

## Staff Issue Paper

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# Criminal History – Possible Modifications

## Custody Status Point and Decay Periods

April 12, 2018

### Background

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From March through October of 2017, the Commission conducted an eight-part review of criminal history scores. The Commission discussed the role of criminal history in punishment; reviewed the four components of Minnesota’s criminal history score (custody status, juvenile history, misdemeanor/gross misdemeanor history, and felony history); and compared criminal history score computations from other sentencing guidelines jurisdictions.

In December of 2017, Dr. Julia Laskorunsky, Research Fellow, Robina Institute of Criminal Law and Criminal Justice, presented Phase 1 findings of the Robina Institute’s Recidivism Study on Minnesota’s Criminal History Score (CHS), which concluded that Minnesota’s CHS predicted recidivism “moderately well” but it had components that did not add to its predictive value.<sup>1</sup>

At its January 11, 2018, meeting, “Criminal History – Potential Areas of Reform” was on the agenda as a discussion item. Chair Dietzen introduced two areas that may be in need of reform if the Commission could find consensus: 1) the Custody Status Point; and 2) the period in which prior convictions decay.

At its March 8, 2018, meeting, “Criminal History – Potential Areas of Reform” was on the agenda as a discussion item. After a staff presentation and discussion, Chair Dietzen directed staff to research the following modifications to the Custody Status Point and decay period. Each area presented below is

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<sup>1</sup> Laskorunsky, Julia. *The Predictive Validity of the Minnesota Sentencing Guideline’s Criminal History Score*. Robina Institute of Criminal Law and Criminal Justice University of Minnesota. Presentation to Minn. Sentencing Guidelines Comm’n, Dec. 14, 2017.

followed by a staff summary of the possible modification in the form of a possible proposal, data, examples, and demographic impact.

• **Custody Status Point (CSP)**

**Possible Modification Proposals:**

Below are possible proposals with data, examples, and demographic impact related to CSP for the Commission’s consideration. To the extent possible, they are grouped into like categories.

1. Abolish CSP.
2. Abolish CSP except for offenders on the Sex Offender Grid.

*Table 1. Current CSP Policy, Possible Proposals 1 & 2, Demographic Impact*

		Current Policy			1. Abolish CSP			2. Abolish CSP except for Sex Grid Offenders		
		Number of Offenders	With CSP	Presumptive Commit	W/out CSP	Shift to Presumptive Stay	Beds (-)	W/out CSP	Shift to Presumptive Stay	Beds (-)
	Male	13,702	46%	37%	46%	4%	714	44%	4%	634
	Female	3,225	38.5%	18%	38.5%	2%	65	38%	2%	64
<b>Race &amp; Ethnicity</b>	White	9,813	43%	29%	43%	3%	384	41%	3%	355
	Black	4,209	47%	44%	47%	5%	243	45%	5%	214
	American Indian	1,472	52%	29%	52%	4%	75	50%	4%	67
	Hispanic	903	41%	39%	41%	3%	57	38%	3%	44
	Asian	525	39%	28%	39%	3%	19	38.5%	3%	18
	Other/unknown	5	20%	20%	20%	0%	0	20%	0%	0
	First	2,192	43.5%	27%	43.5%	4%	75	42%	4%	68
	Second	1,784	50%	39%	50%	5%	108	48%	5%	103
Third	1,344	46%	31.5%	46%	3%	60	44.5%	3%	56	
Fourth	3,341	42%	41%	42%	3%	143	40%	3%	123	
Fifth	1,075	39%	30%	39%	2.5%	35	37%	2%	34	
Sixth	862	39%	31%	39%	4%	29	38%	4%	25	
Seventh	1,689	48.5%	33%	48.5%	4%	116	47%	4%	98	
Eighth	432	37%	28%	37%	3%	23	35%	3%	21	
Ninth	1,688	49%	29%	49%	3%	81	47%	3%	74	
Tenth	2,520	45%	30%	45%	4%	109	43%	4%	98	
<b>Total</b>		<b>16,927</b>	<b>44.5%</b>	<b>33%</b>	<b>44.5%</b>	<b>4%</b>	<b>778</b>	<b>43%</b>	<b>3.5%</b>	<b>698</b>

3. End eligibility for CSP for offenders on probation at the time of discharge from probation rather than at the end of the original probation term.
4. Limit a Custody Status Point to current offenses ranked at severity levels 8-11 on the Standard Grid, A-C, & H on the Sex Offender Grid, D8 & D9 on the Drug Offender Grid, attempted murder in the first degree.
5. Limit a Custody Status Point to current offenses ranked at severity levels 8-11 on the Standard Grid, A-C, & H on the Sex Offender Grid, D8 & D9 on the Drug Offender Grid, attempted murder in the first degree, or a weapon offense under Minn. Stat. § 609.11.

