rate. Only two states, Vermont and Maine, incarcerate fewer offenders per capita in prisons and jails combined than Minnesota.

It is generally believed that Minnesota imprisons violent criminals for a longer period of time than most other states. Some evidence suggests that this may be the case for the most violent offenders but not for all offenders committing person crimes. Considering Minnesota’s very low overall imprisonment rate, it is then likely that Minnesota’s imprisonment rates for property and perhaps other crimes are much lower than those in other states.

**Minnesota’s incarceration rate is well below the national average.**

**Table 3.1: Incarceration Rates for Prisons and Jails Under State and Local Control, June 30, 1999**

	Minnesota	United States Average	Percentage Difference from U.S. Average	Minnesota’s Rank Among the 50 States
Prison inmates per 100,000 residents	121	428	-72%	50 <sup>th</sup> of 50
Jail inmates per 100,000 residents <sup>a</sup>	105	222	-53	43 <sup>rd</sup> of 46
Prison and jail inmates per 100,000 residents <sup>b</sup>	226	639	-65	48 <sup>th</sup> of 50

<sup>a</sup>Four states have integrated prison and jail systems. All of their inmates are counted as prison inmates, and none are counted as jail inmates.

<sup>b</sup>Unlike the prison inmate row, this row does not include prisoners under the legal authority of a prison system who are being held outside of a state’s prison facilities.

SOURCE: *Prison and Jail Inmates at Midyear 1999*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice (Washington, D.C., April 2000).

<sup>2</sup> Minnesota’s per diem prison expenditures have been significantly higher than those in other states due to our relatively high prison staffing levels, including both security and program staff. Compared with other states, Minnesota has a relatively high percentage of its prison inmates in high or medium security prisons and a very low percentage in minimum security facilities. The per diem figures cited above are higher than those usually presented since they include central office expenditures by the state departments with authority over prison operations.

It should be pointed out that imprisonment rates for whites and African Americans are significantly different from one another both in Minnesota and in other states. In 1997, the imprisonment rate in Minnesota for African Americans was 30 times that for whites, compared with a national average of 9. Minnesota's imprisonment rates for African American males and females were 9 percent and 2 percent below their respective national averages, but Minnesota's imprisonment rates for white males and females were 70 percent and 79 percent below the comparable national averages.

## Probation

Although Minnesota has a very low incarceration rate, it has a slightly larger share of its population under overall correctional supervision than most other states. As Table 3.2 shows, the number of offenders on probation or parole per capita in Minnesota is 35 percent higher than the national average. Minnesota has the sixth highest share of population on probation or parole in the nation.<sup>3</sup> The table also shows that, when those on probation or parole are added to those incarcerated, Minnesota has about 5 percent more offenders under correctional supervision than the national average. In fact, Minnesota has the 14<sup>th</sup> highest share of population under supervision despite ranking 48th in the share of population that is incarcerated.

**Minnesota's share of adults on probation is among the nation's highest.**

**Table 3.2: Probation and Parole Rates and Overall Correctional Supervision Rates for Minnesota and the United States, 1998-99**

	Minnesota	United States Average	Percentage Difference from U.S. Average	Minnesota's Rank Among the 50 States
Number of offenders on probation or parole per 100,000 adult residents (12/31/98)	2,711	2,007	35%	6 <sup>th</sup> of 50
Number of offenders under correctional supervision or authority per 100,000 adult residents <sup>a</sup>	3,022	2,876	5	14 <sup>th</sup> of 50
Number of offenders on probation or parole per number incarcerated in prison or jail	8.7	2.3	278	1 <sup>st</sup> of 50

<sup>a</sup>Includes prison and jail inmates on June 30, 1999 and offenders on probation or parole on December 31, 1998.

SOURCE: Office of the Legislative Auditor's analysis of data from *Probation and Parole in the United States, 1998*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice (Washington, D.C., August 1999) and *Prison and Jail Inmates at Midyear 1999*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice (Washington, D.C., April 2000).

<sup>3</sup> Minnesota's probation rate is 56 percent higher than the national average, while its parole rate is 73 percent lower than average. Even though Minnesota has a much lower than average parole rate, its combined probation and parole rate is still well above the national average because there are five times more offenders on probation than on parole nationally.

Table 3.2 also illustrates why Minnesota’s overall correctional spending is below the national average. Minnesota has close to nine offenders on probation or parole per offender incarcerated in either prison or jail. This is the highest ratio in the nation and is nearly four times higher than the national average. Because annual spending per incarcerated offender can be 10 to 30 times higher than average expenditures per offender on probation or parole, Minnesota has kept its overall expenditures on corrections low relative to other states.

## Crime Rates

We should expect Minnesota to spend less on corrections and to have a lower incarceration rate than most other states due to its lower than average crime rate. However, as Table 3.3 shows, while Minnesota’s serious (Part I) crime rate is 12 percent below the national average, its overall incarceration rate is 65 percent below the average. In addition, Minnesota’s prison incarceration rate is 72 percent below the national average, but its violent crime rate is only 45 percent less than the average and its property crime rate is only 8 percent below average.

**Table 3.3: Part I Crimes per 100,000 Inhabitants, Minnesota and the United States, 1998**

Crime	Minnesota	United States Average	Percentage Difference from National Average	Minnesota’s Rank
Murder and Manslaughter	3	6	-59%	41 <sup>st</sup> of 50
Robbery	93	165	-44	31 <sup>st</sup> of 50
Aggravated Assault	165	360	-54	42 <sup>nd</sup> of 50
Rape	50	34	45	6 <sup>th</sup> of 50
<b>Violent crime</b>	<b>310</b>	<b>566</b>	<b>-45%</b>	<b>38<sup>th</sup> of 50</b>
Burglary	688	862	-20	30 <sup>th</sup> of 50
Larceny/Theft	2,724	2,728	0	28 <sup>th</sup> of 50
Motor Vehicle Theft	325	459	-29	36 <sup>th</sup> of 50
<b>Property crime</b>	<b>3,736</b>	<b>4,049</b>	<b>-8</b>	<b>31<sup>st</sup> of 50</b>
<b>All crimes</b>	<b>4,046</b>	<b>4,616</b>	<b>-12%</b>	<b>32<sup>nd</sup> of 50</b>

SOURCE: *Sourcebook of Criminal Justice Statistics 1999*, Tables 3.122 and 3.124. The online version is available at <http://www.albany.edu/sourcebook>.

It should be pointed out that correctional populations in Minnesota and throughout much of the nation grew dramatically during the 1980s and 1990s. Minnesota’s per capita prison, jail, and probation populations have all more than doubled since 1985. Increased violent crime rates, tougher sentencing policies (particularly those implemented in 1989), and increased arrest rates have contributed to the growth in Minnesota’s correctional populations.<sup>4</sup> The overall violent crime rates in Minnesota increased significantly during the 1980s and the first half of the 1990s but has declined since 1994. The overall property crime rate showed no consistent trend during the 1980s and much of the 1990s. However, the property crime rate declined in the last two years and, in 1999, was at its lowest point during the 1980s and 1990s.

