



REPORT TO THE LEGISLATURE

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Introduction

The Minnesota Sentencing Guidelines Commission submits this report to the Legislature to fulfill its two statutory reporting requirements:

- To identify and explain all modifications made during the preceding twelve months and all proposed modifications that are being submitted to the Legislature in 2018;¹ and
- To summarize and analyze reports received from county attorneys on criminal cases involving a firearm.²

The Commission also takes this opportunity to highlight other topics that may be of interest to the Legislature, including updates on Commission and staff activities, sentencing trends, and information regarding the impact of the 2016 Drug Sentencing Reform Act.³

In 1980, Minnesota became the first state to implement a sentencing guidelines structure. The Minnesota Sentencing Guidelines Commission is a legislatively created body whose purpose is to establish and improve the Minnesota Sentencing Guidelines, evaluate outcomes of changes in sentencing policy, analyze trends, make appropriate recommendations, and provide education on sentencing law and policy.

When establishing and modifying the Guidelines, the Commission's primary consideration is **public safety**.⁴ Other considerations are current sentencing and release practices, correctional resources—including, but not limited to, the capacities of local and state correctional facilities—and the long-term negative impact of crime on the community.⁵ The Commission has stated that the purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that reduce sentencing disparity and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history.⁶ The Sentencing Guidelines embody principles including that sentencing should be neutral, rational, consistent, and uniform, and that departures from the presumptive sentences should be made only when substantial and compelling circumstances can be identified and articulated.⁷

In all but one of the first 37 years the Guidelines were in effect—from 1980 through 2016—Minnesota ranked among the states with the three lowest imprisonment rates in the nation.⁸ Compared with other states, Minnesota's imprisonment rate in 2016—191 prisoners per 100,000 Minnesota residents—was less than half

¹ [Minn. Stat. § 244.09](#), subd. 11.

² [Minn. Stat. § 244.09](#), subd. 14 (referencing the reports required by [Minn. Stat. § 609.11](#), subd. 10).

³ That is, [2016 Minn. Laws ch. 160](#); see [Minn. Stat. § 244.09](#), subd. 6.

⁴ [Minn. Stat. § 244.09](#), subd. 5.

⁵ *Id.*

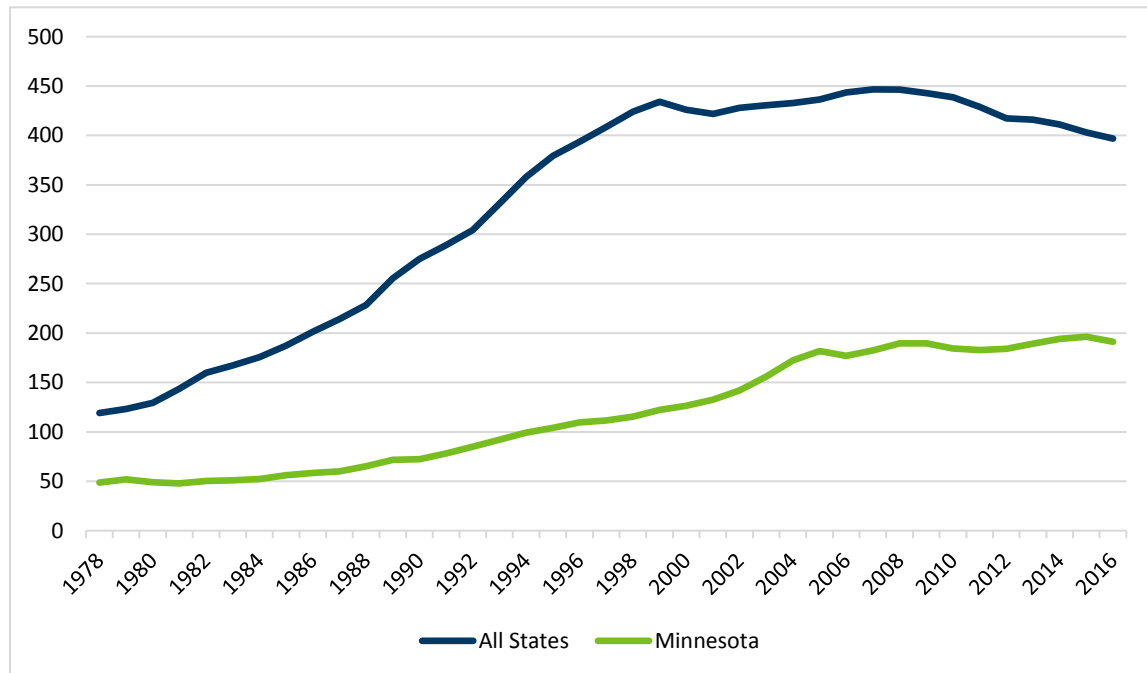
⁶ [Minn. Sentencing Guidelines](#) § 1.A.

⁷ *Id.*

⁸ Minnesota had the fourth-lowest imprisonment rate in 2014, and the third-lowest in 2015 and 2016. Carson, E. Ann. Bureau of Justice Statistics. Imprisonment Rate of Sentenced Prisoners under the Jurisdiction of State or Federal Correctional Authorities per 100,000 U.S. Residents, Dec. 31, 1978-2016. Oct. 19, 2017. Retrieved Jan. 10, 2018, at http://www.bjs.gov/nps/resources/documents/QT_imprisonment%20rate_total.xlsx.

the imprisonment rate for all states.⁹ Minnesota's imprisonment rate fell by 2.6 percent from 2015 to 2016, although it remained, in 2016, at its third-highest level since the Sentencing Guidelines were established (Figure 1).¹⁰ From 2015 to 2016, 18 states' imprisonment rates fell by a higher percentage than Minnesota's; 17 states' imprisonment rates fell by a lower percentage; and 14 states' imprisonment rates grew. The imprisonment rate for all states fell by 1.6 percent.¹¹

Figure 1. Imprisonment Rate per 100,000 Residents, 1978-2016



Source: Bureau of Justice Statistics

⁹ The imprisonment rate for all states was 397 prisoners per 100,000 U.S. residents. Neither rate includes inmates of federal prisons or local correctional facilities. See footnote 11.

¹⁰ For purposes of comparison, Minnesota's imprisonment rate was 49 per 100,000 in 1980. See footnote 8.

¹¹ Carson, E. Ann. Bureau of Justice Statistics. Prisoners in 2016 (NCJ 251149) (Table 7). January 2018. Retrieved Jan. 10, 2018, at <http://www.bjs.gov/content/pub/pdf/p16.pdf>.

Executive Summary

Impact of the 2016 Drug Sentencing Reform Act (see p. 6):

The 2016 Drug Sentencing Reform Act (DSRA), which made a number of significant changes to the sentencing of Minnesota drug offenses, required the Minnesota Sentencing Guidelines Commission to study the law's impact.

The DSRA was enacted in a time of growth in the number of felony drug offenses sentenced. Over the six years leading up to and including the year of the law's enactment, the annual volume of felony drug cases sentenced grew by nearly 65 percent, and that rate of growth showed no signs of slowing in the first half of 2017 (including both pre- and post-DSRA cases). Methamphetamine was the drug type with both the largest number of cases and the greatest rise in number.

Although the number of post-DSRA cases subject to study is still relatively small, some preliminary observations can be made:

- Greater sentence uniformity, by way of reduced departure rates, is a result, in part, of the DSRA's adoption of the Drug Offender Grid.
- Because of the continuing increase in the volume of drug cases, and an increase in the percent of certain offenders who received prison sentences, the expected post-DSRA reduction in the need for prison beds has not materialized.
- On the other hand, the DSRA appears to have avoided the demand, over time, for additional prison beds. This is because, when 2015 sentencing practices are applied to the post-DSRA cases, the prison-bed demand would have been 221 beds greater without the DSRA.
- Use of the DSRA's new gross misdemeanor offense—for first-time trace possession cases—appears to be widespread, and the number of cases resulting in stays of adjudication has grown following the DSRA's enactment.

The Commission's Activities in 2017 (see p. 30):

One of the fundamental responsibilities of the Commission is to maintain and improve the Guidelines by amending them in response to legislative changes, case law, and issues raised by various parties. In order to meet this responsibility, and its responsibility to conduct ongoing research into sentencing practices and other matters relating to the improvement of the criminal justice system, the Commission met ten times during 2017, and held one public hearing on July 20, 2017. Topics of interest to the Commission in 2017 included life sentences for juveniles, the Commission's demographic impact statement policy, Guidelines implications of important case law in Minnesota, sentencing practices for repeat violent offenders, and an ongoing review of Minnesota's criminal history score.

Modifications to the Sentencing Guidelines (see p. 31):

The Guidelines modifications in response to legislative changes were adopted by the Commission on July 27, 2017, and made effective August 1, 2017.

After reviewing new and amended felony crime laws enacted in the 2017 regular and special sessions of the Minnesota Legislature, the Commission assigned a severity level of 3 to Damage to Property (Public Safety Motor Vehicle); a severity level of 3 to Use of Automated Sales Suppression Devices; and a severity level of 2 to Impersonating a Peace Officer. The Commission made other technical modifications and corrections as a result of new and amended crime laws.

Proposed Modifications to the Sentencing Guidelines (see p. 33):

At its October 12 and November 9, 2017 meetings, the Commission moved three proposed Guidelines modifications forward to public hearing, and moved to report those proposals to the Legislature in this report. Proposed modifications are: a change to the statement of purpose and principles to emphasize public safety; an official “unranked” designation for the crime of Escape from Electronic Home Monitoring; and a correction to a comment that lists designated offenses that, by definition, involve a firearm or other dangerous weapon.

Staff Activities (see p. 33):

The staff performed the following activities: Answered nearly 100 phone calls and emails per month; trained over 300 practitioners in traditional classroom and online settings; provided 25 fiscal impact statements for introduced legislation; compiled sentencing information for an estimated 300 individual data requests; worked with the Department of Corrections to generate prison bed projections; participated in various criminal justice boards, forums and committees; processed and ensured the accuracy of nearly 17,000 sentencing records; published the annual edition of the Guidelines and commentary; and provided reports on sentencing practices to the public.

2016 Sentencing Practices Data Summary (see p. 36):

Minnesota courts sentenced 16,927 felony offenders in 2016, an increase of one percent. This was the highest volume on record, surpassing the previous record set in 2015. Of the total volume, drug offenses accounted for 32.3 percent (5,475 offenders), person offenses accounted for 28.7 percent (4,857 offenders), and property offenses accounted for 26.1 percent (4,411 offenders). The drug category was the largest offense category for the first time in Guidelines history.

The 2012-15 imprisonment rates were the highest rates observed since the Guidelines were implemented. In 2016, the imprisonment rate fell to 25.4 percent of felony sentences—the same rate seen from 2008 to 2011. In 2016, 92.0 percent of felony offenders served some time in a local correctional facility or prison setting: 66.6 percent served time in a local correctional facility as part of their stayed sentence; and 25.4 percent were sentenced to a Minnesota Department of Corrections (DOC) prison facility. The average pronounced prison sentence was 46.3 months. Statewide, 74 percent of felony offenders received the presumptive Guidelines sentence. The rate varied by gender, race and ethnicity, judicial district, and offense type.

County Attorney Firearms Reports (see p. 56):

County attorneys collect and maintain information on crimes for which a defendant is alleged to have possessed or used a firearm. The Commission is required to include in its annual report a summary and analysis of the reports received. Since 1996, when the mandate began, county attorneys have annually reported an average 804 cases allegedly involving a firearm. The total number of reported firearms cases for fiscal year 2017 was 1,116, which is a decrease of 6.6 percent from FY 2016.

Impact of the 2016 Drug Sentencing Reform Act

The 2016 Drug Sentencing Reform Act (DSRA)¹² required the Minnesota Sentencing Guidelines Commission to include the impact of the DSRA (and other statutory changes to Minnesota’s drug laws) within the information that the Commission collects, prepares, analyzes, and disseminates.¹³ This is the Commission’s first report on the measurable impact of the DSRA.

In light of the law’s recent effective date,¹⁴ the number of cases sentenced under the DSRA and subject to study is relatively small. Nevertheless, some preliminary observations can be made.

- **Summary of the 2016 DSRA** (see p. 7). The DSRA made a number of changes to Minnesota’s drug sentencing laws, including changes to drug-weight thresholds and to the recommended Guidelines dispositions and durations for various offenses. Among these changes, the DSRA adopted the Commission’s proposed Drug Offender Grid, with modifications.
- **Multiyear, Record Increase in Felony Drug Cases** (see p. 9). As of 2016, the year of the DSRA’s enactment, the annual volume of felony drug sentences had grown by nearly 65 percent over the previous six years, and that rate of growth showed no signs of slowing in the first half of 2017 (including both pre- and post-DSRA cases).
- **Methamphetamine Growth Continues** (see p. 11). For at least a decade leading up to the DSRA, methamphetamine has been the drug associated with the largest number of cases. Post-DSRA, a detailed examination of criminal complaints shows that methamphetamine continues to dominate other drug types.

The next three sections of this report compare post-DSRA sentences to comparable groups of cases in two prior years.

- **Post-DSRA, Offense Volume Increased** (see p. 12). Preliminary results show that the volume of post-DSRA felony drug cases was similar to the volume of comparable cases from the year before, and the volume was distinctly higher than previous years when sentences for the DSRA’s new gross misdemeanor offense are included in the post-DSRA group (Table 3).
- **Post-DSRA, Sentence Uniformity for Certain Offenses Increased (Preliminary)** (see p. 14). For post-DSRA second-degree offenses, case volume and imprisonment rates fell (Table 4), and, due to the DSRA’s adoption of the Drug Offender Grid, more uniformity was seen by way of fewer of these offenders receiving mitigated dispositional departure—i.e., a stayed sentence when the Sentencing

¹² [2016 Minn. Laws ch. 160](#). Although the act does not call itself the “Drug Sentencing Reform Act,” this report follows the lead of Minnesota’s appellate courts, which consistently refer to the act by this title. *See, e.g., State v. Kirby*, 899 N.W. 2d 485, 486 (Minn. 2017).

¹³ This requirement is found at [2016 Minn. Laws ch. 160](#) § 13 and codified at [Minn. Stat. § 244.09](#), subd. 6 (2016).

¹⁴ The law’s provisions generally took effect August 1, 2016, and were made effective for crimes committed on and after that date. *But see* footnote 18.

Guidelines recommend an executed prison sentence (Table 5 & Figure 4). Likewise, it preliminarily appears that, within the three most serious offense degrees, the mitigated durational departure rate—the rate at which offenders receive executed prison sentences shorter than the executed prison durations recommended by the Sentencing Guidelines—fell (Table 6 & Figure 5).

- **Post-DSRA, Expected Prison-Bed Savings Not Realized (Preliminary)** (see p. 18). The number of estimated prison beds is similar to the estimated number of prison beds needed for comparable groups in previous years. This is due to the continuing increase in the volume of drug cases, and an increase in the percent of first- and fifth-degree offenses receiving executed prison sentences.
- **Without DSRA, Prison-Bed Demand Would Have Been Greater (Preliminary)** (see p. 20). Although the post-DSRA group did not actually require fewer prison beds, the DSRA nevertheless appears to have avoided the demand, over time, for additional prison beds. This is because, when 2015 sentencing practices are applied to the post-DSRA cases, the prison-bed demand would have been 221 beds greater without the DSRA.
- **DSRA's New Gross Misdemeanor Offense is Being Widely Used** (see p. 22). Under the DSRA, some fifth-degree offenses—involving trace amounts of drugs possessed by first-time drug offenders—became gross misdemeanors. Preliminary data show widespread, albeit not entirely geographically uniform, use of this new provision.
- **Stays of Adjudication Have Increased Post-DSRA** (see p. 25). Under the DSRA, the statutory provision permitting stays of adjudication—[Minn. Stat. § 152.18](#)—was expanded to include more drug offenses, and stays of adjudication become mandatory in some cases. Preliminary data show post-DSRA growth in the number of cases resulting in stays of adjudication.

Summary of the 2016 DSRA

Supporters of the 2016 DSRA intended that the law would ensure that drug offenders who should be in prison spend time behind bars, while others who may be more amenable to prison alternatives like treatment or probation would not be sentenced to serve time.¹⁵ With broad agreement among criminal justice stakeholders¹⁶

¹⁵ Cook, M., Minn. H.R. Public Information Services. “Drug Sentencing Changes get House Support, Going to Governor.” *Session Daily*. May 21, 2016. Retrieved Dec. 19, 2017, at <http://www.house.leg.state.mn.us/SessionDaily/Story/10304>.

¹⁶ A document entitled “Drug Sentencing Reform Agreement,” dated April 29, 2016, served as the basis for subsequent versions of [Senate File no. 3481](#), 89th Minn. Legislature, which became the DSRA. Cook, *supra* note 15. According to that document, the following organizations entered into and supported the agreement: Minn. County Attorney’s Association; Minn. State Public Defender; Minn. Association of Criminal Defense Lawyers; U.S. Justice Action Network; Minn. Chiefs of Police Association; Minn. Police and Peace Officers Association; and Minn. Sheriffs’ Association. Retrieved Dec. 19, 2017, at http://www.senate.mn/committees/2015-2016/3070_Judiciary_Budget_Division/Drug%20Sentencing%20Proposal%20Summary.pdf.

and legislators,¹⁷ the DSRA was approved by the Governor and enacted on May 22, 2016. The law's provisions generally took effect August 1, 2016, and apply to crimes committed on and after that date.¹⁸

The 2016 DSRA—

- Adopted the Commission's proposed Drug Offender Grid, with modifications, altering some durations and dispositions recommended for some serious controlled substance offenses;¹⁹
- Accepted the Commission's proposal to add to the Sentencing Guidelines new aggravating factors, intended to allow prosecutors to seek high sentences against drug dealers, and a new mitigating factor, intended to allow judges to place on probation, and send to drug treatment, the truly chemically dependent;²⁰
- Enacted a list of statutory aggravating factors used to enhance certain first- and second-degree offenses;
- Created first-degree aggravated controlled substance crimes;
- Established mandatory minimum sentences for certain aggravated crimes;
- Reduced marijuana weight thresholds for first- and second-degree offenses;
- Introduced marijuana plants as a new measure of quantity and severity;
- Restricted the application of mandatory minimum penalties for subsequent controlled substance convictions to first- and second-degree offenses only;
- Redefined "subsequent controlled substance conviction" to restrict qualifying prior offenses to first- and second-degree offenses only, and to exclude prior dispositions under [Minn. Stat. § 152.18](#);
- Increased cocaine and methamphetamine weight thresholds for first- and second-degree controlled substance crimes, and third-degree possession offenses;
- Rolled back those threshold increases if the offense involved a firearm or multiple aggravating factors;
- Amended fifth-degree possession of certain small amounts of a controlled substance, for offenders with no prior [Minn. Stat. chapter 152](#) convictions, to a gross misdemeanor;
- Expanded eligibility for disposition under Minn. Stat. § 152.18 to third-degree possession offenses, and
- Mandated dispositions under Minn. Stat. § 152.18 for eligible fifth-degree possession cases with no prior felony record and no prior convictions for gross misdemeanor fifth-degree possession.

¹⁷ The Senate and House approved the measure on votes of 45 to 19 and 129 to 0, respectively. Cook, *supra* note 15.

¹⁸ 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); *see also* footnote 57 and accompanying text. Because cases benefiting from this holding are included in neither the post-reform nor the comparison data analyzed herein, the *Kirby* opinion should not alter this section's analysis.

¹⁹ As proposed by the Commission, the Drug Offender Grid is on page 80 of the Commission's [2016 Report to the Legislature](#). The DSRA's modifications to the proposed Drug Offender Grid are found at [2016 Minn. Laws ch. 160](#) § 18. As adopted by the DSRA, the Drug Offender Grid is on page 77 of this report.

²⁰ The new aggravating and mitigating factors were submitted in Appendix 2.2 of the Commission's [2016 Report to the Legislature](#). As the Legislature did not intervene, those changes took effect Aug. 1, 2016. *See* [Minn. Stat. § 244.09](#), subd. 11.

Multiyear, Record Increase in Felony Drug Cases

This section presents information on recent, general trends in felony drug offenders sentenced. The data in this section make no distinction between pre- and post-DSRA cases.

Volume of Offenses

The DSRA was enacted in the context of a steadily rising number drug offenses sentenced. From 2010 to 2016, the volume of offenders sentenced for felony drug offenses in Minnesota increased by nearly 65 percent,²¹ and more offenders were sentenced for drug offenses in 2016 than in any previous year on record.²² The percentage increase over each previous year was 2.5 percent in 2011, 4.2 percent in 2012, 7.6 percent in 2013, 14.2 percent in 2014, 12.6 percent in 2015, and 11.4 percent in 2016 (Table 10). Table 1 displays the total number of drug offenses sentenced by drug-offense level, from 2013 to the first half of 2017.²³ If a similar number of cases are sentenced in the second half of the year, 2017 is on pace to set another record high for the volume of drug offenses sentenced. The 2017 January-June total (3,082 cases) is 9.6 percent greater than the 2016 January-June total (2,812 cases).

Table 1. Number of Felony Cases with a Drug Offense, by Most Serious Offense Sentenced

Drug Offense	2013		2014		2015		2016		(Jan-June) 2017	
	Number	%	Number	%	Number	%	Number	%	Number	%
First Degree	273	7	278	6	302	6	281	5	182*	6
Second Degree	318	8	427	10	395	8	456	8	222*	7
Third Degree	513	13	603	14	609	12	613	11	300*	10
Fourth Degree	145	4	135	3	114	2	103	2	42*	1
Fifth Degree	2,515	66	2,849	65	3,433	70	3,984	73	2,290*	74
Sale Simulated Drug	12	0.3	13	0.3	15	0.3	8	0.1	9*	0.3

²¹ There were 3,326 drug offenders sentenced in 2010. This number increased by 2,149, or 64.6 percent, to 5,475 drug offenders sentenced in 2016. By comparison, over the same six-year period, the volume of person offenders sentenced grew by 5.9 percent (from 4,605 in 2010 to 4,875 in 2016), and the volume of property offenders sentenced grew by 1.8 percent (from 4,334 in 2010 to 4,411 in 2016). As discussed on page 36, 2016 was the first year on record in which the drug category was the largest offense category.

²² That is, in the sentencing records of the Minnesota Sentencing Guidelines Commission, which date back to 1981. By volume of drug offenses sentenced, the top five years were 2016 (5,475), 2015 (4,913), 2006 (4,484), 2005 (4,364), and 2014 (4,363).

²³ MSGC staff collected data on drug offenses sentenced from January to June of 2017. The 2017 data include both pre- and post-DSRA cases.

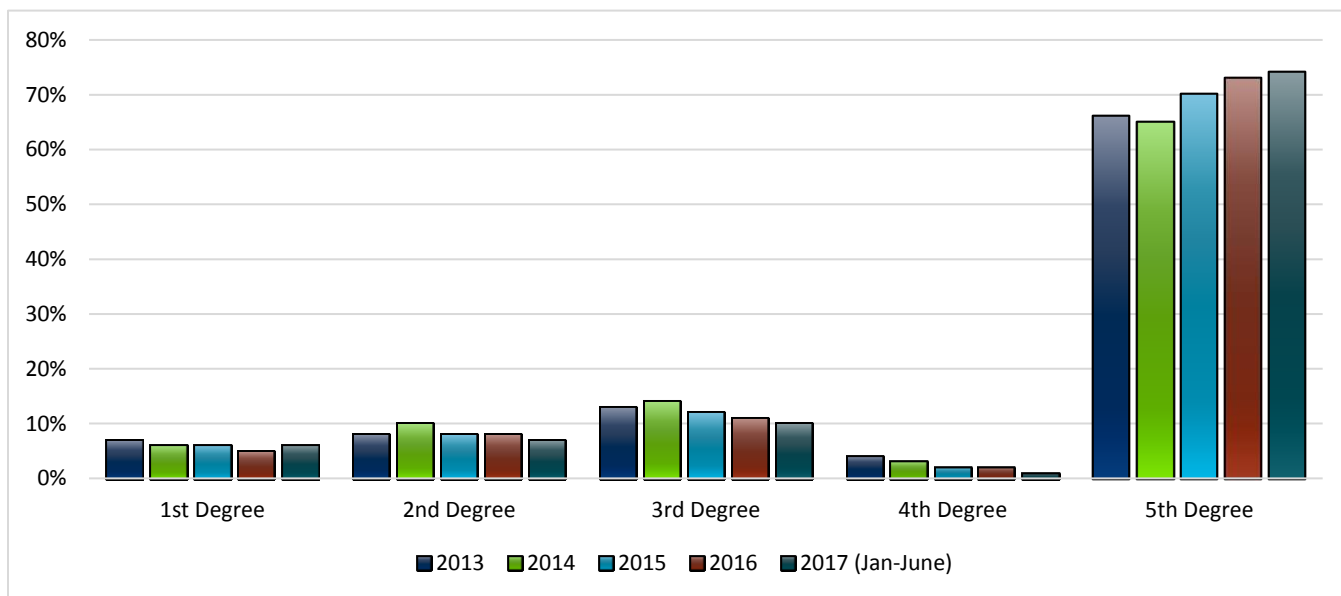
Drug Offense	2013		2014		2015		2016		(Jan-June) 2017	
	Number	%	Number	%	Number	%	Number	%	Number	%
Poss. w/Intent Mfr. Meth.	12	0.3	8	0.2	7	0.1	6	0.1	9*	0.3
Meth. Presence of Child	33	1	44	1	34	0.7	22	0.4	24*	0.8
Sale of Synthetic Cannabinoid	0	0	6	0.1	4	0.1	2	0.1	4*	0.1
Total	3,821	100	4,363	100	4,913	100	5,475	100	3,082*	100

*Six-month total.

