

Minnesota's Criminal History Score: Philosophical and Historical Background
Presentation to the Minnesota Sentencing Guidelines Commission
October 12, 2017

Professor Richard S. Frase,
University of Minnesota Law School
Co-Director, Robina Institute of Criminal Law and Criminal Justice

1. Overview – Are prior record enhancements based on just deserts, on public safety, or both?
 2. The Commission's 1980 Report to the Legislature – “modified just deserts” philosophy: sentences in proportion to offense and prior record; offense is primary (record score is *capped*)
 3. 1984 Three-Year Evaluation Report – retribution adopted as the “primary sentencing goal,” but the Commission also noted public safety goals served by prior record enhancements (while citing research on the limited deterrence & incapacitation benefits of greater sanction severity)
- Dale Parent (1988) observes that time and expense were barriers to developing a risk-based sentencing system; yet he also acknowledges the view that priors have no relevance to desert.
4. Legislative Intent in 1978 – “substantial consideration” of prior practice; MSA 609.01 goals
 5. Non-desert Goals Implicit in Guidelines Rules – stay conditions & revocations; parsimony; no limits on plea concessions; calculation of prior convictions as of the date of sentencing
 6. Non-desert Goals Implicit in Case law & Practice – amenability departures; the Hernandez rule; consistently greater frequency of downward than upward departures
 7. 1989 Legislation – public safety as the Commission's primary consideration; numerous other laws have targeted dangerous offenders, while also endorsing amenability (but still no change in MSA 609.01; and public safety is also served by sentences in proportion to crime seriousness)
 8. Conclusion – the Guidelines, including the role of criminal history, have always had multiple sentencing purposes, with offense proportionality and offender risk each having a substantial role in determining the form and severity of punishment; proportionality sets outer limits, within which offender risk and parsimony operate in setting specific sentences (“limiting retributivism”)