<sup>4</sup> Office of the Legislative Auditor, *Trends in State and Local Government Spending* (St. Paul, MN, 1996), 135-137.

It is not entirely clear why crime rates have fallen in recent years. The aging of the baby boom generation, the continued strong economy and availability of jobs, a decline in the cocaine market and accompanying violence, and the effect of increasing incarceration rates could all be possible explanations for the declining crime rates in Minnesota and elsewhere in the nation.

## ESTIMATES OF THE COSTS OF CRIME

In this section, we highlight the most comprehensive effort to measure the costs of crime. We do not attempt to measure the costs of crime directly or to discuss every study that has looked at this issue. Readers interested in a more comprehensive review of previous cost of crime studies should examine the Minnesota House Research Department's 1999 publication on the costs of crime.<sup>5</sup>

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**Generally, property crimes have lower victim and societal costs than do violent crimes.**

The most comprehensive estimates of the costs of crime were presented in a 1996 report to the National Institute of Justice.<sup>6</sup> These estimates are presented in Table 3.4 along with an inflation adjusted total. The estimates include productivity losses to crime victims and society; other tangible losses such as the costs of medical or mental health care, police and fire services, victim services, property loss or damage, and time spent by victims in the criminal justice system; and intangible losses such as reduced quality of life, pain and suffering, and loss of affection and enjoyment.<sup>7</sup> These estimates suggest that:

- **Crimes resulting in death or in physical or psychological injury result in relatively high costs to victims and society.**

Clearly, a crime resulting in a fatality has the highest average cost, which is estimated to be in excess of \$3,000,000 for the year 2000. These costs are high primarily due to the estimated quality of life costs and productivity losses due to lost wages. Other crimes with average costs exceeding \$100,000 include arson with injury and sex crimes such as rape, sexual assault, and sexual abuse of a child. These crimes tend to have high estimated losses due to a reduced quality of life. Arson with injury also involves substantial property losses and medical care costs. Two other crimes have estimated costs exceeding \$50,000: driving while intoxicated (DWI), if it results in injury, and physical abuse of a child. Both also have significant estimated quality of life costs.

Property offenses, however, have fairly low average costs provided no violent crime is committed during the offense. The average cost of larceny or theft is under \$500, while the average cost of a burglary is \$1,700. Robbery without injury (\$2,400) and motor vehicle theft (\$4,400) have somewhat higher average

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<sup>5</sup> Emily Shapiro, Minnesota House Research Department, *Cost of Crime: A Review of the Research Studies* (St. Paul, MN, August 1999).

<sup>6</sup> Ted R. Miller, Mark A. Cohen, and Brian Wiersema, *Victim Costs and Consequences: A New Look*, a final summary report presented to the National Institute of Justice (Washington, D.C., February 1996).

<sup>7</sup> Medical and mental health care and property losses are the most significant subcategories in the "other tangible losses" category. The cost of police services is relatively small and is particularly small for these estimates because it is averaged over all crimes committed including crimes not reported to police.

**Table 3.4: Costs per Crime, 1993 and Estimated 2000**

Type of Crime	In 1993 Dollars			In 2000 Dollars <sup>a</sup>	
	Productivity	Other Tangible	Quality of Life	Total Costs	Total Costs
<b>Fatal Crime</b>					
Rape, assault and other	\$1,000,000	\$30,000	\$1,910,000	\$2,940,000	\$3,504,000
Arson	724,000	46,000	1,970,000	2,740,000	3,265,000
DWI	1,150,000	30,000	1,995,000	3,180,000	3,790,000
<b>Child Abuse</b>					
Sexual	2,200	5,700	52,371	60,000	72,000
Physical	2,100	7,400	89,800	99,000	118,000
Emotional	3,400	5,600	57,500	67,000	80,000
<b>Rape and sexual assault</b>					
	900	4,800	21,100	27,000	32,000
<b>Other assault or attempt</b>					
With injury	2,200	2,900	81,400	87,000	104,000
No injury	950	650	7,800	9,400	11,000
Domestic	3,100	1,700	19,300	24,000	29,000
	70	130	1,700	2,000	2,400
	760	440	10,000	11,000	13,000
<b>Robbery or attempt</b>					
With injury	950	1,350	5,700	8,000	9,500
No injury	2,500	2,700	13,800	19,000	23,000
	75	625	1,300	2,000	2,400
<b>DWI</b>					
With injury	2,800	3,200	11,900	18,000	21,000
With property damage but no injury	12,100	10,200	48,400	71,000	85,000
	170	1,130	1,400	2,700	3,200
<b>Arson</b>					
With injury	1,750	17,750	18,000	37,500	45,000
No injury	15,400	33,600	153,000	202,000	241,000
	8	15,992	500	16,000	19,000
<b>Larceny or attempt</b>					
	8	362	0	370	440
<b>Burglary or attempt</b>					
	12	1,088	300	1,400	1,700
<b>Motor vehicle theft or attempt</b>					
	45	3,455	300	3,700	4,400
<b>Child neglect</b>					
	25	1,775	7,900	9,700	12,000

<sup>a</sup>We used the CPI-U to adjust the total costs for the inflation that occurred between 1993 and 2000. The total cost figures for 2000 were rounded to the nearest \$1,000 for amounts of \$10,000 or more, to the nearest \$100 for amounts between \$1,000 and \$10,000, and to the nearest \$10 for amounts under \$1,000.

SOURCE: Ted R. Miller, Mark A. Cohen, and Brian Wiersema, *Victim Costs and Consequences: A New Look*, a final summary report presented to the National Institute of Justice (Washington, D.C., February 1996). Inflation adjustment for 2000 was calculated by the Office of the Legislative Auditor.

costs. Arson without injury (\$19,000) is the one exception to the general rule for property crimes due to the high average costs of property damage. Other crimes with relatively low estimated costs include assault without injury (\$2,400) and DWI without injury (\$3,200).<sup>8</sup>

Drug crimes are not included in Table 3.4 because of the difficulty in estimating their costs. Some analysts suggest that drug users are “willing victims” and are

<sup>8</sup> The cost of a DWI without injury was calculated using only DWIs that resulted in property damage. The cost of a DWI without injury or property damage would be lower than that for a DWI without injury.

**Crimes resulting in death or injury have higher costs than do other crimes.**

offenders themselves. As a result, they do not include the costs to these victims as a cost of crime. But, it could be argued that drug use involves significant productivity losses for society, as well as spillover effects on the quality of life in a community. In addition, as we saw in Chapter 2, many offenders convicted of felony drug crimes have significant criminal histories involving other types of crime, particularly property crimes. For some drug users, drug use is part of a pattern of behavior involving other criminal activity. While a number of analysts have examined the productivity losses from drug use, few analysts have attempted to estimate the societal and community costs per drug crime with the same rigor used by the authors whose estimates for other crimes are shown in Table 3.4.

