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# Controlled Substance Offenses

Sentencing Practices for Offenses  
Sentenced in 2017

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*Published March 5, 2019*



# MINNESOTA

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## Summary of 2017 Data

This report gives statistics concerning 2017 sentencing practices for controlled substance offenses (“drug offenses”), as well as trends in sentencing since the implementation of the Guidelines.

The 2016 Drug Sentencing Reform Act (DSRA)<sup>1</sup> made a number of significant changes to the sentencing of Minnesota drug offenses. Those changes generally took effect August 1, 2016, and were made effective for crimes committed on and after that date. Approximately half of the cases sentenced in 2017 were subject to the DSRA provisions (“post-DSRA” cases have dates of offense after July 31, 2016) while about half were not (“pre-DSRA” cases have dates of offense before August 1, 2016). This report first presents information on sentencing practices for pre- and post-DSRA cases sentenced in 2017. Then, pre- and post-DSRA cases are compared.

In 2017, 5,670 offenders were sentenced for drug offenses (Figure 1), an increase of 3.6 percent over 2016 (Figure 2). Because the number of offenders sentenced for drug offenses grew each year from 2011 through 2017, the volume of drug cases sentenced in 2017 was 70.5 percent greater than the 2010 volume. This seven-year rise followed a four-year decline in drug case volume, by seven or eight percent each year, from 2006 to 2010 (Figure 2).

The number of first-degree offenses sentenced increased by 21 percent in 2017, after declining by seven percent in 2016. The number of offenders sentenced for fifth-degree offenses also increased (by 5%). The number sentenced for second, third, and fourth-degree offenses declined by 7, 6, and 22 percent respectively. The number of methamphetamine and amphetamine, marijuana, heroin and opium offenses went up while the number of cases involving cocaine and synthetic narcotics went down (Figure 5).

The total incarceration rate for drug offenders sentenced was 92 percent, with 20 percent receiving a prison sentence and 72 percent getting up to one year of local confinement (i.e., local correctional facility, county jail or workhouse) as a condition of probation (Table 1). The 20-percent imprisonment rate was the lowest since 2006 and may be partially attributable to the DSRA. For those receiving an executed prison sentence, the average pronounced duration was 41 months (Table 2).

Among drug offenders recommended prison under the Guidelines, the total mitigated departure rate was 40 percent. This was higher than the mitigated departure rate for non-drug offenders recommended prison under the Guidelines (35%). As in 2016, among drug offenders recommended prison under the Guidelines, 41 percent were placed on probation and 16 percent received a shorter prison sentence than the Guidelines recommended (mitigated durational departure) (Figure 25). Among drug offenders who actually received prison sentences, 23 percent received a mitigated durational departure, also the same as in 2016 (Figure 18). This rate varied significantly by region (Figure 20).

DSRA’s new gross misdemeanor offense is being widely used (see p. 42), and data show post-DSRA growth in the number of cases resulting in stays of adjudication under Minn. Stat. § 152.18 (see p. 48).

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<sup>1</sup> [2016 Minn. Laws ch. 160](#).

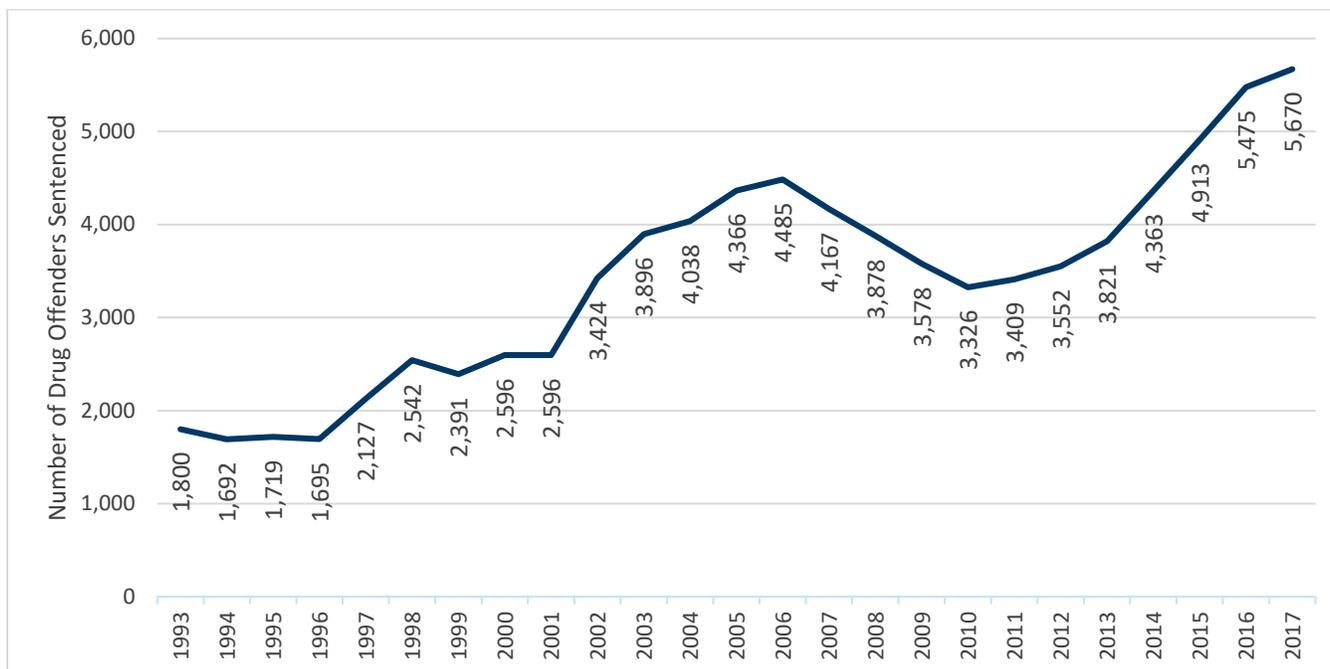
# Case Volume & Distribution<sup>2</sup>

## Volume of Cases

The number of felony offenders sentenced in 2017 totaled 18,288, an increase of eight percent above the number of offenders sentenced in 2016. An illustration of the total number of felony offenders sentenced since 1981 can be found in MSGC’s report, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the “Annual Summary” tab at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports). There were 5,670 felony offenders sentenced for drug offenses in 2017, an increase of 3.6 percent from 2016, an increase of 70.5 percent from 2010, and the largest number ever sentenced (Figure 1).

The provisions of the 2016 Drug Sentencing Reform Act (DSRA)<sup>3</sup> applied only to cases with dates of offense on or after August 1, 2016.<sup>4</sup> Of the drug offenders sentenced in 2017, the DSRA applied to 2,756 (49%).

Figure 1. Number of Offenders Sentenced for Felony Drug Convictions, 1993–2017



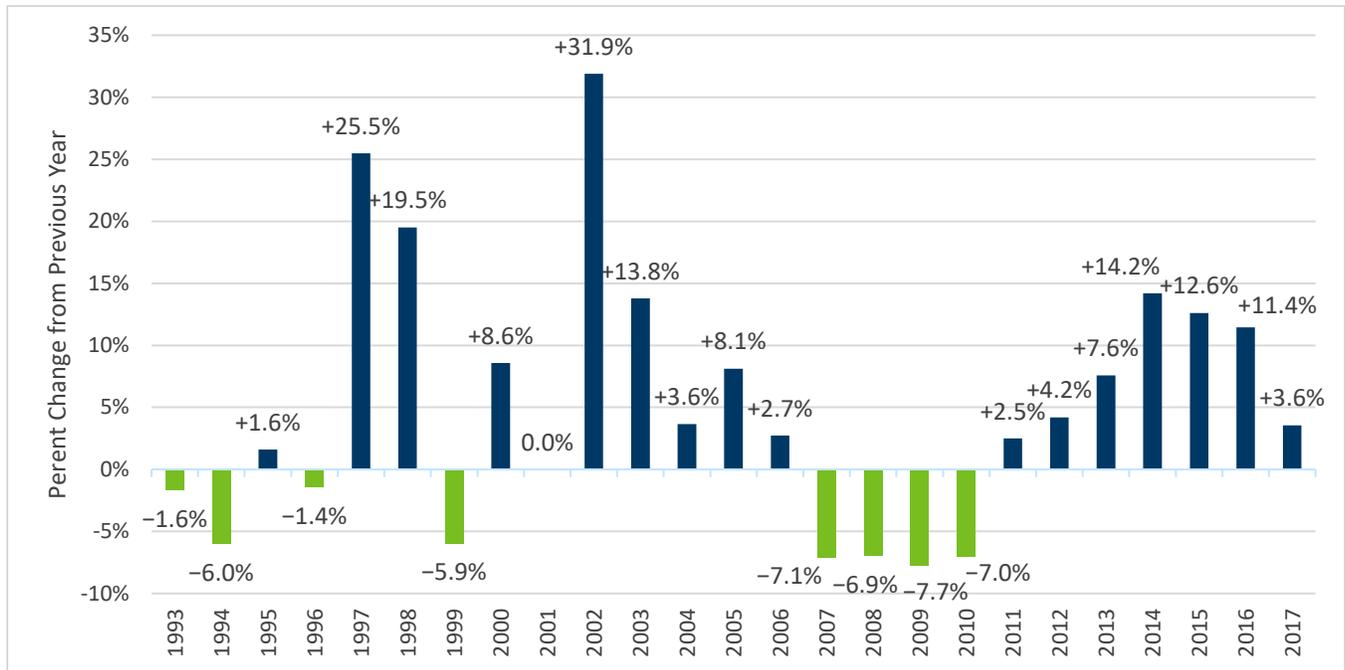
<sup>2</sup> Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

<sup>3</sup> I.e., [2016 Minn. Laws ch. 160](#).

<sup>4</sup> In the case of mitigations to the Drug Offender Grid established by [2016 Minn. Laws ch. 160](#) § 18, however, the Minnesota Supreme Court has held that such changes took immediate effect and therefore applied to convictions not final as of § 18’s effective date (May 23, 2016). [State v. Kirby](#), 899 N.W.2d 485 (Minn. 2017).

Figure 2 illustrates the percent change in the number of drug offenders sentenced over time. From 2006 through 2010, the number of drug offenders sentenced had decreased by seven or eight percent each year. From 2011 through 2017, the number of drug offenders sentenced increased each year. In the 3 years from 2014 to 2016, the number of offenders sentenced for drug offenses increased by over 10 percent each year. In 2017, the growth rate decreased to 3.6 percent (Figure 2).

Figure 2. Percent Change in Number of Offenders Sentenced for Felony Drug Convictions, 1993–2017



### Volume of Cases by Degree

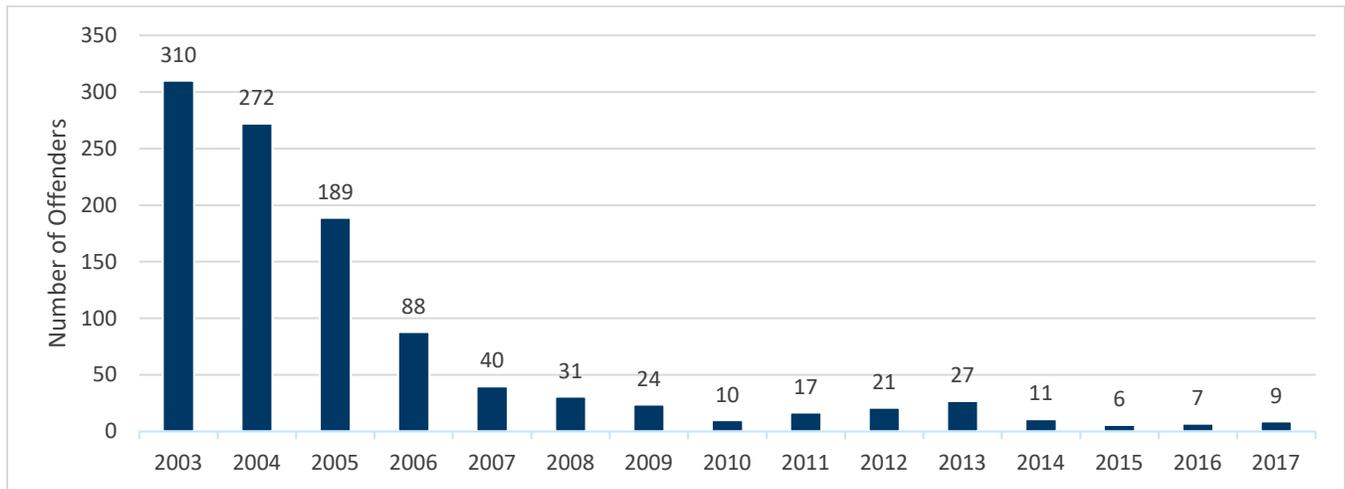
Figure 3 shows the distribution of felony drug offenders across the five controlled substance degrees. The largest group of cases sentenced was fifth degree (74% of the cases). The largest increase in the number of offenders sentenced was for first degree (21% increase). The number sentenced for second- and third-degree offenses decreased by seven and six percent, respectively, while the number sentenced for fifth degree increased by five percent. The number sentenced for fourth degree decreased by 22 percent and the other offenses increased by 50 percent.

The number of first-degree offenders sentenced declined nearly every year between 2003 and 2010, due in part to the decline in the number of offenders sentenced for the first-degree offense of manufacture of methamphetamine (10 offenders in 2010, compared to 310 in 2003) (Figure 4).<sup>5</sup> However, in 2011, the number of offenders sentenced for first degree began to increase again (to 226 offenders in 2011 for an increase of 16%; 245 offenders in 2012 for an increase of 8%; 273 offenders in 2013 for an increase of 11%). The increase in 2014

<sup>5</sup> In 2005, the offense of manufacture of methamphetamine; possession of precursors (Minn. Stat. § [152.021](#), subd. 2a(b)) was reclassified, and is no longer a first-degree offense. This statutory change contributed to the decline in the total number of first-degree offenders. These “precursor offenses” are now reported in the “Other” category.



Figure 4. Number of Offenders Sentenced for Manufacture of Methamphetamine, 2003–2017



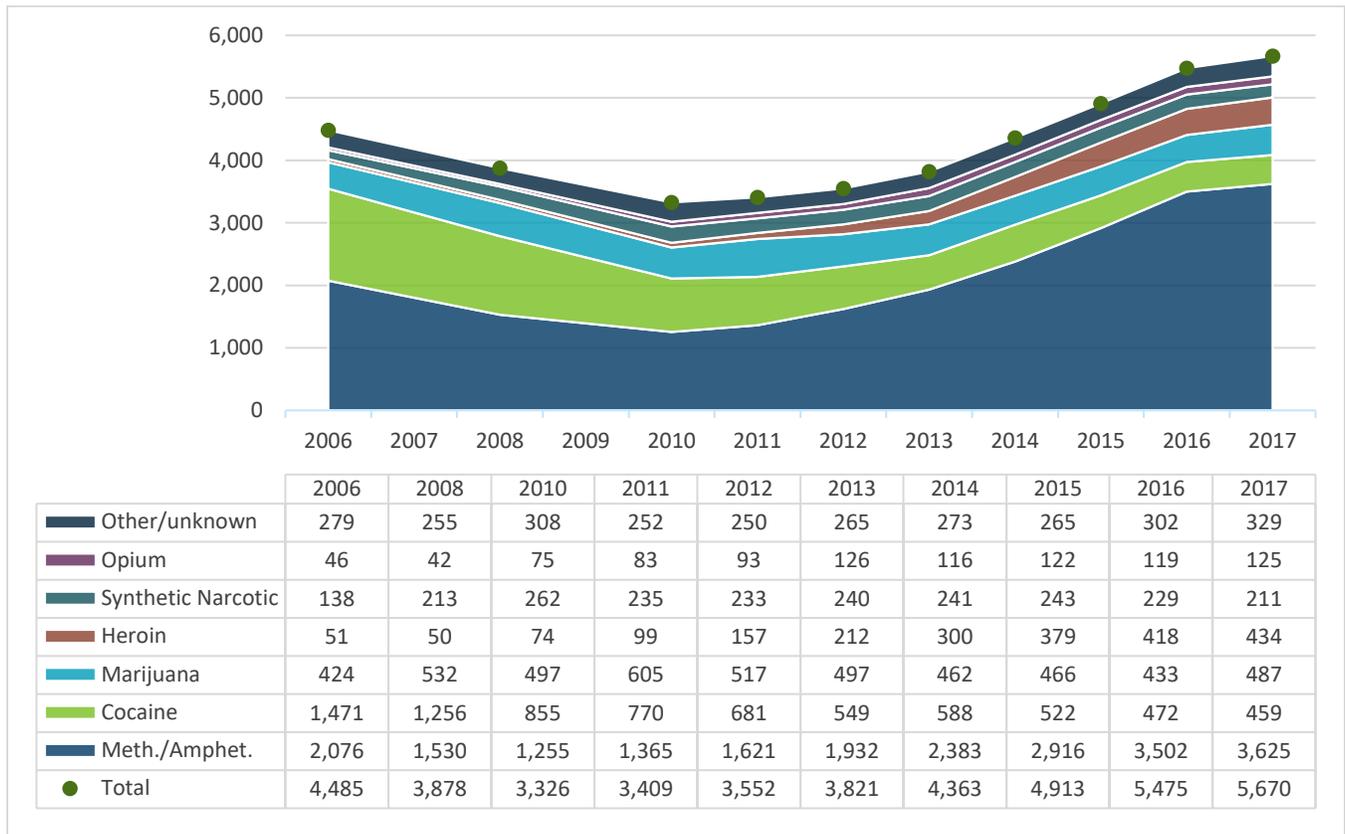
## Drug Type, Region, Race & Prior Drug Convictions

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

The distribution of cases among drug types, as encoded on criminal complaints, has changed over time. In 1996, 48 percent of the cases sentenced involved cocaine, 24 percent involved marijuana, 14 percent were unknown or of some other type, and 14 percent involved amphetamines, a category that includes methamphetamine (“meth”). In 2002, cocaine still represented the largest number of drug cases (40%), but the methamphetamine and amphetamine category (“meth/amphetamine”) had grown to 38 percent, and marijuana had decreased to 13 percent. By 2004, over half (51%) of the drug cases sentenced involved the meth/amphetamine category. Between 2015 and 2016 there was a 20 percent increase in the number of offenders sentenced for meth/amphetamine offenses and a 10 percent decrease in the number of offenders sentenced for cocaine offenses. In 2017, the number sentenced for meth/amphetamine offenses grew by an additional 4 percent and the number sentenced for cocaine offenses decreased by 3 percent. The number sentenced for marijuana offenses decreased by seven percent in 2016 but rose by 12 percent in 2017 (Figure 5).

Between 2015 and 2016, the number of cases involving heroin increased by 10 percent (from 379 to 418) and in 2017 rose an additional four percent to 434. The number of offenses involving opium increased by five percent (from 119 in 2016 to 125 in 2017) and the number sentenced for synthetic narcotics decreased by eight percent (from 229 to 211). Between 2008 and 2017, heroin and opium showed the largest percentage increases (768% for heroin and 198% for opium). In that same period, the number of offenders sentenced for synthetic narcotics decreased by one percent (Figure 5).

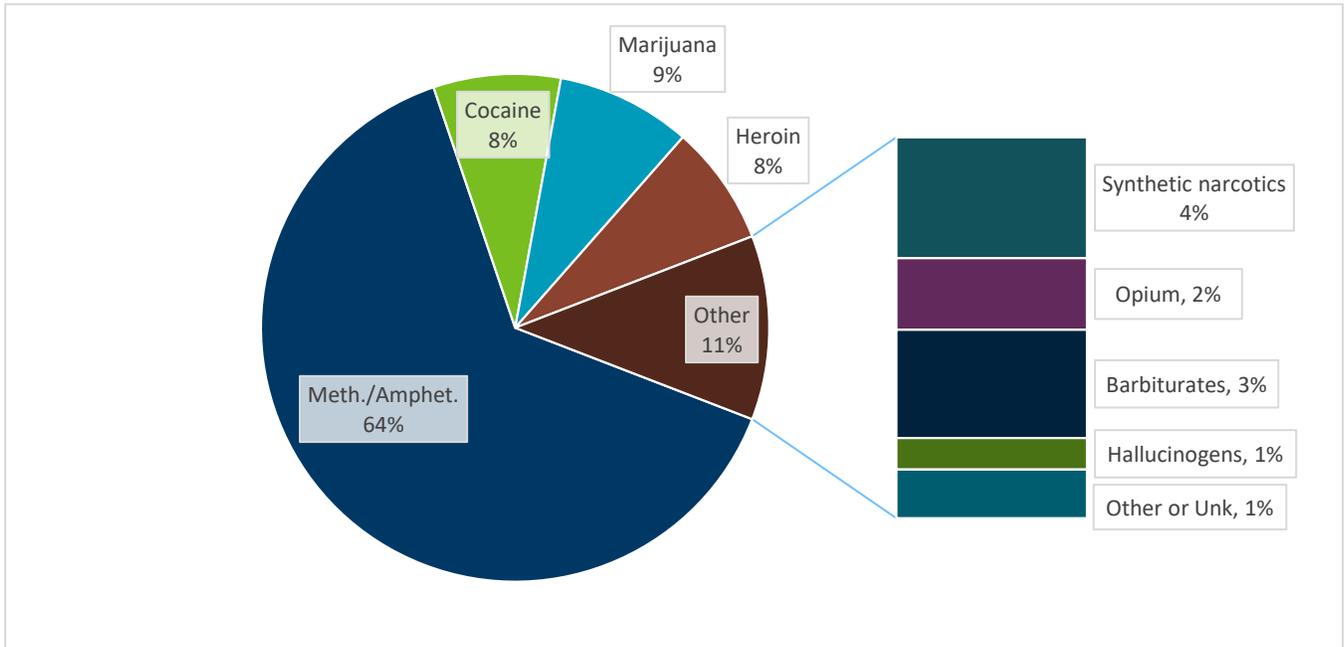
Figure 5. Distribution of Offenders by Drug Type, Sentenced 2006, 2008, 2010–2017



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

At 64 percent in 2017, the meth/amphetamine category continued to be the drug type with the largest number of cases, while eight percent of the cases involved cocaine, nine percent involved marijuana and 19 percent were for other or unknown substances. Among the other drug types, heroin had the largest number of cases at 434 (8%), followed by synthetic narcotics at 211 (4%) (Figure 6).

