

# **2019 REPORT TO THE LEGISLATURE**

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658 Cedar Street, Suite G-58

Saint Paul, MN 55155

Voice: (651) 296-0144

Website: <http://mn.gov/sentencing-guidelines>

Email: [sentencing.guidelines@state.mn.us](mailto:sentencing.guidelines@state.mn.us)

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

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Nicole Jasperson, Research Analyst

Kathleen Madland, Research Analyst Intermediate

Linda McBrayer, Management Analyst 4

Jill Payne, Senior Research Analysis Specialist

Anne Wall, Senior Research Analysis Specialist

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# Introduction

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

- To identify and explain all modifications made during the preceding twelve months and all proposed modifications that are being submitted to the Legislature in 2019;<sup>1</sup> and
- To summarize and analyze reports received from county attorneys on criminal cases involving a firearm.<sup>2</sup>

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

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

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

In all but one of the first 37 years the Guidelines were in effect—from 1980 through 2016—Minnesota ranked among the states with the three lowest imprisonment rates in the nation.<sup>8</sup> Compared with other states,

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<sup>1</sup> [Minn. Stat. § 244.09](#), subd. 11.

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

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

<sup>4</sup> [Minn. Stat. § 244.09](#), subd. 5.

<sup>5</sup> *Id.*

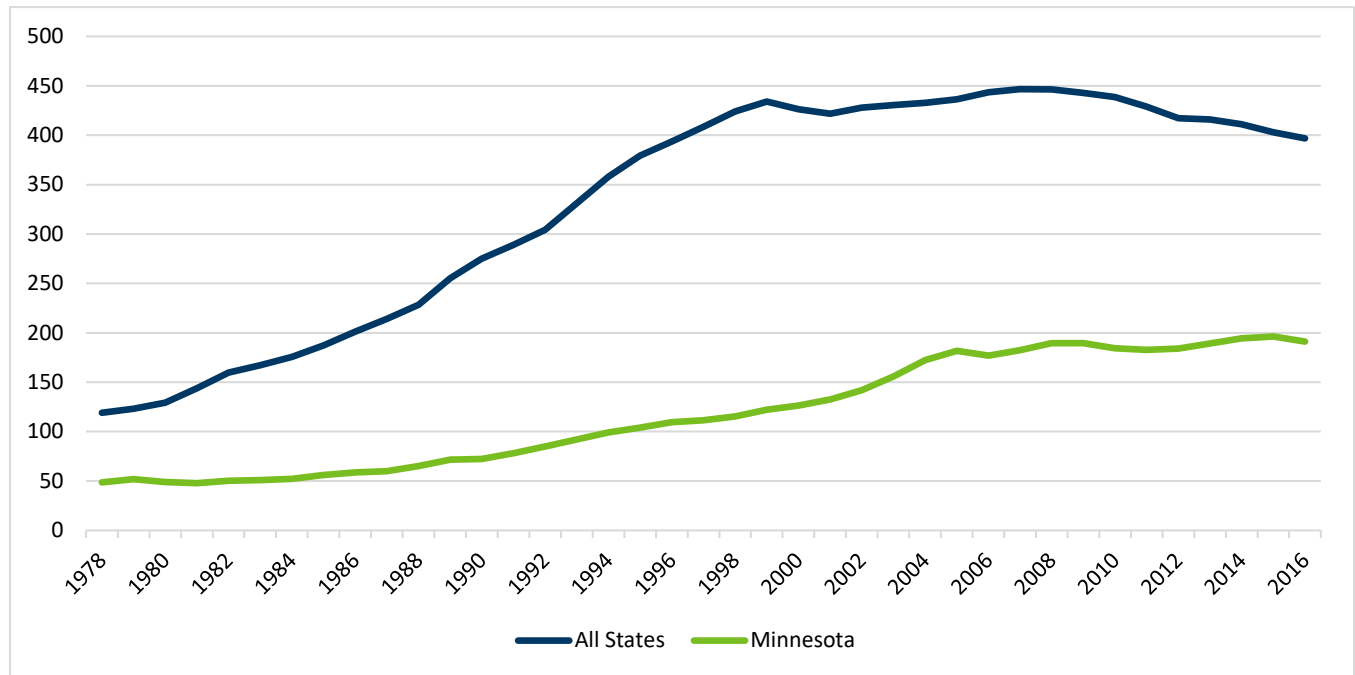
<sup>6</sup> [Minn. Sentencing Guidelines](#) § 1.A.

<sup>7</sup> *Id.*

<sup>8</sup> Minnesota had the fourth-lowest imprisonment rate in 2014, and the third-lowest in 2015 and 2016. Carson, E. Ann. Bureau of Justice Statistics. Imprisonment Rate of Sentenced Prisoners under the Jurisdiction of State or Federal Correctional Authorities per 100,000 U.S. Residents, Dec. 31, 1978–2016. Oct. 19, 2017. Retrieved Jan. 10, 2018, at [http://www.bjs.gov/nps/resources/documents/QT\\_imprisonment%20rate\\_total.xlsx](http://www.bjs.gov/nps/resources/documents/QT_imprisonment%20rate_total.xlsx). Imprisonment rates for 2017 were not available at the time of this report's publication.

Minnesota’s imprisonment rate in 2016—191 prisoners per 100,000 Minnesota residents—was less than half the imprisonment rate for all states.<sup>9</sup> Minnesota’s imprisonment rate fell by 2.6 percent from 2015 to 2016, although it remained, in 2016, at its third-highest level since the Sentencing Guidelines were established (Figure 1).<sup>10</sup> From 2015 to 2016, 18 states’ imprisonment rates fell by a higher percentage than Minnesota’s; 17 states’ imprisonment rates fell by a lower percentage; and 14 states’ imprisonment rates grew. The imprisonment rate for all states fell by 1.6 percent.<sup>11</sup>

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



Source: Bureau of Justice Statistics

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

<sup>10</sup> For purposes of comparison, Minnesota’s imprisonment rate was 49 per 100,000 in 1980. See footnote 8.

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



# Executive Summary

## **The Commission's Activities in 2018 (see p. 5):**

One of the fundamental responsibilities of the Commission is to maintain the Guidelines by annually amending them in response to legislative changes, case law, and issues raised by various parties. The Commission met ten times in 2018 to fulfill its statutory responsibilities of improving the Sentencing Guidelines and conducting ongoing research into sentencing practices and other matters relating to the improvement of the criminal justice system. In addition, the Commission held two public hearings, on July 19 and December 13. The majority of the Commission's 2018 meetings were dedicated to studying the criminal history score and discussing repeat severe violent offenders, which resulted in a proposed modification to the 2019 Guidelines (discussed below).

## **2018 Guidelines Modifications (see p. 5):**

The 2018 Legislature created a new felony, Unauthorized Computer Access (Electronic Terminal). In July, the Commission assigned a severity level of 2 to the new offense, and made other technical amendments as a result of 2018 legislative action.

## **Proposed 2019 Guidelines Modifications (see p. 6):**

After extended study of criminal history and the sentencing of repeated severe, violent offenses, the Commission, on December 20, 2018, unanimously adopted a proposal to amend the Guidelines. The proposed modifications, which would change the calculation of criminal history scores and add a sentencing enhancement for second or subsequent severe violent offenses, are now submitted to the Legislature. Unless the Legislature by law provides otherwise, these modifications will take effect August 1, 2019.

## **Proposed Guidelines and Legislative Changes to Clarify Effective Date (see p. 13):**

To ensure orderly application of the 2019 Guidelines modifications mentioned above, the Commission is making Guidelines changes, and recommending legislative changes, that will ensure that these changes apply only to offenses committed on or after August 1, 2019.

## **Staff Activities (see p. 15):**

The staff performed the following activities in 2018: Answered an average 250 phone calls and emails per month; trained over 350 practitioners in traditional classroom and online settings; provided 38 fiscal impact statements for introduced legislation; compiled sentencing information for 375 individual data requests; worked with the Department of Corrections to generate prison bed projections; participated in various criminal justice boards, forums and committees; processed and ensured the accuracy of over 18,000 sentencing records; published the annual edition of the Guidelines and commentary; and provided reports on sentencing practices to the public.

### **2017 Sentencing Practices Data Summary (see p. 17):**

Minnesota courts sentenced 18,288 felony offenders in 2017. This was the highest volume on record, surpassing the previous record set in 2016. The number of felony offenders sentenced increased eight percent from 2016, the largest year-to-year increase since 2003.

In 2017, 91.7 percent of felony offenders served either local confinement time as part of their stayed sentence (67.4%) or state prison time (24.3%). The average pronounced prison sentence was 46 months.

Statewide, 75.5 percent of felony offenders received the presumptive Guidelines sentence. The rate varied by gender, race and ethnicity, judicial district, offense type, and presumptive disposition.

### **Impact of the 2016 Drug Sentencing Reform Act (see p. 37):**

In 2016, the Legislature enacted the Drug Sentencing Reform Act (DSRA). About half of the drug cases sentenced in 2017 were subject to the DSRA's provisions. Despite the ongoing growth in drug cases sentenced, prison bed savings are appearing, particularly when the post-DSRA sentences through 2017 are compared with pre-DSRA sentences in previous years. For qualifying first-time offenders, the DSRA's alternatives to felony convictions—gross misdemeanor dispositions or stays of adjudication—are widely utilized.

### **County Attorney Firearms Reports (see p. 51):**

County attorneys must collect and report disposition information for specified crimes for which a defendant is alleged to have possessed or used a firearm, and the Commission must summarize and analyze that information in its annual report. In fiscal year 2018, county attorneys disposed of 1,243 firearms cases, the highest number reported to the Commission since the mandate began in 1996.

## The Commission's Activities in 2018

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

The Chief Justice's designee is Associate Supreme Court Justice (Retired) Christopher Dietzen, who also serves as Chair by appointment of the Governor. The Court of Appeals judge is Judge Heidi Schellhas, who is also the Commission's Vice-Chair. The district court judge is Judge Caroline Lennon, First Judicial District. Among the Commission members selected by the Governor, the public defender member is Cathryn Middlebrook, Chief Appellate Public Defender; the county attorney member is Peter Orput, Washington County Attorney; Paul Schnell is the Commissioner of Corrections<sup>12</sup>; the peace officer member is Saint Paul Police Sgt. Salim Omari; the probation officer member is Valerie Estrada, Corrections Unit Supervisor, Hennepin County Community Corrections & Rehabilitation; and the public members are Angela Champagne-From, Yamy Vang, and Senior Judge Mark Wernick.

One of the fundamental responsibilities of the Commission is to maintain the Guidelines by annually amending them in response to legislative changes, case law, and issues raised by various parties. The Commission met ten times in 2018 to fulfill its statutory responsibilities of improving the Sentencing Guidelines and conducting ongoing research into sentencing practices and other matters relating to the improvement of the criminal justice system. In addition, the Commission held two public hearings, on July 19 and December 13. Most of the Commission's 2018 work was dedicated to studying the criminal history score and discussing offenders who repeatedly commit severe, violent offenses. The resulting proposal is discussed in the section titled "Proposed 2019 Guidelines Modifications," beginning on the following page.

### 2018 Guidelines Modifications

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After the 2018 Regular Session, the Commission reviewed new and amended crime laws. In response to these legislative changes, and following a public hearing, the Commission, on July 26, 2018, unanimously modified the Guidelines, effective August 1, 2018. The Commission assigned the new felony offense of Unauthorized Computer Access (Electronic Terminal) a severity level of 2, and made conforming technical amendments to this and other legislative changes. The 2018 Guidelines modifications relating to the action of the 2018 Legislature are reported in Appendix 1, beginning on page 57.

Also on July 26, following a public hearing, the Commission adopted several proposed modifications that had been set forth in the Commission's 2018 *Report to the Legislature*. Those modifications amended the Guidelines' "Statement of Purpose and Principles" to incorporate the statutory requirement that the Commission primarily

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<sup>12</sup> Commissioner of Corrections Tom Roy was a member of the Commission until his retirement on January 2, 2019. On January 7, 2019, Governor Walz appointed Paul Schnell as Commission of Corrections.

consider public safety in establishing and modifying the Guidelines. The modifications also officially designated Escape from Electronic Home Monitoring as an “unranked” offense, and corrected a comment listing offenses that, by definition, involve the use or possession of a firearm, or the use of another dangerous weapon.<sup>13</sup>

## Proposed 2019 Guidelines Modifications

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### Background

On August 26, 2015, family and friends of murder victim Anarae Schunk addressed the Commission. They expressed dissatisfaction with the current dangerous offender law,<sup>14</sup> and voiced a desire to see improvement in the sentencing of repeat violent offenders. In the years that followed these remarks, the Commission studied and discussed the sentencing of repeat violent offenders, while continuing to listen to the Schunk family and friends.

Meanwhile, on March 23, 2016, as part of its ongoing duty to “meet as necessary for the purpose of modifying and improving the guidelines,”<sup>15</sup> the Commission began a two-year study of the manner in which the Guidelines use criminal history in calculating the presumptive sentence.<sup>16</sup> Through discussion, review of research, and input from stakeholders throughout 2018, consensus among Commission members began to build that some components of the Guidelines’ criminal history score were in need of reform.

In an attempt to address both of these issues, the Commission, on November 8, 2018, voted unanimously to send to a public hearing a proposal to amend the Guidelines. The proposed modifications were intended to address the needs both for reform of the criminal history score, and to enhance the punishment of those who repeatedly commit severe, violent offenses. Members of the public provided input to the Commission at a hearing on December 13, 2018, and on December 20, the Commission unanimously adopted the proposal, which is now submitted to the Legislature. Unless the Legislature by law provides otherwise, these modifications will take effect August 1, 2019, and will apply to crimes committed on or after that date.<sup>17</sup>

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<sup>13</sup> Because these modifications have already been reported to the Legislature, they are not restated in this report. See Minnesota Sentencing Guidelines Commission, *Report to the Legislature* (Jan. 12, 2018), Appendix 4, pp. 72–74.

<sup>14</sup> Minn. Stat. § [609.1095](#), subd. 2 & 3. This law applies to an offender who commits a “violent crime” (per a statutory list) after having twice been convicted of a violent crime, provided the second prior offense likewise occurred after the first prior conviction. For such an offender, subd. 3 mandates an executed sentence of the recommended Guidelines duration. In addition, if such an offender is found to be a “danger to public safety” (per statutory factors), subd. 2 permits an aggravated departure from the Guidelines duration, up to the statutory maximum.

<sup>15</sup> Minn. Stat. § [244.09](#), subd. 11.

<sup>16</sup> Together with the severity of the current offense, the criminal history score is one of the two major factors that determines the sentence to be recommended by the Sentencing Guidelines. See generally Appendix 5, Sentencing Guidelines Grids, p. 77 (the criminal history score is the horizontal axis of the grids).

<sup>17</sup> By including within the adopted modifications a preamble to this effect, the Commission intends, with respect to all modifications to the Guidelines and Commentary proposed within Appendix 2, expressly to abrogate the amelioration doctrine. See *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017).

The proposed modifications, which are set forth in Appendix 2, beginning on page 59, would change the calculation of criminal history scores and add a sentencing enhancement for second or subsequent severe violent offenses. The effects these proposed modifications are discussed in greater detail beginning on page 9.

### Historical/Statutory Framework

Historically, there are five reasons for criminal sentencing: retribution or just deserts, incapacitation, deterrence, restitution and rehabilitation. The retribution philosophy maintains that punishment should be inflicted on those convicted of crime because it is deserved. Moreover, the severity of the punishment should be scaled according to the harm caused by the crime and the relative culpability or blameworthiness of the offender. The infliction of deserved punishment was seen as an end in itself and not a means to some other end like crime control. All five reasons are legitimate bases for punishment.

The Minnesota Sentencing Guidelines statute, Minn. Stat. § 244.09, was enacted in April 1978, and the Commission was established the next month. The Guidelines were submitted by the Commission to the Legislature in 1980.<sup>18</sup> In the Commission’s deliberative process, punishment emerged as “the primary purpose guiding its formulation of sentencing policy.”<sup>19</sup> According to Dale Parent, the Commission did not formally adopt a retribution or just deserts perspective; rather that perspective evolved over time as the dominant view.<sup>20</sup> Initially, the Commission considered multipurpose Guidelines but later decided not to base the Guideline on predictions of future criminal behavior. Such predictions would be consistent with an incapacitation goal but would have been inconsistent with a retributive purpose, which is not forwarding looking.<sup>21</sup>

In 1980, the Commission adopted Guidelines § 2.B to address the horizontal axis of the sentencing grid, which is the criminal history score.<sup>22</sup> The Guidelines “reduce the emphasis given to criminal history in sentencing decisions. Under past judicial practice, criminal history was the primary factor in dispositional decisions.”<sup>23</sup> In 1986, the Commission reported to the Legislature:

The sentencing guidelines monitoring data continue to show that criminal history is having a bigger impact on who goes to prison than what was initially projected under the just deserts philosophy of the guidelines.<sup>24</sup>

The “just deserts philosophy,” or a clear conceptual basis covering why criminal history should be used in determining sentencing severity, however, is not clearly defined in the Guidelines.<sup>25</sup> Instead, the Commission examined the elements of the offender’s prior criminal record that it believed were important in ascribing blame

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<sup>18</sup> Dale G. Parent, *Structuring Criminal Sentences: The Evolution of Minnesota’s Sentencing Guidelines* (Butterworth Legal Publishers, 1988), pp. 32–33.

<sup>19</sup> *Id.* at p. 38.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Guidelines § II.B, “Criminal History” (1980) (now styled “2.B”).

<sup>23</sup> Guidelines Comment II.B.01 (1980); Guidelines Comment 2.B.01 (2018).

<sup>24</sup> MSGC, *Report to the Legislature*, November 1986, pp. 14–15.

<sup>25</sup> See Parent, *supra* note 2, at pp. 161–62.

and therefore a more severe sanction.<sup>26</sup> The Commission determined that there were four core variables to the criminal history score: (1) the number of felony convictions; (2) custody status at the time of the offense; (3) misdemeanor and gross misdemeanor; and (4) the offender's juvenile record.<sup>27</sup>

The statute was amended in 1989 to provide that public safety must be the primary consideration in adopting and/or modifying the Guidelines.<sup>28</sup> The Legislature was concerned about the adequacy of sentences given, and affirmatively stated longer sentences were needed. In 1996, the Legislature added language that the long-term impact of crime on the neighborhood must be considered.<sup>29</sup> These changes marked a major shift in the focus of sentencing from retribution, which looks back to punish for past misconduct, to add the forward-looking concepts of incapacitation, deterrence, restitution and rehabilitation. Thus, the amended statute requires consideration of public safety.

What is the meaning of the term "public safety"? Although public safety is not defined in the statute, the term clearly means protecting the public from crime. Two reasons support the conclusion. First, the plain and ordinary meaning of the term: Safety means "the condition of being safe; freedom from danger, risk, or injury."<sup>30</sup> Thus, the term means to protect the public from crime. Second, other portions of the statute identify the basis for which the Commission may adopt or modify the Guidelines. Those reasons include protecting the public, promoting respect for the law, imparting adequate punishment for the crime committed, discouraging future criminal conduct, and imposing sanctions consistent with the need to protect the public and the seriousness of the crime.<sup>31</sup> Moreover, nothing in the amendments rejects the prior emphasis of the Commission on retribution. In fact, public safety was added to address legislative concern that sentences imposed on offenders were not long enough.

In sum, the Commission's primary consideration in establishing and modifying the Guidelines is public safety, which we interpret to mean protecting the public from crime. To achieve the goal of public safety, the Commission must consider and balance the differing purposes of sentencing, which are retribution or punishment, incapacitation, deterrence, restitution, and rehabilitation. In making that determination, the five purposes for sentencing fall within the meaning of public safety. Put differently, the five purposes are legitimate bases to protect the public from crime. Thus, the examination of public safety requires consideration of whether the proposed amendment protects the public from crime and promotes the five purposes for punishment. But an examination that focuses solely on rehabilitation to the exclusion of the other four purposes is flawed and contrary to the statute. Similarly, a law that focuses solely on retribution must also be avoided. Consequently, the Commission must take a balanced approach of public safety when determining any proposed modification of the Guidelines. By statute, the Commission must also consider sentencing and release practices, correctional resources, and the long-term negative impact of crime on the community. Further, the Commission must

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<sup>26</sup> *Id.* at p. 65.

<sup>27</sup> *Id.* at p. 67

<sup>28</sup> 1989 Minn. Laws ch. 290, art. 2, § 8.

<sup>29</sup> 1996 Minn. Laws ch. 408, art. 3, § 11

<sup>30</sup> *Heritage Dictionary*, fourth ed., at p. 1531.

<sup>31</sup> See Minn. Stat. § 244.09.

consider the important public policy goals of uniformity, proportionality, rationality, and predictability in sentencing.

### **How the Criminal History Score and Sentencing for Repeat Severe Violent Offenders Are Working**

In 2017–18, we conducted a comprehensive eight-part review of the various components of the Guidelines criminal history score (CHS) and the culpability and public safety risk of repeat severe violent offenders. We noted a rise in the CHS from 1990 to 2013, and a striking fall in the CHS of zero, i.e., a history of no more than one prior low-level felony conviction. Likewise, we examined our decay policy, by which old offenses no longer contribute to the criminal history score.

Additionally, the Robina Institute presented a two-phase study it conducted of Minnesota’s CHS.<sup>32</sup> The study concluded that Minnesota’s CHS predicted recidivism “moderately well,” but had components that did not add to its predictive value, and that some components increased the presumptive sentence without adding to the scores predictive value for recidivism. Some Commission members questioned this conclusion on the ground that recidivism is not the only purpose of sentencing. Essentially, Robina studied whether sentencing resulted in rehabilitation of incarcerated offenders. There is no doubt that this is an important inquiry from which we can learn much. But the study did not measure whether sentencing satisfied the other purposes of sentencing. There is certainly evidence that sentences do satisfy the purposes of retribution, incapacitation, deterrence and restitution.

These discussions led the Commission to focus on the role of custody status points as part of the CHS. Some consensus seemed to develop around the premise that a custody status point should expire when the offender completed probation even though it was within the “pronounced” period of probation given at the time of sentencing.

The Commission discussed sentencing enhancements for repeat severe offenders. Many Commission members believe that repeat violent offenders present a serious threat to public safety and a sentencing enhancement should be available.

### **Rationale and Overview of the Proposed 2019 Guidelines Modifications**

Following its two-year study of the criminal history score and the sentencing of repeat severe violent offenders, the Commission, on December 20, 2018, unanimously adopted proposed amendments to the Guidelines with respect to how we calculate the criminal history score, and creating a sentencing enhancement for repeat severe violent offenders.

The Commission’s primary consideration in establishing and modifying the Guidelines is public safety, which we interpret to mean protecting the public from crime. Our examination requires us to balance the important purposes of sentencing which are retribution or punishment, incapacitation, deterrence, restitution and

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<sup>32</sup> This study’s final report was published December 19, 2018. Julia A. Laskorunsky, Robina Inst. of Crim. Law & Crim. Just., *Minnesota Criminal History Score Recidivism Project* (2018). Retrieved Jan. 3, 2019, at <https://robinainstitute.umn.edu/publications/minnesota-criminal-history-score-recidivism-report>.

rehabilitation. In doing so we must also factor in the important public policy goals of uniformity, proportionality, rationality and predictability in sentencing, as well as the prudent stewardship of limited correctional resources.

The proposed 2019 Guidelines modifications are consistent with the statutory goal of public safety, as well as the other statutory considerations.

The proposed changes unanimously adopted by the Commission fall into three major categories: (1) waiver of the custody status point in certain circumstances; (2) other changes to the criminal history score; and (3) the sentencing of repeat severe violent offenders.

The first change gives the judge discretion to waive assignment of a custody status point for qualifying, less-violent offenses, provided the judge finds that doing so is consistent with certain enumerated criteria. The rationale for change is that the current Guidelines approach for custody status points results in double-counting, because the offender is sentenced for the crime and receives a custody status point. The argument against is that an offender who reoffends while on probation is more culpable than a person who is not. The bigger concern is that every felony offense, regardless of severity, receives a point. The Commission believes that some reform is necessary, and that giving a judge discretion to waive the assignment of the custody status point for the less violent offenses will improve rationality and proportionality in sentencing, and reduce the demand on correctional resources, without sacrificing public safety. Specifically, permitting waiver for the less severe/violent offenses avoids the current formulaic approach that disregards the severity of the offense.

