

## Demographic Impact Statement

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### House File 480-0 (Excluding Section 3)

*Criminal Sexual Conduct Definitions Amended*

**Statement Date: March 12, 2019**

The staff of the Minnesota Sentencing Guidelines Commission (MSGC) prepares demographic impact statements for proposed crime bills when it appears that the bill's policy changes would likely increase or decrease the number of people convicted of felonies each year by 50 or more; when it appears that the bill's policy changes would likely increase or decrease the annual need for prison beds by 10 or more; or upon legislative request.

#### Bill Description

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HF 480 amends Criminal Sexual Conduct (CSC) provisions.

Section 2 narrows the definition of consent in Minn. Stat. § 609.341, subd. 4 by requiring that the indicated present agreement to have sex, now required to be "freely" given, also be "knowingly" given.

Section 3 expands the definition of "mentally incapacitated" in Minn. Stat. § 609.341, subd. 7, by striking the requirement that the impairing substance must have been administered without that person's agreement. This definition is used in the definition of "consent" as well as in the elements of first- and second-degree criminal sexual conduct (CSC) under subd. 1(e)(ii) of Minn. Stat. §§ 609.342 & 609.343, and of third- and fourth-degree CSC under subd. 1(d) of Minn. Stat. §§ 609.344 & 609.345.

Sections 4 through 8 amend first- through fourth-degree CSC offenses under Minn. Stat. §§ 609.342 through 609.345, by amending the position of authority (POA) clauses to "current or recent" POA. "Recent" is defined as time "within 120 days immediately preceding" the act. The definition of POA is amended to include a person who "assumes" any such authority, even if not charged with it.

Sections 7 and 8 amend third and fourth-degree CSC under Minn. Stat. §§ 609.344 & 609.345 by repealing the mistake-of-age defense, now limited to statutory rape cases in which the actor's mistake of age is reasonable, the actor is not more than 10-years older than the complainant, and the complainant is 13, 14, or 15 years old.

Section 9 repeals the statute of limitations (SOL) for violations of § 609.322 (solicitation, inducement, and promotion of prostitution and sex trafficking) and §§ 609.342 through 609.345 (first through fourth-degree criminal sexual conduct offenses).

This bill is effective August 1, 2019, and apply to crimes committed on or after that date, except for section 9, which is effective the day following enactment.

#### Estimated Impact

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In its fiscal note, MSGC staff estimated that the bill will result in 52 new felony offenders annually as displayed in Table 1.

*Table 1. Number of New Felony Offenders*

<b>Change to</b>	<b>Minn. Statute §</b>	<b>Number New Felony Offenders</b>
Expanding Mental Incapacitation	609.342 & 609.343 1 (e)(ii) 609.644 & 609.345 1 (d)	35
Definition of Position of Authority	609.342 & 609.343 1(b) 609.345 1(b)-POA only 609.644 & 609.345 1 (e)	5
Mistake of Age- Statutory Rape	609.344 & 609.3451(b)	10
Statute of Limitations	609.322 609.342-609.345	2

MSGC staff estimated that the bill will result in an eventual prison bed impact of 104 beds (Table 2).

*Table 2. Prison Bed Impact*

<b>Change to</b>	<b>Minn. Statute §</b>	<b>Number New Prison Beds</b>
Expanding Mental Incapacitation	609.342 & 609.343 1 (e)(ii) 609.644 & 609.345 1 (d)	78
Definition of Position of Authority	609.342 & 609.343 1(b) 609.345 1(b)-POA only 609.644 & 609.345 1 (e)	12
Mistake of Age – Statutory Rape	609.344 & 609.3451(b)	7
Statute of Limitations	6097.322 609.342-609.345	7

## **Current State Demographics**

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Table 3 displays current demographic information pertaining to three populations within the state: the felony population (that is, the population of offenders sentenced for felony offenses in 2017); the adult prison population (as of July 1, 2017); and the general population, age 15 and older (on July 1, 2017, as estimated by the U.S. Census Bureau). Table 6 and Table 7 breaks down those populations by the following demographic categories: Gender; race and ethnicity; and judicial district. A map of Minnesota’s ten judicial districts may be found at <http://www.mncourts.gov/Find-Courts.aspx>.

Table 3. Minnesota's 2017 General Population, Felony Population, and Prison Population, by Gender, Race and Ethnicity, and Judicial District

		General Population		Felony Population			Prison Population	
		2017 Estimated Pop. Age 15 & Older		MSGC Category	Offenders Sentenced in 2017		2017 Adult Inmate Population	
U.S. Census Category		Number	Percent		Number	Percent	Number	Percent
Male		2,223,712	49.5%	Male	14,703	80.4%	9,374	92.7%
Female		2,270,163	50.5%	Female	3,584	19.6%	737	7.3%
Race & Ethnicity	White*	3,755,112	83.6%	White	10,480	57.3%	4,788	47.4%
	Black or African American*	279,784	6.2%	Black	4,656	25.5%	3,463	34.2%
	American Indian*	70,247	1.6%	American Indian	1,640	9.0%	967	9.6%
	Hispanic**	203,250	4.5%	Hispanic**	942	5.2%	601	5.9%
	Asian*	234,126	5.2%	Asian	514	3.1%	274	2.7%
	Native Hawaiian/ Other Pacific Islander*	4,998	0.1%	Other/ Unknown	55	0.3%	18	0.2%
Judicial District	First	628,830	14.0%	First	2,404	13.1%	861	8.5%
	Second	439,934	9.8%	Second	1,815	9.9%	1,304	12.9%
	Third	386,982	8.6%	Third	1,426	7.8%	769	7.6%
	Fourth	1,019,718	22.7%	Fourth	3,819	20.9%	2,540	25.1%
	Fifth	233,192	5.2%	Fifth	1,006	5.5%	448	4.4%
	Sixth	210,739	4.7%	Sixth	912	5.0%	568	5.6%
	Seventh	392,773	8.7%	Seventh	1,972	10.8%	1,098	10.9%
	Eighth	128,819	2.9%	Eighth	492	2.7%	293	2.9%
	Ninth	275,394	6.1%	Ninth	1,818	9.9%	1,088	10.8%
	Tenth	777,494	17.3%	Tenth	2,624	14.3%	1,034	10.2%
<b>Total</b>		<b>4,493,875</b>	<b>100.0%</b>	<b>Total</b>	<b>18,288</b>	<b>100.0%</b>	<b>10,111</b>	<b>100.0%</b>