Figure 6. Percentage of Offenders by Drug Type, 2017



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

### Distribution of Cases over Time (Region)

In the last decade, the number of drug cases outside the seven-county metro area of Anoka, Dakota, Carver, Hennepin, Ramsey, Scott, and Washington counties has increased more than the number of drug cases sentenced in the metro counties. In 1998, 33 percent of all drug cases were sentenced in Greater Minnesota (Figure 7). By 2004, that percentage had grown to 51 percent, and it has remained at or above 50 percent every year since, except 2006. In 2017, 59 percent of drug offenders were sentenced in Greater Minnesota, almost equivalent to the record high of 60 percent in 2013. In comparison, the percent of non-drug offenders sentenced in Greater Minnesota in 2016 was 46 percent. In Hennepin and Ramsey, the percent of drug offenders is lower than the percent of non-drug offenders, while in the other metro counties it is about the same (Figure 8).

Figure 7. Distribution of Drug Cases by Region, 1998–2017

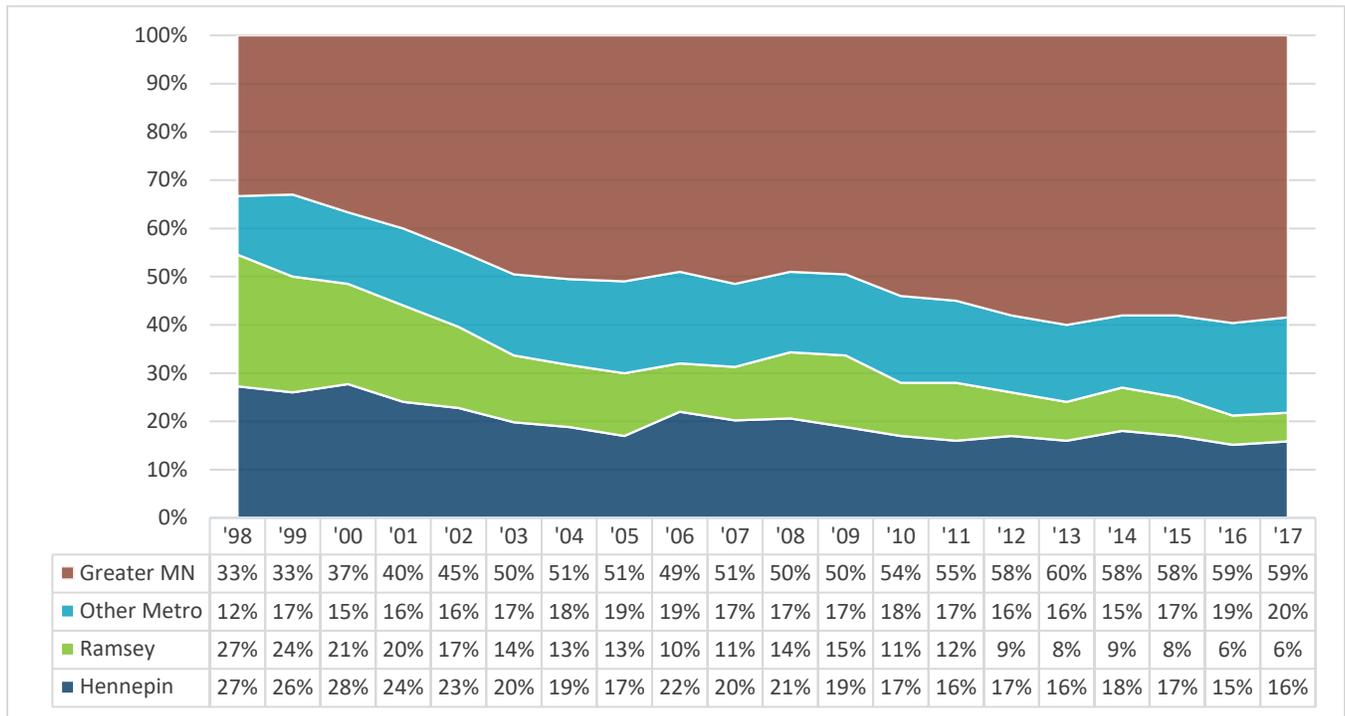
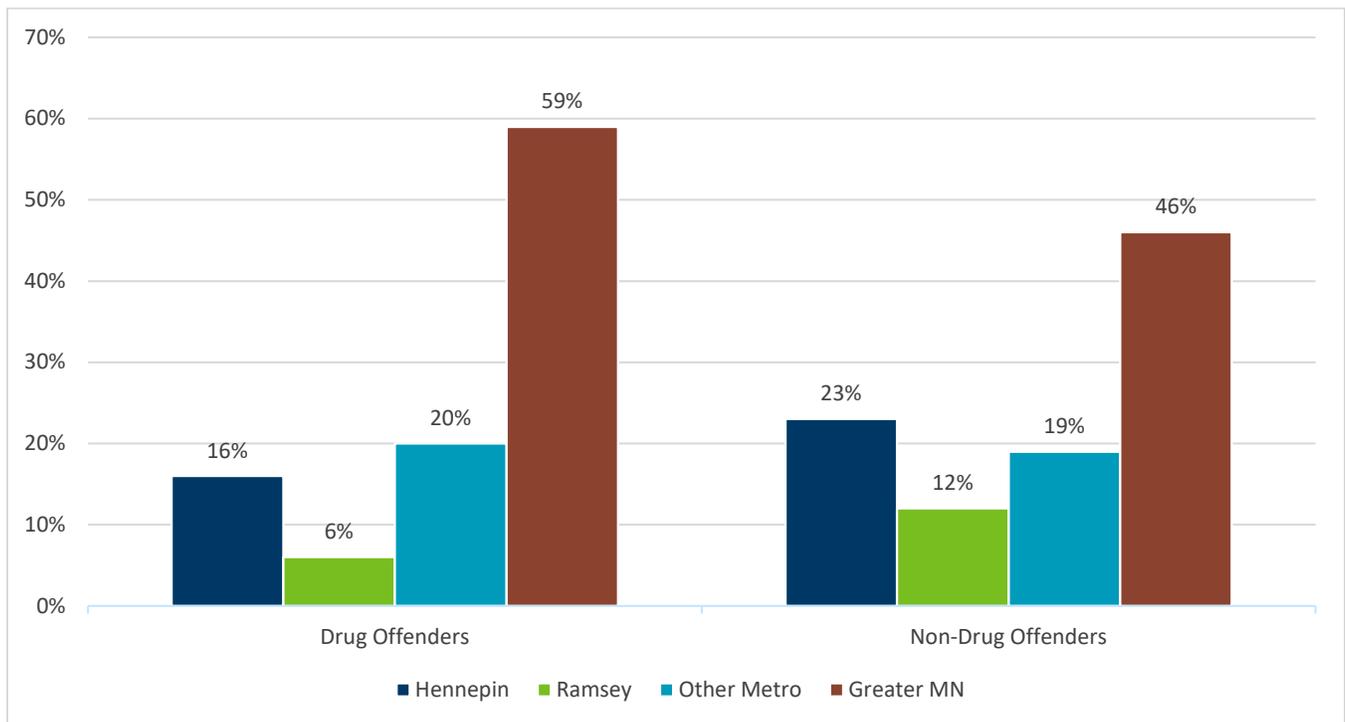


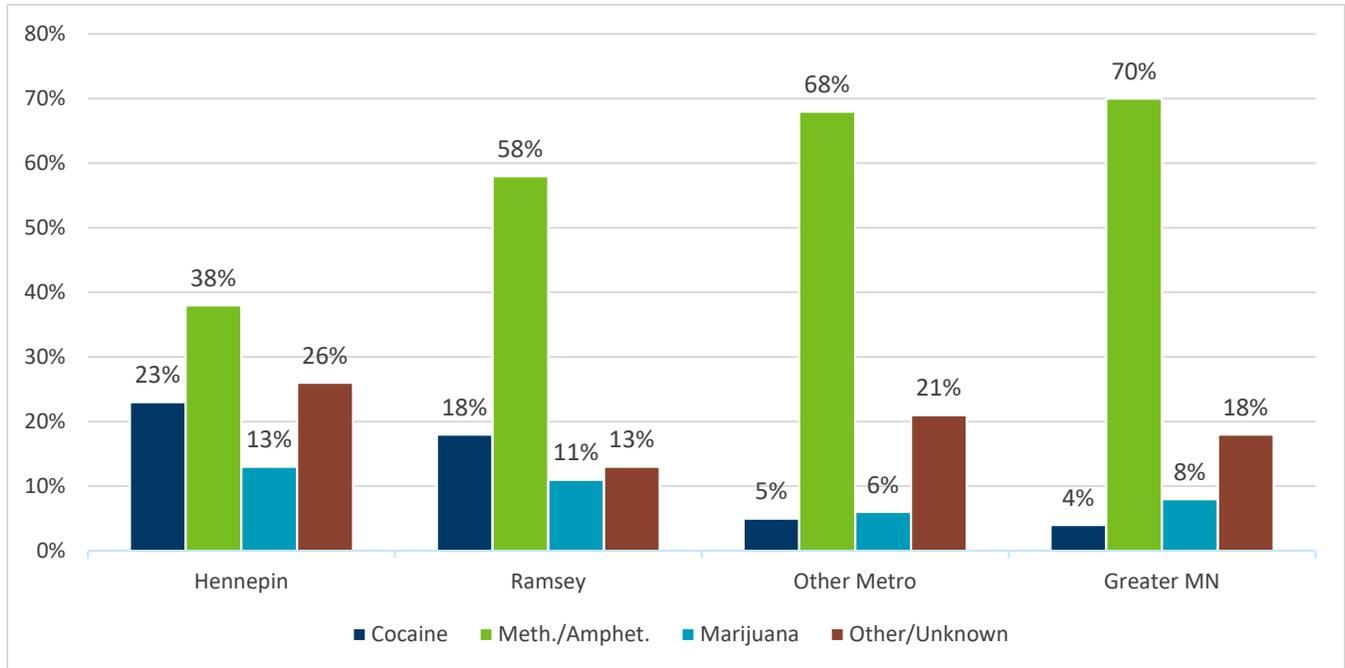
Figure 8. Distribution of Offenders by Region; Drug and Non-Drug Offenders, 2017



## 2017 Distribution of Cases (Drug Types and Region)

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

Figure 9. Distribution of Drug Offenders by Drug Type and Region, 2017



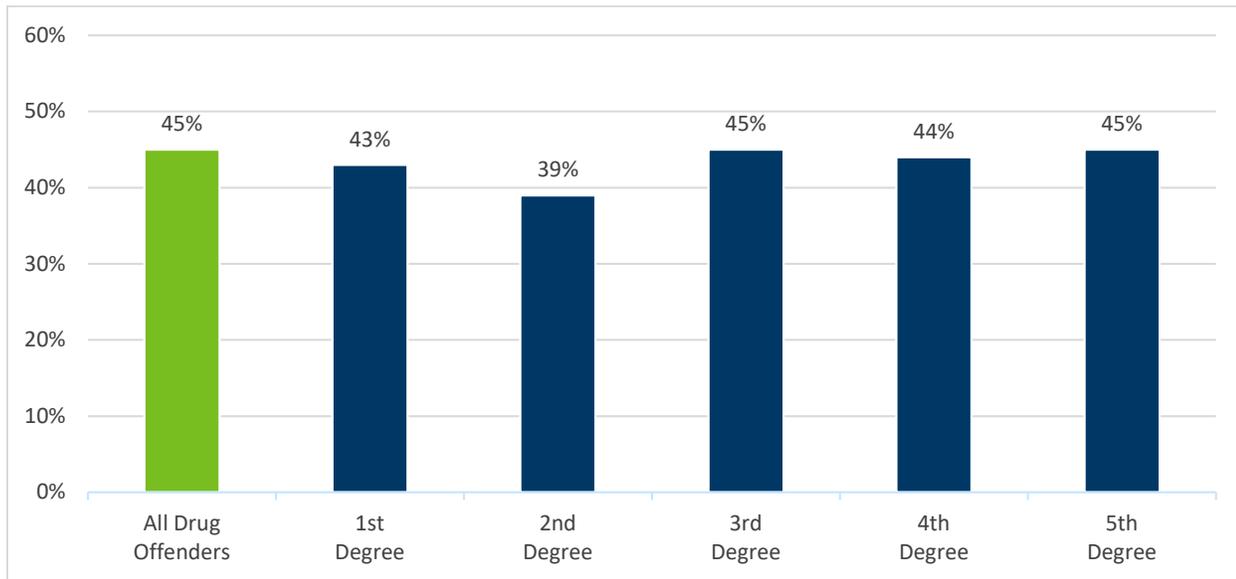
Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

## 2017 Distribution of Cases (Prior Conviction)

Forty-five percent of drug offenders sentenced had prior convictions for felony-level drug offenses (Figure 10).<sup>6</sup> Second-degree offenders (39%) were less likely than other first- through fifth-degree offenders (43–45%) to have prior convictions.

<sup>6</sup> In first- and second-degree (and Pre-DSRA third-degree) controlled substance cases, many (but not all) of these prior convictions will trigger mandatory minimum prison sentences. For a further discussion of mandatory minimum sentences, see p. 30.

Figure 10. Percent of Offenders with a Prior Felony Drug Sentence by Controlled Substance Degree, 2017



### Distribution by Race and Ethnicity

In 1999, 51 percent of drug offenders were white and 36 percent were black, whereas in 2017, 67 percent of drug offenders were white and 15 percent were black. A larger percentage of drug offenders were white than of offenders sentenced for non-drug offenses (Figure 11).

Figure 11. Distribution of Offenders by Race; Drug Offenders and Non-Drug Offenders, 2017

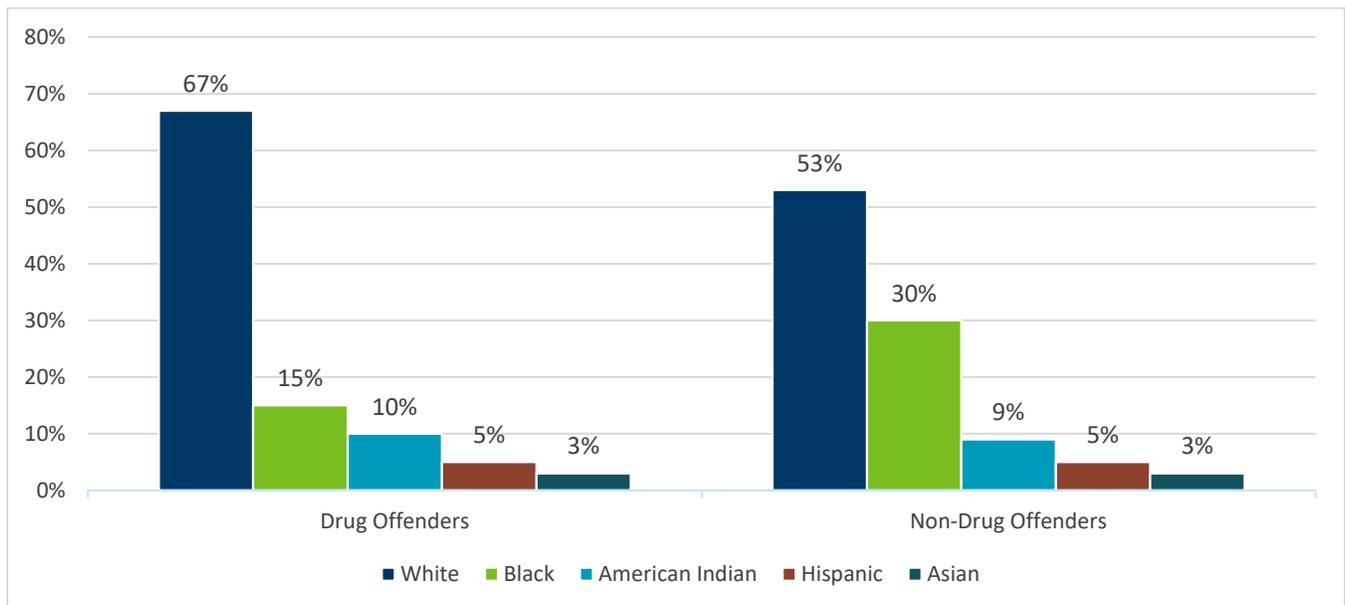
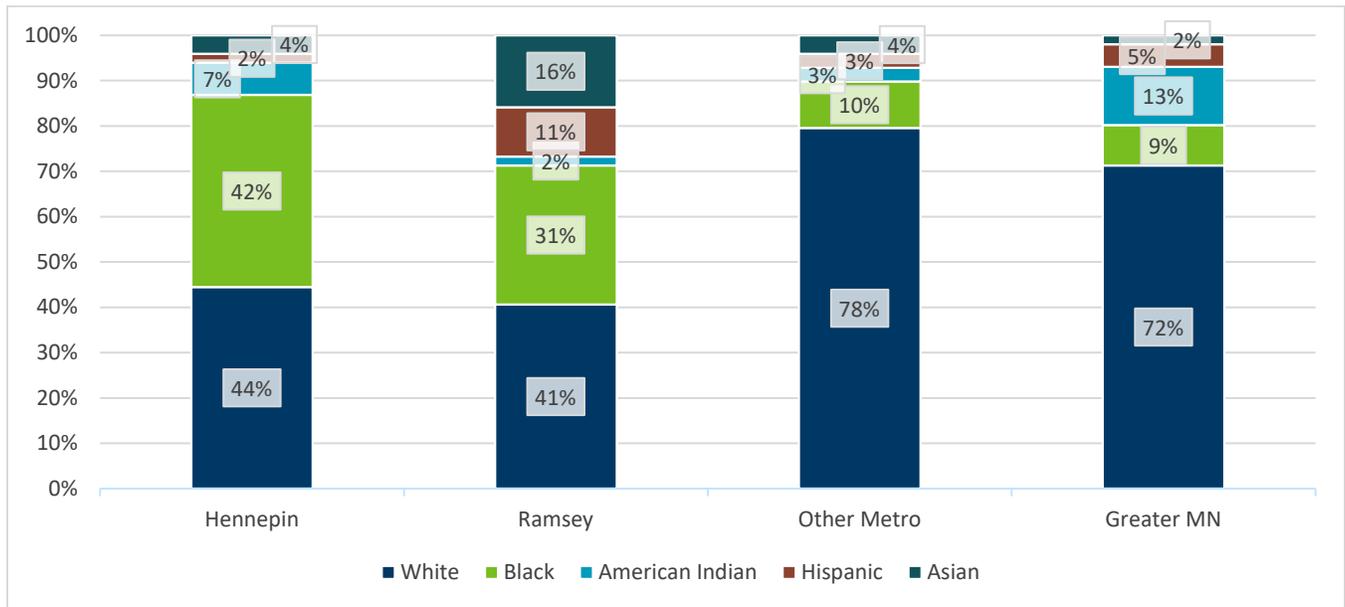


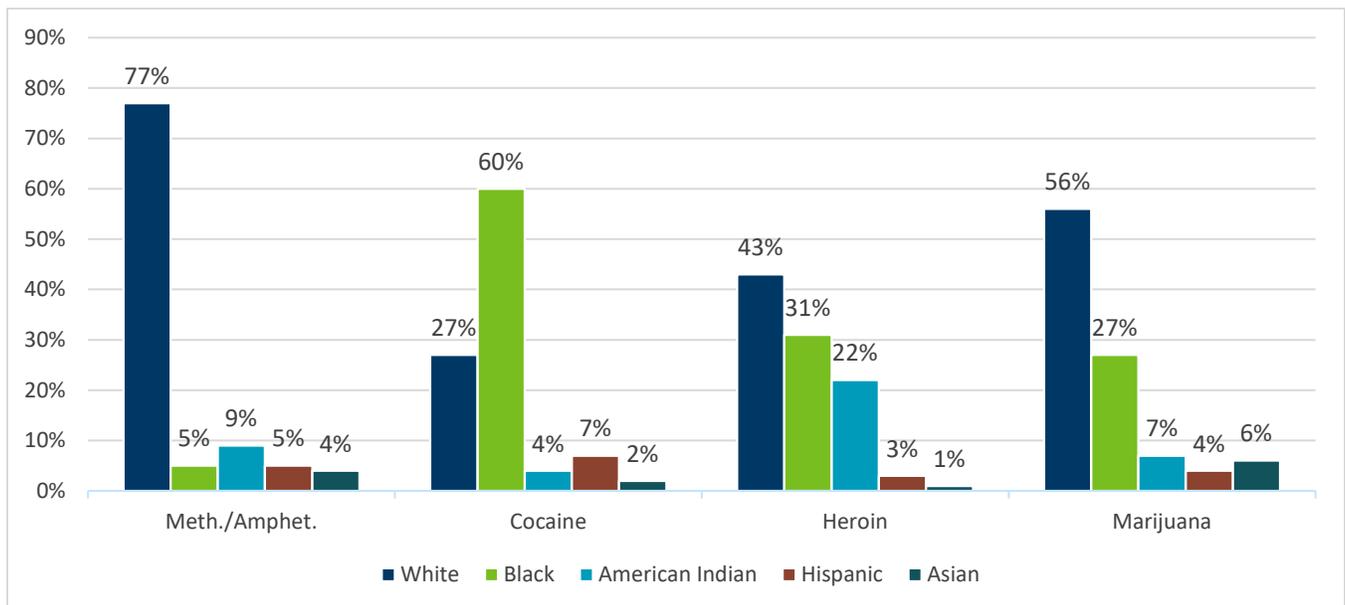
Figure 12 displays the racial distribution of drug offenders by region. Black offenders make up a larger share of the drug offenders sentenced in Hennepin and Ramsey counties than in the rest of the state. These counties include the Metropolitan areas of Minneapolis and St. Paul.

Figure 12. Distribution of Offenders by Race and Region, 2017



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

Figure 13. Distribution of Offenders by Race and Drug Type, 2017



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

## Sentencing Practices

In 2017, 92 percent of felony drug sentences included incarceration: 20 percent in state prison and 72 percent in local correctional facilities (Table 1). The remaining eight percent were not incarcerated; however, they may have served time before sentencing and received sanctions such as drug treatment or home confinement.

Table 1. Total Incarceration, 2017

Incarceration Type	Number	Percent
State Prison	1,128	20
Local Confinement	4,072	72
Total Incarceration	5,200	92
<b>Total</b>	<b>5,670</b>	<b>100</b>

### Incarceration in State Prison

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

Imprisonment of felony drug offenders has increased significantly over the past 25 years, at a higher rate than for any other offense category. The reason for this increase may be twofold: a larger total number of drug offenders are being sentenced, and a higher percentage of them are receiving prison sentences.<sup>7</sup> The imprisonment rate for drug offenders was highest in 2003, at 28 percent, and second-highest in 2013, at 27 percent (Table 2). Despite the lower imprisonment rate trend in recent years, it is still true that more drug offenders are being sentenced to prison for longer periods of time than 30 years ago, which directly impacts the amount of correctional resources required to accommodate this offender population.

