

Staff Information Paper

In Practice: Offender-Related and Offense-Related Reasons for Departures

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There is a rule—in case law, not in the Sentencing Guidelines—that “offender-related” reasons may be used to support only dispositional departures from the Sentencing Guidelines, not durational departures. Among its other recommendations in its July 30, 2025, report, the Comprehensive Review Steering Committee asked the Commission to consider new Guidelines language relaxing this rule.¹ While the suggestion did not earn the Commission’s consensus at its August meeting, some members were interested in more information. This staff paper discusses how offender-related and offense-related reasons have been used to depart.

Analysis

The information provided in this analysis is as follows:

- Cases sentenced in 2022 and 2023 that received either a dispositional departure or durational departure;
- Cases that received both a dispositional and durational departure have been excluded from the analysis;
- Departure reasons are organized into three categories – Offender-Related, Offense-Related, and “Other”; and
- The departure reasons that belong in each category are listed on page 3 for reference.

¹ As drafted, the new Guidelines language would have read, “[2.D.1.d](2) Courts have historically limited the applicability of departure factors classified as ‘offender-related’ to dispositional departures. While the sentencing court may find such analysis useful to its identification and articulation of substantial and compelling reasons to support a departure, its decision to depart from the presumptive disposition, duration, or both, should ultimately be based on whether the identified departure factor reasonably and logically supports such a decision.” Some of this language is adapted from Henry W. McCarr & Jack S. Nordby, *Minnesota Practice, Criminal Law and Procedure* § 36:42 (4th ed. 2024).

The Guidelines have no comparable lists of offender-related vs. offense-related factors, nor do the Guidelines distinguish between factors that may support only a dispositional or durational departure. The only suggestions along these lines are found in the commentary, which is nonbinding and advisory.²

Departure Types by Departure Reasons

From 2022-2023, 4,457 cases received a dispositional departure, and 4,298 cases received a durational departure. Offender-related reasons for departure constituted 80.9% of dispositional departure reasons cited and 14.8% of durational departure reasons. Offense-related reasons constituted only 7.6% of dispositional departures but was 54.5% for durational departures. A higher percent of durational departure reasons fell into the “other” category (30.7%). The “other” category includes departures based on errors, victim recommendation, and reasons regarding certain sanctions.

Table 1: Departure Types by Departure Reasons, Sentenced 2022-2023

Departure Type	Reason Cited for Departure		
	Offender-Related	Offense-Related	Other
Cases w/ Dispositional Departure and No Durational Departure	80.9%	7.6%	11.5%
Cases w/ Durational Departure and No Dispositional Departure	14.8%	54.5%	30.7%

² Comment 2.D.201 warns against using social and economic factors when justifying a *dispositional* departure by amenability, or unamenability, to probation or treatment; this language was added in 1989. Comment 2.D.305 assumes that a particular aggravated departure factor—that the current offense is a repeat criminal sexual conduct or other victim-injury offense—will be used to support a *durational* departure; this assumption was added in 2012 as part of a stylistic, non-substantive revision project. *State v. Kirby*, 899 NW 2d 485, 494 (Minn. 2017). Like all comments to the Sentencing Guidelines, these comments are advisory and are not binding on the courts. *Asfaha v. State*, 665 N.W.2d 523, 526 (Minn. 2003).

Table 2: Departure Reasons in Each Departure Reason Category

Offender-Related Reasons for Departure	
Lacked substantial or reasonable capacity for judgment (non-drug)	
Has failed on probation before/ unamenable to probation/ probation inappropriate	
Failed stay of adjudication (including 152.18)/Diversion/Violated conditions of Conditional Release	
Revoked EJJ	
Prior convictions are old	
No prior record/no prior felonies	
Repeated same type of criminal conduct	
Engrained Offender under Minn. Stat. 609.3455, s. 3a	
Career offender under Minn. Stat. 609.1095, s. 4	
Dangerous offender under Minn. Stat. 609.1095, s. 2	
Offense that made felon ineligible was not violent offense/or is an old offense/was a juvenile offense	
Failure to Register – No new offenses	
Prior record not adequately reflected in criminal history score	
Prior record (redundant)	
Priors are all property and not person offenses (no prior violent offenses)	
Priors overemphasize criminal history/ constitute "same behavioral incident"	
Current SL 1-4 offense and priors resulted in crime spree	
Judge "chose" not to apply Hernandez procedure to current offenses	
Wanted to impose restitution/ imposed restitution/ ensure restitution-other financial penalties paid	
Cooperated with police and other law enforcement/prosecution	
Recommendation by Restorative Justice Conference/Sentencing Circle	
Recommended by court services/ <u>probation</u>	
Recommended by treatment professional	
Cooperated with court services	
Victim recommendation/ acquiescence/ victim's family	
Virtually all the court functionaries/ victim or victim's family agreed on sentence	
Stayed sentence is as severe or more severe than prison sentence/Already served significant time	
Ensure compliance with probation conditions/allow extended period of supervision; long-term public safety	
Keep on probation for second offense	
Make eligible for intensive supervision/work release/Challenge Incarceration	
Public protection/ Danger to public safety	
Low Risk Assessment Score	
Not a danger to public/ public adequately protected/ unlikely to reoccur	
Needed treatment/ supervision/ amenable to treatment	
Chemical dependency treatment/ residential	
Chemical dependency treatment	

