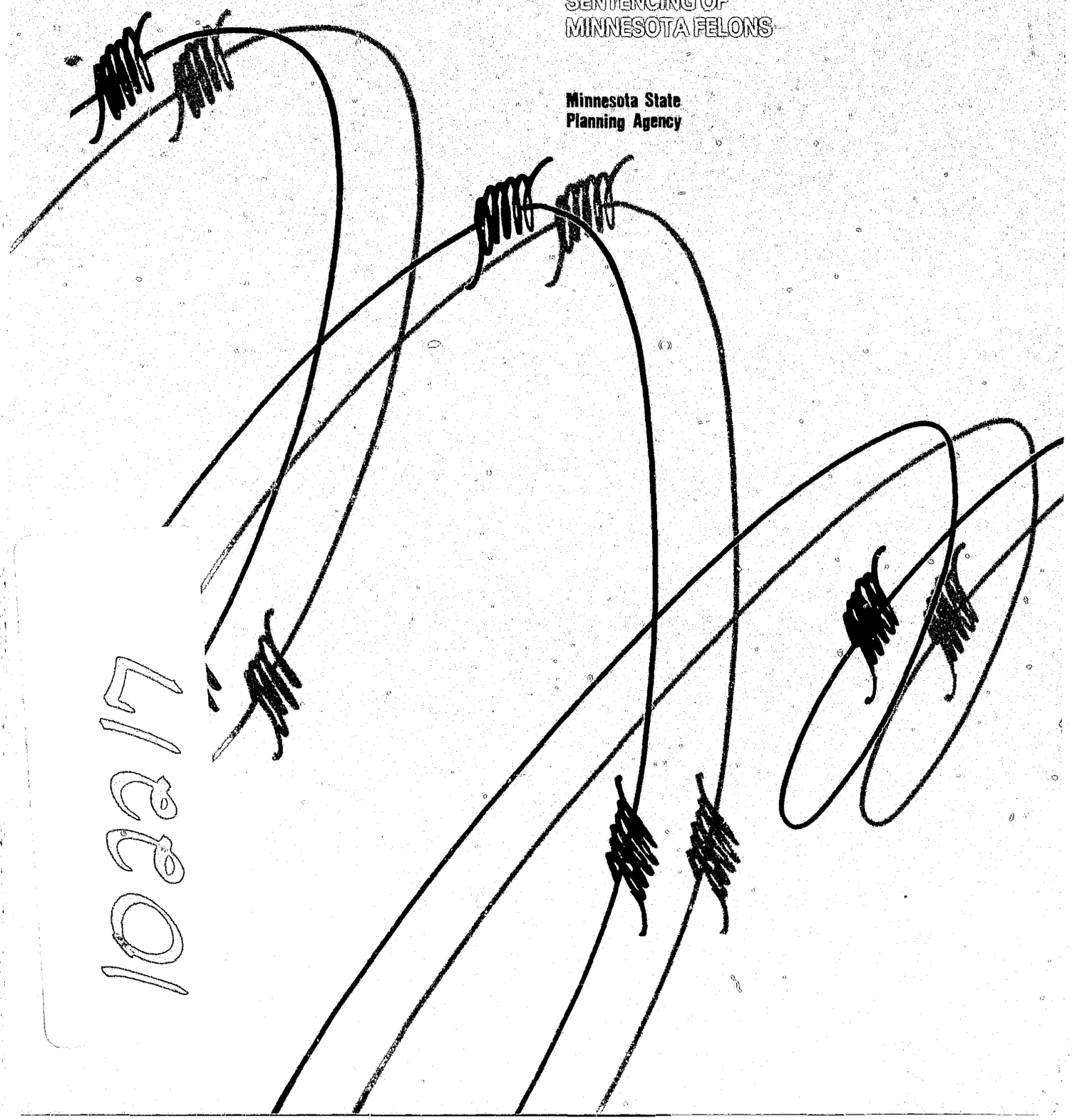
FIRM CONVICTIONS

TRENDS AND ISSUES IN PROSECUTION AND SENTENCING OF MINNESOTA FELONS

Minnesota State
Planning Agency



Firm Convictions

TRENDS AND ISSUES IN PROSECUTION AND SENTENCING OF MINNESOTA FELONS

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The aim of the Statistical Analysis Center is to translate data into policy. This report is one of several published by the Statistical Analysis Center that explore emerging trends and issues in criminal justice. Financial support for this work is provided by the State Planning Agency and the U.S. Department of Justice, Bureau of Justice Statistics. Co-Directors of the Statistical Analysis Center are Kathryn Guthrie and Stephen Coleman. We wish to thank those who reviewed earlier drafts of the report for their constructive comments.

EXECUTIVE SUMMARY

Change in criminal justice springs from trends in criminal behavior in the population, the practices of those who administer the system, and from changes in the law. Here we examine trends and practices in the prosecution and sentencing of felony cases, which are the most serious criminal cases.

From 1981 to 1983, the number of felony cases increased at each stage of the criminal justice system. The trend is toward more prosecutions, more convictions, and more defendants incarcerated in jail and prison. Jail terms, the most likely outcome of a felony case (50% of convictions), went from 3,153 in 1981 to 3,758 in 1983, or a 19% increase. This increase in numbers was partially offset by a shortening of average incarceration length from 4.5 months to 3.8 months. Among felony cases, nonviolent crimes, such as burglary, fraud, and forgery had the greatest increases. The number of women prosecuted for fraud also was up dramatically, from 336 in 1981 to 471 in 1983, a 40% increase.

Minorities are overrepresented in the prosecution of felonies and in incarceration in jail and prison, in relation to their proportion of the general population (3%). In 1983, more Blacks were prosecuted for robbery than were Whites.

Persons incarcerated in jail for convictions in felony cases take up almost half of the state's jail capacity for holding sentenced prisoners, at a cost of roughly $16 million in 1983. Prosecutions for repeated drunken driving convictions (DWI gross misdemeanors) also increased dramatically because of a change in the law in 1982. Jail sentences for these DWI cases used 11% of the state's jail capacity in 1983 at a cost of over $4 million.

Our review of current sentencing practices highlights these findings: **The state lacks a clear philosophy on the use of jails.** Sentencing guidelines have substantially reduced disparity in prison sentences. Nevertheless, only 15% of felony case convictions result in a prison sentence. The guidelines do not address the use of jail sentences or their length, nor do they address jail terms as a condition of a stayed sentence, although jail is the most likely outcome of a felony case. The statutes empower the Sentencing Guidelines Commission to set up jail guidelines, but so far they have not done so.

Jail incarceration lengths are, on average, roughly proportional to the seriousness of the crime; but wide variations in the length of jail terms indicate a confusion about the purpose of jail sentences. The sentencing guidelines for prison embody a "just deserts" or punishment-oriented philosophy, as opposed to a rehabilitation model for corrections (although rehabilitation is certainly not precluded). Jail sentences have some of the "just-deserts" proportionality, but it is greatly diluted by other purposes or inconsistencies. Furthermore, jail sentences are indeterminate, subject to maximum lengths, which contrasts sharply with prison sentencing.

Ironically, those persons sentenced to one year in jail might prefer a prison sentence, because they would have less time to serve in prison than in jail; prison sentences are reduced by up to one-third for "good time." This situation points out especially well the confusion in our policies on jail and prison.

There should be renewed consideration of guidelines on the use of jail as a condition of a stayed sentence and as misdemeanor sentences, combined with a new look at whether jails and prisons can be put on the same, nonoverlapping, continuum: a philosophical as well as an administrative continuum. A change in this direction will make it easier to deal with prison and jail overcrowding problems if they occur — a likely possibility.

Minority overrepresentation is a concern. Minorities are consistently more likely than Whites to be incarcerated in jail or prison and less likely to receive sentences or stays that require no incarceration. Statistical analysis shows strong evidence of bias, although the magnitude is small. It is the high rate of involvement of minorities in violent crimes against persons that especially results in high incarceration rates. Even if there were no bias in sentencing, differences in sentencing practices between Hennepin and Ramsey counties and the rest of the state will continue to send disproportionately more persons of minority races to jail or prison.

Discretionary imposition of "mandatory" prison sentences for gun crimes has a particularly adverse affect on minorities. In 1983, 43% (75 of 175) of gun-using Whites were sentenced to prison upon conviction for violent crimes, compared to 66% (48 of 73) Blacks. The legislature

might consider whether changes are needed in the mandatory gun-crime statues, given the looseness of their application.

Sentencing guidelines and sentencing statutes are not in complete agreement. The accumulation of felony points by some defendants who have misdemeanor convictions, but not by others — a point of judicial discretion — has the potential for undermining the fairness of the guideline system over the long term.

By law, a person convicted of a felony crime who does not receive a felony sentence (e.g. goes to jail instead of prison and is not on probation) has a record of a misdemeanor conviction, not a felony conviction. About 8% of felony cases (531 of 6,643) led to a misdemeanor or gross misdemeanor sentence in 1983.

The law also provides that a person convicted of a felony crime who receives a stay of imposition of the sentence and thereafter successfully completes terms of the stay (such as probation) will have a misdemeanor record. These convictions, however, are treated as if they had been felony convictions by sentencing guidelines, should the defendant be convicted of a subsequent felony within five years.

In computing the criminal history score, which affects sentencing under the guidelines, the Sentencing Guidelines Commission treats a misdemeanor conviction after a stay of imposition of a felony sentence as if it had been a felony conviction. This is not illegal, because case law supports such a policy. The issue is that this is an inconsistency between statute and guidelines which ought to be reconciled by the legislature. Case law also supports giving a guideline felony point to those whose sentence for a felony crime is a misdemeanor or gross misdemeanor sentence, which is something that the guidelines do not do.

The traditional distinction between felony and misdemeanor has become a less significant determinant of the seriousness of crime and the severity of punishment. The usefulness of the felony-misdemeanor distinctions in Minnesota law and how they relate to sentencing need to be evaluated.

A small group of felons are sent to prison; these are the most dangerous criminals or those with the most serious criminal records. The great majority of felony defendants are treated less severely, and with a lack of consistency; they are most likely to get jail time as a condition of a stayed sentence. Among those convicted but not sentenced to prison, the proportions with jail incarceration are about the same regardless of whether they were given a misdemeanor sentence, a felony sentence, or whether their felony charge had been reduced to a misdemeanor before conviction. Furthermore, persons with gross misdemeanor DWI convictions generally get jail terms in the misdemeanor range of 90 days or less rather than terms of up to one year, as allowed for gross misdemeanors.

Minnesota has an outstanding criminal justice data reporting system but a few problems remain. Data collection can be improved in several respects: (1) Some law enforcement agencies fail to report dispositions of felony arrests that do not lead to a complaint being filed. (2) Many prosecutors are not reporting the information that they are responsible for reporting. (3) No data is collected through the court information system (SJIS) on reductions in prison sentences that result when the defendant is given credit for time spent in jail prior to sentencing. (4) The SJIS system does not record the actual time served for jail sentences or stays in the event that the prisoner is released early.

CONTENTS

INTRODUCTION

In this report we describe what happens to persons prosecuted for felony crimes in Minnesota. We identify important trends in prosecution and sentencing, especially as they concern minorities, and explain how these trends affect the state's jails and prisons. The analysis makes it clear that the state lacks a consistent sentencing policy. The result is inconsistent treatment of criminal defendants, an ambiguous policy on the use of jails, and a gap between statute and practice.

A felony is the most serious type of crime. Under statute, a felony crime is one for which a convicted criminal can be sentenced to a term in prison of more than one year. Less serious offenses are misdemeanors, and they allow for sentences of incarceration in jail of up to 90 days, except for gross misdemeanors which can have jail sentences of up to one year. The statutes identify over 100 different offenses as felonies. This analysis deals almost exclusively with the prosecution and sentencing of felony offenses from 1981 to 1983, the most recent years of data available for this study.

In a few instances the data does not distinguish a felony from a gross misdemeanor, and in those situations some gross misdemeanor offenses might have been included inadvertently in the analysis. The report also includes information on gross misdemeanor drunken driving offenses, because the large number of these cases especially burdens the criminal justice system.

The report begins with an overview of felony cases that describes recent trends in the types of offenses being prosecuted and the sentences given to those convicted. Following that description is an analysis of how discretionary policies are affecting the processing of felony cases.

The Appendix includes a thorough discussion of the data used in the analysis and definitions of the crimes. For the reader's convenience, the grid used by the Sentencing Guidelines Commission to set presumptive prison sentences for felony offenses is also included. At the end of the report are copies of statues that are cited in the report.

As this report went to press the Statistical Analysis Center obtained another year of adult felony data, namely for 1984. A brief update on changes that occurred from the period of this report to 1984 follows at the end of the report.

STATISTICAL OVERVIEW OF FELONY CASES

Felony Cases Prosecuted, Convicted and Incarcerated Are on the Increase

In this analysis a felony case is an arrest of a person for a felony crime or crimes that are part of the same criminal incident, and the case includes all subsequent court activity associated with that person, crime, and arrest. If there is more than one crime involved in a case, the analysis treats the case according to the most serious crime charged, the most serious conviction, and the most serious sentence. In 1983, a total 9,783 felony cases were prosecuted. Of this number, 77% (7,554) led to a conviction, 11% (1,034) were dismissed, and 1% (110) acquitted. The "other" category (11% or 1,085) represents cases which did not receive a recorded disposition — often drug offenses which were diverted to chemical dependency programs — or cases that were merged for individuals charged more than once; among other possibilities are death or disappearance of the defendant. (See Figure 1.)

The number of cases at each stage of court processing are on the increase. Compared to 1981, prosecution in 1983 was up by 1,132 cases, convictions rose by 221 cases, and the number of cases resulting in incarceration in jail or prison increased by 832 cases. (See Figure 2.) The data does not reveal whether the increase in prosecutions was the result of more crime and arrests or more intensive prosecution of cases.

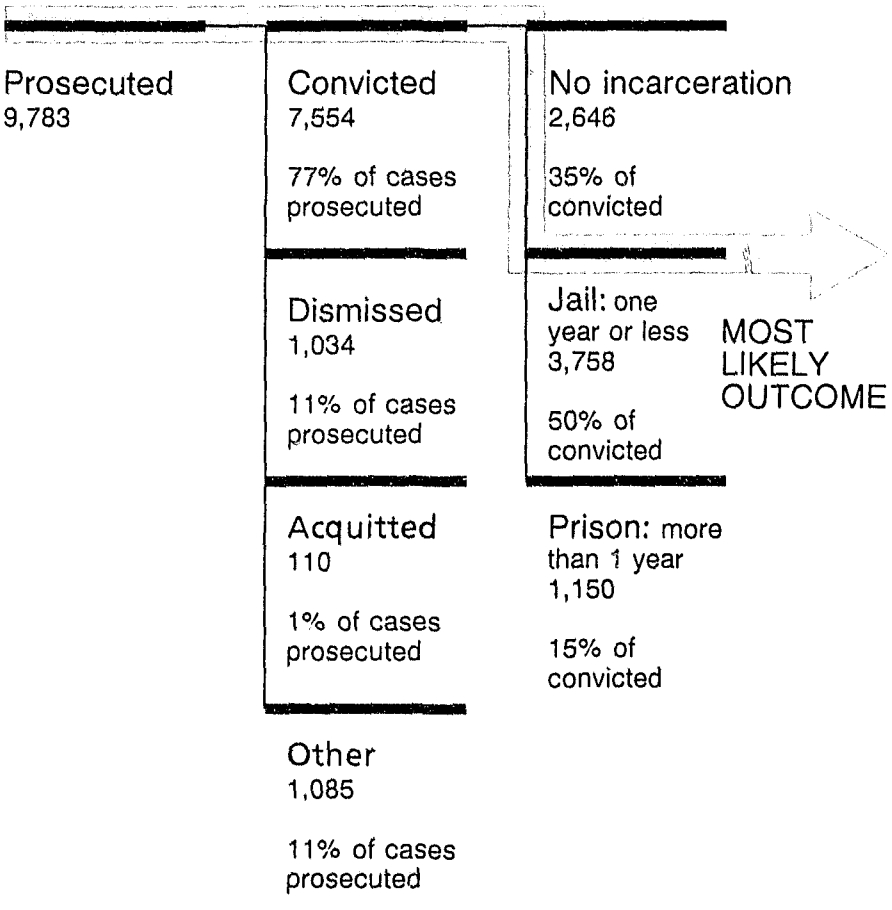
While the number of convictions is on the increase, the proportion of convictions among felony cases prosecuted declined by 8% from 1981 to 1983 — from 85% (7333/8651) to 77% (7554/9783) of cases prosecuted.