Offense Degree

Figure 2 displays the percentage of cases sentenced by each of the five degrees of controlled substance crime from 2013 through 2016 and the first six months of 2017. The percentages do not total 100 percent because a small number of drug offenses are not included within one of the five degrees.²⁴ Because only felony drug offenses are included in this chart, recent sentences for the gross misdemeanor fifth-degree offense established by the DSRA are excluded.

Figure 2. Percentage of Felony Cases with a Drug Offense by Degree of Most Serious Offense Sentenced



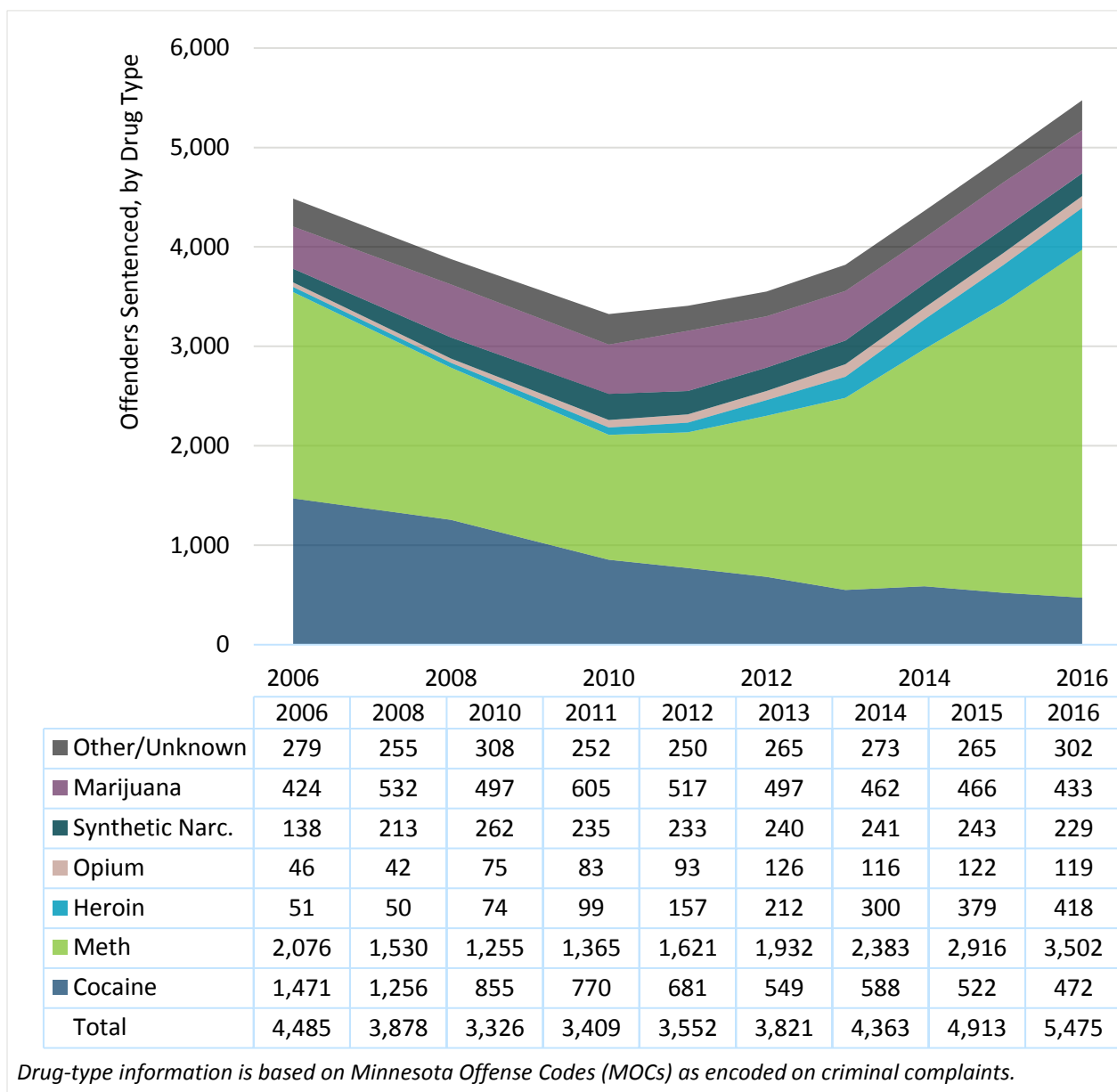
²⁴ Controlled substance crime in the first through fifth degrees are codified at Minn. Stat. §§ 152.021, 152.022, 152.023, 152.024, and 152.025. Other felony drug offenses are possession of substances with intent to manufacture methamphetamine (Minn. Stat. § 152.0262), sale of synthetic cannabinoids (Minn. Stat. § 152.027), sale of a simulated controlled substance (Minn. Stat. § 152.097), and methamphetamine-related crimes involving children and vulnerable adults (Minn. Stat. § 152.137).

Methamphetamine Growth Continues

Drug Types Through 2016

Figure 3 summarizes the drug types involved in drug offenses sentenced from 2006 to 2016, as encoded on criminal complaints. Since 2010, most of the growth in drug sentences is due to continued growth in the number of methamphetamine (“meth”) cases. In 2016, 64 percent of drug offenders were sentenced for crimes involving methamphetamine. Preliminary data indicate that at least 63 percent of the drug offenders sentenced in the first half of 2017 (Jan.-June) were sentenced for crimes involving methamphetamine.

Figure 3. Distribution of Offenders by Drug Type, Sentenced 2006, 2008, 2010-2016



Post-DSRA Drug Types

Table 2 provides more detailed information—drawn from an examination of individual complaints²⁵—about the drug types²⁶ involved in offenses committed on and after the DSRA’s effective date (August 1, 2016), and sentenced by June 30, 2017. Methamphetamine (“meth”) continues to be the most frequently cited drug type.

Table 2. Distribution of Felony Cases by Drug Class & Drug Type, Post-DSRA Group

Drug Class	Drug Type	Drug Type		Drug Class	
		Total	Percent	Total	Percent
Stimulants	Cocaine	108	8.0%		
	Meth	884	65.5%		
	Other	16	1.2%		
Stimulants Total				1,008	75%
Narcotics*	Heroin	87	6.4%		
	Other	40	3.0%		
Narcotics* Total				127	9%
Depressants				45	3%
Hallucinogens				16	1%
Marijuana/Cannabis	Marijuana	100	7.4%		
	Other	20	1.5%		
Marijuana/Cannabis Total				120	9%
Other/Multiple	Other	26	1.9%		
	Multiple	7	0.5%		
Other/Multiple Total				33	2%
Total of Drug Classes				1,349	100%

*See footnote 26.

Post-DSRA, Offense Volume Increased

The provisions of the 2016 DSRA were effective for all offenses committed after July 31, 2016. In total, through June 30, 2017, the new provisions have been applicable to 1,349 felony offenders with a first- through fifth-

²⁵ The categories in Table 2 are more detailed than the categories in Figure 3 because the drug types for Table 2 were determined by MSGC staff review of each criminal complaint, whereas the categories in Figure 3 are based on Minnesota Offense Codes (MOCs) as encoded by prosecution staff.

²⁶ Drug types were grouped into drug classes based on the United States Drug Enforcement Administration’s classifications at https://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf (retrieved Nov. 22, 2017). Consistent with those classifications, the term “narcotics,” as used here, is synonymous with “opioids,” rather than with the statutory term “narcotic drug” (Minn. Stat. § 152.01, subd. 10), which includes the non-opioids cocaine and methamphetamine. Fentanyl is included within “narcotics,” as used here; two post-DSRA cases involving fentanyl were observed.

degree drug offense as the most serious offense sentenced.^{27, 28} The next sections focus their analysis on this limited number of sentenced felony drug offenses. Because the offenses in this group (hereinafter, the “post-DSRA” group) represent significantly less than a complete year of offense data, the results of the following analysis should be viewed as preliminary.

Comparison Groups

Table 3 displays the felony cases in the post-DSRA group, by controlled substance degree. Table 3 also includes, within the post-DSRA cases, those offenses sentenced under the DSRA’s new gross misdemeanor fifth-degree provision. In addition to the post-DSRA offenses, Table 3 also displays the number of cases, by degree, sentenced in comparable time frames in previous years (hereinafter, the “2014-15” and “2015-16” comparison groups).²⁹

Table 3. Number of Cases with a Drug Offense as the Most Serious Offense Sentenced, Post-DSRA Group and Comparison Groups

Comparison Group	Date of Offense On & After	Sentencing Date Range	1 st Deg. No. & Percent	2 nd Deg. No. & Percent	3 rd Deg. No. & Percent	4 th Deg. No. & Percent	Felony 5 th Deg. No. & Percent	Gross Misd. 5 th Deg. No. & Percent	Total
2014-15	Aug. '14	Aug. '14 – June '15	45 (4%)	77 (7%)	148 (13%)	15 (1%)	887 (76%)	N/A	1,172
2015-16	Aug. '15	Aug. '15 – June '16	51 (4%)	80 (6%)	135 (10%)	16 (1%)	1,115 (80%)	N/A	1,397
Post-DSRA	Aug. '16	Aug. '16 – June '17	61 (4%)	60 (3%)	135 (8%)	25 (1%)	1,068 (62%)	373* (22%)	1,722

**Source of post-DSRA gross misdemeanor case data: Minnesota Judicial Branch. (Obtained 11/15/2017.) Gross misdemeanor cases may not necessarily be the most serious offenses sentenced.*

Volume of Offenses

The provisions of the DSRA raised the thresholds (amount of drugs necessary for conviction) for some first-through third-degree offenses. Therefore, it might be expected that the percentage of cases that are first-through third-degree would decline while the percent that are fourth- and fifth-degree would increase. The preliminary evidence available to date shows a slight increase in the number of offenses that are first-degree, a

²⁷ MSGC staff collected data on the small number of cases sentenced in 2016 to which the DSRA changes applied (203 cases), as well as cases sentenced in 2017 with dates of offense after July 31, 2016 (1,146 cases).

²⁸ 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.

²⁹ In order to make comparisons to previous years, MSGC compiled data sets from 2014 to 2016 with similar parameters; cases sentenced from August of 2014 through June of 2015 with dates of offense after July 31, 2014; and sentenced from August of 2015 through June of 2016 with dates of offense after July 31, 2015. These data sets are limited to first- through fifth-degree felony offenses, with the DSRA offense of “aggravated controlled substance crime in the first degree” being included within the first-degree offenses.

decline in the number and percentage of offenses that are second-degree, and little change in the number of third-degree offenses. For felony fifth-degree offenses, the percentage and number of offenses declined compared to the 2015-16 comparison group. When gross misdemeanor fifth-degree offenses are included (for first-time possession of a trace amount of a controlled substance, a DSRA-created offense discussed in more detail on p. 22), the number of post-DSRA fifth-degree cases was greater than the number of cases in either prior comparison group. Likewise, when gross misdemeanor fifth-degree offenses are included, the total number of drug cases in the post-DSRA group was 47 percent greater than the 2014-15 comparison group, and 23 percent greater than the 2015-16 comparison group. (If the 373 gross misdemeanor cases were excluded from the group, the post-DSRA total—1,349 cases—would have been somewhat smaller than the 2015-16 comparison group.)

The DSRA created an aggravated first-degree offense for the most serious offenses. These offenses are ranked at a severity level of D9 on the Drug Offender Grid (p. 77), and therefore have longer presumptive sentences than the standard first-degree offenses. In addition, the statutory sentencing minimum is either 86 months or the presumptive fixed sentence, whichever is longer, which makes the offenders ineligible for a sentence at the low-end of the presumptive range on the Drug Offender Grid. These offenses involve the sale or possession of 100 or more grams and either a firearm (for which there had been one offender sentenced as of June 30, 2017); or two aggravating factors (for which there had also been one offender sentenced as of June 30, 2017).

In addition, the DSRA contains a provision which specifies a minimum sentence of either 65 months or the presumptive fixed sentence, whichever is longer, for offenses involving the sale or possession of 100 or more grams. These offenses are ranked at a severity level of D8 on the Drug Offender Grid (p. 77) (along with the standard first-degree offenses), and the statutory sentencing minimum makes the offenders ineligible for a sentence at the low-end of the presumptive range on the Drug Offender Grid. Of the offenders sentenced through June 2017, there were 13 first-degree offenders involving 100 grams or more that did not qualify as aggravated-first degree offenses.

Post-DSRA, Sentence Uniformity for Certain Offenses Increased (Preliminary)

Presumptive Sentences and Prison Rates

The DSRA limited the definition of subsequent drug offenses to prior first- and second-degree offenses and restricted mandatory minimums for subsequent offenses to first- and second-degree offenses. This change eliminated automatic presumptive prison dispositions for third-degree offenders with prior drug convictions. In addition, before the implementation of the Drug Offender Grid (p. 77), all first- and second-degree offenses had presumptive prison sentences regardless of offenders' criminal history scores (CHS).³⁰ However, on the Drug Offender Grid, second-degree offenses with CHS of 0 or 1 have presumptive stayed sentences. It was anticipated

³⁰ Prior to the implementation of the Drug Offender Grid, first-degree was ranked at a severity level of 9 on the Standard Grid (p. 75) and second-degree was ranked at a severity level of 8 on the Standard Grid.

that those two changes would result in a decrease in the percent of drug offenders with presumptive prison dispositions, and, therefore, prison sentences.

Overall, the presumptive and actual imprisonment rates are slightly lower than those in the 2014-15 comparison group and slightly higher than those in the 2015-16 comparison group. Table 4 displays the presumptive prison rate and actual prison rate by degree for the post-DSRA group and comparison groups.

Table 4. Presumptive and Actual Prison Rates, Comparison Groups & Post-DSRA Group

Degree	2014-15 Comparison Group			2015-16 Comparison Group			Post-DSRA Group (2016-17)		
	Number	Presumptive Prison Rate	Prison Rate	Number	Presumptive Prison Rate	Prison Rate	Number	Presumptive Prison Rate	Prison Rate
First	45	100%	77%	51	100%	61%	61	100%	74%
Second	77	100%	66%	80	100%	63%	60	45%	40%
Third	148	55%	41%	135	45%	35%	135	40%	31%
Fourth	15	33%	27%	16	19%	25%	25	40%	44%
Fifth*	887	10%	16%	1,115	9%	13%	1,068	14%	18%
Total	1,172	25%	25%	1,397	21%	20%	1,349	22%	23%

**Felony only.*

The DSRA provisions reduced the percentage of second- and third-degree offenses that have presumptive prison dispositions; the actual imprisonment rates for those offenders fell accordingly. The presumptive prison rate for second-degree offenders fell from 100 percent to 45 percent, while the actual imprisonment rate fell from over 60 percent to 40 percent. The post-DSRA imprisonment rate for first-degree offenders, while similar to the 2014-15 comparison group, increased compared to the 2015-16 group, perhaps because of the increase in the threshold amounts. While fourth-degree offenders still represented a small fraction of drug offenders, post-DSRA fourth-degree offenses increased in number, presumptive imprisonment rate, and actual imprisonment rate. There was also an increase in the presumptive and actual imprisonment rates for fifth-degree offenses. These increases may be due to the impact of increasing the thresholds for more serious offenses resulting in pushing down to lower degrees what would previously have been second- or third-degree offenses. In addition, the creation of a gross misdemeanor possession of trace amount offense (which will be discussed in more detail on page 19) may have separated the least severe fifth-degree offenses from the felonies.

Departure Rates

A “departure” is a pronounced sentence other than that recommended in the appropriate cell of the applicable Guidelines Grid. There are two types of departures – dispositional and durational – as further explained on page 46.

It was anticipated that the DSRA would result in more uniformity by lowering departure rates for drug cases, for several reasons. By raising the thresholds for first- through third-degree offenses, the cases with lower drug quantities in each degree would drop to a lesser degree and those cases were more likely to receive departures than the cases with larger drug quantities. The shift of trace cases to gross misdemeanors could also affect departure rates.³¹

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

Table 5 and Figure 4 display mitigated dispositional departure rates for cases with presumptive prison dispositions for the post-DSRA group and comparison groups. From the limited evidence available so far, it appears that mitigated dispositional departures have decreased, particularly for second-degree offenses. For all cases, the total mitigated dispositional departure rate was lower for the post-DSRA group (27%) than for those sentenced in the earlier periods, particularly in comparison to 2015-16 when the total mitigated dispositional departure rate was 34 percent.

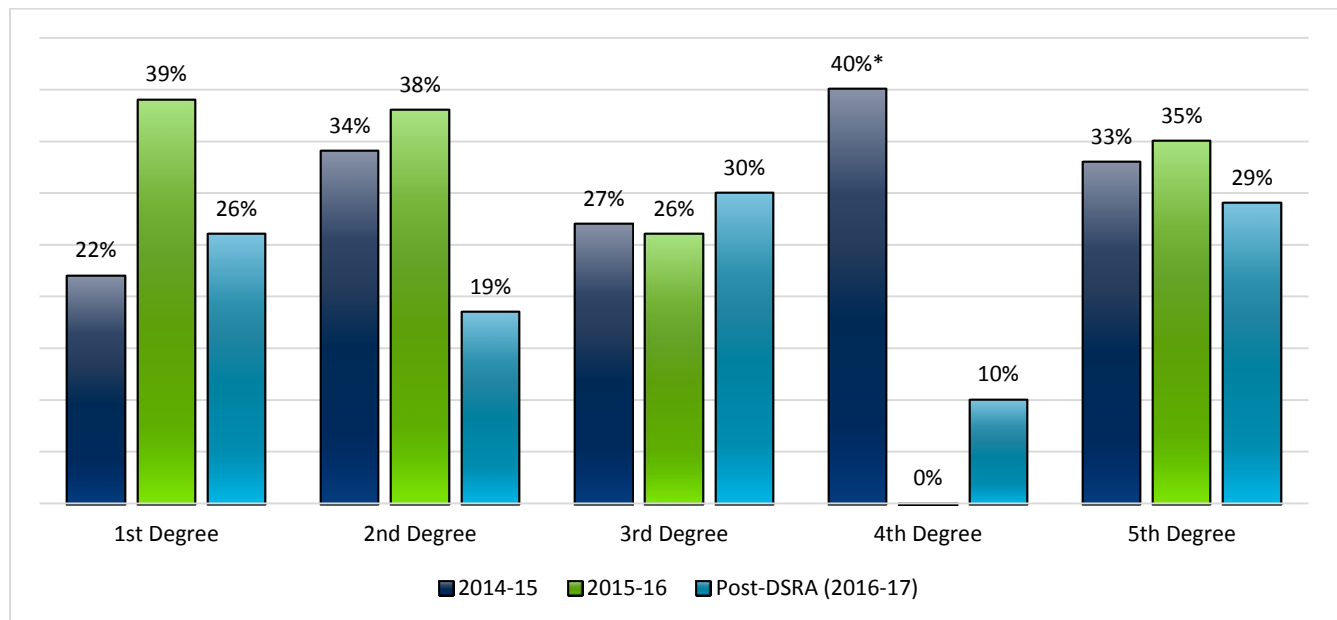
The mitigated dispositional departure rate for second-degree offenders fell from 34 percent in 2014-15 and 38 percent in 2015-16, to 18.5 percent for the post-DSRA group. This reduction is due to the implementation of the Drug Offender Grid, which, as proposed by the Commission and adopted by the DSRA, reduced the percent of second-degree offenders with presumptive prison sentences. To a lesser degree, the mitigated dispositional departure rate also appears to have decreased for fifth-degree offenses (from 33% in 2014-15 and 35% in 2015-16, to 29% for post-DSRA).

Table 5. Mitigated Dispositional Departure Rates – Presumptive Commitments, Comparison Groups & Post-DSRA Group

Degree	2014-15 Comparison Group			2015-16 Comparison Group			Post-DSRA (2016-17)		
	Presumptive Commits	Mitigated Disposition		Presumptive Commits	Mitigated Disposition		Presumptive Commits	Mitigated Disposition	
	Number	Number	Rate	Number	Number	Rate	Number	Number	Rate
First	45	10	22%	51	20	39%	61	16	26%
Second	77	26	34%	80	30	38%	27	5	18.5%
Third	81	22	27%	61	16	26%	54	16	30%
Fourth	5	2	40%	3	0	0%	10	1	10%
Fifth	86	28	33%	97	34	35%	147	42	29%
Total	294	88	30%	292	100	34%	299	80	27%

³¹ A discussion of gross misdemeanor possession of trace amount offenses begins on page 21.

Figure 4. Mitigated Dispositional Departure Rates – Presumptive Commitments, Comparison Groups & Post-DSRA Group



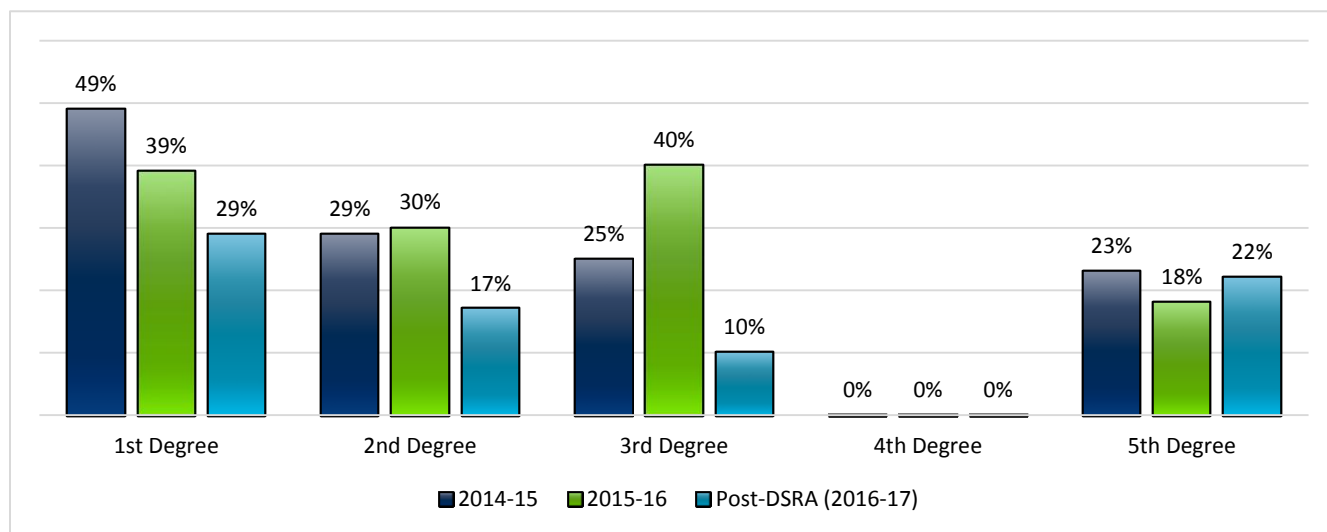
*2 of 5 cases.

Table 6 and Figure 5 display mitigated durational departure rates for cases that received a prison sentence for the post-DSRA and comparison groups. Mitigated durational departure rates declined for first- through third-degree offenses; thus, the overall rate declined. The rate for first-degree offenses declined from 49 percent in 2014-15 and 39 percent in 2015-16 to 29 percent for the post-DSRA group.

Table 6. Mitigated Durational Departure Rates – Executed Prison Sentences, Comparison Groups & Post-DSRA Group

Degree	2014-15 Comparison Group			2015-16 Comparison Group			Post-DSRA (2016-17)		
	Received Prison	Mitigated Duration		Received Prison	Mitigated Duration		Received Prison	Mitigated Duration	
	Number	Number	Rate	Number	Number	Rate	Number	Number	Rate
First	35	17	49%	31	12	39%	45	13	29%
Second	51	15	29%	50	15	30%	24	4	17%
Third	60	15	25%	47	19	40%	42	4	10%
Fourth	4	0	0%	4	0	0%	11	0	0%
Fifth	141	33	23%	149	27	18%	193	43	22%
Total	291	80	28%	281	73	26%	315	64	20%

Figure 5. Mitigated Durational Departures – Executed Prison Sentences, Comparison Groups & Post-DSRA Group



Post-DSRA, Expected Prison-Bed Savings Not Realized (Preliminary)

Because the DSRA adjusted some drug offenses to lesser degrees and moved some to gross misdemeanors, it was anticipated that the act would result in prison bed savings. So far, that has not occurred. The primary reason the anticipated prison bed savings has not been realized appears to be the continuing increases in the number of drug offenses that are sentenced. The estimated bed savings calculated for the DSRA were based on data for offenders sentenced in 2014. As shown in Table 1 (and Table 10), the number of felony drug offenders sentenced increased each year since 2014. The early evidence from January to June of 2017 shows no abatement in the increases.

Table 7 displays the estimated prison beds that will be needed for offenders receiving executed prison sentences for the post-DSRA and comparable cases. “Estimated prison beds” are computed by calculating two-thirds of the sum, in years, of all executed prison sentences imposed for the relevant category.³² Because these estimates are based on the assumption that offenders will serve two-thirds of the pronounced sentences,³³ they do not account for case-specific possibilities that may reduce³⁴ or increase³⁵ the actual prison time to be served. While

³² All beds are not needed in the first year. The total need for the estimated prison beds is, instead, apportioned over a period of approximately nine years, with each year requiring a smaller share of the total estimated prison beds than the year before.

