

## Demographic Impact Statement

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### Senate File 111-0 (Excluding Sections 6, 7, and 18)

#### *Criminal Sexual Conduct Crime Modification*

#### **Statement Date: March 6, 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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SF 111 amends Criminal Sexual Conduct, Surreptitious Intrusion, Use of Minor in a Sexual Performance, and Child Pornography provisions.

Sections 1 and 9 – Surreptitious Intrusion: Minn. Stat. § 609.746: A subsequent violation of subdivision 1 or a violation against a minor is currently a felony with a statutory maximum of two years under subd. 1(e). This bill adds subd. 1(f) which creates a felony penalty with a statutory maximum of four years for violations of paragraph (b) or (d) against a minor under the age of 18; if the person is more than 36 months older than the minor victim; the person did so knowing or having reason to know that the minor is present; and the violation is committed with sexual intent. Violations under the new subd. 1(f) are added to the list of offenses for which persons are required to register as predatory offenders under section 243.166.

Section 3 to 7 – Definition of Position of Authority: Minn. Stat. § 609.341: The definition of position of authority in Minn. Stat. § 609.341, subd. 10 is amended to include persons in current or recent positions of authority. The definition is expanded to include persons who have or assume positions of authority within 120 days immediately preceding the act. This expanded definition is applied to first through fourth degree criminal sexual conduct offenses.

Sections 6 and 7 – Peace Officers: Minn. Stat. §§ 609.344 and 609.345: This bill amends third- and fourth-degree criminal sexual conduct (CSC) offenses under Minn. Stat. §§ 609.344 and 609.345, by adding a clause criminalizing sexual activity between a peace officer and a complainant who is in custody. Consent by the complainant is not a defense. This paragraph does not apply to any penetration of the mouth, genitals, or anus during a lawful search.

Section 8 – Fifth-Degree Criminal Sexual Conduct: Minn. Stat. § 609.3451: This bill amends Minn. Stat. § 609.3451, subdivision 1 paragraph (1) by eliminating the exclusion of “the intentional touching of the clothing covering the immediate area of the buttocks” from the definition of “sexual contact.”

Sections 10 to 12 and 14 and 15 – Aggravated Violations of Use of Minor in Sexual Performance and Child Pornography Offenses: Minn. Stat. § 617.246 or 617.247: This bill increases penalties for certain aggravated violations of use of minors in a sexual performance and child pornography offenses. The three aggravated circumstances are these: when the person has a prior conviction or delinquency adjudication for violating Minn.

Stat. § 617.246 or 617.247; when the violation occurs when the person is a registered predatory offender; or when the violation involved a minor under the age of 13 years.

Section 10 to 13 – Use of Minor in Sexual Performance: Minn. Stat. § 617.246: This bill amends Minn. Stat. § 617.246 subdivisions 2, 3 and 4 by increasing the statutory maximum sentence from ten years to 15 years if the offense involves aggravated circumstances. The bill increases the mandatory conditional release term applicable to those imprisoned for violations of Minn. Stat. § 617.246 from 10 to 15 years if the offender had previously been convicted of a criminal sexual conduct in the first- through fifth-degree, criminal sexual predatory conduct, use of minors in sexual performance, or child pornography.

Sections 14 to 16 – Child Pornography: Minn. Stat. § 617.247: The bill amends Minn. Stat. § 617.247, subd. 3 (dissemination of child pornography), by increasing the statutory maximum sentence from seven to 15 years if the offense involves aggravated circumstances. The bill amends Minn. Stat. § 617.247, subd. 4 (possession of child pornography), by increasing the statutory maximum sentence from five to 10 years if the offense involves aggravated circumstances.

The bill increases the mandatory conditional release term applicable to those imprisoned for violations of Minn. Stat. § 617.247 from ten to 15 years if the offender had previously been convicted of a criminal sexual conduct in the first- through fifth-degree, criminal sexual predatory conduct, use of minors in sexual performance, or child pornography.

Section 18 – Voluntary Relationships: Minn. Stat. § 609.349: This bill repeals Minn. Stat. § 609.349, which provides a voluntary relationship defense for criminal sexual conduct crimes. The bill would eliminate the marital defense now applicable to statutory rape cases, as well as the marital/cohabitation defenses now applicable to criminal sexual conduct cases involving complaints who are mentally impaired, mentally incapacitated, physically helpless, or recipients of special transportation.

This bill is effective August 1, 2019, and apply to crimes committed on or after that date.

## Estimated Impact

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In its fiscal note, MSGC staff estimated that the bill will result in 24 new felony offenders annually as displayed in Table 1.

*Table 1. Number of New Felony Offenders*

Change to	Minn. Statute §	Number New Felony Offenders
Surreptitious Intrusion Required to Register as Predatory Offenders	609.746	7
Definition of Position of Authority	609.342 & 609.343 1(b) 609.345 1(b)-POA only 609.644 & 609.345 1 (e)	5
CSC offenses committed by Peace Officers	609.344 and 609.345	2
Fifth-Degree CSC	609.3451	1

Change to	Minn. Statute §	Number New Felony Offenders
Use of Minor in Sexual Performance	617.246	0
Child Pornography	617.247	0
Voluntary Relationships	609.349	9

MSGC staff estimated that the bill will result in an eventual prison bed impact of 55 beds, as displayed in Table 2.

