

# Controlled Substance Offenses

Sentencing Practices for Offenses  
Sentenced in 2018

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# MINNESOTA

## SENTENCING GUIDELINES COMMISSION

658 Cedar Street, Suite G-58

Saint Paul, MN 55155

Voice: (651) 296-0144

Website: <http://mn.gov/sentencing-guidelines>

Email: [sentencing.guidelines@state.mn.us](mailto:sentencing.guidelines@state.mn.us)

Persons with hearing or speech disabilities may contact us via their preferred Telecommunications Relay Service.

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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.

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## Summary of 2018 Data

This report gives statistics concerning 2018 sentencing practices for felony<sup>1</sup> controlled substance offenses (“drug offenses”), as well as trends in sentencing since the implementation of the Minnesota Sentencing Guidelines. This report also presents information about the impact of the 2016 Drug Sentencing Reform Act (DSRA). Because the act applies to all drug offenses committed after July 31, 2016, over 80 percent of the drug cases sentenced in 2018 were subject to the DSRA’s provisions.

In 2018, 5,536 offenders were sentenced for drug offenses (Figure 1), a decrease of 2.4 percent from 2017 (Figure 2). Because the number of offenders sentenced for drug offenses grew each year from 2010 to 2017, the volume of drug cases sentenced in 2018 was 66 percent greater than the 2010 volume. That seven-year rise followed a four-year decline in drug case volume, by seven or eight percent each year, from 2006 to 2010 (Figure 2).

The number of first-degree offenses sentenced increased by 23 percent in 2018, following a 21 percent increase in 2017. The number of offenders sentenced for third- and fourth-degree offenses also increased (by 4% and 18%). The number sentenced for second- and fifth-degree offenses declined by 22 and 4 percent respectively. The number of cocaine, marijuana, and opium offenses went up, while the number of cases involving methamphetamine and amphetamine, heroin, and synthetic narcotics went down (Figure 5).

The total incarceration rate for drug offenders sentenced was 91 percent, with 19 percent receiving a prison sentence and 72 percent getting up to one year of local confinement (*i.e.*, local correctional facility, county jail or workhouse) as a condition of probation (Table 1). The 19-percent imprisonment rate was the lowest since 1997 and may be partially attributable to the DSRA. For those receiving an executed prison sentence, the average pronounced duration was 45 months (Table 2).

Among drug offenders recommended prison under the Guidelines, the total mitigated departure rate was 54 percent. This was higher than the mitigated departure rate for non-drug offenders recommended prison under the Guidelines (52%). Among drug offenders recommended prison under the Guidelines, 39 percent were placed on probation and 16 percent received a shorter prison sentence than the Guidelines recommended (mitigated durational departure) (Figure 25). Among drug offenders who actually received prison sentences, 23 percent received a mitigated durational departure, the same as in 2017 (Figure 18). This rate varied significantly by region (Figure 20).

The 2016 Drug Sentencing Reform Act (DSRA)<sup>2</sup> made a number of significant changes to the sentencing of Minnesota drug offenses. The DSRA’s provisions were effective for offenses committed after July 31, 2016. The new provisions were applied to 7,327 felony offenders with a first- through fifth-degree drug offense as the most serious offense sentenced from August 1, 2016 through December 31, 2018. There were 1,594 gross misdemeanants sentenced during that time, for a total 8,921 post-DSRA cases (Table 6). The use of the “zone”

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<sup>1</sup> Generally, this report describes data pertaining to felony cases only. In some parts of this report, gross misdemeanor cases are also described. When describing gross misdemeanor case data, this report will make specific note.

<sup>2</sup> [2016 Minn. Laws ch. 160](#).

enhancements increased post-DSRA (Table 9) and the DSRA resulted in a decrease in recommended and actual prison rates (Table 10). The DSRA resulted in an increase in sentence uniformity as reflected in lower durational departure rates (Table 12), although the impact on dispositional departure rates was mixed (Table 11). Prison bed savings due to the DSRA are being realized (Table 13) and the DSRA has resulted in substantial prison bed avoidance (Table 14).

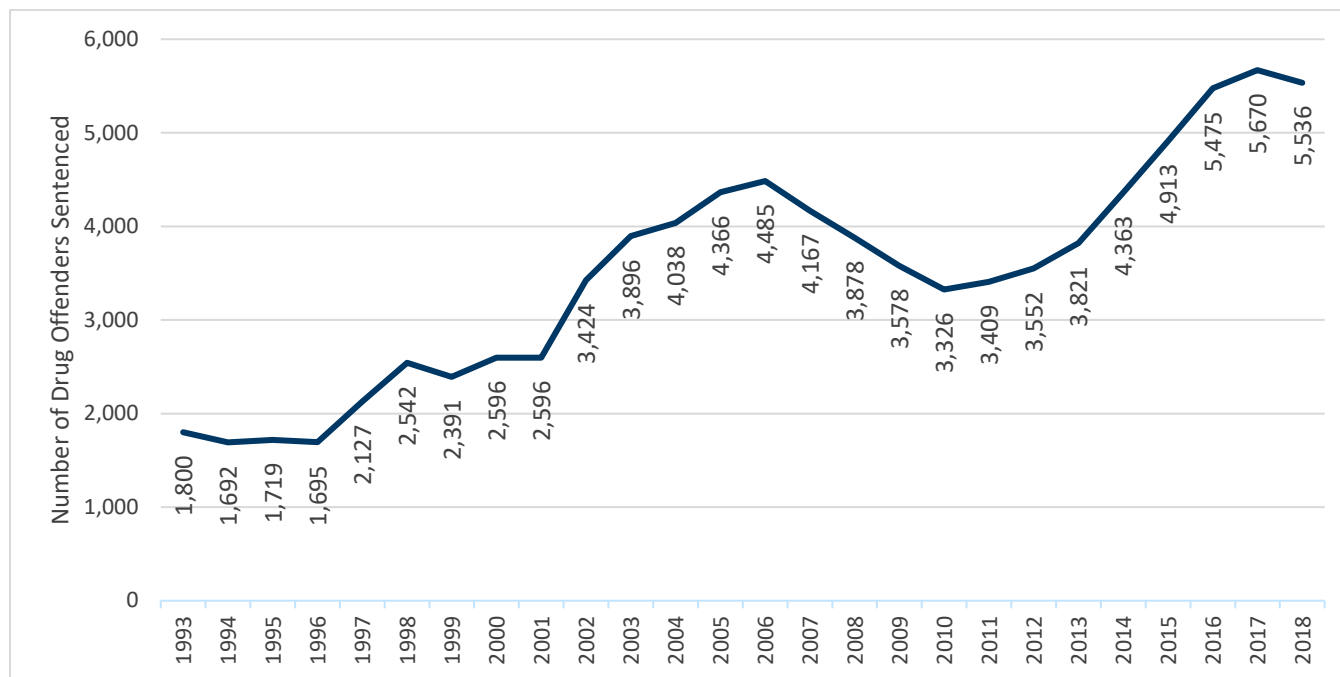
The DSRA's new gross misdemeanor offense is being widely used (p. 46), and data show post-DSRA growth in the number of cases resulting in stays of adjudication under Minn. Stat. § 152.18 (p. 52).

## Case Volume & Distribution<sup>3</sup>

### Volume of Cases

The number of felony offenders sentenced in 2018 totaled 18,284, a number almost identical to the 18,288 sentenced in 2017. 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](http://mn.gov/sentencing-guidelines/reports). There were 5,536 felony offenders sentenced for drug offenses in 2018, which was a decrease of 2.4 percent from 2017, but an increase of 66.4 percent from 2010. The 5,670 drug offenders sentenced in 2017 had been the largest number ever sentenced (Figure 1).

Figure 1. Number of Offenders Sentenced for Felony Drug Convictions, 1993–2018



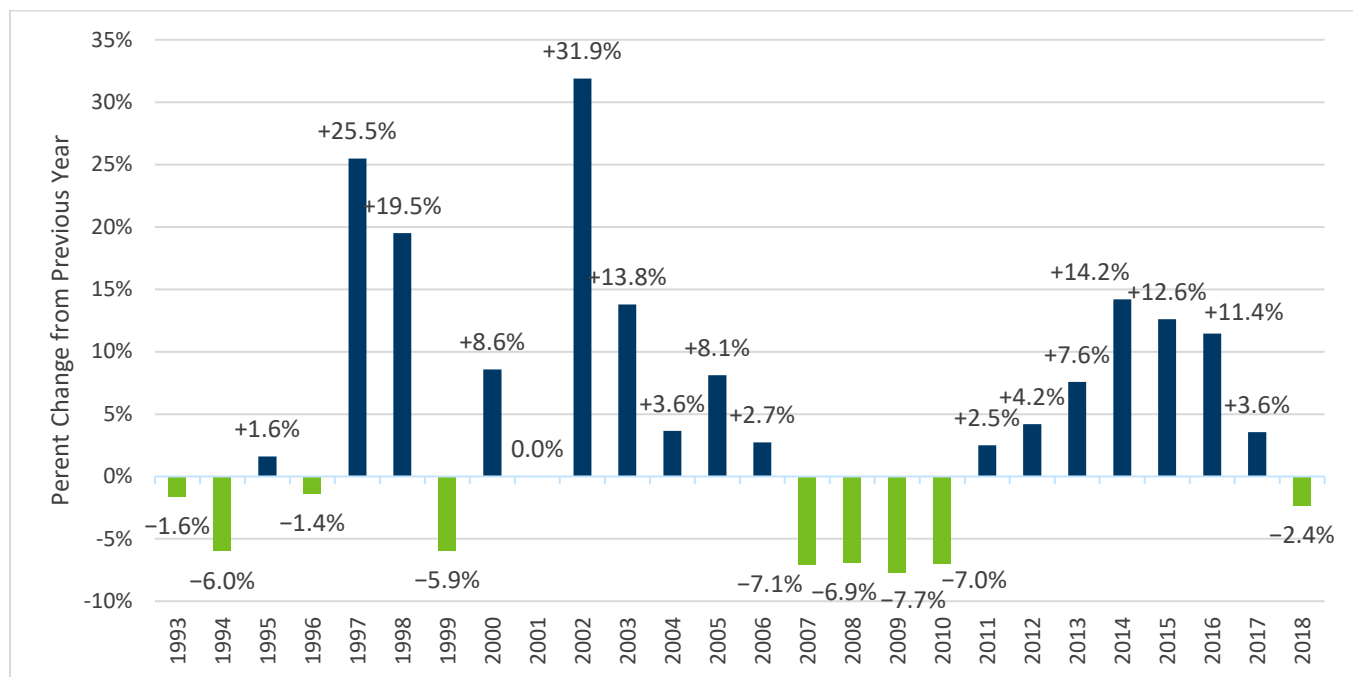
<sup>3</sup> Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.



The provisions of the 2016 Drug Sentencing Reform Act (DSRA)<sup>4</sup> applied only to cases with dates of offense on or after August 1, 2016.<sup>5</sup> Of the felony drug offenders sentenced in 2018, the DSRA applied to 4,471 (81%).

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 decreased by seven or eight percent each year. From 2010 through 2017, the number of drug offenders sentenced increased each year. In the 3 years from 2014 to 2016, the number of offenders sentenced for drug offenses increased by over 10 percent each year. In 2017, the growth rate decreased to 3.6 percent (Figure 2). In 2018, for the first time since 2010, the number of offenders sentenced for a drug offense decreased, by 2.4 percent.

*Figure 2. Percent Change in Number of Offenders Sentenced for Felony Drug Convictions, 1993–2018*



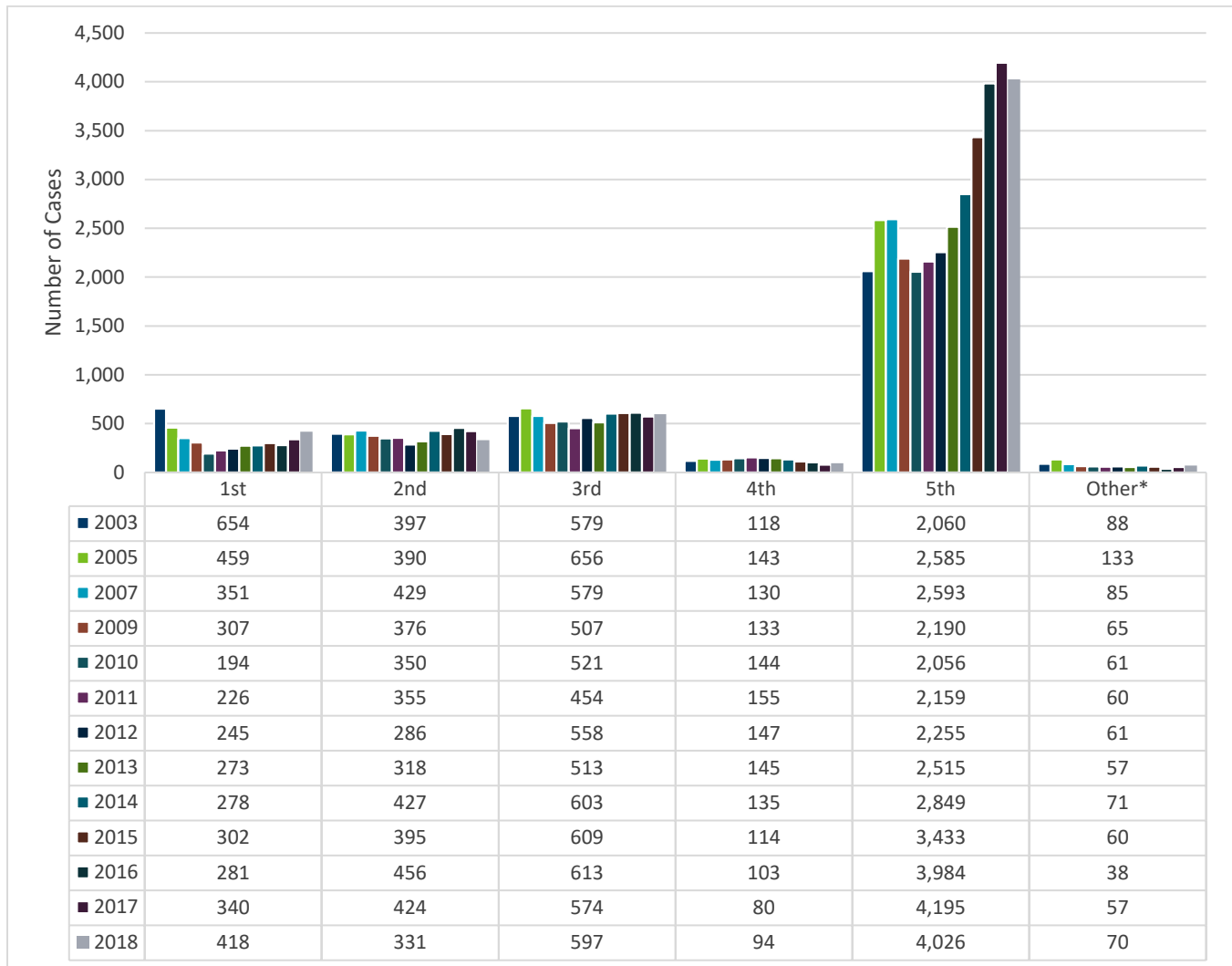
## Volume of Cases by Degree

Figure 3 shows the distribution of felony drug offenders across the five controlled substance degrees. The largest group of cases sentenced was fifth degree (73% of the cases). The largest increase in the number of offenders sentenced was for first degree (23% increase). The number sentenced for second degree offenses decreased by 22 percent. The number sentenced for third degree increased by four percent while the number sentenced for fifth degree decreased by four percent. In smaller categories, the number sentenced for fourth degree increased by 18 percent and the “other” offenses increased by 23 percent.

<sup>4</sup> I.e., [2016 Minn. Laws ch. 160](#).

<sup>5</sup> In the case of mitigations to the Drug Offender Grid established by [2016 Minn. Laws ch. 160](#) § 18, however, the Minnesota Supreme Court has held that such changes took immediate effect and therefore applied to convictions not final as of § 18’s effective date (May 23, 2016). [State v. Kirby](#), 899 N.W.2d 485 (Minn. 2017).

Figure 3. Number of Felony Drug Offenders Sentenced, by Drug Degree, 2003, 2005, 2007, 2009–2018



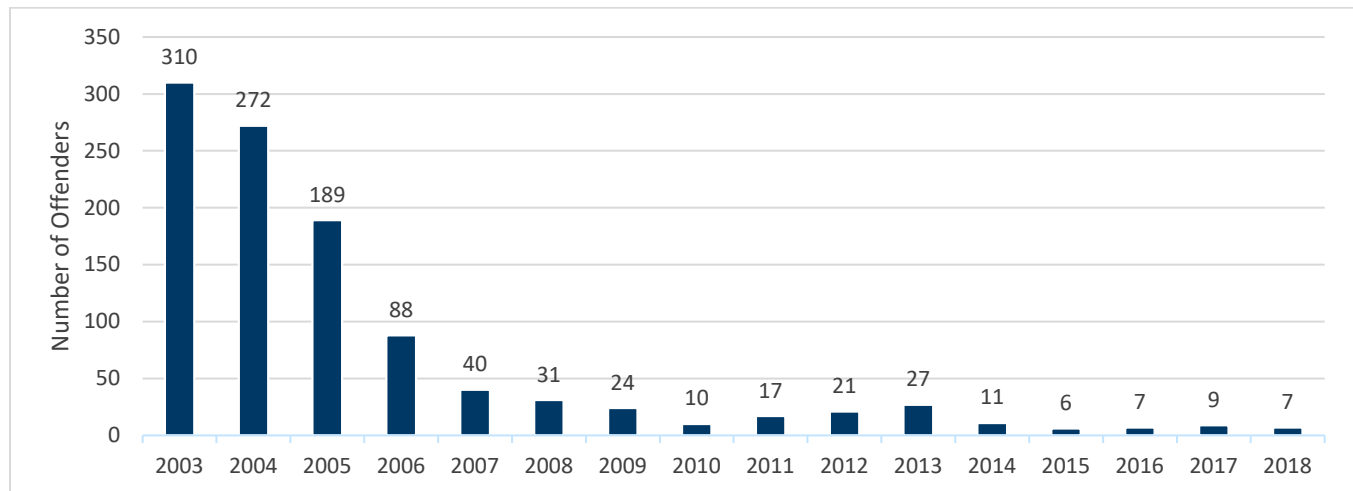
\* In 2018, the “Other” category includes 2 offenders sentenced for possession of precursors with intent to manufacture methamphetamines, 16 offenders sentenced for sale of a simulated/analog controlled substance, and 52 offenders sentenced for methamphetamine crimes involving children.

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).<sup>6</sup> After 2010, however, the number of offenders sentenced for first degree increased nearly every year, from 194 offenders in 2010 to 418 offenders in 2018; the 2018 first-degree case volume was a 23-percent increase over the year before.

<sup>6</sup> 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.

The number of offenders sentenced for manufacture of methamphetamine decreased from 27 in 2013 to 11 in 2014, and has remained below that level in the years following (Figure 4).

*Figure 4. Number of Offenders Sentenced for Manufacture of Methamphetamine, 2003–2018*



## Drug Type, Region, Race & Prior Drug Convictions

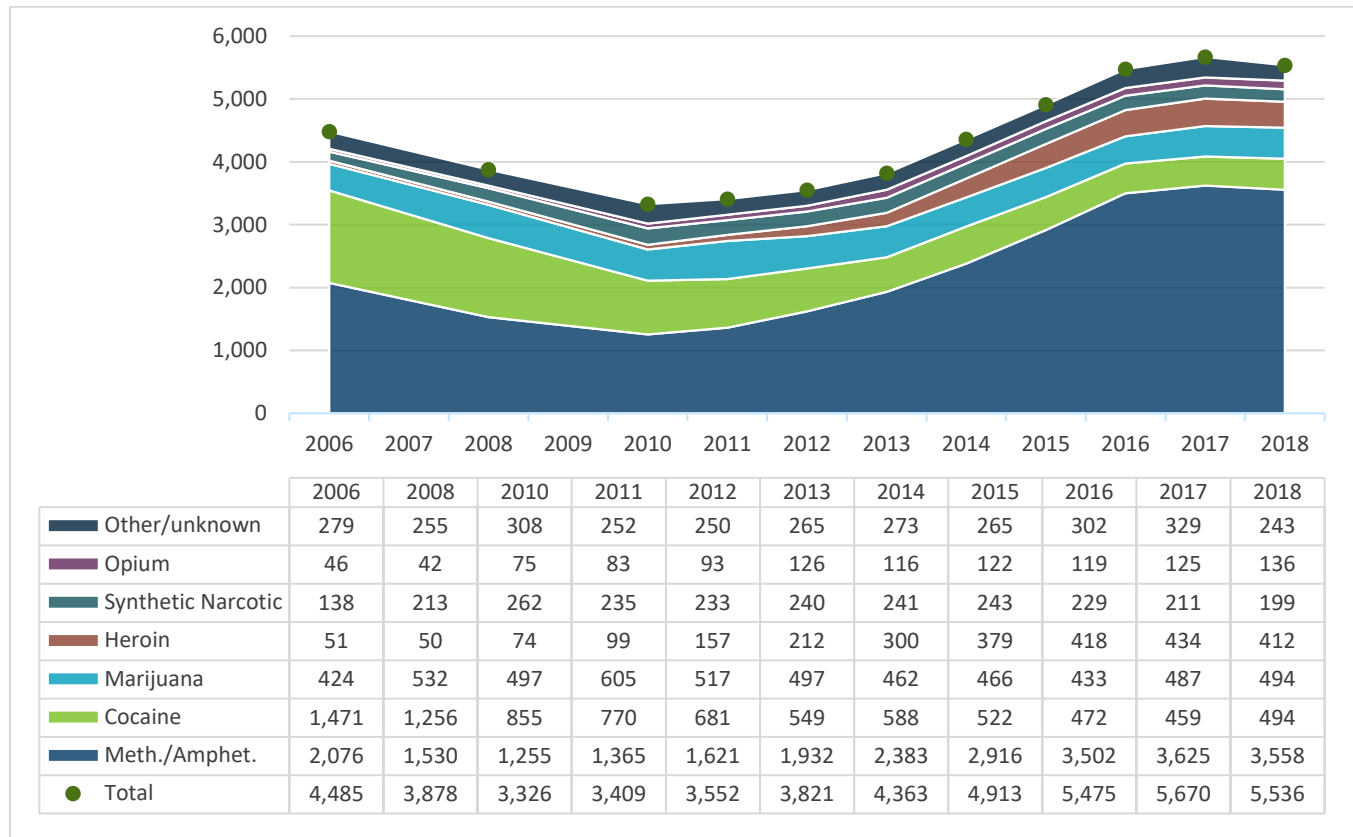
### Distribution of Cases over Time (Drug Types)

The distribution of cases among drug types, as encoded 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 methamphetamine (“meth”) or amphetamines. In 2002, cocaine still represented the largest number of drug cases (40%), but the methamphetamine and amphetamine category (“meth/amphetamine”) had grown to 38 percent, and marijuana had decreased to 13 percent. Meth/amphetamine cases constituted a majority of drug offenses sentenced in 2004 (51%), regained majority status in 2013, and have constituted 64 percent of drug offenses sentenced in each of the last three years (2016–18) (Figure 5).

Between 2015 and 2017, there was a 24-percent increase in the number of offenders sentenced for meth/amphetamine offenses and a 12-percent decrease in the number of offenders sentenced for cocaine offenses. These trends reversed in 2018, with a two-percent decrease in meth/amphetamine cases and an eight-percent increase in cocaine cases. The number sentenced for marijuana offenses decreased by seven percent in 2016 but rose by 12 percent in 2017 and eight percent in 2018 (Figure 5).

Between 2015 and 2016, the number of cases involving heroin increased by 10 percent (from 379 to 418) and in 2017 rose an additional four percent to 434. In 2018 the number of heroin cases fell by five percent to 412. The number of offenses involving opium increased by nine percent (from 125 in 2017 to 136 in 2018) and the number sentenced for synthetic narcotics decreased by six percent (from 211 to 199). Between 2008 and 2018, heroin and opium showed the largest percentage increases (724% for heroin and 224% for opium). In that same period, the number of offenders sentenced for synthetic narcotics decreased by seven percent (Figure 5).

