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"And please take into account that my client  
was acting upon a double-dog-dare."

# SENTENCING

# Goals of Sentencing

- Protect the public
- Reduce crime
- Punish offenders
- Rehabilitate offenders
- Restitution

How are we doing?

## **Currently in the U.S.**

- Per the 2015 Census: the United States incarcerates over 20 percent of the world's prisoners despite having less than 5 percent of the world's population.
- The U.S. incarceration rate is more than four times the world average.
- At the same time, between 1980 and 2014 violent crime rates fell by 39 percent and property crime rates fell by 52 percent.

Who are we  
incarcerating?

- There are approximately 2.2 million people in the United States behind bars, including individuals in Federal and State prisons as well as local jails.
- African Americans are incarcerated in state prisons at a rate that is 5.1 times the imprisonment of whites.
- Over a third of the prison population has received public assistance at some point in their lives, 13 percent grew up in foster care, and over 10 percent experienced homelessness in the year prior to entering prison.
- Over 50 percent of the incarcerated have mental health problems, while approximately 70 percent were regular drug users and 65 percent regularly used alcohol prior to being incarcerated.

# Minnesota Nice?

- We have one of the lowest rates of incarceration, but one of the highest rates of probation.
- In 2016, two thirds of the state's prison admissions were due to technical violations.
- Minnesota is one of five states (Iowa, Minnesota, New Jersey, Vermont, and Wisconsin), where the disparity between blacks and whites is more than 10 to 1.

# **Your sentence could depend on where you live-**

- There were 16,763 felony offenders sentenced in 2015, an increase of 3.8 percent from 2014. This was the highest volume on record, surpassing the previous record set in 2006.
- 15.4% received a dispositional departure from the Guidelines: 11.2% of offenders received probation when the Guidelines recommended prison (“Mitigated”)
- Highest rate of dispositional departure: 47.4 percent in the Fifth Judicial District (includes the City of Mankato)
- Lowest rate of dispositional departure: 24.6 percent in the Seventh District (includes the cities of Moorhead and St. Cloud) and 27.8 percent in the Eight District (includes the City of Willmar)

## **Other notable variations:**

- The mitigated dispositional departure rate is higher for women (52.4%) than men (31.8%).
- The mitigated dispositional departure rate ranged from a low of 26.2 percent for Asian offenders to a high of 37.0 percent for white offenders.

# **MN Sentencing Guidelines, continued..**

- 24.8% received a mitigated durational departure.
- 3.3 % received an aggravated durational departure.
- **There is also considerable variation in mitigated durational departure rates by Minnesota Judicial District:**
- Highest rate of durational departures: 48.6 percent in the Fourth Judicial District (Hennepin County)
- Lowest rate of durational departures: 2.2 percent in the Eighth Judicial District (includes city of Willmar)

- The mitigated durational departure rate for males sentenced in 2015 was higher than for females (25.3% vs. 19.9%).
- The mitigated durational rate varied from a low of 14.8 percent for American Indian offenders to a high of 38.6 percent for Asian offenders.

**Why should you care?**  
(Hint: we are punishing the  
wrong people.)

- The probability that a family is in poverty increases by nearly 40 percent while a father is incarcerated.
- Nearly 2 in 3 families (65%) with an incarcerated member were unable to meet their family's basic needs.
- It is estimated that more than 5 million children have a parent that has ever been incarcerated.
- Parental incarceration is a strong risk factor for a number of adverse outcomes, including antisocial and violent behavior, mental health problems, school dropout, and unemployment.

# **Don't care about the humanitarian reasons for reform?**

- Further increasing the incarcerated population is not likely to materially reduce crime.
- Longer sentence lengths have little deterrent impact on offenders. A 10 percent increase in average sentence length corresponds to a zero to 0.5 percent decrease in arrest rates.
- Emerging research finds that longer spells of incarceration increase recidivism. A recent study finds that each additional sanction year causes an average increase in future offending of 4 to 7 percentage points.

# Remember those Goals?

- Protect the public
- Reduce crime
- Punish offenders
- Rehabilitate offenders
- Restitution

# What works?

- **Mental Health Courts:** In a 2015 literature review of mental health court data, 13 of 15 articles examined recidivism rates and found significant reductions in new arrests and days spent incarcerated.
- For example, one study of over 1,000 participants showed that mental health court participants spent 44 percent fewer days in jail—82 days fewer in total—compared to regular court defendants, who spent 152 days in jail on average.
- **Drug Courts:** According to the National Association of Drug Court Professionals, 75 percent of those who successfully complete drug court “remain arrest-free at least two years after leaving the program,” and for every dollar invested in drug court, “taxpayers save as much as \$3.36 in avoided criminal justice costs alone.”

- **Be creative in counties without problem-solving courts!**
- **Risk/Needs Assessment:** stay “hands off” low risk offenders.  
LEAST RESTRICTIVE MEANS NECESSARY TO ACHIEVE  
THE PURPOSE OF THE SENTENCE.
- **Address Criminogenic Needs:** antisocial peer group, drug or alcohol dependency, etc.
- **Target the Appropriate Intervention:** research says that it does more harm than good to put offenders in programs they don't need.
- **Increase Positive Reinforcement:** 4:1 of positive reinforcement over sanctions found to be most effective (e.g. verbal recognition).

- Truly get to know the people being sentenced,
- treat only what they actually need to treat,
- & remember that none of this has to wait until sentencing.

# Sources of Information:

- *“6 Evidence-based Practices Proven to Lower Recidivism,”* [CorrectionsOne.com](http://CorrectionsOne.com), March 30, 2010.
- *“Economic Perspectives on Incarceration and the Criminal Justice System,”* Executive Council of Economic Advisors, April 2016. (Available on <https://obamawhitehouse.archives.gov> )
- *“Five Studies: Mental Health Courts are Finding their Footing,”* Pacific Standard, November 25, 2015.
- *“Minnesota Sentencing Guidelines Commission 2015 Sentencing Practices: Annual Summary Statistics for Felony Offenders,”* Published November 2016
- *“Notable Statistics Minnesota Department of Corrections,”* September 2016.
- *“The Color of Justice: Racial and Ethnic Disparity in State Prisons,”* The Sentencing Project, 2016.
- *“Who Pays? The True Cost of Incarceration on Families,”* September 2015.
- *“Yes, Minnesota has a low prison population, but that’s not the whole story,”* Star Tribune, April 2, 2017.

**Know someone who was granted a departure  
from the MN Sentencing Guidelines and made  
the most of it? Tell me more!**

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