

# MINNESOTA SENTENCING GUIDELINES COMMISSION

## Sentencing Practices

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### Controlled Substance Offenses Sentenced in 2013

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## Summary of 2013 Data

This report gives statistics concerning drug felonies and how they were sentenced in 2013, as well as outlining trends in sentencing drug offenses since the implementation of the Guidelines.

In 2013, there were 3,821 offenders sentenced for drug offenses, an increase of 7.6 percent over the number sentenced in 2012 (Figures 1 and 2). Beginning in 2011, the number of offenders sentenced for drug offenses has grown each year. 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 2013 (as in 2011 and 2012) after declining in almost every year since 2003. The number of offenders sentenced for second- and fifth-degree offenses also increased while the number sentenced for third-degree offenses declined. The number of cocaine cases was down by 19 percent while the number of methamphetamine cases rose by 19 percent (Figure 5).

The total incarceration rate for drug offenders sentenced was 94 percent, with 27 percent receiving a prison sentence and 67 percent getting time in a local correctional facility (jail) as a condition of probation (Table 1). The average pronounced prison sentence was 43 months (Table 2).

In 2013, the mitigated dispositional departure rate decreased slightly from 2012, while the mitigated durational departure rate remained the same. Among drug offenders recommended prison under the Guidelines, 31 percent received a mitigated dispositional departure and were placed on probation (Figure 16). Among drug offenders who received prison sentences, 31 percent received a mitigated durational departure in both 2012 and 2013 (Figure 17), although this rate varied significantly by region (Figure 19).

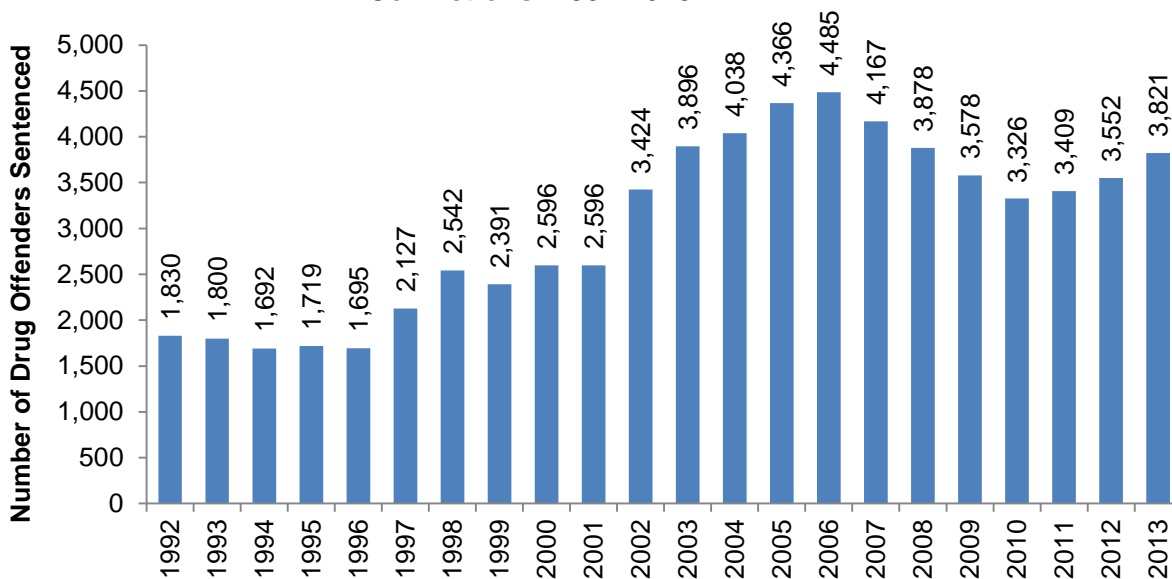
Among drug offenders recommended prison sentences under the Guidelines, departure rates were slightly higher than the overall mitigated departure rate of 51 percent: More offenders received mitigated departures (55 percent) than received the recommended sentence or longer (45 percent). Some 31 percent received a probationary sentence (mitigated dispositional departure), and 24 percent received a prison sentence that reflected less time than designated under the Guidelines (mitigated durational departure) (Figure 24).

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

### Volume of Cases

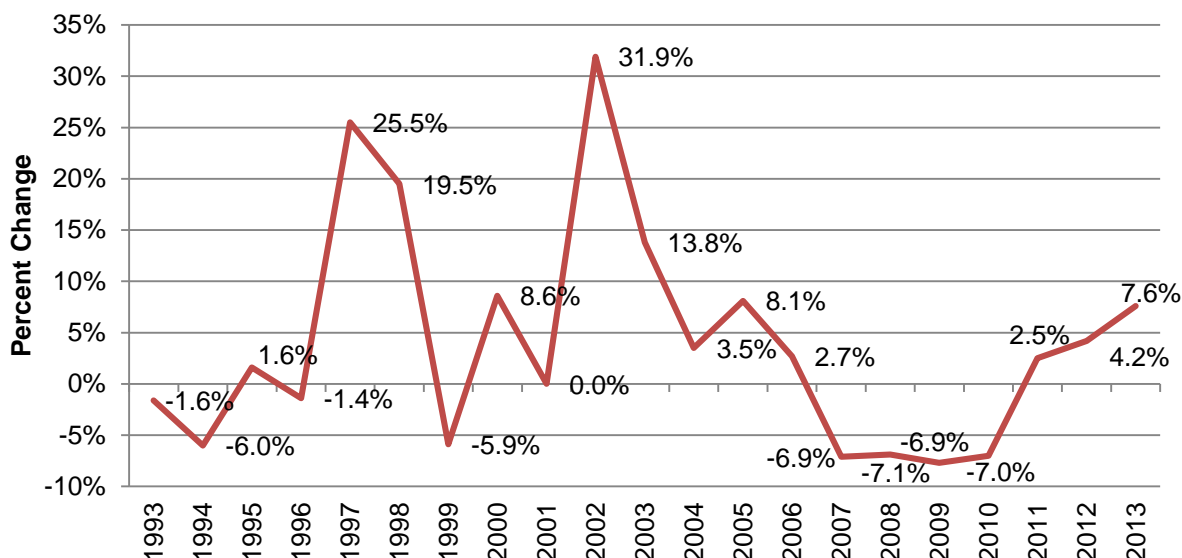
The number of felony offenders sentenced in 2013 totaled 15,318, an increase of approximately one percent from the number of offenders sentenced in 2012. An illustration of the total number of felony offenders sentenced since 1981 can be found in MSGC’s report, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the “Annual Summary” tab at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports). There were 3,821 felony offenders sentenced for drug offenses in 2013, an increase of 7.6 percent from 2012 (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. In 2011, the number of drug offenders sentenced increased. The increase in the number of offenders sentenced for drug offenses in 2013 is greater than the increases in 2011 and 2012, and is a continuation of the reversal in the trend observed prior to 2011.

**Figure 1. Number of Offenders Sentenced for Felony Drug Convictions: 1992-2013**



<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: 1993-2013**

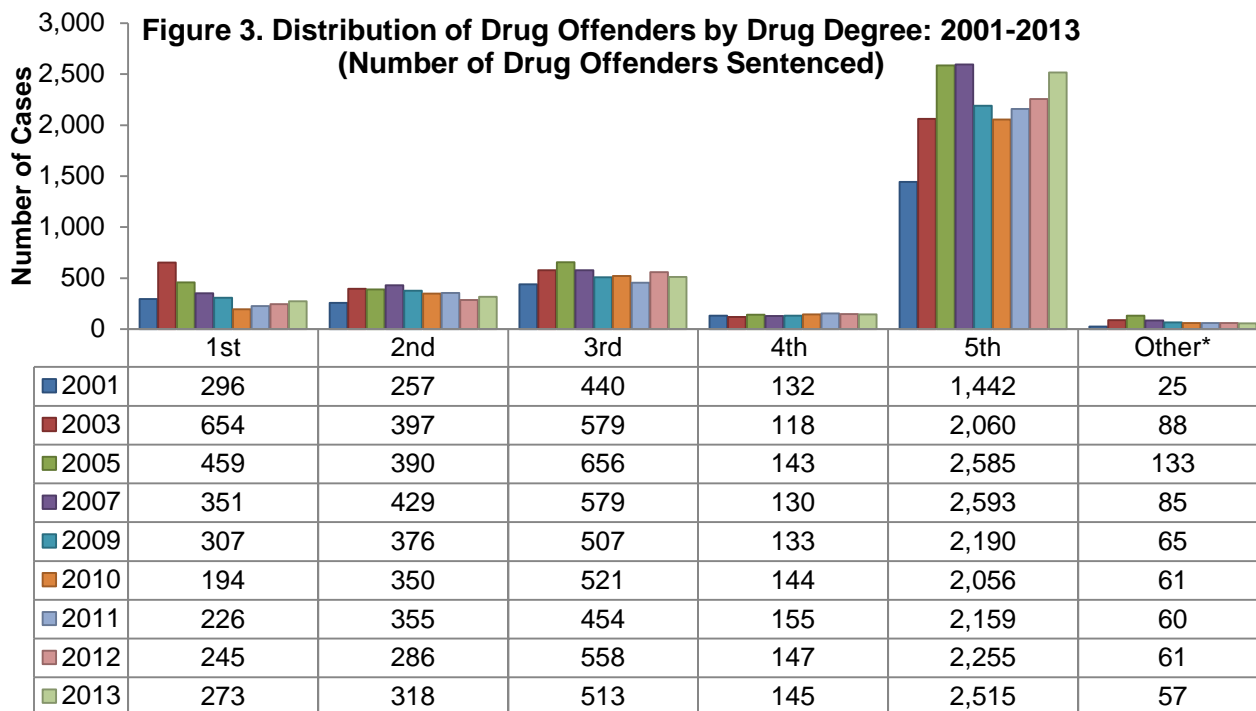


#### Volume of Cases by Degree:

Figure 3 shows the distribution of drug offenders across the controlled substance degrees. The largest group of cases sentenced was fifth-degree (66% of the cases). In 2013, the number of offenders sentenced for first-, second- and fifth-degree offenses increased by slightly over 11 percent for each degree, while the number sentenced for third-degree offenses decreased by 8 percent.