In 1991, 217 drug offenders were imprisoned (13% imprisonment rate), with an average pronounced sentence of 35 months. By 2003, this number climbed to 1,107 offenders (28% imprisonment rate). The average drug sentence duration peaked at 52 months in 2003, falling into the 42-46 month range thereafter. In 2017 the imprisonment rate fell from 22% in 2016 to 20%, the lowest rate since 2006 and before that, the mid-90s. The

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<sup>7</sup> It is difficult to measure the extent to which the incarceration increases may have been driven by changes in offender behavior; in enforcement, prosecutorial, or judicial practice; or in policy. With that in mind, the following policy changes are notable: [Minn. Sentencing Guidelines \(1989\)](#) (at the same time legislature created five degrees of drug offense, durations increased for the severity levels to which some of those degrees would be assigned); [1992 Minn. Laws ch. 359](#) (sale redefined to include possession with intent to sell; cocaine thresholds reduced); [1997 Minn. Laws ch. 239, art. 4](#) (heroin thresholds reduced); [1998 Minn. Laws ch. 367, art. 4](#) (methamphetamine thresholds reduced); and [2016 Minn. Laws ch. 160](#) (Drug Sentencing Reform Act: cocaine and methamphetamine thresholds increased, new Drug Offender Grid established, scope of mandatory minimums reduced, etc.).

number of drug offender receiving a prison sentence fell from 1,229 in 2016 to 1,128 in 2017. The average sentence duration declined from 42 to 41 months.

*Table 2. Imprisonment Cases; Prison Rates and Average Pronounced Durations for Drug and Non-Drug Offenders, 1991–2017*

Year	Drug Offenders			Non-Drug Offenders		
	Number of Cases	Prison Rate	Average Duration	Number of Cases	Prison Rate	Average Duration
1991	1,693	13%	35 months	7,468	21%	46 months
1992	1,830	14%	38 months	7,495	22%	49 months
1993	1,800	19%	42 months	7,837	22%	47 months
1994	1,692	17%	44 months	8,095	22%	51 months
1995	1,719	19%	41 months	7,702	24%	46 months
1996	1,695	17%	42 months	7,785	24%	47 months
1997	2,127	16%	42 months	7,720	24%	44 months
1998	2,542	22%	40 months	8,345	24%	47 months
1999	2,391	22%	42 months	8,243	23%	48 months
2000	2,596	24%	47 months	7,799	23%	49 months
2001	2,596	24%	47 months	8,200	22%	48 months
2002	3,424	27%	50 months	9,554	22%	46 months
2003	3,896	28%	52 months	10,596	23%	50 months
2004	4,038	25%	46 months	10,713	23%	45 months
2005	4,366	23%	44 months	11,096	23%	46 months
2006	4,485	20%	42 months	11,961	22%	45 months
2007	4,167	24%	42 months	12,001	23%	46 months
2008	3,878	25%	43 months	11,516	25%	46 months
2009	3,578	25%	42 months	11,262	25%	43 months
2010	3,326	25%	43 months	10,985	26%	47 months
2011	3,409	24%	43 months	11,162	25%	46 months
2012	3,552	25%	44 months	11,655	27%	48 months
2013	3,821	27%	43 months	11,497	27.5%	46 months
2014	4,363	25%	43 months	11,782	26%	46 months
2015	4,913	24%	41 months	11,850	27%	46 months
2016	5,475	22%	42 months	11,452	27%	48 months
2017	5,670	20%	41 months	12,318	26%	48 months

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

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

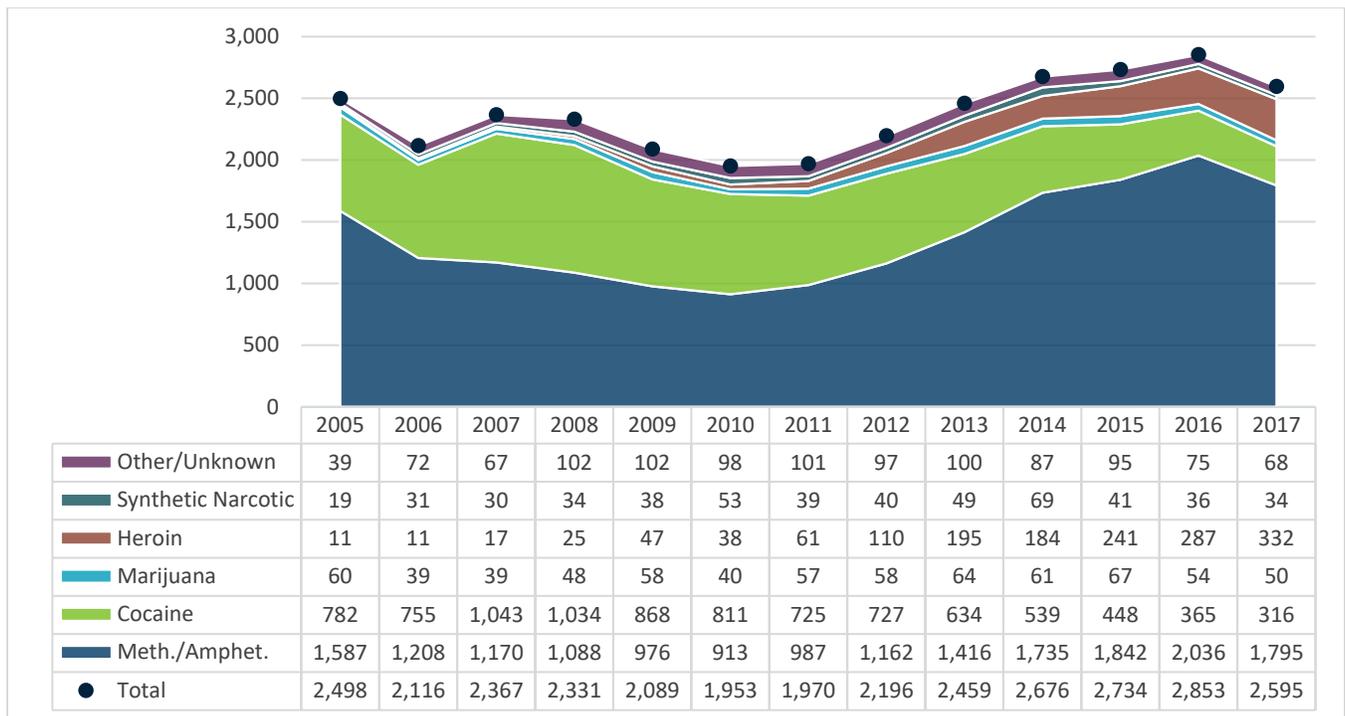
description of the relative number of beds taken up by the offenders with various drug types, they do not mirror the actual Minn. Department of Corrections population for any given year because they do not reflect –

- Beds for probation revocations;
- Credit for time served before sentencing;
- Extended incarceration for violations in prison;
- Early releases for participation in early release programs such as Challenge Incarceration;
- Beds for supervised release revocations.

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

With these caveats in mind, it is estimated that the drug offenders receiving prison sentences in 2017 will, over time, occupy 2,595 beds. The number of estimated prison beds taken up by meth/amphetamine offenders reached a record high in 2016 when offenders in the meth/amphetamine category—who constituted 64 percent of the cases sentenced—accounted for 71 percent of the estimated prison beds. This is an increase from 67 percent in 2015. The percent of beds taken up by meth/amphetamine cases reached its previous high in 2005 (63.5 percent). From 2007 through 2010, the meth share of drug offenders’ prison beds stayed below 50 percent, but then increased steadily through 2016. In 2017, the share of prison beds accounted for by meth offenders (still 64% of offenders) fell slightly, to 69 percent.

Figure 14. Estimated Prison Beds for Felony Controlled Substance Crimes, by Drug Type, Sentenced 2005–2017



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

## Probation Cases

The rise in the number of drug cases has resulted in an increase in the number of drug offenders sentenced to probation, as well as an increase in the number of drug offenders serving local confinement (i.e., local correctional facility, county jail or workhouse) as a sentence or a condition of probation. In 2017, 4,542 offenders received non-prison sentences for drug offenses, a 200 percent increase over the number receiving non-prison sentences in 1991 (Table 3). In comparison, the number of non-drug offenders serving non-prison sentences increased by about 57 percent during this same time period. Almost all of the drug offenders receiving non-prison sentences are placed on probation (99% in 2017). The increase in the number of drug offenders placed on probation expands the size of the pool of offenders who may eventually end up in prison through probation revocations, which impacts prison populations. In 2017, the average pronounced period of probation for drug offenders was 68.5 months; the median was 60 months.

Offenders placed on probation for a felony offense can receive up to one year of time in a local correctional facility as a condition of probation. The vast majority of offenders placed on felony probation serve some time in a local correctional facility. Since 1991, more than 80 percent of felony probationers have had local time imposed as a condition of probation, and drug offenders have usually had local time imposed at a slightly higher rate than non-drug offenders. Since 2012, the local incarceration rate had been 91 percent. In 2017 it fell to 90 percent. For both groups, the average time pronounced in a local facility in most years has usually been more than 100 days. In 2017, the average pronounced local time for drug offenders was 102 days (a decrease from the 2016 figure of 122 days), whereas for non-drug offenders it was 94 days (Table 3).

*Table 3. Non-Imprisonment Cases; Rates and Average Pronounced Local Confinement for Drug and Non-Drug Offenders, 1991–2017*

Year	Drug Offenders			Non-Drug Offenders		
	Number of Stayed Cases	Local Rate	Average Duration	Number of Stayed Cases	Local Rate	Average Duration
1991	1,476	86%	90 days	5,908	80%	110 days
1992	1,575	87%	101 days	5,825	83%	111 days
1993	1,459	86%	116 days	6,114	81%	112 days
1994	1,412	87%	98 days	6,332	80%	117 days
1995	1,398	87%	101 days	5,887	82%	110 days
1996	1,404	83%	104 days	5,887	81%	108 days
1997	1,781	87%	105 days	5,877	82%	107 days
1998	1,192	88%	99 days	6,334	83%	110 days
1999	1,872	88%	99 days	6,311	84%	104 days
2000	1,982	90%	101 days	5,985	85%	106 days
2001	1,973	91%	108 days	6,374	84%	104 days
2002	2,486	90%	114 days	7,435	86%	103 days
2003	2,789	91%	115 days	8,167	86%	109 days
2004	3,015	91%	117 days	8,290	88%	110 days
2005	3,353	91%	118 days	8,526	89%	99 days

Year	Drug Offenders			Non-Drug Offenders		
	Number of Stayed Cases	Local Rate	Average Duration	Number of Stayed Cases	Local Rate	Average Duration
2006	3,573	91%	118 days	9,278	89%	96 days
2007	3,165	90%	118 days	9,243	88%	106 days
2008	2,914	88%	117 days	8,628	87%	106 days
2009	2,696	90%	113 days	8,421	87%	105 days
2010	2,503	82%	120 days	8,168	80%	107 days
2011	2,591	89%	120 days	8,327	87%	104 days
2012	2,650	91%	122 days	8,553	87%	104 days
2013	2,795	91%	121 days	8,330	89%	101 days
2014	3,253	91%	121 days	8,674	89%	102 days
2015	3,729	91%	119 days	8,642	88%	99 days
2016	4,246	91%	122 days	8,373	89%	97 days
2017	4,542	90%	102 days	9,299	89%	94 days

## Departure Rates

### Role and Definition of Departures in the Sentencing Guidelines System

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The Guidelines establish a presumptive sentence for felony offenses based on the severity of the offense and the offender’s criminal history score. The presumptive sentence is based on the typical case; however, the court may depart from the Guidelines when substantial and compelling circumstances exist. A “departure” is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures—dispositional and durational—as further explained below. Since the presumptive sentence is based on “the typical case,” the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

While the court ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is commonly agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

### Description of Departure Types

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**Dispositional Departure.** A “dispositional departure” occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: mitigated and aggravated. A

mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence.

**Durational Departure.** A “durational departure” occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

## Departure Rates for Drug Offenders and Non-Drug Offenders

### Total Departure Rate: Drug and Non-Drug Offenders

The total departure rate refers to the percentage of felony offenders who did not receive the presumptive Guidelines sentence. In 2017, the total departure rate for drug offenders was 19 percent compared to 27 percent for non-drug offenders. The total mitigated departure rate was 16 percent for drug offenders and 25 percent for non-drug offenders (Table 4).

Table 4. Total Departure Rates; Drug and Non-Drug Offenders, 2017

Departure Type	Drug Offenders		Non-Drug Offenders	
	Number	Percent	Number	Percent
<b>No Departure</b>	4,585	81	9,229	73
<b>Total Departures</b>	1,085	19	3,389	27
<i>Mitigated</i>	920	16	3,138	25
<i>Aggravated</i>	135	2.4	199	1.6
<i>Mixed</i>	30	0.5	52	0.4
<b>Total</b>	5,670	100	12,618	100

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

Aggravated dispositional departures occur relatively infrequently compared to other types of departures. Three percent of drug offenders received aggravated dispositional departures (sentenced to prison when the Guidelines recommended a stayed sentence) (Table 5). An offender’s request for an executed prison sentence or plea agreement accounted for 44 percent of aggravated dispositional departures in drug cases, excluding cases in which the departure reason was “unknown.”<sup>8</sup> This request is usually made to allow the offender to serve the

<sup>8</sup> For offenses committed after 7/31/2015, a sentence that is executed pursuant to an offender’s right to demand execution is not an aggravated dispositional departure (Guidelines § 2.D.1.f).

sentence concurrently (at the same time) with another prison sentence. The aggravated dispositional departure rate for drug offenders was higher than for non-drug offenders.

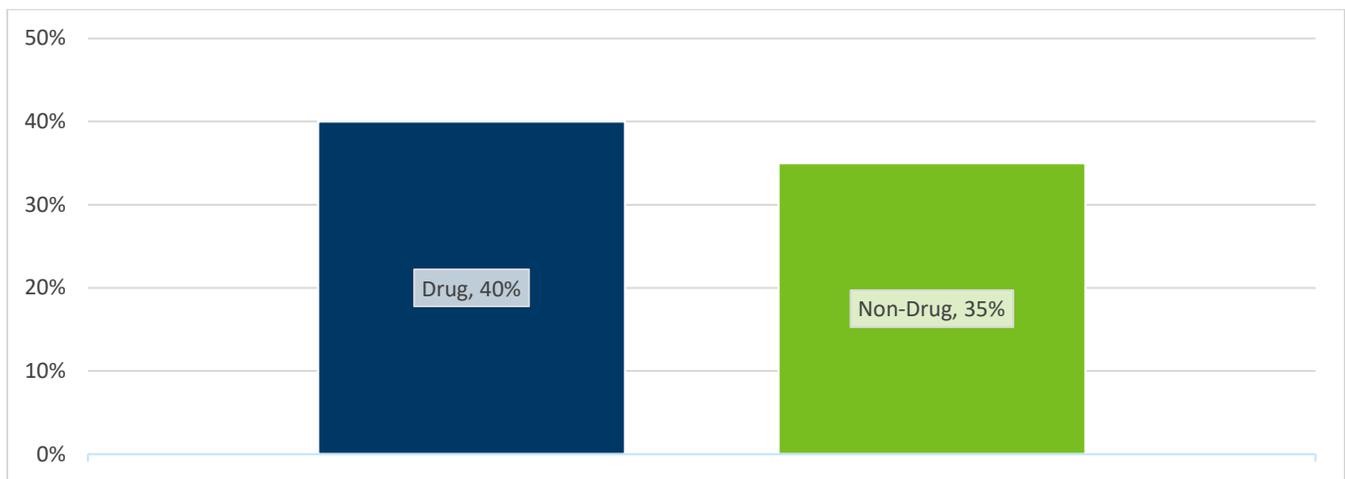
Table 5. Aggravated Dispositional Departure Rates; Drug and Non-Drug Offenders, 2017

	Drug Offenders	Non-Drug Offenders
Number of Presumptive Stays	4,362	7,977
Aggravated Dispositions (and Percent of Presumptive Stays)	122 (3%)	79 (1%)
Aggravated Dispositions with Departure Reasons	121	78
Request for Prison (and Percent of Aggravated Dispositions with Departure Reasons)	53 (44%)	63 (81%)

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

Figure 15 shows that 40 percent of drug offenders who were recommended prison under the Guidelines instead received a non-prison (probationary) sentence. This compared to 35 percent for non-drug offenders. This type of departure decreased slightly for drug offenders compared to 2016 (41%). Departure rates vary greatly by general offense type and specific offense. (See Sentencing Practices: Annual Summary Statistics for Felony Offenders, on the “Annual Summary” tab for more information on departure rates by offense type at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports).)

Figure 15. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, Drug and Non-Drug Offenders, 2017



### Dispositional Departures: Frequently Cited Reasons for Departure

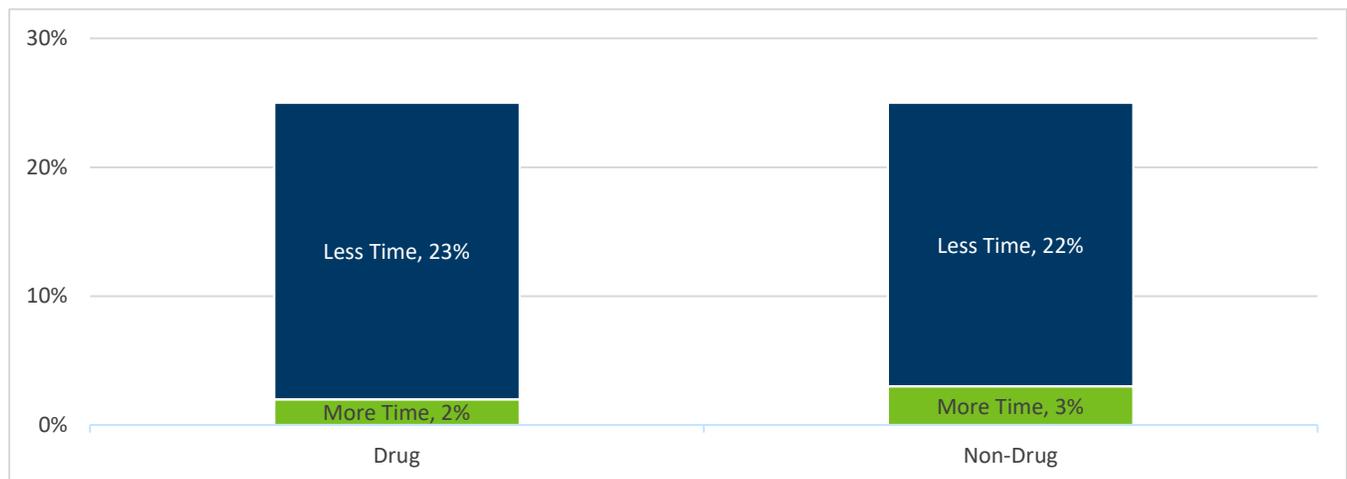
Amenability to treatment and probation were the most frequently-cited departure reasons for the mitigated dispositions in drug cases. In a large percentage of these cases, the sentencing court noted either that there was

a plea agreement for the departure or that the prosecutor recommended or did not object to the departure. Plea agreements or prosecutor recommendations occurred in 52 percent of drug cases, compared to 61 percent in non-drug cases. Information provided by the court revealed that the prosecutor was more likely to object to the mitigated disposition in drug offenses than in non-drug offenses (17% and 16%, respectively).<sup>9</sup>

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

The mitigated durational departure rate for drug offenders who received executed prison sentences was 23 percent and the rate for non-drug offenders was 22 percent (Figure 16). The aggravated durational departure rate was two percent for drug offenders and three percent for non-drug cases. (See Sentencing Practices: Annual Summary Statistics for Felony Offenders, on the “Annual Summary” tab for more information on departure rates by offense type at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports).)

Figure 16. Durational Departure Rates for Cases Receiving Executed Prison Sentences, Drug and Non-Drug Offenders, 2017



“Plea Agreement” was the most frequently-cited reason for mitigated durational departures in drug offenses. The court indicated that there was a plea agreement for the mitigated durational departure or that the prosecutor recommended, or did not object to, the mitigated durational departure in 65 percent of the drug offenses and 78 percent of the non-drug offenses. The court reported that the prosecutor objected to a mitigated duration in about eight percent of the drug offenses and six percent of non-drug offenses.<sup>10</sup> As reported by the court, mitigated durational departures were more commonly supported either by a plea agreement or by the prosecutor’s recommendation or lack of objection (65%) than mitigated dispositional departures (52%).

<sup>9</sup> The percentages do not total 100 percent because the prosecutor’s position was not recorded in a number of cases. The sentencing court is not required to record the prosecutor’s position.

<sup>10</sup> The percentages do not total 100 percent because the prosecutor’s position was not recorded in a number of cases. The sentencing court is not required to record the prosecutor’s position.

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

Figure 17 shows that, between 1999 and 2003, the mitigated dispositional departure rate stabilized in the mid-30 percent range. The rate then increased until 2006, when it reached a rate of 46 percent, which was the highest since 1997. In 2007, this rate returned to under 40 percent and had dropped to 31 percent in 2013. In 2014, the rate increased to 36 percent and further increased to 41 percent in 2016. In 2017, the rate was 40 percent.

