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Jail Time for DWI Offenders in Minnesota: A Brief Survey of Practices

This information brief reports results of a survey on the jail sentences served by convicted DWI offenders. The survey sampling design was nonscientific, but the results nevertheless provide a general indication of jail sentences for DWI offenders in the state's ten judicial districts.

The information in Table 1 was gathered in early January 2000 upon legislative request. It is intended to serve as a *general indication* of the jail sentences currently being served by convicted DWI offenders in Minnesota. There is no centralized statewide depository in Minnesota containing court sentencing information for gross misdemeanor or misdemeanor DWI offenses.¹ Thus, the sentencing information presented in Table 1 (pages 4 and 5) was collected by telephone from a nonscientific, convenience sample of knowledgeable local officials from throughout the state, including city attorneys, judges, court administrators, and probation officers.²

An attempt was made to include at least one county or major city for each of the state's ten judicial districts. However, since this survey did not employ scientific sampling procedures, the reader *should not generalize* the data to the entire judicial district because the data for the county or city *might not be representative* of the entire judicial district. The exceptions would be the second and fourth judicial districts, since Ramsey and Hennepin counties, respectively, are coterminous with those districts. (Each column label in Table 1 clearly indicates the geographic area to which the data applies.)

Note that the data in Table 1 reflect the *executed* jail sentence, rather than either the *imposed* sentence or the jail time actually served. The following example distinguishes between these concepts. Upon convicting a person of a multiple repeat DWI offense, the court often *imposes* a jail sentence of one year (the maximum for a gross misdemeanor crime), but then *stays the*

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imposition of most of that sentence (say nine months or 275 days) and orders the remainder (90 days in this example) to be *executed*. The offender would *actually serve two-thirds* of the executed sentence (i.e., 60 of the 90 days). Typically, the stay of imposition is conditioned on the payment of a fine and court costs, as well as compliance with other conditions of probation. The most noteworthy finding of this study is that sentencing practices for DWI offenders appear to differ widely both among and within Minnesota ten judicial districts. The interviewees noted that many factors can affect the number of days jail time ordered for a DWI offender, including:

- how old the offender's prior DWI violations are;
- the perceived amenability of the offender to probation;
- the occurrence of probation violations and whether the system responds with revocation and incarceration;
- the degree of local jail crowding;
- plea bargaining agreements;
- judicial sentencing philosophies;
- whether the court adjusts the pronounced sentence length based on the amount of time the defendant has spent in pretrial detention (by law, the court must credit any time served in jail during arrest and/or pretrial detention);
- whether the court credits time spent in chemical dependency treatment; and
- certain unique defendant characteristics (e.g., poor health, employment status, needs of dependents, etc.).

To the extent that any general pattern of DWI jail sentencing exists statewide, it would appear to be loosely modeled after the mandatory minimum jail sentences specified in statute (see Table 2 on page 6).³ It is important to note that the statutory language setting the mandatory minimum jail terms also provides that the court may sentence offenders to the nonjail alternative of intensive supervision, and many courts do use that alternative, at least for part of an offender's sentence.

Several respondents noted that they and/or other authorities took into account the statutory minimums when devising their own local DWI sentencing guidelines or practices. In some localities typical jail sentences are longer than the mandatory minimums, while in others they are shorter. Some courts routinely impose significant jail sentences meeting or exceeding the mandatory minimums, but then, for offenders judged amenable to probation, stay the entire sentence (even for chronic offenders) pending successful performance in their county's intensive supervision program. Some courts mete out jail sentences consistent with the mandatory minimum jail terms, but give most offenders the option of serving half of their sentence while living at home under electronic alcohol monitoring (at the offender's expense) and allowing them

to leave home for work purposes. In some cases with unusual extenuating circumstances—such as a single parent with small children—a chronic offender may be sentenced exclusively to home detention. Some courts routinely credit time spent by the offender in an in-patient alcohol treatment program, while other courts do not. It should be noted that virtually all of these possibilities are within the framework of the mandatory minimum DWI sentencing requirements, since the statute permits sentencing repeat offenders to supervised probation with electronic alcohol monitoring in lieu of, or in addition to, an executed jail time.

