

SEVERITY LEVEL OF CONVICTION OFFENSE (Rank by offense level in bold)	0	1	2	3	4	5	6 or more	
Murder, 2nd Degree (Intentional murder drive-by-shooting)	11	306 201-307	326 278-301	345 205-415	355 312-430	365 329-403	408 346-487	426 300-487
Murder, 3 rd Degree (Intentional murder)	10	150 120-180	165 141-188	180 153-218	195 166-234	210 179-262	225 190-270	240 204-288
Assault, 1 st Degree	9	88 74-103	98 84-117	110 94-132	122 104-148	134 114-160	146 125-175	158 135-189
Aggravated Robbery, 1 st Degree	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 93-129
Burglary, 1 st Degree (with weapon or assault)	7	38 30	42 42	48 48	54 45-64	60 45-72	66 57-79	72 62-84
Felony DWI, Financial Exploitation of a Vulnerable Adult	6	21 21	27 27	33 33	39 34-46	45 39-54	51 44-61	57 48-68
Assault, 2 nd Degree	5	18 18	23 23	28 28	33 29-38	38 33-45	43 37-51	48 41-57
Burglary, 1 st Degree (occupied dwelling)	4	12 12	15 15	18 18	21 21	24 21-28	27 23-30	30 26-36
Residential Burglary	3	12 12	13 13	15 15	17 17	19 17-22	21 18-25	23 20-27
Nonresidential Burglary	2	12 12	12 12	13 13	15 15	17 17	19 18-22	21 18-25
Theft Crimes (over \$5,000)	1	12 12	12 12	12 12	13 13	15 15	17 17	19 18-22
Theft Crimes (\$5,000 or less)	1	12 12	12 12	12 12	13 13	15 15	17 17	19 18-22
Check Forgery (\$251-\$2,500)	1	12 12	12 12	12 12	13 13	15 15	17 17	19 18-22
Assault, 4 th Degree	1	12 12	12 12	12 12	13 13	15 15	17 17	19 18-22
Moving a Police Officer	1	12 12	12 12	12 12	13 13	15 15	17 17	19 18-22

12th - One year and one day
 Restitutive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 90A.185. See section 2.6, for policies regarding those sentences controlled by law.
 Presumptive stayed sentence, at the discretion of the court, up to one year of confinement and other non-penal sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2C and 2L.

Sentencing Commissions and Guidelines By the Numbers:

Cross-Jurisdictional Comparisons Made Easy By the Sentencing Guidelines Resource Center

By Kelly Lyn Mitchell

sentencing.umn.edu

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The Sentencing Guidelines Resource Center

The Sentencing Guidelines Resource Center (SGRC) is a cutting-edge, one-of-a-kind online resource developed by the Robina Institute of Criminal Law and Criminal Justice (robinainstitute.umn.edu) that is dedicated to providing insight, information, and analysis about sentencing guidelines systems in the United States. Sentencing guidelines are standards put in place to establish rational and consistent sentencing practices with the goal of producing more uniformity and proportionality in sentencing.

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The Robina Institute's Sentencing Guidelines research team, led by Robina Institute Co-Director Professor Richard Frase (University of Minnesota Law School) and Robina Institute Executive Director Kelly Lyn Mitchell (University of Minnesota Law School), has researched and published on the Sentencing Guidelines Resource Center original, in-depth jurisdiction profiles and summaries of important interpretive case law, providing answers to key questions that determine the strength and integrity of sentencing guidelines systems. The Resource Center also provides easy access to materials, including current versions of each jurisdiction's guidelines, sentencing commission and sentencing guidelines enabling laws, and other important sentencing-related statutes. By bringing these materials together in one place and providing guidance to help visitors understand and make the best use of the materials, the Robina Institute seeks to facilitate the exchange and sharing of information, expertise, and experience; to educate on issues related to sentencing policy, guidelines, and commissions; to promote multi-jurisdictional comparative research and policy analysis; and to promote the adoption and retention of best practices in sentencing guidelines systems.

Included in this publication are the kind of cross-jurisdictional comparisons that can now be made as the result of our research. Each of these comparisons can be used to discover structural variations and different practices, as well as provide answers to key policy questions.

