

**2<sup>nd</sup> Degree Assault, Dangerous Weapon: Statewide, Sentenced 2019-2023**

## Data Request

The Minnesota Sentencing Guidelines Commission has a statutory charter to serve as the state's clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on sentencing practices.<sup>1</sup> This data request serves to fulfill this charter.<sup>2</sup>

**Information Requested:** Departure rate for Second-Degree Assault, Dangerous Weapon.

**Offense Details:**

- Second-Degree Assault, Dangerous Weapon, Not Substantial Bodily Harm, under Minn. Stat. § 609.222 Subd 1.
- Excludes attempts under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175.
- Severity Level 6.
- This offense, by statutory definition, involves a dangerous weapon and therefore the presumptive disposition is imprisonment, and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time on the Sentencing Grid, whichever is longer.

**Analysis:**

- Statewide.
- Sentenced 2019-2023.
- Dispositional departure rates by presumptive disposition and criminal history score.
- Durational departure rates by prison sentence and criminal history score.
- Most frequently cited reasons for mitigated departures.
- Prosecutorial agreement for mitigated departures.

**Note on Analysis:**

- Each of the 1,185 offenses involved a type of dangerous weapon:
- 371 (31.3%) used a firearm.
- 109 (9.2%) possess a firearm.
- 705 (59.5%) used a dangerous weapon other than a firearm.

**Note on Data:**

Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are person-based, meaning cases represent persons rather than individual charges. Persons sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense. This data request was prepared by the research staff of MSGC in fulfillment of the Commission's statutory role as a clearinghouse and information center for information on sentencing practices. This is not a policy document. Nothing in this request should be construed as a statement of existing policy or recommendation of future policy on behalf of the Commission itself, or as an authoritative interpretation of the Minnesota Sentencing Guidelines, Minnesota statutes, or case law.

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<sup>1</sup> See [Minn. Stat. § 244.09, subd. 6](#).

<sup>2</sup> Submit data requests online at <https://mn.gov/sentencing-guidelines/contact/data-requests.jsp>

## Dispositional Departures

Statewide, from 2019-2023, 1,185 people were sentenced for Second-Degree Assault, Dangerous Weapon, Not Substantial Bodily Harm, under Minn. Stat. § 609.222 Subd 1. None had a presumptive disposition of stay and all 1,185 (100.0%) had a presumptive disposition of commit.

Among persons with a presumptive commit/prison sentence, 514 (43.4%) were not departures and 671 (56.6%) were mitigated dispositional departures, when the Guidelines recommended a commit/prison sentence, but the court pronounced a stayed sentence.

**Table 1. Dispositional Departure Rate by Criminal History Score**

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CHS	All Cases Total	Presumptive Disposition <sup>a</sup>		Dispositional Departures <sup>b</sup>					
				Presumptive Stays <sup>c</sup>				Presumptive Commits <sup>f</sup>	
				No Departures <sup>d</sup>		Aggravated Departures <sup>e</sup>		None <sup>g</sup>	Mit
				Stay	Commit	None	None (Req) <sup>g</sup>		
0	560	0	560	--	--	--	--	136	424
	100.0%	0.0%	100.0%	--	--	--	--	24.3%	75.7%
1	179	0	179	--	--	--	--	73	106
	100.0%	0.0%	100.0%	--	--	--	--	40.8%	59.2%
2	110	0	110	--	--	--	--	56	54
	100.0%	0.0%	100.0%	--	--	--	--	50.9%	49.1%
3	97	0	97	--	--	--	--	56	41
	100.0%	0.0%	100.0%	--	--	--	--	57.7%	42.3%
4	78	0	78	--	--	--	--	56	22
	100.0%	0.0%	100.0%	--	--	--	--	71.8%	28.2%
5	62	0	62	--	--	--	--	47	15
	100.0%	0.0%	100.0%	--	--	--	--	75.8%	24.2%
6 or more	99	0	99	--	--	--	--	90	9
	100.0%	0.0%	100.0%	--	--	--	--	90.9%	9.1%
Total	1185	0	1185	--	--	--	--	514	671
	100.0%	0.0%	100.0%	--	--	--	--	43.4%	56.6%

Source: Minnesota Sentencing Guidelines Commission Monitoring Data. Notes: Percents refer to rows, cases within each group of defendants by criminal history score (CHS).

