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Comment

State v. Krotzer: Inherent Judicial Authority—Going Where No Court Has Gone Before

Mark H. Zitzewitz*

Billy Jim Krotzer pled guilty to "statutory rape."1 Over the prosecution's objections, the trial court refused to accept Krotzer's plea, and, instead of sentencing Krotzer according to statutory sentencing provisions, the court declared a stay of adjudication and placed Krotzer on conditional probation.2 The State of Minnesota appealed the trial court's disposition, arguing that it violated the separation of powers doctrine in the Minnesota Constitution.3 Nonetheless, the court of appeals affirmed the trial court's decision, holding that it was within the court's inherent authority to act "in the furtherance of justice."4 The Minnesota Supreme Court affirmed that holding, adding that the "special circumstances" of Krotzer's case warranted "unusual judicial measures."5

The decision in State v. Krotzer strayed from precedent regarding the proper role of the judiciary in criminal trials.6 Krotzer posed a single issue: whether a Minnesota court has the authority to preclude prosecution of an individual by staying adjudication of the case because that court finds that the

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* J.D. Candidate 1998, University of Minnesota Law School; B.A. 1993, St. Olaf College, Northfield, Minnesota.


2. Id. at 865. In essence, a stay of adjudication acts as a diversion from the trial process, offering a defendant the opportunity to fulfill court-determined conditions in exchange for dismissing charges before trial has begun.

3. Id.

4. Id. at 867.


6. See infra notes 17-57 and accompanying text (detailing precedent regarding the role of each branch established by the separation of powers doctrine).
circumstances of the case warrant a disposition other than those legislatively established. The holding extended judicial discretion in sentencing beyond that previously recognized by Minnesota and other courts.\footnote{See infra notes 51-53 and accompanying text (detailing the extent of judicial discretion in sentencing previously recognized by the courts).}

This Comment will examine the holding of \textit{Krotzer} and argue that the Minnesota Court of Appeals and the Minnesota Supreme Court erred in finding that inherent judicial powers include the ability to stay adjudication of criminal prosecutions. Part I provides an overview of the separation of powers doctrine and its application to the criminal trial process.\footnote{Because \textit{Krotzer} was a Minnesota case and the holding is unparalleled, the author cites primarily Minnesota case law. The issues dealt with in \textit{Krotzer}, however, are not unique to Minnesota. All state criminal courts face the challenge of determining appropriate sentences in the context of a system that allocates powers to each branch of the government and an environment in which the public is increasingly critical of the criminal justice system. For that reason, the author includes case law of other states and of the federal courts.} Part II examines the holding and reasoning of both the Minnesota Court of Appeals and the Minnesota Supreme Court in \textit{Krotzer}. Part III critically analyzes the availability of a judicial stay of adjudication in light of the constitutional separation of powers. This Comment contends that the trial court's decision to stay adjudication abridged the constitutional roles of both the legislature and the prosecutor. It further contends that the supreme court's holding established a standard which permits unlimited judicial discretion in sentencing and sanctions judicial abuse of the legislature's proper role in making value judgments in enacting the criminal code. Finally, this Comment recommends that, absent an overturning of \textit{Krotzer}, the legislature should regulate the availability of stays of adjudication in order to maintain the proper judicial, prosecutorial, and legislative roles in the criminal justice system.

\section*{I. THE SEPARATION OF POWERS DOCTRINE}

The federal and state constitutions divide the powers of governance into the legislative, executive, and judicial branches. The Minnesota Constitution provides: "The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of
the powers properly belonging to either of the others except in the instances expressly provided in this constitution." Although the separation of powers arrangement appears rigid, courts have generally refused to view the branches as "airtight compartments," and instead have determined that the efficient practice of governance requires a pragmatic, flexible application of the system. As such, the "inherent powers" of the branches often overlap and sometimes conflict.

In order to function smoothly, the criminal justice system requires a practical application of the separation of powers. Generally, the state and federal constitutions charge the legislative branch with defining criminal offenses, empower the executive to enforce the criminal code, and grant the judiciary the authority to impose criminal sentences upon those convicted. Enactment and enforcement of the criminal code ultimately achieves both retributivist and utilitarian purposes, but when that code is ambiguous, the three branches claim "inherent authority" and often disagree about how to attain those goals. The constitution provides little guidance for the proper handling of such cases, though each branch must observe the distribution of authority therein to consistently achieve justice.

A. LEGISLATIVE AUTHORITY

The power to define criminal offenses and fix the punishment for proscribed acts is exclusively legislative. In presid-
ing over the adjudication of criminal complaints, the courts must observe the legislature's policy decisions that lie behind the criminal code.\textsuperscript{18} It is the legislature's duty to prescribe criminal penalties and thus direct the courts' imposition of sentences.\textsuperscript{19} Indeed, some states, including Minnesota, as well as the federal justice system have established sentencing guidelines from which a court may stray only under prescribed conditions.\textsuperscript{20} The imposition of sentencing guidelines and similar measures reflects the general trend toward confining judicial sentencing discretion, as Congress and state legislatures respond to public pressure and sentiment that criminals get their

\begin{thebibliography}{9}
\bibitem{18} See \textit{Ex Parte United States}, 242 U.S. at 42 (noting that a "discretionary authority [of the judiciary] to permanently refuse to try a criminal charge because of the conclusion that a particular act made criminal by law ought not to be treated as criminal... would result in the destruction of the conceded powers of the other departments and hence leave no law to be enforced"); \textit{Meyer}, 37 N.W.2d at 10 ("It is the exclusive province of the Legislature to declare what acts, deemed by the lawmakers... shall constitute a crime, to prohibit the same and impose appropriate penalties for a violation thereof. With the wisdom and propriety thereof the courts are not concerned.") (emphasis added) (quoting \textit{State v. Moilen}, 167 N.W. 345, 346 (Minn. 1918)); \textit{see also Billis}, 800 P.2d at 416 ("The judicial department has no inherent power to refuse to impose a sentence fixed by statute or to refuse to execute such a sentence when imposed.... That power belongs exclusively to the legislative department.").
\bibitem{19} \textit{State v. Olson}, 325 N.W.2d 13, 17 (Minn. 1982); \textit{Meyer}, 37 N.W.2d at 15; \textit{State v. Pierce}, 657 A.2d 192, 195 (Vt. 1995).
\bibitem{20} See, e.g., Deb Dailey, \textit{Introduction and Background to MINNESOTA SENTENCING GUIDELINES AND COMMENTARY ANNOTATED} (Deb Dailey ed., 2d ed. 1995) (noting that the sentencing structure that existed prior to the establishment of sentencing guidelines was indeterminate, allowing broad judicial discretion to impose a sentence within a range of years to the statutory maximum). In 1978, the state legislature established a Sentencing Guidelines Commission to establish guidelines for the district court in sentencing felons. Id. The Commission established a determinate sentencing structure that employs a grid system, placing each individual offense in a cell on the grid based on its severity and on the offender's criminal history. Id. Judges may depart from the presumed sentence established by the Guidelines only when they note, in writing, established social factors that are "substantial and compelling" in the individual's case. \textit{MINN. SENT. GUIDELINES} § II.D (1996). The guidelines do not guide the decision to stay imposition or execution of sentences, however. Id. § II.A.2. The sentencing court has the option of staying imposition or execution after a finding of guilt. \textit{MINN. STAT.} § 609.135, subd. 1 (1994); \textit{State v. Oka}, 356 N.W.2d 676, 677 (Minn. 1984). An overwhelming majority of state and federal courts has held that a disposition of a stay of execution or imposition is within the power granted the courts by statute, not that the option is within "inherent judicial powers." \textit{Osterloh}, 275 N.W.2d at 580.
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"just desserts."\(^{21}\) The federal and state constitutions empower solely the democratic legislative branch to categorize behavior as "criminal" and to determine the extent to which the State will impose penalties for such actions.

**B. Executive Authority**

The executive branch enforces the criminal code that the legislature adopts. In the context of the criminal justice system, the executive branch has the constitutional prerogative to decide to bring charges,\(^{22}\) to dismiss charges once brought,\(^ {23}\) to plea bargain,\(^ {24}\) and to recommend a sentence to the court.\(^ {25}\)

The prosecutor, as an agent of the executive branch, exercises this authority in making the decision to bring specific charges against individuals through criminal complaints,\(^ {26}\) with established procedural checks providing the only limit to his or her authority.\(^ {27}\) Prosecutors have considerable discre-
tion in the charging decision, subject only to the limitations of abuse, due process, and equal protection. Absent statutory or constitutional abridgment, the state has a "right to one full and fair opportunity to convict those who have violated its laws." Beyond the enforcement of procedural limitations, the court cannot evaluate the propriety of criminal charges.


The decision to prosecute and the choice of what charges to file and against whom rest entirely within the prosecutor's discretion. See Smith, 270 N.W.2d at 124 (following the Supreme Court's establishment of the scope of prosecutorial discretion established in Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978)); State v. Billis, 800 P.2d 401, 417 (Wyo. 1990) (noting that the "prosecutor's power to dismiss charges, to reduce charges, to defer charges, in sum to control the prosecution, was exclusive").

28. See Aubol, 244 N.W.2d at 639 (citing United States v. Ammidown, 497 F.2d 615, 622 (D.C. Cir. 1973)), in which the court noted, "The question is not what the judge would do if he were the prosecuting attorney, but whether he can say that the action of the prosecuting attorney is such a departure from sound prosecutorial principle as to mark an abuse of prosecutorial discretion".

Minnesota courts have evaluated charging decisions for prosecutorial abuse in a variety of contexts. See State v. Salitros, 499 N.W.2d 815, 817-18, 820 (Minn. 1993) (evaluating abuse in the execution of the indictment and trial processes); State v. Alexander, 290 N.W.2d 745, 748-49 (Minn. 1980) (examining a charging decision for vindictiveness); Smith, 270 N.W.2d at 124 (determining whether charging decisions were race-based).

29. See Bordenkircher, 434 U.S. at 364-65 (holding that a charging decision did not violate the Due Process Clause of the Constitution when it was based on probable cause and was not deliberately arbitrary); Smith, 270 N.W.2d at 164 (applying the Bordenkircher test to a challenge under the Minnesota Constitution's due process clause).

30. See, e.g., State v. Herme, 298 N.W.2d 454, 455 (Minn. 1980) ("As a general rule, the prosecutor's decision whom to prosecute and what charges to file is a discretionary matter which is not subject to judicial review absent proof by defendant of deliberate discrimination based on some unjustifiable standard such as race, sex, or religion.").


32. See Aubol, 244 N.W.2d at 640 (holding that under the Minnesota Rules of Criminal Procedure and the constitutional separation of powers, the judiciary must refrain from undue interference with the direction taken by the prosecution in bringing criminal charges). The Aubol court noted:

As to fairness to the prosecution interest, here we have a matter in which the primary responsibility, obviously, is that of the prosecuting attorney. The District Court cannot disapprove of his action on the ground of incompatibility with prosecutorial responsibility unless the judge is in effect ruling that the prosecutor has abused his discretion.

