

# MEMORANDUM

**To: The Minnesota Sentencing Guidelines Commission**

**From: Dr. Julia Laskorunsky, Research Director, Robina Institute of Criminal Law and Criminal Justice**

**Date: September 9, 2025**

**Subject: Departure Justifications – Offense vs. Offender Factors from Practitioner Interviews**

This memorandum provides supplemental information from my 2025 qualitative research on sentencing topics with Minnesota practitioners. This memorandum focuses on the use of offense vs. offender-based factors for departures from the Guidelines-recommended sentence.

## **Executive Summary**

- Across interviews, practitioners consistently describe using both offense characteristics (harm level, weapon type, conduct specifics) and offender characteristics (amenability, treatment, criminal history nuances) when justifying dispositional departures.
- This practice blurs the formal case law distinction: durational departures should be offense-based; dispositional departures should be offender-based.
- Prosecutors were more likely to voice adherence to the bright-line rule (to ensure appellate sustainability) yet acknowledge fact-specific realities and judicial workarounds.
- Implication for Proposal 7: There is qualitative support that courts already blend offense/offender factors in practice; clarifying or re-framing allowable reasons could better align doctrine with reality.

## **Findings from Interviews**

Across interviews, practitioners described using offense-based factors in justifying probation departures. Probation was justified in **Assault 2** and **Aggravated Robbery** cases when the crime involved low injury or a non-traditional, less dangerous weapon. In **Failure to Register** cases, the most common justification for a probation sentence was that the violation was “technical” in nature (e.g., late

reporting or misunderstanding requirements), rather than a deliberate attempt to avoid detection. In **felony DWI** cases, probation was often justified by the lack of direct harm from the offense. Even in **Criminal Vehicular Homicide** cases, participants described probation decisions depending on offense details such as whether the driver was distracted versus intoxicated, or whether there was intent to cause harm. These rationales highlight that courts frequently rely on offense-level considerations to justify dispositional departures, despite Supreme Court precedent indicating that dispositional decisions should rest on offender-related factors such as amenability to probation, remorse, or rehabilitation potential. Conversely, there were fewer examples of offender characteristics being used to justify durational departures, although it is unclear whether this was due to the influence of case law. However, case load pressure was often cited as a reason for durational departures.

## Findings by Role

### Prosecutors – Core Themes

- State the doctrinal split explicitly (durational = offense; dispositional = offender) and emphasize offers must be sustainable on appeal.
- Some prosecutors endorse collapsing or simplifying categories to reflect real-world reasoning and reduce artificial parsing.
- Acknowledged both durational and dispositional departures emerge out of negotiation, caseload pressure, and judicial preference, not just formal factors.

### Representative Quotations

- *“The rubric on which we think of things as better or as less harmful or more harmful ... the dance you do with whether or not a durational departure or dispositional departure are appropriate ... I would lump them together. Like, if you’re going to depart for one of these reasons, let’s not parse out certain offense based things for one and offender based things for the other.”*
- *“We typically do look at offender-based factors to determine whether a dispositional departure of any kind is appropriate. Anytime we support or offer a departure on any kind of case outside of the guidelines, let alone a mandatory minimum, it would be those factors. We would want to make sure that it is proper under the law and that it would be upheld on appeal.”*
- *“One of the biggest reasons that we talk about departure in this office is what was the weapon used and in what manner was it used... lack of harm definitely makes a difference.”*
- *“The guidelines have this kind of bright line that offense-related things ... go to the length of the sentence and things that relate to the offender go to the disposition. I don’t think it’s as clear cut as that... We do take the facts of the case and the nature of the conduct into account when sometimes we determine whether this person needs to go to prison. I don’t know how you cleanly say*

- offender-related only relates to whether they're [going to] prison or not, because those things are all to me, interrelated."*
- *"There's delineated things within the sentencing guidelines that you can only depart for X, Y, and Z reasons. And then there's a whole wide swath of amorphous things that you just have to mouth in order to get your departure. But...it could be based on the strength of the case, it could be based on the victim's wishes. A lot of other things that play into a reason a departure is done that have nothing to do with the things delineated in the sentencing guidelines."*

### Defense – Core Themes

- Describe departures as driven by case specifics and judicial philosophy; report frequent use of offender factors for dispositional departures, and strategic use of charge bargaining when durational relief is hard to justify under case law.
- Observe that the bright-line legal categories rarely match courtroom reasoning; judges and parties blend factors as needed.
- Highlight pressures from mandatory minimums and grid placements; departures used to correct perceived overreach or mismatch between presumptive outcomes and case reality.

### Representative Quotations

- *"Those reduced numbers [durational departures] are because with the mandatory minimums, we would try every single one. If there's no carrot, you try every single one. Why would I ever, ever, ever tell a client to plead and go to prison for two years when if we go to trial and lose, his sentence will be two years? So maybe the guy is really creepy, and you can't get probation, but maybe they'll knock off a few months just so that the prosecutor doesn't have to try all these cases."*
- *"I have seen a lot of both dispositional offers and durational to [sentence failure to register] as a gross ... They still charge it as a felony, but then they sometimes agree to sentence it as a gross... we count them as durational [departures]."*
- *"I think there's not a very clearly objective thing that you can point to that says, this one clearly deserves prison [in assault 2 cases]. Because you could say if someone gets hurt, then that makes sense. But I've seen some assault tools where people do some really scary stuff and no one gets hurt, but that was really scary...The mandatory minimum makes it really difficult for anyone to have discretion... that's just why you get so many departures because it's presumed everyone has to go to prison. And then all of those cases where you're like, yeah, but this just isn't a prison case, those are getting departures."*