

Controlled Substance Offenses

Sentencing Practices for Offenses
Sentenced in 2020 and 2021

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ABOUT THIS REPORT

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

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Summary of 2020 & 2021 Data

In 2020, 3,205 felony drug cases were sentenced in Minnesota, and 3,912 in 2021 (Figure 1). By comparison, 5,175 drug cases were sentenced in 2019.

In 2020 and 2021, compared to non-drug felonies:

- A larger share of felony drug cases were sentenced in Greater Minnesota (69%, vs. 47% of non-drug cases);
- A larger share of those sentenced for drug felonies were white (69%, vs. 52% of non-drug cases); and
- A smaller share of those sentenced for drug felonies were black (13%, vs. 30% of non-drug cases).

The incarceration rate for drug felonies was 85 percent, with 17.5 percent receiving a prison sentence and 68 percent receiving up to one year of local confinement in a local correctional facility, county jail or workhouse as a condition of probation (Table 1). The 17.5-percent imprisonment rate was a slight decrease from the 20 percent rate observed in 2019. For those receiving an executed prison sentence, the average pronounced duration was 48 months, an increase from the 2019 average of 42 months. (Table 2).

Among cases where the Sentencing Guidelines recommended prison, the total mitigated dispositional departure rate was 46 percent. This was higher than the rate for non-drug offenses (44%) (Figure 29). Among those who received prison sentences, 17 percent received a mitigated durational departure, lower than the 20 percent rate observed in 2019, and the lowest rate observed since at least 1996 (Figure 20). This rate varied significantly by region (Figure 22).

The 2016 Drug Sentencing Reform Act (DSRA)¹ made a number of significant changes to the sentencing of Minnesota drug offenses committed after July 31, 2016. Among the changes was the creation of a gross misdemeanor fifth-degree possession offense. The DSRA's new gross misdemeanor offense is widely used, increasing from 652 cases in 2017 (the first full year of data following enactment of the DSRA) to 864 cases in 2018. More recently, there were 709 gross misdemeanor cases in 2019, 532 in 2020, and 755 in 2021.

A substantial increase in stays of adjudication for drug cases followed the DSRA's requirement that adjudication of guilt be stayed for qualifying first-time drug offenders (Figure 3). The 2021 number (3,628 cases) was almost triple the 2019 number (979 cases). The years following enactment of the DSRA have seen an increase in sentence uniformity as reflected in a somewhat lower durational departure rate (Figure 20), but there has not been a similar impact on the dispositional departure rate (Figure 19).

¹ [2016 Minn. Laws ch. 160.](#)

Case Volume & Distribution

Data Description

Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are person-based, meaning cases represent people sentenced rather than individual charges. Cases sentenced within the same county in a one-month period are generally counted only once, based on the most serious offense.

The following pages display summary data about sentencing practices and case volume and distribution for felony² controlled substance offenses (“drug offenses” or “drug cases”), as well as trends in sentencing since the implementation of the Minnesota Sentencing Guidelines and information about the impact of the 2016 Drug Sentencing Reform Act (DSRA).³ Having taken effect August 1, 2016, the DSRA applied to 96.6% of the felony drug cases sentenced in 2020 and 2021.

The recommended sentence is based primarily on the severity of the offense of conviction and secondarily on criminal history. In most cases, the recommended sentence is applied. Because sentencing practices are closely related to the recommended Guidelines sentence, it is important to be aware of the effect of differences in offense severity and criminal history when evaluating sentencing practices. This is particularly important when comparing cases (e.g., by gender, race/ethnicity, or judicial district). (See “How the Guidelines Work,” p. 36.)

Volume of Cases

Due to the COVID-19 health pandemic, the cases sentenced in 2020 and 2021 may not be fair approximations of cases sentenced in the past or future; therefore, only limited comparisons to cases sentenced in 2019 and previous years are made in this report. The total cases sentenced in 2020 (11,517 cases) and 2021 (14,429 cases) were only a fraction of the total cases sentenced in 2019 (17,335). An illustration of the total number of felony cases sentenced since 1981 can be found in MSGC’s report, *2021 Sentencing Practices: Annual Summary Statistics for Felony Cases* (located on the “Annual Summary” tab at mn.gov/sentencing-guidelines/reports).

In 2020, 3,205 felony drug cases were sentenced in Minnesota, and 3,912 cases in 2021 (Figure 1). By comparison, 5,175 drug cases were sentenced in 2019. Because the number of cases grew each year from 2010 to 2017—reaching a record-high volume of 5,670 cases in 2017—the volume sentenced in 2019 was 56 percent greater than the 2010 volume (Figure 1). In 2020, due to the COVID-19 pandemic, the drug-case volume declined significantly, followed by an uptick in case volume in 2021.

² Generally, this report describes data pertaining to felony-conviction cases only. In some parts of this report, gross misdemeanor cases are described as well as stays of adjudication. When describing these case data, the report will make specific note.

³ [2016 Minn. Laws ch. 160](#).

Figure 1. Number of Drug Cases, 1993–2021

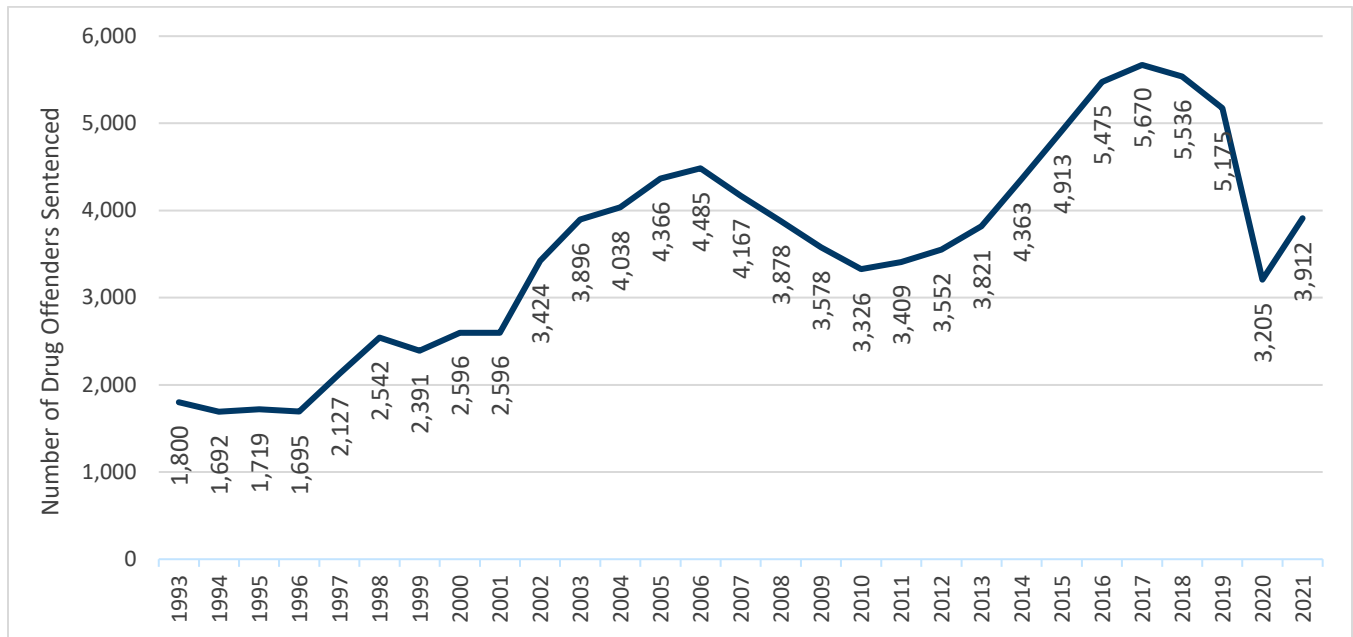
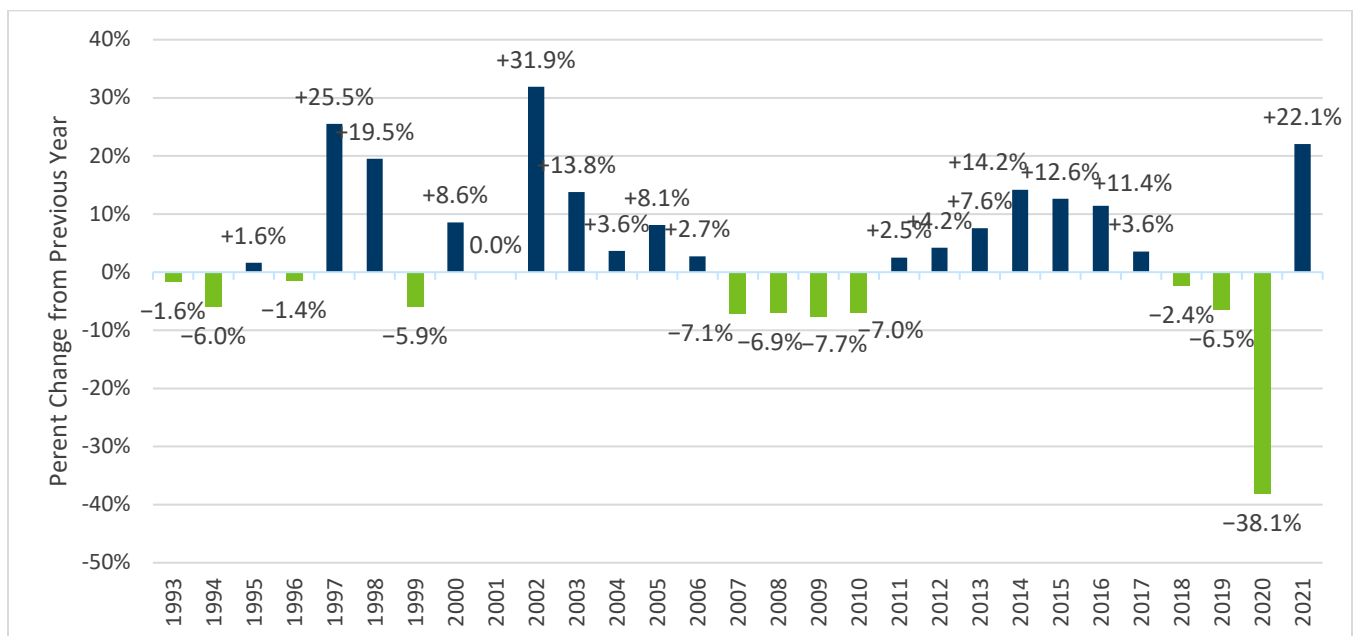


Figure 2 illustrates the percent change in the number of drug cases sentenced over time. From 2006 through 2010, the number decreased by seven or eight percent each year. From 2010 through 2017, the number increased each year—in the three years from 2014 to 2016, by over 10 percent annually. In 2018, for the first time since 2010, the number decreased, by 2.4 percent. In 2019, the number fell again, by 6.5 percent. As previously noted, the downward trend in the number of drug cases sentenced was exacerbated in 2020 by the COVID-19 health pandemic.

Figure 2. Annual Percent Change in Drug Cases, 1993–2021



Volume of Cases by Degree

Figure 3 (p. 8) shows the distribution of drug cases across the five controlled substance degrees, including gross misdemeanor fifth degree (possession of a trace amount). Stays of adjudication for felony or gross misdemeanor offenses are also shown.

- The 2016 Drug Sentencing Reform Act (DSRA)⁴ created a **gross misdemeanor fifth-degree** offense for possessing a trace amount of a controlled substance. Before August 1, 2016, this offense would have been a felony. Only defendants with no prior conviction for sale or possession of a controlled substance offense are eligible for the gross misdemeanor penalty. “Trace” amounts refer to less than 0.25 grams or one dosage unit for controlled substances that are not heroin; and less than 0.05 grams for heroin.
- A **stay of adjudication** under [Minn. Stat. § 152.18](#) (“Discharge and Dismissal”) is a type of deferred prosecution that allows certain first-time drug defendants to be placed on probation and receive conditions of probation (e.g., drug treatment or educational programming) without judgment of guilt. If the conditions are successfully met, the defendant is 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 cases with no felony record and no previous participation in diversion.⁵ Additionally, such stays of adjudication were expanded to permit their use for third-degree controlled substance possessions.

In 2020 and 2021, as in previous years, the most common felony degree sentenced was felony fifth degree (70% of felony cases), but the number of cases sentenced decreased across all felony drug degrees from 2019 to 2021 (Figure 3). The largest decrease from 2019 to 2021 was in fourth degree (–36%). The decreases in the number sentenced for first, second, third, and felony fifth degrees were 19 percent, 16 percent, 21 percent, and 26 percent, respectively. On the other hand, the number sentenced for gross misdemeanor fifth-degree possession of a trace amount increased 6.5 percent from 2019 to 2021, and stays of adjudication more than tripled, going from 979 cases in 2019 to 3,628 cases in 2021.

The number of first-degree cases declined nearly every year between 2003 and 2010, due in part to the decline in the number of first-degree manufacture of methamphetamine cases (310 cases in 2003 compared to 10 cases in 2010).⁶ The number of manufacture of methamphetamine cases has remained relatively low in the years following, with no such cases in 2019 or 2020, and one case in 2021.

Despite low numbers of manufacture of methamphetamine cases, the number of first-degree cases increased in most years after 2010, from 194 cases in 2010 to 418 cases in 2018; the 2018 first-degree case volume was a 23-percent increase over the year before. In 2019, first-degree cases decreased by 11 percent, to 373 cases. In

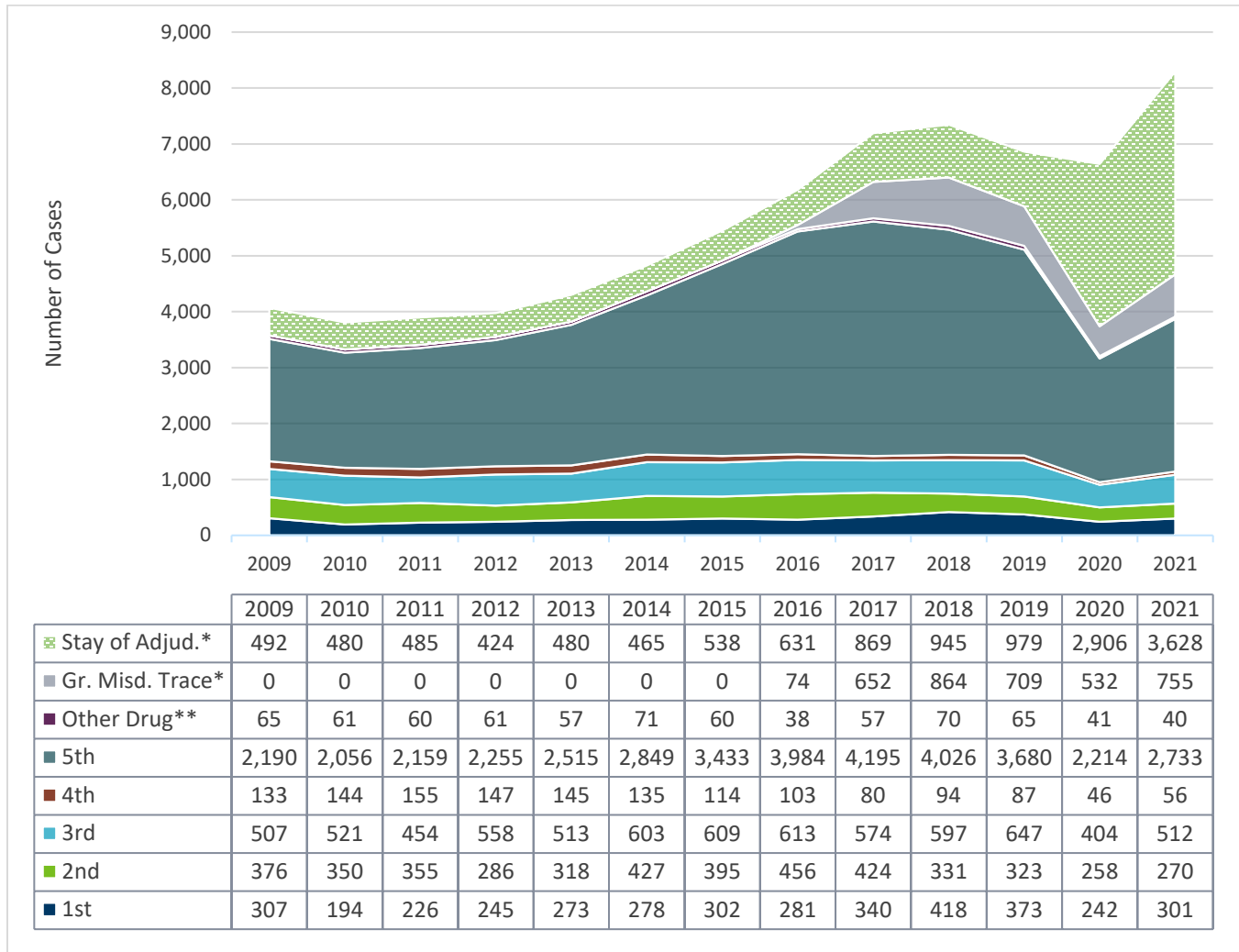
⁴ [2016 Minn. Laws ch. 160](#).