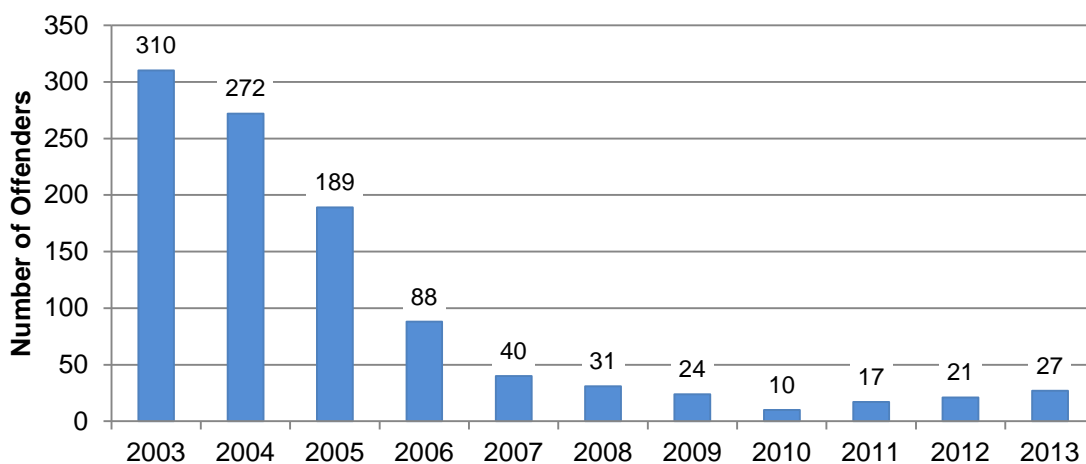
The number of first-degree offenders sentenced declined nearly every year between 2003 and 2010, due in part to the decline in the number of offenders sentenced for manufacture of methamphetamine (10 offenders in 2010, compared to 310 in 2003 – Figure 4). But in 2011, the number of offenders sentenced 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%; 273 offenders in 2013 for an increase of 11%).

Figure 4 shows the number of offenders sentenced for manufacture of methamphetamine from 2003 to 2013. In 2013, the number increased slightly from 21 in 2012 to 27. 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.



\* In 2013, the "Other" category includes 12 offenders sentenced for possession of precursors with intent to manufacture methamphetamines, 12 offenders sentenced for sale of a simulated controlled substance, and 33 offenders sentenced for methamphetamine crimes involving children.

**Figure 4. Number of Offenders Sentenced for Manufacture of Methamphetamine (Meth): 2003-2013**

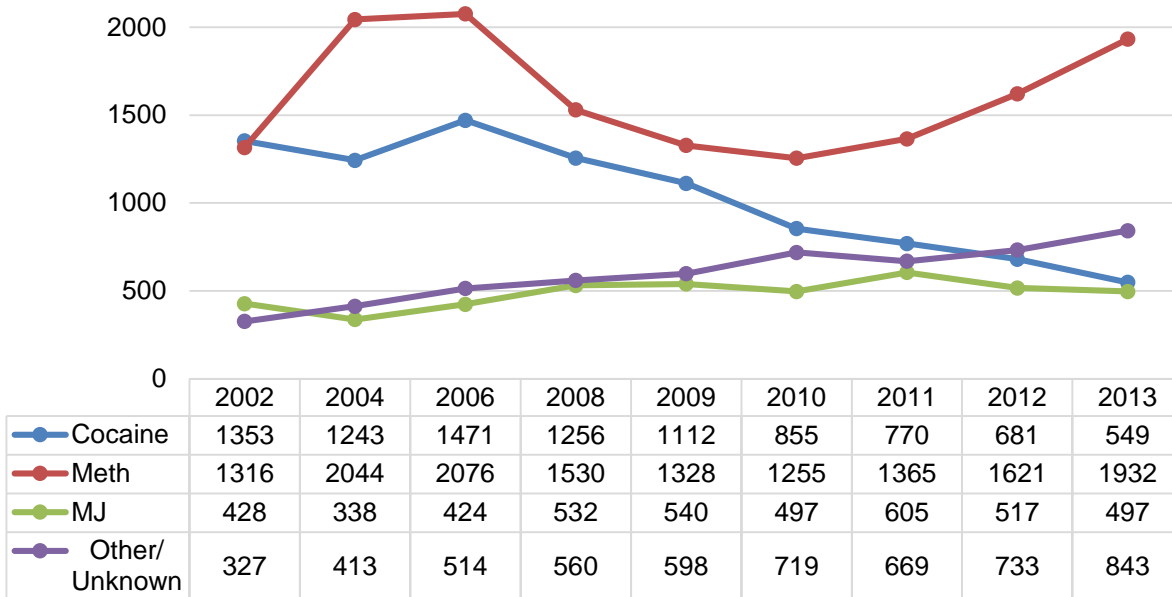


*Drug Type, Region, Race & Prior Drug Convictions*

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 involve other drug types or unknown drugs. By 2004, over half (51%) of the drug cases sentenced involved methamphetamine. In 2013, methamphetamine was still the drug type with the largest number of cases (51%), while 14 percent of the cases involved cocaine, 13 percent involved marijuana and 22 percent were for other or unknown substances. Between 2012 and 2013 there was a 19 percent increase in the number of offenders sentenced for methamphetamine offenses and a 19 percent decrease in the number of offenders sentenced for cocaine offenses. The number sentenced for marijuana offenses declined by 4 percent and the number of cases involving other or unknown drugs increased by 15 percent (Figure 5).

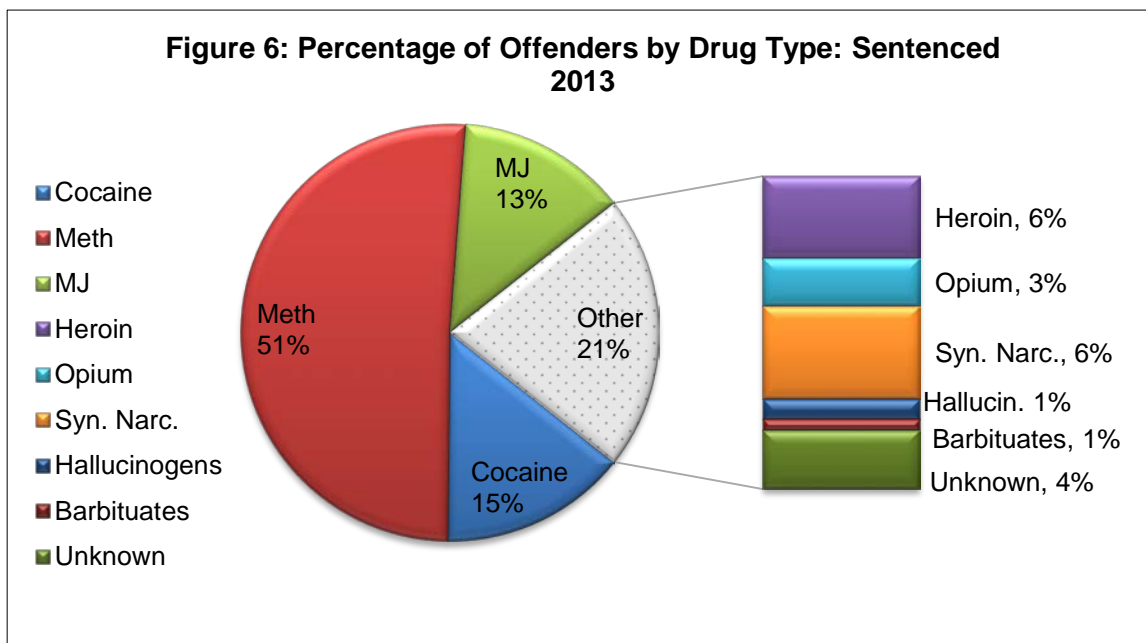
**Figure 5: Distribution of Offenders by Drug Type Over Time: Sentenced 2002-2013**



Within the Other/Unknown category, in 2013, synthetic narcotics were the largest drug type with 240 cases (compared to 233 cases in 2012) and there were 150 cases where the drug type was unknown. Between 2012 and 2013, the number of cases involving heroin increased by 35 percent (from 157 to 212) and the number of offenses involving opium increased by 32 percent (from 93 to 123). Between 2008 and 2013, heroin and opium also showed the largest



percentage increases (324% for heroin and 200% for opium). In that same period, the number of offenders sentenced for synthetic narcotics increased by 13 percent (Figure 6).



Distribution of Cases over Time (Region)

In recent years, the number of drug cases outside the 7-County Metro area of Anoka, Dakota, Carver, Hennepin, Ramsey, Scott, and Washington counties has increased more than the number of drug cases sentenced in the metro counties. In 1998, 33 percent of all drug cases were sentenced in Greater Minnesota (Figure 7). By 2004, that percentage had grown to 51 percent, and it has remained above 50 percent in almost every year since. In 2013, the percent of drug offenders sentenced in Greater Minnesota rose to an all-time high of 60 percent. In comparison, the percent of offenders other than drug offenders sentenced in Greater Minnesota was 47 percent. In all other regions, the percent of drug offenders is lower than the percent of other offenders (Figure 8).