Figure 17. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, 1996-2017

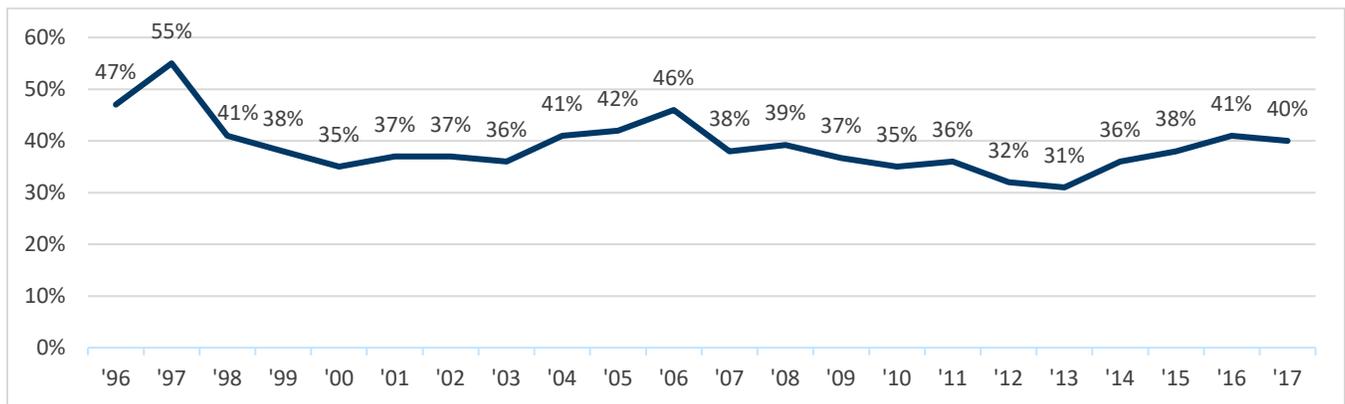
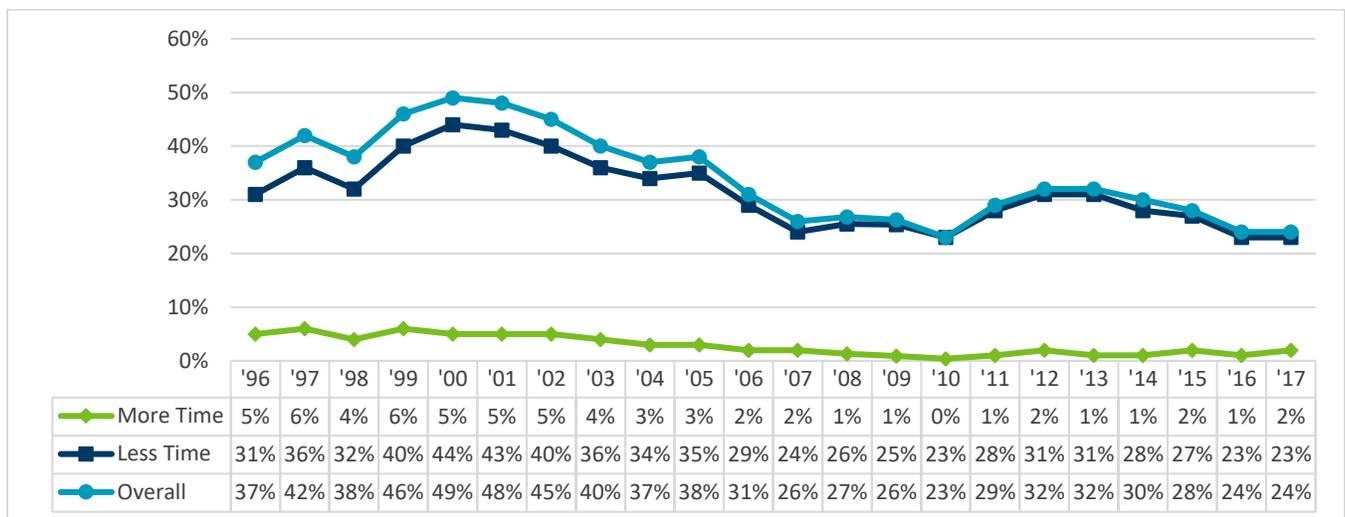


Figure 18 shows that the mitigated durational departure rate continued to increase through the 1990s, and peaked in 2000 at 44 percent. Since 2000, however, this rate steadily declined to a low of 23 percent in 2010. In 2011 the rate climbed back to 28 percent and increased again in 2012 and 2013 to 31 percent. In 2014 it returned to 28 percent and was 27 percent in 2015. In 2016 and 2017, the rate returned to the previous low of 23 percent. Aggravated durational departure rates were consistently low, and in 2010 reached a new low of 0.4 percent. In 2013 and 2014 the aggravated durational departure rate was one percent. The rate in 2016 was 1.4 percent and in 2017 it was 1.6 percent.

Figure 18. Durational Departure Rates for Cases Receiving Prison Sentences, 1996-2017



## Departure Rates for Drug Offenders by Region

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

In 2017, the mitigated dispositional departure rates increased in Hennepin and Ramsey and decreased slightly elsewhere (Figure 19). In the seven years before 2014, the other metro counties<sup>11</sup> had the highest rates and Ramsey County or Greater Minnesota had the lowest. In 2017, Ramsey County had the highest mitigated dispositional departure rate and Greater Minnesota had the lowest.

Figure 19. Mitigated Dispositional Departure Rates by Region, Presumptive Commitments Only, 1996–2017

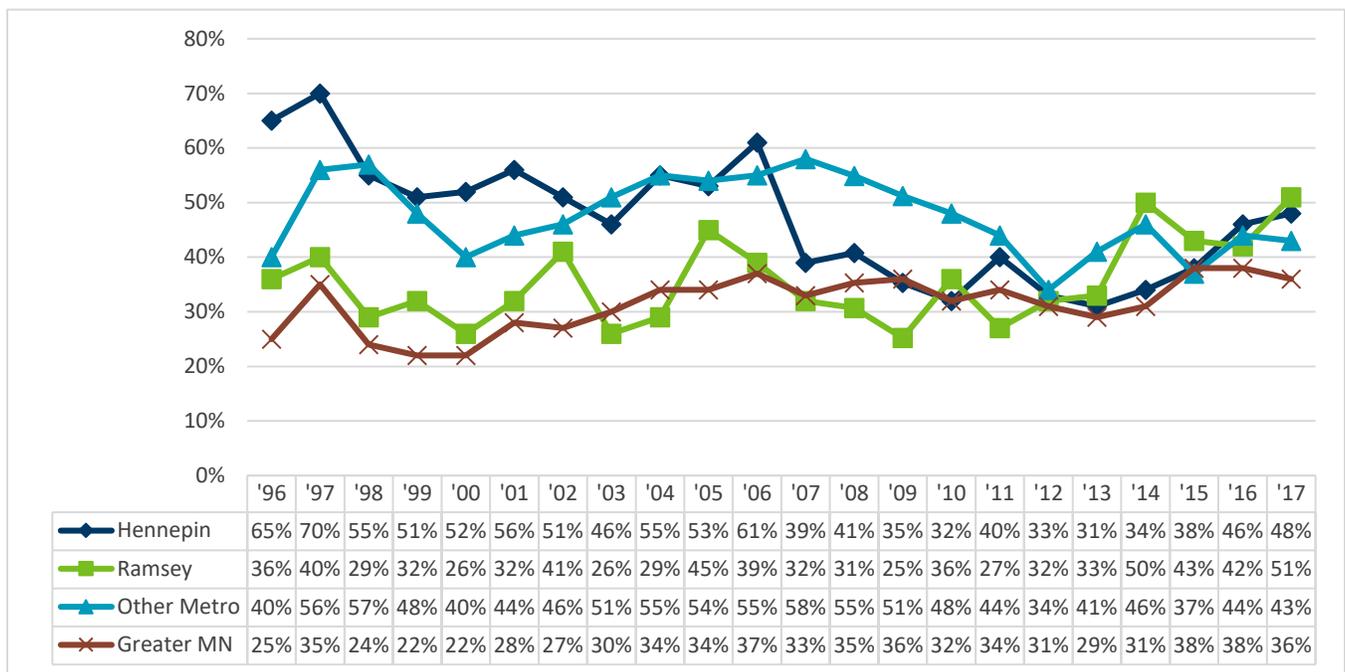
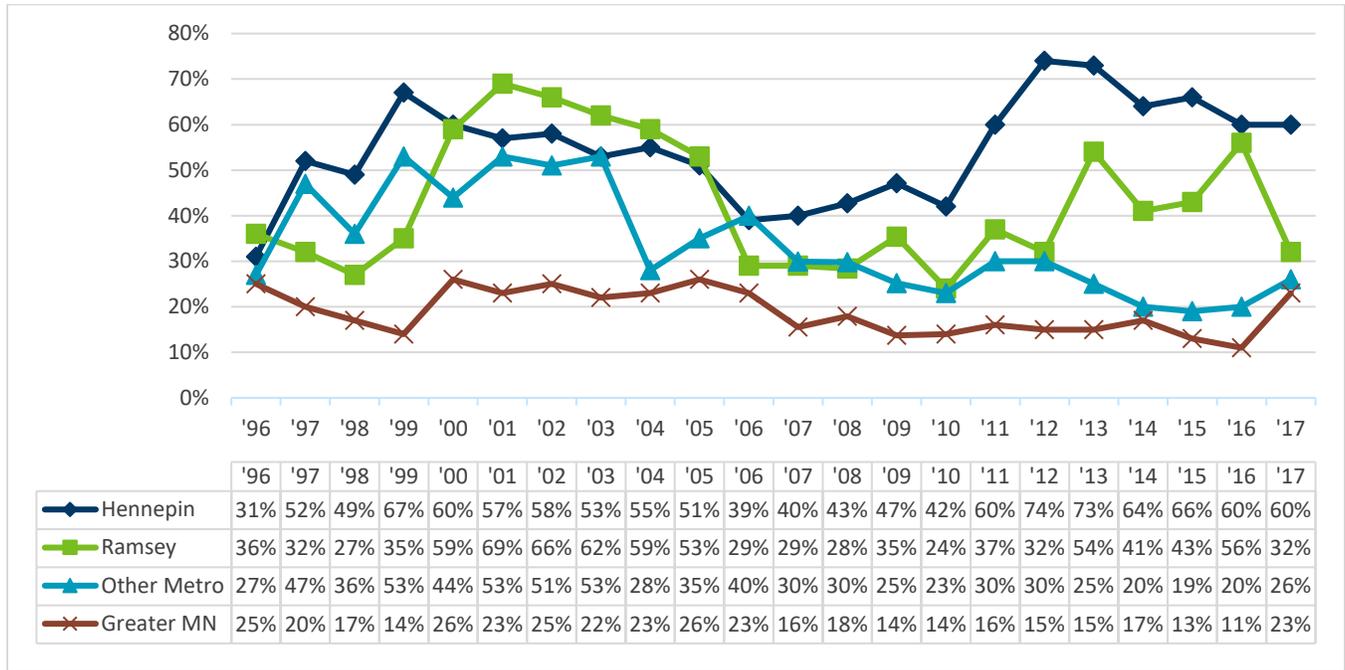


Figure 20 shows that, in 2017, the mitigated durational departure rate for executed sentences rose in Greater Minnesota and the other metro counties, and declined sharply in Ramsey County, from 56 percent to 32 percent. At 60 percent, Hennepin County’s 2017 durational departure rate was the highest among the four regions, and was equal to its 2011 and 2016 rates. The Hennepin County rate exceeded 60 percent from 2012 to 2015, and was lower before 2011.

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

<sup>11</sup> “Other metro counties” are Anoka, Carver, Dakota, Scott and Washington counties.

Figure 20. Mitigated Durational Departure Rates by Region for Cases Receiving Executed Prison Sentences, 1996–2017

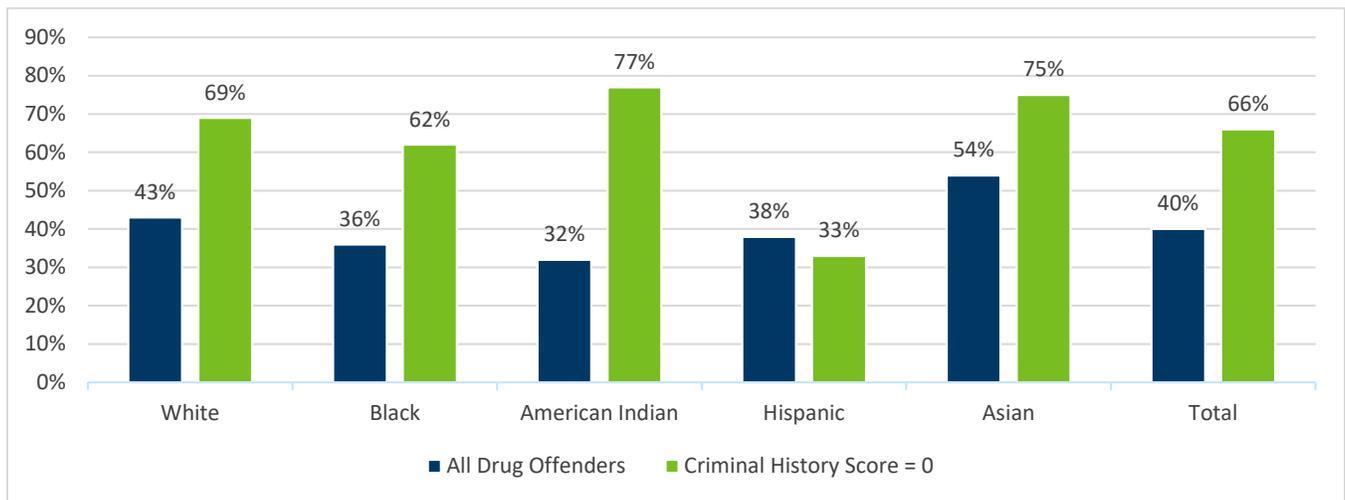


## Departure Rates for Drug Offenders by Race & Ethnicity

Departure rates vary by race, with white and Asian offenders receiving mitigated dispositional departures at higher rates (Figure 21). The differences in departure rates may be related to criminal history scores. At a criminal history score of zero, the mitigated dispositional departure rate is 66 percent, and offenders of every race and ethnicity category, except Hispanic, have an average mitigated dispositional departure rate of more than 60 percent. The rate is highest for American Indian offenders.<sup>12</sup> Offenders who are Hispanic have the lowest departure rate at a criminal history score of zero at 33 percent.

<sup>12</sup> There were 17 American Indian offenders who had a presumptive prison disposition and a criminal history score of 0; 13 received a mitigated dispositional departure.

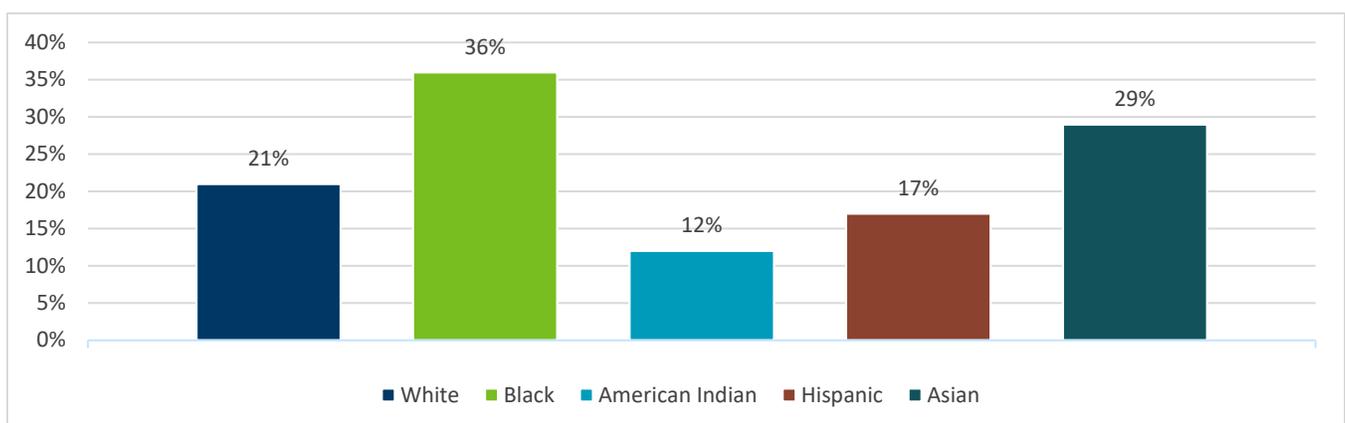
Figure 21. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, by Race & Ethnicity, 2017



Mitigated durational departure rates are higher for offenders who are black than for offenders who are white (Figure 22). This difference remains for offenders with a criminal history of zero. Criminal history may play more of a role in determining a dispositional departure than it does in determining a durational departure—the assumption being that an offender with relatively little or no criminal history is more amenable to probation. From 2016 to 2017, mitigated durational departures declined for offenders who are black, American Indian and Hispanic. For offenders who are black, the rate fell from 40 percent to 36 percent; for offenders who are Hispanic, the rate fell from 20 percent to 17 percent; and for offenders who are American Indian, the rate fell from 14 percent to 12 percent. For white offenders, the rate rose from 19 to 21 percent and for Asian offenders the rate rose from 24 to 29 percent.

The differences in mitigated durational departure rates may be related to differences in the location in which the offender was sentenced. A larger proportion of offenders who are black than offenders in other racial and ethnic groups are sentenced in Hennepin County, where mitigated durational departure rates are highest. (See Figure 12, p. 15, for an illustration of the racial & ethnic distribution of drug offenders by region.)

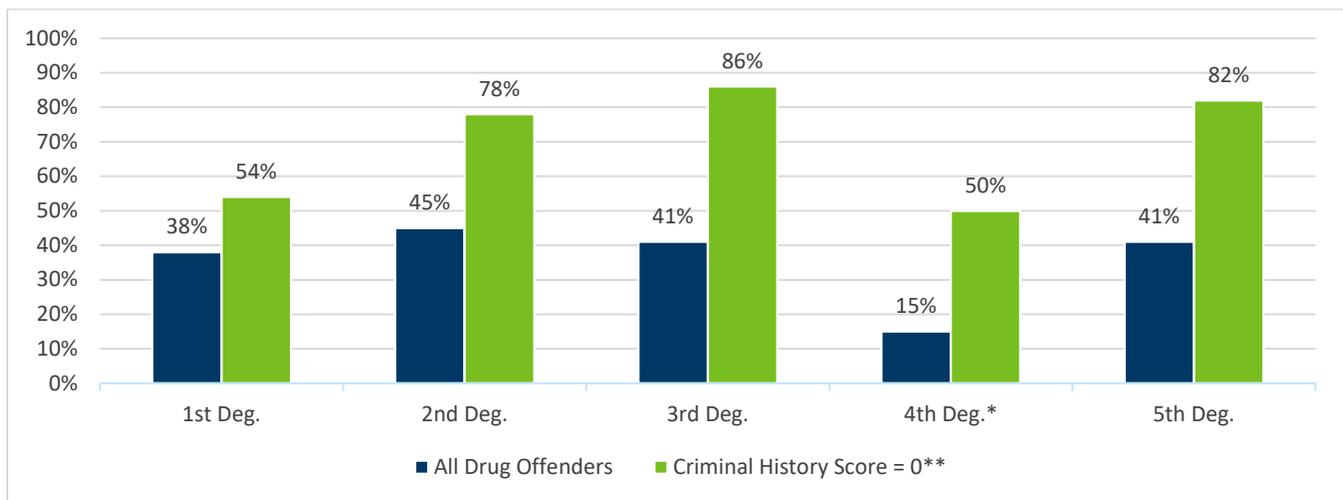
Figure 22. Mitigated Durational Departure Rates by Race & Ethnicity for Cases Receiving an Executed Prison Sentence, 2017



## Departure Rates for Drug Offenders by Drug Degree

Figure 23 shows the mitigated dispositional departure rates by drug degree. The 38-percent rate for first degree was a decrease from the 41-percent rate in 2016. The highest rate seen in the recent past was 47 percent in 2011, while the lowest rate observed in this period was 30 percent in 2013. The rates for second degree (45%) and fifth-degree (41%) also decreased over 2016 (46% and 42% in 2016). The third-degree rate (41%) increased from 2016 (31%). The fourth-degree rate at 15 percent; was much lower than the 2016 rate (44%), but that change is likely due to the small number of cases at that degree (20 cases in 2017). Among offenders with a criminal history score of 0, the total mitigated dispositional departure rate was 66 percent, similar to the 2016 rate of 69 percent. Departure rates for offenders with a criminal history score of 0 decreased for first- fourth- and fifth-degree and increased for second- and third-degree.<sup>13</sup>

Figure 23. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, by Degree, 2017



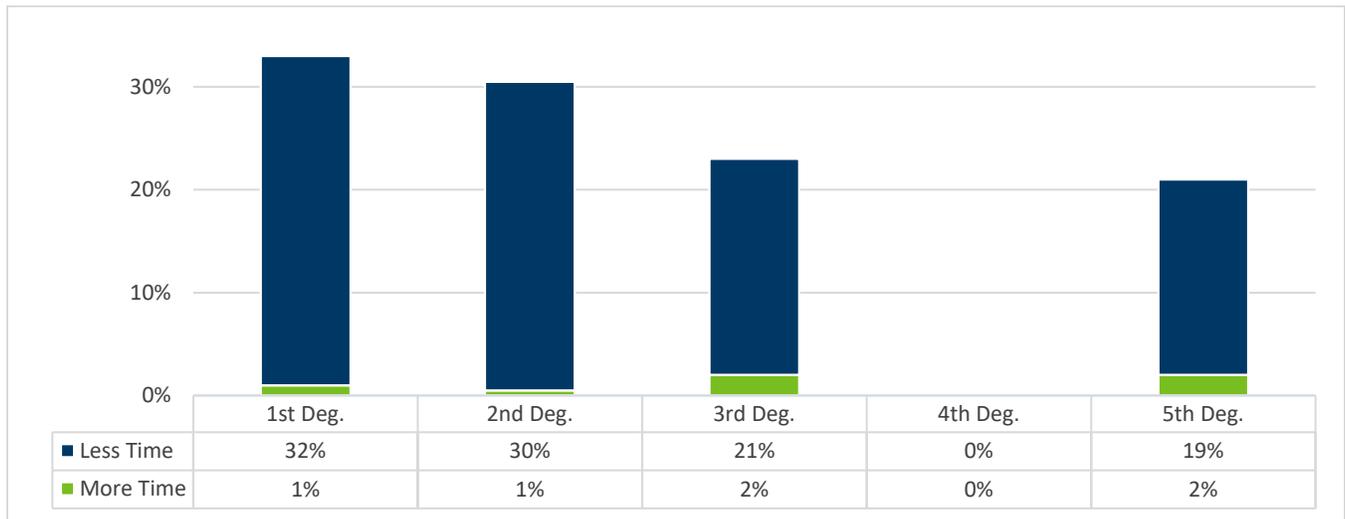
\* One offender was sentenced for a fourth-degree drug offense and had a criminal history score of 0.

\*\* For 3rd Deg., 4th Deg., and 5th Deg., see note 13.

Figure 24 shows that mitigated durational departure rates in 2017 were 32 percent for first-degree offenses and 30 percent for second-degree offenses. The second-degree rate was the similar to the 2016 rate, while the first-degree rate decreased from 2016 (36%). The mitigated durational departure rates decreased for third-degree offenders (from 28% to 21%); decreased for fourth-degree offenders (from 8% to 0%); and increased for fifth-degree offenders (from 16% to 19%). The median reduction in sentence length from the presumptive sentence was 37 months for first-degree cases, 30 months for second-degree cases, and 15 months for third-degree cases.