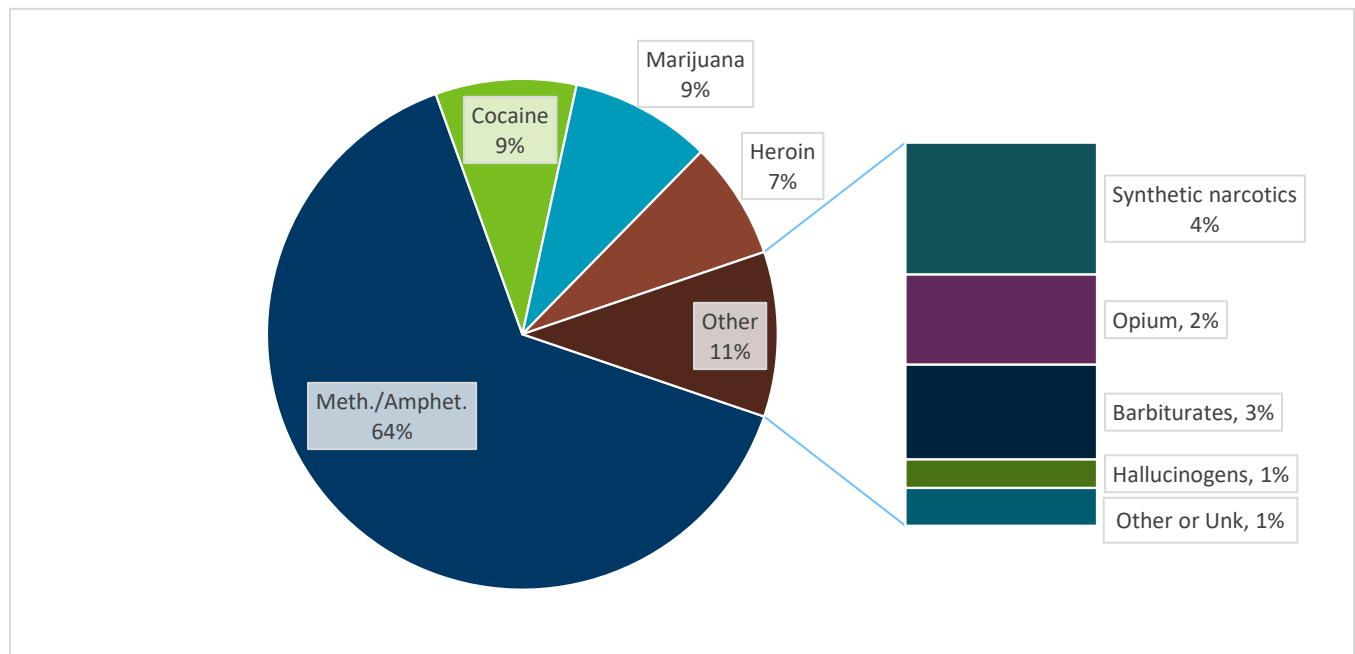
Figure 5. Distribution of Offenders by Drug Type, Sentenced 2006, 2008, 2010–2018



Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

At 64 percent, the meth/amphetamine category continued to be the drug type with the largest number of cases in 2018, while nine percent of the cases involved cocaine, nine percent involved marijuana, and 18 percent were for other or unknown substances. Among the other drug types, heroin had the largest number of cases at 412 (7%), followed by synthetic narcotics at 199 (4%) (Figure 6).

Figure 6. Percentage of Offenders by Drug Type, 2018



Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

### 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 those metro counties. In 1998, 33 percent of all drug cases were sentenced in Greater Minnesota (Figure 7). By 2004, that percentage had grown to 51 percent, and it has remained at or above 50 percent every year since, except 2006. In 2018, 59 percent of drug offenders were sentenced in Greater Minnesota, almost equal to the record high of 60 percent in 2013. By comparison, 44 percent of non-drug offenders were sentenced in Greater Minnesota in 2018. In Hennepin and Ramsey counties, the percent of drug offenders is lower than the percent of non-drug offenders, while in the other metro counties it is about the same (Figure 8).

Figure 7. Distribution of Drug Cases by Region, 1998–2018

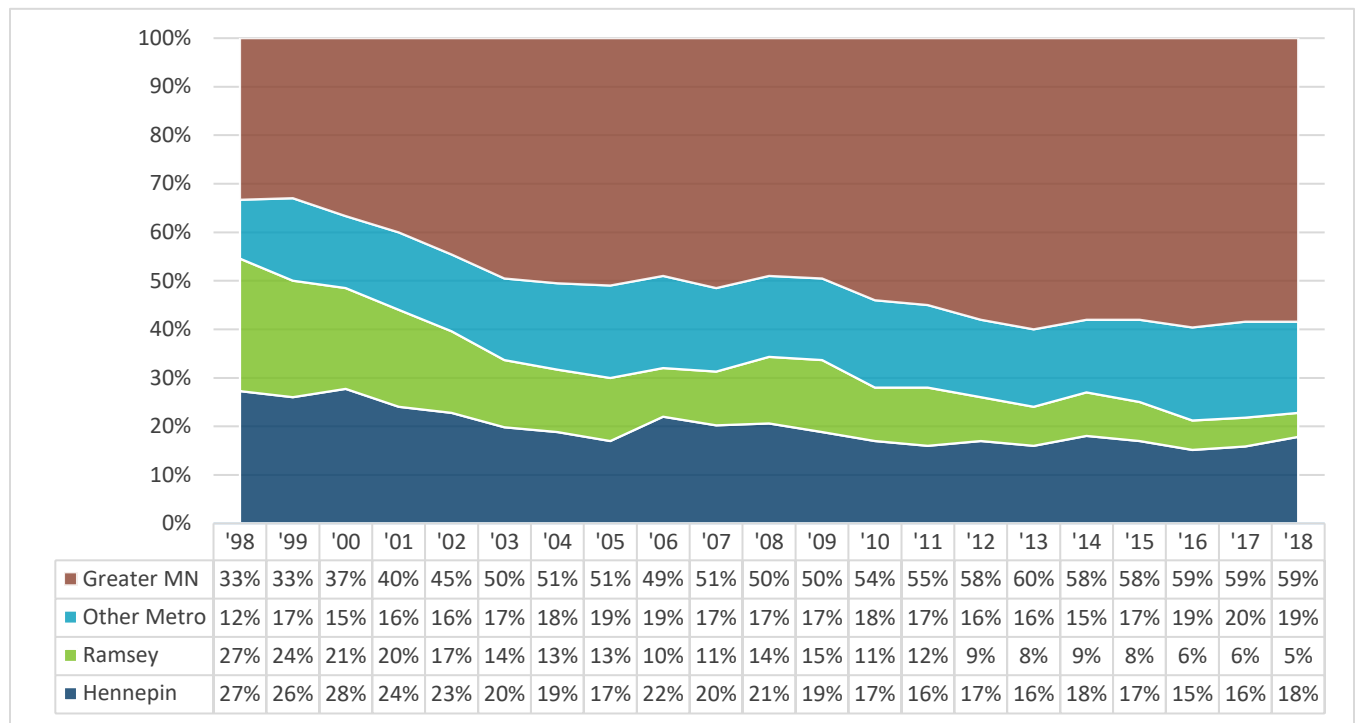
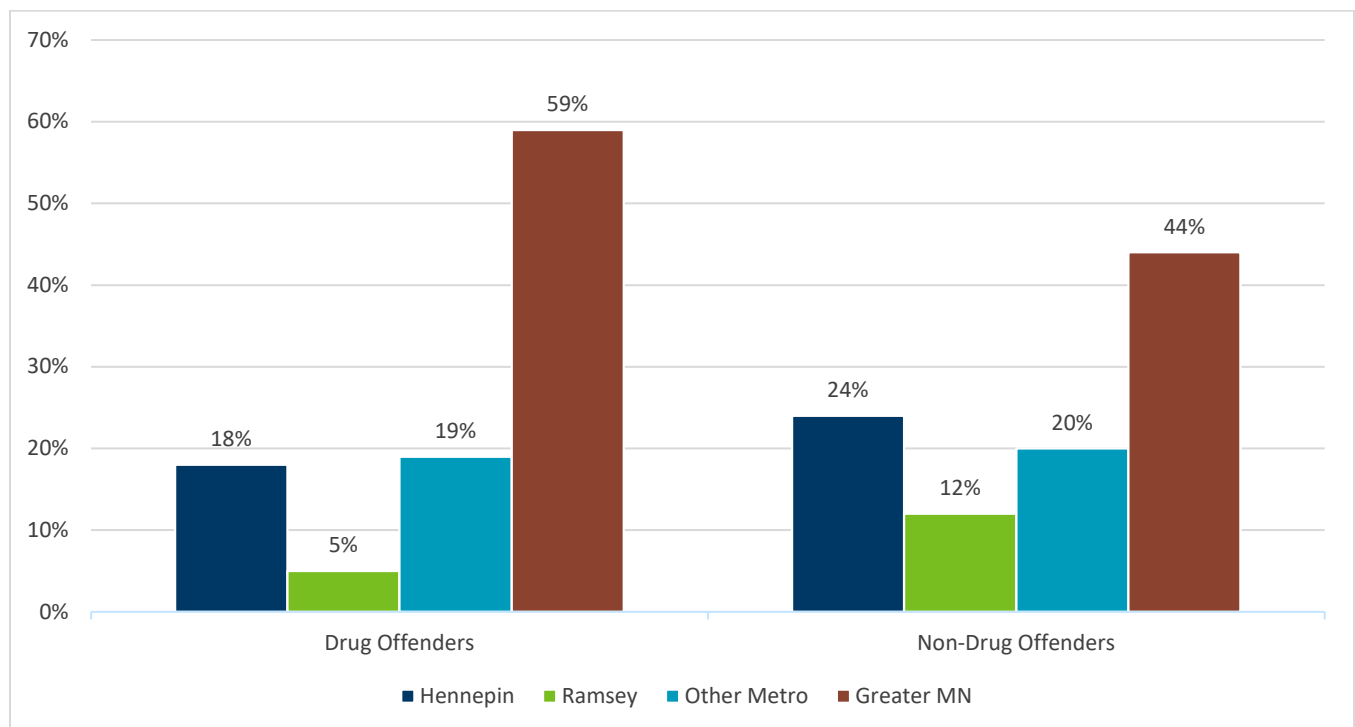


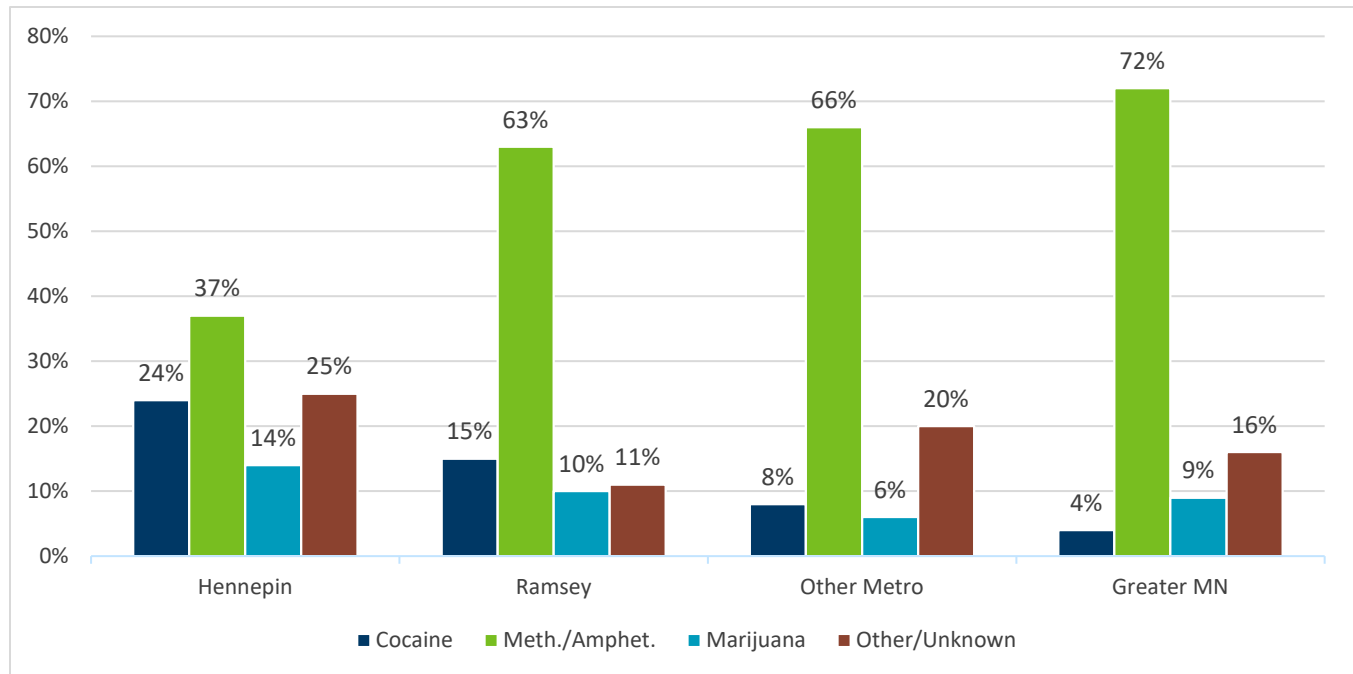
Figure 8. Distribution of Offenders by Region; Drug and Non-Drug Offenders, 2018



## 2018 Distribution of Cases (Drug Types and Region)

There was a difference in the distribution of drug types among regions as well (Figure 9). Beginning in 2016, meth/amphetamine became the most common drug type in all regions—although, in Hennepin County, meth/amphetamine cases constituted less than half of the cases. Before 2016, cocaine had been the drug type found most frequently in Hennepin County.

Figure 9. Distribution of Drug Offenders by Drug Type and Region, 2018



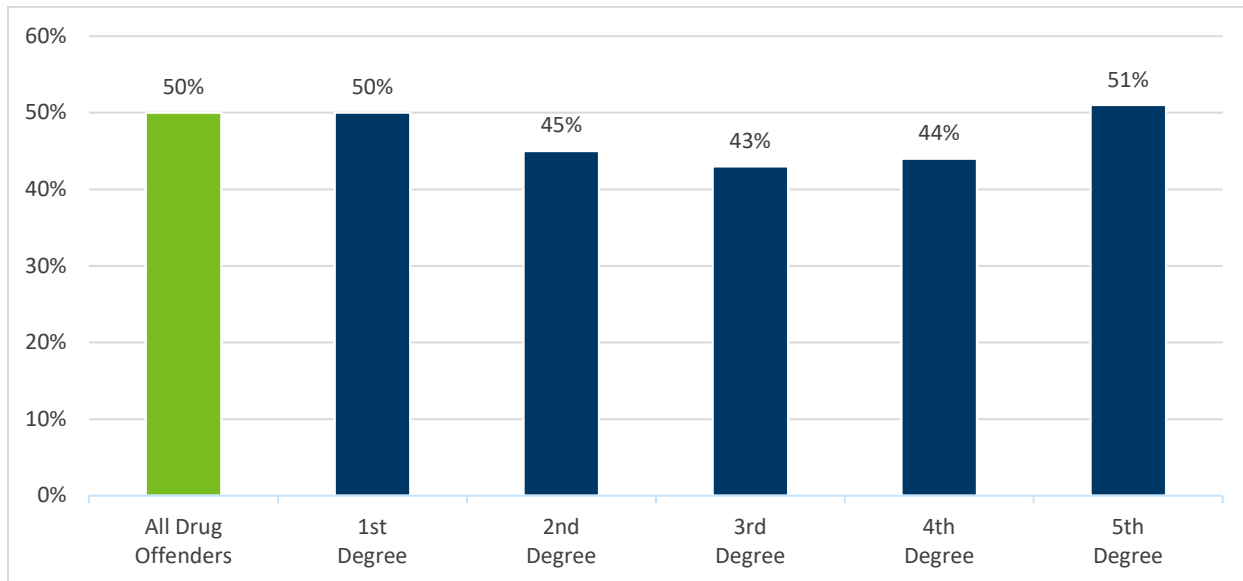
Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

## 2018 Distribution of Cases (Prior Conviction)

Fifty percent of drug offenders sentenced had prior convictions for felony-level drug offenses (Figure 10).<sup>7</sup> Among the controlled substance degrees, third-degree offenders were the least likely (43%) to have prior convictions.

<sup>7</sup> In first- and second-degree (and pre-DSRA 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. 31.

Figure 10. Percent of Offenders with a Prior Felony Drug Sentence by Controlled Substance Degree, 2018



### Distribution by Race and Ethnicity

In 1999, 51 percent of drug offenders were white and 36 percent were black, whereas in 2018, 66 percent of drug offenders were white and 17 percent were black. A larger percentage of drug offenders were white than of offenders sentenced for non-drug offenses (Figure 11).

Figure 11. Distribution of Offenders by Race; Drug Offenders and Non-Drug Offenders, 2018

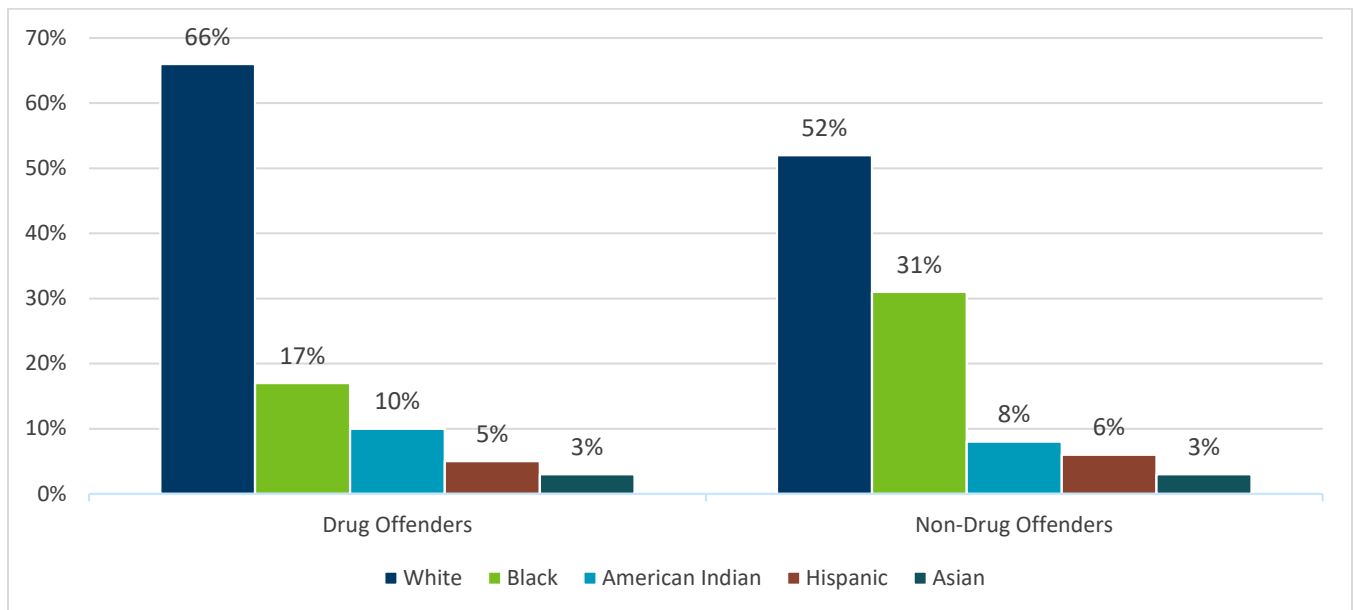
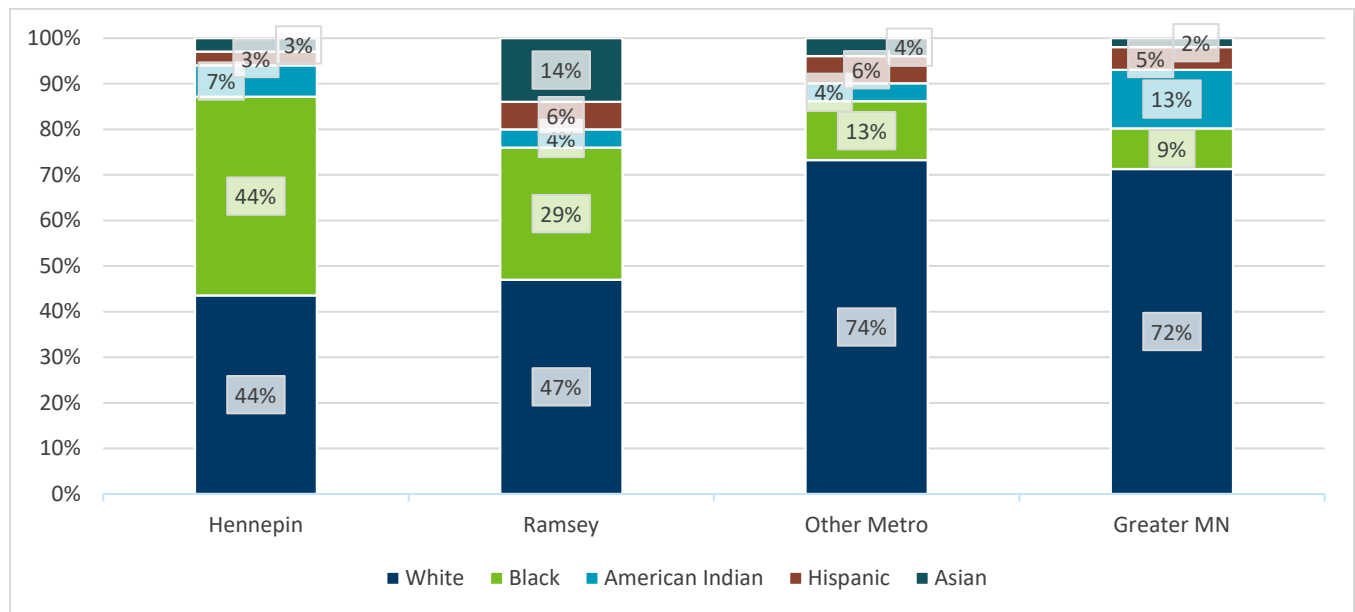


Figure 12 displays the racial distribution of drug offenders by region. Black offenders make up a larger share of the drug offenders sentenced in Hennepin and Ramsey counties than in the rest of the state. These counties include the metropolitan areas of Minneapolis and St. Paul.