Figure 7. Distribution of Drug Cases by Region: 1996-2013

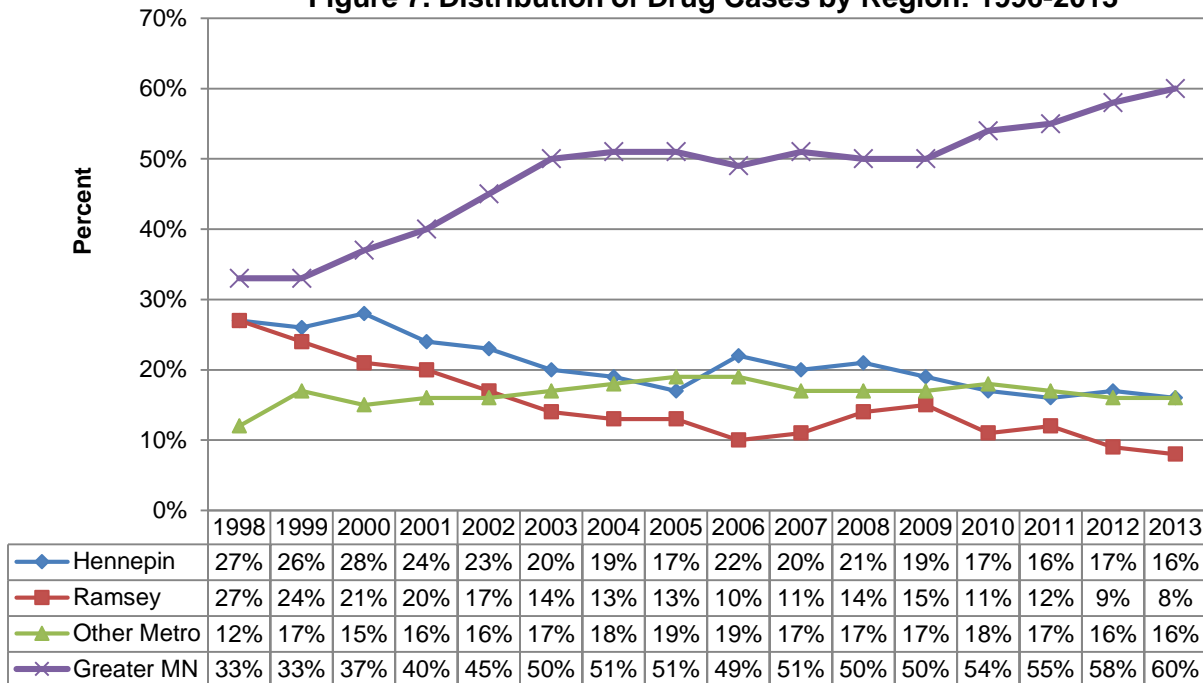
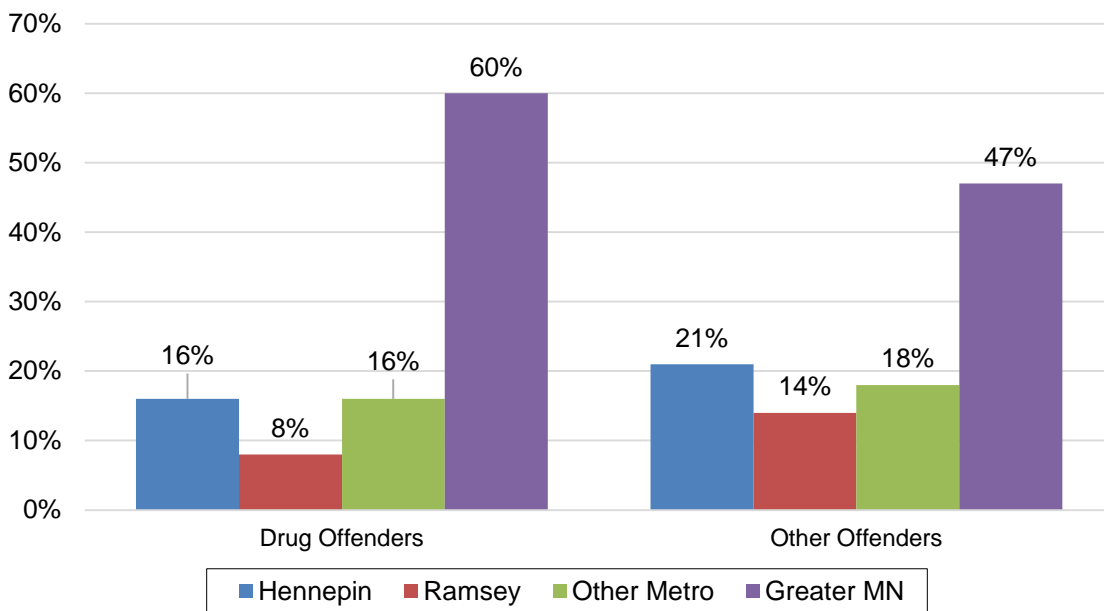


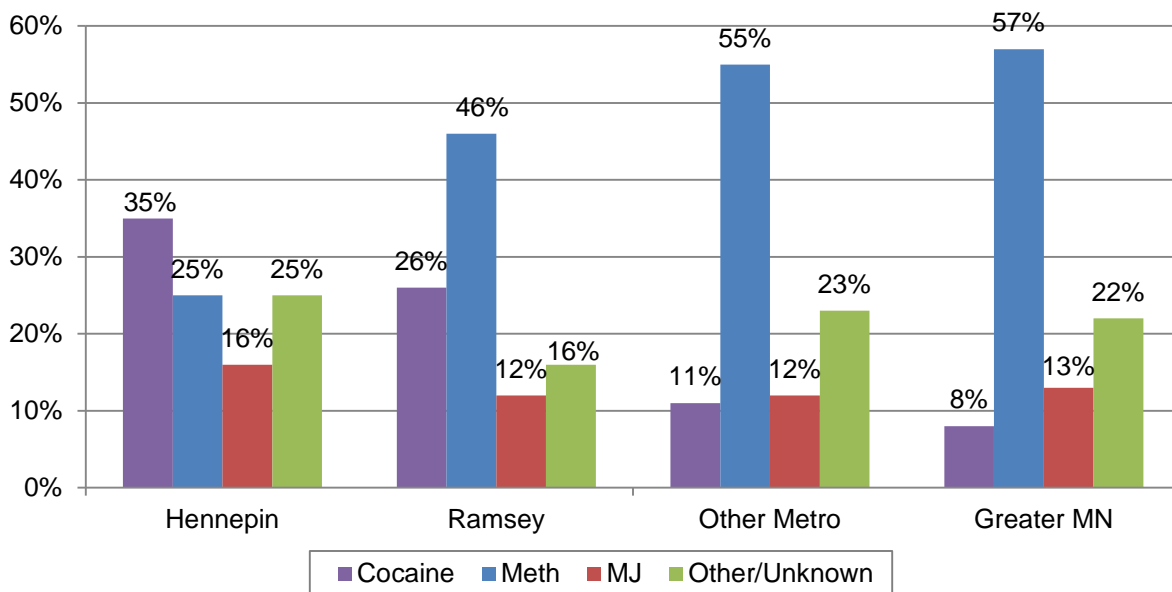
Figure 8. Distribution of Offenders by Region: 2013 Drug Offenders vs. 2013 Other Offenders



2013 Distribution of Cases (Drug Types and Region)

There was a difference in the distribution of drug types among regions as well (Figure 9). In 2013, 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 and 2012, in Ramsey County, methamphetamine (as opposed to cocaine) was the most frequently cited drug type.

**Figure 9. Distribution of Drug Offenders by Drug Type and Region: 2013**

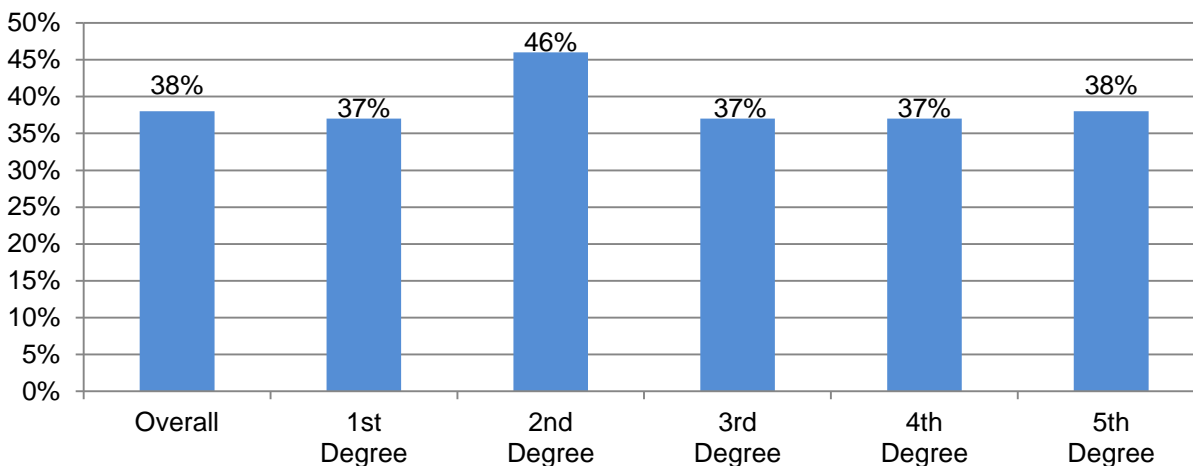


2013 Distribution of Cases (Prior Conviction)

In 2013, 38 percent of the drug offenders sentenced had prior convictions for felony-level drug offenses (Figure 10).<sup>2</sup> With the exception of second-degree offenders, there was not much variation in prior conviction rates depending on the controlled substance degree. Second-degree offenders were more likely than other offenders to have prior convictions (46%).

<sup>2</sup> In first-, second-, and third-degree controlled substance cases, many (but not all) of these prior convictions will trigger mandatory minimum prison sentences. For a further discussion of mandatory minimum sentences, see p. 30.