In some respects, the differences in estimated costs for various types of crime are similar to the priorities reflected in the sentencing guidelines, even though the guidelines were not intended to respond to differences in the costs of crime. As we saw in Chapter 2, the guidelines place a significantly greater priority on imprisoning violent offenders than on imprisoning property offenders. The cost estimates discussed above show that the cost to victims and society of a violent crime is much greater than the cost of a property crime. However, while the guidelines place greater emphasis on imprisoning drug offenders than property offenders, the cost of crime estimates do not provide a benchmark to assess this policy because of the difficulty in measuring the costs of drug crimes.

These data on the costs of crime, while appropriately estimated and more comprehensive than any other source, have several limitations. First, some costs of crime are not included, particularly those that are more difficult to estimate due to lack of adequate data or research. Most of the excluded costs are the costs of society's response to crime. For example, the costs of the criminal justice system other than police costs are not included. This category includes the costs of prosecution, courts, public defenders, probation, incarceration, and correctional programs and offender treatment.<sup>9</sup> Also excluded from the cost estimates are the costs of security precautions taken by potential future victims, the costs of their response to the fear of crime, and their potential loss of quality of life due to the fear of crime. These estimates also exclude the costs imposed on innocent individuals when they are accused of an offense or when legitimate activity is restricted in an effort to reduce crime. Finally, the estimates exclude the privately borne legal costs of offenders as well as the value to offenders and their families of lost wages, productivity, freedom, and consortium while offenders are incarcerated.<sup>10</sup>

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<sup>9</sup> It would be difficult to estimate certain public costs of crime such as prosecution and police costs for Minnesota because of the lack of adequate cost data, the need to separate the costs of criminal justice activities from other agency functions, and the lack of adequate data on criminal justice activities by jurisdiction. Estimates for the state of Washington, where adequate data were available, indicate that the cost per arrest by police was about \$12,600 for violent felonies and \$1,900 for property and drug felonies. The cost of prosecution and court resources was, on average, about \$97,000 for murder/manslaughter offenses, \$18,400 for certain other violent crimes, and \$1,700 for property and drug felonies. See Washington State Institute for Public Policy, *The Comparative Costs and Benefits of Programs to Reduce Crime: A Review of National Research Findings with Implications for Washington State* (Olympia, WA, May 1999), 116.

<sup>10</sup> Also excluded from the estimates are the legal costs borne by victims or their families in pursuing tort claims and the second generation costs incurred in those cases when victims of crimes such as child abuse later commit crimes themselves.

Second, these estimates are averages for crimes that may have a wide range of costs. Costs for a particular crime such as larceny or theft may vary greatly due to differences in the amount of money or property stolen. Crimes involving injury can also have significantly different costs due to differences in the nature and severity of injuries sustained during the commission of the crime. Because the estimates presented in Table 3.4 are averages, they should not be used to assess the cost of any particular offense.

Finally, it should be recognized that the estimates made for the National Institute of Justice include some categories of costs that are difficult to estimate. Clearly, intangible costs such as losses in the quality of life cannot be priced as easily as other categories of costs. Nevertheless, the study used reasonable techniques to estimate these costs, including using life insurance industry data to estimate the value of the life lost by murder victims and using jury awards to estimate quality of life losses for nonfatal crimes.

## BENEFITS AND COSTS OF INCARCERATION

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**Comparing the financial benefits and costs of incarceration may be helpful to some policy makers.**

In this section, we examine how the benefits of incarceration compare with the costs of incarceration. The benefits are essentially the costs of crimes avoided because offenders are “incapacitated” while they are in prison or jail and unable to commit crimes. The costs of incarceration include operating expenditures of prisons or jails and an annualized portion of their construction costs if it is necessary to build additional capacity. Alternatively, the costs of incarceration may consist of the rental costs for a correctional facility if such facilities are available for rental.

Ideally, we would like to be able to compare the benefits of incapacitation—measured by the value of the reduction in crimes committed—with the costs of incarceration. If the benefits exceed the costs for certain offenses or groups of offenders, then it could be argued that more of these offenders should be incarcerated despite the high costs of operating a prison or jail. If, on the other hand, the benefits are less than the costs, it could be argued that current incarceration rates are excessive.



**But there are factors besides benefits and costs that influence incarceration policy.**

It should be recognized that *incapacitation* is only one of a number of reasons why policy makers may want to incarcerate an individual. The guidelines used in Minnesota for sentencing convicted felons are largely based on a philosophy of *just deserts*. The guidelines recommend sentences based on what the framers of the guidelines felt was a fair and just penalty given the severity of a crime and an offender's criminal history. Another philosophy might be to establish sentences that provide sufficient *deterrence* so that the sentenced offenders and potential offenders are less likely to commit crimes. Imprisonment can also be viewed as means to punish an offender or, in other words, to provide society with *retribution*. Finally, incarceration can provide an opportunity to administer treatment to offenders with the goal of *rehabilitation*. The bottom line is that, even though examining the benefits and costs of incapacitation may be useful, there may be other reasons why policy makers may want to either incarcerate or not incarcerate offenders.

Nevertheless, in the remainder of this chapter, we examine the benefits and costs of incapacitation. First, we provide estimates of the costs of incarceration for Minnesota prisons and jails and make a rough comparison of these costs with the benefits of incapacitation as measured by the costs of crime presented earlier. Next, we discuss the difficulties involved in making such comparisons. Finally, we examine what other studies of this issue have concluded.

## Costs of Incarceration

Table 3.5 shows that the operating costs of Minnesota's state prisons were approximately \$85 per day, or \$31,000 per year, per inmate in fiscal year 2000. This average cost has decreased slightly in recent years as Minnesota's prison population has grown and the state's existing facilities are operated closer to capacity. The average cost does not include the state's newest prison at Rush City, which has not fully opened and, in fiscal year 2001, is operating at less than half its capacity. For 2001, the projected per diem cost of the Rush City facility is about \$163, or roughly \$60,000 per inmate per year.

**Table 3.5: Estimated Prison and Jail Costs per Inmate, 2000**

Type of Facility	Per Day	Per Year
<b>Department of Corrections Prison</b>		
Operating costs	\$ 85	\$ 31,000
Estimated construction costs	21 to 28	7,700 to 10,300
<b>TOTAL COSTS</b>	<b>\$106 to 113</b>	<b>\$ 39,000 to 41,000</b>
<b>Private Prison</b>	\$ 55	\$ 20,000
<b>Local Jails and Corrections Facilities<sup>a</sup></b>		
Operating costs	\$ 66	\$ 24,000
Estimated Construction Costs	10 to 16	3,600 to 5,800
<b>TOTAL COSTS</b>	<b>\$ 76 to 82</b>	<b>\$ 28,000 to 30,000</b>

<sup>a</sup>These estimates are based on the average 1996 costs of facilities who responded to a DOC survey. We converted the estimates to 2000 dollars using the CPI-U.

SOURCE: Department of Corrections.

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**It costs between \$20,000 and \$40,000 to incarcerate an offender for one year.**

The \$31,000 per inmate per year figure includes the ongoing costs of running Minnesota's prisons, including health care costs, but does not include any other portion of central office costs. We have not attempted to include central office costs since it could be argued that central office costs do not necessarily need to grow if another prison is added. It should also be pointed out that the Department of Corrections has developed a plan for reducing its facility operating costs per inmate by up to 20 percent.<sup>11</sup> The figures in Table 3.5 do not reflect DOC's proposed changes.

