

MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Controlled Substance Offenses Sentenced in 2011

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Summary of 2011 Data

This report gives statistics concerning drug felonies and how they were sentenced in 2011, as well as outlining trends in sentencing drug offenses since the implementation of the Guidelines.

In 2011, there were 3,409 offenders sentenced for drug offenses, an increase of approximately two and a half percent over the number sentenced in 2010 (Figures 1 and 2). For four years prior to 2011, the number of drug offenses sentenced had decreased by seven or eight percent each year.

The number of first-degree offenses sentenced rose in 2011 after declining in almost every year since 2003, due in part to the decline in the number of manufacture of methamphetamine “Meth” offenses (17 offenders were sentenced in 2011, compared to 310 in 2003 – Figures 3 and 4). The number of cocaine cases was down by ten percent while the number of methamphetamine cases rose by nine percent (Figure 5).

The total incarceration rate for drug offenders sentenced was 92 percent, with 24 percent receiving a prison sentence and 68 percent getting time in a local correctional facility (jail) as a condition of probation (Table 1).

Departure rates for drug offenses increased from the departure rates observed in 2010, when they were at their lowest level seen in the last decade. Among drug offenders recommended prison under the Guidelines, 36 percent received a mitigated dispositional departure and were placed on probation (Figure 15). Among drug offenders who received prison sentences, 28 percent received a mitigated durational departure, an increase from the 2010 rate of 23 percent (Figure 16).

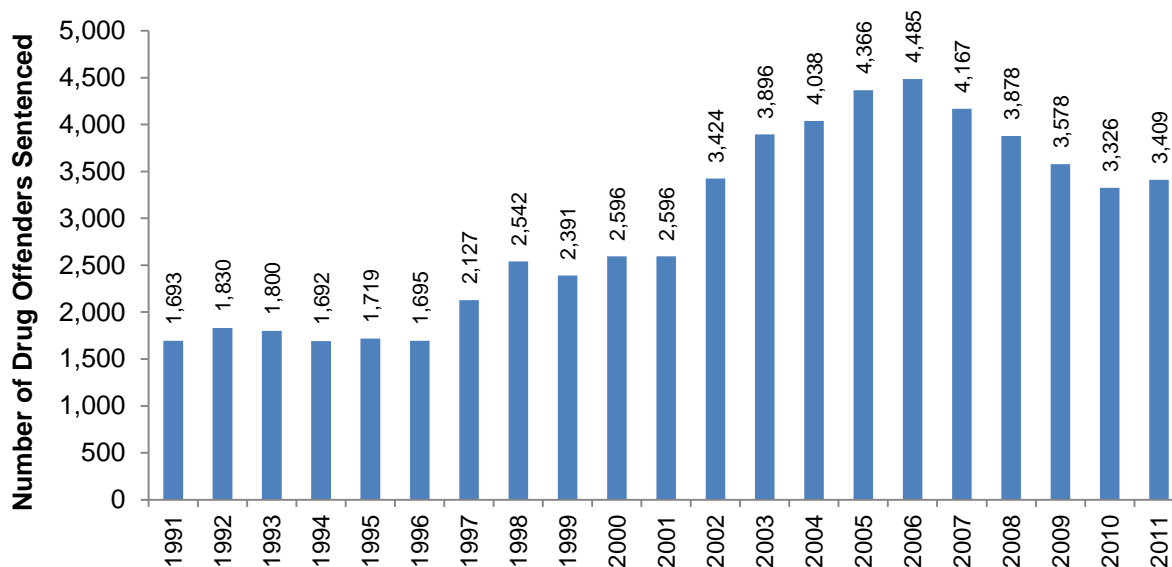
Departure rates among offenders recommended prison sentences under the Guidelines are so high that a greater number of offenders receive departures than receive the recommended sentence. Only 45 percent of drug offenders who were recommended a prison sentence received the recommended sentence or longer; 36 percent received a probationary sentence and 19 percent received a prison sentence that reflected less time than designated for under the Guidelines (Figure 23).

Case Volume & Distribution¹

Volume of Cases

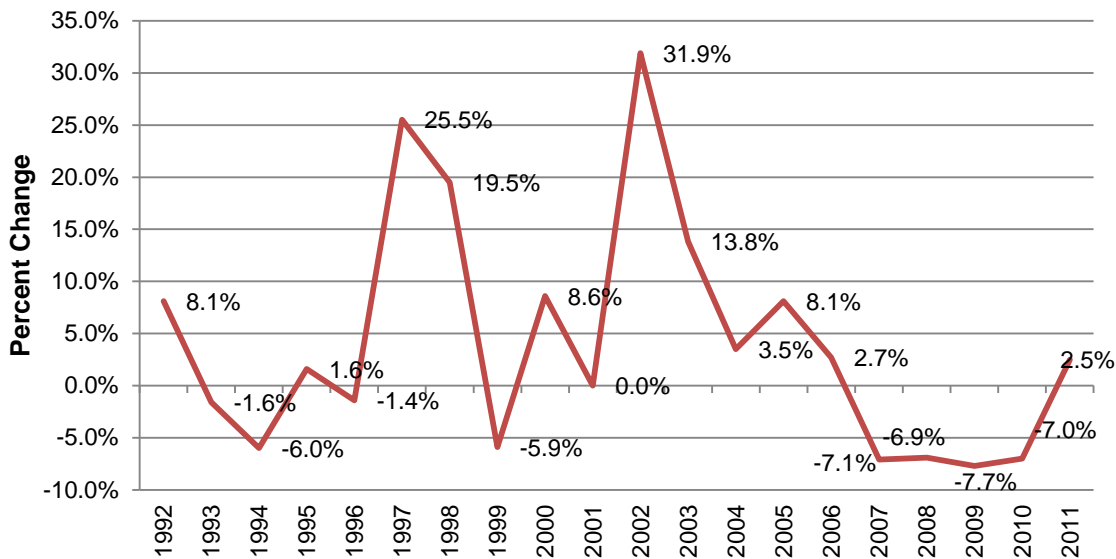
The number of felony offenders sentenced in 2011 totaled 14,571, an increase of approximately two percent from the number of offenders sentenced in 2010. An illustration of the total number of felony offenders sentenced since 1981 can be found in MSGC's full Sentencing Practices data report (available online at <http://www.msgc.state.mn.us>). There were 3,409 felony offenders sentenced for drug offenses in 2011, an increase of two and a half percent over the number of drug offenders sentenced in 2010 (Figure 1). Figure 2 illustrates the percent change in the number of drug offenders sentenced over time. The increase in the number of offenders sentenced for drug offenses in 2011 is a departure from the trend in the recent past. From 2006 through 2010, the number of drug offenders sentenced had decreased by seven or eight percent each year.

Figure 1. Number of Offenders Sentenced for Felony Drug Convictions: 1991-2011



¹ Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

Figure 2. Percent Change in Number of Offenders Sentenced for Felony Drug Convictions: 1992-2011

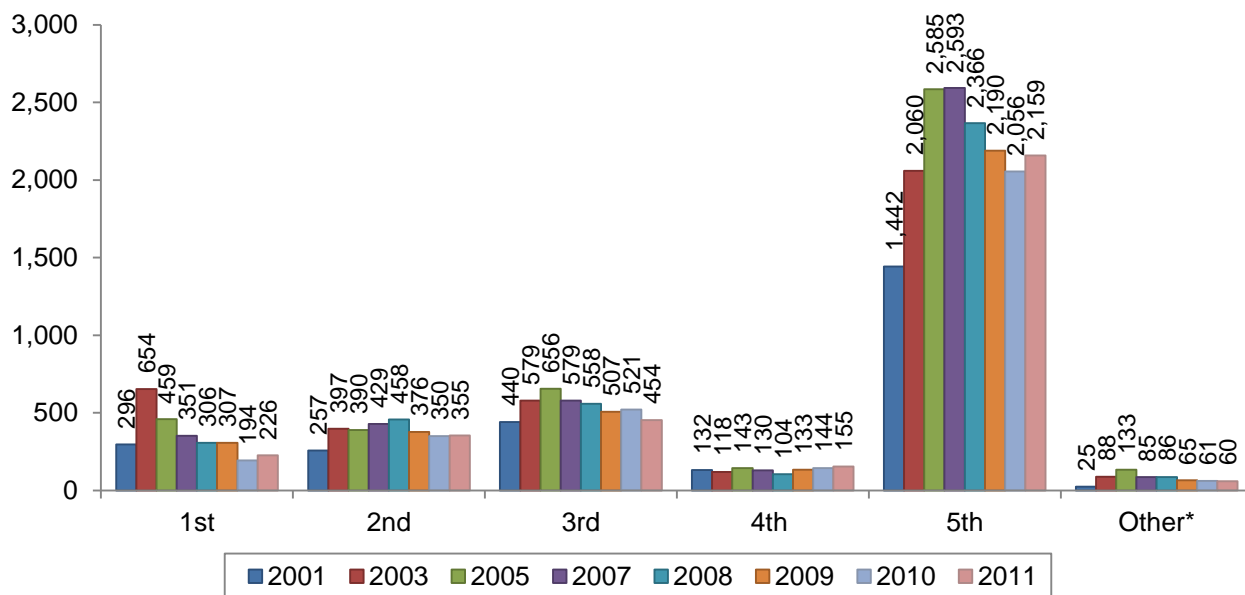


Volume of Cases: First-Degree

Figure 3 shows the distribution of drug offenders across the controlled substance degrees. After significantly increasing in the early 2000s, the number of offenders sentenced for first-degree offenses has declined. The number of first-degree offenders sentenced declined in each year between 2003 and 2008, due in part to the decline in the number of offenders sentenced for manufacture of methamphetamine (17 offenders in 2011, compared to 310 in 2003 – Figure 4). In 2010, the number of first-degree offenders continued to experience a general decline, falling to the lowest level seen in over a decade (194 offenders). The number of offenders sentenced for first-degree offenses increased in 2011 to 226 offenders (an increase of 16%).