³³ See Minn. Stat. § 244.101, subd. 1 (defining an executed sentence as consisting of two parts: a minimum term of imprisonment, equal to two-thirds of the executed sentence; and a maximum supervised release term, equal to one-third of the executed sentence).

³⁴ Prison time might be reduced, for example, because of jail credit ([Minn. Sentencing Guidelines](#) § 3.C.; [Minn. R. Crim. P. 27.03](#), subd. 4(B)) or early release programs (see, e.g., [Minn. Stat. § 244.17](#) (Challenge Incarceration Program)).

³⁵ Prison time might be increased because of additional time served by supervised release violators (Minn. Stat. § 244.05, subd. 3(2)) or subsequently revoked sentences of offenders who were originally sentenced to probation, rather than to an executed prison sentence (Minn. Stat. § 609.14, subd. 3).

the number of estimated prison beds that will be needed for the post-DSRA group (621 beds) is somewhat lower than that estimated for the 2014-15 group (631 beds), it is slightly higher than that estimated for the 2015-16 group (616 beds). All estimated prison beds are not needed the first year; the need is, instead, apportioned over time.³⁶

The number of offenders receiving prison sentences for first-degree offenses (who typically receive the longest prison sentences) increased post-DSRA. In addition to the increased volume of first-degree offenses (Table 3), this increase may also be due to unanticipated charging and plea negotiation practices, or the decreased mitigated departure rates (Table 5 & Table 6).

The number of post-DSRA second-degree offenders receiving prison sentences declined, as anticipated, as did the number of post-DSRA third-degree offenders.

The number of post-DSRA fifth-degree offenders receiving prison sentences increased, which could be a continuation of the trend seen in previous years of increases in the number of offenders sentenced for fifth-degree offenses. Between 2014 and 2016, the number of offenders sentenced for fifth-degree offenses increased by 60 percent (from 2,849 in 2014 to 4,571 in 2016) and the number receiving prison sentences increased by 69 percent (from 435 in 2014 to 734 in 2016). The length of prison sentences for fifth-degree offenders also grew post-DSRA, which may be related to less severe offenses (by drug amount and criminal history) being treated as gross misdemeanors (see p. 22), and more severe offenses (by drug amount) being treated as fifth-degree, rather than third-degree, offenses.

Table 7. Estimated Prison Beds Needed, Comparison Groups & Post-DSRA Group

Degree	2014-15 Comparison Group			2015-16 Comparison Group			Post-DSRA (2016-17)		
	Number Receiving Prison	Average Duration (months)	Est. Beds Needed	Number Receiving Prison	Average Duration (months)	Est. Beds Needed	Number Receiving Prison	Average Duration (months)	Est. Beds Needed
First	35	93	182	31	105	181	45	84	211
Second	51	65	184	50	69	191	24	76	102
Third	60	38	126	47	40	104	42	45	104
Fourth	4	27	6	4	25	6	11	27	17
Fifth	141	17	133	149	16	134	193	17	186
Total	291	39	631	281	39	616	315	35	621

All estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 32, above.

³⁶ See footnote 32, above.

Without DSRA, Prison-Bed Demand Would Have Been Greater (Preliminary)

Like the previous section, this section analyzes the sentences for “post-DSRA” offenses; that is, offenses committed after July 31, 2016, and sentenced no later than June 30, 2017.³⁷ Unlike the previous section, however, this section does not compare the post-DSRA sentences to sentences actually imposed in previous years. Instead, this section seeks to compare the post-DSRA sentences to the estimated sentences those same cases would have received if they had been sentenced in 2015, before the DSRA took effect.

Due to lack of data for gross misdemeanor post-DSRA cases, this section does not analyze the impact of the DSRA’s creation of a gross misdemeanor for possession of trace amounts of drugs. Instead, this analysis focuses on possession and sale of two of the three drugs for which the thresholds and presumptive punishments may have changed at the higher offense degrees: namely, cocaine and methamphetamine.³⁸ Heroin is also included in this analysis. A total of 1,036 post-DSRA cases—all involving the sale or possession of cocaine, heroin, or methamphetamine sold or possessed on or after August 1, 2016, and sentenced no later than June 30, 2017—are the subject of this analysis.

First, Table 8 (“Estimated Prison Beds Needed Based on Actual Sentences”) displays the estimated prison beds that will be needed for those post-DSRA offenses based on the executed sentences actually imposed in those cases. “Estimated prison beds” are calculated in the manner described on page 18, above.³⁹

Next, Table 8 (“Estimated Prison Beds Needed if Sentenced in 2015”) displays the estimated prison beds that would have been needed for the same set of post-DSRA offenses, if those offenses had been sentenced as similar offenses were sentenced in 2015. This calculation is made by replacing the actual penalty received for each post-DSRA offense with the average penalty offenders with the same criminal history score received in 2015 for the same act (sale or possession) involving a similar amount⁴⁰ of cocaine, methamphetamine, or heroin.

Finally, Table 8 (“Difference”) shows the difference in prison beds needed, over time.⁴¹ A negative number means that fewer beds were actually needed, post-DSRA, than would have been needed if those cases had been sentenced in 2015.

³⁷ These are the 1,722 cases (1,349 felony cases) listed in the “Post-DSRA” row of Table 3, although, as described below, only felony cocaine, methamphetamine, and heroin possession and sale cases (1,036 cases) are analyzed in this section. Again, because the offenses in the post-DSRA group represent significantly less than a complete year of offense data, the results of this analysis should be viewed as preliminary.

³⁸ The thresholds also changed for marijuana; weight thresholds were lowered and plants were added as a unit of measure. Because no cases in the post-DSRA group were above these thresholds, marijuana is not included in this analysis.

³⁹ All estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 32, above.

⁴⁰ For purposes of this analysis, the following drug quantities were considered similar. Sale: under 3 grams; 3 to under 10 grams; 10 to under 100 grams; and 100 grams or more. Possession: under 3 grams; 3 to under 6 grams; 6 to under 25 grams; 25 to under 100 grams; and 100 grams or more. Drug quantities were determined by a review of 95 percent of criminal complaints of cases sentenced in 2015 and all complaints of cases in the post-DSRA group.

⁴¹ All estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 32, above.

Table 8. Estimated Prison-Bed Demand Avoided for Post-DSRA Heroin, Cocaine, and Meth Cases

Degree (Post-DSRA)	Post-DSRA Heroin, Cocaine, and Methamphetamine Sale or Possession Cases			Difference
	Number of Cases	Estimated Prison Beds Needed Based on Actual Sentences	Estimated Prison Beds Needed if Sentenced in 2015	
First	57	197	160	+37
Second	53	98	122	-24
Third	106	91	154	-63
Fourth	17	14	26	-12
Fifth*	803	153	311	-158
Total	1,036	552	773	-221
<i>If felony cases not involving the sale or possession of heroin, cocaine, or meth are added back in:</i>				
	1,349	621	842	-221

All estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 32, above.

*Felony only.⁴²

The bottom row of Table 8 (in italics) adds back in the estimated prison beds attributable to drug cases other than sale or possession of heroin, cocaine, or methamphetamine. (Because the DSRA did not change the quantity thresholds for these offenses,⁴³ it is assumed that the prison-bed need for these cases would not significantly change pre- and post-DSRA.) It will be seen that the estimated prison-bed need for the offenses sentenced in the post-DSRA group (621 beds) is 26 percent smaller than the estimated prison-bed need for those same offenses would have been (842 beds) if each case had been sentenced as a similar case was typically sentenced in 2015. All estimated prison beds would not have been needed the first year; the need would, instead, have been apportioned over time.⁴⁴

As noted above, the post-DSRA group represents significantly less than a complete year of sentencing data. In addition, it is possible that distribution of drug types, drug quantities, or sentences imposed for cases sentenced within the first eleven months of the DSRA will prove to be atypical of post-DSRA cases in the long run. Accordingly, these results should be regarded as preliminary.

⁴² Due to a lack of data, this analysis does not include gross misdemeanor fifth-degree cases (the subject of the next section). If those cases were included in Table 8, they would not increase the estimated prison beds needed based on actual post-DSRA sentences because gross misdemeanor offenses are not sentenced to prison. On the other hand, due to the gross misdemeanor statute's eligibility requirements—of no prior drug offenses and low drug quantities—it is assumed that this offense category's contribution to the 2015 estimated prison-bed need would not have been large.

⁴³ Regarding the quantity threshold changes applicable to marijuana offenses, see footnote 38, above.

⁴⁴ See footnote 32, above.

DSRA's New Gross Misdemeanor Offense is Being Widely Used

The DSRA created a gross misdemeanor fifth-degree offense for possessing a trace amount of a controlled substance, effective for offenses committed after July 31, 2016. Before the effective date, this offense would have been a felony.⁴⁵ Only offenders with no prior conviction for sale or possession of a controlled substance offense are eligible for the gross misdemeanor penalty. A “trace” amount is defined as less than 0.25 grams or one dosage unit for controlled substances that are not heroin; and 0.05 grams for heroin.

Since the law's effective date, there were 601 convictions for gross misdemeanor possession of a trace amount of a controlled substance (sentenced through October 19, 2017).⁴⁶ Almost 66 percent were male and 34.1 percent were female (Figure 6). Figure 7 displays the racial and ethnic composition of these offenders. Over sixty-five percent were white, 7.3 percent were black, 16.7 percent were American Indian, 5.1 percent were Hispanic, 2.7 percent were Asian, and in 2.9 percent of the cases, the person's race or ethnicity was “other” or “unknown.”⁴⁷

The majority of the type of drug possessed in the gross misdemeanor trace-amount cases was methamphetamine at 79.2 percent (Figure 9). This is consistent with the trend described on pages 11 and following, above. The other drugs were: cocaine at 4.2 percent; heroin at 3.7 percent; opium at 0.8 percent; synthetic narcotics (“Synthetic Narc.”) at 1.7 percent; marijuana at 2.0 percent; and “other” or “unknown” at 8.5 percent.⁴⁸

The Minnesota judicial district with the most convictions was the Ninth Judicial District (counties of Aitkin, Beltrami, Cass, Clearwater, Crow Wing, Hubbard, Itasca, Kittson, Koochiching, Lake of the Woods, Mahnommen, Marshall, Norman, Pennington, Polk, Red Lake and Roseau counties) with 25.0 percent, and the judicial district with the least convictions was the Fourth Judicial District (Hennepin County) with 1.5 percent (Figure 8). A map of the judicial districts can be found in Appendix 1 (p. 62). Tables displaying the number of cases and data by Minnesota counties are available in Appendix 2, beginning on page 63.

In addition to the distribution of gross misdemeanor trace-amount cases across judicial districts, Figure 8 also displays, for comparison, the distribution of felony fifth-degree possession cases sentenced in 2015—before the DSRA took effect—in which the complaints reflected a trace amount of the controlled substance.⁴⁹ Figure 8 also displays each district's share of the state's estimated 2016 population, age 15 and older. Unlike the other judicial districts, post-DSRA gross misdemeanor trace-amount cases committed in the Second Judicial District (Ramsey

⁴⁵ Unlike a felony sentence, a gross misdemeanor sentence may never include state prison time—even if probation is revoked and the entire sentence is executed. Cf. Minn. Stat. §§ 609.02, subds. 2 & 4, & 609.03(2) (maximum imprisonment for gross misdemeanor is one year) with Minn. Stat. § 609.105, subd. 3 (sentence of one year or less to be served locally).

⁴⁶ Sentenced under Minn. Stat. § 152.025, subd. 4(a), 8/25/2016 to 10/19/2017. Source: Minnesota Judicial Branch. (Obtained 11/15/2017.)

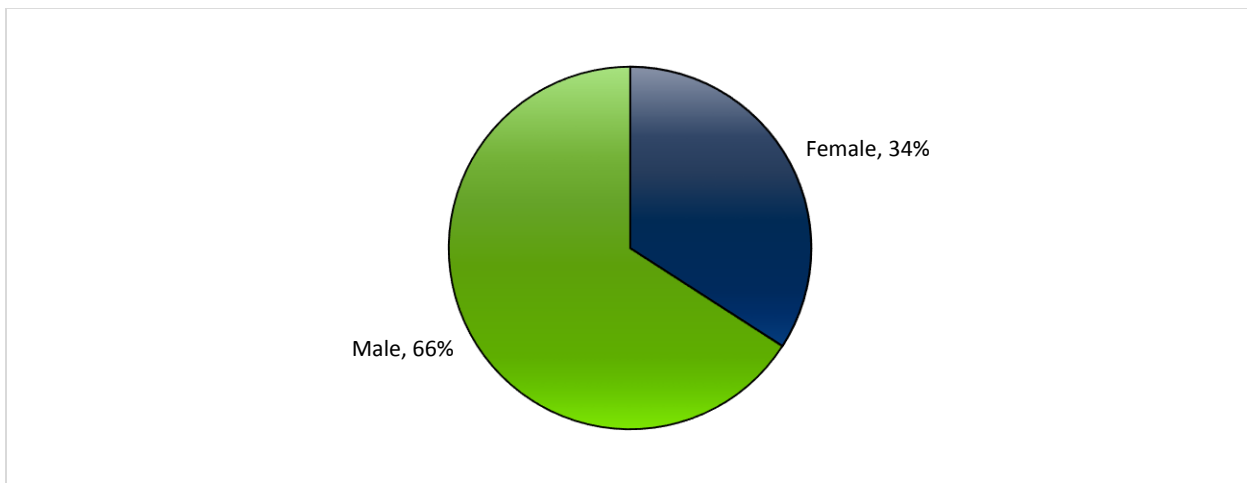
⁴⁷ Other/Unknown: .9% multiracial; .9% unavailable; .7% “other;” .2% Hawaiian/Pacific Islander; and .2% refused.

⁴⁸ Drug type information is based on Minnesota Offense Codes (MOCs) obtained from the court record.

⁴⁹ From a sample of 95 percent of fifth-degree possession cases sentenced in 2015 wherein the drug quantity, according to the criminal complaint, was described as a “trace” or otherwise would have met the DSRA's trace definition (Minn. Stat. § 152.025, subd. 4(a) (2016)), if the DSRA had applied when those crimes were committed. Although offenders with previous convictions would not have been eligible for gross misdemeanor treatment if the DSRA had applied, they have not been excluded from these data.

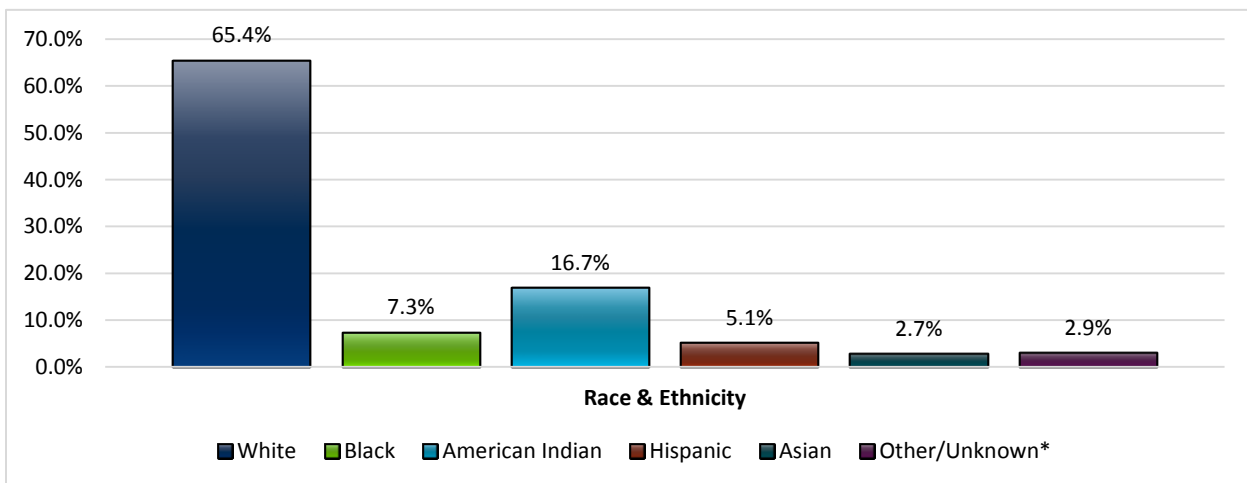
County) and Fourth Judicial District (Hennepin County) are prosecuted by the appropriate city attorney, rather than the county attorney.⁵⁰ This jurisdictional change, which applies only to those two judicial districts, may account for some of the variation in the data shown in Figure 8.

Figure 6. Gross Misdemeanor Possession of Trace Amounts by Gender, Sentenced 8/25/2016 to 10/19/2017



Source: Minnesota Judicial Branch. (Obtained 11/15/2017.)

Figure 7. Gross Misdemeanor Possession of Trace Amounts by Race & Ethnicity, Sentenced 8/25/2016 to 10/19/2017

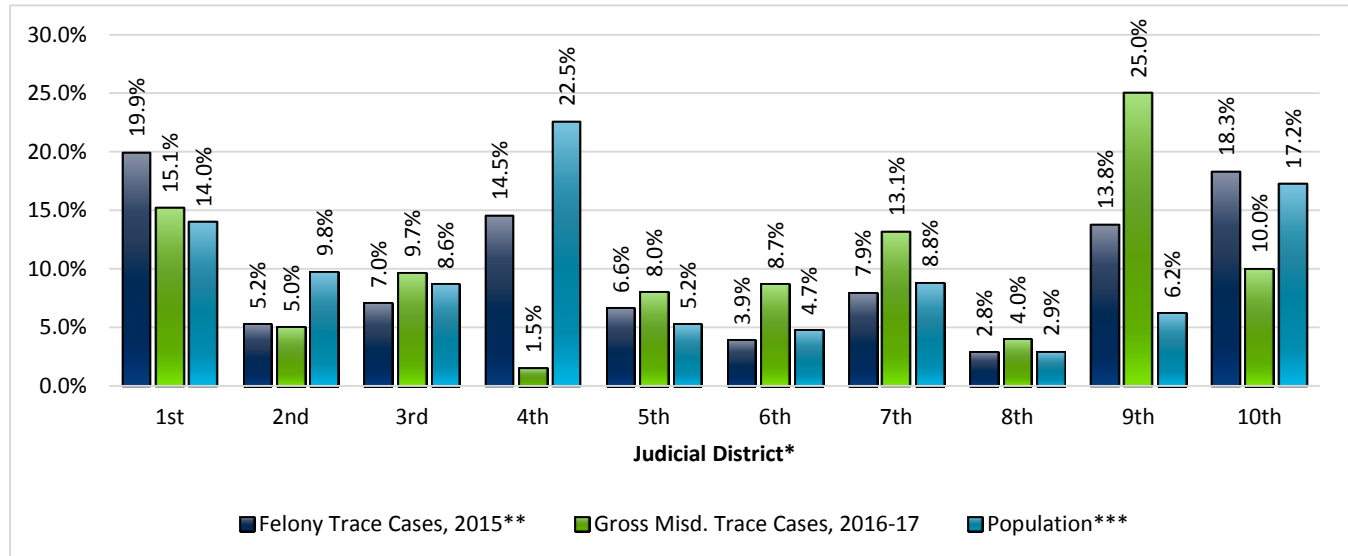


Source: Minnesota Judicial Branch. (Obtained 11/15/2017.)

*Other/Unknown: .9% multiracial; .9% unavailable; .7% "other"; .2% Hawaiian/Pacific Islander; and .2% refused.

⁵⁰ There are some exceptions to this rule (e.g., in some municipalities whose population is less than 2,500). [Minn. Stat. § 484.87](#), subd. 2. In all other counties, the county attorney must prosecute. [Minn. Stat. § 388.051](#), subd. 2(d).

Figure 8. Distribution by Judicial District of Gross Misdemeanor Possession of Trace Amount Cases Sentenced 8/25/2016 to 10/19/2017; Felony Fifth Degree Possession of Trace Amount Cases Sentenced 2015; and Population Age 15 and Older



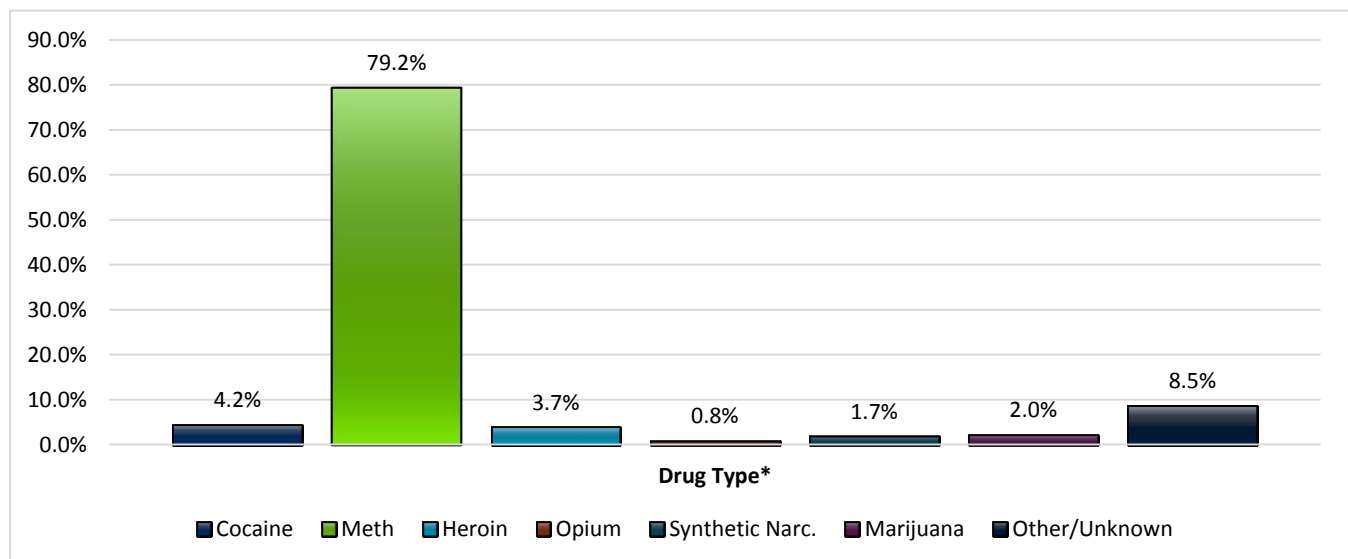
Source of Gross Misd. Trace Cases, 2016-17: Minnesota Judicial Branch. (Obtained 11/15/2017.)

*See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.

**See footnote 49.

***2016 estimated population, age 15 and over, U.S. Census Bureau (June, 2017).

Figure 9. Gross Misdemeanor Possession of Trace Amounts by Drug Type, Sentenced 8/25/2016 to 10/19/2017



Source: Minnesota Judicial Branch. (Obtained 11/15/2017.)

*Drug type information is based on Minnesota Offense Codes (MOCs).

Stays of Adjudication Have Increased Post-DSRA

Stays of adjudication under [Minn. Stat. § 152.18](#) (“Discharge and Dismissal”) are a type of deferred prosecution that allows certain first-time drug offenders to be placed on probation and receive conditions of probation (e.g., drug treatment, educational programming) without judgment of guilt. If the conditions are successfully met, offenders are discharged from probation and proceedings are dismissed. Effective with the DSRA, such a stay of adjudication became mandatory for first-time fifth-degree controlled substance possession offenders with no felony record and no previous participation in diversion.⁵¹ Additionally, such stays of adjudication were expanded to permit their use for third-degree controlled substance possessions.

Comparison Group

Because these comparisons of pre-DSRA and post-DSRA stays of adjudication rely on less than a complete year of post-DSRA offense data, the results should be viewed as preliminary.

Table 9 displays, by offense degree, stay of adjudication dispositions under Chapter 152 in 2015, 2016, and 2017, as reported through November 2017. A total of 3,927 cases were disposed of within this time period: 784 in 2015; 1,223 in 2016; and 1,920 in 2017. The data are separated into two groups: “Pre-DSRA” (offense dates before August 1, 2016); and “Post-DSRA” (offense dates on or after August 1, 2016).⁵² There were 2,440 pre-DSRA cases and 1,487 post-DSRA cases.

Although Table 9 does not yet contain a complete year’s data for 2017, the number of 2017 post-DSRA stays of adjudication already exceeds the number of stays of adjudication reported in either of the two previous years (Figure 10).