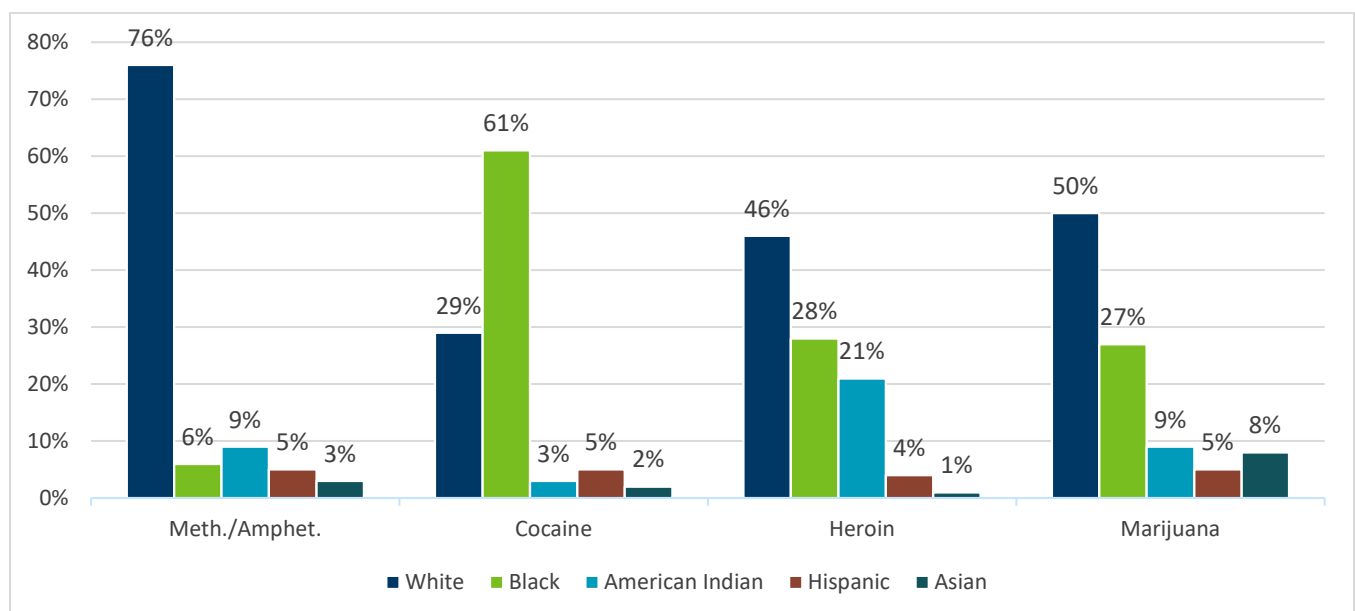


Figure 12. Distribution of Drug Offenders by Race and Region, 2018



Sentencing data reveal that the correlation between meth/amphetamine and offenders who are white directly impacted the racial make-up of drug offenders in Minnesota. Figure 13 displays the racial composition of offenders sentenced for meth/amphetamine, cocaine, heroin, and marijuana offenses.

Figure 13. Distribution of Offenders by Race and Drug Type, 2018



Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

## Sentencing Practices

In 2018, 91 percent of felony drug sentences included incarceration: 19 percent in state prison and 72 percent in local correctional facilities (Table 1). The remaining nine 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, 2018*

Incarceration Type	Number	Percent
State Prison	1,051	19
Local Confinement	3,986	72
Total Incarceration	5,037	91
<b>Total</b>	<b>5,536</b>	<b>100</b>

### Incarceration in State Prison

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After Minnesota established five degrees of controlled substance crime 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 been less dramatic, and the imprisonment rates and average pronounced sentences in those cases have remained relatively stable (Table 2).

Imprisonment 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 twofold: a larger total number of drug offenders are being sentenced, and a higher percentage of them are receiving prison sentences.<sup>8</sup> 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 30 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. Most recently, the imprisonment rate fell from 20 percent in 2017 to 19 percent in 2018, the lowest rate since 1997. While the

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<sup>8</sup> 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); and [2016 Minn. Laws ch. 160](#) (Drug Sentencing Reform Act: cocaine and methamphetamine thresholds increased, new Drug Offender Grid established, scope of mandatory minimums reduced, etc.).

number of drug offenders receiving a prison sentence fell, from 1,128 in 2017 to 1,051 in 2018, the average sentence duration rose, from 41 to 45 months.

*Table 2. Imprisonment Cases; Prison Rates and Average Pronounced Durations for Drug and Non-Drug Offenders, 1991–2018*

Year	Drug Offenders			Non-Drug Offenders		
	Number of Cases	Prison Rate	Average Duration	Number of Cases	Prison Rate	Average 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
2016	5,475	22%	42 months	11,452	27%	48 months
2017	5,670	20%	41 months	12,318	26%	48 months
2018	5,536	19%	45 months	12,748	25%	48 months

## Distribution of Estimated Prison Beds by Drug Type over Time

Figure 14 displays the estimated number of prison beds occupied for offenders receiving an executed prison sentence by drug type from 2005 to 2018. These estimates are calculated assuming the offender serves the

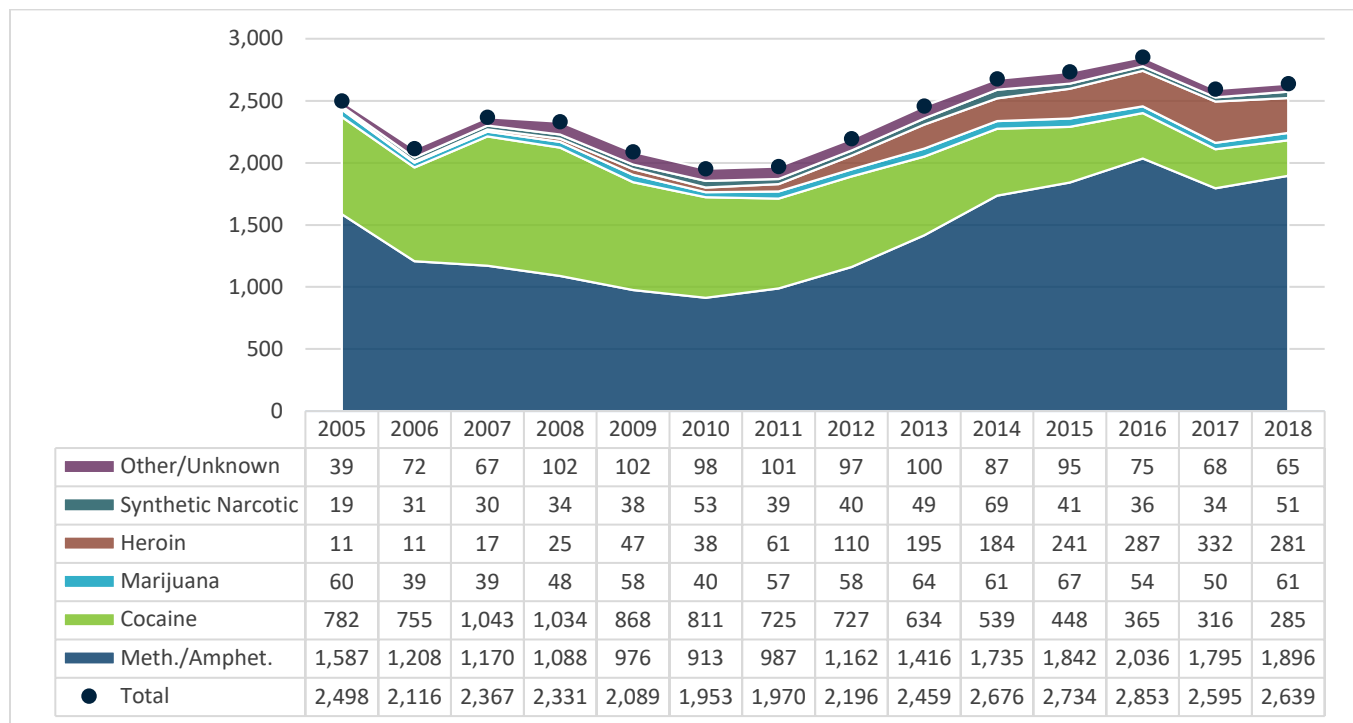
estimated term of imprisonment, which is two-thirds of the executed sentence. While these estimates provide a description of the relative number of beds taken up by the offenders with various drug types, they do not mirror the actual Minn. Department of Corrections population for any given year because 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.

Moreover, not all estimated prison beds are needed in the first year. The total need for the estimated prison beds is, instead, apportioned over a period of approximately nine years, with each year requiring a smaller share of the total estimated prison beds than the year before.

With these caveats in mind, it is estimated that the drug offenders receiving prison sentences in 2018 will, over time, occupy 2,639 beds. The number of estimated prison beds taken up by meth/amphetamine offenders reached a record high in 2018 when offenders in the meth/amphetamine category—who constituted 64 percent of the cases sentenced—accounted for 72 percent of the estimated prison beds. This is an increase from 69 percent in 2016. The percent of beds taken up by meth/amphetamine cases reached its previous high in 2016 (71% percent). From 2007 through 2010, the meth share of drug offenders’ prison beds stayed below 50 percent, but then increased steadily through 2016.

*Figure 14. Estimated Prison Beds for Felony Controlled Substance Crimes, by Drug Type, Sentenced 2005–2018*



*Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.*

## 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 local confinement (i.e., local correctional facility, county jail or workhouse) as a sentence or a condition of probation. In 2018, 4,485 offenders received non-prison sentences for drug offenses, a 200 percent increase over the number receiving non-prison sentences in 1991 (Table 3). In comparison, the number of non-drug offenders serving non-prison sentences increased by about 62 percent during this same time period. Almost all of the drug offenders receiving non-prison sentences are placed on probation (99% in 2018). 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. In 2018, the average pronounced period of probation for drug offenders was 67.9 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 consistently had local time imposed at a slightly higher rate than non-drug offenders. From 2012 through 2016, the local incarceration rate for drug offenders had been 91 percent, falling to 90 percent in 2017 and 89 percent in 2018. For both groups, the average time pronounced in a local facility in most years has usually been more than 100 days. In 2018, the average pronounced local time for both drug offenders and non-drug offenders was 95 days (Table 3).

*Table 3. Non-Imprisonment Cases; Rates and Average Pronounced Local Confinement for Drug and Non-Drug Offenders, 1991–2018*

Year	Drug Offenders			Non-Drug Offenders		
	Number of Stayed Cases	Local Rate	Average Duration	Number of Stayed Cases	Local Rate	Average 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

Year	Drug Offenders			Non-Drug Offenders		
	Number of Stayed Cases	Local Rate	Average Duration	Number of Stayed Cases	Local Rate	Average Duration
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
2016	4,246	91%	122 days	8,373	89%	97 days
2017	4,542	90%	102 days	9,299	89%	94 days
2018	4,485	89%	95 days	9,573	88%	95 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 2018, the total departure rate for drug offenders was 17 percent, compared to 29 percent for non-drug offenders. The total mitigated departure rate was 15 percent for drug offenders and 27 percent for non-drug offenders (Table 4).

Table 4. Total Departure Rates; Drug and Non-Drug Offenders, 2018

Departure Type	Drug Offenders		Non-Drug Offenders	
	Number	Percent	Number	Percent
No Departure	4,585	83	9,051	71
Total Departures	951	17	3,697	29
Mitigated	843	15	3,429	27
Aggravated	88	1.6	218	1.7
Mixed	20	0.4	50	0.4
Total	5,536	100	12,748	100

### Aggravated Dispositional Departures: Drug and Non-Drug Offenders

Aggravated dispositional departures occur relatively infrequently compared to other types of departures. One 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<sup>9</sup> or plea agreement accounted for 48 percent of aggravated dispositional departures in drug cases, excluding

<sup>9</sup> This request is usually made to allow the offender to serve the sentence concurrently (at the same time) with another prison sentence. 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).

cases in which the departure reason was “unknown.” The aggravated dispositional departure rate for drug offenders was higher than for non-drug offenders.

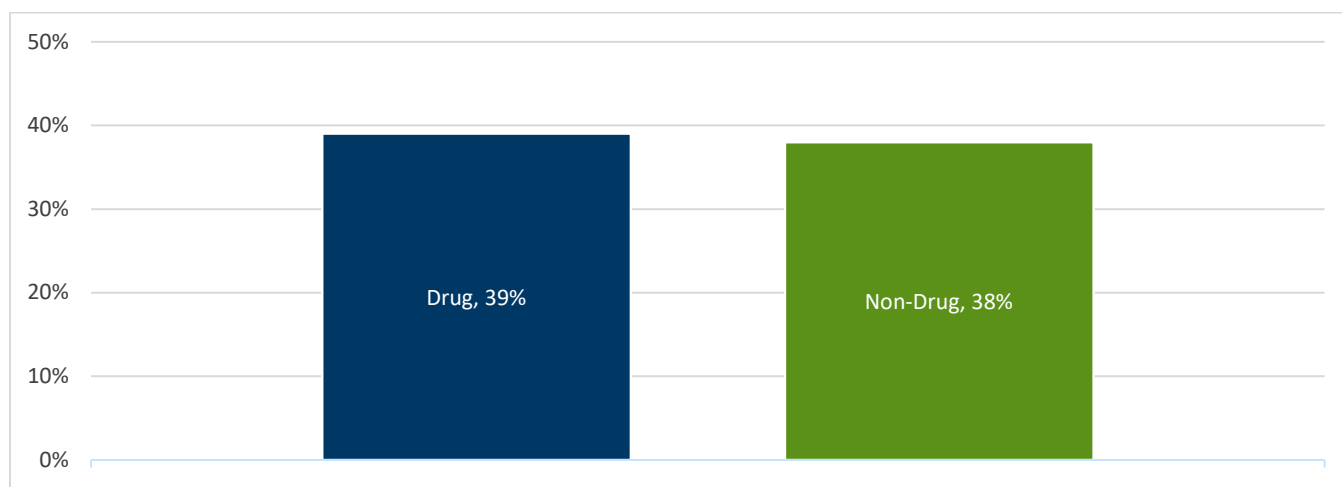
*Table 5. Aggravated Dispositional Departure Rates; Drug and Non-Drug Offenders, 2018*

	<b>Drug Offenders</b>	<b>Non-Drug Offenders</b>
Number of Presumptive Stays	4,281	8,041
Aggravated Dispositions (and Percent of Presumptive Stays)	62 (1.4%)	40 (0.5%)
Aggravated Dispositions with Departure Reasons	62	39
Requests for Prison	30 (48%)	24 (62%)

### Mitigated Dispositional Departures: Drug and Non-Drug Offenders

Figure 15 shows that 39 percent of drug offenders who were recommended prison under the Guidelines instead received a non-prison (probationary) sentence in 2018. This compared to 38 percent for non-drug offenders. Compared to 2017 (40%), mitigated dispositional departures decreased slightly for 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](http://mn.gov/sentencing-guidelines/reports).)

*Figure 15. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, Drug and Non-Drug Offenders, 2018*



### Dispositional Departures: Frequently Cited Reasons for Departure

Amenability to treatment and to probation were the most frequently-cited departure reasons for the mitigated dispositions in drug cases. In a large percentage of these cases, the sentencing court noted either that a plea agreement supported the departure, or that the prosecutor recommended or did not object to the departure.

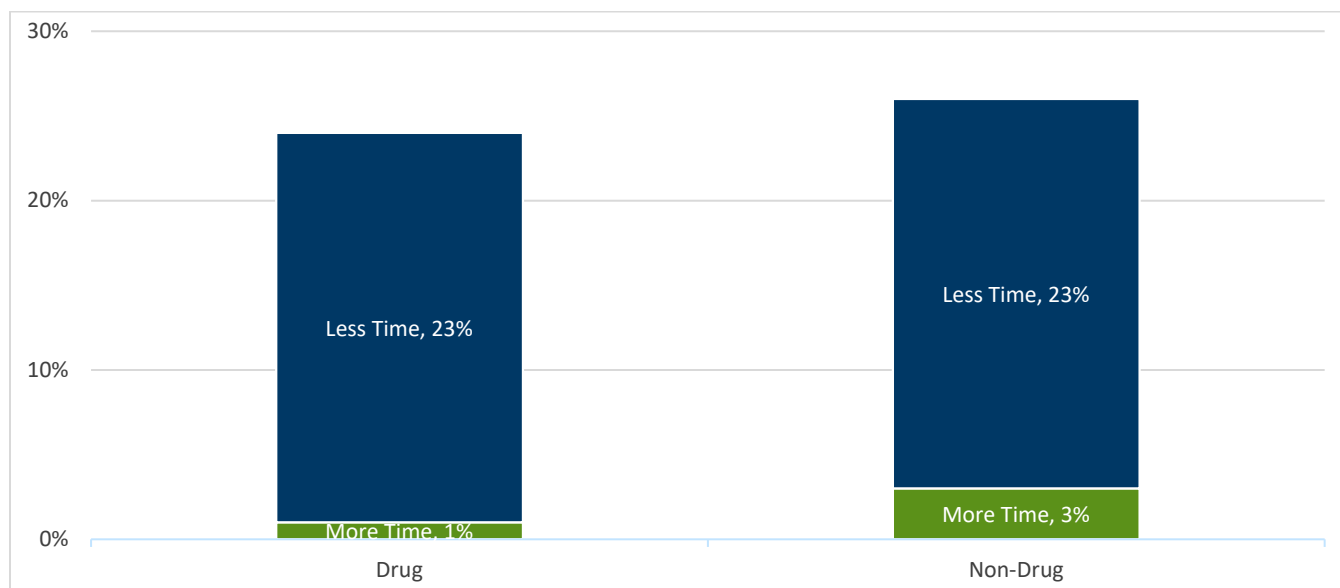


Such plea agreements or prosecutor recommendations supported 55 percent of mitigated dispositions in drug cases, compared to 57 percent in non-drug cases. The sentencing court noted the prosecutor’s objection to the mitigated disposition in 19 percent of both the drug offenses and non-drug offenses.<sup>10</sup>

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

The mitigated durational departure rate for offenders who received executed prison sentences was 23 percent for both drug and non-drug offenders (Figure 16). The aggravated durational departure rate was one percent for drug offenders and three 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](http://mn.gov/sentencing-guidelines/reports).)

Figure 16. Durational Departure Rates for Cases Receiving Executed Prison Sentences, Drug and Non-Drug Offenders, 2018



“Plea Agreement” was the most frequently cited reason for mitigated durational departures in drug offenses. The court indicated that there was a plea agreement for the mitigated durational departure, or that the prosecutor recommended, or did not object to, the mitigated durational departure, in 69 percent of the drug offenses and 73 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 eight percent of non-drug offenses.<sup>11</sup> As reported by the court, mitigated durational departures were more commonly supported either by a plea agreement or by the prosecutor’s recommendation or lack of objection (69%) than mitigated dispositional departures (55%).

<sup>10</sup> 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.

<sup>11</sup> See footnote 10.

## Long-Term Trends in Departure Rates for Drug Offenders

Figure 17 shows that, for most of the last twenty years, the mitigated dispositional departure for drug offenders has been between 35 and 39 percent. The rate was higher in 2004 to 2006 (reaching a rate of 46 percent in 2006) and lower in 2012 and 2013 (falling to a rate of 31 percent in 2013). More recently, in 2016 and 2017, the rate was in the low 40s, but fell again to 39 percent in 2018.

Figure 17. Mitigated Dispositional Departure Rates, Drug Offenses, Presumptive Commitments Only, 1996–2018

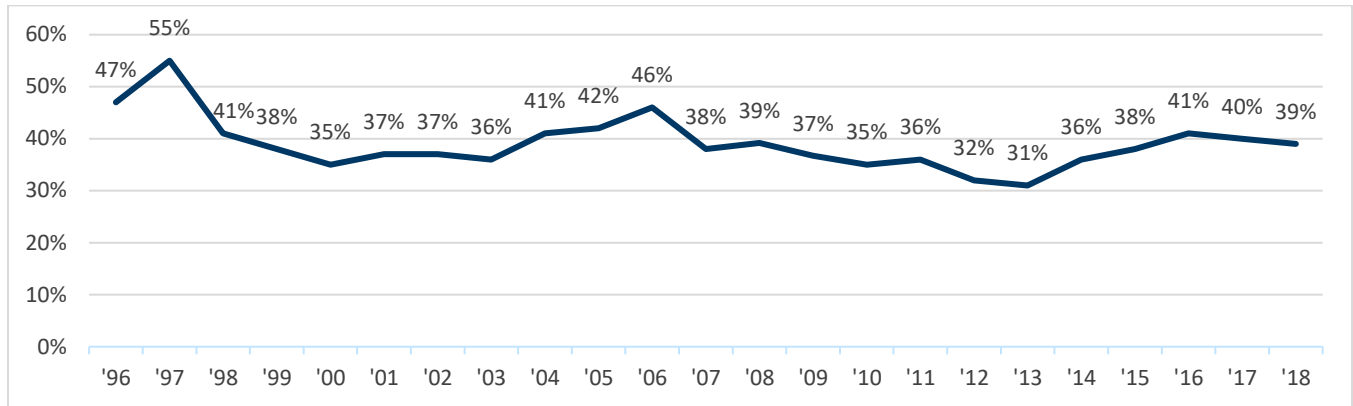
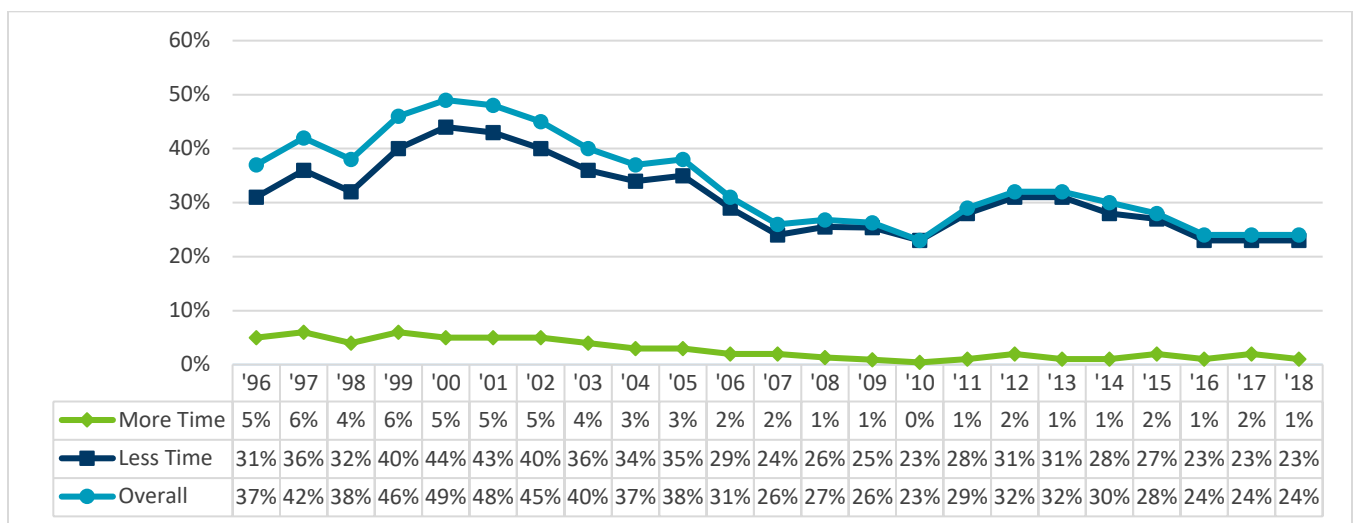


Figure 18 shows that the mitigated durational departure rate increased through the 1990s, peaking at 44 percent in 2000. After 2000, however, this rate steadily declined to a low of 23 percent in 2010. The rate then climbed to 31 percent in 2012 and 2013, but fell thereafter. In 2016 through 2018, the mitigated durational departure rate has stabilized at its previous low of 23 percent. The aggravated durational departure rate, on the other hand, have been consistently low, remaining at or below two percent since 2006.

Figure 18. Durational Departure Rates for Drug Cases Receiving Prison Sentences, 1996-2018



## Departure Rates for Drug Offenders by Region

While departure rates for drug offenses fluctuate from year to year and vary by region, they are high across the state (Figure 19 & Figure 20).

In 2018, the mitigated dispositional departure rates decreased in Hennepin, Ramsey and the other metro counties and increased in Greater Minnesota (Figure 19). In the seven years before 2014, the other metro counties<sup>12</sup> had the highest rates and Ramsey County or Greater Minnesota had the lowest. In 2018, Ramsey County had the highest mitigated dispositional departure rate, followed by Greater Minnesota; for the first time ever, Hennepin County had the lowest.

