

# Minnesota Sentencing Guidelines Commission

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## Stays of Adjudication and Aggravated Dispositional Departures February 19, 2015

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**Issue:** Some practitioners are unaware that it is an aggravated dispositional departure to execute, immediately upon revocation of a stay of adjudication, an otherwise presumptively stayed sentence. It is a departure regardless of the number of previous attempts by the court to restructure the stay of adjudication before revocation. Guidelines staff contacted 10 judges in its last quarterly departure request cycle who were unaware that they had departed. (See the attached departure worksheet and example reply letter, which contains an exposition of the legal principles that support the conclusion that this sort of sentence constitutes a departure.)

**Guidelines Considerations:** If the initial sentence following felony conviction is commitment to the Commissioner of Corrections and the Guidelines recommended a stayed sentence, the decision to revoke a defendant and sentence to prison is an aggravated dispositional departure. MSGC staff notes “revocation of a stay of adjudication” as the reason for departure, unless the court offers further guidance.

**Constitutional Considerations:** The existence of these inadvertent aggravated dispositional departures raises the possibilities (1) that the Constitution requires the facts necessary to support such Guidelines departures to have been found by a “ ‘jury verdict or admitted by the defendant,’ ” *State v. Shattuck*, 704 N.W.2d 131, 141 (Minn. 2005) (quoting *Blakely v. Washington*, 542 U.S. 296, 303 (2004)), and (2) that some courts may be imposing such departures without properly conducting the required fact-finding by a jury, or accepting the required admissions or waivers from the defendant.

**Questions for the Commission:** Does the Commission wish to make it explicit in the Guidelines that a revocation of a stay of adjudication to a prison commitment is an aggravated dispositional departure?

**Note:** Possible modifications in the first paragraph of section 2.D.1, below, are intended to clarify the general departure language. The staff suggestion is unrelated to stays of adjudication.

## Possible Guidelines Modifications to Section 2.

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### C. Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. \* \* \*

*2.C.10. Because a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered.*

\* \* \*

### D. Departures from the Guidelines

1. Departures in General. The sentences ~~ranges~~ provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departuresentence outside the appropriate range on the applicable Grid.

The court may depart from the presumptive disposition or duration provided in the Guidelines, and stay or impose a sentence that is deemed to be more appropriate than the presumptive sentence. A pronounced sentence for a felony conviction that is outside the appropriate range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines. A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.

- a. Disposition and Duration. Departures with respect to disposition and duration are separate decisions. A court may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa. A court departing from the presumptive disposition as well as the presumptive duration has made two

separate departure decisions, each requiring written departure reasons.

- b. Aggravated Departure. When imposing a sentence that is an aggravated departure, it is recommended that the court pronounce a sentence proportional to the severity of the crime for which the sentence is imposed and the offender's criminal history, and take into consideration the purposes and underlying principles of the Guidelines.
- c. Departure Report. In exercising the discretion to depart from a presumptive sentence, the court must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence. The reasons must be stated in the sentencing order or recorded in the departure report and filed with the Commission.
- d. Departure Reasons. Because departures are by definition exceptions to the Guidelines, the departure factors in this section are advisory, except as otherwise established by case law.
- e. Revoked Stay of Adjudication. When a felony stay of adjudication is vacated and conviction is entered, the Guidelines must be applied. To the extent that the sentence pronounced immediately following a revocation of a stay of adjudication is contrary to the Guidelines presumptive sentence, that sentence is a departure.

\* \* \*

**2.D.106.** *The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and Comment 2.C.10). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and "revocation of a stay of adjudication" will be noted as the reason for departure, unless the court offers another explanation.*

\* \* \*

# MSGC REQUEST FOR DEPARTURE REPORT

Offender Name (Last, First, Middle)	County	District Court Case No.	Count No.
THE HON.	4/9/2014	1/31/2012	2
Judge Name	Sentence Date	Date of Offense	Date of Request
THE HON.	4/9/2014	1/31/2012	11/21/2014

### Conviction Offense

Offense Modifiers (If Applicable)				
TITLE OF OFFENSE	MN STATUTE No.	SEV. LEVEL	CUSTODY Pt.	CHS (INCL. CUST.)
DRUGS - 5TH DEGREE - POSSESS SCHEDULE 1,2,3,4 - NOT SMALL AMOUNT MARIJUANA	152025210	2	0	0
Presumptive Sentence – MSGC records indicate the following presumptive guidelines sentence:	Pronounced Sentence – MSGC records indicate that the following sentence was pronounced:			
STAY 12.033 Mos.	12 MOS. AND 1 DAY PRISON			

### Type of Departure

Our records indicate that the sentence pronounced in the above case was a departure from the presumptive sentence under the Sentencing Guidelines as indicated below.