Table 9. Number of Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015-2017

	Pre-DSRA				Post-DSRA				Total Pre- & Post- DSRA
	Disposition Year				Disposition Year				
Degree	2015	2016	2017*	Total	2015	2016	2017*	Total	
First	1	3	0	4	0	0	1	1	5
Second	3	4	3	10	0	0	1	1	11
Third	17	20	21	58	0	1	48	49	107
Fourth	21	18	8	47	0	2	10	12	59
Fifth	742	1,022	557	2,321	0	153	1,271	1,424	3,745
Total	784	1,067	589	2,440	0	156	1,331	1,487	3,927

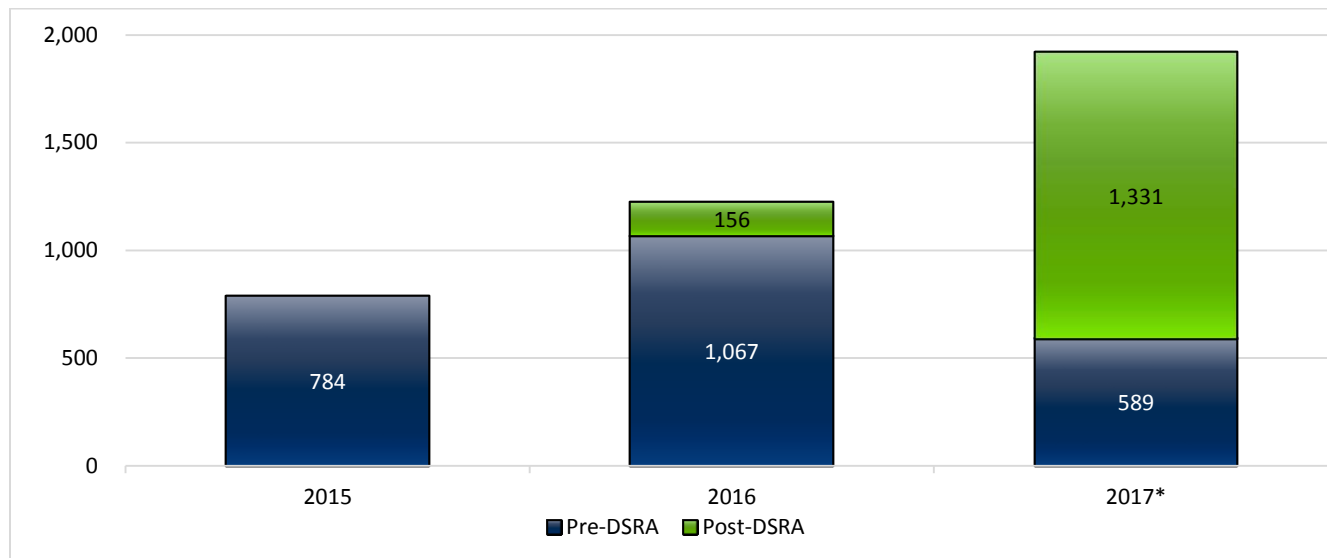
Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

*Data as reported as of Nov. 29, 2017.

⁵¹ See Minn. Stat. § 152.18, subd. 1(b) for a complete description of the criteria.

⁵² Stay of adjudication dispositions, first- through fifth-degree offenses with dispositions in 2015, 2016, and 2017. Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

Figure 10. Total Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015-2017

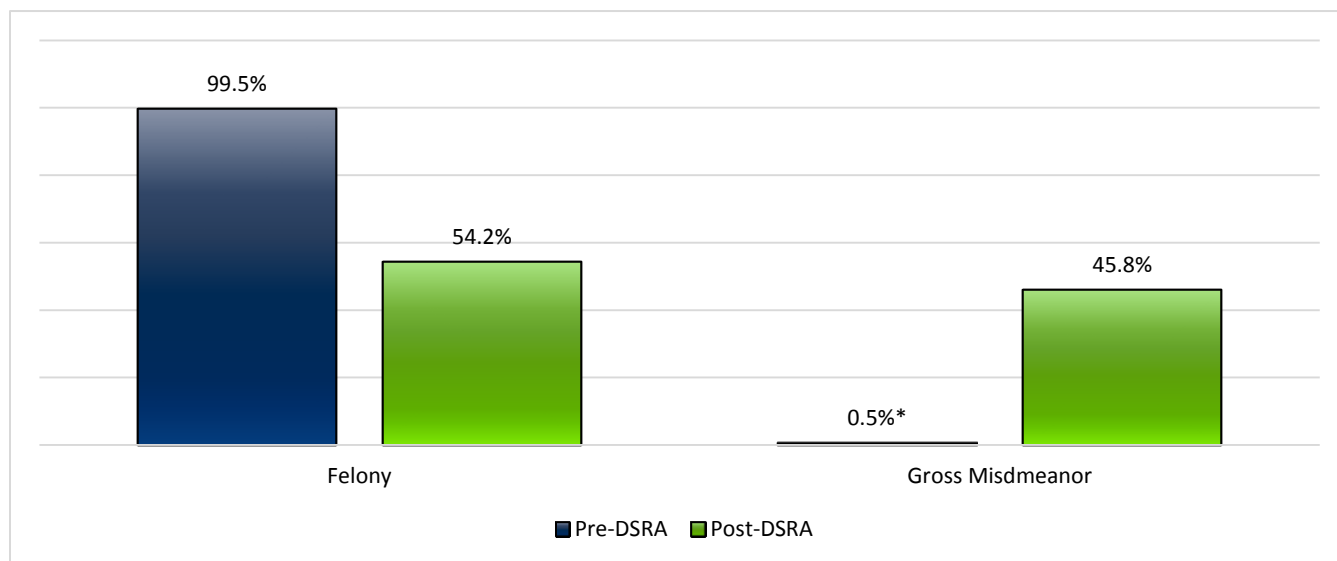


Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

*Data as reported as of Nov. 29, 2017.

As described on page 22, the DSRA created a gross misdemeanor fifth-degree offense for possessing a trace amount of a controlled substance. Figure 11 shows that gross misdemeanor offenders were receiving stay of adjudication dispositions post-DSRA.

Figure 11. Distribution by Offense Level of Stay of Adjudication Dispositions under Chapter 152, Pre-DSRA & Post-DSRA



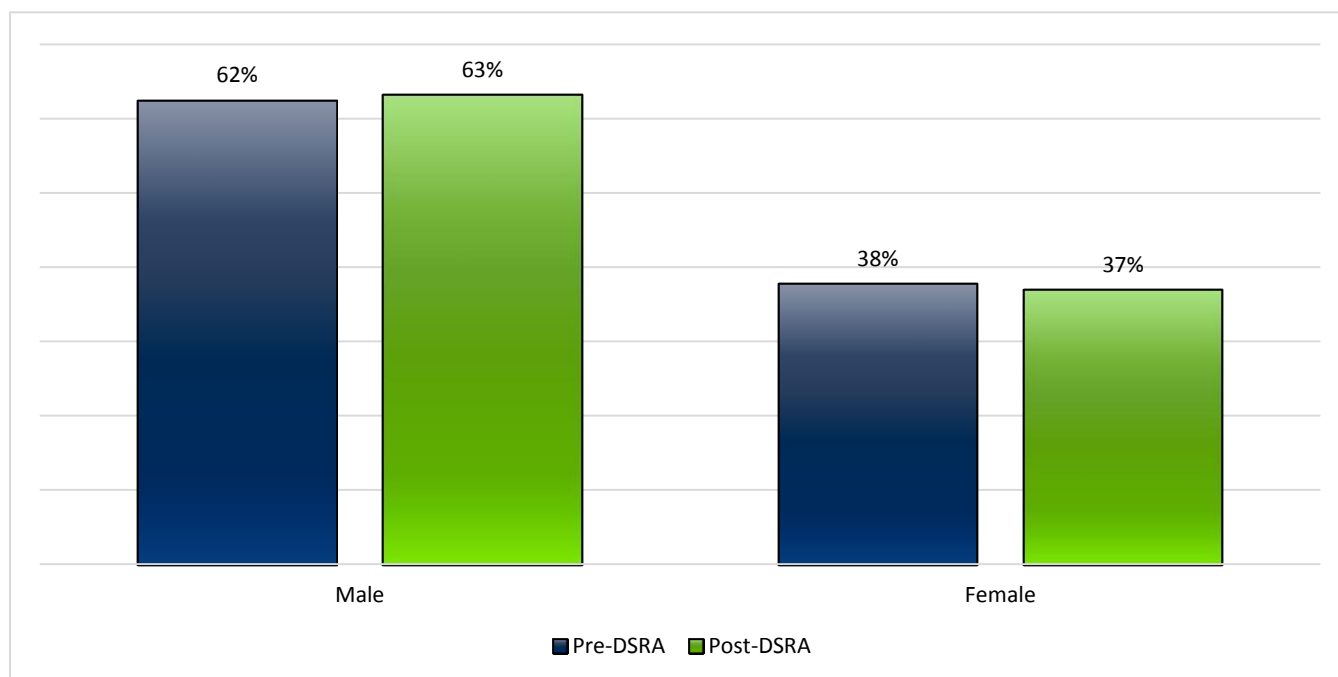
Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

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

Pre-DSRA & Post-DSRA Comparisons

As Figure 12 shows, the distribution by gender of stay of adjudication dispositions was largely the same for the pre-DSRA and post-DSRA groups. This was generally true of the distribution by judicial district (Figure 13), although there was some variation in the first, fourth, and fifth districts. Distribution by race and ethnicity was largely the same for pre-DSRA and post-DSRA groups (Figure 14).

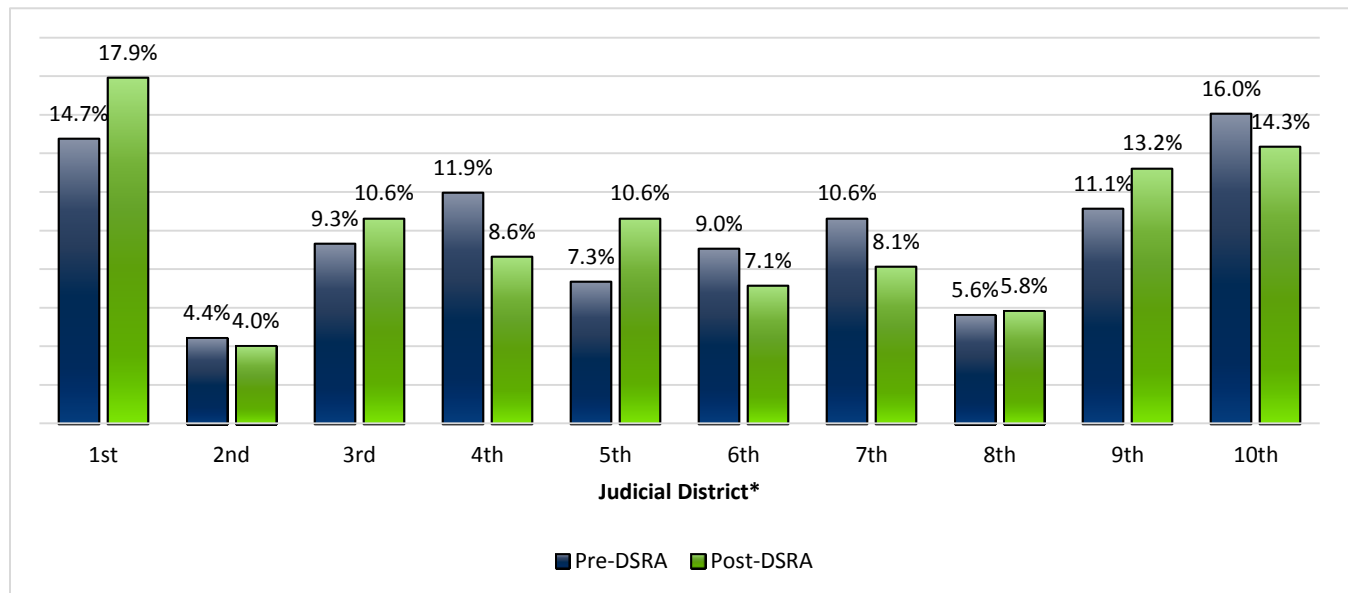
Figure 12. Distribution by Gender of Stay of Adjudication Dispositions under Chapter 152, Pre-DSRA & Post-DSRA



Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

*93 cases in which no gender was identified were excluded.

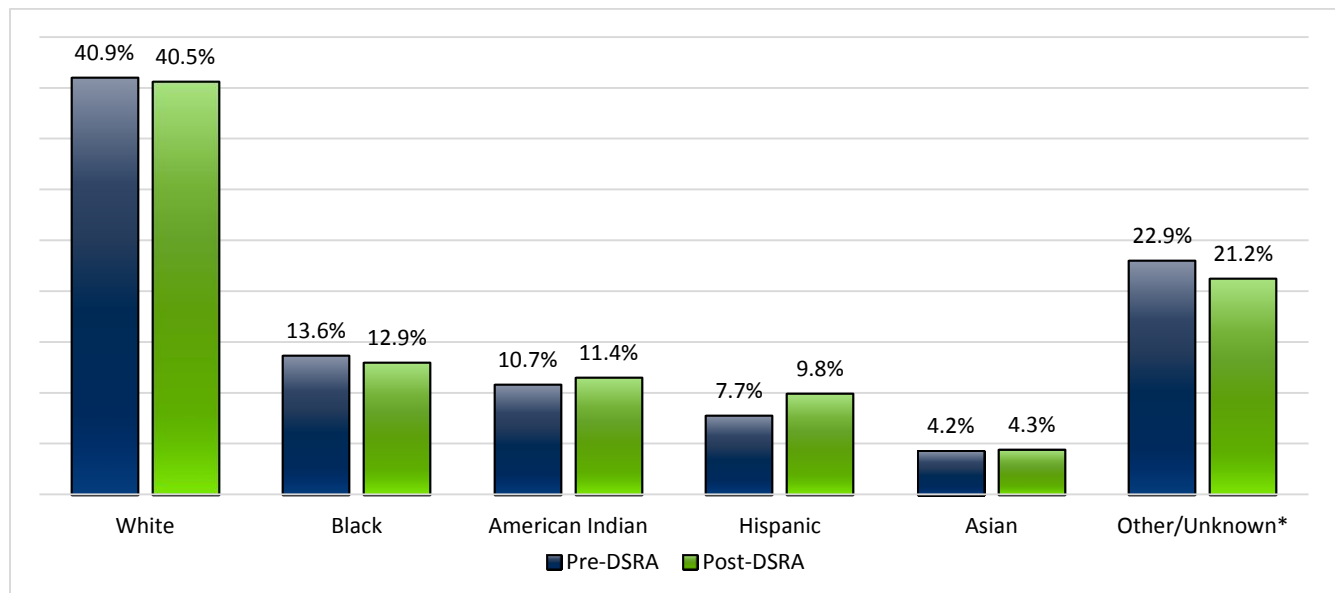
Figure 13. Distribution by Judicial District of Stay of Adjudication Dispositions under Chapter 152, Pre-DSRA & Post-DSRA



Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

*See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.

Figure 14. Distribution by Race & Ethnicity of Stay of Adjudication Dispositions under Chapter 152, Pre-DSRA & Post-DSRA

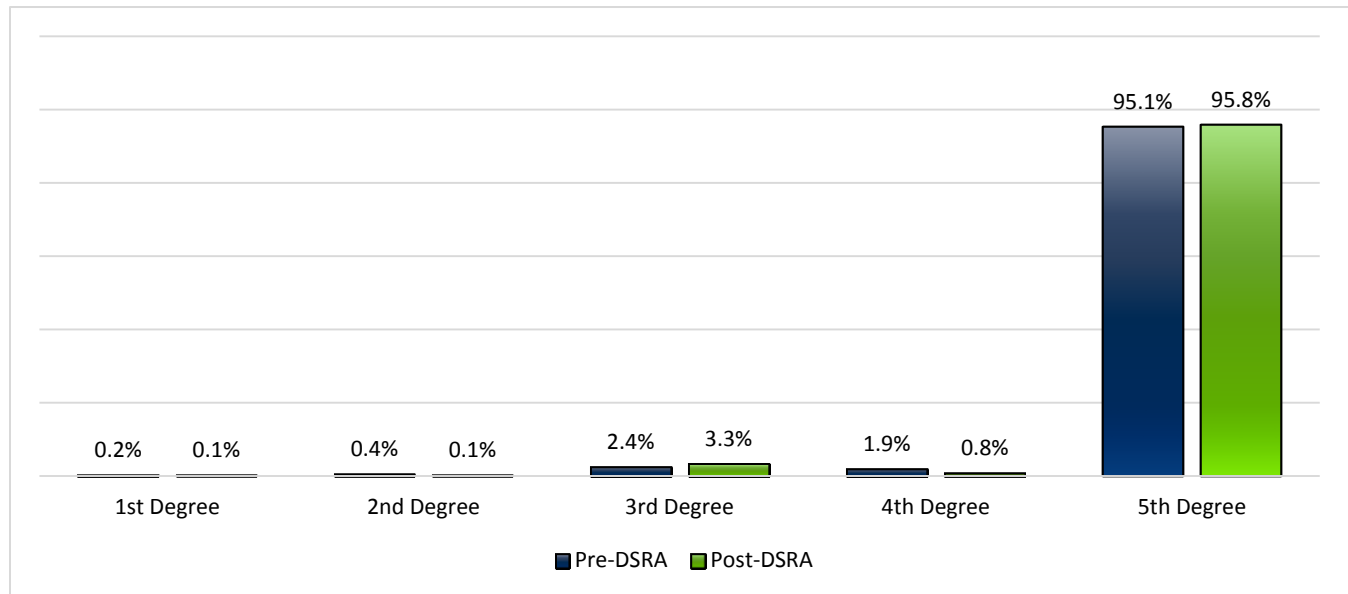


Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

*Other/Unknown: 10.2% Pre-DSRA & 10.4% Post-DSRA unknown; 5.5% Pre-DSRA & 3.7% Post-DSRA unavailable; 3.4% Pre-DSRA & 2.9% Post-DSRA "other;" 1.7 Pre-DSRA & 1.5% Post-DSRA multiracial; 1.5% Pre-DSRA & 1.6% Post-DSRA refused; and .6% Pre-DSRA & 1.1% Post-DSRA Hawaiian/Pacific Islander.

As stated, the DSRA required statutory stays of adjudication for certain first-time fifth-degree possession offenders, and permitted the use of such stays of adjudication in third-degree possession cases. Figure 15 shows that the use of stays of adjudication for third-degree cases has gone up slightly post-DSRA, but their use remains most common in fifth-degree cases.⁵³

Figure 15. Distribution by Controlled Substance Degree of Stay of Adjudication Dispositions under Chapter 152, Pre-DSRA & Post-DSRA



Source: Minnesota Judicial Branch. (Obtained 11/29/2017.)

⁵³ First- and second-degree possession cases, and sale cases at every degree, are ineligible for disposition under [Minn. Stat. § 152.18](#). Nothing in that section, however, explicitly curtails the general authority of the district court to stay adjudication for such an offense, although the circumstances in which the district court is authorized to “stay[] adjudication of guilt over the prosecutor’s objection and in the absence of statutory authority” have been described as “unusual,” *State v. Foss*, 556 N.W.2d 540, 540-41 (Minn. 1996); see also *State v. Lee*, 706 N.W.2d 491 (Minn. 2005).

The Commission's Activities in 2017

The Minnesota Sentencing Guidelines Commission is an eleven-member body created by the Legislature. Three members are appointed by the Chief Justice of the Supreme Court: the Chief Justice's designee; a judge of the Court of Appeals; and a district court judge. Eight members are appointed by the Governor: one public defender; one county attorney; the Commissioner of Corrections; one peace officer; one probation officer; and three public members, one of whom must be a felony crime victim.

The Chief Justice's designee is Associate Supreme Court Justice (Retired) Christopher Dietzen, who also serves as Chair by appointment of the Governor. The Court of Appeals judge is Judge Heidi Schellhas, who is also the Commission's Vice-Chair. The district court judge is Judge Caroline Lennon, First Judicial District. Among the Commission members selected by the Governor, the public defender member is Cathryn Middlebrook, Chief Appellate Public Defender; the county attorney member is Peter Orput, Washington County Attorney; Tom Roy is the Commissioner of Corrections; the peace officer member is Saint Paul Police Sgt. Salim Omari;⁵⁴ the probation officer member is Valerie Estrada, Corrections Unit Supervisor, Hennepin County Community Corrections & Rehabilitation; and the public members are Angela Champagne-From, Yamy Vang, and Senior Judge Mark Wernick.

The Commission met ten times in 2017 to fulfill its statutory responsibilities of improving the Sentencing Guidelines and conducting ongoing research into sentencing practices and other matters relating to the improvement of the criminal justice system. In addition, the Commission held one public hearing on July 20, 2017.

Topics of interest to the Commission in 2017 included life sentences for juveniles, the Commission's demographic impact statement policy, Guidelines implications of important case law in Minnesota, sentencing practices for repeat violent offenders, and an ongoing review of Minnesota's criminal history score.

At its January, March, and May meetings, the Commission heard presentations and discussed juvenile life without parole in Minnesota. Related topics included brain development in adolescents, fair and rational sentences for juveniles, and a review of what other states are doing post-*Miller v. Alabama*.⁵⁵ In January, March, April, May, November, and December, the Commission reviewed its existing demographic impact statement policy and approved revisions to it, described on page 35.

⁵⁴ Saint Paul Police Commander Paul Ford was a member of the Commission until his resignation from the Commission effective November 9, 2017. Sgt. Omari's appointment was effective January 10, 2018.

⁵⁵ *Miller v. Alabama*, 567 U.S. 460 (2012), held a sentencing scheme that mandated life without the possibility of parole for a juvenile offender to be unconstitutional. As a result of *Miller*, Minn. Stat. § 609.106, subd. 2, in its current form, has been held to be unconstitutional as applied to a juvenile offender. *Jackson v. State*, 883 N.W.2d 272 (Minn. 2016).

In January and March, the Commission discussed the implications of the vacation of past sentences on criminal history as it related to *State v. Haywood*.⁵⁶ In July and September, the Commission discussed implications of *State v. Kirby*⁵⁷ and what guidance should be given to probation officers on how to prepare a sentencing worksheet when a sentencing judge applied the Drug Offender Grid because of *Kirby*.

In March and September, the Commission discussed repeat violent offenders, including how often offenders are sentenced under [Minn. Stat. § 609.1095](#), which are the existing sentencing provisions for repeat violent offenders and career offenders.

From March through October, the Commission conducted an eight-part review of criminal history scores. The Commission discussed the role of criminal history in punishment; reviewed the four components of Minnesota's criminal history score: custody status, juvenile history, misdemeanor/gross misdemeanor history, and felony history; and compared criminal history score computations from other sentencing guidelines jurisdictions.

Modifications to the Sentencing Guidelines

One of the fundamental responsibilities of the Commission is to maintain the Guidelines by annually amending them in response to legislative changes, case law, and issues raised by various parties.

Following a July 20, 2017, public hearing, the Guidelines modifications in response to legislative changes were adopted by the Commission on July 27, 2017, and took effect August 1, 2017. Those modifications, summarized in paragraphs A, B, and C, below, are fully reproduced in Appendix 3 (p. 66).

A. New and Amended Crime Laws Affecting the Guidelines

The Commission reviewed laws related to new and amended crime laws in the 2017 Regular Session and 1st Special Session, and adopted proposals to assign severity levels to three new or amended felony offenses.

1. Modification to Guidelines §§ 5.A and 5.B resulting from amended Damage to Property under Minn. Stat. § 609.595, subd. 1

The Commission adopted a proposal to assign to the offense of Damage to Property (Public Safety Motor Vehicle) a severity level of 3, and to make technical changes to accommodate the renumbering of the clauses of Minn. Stat. § 609.595, subd. 1.

⁵⁶ In *State v. Haywood*, 886 N.W.2d 485 (Minn. 2016), the Minnesota Supreme Court held that a BB gun was not a firearm for the purposes of the felon-in-possession statute found in [Minn. Stat. § 609.165](#). For a further discussion of this case, see footnote 84 and accompanying text.

⁵⁷ *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017), held that the amelioration doctrine required the resentencing of a person whose conviction was not yet final on May 23, 2016—the effective date of section 18 of the Drug Sentencing Reform Act (2016 Minn. Laws [ch. 160](#))—in a case in which the Drug Offender Grid, as established under that section, reduced the offender's presumptive sentencing range from that of the sentencing grid in effect at the time of the offense.

2. Assign a severity level of 3 to Use of Automated Sales Suppression Devices under Minn. Stat. § 289A.63, subd. 12, resulting in no modification to Guidelines §§ 5.A and 5.B

The Commission adopted a proposal to assign Use of Automated Sales Suppression Devices a severity level of 3. Because the offense is codified within the existing severity-level 3 offense of Tax Evasion Laws, the Commission therefore adopted a proposal to make no modifications to §§ 5.A and 5.B as a consequence.

3. Modifications to Guidelines §§ 5.A and 5.B and Appendix 3 resulting from the new Impersonating a Peace Officer under Minn. Stat. § 609.4751

The Commission adopted a proposal to assign Impersonating a Peace Officer a severity level of 2, and to add the offense of Impersonating a Peace Officer to Guidelines Appendix 3 (Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table).

B. Technical Amendments to Crime Laws Affecting the Guidelines

The Commission reviewed laws related to new and amended crime laws in the 2017 Regular Session and 1st Special Session, and adopted a proposal to modify Guidelines §§ 5.B and 7, as a result of technical amendments to the headnote and text of Minn. Stat. § 268.182, which changed the title of the offense from “APPLICANT’S FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY” to “FRAUD; CRIMINAL PENALTY.” As a result, the Commission changed the offense’s title in the Guidelines from “False Representations” to “Unemployment Benefit Fraud.”

C. Technical Corrections

The Commission reviewed technical errors, and adopted a proposal to modify Guidelines Comment 2.D.106; and the Guidelines Cover Page.

1. Modification to Guidelines Comment 2.D.106, to strike an obsolete cross-reference

The Commission adopted a proposal to strike the reference to the obsolete cross-reference to Comment 2.C.10 in Comment 2.D.106.

2. Modification to Guidelines Cover Page to strike the word “annual.”

The Commission adopted a proposal to strike the word “annual” from the notation on the Guidelines cover page to clarify that the Guidelines are in effect until the next publication, which may or may not be annual.

Proposed Modifications to the Sentencing Guidelines

At its October 12 and November 9, 2017, meetings, the Commission adopted motions to advance three proposed modifications to the Sentencing Guidelines and Commentary to public hearing, and to report those

proposed modifications to the Legislature in this report. Those proposed modifications, summarized in paragraphs A, B, and C below, are fully reproduced in Appendix 4 (p. 72).