Two-thirds of all convicted felony cases in 1983 had dispositions that required incarceration in either jail (50%) or prison (15%). Thus, a conviction with time to be served in jail is the most likely outcome of a felony prosecution. (Jail can result from either an imposed sentence, which implies a misdemeanor or gross misdemeanor conviction, or jail can be a condition of a stayed felony sentence.) The likelihood of a jail or prison term changes, however, with the type of crime charged, as we show below.

Despite the reduction in the rate of convictions, judges were sending the convicted to prison or jail more often. In 1983 the incarceration rate among those convicted was 9% over 1981 — up from 56% of convictions to 65%. The number of jail sentences and jail terms imposed as a condition of a stayed sentence increased from 3,153 in 1981 to 3,758 in 1983, which is

Total Felony Cases 1983

Figure 1.



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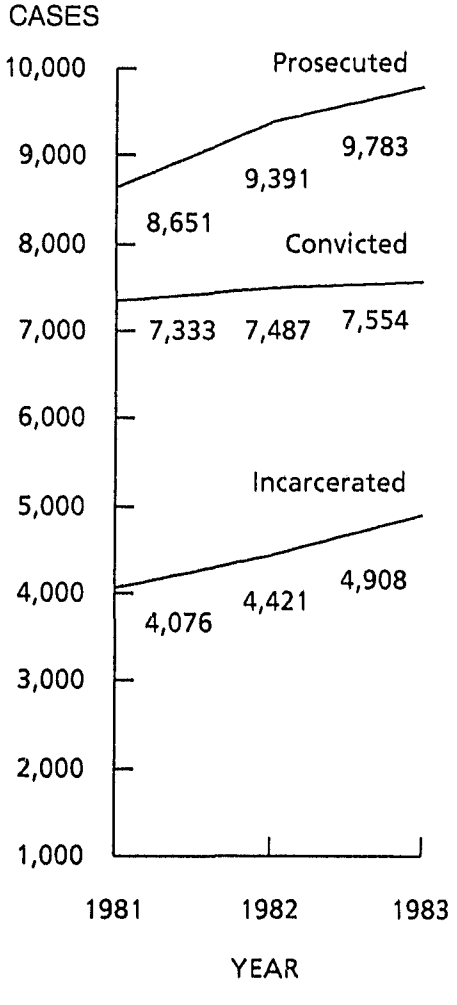
an increase of 19%. The number of cases with prison as an outcome was higher in 1983 than in 1981, although lower than in 1982. Prison sentences increased from 923 in 1981 to 1169 in 1982 and 1150 in 1983, for an increase of 24% from 1981 to 1983. (See Figure 3.) Each year, about three times as many felons were sent to jail than were sent to prison.

The increase in the number of cases with jail outcomes is the result of both the increase in numbers of felony prosecutions and the increased use of jail incarceration.

Felony Case Trends 1981 to 1983

Figure 2.

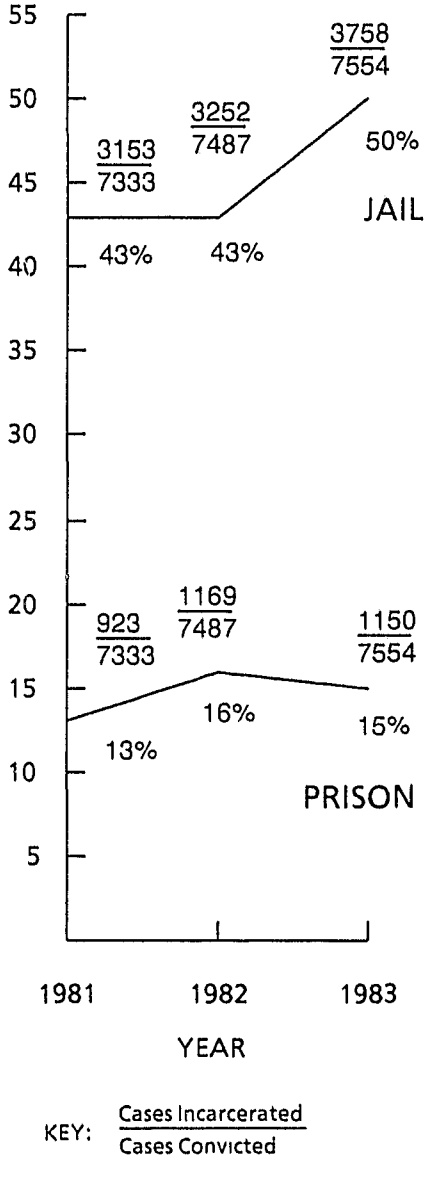


Violent Crime Cases Down, Property Cases Up = Increase in System

The increase in the number of cases prosecuted — from 8,651 in 1981 to 9,783 in 1983 — was mainly the result of increases in property crimes, not violent crimes against persons.

Incarceration Rates for Felony Convictions

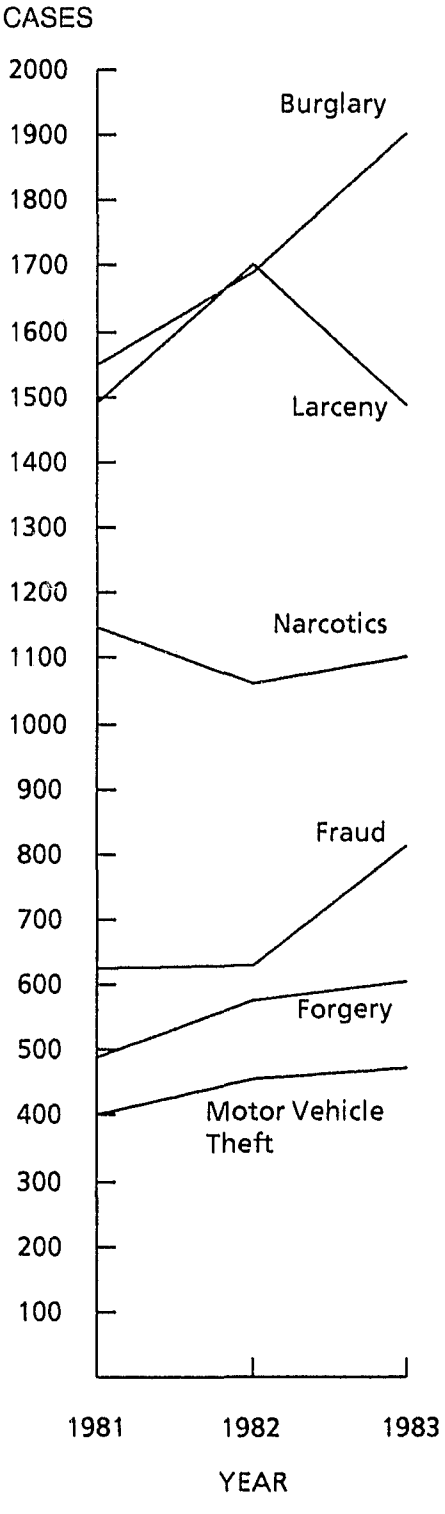
Figure 3.



KEY: Cases Incarcerated / Cases Convicted

Prosecution Trends Property Crime and Narcotic Cases

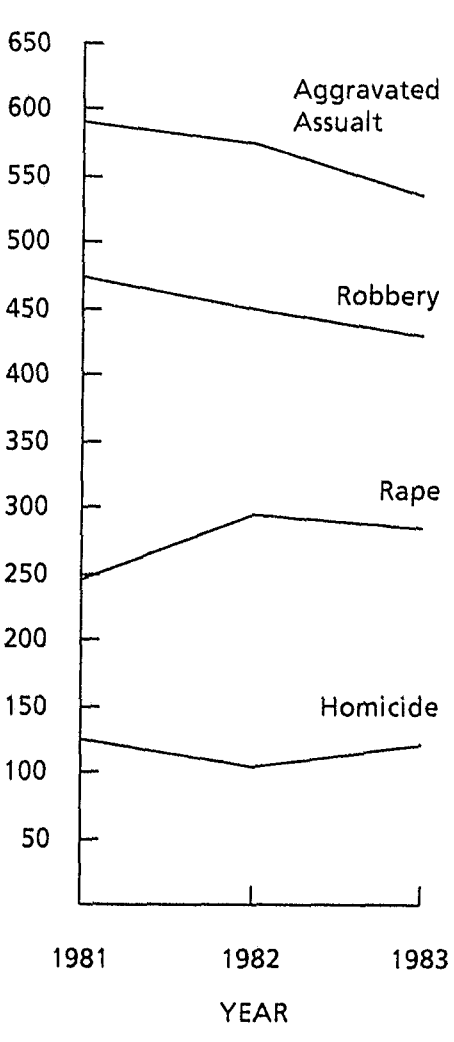
Figure 4.



Burglary was the single largest felony offense category prosecuted, and the trend in the number of burglary prosecutions is on a steep incline. (Cases are classified according to the most serious crime charged at arrest.) From 1981 to 1983 burglary prosecutions were up 24% — from 1,523 in 1981 to 1,885 in 1983. (See Figure 4.) Prosecutions for fraud also climbed at a rapid pace in 1983, up 30% over 1981 — from 637 cases to 827 cases. Forgery cases had a similar growth pattern — up from 493 to 637, a 29% increase. Motor vehicle theft also showed a slight upward tendency.

Prosecution Trends Violent Crime Cases

Figure 5.



On the down side, larceny, which had increased sharply from 1981 to 1982, decreased from 1982 to 1983. (Larceny or theft was generally a felony only if the value of the stolen item exceeded $150; the law has since been changed to increase the limit to $250.)

Prosecution of violent crimes against persons is on the decline. Aggravated assault and robbery in 1983 show downward trends of about 10% below 1981. (See Figure 5.) Robbery cases are down from 470 in 1981 to 422 in 1983; aggravated assault prosecutions are down from 591 to 528. Sexual assault cases and homicide cases show little change in numbers.

Most Felons are Young, White Males

Males accounted for 84% of all felony cases prosecuted in 1983; this percentage has stayed about the same since 1981.

The majority of felony prosecutions in 1983 involved Whites, 7,934 cases or 81%. Blacks accounted for 14% of the cases (1,335), and American Indians 5% (482).

It is clear from these percentages that minorities are prosecuted for serious crimes at a much higher rate than their proportion of the general population would suggest. (Only 3% of Minnesota's population are of minority races.)

The overrepresentation of minorities is even more striking if one examines certain types of crimes. In 1983, 42% of homicide cases, 54% of robbery cases, and 45% of commercial vice (prostitution) cases involved prosecutions against Blacks or Indians. In 1983, for the first time, the number of minorities prosecuted for robbery exceeded the number of Whites prosecuted.

The involvement of minorities in the prosecution of violent crimes against persons has a profound effect on prisons, because violent crimes are the crimes most likely to lead to a prison sentence.

Minorities are least likely to be charged with crimes such as damage to property, nonviolent sex crimes, and narcotics — all had fewer than 10% minority cases.

The peak age group for total felony cases prosecuted in 1983 were nineteen year olds (see Figure 6); this also holds for 1981 and 1982. These young felons were more likely to be prosecuted for property crimes than for violent crimes against persons. In general, violent crimes are much less age-dependent than are property crimes.

Burglary was the most common offense for felons under 30 years old. Fraud and larceny were the crimes most common to the age group over 30.

Most fraud cases were attributed to females (58%). The peak age for these offenders was about 25.

Fraud is unusual among crimes in that the number of female offenders exceeds the number of male offenders (by 131 cases in 1983 — 471 females versus 348 males).

Fraud also had one of the fastest rates of growth, which may have serious consequences for the system, given the small capacity of the women's prison and the very limited accommodations for women in jails. In 1981 women fraud defendants outnumbered men by only 35 (336 to 301). Women are also overrepresented among forgery cases (38%), and there was an increase in females

prosecuted from 167 in 1981 to 239 in 1983.

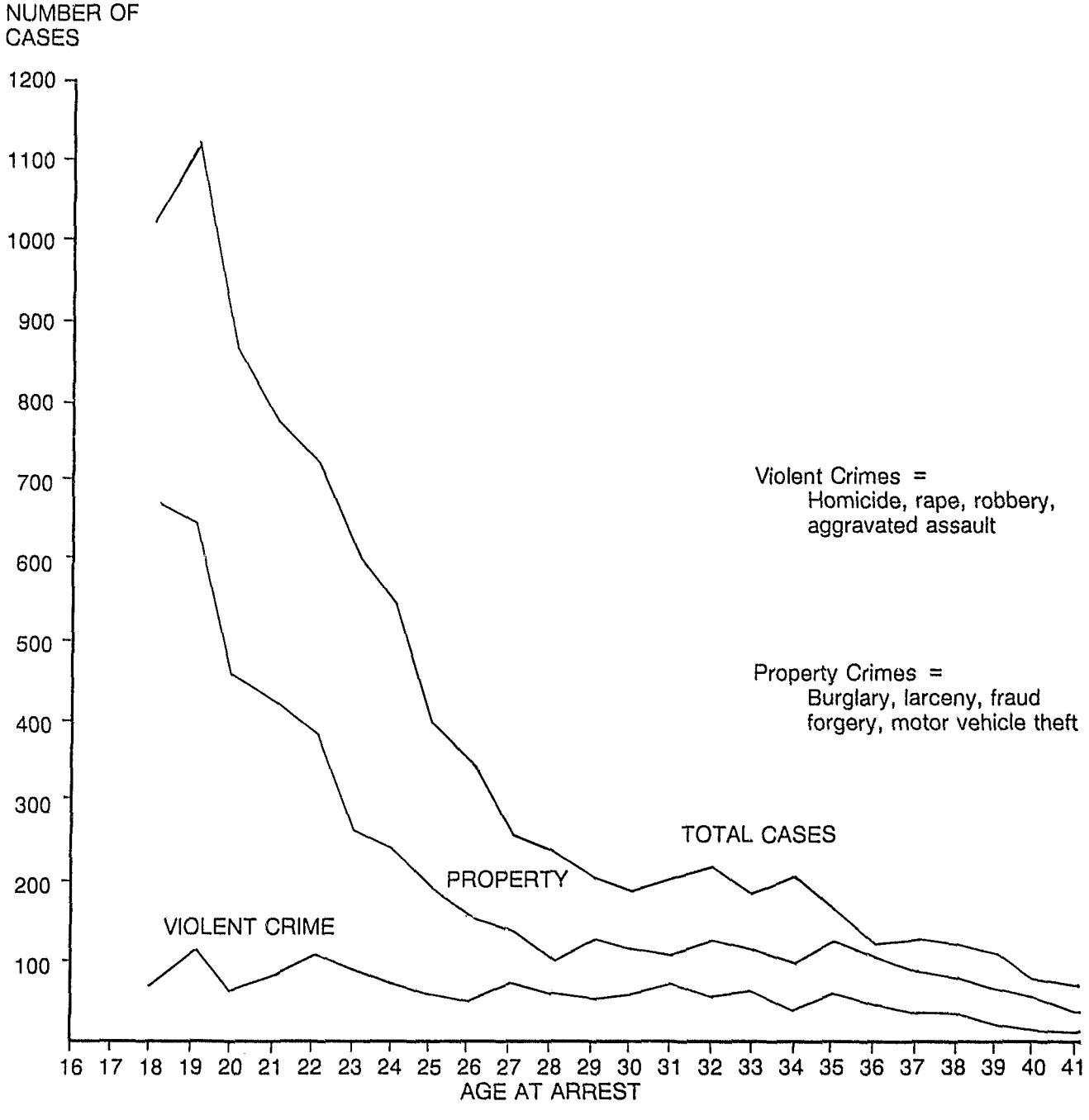
In 1983, about 42% of felony cases involved offenders entering the criminal justice system as felony defendants for the first time. The proportion of first-time felony offenders among all defendants seems to be decreasing, having declined from about 48% in 1981.

