

MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Controlled Substance Offenses
Sentenced in 2015



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Minnesota Sentencing Guidelines Commission

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About This Report

This data report has been prepared by the research staff of the Minnesota Sentencing Guidelines Commission in fulfillment of the Commission's statutory role as a clearinghouse and information center for information on sentencing practices. This is not a policy document. Nothing in this report should be construed as a statement of existing policy or recommendation of future policy on behalf of the Commission itself, or as an authoritative interpretation of the Minnesota Sentencing Guidelines, Minnesota statutes, or case law.

Summary of 2015 Data

This report gives statistics concerning drug felonies and how they were sentenced in 2015, as well as outlining trends in sentencing drug offenses since the implementation of the Guidelines.

In 2015, there were 4,913 offenders sentenced for drug offenses (Figure 1), an increase of 12.6 percent over 2014 (Figure 2). The number of offenders sentenced for drug offenses grew each year from 2011 through 2015. For the four years prior to 2011, the number of drug offenses sentenced had decreased by seven or eight percent each year (Figure 2).

The number of first-degree offenses sentenced continued to rise in 2015 (as in 2011 through 2014), after declining from 2003 to 2010 (Figure 3). The number of offenders sentenced for third-degree offenses also increased (slightly), while the number sentenced for fifth-degree offenses increased by 20 percent. The number sentenced for second-degree, fourth-degree, and other drug offenses declined. The number of methamphetamine, heroin, and opium offenses went up while the number of cocaine cases went down. The number sentenced for marijuana and synthetic narcotic offenses increased only slightly (Figure 5).

The total incarceration rate for drug offenders sentenced was 93 percent, with 24 percent receiving a prison sentence and 69 percent getting up to one year in a local correctional facility as a condition of probation (Table 1). For those receiving an executed prison sentence, the average pronounced duration was 41 months (Table 2).

Among drug offenders recommended prison under the Guidelines, the total mitigated departure rate was 57 percent. This was higher than the mitigated departure rate for non-drug offenders recommended prison under the Guidelines (48%). Among drug offenders recommended prison under the Guidelines, 38 percent received a mitigated (downward) dispositional departure and were placed on probation – compared to 36 percent in 2014 (Figure 25) – and 20 percent received a shorter prison sentence than the Guidelines recommended (mitigated durational departure) (Figure 25). Among drug offenders who actually received prison sentences, 27 percent received a mitigated durational departure, compared to 28 percent in 2014 (Figure 18). This rate varied significantly by region (Figure 20).

Case Volume & Distribution¹

Volume of Cases

The number of felony offenders sentenced in 2015 totaled 16,763, an increase of approximately

¹ Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

four percent above the number of offenders sentenced in 2014. An illustration of the total number of felony offenders sentenced since 1981 can be found in MSGC's report, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the "Annual Summary" tab at mn.gov/sentencing-guidelines/reports. There were 4,913 felony offenders sentenced for drug offenses in 2015, an increase of 12.6 percent from 2014 and the largest number ever sentenced. (Figure 1). Figure 2 illustrates the percent change in the number of drug offenders sentenced over time. From 2006 through 2010, the number of drug offenders sentenced had decreased by seven or eight percent each year. From 2011-14, the number of drug offenders sentenced increased each year.

Figure 1. Number of Offenders Sentenced for Felony Drug Convictions, 1992-2015

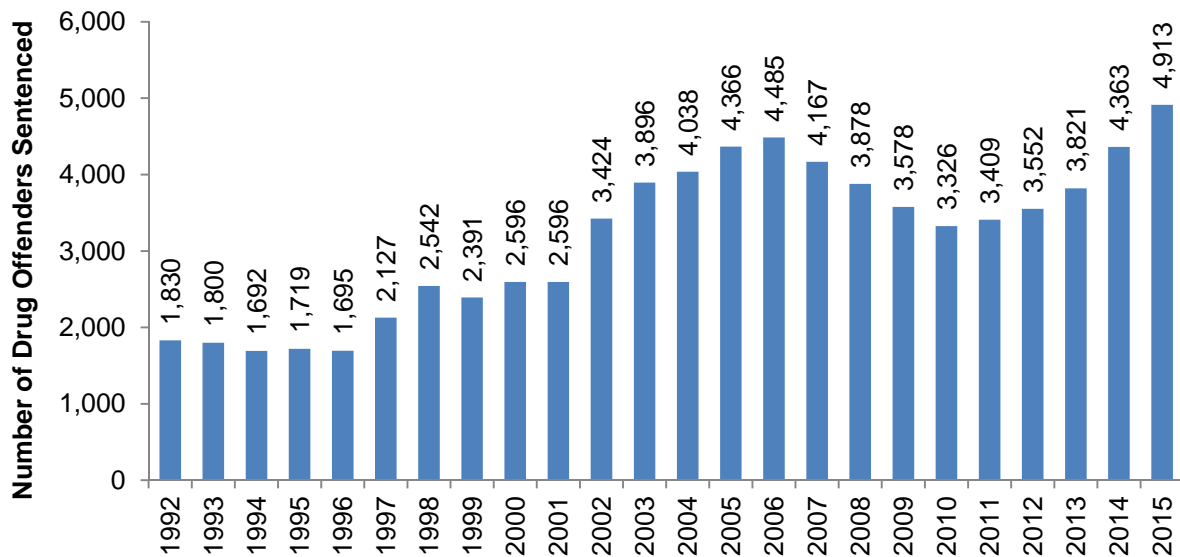
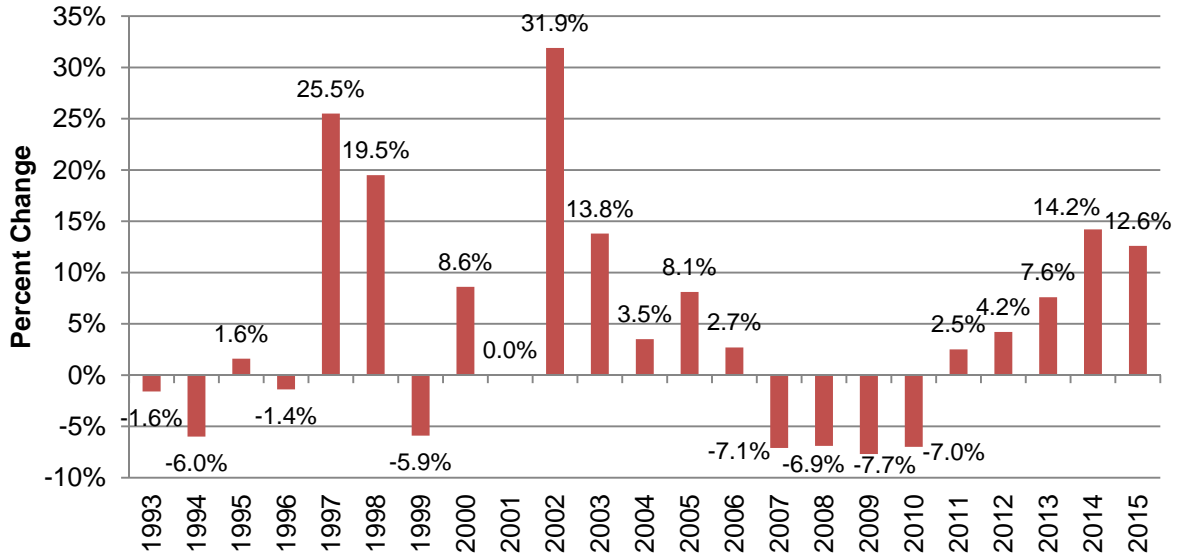


Figure 2. Percent Change in Number of Offenders Sentenced for Felony Drug Convictions, 1993-2015



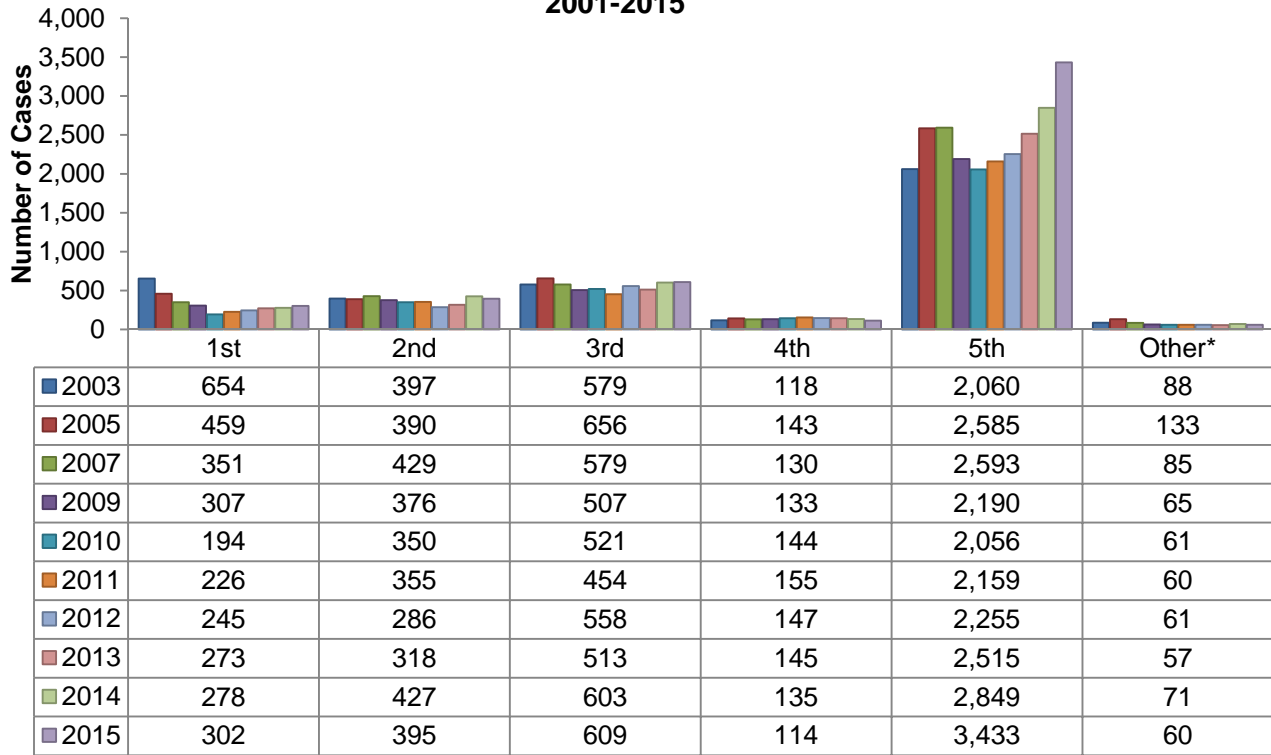
Volume of Cases by Degree

Figure 3 shows the distribution of drug offenders across the controlled substance degrees. The largest group of cases sentenced was fifth-degree (70% of the cases). The largest increase in the number of offenders sentenced was also for fifth-degree (20% increase). The number sentenced for first-degree increased by nine percent, while the number sentenced for second-degree offenses decreased by seven percent. The number sentenced for third-degree increased slightly (1%) and the number sentenced for fourth-degree and the other offenses decreased by 16 and 15 percent, respectively.

The number of first-degree offenders sentenced declined nearly every year between 2003 and 2010, due in part to the decline in the number of offenders sentenced for the first-degree offense of manufacture of methamphetamine (10 offenders in 2010, compared to 310 in 2003) (Figure 4).² However, in 2011, the number of offenders sentenced for first-degree began to increase again (to 226 offenders in 2011 for an increase of 16%; 245 offenders in 2012 for an increase of 8%; 273 offenders in 2013 for an increase of 11%). The increase in 2014 was more modest (278 offenders for an increase of 2%) but the increase in 2015 to 302 offenders was more substantial (9%). The number of offenders sentenced for manufacture of methamphetamine continued to decrease from 27 in 2013 to 11 in 2014 to 6 in 2015 (Figure 4).

