

Staff Information Paper

History of Minnesota Sentencing Guidelines’ Purpose and Principles

April 4, 2024

This staff paper looks historically at the purpose and principles of the Sentencing Guidelines in two parts: First, as historically guided by the Legislature; and, second, as historically interpreted by the Commission.

Legislative Guidance

Among other things, the various subdivisions of the Commission’s 1978 charter statute, Minn. Stat. § 244.09, established the Minnesota Sentencing Guidelines Commission, defined its membership, authorized its staff, and commissioned it as the state’s clearinghouse and information center for sentencing-practices data. This paper focuses on subdivision 5, which directed to the Commission to promulgate sentencing guidelines by January 1, 1980. Within this subdivision, the Legislature provided the Commission guidance from which the Guidelines’ purpose and principles may be read or inferred.

The center of the figure below contains the text of subdivision 5, as it appears today.¹ Changes over time are highlighted in yellow and noted on the left, and Guidelines purpose or principles, as read or inferred by staff, are highlighted in turquoise and noted on the right.

Table 1. Staff-Inferred Legislative Purpose or Principles for the Sentencing Guidelines.

Change from 1978 version	Minn. Stat. § 244.09, subd. 5 (2023) (final paragraph omitted)	Inferred purpose/principle
1997: Jan. 1980 promulgation deadline removed	<p>[Minn. Stat. §] 244.09 MINNESOTA SENTENCING GUIDELINES COMMISSION.</p> <p style="text-align: center;">* * *</p> <p>[Subdivision] 5. Promulgation of Sentencing Guidelines. The commission shall promulgate Sentencing Guidelines for the district</p>	

¹ The final paragraph of subd. 5, which describes the Commission’s rulemaking power and the applicability of the Administrative Procedure Act, is omitted.

This document was prepared by the staff of the Minnesota Sentencing Guidelines Commission for the Commission’s review. This document has not been adopted by the Commission and does not necessarily represent its views.

Change from 1978 version	Minn. Stat. § 244.09, subd. 5 (2023) (final paragraph omitted)	Inferred purpose/principle
<p>2005: Ranges are made mandatory; upper range is expanded</p> <p>1997: Clarifying paragraph is added</p> <p>1988: "And modifying" is added; "public safety" is added as a consideration and made primary; for other considerations, "take into substantial consideration" is changed to "consider"</p> <p>1996: Crime's community impact is added</p>	<p>court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:</p> <p>(1) the circumstances under which imprisonment of an offender is proper; and</p> <p>(2) a presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines shall provide for an increase of 20 percent and a decrease of 15 percent in the presumptive, fixed sentence.</p> <p>The Sentencing Guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.</p> <p>Although the Sentencing Guidelines are advisory to the district court, the court shall follow the procedures of the guidelines when it pronounces sentence in a proceeding to which the guidelines apply by operation of statute. Sentencing pursuant to the Sentencing Guidelines is not a right that accrues to a person convicted of a felony; it is a procedure based on state public policy to maintain uniformity, proportionality, rationality, and predictability in sentencing.</p> <p>In establishing and modifying the Sentencing Guidelines, the primary consideration of the commission shall be public safety. The commission shall also consider current sentencing and release practices; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community.</p> <p style="text-align: center;">* * *</p>	<p>Reasonableness</p> <p>Propriety</p> <p>Appropriateness</p> <p>Uniformity</p> <p>Proportionality</p> <p>Rationality</p> <p>Predictability</p> <p>Public safety</p> <p>Consistency with current practice</p> <p>Correctional resources & capacity</p> <p>Community impact from crime</p>

There are perhaps five categories of purposes or principles contained within this subdivision. These are presented in the order of appearance, rather than in the order of importance, and reasonable minds may disagree with these inferred categories.

- Rationality (related: reasonableness)
- Proportionality (related: propriety, appropriateness)
- Uniformity (related: predictability, consistency with current practice)
- Public safety (related: community impact from crime)
- Correctional resources and capacity

Sentencing Guidelines' Restatement of Its Purpose and Principles

Since their 1980 promulgation, the Sentencing Guidelines have always begun with a "Statement of Purpose and Principles." This statement is shown below in markup format, with additions between 1980 and 2023 underlined, and deletions ~~stricken~~. Changes in numbering or capitalization are not shown.

Statement of Purpose and Principles

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards which that promote public safety, reduce sentencing disparity, and ensure that the sanctions ~~following conviction of a~~ imposed for felony convictions are proportional to the severity of the conviction offense ~~of conviction~~ and the extent of the offender's criminal history. ~~Equity in sentencing requires (a) that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions, and (b) that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions.~~

The Sentencing Guidelines shall embody the following principles:

1. In establishing and modifying the Sentencing Guidelines, the Commission's primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.
2. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
3. ~~While commitment to the Commissioner of Corrections is the most severe sanction that can follow conviction of a felony, it is not the only significant sanction available to the sentencing judge. Development of a rational and consistent sentencing policy requires that the~~ The severity of sanctions the sanction should increase in direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons an increase in offense severity or the convicted felon's criminal history, or both. This promotes a rational and consistent sentencing policy.

4. Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.
5. ~~Because the capacities of state and local correctional facilities are~~ facility capacity is finite, ~~use of incarcerative sanctions~~ confinement should be ~~limited to those imposed only for offenders who are~~ convicted of more serious offenses or ~~those who have longer criminal histories.~~ To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.
6. ~~While~~ Although the Sentencing Guidelines are advisory to the ~~sentencing judge, court,~~ the presumptive sentences are deemed appropriate for the felonies covered by them. Therefore, departures from the presumptive sentences established in the Sentencing Guidelines should be made only when substantial and compelling circumstances exist can be identified and articulated.