Violent Crimes

The violent crimes include homicide, sexual assault, robbery, and aggravated assault. (If an assault involves no serious injury

Age of Defendants Prosecuted, 1983

Figure 6.



it is classified as a "simple" assault, which is not a felony and not considered a serious crime.) Statistics for homicide, sexual assault, robbery, and aggravated assault prosecutions are shown in Figures 7-10 in Appendix. As one might expect, and as sentencing guidelines specify, those convicted of violent crimes generally receive harsher sentences than those convicted of property or other crimes. Differences in the degree of seriousness of crimes account for some of the variation in sentencing within a given class of crimes. Plea bargaining, the defendant's past record, and local sentencing practices also cause similar offenses to have different outcomes.

The most likely outcome for prosecutions that began as homicide or robbery cases was conviction with a sentence to prison for more than one year. The percentage of those convicted in homicide cases receiving prison sentences was 79%; and for robbery it was 51%. These are the only categories of crimes, however, for which prison was the most likely sentence. For sexual assault cases that led to conviction, the probability of a prison sentence (41%) was slightly less than the probability of a jail confinement (43%). For aggravated assault cases a prison sentence was an 18% probability upon conviction.

Property Crimes

The most likely outcome for prosecutions that began with a burglary arrest was jail incarceration, usually as a condition of a stayed sentence. About 57% of defendants convicted in burglary cases got jail terms, compared to 25% who were not incarcerated and 19% who went to prison. (See Figure 11 in Appendix.) In comparison with other types of crimes, burglary cases had the greatest number of cases end with jail terms (911).

For the less serious crime of larceny (felony theft), the degree of punishment is correspondingly reduced from that of burglary. The most likely outcome for larceny cases was incarceration in jail (48%); prison was an 11% chance. (See Figure 12 in Appendix.) Persons prosecuted for felony theft had a probability of 41% of receiving no incarceration if convicted.

The most likely outcome for car theft, arson, and drug crimes was jail. (See Figures 13-15 in appendix.) Also, more than half of the drug cases led to jail terms (57%), while 37% received sentences or stays requiring no incarceration. The number of drug crime cases with jail incarceration was relatively large (434) compared to other crimes.

1983 Sentences Stiffer Than 1981

Overall, there is a slight trend in sentencing toward more incarceration. This trend is especially noticeable for the following crimes, when comparing the proportion of those incarcerated in 1981 with 1983:

Increases in Incarceration
1981 — 1983

Assault	+15%
Dangerous Drugs	+15%
Nonviolent Sex Crimes	+13%
Burglary	+10%
Larceny	+9%

These increases are percentage point increases. The increases in incarceration show up largely in the jails.

Counties Vary Greatly

Because the criminal justice system is administered mainly at the local or county level in Minnesota, local practice **often** results in felony case processing that is not typical of the state statistics presented here. (County-level statistics on arrests and dispositions of those case are available from the Statistical Analysis Center for each county for 1983.) The type of crimes committed can change markedly from one region to another. Discretion by prosecutors (County Attorneys) and judges (at the District Court level) also affects the outcome of felony cases. A few examples will illustrate the range of county differences in 1983: The percentage of felony cases that involved violent crimes varied from none in some counties to as much as 50% in others. The percentage of felony cases dismissed varied from none to 50% among the 87 counties. For those cases where there was a conviction, the percentage of defendants serving time in jail ranged from none to 100% of cases.

The amount of discretion at the local level makes it possible that, even without changes in the law, there can be changes going on across the state in prosecution and sentencing. We will next examine some of the current trends.

CHANGING PRACTICES IN SENTENCING

The Legal Framework

Important changes are going on in the conviction and sentencing of those who commit serious crimes. To understand what is happening, one needs to have in mind the legal framework of sentencing practice in Minnesota. Sentencing is governed by statute and by the sentencing guidelines, which were adopted by the Sentencing Guidelines Commission under legislative authority.

Sentencing is closely linked to the seriousness of the crime committed. A felony — the most serious type of crime — is defined as a crime for which a sentence of more than one year in prison is possible. If a person is sentenced to more than one year of incarceration, the time served must be in a state prison; jails and workhouses are reserved for those serving terms of one year or less. A crime is a gross misdemeanor if it can have a sentence of more than 90 days incarceration, but not more than one year, or a fine of up to $3,000. A misdemeanor is a crime which carries a sentence of up to 90 days in jail or a fine of no more than $700.

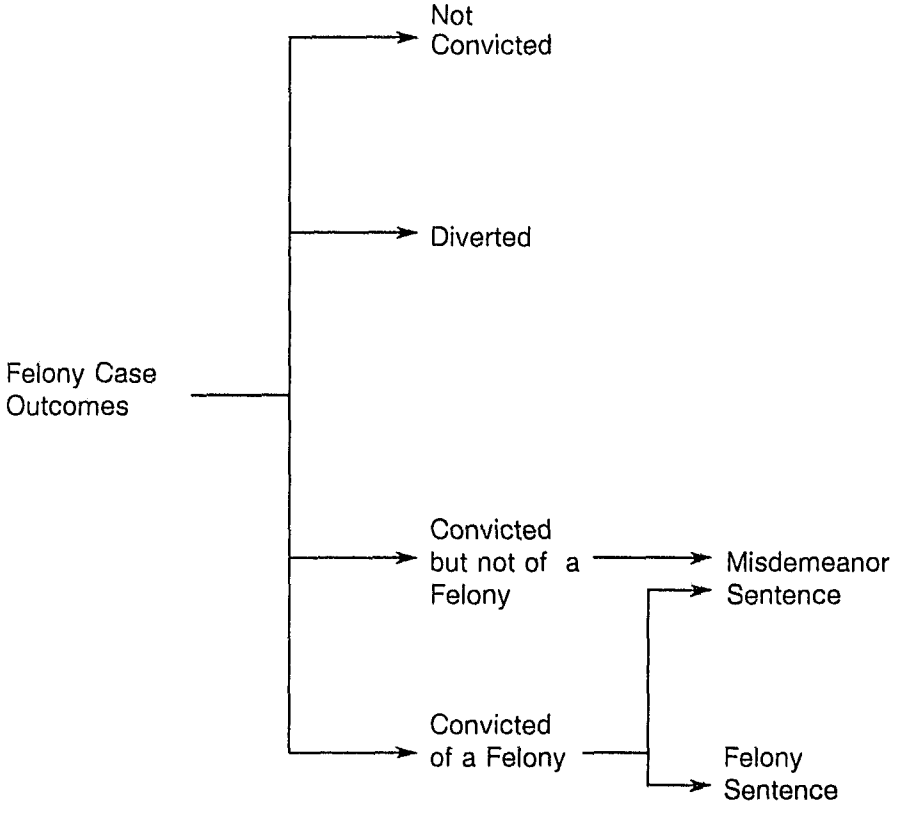
Burglary in the first degree — the most serious class of burglaries — is an example of a felony because it has a statutory maximum sentence (MS 609.582) of 20 years, or a fine of not more than $35,000. Burglary in the fourth degree has a sentence limited to not more than one year, or a fine of not more than $3,000; it is a gross misdemeanor.

When a person is arrested or prosecuted for a crime that has the potential for a felony sentence, the offense is considered a felony or the case is a felony case. The offense can change at sentencing, however, if the sentence that is given the defendant is not a felony sentence (609.13). In other words, it is the sentence actually given — not the crime as charged — that determines whether the defendant is convicted of a felony, a gross misdemeanor, or a misdemeanor. Suppose, for illustration, that someone convicted of first degree burglary is sentenced to six months in jail. That person now has a record of a gross misdemeanor, not a felony. The general course of felony cases are depicted in Figure 16.

A person convicted of a crime can have the sentence suspended in one of two ways: by stay of imposition or by stay of execution (609.135). When imposition is stayed, the sentence is not actually given, but only held out as a possibility, pending successful completion of probation and other terms that a judge might prescribe. That is, the sentencing is deferred or withheld. If the execution is stayed, the person is given the sentence for the record, but the terms of the sentence — a prison sentence, for example — are held in abeyance pending successful completion of a probationary

Felony Case Outcomes

Figure 16.



period or other conditions of the stay.

If a sentence is stayed, and the crime is a felony, the term of the stay cannot exceed the legal limit of imprisonment set for the crime. A gross misdemeanor stay cannot exceed two years; a misdemeanor stay cannot exceed one year. As a condition of the stay — one that is frequently applied — a defendant may be required to spend up to a year in jail.

Sentencing Guidelines

Sentencing guidelines also affect sentencing outcomes. A main purpose of the guidelines is to promote uniformity and fairness in sentencing throughout the state. The guidelines set out presumptive sentences for persons sentenced for felony crimes. That is, the guidelines set standards on who goes to prison and for how long. These standards, in turn, depend on the seriousness of the crime and on a criminal history score of the defendant at time of sentencing. The score is computed by adding one point for each prior felony sentence (regardless of how serious it was), and additional points for other factors, such as a prior juvenile or misdemeanor record, or a probation violation. Judges can deviate from the standards if there are mitigating or aggravating circumstances about the crime and if the judge provides written explanation for the sentencing departure.

Sentencing guidelines treat prior convictions differently from the statutes. Under the guidelines (II.B. 105), if a prior conviction for a felony crime resulted in a stay of imposition of a prison sentence, the sentencing guidelines will, for five years, count that prior conviction as if it had been a felony when the criminal history score is computed. Statute, however, says that in this case the defendant had a misdemeanor conviction for the prior offense, and a prior misdemeanor conviction ordinarily would not add a point to the criminal history score. Case law supports the decision of Sentencing Guidelines to give a felony point when there was a prior stay of imposition of a felony sentence.

There are two avenues by which a felony case can end up as a misdemeanor or gross misdemeanor under sentencing guidelines. A defendant will not receive a felony point under the guidelines if at conviction the current sentence given qualifies as a misdemeanor or gross misdemeanor sentence (one year or less incarceration), and if there is no stay of imposition of a felony sentence. This is a departure from the guidelines. Case law would also support giving these convicts a felony point under the guidelines.

The second outlet is when a felony defendant's initial charge has been reduced to a crime of a lesser degree — a nonfelony — before or at conviction. (This might be the result of a plea bargain.) In this instance, as well, no guideline point is accrued by the defendant.

The result of these various sentencing options can create situations such as this: Consider three persons charged with an identical crime, burglary in the first degree, who have identical criminal records. One person might be convicted of first degree burglary, given a stay of imposition for two years, but not have to serve any time in jail. The second defendant is convicted of first degree burglary and sentenced to one year in jail. The third person has his initial charge reduced to fourth degree burglary (or another misdemeanor), as a result of a plea bargain, and is sentenced to one year in jail. Under sentencing guidelines, the first defendant gets the felony point; the others do not. Nevertheless, many observers might consider the sentences of the second and third defendants to be the more severe.

Changing Practices

In 1983, 7,554 cases that started with a felony charge led to a conviction. In 911 of these cases, however, the most serious charge at conviction was a nonfelony. That is, the initial charge had been changed or reduced in degree to a misdemeanor or gross misdemeanor level. This group of nonfelony cases, therefore, was not covered by sentencing guidelines. This type of case outcome increased substantially from 1981 to 1983 — up 25%, from 728 to 911. (See also Table 1.)

In other words, of the 7,554 felony cases that resulted in convictions in 1983, 81% resulted in felony convictions. The remaining cases did not receive a felony point under sentencing guidelines.

Of the remaining 6,643 felony cases at conviction, 6,112 had sentences at the felony level, whereas in 531 cases the defendant received a sentence that was at the misdemeanor or gross misdemeanor level. Misdemeanor and gross misdemeanor sentences decreased by 51% from 1981, down from 1,081.

In other words, of the 7,554

felony cases that resulted in convictions in 1983, 81% resulted in felony convictions. The remaining cases did not receive a felony point under sentencing guidelines.

In addition to the felony cases that led to convictions, a substantial number of felony drug cases resulted in no conviction on record. Under a special provision of Minnesota law (152.18), a conviction in a drug case can be withheld pending successful completion of probation or a treatment program. At the end of the program, the defendant's public record of the drug conviction is cleared. (These nonconvictions will not be reported under sentencing guidelines.) From 1981 to 1983, the number of drug cases that concluded with no conviction increased from 294 to 372. This was also an increase in the percentage of drug cases where this sentencing option was used — up from 26% of 1131 in 1981 to 36% of 1049 in 1983.

Felony Case Statistics: 1981-1983

Table 1

Convictions for Felony Cases	
1981	7,333
1982	7,487
1983	7,554
Felony Crimes at Conviction	
1981	6,605
1982	6,741
1983	6,643
Felony Sentences for Felony Convictions	
1981	5,519
1982	5,881
1983	6,112
Misdemeanor* Sentences for Felony Convictions	
1981	1,086
1982	860
1983	531
Misdemeanor Crime Convictions*	
1981	728
1982	746
1983	911
Sentencing Guidelines Cases	
1981	5,500
1982	6,066
1983	5,562

*Includes gross misdemeanors

The Sentencing Guidelines Commission reports on the numbers of cases that fall under the guidelines each year. (See "The Impact of Sentencing Guidelines — Three Year Evaluation," Sentencing Guidelines Commission, 1984.) For 1981, 1982 and 1983 the figures are respectively, 5,500, 6,066, and 5,562. Note, however, that the Guidelines "year" is three months ahead of the calendar year, and that data on cases is aggregated when separate arrests are prosecuted together. That is, Guidelines data has to do with defendants rather than with cases (as in this report), and the net result is that the number of Guidelines cases will be less than the number of cases that are reported here.

An analysis of Hennepin County cases in 1983 showed that about 13% of cases represented defendants in court for second or third separate felony arrests. Many of these cases are aggregated in the Guidelines statistics. This is a gauge of the difference between case totals in this report (more cases) and sentencing guidelines reports (fewer cases).

Overall, the statistics on felony case processing show that a large number of defendants end up with misdemeanor or gross misdemeanor sentences. These defendants will not receive a criminal history point for conviction of a felony, which, in turn, will moderate their future sentences under the guidelines, should they commit additional crimes. Judges and prosecutors, by virtue of their charging and sentencing options, have great discretion in the determination of which defendants subsequently accrue a felony point and which do not. This discretionary factor, if not applied uniformly, has the potential for significantly undermining the uniformity of the guideline system over the long run.

More Jail Incarceration, but for Shorter Terms

We can also examine the dispositions given in felony case convictions, namely, whether the defendant went to prison, jail, or was not incarcerated. Felony sentences and misdemeanor sentences differ, of course, in the possibility of imprisonment for more than one year. But, as for the use of jails, those defendants who have felony convictions have about the same jail incarceration rates as do those with misdemeanor or gross misdemeanor convictions. In 1983, in about 62% of the felony cases that resulted in a stay of imposition or stay of execution of a prison sentence, a jail term was required as a condition of the stay. Among persons convicted of misdemeanors or gross misdemeanors, 50% received jail sentences; and among those convicted of felonies but given misdemeanor or gross misdemeanor sentences, 47% went to jail in 1983.

It is clear that jail time is the most likely form of incarceration for all felony cases, regardless of the level of conviction — that is, whether felony or misdemeanor.

By comparison, 1,150 cases —

15% of felony cases — led to prison sentences in 1983. Nevertheless, sentencing guidelines do not address jail terms.

The number of felony cases with the outcome of jail incarceration is increasing — up from 3,153 in 1981 to 3,758 in 1983 — a 19% increase. This increase in the number of jail incarcerations is partially offset by a corresponding reduction in the average time served in jail. Among those who were charged with felonies and, subsequently, went to jail, the average jail sentence decreased between 1981 and 1983 — from 4.5 months to 3.8 months, or a 16% reduction. Note, however, that these jail terms are maximum terms prescribed by the judge and that a convict can be released from jail by the judge before expiration of the term. That is, jail incarceration is much like the indeterminate sentencing of convicts to prison before the guidelines, when the parole board determined the release date of the prisoner. The state's criminal history file does not contain data on how often jail time is reduced.

It is clear that jail time is the most likely form of incarceration for all felony cases, regardless of the level of conviction — that is, whether felony or misdemeanor.

Analysis of the jail time served by those convicted in felony cases reveals another side of sentencing policy. We observe first that, in 1983, 64% of jail terms (2,405 of 3,758) actually had durations that fell in the misdemeanor range — ninety days or less; this put 36% in the gross misdemeanor range. The percentage with misdemeanor jail terms has increased from 59% in 1981.

At the other end of the scale of jail sentences, the number of one-year jail terms decreased between 1981 and 1983: down from 564 (or 18%) to 411 (11%) in 1983.