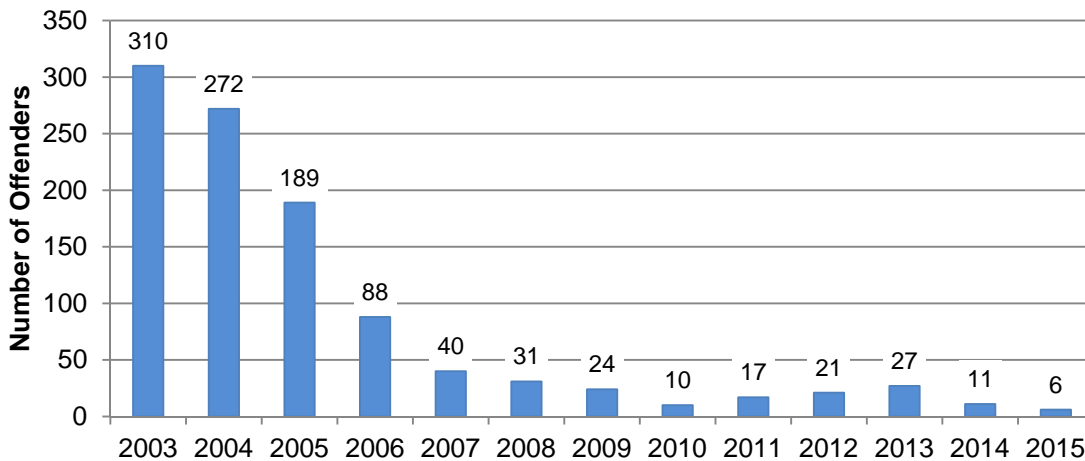
² In 2005, the offense of manufacture of methamphetamine; possession of precursors (Minn. Stat. § [152.021](#), subd. 2a(b)) was reclassified, and is no longer a first-degree offense. This statutory change contributed to the decline in the total number of first-degree offenders. These “precursor offenses” are now reported in the “Other” category.

Figure 3. Distribution of Drug Offenders Sentenced by Drug Degree, 2001-2015



* In 2015, the “Other” category includes 7 offenders sentenced for possession of precursors with intent to manufacture methamphetamines, 19 offenders sentenced for sale of a simulated/analog controlled substance, and 34 offenders sentenced for methamphetamine crimes involving children.

Figure 4. Number of Offenders Sentenced for Manufacture of Methamphetamine, 2003-2015



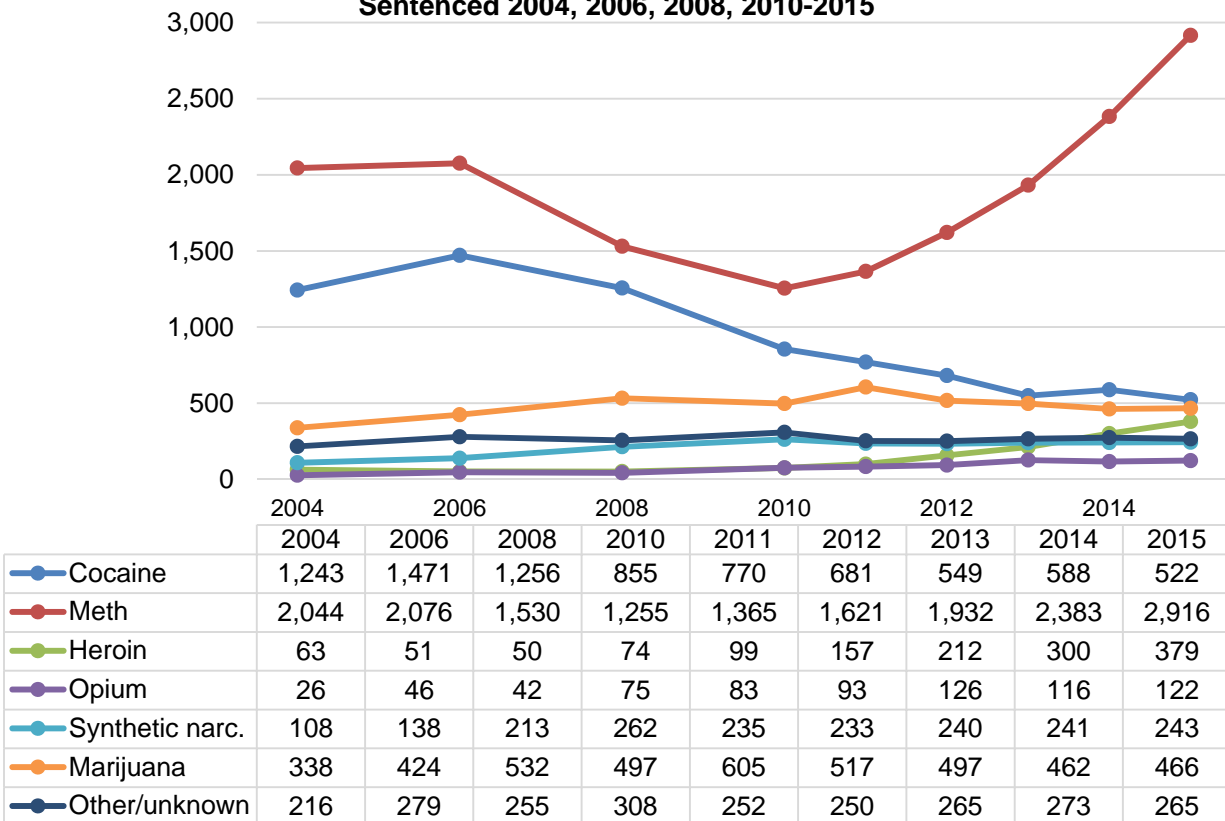
Drug Type, Region, Race & Prior Drug Convictions

Distribution of Cases over Time (Drug Types)

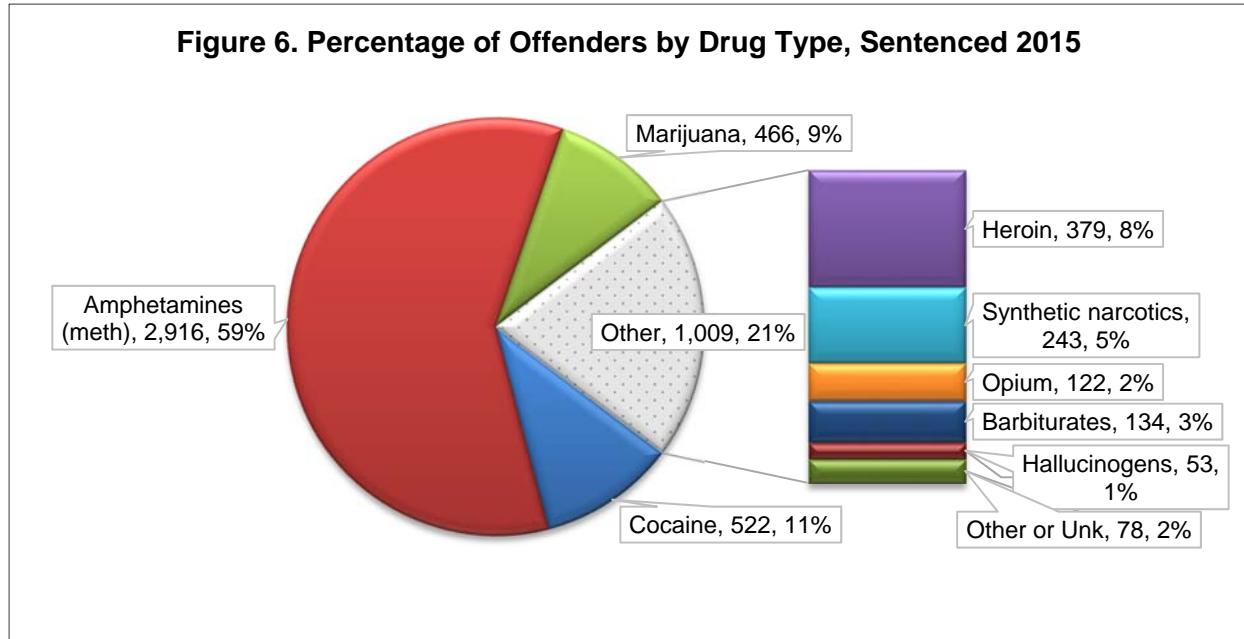
The distribution of cases among drug types, as coded on criminal complaints, has changed over time. In 1996, 48 percent of the cases sentenced involved cocaine, 24 percent involved marijuana, 14 percent were unknown or of some other type, and 14 percent involved amphetamines, a category that includes methamphetamine (meth). In 2002, cocaine still represented the largest number of drug cases (40%), but the amphetamines/meth category had grown to 38 percent, and marijuana had decreased to 13 percent. By 2004, over half (51%) of the drug cases sentenced involved the meth category. Between 2014 and 2015 there was an 18 percent increase in the number of offenders sentenced for meth offenses and a 13 percent decrease in the number of offenders sentenced for cocaine offenses. The number sentenced for marijuana offenses remained almost the same (Figure 5).

Between 2014 and 2015, the number of cases involving heroin increased by 26 percent (from 300 to 379) while the number of offenses involving opium increased by 5 percent (from 116 to 122). Between 2008 and 2015, heroin and opium also showed the largest percentage increases (658% for heroin and 190% for opium). In that same period, the number of offenders sentenced for synthetic narcotics increased by 13 percent (Figure 5).

Figure 5. Distribution of Offenders by Drug Type Over Time, Sentenced 2004, 2006, 2008, 2010-2015



At 59 percent in 2015, the meth/amphetamine category continued to be the drug type with the largest number of cases, while 11 percent of the cases involved cocaine, 10 percent involved marijuana and 21 percent were for other or unknown substances. Among the other drug types, heroin had the largest number of cases at 379 (8%), followed by synthetic narcotics at 243 (5%) (Figure 6).



Distribution of Estimated Prison Beds by Drug Type over Time

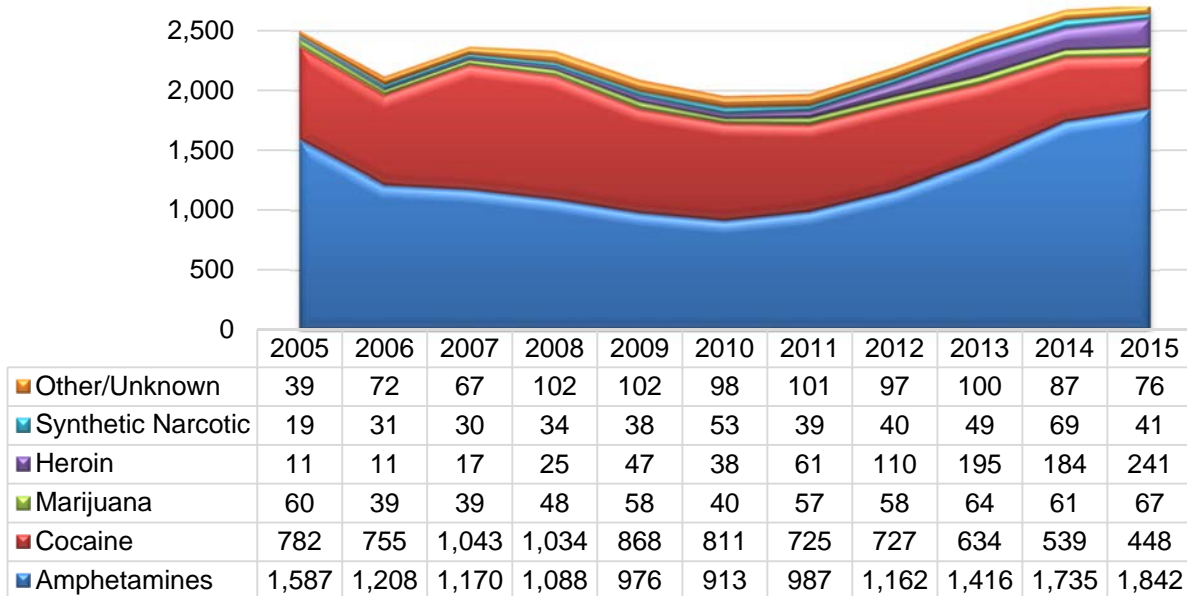
Figure 7 displays the estimated number of prison beds occupied for offenders receiving an executed prison sentence by drug type from 2005 to 2015. These estimates are calculated assuming the offender serves the estimated term of imprisonment, which is two-thirds of the executed sentence. While these estimates provide a description of the relative number of beds taken up by the offenders with various drug types, they do not mirror the actual Minn. Department of Corrections population for any given year because they do not reflect –

- Beds for probation revocations;
- Credit for time served before sentencing;
- Extended incarceration for violations in prison;
- Early releases for participation in early release programs such as Challenge Incarceration;
- Beds for supervised release revocations.

