

# MINNESOTA SENTENCING GUIDELINES COMMISSION

## Sentencing Practices

---

### Controlled Substance Offenses Sentenced in 2012

Published November 2013

Minnesota Sentencing Guidelines Commission  
309 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

Voice: 651.296.0144 Fax: 651.297.5757  
TTY: 1-800-627-3529, ask for 651.296.0144

Website: [mn.gov/sentencing-guidelines](http://mn.gov/sentencing-guidelines)  
E-mail: [sentencing.guidelines@state.mn.us](mailto:sentencing.guidelines@state.mn.us)  
Reports are available in alternative formats upon request.

#### MEMBERS

Jeffrey Edblad, Chair, Isanti County Attorney  
Jason Anderson, Probation Representative, Department of Corrections  
Christopher Dietzen, Justice, Minnesota Supreme Court  
Paul Ford, Peace Officer Representative, Washington County  
Connie Larson, Citizen Member  
Caroline Lennon, Judge, First Judicial District  
Tom Roy, Commissioner of Corrections  
Heidi Schellhas, Judge, Court of Appeals  
John Stuart, State Public Defender  
Yamy Vang, Citizen Member  
Sarah Walker, Citizen Member

#### STAFF

Kelly Lyn Mitchell, Executive Director  
Jackie Braun, Research Analyst  
Kathleen Madland, Research Analyst Intermediate  
Linda McBrayer, Management Analyst 4  
Jill Payne, Research Analysis Specialist, Senior  
Anne Wall, Research Analysis Specialist, Senior

## Table of Contents

<b>Summary of 2012 Data</b> .....	<b>4</b>
<b>Case Volume &amp; Distribution</b> .....	<b>5</b>
Volume of Cases .....	5
Drug Type, Region, Race & Prior Drug Convictions .....	8
<b>Sentencing Practices</b> .....	<b>13</b>
Incarceration in State Prison.....	13
Probation Cases .....	15
<b>Departure Rates</b> .....	<b>17</b>
Role & Definition of Departures in Sentencing Guidelines System.....	17
Description of Departure Types .....	17
Departure Rates for Drug Offenders and Non-Drug Offenders.....	18
Trends in Departure Rates for Drug Cases .....	20
Departure Rates for Drug Offenders by Region.....	22
Departure Rates for Drug Offenders by Race.....	24
Departure Rates for Drug Cases by Drug Degree & Judicial District.....	26
Departure Rates for Subsequent Drug Offenses .....	30
<b>How the Guidelines Work</b> .....	<b>31</b>
<b>Minnesota Judicial District Map</b> .....	<b>32</b>
<b>Sentencing Guidelines Grid</b> .....	<b>33</b>

## Summary of 2012 Data

This report gives statistics concerning drug felonies and how they were sentenced in 2012, as well as outlining trends in sentencing drug offenses since the implementation of the Guidelines.

In 2012, there were 3,552 offenders sentenced for drug offenses, an increase of approximately four percent over the number sentenced in 2011 (Figures 1 and 2). For the 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 2012 (as in 2011) after declining in almost every year since 2003. The number of offenders sentenced for third and fifth-degree offenses also increased while the number sentenced for second-degree offenses declined. The number of cocaine cases was down by 12 percent while the number of methamphetamine cases rose by 19 percent (Figure 5).

The total incarceration rate for drug offenders sentenced was 93 percent, with 25 percent receiving a prison sentence and 68 percent getting time in a local correctional facility (jail) as a condition of probation (Table 1). The average pronounced prison sentence was 44 months.

Compared to 2011, in 2012 the mitigated dispositional departure rate decreased while the mitigated durational departure rate increased. Among drug offenders recommended prison under the Guidelines, 32 percent received a mitigated dispositional departure and were placed on probation, a decrease from the 36 percent rate in 2011 (Figure 15). This is the lowest rate observed since 1993. Among drug offenders who received prison sentences, 31 percent received a mitigated durational departure, an increase from the 2011 rate of 28 percent (Figure 16). The increase was most pronounced in Hennepin County where the rate increased from 60 percent to 74 percent.

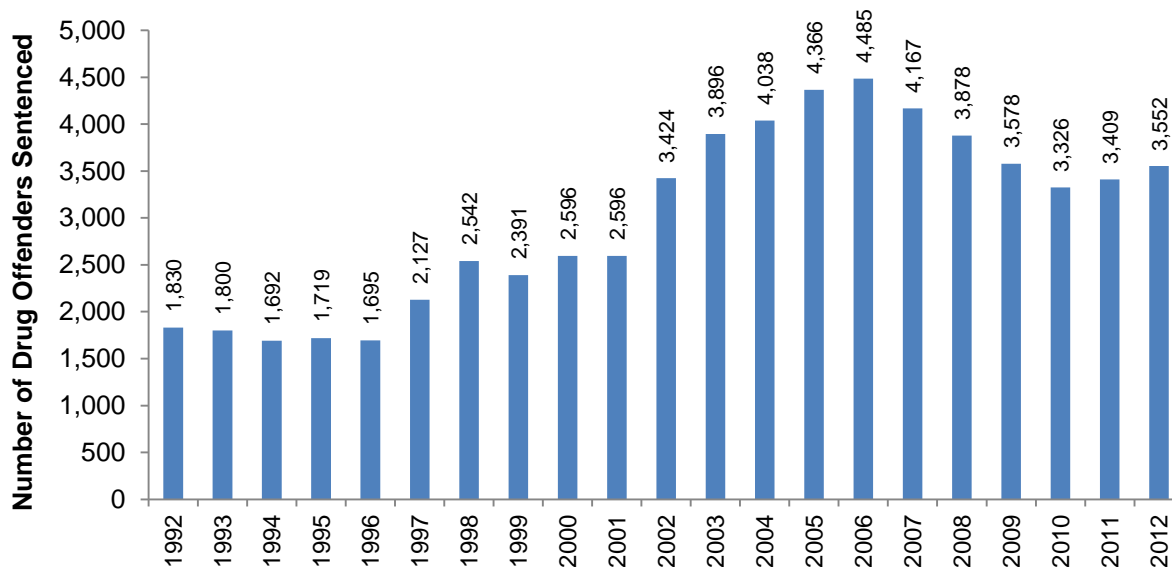
Departure rates among drug offenders recommended prison sentences under the Guidelines are so high that a greater number of offenders receive departures than receive the recommended sentence. Only 45 percent of drug offenders who were recommended a prison sentence received the recommended sentence or longer; 32 percent received a probationary sentence and 23 percent received a prison sentence that reflected less time than designated under the Guidelines (Figure 22).

## Case Volume & Distribution<sup>1</sup>

### Volume of Cases

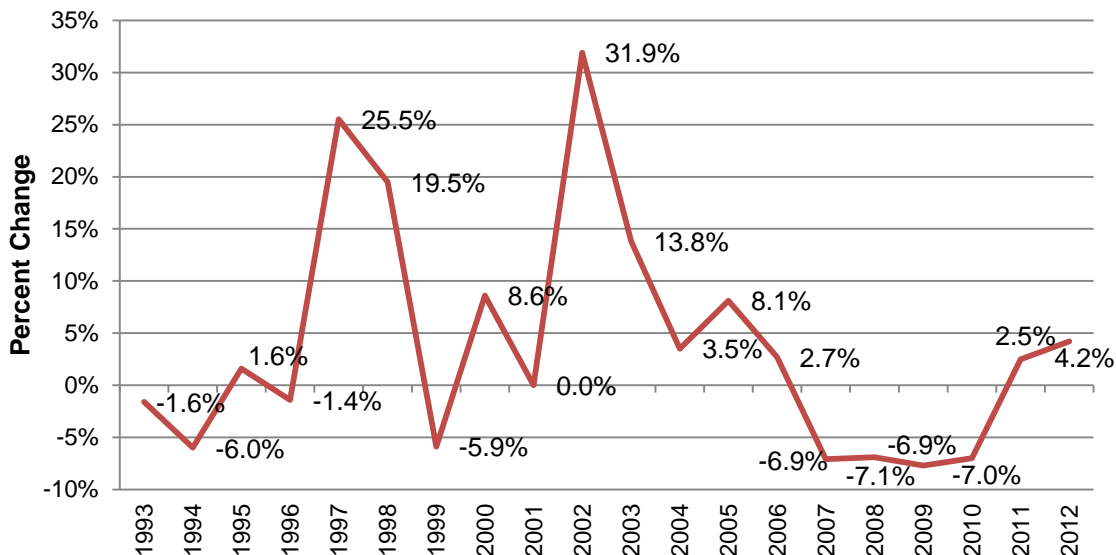
The number of felony offenders sentenced in 2012 totaled 15,207, an increase of approximately four percent from the number of offenders sentenced in 2011. An illustration of the total number of felony offenders sentenced since 1981 can be found in MSGC's report, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the "Annual Summary" tab at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports). There were 3,552 felony offenders sentenced for drug offenses in 2012, also an increase of approximately four percent over the number of drug offenders sentenced in 2011 (Figure 1). Figure 2 illustrates the percent change in the number of drug offenders sentenced over time. From 2006 through 2010, the number of drug offenders sentenced had decreased by seven or eight percent each year. But in 2011, the number of drug offenders sentenced increased. The increase in the number of offenders sentenced for drug offenses in 2012 is a continuation of the reversal in the trend observed prior to 2011.