The second category of modifications involve changes to how the decay factor for the criminal history score is calculated, as well as the one-half custody status point, custody status calculation after early discharge from probation, custody status for Minn. Stat. § 152.18 stays of adjudication, and a technical correction to certain misdemeanor units. These changes will promote rationality and proportionality in certain sentences, and make technical changes due to recent legislation,<sup>33</sup> and will not sacrifice public safety. For example, the 15-year decay factor currently begins to run at the end of the sentence. For a typical offender who receives a 48-month executed sentence, that person serves 36 months of incarceration followed by 12 months of supervised release. At the end of that time—totaling 48 months—the 15-year clock begins to run. But for a typical offender who receives a 48 month stayed sentence on the condition that the person be on probation for 12 years, that person's 15 year decay factor clock doesn't begin to run until after the expiration of the 12 years of probation. It is neither rational nor fair to penalize the probationer in this situation. The proposed change would have the 15-year decay period for the typical probationer begin on the date the judge imposed sentence, and not the day the term of probation expires.

The third category is the creation of a sentencing enhancement for repeat violent offenders for certain qualifying crimes. This change will benefit public safety because it adds a sentencing enhancement for offenders who engage in repeat, severe violent crimes. The Commission believes that public safety, particularly the goals of retribution, incapacitation, and deterrence, will be improved as a result of this change. Also, the change is consistent with the public policy goals of uniformity, rationality, proportionality and predictability.

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<sup>33</sup> See footnote 37.



## Detail and Effect of Proposed 2019 Guidelines Modifications

The proposed modifications are set forth in Appendix 2, beginning on page 59. Their general effect may be summarized as follows:

### *Criminal History Score*

Under the Sentencing Guidelines, the presumptive sentence for a felony is determined by the severity of the current offense and the criminal history of the offender. There are four components to criminal history:

- Prior felonies;
- Custody status<sup>34</sup> at the time of the offense;
- Prior gross misdemeanors and misdemeanors; and
- Prior juvenile adjudications.

The sum of the points contributed by each component constitutes the offender's criminal history score.

With respect to **prior felonies**, the proposed modifications change the decay factor; that is, the time after which a prior felony is considered no longer relevant to criminal history. Under current policy, a prior felony decays fifteen years after discharge from, or expiration of, a sentence. The Commission was concerned that, under existing policy, prior offenses warranting imprisonment will often decay before prior probationary offenses.

The proposed modifications address this concern. The proposal maintains current policy for an executed prison sentence. If a probationary sentence is never executed, however, the proposal will permit the prior offense to decay fifteen years after sentencing, provided that an offense cannot decay while the offender remains on supervision for the offense. The proposed modifications—to Guidelines § 2.B.1.c and Comment 2.B.113—may be found on pages 60–61.

The Commission had several concerns about the criminal history point resulting from an offender's **custody status at the time of the offense**:

1. The Commission discussed the fact that, for certain offenses, an offender's custody status in connection with certain lower-severity offenses contributes more to the criminal history score (one point) than the commission of the prior offense itself (one-half point or less<sup>35</sup>). To avoid this, the proposal reduces by half the weight of the custody status point in connection with certain lower-severity offenses.<sup>36</sup> The

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<sup>34</sup> Actual confinement is not required for "custody status"; various court-ordered release statuses, including probation, will suffice. Minn. Sentencing Guidelines § 2.B.2.a(1) (see p. 61).

<sup>35</sup> A prior felony offense assigned a severity level of 1, 2, D1, or D2, or H (for first offense) contributes a half point to criminal history. A prior non-traffic gross misdemeanor, gross misdemeanor DWI, or targeted misdemeanor, generally equals one misdemeanor unit, four of which collectively contribute a whole point to criminal history.

<sup>36</sup> Although a first offense of Failure to Register as a Predatory Offender (Severity Level H) also contributes one-half point to criminal history, the Commission is maintaining the current policy for that offense: custody status will continue to contribute a whole custody status point to criminal history.

proposed modifications—chiefly to Guidelines §§ 2.B.2.a & 2.B.2.a(3) and Comment 2.B.202, with conforming changes elsewhere—may be found on pages 61–62 & 64.

2. The Commission reconsidered its rule, established in 2001, maintaining a probationer’s eligibility for a custody status point throughout the entire, originally pronounced length of probation, notwithstanding an early discharge from probation. The proposal repeals this rule, restoring the requirement that, to receive a custody status point, an offender must actually be under a custody status at the time the current offense was committed. The proposed modifications—to Guidelines §§ 2.B.2.a(1) & 2.B.2.a(4) and Comment 2.B.202—may be found on pages 61, 62, & 64.
3. The Commission also reconsidered its rule distinguishing, for purposes of the custody status point, stays of adjudication granted under Minn. Stat. § 152.18 (applicable to some drug offenses) from all other stays of adjudication. Under the current rule, a stay of adjudication qualifies for custody status, but only if it was granted under § 152.18.<sup>37</sup> The proposal repeals this distinction. The proposed modifications—to Guidelines § 2.B.2.a(2) and Comment 2.B.203—may be found on pages 61 & 65.
4. For the reasons discussed in the previous section, the Commission proposes to permit the court to waive assignment of the custody status point in certain circumstances. Waiver would be permitted only when the offender established that waiver would be consistent with public safety, and waiver would never be permitted for severe offenses.<sup>38</sup> The proposed modifications, which create a new Guidelines § 2.B.2.e and modify Comment 2.B.203, may be found on pages 63–65.

With respect to **prior gross misdemeanors and misdemeanors**, the proposal changes the misdemeanor decay policy—presently, ten years after discharge or expiration—to ten years after sentencing, to be consistent with the change to felony decay policy.<sup>39</sup> To remove potential confusion, the proposal also makes a technical correction consistent with the Commission’s existing intent, that the criminal history score of a current driving while impaired (DWI) or criminal vehicular operation (CVO) felony may include non-DWI/CVO misdemeanor units. The proposed modifications—to Guidelines §§ 2.B.3.a & 2.B.3.e and Comment 2.B.304—may be found on pages 65–66.

The proposed modifications make no changes with respect to **prior juvenile adjudications**.

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<sup>37</sup> This inconsistency may have been justified by the reference to § 152.18 dispositions in the “subsequent controlled substance conviction” definition in Minn. Stat. § 152.01, subd. 16a (2015). When that statutory reference was repealed by the 2016 Drug Sentencing Reform Act (2016 Minn. Laws ch. 160, § 1), the only obvious rationale for the distinction was eliminated.

<sup>38</sup> Specifically, neither the current offense nor the custody offense may be ranked at or above severity level 8, G, or D8, nor be listed on the new Severe Violent Offense list, nor be fleeing a peace officer resulting in great bodily harm. If waived, the criminal history score and presumptive sentence will be calculated without the custody status point. Waiver, in itself, will not constitute a Guidelines departure, so long as the new processes are followed.

<sup>39</sup> The change also improves consistency with the Minnesota Judicial Branch’s [District Court Record Retention Schedule](#) (June 1, 2018), which permits and recommends destruction of misdemeanor records—with exceptions for traffic and domestic violence offenses—ten years after the date of final disposition.

## *Repeat, Severe Violent Offenders*

The Commission proposes a new sentencing enhancement for second or subsequent severe violent offenses. A “severe violent offense” would be defined by list, in a new section of the Guidelines (p. 68). A new sentence modifier would add between 12 and 24 months, depending on the number of prior severe violent offense convictions, to the presumptive sentence.<sup>40</sup> As proposed, the new or modified sections—Guidelines §§ 1.B.14, 2.G.1, 2.G.14, & 8, Comment 2.G.03, and Guidelines Appendix 4—may be found on pages 59 & 67–68.

## *Impact of the Proposed 2019 Guidelines Modifications*

The proposed changes to criminal history will, in the long term, tend to reduce the need for prison beds, while the sentencing enhancement for repeat, severe violent offenders will tend to increase the need for prison beds. All told, Minnesota Sentencing Guidelines Commission (MSGC) staff estimates that the proposed modifications will eventually result in a reduction of the need for 536 prison beds, and possibly as many as 666 prison beds. The staff impact estimate is detailed in Appendix 3 on page 70.

## **Proposed Guidelines and Legislative Changes to Clarify Effective Dates**

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To ensure orderly application of the 2019 Guidelines modifications described in the previous section, the Commission is making Guidelines changes, and recommending legislative changes, that will ensure that these changes apply only to offenses committed on or after August 1, 2019.

### **Background: *State v. Kirby* and the Amelioration Doctrine**

Since 1987, the Sentencing Guidelines rule has been that Guidelines modifications only apply to offenders whose date of offense is on or after the specified modification effective date.<sup>41</sup> Thus, a Guidelines modification only applied to offenses committed on or after the effective date of the change.

In *State v. Kirby*,<sup>42</sup> the defendant was convicted of and sentenced for first-degree drug possession. While his case was on appeal, the 2016 Drug Sentencing Reform Act (DSRA) took effect, which would have reduced his presumptive sentence. Kirby asked that he be sentenced under the DSRA’s new sentencing grid. The Minnesota Supreme Court agreed with Kirby, holding that the amelioration doctrine applied, and remanded for resentencing under the new law. Notably, the Court stated that the doctrine only applied to cases where the Legislature had not clearly abrogated the amelioration doctrine; where the amendment to the law mitigated punishment; and where final judgment had not been entered when the new law took effect. The Court did not

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<sup>40</sup> The proposal also clarifies that sentence modifiers can originate in statute or Guidelines policy, and renumbers the existing Guidelines Section 8, Targeted Misdemeanor List, as Guidelines Appendix 4.

<sup>41</sup> Compare 1987 Minn. Sentencing Guidelines § III.F (“Modifications to the Minnesota Sentencing Guidelines will be applied to offenders whose date of offense is on or after the specified modification effective date.”) with 2018 Minn. Sentencing Guidelines § 3.G.1 (“Modifications to the Minnesota Sentencing Guidelines and associated commentary apply to offenders whose date of offense is on or after the specified modification effective date.”).

<sup>42</sup> *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017).

rule on the question of whether the amelioration doctrine may be abrogated by Commission action not ratified by the Legislature.<sup>43</sup>

The Commission does not intend for the amelioration doctrine to apply to the 2019 Guidelines modifications described in the previous section. Instead, the Commission intends for these modifications to take place on August 1, 2019, and to apply to crimes committed on or after that date. If the amelioration doctrine applied to these modifications, it would create confusion among Guidelines practitioners: Rather than applying to all offenses committed after a specified date, the modifications would apply to some—but not all—cases committed before that date, depending on each case’s procedural posture when the change took effect.

### **Commission’s Response: Guidelines Change and Recommended Legislative Action**

To ensure that the Sentencing Guidelines remain clear, predictable, understandable, and consistent, the Commission, on December 20, 2018, unanimously took three actions:

- First, it stated its clear intent, in the 2019 Guidelines modifications described in the previous section, that those modifications would apply only to crimes committed on or after August 1, 2019.
- Second, subject to a future public hearing and final adoption, the Commission voted to modify the Guidelines to clarify that its longstanding effective-date policy applies to the entire Sentencing Guidelines—not just part of the Guidelines, as *Kirby* suggests.<sup>44</sup> This Guidelines change—to § 3.G.1—is found in Appendix 4.1 on page 75.
- Third, the Commission is recommending—pursuant to its statutory mandate to make recommendations to the Legislature on sentencing policy<sup>45</sup>—that the Legislature change the Commission’s charter statute to clarify that August 1 Guidelines changes will apply to crimes committed on or after that date, unless the Commission or the Legislature directs otherwise. The resolution recommending this amendment to Minn. Stat. § 244.09 is found in Appendix 4.2 on page 76.

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<sup>43</sup> “We have never ruled—and decline to rule today—that the amelioration doctrine may be abrogated by Commission statements not ratified by the Legislature.” *Kirby*, 899 N.W.2d at 493.

<sup>44</sup> *Kirby* avoided the question of whether Guidelines § 3.G.1 effectively abrogated the amelioration doctrine by limiting application of that section to “policy” changes—and further holding that, when § 3.G.1 referred to policy, it was referring only to Guidelines §§ 1–3 only (which excludes the sentencing grids in § 4). *State v. Kirby*, 899 N.W.2d 485, 493 (Minn. 2017).

<sup>45</sup> “The commission shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing.” Minn. Stat. § 244.09, subd. 6.

## Staff Activities

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The following provides a summary of the activities performed by staff—in addition to providing support and research for the Guidelines modifications detailed in this report—to further the goals and purposes of the Commission. In particular, staff assist the Commission in fulfilling its statutory charter<sup>46</sup> to serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on sentencing practices. This includes information regarding the impact of statutory changes to the state's criminal laws related to controlled substances, including the Drug Sentencing Reform Act.<sup>47</sup>

### Monitoring Sentencing Data

One of the primary functions of the MSGC staff is to monitor sentencing practices. The monitoring system is designed to maintain data on all offenders convicted of a felony and sentenced under the Guidelines.<sup>48</sup> A case is defined when a sentencing worksheet is received from the probation officer and matched with sentencing data from the District Court. As part of the agency's core functions, MSGC staff collected and analyzed data of over 18,000 felony offenders. Additionally, staff published the annual edition of the Sentencing Guidelines and Commentary and its annual reports on sentencing practices and trends.<sup>49</sup>

### Training & Assistance

The staff provides training and assistance with the Guidelines in a variety of ways: traditional classroom settings, webinars, website materials and email and telephone assistance. In 2018, staff trained over 350 practitioners in nine traditional classroom sessions. On average, the staff fielded 250 phone calls and emails per month, the majority of which were questions from judges, attorneys, and probation officers about the application of the Guidelines to their felony cases.

MSGC staff and Department of Corrections' Information Technology staff released a new, electronic "criminal history report" product, allowing probation officers to initiate a summary of a defendant's criminal history and report it to the District Court without specifying the conviction offense. This allows probation officers to report criminal history information to practitioners early in the criminal justice process, and later transfer that information to a pre-plea worksheet or sentencing worksheet if there is a conviction.

### Website & Data Requests

On average, the Commission's website received 3,500 visits each month in 2018. The majority visited to access the Sentencing Guidelines. Most visited using desktops (63%), but the number of mobile users was up by almost

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<sup>46</sup> [Minn. Stat. § 244.09](#), subd. 6.

<sup>47</sup> See "Impact of the 2016 Drug Sentencing Reform Act," beginning on p. 37.

<sup>48</sup> Beginning in 2005 and 2006, MSGC began maintaining data on life sentences, even if not governed by the Guidelines.

<sup>49</sup> This information is summarized in this report ("2017 Sentencing Practices Data Summary," beginning on p. 17). The detailed reports may be found at <https://mn.gov/sentencing-guidelines/reports/>.

five percent. The website includes easily accessible email signup for upcoming trainings, public hearing notices, and Commission meeting notices. One-click data requests makes getting sentencing information quick and easy.

One of the important ways in which the Commission's staff works with fellow agencies and criminal justice practitioners across the state is researching and compiling statistical data in response to information requests. MSGC staff responded to 375 data requests in 2018. These requests are most often made by lawyers or corrections agents to show evidence of specific sentencing practices to the court. However, the requests are also made by academics, students, other state agencies, legislative staff, law enforcement, and the press for other purposes. The topics range from departure data for a single type of offense within a given county to comparative data on how an offense has been sentenced from one jurisdiction to another.

### **Collaboration with Criminal Justice Agencies**

The staff's knowledge of felony sentencing and practice makes it a valued contributor to criminal justice policy discussions. Each year, Commission staff works with the Department of Corrections to generate prison bed projections. MSGC staff also serves on the Criminal and Juvenile Justice Information Advisory Group. Additionally, staff participated in trainings that were arranged by the Minnesota County Attorneys Association and Minnesota Association of Community Corrections Act Counties. Presentations were given to the Criminal Justice Institute and Tribal Court State Court Forum.

### **Fiscal Impact Statements & Demographic Impact Statements**

During the 2018 Legislative Session, staff provided fiscal impact statements for 38 bills. These impact statements include details as to any increase or decrease in adult offender populations, the estimated net increase in state correctional facility beds, and the impact on confinement in local correctional facilities. Staff provided all requested information within the time requirements set by the Legislature.

In 2008, MSGC staff began providing the Minnesota Legislature demographic impact statements<sup>50</sup> on certain crime bills when such a statement was anticipated to be helpful to the Legislature. When, in the course of preparing a required fiscal impact statement, MSGC staff identifies a bill that meets its criteria for preparing a demographic impact statement, it prepares such a statement and sends it to the chairs of the crime committees in the Senate and the House. This is done separately from the required fiscal-impact statements.

During the 2018 Legislative Session, three legislative policy proposals met the criteria for preparing a demographic impact statement: Both [Senate File 2699](#) and [House File 2904](#) would have increased penalties for child pornography offenses, and [House File 2964](#) would have required soliciting a prostitute offenders to register as predatory offenders. The full demographic impact statements are available on the MSGC web site.<sup>51</sup>

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<sup>50</sup> These had previously been referred to as "racial-impact statements."

<sup>51</sup> Full statements are available at <https://mn.gov/sentencing-guidelines/reports/#1>. In addition, the demographic impact of the Commission's proposed 2019 Guidelines modifications may be found in Appendix 3.2 (p 71).

# 2017 Sentencing Practices Data Summary

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

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

## Case Volume and Distribution

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Minnesota courts sentenced 18,288 felony offenders in 2017. This was the highest volume on record, surpassing the previous record set in 2016 (Figure 2, p. 18). The number of felony offenders sentenced increased eight percent (1,361 cases) from 2016 (Figure 3, p. 18), the largest year-to-year increase since 2003.

Increases in property offenses (up 10.4%) and person offenses (up 7.8%) accounted for most of the additional cases, although each of the other non-drug offense categories grew by more than ten percent (Figure 4, p. 19).

In addition to growth from 2010 to 2017, significant growth also occurred between 2001 and 2006, when the total volume of felony offenders sentenced rose by 52 percent. That increase was also largely attributable to growth in the number of drug crimes sentenced, particularly methamphetamine cases, as well as the implementation of the felony DWI law.

As a category, drug offenses experienced the smallest percentage increase (up 3.6%) from 2016 to 2017 (Figure 4, p. 19). By contrast, in the seven years from 2010 to 2017, the number of drug offenses grew by 71 percent, accounting for most of the 27-percent overall growth in felony offenders sentenced over those seven years.

The “weapon”<sup>52</sup> category also grew by 71 percent from 2010 to 2017. The specific offense that contributed the most to that growth in the “weapon” category was possession of a firearm by a felon convicted of a crime of violence, which increased from 234 offenders in 2010 to 435 offenders in 2017—an 86-percent increase. Person offenses grew by 14 percent during these seven years, while property offenses had the smallest growth rate, at twelve percent. Non-CSC sex offenses<sup>53</sup> grew by 22 percent, and “other”<sup>54</sup> offenses grew by 38 percent. The only

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<sup>52</sup> “Weapon” offenses include: possession of a firearm by a felon convicted of a crime of violence, firearm discharge, possession of teargas and explosive devices, and other weapon related offenses.

<sup>53</sup> “Non-CSC sex offenses” are offenses on the sex offender grid other than criminal sexual conduct (chiefly failure to register as a predatory offender and possession and dissemination of child pornography).

<sup>54</sup> “Other” category: Fleeing police, escape, and other offenses of less frequency including crimes against the government such as tax offenses, failure to appear in court, and aiding an offender.

offense category that showed a decline from 2010 to 2017 was felony driving while impaired (DWI), which fell by 15 percent.

Figure 2. Volume of Offenders Sentenced for Felony Convictions, 1981–2017

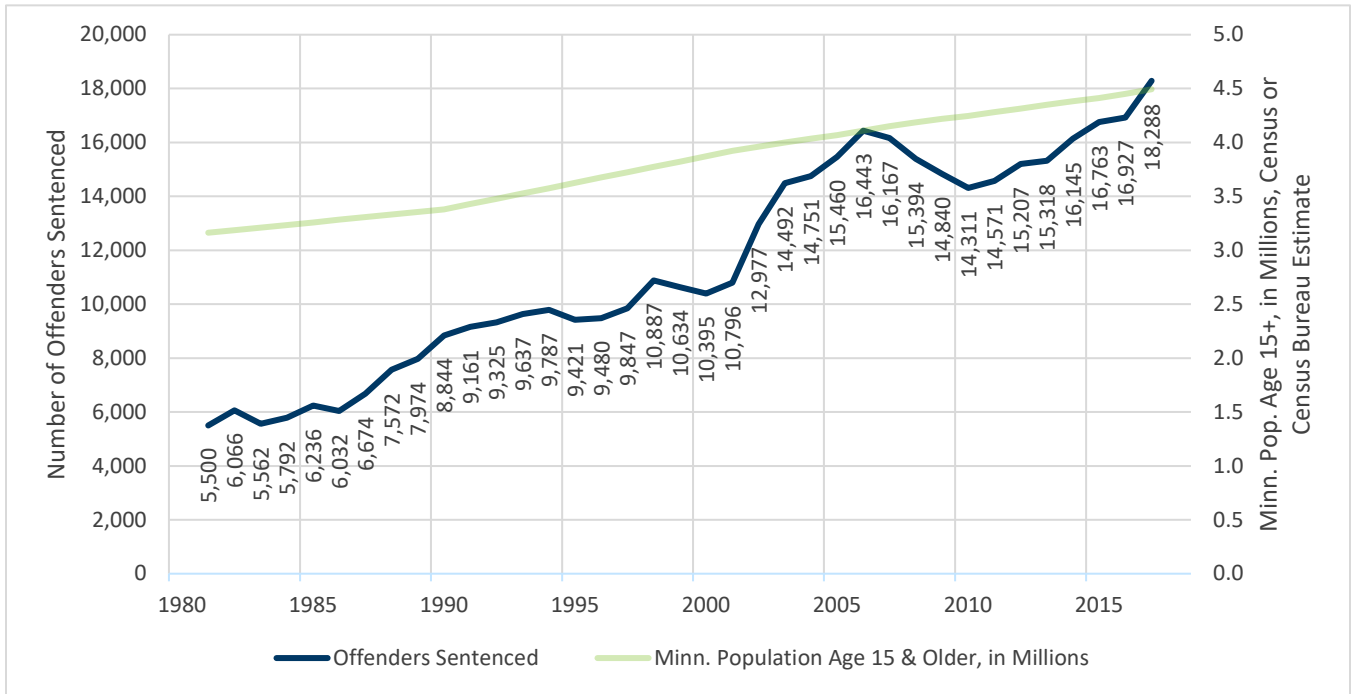
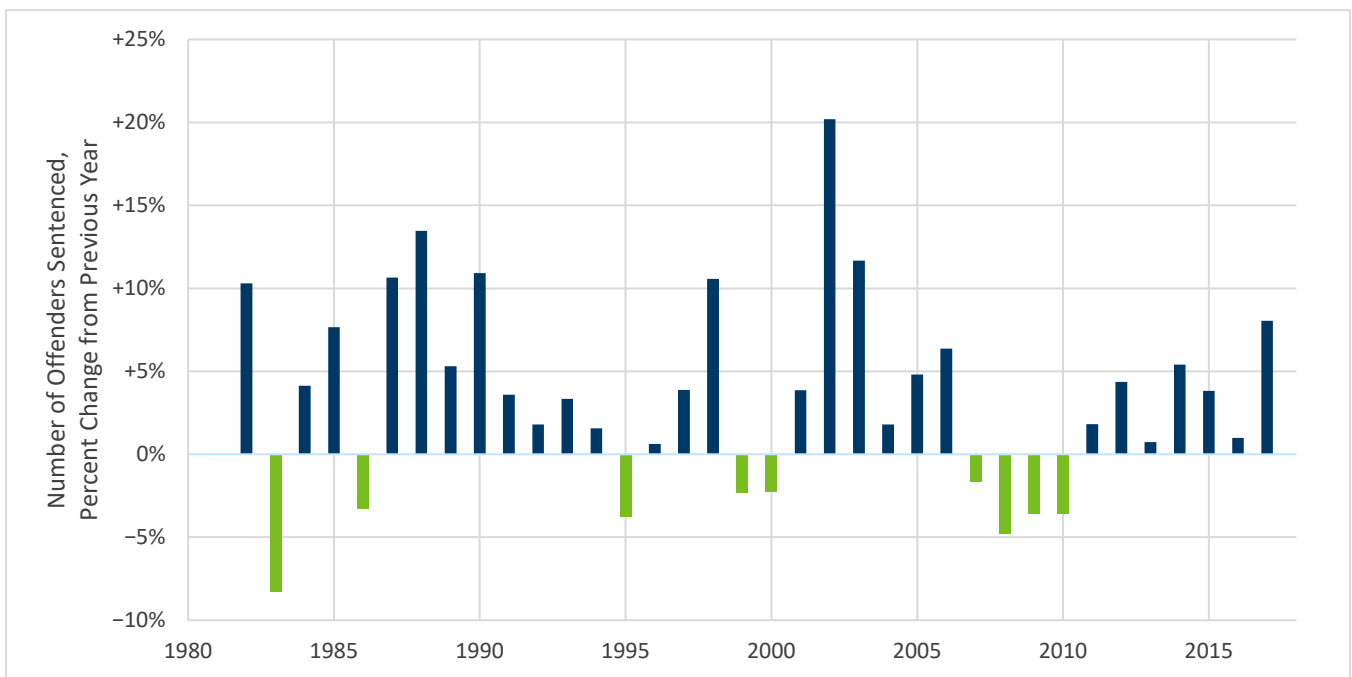


Figure 3. Percent Change in Number of Offenders Sentenced for Felony Convictions, 1982–2017





According to Department of Public Safety data, the crime rate has fluctuated over time. Over the past decade, both the number of “index crimes” and the index crime rate have fallen in every year except 2012 and 2017. From 2016 to 2017, reports of “violent crimes” rose by 0.5 percent, reports of “property crimes” rose by 4.4 percent, and the population-adjusted index crime rate rose by 2.9 percent.<sup>55</sup>

## Change in Case Volume by Offense Type

Figure 4 shows the year-to-year percent change, by offense type, in the number of offenders sentenced, and Figure 5 shows the number of offenders sentenced by offense type from 2002 to 2017.

