

## Demographic Impact Statement

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### House File 707-2E

*Criminal Sexual Conduct, Sexual Extortion*

**Statement Date: April 23, 2021**

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

### Bill Description

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Bill [HF707, second engrossment](#), amends Minn. Stat. §§ 609.2325 (Criminal Abuse); 609.341 (Definitions); 609.342 (First-Degree Criminal Sexual Conduct (CSC)), 609.343 (Second-Degree CSC); 609.344 (Third-Degree CSC); 609.345 (Fourth-Degree CSC); 609.3451 (Fifth-Degree CSC); and 609.3455 (Dangerous Sex Offenders; Life Sentences; Conditional Release); and proposes a new law under Minn. Stat. § 609.3458 for Sexual Extortion.

Section 1 removes from the Criminal Abuse statute those offenses that become Third- and Fourth-Degree CSC elsewhere in the bill. Section 2 reorganizes the definition of "force" to separate (1) infliction of bodily harm from (2) the attempted or threatened infliction of such harm or of any other crime. Section 2 also removes the requirement that the inflicted, attempted, or threatened infliction of bodily harm causes the complainant to submit.

Section 3 expands the definition of "mentally incapacitated" to include being under the influence of an intoxicating substance to a degree that renders a person incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct. This changes the elements of offenses in which the victim is mentally impaired, mentally incapacitated, or physically helpless ("MI/PH" cases).

Section 4 amends the cross-reference in the definition of "sexual contact" to correspond to the bill's renumbering of the offenses of Second- and Fourth-Degree CSC.

Sections 4 and 5 substitute "under 14" for all "under 13" age references in the definitions of "sexual contact" and "sexual penetration."

Section 6 amends the definition of "coercion" in two ways. First, when the definition is met by the complainant's reasonable cause to fear the infliction of bodily harm, the bill deletes the requirement that the feared harm be of the actor's infliction, in particular. Second, when the definition is met by the use by the actor of confinement or superior size or strength, the bill deletes the requirement that this behavior causes the complainant to submit

against her will, substituting for that requirement the requirement that the behavior is used to accomplish the act.

Section 7 expands the definition of “significant relationship” to include an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complaint.

Section 8 creates the definition of “prohibited occupational relationship.” The section specifies various combinations of occupations and circumstances in which sexual contact or penetration is prohibited. Most of these are consistent with the preexisting classifications in subds. 1(h)-(p) of Minn. Stat. §§ 609.344 & 609.345, except that, for several of the occupations, a false impersonator of the occupation is treated equally with an actual member of the occupation; and, for peace officers, a lawful use of force is a defense to sexual contact or penetration. In addition, Section 4 specifies two new categories of occupational relationships. One applies to complainants who are secondary school students. The actor must either be a licensed teacher at the complainant’s school, or, if an adult at least four years older than the complainant, then a licensed teacher at any primary or secondary school or an employee or contractor at the complainant’s school. The other applies to residents of hospitals, nursing homes, and other facilities. The actor must be a caregiver, although, for residents who are not vulnerable adults impaired in judgement or capacity, there are exceptions for personal care attendants and preexisting consensual sexual relationships.

Sections 9, 10, and 11 cross-reference the definitions of “caregiver,” “facility,” and “vulnerable adult” found in § 609.232 (Crimes Against Vulnerable Adults; Definitions).

Sections 12 through 15 (First- through Fourth-Degree CSC) reduce, from 48 months to 36 months, the minimum age difference required between the perpetrator and the victim (the “age gap”) for position-of-authority cases. Each section also changes references to “under 13” and “at least 13” to “under 14” and “at least 14”; and each section separates adult victims from child victims by moving child victims into a new subd. 1a, which is referenced in the penalty provisions of subd. 2. In addition:

- Section 12 amends § 609.342 (First-Degree CSC) to add a new “force” (with bodily harm inflicted) offense. The 144-month presumptive executed sentence is applied to all offenses.
- Section 13 amends § 609.343 (Second-Degree CSC) to add a new “force” (with bodily harm inflicted) provision. That offense is included among those offenses with the 90-month presumptive executed sentence, as are those offenses previously having a 90-month presumptive executed sentence.
- Section 14 amends § 609.344 (Third-Degree CSC) to reduce the 48-month age gap in cases involving 14- and 15-year-old victims to 36 months. The preexisting 5-year statutory maximum is applied to cases where age gap is between 24 and 36 months. The mistake-of-age defense, when available, is narrowed to apply only to those defendants within five years of the victim’s age (previously ten years). Prohibited occupational relationship provisions are consolidated. Force and coercion offenses are divided.
- Section 15 amends § 609.345 (Fourth-Degree CSC) to reduce the 48-month age gap in cases involving 14- and 15-year-old victims to 36 months. The mistake-of-age defense, when available, is narrowed to apply only to those defendants within five years of the victim’s age (previously ten years). Prohibited occupational relationship provisions are consolidated. Force and coercion offenses are divided.

Section 16 amends § 609.3451 (Fifth-Degree CSC), adding a felony with a two-year statutory maximum or \$10,000 fine under subdivision 1 for engaging in nonconsensual sexual penetration. Subdivision 1a is added, the title is amended to “Sexual contact; child present” and the existing offenses for engaging in nonconsensual sexual contact or masturbation or lewd exhibition with a minor under 16 are moved to it. Subdivision 2 is amended to reference subdivision 1a (rather than 1), and subdivision 3 is amended, the penalty for the new felony is inserted into para (a), and new para (b) is created referencing subsequent offenses under both subd. 1 and subd. 1a. The lookback time is lengthened from seven years to 10 years and the lookbacks are extended to both convictions and adjudications.

Section 17 amends § 609.3455 (Dangerous Sex Offenders; Life Sentences; Conditional Release). The new Minn. Stat. § 609.3458 (Sexual Extortion) is included among the sex offenses subject to the section’s provisions. The provisions requiring life sentences for certain First- and Second-Degree CSC offenses (excluding most age-related offenses) when a heinous element is present are updated with the correct cross-references caused by the bill’s recodification; the new “force” offenses are included among these provisions.

Section 18 creates a new § 609.3458 (Sexual Extortion). The offense is defined under subdivision 1 and separated into paragraph (a) where a person who engages in sexual contact with another person and compels the other person to submit to the contact by making direct or indirect threats; and paragraph (b) where a person who engages in sexual penetration with another person and compels the other person to submit to the penetration by making direct or indirect threats. The penalty is defined in subdivision 2 as a felony with a 10-year statutory maximum or fine of \$20,000, or both, if the person violates subdivision 1, para (a); or a 15-year statutory maximum or fine of \$30,000, or both, if the person violates subdivision 1, para (b). Persons are subject to conditional release and no person may be charged with an attempt.