To learn more about sentencing guidelines, visit the **Sentencing Guidelines Resource Center** at sentencing.umn.edu. The About Guidelines and Commissions section of the Sentencing Guidelines Resource Center includes articles that address the topics in this publication in greater detail.

Sentencing Commissions and Guidelines

Though the Sentencing Guidelines Resource Center highlights information for 26 jurisdictions, including the federal government, not all of these jurisdictions have sentencing guidelines (Figure 1). Neither do all of the jurisdictions have sentencing commissions. And over time, jurisdictions have moved back and forth between classifications as sentencing commissions have been formed and sunsetted and as guidelines systems have developed and been undercut by various factors, creating an even larger potential pool for study. This publication focuses on the 17 jurisdictions that exhibit the strongest characteristics of sentencing guidelines: Alabama, Arkansas, Delaware, Kansas, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Ohio, Oregon, Pennsylvania, U.S., Utah, Virginia, Washington, and Washington, D.C.

FIGURE 1. Sentencing Commissions and Guidelines

Sentencing Commissions							FL	TN
AK	MO	AL	KS	MN	PA	WA		
CT	NV	AR	MA	NC	US			
IL	NM	DE	MD	OH	UT			
LA		DC	MI	OR	VA			
							Sentencing Guidelines	

Source: Sentencing Guidelines Resource Center, Key Elements of Guidelines Systems, sentencing.umn.edu.

Commission Purpose

Sentencing commissions are established for many different purposes. Some are established primarily for the purpose of developing and maintaining sentencing guidelines. Others are established with broader mandates relative to the state's criminal justice system, which may or may not include the development of sentencing guidelines. Looking across jurisdictions, the top six purposes articulated for sentencing commissions in statute are:

1. Recommend or establish sentencing policies and practices (to uphold stated goals);
2. Protect public safety;
3. Manage correctional resources;
4. Maintain judicial discretion in sentencing;
5. Avoid disparity / increase equity and fairness in sentencing; and
6. Achieve certainty in sentencing.

Commission Composition

Sentencing commissions range in size from 9 to 31 members, including non-voting or ex officio members. They also vary in composition as illustrated in Table 1. Nearly every commission includes members who are judges, prosecutors, and defense attorneys. A majority of commissions also have members who are legislators, victims or victims' advocates, and members of the public. From there, commission membership varies a great deal, including members such as community supervision agents, juvenile justice practitioners and advocates, mental health experts, court administrators, county commissioners, business leaders, and former inmates. Only the U.S. Sentencing Commission and Virginia Sentencing Commission omit the defense representation that could counterbalance the prosecutorial representation on the commission.

TABLE 1. Commission Membership

	Non-Guidelines Jurisdictions						Guidelines Jurisdictions																	
	AK	CT	IL	LA	MO	NM	AL	AR	DC	DE	KS	MA	MD	MI	MN	NC	OH	OR ^a	PA	UT	VA	US ^b	WA	
Judge(s)	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Defense Attorney	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Prosecutor	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Dept. of Corrections	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Legislators	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Victims/ Advocates	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Public	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Law Enforcement	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Parole	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Academics/ Experts	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Comm. Sup.	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Other	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Total Members (including nonvoting)	13	23	22	25	11	24	21	11	17	11	17	15	19	16	11	28	31	9	11	27	17	9	20	

Source: Sentencing Guidelines Resource Center, Jurisdiction Profiles, Sentencing Commission Section, sentencing.umn.edu

^a Oregon law requires that the commission comprise 9 members, 2 of which are non-voting and legislators, and 7 of which are appointed by the Governor. The law does not specify the role or representation of the gubernatorial appointees.

^b At the federal level, the appointing authority (the President of the United States) has broad discretion to determine the ultimate composition of the commission. The only limitation is that at least three members must be federal judges and no more than four may be from the same political party.

^c New York's Permanent Commission on Sentencing is excluded because it does not have any statutory law governing its membership.

Place in Government

Sentencing commissions can be situated in any branch of government. By far, the most common placement is within the Executive Branch as an independent and separate agency (Table 2). But successful and independent commissions exist in every branch of government.