Source of July 1, 2017, Adult Inmate Population: Minn. Department of Corrections. Judicial district populations exclude 107 inmates whose governing sentences were for offenses committed in non-Minnesota jurisdictions.

Source of July 1, 2017, population estimate: U.S. Census Bureau (June, 2018).

\* Not Hispanic, alone or in combination with one or more other races. Sum of percentages of residents in each racial/ethnic category exceeds 100 percent because residents of more than one race are counted in more than one category.

\*\* Lists all Hispanic offenders and residents as Hispanic, regardless of race.

## Demographic Impact

### Demographic Characteristics – New Felony Population

In its fiscal note, MSGC staff estimated that the bill would result in 52 new felony offenders annually.

No attempt is made to estimate the demographic characteristics of the occupants of 35 of those offenders; namely, those attributable to section 3 of the bill. Because the demographic characteristics of offenders expected to be sentenced under that provision—relating to offenses committed while the victim is in a state of mental impairment—cannot be assumed to be similar to the demographic characteristics of current CSC offenders, the preparation of a demographic impact statement with respect to those sections would be inconsistent with the MSGC’s [Demographic Impact Statement Policy](#).

Because the anticipated number of new convictions remaining, 17, is less than the 50 necessary to trigger a DIS, 50 necessary to trigger a demographic impact statement, the demographic characteristics of the new felony population are not estimated.

### Demographic Characteristics – New Prison Population

It is estimated that the bill will result in a total projected prison bed impact of 104 beds a year.

No attempt is made to estimate the demographic characteristics of the occupants of 78 of those prison beds; namely, those attributable to section 3 of the bill. Because the demographic characteristics of offenders expected to be imprisoned under that provision—relating to offenses committed while the victim is in a state of mental impairment—cannot be assumed to be similar to the demographic characteristics of current CSC offenders, the preparation of a demographic impact statement with respect to those sections would be inconsistent with the MSGC’s [Demographic Impact Statement Policy](#).

With respect to the remaining 26 new prison beds, one might assume that, in the future, the demographic characteristics of the occupants of those beds will be the same as the known demographic characteristics of the offenders sentenced 2013–2017 who would be expected to receive prison sentences under the amended provisions, as shown in Table 4.

*Table 4. Demographic Characteristics of Persons Receiving Prison Sentences for Amended Provisions, House File 480-0 (Excluding Section 3)*

Bill Sections (Amended Provisions)	Demographic Characteristics of Past Prison Sentences							
	Gender		Race or Ethnicity		Judicial District			
	Category	Percent	Category	Percent	No.	Percent	No.	Percent
4–8 (Definition of Position of Authority) <sup>1</sup>	Male	100%	White	64.7%	1	17.6%	6	5.9%
	Female	0%	Black	23.5%	2	0.0%	7	11.8%
			Am. Indian	0.0%	3	5.9%	8	5.9%
			Hispanic	5.9%	4	5.9%	9	17.6%
			Asian	5.9%	5	0.0%	10	29.4%

<sup>1</sup>Demographic characteristics are based on known demographic characteristics of the 17 offenders receiving prison sentences from 2013–2017 for first degree CSC under Minn. Stat. § 609.342 subd. 1(b). (Source: MSGC monitoring data 2013–2017.)

Bill Sections (Amended Provisions)	Demographic Characteristics of Past Prison Sentences							
	Gender		Race or Ethnicity		Judicial District			
	Category	Percent	Category	Percent	No.	Percent	No.	Percent
7–8 (Statutory Rape Mistake-of-Age Defense Repeal) <sup>2</sup>	Male	97%	White	63.6%	1	11.2%	6	6.5%
	Female	3%	Black	12.1%	2	2.8%	7	12.1%
			Am. Indian	11.2%	3	15.0%	8	6.5%
			Hispanic	10.3%	4	6.5%	9	19.6%
			Asian	2.8%	5	7.5%	10	12.1%
9 (Statute of Limitations Repeal) <sup>3</sup>	Male	99%	White	37.6%	1	9.2%	6	5.2%
	Female	1%	Black	40.5%	2	13.9%	7	9.2%
			Am. Indian	8.7%	3	8.7%	8	4.6%
			Hispanic	10.4%	4	29.5%	9	7.5%
			Asian	2.3%	5	4.0%	10	8.1%

If that assumption is accurate, it is estimated that the demographic characteristics of the occupants of the prison beds resulting from this bill would be as follows.

- **Gender:** Male (99%); and Female (1%).
- **Race & Ethnicity:** White (57%); Black (25%); American Indian (5%); Hispanic (8%); Asian (4%).
- **Judicial District:** First (14%); Second (5%); Third (9%); Fourth (12%); Fifth (3%); Sixth (6%); Seventh (11%); Eighth (6%); Ninth (15%); and Tenth (19%).

