



Criminal History Score Overview Part 6: Decay

MSGC Staff Presentation

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Rationale for a Decay Policy

- At some point, prior offenses may no longer be relevant in determining the offender's culpability for a new crime or predicting the offender's propensity for reoffending.
 - Studies in the U.S. and Europe have shown that if an offender with a criminal record manages to stay crime free for a long period of time (e.g., 7 to 10 years), then the offender's risk to reoffend becomes close to that of a person without any criminal record.
- To encourage offenders to strive for a crime-free existence.
- Utilizing a decay or gap policy focuses punishment on the current offense (lessens the impact of criminal history).

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Establishment of the Original Decay Policy

The Commission established a “decay factor” for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences, but also the time interval between those sentences. A person who was sentenced for three felonies within a five-year period is more culpable than one sentenced for three felonies within a twenty-five year period. The Commission decided that after a significant period of conviction-free living, the presence of old felony sentences should not be counted in criminal history score computation if ten years had elapsed since the date of discharge from or expiration of the sentence, provided that during the ten-year period, the individual was not sentenced for a felony, gross misdemeanor, or misdemeanor.

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Original Decay Policy

Felony Decay Factor

- Prior felony sentences will not be used in criminal history after a period of **10** years has elapsed since the date of discharge from or expiration of the sentence, provided that during the period the offender had not received a felony, gross misdemeanor, or misdemeanor sentence.

Gross Misdemeanor/ Misdemeanor Decay Factor

- Prior misdemeanor and gross misdemeanor sentences will not be used in computing the criminal history score after a period of **5** years has elapsed since the date of discharge from or expiration of the sentence, provided that during the period the offender had not received a felony, gross misdemeanor, or misdemeanor sentence.

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Changes to Decay Policy

1983

Absolute decay after 10 years adopted for misdemeanors

1986

Offense free period abandoned in favor of absolute decay for all prior offenses

1990

Start and end date for M/GM decay changed to match start and end dates for felonies.

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Current Decay Policy

Felony
Decay
Factor

- A prior felony sentence or stay of imposition following a felony conviction must not be used in computing the criminal history score if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence to the date of the current offense.

Gross
Misdemeanor/
Misdemeanor
Decay Factor

- A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction must not be used in computing the criminal history score of ten years has elapsed between the date of discharge from or expiration of the sentence and the date of the current offense. However, misdemeanor sentences that result from the successful completion of a stay of imposition for a felony conviction are subject to the felony decay factor.

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Current Decay Policy Commentary

2.B.113. The Commission established a “decay factor” for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences and stays of imposition, but also the age of the sentences and stays of imposition. The Commission decided that the presence of old felony sentences and stays of imposition should not be considered in computing criminal history scores after a significant period of time has elapsed. A prior felony sentence or stay of imposition would not be counted in criminal history score computation if fifteen years had elapsed from the date of discharge or expiration of that sentence or stay of imposition to the date of the current offense. While this procedure does not include a measure of the offender’s subsequent criminality, it has the overriding advantage of accurate and simple application.

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How Decay Policy Works for Prison vs. Probation Sentences

- Example 1: Fifth-Degree Drug Offense – 5 yr. Stat. Max.

Average sentence Decay period



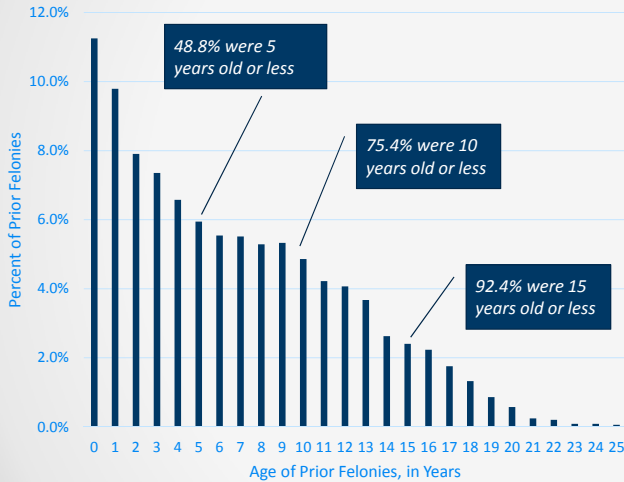
- Example 2: Second-Degree Burglary of Dwelling – 10 yr. Stat. Max.