Id. at 639 (citation omitted); see also Newman v. United States, 382 F.2d 479, 480 (D.C. Cir. 1967). The Newman court wrote succinctly of proper judicial restraint, noting, "Few subjects are less adapted to judicial review than the exercise by the Executive of his discretion in deciding whether to institute
The prosecutor also has virtually unconstrained power to permanently or temporarily suspend prosecution.\textsuperscript{33} Though the court may dismiss a charge "in the furtherance of justice"\textsuperscript{34} or upon finding a lack of probable cause,\textsuperscript{35} absent such a finding, it may not defeat a prosecution or accept a plea to a lesser charge without the prosecutor’s consent.\textsuperscript{36} Until jeopardy attaches, therefore, a court’s dismissal on procedural grounds is without prejudice, allowing the prosecutor to reinstate charges, or what precise charge shall be made, or whether to dismiss a proceeding once brought." Id.

33. MINN. STAT. § 609.132 (1994); MINN. R. CRIM. P. 30.01; see Aubol, 244 N.W.2d at 640 (holding that the Rules require a trial court to grant leave to dismiss upon motion by the prosecutor unless the court explicitly finds that such motion constitutes an abuse of discretion); see also Commonwealth v. Gordon, 574 N.E.2d 974, 975 (Mass. 1991) (stating that the decision to terminate prosecution is within the discretion of the prosecutor and is free from judicial intervention); State v. Clark, 469 N.W.2d 871, 873 (Wis. Ct. App. 1991) (holding that “[t]he authority to seek dismissal, with or without prejudice, except in cases of statutory or constitutional authorization, rests in the discretion of the prosecutor”); State v. Billis, 800 P.2d 401, 418 (Wyo. 1990) (noting that the power to terminate prosecution is exclusively allocated to the executive branch).

34. MINN. STAT. § 681.21 (1994); see infra notes 37, 48 (describing application of the statute).

35. MINN. R. CRIM. P. 28.04, subd. 1. But see State v. Aarsvold, 376 N.W.2d 518, 520 (Minn. Ct. App. 1985) (noting that a dismissal for lack of probable cause after suppressing evidence was appealable where it effectively precluded the prosecution from reissuing an amended complaint).

36. See generally State v. Carriere, 290 N.W.2d 618 (Minn. 1980) (examining the court’s authority under Minnesota Rule of Criminal Procedure 15.07, which authorizes the court to permit the defendant on motion to plead to a lesser offense). The Carriere court found that the comment to Rule 15.07 expressly authorized the court to accept such a plea without consent of the prosecutor, but the court held that such an application would violate the separation of powers arrangement which gives the prosecutor discretion in charging criminal offenses. Id. at 620. The court further held that the prosecution can defeat such a motion by showing a “reasonable likelihood the state can withstand a motion to dismiss the charge at the close of the state’s case in chief.” Id.; see also Ohio v. Johnson, 467 U.S. 493, 502 (1984) (holding that the trial court’s dismissal of a murder indictment after accepting a guilty plea to involuntary manslaughter was improper because it denied the prosecution an opportunity to exercise its constitutional power to prosecute violators of the laws); Gordon, 574 N.E.2d at 976 (holding that the trial court’s decision to accept, over the prosecutor’s objection, the defendant’s guilty plea to second-degree murder when he had been indicted for first-degree murder usurped the decision-making authority constitutionally reserved for the prosecutor); cf. United States v. Lovasco, 431 U.S. 783, 790-96 (1977) (holding that the judgment of when to bring an indictment was within the discretion of the prosecutor); Commonwealth v. Kindness, 371 A.2d 1346, 1349 (Pa. 1977) (holding that “a Pennsylvania court has the power to dismiss a prosecution over the prose-cuting attorney's objection only when the legislature expressly empowers it to do so”).
through an amended complaint. Thus, the state and federal constitutions limit the decision to dismiss charges, just as they limit the decision to bring charges, but the prosecutor maintains broad discretion.

As an extension of the power to control the charges filed against a defendant, the prosecutor has the exclusive authority to enter into a plea agreement with the defense. The discretion to plea bargain is necessarily quite broad, and the prosecutor, as part of the negotiation, can threaten to bring additional charges against a defendant as long as he or she can show probable cause. Indeed, the prosecutor has no duty to enter into plea bargaining at all. Overall, the process of plea bargaining is the province of the prosecutor, and courts have no authority to interfere by entering into plea bargains on the State’s behalf without the prosecutor’s consent.

A final extension of the prosecutor’s authority to press criminal charges is the power to “recommend” a sentence to the court by selectively charging individuals under statutes that

37. See City of St. Paul v. Landreville, 221 N.W.2d 532, 534 (Minn. 1974) (per curiam). A court’s finding that further prosecution would violate the defendant’s constitutional rights bars the prosecutor from charging the same offense. Id.; see also Village of Eden Prairie v. Housman, 180 N.W.2d 251, 252 (Minn. 1970) (per curiam) (holding that a dismissal for “want of prosecution” is without prejudice); cf. City of St. Paul v. Halvorson, 221 N.W.2d 535, 537 (Minn. 1974) (holding that a violation of due process justifies a dismissal with prejudice, but that under other circumstances, the state may reinstate charges after a dismissal by the court).

38. See State v. Vahabi, 529 N.W.2d 359, 360-61 (Minn. Ct. App. 1995); see also Gordon, 574 N.E.2d at 976 & n.3 (noting that plea bargaining is constitutionally allocated to the prosecutor and judges are not to actively participate); Carriere, 290 N.W.2d at 620 n.3 (stating that the decision to engage in plea bargaining is at the prosecutor’s discretion).

39. See Bordenkircher v. Hayes, 434 U.S. 357, 365 (1978) (holding that the threat in plea bargaining to charge the defendant under the Kentucky recidivist statute “no more than openly presented the defendant with the unpleasant alternatives of forgoing trial or facing charges on which he was plainly subject to prosecution, [and] did not violate the Due Process Clause of the Fourteenth Amendment”).


41. See, e.g., Vahabi, 529 N.W.2d at 360-61 (noting that trial judges should not “improperly inject” themselves into plea negotiations) (citation omitted); see also State v. Johnson, 156 N.W.2d 218, 223 (Minn. 1968) (noting that the role of the trial judge in the plea negotiation process is limited to a “discreet inquiry into the propriety of the settlement submitted for judicial acceptance”); State v. Todd, 570 A.2d 20, 23 (N.J. Super. Ct. App. Div. 1990) (upholding a New Jersey statute that prohibits courts from imposing a lesser sentence than the one the parties agreed to in a plea bargain).
change the possible punishment upon conviction. For instance, the decision to try a juvenile in adult court is generally within the prosecutor's discretion. Likewise, the prosecutor may seek to charge an individual under a "repeat offender" statute that imposes significantly harsher penalties on recidivist criminals. Many states allow the prosecutor to choose pre-trial diversion as an alternative to going forward with or dropping a complaint. The charging power under these "special" statutes grants discretion to prosecutors that is quite

42. See Woodard v. Wainwright, 556 F.2d 781, 786 (5th Cir. 1977) (holding that "[i]n light of our previous holding that juvenile treatment is a creation of state legislatures, we find no federal constitutional infirmity in permitting state prosecutors to employ their discretion to seek indictments against those juveniles who have allegedly committed serious crimes"); Russell v. Parratt, 543 F.2d 1214, 1217 (8th Cir. 1976) (holding that the exercise of prosecutorial discretion in trying a 17-year-old as an adult did not violate due process); United States v. Bland, 472 F.2d 1329, 1337 (D.C. Cir. 1972) (holding that the discretion afforded prosecutors under a statute allowing adult prosecution for offenders 16 years of age or older does not violate due process or equal protection); People v. Thorpe, 641 P.2d 935, 938 (Colo. 1982) (en banc) (holding that Colorado's statute allowing criminal trials for defendants 14 and older prohibited the court from intervening in the prosecutor's decision to try a 16-year-old as an adult).

43. See, e.g., People v. San Diego County Superior Court, 37 Cal. Rptr. 2d 364, 375 (Cal. Ct. App. 1995) (upholding California's "Three Strikes" law which enhanced penalties for recidivist defendants). The California "Three Strikes" statute expressly provided that courts could not strike prior convictions from a defendant's record in order to avoid the law's edict, but allowed prosecutors to strike prior convictions "in furtherance of justice." Id. The court held that the statute's allowance of prosecutorial discretion was proper under the separation of powers clause of the state constitution. Id. The California Supreme Court upheld the decision. 892 P.2d 804 (Cal. 1995).

Similarly, the Eighth Circuit Court of Appeals has upheld Nebraska's "habitual criminal statute," Neb. Rev. Stat. § 29-2221 (1993), against repeated challenges. See Pierce v. Parratt, 666 F.2d 1205, 1206 (8th Cir. 1981) (upholding the statute against a challenge that it delegated to the prosecutor the legislative responsibility to define criminal conduct); Brown v. Parratt, 560 F.2d 303, 304 (8th Cir. 1977) (holding that the statute does not constitute cruel and unusual punishment); Martin v. Parratt, 549 F.2d 50, 52 (8th Cir. 1977) (finding that the statute does not violate the principles of due process or equal protection).

44. LaFAVE & ISRAEL, supra note 27, § 13.1(d), at 158-59. "Diversion 'is the disposition of a criminal complaint without a conviction, the noncriminal disposition being conditioned on either the performance of specified obligations by the defendant, or his participation in counselling [sic] or treatment.'" Id. at 159 (citation omitted).
broad, bounded only by the constitutional limit forbidding purposeful discrimination.\textsuperscript{45}

C. JUDICIAL AUTHORITY

Though the separation of powers often restricts its discretion, the judiciary is far from a passive spectator in the process of criminal justice. Once the State brings criminal charges, the court has the authority to accept or reject a plea,\textsuperscript{46} including one arrived at through negotiation between the prosecutor and defendant.\textsuperscript{47} Furthermore, the court has the power to dismiss a complaint \textit{sua sponte} in the "furtherance of justice" or upon the determination of a constitutional violation.\textsuperscript{48} As noted earlier, the court may not deny the State a full and fair opportunity to prosecute a defendant, but it maintains a ministerial role in determining the propriety of the proceedings.\textsuperscript{49}

\textsuperscript{45} See, e.g., Bland, 472 F.2d at 1337 (noting that the general due process requirement is that a charging decision need not be based on "suspect" factors, such as "race, religion, or other arbitrary classification").

