How Mandatory Minimums Shape Charging, Plea, and Sentencing Decisions

Practitioner Perspectives on Assault 2, Aggravated Robbery, and Failure to Register

Presentation for the Task Force on Mandatory Minimum Sentences
April 10, 2026

Julia Laskorunsky, PhD | Robina Institute | University of Minnesota Law School

University of Minnesota
Driven to Discover®

Introduction and Study Overview

Study Goal: to examine offenses with very high downward departure rates for MSGC.

This presentation draws on qualitative interviews to help the Task Force understand how mandatory minimums influence real-world charging, plea, and sentencing decisions.

Focus offenses: Assault 2, Aggravated Robbery, and Failure to Register as a Predatory Offender — all carry mandatory minimums and exhibit high departure rates.

Methodology

20 semi-structured interviews

- Prosecutors
- Defense attorneys
- Dispositional advisors

Thematic analysis of perceptions and reasoning

> *Although downward departures can only be granted by judges, prosecutors and defense attorneys play a major behind-the-scenes role in shaping whether a departure occurs — and mandatory minimums are a central factor in those negotiations.*

How Mandatory Minimum Eligible Cases Move Through the System

Understanding the decision points where mandatory minimums can exert pressure

1 Charging

Prosecutor chooses what to file. May charge lower to avoid triggering mandatory minimum.

2 Plea Negotiation

Both sides weigh evidence, exposure, and what the minimum requires. Most cases resolve here.

3 Trial or Straight Plea

When negotiations fail, defendant goes to trial or pleads to the charge and defense asks the judge directly for departure.

4 Sentencing

Judge decides: impose the mandatory minimum or grant departure, where available.

Charge amendments (reducing the charge to avoid the minimum) vs. departures (keeping the charge but sentencing below the minimum) — both are workarounds, but they look very different in the data.

Failure to Register as a Predatory Offender

Practitioner Perspectives on the Mandatory Minimum

Failure to Register — Overview

Severity Level

I

(sex offense grid)

1st Offense Min.

1 yr + 1 day

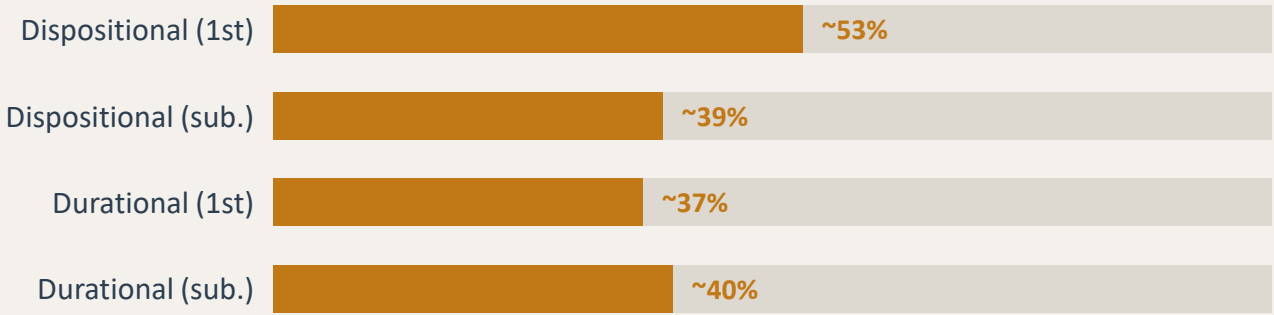
mandatory prison

Subsequent Min.

2 years

mandatory prison

Departure Rates



Why Practitioners Depart: The Registration Statute

The statute is complex:

- Registration lasts at least 10 years, potentially life
- Many requirements have a 5-day filing window
- Homeless registrants must report to police weekly
- Each violation extends registration by 5 years
- Does not require conviction of a registrable offense

> *"When you're homeless and you lose your residency, you have to report to your local law enforcement agency within a very short period of time. And people don't do that because they're worried about shelter, food, water, medicine…And then with every charge…you now have additional time where you have to statutorily register. So this perpetual cycle where you'll never not have to register. And so really what we end up doing is prosecuting indigency, right?"*
>
> **— Prosecutor (Urban)**

> *"A lot of times there's confusion over what the obligations are. And the client is honestly trying to comply with the law and makes a mistake. And it's not an intentional one. So I think [prosecutors] look at their cases and they just think it's not worth going to trial over."*
>
> **— Defense (Rural)**

FTR: Proportionality and Harm Concerns

No Direct Harm

“You could have five, six prior felony fleeings in a motor vehicle and it’s still presumptive probation, but failure to register, any single one, and you have to argue for probation and it just doesn't seem to fit the harm involved.”