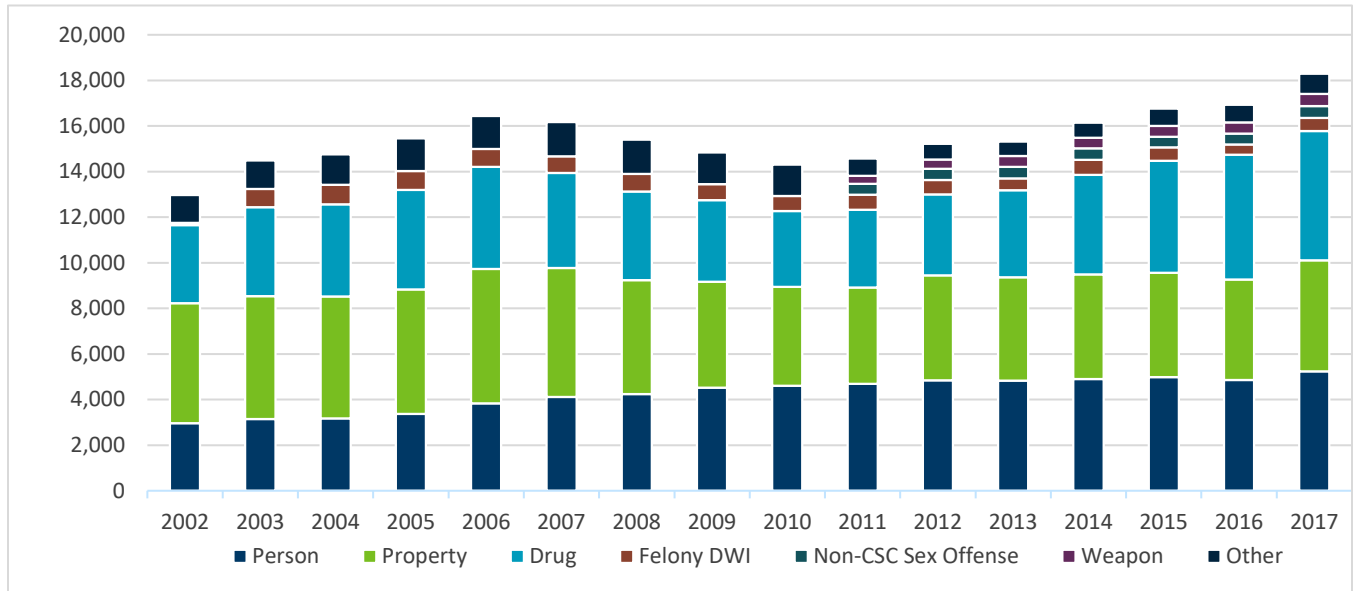
Figure 4. Offenders Sentenced, Percent Change from Previous Year, by Offense Type, 2001–2017

Year Sentenced	All Offenses	Person	Property	Drug	Felony DWI	Non-CSC Sex Offense	Weapon	Other
2001	+3.9%	+3.8%	+4.2%	0.0%				+13.3%
2002	+20.2%	+10.4%	+17.9%	+31.9%				+16.3%
2003	+11.7%	+6.2%	+2.4%	+13.8%				+2.2%
2004	+1.8%	+1.1%	-0.8%	+3.6%	+6.2%			+6.2%
2005	+4.8%	+6.4%	+2.0%	+8.1%	-3.0%			+7.6%
2006	+6.4%	+13.7%	+7.9%	+2.7%	-5.5%			+1.1%
2007	-1.7%	+7.3%	-4.0%	-7.1%	-6.7%			+3.7%
2008	-4.8%	+2.9%	-11.5%	-6.9%	+6.0%			-0.1%
2009	-3.6%	+6.6%	-7.0%	-7.7%	-9.6%			-7.0%
2010	-3.6%	+2.0%	-6.8%	-7.0%	-5.3%	+3.1%	-1.3%	-3.0%
2011	+1.8%	+1.7%	-2.4%	+2.5%	-1.0%	+9.9%	+9.8%	+20.3%
2012	+4.4%	+3.5%	+8.8%	+4.2%	-4.4%	+4.0%	+18.8%	-11.5%
2013	+0.7%	-0.1%	-1.7%	+7.6%	-19.2%	+4.6%	+13.4%	-5.2%
2014	+5.4%	+1.4%	+1.3%	+14.2%	+28.6%	-2.1%	+0.2%	+2.6%
2015	+3.8%	+1.6%	-0.3%	+12.6%	-10.5%	-7.1%	+2.1%	+15.0%
2016	+1.0%	-2.5%	-3.6%	+11.4%	-19.1%	-4.3%	+1.3%	+2.2%
2017	+8.0%	+7.8%	+10.4%	+3.6%	+20.0%	+16.9%	+11.2%	+13.2%

For explanations of the “Non-CSC sex offenses,” “Weapon,” and “Other” categories, see footnotes 52–54. “Other” category also includes DWI before 2004 and non-CSC sex offenses and weapon offenses before 2010.

<sup>55</sup> “Index crimes” are comprised of “violent crimes” (Murder, Forcible Rape, Robbery, Aggravated Assault, Human Trafficking – Commercial Sex Acts, and Human Trafficking – Involuntary Servitude) and “property crimes” (Burglary, Larceny, Motor Vehicle Theft, and Arson). From 2016 to 2017, violent crimes rose from 13,407 to 13,476; property crimes rose from 117,534 to 122,698; and the index crime rate rose from 2372.2 to 2441.9 per 100,000 in population. 1995 to

Figure 5. Number of Offenders Sentenced by Offense Type, 2002–2017



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

Males have always accounted for more than 80 percent of the felony offenders in Minnesota. In 2017, 80.4 percent of the offenders sentenced were male and 19.6 percent were female (Table 1). Figure 6 shows the racial and ethnic composition of the felony offender population from 1981 through 2017. The percentage of offenders who were white decreased by 25 percentage points between 1981 (81.8%) and 2009 (56.5%). This was largely due to an increase in the percentage of black offenders, although the percentage of other non-white offenders (particularly Hispanic offenders) also increased.

Figure 7 displays the 2017 distribution of the racial and ethnic composition of offender populations by Minnesota judicial district. The largest populations of black offenders were in the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County). These districts include the cities of St. Paul and Minneapolis, respectively. A map of the judicial districts can be found in Appendix 6 (p. 80).

2017 Uniform Crime Reports, State of Minnesota, Department of Public Safety, obtained September 2018 at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Pages/uniform-crime-reports.aspx>.

Figure 6. Distribution of Felony Offenders by Race & Ethnicity, 1981–2017

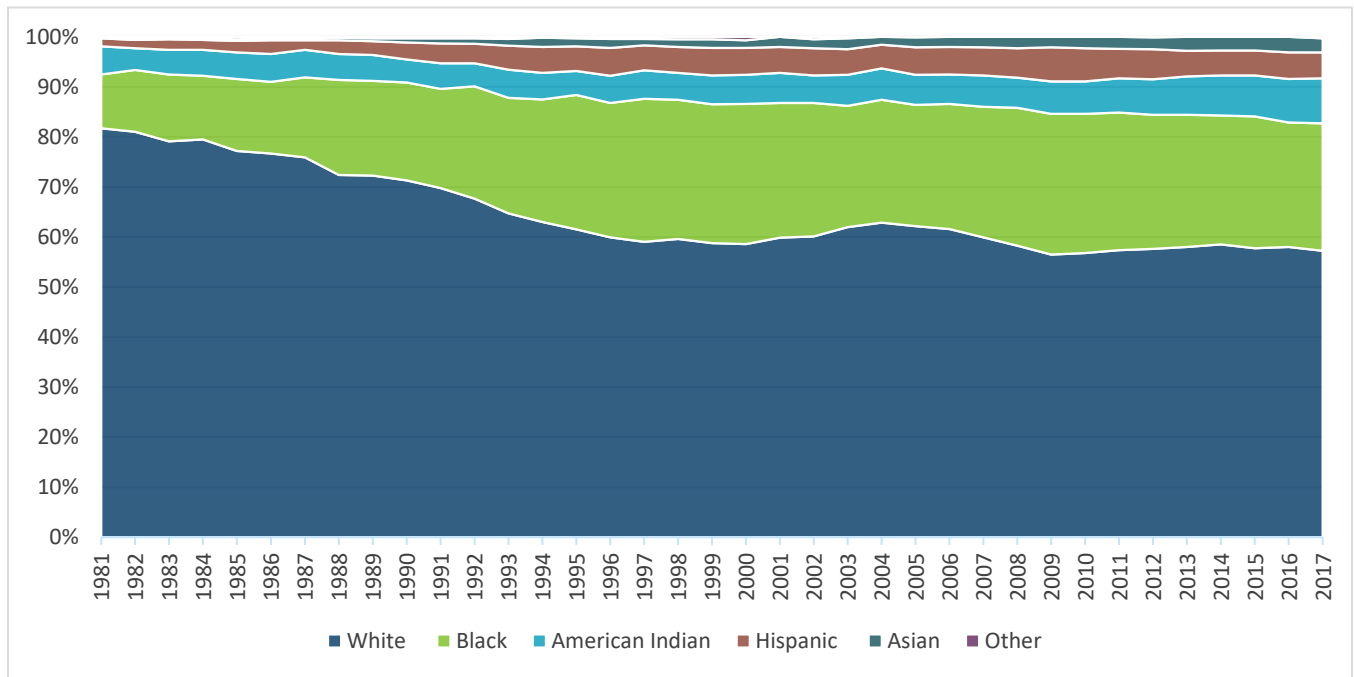


Figure 7. Distribution of Felony Offenders by Race & Ethnicity and Judicial District, 2017

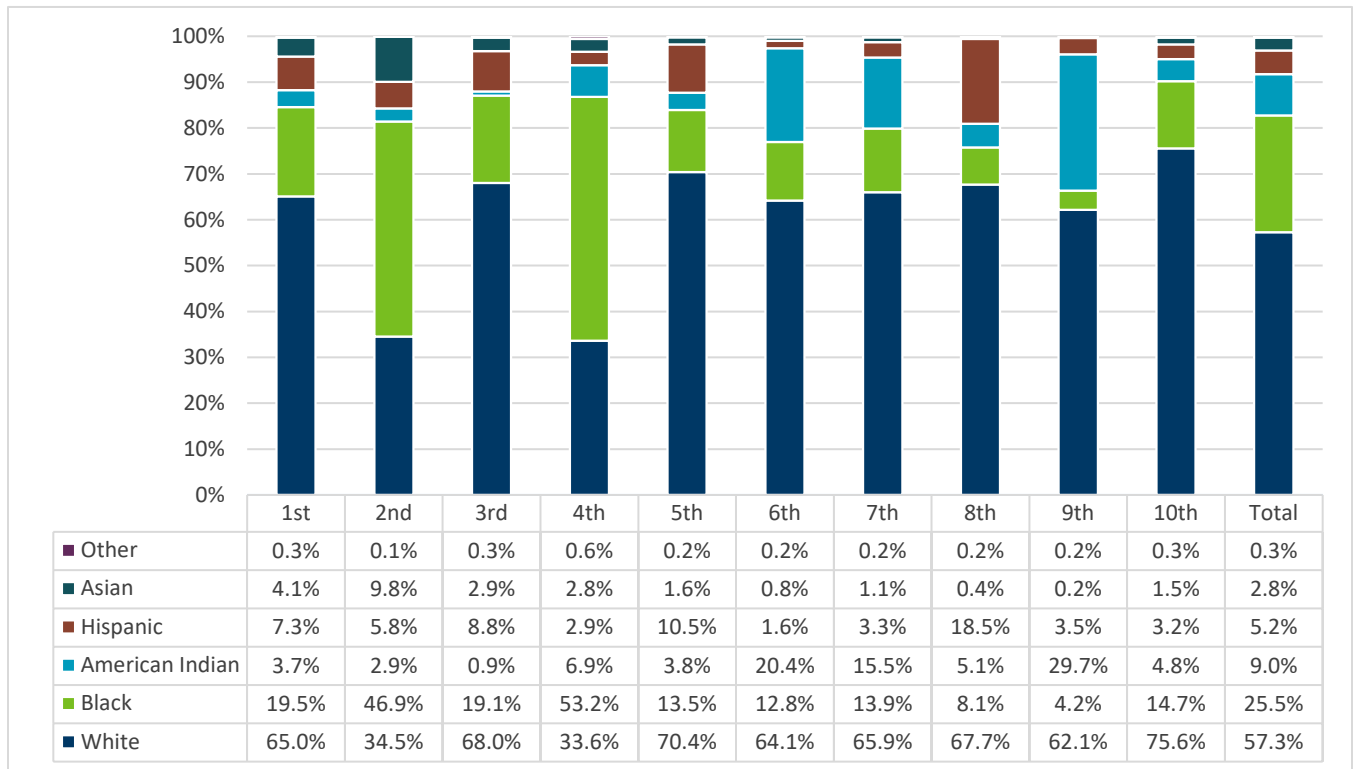


Table 1 compares, by the categories of sex, race & ethnicity, and judicial district, the population of felony offenders sentenced in 2017 with the 2017 estimated state population, age 15 and older. Within those comparison categories, Table 1 also calculates the rate of offenders sentenced in 2017 per 100,000 residents.

*Table 1. Offenders Sentenced, 2017, by Gender, Race & Ethnicity, and Judicial District, Compared to 2017 Estimated Population Age 15 Years and Older*

	Offenders Sentenced		U.S. Census Category	2017 Estimated Pop. Age 15 & Older		Offenders Sentenced per 100,000	
	MSGC Category	Number		Percent	Number		Percent
	Male	14,703	80.4%	Male	2,223,712	49.5%	661
	Female	3,584	19.6%	Female	2,270,163	50.5%	158
Race & Ethnicity	White	10,480	57.3%	White*	3,755,112	83.6%	279
	Black	4,656	25.5%	Black or African American*	279,784	6.2%	1,664
	American Indian	1,640	9.0%	American Indian*	70,247	1.6%	2,335
	Hispanic**	942	5.2%	Hispanic**	203,250	4.5%	463
	Asian	514	2.8%	Asian*	234,126	5.2%	220
	Other/Unknown	55	0.3%	Native Hawaiian/Other Pacific Islander*	4,998	0.1%	***
Judicial District****	First	2,404	13.1%	First	628,830	14.0%	382
	Second	1,815	9.9%	Second	439,934	9.8%	413
	Third	1,426	7.8%	Third	386,982	8.6%	368
	Fourth	3,819	20.9%	Fourth	1,019,718	22.7%	375
	Fifth	1,006	5.5%	Fifth	233,192	5.2%	431
	Sixth	912	5.0%	Sixth	210,739	4.7%	433
	Seventh	1,972	10.8%	Seventh	392,773	8.7%	502
	Eighth	492	2.7%	Eighth	128,819	2.9%	382
	Ninth	1,818	9.9%	Ninth	275,394	6.1%	660
	Tenth	2,624	14.3%	Tenth	777,494	17.3%	337
	<b>Total</b>	<b>18,288</b>	<b>100.0%</b>	<b>Total</b>	<b>4,493,875</b>	<b>100.0%</b>	<b>407</b>

Source of July 1, 2017, population estimate: U.S. Census Bureau (June 2018).

\*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 (101.2%) because residents of more than one race are counted in more than one category.

\*\*Table 1 lists all Hispanic offenders and residents as Hispanic, regardless of race.

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

\*\*\*\*See Appendix 6 (p. 80) for a map of Minnesota's ten judicial districts.

## Incarceration Rates

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Under Minn. Stat. § [609.02](#), a felony sentence must be at least 366 days long. Sentences of one year or less are gross misdemeanors or misdemeanors and are served in local correctional facilities (i.e., county jail or workhouse).

The Guidelines presume who should go to state prison and for how long. Imprisonment rates are related to the Guidelines recommendations and are based on the seriousness of the offense and the offender's criminal history score. In cases in which prison sentences are stayed, the court usually places the offender on probation. As a condition of probation, the court may impose up to one year of local confinement. Probationers usually serve time in a local facility (i.e., county jail or workhouse) and are often given intermediate sanctions such as treatment (residential or nonresidential), restitution, and fines.

There are no specific guidelines to the court regarding the imposition of these intermediate sanctions.<sup>56</sup>

### Total Incarceration

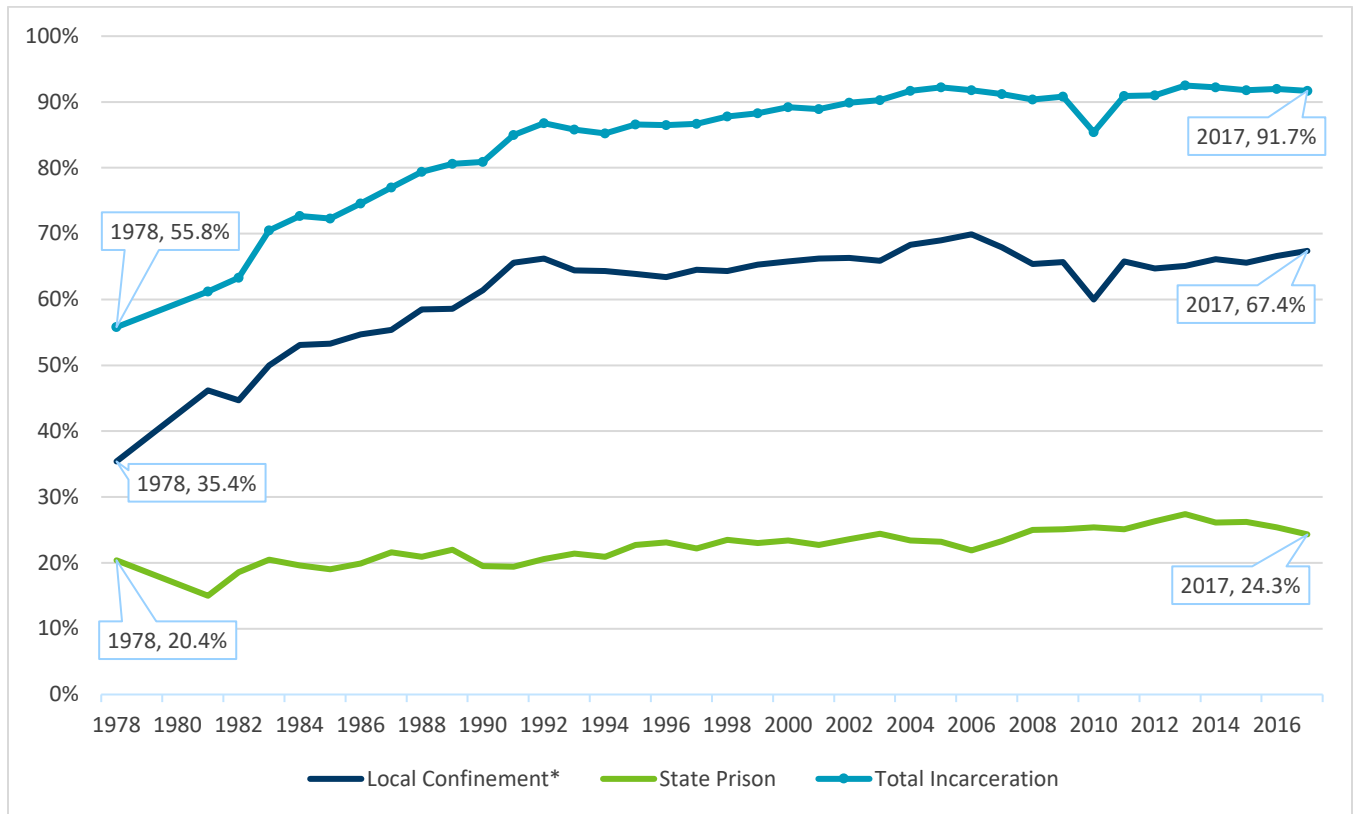
The total incarceration rate describes the percentage of offenders who received a sentence that included incarceration in a state prison or local confinement (i.e., county jail, local correctional facility, or workhouse), following conviction. The 2012–15 imprisonment rates were the highest rates observed since the Guidelines were implemented. In 2016 and 2017, the imprisonment rate declined to 25.4 percent and 24.3 percent, respectively (State Prison, Figure 8). In 2017, 91.7 percent of felony offenders served either local confinement time or state prison time (Total Incarceration, Figure 8): 67.4 percent served local confinement time<sup>57</sup> as part of their stayed sentence (Local Confinement, Figure 8); and 24.3 percent were sentenced to state prison (State Prison, Figure 8).

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<sup>56</sup> While the Commission is authorized to establish, within the Sentencing Guidelines, sanctions for offenders for whom imprisonment is not proper ([Minn. Stat. § 244.09](#), subd. 5), it has chosen not to develop specific Guidelines for the sanctions and other conditions of stayed sentences. The determination of such sanctions and conditions is left to district courts, with general guidance provided in Minnesota Sentencing Guidelines § 3.A.2.

<sup>57</sup> When a felony sentence is “stayed,” the court may impose up to one year of confinement in a local correctional facility such as a county jail or workhouse.

Figure 8. Total Incarceration Rates: 1978, 1981–2017



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

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

Table 2, below, provides total incarceration information for offenders sentenced in 2017.

### Race & Ethnicity

The total incarceration rate varies somewhat across racial groups (ranging from 90.8% for white offenders to 93.6% for Asian offenders). Greater variation by race exists in the separate imprisonment rates (State Prison) and local confinement. Among five racial groups, white offenders had the lowest actual (21.3%), whereas black offenders had the highest actual (29.7%) imprisonment rates (Table 2).

### Judicial District

Variation was also observed in incarceration rates by judicial district. The Second Judicial District (Ramsey County) had the highest total incarceration rate (98.5%) and the Ninth Judicial District (northwest Minnesota) had the lowest total incarceration rate (81.7%). Variation was also seen with respect to the separate rates for

prison and local confinement. The Seventh Judicial District (west-central counties) had the highest imprisonment rate (27.9%), and the First Judicial District (southern metro counties) had the lowest imprisonment rate (20.3%). With regard to use of local confinement, the Tenth Judicial District had the highest rate (74%), and the Ninth Judicial District had the lowest rate (55.7%). See Appendix 6 (p. 80) for a map of Minnesota’s ten judicial districts.

