

## 1. THE SENTENCING COMMISSION

**Q.** What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

The Commission was established by statute in 1978,<sup>1</sup> and remains in existence to this day.

**Q.** Membership: who appoints them, for what terms, with what required qualifications?

The Commission consists of eleven members appointed by the governor and chief justice of the Minnesota Supreme Court.

The chief justice appoints:

- three judges representing the trial court, Court of Appeals, and Supreme Court.

The governor appoints:

- a public defender (upon recommendation of the State Public Defender);
- a prosecutor (upon recommendation of the Minnesota County Attorneys Association);
- the commissioner of corrections (an *ex officio* commission member);
- a peace officer;
- a probation or parole officer; and
- three members of the public, one of whom must be a felony crime victim.

The governor designates one of the members to be chair.<sup>2</sup>

**Q.** Is the commission an independent agency, or is it located in or hosted by some other state agency?

The Commission is an independent agency created by the legislature.<sup>3</sup>

**Q.** How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Commission currently has a staff of six, including an executive director, a management analyst, and four research analysts.

**Q.** What is the commission's current statutory mandate?

The Commission's mandate is to promulgate the Guidelines, serve as a clearinghouse of information for sentencing information and practices, conduct ongoing sentencing guidelines research, and make recommendations to the Legislature regarding changes to the criminal code, criminal procedure, and other aspects of sentencing.<sup>4</sup>

<sup>1</sup> 1978 Minn. Laws ch. 723, art. 1, § 9; see MINN. STAT. § 244.09, subd. 1 (2019).

<sup>2</sup> MINN. STAT. § 244.09, subd. 2 (2019).

<sup>3</sup> See MINN. STAT. § 244.09 (2019).

<sup>4</sup> MINN. STAT. § 244.09, subds. 5–7 (2019).

**Q. Do statutes and/or guidelines identify management of prison and jail resources as a goal?**

The enabling statute requires the Commission, when drafting or revising the guidelines, to consider existing correctional resources, including prison and jail capacities.<sup>5</sup> Prior to 1989 the statute required the Commission to take this factor into “substantial consideration.” The Commission identified avoidance of prison overcrowding as a major goal, and planned to never exceed 95 percent of projected capacity. The Commission also designed the Guidelines to increase the number of violent (“person”) offenders sent to prison, and decrease the number of non-violent offenders.<sup>6</sup>

**Q. Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?**

To support its mandate of conducting ongoing sentencing guidelines research, the Commission maintains a sentencing data set. Sentencing practices are extensively studied by means of detailed annual monitoring data sets covering all felons sentenced that year, as well as more specialized data sets. Most of this data is made available on request to outside researchers.<sup>7</sup>

## 2. THE GUIDELINES

**Q. When were the guidelines first implemented?**

The Minnesota Sentencing Guidelines went into effect May 1, 1980.<sup>8</sup>

**Q. In recent years, have they been modified at least once a year?**

The Commission updates the Guidelines annually to account for new and amended crimes, legislative mandates, revised Commission policies, and any necessary technical changes.<sup>9</sup>

**Q. Do the commission’s recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?**

The current enabling statute provides that any proposed modifications that would amend the guidelines grid, reduce any sentence, or cause the early release of any inmate, must be submitted to the legislature each year on or before January 15<sup>th</sup>, to become effective as of August 1<sup>st</sup> of that year unless the legislature by law provides otherwise. Any other change may be implemented “according to the procedural rules of the commission.”<sup>10</sup>

<sup>5</sup> MINN. STAT. § 244.09, subd. 5 (2019).

<sup>6</sup> Minn. Sentencing Guidelines Comm’n, *Report to Legislature* 14–15 (Jan. 1, 1980), available at [http://mn.gov/sentencing-guidelines/assets/1980%20Report%20to%20the%20Legislature\\_tcm30-81498.pdf](http://mn.gov/sentencing-guidelines/assets/1980%20Report%20to%20the%20Legislature_tcm30-81498.pdf).

<sup>7</sup> Minn. Sentencing Guidelines Comm’n, *MSGC Reports*, (last visited Sept. 13, 2019), <http://mn.gov/sentencing-guidelines/reports/index.jsp>; Minnesota Sentencing Guidelines Commission, *Data Requests*, (last visited Sept. 13, 2019), <http://mn.gov/sentencing-guidelines/contact/data-requests.jsp>.