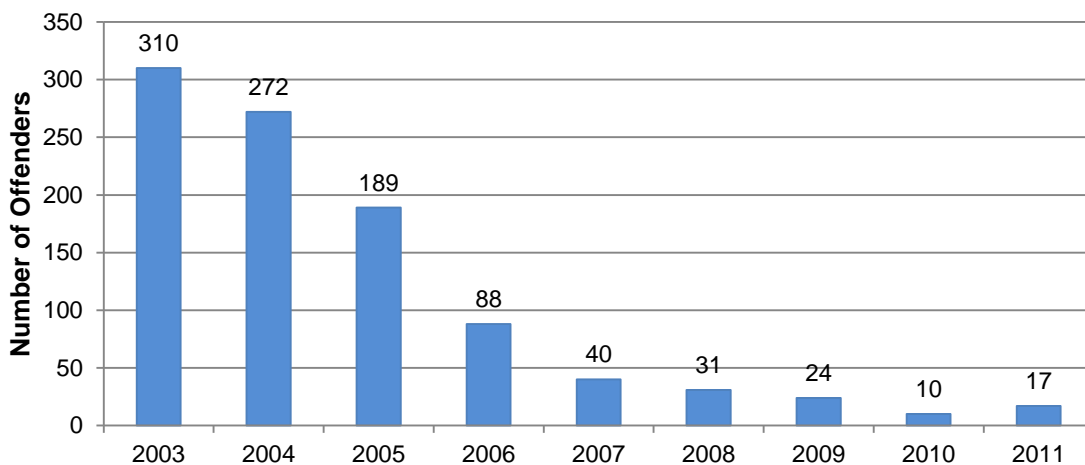
Figure 4 shows the number of offenders sentenced for manufacture of methamphetamine from 2003 to 2011. In 2011, the number increased slightly from 10 in 2010 to 17. In 2005, the offense of manufacture of methamphetamine; possession of precursors (Minn. Stat. § 152.021, subd. 2a(b)) was reclassified, and is no longer a first-degree offense. This statutory change contributed to the decline in the total number of first-degree offenders. These “precursor offenses” are now reported in the “Other” category.

**Figure 3. Distribution of Drug Offenders by Drug Degree: 2001-2011
(Number of Drug Offenders Sentenced)**



* In 2011, the “Other” category includes one offender sentenced for tampering with anhydrous ammonia, 10 offenders sentenced for possession of precursors with intent to manufacture methamphetamines, 22 offenders sentenced for sale of a simulated controlled substance, and 27 offenders sentenced for methamphetamine crimes involving children, which went into effect August 1, 2005.

Figure 4. Number of Offenders Sentenced for Manufacture of Methamphetamine (Meth): 2003-2011



Drug Type, Region, Race & Prior Drug Convictions

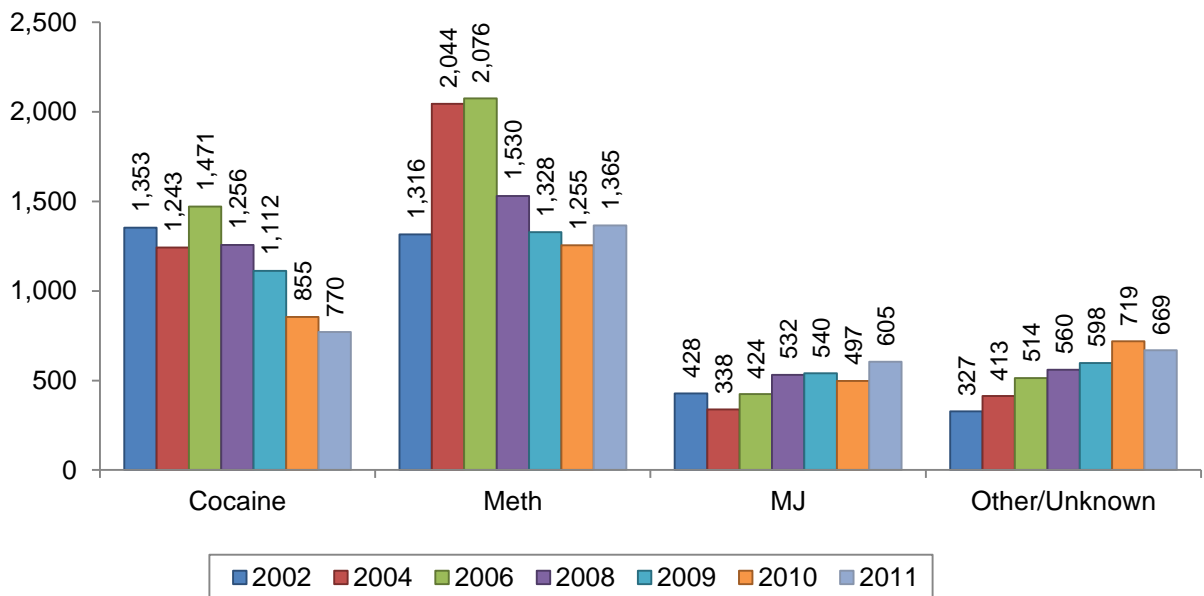
Drug Type

In 2011, the number of offenders sentenced for cocaine offenses decreased while the number for methamphetamine and marijuana increased. The numbers for methamphetamine rose by nine percent, the numbers for marijuana increased by 22 percent, while the numbers for cocaine decreased by ten percent. The numbers involving other or unknown drugs decreased by seven percent (Figure 5).

Distribution of Cases over Time (Drug Types)

The distribution of cases among drug types has changed over time. In 1996, 48 percent of the cases sentenced involved cocaine, 24 percent involved marijuana, 14 percent were unknown or of some other type and 14 percent involved amphetamines. In 2002, cocaine still represented the largest number of drug cases (40%), but the amphetamine/methamphetamine category had grown to 38 percent, marijuana had decreased to 13 percent, and 10 percent involved other drug types or unknown drugs. By 2004, over half (51%) of the drug cases sentenced involved methamphetamine. In 2011, methamphetamine was still the drug type with the largest number of cases (40%), while 23 percent of the cases involved cocaine, 18 percent involved marijuana and 20 percent were for other or unknown substances.

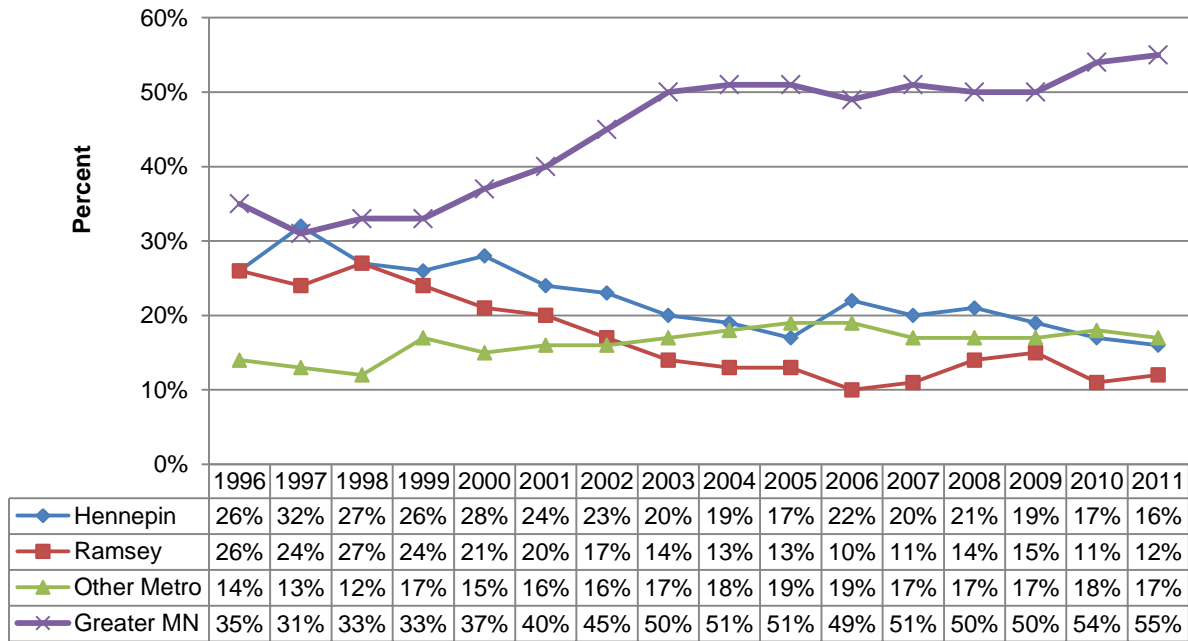
**Figure 5. Distribution of Offenders by Drug Type: 2001-2011
(Number of Drug Offenders Sentenced)**



Distribution of Cases over Time (Region)

The number of drug cases outside of the 7-County Metro area has increased more than the number of drug cases sentenced in the metro counties. In 1996, 35 percent of all drug cases were sentenced in Greater Minnesota (Figure 6). By 2004, that percentage had grown to 51 percent, and it has remained above 50 percent in almost every year since. In 2011, the percent of drug offenders sentenced in Greater Minnesota rose to an all-time high of 55 percent.

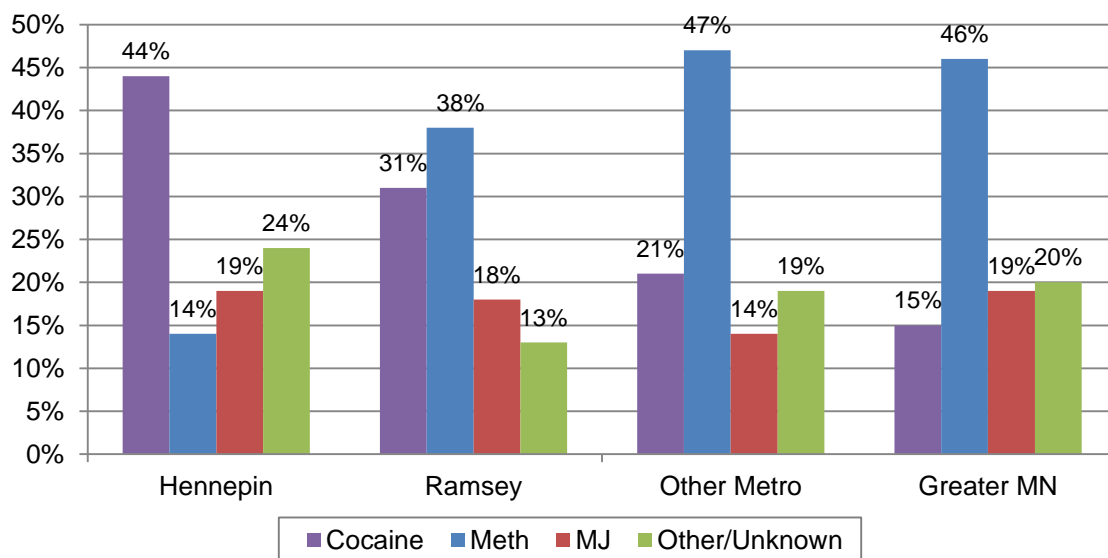
Figure 6. Distribution of Drug Cases by Region: 1995-2011



2011 Distribution of Cases (Drug Types and Region)

There was a difference in the distribution of drug types among regions as well (Figure 7). In 2011, cocaine was still the drug type found most frequently in Hennepin County, while methamphetamine remained the most common drug type in Greater Minnesota and the other metro counties. For the first time in Ramsey County, methamphetamine (as opposed to cocaine) was the most frequently cited drug type.