Table 5, on page 6, shows the demographic change in the prison population that would result from the enactment of this bill, if the assumption stated above is accurate.

<sup>2</sup>Demographic characteristics are based on known demographic characteristics of the 107 offenders receiving prison sentences from 2013–2017 for third and fourth degree CSC under the statutory rape clauses, Minn. Stat. §§ 609.344 and 609.345, subs. 1(b). (Source: MSGC monitoring data 2013–2017.)

<sup>3</sup>Demographic characteristics are based on known demographic characteristics of the 173 offenders sentenced from 2013–2017 for first-fourth degree CSC where MOC codes indicate that victim was an adult acquaintance of the assailant, pursuant fiscal note’s assumption that only such cases would be affected by the SOL repeal. (Source: MSGC monitoring data 2013–2017.)

Table 5. Minnesota’s Existing Annual Prison Population, Estimated Change in Prison Beds Needed, and Estimated Resulting Annual Prison Population, by Gender, Race and Ethnicity, and Judicial District

	Prison Population			Estimated Change in Prison Beds Needed*		Estimated Resulting Prison Population*					
	MSGC Category	2017 Adult Inmate Population				No.	%	No.	%	% -point change relative to other categories**	Estimated resulting rate per 100,000*†
		No.	%	Rate per 100,000†							
	Male	9,374	92.7%	422	+25.7	98.9%	9,400	92.7%		423	+0.3%
	Female	737	7.3%	32	+0.3	1.1%	737	7.3%		32	0.0%
Race & Ethnicity	White	4,788	47.4%	128	+14.8	57.1%	4,803	47.4%		128	+0.3%
	Black	3,463	34.2%	1238	+6.5	25.0%	3,470	34.2%		1,240	+0.2%
	American Indian	967	9.6%	1377	+1.4	5.4%	968	9.6%		1,379	+0.1%
	Hispanic	601	5.9%	296	+2.2	8.3%	603	6.0%	+0.1%	297	+0.4%
	Asian	274	2.7%	117	+1.1	4.1%	275	2.7%		117	+0.4%
Judicial District	First	861	8.5%	137	+3.5	13.6%	865	8.5%		137	+0.4%
	Second	1,304	12.9%	296	+1.2	4.5%	1,305	12.9%		297	+0.1%
	Third	769	7.6%	199	+2.4	9.1%	771	7.6%		199	+0.3%
	Fourth	2,540	25.1%	249	+3.2	12.4%	2,543	25.1%		249	+0.1%
	Fifth	448	4.4%	192	+0.8	3.1%	449	4.4%		192	+0.2%
	Sixth	568	5.6%	270	+1.5	5.9%	570	5.6%		270	+0.3%
	Seventh	1,098	10.9%	280	+2.9	11.2%	1,101	10.9%		280	+0.3%
	Eighth	293	2.9%	227	+1.5	5.7%	294	2.9%		229	+0.5%
	Ninth	1,088	10.8%	395	+4.0	15.4%	1,092	10.8%		397	+0.4%
	Tenth	1,034	10.2%	133	+4.9	19.0%	1,039	10.2%		134	+0.5%
	<b>Total</b>	<b>10,111</b>	<b>100%</b>	<b>225</b>	<b>+26.0</b>	<b>100%</b>	<b>10,137</b>	<b>100%</b>		<b>226</b>	<b>+0.3%</b>

\* This table’s projections assume that future offenders’ demographic characteristics will be similar to past offenders, as stated on page **Error! Bookmark not defined.**. The accuracy of these projections will therefore vary according to the accuracy of these assumptions.

† Rate per 100,000 residents age 15 and older, as shown on Table 1, “General Population” (2017 U.S. Census Bureau Estimate).

\*\* I.e., the expected change, in percentage points, of the category’s share of the annual prison population relative to the other demographic categories.

# Appendix: Historical Demographic Data

The following figures illustrate the change in the state’s population, imprisonment rates, and felony sentencing rates for the period 2002 to 2017. Rates are per 100,000 Minnesota residents age 15 and older.

## Estimated Population, Age 15 and Older

Figure 1. Minnesota Residents Age 15 and Older, Estimated 2002-17, by Gender and Total



Figure 2. Minnesota Residents Age 15 and Older, Estimated 2002-17, by Race and Ethnicity