⁵ See Minn. Stat. § [152.18](#), subd. 1(b), for a complete description of the criteria.

⁶ In 2005, the offense of manufacture of methamphetamine; possession of precursors (Minn. Stat. § [152.021](#), subd. 2a(b)) was reclassified and is no longer a first-degree offense. This statutory change contributed to the decline in the total number of first-degree cases. These “precursor offenses” are now reported in the “Other” category.

2020 and 2021, first-degree remained below the 2018 peak—at 242 cases and 301 cases, respectively—and were just over 7.5 percent of the cases sentenced.

Figure 3. Number of Drug Cases by Drug Degree, Gross Misdemeanor Trace, & Stays of Adjudication, 2009–2021



Source of Gr. Misd. Trace & Stays of Adjud.: Minnesota Judicial Branch. (Obtained 3/14/2023.)

*Revoked stays of adjudication may be represented in another category. Gross misdemeanors may not necessarily be the most serious offenses sentenced.

**In 2020, the “other category included three cases of simulated controlled substance crime, one case of possession of substances with intent to manufacture methamphetamine, one case of sale of a simulated/analog controlled substance, and 36 cases of methamphetamine crimes involving children. In 2021, the “Other” category included three cases of simulated controlled substance crime, one case of sale of a simulated/analog controlled substance, and 36 cases of methamphetamine crimes involving children.

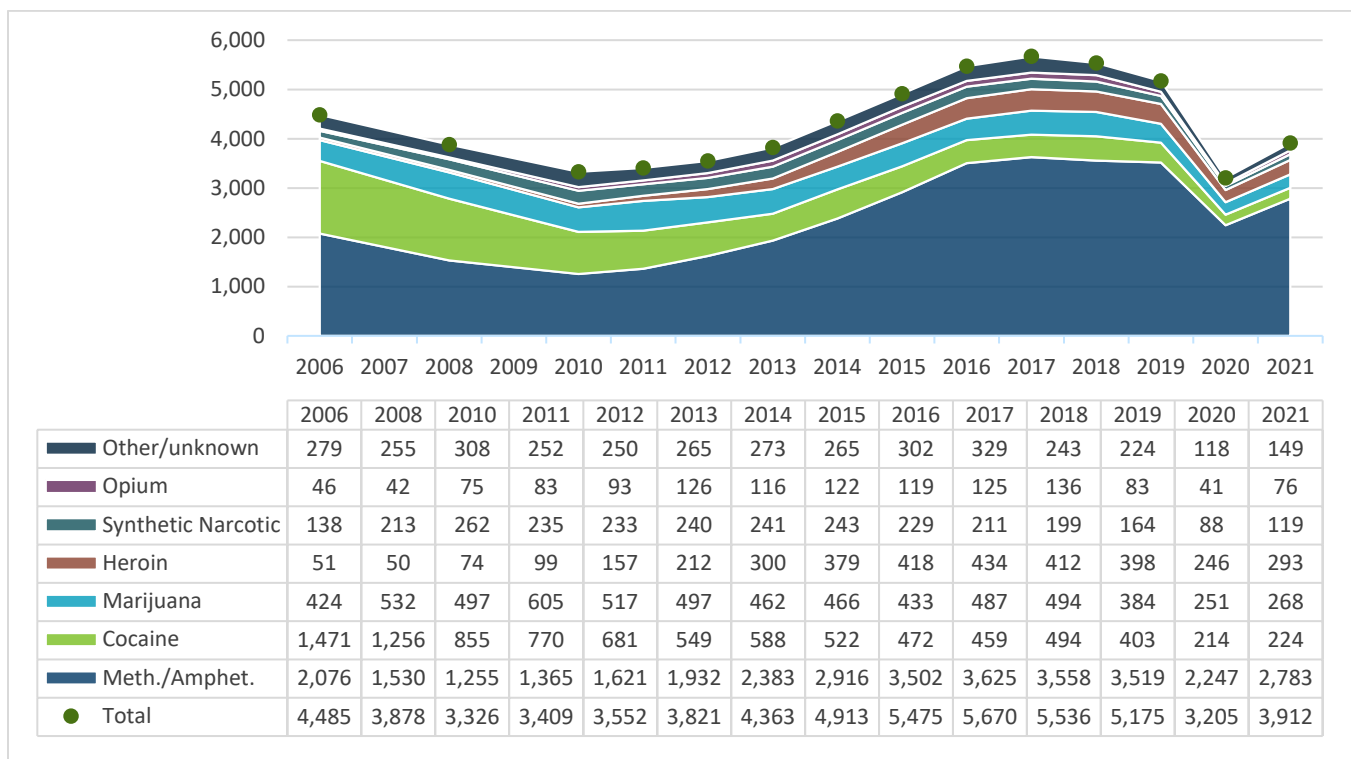
Case Volume by Drug Type, Region, Prior Drug Conviction, & Race/Ethnicity

Cases by Drug Type

The distribution of cases among drug types, as encoded on criminal complaints,⁷ 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 methamphetamine (“meth”) or amphetamines. 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 2013, meth/amphetamine cases constituted a majority of drug cases sentenced, holding a 64-percent share from 2016 through 2018. In 2020 and 2021, the meth/amphetamine share was over 70 percent (Figure 4).

From 2019 to 2021, there were decreases in the number of cases for every drug type. The decreases ranged from eight percent for opium to 44 percent for cocaine. Marijuana declined by 30 percent, meth/amphetamine declined by 21 percent, synthetic narcotic cases declined by 27 percent, and heroin declined by 26 percent.

Figure 4. Distribution of Drug Cases by Drug Type, 2006, 2008, 2010, 2012–2021

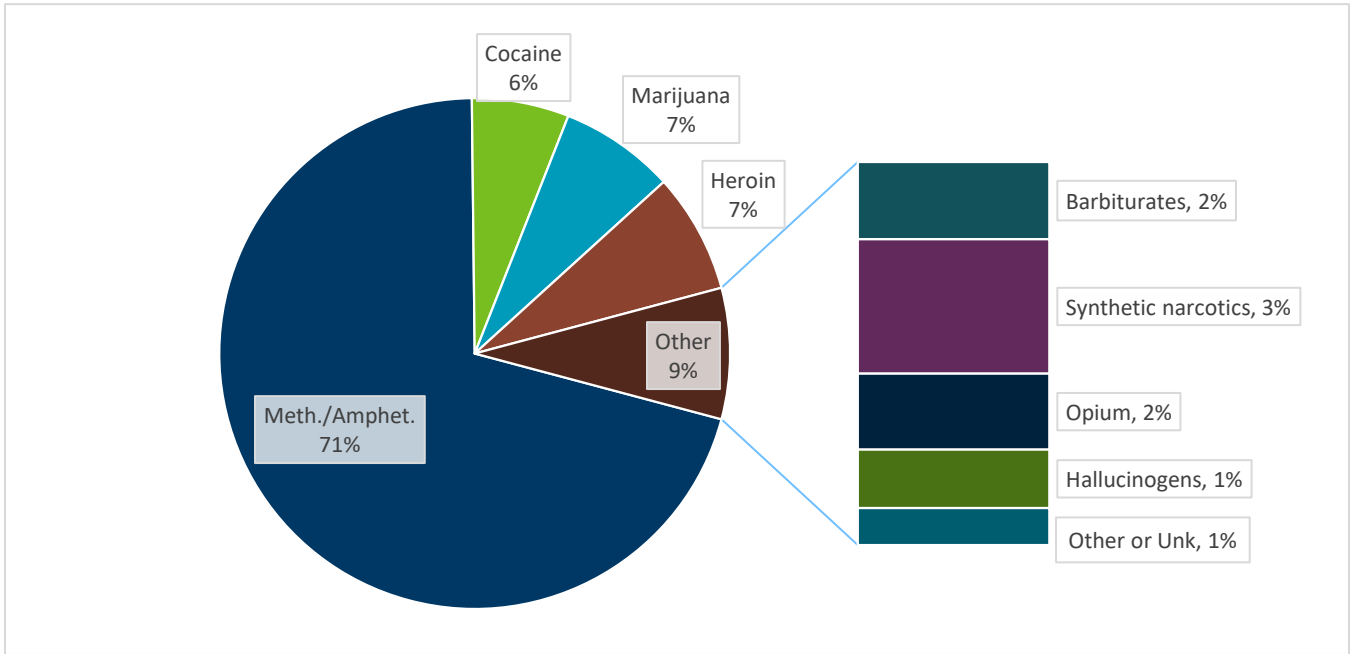


Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

⁷ Drug-type information is based on Minnesota Offense Code (MOC) categories, as encoded on criminal complaints by county attorneys or their staff members. This information is not formally alleged or proven, and may not even be reviewed or verified by the prosecutor.

As noted above, the meth/amphetamine category continued to be the drug type with the largest number of cases in 2020 and 2021 (70.7%), while 7.6 percent of cases involved heroin, 7.3 percent involved marijuana, 6.2 percent involved cocaine, and 8.3 percent were for other or unknown substances (Figure 5).

Figure 5. Percentage of Drug Cases by Drug Type, Sentenced 2020 & 2021

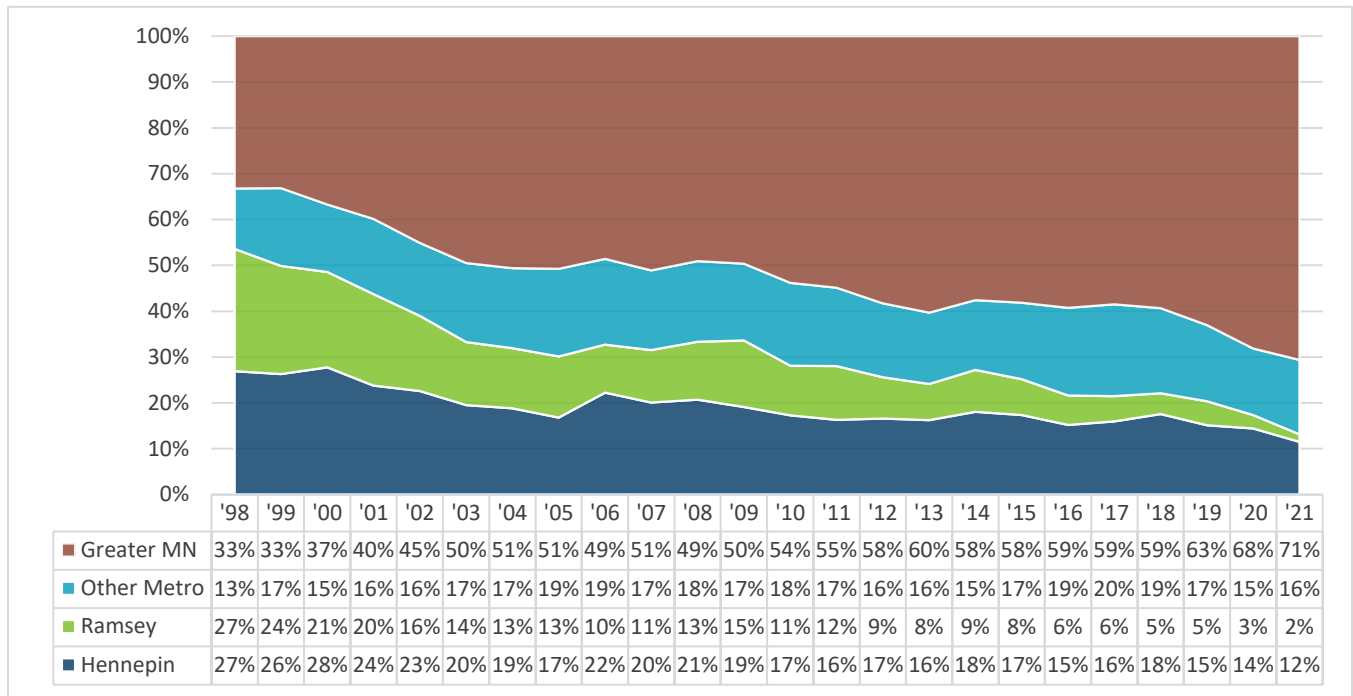


Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

Cases by Region

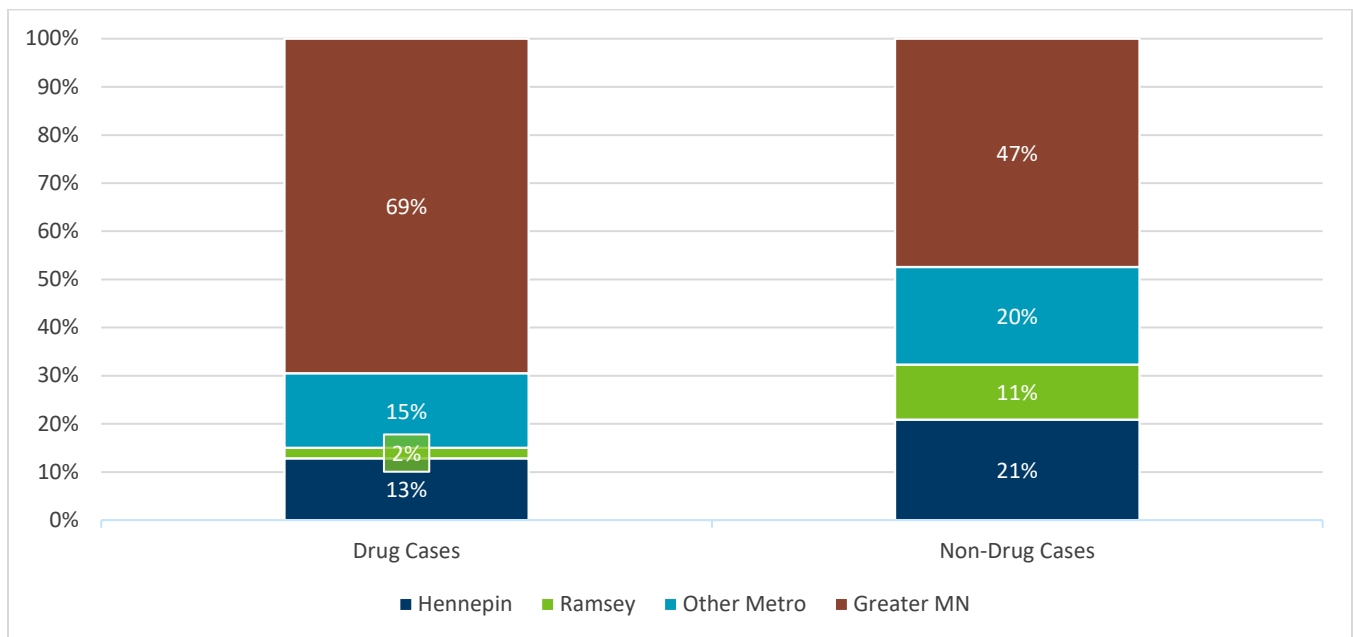
In the last decade, the number of drug cases outside the seven-county metro area—Anoka, Dakota, Carver, Hennepin, Ramsey, Scott, and Washington counties—has increased more than the number of drug cases in those metro counties (Figure 6). In 1998, 33 percent of all drug cases were sentenced in Greater Minnesota. That percentage grew to around 50 percent in 2003–2009, and to nearly 60 percent from 2012–2018. In 2019, a then-record 63 percent of drug cases were sentenced in Greater Minnesota, surpassing the previous record high of 60 percent in 2013.

Figure 6. Distribution of Drug Cases by Region, 1998–2021



In 2020 and 2021, Greater Minnesota claimed an even greater share of the state’s drug cases, 69 percent. By contrast, less than half (47%) of the state’s non-drug cases were sentenced in Greater Minnesota during those two years (Figure 7).