**Figure 1. Number of Offenders Sentenced for Felony Drug Convictions: 1992-2012**



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

**Figure 2. Percent Change in Number of Offenders Sentenced for Felony Drug Convictions: 1993-2012**



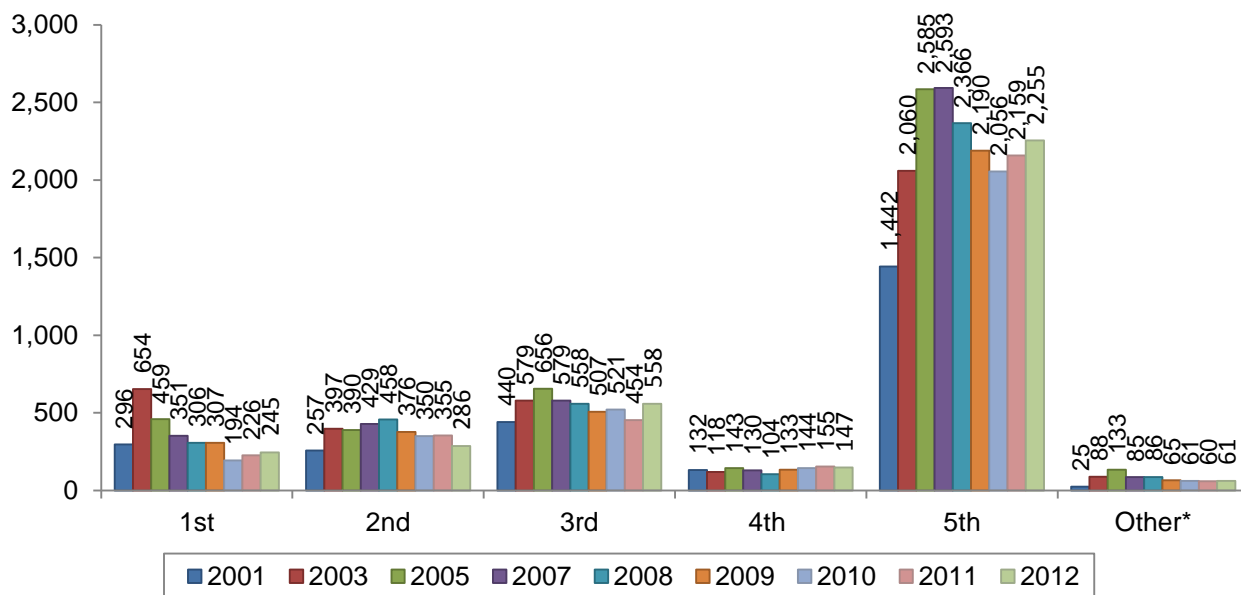
Volume of Cases by Degree:

Figure 3 shows the distribution of drug offenders across the controlled substance degrees. The largest group of cases sentenced was fifth-degree (64% of the cases). In 2012, the growth in the number of offenders sentenced was particularly noticeable for the third-degree offenses which increased by 23 percent compared to 2011. Increases were also seen in first-degree (8%) and fifth-degree (4%). In contrast, there were decreases in the number of offenders sentenced for second (-19%) and fourth-degree offenses (-5%).

The number of first-degree offenders sentenced declined nearly every year between 2003 and 2010, due in part to the decline in the number of offenders sentenced for manufacture of methamphetamine (10 offenders in 2010, compared to 310 in 2003 – Figure 4). But in 2011, the number of offenders sentenced for first-degree offenses began to increase (226 offenders in 2011 for an increase of 16%; 245 offenders in 2012 for an increase of 8%).

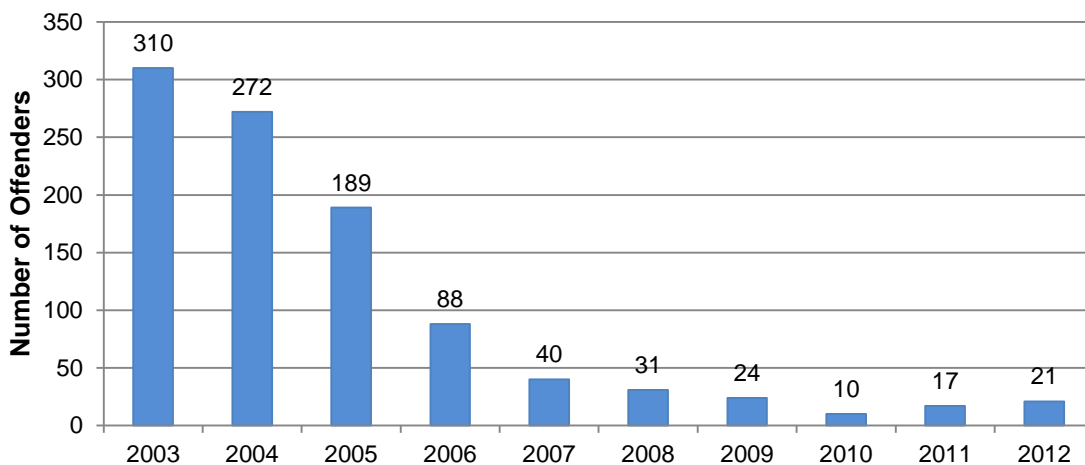
Figure 4 shows the number of offenders sentenced for manufacture of methamphetamine from 2003 to 2012. In 2012, the number increased slightly from 17 in 2011 to 21. In 2005, the offense of manufacture of methamphetamine; possession of precursors (Minn. Stat. § 152.021, subd. 2a(b)) was reclassified, 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: 2001-2012  
(Number of Drug Offenders Sentenced)**



\* In 2012, the "Other" category includes one offender sentenced for tampering with anhydrous ammonia, 14 offenders sentenced for possession of precursors with intent to manufacture methamphetamines, 22 offenders sentenced for sale of a simulated controlled substance, and 24 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): 2003-2012**



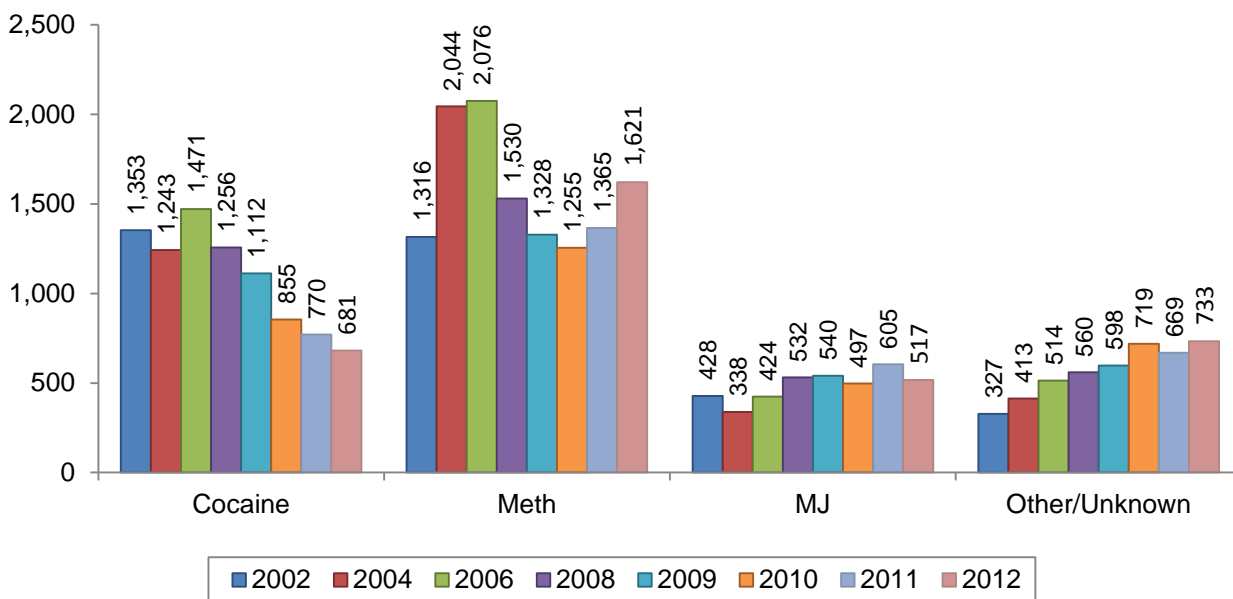
*Drug Type, Region, Race & Prior Drug Convictions*

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 2012, methamphetamine was still the drug type with the largest number of cases (46%), while 19 percent of the cases involved cocaine, 15 percent involved marijuana and 21 percent were for other or unknown substances. Between 2011 and 2012 there was a 19 percent increase in the number of offenders sentenced for methamphetamine offenses and a 12 percent decrease in the number of offenders sentenced for cocaine offenses. The number of cases involving other or unknown drugs increased by ten percent (Figure 5).

Within the Other/Unknown category, in 2012, synthetic narcotics were the largest drug type with 233 cases and there were 120 cases where the drug type was unknown. Between 2011 and 2012, the number of cases involving heroin increased by 59 percent (from 99 to 157) and the number of offenses involving opium increased by 12 percent (from 83 to 93). In the five year period from 2007 to 2012, heroin and opium also showed the largest percentage increases (283% for heroin and 244% for opium). In that five year period, the number of offenders sentenced for synthetic narcotics increased 34%.