TABLE 2. Commission Placement in Government

Executive	AK, AR, CT, DC, DE, KS, IL, LA, MD, MN, NM, OR, UT, WA
Judicial	AL, MA, MO, NC, OH, US, VA
Legislative	PA, MI

Source: Sentencing Guidelines Resource Center, Jurisdictions Profiles, Sentencing Commission Section, sentencing.umn.edu.

Authority to Modify the Sentencing Guidelines

Defining crimes and establishing punishments is a function of the legislature. But with few commissions residing in the legislative branch, for those commissions with responsibility for sentencing guidelines, the commission's authority to modify the guidelines raises potential separation of powers issues. Thus, the authority of most commissions is checked by some form of legislative oversight. Looking across the 17 guidelines jurisdictions, Table 3 sets forth these variations. In several jurisdictions, modifications must go through the legislative process, either because the guidelines are in statute and must be amended, or because legislative approval is required before the guidelines can take effect. In others, modifications are subject to legislative override, which generally means that the legislature must enact a law or resolution to prevent them from going into effect. The remaining either follow the administrative rule making process or a process unique to the jurisdiction.

TABLE 3. Authority to Modify the Sentencing Guidelines

Method	Jurisdiction				
Modifications subject to legislative override	AL ^a	MN	PA	US	VA
Modifications must be enacted into law	KS	MI	NC	OH	WA
Modifications subject to legislative approval	AL ^a	OR			
Modifications are made through the administrative rulemaking process	AR	MD			
Other or unclear	DC	DE	UT	MA	

Source: Sentencing Guidelines Resource Center, Jurisdiction Profiles, Sentencing Guidelines Section, sentencing.umn.edu.

^a Alabama falls into two categories because it has two sets of guidelines: one set that is voluntary and subject to legislative approval, and one set that is presumptive and subject to legislative override.

Sentencing Guideline Structure

The two primary determinants of the sentence under sentencing guidelines systems are offense severity and criminal history. Most systems arrange these attributes on a sentencing grid with offense severity representing one axis on the grid and criminal history the other. The grid cell at the intersection of these two points determines the recommended sentence under the guidelines. Two states – Alabama and Virginia – do not use a grid format at all. Instead, presumptive sentences are determined by completing worksheets that take into account factors reflecting both offense severity and criminal history. Delaware utilizes a more narrative structure to communicate recommended sentences, and Ohio law sets forth a range of determinate sentences that may be given.

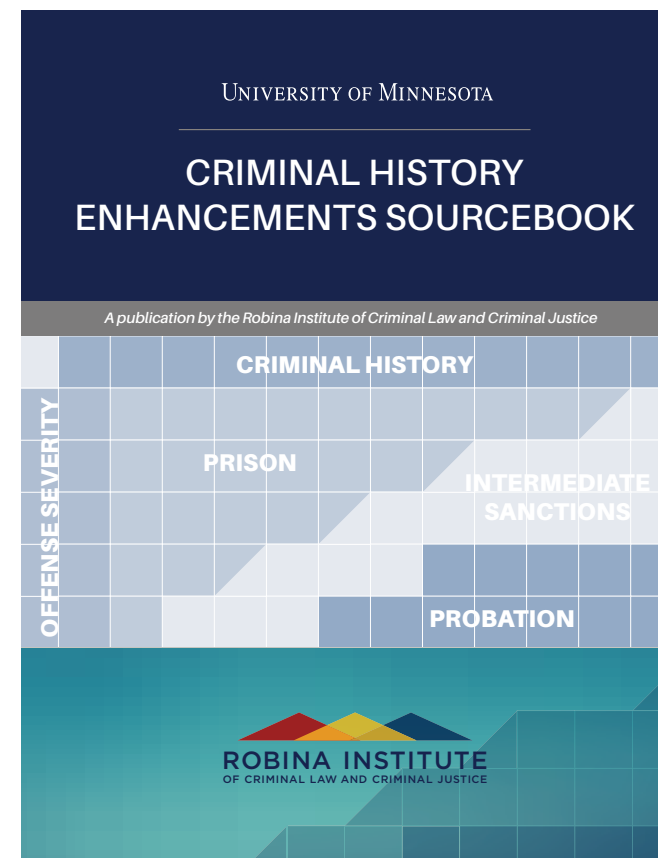
Of the jurisdictions that use a grid format, three states utilize a single grid to cover all sentencing decisions: AR, MA, and OR. Nine jurisdictions use multiple grids so that they can differentiate the sentence ranges for different types of offenses. For example, Minnesota has a grid for drug offenses, a grid for sex offenses, and a grid for all other offenses, and each grid is structured with slightly different rules. Michigan has nine grids, each of which corresponds to one of the felony offense classifications in Michigan's criminal code. Finally, Pennsylvania has grids to handle specialized issues such as sentencing enhancements and sentencing for juvenile offenders.