Table 2. Total Incarceration Rates by Gender, Race & Ethnicity, and Judicial District, 2017 and 2012–16 Rate

	MSGC Category	Total Number	Total Incarceration		Local Confinement		State Prison		
			Number	Rate (%)	Number	Rate (%)	Number	2017 Rate (%)	2012–16 5-Yr. Rate
	Male	14,703	13,605	92.5	9,560	65.0	4,045	27.5	29.2
	Female	3,584	3,159	88.1	2,757	76.9	402	11.2	12.7
Race & Ethnicity	White	10,480	9,521	90.8	7,287	69.5	2,234	21.3	22.9
	Black	4,656	4,312	92.6	2,930	62.9	1,382	29.7	32.8
	American Indian	1,640	1,528	93.2	1,079	65.8	449	27.4	28.1
	Hispanic	942	872	92.6	617	65.5	255	27.1	30.2
	Asian	514	481	93.6	363	70.6	118	23.0	24.3
	Other/Unknown	55	50	90.9	41	74.5	9	16.4	11.8
Judicial District	First	2,404	2,243	93.3	1,756	73.0	487	20.3	20.7
	Second	1,815	1,787	98.5	1,329	73.2	458	25.2	29.3
	Third	1,426	1,232	86.4	865	60.7	367	25.7	25.6
	Fourth	3,819	3,399	89.0	2,408	63.1	991	25.9	30.5
	Fifth	1,006	914	90.9	706	70.2	208	20.7	21.7
	Sixth	912	828	90.8	602	66.0	226	24.8	21.8
	Seventh	1,972	1,917	97.2	1,367	69.3	550	27.9	29.9
	Eighth	492	464	94.3	329	66.9	135	27.4	28.2
	Ninth	1,818	1,486	81.7	1,012	55.7	474	26.1	26.6
	Tenth	2,624	2,494	95.0	1,943	74.0	551	21.0	23.4
	<b>Total</b>	<b>18,288</b>	<b>16,764</b>	<b>91.7</b>	<b>12,317</b>	<b>67.4</b>	<b>4,447</b>	<b>24.3</b>	<b>26.3</b>

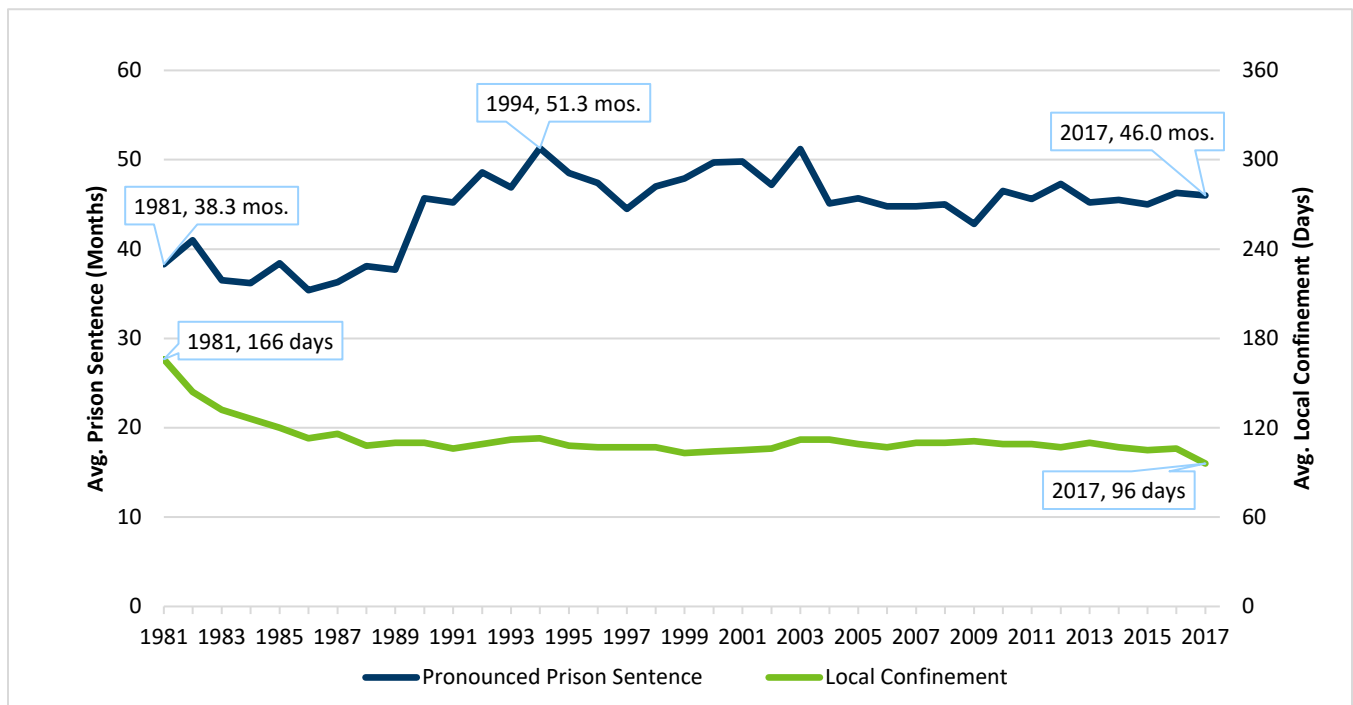
\*See Appendix 6 (p. 8057) for a map of Minnesota’s ten judicial districts.

## Average Pronounced Prison Sentence and Local Confinement

The average pronounced prison sentence in 2017 was 46 months, a slight decrease from 2016 (Figure 9). The average varied by applicable Grid: 43 months for offenders with presumptive sentences on the Standard Grid,

and 72 months for offenders with presumptive sentences on the Sex Offender Grid.<sup>58</sup> The average amount of local confinement pronounced was 96 days in 2017, the lowest average on record (Figure 9). The average amount of local confinement remained in a fairly narrow range—between 103 and 113 days—from 1988 through 2016.

Figure 9. Average Pronounced Prison Sentences and Local Confinement, 1981–2017



## Life Sentences

Seven offenders received life sentences, five for first-degree murder and two for first-degree criminal sexual conduct. Six of those life sentences were with no release possible.<sup>59</sup> Offenders with life sentences are excluded from the average pronounced prison sentences reported.

<sup>58</sup> In 2017, six offenders (0.1%) were sentenced for offenses committed before August 1, 2005, some of which were sex offenses. The applicable pre-2005 Standard Grid was therefore used to determine the presumptive sentence. The average pronounced sentence for these offenses was 193 months.

<sup>59</sup> In four cases, the mandatory penalty of life without the possibility of release resulted from the automatic application of [Minn. Stat. § 609.106](#), subd. 2(1) (requiring life without release upon conviction of certain types of first-degree murder), to [Minn. Stat. § 609.185\(a\)\(1\)](#) (premeditated murder). In one case, the mandatory penalty of life without the possibility of release resulted from the application of [Minn. Stat. § 609.3455](#), subd. 2(a)(1) (requiring life without release upon conviction of certain sex offenses when two or more heinous elements are found), to [Minn. Stat. § 609.342](#), subd. 1(h)(ii) (first-degree criminal sexual conduct, under 16, significant relationship and personal injury). Additionally, there was one case of first-degree murder that was consecutive to first-degree murder of an unborn child under [Minn. Stat. § 609.2661\(1\)](#).



## Departures from the Sentencing Guidelines

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A “departure” is a pronounced sentence other than that recommended in the appropriate cell of the applicable Guidelines Grid. There are two types of departures – dispositional and durational – as further explained below. Since the presumptive sentence is based on “the typical case,” the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

While the court ultimately makes the sentencing decision, most sentences pronounced by the court are based on judicial acceptance of plea agreements between prosecutors and defendants after victim input. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys commonly arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Prosecutors did not object to at least 58 percent of mitigated dispositional departures, nor to at least 74 percent of mitigated durational departures.<sup>60</sup>

When there is a departure from the presumptive sentence, the court is required to submit reasons for the departure to the Commission.<sup>61</sup> Along with reasons for departure, the court may supply information about the position of the prosecutor regarding the departure. In 2017, the Commission received departure reasons or information about the position of the prosecutor 97 percent of the time, and 97 percent of felony convictions were settled without a trial. The Commission recognizes the need to balance the importance of plea agreements with the goals of the Guidelines. In the case of a plea agreement, the Commission asks courts to explain the underlying reasons for the plea agreement or for the court’s acceptance of it.<sup>62</sup>

### Total Departures

In 2017, 75.5 percent of the total number of felony offenders (18,288) sentenced received the presumptive Guidelines sentence. The remaining 24.5 percent received some type of departure; i.e., aggravated, mitigated, or “mixed,” which includes both dispositional and durational departures (Figure 10).

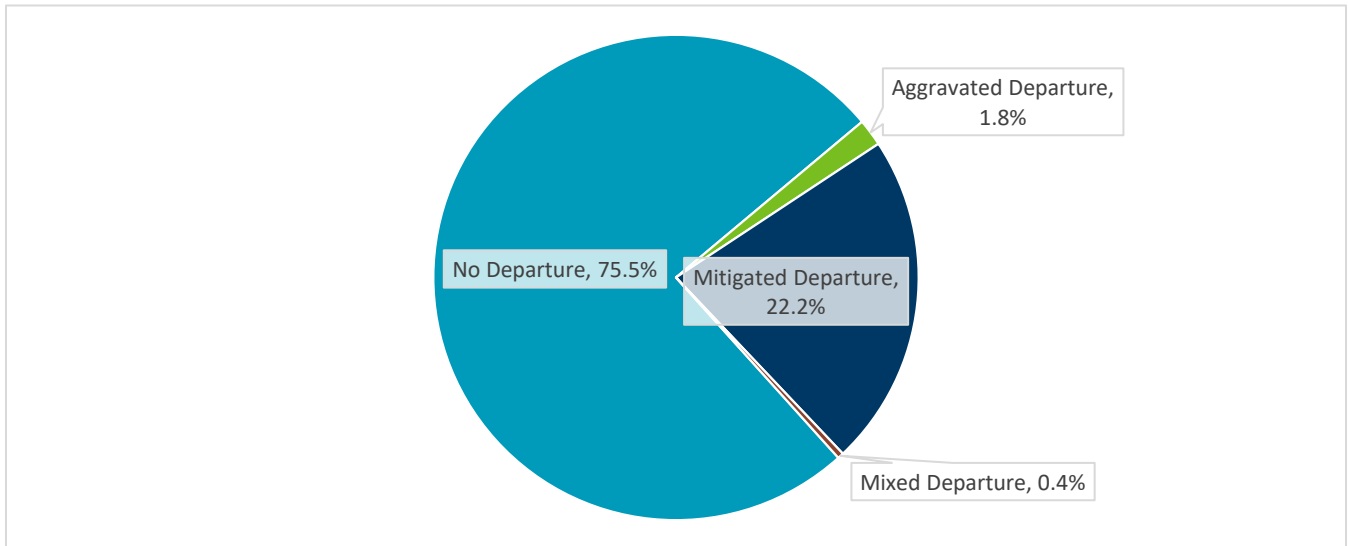
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<sup>60</sup> See Figure 13 and Figure 15.

<sup>61</sup> Minn. R. Crim. P. [27.03](#), subd. 4(C).

<sup>62</sup> See Minn. Sentencing Guidelines comment 2.D.104 (“Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the Guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to make informed policy decisions or to ensure consistency, proportionality, and rationality in sentencing. Departures and their reasons highlight both the success and problems of the existing Guidelines. When a plea agreement involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain its reasons for accepting the negotiation.”).

Figure 10. Combined Dispositional and Durational Departure Rates, 2017



### Dispositional Departures

While Figure 10, above, reports both the dispositional and durational departure rates among all cases, this section examines only dispositional departures. A “dispositional departure” occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: aggravated dispositional departures and mitigated dispositional departures. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces an executed prison sentence. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence.

In 2017, the combined mitigated and aggravated dispositional departure rate was 12.8 percent: 11.7 percent mitigated (Figure 11) and 1.1 percent aggravated (Figure 11, inset). Effective with the August 1, 2015, amendments to Minnesota Sentencing Guidelines § 2.D.1, a sentence that is executed pursuant to an offender’s right to demand execution is no longer considered an aggravated dispositional departure. This change has resulted in a decrease in the aggravated dispositional departure rate from previous years. In 2015, the overall aggravated dispositional departure rate was 4.2 percent and the rate for presumptive stayed sentences was 6.2 percent. The decrease in aggravated dispositional departure rates is apparent in the 2017 sentencing data.<sup>63</sup>

<sup>63</sup> For cases sentenced in 2017, 87% of the presumptive stayed cases had an offense date within the scope of the 2015 change. The aggravated dispositional departure rate for those cases was 1.1%, compared to 5.2% for 2017 cases with offense dates prior to August 1, 2015. There were 407 post-August 1, 2015, presumptive stay cases where the offender received a prison sentence that was not counted as a dispositional departure because the sentence was executed pursuant to the offender’s right to demand execution.

Figure 11. Dispositional Departure Rates with and without Requests for Prison from Defendant, 2017

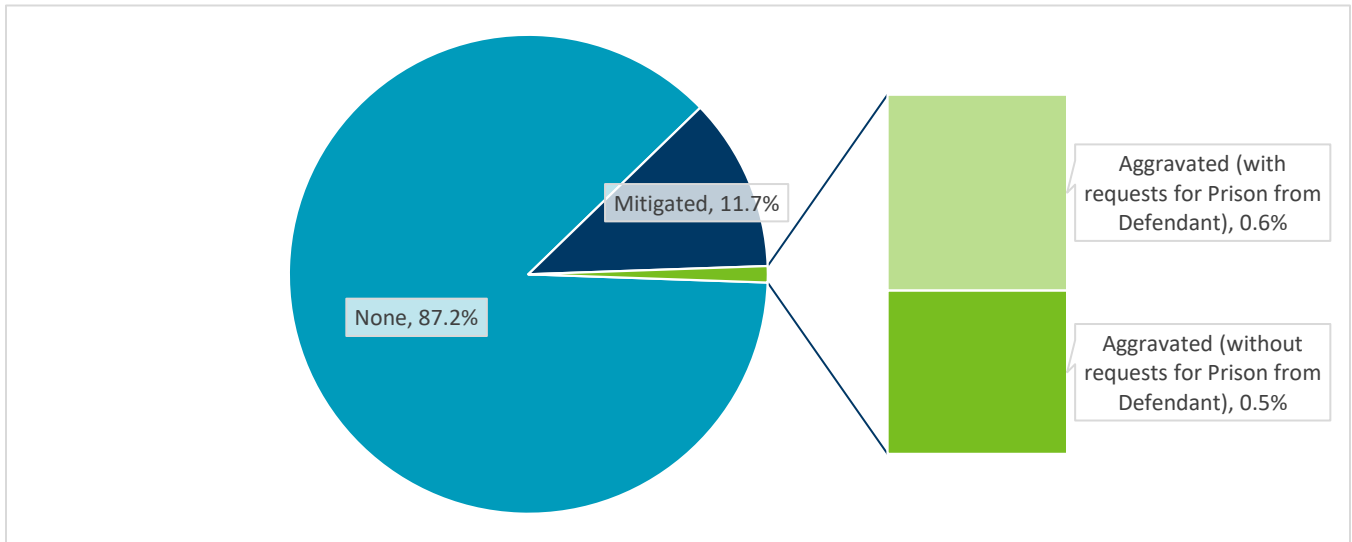


Table 3 lists dispositional departure rates based on presumptive disposition by gender, race, and judicial district. The aggravated dispositional departure rate for offenders recommended a stayed sentence (“Presumptive Stays”) was 1.6 percent. The mitigated dispositional departure rate for offenders who were recommended prison (“Presumptive Commits”) was 35.8 percent.

The mitigated dispositional departure rate is higher for women (55.9%) than men (33.7%). When examined by racial and ethnic composition, the mitigated dispositional departure rate ranged from a low of 28.4 percent for American Indian offenders to a high of 39.7 percent for Asian offenders, and a high of 64.7 percent for “Other” race/ethnicity. There was also variation in the rate by judicial district, ranging from a low of 27.8 percent in the Seventh Judicial District (includes the City of St. Cloud) to a high of 41 percent in the Fifth Judicial District (includes the City of Mankato). This is a smaller variation than seen in 2016, where the range by judicial district was 23.1 to 45.9 percent.

When reviewing Table 3, note that the observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced, criminal history scores of offenders across racial groups or across regions, and available local correctional resources. (See Appendix 6 on page 80 for a map of Minnesota’s ten judicial districts.)

Table 3. Dispositional Departure Rates by Presumptive Disposition, by Gender, Race & Ethnicity, and Judicial District, 2017 and 2012–16 Rate

		Total Number	Presumptive Stays			Presumptive Commitments			
			Total	Aggravated Dispositional Departure		Total	Mitigated Dispositional Departure		
				Number	Rate (%)		Number	2017 Rate (%)	2012–16 5-Yr. Rate
	Male	14,703	9,326	146	1.6	5,377	1,812	33.7	32.1
	Female	3,584	3,012	55	1.8	572	320	55.9	52.4
Race & Ethnicity	White	10,480	7,487	122	1.6	2,993	1,156	38.6	37.1
	Black	4,656	2,738	33	1.2	1,918	643	33.5	31.6
	American Indian	1,640	1,105	24	2.2	535	152	28.4	29.0
	Hispanic	942	607	11	1.8	335	110	32.8	29.5
	Asian	514	363	10	2.8	151	60	39.7	30.7
	Other/Unknown	55	38	1	2.6	17	11	64.7	33.3
Judicial District	First	2,404	1,737	34	2.0	667	264	39.6	38.7
	Second	1,815	1,106	12	1.1	709	289	40.8	30.2
	Third	1,426	955	18	1.9	471	173	36.7	34.7
	Fourth	3,819	2,424	26	1.1	1,395	486	34.8	34.5
	Fifth	1,006	706	6	0.8	300	123	41.0	43.9
	Sixth	912	583	8	1.4	329	129	39.2	43.8
	Seventh	1,972	1,320	27	2.0	652	181	27.8	26.2
	Eighth	492	343	6	1.7	149	43	28.9	28.2
	Ninth	1,818	1,305	43	3.3	513	152	29.6	32.5
	Tenth	2,624	1,860	21	1.1	764	292	38.2	33.6
	<b>Total</b>	<b>18,288</b>	<b>12,339</b>	<b>201</b>	<b>1.6</b>	<b>5,949</b>	<b>2,132</b>	<b>35.8</b>	<b>34.0</b>

See Appendix 6 (p. 80) for a map of Minnesota’s ten judicial districts.

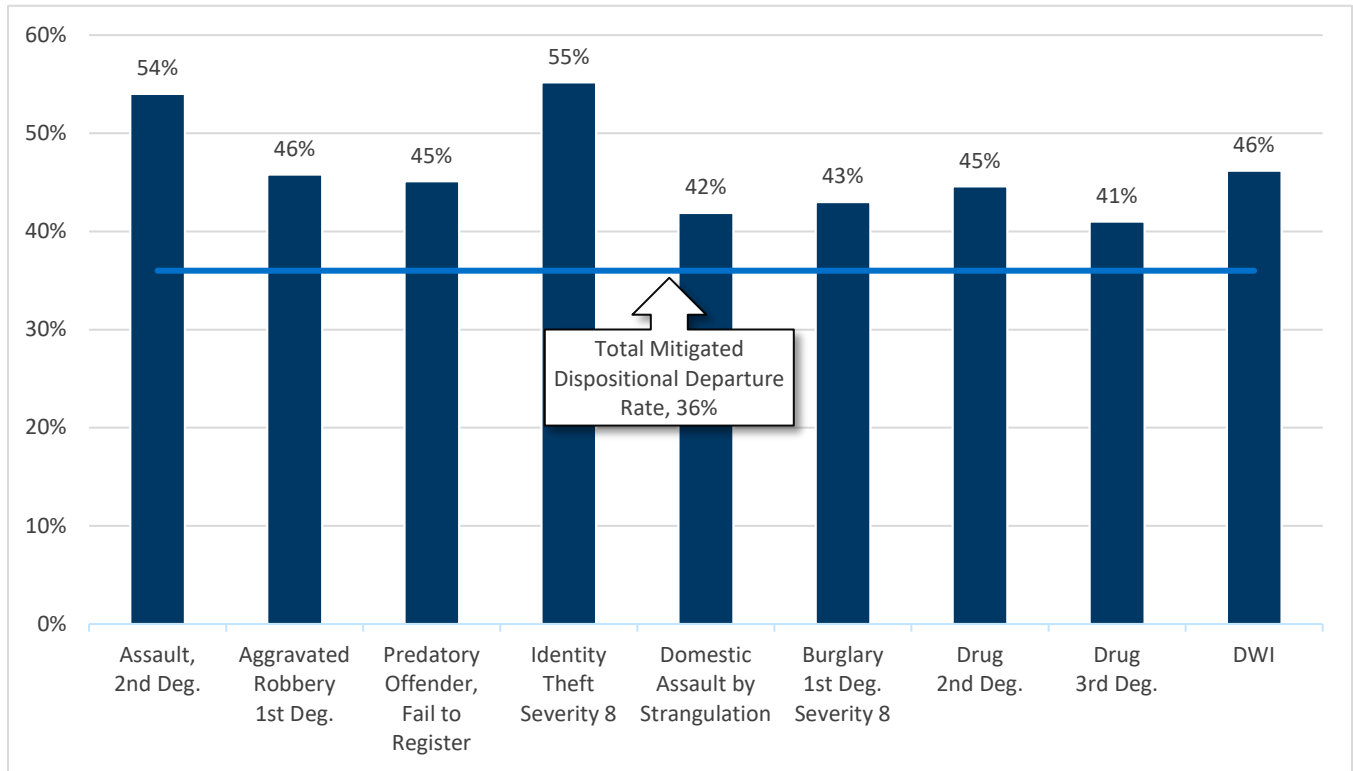
Dispositional departure rates vary for the type of offense. Figure 12 displays the offenses with the highest rates of mitigated dispositional departure compared to the total rate of 36 percent, and Figure 13 displays the position of the prosecutor as cited by the court.<sup>64</sup>

In 58 percent of mitigated dispositional departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 16 percent of these cases, the court stated that the prosecutor objected to the departure (Figure 13, “Total”). The court did not supply

<sup>64</sup> The offenses were selected based on criteria that there were 50 or more “presumptive commitment” cases and the mitigated dispositional departure rate of 41% or more.

information on the prosecutor’s position in 26 percent of these departures. In all offense categories, amenability to probation and amenability to treatment were the most frequently cited substantial and compelling reasons for departure recorded.

Figure 12. Mitigated Dispositional Departure Rates for Selected\* Offenses Compared to Total Rate, 2017



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

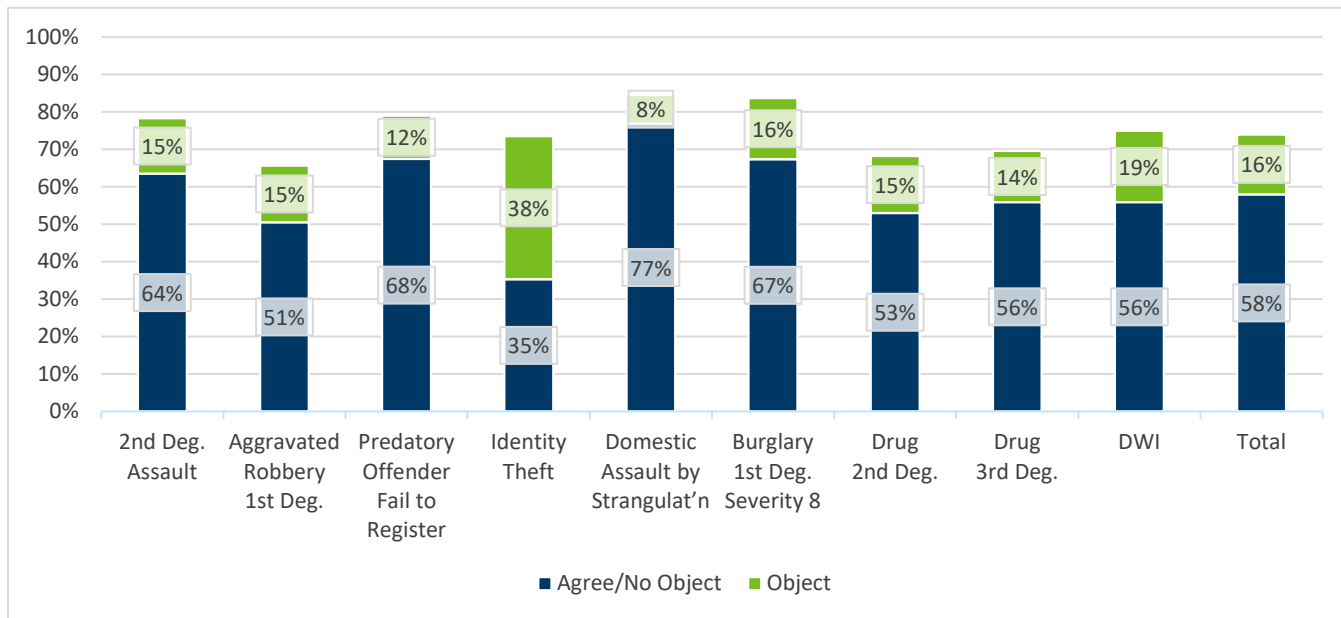
Two of the selected<sup>65</sup> offenses in Figure 12 and Figure 13, assault in the second degree and failure to register as a predatory offender, have mandatory minimum sentences specified in statute, with provisions allowing for departure from those mandatory minimums.

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

<sup>65</sup> See footnote 64 for selection criteria.