Figure 19. Mitigated Dispositional Departure Rates by Region, Drug Offenses, Presumptive Commitments Only, 1996–2018

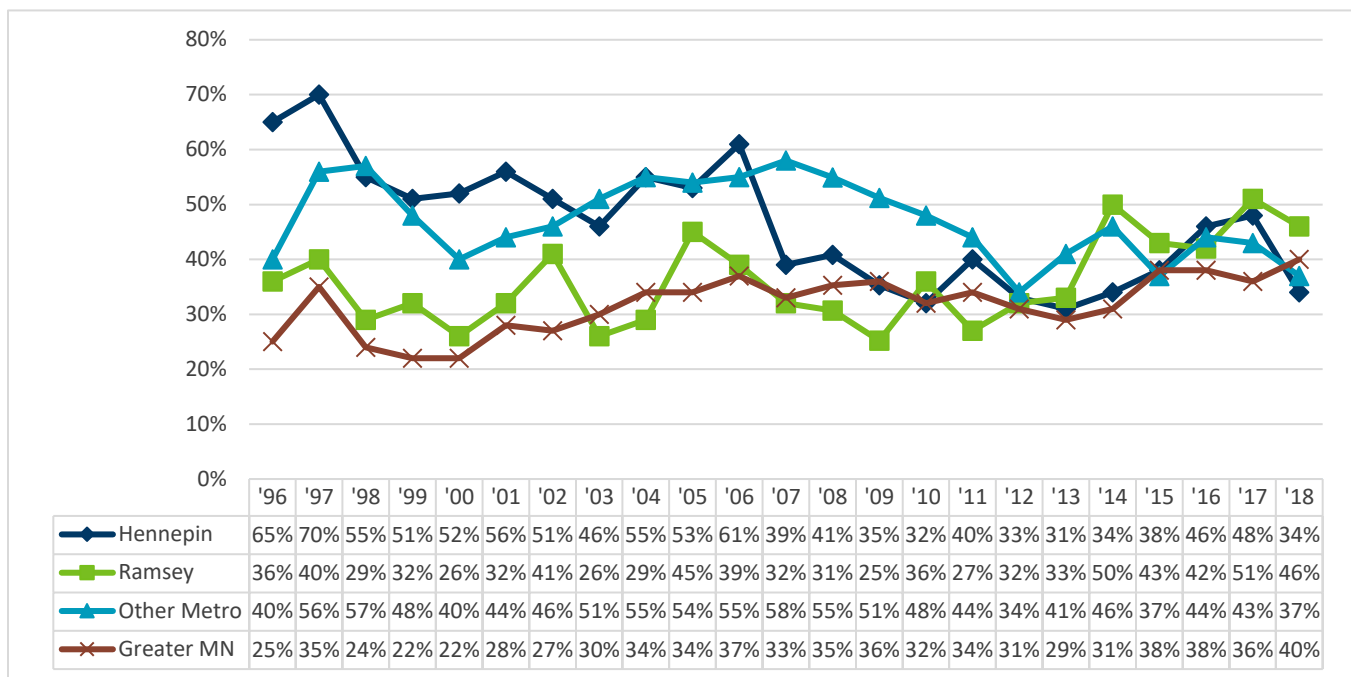
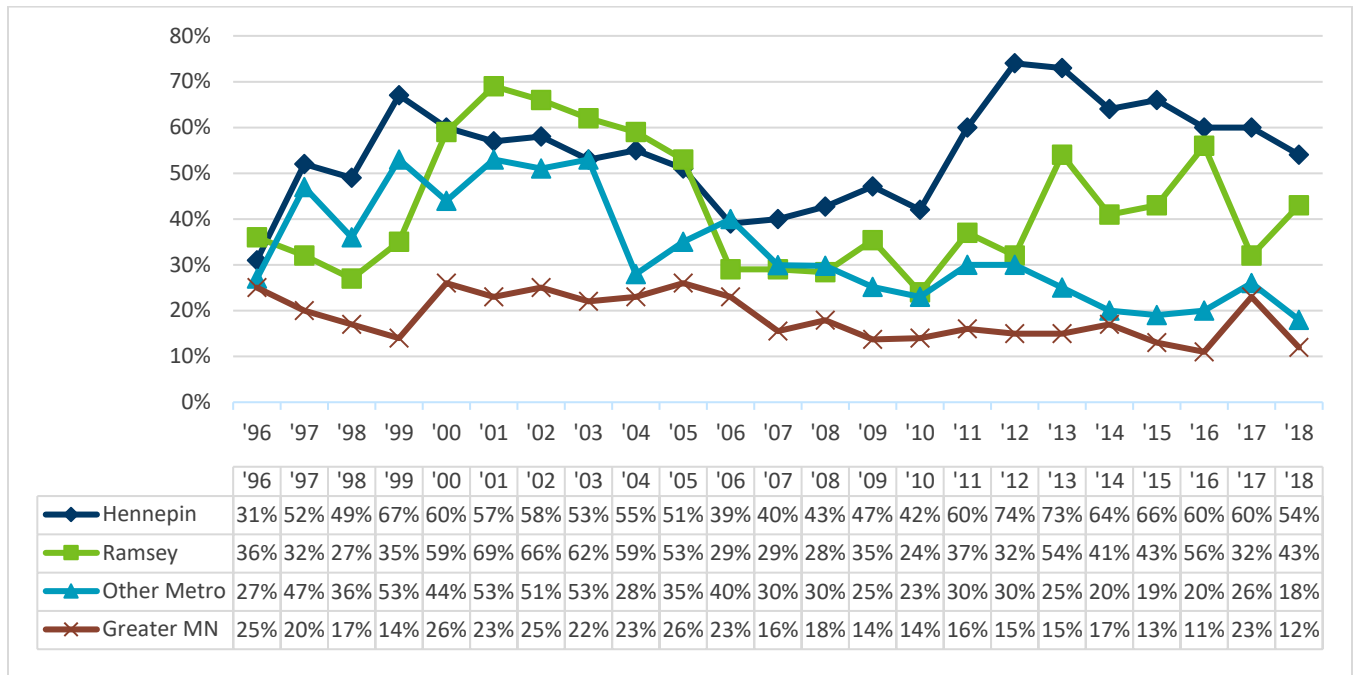


Figure 20 shows that, in 2018, the mitigated durational departure rate for executed sentences rose in Ramsey County from 32 percent to 43 percent. The mitigated durational departure rate declined in the other regions. At 54 percent, Hennepin County's 2018 durational departure rate was the highest among the four regions, but was lower than the 2017 rate of 60%. The Hennepin County rate exceeded 60 percent from 2012 to 2015, but was lower before 2011.

<sup>12</sup> "Other metro counties" are Anoka, Carver, Dakota, Scott and Washington counties.

Because the mandatory minimum sentence lengths for subsequent first- and second-degree drug offenses are less than the durations recommended by the Guidelines, it is possible for a court to give a mitigated durational departure while still complying with the mandatory minimum prison sentence.

*Figure 20. Mitigated Durational Departure Rates by Region for Drug Cases Receiving Executed Prison Sentences, 1996–2018*

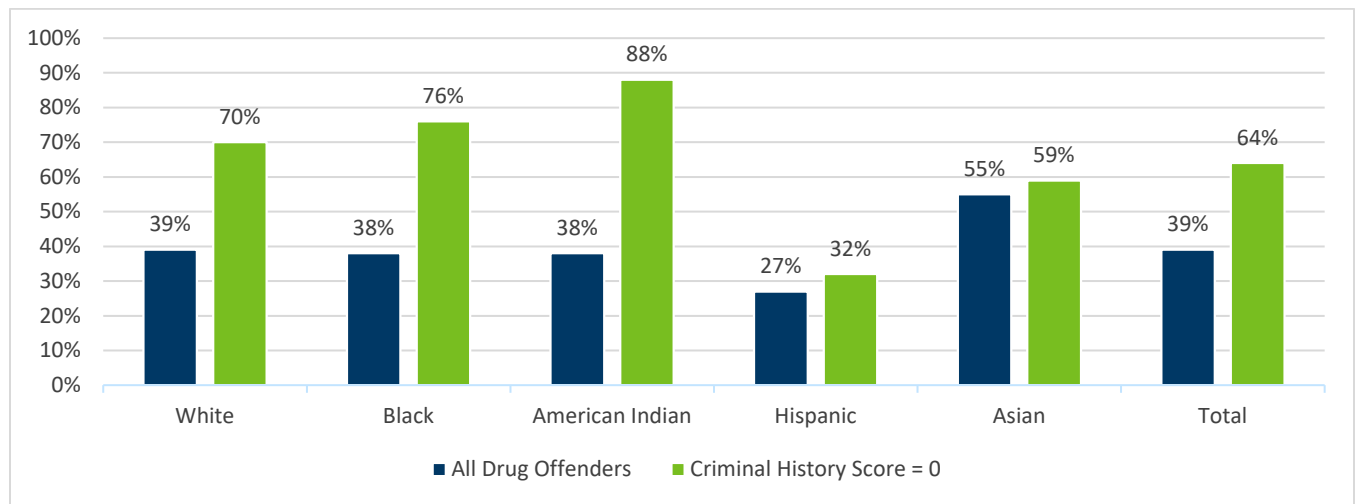


## Departure Rates for Drug Offenders by Race & Ethnicity

Departure rates vary by race, with Asian offenders receiving mitigated dispositional departures at higher rates and Hispanic offenders at lower rates (Figure 21). The differences in departure rates may be related to criminal history scores. At a criminal history score of zero, the mitigated dispositional departure rate is 64 percent, and offenders of every race and ethnicity category, except Hispanic and Asian, have an average mitigated dispositional departure rate of more than 60 percent. The rate is highest for American Indian offenders.<sup>13</sup> Offenders who are Hispanic have the lowest departure rate at a criminal history score of zero at 32 percent.

<sup>13</sup> There were 8 American Indian offenders who had a presumptive prison disposition and a criminal history score of 0; 7 received a mitigated dispositional departure.

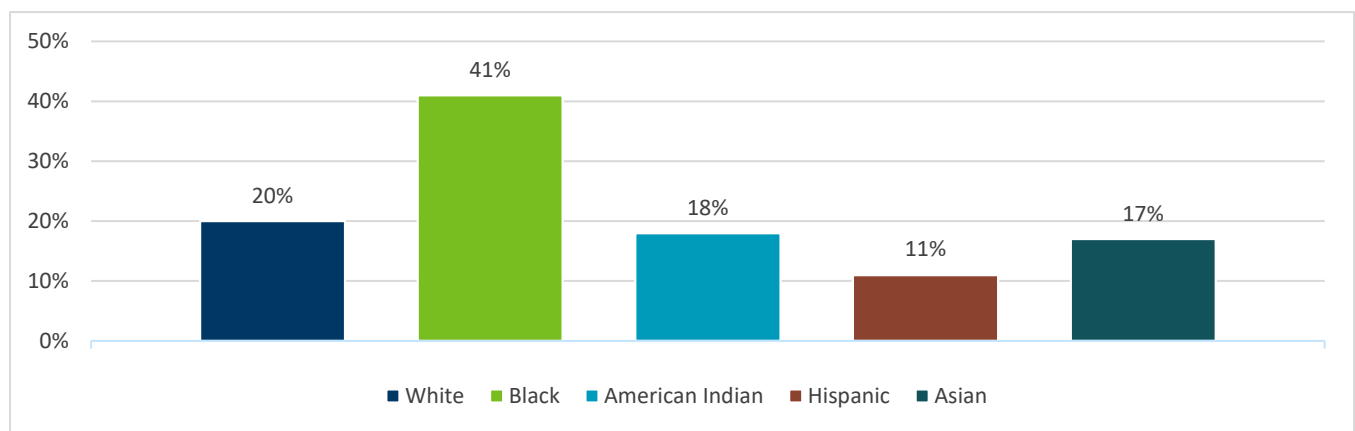
*Figure 21. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, by Race & Ethnicity, 2018*



Mitigated durational departure rates are higher for offenders who are black than for offenders of any other race (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 2017 to 2018, mitigated durational departures declined for offenders who are white (from 21% to 20%), Hispanic (from 17% to 11%), and Asian (from 29% to 17%); and rose for offenders who are black (from 36% to 41%) and American Indian (from 12% to 18%).

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 offenders who are black than offenders in other racial and ethnic groups are sentenced in Hennepin County, where mitigated durational departure rates are highest. (See Figure 12, p. 15, for an illustration of the racial & ethnic distribution of drug offenders by region.)

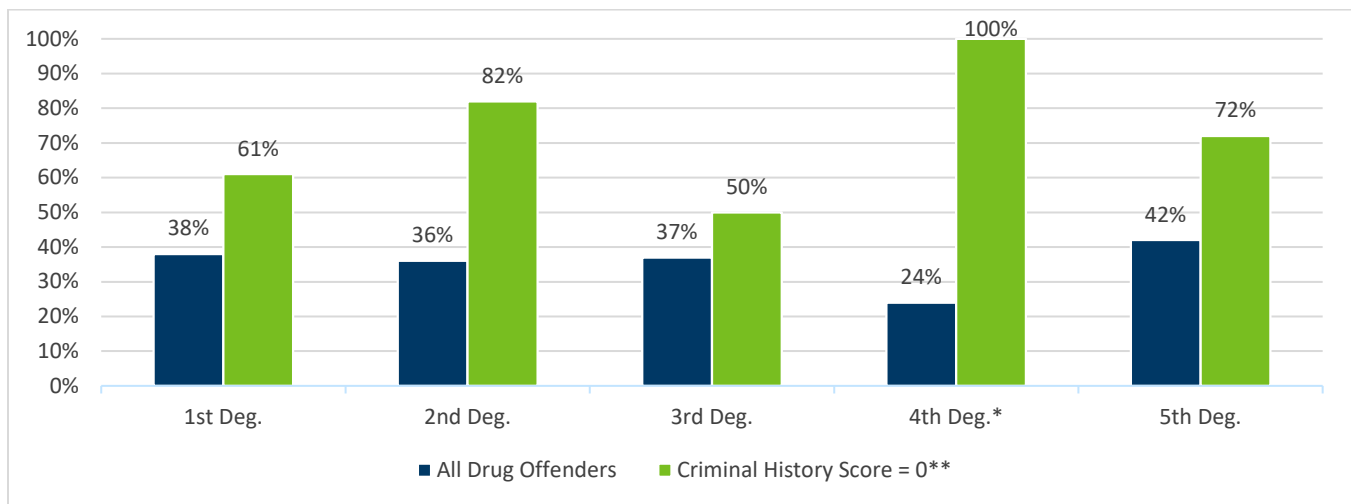
*Figure 22. Mitigated Durational Departure Rates by Race & Ethnicity for Drug Cases Receiving an Executed Prison Sentence, 2018*



## Departure Rates for Drug Offenders by Drug Degree

Figure 23 shows the 2018 mitigated dispositional departure rates by drug degree. The 38-percent rate for first degree was identical to the 2017 rate. The highest rate seen in the recent past was 47 percent in 2011, while the lowest rate recently observed was 30 percent in 2013. The rates for second degree (36%) and third degree (37%) decreased from 2017 (when they were 45% and 41%, respectively). The fifth-degree rate (42%) was almost identical to the 2017 rate (41%). At 24 percent, the fourth-degree rate was higher than the 2017 rate (15%), but that variation is likely due to the small number of cases at that degree (21 cases in 2018). Among offenders with a criminal history score of zero, the total mitigated dispositional departure rate was 64 percent, similar to the 2017 rate of 66 percent. Departure rates for offenders with a criminal history score of zero decreased for third- and fifth-degree and increased for first-second- and fourth-degree.<sup>14</sup>

*Figure 23. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, by Drug Degree, 2018*



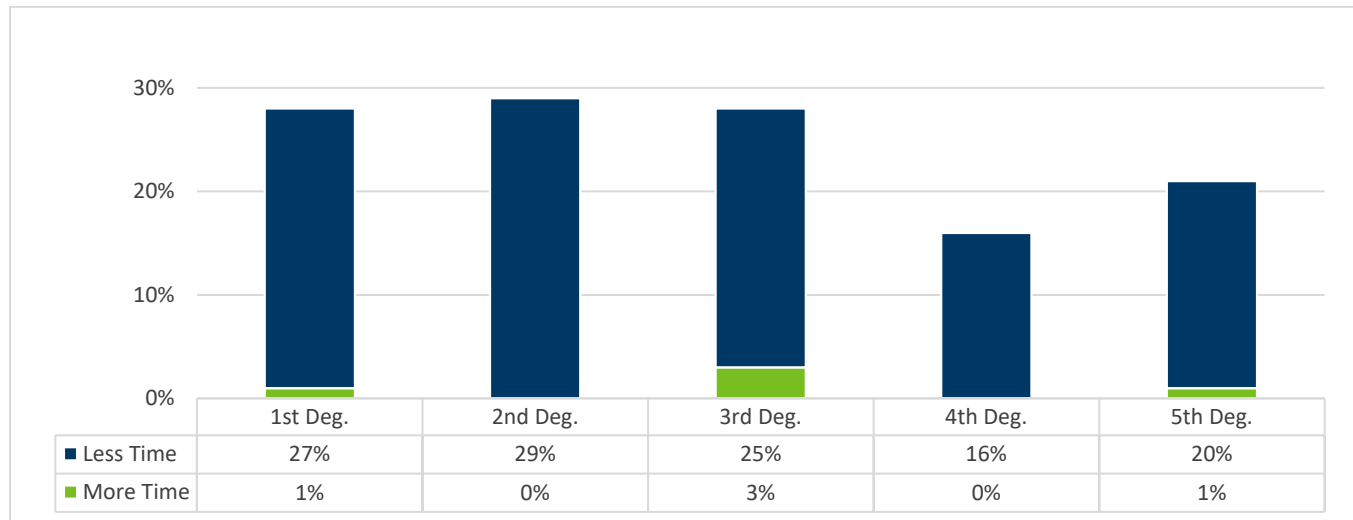
\* One offender was sentenced for a fourth-degree drug offense and had a criminal history score of 0.

\*\* For 3rd Deg., 4th Deg., and 5th Deg., see note 14.

Figure 24 shows that mitigated durational departure rates in 2018 were 27 percent for first-degree offenses and 29 percent for second-degree offenses. The second-degree rate was the similar to the 2017 rate, while the first-degree rate decreased from 2017 (32%). The mitigated durational departure rates increased for third-degree offenders (from 21% to 25%) and fourth-degree offenders (from 0% to 16%), and remained almost the same for fifth-degree offenders (19% and 20%). The median reduction in sentence length from the presumptive sentence was 29 months for first-degree cases, 31 months for second-degree cases, and 15 months for third-degree cases.

<sup>14</sup> 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, pre-DSRA 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.

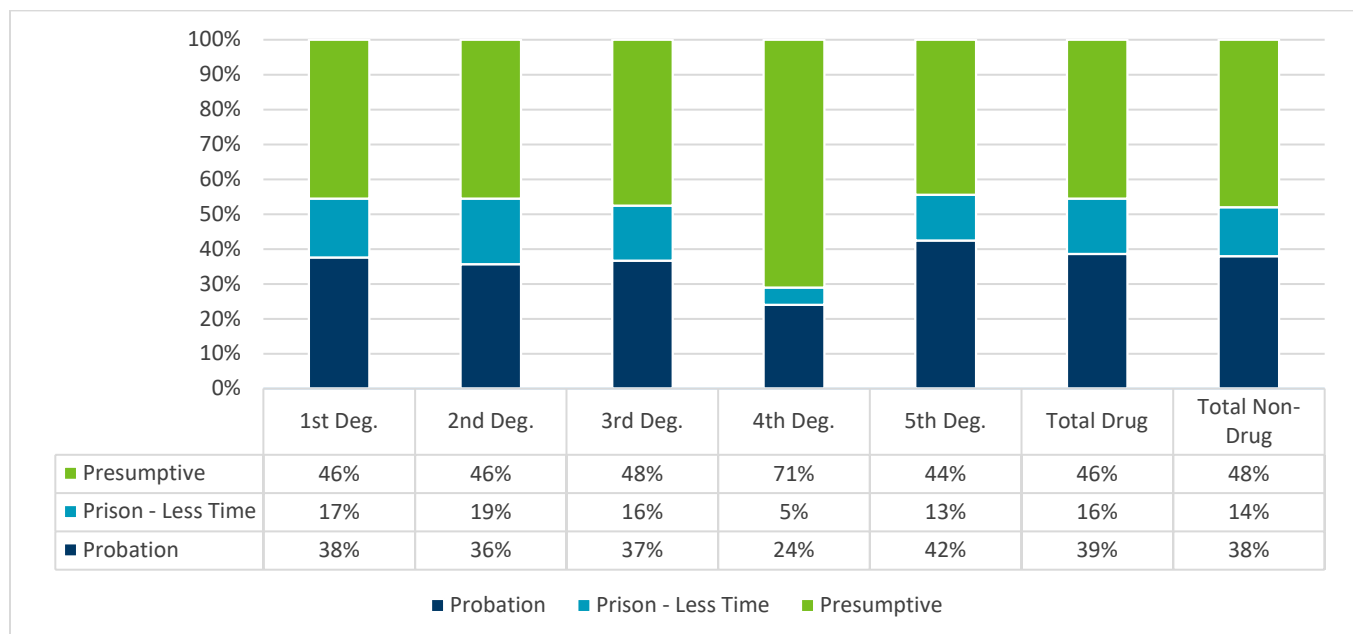
Figure 24. Durational Departure Rates by Drug Degree for Cases Receiving an Executed Prison Sentence, 2018



### Presumptive Commitment Drug Offense Sentencing by Degree

Of the 5,536 drug offenders sentenced in 2018, 23 percent (1,255 offenders) had presumptive prison sentences under the Guidelines. Departure rates are so high that, among offenders recommended a prison sentence in 2018 (as in 2011–17), a greater number of offenders received departures than received the recommended sentence. In 2018, 46 percent of such drug offenders recommended a prison sentence received the recommended sentence or longer; 39 percent received a probationary sentence; and 16 percent received a prison sentence with a duration that was less than that recommended by the Guidelines. Almost half (48%) of non-drug offenders with recommended prison sentences received the presumptive sentence (Figure 25).

Figure 25. Sentence Imposed by Drug Degree, Presumptive Commitment Cases Only, 2018

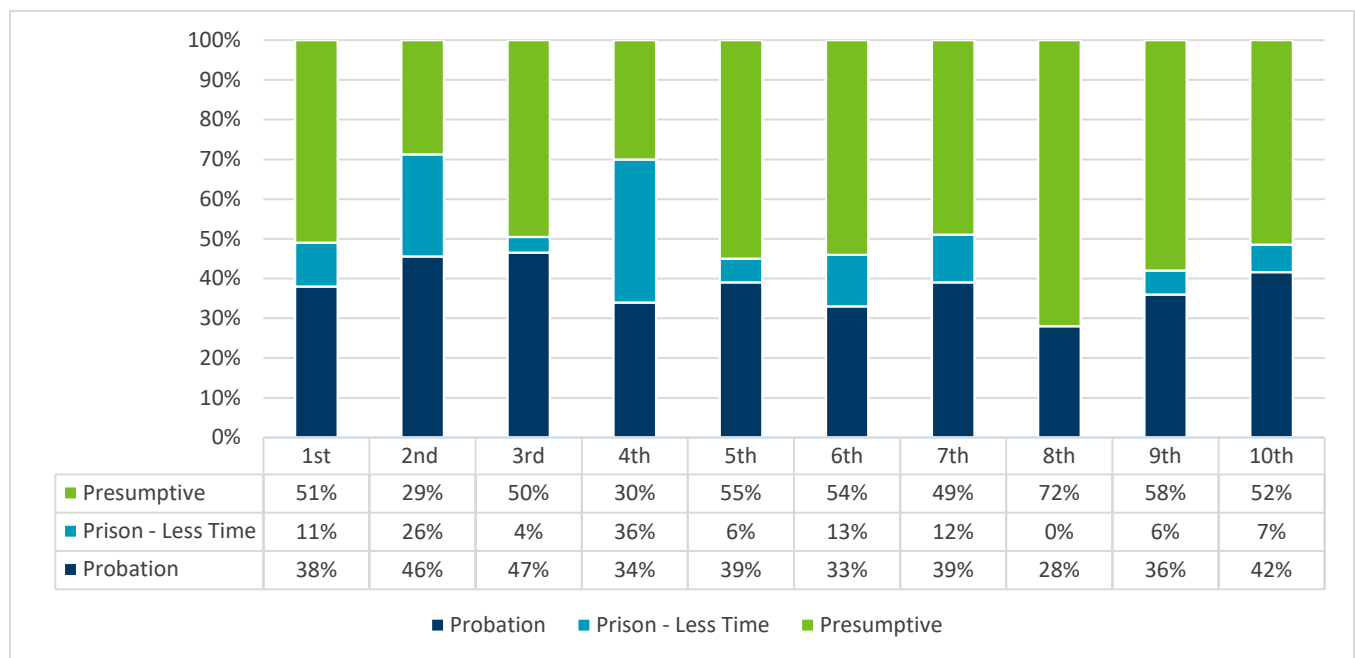


In 2018, 46 percent of first-degree and second-degree offenders received the recommended sentence (an increase from 42% in 2017 for first degree and 38% in 2017 for second degree). Forty-eight percent of third-degree offenders received the presumptive sentence (47% in 2016). The fourth-degree rate decreased to 71 percent (from 85% in 2017). The fifth-degree rate remained almost unchanged (44% in 2018, 45% in 2017).