**Figure 5. Distribution of Offenders by Drug Type: 2002-2012  
(Number of Drug Offenders Sentenced)**

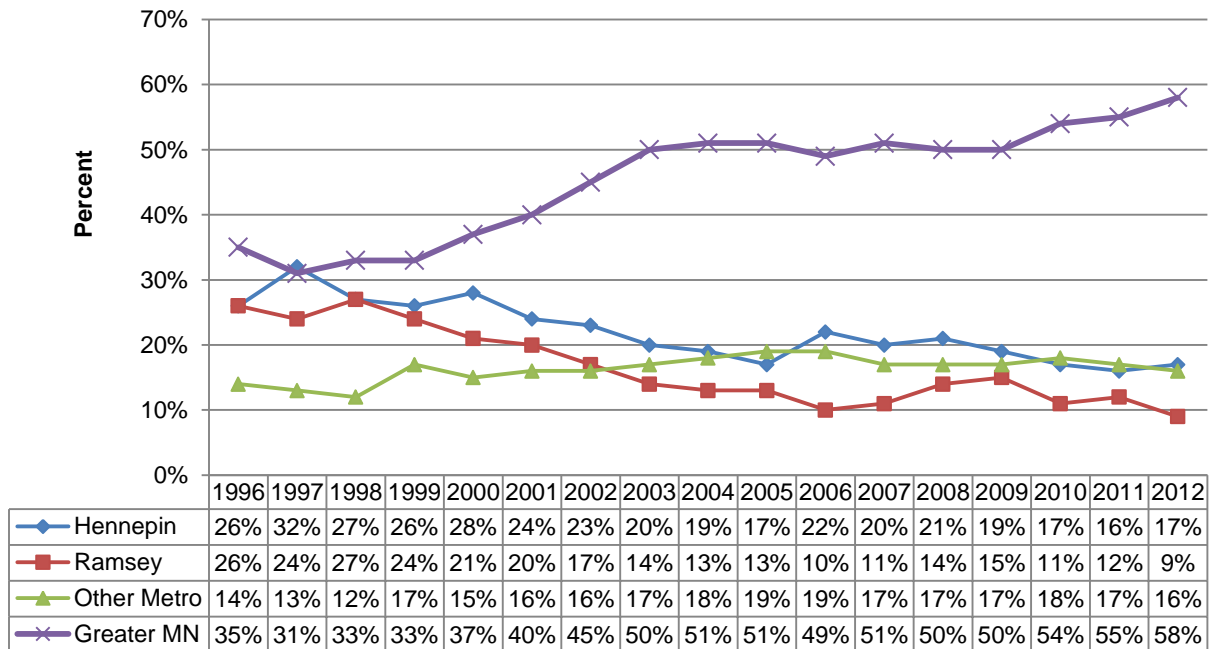




Distribution of Cases over Time (Region)

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 2012, the percent of drug offenders sentenced in Greater Minnesota rose to an all-time high of 58 percent.

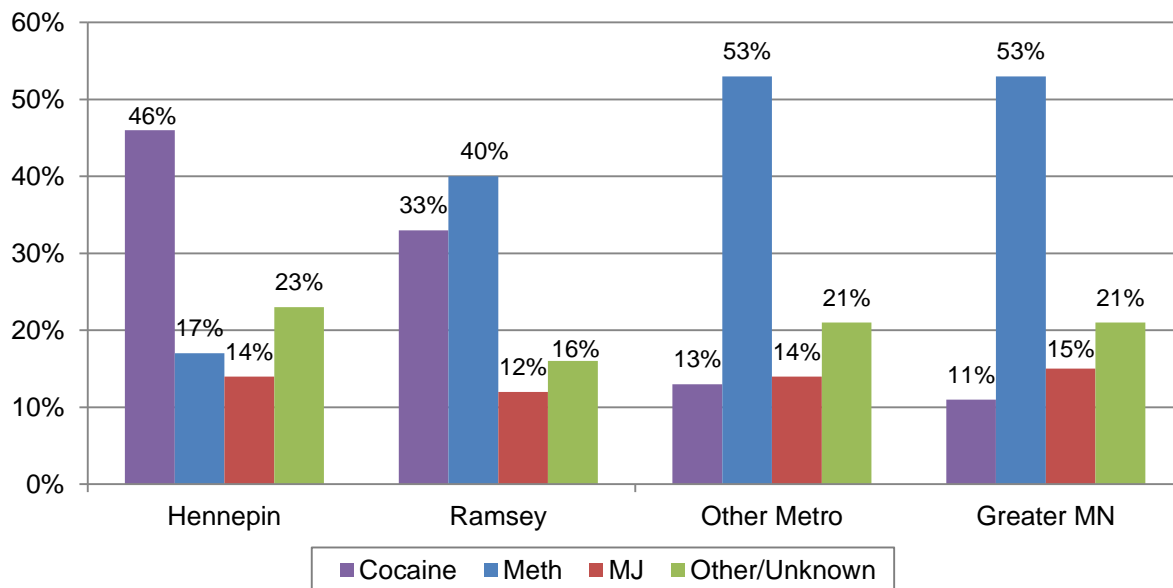
**Figure 6. Distribution of Drug Cases by Region: 1996-2012**



2012 Distribution of Cases (Drug Types and Region)

There was a difference in the distribution of drug types among regions as well (Figure 7). In 2012, 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. As in 2011, in Ramsey County, methamphetamine (as opposed to cocaine) was the most frequently cited drug type.

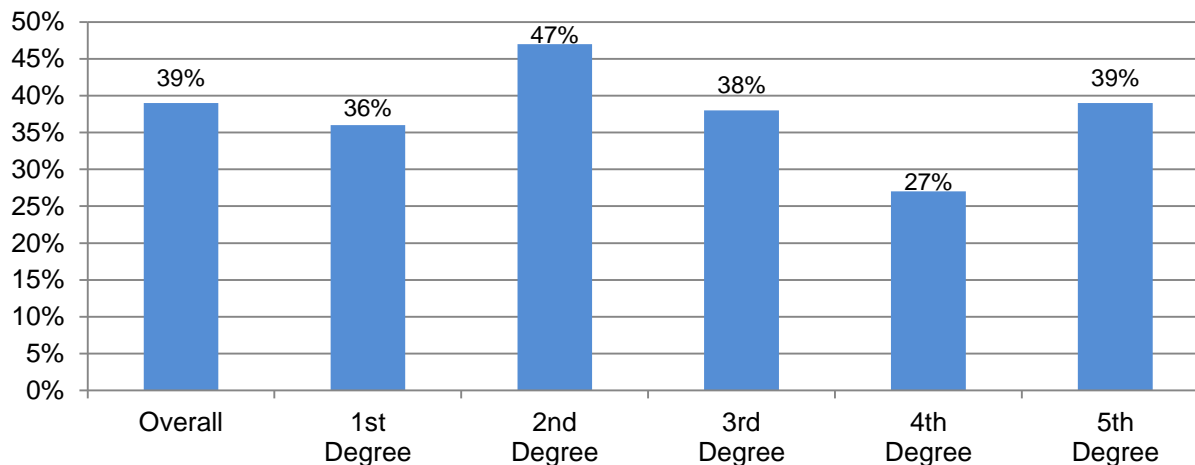
**Figure 7. Distribution of Drug Offenders by Drug Type and Region: 2012**



2012 Distribution of Cases (Prior Conviction)

In 2012, 39 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. Fourth-degree offenders were least likely to have prior convictions (27%), while second-degree offenders were most likely to have prior convictions (47%).

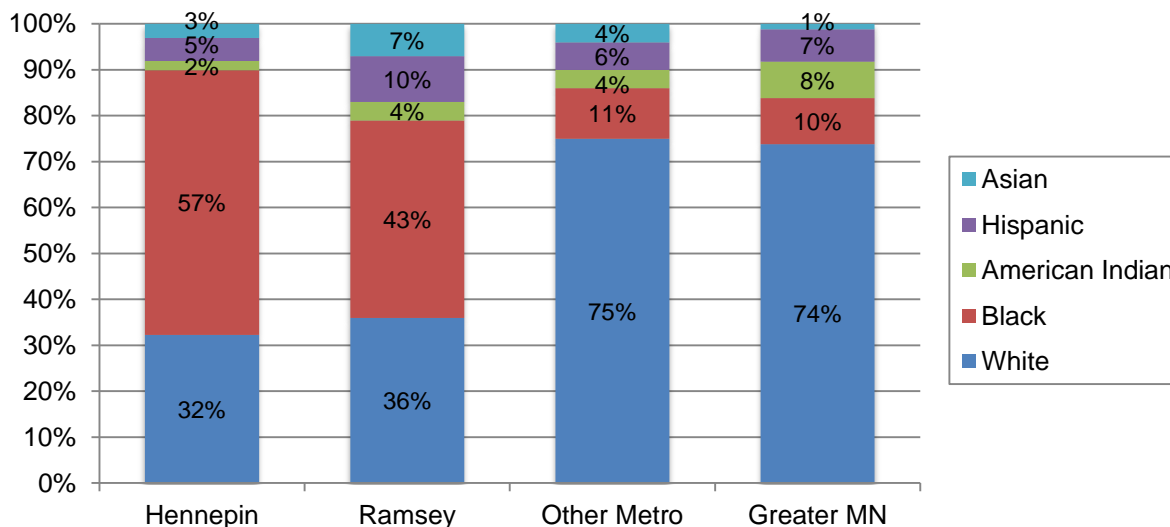
**Figure 8. Percent of Offenders with a Prior Felony Drug Sentence by Controlled Substance Degree: 2012**