*Table 2. Prison Bed Impact*

Change to	Minn. Statute §	Number New Prison Beds
Surreptitious Intrusion Required to Register as Predatory Offenders	609.746	8
Definition of Position of Authority	609.342 & 609.343 1(b) 609.345 1(b)-POA only 609.644 & 609.345 1 (e)	12
CSC offenses committed by Peace Officers	609.344 and 609.345	3
Fifth-Degree CSC	609.3451	0
Use of Minor in Sexual Performance	617.246	4
Child Pornography	617.247	17
Voluntary Relationships	609.349	11

## 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 5 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		
U.S. Census Category	2017 Estimated Pop. Age 15 & Older		MSGC Category	Offenders Sentenced in 2017		2017 Adult Inmate Population	
	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%
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%
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 24 new felony offenders annually. Because the anticipated number of new convictions is less than the 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 an eventual increase in prison bed demand of 55 beds a year.

No attempt is made to estimate the demographic characteristics of the occupants of 14 of those prison beds; namely, those attributable to sections 6, 7, and 18 of the bill. Because the demographic characteristics of offenders expected to be imprisoned under those provisions—relating to offenses by peace officers and the repeal of the voluntary relationships statute—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 41 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, Senate File 111-0 (Excluding Sections 6, 7, and 18)*

Bill Sections (Amended Provisions)	Demographic Characteristics of Past Prison Sentences							
	Gender		Race or Ethnicity		Judicial District			
	Category	Percent	Category	Percent	No.	Percent	No.	Percent
1 & 9 (Surreptitious Intrusion Required to Register as Predatory Offenders) <sup>1</sup>	Male	100%	White	85.7%	1	7.1%	6	7.1%
	Female	0%	Black	0%	2	7.1%	7	21.4%
			Am. Indian	7.1%	3	7.1%	8	0%
			Hispanic	7.1%	4	7.1%	9	14.2%
			Asian	0%	5	0%	10	35.7%

<sup>1</sup> Demographic characteristics are based on known demographic characteristics of the 14 offenders sentenced from 2015–2017 for surreptitious intrusion under Minn. Stat. § 609.344 subd. 1(e) who were found to meet the criteria for the new offense. (Source: MSGC monitoring data 2015–2017.)

Bill Sections (Amended Provisions)	Demographic Characteristics of Past Prison Sentences							
	Gender		Race or Ethnicity		Judicial District			
	Category	Percent	Category	Percent	No.	Percent	No.	Percent
3–7 (Definition of Position of Authority) <sup>2</sup>	Male	100%	White	64.7%	1	17.6%	6	5.9%
	Female	0%	Black	23.5%	2	0%	7	11.8%
			Am. Indian	0%	3	5.9%	8	5.9%
			Hispanic	5.9%	4	5.9%	9	17.6%
			Asian	5.9%	5	0%	10	29.4%
10–13 (Use Minors) <sup>3</sup>	Male	100%	White	100%	1	50%	6	50%
14–16 (Child Pornography) <sup>4</sup>	Male	100%	White	94.2%	1	20.4%	6	2.9%
	Female	0%	Black	1.9%	2	9.7%	7	8.7%
			Am. Indian	1%	3	7.8%	8	1.9%
			Hispanic	1.9%	4	26.2%	9	3.9%
			Asian	1%	5	4.9%	10	13.6%

If this 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 (100%); and Female (0%).
- **Race & Ethnicity:** White (85%); Black (8%); American Indian (2%); Hispanic (4%); Asian (2%).
- **Judicial District:** First (20%); Second (6%); Third (7%); Fourth (16%); Fifth (3%); Sixth (10%); Seventh (10%); Eighth (1%); Ninth (7%); and Tenth (22%).

Table 5, on page 7, 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 17 offenders receiving prison sentences from 2013–2017 for first degree CSC under Minn. Stat. § 609.342 subds. 1(b). (Source: MSGC monitoring data 2013-2017.)

<sup>3</sup> Demographic characteristics are based on known demographic characteristics of the four offenders sentenced from 2015–2017 for Use of Minors in a Sexual Performance under Minn. Stat. § 617.246 who were found to meet the criteria for the new increased statutory maximum. (Source: MSGC monitoring data 2015–2017.)

<sup>4</sup> Demographic characteristics are based on known demographic characteristics of the 103 offenders sentenced from 2016–2017 for Child Pornography offenses under Minn. Stat. § 617.247 who were found to meet the criteria for the new increased statutory maximum. (Source: MSGC monitoring data 2016–2017.)

Table 5. Minnesota’s Existing Inmate Population, Estimated Change in Prison Beds, and Estimated Resulting Prison Population, by Gender, Race and Ethnicity, and Judicial District, Senate File 111-0 (Excluding Sections 6, 7, and 18)