<sup>13</sup> For third-, fourth-, and fifth-degree controlled substance crime, the presumptive sentence for an offender with a criminal history score of 0 is a stayed prison sentence. Nevertheless, Figure 23 reflects mitigated dispositional departure rates for the small number of zero-criminal-history-score third-, fourth-, and fifth-degree drug offenders whose offenses are presumptive commits by operation of law. (See Minn. Sentencing Guidelines § 2.E.) For example, subsequent third-degree drug offenders (Minn. Stat. § 152.023, subd. 3(b)) and felony drug offenders in possession of a firearm (Minn. Stat. § 609.11) are always subject to a presumptive executed prison sentence.

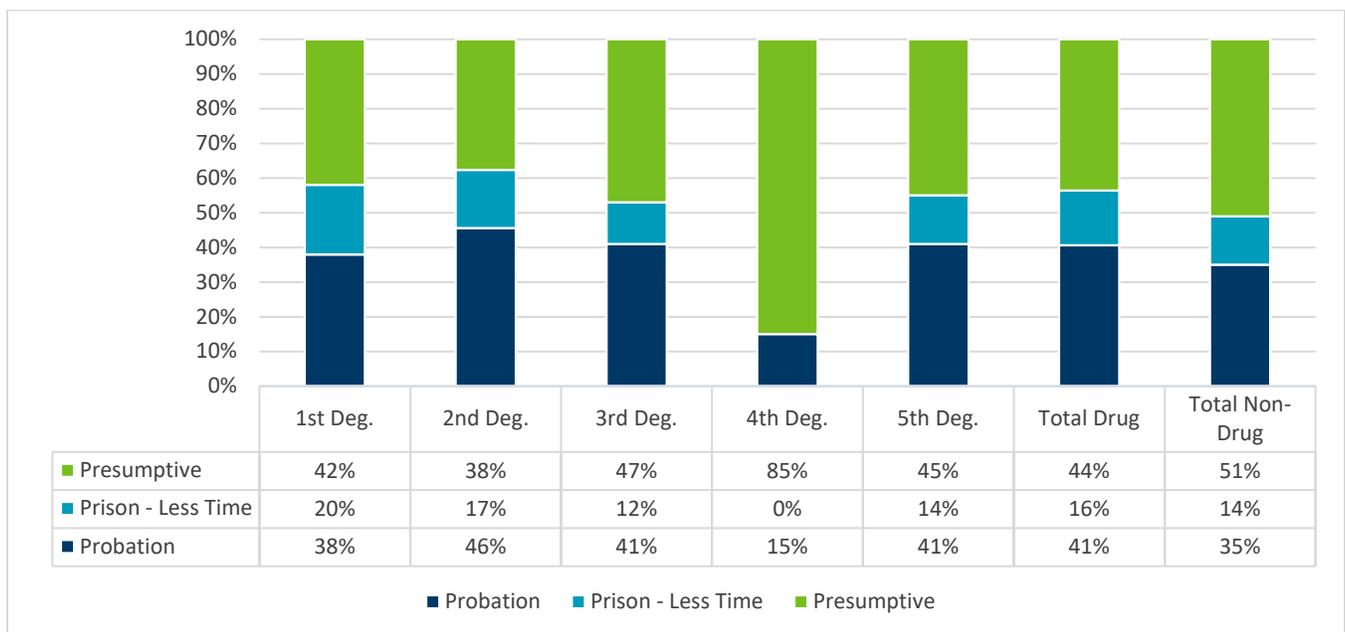
Figure 24. Durational Departure Rates by Degree for Cases Receiving an Executed Prison Sentence, 2017



### Presumptive Commitment Drug Offense Sentencing by Degree

Of the 5,670 drug offenders sentenced in 2017, 23 percent (1,308 offenders) had presumptive prison sentences under the Guidelines. Departure rates are so high that, among offenders recommended a prison sentence in 2017 (as in 2011-16), a greater number of offenders received departures than received the recommended sentence. In 2017, 44 percent of such drug offenders recommended a prison sentence received the recommended sentence or longer; 41 percent received a probationary sentence; and 16 percent received a prison sentence with a duration that was less than that recommended by the Guidelines. Over half (51%) of non-drug offenders with recommended prison sentences received the presumptive sentence. (Figure 25).

Figure 25. Sentence Imposed by Drug Degree, Presumptive Commitment Cases Only, 2017

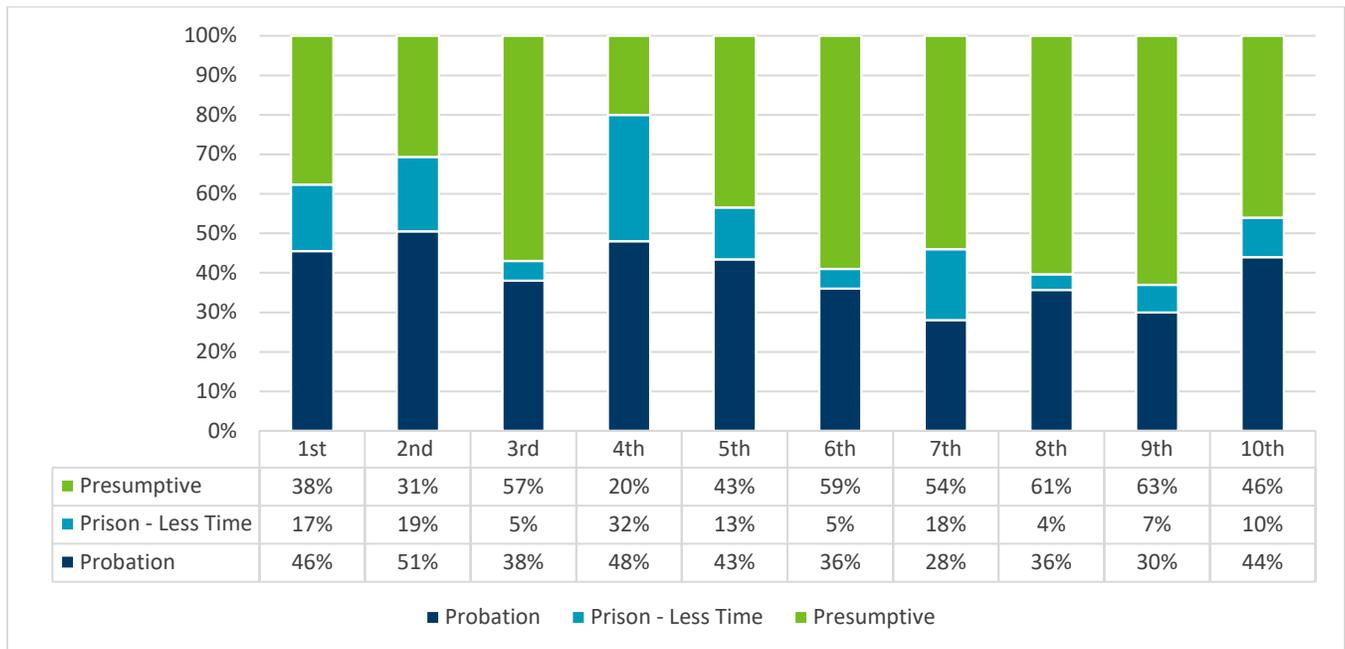


In 2017, 42 percent of first-degree offenders received the recommended sentence (an increase from 38% in 2016). For second-degree offenders, as in 2016, 38 percent received the presumptive sentence. Forty-seven percent of third-degree offenders received the presumptive sentence (50% in 2016). The fourth-degree rate increased to 85 percent (from 56% in 2016). The fifth-degree rate remained almost unchanged (45% in 2017, 47% in 2016).

### Presumptive Commitment Drug Offense Sentencing by Judicial District

The likelihood of an offender receiving the presumptive sentence varies widely across the state. Figure 26 shows the percent of offenders with presumptive prison sentences who received the recommended sentence by judicial district. The portion who received the presumptive sentence ranged from 20 percent in the Fourth District (Hennepin County) to 63 percent in the Ninth District (including northwestern Minnesota). See page 54 for a map of Minnesota’s ten judicial districts.

Figure 26. Sentence Imposed by Judicial District, Presumptive Commitment Cases Only, 2017



### Departure Rates for Subsequent Drug Offenders

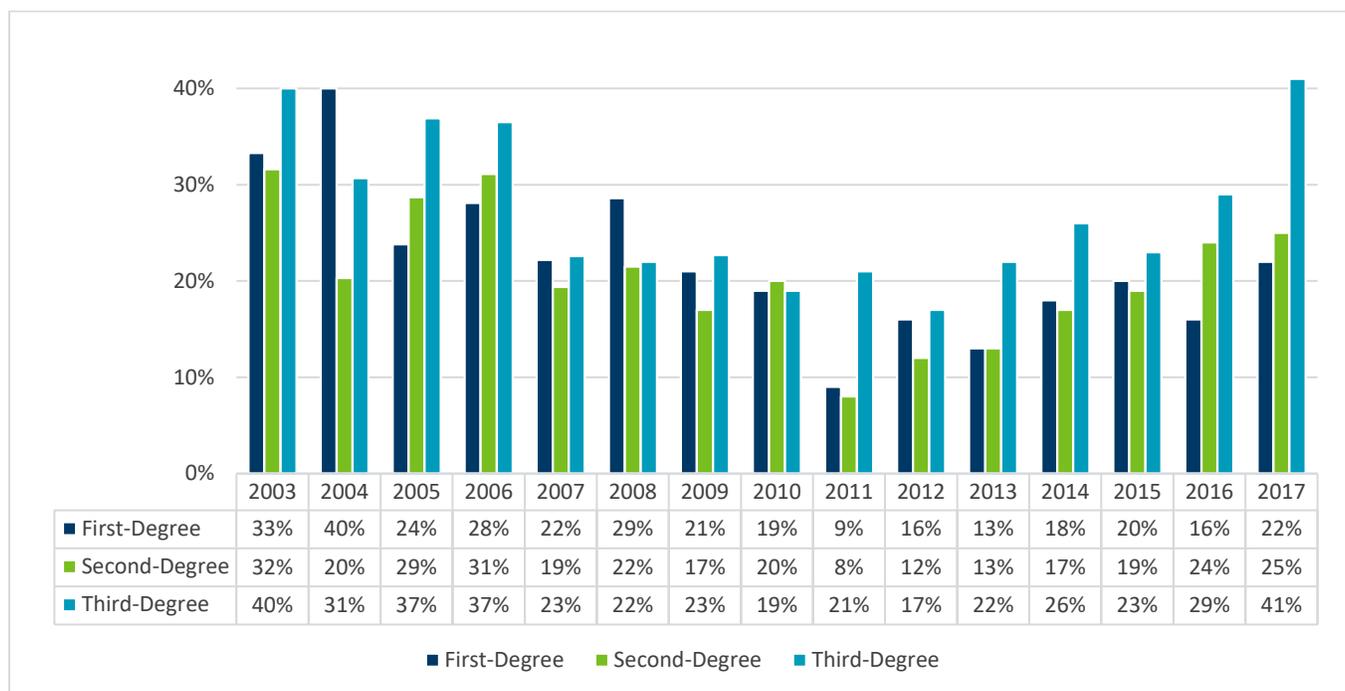
Minnesota Statutes specify mandatory minimum prison terms for first and second degree (for pre-DSRA drug offenses) and first through third degree (for post-DSRA drug offenses) when the offender has a prior drug conviction.<sup>14</sup> When such a statutory mandatory minimum applies, the presumptive Guidelines disposition is

<sup>14</sup> See subdivisions 3(b) of Minn. Stat. §§ [152.021](#), [152.022](#) and [152.023](#) (2015). Pre-DSRA, an actual conviction was not always necessary, as a past disposition under Minn. Stat. § [152.18](#), even without conviction, caused the current offense to become a “subsequent controlled substance conviction.” Minn. Stat. § [152.01](#), subd. 16a (2015). Post-DSRA, subsequent offenders are only those with prior first- and second-degree convictions. Minn. Stat. § [152.01](#), subd. 16a (2016).

imprisonment.<sup>15</sup> The mandatory minimum durations are as follows: 48 months for first-degree offenses; 36 months for second-degree offenses; and 24 months for third-degree offenses. Because the presumptive Guidelines sentence is greater than the mandatory minimum for all first- and second-degree offenses, the mandatory minimum usually alters the duration of only third-degree cases.<sup>16</sup> For third-degree offenses committed post-DSRA, this mandatory minimum provision is repealed.

In 2017, 300 drug offenders were sentenced for offenses involving a second or subsequent drug offense that were subject to these mandatory minimum provisions. Of this total, 90 offenders (30%) received a mitigated dispositional departure from the Guidelines. The 30-percent dispositional departure rate was higher than the 2016 rate (25%). The rate was lower for first- and second-degree offenses than for third-degree offenses (Figure 27). The court indicated that the prosecutor agreed to, recommended, or did not object to the mitigated disposition in 60 percent of the mitigated dispositions for subsequent drug offenses.

Figure 27. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Offense, 2003–2017



Of the 210 second or subsequent drug offenders who received executed prison sentences, all but one had a pronounced sentence equal to, or longer than, the mandatory minimum. One second-degree offender received less than the mandatory minimum time.

<sup>15</sup> See also *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007), *review denied* (Minn. May 30, 2007) (holding that the mandatory minimum sentencing provision for a repeat drug offender precluded a stay of execution).

<sup>16</sup> Likewise, regarding presumptive disposition, the mandatory minimum changes Controlled Substance Crime in the Third Degree (for offenders with criminal history scores below 3) and Controlled Substance Crime in the Second Degree (for offenders with criminal history scores below 2). Although the dispositions for all first-, second-, and third-degree subsequent controlled substance convictions are affected by the mandatory minimums, inasmuch as those dispositions are mandatory, rather than merely presumptive, executed terms of imprisonment.

## 2016 Drug Sentencing Reform Act (DSRA)

The 2016 Drug Sentencing Reform Act (DSRA) made a number of significant changes to the sentencing of Minnesota drug offenses. Those changes generally took effect August 1, 2016, and applied to crimes committed on and after that date. Nearly half of drug cases sentenced in 2017 were subject to the DSRA.<sup>17</sup>

### Post-DSRA Offense Volume

The DSRA’s provisions were effective for all offenses committed after July 31, 2016. Through the end of 2017, the new provisions have been applicable to 2,939 felony offenders with a first- through fifth-degree drug offense as the most serious offense sentenced.<sup>18</sup> The next sections focus on these offenses. Because these offenses represent significantly less than a complete year of offense data, the results of the following analysis should be viewed as preliminary.

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

To measure the impact of the DSRA, this report compares a group of post-DSRA cases to comparable pre-DSRA groups. Table 6 displays felony post-DSRA cases committed before August 1, 2017, and sentenced through December 2017, by controlled substance degree, as well as comparable offenses sentenced under the DSRA’s new gross misdemeanor fifth-degree provision. For comparison to this post-DSRA group, Table 6 also displays the number of cases, by degree, committed and sentenced in comparable time frames in two earlier, pre-DSRA years (2014–15 and 2015–16).

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

Comparison Group	Offense Date Range	Sentencing Date Range	1 <sup>st</sup> Deg. No. & Percent	2 <sup>nd</sup> Deg. No. & Percent	3 <sup>rd</sup> Deg. No. & Percent	4 <sup>th</sup> Deg. No. & Percent	Felony 5 <sup>th</sup> Deg. No. & Percent	Gross Misd. 5 <sup>th</sup> Deg. No. & Percent	Total
Pre-DSRA 2014–15	Aug '14 – Jul '15	Aug '14 – Dec '15	132 (5%)	193 (7.5%)	337 (13%)	48 (2%)	1,878 (73%)	N/A	2,588
Pre-DSRA 2015–16	Aug '15 – Jul '16	Aug '15 – Dec '16	135 (4.5%)	218 (7%)	334 (11%)	36 (1%)	2,260 (76%)	N/A	2,983
Post-DSRA 2016–17	Aug '16 – Jul '17	Aug '16 – Dec '17	139* (4.2%)	172 (5.2%)	290 (8.7%)	49 (1.5%)	2,024 (60.7%)	662** (19.8%)	3,336

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

\*\*Source of post-DSRA gross misdemeanor case data: Minnesota Judicial Branch. (Obtained 10/18/2018.) Gross misdemeanor cases may not necessarily be the most serious offenses sentenced.

To facilitate a valid comparison, the “Post-DSRA 2016–17” row in Table 6 includes only post-DSRA cases committed before August 1, 2017. A total of 3,664 post-DSRA cases were sentenced through December 31,

<sup>17</sup> Of the 5,670 drug cases sentenced in 2017, 49 percent were committed after the DSRA took effect.

<sup>18</sup> The DSRA applied to 222 of such cases sentenced in 2016, and 2,717 of such cases sentenced in 2017.

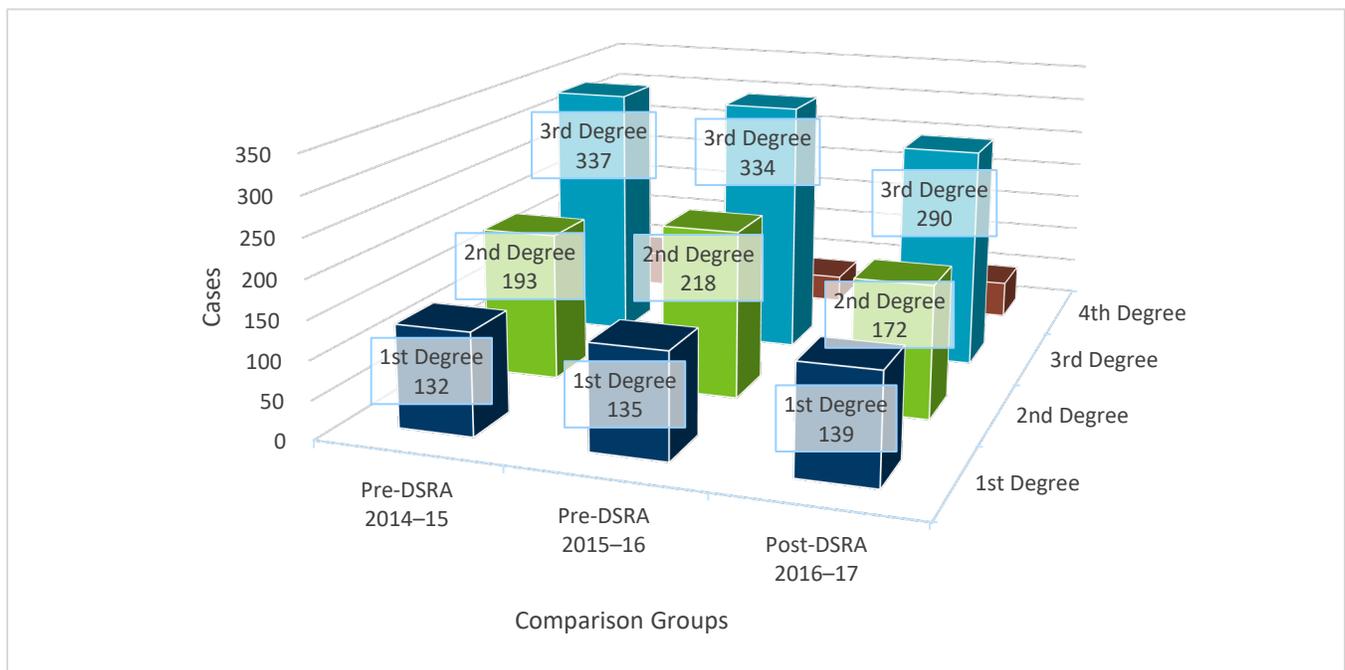
2017. By degree, the total number (and percent) of 1st Degree cases was 145 (4%); of 2nd Degree cases was 181 (5%); of 3rd Degree cases was 314 (9%); of 4th Degree cases was 52 (1%); of felony 5th Degree was 2,247 (61%); and of gross misdemeanor 5th Degree was 725 (20%).

## Volume of Offenses

### First- Through Fourth-Degree 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 evidence available to date shows a slight increase in the number of offenses that are first-degree, and a decline in the number and percentage of offenses that are second- and third-degree offenses (shown by comparison group in Figure 28).

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

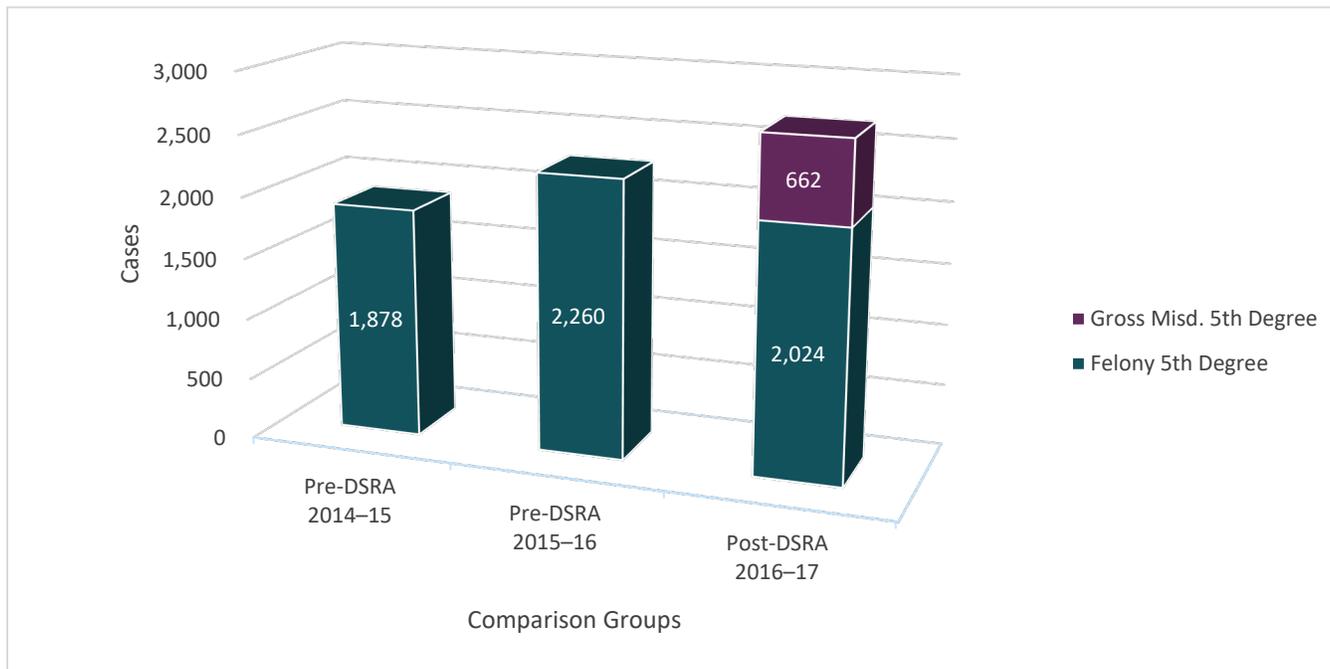


### Fifth-Degree Offenses

For felony fifth-degree offenses, the number and percentage of offenses compared to the 2015–16 comparison group decreased. However, 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. 42), the number of post-DSRA fifth-degree cases was greater than the number of cases in either prior comparison group (2,686 cases) and they amount to 80 percent of the total number of cases. Likewise, when gross misdemeanor fifth-degree offenses are included, the total number of drug cases in the post-DSRA group was 43 percent greater than the 2014–15 comparison group, and 19 percent greater than the 2015–16

comparison group. (If the 662 gross misdemeanor cases were excluded from the group, the post-DSRA total—2,674 cases—would have been slightly smaller than the 2015–16 comparison group.) This is illustrated in Figure 29.