Table 2. Possible Proposals 3, 4, & 5, Demographic Impact

			3. End CSP at Discharge From Probation Rather Than Original Stay Period			4. Abolish CSP Except for Offenders at SLs with Presumptive Commits at CHS=0			5. 4 + 609.11 (Weapon Offenses Would Keep CSP)		
		Number of Offenders	W/Out CSP	Shift to Presumptive Stay	Beds (-)	W/Out CSP	Shift to Presumptive Stay	Beds (-)	W/Out CSP	Shift to Presumptive Stay	Beds (-)
	Male	13,702	1%	0.3%	21	41%	4%	541	39%	4%	528
	Female	3,225	1%	0.1%	1	36.5%	2%	50	36%	2%	49
Race & Ethnicity	White	9,813	1.5%	0.2%	13	39%	3%	309	38%	3%	303
	Black	4,209	1%	0.3%	2	41.5%	5%	166	38%	5%	160
	American Indian	1,472	1%	0.3%	5	48%	4%	61	46%	4%	58
	Hispanic	903	1%	0.4%	1	36%	3%	43	34%	3%	42
	Asian	525	1.5%	0.0%	1	36%	3%	14	34%	3%	13
	Other/unknown	5	0%	0.0%	0	20%	0%	0	20%	0%	0
Judicial District	First	2,192	1%	0.3%	4	40%	4%	65	39%	4%	64
	Second	1,784	2%	0.5%	4	45%	5%	90	42%	5%	88
	Third	1,344	1%	0.1%	0	42%	3%	44	40%	3%	41
	Fourth	3,341	1%	0.2%	2	36%	3%	85	34%	3%	83
	Fifth	1,075	1%	0.1%	0	35%	2.5%	27	34%	2.5%	26
	Sixth	862	0.5%	0.2%	0	36%	4%	16	34%	4%	15
	Seventh	1,689	2%	0.2%	2	44%	4%	96	42%	4%	93
	Eighth	432	1%	0.0%	0	32%	3%	17	31%	3%	16
	Ninth	1,688	1%	0.2%	5	45%	3%	62	43%	3%	61
	Tenth	2,520	1.5%	0.4%	5	41%	4%	91	40%	4%	90
<b>Total</b>	<b>16,927</b>	<b>1%</b>	<b>0.3%</b>	<b>22</b>	<b>40%</b>	<b>4%</b>	<b>592</b>	<b>38%</b>	<b>4%</b>	<b>577</b>	

6. Limit weight of a CSP to 0.5 point for offenders whose custody status derives from a prior offense that has a weight of less than 1.0 point, is a misdemeanor or gross misdemeanor, or is a statutory stay of adjudication for a drug offense under Minn. Stat. § 152.18.<sup>2</sup>

Notes on Estimating Impact: Measuring the impact of this possible proposal required the determination of which prior conviction the CSP was based upon. For a limited attempt to measure this impact, MSGC selected offenders in the history area of the grid (area where presumptive prison disposition is determined by criminal history rather than severity level or mandatory minimum) (see illustrated Standard Grid, p.15). The selection was further limited to those offenders in the grid cells just to the right of the dispositional line because they are the offenders for whom reducing the weight of the CSP to 0.5 may shift the presumptive disposition from commitment to stay.

There were 610 offenders in these identified cells and 363 (60%) received prison sentences. Therefore, the examination of prior offenses was limited to them. Staff found that, of those 363 offenders, 109 were on probation for either a prior GM conviction or a prior Severity Level 1 or 2 conviction. Of those 109, reducing the CSP to 0.5 would result in 57 offenders who would shift from presumptive commitment to stay. MSGC was not able to identify offenders on probation for a stay of adjudication.

Because the policy was applied to only offenders in those certain cells (See illustrated Standard Grid, p. 15), the number that shift from CSP to no CSP is equal to the number who would shift from presumptive commitment to presumptive stay. The estimated impact is displayed in Table 4 for both the entire population and the group of offenders in the cells being examined. (The additional impact that may result from shorter prison durations due to a possible shift from CSP to no CSP in the group of offenders in cells not being examined was not been estimated.)

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<sup>2</sup> This last category was not addressed at the meeting but is an open question for the Commission to consider. See Minn. Sentencing Guidelines 2.B.2.a(2) & Comment 2.B.203.

