Criminal History Score Review

MSGC Staff Presentation
March 9, 2017

Guidelines Original Proposed Four Sentencing Purposes

Deterrence
Incapacitation
Rehabilitation
Retribution

The top row contains “utilitarian” theories of sentencing

A retributive, “just deserts” model emerged as MSGC’s dominant view

Role of Criminal History in Punishment

“Just Deserts”
- Repetition alters culpability
  - Greater consciousness of wrongdoing
  - Greater defiance of the law
- *Alternative view:* Offender has already been punished for prior behavior

Utilitarian Theories
- Repeat offenders are more likely to repeat again; thus, incapacitation is more important for repeat offenders
- Rehabilitation is less possible, and deterrence has evidently failed, for those higher criminal histories
- *Alternative view:* Criminal history score is a crude proxy for risk

*Original MSGC employed criminal history as a measure of blameworthiness, not future risk.*


Use of Criminal History in “In/Out” Prison Disposition Decision

- In Just-Deserts model, offense severity (blameworthiness) may be dominant
- In Utilitarian Model, Criminal History (Risk) may be dominant

Current Guidelines Employ Mixed Dispositional Model

- Some offenses are severe enough to warrant prison, regardless of criminal history.

- Some criminal histories are great enough to warrant prison, regardless of offense severity.

Criminal History Review to Date

- Goals
  - Explain current policy and examine impact of past policy changes
  - Focus on impact on racial disparity

- Progress
  - Explained how criminal history impacts sentences
  - Reviewed Misdemeanor/Gross Misdemeanor and Juvenile Points
  - Today we will review that work
Average Criminal History Scores Have Grown Since 1990

Percentage with Criminal History Score 0 has Dropped
Percentage Presumptive Prison by Race/Ethnicity: Guidelines Years 1991-2014

Reasons for Presumptive Prison Varies
Presumptive Prison: Guidelines Years 2010-2014

Graph excludes two cases where race was unknown.

Four Components of Minnesota’s Criminal History Score: Misdemeanor (Misd.)/Gross Misdemeanor (GM)

2014 Average CHS

- Felony: 74%
- Custody Status: 21%
- Juvenile: 1%
- Misd./GM: 4%
Misdemeanor and Gross Misdemeanor Criminal History Policy

UNITs
- All non-traffic gross misdemeanors receive 1 unit
- Targeted misdemeanors receive 1 unit
- Prior DWIs and CVOs are included and assigned two units if the current offense is CVO or DWI

POINts
- Four units equal 1 criminal history point
- A maximum of one misd./GM point is allowed in criminal history
- No limit to the number of points from DWI if current offense is DWI/CVO

DECAy
- Prior misd./GM is decayed if 10 years have elapsed from discharge/expiration of prior offense to the date the current offense was committed

Percentage Misdemeanor/GM Point by Race/Ethnicity: Guidelines Years 1991-2014

- 1991: No limit to number of points from DWIs if current offense is CVO.
- 2002: DWI policy also applies to felony DWI.
- 2003: Prior CVOs get 2 units & unlimited points from DWI/CVO.
- 2010: M/GM list abolished; all GMs & targeted Misd. used.
Four Components of Minnesota’s Criminal History Score: Juvenile

- **Juvenile Custody Status**: 21%
- **Juvenile**: 1%
- **Misd./GM**: 4%
- **Felony**: 74%

### 2014 Average CHS

**Juvenile Criminal History Policy**

**OFFENSE**
- Felony offense committed and prosecuted as a juvenile
- Findings were made by the juvenile court pursuant to admission in court or after trial
- Each offense is a separate behavioral incident or involved separate victims

**POINTS**
- Need two juvenile offenses to get 1 point
- Generally, one juvenile point is allowed in criminal history
- Point limit does not apply to juvenile offenses that would be considered presumptive commitments under the Guidelines regardless of criminal history

**PARAMETERS**
- Juvenile offense has to be committed after the offender’s 14th birthday
- Juvenile offenses/point only applicable until age 25 at time of current offense
Number with Juvenile Points: Guidelines Years 1991-2014

Percent Under Age 25: Guidelines Years 1991-2014
The Road Ahead

- In future meetings, we may have a chance to—
  - Unpack other criminal history components
  - Review decay policies
  - Look at what other policies have changed over time
4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

<table>
<thead>
<tr>
<th>CRIMINAL HISTORY SCORE</th>
<th>SEVERITY LEVEL OF CONVICTION OFFENSE</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)</td>
<td>10</td>
<td>150</td>
<td>128-180</td>
<td>165</td>
<td>141-198</td>
<td>180</td>
<td>153-216</td>
<td>195</td>
</tr>
<tr>
<td>Assault, 1st Degree</td>
<td>9</td>
<td>86</td>
<td>74-103</td>
<td>98</td>
<td>84-117</td>
<td>110</td>
<td>94-132</td>
<td>122</td>
</tr>
<tr>
<td>Agg. Robbery, 1st Degree; Burglary, 1st Degree (w/ Weapon or Assault)</td>
<td>8</td>
<td>48</td>
<td>41-57</td>
<td>58</td>
<td>50-69</td>
<td>68</td>
<td>58-81</td>
<td>78</td>
</tr>
<tr>
<td>Felony DWI; Financial Exploitation of a Vulnerable Adult</td>
<td>7</td>
<td>36</td>
<td>36</td>
<td>29-42</td>
<td>48</td>
<td>40-60</td>
<td>54</td>
<td>39-64</td>
</tr>
<tr>
<td>Assault, 2nd Degree Burglary, 1st Degree (Occupied Dwelling)</td>
<td>6</td>
<td>21</td>
<td>21</td>
<td>15</td>
<td>27</td>
<td>27</td>
<td>20-43</td>
<td>33</td>
</tr>
<tr>
<td>Residential Burglary; Simple Robbery</td>
<td>5</td>
<td>18</td>
<td>18</td>
<td>12</td>
<td>23</td>
<td>23</td>
<td>18-36</td>
<td>33</td>
</tr>
<tr>
<td>Nonresidential Burglary</td>
<td>4</td>
<td>12(^1)</td>
<td>12(^1)</td>
<td>15</td>
<td>18</td>
<td>18</td>
<td>15-21</td>
<td>21</td>
</tr>
<tr>
<td>Theft Crimes (Over $5,000)</td>
<td>3</td>
<td>12(^1)</td>
<td>12(^1)</td>
<td>13</td>
<td>15</td>
<td>15</td>
<td>15-17</td>
<td>19</td>
</tr>
<tr>
<td>Theft Crimes ($5,000 or less) Check Forgery ($251-$2,500)</td>
<td>2</td>
<td>12(^1)</td>
<td>12(^1)</td>
<td>13</td>
<td>15</td>
<td>15</td>
<td>15-17</td>
<td>17</td>
</tr>
<tr>
<td>Assault, 4th Degree Fleeing a Peace Officer</td>
<td>1</td>
<td>12(^1)</td>
<td>12(^1)</td>
<td>12(^1)</td>
<td>13</td>
<td>13</td>
<td>13-15</td>
<td>15</td>
</tr>
</tbody>
</table>

\(^1\) 12\(^1\)=One year and one day

- Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.

- Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

2. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

3. The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)