### Presumptive Commitment Drug Offense Sentencing 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 29 percent in the Second District (Ramsey County) to 72 percent in the Eighth District (including west-central Minnesota). See page 57 for a map of Minnesota’s ten judicial districts.

Figure 26. Sentence Imposed by Judicial District, Drug Offenses, Presumptive Commitment Cases Only, 2018



### Departure Rates for Subsequent Drug Offenders

Minnesota Statutes specify mandatory minimum prison terms for first and second degree (for post-DSRA drug offenses) and first through third degree (for pre-DSRA drug offenses) when the offender has a prior drug conviction.<sup>15</sup> When such a statutory mandatory minimum applies, the presumptive Guidelines disposition is

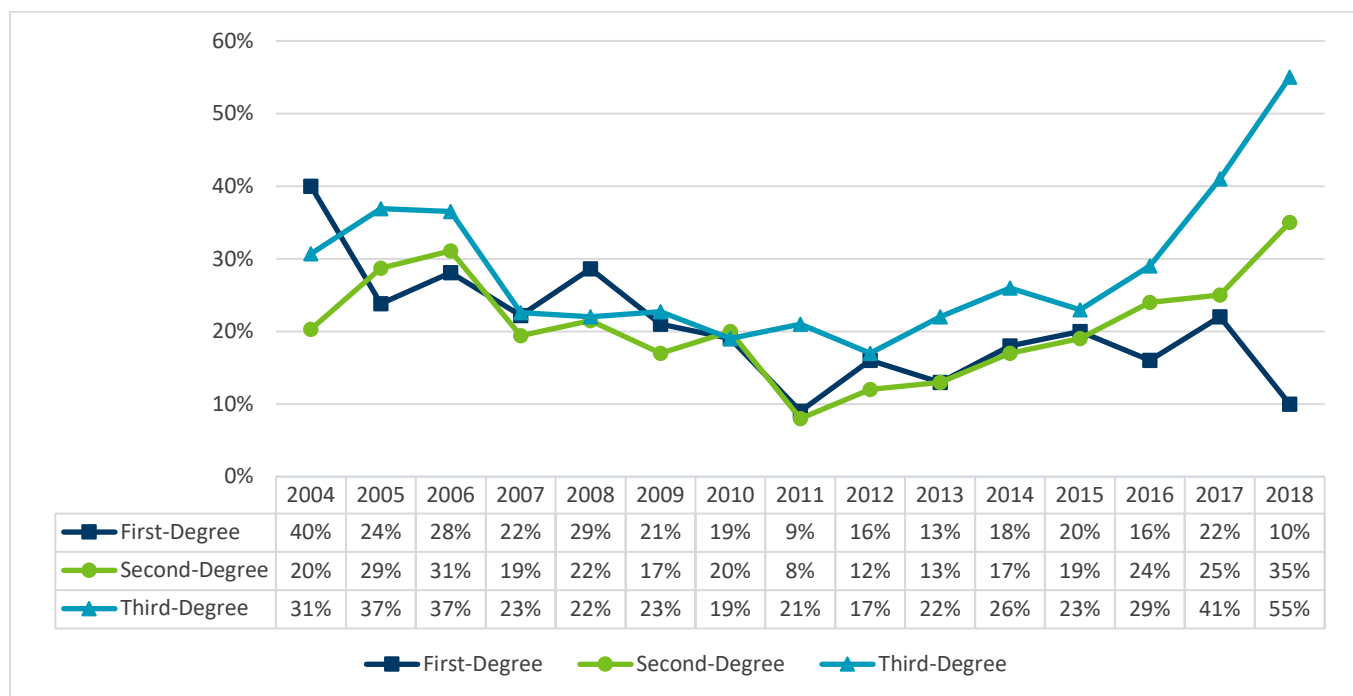
<sup>15</sup> See subdivisions 3(b) of Minn. Stat. §§ [152.021](#), [152.022](#) and [152.023](#) (2015). Pre-DSRA, an actual conviction was not always necessary, as a past disposition under Minn. Stat. § [152.18](#), even without conviction, caused the current offense to become a “subsequent controlled substance conviction.” Minn. Stat. § [152.01](#), subd. 16a (2015). Post-DSRA, subsequent offenders are only those with prior first- and second-degree convictions. Minn. Stat. § [152.01](#), subd. 16a (2016).



imprisonment.<sup>16</sup> 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 (pre-DSRA) offenses. Because the presumptive Guidelines sentence is greater than the mandatory minimum for all first- and second-degree offenses, the mandatory minimum usually altered the duration of only pre-DSRA third-degree cases.<sup>17</sup> For third-degree offenses committed post-DSRA, this mandatory minimum provision is repealed.

In 2018, 141 drug offenders were sentenced for offenses involving a second or subsequent drug offense that were subject to these mandatory minimum provisions. Of this total, 36 offenders (26%) received a mitigated dispositional departure from the Guidelines. The 26-percent dispositional departure rate was lower than the 2017 rate (30%). 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 56 percent of the mitigated dispositions for subsequent drug offenses.

Figure 27. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Offense, 2003–2018



Of the 104 second or subsequent drug offenders who received executed prison sentences, all but one had a pronounced sentence equal to, or longer than, the mandatory minimum. One second-degree offender received less than the mandatory minimum time.

<sup>16</sup> See also *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007), *review denied* (Minn. May 30, 2007) (holding that the mandatory minimum sentencing provision for a repeat drug offender precluded a stay of execution).

<sup>17</sup> Likewise, these mandatory minimums change presumptive stayed dispositions to presumptive prison commitments. This affected pre-DSRA Controlled Substance Crime in the Third Degree (presumptive stay for offenders with criminal history scores below 3), and now affects post-DSRA Controlled Substance Crime in the Second Degree (presumptive stay for offenders with criminal history scores below 2). In a sense, however, any mandatory minimum prison disposition for a subsequent controlled substance conviction affects the presumptive disposition, inasmuch as such a disposition becomes a mandatory, rather than merely presumptive, executed term of imprisonment (see footnote 16).

## 2016 Drug Sentencing Reform Act (DSRA)

The 2016 Drug Sentencing Reform Act (DSRA) made a number of significant changes to the sentencing of Minnesota drug offenses. Those changes generally took effect August 1, 2016, and applied to crimes committed on and after that date. Over eighty percent of the drug cases sentenced in 2018 were subject to the DSRA.<sup>18</sup>

### Post-DSRA Offense Volume

The DSRA's provisions were effective for all offenses committed after July 31, 2016. Through the end of 2018, the new provisions have been applicable to 7,327 felony offenders with a first- through fifth-degree drug offense as the most serious offense sentenced.<sup>19</sup> The next sections focus on these offenses.

#### Pre- and Post-DSRA Comparison Groups

To measure the impact of the DSRA, this report compares the post-DSRA cases to comparable pre-DSRA group. Table 6 displays felony post-DSRA cases committed on or after August 1, 2016, and sentenced through December 2018, by controlled substance degree, as well as comparable offenses sentenced under the DSRA's new gross misdemeanor fifth-degree provision. For comparison to this post-DSRA group, Table 6 also displays the number of cases, by degree, committed and sentenced in a comparable earlier time frame (committed on or after August 1, 2013 and sentenced through December 2015).

Table 6. Cases with a Drug Offense as the Most Serious Offense Sentenced, Pre- & Post-DSRA Comparison Groups

Comparison Group	Offense Date Range	Sentencing Date Range	1 <sup>st</sup> Deg. No. & Percent	2 <sup>nd</sup> Deg. No. & Percent	3 <sup>rd</sup> Deg. No. & Percent	4 <sup>th</sup> Deg. No. & Percent	Felony 5 <sup>th</sup> Deg. No. & Percent	Gross Misd. 5 <sup>th</sup> Deg. No. & Percent	Total
Pre-DSRA 2013–15	Aug '13 – Dec '15	Aug '13 – Dec '15	391 6.1%	531 8.3%	854 13.4%	144 2.3%	4,443 69.8%	N/A	6,363 100%
Post-DSRA 2016–18	Aug '16 – Dec '18	Aug '16 – Dec '18	499* 5.6%	444 5.0%	844 9.5%	128 1.4%	5,412 60.7%	1,594** 17.9%	8,921 100%

\*Includes the DSRA offense of Aggravated Controlled Substance Crime 1st Degree.

\*\*Source of post-DSRA gross misdemeanor case data: Minnesota Judicial Branch. (Obtained 9/19/2019.) Gross misdemeanor cases may not necessarily be the most serious offenses sentenced.

### Volume of Offenses

#### First- Through Fourth-Degree Offenses

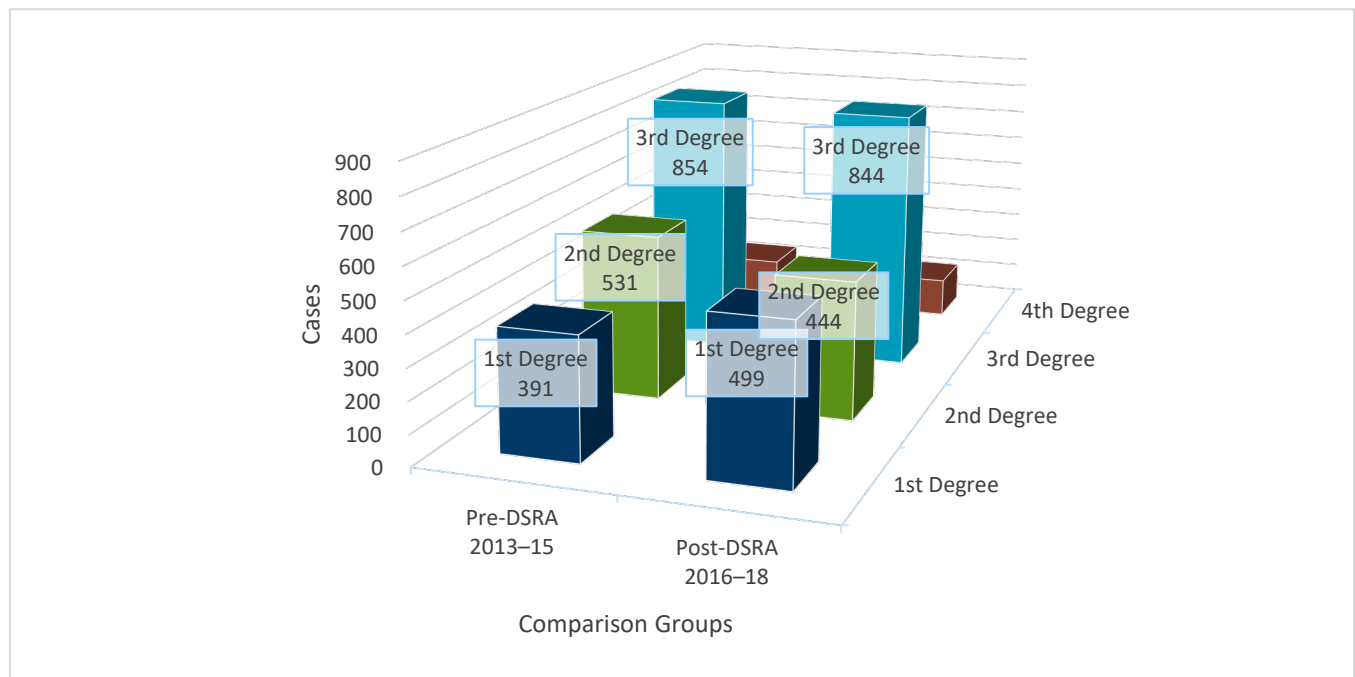
The provisions of the DSRA raised the thresholds (amounts of drugs necessary for conviction) for some first- through third-degree offenses. Therefore, it might be expected that the percentage of cases that are first-

<sup>18</sup> Of the 5,536 drug cases sentenced in 2018, 81 percent were committed after the DSRA took effect.

<sup>19</sup> The DSRA applied to 203 cases sentenced in 2016, 2,717 cases sentenced in 2017, and 4,407 cases sentenced in 2018.

through third-degree would decline while the percent that are fourth- and fifth-degree would increase. The evidence available to date shows an increase in the number of offenses that are first-degree, and a decline in the number and percentage of offenses that are second-degree offenses (shown by comparison group in Figure 28).

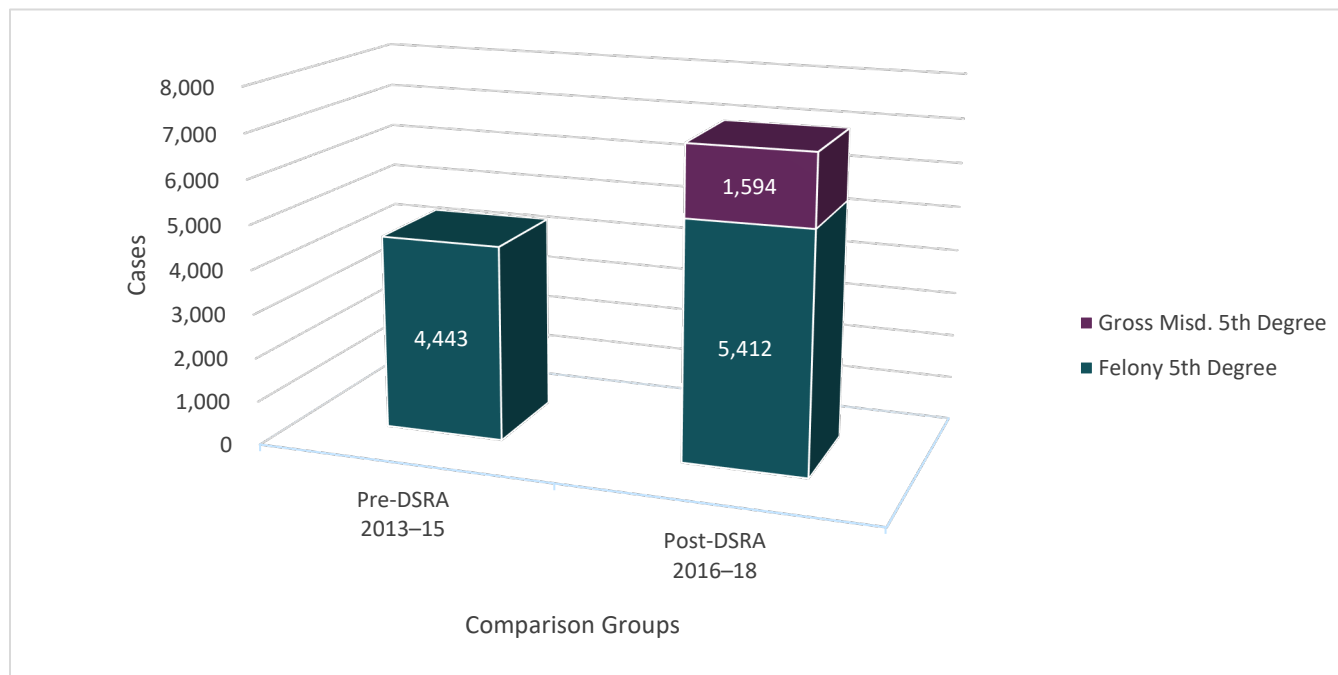
*Figure 28. Case Volume, 1st–4th Degree Drug Offenses, Pre- and Post-DSRA Comparison Groups*



### *Fifth-Degree Offenses*

For felony fifth-degree offenses, the number and percentage of offenses compared to the 2013–15 group increased. When gross misdemeanor fifth-degree offenses are included (for first-time possession of a trace amount of a controlled substance, a DSRA-created offense discussed in more detail on p. 46), the number of post-DSRA fifth-degree cases increased from 4,443 cases (69.8% of pre-DSRA cases) to 7,006 (78.5% of post-DSRA cases) which is a 57.7 percent increase. Likewise, when gross misdemeanor fifth-degree offenses are included, the total number of drug cases in the post-DSRA group was 40.2 percent greater than the 2013–15 comparison group. (Even if the 1,594 gross misdemeanor cases were excluded from the group, the post-DSRA total—7,327 cases—would have been larger than the 2015–16 comparison group.) This is illustrated in Figure 29.

Figure 29. Case Volume, 5th Degree Drug Offenses, Pre- and Post-DSRA Comparison Groups



## Post-DSRA Offense Characteristics

### Post-DSRA Aggravated First-Degree Offenses

The DSRA created an aggravated first-degree offense for the most serious offenses. These offenses are ranked at a severity level of D9 on the Drug Offender Grid (p. 59), and therefore have longer presumptive sentences than the standard first-degree offenses. In addition, the statutory sentencing minimum is either 86 months or the presumptive fixed sentence, whichever is longer, which makes the offenders ineligible for a sentence at the low end of the presumptive range on the Drug Offender Grid. This offense requires the sale or possession of 100 or more grams, as well as either a firearm or two aggravating factors. Through 2018, eight offenders had been sentenced for First-Degree Aggravated Controlled Substance Crime under the firearm provision, and another 10 offenders had been sentenced under the provision requiring two aggravating factors. All of the aggravated offenses received prison sentences. The average pronounced sentence was 115 months.

In addition, the DSRA contains a provision that specifies a minimum sentence of either 65 months or the presumptive fixed sentence, whichever is longer, for offenses involving the sale or possession of 100 or more grams without a firearm or aggravating factors, referred to in this report as “100+ gram offenses.” Like other non-aggravated first-degree offenses, these offenses are ranked at severity level D8 on the Drug Offender Grid (p. 59), but the statutory sentencing minimum makes the offenders ineligible for a sentence at the low-ends of the presumptive ranges. Through 2018, 76 first-degree offenders were sentenced for 100+ gram offenses not

qualifying as aggravated-first degree offenses. The imprisonment rate was 75 percent. The average pronounced sentence for the offenders receiving prison sentences was 81 months.

### Post-DSRA Drug Types

Table 7 provides more detailed information—drawn from an examination of individual complaints<sup>20</sup>—about the drug types<sup>21</sup> involved in offenses committed on and after the DSRA’s effective date (August 1, 2016), and sentenced through 2018. Methamphetamine (“meth”) continues to be the most frequently cited drug type.

*Table 7. Distribution of Felony Cases by Drug Class & Drug Type, Post-DSRA Group*

Drug Class	Drug Type	Drug Type		Drug Class	
		Total	Percent	Total	Percent
Stimulants	Cocaine	604	8.2%		
	Meth	4,727	64.5%		
	Other	88	1.2%		
<b>Stimulants Total</b>				<b>5,419</b>	<b>74%</b>
Narcotics*	Heroin	562	7.7%		
	Other	278	3.8%		
<b>Narcotics* Total</b>				<b>840</b>	<b>11.5%</b>
<b>Depressants</b>				<b>257</b>	<b>3.5%</b>
<b>Hallucinogens</b>				<b>61</b>	<b>0.8%</b>
Marijuana/Cannabis	Marijuana	526	7.2%		
	Other	87	1.2%		
<b>Marijuana/Cannabis Total</b>				<b>613</b>	<b>8.4%</b>
Other/Multiple	Other	39	0.5%		
	Multiple	98	1.3%		
<b>Other/Multiple Total</b>				<b>137</b>	<b>1.9%</b>
<b>Total of Drug Classes</b>				<b>7,327</b>	<b>100%</b>

\*See footnote 21.

<sup>20</sup> The categories in Table 7 are more detailed than the categories in Figure 6 because the drug types for Table 7 were determined by MSGC staff review of each criminal complaint, whereas the categories in Figure 6 are based on Minnesota Offense Codes (MOCs) as encoded by prosecution staff.

<sup>21</sup> Drug types were grouped into drug classes based on the United States Drug Enforcement Administration’s classifications at [https://www.dea.gov/pr/multimedia-library/publications/drug\\_of\\_abuse.pdf](https://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf) (retrieved Nov. 22, 2017). Consistent with those classifications, the term “narcotics,” as used here, is synonymous with “opioids,” rather than with the statutory term “narcotic drug” (Minn. Stat. § 152.01, subd. 10), which includes the non-opioids cocaine and methamphetamine. Fentanyl is included within “narcotics,” as used here; 20 post-DSRA cases involving fentanyl were observed.

## Post-DSRA Fifth-Degree Offenses with Trace Drug Amounts

Unless the offender has a prior conviction for a drug offense, Minn. Stat. § [152.025](#), subd. 4(a) establishes post-DSRA fifth-degree offenses as gross misdemeanors if the person had less than a specified quantity of drugs (“trace” amounts). There were 5,412 post-DSRA felony fifth-degree offenders. Table 8 displays the number of those cases with a trace amount. It is assumed that these offenders had prior convictions that disqualified them from gross misdemeanor convictions. On some criminal complaints, the drug amount was not specified but was described as residue or a trace amount. There were 965 fifth-degree cases (almost 18%) where either the drug quantity specified fit within gross misdemeanor limits or the criminal complaint alleged there was residue or a trace amount. Fourteen percent of those 965 cases received executed prison sentences. There were 790 fifth-degree cases where the quantity of drugs was not specified on the criminal complaint. Some percentage of those cases could have been a trace amount.

*Table 8. Felony Fifth-Degree Cases by Alleged Drug Amounts, Post-DSRA Group*

Drug Type	Amount Alleged on Criminal Complaint	Number of Cases	Percent of Felony Fifth-Degree Cases	Percent of All Felony Drug Cases
Cocaine and Methamphetamine	Less than .25 grams	303	5.6%	4.1%
Heroin	Less than .05 grams	9	0.2%	0.1%
Dosage Units	1 dosage unit or less	58	1.1%	0.8%
Trace or Residue	As stated on complaint	595	11%	8.1%
<b>Total Trace Cases</b>		<b>965</b>	<b>17.8%</b>	<b>13.1%</b>
<b>Quantity of Drug – Not Specified</b>	No amount alleged on criminal complaint	790	14.6%	10.8%
<b>Fifth-Degree – Not a Possible Trace Level</b>	Greater than trace amount alleged	3,657	67.6%	49.9%
<b>Total Post-DSRA Felony Fifth-Degree</b>		<b>5,412</b>	<b>100.0%</b>	<b>73.8%</b>

## Post-DSRA Zone Offenses

The drug statutes provide harsher penalties for offenses committed in specified zones – school, park, public housing and drug treatment facilities as defined in Minn. Stat. § [152.01](#). The school, park and public housing zones include the property as well as the area surrounding the property to a distance of 300 feet or one city block. Offenses committed in zones are elevated to a more severe degree than other offenses. What would be third-degree sale offenses are elevated to second-degree offenses and fifth-degree sale of marijuana offenses are elevated to fourth-degree offenses. Fifth-degree possession offenses are elevated to third-degree offenses.

Zone offenses existed before passage of the DSRA, but the frequency of the use of the zone enhancement has increased post-DSRA, from 74 cases (4.8% of the 2nd–4th degree offenses in the pre-DSRA group) to 163 cases

(11.5% of the 2nd–4th degree offenses in the post-DSRA group). This may be attributable to the creation of gross misdemeanor penalty level for trace amounts. Unless there is a prior conviction, post-DSRA trace-level cases cannot be prosecuted as felony fifth-degree offenses, but can, if committed in a zone, be prosecuted as felony third-degree offenses. In 26 percent of the post-DSRA zone cases, trace or residue was the stated drug quantity. In 17 percent of the zone cases, no amount of drug was specified. None of the post-DSRA zone cases with unknown or trace amounts had a prior conviction.

