

Minnesota Sentencing Guidelines Commission

Felony Driving While Impaired

Cases Sentenced Through December, 2003

Felony Driving While Impaired went into effect August 1, 2002. Minn. Stat. § 169A.276, subdivision 1(a) created a minimum 36-month felony sentence of imprisonment for this offense, while subdivision 1(b) allows for a stay of execution of that sentence but specifically forbids a stay of imposition or stay of adjudication. This means that the court is required to pronounce a period of incarceration even if the court intends on pronouncing a probationary sentence.

The Minnesota Sentencing Guidelines and Commentary (MSGC) presume a minimum 36-month sentence be imposed by the court for this offense (MSGC II.E.). For a person convicted of a felony DWI who has a criminal history score of less than 3, the sentencing guidelines presume a stayed sentence; however, if a person has a prior felony DWI conviction, the sentence is presumed to be an executed sentence of imprisonment, regardless of the criminal history score (MSGC II.C.). An offender being sentenced for a felony DWI is also subject to a 5-year term of conditional release (Minn. Stat. § 169A.276, subd. 1(d); MSGC II.E).

Offenders receiving stayed sentences can receive up to one year of local jail time as a condition of their probation and are subject to the mandatory penalty provisions specified in Minn. Stat. § 169A.275. This statute provides that 4th time offenders must be incarcerated for 180 days and 5th or more time offenders for one year, unless they are placed in an intensive supervision program. This statute also allows that a portion of this mandatory jail time may be served on electronic monitoring.

The following report summarizes data for all felony DWI offenses sentenced in Minnesota through December 2003. MSGC monitoring data is offender based. An offender sentenced in the same county for more than one offense within a thirty-day period is counted as one case; information included in the data is for the most serious offense. Reported here are cases where First Degree DWI was the most serious offense.

Beginning August 1, 2002 and as of the end of December 2003, there were 920 offenders (845 males and 75 females) sentenced in Minnesota for First Degree Driving While Intoxicated. Of the 920 offenders sentenced, the sentencing guidelines presumed a stayed sentence for 735 offenders (80%) and a presumptive commit to prison for 185 offenders (20%).

Number of Offenders Sentenced Through December 2003: 920

Sex: Male – 845 (92%) / Female – 75 (8%)

Presumptive Stayed Cases 735 (80%) -- Presumptive Prison Cases 185 (20%)

Criminal History

All felony DWI offenders have at a minimum three prior alcohol related driving offenses on their record that serve as the predicate offenses upon which a felony DWI charge is based. Per the sentencing guidelines, the predicate offenses upon which a felony offense is based are not used in calculating an offender's criminal history score (MSGC II.B.6). Thus, a first time felony DWI offender may be sentenced at a criminal history score of zero.

Of the 920 cases sentenced through December 2003, the greatest number of offenders (350 or 38%) was sentenced at a criminal history score of one, followed by 235 offenders (26%) sentenced at a criminal history score of zero and 151 offenders (16%) sentenced at a criminal history score of two. All totaled, the vast majority (80%) of offenders sentenced for felony DWI were sentenced at a criminal history score of two or less. A criminal history score of 2 or less is a presumed stayed sentence unless

the offender's criminal history score includes a prior felony DWI. All but a single offender sentenced at a criminal history score of two or less had a presumed stayed sentence.

Just over half of all offenders (56%) were under some kind of supervision (e.g., probation, release pending sentence, supervised release from prison) at the time they committed the current offense. Over a third (38%) of these offenders had other felony offenses (i.e., non-DWI felonies) on their record that contributed to their total criminal history score, while only 22 (2%) had a prior DWI felony offense that contributed to their total criminal history score.

Number with Custody Status Point: 519 (56%)
Number with Prior Non-DWI Felony Offense in Criminal History: 347 (38%)
Number with Prior DWI Felony Offense in Criminal History: 22 (2%)

Distribution of Cases by Criminal History Score

Criminal History Score	Number	Percent
0	235	26%
1	350	38%
2	151	16%
3	74	8%
4	44	5%
5	24	3%
6 or more	42	5%

Incarceration Rates

At the time of sentencing, the court can impose one or more of several different sentences, the most restrictive being a sentence of imprisonment in a state facility for a period exceeding a year. The court may also impose a sentence of local incarceration for a period of up to one year as a condition of probation, as well as other sanctions including community work service, court ordered treatment, and fines.

