

**Racial Impact for S.F. 9980\_1A:  
Miscellaneous Criminal Justice System Changes**  
Minnesota Sentencing Guidelines Commission  
April 6, 2009

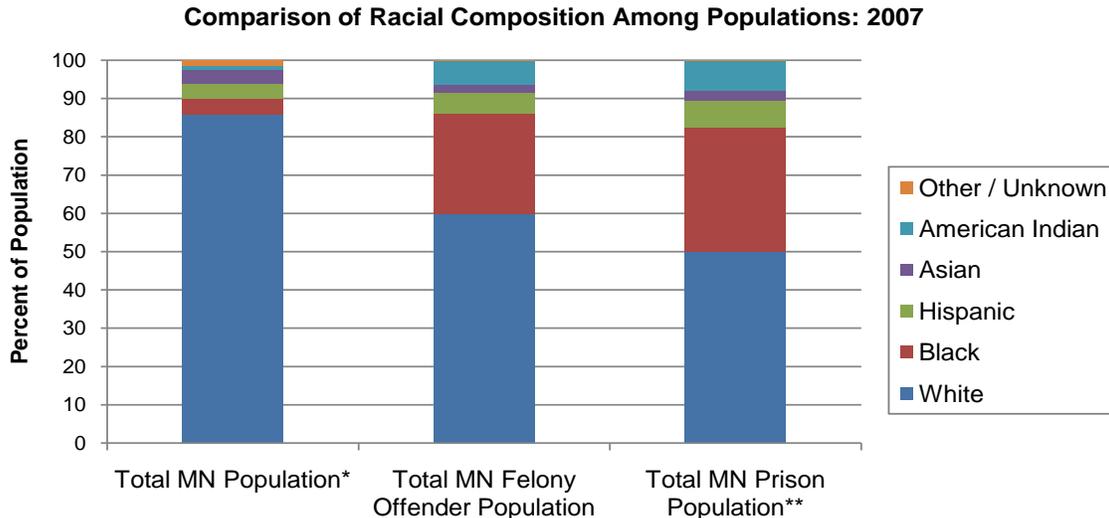
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By providing the following information on race, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota’s criminal justice system. Just as with the Commission’s fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2007 (the most current estimates available at this time), almost 86 percent of Minnesota’s population is white. The composition of the remaining 14 percent is as follows: 4.3 percent black; 4.0 percent Hispanic; 3.5 percent Asian; 1.1 percent American Indian; and roughly one percent who identify themselves with two or more races.

In contrast, MSGC monitoring data shows the following racial make-up of the 2007 felony offender population: 59.9 percent white; 26.1 percent black; 6.3 percent American Indian; 5.6 percent Hispanic; 2.1 percent Asian, and .03 percent unknown/other.

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2007 was as follows: 49.9 percent white; 32.6 percent black; 8.0 percent American Indian; 7.1 percent Hispanic; 2.3 percent Asian; and .05 percent unknown/other.



\* Source for “Total MN Population”: [U.S. Census Bureau 2007 Population Estimates](#).

\*\* Source for “Total MN Prison Population”: [MN Department of Corrections Adult Inmate Profile: 7/1/07](#).

**Article 3, Sections 1, 15: Expand M.S. §152.027**

This provision of the bill expands the definition of “small amount” as defined in M.S. §152.01, subd. 16 and M.S. §152.027. The “small amount” law currently provides that someone in possession of a small amount of marijuana is guilty of a petty misdemeanor (42.5 grams or less). This bill would create misdemeanor penalties for offenders in possession of 0.1 grams or less of cocaine, heroin, or methamphetamine.

The proposed changes to the drug thresholds may lessen some of the racial disparity in the prison population with respect to Hispanics. Hispanic and Asian offenders would see the largest percentage decrease in offenders receiving prison sentences (64.3% and 42.9%, respectively). However, these groups make up a relatively small percentage of fifth-degree offenders, so the actual number of offenders affected by the change would be small. Similar percentages of white and black offenders would move from prison or felony probation to misdemeanor probation.

Table 1 illustrates the racial distribution for all felony offenders and also for fifth-degree controlled substance offenses involving cocaine, heroin, and methamphetamine. It also shows the number of offenders who would be affected, by either moving from prison to probation or moving from felony probation to misdemeanor probation (offenders currently receiving stayed sentences).

