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# Many convicted of indecent assault in Mass. avoid incarceration

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By **Matt Rocheleau**

GLOBE STAFF AUGUST 31, 2016

The majority of Massachusetts defendants with no criminal records, or only minor ones, have gotten no time behind bars for convictions on indecent assault and battery charges at the district court level in recent years.

A national outcry has been raised in the wake of the sentencing of David Becker, 18, of East Longmeadow, who was initially charged with rape but ultimately pleaded guilty in Palmer District Court to lesser charges of indecent assault and battery on two former high school classmates who were unconscious.

Judge Thomas Estes [sentenced](#) Becker, who had no prior record, to serve two years of probation and allowed him to serve it in Ohio, where he planned to attend college.

Critics have [decried the sentence as too lenient](#).

A Globe review of state court system statistics found 586 cases in which defendants with either no criminal record, or one defined by the system as "[minor](#)," were convicted in district court of indecent assault and battery during the 12-year period that concluded at the end of June 2013.

In 259 of the cases, or 44 percent, defendants' sentences included some time incarcerated.

In the rest of the cases, the defendants avoided incarceration, the data shows.

The [state's sentencing guidelines](#) recommend that defendants with no, or minor, records receive anywhere from two years of incarceration to no time behind bars for a conviction of indecent assault and battery. Judges aren't required to follow the guidelines.

Sentencing decisions can vary widely based on a host of circumstances specific to each case. Experts say the details of each case are critical.

Judges carefully weigh multiple factors, including the specific facts of the crime; sentencing recommendations from prosecutors, victims and defense attorneys; and whether the defendant cooperated with prosecutors, showed remorse, has a criminal past, and is likely to reoffend.

In Becker's case, prosecutors recommended a two-year jail sentence, while Becker's lawyer asked that the case be continued without a finding and that Becker serve a year of probation and be allowed to attend college in Ohio.

Estes, the judge, said in court that sentencing Becker was a tough call.

"This does not present an easy decision for the court," Estes said, according to a transcript of the Aug. 15 hearing in which Becker pleaded guilty and was sentenced.

Estes outlined several factors influencing his decision.

He said he had been swayed in part by one victim's statement that she did "not want to be responsible for ruining [Becker's] life."

"That is moving to the court," Estes said.

Finding Becker guilty "given [his] position in life ... would slam a lot of doors," Estes said. He also

said Becker had already faced significant “collateral consequences to simply being charged with the offense in the first place.”

Though he pleaded guilty, Becker was not actually convicted. That’s because Estes ordered that the case be continued without a finding, meaning that as long as Becker successfully completes his two-year probation sentence without any violations, the charges will ultimately be dismissed.

James Leydon, Hampden district attorney’s spokesman, said Becker was allowed to plead down from rape charges to indecent assault and battery “due to mitigating factors surrounding the case,” but Leydon declined to elaborate.

The incarceration rate figures the Globe reviewed come from [annual reports](#) by the Executive Office of the Trial Court.

The reports did not detail specific cases. The state trial court office, which is exempt from public record disclosure laws, has declined to release further details. The most recent year for which data was available was fiscal year 2013.

When indecent assault and battery cases made their way to superior court, rather than district court, defendants were more likely to serve time. But a substantial number still avoided incarceration.

Superior court defendants with no, or minor, records were put behind bars 54 percent of the time.

If defendants had records deemed “moderate” or worse, their incarceration rates were at least 67 percent in district court and at least 78 percent in superior court.

The Globe previously reported, based on the same court data, that more than three dozen people convicted of rape in Massachusetts in recent years [received no prison time](#).

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