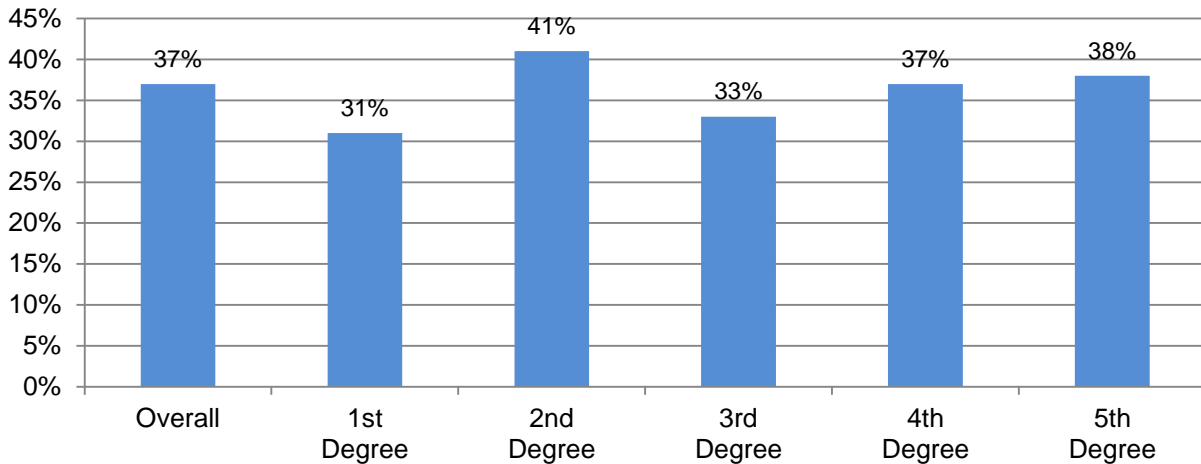
Figure 7. Distribution of Drug Offenders by Drug Type and Region: 2011



2011 Distribution of Cases (Prior Conviction)

In 2011, 37 percent of the drug offenders sentenced had prior convictions for felony-level drug offenses (Figure 8). There was variation in prior conviction rates depending on the controlled substance degree. First-degree offenders were least likely to have prior convictions (31%), while second-degree offenders were most likely to have prior convictions (41%).

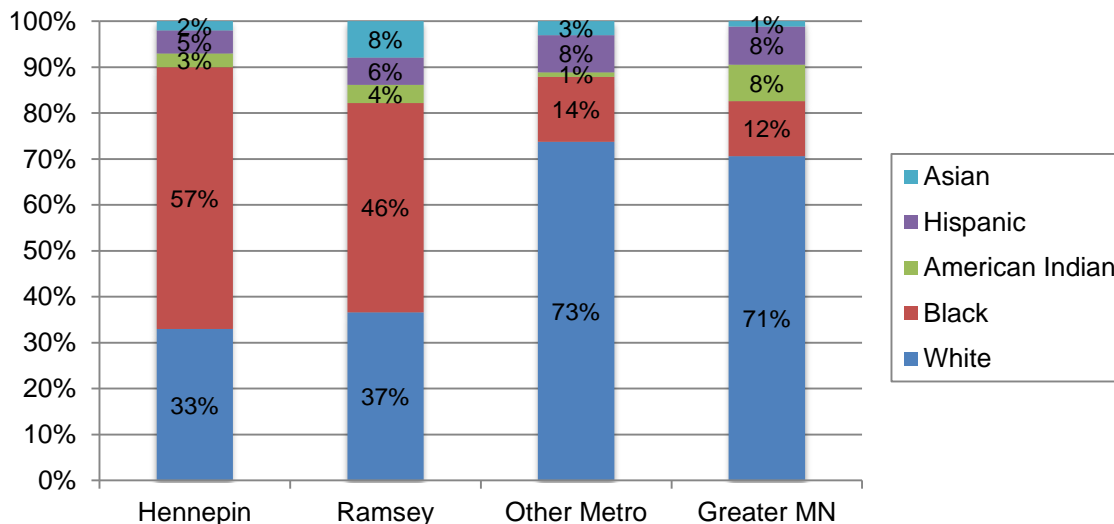
Figure 8. Percent of Offenders with a Prior Felony Drug Sentence by Controlled Substance Degree: 2011



Racial Distribution

Figure 9 displays the racial distribution of drug offenders by region. The majority of drug offenders sentenced in Hennepin County and Ramsey County are black. These counties include the Metropolitan areas of St. Paul and Minneapolis.

Figure 9. Distribution of Offenders by Race and Region: 2011



Before the growth of methamphetamine, non-whites were over-represented among drug offenders when compared to other offense types. In 2011, the racial composition of drug offenders is similar to the composition of other felony offenders (Figure 10). In 1999, 51 percent of drug offenders were white and 36 percent were black, whereas in 2011, 61 percent of drug offenders were white and 24 percent were black. Sentencing data reveal that methamphetamine is predominantly a drug of choice for white offenders and is directly impacting the racial make-up of drug offenders in Minnesota. Figure 11 displays the racial composition of offenders sentenced for methamphetamine, cocaine, and marijuana offenses in 2011.

Figure 10. Distribution of Offenders by Race: 2011 Drug Offenders vs. 2011 Other Offenders

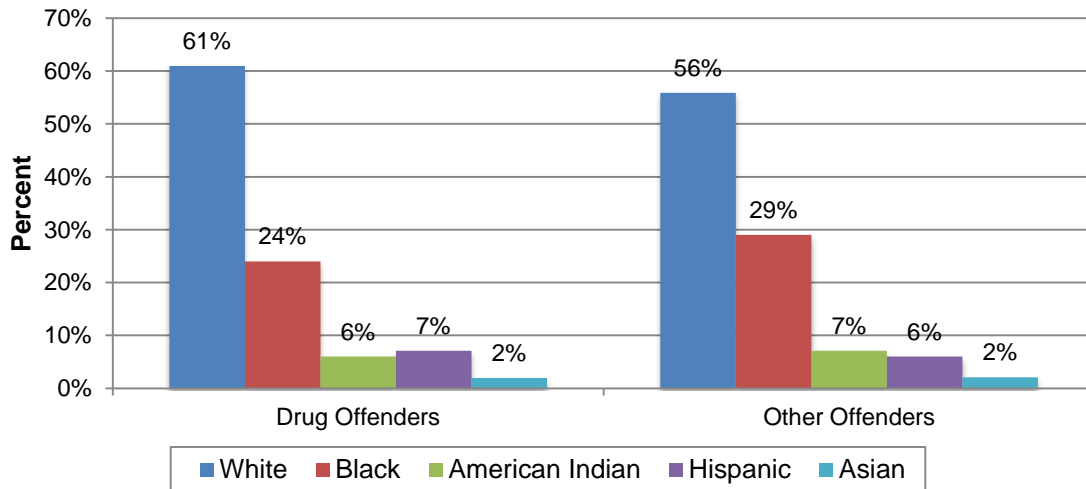
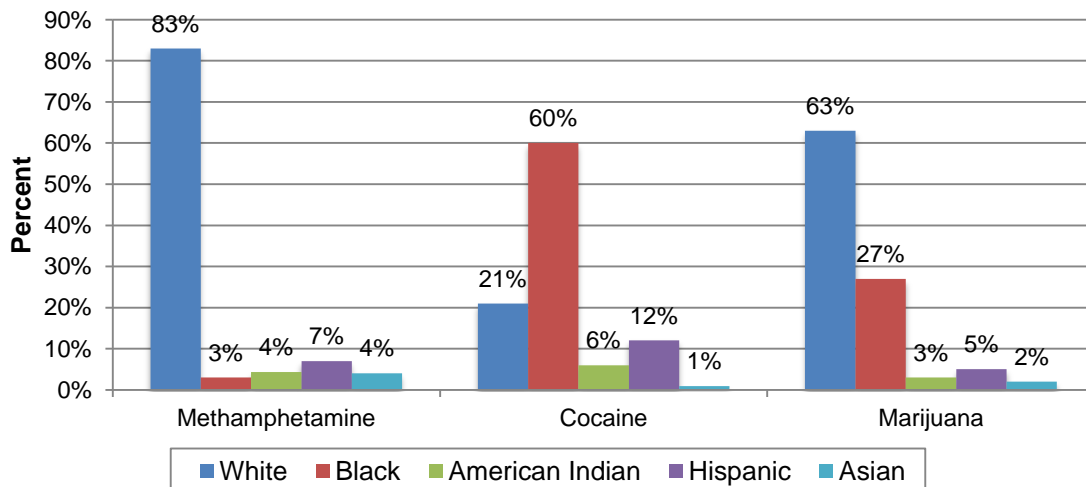


Figure 11. Distribution of Offenders by Race: 2011 Most Common Drug Types



Sentencing Practices

In 2011, 92 percent of drug offenders were incarcerated; 24 percent in state prison; and 68 percent in local correctional facilities (Table 1). The remaining 8 percent received non-jail sanctions such as treatment and incarceration as a possible consequence of failing to comply with court orders.