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Prior Felony Offenses: Age of Prior Offenses

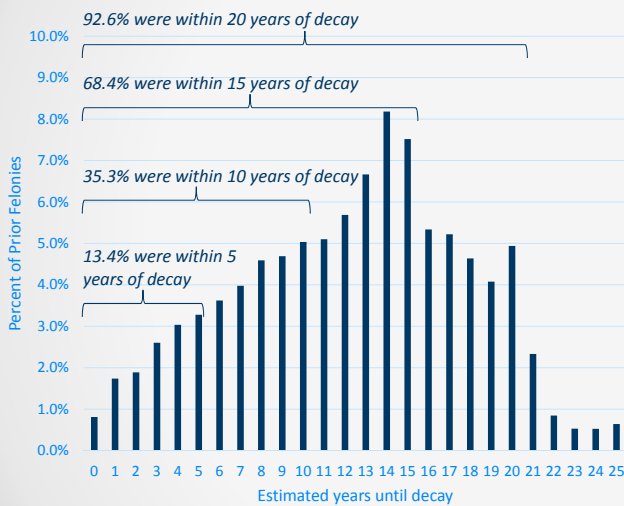


In 2015, the 16,763 offenders sentenced had 32,848 prior non-decayed felonies in their criminal histories. For those priors, staff calculated the time elapsed between the disposition dates of the prior offense and the current offense. The chart displays the age distribution of the prior offenses as a percentage of the total. (Not shown: 0.2% of priors were more than 25 years old.)

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Prior Felony Offenses: Estimated Time Until They Reach Decay



In 2015, the 16,763 offenders sentenced had 32,848 prior non-decayed felonies in their criminal histories. For those priors, staff calculated the estimated remaining time until decay. The chart displays the estimated percentage of prior felony offenses that would decay within each future year. (Not shown: 2.5% of priors would decay after 25 years.)

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Decay Policies in Other Guidelines States: from Robina Institute's Criminal History Enhancement Sourcebook

Decay: Prior convictions eventually age out of the criminal history score calculation.

Gap: If offender achieves a crime-free existence for a defined period of time the prior conviction is no longer included in the criminal history score calculation.

DECAY OR GAP POLICY BY JURISDICTION		
No Decay	Decay – 15 years	Gap – 10 years
Alabama	Minnesota	Delaware
Kansas	Arkansas	District of Columbia
Massachusetts	Federal	Florida
North Carolina		Maryland
Oregon		Michigan
Pennsylvania		Washington
Tennessee		
Utah		

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When to Start Counting Decay/Gap Period

- At discharge from sentence (this is the practice in most states)
 - Advantage: for prison sentences, decay period does not start until offenders are at risk to reoffend.
 - Disadvantage: the length of time between sentencing and end of decay period is usually longer for offender's placed on probation than offenders with prison sentences.
 - Date of discharge from probation is sometimes difficult to determine (especially from non-Minnesota jurisdictions).
- Closer to time of sentence
 - Federal: clock starts upon date of sentencing for the prior offense (decay).
 - Delaware: clock starts at the end of incarceration or at the date of sentencing if the offender received probation (gap).

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Are Prior Convictions Ever Revived or Always Counted?

- Offenses can be revived
 - District of Columbia: if offender commits a new offense during the gap period, all prior felonies are revived, but the weighting for less serious felony offenses is discounted.
 - Michigan: some priors can be revived.
- Prior convictions that are always counted
 - Arkansas: offenses at seriousness levels 6-10 never decay (i.e. murder, terrorism, kidnapping, aggravated robbery, rape, and manufacture meth).
 - Delaware: A and B felonies never decay (i.e. murder, rape, kidnapping, home invasion).
 - Washington: Class A felonies and sex convictions never decay (i.e. murder, 1st degree assault, rape).

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Standard Grid: Effective August 1, 2016

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE							
	0	1	2	3	4	5	6 or more	
<i>Murder, 2nd Degree (intentional murder; drive-by-shootings)</i>	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹	426 363-480 ²
<i>Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)</i>	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Agg. Robbery, 1st Degree; Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{1, 2}
<i>Assault, 2nd Degree Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary; Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 ³	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12 ³	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less) Check Forgery (\$251-\$2,500)</i>	2	12 ³	12 ³	13	15	17	19	21 18-25
<i>Assault, 4th Degree Fleeing a Peace Officer</i>	1	12 ³	12 ³	12 ³	13	15	17	19 17-22

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The Road Ahead

- In future meetings, we may have a chance to—
 - Provide more information for any questions you have
 - Review decay policies and their impact
 - Summarize what we have presented

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