

Minnesota Sentencing Guidelines Commission

Current Violent Offender Sentencing Provisions September 28, 2016 (Updated: October 10, 2016)

Issue: How often are the current violent offender sentencing provisions used?

The existing sentencing provisions for repeat violent offenders are found in Minn. Stat. § 609.1095. Violent crimes are defined as convictions for any of the offenses listed in Table 1 including attempts.

Table 1: 609.1095 subd. 1d : Violent Crime

Statute	Offense Description
609.165 & 624.713	Persons with Prior Violent Crime not to Possess Firearms
609.185	Murder 1
609.19	Murder 2
609.195	Murder 3
609.2	Manslaughter 1
609.205	Manslaughter 2
609.21	Criminal Vehicular Homicide and Injury
609.221	Assault 1
609.222	Assault 2
609.223	Assault 3
609.228	Dist. Drugs – Great Bodily Harm
609.235	Use of Drugs to Injure or Facilitate
609.24	Simple Robbery
609.245	Aggravated Robbery
609.25	Kidnapping
609.255	False Imprisonment
609.2661-609.268	Crimes Against Unborn
609.342	Criminal Sexual Conduct 1
609.343	Criminal Sexual Conduct 2
609.344	Criminal Sexual Conduct 3
609.345	Criminal Sexual Conduct 4
609.498 subd. 1	Aggravated Witness Tampering
609.561	Arson 1
609.562	Arson 2
609.582 subd. 1	Burglary 1
609.66 subd. 1e	Drive-By Shooting
609.687	Adulteration
609.855 subd. 5	Shooting at Transit Vehicle
609.229	Crime Benefit Gang
609.377	Felony Provisions Malic. Punish. of Child
609.378	Felony Provisions Child Endangerment
609.749	Harassment Stalking
Chapter 152	Felony Drug Offenses with Stat Max of 15 years (1st-4th degree)
152.137	Meth Crimes Involving Children

A. 609.1095 subd. 2 – Aggravated Durational Departure

1. An aggravated durational departure of up to the statutory maximum is authorized when:
 - Conviction for a violent crime
 - Presumptive Prison Sentence
 - Offender is 18 or Older
 - Offender has two or more prior convictions for violent crimes, and
 - Fact-finder determines that the offender is a danger to public safety

2. Frequency of Use

The provision authorizing this aggravated durational departure was used for less than 1% of the cases receiving executed prison sentences from 2011-2015. Table 1 displays how often this sentencing provision was cited as a reason for an aggravated durational departure in the last five years.

Table 2. Aggravated Durational Departures with 609.1095 subd. 2 Cited

Sentence Year	# of Prison Sentences	609.1095 subd. 2 cited			
		No		Yes	
2011	3,653	3,647	99.8%	6	0.2%
2012	4,004	3,996	99.8%	8	0.2%
2013	4,193	4,193	99.9%	3	0.1%
2014	4,218	4,214	99.9%	4	0.1%
2015	4,392	4,392	99.9%	5	0.1%
Total	20,460	20,434	99.8%	26	0.1%

3. Offenses

Table 3 displays the offenses for which the violent offender aggravated departure was used from 2011-2015.

Table 3. Aggravated Departures for Which 609.1095 subd. 2 was Cited, by Offense, Sentenced 2011-2015

Offense	Number of Cases	Percent
Assault 1	1	3.8%
Assault 2	3	11.5%
Assault 3	3	11.5%
Simple Robbery	2	7.7%
Aggravated Robbery 1	4	15.4%
Kidnaping	4	15.4%
Burglary 1	1	3.8%
Controlled Substance 2	1	3.8%
Prohibited Felon With Gun	6	23.1%
Witness Tampering	1	3.8%
Total	26	100%

**Table 2a. Added 10/10/2016
Aggravated Durational Departures 1991-2015 with 609.1095 subd. 2 Cited**

Sentence Year	# of Prison Sentences	609.1095 subd. 2 cited			
		No		Yes	
1991	1,777	1,776	99.9%	1	0.1%
1992	1,925	1,922	99.8%	3	0.2%
1993	2,064	2,061	99.9%	3	0.1%
1994	2,043	2,040	99.9%	3	0.1%
1995	2,136	2,135	99.9%	1	0.1%
1996	2,189	2,188	99.9%	1	0.1%
1997	2,189	2,185	99.8%	4	0.2%
1998	2,561	2,557	99.8%	4	0.2%
1999	2,451	2,445	99.8%	6	0.2%
2000	2,428	2,424	99.8%	4	0.2%
2001	2,449	2,441	99.7%	8	0.3%
2002	3,057	3,048	99.7%	9	0.3%
2003	3,536	3,520	99.5%	16	0.5%
2004	3,446	3,442	99.9%	4	0.1%
2005	3,581	3,581	100%	0	0.0%
2006	3,593	3,588	99.9%	5	0.1%
2007	3,759	3,757	99.9%	2	0.1%
2008	3,852	3,850	99.9%	2	0.1%
2009	3,723	3,719	99.9%	4	0.1%
2010	3,640	3,635	99.9%	5	0.1%
2011	3,653	3,647	99.8%	6	0.2%
2012	4,004	3,996	99.8%	8	0.2%
2013	4,193	4,190	99.9%	3	0.1%
2014	4,218	4,214	99.9%	4	0.1%
2015	4,392	4,392	99.9%	5	0.1%
Total	76,859	76,748	99.9%	111	0.1%