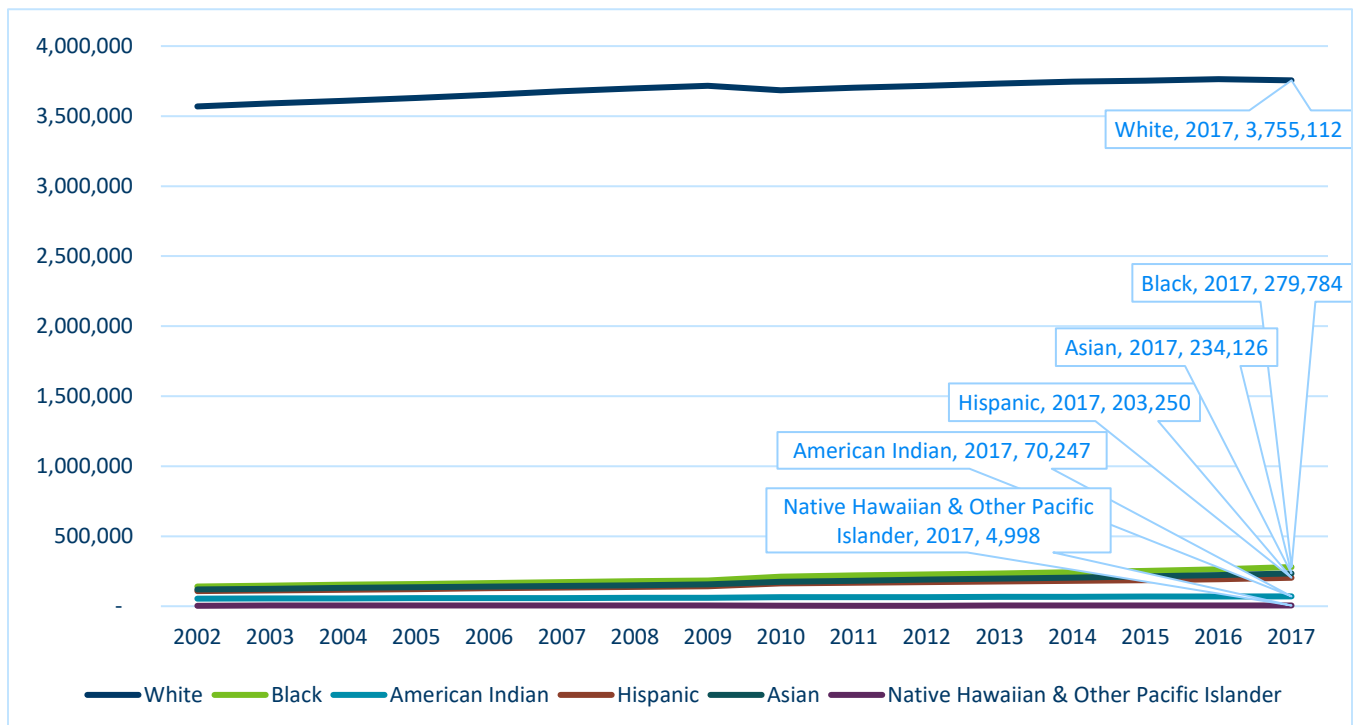
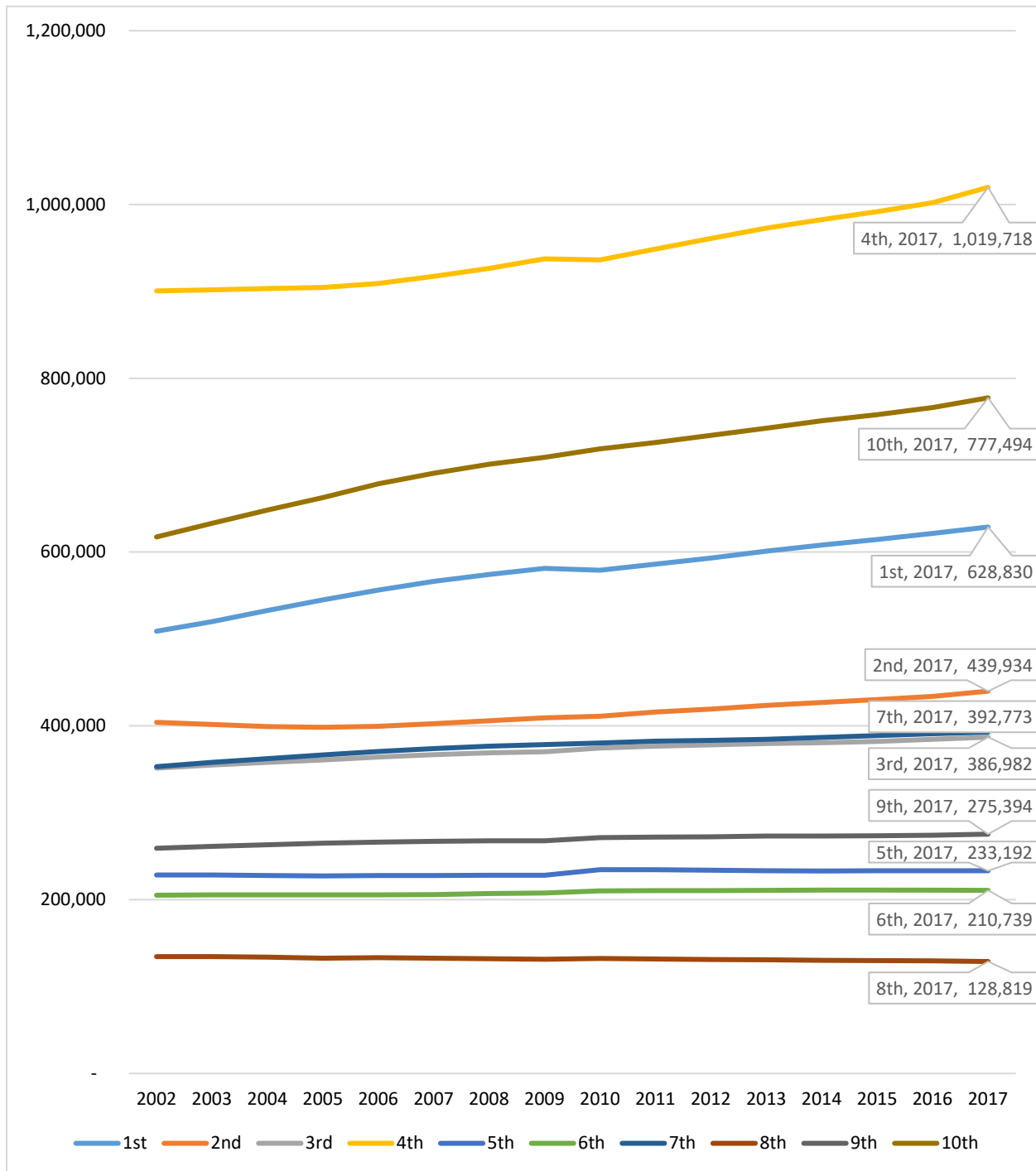


Figure 3. Minnesota Residents Age 15 and Older, Estimated 2002-17, by Judicial District



Notes for Figure 1 through Figure 3: Minnesota residents age 15 and older on July 1 of the respective year. Source of residential population estimates: U.S. Census Bureau. Except for Hispanic residents, residents of more than one race are counted in more than one category.