Table 1. Total Incarceration: 2011

| Incarceration Type | Number | Percent |
|---------------------|--------|---------|
| State Prison | 818 | 24 |
| Local Jail | 2,315 | 68 |
| Total Incarceration | 3,132 | 92 |

Incarceration in State Prison

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

Incarceration of felony drug offenders at the state level has increased significantly over the past fifteen years, at a higher rate than for any other offense category. The reason for this increase is two-fold: a larger total number of drug offenders are being sentenced and a higher percentage of them are receiving prison sentences. The imprisonment rate for drug offenders was highest in 2003, at 28 percent, and has decreased slightly to between 24 and 25 percent in recent years (Table 2). This decrease reflects the change in the distribution of cases, with a larger proportion of offenses now at the lower severity levels. This is due, in part, to the decrease in the number of offenders sentenced for manufacture of methamphetamine. However, despite the lower imprisonment rate trend in recent years, it is still true that more drug offenders are being sentenced to prison for longer periods of time than fifteen years ago, which directly impacts the amount of correctional resources required to accommodate this offender population.

In 1991, 217 drug offenders (13%) were imprisoned with an average pronounced sentence of 35 months. In 2003, this number jumped to 1,107 offenders (28%) with an average sentence of 52 months. However, since 2003, both the total number of drug offenders sentenced and the proportion of drug offenders sentenced for the most serious offenses has decreased, resulting in a decrease in both the imprisonment rate and average sentence duration. In 2011, 818 drug offenders (24%) were imprisoned with an average sentence of 43 months.

Table 2. Imprisonment Cases: Prison Rates and Average Pronounced Durations for Drug and Non-Drug Offenders

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

Probation Cases

The rise in the number of drug cases has resulted in an increase in the number of drug offenders sentenced to probation, as well as an increase in the number of drug offenders serving time in local jails and workhouses as a condition of probation. In 2011, 2,591 offenders received probation sentences for drug offenses; a 76 percent increase over the number receiving probation sentences in 1991 (Table 3). In comparison, the number of non-drug offenders serving probation sentences increased by about 41 percent during this same time period. The increase in the number of drug offenders placed on probation expands the size of the pool of offenders who could eventually end up in prison through probation revocations. This has directly impacted prison populations.

Offenders placed on probation for a felony offense can receive up to one year of local jail or workhouse time as a condition of probation. The vast majority of offenders placed on felony probation serve conditional jail time. Since 1991, more than 80 percent of felony probationers have had jail time imposed as a condition of probation and drug offenders have had jail time imposed at a slightly higher rate than non-drug offenders. In 2011, the jail rate rose to 89 percent from 82 percent in 2010. Non-drug offenders have had slightly lower rates of imposed jail time. For both groups, the average jail time pronounced has been close to, or slightly greater than, 100 days. In 2011, as in 2010, the average pronounced jail time for drug offenders was 120 days (Table 3).

Table 3. Non-Imprisonment Cases: Jail Rates and Avg. Pronounced Conditional Confinement for Drug and Non-Drug Offenders

| Year Sentenced | Drug Offenders | | | Non-Drug Offenders | | |
|----------------|----------------|-----------|--------------------------|--------------------|-----------|--------------------------|
| | # Stayed Cases | Jail Rate | Avg. Pronounced Duration | # Stayed Cases | Jail Rate | Avg. Pronounced Duration |
| 1991 | 1,476 | 86% | 90 days | 5,908 | 80% | 110 days |
| 1992 | 1,575 | 87% | 101 days | 5,825 | 83% | 111 days |
| 1993 | 1,459 | 86% | 116 days | 6,114 | 81% | 112 days |
| 1994 | 1,412 | 87% | 98 days | 6,332 | 80% | 117 days |
| 1995 | 1,398 | 87% | 101 days | 5,887 | 82% | 110 days |
| 1996 | 1,404 | 83% | 104 days | 5,887 | 81% | 108 days |
| 1997 | 1,781 | 87% | 105 days | 5,877 | 82% | 107 days |
| 1998 | 1,192 | 88% | 99 days | 6,334 | 83% | 110 days |
| 1999 | 1,872 | 88% | 99 days | 6,311 | 84% | 104 days |
| 2000 | 1,982 | 90% | 101 days | 5,985 | 85% | 106 days |
| 2001 | 1,973 | 91% | 108 days | 6,374 | 84% | 104 days |
| 2002 | 2,486 | 90% | 114 days | 7,435 | 86% | 103 days |
| 2003 | 2,789 | 91% | 115 days | 8,167 | 86% | 109 days |
| 2004 | 3,015 | 91% | 117 days | 8,290 | 88% | 110 days |
| 2005 | 3,353 | 91% | 118 days | 8,526 | 89% | 99 days |
| 2006 | 3,573 | 91% | 118 days | 9,278 | 89% | 96 days |
| 2007 | 3,165 | 90% | 118 days | 9,243 | 88% | 106 days |
| 2008 | 2,914 | 88% | 117 days | 8,628 | 87% | 106 days |
| 2009 | 2,696 | 90% | 113 days | 8,421 | 87% | 105 days |
| 2010 | 2,503 | 82% | 120 days | 8,168 | 80% | 107 days |
| 2011 | 2,591 | 89% | 120 days | 8,327 | 87% | 104 days |

Departure Rates

Role and Definition of Departures in the Sentencing Guidelines System

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

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

Description of Departure Types

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

Aggravated dispositional departures happen relatively infrequently compared to other types of departures. In 2011, 7.5 percent of drug offenders received aggravated dispositional departures (sentenced to prison) when the Guidelines recommended a stayed sentence (Table 4.)

Most aggravated dispositional departures occur when an offender requests an executed prison sentence or agrees to the departure as part of a plea agreement. Offender requests accounted for 74 percent of the aggravated dispositional departures, excluding cases where the departure reason was "unknown." This request is usually made to allow the offender to serve the sentence concurrently (at the same time) with another prison sentence (Table 4). The aggravated dispositional departure rate for drug offenses was higher than for non-drug offenses.

**Table 4. Aggravated Dispositional Departure Rates:
2011 Drug Offenders and Non-Drug Offenders**

| | Drug Offenders | Other Offenders |
|------------------------------|-----------------------|------------------------|
| Number Presumptive Stays | 2,414 | 7,310 |
| Aggravated Dispositions | 181 (7.5%) | 249 (3.4%) |
| Cases with Departure Reasons | 179 | 244 |
| Request for Prison | 133 (74%) | 221 (91%) |

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

Departure Rates for Drug Offenders and Non-Drug Offenders

Total Departure Rates

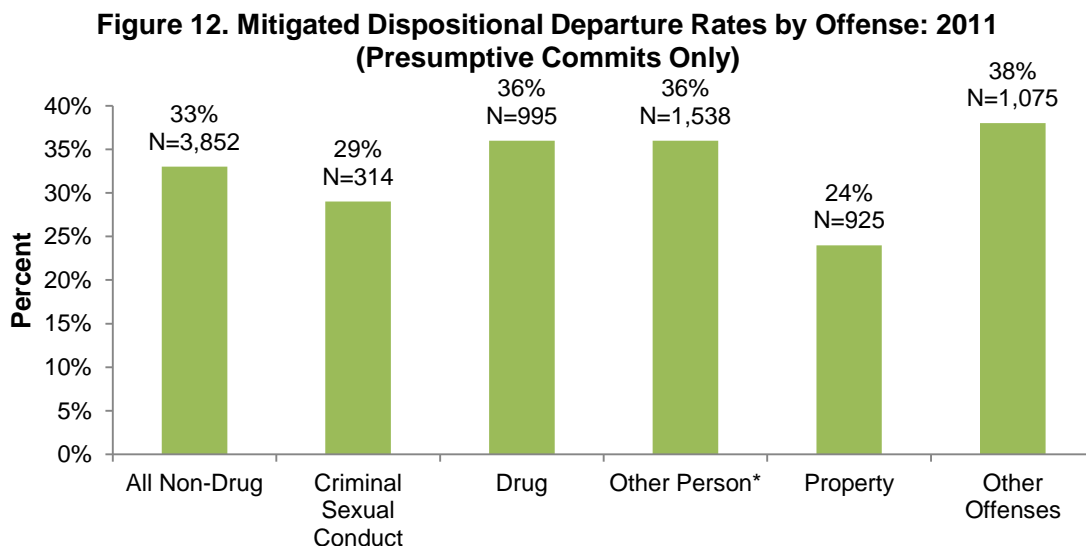
The total departure rate for drug cases was 23 percent, compared to 28 percent for non-drug cases. The downward departure rate was 17 percent for drug cases and 24 percent for non-drug cases (Table 5).

Table 5. Total Departure Rates: Drug and Non-Drug Offenders: 2011

| Departure Type | Drug Offenders | | Other Offenders | |
|-----------------------|-----------------------|---------------|------------------------|---------------|
| No Departures | 2,617 | (77%) | 8,091 | (73%) |
| Total Departures | 792 | (23%) | 3,071 | (28%) |
| • Mitigated | 586 | (17%) | 2,657 | (24%) |
| • Aggravated | 161 | (5%) | 320 | (3%) |
| • Mixed | 45 | (1%) | 94 | (1%) |
| Total Sentenced | 3,409 | (100%) | 11,162 | (100%) |

Mitigated Dispositional Departures: Drug Offenses vs. Other Offense Types

Figure 12 shows that 36 percent of drug offenders who were recommended prison under the Guidelines instead received a non-prison sentence. In contrast, the mitigated dispositional departure rate for non-drug offenses that were presumptive prison cases was 33 percent. Departure rates vary greatly by general offense type and specific offense. Among offenses for which more than a handful of offenders had presumptive prison sentences, the offenses with mitigated dispositional departure rates equal to or higher than 36 percent were: second-degree assault (56%), child pornography offenses (47%), third-degree criminal sexual conduct (46%), first-degree burglary ranked at severity level 8 (45%), failure to register as a predatory offender (44% in the “other” offenses category (Figure 12, below)), criminal vehicular homicide (44%), first-degree aggravated robbery (40%), and terroristic threats ranked at severity level 4 (39%).



* “Other Person” includes all person offenses beyond second-degree assault and criminal sexual conduct offenses.