Current drug conv.; evidence of chem. dep., amen. to probation and accepted into treatment under 152.152
Has gotten or is getting chemical dependency under control/Already in or completed treatment
Has potential for becoming rehabilitated/ amenable to probation
Qualifying US military service member or veteran found by the district court to meet the criteria for particular amenability to probation found in Minn. Stat. § 609.1056, subd. 4
Sex offender therapy program
In Phase II Challenge Inc./In Intensive Community Supervision/Intensive Local Supervision
Other type of treatment program
So can participate in prison treatment program/Boot Camp/Challenge Incarceration Program
Not amenable to rehabilitation/ treatment
Concurrent time with another
Guidelines/Legislation revised/Defendant unaware of consequences
Commensurate/proportional to codefendants' or other defendants' sentences/ charges
Sentence appropriate/ just; Court's desire to restore individuals to the community as law-abiding, contributing members of society at earliest opportunity
Accepted into a Specialty Court (e.g., Drug Court, Veterans Court, DWI Court)
Psych. and emotional problems/ emotional state/ impaired capacity for judgment/Mental Illness
Serious and Persistent Mental Illness Alternative Placement per M. S. 609.1055
Educationally/ culturally deprived/ unassimilated/ under socialized/Mental impairment
Chemical dependency problem
Defendant pregnant
Defendant's health problems
Age of offender
Serving time in other state or federal/ lives in other state
Offender being deported/ returning to native country
Avoid deportation
Substantial risk of victimization if committed to an institution
Not amenable to prison
Shows remorse/ accepts responsibility
No remorse
Offender absconded prior to sentencing/Failed to make appearances
Offense-Related Reasons for Departure
Victim aggressor in incident/relationship
Offender played minor, lesser, or passive role/acted under coercion or duress
Mitigate or excuse culpability, but does not amount to a defense
Use of intoxicants at time of offense
Drug offense less onerous than usual/ amount barely over threshold/not a major dealer
Crime relatively insignificant/less onerous than usual/weapon type less serious/gun not loaded
Victim is particularly vulnerable: Age/infirmity/reduced capacity

Particular cruelty
Motivated by racial/ethnic bias
Victim injury with previous felony injury conviction
Major economic offense
Multiple victims or multiple incidents per victim (Major economic offense)
Actual or attempted monetary loss substantially greater than usual offense (Major economic offense)
High degree of sophistication, planning / occurred over lengthy period of time (Major economic offense)
Major drug offense
Separate acts three or more counties (Major drug offense)
Offender/Accomplice Possessed firearm/other wpn during commission of offense (Major drug offense)
Committed additional crimes for which not convicted/ additional offenses alleged
Actual offense more serious than conviction offense (charging decision)
Multiple current offenses
Multiple current offenses/ compensate for ordering or timing of processing
Multiple victim or multiple incidents per victim (not major economic offense)
Position of authority over the victim/ position of superiority, confidence, or trust
High degree of sophistication/ occurred over lengthy period of time
Crime more onerous than usual offense
Injury sustained by victim(s) more serious than usual/psychological impact
Crime committed in victim's home or zone of privacy
Crime committed in presence of young child/ children
Committed crime as part of a group of 3 or more persons who all actively participated in the crime
Committed, for hire, a crime against the person
Fled scene/Failed to render aid
Accept sentence plea due to evidentiary problems/Prosecution has weak case
Other Departure Reasons (departures that are neither offender or offense related)
Victim unwilling or unlikely or unable to testify
Prevent trauma to victim from testifying
2016 Changes to Drug Sentencing Policies/Align with anticipated policy change
Covid-19 Pandemic
Sentence appropriate/disagreement with sentencing guidelines policies
Straight plea agreement between the court and defense
609.11 motion by court to sentence without regard to Minn. Stat. 609.11
Save taxpayers cost of a trial or other costs/for judicial efficiency/early resolution
Delay in prosecution caused guideline sentence to be disproportional