

**1<sup>st</sup> Degree First Felony DWI 169A.24 Subd 1(1): 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 rates for Felony DWI, First Offense, § 169A.24 Subd. 1(1).

**Offense Details:**

- First-Degree Driving While Impaired (DWI) – First Offense under Minn. Stat. § 169A.24, subd. 1(1).
- Defendant commits this violation within ten years of the first of three or more qualified impaired driving incidents.
- Excludes attempts under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175.
- Severity Level 7.

**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 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

From 2019-2023, 1,449 people were sentenced for First-Degree Driving While Impaired (DWI) – First Offense under Minn. Stat. § 169A.24, subd. 1(1). 1,103 (76.1%) had a presumptive disposition of stay and 346 (23.9%) had a presumptive disposition of commit.

Among persons with a presumptive stay/non-prison sentence, 1,090 (98.8%) were not departures; 13 (1.2%) were not departures, but the defendant requested an executed prison sentence even when the court pronounced a stayed sentence<sup>3</sup>; none were aggravated dispositional departures, when the Guidelines recommended a stayed sentence, but the court pronounced an executed prison sentence; and none were aggravated departures where the defendant requested an executed prison sentence even when the court pronounced a stayed sentence<sup>4</sup>.

Among persons with a presumptive commit/prison sentence, 144 (41.6%) were not departures and 202 (58.4%) 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**

*1st Degree First Felony DWI 169A.24 Subd 1(1): Statewide, Sentenced 2019-2023*

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>	Agg <sup>g</sup>	Agg (Req) <sup>g</sup>		
0	632	632	0	630	2	0	0	--	--
	100.0%	100.0%	0.0%	99.7%	0.3%	0.0%	0.0%	--	--
1	300	300	0	298	2	0	0	--	--
	100.0%	100.0%	0.0%	99.3%	0.7%	0.0%	0.0%	--	--
2	171	171	0	162	9	0	0	--	--
	100.0%	100.0%	0.0%	94.7%	5.3%	0.0%	0.0%	--	--
3	114	0	114	--	--	--	--	34	80
	100.0%	0.0%	100.0%	--	--	--	--	29.8%	70.2%
4	71	0	71	--	--	--	--	25	46
	100.0%	0.0%	100.0%	--	--	--	--	35.2%	64.8%
5	66	0	66	--	--	--	--	26	40
	100.0%	0.0%	100.0%	--	--	--	--	39.4%	60.6%
6 or more	95	0	95	--	--	--	--	59	36
	100.0%	0.0%	100.0%	--	--	--	--	62.1%	37.9%
Total	1449	1103	346	1090	13	0	0	144	202
	100.0%	76.1%	23.9%	98.8%	1.2%	0.0%	0.0%	41.6%	58.4%

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".

<sup>3</sup> Offenses committed on or after of 8/1/2015 are not considered aggravated departures, see amendments to Guidelines § 2.D.1.

<sup>4</sup> Offenses committed before 8/1/2015 are considered aggravated departures, see amendments to Guidelines § 2.D.1.

The most common reasons cited<sup>5</sup> among the 202 mitigated dispositional departures were amenable to probation (137; 67.8%) and amenable to treatment (135; 66.8%).

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

*1st Degree First Felony DWI 169A.24 Subd 1(1): Statewide, Sentenced 2019-2023*

Reasons Provided for Mitigated Dispositional Departure <sup>a</sup>	Number	Percent <sup>b</sup>
Amenable to probation	137	67.8%
Amenable to treatment	135	66.8%
Shows remorse/accepts responsibility	61	30.2%
Recommended by court services	34	16.8%
Compliance with probation/extended supervision	19	9.4%
Drug Court-No reasons in transcript	18	8.9%
Unknown	9	4.5%
Less onerous/weapon type less serious/gun not loaded	7	3.5%
Sentence appropriate/just	7	3.5%
Save taxpayers cost of a trial/judicial efficiency	6	3.0%
Inadvertent/worksheet error	3	1.5%
Prior convictions are old	2	1.0%
Lacked substantial capacity for judgment (non-drug)	1	0.5%
Mit or excuse culpability, not amount to defense	1	0.5%
No prior record/no prior felonies	1	0.5%
Priors overemphasize CH/same behavioral incident	1	0.5%
Priors occurred in short period of time/crime spree	1	0.5%
Imposed rest. or other financial penalty/ensure paid	1	0.5%
So can participate in prison treatment program	1	0.5%
Psych-Emot problems/impaired capacity for judgment	1	0.5%
Age of offender	1	0.5%
Serving time in another state/lives in another state	1	0.5%
<b>Total Cases</b>	<b>202</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 129 (63.9%) cases, objected to the departure in 33 (16.3%) cases, and in 40 (19.8%) cases the position of the prosecutor was unknown.

