

Racial and Ethnic Patterns of Downward Departures from § 609.11 Mandatory Minimums

Minnesota sentencing data, 2016–2024

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Analysis of MSGC sentence-monitoring data, 2016-2024. Focus: how often courts grant departures from the firearm/weapon mandatory minimums, and whether relief is distributed evenly across racial/ethnic groups. Raw differences and adjusted models.

One statute, two very different mandatory minimums

Track A: Weapon w/crime

A firearm possessed or used, or a non-firearm dangerous weapon used, during a listed offense. (Assault 2 dominates)

≈ 5,000

1 to 5-year minimums • subds. 4 & 5(a)

Track B: Felon in possession (crime of violence based)

Possessing a gun or ammunition after a crime-of-violence conviction

≈ 4,600

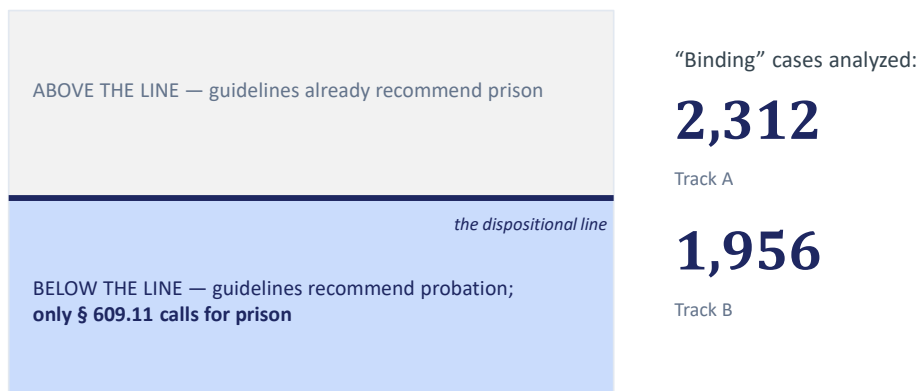
5-year minimum • subd. 5(b) • felon-in-possession

Sentenced felony cases, 2016–2024, MSGC monitoring data

Nearly three-quarters of all Minnesota mandatory-minimum sentences are 609.11 sentences. Different conduct: in Track A the weapon made a listed crime worse; in Track B the possession IS the crime. Different defendants, and - as we'll see - very different findings.

Track B is limited to crime-of-violence-based prohibited-person possession cases — the § 609.165 / § 624.713(1)(2) cases that carry the § 609.11, subd. 5(b), five-year minimum.

Focus is on cases where the minimum is the deciding factor between prison and probation.



Binding cases involve lower-history defendants by construction (scores 0–2 in Track B) — higher-history cases return on a later slide

“These are the cases where § 609.11 changes the presumptive sentence from probation to prison.”

The dispositional line is set by offense severity and criminal history. Below it, the guidelines alone would give probation - so these are the cases where the mandatory minimum does real work. This conditions the analysis on lower-history defendants; the excluded higher-history cases come back near the end, when I look at sentence length. Outcome studied: was the sentence stayed (probation) or executed (prison). Isolates the question of is this mandatory minimum inappropriate?

Courts grant a downward departure in most cases where the 609.11 minimum would have caused someone to go to prison.

67%

of binding Track A (Weapon w/Crime) cases
departed

59%

of binding Track B (Felon in Possess.) cases
departed

- *Top departure reason: amenable to probation*
- *Most departures are unopposed or plea-negotiated.*

First major finding: In binding cases, departure authority is used frequently enough that § 609.11 often operates as a prison default rather than an absolute sentencing outcome. MSGC's own departure tables show the prosecutor did not object or the departure was plea-negotiated in over half of these cases; prosecutors affirmatively objected in only about a fifth.

When § 609.11 turns a Guidelines-probation case into a prison case, who receives relief from that mandatory minimum?

The legislation creating this task force directs it to examine mandatory minimum sentences for their impact on equity.