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



### Aggravated Offenses

The DSRA created an aggravated first-degree offense for the most serious offenses. These offenses are ranked at a severity level of D9 on the Drug Offender Grid (p. 56), and therefore have longer presumptive sentences than the standard first-degree offenses. In addition, the statutory sentencing minimum is either 86 months or the presumptive fixed sentence, whichever is longer, which makes the offenders ineligible for a sentence at the low end of the presumptive range on the Drug Offender Grid. This offense requires the sale or possession of 100 or more grams, as well as either a firearm or two aggravating factors. Through 2017, two offenders had been sentenced for Aggravated Controlled Substance Crime 1st Degree under the firearm provision, and another three offenders had been sentenced under the provision requiring two aggravating factors.

In addition, the DSRA contains a provision that specifies a minimum sentence of either 65 months or the presumptive fixed sentence, whichever is longer, for offenses involving the sale or possession of 100 or more grams. Like other non-aggravated first-degree offenses, these offenses are ranked at a severity level of D8 on the Drug Offender Grid (p. 56), but the statutory sentencing minimum makes the offenders ineligible for a sentence at the low-end of the presumptive ranges shown on that grid. Through 2017, 26 first-degree offenders were sentenced for offenses charged under this provision involving 100 grams or more, but not qualifying as aggravated-first degree offenses.

## Post-DSRA Sentence Uniformity

### Presumptive Sentences and Prison Rates

The DSRA restricted mandatory minimums for subsequent offenses to first- and second-degree offenses, and limited the definition of subsequent drug offenses to prior first- and second-degree offenses. This change eliminated automatic presumptive prison dispositions for third-degree offenders with prior drug convictions. In addition, before the implementation of the Drug Offender Grid (p. 56), all first- and second-degree offenses had presumptive prison sentences regardless of offenders' criminal history scores (CHS).<sup>19</sup> On the Drug Offender Grid, however, second-degree offenses with CHS of 0 or 1 have presumptive stayed sentences. It was anticipated that those two changes would result in a decrease in the percent of drug offenders with presumptive prison dispositions, and, therefore, prison sentences.

Overall, the presumptive and actual imprisonment rates are slightly lower than those in the two comparison groups. Table 7 displays the presumptive prison rate and actual prison rate by degree for the post-DSRA group and comparison groups. 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.

Table 7. Presumptive and Actual Prison Rates, Pre- and Post-DSRA Comparison Groups

Degree	Pre-DSRA 2014–15 Comparison Group			Pre-DSRA 2015–16 Comparison Group			Post-DSRA 2016–17 Comparison Group		
	Number	Presumptive Prison Rate	Prison Rate	Number	Presumptive Prison Rate	Prison Rate	Number	Presumptive Prison Rate	Prison Rate
<b>First</b>	132	100%	71%	135	100%	63%	139	100%	71%
<b>Second</b>	193	100%	63%	218	100%	55%	172	44%	35%
<b>Third</b>	337	49%	37%	334	51%	37%	290	37%	25%
<b>Fourth</b>	48	21%	23%	36	22%	31%	49	31%	35%
<b>Fifth*</b>	1,878	9%	15%	2,260	9%	13%	2,024	12%	15%
<b>Total</b>	<b>2,588</b>	<b>26%</b>	<b>24%</b>	<b>2,983</b>	<b>25%</b>	<b>21%</b>	<b>2,674</b>	<b>22%</b>	<b>20%</b>

\*Felony only.

The DSRA provisions reduced the percentage of second- and third-degree offenses that have presumptive prison dispositions; the actual imprisonment rates for those offenders fell accordingly. The presumptive prison rate for second-degree offenders fell from 100 percent to 44 percent, while the actual imprisonment rate fell from 63

<sup>19</sup> Prior to the implementation of the Drug Offender Grid, first-degree was ranked at a severity level of 9 on the Standard Grid (p. 55) and second-degree was ranked at a severity level of 8 on the Standard Grid.

and 55 percent to 35 percent. The presumptive prison rate for third-degree offenders fell from about 50 percent to 37 percent, while the actual imprisonment rate fell from 37 percent to 25 percent. While fourth-degree offenders still represented a small fraction of drug offenders, post-DSRA fourth-degree offenses had an increase in presumptive imprisonment rate. The actual imprisonment rate also increased.

There was 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 is discussed in more detail on p. 42) 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 20.

It was anticipated that the DSRA would result in more uniformity by lowering departure rates for drug cases, for several reasons. By raising the thresholds for first- through third-degree offenses, the cases with lower drug quantities in each degree would drop to a lesser degree and those cases were more likely to receive departures than the cases with larger drug quantities. The shift of trace cases to gross misdemeanors could also affect departure rates.<sup>20</sup>

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

Table 8 and Figure 30 display mitigated dispositional departure rates for cases with presumptive prison dispositions for the post-DSRA group and comparison groups. From the data available so far, it appears that mitigated dispositional departures have decreased, particularly for second-degree offenses. For all offense degrees, the total mitigated dispositional departure rate was lower for the post-DSRA 2016–17 group (32%) than for those sentenced in the earlier periods, particularly in comparison to 2015–16, when the total mitigated dispositional departure rate was 39 percent.

Mitigated dispositional departure rates fell for first-degree offenders (29% post-DSRA) compared to the 37 percent rate in 2015–16. The mitigated dispositional departure rate for second-degree offenders fell from 37 percent in 2014–15 and 45 percent in 2015–16, to 26 percent for the post-DSRA 2016–17 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 36% in 2014–15 and 43% in 2015–16, to 33% for post-DSRA 2016–17). However, the mitigated dispositional departure rate increased for third-degree offenses, from 27 and 29 percent for the two pre-DSRA

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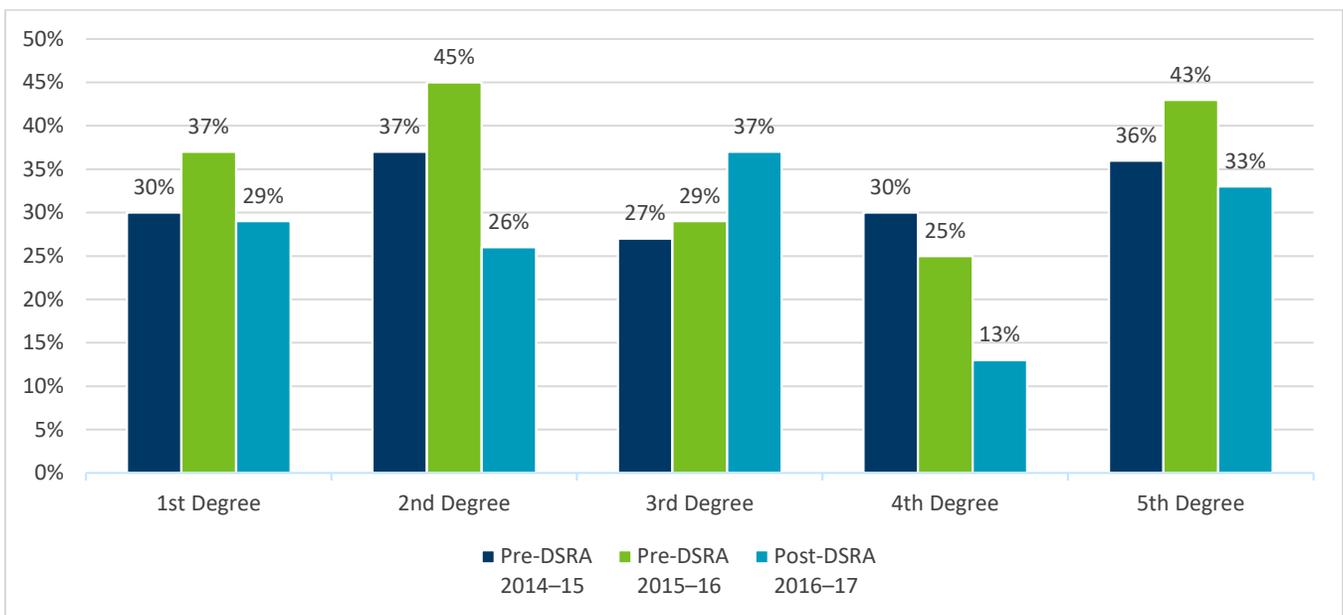
<sup>20</sup> A discussion of gross misdemeanor possession of trace amount offenses begins on page 42.

groups to 37 percent post-DSRA. This may be due to the DSRA’s removal, for third-degree offenses, of the mandatory minimum sentence provision, from which mitigated dispositional departures were not lawful.<sup>21</sup>

*Table 8. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, Pre- & Post-DSRA Comparison Groups*

Degree	Pre-DSRA 2014–15 Comparison Group			Pre-DSRA 2015–16 Comparison Group			Post-DSRA 2016–17 Comparison Group		
	Presumptive Commits	Mitigated Disposition		Presumptive Commits	Mitigated Disposition		Presumptive Commits	Mitigated Disposition	
	Number	Number	Rate	Number	Number	Rate	Number	Number	Rate
<b>First</b>	132	39	30%	135	50	37%	139	40	29%
<b>Second</b>	193	72	37%	218	98	45%	76	20	26%
<b>Third</b>	166	45	27%	170	50	29%	107	40	37%
<b>Fourth</b>	10	3	30%	8	2	25%	15	2	13%
<b>Fifth</b>	174	63	36%	205	88	43%	244	81	33%
<b>Total</b>	<b>675</b>	<b>223</b>	<b>33%</b>	<b>736</b>	<b>288</b>	<b>39%</b>	<b>581</b>	<b>183</b>	<b>32%</b>

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



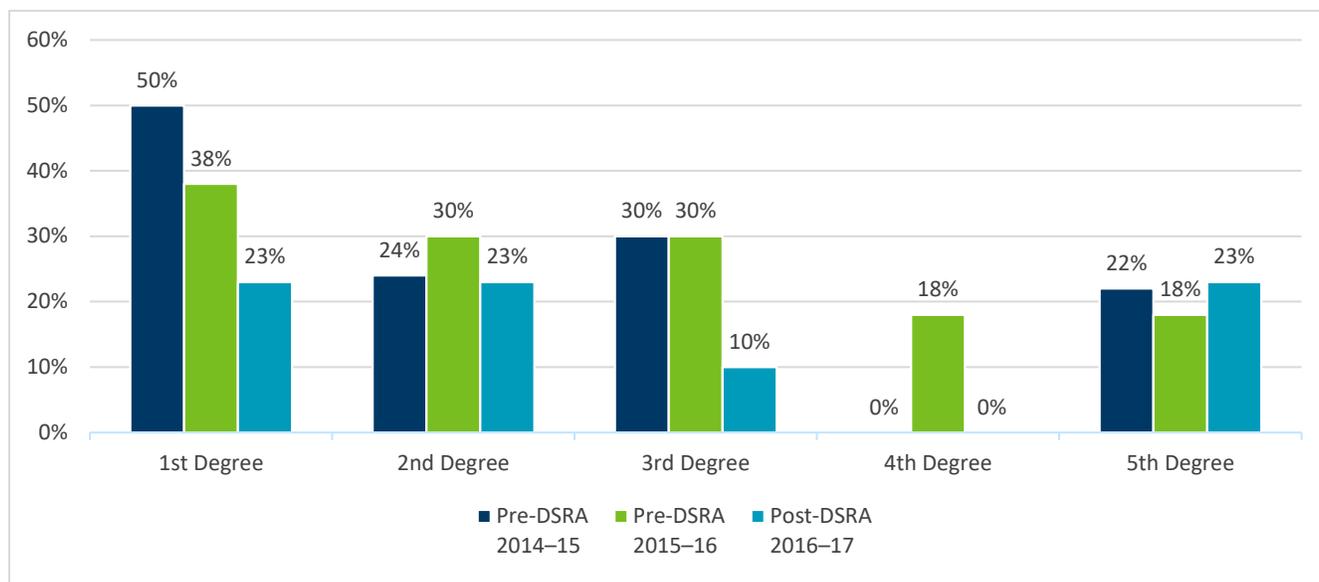
<sup>21</sup> See *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007), review denied (Minn. May 30, 2007).

Table 9 and Figure 31 display mitigated durational departure rates for cases that received a prison sentence for the pre- and post-DSRA comparison groups. Mitigated durational departure rates declined for first- through third-degree offenses; thus, the overall rate declined. The rate for first-degree offenses declined from 50 and 38 percent in the pre-DSRA groups, to 23 percent in the post-DSRA group. The rate for second-degree offenses declined from 24 and 30 percent pre-DSRA, to 23 percent post-DSRA. The rate for third-degree offenses declined from 30 percent in the pre-DSRA groups to 10 percent in the post-DSRA group.

Table 9. Mitigated Durational Departure Rates, Executed Prison Sentences Only, Pre- & Post-DSRA Comparison Groups

Degree	Pre-DSRA 2014–15 Comparison Group			Pre-DSRA 2015–16 Comparison Group			Post-DSRA 2016–17 Comparison Group		
	Received Prison	Mitigated Duration		Received Prison	Mitigated Duration		Received Prison	Mitigated Duration	
	Number	Number	Rate	Number	Number	Rate	Number	Number	Rate
First	93	46	50%	85	32	38%	99	23	23%
Second	121	29	24%	120	36	30%	60	14	23%
Third	124	37	30%	124	37	30%	73	7	10%
Fourth	11	0	0%	11	2	18%	17	0	0%
Fifth	278	62	22%	292	51	18%	295	68	23%
<b>Total</b>	<b>627</b>	<b>174</b>	<b>28%</b>	<b>632</b>	<b>158</b>	<b>25%</b>	<b>544</b>	<b>112</b>	<b>21%</b>

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



## Estimated Prison Beds Needed Post-DSRA

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Because the DSRA adjusted some drug offenses to lesser degrees and moved some to gross misdemeanors, it was anticipated that the act would result in prison bed savings. That savings has begun; however, it is not as large as anticipated. The primary reason the anticipated prison bed savings has not been fully realized appears to be the continuing increases in the number of drug offenses that are sentenced. The estimated bed savings calculated for the DSRA were based on data for offenders sentenced in 2014. After 2014, as shown in Figure 1 and Figure 2, the number of felony drug offenses sentenced has risen every year.

This section discusses the number of *estimated prison beds* needed for the pre-DSRA and post-DSRA comparison groups. “Estimated prison beds” are computed by calculating two-thirds of the sum, in years, of all executed prison sentences imposed for the relevant category. Because these estimates are based on the assumption that offenders will serve two-thirds of the pronounced sentences,<sup>22</sup> they do not account for case-specific possibilities that may reduce<sup>23</sup> or increase<sup>24</sup> the actual prison time to be served. All estimated prison beds are not needed the first year; the need is, instead, apportioned over time.<sup>25</sup>

Preliminary indications of prison bed savings are appearing. The number of estimated prison beds that will be needed for the post-DSRA 2016–17 group (1,225 beds) is 18 percent lower than that estimated for the pre-DSRA 2014–15 group (1,488 beds), and 17 percent lower than that estimated for the pre-DSRA 2015–16 group (1,478 beds).

The estimated prison beds needed for first-degree offenders decreased slightly, from 496 and 485 beds pre-DSRA, to 481 post-DSRA. The number of offenders receiving prison sentences for first-degree offenses (who typically receive the longest prison sentences) is similar post-DSRA. The slight decrease in beds—despite the decrease in the mitigated dispositional departure rate (Table 8)—may be due to a decrease in average pronounced sentence lengths. The average sentence for first-degree offenders decreased by 9 months from the 2014–15 average, and by 15 months from the 2015–16 average.

The number of estimated prison beds needed for second-degree offenders decreased markedly (from 460 and 439 beds pre-DSAR to 252 post-DSRA). The number of estimated prison beds needed for third-degree offenders also decreased (from 258 and 279 beds pre-DSRA to 184 post-DSRA). The number of post-DSRA second-degree offenders receiving prison sentences declined, as anticipated, as did the number of post-DSRA third-degree offenders. The average pronounced sentences at both degrees increased. The increase in average sentences for

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<sup>22</sup> See Minn. Stat. § [244.101](#), subd. 1 (defining an executed sentence as consisting of two parts: a minimum term of imprisonment, equal to two-thirds of the executed sentence; and a maximum supervised release term, equal to one-third of the executed sentence).

<sup>23</sup> Prison time might be reduced, for example, because of jail credit ([Minn. Sentencing Guidelines](#) § 3.C.; [Minn. R. Crim. P. 27.03](#), subd. 4(B)) or early release programs (see, e.g., [Minn. Stat. § 244.17](#) (Challenge Incarceration Program)).

<sup>24</sup> Prison time might be increased because of additional time served by supervised release violators (Minn. Stat. § [244.05](#), subd. 3(2)) or subsequently revoked sentences of offenders who were originally sentenced to probation, rather than to an executed prison sentence (Minn. Stat. § [609.14](#), subd. 3).

<sup>25</sup> All beds are not needed in the first year. The total need for the estimated prison beds is, instead, apportioned over a period of approximately nine years, with each year requiring a smaller share of the total estimated prison beds than the year before.

second-degree offenders is due to the fact that presumptive prison sentences were eliminated for offenders at criminal history scores of 0 and 1, thus focusing prison sentences on offenders with higher criminal history scores. The increase in average sentences for third-degree offenders is due to the fact that mandatory minimums for subsequent offenders were eliminated, thus reducing the prison rate at criminal history scores below three.

The estimated prison beds needed for fifth-degree offenders increased (from 258 and 261 beds pre-DSRA to 284 post-DSRA). 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 16 percent (from 1,878 in 2014–15 group to 2,260 in the 2015–16 group) and the number receiving prison sentences increased by five percent (from 278 in the 2014–15 group to 292 in the 2015–16 group). Post-DSRA, the number of offenders sentenced for felony fifth-degree offenses (2,024) declined compared to the 2015-2016 group, but the number receiving a prison sentence rose slightly, to 295 offenders.

Table 10. Estimated Prison Beds Needed, Pre- & Post-DSRA Comparison Groups

Degree	Pre-DSRA 2014–15 Comparison Group			Pre-DSRA 2015–16 Comparison Group			Post-DSRA 2016–17 Comparison Group		
	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	93	96	496	85	102	485	99	87	481
Second	121	68	460	120	66	439	60	75	252
Third	124	37	258	124	40	279	73	45	184
Fourth	11	25	15	11	24	15	17	27	25
Fifth	278	17	258	292	16	261	295	17	284
<b>Total</b>	<b>627</b>	<b>43</b>	<b>1,488</b>	<b>632</b>	<b>42</b>	<b>1,478</b>	<b>544</b>	<b>40</b>	<b>1,225</b>

All estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 25, above.

## Estimated Prison-Bed Demand Avoided Due to DSRA

Like the previous section, this section analyzes the sentences for “post-DSRA” offenses; that is, offenses committed after July 31, 2016, and sentenced in 2017, but includes all cases sentenced through the end of 2017; not just those with offense dates prior to August 1, 2017.<sup>26</sup> Unlike the previous section, however, this section

<sup>26</sup> These are the 2,939 felony cases discussed on p. 32, above. As described below, only felony cocaine, methamphetamine, and heroin possession and sale cases (2,331 cases) are analyzed in 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.

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.<sup>27</sup> Heroin is also included in this analysis. A total of 2,331 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 in 2017—are the subject of this analysis.

First, Table 11 (“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 39, above.

Next, Table 11 (“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 amount<sup>28</sup> of cocaine, methamphetamine, or heroin.

Finally, Table 11 (“Difference”) shows the difference in prison beds needed, over time. 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.

The bottom row of Table 11 (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,<sup>29</sup> 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 (1,315 beds) is 32 percent smaller than the estimated prison-bed need for those same offenses would have been (1,937 beds) if each case had been sentenced as a similar case was typically sentenced in 2015.<sup>30</sup>

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<sup>27</sup> The thresholds also changed for marijuana; weight thresholds were lowered and plants were added as a unit of measure. Because very few cases in the post-DSRA group were above these thresholds, marijuana is not included in this analysis.

<sup>28</sup> For purposes of this analysis, the following drug quantities were considered similar. Sale: under 3 grams; 3 to under 10 grams; 10 to under 100 grams; and 100 grams or more. Possession: under 3 grams; 3 to under 6 grams; 6 to under 25 grams; 25 to under 100 grams; and 100 grams or more. Drug quantities were determined by a review of 95 percent of criminal complaints of cases sentenced in 2015 and all complaints of cases in the post-DSRA group.

<sup>29</sup> Regarding the quantity threshold changes applicable to marijuana offenses, see footnote 27, above.

<sup>30</sup> All estimated prison beds would not have been needed the first year; the need would, instead, have been apportioned over time. See footnote 25, above.

Table 11. 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	136	471	425	+46
Second	160	264	352	-88
Third	282	181	365	-184
Fourth	40	25	51	-26
Fifth*	1,713	272	641	-369
<b>Total</b>	<b>2,331</b>	<b>1,212</b>	<b>1,834</b>	<b>-622</b>
<i>If felony cases not involving the sale or possession of heroin, cocaine, or meth are added back in:</i>	2,939	1,315	1,937	-622

All estimated prison beds are not needed the first year; the need is, instead, apportioned over time. See footnote 25, above.

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

As noted above, the post-DSRA group represents 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 fifteen 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.