## Felony Sentencing Rates

Figure 4. Felony Sentencing Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Gender and Total

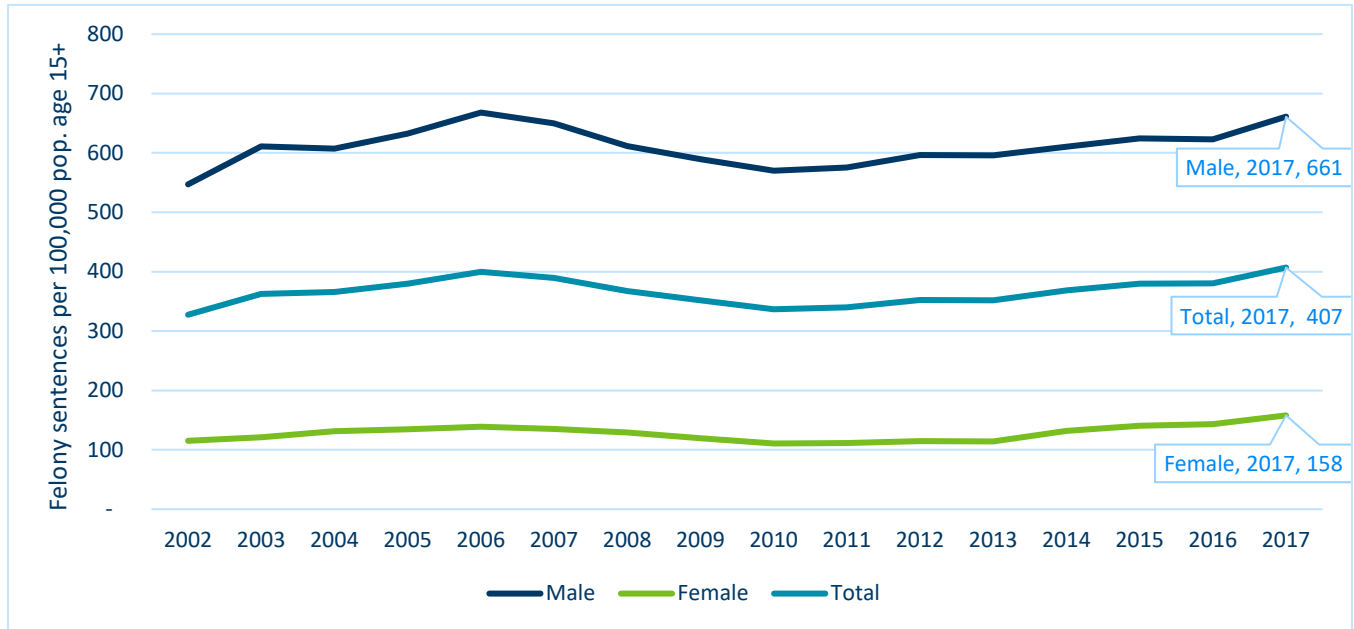


Figure 5. Felony Sentencing Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Race and Ethnicity