A. Proposal to Modify Guidelines § 1.A – Statement of Purpose and Principles

On November 9, 2017, the Commission proposed to modify Guidelines § 1.A, Statement of Purpose and Principles. The modifications would incorporate the promotion of public safety into the Guidelines’ purpose, and would establish the considerations of public safety and the long-term negative impact of crime on the community within the principles embodied by the Guidelines. These modifications would be consistent with statutory changes made to [Minn. Stat. § 244.09](#), subd. 5, in 1989⁵⁸ and 1996.⁵⁹

B. Proposal to Modify Guidelines § 5 - Felony Escape from Electronic Home Monitoring

On October 12, 2017, the Commission proposed to officially designate Escape from Electronic Home Monitoring (EHM) under Minn. Stat. § 609.485, subd. 4(f), an “unranked” offense in Guidelines § 5.

C. Proposal to Modify Guidelines Comment 2.E.03 – Offenses Involving a Dangerous Weapon; Application of Mandatory Sentences

On November 9, 2017, the Commission proposed to correct the list of designated offenses in Guidelines Comment 2.E.03 that, by definition, involve a firearm or other dangerous weapon.

Staff Activities

The following provides a summary of the activities performed by staff—in addition to providing support and research for the Guidelines modifications detailed in this report, to further the goals and purposes of the Commission. In particular, staff assist the Commission in fulfilling its statutory charter to serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on sentencing practices. This includes information regarding the impact of statutory changes to the state's criminal laws related to controlled substances, including those changes enacted by the legislature in Laws 2016, chapter 160.⁶⁰

Monitoring Sentencing Data

One of the primary functions of the Minnesota Sentencing Guidelines Commission (MSGC) staff is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the Guidelines.⁶¹ A case is defined when a sentencing worksheet is received from the

⁵⁸ [1989 Minn. Laws ch. 290](#) art. 2 § 8.

⁵⁹ [1996 Minn. Laws ch. 408](#) art. 3 § 11.

⁶⁰ The Commission is charged both with its research role, and its role as a clearinghouse and information center on sentencing practices, in [Minn. Stat. § 244.09](#), subd. 6.

⁶¹ Beginning in 2006, first-degree murder offenses were included in the Commission’s data. Previously, only attempted first-degree murder and conspiracy to commit first-degree murder had been included. First-degree murder has a mandatory life sentence; the presumptive sentence is not determined by the Sentencing Guidelines. It was decided to include first-degree

probation officer and matched with sentencing data from the District Court. As part of the agency's core functions, MSGC staff collected and analyzed data for almost 17,000 felony offenders. Additionally, staff published the annual edition of the Sentencing Guidelines and Commentary and a report on sentencing practices and trends.⁶²

Training & Assistance

The staff provides assistance with the Guidelines in a variety of ways: traditional training seminars, website training materials and informational publications, and email and telephone assistance for judges, attorneys, and probation officers in determining appropriate presumptive sentences. On average, the staff fielded an average 100 phone calls per month in 2017, the majority of which were questions from practitioners about the application of the Guidelines to the sentencing of a particular felony case.

In the continued effort to promote accurate application of the Guidelines, staff trained over 300 practitioners in ten traditional classroom training events. In addition to fulfilling training requests from probation agencies, public defenders, and prosecutors, this year's classroom trainings included participation in the statewide public defenders trainings delivered by the State Public Defenders Office, and in the Minnesota Association of Community Corrections Act Counties annual conference.

Webinars also continued to be a focus of improved training delivery. These events allow staff to deliver on a single topic, giving practitioners a deeper view into advanced policy topics. They also allow staff efficiently to train large groups of practitioners who may have been unable to attend a live training. Four webinars were offered throughout the year to new practitioners, allowing staff to train these practitioners sooner, rather than delaying training until it could be scheduled in their region. Additionally, a recorded Practitioner's Training module was added to the website so that new practitioners could be immediately trained.

Website & Data Requests

The Commission's website receives almost 5,000 visits each month, up four percent from last year (4,372 per month in 2017 vs. 4,213 per month in 2016). The website includes easily accessible email signup for upcoming trainings, public hearing notices, and Commission meeting notices. One-click data requests makes getting sentencing information quick and easy.

One of the important ways in which the Commission's staff works with fellow agencies and criminal justice practitioners across the state is researching and compiling statistical data in response to information requests. MSGC staff responded to an average 25 data requests each month for over 300 data requests in 2017. These requests are most often made by lawyers or corrections agents to show evidence of specific sentencing practices to the court. However, the requests are also made by academics, students, other state agencies,

murder in the Commission's data following the Legislature's creation of life sentences for certain sex offenses in 2005. The MSGC now maintains data on all life sentences pronounced.

⁶² This information, in summary form, may be found in the section of this report entitled, "2016 Sentencing Practices Data Summary," beginning on page 36.

legislative staff, law enforcement, and the press for other purposes. The topics range from departure data for a single type of offense within a given county to comparative data on how an offense has been sentenced from one jurisdiction to another.

Collaboration with Criminal Justice Agencies

The staff's knowledge of felony sentencing and practice makes it a valued contributor to criminal justice policy discussions. Each year, Commission staff works with the Department of Corrections to generate prison bed projections. MSGC staff also serves on the Criminal and Juvenile Justice Information Advisory Group.

Fiscal Impact Statements & Demographic Impact Statements

During the 2017 Legislative Session, staff provided fiscal impact statements for 25 bills. These impact statements include details as to any increase or decrease in adult offender populations, the estimated net increase in state correctional facility beds, and the impact on confinement in local correctional facilities. Staff provided all requested information within the time requirements set by the Legislature.

In 2008, MSGC staff began providing the Minnesota Legislature demographic impact statements—previously referred to as “racial-impact statements”—on certain crime bills when such a statement was anticipated to be helpful to the Legislature. When, in the course of preparing a required fiscal impact statement, MSGC staff identifies a bill that meets its criteria for preparing a demographic impact statement, it prepares such a statement and sends it to the chairs of the crime committees in the Senate and the House. This is done separately from the required fiscal-impact statements.

During the 2017 Legislative Session, one legislative policy proposal met the criteria for preparing a demographic impact statement: the Minnesota Public Safety Personnel Protection Act ([House File 34](#)), which was not ultimately enacted. That demographic impact statement is available on the MSGC web site.⁶³

In December, 2017, the Commission revised its demographic impact statement policy to clarify its authority for preparing such statements, define the circumstances under which statements are prepared, establish standards for such preparation, and expand the demographic scope of such statements beyond race alone.⁶⁴

⁶³ The full statement is available at http://mn.gov/msgc-stat/documents/racial-impact-statements/2017/RIS_HF34.pdf (retrieved Sept. 28, 2017).

⁶⁴ The agency's current Demographic Impact Statement Policy, as approved by the Minnesota Sentencing Guidelines Commission on December 14, 2017, is available at <https://go.usa.gov/xnEVB> (retrieved December 27, 2017).

2016 Sentencing Practices Data Summary

The following data summarize information about sentencing practices and case volume and distribution. The recommended sentence under the Guidelines is based primarily on the severity of the offense of conviction and secondarily on the offender's criminal record. The majority of offenders receive the recommended sentence.

In Minnesota, sentencing of felony offenders is governed by the Sentencing Guidelines. It is important, therefore, to be aware of the effect of differences in offense severity and criminal history when evaluating sentencing practices. This is particularly important when comparing groups of offenders (e.g., by gender, race and ethnicity, and judicial district). For example, if in a particular district the proportion of serious person offenders is fairly high, the imprisonment rate for that district will likely be higher than for districts with predominantly lower severity-level offenses.

Case Volume & Distribution

Minnesota courts sentenced 16,927 felony offenders in 2016, an increase of one percent from 2015. This was the highest volume on record, surpassing the previous record set in 2015.

Of the total volume in 2016, drug offenses accounted for 32.3 percent (5,475 offenders), person offenses accounted for 28.7 percent (4,857 offenders), property offenses accounted for 26.1 percent (4,411 offenders), "other"⁶⁵ offenses accounted for 4.6 percent (775 offenders), "weapon"⁶⁶ offenses accounted for 2.9 percent (483 offenders), felony DWI offenses accounted for 2.8 percent (475 offenders), and Non-CSC Sex Offenses⁶⁷ accounted for 2.7 percent (451 offenders) (Figure 16). For the first year in Guidelines history, the drug category was the largest offense category, exceeding both the property category (the largest category from 1981 to 2009) and the person category (the largest category from 2010 to 2015).

Significant growth occurred from 2001 to 2006, when the total volume of felony offenders sentenced increased by 52 percent. This was attributable largely to the implementation of the felony driving while impaired (DWI) law and increases in the number of drug offenses sentenced, particularly methamphetamine cases.

In 2010, after a four-year fall, case volume again began to rise. The 18-percent growth in case volume from 2010 to 2016 can largely be attributed to the growth in drug offenders (65% growth) and offenses in the "weapon" category (53% growth). The specific offense that contributed the most to that growth in the "weapon" category was possession of a firearm by a felon convicted of a crime of violence, which increased from 234 offenders in 2010 to 390 offenders in 2016—a 67-percent growth rate. Person offenses grew by six percent from 2010 to 2016, while property offenses had the smallest growth rate, at two percent. Non-CSC sex offenses grew by four

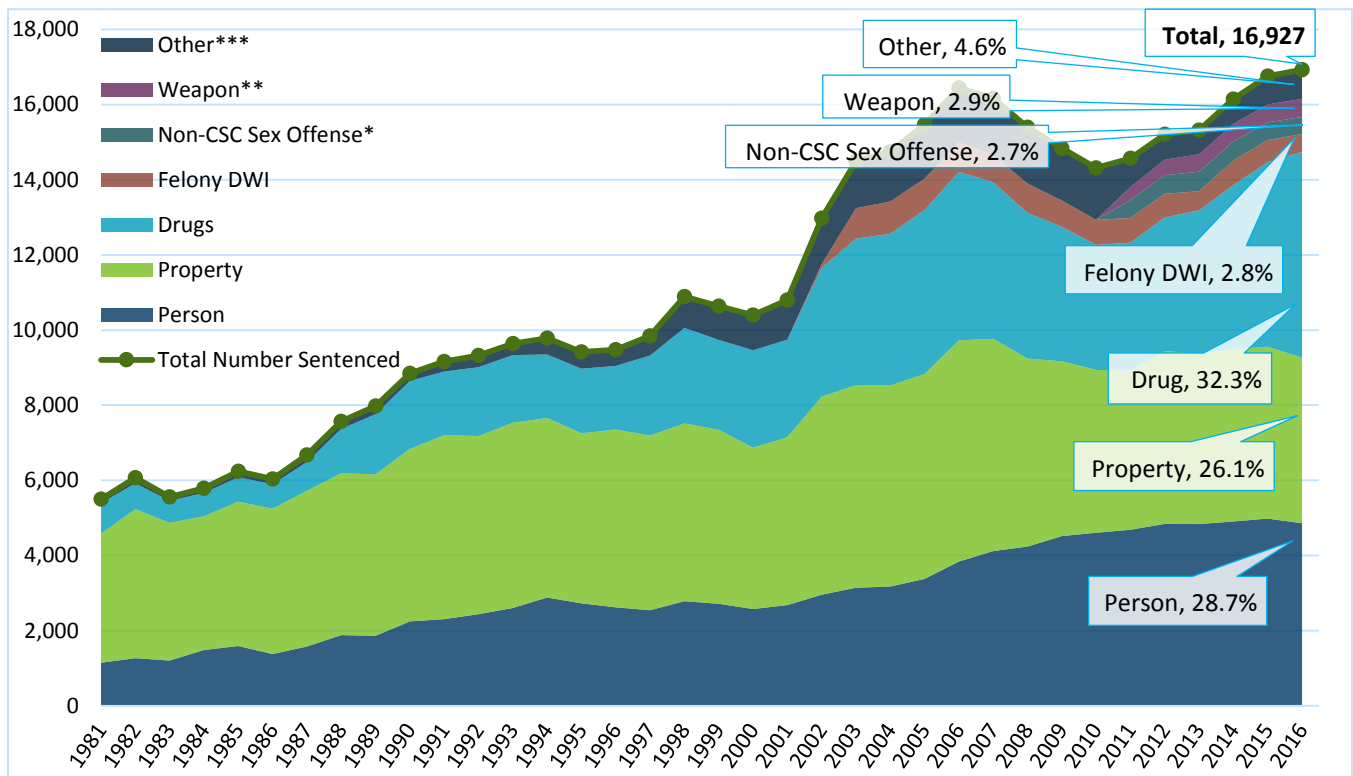
⁶⁵ "Other" category: Fleeing police, escape, and other offenses of less frequency including crimes against the government such as tax offenses, failure to appear in court, and aiding an offender.

⁶⁶ "Weapon" offenses include: possession of a firearm by a felon convicted of a crime of violence, firearm discharge, possession of teargas and explosive devices and other weapon related offenses.

⁶⁷ "Non-CSC sex offenses" are offenses on the sex offender grid other than criminal sexual conduct (chiefly failure to register as a predatory offender and possession and dissemination of child pornography).

percent. The only offense category that showed a decline during this time period was felony DWI, which declined by 29 percent.

Figure 16. Total Number of Offenders Sentenced and Volume of Offenders Sentenced by Offense Type, 1981-2016



According to Department of Public Safety data, the crime rate has fluctuated over time.⁶⁸ Over the past decade, both the number of “index crimes” and the index crime rate have fallen in every year except 2012, when the rate rose by 0.6 percent. The 2016 crime rate of 2,372 index crimes per 100,000 in population represents a decrease of 3.8 percent from the 2015 rate. On the other hand, the number of “violent crimes” rose in 2016; there were 13,407 reported violent crimes, an increase of 0.9 percent from the 13,294 violent crimes reported in 2015.

Change in Case Volume by Offense Type

Table 10 shows the percent change, by offense type, in the number of offenders sentenced from 2001 and 2016. With an 11-percent increase over 2015, drug offenses showed the highest percent change of the offense categories. Except for a slight decrease in 2013, the number of person offenses increased every year from 2001

⁶⁸ “Index Crimes” are Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny, Motor Vehicle Theft, and Arson. “Violent Crimes” are Murder, Forcible Rape, Robbery, and Aggravated Assault. 1995 to 2016 Uniform Crime Reports, State of Minnesota, Department of Public Safety at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Pages/uniform-crime-reports.aspx> (retrieved Oct. 23, 2017).

to 2015, and declined by 2.5 percent in 2016. The number of felony DWI offenders sentenced peaked in 2004 at 860 and declined in most years since. In 2016, felony DWIs decreased to 475 (down 19%). These sharp fluctuations may be due to the timing of cases in response to challenges to procedures for collecting evidence without a warrant. There was a four percent decrease in the number of offenders in the non-CSC sex offense category. Failure to register as a predatory offender went down (from 372 to 351) and child pornography remained flat (90 in 2015, 91 in 2016).

In 2015, weapon offenses were removed from the “other” category and placed in a newly created “weapon” category in order to further limit the number of offenses described as “other.” The number of weapon offenses sentenced increased one percent from 2015 to 2016. Ineligible felon in possession of firearm/ammunition increased by seven percent (from 364 to 390).

Table 10. Year-by-Year Percent Change by Offense Type, 2001-2016

Year	Total	Person	Property	Drug	Felony DWI	Non-CSC Sex Offense	Weapon	Other ⁶⁹
2001	3.9	3.8	4.2	0.0				13.3
2002	20.2	10.4	17.9	31.9				16.3
2003	11.7	6.2	2.4	13.8				2.2
2004	1.8	1.1	-0.8	3.6	6.2			6.2
2005	4.8	6.4	2.0	8.1	-3.0			7.6
2006	6.4	13.7	7.9	2.7	-5.5			1.1
2007	-1.7	7.3	-4.0	-7.1	-6.7			3.7
2008	-4.8	2.9	-11.5	-6.9	6.0			-0.1
2009	-3.6	6.6	-7.0	-7.7	-9.6			-7.0
2010	-3.6	2.0	-6.8	-7.0	-5.3	3.1	-1.3	-3.0
2011	1.8	1.7	-2.4	2.5	-1.0	9.9	9.8	20.3
2012	4.4	3.5	8.8	4.2	-4.4	4.0	18.8	-11.5
2013	0.7	-0.1	-1.7	7.6	-19.2	4.6	13.4	-5.2
2014	5.4	1.4	1.3	14.2	28.6	-2.1	0.2	2.6
2015	3.8	1.6	-0.3	12.6	-10.5	-7.1	2.1	15.0
2016	1.0	-2.5	-3.6	11.4	-19.1	-4.3	1.3	2.2

⁶⁹ “Other” category includes DWI before 2004 and non-CSC sex offenses and weapon offenses before 2010.

Distribution of Offenders by Gender, Race & Ethnicity, and Judicial District

Males have always accounted for more than 80 percent of the felony offenders in Minnesota. In 2016, 80.9 percent of the offenders sentenced were male and 19.1 percent were female (Table 11). Figure 17 shows the racial and ethnic composition of the felony offender population from 1981 through 2016. The percentage of offenders who were white decreased by 25 percentage points between 1981 (81.8%) and 2009 (56.5%). This was largely due to an increase in the percentage of black offenders, although the percentage of other non-white offenders (particularly Hispanic offenders) also increased. More recently, the percentage of white offenders increased slightly, from 57.7 percent in 2015 to 58.0 percent in 2016.

Figure 17. Distribution of Felony Offenders by Race & Ethnicity, 1981-2016

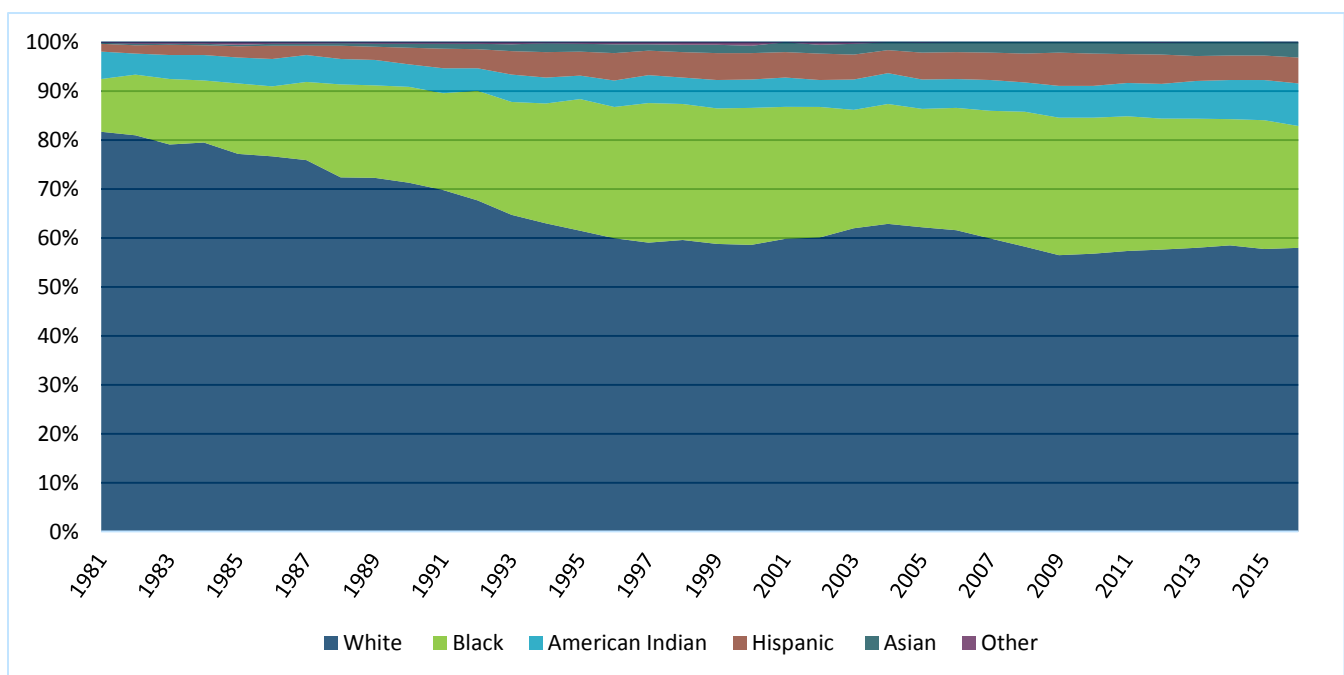


Figure 18 displays the 2016 distribution of the racial and ethnic composition of offender populations by Minnesota judicial district. The largest populations of black offenders were in the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County). These districts include the cities of St. Paul and Minneapolis, respectively. A map of the judicial districts can be found in Appendix 1 (p. 62).

Figure 18. Distribution of Felony Offenders by Race & Ethnicity and Judicial District, 2016

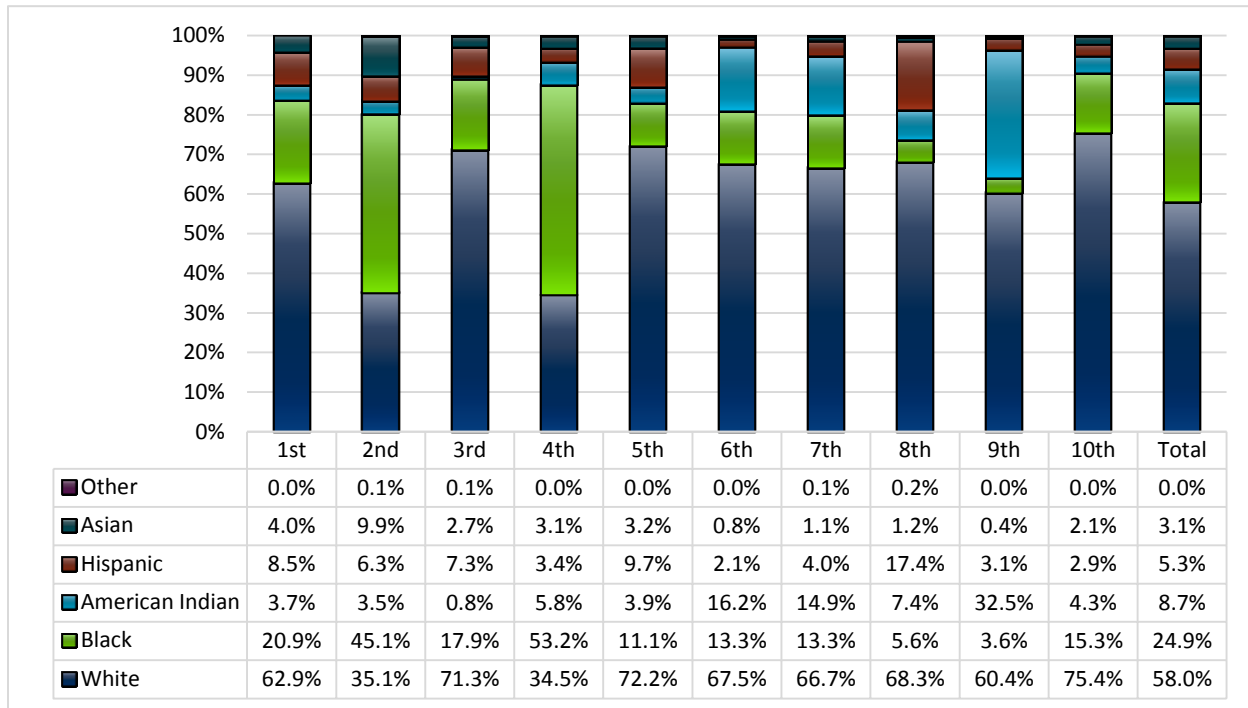


Table 11 compares, by the categories of sex, race & ethnicity, and judicial district, the population of felony offenders sentenced in 2016 with the 2016 state population,⁷⁰ as estimated by the U.S. Census Bureau. Within those comparison categories, Table 11 also calculates the rate of offenders sentenced in 2016 per 100,000 residents.

A map of Minnesota's ten judicial districts can be found in Appendix 1 (p. 62).

⁷⁰ Age 15 years and older. Younger residents were excluded because they were not a valid comparison group to the offender population. Residents age 15 to 17 years were included because the U.S. Census Bureau groups them together with residents age 18 and 19 years for its population estimates.

Table 11. Offenders Sentenced, 2016, by Gender, Race & Ethnicity, and Judicial District, Compared to 2016 Estimated Population Age 15 Years and Older

	MSGC Category	Offenders Sentenced		U.S. Census Category	2016 Estimated Pop. Age 15 & Older		Offenders Sentenced per 100,000
		Number	Percent		Number	Percent	
	Male	13,702	80.9%	Male	2,199,515	49.5%	623
	Female	3,225	19.1%	Female	2,247,439	50.5%	143
Race & Ethnicity	White	9,813	58.0%	White*	3,763,894	84.6%	261
	Black	4,209	24.9%	Black or African American*	263,625	5.9%	1,597
	American Indian	1,472	8.7%	American Indian*	69,224	1.6%	2,126
	Hispanic**	903	5.3%	Hispanic**	193,435	4.3%	467
	Asian	525	3.1%	Asian*	221,996	5.0%	236
	Other/Unknown	5	0.0%	Native Hawaiian/Other Pacific Islander*	4,781	0.1%	***
Judicial District****	First	2,192	12.9%	First	621,377	14.0%	353
	Second	1,784	10.5%	Second	433,849	9.8%	411
	Third	1,344	7.9%	Third	384,440	8.6%	350
	Fourth	3,341	19.7%	Fourth	1,002,248	22.5%	333
	Fifth	1,075	6.4%	Fifth	233,217	5.2%	461
	Sixth	862	5.1%	Sixth	210,929	4.7%	409
	Seventh	1,689	10.0%	Seventh	390,911	8.8%	432
	Eighth	432	2.6%	Eighth	129,504	2.9%	334
	Ninth	1,688	10.0%	Ninth	274,234	6.2%	616
	Tenth	2,520	14.9%	Tenth	766,245	17.2%	329
	Total	16,927	100.0%	Total	4,446,954	100.0%	381

Source of July 1, 2016, population estimate: U.S. Census Bureau (June, 2017).

