

Understanding Departure Patterns: Practitioner Perspectives on Assault 2 and Aggravated Robbery

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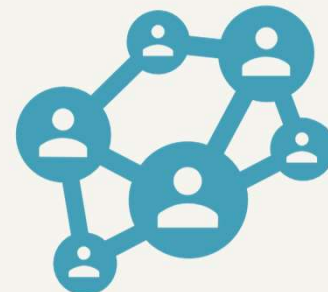


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Introduction and Context

- Robina Institute partnered with the commission to support the comprehensive review.
- Examine very high (downward) departure cases.
Why are the guidelines are not guiding?
- Although downward departures can only be granted by judges, **prosecutors and defense attorneys play a major behind-the-scenes role** in shaping whether a departure occurs.
- **Purpose of Presentation:**
 - Assist the commission members in their decision-making about potential reranking or legislative recommendations.
 - Provide insights from prosecutors and defense attorneys on why departures happen for high-departure offense.



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Assault 2 – Current Departure Trends

- **Assault with a dangerous weapon (Sub. 1); Assault with a dangerous weapons and inflicting bodily harm (Sub. 2)**
- **Severity Level: 6**
- **Mandatory Minimums:**
 - *Non-firearm: 1 year + 1 day; 3 years subsequent*
 - *Firearm: 3 years; 5 years subsequent (no departure)*
- **Departure Rates:**
 - *Dispositional Departure: ~57% Subdivision 1, 43% for Subdivision 2*
 - *Durational Departure: ~20% Subdivision 1, 22% Subdivision 2 receive shorter sentences*

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Methodology

- 19 semi-structured interviews across MN:
 - *Prosecutors*
 - *Defense attorneys*
 - *Dispositional advisors*
- Thematic analysis focused on perceptions and reasoning behind departures and recommendations for policy changes.
- Themes reported appeared multiple times across both defense attorneys and prosecutors.



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Common Factors Supporting Departures

- **Wide Statutory Sweep:**

"We have a lot of assault twos that, some of them are really, really bad cases. Multiple shots, maybe a person injured. And then you have on the other side... a person waving a gun at someone in a road rage incident. There's such a wide swath of what those crimes could be."

– Prosecutor (Rural)

- **Low Injury:**

"You can have assault fear type cases ...the assault wasn't completed - they don't have to prove the bodily harm... that's probably the biggest part of it – because there wasn't actually an injury... maybe not prison worthy on a lot of it."

– Defense (Rural)

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Common Factors Supporting Departures

- **Non-traditional Weapon:**

"The dangerous weapon is... a butter knife... two sisters fighting... she's jamming this butter knife through the opening in the door...saying 'give me my stuff'...I don't think that's on par with [a stranger] pointing a gun at your head."

– Defense (Urban)

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Common Factors Supporting Departures

Defendant Characteristics:

Young Age: "Something you get a lot of people who are in their late teens, early twenties who just did something dumb."

– Defense (Urban)

Low Criminal History Score/First-Time Offenders:

"I think the biggest thing is a first-time offense, no criminal record history at all. Most prosecutors aren't sending you to prison."

– Prosecutor (Urban)

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Common Factors Supporting Departures

Defendant Characteristics:

Amenability to Treatment/Community Supervision:

"On the ones end up getting probation, they've gotten out [of jail], they've done a treatment plan ...you're getting bi-weekly ...[You] put forth that sentencing argument: Look, judge, X, Y, and Z has all been done. And I actually have a fair number of prosecutors who, if the client has done a lot of stuff, they're not opposed to putting them on probation."

– Dispo Advisor (Rural)

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Common Factors Supporting Departures

Victim Preferences and Role

- "If it's a second-degree assault where no one was hurt and the victim in that matter doesn't want that person to go to prison, it's a lot higher chance that there's going to be a departure."
– Defense (Rural)

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Common Factors Supporting Departures

Systemic and Practical Considerations

- **Agreeing to a Departure:** "And then you're scrambling to try to make sure that, do you have a case? Is your victim here? A lot of times on these assaultive cases, the [defense] just waits till trial to see if the victim's going to come or not going to come."
– Prosecutor (Urban)
- **Settling Down:** "We do settle a fair number of [assault 2] cases down to the threats of violence...If we're going to resolve it where we think that non prison is appropriate, we're going to resolve it with a guideline to stay, charged with threats of violence."
– Prosecutor (Rural)

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Challenges with Mandatory Minimums

A majority of defense attorneys and prosecutors expressed negative sentiments to the mandatory minimums applied to Assault 2 cases.

Reason for high departure rate: "With assault in the second degree, it's certainly that [judges and prosecutors] trying to get around the mandatory minimum."

– Defense (Rural)

Not designed with full range of cases in mind:

"Mandatory minimums are so hard because every case is so different. ...it does sort of hamstring you at times when you have a case that, boy, in this specific situation, that's not what I think anyone was talking about."

– Prosecutor (Urban)

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Challenges with Mandatory Minimums

- **Too harsh:** "I would say when you're coming with your first-time offense or second time offense, a lot of those departures are happening because of the amount of time that those individuals are looking at. So if I have a guy coming in on assault two, and he has no criminal record history, and the presumptive with no criminal record history is 48 months, and maybe he just flashed the gun at somebody, right? Or she assaulted a relative with a knife... and they have no criminal record history, likely nobody's going to send them to prison for 48 months."