a. **Presumptive Disposition:** Guidelines recommended sentence based on offense severity and defendant CHS; either a "Stay" a stayed/non-prison sentence; or "Commit" a commit/prison sentence.

b. **Dispositional Departures:** when the court pronounced a sentenced that was different from the presumptive sentence provided by the Guidelines.

c. **Among Presumptive Stays:** Dispositional departures among only presumptive stayed sentences; only aggravated dispositional departures are possible for presumptive stays.

d. **No Departures:** includes "None", no departure, and "None (Req)", where the defendant used their right to demand/request execution of their prison sentence even when the presumptive sentence was stay and the court pronounced a stayed sentence; for offenses on or after 8/1/2015 the Guidelines no longer deemed these cases to be departures. See Guidelines § 2.D.1.

e. **Aggravated Departures:** includes "Agg", an aggravated dispositional departure, where the Court pronounced a commit sentence (prison) but the Guidelines recommended a stayed sentence (non-prison), and "Agg (Req)" an aggravated dispositional departure, where the defendant used their right to demand/request execution of their prison sentence even when the presumptive sentence was stay and the court pronounced a stayed sentence; for offenses before 8/1/2015 the Guidelines deemed these cases to be departures. See Guidelines § 2.D.1.

f. **Among Presumptive Commits:** Dispositional departures among only presumptive commit sentences; includes "None", no departure, and "Mit", a mitigated dispositional departure when the Court pronounced a stayed sentence (non-prison) when the Guidelines recommended a commit sentence (prison); only mitigated dispositional departures are possible for presumptive commits.

g. The total number of defendants who received a prison sentence is a combination of presumptive stayed sentences which demanded a prison sentence, "None (Req)", and who received an aggravated dispositional departure, "Agg" or "Agg (Req)", as well as presumptive commits which did not receive a mitigated departure, "None".

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The most common reasons cited<sup>3</sup> among the 671 mitigated dispositional departures were amenable to probation (458; 68.3%), amenable to treatment (262; 39.0%), and shows remorse/accepts responsibility (241; 35.9%).

**Table 2. Reasons Provided for Mitigated Dispositional Departures**

*2<sup>nd</sup> Degree Assault, Dangerous Weapon: Statewide, Sentenced 2019-2023*

Reasons Provided for Mitigated Dispositional Departure <sup>a</sup>	Number	Percent <sup>b</sup>
Amenable to probation	458	68.3%
Amenable to treatment	262	39.0%
Shows remorse/accepts responsibility	241	35.9%
Recommended by court services	120	17.9%
Virtually all parties/vict/family agreed on sentence	55	8.2%
Less onerous/weapon type less serious/gun not loaded	54	8.0%
Compliance with probation/extended supervision	54	8.0%
Lacked substantial capacity for judgment (non-drug)	29	4.3%
Unknown	29	4.3%
Prevent trauma to victim from testifying	26	3.9%
No prior record/no prior felonies	19	2.8%
Offender played minor, lesser, or passive role	11	1.6%
Age of offender	11	1.6%
Victim aggressor in incident/relationship	10	1.5%
Drug Court-No reasons in transcript	10	1.5%
Mit or excuse culpability,not amount to defense	8	1.2%
Save taxpayers cost of a trial/judicial efficiency	7	1.0%
Imposed rest. or other financial penalty/ensure paid	6	0.9%
Sentence appropriate/just	6	0.9%
Inadvertent/worksheet error	6	0.9%
Psych-Emot problems/impaired capacity for judgment	5	0.7%
Accept sentence plea due to evidentiary problems	4	0.6%
Crime more onerous than usual offense	2	0.3%
Revoked EJJ	2	0.3%
Cooperated with police and other law enforcement	2	0.3%
Persistent Mental Illness per 609.1055	2	0.3%
Serving time in another state/lives in another state	2	0.3%
Failed Stay of Adj/Diversion/Violated Cond Release	1	0.1%
Prior convictions are old	1	0.1%
Cooperated with court services	1	0.1%
Stayed sentence as or more severe/Time already served	1	0.1%
Public protection	1	0.1%
Not a danger to public/unlikely to reoccur	1	0.1%
Concurrent time with another	1	0.1%
Reasons not requested--no worksheet completed	1	0.1%
<b>Total Cases</b>	<b>671</b>	<b>.</b>

Source: Minnesota Sentencing Guidelines Commission Monitoring Data.