Racial Distribution

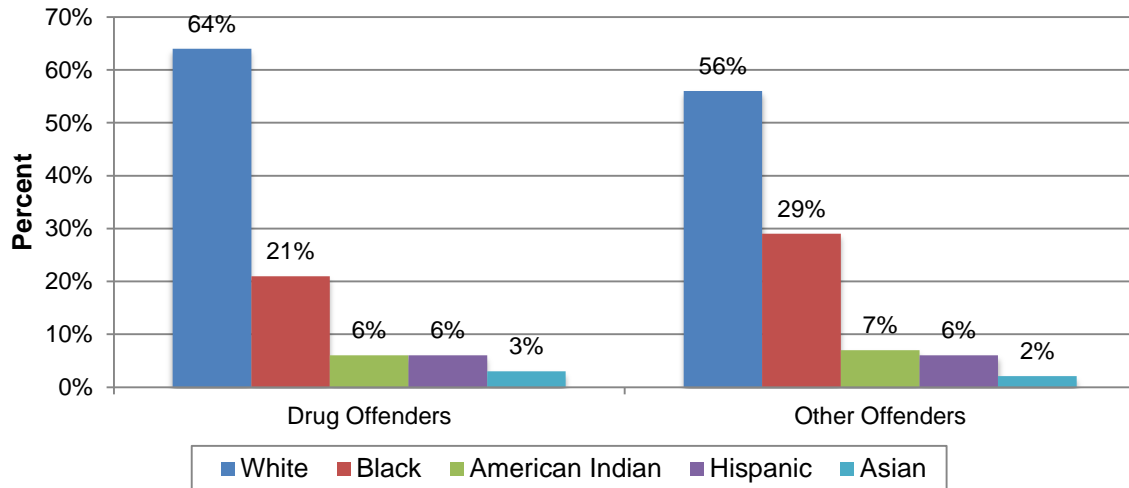
Figure 9 displays the racial distribution of drug offenders by region. Black offenders make up the largest portion of drug offenses sentenced in Hennepin and Ramsey Counties. These counties include the Metropolitan areas of St. Paul and Minneapolis.

**Figure 9. Distribution of Offenders by Race and Region: 2012**

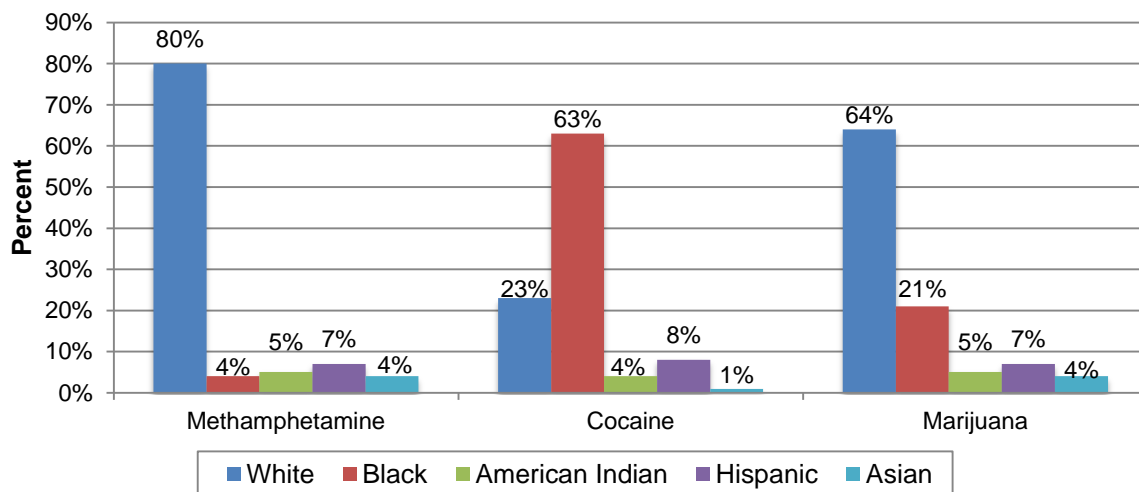


In 1999, 51 percent of drug offenders were white and 36 percent were black, whereas in 2012, 64 percent of drug offenders were white and 21 percent were black (Figure 10). Sentencing data reveal that methamphetamine is predominantly a drug of choice for white offenders and is directly impacting the racial make-up of drug offenders in Minnesota. Figure 11 displays the racial composition of offenders sentenced for methamphetamine, cocaine, and marijuana offenses in 2012.

**Figure 10. Distribution of Offenders by Race: 2012 Drug Offenders vs. 2012 Other Offenders**



**Figure 11. Distribution of Offenders by Race: 2012 Most Common Drug Types**



## Sentencing Practices

In 2012, 93 percent of drug offenders were incarcerated; 25 percent in state prison; and 68 percent in local correctional facilities (Table 1). The remaining 7 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: 2012**

Incarceration Type	Number	Percent
State Prison	901	25
Local Jail	2,414	68
Total Incarceration	3,315	93

### *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 2012, 901 drug offenders (25%) were imprisoned with an average sentence of 44 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
2012	3,552	25%	44 months	11,655	27%	48 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 2012, 2,650 offenders received probation sentences for drug offenses; an 80 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 45 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 2012, the jail rate rose to 91 percent from 89 percent in 2011. Non-drug offenders have had slightly lower rates of imposed jail time. For both groups, the average jail time pronounced in most years has been more than 100 days. In 2012, the average pronounced jail time for drug offenders was 122 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
2012	2,650	91%	122 days	8,553	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.

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

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

#### Total Departure Rate: Drug Offenders vs. Non-Drug Offenders

The total departure rate refers to the percentage of felony offenders who did not receive the presumptive Guidelines sentence. In 2012, the total departure rate for drug cases was 24

percent, compared to 29 percent for non-drug cases. The downward departure rate was 17 percent for drug cases and 25 percent for non-drug cases (Table 4).

**Table 4. Total Departure Rates: Drug and Non-Drug Offenders: 2012**

Departure Type	Drug Offenders		Other Offenders	
No Departures	2,714	(76%)	8,240	(71%)
Total Departures	838	(24%)	3,415	(29%)
• Mitigated	604	(17%)	2,881	(25%)
• Aggravated	190	(5%)	422	(4%)
• Mixed	44	(1%)	112	(1%)
Total Sentenced	<b>3,552</b>	<b>(100%)</b>	<b>11,655</b>	<b>(100%)</b>

Aggravated Dispositional Departures: Drug Offenders vs. Non-Drug Offenders

Aggravated dispositional departures happen relatively infrequently compared to other types of departures. In 2012, eight percent of drug offenders received aggravated dispositional departures (sentenced to prison when the Guidelines recommended a stayed sentence) (Table 5.)

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 79 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 5). The aggravated dispositional departure rate for drug offenses was higher than for non-drug offenses.

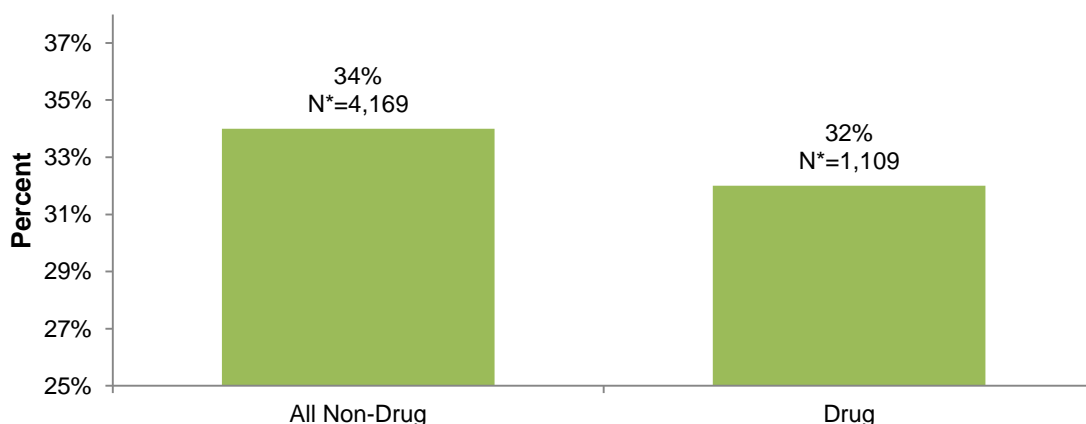
**Table 5. Aggravated Dispositional Departure Rates: 2012 Drug Offenders and Non-Drug Offenders**

	Drug Offenders	Other Offenders
Number Presumptive Stays	2,533	7,486
Aggravated Dispositions	207 (8%)	333 (4%)
Cases with Departure Reasons	199	323
Request for Prison	158 (79%)	294 (91%)

Mitigated Dispositional Departures: Drug Offenses vs. Other Offense Types

Figure 12 shows that 32 percent of drug offenders who were recommended prison under the Guidelines instead received a non-prison sentence. The mitigated dispositional departure rate for non-drug offenses that were presumptive prison cases was 34 percent. Departure rates vary greatly by general offense type and specific offense. (See, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the “Annual Summary” tab for more information on departure rates by offense type at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports).)