Of the 920 offenders sentenced for felony DWI, 132 (14%) were sentenced to imprisonment in a state facility. The average pronounced sentence for these 132 offenders was 50 months. An additional 761 offenders (83%) were sentenced to local incarceration for an average period of 233 days. The total incarceration rate (i.e., both offenders sentenced to prison and local incarceration) was 97%. The remaining 27 offenders (3%) received other sanctions by the court at sentencing.

Total Incarceration Rate for Felony DWI Offenders: 97%

Number of Offenders That Received Various Types of Incarceration

Type	Number	Percent	Average Pronounced Durations
Prison	132	14%	50 months
Local Jail Time	761	83%	233 days
Other Sanctions	27	3%	

Total	920	100%	
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Departure Rates

A departure occurs when the court imposes a sentence that is different from that presumed under the sentencing guidelines. A departure can be to the presumed **disposition** of the sentence (i.e., whether the guidelines calls for a stayed probationary sentence or a commitment to prison) or to the presumed **duration** or the sentence measured in months. A departure can be “aggravated” meaning either imposing a prison sentence on a presumptive stayed probationary sentence, or imposing a greater amount of time than that presumed by the sentencing guidelines. A departure can be “mitigated” meaning either imposing a stayed probationary sentence on a presumed prison sentence, or by imposing a shorter duration than that presumed under the sentencing guidelines.

Dispositional Departures

As noted above, 185 of the 920 cases sentenced were presumed prison sentences under the sentencing guidelines. Of those 185 cases, 116 (63%) were given the presumptive sentence and committed to prison. The remaining 69 cases (37%) were given a mitigated dispositional departure and placed on probation.

Of the 735 cases where the sentencing guidelines presumed a stayed sentence, 16 (2%) were given an aggravated dispositional departure and committed to prison. The remaining 719 cases received the presumptive stayed sentence and were placed on probation. As noted above, a stayed sentence where the offender is placed on probation might include up to a year of incarceration in a local facility as a condition of the probation.

Dispositional Departures

Presumptive Disposition	Sentence Received		Departure Rate
	Prison	Probation	
Prison – 185	116 (63%)	69 (37%)	Mitigated – 37%
Probation – 735	16 (2%)	719 (98%)	Aggravated – 2%
Total – 920	132 (14%)	788 (86%)	

Durational Departures on Prison Cases

Of the 132 cases sentenced to prison, 73 (55%) received the duration recommended under the sentencing guidelines. One case received a duration greater than that recommended by the sentencing guidelines and the remaining 58 cases (44%) received a sentence duration shorter than that recommended by the sentencing guidelines.

Durational Departures-Executed Sentences

Number of Executed Sentences	No Departure	Aggravated Departures	Mitigated Departures	Total Departure Rate
132	73 (55%)	1 (1%)	58 (44%)	45%

Total Departure Rate

The total dispositional departure rate for all 920 cases was 9%. For presumed prison cases the rate was higher at 37%, and for presumed stayed cases it was lower at only 2%. The total durational departure rate for all 920 cases was 13%. For presumed prison cases the rate was higher at 38%, and for presumed stayed cases it was 7%.

Any individual sentence might contain more than one kind of departure. A case where the sentencing guidelines presumes probation, if sentenced to prison but for a shorter duration than called for under the sentencing guidelines would be both an aggravated dispositional departure and a mitigated durational departure. Only 2% of all 920 cases were given a sentence that was both a dispositional and a durational departure. For presumed prison cases, 9% received a sentence that was both a dispositional and a durational departure. For presumed stayed cases only 1% received a sentence that was both.

The overall total departure rate (combining both dispositional and durational departures) was 20%, or 187 of the 920 cases sentenced received one or more departures. For presumptive prison cases, the total departure rate was the highest at 66%. For presumed stayed cases, the total departure rate was just 9%.

Total Departure Rate

Presumptive Disposition	Dispositional Departure	Durational Departure	Both	Total Departure Rate
Prison – 185	53 (29%)	54 (29%)	16 (9%)	123 (66%)
Probation – 735	11 (2%)	47 (6%)	6 (1%)	64 (9%)
Total – 920	64 (7%)	101 (11%)	22 (2%)	187 (20%)

Revocations to Prison

A revocation occurs when an offender placed on probation violates the conditions of that probation. A revocation can add additional sanctions to an offender's sentence or can result in the offender being sent to prison to serve their sentence.