ENDNOTES

1. The Office of the State Court Administrator receives and archives some gross misdemeanor DWI sentencing information on a statewide basis; however, according to a court spokesperson, that information arrives from the district courts in an aggregated form that does not enable the user to link an executed sentence to a DWI offender's DWI history score. The state court administrator also collects some individual level sentencing data for DWI offenders statewide; however, that information contains *imposed* sentences rather than *executed* sentences. The individual district courts, on the other hand, maintain individual cases files of DWI offenses which do contain both imposed and executed sentences, as well as the driving history for each convicted offender, though typically those files are in paper rather than electronic form and, thus, are not amenable to systematic sampling and review without great cost and effort. The driver's license data base of the Minnesota Department of Public Safety also contains detailed DWI offense history information for individual drivers—including offense conviction history—but it does not include court sentencing information.
2. In most districts, several phone calls were required to identify and reach an official knowledgeable about DWI sentencing practices. Typically, the district court administrators did not feel sufficiently familiar with sentencing practices to provide the requested information. Judges proved very knowledgeable, but few could be reached due to court duties. City attorneys were generally most familiar with sentencing practices; however, most of those contacted noted that sentencing practices differ considerably among localities within the judicial district and, thus, were hesitant to generalize beyond the city or county they serve. Finally, some probation officers contacted were also quite knowledgeable about sentencing practices within the county they serve. In Anoka County, the probation coordinator was able to systematically query the county data base to determine the actual executed sentences for DWI offenders at each offense level.
3. Minn. Stat. § 169.121, subd. 3d.

Table 1
Executed Jail Time for DWI Offenders in Minnesota: A Selected Jurisdiction within Each Judicial District

Offense #	Mandatory Minimum *	First District	Second District	Third District	Fourth District	Fifth District	Sixth District	Seventh District	Eighth District	Ninth District		Tenth District	
		Dakota County only (1)	Ramsey County (2)	Olmsted County only (3)	Hennepin County* (4)	Mankato only (5)	Duluth only (6)	Moorhead/Duluth only (7)	Kandiyohi County only (8)	Polk County only (9) <.20 AC >.20 AC		Anoka County only (10a)	Pine, Isanti, Kanabek, & Chisago Counties (10b)
2nd	30 days		20-30 days	10 days, plus 20 EAM**	0-30 days	30 days	2 days, plus 28 EAM	30 days	30 days	45 days (75 for aggravated)	60 days, plus 30 EAM		30 days
3rd	90 days	Safe Sts.*** or 120	45-60 days	30 days, plus 60 EAM	45-90 days	90-120 days	90 days	45 days, plus 45 EAM	45 days	60 days, plus 30 EAM	120 days, plus 60 EAM		60 days, plus 60 EAM
4th	180 days	Safe Sts. or 240	60-120 days	30 days, plus 150 EAM	120-180 days	120-180 days	180 days	90 days, plus 90 EAM	90 days	120 days, plus 60 EAM	240 days, plus 60 EAM	130 days (actual avg)	120 days, plus 120 EAM
5th	1 year	Safe Sts. or 1 year	180 days	90-120 days, plus 90-270 EAM	180 days-1 year	1 year	1 year	180 days, plus 180 EAM	180 days	240 days, plus 120 EAM	1 year	130 days (actual avg)	270 days, plus 270 EAM
6th	1 year	Safe Sts. 1 year	1 year	90-120 days, plus 90-270 EAM	1 year	1 year	1 year		180 days	1 year	1 year	164 days (actual avg)	

* The mandatory minimum sentences for DWI are specified in Minnesota Statutes section 169.121, subdivision 3d, and include the alternative of sentencing to intensive probation (see Table 2).

The authorities surveyed noted that first-time DWI offenders are rarely sentenced to an executed jail sentence, and almost never in excess of two days time.