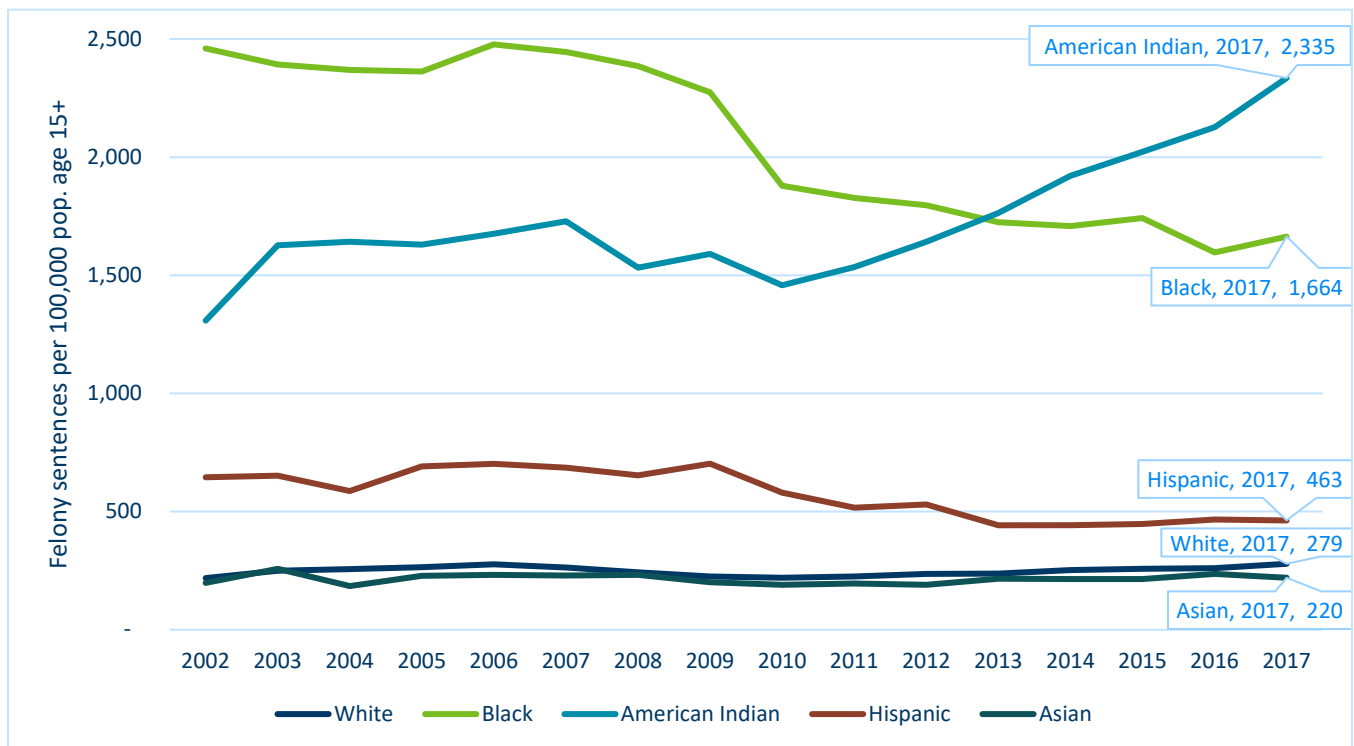
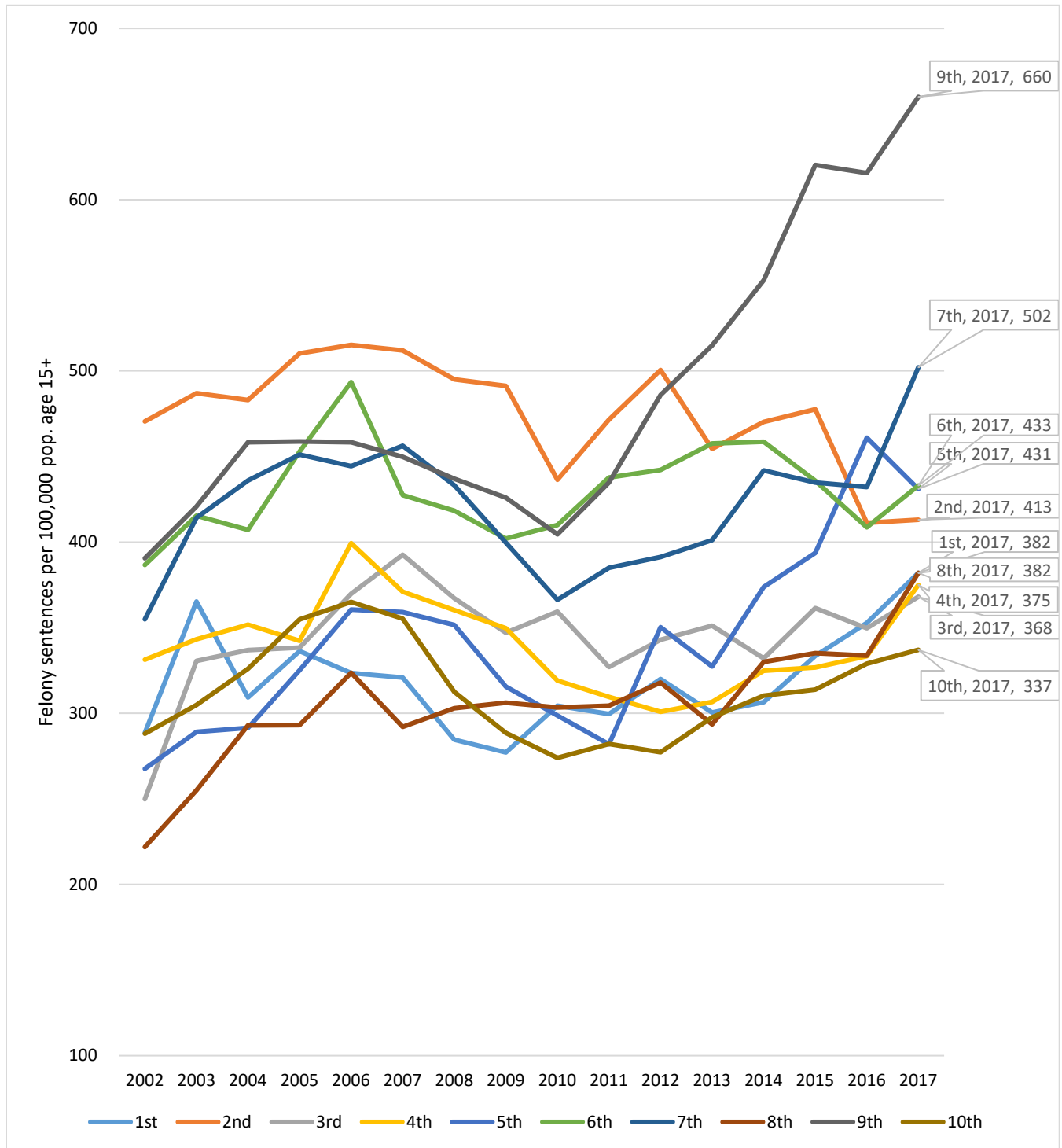


Figure 6. Felony Sentencing Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Judicial District



Notes for Figure 4 through Figure 6: Rates are felony offenders sentenced annually per 100,000 Minnesota residents age 15 and older on July 1 of the respective year. Source of residential population estimates: U.S. Census Bureau. Except for Hispanic residents, residents of more than one race are counted in more than one category. Other/unknown and Hawaiian/Pacific Islander are excluded.