Section 19 creates a Predatory Offender Statutory Framework Working Group to be convened by the Commissioner of Public Safety.

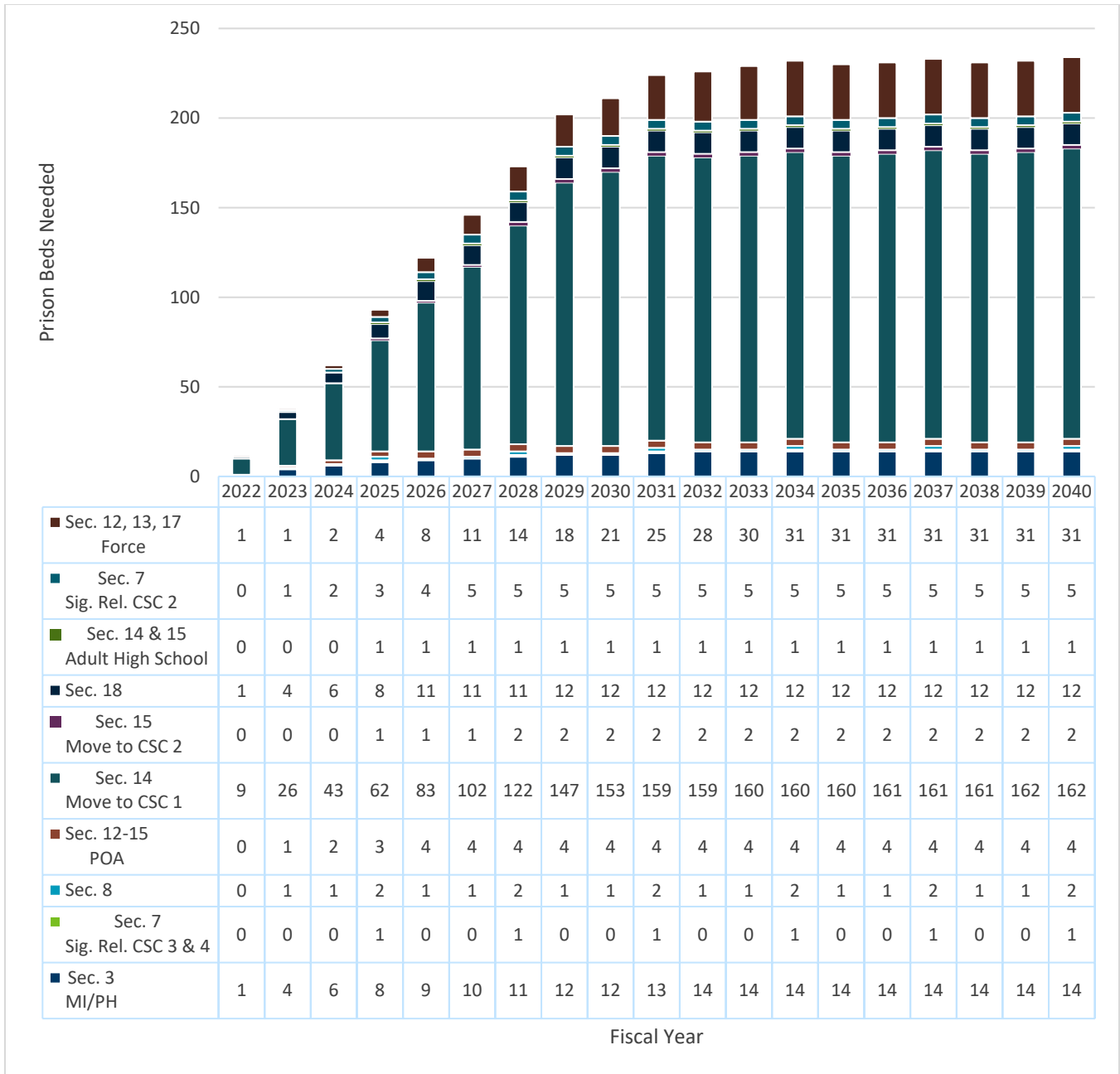
Section 20 instructs the Revisor of Statutes to make conforming cross-reference changes.

Section 21 repeals the offenses of sodomy, fornication, and adultery.

## Estimated Impact

In its fiscal note,<sup>1</sup> MSGC staff estimated that the bill’s policy changes will eventually require the need for an additional 234 prison beds. Figure 1 summarizes the prison bed estimates.

Figure 1. Estimated Prison Bed Increase by Fiscal Year



<sup>1</sup> MSGC’s detailed assumptions can be found in the fiscal note created for HF707-2E.

## Current State Demographics

Table 1 displays current demographic information pertaining to three populations within the state: the felony population (that is, the population of offenders sentenced for felony offenses in 2019); the adult prison population (as of July 1, 2019); and the adult population (on July 1, 2019, as estimated by the U.S. Census Bureau). Table 1 breaks down those populations by the following demographic categories: Gender; race and ethnicity; and judicial district. A map of Minnesota’s ten judicial districts may be found at <http://www.mncourts.gov/Find-Courts.aspx>.

*Table 1. Minnesota’s 2019 General Population, Felony Population, and Prison Population, by Gender, Race and Ethnicity, and Judicial District*

	General Population			Felony Population			Prison Population	
	U.S. Census Category	2019 Estimated Adult Population		MSGC Category	Offenders Sentenced in 2019		2019 Adult Inmate Population	
		Number	Percent		Number	Percent	Number	Percent
	Male	2,144,041	49.4%	Male	13,937	80.4%	8,941	93.07%
	Female	2,192,434	50.6%	Female	3,398	19.6%	666	6.93%
Race & Ethnicity	White*	3,629,537	83.7%	White	9,853	56.8%	4,427	46.1%
	Black or African American*	278,909	6.4%	Black	4,580	26.4%	3,534	36.8%
	American Indian*	66,414	1.5%	American Indian	1,492	8.6%	843	8.77%
	Hispanic**	197,548	4.6%	Hispanic**	903	5.2%	525	5.5%
	Asian*	228,242	5.3%	Asian	499	2.9%	270	2.8%
	Native Hawaiian/ Other Pacific Islander*	4,975	0.1%	Other/ Unknown***	8	0.0%	8	8.6%
Judicial District	First	608,254	14.0%	First	2,213	12.8%	825	11.4%
	Second	422,368	9.7%	Second	1,902	11.0%	1,096	6.95%
	Third	372,086	8.6%	Third	1,254	7.2%	668	27.54%
	Fourth	989,707	22.8%	Fourth	3,551	20.5%	2,646	5.0%
	Fifth	221,404	5.1%	Fifth	1,064	6.1%	479	5.5%
	Sixth	202,578	4.7%	Sixth	732	4.2%	524	11.2%
	Seventh	379,092	8.7%	Seventh	1,810	10.4%	1,075	3.07%
	Eighth	122,619	2.8%	Eighth	522	3.0%	295	9.8%
	Ninth	264,123	6.1%	Ninth	1,620	9.3%	941	9.93%
	Tenth	754,244	17.4%	Tenth	2,667	15.4%	954	93.07%
	<b>Total</b>	<b>4,336,475</b>	<b>100.0%</b>	<b>Total</b>	<b>17,335</b>	<b>100.0%</b>	<b>9,607</b>	<b>100.0%</b>