	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	+55.0	100%	9,429	92.8%	+0.1%	424	+0.6%
	Female	737	7.3%	32	0.0	0%	737	7.2%	-0.1%	32	0.0%
Race & Ethnicity	White	4,788	47.4%	128	+46.8	85%	4,835	47.6%	+0.2%	129	+1.0%
	Black	3,463	34.2%	1238	+4.4	8%	3,467	34.1%	-0.1%	1,239	+0.1%
	American Indian	967	9.6%	1377	+1.1	2%	968	9.5%	-0.1%	1,378	+0.1%
	Hispanic	601	5.9%	296	+2.2	4%	603	5.9%		297	+0.4%
	Asian	274	2.7%	117	+1.1	2%	275	2.7%		118	+0.4%
Judicial District	First	861	8.5%	137	+11.0	20%	872	8.6%	+0.1%	139	+1.3%
	Second	1,304	12.9%	296	+3.3	6%	1,307	12.9%		297	+0.3%
	Third	769	7.6%	199	+3.9	7%	773	7.6%		200	+0.5%
	Fourth	2,540	25.1%	249	+8.8	16%	2,549	25.1%		250	+0.3%
	Fifth	448	4.4%	192	+1.7	3%	450	4.4%		193	+0.4%
	Sixth	568	5.6%	270	+5.5	10%	574	5.6%		272	+1.0%
	Seventh	1,098	10.9%	280	+5.5	10%	1,104	10.9%		281	+0.5%
	Eighth	293	2.9%	227	+0.6	1%	294	2.9%		228	+0.2%
	Ninth	1,088	10.8%	395	+3.9	7%	1,092	10.7%	-0.1%	396	+0.4%
	Tenth	1,034	10.2%	133	+12.1	22%	1,046	10.3%	+0.1%	135	+1.2%
	<b>Total</b>	<b>10,111</b>	<b>100.0%</b>	<b>225</b>	<b>+55.0</b>	<b>100.0%</b>	<b>10,166</b>	<b>100%</b>		<b>226</b>	<b>+0.5%</b>

\* This table’s projections assume that future offenders’ demographic characteristics will be similar to past offenders, as stated on page 5. 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 page 4, “General Population” (2017 U.S. Census Bureau Estimate).

\*\* I.e., the expected change, in percentage points, of the category’s share of the annual felony 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

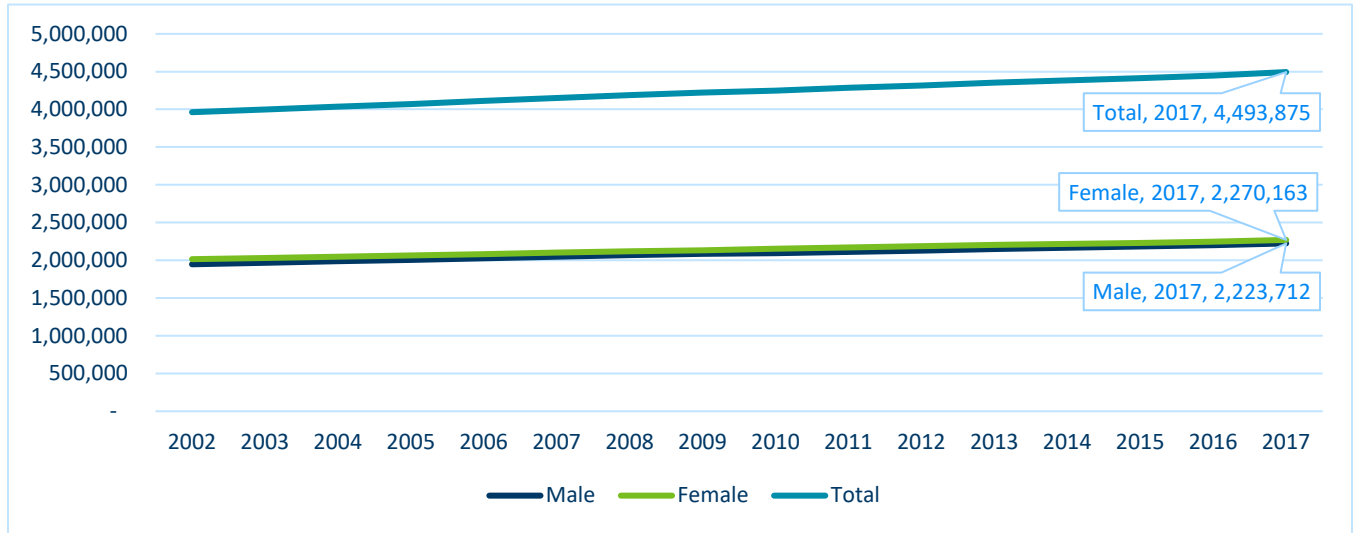


Figure 2. Minnesota Residents Age 15 and Older, Estimated 2002-17, by Race and Ethnicity