<sup>8</sup> Minn. Sentencing Guidelines Comm’n, *Report to Legislature* 2 (Jan. 1, 1980), available at [https://mn.gov/sentencing-guidelines/assets/1980%20Report%20to%20the%20Legislature\\_tcm30-81498.pdf](https://mn.gov/sentencing-guidelines/assets/1980%20Report%20to%20the%20Legislature_tcm30-81498.pdf).

<sup>9</sup> *Previous Years Guidelines and Commentary*, Minnesota Sentencing Guidelines Commission (last visited Sept. 20, 2019), <https://mn.gov/sentencing-guidelines/guidelines/archive.jsp>.

<sup>10</sup> MINN. STAT. § 244.09, subd. 11 (2019).

**Q.** Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

The sentencing guidelines apply to all felonies except those subject to life or life-without-parole sentences (there is no death penalty in this state). Misdemeanors and petty offenses are not subject to the guidelines or to any other state-wide structured sentencing rules, but they are factored into criminal history scores when applicable.<sup>11</sup>

**Q.** Is a grid used? Are there multiple grids? How many severity levels does the grid contain?

The Minnesota Sentencing Guidelines are primarily presented in a grid format. There are three grids: one for sex offenses, one for drug offenses and one for all other felonies. The Sex Offender Grid contains 8 severity levels, the Drug Offender Grid contains 9 severity levels, and the Standard Grid contains 11 severity levels.<sup>12</sup>

**Q.** How is the presumptive sentence determined?

The vertical axis on each grid represents the severity level of the offense; the horizontal axis represents the offender's criminal history score. The presumptive sentence is determined by locating the cell on the grid where the severity level of the offense and offender's criminal history score intersect. Each cell contains the *presumptive duration* of a sentence in months.

When prison is the presumptive sentence, the guidelines provide a range of 15% downward and 20% upward from a specified duration. A judge may pronounce a sentence within that range without departing from the guidelines.<sup>13</sup>

**Q.** Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion or prison for those cases?

There are two major types of recommended-sentences under the guidelines: executed-prison terms, and “stayed” (suspended) sentences. A stayed sentence may consist of either pronouncing a prison term and staying its execution or of staying imposition of a prison term (i.e., deferred sentencing). The choice of an executed or a stayed sentence is regulated primarily by means of the heavy dark “disposition” line on the standard, drug offender and sex offender grids. For cells below and to the left of the solid line (in the gray-shaded area), the guidelines recommend a stayed sentence. For cells above and to the right of the solid line (in the white area of the grid), the guidelines recommend incarceration in a state prison.<sup>14</sup> Some cases falling below the disposition line have recommended executed-prison terms due to the application of a mandatory-minimum statute (e.g., for certain crimes committed with a dangerous weapon and subsequent controlled substance offenses),<sup>15</sup> or when a special guidelines rule applies (e.g., for repeat burglary).<sup>16</sup> There are no cells or other categories of felonies for which a prison term is definitively precluded by the guidelines; however judges may, by departure, impose a jail term which is

<sup>11</sup> See Minn. Sentencing Guidelines § 1.A, 1 (2019) (stating that the purpose of the guidelines is to establish rational and consistent sentencing standards for felony convictions).

<sup>12</sup> Minn. Sentencing Guidelines §§ 4.A, 4.B, 4.C (2019).

<sup>13</sup> Minn. Sentencing Guidelines § 2.C.01 (2019).

<sup>14</sup> *Id.*

<sup>15</sup> MINN. STAT. § 152.021 subd. 3(b). (2019); Minn. Sentencing Guidelines § 2.C.3.c (2019).

<sup>16</sup> Minn. Sentencing Guidelines § 2.E.1 (2019).

deemed a misdemeanor or gross misdemeanor sentence, and which does preclude any subsequent imposition of a prison term for that offense.<sup>17</sup>

**Q. Are there border boxes or other case categories permitting multiple sentence types?**

There are no border boxes on any of the grids and no other case categories permitting multiple sentence types in the judge's discretion.<sup>18</sup>

**Q. Are the guidelines purely advisory, or are they legally binding?**

The guidelines are legally binding; judges must pronounce a sentence within the recommended range unless a departure is ordered, stating legally valid reasons.<sup>19</sup>