**Figure 12. Mitigated Dispositional Departure Rates :  
2012 Drug Cases vs. 2012 Non-Drug Cases  
(Presumptive Prison Cases Only)**



\*N=total number presumptive prison cases

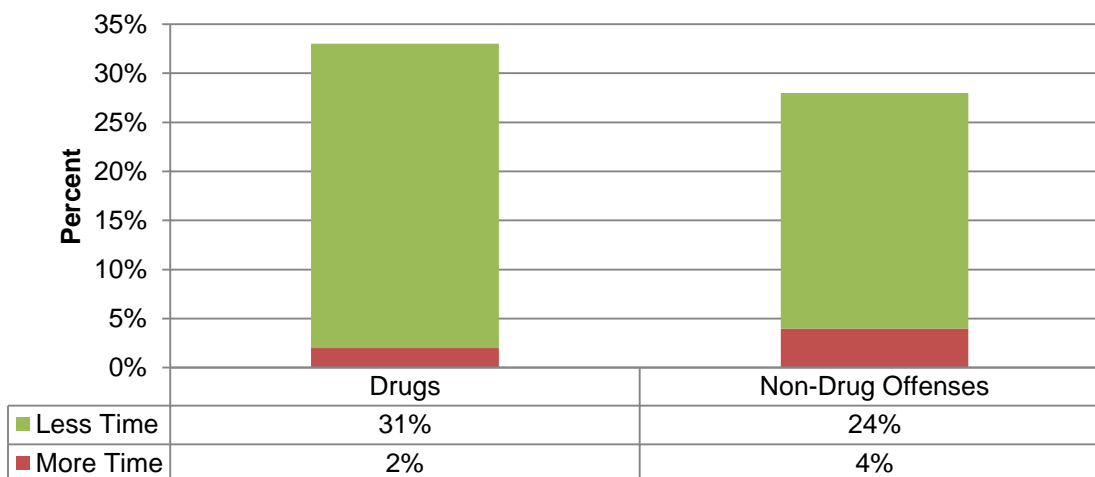
Dispositional Departures: Frequently Cited Reasons for Departure

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 (62% and 58%, 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 (21% and 12%, respectively).

Durational Departures (Prison Cases): Drug Offenders vs. Non-Drug Offenders

The mitigated durational departure rate for drug offenders who received executed prison sentences was 31 percent whereas the rate for non-drug offenders was 24 percent (Figure 13). The aggravated durational departure rate was two percent for drug offenders and four percent for non-drug cases. (See, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the “Annual Summary” tab for more information on departure rates by offense type at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports).)

**Figure 13. Durational Departure Rates:  
2012 Drug Cases vs. 2012 Non-Drug Cases**



“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 72 percent of both the drug and non-drug cases. The court reported that the prosecutor objected to the mitigated duration in about 10 percent of the drug cases and seven percent of non-drug cases.

***Long-Term Trends in Departure Rates for Drug Cases***

Figure 14 shows that, between 1999 and 2003, the mitigated dispositional departure rate stabilized in the mid-30 percent range. The rate then increased until 2006, when it reached a rate of 46 percent, which was the highest since 1997. In 2007, this rate returned to under 40 percent and has dropped nearly every year since. The 2012 rate of 32 percent was the lowest rate seen in during this time period.

**Figure 14. Mitigated Dispositional Departure Rates: 1996-2012  
(Presumptive Commitments Only)**

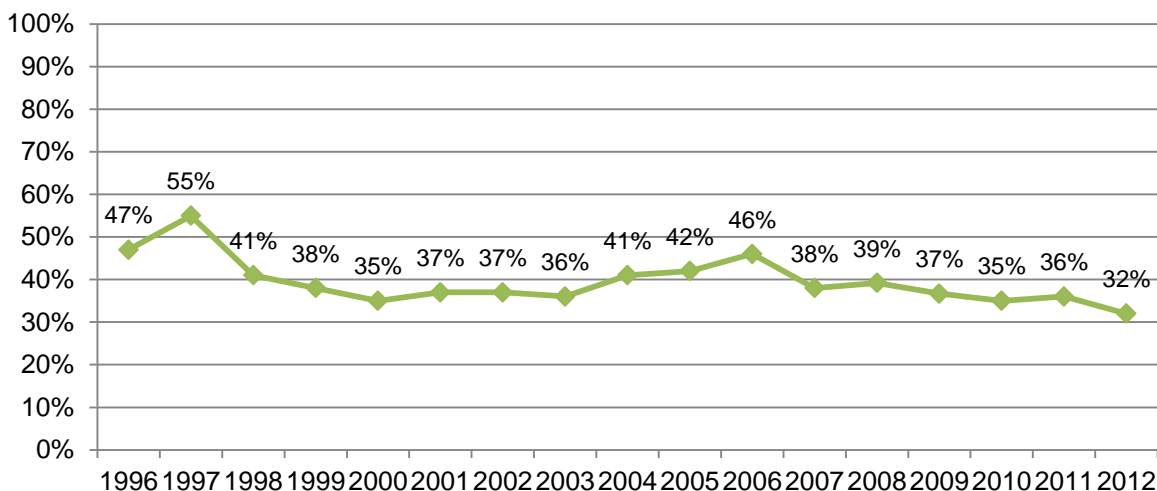
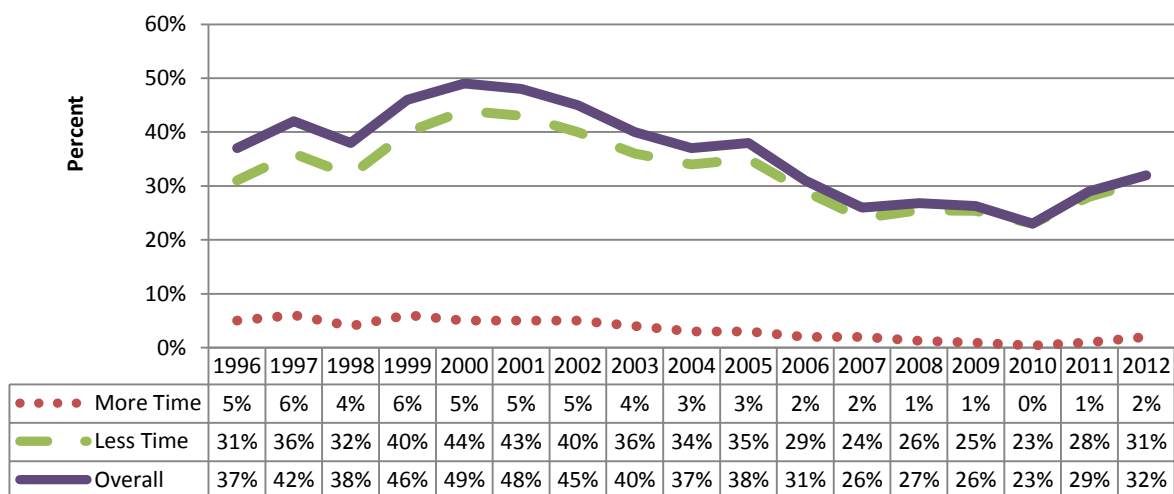


Figure 15 shows that the mitigated durational departure rate continued to increase through the 1990s, and peaked in 2000 at 44 percent. Since 2000, however, this rate steadily declined to a low of 23 percent in 2010. In 2011 the rate climbed back to 28 percent and increased again in 2012 to 31 percent. Aggravated durational departure rates have consistently been very low and in 2010 reached a new low of 0.4 percent. In 2012 the aggravated durational departure rate was 1.8 percent.