– Prosecutor (Urban)

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Policy Considerations

- **Majority had issue is with mandatory minimum, less with severity ranking itself.**
- **Largely appropriate at a severity level 6.**
- **Strong support for explicitly differentiating (not necessarily reranking) Assault 2 types:**
 - *"Fear only" vs actual bodily harm cases*
- **Confusion over severity level 6 ranking:** "I just think it's really confusing because it clashes with the statutory mandatory minimum ...It's like secondary assault is in its own category. Like it doesn't even fit on the grid because of the mandatory minimum."
 - Defense (Suburban)

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Aggravated Robbery – Current Departure Trends

- Taking personal property from someone by force or threat of force (dangerous weapon and/or inflicting bodily harm).
- **Severity Level:** 8 (Presumptive 4-year commit)
- **Mandatory Minimums:**
 - *Non-firearm: 1 year + 1 day; 3 years subsequent*
 - *Firearm: 3 years; 5 years subsequent (no departure)*
- **Departure Rates:**
 - *Dispositional Departure: ~42%*
 - *Durational Departure (for those who get prison): ~35%*

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Common Factors Supporting Departures

Wide Range of Behavior:

"It's different where it's like, Hey, I just pulled up next to some guy on the side of the street and said, give me your wallet and give me your phone, versus you a fight between friends and I had punched him and I took his wallet because he owed me money."

– Defense Attorney (Rural)

Minor Physical Harm:

"You can have a robbery that causes a bruise on the person's hand that's going to be aggravated robbery. The idea that we're going to treat that as the same as someone who points a gun and puts a gun at your head, to me, is preposterous."

– Defense (Urban)

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Common Factors Supporting Departures

Defendant Characteristics

- **Youth** (age and immaturity), involvement in drug-related offenses:
 - "Robbery gone bad in a park drug deal: I'm asking for prison and he's asking for a departure. And he is a young kid. He's 20 years old...He's got a troubled CHIP history...He might get [a departure]."
 - Prosecutor (Rural)
 - "Because it's often for young men and they get in these groups and they're like, 18, 19, 20, this happens. And if they can just get out of this young man phase, they will not be doing this again. So those are where I see a lot of the departure rates."
 - Defense (Suburban)
 - Limited or no criminal history cited less frequently

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Common Factors Supporting Departures

- **Practical and Systemic Factors**

Credibility or cooperation issues with victims, especially during illicit activities.

- “We're more likely to say, okay, we would agree to a departure in this situation because our case isn't as strong as we thought it was. Our victims a lot of times they have crimes that they can be impeached with. And so when we're putting their credibility on the line, the jury is probably going to hear that they've been convicted of a felony or two or more. And so then we're going to have to say, you lied to the police, etc.”

– Prosecutor (Rural)

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Common Factors Supporting Departures

- **Heavy caseload pressure:**

- “You see it time and time again where you're so inundated with trials that you're giving away the farm. You got eight trials set for today, three of them, you don't have any victims. Two of them, you don't have any witnesses. And then you're like, okay, well what can I do to get a plea out of this? You know he did it. It's not like you don't have the evidence to do it, but can you prove it?.” -Prosecutor (Urban)

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Judicial and Prosecutorial Discretion Themes

- **General prosecutorial reluctance to offer departures, especially when a dangerous weapon was present.**
- **Judges more amenable to departures.**

“We’ve had one departure in our jurisdiction where the amount of money stolen from {the victim} was 10 bucks and the judge gave less time but still executed the sentence. Which I thought was ridiculous because the act shouldn’t be based on how much money was stolen. Because it’s violence towards another individual using a weapon to steal.” *Prosecutor (Rural)*

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Judicial and Prosecutorial Discretion Themes

- **Prosecutors and defense attorneys note frequent charge amendments from Aggravated Robbery to lesser charges (e.g. Simple Robbery) in less serious cases or cases that are hard to prove.**
- “Sometimes if a weapon isn’t found that can make things harder. Especially if you have any credibility issues with your victim and you don’t have a weapon, that’s a pretty good time to say, even if we go to trial, they might believe everything, but we’re not going to be able to show a knife or a gun because they got away and either hid it or whatever. So in those situations, it’s much more likely to go down to a simple robbery or just, you know, negotiating tactics.” *Prosecutor (Urban)*
- “Usually what I’ve had is if it’s a non firearm or non weapon, even ag robbery, they just give you a simple robbery. – Defense (Rural)

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Is this offense ranked appropriately?

Most Common Answer: This was appropriately ranked at a severity level 8.

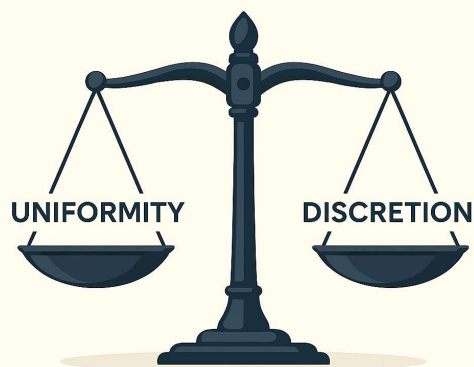
• **Second Most Common Answer:** Offense was ranked too high when minor harm occurred and/or no weapon was used.

• Use of a gun was taken serious across the board, even if no harm occurred.

• More participants noted departures occur because the ranking can feel overly harsh for borderline or less violent cases.

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- Departure decisions in structured sentencing systems are shaped by a mix of legal, contextual, and individual factors, reflecting the ongoing tension between uniformity and discretion in sentencing.



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Next Steps:

- Analyze the interview data on CVH, Felony DWI, and Failure to Register
- Run any queries that clarify presentation, interview findings, and implications for reranking.