Notes: Percents refer to the proportion of mitigated dispositional departures receiving each reason.

a. **Mitigated Dispositional Departures:** When the Court pronounced a stayed sentence (non-prison) when the Guidelines recommended a commit sentence (prison); mitigated dispositional departures are only possible for presumptive commits.

b. **Percent:** Since each sentence may receive multiple reasons, combined percents may not add up to 100.0%.

The prosecutor agreed to/recommended/ did not object to the departure in 473 (70.5%) cases, objected to the departure in 66 (9.8%) cases, and in 132 (19.7%) cases the position of the prosecutor was unknown.

<sup>3</sup> The court may provide multiple reasons for mitigated dispositional departures; percents may not add up to 100.0%.

## Durational Departures

Statewide, from 2019-2023, among people sentenced for Second-Degree Assault, Dangerous Weapon, Not Substantial Bodily Harm, under Minn. Stat. § 609.222 Subd 1, in total, 514 (43.4%) people received a prison sentence<sup>4</sup>, and 671 (56.6%) people received a non-prison sentence.

Of the people that received a non-prison sentence, 598 (89.1%) were not departures, 40 (6.0%) received an aggravated durational departure, 12 (1.8%) received a mitigated durational departure, and 21 (3.1%) received a mitigated departure to a misdemeanor/gross misdemeanor sentence.

Of the people that received prison, 396 (77.0%) were not departures, 16 (3.1%) received an aggravated durational departure and 102 (19.8%) received a mitigated durational departure.

**Table 3. Durational Departure Rate by Criminal History Score**

*2<sup>nd</sup> Degree Assault, Dangerous Weapon: Statewide, Sentenced 2019-2023*

CHS	All Cases	Executed Prison Sentence <sup>a</sup>		Durational Departures <sup>b</sup>						
		No	Yes	Non-Prison Sentences <sup>c</sup>				Prison Sentence <sup>d</sup>		
	Total			None	Agg	Mit	Misd/GM	None	Agg	Mit
0	560	424	136	373	29	5	17	113	3	20
	100.0%	75.7%	24.3%	88.0%	6.8%	1.2%	4.0%	83.1%	2.2%	14.7%
1	179	106	73	97	3	3	3	62	1	10
	100.0%	59.2%	40.8%	91.5%	2.8%	2.8%	2.8%	84.9%	1.4%	13.7%
2	110	54	56	48	5	1	0	44	0	12
	100.0%	49.1%	50.9%	88.9%	9.3%	1.9%	0.0%	78.6%	0.0%	21.4%
3	97	41	56	37	1	2	1	36	4	16
	100.0%	42.3%	57.7%	90.2%	2.4%	4.9%	2.4%	64.3%	7.1%	28.6%
4	78	22	56	22	0	0	0	45	1	10
	100.0%	28.2%	71.8%	100.0%	0.0%	0.0%	0.0%	80.4%	1.8%	17.9%
5	62	15	47	14	1	0	0	31	2	14
	100.0%	24.2%	75.8%	93.3%	6.7%	0.0%	0.0%	66.0%	4.3%	29.8%
6 or more	99	9	90	7	1	1	0	65	5	20
	100.0%	9.1%	90.9%	77.8%	11.1%	11.1%	0.0%	72.2%	5.6%	22.2%
Total	1185	671	514	598	40	12	21	396	16	102
	100.0%	56.6%	43.4%	89.1%	6.0%	1.8%	3.1%	77.0%	3.1%	19.8%

Source: Minnesota Sentencing Guidelines Commission Monitoring Data. Notes: Percents refer to rows, cases within each group of defendants by criminal history score (CHS).

a. **Executed Prison Sentence:** the pronounced disposition from the Court, either "No," a non-prison sentence (stay), or "Yes," a prison sentence (commit; regardless of the Guidelines recommendation).

b. **Durational Departures:** when the Court pronounced a sentence duration that is different from the recommended duration provided by the Guidelines; either more or less than the fixed duration for presumptive stays, or outside of the duration range (15% lower and 20% higher) for presumptive commits, provided the minimum sentence is not less than one year and the maximum sentence is not more than the statutory maximum (See section 2.C.1-2).