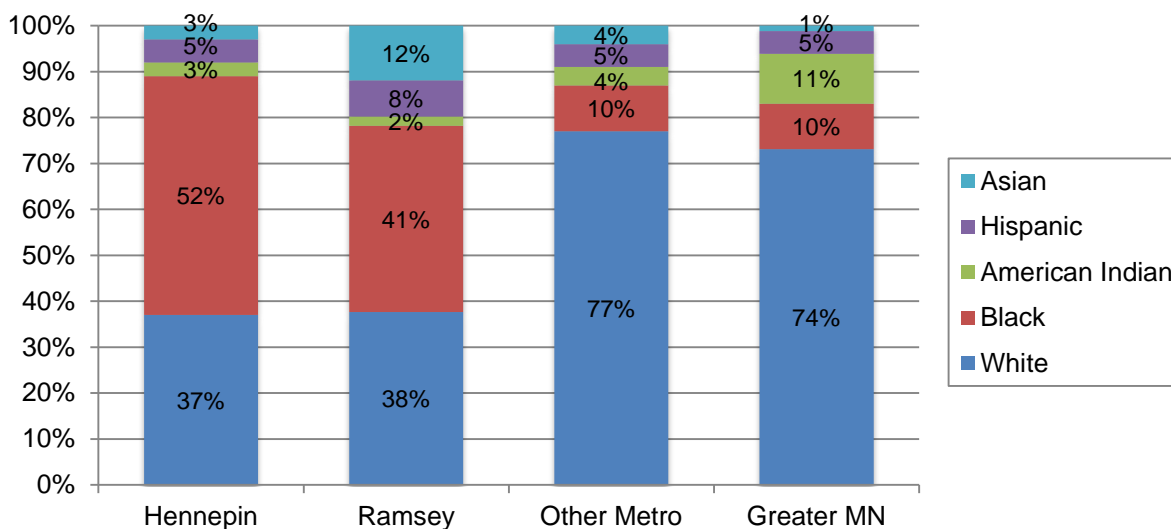
**Figure 10. Percent of Offenders with a Prior Felony Drug Sentence by Controlled Substance Degree: 2013**



Racial Distribution

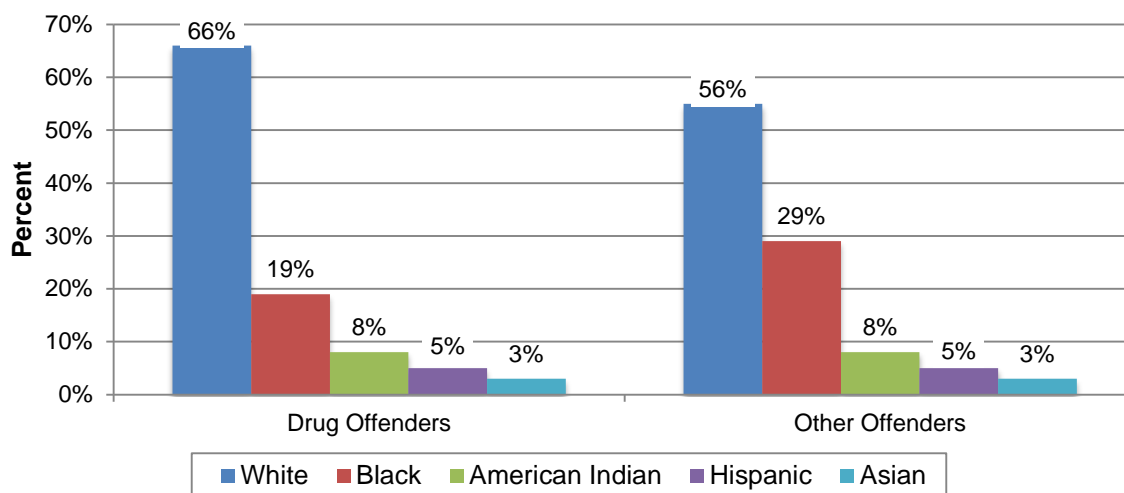
Figure 11 displays the racial distribution of drug offenders by region. Black offenders make up the largest portion of drug offenders sentenced in Hennepin and Ramsey counties. These counties include the Metropolitan areas of Minneapolis and St. Paul.

**Figure 11. Distribution of Offenders by Race and Region: 2013**

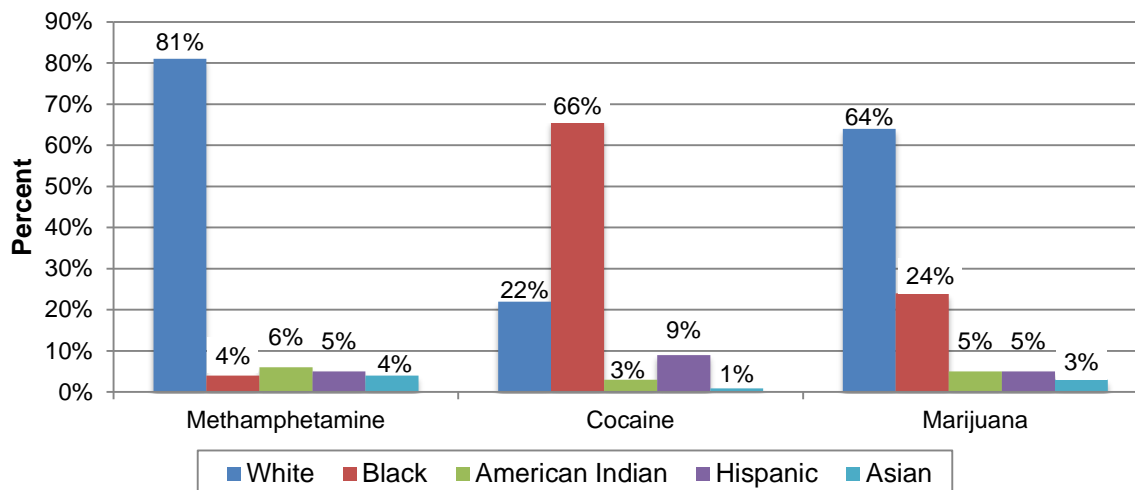


In 1999, 51 percent of drug offenders were white and 36 percent were black, whereas in 2013, 66 percent of drug offenders were white and 19 percent were black (Figure 12). Sentencing data reveal that methamphetamine is predominantly a drug of choice for white offenders and is directly impacting the racial make-up of drug offenders in Minnesota. Figure 13 displays the racial composition of offenders sentenced for methamphetamine, cocaine, and marijuana offenses in 2013.

**Figure 12. Distribution of Offenders by Race: 2013 Drug Offenders vs. 2013 Other Offenders**



**Figure 13. Distribution of Offenders by Race: 2013 Most Common Drug Types**



## Sentencing Practices

In 2013, 94 percent of drug offenders were incarcerated: 27 percent in state prison, and 67 percent in local correctional facilities (Table 1). The remaining six percent were not incarcerated; however, they may have received sanctions such as drug treatment.

**Table 1. Total Incarceration: 2013**

Incarceration Type	Number	Percent
State Prison	1,026	27
Local Jail	2,555	67
Total Incarceration	3,581	94

### *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 has increased significantly over the past 23 years, at a higher rate than for any other offense category. The reason for this increase may be 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 had decreased slightly to between 24 and 25 percent in recent years, but rose again to 27 percent in 2013 (Table 2). 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 twenty 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. By 2003, this number climbed to 1,107 offenders (28%) with an average sentence of 52 months. Since 2003, both the total number of drug offenders sentenced and the proportion of drug offenders sentenced for the most serious offenses had decreased, resulting in a decrease in both the imprisonment rate and average sentence duration. However, in 2013, the number of drug offenders receiving a prison sentence rose to 1,026 offenders (27%) 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
2012	3,552	25%	44 months	11,655	27%	48 months
2013	3,821	27%	43 months	11,497	27.5%	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 2013, 2,795 offenders received probation sentences for drug offenses, an 89 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, which impacts 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 and 2013, the jail rate was 91 percent. 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 2013, the average pronounced jail time for drug offenders was 121 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
2013	2,795	91%	121 days	8,330	89%	101 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 commonly agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

### *Description of Departure Types*

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

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

*Departure Rates for Drug 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 2013, the total departure rate for drug cases was 25 percent, compared to 29 percent for non-drug cases. The overall mitigated departure rate was 18 percent for drug cases and 25 percent for non-drug cases (Table 4).

**Table 4. Total Departure Rates: Drug and Non-Drug Offenders: 2013**

Departure Type	Drug Offenders		Other Offenders	
No Departures	2,863	(75%)	8,140	(71%)
Total Departures	958	(25%)	3,357	(29%)
• Mitigated	674	(18%)	2,864	(25%)
• Aggravated	222	(6%)	403	(4%)
• Mixed	62	(2%)	90	(1%)
Total Sentenced	<b>3,821</b>	<b>(100%)</b>	<b>11,497</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 2013, 10 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 85 percent of the aggravated dispositional departures in drug cases, 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 offenders was higher than for non-drug offenders.