**Figure 15. Durational Departure Rates for Cases Receiving  
Prison Sentences: 1996-2012**



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 16). In 2012, the dispositional departure rates dropped in all regions except Ramsey County (which includes the City of Saint Paul) and for the first time were virtually identical in all regions. 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. In 2012 the Hennepin rate fell again. Part of this large drop may be the result of significant changes that took effect in 2007 in how Hennepin County operates its Drug Court. 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 16. Mitigated Dispositional Departure Rates by Region  
Presumptive Prison Cases: 1996-2012

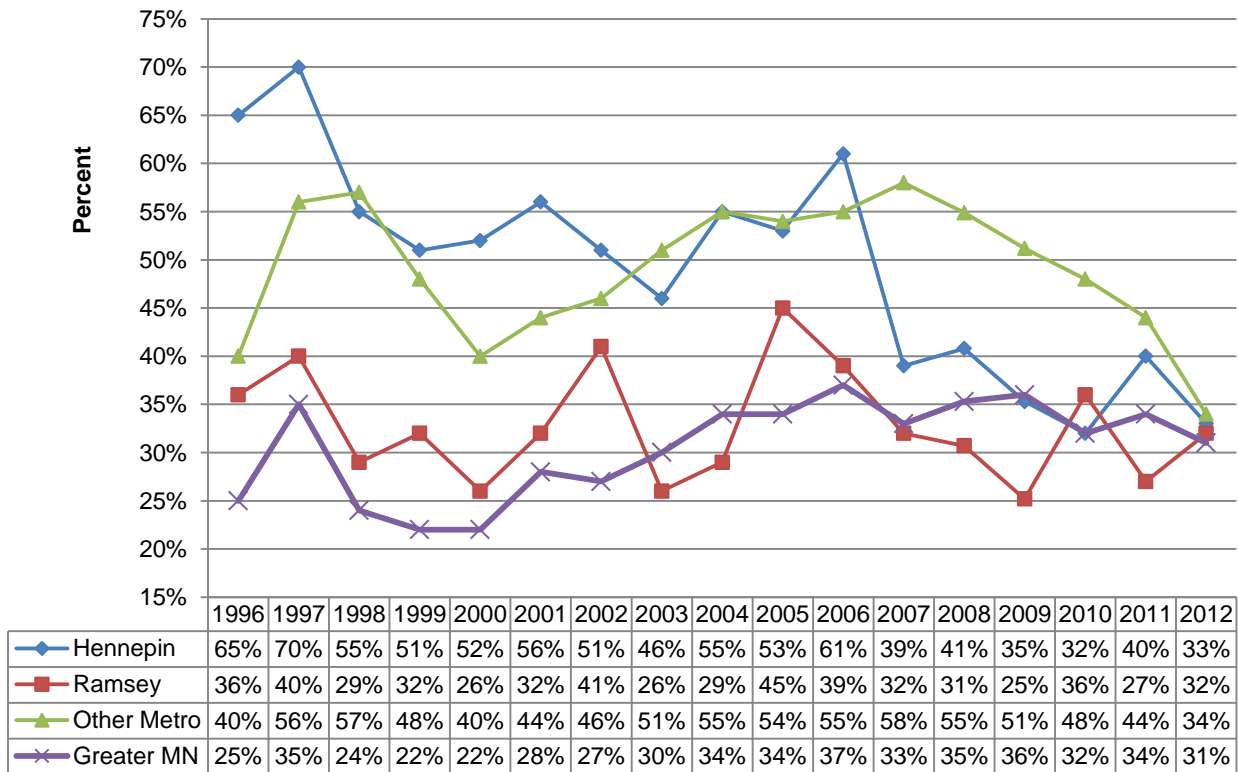
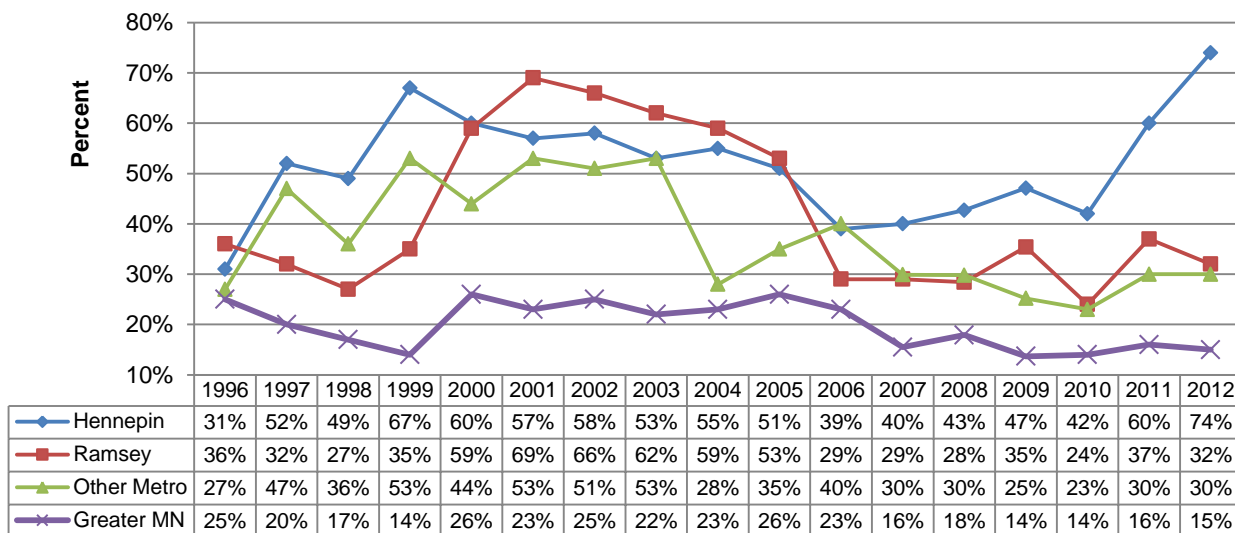


Figure 17 shows that in 2012, the mitigated durational departure rate for executed sentences remained the same as the rates observed in 2011 in Greater MN and the other Metro counties, but the rate fell in Ramsey county and increased dramatically in Hennepin County. In 2012, the rate in Hennepin County (74%) was higher than it had been in any year during this period, and is the highest rate observed over time in any of the four regions. 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.

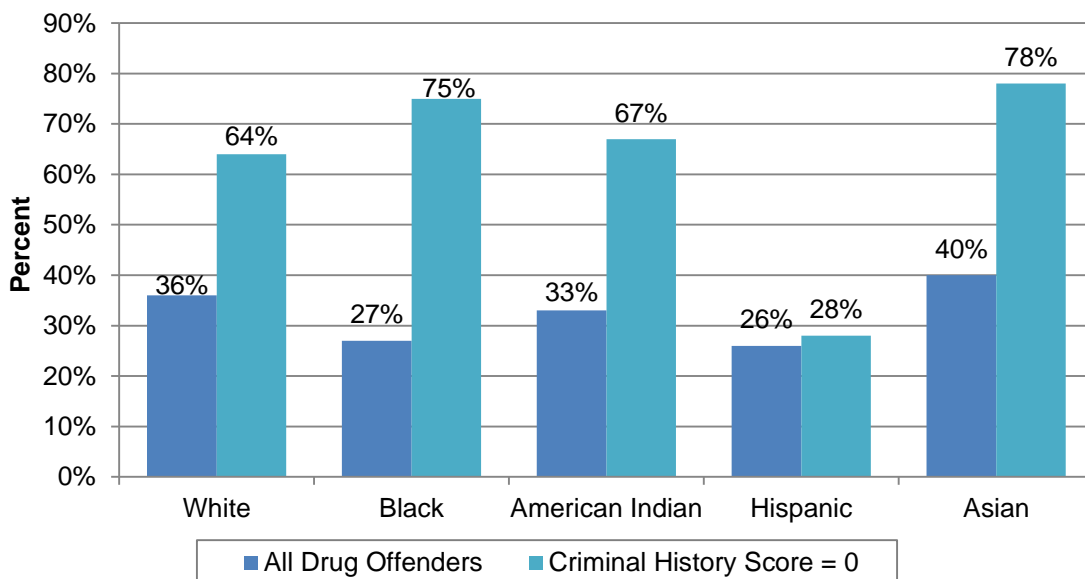
**Figure 17. Mitigated Durational Departure Rates by Region for Cases Receiving Executed Prison Sentences: 1996-2012**



*Departure Rates for Drug Offenders by Race*

Departure rates vary by race, with white offenders receiving mitigated dispositional departures at higher rates than black offenders (Figure 18). Mitigated dispositional departure rates are typically lowest for Hispanics. The differences in departure rates 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 and the rate is highest for black offenders. Hispanics have the lowest departure rate at a criminal history score of zero at only 28 percent.

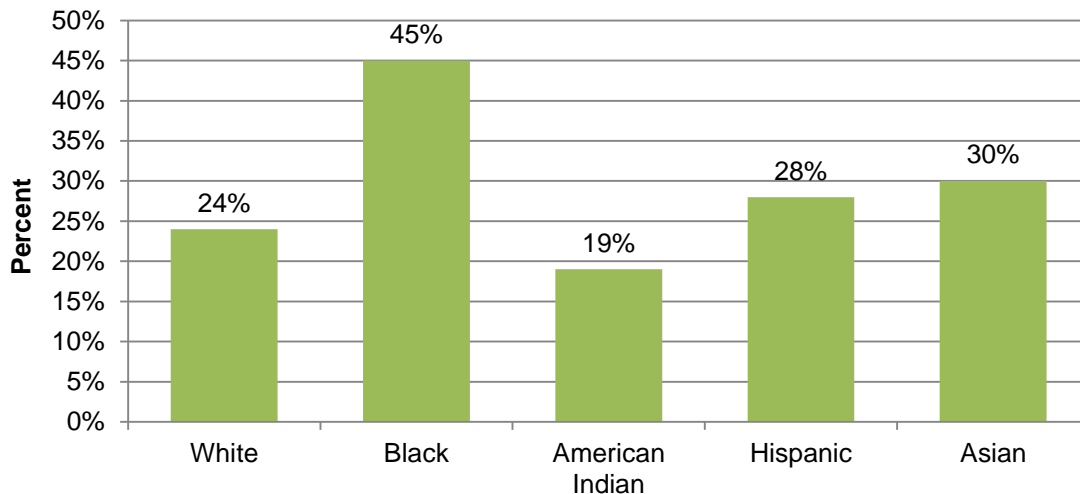
**Figure 18. Mitigated Dispositional Departures by Race: 2012**





Mitigated durational departure rates are higher for black offenders than for white offenders (Figure 19). 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. From 2011 to 2012, mitigated durational departures increased for white, black and American Indian offenders. The rates increased from 22 percent for white offenders, 41 percent for black offenders and 15 percent for American Indian offenders. The rates for Hispanic and Asian offenders were only slightly higher than the 27 percent rate in 2011. 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.)