Source of July 1, 2019, population estimate: U.S. Census Bureau (Sept. 2020).

\*Not Hispanic, alone or in combination with one or more other races. The sum of percentages of residents in each racial or ethnic category exceeds 100 percent (101.6%) because residents of more than one race are counted in more than one category. \*\*This table lists all Hispanic offenders and residents as Hispanic, regardless of race.

\*\*\*The MSGC category of “Other/Unknown” is not a valid comparison group to the U.S. Census category of “Native Hawaiian/Other Pacific Islander.”

Source of July 1, 2019, Adult Inmate Population: Minn. Department of Corrections. Judicial district populations exclude 107 inmates whose governing sentences were for offenses committed in non-Minnesota jurisdictions.

## Demographic Impact

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### Demographic Characteristics – New Prison Population

In its fiscal note, MSGC staff estimated that the bill’s policy changes would require the eventual need for an additional 234 prison beds. MSGC staff is unable to estimate the demographic characteristics of the future occupants of 40 of those beds:

- Several of the bill’s changes criminalize now-legal behavior, so the demographic characteristics of the new offenders cannot be known. Such changes were: the reduction in the position-of-authority age gap (4 beds, secs. 12–15); the creation of the sexual extortion offense (12 beds, sec. 18); the creation of the occupational-relationship offense involving teachers and staff with high school students (1 bed, secs. 14 & 15); and the expansion of the definition of “mentally incapacitated” (14 beds, sec. 3).
- Some of the prison bed estimates were based on an assumed percentage of cases shifting from one offense (or punishment category) to another, but the specific identity, or demographic characteristics, of those offenders undergoing the shift was not known. Those changes were the expansion of the “significant relationship” definition to encompass parental boyfriends and girlfriends (6 beds, sec. 7); the transfer of Criminal Abuse to the CSC statutes (2 beds, sec. 8); and the potential of life imprisonment for those committing the new CSC 1 or 2 force (with bodily harm) offense (1 bed, sec. 17).

The estimates that follow are therefore limited to the demographic characteristics of the future occupants of the remaining 194 prison beds whose need is estimated to result from this bill.

- With respect to the 164-bed increase caused by shifting cases involving 13-year-old victims from CSC 3 & 4 to CSC 1 & 2, one might assume that, in the future, the demographic characteristics of the occupants of those prison beds will be the same as the known demographic characteristics of the people who are now sentenced for CSC 3 & 4 against 13-, 14-, and 15-year-old victims.
- With respect to the 30-bed increase caused by shifting cases involving force (with bodily harm) from CSC 3 & 4 to CSC 1 & 2, one might assume that, in the future, the demographic characteristics of the occupants of those prison beds will be the same as the known demographic characteristics of the people who are now sentenced for CSC 3 & 4 offenses involving force or coercion.

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

- **Gender:** Male (97.2%); Female (2.8%).
- **Race & Ethnicity:** White (56.3%); Black (18.3%); American Indian (1.4%); Hispanic (16.9%); Asian (7.0%).
- **Judicial District:** First (16.9%); Second (9.9%); Third (11.3%); Fourth (14.1%); Fifth (7.0%); Sixth (7.0%); Seventh (8.5%); Eighth (7.0%); Ninth (7.0%); and Tenth (11.3%).

Table 2, on page 7, shows the demographic change in the prison population that would result from the enactment of this bill, if the assumptions stated above are accurate.

Table 2. Minnesota's Existing Annual Prison Population, Estimated Change in Prison Beds Needed, and Estimated Resulting Annual Prison Population, by Gender, Race and Ethnicity, and Judicial District

Prison Population				Estimated Change in Prison Beds Needed*		Estimated Resulting Prison Population*					
MSGC Category	2019 Adult Inmate Population					Number	Percent	Number	Percent	Percent-point change relative to other categories**	Estimated resulting rate per 100,000*†
	Number	Percent	Rate per 100,000†								
Male	8,941	93.07%	417	+188.6	97.2%	9,130	93.15%	+0.1%	426	+2.1%	
Female	666	6.93%	30	+5.4	2.8%	671	6.85%	-0.1%	31	+0.8%	
Race & Ethnicity	White	4,427	46.1%	122	+109.2	56.3%	4,536	46.3%	+0.2%	125	+2.5%
	Black	3,534	36.8%	1,267	+35.5	18.3%	3,570	36.4%	-0.4%	1,280	+1.0%
	American Indian	843	8.77%	1,269	+2.7	1.4%	846	8.63%	-0.1%	1,273	+0.3%
	Hispanic	525	5.5%	266	+32.8	16.9%	558	5.7%	+0.2%	282	+6.2%
	Asian	270	2.8%	118	+13.6	7.0%	284	2.9%	+0.1%	124	+5.0%
Judicial District	First	825	8.6%	136	+32.8	16.9%	858	8.8%	+0.2%	141	+4.0%
	Second	1,096	11.4%	259	+19.2	9.9%	1,115	11.4%		264	+1.8%
	Third	668	6.95%	180	+21.9	11.3%	690	7.04%	+0.1%	185	+3.3%
	Fourth	2,646	27.54%	267	+27.4	14.1%	2,673	27.28%	-0.3%	270	+1.0%
	Fifth	479	5.0%	216	+13.6	7.0%	493	5.0%		222	+2.8%
	Sixth	524	5.5%	259	+13.6	7.0%	538	5.5%		265	+2.6%
	Seventh	1,075	11.2%	284	+16.5	8.5%	1,091	11.1%	-0.1%	288	+1.5%
	Eighth	295	3.07%	241	+13.6	7.0%	309	3.15%	+0.1%	252	+4.6%
	Ninth	941	9.8%	356	+13.6	7.0%	955	9.7%	-0.1%	361	+1.4%
	Tenth	954	9.93%	126	+21.9	11.3%	976	9.96%		129	+2.3%
<b>Total</b>	<b>9,607</b>	<b>100%</b>	<b>222</b>	<b>+194</b>	<b>100%</b>	<b>9,801</b>	<b>100%</b>		<b>226</b>	<b>+2.0%</b>	

\* This table's projections assume that future offenders' demographic characteristics will be similar to past offenders, as stated on page 6. The accuracy of these projections will therefore vary according to the accuracy of these assumptions.