When Prison Looks Better Than Jail

An irony of Minnesota's current sentencing policy is that many persons who are sentenced to jail might prefer a prison sentence. A person sentenced to one year in jail will serve more time than will a convict sentenced to a year in prison. Because of the "good time" policy built into the guideline system, all prison sentences are shortened by one-third. (This one-third time-off can be lost by the prisoner if he breaks prison rules.) Thus, one can easily calculate that someone with a prison sentence of less than eighteen months will serve less time than anyone serving a one-year jail sentence. For the same reason, a jail inmate with a sentence of more than eight months might prefer to be in prison. Furthermore, the convict in jail very likely will also have a long probationary period following his incarceration — a situation not applicable to prison inmates. (Recall that probation is given as a condition of a stayed prison sentence; but once a prison inmate has finished his sentence, he is no longer under the authority of the court or corrections.)

As the statistics cited above show, several hundred persons each year are affected by this contradictory overlap between jail and prison sentences. Note, however, that if the guidelines did not count stayed sentences as if they were felonies, the convict with a one-year jail term as a condition of a stay of imposition might still have an advantage over the prison inmate. The jail inmate would still be serving more time than the prison inmate, but the jail inmate would not have the felony point on his record. Thus, "good time" is not the only issue behind the problem of overlapping jail and prison sentences.

Jail Sentencing Guidelines?

The Guidelines Commission has reported substantial progress in reducing disparity in prison sentencing. The sentencing guidelines do not set out presumptive jail terms. Yet with such a large proportion of felony cases having jail outcomes — jail being the most common outcome of a felony case — it raises the issue of whether sentencing uniformity can be truly achieved without extending the guidelines to the use or length of jail sentences or to jail and probation terms under stays of felony sentences.

One can get a picture of what jail guidelines might look like by calculating the average jail time given to those convicted of different types of crimes. In fact, as Table 2 shows, the average time served has a clear proportionality to the seriousness of the crimes. For instance, in 1983, robberies, sexual assaults, and involuntary manslaughter had average jail terms of about 7 months. Burglary jail terms averaged 4.5 months; narcotics 3.3; and so forth.

Interpreting the averages as guidelines, one must recognize that many cases depart significantly from the average time served. The standard deviation in lengths of jail terms for all of the crimes shown in Table 2 is over 3 months. This means that about 30% of all jail incarcerations departed from the

average — above or below — by at least 3 months. This variability, or inconsistency, in jail time is greater than the difference in average sentence lengths between most types of crimes. In other words, factors beside the type of offense are greatly affecting decisions about durations of jail incarcerations.

We have tried to assess what factors account for the variation in jail time. Examining average jail time given to first-time felony offenders, one finds an almost identical pattern as when all defendants are considered (Table 2). Jail terms for first-time offenders are somewhat shorter than for offenders generally, but just as variable. Thus it appears that criminal history does not explain much about jail times.

We used multiple regression analysis to measure the percentage of variation in jail time that can be explained by the following variables, individually and collectively: whether the offender was a first-time felon or not in 1983; whether there was a stayed sentence; the number of separate offenses at conviction; whether restitution was ordered; whether there was a change in the most serious charge from arrest to conviction; whether the case was in Hennepin or Ramsey counties or the rest of the state; the age, sex, and race of the defendant; and an index of severity of the crime at conviction based on a numerical ranking. The age of the defendant is also a surrogate measure of criminal history, because older offenders tend to have longer records.

All of these ten factors together explain only 12% of the variation in jail time in 1983. The factor with the highest explanatory value is the first offender distinction; but it accounts for only 3.5% of total variation in jail time. This amount of explanatory power, although statistically significant, is too little to have any practical impact. Note especially that race is not a significant factor.

What then accounts for why different offenders receive different jail terms? Judges, individually, may have definite reasons or schemes for assigning jail time that relate to criminal history or other factors that we examined here. But when the results of the sentencing decisions of all judges are combined, as in this analysis, one sees mainly inconsistency or unexplained variation. To us, that speaks to the need for jail guidelines.

One might also question whether the differences in time served between categories of crime are sufficiently proportional to the relative seriousness of the crimes. For example, is 2.3 months a proper difference between average robbery terms and average burglary terms?

Sentencing — Changes Needed

The complexity of this analysis points to the complexity of sentencing in Minnesota. At first glance, the guidelines seem to be a clear expression of sentencing policy, as they set out a presumptive sentence for each felony defendant convicted. In reality, what is presumptive for most of those convicted is that they will not go to prison, nothing more. In fact, most commonly their sentences will not be pronounced; that is, imposition will be stayed.

The complexity arises because the law on sentencing was not rewritten to conform to the guidelines when they were introduced. Rather, the guideline system was superimposed on existing law. Moreover, the guidelines have concentrated attention on prison sentences, whereas the great majority of felony convictions never result in a prison sentence.

How can we have clarity in sentencing policy when the most common result of a felony case is that no sentence is imposed?

By our law, a jail term that is a condition of a stayed sentence is not a sentence.

Average Jail Sentences in 1983

Table 2

Most Serious Crime At Conviction	Months Sentenced*	N
Violent sex crimes (not forcible rape)	7.8 (7.7)	38
Involuntary manslaughter	6.9 (6.8)	16
Forcible rape	6.8 (5.6)	24
Robbery	6.8 (6.0)	97
Nonviolent sex crimes	6.6 (6.2)	189
Arson	5.6 (3.8)	28
Assault	4.9 (4.4)	200
Burglary	4.5 (3.8)	757
Auto theft	3.7 (3.1)	211
Narcotics	3.3 (2.4)	376
Larceny	3.1 (2.2)	675
Fraud, Embezzlement	2.6 (2.0)	180
DWI and related gross misdemeanors	1.4	2,599

*Averages in parentheses are for those who were first-time felony defendants in 1983.

We are also concerned about the decision of the Sentencing Guidelines Commission to treat as felons, in computing criminal history scores, many of those who, under law, are not felons because they had not received a felony sentence for a prior conviction. The Commission's policy may be the best policy, but as it seriously affects, roughly, 3000 defendants each year, the legislature might consider whether the statute ought to be brought into conformity with guidelines practice — if current practice is indeed the intent of the legislature. The principle of sentencing guidelines has been established in Minnesota, but it is time to reconcile the guideline system with statute. Minnesota needs to have a clear expression of the state's sentencing policy for all felony convictions in a single location, namely, the statutes.

How can we have clarity in sentencing policy when the most common result of a felony case is that no sentence is imposed?

The change to sentencing guidelines from the prior method of indeterminate prison sentences also represented a shift from a rehabilitation philosophy of corrections to one that is more punishment or "just-deserts" oriented. But as for jail sentences, it is not clear what the philosophy is in Minnesota. Jail incarceration patterns imply a mix of the two philosophies: Incarceration terms, on the average, are roughly proportional to the seriousness of crimes. On the other hand, we cannot identify any factors that have a substantial and consistent bearing on jail terms statewide.

Moreover, jail incarcerations are indeterminate, as prison sentences were before the guidelines. So there is a distinct break between jail and prison as to what the philosophy of incarceration is. Whether or not Minnesota adopts jail sentencing guidelines, the state ought to have a clear philosophy about how jails are to be used, and it seems reasonable that a jail philosophy ought to be consistent with the prison philosophy.

THE IMPACT OF SERIOUS CRIME ON JAILS AND PRISONS

A major constraint on the criminal justice system is the amount of space available in prisons and jails. Space limitations affect sentencing policy. The allocation of jail and prison space can be shifted among classes of convicts by a change in policy, but the overall capacity of the system is inflexible. The building of a new jail or prison is a difficult and expensive process.

Use of Jail Capacity

One can estimate the total jail capacity of the state for holding **convicted** persons by adding up the current capacities of local and regional correctional facilities for holding this class of inmate. This total is about 2,350 approved beds (Department of Corrections, "Statewide Jail Report Summary," 1984, p.5). This total includes lockups, which may be used to confine sentenced offenders for up to 90 days, as well as longer-term jail facilities, but excludes short-term detention facilities. This number of beds does not describe how many convicts can be sentenced to jail, however, because that depends on their lengths of sentence. To measure the use of jail space one must relate beds to time. Multiplying 2,350 beds by 12 months gives a capacity measure of 28,200 bed-months per year.

In 1983, 3,666 persons who were charged with felonies ended up in jail. (We exclude here concurrent sentences but include those defendants with misdemeanor or gross misdemeanor outcomes for felony cases.) The total time of their sentences was 13,777 months, or an average of 3.8 months per sentence. The total sentence time was, therefore, 49% of approved jail capacity for the year for holding sentenced offenders. (See Table 3). The rate of jail use was about the same as in 1981 (48%) and in 1982 (45%). In other words, felony cases consistently take up almost half of the state's jail capacity for long-term incarceration of convicted offenders.

These figures on the use of jail capacity are conservative in that jails cannot operate efficiently with populations at 100% of capacity. Legal requirements for the separation of prisoners of different types, sex, and so forth, make it necessary that not all jail space can be used all the time. Extra space is also needed to allow for random fluctuations in population. Some correctional authorities use 80% capacity as a sound, practical limit on population. On the other hand, when sentenced prisoners are released early, extra space is made available; but this is not a situation that can be easily planned upon. Additional jail space is taken up by felony offenders prior to sentencing.

Jail Incarceration: Total Time Served

Table 3

	1981	1982	1983
Felony Cases			
Total months	13,513	12,722	13,777
Number sentenced	3,065	3,167	3,666
Average months	4.4	4.0	3.8
% jail capacity*	48%	45%	49%
DWI Gross Misdemeanors			
Total months	1,113	1,966	3,597
Number sentenced	318	977	2,599
Average months	3.5	2.0	1.4
% jail capacity	3.9%	7.0%	12.8%

*Total jail capacity for sentenced prisoners in approved jail beds (1984) is approximately 28,200 bed-months/year. This includes 90-day lockups but not detention centers. Totals do not include time spent in jail by convicted felons before sentencing, nor is the total reduced by early releases (which are an unknown amount). Working jail capacity must allow for segregation of prisoners of different types.

In 1982, the legislature acted to increase the penalities for DWI — driving under the influence of alcohol or drugs (169.121). After April 1, 1982, a second DWI conviction is a gross misdemeanor, which permits a jail sentence of up to one year. Prior to that change in the law, gross misdemeanor sentences applied only to a second DWI conviction if it occurred during a period of license suspension or revocation (169.129). The number of persons receiving jail sentences for gross misdemeanor DWI offenses increased from 318 in 1981, to 977 in 1982, to 2,599 in 1983.

Although the average DWI jail sentence decreased from 1981 to 1983 — from 3.5 months to 1.4 months — the total time served in jail for these gross misdemeanor cases increased from 1,113 months to 3,597 months. (See Table 3). This is an increase in the use of jail space for DWI gross misdemeanors from 3.9% of approved capacity to 12.8%. We should add, however, that some of these persons might have served jail terms even if the law had not been changed, and some prisoners might have been released early.

The distribution of jail sentences for DWI gross misdemeanor cases is shown in Table 4. Despite the fact that a gross misdemeanor sentence can extend to one year, only 8% of those sentenced to jail in 1983 had jail sentences greater than the misdemeanor range of 90 days.

The costs of keeping a convict in jail range from $11,000 to $18,000 per year, depending on which county the jail is in. Operating expenses for the Ramsey County Workhouse are $15,695 per year; for the Hennepin County Workhouse, they are $13,505 per year for each inmate. The National Coalition for Jail Reform cites an average cost of $14,000 per inmate year.

Length of Jail Term

for Gross Misdemeanor DWI Cases in 1983 where a Jail Sentence was Imposed
Table 4

Sentence Days	Percentage Of Convicts
1 - 10	28%
11 - 30	44%
31 - 90	20%
over 90	8%

Using the $14,000 figure, we estimate that the cost of confining those sentenced to jails in felony cases at about $16 million in 1983. The gross misdemeanor DWI cases added $4.2 million to that cost in 1983.

Prison Capacity Threatened with Overcrowding

One can also calculate the impact of prison sentences on prison capacity. The state's prisons have room for about 2,335 inmates. So that we can compare prison statistics with jails, we will convert prison capacity to inmate-months. The total capacity is, therefore, about 28,000 inmate-months per year.

Adding up the lengths of all prison sentences in 1983 (except life sentences and concurrent sentences), we find that a total of 39,216 months were imposed. This total is reduced by "good time" of up to one-third, resulting in an actual sentence total of at least 26,144 months. This total was 93% of prison capacity in 1983. Comparable figures for 1981 are 92%, and for 1982, 104%. (See Table 5.)

These percentage of capacity calculations are approximate because we have not included several factors that will tend to increase or decrease the total sentence time to be served in prison; these are factors for which comparable data is not available. Loss of good time by inmates and life sentences (or longevity) take away additional prison space. Space is gained when prisoners are given credit for time served in jail prior to sentencing, although this amounts to a shift of sentence time from prison to jail (and from state to county). If offenders on probation for stayed sentences fail to meet terms of probation, they may become additions to the prison population. Thus stayed sentences, especially stays of execution, might be seen as a potential liability to prison capacity.

It is instructive to assess the amount of prison time not served because of stays of execution of prison sentences. This total nearly equals the total time of executed prison sentences. To us, this suggests that prison capacity is vulnerable to any shift in current practices regarding probation revocation.

Prison Sentences — Total Time Served

Table 5

	1981	1982	1983
Sentences(months)	38,769	43,572	39,216
Less "Good Time"	25,846	29,048	26,144
Number sentenced	846	1,047	1,046
Average "Good Time" Sentence (Months)	30.6	27.7	25.0
Percent of capacity	92%	104%	93%

Note: A small number of inmates with life sentences were excluded from the calculation, and loss of good time was not considered. Concurrent sentences are excluded. Total time is not reduced for time spent previously in jail (no data). Revocation of stays is not considered. Total capacity is about 28,000, which does not account for space allocation by type of offender.

The reason the prisons are not overcrowded is that the sentences extend over a period of years; not all of the time has to be served in a single year. Nevertheless, as we see in Table 5, the total of sentences executed hovered near the prison capacity in each of the three years from 1981 to 1983. Although there is currently extra space in the prisons, this sentencing pattern — if it continues — may cause serious problems.

If we compare total sentences for jails and prisons, we observe that the prisons absorb the great majority of incarceration time to be served for felony cases — 75% in 1983. This happens because prison inmates serve much longer terms than jail inmates, even though the number of jail inmates each year is much greater than the number of prison inmates. This also implies that the state government pays for at least 75% of the cost of incarcerating serious criminals, and probably more, considering state subsidies to local corrections through the Community Corrections Act.

Minnesota has been fortunate to have escaped the problems of prison overcrowding that many other states have experienced. The entire prison systems of seven states have been declared unconstitutional by the courts. And one or more facilities in 21 states have been operating under court order or consent decree as a result of inmate crowding or the conditions of confinement. Minnesota ought to be thinking ahead about what strategy it will take if current prison sentencing patterns continue to push prison population toward capacity. The extra prison capacity now available might also be lost very quickly by sudden changes in crime rates, conviction rates, or probation revocation rates: factors over which the state has little control.

A New Policy Direction

The alternatives one might consider to alleviate overcrowding fall into three broad categories: to build or lease more prison space; to reduce the number of persons sentenced to prison; or to shorten the lengths of sentences. Here we will discuss one idea that follows from our analysis of sentencing practices.

This analysis has shown that the distinctions between felony, gross misdemeanor, and misdemeanor have become blurred in practice. Rather than sharp lines between distinct categories, one finds a continuum of sentences for these types of crimes, from prison sentences to jail terms of all lengths, and with overlapping sentence lengths between jail and prison. This also implies that the division of costs between state and local governments has become blurred with respect to the categories of crimes.

All of this suggests that the line between jail and prison has become rather arbitrary. Instead of considering prison or jail overcrowding as separate issues with different levels of government responsible for each, the state may have an advantage in putting jails and prisons on the same continuum, with the possibility of shifting prisoners between them. This already happens, in a sense, when prison inmates get day-for-day credit for prior jail time served. The jails already have a role in keeping prison population down by this mechanism.