## Imprisonment Rates

Figure 7. Imprisonment Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Gender and Total

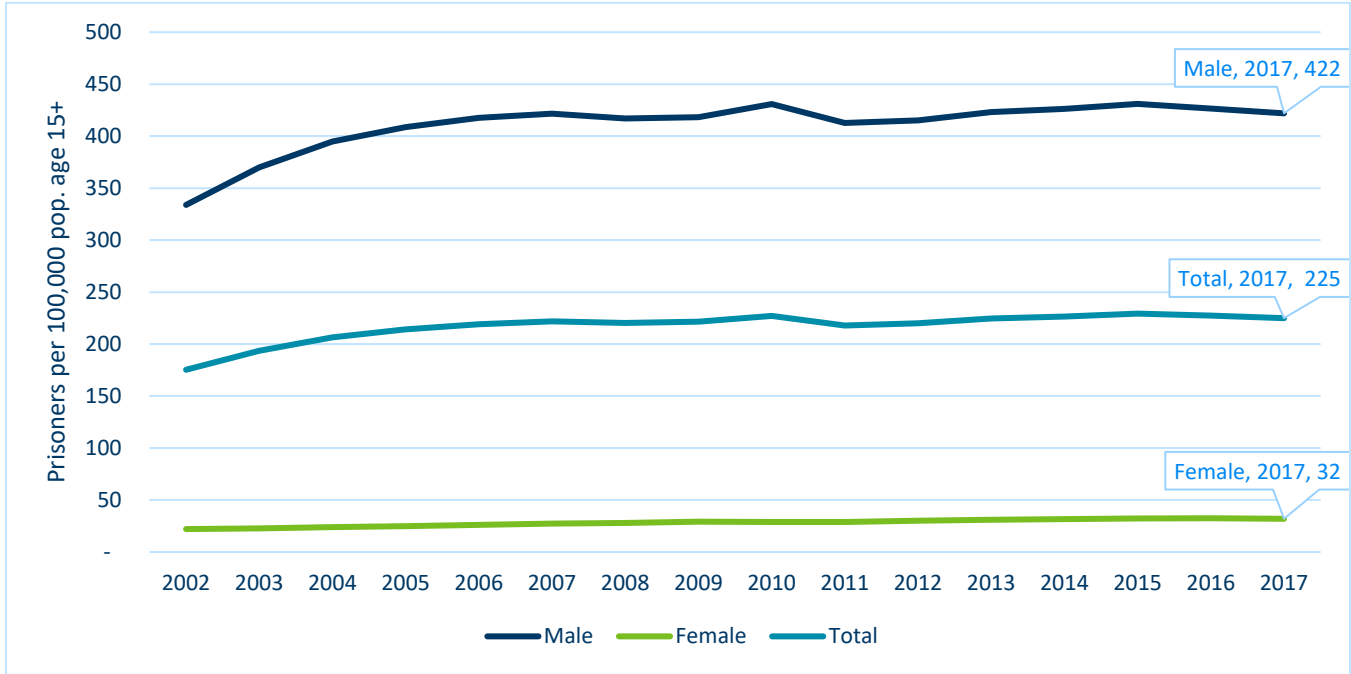


Figure 8. Imprisonment Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Race and Ethnicity

