

## 2<sup>nd</sup> Degree Drug Sale, subd. 1(3): Statewide, Sentenced 2019-2023

### Data Request

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.

**Information Requested:** Departure data for 2nd Degree Drug Sale, subd. 1(3).

**Analysis:**

- Statewide, Sentenced 2019-2023.
- Second-Degree Sale of Controlled Substance Crime under Minn. Stat. § 152.022, subd. 1(3).
- Excludes attempts under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175.
- Offenses ranked at Severity Level D7 (post-DSRA); offense committed on or after 8/1/2016.

### Dispositional Departures

From 2019-2023, 54 people were sentenced for 2nd Degree Drug Sale, subd. 1(3), with 21 (39%) having a presumptive disposition of stay and 33 (61%) a presumptive disposition of commit. Of the people sentenced to a stay/non-prison sentence, none received an aggravated dispositional departure<sup>1</sup>. Of the people with a presumptive commit/prison sentenced, 14 (42%) received a mitigated dispositional departure.

The most common reasons cited for mitigated dispositional departures were amenable to probation (11), amenable to treatment (6), recommended by court services (5), and shows remorse/accepts responsibility (5). The prosecutor agreed to/recommended/ did not object to the departure in 35.7% of cases, objected to the departure in 35.7% of cases, and in 28.6% of cases the position of the prosecutor was unknown.

**Table 1. Dispositional Departure Rate by Criminal History Score: 2nd Degree Drug Sale, subd. 1(3)**

| CHS       | All Cases Total | Presumptive Disposition <sup>a</sup> |        | Dispositional Departures (Presumptive Stays) <sup>b</sup> |            |                                    |           | Dispositional Departures (Presumptive Commits) <sup>e</sup> |        |
|-----------|-----------------|--------------------------------------|--------|---|------------|------------------------------------|-----------|---|--------|
|           |                 | Stay                                 | Commit | No Departures <sup>c</sup>                                |            | Aggravated Departures <sup>d</sup> |           | None  | Mit    |
|           |                 |                                      |        | None  | None (Req) | Agg                                | Agg (Req) |   |        |
| 0         | 15              | 13                                   | 2      | 12  | 1          | 0                                  | 0         | 0   | 2      |
|           | 100.0%          | 86.7%                                | 13.3%  | 92.3%   | 7.7%       | 0.0%                               | 0.0%      | 0.0%  | 100.0% |
| 1         | 8               | 8                                    | 0      | 8   | 0          | 0                                  | 0         | --  | --     |
|           | 100.0%          | 100.0%                               | 0.0%   | 100.0%  | 0.0%       | 0.0%                               | 0.0%      | --  | --     |
| 2         | 11              | 0                                    | 11     | --  | --         | --                                 | --        | 5   | 6      |
|           | 100.0%          | 0.0%                                 | 100.0% | --  | --         | --                                 | --        | 45.5%   | 54.5%  |
| 3         | 3               | 0                                    | 3      | --  | --         | --                                 | --        | 1   | 2      |
|           | 100.0%          | 0.0%                                 | 100.0% | --  | --         | --                                 | --        | 33.3%   | 66.7%  |
| 4         | 6               | 0                                    | 6      | --  | --         | --                                 | --        | 3   | 3      |
|           | 100.0%          | 0.0%                                 | 100.0% | --  | --         | --                                 | --        | 50.0%   | 50.0%  |
| 5         | 2               | 0                                    | 2      | --  | --         | --                                 | --        | 2   | 0      |
|           | 100.0%          | 0.0%                                 | 100.0% | --  | --         | --                                 | --        | 100.0%  | 0.0%   |
| 6 or more | 9               | 0                                    | 9      | --  | --         | --                                 | --        | 8   | 1      |
|           | 100.0%          | 0.0%                                 | 100.0% | --  | --         | --                                 | --        | 88.9%   | 11.1%  |
| Total     | 54              | 21                                   | 33     | 20  | 1          | 0                                  | 0         | 19  | 14     |
|           | 100.0%          | 38.9%                                | 61.1%  | 95.2%   | 4.8%       | 0.0%                               | 0.0%      | 57.6%   | 42.4%  |

**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 Departure (Presumptive Stays):** Dispositional departures among only presumptive stayed sentences; only aggravated dispositional departures are possible for presumptive stays.

c. **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.

d. **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.

e. **Dispositional Departures (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.