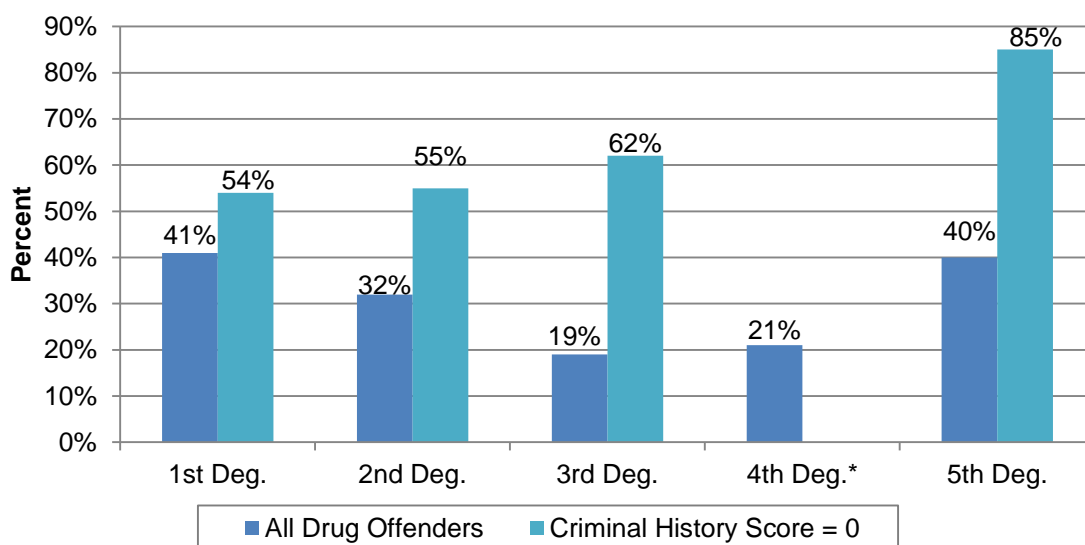
**Figure 19. Mitigated Durational Departures by Race: 2012  
(for those receiving executed prison sentences)**



*Departure Rates for Drug Cases by Drug Degree and Judicial District*

Figure 20 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. In 2012, the rate fell back to 41 percent. For second-degree offenses, the rate was 32 percent, a decrease from the rate observed in 2011 (36%). The rate for third-degree offenses also declined from 23 percent in 2011 to 19 percent in 2012. The rates for fourth and fifth-degree offenses increased from 13 to 21 percent and 38 to 40 percent, respectively. Among offenders with a criminal history score of 0, the overall mitigated dispositional departure rate was 56 percent, a decrease from the 2011 rate of 68 percent.

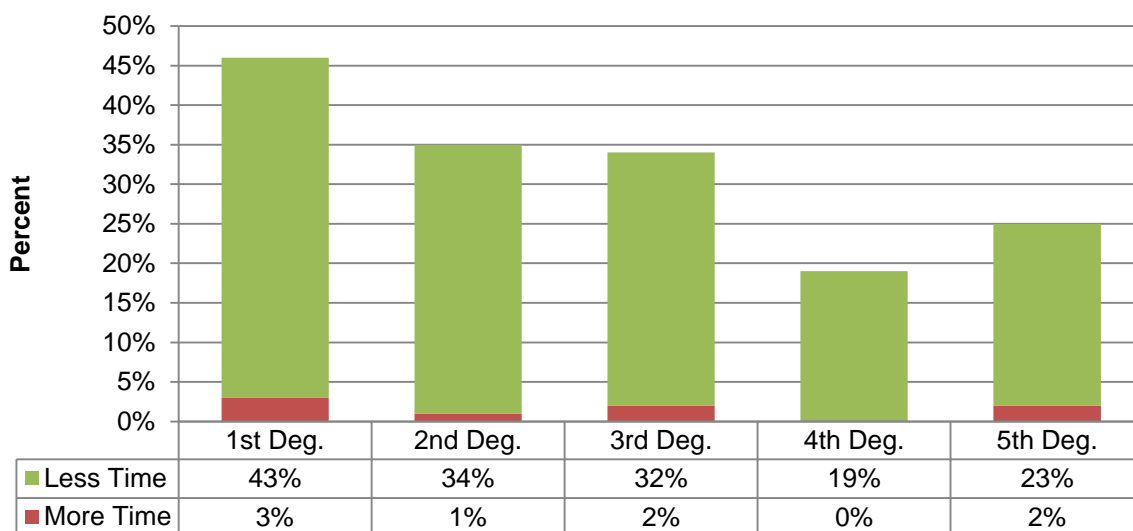
**Figure 20. Mitigated Dispositional Departure Rates by Degree: 2012**



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

Figure 21 shows that mitigated durational departure rates were 43 percent for first-degree offenses and 34 percent for second-degree offenses. The first-degree rate was a decrease from the 2011 rate of 47 percent while the second-degree rate was an increase from the 2011 rate of 27 percent. The mitigated durational departure rates for third and fourth-degree offenders are identical to the 2011 rates, while the fifth-degree rate increased from 19 percent in 2011 to 23 percent in 2012. The average reduction in sentence length from the presumptive sentence was 50 months for first-degree cases, 28 months for second-degree cases, and 16 months for third-degree cases. The average sentence reduction was higher for first- and second-degree offenses in 2012 compared to 2011.

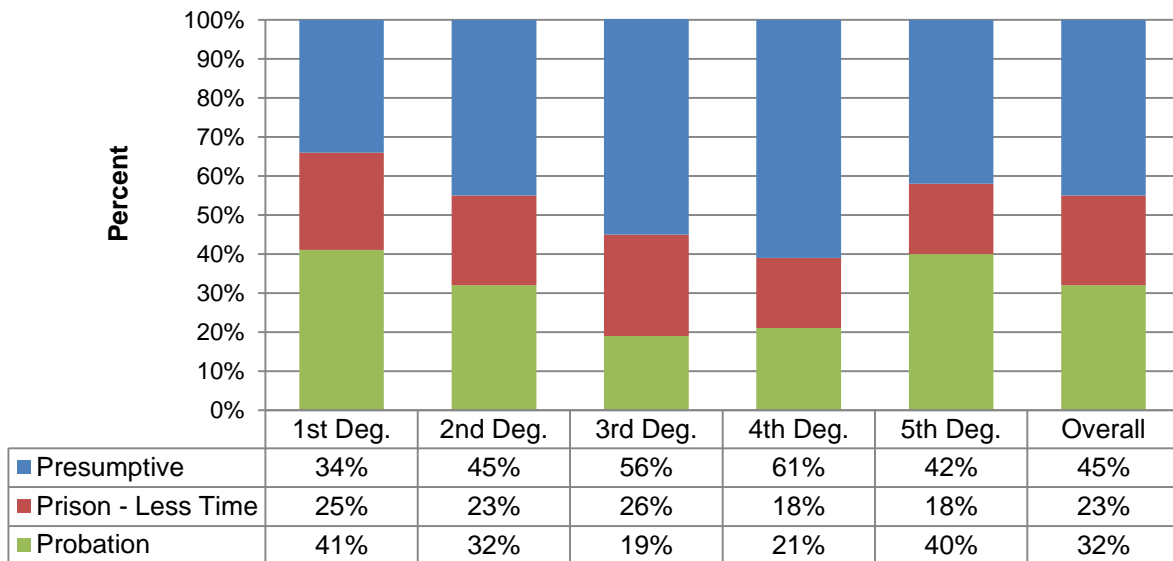
**Figure 21. Durational Departure Rates by Degree: 2012  
(for those receiving executed sentences)**



Presumptive Prison Cases by Degree

Of the 3,552 offenders sentenced for drug offenses in 2012, 29 percent (1,019) 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. In 2012, as in 2011, only 45 percent of drug offenders recommended a prison sentence received the recommended sentence or longer; 32 percent received a probationary sentence and 23 percent received a prison sentence that reflected less time than designated for under the Guidelines. Figure 22 shows that 34 percent of first-degree cases received the recommended sentence, which was an increase from that observed 2011 (28%). A similar percentage of second- and third-degree offenders in 2011 and 2012 received the presumptive sentences. The percent receiving the presumptive sentence decreased from 78 percent for fourth-degree offenses and from 51 percent for fifth-degree offenses.