Other References to Purpose and Principles Within the Guidelines

The following is a nonexclusive list of other places where the Sentencing Guidelines set forth principles for sentencing:

- Guidelines section 2.D.2, which lists factors that should not be used as reasons for departure, and its associated commentary, contain several statements that may be read as principles. This section classifies race, sex, socioeconomic factors, the exercise of a constitutional right, and consideration of circumstances that would be elements of another offense not proven as improper sentencing considerations.
- Sections 3.A and 3.B contain a number of advisory principles for courts to consider when establishing the conditions of, or deciding whether to revoke, probation.
- In the context of waiving the custody status point, section 2.B.2.e draws the sentencing court's attention to "the traditional purposes of sentencing which are retribution, incapacitation, deterrence, restitution, and rehabilitation." Limited to this context, Comment 2.B.203 provides a definition of "public safety": "protecting the public from crime."

The First Commission's Deliberations

In his 1988 book, *Structuring Criminal Sentences: The Evolution of Minnesota's Sentencing Guidelines*, the Commission's first executive director, Dale G. Parent, describes, from his perspective, the principles that motivated the Commission as it formulated the Sentencing Guidelines in 1978 and 1979. Parenthetical references are to page numbers in the book, which was published by Butterworth Legal Publishers.

Regarding the process of Guidelines formulation, the Commission focused on three themes (33):

- The Guidelines should be prescriptive of newly agreed policies for the future, not merely descriptive of sentencing practices of the past;
- Minnesota’s existing prison capacity was adopted as a constraint on the Commission’s decisions regarding who should be imprisoned and for how long; and
- Criminal justice interests and the general public should be involved in the process of formulating the Guidelines. This enabled the development of consensus and the general acceptance of the Guidelines when promulgated.

Regarding the purpose of the Guidelines’ prescriptive sentencing policy, *punishment, or “just deserts,”* emerged as the Commission’s primary philosophy (37). This perspective was not adopted at the outset of the Commission’s discussions, but emerged over time as the dominant view. Such a view maintained that punishment should be inflicted on those convicted of crime because it is deserved, and the severity of the punishment should be scaled according to the harm caused by the crime and the relative culpability of the offender. Under this view, punishment was considered an end in itself and not a means to another end, such as crime control (37, 138). Rehabilitation, deterrence, and incapacitation were rejected as primary goals in determining the presumptive sentence (219). While the just-deserts perspective was not rigid or binding, it did provide an anchoring point for the Commission’s discussions, lending a coherence of purpose that might otherwise have been lacking (39).

An application of this view may be seen in the formulation of the Guidelines’ dispositional policy, or the “in/out” decision with respect to prison. This policy is shown as a disposition line on a two-axis grid, where offense severity is on the vertical axis and criminal history is on the horizontal axis (77–80). In a modified just-deserts model, according to Parent, the line would be more horizontal; the focus would be on the crime itself, with criminal history altering the dispositional decision only for offenses in the middle of the seriousness scale (Figure 1).

Figure 1. Modified Just-Deserts Dispositional Policy.



Figure 2. Utilitarian Dispositional Policy.

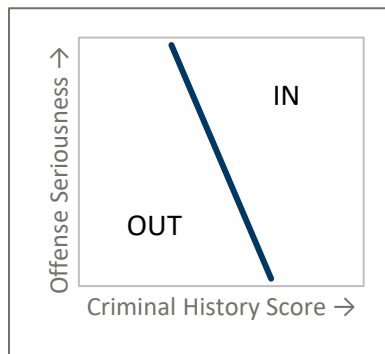
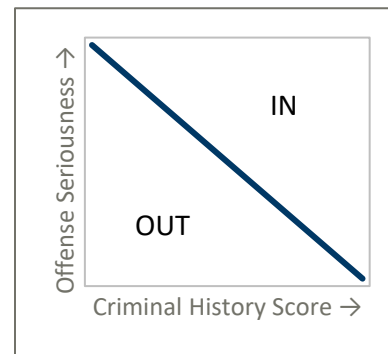


Figure 3. Mixed Dispositional Policy.



On the other hand, a utilitarian model, in Parent’s view, might aim to incapacitate repeat offenders, with less regard to the severity of the offense. Thus, all repeat offenders—and no first offenders—would go to prison, with offense severity altering the dispositional decision only for a narrow range of cases with

moderate criminal histories (Figure 2). Finally, Figure 3 reflects a mixed policy where both criminal history and offense severity have equal weight in the disposition decision.

Ultimately, the Commission adopted the modified just-deserts approach, as it explained to the Legislature on pp. 8–10 of its January 1980 report proposing the Sentencing Guidelines (https://mn.gov/sentencing-guidelines/assets/1980%20Report%20to%20the%20Legislature_tcm30-81498.pdf). With this focus on offense severity, Parent explains, the Guidelines were designed to produce more prison sentences for violent offenders, and fewer prison sentences for property offenders, than before the Guidelines took effect (219).

After the Sentencing Guidelines were proposed, Commission members educated legislators and the public about their philosophical bases and what they were and were not intended to achieve:

The Commission stressed that the guidelines were not intended to achieve deterrence or incapacitation objectives. It stressed that the evidence that crime rates can be lowered by changing sentencing practices was mixed and inconclusive, that our ability to predict future criminality was very weak, and that the endeavor was fraught with moral concerns. It stressed that the purpose of the guidelines was to mete out deserved punishment in an equitable and fair manner, not to reduce crime, and that the guidelines' effectiveness should not be judged by changes in the crime rate (138).

This emphasis on deserved punishment was not without any intended utility, however: The Guidelines were intended to “reduce sentencing disparity by promoting similar sentences for similar cases and by assuring that differences in sentences were proportional to relevant differences among cases. They were aimed at making sentencing neutral with respect to the race, sex, and economic status of offenders” (219).