MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Controlled Substance Offenses Sentenced in 2016

Published January 2018

Minnesota Sentencing Guidelines Commission
658 Cedar Street
Suite G-58
St. Paul, MN 55155

Voice: 651.296.0144 Fax: 651.297.5757
TTY: 1-800-627-3529, ask for 651.296.0144

Website: http://mn.gov/sentencing-guidelines/
E-mail: sentencing.guidelines@state.mn.us

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

Reports are available in alternative formats upon request.

Table of Contents

About This Report

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

Summary of 2016 Data

This report gives statistics concerning drug felonies and how they were sentenced in 2016, as well as outlining trends in sentencing drug offenses since the implementation of the Guidelines.

The 2016 Drug Sentencing Reform Act (DSRA)[1] made a number of significant changes to the sentencing of Minnesota drug offenses. Those changes generally took effect August 1, 2016, and were made effective for crimes committed on and after that date. While some post-DSRA cases were sentenced in 2016 and are therefore included in this report's data, this report does not separately analyze the impact of the DSRA on sentencing practices. The Commission's 2018 *Report to the Legislature* contains preliminary findings on the DSRA's impact.[2]

In 2016, 5,475 offenders were sentenced for drug offenses (Figure 1), an increase of 11.4 percent over 2015 (Figure 2). Because the number of offenders sentenced for drug offenses grew each year from 2011 through 2016, the volume of drug cases sentenced in 2016 was 64.6 percent greater than the 2010 volume. This six-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 declined by seven percent in 2016 after rising every year since 2010. The number of offenders sentenced for fourth-degree offenses also decreased (by 10%). The number sentenced for second-degree and fifth-degree offenses rose by 15 and 16 percent respectively, while the number sentenced for third-degree increased only slightly. The number of meth/amphetamine and heroin offenses went up while the number of cases involving cocaine, marijuana, opium and synthetic narcotics went down (Figure 5).

The total incarceration rate for drug offenders sentenced was 93 percent, with 22 percent receiving a prison sentence and 71 percent getting up to one year in a local correctional facility as a condition of probation (Table 1). For those receiving an executed prison sentence, the average pronounced duration was 42 months (Table 2).

Among drug offenders recommended prison under the Guidelines, the total mitigated departure rate was 57 percent. This was higher than the mitigated departure rate for non-drug offenders recommended prison under the Guidelines (50%). Among drug offenders recommended prison under the Guidelines, 41 percent received a mitigated (downward) dispositional departure and were placed on probation – compared to 38 percent in 2015 (Figure 25) – 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, compared to 27 percent in 2015 (Figure 18). This rate varied significantly by region (Figure 20).

[1] 2016 Minn. Laws ch. 160.
[2] Minn. Sentencing Guidelines Commission, *Report to the Legislature* (Jan. 12, 2018). Retrieved Jan. 12, 2018 at http://mn.gov/msgc-stat/documents/legislative-report-archive/2018_MN_Sentencing_Guidelines_Comm_Report_to_the_Legislature.pdf.

Case Volume & Distribution[3]

Volume of Cases

The number of felony offenders sentenced in 2016 totaled 16,927, an increase of one percent above the number of offenders sentenced in 2015. An illustration of the total number of felony offenders sentenced since 1981 can be found in MSGC's report, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the "Annual Summary" tab at mn.gov/sentencing-guidelines/reports. There were 5,475 felony offenders sentenced for drug offenses in 2016, an increase of 11.4 percent from 2015, an increase of 64.6 percent from 2010, and the largest number ever sentenced (Figure 1).

The provisions of the 2016 Drug Sentencing Reform Act (DSRA)[4] only applied to cases with dates of offense on or after August 1, 2016.[5] Of the drug offenders sentenced in 2016, the DSRA applied to only 205 (3.7%).

Figure 1. Number of Offenders Sentenced for Felony Drug Convictions, 1993-2016

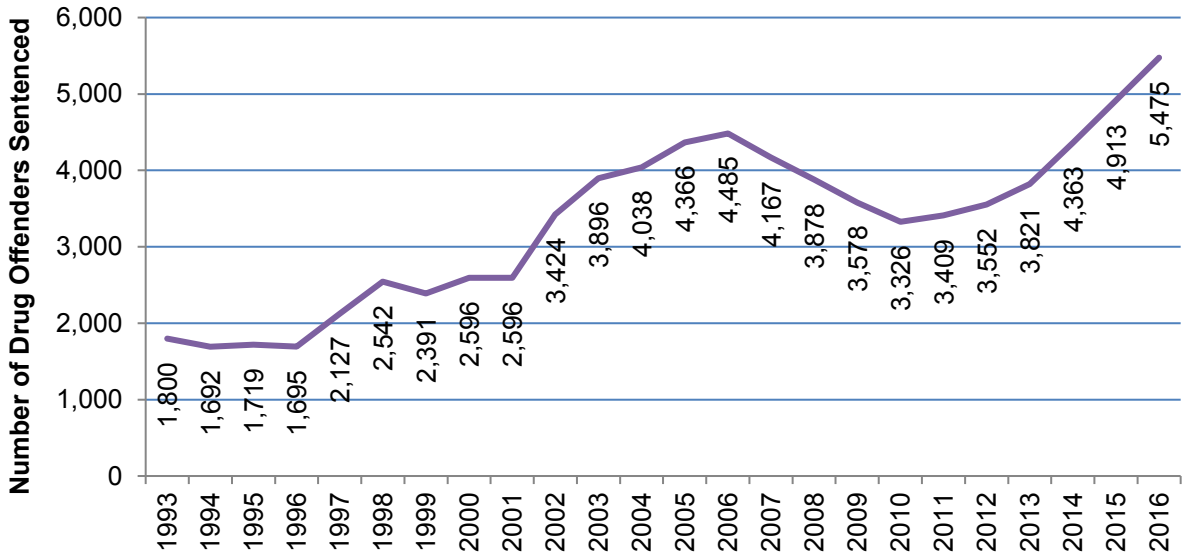
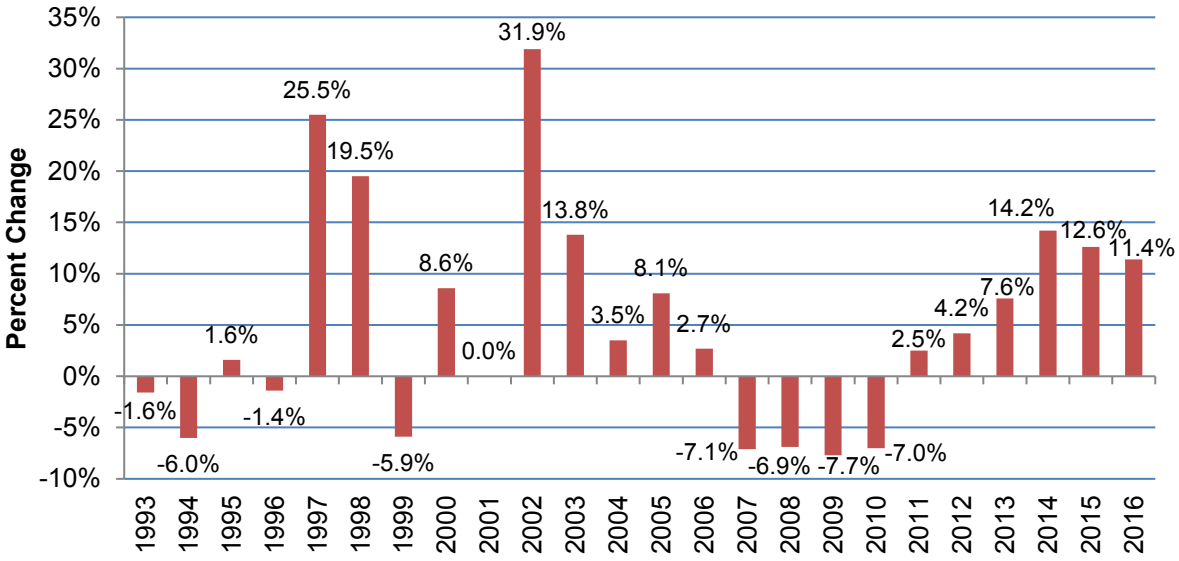


Figure 2 illustrates the percent change in the number of drug offenders sentenced over time. From 2006 through 2010, the number of drug offenders sentenced had decreased by seven or eight

[3] 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.
[4] *I.e.*, 2016 Minn. Laws ch. 160.
[5] 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).

percent each year. From 2011 through 2016, the number of drug offenders sentenced increased each year. In the last 3 years (2014-2016) the number of offenders sentenced for drug offenses increased by over 10 percent each year (Figure 2).

Figure 2. Percent Change in Number of Offenders Sentenced for Felony Drug Convictions, 1993-2016



Volume of Cases by Degree

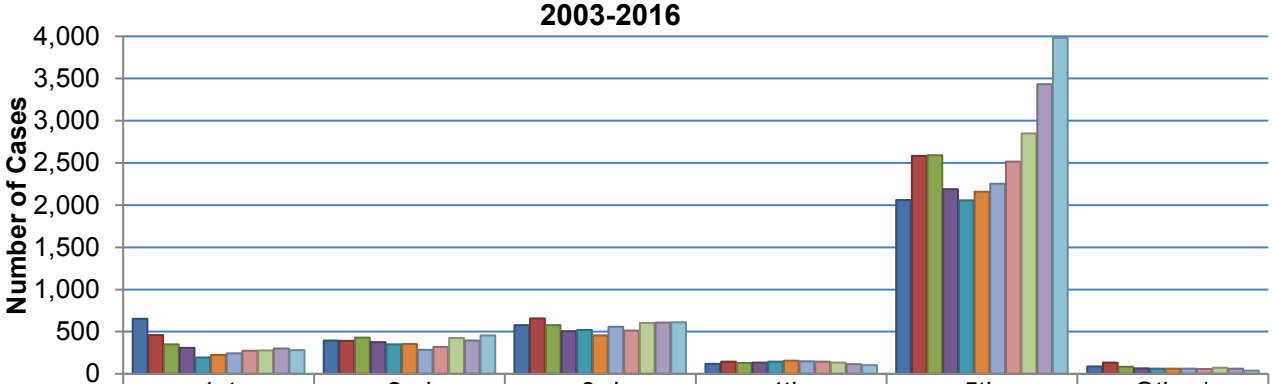
Figure 3 shows the distribution of drug offenders across the controlled substance degrees. The largest group of cases sentenced was fifth-degree (73% of the cases). The largest increase in the number of offenders sentenced was also for fifth-degree (16% increase). The number sentenced for first-degree decreased by seven percent, while the number sentenced for second-degree offenses increased by 15 percent. The number sentenced for third-degree increased slightly (1%), and the number sentenced for fourth-degree and the other offenses decreased by 10 and 37 percent, respectively.