Table 3. Current CSP Policy, Possible Proposal 6, Demographic Impact

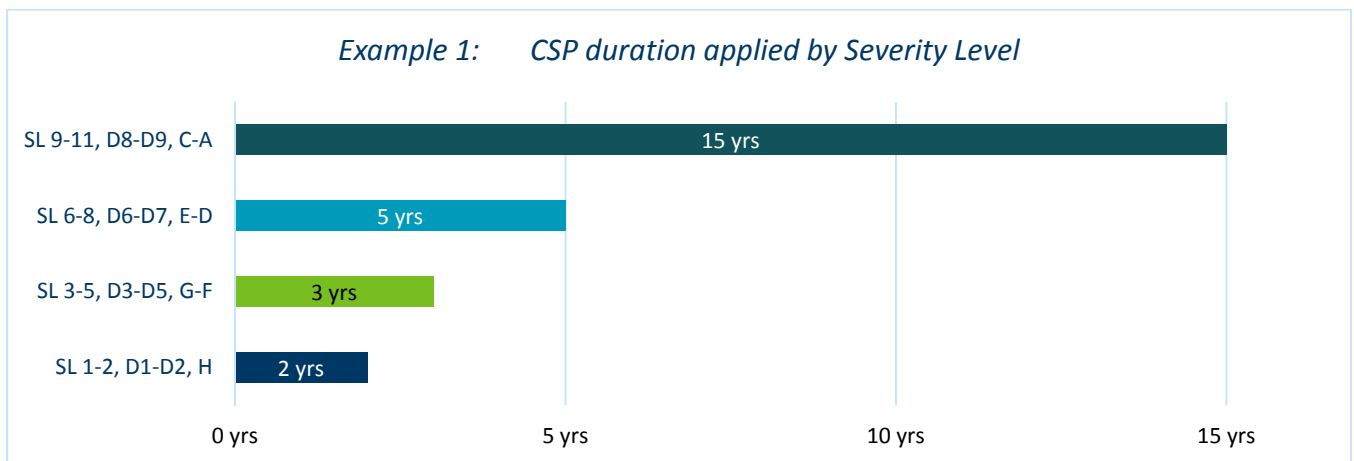
		Number of Offenders	Current Policy		6. Limit Weight of CSP if Prior worth Less Than 0.5 Pts – All Cases			6. Limit Weight of CSP if Prior worth Less Than 0.5 Pts – Grid Cells Studied		
			With CSP	Presumptive Commit	W/out CSP	Shift to Presumptive Stay	Beds (-)	W/out CSP	Shift to Presumptive Stay	Beds (-)
	Male	13,702	46%	37%	0.4%	0.4%	57	15%	15%	57
	Female	3,225	38.5%	18%	0.2%	0.2%	6	21%	21%	6
Race & Ethnicity	White	9,813	43%	29%	0.4%	0.4%	38	19%	19%	38
	Black	4,209	47%	44%	0.3%	0.3%	15	12%	12%	15
	American Indian	1,472	52%	29%	0.5%	0.5%	8	20%	20%	8
	Hispanic	903	41%	39%	0.0%	0.0%	0	0%	0%	0
	Asian	525	39%	28%	0.4%	0.4%	2	18%	18%	2
	Other/unknown	5	20%	20%	0.0%	0.0%	0	0%	0%	0
Judicial District	First	2,192	43.5%	27%	0.5%	0.5%	12	26%	26%	12
	Second	1,784	50%	39%	0.3%	0.3%	7	9%	9%	7
	Third	1,344	46%	31.5%	0.2%	0.2%	3	12.5%	12.5%	3
	Fourth	3,341	42%	41%	0.3%	0.3%	9	15%	15%	9
	Fifth	1,075	39%	30%	0.2%	0.2%	2	15%	15%	2
	Sixth	862	39%	31%	0.3%	0.3%	3	30%	30%	3
	Seventh	1,689	48.5%	33%	0.4%	0.4%	9	11.5%	11.5%	9
	Eighth	432	37%	28%	0.2%	0.2%	1	11%	11%	1
	Ninth	1,688	49%	29%	0.6%	0.6%	10	29%	29%	10
	Tenth	2,520	45%	30%	0.2%	0.2%	7	16%	16%	7
	<b>Total</b>	<b>16,927</b>	<b>44.5%</b>	<b>33%</b>	<b>0.3%</b>	<b>0.3%</b>	<b>63</b>	<b>16%</b>	<b>16%</b>	<b>63</b>

Table 4. Summary of Possible Proposals 1 through 6, Prison Bed Impact

Note: For purposes of comparison to the proposals listed in Table 4, under current policy, 44.5% of offenders sentenced have a CSP and 33% are presumptive commits.