On the other hand, adding another prison would involve financing construction costs. Generally, other studies have estimated the annualized costs of construction to be about one-fourth to one-third of the annual operating costs of a prison. Given an average annual operating cost of \$31,000 per inmate, the estimated annual total costs including construction might be roughly \$40,000 per inmate. Whether this estimate is reasonable would depend on the type of prison being built. The costs of building and operating a minimum security facility for property and other low-level offenders would be lower while the costs of a high-security facility would likely be much higher.

Another option that needs to be considered is the availability of suitable rental space. According to Department of Corrections staff, up to 200 beds have been available in the past at a private correctional facility in Minnesota. The rental rate at the facility was \$55 per day, or about \$20,000 per inmate per year. This rate compares favorably with the \$40,000 per year estimate for DOC-operated facilities, but limited space would be available at this private facility and may not be suitable for all types of offenders.

Table 3.5 also provides an estimate of the per diem and annual costs of jails and other local correctional facilities in Minnesota. The estimated average operating cost per inmate of Minnesota's jails is about \$66 per day or \$24,000 per year. If construction of additional jail capacity were necessary, the total annual costs per inmate might be between \$28,000 and \$30,000. These estimates are much less certain than those for prisons since they are based on 1996 data on about 60 percent of the existing facilities. In addition, estimated construction costs are unknown but were based on 15 to 25 percent of the estimated operating expenditures. Finally, it should be pointed out that jail costs per inmate vary significantly around the state. The variation in costs reflects the different types of facilities operated around the state, the differences in their operations and services, and the degree to which the facility's capacity is utilized. The estimate presented in Table 3.5 is an average for facilities with a wide range in costs per inmate.

## **Comparing the Benefits and Costs of Incarceration**

In this section, we make a rough comparison of the costs of incarceration with the potential benefits of incarceration as measured by the costs of crime avoided by incarcerating an offender. Given a prison cost of about \$40,000 per year and a private facility cost of \$20,000 per year, Table 3.6 estimates the number of

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<sup>11</sup> Department of Corrections, *Per Diem Reduction Plan for the Minnesota Department of Corrections Adult Facilities Division* (St. Paul, October 2000).

**Table 3.6: Number of Prevented Offenses Needed per Year to Make the Benefits of Incapacitation Equal to Estimated Prison Costs, 2000**

Type of Crime	DOC Facility	Private Facility <sup>a</sup>
Murder	0.01	0.01
Child abuse	0.6	0.3
Rape and sexual assault	0.4	0.2
Other assault or attempt	3.6	1.8
Robbery or attempt	4.2	2.1
DWI with injury or property damage	1.9	1.0
Arson	0.9	0.4
Larceny or attempt	90.9	45.5
Burglary or attempt	23.5	11.8
Motor vehicle theft or attempt	9.1	4.5
Child neglect	3.3	1.7

<sup>a</sup>The use of a private facility may not be appropriate for violent offenders.

SOURCE: Office of the Legislative Auditor's analysis.

offenses of a given type that an offender would have to commit each year in order for the benefits measured by the reduced costs of crime to equal the costs of prison.

The table suggests that preventing one murder in 100 years would be sufficient to justify imprisoning an offender. Alternatively, if there is a greater than 1 percent chance that the offender would commit a murder that year, the benefits of incapacitating the offender for a year may equal the costs of prison. For rape and child abuse, the number of offenses prevented per year needed to justify imprisonment for that year is less than one.

For other crimes, however, the benefits of incarceration would only equal or exceed the costs if an offender would have committed one or more crimes during the year. For property crimes, the number of offenses at the breakeven point would be between 5 and 9 motor vehicle thefts, 12 and 24 burglaries, or 46 to 91 larcenies or thefts. The range reflects the difference between incarcerating the offenders at a facility costing \$20,000 per year and a facility costing \$40,000.

**Estimating the benefits of incarceration is particularly difficult.**

## Problems in Estimating Benefits

While this comparison would seem to make it simple to estimate the monetary benefits of incapacitating more offenders, it is actually quite difficult. At the root of the problem is the difficulty in knowing **the number and types of offenses** an offender would commit each year if not incarcerated. As we have seen, conviction data probably provide a relatively low estimate of the number of crimes an offender commits because convictions account for only a small percentage of the crimes committed. Studies that have examined the issue have used arrest data, inmate interviews, and other sources in an attempt to estimate the number of

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**It is hard to estimate the number and type of crimes prevented by incarcerating an offender.**

crimes committed per year by the typical offender and the type of crimes they committed. However, these studies vary significantly in their estimates of the average number of offenses committed per year by active offenders—from about 5 to over 200 offenses per year. In addition, most offenders do not specialize completely in one type of crime. As a result, it becomes more difficult to calculate whether the benefits of incarcerating offenders exceed the costs. For example, a burglar, while usually specializing in burglaries, might commit a costly violent crime if confronted by a victim during a burglary.

A second problem is that it is difficult to estimate **the remaining length of an offender's criminal career**. If an offender is incarcerated but was likely to have ended criminal activity prior to the end of the prison sentence, then the benefits of incapacitation are less than would otherwise be the case. Offenders generally do not continue their criminal activities throughout their lives, but it is hard to predict when any particular offender or group of offenders will no longer be criminally active.

A third problem is that removing one offender from the streets may result in the **replacement** of that offender by others and little or no reduction in crime rates. For example, some researchers suggest that incarcerating a drug dealer is unlikely to result in a reduction in crime. The imprisoned dealer will simply be replaced by another individual willing to provide the illegal substances in demand.

Finally, it is somewhat difficult to predict the net impact of imprisoning an offender due to the fact that some **crimes are committed by multiple offenders**. If one offender is imprisoned but the offender's partner is not imprisoned, it is not entirely clear how the absence of the incapacitated offender will affect the offense rate of the offender who remains free. The crime rate could go down due to the absence of the partner or it could remain unchanged if the free offender acquires a new, previously inactive partner or learns to commit the same crimes without a partner.

Considering these difficulties, we did not attempt to use data from Minnesota to estimate the benefits of incarceration. While we had information on convictions in Minnesota, we had little basis on which to estimate the overall offense rates of chronic offenders. Offenses that are not reported to police and reported offenses for which no arrest is made are difficult to attribute to any particular offender or group of offenders. Instead, the remainder of this chapter examines national studies that have addressed some or all of the estimation problems outlined above.

## Previous Studies

Much of the research into and controversy about the cost effectiveness of incarceration has focused on the number of offenses committed by the average inmate rather than the cost of crime. Even though significant issues can be raised about how to measure the cost of crime, it has been even more difficult to reach consensus about the average number of offenses committed by offenders before they went to prison. At the root of the problem is the fact that offenders typically commit more offenses than the number for which they are convicted.