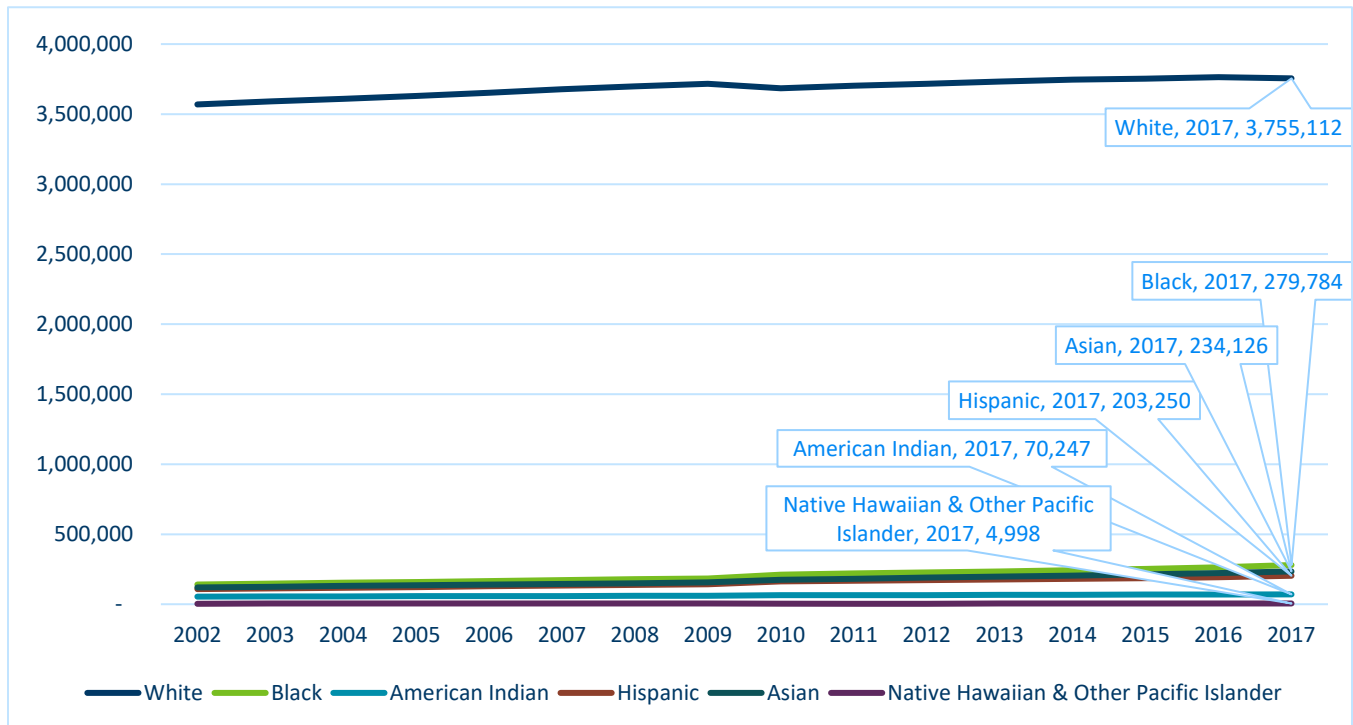
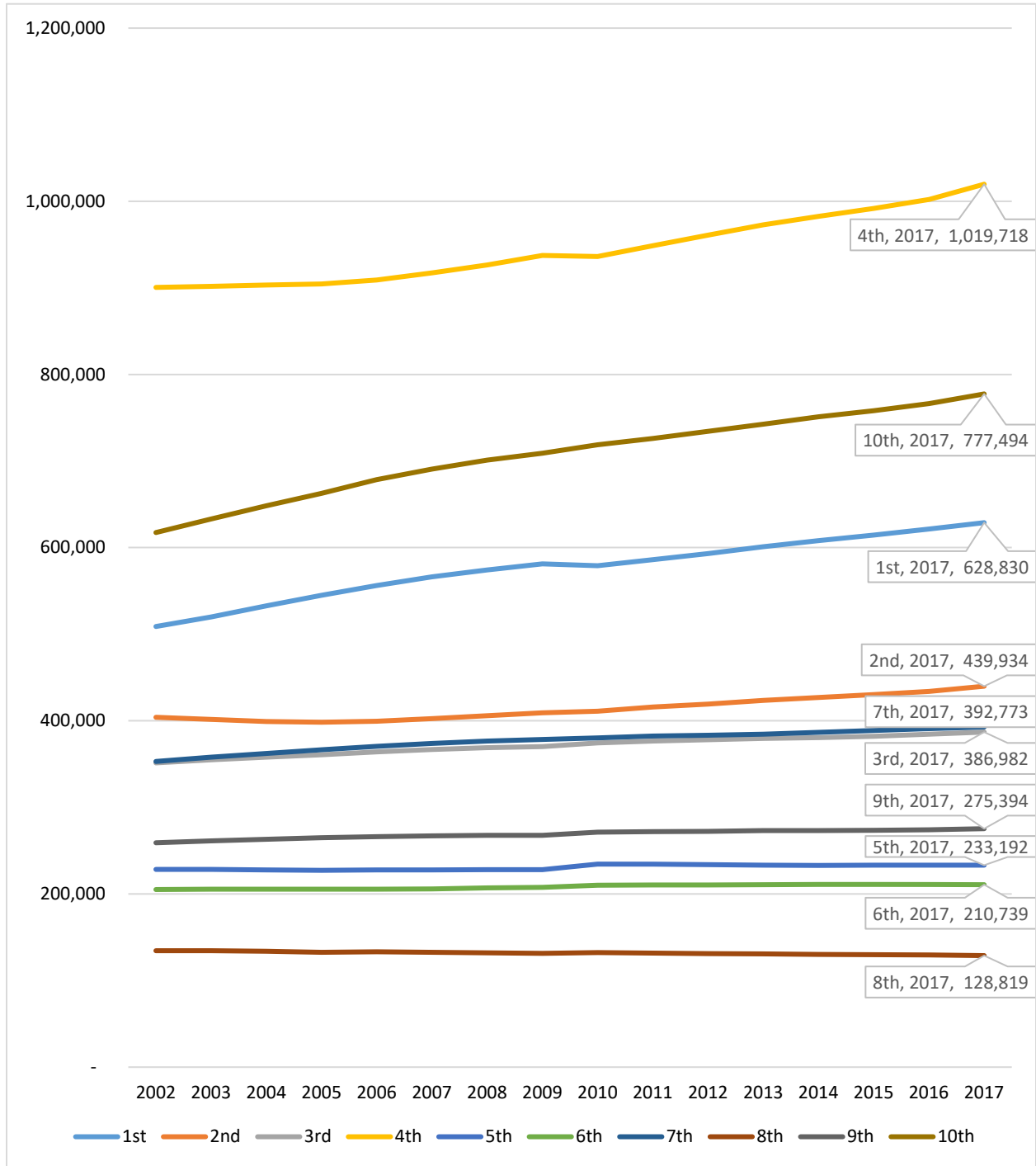