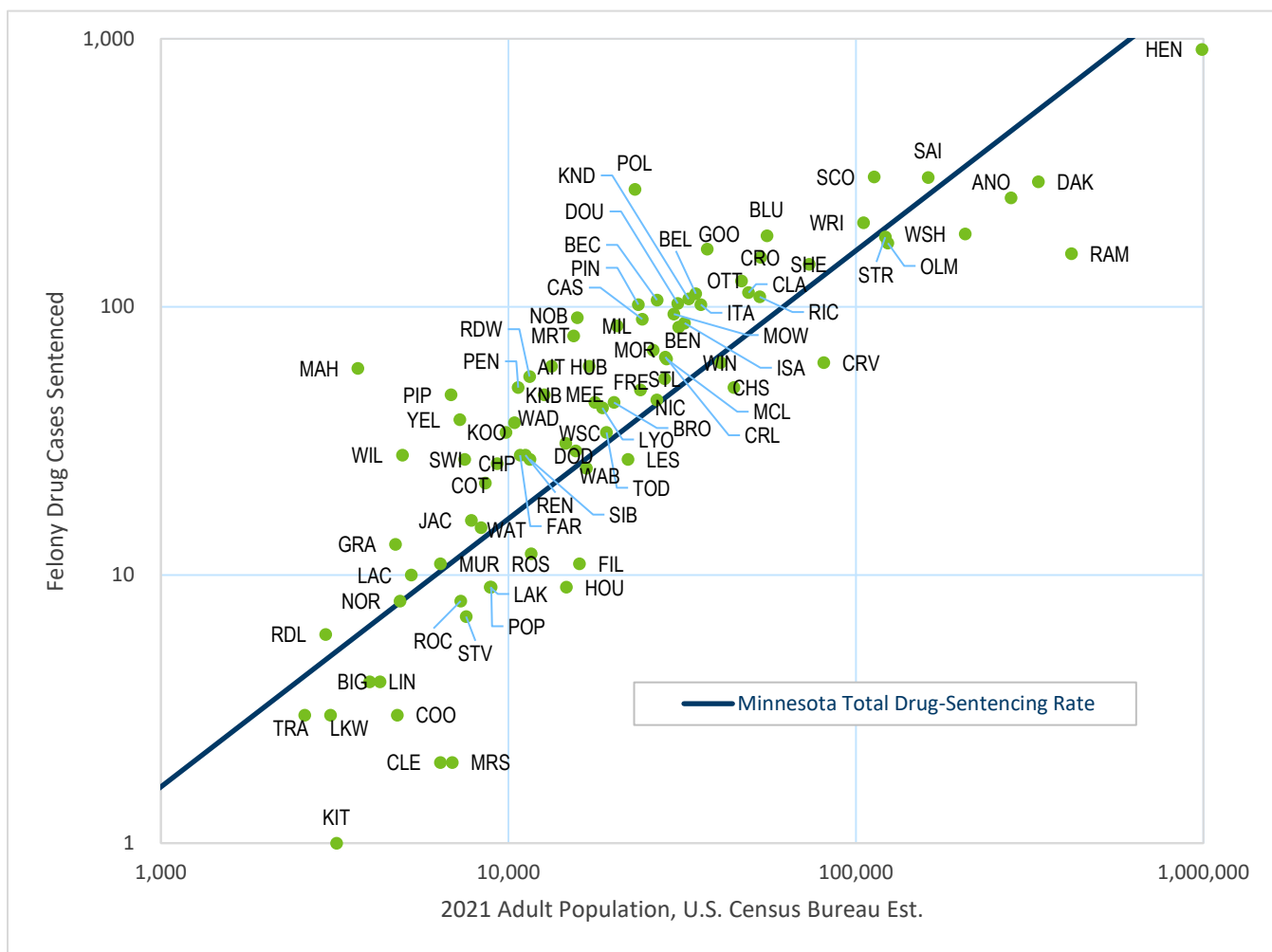
Figure 7. Distribution of Drug & Non-Drug Cases by Region, Sentenced 2020 & 2021



Cases by County

Figure 8 displays the number of drug cases sentenced in 2020 and 2021 by county, compared with that county’s 2021 estimated adult population. The blue line represents Minnesota’s total drug-sentencing rate. Table 6 (p. 37) contains Figure 8’s underlying data, together with the key to its county abbreviations.

Figure 8. Number of Drug Cases and Adult Population by County, Sentenced 2020 & 2021

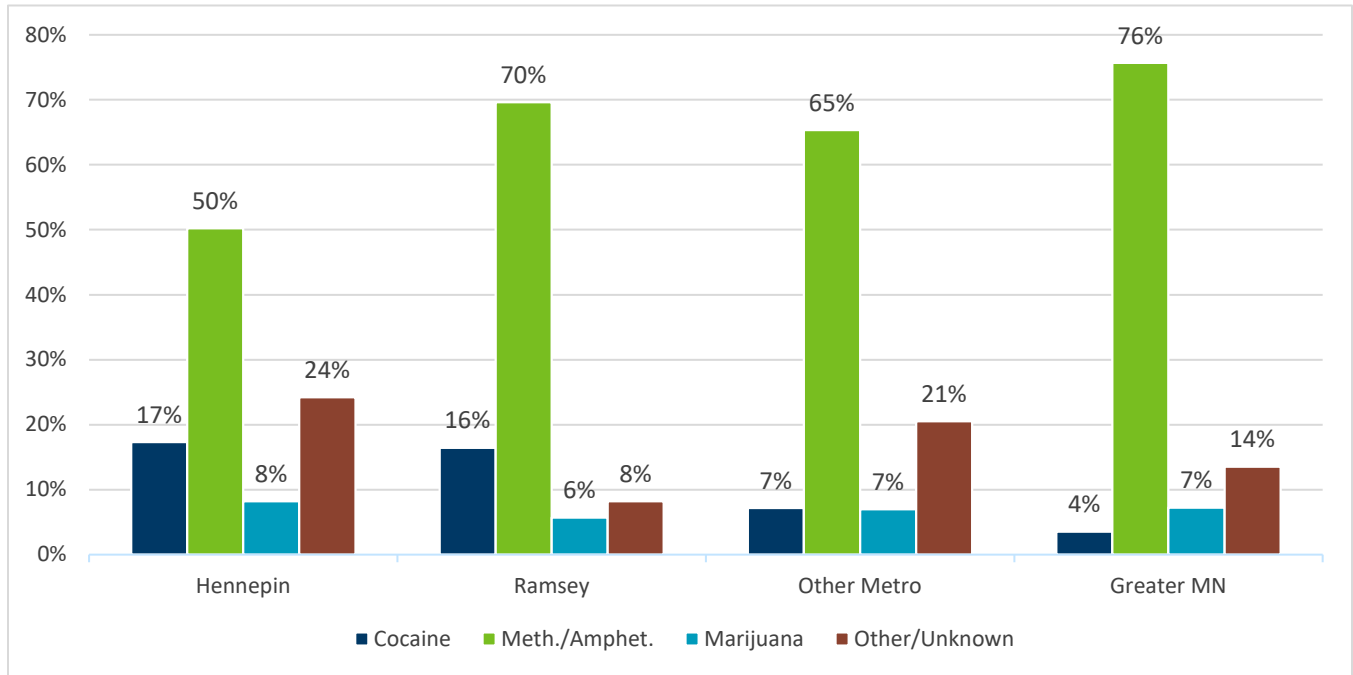


Each county is abbreviated by its first three letters or consonants, except “LAK” is Lake and “LKW” is Lake of the Woods (key in Table 6, p. 37). Because of the logarithmic scale, differences in case volume above the blue rate line are compressed, and differences below the line are expanded.

Cases by Drug Type 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. This trend continued in 2020 and 2021, with meth/amphetamine claiming the lowest share of cases in Hennepin County, at 50 percent.

Figure 9. Distribution of Drug Cases by Drug Type and Region, Sentenced 2020 & 2021

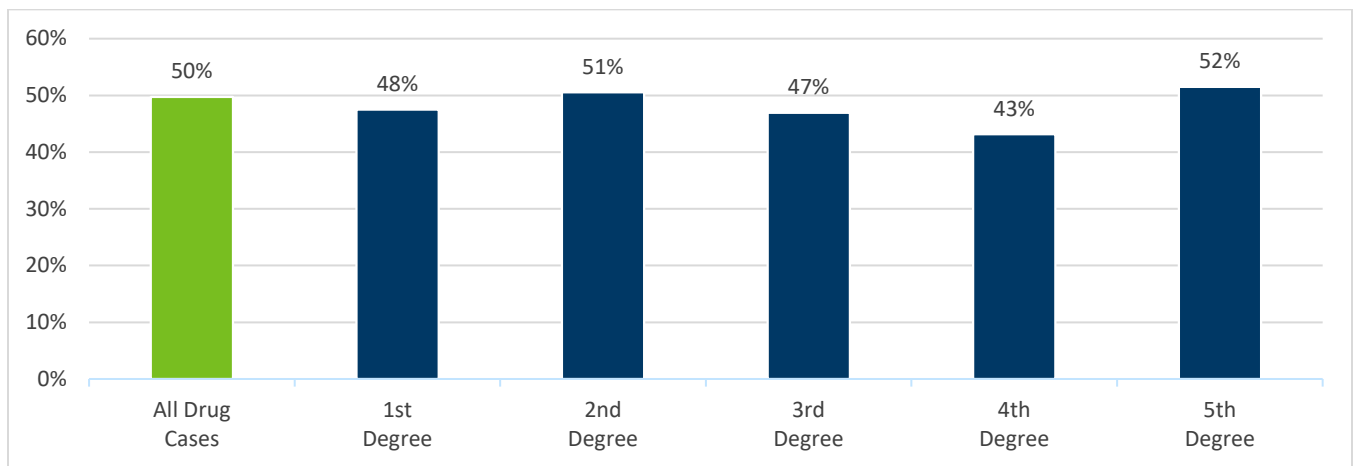


Drug-type information is based on Minnesota Offense Codes (MOCs) as encoded on criminal complaints.

Cases by Prior Conviction

In 50 percent of felony drug cases, there was a prior conviction for a felony-level drug offense (Figure 10).⁸ Among the drug degrees, fourth-degree cases were the least likely (43%) to have prior convictions.

Figure 10. Percent of Felony Drug Cases with a Prior Felony Drug Conviction, Sentenced 2020 & 2021

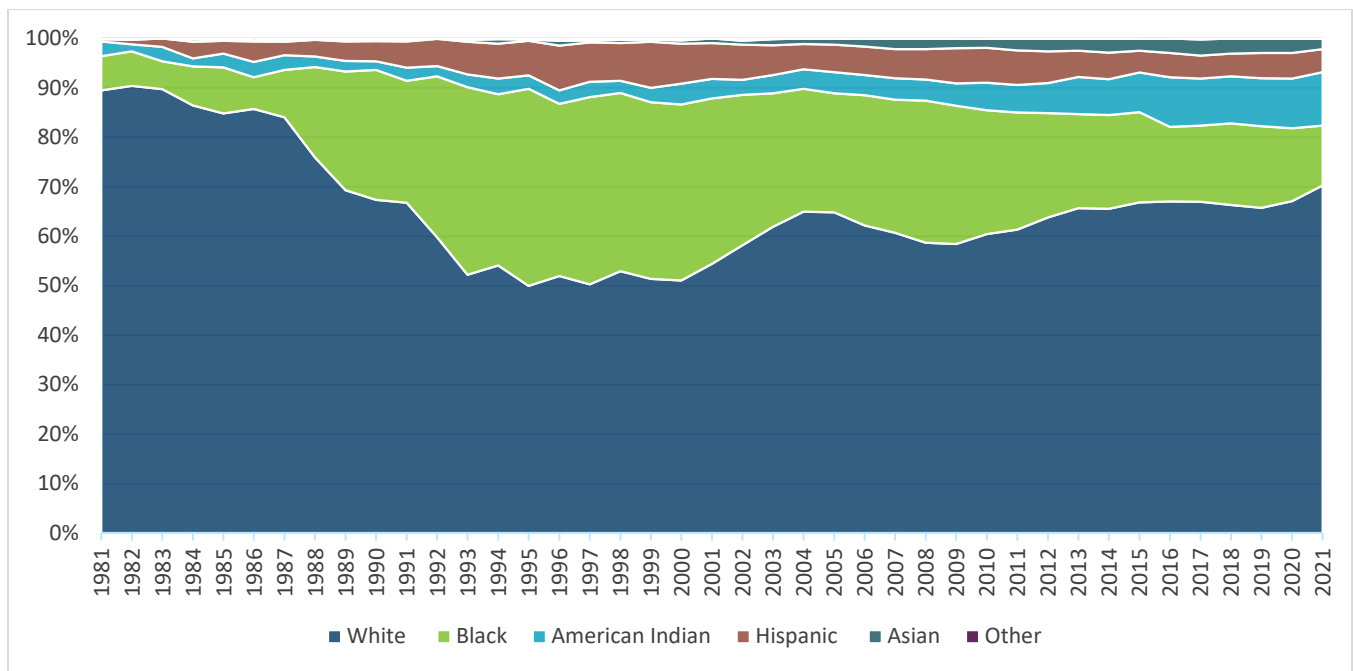


⁸ In first- and second-degree (and pre-DSRA third-degree) controlled substance cases, many (but not all) of these prior convictions will trigger mandatory minimum prison sentences. For a further discussion of mandatory minimum sentences, see p. 34.

Cases by Race and Ethnicity

Figure 11 shows drug cases sentenced from 1981 through 2021 by racial or ethnic group. From 1981 to 1995, the white group’s percentage of drug cases decreased from 89.5 percent to 50.0 percent (that group’s lowest percentage on record), while the black group’s percentage increased from 6.9 percent to 39.8 percent (that group’s highest percentage on record). In 2020 and 2021, the white group accounted for 69 percent of drug cases and the black group accounted for 13 percent (Figure 11).

Figure 11. Distribution of Drug Cases by Race/Ethnicity, 1981–2021



In 2020 and 2021, the white group accounted for a larger percentage of the state’s drug cases than the state’s non-drug cases (Figure 12).

Figure 12. Distribution of Drug & Non-Drug Cases by Race/Ethnicity, Sentenced 2020 & 2021

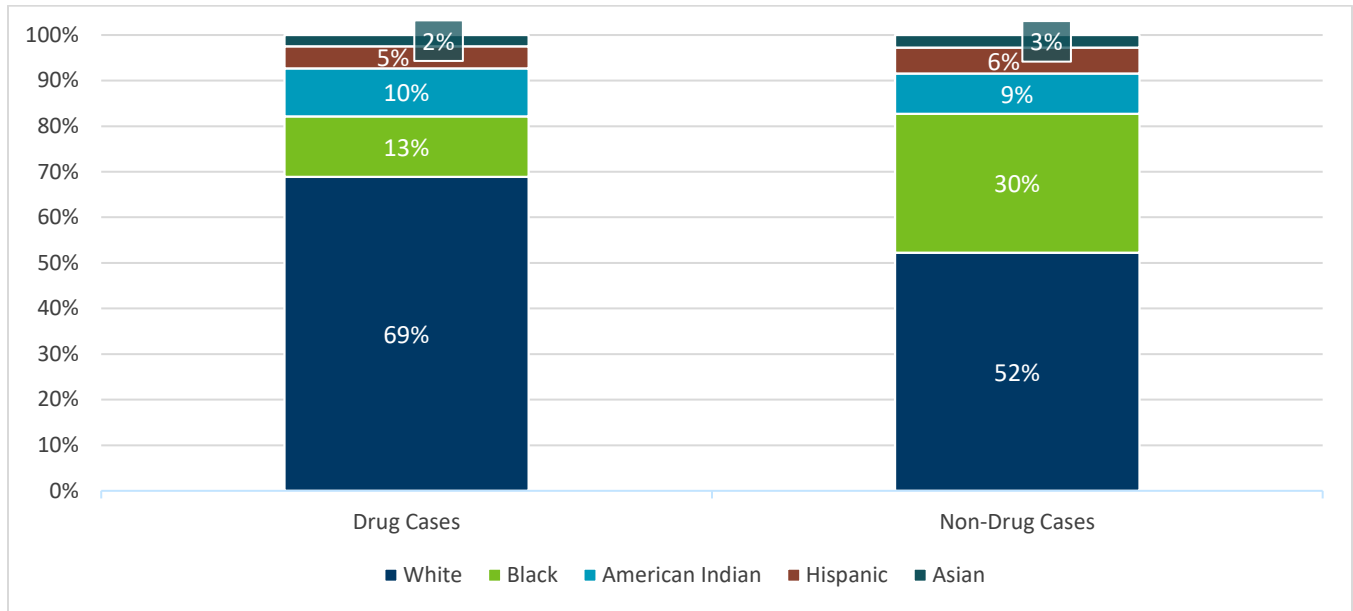
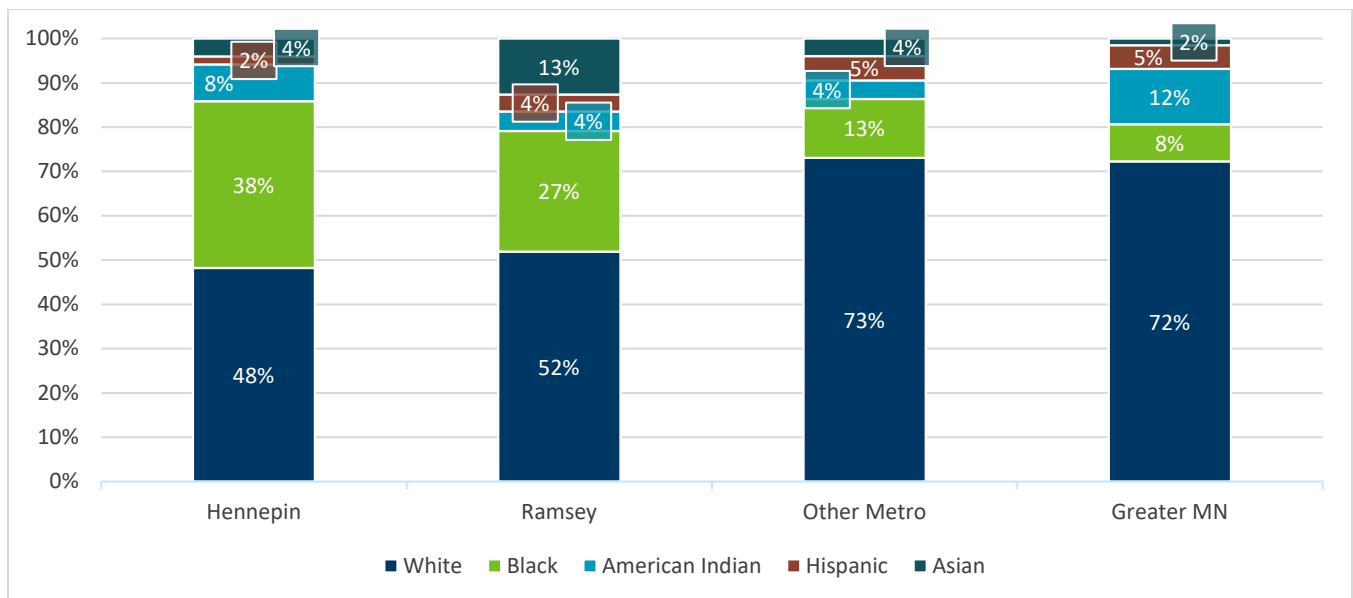