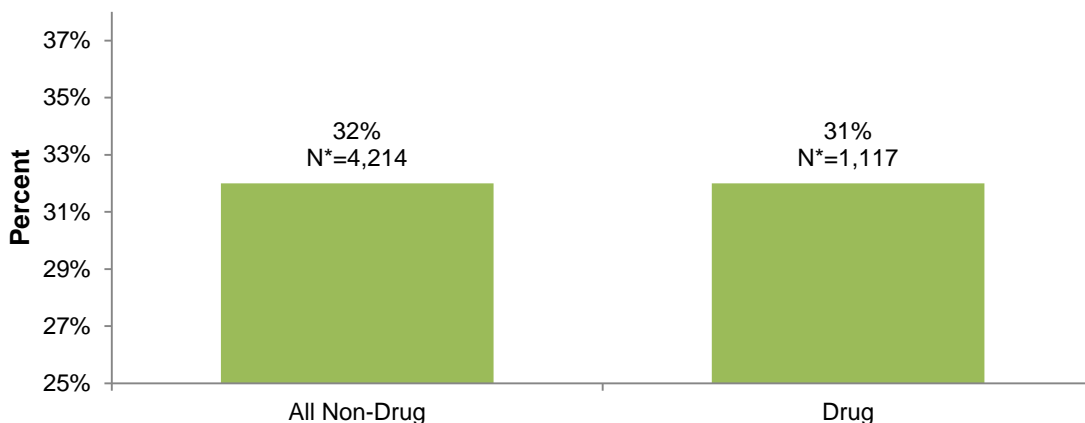
**Table 5. Aggravated Dispositional Departure Rates: 2013 Drug Offenders and Non-Drug Offenders**

	Drug Offenders	Other Offenders
Number Presumptive Stays	2,704	7,283
Aggravated Dispositions	260 (10%)	320 (4%)
Cases with Departure Reasons	249	313
Request for Prison	211 (85%)	296 (95%)

Mitigated Dispositional Departures: Drug Offenses vs. Other Offense Types

Figure 14 shows that 31 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 32 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 14. Mitigated Dispositional Departure Rates :  
2013 Drug Cases vs. 2013 Non-Drug Cases  
(Presumptive Prison Cases Only)**



\*N=total number presumptive prison cases

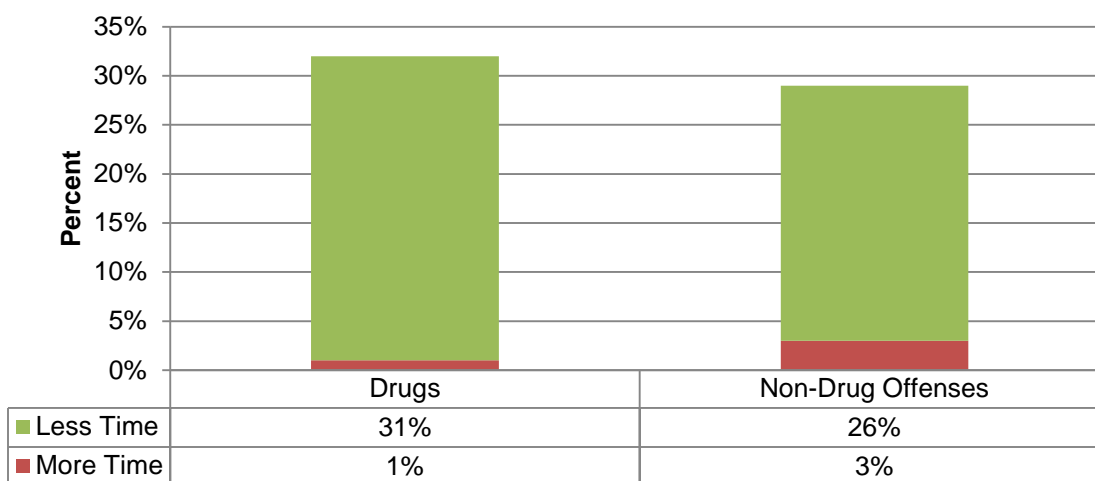
Dispositional Departures: Frequently Cited Reasons for Departure

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 (65% and 52%, 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 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 26 percent (Figure 15). The aggravated durational departure rate was one percent for drug offenders and three percent for non-drug cases. (See, *Sentencing Practices: Annual Summary Statistics for Felony Offenders*, on the “Annual Summary” tab for more information on departure rates by offense type at [mn.gov/sentencing-guidelines/reports](http://mn.gov/sentencing-guidelines/reports).)

**Figure 15. Durational Departure Rates:  
2013 Drug Cases vs. 2013 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 the drug cases and 73 percent of the non-drug cases. The court reported that the prosecutor objected to the mitigated duration in about 10 percent of the drug cases and five percent of non-drug cases.

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

Figure 16 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 2013 rate of 31 percent was the lowest rate seen in during this time period.

**Figure 16. Mitigated Dispositional Departure Rates: 1996-2013  
(Presumptive Commitments Only)**

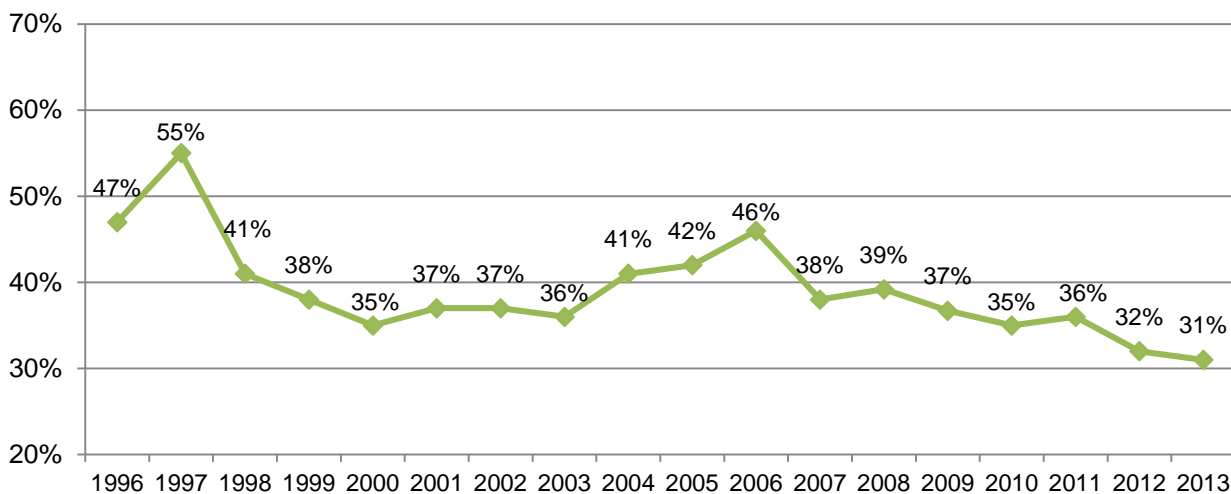
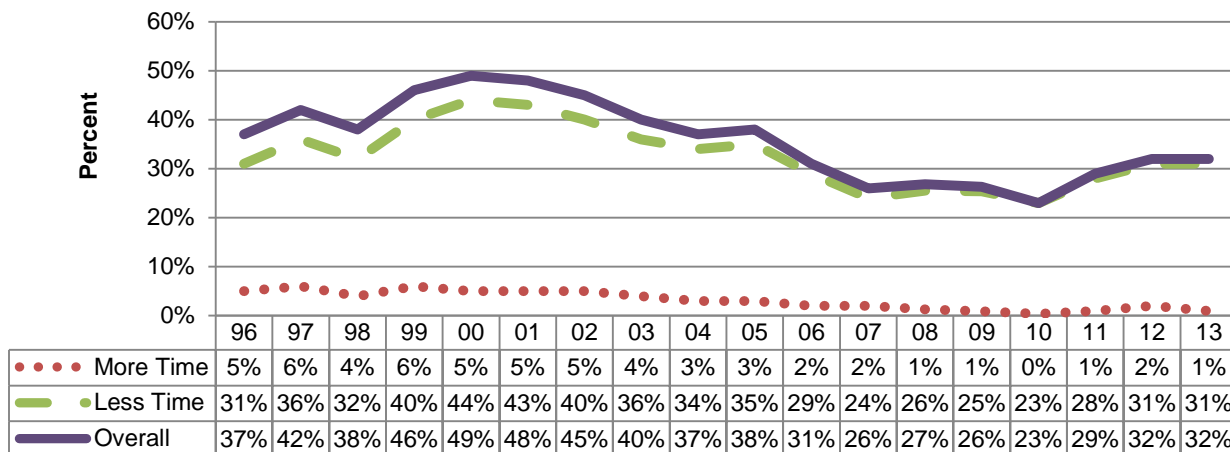


Figure 17 shows that the mitigated durational departure rate continued to increase through the 1990s, and peaked in 2000 at 44 percent. Since 2000, however, this rate steadily declined to a low of 23 percent in 2010. In 2011 the rate climbed back to 28 percent and increased again in 2012 and 2013 to 31 percent. Aggravated durational departure rates have consistently been very low and in 2010 reached a new low of 0.4 percent. In 2013 the aggravated durational departure rate was one percent.

**Figure 17. Durational Departure Rates for Cases Receiving  
Prison Sentences: 1996-2013**



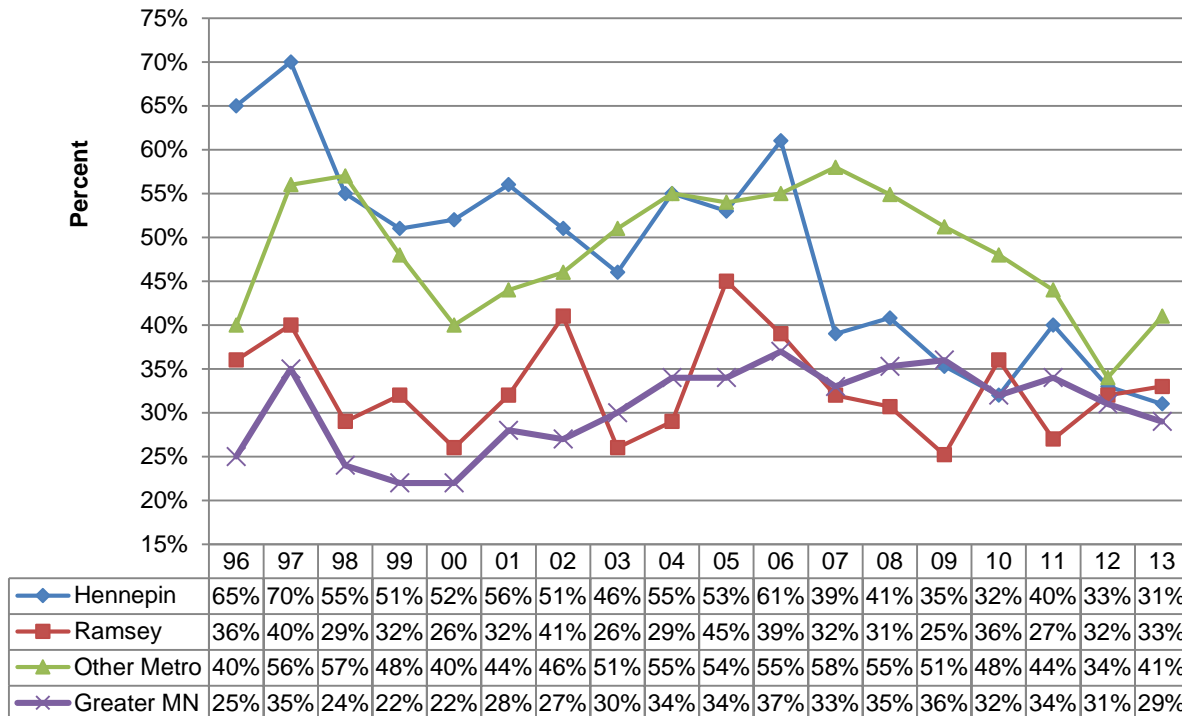
Departure Rates for Drug Offenders by Region

While departure rates fluctuate from year to year and vary by region, they are fairly high across the state (Figure 18). In 2013, the dispositional departure rates remained similar to those in 2012 for all regions except the metro counties not including Hennepin and Ramsey.<sup>3</sup> 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 seven 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 dropped again 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 to 33 percent and fell again in 2013 to 31 percent.