B. 609.1095 subd. 3 – Mandatory Sentence for 3rd Violent Felony

1. The Court must impose an executed prison sentence (regardless of whether presumptive disposition is prison) of at least the presumptive Guidelines duration if:
 - Conviction for a violent crime other than 3rd or 4th degree drugs
 - Offender has two or more prior convictions for violent crimes other than 3rd or 4th degree drugs, and
 - Must be convicted for the first prior violent offense before committing the next violent offense
2. Number of Offenses:

From 2011-2015, 22 percent of the offenses sentenced were on the list of violent offenses in 609.1095 subd. 1d (excluding third and fourth degree drug offenses). Table 4 displays the distribution of cases sentenced from 2011-2015.

Table 4. Number of Violent Crimes per 609.1095 subd. 3, 2011-2015

Sentence Year	# of Cases	Violent Crime			
		No		Yes	
2011	14,571	11,280	77.4%	3,291	22.6%
2012	15,207	11,851	77.9%	3,356	22.1%
2013	15,318	11,906	77.7%	3,412	22.3%
2014	16,145	12,632	78.2%	3,513	21.8%
2015	16,763	13,227	78.9%	3,536	21.1%
Total	78,004	60,896	78.1%	17,108	21.9%

3. Offenses Qualifying for Mandatory Provision:

Of the 3,536 offenders sentenced in 2015 for a crime defined as a violent crime, 1,111 (31%) had 2 or more true prior offenses (offenses sentenced before the current offense was committed). The worksheets for those offenses were examined in order to determine how many had two or more true prior violent offenses. In order to qualify for the mandatory provision, the prior offenses had to have convictions before the next offense was committed. It was determined that 189 offenses sentenced in 2015 met those criteria. Table 5 displays the cases found to qualify for the mandatory provision by offense as well as their presumptive guidelines dispositions.

Table 5. Cases Which Qualify for Mandatory Penalty by Presumptive Disposition, Sentenced in 2015

Offense	Number of Cases	Presumptive Disposition, as Reflected on Worksheet			
		Stay		Prison	
Attempted Murder 1	2	0	0%	2	100%
Intentional Murder 2	2	0	0%	2	100%
Unintentional Murder 2	1	0	0%	1	100%
Manslaughter 1	1	0	0%	1	100%
Criminal Vehicular Injury	1	0	0%	1	100%
Criminal Vehicular Homicide	1	0	0%	1	100%
Assault 1	2	0	0%	2	100%
Assault 2	18	0	0%	18	100%
Assault 3	25	4	16%	21	84%
Simple Robbery	6	0	0%	6	100%
Aggravated Robbery 1	11	0	0%	11	100%

Offense	Number of Cases	Presumptive Disposition, as Reflected on Worksheet			
		Stay		Prison	
Aggravated Robbery 2	2	1	17%	5	83%
Kidnapping	2	0	0%	2	100%
Criminal Sexual Conduct 1	1	0	0%	1	100%
Criminal Sexual Conduct 3	3	0	0%	3	100%
Criminal Sexual Conduct 4	1	0	0%	1	100%
Stalking	5	3	60%	2	40%
Burglary 1-Severity 6	9	0	0%	9	100%
Burglary 1-with assault or weapon	4	0	0%	4	100%
Meth Crimes Involving Children	1	0	0%	1	100%
Controlled Substance 1	25	0	0%	25	100%
Controlled Substance 2	22	0	0%	22	100%
Prohibited Felon With Gun	40	0	0%	40	100%
Total	189	8	4%	181	96%

4. How Many Got a Prison Sentence?

Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 163 (86%) received a prison sentence. Of the 26 offenders who did not receive a prison sentence, for 18 it was the result of a mitigated dispositional departure- a mitigated dispositional departure rate of 10%.

5. How Many Got a Less than the Presumptive Duration?

Of the 163 offenders sentenced in 2015 who qualified for the mandatory penalty and received a prison sentence, 47 (29%) received a mitigated durational departure. Twelve (7%) received an aggravated durational departure.

6. Compliance Rate

Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 73 (39%) received a sentence that was not in compliance with the mandatory penalty (but see "Impact of Drug Offenses," below).

7. Impact of Drug Offenses:

- Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 48 (25%) were convicted of a drug offense. Of those 48 drug offenders, 22 (46%) had a prior drug offense as one of the prior violent crimes that qualified them for the mandatory penalty.
- For the 48 drug offenders, the non-compliance rate was 52 percent; 8 (17%) did not receive a prison sentence and of the 40 who did go to prison, 17 (35%) received a mitigated durational departure.
- Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 141 (75%) were convicted of a non-drug offense. Of those 141 non-drug offenders, 16 (11%) had a prior drug offense as one of the prior violent crimes that qualified them for the mandatory penalty.
- For the 141 non-drug offenders, the non-compliance rate was 34 percent; 18 (13%) did not receive a prison sentence and of the 123 who did go to prison, 30 (21%) received a mitigated durational departure.