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**Early studies found the benefits of incarceration exceeded the costs.**

Early studies of this issue estimated the offense rate using data from prison inmate surveys conducted by the RAND Corporation. A 1987 study by Edwin Zedlewski concluded that each additional incarcerated inmate would reduce the annual cost of crime by \$430,000 but only cost \$20,000 to incarcerate.<sup>12</sup> Zedlewski used an offense rate of 187 offenses per year, not including drug crimes, and estimated that each avoided offense would save an average of \$2,300 in crime costs.<sup>13</sup>

David Cavanagh and Mark Kleiman reached similar conclusions in 1990 using the RAND survey data. They estimated the annual cost of crime averted by imprisoning one offender to be between \$172,000 and \$2,364,000, including indirect and other social costs in addition to the out-of-pocket and quality of life costs. In contrast, they estimated the cost of incarceration to be \$23,000 to \$70,000, including prison operating and capital costs of \$12,000 to \$48,000 and \$12,000 to \$22,000 in lost offender wages and public costs of supporting the offender's family. This study used an offense rate of 199 to 689 crimes per inmate per year including drug crimes.<sup>14</sup>

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**But these studies overstated the number of crimes prevented by incarceration.**

The most important problem with these early studies is the offense rate used to estimate the reduction in crime costs due to incarceration. The average offense rates calculated using the RAND Corporation data were not representative of the majority of inmates surveyed and probably not representative of most offenders not in prison. Half of the surveyed inmates said they committed fewer than 15 crimes per year, while 25 percent committed more than 135 crimes per year and 10 percent committed more than 600 crimes annually.<sup>15</sup> Thus, the conclusion reached by these studies may not have been valid even for most of the current inmate population.<sup>16</sup> Furthermore, the implication that it would be beneficial to incarcerate a greater number of offenders was not based on any analysis of the offense rate for offenders not currently in prison. These offenders could have a much lower average offense rate than the average rate for those incarcerated.

More recent research on offense rates and the relative benefits and costs of incarceration does not provide a clear consensus but is generally less supportive of the conclusions reached by the earlier studies. The most comprehensive examination of offense rates, criminal career lengths, and benefit-cost calculations is contained in a 1994 book written by William Spelman, a professor at the

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<sup>12</sup> Zedlewski added \$5,000 per year in lost wages for incarcerated offenders and other social costs to the \$20,000 figure for a total of \$25,000 in prison and other social costs. See Edwin W. Zedlewski, *Making Confinement Decisions*, National Institute of Justice, Research in Brief (Washington, D.C., July 1987).

<sup>13</sup> Most of the studies discussed in this section except the Zedlewski study do not explicitly consider most of the public costs of crime such as court, prosecution, and public defender costs. The rationale for not including these costs is that these costs may increase if a jurisdiction attempts to send more offenders to prison and more defendants choose to go to trial rather than plead guilty. The increase could offset any reduction in costs occurring because more offenders are eventually incarcerated and unable to commit crimes.

<sup>14</sup> David P. Cavanagh and Mark A. R. Kleiman, *A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions*, a BOTEC Analysis Corporation report prepared for the National Institute of Justice (Washington, D.C., June 1990).

<sup>15</sup> Zedlewski, *Making Confinement Decisions*, 3.

<sup>16</sup> These studies did not provide insight into whether those who committed relatively few crimes had committed more serious and costly crimes. If they had, the benefits of incarcerating those individuals may still have exceeded the costs.

University of Texas.<sup>17</sup> Spelman reexamined the RAND data and examined other studies of arrest rates as well. He concluded that the offense rate varies significantly depending on the group of offenders being considered. According to Spelman, the average active offender commits about 8 crimes per year, while offenders who are incarcerated at some point in their careers commit an average of 30 to 50 crimes per year when active, and incoming prison inmates have committed an average of 60 to 100 crimes per year.

One of the problems facing the criminal justice system is that these averages are not representative of the groups of offenders being examined. As we mentioned above, the distribution of offense rates is highly skewed—that is, the average offense rate is not representative of most of the offenders in the group. The average is higher than the rate for most of those in the group because the rate is very high for a small percentage of offenders in the group. If the criminal justice system could somehow identify those offenders with high offense rates, it could perhaps more selectively incarcerate just those offenders. The problem with that strategy is that there is not good information about offense rates of individuals, and judges might be rightfully reluctant to sentence individuals based on offense information other than prior convictions of an offender. Furthermore, researchers have not been able to predict with much success the future criminal activity of an offender.<sup>18</sup>

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**More recent work shows the difficulty of reaching definitive conclusions about the net economic benefits of incarceration.**

Spelman estimated prison and other social costs of incarceration to be about \$40,000 per year and estimated the cost per crime, including the same types of costs used by Cavanagh and Kleiman, to be about \$5,100. He found that a 1 percent increase in prison capacity would cost \$360 million annually and would reduce crime by 0.12 to 0.20 percent, resulting in reduced crime costs of \$306 million to \$512 million per year. The net result would be somewhere between a \$54 million loss and a \$152 million gain. His best estimate was that a 1 percent increase in prison capacity would result in a net gain of \$41 million per year for the nation. However, in reaching these estimates, Spelman inflated the measured costs of crime—including monetary losses, pain and suffering, and other quality of life losses—by 300 percent to include indirect costs of crime such as the costs of additional security and crime prevention, reduced social interaction and solidarity, reduced trust, and disintegration of the sense of a community.<sup>19</sup>

Spelman concluded that “...for most states and the nation as a whole, constructing additional jails and prisons is a risky investment with a very uncertain payoff.”<sup>20</sup> He also suggested that states with low incarceration rates and low incarceration costs would be more likely to obtain net benefits from incarcerating more individuals. As discussed earlier in this chapter, Minnesota has a low incarceration rate but high incarceration costs. Minnesota might be able to benefit from incarcerating more offenders if it could be done at a lower cost. Although

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<sup>17</sup> William Spelman, *Criminal Incapacitation* (New York: Plenum Press, 1994).

<sup>18</sup> See Spelman, *Criminal Incapacitation*, 99-100, and Peter W. Greenwood and Susan Turner, *Selective Incapacitation Revisited: Why the High-Rate Offenders Are Hard to Predict*, RAND Corporation report for the National Institute of Justice (Washington, D.C.: March 1987).

<sup>19</sup> Spelman based this estimate of indirect crime costs on a 1984 study that examined the effect of crime on housing prices. See W.W. Greer, “What is the Cost of Rising Crime?” *New York Affairs*, vol. 8 (January 1984), 6-16.

<sup>20</sup> Spelman, *Criminal Incapacitation*, 227.

Spelman did not directly recommend a general increase in the nation's incarceration rate, he suggested that a better return could be achieved by police and prosecution policies that more selectively focus on high-rate offenders.