The number of first-degree offenders sentenced declined nearly every year between 2003 and 2010, due in part to the decline in the number of offenders sentenced for the first-degree offense of manufacture of methamphetamine (10 offenders in 2010, compared to 310 in 2003) (Figure 4).[6] However, in 2011, the number of offenders sentenced for first-degree began to increase again (to 226 offenders in 2011 for an increase of 16%; 245 offenders in 2012 for an increase of 8%; 273 offenders in 2013 for an increase of 11%). The increase in 2014 was more modest (278 offenders for an increase of 2%) but the increase in 2015 to 302 offenders was more substantial (9%). In 2016, for the first time since 2010, the number of offenders sentenced for a first-degree

[6] 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.

offense decreased (by 7%). The number of offenders sentenced for manufacture of methamphetamine continued to decrease from 27 in 2013 to 11 in 2014 to 6 in 2015 and 7 in 2016 (Figure 4).

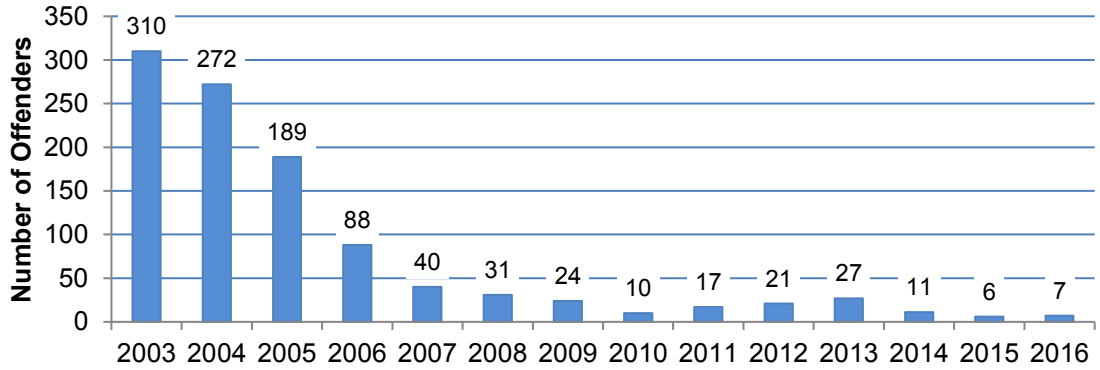
Figure 3. Distribution of Drug Offenders Sentenced by Drug Degree, 2003-2016



	1st	2nd	3rd	4th	5th	Other*
2003	654	397	579	118	2,060	88
2005	459	390	656	143	2,585	133
2007	351	429	579	130	2,593	85
2009	307	376	507	133	2,190	65
2010	194	350	521	144	2,056	61
2011	226	355	454	155	2,159	60
2012	245	286	558	147	2,255	61
2013	273	318	513	145	2,515	57
2014	278	427	603	135	2,849	71
2015	302	395	609	114	3,433	60
2016	281	456	613	103	3,984	38

* In 2016, the "Other" category includes 6 offenders sentenced for possession of precursors with intent to manufacture methamphetamines, 10 offenders sentenced for sale of a simulated/analog controlled substance, and 22 offenders sentenced for methamphetamine crimes involving children.

Figure 4. Number of Offenders Sentenced for Manufacture of Methamphetamine, 2003-2016



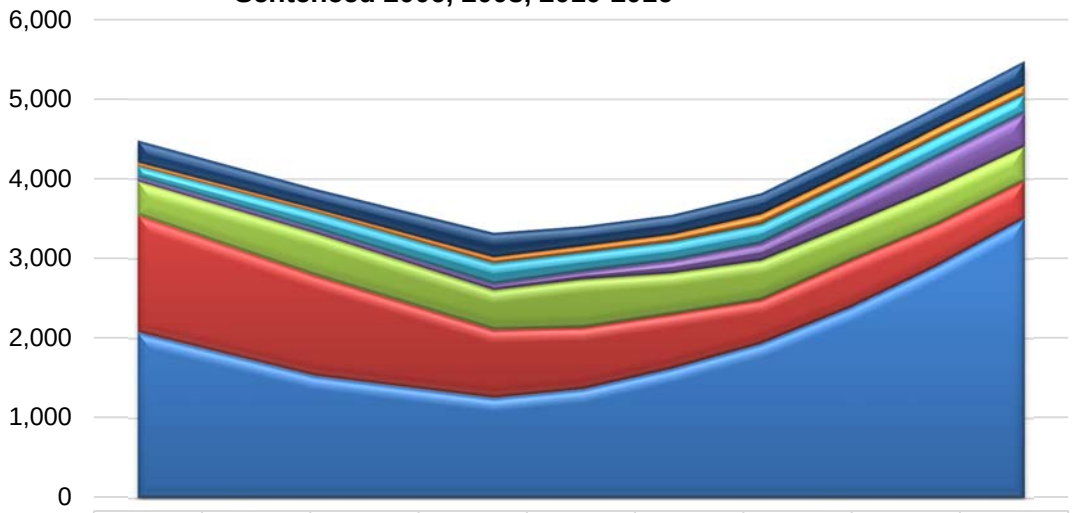
Drug Type, Region, Race & Prior Drug Convictions

Distribution of Cases over Time (Drug Types)

The distribution of cases among drug types, as coded on criminal complaints, has changed over time. In 1996, 48 percent of the cases sentenced involved cocaine, 24 percent involved marijuana, 14 percent were unknown or of some other type, and 14 percent involved amphetamines, a category that includes methamphetamine (meth). In 2002, cocaine still represented the largest number of drug cases (40%), but the meth/amphetamine category had grown to 38 percent, and marijuana had decreased to 13 percent. By 2004, over half (51%) of the drug cases sentenced involved the meth/amphetamine category. Between 2015 and 2016 there was a 20 percent increase in the number of offenders sentenced for meth/amphetamine offenses and a 10 percent decrease in the number of offenders sentenced for cocaine offenses. The number sentenced for marijuana offenses decreased by seven percent (Figure 5).

Between 2015 and 2016, the number of cases involving heroin increased by 10 percent (from 379 to 418) while the number of offenses involving opium decreased by two percent (from 122 to 119) and the number sentenced for synthetic narcotics decreased by six percent (from 243 to 229). Between 2008 and 2016, heroin and opium showed the largest percentage increases (736% for heroin and 183% for opium). In that same period, the number of offenders sentenced for synthetic narcotics increased by eight percent (Figure 5).

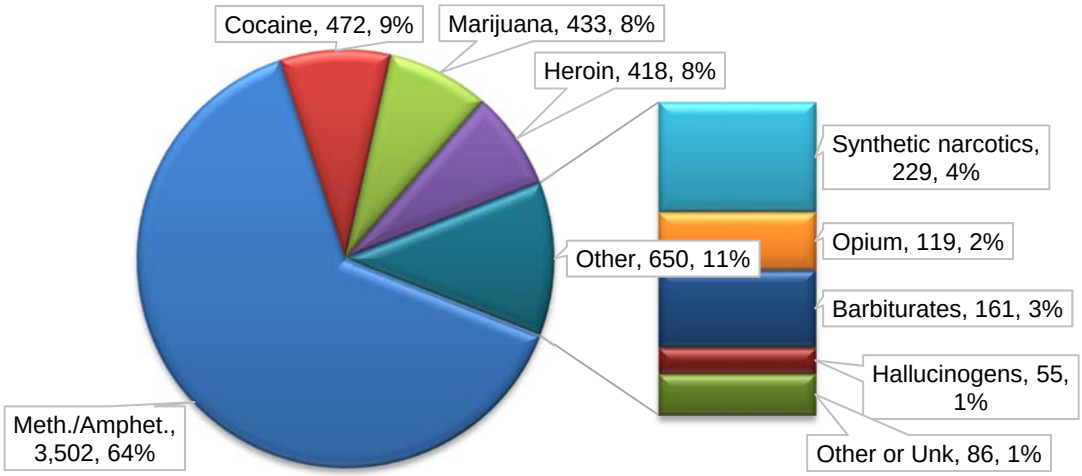
Figure 5. Distribution of Offenders by Drug Type Over Time, Sentenced 2006, 2008, 2010-2016



	2006	2008	2010	2011	2012	2013	2014	2015	2016
Other/unknown	279	255	308	252	250	265	273	265	302
Opium	46	42	75	83	93	126	116	122	119
Synthetic Narcotic	138	213	262	235	233	240	241	243	229
Heroin	51	50	74	99	157	212	300	379	418
Marijuana	424	532	497	605	517	497	462	466	433
Cocaine	1,471	1,256	855	770	681	549	588	522	472
Meth./Amphet.	2,076	1,530	1,255	1,365	1,621	1,932	2,383	2,916	3,502

At 64 percent in 2016, the meth/amphetamine category continued to be the drug type with the largest number of cases, while nine percent of the cases involved cocaine, eight percent involved marijuana and 20 percent were for other or unknown substances. Among the other drug types, heroin had the largest number of cases at 418 (8%), followed by synthetic narcotics at 229 (4%) (Figure 6).

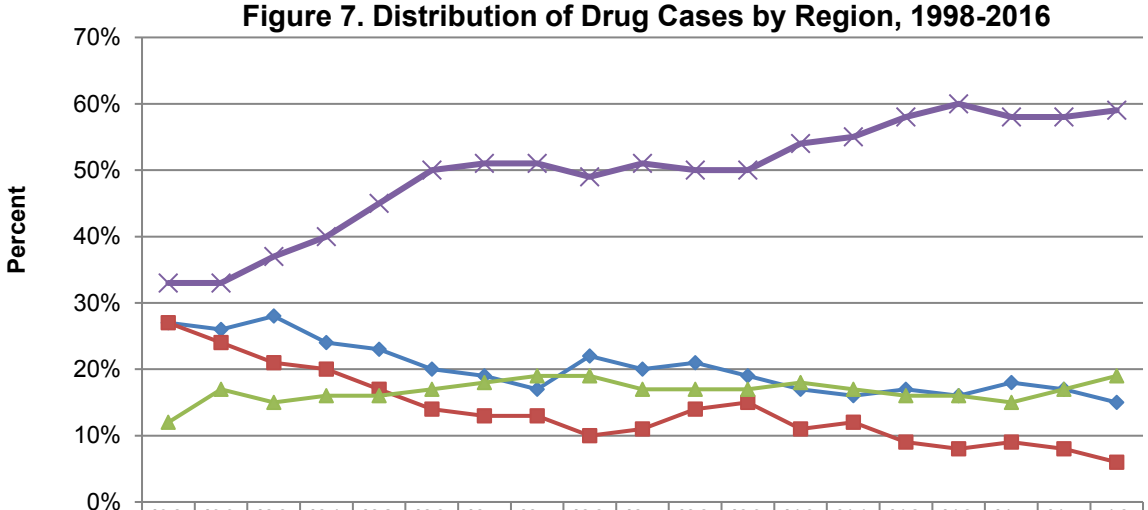
Figure 6. Percentage of Offenders by Drug Type, Sentenced 2016



Distribution of Cases over Time (Region)