Of the 920 DWI cases sentenced, 788 were initially given a stayed sentence. Of those 788 stayed cases, 24 (3%) were revoked, their sentences executed and the offender sent to prison. The average period of time between sentencing and revocation for all 24 cases was 5 ½ months.

Average Number of Months To Revocation by Criminal History Score

Criminal History Score	Average number of Months to Revocation	Number of Cases
0	6.0	4
1	4.2	7
2	7.4	8
3	4.0	1
4	9.5	1
6	4.0	1
7	2.0	1
8	1.0	1

Total	5.6	24
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Distribution of Cases Sentenced by Month

This report covers cases sentenced over a period of 17 months, from August 2002, when the law first went into effect, until the end of 2003. There was an average of 54 cases per month sentenced in that period of time. In 2002 (the first five months the new DWI law was in effect) there was an average of 21 cases sentenced per month. In 2003, on average there were 68 cases sentenced per month. The largest number of cases sentenced in 2003 occurred in the months of June and July at 80 cases per month. The smallest number of cases sentenced in 2003 occurred in February with 42 total cases sentenced.

Number of Cases Sentenced by Month

Month	Number of Cases Sentenced
August 2002	2
September 2002	5
October 2002	17
November 2002	31
December 2002	50
January 2003	61
February 2003	42
March 2003	82
April 2003	71
May 2003	64
June 2003	80
July 2003	80
August 2003	57
September 2003	86
October 2003	68
November 2003	56
December 2003	68
Total	920

Distribution of Cases by County

By far, the highest number of cases sentenced was in Hennepin County with 173, followed by Ramsey County with 86, Dakota County with 75, St Louis County with 49, and Anoka County with 48. These counties accounted for nearly half (48%) of all felony DWI cases sentenced in the state. Other counties with more than 20 felony DWI cases sentenced included Clay County with 32 cases; Mille Lacs and Polk Counties with 23 cases each; and Becker, Olmsted, and Washington Counties with 21 cases each. These six counties accounted for an additional 15% of all felony DWI cases sentenced in Minnesota.

A direct comparison of the geographic distribution of Felony DWI cases with other cases is not yet possible; however, we can compare all cases sentenced in 2002. When comparing felony DWI's sentenced through December 2003 to all felony offenses sentenced in Minnesota in 2002, Hennepin and Ramsey counties accounted for a smaller percentage of DWI cases sentenced and Greater Minnesota accounted for a larger number of cases.

Hennepin County sentenced 18.8% of the felony DWI cases in the state compared to 23% of all felony cases in 2002. Ramsey County sentenced 14.6% of all felony cases in 2002, compared to only 9.3% of felony DWI's sentenced through December 2003. The other metro counties were nearly the same sentencing 17.4% of all felonies in 2002, and 17.9% of all felony DWI cases. Conversely, Greater Minnesota sentenced a greater portion of all felony DWI's (53.9%) compared to all felonies sentenced in 2002 (44.9%).

Regional Distribution of Felony DWI Cases Sentenced Compared to all Offenses Sentenced in 2002

Region	Percent and Number of Felonies Sentenced in 2002	Percent and Number of Felony DWI's Sentenced through December 2003
Hennepin County	23.0% (2984)	18.8% (173)
Ramsey County	14.6% (1901)	9.3% (86)
Other Metro Counties	17.4% (2260)	17.9% (165)
Greater Minnesota	44.9% (5833)	53.9% (496)
Total	100% (12978)	100% (920)