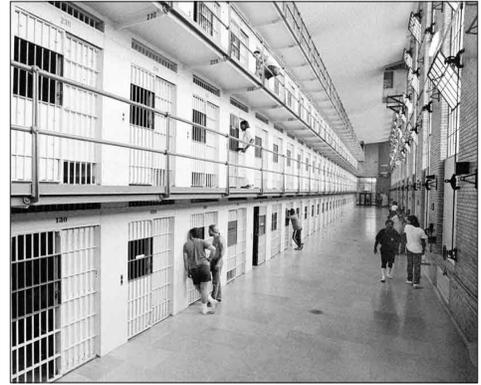
Several other studies are worth mentioning. In a 1994 article, researcher Thomas Marvell concluded that "prison populations appear to be near an equilibrium point from a cost-benefit viewpoint."<sup>21</sup> He

calculated the annual cost of prison operation and construction to be \$29,000 per inmate. Using a higher estimate than Spelman of the reduction in crime resulting from a 1 percent increase in incarceration, Marvell estimated the avoided out-of-pocket costs of crime to be about \$19,000 per offender incarcerated. To that figure, he added \$18,000 per offender for reduced pain and suffering and psychological injuries to victims. But, given the uncertainties involved with estimating this latter category as well as other benefits, he concluded that the estimates of costs and benefits do not differ by much. Unlike Spelman, he did not include any indirect costs of crime in the benefits of incarceration, nor did he include any offender costs in the costs of incarceration.

In a 1996 article, Harvard researcher Steven Levitt estimated that each additional inmate incarcerated would reduce crime costs by \$53,900, which he said was probably higher than the costs of incarceration plus the social costs of incarcerating an offender (such as lost wages and pain and suffering for offender families).<sup>22</sup> Using a statistical analysis of states with judicial orders regarding prison overcrowding, Levitt estimated that each newly incarcerated inmate would have committed 15 Part I offenses per year and found that assault, robbery, and burglary decreased the most in response to increases in imprisonment. His estimates of the reduced costs of crime included the types of costs shown in Table 3.4 but did not include any indirect costs of crime.

Levitt's statistical techniques measured both the effects on the crime rate of incapacitating more offenders and deterring others from committing crimes. His estimates could be criticized for being based largely on southern states with high incarceration rates, although he suggests that the responsiveness of the crime rate to increased incarceration may be higher in states with lower incarceration rates.

Levitt concluded that: "While calculations of the costs of crime are inherently uncertain, it appears that the social benefits associated with crime reduction equal or exceed the social costs of incarceration for the marginal prisoner."<sup>23</sup> Despite



<sup>21</sup> Thomas Marvell, "Is Further Prison Expansion Worth the Costs?" *Federal Probation*, vol. 58, no. 4 (Washington, D.C., December 1994), 61.

<sup>22</sup> Steven D. Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation," *Quarterly Journal of Economics* 111 (Cambridge, MA, May 1996), 319-351.

<sup>23</sup> *Ibid.*, 319.

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**Even if the benefits of incarceration exceed its costs, incarceration is not necessarily the most cost effective option.**

this conclusion, Levitt stated that: “The finding that increased prison populations appear to substantially reduce crime does nothing to reduce the importance of identifying and correcting those factors that lie at the source of criminal behavior.”<sup>24</sup> He commented that, if feasible, crime prevention or rehabilitation is preferable to prison from “both a cost-benefit and humanitarian perspective.”<sup>25</sup> Levitt suggested that early-childhood programs and family-intervention programs are worth considering, along with alternative sanctions such as community-based sentences and boot camps.

We conclude that:

- **The research studies we reviewed do not provide a clear consensus regarding the relative benefits and costs of incarceration.**

The difficulties in estimating the number of offenses committed by offenders, as well as the uncertainties involved in estimating the costs of crime, make it difficult to draw any firm conclusions. Another problem is that:

- **The existing studies of the benefits and costs of incapacitation fail to provide much insight into how to maximize the benefits from increasing incarceration.**

The studies either provide no such insights or do not provide convincing evidence to support their recommended approaches. Levitt suggested keeping the current group of prisoners behind bars for longer periods because they are likely to be more criminally active than offenders that have not typically been incarcerated.<sup>26</sup> However, keeping the current offenders behind bars longer is impractical since they have already been sentenced. Minnesota requires them to be released after they have served two-thirds of their sentences unless the Department of Corrections holds them longer due to violations of prison rules. Levitt may have intended to say that prison sentences for future convicted felons should be lengthened. However, he provided no advice regarding the particular types of offenses and offenders that should receive longer sentences. In addition, he provided little insight into why other approaches such as increased targeting of career criminals by police and prosecutors should not be considered instead.

As discussed earlier, Spelman recommended that police and prosecutors focus more on career criminals. His rationale was laid out in great detail, yet his recommendation was clouded by skepticism on his part that police and prosecutors could adequately target high-rate offenders. His skepticism may be appropriate to a certain degree because many crimes are never solved and high-rate offenders may be more adept at evading police detection than other offenders. Police and prosecutors can only target their resources at those offenders whose crimes are detected, and courts can only sentence offenders in accordance with their convictions.

It should be pointed out that none of these studies, except the Levitt article, includes the effect of a higher incarceration rate in deterring others from

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<sup>24</sup> *Ibid.*, 348.

<sup>25</sup> *Ibid.*, 348.

<sup>26</sup> *Ibid.*, 347-348.

committing crimes. While literature on deterrence suggests that deterrent effects may be important, it may be more important to increase the chance that offenders are caught and convicted of the crimes they commit than to focus on increasing the length of sentences for those who are convicted.<sup>27</sup> Offenders may respond more to an increase in the certainty that they will be punished than to the lengthening of sentences they have a small chance of receiving.

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<sup>27</sup> See Andrew von Hirsch, Anthony E. Bottoms, Elizabeth Burney, and P-O. Wikstrom, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Oxford, UK, 1999) and Daniel S. Nagin, "Deterrence and Incapacitation," in Michael Tonry, ed., *The Handbook of Crime & Punishment* (New York, 1998), 345-368.

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# Discussion

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## SUMMARY

*Because chronic offenders appear to be responsible for a disproportionately large share of certain crimes, efforts to either change their behavior or incarcerate more of them are worth considering. However, it is unclear at this point what strategies will be most cost-effective in dealing with chronic offenders.*

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In Chapter 1, we found that over 11,600 offenders had been convicted of at least three felonies or at least five criminal offenses, including misdemeanors and gross misdemeanors, in a recent four-year period. These “chronic” offenders were much more likely than other offenders to have committed a property crime, but most had also committed more than one type of crime. These chronic offenders, representing 5 percent of all offenders, accounted for 37 percent of all felony convictions from 1996 through 1999. In addition, they had more than 30 percent of the homicide, robbery, kidnapping, arson, burglary, theft, and forgery convictions.

The number of chronic offenders is roughly equivalent to the number of offenders currently incarcerated in prisons or jails in Minnesota. Incarcerating all of these offenders is not a practical solution to the chronic offender problem. But, neglecting the problem ignores the significant costs that chronic offenders place on crime victims and communities.

This chapter considers some possible approaches to Minnesota’s problems with chronic offenders and discusses the difficulties involved in assessing the relative merits of different approaches. We also discuss the need for a comprehensive criminal justice data system and greater research and evaluation efforts within the criminal justice community.