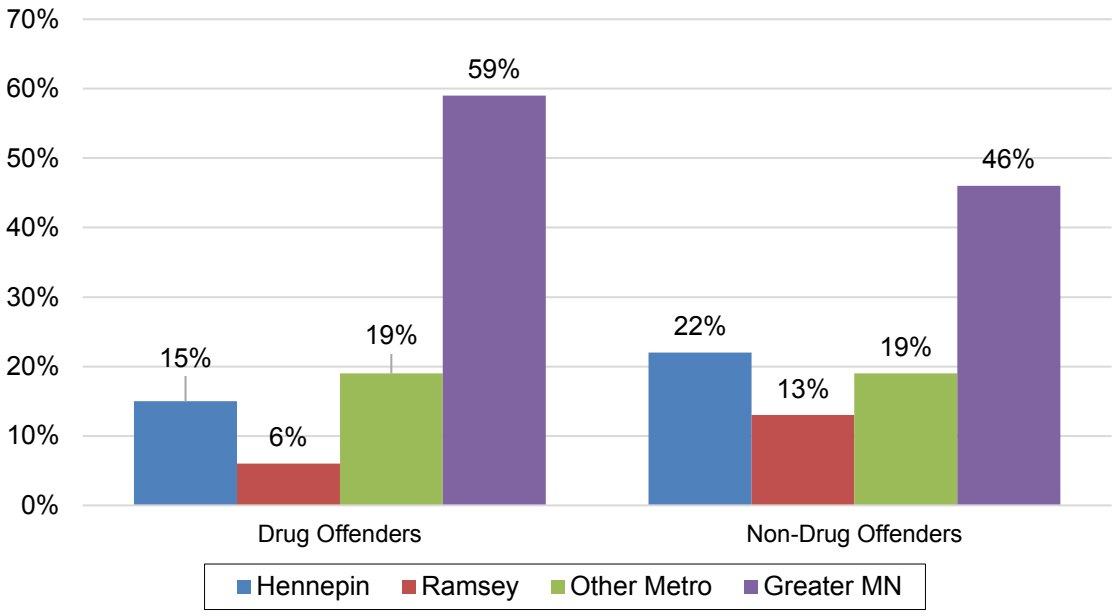
In the last decade, the number of drug cases outside the seven-county metro area of Anoka, Dakota, Carver, Hennepin, Ramsey, Scott, and Washington counties has increased more than the number of drug cases sentenced in the metro counties. In 1998, 33 percent of all drug cases were sentenced in Greater Minnesota (Figure 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 2016, 59 percent of drug offenders were sentenced in Greater Minnesota, almost equivalent to the record high of 60 percent in 2013. In comparison, the percent of non-drug offenders sentenced in Greater Minnesota in 2016 was 46 percent. In Hennepin and Ramsey, the percent of drug offenders is lower than the percent of non-drug offenders, while in the other metro counties it is the same (Figure 8).

Figure 7. Distribution of Drug Cases by Region, 1998-2016



	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	16
Hennepin	27%	26%	28%	24%	23%	20%	19%	17%	22%	20%	21%	19%	17%	16%	17%	16%	18%	17%	15%
Ramsey	27%	24%	21%	20%	17%	14%	13%	13%	10%	11%	14%	15%	11%	12%	9%	8%	9%	8%	6%
Other Metro	12%	17%	15%	16%	16%	17%	18%	19%	19%	17%	17%	17%	18%	17%	16%	16%	15%	17%	19%
Greater MN	33%	33%	37%	40%	45%	50%	51%	51%	49%	51%	50%	50%	54%	55%	58%	60%	58%	58%	59%

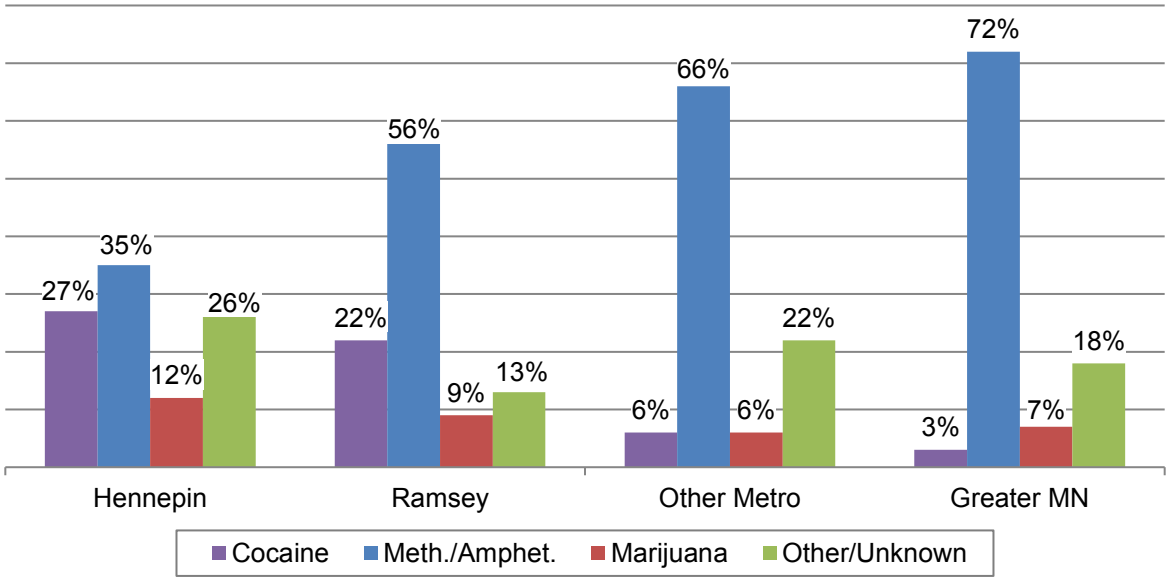
Figure 8. Distribution of Offenders by Region; Drug and Non-Drug Offenders, 2016



2016 Distribution of Cases (Drug Types and Region)

There was a difference in the distribution of drug types among regions as well (Figure 9). In 2016, for the first time, meth/amphetamine was the most common drug type in all regions. However, in Hennepin County a smaller percentage of the cases were meth related than in the other regions. Previous to 2016, cocaine was the drug type found most frequently in Hennepin County.

Figure 9. Distribution of Drug Offenders by Drug Type and Region, 2016

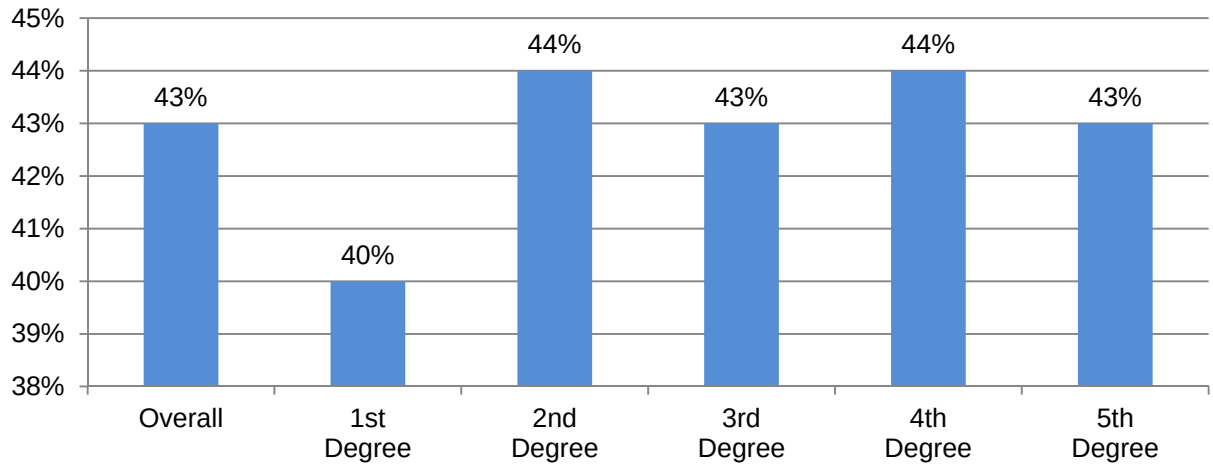


2016 Distribution of Cases (Prior Conviction)

Forty-three percent of drug offenders sentenced had prior convictions for felony-level drug offenses (Figure 10).[7] First-degree offenders (40%) were less likely than second- through fifth-degree offenders (43-44%) to have prior convictions.

[7] In first-, second-, and third-degree controlled substance cases, many (but not all) of these prior convictions will trigger mandatory minimum prison sentences. For a further discussion of mandatory minimum sentences, see p. 29.

Figure 10. Percent of Offenders with a Prior Felony Drug Sentence by Controlled Substance Degree, 2016



Racial Distribution

In 1999, 51 percent of drug offenders were white and 36 percent were black, whereas in 2016, 67 percent of drug offenders were white and 15 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, 2016

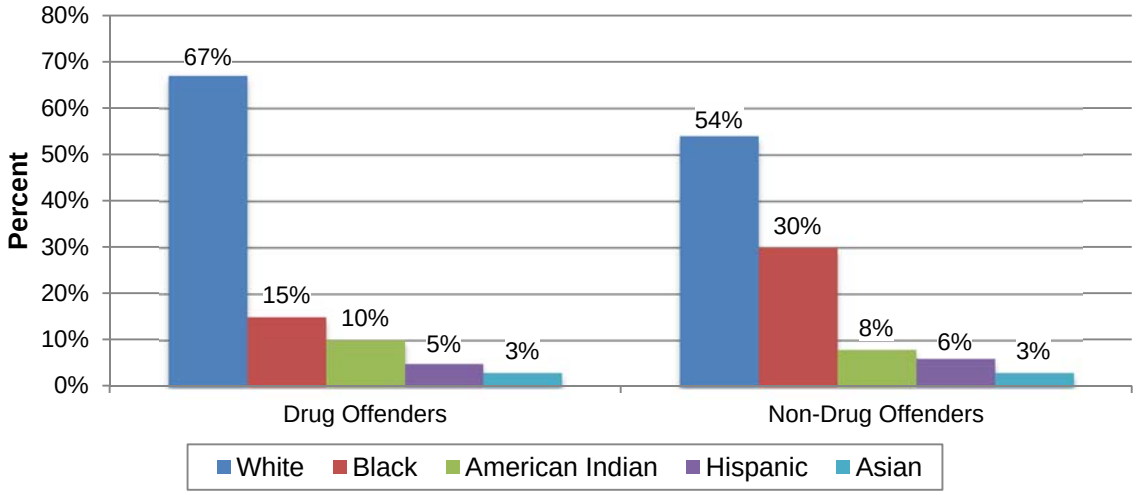
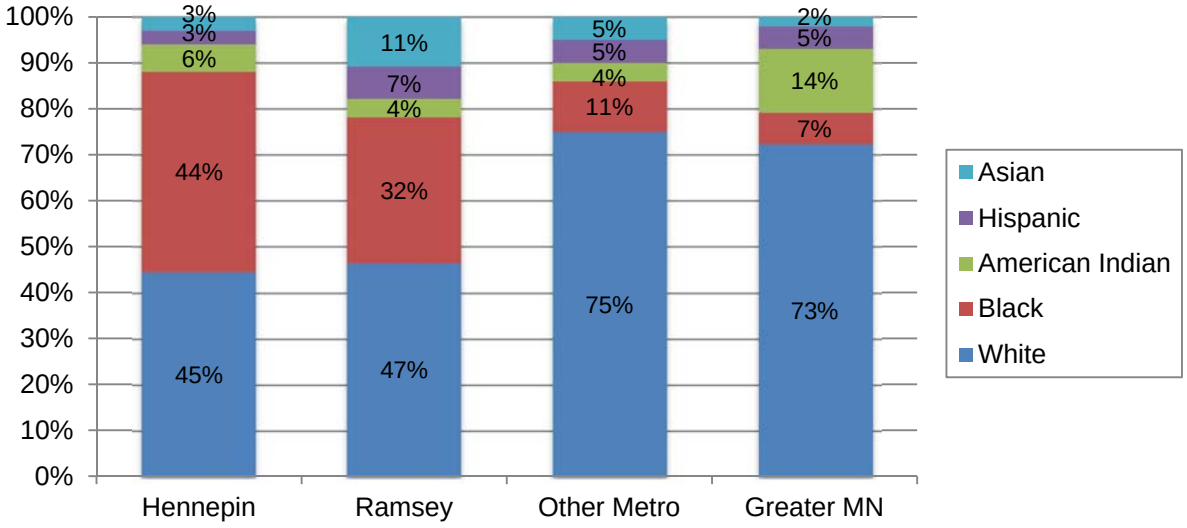


