

Staff Issue Paper

Criminal History Scenarios – Possible Modifications

Refined Proposals on Custody Status Point and Decay Periods

Presented June 7, 2018

Background

In 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 2018, the Commission discussed possible modifications to criminal history focusing on two areas that may be in need of modification if the Commission finds consensus: (1) the Custody Status Point; and (2) the period in which prior convictions decay.

Dr. Julia Laskorunsky, Research Fellow, Robina Institute of Criminal Law and Criminal Justice, twice presented findings from the Robina Institute’s Recidivism Study on Minnesota’s Criminal History Score (CHS), concluding that: Minnesota’s CHS predicted recidivism “moderately well” but it had components that did not add to its predictive value¹; and that some components of Minnesota’s CHS increased the presumptive sentence length without adding to the score’s predictive power for recidivism.²

The Commission discussed pros and cons to different scenarios including public safety, recidivism and the forthcoming completion of the Robina Institute’s project. The Commission asked staff to report back on the following refined proposals.

¹ 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.

² Laskorunsky, Julia. *The Predictive Validity of the Minnesota Sentencing Guideline’s Criminal History Score, Phase II*. Robina Institute of Criminal Law and Criminal Justice University of Minnesota. Presentation to Minn. Sentencing Guidelines Comm’n, May 10, 2018.

Custody Status Point

Current Policy: Table 1 displays the number of offenders with a custody status point (CSP) as part of their criminal history score (CHS) under existing policy. Also shown is the 2016 imprisonment rate and the resulting number of estimated prison beds needed (not equivalent to the Department of Corrections prison population)¹ per 100,000 population² for the existing CHS policy.

Table 1. Felony Sentences in 2016, With Current CSP Policy

		Number of Offenders	With CSP	Presumptive Commit	Prison		Est. Prison Beds		Est. Prison Beds per 100,000
					Number	Percent	Number	Percent	
	Male	13,702	46%	37%	3,894	28%	10,355	93%	471
	Female	3,225	38.5%	18%	414	13%	804	7%	36
Race & Ethnicity	White	9,813	43%	29%	2,193	22%	5,241	47%	139
	Black	4,209	47%	44%	1,315	31%	3,839	34%	1,456
	American Indian	1,472	52%	29%	394	27%	877	8%	1,267
	Hispanic	903	41%	39%	285	32%	928	8%	480
	Asian	525	39%	28%	121	23%	274	3%	123
	Other/unknown	5	20%	20%	0	0%	0	0%	---
Judicial District	First	2,192	43.5%	27%	442	20%	1,045	9%	168
	Second	1,784	50%	39%	512	29%	1,279	12%	295
	Third	1,344	46%	31.5%	331	25%	890	8%	232
	Fourth	3,341	42%	41%	970	29%	2,740	25%	273
	Fifth	1,075	39%	30%	234	22%	563	5%	241
	Sixth	862	39%	31%	187	22%	549	5%	260
	Seventh	1,689	48.5%	33%	494	29%	1,170	11%	299
	Eighth	432	37%	28%	129	30%	360	3%	278
	Ninth	1,688	49%	29%	434	26%	1,101	10%	401
	Tenth	2,520	45%	30%	575	23%	1,462	13%	191
	Total	16,927	44.5%	33%	4,308	25.5%	11,159	100%	251

Possible Modification Proposals: Below, for the Commission’s consideration, are possible proposals that were discussed at the April 2018 meeting with revisions to the data, examples, and demographic impact related to CSP.

Proposal 1: Abolish CSP.

Table 2A displays the prison bed impact by gender, race and judicial district. It is estimated that this proposal would result in: 2.1% of offenders shifting from a prison sentence to a probation sentence for a savings of 428 beds; 7% of offenders serving less time in prison for a savings of 358 beds. The total projected prison bed savings is 786 beds. A larger percentage of minority offenders than white offenders would shift from prison to probation and serve less time in prison.

Table 2B displays the impact by offense type and severity level. The group most likely to have a CSP are person offenders at severity levels 3 and 4. Overall 9% of offenders would see a change to their prison sentence. The level of change varies by offense type from 12% of person offenders to 7% of property offenders. The percent of offenders shifting from prison to probation is greatest for severity levels 3 and 4 (4%), whereas the largest percentage of offenders serving less time is at severity levels 8 and above (17%). That is true for all offense types.

¹ Throughout this staff issue paper, “estimated prison beds” means two-thirds of the sum of the durations, in years, of executed prison sentences imposed annually. This estimate does not account for pre- or post-sentencing events that may cause an offender to serve more or less time than two-thirds of the pronounced, executed prison sentence, such as participation in an early-release program, jail credit, probation violation, or supervised release violation.

² Throughout this staff issue paper, rates are per 100,000 residents of Minnesota (or the appropriate subset) age 15 and older as of July 1, 2016, as estimated by the U.S. Census Bureau. Members of more than one race may contribute to more than one residential population group when grouped by race.