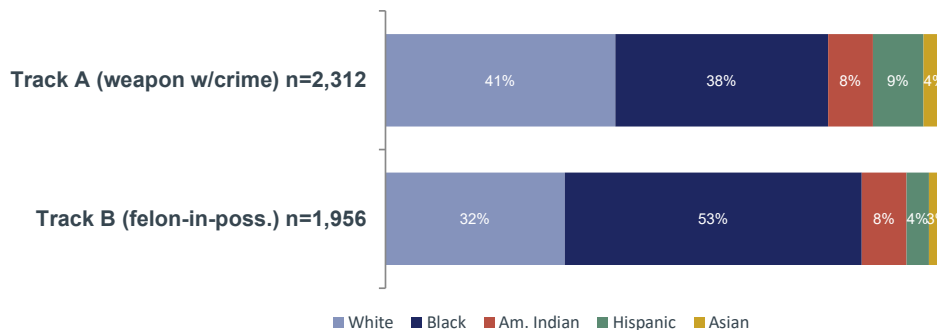
“Equity & disparities: Does the policy reduce, perpetuate, or worsen disparities regarding those affected?”

— Evaluation Domain C, adopted by the task force (chair’s memorandum, Jan. 21, 2026)

This analysis answers it for § 609.11’s departure decisions: **are legally similar defendants equally likely to receive relief, by race and ethnicity?**

The enabling legislation directs the task force to examine equity; the task force itself adopted seven evaluation domains in January, and Domain C asks whether each policy reduces, perpetuates, or worsens disparities. This analysis operationalizes that question for 609.11’s relief decisions. Why race specifically: it is the dimension Domain C and the disparity literature center, and the one where the data permit clean comparison - geography and sex are also in every model as controls and findings, just not the headline. Disparities can also enter upstream, in charging and plea decisions, which this analysis holds fixed and the qualitative interviews address.

Who the two minimums apply to

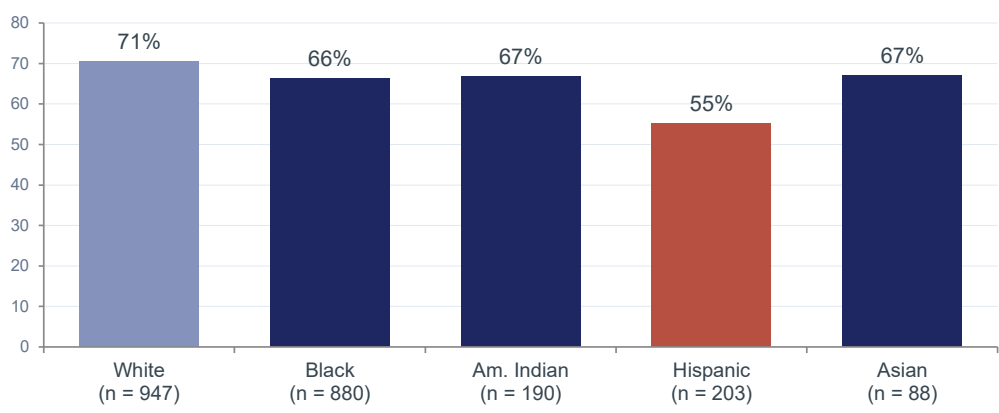


76% of Black Track B cases are sentenced in Hennepin and Ramsey counties.

Share of binding cases by race (percent)

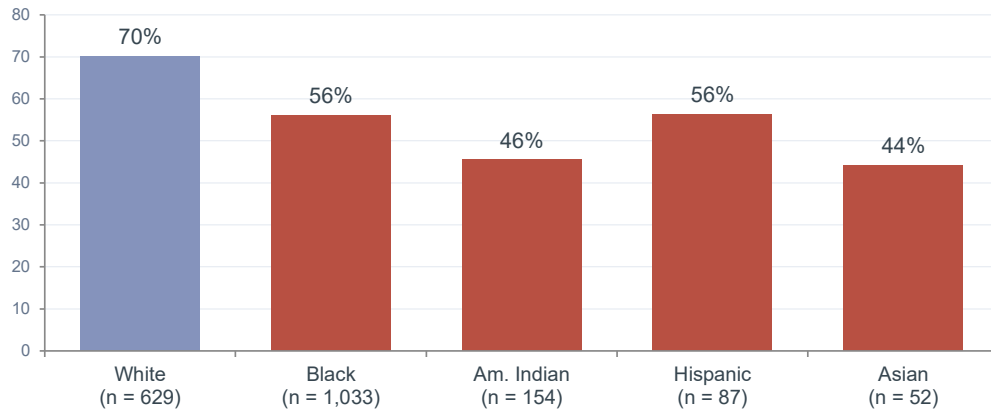
The felon-in-possession minimum (Track B) is the majority-Black mandatory minimum - 53 percent of binding Track B cases - and it is heavily metro-concentrated. It is also the state's single largest mandatory minimum by volume. So whatever is true of Track B is true of where the caseload actually is.