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

Figure 13. Court-Cited Position of Prosecutor for Mitigated Dispositional Departures, Selected\* Offenses, 2017



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

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

### Durational Departures

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

From 2016 to 2017, the mitigated durational departure rate fell from 23.7 percent to 21.9 percent. The aggravated durational departure rate also fell, from 2.8 percent to 2.6 percent. The trend in lower aggravated durational departure rates since the mid-2000s likely reflects the impact of increased presumptive sentences over the past years and issues related to the U.S. Supreme Court ruling in *Blakely v. Washington*, 542 U.S. 296

(2004), which required a jury to find all facts—other than the fact of a prior conviction or those facts agreed to by the defendant—used to enhance a sentence under mandatory sentencing guidelines.<sup>66</sup>

In response to the *Blakely* decision, the 2005 Legislature widened the ranges on the Standard Grid to 15 percent below and 20 percent above the presumptive fixed sentence, within which the court may sentence without departure. In 2006, a Sex Offender Grid was adopted. The Sex Offender Grid introduced higher presumptive sentences for repeat offenders and offenders with prior criminal history records.<sup>67</sup>

Table 4 illustrates durational departure rates for executed prison sentences by gender, race and ethnicity, and judicial district. The mitigated durational departure rate for males sentenced in 2017 was higher than for females (22% vs. 20%). When the departure rate is examined by racial and ethnic composition, the rate varies from a low of 16 percent for American Indian and Hispanic offenders to a high of 30.5 percent for black offenders. There is also considerable variation in mitigated durational departure rates by Minnesota Judicial District, ranging from a low of eight percent in the Eighth Judicial District to a high of 42 percent in the Fourth Judicial District.

When reviewing the information in Table 4, it is important to note that the observed variations may be partly explained by regional differences in case volume, charging practices, and plea agreement practices, as well as differences in the types of offenses sentenced and criminal history scores of offenders across racial groups or across regions. A map of Minnesota’s ten judicial districts can be found in Appendix 6 (p. 80).

*Table 4. Durational Departure Rates by Gender, Race & Ethnicity, and Judicial District, Executed Prison Sentences Only, 2017 and 2012–16 Rate*

		Number Executed Prison	Total Durational Departure Rate (%)	Durational Departures, Executed Prison Sentences Only						
				No Departure		Aggravated		Mitigated		
				Number	Rate	Number	Rate	Number	2017 Rate	2012–16 5-Yr. Rate
	Male	4,045	24.8	3,042	75.2	109	2.7	894	22.1	25.7
	Female	402	21.6	315	78.4	6	1.5	81	20.1	21.5
Race & Ethnicity	White	2,234	21.0	1,765	79.0	55	2.5	414	18.5	20.0
	Black	1,382	33.6	918	66.4	43	3.1	421	30.5	35.6
	American Indian	449	18.0	368	82.0	9	2.0	72	16.0	17.4
	Hispanic	255	17.6	210	82.4	4	1.6	41	16.1	22.6
	Asian	118	25.4	88	74.6	4	3.4	26	22.0	33.8
	Other/Unknown	9	11.1	8	88.9	0	0.0	1	11.1	50.0

<sup>66</sup> The Minnesota Supreme Court determined that *Blakely’s* jury requirements applied to aggravated departures under the Minnesota Sentencing Guidelines. *State v. Shattuck*, 704 N.W.2d 131 (Minn. 2005).

<sup>67</sup> For a deeper examination of the effect of the *Blakely* decision on sentencing practices, see the MSGC special report: *Impact of Blakely and Expanded Ranges on Sentencing Grid*, at: <http://mn.gov/sentencing-guidelines/reports/>.

		Number Executed Prison	Total Durational Departure Rate (%)	Durational Departures, Executed Prison Sentences Only						
				No Departure		Aggravated		Mitigated		
				Number	Rate	Number	Rate	Number	2017 Rate	2012–16 5-Yr. Rate
Judicial District	First	487	18.7	396	81.3	14	2.9	77	15.8	19.8
	Second	458	33.0	307	67.0	9	2.0	142	31.0	35.4
	Third	367	10.9	327	89.1	5	1.4	35	9.5	9.3
	Fourth	991	45.8	537	54.2	38	3.8	416	42.0	49.9
	Fifth	208	22.1	162	77.9	4	1.9	42	20.2	20.9
	Sixth	226	15.0	192	85.0	5	2.2	29	12.8	17.0
	Seventh	550	19.5	443	80.5	10	1.8	97	17.6	17.2
	Eighth	135	9.6	122	90.4	2	1.5	11	8.1	6.8
	Ninth	474	12.2	416	87.8	10	2.1	48	10.1	10.3
	Tenth	551	17.4	455	82.6	18	3.3	78	14.2	12.7
	<b>Total</b>	<b>4,447</b>	<b>24.5</b>	<b>3,357</b>	<b>75.5</b>	<b>115</b>	<b>2.6</b>	<b>975</b>	<b>21.9</b>	<b>25.3</b>

See Appendix 6 (p. 80) for a map of Minnesota’s ten judicial districts.

As with dispositional departures, it can be helpful to look at offenses with higher than average durational departure rates. Figure 14 displays offenses with high durational departure rates compared to the total durational departure rate and Figure 15 displays the position of the prosecutor as cited by the court.<sup>68</sup>

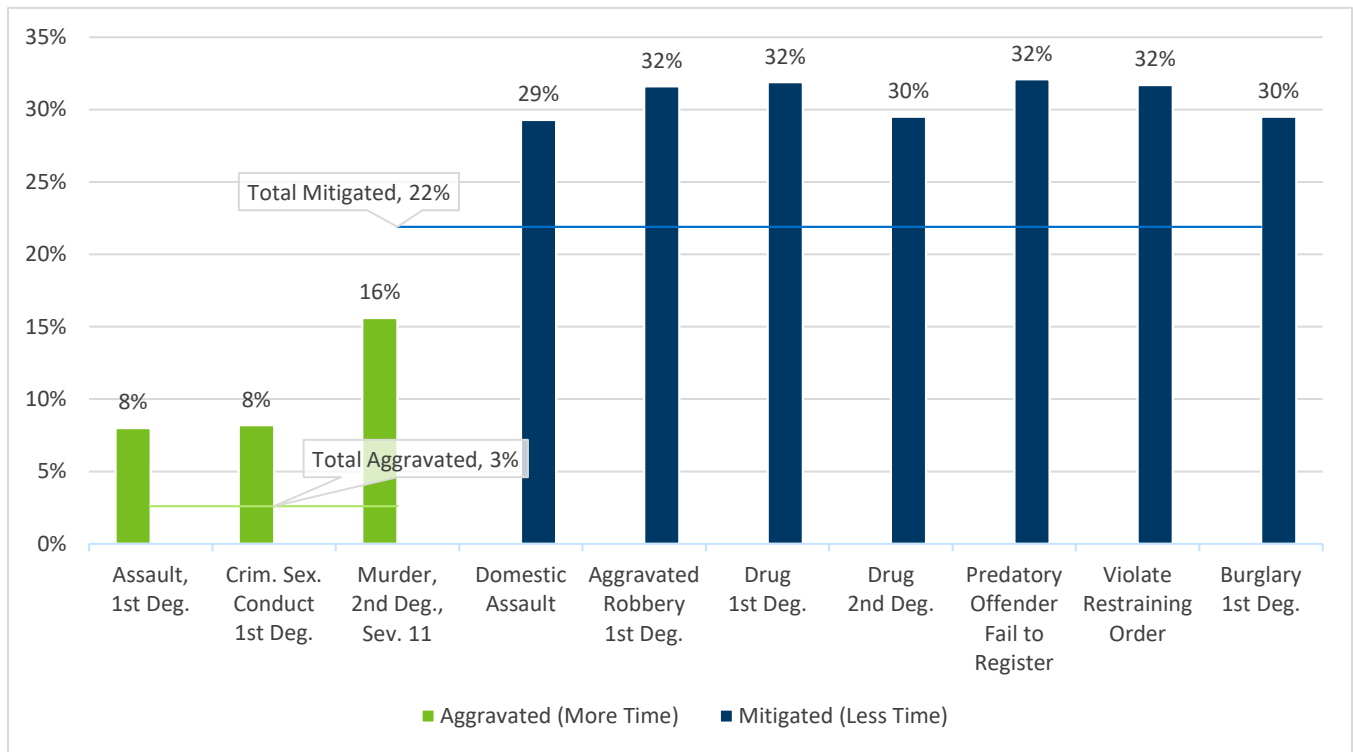
Aggravated durational departure rates were highest for assault in the first degree, criminal sexual conduct in the first degree, and murder in the second degree (Severity Level 11). Mitigated durational departure rates were highest for domestic assault, aggravated robbery in the first degree, controlled substance crimes in the first and second degrees, predatory offender, failure to register, violations of restraining orders, and burglary in the first degree (Figure 14).

For both mitigated and aggravated durational departures, plea agreement or recommendation of the prosecutor were the most frequently cited reasons for departure for all offense types.

<sup>68</sup> Selected based on criteria that there were 40 or more executed prison sentences and the aggravated durational departure rate was 8% or more, or the mitigated durational departure rate was 29% or more.



Figure 14. Durational Departure Rates for Selected\* Offenses Compared to the Total Rate, Executed Prison Sentences Only, 2017



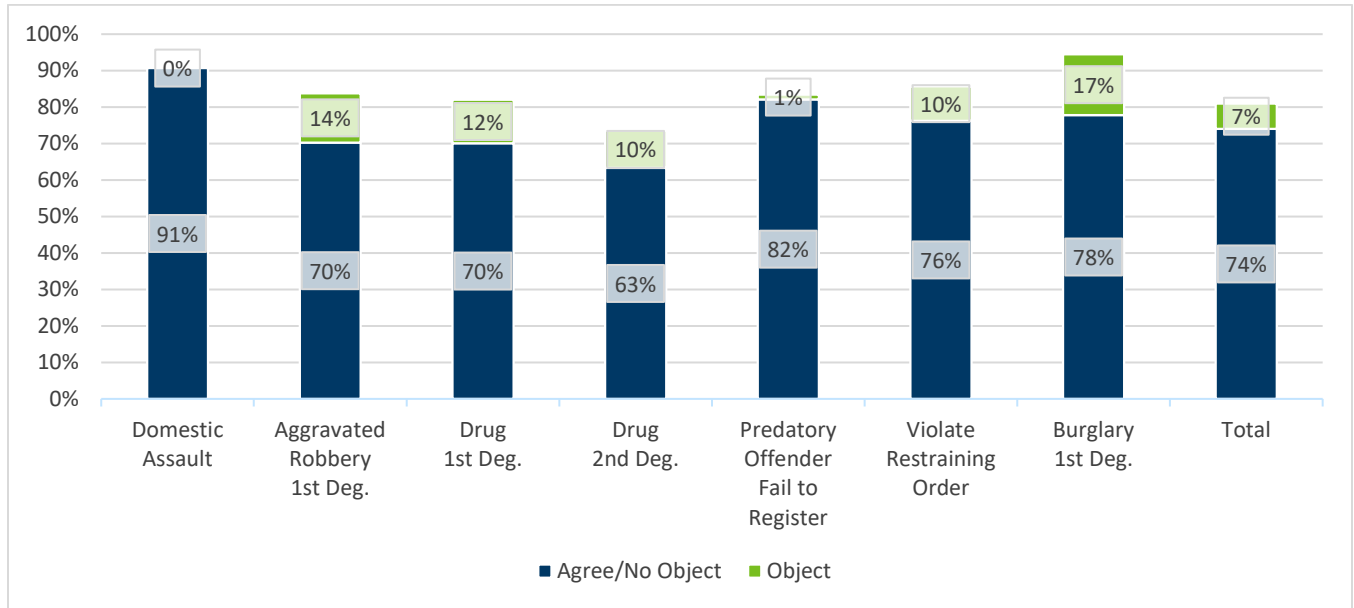
\*Selected based on criteria that there were 40 or more executed prison sentences and the aggravated durational departure rate was 8% or more, or the mitigated durational departure rate was 29% or more. "Total" includes all executed prison sentences.

In 74 percent of the mitigated durational departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In seven percent of these cases, the court stated that the prosecutor objected to the departure (Figure 15, Total). In 19 percent of the mitigated durational departures, the court did not provide information on the position of the prosecutor. These rates varied somewhat by offense.

In 56.5 percent of the aggravated durational departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 43.5 percent of the aggravated durational departures, the court did not provide information on the position of the prosecutor. There were no cases in which the court stated that the prosecutor objected to the aggravated durational departure.

The discussion on page 32 regarding mandatory minimums applies here: The mandatory minimum provisions applicable to one of the high-durational-departure crimes—failure to register as a predatory offender—allow for sentencing without regard to the mandatory minimum prison term (Minn. Stat. § 243.166, subd. 5(d)). This fact, together with the wide variety of ways in which the crime can be committed, may lend this offense to the application of discretion in prosecutorial or judicial sentencing practice.

Figure 15. Court-Cited Position of Prosecutor for Mitigated Durational Departures, Selected\* Offenses, 2017



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

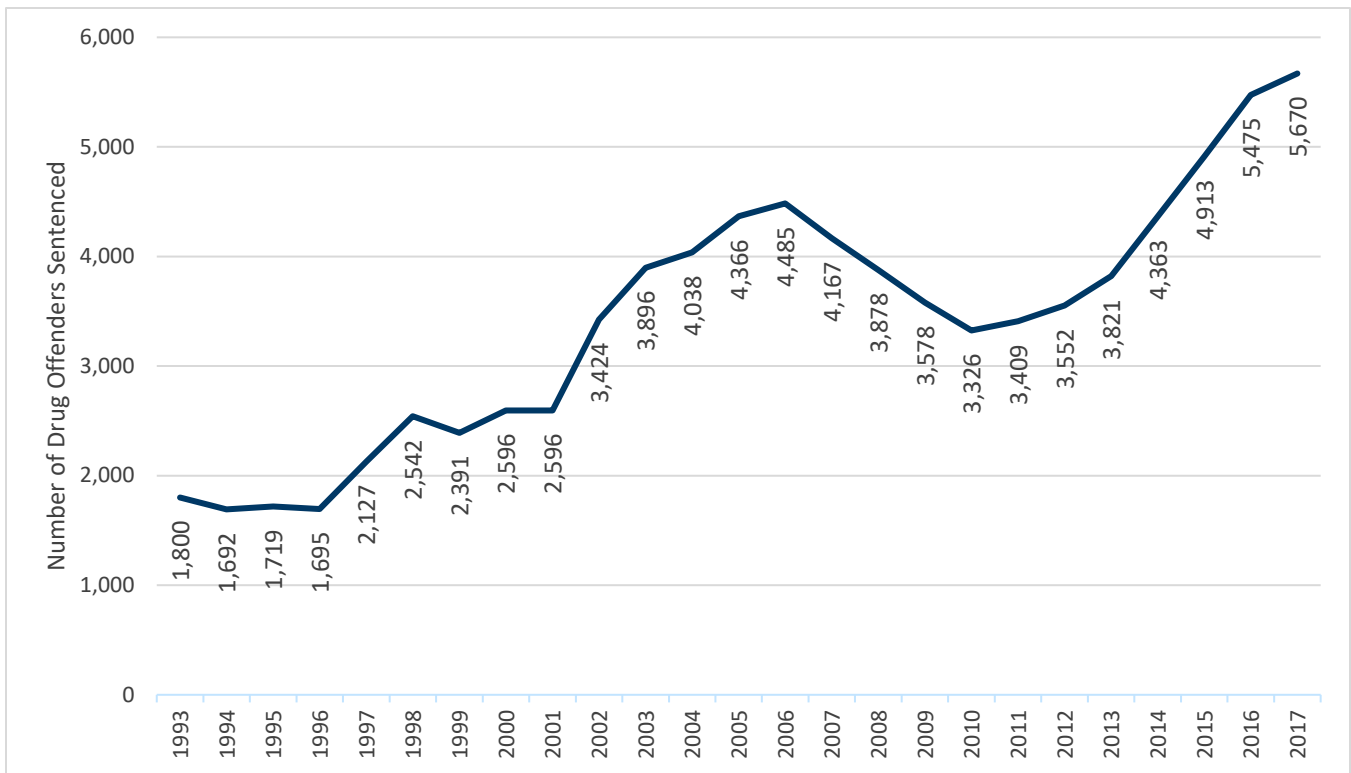
\*Selected based on criteria that there were 40 or more executed prison sentences and the mitigated durational departure rate was 29% or more. “Total” includes all offenses, not just selected offenses.

## Impact of the 2016 Drug Sentencing Reform Act

The 2016 Drug Sentencing Reform Act (DSRA)<sup>69</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).

In 2017, 5,670 offenders (pre- and post-DSRA) were sentenced for drug offenses (Figure 16), an increase of 3.6 percent over 2016. 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 16. Number of Offenders Sentenced for Felony Drug Convictions, 1993–2017



<sup>69</sup> [2016 Minn. Laws ch. 160](#).

## 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>70</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, two groups of pre-DSRA cases were compared to a group of post-DSRA cases. Table 5 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 5 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 5. 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
<b>Pre-DSRA 2014–15</b>	Aug '14 – Jul '15	Aug '14 – Dec '15	132 (5%)	193 (7.5%)	337 (13%)	48 (2%)	1,878 (73%)	N/A	2,588
<b>Pre-DSRA 2015–16</b>	Aug '15 – Jul '16	Aug '15 – Dec '16	135 (4.5%)	218 (7%)	334 (11%)	36 (1%)	2,260 (76%)	N/A	2,983
<b>Post-DSRA 2016–17</b>	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 5 includes only post-DSRA cases committed before August 1, 2017. A total of 3,664 post-DSRA cases were sentenced through December 31, 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%).

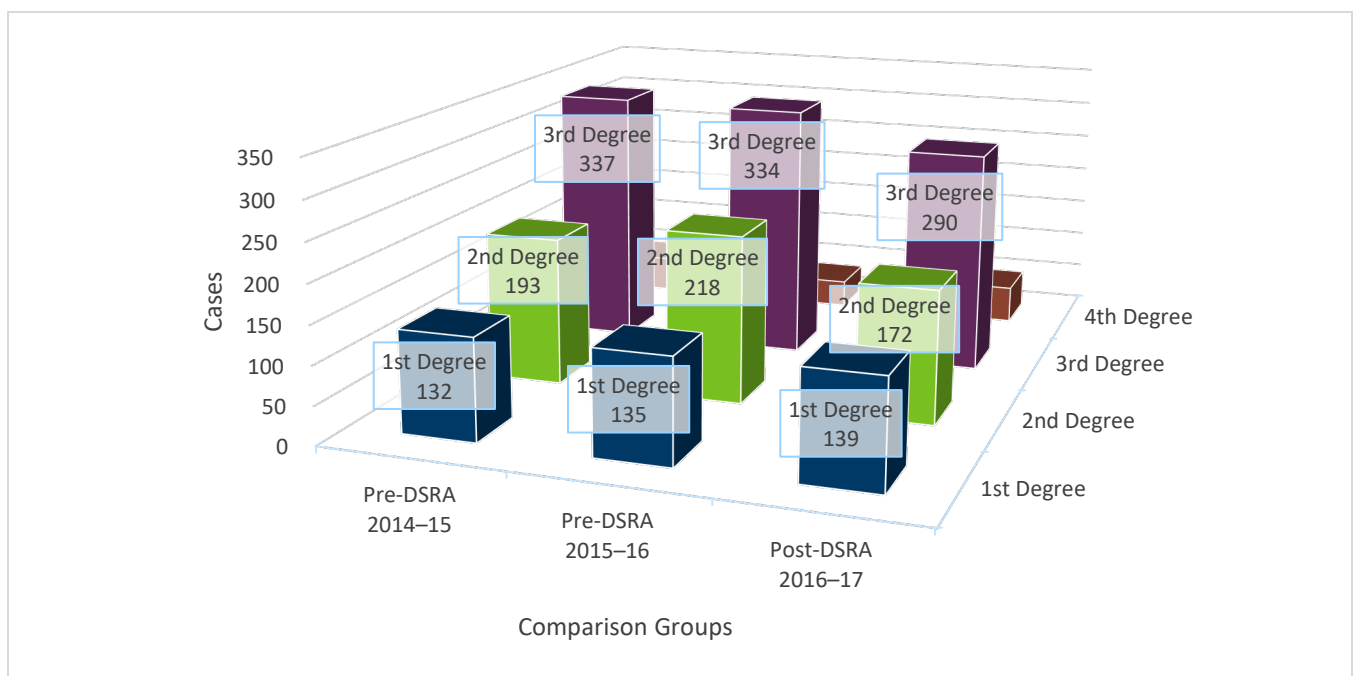
<sup>70</sup> The DSRA applied to 222 of such cases sentenced in 2016, and 2,717 of such cases sentenced in 2017.

## 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 17).

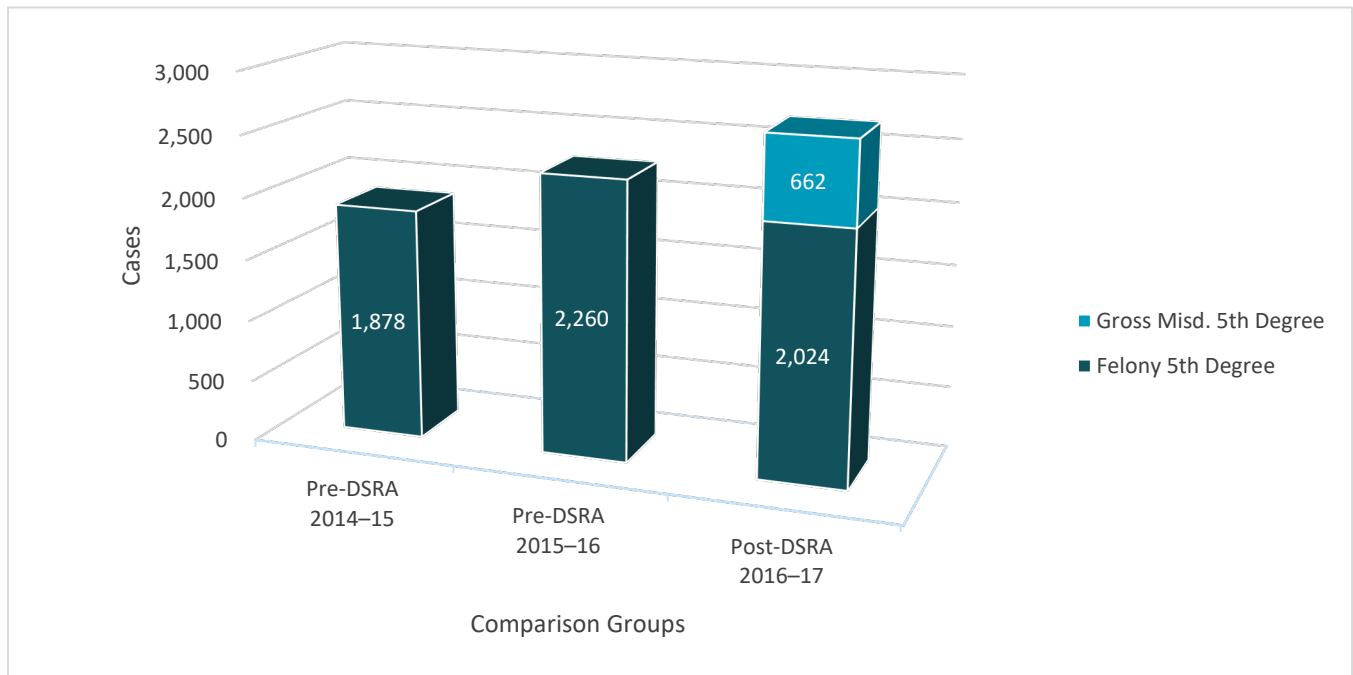
Figure 17. Case Volume, 1st–4th Degree Drug Offenses, Pre- and Post-DSRA Comparison Groups



### 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. 46), 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 18.

Figure 18. Case Volume, 5th Degree Drug Offenses, Pre- and Post-DSRA Comparison Groups



## 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 (Appendix 5.3, p. 79), all first- and second-degree offenses had presumptive prison sentences regardless of offenders’ criminal history scores (CHS).<sup>71</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 6 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.

<sup>71</sup> Prior to the implementation of the Drug Offender Grid, first-degree was ranked at a severity level of 9, and second-degree was ranked at a severity level of 8, on the Standard Grid (Appendix 5.1, p. 77).

Table 6. 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.

## 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 in the discussion beginning on page 27.

Figure 19 displays 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 generally 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. However, the mitigated dispositional departure rate increased for third-degree offenses, from 27 and 29 percent for the two pre-DSRA 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>72</sup>

<sup>72</sup> See *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007), review denied (Minn. May 30, 2007).