### 3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

**Q. What is the overall/general standard for departure?**

The court may depart from the presumptive sentence when there are substantial and compelling circumstances.<sup>20</sup> Case law has added that the court's reasons for departure may not be based on a factor that has already been taken into account in determining the recommended (pre-departure) sentence (e.g., absence of any criminal history).<sup>21</sup>

**Q. Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?**

The guidelines contain lists of permissible aggravating and mitigating circumstances permitting departure, and both of these lists are explicitly stated to be non-exclusive (i.e., courts may recognize additional factors). Most of the listed factors relate to case-specific facts that make the conviction offense more or less serious than the typical crime of this type (including factors related to the victim, the offender's role relative to co-defendants, and various factors related to the offender's moral culpability and/or the harm caused or threatened by the offense). As of 2019, subsequent severe violent convictions may lead to a 12-14 month sentence length increase for completed crimes, and a 6-12 month increase for attempts and conspiracies.<sup>22</sup> The guidelines also contain a list of prohibited departure factors: race, sex, employment factors, social factors (education, living arrangements, marital status), and "the defendant's exercise of constitutional rights during the adjudication process."<sup>23</sup>

**Q. Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?**

The guidelines do not expressly provide for a mitigated sentence based on a guilty plea or acceptance of responsibility. Indeed, plea mitigation arguably violates the prohibition on

<sup>17</sup> Minn. Sentencing Guidelines § 2.D.1 (2019).

<sup>18</sup> See Minn. Sentencing Guidelines §§ 4.A–C (2019).

<sup>19</sup> Minn. Sentencing Guidelines § 2.D.1 (2019).

<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., *State v. Cizl*, 304 N.W. 2d 632 (Minn. 1981).

<sup>22</sup> Minn. Sentencing Guidelines § 2.G.14 (2019).

<sup>23</sup> Minn. Sentencing Guidelines § 2.D.2–3 (2019).

considering the defendant's exercise of constitutional rights (however, the latter ban could also be interpreted as applicable only to sentence enhancements for exercising trial rights, not sentence mitigations for declining to exercise those rights).<sup>24</sup> There is no general or formal provision for sentence mitigation based on providing assistance to law enforcement, but a special rule permits departure on this ground from a presumptive consecutive sentence.<sup>25</sup>

**Q. Are there limits on the degree of durational (length-of-custody) departure?**

The guidelines do not themselves limit the degree of durational (length-of-custody) departure, but case law provides that upward departures may not exceed twice the presumptive prison term (the middle figure in grid cells above the disposition line; the sole figure in cells below the line) except in rare cases of extremely aggravated circumstances.<sup>26</sup>

**Q. Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?**

Other than the prohibited grounds listed in the guidelines or recognized in case law, and mandatory-minimum-sentence statutes, there are no limits on the availability of dispositional departures from recommended executed-prison or from recommended stayed sentences.<sup>27</sup>

## 4. PRISON RELEASE DISCRETION

**Q. Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?**

The 1978 Legislature abolished parole release discretion for all felony crimes except those for which life imprisonment was retained.<sup>28</sup> At that time first degree murder and treason were the only such crimes, but some sex crimes are now punishable with parole-eligible life sentences as well.<sup>29</sup>

**Q. Does the state have a "truth in sentencing" law, limiting the extent of early release?**

Minnesota utilizes determinate sentencing, meaning that the offender will serve a specified duration that cannot be changed by a parole board or other agency. By statute, a pronounced executed sentence consists of two parts: "(1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence."<sup>30</sup>

<sup>24</sup> Minn. Sentencing Guidelines § 2.D.2 (2019).

<sup>25</sup> Minn. Sentencing Guidelines § 2.F.1.f (2019).

<sup>26</sup> *State v. Evans*, 311 N.W. 2d 481, 483 (Minn. 1981). See also *State v. Jackson*, 749 N.W. 2d 353 (Minn. 2008) (upholding the rule from *Evans* despite 27 years of changes to the guidelines).

<sup>27</sup> Minn. Sentencing Guidelines § 2.D.2 (2019) (listing prohibited grounds for departing from the guidelines); Minn. Sentencing Guidelines § 2.E.2, 51–52 (2019) (describing several mandatory-minimum statutes that supersede the guidelines).

<sup>28</sup> 1978 Minn. Laws ch. 723, art. 1, § 12.

<sup>29</sup> MINN. STAT. § 609.3455 (2019). Note that per *Graham v. Florida*, 560 U.S. 48 (2010), some of these statutory provisions are unconstitutional in sentencing juvenile offenders to life without parole.

