

Memo

Date: September 30, 2025

To: Members of the Sentencing Guidelines Commission

From: Kelly Lyn Mitchell, Chair

Re: Steering Committee Proposal on Departure Reasons

Overview

The Steering Committee report presented to the Sentencing Guidelines Commission in August included one proposal – Proposal #7 related to departure reasons – that did not have full consensus. The proposal sought to eliminate a case law distinction limiting the types of departure reasons that could be used for durational and dispositional departures. While the proposal did not earn consensus at the August meeting, some members requested additional research. However, due to the complexity of the research needed to fully inform the Commission on this issue, **I am withdrawing the proposal from consideration this year and instead request that the Commission consider a modification to the newly proposed departure reason for individuals with no prior record.**

Departure Types and Reasons

There are two types of departures under the Sentencing Guidelines: durational and dispositional.

- A “durational” departure occurs when the court orders a prison sentence, but the length of the sentence is shorter or longer than the sentencing range listed in the applicable cell on the applicable grid.
- A “dispositional” departure occurs when the court orders a disposition other than that called for on the grid (i.e., the court orders probation when the guidelines call for incarceration or vice versa).

The Sentencing Guidelines provide that “[t]he court must pronounce a sentence of the applicable disposition and within the applicable prison range unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines § 2.D.1. The Sentencing Guidelines includes a nonexclusive list of departure reasons, which are circumstances that may support a departure. See Minn. Sent. Guidelines § 2.D.3. However, the Guidelines do not specify which reasons may be used to support the two different types of departures.

Currently in case law there is a divide in the types of departure reasons that may be used to support durational and dispositional departures. In general, case law indicates that durational departures must be supported by substantial and compelling reasons indicating that “the defendant’s conduct was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (internal citations omitted) Thus, case law states that only *offense-related* factors can support durational departures. In contrast, case law indicates that the reasons that can support dispositional departures are factors related to the individual such as particular amenability to probation or treatment, remorse, and age. *Id.* at 533.

As the Supreme Court stated in *State v. Heywood*, “when justifying only a *dispositional* departure, the trial court can focus more on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” 338 N.W.2d 243, 244 (Minn. 1983).

Steering Committee Discussion

The discussion in the Steering Committee centered on the rigidity of this distinction. Members were especially concerned about the inability to utilize factors related to the individual for durational departures. As the Supreme Court stated in *State v. Solberg*, “[t]he requirement that aggravating or mitigating factors must relate to the seriousness of the offense—and not to the characteristics of the offender—narrows the range of factors that may justify a durational departure.” 882 N.W.2d 618, 624 (Minn. 2016).

Steering Committee members discussed example cases in which a prison sentence was appropriate given the seriousness of the offense, but where the length of the presumptive sentence did not seem appropriate given the specific circumstances of the individual. Some individual characteristics discussed included the person’s age, especially with regard to youth, or cases in which the individual otherwise had no prior record. The Steering Committee also considered whether some of the high dispositional departure rates might be mitigated if courts had the flexibility to impose durational departures instead. Based on these discussions, the Steering Committee put forward two proposals. The first proposal was intended to clarify Commission intent that factors relating to the individual *could* be used for durational departures. The second proposal established a new departure reason for individuals with no prior record.

There was considerable debate regarding the first proposal at the August meeting. Some members were concerned about amending the guidelines in a way that could upend decades of established case law. Others were concerned that the case law may not have been grounded in Commission intent. While the proposal did not gain consensus at that meeting, some members requested additional information, including research explaining the origin of the distinction in case law between the reasons that may be used to support durational and dispositional departures.

It takes considerable time and effort to trace a tenet of case law back to its origin. Though some of that work has been done, it is also emerging that the case law is nuanced. Under the case law, some departure factors can support both dispositional and durational departures (e.g., remorse), whereas others appear to only be available for one type of departure or the other. Because of the complexity, I have concluded that more research would be necessary to clearly map these distinctions and provide the Commission with a full picture of the applicable case law. However, that degree of research would take more time than the Commission currently has within this year’s amendment cycle. For that reason, **I am withdrawing the proposal from consideration this year.** If the Commission continues to be interested in this proposal, we can ensure that the additional research is completed and take the issue back up next year.

Proposed Revision to New Departure Factor

The withdrawal of the first proposal affects the utility of the second proposal. Under existing case law, lack of a criminal record is generally viewed as an offender-related factor relevant to whether the individual is particularly amenable to probation. If it were to be adopted, pursuant to case law, the court would only be able to use it for dispositional departures. The intent of the Steering Committee in creating this factor was to also permit its use for durational departures.

To maintain that intent, I would propose further amending it by adding the underlined sentence as follows:

(10) The person being sentenced has no prior criminal conviction or stay of adjudication. A criminal history score of zero is not sufficient to qualify for this factor. This factor is not available if the current offense is ranked at severity level 10 or 11 on the Standard Grid or is on the Sex Offender Grid. In qualifying cases, this factor may support a dispositional or durational departure.