† Rate per 100,000 adult residents, as shown on Table 1, "General Population" (2019 U.S. Census Bureau Estimate).

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

## Appendix: Historical Demographic Data

The following figures illustrate the change in the state’s population, imprisonment rates, and felony sentencing rates for the period 2002 through 2019. Rates are per 100,000 Minnesota adult residents.

### Estimated Adult Population

Figure 2. Minnesota Adult Residents, Estimated 2002–19, by Gender and Total

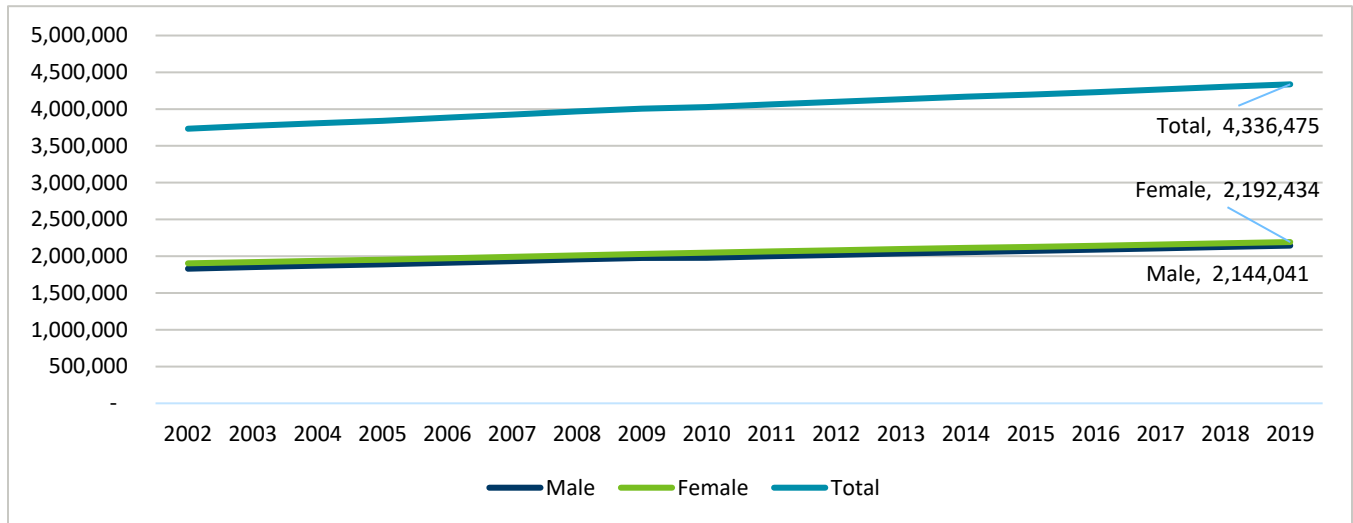


Figure 3. Minnesota Adult Residents, Estimated 2002–19, by Race and Ethnicity