<sup>1</sup> 1 person used their right to demand execution of their prison sentence even when the presumptive sentence was stay and the Court pronounced a stayed sentence, although it was not considered an aggravated dispositional departure since the offense was committed on or after 8/1/2015. See amendments to Guidelines § 2.D.1.

## Durational Departures

In total, 20 (37%) people received a prison sentence<sup>2</sup>, and 34 (63%) people received a non-prison sentence. Of the people that received a non-prison sentence, none received an aggravated durational departure, none received a mitigated durational departure, and none received a mitigated departure to a misdemeanor/gross misdemeanor sentence. Of the people that received prison, 2 (10%) received an aggravated durational departure and 5 (25%) received a mitigated durational departure.

The most common reasons cited for mitigated durational departures among prison sentences were crime less onerous (3) and shows remorse/accepts responsibility (2). The prosecutor agreed to/recommended/did not object to the departure in 60% of cases, objected in 0% of cases, and in 40% of cases the position of the prosecutor was unknown.

**Table 2. Durational Departure Rate by Criminal History Score: 2nd Degree Drug Sale, subd. 1(3)**

| CHS       | All Cases<br>Total | Executed Prison Sentence <sup>a</sup> |        | Durational Departures <sup>b</sup> |      |      |         |                              |       |        |
|-----------|--------------------|---------------------------------------|--------|------------------------------------|------|------|---------|------------------------------|-------|--------|
|           |                    | No                                    | Yes    | Non-Prison Sentences <sup>c</sup>  |      |      |         | Prison Sentence <sup>d</sup> |       |        |
|           |                    |                                       |        | None                               | Agg  | Mit  | Misd/GM | None                         | Agg   | Mit    |
| 0         | 15                 | 14                                    | 1      | 14                                 | 0    | 0    | 0       | 1                            | 0     | 0      |
|           | 100.0%             | 93.3%                                 | 6.7%   | 100.0%                             | 0.0% | 0.0% | 0.0%    | 100.0%                       | 0.0%  | 0.0%   |
| 1         | 8                  | 8                                     | 0      | 8                                  | 0    | 0    | 0       | --                           | --    | --     |
|           | 100.0%             | 100.0%                                | 0.0%   | 100.0%                             | 0.0% | 0.0% | 0.0%    | --                           | --    | --     |
| 2         | 11                 | 6                                     | 5      | 6                                  | 0    | 0    | 0       | 5                            | 0     | 0      |
|           | 100.0%             | 54.5%                                 | 45.5%  | 100.0%                             | 0.0% | 0.0% | 0.0%    | 100.0%                       | 0.0%  | 0.0%   |
| 3         | 3                  | 2                                     | 1      | 2                                  | 0    | 0    | 0       | 0                            | 0     | 1      |
|           | 100.0%             | 66.7%                                 | 33.3%  | 100.0%                             | 0.0% | 0.0% | 0.0%    | 0.0%                         | 0.0%  | 100.0% |
| 4         | 6                  | 3                                     | 3      | 3                                  | 0    | 0    | 0       | 1                            | 0     | 2      |
|           | 100.0%             | 50.0%                                 | 50.0%  | 100.0%                             | 0.0% | 0.0% | 0.0%    | 33.3%                        | 0.0%  | 66.7%  |
| 5         | 2                  | 0                                     | 2      | --                                 | --   | --   | --      | 2                            | 0     | 0      |
|           | 100.0%             | 0.0%                                  | 100.0% | --                                 | --   | --   | --      | 100.0%                       | 0.0%  | 0.0%   |
| 6 or more | 9                  | 1                                     | 8      | 1                                  | --   | --   | --      | 4                            | 2     | 2      |
|           | 100.0%             | 11.1%                                 | 88.9%  | 100.0%                             | --   | --   | --      | 50.0%                        | 25.0% | 25.0%  |
| Total     | 54                 | 34                                    | 20     | 34                                 | 0    | 0    | 0       | 13                           | 2     | 5      |
|           | 100.0%             | 63.0%                                 | 37.0%  | 100.0%                             | 0.0% | 0.0% | 0.0%    | 65.0%                        | 10.0% | 25.0%  |

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

a. **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>2</sup> Effective with the August 1, 2015, amendments to Guidelines § 2.D.1, a sentence that is executed pursuant to an offender's right to demand execution is no longer considered an aggravated dispositional departure. The 20 people that received prison included the 1 person who demanded execution of sentence where it was not considered an aggravated dispositional departure, combined the 19 non-departure cases among presumptive commits.