An application of a single-continuum policy is to eliminate the overlapping of prison and jail sentences. For example, in 1983 about 250 persons were sentenced to prison for terms that, by their length, actually fall in the one-year range of jails. These persons might serve their time in jail rather than in prison. Additional persons come to prison from jails with little time left to serve. These inmates might just as well finish their sentences in jail. By limiting jail terms or by instituting jail guidelines, one can remove any advantage of a prison sentence over a jail sentence; this would reduce the number of felony convicts who might seek to go to prison rather than have a one-year jail term. This too will reduce pressure on prison population.

By itself, this change in policy will not prevent more criminal defendants from receiving incarceration sentences, but it will give the state more flexibility to deal with an overcrowding problem if it occurs.

To create a jail-prison continuum will require changes in laws about who is responsible for the custody and expense of various types of offenders and about the institutions in which various types of offenders can be incarcerated. But many of the necessary changes will be in the direction of moving statute closer to practice. Furthermore, the state already pays the great majority of the costs of confining those convicted in felony cases.

MINORITY PROSECUTION AND SENTENCING

Persons of minority races are arrested and prosecuted for serious crimes at a much higher rate than one might expect from their small (3%) proportion in the general population of Minnesota. In Hennepin County in 1983, for example, the number of Blacks convicted of violent crimes (rapes, robbery, aggravated assault) was greater than the number of Whites convicted for those crimes, 121 Black and 107 Whites. The overrepresentation of minorities raises concern about possible bias in the handling of their cases. To investigate this issue, one must, so far as possible, evaluate case outcomes where the crimes charged against Whites and minorities are alike.

Violent Crimes

Consider first those persons arrested or convicted for three violent crimes — sexual assault (rape), robbery, and aggravated assault — in Hennepin and Ramsey counties from 1981 to 1983. Under sentencing guidelines these offenses have similar sanctions: imprisonment for the highest degree of the crime and stay of imposition with probation or jail for the lower degrees, provided that the offender has little or no criminal history.

Because discretion is involved at every step of criminal case processing, from arrest to sentencing, it is necessary to check for racial biases at each point. We have calculated the percentages of Blacks and Whites arrested but not prosecuted, prosecuted but not convicted, and among those convicted, the percentages of Blacks and Whites who received the sentencing options of prison, jail, or no incarceration.

Over the three years from 1981 to 1983, differences among the races appear intermittently at all of the stages of case processing. Much of this variation, however, might be the result of chance factors. Only one decision point shows a consistent difference between Whites and Blacks. This is at the sentencing decision.

Blacks are consistently less likely than Whites in Hennepin and Ramsey counties to receive jail sentences or stayed sentences that do not require any incarceration. Blacks are more likely than Whites to be sentenced to prison, whereas Whites are more likely to end up in jail or the workhouse for a violent crime conviction.

In Hennepin in 1983, for instance, 60% of 121 Blacks convicted of one of the three violent crimes (rape, robbery, aggravated assault) got prison sentences, compared to 47% of 107 Whites convicted. For Ramsey in 1983 the equivalent figures are 60% of 60 Blacks to prison and 43% of 77 Whites to prison. At the nonincarceration level of sentencing, Hennepin had 11% of convicted Whites and 8% of the Blacks in 1983; Ramsey had 23% of the Whites and 15% of the Blacks.

The higher imprisonment rate for Blacks than Whites does not necessarily mean that racial prejudices are at work. The degree of seriousness or circumstances of the crime and the defendant's criminal record have an important bearing on the likelihood of a prison sentence under sentencing guidelines.

We can remove much of the possible effect of past criminal record by considering first-time felony offenders only, that is, those who entered the system in a given year with their first felony prosecution. We combined felony convictions for each of the violent crimes over the three years (to increase the size of the comparison groups) and looked

Chi-square Test

Statistical Levels of the Relationship Between Race (White or Black) and Incarceration (Prison, Jail, No Incarceration) for First-Time Felony Offenders in 1981 to 1983.
Table 6

Most serious crime at conviction	Hennepin + Ramsey	State
Forcible rape	ns	.01
Robbery	ns	ns
Aggravated assault	ns	.05
Burglary	.01	.001
Larceny	.001	.0001

Note: Direction of relation when significant is that Blacks are more likely to be incarcerated; "ns" means not significant.

for differences between Whites and Blacks in the proportions going to prison, jail, or not being incarcerated. Using a chi-square statistical test, we did not find any significant differences between first-time Black and White offenders in Hennepin and Ramsey counties. We then repeated this series of tests for the entire state. In this analysis, statistically significant differences appear between Blacks and Whites in regard to the level of incarceration. Among first-time offenders, statewide, Blacks are more likely than Whites to be incarcerated for rape and aggravated assault. (See Table 6.)

Property Crimes

We continued the previous analysis by testing for differences in incarceration for burglary and larceny convictions. Among convictions of persons arrested for burglary in Hennepin and Ramsey counties in 1983, 75% of Whites (292 of 390) received jail or prison sentences compared to 88% of Blacks (123 of 140) and 88% of Indians (35 of 40). The equivalent percentage for Whites outside Hennepin and Ramsey is 73% (697 of 959) and, for Indians, also 73% (49 of 67). (Blacks are too few for comparison.) In other words, Indians and Whites fare equally in outstate Minnesota, but Indians and Blacks are punished more severely in Hennepin and Ramsey.

To check on the effect of criminal history, we again restricted our analysis to first-time felony defendants, and aggregated data for 1981 to 1983. With the chi-square test we find significant differences between Blacks and Whites that extend to Ramsey and Hennepin counties (taken together) as well as for the entire state (Table 6). Again, Blacks are more likely to be incarcerated. Statewide, for first-time defendants convicted of burglary, we have 34% of Whites with no incarceration (408 of 1213) compared with 22% of Blacks (19 of 85).

Discriminant Analysis

Although it appears that there might be bias in the incarceration of Blacks, we need to know more about the magnitude of this problem and whether other factors might be involved. Discriminant analysis is a powerful statistical method that can help us evaluate the effect of multiple, simultaneous factors on a discretionary decision point. The discriminant analysis constructs a mathematical rule that gives us the best prediction of which of two possible outcomes is likely in a given case. Here we examine the decision point of whether to send a convicted felony defendant to jail or impose no incarceration. In effect, we try to use available information that might reasonably bear on the decision to duplicate the decision making process of the sentencing judge.

In this discriminant analysis we included, separately, four crimes, which were the most serious charged at conviction: forcible rape, robbery, burglary, and felony theft. As potential explanatory variables we included: whether the defendant was a first offender; the number of charges at conviction; whether restitution was ordered; whether there was a change in the charge from arrest to conviction; age (which is also a surrogate measure for criminal history); sex; race (White or Black); and whether the case was in Ramsey or Hennepin counties or the rest of the state.

The general pattern of results of all of these discriminant analyses is that certain factors generally predict a sentence of no incarceration. The most likely candidate for no incarceration fits this profile: White, female, older, with fewer offenses at conviction, no restitution ordered, living outside Hennepin or Ramsey counties. Of the four crimes, forcible rape is the only one where Black is not a significant factor predicting toward jail. Hennepin and Ramsey also significantly predispose to jail for rape and larceny; but toward no incarceration for robbery.

The analysis shows that Black overrepresentation in jails can occur either because of racial differences in sentencing or because of differences between Hennepin and Ramsey counties and the rest of the state, given that most Blacks happen to live in these two counties.

Having established a link between race and sentencing, we must add that the impact of any bias is small. Even with all of the above factors included in the discriminant prediction model, one can correctly predict a jail incarceration versus no incarceration in only 61% to 65% of the cases for any of the four crimes analyzed. One can do almost as well just by knowing the a priori odds of a jail incarceration. This indicates that other, unknown, factors or inconsistent application of the known factors have a great impact on the jail/no-jail decision.

The weakness of bias in relation to other causes for why one goes to jail and another does not is also revealed by a multiple regression analysis that repeats the previous discriminant analysis. Only 13% to 20% of variation in the jail/no-jail decision can be accounted for by all of the factors cited.

Gun Crimes

We next consider another discretionary point that involves those violent crimes where a gun was used or was in possession of a defendant. Under Minnesota law (609.11), possession or use of a firearm by a defendant or an accomplice in commission of a violent crime (or any of several others, including burglary) calls for a mandatory prison sentence without the possibility of a stay. Prior to sentencing, however, the prosecutor can petition the court to ignore the firearm at sentencing when there are mitigating factors. The effect of this provision in the law is that the mandatory prison sentence is at the discretion of the prosecutor and judge.

The result of this discretion in the application of mandatory sentencing is that minorities are more likely to go to prison than Whites. We examined arrests for the three violent crimes where the arrest report indicated that a gun was involved, and we followed the cases through to conviction and sentencing. In Hennepin and Ramsey counties, taken together, in 1983, 56% (32 of 57) of gun-using Whites went to prison upon conviction, compared to 66% of Blacks (46 of 70), and 73% of Indians (10 of 13).

These differences across races become greater, and more significant, when one looks at the state as a whole. In Minnesota in 1983, 43% of gun-using Whites were sentenced to prison upon conviction (75 of 175) compared to 66% of Blacks (48 of 73), and 53% of Indians (10 of 19). Furthermore, the differences in sentencing disparity have increased from 1981 to 1983. In 1981, 51% of Whites went to prison, and 57% of Blacks. That is, the spread between Blacks and Whites has widened from 6% to 23%.

Local Discretion Heightens Racial Disparity

The statewide differences between Blacks and Whites reflect significant differences in sentencing patterns between Hennepin and Ramsey and the rest of the state. As the data shows, persons convicted of gun crimes in Hennepin and Ramsey are obviously much more likely to go to prison than those convicted in other counties, regardless of race. The fact that most Blacks live in Hennepin and Ramsey counties means that disproportionately more Blacks than Whites will end up in prison for gun crimes. Although the statewide differences are not indicative of prejudice in sentencing, discretion in mandatory sentencing for gun crimes has worked with increasing unfairness to Blacks. This, and the fact of high numbers of Blacks prosecuted for violent crimes, are reasons for the high proportion of Blacks in state prisons (22% of inmates in 1982). Furthermore, when less than half of Whites statewide receive the mandatory prison sentences for gun crimes, one must question whether the legislative intent of a mandatory gun law is being practiced.

Racial differences are not pervasive in the criminal process, but sentencing disparity across the races exists, and it ought to concern us.

The main source of racial disparity in sentencing does not seem to be prejudice, but the effect of local discretion.

As it is with mandatory sentences for gun crimes, the source of discretion can be the laws themselves. Even in the total absence of bias against minorities, we would still see minorities treated more harshly than Whites statewide. The policy question is

The main source of racial disparity in sentencing does not seem to be prejudice, but the effect of local discretion.

whether this disparity is of enough concern to us that it should be eliminated by curtailing the discretion of prosecutors and judges.

Minnesota is unusual among states in having a small number of prison inmates in relation to the size of the population. On the other hand, Minnesota has a relatively large number of minority inmates in relation to the size of its minority population. This imbalance occurs because sentencing policy tends to restrict prisons in Minnesota to those convicts who have committed the most serious crimes. The high relative rate of involvement of minorities in violent crimes predisposes Minnesota to having a large minority population in its prisons, and this situation is magnified by the state's low incarceration rate. If the state moved toward a jail-prison continuum, it would be possible to reduce the racial imbalance in prison by shifting minority inmates to other correctional facilities. The net result would be to give Minnesota an inmate population more representative of other states and one that would be closer in composition to the general population.

The introduction of jail guidelines would also foster uniformity in the incarceration of persons in jail, regardless of their race.

UPDATE 1984

A limited analysis of 1984 felony case data shows that, overall, many of the trends observed from 1981 to 1983 continued into 1984. Breaks occurred, however, in the trends for certain types of crimes. The main findings are as follows:

- Felony prosecutions continued to increase over previous years. Total prosecutions were up 2% from 1983.

- The number of jail incarcerations that resulted from felony case convictions also continued its increase of previous years — up 11% from 1983. Jail is now even more likely an outcome of a felony case than before; this is especially true for property crimes, such as burglary and larceny.

- The total time of jail terms for all defendants went up 13% from 1983 to 1984, so that as much as 55% of jail capacity for sentenced offenders is now taken up as a result of felony cases convictions. The increase in total time of incarcerations was the result of an increase in numbers of offenders going to jail plus a lengthening of average jail terms from 3.8 months to 3.9 months.

- Prison incarcerations increased slightly; total sentence length increased to about 96% of annual prison capacity in 1984.

- The number of cases prosecuted increased for these crimes: kidnapping, sexual assault (rape), car theft, and sex offenses (other than rape).

- The number of cases prosecuted decreased for these crimes: homicide, robbery, burglary, larceny, arson, forgery, and fraud. The declines in burglary, fraud, and forgery reversed strong upward trends of the previous three years.

Data on the outcomes of felony cases prosecuted in Minnesota in 1984 is now available from the Statistical Analysis Center for the entire state as well as for every county.

APPENDIX

THE DATA AND ITS LIMITATIONS

The Data

This report is based on statistical data drawn from the state's criminal justice computer information systems. Criminal justice data is collected on reported crimes and arrests by police and sheriffs' offices throughout the state. The crime and arrest data are forwarded to the State Bureau of Criminal Apprehension (BCA) in St. Paul. When the arrest is for a felony or gross misdemeanor, information on that case is entered into the BCA's criminal history files, along with a fingerprint identification card.

If an arrested adult is charged with a felony or gross misdemeanor, a second trail of data is begun on that person. The data begins with the prosecutor's filing of a complaint form and includes data on all subsequent and significant appearances in criminal district court (the felony court in Minnesota), including sentencing. Court data is collected through the court administrators and processed by the State Judicial Information System (SJIS) maintained by the Office of the Supreme Court Administrator in St. Paul. Data on juvenile delinquents is also collected through the court information system but is kept separately from adult criminal data.

Arrest data and court data are merged and become part of the Computerized Criminal History (CCH) file, which is maintained under the authority of the BCA. Data for this report was extracted from the CCH file with the permission of the BCA and in accordance with Federal guidelines. All personal identification was removed from the data before analysis so that confidentiality of individual criminal history records was preserved. Thus, the purpose of the data analyzed here is to bring to the public and government bodies a statistical overview of the processing of criminal defendants without sacrifice to the confidentiality of police and court records.

This data will be maintained by the Criminal Justice Statistical Analysis Center, State Planning Agency, as a resource for criminal justice in Minnesota. Copies of the data have also been provided to the Bureau of Justice Statistics, Department of Justice, Washington, D.C., so that a national profile of the processing of criminal defendants might be produced.

Limitations

Each case in our data begins with an arrest and includes all subsequent prosecution and court records associated with that arrest, regardless of the number of charges involved. The data used for this analysis has several limitations. Case information does not include criminal history data, which is an important factor in sentencing under the guidelines. We can, however, identify almost completely those defendants who are entering the criminal process for the first time as a felony offender in a given year. (We do not have any data on juvenile or prior misdemeanor records.) We plan to analyze patterns of repeat criminal behavior in a future study of sentencing effectiveness in Minnesota to be published in 1986.

A second drawback is the timeliness of the data. Because the volume of data being collected is so great, and its analysis so complicated, it is not possible to have an up to date knowledge of the state of criminal justice. The most recent years of data available for this research were 1981 to 1983. Furthermore, we have adopted the rule of including for each year only cases that were disposed of (finished) during the year. That is, the data set is based on a "dispositional year;" it may include cases than began with an arrest in that year or a preceding year. (A method of standardizing a year is necessary so that one year can be compared with another.)

If a person has two or more dispositions in a year, each will be counted as a separate case. That is, strictly speaking, the data has to do with cases, not with individuals.

As stated at the outset of the report, the main focus is on felony cases. In certain types of crimes it is difficult to determine unequivocally that the case is a felony and not a gross misdemeanor. This mainly concerns crimes in the liquor law and commercial vice (prostitution) categories. The number of gross misdemeanors is rather small, in any event; and, as shown in the analysis of sentences given in felony cases, the line between felony and misdemeanor has become blurred in practice. We have chosen to include as felony cases those where we cannot distinguish a felony from a gross misdemeanor.

Most types of crimes, such as burglary or assault, include a

range of offenses of varying degrees of severity. These degrees of a crime call for different levels of punishment, as specified in statute. Sentencing guidelines use degrees of crimes in their sentencing matrix (see the Appendix). In this analysis, we are not able to distinguish offenses within a crime type by their degree of seriousness. That is, we lump together all burglaries, all sexual assaults, and so forth. (Technically speaking, we distinguish crimes by their Uniform Offense Code, rather than by the applicable statute.) This is both a simplification and a limitation. Its main effect is that some of the variation in case outcomes owing to degrees of seriousness cannot be accounted for in the analysis.