**Raw departure rates differ modestly in Track A
(weapon w/crime)...**



Percent of binding Track A cases with downward departures, 2016–2024.

...and sharply in Track B (felon-in-possession)



Percent of binding Track B cases with downward departures, 2016–2024.

From raw differences to like-with-like comparisons

RAW

All cases compared as they come. Differences in departures may just reflect different types of cases.

ADJUSTED

Like cases compared with like — defendants alike in every way the court record shows.

Held equal:

Offense type

criminal history

county / district

age

sex

plea vs. trial

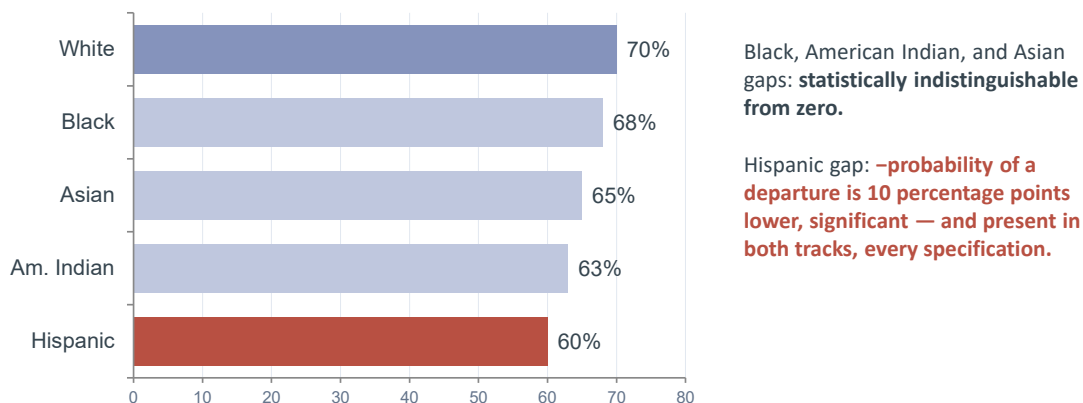
year

repeat- weapon offense flag

What survives adjustment is the disparity that observable case differences can't explain.

The intuition: think of comparing each defendant to others who look the same on paper - same offense, same criminal history, same county, same age and sex, same year, same plea-or-trial, same repeat-offense flag - and asking whether race still predicts who gets relief. Concrete example: a 25-year-old man, no criminal history, pleading guilty to felon-in-possession in Hennepin in 2022 - compared with the same defendant, different race. Honest boundary: alike in every way THE COURT RECORD SHOWS - things the record doesn't capture (strength of evidence, what the prosecutor offered) can't be held equal. Watch, not the numbers themselves, but whether the gaps SURVIVED the like-with-like comparison. Model: logistic regression with the listed covariates, county-clustered inference with wild-cluster bootstrap.

Track A after adjustment: near-parity — one exception



Track A, adjusted probability of a stay (%) — same scale as the Track B chart. Gray-blue bars are not statistically different from White.

Adjusted probability of a stay, same 0-80 axis, White as the lighter reference bar. The picture differs from Track B at a glance: here the bars cluster near White - Black 68, Asian 65, American Indian 63, none statistically distinguishable from 70 - with one exception, Hispanic at 60, a 10-point gap, bootstrap $p = .013$, and the only gap present in BOTH tracks under every specification. Levels shown are the model's predictive margins (White 70.2, Black 67.7, Asian 65.5, Am Indian 63.1, Hispanic 60.2); the gaps quoted in the side text are the differences between them.