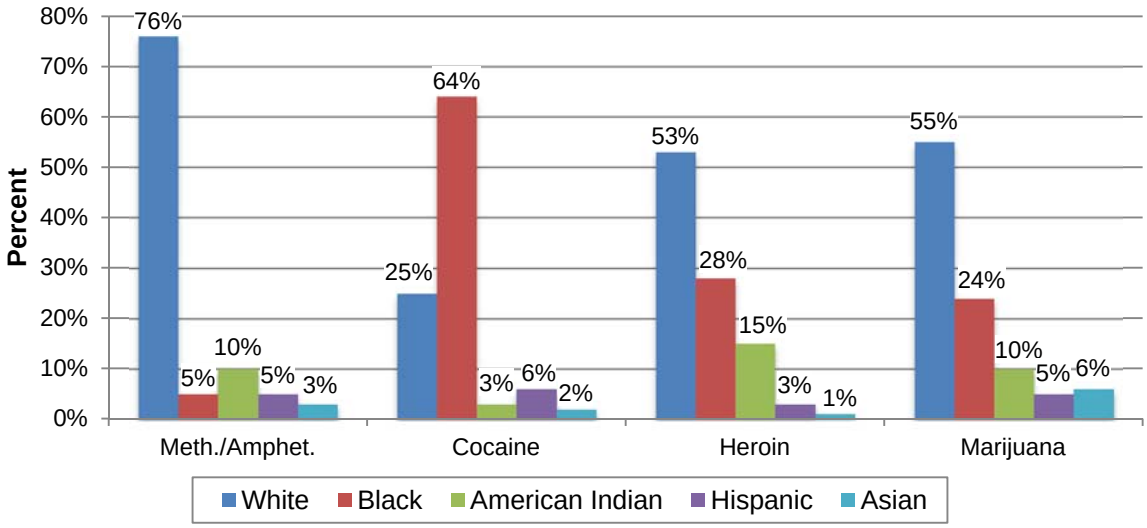
Figure 12 displays the racial distribution of drug offenders by region. Offenders who are black make up a larger share of the drug offenders sentenced in Hennepin and Ramsey counties than in the rest of the state. These counties include the Metropolitan areas of Minneapolis and St. Paul.

Figure 12. Distribution of Offenders by Race and Region, 2016



Sentencing data reveal that meth/amphetamine is a drug predominantly associated with offenders who are white and is directly impacting 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, 2016



Sentencing Practices

In 2016, 93 percent of felony drug sentences included incarceration: 22 percent in state prison and 71 percent in local correctional facilities (Table 1). The remaining seven percent were not incarcerated; however, they may have served time before sentencing and received sanctions such as drug treatment or home confinement.

Table 1. Total Incarceration, 2016

Incarceration Type	Number	Percent
State Prison	1,229	22
Local Correctional Facilities	3,859	71
Total Incarceration	5,088	93
Total	5,475	100

Incarceration in State Prison

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

Incarceration of felony drug offenders has increased significantly over the past 25 years, at a higher rate than for any other offense category. The reason for this increase may be two-fold: a larger total number of drug offenders are being sentenced, and a higher percentage of them are receiving prison sentences.[8] The imprisonment rate for drug offenders was highest in 2003, at 28 percent, and second-highest in 2013, at 27 percent (Table 2). Despite the lower imprisonment rate trend in recent years, it is still true that more drug offenders are being sentenced to prison for longer periods of time than 25 years ago, which directly impacts the amount of correctional resources required to accommodate this offender population.

In 1991, 217 drug offenders were imprisoned (13% imprisonment rate), with an average pronounced sentence of 35 months. By 2003, this number climbed to 1,107 offenders (28% imprisonment rate). The average drug sentence duration peaked at 52 months in 2003, falling into the 42-46 month range thereafter. In 2016 despite a decrease in the imprisonment rate from

[8] 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); 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.).

24 percent in 2015, a record 1,229 drug offenders were imprisoned (22% imprisonment rate), with an average sentence duration of 42 months.

Table 2. Imprisonment Cases; Prison Rates and Average Pronounced Durations for Drug and Non-Drug Offenders, 1991-2016

Year Sentenced	Drug Offenders			Non-Drug Offenders		
	Total # Cases	Prison Rate	Avg. Duration	Total # Cases	Prison Rate	Avg. Duration
1991	1,693	13%	35 months	7,468	21%	46 months
1992	1,830	14%	38 months	7,495	22%	49 months
1993	1,800	19%	42 months	7,837	22%	47 months
1994	1,692	17%	44 months	8,095	22%	51 months
1995	1,719	19%	41 months	7,702	24%	46 months
1996	1,695	17%	42 months	7,785	24%	47 months
1997	2,127	16%	42 months	7,720	24%	44 months
1998	2,542	22%	40 months	8,345	24%	47 months
1999	2,391	22%	42 months	8,243	23%	48 months
2000	2,596	24%	47 months	7,799	23%	49 months
2001	2,596	24%	47 months	8,200	22%	48 months
2002	3,424	27%	50 months	9,554	22%	46 months
2003	3,896	28%	52 months	10,596	23%	50 months
2004	4,038	25%	46 months	10,713	23%	45 months
2005	4,366	23%	44 months	11,096	23%	46 months
2006	4,485	20%	42 months	11,961	22%	45 months
2007	4,167	24%	42 months	12,001	23%	46 months
2008	3,878	25%	43 months	11,516	25%	46 months
2009	3,578	25%	42 months	11,262	25%	43 months
2010	3,326	25%	43 months	10,985	26%	47 months
2011	3,409	24%	43 months	11,162	25%	46 months
2012	3,552	25%	44 months	11,655	27%	48 months
2013	3,821	27%	43 months	11,497	27.5%	46 months
2014	4,363	25%	43 months	11,782	26%	46 months
2015	4,913	24%	41 months	11,850	27%	46 months
2016	5,475	22%	42 months	11,452	27%	48 months

Distribution of Estimated Prison Beds by Drug Type over Time

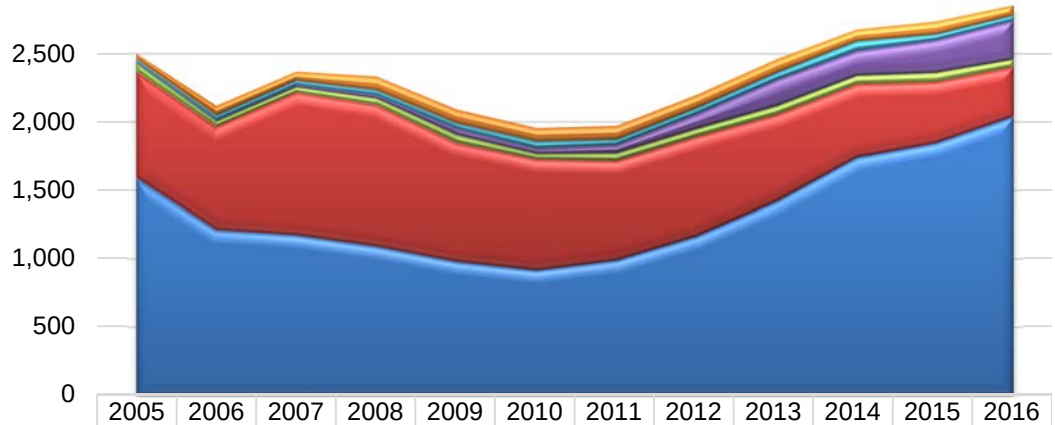
Figure 14 displays the estimated number of prison beds occupied for offenders receiving an executed prison sentence by drug type from 2005 to 2016. These estimates are calculated assuming the offender serves the estimated term of imprisonment, which is two-thirds of the executed sentence. While these 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, all estimated prison 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.

With these caveats in mind, it is estimated that the drug offenders receiving prison sentences in 2016 will, over time, occupy 2,856 beds. The number of estimated prison beds taken up by meth/amphetamine offenders reached a record high in 2016 when offenders in the meth/amphetamine category – who constituted 64 percent of the cases sentenced – accounted for 71 percent of the estimated prison beds. This is an increase from 67 percent in 2015. The percent of beds taken up by meth/amphetamine cases reached its previous high in 2005 (63.5 percent). In 2007, the share dropped below 50 percent, remained below 50 percent until 2011, and increased steadily through 2016.

Figure 14. Estimated Prison Beds for Felony Controlled Substance Crimes, by Drug Type, Sentenced 2005-2016



	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Other/Unknown	39	72	67	102	102	98	101	97	100	87	95	75
Synthetic Narcotic	19	31	30	34	38	53	39	40	49	69	41	36
Heroin	11	11	17	25	47	38	61	110	195	184	241	287
Marijuana	60	39	39	48	58	40	57	58	64	61	67	54
Cocaine	782	755	1,043	1,034	868	811	725	727	634	539	448	365
Meth./Amphet.	1,587	1,208	1,170	1,088	976	913	987	1,162	1,416	1,735	1,842	2,036

Probation Cases

The rise in the number of drug cases has resulted in an increase in the number of drug offenders sentenced to probation, as well as an increase in the number of drug offenders serving time in local correctional facilities (i.e., jails and workhouses) as a condition of probation. In 2016, 4,246 offenders received probation sentences for drug offenses, a 187 percent increase over the number receiving probation sentences in 1991 (Table 3). In comparison, the number of non-drug offenders serving probation sentences increased by about 42 percent during this same time period. The increase in the number of drug offenders placed on probation expands the size of the pool of offenders who may eventually end up in prison through probation revocations, which impacts prison populations. The average pronounced period of probation for drug offenders in 2016 was 74 months. The median was 60 months.

Offenders placed on probation for a felony offense can receive up to one year of time in a local correctional facility as a condition of probation. The vast majority of offenders placed on felony probation serve some time in a local correctional facility. Since 1991, more than 80 percent of felony probationers have had local time imposed as a condition of probation, and drug offenders have had local time imposed at a slightly higher rate than non-drug offenders. Since 2012 the local incarceration rate has been 91 percent. Non-drug offenders have had slightly lower rates. For both groups, the average time pronounced in a local facility in most years has usually been more than 100 days. In 2016, the average pronounced local time for drug offenders was 122 days, whereas for non-drug offenders it was 97 days (Table 3).