It is estimated that the drug offenders receiving prison sentences in 2015 will occupy 2,734 beds. The number of estimated prison beds taken up by meth offenders reached a record high in 2015 when offenders in the meth category – who constituted 59 percent of the cases sentenced – accounted for 67 percent of the estimated prison beds. The percent of beds taken up by meth

cases reached its previous high in 2005 (63.5 percent). In 2007, the share dropped below 50 percent, remained below 50 percent until 2011, and increased steadily through 2015.

Figure 7. Estimated Prison Beds for Felony Controlled Substance Crimes, by Drug Type, Sentenced 2005-2015



Distribution of Cases over Time (Region)

In the last decade, the number of drug cases outside the seven-county metro area of Anoka, Dakota, Carver, Hennepin, Ramsey, Scott, and Washington counties has increased more than the number of drug cases sentenced in the metro counties. In 1998, 33 percent of all drug cases were sentenced in Greater Minnesota (Figure 8). By 2004, that percentage had grown to 51 percent, and it has remained above 50 percent every year since, except 2006. In 2015, as in 2014, 58 percent of drug offenders were sentenced in Greater Minnesota, a decrease from the record high of 60 percent in 2013. In comparison, the percent of non-drug offenders sentenced in Greater Minnesota was 47 percent. In all other regions, the percent of drug offenders is lower than the percent of non-drug offenders (Figure 9).

Figure 8. Distribution of Drug Cases by Region, 1998-2015

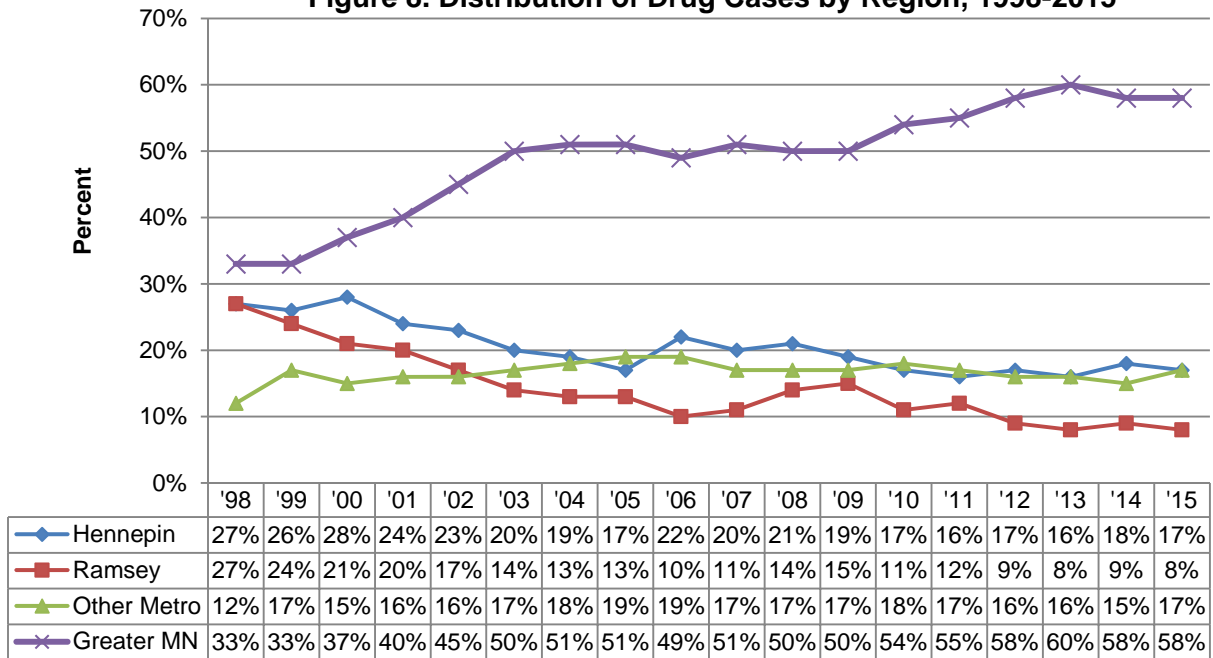
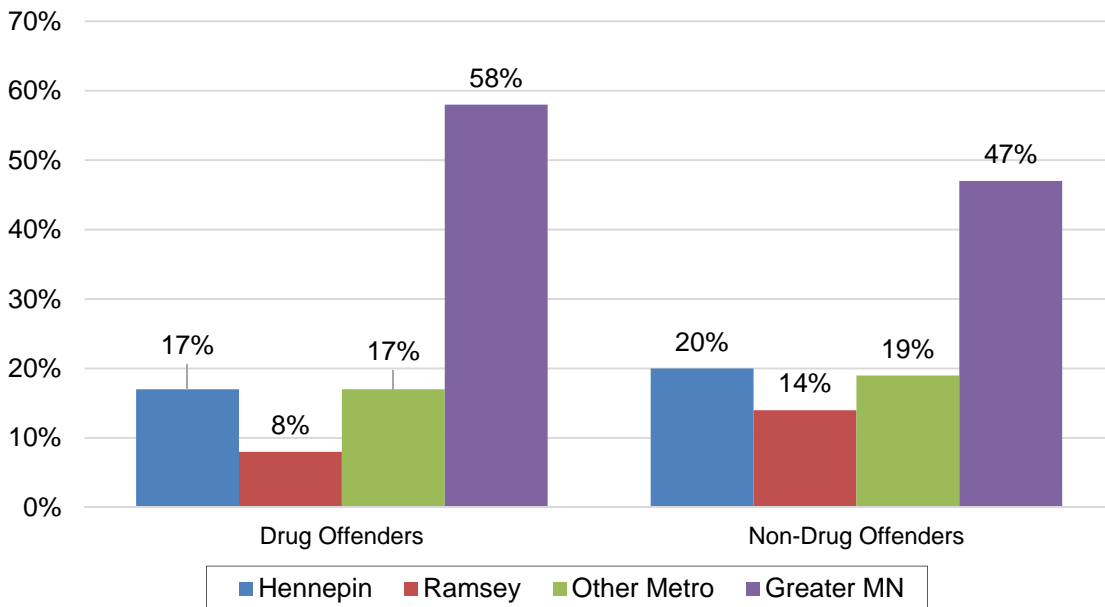


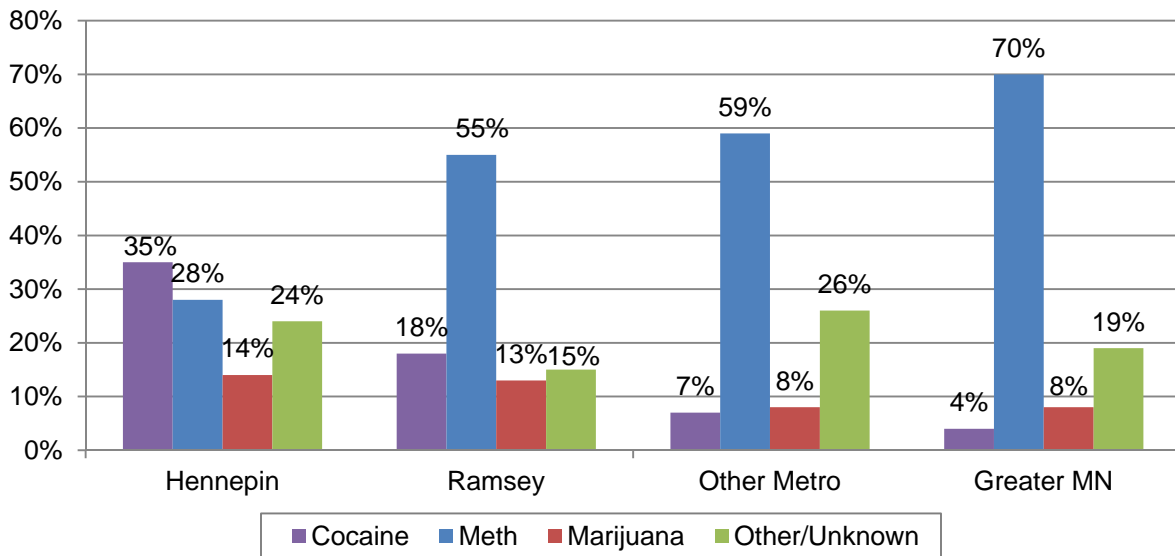
Figure 9. Distribution of Offenders by Region; Drug and Non-Drug Offenders, 2015



2015 Distribution of Cases (Drug Types and Region)

There was a difference in the distribution of drug types among regions as well (Figure 10). In 2015, cocaine was the drug type found most frequently in Hennepin County, while methamphetamine remained the most common drug type in Greater Minnesota, Ramsey County and the other metro counties.

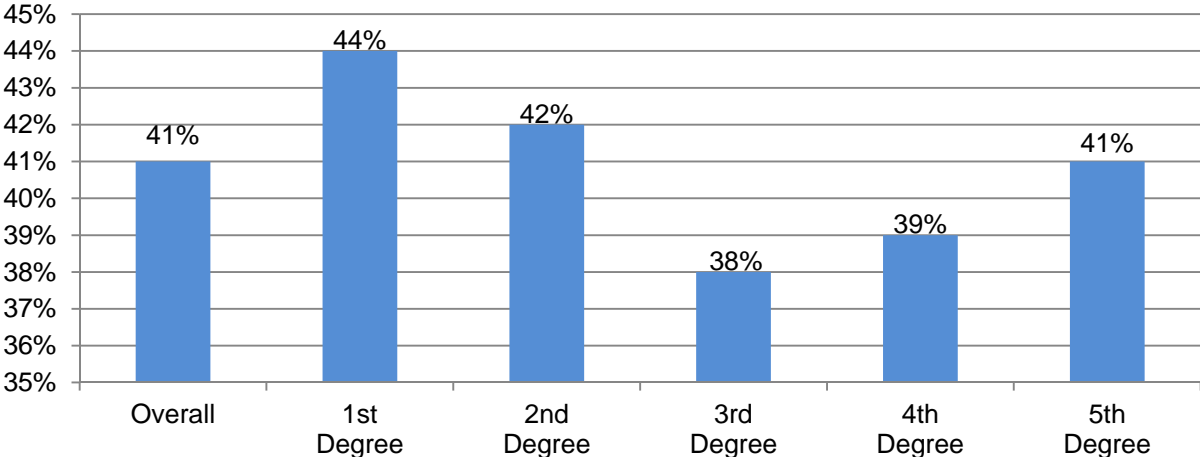
Figure 10. Distribution of Drug Offenders by Drug Type and Region, 2015

2015 Distribution of Cases (Prior Conviction)

Forty-one percent of drug offenders sentenced had prior convictions for felony-level drug offenses (Figure 11).³ First-degree offenders were more likely than second- through fifth-degree offenders to have prior convictions (44%), while third-degree offenders were the least likely (38%).

³ In first-, second-, and third-degree controlled substance cases, many (but not all) of these prior convictions will trigger mandatory minimum prison sentences. For a further discussion of mandatory minimum sentences, see p. 27.