\textsuperscript{46} See supra note 36 (explaining the Minnesota Supreme Court's ruling in \textit{Carriere}, which examined the court's authority to accept a plea to a lesser crime than that charged); see also State v. Tuttle, 504 N.W.2d 252, 256 (Minn. Ct. App. 1993) (noting that Minnesota Rule of Criminal Procedure 15.05 grants courts the discretion to allow a defendant to withdraw a guilty plea before sentencing if it is "fair and just" to do so). Under Minnesota Rule of Criminal Procedure 15.04, subdivision 3(1), a court has the authority to reserve acceptance of a guilty plea pending completion of a pre-sentence investigation (PSI), but cannot allow a defendant to subsequently withdraw the plea. Tuttle, 504 N.W.2d. at 257.

\textsuperscript{47} See supra notes 41, 46 and accompanying text (describing the limited role of a court in the plea bargaining process); see also State v. Moe, 479 N.W.2d 427, 429 (Minn. Ct. App. 1992) (describing the court's role as that of an "independent examiner to verify that the defendant's plea is the result of an intelligent and knowing choice and not based on misapprehension or the product of coercion") (citation omitted).

\textsuperscript{48} See supra note 37 and accompanying text (detailing cases in which the Minnesota Supreme Court held that a court's dismissal in furtherance of justice or on constitutional grounds may be proper under Minnesota statutes and rules but is presumed without prejudice); see also State v. Hendrickson, 395 N.W.2d 458, 461 (Minn. Ct. App. 1986) (noting that the court's dismissal "in the furtherance of justice" did not prevent the State from reissuing the complaint); \textit{In re Welfare of J.H.C.}, 384 N.W.2d 599, 601 (Minn. Ct. App. 1986) (stating that dismissal in the furtherance of justice was authorized by Minnesota Statute § 631.21 (1984), but that such an action was not a final order of the court precluding further state action on the charge).

\textsuperscript{49} See supra note 28 (discussing a court's holding that a trial court need not accept a motion by the prosecutor to dismiss a case but that the trial court must explicitly identify its reasons for refusing to grant leave to dismiss a complaint).
The court’s primary role comes in the final disposition of a case. The court has the exclusive authority to impose criminal sanctions, though statutory mandates limit the scope of its power. In a determinate sentencing scheme, the court maintains the limited power to depart from a presumptive sentence to ensure that the punishment imposed fits the circumstances of the crime committed. It also has the discretion to stay execution or imposition of a sentence if a statute authorizes such a disposition. Additionally, most states have statutes granting courts some authority to expunge criminal records. Though

50. See People v. Tenorio, 473 P.2d 993, 996 (Cal. 1970) (en banc) ("When the decision to prosecute has been made, the process which leads to acquittal or to sentencing is fundamentally judicial in nature.").

51. See State v. Billis, 800 P.2d 401, 416 (Wyo. 1990) (finding that "[t]he judicial department has no inherent power to refuse to impose a sentence fixed by statute or to refuse to execute such a sentence when imposed").

52. See supra note 20 (discussing the use of sentencing guidelines and the judicial power to depart from those guidelines). States are divided on whether courts may, without consent of the prosecutor, impose a sentence below the statutory minimum established for offenses. Cases holding that the judiciary has such authority include: State v. Jones, 689 P.2d 561 (Ariz. Ct. App. 1984); People v. Navarro, 497 P.2d 481 (Cal. 1972); Brugman v. State, 339 S.E.2d 244 (Ga. 1986); and State v. LeCompte, 406 So. 2d 1300 (La. 1981).

Cases which upheld statutes requiring prosecutorial recommendation in order for courts to impose a sentence which is less than the statutory minimum include: United States v. Huerta, 878 F.2d 89 (2d Cir. 1989); Eldridge v. State, 418 So. 2d 203 (Ala. Ct. App. 1982); People v. District Court, 101 P.2d 26 (Colo. 1940); State v. Benitez, 395 So. 2d 514 (Fla. 1981); and People v. Eason, 353 N.E.2d 587 (N.Y. 1976).

53. See supra note 20 (discussing stays of imposition and execution of sentences). Furthermore, courts have inherent power to suspend sentencing while awaiting the determination of a rule of law or a finding of fact regarding specific circumstances of the case at hand. Ex Parte United States, 242 U.S. 27, 30 (1916). This power is limited, however, because "[a]rbitrary, capricious or indefinite suspension... destroys the due administration of the law, and transcends all inherent power." Id. A permanent suspension, the Court held, is the equivalent of a pardon—a power reserved solely for the executive. Id. at 42.

54. See, e.g., State v. Ranthum, No. C9-95-2842, 1996 WL 422520, at *1 (Minn. Ct. App. 1996) (examining the authority of Minnesota courts to expunge criminal records). Minnesota Statute section 299C.11 authorizes expungement of records of criminal proceedings after 10 years if those proceedings turn out in favor of the accused. The Ranthum court noted that courts have the inherent authority to expunge records to prevent the infringement of constitutional rights or if such action is "necessary to the performance of the judicial function as contemplated in our state constitution." Ranthum, 1996 WL 422520, at *2 (citation omitted); see also In re R.L.F., 256 N.W.2d 803, 807-08 (Minn. 1977) (holding that the court's equity powers enable the power of expungement when the record indicates serious infringement of constitutional rights).
the role of sentencing is exclusively judicial, the discretion exercised in sentencing is statutory, and courts must obey the legislatively imposed limits.

The courts also have "inherent powers" that arise from the judiciary's historic powers of equity and its oversight role in the courtroom. By necessity, the court must be able to control the proceedings within its arena. Courts may invoke their inherent powers where no statutory limits exist. Nonetheless, the scope of such authority is controversial. In these situations, the courts must balance the need for humane administration of justice in each individual criminal case with their restricted role within the separation of powers doctrine.

II. STATE V. KROTZER

Billy Jim Krotzer stood before Judge Philip Kanning, of the First Judicial District, charged with criminal sexual conduct in the third degree. Then nineteen years old, Krotzer

55. See Lyon County, 241 N.W.2d at 784 (explaining the court's inherent powers). The Lyon County court found, "Inherent judicial power governs that which is essential to the existence, dignity, and function of a court because it is a court." Id.; see also State v. Moriwake, 647 P.2d 705, 712 (Haw. 1982) ("[T]he inherent power of the court is the power to protect itself; the power to administer justice whether any previous form of remedy has been granted or not; the power to promulgate rules for its practice; and the power to provide process where none exists.") (citation omitted).

56. See, e.g., In re Death of VanSlooten, 424 N.W.2d 576, 578-79 (Minn. Ct. App. 1988) (finding that "courts do have authority over executive officials in the exercise of purely ministerial functions," in holding that the trial court had the power to suppress items found in a search because a search warrant is subject to the direction of the court).

57. See Lyon County, 241 N.W.2d at 784 (noting that the scope of inherent judicial power "is the practical necessity of ensuring the free and full exercise of the court's vital function—the disposition of individual cases to deliver remedies for wrongs and... justice conformable to the laws") (citation omitted). The Lyon County court further noted that a court cannot exercise inherent judicial authority in the face of constitutional provisions granting power to the legislative branch. Id.

The New Jersey courts have taken a particularly broad view of the extent of judicial discretion. See, e.g., State v. Abbati, 493 A.2d 513, 518 (N.J. 1985) (noting that "the judicial power imports the power to fashion needed and appropriate remedies," in upholding the power to dismiss an indictment with prejudice after two trials on the same indictment resulted in deadlocked juries); State v. Farquharson, 655 A.2d 84, 88 (N.J. Super. Ct. App. Div. 1995) (finding that "the inherent power of the court to fashion needed and appropriate remedies to meet particular circumstances is without question and is as expansive as the need and circumstances require").

58. Criminal Sexual Conduct in the Third Degree is defined in Minnesota Statute section 609.344, subdivision 1(b) (1994).
had admitted to having sexual intercourse with fourteen-year-old C.H.M.\textsuperscript{59} The Carver County prosecutor charged Krotzer with "statutory rape," a felony punishable by a term of imprisonment not to exceed fifteen years and/or a fine of not more than $30,000.\textsuperscript{60} Additionally, the State must register any person convicted of third-degree criminal sexual conduct as a "predatory sex offender."\textsuperscript{61} After the parties failed to reach a plea agreement, Krotzer pleaded guilty to the crime charged.\textsuperscript{62}

Without formally accepting the plea,\textsuperscript{63} the district court ordered the Department of Corrections to perform a pre-sentence investigation (PSI).\textsuperscript{64} The PSI recommended that the district court "stay adjudication" of the matter and place Krotzer on probation for up to five years.\textsuperscript{65} Based on this rec-

\textsuperscript{59} State v. Krotzer, 531 N.W.2d 862, 864 (Minn. Ct. App. 1995), aff'd in part, rev'd in part, 548 N.W.2d 252 (Minn. 1996). According to the facts detailed by the court of appeals, Krotzer and C.H.M. had been dating and had engaged in sexual intercourse at least twice. The girl's mother subsequently learned of the relationship and set strict rules that they no longer have sexual relations. The couple then decided to cease the sexual relationship. \textit{Id.}

The police learned of the relationship not from the mother, but from an unnamed party's tip. \textit{Id.} In a subsequent investigation, the Chaska Police Department interviewed the couple at which time they admitted to having had sexual intercourse. \textit{Id.} The court found, "Neither the so-called victim nor her family had any intention of criminally implicating Krotzer. The record shows it was a consensual, though unacceptable, relationship between two dating teenagers." \textit{Id.} at 867.

The Minnesota Supreme Court found it particularly noteworthy that the parties reached an "amicable resolution of the situation" prior to the State's intervention. State v. Krotzer, 548 N.W.2d 252, 253 (Minn. 1996). The court noted that the girl's mother opposed Krotzer's prosecution and asked the district court in a letter to "let it end." \textit{Id.} at 253 n.2. The girl's mother also told the court at the sentencing hearing that she had "given [her] blessing to this relationship." \textit{Id.}

\textsuperscript{60} Minn. Stat. § 609.344, subd. 2 (1994).

\textsuperscript{61} \textit{Id.} § 243.166. The statute requires that a person convicted of criminal sexual conduct must register with corrections and law enforcement authorities each time he or she changes residences for 10 years and provide to those officials a statement of his or her offense, a photograph and a fingerprint card. Failure to do so is a gross misdemeanor. \textit{Id.}

\textsuperscript{62} \textit{Krotzer}, 531 N.W.2d at 864.

\textsuperscript{63} \textit{Krotzer}, 548 N.W.2d at 253. The trial judge told Krotzer that if "this matter does not conclude as we expect it will, then you have a right to withdraw the plea and the State would then have to prove the case and you would be entitled to a jury trial." \textit{Id.}

\textsuperscript{64} \textit{Krotzer}, 531 N.W.2d at 864.