Track B is the cleanest comparison this data allows

1

Same single offense

felon-in-possession — nothing else

2

Same severity level

every case sits at severity level 6 on the main grid

3

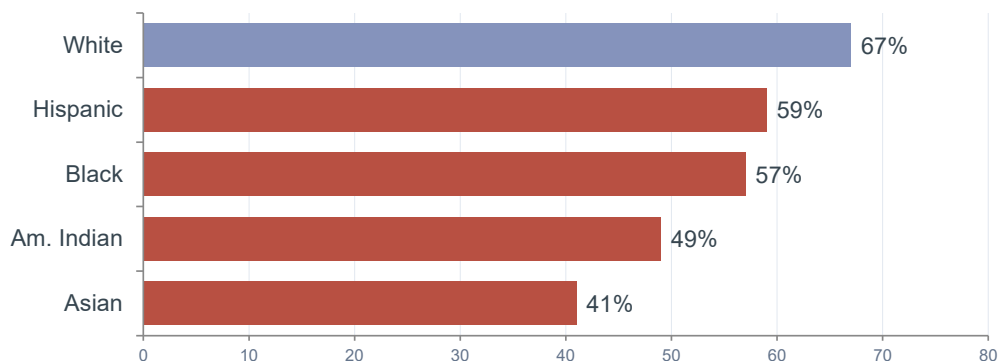
Same low history range

scores 0–2 by construction — and CHS controlled

The usual explanation — “different types offense or criminal history” — is less likely here by construction.

In most disparity research, the first rebuttal is offense composition. Track B removes it by construction: one offense, one grid cell, a three-point history range that is also controlled. Selection into this population is racially neutral - 42 percent of every group's FIP cases fall above the line. Models also adjust for district, sex, age, trial conviction, year, and the repeat-weapon-offense flag.

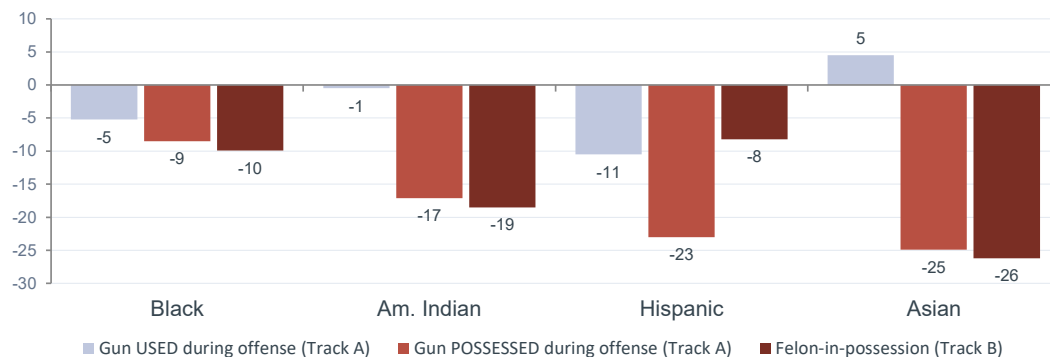
Among legally similar defendants, the racial gaps remain for Track B



Track B, adjusted probability of a stay (%). Every gap is statistically significant under the most conservative test — and holds when all arguably non-deportable cases are excluded. Asian group is only 52 cases and concentrated in 2 districts (Hennepin and district 5.)

Adjusted for everything observable - district, history, sex, age, trial, year, repeat weapon-offense flag - among defendants convicted of the identical offense. White 67, Hispanic 59, Black 57, American Indian 49, Asian 41. All significant under wild-cluster bootstrap ($p = .002$ to $.043$). Translate: roughly one additional prison sentence for every ten Black FIP defendants in this population. Robust to person-level clustering and to dropping every case where departure was arguably barred - the gaps actually widen slightly there. Same outcome as the raw chart two a few slides ago - the point is the gaps SURVIVED the like-with-like comparison.

Exploratory Analysis: The gaps in departure rates concentrate where the gun was possessed, not used



Adjusted departure-rate gap vs. White defendants, in percentage points (0 = parity with White). Track A possession cells are small for the smaller groups (20–27 cases) — an exploratory pattern, consistent across all four groups.