*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.

**Table 11 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."

****See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.

Incarceration Rates

Under [Minn. Stat. § 609.02](#), a felony sentence must be at least 366 days long. The Guidelines presume who should go to state correctional institutions (prison) and for how long. Imprisonment rates are related to the Guideline recommendations and are based on the seriousness of the offense and the offender's criminal history score. In cases in which prison sentences are stayed, the court usually places the offender on probation. As a condition of probation, the court may impose up to one year of incarceration in a local correctional facility. Probationers usually serve time in a local correctional facility and are often given intermediate sanctions such as treatment (residential or nonresidential), restitution, and fines. There are no specific Guidelines to the court regarding the imposition of these intermediate sanctions.⁷¹

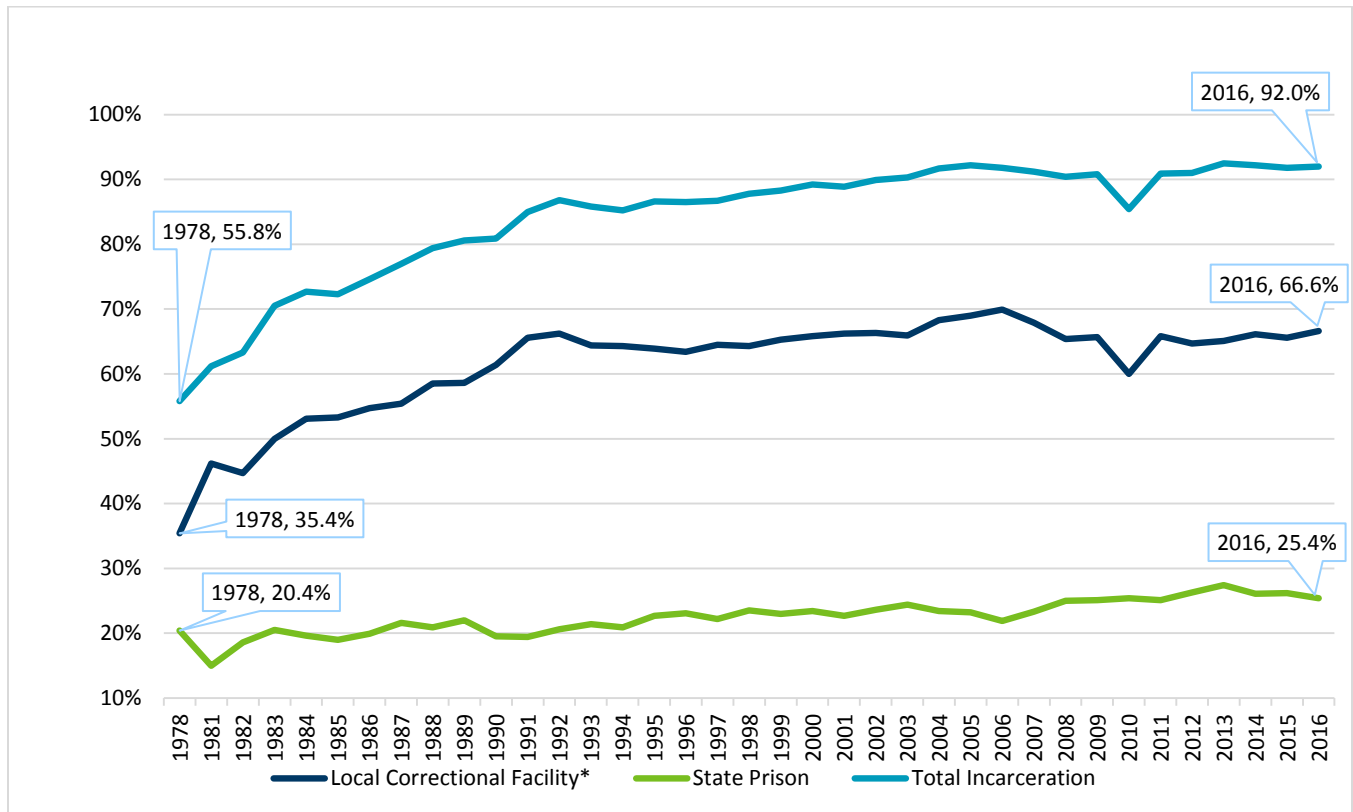
Total Incarceration

The 2012-15 imprisonment rates were the highest rates observed since the Guidelines were implemented. In 2016, the imprisonment rate fell to 25.4 percent—the same rate seen from 2008 to 2011. In 2016, 92.0 percent of felony offenders served some time in a local correctional facility or prison setting (Total Incarceration, Figure 19): 66.6 percent served time in a local correctional facility⁷² as part of their stayed sentence (Local Correctional Facility, Figure 19); and 25.4 percent were sentenced to a Minnesota Department of Corrections (DOC) prison facility (State Prison, Figure 19).

⁷¹ While the Commission is authorized to establish, within the Sentencing Guidelines, sanctions for offenders for whom imprisonment is not proper ([Minn. Stat. § 244.09](#), subd. 5), it has chosen not to develop specific Guidelines for the sanctions and other conditions of stayed sentences. The determination of such sanctions and conditions is left to district courts, with general guidance provided in Minnesota Sentencing Guidelines § 3.A.2.

⁷² When a felony sentence is “stayed,” the court may impose up to one year of confinement in a local correctional facility such as a local jail or workhouse.

Figure 19. Total Incarceration Rates: 1978, 1981-2016



*Offenders who receive “stayed” sentences that include up to one year incarceration in a local correctional facility are subject to possible future revocation to state prison.

When comparing imprisonment rates across various groups (sex, race and ethnicity, or judicial district) it is important to note that much of the variation is directly related to the proportion of offenders in any particular group who are recommended a prison sentence by the Guidelines based on the severity of the offense and the offender’s criminal history.

Table 12, below, provides total incarceration information for offenders sentenced in 2016. The total incarceration rate describes the percentage of offenders who received a sentence that included incarceration in a state prison or local correctional facility, following conviction.

Race & Ethnicity

The total incarceration rate varies somewhat across racial groups (ranging from 91.1% for white offenders to 93.6% for black offenders). Greater variation by race exists in the separate rates for prison and local confinement. Among five racial groups, white offenders had the lowest actual (22.3%), and second-lowest presumptive (28.8%), imprisonment rates, whereas Hispanic offenders had the highest actual (31.6%), and second-highest presumptive (39.2%), imprisonment rates (Table 12).

Judicial District

Variation was also observed in incarceration rates by judicial district (Table 12). The Second Judicial District (Ramsey County) had the highest total incarceration rate (99.2%) and the Ninth Judicial District (northwest Minnesota) had the lowest total incarceration rate (85.2%). This variation continues with respect to the separate rates for prison and local confinement. The Eighth Judicial District (west-central counties) had the highest imprisonment rate (30%), and the First Judicial District (southern metro counties) had the lowest imprisonment rate (20%). With regard to use of local confinement, the Tenth Judicial District had the highest rate (72.8%), and the Ninth Judicial District had the lowest rate (59.5%). See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.

Table 12. Total Incarceration Rates by Gender, Race & Ethnicity, and Judicial District, 2016

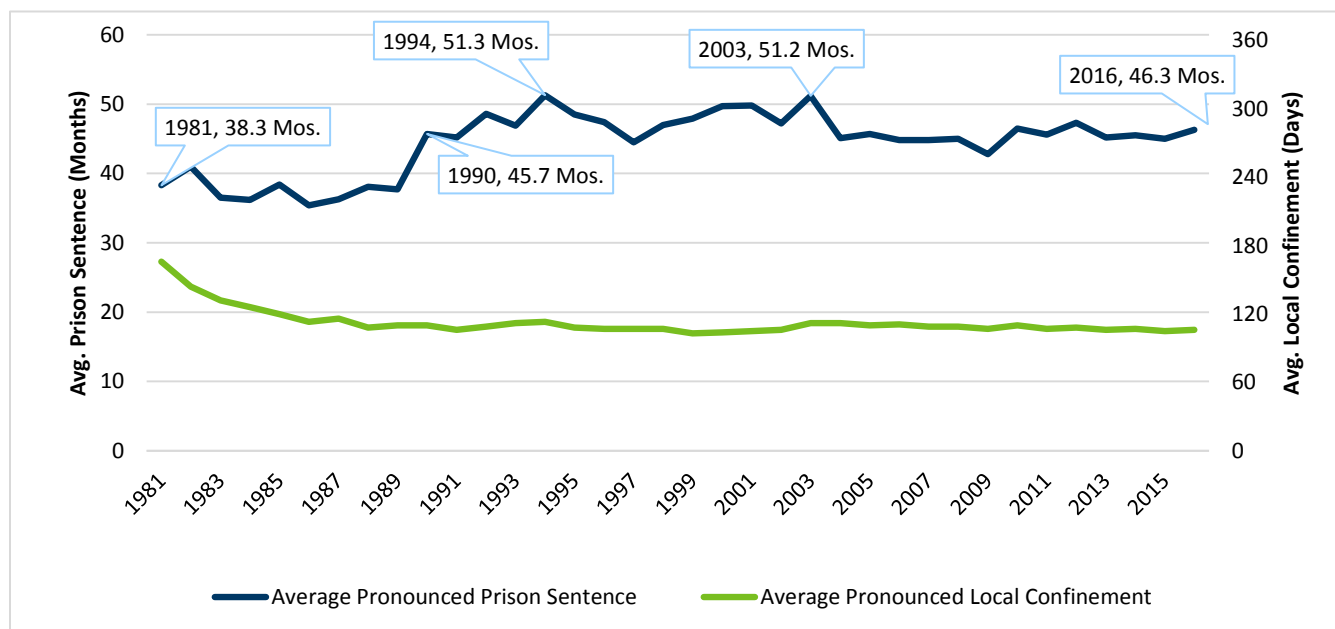
		Total	Total Incarceration		State Prison		Conditional Confinement	
		Number	Number	Rate	Number	Rate	Number	Rate
Gender	Male	13,702	12,702	92.7%	3,894	28.4%	8,812	64.3%
	Female	3,225	2,873	89.1%	414	12.8%	2,459	76.2%
Race & Ethnicity	White	9,813	8,941	91.1%	2,193	22.3%	6,751	68.8%
	Black	4,209	3,940	93.6%	1,315	31.2%	2,625	62.4%
	American Indian	1,472	1,363	92.6%	394	26.8%	970	65.9%
	Hispanic	903	836	92.6%	285	31.6%	551	61.0%
	Asian	525	490	93.3%	121	23.0%	369	70.3%
	Other/Unknown	5	5	100.0%	0	0.0%	5	100.0%
Judicial District*	First	2,192	2,015	91.9%	442	20.2%	1,573	71.8%
	Second	1,784	1,769	99.2%	512	28.7%	1,257	70.5%
	Third	1,344	1,161	86.4%	331	24.6%	830	61.8%
	Fourth	3,341	2,982	89.3%	970	29.0%	2,012	60.2%
	Fifth	1,075	983	91.4%	234	21.8%	749	69.7%
	Sixth	862	767	89.0%	187	21.7%	581	67.4%
	Seventh	1,689	1,635	96.8%	494	29.2%	1,141	67.6%
	Eighth	432	415	96.1%	129	29.9%	289	66.9%
	Ninth	1,688	1,438	85.2%	434	25.7%	1,004	59.5%
	Tenth	2,520	2,410	95.6%	575	22.8%	1,835	72.8%
	Total	16,927	15,575	92.0%	4,308	25.5%	11,271	66.6%

**See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.*

Average Pronounced Prison Sentences and Confinement in Local Correctional Facilities

The average pronounced prison sentence in 2016 was 46.3 months, an increase over 2015 (Figure 20). Numerous changes in sentencing practices and policies, as well as changes in the distribution of cases, can affect the average. The average prison sentence increased after 1989, when the Commission increased—in some cases, doubled—recommended prison sentences for higher severity-level offenses. The average amount of local confinement pronounced as an interim sanction was 106 days, compared to 105 days in 2015 and 107 days in 2014 (Figure 20). The average has remained largely constant since 1988.

Figure 20. Average Pronounced Prison Sentences and Confinement in Local Correctional Facilities, 1981-2016



Life Sentences

Eleven offenders received life sentences, nine for first-degree murder and two for criminal sexual conduct offenses. Seven of those life sentences were with no release possible.⁷³ Offenders with life sentences are excluded from the average pronounced prison sentences reported.

⁷³ In six cases, the mandatory penalty of life without the possibility of release resulted from the automatic application of [Minn. Stat. § 609.106](#), subd. 2(1) (requiring life without release upon conviction of certain types of first-degree murder), to [Minn. Stat. § 609.185\(a\)\(1\)](#) (premeditated murder). In one case, the mandatory penalty of life without the possibility of release resulted from the application of [Minn. Stat. § 609.3455](#), subd. 2(a)(1) (requiring life without release upon conviction of certain sex offenses when two or more heinous elements are found), to [Minn. Stat. § 609.342](#), subd. 1(c) (first-degree criminal sexual conduct, fear of imminent great bodily harm).

Departures from the Sentencing Guidelines

A “departure” is a pronounced sentence other than that recommended in the appropriate cell of the applicable Guidelines Grid. There are two types of departures – dispositional and durational – as further explained 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, most sentences pronounced by the court are based on judicial acceptance of plea agreements between prosecutors and defendants after victim input. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys commonly arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Prosecutors did not object to at least 60 percent of mitigated dispositional departures, nor to at least 70 percent of mitigated durational departures.⁷⁴

When there is a departure from the presumptive sentence, the court is required to submit reasons for the departure to the Commission.⁷⁵ Along with reasons for departure, the court may supply information about the position of the prosecutor regarding the departure. In 2016, the Commission received departure reasons or information about the position of the prosecutor 95 percent of the time. In 2016, 97 percent of felony convictions were settled without a trial. The Commission recognizes the need to balance the importance of plea agreements with the goals of the Guidelines. In the case of a plea agreement, the Commission asks courts to explain the underlying reasons for the plea agreement or for the court’s acceptance of it.⁷⁶

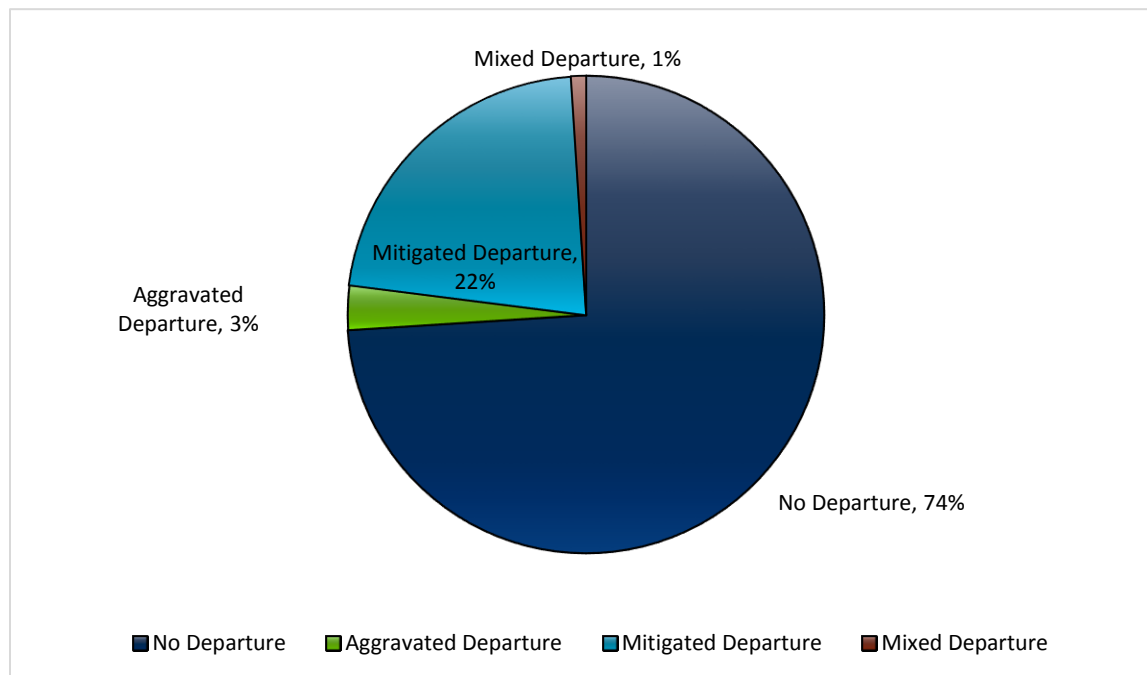
In 2016, 74 percent of all felony offenders sentenced received the presumptive Guidelines sentence. The remaining 26 percent received some type of departure (Figure 21).

⁷⁴ See Figure 24 and Figure 26.

⁷⁵ Minn. R. Crim. P. [27.03](#), subd. 4(C).

⁷⁶ See Minn. Sentencing Guidelines comment 2.D.104 (“Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the Guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to make informed policy decisions or to ensure consistency, proportionality, and rationality in sentencing. Departures and their reasons highlight both the success and problems of the existing Guidelines. When a plea agreement involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain its reasons for accepting the negotiation.”).

Figure 21. Combined Dispositional and Durational Departure Rates, 2016



Dispositional Departures

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

In 2016, the combined mitigated and aggravated dispositional departure rate was 15 percent: 11.9 percent mitigated and 3.1 percent aggravated (Figure 22). Effective with the August 1, 2015, amendments to Minnesota Sentencing Guidelines § 2.D.1, a sentence that is executed pursuant to an offender’s right to demand execution is no longer considered an aggravated dispositional departure. This change has resulted in a decrease in the aggravated dispositional departure rate from previous years. In 2015, the overall aggravated dispositional departure rate was 4.2 percent and the rate for presumptive stayed sentences was 6.2 percent.⁷⁷

Because aggravated dispositional departures represent such a small percentage of cases, the remainder of this analysis of departures will focus on mitigated dispositional departures.

⁷⁷For cases sentenced in 2016, 61% of the presumptively stayed cases had an offense date after July 31, 2015 (post-effective date). The aggravated dispositional departure rate for presumptively stayed sentences with a post-effective date was 2.6% compared to 8% with a pre-effective date. There were 196 post-effective date presumptively stayed sentences in which the offender received a prison sentence that was not counted as a dispositional departure because the sentence was executed pursuant to their right to demand execution.

Figure 22. Dispositional Departure Rates with and without Requests for Prison from Defendant, 2016

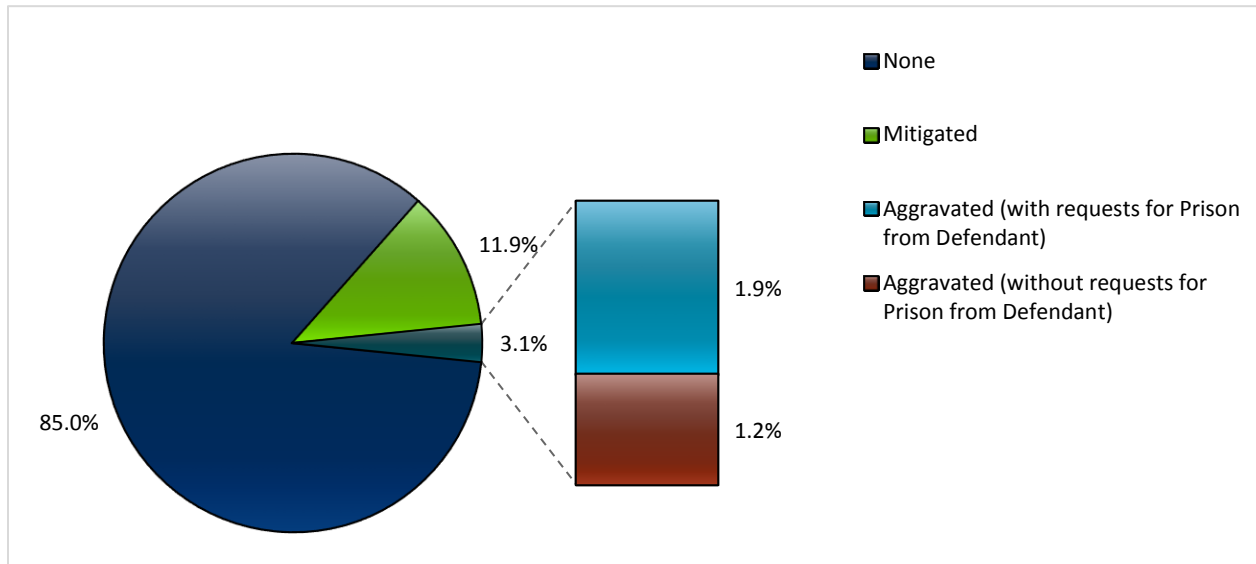


Table 13 lists dispositional departure rates based on presumptive disposition by gender, race, and judicial district. The aggravated dispositional departure rate for offenders recommended a stayed sentence (“Presumptive Stays”) was 4.7 percent. The mitigated dispositional departure rate for offenders who were recommended prison (“Presumptive Commits”) was 35.9 percent.

The mitigated dispositional departure rate is higher for women (54.6%) than men (33.8%). When examined by racial and ethnic composition, the mitigated dispositional departure rate ranged from a low of 29.1 percent for Hispanic offenders to a high of 39 percent for Asian offenders. There was also variation in the rate by judicial district, ranging from a low of 23.1 percent in the Eighth Judicial District (includes the City of Willmar) to a high of 45.9 percent in the Sixth Judicial District (includes the City of Duluth). When reviewing Table 13, note that the observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced, criminal history scores of offenders across racial groups or across regions, and available local correctional resources. (See Appendix 1 on page 62 for a map of Minnesota’s ten judicial districts.)

Table 13. Total Dispositional Departure Rates by Gender, Race & Ethnicity, and Judicial District, 2016

		Total Cases	Presumptive Stays			Presumptive Commits		
			Total	Aggravated Dispositional Departure		Total	Mitigated Dispositional Departure	
				Number	Rate		Number	Rate
Gender	Male	13,702	8,674	409	4.7%	5,028	1,698	33.8%
	Female	3,225	2,657	123	4.6%	568	310	54.6%

		Total Cases	Presumptive Stays			Presumptive Commits		
			Total	Aggravated Dispositional Departure		Total	Mitigated Dispositional Departure	
				Number	Rate		Number	Rate
Race & Ethnicity	White	9,813	6,989	335	4.8%	2,824	1,083	38.3%
	Black	4,209	2,366	79	3.3%	1,843	636	34.5%
	American Indian	1,472	1,044	74	7.1%	428	128	29.9%
	Hispanic	903	549	22	4.0%	354	103	29.1%
	Asian	525	379	22	5.8%	146	57	39.0%
	Other/Unknown	5	4	0	0.0%	1	1	100%
Judicial District*	First	2,192	1,597	57	3.6%	595	232	39.0%
	Second	1,784	1,091	33	3.0%	693	241	34.8%
	Third	1,344	920	53	5.8%	424	160	37.7%
	Fourth	3,341	1,978	72	3.6%	1,363	489	35.9%
	Fifth	1,075	751	41	5.5%	324	145	44.8%
	Sixth	862	592	40	6.8%	270	124	45.9%
	Seventh	1,689	1,125	58	5.2%	564	154	27.3%
	Eighth	432	311	30	9.6%	121	28	23.1%
	Ninth	1,688	1,197	80	6.7%	491	166	33.8%
	Tenth	2,520	1,769	68	3.8%	751	269	35.8%
	Total	16,927	11,331	532	4.7%	5,596	2,008	35.9%

*See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.