<sup>30</sup> MINN. STAT. § 244.101, subd. 1 (2019).

**Q.** Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

The recommended prison durations shown on the applicable guidelines grid, and the sentence pronounced by the judge, either from the grid or by departure, represent the maximum time the offender will serve in prison. Under state law, that maximum also determines the offender's minimum time to serve, which is two-thirds of the maximum. There is no parole release discretion for offenses sentenced under the guidelines.<sup>31</sup>

**Q.** Is the period of post-prison supervision independent of any unserved prison term?

For most defendants the period of post-prison supervision is equal to their unserved prison term. The minimum prison term and maximum supervised release term are determined by the court's initial pronouncement of sentence. However, the department of corrections can impose disciplinary confinement periods in response to violations of disciplinary rules or refusal to participate in rehabilitative programming; this will in turn increase the time spent in prison and reduce the period of supervised release.<sup>32</sup> Indeed, an offender could potentially serve the entire executed sentence in prison, with no period of post-prison supervision.<sup>33</sup>

Additionally, certain sex offenders and felony driving while impaired (DWI) offenders are also subject to a separate conditional release term, which is a period of post-prison supervision that extends beyond the supervised release term. Depending on the offense of conviction, conditional release terms can be five years, ten years, or life.<sup>34</sup>

**Q.** What good-time credits do prisoners earn? Is program participation considered?

Good time credits were formally abolished by the Minnesota Legislature in 1993, but the time an offender spends in prison will be shorter if he or she avoids disciplinary violations and participates in assigned programming. Prior to 1993 offenders could reduce their terms of imprisonment by one day for every two days served without a disciplinary violation up to the maximum period of supervised release. The 1993 change effectively replaced "good time" reductions with "bad time" increases, but for most offenders the minimum and maximum terms of imprisonment and supervision were not altered.<sup>35</sup>

<sup>31</sup> MINN. STAT. §§ 244.05, subd.1b, 244.101, subds. 1, 2 (2019) (specifying that the minimum time to serve is two-thirds of the executed prison sentence; that the minimum may be extended for violation of disciplinary rules or refusal to participate in assigned rehabilitative programming; and that such extensions could result in the offender serving the entire executed sentence); 1978 Minn. Laws ch. 723, art. 1, § 12 (abolishing parole release discretion).

<sup>32</sup> MINN. STAT. § 244.05, subd. 1b(a) (2019).

<sup>33</sup> See MINN. STAT. § 244.101, subd. 2 (2019).

<sup>34</sup> See, e.g., MINN. STAT. § 169A.276, subd. 1(d) (2019) (requiring five year post-prison conditional release for first degree DWI offenses); MINN. STAT. § 609.3455, subds. 6–7 (2019) (requiring mandatory ten-year or lifetime conditional release terms for certain sexual offenses).

<sup>35</sup> MINN. STAT. §§ 244.04 subd.3, 244.101, subd. 2 (2019).

## Q. Are prisoners subject to exceptional, “second-look” releasing mechanisms?

Inmates sent to prison under the guidelines are eligible for various furlough programs, or for pardon and clemency, but prison terms are not otherwise subject to exceptional, “second-look” releasing mechanisms other than in cases of serious medical infirmity.<sup>36</sup>

## 5. RELATIONSHIP TO CRIMINAL LAWS

### Q. Did the guidelines replace some or all previous statutory maxima?

The guidelines did not replace any previous statutory maximum sentences, but rather were designed to operate within those maxima. The statutory maximum sentence is used as a factor in ranking the severity of new and amended crimes. Subject to normal rules for upward departure and special requirements for sentencing to more than double the recommended prison duration, judges could potentially impose a sentence all the way up to the statutory maximum.<sup>37</sup>

### Q. Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and over-ridden whenever a mandatory applies?

The guidelines were set independently of mandatory-minimum statutes, and are overridden whenever such a statute applies and requires a more severe sentence.<sup>38</sup>

### Q. Are some “mandatory” minima subject to case-specific “departure or other exceptions?”

In the case of some mandatory minimum statutes, the Legislature permits the court to impose a sentence less severe than the applicable statutory minimum if the court finds that a lower sentence is justified by substantial and compelling circumstances. This is the general Guidelines departure standard; accordingly, such a below-the-mandatory sentence is treated as a departure under the Guidelines.<sup>39</sup>