**Table 1. Distribution of Offenders Affected by Expanding Definition of “Small Amount”**

<b>Race</b>	<b>Total Felony Offenders</b>	<b>Fifth-Degree Offenders<sup>1</sup></b>	<b>Offenders Moving from Prison to Misdemeanor Probation</b>	<b>Offenders Moving from Felony to Misdemeanor Probation</b>
White	59.9%	66.3%	28 (18.2% of prison cases)	223 (20.4% of 5 <sup>th</sup> deg. cases)
Black	26.1%	24.5%	14 (17.9% of prison cases)	81 (21.1% of 5 <sup>th</sup> deg. cases)
American Indian	6.3%	3.8%	1 (10.0% of prison cases)	23 (37.7% of 5 <sup>th</sup> deg. cases)
Hispanic	5.6%	3.5%	9 (64.3% of prison cases)	11 (21.6% of 5 <sup>th</sup> deg. cases)
Asian	2.1%	1.9%	3 (42.9% of prison cases)	4 (14.3% of 5 <sup>th</sup> deg. cases)

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<sup>1</sup> This column includes fifth-degree offenders involving cocaine, heroin, and methamphetamine possession, since these are the drug types that would be affected by this provision of the bill.

**Article 3, Sections 4-14: Changes to Drug Thresholds**

These sections of the bill revise the threshold amounts of controlled substances for first- through third-degree drug offenses.

The proposed changes to the drug thresholds may lessen some of the racial disparity in the prison population with respect to Hispanics and American Indians. Hispanic and Asian offenders would see the largest percentage decrease in offenders receiving prison sentences (23.2% and 30.8%, respectively). However, it should be noted that Asian offenders make up a relatively small percentage of this group, so the actual number of Asian offenders affected is quite small. A larger proportion of American Indians than other groups would receive shorter prison sentences. A smaller percentage of black than white offenders would move from prison to probation. Table 2 illustrates the racial distribution for all felony offenders and also for those affected by this provision of the bill. It also shows the number of offenders who would be affected, by either moving from prison to probation or by receiving a shorter prison sentence.

**Table 2. Distribution of Offenders Affected by Changing Drug Thresholds**

<b>Race</b>	<b>Total Felony Offenders</b>	<b>Drug Offenders Affected by Proposal</b>	<b>Offenders Moving from Prison to Probation</b>	<b>Offenders Receiving Shorter Prison Sentences</b>
White	59.9%	53.1%	49 (18.6% of prison cases)	91 (34.6% of prison cases)
Black	26.1%	31.3%	25 (11.9% of prison cases)	66 (31.4% of prison cases)
American Indian	6.3%	2.3%	1 (11.1% of prison cases)	5 (55.6% of prison cases)
Hispanic	5.6%	10.4%	19 (23.2% of prison cases)	26 (31.7% of prison cases)
Asian	2.1%	2.9%	4 (30.8% of prison cases)	5 (38.5% of prison cases)

Table 3 displays the average sentence pronounced in 2007 and what the average would be under the proposed changes for those offenders who would receive a prison sentence. It does not include offenders sentenced for manufacture of meth because there are no proposed changes to that offense. While the reductions in average sentences are similar for most racial groups (6-9 months), the reduction for American Indians is 16 months.

**Table 3. Average Sentences Pronounced: Under Current and Proposed Thresholds**

<b>Race</b>	<b>2007 Average Sentence (in months)</b>	<b>Average Sentence Under Proposed Changes (in months)</b>
White	61.4	54.8
Black	54.8	49.1
American Indian	71.6	55.8
Hispanic	59.5	52.3
Asian	60.8	51.7

**Article 3, Sections 4-14: Repeal Mandatory Minimum for Subsequent Drug Offenders**

These sections of the bill repeal the mandatory minimums for subsequent controlled substance offenses. Currently, there is a four-year minimum for subsequent first-degree offenders, three years for second-degree, two years for first-degree, one year minimum conditional jail time for fourth-degree, and a minimum of six months conditional jail time for fifth-degree offenders.

In 2007, the Supreme Court held that judges do not have discretion to sentence an offender to less than the mandatory minimum for a subsequent controlled substance offense (*State v. Turck*). As a result of that decision, mitigated departures on subsequent controlled substance offenses have decreased. MSGC's estimated bed impact assumes that the dispositional departure rates for subsequent controlled substance offenses would return to the levels observed prior to the *Turck* decision (2006). It is possible that dispositional departure rates would rise even higher than the levels observed in 2006. If that were to happen, there could be greater impact than what is estimated below.

This provision is likely to have a neutral impact on racial disparity in the prison population. Table 4 illustrates the racial distribution for all felony offenders and also for subsequent drug offenders. It also shows the number of subsequent drug offenders who would be affected by the proposal, assuming dispositional departure rates would return to levels observed in 2006.