#### AGGRAVATED DISPOSITION

Please indicate how the sentence was imposed if the sentence was an aggravated departure.

- Jury determination of aggravating factors       Defendant waived right to jury determination of aggravating factors

### Reason(s) for Departure

Please complete Section 1 or Section 2 to indicate if the presumptive sentence or pronounced sentence is correct.

**1. No Departure in this Case.** Check one or more of the following:

- Criminal History score listed above is incorrect. The correct criminal history score is: \_\_\_\_\_.
- Severity Level listed above is incorrect. The correct Severity Level is: \_\_\_\_\_.
- Sentencing information listed above is incorrect. The correct pronounced sentence is: \_\_\_\_\_.

Other information listed above is incorrect. (Please explain below):

**2. Sentence Imposed or Stayed is a Departure.** Please do one of the following: 1. Check the appropriate reason(s) listed on page 2 of this form; 2. Attach a copy of the Departure Report; 3. Write the reason(s) in the space below; or 4. Attach the relevant pages from the sentencing transcript.

↓ Δ ORIGINALLY RECEIVED A STAY OF ADJUDICATION (152.18),  
 ↓ THEN VIOLATED PROBATION ON 3 OCCASIONS; AFTER A  
 CONTESTED VIOLATION HEARING, THE COURT MADE FINDINGS  
 PER AUSTIN, REVOKED THE STAY OF ADJUDICATION &  
 EXECUTED Δ'S REMAINING SENTENCE. THIS WAS A PV  
 DISPOSITION.

MSGC use:  
270545

Please forward this form to the Commission's office by 12/19/2014.  
If additional time is needed, please contact our office.

Please send to: Minnesota Sentencing Guidelines Commission      Voice: (651) 296-0144  
 309 Administration Building, 50 Sherburne Ave.      Fax: (651) 297-5757  
 St. Paul, Minnesota 55155      Email: [sentencing.guidelines@state.mn.us](mailto:sentencing.guidelines@state.mn.us)

12/9/14

# Minnesota Sentencing Guidelines Commission

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## *Example Letter*

[Date]

The Honorable Judge

Re: Departure Report

District Court file no. xx-xx-xx-xxxx

Dear Judge:

Thank you for your December 9, 2014, departure report in the above-captioned case. In it, you opine that the executed sentence was not an aggravated dispositional departure because the defendant had originally been sentenced to a stay. The stay, in this case, was a stay of adjudication.

Please be advised that the Minnesota Sentencing Guidelines Commission respectfully takes a different view. A felony conviction—which occurs when a plea, verdict, or finding of guilty is accepted and recorded by the Court<sup>1</sup>—is prerequisite to the need for a sentencing worksheet,<sup>2</sup> the requirement of a felony sentencing hearing,<sup>3</sup> and the application of the Minnesota Sentencing Guidelines.<sup>4</sup> A stay of adjudication, by contrast, is not a conviction,<sup>5</sup> and therefore does not implicate the Minnesota Sentencing Guidelines.

It is our view, then, that the initial sentence following felony conviction in this case was commitment to the Commissioner of Corrections, contrary to the Guidelines presumption.

Accordingly, please be advised that the Minnesota Sentencing Guidelines Commission will record the sentence in this case as an aggravated dispositional departure from the

Guidelines. We will note “revocation of a stay of adjudication” as the reason for departure, unless you wish to offer us further guidance.

Please contact me if have any questions or concerns about this case.

Respectfully submitted,

Nathaniel J. Reitz, Executive Director  
Minnesota Sentencing Guidelines Commission  
651-757-1722 | [nate.reitz@state.mn.us](mailto:nate.reitz@state.mn.us)

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<sup>1</sup> See Minn. Stat. § 609.02, subd. 5; *cf.* Minn. R. Crim. P. 27.03, subd. 7.

<sup>2</sup> Minn. Stat. § 609.115, subd. 1(e) & 2a.

<sup>3</sup> Minn. Stat. § 244.10, subd. 1.

<sup>4</sup> Minn. Sentencing Guidelines §§ 1.A. & 2.

<sup>5</sup> See, e.g., *State v. C.P.H.*, 707 N.W.2d 699, 703 (Minn. Ct. App. 2006).