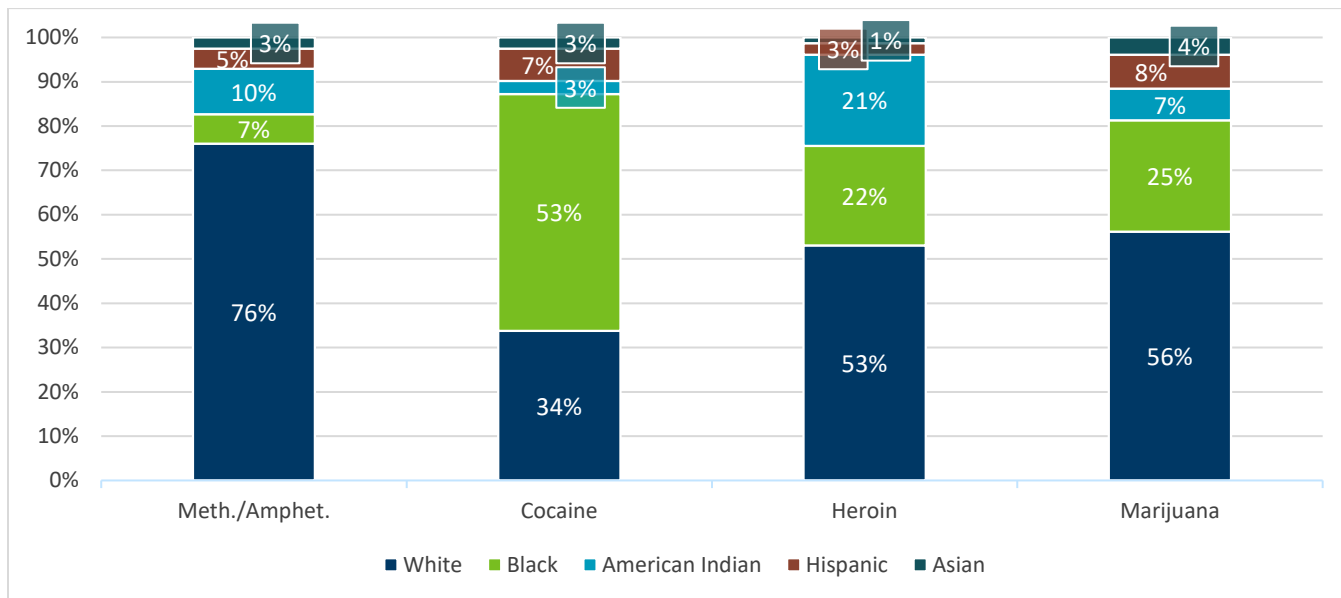
Figure 13 displays the racial or ethnic distribution of drug cases by region. The black group accounted for a larger percentage of the drug cases sentenced in Hennepin and Ramsey counties than in the rest of the state. These counties include the cities of Minneapolis and St. Paul, respectively. American Indians accounted for a larger share of the drug cases in Greater Minnesota than in the rest of the state.

Figure 13. Distribution of Felony Drug Cases by Race and Region, Sentenced 2020 & 2021



Recall that meth/amphetamine cases accounted for over two-thirds of the felony drug cases sentenced (Figure 5). In 2020 and 2021, the white group accounted for three-quarters of the meth/amphetamine cases sentenced (Figure 14), which directly impacted the racial or ethnic distribution of drug cases (Figure 12).

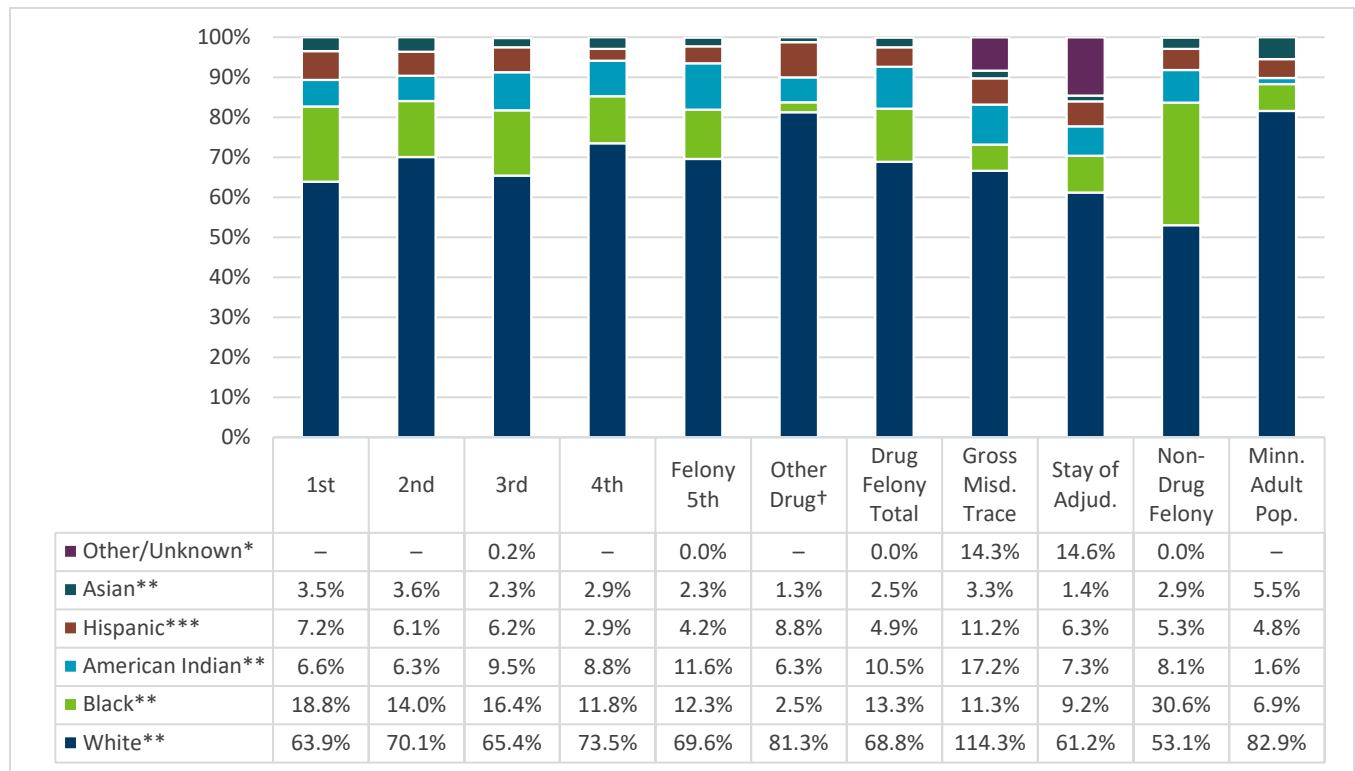
Figure 14. Distribution of Drug Cases by Race/Ethnicity and Drug Type, Sentenced 2020 & 2021



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

Figure 15 displays the racial or ethnic composition of 2020 and 2021 felony drug cases by degree, as well as for gross misdemeanor trace cases, drug-related stays of adjudication, non-drug felony cases, and Minnesota’s 2021 estimated adult population. The white and Asian groups were represented among felony drug cases (68.8% and 2.5%, respectively) at a lower rate than among the adult population (82.9% and 5.5%, respectively), while the black and American Indian groups were represented among felony drug cases (13.3% and 10.5%, respectively) at a higher rate than among the adult population (6.9% and 1.6%, respectively). The Hispanic group’s total share of felony drug cases was 4.9 percent, while its share of the adult population was 4.8 percent.

Figure 15. Distribution by Race/Ethnicity of Felony Drug Cases, Gross Misdemeanors Trace Cases, Drug Stays of Adjudication, Non-Drug Felony Cases, & Estimated Adult Population, Sentenced 2020 & 2021



Source of Gross Misdemeanor Trace & Stays of Adjudication: Minnesota Judicial Branch. (Obtained 3/14/2023.)

Source of July 1, 2021, population estimate: U.S. Census Bureau (Nov. 2022).

*Other/Unknown Gross Misdemeanor Trace cases: 3.6% multiracial; 0.4% Native Hawaiian/Pacific Islander; 2.4% “Null;” 0.5% “other;” 0.8% refused; 0.6% unavailable. Other/Unknown Stays of Adjud. cases: 3.2% multiracial; 0.1% Native Hawaiian/Pacific Islander; 8.2% “Null;” 1.1% “other;” 0.8% refused; 1.1% unavailable. MSGC category of “Other/Unknown” is not a valid comparison group to the U.S. Census category of “Native Hawaiian/Other Pacific Islander”.

**Not Hispanic, alone or in combination with one or more other races. The sum of percentages of residents in each racial or ethnic category exceeds 100 percent (101.6%) because residents of more than one race are counted in more than one category.

***MSGC lists all Hispanic cases and residents as Hispanic, regardless of race.

†“Other Drug” includes 1 possession of precursors with intent to manufacture methamphetamines, 11 sale of a simulated/analog controlled substance, and 53 methamphetamine crimes involving children.

Sentencing Practices

In 2020 and 2021, 85 percent of felony drug sentences included incarceration: 17.5 percent in state prison and 68 percent in local correctional facilities (Table 1). The remaining fifteen percent of sentences did not include incarceration; however, those sentences may have included credit for incarceration served before sentencing and sanctions such as drug treatment or home confinement.

Table 1. Total Incarceration, Felony Drug Sentences, Combined 2020 & 2021

Incarceration Type	Number	Percent
State Prison	1,248	17.5%
Local Confinement	4,823	68%
Total Incarceration	6,071	85%
Total	7,177	100%

Imprisonment

After Minnesota established five degrees of drug offenses in 1989, the number of drug cases increased dramatically, as have imprisonment rates and average pronounced sentences. While the number of non-drug cases has also increased during this same time period, the increase has been less dramatic, and the imprisonment rates and average pronounced sentences in non-drug cases remained relatively stable until 2019. (Table 2). In 2019, the average sentence length increased to 51 months, while in 2021 it was over 55 months.

Imprisonment for drug cases 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 cases are sentenced, and a higher percentage of them receive prison.⁹ The imprisonment rate for drug cases 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 cases are receiving prison sentences for longer periods of time than 30 years ago, which directly impacts the amount of correctional resources required to accommodate this prison population.

In 1991, there were 217 drug cases resulting in prison (13% prison rate), with an average pronounced sentence of 35 months. By 2003, this number climbed to 1,107 cases (28% prison rate). The average drug duration peaked at 52 months in 2003, falling to the 42- to 46-month range thereafter. Most recently, the prison rate fell from 20

⁹ It is difficult to measure the extent to which the incarceration increases may have been driven by changes in individual 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 offenses, 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.).

percent in 2017 to 19 percent in 2018, the lowest rate since 1997. In 2019, the prison rate returned to 20 percent. While the number of drug cases receiving prison fell, from 1,051 in 2018 to 1,012 in 2019, the prison rate increased because the total number of drug cases decreased. The average sentence duration fell to 42 months. In 2020 and 2021, the imprisonment rate fell to 17.5 percent, while the average sentence length increased to 48 months.

Table 2. Cases Sentenced, Prison Rates, & Average Pronounced Durations, Drug & Non-Drug Cases, 1991–2021

Year	Drug Cases			Non-Drug Cases		
	Number of Sentences	Prison Rate	Average Duration	Number of Sentences	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	28%	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
2018	5,536	19%	45 months	12,748	25%	48 months
2019	5,175	20%	42 months	12,160	26%	51 months
2020	3,205	18%	48 months	8,312	24%	51 months
2021	3,912	17%	48 months	10,517	23%	55 months

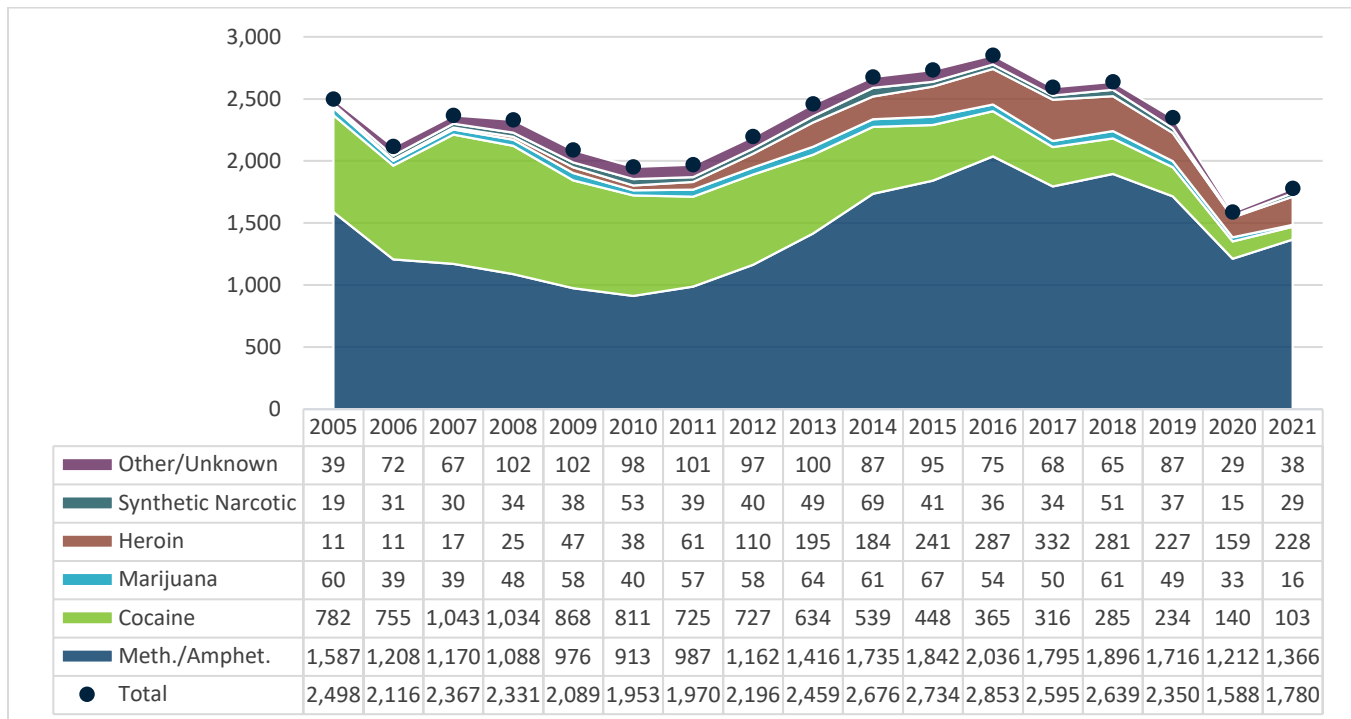
Distribution of Estimated Prison Beds by Drug Type over Time

Figure 16 displays the estimated number of prison beds occupied by executed prison sentences by drug type from 2005 to 2021. These estimates are calculated assuming service of 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 by drug types, they do not mirror the actual Minnesota Department of Corrections population for any given year because they do not reflect—

- Additional prison beds for probation revocations;
- Credit for time served before sentencing;
- Early releases for participation in early release programs such as Challenge Incarceration;
- Additional incarceration for violations of prison rules or supervised release conditions; or
- The fact that not all estimated prison beds are needed in the first year. The total need for the estimated prison beds is, instead, apportioned over time.