Table 9 displays the frequency of zone use for second-, third-, and fourth-degree offenses by judicial district. Post-DSRA, zone enhancements were used in a higher percentage of cases in all districts except the Second Judicial District and the Seventh Judicial District. This was particularly noticeable in the Fifth Judicial District and the Ninth Judicial District. Post-DSRA, 53 percent of all zone cases were found in the Ninth Judicial District; compared to 45 percent of the pre-DSRA zone cases. In Polk County (the site of 63 of the Ninth Judicial District’s 87 post-DSRA zone offenses), zone enhancements were used in 70 percent of the second- through fourth-degree post-DSRA cases compared to 42 percent of the pre-DSRA cases.

*Table 9. Use of Zone Provisions, Second- Through Fourth-Degree Offenses by Judicial District; Pre- & Post-DSRA Comparison Groups*

District	Pre-DSRA 2013–15 Comparison Group		Post-DSRA 2016–18 Comparison Group	
	Number of Zone Offenses	Percent of Cases	Number of Zone Offenses	Percent of Cases
First	0	0%	7	6.3%
Second	0	0%	0	0%
Third	6	2.7%	17	11.5%
Fourth	4	1.5%	11	4.0%
Fifth	13	11.5%	23	17.8%
Sixth	3	2.3%	6	5.8%
Seventh	13	8.8%	6	3.9%
Eighth	1	1.6%	2	5.3%
Ninth	33	16.5%	87	33.2%
Tenth	1	.6%	4	3.1%
Total	74	4.8%	163	11.5%

## Post-DSRA Sentence Uniformity

### Presumptive Sentences and Prison Rates

The DSRA restricted mandatory minimums for subsequent offenses to first- and second-degree offenses and limited the definition of subsequent drug offenses to prior first- and second-degree offenses. This change eliminated automatic presumptive prison dispositions for third-degree offenders with prior drug convictions. In addition, before the implementation of the Drug Offender Grid (p. 59), all first- and second-degree offenses had

presumptive prison sentences regardless of offenders' criminal history scores (CHS).<sup>22</sup> On the Drug Offender Grid, however, second-degree offenses with CHS of 0 or 1 have presumptive stayed sentences. It was anticipated that those two changes would result in a decrease in the percent of drug offenders with presumptive prison dispositions, and, therefore, prison sentences.

Overall, the presumptive and actual imprisonment rates are lower than those for the comparison group. Table 10 displays the presumptive prison rate and actual prison rate by degree for the post-DSRA group and the comparison group. The post-DSRA imprisonment rate for first-degree offenders is similar to, but slightly higher than, the rate for the comparison group, perhaps because of the increase in the threshold amounts and the creation of the aggravated first-degree offenses. The prison rate for the non-aggravated first-degree offenses was 61 percent, while the rates were 100 percent for aggravated offenses and 75 percent for 100+ gram offenses.

*Table 10. Presumptive and Actual Prison Rates, Pre- and Post-DSRA Comparison Groups*

Degree	Pre-DSRA 2013–15 Comparison Group			Post-DSRA 2016–18 Comparison Group		
	Number	Presumptive Prison Rate	Prison Rate	Number	Presumptive Prison Rate	Prison Rate
<b>First</b>	391	100%	63%	499	100%	65%
<b>Second</b>	531	100%	62%	444	50%	36%
<b>Third</b>	854	49%	37%	844	38%	26%
<b>Fourth</b>	144	25%	22%	128	26%	29%
<b>Fifth*</b>	4,443	9%	15%	5,412	11%	13%
<b>Total</b>	<b>6,363</b>	<b>28%</b>	<b>25%</b>	<b>7,327</b>	<b>23%</b>	<b>20%</b>

*\*Felony only.*

The DSRA provisions reduced the percentage of second- and third-degree offenses that have presumptive prison dispositions; the actual imprisonment rates for those offenders fell accordingly. The presumptive prison rate for second-degree offenders fell from 100 percent to 50 percent, while the actual imprisonment rate fell from 62 percent to 36 percent. The presumptive prison rate for third-degree offenders fell from 49 percent to 38 percent, while the actual imprisonment rate fell from 37 percent to 26 percent. Fourth-degree offenders still represented a small fraction of drug offenders; post-DSRA fourth-degree offenses had similar presumptive prison rates, but a higher actual imprisonment rate.

There was a slight increase in the presumptive imprisonment rates for fifth-degree offenses, but a slight decrease in the actual rate. The increase in the presumptive rate may be due, in part, to the creation of a gross

<sup>22</sup> Prior to the implementation of the Drug Offender Grid, first-degree was ranked at a severity level of 9 on the Standard Grid (p. 58) and second-degree was ranked at a severity level of 8 on the Standard Grid.



misdemeanor possession of trace amount offense (discussed in more detail on p. 46), which removed some first-time drug offenders, with potentially lower criminal history scores, from the pool of felony fifth-degree offenders.

## Departure Rates

A “departure” is a pronounced sentence other than that recommended in the appropriate cell of the applicable Guidelines Grid. There are two types of departures—dispositional and durational—as further explained on page 20.

It was anticipated that the DSRA would result in more uniformity by lowering departure rates for drug cases, for several reasons. By raising the thresholds for first- through third-degree offenses, the cases with lower drug quantities in each degree would drop to a lesser degree and those cases were more likely to receive departures than the cases with larger drug quantities. The shift of trace cases to gross misdemeanors could also affect departure rates.<sup>23</sup>

Limiting the definition of a subsequent drug offense to first- and second-degree offenses and eliminating mandatory minimums for all but first- and second-degree offenses could also potentially increase uniformity by decreasing both mitigated dispositional departures and mitigated durational departures.

Table 11 and Figure 30 display mitigated dispositional departure rates for cases with presumptive prison dispositions for the post-DSRA group and comparison group. For all offense degrees, the total mitigated dispositional departure rate was 35 percent for both the pre- and post-DSRA groups.

Mitigated dispositional departure rates fell for first-degree offenders (35.5% post-DSRA) compared to the 37 percent rate in the pre-DSRA group. The mitigated dispositional departure rate for second-degree offenders fell from 38 percent in the pre-DSRA group to 30 percent for the post-DSRA group. This reduction is due to the implementation of the Drug Offender Grid, which, as proposed by the Commission and adopted by the DSRA, reduced the percent of second-degree offenders with presumptive prison sentences.

However, the mitigated dispositional departure rates increased for third and fifth-degree offenses. The rate for third-degree offenses rose from 27 percent to 35 percent post-DSRA. This may be due to the DSRA’s removal, for subsequent third-degree offenses, of the mandatory minimum sentence provision, from which mitigated dispositional departures were not lawful.<sup>24</sup> To a lesser degree, the mitigated dispositional departure rate also appears to have increased for fifth-degree offenses (from 34.5% to 37.5% post-DSRA).

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<sup>23</sup> A discussion of gross misdemeanor possession of trace amount offenses begins on page 46.

<sup>24</sup> See *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007), review denied (Minn. May 30, 2007).

Table 11. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, Pre- & Post-DSRA Comparison Groups

Degree	Pre-DSRA 2013–15 Comparison Group			Post-DSRA 2016–18 Comparison Group		
	Presumptive Commits	Mitigated Disposition		Presumptive Commits	Mitigated Disposition	
	Number	Number	Rate	Number	Number	Rate
First	391	146	37%	499	177	35.5%
Second	531	203	38%	220	66	30%
Third	417	113	27%	318	112	35%
Fourth	36	14	39%	33	6	18%
Fifth	386	133	34.5%	605	227	37.5%
Total	1,761	609	35%	1,675	588	35%

Figure 30. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, Pre- & Post-DSRA Comparison Groups

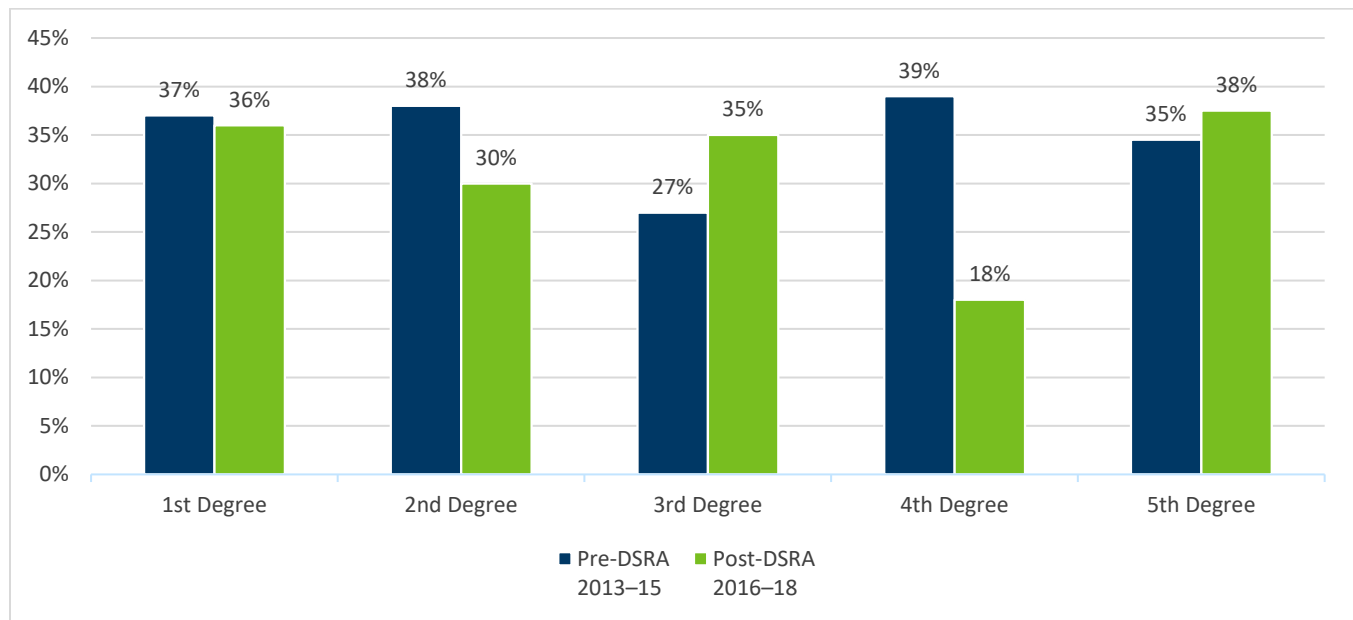


Table 12 and Figure 31 display mitigated durational departure rates for cases that received a prison sentence for the pre- and post-DSRA comparison groups. Mitigated durational departure rates declined for first- through third-degree offenses; thus, the overall rate declined. The rate for first-degree offenses declined from 46 percent pre-DSRA, to 26 percent in the post-DSRA group. The rate for second-degree offenses declined from 29 percent pre-DSRA, to 23 percent post-DSRA. The rate for third-degree offenses declined from 30 percent pre-

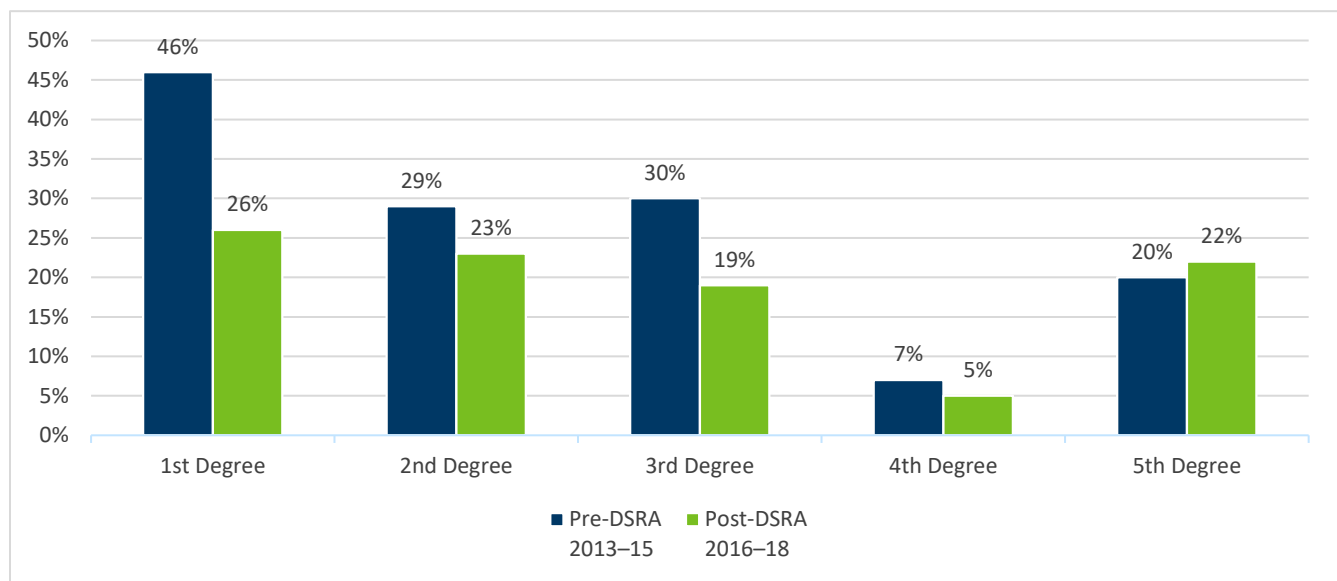
DSRA group to 19 percent in the post-DSRA group. The rate for fifth-degree offenders rose slightly from 20 percent to 22 percent. The overall rate declined from 28 percent pre-DSRA to 22 percent post-DSRA.

Among the first-degree post-DSRA offenders who received prison sentences, the mitigated durational departure rates were 25 percent for the non-aggravated offenses, 22 percent for the aggravated offenses, and 30 percent for the 100+ gram offenses.

*Table 12. Mitigated Durational Departure Rates, Executed Prison Sentences Only, Pre- & Post-DSRA Comparison Groups*

Degree	Pre-DSRA 2013–15 Comparison Group			Post-DSRA 2016–18 Comparison Group		
	Received Prison	Mitigated Duration		Received Prison	Mitigated Duration	
	Number	Number	Rate	Number	Number	Rate
<b>First</b>	245	112	46%	322	82	26%
<b>Second</b>	328	96	29%	159	37	23%
<b>Third</b>	317	96	30%	216	42	19%
<b>Fourth</b>	31	2	7%	37	2	5%
<b>Fifth</b>	661	134	20%	722	159	22%
<b>Total</b>	<b>1,582</b>	<b>440</b>	<b>28%</b>	<b>1,456</b>	<b>322</b>	<b>22%</b>

*Figure 31. Mitigated Durational Departures, Executed Prison Sentences Only, Pre- & Post-DSRA Comparison Groups*



## Estimated Prison Beds Needed Post-DSRA

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Because the DSRA adjusted some drug offenses to lesser degrees and moved some to gross misdemeanors, it was anticipated that the act would result in prison bed savings. That savings has begun; however, it is not as large as anticipated. The primary reason the anticipated prison bed savings has not been fully realized appears to be the continuing increases in the number of drug offenses that are sentenced. The DSRA's originally estimated bed savings was based on 2014 sentencing data, but the number of felony drug offenses sentenced in 2018 was 27 percent greater than the 2014 case volume (Figure 1).

This section discusses the number of *estimated prison beds* needed for the pre-DSRA and post-DSRA comparison groups. "Estimated prison beds" are computed by calculating two-thirds of the sum, in years, of all executed prison sentences imposed for the relevant category. Because these estimates assume that offenders will serve two-thirds of the pronounced sentences,<sup>25</sup> they do not account for case-specific possibilities that may reduce<sup>26</sup> or increase<sup>27</sup> the actual prison time to be served. All estimated prison beds are not needed the first year; the need is, instead, apportioned over time.<sup>28</sup>

Despite the increase in the number of drug cases sentenced in recent years, indications of prison bed savings are appearing (Table 13). While the number of felony offenders in the 2016–18 post DSRA comparison group (7,327) was 15 percent greater than the number of offenders in the 2013–15 pre-DSRA comparison group (6,363), the number receiving a prison sentence (1,582 pre-DSRA and 1,456 post-DSRA) was eight percent lower, and the number of estimated beds (3,780 pre-DSRA and 3,520 post-DSRA) was seven percent lower.

For first-degree offenders, the estimated prison beds needed rose by 22 percent (from 1,275 beds pre-DSRA to 1,556 beds post-DSRA), despite a post-DSRA decrease in the prison sentence for the average first-degree offender of six months. Instead, this increase in the need for estimated prison beds was caused by a 31-percent increase in the number of first-degree offenders receiving prison sentences (from 245 pre-DSRA to 322 in the post-DSRA group).

On the other hand, the number of estimated prison beds needed for second-degree offenders decreased markedly (by 43%, from 1,202 pre-DSRA to 691 post-DSRA). The number of estimated prison beds needed for third-degree offenders also decreased (by 19%, from 657 beds pre-DSRA to 532 post-DSRA). The number of post-DSRA second-degree offenders receiving prison sentences declined, as anticipated, as did the number of post-DSRA third-degree offenders. The average pronounced sentences at both degrees increased. These

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<sup>25</sup> See Minn. Stat. § [244.101](#), subd. 1 (defining an executed sentence as consisting of two parts: a minimum term of imprisonment, equal to two-thirds of the executed sentence; and a maximum supervised release term, equal to one-third of the executed sentence).

<sup>26</sup> Prison time might be reduced, for example, because of jail credit ([Minn. Sentencing Guidelines](#) § 3.C.; [Minn. R. Crim. P. 27.03](#), subd. 4(B)) or early release programs (see, e.g., [Minn. Stat. § 244.17](#) (Challenge Incarceration Program)).

<sup>27</sup> Prison time might be increased because of additional time served by supervised release violators (Minn. Stat. § [244.05](#), subd. 3(2)) or subsequently revoked sentences of offenders who were originally sentenced to probation, rather than to an executed prison sentence (Minn. Stat. § [609.14](#), subd. 3).

<sup>28</sup> All beds are not needed in the first year. The total need for the estimated prison beds is, instead, apportioned over a period of approximately nine years, with each year requiring a smaller share of the total estimated prison beds than the year before.

increases in average sentences were due to the elimination of low-duration presumptive prison sentences for offenders with low criminal history scores. This was accomplished by the Drug Offender Grid’s elimination of presumptive prison sentences for second-degree offenders at criminal history scores of zero and one, and by the elimination of mandatory minimums for subsequent third-degree drug offenders, thus reducing the prison rate at criminal history scores below three.

The estimated prison beds needed for fifth-degree offenders increased by 15 percent (from 604 beds pre-DSRA to 696 post-DSRA). This is because the number of post-DSRA fifth-degree offenders receiving prison sentences increased, a reflection of recent years’ increases in the number of offenders sentenced for fifth-degree offenses. The number of offenders sentenced for fifth-degree offenses increased by 22 percent (from 4,443 in the pre-DSRA group to 5,412 in the post-DSRA group) while the number receiving prison sentences increased by nine percent (from 661 to 722).

*Table 13. Estimated Prison Beds Needed, Pre- & Post-DSRA Comparison Groups*

Degree	Pre-DSRA 2013–15 Comparison Group			Post-DSRA 2016–18 Comparison Group			Change in Post-DSRA Estimated Bed Need
	Number Receiving Prison	Average Duration (months)	Est. Beds Needed	Number Receiving Prison	Average Duration (months)	Est. Beds Needed	
First	245	93	1,275	322	87	1,556	+22%
Second	328	66	1,202	159	77	681	–43%
Third	317	37	657	216	44	532	–19%
Fourth	31	25	43	37	26	54	+26%
Fifth	661	16	604	722	17	696	+15%
<b>Total</b>	<b>1,582</b>	<b>43</b>	<b>3,780</b>	<b>1,456</b>	<b>43</b>	<b>3,520</b>	<b>–7%</b>

*Because “estimated prison beds” in this table represent more than one year of sentencing data, these numbers should be used for relative comparison only between the pre-DSRA and post-DSRA groups. In addition, all estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 28, above.*

## Estimated Prison-Bed Demand Avoided Due to DSRA

Like the previous section, this section analyzes the sentences for “post-DSRA” offenses; that is, offenses committed after July 31, 2016, and sentenced through 2018. Unlike the previous section, however, this section does not compare the post-DSRA sentences to sentences actually imposed in previous years. Instead, this section seeks to compare the post-DSRA sentences to the estimated sentences those same cases would have received if they had been sentenced in 2015, before the DSRA took effect.

The first part of this analysis focuses on possession and sale of two of the three drugs for which the thresholds and presumptive punishments may have changed at the higher offense degrees: namely, cocaine and

methamphetamine. Heroin is also included in this analysis. A total of 5,880 post-DSRA cases—all involving the sale or possession of cocaine, heroin, or methamphetamine sold or possessed on or after August 1, 2016, are the subject of this part of the analysis.

The thresholds also changed for marijuana; weight thresholds were lowered and plants were added as a unit of measure for first- and second-degree offenses. Very few cases in the post-DSRA group were above these thresholds. Beds for these cases were calculated separately.

With respect to drugs other than cocaine, methamphetamine, heroin, and first or second-degree marijuana offenses, the methodology for calculating prison beds pre- and post-DSRA does not consider drug type and quantity. Because the DSRA did not change the quantity thresholds for these offenses, it is assumed that the prison-bed need for these cases would be based on reduced durations for first-degree offenders on the Drug Offender Grid; stayed dispositions for some second-degree offenders on the Drug Offender Grid; and eliminated mandatory minimum penalties for third-degree offenders. Instead, the 2015 bed estimate is based on the average sentence pronounced in 2015 for cases at the same severity levels and criminal history scores.

First, Table 14 (“Estimated Prison Beds Needed Based on Actual Sentences”) displays the estimated prison beds that will be needed for those post-DSRA offenses based on the executed sentences actually imposed in those cases. “Estimated prison beds” are calculated in the manner described on page 42, above.

Next, Table 14 (“Estimated Prison Beds Needed if Sentenced in 2015”) displays the estimated prison beds that would have been needed for the same set of post-DSRA offenses, if those offenses had been sentenced as similar offenses were sentenced in 2015. These estimates are calculated as follows:

- The first six rows display the estimated prison beds needed and avoided for sale or possession of cocaine, methamphetamine, heroin, or—in first- and second-degree cases—marijuana. The calculations are made by replacing the actual penalty received for each post-DSRA offense with the average penalty given in 2015 to offenders with the same criminal history score for the same act (sale or possession) involving a similar amount<sup>29</sup> of the drug in question.
- For the “All other felony cases” row—involving lower-frequency drugs whose thresholds did not change post-DSRA—this calculation is made by changing the dispositions and durations to reflect applicable pre-DSRA presumptive penalties; *i.e.*, by applying to those cases the sentencing grid, the mandatory minimums for repeat offenders, and the sentencing practices as they existed in 2015.

Finally, Table 14 (“Difference”) shows the difference in prison beds needed, over time. A negative number reflects an estimate that fewer beds were actually needed, post-DSRA, then would have been needed if those cases had been sentenced in 2015.

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<sup>29</sup> For purposes of this analysis, the following drug quantities were considered similar. Sale: under 3 grams; 3 to under 10 grams; 10 to under 100 grams; and 100 grams or more. Possession: under 3 grams; 3 to under 6 grams; 6 to under 25 grams; 25 to under 100 grams; and 100 grams or more. Drug quantities were determined by a review of 95 percent of criminal complaints of cases sentenced in 2015 and all complaints of cases in the post-DSRA group.

Because the post-DSRA cases were sentenced over a span of years, they represent more than one year of sentencing data. As a result, the number of estimated prison beds may be misleading. To resolve this, the last row of Table 14 (“Annualized Total”) reduces the number of post-DSRA cases to a number that more closely resembles a typical year’s felony drug caseload.