**Figure 19. Mitigated Dispositional Departure Rates, Presumptive Commitments Only, Pre- & Post-DSRA Comparison Groups**

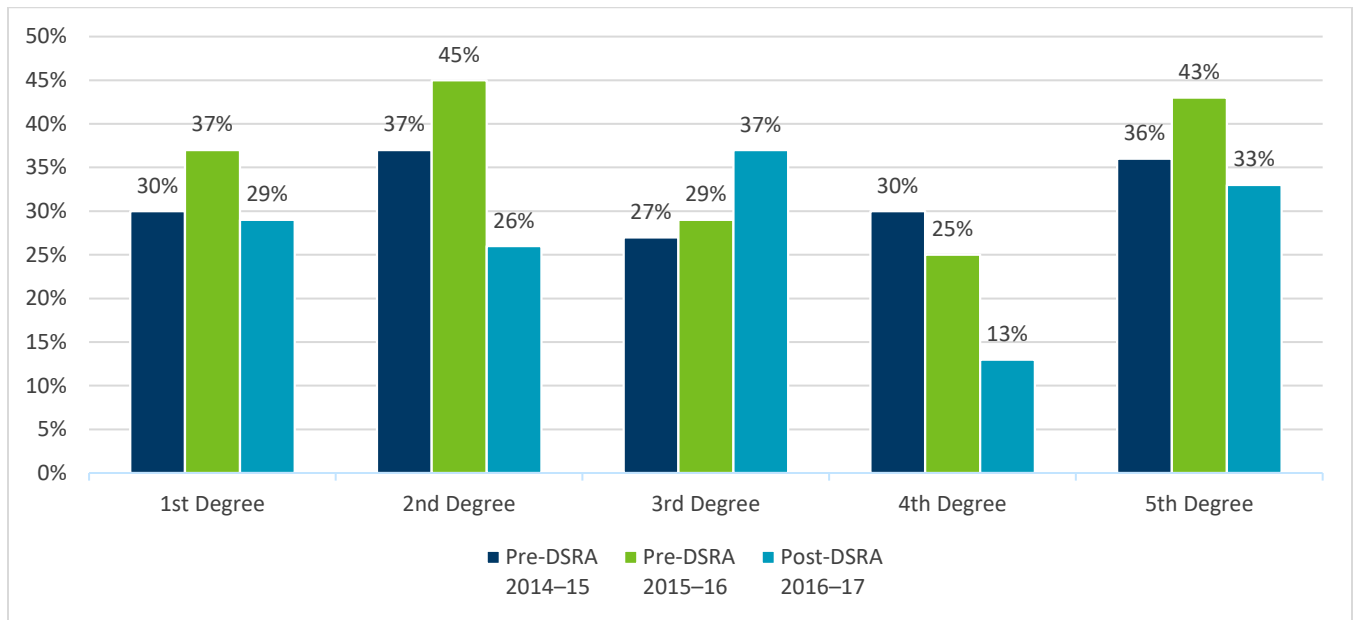
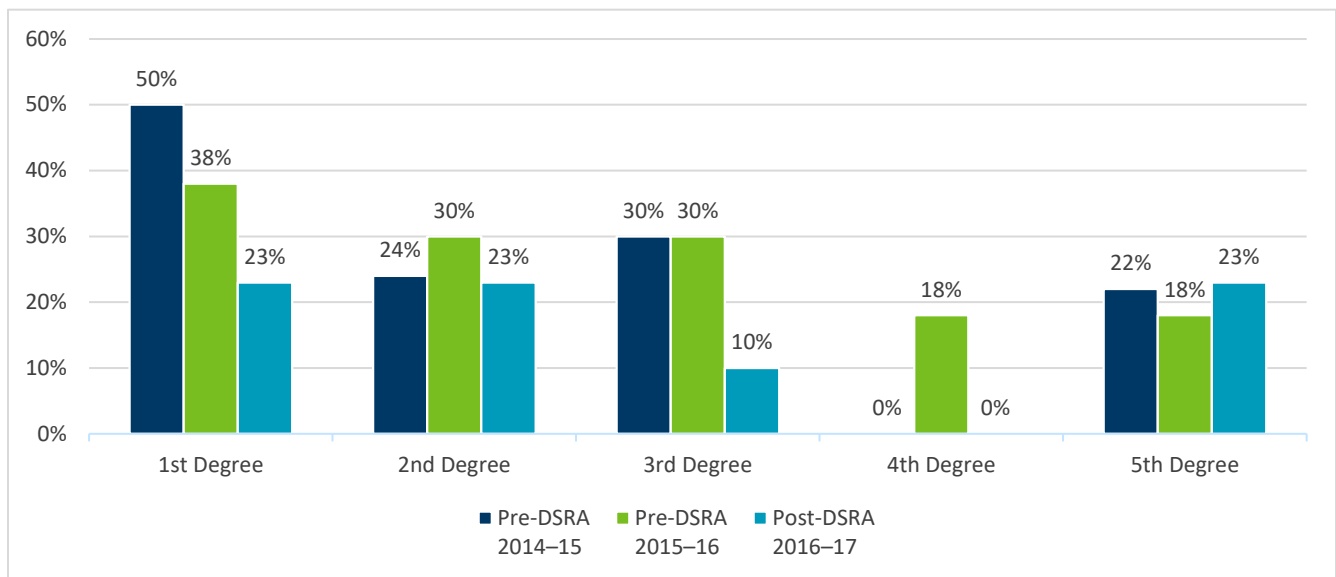


Figure 20 displays mitigated durational departure rates for cases that received a prison sentence for the pre- and post-DSRA comparison groups. Mitigated durational departure rates declined for first- through third-degree offenses; thus, the overall rate declined. The rate for first-degree offenses declined 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.

**Figure 20. 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 16, 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>73</sup> they do not account for case-specific possibilities that may reduce<sup>74</sup> or increase<sup>75</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>76</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 (Figure 19)—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>73</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>74</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>75</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>76</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 2015–16 group, but the number receiving a prison sentence rose slightly, to 295 offenders.

*Table 7. 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 76, 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>77</sup> Unlike the previous section, however, this section does not compare the post-DSRA sentences to sentences actually imposed in previous years. Instead, this

<sup>77</sup> These are the 2,939 felony cases discussed on p. 38, above. As described below, only felony cocaine, methamphetamine, and heroin possession and sale cases (2,331 cases) are analyzed in this section.

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>78</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 8 (“Estimated Prison Beds Needed Based on Actual Sentences”) displays the estimated prison beds that will be needed for those post-DSRA offenses based on the executed sentences actually imposed in those cases. “Estimated prison beds” are calculated in the manner described on page 43, above.

Next, Table 8 (“Estimated Prison Beds Needed if Sentenced in 2015”) displays the estimated prison beds that would have been needed for the same set of post-DSRA offenses, if those offenses had been sentenced as similar offenses were sentenced in 2015. This calculation is made by replacing the actual penalty received for each post-DSRA offense with the average penalty offenders with the same criminal history score received in 2015 for the same act (sale or possession) involving a similar amount<sup>79</sup> of cocaine, methamphetamine, or heroin.

Finally, Table 8 (“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 8 (in italics) adds back in the estimated prison beds attributable to drug cases other than sale or possession of heroin, cocaine, or methamphetamine. (Because the DSRA did not change the quantity thresholds for these offenses,<sup>80</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>81</sup>

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<sup>78</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>79</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>80</sup> Regarding the quantity threshold changes applicable to marijuana offenses, see footnote 78, above.

<sup>81</sup> All estimated prison beds would not have been needed the first year; the need would, instead, have been apportioned over time. See footnote 76, above.

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

Degree (Post-DSRA)	Post-DSRA Heroin, Cocaine, and Methamphetamine Sale or Possession Cases			Difference
	Number of Cases	Estimated Prison Beds Needed Based on Actual Sentences	Estimated Prison Beds Needed if Sentenced in 2015	
First	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 76, above.  
\*Felony only.<sup>82</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>83</sup> Only offenders with no prior conviction for sale or possession of a controlled substance

<sup>82</sup> This analysis does not include gross misdemeanor fifth-degree cases (the subject of the next section). If those cases were included in Table 8, they would not increase the estimated prison beds needed based on actual post-DSRA sentences because gross misdemeanor offenses are not sentenced to prison. On the other hand, due to the gross misdemeanor statute's eligibility requirements—of no prior drug offenses and low drug quantities—it is assumed that this offense category's contribution to the 2015 estimated prison-bed need would not have been large.

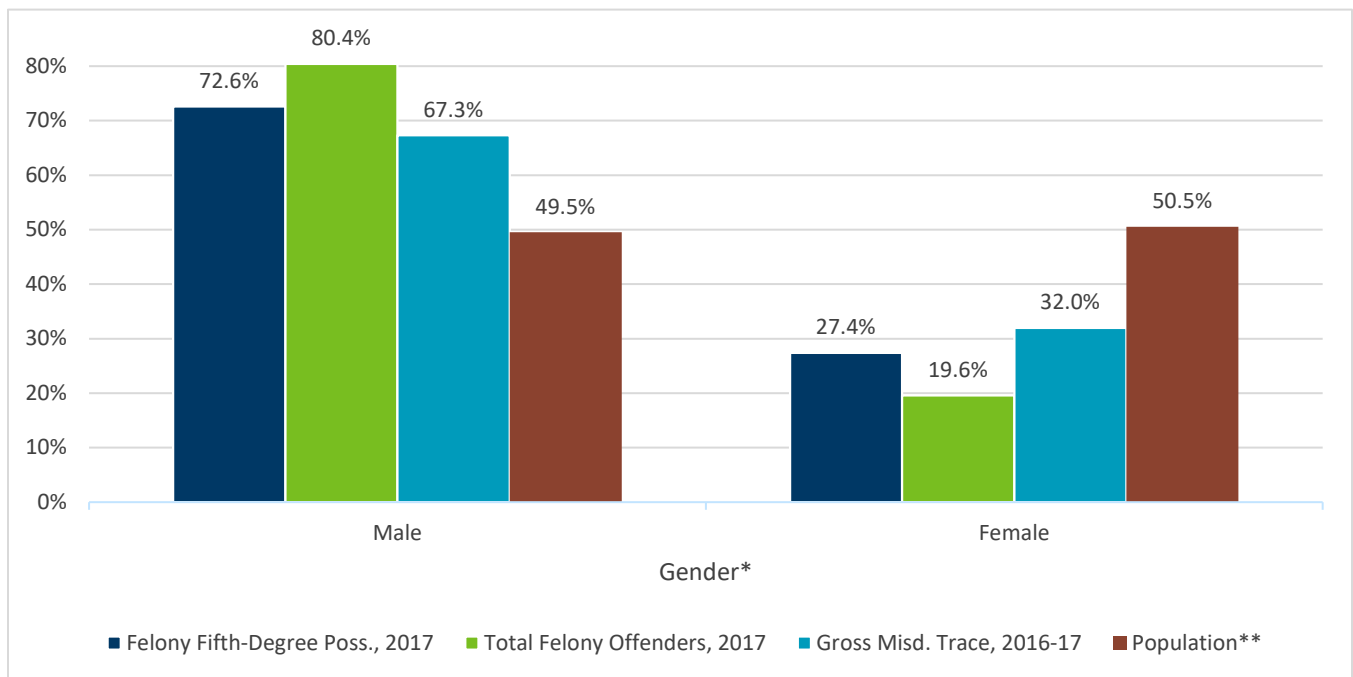
<sup>83</sup> Unlike a felony sentence, a gross misdemeanor sentence may never include state prison time—even if probation is revoked and the entire sentence is executed. Compare Minn. Stat. §§ [609.02](#), subs. 2 & 4, & [609.03\(2\)](#) (maximum imprisonment for gross misdemeanor is one year) with [Minn. Stat. § 609.105](#), subd. 3 (sentence of one year or less to be served locally).

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.

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>84</sup> Over 67 percent were male and 32 percent were female.<sup>85</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 21).

*Figure 21. 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).

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

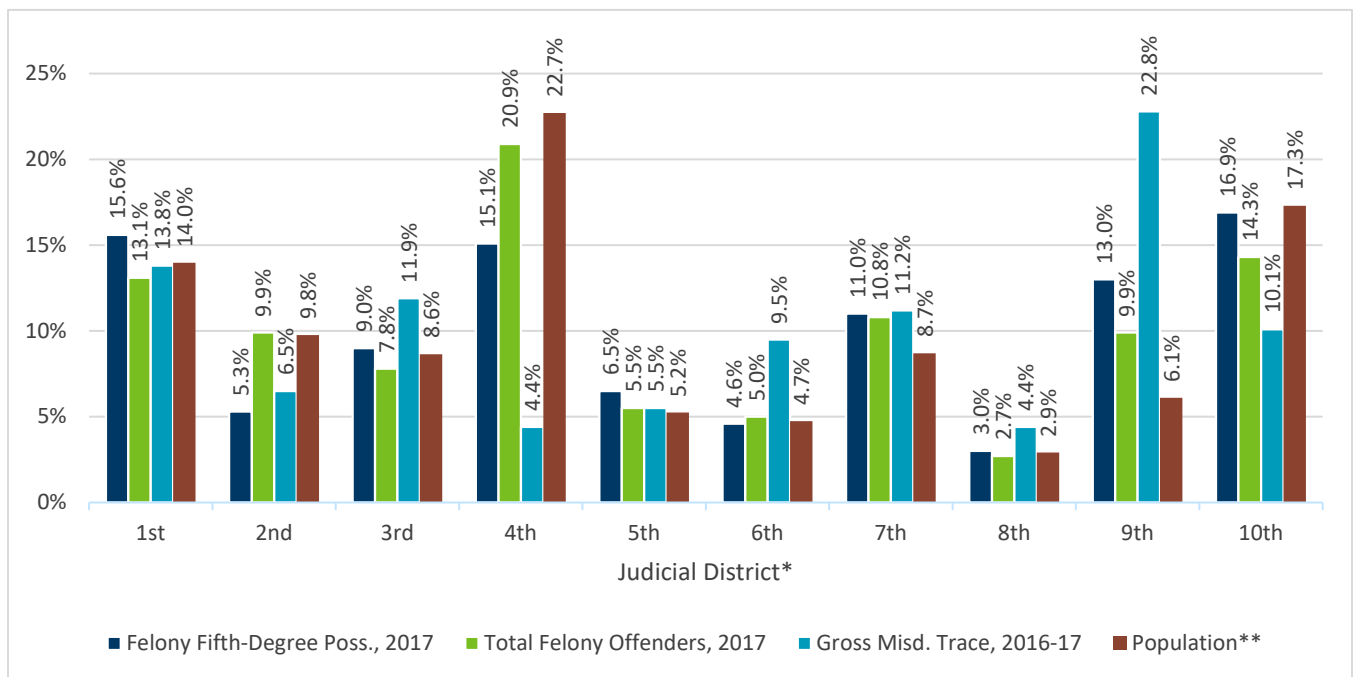
<sup>84</sup> Sentenced under [Minn. Stat. § 152.025](#), subd. 4(a), 8/29/2016 to 12/29/2017. Source: Minnesota Judicial Branch. (Obtained 10/18/2018.)

<sup>85</sup> In five cases, the gender reported was blank; i.e., “Null.”

Judicial District each with 4.4 percent (Gross Misd. Trace, 2016–17, Figure 22). A map of the judicial districts can be found in Appendix 6 (p. 80).

In addition to the distribution of gross misdemeanor trace-amount cases across judicial districts, Figure 22 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>86</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 22.

*Figure 22. 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 6 (p. 80) for a map of Minnesota’s ten judicial districts.

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

<sup>86</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).

## 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>87</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 9 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>88</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 9). The number of stays of adjudication was greater in 2017 than in either 2015 or 2016 (Figure 23).

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

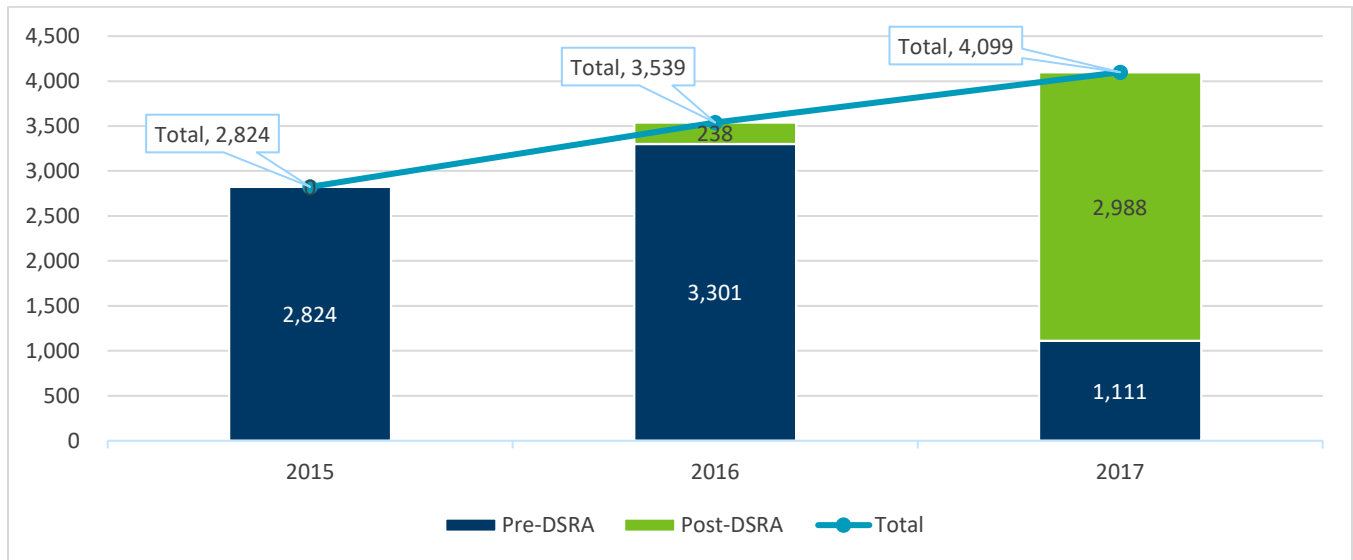
	Pre-DSRA				Post-DSRA				Total Pre- & Post-DSRA
	Disposition Year				Disposition Year				
Degree	2015	2016	2017	Total	2015	2016	2017	Total	
First	2	3	–	5	–	–	1	1	6
Second	5	5	3	13	–	–	3	3	16
Third	34	32	22	88	–	1	59	60	148
Fourth	30	24	8	62	–	3	14	17	79
Fifth	2,753	3,237	1,078	7,068	–	234	2,911	3,145	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>87</sup> See Minn. Stat. § [152.18](#), subd. 1(b), for a complete description of the criteria.

<sup>88</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.)

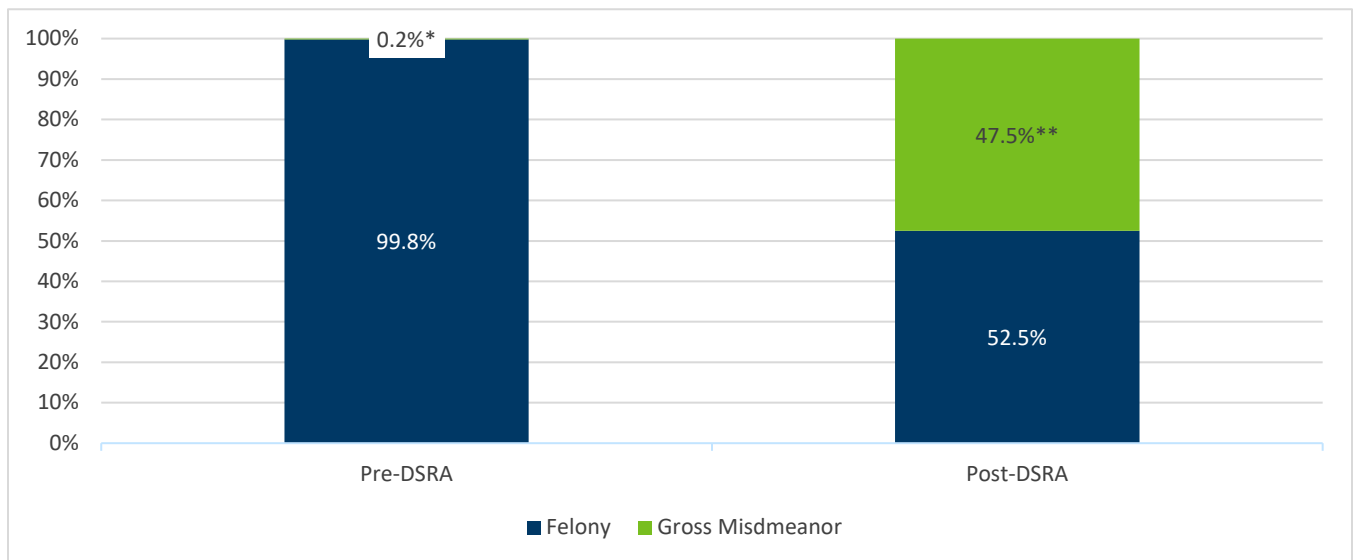
Figure 23. Total Stay of Adjudication Dispositions under Chapter 152, Disposition Years 2015–2017



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

As described on page 46, the DSRA created a gross misdemeanor fifth-degree offense for possessing a trace amount of a controlled substance. Figure 24 shows that gross misdemeanor offenders were receiving almost half of the post-DSRA stay of adjudication dispositions.

Figure 24. 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.



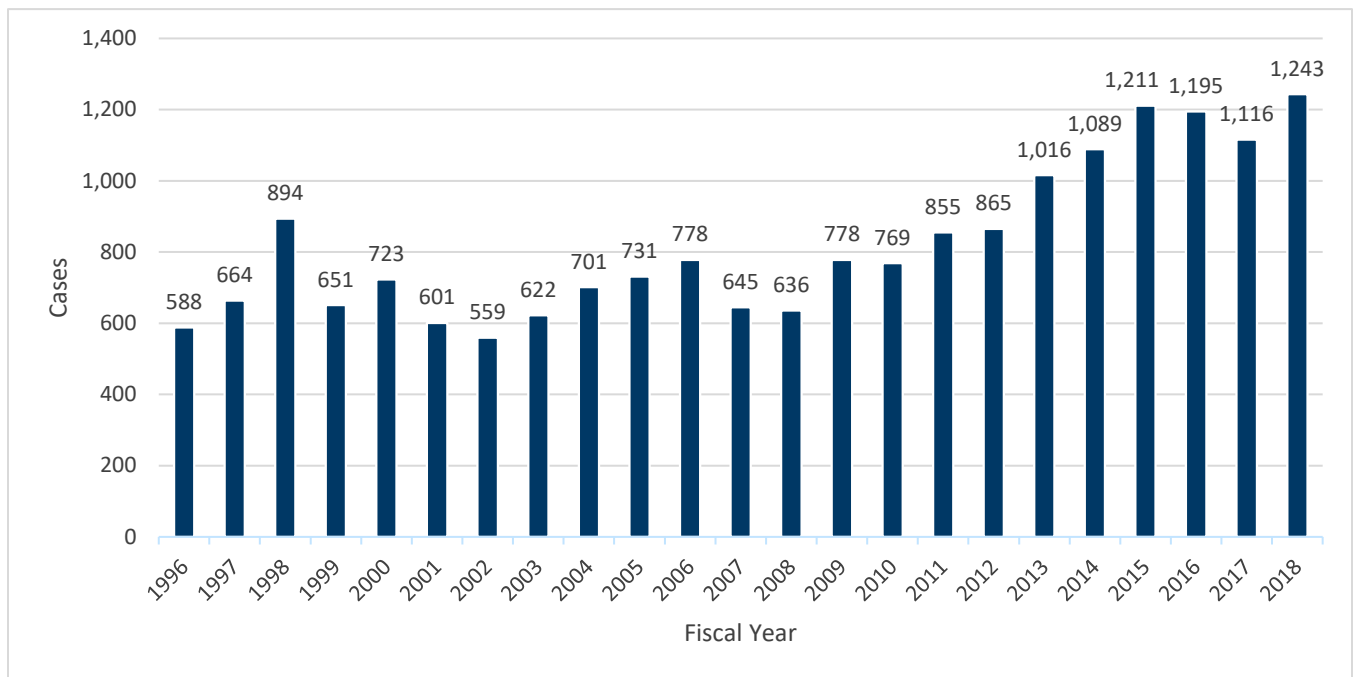
# County Attorney Firearms Reports

Current law requires all county attorneys in Minnesota, by July 1 of each year, to submit to the Commission its data regarding felony cases in which defendants allegedly possessed or used a firearm and committed offenses listed in [Minn. Stat. § 609.11](#), subdivision 9.<sup>89</sup> The Commission is required to include in its annual Report to the Legislature a summary and analysis of the reports received. Memoranda describing the mandate, along with report forms, are distributed by MSGC staff to county attorneys. Although MSGC staff clarifies inconsistencies in the summary data, the information received from the county attorneys is reported directly as provided.

## Cases Allegedly Involving a Firearm, 1996 to 2018

Since the mandate began in 1996, the average number of annual cases allegedly involving firearms statewide has been 823. Between July 1, 2017 and June 30, 2018 (FY 2018), there were 1,243 cases allegedly involving a firearm (Figure 25). This was an 11.4 percent increase (up 127 cases) from FY 2017, and the largest number of such cases on record.