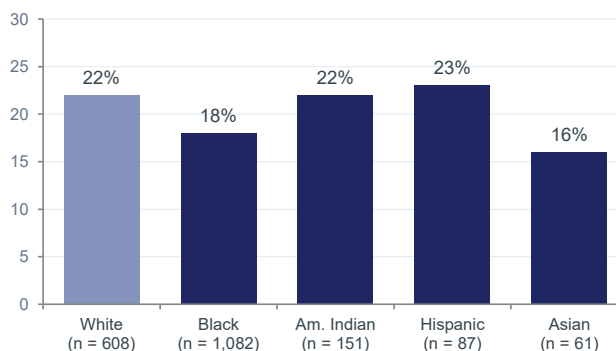
The possession-context gaps are uniformly large and mostly significant; the use-context gaps are uniformly small and never significant; and the contrast between the two contexts is consistent across all four groups.

Each cluster is one racial group; each bar is that group's ADJUSTED gap versus White defendants - zero means parity. Light bars: Track A cases where the gun was USED - they hug zero (Hispanic marginal at -10.5 is the exception, consistent with their cross-cutting gap). Medium rust: Track A cases where the gun was POSSESSED - large gaps for every group. Dark rust: Track B, which is a possession offense by definition - and it tracks the possession bars, not the use bars. Sum: where a gun was used, near-equal treatment; where a gun was possessed, the gaps appear. Cautions to deliver: the Track A possession estimates rest on 20-27 cases for American Indian, Hispanic, and Asian defendants - exploratory; the Track B bars are the powered headline estimates from earlier. Other-dangerous-weapon cases (knives etc.) omitted from the chart for clarity - they sit near zero except a modest Hispanic gap. Possession cases are where the danger of the conduct is most in the eye of the beholder.

The disparity is mainly about whether prison is given — not how long

≈20%

of FIP prison sentences fall below the 60-month floor



Durational gaps of 0–6 points — a fraction of the 10–26-point dispositional gaps. Median sentence: exactly 60 months for every group.

Above-the-line FIP prison sentences (n = 1,990): adjusted probability of a sentence below the 5-year statutory floor, same covariates as the dispositional models. Black (–4.2) and Asian (–6.2) contrasts significant under conventional clustered tests; Am. Indian and Hispanic null.

Adjusted below-floor probabilities: White 22.3, Black 18.1, Am Indian 21.7, Hispanic 23.5, Asian 16.1. Black minus 4.2 points ($p=.011$) and Asian minus 6.2 ($p=.015$) are significant under conventional county-clustered inference (73 clusters); Am Indian and Hispanic are clean nulls. Webb bootstrap not yet run on these contrasts. The headline survives in COMPARATIVE form: durational gaps are a fraction of dispositional ones (4-6 vs 10-26 points), and the median is exactly 60 months for every group and Black and Asian defendants receive somewhat less relief on BOTH margins. Other model notes: the repeat weapon-offense flag strongly suppresses below-floor relief (coef -1.28); durational relief was highest in 2016 and declined after - the opposite time path from dispositional relief, which surged post-2020. One Unknown-race case dropped (N=1,989).

One flag for follow-up: Asian defendants

-26 pts

largest adjusted gap in the analysis
— but only 52 cases

2 places

concentrated in Hennepin County
and southwest Minnesota (D5)

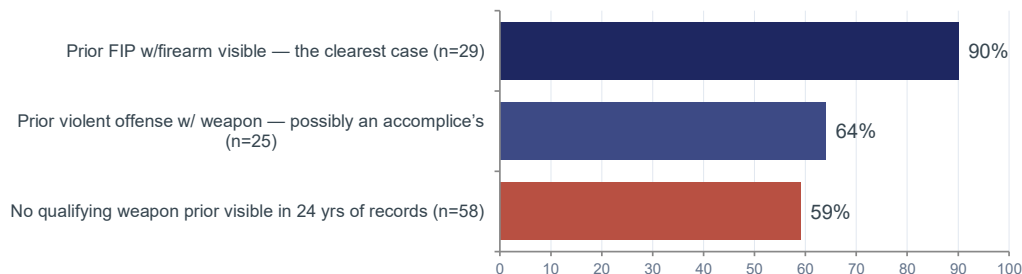
2016-19

1 stay in 13 cases then; substantial
convergence since (56% in 2019-24)

Presented as a substantiated flag for follow-up — including in the practitioner interviews — not a settled statewide finding.