Possible Proposal	W/out CSP	Shift to Presumptive Stay	Prison Bed Impact				
			Shift from Prison to Probation		Serve Less Time in Prison		Total Beds (-)
			Number	Beds (-)	Number	Beds (-)	
Proposal 1	44.5%	4%	363	428	1,064	350	778
Proposal 2	43%	3.5%	354	402	992	297	699
Proposal 3	1%	0.3%	10	12	27	10	22
Proposal 4	40%	4%	363	428	744	164	592
Proposal 5	38%	4%	363	428	704	149	577
Proposal 6	0.3%	0.3%	57	63	0	0	63

7. Judge Lennon’s Proposal (as initially drafted, provided to staff, and summarized by staff):
- Eliminate the M/GM point, and eliminate custody for M/GM.
  - Limit the length of time a CSP applies based on Severity Level (see Example 1):
    - Level 1-2, D1-D2, H = 2 years
    - Level 3-5, D3-D5, G-F = 3 years
    - Level 6-8, D6-D7, E-D = 5 years
    - Level 9-11, D8-D9, C-A = 15 years
  - CSP limited to a weight of 0.5 for felonies weighted at 0.5.
  - Decay starts at end of standard durations (see Example 1) for probation cases and at discharge for prison sentences.
  - Decay period reduced to 10 years from date of discharge.



Notes on Estimating Impact: Limiting duration for CSP policy was applied to those offenders described in Proposal 6 (i.e., the 353 offenders in the “history” area of the grid who were in cells just to the right of the dispositional line who also received a prison sentence). MSGC staff found that 24 (6.6%) of those offenders received a CSP for a conviction for which they had been on probation for longer than the custody period described in Example 1. (The additional impact from shorter durations that may result from offenders in other cells on the Grid with prison sentences that would have lower criminal history scores was not estimated. Thus, all beds displayed in Table 5 are from offenders shifting from prison sentences to probation sentences.) Changes to decay were not examined. Elimination of CSP for original length of stay was assumed.

Table 5. Current CSP Policy, Proposal 7, Demographic Impact

Note: Table 5 does not estimate the impact of the proposed change to decay.