Dispositional Departures: Frequently Cited Reasons for Departure

Amenability to treatment and probation were the most frequently-cited departure reasons for the mitigated dispositions in drug cases. In a large percentage of these cases, the court noted either that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure. Plea agreements or prosecutor recommendations occurred more frequently in non-drug cases than in drug cases (54% and 62%, respectively). Information provided by the court revealed that the prosecutor was more likely to object to the mitigated disposition in drug cases than in non-drug cases (22% and 13%, respectively).

Durational Departures: Prison Cases

The mitigated durational departure rate for drug offenders who received executed prison sentences was 28 percent whereas the rate for non-drug offenders was 24 percent (Figure 13). The aggravated durational departure rate was one percent for drug offenders and approximately three percent for non-drug cases.

Figure 14 shows that these rates also vary by general offense type; the mitigated durational departure rate for drug offenses was higher than for most other offense types, and the aggravated durational departure rate was lower than for most other offense types. Among offenses for which more than a handful of offenders had prison sentences, the offenses with mitigated durational departure rates equal to or higher than 28 percent were: domestic assault (36%), failure to register as a predatory offender (35% in the “other” offenses category (Figure 14, below)), violation of restraining order offenses (33%), prohibited felon in possession of a firearm (32%), fleeing police (31%), first-degree burglary ranked at severity level 8 (29%), and first-degree aggravated robbery (29%).

**Figure 13. Durational Departure Rates:
2011 Drug Cases vs. 2011 Non-Drug Cases**

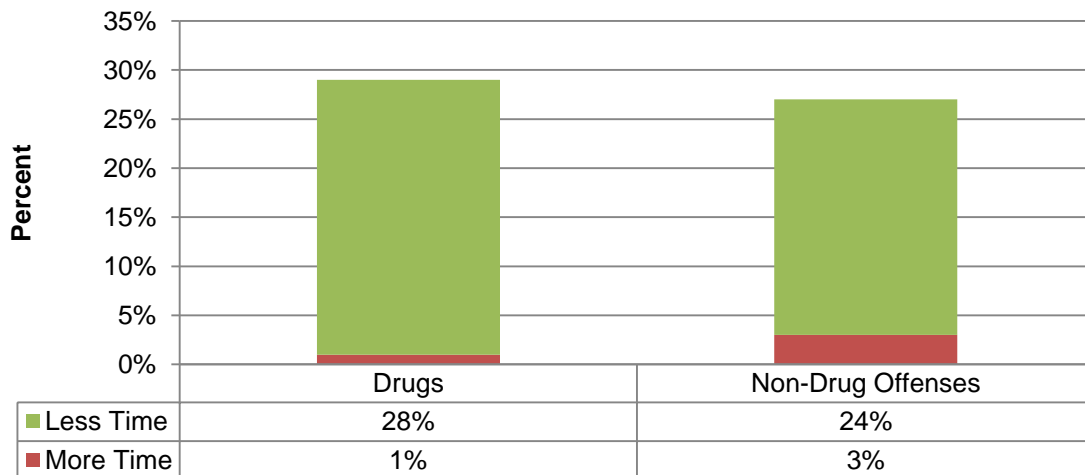
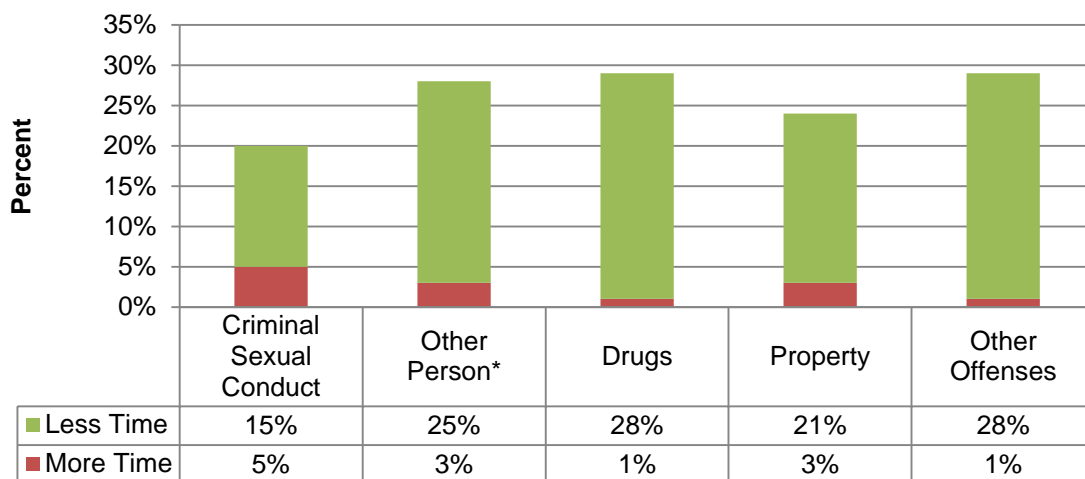


Figure 14. Durational Departure Rates by General Offense Type: 2011



* "Other Person" includes all person offenses beyond murder/manslaughter, assault, and CSC offenses.

"Plea Agreement" was the most frequently-cited reason for mitigated durational departures in drug cases. The court stated either that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the departure in a larger portion of the mitigated durations than the mitigated dispositions, particularly in drug cases. The court indicated that there was a plea agreement for the departure or that the prosecutor recommended or did not object to the mitigated durational departure in 69 percent of the drug cases and 73 percent of the non-drug cases. The court reported that the prosecutor objected to the mitigated duration in about nine percent of the drug cases and five percent of non-drug cases.

Trends in Departure Rates for Drug Cases

The total mitigated departure rates have increased since the early 1990s. Figure 15 shows that, between 1999 and 2003, the mitigated dispositional rate had stabilized: from 35 to 38 percent. The 2006 rate of 46 percent was the highest since 1997. In 2007, this rate returned to under 40 percent and has remained there since. The 2010 rate of 35 percent was the lowest rate seen in the last decade. In 2011 the mitigated dispositional departure rate rose slightly to 36 percent.

**Figure 15. Mitigated Dispositional Departure Rates: 1996-2011
(Presumptive Commits Only)**

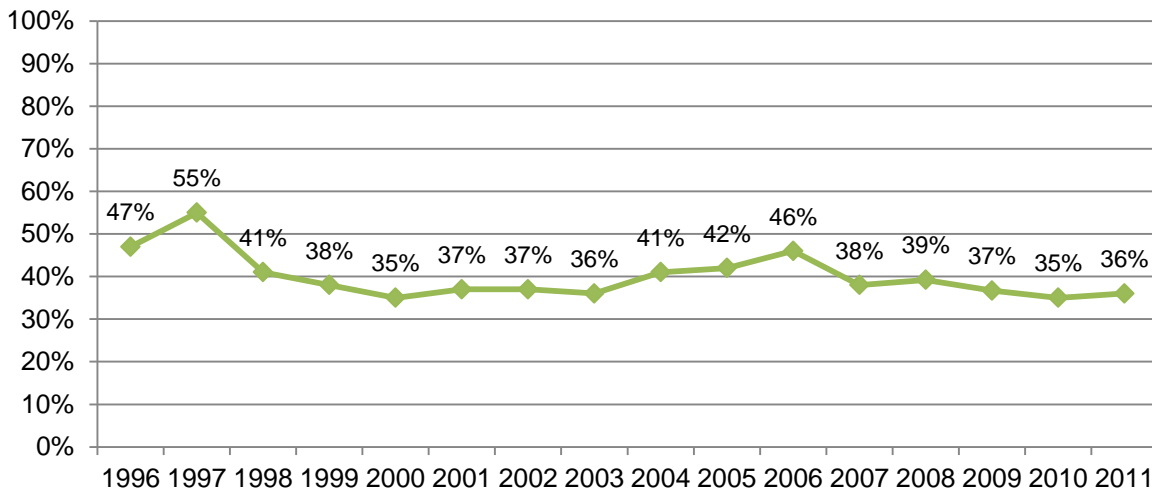
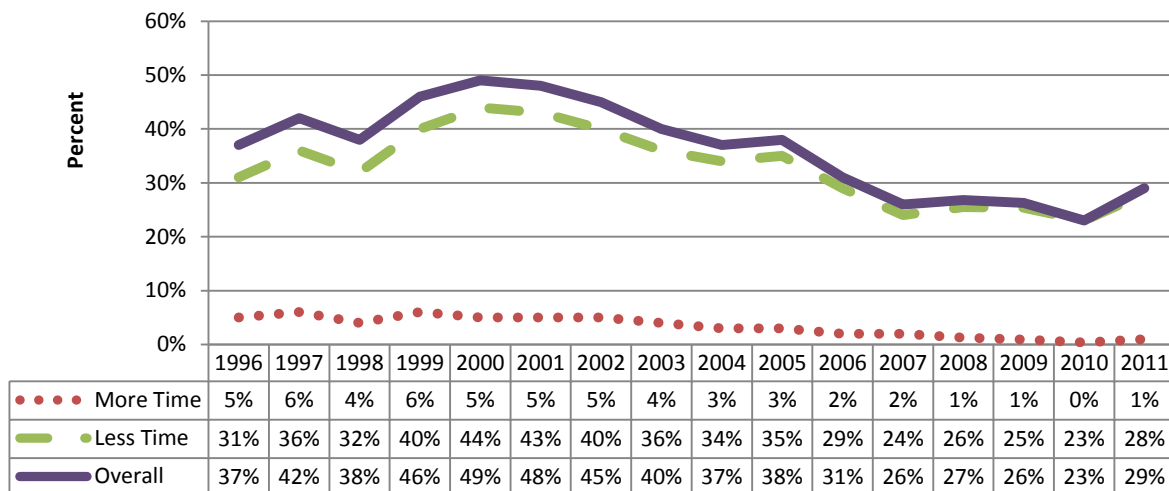


Figure 16 shows that the mitigated durational departure rate continued to increase through the 1990s, peaking in 2000 at 44 percent. Since 2000, however, this rate had been steadily declining, to a low of 23 percent in 2010. In 2011 the rate climbed back to 28 percent. Aggravated durational departure rates have consistently been very low and in 2010 reached a new low of 0.4 percent.