Figure 3. Minnesota Residents Age 15 and Older, Estimated 2002-17, by Judicial District



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

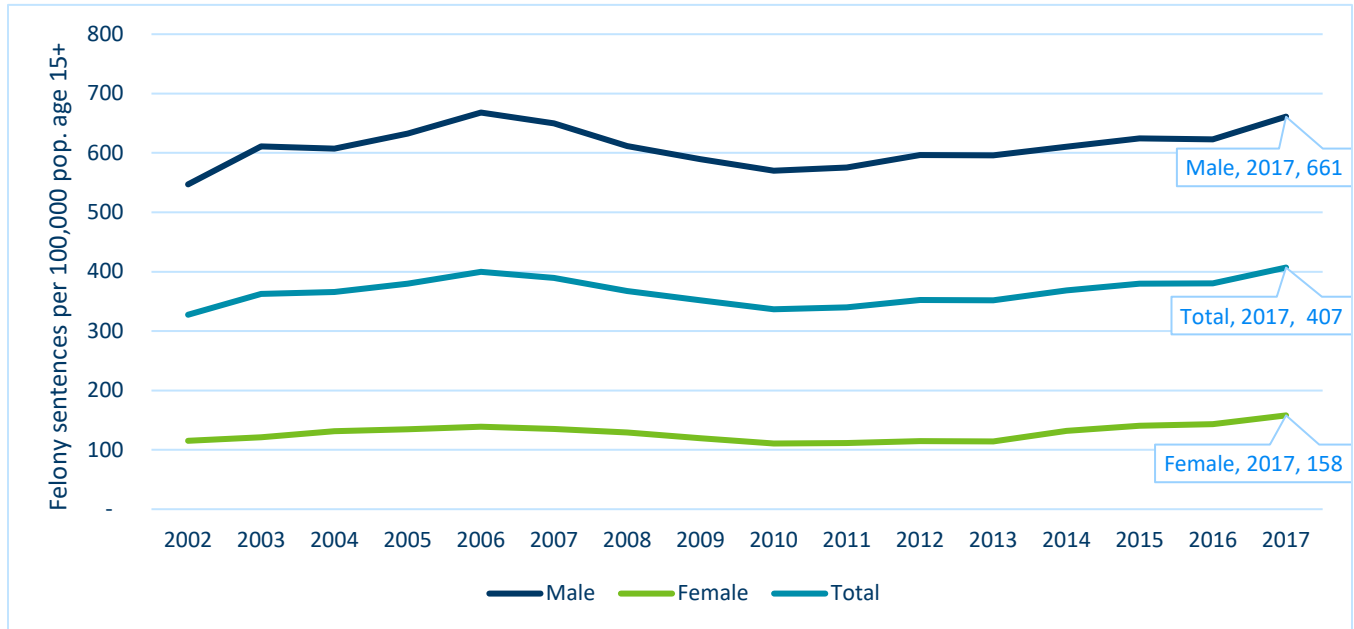


Figure 5. Felony Sentencing Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Race and Ethnicity