Table 3. Non-Imprisonment Cases; Rates and Avg. Pronounced Conditional Confinement for Drug and Non-Drug Offenders, 1991-2016

Year Sentenced	Drug Offenders			Non-Drug Offenders		
	# Stayed Cases	Local Rate	Avg. Pronounced Duration	# Stayed Cases	Local Rate	Avg. Pronounced Duration
1991	1,476	86%	90 days	5,908	80%	110 days
1992	1,575	87%	101 days	5,825	83%	111 days
1993	1,459	86%	116 days	6,114	81%	112 days
1994	1,412	87%	98 days	6,332	80%	117 days
1995	1,398	87%	101 days	5,887	82%	110 days
1996	1,404	83%	104 days	5,887	81%	108 days
1997	1,781	87%	105 days	5,877	82%	107 days
1998	1,192	88%	99 days	6,334	83%	110 days
1999	1,872	88%	99 days	6,311	84%	104 days
2000	1,982	90%	101 days	5,985	85%	106 days
2001	1,973	91%	108 days	6,374	84%	104 days
2002	2,486	90%	114 days	7,435	86%	103 days
2003	2,789	91%	115 days	8,167	86%	109 days
2004	3,015	91%	117 days	8,290	88%	110 days
2005	3,353	91%	118 days	8,526	89%	99 days
2006	3,573	91%	118 days	9,278	89%	96 days
2007	3,165	90%	118 days	9,243	88%	106 days
2008	2,914	88%	117 days	8,628	87%	106 days
2009	2,696	90%	113 days	8,421	87%	105 days
2010	2,503	82%	120 days	8,168	80%	107 days
2011	2,591	89%	120 days	8,327	87%	104 days
2012	2,650	91%	122 days	8,553	87%	104 days
2013	2,795	91%	121 days	8,330	89%	101 days
2014	3,253	91%	121 days	8,674	89%	102 days
2015	3,729	91%	119 days	8,642	88%	99 days
2016	4,246	91%	122 days	8,373	89%	97 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 2016, the total departure rate for drug offenders was 22 percent compared to 28 percent for non-drug offenders. The total mitigated departure rate was 17 percent for drug offenders and 25 percent for non-drug offenders (Table 4).

Table 4. Total Departure Rates; Drug and Non-Drug Offenders, 2016

Departure Type	Drug Offenders		Non-Drug Offenders	
No Departures	4,287	78%	8,233	72%
Total Departures	1,188	22%	3,219	28%
• Mitigated	930	17%	2,854	25%
• Aggravated	211	4%	279	2.4%
• Mixed	47	1%	86	1%
Total Sentenced	**5,475**	**100%**	**11,452**	**100%**

Aggravated Dispositional Departures: Drug and Non-Drug Offenders

Aggravated dispositional departures occur relatively infrequently compared to other types of departures. Six percent of drug offenders received aggravated dispositional departures (sentenced to prison when the Guidelines recommended a stayed sentence) (Table 5). An offender's request for an executed prison sentence or plea agreement accounted for 63 percent of aggravated dispositional departures in drug cases, excluding cases in which the departure reason was "unknown."[9] This request is usually made to allow the offender to serve the sentence concurrently (at the same time) with another prison sentence. The aggravated dispositional departure rate for drug offenders was higher than for non-drug offenders.

Table 5. Aggravated Dispositional Departure Rates; Drug and Non-Drug Offenders, 2016

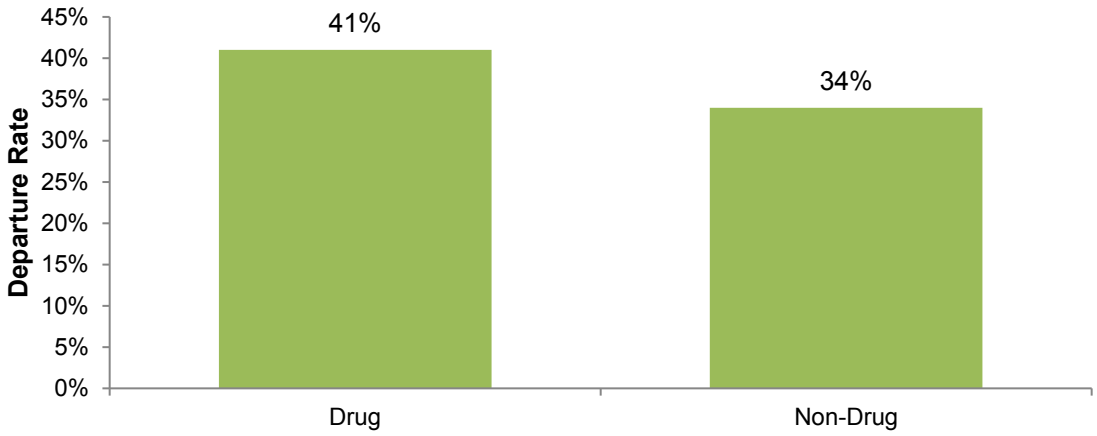
	Drug Offenders	Non-Drug Offenders
Number Presumptive Stays	4,054	7,277
Aggravated Dispositions (and Percent of Presumptive Stays)	225 (6%)	242 (3%)
Cases with Departure Reasons	223	200
Request for Prison (and Percent of Cases with Departure Reasons)	141 (63%)	181 (91%)

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

Mitigated Dispositional Departures: Drug and Non-Drug Offenders

Figure 15 shows that 41 percent of drug offenders who were recommended prison under the Guidelines instead received a non-prison (probationary) sentence. This compared to 34 percent for non-drug offenders. This type of departure increased for both groups compared to 2015 (38% for drug offenders and 32% for non-drug offenders). Departure rates vary greatly by general offense type and specific offense. (See *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the "Annual Summary" tab for more information on departure rates by offense type at mn.gov/sentencing-guidelines/reports.)

Figure 15. Mitigated Dispositional Departure Rates; Drug and Non-Drug Offenders, 2016 (Presumptive Prison Cases Only)



Dispositional Departures: Frequently Cited Reasons for Departure

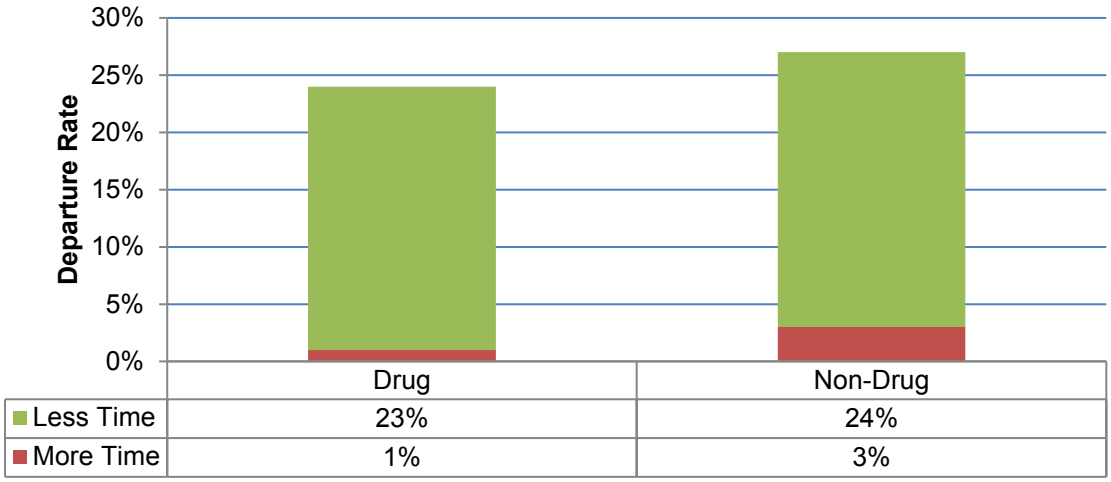
Amenability to treatment and probation were the most frequently-cited departure reasons for the mitigated dispositions in drug cases. In a large percentage of these cases, the sentencing court noted either that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure. Plea agreements or prosecutor recommendations occurred in 58 percent of drug cases, compared to 60 percent in non-drug cases. Information provided by the court revealed that the prosecutor was more likely to object to the mitigated disposition in drug offenses than in non-drug offenses (17% and 14%, respectively).[10]

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

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

The mitigated durational departure rate for drug offenders who received executed prison sentences was 23 percent, whereas the rate for non-drug offenders was 24 percent (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.)

Figure 16. Durational Departure Rates; Drug and Non-Drug Offenders, 2016



	Drug	Non-Drug
Less Time	23%	24%
More Time	1%	3%

"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 64 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 10 percent of the drug offenses and five percent of non-drug offenses.[11] As reported by the court, mitigated durational departures were more commonly supported by either a plea agreement or the prosecutor's recommendation, or lack of objection (64%), than mitigated dispositional departures (58%).

Long-Term Trends in Departure Rates for Drug Offenders

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

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

and had dropped to 31 percent by 2013. In 2014, the rate increased to 36 percent and further increased to 38 percent in 2015. In 2016 again rose to over 40% (41%).

Figure 17. Mitigated Dispositional Departure Rates, 1996-2016
(Presumptive Commitments Only)

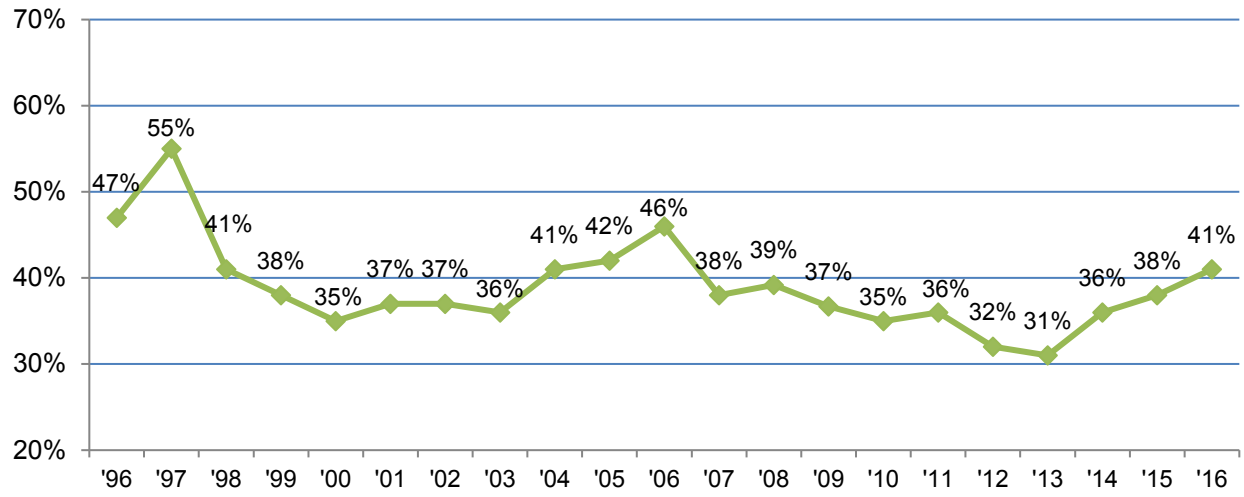
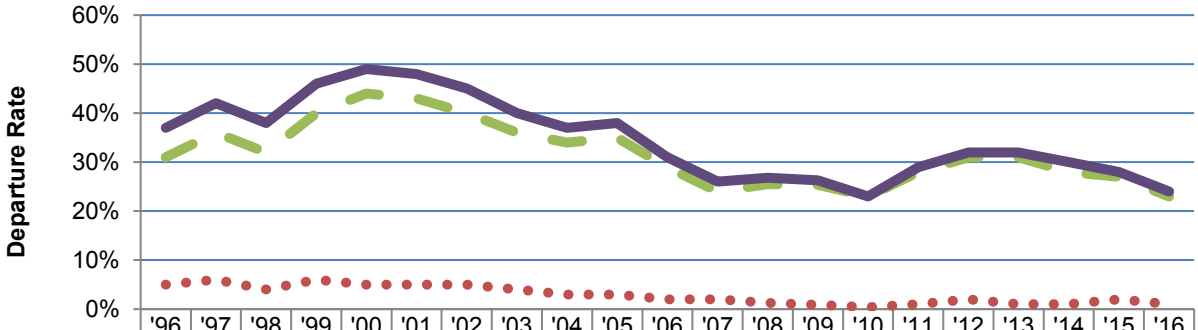


Figure 18 shows that the mitigated durational departure rate continued to increase through the 1990s, and peaked in 2000 at 44 percent. Since 2000, however, this rate steadily declined to a low of 23 percent in 2010. In 2011 the rate climbed back to 28 percent and increased again in 2012 and 2013 to 31 percent. In 2014 it returned to 28 percent and was 27 percent in 2015. In 2016 the rate returned to the previous low of 23 percent. Aggravated durational departure rates were consistently low, and in 2010 reached a new low of 0.4 percent. In 2013 and 2014 the aggravated durational departure rate was one percent. The rate in 2015 was 1.8 percent and in 2016 it was 1.4 percent.