Part of this large drop may be the result of significant changes that took effect in 2007, when Hennepin County’s Drug Court revised its criteria for admissions.<sup>4</sup> The decrease in departures may also have been due to a changes 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

Figure 18. Mitigated Dispositional Departure Rates by Region Presumptive Prison Cases: 1996-2013



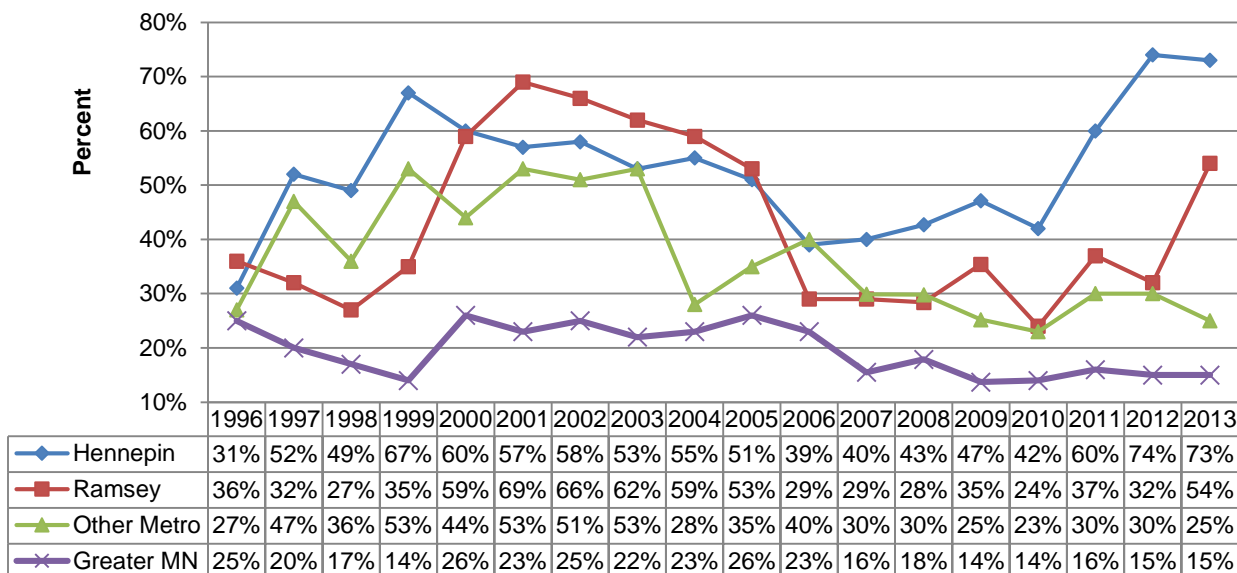
<sup>3</sup> Other metro counties are Anoka, Carver, Dakota, Scott and Washington.

<sup>4</sup> Drug Court (November 26, 2014). MN Judicial Branch. Retrieved from [4th District Drug Court](#).

repeat offender under Minn. Stat. § 152.023, subd. 3(b) prohibits the court from staying execution).

Figure 19 shows that the mitigated durational departure rate for executed sentences in Greater Minnesota remained constant from 2012 to 2013 (15%). The rate in Ramsey County increased from 32 percent to 54 percent while the rate in the other metro counties decreased from 30 percent to 25 percent.<sup>5</sup> In 2012, the rate in Hennepin County (74%) was higher than it had been in any year during this period, and was the highest rate observed over time in any of the four regions. In 2013, the Hennepin rate declined slightly to 73%. 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 19. Mitigated Durational Departure Rates by Region for Cases Receiving Executed Prison Sentences: 1996-2013**



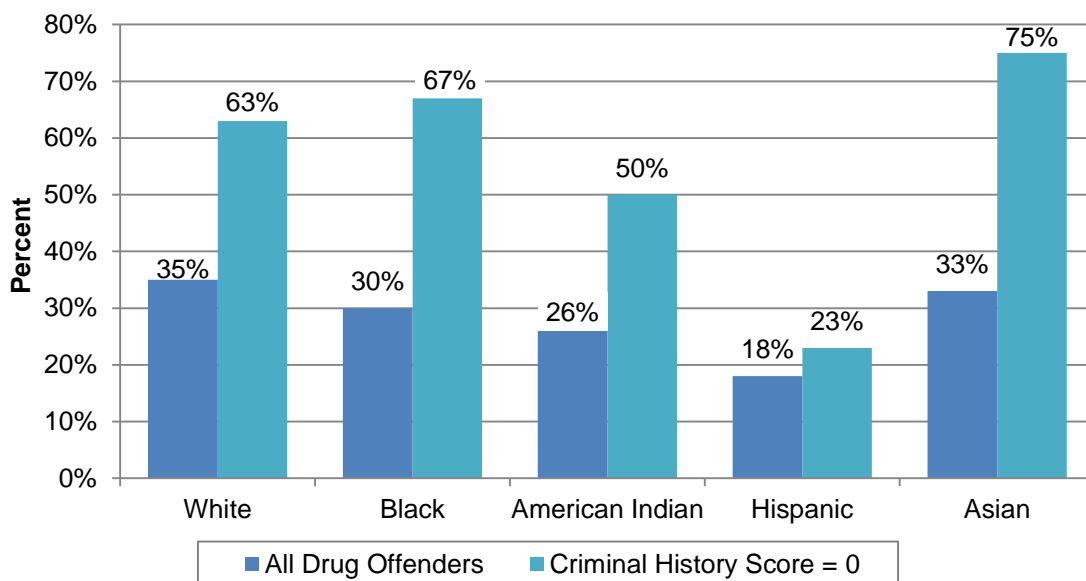
*Departure Rates for Drug Offenders by Race*

Departure rates vary by race, with white offenders receiving mitigated dispositional departures at higher rates than other offenders (Figure 20). 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 Asian offenders. Hispanics have the lowest departure rate at a criminal history score of zero at only 23 percent.

<sup>5</sup> Other metro counties are Anoka, Carver, Dakota, Scott and Washington.

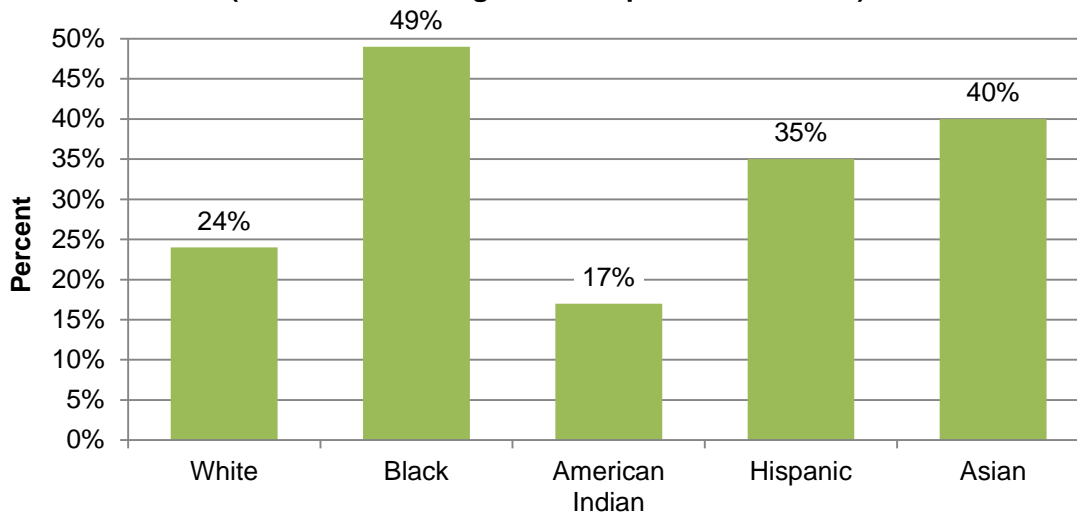


Figure 20. Mitigated Dispositional Departures by Race: 2013



Mitigated durational departure rates are higher for black offenders than for white offenders (Figure 21). This difference remains for offenders with a criminal history of zero. Criminal history may play more of a role in determining a dispositional departure than it does in determining a durational departure; the assumption being that an offender with relatively little or no criminal history is more amenable to probation. From 2012 to 2013, mitigated durational departures increased for black offenders (from 45% to 49%), Hispanic offenders (from 28% to 35%), and Asian offenders (from 30% to 40%). The rates for white offenders (24%) remained the same as in 2012 while the rate for American Indian offenders decreased (from 19% to 17%). The differences in mitigated durational departure rates may be related to differences in the location in which the offender was sentenced. A larger proportion of black offenders than offenders in other racial groups are sentenced in Hennepin County where mitigated durational departure rates are highest. (See Figure 11 for an illustration of the racial distribution of drug offenders by region.)