With these caveats in mind, it is estimated that prison sentences for drug cases sentenced in 2020 and 2021 will, over time, require 1,588 beds and 1,780 beds, respectively, which are decreases from the estimated 2,350 beds for drug sentences in 2019. Relative to other drug types, the share of estimated prison beds taken up by meth/amphetamine cases reached a record high in 2021 when 71 percent of the cases sentenced accounted for 77 percent of the estimated prison beds (2020 had a similar percentage at 76%). This is an increase from 73 percent in 2019. From 2007 through 2010, the meth/amphetamine share of drug sentences' prison beds stayed below 50 percent, but then increased steadily through 2016.

Figure 16. Estimated Prison Beds for Drug Cases by Drug Type, Sentenced 2005–2021



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 probation sentences, as well as an increase in the number serving local confinement time (i.e., local correctional facility, county jail or workhouse) as a sentence or a condition of a probation sentence. In 2019, there were 4,163 felony drug cases not sentenced to prison, which was a 182-percent increase over the number in 1991 (Table 3). In comparison, the number of non-drug cases only increased by about 53 percent during the same time period.

Almost all drug cases not sentenced to prison receive probation (99% in 2019, 2020 and 2021). The increase in the number on probation cases expands the size of the probation-revocation pool, which impacts the prison population. In 2019, the average pronounced period of probation for drug sentences was 65.5 months; the median length of stay was 60 months. Effective August 1, 2020, the Commission adopted a presumptive probation cap of 60 months for drug offenses. Perhaps partly due to that change, the average pronounced period of probation for drug cases declined to 58 months in 2020 and 56 months in 2021.

Felony probationers may receive up to one year in local correctional facilities as a condition of probation. The vast majority serve some time in a local correctional facility. Since 1991, more than 80 percent had local time imposed as a condition of probation. Felony drug probationers have consistently had local time imposed at a slightly higher rate than non-drug cases. From 2012 through 2016, the local incarceration rate for the drug cases had been 91 percent, falling to 90 percent in 2017 and 89 percent in 2018. In 2019, a slightly lower percentage of drug sentences (87%) than non-drug sentences (89%) included time in local correctional facilities. For both drug and non-drug sentences, the average time pronounced in a local correctional facility in most years has usually been more than 100 days. In 2019, the average pronounced duration in a local correctional facility was for both groups was 92 days (Table 3). In 2020 and 2021, the rates of local incarceration fell to below 70 percent, while the average pronounced duration slipped below 90 days. The jail rates and pronounced local confinement times did not decline as noticeably for non-drug cases sentenced in 2020 and 2021.

Table 3. Non-Prison Sentences & Local Confinement Rates & Durations, Drug & Non-Drug Cases, 1991–2021

Year	Drug Cases			Non-Drug Cases		
	Number of Non-Prison Sentences	Local Confinement Rate	Average Duration	Number of Non-Prison Sentences	Local Confinement 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
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
2018	4,485	89%	95 days	9,573	88%	95 days
2019	4,163	87%	92 days	9,018	89%	92 days
2020	2,616	69%	85 days	6,229	88%	92 days
2021	3,253	67%	78 days	8,072	83%	90 days

Departure Rates

Role and Definition of Departures in the Sentencing Guidelines System

The Guidelines establish a presumptive sentence for felony offenses based on the severity of the offense and the offender’s criminal history score. The presumptive sentence is based on the typical case; however, the court may depart from the Guidelines when substantial and compelling circumstances exist. A “departure” is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures—dispositional and durational—as further explained below. Since the presumptive sentence is based on “the typical case,” the appropriate use of departures by the courts when substantial and compelling circumstances exist can 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 may agree on acceptable sentences. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is commonly agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

Description of Departure Types

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

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

Departure Rates for Drug and Non-Drug Cases

Total Departure Rate: Drug and Non-Drug Cases

The total departure rate refers to the percentage of cases not receiving the presumptive Guidelines sentence. In 2020 and 2021, the total departure rate for drug cases was 19 percent, compared to 32.5 percent for non-drug cases. The total mitigated departure rate was 17 percent for drug cases and 30 percent for non-drug cases (Table 4).

Table 4. Total Departure Rates, Drug and Non-Drug Cases, Sentenced 2020 & 2021

Departure Type	Drug Cases		Non-Drug Cases	
	Number	Percent	Number	Percent
No Departure	5,773	81.3	12,629	67.5
Total Departures	1,344	18.8	6,200	32.5
<i>Mitigated</i>	1,203	16.9	5,668	30.1
<i>Aggravated</i>	91	1.3	280	1.5
<i>Mixed</i>	41	0.6	174	0.9
<i>Probation Term</i>	9	0.1	78	0.4
Total	5,175	100.0	18,829	100.0

Aggravated Dispositional Departures: Drug and Non-Drug Cases

Aggravated dispositional departures occur relatively infrequently compared to other types of departures. Less than one percent of drug cases received aggravated dispositional departures (sentenced to prison when the Guidelines recommended a stayed sentence) (Table 5). A defendant's request for an executed prison sentence¹⁰ or plea agreement accounted for 14 percent of aggravated dispositional departures in drug cases, excluding cases in which the departure reason was "unknown." The aggravated dispositional departure rate for drug cases was identical to that of non-drug cases.

Table 5. Aggravated Dispositional Departure Rates, Drug and Non-Drug Cases, Sentenced 2020 & 2021

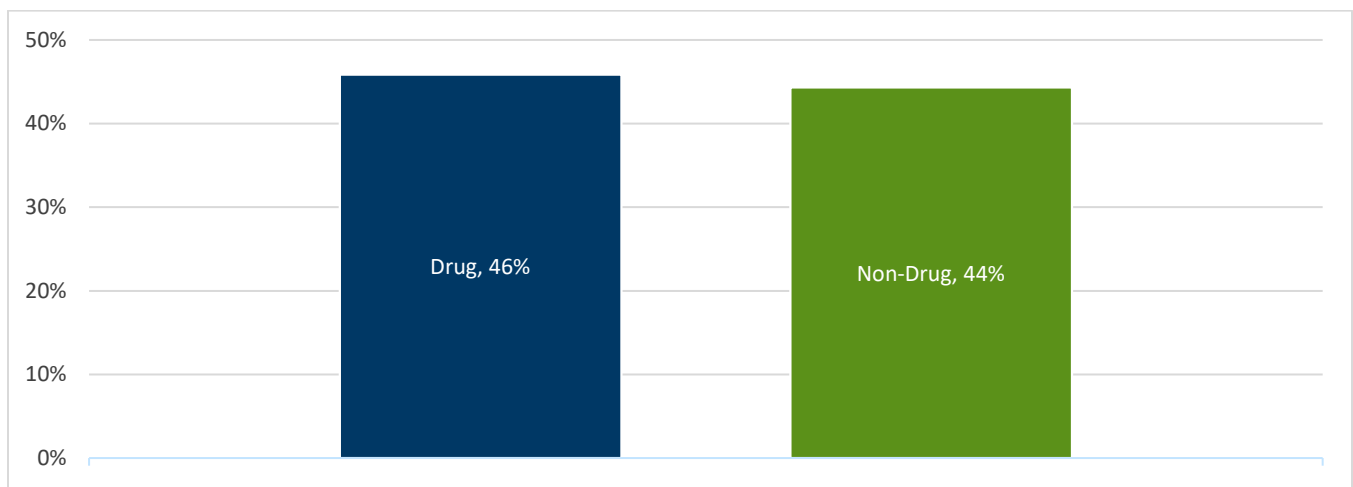
	Drug Cases	Non-Drug Cases
Number of Presumptive Stays	5,292	11,361
Aggravated Dispositions (and Percent of Presumptive Stays)	9 (0.2%)	20 (0.2%)
Aggravated Dispositions with Departure Reasons	7	18
Requests for Prison, pre-8/1/2015 offense date (and Percent of Aggravated Dispositions with Departure Reasons)	1 (14.3%)	2 (11%)

¹⁰ This request is usually made to allow the defendant to serve the sentence concurrently (at the same time) with another prison sentence. For offenses committed after 7/31/2015, a sentence that is executed pursuant to a defendant's right to demand execution is not an aggravated dispositional departure (Guidelines section 2.D.1.f).

Mitigated Dispositional Departures: Drug and Non-Drug Cases

In 2020 and 2021, 46 percent of the drug cases recommended prison received a mitigated dispositional departure (a non-prison, probationary sentence). This compared to 44 percent of non-drug cases (Figure 17). Compared to 2019, mitigated dispositional departures increased for both drug cases (42% in 2019) and non-drug cases (39% in 2019). Departure rates vary greatly by general offense type and specific offense. For more information on departure rates by offense type, see *2021 Sentencing Practices, Annual Summary Statistics for Felony Cases Sentenced in 2021* (on the “Annual Summary” tab at mn.gov/sentencing-guidelines/reports).

Figure 17. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, Drug and Non-Drug Cases, Sentenced 2020 & 2021



Dispositional Departures: Frequently Cited Reasons for Departure

“Amenability to treatment” and “amenability to probation” were the most frequently cited reasons for mitigated dispositional departure in drug cases. In a large percentage of these cases, the sentencing court noted either that a plea agreement supported the departure, or that the prosecutor recommended or did not object to the departure. Such plea agreements or prosecutor recommendations supported 68 percent of mitigated dispositions in drug cases, and 67 percent in non-drug cases. The sentencing court noted the prosecutor’s objection to the mitigated disposition in 14 percent of the drug cases and 12 percent of non-drug cases.¹¹

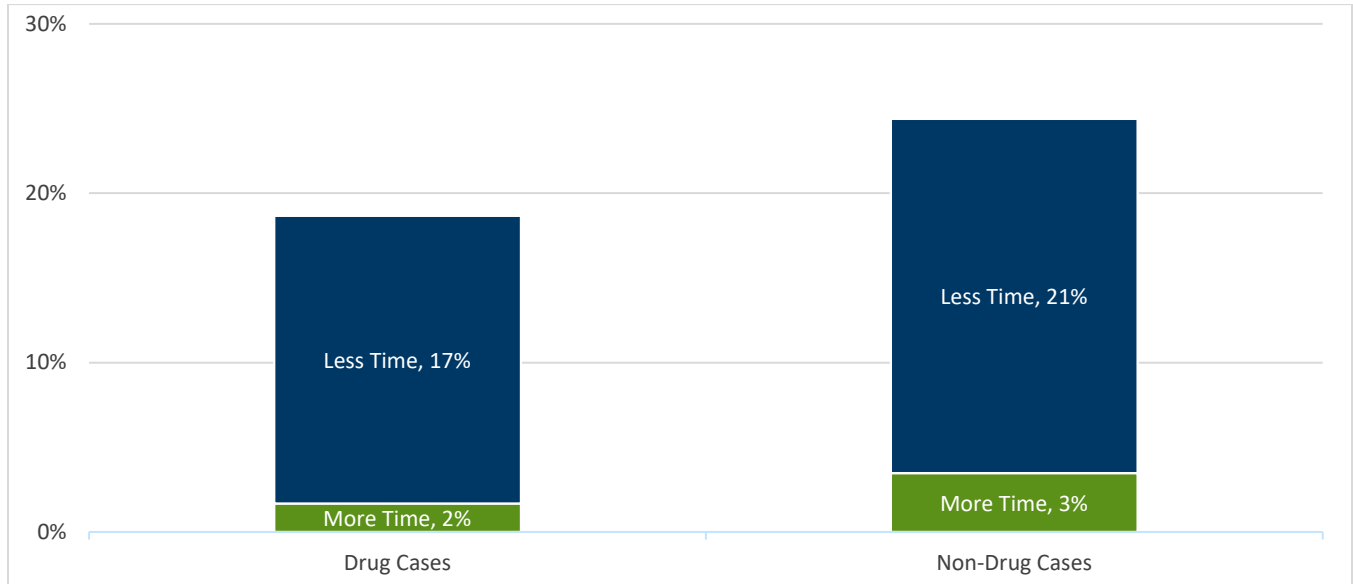
Durational Departures (Prison Cases): Drug and Non-Drug Cases

The mitigated durational departure rate for executed prison cases was 17 percent for drug cases sentenced in 2020 and 2021 and 21 percent for non-drug cases (Figure 18). The aggravated durational departure rate was two percent for drug cases and three percent for non-drug cases. For more information on departure rates by

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

offense type, see *2021 Sentencing Practices, Annual Summary Statistics for Felony Cases Sentenced in 2021* (on the “Annual Summary” tab at mn.gov/sentencing-guidelines/reports).

Figure 18. *Durational Departure Rates for Cases Receiving Executed Prison Sentences, Drug and Non-Drug Cases, Sentenced 2020 & 2021*



“Plea Agreement” was the most frequently cited reason for mitigated durational departure in drug cases. In 72 percent of the drug cases and 71 percent of the non-drug cases, 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. The court reported that the prosecutor objected to a mitigated duration in about three percent of the drug cases and five percent of non-drug cases.¹² 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 (72%) than mitigated dispositional departures (68%).

Long-Term Trends in Departure Rates for Drug Cases

Figure 19 shows that, for most of the last twenty-three years (post 1998), the mitigated dispositional departure rate for presumptive-commit drug cases has been between 35 and 39 percent. The rate was higher in 2004 to 2006 (reaching a rate of 46 percent in 2006) and lower in 2012 and 2013 (falling to a rate of 31 percent in 2013). More recently, in 2016 and 2017, the rate was in the low 40s, but fell again to 39 percent in 2018. In 2019 it rose to 42 percent, the highest rate since 2006. In 2020 and 2021, the mitigated dispositional departure rate rose to 45 and 47 percent, respectively.

¹² See footnote 11.