\textsuperscript{65} \textit{Id.} The Department's report noted that the law required Krotzer to register as a predatory sex offender despite a lack of aggressiveness in his case and found him to be amenable to counseling. \textit{Id.}
ommendation and over the prosecutor's objection, the court then stayed adjudication.\textsuperscript{66} The court placed Krotzer on probation for sixty months, conditioned on his serving sixty days in the workhouse, paying fees and fines totaling about \$615 and "remain[ing] law abiding."\textsuperscript{67} The prosecutor objected and requested that the court accept the guilty plea and impose the presumptive sentence under the Minnesota Sentencing Guidelines.\textsuperscript{68} The district court declined the prosecutor's recommendation, though the court was uncertain of the propriety of its disposition and invited the prosecutor to appeal in order to have a higher court determine if a stay of adjudication was an available and proper sentencing option.\textsuperscript{69}

The State appealed the district court's disposition, and the Minnesota Court of Appeals upheld it as an exercise of inherent judicial authority.\textsuperscript{70} The court found that the judiciary had the power to dismiss criminal cases for lack of probable cause, in the furtherance of justice, or upon judgment of acquittal at the close of either side's case.\textsuperscript{71} It further noted that the judiciary had inherent power in the governance of "its own operations" and in the "exercise of the court's vital function—the disposition of individual cases to deliver remedies for wrongs."\textsuperscript{72} Such inherent authority, the court reasoned, necessarily implied the lesser power of imposing a stay of adjudication.\textsuperscript{73}

The court of appeals reasoned by analogy in equating a stay of adjudication with a continuance for dismissal\textsuperscript{74} and

\begin{itemize}
  \item \textsuperscript{66} \textit{Id.} at 865.
  \item \textsuperscript{67} \textit{Id.} The fees included \$200 to the public defender's fund, a \$115 surcharge, and an unspecified payment for his sex offender assessment at Alpha Human Services. \textit{Id.} The fine imposed was \$300. \textit{Id.} The court also required that Krotzer's visits with C.H.M. or any other female under age 16 be supervised. \textit{Id.}
  \item \textsuperscript{68} \textit{Krotzer,} 548 N.W.2d at 253. For a defendant with a criminal history score of zero, as was the case with Krotzer, the Guidelines call for an 18-month stay of imposition. \textit{MINN. SENT. GUIDELINES § IV} (1996).
  \item \textsuperscript{69} \textit{Krotzer,} 548 N.W.2d at 253.
  \item \textsuperscript{70} \textit{Krotzer,} 531 N.W.2d at 867.
  \item \textsuperscript{71} \textit{Id.} at 865.
  \item \textsuperscript{72} \textit{Id.} (citation omitted).
  \item \textsuperscript{73} \textit{Id.} The court found, "The stay of adjudication is less than outright dismissal because the court retains jurisdiction through conditions imposed on the stay." \textit{Id.}
  \item \textsuperscript{74} \textit{Id.} The court noted:

[[Inherent in that power to dismiss is the right to postpone. Put another way, the judge's power to dismiss can be exercised on the spot or the trial court can say, I will make the dismissal effective next


stated that the sentence was a proper diversion from the trial process. Moreover, the court found that, because the district court had not yet formally accepted Krotzer’s guilty plea, it had not yet reached the point of sentencing and thus could stay adjudication. The court ultimately held that “[s]tays of adjudication to protect a citizen from a formal criminal record are within the inherent power of a district court.”

The Minnesota Supreme Court affirmed the appellate court’s decision. The court held that the decision of the trial court did not interfere with the executive’s power to prosecute, because the case had reached the point of disposition—the exclusive realm of the judiciary. Additionally, the court noted that the “special circumstances of Krotzer’s case” warranted

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week or next month. That is the essence of a continuance for dismissal or a stay of adjudication.

Id. at 866 (emphasis added).

75. Id. The court noted that courts may, in some instances, divert a case from the trial process. It then chastised the prosecution for bringing the matter within the trial process, noting:

It is unfortunate that appellant State has put the trial court in this position. . . . It would be overkill for the court to formally accept a plea of guilty even if it then went on to stay imposition of sentence or stay execution of sentence, as under the letter of the law, the young man would be registered for life as a predatory sex offender, despite his withdrawal from the relationship. . . . Krotzer did not deserve that label. The probation officer saw that, the trial court saw that, the family of the alleged victim saw that. Only the state saw fit to appeal a sentence on a fact situation which arguably could have been handled with complete diversion outside the criminal process from the outset.

Id. at 867.

76. Id. at 866. But cf. State v. Boyd, No. C5-93-902, 1993 WL 319080, at *3 (Minn. Ct. App. Aug. 24, 1993). In Boyd, the court held that a stay of adjudication was a disposition not authorized by the legislature. Id. at *2. In Krotzer, the court of appeals distinguished Boyd because in that case the trial court had formally accepted the defendant’s guilty plea, and, as such, “there was nothing left for the district court to do other than pronouncing sentence.” 531 N.W.2d at 866. In contrast, the Krotzer court reasoned, the trial court in the instant case reserved the formal adjudication of a guilty plea.” Id.

77. Krotzer, 531 N.W.2d at 867.

78. Krotzer, 548 N.W.2d at 256. Regarding the imposition of a jail sentence as a condition of probation, the court held that the 60-day sentence levied by the trial court was a proper exercise of judicial authority. Id. In justifying such a condition, the court pointed out that it would have been authorized by Minnesota Statute § 152.18, which authorizes a stay of adjudication in some drug cases. Id. Though that statute was inapplicable in this case, the court reasoned that the discretion it afforded in staying adjudication did apply. Id.

79. Id. at 254.
the employment of "unusual judicial measures." The Minnesota Supreme Court held that a stay of adjudication was an exercise of inherent judicial authority that was necessary to the furtherance of justice, though it acknowledged that no Minnesota statute or rule supported such an action. The court noted that a dismissal by the trial court would have allowed the prosecutor to reinstate the charges, and found that a stay of adjudication "avoid[ed] this dilemma."

80. Id.
81. Id. at 255. The court held that a stay of adjudication was akin to a dismissal in the furtherance of justice, as authorized under Minnesota Statute section 631.21. Id.
82. Id. at 254. In a footnote, the court acknowledged that Krotzer's case did not fit under Minnesota Statute section 152.18, which permits a court to stay adjudication in prosecutions of certain drug offenses. Id. at 254 n.3. The court further noted that a stay of adjudication was not among the available sentences for conviction of a felony nor under the statute which permits stays of imposition or execution in some cases. Id. The court found, however, that none of these statutes applied in this case, as Krotzer's guilty plea had never been accepted by the court. Id.
83. Id. at 255. Three justices of the Minnesota Supreme Court disagreed. Justice Coyne issued a strongly worded dissent in which she rebuked the court for making "bad law." Id. at 256 (Coyne, J., dissenting). Justice Coyne noted that statutory rape was a long-established offense that represented a policy decision by the legislature. Id. "This court," she admonished, "is not a law unto itself." She continued, "Invoking a court's 'inherent judicial authority' to obtain a result that this court likes in this case is tantamount to saying that a court can do anything it wants to do." Id.
Justice Coyne further added that courts do not have inherent authority to accept a plea to a lesser offense without the prosecutor's agreement, nor can they defeat all avenues of prosecution by dismissal in the furtherance of justice. Id. at 259. She concluded that the separation of powers doctrine did not allow the judiciary to employ a stay of adjudication as a diversion from the trial process in a manner which denied the executive branch an opportunity to prosecute. Id. Justice Coyne found:

While the arguments are strong that the prosecutor in this case perhaps should not have filed the charge in the first place and that it might have been prudent for the prosecutor to agree to the diversion requested by the trial court, I do not think that the trial court had the power or the authority to order the diversion over the prosecutor's objection.

Id.
Justice Tomljanovich joined Justice Coyne's dissent and reminded the court that the majority's decision failed to enforce a law which the legislature enacted to protect young victims. Id. at 260 (Tomljanovich, J., dissenting). Justice Tomljanovich noted that a stay of adjudication was not an available disposition in this case, and she concluded that, though some instances warrant judicial discretion, "when judicial discretion conflicts with the constitutional separation of powers, separation of powers wins," and that "[t]he majority has permitted the courts to encroach into an area reserved to the executive branch by the constitution." Id.
III. KROTZER: AN ANALYSIS OF INHERENT JUDICIAL AUTHORITY

The majority in Krotzer found the State's separation of powers argument unconvincing. In finding that a stay of adjudication was a proper though "unusual" exercise of "inherent judicial authority," the majority strayed from Minnesota precedent, as well as that accepted by other state and federal courts, and trampled upon the powers vested in the legislative and executive branches. Furthermore, by holding that the "special circumstances" of Krotzer's case warranted a stay of adjudication, the court established a standard that has led to further abuse of the separation of powers in subsequent cases. Although the disposition of criminal cases should address the particular facts of each case, it is the legislature's exclusive right to define the limits of judicial discretion in sentencing, especially when that discretion forecloses the prosecution's opportunity to see the case through to its desired end. Absent such legislative approval, a stay of adjudication was not an appropriate disposition in Krotzer, and the decision should be overturned.

A. THE SEPARATION OF POWERS REVISITED: STAY OF ADJUDICATION AND STATUTORY JUDICIAL DISCRETION

1. Legislative Authority to Limit Judicial Considerations

The Minnesota legislature defined the act of sexual penetration of a child under age sixteen by someone more than forty-eight months older as criminal sexual conduct in the third degree. As such, the admitted acts committed by Billy Jim Krotzer were criminal and punishable by law. The trial

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84. See id. at 254 (finding that the prosecutor's powers were not impeded by the decision to stay adjudication).

85. See supra notes 17-57 and accompanying text (detailing precedent regarding the roles of each branch).

86. See infra notes 154-165 and accompanying text (discussing cases in which Krotzer has been applied).

87. See infra notes 182-185 and accompanying text (describing the legislative role and the need for legislative action in light of Krotzer).

88. MINN. STAT. § 609.344, subd. 1(b) (1994).

89. See, e.g., State v. Meyer, 37 N.W.2d 3, 10 (Minn. 1950) ("It is the exclusive province of the Legislature to declare what acts, deemed by the lawmakers . . . shall constitute a crime, to prohibit the same and impose appropriate penalties for a violation thereof.") (citation omitted).
court gave undue consideration to both the fact that the victim’s mother did not deem these acts worthy of criminal punishment and to the harshness of the penalties faced by Krotzer. In the criminal justice system, the judgments of the court and a peripheral party as to the propriety of criminal laws is subordinate to that of the legislature, which the Minnesota Constitution charges with establishing, through democratic means, the standard of allowable behavior. That the court of appeals referred to C.H.M. as a “so-called victim” was unfortunate, if not demeaning, and the repeated reference to the couple’s sexual relationship as “consensual” ignored the plain language of the statute, which specifically establishes that a fourteen-year-old is incapable of such consent. The court’s framing of the illegal acts within a context of a continuing relationship and its desire to see it handled within the family unit may have been suitable sentiments, but such feelings cannot overshadow the legislature’s constitutional prerogative of defining criminal acts.