It will be seen that the estimated prison-bed need for the offenses sentenced in the post-DSRA group (2,671 beds, annualized) is 33 percent smaller than the estimated prison-bed need for those same offenses would have been (4,015 beds, annualized) if each case had been sentenced as a similar case was typically sentenced in 2015.<sup>30</sup>

*Table 14. Estimated Prison-Bed Demand Avoided for Post-DSRA Felony Drug Cases*

Degree (Post-DSRA)	Post-DSRA (2016–18) Felony Drug Cases			Difference
	Number of Cases	Estimated Prison Beds Needed Based on Actual Sentences	Estimated Prison Beds Needed if Sentenced in 2015	
First – Heroin, Cocaine, Meth	463	1,461	1,420	+41
Second – Heroin, Cocaine, Meth	387	668	963	–295
Third – Heroin, Cocaine, Meth	748	492	1,000	–508
Fourth – Heroin, Cocaine, Meth	90	50	125	–75
Fifth* – Heroin, Cocaine, Meth	4,192	574	1,464	–890
First & Second – Marijuana	38	23	20	+3
All other felony cases	1,409	252	299	–47
Post-DSRA (2016–18) Total	7,327	3,520	5,291	–1,771
<b>Annualized Total**</b>	<b>5,560</b>	<b>2,671</b>	<b>4,015</b>	<b>–1,344</b>

*All estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 28, above.*

*\*Felony only<sup>31</sup>*

*\*\*“Annualized Total” is the Post-DSRA Total multiplied by 75.8%, which is the ratio of the average annual number of felony drug cases from 2016–18 (5,560) to the number of felony cases in the Post-DSRA Comparison Group (7,327).*

<sup>30</sup> All estimated prison beds would not have been needed the first year; the need would, instead, have been apportioned over time. See footnote 28, above.

<sup>31</sup> This analysis does not include gross misdemeanor fifth-degree cases (the subject of the next section). If those cases were included in Table 14, they would not increase the estimated prison beds needed based on actual post-DSRA sentences because gross misdemeanor offenses are not sentenced to prison. On the other hand, due to the gross misdemeanor statute’s eligibility requirements—of no prior drug offenses and low drug quantities—it is assumed that this offense category’s contribution to the 2015 estimated prison-bed need would not have been large.

## Use of DSRA Gross Misdemeanor Offense

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The DSRA created a gross misdemeanor fifth-degree offense for possessing a trace amount of a controlled substance, effective for offenses committed after July 31, 2016. Before the effective date, this offense would have been a felony.<sup>32</sup> Only offenders with no prior conviction for sale or possession of a controlled substance offense are eligible for the gross misdemeanor penalty. A “trace” amount is defined as less than 0.25 grams or one dosage unit for controlled substances that are not heroin; and 0.05 grams for heroin.<sup>33</sup>

From August 1, 2016 through December 31, 2018, 1,594 people were convicted of gross misdemeanor possession of a trace amount of a controlled substance.<sup>34</sup> Of those, 66.9 percent were male and 32.7 percent were female.<sup>35</sup>

Compared with the rates of females sentenced for felony fifth-degree possession in 2018 (28.5%) and females in the total 2018 felony population (20.4%), females were sentenced for gross misdemeanor possession of a trace amount at a higher rate (32.7%) (Figure 32).

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<sup>32</sup> Unlike a felony sentence, a gross misdemeanor sentence may never include state prison time—even if probation is revoked and the entire sentence is executed. *Cf.* Minn. Stat. §§ [609.02](#), subds. 2 & 4, & [609.03](#)(2) (maximum imprisonment for gross misdemeanor is one year) *with* [Minn. Stat. § 609.105](#), subd. 3 (sentence of one year or less to be served locally).

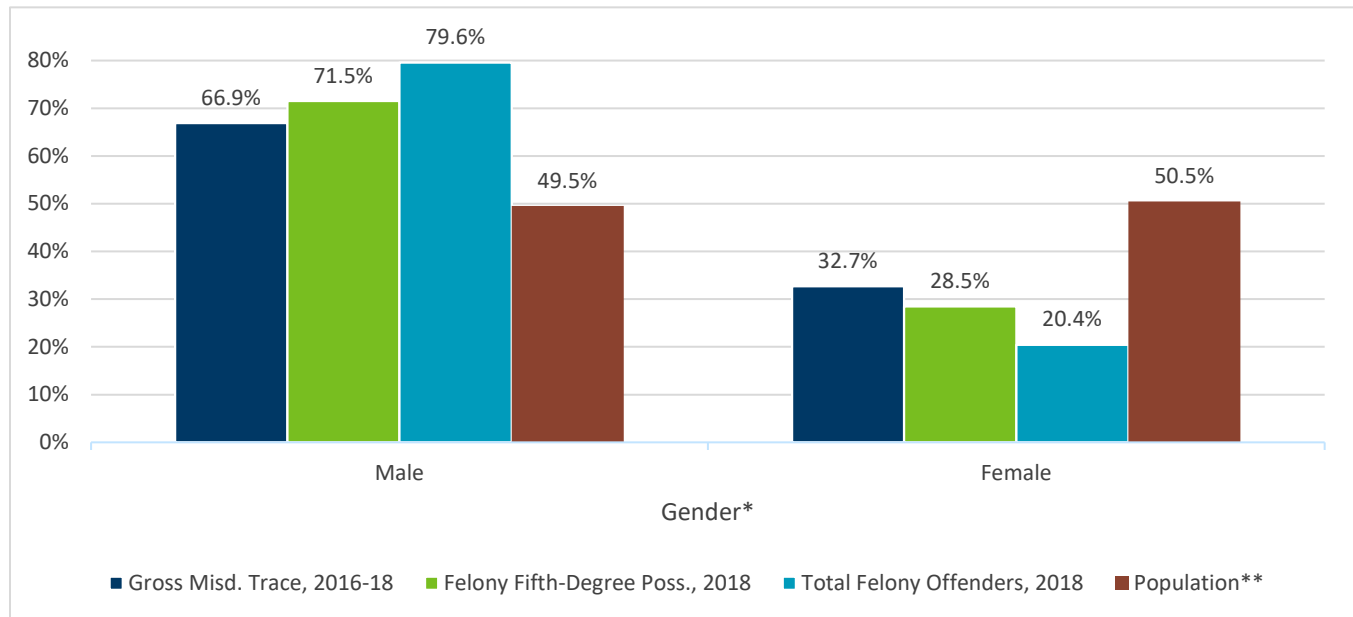
<sup>33</sup> The status of possession of a small amount of marijuana as a petty misdemeanor was not altered by the DSRA. Minn. Stat. § 152.027, subd. 4.

<sup>34</sup> Sentenced under [Minn. Stat. § 152.025](#), subd. 4(a), 8/1/2016 to 12/31/2018. Source: Minnesota Judicial Branch. (Obtained 9/19/2019.)

<sup>35</sup> In six cases, the gender reported was blank; i.e., “Null.”



Figure 32. Distribution by Gender of Gross Misdemeanor Possession of Trace Amount Cases Sentenced 8/1/2016 to 12/31/2018; Felony Fifth Degree Possession Sentenced 2018; Total Felony Offenders Sentenced 2018; and Population Age 15 and Older



Source of Gross Misd. Trace Cases, 2016–18: Minnesota Judicial Branch. (Obtained 9/19/2019.)

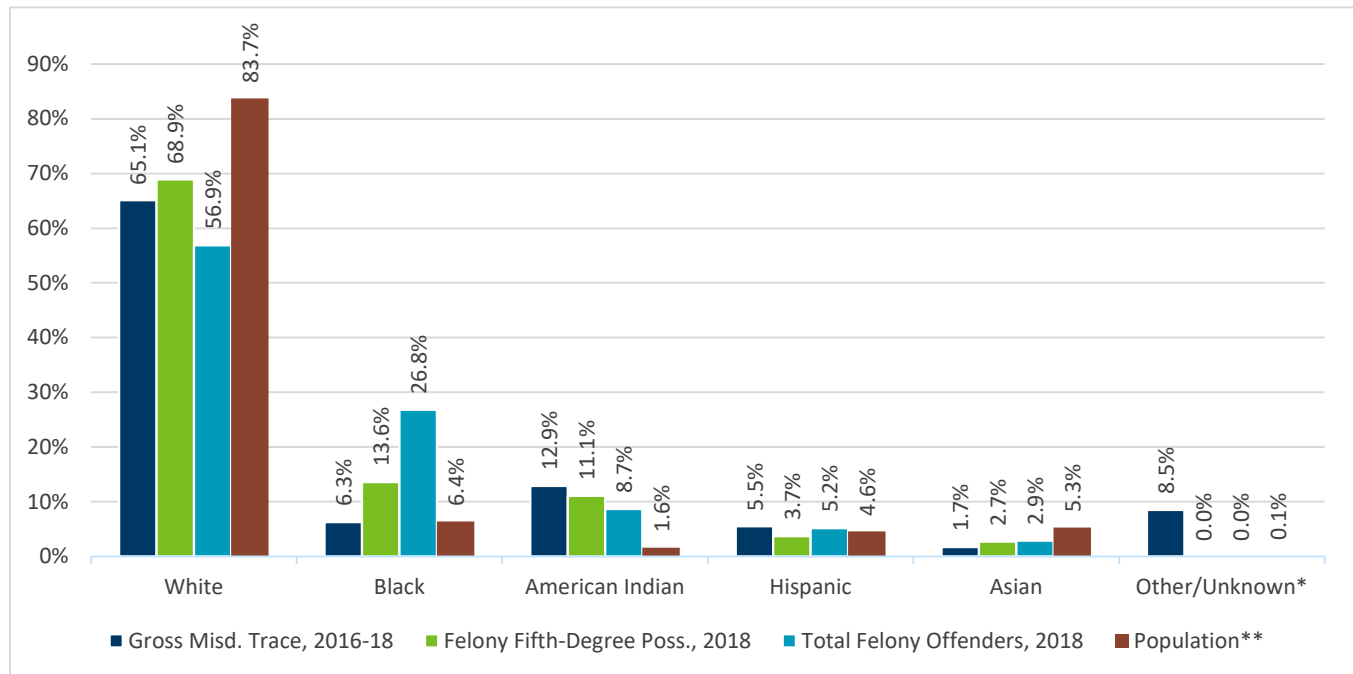
\* One “Total Felony Offenders, 2018” case for a “corporation” not included. Six “Gross Misd. Trace, 2016-18” cases (0.4%) not displayed where the gender was blank i.e., not reported, “Null.”

\*\*2018 estimated population, age 15 and over, U.S. Census Bureau (August 2019).

Of those convicted of gross misdemeanor possession of a trace amount of a controlled substance from August 1, 2016 through December 31, 2018, 65.1 percent were white, 6.3 percent were black, 12.9 percent were American Indian, 5.5 percent were Hispanic, 1.7 percent were Asian, and in 8.5 percent of the cases, the person’s race or ethnicity was “other” or “unknown.”<sup>36</sup> Figure 33 also displays rates by race and ethnicity of felony fifth-degree possession offenders sentenced in 2018, total felony offenders sentenced in 2018, and the state’s estimated 2018 population, age 15 and older.

<sup>36</sup> Other/Unknown: 3.6% multiracial; 5% Hawaiian/Pacific Islander; 1.4% “Null;” .5% “other;” .5% refused 1.9% unavailable.

**Figure 33. Distribution by Race & Ethnicity of Gross Misdemeanor Possession of Trace Amount Cases Sentenced 8/1/2016 to 12/31/2018; Felony Fifth Degree Possession Sentenced 2018; Total Felony Offenders Sentenced 2018; and Population Age 15 and Older**



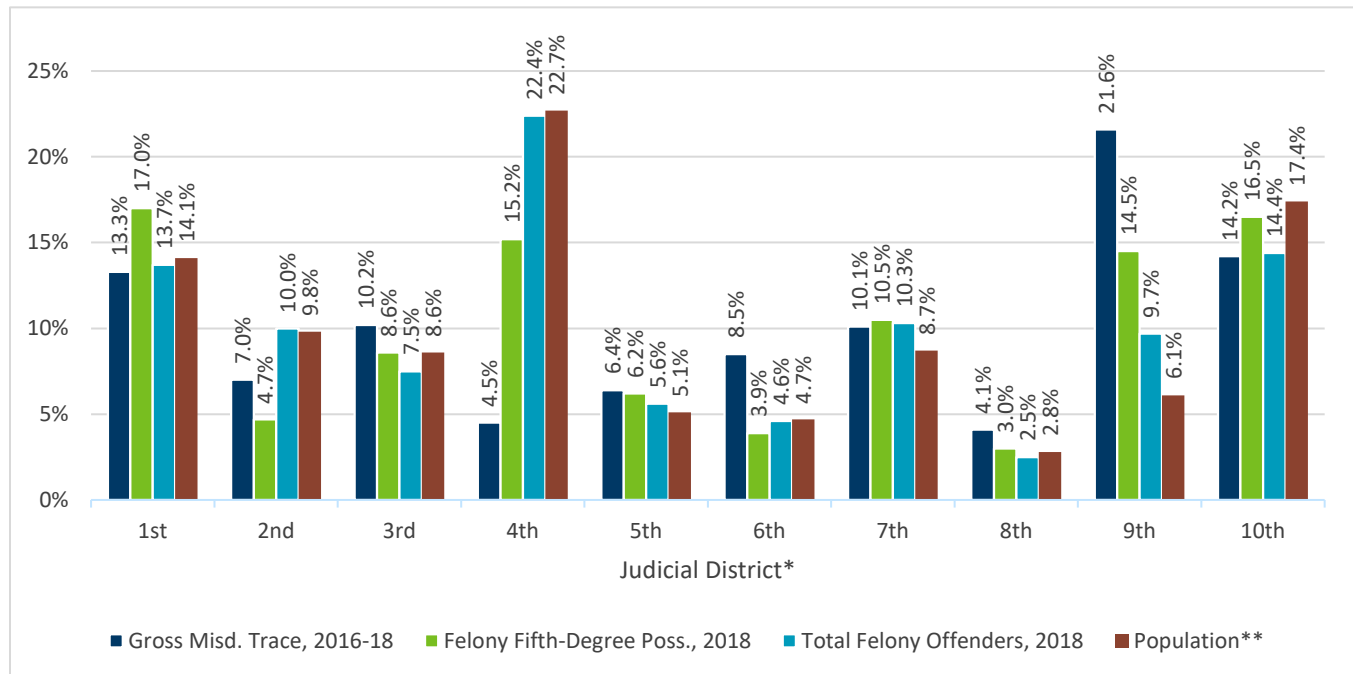
Source: Minnesota Judicial Branch. (Obtained 9/19/2019.)

\*Other/Unknown: 3.6% multiracial; .5% Hawaiian/Pacific Islander; 1.4% “Null;” .5% “other;” .5% refused 1.9% unavailable.

\*\*2018 estimated population, age 15 and over, U.S. Census Bureau (August 2019).

The Minnesota judicial district with the most convictions for gross misdemeanor possession of a trace amount of a controlled substance from August 1, 2016 through December 31, 2018, was the Ninth Judicial District with 21.6 percent. By comparison, the Ninth Judicial District has about six percent of Minnesota’s population age 15 and older. The judicial districts with the fewest convictions were the Eighth Judicial District (4.1% of gross misdemeanor trace cases and 2.8% of population) and the Fourth Judicial District (Hennepin County) (4.5% of gross misdemeanor trace cases and 22.7% of population). Figure 34 displays the geographical distribution of these trace cases together with the geographical distribution of felony fifth-degree possessions sentenced in 2018, total felony offenders sentenced in 2018, and the state’s estimated 2018 population, age 15 and older. A map of the judicial districts, including counties, can be found in Appendix 1 (p. 57).

Figure 34. Distribution by Judicial District of Gross Misdemeanor Possession of Trace Amount Cases Sentenced 8/1/2016 to 12/31/2018; Felony Fifth Degree Possession Sentenced 2018; Total Felony Offenders Sentenced 2018; and Population Age 15 and Older



Source of Gross Misd. Trace Cases, 2016–18: Minnesota Judicial Branch. (Obtained 9/19/2019.)

\*See Appendix 1 (p. 57) for a map of Minnesota’s ten judicial districts.

\*\*2018 estimated population, age 15 and over, U.S. Census Bureau (August 2019).

Unlike other judicial districts, post-DSRA gross misdemeanor trace offenses committed in the Second Judicial District (Ramsey County) and Fourth Judicial District (Hennepin County) are prosecuted by the appropriate city attorney, rather than the county attorney.<sup>37</sup> This jurisdictional change, which applies only to those two judicial districts, may account for some of the variation in the data shown in Figure 34.

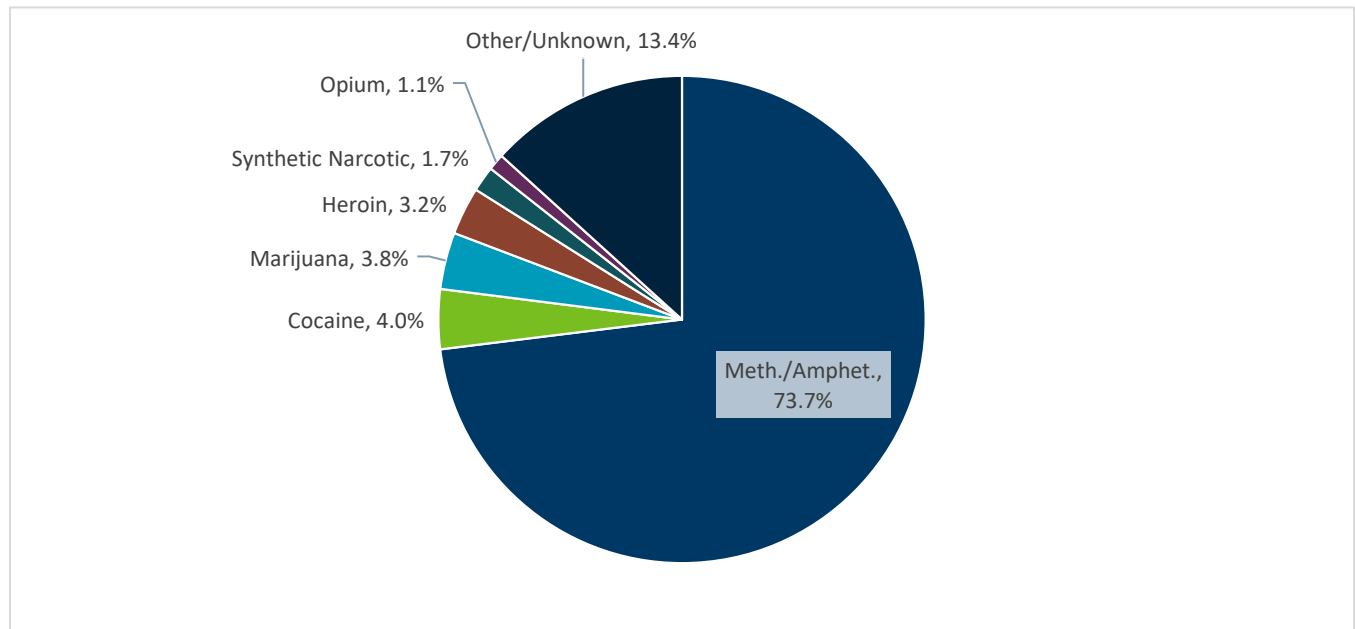
Table 15 and Table 16 display the number and percentage of gross misdemeanor trace-amount cases by gender, race, judicial district, and county. These tables begin on page 50.

Most of the gross misdemeanor trace-amount cases involved possession of methamphetamine or amphetamines (“Meth./Amphet.”) at 73.7 percent (Figure 35). This is consistent with the trend for felony cases depicted in Figure 5 and Figure 6. The other drugs were: cocaine at 4.0 percent; marijuana at 3.8 percent; heroin at 3.2 percent; synthetic narcotics at 1.7 percent; Opium at 1.1 percent; and “other” or “unknown” at 13.4 percent.<sup>38</sup>

<sup>37</sup> There are some exceptions to this rule (e.g., in some municipalities whose population is less than 2,500). [Minn. Stat. § 484.87](#), subd. 2. In all other counties, the county attorney must prosecute. [Minn. Stat. § 388.051](#), subd. 2(d).

<sup>38</sup> Drug type information is based on Minnesota Offense Codes (MOCs) obtained from the court record.

Figure 35. Gross Misdemeanor Possession of Trace Amounts by Drug Type, Sentenced 8/1/2016 to 12/31/2018



Source: Minnesota Judicial Branch. (Obtained 9/19/2019.)  
Drug type information is based on Minnesota Offense Codes (MOCs).

Table 15. Gross Misdemeanor Possession of Trace Amount Convictions by Gender and Judicial District, Sentenced 8/1/2016 to 12/31/2018

		Number	Percent
<b>Gender</b>	Male	1,067	66.9
	Female	521	32.7
	Unknown	6	.4
	<b>Total</b>	<b>1,594</b>	<b>100.0</b>
<b>Judicial District<sup>39</sup></b>	First	212	13.3
	Second	112	7.0
	Third	162	10.2
	Fourth	72	4.5

		Number	Percent
<b>Judicial District (cont'd)</b>	Fifth	102	6.4
	Sixth	136	8.5
	Seventh	161	10.1
	Eighth	65	4.1
	Ninth	345	21.6
	Tenth	227	14.2
	<b>Total</b>	<b>1,594</b>	<b>100.0</b>

Source: Minnesota Judicial Branch. (Obtained 9/19/2019.)

Table 16. Number and Percent of Gross Misdemeanor Possession of Trace Amounts by County,\* Sentenced 8/1/2016 to 12/31/2018

County	Number	Percent
1 Aitkin	21	1.3
2 Anoka	45	2.8

County	Number	Percent
3 Becker	23	1.4
4 Beltrami	39	2.4

<sup>39</sup> See Appendix 1 (p. 57) for a map of Minnesota's ten judicial districts.

County	Number	Percent
5 Benton	10	.6
7 Blue Earth	34	2.1
8 Brown	11	.7
9 Carlton	17	1.1
10 Carver	12	.8
11 Cass	58	3.6
12 Chippewa	8	.5
13 Chisago	21	1.3
14 Clay	14	.9
15 Clearwater	3	.2
16 Cook	1	.1
17 Cottonwood	1	.1
18 Crow Wing	81	5.1
19 Dakota	76	4.8
20 Dodge	7	.4
21 Douglas	3	.2
22 Faribault	22	1.4
23 Fillmore	1	.1
24 Freeborn	18	1.1
25 Goodhue	36	2.3
26 Grant	1	.1
27 Hennepin	72	4.5
28 Houston	21	1.3
29 Hubbard	9	.6
30 Isanti	22	1.4
31 Itasca	20	1.3
33 Kanabec	17	1.1
34 Kandiyohi	18	1.1
36 Koochiching	5	.3
38 Lake	7	.4
39 Lake of the Woods	2	.1
40 Le Sueur	6	.4
42 Lyon	6	.4
43 McLeod	8	.5
44 Mahnomon	48	3.0
46 Martin	5	.3
47 Meeker	7	.4
48 Mille Lacs	29	1.8

County	Number	Percent
49 Morrison	16	1.0
50 Mower	8	.5
51 Murray	3	.2
52 Nicollet	4	.3
53 Nobles	8	.5
54 Norman	3	.2
55 Olmsted	18	1.1
56 Otter Tail	27	1.7
57 Pennington	19	1.2
58 Pine	59	3.7
59 Pipestone	1	.1
60 Polk	30	1.9
61 Pope	9	.6
62 Ramsey	112	7.0
63 Red Lake	1	.1
64 Redwood	4	.3
65 Renville	12	.8
66 Rice	25	1.6
68 Roseau	6	.4
69 St. Louis	111	7.0
70 Scott	65	4.1
71 Sherburne	11	.7
72 Sibley	9	.6
73 Stearns	32	2.0
74 Steele	13	.8
75 Stevens	2	.1
76 Swift	3	.2
77 Todd	2	.1
78 Traverse	1	.1
79 Wabasha	11	.7
80 Wadena	5	.3
82 Washington	6	.4
83 Watonwan	30	1.9
84 Wilkin	3	.2
85 Winona	34	2.1
86 Wright	22	1.4
87 Yellow Medicine	3	.2
<b>Total</b>	<b>1,594</b>	<b>100.0</b>

\*Counties with zero cases omitted. Source Minnesota Judicial Branch. (Obtained 9/19/2019.)