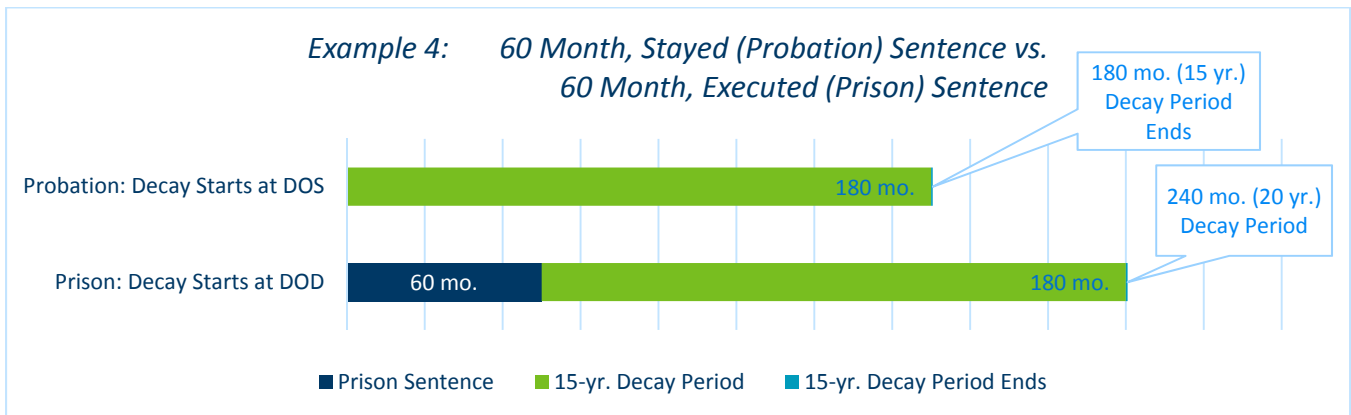
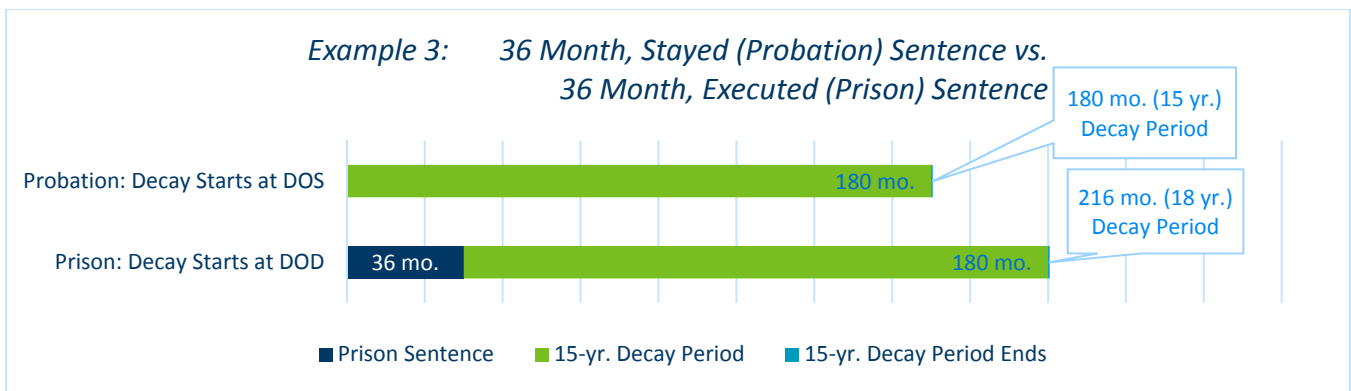
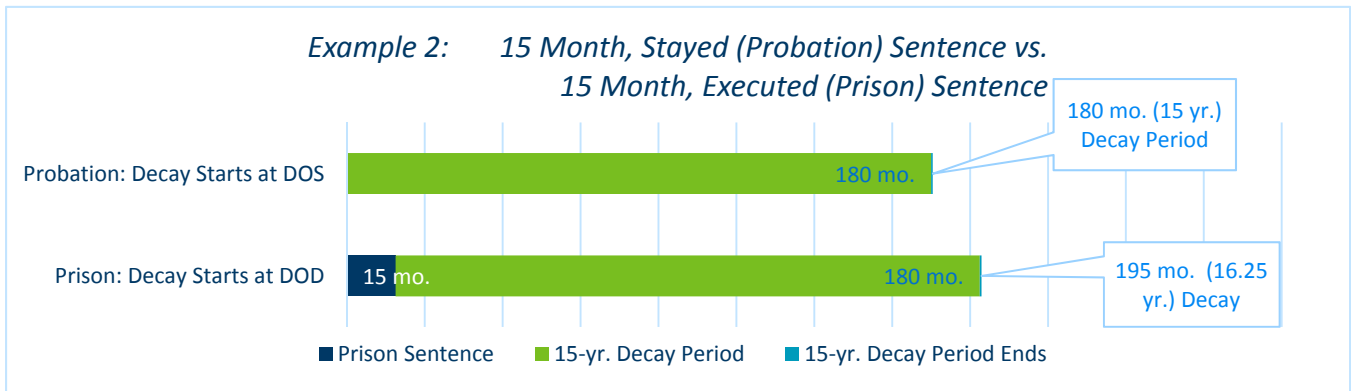
		Number of Offenders	Current Policy		7. Eliminate M/GM Pt. and Custody Limit Weight of CSP if Prior Worth Less Than 0.5 Limit CSP to Standard Durations		
			With CSP	Presumptive Commit	With Lower CHS	Shift to Presumptive Stay	Beds (-)
	Male	13,702	46%	37%	10.3%	1.4%	158
	Female	3,225	38.5%	18%	7.5%	0.7%	18
Race & Ethnicity	White	9,813	43%	29%	9.6%	1.3%	108
	Black	4,209	47%	44%	8.6%	1.2%	34
	American Indian	1,472	52%	29%	15.7%	1.8%	20
	Hispanic	903	41%	39%	8.7%	0.8%	11
	Asian	525	39%	28%	6.7%	0.8%	4
	Other/unknown	5	20%	20%	0.0%	0%	0
	First	2,192	43.5%	27%	8.6%	1.5%	30
	Second	1,784	50%	39%	7.8%	1.0%	18
Judicial District	Third	1,344	46%	31.5%	12.0%	1.3%	9
	Fourth	3,341	42%	41%	7.3%	0.7%	15
	Fifth	1,075	39%	30%	7.7%	1.1%	6
	Sixth	862	39%	31%	8.2%	1.5%	7
	Seventh	1,689	48.5%	33%	15.5%	1.8%	34
	Eighth	432	37%	28%	9.7%	0.9%	3
	Ninth	1,688	49%	29%	12.7%	1.8%	27
	Tenth	2,520	45%	30%	9.8%	1.3%	28
	<b>Total</b>	<b>16,927</b>	<b>44.5%</b>	<b>33%</b>	<b>9.8%</b>	<b>1.3%</b>	<b>176</b>

