



## Criminal History Score Overview Part 7: Comparing Sentencing Guidelines Jurisdictions

MSGC Staff Presentation

September 14, 2017

09/14/2017

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## Comparing Sentencing Guidelines Jurisdictions: Custody Status

*Most GL states apply some premium if offender under supervision at time of offense*

### **JUSTIFICATION**

- Pre-guidelines, most jurisdictions imposed a more severe sentence if an offender was under some form of court order
- Offenders are more culpable for disregard of previously imposed court order
- Poses higher risk of reoffending (validity of this claim has not been studied)

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## Comparing Sentencing Guidelines Jurisdictions: Custody Status

### **VARIATIONS IN APPROACH**

APPROACH	STATE(S)
Include custody as addition to criminal history score	MN, AK, FED, FL, MD, MI, NC, VA, WA, UT
Custody not included in CHS – dealt with by other means	OR, PA
Custody used as an aggravating factor	AI, KS*, MA
Other approaches incorporating custody status	DC: Sentence for new offense must be imposed consecutively to prior sentence DE: Raises presumptive range based on seriousness of current offense TN: Functions as enhancement factor

\* Offender incarcerated at time of offense can be used as an aggravating factor.

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## Comparing Sentencing Guidelines Jurisdictions: Custody Status

### **CATEGORIES THAT ADD, ENHANCE, OR AGGRAVATE CHS**

CUSTODY CATEGORY	STATE(S)
Post conviction	MN, FED, MD, NC, MA, WA, UT
Pre and post conviction	AL, AK, DE, DC, FL, MI, TN, VA

  

WEIGHT ASSIGNED TO CUSTODY	STATE(S)
1 point	MN, AK, MD*, WA, NC
2 points	FED
4 points	FL
Point range	MI, VA, UT

\* Custody point given if on unsupervised probation for an offense not punishable by imprisonment.

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## Comparing Sentencing Guidelines Jurisdictions: Prior Felony Offenses

### ***METHODS FOR WEIGHTING PRIOR FELONIES***

*Almost all states apply some weighting system*

METHOD	STATE(S)
Severity level	AK, DC, FL, MI, MN, NC, PA
Punishment imposed	AL, FED
Nominal category	KS, OR
Offender Classification	MA, MD, TN
Other	DE, UT, VA

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## Comparing Sentencing Guidelines Jurisdictions: Prior Felony Offenses

### ***SPECIAL ELIGIBILITY REQUIREMENTS FOR HIGHEST CHS CATEGORIES***

*Highest criminal history category reserved for very serious or violent offenders*

STATE	REQUIREMENTS FOR HIGHEST CRIMINAL HISTORY CATEGORIES
DE	Raises presumptive sentence rather than weighting; offenders with prior nonviolent felony records will never be included in presumptive range with highest ceiling.
OR, KS	Reserves eligibility for the four highest CHS categories for offenders with prior person offenses. As a result, offenders without such offenses can move only about half-way across the Grid and offenders with one prior person offense are automatically in the top half of the CHS categories.
MA	Reserves highest classifications for offenders with convictions from three highest severity levels.
PA	Reserves the two highest CHS categories for repeat violent offenders.
TN	Not eligible for highest CHS category unless offender has a certain number of high severity priors.

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## Comparing Sentencing Guidelines Jurisdictions: Prior Felony Offenses

### ***SPECIAL ELIGIBILITY REQUIREMENTS FOR HIGHEST CHS CATEGORIES***

*Factors other than the number of prior felonies required for inclusion*

STATE	REQUIREMENTS FOR HIGHEST CRIMINAL HISTORY CATEGORIES
MD	Cannot get into the highest CHS category based solely on adult record. Offender needs a custody status point, point for prior custody violation, or points for juvenile offenses.
MA	Cannot get to second highest CHS category without high severity juvenile adjudications and/or points for relationship to criminal justice system.

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## Comparing Sentencing Guidelines Jurisdictions: Patterning Premium

### ***PATTERNING PREMIUM***

*Assigning more weight to prior offenses which are similar to the current offense*

*Used to some extent in two-thirds of GL Systems*

- Justification
  - Pattern may indicate recidivism risk
  - Similar offending in past may predict nature of future offending
  - Seen as more blameworthy for committing same type of offense
- Use
  - None in six jurisdictions - FEDS, AR, DC, MD, MA, MI

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## Comparing Sentencing Guidelines Jurisdictions: Patterning Premium

### ***PATTERNING PREMIUM***

***Use***

PATTERN PREMIUM	STATE(S)	USE OF PATTERN PREMIUM
Add weight to CHS for similar priors	MN	Repeat criminal sexual conduct offenses, no limit to misdemeanor points for DWI
	AL	If a property offense; prior adult conviction for same felony gets an additional point
	NC	One additional point added if all elements of current offense included in a prior
	VA, WA	Worksheets for certain offenses assign additional points for similar priors
Build Patterning into Structure of CHS Categories	PA, TN	Highest CHS categories are patterning categories
	KS, OR	Multiple lower level offenses can be converted into higher level offenses so offender lands in higher category. Multiple prior misdemeanors convert to prior person felony at varying rates.
Aggravating Factor	DE	Repeat convictions for same or similar offenses can be used as aggravating factor