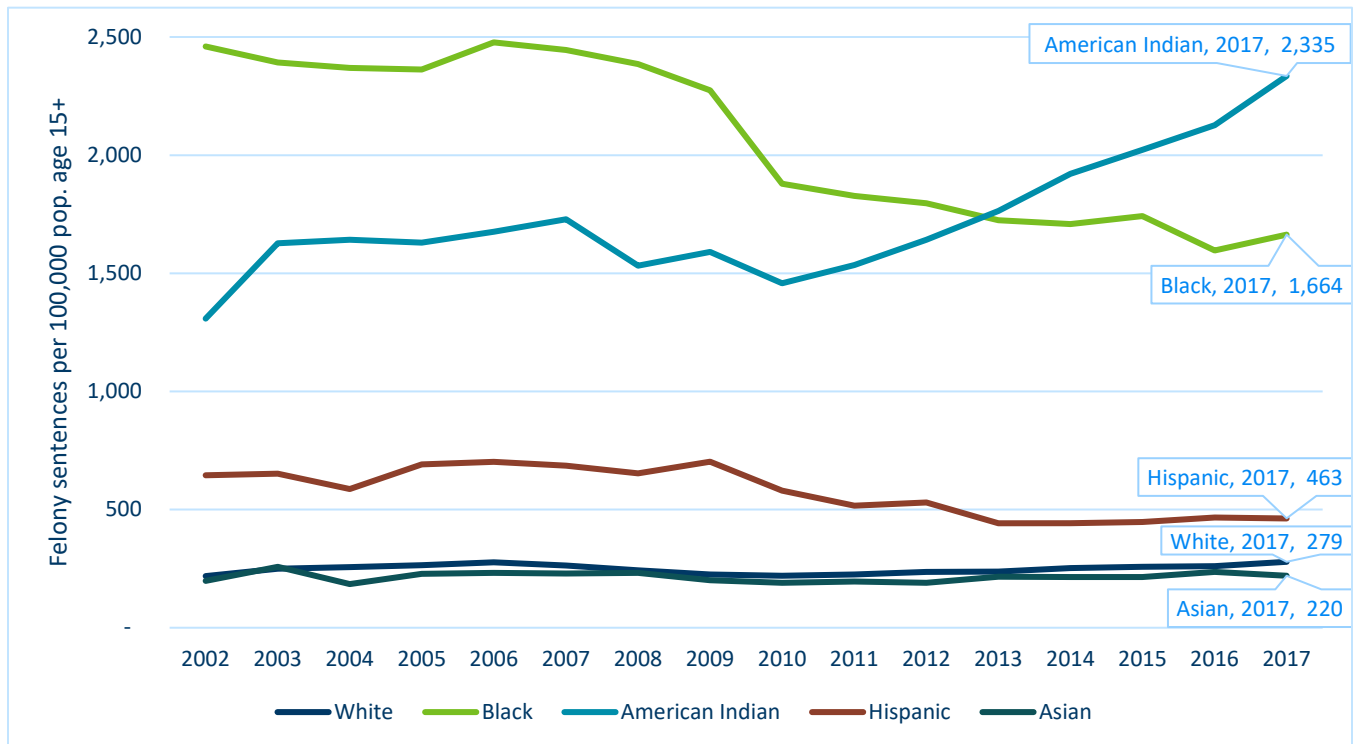
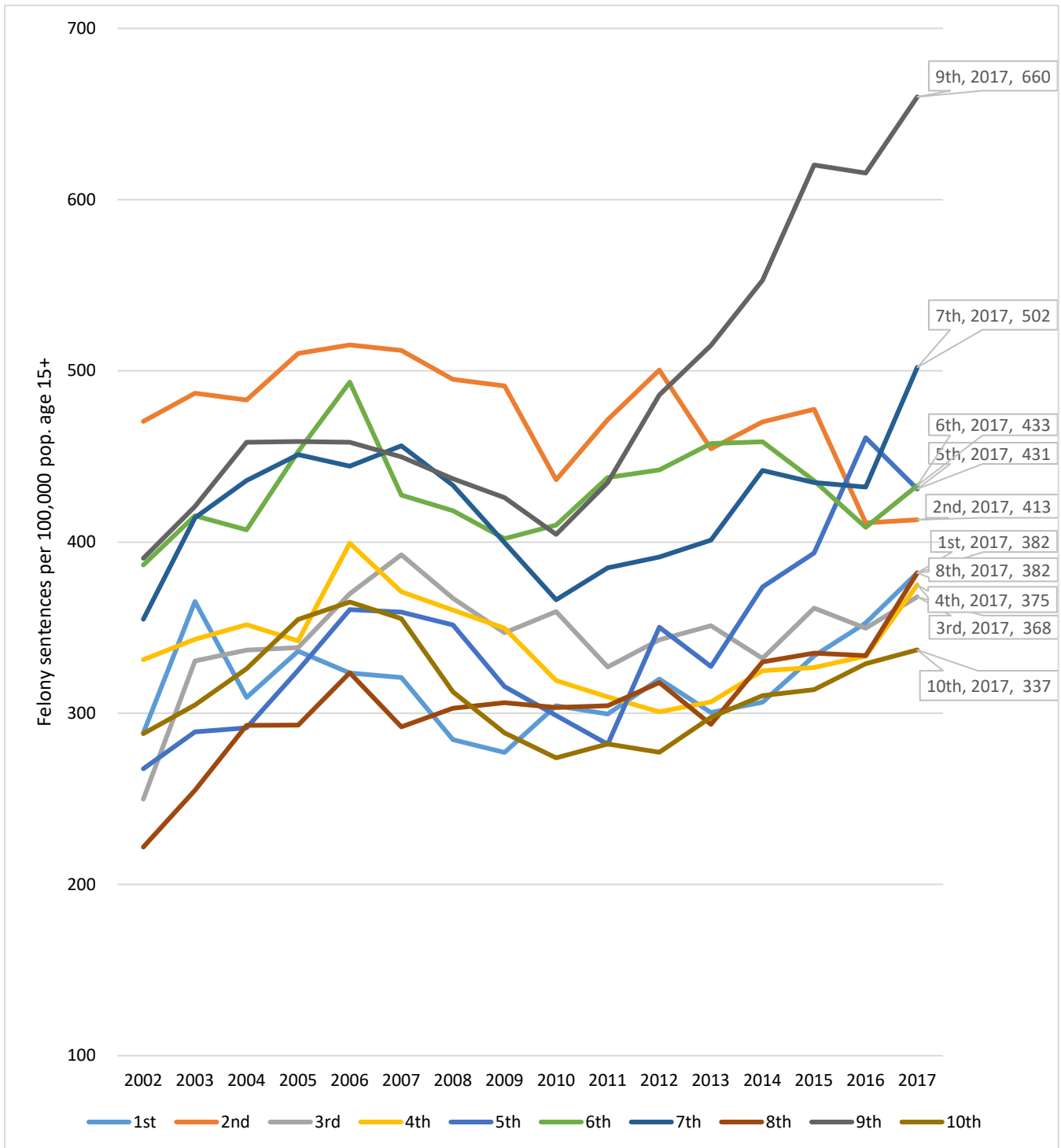


