



Parental Status and the Minnesota Sentencing Guidelines

The Minnesota Sentencing Guidelines provide for an alternative to incarceration in the form of a downward dispositional departure. This handout reviews the basis for considering parental status as a factor supporting a dispositional departure.

Even where the guidelines call for a prison term, a sentencing judge is allowed to depart and sentence an offender to probation if the offender is “**particularly amenable to probation.**” Minn. Sent. Guidelines, 2.3.a(7)

Guideline 2, subdivision D.2 sets forth reasons that should not be used for departures, including social factors such as living arrangements, marital status, and economic status. That social and economic factors cannot be used to justify a sentencing departure is a fundamental tenet of the guidelines, designed to prevent unfair sentencing disparities. Minn. Sent. Guidelines, 2.D.2

Lawyers and judges sometimes mistakenly conclude that this provision means they cannot consider parental status as a factor during a dispositional departure. But Guideline 2, subdivision D.3.a(7) does permit a departure where an offender is particularly amenable to probation. The comment to that guideline, citing a Minnesota Supreme Court decision, states that **although social and economic factors can't justify a departure, social and economic facts may be relevant to the question of a defendant's particular amenability to probation.** Minn. Sent. Guidelines Comment 2.D.303 (citing *State v. Soto*, 855 N.W.2d 303, 312 (Minn. 2014)).

Moreover, the case law indicates that **an offender's status as a parent can be relevant in determining whether the defendant is particularly amenable to probation.**

- *State v. Sherwood*, 341 N.W.2d 574 (Minn. Ct. App. 1983)
“[S]ocial and economic factors...may not be directly considered as reasons for departure under section II-D-1 of the guidelines. On the other hand, social and economic factors may ‘bear directly on a determination such as whether a defendant is particularly suitable to treatment in a probationary setting.’” *Sherwood*, 341 N.W.2d at 577 (quoting *State v. King*, 337 N.W.2d 674, 675-76 (Minn. 1983)).

The court of appeals went on to reject the defendant's argument that she should have received a downward dispositional departure based on her status as a mother because her nine convictions over 17 years indicated that she was not particularly amenable to probation [*Sherwood*, 341 N.W.2d at 577]. But the court accepted the proposition that parental status is a fact that may be considered in determining whether a defendant is particularly amenable to probation.

- *State v. Soto*, 855 N.W.2d 303 (Minn. 2014)
The supreme court held that the court of appeals erred in concluding that the defendant's status as a father was a “social or economic factor” that a court cannot consider at sentencing. Rather, “facts that cannot themselves justify a departure can be relevant to determining whether a defendant is particularly amenable to probation.” *Soto*, 855 N.W.2d at 312 (citing *State v. King*, 337 N.W.2d 674, 675-76 (Minn. 1983)).

The supreme court ultimately reversed the district court's downward dispositional departure, however, concluding that the lower court had abused its discretion in concluding that the defendant, who had been convicted of first degree criminal sexual conduct for a violent rape, was *particularly* amenable to probation. *Soto*, 855 N.W.2d at 312.