Figure 19. Mitigated Dispositional Departure Rates, Drug Cases, Presumptive Commitments Only, Sentenced 1996–2021

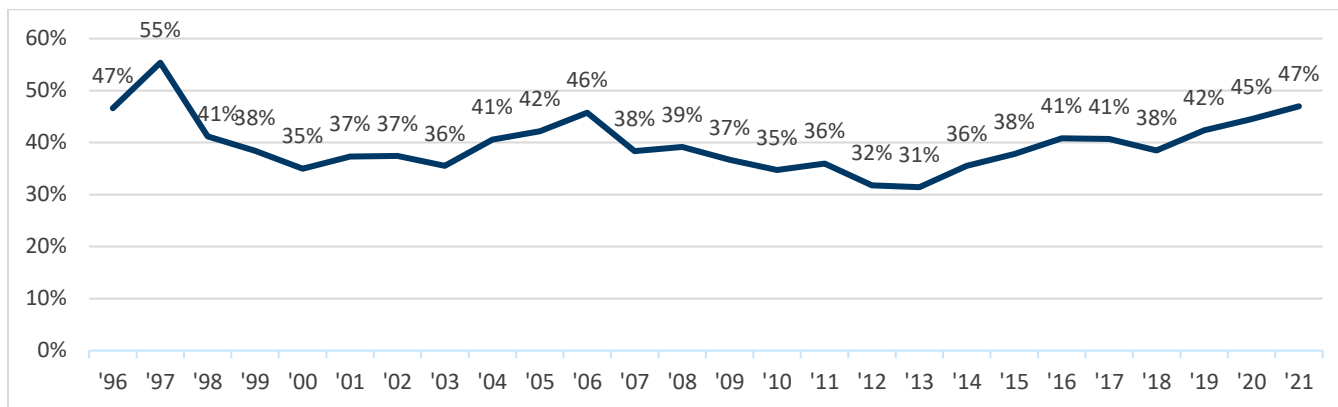
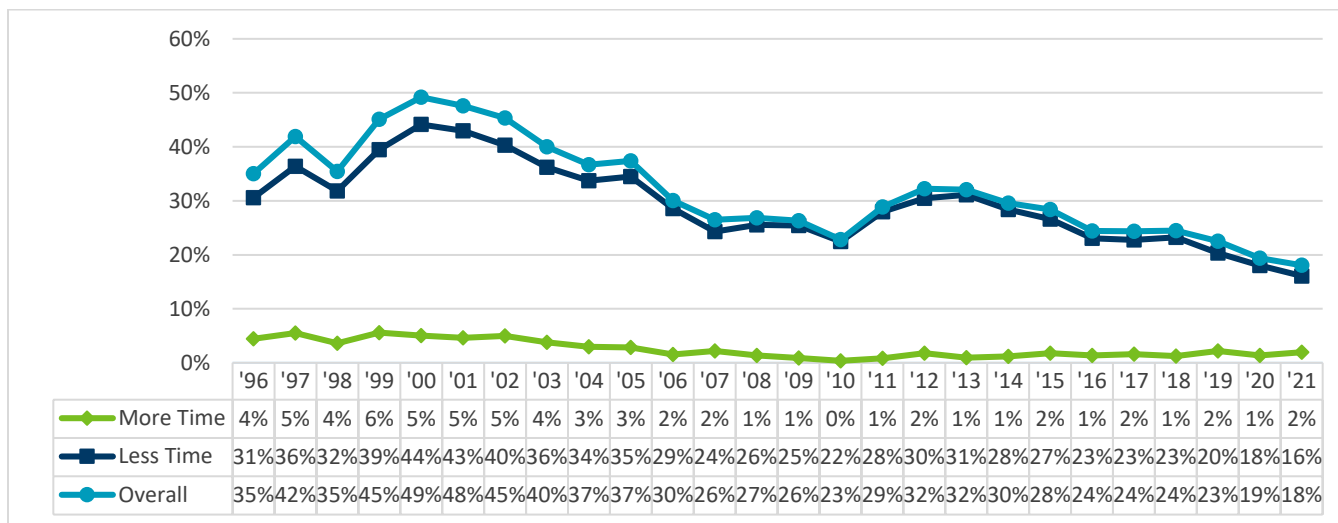


Figure 20 shows that the mitigated durational departure rate for prison cases (“Less Time”) increased through the 1990s, peaking at 44 percent in 2000. After 2000, however, this rate steadily declined to a low of 22 percent in 2010. The rate then climbed to 31 percent in 2013, but fell thereafter. In 2016 through 2018, the rate stabilized at close to its previous low of 22 percent. In 2019, the mitigated durational departure rate fell to 20 percent. In 2020 and 2021, the mitigated durational departure rate fell again to 18 percent in 2020 and 16 percent in 2021. The aggravated durational departure rate (“More Time”), has been consistently low, remaining at or below two percent since 2006. In 2020 and 2021, the aggravated durational departure rate remained very low at one percent and two percent, respectively.

Figure 20. Durational Departure Rates for Drug Cases Receiving Prison Sentences, 1996–2021



Departure Rates for Drug Cases by Region

While departure rates for drug cases fluctuate from year to year and vary by region, they are high across the state (Figure 21 & Figure 22).

In 2019, the mitigated dispositional departure rates for presumptive-commit drug cases rose in Hennepin, Ramsey, and the other metro counties¹³ and decreased slightly in Greater Minnesota (Figure 21). In the seven years before 2014, the other metro counties had the highest rates and Ramsey County or Greater Minnesota had the lowest. In six of the eight years from 2014 through 2021, Ramsey County had the highest mitigated dispositional departure rate and Greater Minnesota had the lowest rate.

Figure 21. Mitigated Dispositional Departure Rates by Region, Drug Cases, Presumptive Commitments Only, Sentenced 1998–2021

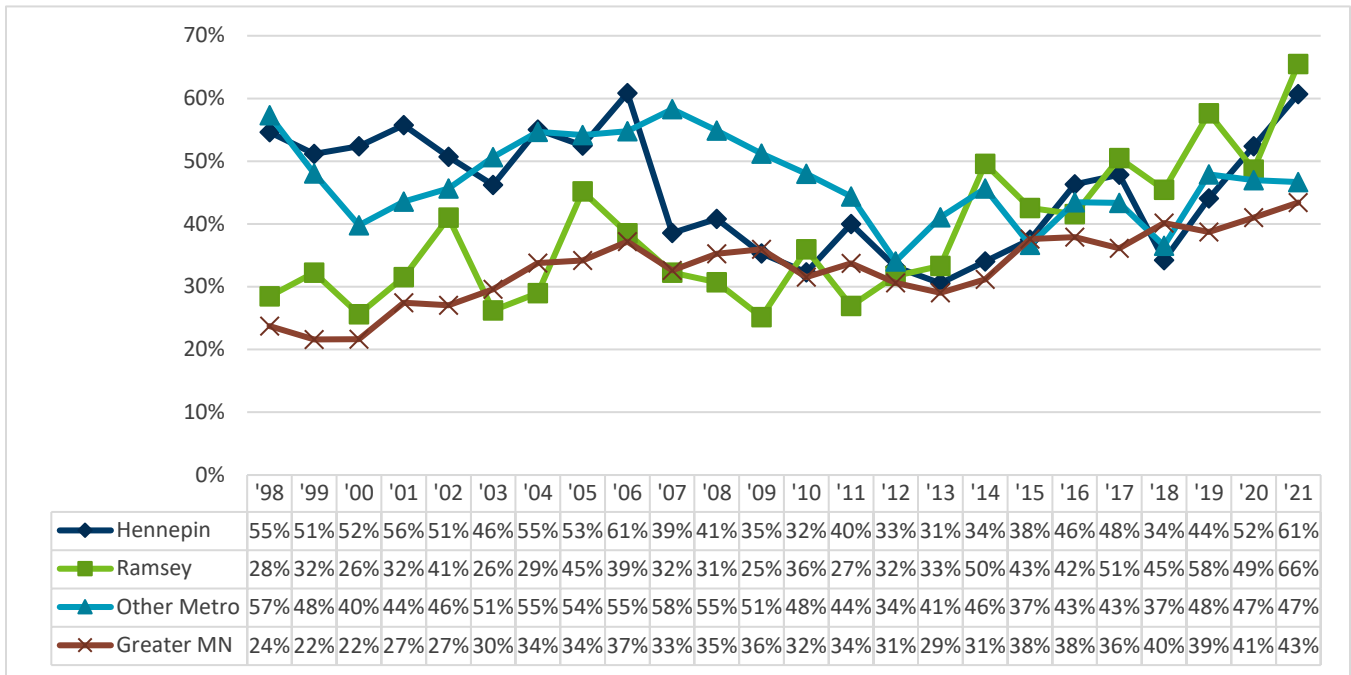


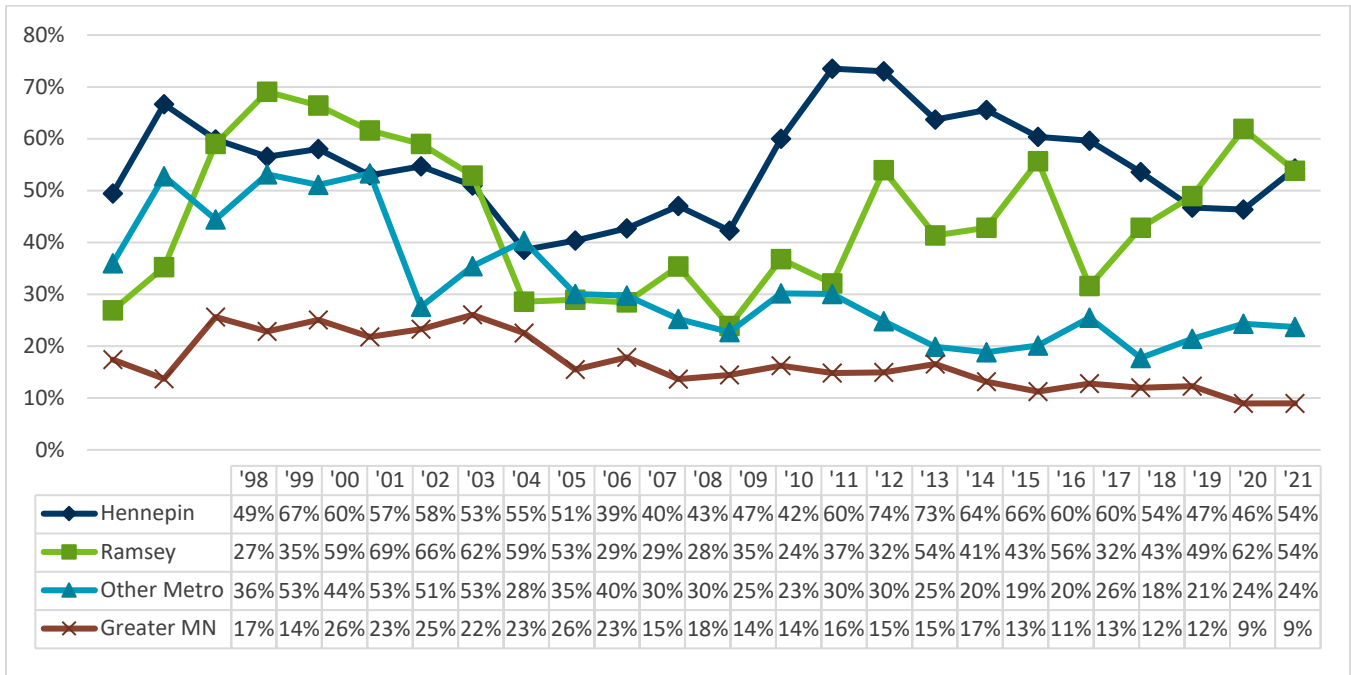
Figure 22 shows the mitigated durational departure rate for executed sentences. In 2020, the rate rose in Ramsey County but remained almost the same as in 2019 for Hennepin County. In 2021, the rate fell in Ramsey County, but rose in Hennepin, resulting in equivalent rates of 54 percent in both counties. In 2020 and 2021, the Other Metro counties and Greater Minnesota continued to have mitigated durational departure rates that were much lower than in Hennepin and Ramsey counties.

Because the mandatory minimum sentence lengths for subsequent first- and second-degree drug offenses are less than the durations recommended by the Guidelines, it is possible for a court to give a mitigated durational

¹³ “Other metro counties” are Anoka, Carver, Dakota, Scott, and Washington counties.

departure while still complying with the mandatory minimum prison sentence.

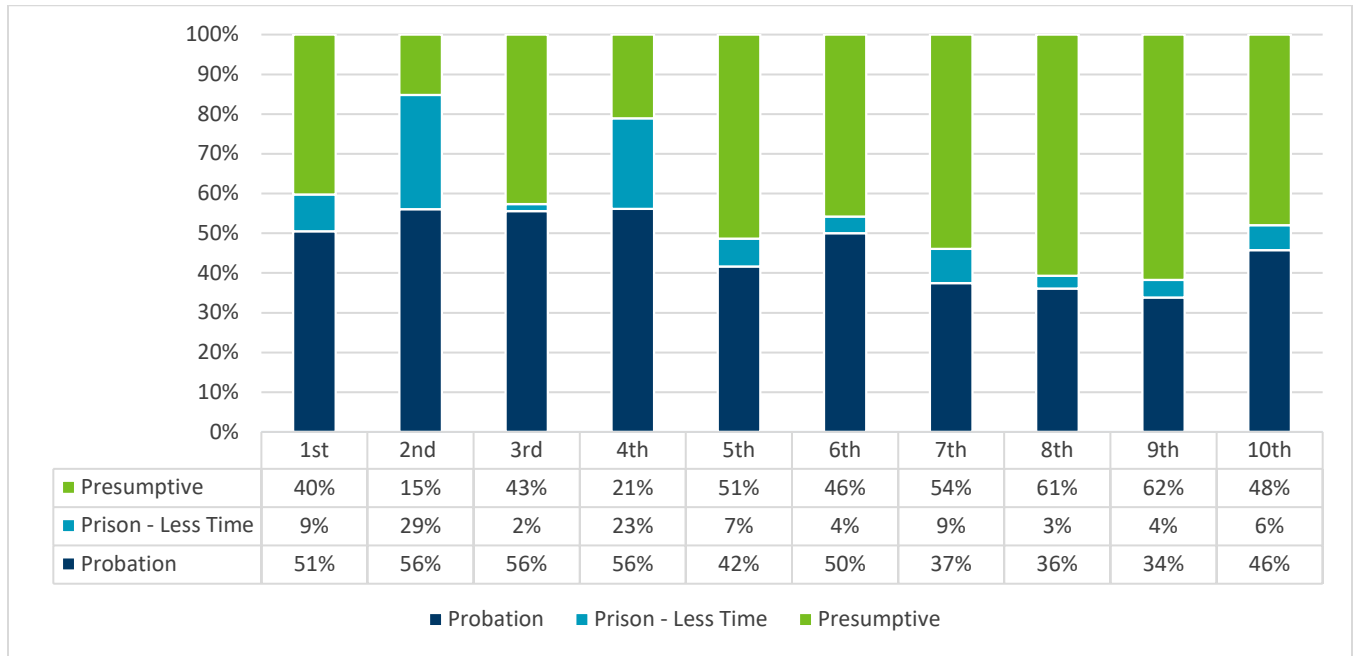
Figure 22. Mitigated Durational Departure Rates by Region for Drug Cases Receiving Executed Prison Sentences, Sentenced 1998–2021



Presumptive Commitment Drug Offense Sentencing by Judicial District

The likelihood of a case receiving the presumptive sentence varies widely across the state. Figure 23 shows the percent of offenses with presumptive commitment sentences that received the recommended sentence by judicial district. The portion receiving the presumptive sentence ranged from 15 percent in the Second District (Ramsey County) to 62 percent in the Ninth District (including north-west Minnesota). See page 40 for a map of Minnesota’s ten judicial districts.

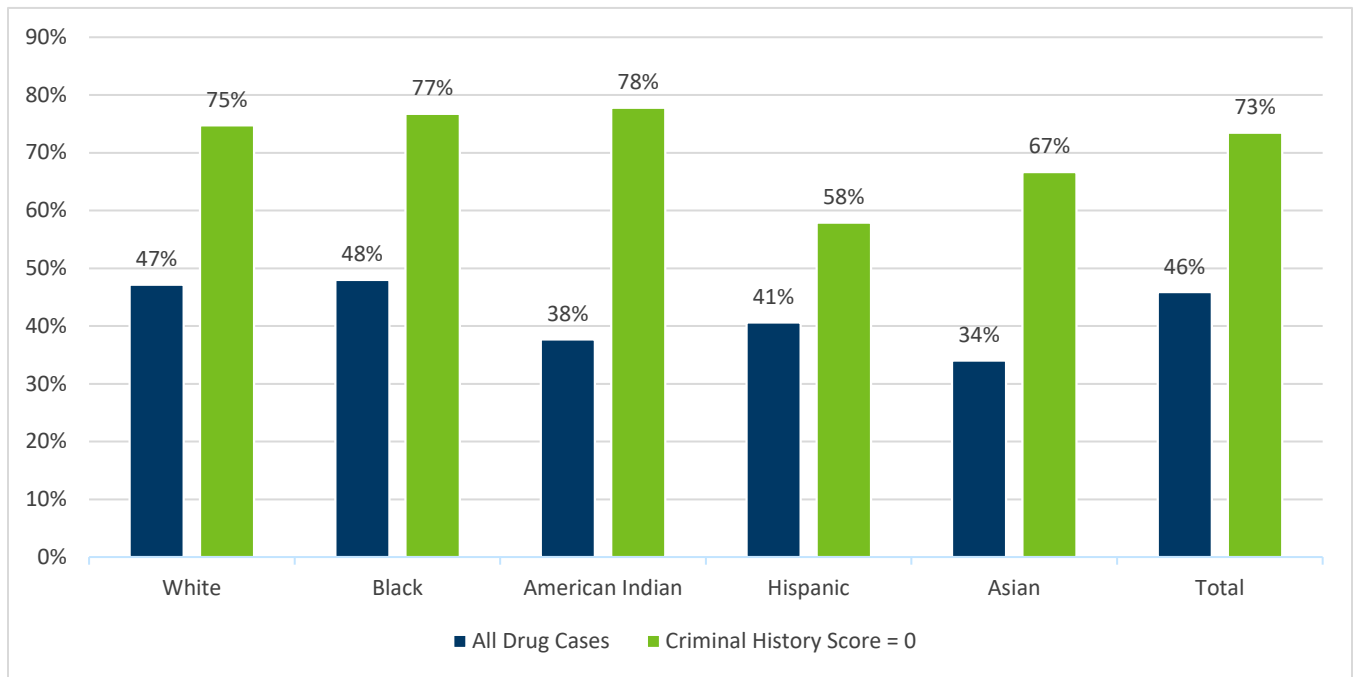
Figure 23. Sentence Imposed by Judicial District, Drug Offenses, Presumptive Commitment Cases Only, Sentenced 2020 & 2021



Departure Rates for Drug Cases by Race or Ethnicity

Departure rates vary by racial or ethnic group. In 2020 and 2021, the rates of mitigated dispositional departure in the American Indian, Hispanic, and Asian groups were lower than the total rate, while the rates in the white and black groups were higher (Figure 24). The differences in departure rates may be related to variations in criminal history scores. At a criminal history score of zero, the mitigated dispositional departure rate was 73 percent, and all groups, except the Hispanic group, had an average mitigated dispositional departure rate of more than 65 percent. The Hispanic group had the lowest mitigated dispositional departure rate at a criminal history score of zero (58%).