## Use of DSRA Gross Misdemeanor Offense

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

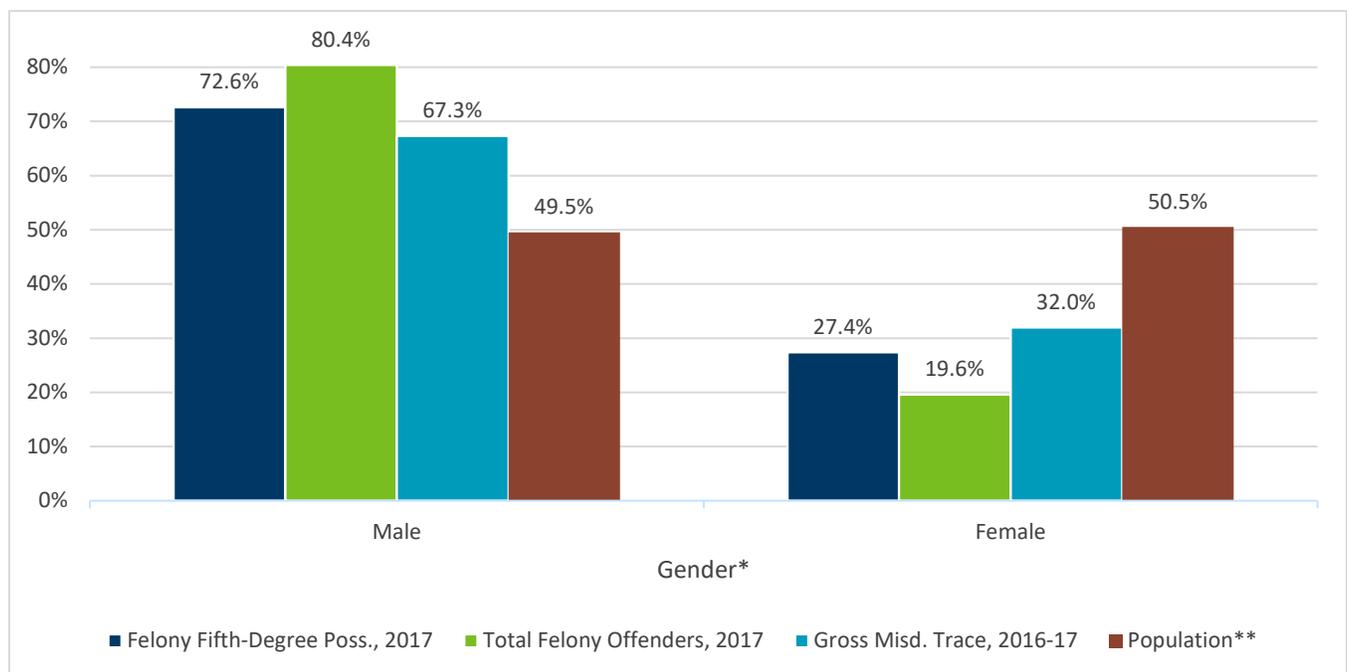
<sup>31</sup> This analysis does not include gross misdemeanor fifth-degree cases (the subject of the next section). If those cases were included in Table 11, they would not increase the estimated prison beds needed based on actual post-DSRA sentences because gross misdemeanor offenses are not sentenced 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.

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

From August 1, 2016 through December 31, 2017, 725 offenders were convicted of gross misdemeanor possession of a trace amount of a controlled substance.<sup>33</sup> Over 67 percent were male and 32 percent were female.<sup>34</sup>

By comparison, the rate of female offenders sentenced for gross misdemeanor possession of a trace amount is higher than that for female felony fifth-degree possession offenders sentenced in 2017 (27.4%) and higher than the rate of females in the total 2017 felony offender population (19.6%). The rate is still lower than the state’s estimated 2017 female population, age 15 and older, at 50.5 percent (Figure 32).

*Figure 32. Distribution by Gender of Gross Misdemeanor Possession of Trace Amount Cases Sentenced, Sentenced 8/1/2016 to 12/31/2017; Total Felony Offenders Sentenced 2017; Felony Fifth Degree Possession Sentenced 2017; and Population Age 15 and Older*



Source of Gross Misd. Trace Cases, 2016–17: Minnesota Judicial Branch. (Obtained 10/18/2018.)

\* 1.0% (5 cases) not displayed where the gender was blank i.e., not reported, “Null.”

\*\*2017 estimated population, age 15 and over, U.S. Census Bureau (June, 2018).

Over 64 percent were white, 6.2 percent were black, 13.6 percent were American Indian, 5.4 percent were Hispanic, 1.9 percent were Asian, and in 8.3 percent of the cases, the person’s race or ethnicity was “other” or “unknown”<sup>35</sup> (Gross Misd. Trace, 2016–17, Figure 33).

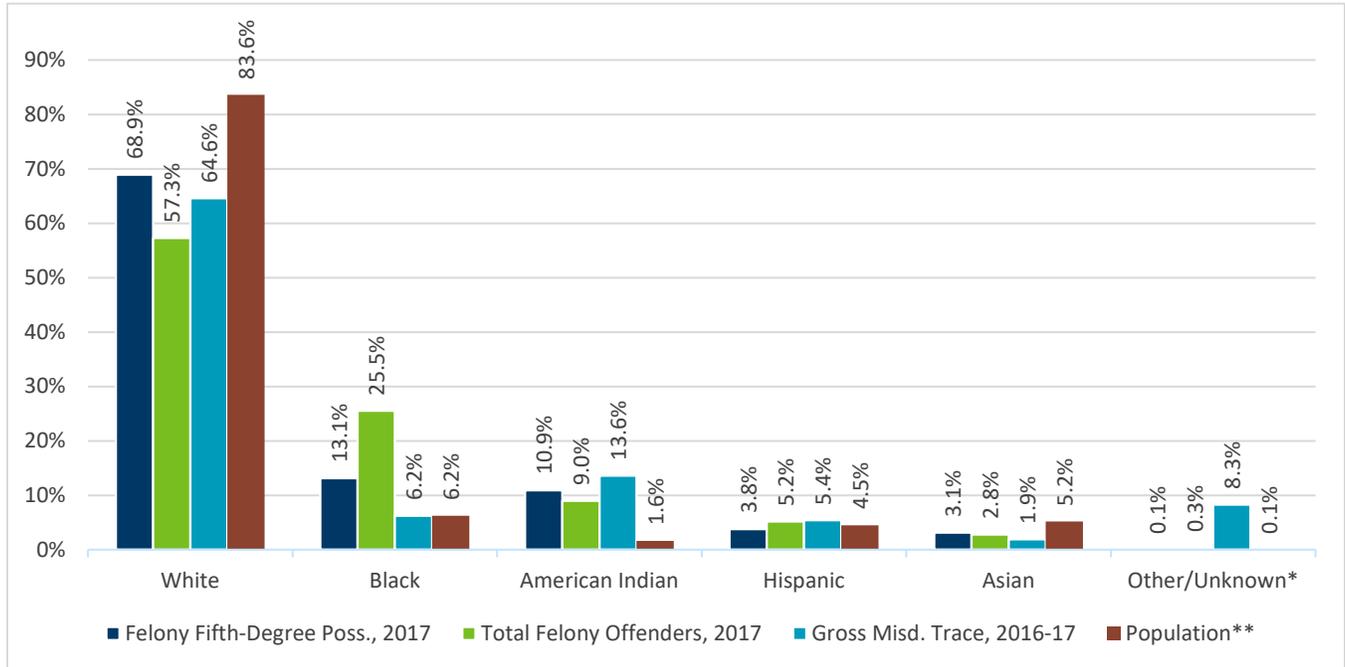
<sup>33</sup> Sentenced under [Minn. Stat. § 152.025](#), subd. 4(a), 8/29/2016 to 12/29/2017. Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

<sup>34</sup> In five cases, the gender reported was blank; i.e., “Null.”

<sup>35</sup> Other/Unknown: 4.4% multiracial; .7% unavailable; .7% “other;” .1% Hawaiian/Pacific Islander; and .3% refused.

In addition to the distribution of gross misdemeanor trace-amount cases by race and ethnicity, Figure 33 also displays rates by race and ethnicity for felony fifth-degree possession offenders sentenced in 2017, total felony offenders sentenced in 2017, and the state’s estimated 2017 population, age 15 and older.

*Figure 33. Distribution by Race & Ethnicity of Gross Misdemeanor Possession of Trace Amount Cases Sentenced, Sentenced 8/1/2016 to 12/31/2017; Total Felony Offenders Sentenced 2017; Felony Fifth Degree Possession Sentenced 2017; and Population Age 15 and Older*



Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

\*Other/Unknown: 4.4% multiracial; .7% unavailable; .7% “other;” .1% Hawaiian/Pacific Islander; and .3% refused.

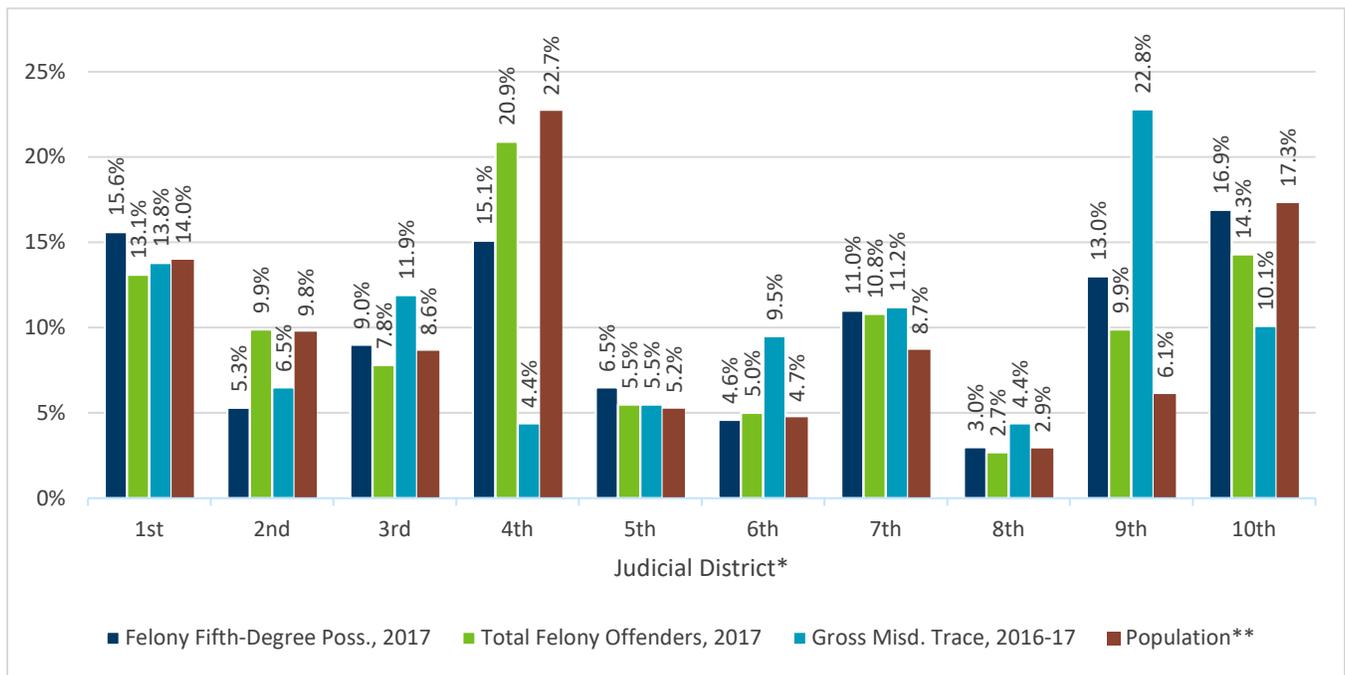
\*\*2017 estimated population, age 15 and over, U.S. Census Bureau (June 2018).

The Minnesota judicial district with the most convictions was the Ninth Judicial District with 22.8 percent, and the judicial districts with the least convictions were the Fourth Judicial District (Hennepin County) and the Eighth Judicial District each with 4.4 percent (Gross Misd. Trace, 2016–17, Figure 34). A map of the judicial districts, including counties, can be found in Appendix 1 (p. 54). The number of cases and data by Minnesota Judicial District and counties are displayed in Table 12 and Table 13, beginning on page 46.

In addition to the distribution of gross misdemeanor trace-amount cases across judicial districts, Figure 34 also displays, for comparison, the distribution of felony fifth-degree possession offenders sentenced in 2017, total felony offenders sentenced in 2017, and the state’s estimated 2017 population, age 15 and older. Unlike other judicial districts, post-DSRA gross misdemeanor trace-amount cases committed in the Second Judicial District (Ramsey County) and Fourth Judicial District (Hennepin County) are prosecuted by the appropriate city attorney,

rather than the county attorney.<sup>36</sup> This jurisdictional change, which applies only to those two judicial districts, may account for some of the variation in the data shown in Figure 34.

Figure 34. Distribution by Judicial District of Gross Misdemeanor Possession of Trace Amount Cases Sentenced, Sentenced 8/1/2016 to 12/31/2017; Total Felony Offenders Sentenced 2017; Felony Fifth Degree Possession Sentenced 2017; and Population Age 15 and Older



Source of Gross Misd. Trace Cases, 2016–17: Minnesota Judicial Branch. (Obtained 10/18/2018.)

\*See Appendix 1 (p. 54) for a map of Minnesota’s ten judicial districts.

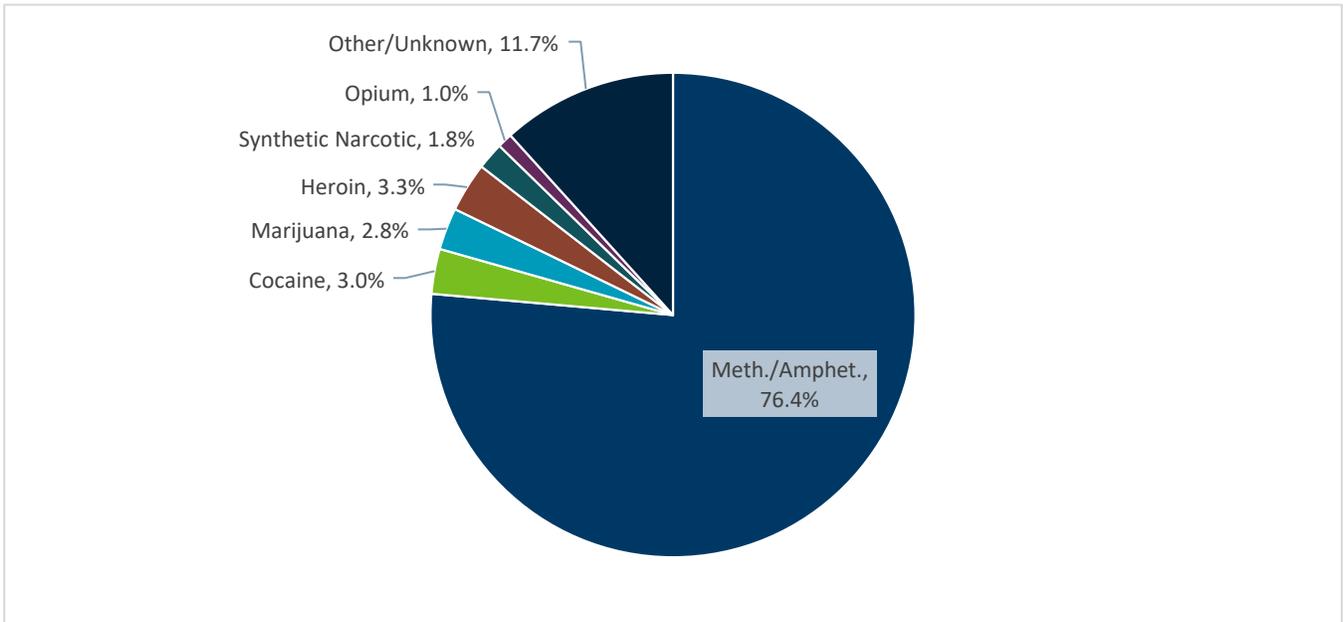
\*\*2017 estimated population, age 15 and over, U.S. Census Bureau (June 2018).

The majority of the type of drug possessed in the gross misdemeanor trace-amount cases was methamphetamine and amphetamines (“Meth./Amphet.”) at 76.4 percent (Figure 35). This is consistent with the trend depicted in Figure 5 & Figure 6. The other drugs were: cocaine at 3.0 percent; marijuana at 2.8 percent; heroin at 3.3 percent; synthetic narcotics at 1.8 percent; Opium at 1.0 percent; and “other” or “unknown” at 11.7 percent.<sup>37</sup>

<sup>36</sup> There are some exceptions to this rule (e.g., in some municipalities whose population is less than 2,500). [Minn. Stat. § 484.87](#), subd. 2. In all other counties, the county attorney must prosecute. [Minn. Stat. § 388.051](#), subd. 2(d).

<sup>37</sup> Drug type information is based on Minnesota Offense Codes (MOCs) obtained from the court record.

Figure 35. Gross Misdemeanor Possession of Trace Amounts by Drug Type, Sentenced 8/1/2016 to 12/31/2017



Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)  
 Drug type information is based on Minnesota Offense Codes (MOCs).

Table 12. Gross Misdemeanor Possession of Trace Amount Convictions by Gender, Race & Ethnicity, and Judicial District, Sentenced 8/1/2016 to 12/31/2017

		Number	Percent
<b>Gender</b>	Male	488	67.3
	Female	232	32.0
	Unknown	5	0.7
<b>Race &amp; Ethnicity<sup>38</sup></b>	White	---	64.6
	Black	---	6.2
	American Indian	---	13.6
	Hispanic	---	5.4
	Asian	---	1.9
	Other/Unknown	---	8.3

		Number	Percent
<b>Judicial District<sup>39</sup></b>	First	100	13.8
	Second	47	6.5
	Third	86	11.9
	Fourth	32	4.4
	Fifth	40	5.5
	Sixth	69	9.5
	Seventh	81	11.2
	Eighth	32	4.4
	Ninth	165	22.8
	Tenth	73	10.1
	<b>Total</b>	<b>725</b>	<b>100.0</b>

Source: State Court Administrator's Office, Court Services; Research & Evaluation. (Obtained 10/18/2018.)

<sup>38</sup> Summary data small enough to compromise the privacy of individual defendants.

<sup>39</sup> See Appendix 1 (p. 54) for a map of Minnesota's ten judicial districts.

Table 13. Number and Percent of Gross Misdemeanor Possession of Trace Amounts by County, \* Sentenced 8/1/2016 to 12/31/2017

County	Number	Percent
1 Aitkin	8	1.1
2 Anoka	12	1.7
3 Becker	13	1.8
4 Beltrami	16	2.2
5 Benton	6	0.8
7 Blue Earth	11	1.5
8 Brown	4	0.6
9 Carlton	11	1.5
10 Carver	8	1.1
11 Cass	38	5.2
12 Chippewa	4	0.6
13 Chisago	4	0.6
14 Clay	8	1.1
15 Clearwater	2	0.3
16 Cook	1	0.1
18 Crow Wing	30	4.1
19 Dakota	29	4.0
20 Dodge	4	0.6
21 Douglas	2	0.3
22 Faribault	9	1.2
24 Freeborn	14	1.9
25 Goodhue	15	2.1
27 Hennepin	32	4.4
28 Houston	10	1.4
29 Hubbard	3	0.4
30 Isanti	8	1.1
31 Itasca	11	1.5
33 Kanabec	6	0.8
34 Kandiyohi	12	1.7
36 Koochiching	3	0.4
38 Lake	3	0.4
39 Lake of the Woods	1	0.1
40 Le Sueur	5	0.7
42 Lyon	1	0.1
43 McLeod	5	0.7
44 Mahnomon	24	3.3
46 Martin	2	0.3
47 Meeker	2	0.3

County	Number	Percent
48 Mille Lacs	15	2.1
49 Morrison	8	1.1
50 Mower	7	1.0
51 Murray	1	0.1
53 Nobles	4	0.6
54 Norman	2	0.3
55 Olmsted	4	0.6
56 Otter Tail	13	1.8
57 Pennington	12	1.7
58 Pine	16	2.2
59 Pipestone	1	0.1
60 Polk	11	1.5
61 Pope	5	0.7
62 Ramsey	47	6.5
63 Red Lake	1	0.1
64 Redwood	4	0.6
65 Renville	4	0.6
66 Rice	17	2.3
68 Roseau	3	0.4
69 St. Louis	54	7.4
70 Scott	36	5.0
71 Sherburne	7	1.0
72 Sibley	2	0.3
73 Stearns	13	1.8
74 Steele	5	0.7
75 Stevens	1	0.1
76 Swift	1	0.1
77 Todd	1	0.1
78 Traverse	1	0.1
79 Wabasha	5	0.7
80 Wadena	2	0.3
82 Washington	9	1.2
83 Watonwan	3	0.4
84 Wilkin	1	0.1
85 Winona	20	2.8
86 Wright	11	1.5
87 Yellow Medicine	1	0.1
<b>Total</b>	<b>725</b>	<b>100.0</b>

\*Counties with zero cases omitted.

Source: State Court Administrator's Office, Court Services; Research & Evaluation. (Obtained 10/18/2018.)

## Post-DSRA Stays of Adjudication

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 for offenses committed on or after August 1, 2016 (when the DSRA took effect), such a stay of adjudication became mandatory for first-time fifth-degree controlled substance possession offenders with no felony record and no previous participation in diversion.<sup>40</sup> Additionally, such stays of adjudication were expanded to permit their use for third-degree controlled substance possessions.

### Stays of Adjudication Before and After the DSRA

Table 14 displays, by offense degree, stay of adjudication dispositions under Chapter 152 in 2015, 2016, and 2017. A total of 10,462 cases were disposed of within this time period: 2,824 in 2015; 3,539 in 2016; and 4,099 in 2017. The data were separated into two groups: “Pre-DSRA” (offense dates before August 1, 2016); and “Post-DSRA” (offense dates on or after August 1, 2016).<sup>41</sup> There were 7,236 pre-DSRA cases and 3,226 post-DSRA cases.

In 2017, the number of post-DSRA cases exceeded pre-DSRA cases (Table 14). The number of stays of adjudication was greater in 2017 than in either 2015 or 2016 (Figure 36).