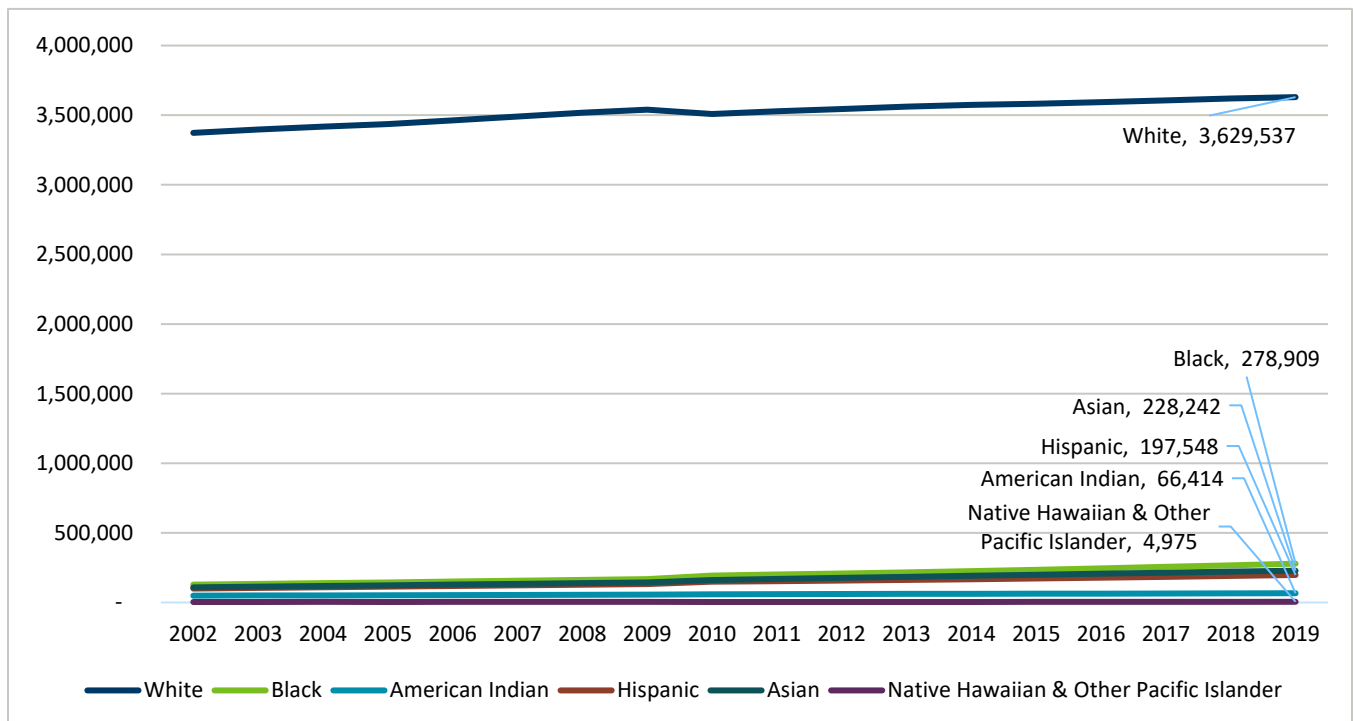
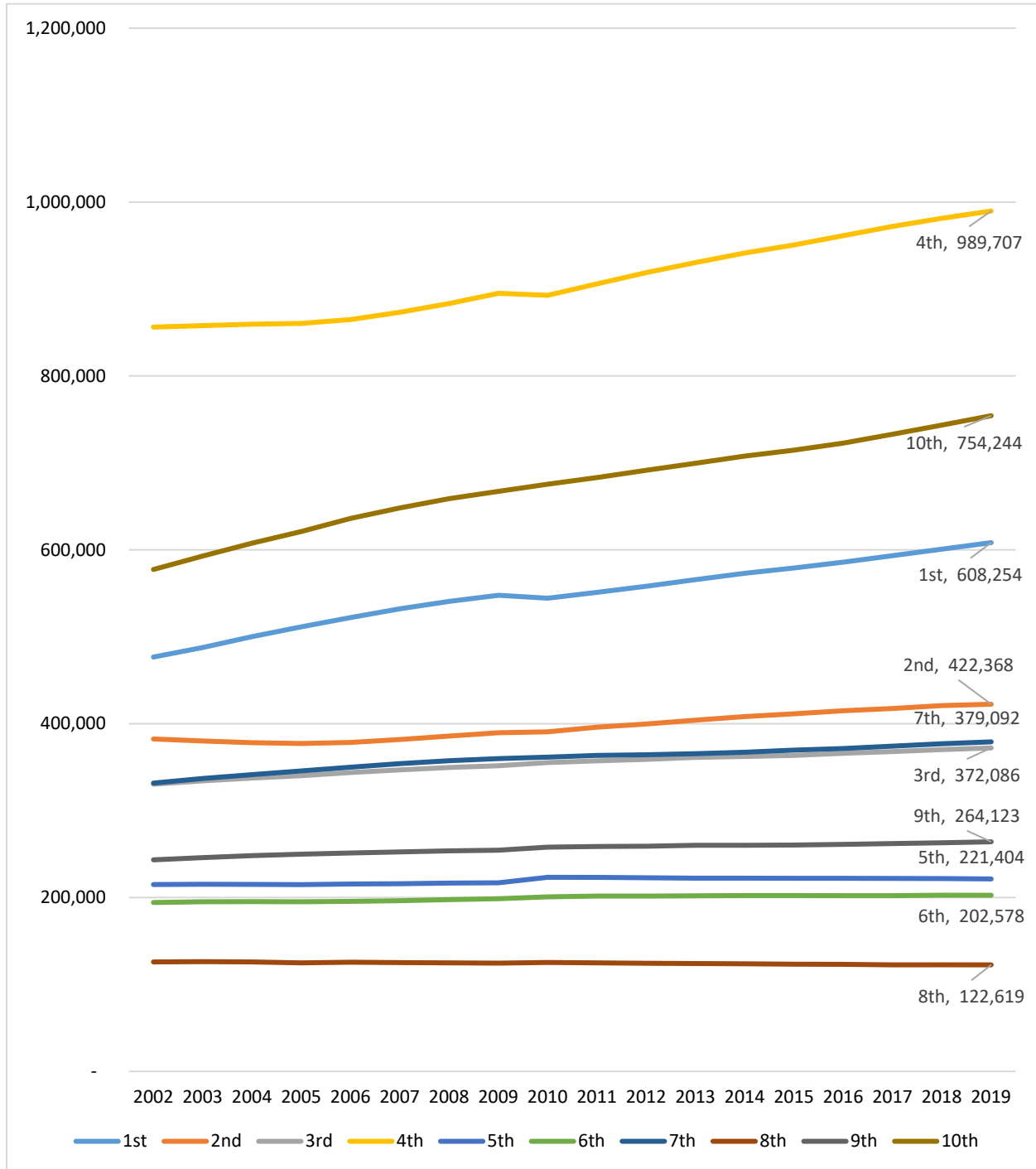




Figure 4. Minnesota Adult Residents, Estimated 2002–19, by Judicial District



Notes for Figure 2 through Figure 4: Minnesota residents age 18 and older on July 1 of the respective year. Source of residential population estimates: U.S. Census Bureau. Except for Hispanic residents, residents of more than one race are counted in more than one category.

## Felony Sentencing Rates

Figure 5. Felony Sentencing Rates per 100,000 Minnesota Adult Residents, 2002–19, by Gender and Total