Figure 18. Durational Departure Rates for Cases Receiving Prison Sentences, 1996-2016



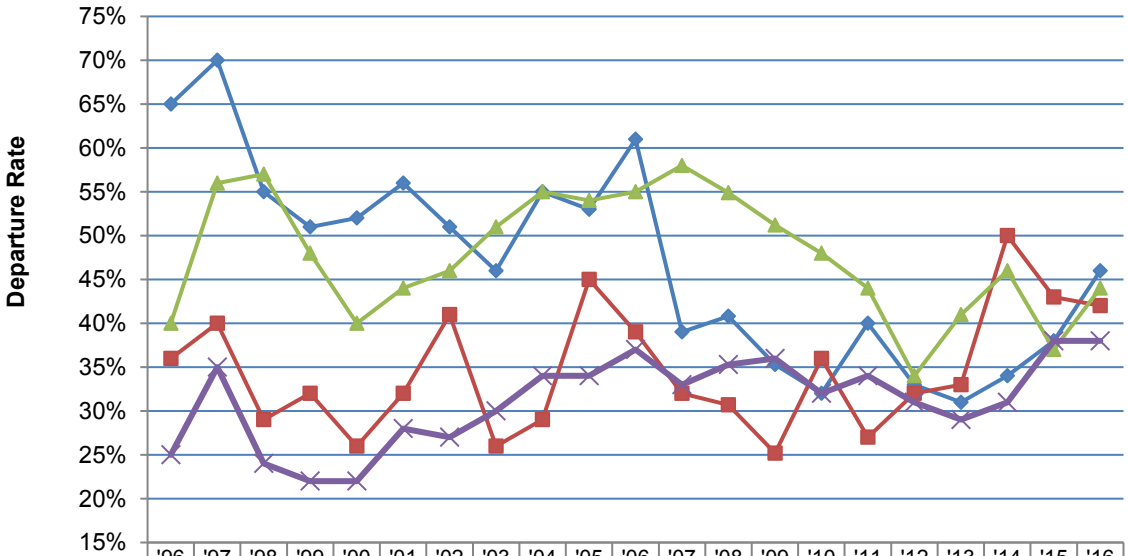
	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	'16
More Time	5%	6%	4%	6%	5%	5%	5%	4%	3%	3%	2%	2%	1%	1%	0%	1%	2%	1%	1%	2%	1%
Less Time	31%	36%	32%	40%	44%	43%	40%	36%	34%	35%	29%	24%	26%	25%	23%	28%	31%	31%	28%	27%	23%
Overall	37%	42%	38%	46%	49%	48%	45%	40%	37%	38%	31%	26%	27%	26%	23%	29%	32%	32%	30%	28%	24%

Departure Rates for Drug Offenders by Region

While departure rates for drug offenses fluctuate from year to year and vary by region, they are fairly high across the state (Figure 19). In 2016 the dispositional departure rates increased in every region except Greater Minnesota where it remained the same as in 2015. In the seven years before 2014, the other metro counties[12] had the highest rates and Ramsey County or Greater Minnesota had the lowest. In 2016, Hennepin County had the highest mitigated dispositional departure rate and Greater Minnesota had the lowest. The 38 percent departure rate in Greater Minnesota, despite being the lowest rate in the state, was, as had been the case in 2015, the highest ever observed during this period for that region.

Before 2007, the departure rates in Hennepin County were above 50 percent in all but one year. In 2007, the mitigated dispositional departure rate in Hennepin County dropped to 39 percent, and dropped again in 2009 and 2010. In 2011, the rate rose to 40 percent. In 2012, the Hennepin County rate fell to 33 percent and fell again in 2013 to 31 percent. Although the rate in Hennepin County rose to 38 percent in 2015, it was the second lowest rate among the regions. In 2016, the Hennepin rate rose to 46 percent.

Figure 19. Mitigated Dispositional Departure Rates by Region
Presumptive Prison Cases, 1996-2016



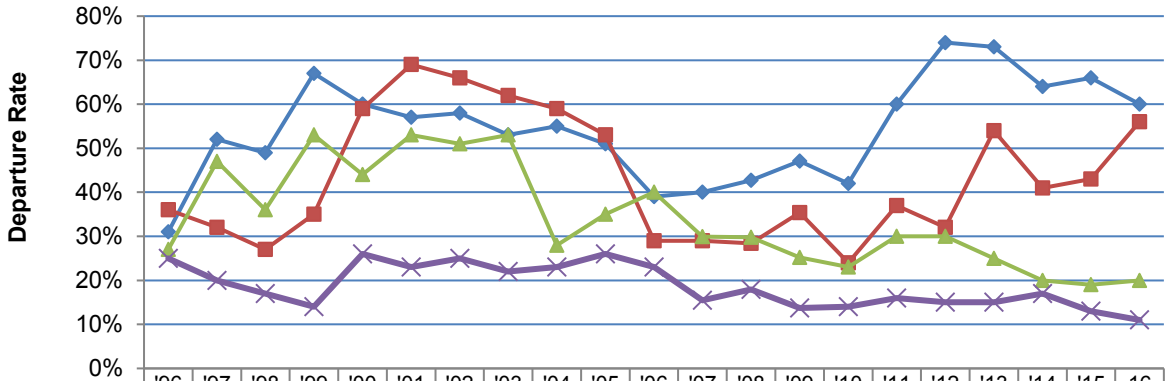
	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	'16
Hennepin	65%	70%	55%	51%	52%	56%	51%	46%	55%	53%	61%	39%	41%	35%	32%	40%	33%	31%	34%	38%	46%
Ramsey	36%	40%	29%	32%	26%	32%	41%	26%	29%	45%	39%	32%	31%	25%	36%	27%	32%	33%	50%	43%	42%
Other Metro	40%	56%	57%	48%	40%	44%	46%	51%	55%	54%	55%	58%	55%	51%	48%	44%	34%	41%	46%	37%	44%
Greater MN	25%	35%	24%	22%	22%	28%	27%	30%	34%	34%	37%	33%	35%	36%	32%	34%	31%	29%	31%	38%	38%

[12] "Other metro counties" are Anoka, Carver, Dakota, Scott and Washington counties.

Part of this large drop may be the result of policy changes that took effect in 2007, when, for example, Hennepin County revised its Drug Court criteria.[13] The decrease in departures may also have been due to changes in sentencing practices as a result of *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007) (holding that the mandatory minimum sentencing provision for a repeat offender under Minn. Stat. § 152.023, subd. 3(b) prohibits the court from staying execution).

Figure 20 shows that in 2016 the mitigated durational departure rate for executed sentences rose in Ramsey County; was almost unchanged in the other metro counties; and declined slightly in Greater Minnesota from 13 percent to 11 percent. In 2012, the rate in Hennepin County (74%) was higher than it had been in any year during this period, and the highest rate observed over time in any of the four regions; in 2015, the rate was 66 percent, and, in 2016, the rate declined to 60 percent, the lowest rate since 2011. Because the mandatory minimum sentence length for subsequent first- and second-degree drug offenses is less than the duration recommended in the Guidelines, the court may give a mitigated durational departure and still be at or above the mandatory minimum prison sentence.

Figure 20. Mitigated Durational Departure Rates by Region for Cases Receiving Executed Prison Sentences, 1996-2016



	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	16
Hennepin	31%	52%	49%	67%	60%	57%	58%	53%	55%	51%	39%	40%	43%	47%	42%	60%	74%	73%	64%	66%	60%
Ramsey	36%	32%	27%	35%	59%	69%	66%	62%	59%	53%	29%	29%	28%	35%	24%	37%	32%	54%	41%	43%	56%
Other Metro	27%	47%	36%	53%	44%	53%	51%	53%	28%	35%	40%	30%	30%	25%	23%	30%	30%	25%	20%	19%	20%
Greater MN	25%	20%	17%	14%	26%	23%	25%	22%	23%	26%	23%	16%	18%	14%	14%	16%	15%	15%	17%	13%	11%

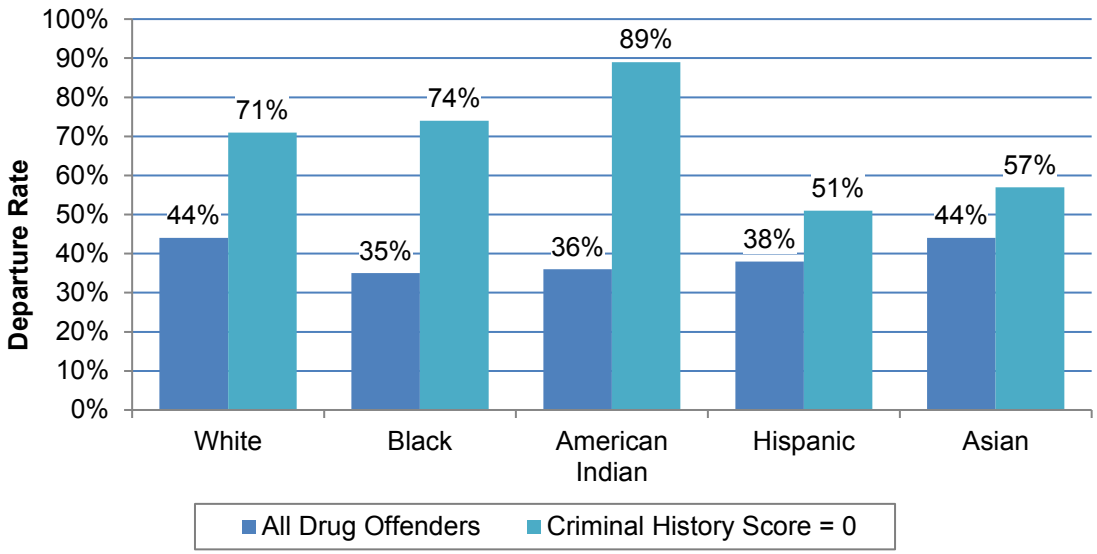
Departure Rates for Drug Offenders by Race/Ethnicity

Departure rates vary by race, with white and Asian offenders receiving mitigated dispositional departures at higher rates (Figure 21). The differences in departure rates may be related to criminal history scores. At criminal history scores of zero, the difference between the rates for

[13] Minnesota Judicial Branch, State Court Administrator's Office, *Minnesota Statewide Adult Drug Court Evaluation* (June 2012). Retrieved from http://www.mncourts.gov/Documents/0/Public/Drug_Court/2012%20Statewide%20Evaluation/MN_Statewide_Drug_Court_Evaluation_Report_-_Final_Public.pdf on Jan. 3, 2018.

white and black offenders diminished. At a criminal history score of zero, offenders of every race/ethnicity category have an average mitigated dispositional departure rate of 50 percent or more, and the rate is highest for American Indian offenders.[14] Offenders who are Hispanic continue to have the lowest departure rate at a criminal history score of zero at 51 percent.