## STRATEGIES

There are a number of potential strategies for dealing with chronic offenders. They include:

- Changes in felony sentencing designed to increase imprisonment rates;
- Formalized graduated sanctions for offenders not going to prison, including alternative sanctions such as participation on a work crew doing community service;

- Targeting of chronic offenders by police and prosecutors for more speedy prosecution;
- More intense supervision of certain chronic offenders while they are on probation;
- Assessment of the needs and problems of chronic offenders and suitability for treatment or rehabilitation programs; and
- Better data systems and increased emphasis on evaluation of programs and performance.

These potential strategies and other options are outlined and discussed below.

## Felony Sentencing

One strategy for dealing with chronic offenders would be to implement changes in the statutes or the sentencing guidelines that would either lengthen prison sentences for felons with extensive criminal records or increase the probability that such felons would be sent to prison. This could be addressed in a number of

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**Criminal history could be given greater weight in sentencing decisions.**



ways. One method would be to change the guidelines to provide a greater emphasis on criminal history scores. This could be accomplished by increasing the length of sentences for offenders with higher criminal history scores and/or increasing the number of cells in the sentencing guidelines grid, particularly at higher criminal history scores, that call for a prison sentence. Another method

would be to change the methods used to calculate criminal history scores by increasing the relative weight of prior felonies committed at lower severity levels or changing the one-point limit on the contribution that certain misdemeanors and gross misdemeanors can make to an offender's criminal history score.

Another potential method would be to broadly change the presumption of concurrent sentences to consecutive sentences. Alternatively, the use of consecutive sentencing could be selectively expanded by permitting judges to use it for certain chronic offenders based on specific criteria established by law. It should be noted that changing to consecutive sentences could also greatly affect sentencing for misdemeanor and gross misdemeanor offenses.

Without changing the general presumption of concurrent sentencing, the Legislature could consider prohibiting an offender from receiving credit for time served in a jail or other correctional facility for offenses or behavioral incidents unrelated to the offense for which the offender is being sentenced. In addition, the Legislature could consider changing the definition of prior convictions in the career offender statute so that more offenders with five or more prior felony convictions would be eligible for sentencing under the statute.

## Graduated Non-Imprisonment Sanctions

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**District courts and local criminal justice agencies could develop graduated sanctions for chronic offenders not going to prison.**

Another strategy for policy makers to consider is the use of graduated sanctions for offenders not going to prison. Minnesota does not have sentencing guidelines for jail time, fines, or other sanctions applied to offenders not going to prison, including both felony offenders and offenders who have committed misdemeanor or gross misdemeanor offenses. Formalized non-imprisonment guidelines could be adopted at the state level but would be controversial due to the potential fiscal impacts on county governments, which are responsible for funding and operating county jails. Alternatively, state policy makers could encourage counties and district courts to develop and adopt more formalized non-imprisonment guidelines. When adopted at the local level, these guidelines could be designed with local jail capacity in mind, as well as the particular types of chronic offenders that are a problem in that area of the state.

One key feature of non-imprisonment guidelines should be the use of graduated sanctions. Sanctions should be designed so that, with each additional offense, an offender receives a more significant sanction. Graduated sanctions would provide incentives for existing or potential chronic offenders to change their behavior or at least incapacitate chronic offenders longer than other offenders. While sanctions might vary depending on the offense committed, they should increase for offenders who not only have committed that type of offense on a previous occasion but have committed other types of offenses. The non-imprisonment guidelines would need to recognize that, as we saw in Chapter 1, chronic offenders generally commit more than one type of offense.

Non-imprisonment sanctions could also include alternative sanctions such as sentencing offenders to serve on work crews doing community service projects. This type of sanction would provide some restitution to the community for the crimes that have been committed and perhaps incentives to offenders to change their behavior. Offenders who do not successfully complete their community

service assignment could receive a longer jail sentence than would have otherwise been the case.

The use of graduated sanctions might not only impact the number of prisoners held in local correctional facilities. It could also impact the state's prison population. If felony offenders fail to comply with court orders or commit new offenses, a graduated sanctions approach would eventually call for their stayed prison sentences to be executed. Graduated sanctions could thus increase the percentage of offenders who are sent to prison following revocation of their probation.

## Targeting by Police and Prosecutors

Another way to address problems with chronic offenders would be for prosecutors to place additional priority on chronic offenders to ensure that charges against them are prosecuted, provided the charges are supported by evidence, and that prosecution occurs swiftly. To do this, prosecutors need timely information on the past offenses of offenders being arrested and may need additional resources. In some parts of the state, such a strategy would also involve coordination between county attorneys prosecuting felonies and city attorneys handling misdemeanor or gross misdemeanor cases, since chronic offenders may have both types of cases, involving separate behavioral instances, pending in court.

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**Prosecutors and police could focus more resources on cases involving chronic offenders.**

Targeting by police could involve greater attention to investigating cases potentially involving known chronic offenders. Alternatively, police could focus greater attention on neighborhoods experiencing an increase in criminal activity.



## Intensive Probation Supervision

Another possible strategy would be to target chronic offenders for more intensive supervision while they are on probation. More intensive supervision might involve more frequent reporting to a probation officer as a method of determining if the offender is complying with the conditions of his or her probation. Intensive supervision could also be integrated into a system of graduated sanctions. It could be used first before using other more intrusive sanctions such as required service on a work crew.

As with other options, it is unclear how effective more intensive supervision would be in changing the behavior of chronic offenders. It would most likely

require additional funding but would be less costly per offender than incarceration.

## Assessment and Programs

As part of any effort to address problems with chronic offenders, policy makers may wish to consider devoting some resources to assessing and addressing the underlying causes of chronic criminal behavior. To some extent, there are already programs to deal with certain types of chronic offenders and certain conditions. For example, there are programs in some parts of the state to deal with repeat domestic abuse offenders. In addition, drug offenders may be assessed and sent to treatment programs. However, there appears to be less assessment of mental health issues and few programs to deal with chronic property offenders.

## Data Systems and Evaluation

Minnesota is in the early stages of building a comprehensive integrated criminal justice database. The 2000 Legislature appropriated \$12 million for this purpose. An additional \$41 million is being requested from the 2001 Legislature for a project that may ultimately cost several hundred million dollars. While building such a database will require significant resources, it has the potential for improving information and decision-making in the criminal justice field for years to come. In addition, it could help courts and criminal justice agencies deal more effectively with chronic offenders.

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**Better data systems would enhance efforts to deal with chronic offenders.**

With current data systems, courts and agencies sometimes lack information that might help them make better decisions. Judges making sentencing decisions need accurate and timely information on offenders' criminal history, other current charges, and past attempts at treatment or rehabilitation. Prosecutors need that information so they can appropriately charge offenders and recommend sentences to judges. Probation officers need good information so they can help advise the court on an appropriate combination of treatment, incarceration, and other sanctions.

Current data systems sometimes provide incomplete information on past convictions and current charges and can be difficult to use. These systems are not designed to deal effectively with the many chronic offenders who cross county lines to commit offenses. Although strategies to deal with chronic offenders are feasible without a new data system, their potential success would be enhanced by an effective comprehensive statewide data system.