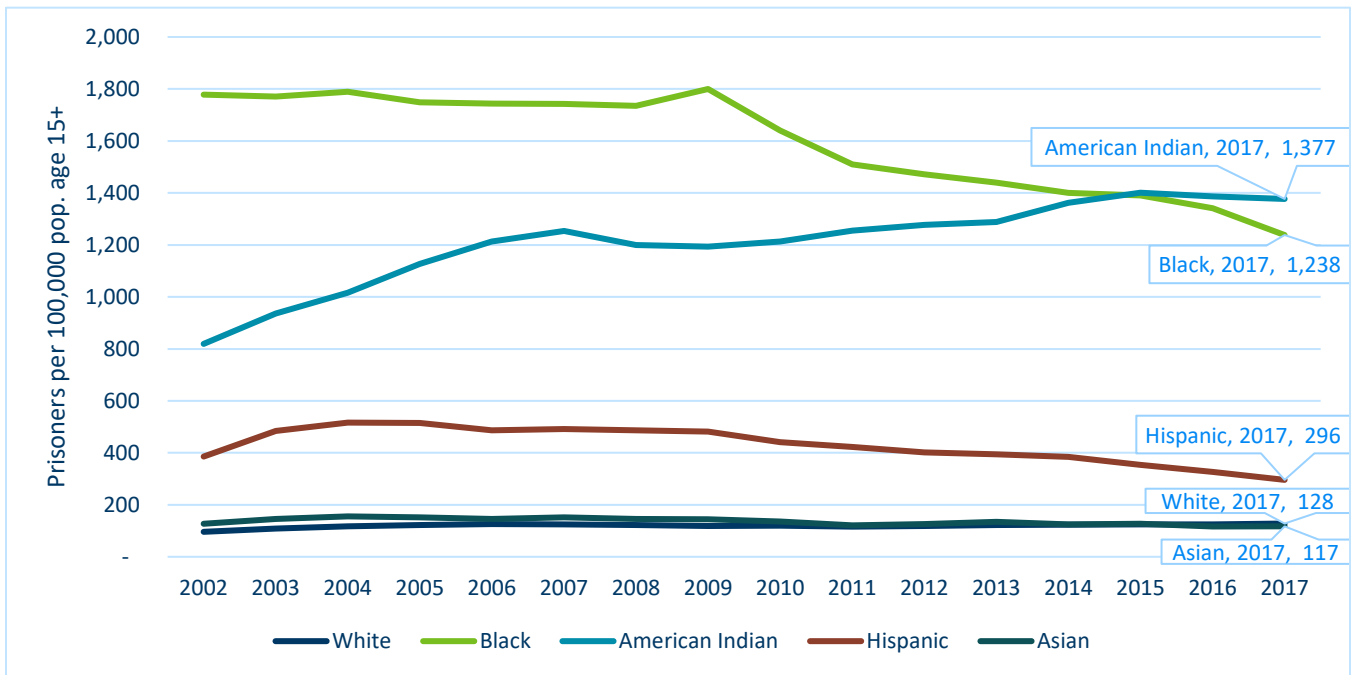
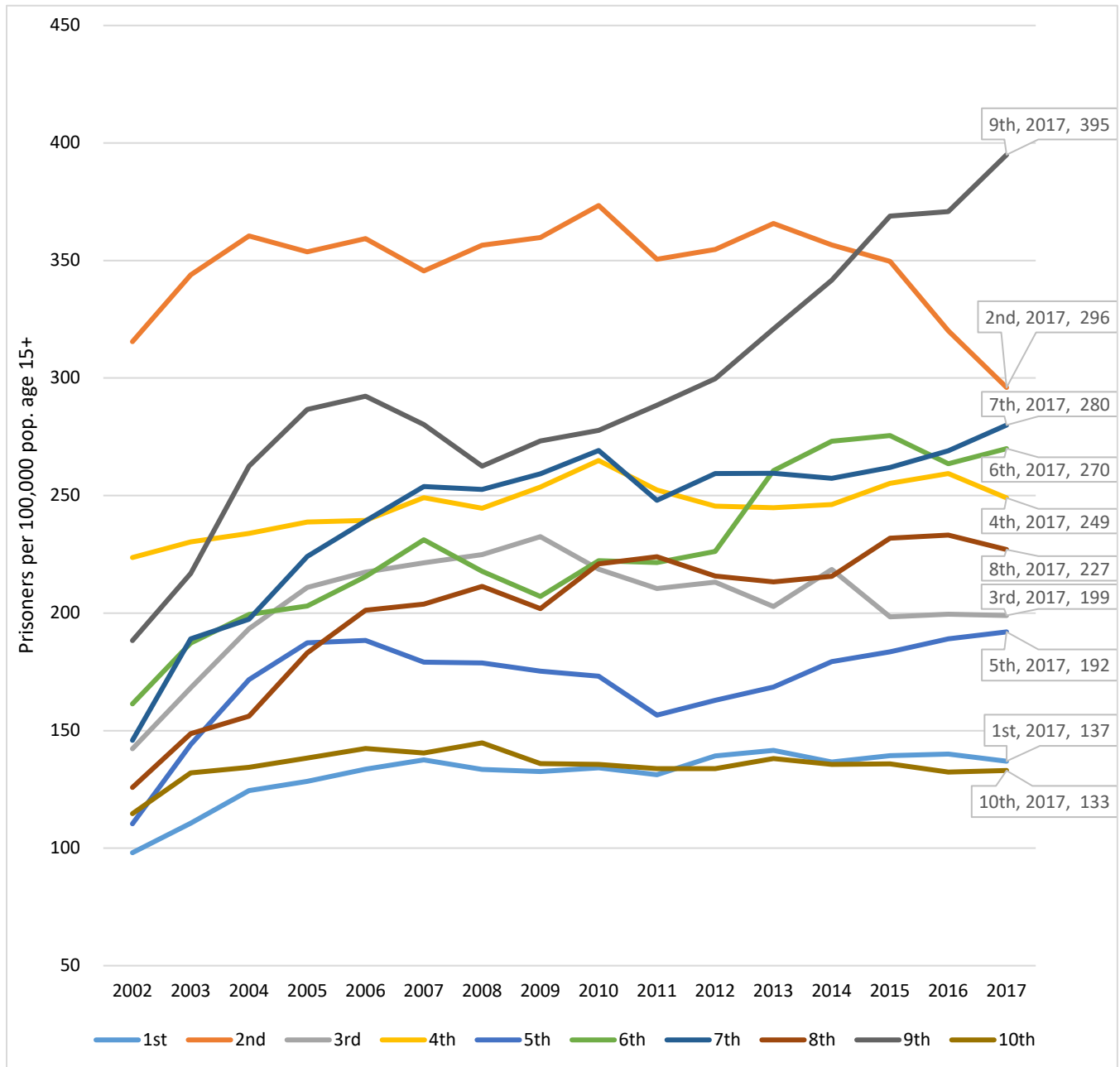


Figure 9. Imprisonment Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Judicial District



Notes for Figure 7 through Figure 9: Rates are prisoners on July 1 of the respective year per 100,000 Minnesota residents age 15 and older on the same date. Source of prison population counts: Minn. Dep't of Corrections. Source of residential population estimates: U.S. Census Bureau. Except for Hispanic residents, residents of more than one race are counted in more than one category. Other/unknown and Hawaiian/Pacific Islander are excluded, except for 2005-07, in which case they were included in the Asian prison population counts. Not all prisoners were associated with a particular judicial district.