Table 2A. Proposal 1, Abolish CSP

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	4.0%	26%	334	2.4%	395	1,068	7.8%	327	722	9,633	-7.0%	438
	Female	2.0%	12%	29	0.9%	33	125	3.9%	31	64	740	-8.0%	33
Race & Ethnicity	White	3.1%	20.5%	183	1.9%	219	602	6.1%	170	389	4,852	-7.4%	129
	Black	4.6%	29%	112	2.7%	123	358	8.5%	122	245	3,594	-6.4%	1,363
	American Indian	4.0%	24%	35	2.4%	41	121	8.2%	32	73	804	-8.3%	1,161
	Hispanic	3.4%	29%	22	2.4%	33	78	8.6%	26	59	869	-6.4%	449
	Asian	3.0%	21%	11	2.1%	12	34	6.5%	9	20	254	-7.3%	114
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	3.7%	18%	42	1.9%	51	114	5.2%	27	78	967	-7.5%	156
	Second	5.2%	25%	64	3.6%	73	136	7.6%	38	111	1,168	-8.7%	269
	Third	3.0%	23%	24	1.8%	28	107	8.0%	32	59	831	-6.6%	216
	Fourth	3.0%	27%	59	1.8%	60	224	6.7%	80	141	2,599	-5.1%	259
	Fifth	2.5%	21%	13	1.2%	17	70	6.5%	20	37	526	-6.6%	226
	Sixth	4.1%	20.5%	10	1.2%	11	50	5.8%	20	31	518	-5.6%	246
	Seventh	4.0%	26%	52	3.1%	72	159	9.4%	44	116	1,054	-9.9%	270
	Eighth	3.2%	28%	9	2.1%	11	33	7.6%	12	23	337	-6.4%	260
	Ninth	3.3%	24%	35	2.1%	43	130	7.7%	39	83	1,018	-7.5%	371
	Tenth	3.9%	21%	55	2.2%	62	170	6.7%	45	108	1,354	-7.4%	177
	Total	3.6%	23%	363	2.1%	428	1,193	7.0%	358	786	10,373	-7.0%	233

Table 2B. Proposal 1, Abolish CSP, Impact by Offense and Severity

	Severity Level Category	Number of Offenders		Have Custody Status Point		CHS is Decreased		CHS Decrease Results in Change to Prison Sentence					
		Number	Percent	Number	Percent	Number	Percent	Shift from Prison to Probation		Less Time		Total	
								Number	Percent	Number	Percent	Number	Percent
Person	SL1-2	203	1.2%	79	38.9%	79	38.9%	6	3.0%	1	0.5%	7	3.4%
	SL3-4, G	2,966	17.5%	1,560	52.6%	1,560	52.6%	146	4.9%	211	7.1%	357	12.0%
	SL5-7, D-F	891	5.3%	270	30.3%	270	30.3%	17	1.9%	77	8.6%	94	10.5%
	SL8-12, A-C	797	4.7%	238	29.9%	238	29.9%	0	0.0%	137	17.2%	137	17.2%
	Total	4,857	28.7%	2,147	44.2%	2,147	44.2%	169	3.5%	426	8.8%	595	12.3%
Property	SL1-2	1,950	11.5%	841	43.1%	841	43.1%	29	1.5%	49	2.5%	78	4.0%
	SL3-4	1,775	10.5%	723	40.7%	723	40.7%	50	2.8%	124	7.0%	174	9.8%
	SL5-7	629	3.7%	221	35.1%	221	35.1%	15	2.4%	44	7.0%	59	9.4%
	SL8+	57	0.3%	18	31.6%	18	31.6%	0	0.0%	9	15.8%	9	15.8%
	Total	4,411	26.1%	1,803	40.9%	1,803	40.9%	94	2.1%	226	5.1%	320	7.3%
Drug	SL1-2, D1-2	3,994	23.6%	1,919	48.0%	1,919	48.0%	64	1.6%	139	3.5%	203	5.1%
	SL3-4,D3-4	125	0.7%	57	45.6%	57	45.6%	2	1.6%	15	12.0%	17	13.6%
	SL5-7,D5-7	626	3.7%	258	41.2%	258	41.2%	2	0.3%	90	14.4%	92	14.7%
	SL8-9,D8-9	730	4.3%	274	37.5%	274	37.5%	0	0.0%	137	18.8%	137	18.8%
	Total	5,475	32.3%	2,508	45.8%	2,508	45.8%	68	1.2%	381	7.0%	449	8.2%
Other	SL1-2	672	4.0%	283	42.1%	283	42.1%	14	2.1%	5	0.7%	19	2.8%
	SL3-4	252	1.5%	112	44.4%	112	44.4%	9	3.6%	17	6.7%	26	10.3%
	SL5-7	897	5.3%	516	57.5%	516	57.5%	8	0.9%	86	9.6%	94	10.5%
	SL8+,H	363	2.1%	171	47.1%	171	47.1%	0	0.0%	52	14.3%	52	14.3%
	Total	2,184	12.9%	1,082	49.5%	1,082	49.5%	31	1.4%	160	7.3%	191	8.7%
Sev. Lev. Total	SL1-2, D1-2	6,819	40.3%	3,122	45.8%	3,122	45.8%	113	1.7%	194	2.8%	307	4.5%
	SL3-4,D3-4, G	5,118	30.2%	2,452	47.9%	2,452	47.9%	207	4.0%	367	7.2%	574	11.2%
	SL5-7,D5-7, D-F	3,043	18.0%	1,265	41.6%	1,265	41.6%	42	1.4%	297	9.8%	339	11.1%
	SL8+,D8,D9, A-C,H	1,947	11.5%	701	36.0%	701	36.0%	0	0.0%	335	17.2%	335	17.2%
	Total	16,927	100.0%	7,540	44.5%	7,540	44.5%	362	2.1%	1,193	7.0%	1,555	9.2%