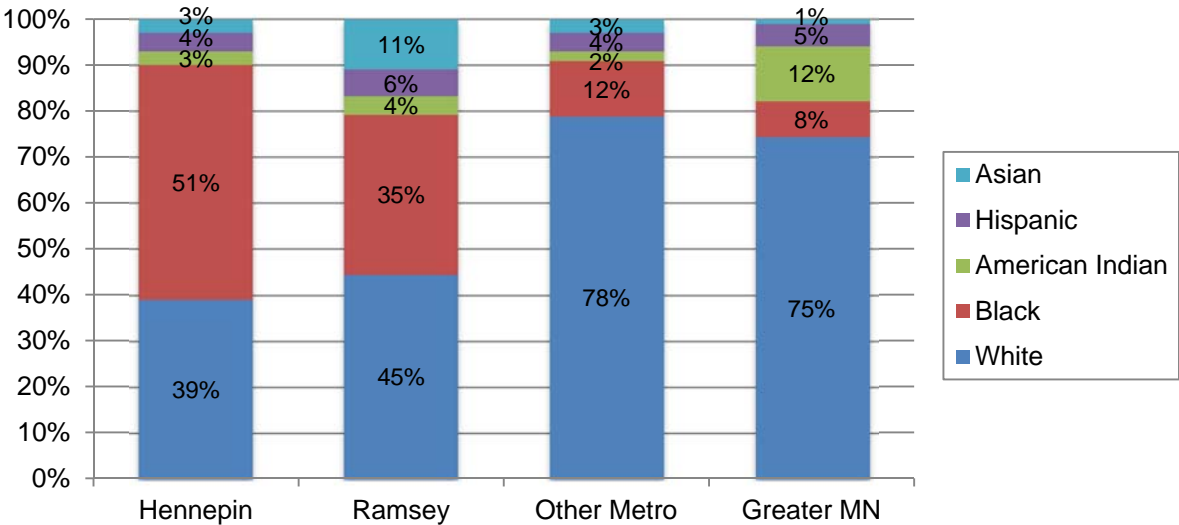
Figure 11. Percent of Offenders with a Prior Felony Drug Sentence by Controlled Substance Degree, 2015



Racial Distribution

Figure 12 displays the racial distribution of drug offenders by region. Black offenders make up over half the drug offenders sentenced in Hennepin County and 35 percent of the offenders sentenced in Ramsey County. These counties include the Metropolitan areas of Minneapolis and St. Paul.

Figure 12. Distribution of Offenders by Race and Region, 2015



In 1999, 51 percent of drug offenders were white and 36 percent were black, whereas in 2015, 67 percent of drug offenders were white and 18 percent were black. A larger percentage of drug offenders were white than of offenders sentenced for non-drug offenses (Figure 13). Sentencing

data reveal that meth is a drug predominantly associated with white offenders and is directly impacting the racial make-up of drug offenders in Minnesota. Figure 14 displays the racial composition of offenders sentenced for meth, cocaine, heroin, and marijuana offenses.

Figure 13. Distribution of Offenders by Race; Drug Offenders and Non-Drug Offenders, 2015

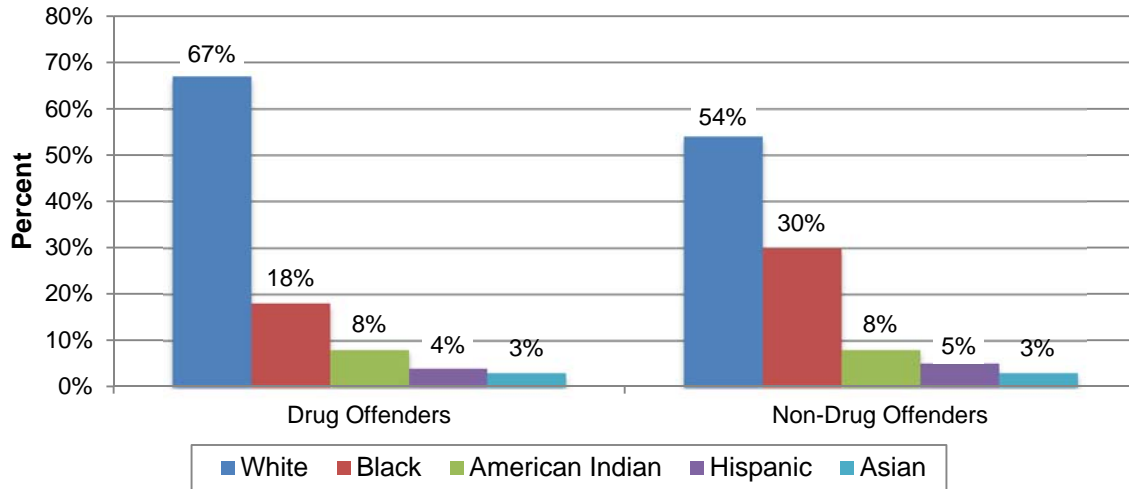
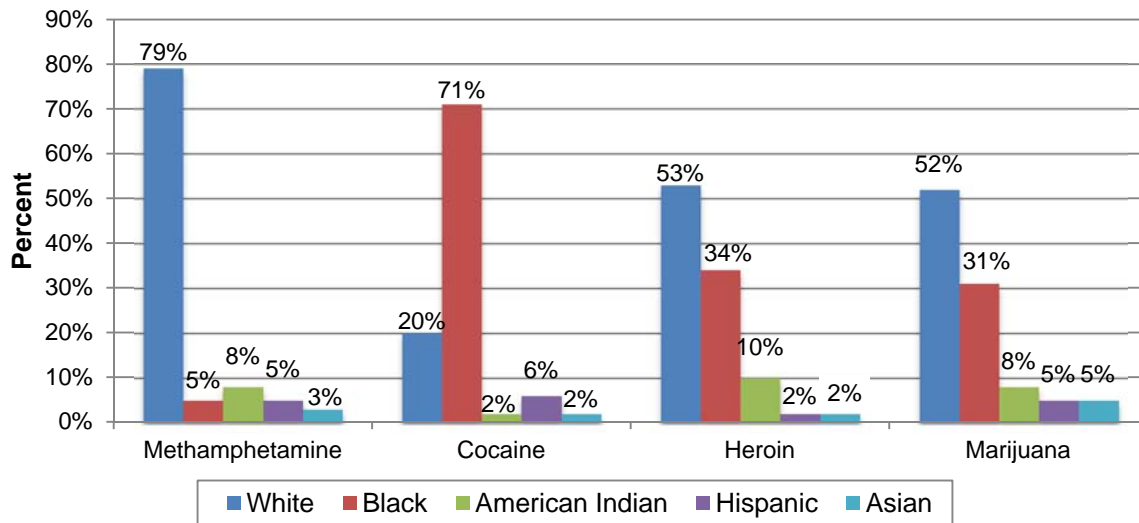


Figure 14. Distribution of Offenders by Race and Drug Type, 2015



Sentencing Practices

In 2015, 93 percent of felony drug sentences included incarceration: 24 percent in state prison and 69 percent in local correctional facilities (Table 1). The remaining seven percent were not incarcerated; however, they may have served time before sentencing and received sanctions such as drug treatment or home confinement.

Table 1. Total Incarceration, 2015

Incarceration Type	Number	Percent
State Prison	1,184	24
Local Correctional Facilities	3,407	69
Total Incarceration	4,591	93

Incarceration in State Prison

Since the controlled substance statutes were revised in 1989, the number of drug offenders sentenced has increased dramatically, as have imprisonment rates and average pronounced sentences. While the number of offenders sentenced for non-drug crimes has also increased during this same time period, the increase has not been as dramatic, and the imprisonment rates and average pronounced sentences in those cases have remained relatively stable (Table 2).

Incarceration of felony drug offenders has increased significantly over the past 25 years, at a higher rate than for any other offense category. The reason for this increase may be two-fold: a larger total number of drug offenders are being sentenced, and a higher percentage of them are receiving prison sentences.⁴ The imprisonment rate for drug offenders was highest in 2003, at 28 percent, and second-highest in 2013, at 27 percent (Table 2). Despite the lower imprisonment rate trend in recent years, it is still true that more drug offenders are being sentenced to prison for longer periods of time than 25 years ago, which directly impacts the amount of correctional resources required to accommodate this offender population.

In 1991, 217 drug offenders were imprisoned (13% imprisonment rate), with an average pronounced sentence of 35 months. By 2003, this number climbed to 1,107 offenders (28% imprisonment rate). The average drug sentence duration peaked at 52 months in 2003, falling into the 42-46 month range thereafter. In 2015, a record 1,184 drug offenders were imprisoned (24% imprisonment rate), with an average sentence duration of 41 months.

⁴ It is difficult to measure the extent to which the incarceration increases may have been driven by changes in offender behavior; in enforcement, prosecutorial, or judicial practice; or in policy. With that in mind, the following policy changes are notable: [Minn. Sentencing Guidelines \(1989\)](#) (at the same time legislature created five degrees of drug offense, durations increased for the severity levels to which some of those degrees would be assigned); [1992 Minn. Laws ch. 359](#) (sale redefined to include possession with intent to sell; cocaine thresholds reduced); [1997 Minn. Laws ch. 239, art. 4](#) (heroin thresholds reduced); [1998 Minn. Laws ch. 367, art. 4](#) (methamphetamine thresholds reduced).

Table 2. Imprisonment Cases; Prison Rates and Average Pronounced Durations for Drug and Non-Drug Offenders, 1991-2015

Year Sentenced	Drug Offenders			Non-Drug Offenders		
	Total # Cases	Prison Rate	Avg. Duration	Total # Cases	Prison Rate	Avg. Duration
1991	1,693	13%	35 months	7,468	21%	46 months
1992	1,830	14%	38 months	7,495	22%	49 months
1993	1,800	19%	42 months	7,837	22%	47 months
1994	1,692	17%	44 months	8,095	22%	51 months
1995	1,719	19%	41 months	7,702	24%	46 months
1996	1,695	17%	42 months	7,785	24%	47 months
1997	2,127	16%	42 months	7,720	24%	44 months
1998	2,542	22%	40 months	8,345	24%	47 months
1999	2,391	22%	42 months	8,243	23%	48 months
2000	2,596	24%	47 months	7,799	23%	49 months
2001	2,596	24%	47 months	8,200	22%	48 months
2002	3,424	27%	50 months	9,554	22%	46 months
2003	3,896	28%	52 months	10,596	23%	50 months
2004	4,038	25%	46 months	10,713	23%	45 months
2005	4,366	23%	44 months	11,096	23%	46 months
2006	4,485	20%	42 months	11,961	22%	45 months
2007	4,167	24%	42 months	12,001	23%	46 months
2008	3,878	25%	43 months	11,516	25%	46 months
2009	3,578	25%	42 months	11,262	25%	43 months
2010	3,326	25%	43 months	10,985	26%	47 months
2011	3,409	24%	43 months	11,162	25%	46 months
2012	3,552	25%	44 months	11,655	27%	48 months
2013	3,821	27%	43 months	11,497	27.5%	46 months
2014	4,363	25%	43 months	11,782	26%	46 months
2015	4,913	24%	41 months	11,850	27%	46 months

Probation Cases

The rise in the number of drug cases has resulted in an increase in the number of drug offenders sentenced to probation, as well as an increase in the number of drug offenders serving time in local correctional facilities (i.e., jails and workhouses) as a condition of probation. In 2015, 3,729 offenders received probation sentences for drug offenses, a 152 percent increase over the number receiving probation sentences in 1991 (Table 3). In comparison, the number of non-drug offenders serving probation sentences increased by about 46 percent during this same time period. The increase in the number of drug offenders placed on probation expands the size of the pool of offenders who may eventually end up in prison through probation revocations, which impacts prison populations. The average pronounced period of probation for drug offenders in 2015 was 77 months. The median was 60 months.

Offenders placed on probation for a felony offense can receive up to one year of time in a local correctional facility as a condition of probation. The vast majority of offenders placed on felony probation serve some time in a local correctional facility. Since 1991, more than 80 percent of felony probationers have had local time imposed as a condition of probation, and drug offenders have had local time imposed at a slightly higher rate than non-drug offenders. Since 2012 the local incarceration rate has been 91 percent. Non-drug offenders have had slightly lower rates. For both groups, the average time pronounced in a local facility in most years has been more than 100 days. In 2015, the average pronounced local time for drug offenders was 119 days (Table 3).