The penalties Krotzer faced were indeed harsh, as the State would have required him to be registered as a sex offender even though he lacked the violent or predatory nature generally associated with such a label. To infer that the legislature disregarded such a consequence, however, disrespects the legislative process and improperly injects judicial opinion

90. See supra note 18 and accompanying text (citing cases which have held that the decision to deem specific acts criminal is outside the purview of the judiciary). C.H.M.’s mother, upon learning of the illegal acts, had two available options: to seek prosecution, or to not seek prosecution. That prosecution was sought without her assent does not grant her the authority to defeat a valid prosecution. Her objection to the law may be taken up with the legislature, not with the court.

91. Krotzer, 531 N.W.2d at 867.

92. See MINN. STAT. § 609.344, subd. 1(b) (establishing that consent is not an available defense under the statute with which Krotzer was charged); see also Krotzer, 548 N.W.2d at 256 (Coyne, J., dissenting). Justice Coyne appropriately noted:

The crime is based on recognition of the fact that young girls and boys lack both the judgment and the understanding of the possible long-term consequences of their actions so that they are incapable of giving meaningful consent to sexual intercourse. That the erosion of the deep shame and embarrassment formerly associated with out-of-wedlock pregnancies of young girls may have resulted in somewhat sporadic enforcement does not make the crime any less a crime.

Id.

93. See Krotzer, 531 N.W.2d at 867 (calling the treatment of Krotzer “overkill”).
into that legislative function. Recognizing that youthful offenders may deserve a second chance, the legislature granted judicial authority to set aside a guilty verdict five years after service of the penalty imposed. The legislature also granted expungement power to the court, though it is doubtful that such an outcome would be available in Krotzer's case. Beyond the remedies specifically made available by statute, the court was powerless to unilaterally impose its own value judgment over that of the state legislature.

2. The Court's Failure to Justify Its Holding

The court cannot justify a stay of adjudication in the face of existing Minnesota statutes. Once defined as a criminal act, Krotzer's behavior and admission of guilt allowed the State to seek punishment as it saw fit. Under Minnesota statutes, the

94. See supra note 18 (noting that courts should not be concerned with the "wisdom and propriety" of legislative choices in establishing the criminal code).

95. Minnesota Statute § 609.166 (1994) allows a court to set aside a guilty verdict when the defendant was under 21 years old when he or she committed a crime not punishable by life imprisonment so long as he or she has not been convicted of a felony or misdemeanor in the five years following completion of the sentence.

96. See supra note 54 and accompanying text (explaining the expungement statute). Krotzer could petition for expungement of the conviction in 10 years, but it is doubtful that the court would find that the outcome of his trial was in his favor or infringed upon his constitutional rights.

97. See United States v. Lovasco, 431 U.S. 783, 790 (1977) (finding that "[j]udges are not free, in defining 'due process,' to impose on law enforcement officials our 'personal and private notions' of fairness and to 'disregard the limits that bind judges in their judicial function.'") (citation omitted); Ex Parte United States, 242 U.S. 27, 42 (1916) (noting that judicial refusal to treat a criminal act as such would violate the separation of powers).

98. See supra note 19 and accompanying text (noting that the court must impose a sentence that the legislature has prescribed upon a finding of guilt).

The Krotzer court cited State v. Olson, 325 N.W.2d 13 (Minn. 1982), in defining the scope of judicial sentencing authority. Krotzer, 548 N.W.2d at 254. In Olson, the court examined a statute allowing courts the power to sentence persons without regard to sentencing enhancements for the use of a firearm. Olson, 325 N.W.2d at 15. The court held that a judicial decision not to apply the enhancement statute did not require prosecutorial assent, because "once the legislature has prescribed the punishment for a particular offense, it cannot, within constitutional parameters, condition the imposition of the sentence by the court upon the prior approval of the prosecutor." Id. at 18.

The California case upon which the Olson court rested its description of broad judicial power is contra to the Supreme Court's decision in Bordenkircher v. Hayes, 434 U.S. 357 (1978), and has been abandoned by the Cali-
sentences available upon a felony conviction, including third-degree criminal sexual conduct, do not include a stay of adjudication.\textsuperscript{99} Minnesota Statute § 609.095 expressly limits the dispositions available upon a finding of guilt, providing, “No other or different sentence or punishment shall be imposed for the commission of a crime than is authorized by this chapter or other applicable law.”\textsuperscript{100} The Minnesota Sentencing Guidelines provide presumptive sentences for criminal offenses and allow for departures, but do not authorize a stay of adjudication.\textsuperscript{101} Neither the Minnesota statutes nor the Minnesota Sentencing Guidelines authorized the court’s imposition of a conditional stay of adjudication as a punishment for the crime with which Krotzer was charged.

Further, the court cannot justify its imposition of a stay of adjudication as akin to existing sentencing options. Under certain circumstances, Minnesota statutes allow the court to stay imposition or execution of the sentence on specified conditions, usually probation.\textsuperscript{102} Indeed, given Krotzer’s criminal history score of zero, the Minnesota Sentencing Guidelines called for a stay of execution in his case.\textsuperscript{103} Stays of imposition or execution, however, are fundamentally different from a stay of adjudication. A stay of adjudication precludes a conviction for the offense charged, whereas a stay of imposition or execution is an

\textsuperscript{99} Minnesota Statute § 609.10 (1994) lists as available felony sentences only imprisonment for a term of years up to life and/or payment of fines, restitution, or fees. In addition, Minnesota Statute § 609.135, subdivision 1 (1994) provides for a stay of execution or a stay of imposition of a sentence, together with probation, intermediate sanctions, or both. Special terms of probation and extended sentences are made available in certain cases. \textit{See} MINN. STAT. §§ 609.10, subd. 2-6; 609.135-.166 (1994).

\textsuperscript{100} Id. § 609.095.

\textsuperscript{101} \textit{See} MINN. SENT. GUIDELINES § IV (1996). (establishing a presumptive sentence of a stayed term of imprisonment for 18 months upon conviction of Criminal Sexual Conduct in the Third Degree for an individual with a criminal history score of zero); \textit{see also supra} note 20 (explaining the Sentencing Guidelines and the process for departure from the guidelines).

\textsuperscript{102} MINN. STAT. § 609.135, subd. 1 (1994); \textit{see also} MINN. SENT. GUIDELINES cmt. III.A.101 (1996) (“When the presumptive sentence is a stay, the judge may grant the stay by means of \textit{either a stay of imposition or a stay of execution.}”) (emphasis added).

\textsuperscript{103} MINN. SENT. GUIDELINES § IV (1996).

\textsuperscript{99} Minnesota Statute § 609.095.

\textsuperscript{100} Id. § 609.095.

\textsuperscript{101} \textit{See} MINN. SENT. GUIDELINES § IV (1996). (establishing a presumptive sentence of a stayed term of imprisonment for 18 months upon conviction of Criminal Sexual Conduct in the Third Degree for an individual with a criminal history score of zero); \textit{see also supra} note 20 (explaining the Sentencing Guidelines and the process for departure from the guidelines).

\textsuperscript{102} MINN. STAT. § 609.135, subd. 1 (1994); \textit{see also} MINN. SENT. GUIDELINES cmt. III.A.101 (1996) ("When the presumptive sentence is a stay, the judge may grant the stay by means of either a stay of imposition or a stay of execution.") (emphasis added).

\textsuperscript{103} MINN. SENT. GUIDELINES § IV (1996).
authorized sentence upon a finding of guilt. The legislature has authorized stays of adjudication only when an adult defendant pleads guilty to certain enumerated drug crimes. The Krotzer court acknowledged that this authorization was inapplicable, but reasoned that it created a basis for the use of a stay of adjudication. Such reasoning is inappropriate in the face of explicit legislative sentencing mandates and the intent to limit judicial discretion therein.

Finally, the court cannot justify its holding under the statutory authority to dismiss cases in the “furtherance of justice.” Such an action is not the final order of the court and does not preclude the State from further pursuing the charge. The Krotzer court deemed the trial court’s disposition as something akin to this authority. Though the trial judge may have had such a motive in mind, his holding did not include a dismissal order by the court, as the statute requires when a court acts in the “furtherance of justice.” The Minne-

104. See Krotzer, 531 N.W.2d at 866 (noting that the district court “reserved the formal adjudication of a guilty plea” when it stayed adjudication). The stay of adjudication was indefinite and acted as a final disposition of the case, though Krotzer was never found guilty of any offense.

105. Minnesota Statute § 152.18 (1994) allows for diversion of some cases after trial or upon a plea of guilty to fourth- or fifth-degree possession of a controlled substance. Also, both a statute and the Minnesota Rules of Criminal Procedure allow for stays of adjudication in certain juvenile delinquency proceedings. MINN. STAT. § 260.185; MINN. R. CRIM. P. 29.02.

106. Krotzer, 548 N.W.2d at 254 n.3.

107. See id. at 256 (“We therefore hold that it was not improper for the district court in this case to follow the sentencing options permitted by section 152.18 . . . “)

108. See supra note 105 (describing the extent of the diversion statute).

109. Minnesota Statute § 631.21 (1994) states:

The court may order a criminal action, whether prosecuted upon indictment or complaint, to be dismissed. The court may order dismissal of an action either on its own motion or upon motion of the prosecuting attorney and in furtherance of justice. If the court dismisses an action, the reasons for the dismissal must be set forth in the order and entered upon the minutes. The recommendations of the prosecuting officer in reference to dismissal, with reasons for dismissal, must be stated in writing and filed as a public record with the official files of the case.

110. See supra notes 37, 48 and accompanying text (explaining that a dismissal by the court is not with prejudice to the prosecution).

111. Krotzer, 548 N.W.2d at 255.

112. MINN. STAT. § 631.21 (1994); see also State v. Kivi, 554 N.W.2d 97, 101 (Minn. Ct. App. 1996) (holding that the “interest of justice” power did not apply to a court’s dismissal when its order did not cite § 631.21 or state reasons for dismissal as the statute required).
sota Supreme Court's implication that the stay of adjudication precluded further prosecutorial action on the charge refutes its own conclusion that the trial court had merely entered a dismissal order.113

If the stay of adjudication did indeed serve as an ultimate disposition of the case, jeopardy attached and the disposition denied the prosecutor an opportunity to proceed with the charge in that court or in the future.114 As such, the stay of adjudication was not, as the court insisted, "a course of action short of dismissal,"115 but rather an impermissible expansion of the statutory authority granted the judiciary through which the court precluded any further action by the State.116 The court's power to dismiss in the furtherance of justice, be it "inherent" or statutory, does not imply the additional authority to preclude future prosecution on the same charge.117 Labeling the stay a "lesser" judicial act ignores the fact that the "greater" power does not include the attachment of jeopardy; it is curious that the Krotzer court found that the stay of adjudication did just that.