Figure 21. Mitigated Dispositional Departures by Race/Ethnicity, 2016

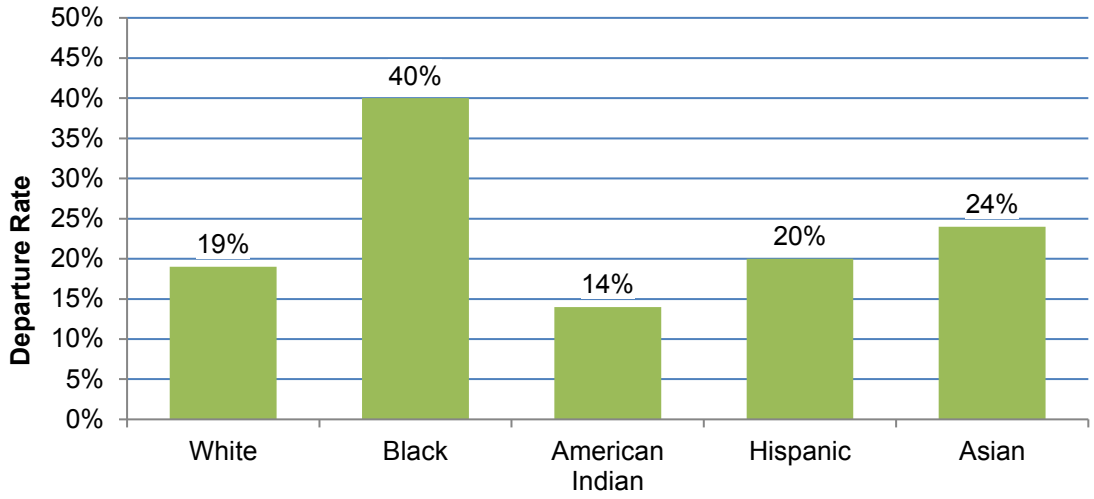


Mitigated durational departure rates are higher for offenders who are black than for offenders who are white (Figure 22). This difference remains for offenders with a criminal history of zero. Criminal history may play more of a role in determining a dispositional departure than it does in determining a durational departure – the assumption being that an offender with relatively little or no criminal history is more amenable to probation. From 2015 to 2016, mitigated durational departures declined for all racial and ethnic groups except American Indians. For offenders who are white, the rate fell from 22 percent to 19 percent; for offenders who are black, the rate fell from 45 percent to 40 percent; for offenders who are Hispanic, the rate fell from 27 percent to 20 percent; and for offenders who are Asian, the rate fell from 40 percent to 24 percent. The rate rose from 11 percent to 14 percent for offenders who are American Indian.

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 for an illustration of the racial & ethnic distribution of drug offenders by region.)

[14] There were nine American Indian offenders who had a presumptive prison disposition and a criminal history score of 0; eight received a mitigated dispositional departure.

Figure 22. Mitigated Durational Departures by Race/Ethnicity, 2016
(for those receiving executed prison sentences)

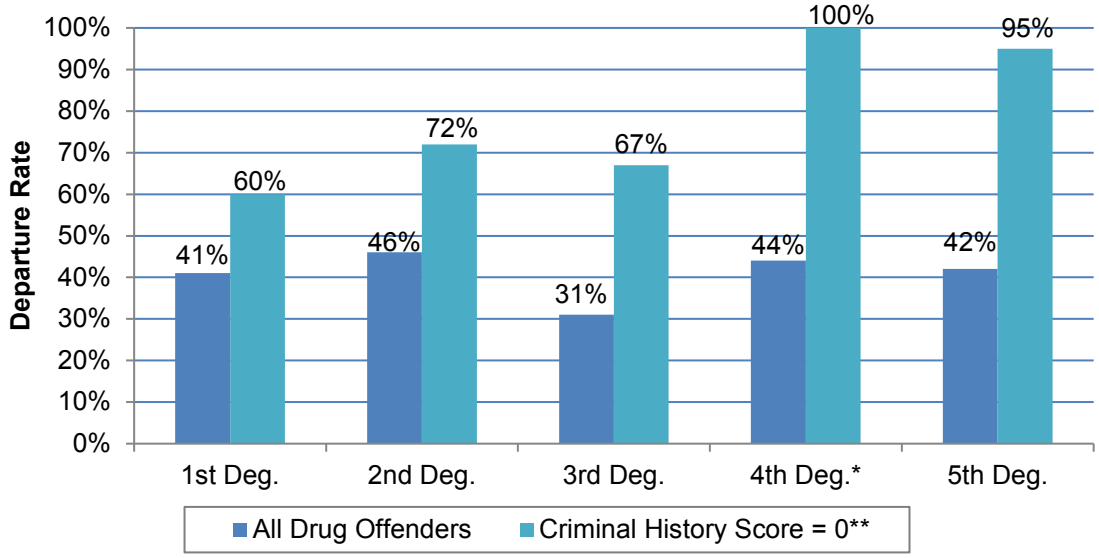


Departure Rates for Drug Offenders by Drug Degree

Figure 23 shows the mitigated dispositional departure rates by drug degree. The 41 percent rate for first degree was an increase from the 38 percent rate in 2015. The rates in 2015 and 2014 (39%) were increases from 30 percent in 2013, which was lower than the rate had been in previous years (41% in 2012; and 47% in 2011). The rates for second degree (46%) and third degree (31%) also increased over 2015 (44% and 27% in 2015). The fourth-degree rate at 44 percent; was nearly identical to the 2015 rate (45%). The fifth-degree rate (42%) also increased from 2015 (39%). Among offenders with a criminal history score of 0, the total mitigated dispositional departure rate was 69 percent, similar to the 2015 rate of 68 percent. Departure rates for offenders with a criminal history score of 0 increased for first- and fifth-degree and decreased for second- and third-degree.[15]

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

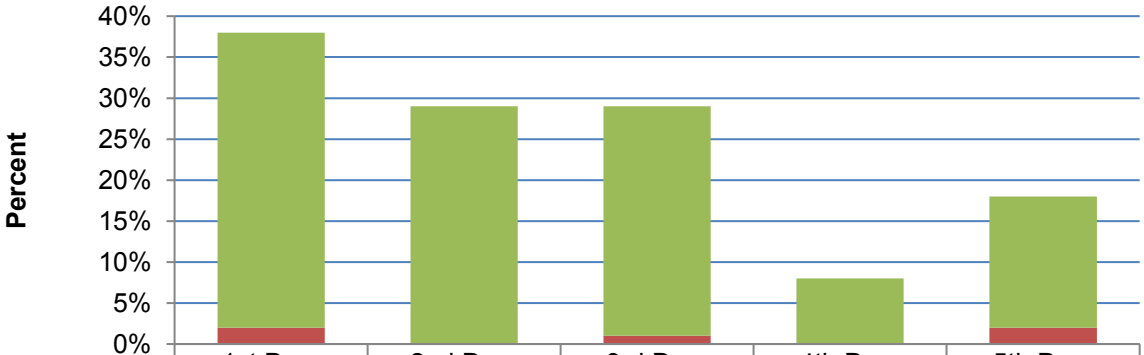
Figure 23. Mitigated Dispositional Departure Rates by Degree, 2016



* Only one offender was sentenced for a fourth-degree drug offense and had a criminal history score of 0.
** For 3rd Deg., 4th Deg., and 5th Deg., see note 15 above.

Figure 24 shows that mitigated durational departure rates were 36 percent for first-degree offenses and 29 percent for second-degree offenses. The second-degree rate was the same as in 2015 while the first-degree rate decreased from 2015 (48%). The mitigated durational departure rates decreased for third-degree offenders (from 30% to 28%), increased for fourth-degree offenders (8% vs. 4% in 2015); and remained almost the same for fifth-degree offenders (16% vs. 17% in 2015). The average reduction in sentence length from the presumptive sentence was 46 months for first-degree cases, 31 months for second-degree cases, and 15 months for third-degree cases.

Figure 24. Durational Departure Rates by Degree, 2016
(for those receiving executed sentences)



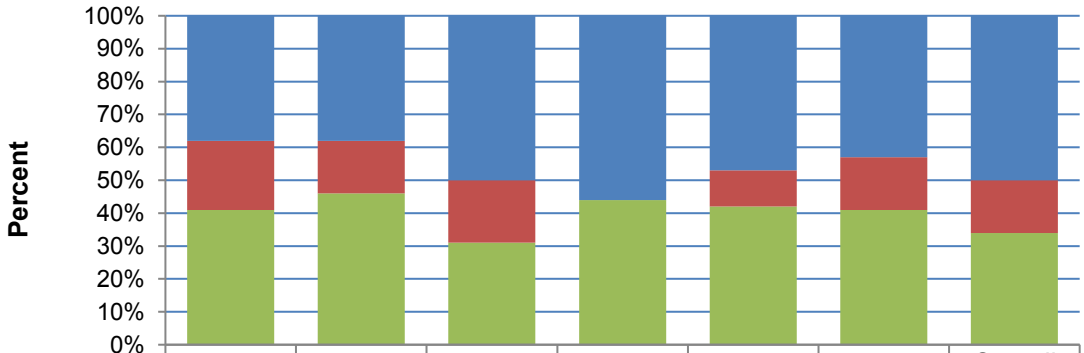
	1st Deg.	2nd Deg.	3rd Deg.	4th Deg.	5th Deg.
Less Time	36%	29%	28%	8%	16%
More Time	2%	0%	1%	0%	2%

Presumptive Prison Offenders by Degree

Of the 5,475 drug offenders sentenced in 2016, 26 percent (1,421 offenders) had presumptive prison sentences under the Guidelines. Departure rates are so high that, among offenders recommended a prison sentence in 2016 (as in 2011-15), a greater number of offenders received departures than received the recommended sentence. In 2016, 43 percent of drug offenders recommended a prison sentence received the recommended sentence or longer; 41 percent received a probationary sentence; and 16 percent received a prison sentence with a duration that was less than that recommended under the Guidelines (Figure 25).