Figure 6. Felony Sentencing Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Judicial District



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

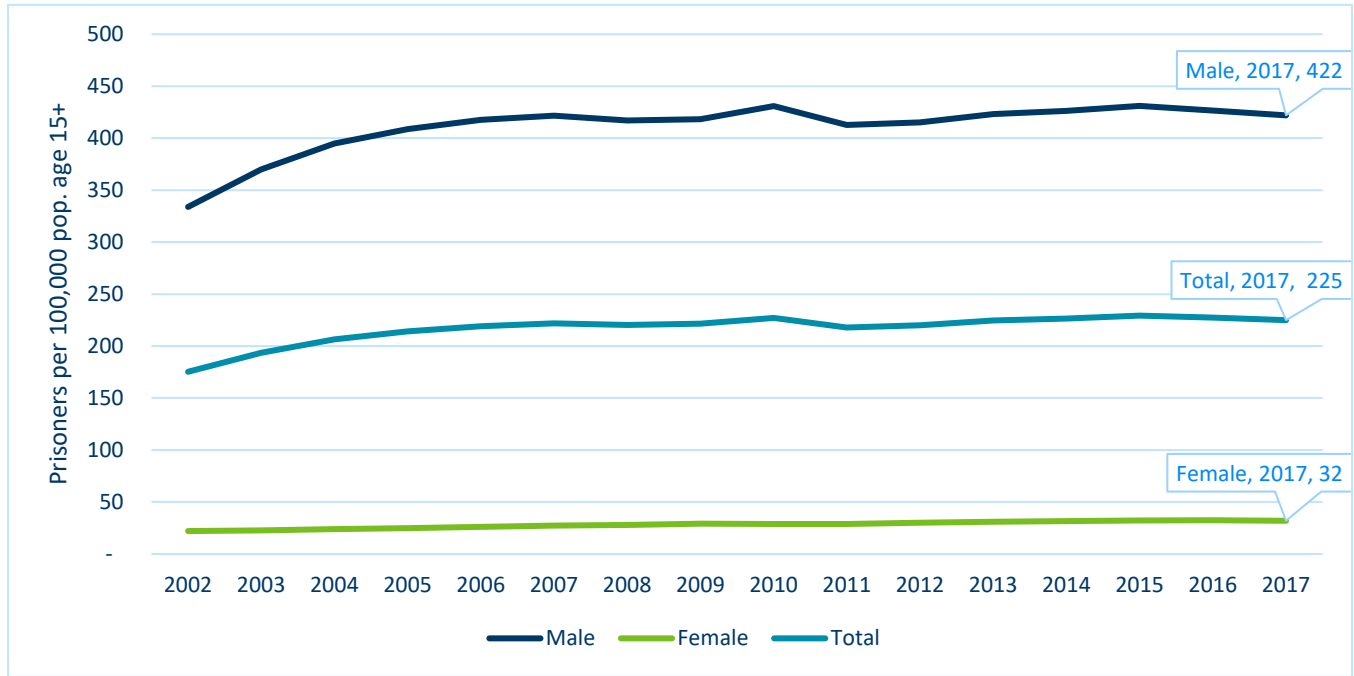


Figure 8. Imprisonment Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Race and Ethnicity