**Table 4. Distribution of Subsequent Drug Offenders and Those Affected by Proposal**

<b>Race</b>	<b>Total Felony Offenders</b>	<b>Subsequent Drug Offenders</b>	<b>Offenders Moving from Prison to Probation</b>
White	59.9%	43.7%	20 (14.7% of prison cases)
Black	26.1%	44.4%	19 (13.8% of prison cases)
American Indian	6.3%	1.6%	0
Hispanic	5.6%	8.7%	5 (18.5% of prison cases)
Asian	2.1%	1.6%	0

**Article 3, Section 16: Repeal Mandatory Minimum for Failure to Register**

This section repeals the mandatory minimum for offenders who fail to register as a predatory offender, per M.S. §243.166. Currently offenders who violate this law are subject to a mandatory minimum sentence of 12 months and a day in prison; 24 months for subsequent violators. The Minnesota Sentencing Guidelines Commission took this mandatory minimum into account when it created the Sex Offender Grid, effective August 1, 2006. Failure to Register is a severity level H offense, where all offenders have presumptive prison sentences.

The estimates below are based on the following assumptions:

- 1.) If the mandatory minimum were repealed, the Commission would adjust the Sex Offender Grid so that offenders with a criminal history score of 3 or less would be recommended probation; those with a score of 4 or greater would be recommended prison.
- 2.) Those who currently receive dispositional departures for this offense would continue to do so at the same rate.
- 3.) Offenders who would not go to prison because of the repeal would receive similar probation lengths/conditional jail terms as offenders with similar criminal history scores who currently receive dispositional departures.

The proposed repeal of mandatory minimums for Failure to Register is unlikely to lessen some of the racial disparity in the prison population. As Table 5 indicates, Asian offenders would see the largest percentage decrease in offenders receiving prison sentences, with all offenders moving to probation. However, it should be noted that Asian offenders make up a relatively small percentage of this group, so the actual number of Asian offenders affected is quite small. American Indian, white, and Hispanic offenders would all see more than 60 percent of offenders shifting from prison to probation. However, a smaller percentage of black offenders (45%) would shift from prison to probation.

**Table 5. Distribution of Offenders Affected by Repealing Mandatory Minimum for Failure to Register**

<b>Race</b>	<b>Total Felony Offenders</b>	<b>Failure to Register Offenders</b>	<b>Offenders Moving from Prison to Probation</b>
White	59.9%	52.1%	61 (68.5% of cases)
Black	26.1%	31.5%	26 (44.8% of cases)
American Indian	6.3%	8.7%	11 (68.8% of cases)
Hispanic	5.6%	6.5%	7 (63.6% of cases)
Asian	2.1%	1.1%	3 (100% of cases)

**Article 3, Section 32: MSGC to Consider Re-Rank of Felony DWI**

This section of the bill asks the Minnesota Sentencing Guidelines Commission to consider re-ranking felony DWI at either severity level 5 or severity level 6. Since it is unknown where the Commission would choose to rank the offense, racial impact was analyzed at both severity levels. As with the fiscal note, the following assumptions were made about this provision:

- 1.) Imprisonment rate for felony DWI offenders remains the same, since offenders would be recommended prison at the same criminal history score. This also assumes that offenders who are currently receiving mitigated dispositional departures would continue to do.
- 2.) Current Guidelines policy regarding subsequent felony DWI offenses would remain in place. (Regardless of criminal history score, subsequent felony DWI offenders are recommended prison.)
- 3.) Offenders currently receiving durational departures that result in shorter sentences than what their new presumptive sentences would be under the proposed re-ranking would continue to get their current sentences.

Because the majority of felony DWI offenders are white, the proposed re-rank of felony DWI is not likely to reduce the racial disparity in the prison population. As Table 6 indicates, white offenders would have the largest percentage of offenders who serve less time under either of the re-rankings. Table 7 shows that white offenders would see the greatest decrease in average sentence length, with the exception of Hispanic offenders.

**Table 6. Distribution of Offenders Affected by Re-Ranking Felony DWI**

Race	Total Felony Offenders	Felony DWI Offenders	Offenders Serving Less Time: Severity Level 6	Offenders Serving Less Time: Severity Level 5
White	59.9%	69.5%	110 (91.7% of prison cases)	116 (96.7% of prison cases)
Black	26.1%	12.5%	20 (64.5% of prison cases)	29 (93.5% of prison cases)
American Indian	6.3%	9.8%	20 (87.0% of prison cases)	22 (95.7% of prison cases)
Hispanic	5.6%	7.3%	7 (77.8% of prison cases)	7 (77.8% of prison cases)
Asian	2.1%	0.8%	0	0

Table 7 displays the average sentence pronounced in 2007 and what the average would be if felony DWI were re-ranked at either severity level 5 or 6.

**Table 7. Average Sentences Pronounced: Under Current and Proposed Thresholds**

Race	2007 Average Sentence (in months)	Average Sentence If Re-Ranked to Severity 6 (in months)	Average Sentence If Re-Ranked to Severity 5 (in months)
White	50.9	22.8	19.2
Black	46.8	31.4	26.5
American Indian	53.1	27.9	23.6
Hispanic	50.9	18.7	15.8