Figure 25. Cases Allegedly Involving a Firearm, FY 1996 to FY 2018



<sup>89</sup> The statute provides a mandatory minimum sentence of 36 months for the first conviction of specified offenses, and 60 months for a second. Designated offenses include murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; some criminal sexual conduct offenses; escape from custody; arson in the first, second, or third degree; felony drive-by shooting; aggravated harassment and stalking; felon in possession of a firearm; and felony controlled substance offenses.

## Cases Charged, 2018

Of the 1,243 cases in which defendants allegedly possessed or used firearms, prosecutors charged 1,162 cases (93%), while 81 cases (7%) were not charged (Figure 26, “Charged” and “Not Charged”).

## Case Outcomes, 2018

Of the 1,162 cases charged, 825 (71%) were convicted of offenses designated in [Minn. Stat. § 609.11](#); 125 (11%) were convicted of non-designated offenses (not covered by the mandatory minimum (e.g., threats of violence under [Minn. Stat. § 609.713](#)); 155 (13%) had all charges dismissed; 28 (2%) were acquitted on all charges; and 29 (2.5%) were “other” cases, including federal prosecutions and stays of adjudication (Figure 26).

## Cases Convicted of Designated Offense & Firearm Established on the Record, 2018

In 781 (95%) of the 825 cases in which there was a conviction for a designated offense, use or possession of a firearm was established on the record (Figure 26, “Firearm Established”). The fact-finder, i.e., the judge or jury, must establish whether the defendant or an accomplice used or possessed a firearm in the commission of the offense at the time of conviction. Minn. Stat. § 609.11, subdivision 7.

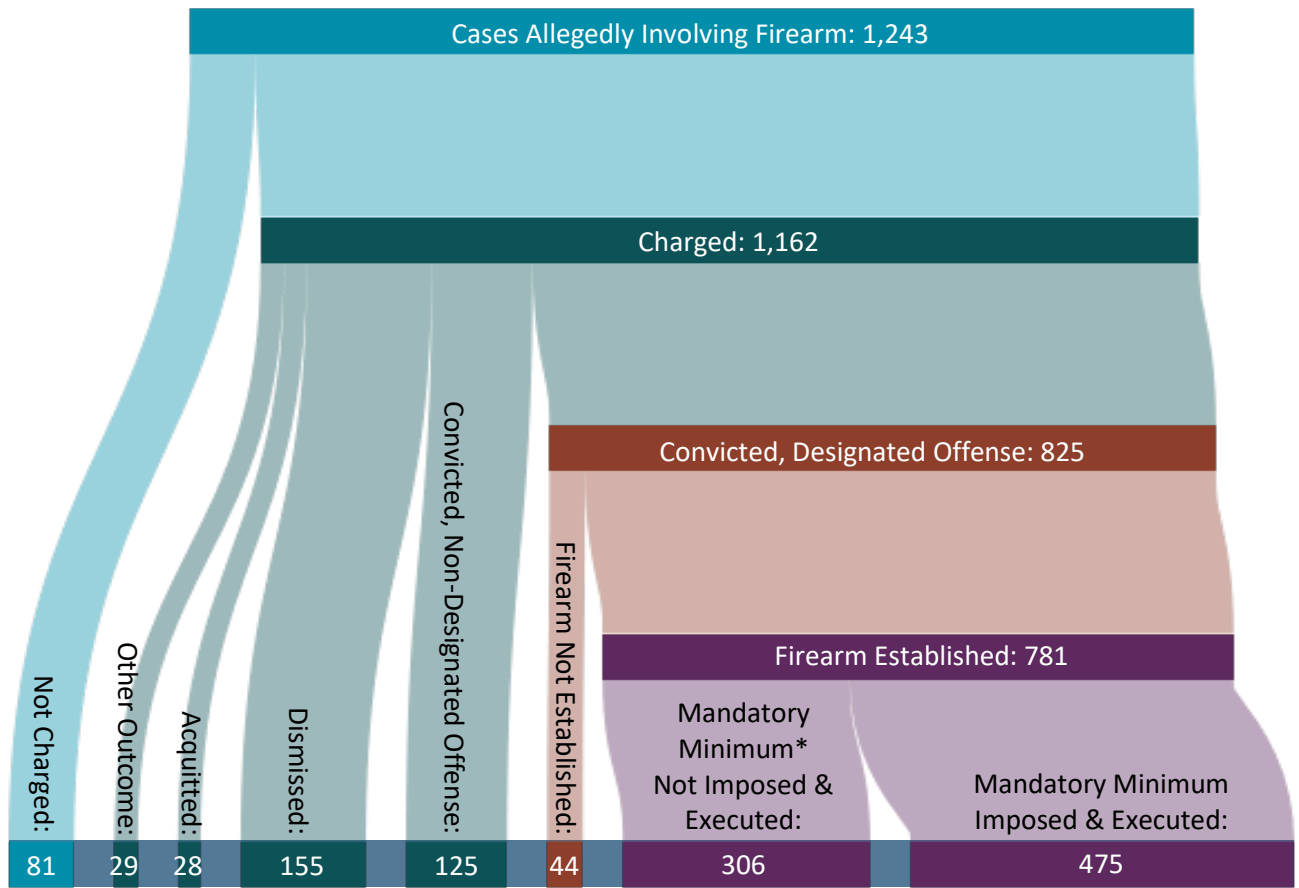
In the cases in which the firearm was established on the record, 475 offenders (61%)<sup>90</sup> were sentenced to the mandatory minimum prison term (Figure 26, “Mandatory Minimum Imposed & Executed”). The statute specifically allows the prosecutor to file a motion to have the defendant sentenced without regard to the mandatory minimum. The prosecutor must provide a statement as to the reasons for the motion. If the court finds substantial mitigating factors, with or without a motion by the prosecutor, the defendant may be sentenced without regard to the mandatory minimum. Minn. Stat. § 609.11, subdivision 8.<sup>91</sup>

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<sup>90</sup> County attorneys’ data for fiscal year 2018 (ending June 30, 2018). According to MSGC monitoring data from calendar year 2017, of those offenders whose sentencing worksheets reflected the use or possession of a firearm or prohibited persons from possessing a firearm or ammunition requiring a mandatory prison sentence under Minn. Stat. § 609.11, 48 percent (504 offenders) received both the mandatory prison disposition and the mandatory minimum duration or longer. In addition, 11.2 percent (118 offenders) received the mandatory prison disposition, but less than the mandatory minimum duration.

<sup>91</sup> Although [Minn. Stat. § 609.11](#) uses the term “mandatory minimum” to describe the sentences it prescribes, the term includes cases in which the court, on the motion of the prosecutor or on its own motion, is statutorily permitted, when substantial and compelling reasons are present, to sentence a defendant without regard to those prescribed sentences. Minn. Stat. § 609.11, subd. 8(a); but see subd. 8(b) & 8(c) (the court is not permitted to sentence a defendant without regard to the mandatory minimum if the defendant was previously convicted of a designated offense in which the defendant used or possessed a firearm or other dangerous weapon, nor if the defendant or an accomplice used or personally possessed a firearm in the commission of a first- or second-degree sale of a controlled substance).

Figure 26. Disposition of Cases, Alleged Designated Offenses Involving Firearms, as Reported by County Attorneys, Cases Disposed of Between July 1, 2017, and June 30, 2018



\*For an explanation of the term “mandatory minimum,” see footnote 91, above.

Table 10. County Attorney Firearms Reports on Criminal Cases Allegedly Involving a Firearm, by Minn. County, Cases Disposed of Between July 1, 2017, and June 30, 2018

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Aitkin	10	5	-	1	4	2	2
Anoka	57	54	15	7	32	32	13
Becker	33	16	-	-	16	13	11
Beltrami	0	-	-	-	-	-	-
Benton	5	4	-	-	4	3	2
Big Stone	0	-	-	-	-	-	-
Blue Earth	16	16	3	6	6	6	6
Brown	4	4	-	-	3	2	-
Carlton	7	7	-	-	7	5	1
Carver	1	1	-	-	1	1	1
Cass	18	8	1	4	3	3	2
Chippewa	8	8	-	5	3	2	2
Chisago	3	3	1	-	1	1	-
Clay	12	12	6	2	4	4	2
Clearwater	3	3	1	-	2	2	2
Cook	1	1	-	-	1	1	1
Cottonwood	6	6	-	-	5	5	1
Crow Wing	0	-	-	-	-	-	-
Dakota	58	58	7	6	40	35	20
Dodge	2	2	-	-	2	2	2
Douglas	7	7	-	1	-	-	-
Faribault	0	-	-	-	-	-	-
Fillmore	2	2	-	-	2	2	1
Freeborn	6	6	1	3	2	2	2
Goodhue	2	2	-	1	1	1	-
Grant	1	1	-	1	-	-	-
Hennepin	439	439	62	10	349	349	230
Houston	2	2	-	1	1	1	1
Hubbard	6	5	-	3	2	2	1

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Isanti	3	2	1	-	1	1	1
Itasca	14	14	1	2	10	10	3
Jackson	1	1	-	-	-	-	-
Kanabec	7	2	-	-	2	2	2
Kandiyohi	7	6	1	2	3	1	-
Kittson	0	-	-	-	-	-	-
Koochiching	5	5	1	-	4	3	-
Lac qui Parle	0	-	-	-	-	-	-
Lake	4	4	1	-	2	2	1
Lake of the Woods	0	-	-	-	-	-	-
Le Sueur	0	-	-	-	-	-	-
Lincoln	0	-	-	-	-	-	-
Lyon	13	10	4	-	3	3	2
McLeod	4	4	-	-	4	4	-
Mahnomen	0	-	-	-	-	-	-
Marshall	1	1	-	-	1	-	-
Martin	3	3	-	-	3	3	-
Meeker	1	1	-	1	-	-	-
Mille Lacs	15	15	4	3	8	6	2
Morrison	4	4	1	-	3	3	1
Mower	9	9	-	-	3	3	2
Murray	1	1	-	-	-	-	-
Nicollet	1	1	-	1	-	-	-
Nobles	6	5	-	1	4	3	2
Norman	1	1	-	-	1	1	-
Olmsted	48	31	3	10	18	15	11
Otter Tail	12	12	2	3	7	7	3
Pennington	10	10	-	1	7	7	6
Pine	15	12	1	4	7	4	3

County	Cases Allegedly Involving Firearm	Charged	Dismissed	Convicted, Non-Designated Offense	Convicted, Designated Offense	Firearm Established	Mandatory Minimum Imposed and Executed
Pipestone	3	3	1	-	2	-	-
Polk	9	9	1	2	5	5	5
Pope	2	2	-	1	1	1	1
Ramsey	137	137	15	8	111	103	61
Red Lake	0	-	-	-	-	-	-
Redwood	5	3	1	-	2	2	2
Renville	6	6	1	3	1	1	1
Rice	8	8	-	2	6	6	2
Rock	0	-	-	-	-	-	-
Roseau	1	1	1	-	-	-	-
Scott	19	19	1	4	13	13	12
Sherburne	2	2	-	-	2	2	1
Sibley	0	-	-	-	-	-	-
St. Louis	51	47	6	5	34	32	14
Stearns	18	18	2	1	15	15	6
Steele	9	9	1	2	5	5	5
Stevens	0	-	-	-	-	-	-
Swift	0	-	-	-	-	-	-
Todd	4	2	1	-	1	1	-
Traverse	1	1	1	-	-	-	-
Wabasha	7	7	-	3	4	4	1
Wadena	4	4	1	-	3	2	2
Waseca	0	-	-	-	-	-	-
Washington	21	21	1	-	20	19	10
Watsonwan	4	4	1	2	1	1	-
Wilkin	0	-	-	-	-	-	-
Winona	20	16	3	6	7	6	5
Wright	17	17	-	7	10	9	5
Yellow Medicine	1	-	-	-	-	-	-
<b>Total</b>	<b>1,243</b>	<b>1,162</b>	<b>155</b>	<b>125</b>	<b>825</b>	<b>781</b>	<b>475</b>

# Appendices

## Appendix 1. 2018 Guidelines Modifications – Relating to Legislative Action

The Commission reviewed new and amended crime laws of the 2018 Regular Session. In response to these legislative changes, and following a July 19, 2018, public hearing, the Commission, on July 26, 2018, unanimously adopted the following modifications to the 2017 Minnesota Sentencing Guidelines and Commentary. These modifications took effect August 1, 2018.

### Appendix 1.1. New Crime Law Affecting the Guidelines

The Commission assigned the new offense of Unauthorized Computer Access (Electronic Terminal) a severity level of 2, and made conforming technical amendments. The following modifications to 2017 Minn. Sentencing Guidelines §§ 5.A and 5.B relate to [2018 Minn. Laws ch. 123](#):

#### 5.A. Offense Severity Reference Table

\* \* \*

Severity Level	Offense Title	Statute Number
2	<a href="#">Unauthorized Computer Access (Electronic Terminal)</a>	<a href="#">609.891, subd. 2(c)</a>

\* \* \*

Severity Level	Offense Title	Statute Number
UNRANKED	Unauthorized Computer Access <a href="#">(Grave Risk or Subsequent)</a>	<a href="#">609.891, subd. 2(a) &amp; (b)</a>

\* \* \*

#### 5.B. Severity Level by Statutory Citation

\* \* \*

Statute Number	Offense Title	Severity Level
<a href="#">609.891 subd. 2(a) &amp; (b)</a>	Unauthorized Computer Access <a href="#">(Grave Risk or Subsequent)</a>	Unranked

Statute Number	Offense Title	Severity Level
<a href="#">609.891 subd. 2(c)</a>	<a href="#">Unauthorized Computer Access (Electronic Terminal)</a>	<u>2</u>

\* \* \*

## Appendix 1.2. Technical Amendment to Crime Law Affecting the Guidelines

In response to a change in the statutory citation for methamphetamine manufacture, the Commission made conforming technical amendments. The following modifications to 2017 Minn. Sentencing Guidelines §§ 5.A, 5.B, and 6 relate to [2018 Minn. Laws ch. 182](#), art. 1, § 39, follow:

### 5.A. Offense Severity Reference Table

\* \* \*

Severity Level	Offense Title	Statute Number
D9	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a <del>(a)</del>

\* \* \*

### 5.B. Severity Level by Statutory Citation

\* \* \*

Statute Number	Offense Title	Severity Level
152.021, subd. 2a <del>(a)</del>	Manufacture Any Amount of Methamphetamine	D9

\* \* \*

### 6. Offenses Eligible for Permissive Consecutive Sentences

\* \* \*

Statute Number	Offense Title
152.021, subd. 2a <del>(a)</del>	Manufacture any Amount of Methamphetamine



## Appendix 2. Proposed 2019 Guidelines Modifications – Submitted to the Legislature

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Following a public hearing on December 13, 2018, the Commission, on December 20, 2018, unanimously adopted a proposal to amend the Guidelines. As adopted, the proposed modifications will amend the calculation of the criminal history score and add a sentencing enhancement for second or subsequent severe violent offenses. For a complete discussion of these modifications, see pages 6–13 of this report.

The following modifications to 2018 Minn. Sentencing Guidelines and Commentary §§ 1.B, 2.B., 2.G, and 8, and the appendices, will become effective August 1, 2019, and will apply to crimes committed on or after that date, unless the Legislature by law provides otherwise:

*The Minnesota Sentencing Guidelines Commission intends to make the following modifications to the Minnesota Sentencing Guidelines and Commentary on August 1, 2019, unless the Legislature by law provides otherwise. Each modification is intended to apply to offenders whose date of offense is on or after August 1, 2019. See State v. Otto, 899 N.W.2d 501, 503 (Minn. 2017) (describing language sufficient to abrogate the amelioration doctrine).*

### Minnesota Sentencing Guidelines and Commentary

#### 1. Purpose and Definitions

\* \* \*

##### B. Definitions

As used in these Sentencing Guidelines (or “Guidelines”), the following terms have the meanings given.

\* \* \*

14. Sentence Modifier. A “sentence modifier” is a statute or policy that aids in defining the punishment for the underlying offense. A sentence modifier can affect either or both the duration and the disposition of the presumptive sentence. See section 2.G for policies relating to determining the presumptive sentence for offenses that include a sentence modifier.

\* \* \*

## 2. Determining Presumptive Sentences

\* \* \*

### B. Criminal History

\* \* \*

#### 1. Prior Felonies. \* \* \*

\* \* \*

- c. Felony Decay Factor. In computing the criminal history score, a A prior felony sentence or stay of imposition following a felony conviction must not be used ~~in computing the criminal history score~~ if ~~a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence to~~ all of the following, to the extent applicable, occurred before the date of the current offense:

- (1) the prior felony sentence or stay of imposition expired or was discharged;
- (2) a period of fifteen years elapsed after the date of the initial sentence following the prior conviction; and
- (3) if the prior felony sentence was executed, a period of fifteen years elapsed after the date of expiration of the sentence.

\* \* \*

*Comment*

\* \* \*

**2.B.113.** *The Commission established a "decay factor" for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences and stays of imposition, but also the age of the sentences and stays of imposition. The Commission decided that the presence of old felony sentences and stays of imposition should not be considered in computing criminal history scores after a significant period of time has*

elapsed. A prior felony sentence or stay of imposition ~~will~~ ~~would~~ not be counted in criminal history score computation if fifteen years ~~has had~~ elapsed from the prior sentencing date (or from the date the prison sentence, if executed, expired) date of discharge or expiration of that sentence or stay of imposition to the date of the current offense, provided the offender was then no longer on supervision for the prior sentence. If the offender received a stay of imposition for the prior offense, that sentencing date marks "the date of the initial sentence," even if a stay of execution subsequently occurred as the result of, e.g., a probation violation. While this procedure does not include a measure of the offender's subsequent criminality, it has the overriding advantage of accurate and simple application, while also ensuring that prison offenses do not decay before probation offenses.

\* \* \*

## 2. Custody Status at the Time of the Offense.

- a. One or One-Half Custody Status Point. Assign **one** custody status point when the conditions in paragraphs (1), (2), and (3)(ii) or (iii) are met. In all other cases when the conditions in paragraphs (1) through (3) are met, assign **one-half** custody status point:

(1) The offender was under one of the following custody statuses at the time the current offense was committed:

- (i) probation;
- (ii) parole;
- (iii) supervised release;
- (iv) conditional release following release from an executed prison sentence (see conditional release terms listed in section 2.E.3);
- (v) release pending sentencing;
- (vi) confinement in a jail, workhouse, or prison pending or after sentencing; or
- (vii) escape from confinement following an executed sentence.

(2) The offender was under one of the custody statuses in paragraph (1) after entry of a guilty plea, guilty verdict, or conviction. ~~This includes a guilty plea for an offense under Minn. Stat. § 152.18, subd. 1.~~

(3) The offender was under one of the custody statuses in paragraph (1) for one of the following:

- (i) a felony currently assigned a severity level ranking, on the Offense Severity Reference Table, of 1 or 2 on the Standard Grid or D1 or D2 on the Drug Offender Grid, a felony from a jurisdiction other than Minnesota equivalent to an offense currently ranked at one of those severity levels, or an extended jurisdiction juvenile (EJJ) conviction for an offense currently ranked at one of those severity levels;
- (ii) any other felony;
- (iii) any other extended jurisdiction juvenile (EJJ) conviction;
- (iv) a non-traffic gross misdemeanor;
- (v) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or
- (vi) a targeted misdemeanor.

~~(4) Early Discharge from Probation. Assign a custody point if the offender is discharged from probation but commits an offense within the initial period of probation pronounced by the court. **Do not** assign a point if probation is revoked and the offender serves an executed sentence.~~

~~(4)(5) Assigning Points to Offenses Committed Over Time. Assign a one or one-half custody status point when the offender meets the conditions in paragraphs (1) through (3) and the offender was placed under one of the custody statuses in paragraph (1) at any point in time during which the offense occurred when:~~

- (i) multiple offenses are an element of the conviction offense; or
- (ii) the conviction offense is an aggregated offense.

\* \* \*

c. Additional Duration. An **additional three months** must be added to the duration of the appropriate cell time, which then becomes the presumptive duration, when:

- (1) at least one-half custody status point is assigned; and

- (2) the offender's total Criminal History Score exceeds the maximum score on the applicable Grid (i.e., 7 or more).

\* \* \*

e. Waiver. Subject to the limitations in paragraph (4) below, the court, on its own motion or on the motion of a party, may, but is not required to, waive assignment of a custody status point or half-point pursuant to section 2.B.2, provided the offender establishes that granting a waiver is consistent with public safety. Specifically, the court has the discretion, but is not required, to grant a waiver if the offender establishes that waiver is consistent with public safety and promotes the traditional purposes of sentencing which are retribution, incapacitation, deterrence, restitution, and rehabilitation. See Minn. Stat. § 244.09. In considering rehabilitation, the court may examine the following:

- (1) Whether the offender has consistently utilized available probation services, such as drug, alcohol, and psychological treatment services, and has otherwise been in substantial compliance with the conditions of probation, parole, or conditional or supervised release, apart from the commission of the current offense, for the past twelve months;
- (2) Whether the current offense represents an escalation of criminal activity; and
- (3) Whether the offender has made any progress toward rehabilitation and reentry into society, such as additional education and/or vocational training.
- (4) The court may not, however, waive assignment of a custody status point or half-point if either the current offense or a custody status offense is any of the following offenses, including an equivalent felony offense from a jurisdiction other than Minnesota. As used within this paragraph, "custody status offense" means a prior offense resulting in a custody status that caused the offender to qualify for a custody status point as described in section a, above.
  - (i) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of 8, 9, 10, or 11 on the Standard Grid;
  - (ii) an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166);

- (iii) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of D8 or D9 on the Drug Offender Grid;
- (iv) an offense listed in Section 8, Severe Violent Offense List;
- (v) Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b));  
or
- (vi) an attempt or conspiracy to commit one of these offenses.

Comment

**2.B.201.** *The basic rule assigns offenders one or one-half point if they were under some form of eligible criminal justice custody status when they committed the offense for which they are now being sentenced.*

**2.B.202.** *The Commission intended to avoid criminal history scores in which a prior offense's custody status point outweighed the criminal history of the prior offense itself. Accordingly, when the criminal history weight of a prior felony is one-half point (but excluding severity level H offenses; see generally section 2.B.1) or the prior gross misdemeanor or misdemeanor contributes one or two misdemeanor units (see section 2.B.3), the custody status from that prior offense results in one-half, rather than one, custody status point. The Commission determined that the potential for a custody status point should remain for the entire period of the probationary sentence. If an offender receives an initial term of probation that is definite, is released from probation prior to the expiration of that term and commits a new crime within the initial term, it is clear that a custody point will be assigned. For example, if the offender is put on probation for five years, is released from probation in three years, and commits a new crime in year four, at least one custody status point will be added to the offender's criminal history. When the offender is given an indefinite initial term of probation and commits a new crime at any time prior to the end date of the pronounced range, the offender will be assigned a custody status point. Thus, an initial term of probation "not to exceed three years" is, for this purpose, three years; "three to five years" is five years; "up to the statutory maximum" is the statutory maximum. If probation is revoked and the offender serves an executed prison sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence.*

**2.B.203.** *In determining whether to grant a waiver in a particular case, the primary consideration is public safety. In this context, public safety means protecting the public from crime. The court should consider the values of retribution, incapacitation, deterrence, restitution and rehabilitation. In doing so, the court should apply a balanced approach in which all five values are examined and applied. For rehabilitation, the court may also consider the three factors listed in section 2.B.2.e in order to examine the whole person. When custody status is waived, the presumptive sentence will be calculated without the addition of the waived custody status point, or half-point, in the criminal history score. Thus, provided the*

~~processes of section 2.B.2.e are followed, granting a waiver of custody status for the current offense does not, in itself, constitute a departure from the Sentencing Guidelines. Probation given for an offense under Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status.~~

\* \* \*

3. Prior Gross Misdemeanors and Misdemeanors. Prior gross misdemeanor and misdemeanor convictions count as units comprising criminal history points. Four units equal one criminal history point; give no partial point for fewer than four units. Determine units as specified in this section.
  - a. General Assignment of Units. ~~Except as provided in paragraph g. If the current conviction is for an offense other than criminal vehicular homicide or operation or felony driving while impaired (DWI),~~ assign the offender one unit for each prior conviction of the following offenses provided the offender received a stayed or imposed sentence or stay of imposition for the conviction before the current sentencing:
    - (1) targeted misdemeanor, as defined in Minn. Stat. § 299C.10, subd. 1(e);
    - (2) non-traffic gross misdemeanor;
    - (3) gross misdemeanor driving while impaired;
    - (4) gross misdemeanor refusal to submit to a chemical test;
    - (5) gross misdemeanor reckless driving;
    - (6) a felony conviction resulting in a misdemeanor or gross misdemeanor sentence.