If, in the alternative, the stay of adjudication was merely an indefinite "continuance for dismissal," as the court of appeals implied,118 the court's action frustrated the prosecutor's role even more and was more clearly unauthorized. The court correctly noted that it had the right to delay the proceeding be-

113. The court noted the holding in City of St. Paul v. Landreville, 221 N.W.2d 532, 534 (Minn. 1974), in which the court found that "the court has the inherent power to dismiss a case in the interest or furtherance of justice, whether that power is expressly conferred by statute or arises by implication." Krotzer, 548 N.W.2d at 255. Regardless, a dismissal under the statute is without prejudice. In re Welfare of J.H.C., 384 N.W.2d 599, 601 (Minn. 1986).

114. See MINN. STAT. § 609.035, subd. 1 (1994) ("All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts."); see also Ohio v. Johnson, 467 U.S. 493, 499 (1984) (holding that "the bar to retrial following acquittal or conviction ensures that the State does not make repeated attempts to convict an individual, thereby exposing him to continued embarrassment, anxiety and expense, while increasing the risk of erroneous conviction or an impermissibly enhanced sentence"); supra note 37 and accompanying text (noting the double jeopardy implications of reinstating charges after a dismissal with prejudice).

115. Krotzer, 548 N.W.2d at 255.

116. See, e.g., Landreville, 221 N.W.2d at 534 (holding that an attempt to "permanently" dismiss a case by judicial order, absent a constitutional violation in bringing the charges, was an impermissible overstepping of the court's authority, either statutory or implied).

117. Id.

118. Krotzer, 531 N.W.2d at 866.
fore accepting a plea or entering judgment, and that such a
delay was proper pending completion of a pre-sentence inves-
tigation.\textsuperscript{119} An indefinite continuance pending the completion of
a probationary sentence or otherwise, however, would allow
Krotzer to meet the court's conditions and subsequently move
for dismissal for want of prosecution or for a violation of his
right to a speedy trial.\textsuperscript{120} The prosecutor was thus temporarily
powerless to pursue any course at all, and the statute of limi-
tations may have barred future prosecution.\textsuperscript{121}

Furthermore, judicial suspension of a criminal case with-
out the prosecutor's consent violates the Minnesota Rules of
Criminal Procedure, which require an agreement of all the
parties in order to suspend prosecution.\textsuperscript{122} That the court must
approve such an agreement does not give it authority to make
such an agreement with the defendant and leave the State out
of the decision altogether.\textsuperscript{123} The decision to suspend prosecu-
tion, like the choice of negotiating a plea to a lesser charge,\textsuperscript{124}

\begin{itemize}
\item \textsuperscript{119} A delay is consistent with the Minnesota Rules of Criminal Procedure. \textit{See}, e.g., \textit{Minn. R. Crim. P} 14.01 (governing the entry of a plea) and 27.03, subd. 1 (allowing a continuance for sentencing); \textit{see also} \textit{Ex Parte} United States, 242 U.S. 27, 46 (1916) (noting that it is proper for a criminal court to
delay sentencing and that "many good reasons may be suggested for doing so;
such as to give opportunity for a motion for a new trial or in arrest, or to en-
able the judge to better satisfy his own mind what the punishment ought to
be") (citation omitted).
\item \textsuperscript{120} \textit{See} \textit{Barker} v. \textit{Wingo}, 407 U.S. 514, 536 (1972) (noting that in some
situations, an indictment may be dismissed on speedy trial grounds even if a
defendant did not object to continuances).
\item \textsuperscript{121} \textit{See} \textit{Minn. Stat.} § 628.26(c) (1994) (noting that the statute of limi-
tation when the victim was under the age of 18 is either 3 or 7 years, depending
on various circumstances).
\item \textsuperscript{122} Minnesota Rule of Criminal Procedure 27.05, subdivision 1 provides
in part:
\begin{enumerate}
\item \textit{Generally.} After due consideration of the victim's views and
subject to the court's approval, the prosecuting attorney and the de-
fendant may agree that the prosecution will be suspended for a
specified period after which it will be dismissed under subdivision 7
of this rule on condition that the defendant not commit a felony, gross
misdemeanor, misdemeanor or petty misdemeanor offense during the
period.
\item \textsuperscript{123} \textit{See supra} note 33 and accompanying text (discussing the limited ju-
dicial role in the decision to terminate prosecution); \textit{cf.} \textit{State} v. \textit{Aubol}, 244
N.W.2d 636, 639 (Minn. 1976) (per curiam) (holding that the decision to sus-
pend a prosecution under Minnesota Rule of Criminal Procedure 30.01 is that
of the prosecutor).
\item \textsuperscript{124} \textit{See supra} notes 38-41 and accompanying text (establishing the prose-
cutorial authority to enter into plea agreements); note 36 (noting that courts
entails a judicial role of oversight, not instigation.\textsuperscript{125} Similarly, the court generally may not accept a plea to a lesser offense than that charged.\textsuperscript{126} Though the Minnesota courts may have wished that the prosecutor had diverted the case from trial on the charge brought, they lacked the power, by either statute or rule, to suspend that prosecution or accept a plea to any other charge than third-degree criminal sexual conduct.

3. The Court’s Elimination of the Prosecutor’s Legitimate Function

In issuing a stay of adjudication, the court eliminated the prosecutor’s opportunity to exercise his “absolute right to prosecute.”\textsuperscript{127} The defendant did not allege, nor did the court find, that the prosecutor had abused his discretion or violated the state constitution in bringing the charge against Krotzer.\textsuperscript{128} Though the court may have felt that such a charge would unfairly label Krotzer a sex offender, the facts supported the charge, as Krotzer’s actions fell well within the legislature’s definition of third-degree criminal sexual conduct.\textsuperscript{129} The State, as the voice of the people, has a “right to one full and fair
opportunity to convict those who have violated its laws."\(^{130}\) After the prosecutor made his charging decision, the court had no authority to control the course of the prosecution.\(^{131}\) That the court felt that a plea agreement would have been suitable\(^{132}\) was constitutionally irrelevant. Such an opinion cannot thwart a legitimate exercise of the prosecutorial power vested in the executive by the Minnesota Constitution.\(^{133}\)

The decision to grant a stay of adjudication in *Krotzer* imposed a penalty for Krotzer's acts other than the one established by the legislature.\(^{134}\) The *Krotzer* court was unable to justify such a holding in light of the express language of Minnesota statutes and rules. Because the stay of adjudication functionally precluded the prosecutor from further action on the charge, the stay amounted to a final disposition.\(^{135}\) The court had no authorization for such a sentence, as the statutes and sentencing guidelines expressly limited the court's disposition options.\(^{136}\)

**B. THE EXTENT OF "INHERENT" JUDICIAL POWERS**

Despite the trial court's lack of statutory authority to enter a stay of adjudication, the *Krotzer* appellate courts upheld the sentence, concluding that the decision to stay adjudication "fell within the 'inherent judicial power' we have repeatedly recognized, and was necessary to the furtherance of justice."\(^{137}\) Such a conclusion, by definition of inherent power, implies that the decision was "essential to the existence, dignity, and function


\(^{131}\) *See supra* note 32 (discussing decisions of Minnesota and federal courts which held that the courts may not unduly interfere with this aspect of executive authority).

\(^{132}\) State v. Krotzer, 548 N.W.2d 252, 255 (Minn. 1996).

\(^{133}\) *See* State v. Aubol, 244 N.W.2d 636, 639 (Minn. 1976) (per curiam) ("The question is not what the judge would do if he were the prosecuting attorney, but whether he can say that the action of the prosecuting attorney is such a departure from sound prosecutorial principle as to mark it an abuse of prosecutorial discretion.").

\(^{134}\) *See supra* note 99 and accompanying text (discussing the court's limited sentencing options).

\(^{135}\) *See supra* notes 115-116 and accompanying text (noting that the court's action in precluding further prosecution was not within its authority).

\(^{136}\) *See supra* notes 100-103 and accompanying text (discussing the *Krotzer* court's sentencing options).

\(^{137}\) 548 N.W.2d at 255 (citations omitted).
of [the] court." This reasoning ignores the fact that, although all the parties need to observe the court's powers of equity and ministerial oversight of criminal proceedings, the separation of powers doctrine and the development of presumptive sentencing limit the extent of inherent judicial power in the sentencing context.

Inherent power must respect the separation of powers doctrine, which mandates that the court's legitimate role in criminal cases cannot preclude the other branches from acting pursuant to their respective constitutional authority. Inherent judicial power essentially "fills in the blanks" when roles are unclear and justice is the only guide. It has little place in sentencing because the legislature has the exclusive power to create punishments and the executive has the exclusive power to pursue criminal sanctions. The courts may prohibit abuse

138. In re Clerk of Lyon County, 241 N.W.2d 781, 784 (Minn. 1976); see supra note 55 (explaining the basis of inherent judicial power).

139. See supra notes 55-56 and accompanying text (noting that courts have inherent power to preserve effective functioning of the criminal justice process).

140. See State v. Olson, 325 N.W.2d 13, 17 (Minn. 1982) (noting that "courts have no inherent authority to impose terms or conditions of sentence for criminal acts" and that "the power to prescribe punishment for such acts rests with the legislature"); Billis v. State, 800 P.2d 401, 416 (Wyo. 1990) ("The judicial department has no inherent power to refuse to impose a sentence fixed by statute or to refuse to execute such a sentence when imposed."); supra note 20 and accompanying text (noting that sentencing guidelines provide judges with a presumptive range and narrow exceptions in which their discretionary power is quite limited); see also Hon. William W. Schwarzer, Judicial Discretion in Sentencing, 159 PRACTICING LAW INSTITUTE: CRIM. L. & URB. PROBS. 15, 24 (1991) (noting that the available departures from presumptive sentences "are not held out by the guidelines as opportunities for the exercise of discretion—rather than being invited to exercise their discretion, judges are directed to apply [departures] correctly, as the guidelines instruct").

141. See Lyon County, 241 N.W.2d at 786 ("The test [of inherent judicial authority] must be applied with due consideration for equally important executive and legislative functions.").

142. See id. at 784 (holding that the scope of inherent judicial powers "is the practical necessity of ensuring the free and full exercise of the court's vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the law.") (citation omitted).

143. See, e.g., State v. Jonason, 292 N.W.2d 730, 733 (Minn. 1980) ("Judicial sentencing must strictly adhere to statutory authorization."); State v. Osterloh, 275 N.W.2d 578, 580 (Minn. 1978) ("The role of the trial judge in prescribing sentence in a criminal case is that of the executor of the legislative power."). But see supra note 52 (noting the split between states as to whether courts have inherent authority to sentence a convicted defendant to less than the statutory minimum without the prosecutor's consent); note 57 (discussing
by the other branches, but they may not supersede legislative and prosecutorial judgment when the constitution supports such judgment.