**Figure 16. Durational Departure Rates for Cases Receiving
Prison Sentences: 1996-2011**



Departure Rates for Drug Offenders by Region

While departure rates fluctuate from year to year and vary by region, they are fairly high across the state (Figure 17). Mitigated dispositional departure rates for 2010 decreased in all regions of the state except Ramsey County (which includes the city of St. Paul). In 2011, the rates rose in all regions except Ramsey, most noticeably in Hennepin County. The rate in Ramsey County dropped markedly. In previous years, Hennepin County (which includes the city of Minneapolis) often had the highest mitigated dispositional departure rate and Greater Minnesota had the lowest. However, in the last five years, the other metro counties had the highest rates and Ramsey County or Greater Minnesota had the lowest.

In 2007, the mitigated dispositional departure rate in Hennepin County plummeted to 39 percent, and continued to drop in 2009 and 2010. In 2011 the rate rose to 40 percent, but was still lower than the rates seen in the years before 2007. Part of this large drop may be the result of significant changes in how Hennepin County runs its Drug Court, changes that took effect in 2007. The decrease in departures may also have been due to a change in sentencing practices as a result of *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007) (holding that the mandatory minimum sentencing provision for a repeat offender under Minn. Stat. § 152.023, subd. 3(b) prohibits the court from staying execution).

**Figure 17. Mitigated Dispositional Departure Rates by Region
Presumptive Prison Cases: 1996-2011**

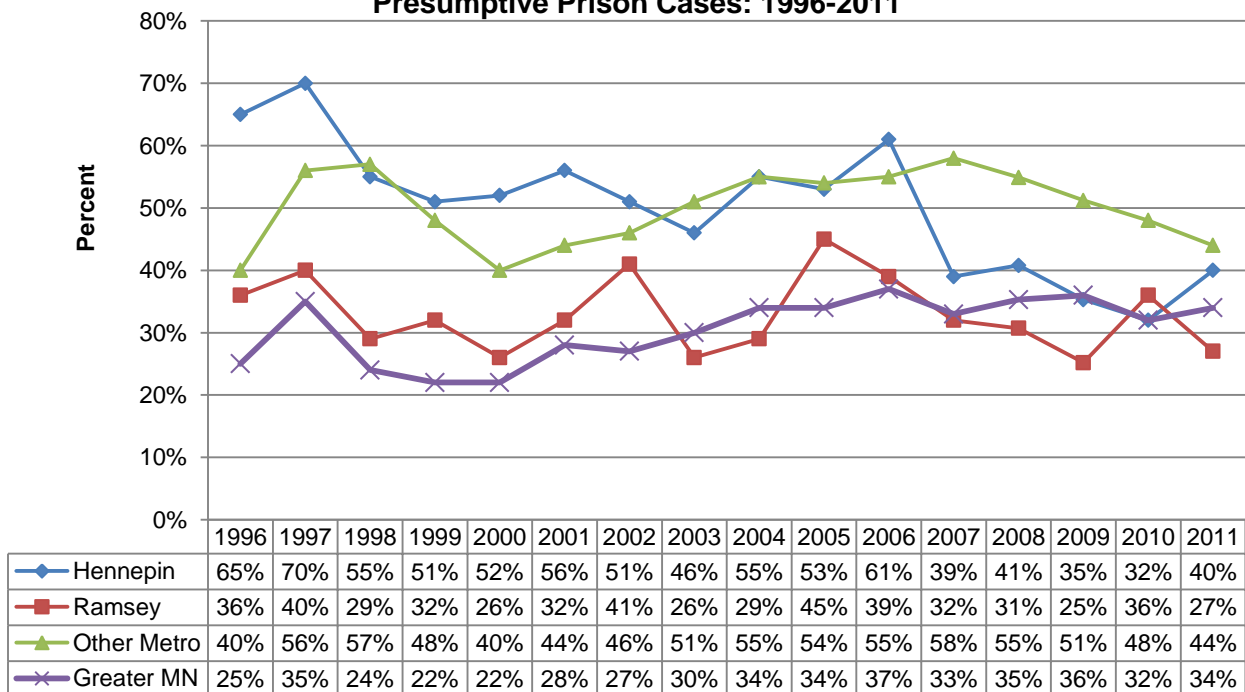
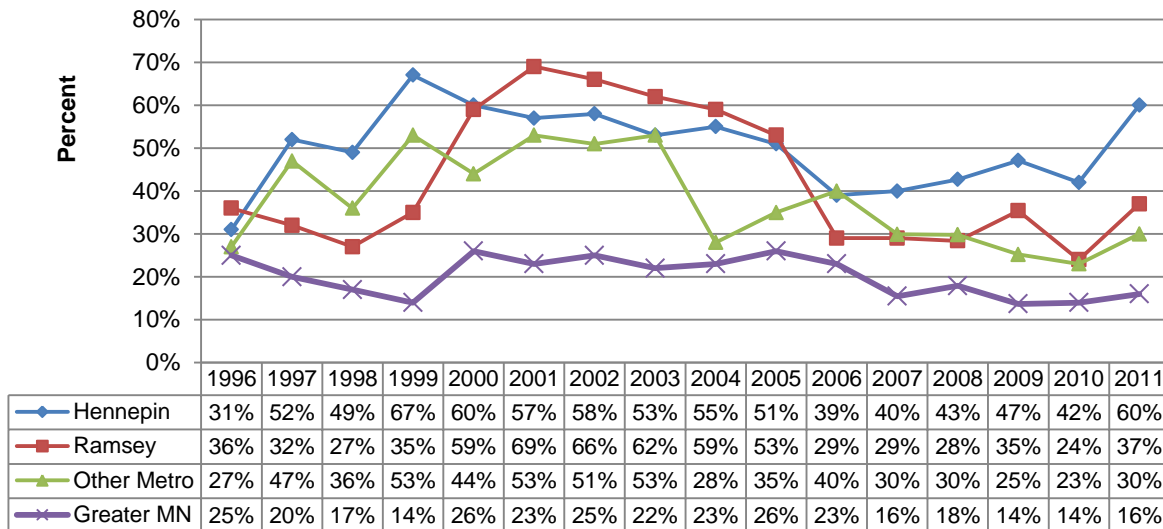


Figure 18 shows that in 2011, the mitigated durational departure rate for executed sentences increased from the rates observed in 2010 in all regions. Until 2011, mitigated durational departure rates had declined in all areas since the early years of this decade. In 2011, the rate in Hennepin County (60%) was higher than it had been in any year since 2000. Since the mandatory minimum sentence length for subsequent first- and second-degree drug offenses is less than the duration recommended on the Guidelines Grid, judges can give mitigated durational departures and still be at or above the mandatory minimum prison sentence.

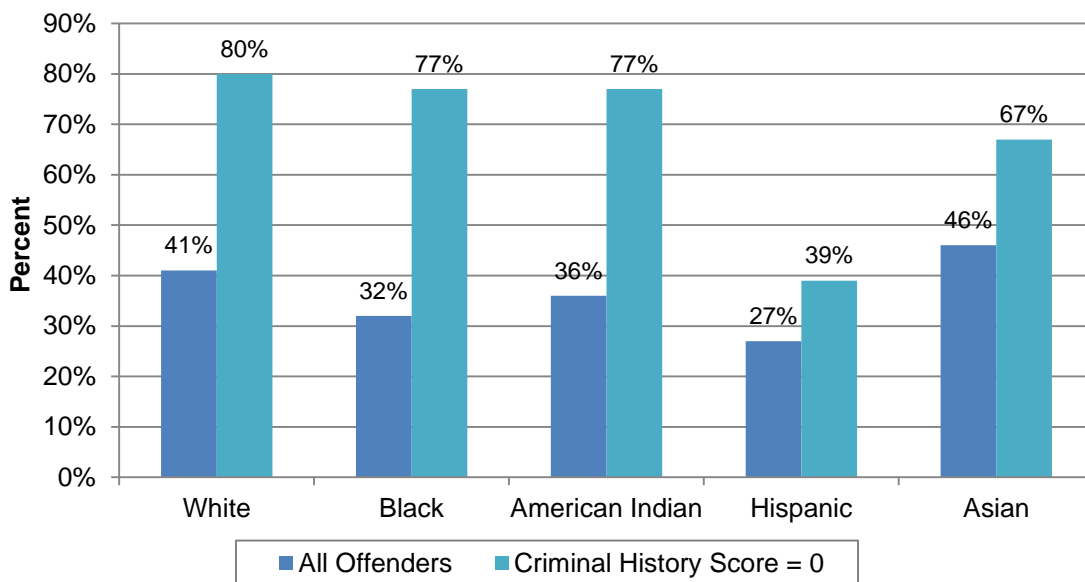
Figure 18. Mitigated Durational Departure Rates by Region for Cases Receiving Executed Prison Sentences: 1996-2011



Departure Rates for Drug Offenders by Race

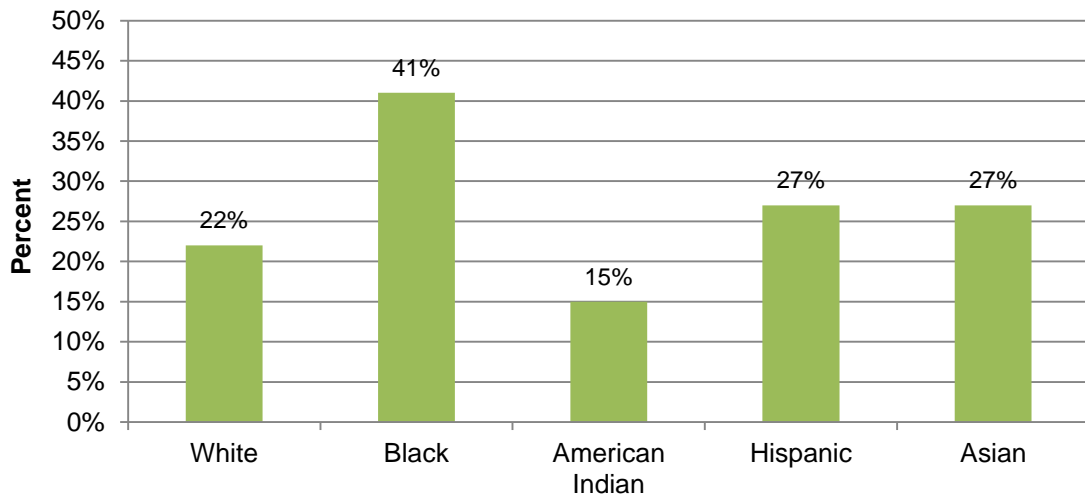
Departure rates vary by race, with white offenders receiving mitigated dispositional departures at higher rates than blacks (Figure 19). Mitigated dispositional departure rates are typically lowest for Hispanics. The differences in departure rate may be related to criminal history scores. When offenders with a criminal history score of zero are isolated, every race category other than Hispanic has a departure rate of 50 percent or more. Hispanics have the lowest departure rate at a criminal history score of zero at only 39 percent.