If more than one offense is charged against a defendant, we categorize the case by the most serious charge. The ranking of crimes by seriousness follows Federal guidelines: homicide, rape, robbery, aggravated assault, burglary, larceny, auto theft, arson, forgery, fraud, embezzlement, stolen property, vandalism, weapons, commercial vice, nonviolent sex offenses, narcotics, liquor, and others.

In cases where the defendant received multiple sentences for multiple counts or charges for a single arrest, we took the most serious sentence. We classified incarceration on the basis of imposed sentences rather than stayed sentences, or if there was no imposed sentence, then on the conditions of a stayed sentence. We then ranked seriousness of incarceration in the order of prison, jail, or no incarceration.

In presenting overall statistical information on case processing, we treat concurrent and consecutive sentences for separate arrests as separate cases. Our view is that we want to know what happened to a criminal as a result of a given crime and arrest; that is, we look at outcomes from the victim's point of view, one might say. In certain analyses, as described in the report, we eliminated concurrent sentences to measure more accurately the impact of numbers of individuals on jails or prisons.

DEFINITION OF CRIMES

Part I Offenses reflect information on eight "serious" crime classifications, and it is generally referred to as the "Crime Index" measurement. Part II Offenses are represented by twenty "less serious" crime classifications.

The eight crimes represented in the Part I Offenses include murder, rape, aggravated assault, robbery, burglary, larceny, motor vehicle theft, and arson. These crimes were chosen because of their uniformity of definition, total volume, and likelihood of being reported. The crimes of murder, rape, aggravated assault, and robbery are also known as "violent crimes." The crimes of burglary, larceny, motor vehicle theft and arson are labeled as "property crimes." The law enforcement agency may become aware of these crimes in several ways; reports of its own officers, citizens complaints, notification from the prosecuting attorney and from information supplied by court officials.

PART I OFFENSES (Serious Crime)

Criminal Homicide – The killing of another person.

(a) Murder – Any unlawful killing of a human being in which the element of malice aforethought was present in the murder.

Manslaughter – Any unlawful killing of a human being without the element of malice aforethought is counted as manslaughter.

(b) Death by Negligence – Any death that occurs because of the negligence of some person other than the victim and that is not in the commission of an unlawful act. These are deaths which police investigation established as primarily caused by gross negligence.

Forcible Rape (does not include Statutory Rape).

(a) Rape by Force – The carnal knowledge of a female forcibly and against her will, but excluding statutory rape and other sex offenses.

(b) Assault to Rape-Attempts – All assaults and attempts to rape.

Robbery – A robbery is defined as the felonious and forcible taking of property of another against his will by violence or by putting him in fear. This includes all attempts.

(a) Armed Robbery-Any Weapon – When any object is so employed as to constitute force or the threat of force, it will be considered a weapon. This would include firearms, knives, clubs, brass knuckles, black jacks, broken bottles, acid, explosives, etc. Cases involving possible pretended weapons or cases involving weapons not seen by the victim but which the robber claims to have with him should be counted in this category.

(b) Strong Arm-No Weapons – This includes muggings and similar offenses where no weapon is used but strong-arm tactics are employed to deprive the victim of his property. This definition is limited to hands, arms, fists, feet, etc. Include all attempts.

Aggravated Assault – An Aggravated Assault is an attempt or offer with unlawful force or violence to do physical injury to another. As a general rule all assaults will be classified and scored in this category. Exclude assaults with intent to rob or rape. Excludes simple assault, assault and battery, fighting, etc. These will be scored in the appropriate category.

(a) Gun – Includes all assaults or attempted assaults involving the use of any type of firearm. This includes revolvers, automatic pistols, shotguns, zip guns, pellet guns, etc.

(b) Knife or Cutting Instrument – Includes all assaults or attempted assaults involving the use of cutting or stabbing objects such as knives or razors, hatchets, axes, cleavers, scissors, glass, broken bottles, daggers, ice picks, etc.

(c) Other Dangerous Weapons – Includes all assaults or attempted assaults when an object other than a gun, knife or cutting instrument is used. This includes clubs, bricks, jack handles, bottles, explosives, acid, lye, poisons, scalding water, and cases of attempted drownings and burnings, etc.

(d) Hands, Fists, Feet, etc.-Aggravated – Includes all assaults with hands, fists, feet, etc., which could result in an aggravated assault conviction. In order to be classified as aggravated, the victim must suffer great bodily harm.

Burglary-Breaking and Entering – Includes any unlawful entry or attempted forcible entry of any structure to commit a felony or larceny. As a general rule, score as one offense, any unlawful entry or attempted forcible entry of any dwelling, attached structure, public building, shop, factory, storehouse, apartment, house, trailer, warehouse, mill, farm, ship, railroad car, etc. For UCR purposes, breaking and entering with larceny is classified and scored only as breaking and entering.

This does not include breaking and entering of motor vehicles. These are scored in the larceny category.

(a) Forcible Entry – Includes all offenses where force of any kind is used to unlawfully enter a locked structure such as any of those listed above with intent to steal or commit a felony. This includes entry by use of a master key, celluloid, or other device that leaves no outward mark but is used to open a lock. Concealment inside a building followed by breaking out of the structure should also be scored here.

(b) Unlawful Entry-No Force – Includes any unlawful entry when you fail to discover any evidence of forcible entry.

(c) Attempted Forcible Entry – Included in this category only when your investigation determines that a forcible entry has been attempted.

Larceny-Theft (does not include Motor Vehicle Theft) – This category includes the unlawful taking of the property of another with intent to deprive him of ownership. This involves all larcenies and thefts resulting from pocketpicking, purse snatching, shoplifting, larceny from auto, larceny of auto parts and accessories, bicycle theft, larceny from buildings, and larceny from any coin operated machines. Any theft that is not a robbery or any theft that does not result from a breaking and entering shall be scored here. Excludes embezzlements, unlawful conversions, larceny by bailee, frauds or bad checks. Enter all attempted larcenies. Note: when the true or known value of stolen property is not available, estimates based on accepted police methods of property evaluation should be used for the purposes of Uniform Crime Reporting.

Motor Vehicle Theft – This category includes larceny or attempted larceny of motor vehicles. Includes all thefts and attempted thefts of motor vehicles. This includes all vehicles which can be registered as a motor vehicle in this state. Excludes incidents in which the alleged offender had lawful access to the vehicle as in a family situation or the unauthorized use by others having lawful access to the vehicle such as chauffeur, employee, etc.

Arson – Includes all arrests for violation of state law and municipal ordinances relating to arson and attempted arson. This generally includes any willful or malicious burning of a dwelling, church, college, jail, meeting house, public building, ship or other vessel, motor vehicle, aircraft, contents of building, personal property of another, goods or chattels, crops, trees, fences, gates, grain, vegetable products, lumber, woods, marshes, meadows, etc. A death resulting from arson will be classified as murder and personal injuries resulting would be classified as assaults.

PART II OFFENSES (Less Serious Crime)

Other Assaults – This classification consists of all assaults and attempted assaults which are simple or minor in nature.

Forgery and Counterfeiting – In this case, place all offenses dealing with the making, altering, uttering or possession with intent to defraud, anything false in a semblance of that which is true. Include altering or forging of public or other records, making, altering, forging or counterfeiting coins, plates, banknotes, checks, etc. Possessing or uttering forged or counterfeited instruments, signing the name of another or a fictitious person with intent to defraud and all attempts to commit any of the above acts.

Fraud – This is defined as fraudulent conversion and obtaining money or property by false pretense. Include bad checks, confidence games, etc., except forgeries and counterfeiting.

Embezzlement – This is the misappropriation or misapplication of money or property entrusted to one's care, custody, or control.

Stolen Property-Buying, Receiving, Possessing – This includes all offenses of buying, receiving, possessing, or concealing stolen property as well as all attempts to commit any of these offenses.

Vandalism-Destruction of Property – This includes all willful or malicious destruction, injury, disfigurement or defacement of any public or private property, real or personal, without the consent of the owner or person having custody or control by cutting, tearing, breaking, marking, painting, drawing, covering with filth or any other such means as may be specified by law.

Weapons – This classification includes violation of weapon laws such as the manufacture, sale, or possession of deadly weapons or silencers, carrying deadly weapons, aliens possessing deadly weapons, and all attempts to commit any of the above offenses.

Prostitution and Commercialized Vice – Include in this class the sex offenses of a commercialized nature such as prostitution, keeping a bawdy house, disorderly house, or house of ill repute, pandering, procuring, transporting or detaining women for immoral purposes, etc., and all attempts to commit any of the above.

Sex Offenses – This includes all sex offenses other than forcible rape, prostitution, and commercialized vice. This encompasses offenses against chastity, common decency, morals, and the like such as adultery and fornication, buggery, incest, indecent exposure, sodomy, carnal abuse (no force), and all attempts to commit any of the above.

Narcotic Drug Laws – This includes all arrests for the violation of state and local ordinances, specifically

those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

Gambling — Includes all charges relating to promoting, permitting, or engaging in gambling.

Offenses Against Family and Children — Includes all charges of non-support, neglect, or abuse of family and children by such acts as desertion, abandonment, or non-support, neglect or abuse of a child, or nonpayment of alimony.

Driving Under the Influence — This classification is limited to driving or operating any vehicle while under the influence of liquor or narcotic drugs.

Liquor Laws — With the exception of drunkenness and driving under the influence, all state or local liquor law violations are placed in this class. Excludes federal violations, includes manufacturing, selling, transporting and furnishing as in maintaining unlawful drinking places. Bootlegging, operating a still, furnishing liquor to a minor and the using of a vehicle for illegal transportation of liquor are included.

All Other Offenses — Include in this class every other state or local offense not included, except traffic. This encompasses abduction and compelling to marry, abortion (death resulting from criminal abortion, according to statutes, is criminal homicide), bastardy and concealing death of a bastard, bigamy and polygamy, blackmail and extortion, bribery, contempt of court, discrimination and unfair competition, kidnapping, offenses contributing to juvenile delinquency, perjury, possession, repair, manufacturing, etc., of burglary tools, possession or sale of obscene literature and unlawful use, possession, etc., of explosives, etc.

Source: Minnesota Crime Information
Bureau of Criminal Apprehension

SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle *Possession of Marijuana*	I	12*	12*	12*	13	15	17	19 *18-20*
Theft Related Crimes ($250-$2500) *Aggravated Forgery ($250-$2500)*	II	12*	12*	13	15	17	19	21 *20-22*
Theft Crimes ($250-$2500)	III	12*	13	15	17	19 *18-20*	22 *21-23*	25 *24-26*
Nonresidential Burglary *Theft Crimes (over $2500)*	IV	12*	15	18	21	25 *24-26*	32 *30-34*	41 *37-45*
Residential Burglary *Simple Robbery*	V	18	23	27	30 *29-31*	38 *36-40*	46 *43-49*	54 *50-58*
Assault, 2nd Degree	VI	21	26	30	34 *33-35*	44 *42-46*	54 *50-58*	65 *60-70*
Aggravated Robbery	VII	24 *23-25*	32 *30-34*	41 *38-44*	49 *45-53*	65 *60-70*	81 *75-87*	97 *90-104*
Criminal Sexual Conduct, 1st Degree *Assault, 1st Degree*	VIII	43 *41-45*	54 *50-58*	65 *60-70*	76 *71-81*	95 *89-101*	113 *106-120*	132 *124-140*
Murder, 3rd Degree *Murder, 2nd Degree (felony murder)*	IX	105 *102-108*	119 *116-122*	127 *124-130*	149 *143-155*	176 *168-184*	205 *195-215*	230 *218-242*
Murder, 2nd Degree (with intent)	X	120 *116-124*	140 *133-147*	162 *153-171*	203 *192-214*	243 *231-255*	284 *270-298*	324 *309-339*

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

*one year and one day

(Rev. Eff. 8/1/81; 11/1/83)

SELECTED STATUTES

152.18 DISCHARGE AND DISMISSAL. PROHIBITED DRUGS

Subdivision 1. If any person is found guilty of a violation of section 152.09, subdivision 1, clause (2) after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum term of imprisonment provided for such violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal hereunder shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the department of public safety solely for the purpose of use by the courts in determining the merits of subsequent proceedings against such person. The court shall forward a record of any discharge and dismissal hereunder to the department of public safety who shall make and maintain the nonpublic record thereof as hereinbefore provided. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

Subd. 2. Upon the dismissal of such person and discharge of the proceedings against him pursuant to subdivision 1, such person may apply to the district court in which the trial was had for an order to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to subdivision 1, all recordation relating to arrest, indictment or information, trial and dismissal and discharge pursuant to subdivision 1. If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed, it shall enter such order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made for him for any purpose.

Subd. 3. Any person who has been found guilty of a violation of section 152.09 with respect to a small amount of marijuana which violation occurred prior to April 11, 1976, and whose conviction would have been a petty misdemeanor under the provisions of section 152.15, subdivision 2, clause (5) in effect on April 11, 1978, but whose conviction was for an offense more serious than a petty misdemeanor under laws in effect prior to April 11, 1976, may petition the court in which he was convicted to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to section 152.15, subdivision 2, clause (5), all recordation relating to his arrest, indictment or information, trial and conviction of an offense more serious than a petty misdemeanor. The court, upon being satisfied that a small amount was involved in the conviction, shall order all the recordation expunged.

169.121 MOTOR VEHICLE DRIVERS UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE.

Subdivision 1. **Crime.** It is a misdemeanor for any person to drive, operate or be in physical control of any motor vehicle within this state:

(a) When the person is under the influence of alcohol;

(b) When the person is under the influence of a controlled substance;

(c) When the person is under the influence of a combination of any two or more of the elements named in clauses (a) and (b);

(d) When the person's alcohol concentration is 0.10 or more; or

(e) When the person's alcohol concentration as measured within two hours of the time of driving is 0.10 or more.

The provisions of this subdivision apply, but are not limited in application, to any person who drives, operates, or is in physical control of any motor vehicle in the manner prohibited by this subdivision upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

Subd. 1a. **Arrest.** A peace officer may lawfully arrest a person for violation of subdivision 1 without a warrant upon probable cause, without regard to whether the violation was committed in the officer's presence.

When a peace officer has probable cause to believe that a person is driving or operating a motor vehicle in violation of subdivision 1, and before a stop or arrest can be made the person escapes from the geographical limits of the officer's jurisdiction, the officer in fresh pursuit of the person may stop or arrest the person in another jurisdiction within this state and may exercise the powers and perform the duties of a peace officer under sections 169.121 and 169.123. An officer acting in fresh pursuit pursuant to this subdivision is serving in his regular line of duty as fully as though he was within his jurisdiction.

The express grant of arrest powers in this subdivision does not limit the arrest powers of peace officers pursuant to sections 626.65 to 626.70 or section 629.40 in cases of arrests for violation of subdivision 1 or any other provision of law.

Subd. 2. **Evidence.** Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or being in physical control of a motor vehicle in violation of subdivision 1, the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by an analysis of those items.

For the purposes of this subdivision:

(a) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol;

(b) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

Evidence of the refusal to take a test is admissible into evidence in a prosecution under this section or an ordinance in conformity with it.

If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of subdivision 1, clause (e) that the defendant consumed a sufficient quantity of alcohol after the time of actual driving, operating, or physical control of a motor vehicle and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed 0.10. Provided, that this evidence may not be admitted unless notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.

The foregoing provisions do not limit the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of alcohol or a controlled substance, including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample, as defined in section 169.123, subdivision 2b, paragraph (b).

Subd. 3. **Criminal penalties.** A person who violates this section or an ordinance in conformity with it is guilty of a misdemeanor.

The following persons are guilty of a gross misdemeanor:

(a) A person who violates this section or an ordinance in conformity with it within five years of a prior conviction under this section, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them; and

(b) A person who violates this section or an ordinance in conformity with it within ten years of two or more prior convictions under this section, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them.

For purposes of this subdivision, a prior juvenile adjudication under this section, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them is a prior conviction.

The attorney in the jurisdiction in which the violation occurred who is responsible for prosecution of misdemeanor violations of this section shall also be responsible for prosecution of gross misdemeanor violations of this section.