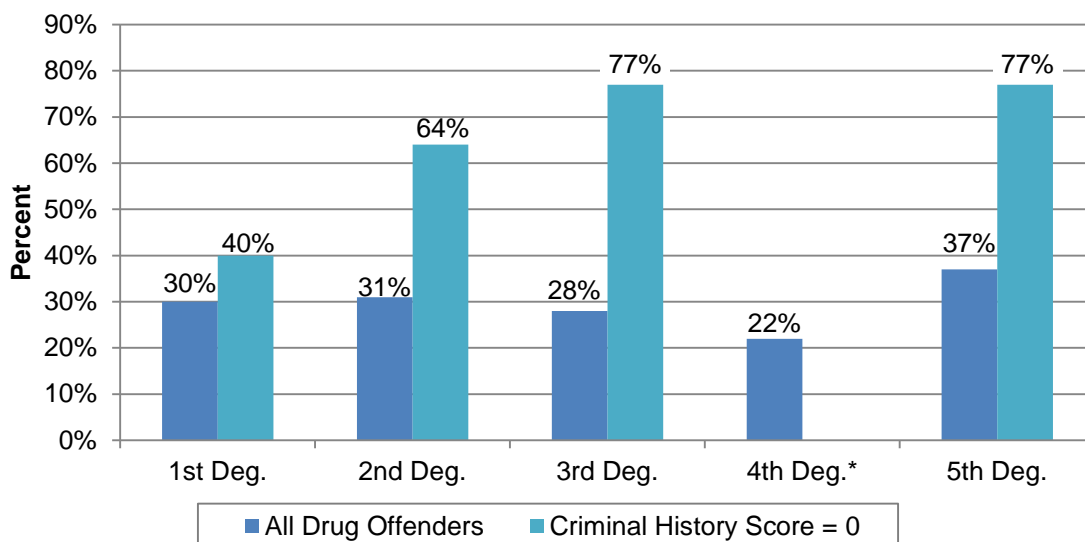
**Figure 21. Mitigated Durational Departures by Race: 2013  
(for those receiving executed prison sentences)**



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

Figure 22 shows the mitigated dispositional departure rates by drug degree. Rates for first-degree decreased to 30 percent after higher rates were observed in 2011 (47%) and 2012 (41%). The rate for second-degree was 31 percent; almost the same as the 2012 rate (32%) but a decrease from 2011 (36%). The third-degree rate was 28 percent; up from 2011 (23%) and 2012 (19%). The fourth-degree rate was 22 percent; similar to that observed in 2011 (21%). The fifth-degree rate decreased to 37 percent from that observed in 2012 (40%). Among offenders with a criminal history score of 0, the overall mitigated dispositional departure rate was 54 percent, a slight decrease from the 2012 rate of 56 percent. Departure rates for offenders with a criminal history score of 0 fell to 40 percent for first-degree (from 54% in 2012) but increased for second- and third-degree (from 55% and 62%, respectively).

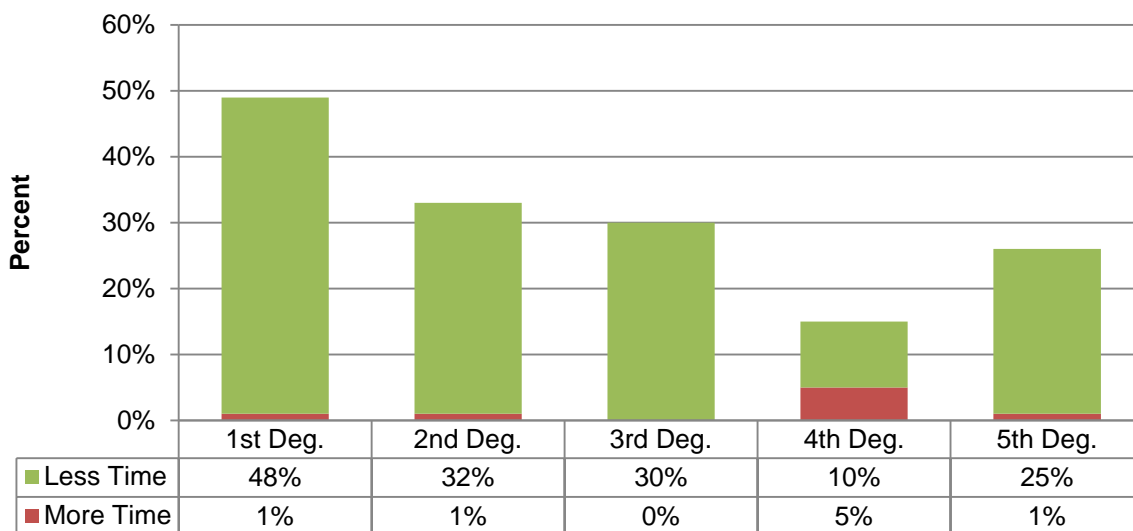
**Figure 22. Mitigated Dispositional Departure Rates by Degree: 2013**



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

Figure 23 shows that mitigated durational departure rates were 48 percent for first-degree offenses and 32 percent for second-degree offenses. The first-degree rate was an increase from that in 2012 (43%) while the second-degree rate was a decrease from 2012 (34%). The mitigated durational departure rates declined for third- and fourth-degree offenders from the 2012 rates (from 32% for third-degree; and 19% for fourth-degree) and increased slightly for the fifth-degree offenders (from 23%). The average reduction in sentence length from the presumptive sentence was 50 months for first-degree cases, 31 months for second-degree cases, and 17 months for third-degree cases. The average sentence reduction was higher for second-degree offenses in 2013 compared to 2012.

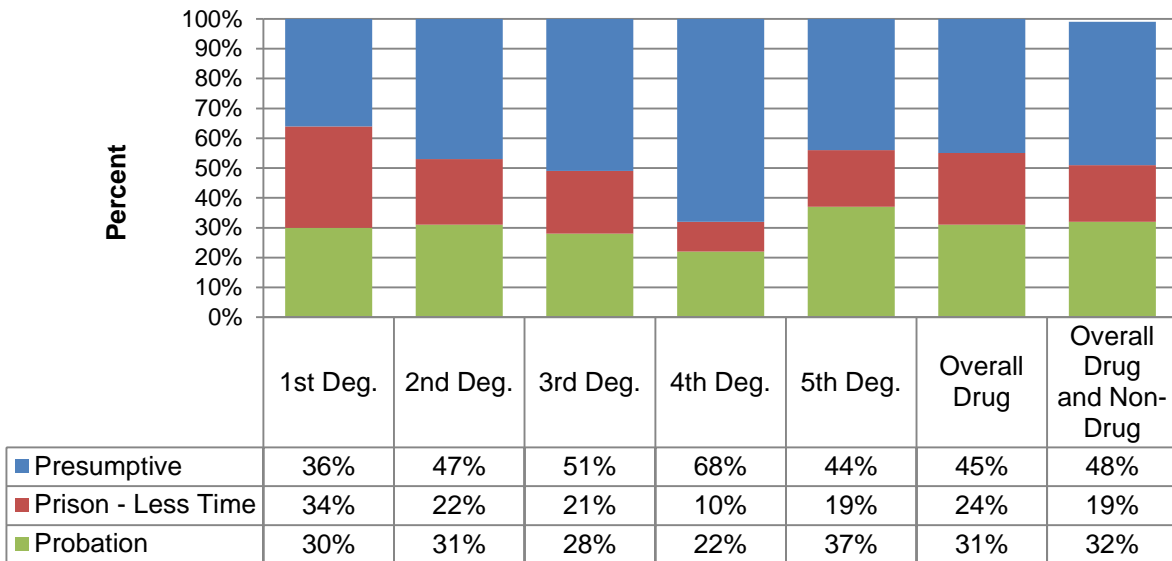
**Figure 23. Durational Departure Rates by Degree: 2013  
(for those receiving executed sentences)**



Presumptive Prison Cases by Degree

Of the 3,821 offenders sentenced for drug offenses in 2013, 29 percent (1,117 offenders) had presumptive prison sentences under the Guidelines. Departure rates are so high that, among offenders recommended a prison sentence, a greater number of offenders received departures than received the recommended sentence. In 2013 (as in 2012 and 2011) only 45 percent of drug offenders recommended a prison sentence received the recommended sentence or longer; 31 percent received a probationary sentence; and 24 percent received a prison sentence with a duration that was less than was recommended under the Guidelines. Figure 24 shows that 36 percent of first-degree offenders received the recommended sentence; an increase from 34 percent in 2012. For second-degree offenders there was also an increase to 47 percent (from 45% in 2012). Fifty-one percent of third-degree offenders received the presumptive sentence (vs. 56% in 2012). The rate for fourth-degree offenders increased to 68 percent (from 61% in 2012); fifth-degree went up to 44 percent (from 42% in 2012).