In 2016, 38 percent of first-degree offenders received the recommended sentence an increase from 32% in 2015). For second-degree offenders there was a decrease to 38 percent (from 40% in 2015). Fifty percent of third-degree offenders received the presumptive sentence (similar to 2015). The fourth-degree rate decreased to 47 percent (from 55% in 2014). The fifth-degree rate remained almost unchanged (48% in 2015, 47% in 2016).

Figure 25. Sentence Imposed by Drug Degree, 2016
(Presumptive Prison Cases)

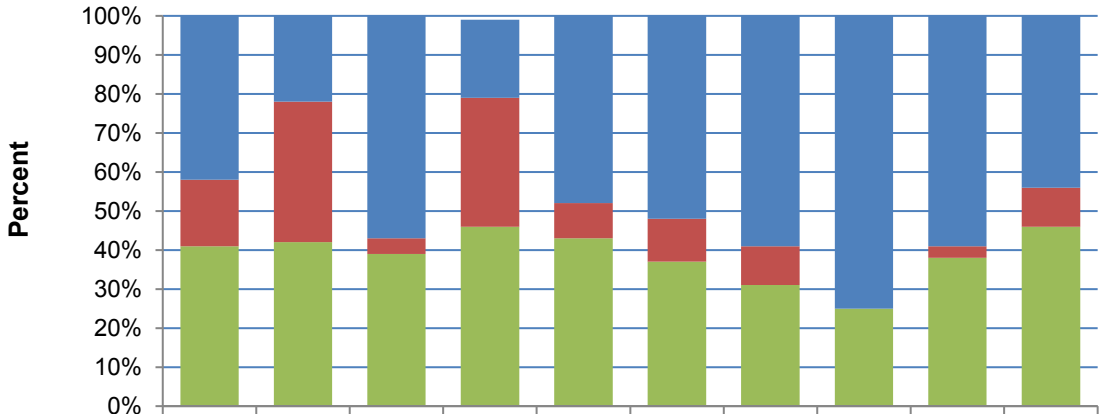


	1st Deg.	2nd Deg.	3rd Deg.	4th Deg.	5th Deg.	Overall Drug	Overall Non-Drug
Presumptive	38%	38%	50%	56%	47%	43%	50%
Prison - Less Time	21%	16%	19%	0%	11%	16%	16%
Probation	41%	46%	31%	44%	42%	41%	34%

Presumptive Prison Offenders by Judicial District

The likelihood of an offender receiving the presumptive sentence varies widely across the state. Figure 26 shows the percent of offenders with presumptive prison sentences who received the recommended sentence by judicial district. The portion who received the presumptive sentence ranged from 20 percent in the Fourth District (Hennepin County) to 75 percent in the Eighth District (including western Minnesota). See p. 30 for a map of Minnesota's ten judicial districts.

Figure 26. Sentence Imposed by Judicial District, 2016
(Presumptive Prison Cases)



	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
Presumptive	43%	22%	57%	20%	48%	52%	59%	75%	59%	44%
Prison - Less Time	17%	36%	4%	33%	9%	11%	10%	0%	3%	10%
Probation	41%	42%	39%	46%	43%	37%	31%	25%	38%	46%

Departure Rates for Subsequent Drug Offenders

Minnesota Statutes specify mandatory minimum prison terms for first- through third-degree drug offenses when the offender has a prior drug conviction.[16] When such a statutory mandatory minimum exists, the presumptive Guidelines disposition is imprisonment. The mandatory minimum durations are as follows: 48 months for first-degree offenses; 36 months for second-degree offenses; and 24 months for third-degree offenses. Because the presumptive Guidelines sentence is greater than the mandatory minimum for all first- and second-degree offenses, the mandatory minimum usually affects only the duration of third-degree cases.[17]

As of August 1, 2016, the mandatory minimum provision for third degree offenses was repealed. There were two third-degree offenses sentenced in 2016 with dates of offense after August 1, 2016 and those offenses are excluded from the analysis below.

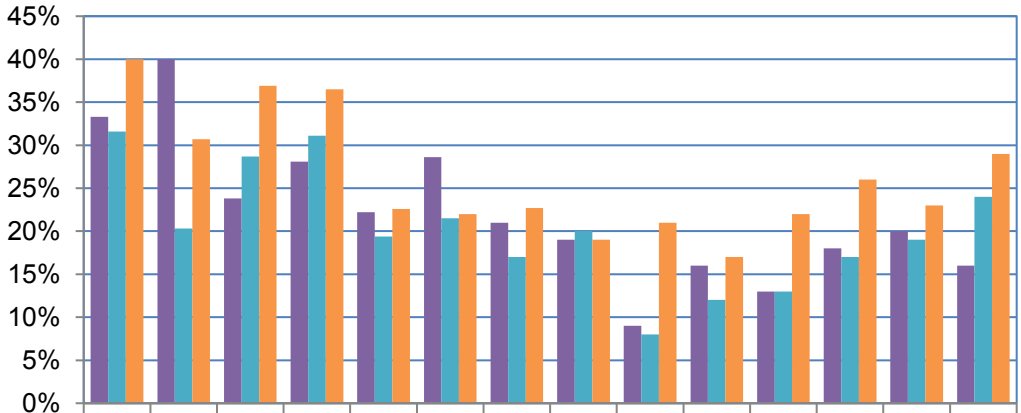
In 2016, 560 drug offenders were sentenced for offenses involving a second or subsequent drug offense that were subject to these mandatory minimum provisions. Of this total, 140 offenders (25%) received a mitigated dispositional departure from the Guidelines. The 25 percent dispositional departure rate was higher than the 2015 rate (21%). The rate was lower for first- and

[16] See subdivisions 3(b) of Minn. Stat. §§ 152.021, 152.022 and 152.023 (2015). An actual conviction is not always necessary, as a past disposition under Minn. Stat. § 152.18, even without conviction, will cause the current offense to become a "subsequent controlled substance conviction." Minn. Stat. § 152.01, subd. 16a (2015).
[17] Likewise, regarding presumptive disposition, the mandatory minimum changes only Controlled Substance Crime in the Third Degree, and only for offenders with criminal history scores below 3—although the dispositions for all first-second-, and third-degree subsequent controlled substance convictions are affected by the mandatory minimums, inasmuch as those dispositions are mandatory, rather than merely presumptive, executed terms of imprisonment.

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 68 percent of the mitigated dispositions for subsequent drug offenses.

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

Figure 27. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Offense, 2003-2016



	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
First-Degree	33%	40%	24%	28%	22%	29%	21%	19%	9%	16%	13%	18%	20%	16%
Second-Degree	32%	20%	29%	31%	19%	22%	17%	20%	8%	12%	13%	17%	19%	24%
Third-Degree	40%	31%	37%	37%	23%	22%	23%	19%	21%	17%	22%	26%	23%	29%

Of the 420 second or subsequent drug offenders who received executed prison sentences, all but three (less than 1%) had a pronounced sentence equal to, or longer than, the mandatory minimum. One second-degree offender and two third-degree offenders received less than the mandatory minimum time.

How the Guidelines Work

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

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

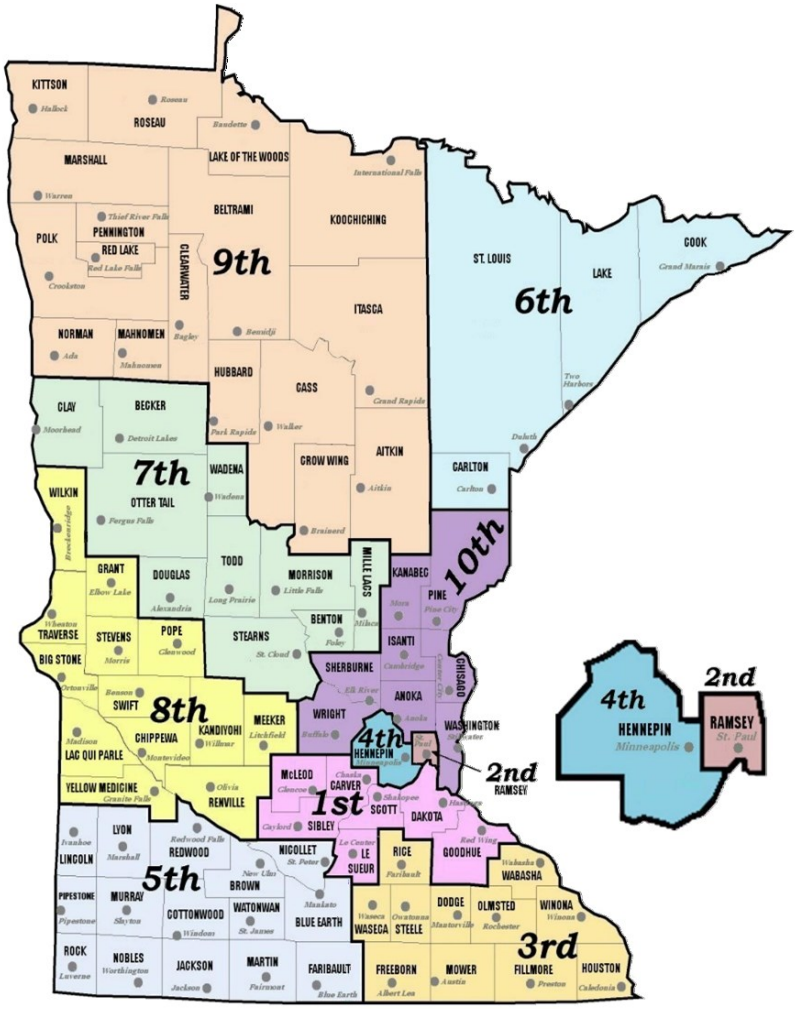
The recommended (presumptive) guideline sentence is found in the cell of the Grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the Grid.

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

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

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

Minnesota Judicial District Map



First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth	Ninth	Tenth
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.

Sentencing Guidelines Grid - Effective for Controlled Substance Crimes Committed 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.

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

[1] 12^1=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.

**But see State v. Kirby*, 899 N.W.2d 485 (Minn. 2017).

Standard Grid effective for controlled substance crimes committed before August 1, 2016

Drug Offender Grid - Effective for Controlled Substance Crimes Committed On or After August 1, 2016

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes 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.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	**1**	**2**	**3**	**4**	**5**	**6 or more**
Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth	**D9**	86 *74*-103*	98 *84*-117*	110 *94*-132*	122 *104*-146*	134 *114*-160*	146 *125*-175*	158 *135*-189*
Controlled Substance Crime, 1st Degree	**D8**	65 *56*-78*	75 *64*-90*	85 *73*-102*	95 *81*-114*	105 *90*-126*	115 *98*-138*	125 *107*-150*
Controlled Substance Crime, 2nd Degree	**D7**	48	58	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Controlled Substance Crime, 3rd Degree Failure to Affix Stamp	**D6**	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Possess Substances with Intent to Manufacture Meth	**D5**	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Controlled Substance Crime, 4th Degree	**D4**	12^1	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Meth Crimes Involving Children and Vulnerable Adults	**D3**	12^1	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Controlled Substance Crime, 5th Degree	**D2**	12^1	12^1	13	15	17	19	21 *18-25*
Sale of Simulated Controlled Substance	**D1**	12^1	12^1	12^1	13	15	17	19 *17-22*

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

[1] 12^1=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.