## • Decay Period of Priors

### Possible Modification Proposals:

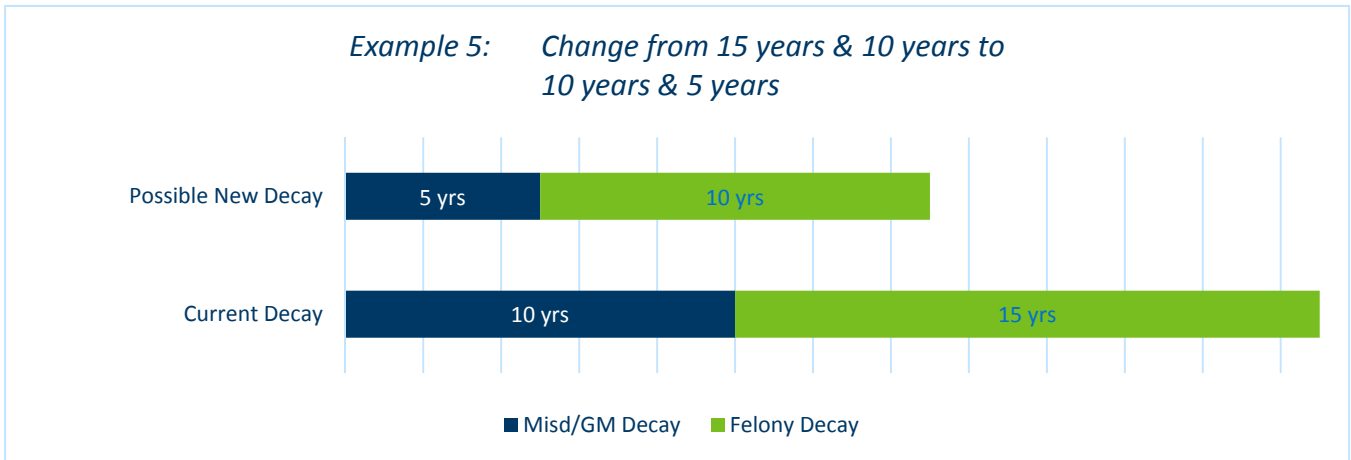
Below, for the Commission’s consideration, are possible proposals related to the decay period of priors, with examples. A discussion on impact follows the examples. To the extent possible, the proposals are grouped into like categories.

- Start decay period at date of sentence (DOS) for probationers and date of discharge (DOD) for prisoners. (See examples 2-4.)





- 9. Change decay period for prior felonies to 10 years, and 5 years for misdemeanors & gross misdemeanors. (See Example 5.)



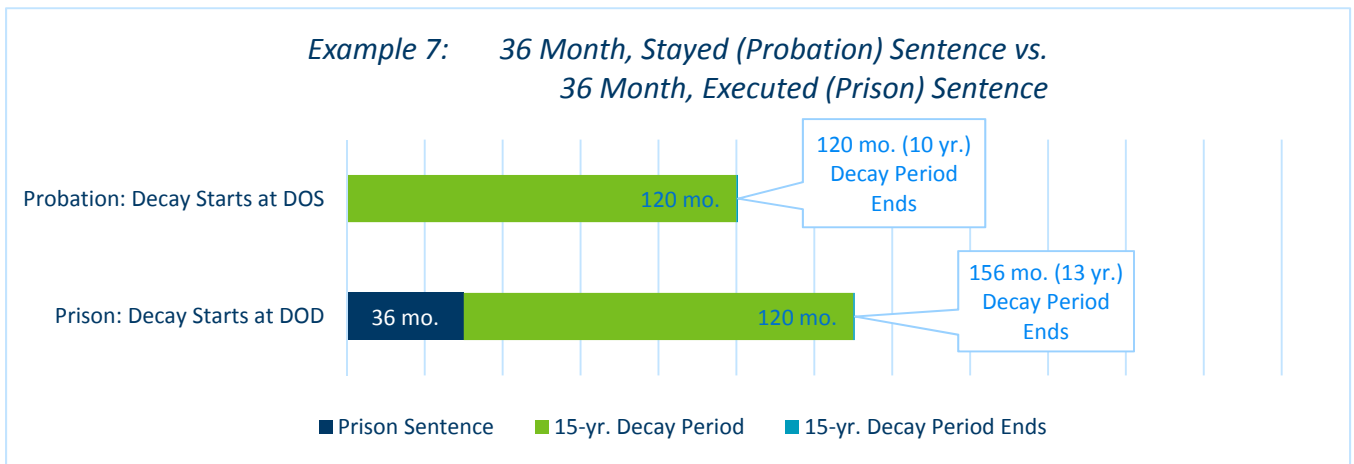
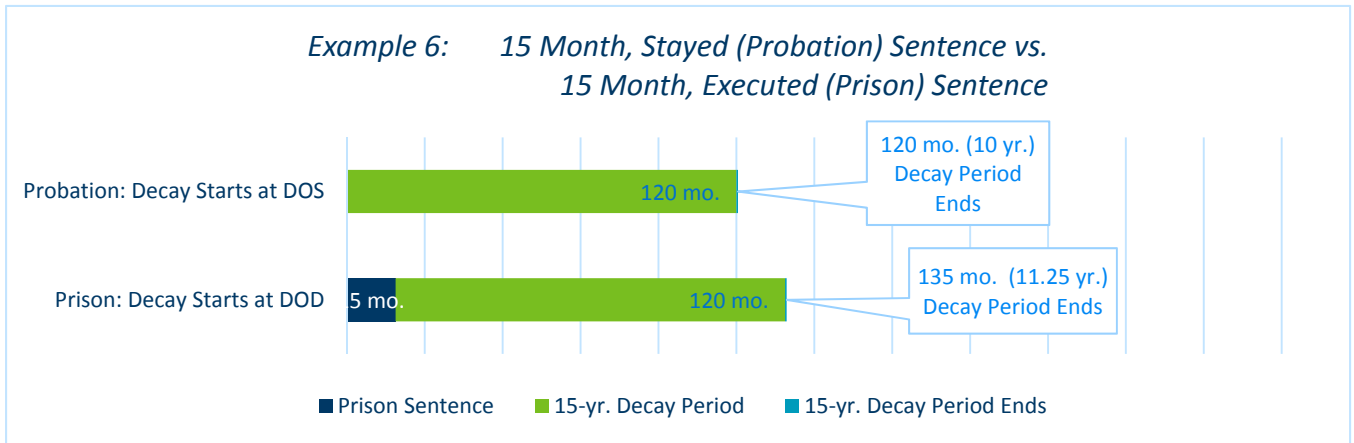
Notes on Estimating Impact: Staff were able to calculate which prior felonies would decay if the decay period for felonies was changed from 15 years to 10 years. In total, 12 percent of the prior felony convictions from offenders sentenced in 2016 would have decayed if the decay period was changed. The impact of changing the GM/M decay period from 10 years to five years was not estimated. A new criminal history score was calculated for offenders sentenced in 2016.