— Defense (Rural)

Underlying Offense Matters

“It’s a world of difference between someone who’s been convicted of a sex offense… not notifying authorities where they’re at. To me, that’s a higher public safety risk than the individual whose crime technically is not on the list of registration offenses.”

— Prosecution (Rural)

First-Time FTR

“If genuinely all they have on their record is a sex offense that got them there and the failure to register, they’re not going to prison.”

— Defense (Rural)

FTR: Practitioner Sentiment on the Mandatory Minimum

Near-universal negative sentiment toward the mandatory minimum — especially for first-time FTR offenses

- Almost all practitioners thought the offense was appropriately ranked — the issue is the mandatory minimum, not the severity level
- Prosecutors were much less likely to offer dispositional departures for subsequent FTRs, but were still willing to offer durational departures.

"I'm less enthused about the mandatory minimum. Part of me says you have somebody who's registering because they committed a serious crime… and we need to know where they are. But again, there are situations where yes, we do know where you are, but you're not doing it through the correct channels. And so now to say you have to go to prison. I don't necessarily agree with that one. And that's why I think prosecutorial discretion on those cases is so important."

— Prosecutor (Rural)

Assault in the Second Degree

Practitioner Perspectives on the Mandatory Minimum

Assault 2 — Overview

Sub. 1: Dangerous weapon

Sub. 2: Dangerous weapon + bodily harm

Severity Level: 6 (with MM override)

Mandatory Minimums:

	First Offense	Subsequent
Non-firearm	1 year + 1 day	3 years
Firearm	3 years	5 years (no departure)

Departure Rates:

- Dispositional: ~57% (Sub. 1) / ~43% (Sub. 2)
- Durational: ~20% (Sub. 1) / ~22% (Sub. 2)

Assault 2: The Wide Statutory Sweep Problem

The same charge — and the same mandatory minimum — covers an enormous range of conduct

Most serious end

Multiple gunshots fired, victim injured — clearly prison-worthy conduct

Least serious end

Waving a gun during road rage, butter knife in a family dispute, "fear only" assault with no injury

"The dangerous weapon is… a butter knife… two sisters fighting… she's jamming this butter knife through the opening in the door…saying 'give me my stuff". I don't think that's on par with [a stranger] pointing a gun at your head." — Defense (Urban)

Assault 2: Pain Points with the Mandatory Minimum

A majority of defense attorneys and prosecutors expressed negative sentiment toward the mandatory minimums applied to Assault 2 cases.

Too harsh for low-end cases:

"If I have a guy coming in on assault two, and he has no criminal record history, and the presumptive with no criminal record history is 48 months, and maybe he just flashed the gun at somebody… and they have no criminal record history, likely nobody's going to send them to prison for 48 months."

— Prosecutor (Urban)

Not designed for the full range:

"Mandatory minimums are so hard because every case is so different… it does sort of hamstring you at times when you have a case that, boy, in this specific situation, that's not what I think anyone was talking about."

— Prosecutor (Urban)

Assault 2: How the Mandatory Minimum Drives Behavior

Charge Amendments

Prosecutors settle cases down to threats of violence to avoid triggering the mandatory minimum when they believe prison is unwarranted.

"We do settle a fair number of [assault 2] cases down to the threats of violence… If we're going to resolve it where we think that non-prison is appropriate, we're going to resolve it with a guideline to stay."

— Prosecutor (Rural)

Main Reason for Downward Departure

"With assault in the second degree, it's certainly that [judges and prosecutors are] trying to get around the mandatory minimum."

— Defense (Rural)

Judges More Amendable

In low-harm, low-history cases, judges depart even when prosecutors formally object.

"...somebody with a first offense or second offense, and they're arguing for probation, and I'm arguing for prison. The judge is going to give them probation and then give them some workhouse time."

Assault 2: The Felon-in-Possession Overlay

Mandatory minimums don't operate in isolation — they stack

Firearm assault 2 cases frequently carry a second mandatory minimum through the felon-in-possession or ineligible-person-in-possession statute (60 months). This creates layered dynamics:

Charge Bargaining Lever	Prosecutors let defendants plead to felon-in-possession and dismiss the assault (or vice versa), using the layered mandatories as negotiating tools.
Compounding Severity	A defendant facing both a 36-month assault 2 mandatory and a 60-month felon-in-possession mandatory has enormous pressure to accept any deal offered.
Hidden from the Data	When a defendant pleads to felon-in-possession instead of assault 2, the assault departure rate drops — but the mandatory minimum dynamics haven't changed.