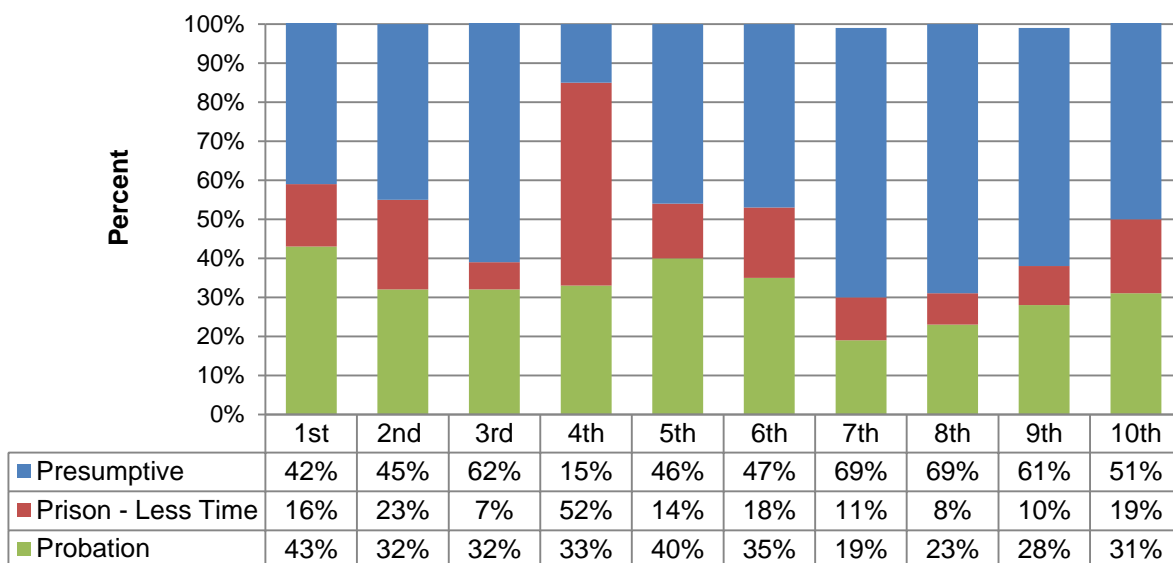
**Figure 22. Sentence Imposed by Drug Degree: 2012  
(Presumptive Prison Cases)**



Presumptive Prison Cases by Judicial District

The likelihood of an offender receiving the presumptive sentences varies widely across the state. Figure 23 shows the percent of offenders with presumptive prison sentences who received the recommended sentence by Judicial District. The portion who received the presumptive sentence ranged from 15 percent in the Fourth District (Hennepin County) to 69 percent in the Seventh and Eighth and Districts (includes western and Minnesota). See p. 32 for a map of Minnesota’s ten Judicial Districts.

**Figure 23. Sentence Imposed by Judicial District: 2012  
(Presumptive Prison Cases)**



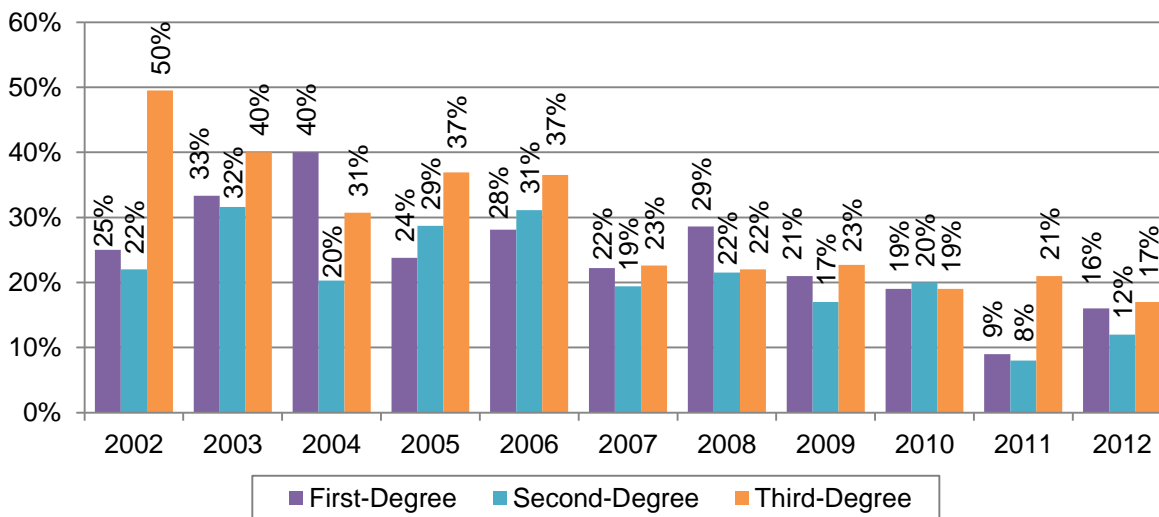
Departure Rates for Subsequent Drug Offenses

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 2012, 399 drug offenders were sentenced for offenses involving a second or subsequent drug offense that was subject to mandatory minimum provisions. Of this total, 61 offenders (15%) received a mitigated dispositional departure from the Guidelines. This rate is similar to that observed in 2011 (14%) and is a decrease from the rate observed in 2010 (19%). The rate was lower for second-degree offenses than for first- and third-degree offenses (Figure 24). Compared to 2011, the dispositional departure rates increased in 2012 for first- and second-degree offenses and decreased for third-degree offenses. The court indicated that the prosecutor agreed to, recommended or did not object to the mitigated disposition in 69 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 24. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Offense: 2002-2012**



Of the 338 second or subsequent drug offenders who received executed prison sentences, all but 5 (1.5%) had a pronounced sentence equal to, or longer than, the mandatory minimum. One of the offenders receiving less time was a second-degree offender and four 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.

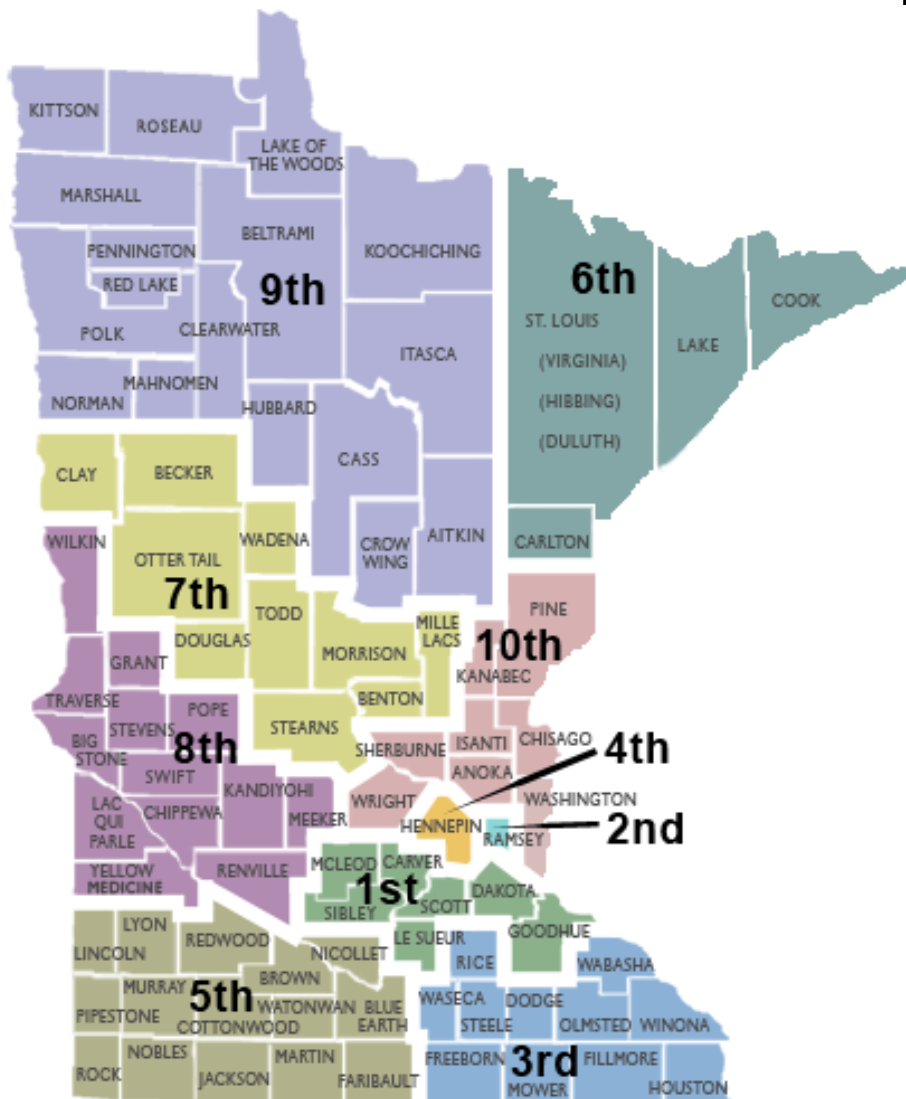
The recommended (presumptive) guideline sentence is found in the cell of the Grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the Grid.

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 [mn.gov/sentencing-guidelines](http://mn.gov/sentencing-guidelines).

# 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)	<b>11</b>	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 <sup>2</sup>	426 363-480 <sup>2</sup>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	<b>10</b>	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>	<b>9</b>	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>	<b>8</b>	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>	<b>7</b>	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 <sup>2</sup>
<i>Controlled Substance Crime, 3rd Degree</i>	<b>6</b>	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	<b>5</b>	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	<b>4</b>	12 <sup>1</sup>	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	<b>3</b>	12 <sup>1</sup>	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>	<b>2</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 18-25
<i>Sale of Simulated Controlled Substance</i>	<b>1</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 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.

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

<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. Guidelines section 2.C.1-2. Presumptive Sentence.