Table 3. Non-Imprisonment Cases; Rates and Avg. Pronounced Conditional Confinement for Drug and Non-Drug Offenders, 1991-2015

Year Sentenced	Drug Offenders			Non-Drug Offenders		
	# Stayed Cases	Local Rate	Avg. Pronounced Duration	# Stayed Cases	Local Rate	Avg. Pronounced Duration
1991	1,476	86%	90 days	5,908	80%	110 days
1992	1,575	87%	101 days	5,825	83%	111 days
1993	1,459	86%	116 days	6,114	81%	112 days
1994	1,412	87%	98 days	6,332	80%	117 days
1995	1,398	87%	101 days	5,887	82%	110 days
1996	1,404	83%	104 days	5,887	81%	108 days
1997	1,781	87%	105 days	5,877	82%	107 days
1998	1,192	88%	99 days	6,334	83%	110 days
1999	1,872	88%	99 days	6,311	84%	104 days
2000	1,982	90%	101 days	5,985	85%	106 days
2001	1,973	91%	108 days	6,374	84%	104 days
2002	2,486	90%	114 days	7,435	86%	103 days
2003	2,789	91%	115 days	8,167	86%	109 days
2004	3,015	91%	117 days	8,290	88%	110 days
2005	3,353	91%	118 days	8,526	89%	99 days
2006	3,573	91%	118 days	9,278	89%	96 days
2007	3,165	90%	118 days	9,243	88%	106 days
2008	2,914	88%	117 days	8,628	87%	106 days
2009	2,696	90%	113 days	8,421	87%	105 days
2010	2,503	82%	120 days	8,168	80%	107 days
2011	2,591	89%	120 days	8,327	87%	104 days
2012	2,650	91%	122 days	8,553	87%	104 days
2013	2,795	91%	121 days	8,330	89%	101 days
2014	3,253	91%	121 days	8,674	89%	102 days
2015	3,729	91%	119 days	8,642	88%	99 days

Departure Rates

Role and Definition of Departures in the Sentencing Guidelines System

The Guidelines establish a presumptive sentence for felony offenses based on the severity of the offense and the offender's criminal history score. The presumptive sentence is based on the typical case; however, the court may depart from the Guidelines when substantial and compelling circumstances exist. A "departure" is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures – dispositional and durational – as further explained below. Since the presumptive sentence is based on "the typical case," the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

While the court ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is commonly agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

Description of Departure Types

Dispositional Departure. A "dispositional departure" occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: mitigated and aggravated. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence.

Durational Departure. A "durational departure" occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

*Departure Rates for Drug Offenders and Non-Drug Offenders*Total Departure Rate: Drug and Non-Drug Offenders

The total departure rate refers to the percentage of felony offenders who did not receive the presumptive Guidelines sentence. In 2015, the total departure rate for drug offenders was 25 percent compared to 28 percent for non-drug offenders. The total mitigated departure rate was 17 percent for drug offenders and 24 percent for non-drug offenders (Table 4).

Table 4. Total Departure Rates; Drug and Non-Drug Offenders, 2015

Departure Type	Drug Offenders		Non-Drug Offenders	
No Departures	3,680	(75%)	8,517	(72%)
Total Departures	1,233	(25%)	3,333	(28%)
• Mitigated	817	(17%)	2,806	(24%)
• Aggravated	350	(7%)	414	(3.5%)
• Mixed	66	(1%)	113	(1%)
Total Sentenced	4,913	(100%)	11,850	(100%)

Aggravated Dispositional Departures: Drug and Non-Drug Offenders

Aggravated dispositional departures occur relatively infrequently compared to other types of departures. Ten percent of drug offenders received aggravated dispositional departures (sentenced to prison when the Guidelines recommended a stayed sentence) (Table 5). An offender's request for an executed prison sentence or plea agreement accounted for 76 percent of aggravated dispositional departures in drug cases, excluding cases in which the departure reason was "unknown."⁵ This request is usually made to allow the offender to serve the sentence concurrently (at the same time) with another prison sentence. The aggravated dispositional departure rate for drug offenders was higher than for non-drug offenders.

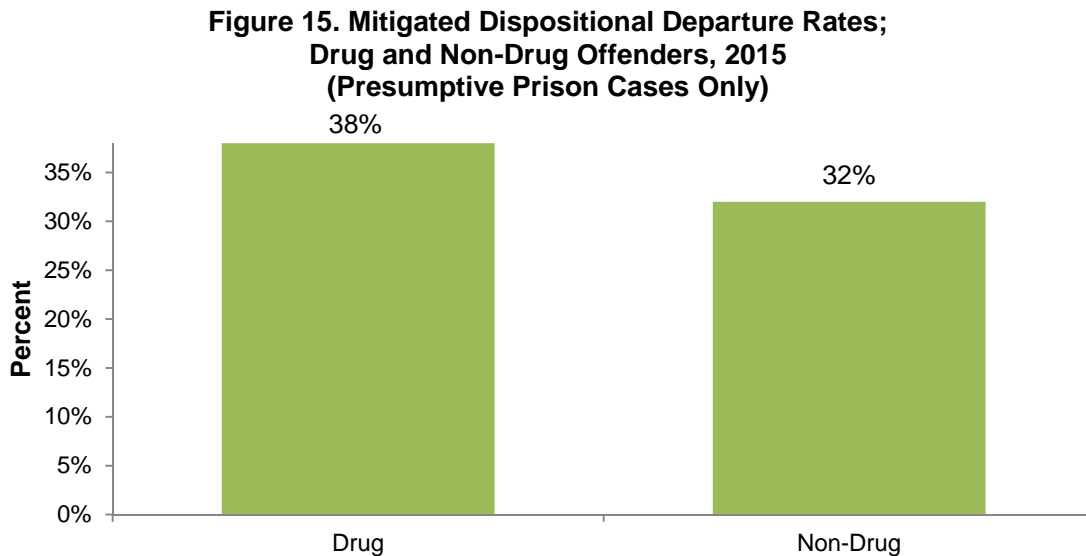
Table 5. Aggravated Dispositional Departure Rates; Drug and Non-Drug Offenders, 2015

	Drug Offenders	Non-Drug Offenders
Number Presumptive Stays	3,602	7,600
Aggravated Dispositions	366 (10%)	335 (4%)
Cases with Departure Reasons	363	325
Request for Prison	275 (76%)	304 (93.5%)

⁵ For offenses committed after 7/31/2015, a sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure (Guidelines § 2.D.1.f).

Mitigated Dispositional Departures: Drug and Non-Drug Offenders

Figure 15 shows that 38 percent of drug offenders who were recommended prison under the Guidelines instead received a non-prison (probationary) sentence. This compared to 32 percent for non-drug offenders. Departure rates vary greatly by general offense type and specific offense. (See *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the “Annual Summary” tab for more information on departure rates by offense type at mn.gov/sentencing-guidelines/reports.)



Dispositional Departures: Frequently Cited Reasons for Departure

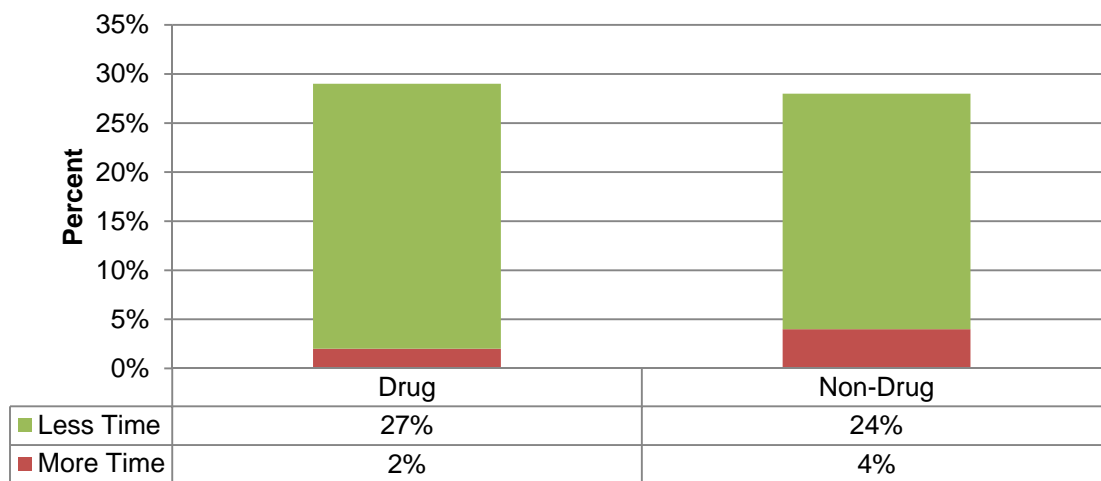
Amenability to treatment and probation were the most frequently-cited departure reasons for the mitigated dispositions in drug cases. In a large percentage of these cases, the court noted either that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure. Plea agreements or prosecutor recommendations occurred in 60 percent of drug cases, compared to 63 percent in non-drug cases. Information provided by the court revealed that the prosecutor was more likely to object to the mitigated disposition in drug offenses than in non-drug offenses (18% and 14%, respectively).⁶

⁶ The percentages do not total 100 percent because the prosecutor's position was not recorded in a number of cases. The sentencing court is not required to record the prosecutor's position.

Durational Departures (Prison Cases): Drug and Non-Drug Offenders

The mitigated durational departure rate for drug offenders who received executed prison sentences was 27 percent, whereas the rate for non-drug offenders was 24 percent (Figure 16). The aggravated durational departure rate was two percent for drug offenders and four percent for non-drug cases. (See *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the “Annual Summary” tab for more information on departure rates by offense type at mn.gov/sentencing-guidelines/reports.)

**Figure 16. Durational Departure Rates;
Drug and Non-Drug Offenders, 2015**



“Plea Agreement” was the most frequently-cited reason for mitigated durational departures in drug offenses. The court stated either that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure in a larger portion of the mitigated durations than the mitigated dispositions, particularly in drug offenses. The court indicated that there was a plea agreement for the departure or that the prosecutor recommended, or did not object to, the mitigated durational departure in 66 percent of the drug offenses and 76 percent of the non-drug offenses. The court reported that the prosecutor objected to a mitigated duration in about seven percent of the drug offenses and four percent of non-drug offenses.⁷

Long-Term Trends in Departure Rates for Drug Offenders

Figure 17 shows that, between 1999 and 2003, the mitigated dispositional departure rate stabilized in the mid-30 percent range. The rate then increased until 2006, when it reached a rate of 46 percent, which was the highest since 1997. In 2007, this rate returned to under 40 percent

⁷ The percentages do not total 100 percent because the prosecutor’s position was not recorded in a number of cases. The sentencing court is not required to record the prosecutor’s position.

and had dropped to 31 percent by 2013. In 2014, the rate increased to 36 percent and further increase to 38 percent in 2015.

**Figure 17. Mitigated Dispositional Departure Rates, 1996-2015
(Presumptive Commitments Only)**

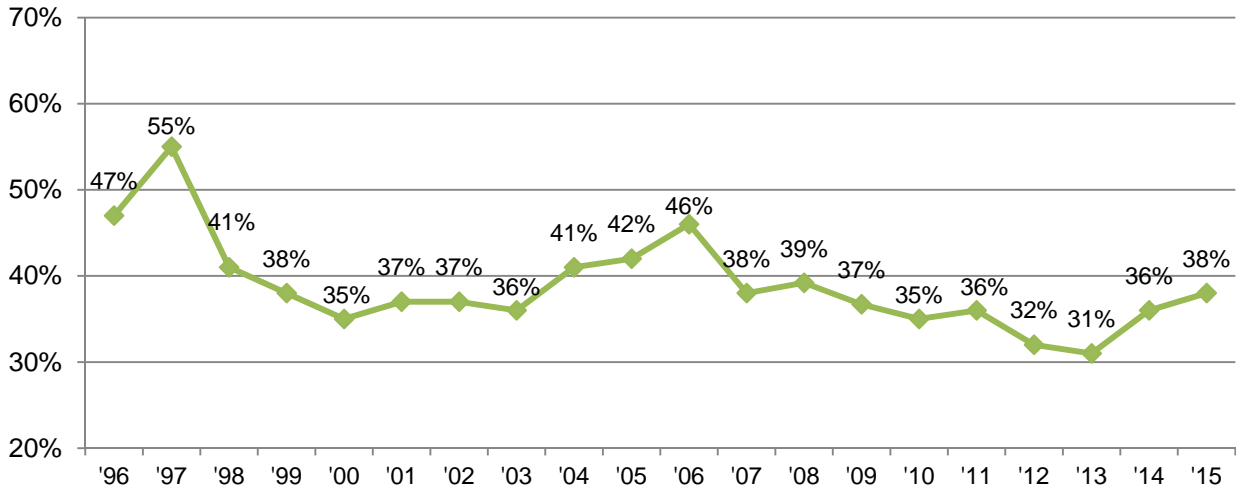
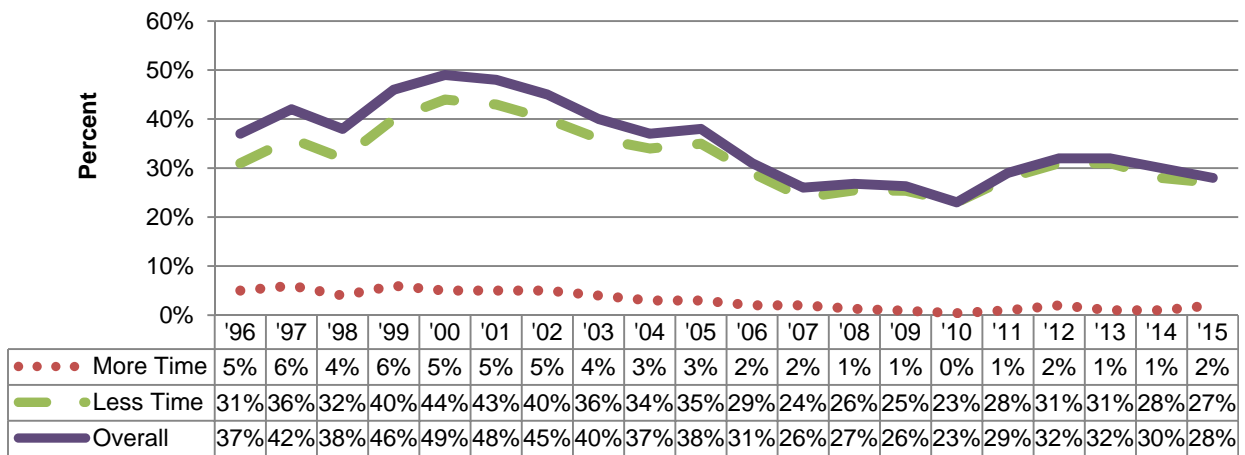