Figure 19. Mitigated Dispositional Departures by Race: 2011



Mitigated durational departure rates are higher for blacks than for whites (Figure 20). This difference remains for offenders with a criminal history of zero. Criminal history may play a larger role in determining if an offender is amenable to probation than if a mitigated duration is warranted. Mitigated durational departures increased for every group compared to 2010. The rates for offenders increased from 18% for white offenders, 34% percent for black offenders, 8% for American Indians, and 17% for Hispanics and Asians. The differences in mitigated durational departure rates may be related to differences in where the offenders are sentenced. A larger proportion of black offenders than offenders in other racial groups are sentenced in Hennepin County, where mitigated durational departure rates are highest. (See figure 9 for an illustration of the racial distribution of drug offenders by region.)

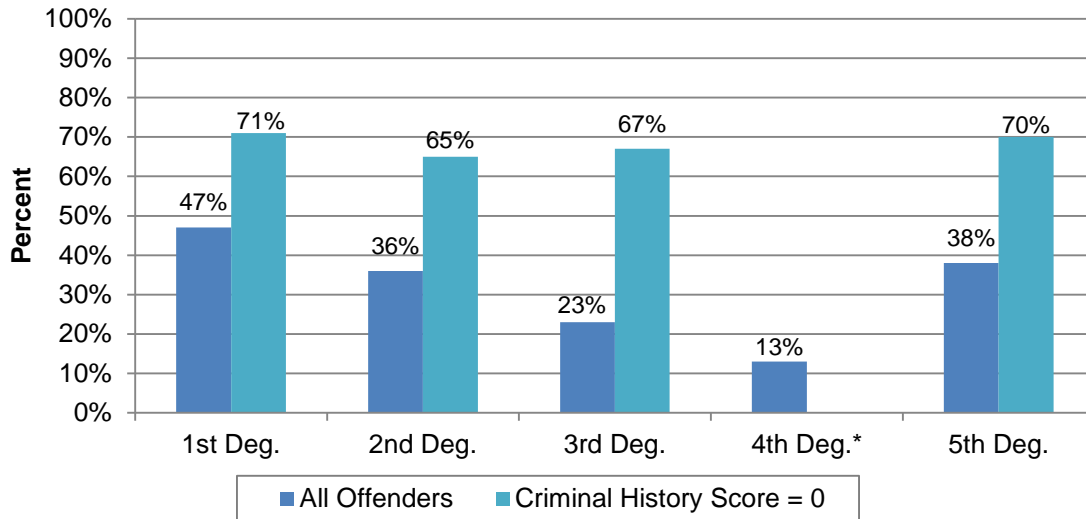
Figure 20. Mitigated Durational Departures by Race: 2011
(for those receiving executed prison sentences)



Departure Rates for Drug Cases by Drug Degree and Judicial District

Figure 21 shows the mitigated dispositional departure rates by drug degree. Mitigated dispositional departure rates for first-degree offenses increased from 41 percent in 2010 to 47 percent in 2011. For second-degree offenses, the rate was 36 percent, a decrease over the rate observed in 2010 (39%). The rate for third and fifth-degree offenses remained almost the same as in 2010 (22 percent for third degree and 37 percent for fifth-degree in 2010), while the rate for fourth-degree offenses decreased from 32 percent. Among offenders with a criminal history score of 0, the overall mitigated dispositional departure rate was 68 percent.

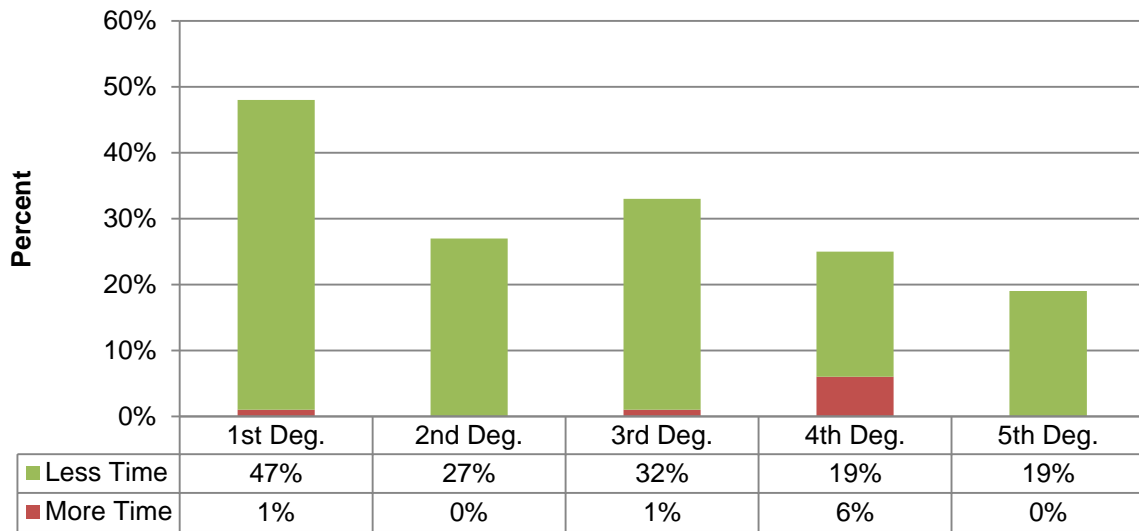
Figure 21. Mitigated Dispositional Departure Rates by Degree: 2011



* No fourth-degree offenders were both presumptive commitment and criminal history scores of zero.

Figure 22 shows that mitigated durational departure rates were 47 percent for first-degree offenses and 27 percent for second-degree offenses. Both rates are increases from the 2010 rates of 29 percent for first-degree and 21 percent for second-degree. The mitigated durational departure rates for third and fifth-degree offenders are close to the 2010 rates. The average reduction in sentence length from the presumptive sentence was 43 months for first-degree cases, 27 months for second-degree cases, and 16 months for third-degree cases. The average sentence reduction was lower for first- and second-degree offenses in 2011 compared to 2010.

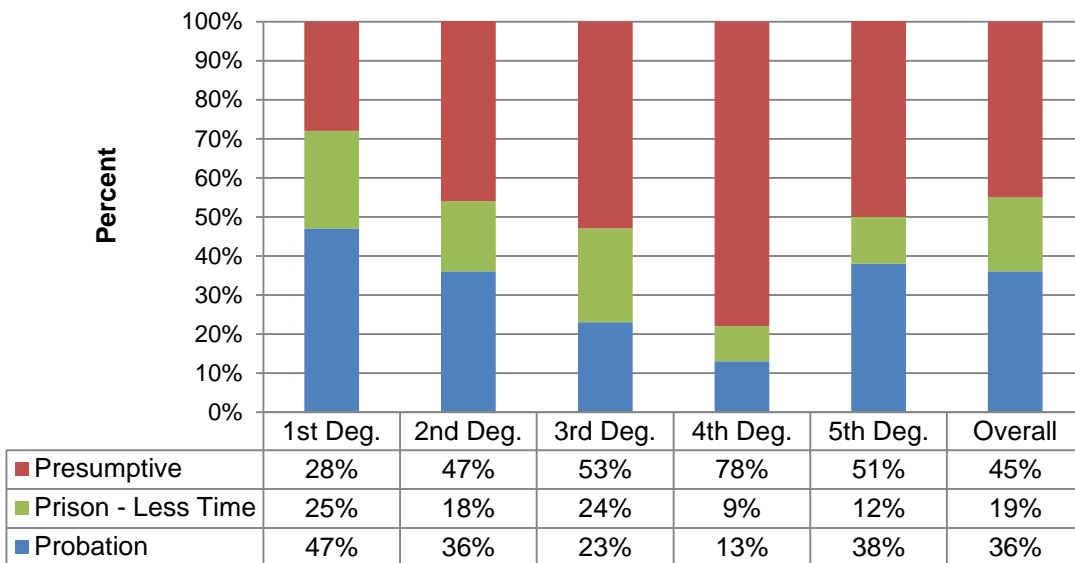
**Figure 22. Durational Departure Rates by Degree: 2011
(for those receiving executed sentences)**



Presumptive Prison Cases by Degree

Of the 3,409 offenders sentenced for drug offenses in 2011, 29 percent (995) had presumptive prison sentences under the Guidelines. Departure rates are so high that, among offenders recommended a prison sentence, a greater number of offenders receive departures than receive the recommended sentence. Only 45 percent of drug offenders recommended a prison sentence received the recommended sentence or longer; 36 percent received a probationary sentence and 19 percent received a prison sentence that reflected less time than designated for under the Guidelines. Figure 23 shows that 28 percent of first-degree cases received the recommended sentence. The percent of offenders who got the presumptive sentence in 2011 decreased from that observed 2010 for first-degree offenders (from 42%). A similar percentage of second-, third- and fifth-degree offenders in 2010 and 2011 received the presumptive sentences. The percent receiving the presumptive sentence increased from 65 percent to 78 percent for fourth-degree offenses.