## Pre- and Post-DSRA Stays of Adjudication

A stay of adjudication under [Minn. Stat. § 152.18](#) (“Discharge and Dismissal”) is a type of deferred prosecution that allows certain first-time drug defendants to be placed on probation and receive conditions of probation (e.g., drug treatment, educational programming) without judgment of guilt. If the conditions are successfully met, the defendant is discharged from probation and proceedings are dismissed. Effective for offenses committed on or after August 1, 2016 (when the DSRA took effect), such a stay of adjudication became mandatory for first-time fifth-degree controlled substance possession offenders with no felony record and no previous participation in diversion.<sup>40</sup> Additionally, such stays of adjudication were expanded to permit their use for third-degree controlled substance possessions. To measure the impact of the DSRA, this section compares post-DSRA cases to a comparable pre-DSRA group. This comparison is not limited to felony cases; this section includes post-DSRA gross misdemeanor cases among fifth-degree case data.

### Stays of Adjudication Before and After the DSRA

Table 17 displays two groups: “Pre-DSRA”<sup>41</sup>; and “Post-DSRA”.<sup>42</sup> There were 4,267 pre-DSRA cases and 7,530 post-DSRA cases. Comparing Pre-DSRA and Post-DSRA, the number of stays of adjudications increased by 76.5 percent (from 4,267 to 7,530); this varied by degree (Figure 36).

*Table 17. Stay of Adjudication Dispositions under Chapter 152, Pre- & Post-DSRA Comparison Groups*

Degree	Pre-DSRA 2013–15 Comparison Group	Post-DSRA 2016–18 Comparison Group	Pre-DSRA to Post- DSRA Percent Change
First	2	1	–50.0%
Second	6	7	+16.7%
Third	42	163	+288.1%
Fourth	46	42	–8.7%
Fifth	4,171	7,317	+75.4%
Total	<b>4,267</b>	<b>7,530</b>	+76.5%

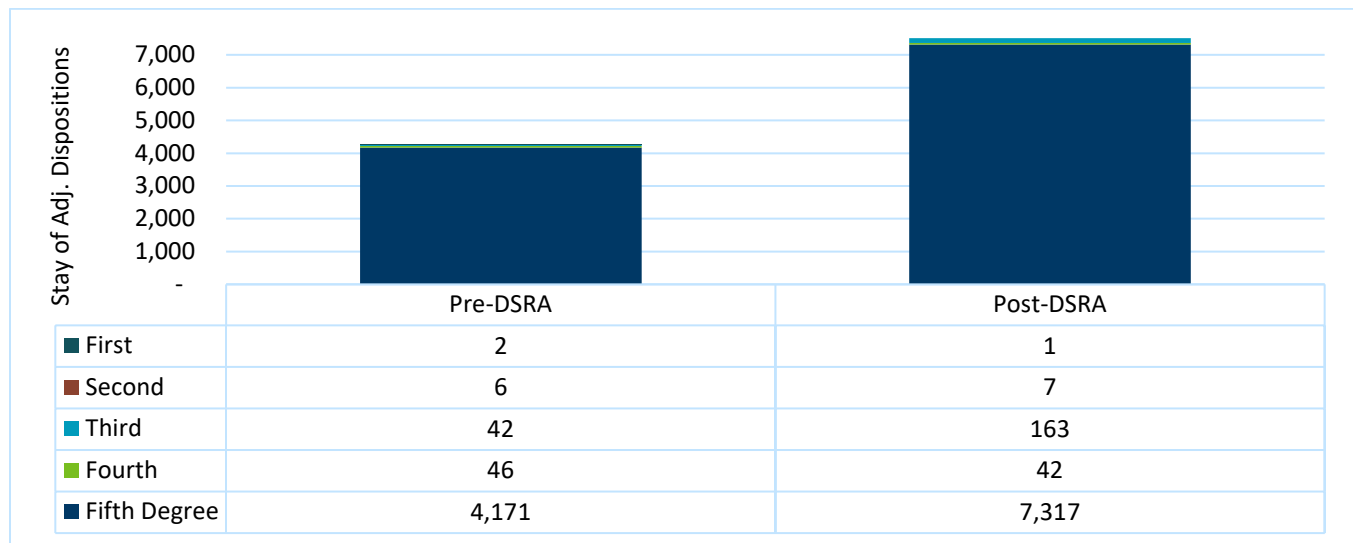
Source: Minnesota Judicial Branch. (Obtained 9/19/2019 and 12/11/2019.)

<sup>40</sup> See Minn. Stat. § 152.18, subd. 1(b), for a complete description of the criteria.

<sup>41</sup> Stay of adjudication dispositions, first- through fifth-degree offenses with offense dates and disposition dates between 8/1/2013 and 12/31/2015. Source: Minnesota Judicial Branch. (Obtained 12/11/2019.)

<sup>42</sup> Stay of adjudication dispositions, first- through fifth-degree offenses with offense dates and disposition dates between 8/1/2016 and 12/31/2018. Source: Minnesota Judicial Branch. (Obtained 9/19/2019.)

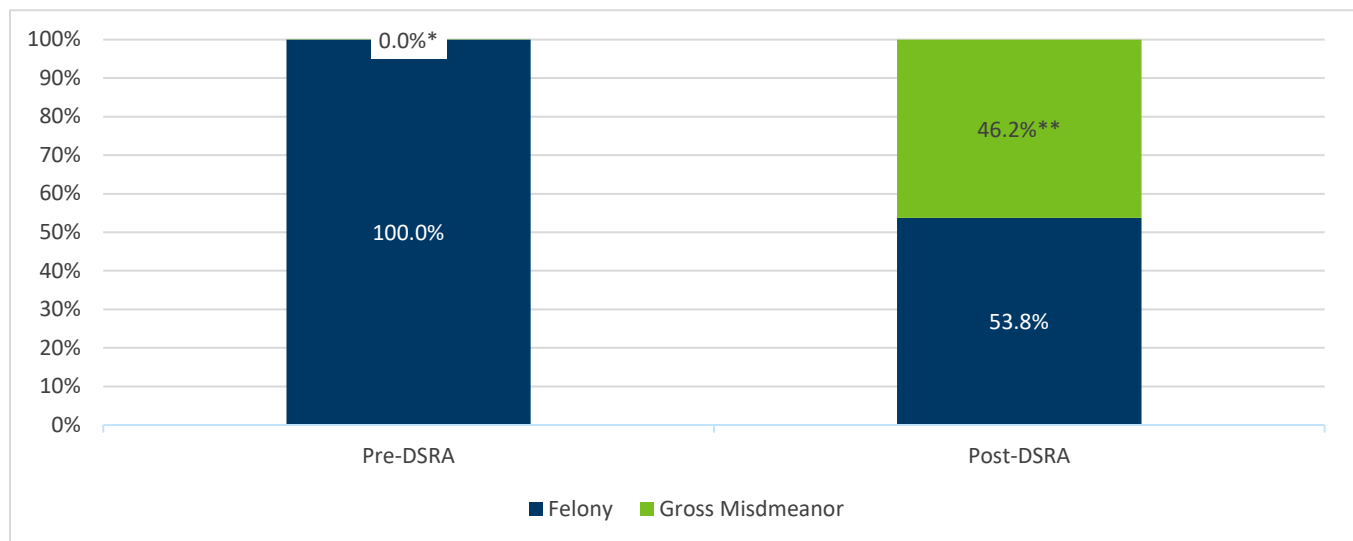
Figure 36. Stay of Adjudication Dispositions under Chapter 152 by Degree, Pre- & Post-DSRA Comparison Groups



Source: Minnesota Judicial Branch. (Obtained 9/19/2019 and 12/11/2019.)

As described on page 46, the DSRA created a gross misdemeanor fifth-degree offense for possessing a trace amount of a controlled substance. Figure 37 shows that gross misdemeanants were receiving almost half of the post-DSRA stay of adjudication dispositions.

Figure 37. Distribution by Offense Level of Stay of Adjudication Dispositions under Chapter 152, Pre- & Post-DSRA Comparison Groups



Source: Minnesota Judicial Branch. (Obtained 9/19/2019 and 12/11/2019.)

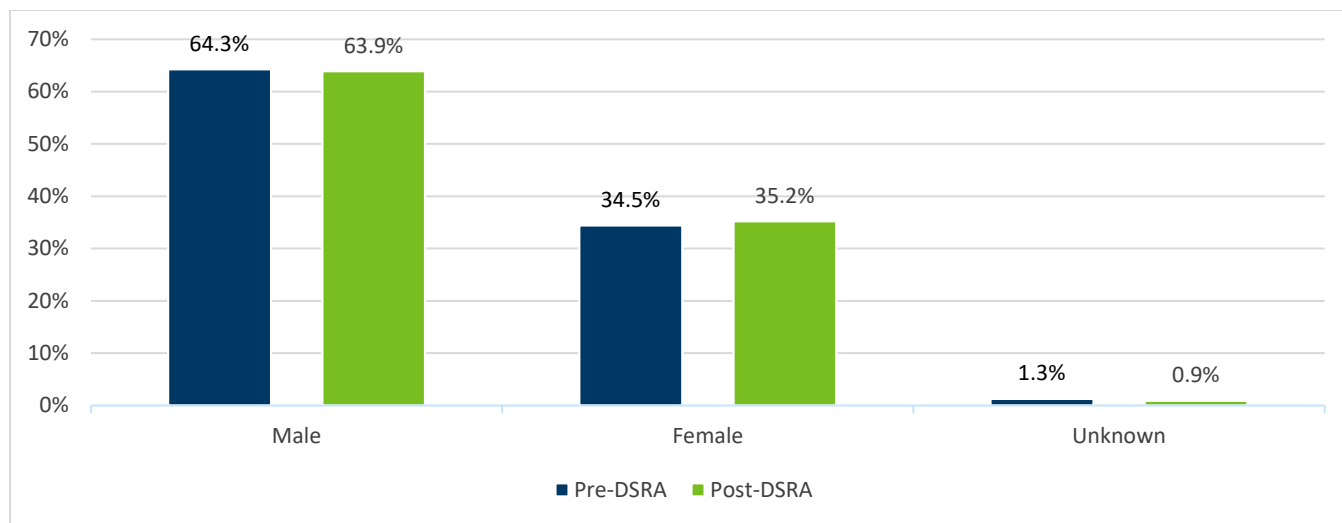
\*Two cases were coded as misdemeanor offenses pre-DSRA. It is assumed that these were data errors, as the law had not yet taken effect.

\*\*Three cases were coded as misdemeanor offenses post-DSRA. It is assumed that these were data errors.

## Pre-DSRA & Post-DSRA Comparisons

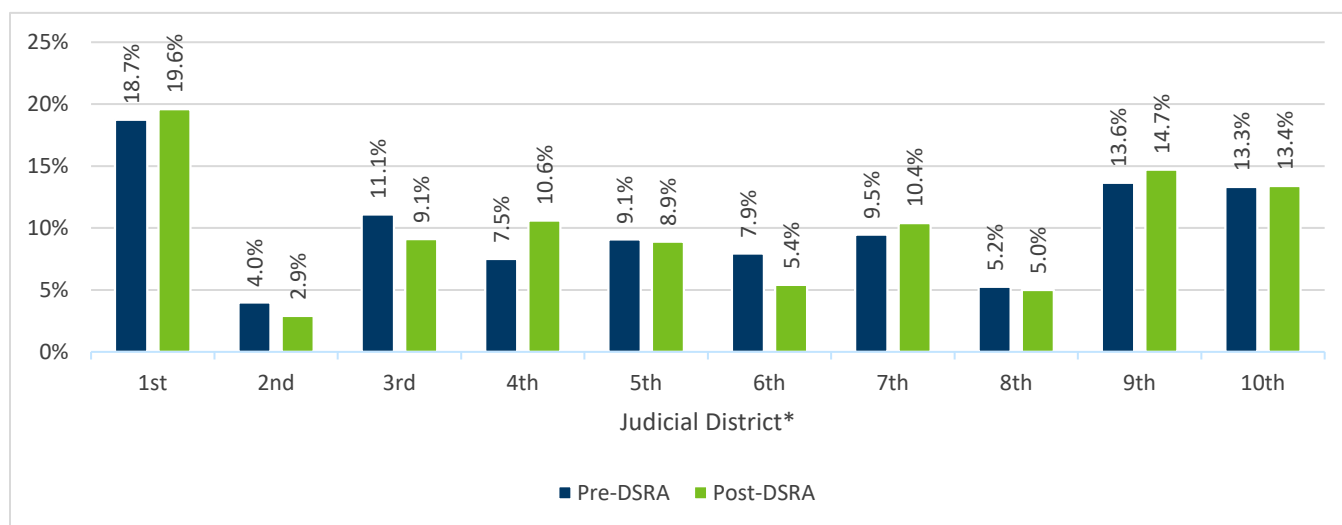
As Figure 38 shows, the distribution by gender of stay of adjudication dispositions was largely the same for the pre-DSRA and post-DSRA groups. This was generally true of the distribution by judicial district (Figure 39), although there was some variation in the fourth and sixth districts. Distribution by race and ethnicity was largely the same for pre-DSRA and post-DSRA groups (Figure 40).

*Figure 38. Distribution by Gender of Stay of Adjudication Dispositions under Chapter 152, Pre- & Post-DSRA Comparison Groups*



Source: Minnesota Judicial Branch. (Obtained 9/19/2019 and 12/11/2019.)

*Figure 39. Distribution by Judicial District of Stay of Adjudication Dispositions under Chapter 152, Pre- & Post-DSRA Comparison Groups*

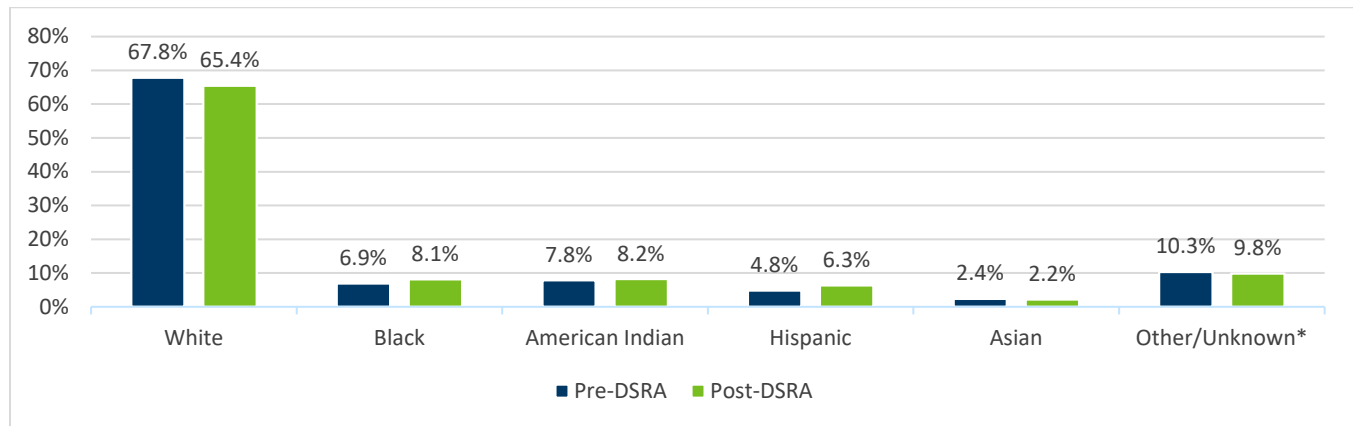


Source: Minnesota Judicial Branch. (Obtained 9/19/2019 and 12/11/2019.)

\*See Appendix 1 (p. 57) for a map of Minnesota's ten judicial districts.



**Figure 40. Distribution by Race & Ethnicity of Stay of Adjudication Dispositions under Chapter 152, Pre- & Post-DSRA Comparison Groups**

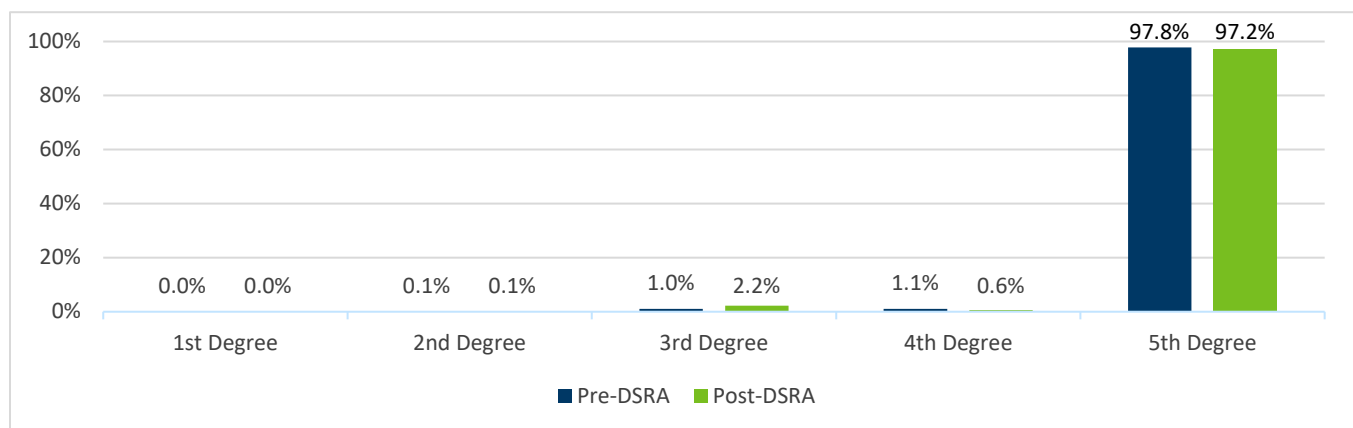


Source: Minnesota Judicial Branch. (Obtained 9/19/2019 and 12/11/2019.)

\*Other/Unknown: 10.3% Pre-DSRA & 9.8% Post-DSRA unknown; 2.7% Pre-DSRA & 1.5% Post-DSRA unavailable; 0.7% Pre-DSRA & 0.8% Post-DSRA “other;” 2.5 Pre-DSRA & 3.1% Post-DSRA multiracial; 0.5% Pre-DSRA & 0.8% Post-DSRA refused; and 0.2% Pre-DSRA & 0.3% Post-DSRA Hawaiian/Pacific Islander.

As stated, the DSRA required statutory stays of adjudication for certain first-time fifth-degree possession defendants, and permitted the use of such stays of adjudication in third-degree possession cases. Figure 41 shows that the use of stays of adjudication for third-degree cases has gone up slightly post-DSRA, but their use remains most common in fifth-degree cases.<sup>43</sup>

**Figure 41. Distribution by Controlled Substance Degree of Stay of Adjudication Dispositions under Chapter 152, Pre- & Post-DSRA Comparison Groups**



Source: Minnesota Judicial Branch. (Obtained 9/19/2019 and 12/11/2019.)

<sup>43</sup> First- and second-degree possession cases, and sale cases at every degree, are ineligible for disposition under [Minn. Stat. § 152.18](#). Nothing in that section, however, explicitly curtails the general authority of the district court to stay adjudication for such an offense, although the circumstances in which the district court is authorized to “stay[] adjudication of guilt over the prosecutor’s objection and in the absence of statutory authority” have been described as “unusual,” *State v. Foss*, 556 N.W.2d 540, 540-41 (Minn. 1996); see also *State v. Lee*, 706 N.W.2d 491 (Minn. 2005).

## 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 sentencing 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.

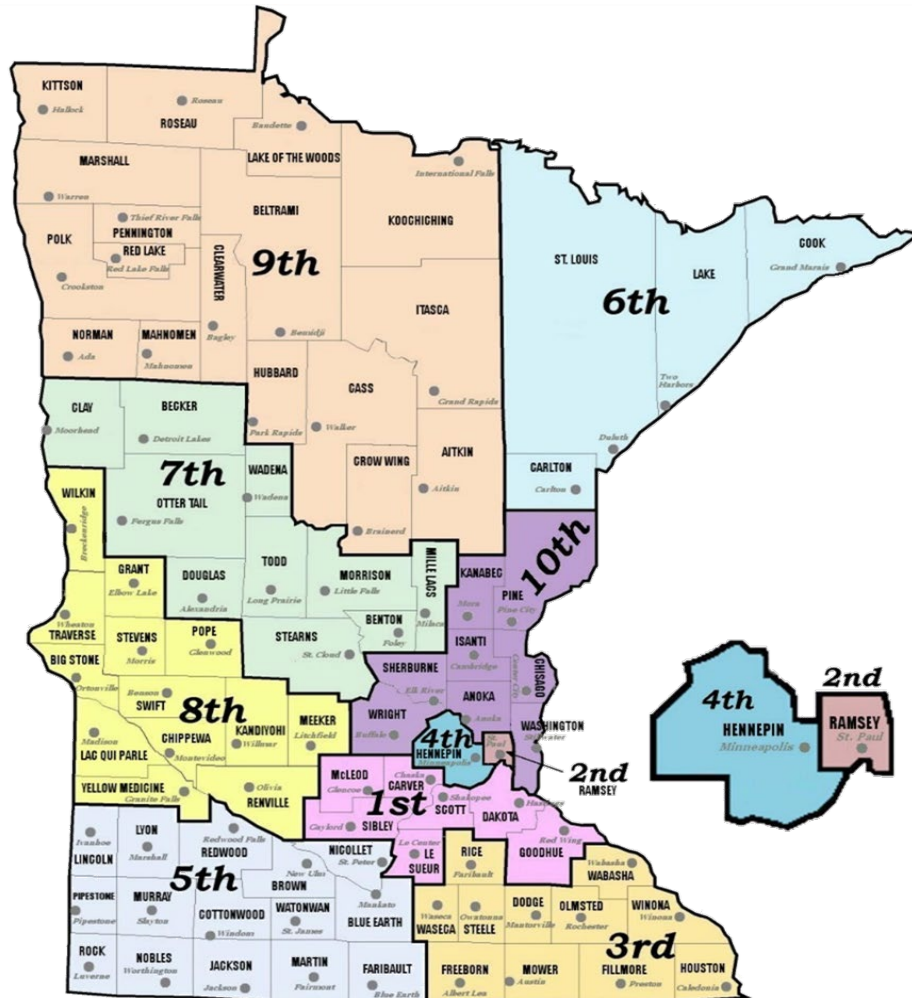
The Guidelines generally recommend a stayed sentence for cells in the shaded area of the applicable Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of local confinement (i.e., local correctional facility, county jail or workhouse) as a condition of probation. 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 applicable 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 applicable 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 <http://mn.gov/sentencing-guidelines>.

# Appendices

## Appendix 1. 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		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
Le Sueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Mille Lacs	Lac qui Parle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Otter Tail	Pope	Itasca	Washington
		Steele		Martin		Stearns	Renville	Kittson	Wright
		Wabasha		Murray		Todd	Stevens	Koochiching	
		Waseca		Nicollet		Wadena	Swift	Lake of the Woods	
		Winona		Nobles			Traverse	Mahnomen	
				Pipestone			Wilkin	Marshall	
				Redwood			Yellow Medicine	Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	

Source: Minn. Judicial Branch.

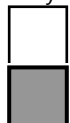
## Appendix 2. Sentencing Guidelines Grid, Effective Before August 1, 2016

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

<sup>1</sup> 12<sup>1</sup>=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.

<sup>2</sup> 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.

<sup>3</sup> 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.)

## Appendix 3. Drug Offender Grid, Effective on and After August 1, 2016

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 <i>italics</i> )		0	1	2	3	4	5	6 or more
<i>Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth</i>	<b>D9</b>	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>Controlled Substance Crime, 1st Degree</i>	<b>D8</b>	65 <i>56*-78</i>	75 <i>64*-90</i>	85 <i>73*-102</i>	95 <i>81*-114</i>	105 <i>90*-126</i>	115 <i>98*-138</i>	125 <i>107*-150</i>
<i>Controlled Substance Crime, 2nd Degree</i>	<b>D7</b>	48	58	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>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i>	<b>D6</b>	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i>	<b>D5</b>	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i>	<b>D4</b>	12 <sup>1</sup>	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	<b>D3</b>	12 <sup>1</sup>	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i>	<b>D2</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	<b>D1</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 <i>17-22</i>

\* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).

<sup>1</sup> 12<sup>1</sup>=One year and one day



Presumptive commitment to state imprisonment.



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.