Figure 18 shows that the mitigated durational departure rate continued to increase through the 1990s, and peaked in 2000 at 44 percent. Since 2000, however, this rate steadily declined to a low of 23 percent in 2010. In 2011 the rate climbed back to 28 percent and increased again in 2012 and 2013 to 31 percent. In 2014 it returned to 28 percent and was 27 percent in 2015. Aggravated durational departure rates were consistently low, and in 2010 reached a new low of 0.4 percent. In 2013 and 2014 the aggravated durational departure rate was one percent. The rate in 2015 was 1.8 percent.

**Figure 18. Durational Departure Rates for Cases Receiving
Prison Sentences, 1996-2015**

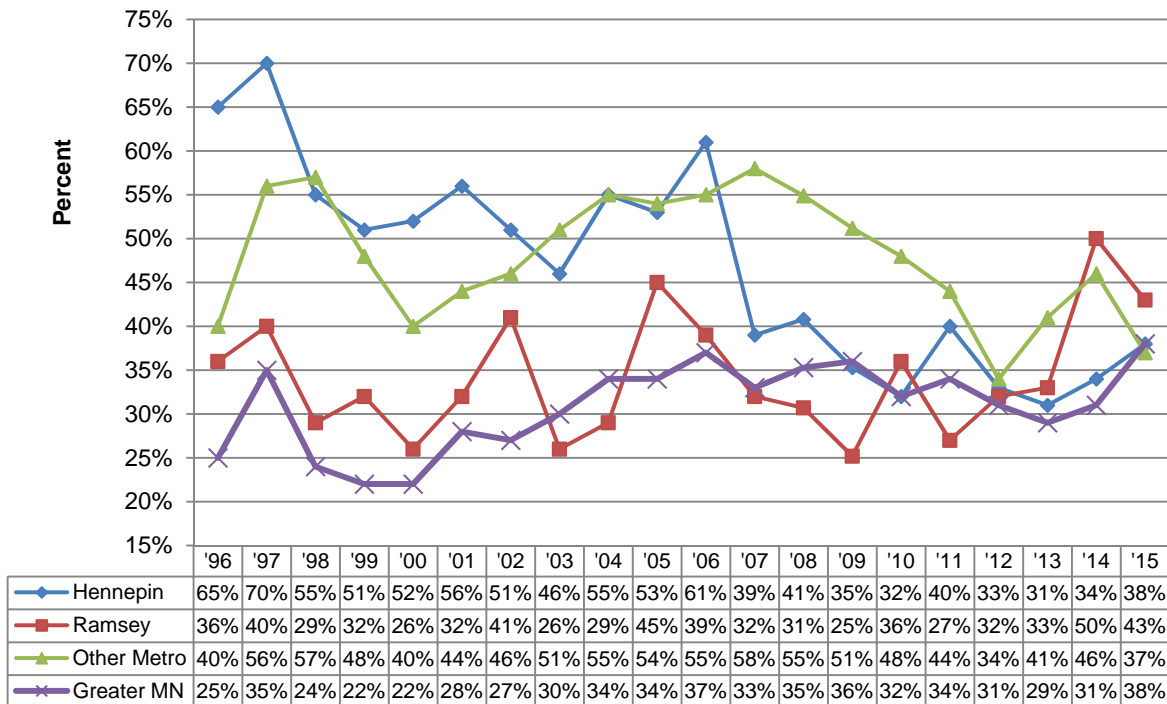


Departure Rates for Drug Offenders by Region

While departure rates for drug offenses fluctuate from year to year and vary by region, they are fairly high across the state (Figure 19). In 2015 the dispositional departure rates increased in Hennepin County and Greater Minnesota and decreased in Ramsey County and the other metro counties. In the seven years before 2014, the other metro counties⁸ had the highest rates and Ramsey County or Greater Minnesota had the lowest. Despite the decline in 2015, Ramsey County had the highest mitigated dispositional departure rate. The rates in Hennepin County and Greater Minnesota were slightly higher than the rate in the other metro counties which had the lowest rate in 2015. The 38 percent departure rate in Greater Minnesota was the highest ever observed during this period for that region.

Before 2007, the departure rates in Hennepin County were above 50 percent in all but one year. In 2007, the mitigated dispositional departure rate in Hennepin County dropped to 39 percent, and dropped again in 2009 and 2010. In 2011, the rate rose to 40 percent. In 2012, the Hennepin County rate fell to 33 percent and fell again in 2013 to 31 percent. Although the rate in Hennepin County rose to 38 percent in 2015, it was the second lowest rate among the regions.

**Figure 19. Mitigated Dispositional Departure Rates by Region
Presumptive Prison Cases, 1996-2015**

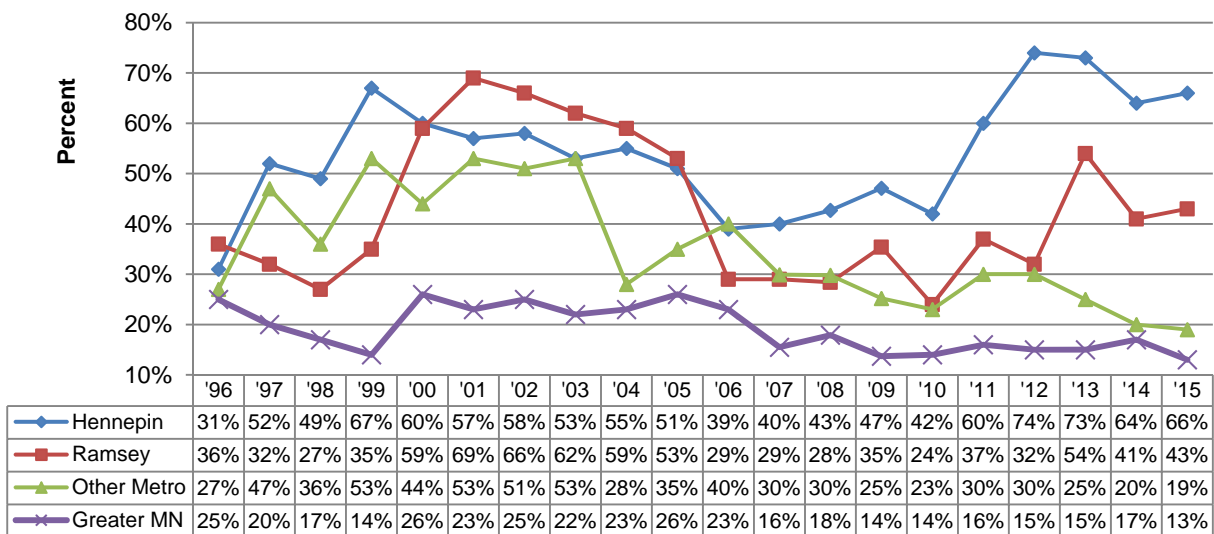


⁸ “Other metro counties” are Anoka, Carver, Dakota, Scott and Washington counties.

Part of this large drop may be the result of policy changes that took effect in 2007, when, for example, Hennepin County revised its Drug Court criteria.⁹ The decrease in departures may also have been due to changes in sentencing practices as a result of *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007) (holding that the mandatory minimum sentencing provision for a repeat offender under Minn. Stat. § 152.023, subd. 3(b) prohibits the court from staying execution).

Figure 20 shows that in 2015 the mitigated durational departure rate for executed sentences rose slightly in Hennepin and Ramsey counties; was almost unchanged in the other metro counties; and declined in Greater Minnesota from 17 percent to 13 percent. In 2012, the rate in Hennepin County (74%) was higher than it had been in any year during this period, and was the highest rate observed over time in any of the four regions; in 2015, the rate was 66 percent. Because the mandatory minimum sentence length for subsequent first- and second-degree drug offenses is less than the duration recommended in the Guidelines, the court may give a mitigated durational departure and still be at or above the mandatory minimum prison sentence.

Figure 20. Mitigated Durational Departure Rates by Region for Cases Receiving Executed Prison Sentences, 1996-2015



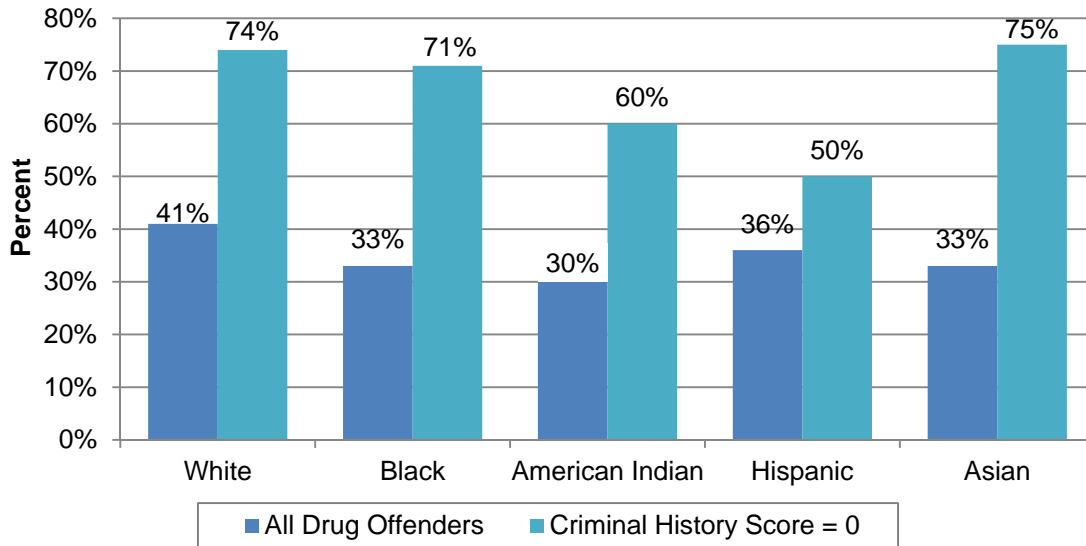
Departure Rates for Drug Offenders by Race/Ethnicity

Departure rates vary by race, with white offenders receiving mitigated dispositional departures at higher rates (Figure 21). The differences in departure rates may be related to criminal history scores. When offenders with a criminal history score of zero are isolated, every race/ethnicity

⁹ Minnesota Judicial Branch, State Court Administrator’s Office, *Minnesota Statewide Adult Drug Court Evaluation* (June 2012). Retrieved from http://www.mncourts.gov/Documents/0/Public/Drug_Court/2012%20Statewide%20Evaluation/MN_Statewide_Drug_Court_Evaluation_Report_-_Final_Public.pdf on Nov. 24, 2015.

category has a departure rate of 50 percent or more, and the rate is highest for Asian offenders.¹⁰ Hispanics continue to have the lowest departure rate at a criminal history score of zero at 50 percent. The disparity between the rates for white and black offenders diminished.