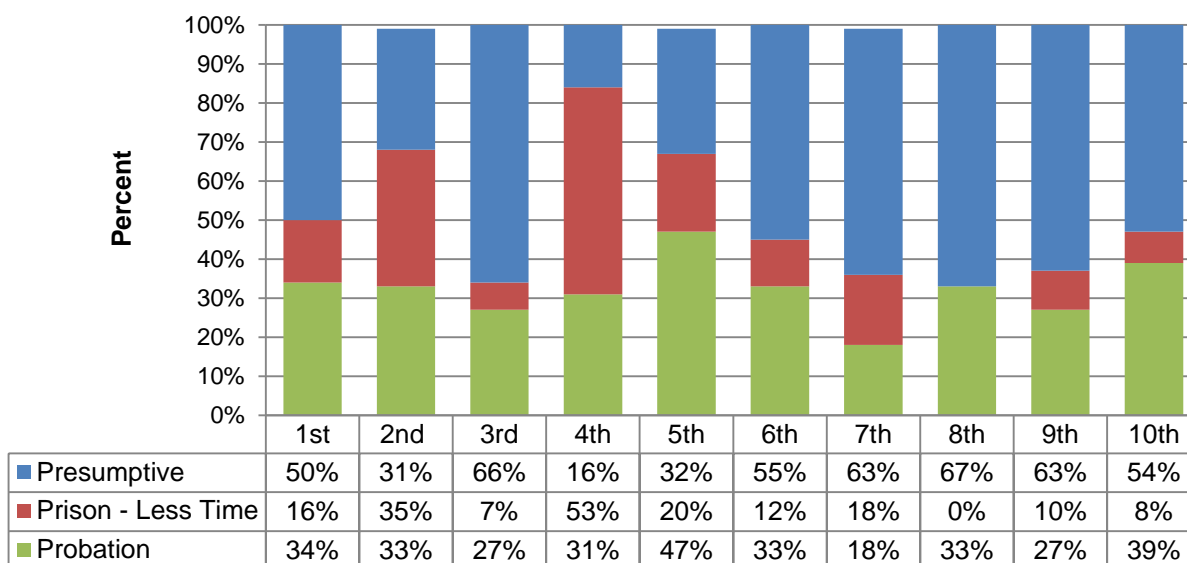
**Figure 24. Sentence Imposed by Drug Degree: 2013  
(Presumptive Prison Cases)**



Presumptive Prison Cases by Judicial District

The likelihood of an offender receiving the presumptive sentences varies widely across the state. Figure 25 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 16 percent in the Fourth District (Hennepin County) to 67 percent in the Eighth District (includes western Minnesota). See p. 33 for a map of Minnesota’s ten Judicial Districts.

**Figure 25. Sentence Imposed by Judicial District: 2013  
(Presumptive Prison Cases)**



*Departure Rates for Subsequent Drug Offenses*

Minnesota Statutes specify mandatory minimum prison terms for first- through third-degree drug offenses when the offender has a prior drug conviction.<sup>6</sup> When such a statutory mandatory minimum exists, the presumptive Guidelines disposition is imprisonment. The mandatory minimum durations are as follows: 48 months for first-degree offenses, 36 months for second-degree offenses, and 24 months for third-degree offenses. Since the presumptive Guidelines sentence is greater than the mandatory minimum for first- and second-degree offenses, the mandatory minimum usually affects only the duration of third-degree cases.<sup>7</sup>

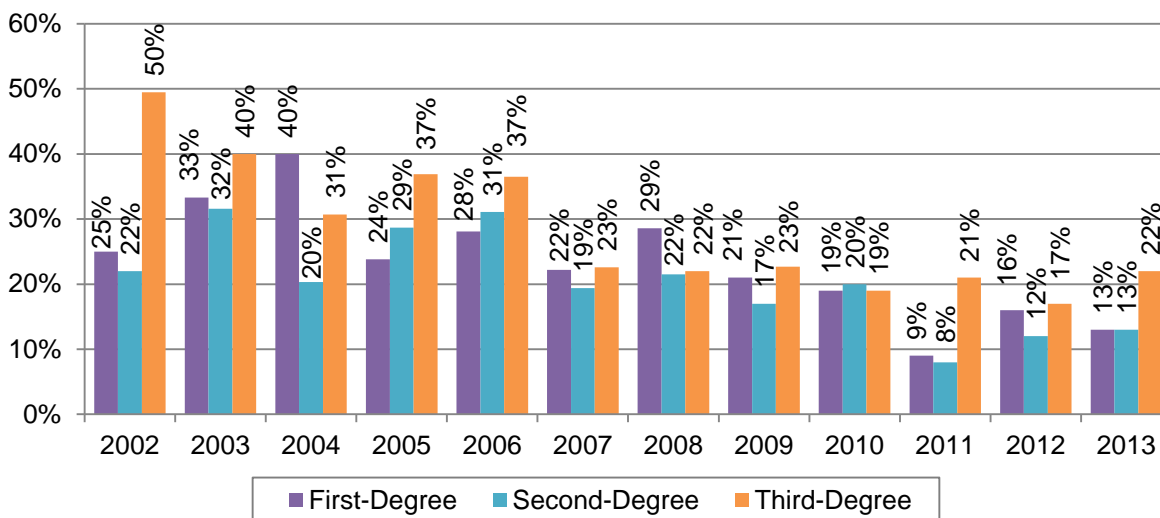
In 2013, 408 drug offenders were sentenced for offenses involving a second or subsequent drug offense that was subject to these mandatory minimum provisions. Of this total, 69 offenders (17%) received a mitigated dispositional departure from the Guidelines. The rate was lower for first- and second-degree offenses than for third-degree offenses (Figure 26). Compared to 2012, the dispositional departure rate increased in 2013 for third-degree offenses and decreased for first-degree offenses. The court indicated that the prosecutor agreed to, recommended, or did not object to the mitigated disposition in 73 percent of the mitigated dispositions for subsequent drug offenses.

<sup>6</sup> See subdivisions 3(b) of Minn. Stat. §§ [152.021](#), [152.022](#) and [152.023](#). An actual conviction is not always necessary, as a past disposition under Minn. Stat. § [152.18](#), even without conviction, will cause the current offense to become a “subsequent controlled substance conviction.” Minn. Stat. § [152.01](#), subd. 16a.

<sup>7</sup> Likewise, regarding presumptive disposition, the mandatory minimum changes only Controlled Substance Crime in the Third Degree, and only for offenders with criminal history scores below 3—although the dispositions for all first-, second-, and third-degree subsequent controlled substance convictions are affected by the mandatory minimums, inasmuch as those dispositions are mandatory, rather than merely presumptive, executed terms of imprisonment.

As discussed on page 23, above, 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 26. Mitigated Dispositional Departure Rate for Subsequent Drug Offenses by Offense: 2002-2013**



Of the 339 second or subsequent drug offenders who received executed prison sentences, all but three (1%) had a pronounced sentence equal to, or longer than, the mandatory minimum. There was one offender at each degree who received less than the mandatory minimum time.

## 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.

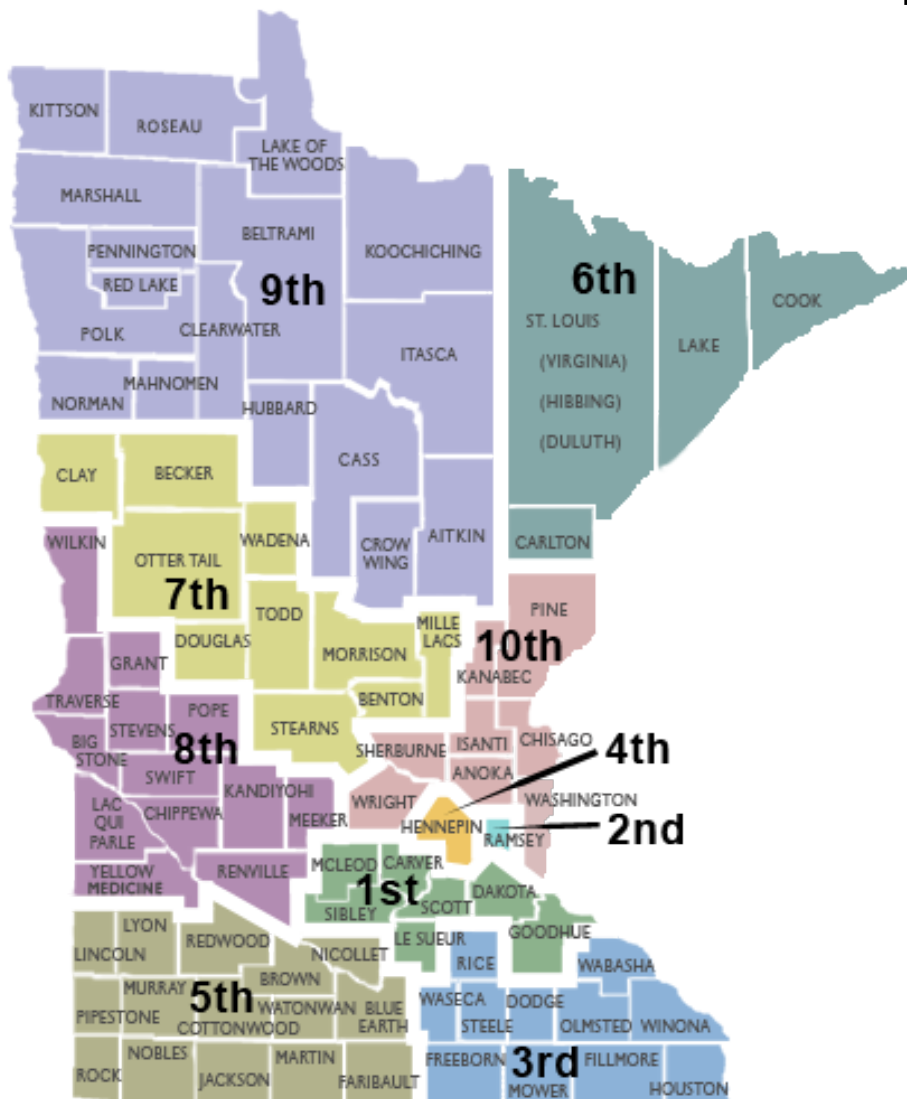
The Guidelines generally recommend a stayed sentence for cells in the shaded area of the Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of conditional confinement in a local facility (jail or workhouse). Other conditions such as fines, 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	Marshall	
				Pipestone			Yellow Medicine	Norman	
				Redwood				Pennington	
				Rock				Polk	
				Watonwan				Red Lake	
								Roseau	


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


## Sentencing Guidelines Grid – Effective August 1, 2013

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.