> *"A lot of the assault twos also have a charge of felon in possession… which carries the 60-month mandatory minimum. A lot of times they'll let you plead to that and argue the departure and then dismiss the assault." — Defense (Urban)*

Aggravated Robbery

Practitioner Perspectives on the Mandatory Minimum

Aggravated Robbery — Overview

Taking personal property from someone by force or threat of force (dangerous weapon and/or inflicting bodily harm)

Severity Level: 8 (Presumptive 4-year commit)
Mandatory Minimums:

	First Offense	Subsequent
Non-firearm	1 year + 1 day	3 years
Firearm	3 years	5 years (no departure)

Aggravated Robbery: How the Mandatory Minimum Shapes Practice

Weak Evidence + Hard Mandatory = Forced Charge Down

*"…*sometimes if you know a weapon isn't found... we're not going to be able to show a knife or a gun because they got away and either hid it or whatever. So in those situations, it's much more likely to go down to a simple robbery. *I would rather have this guy on probation for…even a lesser offense and keep tabs on them then go to trial and have…a weak case that I think I could lose." — Prosecutor (Urban)*

The Plea Incentive Problem

Hard mandatory minimums can undermine the plea system that the courts depend on to function.

If the sentence is the same whether you plead guilty or lose at trial, there is no reason to plead. Defendants take their chances at trial, consuming court resources that could be used for more serious cases.

> *"If the mandatory minimum is the mandatory minimum, and you get that when you plead guilty or you get that after you have a trial, someone needs to give an incentive to a defendant to not have that trial because we don't have the capacity to have as many trials as we do."*
>
> **— Defense (Suburban)**

> *"We're going to tell our clients there's absolutely no disincentive. Let's go to trial."*
>
> **— Defense (Urban), on hard mandatories.**

> *"If I'm trying a [mandatory minimum] felon in possession case that week, that means we're not trying a child sex assault case that week."*
>
> **— Prosecutor (Urban)**

Equity Concerns Around Mandatory Minimums

> *"I think it's discriminatory. I think it results in racial and cultural inequities. If you just look at charging with weapons, that non-white individuals are charged with these offenses more than white individuals… I think we have huge problems with this mandatory minimum."*
>
> **— Defense (Rural), on the Assault 2 mandatory minimum**

Upstream Disparities

Practitioners noted that if there are disparities in who gets stopped, charged, and prosecuted for weapon offenses, mandatory minimums amplify those disparities by removing judicial discretion to account for individual circumstances.

Socioeconomic Dimension

Several practitioners observed that defendants with resources — private attorneys, treatment access, stable housing — are better positioned to secure departures. Mandatory minimums may fall hardest on those least able to navigate the system.

While this study was not designed to measure disparities, practitioners raised equity concerns unprompted. The Task Force may want to examine how mandatory minimums interact with existing disparities in charging and prosecution.

Practitioners Are Confused

The "soft mandatory" vs. "hard mandatory" distinction creates systemic confusion

"Soft" Mandatory (can depart)

e.g. non-firearm (1 yr + 1 day) and first-time firearm (3 yrs).

"Hard" Mandatory (no departure)

e.g. Subsequent 609.11 offense (5 yrs)

> *"I just think it's really confusing because it clashes with the statutory mandatory minimum… It's like secondary assault is in its own category. Like it doesn't even fit on the grid because of the mandatory minimum." — Defense (Suburban)*

Appellate perspective:
Appellate attorneys report that judges sometimes erroneously believe they cannot depart from a "soft" mandatory, and that plea agreements are sometimes legally invalid because defendants were promised probation the mandatory minimum doesn't actually allow.

Other Cross-Cutting Themes

Patterns across all three offenses

Wide Sweep + Rigid Minimums = Workarounds

When a mandatory minimum applies equally to the most and least serious versions of an offense, practitioners find ways around it – either through downward departures or charge amendments.

Charge Amendments as Shadow Sentencing

Reducing charges to avoid minimums means the sentencing guidelines grid isn't capturing what's actually happening. The "real" sentencing decision is being made at the charging/plea stage.

First-Time Offenders Are the Biggest Pain Point

Across all three offenses, practitioners view mandatory prison for first-time or low-history defendants as the most problematic application of the minimums.

Proportionality Concerns

Practitioners repeatedly compare these offenses to others on the grid that carry lower consequences for what they perceive as comparable or greater harm.

A Closing Consideration

> *A carefully calibrated grid – consideration of harm, blameworthiness, stat max, and proportionality.*

> *Mandatory minimums sit outside that framework as a legislative override.*

> *An invitation to weigh how the mandatory minimums interact with a well-established guideline system.*