Minnesota statutes and rules also limited the court's inherent powers in disposing of the case. The trial court could have rejected Krotzer's guilty plea, dismissed the case in the furtherance of justice, or sentenced Krotzer according to the dictates of the statute under which the State charged him. Its inherent power entailed that much, but no more. The prosecutor could not force its hand, but the court's powers included only those cards dealt it by the constitution. Though the trial judge personally disagreed with the ends sought and means taken in Krotzer's case, it is difficult to see how having to choose a sentencing option from those authorized by statute threatened the court's existence or dignity. Creating a new penalty may or may not have furthered justice, but it was beyond the court's authority to do so.

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144. Cf. State v. Aubol, 244 N.W.2d 636, 639 (Minn. 1976) (per curiam) (noting that the court may deny a prosecutor's motion to dismiss a case if the court specifically finds an abuse of discretion).

145. See, e.g., Commonwealth v. Gordon, 574 N.E.2d 974, 976 (Mass. 1991) ("The district attorney is the people's elected advocate for a broad spectrum of societal interests—from ensuring that criminals are punished for wrongdoing, to allocating limited resources to maximize public protection.").

146. Osterloh, 275 N.W.2d at 580-81.

147. See supra note 46 and accompanying text (explaining the judicial power to accept and reject pleas).

148. See supra note 48 and accompanying text (explaining the judicial power of dismissal).

149. See supra note 51 and accompanying text (explaining judicial sentencing authority).

150. See, e.g., Gordon, 574 N.E.2d at 977 (noting that courts have inherent authority to dismiss an indictment before or after trial for insufficient evidence, because of unfair presentation of evidence to the grand jury, or for constitutional infirmity, but holding that "[a]ll those powers involve either rulings of law or exercises of discretion after the Commonwealth has had a full and fair opportunity to present its case" and that "[b]y contrast, pretrial dismissal of a lawful complaint prematurely cuts off the prosecution without a legal basis").

151. See, e.g., State v. Olson, 325 N.W.2d 13, 19 (Minn. 1982) (noting that "we expect too much when we look to the prosecutor alone for an evenhanded assessment of whether mitigating factors may exist in cases that have been successfully prosecuted").

152. See supra note 75 (quoting the court in its criticism of the prosecutor).
C. THE "SPECIAL CIRCUMSTANCES" TEST

Beyond subverting the separation of powers, the Krotzer decision left unclear the circumstances under which a stay of adjudication is proper. The Minnesota Supreme Court held that the "special circumstances" of Krotzer's case warranted the "unusual" disposition levied by the trial court. Those circumstances appear to have been both objective (the lack of aggression and the context of the relationship) and subjective (the mother's desire to have charges dropped and the court's disagreement with the choice to prosecute the charge). As such, the case presents little guidance as to the extent to which this extraordinary power is available to criminal courts.

Since Krotzer, the Minnesota Court of Appeals has reviewed three cases in which trial courts granted stays of adjudication, finding in each that the disposition was available and proper under the circumstances presented. In State v. Foss, a trial court stayed adjudication of a man charged with fifth-degree assault. The trial court found that the parties on both sides of the altercation were guilty of wrongdoing, and held that the circumstances of the case warranted a stay of adjudication with a probationary term of six months attached. In upholding the decision, the court of appeals noted that Krotzer granted the courts wide discretion in applying such a remedy.

155. Foss, 554 N.W.2d at 83. The State charged Foss for chasing down a motorist who had made an obscene gesture at him and subsequently grabbing him by the hair and swearing at him. Id.
156. Id. The defendant was also assessed $100 in court costs. Id.
157. Id. at 84 ("Whatever is included in the term 'special circumstances,' a narrow definition of that term would be inherently inconsistent with the broad nature of the 'inherent judicial power' that the Krotzer court recognizes.") (citing Krotzer, 548 N.W.2d 252, 255 (Minn. 1996)).

The Minnesota Supreme Court overturned the judgment, however, holding instead that Foss's case was a "typical case of misdemeanor assault" and noting that "[n]othing in the record supports the conclusion that 'special circumstances' like those in Krotzer were present or that the prosecution in any way abused its broad discretion in charging the defendant with misdemeanor assault." State v. Foss, 556 N.W.2d 540, 540 (Minn. 1996). In its brief order opinion, the supreme court did not clarify the "special circumstances" test, but did note that the authority under Krotzer should be exercised only when
The court of appeals' second interpretation of Krotzer occurred in State v. Hauer, in which the State charged the defendant with wrongfully obtaining welfare benefits. The trial court refused to accept the defendant's guilty plea, stayed adjudication, and placed her on probation for one year. The "special circumstances" that the court found compelling included the facts that the defendant had completed counseling, paid restitution, and would lose her education grants if convicted of a felony. The court also noted that the amount taken was "barely over felony level," and that avoidance of a felony record would be "critical to Hauer's future."

Similarly, in State v. Vahabi, the court upheld a stay of adjudication in another case of wrongfully obtaining public assistance. The trial court ordered restitution and imposed probation and a fine, noting that the defendants would be deported if convicted and that the State would be denied an opportunity for restitution. The court noted that the case lacked mitigating factors, but found that the collateral consequences of conviction were "severe." The court held that the circumstances of the case were different "in kind" from Krotzer's, but that the "special circumstances" were "within the rationale of Krotzer."

These three cases indicate two disturbing consequences of Krotzer: courts are virtually unconstrained in their exercise of the "inherent power" to stay adjudication, and such stays are likely to become commonplace. The "special circumstances"
test, as applied by the court of appeals, amounts to a balancing
test of the gravity of the offense, the severity of the concomi-
tant consequences of conviction to the particular defendant,
and the collateral ends sought by the State. The test ignores
the value choices the legislature made in creating the criminal
code—both deterrent and retributivist.167 Although those
choices are imbedded in the sentencing provisions provided by
statutes and guidelines, it appears from these decisions that a
court may ignore them if it subjectively finds that an alterna-
tive disposition would further justice.168

That the court of appeals has upheld stays of adjudication
in cases of sexual abuse,169 violence,170 and theft171 indicates
that stays of adjudication are likely to be exercised regardless
of the category of crime with which the State charges a defen-
dant. So long as a defendant can convince the court that the

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J., dissenting) ("With no clear restrictions and a willing judiciary, inherent
power stays of adjudication could become routinely administered, and, despite
the prosecutor's objection, the executive function thereby routinely subjugated
in the name of expedience.").

167. For instance, the statute under which the State charged Krotzer spe-
cifically states that consent by the victim is not a defense, making it apparent
that the legislature specifically discounted consent as a factor relating to the
seriousness of the crime. MINN. STAT. § 609.344, subd. (1)(b) (1996). The
Krotzer court subverted this judgment when it took into account C.H.M.'s con-
sent to the sexual relationship as a "special circumstance" which allowed for a
stay of adjudication.

168. But compare People v. Superior Court, 37 Cal. Rptr. 2d 364, 378 (Cal.
Ct. App. 1995) (citations omitted), noting:

The power to define crimes and prescribe punishment is a legislative
function. The judiciary may not interfere in this process unless the
statute prescribes a penalty so severe in relation to the crime as to
violate the constitutional prohibition against cruel and unusual pun-
ishment. . . . The basic test is whether the punishment is "so dispro-
portionate to the crime for which it is inflicted that it shocks the con-
science and offends fundamental notions of human dignity."

It is doubtful that any court would find that the penalties faced by
Krotzer, Foss, Hauer, or the Vahabis were cruel and unusual. None of the de-
fendants made such an argument, for which they carried the burden of estab-
lishing the disproportionality of the sentence as compared to the seriousness
of the crime. Id. at 379. As noted by the Supreme Court, "successful chal-
lenges to the proportionality of particular sentences have been exceedingly

169. Krotzer was charged with "statutory rape," which Minnesota Statute
§ 609.344 defines as "sexual abuse."

170. Fifth-degree assault, with which the State charged Foss, is a crime of
violence under Minnesota Statute § 609.224, subdivision 1 (1994).

171. The State charged both the Vahabis and Hauer with theft by wrong-
fully obtaining public assistance, a violation of Minnesota Statute § 256.98,
subdivision 1 (1994).
collateral consequences of conviction are severe compared to the actual harm done, the court can issue a stay and effectively preclude the State from prosecuting the defendant's wrongdoing.\(^\text{172}\) That criminal penalties are "critical" to a defendant's future\(^\text{173}\) is exactly the basis of criminal law,\(^\text{174}\) however, and reflects the judgment that the state constitution entitles the legislature to make.\(^\text{175}\) The court's subjective application of stays of adjudication creates unlimited potential for abuse of judicial discretion,\(^\text{176}\) destroys the uniformity that the sentencing guidelines seek, and undermines public confidence in the criminal justice system.\(^\text{177}\)

The criminal justice system has many goals, but it must retain the support of the populace in order to remain effective. Dissatisfaction with the inconsistency of indeterminate, individualized sentencing has driven the trend in sentencing toward uniform penalties.\(^\text{178}\) The sentencing guidelines take into account characteristics of individual offenders and their crimes to determine an appropriate penalty.\(^\text{179}\) The court, therefore,

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\(^{172}\) Courts may find a stay of adjudication particularly fitting in drunk driving cases, in which an offender is subject to license revocation, social stigma, and huge financial costs even when there is no "victim." It would appear that a court could exercise its "inherent power" to lessen the blow to the defendant if it is convinced that such an outcome is "just" under the circumstances.


\(^{174}\) \textit{See id.} (Harten, J., dissenting) ("Anyone convicted of a crime must deal with the personal effects of the conviction.").

\(^{175}\) \textit{See supra} note 17 and accompanying text (discussing the legislative authority to define crime).


\(^{177}\) \textit{See} Daniel J. Freed, \textit{Federal Sentencing in the Wake of Guidelines: Unacceptable Limits on the Discretion of Sentencers}, 101 \textit{Yale L.J.} 1681, 1685 (1992) (noting that the federal sentencing guidelines were a response to widespread dissatisfaction with sentencing disparities and the uncertainty that indeterminate sentencing created); Schwarzer, \textit{supra} note 140, at 18 ("The Sentencing Reform Act of 1984 was adopted in response to a widespread feeling that unwarranted disparities in sentencing were undermining public faith in the criminal justice system.").

\(^{178}\) McCall, \textit{supra} note 21, at 483-84.