Subd. 4. **Penalties.** A person convicted of violating this section shall have his driver's license or operating privileges revoked by the commissioner of public safety as follows:

(a) First offense: not less than 30 days;

(b) Second offense in less than five years: not less than 90 days and until the court has certified that treatment or rehabilitation has been successfully completed where prescribed in accordance with section 169.126;

(c) Third offense in less than five years: not less than one year, together with denial under section 171.04, clause (8), until rehabilitation is established in accordance with standards established by the commissioner;

(d) Fourth or subsequent offense on the record: not less than two years, together with denial under section 171.04, clause (8), until rehabilitation is established in accordance with standards established by the commissioner.

If the person convicted of violating this section is under the age of 18 years, the commissioner of public safety shall revoke the offender's driver's license or operating privileges until the offender reaches the age of 18 years or for a period of six months or for the appropriate period of time under clauses (a) to (d) for the offense committed, whichever is the greatest period.

For purposes of this subdivision, a juvenile adjudication under this section, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them is an offense.

Whenever department records show that the violation involved personal injury or death to any person, not less than 90 additional days shall be added to the base periods provided above.

Any person whose license has been revoked pursuant to section 169.123 as the result of the same incident is not subject to the mandatory revocation provisions of clause (a) or (b).

Subd. 5. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4, except the revocation of the driver's license, on the

SENTENCES

609.095 LIMITS OF SENTENCES.

No other or different sentence or punishment shall be imposed for the commission of a crime than is authorized by this chapter or other applicable law.

History: *1963 c 753 art 1 s 609.095*

609.10 SENTENCES AVAILABLE.

Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence, may sentence the defendant to the extent authorized by law as follows:

(1) To life imprisonment; or

(2) To imprisonment for a fixed term of years set by the court; or

(3) To both imprisonment for a fixed term of years and payment of a fine; or

(4) To payment of a fine without imprisonment or to imprisonment for a fixed term of years if the fine is not paid; or

(5) To payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both.

History: *1963 c 753 art 1 s 609.10; 1978 c 723 art 1 s 13; 1984 c 610 s 1*

609.101 SURCHARGE ON FINES, ASSESSMENTS.

When a court sentences a person convicted of a felony, gross misdemeanor, or misdemeanor, other than a traffic or parking violation, and if the sentence does not include payment of a fine, the court shall impose an assessment of not less than $20 nor more than $40. If the sentence includes payment of a fine, the court shall impose a surcharge on the fine of ten percent of the fine. This section applies whether or not the person is sentenced to imprisonment and when the sentence is suspended. The court may, upon a showing of indigency or undue hardship upon the convicted person or his immediate family, waive payment or authorize payment of the assessment or surcharge in installments.

The court shall collect and forward the amount of the assessment or surcharge to the state treasurer to be deposited in the general fund for the purposes of providing services, assistance, or reparations or a combination, to victims of crimes through programs established under sections 611A.21 to 611A.36, under chapter 256D, and chapter 299B. If the convicted person is sentenced to imprisonment, the chief executive officer of the correctional facility in which the convicted person is incarcerated may collect the assessment or surcharge from any earnings the inmate accrues for work performed in the correctional facility and forward the amount to the state treasurer. The state treasurer shall identify and report to the commissioner of finance all amounts deposited in the general fund under this section.

History: *1981 c 360 art 2 s 50; 1983 c 262 art 1 s 6*

609.105 SENTENCE OF IMPRISONMENT.

Subdivision 1. A sentence to imprisonment for more than one year shall commit the defendant to the custody of the commissioner of corrections.

Subd. 2. The commissioner of corrections shall determine the place of confinement in a prison, reformatory, or other facility of the department of corrections established by law for the confinement of convicted persons and prescribe reasonable conditions, rules, and regulations for their employment, conduct, instruction, and discipline within or without the facility.

Subd. 3. A sentence to imprisonment for a period of one year or any lesser period shall be to a workhouse, work farm, county jail, or other place authorized by law.

History: *1963 c 753 art 1 s 609.105*

609.11 MINIMUM TERMS OF IMPRISONMENT.

Subdivision 1. **Commitments without minimums.** All commitments to the commissioner of corrections for imprisonment of the defendant are without minimum terms except when the sentence is to life imprisonment as required by law and except as otherwise provided in this chapter.

Subd. 2. [Repealed, 1978 c 723 art 2 s 5]

Subd. 3. [Repealed, 1981 c 227 s 13]

Subd. 4. **Dangerous weapon.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a dangerous weapon other than a firearm, or had in possession a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than one year plus one day, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a dangerous weapon other than a firearm, or had in possession a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than three years nor more than the maximum sentence provided by law.

Subd. 5. **Firearm.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm, shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than three years, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a firearm shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than five years, nor more than the maximum sentence provided by law.

Subd. 6. **No early release.** Any defendant convicted and sentenced as required by this section is not eligible for probation, parole, discharge, or supervised release until that person has served the full mandatory minimum term of imprisonment as provided by law, notwithstanding the provisions of sections 242.19, 243.05, 244.04, 609.12 and 609.135.

Subd. 7. **Prosecutor shall establish.** Whenever reasonable grounds exist to believe that the defendant or an accomplice used a firearm or other dangerous weapon or had in possession a firearm, at the time of commission of an offense listed in subdivision 9, the prosecutor shall, at the time of trial or at the plea of guilty, present all evidence tending to establish that fact unless it is otherwise admitted on the record. The question of whether the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm shall be determined by the court at the time of a verdict or finding of guilt at trial or the entry of a plea of guilty based upon the record of the trial or the plea of guilty. The court shall determine at the time of sentencing whether the defendant has been convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm.

Subd. 8. **Motion by prosecutor.** Prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum terms of imprisonment established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion and if it finds substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum terms of imprisonment established by this section.

Subd. 9. **Applicable offenses.** The crimes for which mandatory minimum sentences shall be served before eligibility for probation, parole, or supervised release as provided in this section are: murder in the first, second, or third degree; assault

in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; criminal sexual conduct in the first, second, or third degree; escape from custody; arson in the first, second, or third degree; or any attempt to commit any of these offenses.

History: *1963 c 753 art 1 s 609.11; 1969 c 743 s 1; 1971 c 845 s 15; 1974 c 32 s 1; 1975 c 378 s 8; 1977 c 130 s 2; 1978 c 723 art 2 s 2; 1979 c 258 s 1; 1981 c 227 s 1-7; 1983 c 274 s 15*

609.125 SENTENCE FOR MISDEMEANOR OR GROSS MISDEMEANOR.

Upon conviction of a misdemeanor or gross misdemeanor the court, if sentence is imposed, may, to the extent authorized by law, sentence the defendant:

(1) To imprisonment for a definite term; or

(2) To payment of a fine, or to imprisonment for a specified term if the fine is not paid; or

(3) To both imprisonment for a definite term and payment of a fine; or

(4) To payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both.

History: *1963 c 753 art 1 s 609.125; 1971 c 25 s 91; 1984 c 610 s 2*

609.13 CONVICTIONS OF FELONY OR GROSS MISDEMEANOR; WHEN DEEMED MISDEMEANOR OR GROSS MISDEMEANOR.

Subdivision 1. Notwithstanding a conviction is for a felony:

(1) The conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02; or

(2) The conviction is deemed to be for a misdemeanor if the imposition of the sentence is stayed, the defendant is placed on probation, and he is thereafter discharged without sentence.

Subd. 2. Notwithstanding that a conviction is for a gross misdemeanor, the conviction is deemed to be for a misdemeanor if:

(1) The sentence imposed is within the limits provided by law for a misdemeanor as defined in section 609.02; or

(2) If the imposition of the sentence is stayed, the defendant is placed on probation, and he is thereafter discharged without sentence.

History: *1963 c 753 art 1 s 609.13; 1971 c 937 s 21*

609.135 STAY OF IMPOSITION OR EXECUTION OF SENTENCE.

Subdivision 1. **Terms and conditions.** Except when a sentence of life imprisonment is required by law, or when a mandatory minimum term of imprisonment is required by section 609.11, any court may stay imposition or execution of sentence and (a) may order noninstitutional sanctions without placing the defendant on probation, or (b) may place the defendant on probation with or without supervision and on the terms the court prescribes, including noninstitutional sanctions when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony or gross misdemeanor, by the commissioner of corrections, or in any case by some other suitable and consenting person. For purposes of this subdivision, subdivision 6, and section 609.14, the term "noninstitutional sanctions" includes but is not limited to restitution, community work service, and work in lieu of or to work off fines.

A court may not stay the revocation of the driver's license of a person convicted of violating the provisions of section 169.121.

Subd. 2. (1) In case the conviction is for a felony such stay shall be for not more than the maximum period for which the sentence of imprisonment might have been imposed.

(2) In case the conviction is for a misdemeanor the stay shall not be for more than one year.

(3) In case the conviction is for a gross misdemeanor the stay shall not be for more than two years.

(4) At the expiration of such stay, unless the stay has been revoked or the defendant discharged prior thereto, the defendant shall be discharged.

Subd. 3. The court shall report to the commissioner of public safety any stay of imposition or execution granted in the case of a conviction for an offense in which a motor vehicle, as defined in section 169.01, subdivision 3, is used.

Subd. 4. The court may, as a condition of probation, require the defendant to serve up to one year incarceration in a county jail, a county regional jail, a county workfarm, county workhouse or other local correctional facility. The court may allow the defendant the work release privileges of section 631.425 during the period of incarceration.

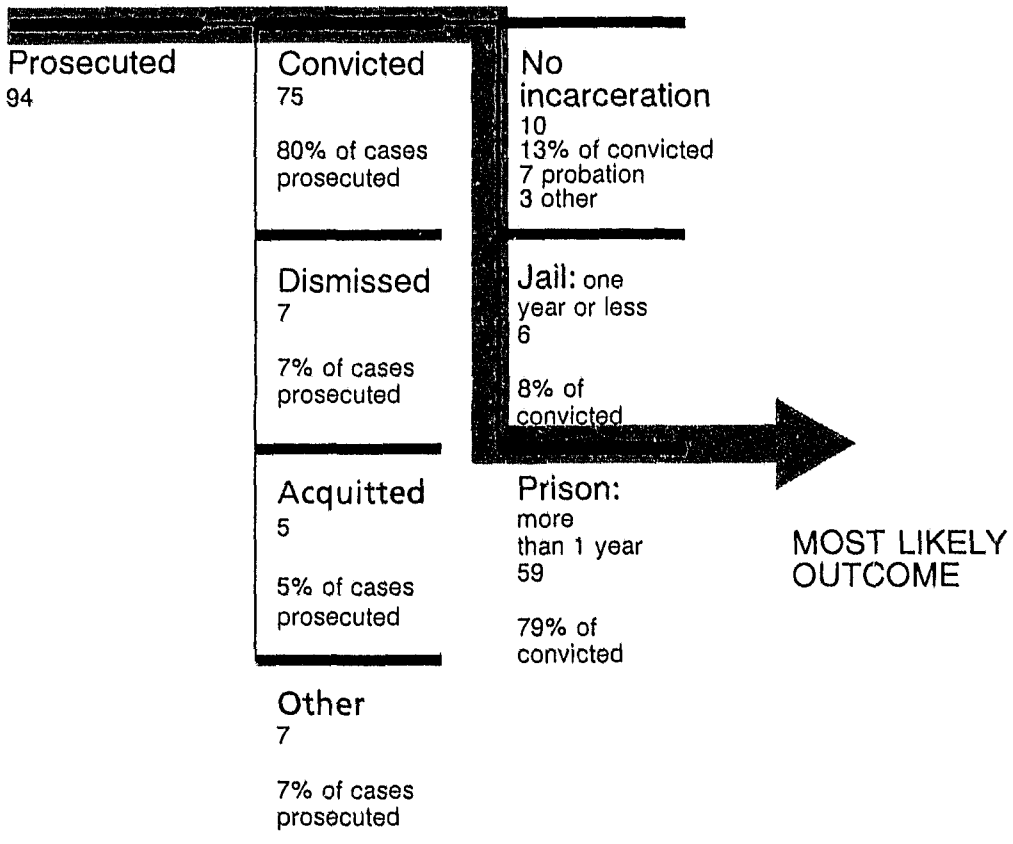
Subd. 5. If a person is convicted of assaulting his spouse or other person with whom he resides, and the court stays imposition or execution of sentence and places the defendant on probation, the court may condition the stay upon the defendant's participation in counseling or other appropriate programs selected by the court.

Subd. 6. **Preference for noninstitutional sanctions.** A court staying imposition or execution of a sentence that does not include a term of incarceration as a condition of the stay shall order noninstitutional sanctions where practicable.

History: *1963 c 753 art 1 s 609.135; 1971 c 244 s 2; 1976 c 341 s 3; 1977 c 349 s 1; 1977 c 355 s 6; 1978 c 723 art 2 s 4; 1978 c 724 s 1; 1981 c 9 s 2; 1981 c 227 s 8; 1983 c 264 s 9; 1984 c 610 s 3,4*

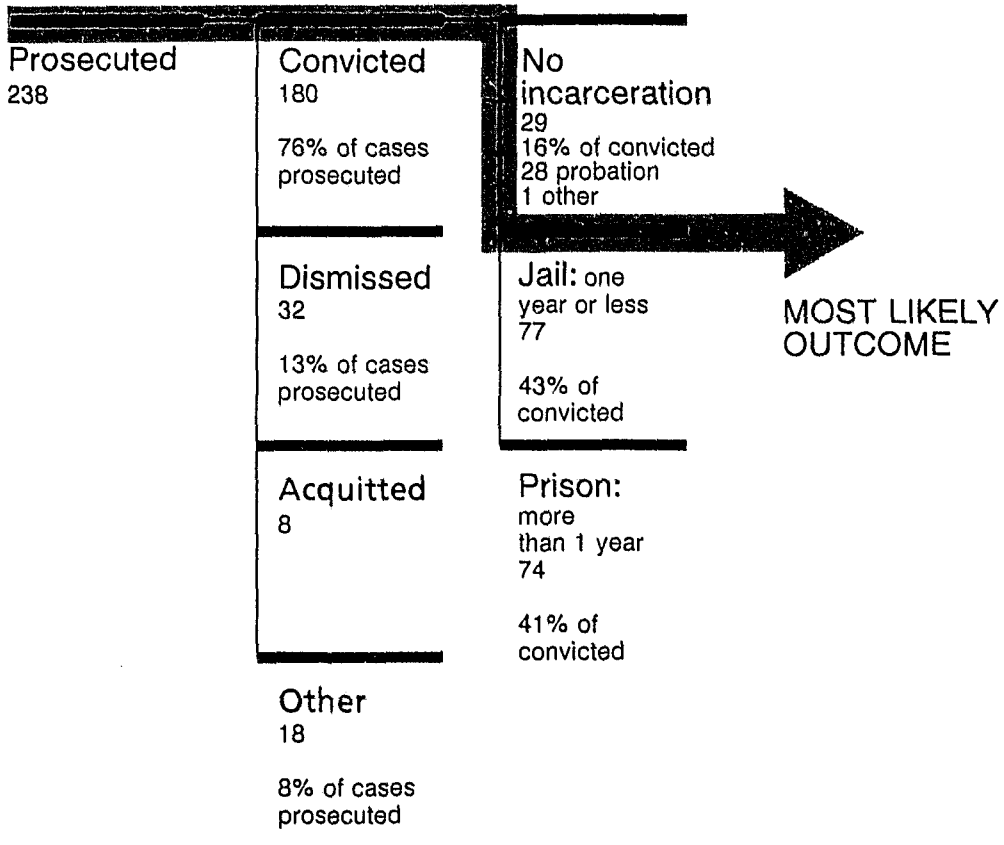
Homicide Cases

Figure 7.