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

## Durational Departures

From 2019-2023, among people sentenced for First-Degree Driving While Impaired (DWI) – First Offense under Minn. Stat. § 169A.24, subd. 1(1), in total, 153 (10.6%) people received a prison sentence<sup>6</sup>, and 1,296 (89.4%) people received a non-prison sentence.

Of the people that received a non-prison sentence, 1,143 (88.2%) were not departures, 116 (9.0%) received an aggravated durational departure, 29 (2.2%) received a mitigated durational departure, and 8 (0.6%) received a mitigated departure to a misdemeanor/gross misdemeanor sentence.

Of the people that received prison, 117 (76.5%) were not departures, 1 (0.7%) received an aggravated durational departure and 35 (22.9%) received a mitigated durational departure.

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

*1st Degree First Felony DWI 169A.24 Subd 1(1): 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	632	630	2	558	66	1	5	1	0	1
	100.0%	99.7%	0.3%	88.6%	10.5%	0.2%	0.8%	50.0%	0.0%	50.0%
1	300	298	2	265	17	15	1	0	0	2
	100.0%	99.3%	0.7%	88.9%	5.7%	5.0%	0.3%	0.0%	0.0%	100.0%
2	171	162	9	140	14	7	1	5	1	3
	100.0%	94.7%	5.3%	86.4%	8.6%	4.3%	0.6%	55.6%	11.1%	33.3%
3	114	84	30	73	8	2	1	25	0	5
	100.0%	73.7%	26.3%	86.9%	9.5%	2.4%	1.2%	83.3%	0.0%	16.7%
4	71	46	25	42	1	3	0	22	0	3
	100.0%	64.8%	35.2%	91.3%	2.2%	6.5%	0.0%	88.0%	0.0%	12.0%
5	66	40	26	34	6	0	0	20	0	6
	100.0%	60.6%	39.4%	85.0%	15.0%	0.0%	0.0%	76.9%	0.0%	23.1%
6 or more	95	36	59	31	4	1	0	44	0	15
	100.0%	37.9%	62.1%	86.1%	11.1%	2.8%	0.0%	74.6%	0.0%	25.4%
Total	1449	1296	153	1143	116	29	8	117	1	35
	100.0%	89.4%	10.6%	88.2%	9.0%	2.2%	0.6%	76.5%	0.7%	22.9%

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>6</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>7</sup> cited among the 35 mitigated durational departures among prison sentences were crime less onerous (15; 42.9%) and shows remorse/accepts responsibility (11; 31.4%).

**Table 4. Reasons Provided for Mitigated Durational Departures among Prison Sentences**  
*1st Degree First Felony DWI 169A.24 Subd 1(1): 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	15	42.9%
Shows remorse/accepts responsibility	11	31.4%
Lacked substantial capacity for judgment (non-drug)	2	5.7%
Inadvertent/worksheet error	2	5.7%
Unknown	2	5.7%
Has failed on probation before/unamen probation	1	2.9%
Amenable to treatment	1	2.9%
Save taxpayers cost of a trial/judicial efficiency	1	2.9%
Solid community record/ support	1	2.9%
<b>Total Cases</b>	<b>35</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 26 (74.3%) cases, objected to the departure in 2 (5.7%) of the cases, and in 7 (20.0%) cases the position of the prosecutor was unknown.

<sup>7</sup> The court may provide multiple reasons for prison sentences receiving mitigated durational departures; percents may not add up to 100.0%.