Figure 21. Mitigated Dispositional Departures by Race/Ethnicity, 2015

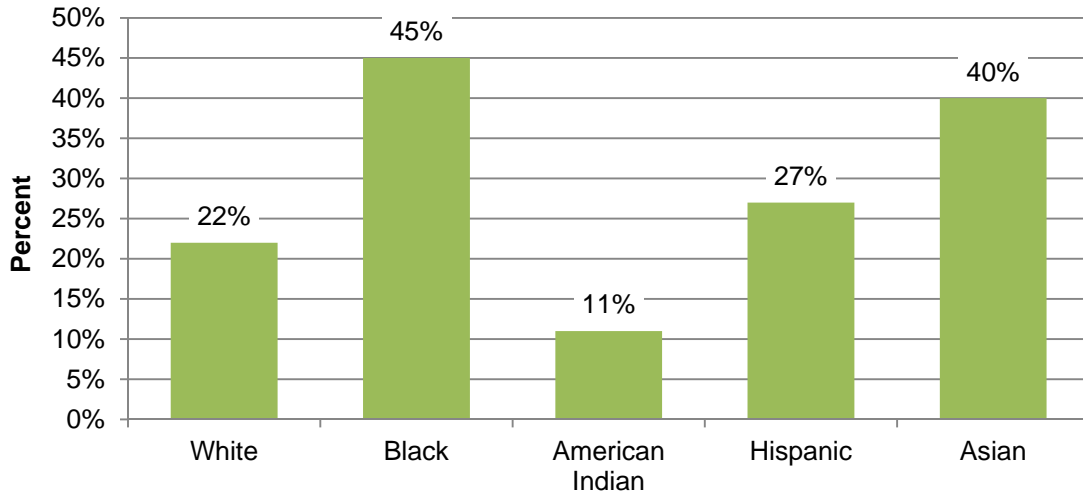


Mitigated durational departure rates are higher for black offenders than for white offenders (Figure 22). This difference remains for offenders with a criminal history of zero. Criminal history may play more of a role in determining a dispositional departure than it does in determining a durational departure – the assumption being that an offender with relatively little or no criminal history is more amenable to probation. From 2014 to 2015, mitigated durational departures declined for black offenders, from 49 to 45 percent and remained unchanged for white offenders at 22 percent. The rate rose from 35 percent to 40 percent for Asian offenders. For American Indians, the rate fell from 13 to 11 percent; and from 31 to 27 percent for Hispanics.

The differences in mitigated durational departure rates may be related to differences in the location in which the offender was sentenced. A larger proportion of black offenders than offenders in other racial and ethnic groups are sentenced in Hennepin County, where mitigated durational departure rates are highest. (See Figure 12 for an illustration of the racial distribution of drug offenders by region.)

¹⁰ There were eight Asian offenders who had a presumptive prison disposition and a criminal history score of 0; six received a mitigated dispositional departure.

**Figure 22. Mitigated Durational Departures by Race/Ethnicity, 2015
(for those receiving executed prison sentences)**

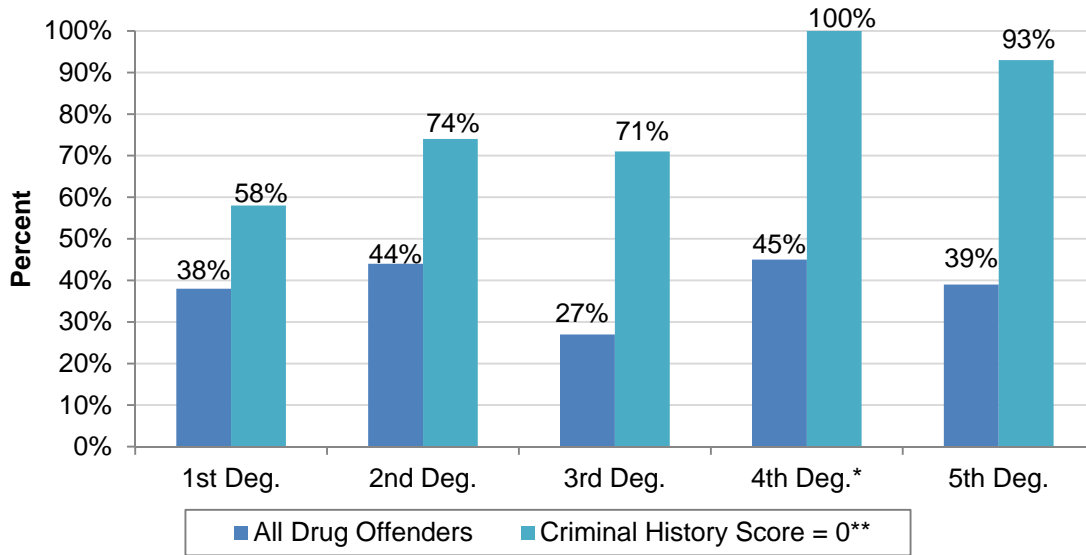


Departure Rates for Drug Offenders by Drug Degree

Figure 23 shows the mitigated dispositional departure rates by drug degree. The 38 percent rate for first-degree remained similar to the rate in 2014 (39%) when it increased from 30 percent in 2013, which was lower than the rate had been in previous years (41% in 2012; and 47% in 2011). The rate for second-degree was 44 percent; an increase over 2014 (38%). The third-degree rate was 27 percent; a decrease from 2014 (31%). The fourth-degree rate was 45 percent; up from the 2014 rate (36%). The fifth-degree rate (39%) also increased from 2014 (33%). Among offenders with a criminal history score of 0, the total mitigated dispositional departure rate was 68 percent, an increase from the 2014 rate of 64 percent. Departure rates for offenders with a criminal history score of 0 increased for all degrees except third.¹¹

¹¹ For third-, fourth-, and fifth-degree controlled substance crime, the presumptive sentence for an offender with a criminal history score of 0 is a stayed prison sentence. Nevertheless, Figure 23 reflects mitigated dispositional departure rates for the small number of zero-criminal-history-score third-, fourth-, and fifth-degree drug offenders whose offenses are presumptive commits by operation of law. (See Minn. Sentencing Guidelines § 2.E.) For example, subsequent third-degree drug offenders (Minn. Stat. § [152.023](#), subd. 3(b)) and felony drug offenders in possession of a firearm (Minn. Stat. § [609.11](#)) are always subject to a presumptive executed prison sentence.

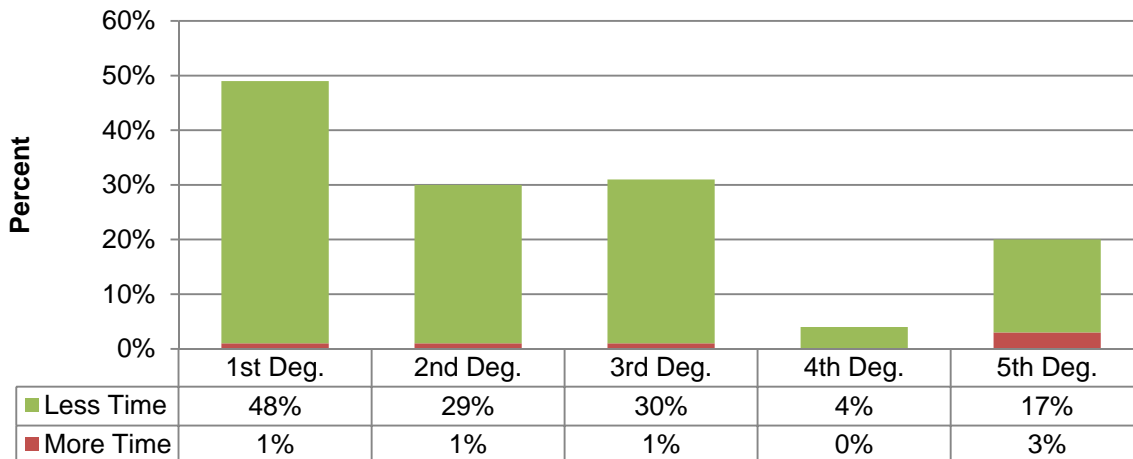
Figure 23. Mitigated Dispositional Departure Rates by Degree, 2015



* Only one offender was sentenced for a fourth-degree drug offense and had a criminal history score of 0.
 ** For 3rd Deg., 4th Deg., and 5th Deg., see note 11 above.

Figure 24 shows that mitigated durational departure rates were 48 percent for first-degree offenses and 29 percent for second-degree offenses. The first-degree rate was almost the same as in 2014 (47%) while the second-degree rate decreased from 2014 (32%). The mitigated durational departure rates decreased for third- and fourth-degree offenders (from 34% to 30% for third-degree; and from 13% to 4% for fourth-degree) and remained almost the same for fifth-degree offenders (17% vs. 18% in 2014). The average reduction in sentence length from the presumptive sentence was 46 months for first-degree cases, 30 months for second-degree cases, and 17 months for third-degree cases. The average sentence reduction was higher for first-degree offenses in 2015 compared to 2014 (43 months).

**Figure 24. Durational Departure Rates by Degree, 2015
 (for those receiving executed sentences)**

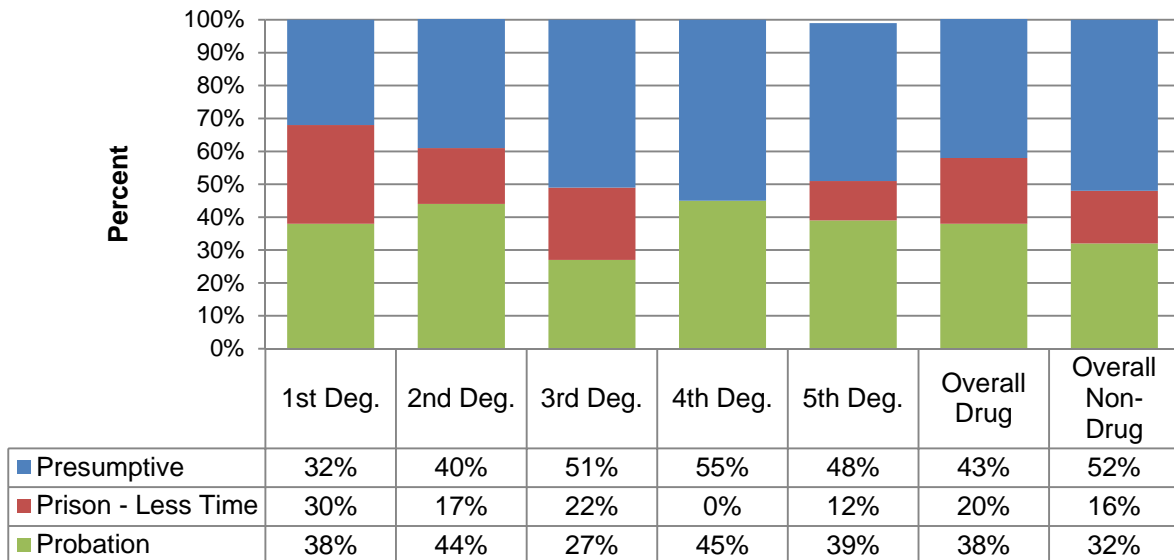


Presumptive Prison Offenders by Degree

Of the 4,913 drug offenders sentenced in 2015, 27 percent (1,311 offenders) had presumptive prison sentences under the Guidelines. Departure rates are so high that, among offenders recommended a prison sentence in 2015 (as in 2011-14), a greater number of offenders received departures than received the recommended sentence. In 2015, 43 percent of drug offenders recommended a prison sentence received the recommended sentence or longer; 38 percent received a probationary sentence; and 20 percent received a prison sentence with a duration that was less than that recommended under the Guidelines (Figure 25).

In 2015, 32 percent of first-degree offenders received the recommended sentence. For second-degree offenders there was a decrease to 40 percent (from 42% in 2014). Fifty-one percent of third-degree offenders received the presumptive sentence (up from 46% in 2014). The fourth-degree rate decreased to 55 percent (from 57% in 2014). The fifth-degree rate also decreased (from 53% in 2014 to 43% in 2015).