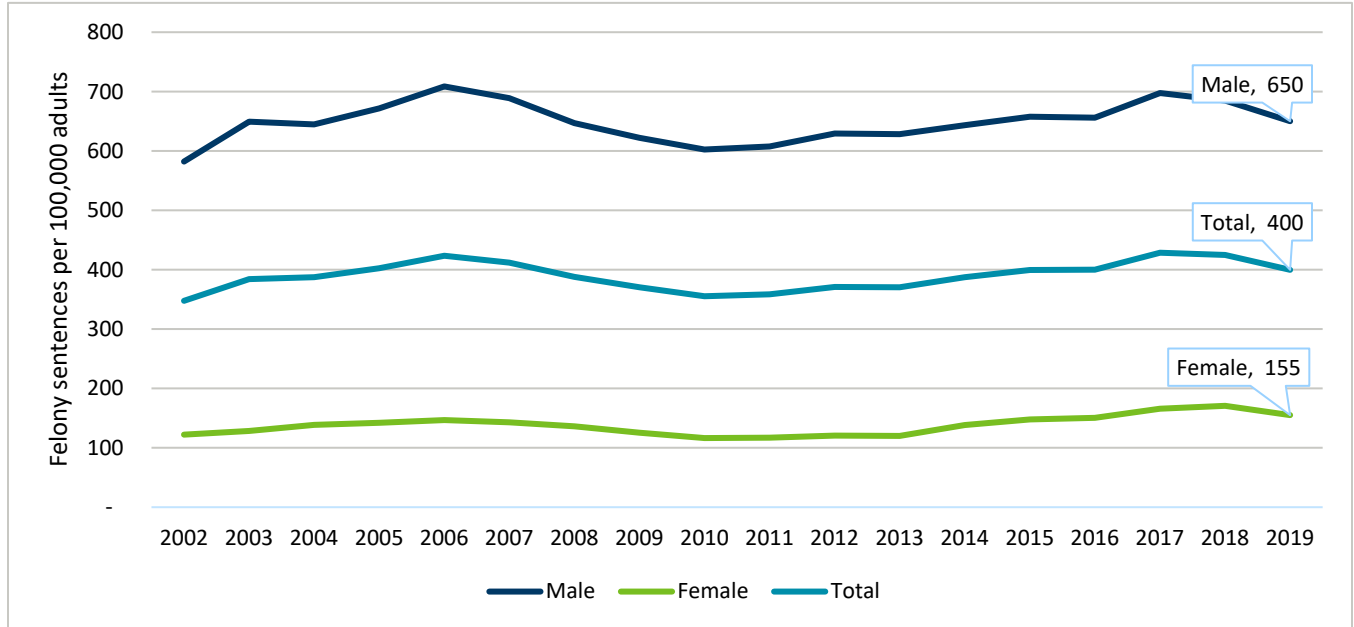


Figure 6. Felony Sentencing Rates per 100,000 Minnesota Adult Residents, 2002–19, by Race and Ethnicity

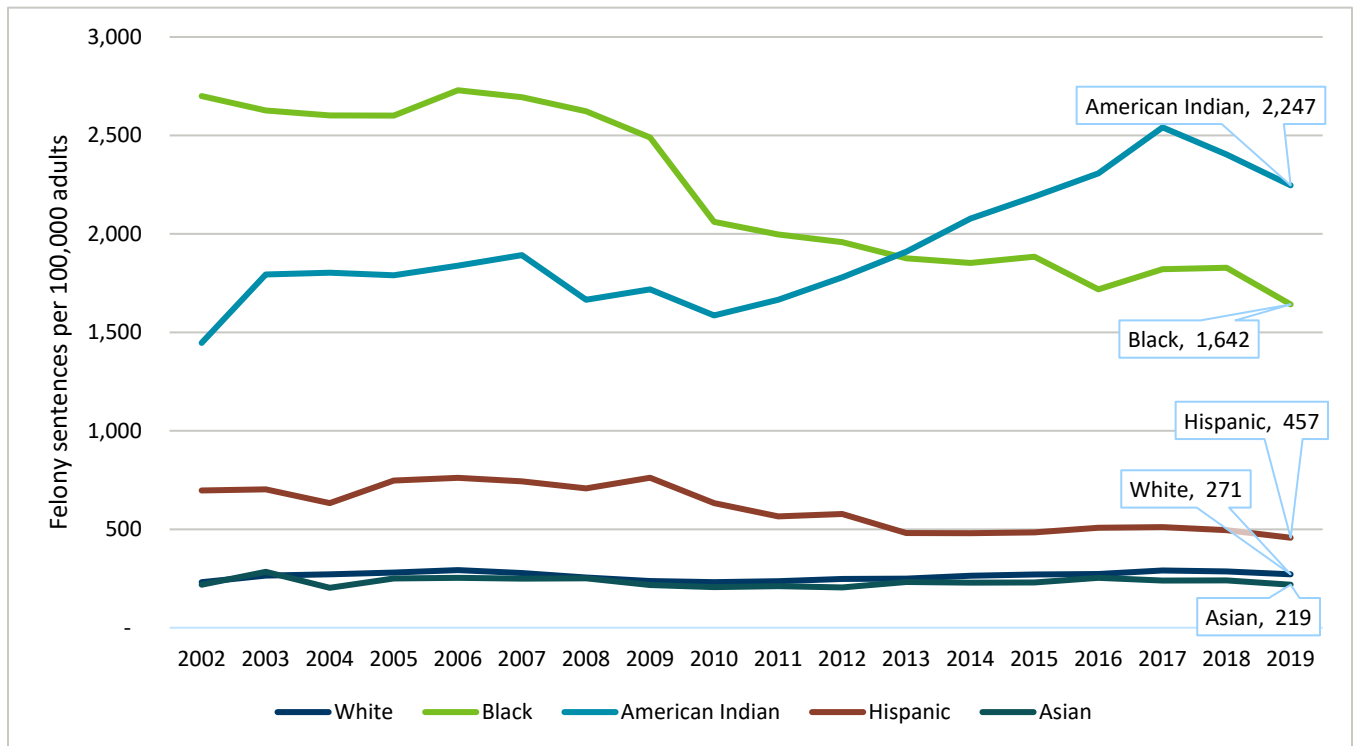
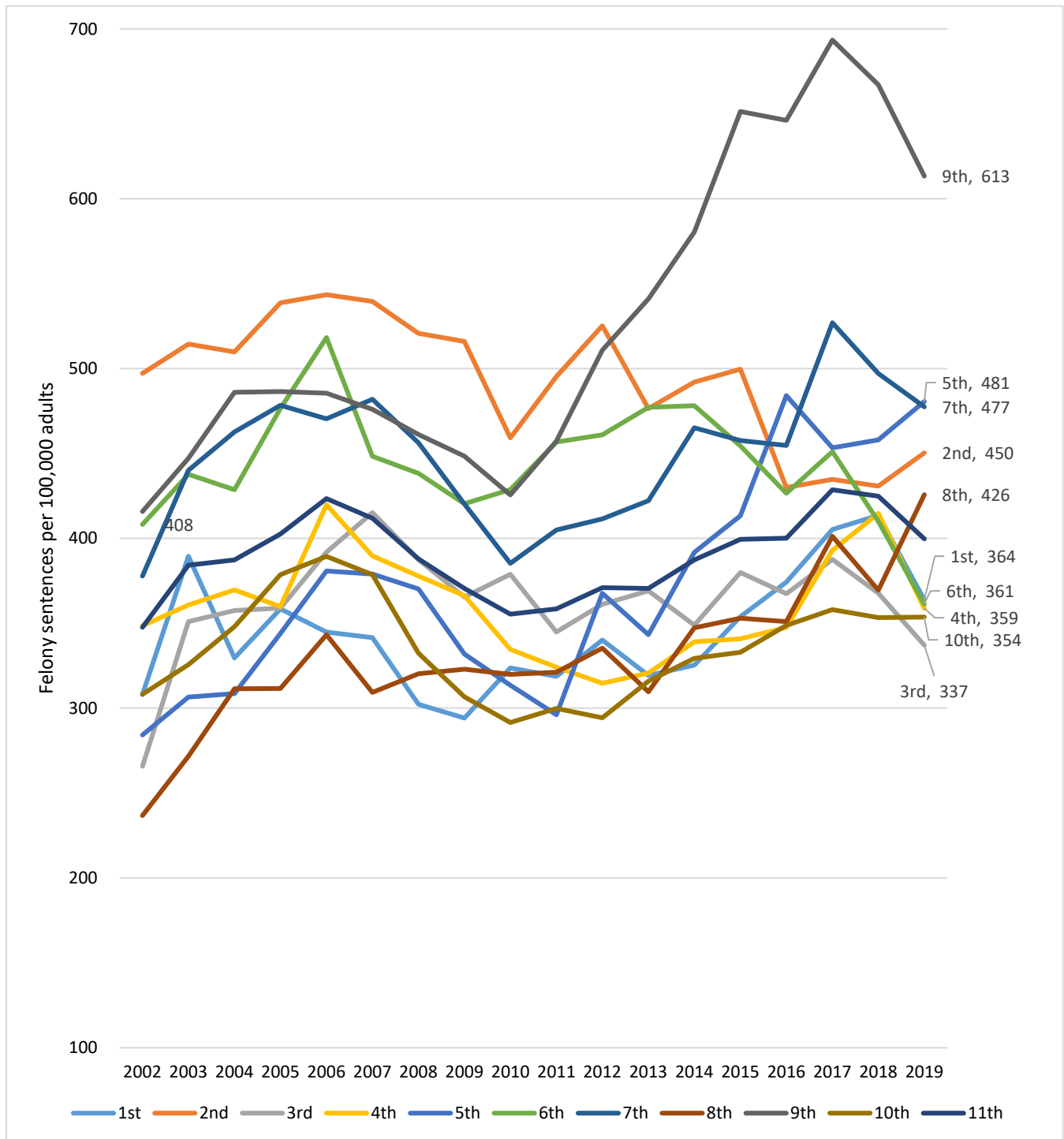