Sexual Assault Cases

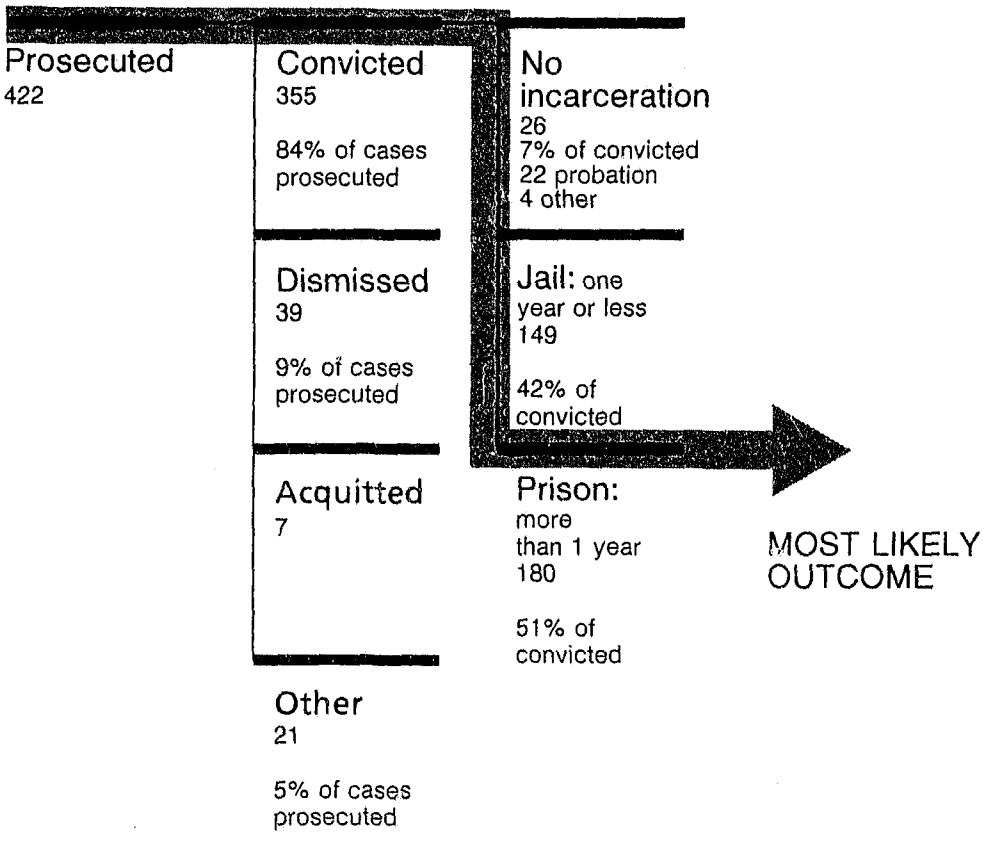
Figure 8.



iolent Crimes 1983

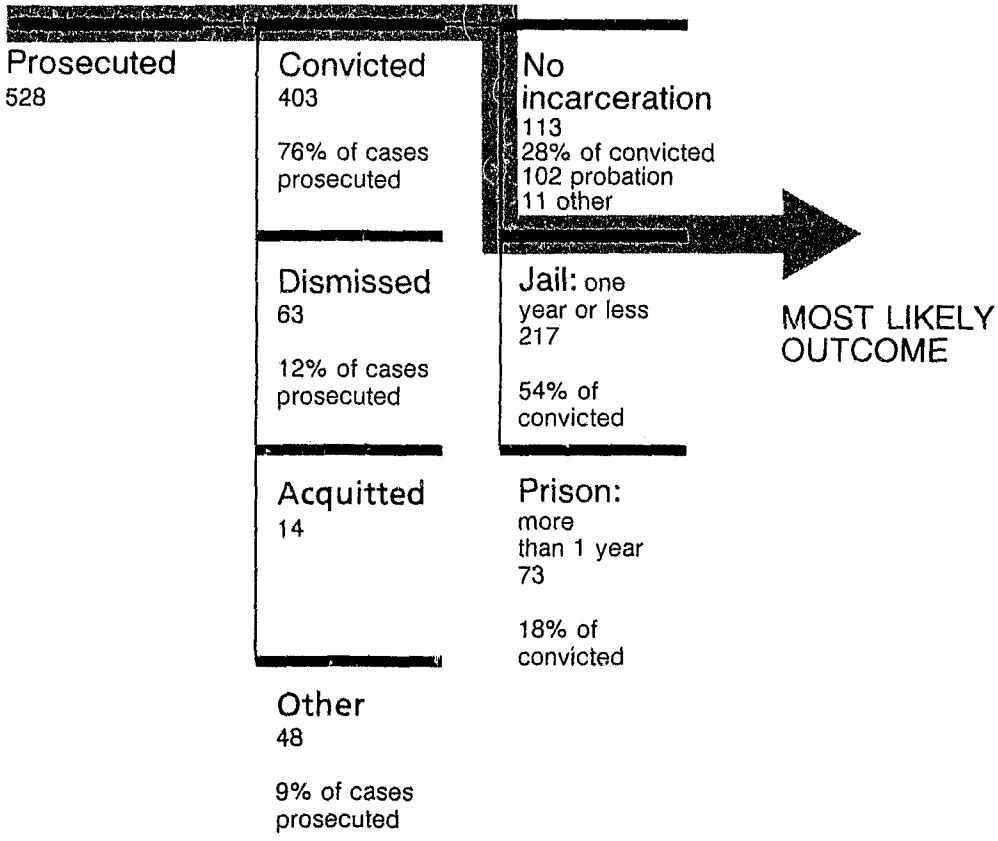
Robbery Cases

Figure 9.



Aggravated Assault Cases

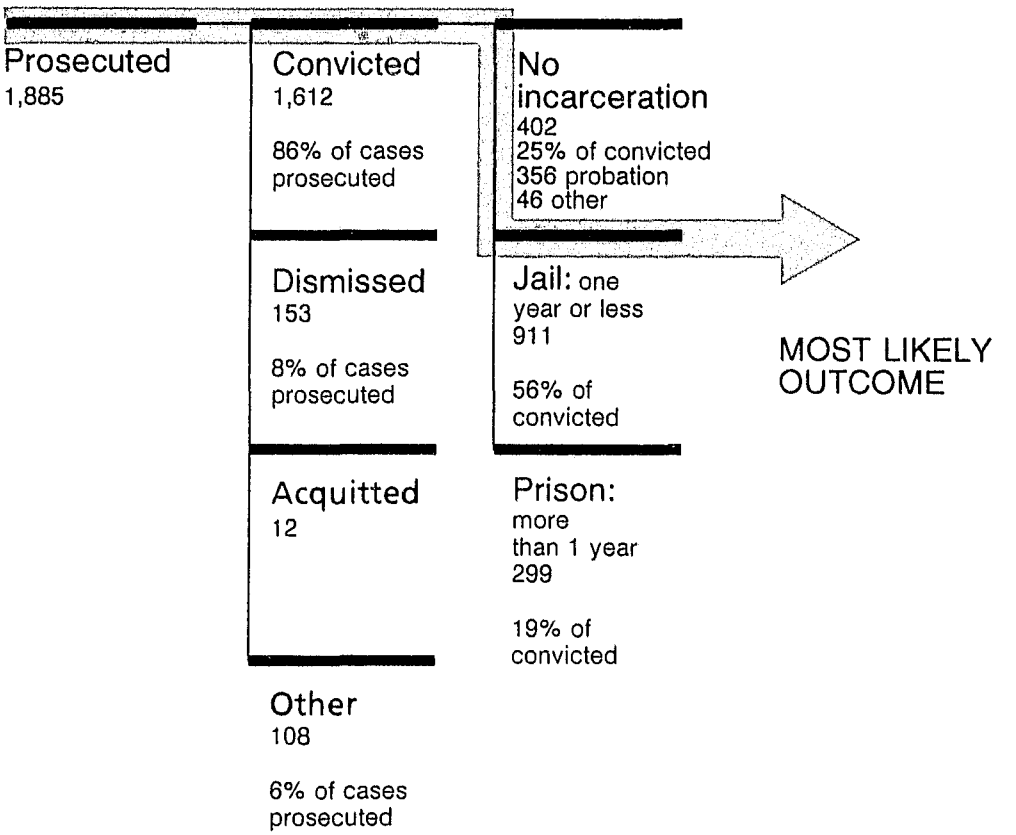
Figure 10.



Court Processing o

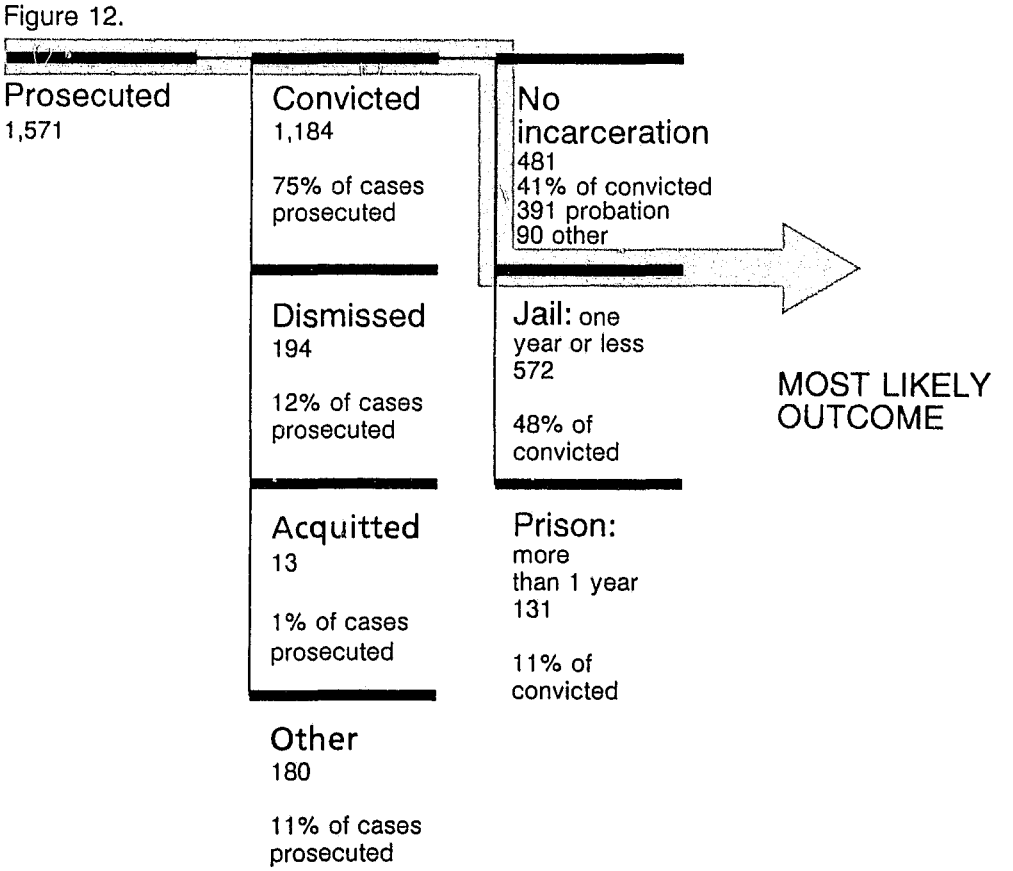
Burglary Cases

Figure 11.



Theft Cases

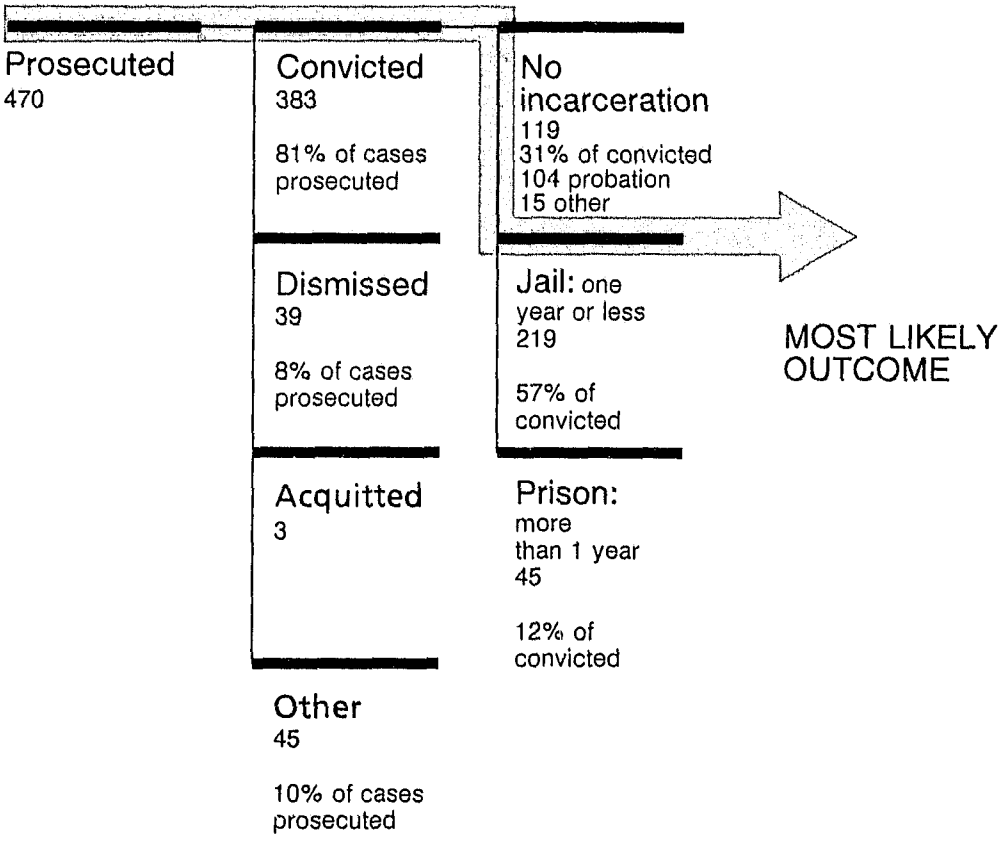
Figure 12.



roperty Crimes 1983

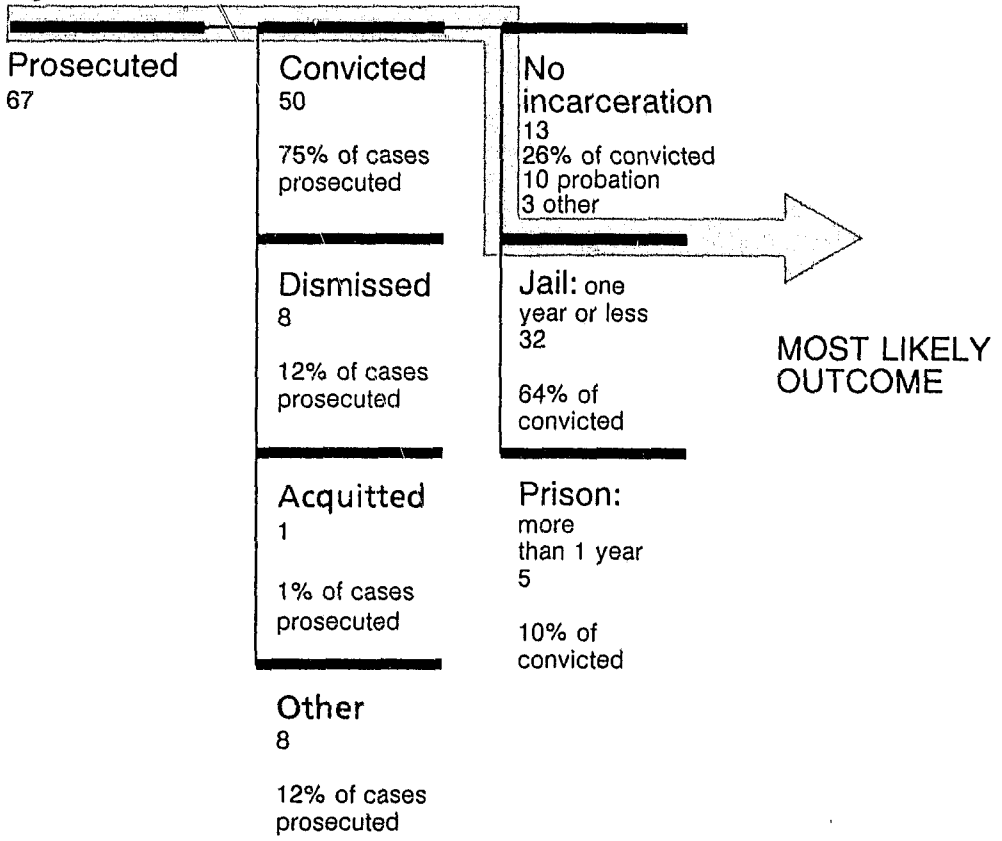
Motor Vehicle Theft Cases

Figure 13.



Arson Cases

Figure 14.



Narcotic Cases

Figure 15.