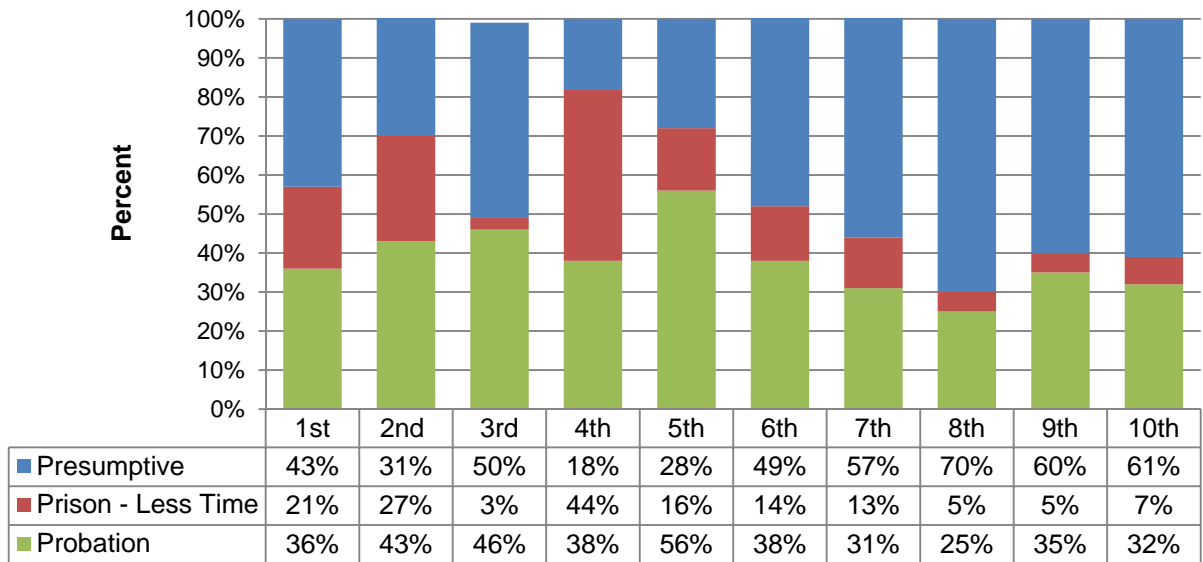
**Figure 25. Sentence Imposed by Drug Degree, 2015
(Presumptive Prison Cases)**



Presumptive Prison Offenders by Judicial District

The likelihood of an offender receiving the presumptive sentence varies widely across the state. Figure 26 shows the percent of offenders with presumptive prison sentences who received the recommended sentence by judicial district. The portion who received the presumptive sentence ranged from 18 percent in the Fourth District (Hennepin County) to 70 percent in the Eighth District (including western Minnesota). See p. 30 for a map of Minnesota’s ten judicial districts.

**Figure 26. Sentence Imposed by Judicial District, 2015
(Presumptive Prison Cases)**



Departure Rates for Subsequent Drug Offenders

Minnesota Statutes specify mandatory minimum prison terms for first- through third-degree drug offenses when the offender has a prior drug conviction.¹² When such a statutory mandatory minimum exists, the presumptive Guidelines disposition is imprisonment. The mandatory minimum durations are as follows: 48 months for first-degree offenses; 36 months for second-degree offenses; and 24 months for third-degree offenses. Because the presumptive Guidelines sentence is greater than the mandatory minimum for all first- and second-degree offenses, the mandatory minimum usually affects only the duration of third-degree cases.¹³

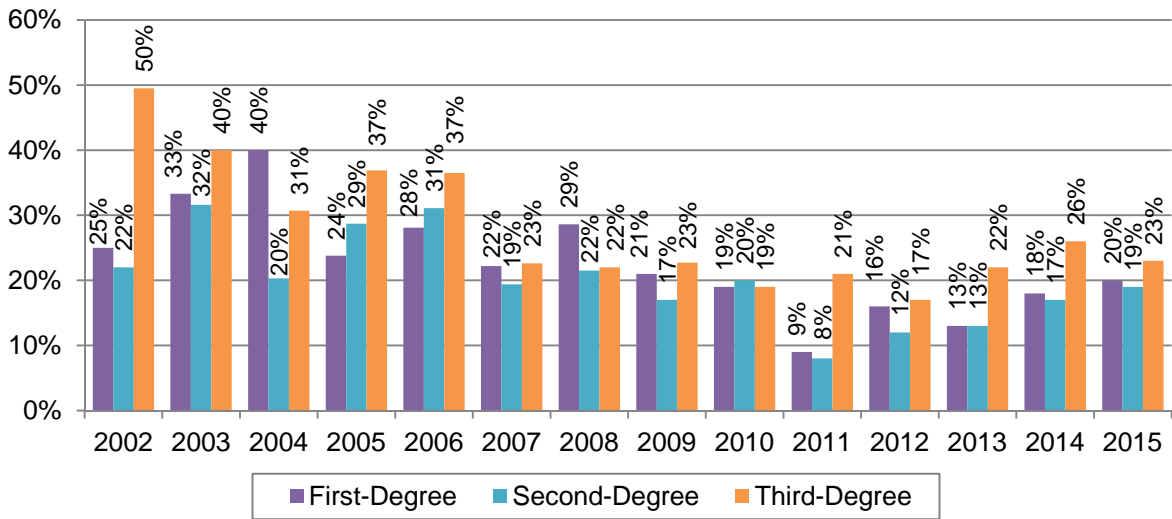
In 2015, 542 drug offenders were sentenced for offenses involving a second or subsequent drug offense that were subject to these mandatory minimum provisions. Of this total, 114 offenders (21%) received a mitigated dispositional departure from the Guidelines. The 21 percent dispositional departure rate was the same as in 2014. The rate was lower for first- and second-degree offenses than for third-degree offenses (Figure 27). The court indicated that the prosecutor agreed to, recommended, or did not object to the mitigated disposition in 74 percent of the mitigated dispositions for subsequent drug offenses.

¹² See subdivisions 3(b) of Minn. Stat. §§ [152.021](#), [152.022](#) and [152.023](#) (2015). An actual conviction is not always necessary, as a past disposition under Minn. Stat. § [152.18](#), even without conviction, will cause the current offense to become a “subsequent controlled substance conviction.” Minn. Stat. § [152.01](#), subd. 16a (2015).

¹³ Likewise, regarding presumptive disposition, the mandatory minimum changes only Controlled Substance Crime in the Third Degree, and only for offenders with criminal history scores below 3—although the dispositions for all first-second-, and third-degree subsequent controlled substance convictions are affected by the mandatory minimums, inasmuch as those dispositions are mandatory, rather than merely presumptive, executed terms of imprisonment.

As discussed on page 22, above, it is believed that the Minnesota Court of Appeals' 2007 ruling in *State v. Turck* has been a factor in the reduction of mitigated dispositional departures for subsequent drug offenses.

Figure 27. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Offense, 2002-2015



Of the 428 second or subsequent drug offenders who received executed prison sentences, all but five (less than 1%) had a pronounced sentence equal to, or longer than, the mandatory minimum. One second-degree offender and three third-degree offenders received less than the mandatory minimum time.

How the Guidelines Work

Minnesota's Guidelines are based on a grid structure. The vertical axis of the Grid represents the **severity** of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's **criminal history**. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the **Severity Reference Table** in the *Minnesota Sentencing Guidelines and Commentary*.

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was on probation or parole when the current offense was committed.

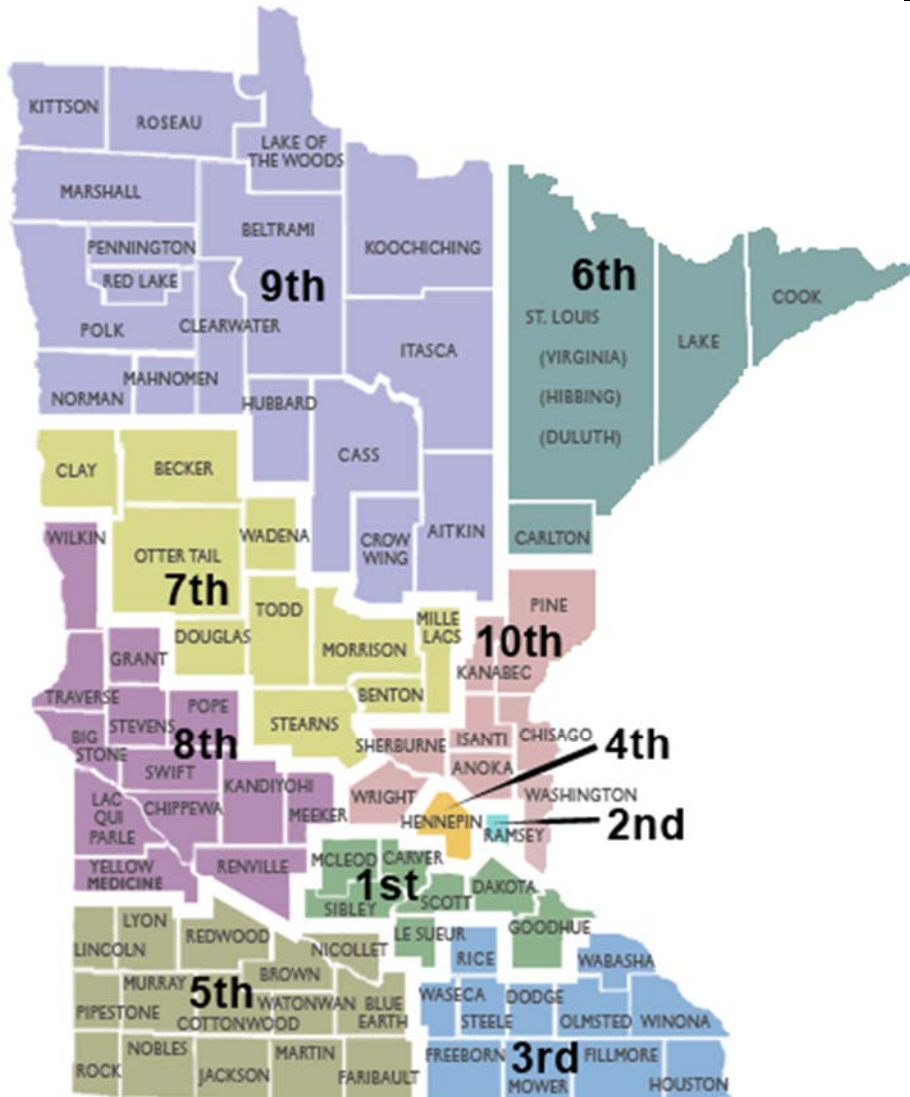
The recommended (presumptive) guideline sentence is found in the cell of the Grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the Grid.

The Guidelines generally recommend a stayed sentence for cells in the shaded area of the Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of conditional confinement in a local facility (i.e., jail or workhouse). Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the Guidelines Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).

The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the Grid, the Guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the Guidelines.

It is not possible to fully explain all of the policies in this brief summary. Additional information on the Guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at mn.gov/sentencing-guidelines.

Minnesota Judicial District Map



<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Fifth</u>	<u>Sixth</u>	<u>Seventh</u>	<u>Eighth</u>	<u>Ninth</u>	<u>Tenth</u>
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota	Fillmore	Freeborn		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue	Houston	Houston		Cottonwood	Lake	Clay	Grant	Cass	Isanti
LeSueur	Mower	Mower		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod				Jackson		Mille Lacs	LacQuiParle	Crow Wing	Pine
Scott				Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley				Lyon		Otter Tail	Pope	Itasca	Washington
				Martin		Stearns	Renville	Kittson	Wright
				Murray		Todd	Stevens	Koochiching	
				Nicollet		Wadena	Swift	Lake-Woods	
				Nobles			Traverse	Mahnomen	
				Pipestone			Wilkin	Marshall	
				Redwood			Yellow Medicine	Norman	
				Rock				Pennington	
				Watowan				Polk	
								Red Lake	
								Roseau	

Minnesota Judicial Branch at <http://mncourts.gov/?page=238>


Sentencing Guidelines Grid


Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480</i> ²	426 <i>363-480</i> ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> ^{2,3}
<i>Controlled Substance Crime, 3rd Degree</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=One year and one day

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)