Table 6 displays how many offenders would shift from presumptive commit to presumptive stay, how many offenders would have lower criminal history scores (CHS), the percent of prison cases for which a lower CHS would result in lower prison durations, and the prison bed impact if this change were applied to cases sentenced in 2016. (The policy was not applied to presumptive stayed cases that received a prison sentence i.e., aggravated dispositional departures because many of those cases are requests for prison.) Of the estimated impact of 391 beds, 266 beds are due to persons shifting from prison to probation and 125 are due to persons with prison sentences serving a shorter duration.

Table 6. Current Presumptive Commits, Proposal 9, Demographic Impact

		Number of Offenders	Current Policy	9. Change decay period for prior felonies to 10 years			
			Presumptive Commit	Shift to Presumptive Stay	Lower CHS	Lower CHS results in Lower Duration	Beds (-)
	Male	13,702	37%	2.4%	11.9%	7.8%	377
	Female	3,225	18%	0.6%	4.3%	3.6%	14
Race & Ethnicity	White	9,813	29%	1.6%	9.1%	6.0%	177
	Black	4,209	44%	3.2%	14.3%	8.5%	145
	American Indian	1,472	29%	2.4%	13.0%	8.6%	46
	Hispanic	903	39%	1.3%	7.3%	8.3%	18
	Asian	525	28%	0.8%	4.0%	6.1%	4
	Other/unknown	5	20%	0%	0%	0%	0
Judicial District	First	2,192	27%	1.6%	9.2%	5.0%	36
	Second	1,784	39%	2.5%	12.6%	7.5%	46
	Third	1,344	31.5%	1.4%	8.3%	7.8%	26
	Fourth	3,341	41%	2.6%	12.7%	6.7%	94
	Fifth	1,075	30%	0.8%	8.5%	7.3%	17
	Sixth	862	31%	2.1%	10.6%	5.8%	20
	Seventh	1,689	33%	2.2%	10.4%	8.8%	46
	Eighth	432	28%	2.1%	9.5%	7.9%	14
	Ninth	1,688	29%	2.3%	10.0%	8.2%	46
	Tenth	2,520	30%	1.7%	9.4%	6.4%	46
	<b>Total</b>	<b>16,927</b>	<b>33%</b>	<b>2.0%</b>	<b>10.5%</b>	<b>7.0%</b>	<b>391</b>

10. Combine change in start date for probationers with change in decay period for prior felonies to 10 years and 5 years for misdemeanors and gross misdemeanors. (See examples 6 & 7.)