The point estimate is the largest in the analysis and statistically significant, but it rests on 52 cases, it is geographically concentrated (Hennepin at 27 percent stays; the southwest at 22 - Ramsey, with the most cases, is near parity at 50), and it is temporally concentrated in 2016-2019 with real convergence since. The category also aggregates distinct communities - Hmong St. Paul and Southeast Asian southwest Minnesota.

Hard mandatories do not always hold for subsequent weapons cases.



Share of cases where the five-year minimum was imposed. FIP cases flagged as subsequent weapon offenses (n = 114) — a prior weapon offense on top of the disqualifying conviction all FIP defendants have.

Even the clearest hard-minimum group sees departures (3 of 29) — and the data can't verify the rest: the weapons flag counts ammo-only priors that don't qualify, and who actually held the weapon is not recorded in the sentencing data.

In process of getting the State Court Administrator's records, which will be able to answer this question.

In FIP cases, the repeat-weapon flag is intended to identify cases where § 609.11, subd. 8(b), may bar departure. But the legal test is narrower than the data flag: the prior must be a § 609.11-listed offense in which the defendant personally used or possessed a firearm or other dangerous weapon. The sentencing data may not show whether the prior involved firearm rather than ammunition, whether the weapon was possessed by the defendant or an accomplice, or whether the qualifying prior occurred outside the adult Minnesota sentencing records. Court-file data are needed to determine whether these departures were legally authorized, legally barred but unchallenged, or simply misflagged.

Population: the 114 binding FIP cases flagged as subsequent weapon offenses; every FIP defendant has a prior crime of violence by definition; the flag marks an ADDITIONAL prior 609.11-listed weapon offense, which is what locks the statutory waiver. Top bar: prior FIP visible in the data - proves personal gun possession on its face, the clearest case the data can construct - minimum imposed 90 percent, and appellate courts reverse departures when the state appeals; yet 3 of 29 departed anyway, with ordinary amenability reasons. Middle: prior violent offense with a weapon - possibly an accomplice's, which law unlocks the waiver; the data cannot tell who held it. Bottom: no qualifying weapon prior visible anywhere in 24 years - pre-2001, out-of-state, juvenile/EJJ, or flag error - treated like ordinary departable cases.

The flag's unreliability is exactly why it enters the disparity models as a control with an exclusion sensitivity, rather than as a population split - and the disparity findings hold when every flagged case is dropped. Ammo gap : a prior ammunition-only conviction checks the worksheet box but does not legally lock the waiver, since ammunition is neither a firearm nor a dangerous weapon - a lawful gap created by the 2015 amendment, growing yearly.

Three main conclusions:

1. Departures from § 609.11 mandatory minimum are relatively common.
2. Racial disparities in those departures are real: concentrated in the felon-in-possession minimum, in gun *possession* cases across both tracks, and are most relevant for dispositional departure decisions.
3. The hard mandatory minimum are not always binding.

What could explain these racial gaps in who receives a departure?

Consistent with the data and prior research

Differential treatment

similar defendants assessed differently — by courts and by the parties who negotiate most of these departures

Unevenly distributed circumstances

the things that support an “amenability” finding — work, housing, treatment access — are themselves unequally distributed

Decisions upstream of conviction

charging and plea choices shape who reaches sentencing — this analysis starts at conviction

What we have not shown

Individual discrimination

group-level patterns cannot be read onto any judge or prosecutor

Differential treatment: per MSGC's own departure tables the prosecutor did not object or the departure was plea-negotiated in roughly half to three-quarters of these cases, so the discretion under study is substantially prosecutorial, expressed through a judicial act. Unevenly distributed circumstances: amenability as assessed - stable job, stable housing, private treatment, family who shows up - is partly a measure of accumulated advantage, a pattern prior research documents have found. Important: I observe the reason code, not amenability itself; code 535 dominates for every group, so courts do not cite different reasons by race - the gap is in who gets the finding; whether that reflects real differences in circumstances, different readings of similar circumstances, or different negotiations is what sentencing data cannot distinguish. Upstream: the analysis begins at conviction - who gets the weapon enhancement alleged, who gets the FIP charge rather than a lesser count, is invisible here; the SCAO charge-history data will open that door. Right column: the ecological caution (group residuals never indict an individual); and no single mechanism claimed.