** EAM refers to electronic alcohol monitoring.

*** Safe Streets intensive probation program.

The following footnote numbers correspond to the district court numbers shown in the column labels.

- 1 This is the sentence imposed. If an offender is deemed amenable to probation, the entire imposed sentence may be served under the county's Safe Streets intensive probation program. However, if the person fails the program—such as by testing positive for alcohol use at any time—the remainder of the sentence is generally ordered executed.
- 2 The data are from St. Paul, which follows Ramsey County sentencing guidelines. A spokesperson noted that judges frequently depart downward, especially by discounting older prior offenses. Not all of the stated jail time is served through incarceration in jail; rather, by judicial order, part of it may be served in the county's Sentence to Serve (STS) work crew program and part of it may be served in home monitoring (up to 150 days of a sentence, but not more).
- 4 Actual sentence varies considerably among judges. Sentences also vary depending on perceived amenability of the defendant to probation, as well as on jail bed availability. Defendants ordered into chemical treatment at public expense must spend 60 days in the workhouse to complete it, after which the defendant may be furloughed (released from jail) and placed on intensive probation.
- 6 A spokesperson noted that jail sentences for DWI offenders in this area typically were harsher before January 1, 1998, the effective date of the mandatory minimum sentences.
- 7 Typically, an offender may choose to serve half of the executed sentence living at home while submitting to electronic alcohol monitoring, provided the person is deemed amenable to probation and agrees to pay the \$8 to \$12 daily cost of the monitoring. A failure under EAM (i.e., a positive alcohol reading) results in return to jail for the remainder of the executed sentence. The defender may decline the EAM and spend the additional time in jail.
- 10a Anoka County Probation was able to calculate the following actual averages for jail days ordered: 4th DWI offense - 130 days; 5th - 131 days; 6th - 164 days; 7th - 164; 8th - 191 days; and 9th - 310 days.
- 10b In lieu of EAM, the defendant may be sentenced to an intensive probation program, depending on availability.

Table 2
Mandatory Minimum Sentences for Gross Misdemeanor DWI Offenses

Type of Gross Misdemeanor Offense	Mandatory Minimum Sentence
Alcohol concentration equal to or greater than 0.20 percent; or Child endangerment; or Failure to stop as required at railroad crossing. (No prior DWI record required)	30 days of incarceration or eight hours of community work service for each day less than 30 the offender is ordered to serve in jail; or Participation in intensive probation program Court may waive this mandatory sentence if written reasons are stated on the record and if offender is ordered to serve at least 48 hours consecutively in jail or 80 hours of community work service
Second DWI offense within five years of prior impaired driving conviction or license revocation	30 days of incarceration or eight hours of community work service for each day less than 30 the offender is ordered to serve in jail; or Participation in intensive probation program Court may waive this mandatory sentence if written reasons are stated on the record and if offender is ordered to serve at least 48 hours consecutively in jail or 80 hours of community work service
Third DWI offense within ten years of prior conviction or license revocation	90 days of incarceration, at least 30 days of which must be served consecutively; or Participation in an intensive probation program that requires the offender to serve at least six days in jail Court may order that 60 days of the 90-day minimum jail penalty be served on home detention or in an intensive probation program
Fourth DWI offense within ten years of prior impaired driving conviction or license revocation	180 days of incarceration, at least 30 days of which must be served consecutively; or Participation in an intensive probation program that requires offender to serve at least six days in jail Court may order that 150 days of the 180-day minimum jail penalty be served on home detention or in an intensive probation program
Fifth DWI offense within 15 years of prior impaired driving conviction or license revocation or sixth or subsequent DWI offense within the offender's lifetime	One year of incarceration, at least 60 days of which must be served consecutively; or Participation in an intensive probation program that requires offender to serve at least six days in jail Court may order that 305 days of the one-year minimum jail penalty be served on intensive probation using an electronic monitoring system or, if such a system is unavailable, on home detention