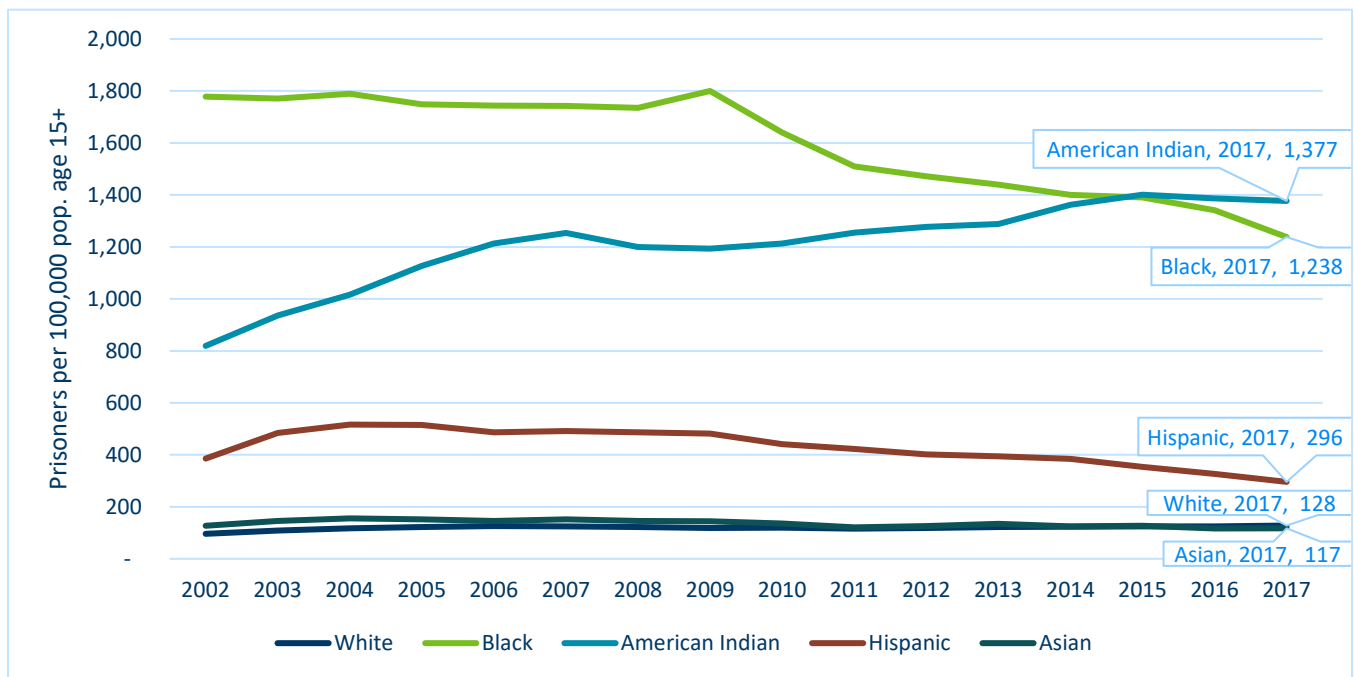
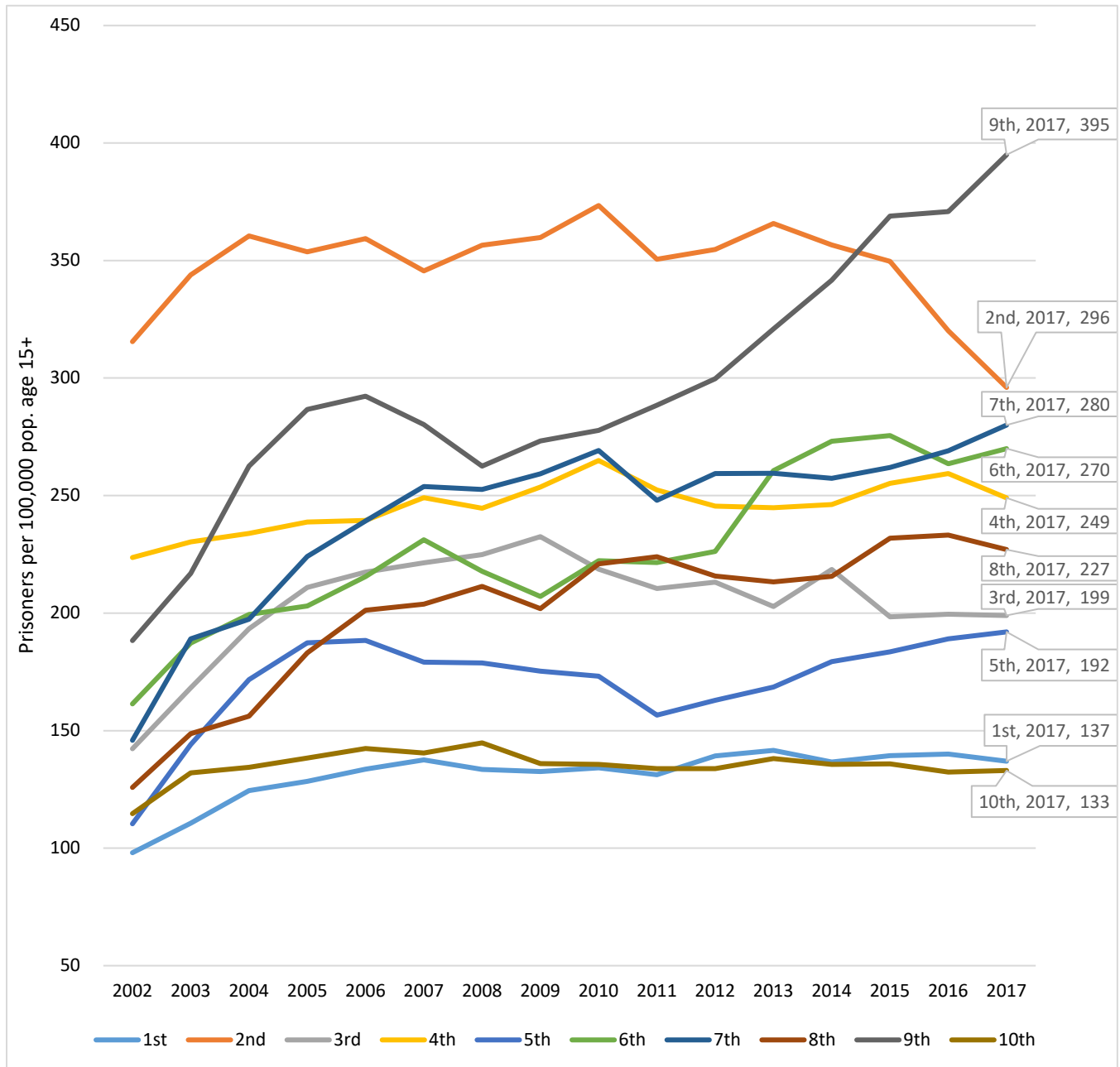


Figure 9. Imprisonment Rates per 100,000 Minnesota Residents Age 15 and Older, 2002-17, by Judicial District



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.