

**1<sup>st</sup> Degree Subsequent Felony DWI 169A.24 Subd 1(2): 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 1<sup>st</sup> Degree Subsequent Felony DWI.

**Offense Details:**

- First-Degree Felony Driving While Impaired (DWI) – Subsequent Felony DWI, under Minn. Stat. § 169A.24, subd. 1(2)
- Excludes attempts under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175
- Severity Level 7.
- Subsequent felony DWI is always a presumptive commitment, regardless of the offender's criminal history score.

**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, 1,185 people were sentenced for First-Degree Felony Driving While Impaired (DWI) – Subsequent Felony DWI, under Minn. Stat. § 169A.24, subd. 1(2). 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, 569 (48.0%) were not departures and 616 (52.0%) were mitigated dispositional departures, when the Guidelines recommended a commit/prison sentence, but the court pronounced a stayed sentence.

The most common reasons cited<sup>3</sup> for mitigated dispositional departures were amenable to probation (448; 73.0%), amenable to treatment (448; 73.0%), shows remorse/accepts responsibility (187; 30.5%), and recommended by court services (139; 22.6%). The prosecutor agreed to/recommended/ did not object to the departure in 336 (54.5%) cases, objected to the departure in 109 (17.7%) of cases, and in 171 (27.8%) cases the position of the prosecutor was unknown.

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

*1st Degree Subsequent Felony DWI 169A.24 Subd 1(2): 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> |                                  |       |
| 0         | 30              | 0                                    | 30     | --                                    | --     | --                                 | --                      | 6                                | 24    |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 20.0%                            | 80.0% |
| 1         | 213             | 0                                    | 213    | --                                    | --     | --                                 | --                      | 44                               | 169   |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 20.7%                            | 79.3% |
| 2         | 224             | 0                                    | 224    | --                                    | --     | --                                 | --                      | 78                               | 146   |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 34.8%                            | 65.2% |
| 3         | 193             | 0                                    | 193    | --                                    | --     | --                                 | --                      | 80                               | 113   |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 41.5%                            | 58.5% |
| 4         | 203             | 0                                    | 203    | --                                    | --     | --                                 | --                      | 122                              | 81    |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 60.1%                            | 39.9% |
| 5         | 124             | 0                                    | 124    | --                                    | --     | --                                 | --                      | 88                               | 36    |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 71.0%                            | 29.0% |
| 6 or more | 198             | 0                                    | 198    | --                                    | --     | --                                 | --                      | 151                              | 47    |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 76.3%                            | 23.7% |
| Total     | 1185            | 0                                    | 1185   | --                                    | --     | --                                 | --                      | 569                              | 616   |
|           | 100.0%          | 0.0%                                 | 100.0% | --                                    | --     | --                                 | --                      | 48.0%                            | 52.0% |

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 sentence 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> 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 Felony Driving While Impaired (DWI) – Subsequent Felony DWI, under Minn. Stat. § 169A.24, subd. 1(2), in total, 569 (48.0%) people received a prison sentence<sup>4</sup>, and 616 (52.0%) people received a non-prison sentence.

Of the people that received a non-prison sentence, 514 (83.4%) were not departures, 93 (15.1%) received an aggravated durational departure, 8 (1.3%) received a mitigated durational departure, and 1 (0.2%) received a mitigated departure to a misdemeanor/gross misdemeanor sentence.

Of the people that received prison, 473 (83.1%) were not departures, 2 (0.4%) received an aggravated durational departure and 94 (16.5%) received a mitigated durational departure.

The most common reasons<sup>5</sup> cited for mitigated durational departures among prison sentences were crime less onerous (51; 54.3%) and shows remorse/accepts responsibility (35; 37.2%). The prosecutor agreed to/recommended/ did not object to the departure in 79 (84.0%) cases, objected to the departure in 2 (2.1%) of cases, and in 13 (13.8%) cases the position of the prosecutor was unknown.

**Table 2. Durational Departure Rate by Criminal History Score**

*1st Degree Subsequent Felony DWI 169A.24 Subd 1(2): 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         | 30        | 24                                    | 6     | 20                                 | 4     | 0    | 0       | 6                            | 0    | 0     |
|           | 100.0%    | 80.0%                                 | 20.0% | 83.3%                              | 16.7% | 0.0% | 0.0%    | 100.0%                       | 0.0% | 0.0%  |
| 1         | 213       | 169                                   | 44    | 143                                | 25    | 1    | 0       | 42                           | 0    | 2     |
|           | 100.0%    | 79.3%                                 | 20.7% | 84.6%                              | 14.8% | 0.6% | 0.0%    | 95.5%                        | 0.0% | 4.5%  |
| 2         | 224       | 146                                   | 78    | 115                                | 30    | 1    | 0       | 66                           | 1    | 11    |
|           | 100.0%    | 65.2%                                 | 34.8% | 78.8%                              | 20.5% | 0.7% | 0.0%    | 84.6%                        | 1.3% | 14.1% |
| 3         | 193       | 113                                   | 80    | 95                                 | 14    | 3    | 1       | 69                           | 0    | 11    |
|           | 100.0%    | 58.5%                                 | 41.5% | 84.1%                              | 12.4% | 2.7% | 0.9%    | 86.3%                        | 0.0% | 13.8% |
| 4         | 203       | 81                                    | 122   | 68                                 | 12    | 1    | 0       | 106                          | 0    | 16    |
|           | 100.0%    | 39.9%                                 | 60.1% | 84.0%                              | 14.8% | 1.2% | 0.0%    | 86.9%                        | 0.0% | 13.1% |
| 5         | 124       | 36                                    | 88    | 32                                 | 3     | 1    | 0       | 70                           | 0    | 18    |
|           | 100.0%    | 29.0%                                 | 71.0% | 88.9%                              | 8.3%  | 2.8% | 0.0%    | 79.5%                        | 0.0% | 20.5% |
| 6 or more | 198       | 47                                    | 151   | 41                                 | 5     | 1    | 0       | 114                          | 1    | 36    |
|           | 100.0%    | 23.7%                                 | 76.3% | 87.2%                              | 10.6% | 2.1% | 0.0%    | 75.5%                        | 0.7% | 23.8% |
| Total     | 1185      | 616                                   | 569   | 514                                | 93    | 8    | 1       | 473                          | 2    | 94    |
|           | 100.0%    | 52.0%                                 | 48.0% | 83.4%                              | 15.1% | 1.3% | 0.2%    | 83.1%                        | 0.4% | 16.5% |

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 (stayed), 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.

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