

# Minnesota Sentencing Guidelines Commission

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## Defendant's Request for Execution as Departure

April 16, 2015

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**Note:** "Defendant's Request for Execution as Departure" was on the agenda March 19, 2015. Possible modifications to section 2.D were presented. Following discussion, the Commission requested staff redraft the language which is presented below.

**Issue:** An offender generally has the right to demand execution of sentence. *State v. Rasinski*, 472 N.W.2d 645, 651 (Minn. 1991) ("[T]he defendant has a right to demand execution of the presumptive sentence when the probationary sentence is more onerous even if society's interest appears ... to be better served by the probationary sentence.").

There is a statutory exception to this rule: if an offender would serve less than nine months at the state institution, and will not be serving another, previously executed felony sentence, then the offender may not demand execution of sentence. Minn. Stat. § 609.135, subd. 7; see *State v. Samarzia*, 452 N.W.2d 727 (Minn. App. 1990), *review denied* (Minn. Apr. 25, 1990).

**Guidelines Considerations:** Although it is the right of the defendant to have his or her probation sentence executed, Commission staff count it as an aggravated dispositional departure because the Guidelines recommend a stayed sentence.

Guidelines reference the statutory exception to the rule in *Comment 3.A.202*, as it relates to establishing conditions of stayed sentences; however, the reference is incorrect.

### Redrafted – Possible Guidelines Modifications to Section 2.D

#### D. Departures from the Guidelines

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x. Offender's Demand for Execution. When an offender determines that service of a probationary sentence would be more onerous than imprisonment, the offender has the right to demand execution if either (1) the duration to be pronounced, less credit for time served, would be not less than nine months or (2) the offender will be serving another executed prison sentence concurrently with or consecutively to the sentence to be

executed. A sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure.

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*2.D.10x. An offender generally has the right to demand execution of sentence. State v. Rasinski, 472 N.W.2d 645, 651 (Minn. 1991); see also Minn. Stat. § 609.135, subd. 7. The Commission does not regard the execution of a presumptively stayed sentence as a departure from the Guidelines if the record, or the Court's communication to the Commission, reflects that the sentence was executed upon the offender's peremptory demand.*

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### **Recommended Correction to Guidelines Section 3.A**

*3.A.202. While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states ~~that~~ when an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration.* \* \* \* \*