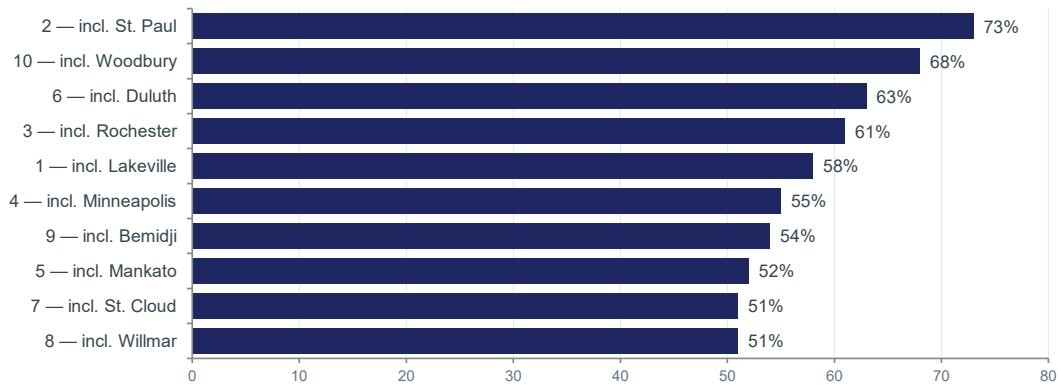
Does § 609.11 worsen disparities? Yes - in practice.

- 1 **The mandatory minimum creates the prison default**
in binding cases, the guidelines recommend probation — only § 609.11 calls for prison
- 2 **Departure discretion determines who avoids it**
possibly operating through amenability-to-probation assessments — the data cannot say how
- 3 **That relief is not distributed evenly by race and ethnicity**
even among legally similar defendants — concentrated in gun-possession cases

Step 1 is the binding-cell construction (slide on the dispositional line). Step 2: relief runs through ordinary departures, 70 percent citing amenability to probation, mostly unopposed or plea-negotiated per MSGC's own tables - so the discretion under study is substantially prosecutorial as well as judicial. The circumstances that support an amenability finding - stable employment, housing, family support, treatment access - are unevenly distributed in ways prior research documents, so even-handed application of the criterion can still produce uneven outcomes; whether that, differential evaluation of similar circumstances, or negotiation dynamics drives the gaps is exactly what sentencing data cannot distinguish. Step 3: the result of this chain of events.

The gaps survive every legal control the data support, among single-offense, low-history, same-county defendants. Remedies: tightening relief equalizes by imprisoning more of every group; removing the mandatory minimum override returns these cases to the guidelines, where probation is presumptive - which path serves equity is the task force's judgment.

Where you're sentenced matters too



District differences are large — a 22-point spread. The racial gaps appear within districts, not because of them.

Binding felon-in-possession cases: adjusted probability of a departure by judicial district, all other measurable factors held equal. Other case factors: trial conviction -33 points, male -25, repeat weapon-offense flag -20 — each larger than most racial gaps.

Did other factors matter?' YES, and district is the most visible. Adjusted Track B stay probabilities: Ramsey/D2 73 percent - the most lenient in the state - down to D7 (St. Cloud) and D8 (Willmar) at 51; a 22-point spread, comparable to the largest racial gap. Note the metro SPLITS: Ramsey 73, Hennepin 55 - 'the metro' is not one thing; whatever drives Ramsey's leniency (county attorney policy, bench culture) is a prime interview question. The racial gaps are estimated WITHIN district - district fixed effects are in every model - so geography cannot explain them; both inequalities coexist. Counties cluster within districts, so individual district point estimates carry softer inference than the bars imply (D8's margin has a 9.5-point SE; D5 6.0) - the defensible claim is 'districts vary substantially,' not precise rank orders; the D2 and D10 coefficients are the clearly distinguishable ones. Other covariates: trial conviction is the single strongest predictor (-33 points - relief is largely a plea-bargained commodity, consistent with MSGC's plea-reason tables); male -25; repeat weapon flag -20; criminal history steep even within the 0-2 range; relief surged from 2020 (+1.0 log-odds, roughly doubling the odds). Durational geography if asked: on the below-floor margin the ordering DIFFERS - Hennepin 25 percent and D5 30 percent at the lenient end, Duluth 8 percent at the tight end - a near four-fold range; geography matters more than race on duration. Age: older defendants slightly more likely to receive relief.