Figure 7. Felony Sentencing Rates per 100,000 Minnesota Adult Residents, 2002–19, by Judicial District



Notes for Figure 5 through Figure 7: Rates are felony offenders sentenced annually per 100,000 Minnesota residents age 18 and older on July 1 of the respective year. Source of residential population estimates: U.S. Census Bureau. Except for Hispanic residents, residents of more than one race are counted in more than one category. Other/unknown and Hawaiian/Pacific Islander are excluded.

## Imprisonment Rates

Figure 8. Imprisonment Rates per 100,000 Minnesota Adult Residents, 2002–19, by Gender and Total

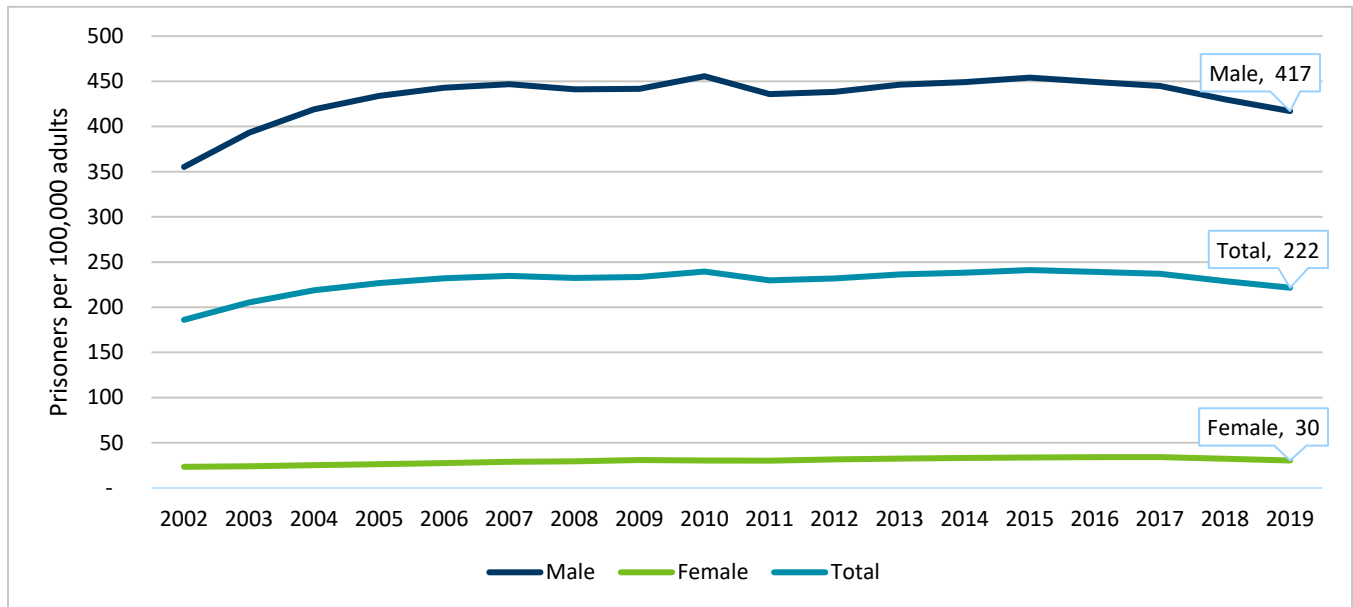


Figure 9. Imprisonment Rates per 100,000 Minnesota Adult Residents, 2002–19, by Race and Ethnicity