\* \* \*

- e. Decay Factor. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction must **not** be used in computing the criminal history score if ten years has elapsed between the date ~~of discharge from or expiration of~~ the initial sentence following the prior conviction and the

date of the current offense. However, misdemeanor sentences that result from the successful completion of a stay of imposition for a felony conviction are subject to the felony decay factor in section 2.B.1.c.

- f. Maximum Assignment of Points. Except as provided in paragraph g, an offender cannot receive more than one point for prior misdemeanor or gross misdemeanor convictions.
  
- g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minn. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114 two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes. For Criminal Vehicular Homicide (Death or Death to an Unborn Child, and Qualified Prior Conviction), assign no misdemeanor units to the qualified prior driving offense that was used to increase the statutory maximum penalty.

\* \* \*

Comment

\* \* \*

**2.B.304.** *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first-degree (felony) driving while impaired, and who have prior violations under Minn. Stat. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114 are also more culpable, and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation (CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVO misdemeanor units. If there are less than four units, add in any DWI/CVO units. Four or more units would equal one point. Only DWI/CVO units can be used in calculating additional points. Each set of four DWI/CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/CVO units, the theft would be added to the two DWI/CVO units to equal one point. The remaining four DWI/CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVO units, the first four theft units would equal one point. Four of the DWI/CVO units would equal a second point. The remaining two theft units*



could not be added to the remaining two DWI/CVO units for a third point. The total misdemeanor score would be two. \* \* \*

\* \* \*

**2.B.306.** The Commission also adopted a “decay” factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated for felony offenses; however, given that these offenses are less serious, the decay period is 10 years rather than 15.

\* \* \*

## **G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers**

1. In General. Sentence modifiers are statutes or policies that aid in defining the punishment for the underlying offense. Modifiers can affect either or both the duration and the disposition of the presumptive sentence. Any change to the presumptive fixed sentence under this section must also be applied to the upper and lower ends of the range found in the appropriate cell on the applicable Grid, except that the presumptive sentence cannot be less than one year and one day, nor can it be less than any applicable mandatory minimum.

\* \* \*

### 14. Second or Subsequent Severe Violent Offense.

#### a. The following definitions apply to this section:

- (1) A “severe violent offense” is an offense listed in Section 8, Severe Violent Offense List. “Severe violent offense” includes attempt or conspiracy, and includes an equivalent felony from a jurisdiction other than Minnesota. A current offense is not a “severe violent offense” if section 2.E.4 (Mandatory Life Sentences) applies.
- (2) “Second or subsequent severe violent offense” means that prior to the commission of current severe violent offense, the offender has been adjudicated guilty of one or more severe violent offenses.
- (3) A “prior severe violent offense conviction” is an adjudication that qualifies the current offense as a second or subsequent severe violent offense. A conviction for an offense excluded from criminal history score computation under section 2.B.1.c (Felony Decay Factor) does not qualify as a “prior severe violent offense conviction.”

b. If the current offense is a second or subsequent severe violent offense, the presumptive fixed sentence for the current offense, as determined in section 2.C, shall increase by the number of months corresponding, in the following table, to the number of prior severe violent offense convictions, provided that:

(1) If the current severe violent offense is an attempt under Minn. Stat. § 609.17 or conspiracy under Minn. Stat. § 609.175, the increase shall be one-half the number of months stated; and

(2) This section shall not apply to a presumptive or permissive consecutive sentence pursuant to section 2.F.

<b><u>NUMBER OF PRIOR SEVERE VIOLENT OFFENSE CONVICTIONS</u></b>	<b><u>MONTHS</u></b>
<u>1</u>	<u>12</u>
<u>2</u>	<u>18</u>
<u>3 or more</u>	<u>24</u>

Comment

\* \* \*

**2.G.03.** While the Commission recognizes the enhanced punishments available in the existing dangerous offender law (Minn. Stat. § 609.1095, subd. 2 and 3), it is also aware of the limited scope of those provisions, which, in practice, rarely result in enhanced sentences. It views the establishment of an automatic sentence modifier applicable to second or subsequent severe violent offenses as being necessary to protect the public from crime and thereby to promote public safety. The term "second or subsequent severe violent offense" incorporates the statutory term "second or subsequent offense" (Minn. Stat. § 609.02, subd. 11).

\* \* \*

## **8. Severe Violent Offense List**

Each of the following is a "severe violent offense" within the meaning of sections 2.B.2.e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

<b><u>Statute Number</u></b>	<b><u>Offense Title</u></b>
<u>609.185</u>	<u>Murder 1st Degree</u>

<b><u>Statute Number</u></b>	<b><u>Offense Title</u></b>
<a href="#"><u>609.19</u></a>	<a href="#"><u>Murder 2nd Degree</u></a>
<a href="#"><u>609.195(a)</u></a>	<a href="#"><u>Murder 3rd Degree (Depraved Mind)</u></a>
<a href="#"><u>609.221</u></a>	<a href="#"><u>Assault 1st Degree</u></a>
<a href="#"><u>609.222, subd. 2</u></a>	<a href="#"><u>Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)</u></a>
<a href="#"><u>609.245, subd. 1</u></a>	<a href="#"><u>Aggravated Robbery 1st Degree</u></a>
<a href="#"><u>609.25, subd. 2(2)</u></a>	<a href="#"><u>Kidnapping (Great Bodily Harm/Unsafe Release/Victim Under 16)</u></a>
<a href="#"><u>609.2661</u></a>	<a href="#"><u>Murder of an Unborn Child 1st Degree</u></a>
<a href="#"><u>609.2662</u></a>	<a href="#"><u>Murder of an Unborn Child 2nd Degree</u></a>
<a href="#"><u>609.2663</u></a>	<a href="#"><u>Murder of an Unborn Child 3rd Degree</u></a>
<a href="#"><u>609.282</u></a>	<a href="#"><u>Labor Trafficking</u></a>
<a href="#"><u>609.342, subd. 1(c)(d)(e)(f)</u></a>	<a href="#"><u>Criminal Sexual Conduct 1st Degree</u></a>
<a href="#"><u>609.343, subd. 1(c)(d)(e)(f)</u></a>	<a href="#"><u>Criminal Sexual Conduct 2nd Degree</u></a>
<a href="#"><u>609.498, subd. 1b</u></a>	<a href="#"><u>Tampering with Witness, Aggravated 1st Degree</u></a>
<a href="#"><u>609.561, subd. 1 or 2</u></a>	<a href="#"><u>Arson 1st Degree</u></a>
<a href="#"><u>609.66, subd. 1e(b)</u></a>	<a href="#"><u>Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)</u></a>

\* \* \*

#### **Appendix 4. 8. Targeted Misdemeanor List**

*Directive to MSGC staff: The existing Section 8, Targeted Misdemeanor List, shall be restyled as Appendix 4, Targeted Misdemeanor List, and moved to the end of the Minnesota Sentencing Guidelines and Commentary.*

## Appendix 3. Impact of Proposed 2019 Guidelines Modifications

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### Appendix 3.1. Prison Bed Impact

The following provides a staff estimate of the cumulative impact of the adoption of the modifications to the Minnesota Sentencing Guidelines and Commentary set forth in Appendix 2 and proposed to take effect August 1, 2019. The proposed changes to criminal history will, in the long term, tend to reduce the need for prison beds, while the sentencing enhancement for repeat, severe violent offenders will tend to increase the need for prison beds.

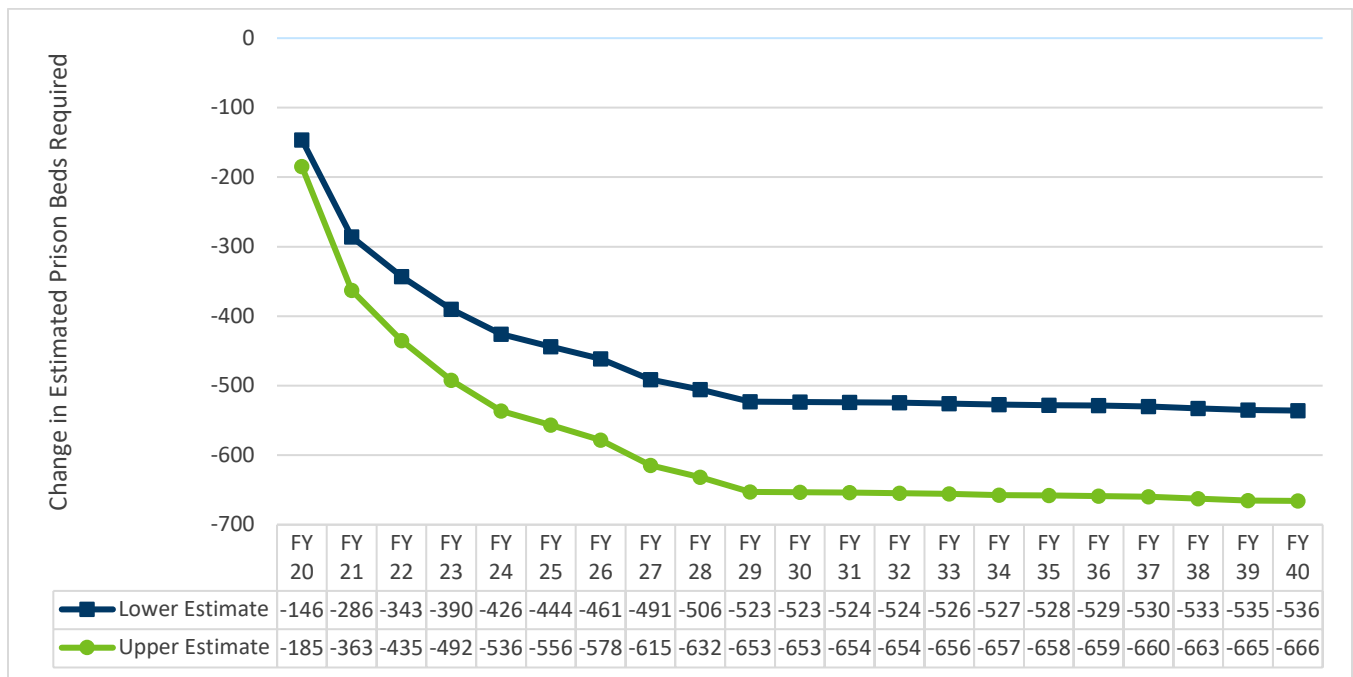
- It is estimated that the proposed changes to decay policy will eventually avoid the need for 236 estimated prison beds.
- It is estimated that three of the changes to custody status policy—not including the custody status waiver proposal—will, combined, eventually avoid the need for 155 estimated prison beds.<sup>92</sup>
- The impact of the custody status waiver proposal will depend on the rate at which judges grant waivers, which is unknown. If staff assumptions about waiver rates are correct, this proposal will eventually avoid the need for between 168 and 298 estimated prison beds.
- With respect to the repeat severe violent offender proposal, it is estimated that the proposal will eventually require the need for an additional 24 estimated prison beds.

All told, MSGC staff estimates that the proposed modifications will eventually result in the reduction of the need for 536 prison beds, and possibly as many as 666 prison beds. The timing of this estimated impact is shown in Figure 27.

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<sup>92</sup> Some of the policy changes affect the impact of other policy changes. The estimated impact takes into consideration the effect of the other policy changes.

Figure 27. Timing of Estimated Prison Bed Impact of Proposed 2019 Guidelines Modifications, by Fiscal Year



Notes: The estimated prison bed savings reflects the expected bed savings as of the end of the fiscal year. For example, the lower estimate in 2020 of 146 beds saved are expected to be realized by June of 2020. The impact of the custody status waiver proposal will depend on the rate at which judges grant waivers, which is unknown. “Lower estimate” is the estimated prison bed reduction based on waiver rates occurring at the low end of the range of staff assumptions. “Upper estimate” is the estimated prison bed reduction based on waiver rates occurring at the high end of the range of staff assumptions. The actual impact might be expected to fall somewhere between these two estimates.

### Appendix 3.2. Demographic Impact

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

#### Current State Demographics

Table 11 below, displays current demographic information pertaining to three populations within the state: the felony population (that is, the population of offenders sentenced for felony offenses in 2017); the adult prison population (as of July 1, 2017); and the general population, age 15 and older (on July 1, 2017, as estimated by the U.S. Census Bureau). Table 1 breaks down those populations by the following demographic categories: Gender; race and ethnicity; and judicial district. A map of Minnesota’s ten judicial districts may be found in Appendix 6.

Table 11. Minnesota’s 2017 General Population, Felony Population, and Prison Population, by Gender, Race and Ethnicity, and Judicial District

General Population		Felony Population				Prison Population		
U.S. Census Category	2017 Estimated Pop. Age 15 & Older		MSGC Category	Offenders Sentenced in 2017		2017 Adult Inmate Population		
	Number	Percent		Number	Percent	Number	Percent	
Male	2,223,712	49.5%	Male	14,703	80.4%	9,374	92.7%	
Female	2,270,163	50.5%	Female	3,584	19.6%	737	7.3%	
Race & Ethnicity	White*	3,755,112	83.6%	White	10,480	57.3%	4,788	47.4%
	Black or African American*	279,784	6.2%	Black	4,656	25.5%	3,463	34.2%
	American Indian*	70,247	1.6%	American Indian	1,640	9.0%	967	9.6%
	Hispanic**	203,250	4.5%	Hispanic**	942	5.2%	601	5.9%
	Asian*	234,126	5.2%	Asian	514	3.1%	274	2.7%
	Native Hawaiian/ Other Pacific Islander*	4,998	0.1%	Other/ Unknown	55	0.3%	18	0.2%
Judicial District	First	628,830	14.0%	First	2,404	13.1%	861	8.5%
	Second	439,934	9.8%	Second	1,815	9.9%	1,304	12.9%
	Third	386,982	8.6%	Third	1,426	7.8%	769	7.6%
	Fourth	1,019,718	22.7%	Fourth	3,819	20.9%	2,540	25.1%
	Fifth	233,192	5.2%	Fifth	1,006	5.5%	448	4.4%
	Sixth	210,739	4.7%	Sixth	912	5.0%	568	5.6%
	Seventh	392,773	8.7%	Seventh	1,972	10.8%	1,098	10.9%
	Eighth	128,819	2.9%	Eighth	492	2.7%	293	2.9%
	Ninth	275,394	6.1%	Ninth	1,818	9.9%	1,088	10.8%
	Tenth	777,494	17.3%	Tenth	2,624	14.3%	1,034	10.2%
<b>Total</b>	<b>4,493,875</b>	<b>100.0%</b>	<b>Total</b>	<b>18,288</b>	<b>100.0%</b>	<b>10,111</b>	<b>100.0%</b>	

Source of July 1, 2017, Adult Inmate Population: Minn. Department of Corrections. Judicial district populations exclude 108 inmates whose governing sentences were for offenses committed in non-Minnesota jurisdictions.

Source of July 1, 2017, population estimate: U.S. Census Bureau (June, 2018).

\* Not Hispanic, alone or in combination with one or more other races. Sum of percentages of residents in each racial/ethnic category exceeds 100 percent (100.4%) because residents of more than one race are counted in more than one category.

\*\* Lists all Hispanic offenders and residents as Hispanic, regardless of race.

### *Demographic Characteristics – Reduced Prison Population*

It is estimated that the proposed modifications will eventually result in the reduction of the need for at least 536 prison beds.<sup>93</sup> If the proposed provisions had been in effect in for offenders sentenced in 2017, it is estimated that the demographic characteristics of the occupants of those prison beds would have been as follows:

- **Gender:** Male (91%); and Female (9%).
- **Race & Ethnicity:** White (50%); Black (30%); American Indian (12%); Hispanic (5%); and Asian (3%).
- **Judicial District:** First (10%); Second (8%); Third (10%); Fourth (19%); Fifth (4%); Sixth (4%); Seventh (14%); Eighth (2%); Ninth (15%); and Tenth (14%).

It may be assumed that the demographic characteristics of the offenders sentenced in the future will be similar to the demographic characteristics of those offenders sentenced in 2017. If so, we would expect that the occupants of the estimated 536 prison beds that will eventually no longer be needed would share similar demographic characteristics with those characteristics listed in the preceding paragraph. Table 12, below, shows the demographic change in prison population that would eventually result from the proposed modifications, assuming that future offenders' demographic characteristics are similar to those of offenders sentenced in 2017.

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<sup>93</sup> Due to uncertainty in application of the custody status point waiver policy, staff estimated a range of eventual prison bed impact (see p. 70). The demographic analysis that follows assumes the lower end of this range.

Table 12. Minnesota’s Existing Prison Population, Estimated Change in Prison Population, and Estimated Resulting Prison Population, by Gender, Race and Ethnicity, and Judicial District

	Prison Population			Estimated Change in Prison Beds Needed*		Estimated Resulting Prison Population*				
	MSGC Category	2017 Adult Inmate Population		Beds	Percent	Number	Percent	Estimated resulting rate per 100,000*†	Percent change from existing prison population	
		Number	Percent							Rate per 100,000†
	Male	9,374	92.7%	422	-489	91.2%	8,885	92.8%	400	-5.2%
	Female	737	7.3%	32	-47	8.8%	690	7.2%	30	-6.4%
Race & Ethnicity	White	4,788	47.4%	128	-270	50.4%	4,518	47.2%	120	-5.6%
	Black	3,463	34.2%	1,238	-160	29.9%	3,303	34.5%	1,181	-4.6%
	American Indian	967	9.6%	1,377	-64	11.9%	903	9.4%	1,285	-6.6%
	Hispanic	601	5.9%	296	-28	5.2%	573	6.0%	282	-4.7%
	Asian	274	2.7%	117	-14	2.6%	260	2.7%	111	-5.1%
	Other/Unknown	18	0.2%	***	-0.5	0.1%	18	0.2%	***	***
Judicial District	First	861	8.5%	137	-51	9.5%	810	8.5%	129	-2.8%
	Second	1,304	12.9%	296	-42	7.8%	1,262	13.2%	287	-5.9%
	Third	769	7.6%	199	-54	10.1%	715	7.5%	185	-3.2%
	Fourth	2,540	25.1%	249	-103	19.2%	2,437	25.5%	239	-7.0%
	Fifth	448	4.4%	192	-22	4.1%	426	4.4%	183	-4.1%
	Sixth	568	5.6%	270	-24	4.5%	544	5.7%	258	-4.9%
	Seventh	1,098	10.9%	280	-73	13.6%	1,025	10.7%	261	-4.2%
	Eighth	293	2.9%	227	-10	1.9%	283	3.0%	220	-6.6%
	Ninth	1,088	10.8%	395	-81	15.1%	1,007	10.5%	366	-3.4%
	Tenth	1,034	10.2%	133	-76	14.2%	958	10.0%	123	-7.4%
	<b>Total</b>	<b>10,111</b>	<b>100.0%</b>	<b>225</b>	<b>-536</b>	<b>100.0%</b>	<b>9,575</b>	<b>100.0%</b>	<b>213</b>	<b>-5.3%</b>

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

† Rate per 100,000 residents age 15 and older, as shown on Table 11, “General Population” (2017 U.S. Census Bureau Estimate).

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

\*\*\* Comparisons within the “other/unknown” category are not reliable.



## Appendix 4. Proposed Guidelines and Legislative Changes to Clarify Effective Dates

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On December 20, 2018, the Minnesota Sentencing Guidelines took the following actions to clarify that Guidelines modifications generally apply to offenses committed on or after the effective date of the modification. These actions were taken in light of *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017). An explanation of these actions begins on page 13.

### Appendix 4.1. Proposed Guidelines Change – Subject to Public Hearing and Final Adoption

On December 20, 2018, the Commission unanimously adopted a motion to modify § 3.G of the Minnesota Sentencing Guidelines, subject to public hearing and final adoption, as follows:

#### 3. Related Policies

\* \* \*

#### G. Modifications

1. Policy Modifications. Modifications to sections 1 through 8 of the Minnesota Sentencing Guidelines, and associated commentary and appendices, apply to offenders whose date of offense is on or after the specified modification effective date.
2. Clarifications of Existing Policy. Modifications to commentary and appendices relating to existing Guidelines policy apply to offenders sentenced on or after the specified effective date.

\* \* \*

## Appendix 4.2. Resolution to Recommend Legislative Change

On December 20, 2018, the Commission unanimously adopted the following resolution:

Whereas the Minnesota Sentencing Guidelines Commission is statutorily required, from time to time, to make recommendations to the Legislature regarding changes in the criminal code, criminal procedures, and other aspects of sentencing;

Whereas the Commission's longstanding policy is that modifications to the Minnesota Sentencing Guidelines apply to offenders whose date of offense is on or after the specified modification effective date;

Whereas, in light of the case of *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017), the intent of the Commission and the Legislature in this regard is in need of clarification; now, therefore, be it

*Resolved*, that the Minnesota Sentencing Guidelines Commission does hereby recommend to the Legislature that Minn. Stat. § 244.09, subd. 11, be amended as follows:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2018, section 244.09, subdivision 11, is amended to read:

Subd. 11. **Modification.** The commission shall meet as necessary for the purpose of modifying and improving the guidelines. Any modification which amends the Sentencing Guidelines grid, including severity levels and criminal history scores, or which would result in the reduction of any sentence ~~or in the early release of any inmate~~, with the exception of a modification mandated or authorized by the legislature or relating to a crime created or amended by the legislature in the preceding session, shall be submitted to the legislature by January 15 of any year in which the commission wishes to make the change and shall be effective on, and shall apply, unless otherwise specified by the commission, to crimes committed on or after, August 1 of that year, unless the legislature by law provides otherwise. All other modifications shall take effect according to the procedural rules of the commission. On or before January 15 of each year, the commission shall submit a written report to the committees of the senate and the house of representatives with jurisdiction over criminal justice policy that identifies and explains all modifications made during the preceding 12 months and all proposed modifications that are being submitted to the legislature that year.

**EFFECTIVE DATE.** This section is effective the day following final enactment, and applies to modifications made effective on or after that date.

# Appendix 5. Sentencing Guidelines Grids

## Appendix 5.1. Standard Sentencing Guidelines Grid – Effective August 1, 2018

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>	<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>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</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</i> <i>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>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</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>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</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 5.2. Sex Offender Grid – Effective August 1, 2018

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

### CRIMINAL HISTORY SCORE

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

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



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



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

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

### Appendix 5.3. Drug Offender Grid – Effective August 1, 2018

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>	<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

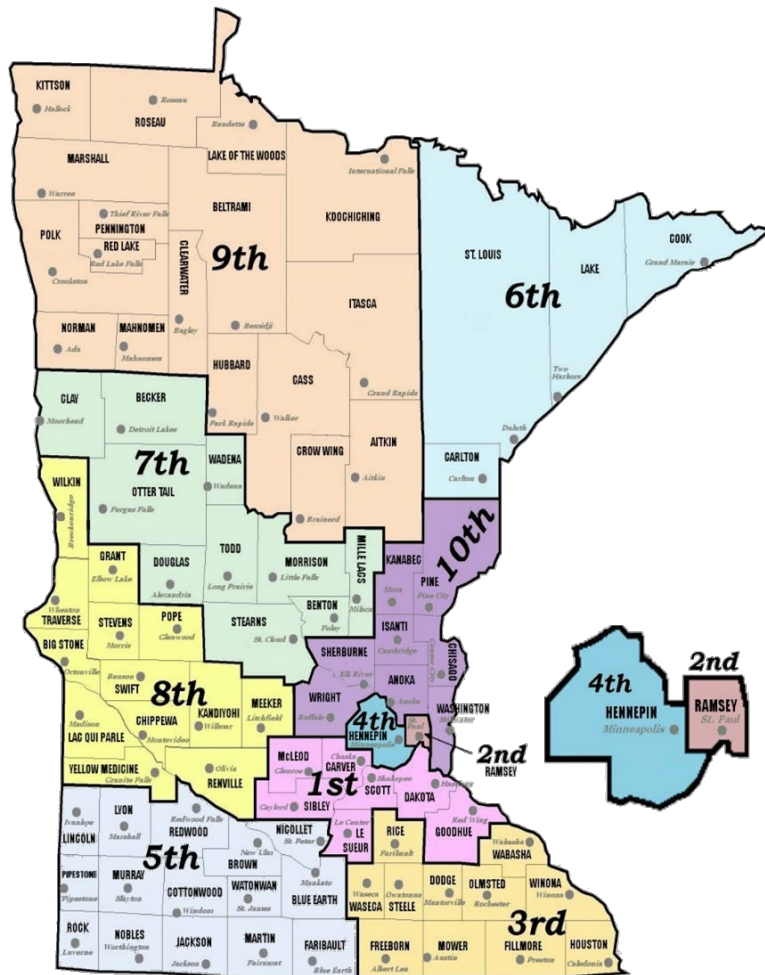


Presumptive commitment to state imprisonment.



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.

## Appendix 6. Minnesota Judicial District Map



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

Source: Minn. Judicial Branch.