## 6. CRIMINAL HISTORY SCORING

### Q. What are the major components of the criminal history score?

The criminal history score is comprised of four elements:

1. Prior felony level offenses;
2. Custody status (whether the defendant was in prison, convicted and in jail, on probation, or in certain other supervision or escape statuses, at the time the current offense was committed);
3. Prior eligible misdemeanor and gross misdemeanor offenses; and
4. Prior eligible juvenile offenses.<sup>40</sup>

<sup>36</sup> See MINN. STAT. § 244.05, subd. 8 (2019) (permitting early release if an offender “suffers from a grave illness or medical condition and the release poses no threat to the public”).

<sup>37</sup> See Minn. Sentencing Guidelines § 2.C.2(2019).

<sup>38</sup> Minn. Sentencing Guidelines § 2.E.1 (2019).

<sup>39</sup> See, e.g., Minn. Sentencing Guidelines § 2.E.2.b (2019) (addressing the court’s power under MINN. STAT. §609.11 to impose a non-prison sentence notwithstanding mandatory minimum prison terms specified for weapons offenses in that statute).

<sup>40</sup> Minn. Sentencing Guidelines § 2.B (2019).

Prior felony convictions are weighted according to their (current) guidelines severity level, receiving from one-half to two points each when the current offense is on the standard grid or the drug grid and from one-half to three points each for current offenses on the sex offender grid. This weighting scheme was designed to “assure a greater degree of proportionality in the current sentencing,” and represents the Commission’s belief that “[o]ffenders who have a history of serious felonies are considered more culpable than those offenders whose prior felonies consist primarily of low severity, nonviolent offenses.”<sup>41</sup> If the weight of an offense is less than one point, then the weight of the custody status is one-half point.

Prior misdemeanors and gross misdemeanors receive limited weight, and only “targeted misdemeanors,”<sup>42</sup> which are those that are tracked in the state’s criminal history system, are counted for criminal history purposes. With limited exceptions, four qualifying prior misdemeanors add one criminal history point, and there are no partial points or multiple points.<sup>43</sup>

**Q.** Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

The general “decay” or washout rules are as follows: Prior felony convictions are no longer counted if the current offense was committed at least 15 years after *the prior sentencing date (or the date the prison sentence, if executed, expired)*, provided the offender was then no longer on probation or post-prison supervision for the prior sentence. Prior misdemeanor and gross misdemeanor convictions and stays of imposition no longer count 10 years after sentencing. If the prior was originally a felony conviction for which a stay of imposition was given (i.e., a deferred sentence) and was later deemed a misdemeanor under Minn. Stat. § 609.13 based upon successful completion of probation, the felony rule applies.<sup>44</sup>

**Q.** Do the Guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

The guidelines do not include any other significant limitations on the use of criminal history.<sup>45</sup>

## 7. MULTIPLE CURRENT OFFENSES

**Q.** Are consecutive sentences limited? If so, how (e.g., prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

The general rule is that multiple current sentences run concurrently, unless the judge departs stating reasons that would justify an upward durational departure. A few crimes carry presumptive consecutive sentences (e.g., where the offender is in prison and commits a new crime carrying a recommended executed-prison term). In such cases, concurrent sentencing is a departure. In a third, fairly large group of cases, consecutive sentencing for two or more current offenses and/or current plus unexpired prior sentences, is “permissive” (discretionary with the judge). To permit consecutive sentencing in such cases, each of the crimes must carry a recommended executed-prison term, and must be made eligible for consecutive sentencing by a special rule or by inclusion

<sup>41</sup> Minn. Sentencing Guidelines cmt. 2.B.103 (2019).

<sup>42</sup> MINN. STAT. § 299C.10, subd. 1 (2019).

<sup>43</sup> Minn. Sentencing Guidelines § 2.B.3 (2019). See Minn. Sentencing Guidelines § 2.B.3.g, (2019) (permitting unlimited misdemeanor points for prior criminal vehicular homicide or driving while intoxicated offenses).

<sup>44</sup> Minn. Sentencing Guidelines §§ 2.B.1.c, 2.B.3.e (2019) (felony decay and misdemeanor decay respectively).