Figure 24. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, by Race/Ethnicity, Sentenced 2020 & 2021



Compared to 2019, overall mitigated durational departure rates among executed prison sentences declined in 2020 and 2021, from 20 percent to 17 percent. The rates declined for the white group (from 17% to 14%), the black group (from 32% to 24%), and the Hispanic group (from 25% to 12%). The rate rose slightly for American Indian group (from 14% to 22%) and more dramatically for the Asian group (from 8% to 42%) (Figure 25).

Figure 25. Durational Departure Rates by Race/Ethnicity for Drug Cases Receiving an Executed Prison Sentence, Sentenced 2020 & 2021

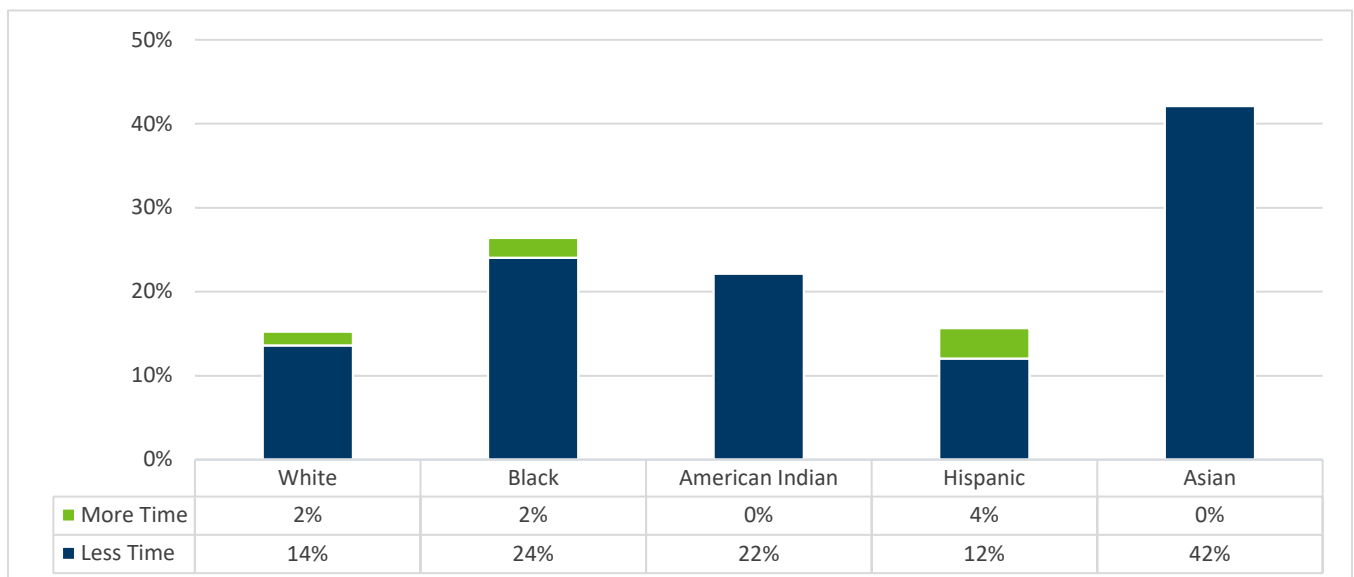
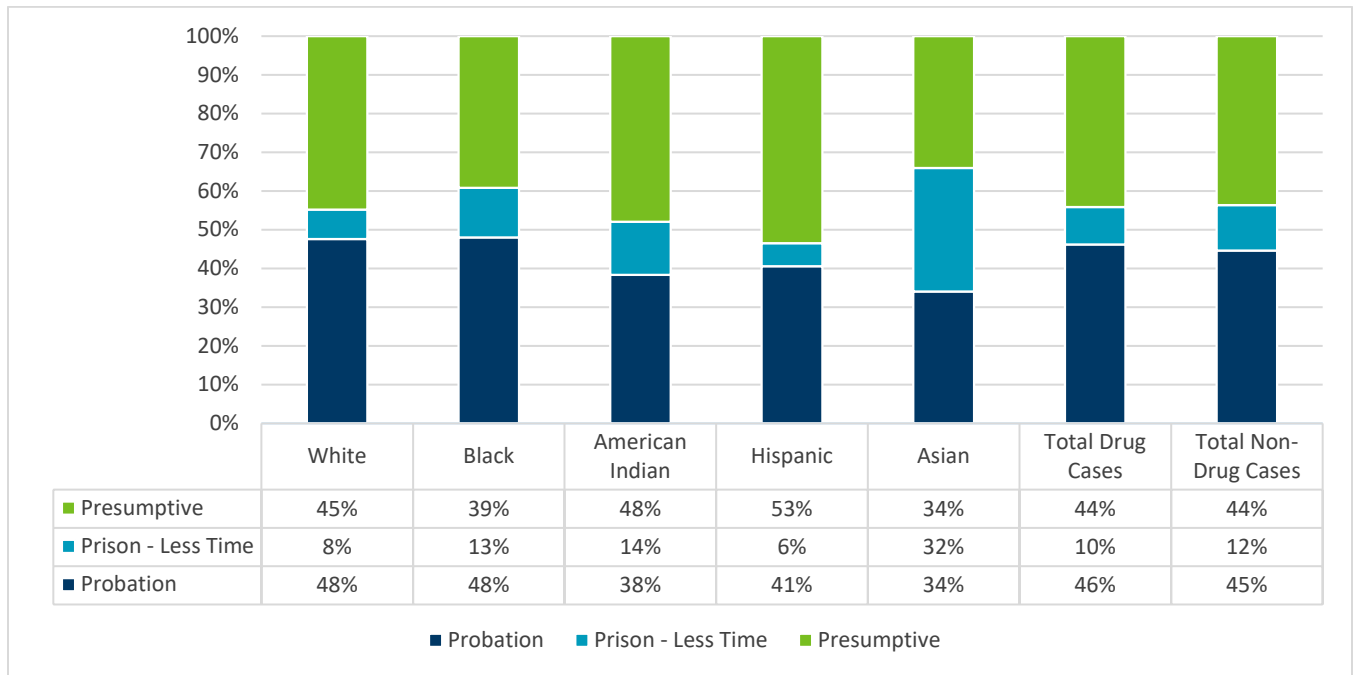


Figure 26. Sentence Imposed by Race, Presumptive Commitment Cases Only, Sentenced 2020 & 2021



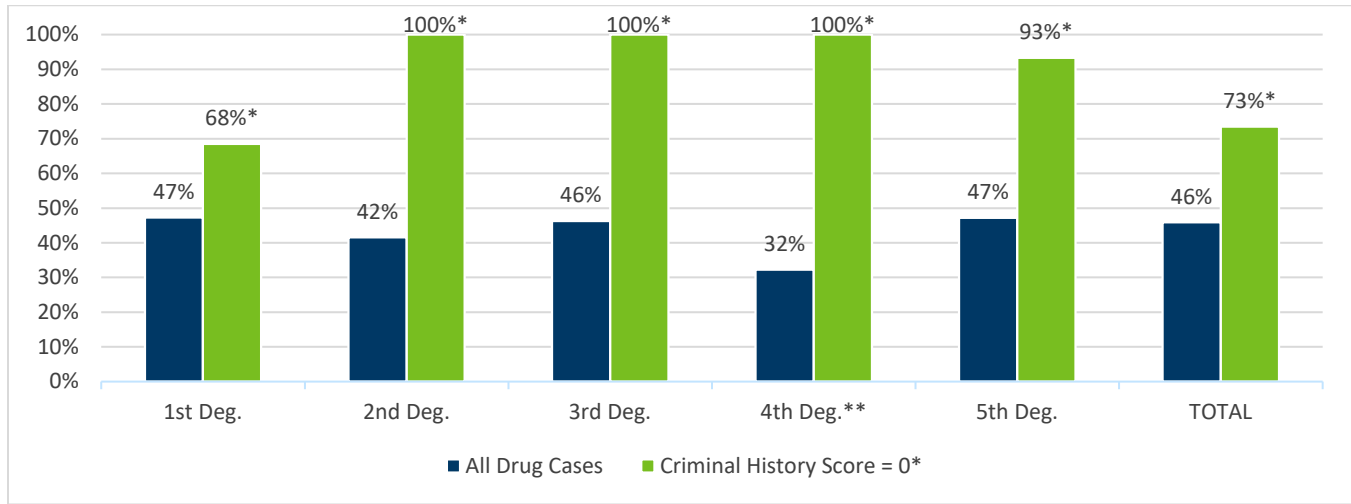
Departure Rates for Drug Cases by Drug Degree

Figure 27 shows the 2020 and 2021 mitigated dispositional departure rates by drug degree. The 47-percent rate for first degree was the same as in 2019. The rate for second degree (42%) decreased slightly (from 47%). The third- and fourth-degree rates increased (to 46% and 32%, respectively) from the 2019 rates (when they were 38% and 26%, respectively). The fifth-degree rate (47%) was also higher than the 2019 rate (42%).

Among cases at criminal history score zero, the total mitigated dispositional departure rate was 73 percent, higher than the 2019 rate of 70 percent. While Figure 27 presents departure rates at a criminal history score of zero for all degrees, it should be noted 82 percent (149 of 181) of presumptive commitment cases with a criminal history score of zero were first-degree cases.¹⁴

¹⁴ For second-, third-, fourth-, and fifth-degree controlled substance crimes, the presumptive sentence at a criminal history score of 0 is a stayed prison sentence. Nevertheless, Figure 27 reflects mitigated dispositional departure rates for the small number of zero-criminal-history-score second-, third-, fourth-, and fifth-degree drug cases whose offenses are presumptive commits by operation of law. (See Minn. Sentencing Guidelines § 2.E.) For example, felony drug cases involving possession of a firearm (Minn. Stat. § 609.11) are always subject to a presumptive executed prison sentence, as are pre-DSRA subsequent third-degree drug cases (Minn. Stat. § 152.023, subd. 3(b) (2015)).

Figure 27. Mitigated Dispositional Departure Rates by Drug Degree, Presumptive Commitments Only, Sentenced 2020 & 2021

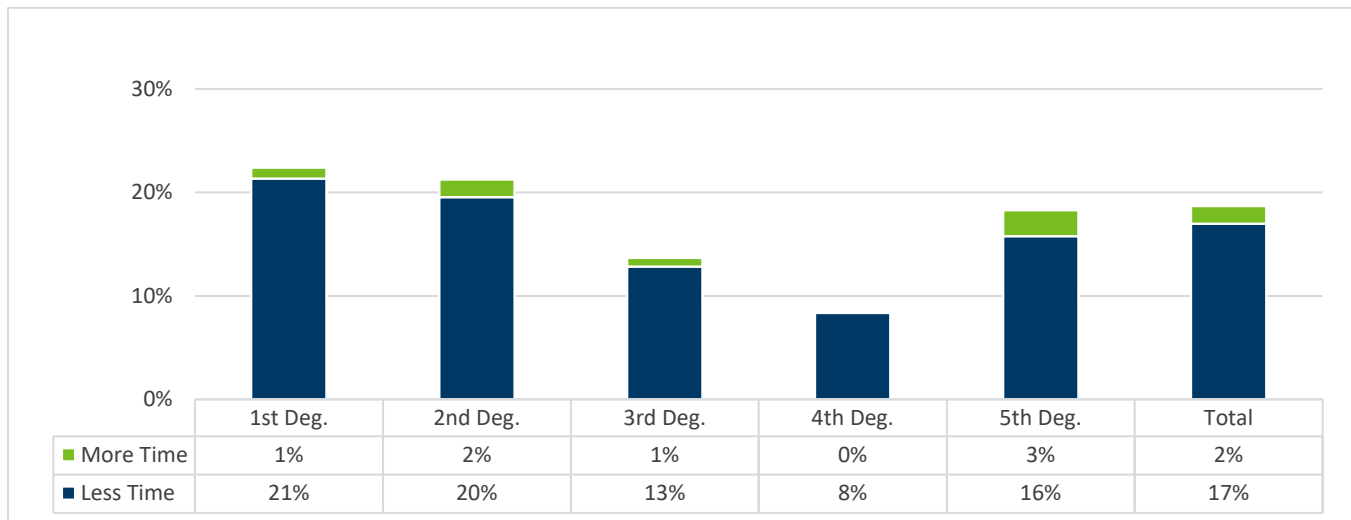


* For 2nd Deg., 3rd Deg., 4th Deg., and 5th Deg., see footnote 14.

** Only 1 fourth-degree case had a criminal history score of zero.

In 2020 and 2021, the mitigated durational departure rate for cases receiving executed prison sentences was 17 percent, down from 20 percent in 2019. The rates decreased at all degrees, most notably at third degree (from 20% to 13%), and fourth degree (from 17% to 8%).¹⁵ The median reduction in sentence length from the presumptive sentence was 27 months for first-degree cases, 28 months for second-degree cases, and 19 months for third-degree cases.

Figure 28. Durational Departure Rates by Drug Degree for Cases Receiving Executed Prison Sentences, Sentenced 2020 & 2021

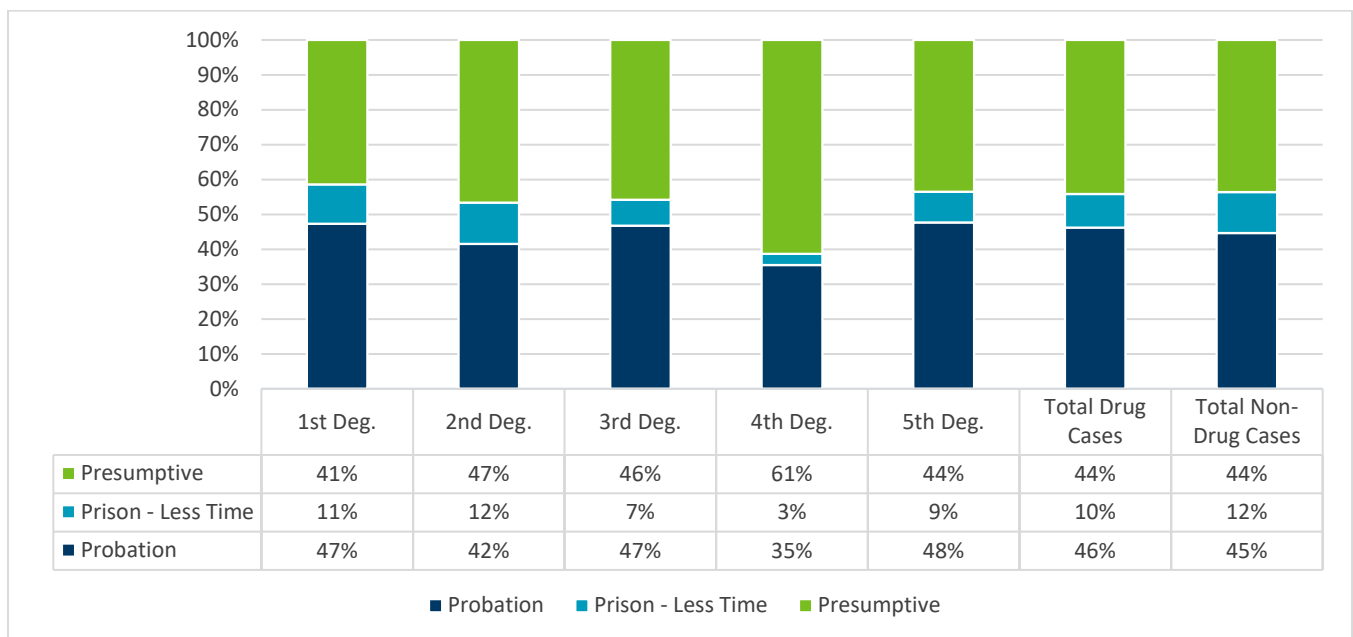


¹⁵ Note that there were only 24 fourth-degree cases that received prison sentences. With this small number of cases, the 8-percent mitigated durational departure rate may not be representative.