The Criminal History Dimension

Criminal history is more than a simple accounting of prior convictions. It is instead a composite of multiple measures of prior offending. At its core, criminal history almost always accounts for prior felonies, misdemeanors, and juvenile adjudications. Additionally, criminal history often includes other factors that

are tangentially related to prior offending, such as custody status (whether the offender was under some type of supervision status such as probation when the offense was committed), prior probation violations, and prior incarcerations. From there, additional rules may exist that further enhance or lessen the value of the offender's criminal history, such as decay or gap rules which serve to wash out or eliminate prior offenses from the criminal history if they are very old or if the individual achieved a crime-free existence for a specified number of years. All of the factors describe above come together to determine the appropriate criminal history score or category.

For a detailed accounting of the components of criminal history, read the Criminal History Enhancement Sourcebook, available online at www.robinainstitute.umn.edu/publications/criminal-history-enhancements-sourcebook.



Departures

A departure is a sentence other than that recommended in the sentencing guidelines. Every state guidelines system permits judges to pronounce sentences that are harsher than (aggravated) or less severe than (mitigated) the recommended guidelines sentences. But while some systems place no limits on these actions, others place greater restraint on the exercise of judicial discretion. One measure of restraint on judicial discretion is to require that a specific standard be met in order for the court to pronounce a departure sentence. Six jurisdictions do not articulate such a standard, and the remaining jurisdictions require either that there be substantial and compelling circumstances or that the court making findings about mitigating or aggravating facts (Table 5). A second measure of restraint is to require, or at least request, the court to state on the record or in writing its reasons for sentencing outside of the guidelines. Here, every jurisdiction except Michigan imposes such a requirement, and Michigan only differs because the statute originally containing this requirement was struck when the Michigan Supreme Court rendered the guidelines advisory in a *Booker*-type fix.

Appeals

Another factor that impacts the strength of sentencing guidelines within a system is whether the parties can appeal guidelines and non-guidelines sentences. Appeals of sentences that are within the scope of the guidelines serve as a check on the court's accuracy in applying the guidelines, and ensure that there are common understandings and interpretations of the various sentencing guidelines provisions. Appeals of sentences that are outside of the guidelines allow the appellate courts to establish the outer boundaries of the trial court's discretion by accepting or rejecting departure reasons and by considering whether limits should be placed on the extent of the departure sentence. Seven jurisdictions permit appellate review of sentences that are within the recommended guidelines range, primarily for error correction purposes, while nine permit review of departure sentences (Table 5).

Parole Release Discretion

One might assume that a shift to sentencing guidelines also requires a shift to determinate sentencing (a fixed term rather than a range) and abolishment of parole as a release mechanism. But in fact, seven jurisdictions have retained parole release discretion: Alabama, Arkansas, Maryland, Massachusetts, Michigan, Pennsylvania, and Utah. In these states, the guidelines are generally utilized to establish one end of the sentencing range – either the minimum time to serve or the maximum sentence – and the parole board determines the actual release date within that range. The guidelines are used to set the minimum term in Michigan and Pennsylvania and the maximum term in Alabama, Arkansas, and Massachusetts. The guidelines set both ends of the range in Maryland. And in Utah, the guidelines are merely a guide to the parole board as to the typical time served. It is interesting to note that in nearly all of these jurisdictions, the guidelines are considered to be advisory, which may indicate that the retention of parole may have been related to the political climate in which the guidelines were constructed and enacted.