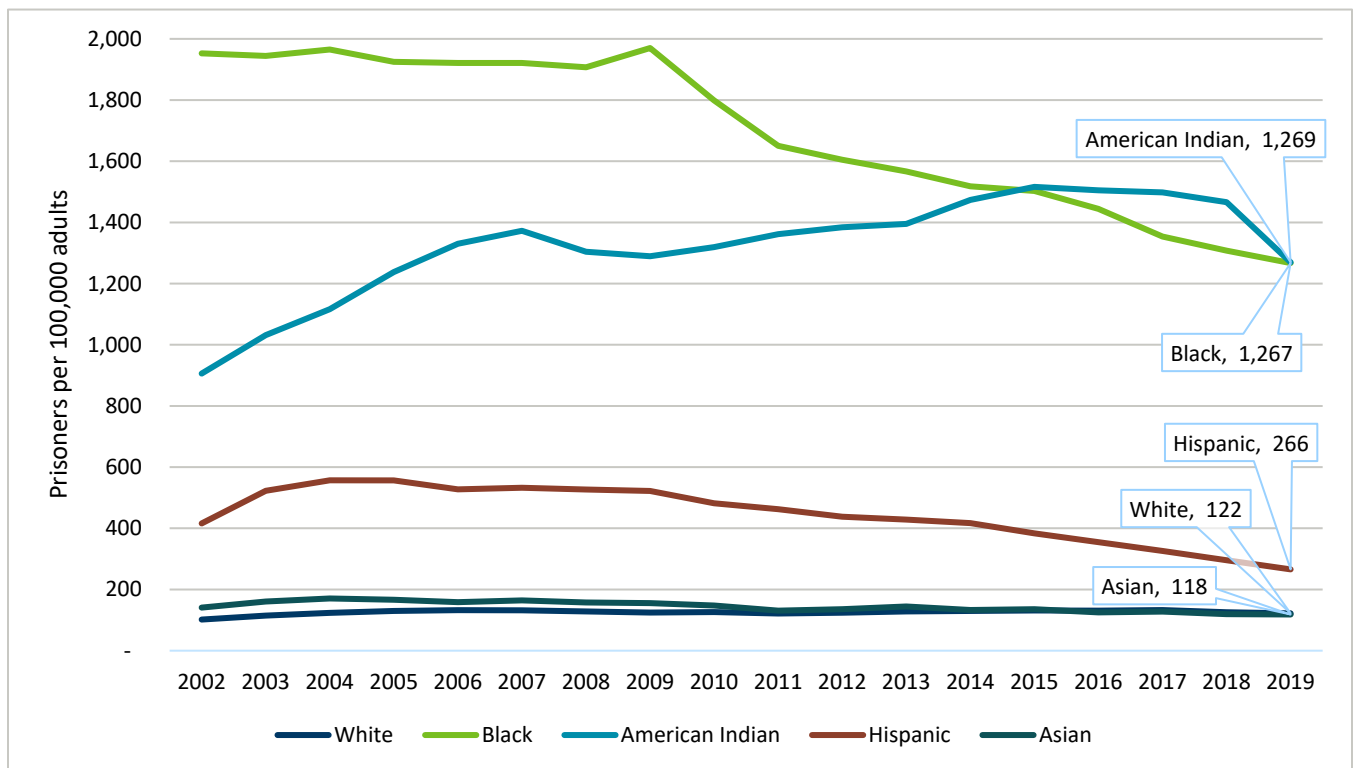
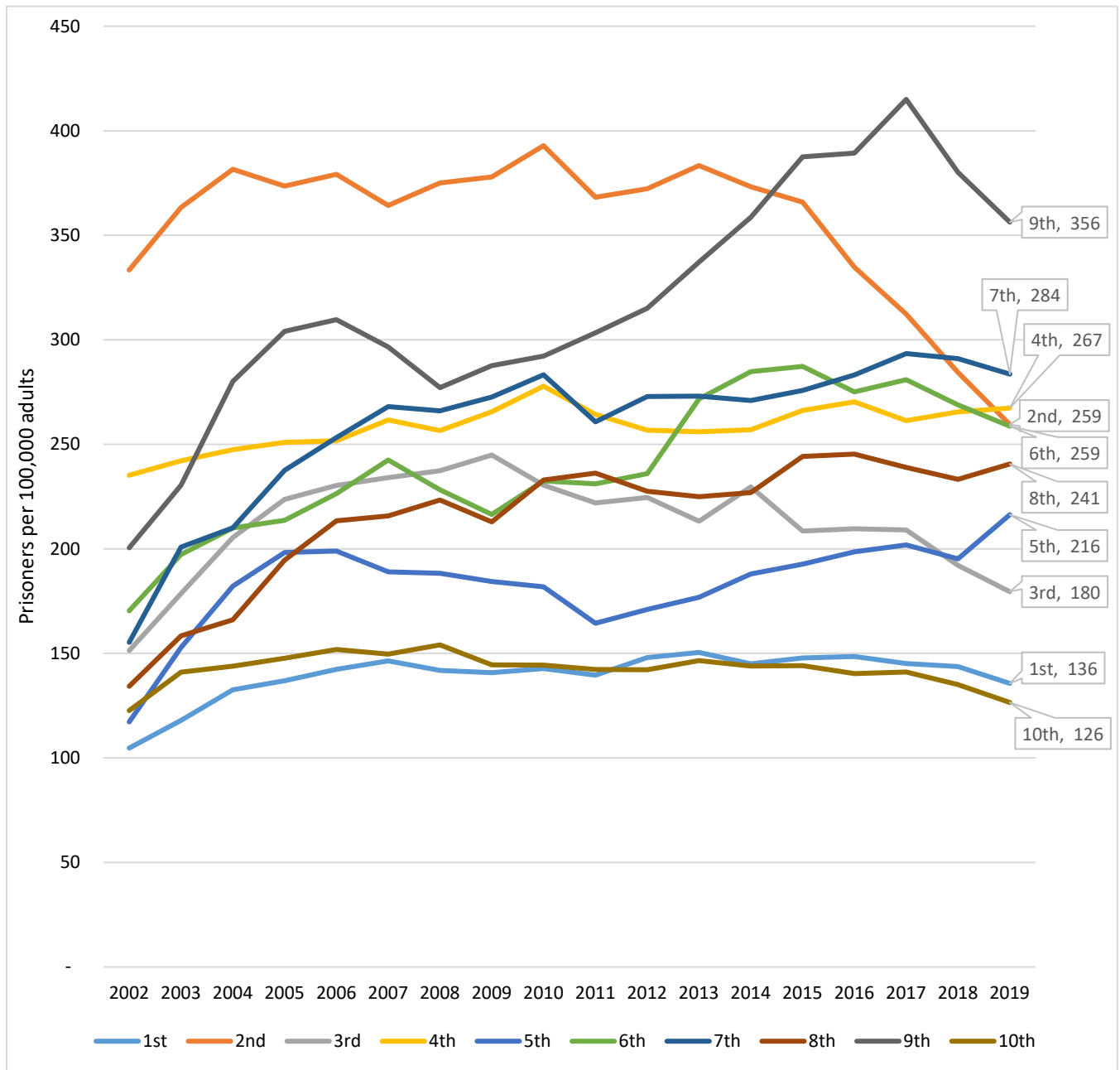


Figure 10. Imprisonment Rates per 100,000 Minnesota Adult Residents, 2002–19, by Judicial District



Notes for Figure 8 through Figure 10: Rates are prisoners on July 1 of the respective year per 100,000 Minnesota residents age 18 and older on the same date. Source of prison population counts: Minn. Dep't of Corrections. Source of residential population estimates: U.S. Census Bureau. Except for Hispanic residents, residents of more than one race are counted in more than one category. Other/unknown and Hawaiian/Pacific Islander are excluded, except for 2005–07, in which case they were included in the Asian prison population counts. Not all prisoners were associated with a particular judicial district.