Presumptive Commitment Drug Offense Sentencing by Degree

Of the 7,117 drug cases in 2020 and 2021, 25.6 percent (1,825 cases) had presumptive prison sentences. Departure rates are so high that, among cases recommended prison in 2020 and 2021 (as in 2011 through 2019), a greater number of cases received departures than received the recommended sentence. In 2020 and 2021, 44 percent of such drug cases recommended a prison sentence received the recommended sentence or longer; 46 percent received a probation sentence; and 10 percent received a prison sentence with a duration that was less than recommended by the Guidelines. Sentencing outcomes were similar for non-drug cases. (Figure 29).

Figure 29. Sentence Imposed by Drug Degree, Presumptive Commitment Cases Only, Sentenced 2020 & 2021



In 2020 and 2021, 41 percent of first-degree and 47 percent of second-degree cases received the recommended sentence (a decrease from 42% in 2019 for first-degree but an increase from 40% for second-degree cases). Forty-six percent of third-degree cases received the presumptive sentence (49% in 2019). The fourth-degree rate decreased to 61 percent (from 63% in 2019). The fifth-degree rate decreased (44% in 2020 & 2021, 47% in 2019).

Departure Rates for Subsequent Drug Offenses

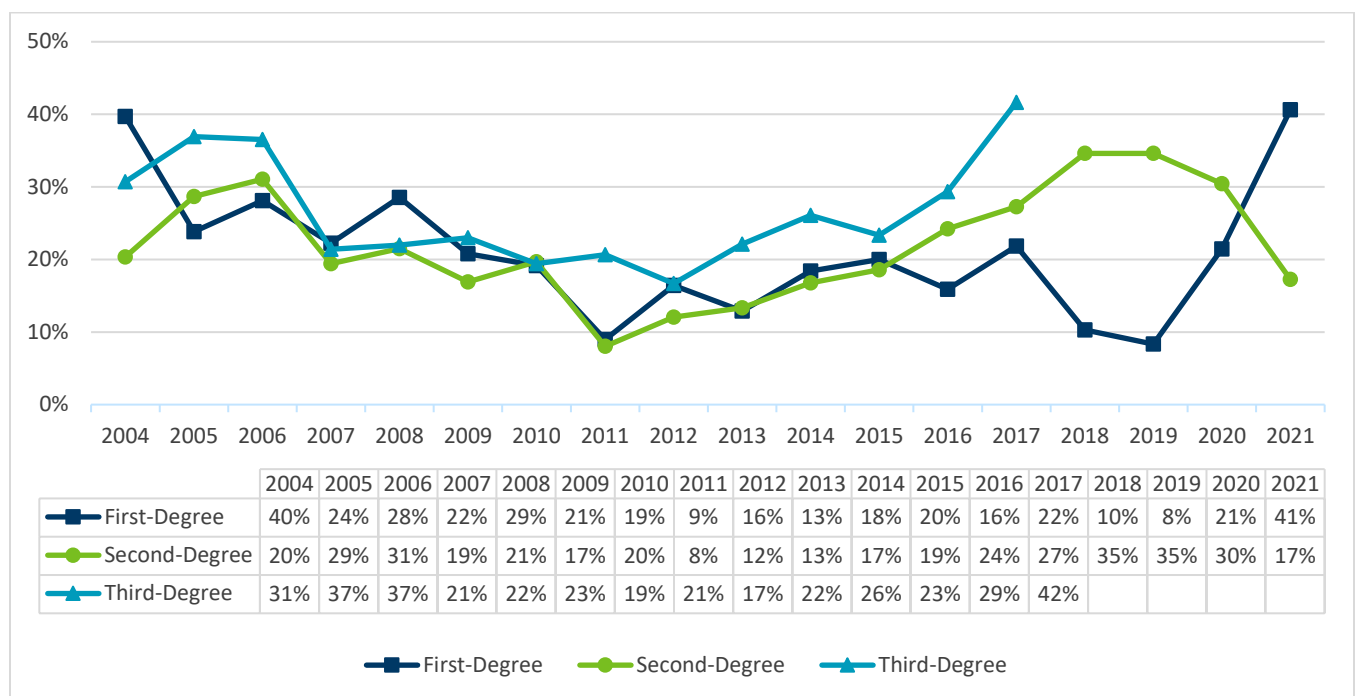
Minnesota Statutes specify mandatory minimum prison terms for first- and second-degree (for post-DSRA drug offenses) and first- through third-degree (for pre-DSRA drug offenses) when the defendant has a prior drug conviction.¹⁶ When such a statutory mandatory minimum applies, the presumptive Guidelines disposition is

¹⁶ 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

imprisonment.¹⁷ 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 (pre-DSRA) offenses. Because the presumptive Guidelines sentence is greater than the mandatory minimum for all first- and second-degree offenses, the mandatory minimum usually altered the duration of only pre-DSRA third-degree offenses.¹⁸ For third-degree offenses committed post-DSRA, this mandatory minimum provision is repealed. Since 2018, only 32 third-degree drug cases sentenced were subsequent drug offenses (20 cases in 2018, 10 cases in 2019, one case in 2020, and one case in 2021). Because third-degree drug offenses are no longer eligible to be treated as a subsequent offense, analysis of subsequent third-degree drug cases concluded in 2017.

In 2020 and 2021, 126 first- and second-degree cases were subject to these mandatory minimum provisions. Thirty-five (27%) received a mitigated dispositional departure which was higher than the 2019 rate (23%), and comparable to the 2018 rate (26%). The rate was higher for first-degree cases (30%) than second-degree (23%) (Figure 30). Of the mitigated dispositional departures, the court indicated that the prosecutor agreed to, recommended, or did not object to the departure in 66 percent of the cases.

Figure 30. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Degree, 2004–2021



become a “subsequent controlled substance conviction.” Minn. Stat. § 152.01, subd. 16a (2015). Post-DSRA, subsequent offenses are only those with prior first- and second-degree convictions. Minn. Stat. § 152.01, subd. 16a (2016).

¹⁷ 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).

¹⁸ Likewise, these mandatory minimums changed presumptive stayed dispositions to presumptive prison commitments. This affected pre-DSRA Controlled Substance Crime in the Third Degree (presumptive stay for offenders with criminal history scores below 3), and now affects post-DSRA Controlled Substance Crime in the Second Degree (presumptive stay for cases with a criminal history score below 2). In a sense, however, any mandatory minimum prison disposition for a subsequent controlled substance conviction affects the presumptive disposition, inasmuch as such a disposition becomes a mandatory, rather than merely presumptive, executed term of imprisonment (see footnote 17).

Of the 93 subsequent drug cases that received executed prison sentences, all had a pronounced duration longer than the mandatory minimum (of 48 months for first-degree offenses; and 36 months for second-degree offenses).

How the Guidelines Work

Minnesota’s guidelines are based on a grid structure. The vertical axis of the Grid represents the **severity** of the conviction offense. The horizontal axis represents a measure of the defendant’s **criminal history**. The Commission has ranked felony-level offenses into eleven severity levels. Offenses for which a life sentence is mandated by statute (first-degree murder and certain criminal sexual conduct offenses) are excluded from the Guidelines. A separate Sex Offender Grid, with severity levels from H to A (most serious), is used for sentencing sex offenses. A separate Drug Offender Grid, with severity levels from D1 to D9 (most serious), was implemented for drug offenses committed after July 31, 2016. 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 defendant’s prior record and includes points for: (variously weighted prior felony sentences; some prior misdemeanor/gross misdemeanor sentences; limited prior serious juvenile offenses; and “custody status” —if the current offense was committed while confined or under community supervision.

The recommended (presumptive) guideline sentence is found in the cell of the sentencing grid in which the defendant’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 defendant 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. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the defendant is on the applicable Guidelines Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and some 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. County Drug Case Volume

Table 6 lists the combined 2020 and 2021 volume of felony drug cases sentenced in each of Minnesota’s 87 counties, together with each county’s 2021 adult population as estimated by the U.S. Census Bureau. This information is shown graphically in Figure 8 (p. 12). Table 6 also contains the key to Figure 8’s county abbreviations, which are the first three letters of the county’s name, or, if another county shares the first three letters, then the first three consonants of the county’s name. There are two exceptions: Lake County is abbreviated “LAK” and Lake of the Woods County is abbreviated “LKW.” Table 6 also displays rate at which felony drug offenses were sentenced in 2020 and 2021, combined, per 100,000 adult residents of the county.

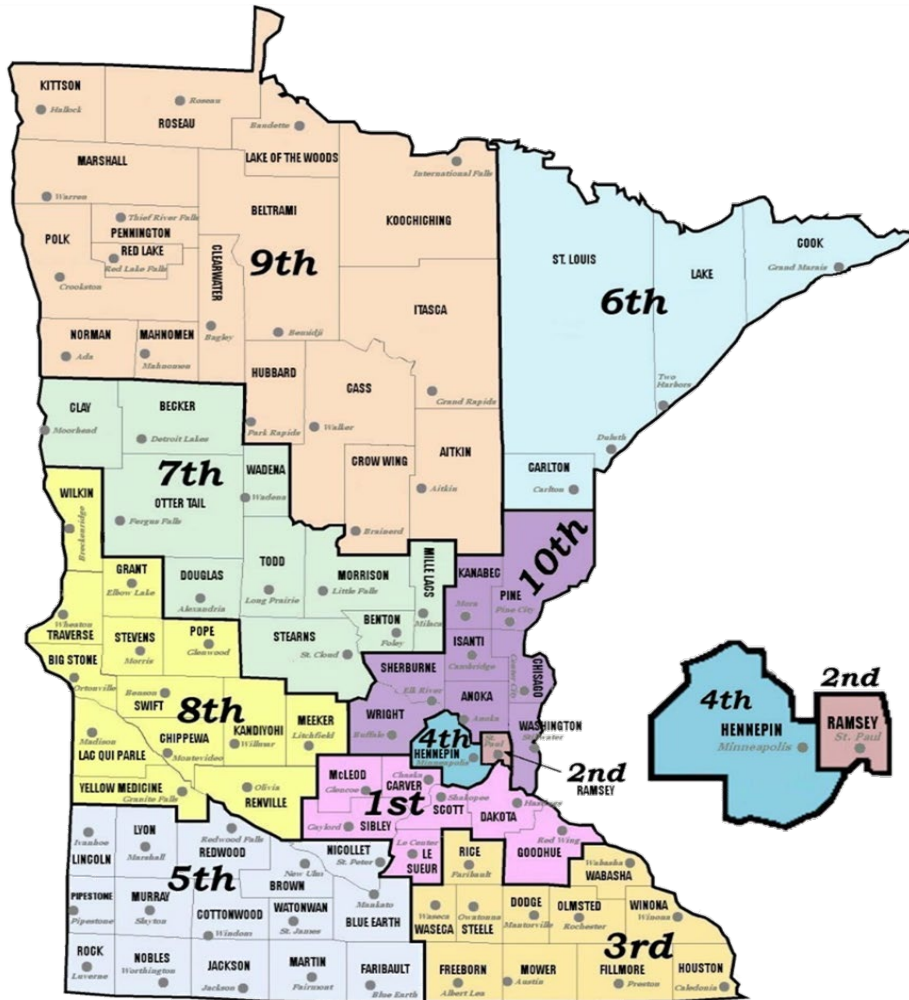
Table 6. Number of Drug Cases Sentenced 2020 & 2021, Adult Population, and Rate by County

Key to Figure 8	County Name	Felony Drug Cases Sentenced, 2020–21	2021 Adult Pop., U.S. Census Bureau Est.	Drug Cases Sentenced Per 100,000 Adults
AIT	Aitkin	60	13,319	450
ANO	Anoka	255	279,703	91
BEC	Becker	106	26,770	396
BEL	Beltrami	112	34,625	323
BEN	Benton	84	30,930	272
BIG	Big Stone	4	3,990	100
BLU	Blue Earth	184	55,482	332
BRO	Brown	44	20,128	219
CRL	Carlton	65	28,302	230
CRV	Carver	62	80,757	77
CAS	Cass	90	24,284	371
CHP	Chippewa	26	9,293	280
CHS	Chisago	50	44,549	112
CLA	Clay	113	49,129	230
CLE	Clearwater	2	6,376	31
COO	Cook	3	4,786	63
COT	Cottonwood	22	8,587	256
CRO	Crow Wing	153	53,146	288
DAK	Dakota	293	335,241	87
DOD	Dodge	29	15,644	185
DOU	Douglas	103	30,728	335
FAR	Faribault	28	10,808	259

Key to Figure 8	County Name	Felony Drug Cases Sentenced, 2020–21	2021 Adult Pop., U.S. Census Bureau Est.	Drug Cases Sentenced Per 100,000 Adults
FIL	Fillmore	11	16,016	69
FRE	Freeborn	49	23,972	204
GOO	Goodhue	164	37,366	439
GRA	Grant	13	4,736	274
HEN	Hennepin	912	991,412	92
HOU	Houston	9	14,676	61
HUB	Hubbard	60	17,075	351
ISA	Isanti	87	32,141	271
ITA	Itasca	102	35,787	285
JAC	Jackson	16	7,826	204
KNB	Kanabec	47	12,677	371
KND	Kandiyohi	107	33,023	324
KIT	Kittson	1	3,203	31
KOO	Koochiching	34	9,832	346
LAC	Lac qui Parle	10	5,255	190
LAK	Lake	9	8,867	101
LKW	Lake of the Woods	3	3,076	98
LES	Le Sueur	27	22,087	122
LIN	Lincoln	4	4,272	94
LYO	Lyon	42	18,639	225
MCL	McLeod	64	28,499	225
MAH	Mahnomen	59	3,690	1,599
MRS	Marshall	2	6,895	29
MRT	Martin	78	15,399	507
MEE	Meeker	44	17,751	248
MIL	Mille Lacs	85	20,562	413
MOR	Morrison	69	26,113	264
MOW	Mower	94	29,932	314
MUR	Murray	11	6,375	173
NIC	Nicollet	45	26,738	168
NOB	Nobles	91	15,780	577
NOR	Norman	8	4,879	164
OLM	Olmsted	173	123,634	140
OTT	Otter Tail	125	46,904	267
PEN	Pennington	50	10,675	468

Key to Figure 8	County Name	Felony Drug Cases Sentenced, 2020–21	2021 Adult Pop., U.S. Census Bureau Est.	Drug Cases Sentenced Per 100,000 Adults
PIN	Pine	102	23,658	431
PIP	Pipestone	47	6,833	688
POL	Polk	274	23,130	1,185
POP	Pope	9	8,926	101
RAM	Ramsey	158	416,939	38
RDL	Red Lake	6	2,980	201
RDW	Redwood	55	11,503	478
REN	Renville	28	11,197	250
RIC	Rice	109	52,867	206
ROC	Rock	8	7,289	110
ROS	Roseau	12	11,633	103
SAI	St. Louis	304	161,595	188
SCO	Scott	305	112,952	270
SHE	Sherburne	144	73,370	196
SIB	Sibley	27	11,526	234
STR	Stearns	182	121,473	150
STL	Steele	54	28,169	192
STV	Stevens	7	7,557	93
SWI	Swift	27	7,482	361
TOD	Todd	34	19,169	177
TRA	Traverse	3	2,595	116
WAB	Wabasha	25	16,767	149
WAD	Wadena	37	10,414	355
WSC	Waseca	31	14,638	212
WSH	Washington	187	206,382	91
WAT	Watsonwan	15	8,340	180
WIL	Wilkin	28	4,955	565
WIN	Winona	62	40,775	152
WRI	Wright	206	105,117	196
YEL	Yellow Medicine	38	7,251	524
--	Minnesota Total	7,117	4,389,823	162

Appendix 2. Minnesota Judicial District Map



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

Source: Minn. Judicial Branch.

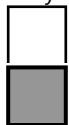
Appendix 3. Sentencing Guidelines Grid, Effective Before August 1, 2016

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.

CRIMINAL HISTORY SCORE

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

¹ 12¹=One year and one day



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

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

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

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

Appendix 4. Drug Offender Grid, Effective on and After August 1, 2016 (2021 Version)

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

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

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

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment.



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