AN ANALYSIS OF DEPARTURES FROM THE U.S. SENTENCING GUIDELINES, 1991–1995

Executive Summary

By

William P. Adams

The Urban Institute
2100 M Street, N.W.
Washington, DC 20037

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This report was prepared under the United States Sentencing Commission's Data Utilization Project. The views expressed are those of the author and should not be attributed to the United States Sentencing Commission, the Urban Institute, its funders, or its trustees. The author is a Research Associate and Analyst with the Federal Justice Statistics Resource Center at the Urban Institute.

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This evaluation presents an empirical analysis of judicial departures from the U.S. Sentencing Guidelines. The goals of the study are: (1) to describe the extent, magnitude, and distribution of departures; and (2) to determine the factors (among those for which the U.S. Sentencing Commission records data) that affect a judge's departure decision.

The study develops a framework for analyzing departures based on Section 5K2.0 of the guidelines manual. These grounds for departure include: (1) aggravating or mitigating factors of a kind not adequately taken into account by the guidelines; (2) the guideline level's inadequacy in unusual circumstances; and (3) the prohibition of using certain offender characteristics ("extra-legal" factors)-- race, sex, national origin, creed, religion, and socio-economic status -- in departure decisions. The study also considers three other sets of factors-- factors "not ordinarily relevant" (age, education, number of dependents), processing factors (mode of disposition) and organizational factors (judicial circuits) -- as additional bases for departure decisions.

Highlights of descriptive analyses include the following:

- Of the 180,227 cases for which a departure determination could be made over the 1991-1995 period, nearly 25% departed from established guideline ranges: 17% of all sentences were downward departures due to substantial assistance to authorities, 7% were downward departures for other reasons, while about 1% of all sentences were upward departures.

- Drug offenders, although comprising about 44% of all cases, accounted for 60% of all departures. Property offenders and public order offenders each comprised 17% of all departures and violent offenders comprised only about 5% of all departures.

- The median downward departure length was about 11 months, while the median upward departure was 13 months, and the median departure length for substantial assistance departures was about 31 months.

Multivariate logit modeling was used to predict the probability of departure, and ordinary least squares regression modeling was used to predict departure length. Key findings of these analyses are presented below:

- Several offense-related and criminal history factors were found to be significantly related to departure decisions. In predicting upward departures, these included factors such as reckless endangerment during flight, whether the victim was restrained, whether there was a vulnerable victim adjustment, whether the offender had any criminal history points, and whether the offender was under criminal justice system

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supervision at the time of the offense. Reckless endangerment during flight had the largest effect in predicting upward departures: offenders that had an adjustment for reckless endangerment during flight were over 9 times as likely to receive a departure as those who did not. For predicting downward departures, whether the offender played a mitigating role in the offense and whether the offender accepted responsibility were statistically significant: defendants coded as having a minimal role in the offense were about twice as likely to receive a downward departure as those who were not, while offenders who accepted responsibility for the offense were about one and half times as likely as those who did not of receiving a downward departure.

- Several extra-legal factors (race, sex, and citizenship)-- factors that the guidelines specifically prohibit from being used as grounds for departure (USSG, Section 5H)-- were found to be statistically significant in predicting downward departures. In predicting upward departures, sex and Hispanic origin emerged as statistically significant.

- Age and education --two of the factors deemed "not ordinarily relevant" by the Commission were statistically related to departures. These are factors which should not normally enter into sentencing decisions, but which the guidelines allow consideration for in extreme or unusual circumstances. Our results indicated that age was statistically significant in predicting downward departures, and education was significant in predicting upward departures.

- Case processing factors -- the mode of disposition in the case (trial or plea) -- were found to be statistically significant in predicting downward departures, but not upward departures: cases decided by plea were more likely to receive a downward departure than were cases that were decided by trial.

- Organizational factors (judicial circuits) were also important in determining departures. The Second and Ninth Circuits emerged as the strongest statistically different circuits compared to the reference circuit (the Eleventh Circuit) in predicting downward departures: the odds of receiving a downward departure in the Second Circuit were about three times the odds of receiving a downward departure in the reference circuit, while the odds of receiving a downward departure in the Ninth Circuit were over four times the odds of receiving one in the reference circuit. In predicting upward departures, the First and Ninth Circuits emerged as the strongest statistically different circuits compared to the reference circuit, although the effects were modest: the odds of receiving an upward departure in the First Circuit were roughly twice the odds of receiving one in the reference circuit, while the odds of receiving an upward departure in the Ninth Circuit were roughly one and a half times the odds of receiving one in the reference circuit.

- In addition to predicting whether or not an offender received a departure, we also constructed models to predict departure length for upward departures and downward departures, separately. We found that many of the same factors from among the sets of factors used as predictors (offense-related and criminal history factors, extra-legal

factors, “not ordinarily relevant” factors, processing factors, and organizational factors) that emerged as significant in predicting whether an individual received a departure were also statistically significant in predicting departure length. Our model predicting downward departure length was statistically significant and explained about 35% of the variation in departure length. Our model predicting upward departure length was statistically significant and explained 22% of the variation in departure length.

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