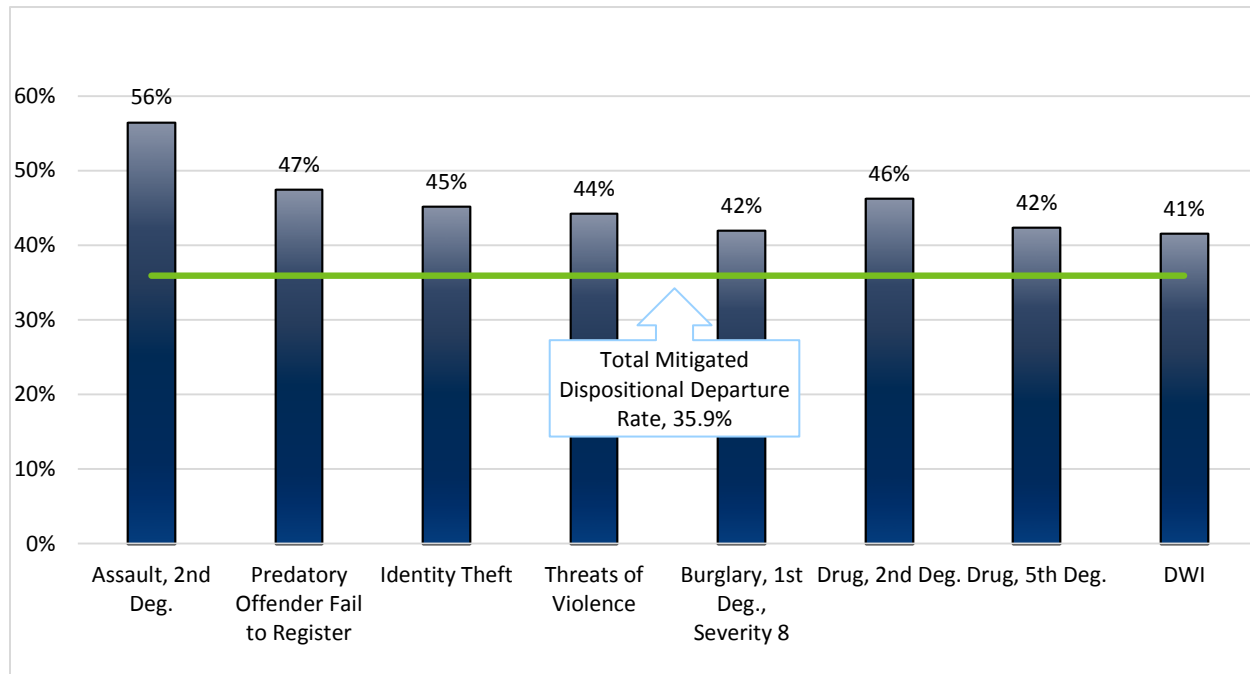
Dispositional departure rates vary for the type of offense. Figure 23 displays the offenses with the highest rates of mitigated dispositional departure compared to the total rate of 35.9 percent, and Figure 24 displays the position of the prosecutor as cited by the court.⁷⁸

In 60 percent of mitigated dispositional departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 15 percent of these cases, the

⁷⁸ The offenses were selected based on criteria that there were 50 or more "presumptive commitment" cases and the mitigated dispositional departure rate of 41% or more.

court stated that the prosecutor objected to the departure (Figure 24, “Total”). The court did not supply information on the prosecutor’s position in 15 percent of these departures. In all offense categories, amenability to probation and amenability to treatment were the most frequently cited substantial and compelling reasons for departure recorded.

Figure 23. Mitigated Dispositional Departure Rates for Selected Offenses Compared to Total Rate, 2016*



**Selected based on criteria that there were 50 or more “presumptive commitment” cases and the mitigated dispositional departure rate was 41 percent or more.*

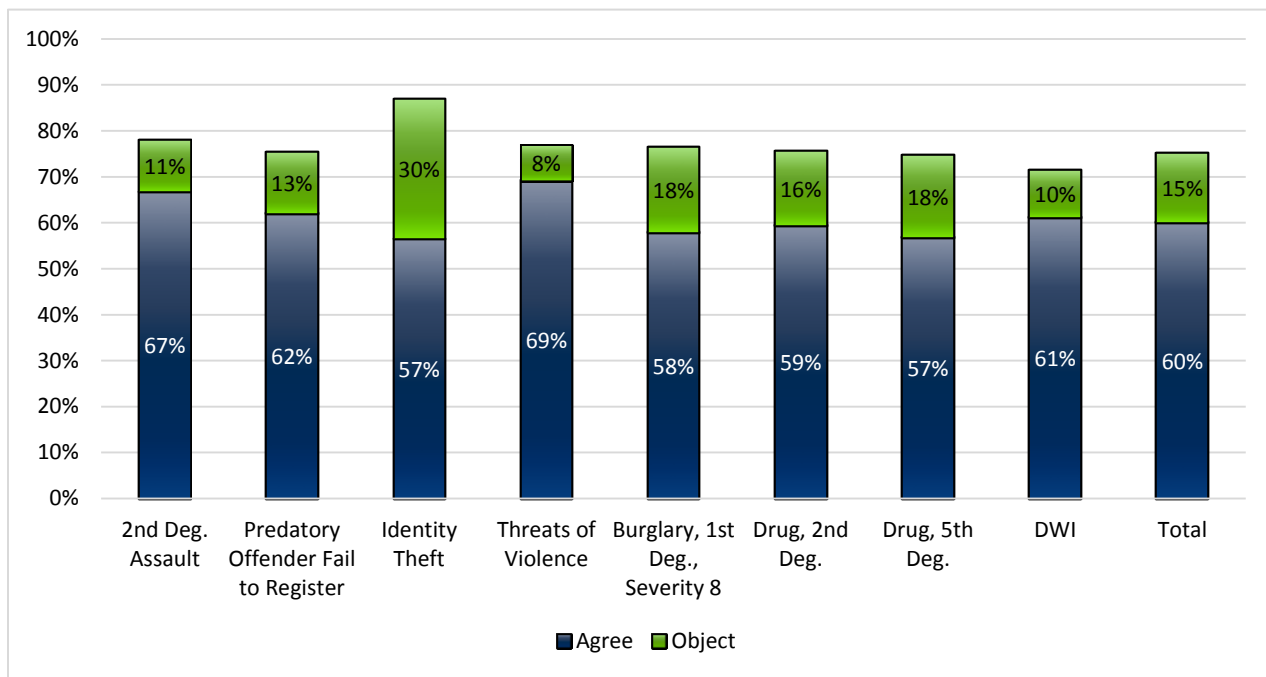
Two of the selected⁷⁹ offenses in Figure 23 and Figure 24, assault in the second degree and failure to register as a predatory offender, have mandatory minimum sentences specified in statute, with provisions allowing for departure from those mandatory minimums.

Assault in the second degree, by definition, involves the use of a dangerous weapon and therefore carries a mandatory minimum prison sentence ([Minn. Stat. § 609.11](#), subds. 4, 5 & 9). The second-degree assault statute proscribes a broad range of misbehavior: Injury to the victim may or may not occur, and the type of dangerous weapon involved can vary widely, from a pool cue to a knife to a firearm. Circumstances surrounding the offense can also vary significantly, from barroom brawls to unprovoked confrontations. The mandatory minimum statute specifically permits the court to sentence without regard to the mandatory minimum, provided that substantial and compelling reasons are present ([Minn. Stat. § 609.11](#), subd. 8). It is perhaps unsurprising to find many departures in the sentencing of a crime that can be committed in many different ways.

⁷⁹ See note 78 for selection criteria.

Failure to register as a predatory offender also has a statutory mandatory minimum sentence, accompanied by a statutory provision that allows for sentencing without regard to the mandatory minimum ([Minn. Stat. § 243.166](#), subd. 5(d)).

Figure 24. Court-Cited Position of Prosecutor for Mitigated Dispositional Departures, Selected Offenses, 2016*



Because departure reports do not always include information on the prosecutor's position, no column totals 100%.

**Selected based on criteria that there were 50 or more "presumptive commitment" cases and the mitigated dispositional departure rate was 41 percent or more. "Total" includes all offenses, not just selected offenses.*

Durational Departures

A "durational departure" occurs when the court orders a sentence with a duration that is 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.

In 2016, the mitigated durational departure rate for offenders receiving executed prison sentences was 23.7 percent which was lower than in 2015 and 2014 (24.8% in 2015 and 26.1% in 2014). The aggravated durational departure rate decreased slightly to 2.8 percent, from 3.3 percent in 2015. The trend in lower aggravated durational departure rates since the mid-2000s likely reflects the impact of increased presumptive sentences over the past years and issues related to the U.S. Supreme Court ruling in [Blakely v. Washington, 542 U.S. 296](#)

(2004), which required a jury to find all facts—other than the fact of a prior conviction or those facts agreed to by the defendant—used to enhance a sentence under mandatory sentencing guidelines.⁸⁰

In response to the *Blakely* decision, the 2005 Legislature widened the ranges on the Standard Grid to 15 percent below and 20 percent above the presumptive fixed sentence, within which the court may sentence without departure. In 2006, a Sex Offender Grid was adopted. The Sex Offender Grid introduced higher presumptive sentences for repeat offenders and offenders with prior criminal history records.⁸¹

Table 14 illustrates durational departure rates for executed prison sentences by gender, race and ethnicity, and judicial district. The mitigated durational departure rate for males was higher than for females (24.1% vs. 19.1%). When the departure rate is examined by racial and ethnic composition, the rate varies from a low of 15.0 percent for American Indian offenders to a high of 33.5 percent for black offenders. There is also considerable variation in mitigated durational departure rates by Minnesota judicial district, ranging from a low of 6.2 percent in the Eighth Judicial District to a high of 47.5 percent in the Fourth Judicial District.

When reviewing the information in Table 14, it is important to note that the observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced and criminal history scores of offenders across racial groups or across regions. A map of Minnesota’s ten judicial districts can be found in Appendix 1 (p. 62).

Table 14. Total Durational Departure Rates by Gender, Race & Ethnicity, and Judicial District, Executed Prison Sentences Only, 2016

		Executed Prison Sentences	Durational Departures, Executed Prison Sentences Only						
			Total Durational Departure Rate	No Departure		Aggravated		Mitigated	
				Number	Rate	Number	Rate	Number	Rate
Gender	Male	3,894	27.0%	2,842	73.0%	112	2.9%	940	24.1%
	Female	414	20.8%	328	79.2%	7	1.7%	79	19.1%
Race & Ethnicity	White	2,193	21.7%	1,718	78.3%	47	2.1%	428	19.5%
	Black	1,315	36.5%	835	63.5%	39	3.0%	441	33.5%
	American Indian	394	19.0%	319	81.0%	16	4.1%	59	15.0%
	Hispanic	285	22.5%	221	77.5%	12	4.2%	52	18.2%
	Asian	121	36.4%	77	63.6%	5	4.1%	39	32.2%
	Other/ Unknown	0	0.0%	0	0.0%	0	0.0%	0	0.0%

⁸⁰ The Minnesota Supreme Court determined that *Blakely*’s jury requirements applied to aggravated departures under the Minnesota Sentencing Guidelines. *State v. Shattuck*, 704 N.W.2d 131 (Minn. 2005).

⁸¹ For a deeper examination of the effect of the *Blakely* decision on sentencing practices, see the MSGC special report: *Impact of Blakely and Expanded Ranges on Sentencing Grid*, at: <http://mn.gov/sentencing-guidelines/reports/>.

		Executed Prison Sentences	Durational Departures, Executed Prison Sentences Only						
			Total Durational Departure Rate	No Departure		Aggravated		Mitigated	
				Number	Rate	Number	Rate	Number	Rate
Judicial District*	First	442	20.4%	352	79.6%	17	3.8%	73	16.5%
	Second	512	39.3%	311	60.7%	9	1.8%	192	37.5%
	Third	331	12.7%	289	87.3%	10	3.0%	32	9.7%
	Fourth	970	51.3%	472	48.7%	37	3.8%	461	47.5%
	Fifth	234	23.5%	179	76.5%	4	1.7%	51	21.8%
	Sixth	187	15.5%	158	84.5%	7	3.7%	22	11.8%
	Seventh	494	17.4%	408	82.6%	9	1.8%	77	15.6%
	Eighth	129	6.2%	121	93.8%	0	0.0%	8	6.2%
	Ninth	434	11.3%	385	88.7%	11	2.5%	38	8.8%
	Tenth	575	13.9%	495	86.1%	15	2.6%	65	11.3%
	Total	4,308	26.4%	3,170	73.6%	119	2.8%	1,019	23.7%

* See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.

As with dispositional departures, it can be helpful to look at offenses with higher than average durational departure rates. Figure 25 displays offenses with high durational departure rates compared to the total durational departure rate and Figure 26 displays the position of the prosecutor as cited by the court.⁸²

Aggravated durational departure rates were highest for assault in the first degree and intentional murder in the second degree (Severity Level 11). Mitigated durational departure rates were highest for domestic assault, controlled substance crime in the first and second degrees, failure to register as a predatory offender, violations of restraining orders and burglary in the third degree. For both mitigated and aggravated durational departures, plea agreement or recommendation of the prosecutor were the most frequently cited reasons for departure for all offense types.

In 70 percent of mitigated durational departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure (Figure 26, "Total"). In seven percent of these cases, the court stated that the prosecutor objected to the departure. In 23 percent of the mitigated durational departures, the court did not provide information on the position of the prosecutor.

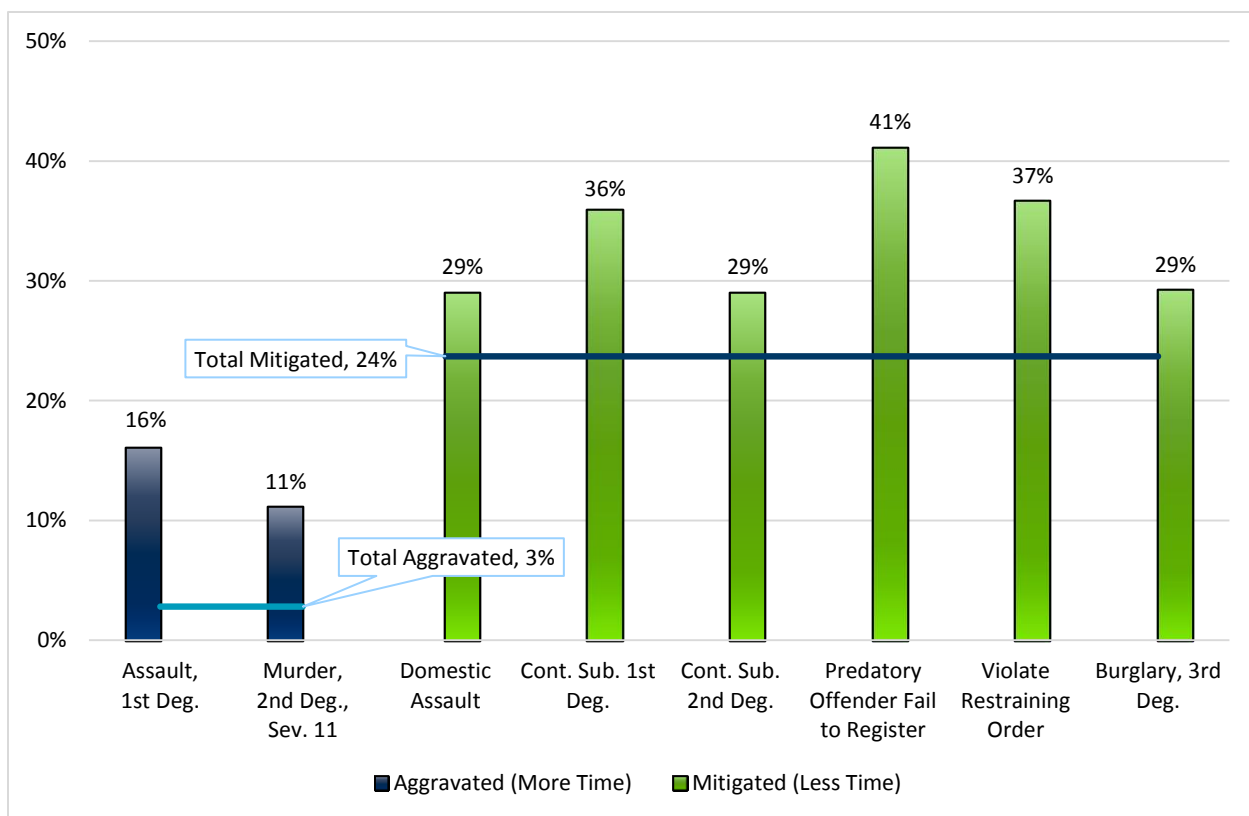
In 61 percent of the aggravated durational departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 39 percent of the aggravated

⁸² Selected based on criteria that there were 40 or more executed prison sentences and the aggravated durational departure rate was 10 percent or more, or the mitigated durational departure rate was above 30 percent.

durational departures, the court did not provide information on the position of the prosecutor. There were no cases in which the court stated that the prosecutor objected to the aggravated durational departure.

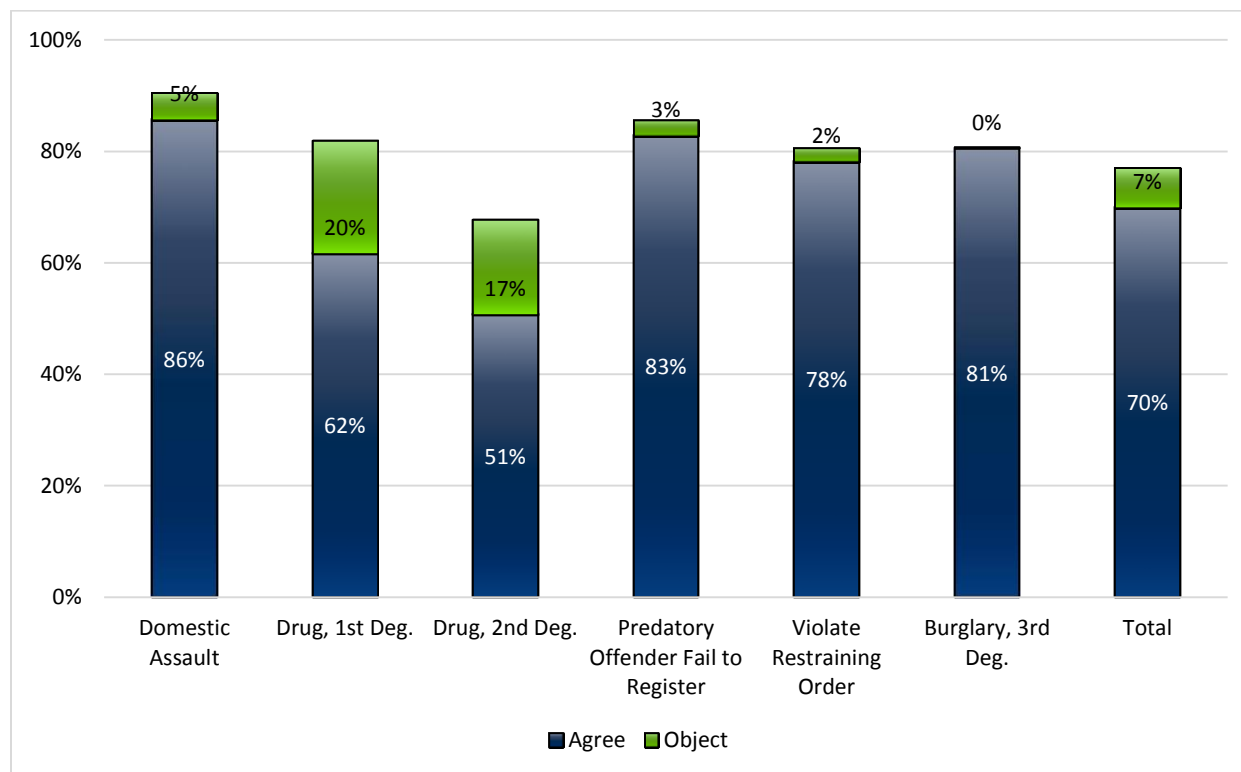
The discussion on page 51 regarding mandatory minimums applies here: The mandatory minimum provisions applicable to one of the high-durational-departure crimes—failure to register as a predatory offender—allow for sentencing without regard to the mandatory minimum prison term (Minn. Stat. § 243.166, subd. 5(d)), and the wide variety of ways in which the crime can be committed may lend itself to the application of discretion in prosecutorial or judicial sentencing practice.

Figure 25. Durational Departure Rates for Selected Offenses Compared to the Total Rate, Executed Prison Sentences Only, 2016*



**Selected based on criteria that there were 40 or more executed prison sentences and the aggravated durational departure rate was 10 percent or more, or the mitigated durational departure rate was above 30 percent.*

Figure 26. Court-Cited Position of Prosecutor for Mitigated Durational Departures, Selected* Offenses, 2016



Because departure reports do not always include information on the prosecutor's position, no column totals 100%.

*Selected based on criteria that there were 40 or more executed prison sentences and the mitigated durational departure rate was above 30 percent. "Total" includes all offenses, not just selected offenses.

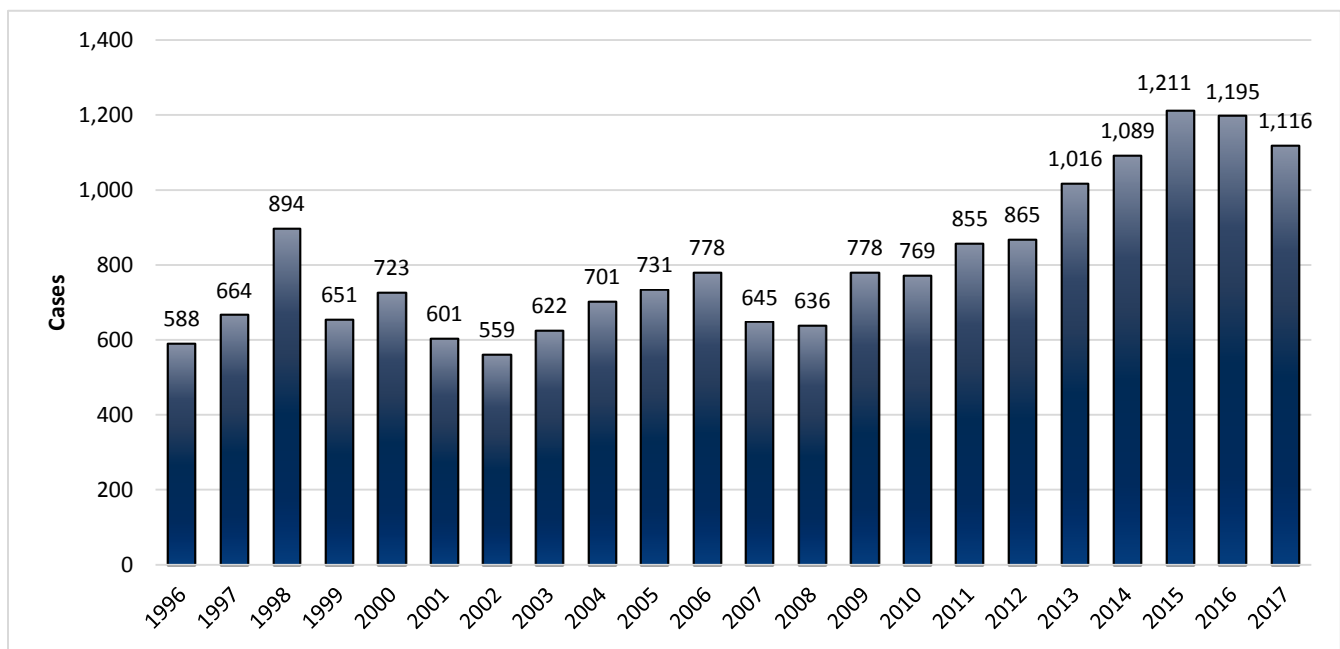
County Attorney Firearms Reports

Current law requires all county attorneys in Minnesota, by July 1 of each year, to submit to the Commission its data regarding felony cases in which defendants allegedly possessed or used a firearm and committed offenses listed in [Minn. Stat. § 609.11](#), subdivision 9.⁸³ The Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received. Memoranda describing the mandate, along with report forms, are distributed by MSGC staff to county attorneys. Although MSGC staff clarifies inconsistencies in the summary data, the information received from the county attorneys is reported directly as provided.

Cases Allegedly Involving a Firearm, 1996 to 2017

Since the mandate began in 1996, the average number of annual cases allegedly involving firearms statewide has been 804. Between July 1, 2016 and June 30, 2017 (FY 2017), there were 1,116 cases allegedly involving a firearm (Figure 27). This was a 6.6 percent decrease (down 79 cases from FY 2016). The peak number of cases reported was 1,211 in FY 2015.

Figure 27. Cases Allegedly Involving a Firearm, FY 1996 to FY 2017



⁸³ The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Designated offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; some criminal sexual conduct offenses; escape from custody; arson in the first, second, or third degree; felony drive-by shooting; aggravated harassment and stalking; felon in possession of a firearm; and felony controlled substance offenses.

Cases Charged, 2017

Of the 1,116 cases in which defendants allegedly possessed or used firearms, prosecutors charged 1,052 cases (94%) while 64 cases (6%) were not charged (Figure 28, “Charged” and “Not Charged”).

Case Outcomes, 2017

Of the 1,052 cases charged, 757 (72%) were convicted of offenses designated in [Minn. Stat. § 609.11](#); 115 (11%) were convicted of non-designated offenses (not covered by the mandatory minimum; e.g., threats of violence under [Minn. Stat. § 609.713](#)); 138 (13%) had all charges dismissed; 26 (2%) were acquitted on all charges; and 16 (2%) were “other” cases, including federal prosecutions, stays of adjudication, and cases for which the definition of a firearm no longer applied to the cases after the allegations were made⁸⁴ (Figure 28).

Cases Convicted of Designated Offense & Firearm Established on the Record, 2017

In 687 (91%) of the 757 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 28, “Firearm Established”). The fact-finder, i.e., the judge or jury, must establish whether the defendant or an accomplice used or possessed a firearm in the commission of the offense at the time of conviction. Minn. Stat. § 609.11, subdivision 7.