c. **Non-Prison Sentences:** among non-prison sentences, "None" the pronounced non-prison sentence length from the Court matched the length recommended by the Guidelines; "Agg" an aggravated durational departure for a non-prison sentence when the pronounced non-prison sentence was more than the fixed duration for a presumptive stay or more than 20% higher than the fixed duration for a presumptive commit sentence; "Mit" a mitigated durational departure for a non-prison sentence when the pronounced non-prison sentence was less than the fixed duration for a presumptive stay or more than 15% lower than the fixed duration for a presumptive commit sentence; "Misd/GM" a mitigated durational departure where the Court imposed a misdemeanor or gross misdemeanor sentence for a felony-level conviction, meaning up to 364 days of confinement in a local jail or other non-jail sanctions can be imposed as a condition of probation.

d. **Prison Sentence:** Among prison sentences, "None" the pronounced prison sentence length from the Court matched the length recommended by the Guidelines; "Agg" an aggravated durational departure for a prison sentence when the pronounced prison sentence was more than the fixed duration for a presumptive stay or more than 20% higher than the fixed duration for a presumptive commit sentence; "Mit" a mitigated durational departure for a prison sentence when the pronounced prison sentence was less than the fixed duration for a presumptive stay or more than 15% lower than the fixed duration for a presumptive commit sentence.

<sup>4</sup> The total number of defendants that received a prison includes the following: persons who demanded execution of sentence where it was not considered an aggravated dispositional departure, all aggravated dispositional departures among presumptive stays, and non-departures among presumptive commits.

The most common reasons<sup>5</sup> cited among the 102 mitigated durational departures among prison sentences were crime less onerous (46; 45.1%) and shows remorse/accepts responsibility (38; 37.3%).

**Table 4. Reasons Provided for Mitigated Durational Departures among Prison Sentences**

*2<sup>nd</sup> Degree Assault, Dangerous Weapon: Statewide, Sentenced 2019-2023*

Reasons for Mitigated Durational Departure Among Prison Sentences <sup>a</sup>	Number	Percent <sup>b</sup>
Less onerous/weapon type less serious/gun not loaded	46	45.1%
Shows remorse/accepts responsibility	38	37.3%
Victim aggressor in incident/relationship	10	9.8%
Virtually all parties/vict/family agreed on sentence	8	7.8%
Recommended by court services	7	6.9%
Mit or excuse culpability, not amount to defense	6	5.9%
Save taxpayers cost of a trial/judicial efficiency	5	4.9%
Inadvertent/worksheet error	5	4.9%
Lacked substantial capacity for judgment (non-drug)	4	3.9%
Prevent trauma to victim from testifying	4	3.9%
Offender played minor, lesser, or passive role	3	2.9%
Unknown	3	2.9%
Amenable to probation	2	2.0%
Psych-Emot problems/impaired capacity for judgment	2	2.0%
Imposed rest. or other financial penalty/ensure paid	1	1.0%
Cooperated with court services	1	1.0%
Compliance with probation/extended supervision	1	1.0%
Accept sentence plea due to evidentiary problems	1	1.0%
Amenable to treatment	1	1.0%
Sentence appropriate/just	1	1.0%
609.11 motion by judge	1	1.0%
Age of offender	1	1.0%
<b>Total Cases</b>	<b>102</b>	<b>.</b>

**Source:** Minnesota Sentencing Guidelines Commission Monitoring Data.

**Notes:** Percents refer to the proportion of mitigated dispositional departures receiving each reason.

**a. Mitigated Durational Departures Among Prison Sentences:** When the pronounced prison sentence was less than the fixed duration for a presumptive stay or more than 15% lower than the fixed duration for a presumptive commit sentence.

**b. Percent:** Since each sentence may receive multiple reasons, combined percents may not add up to 100.0%.

The prosecutor agreed to/recommended/ did not object to the departure in 84 (82.4%) cases, objected to the departure in 2 (2.0%) of the cases, and in 16 (15.7%) cases the position of the prosecutor was unknown.

<sup>5</sup> The court may provide multiple reasons for prison sentences receiving mitigated durational departures; percents may not add up to 100.0%.