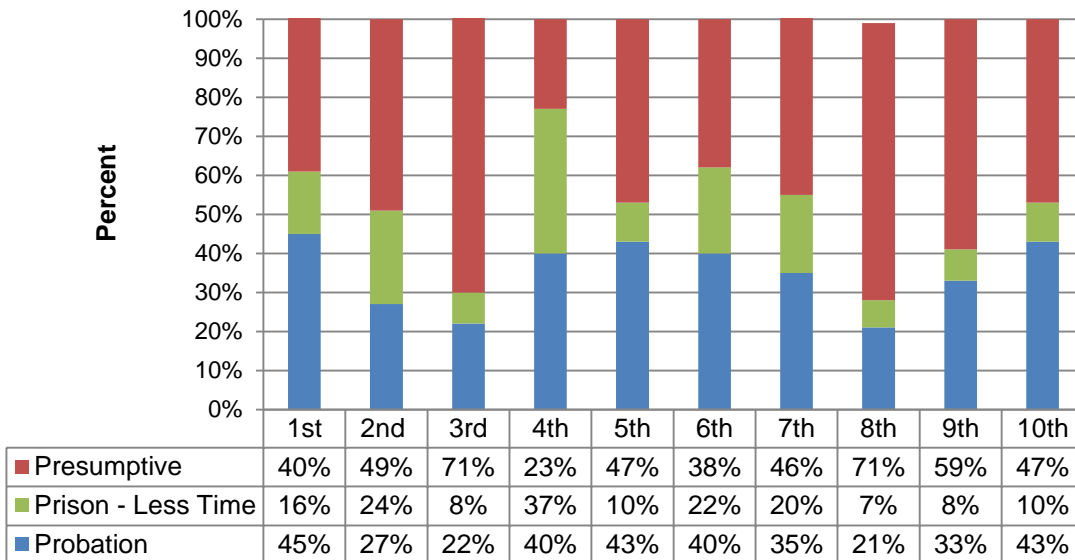
**Figure 23. Sentence Imposed by Drug Degree: 2011
(Presumptive Prison Cases)**



Presumptive Prison Cases by Judicial District

The likelihood of an offender receiving the presumptive sentences varies widely across the state. Figure 24 shows the percent of offenders with presumptive prison sentences who received the recommended sentence by Judicial District. The portion who received a presumptive sentence ranged from 23 percent in the Fourth District (Hennepin County) to 71 percent in the Eighth and Third Districts (includes western and southeastern Minnesota). See p. 34 for a map of Minnesota’s Ten Judicial Districts. The percent of offenders receiving the presumptive sentence decreased in the Fourth, Seventh, Eighth and Tenth districts; rose in the First, Fifth and Sixth districts; and remained relatively unchanged in the Second, Third and Ninth districts.

**Figure 24. Sentence Imposed by Judicial District: 2011
(Presumptive Prison Cases)**



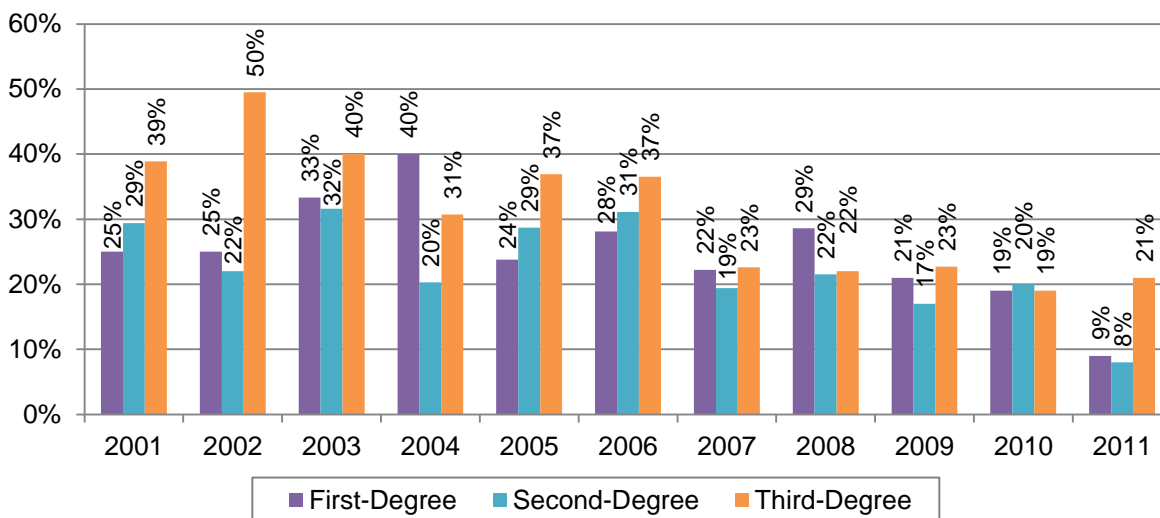
Departure Rates for Subsequent Drug Offenses

Minnesota Statutes specify mandatory minimum prison terms for second or subsequent first-through third-degree drug offenses (Minn. Stats. §§ [152.021](#); [022](#); [023](#)). When such a statutory mandatory minimum exists, the presumptive Guidelines disposition is imprisonment. The mandatory minimums are as follows: 48 months for first-degree offenses, 36 months for second-degree offenses, and 24 months for third-degree offenses. Since the presumptive Guidelines sentence is greater than the mandatory minimum for first- and second-degree offenses, the mandatory minimum usually affects only third-degree cases.

In 2011, 354 drug offenders were sentenced for offenses involving a second or subsequent drug offense that was subject to mandatory minimum provisions. Of this total, 48 offenders (14%) received a mitigated dispositional departure from the Guidelines. This is a decrease from the rate observed in 2010 (19%). The rate was lower for first and second-degree offenses than for third-degree offenses (Figure 25). The court indicated that the prosecutor agreed to, recommended or did not object to the mitigated disposition in 77 percent of the mitigated dispositions for subsequent drug offenses.

As discussed earlier in this report, it is believed that the Minnesota Court of Appeals' ruling in *State v. Turck*, 728 N.W.2d 544 (Minn. App. 2007), has been a factor in the reduction of mitigated dispositional departures for subsequent drug offenses.

Figure 25. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Offense: 2001-2011



Of the 306 second or subsequent drug offenders who received executed prison sentences, all but 11 (4%) had a pronounced sentence equal to, or longer than, the mandatory minimum. One of the offenders receiving less time was a first-degree offender, four were second-degree offenders and six were third-degree offenders.

How the Guidelines Work

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

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

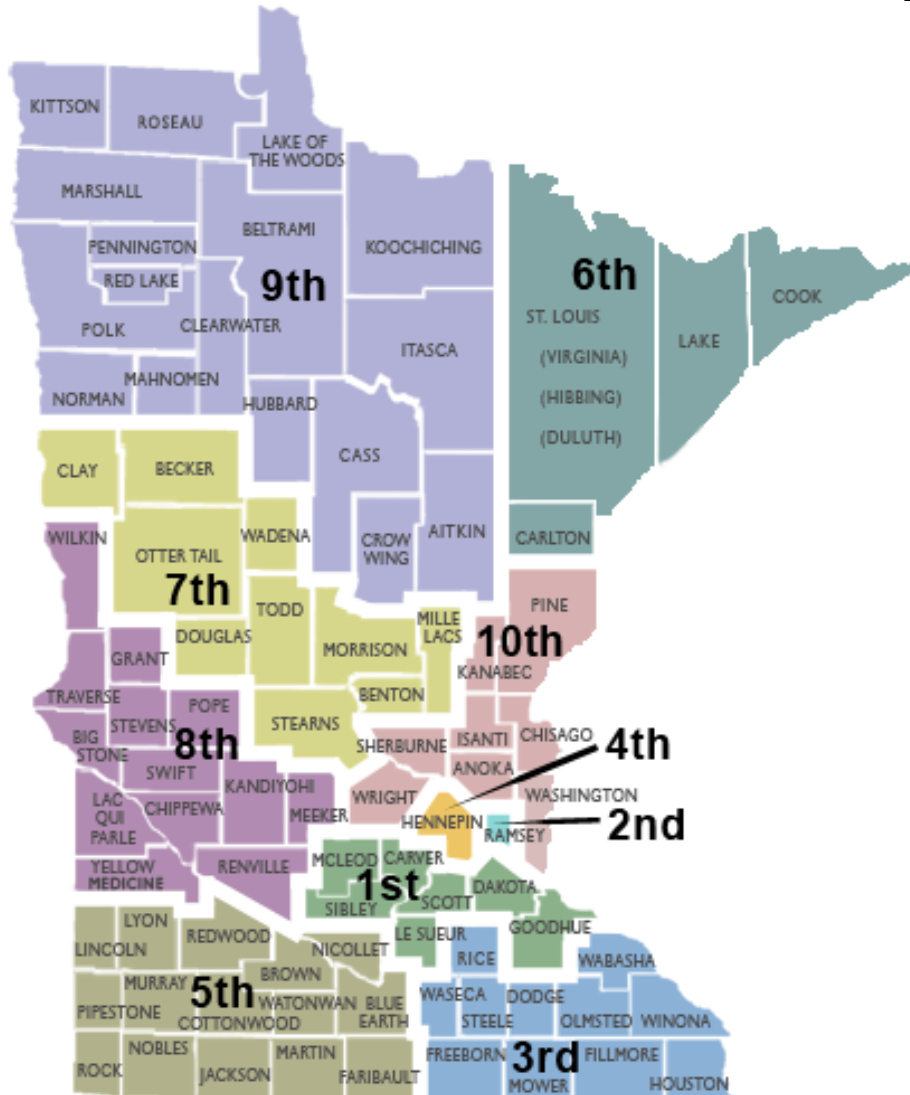
The recommended (presumptive) guideline sentence is found in the cell of the Grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the Grid.

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

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

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

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 |
| LeSueur | | Houston | | Faribault | St. Louis | Douglas | Kandiyohi | Clearwater | Kanabec |
| McLeod | | Mower | | Jackson | | Morrison | LacQuiParle | Crow Wing | Pine |
| Scott | | Olmsted | | Lincoln | | Mille Lacs | 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-Woods | |
| | | Winona | | Nobles | | | Wilkin | Mahnomen | |
| | | | | Pipestone | | | Yellow Medicine | Marshall | |
| | | | | Redwood | | | | Norman | |
| | | | | Rock | | | | Pennington | |
| | | | | Watonwan | | | | Polk | |
| | | | | | | | | Red Lake | |
| | | | | | | | | Roseau | |

Minnesota Judicial Branch at <http://mncourts.gov/?page=238>

Sentencing Guidelines Grid – Effective August 1, 2012

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

CRIMINAL HISTORY SCORE

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

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 Guidelines section 2.E. Mandatory Sentences, 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. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ 12¹=One year and one day

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