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## Comparing Sentencing Guidelines Jurisdictions: Prior Misdemeanor Offenses

### ***MISDEMEANORS***

***Majority of jurisdictions (16 of 18) count misdemeanors to some extent***

ELIGIBLE MISDEMEANORS	STATE(S)
All	FL, MA, PA
All with the exclusion of minor traffic offenses	AL, MD, VA
Most serious only	AR, DC, KS, MI, MN, NC, OR, UT
Other	FEDS, WA

***Special situations***

SPECIAL SITUATION	STATE(S)
Prohibit the use of misdemeanors used to enhance current offenses	MN, KS, MI, PA

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## Comparing Sentencing Guidelines Jurisdictions: Prior Misdemeanor Offenses

### **MISDEMEANORS** *Weighting and Capping*

SYSTEM TYPE	STATE(S)	USE OF PATTERN PREMIUM
Point Based Systems	FL, PA, AL, MD, VA, AR, DC, MI, MN, NC, UT, WA, FEDS	Misdemeanors are weighted lower than felonies, most at a fraction of felony weights. Eight of these states cap the number of misdemeanor points an offender can get.
Categorical Systems	KS, MA, OR	Lowest criminal history categories are defined to include prior misdemeanors. To move into higher criminal history categories the offender must have felonies.

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## Comparing Sentencing Guidelines Jurisdictions: Prior Juvenile Offenses

*Nearly all Guidelines jurisdictions include juvenile offenses in CHS*

### **JUSTIFICATION**

- Juvenile arrests and adjudications have been found to be predictive of recidivism.
- Age-Crime Curve
  - Criminal activity begins between 8 and 14, peaks in early teens and then declines into adulthood.
  - Individuals who begin offending at an early age tend to have longer criminal careers and commit relatively more crimes than those who begin offending at a later age.
- Recent developments in brain science and behavioral development research led the Supreme Court to conclude that juveniles are different than adults and less culpable.

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## Comparing Sentencing Guidelines Jurisdictions: Prior Juvenile Offenses

### **VARIATIONS IN APPROACH**

- Limit eligible juvenile adjudications by offense type
  - Eight jurisdictions only count felony level adjudications, nine jurisdictions count felony and misdemeanor adjudications.
- Limit eligible juvenile adjudications by offenders age or elapsed time
  - Three jurisdictions only count juvenile offenses until a certain age, five jurisdictions apply a decay policy, and two jurisdictions apply a gap policy.
  - One jurisdiction applies both an age policy and gap policy.
- Point values
  - Variations in equivalency to felony offenses

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## Comparing Sentencing Guidelines Jurisdictions: Prior Juvenile Offenses

### **VARIATIONS IN APPROACH**

#### *Limiting Juvenile Adjudications by Offense Type*

ELIGIBLE JUVENILE ADJUDICATIONS	STATE(S)
Only count felony juvenile adjudications	MN, AR, DC, DE, MA, OR, TN, WA
Only offenses for which offender could have been tried as an adult	AR
Only offenses at the top three seriousness levels (all in prison zone)	MA
Only Class A or B felonies or was transferred to adult court	TN
Count felonies AND misdemeanors (great variation as to what counts)	FED, AL, FL, KS, MD, MI, PA, UT, VA

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## Comparing Sentencing Guidelines Jurisdictions: Prior Juvenile Offenses

### **VARIATIONS IN APPROACH**

#### *Limiting juvenile adjudications by offenders age or elapsed time*

ELIGIBLE JUVENILE ADJUDICATIONS	STATE(S)
Only count felony juvenile adjudications until a certain age	MN, MD, KS
Apply a decay policy	AR, DC, FL, UT, FED
Apply a gap policy (crime free period)	MI, WA
Only count felony juvenile adjudication until a certain age AND applies gap policy	PA

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## Comparing Sentencing Guidelines Jurisdictions: Prior Juvenile Offenses

### **VARIATIONS IN APPROACH**

#### *Felony Equivalency?*

SYSTEM	STATE(S)
Treat prior juvenile offenses same as adult convictions	KS, OR, DE, FL, PA
Treat some prior juvenile offenses the same as adult convictions	TN, MA
Assign points to juvenile offenses differently from Felony Offenses	AL, AR, DC, FED, MD, MI, MN, UT, VA WA

#### *Caps on point values*

STATE	CAP (POINTS)	FURTHEST GRID LOCATION	PERCENTAGE OF GRID TRAVELED
AR	2	3 <sup>rd</sup> column of 6	50%
DC	1.5	2 <sup>nd</sup> column of 5	40%
MD	2	3 <sup>rd</sup> column of 8	37.5%
MN	1	2 <sup>nd</sup> column of 7	28.5%
UT	4	2 <sup>nd</sup> row of 5	40%

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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 <sup>1</sup>	426 363-480 <sup>1</sup>
<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 <sup>1, 3</sup>
<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 <sup>1</sup>	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12 <sup>1</sup>	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 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 18-25
<i>Assault, 4th Degree Fleeing a Peace Officer</i>	1	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	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
  - Summarize what we have presented

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