*Table 14. Number of Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015-2017*

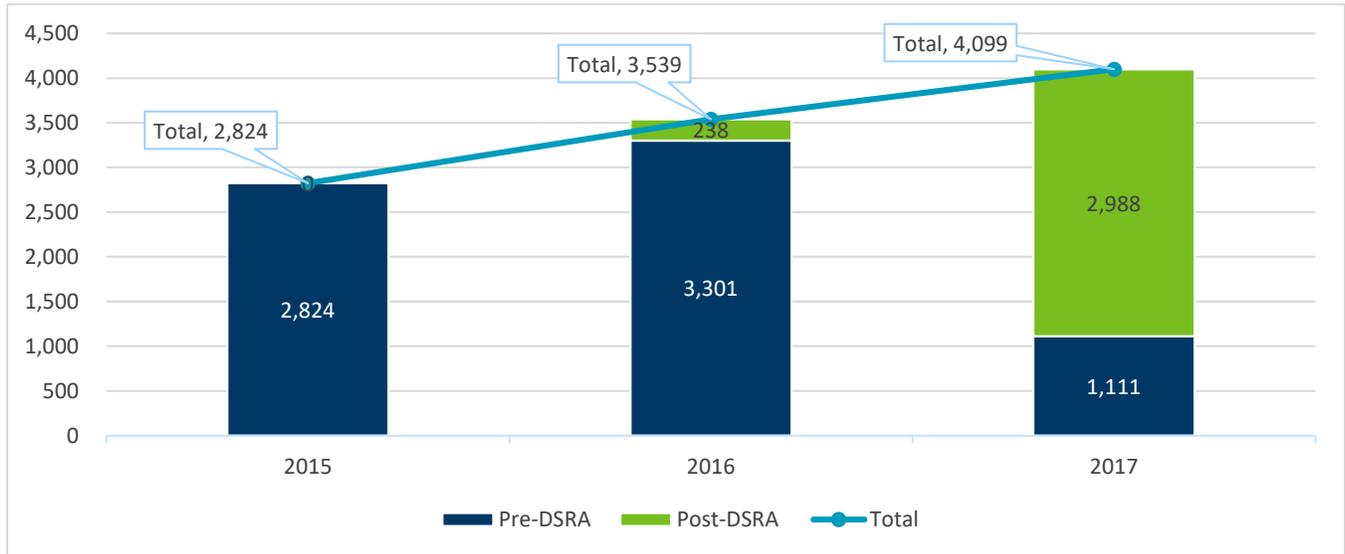
Degree	Pre-DSRA				Post-DSRA				Total Pre- & Post-DSRA
	Disposition Year				Disposition Year				
	2015	2016	2017	Total	2015	2016	2017	Total	
First	2	3	–	5	–	–	1	1	6
Second	5	5	3	13	–	–	3	3	16
Third	34	32	22	88	–	1	59	60	148
Fourth	30	24	8	62	–	3	14	17	79
Fifth	2,753	3,237	1,078	7,068	–	234	2,911	3,145	10,213
<b>Total</b>	<b>2,824</b>	<b>3,301</b>	<b>1,111</b>	<b>7,236</b>	<b>–</b>	<b>238</b>	<b>2,988</b>	<b>3,226</b>	<b>10,462</b>

Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

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

<sup>41</sup> Stay of adjudication dispositions, first- through fifth-degree offenses with dispositions in 2015, 2016, and 2017. Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

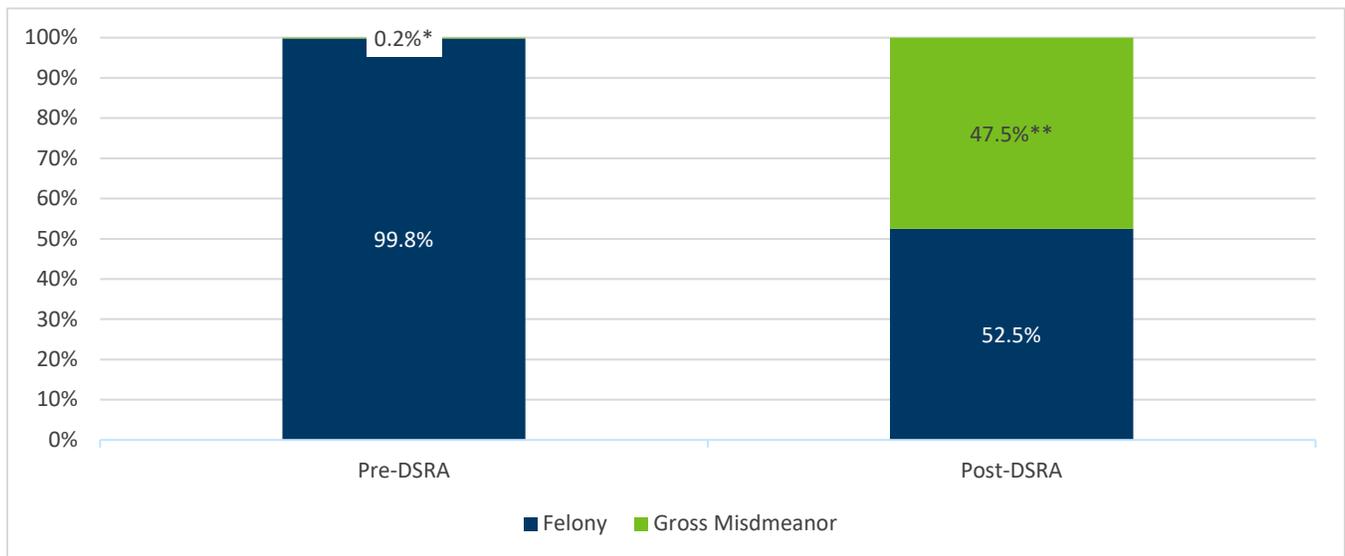
Figure 36. Total Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015-2017



Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

As described on page 42, the DSRA created a gross misdemeanor fifth-degree offense for possessing a trace amount of a controlled substance. Figure 37 shows that gross misdemeanor offenders were receiving almost half of the post-DSRA stay of adjudication dispositions.

Figure 37. Distribution by Offense Level of Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015–17, Pre-DSRA & Post-DSRA



Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

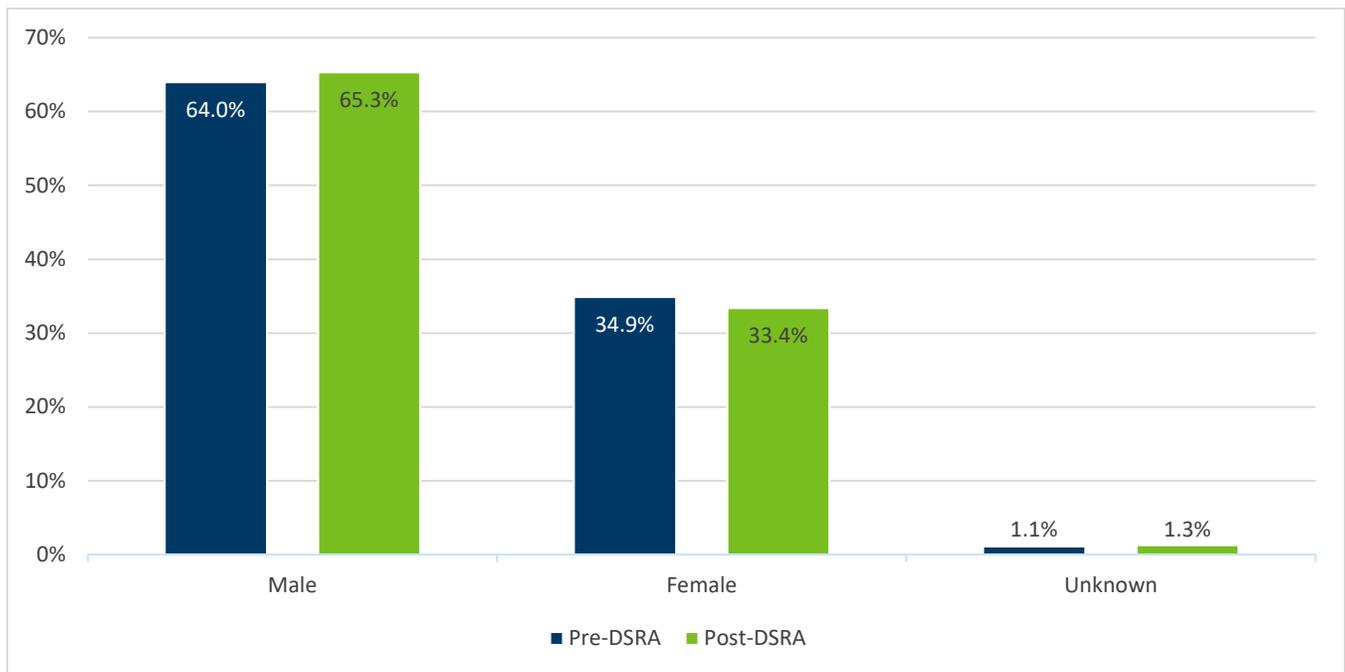
\*14 cases were coded as gross misdemeanor offenses and one was coded as a misdemeanor offense pre-DSRA. It is assumed that these were data errors, as the law had not yet taken effect.

\*\*One case was coded as a misdemeanor offense post-DSRA. It is assumed that this was a data error.

## Pre-DSRA & Post-DSRA Comparisons

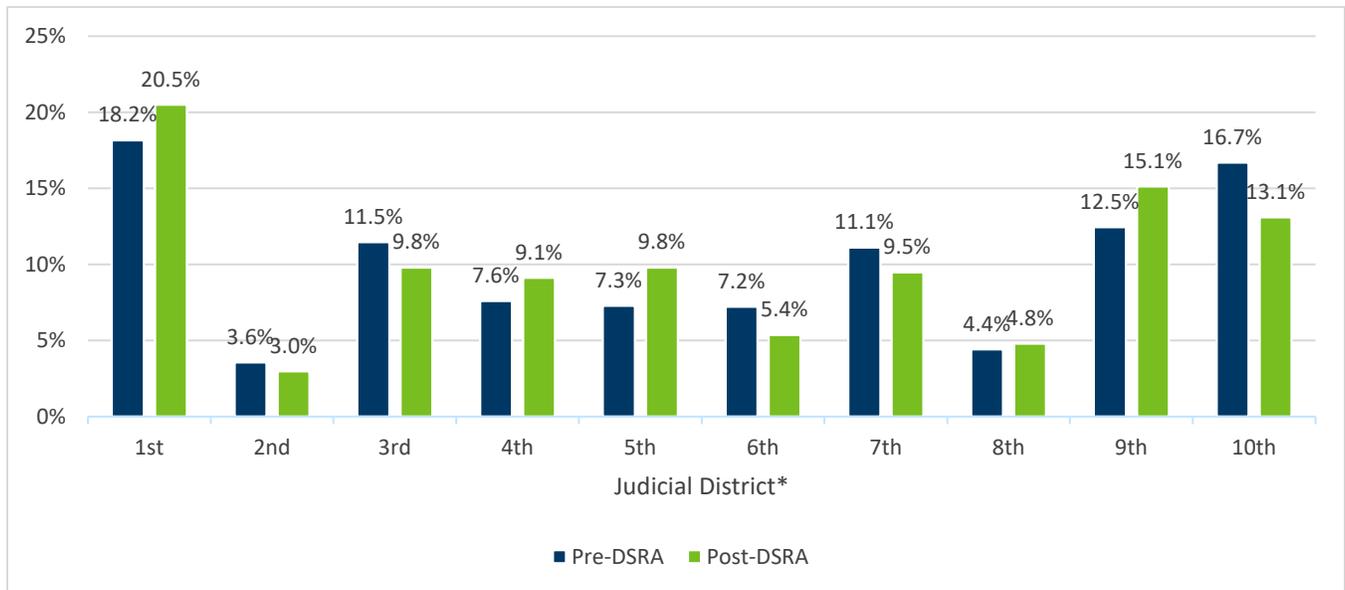
As Figure 38 shows, the distribution by gender of stay of adjudication dispositions was largely the same for the pre-DSRA and post-DSRA groups. This was generally true of the distribution by judicial district (Figure 39), although there was some variation in the tenth district. Distribution by race and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

Figure 38. Distribution by Gender of Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015–17, Pre-DSRA & Post-DSRA



Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

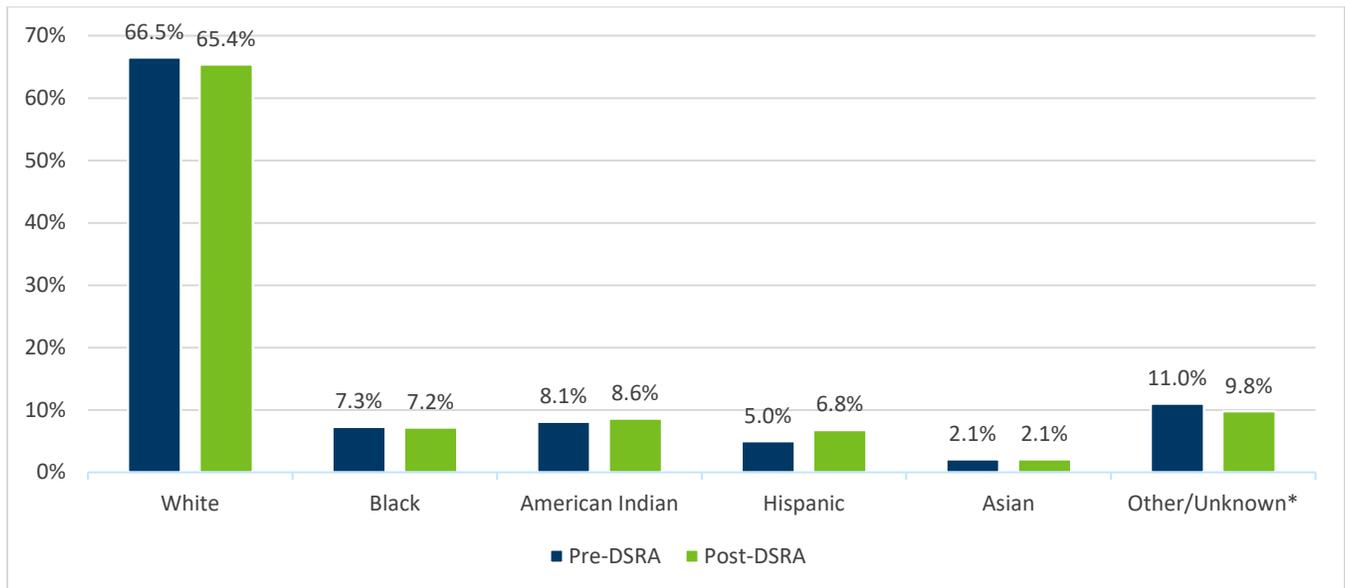
Figure 39. Distribution by Judicial District of Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015–17, Pre-DSRA & Post-DSRA



Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

\*See Appendix 1 (p. 54) for a map of Minnesota’s ten judicial districts.

Figure 40. Distribution by Race & Ethnicity of Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015–17, Pre DSRA & Post-DSRA

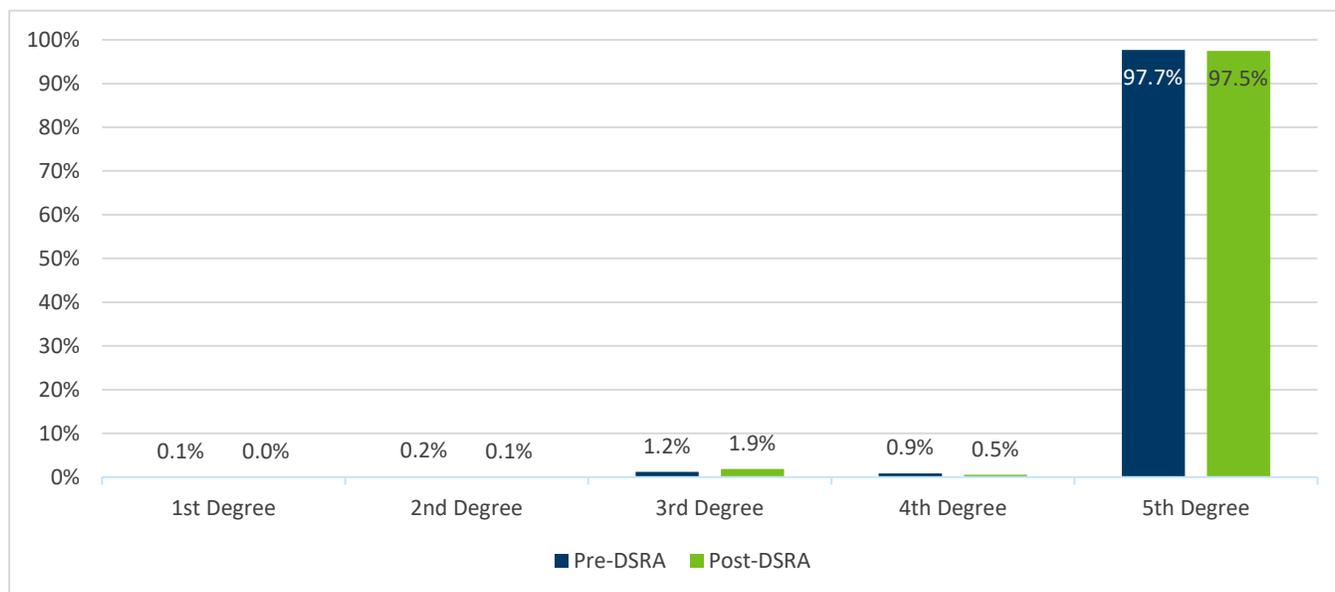


Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

\*Other/Unknown: 4.5% Pre-DSRA & 4.1% Post-DSRA unknown; 1.9% Pre-DSRA & 1.3% Post-DSRA unavailable; 1.1% Pre-DSRA & .7% Post-DSRA “other;” 2.8 Pre-DSRA & 3.0% Post-DSRA multiracial; .4% Pre-DSRA & .5% Post-DSRA refused; and .2% Pre-DSRA & .2% 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 41 shows that the use of stays of adjudication for third-degree cases has gone up slightly post-DSRA, but their use remains most common in fifth-degree cases.<sup>42</sup>

Figure 41. Distribution by Controlled Substance Degree of Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015–17, Pre-DSRA & Post-DSRA



Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

<sup>42</sup> First- and second-degree possession cases, and sale cases at every degree, are ineligible for disposition under [Minn. Stat. § 152.18](#). Nothing in that section, however, explicitly curtails the general authority of the district court to stay adjudication for such an offense, although the circumstances in which the district court is authorized to “stay[] adjudication of guilt over the prosecutor’s objection and in the absence of statutory authority” have been described as “unusual,” *State v. Foss*, 556 N.W.2d 540, 540-41 (Minn. 1996); see also *State v. Lee*, 706 N.W.2d 491 (Minn. 2005).

## How the Guidelines Work

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

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

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

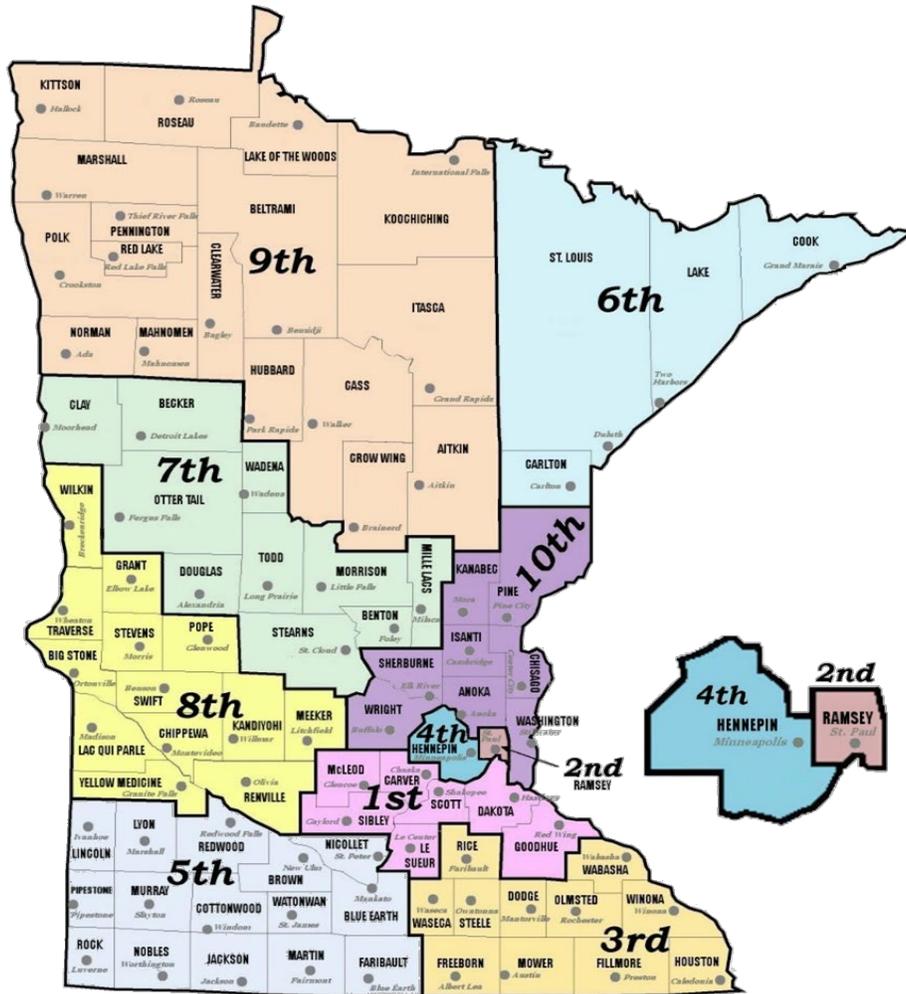
The Guidelines generally recommend a stayed sentence for cells in the shaded area of the applicable Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of local confinement (i.e., local correctional facility, county jail or workhouse) as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

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

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

# Appendices

## Appendix 1. Minnesota Judicial District Map



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

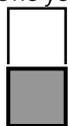
Source: Minn. Judicial Branch.

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

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

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE							
	0	1	2	3	4	5	6 or more	
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	<b>11</b>	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> <sup>2</sup>	426 <i>363-480</i> <sup>2</sup>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	<b>10</b>	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> <i>Controlled Substance Crime, 1st Degree</i>	<b>9</b>	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	<b>8</b>	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; Financial Exploitation of a Vulnerable Adult</i>	<b>7</b>	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> <sup>2,3</sup>
<i>Controlled Substance Crime, 3rd Degree</i>	<b>6</b>	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	<b>5</b>	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	<b>4</b>	12 <sup>1</sup>	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>	<b>3</b>	12 <sup>1</sup>	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>	<b>2</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	<b>1</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 <i>17-22</i>

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



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

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

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

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

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

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

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

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

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



Presumptive commitment to state imprisonment.



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