\(^{179}\) \textit{See supra} note 20 (describing the Minnesota Sentencing Guidelines, which establish a grid system based on the offender's criminal history and the seriousness of the crime of which he or she has been convicted).
must fully explain departures from presumptive sentences based on "substantial and compelling" factors of the individual case.°° Krotzer and its progeny, however, did not offer such an explanation. In failing to do so, they created disparate sentences and undermined public confidence that the system will treat those who break the law similarly.°

D. A LEGISLATIVE ALTERNATIVE: LIMITED APPLICATION

Despite the problems created by the "special circumstances" test, the fact remains that presumptive sentences may not fit the crime or the criminal in every instance in which courts must apply them. If a stay of adjudication is to become an available judicial device to address this issue, it is the legislature that needs to clearly define the scope and availability of that disposition alternative. °°° The Minnesota legislature has shown a willingness to do so, and perhaps has gone as far as it is willing to go in allowing this extraordinary measure.°°°° Nonetheless, Krotzer necessitates that the legislature must act or have its power to limit judicial sentencing discretion subsumed by "inherent judicial authority."°°°°°

The legislature, exercising its exclusive power to adopt criminal law, encapsulates the will of the people in deciding how punishments will be meted out. The democratic legislative process serves as the filter through which the public voices its value judgment and the means by which the criminal justice system gains its legitimacy.°°°°°° The power to define crimi-

181. See Schwarzer, supra note 140, at 18-19 (noting that Congress, in enacting the federal sentencing guidelines, "reasoned that to promote public faith in the criminal justice system, the public needed to believe that similar offenders who committed the same crime under similar circumstances did not receive substantially different punishment").
182. See id. at 23 (criticizing the result of the federal sentencing guidelines, and noting that "[b]y taking discretion from the judge to consider factors that are critical to making a sentence reasonable and appropriate for the case, the guidelines open the door to arbitrary results," and that "[i]t is useful to remember that it is an offender, not an offense, who is being punished").
183. See State v. Olson, 324 N.W.2d 13, 17 (Minn. 1982) (noting that the power to "nol pros" belongs solely to the prosecutor absent statutory provisions to the contrary).
184. See supra note 105 and accompanying text (noting that a stay of adjudication is only available by statute in enumerated drug crimes).
185. See supra notes 153-165 (detailing cases in which Krotzer has been found to give expansive judicial authority).
186. See, e.g., State v. United Parking Stations, 50 N.W.2d 50, 52 (Minn.
nal acts necessarily includes the authority to determine how the State will react to their commission. While it must face the realities of an overcrowded and costly prison system and a political climate that discourages balanced crime measures, the legislature remains the forum through which the citizenry makes value choices and from which democracy doles out the powers to bring the weight of the people's decisions to bear.

It is arguable that judges sit in the best position to evaluate the "best" disposition of each individual case. They are able to evaluate all of the facts of a case from a detached viewpoint, apart from the politicization of crime. In addition, judges see countless criminal cases and develop the capacity to comparatively evaluate the aggravating and mitigating factors involved in a given case. Thus, although judges face the pressures of an enormous caseload and an increasing presence in the public eye, they remain as the sole face of humanity in the decision to take away an individual's liberty.

The separation of powers doctrine, however, enjoins the judiciary from interfering with the legislature in its capacity to determine what acts will result in punishment by the State, and how far that punishment will extend. Despite the need for the branches to work together in the criminal justice system, and regardless of any possible judicial "expertise," case law makes it clear that authority expressly granted by the legislature limits the exercise of judicial discretion in the sentencing aspect of criminal adjudication. The Krotzer decision

1951) (noting that the debate over the wisdom and propriety of exercises of the police power necessarily must take place in the legislative body, not the courts).
189. See id. (noting that the role of judges is to use their "accumulated experience, judgment, and, hopefully, wisdom" in deciding criminal sentences).
190. Daniel J. Freed noted:

Each case involves unique offenders and offense circumstances, and their underlying stories—of need or greed, of recklessness or malice, in mitigation or aggravation—need to be assessed and sentenced by experienced professionals exercising human judgment. Numerical "offense levels" are useful in launching the sentencing process, but they are woefully unreliable as substitutes for judges.
Freed, supra note 177, at 1705.
191. See supra notes 17-18 and accompanying text (discussing the authority of the legislature to set criminal penalties).
192. See supra note 51 and accompanying text (noting the limits of judicial sentencing powers).
abridged the exclusive reservation of the authority to determine sentencing options and took the notion of "inherent judicial power" beyond its constitutional limits. 193

If the legislature chooses to consider the issue and grant courts the option of imposing a stay of adjudication, it must carefully determine the instances in which that power may be exercised. Indeed, in allowing such a disposition in certain drug possession cases 194 and in juvenile delinquency proceedings, 195 the legislature has shown a willingness to allow judges to stay adjudication when the prosecutor agrees that utilitarian concerns outweigh the need for seeking the harsh penalties provided by the sentencing guidelines.

In considering a model for a "stay of adjudication" statute, the legislature may look towards the statutes that permit dismissal in the furtherance of justice, 196 diversion in juvenile delinquency cases, 197 or diversion in drug cases. 198 The "furtherance of justice" statute appears from the Krotzer opinions to be a suitable guide, but careful examination shows that it would be an inappropriate model. The Krotzer decision makes it seem as though the power to stay adjudication is the rough equivalent of the power to dismiss a case in the furtherance of justice. 199

The statute that establishes the latter is quite broad in its allowance of judicial discretion. 200 Moreover, the interpretation that such a dismissal is without prejudice is the key to its constitutionality, as it would otherwise infringe upon the prosecu-

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193. See, for example, Commonwealth v. Kindness, 371 A.2d 1346, 1350 (Pa. Super. Ct. 1977), which held that in exercising its power to divert cases from trial, the court was limited to working within the existing framework of separation of powers, and therefore could not create a diversion program without requiring prosecutorial initiative, as the Commonwealth is indisputably a litigant and possesses a substantive right to insist on seeking a conviction.... While there is something to be said for allowing a court to overrule a prosecutor and order diversion, it should be said to the General Assembly.

194. MINN. STAT. § 152.18 (1996).
195. Id. § 260.185.
196. Id. § 631.21.
197. Id. § 260.185. Because the special needs and goals of adjudication of juveniles are not present in adult criminal trials, the juvenile delinquency diversion statute does not serve as a useful guide in the adult prosecution context.
198. Id. § 152.18.
199. See supra notes 137-140 and accompanying text (detailing the court's reasoning).
tor’s legitimate exercise of the power to bring criminal charges.\textsuperscript{201} Because a stay of adjudication may not allow such future prosecutorial action,\textsuperscript{202} the creation of a statute similar to the “furtherance of justice” authorization would fail to recognize the constitutional separation of powers and would destroy the long-recognized power of the executive to control prosecution.\textsuperscript{203}

The diversion statute applicable in some drug possession cases, on the other hand, serves as a useful model for any future enlargement of the power to go outside the usual sentencing framework. The statute establishes exactly which crimes fall within its scope,\textsuperscript{204} thereby embodying the legislature’s value judgment in limiting judicial application of its authority. Diversion from adjudication is not available under this statute to offenders who have previously received a diverted disposition or have been previously convicted of a controlled substance violation,\textsuperscript{205} thus retaining the deterrent effect of the threat of criminal sanctions. The statute also provides that such a disposition is available only “after trial or upon a plea of guilty,” so that a violation of the diversion conditions may lead directly to an imposition of the sentence originally available.\textsuperscript{206} The State keeps a record of the proceeding which it may use in subsequent proceedings, but the offender may apply for expungement after completing the conditions of the diversion.\textsuperscript{207}

A “stay of adjudication” statute should include each of these elements. It must specifically state which violations fall within its scope.\textsuperscript{208} Such a limiting measure is critical in maintaining the legislative role in determining which criminal ac-

\begin{itemize}
\item \textsuperscript{201} See supra note 48 and accompanying text (explaining that a dismissal under the statute must be without prejudice).
\item \textsuperscript{202} State v. Krotzer, 548 N.W.2d 252, 255 (Minn. 1996).
\item \textsuperscript{203} See supra notes 26-45 and accompanying text (detailing the extent of prosecutorial discretion).
\item \textsuperscript{204} See MINN. STAT. § 152.18, subd. 1 (1996) (allowing diversion only for cases in which the defendant was found guilty of fourth- or fifth-degree possession of a controlled substance).
\item \textsuperscript{205} Id.
\item \textsuperscript{206} Id.
\item \textsuperscript{207} Id. § 152.18, subd. 3.
\item \textsuperscript{208} The choice of which crimes for which a stay of adjudication is available must be the result of legislative deliberation, and this Comment does not suggest which types of cases are appropriate for such a disposition other than to suggest that the statute under which Krotzer was charged is inappropriate for such a disposition. See supra note 92 (explaining the basis for the statutory rape law).
\end{itemize}
tivities are so serious as to require sentencing under the exist-
ing framework despite any characteristics specific to the inci-
dent at hand. A new statute should also limit its application to
first-time offenders so that repeat offenders do not find it fruit-
ful to appeal to judges based on their unique personal circum-
stances. It should be available only after a finding of guilt so
that offenses need not be retried upon a failure to meet the
conditions of the stay, and the State must keep a record of the
adjudication in order to facilitate future proceedings against
the individual if they arise. An expungement provision, there-
fore, is necessary so that the statute meets the purpose of the
stay of adjudication—restoring the parties to their original
status.209

Unless the courts overturn Krotzer or limit the authority it
grants, the legislature should act to stem the judicial discretion
the case granted. Such a legislative reaction is within its con-
stitutional role of defining criminal behavior and sanctions,
and is necessary to preserve the structure established by the
separation of powers.

CONCLUSION

The decision in State v. Krotzer abandoned precedent and
constitutional law. The holding that "stay of adjudication" was
within the "inherent judicial power" subverted the constitu-
tional prerogatives of the legislature to define criminal conduct
and set penalties, and of the prosecutor to bring charges based
on his or her discretion. Additionally, the decision was con-
trary to Minnesota statutes and Rules of Criminal Procedure
and unsupported by prior decisions as to the scope of judicial
authority. The court went beyond its constitutional role in
making its judgment based on subjective values rather than
exercising the limited sentencing authority that statutes and
the constitution had granted it. The decision further estab-
lished a standard allowing virtually unlimited judicial discre-
tion in sentencing and threatened to undermine public confi-
dence in the criminal justice system. The Minnesota Supreme
Court should overturn its decision in Krotzer and restore the
delicate balance of powers in the criminal justice system.

It may be apparent that in some cases a stay of adjudica-
tion is proper in the interest of justice. It is, however, for the
legislature to define those instances and grant such an ex-

209. MINN. STAT. § 152.18, subd. 3 (1996).
traordinary power to the courts. If it chooses to do so, it should carefully limit the availability of a stay of adjudication as an option to the court to circumstances in which such a disposition does not defeat the purposes of criminal prosecution or inhibit the other branches from exercising their constitutional discretion. The separation of powers and the integrity of the criminal justice system demand as much.