Another component of any strategy to deal with offenders in general, and chronic offenders in particular, might be an increased emphasis on research and evaluation within the criminal justice community. While some good work is currently being done by the Department of Corrections and various local jurisdictions, many important questions remain unanswered and even unaddressed. The effectiveness of alternative approaches to dealing with chronic offenders, as well as particular types of offenders, needs further examination. National literature can be helpful in guiding some program choices but it remains to be seen whether programs that are effective elsewhere are implemented in an effective way in Minnesota.

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**More research and evaluation of criminal justice programs is needed.**



Part of the research agenda could also be to provide better performance information to state and local policy makers and the public. Information could include data on the speed with which cases move from arrest to filing in court, the percentage of arrests resulting in criminal charges, and the percentage of charged cases resulting in a conviction. In addition, while the Bureau of Criminal Apprehension publishes data on reported crimes and police clearance rates, the data are incomplete. St. Paul does not report on the number of Part II crimes or the clearance rate on those crimes, and Minneapolis does not report on its clearance rate for either Part I or Part II crimes.<sup>1</sup>

Several other issues are also worth considering within a larger research agenda. First, some attention could be paid to understanding the mental health and chemical dependency problems of chronic offenders. Some would suggest that these problems are major barriers to addressing the recidivist tendencies of chronic offenders. However, not enough is known about the nature and extent of these problems among chronic offenders or about how to address these problems in a cost effective way.

Work also needs to be done to understand why some subgroups within the state's population, such as African American males, have such a high imprisonment rate when Minnesota's overall imprisonment rate is so low compared with the rest of the nation. It is unclear at this point whether the high imprisonment rate is due to biases within the criminal justice system or to the socioeconomic characteristics of part of the subgroup. Some of this work is ongoing in the non-profit sector and needs to be continued.

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<sup>1</sup> It may not be easy to provide complete statewide data on reported crimes and clearance rates. Minneapolis does not report clearance rates because Minneapolis police do not investigate misdemeanor crimes but instead issue citations or tab charges to offenders.

## Other Options

Some criminal justice officials have suggested to us that it may be more cost effective to target funding and services to juvenile offenders, at-risk youth, or even preschool children than to spend additional funds trying to change the behavior of adult chronic offenders. They say that changing the behavior of most adult chronic offenders will be difficult and expensive if not impossible. Changing the behavior of younger offenders or positively influencing those at risk to offend may be more feasible than changing the behavior of adult offenders.

The relative cost effectiveness of this strategy depends on its ability to focus on and be effective with those youth who are likely to become future chronic offenders. Whether such programs can be targeted and effective has not been demonstrated.

## POLICY ISSUES

While we have outlined strategies that policy makers could use to address problems with chronic offenders, it is difficult to provide policy makers with definitive advice regarding which strategies should be employed. There are several reasons why we do not make specific recommendations.

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**More information is needed on the relative cost effectiveness of different strategies.**

First, it is not clear how cost effective various strategies will be in dealing with chronic offenders. Strategies involving a greater increase in imprisonment may be more effective at incapacitating chronic offenders and reducing their impact on communities but will undoubtedly be more costly to implement. The use of graduated sanctions and speedy prosecution to address problems with chronic offenders would cost significantly less but might not be effective in changing chronic offender behavior. The effectiveness of these less costly alternatives can only be established by implementing them in some parts of the state and assessing their effectiveness at a later date. In fact, it is not clear that it would be more effective to implement programs to deal with chronic adult offenders or to spend additional funds working with chronic juvenile offenders.

Second, different values and philosophies may play a role in what type of strategies policy makers feel are appropriate for dealing with chronic offenders. Cost effectiveness may not be the most important concern for policy makers. Some may be more concerned with making sure that those who are repeat offenders are punished for their crimes or that potential offenders are deterred. Others may be concerned with the effect of prison on offenders, their families, or communities and may be more inclined to pursue alternative approaches.

Third, fiscal effects on the state budget need to be considered. While it could be argued that a general increase in incarceration rates may provide benefits to crime victims and communities commensurate with their costs to taxpayers, policy makers will want to consider the fiscal effects of any strategy. Increases in incarceration can be very costly to both state and local governments and may conflict with other goals that policy makers have, such as tax relief or spending on other types of programs.

Finally, policy makers will need to weigh the importance of a better data system and increased evaluation relative to other priorities. While both should be components of a long-term strategy, neither will do anything in the immediate future to address concerns over the impact of chronic offenders on crime victims and communities.

Even though we do not make specific recommendations, we hope that the findings in this report will spur additional debate on and study of Minnesota's criminal justice system and its problems with chronic offenders. Some local agencies have already been working on new approaches for dealing with chronic offenders. Hennepin County, for example, is currently designing a pilot project to address both felony and misdemeanor chronic offenders. Although details of Hennepin County's plan are not yet available, it appears that it will use more formalized graduated sanctions and provide for faster resolution of cases involving existing chronic offenders. The pilot project also involves the assignment of certain offenders to work crews.

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**Some criminal justice agencies already focus attention on chronic offenders.**

Other agencies have previously taken actions to address problems with chronic offenders. Some county attorneys have made the use of the career offender statute a priority, although many would like to see the law changed so that more offenders with at least five prior felony convictions can be sentenced under the statute. In 1998, the Minneapolis city attorney created a special prosecution team to pay additional attention to the top 100 to 150 chronic misdemeanor offenders. In addition, Minneapolis police have implemented a strategy using timely information on reported crimes to quickly reallocate resources to crime "hot spots." The Hennepin County District Court recently redesigned its felony property court and implemented a Minneapolis community impact court. Each court is an attempt to have judges specialize in certain types of cases so that they become more familiar with chronic offenders and their history.

Whether these and similar efforts will be effective in changing the behavior of offenders or minimizing their effect on communities is uncertain at this point. Their effectiveness will depend not only on the efficacy of the programs themselves but also the extent to which chronic offenders cross county lines to commit offenses and avoid the efforts of more active counties. Because a small share of offenders appear to commit a disproportionately large share of the crimes, focusing more attention on these offenders may be worthwhile, but definitive answers are not yet available.

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*State of Minnesota*  
**Minnesota Department of Corrections**  
*Office of the Commissioner*

February 13, 2001

James R. Nobles  
Office of the Legislative Auditor  
Room 140 Centennial Building  
658 Cedar Street  
St. Paul, Minnesota 55155-1603

Dear Mr. Nobles:

Thank you for the opportunity to review the Legislative Auditor's final draft program evaluation report on chronic offenders. The report is an impressive compilation of data in an area where information gathering is difficult and complex. This wealth of information will be invaluable to the Minnesota Legislature and criminal justice professionals as topics relating to chronic offenders are deliberated.

As chair of the Minnesota Sentencing Guidelines Commission, I also will refer the final report after its release to two specialized subcommittees of the commission, one on non-imprisonment sanctions and the other on drug policy. The report includes data that will be very helpful to these two entities as they develop their recommendations to the commission.

Dealing with chronic offenders in cost-effective ways that protect the public is a priority for all of us in the criminal justice system. I look forward to continuing to work with you as these and other issues of mutual concern are discussed.

Sincerely,

*/s/ Sheryl Ramstad Hvass*

Sheryl Ramstad Hvass  
Commissioner

SRH:ds



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