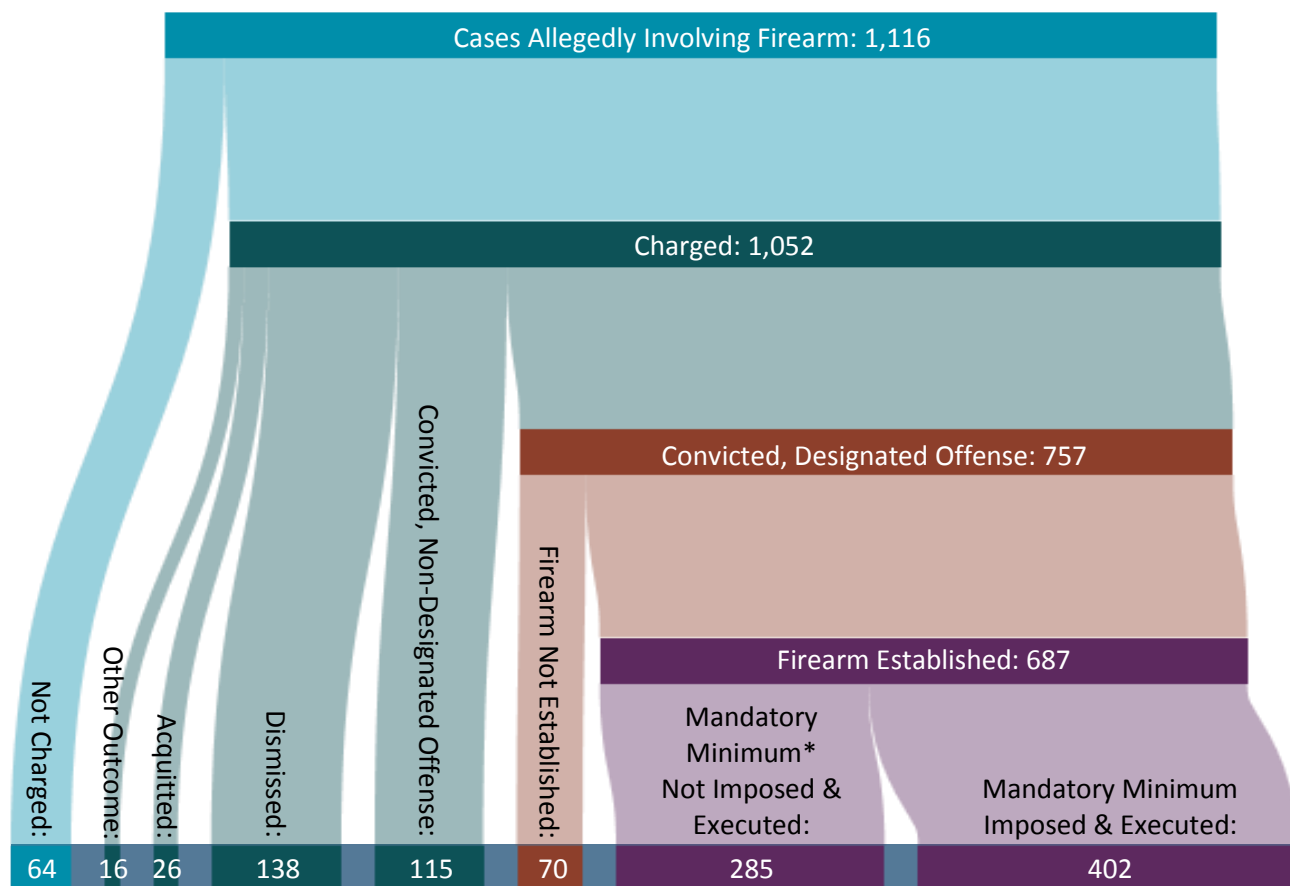
In the cases in which the firearm was established on the record, 402 offenders (59%)⁸⁵ were sentenced to the mandatory minimum prison term (Figure 28, “Mandatory Minimum Imposed & Executed”). The statute specifically allows the prosecutor to file a motion to have the defendant sentenced without regard to the mandatory minimum. The prosecutor must provide a statement as to the reasons for the motion. If the court finds substantial mitigating factors, with or without a motion by the prosecutor, the defendant may be sentenced without regard to the mandatory minimum. Minn. Stat. § 609.11, subdivision 8.⁸⁶

⁸⁴ Prior to 2016, appellate courts permitted the application of the game and fish laws’ definition of a “firearm”—which encompassed a BB gun—to criminal statutes. *State v. Seifert*, 256 N.W.2d 87, 88 (Minn. 1977) (BB gun could be a firearm for purposes of aggravated robbery); *State v. Newman*, 538 N.W.2d 476, 477-78 (Minn. App. 1995) (BB gun could be a firearm for purposes of drive-by shooting); *State v. Fleming*, 724 N.W.2d 537, 538 (Minn. App. 2006) (BB gun could be a firearm for purposes of the felon-in-possession law). In *State v. Haywood*, 886 N.W.2d 485 (Minn. 2016), however, the Minnesota Supreme Court—relying on the plain and ordinary meaning of the term “firearm,” and noting post-*Seifert* legislative definitions of “firearm” that did not include BB guns—held that a BB gun was not a firearm for the purposes of the felon-in-possession statute found in [Minn. Stat. § 609.165](#). In *State v. Yang*, 887 N.W.2d 40 (Minn. App. 2016), this holding was extended to the felon-in-possession statute found in [Minn. Stat. § 624.713](#) as well.

⁸⁵ County attorneys’ data for fiscal year 2017 (ending June 30, 2017). According to MSGC monitoring data from calendar year 2016, of those offenders whose sentencing worksheets reflected the use or possession of a firearm or prohibited persons from possessing a firearm or ammunition requiring a mandatory prison sentence under Minn. Stat. § 609.11, 51.1 percent (507 offenders) received both the mandatory prison disposition and the mandatory minimum duration. In addition, 8.3 percent (82 offenders) received the mandatory prison disposition, but less than the mandatory minimum duration.

⁸⁶ Although [Minn. Stat. § 609.11](#) uses the term “mandatory minimum” to describe the sentences it prescribes, the term includes cases in which the court, on the motion of the prosecutor or on its own motion, is statutorily permitted, when substantial and compelling reasons are present, to sentence a defendant without regard to those prescribed sentences. Minn. Stat. § 609.11, subd. 8(a); *but see* subd. 8(b) & 8(c) (the court is not permitted to sentence a defendant without regard to the mandatory minimum if the defendant was previously convicted of a designated offense in which the

Figure 28. Disposition of Cases, Alleged Designated Offenses Involving Firearms, as Reported by County Attorneys, Cases Disposed of Between July 1, 2016, and June 30, 2017



*For an explanation of the term “mandatory minimum,” see footnote 86, above.

defendant used or possessed a firearm or other dangerous weapon, nor if the defendant or an accomplice used or personally possessed a firearm in the commission of a first- or second-degree sale of a controlled substance).

Table 15. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm, by Minn. County, Cases Disposed of Between July 1, 2016, and June 30, 2017

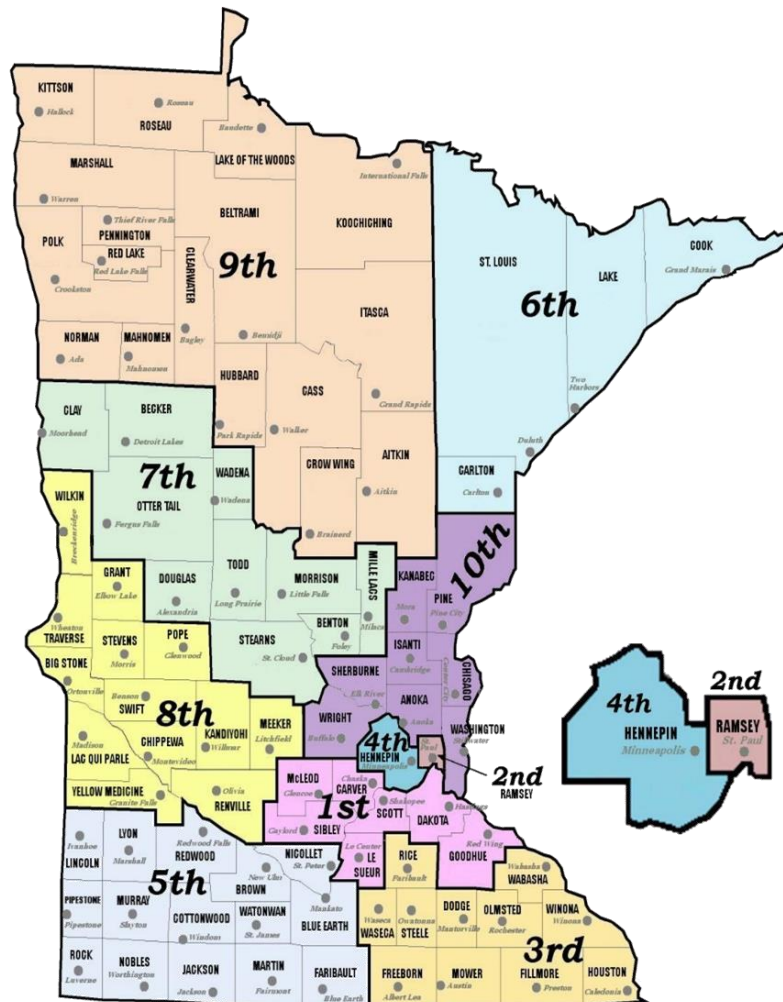
County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted of Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Aitkin	11	7	4	3	3
Anoka	44	43	21	21	13
Becker	12	10	7	5	4
Beltrami	11	4	2	2	2
Benton	5	3	1	1	0
Big Stone	0	0	0	0	0
Blue Earth	13	13	6	6	5
Brown	3	2	1	0	0
Carlton	5	5	5	4	2
Carver	0	0	0	0	0
Cass	13	13	8	6	3
Chippewa	3	3	2	1	0
Chisago	3	3	2	2	0
Clay	2	2	2	2	2
Clearwater	6	6	3	1	0
Cook	1	1	1	1	1
Cottonwood	1	1	1	1	1
Crow Wing	1	1	0	0	0
Dakota	49	49	38	32	17
Dodge	1	1	1	1	0
Douglas	0	0	0	0	0
Faribault	1	1	1	1	1
Fillmore	1	0	0	0	0
Freeborn	3	3	1	1	1
Goodhue	8	8	5	4	2
Grant	2	2	1	0	0
Hennepin	429	429	348	348	201
Houston	1	1	0	0	0
Hubbard	3	3	2	2	2
Isanti	12	7	7	7	2

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted of Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Itasca	15	15	8	7	0
Jackson	2	2	0	0	0
Kanabec	11	7	5	2	2
Kandiyohi	4	2	2	2	1
Kittson	0	0	0	0	0
Koochiching	0	0	0	0	0
Lac qui Parle	1	1	1	1	1
Lake	1	1	0	0	0
Lake of the Woods	4	4	2	2	1
Le Sueur	1	1	1	1	1
Lincoln	0	0	0	0	0
Lyon	5	5	3	2	1
McLeod	2	2	2	2	1
Mahnomen	0	0	0	0	0
Marshall	1	1	1	1	1
Martin	7	7	5	5	2
Meeker	1	1	0	0	0
Mille Lacs	25	22	15	9	4
Morrison	5	5	1	1	0
Mower	26	16	11	6	6
Murray	1	1	1	0	0
Nicollet	5	5	2	2	0
Nobles	8	8	3	3	2
Norman	0	0	0	0	0
Olmsted	17	10	6	6	3
Otter Tail	15	15	8	4	4
Pennington	0	0	0	0	0
Pine	11	10	7	3	3
Pipestone	5	5	5	0	0
Polk	10	7	7	6	5
Pope	0	0	0	0	0

County	Cases Allegedly Involving a Firearm	Cases Charged	Cases Convicted of Designated Offense	Cases in which a Firearm was Established on the Record	Mandatory Minimum Sentence Imposed and Executed
Ramsey	104	104	88	80	52
Red Lake	0	0	0	0	0
Redwood	4	2	2	1	1
Renville	5	3	1	1	0
Rice	17	17	8	8	2
Rock	1	1	0	0	0
Roseau	2	2	0	0	0
Scott	6	6	3	3	3
Sherburne	11	8	4	4	3
Sibley	0	0	0	0	0
St. Louis	43	41	29	25	17
Stearns	32	32	23	19	10
Steele	11	11	6	6	6
Stevens	1	1	1	0	0
Swift	0	0	0	0	0
Todd	0	0	0	0	0
Traverse	1	1	0	0	0
Wabasha	4	4	4	4	0
Wadena	3	3	1	1	1
Waseca	0	0	0	0	0
Washington	8	8	7	7	2
Watonwan	7	7	4	2	0
Wilkin	0	0	0	0	0
Winona	16	15	3	2	1
Wright	8	8	4	4	1
Yellow Medicine	5	4	3	3	3
Total	1,116	1,052	757	687	402

Appendixes

Appendix 1. Minnesota Judicial District Map



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

Source: Minn. Judicial Branch.

Appendix 2. 2016 DSRA Data Tables

Table 16. Gross Misdemeanor Possession of Trace Amount Convictions by Gender, Race & Ethnicity, and Judicial District, Sentenced 8/25/2016 to 10/19/2017

		Number	Percent
Gender	Male	396	65.9
	Female	205	34.1
Race & Ethnicity⁸⁷	White	---	65.4
	Black	---	7.3
	American Indian	---	16.7
	Hispanic	---	5.1
	Asian	---	2.7
	Other/Unknown	---	2.9
Judicial District⁸⁸	First	91	15.1
	Second	30	5.0
	Third	58	9.7
	Fourth	9	1.5
	Fifth	48	8.0
	Sixth	52	8.7
	Seventh	79	13.1
	Eighth	24	4.0
	Ninth	150	25.0
	Tenth	60	10.0
	Total	601	100.0

Source: State Court Administrator's Office, Court Services; Research & Evaluation. (Obtained 10/31/2017.)

Table 17. Number and Percent of Gross Misdemeanor Possession of Trace Amounts by County, Sentenced 8/25/2016 to 10/19/2017*

County	Number	Percent
Aitkin	6	1.0
Anoka	11	1.8
Becker	11	1.8
Beltrami	21	3.5
Benton	3	.5

⁸⁷ Summary data small enough to compromise the privacy of individual defendants.

⁸⁸ See Appendix 1 (p. 62) for a map of Minnesota's ten judicial districts.

Blue Earth	15	2.5
Brown	5	.8
Carlton	7	1.2
Carver	10	1.7
Cass	27	4.5
Chisago	4	.7
Clay	8	1.3
Crow Wing	20	3.3
Dakota	26	4.3
Dodge	1	.2
Douglas	3	.5
Faribault	7	1.2
Fillmore	1	.2
Freeborn	7	1.2
Goodhue	12	2.0
Hennepin	9	1.5
Houston	10	1.7
Hubbard	3	.5
Isanti	14	2.3
Itasca	22	3.7
Kanabec	4	.7
Kandiyohi	9	1.5
Koochiching	3	.5
Lake	1	.2
Le Sueur	4	.7
Mahnomen	22	3.7
Martin	10	1.7
McLeod	5	.8
Meeker	4	.7
Mille Lacs	18	3.0
Morrison	4	.7
Mower	8	1.3
Nobles	6	1.0
Norman	1	.2
Olmsted	4	.7
Otter Tail	16	2.7
Pennington	8	1.3

Pine	12	2.0
Polk	13	2.2
Pope	5	.8
Ramsey	30	5.0
Red Lake	1	.2
Redwood	3	.5
Renville	1	.2
Rice	10	1.7
Roseau	3	.5
Scott	32	5.3
Sherburne	2	.3
Sibley	2	.3
St. Louis	44	7.3
Stearns	13	2.2
Steele	3	.5
Stevens	1	.2
Todd	1	.2
Traverse	1	.2
Wadena	2	.3
Washington	9	1.5
Watsonwan	2	.3
Wilkin	1	.2
Winona	14	2.3
Wright	4	.7
Yellow Medicine	2	.3
Total	601	100.0

*Counties with zero cases omitted.

Source: State Court Administrator's Office, Court Services; Research & Evaluation. (Obtained 10/31/2017.)

Appendix 3. Modifications to the Sentencing Guidelines

The Guidelines modifications in response to legislative changes were adopted by the Commission on July 27, 2017, and effective August 1, 2017.

Appendix 3.1. New and Amended Crime Laws Affecting the Guidelines

The Commission reviewed laws related to new and amended crime laws in the 2017 Regular Session and 1st Special Session, and adopted a proposal to modify Minnesota Sentencing Guidelines §§ 5.A and 5.B and Guidelines Appendix 3; and to assign a severity level of 3 to use of automated sales suppression devices, which is codified within the existing offense of tax evasion laws, therefore making no modifications to §§ 5.A and 5.B as a consequence.

1. Modification to Guidelines §§ 5.A and 5.B resulting from amended damage to property under Minn. Stat § 609.595, subd. 1

The Commission adopted a proposal to assign to the offense of damage to property (public safety motor vehicle) a severity level of 3, and to make technical changes to accommodate the renumbering of the clauses of Minn. Stat. § 609.595, subd. 1, as follows.

[Section]5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
3	Damage to Property (Risk Bodily Harm, <u>Public Safety Motor Vehicle</u>)	609.595, subd. 1(1) <u>& (2)</u>

* * *

Severity Level	Offense Title	Statute Number
2	Damage to Property (Service to Public, Over \$1,000, Over \$500 and Subsequent)	609.595, subd. 1(2), (3), & (4) , <u>& (5)</u>

* * *

[Section]5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.595 subd.1(1) <u>& (2)</u>	Damage to Property (Risk Bodily Harm, <u>Public Safety Motor Vehicle</u>)	3
609.595 subd. 1 (2) (3)(4), <u>& (5)</u>	Damage to Property (Service to Public, Over \$1,000, Over \$500 and Subsequent)	2

* * *

2. **Assign a severity level of 3 to use of automated sales suppression devices under Minn. Stat. § 289A.63, subd. 12, resulting in no modification to Guidelines §§ 5.A and 5.B**

The Commission adopted a proposal to assign Use of Automated Sales Suppression Devices a severity level of 3. Because the offense is codified within the existing offense of Tax Evasion Laws, the Commission therefore adopted a proposal to make no modifications to §§ 5.A and 5.B as a consequence, as follows.

[Section]5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
3	Tax Evasion Laws	289A.63

* * *

[Section]5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
289A.63	Tax Evasion Laws	3

* * *

3. Modifications to Guidelines § 5.A and 5.B and Appendix 3 resulting from the new impersonating a peace officer under Minn. Stat. § 609.4751

The Commission adopted a proposal to assign impersonating a peace officer a severity level of 2, and to add the offense of impersonating a peace officer to Guidelines Appendix 3 (Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table), as follows.

[Section]5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
<u>2</u>	<u>Impersonating a Peace Officer</u>	<u>609.4751, subd. 3</u>

* * *

[Section]5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
<u>609.4751, subd. 3</u>	<u>Impersonating a Peace Officer</u>	<u>2</u>

* * *

[Guidelines]Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

* * *

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
<u>609.4751, subd. 3</u>	<u>Impersonating a Peace Officer</u>	<u>2</u>	<u>24</u>	<u>CHS 6 (upper-range)</u>

* * *

Appendix 3.2. Technical Amendments to Crime Laws Affecting the Guidelines

Headnote and Text

The Commission reviewed laws related to new and amended crime laws in the 2017 Regular Session and 1st Special Session, and adopted a proposal to modify Minnesota Sentencing Guidelines §§ 5.B and 7, as a result of a technical amendments to the headnote and text of Minn. Stat. § 268.182, changing it from “APPLICANT’S FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY” to “FRAUD; CRIMINAL PENALTY,” as follows.

[Section]5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
268.182	False Representations Unemployment Benefit Fraud (Over \$5,000)	3
268.182	False Representations Unemployment Benefit Fraud (\$5,000 or Less)	2

* * *

[Section]7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes (\$5,000 or less and over \$5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

- Severity Level 2. When the monetary value of the Theft Crime is \$5,000 or less, the penalty statute is Minn. Stat. § 609.52, subdivision 3(3)(a).
- Severity Level 3. When the monetary value of the Theft Crime is over \$5,000, the penalty statute is Minn. Stat. § 609.52, subdivision 3(2).

Statute Number	Offense Title
176.178	Workers Compensation Fraud
256.98	Wrongfully Obtaining Assistance
268.182	False Representations <u>Unemployment Benefit Fraud</u>

* * *

Appendix 3.3. Technical Corrections

The Commission reviewed technical errors, and adopted a proposal to modify Minnesota Sentencing Guidelines Comment 2.D.106; and the Guidelines Cover Page.

1. Modification to Guidelines Comment 2.D.106, to strike an obsolete cross-reference

The Commission adopted a proposal to strike the reference to the obsolete cross-reference to Comment 2.C.10 in Comment 2.D.106, as follows.

[Section]2.D. Departures from the Guidelines

* * *

Comment * * *

2.D.106. *The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and ~~Comment 2.C.10~~). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and “revocation of a stay of adjudication” will be noted as the reason for departure, unless the court offers another explanation.* * * *

2. Modification to Guidelines Cover Page to strike the word “annual.”

The Commission adopted a proposal to strike the word “annual” from the notation on the Guidelines cover page to clarify that the Guidelines are in effect until the next publication, which may or may not be annual, as follows.

Minnesota Sentencing Guidelines and Commentary

August 1

2017

These Sentencing Guidelines are effective August 1, ~~2016~~ 2017, and determine the presumptive sentence for felony offenses committed on or after the effective date. The Guidelines remain in effect until the next ~~annual~~ publication.

Appendix 4. Proposed Modifications to the Sentencing Guidelines

At its October 12, 2017, and November 9, 2017, meetings, the Commission adopted motions to move three proposed modifications to the Sentencing Guidelines and Commentary forward to public hearing, and to report those proposed modifications to the Legislature in this report.

Appendix 4.1. Proposal to Modify Guidelines § 1.A – Statement of Purpose and Principles

On November 9, 2017, the Commission proposed to modify Guidelines § 1.A, to incorporate changes made to Minn. Stat. § 244.09, subd. 5, indicating, in establishing and modifying the Sentencing Guidelines, that the Commission’s primary consideration shall be public safety, as follows.

[Section 1.]A. Statement of Purpose and Principles

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender’s criminal history. ~~Equity in sentencing requires that: (a) convicted felons with similar relevant sentencing criteria should receive similar sanctions; and (b) convicted felons with relevant sentencing criteria substantially different from a typical case should receive different sanctions.~~

The Sentencing Guidelines shall embody the following principles:

1. In establishing and modifying the Sentencing Guidelines, the Commission’s primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.
- ~~1.2.~~ Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
- ~~2.3.~~ The severity of the sanction should increase in direct proportion to an increase in offense severity or the convicted felon’s criminal history, or both. This promotes a rational and consistent sentencing policy.
- ~~3.4.~~ Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.
- ~~4.5.~~ Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or who have longer criminal histories. To ensure such usage of

finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

- 5.6. Although the Sentencing Guidelines are advisory to the court, the presumptive sentences are deemed appropriate for the felonies covered by them. Therefore, departures from the presumptive sentences established in the Sentencing Guidelines should be made only when substantial and compelling circumstances can be identified and articulated. * * *

Appendix 4.2. Proposal to Modify Guidelines § 5 - Felony Escape from Electronic Home Monitoring

On October 12, 2017, the Commission proposed to officially designate Escape from Electronic Home Monitoring under Minn. Stat. § 609.485, subd. 4(f), an “unranked” offense in Guidelines § 5, as follows.

[Section]5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
UNRANKED	<u>Escape from Electronic Home Monitoring</u>	<u>609.485, subd. 4(f)</u>

* * *

[Section]5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
<u>609.485, subd. 4(f)</u>	<u>Escape from Electronic Home Monitoring</u>	<u>Unranked</u>

* * *

Appendix 4.3. Proposal to Modify Guidelines Comment 2.E.03 – Offenses Involving a Dangerous Weapon; Application of Mandatory Sentences

On November 9, 2017, the Commission proposed to correct the list of offenses in Guidelines Comment 2.E.03 that, by definition, involve the use or possession of a firearm, or the use of another dangerous weapon, as follows.

[Section 2.]E. Mandatory Sentences

* * *

2.E.03. *Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: Aggravated Controlled Substance Crime in the First Degree with a Firearm under Minn. Stat. § 152.021, subd. 2b(1); Controlled Substance Crime in the First or Second Degree with a firearm under Minn. Stat. § 152.021, subd. 1(2)(i) or 2(a)(2)(i), or Minn. Stat. § 152.022, subd. 1(2)(i) or 2(a)(2)(i); Assault in the Second Degree under Minn. Stat. § 609.222; Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b; and Drive-By Shootings under Minn. Stat. § 609.66; and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3). The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is longer.*

* * *

Appendix 5.1. Standard Sentencing Guidelines Grid – Effective August 1, 2017

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

¹ 12¹=One year and one day



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



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

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

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

Appendix 5.2. Sex Offender Grid – Effective August 1, 2017

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

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
<i>CSC 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
<i>CSC 2nd Degree–(c)(d)(e)(f)(h) Prostitution; Sex Trafficking</i> ³ <i>1st Degree–1(a)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
<i>CSC 3rd Degree–(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking</i> <i>2nd Degree–1a</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> ²
<i>CSC 2nd Degree–(a)(b)(g) CSC 3rd Degree–(a)(e)(f) or(b)with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree–(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography</i> ²	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
<i>CSC 4th Degree–(a)(b)(e)(f); CSC 5th Degree; Possession of Child Pornography (Subsequent or by Predatory Offender)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree–(b)with subd. 2(2); Indecent Exposure Possession of Child Pornography; Solicit Child for Sexual Conduct</i> ²	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
<i>Registration Of Predatory Offenders</i>	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



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 offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

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

³ Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)

Appendix 5.3. Drug Offender Grid – Effective August 1, 2017

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 subjected to local confinement.

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

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

¹ 12¹=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.