Incarceration Rates by County

County	Number of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Aitkin	7	0	7 (100%)	0
Anoka	48	1 (2%)	44 (92%)	3(6%)
Becker	21	3 (14%)	18 (86%)	0
Beltrami	16	2 (13%)	13 (81%)	1 (6%)
Benton	8	0	8 (100%)	0
Big Stone	1	1(100%)	0	0
Blue Earth	9	3 (33%)	6(67%)	0
Brown	2	1 (50%)	1 (50%)	0
Carlton	15	1 (7%)	14 (93%)	0
Carver	7	0	7(100%)	0
Cass	11	2 (18%)	9 (82%)	0
Chippewa	4	0	3 (75%)	1 (25%)
Chisago	10	3 (30%)	6 (60%)	1 (10%)
Clay	32	6 (19%)	26 (81%)	0
Clearwater	2	0	2 (100%)	0
Cook	0	0	0	0
Cottonwood	0	0	0	0
Crow Wing	16	0	16 (100%)	0
Dakota	75	12 (16%)	62 (83%)	1 (1%)
Dodge	4	1 (25%)	3(75%)	0
Douglas	5	1 (20%)	4 (80%)	0
Faribault	2	0	2 (100%)	0
Fillmore	0	0	0	0
Freeborn	1	1 (100%)	0	0
Goodhue	7	1 (14%)	5 (71%)	1 (14%)
Grant	2	0	2 (100%)	0
Hennepin	173	27 (16%)	137(79%)	9 (5%)
Houston	4	0	4(100%)	0
Hubbard	1	0	1 (100%)	0
Isanti	2	0	1 (50%)	1 (50%)

County	Number of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Itasca	17	3 (18%)	14 (82%)	0
Jackson	1	0	1 (100%)	0
Kanabec	6	1 (17%)	5 (83%)	0
Kandiyohi	3	0	3 (100%)	0
Kittson	1	0	1 (100%)	0
Koochiching	3	2 (67%)	1 (33%)	0
Lac Qui Parle	1	0	1 (100%)	0
Lake	0	0	0	0
Lake of the Woods	3	0	3 (100%)	0
Le Sueur	4	0	3 (75%)	1 (25%)
Lincoln	0	0	0	0
Lyon	1	0	1 (100%)	0
McLeod	9	1 (11%)	7 (78%)	1 (11%)
Mahnomen	6	0	5 (83%)	1 (17%)
Marshall	4	0	4 (100%)	0
Martin	5	1 (20%)	4 (80%)	0
Meeker	0	0	0	0
Mille Lacs	23	6 (26%)	17 (74%)	0
Morrison	4	0	4 (100%)	0
Mower	7	0	6 (86%)	1 (14%)
Murray	1	0	1 (100%)	0
Nicollet	4	0	4 (100%)	0
Nobles	8	0	8 (100%)	0
Norman	1	0	1 (100%)	0
Olmsted	21	1 (5%)	20 (95%)	0
Otter Tail	12	1 (8%)	11 (92%)	0
Pennington	8	1 (13%)	7 (88%)	0
Pine	5	0	5 (100%)	0
Pipestone	1	0	1 (100%)	0
Polk	23	9 (39%)	13 (57%)	1 (4%)
Pope	0	0	0	0

County	Number of Cases Sentenced	Number and Percentage of Offenders		
		State Prison	Local Jail	Other Sanctions
Ramsey	86	15 (17%)	70 (81%)	1 (1%)
Red Lake	1	0	1 (100%)	0
Redwood	3	1 (33%)	2 (67%)	0
Renville	2	0	2 (100%)	0
Rice	13	1 (8%)	12 (92%)	0
Rock	2	0	2 (100%)	0
Roseau	3	0	3 (100%)	0
St Louis	49	8 (16%)	41 (84%)	0
Scott	14	1 (7%)	13 (93%)	0
Sherburne	12	4 (33%)	7 (58%)	1 (8%)
Sibley	3	1 (33%)	2 (67%)	0
Stearns	7	1 (14%)	6 (86%)	0
Steele	3	1 (33%)	2 (67%)	0
Stevens	0	0	0	0
Swift	2	0	2 (100%)	0
Todd	3	0	3 (100%)	0
Traverse	0	0	0	0
Wabasha	3	0	3 (100%)	0
Wadena	3	0	2 (67%)	1 (33%)
Waseca	4	0	3 (75%)	1 (25%)
Washington	21	3 (14%)	18 (86%)	0
Watsonwan	1	0	1 (100%)	0
Wilkin	0	0	0	0
Winona	3	0	3 (100%)	0
Wright	11	3 (27%)	8 (73%)	0
Yellow Medicine	4	1 (25%)	3 (75%)	0
Total	920	132 (14%)	761 (83%)	27 (3%)