<sup>45</sup> See Minn. Sentencing Guidelines § 2.B (2019).

on a list of offenses. Most eligible crimes are violent, sex, drug, or escape crimes. When consecutive sentencing is presumptive, permissive, or imposed via departure, there are no special limits on the maximum severity of the combined sentences.<sup>46</sup>

**Q.** In consecutive sentencing, how is the offender’s criminal history taken into account?

When crimes are sentenced consecutively, the offender’s criminal history is not fully counted for all of the crimes. In permissive consecutive sentencing, the judge must use a criminal history score of zero (or a mandatory minimum, if more severe) to sentence all but the first of the crimes.<sup>47</sup> In presumptive consecutive sentencing, the court must use a criminal history score of one or the mandatory minimum, whichever is longer, for all but the first crime.<sup>48</sup>

## 8. ENFORCEMENT MECHANISMS (LOCATION ON THE “ADVISORY”-TO-“MANDATORY” CONTINUUM)

**Q.** Are recommended sentences enforced by prosecution and defense sentence appeals?

Departures from recommended sentences may be appealed by the prosecution and the defense.<sup>49</sup> Decisions not to depart are also appealable, but such sentences will rarely be reversed.<sup>50</sup> Trial court findings on issues of sentencing law and policy are reviewed de novo, whereas substantial deference is given to the lower court’s factual findings and application of legal rules to those facts. The de novo review standard has resulted in a substantial body of interpretive case law, clarifying and further developing many important issues of guidelines interpretation and policy.<sup>51</sup>

**Q.** Are other enforcement mechanisms used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

There are no enforcement methods other than sentence appeals and the requirement that all departure sentences be accompanied by a statement of reasons on the record.<sup>52</sup> Judge-specific departure rates are not published, and the permitted sentencing alternatives and ranges are, for many cases (especially those with recommended non-prison sentences), rather broad.<sup>53</sup>

**Q.** Are some deviations from the guidelines not deemed departures?

Almost all deviations from the guidelines are deemed departures. The exception is that an otherwise stayed sentence that is executed pursuant to an offender’s demand is not considered a dispositional departure.<sup>54</sup> In addition, there are some non-presumptive recommendations that judges have discretion to accept or ignore. For example, where the guidelines recommend a

<sup>46</sup> Minn. Sentencing Guidelines § 2.F (2019).

<sup>47</sup> Minn. Sentencing Guidelines § 2.F.2.b (2019).

<sup>48</sup> Minn. Sentencing Guidelines § 2.F.1.c (2019).

<sup>49</sup> Minn. R. Crim. Proc. 28 (2019).

<sup>50</sup> *State v. Kindem*, 313 N.W.2d 6 (Minn. 1981).

<sup>51</sup> See Robina Inst., Minnesota Case Law Summary,

[https://sentencing.umn.edu/sites/sentencing.umn.edu/files/minnesota\\_case\\_law\\_final\\_2-7-17.pdf](https://sentencing.umn.edu/sites/sentencing.umn.edu/files/minnesota_case_law_final_2-7-17.pdf). See also, Deb Dailey, *Minnesota Sentencing Guidelines and Commentary Annotated* (2d Ed. 1998); Matthew E. Johnson, Minn. Court of Appeals, *The Minnesota Court of Appeals Standards of Review* 50–70 (2011).

<sup>52</sup> Minn. Sentencing Guidelines § 2.D.1 (2019).

<sup>53</sup> Minn. Sentencing Guidelines §§ 4.A, 4.B, 4.C (2019) (standard, sex-crimes, and drug-crimes grids).

<sup>54</sup> Minn. Sentencing Guidelines § 2.D.1.f (2019).

stayed sentence and the court has discretion to pronounce a stay of imposition (conviction entered but no prison sentence is pronounced) or a stay of execution (conviction entered and a prison sentence is pronounced but stayed), the commission has provided a “non-presumptive recommendation” that stays of imposition should be used for offenders convicted of lower severity offenses and who have low criminal history scores.<sup>55</sup>

**Q.** Do some deviations require especially strong justification? Or minimal justification?

Durational departures that more than double the recommended duration are limited to rare cases of extremely aggravated circumstances.<sup>56</sup> All other departures from the guidelines are subject to the same procedural and substantive standards, and none requires either especially strong justification or minimal justification.

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<sup>55</sup> Minn. Sentencing Guidelines § 3.A.1(b) (2019).

<sup>56</sup> *State v. Evans*, 311 N.W. 2d 481 (Minn. 1981).