11. Set a standard period of probation for the purposes of decay based on Severity Level:

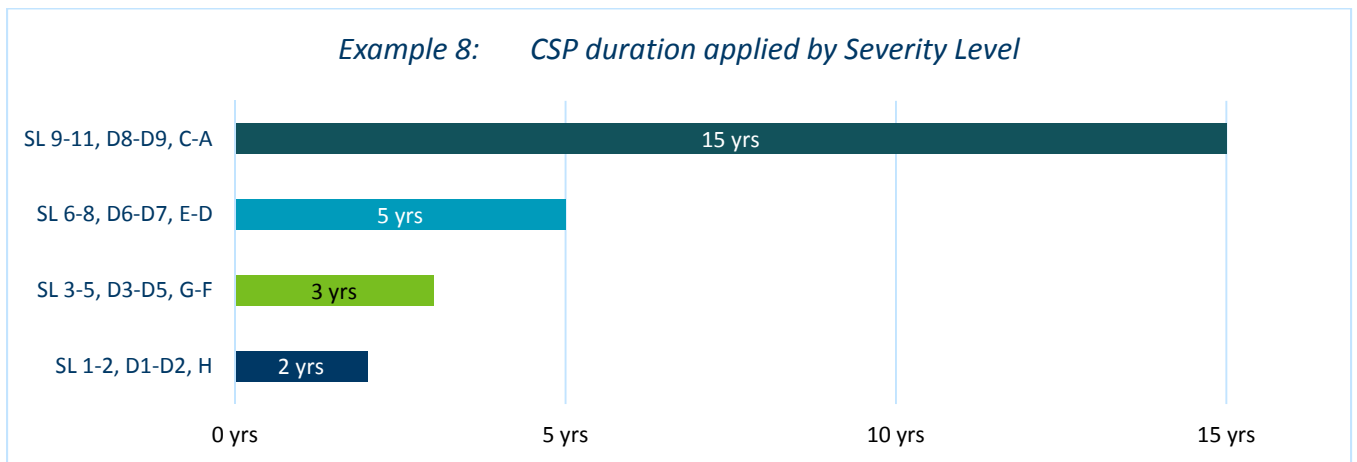
Level 1-2, D1-D2, H = 2 years

Level 3-5, D3-D5, G-F = 3 years

Level 6-8, D6-D7, E-D = 5 years

Level 9-11, D8-D9, C-A = 15 years (See Example 8.).

Change the start date for decay for probation offenses to the end of the standard probation period. Also reduce the decay period for prior felonies to 10 years from date of discharge from probation or prison.



**Further Questions for the Commission:**

Below are questions for the Commission to consider if it wishes for MSGC staff to conduct a more thorough investigation of the impact of the possible proposals there were presented:

<b>Possible Proposal</b>	<b><i>Question(s) for the Commission...</i></b>
Eliminate CSP for original length of stay (End CSP at discharge from probation)	Do you want to pursue this further?
Weight CSP at 0.5 for custody from: M/GM SL1-2	M/GM, SL1 and SL2, both?
Limit/abolish CSP for some/all offenses	All/some severity levels?
Limit CSP for probation to a standard period	What are the “standard” periods?
Eliminate M/GM point	Do you want to pursue this further?
Continue start of decay at discharge from prison Start decay for probation cases at sentencing	Do you want to pursue this further?
Start decay for probation cases at end of standard period	Do you want to pursue this further?
Decrease decay to 10 years for felonies/ 5 years for M/GM	Do you want to pursue this further?

• **Standard Sentencing Guidelines Grid (Illustrated)**

(Example of Standard Grid with shading to illustrate impact of possible modifications)

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</i> (intentional murder; drive-by-shootings)	<b>11</b>	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 <sup>2</sup>	426 363-480 <sup>2</sup>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	<b>10</b>	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>	<b>9</b>	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;</i> <i>Burglary, 1st Degree (w/</i> <i>Weapon or Assault)</i>	<b>8</b>	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI;</i> <i>Financial Exploitation of a</i> <i>Vulnerable Adult</i>	<b>7</b>	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 <sup>2,3</sup>
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied</i> <i>Dwelling)</i>	<b>6</b>	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary;</i> <i>Simple Robbery</i>	<b>5</b>	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	<b>4</b>	12 <sup>1</sup>	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	<b>3</b>	12 <sup>1</sup>	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	<b>2</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 18-25
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	<b>1</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 17-22

<sup>1</sup> 12<sup>1</sup>=One year and one day



One cell to the right of the Disposition Line; presumptive commitment to state imprisonment.



One cell to the left of the Disposition Line; presumptive stayed sentence.