Operating on the Advisory to Mandatory Continuum

An important characteristic of sentencing guidelines is whether they are considered advisory or mandatory. The term "advisory" connotes that the guidelines are a starting point or suggestion for sentencing while the term "mandatory" connotes that the sentences established by the guidelines are required. In truth, no system is fully advisory or mandatory. Though just 5-1/2 jurisdictions would classify themselves as mandatory (with one of Alabama's two sets of guidelines constituting the 1/2), all guidelines systems exist on a continuum of enforceability, and some jurisdictions that label their guidelines advisory are in application further along the continuum towards the mandatory end.

Departures and appeals are two key factors that impact the advisory or mandatory nature of the guidelines. Looking at these attributes together, one can see a relationship that underlies the more mandatory systems (Table 5). All of the jurisdictions that would label themselves as mandatory permit appeals of departure sentences, and all articulate a departure standard thereby establishing a parameter to govern the appeal (e.g., whether the court's reason for the departure was substantial and compelling). These are the jurisdictions that are firmly on the mandatory end of the continuum because the guidelines must be followed unless the court meets a specified standard for departure, and even then, appeal is permitted, thereby creating a mechanism to enforce the use of the guidelines. The Federal system, Michigan, and Pennsylvania, which would all self-identify as advisory, lean more towards the mandatory end of the continuum by requiring that the guidelines be considered as the starting point for sentencing and by permitting appeal based upon errors in application of the guidelines and departure sentences. Moreover case law has developed to fill in the lack of a departure standard in Pennsylvania, and case law is developing in the newly advisory Federal and Michigan systems. But here, jurisdictions like the District of Columbia, Delaware, and Massachusetts stand out because although they articulate a standard for departure, with no right of appeal to enforce that standard, the requirement is somewhat meaningless. The remaining jurisdictions are firmly on the advisory end of the system, relying only on the potential for peer pressure to enforce the application of the guidelines.

TABLE 5. Placing Jurisdictions on the Advisory to Mandatory Continuum Based on Appeal and Departure Standards

Jurisdiction	Advisory or Mandatory (Self-Described)	W/In Guidelines Appeal Permitted	Appeals of Departures Permitted	Departure Standard Articulated	Departure Reasons Required	Advisory or Mandatory in Application
Arkansas	Advisory	No	No	No	Yes	Advisory
Maryland	Advisory	No	No	No	Yes	
Utah	Advisory	No	No	No	Yes	
Virginia	Advisory	No	No	No	Yes	
District of Columbia	Advisory	No	No	Yes	Yes	Mandatory Elements, but Advisory in Application
Delaware	Advisory	No	No	Yes	Yes	
Massachusetts	Advisory	No	No	Yes	Yes	
Federal	Advisory	Yes	Yes	Yes	Yes	Leans Mandatory
Michigan	Advisory	Yes	Yes	No	No	
Pennsylvania	Advisory	Yes	Yes	No	Yes	
Alabama ^a	Both	No	Yes	Yes	Yes	Mandatory
Kansas	Mandatory	No	Yes	Yes	Yes	
Minnesota	Mandatory	Yes	Yes	Yes	Yes	
North Carolina	Mandatory	Yes	Yes	Yes	Yes	
Oregon	Mandatory	Yes	Yes	Yes	Yes	
Washington	Mandatory	Yes	Yes	Yes	Yes	

Source: Sentencing Guidelines Resource Center, Jurisdiction Profiles and Case Law Summaries, sentencing.umn.edu.

^a Alabama has two sets of guidelines. Only the presumptive guidelines, which would be characterized as mandatory, are featured here.

^b Ohio is excluded from this table because of the uniqueness and complexity of its system.



About the Robina Institute of Criminal Law and Criminal Justice

The Robina Institute of Criminal Law and Criminal Justice is located at the University of Minnesota Law School. The Robina Institute engages in original, interdisciplinary research that examines critical issues in the field of criminal justice. The Institute works to achieve transformative change in sentencing law and policy and correctional policies and practices. By partnering with state and local jurisdictions, the Institute focuses nationally on sentencing guidelines systems, parole release and revocation, and community supervision, as well as locally on the Minnesota criminal justice system.

The Robina Institute of Criminal Law and Criminal Justice was established in 2011 at the University of Minnesota Law School thanks to a generous gift from the Robina Foundation. Created by James H. Binger ('41), the Robina Foundation provides funding to major institutions that generate transformative ideas and promising approaches to addressing critical social issues.

For more information, visit robinainstitute.umn.edu.



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