

Impermissible Sentencing Considerations

May 21, 2015



SENTENCING GUIDELINES COMMISSION

Minnesota Sentencing Guidelines

1980

- “Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.”

2014

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Minnesota Sentencing Guidelines

1980

- Factors not to be used as reasons for departure:
 - Race
 - Sex
 - Employment factors
 - Social factors, including:
 - Education
 - Residence
 - Marital status
 - Exercise of rights

2014

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State Public Policy on Human Rights

<i>Freedom from discrimination in:</i>	Employment	Housing & Property	Pub. Accommodations	Public Services	Education
Race	✓	✓	✓	✓	✓
Color	✓	✓	✓	✓	✓
Creed	✓	✓	✓	✓	✓
Religion	✓	✓	✓	✓	✓
National origin	✓	✓	✓	✓	✓
Sex	✓	✓	✓	✓	✓
Marital status	✓	✓	✓		✓
Disability	✓	✓	✓	✓	✓
Pub. ass't status	✓	✓		✓	✓
Sexual orientation	✓	✓	✓	✓	✓
Age	✓			✓	✓
Familial status	✓	✓			

Inapplicable to Criminal Penalties

- “Nothing in [the Minnesota Human Rights Act] alters the provisions of chapter 609 or other law relating to criminal penalties.”

—Minn. Stat. § 363A.41



Guidance from the Courts/Statutes

Impermissible Sentencing Bases

- Alienage
 - *State v. Mendoza*, 638 N.W.2d at 482-83 (Minn. App. 2002)
- National origin
 - *Mendoza* at 485
- Deportability
 - *State v. Peter*, 825 N.W.2d at 130 (Minn. App. 2012)

Permissible Sentencing Bases

- Age
 - *Miller v. Alabama*, 132 S.Ct. at 2459 (2012); M.S.G. § 2.B.4.a.(3)
- Illness or disability
 - *State v. Wright*, 310 N.W.2d 461 (Minn. 1981); *State v. Austin*, 295 N.W.2d at 251 (Minn. 1980)
- Poverty
 - Minn. Stat. § 609.101, subd. 5(b)
- Victim's age, disability
 - Minn. Stat. § 244.10, subd. 5a(1)



U.S. Sentencing Guidelines

Entirely neutral as to offender's:

- Race
- Sex
- National origin
- Creed
- Socioeconomic status

Shall consider only if relevant:

- Age
- Education
- Vocational skills
- Mental and emotional condition, if mitigating or otherwise plainly relevant
- Physical condition, including drug dependence
- Previous employment record
- Family ties and responsibilities
- Community ties
- Role in the offense
- Criminal history
- Degree of dependence upon criminal activity for a livelihood