- **Proposal 2:** 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. In 2016, 222 offenders had CSP based on original probation term indicated on worksheet.

Table 3. Proposal 2 (previously proposal 3), End CSP at Discharge from Probation

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	0.1%	28%	10	0.1%	12	26	0.2%	10	21	10,334	-0.2%	470
	Female	0.0%	13%	0	0.0%	0	4	0.1%	1	1	803	-0.1%	36
Race & Ethnicity	White	0.1%	22%	5	0.1%	5	21	0.2%	9	14	5,227	-0.3%	139
	Black	0.1%	31%	1	0.0%	1	5	0.1%	1	2	3,837	-0.1%	1,455
	American Indian	0.2%	27%	3	0.2%	4	2	0.1%	0.5	4.5	873	-0.5%	1,261
	Hispanic	0.2%	32%	1	0.1%	1.3	1	0.1%	0.2	1.5	927	-0.2%	479
	Asian	0.0%	23%	0	0.0%	0	1	0.2%	0.5	0.5	274	-0.2%	123
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	0.2%	20%	3	0.1%	3.4	1	0.0%	0.2	3.6	1,041	-0.3%	168
	Second	0.2%	29%	2	0.1%	3	4	0.2%	1	4	1,275	-0.3%	294
	Third	0.1%	25%	0	0.0%	0	1	0.1%	0.3	0.3	890	0.0%	232
	Fourth	0.1%	29%	1	0.0%	0.8	4	0.1%	1.2	2	2,738	-0.1%	273
	Fifth	0.0%	22%	0	0.0%	0	2	0.2%	0.5	0.5	563	-0.1%	241
	Sixth	0.1%	22%	0	0.0%	0	1	0.1%	0.1	0.1	549	0.0%	260
	Seventh	0.1%	29%	1	0.1%	1	4	0.2%	1	2	1,168	-0.2%	299
	Eighth	0.0%	30%	0	0.0%	0	1	0.2%	0.1	0.1	360	0.0%	278
	Ninth	0.1%	26%	1	0.1%	1	3	0.2%	3	4	1,097	-0.4%	400
	Tenth	0.1%	23%	2	0.1%	2.4	9	0.4%	2.3	4.6	1,457	-0.3%	190
	Total	0.1%	25.5%	10	0.1%	12	30	0.2%	10	22	11,137	-0.2%	250

- **Proposal 3:** Limit CSP 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, and attempted murder in the first degree.

Table 4A. Proposal 3 (previously proposal 4), Abolish CSP Except for Severity Levels with Presumptive Commits at CHS 0

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	4.0%	26%	334	2.4%	395	758	5.5%	152	547	9,808	-5.3%	446
	Female	2.0%	12%	29	0.9%	33	98	3.0%	17	50	754	-6.2%	34
Race & Ethnicity	White	3.1%	20.5%	183	1.9%	219	455	4.6%	92	312	4,929	-6.0%	131
	Black	4.6%	29%	112	2.7%	123	237	5.6%	47	170	3,669	-4.4%	1,392
	American Indian	4.0%	24%	35	2.4%	41	95	6.5%	17	58	819	-6.6%	1,183
	Hispanic	3.4%	29%	22	2.4%	33	48	5.3%	10	43	885	-4.6%	458
	Asian	3.0%	21%	11	2.1%	12	21	4.0%	3	14	260	-5.1%	117
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	3.7%	18%	42	1.9%	51	89	4.1%	17	67	978	-6.4%	157
	Second	5.2%	25%	64	3.6%	73	97	5.4%	18	90	1,189	-7.0%	274
	Third	3.0%	23%	24	1.8%	28	78	5.8%	17	45	845	-5.1%	220
	Fourth	3.0%	27%	59	1.8%	60	136	4.1%	27	87	2,653	-3.2%	265
	Fifth	2.5%	21%	13	1.2%	17	52	4.8%	11	28	535	-5.0%	229
	Sixth	4.1%	20.5%	10	1.2%	11	32	3.7%	6	16	533	-2.9%	253
	Seventh	4.0%	26%	52	3.1%	72	116	6.9%	22	95	1,075	-8.1%	275
	Eighth	3.2%	28%	9	2.1%	11	22	5.1%	6	17	343	-4.7%	265
	Ninth	3.3%	24%	35	2.1%	43	96	5.7%	18	62	1,039	-5.6%	379
	Tenth	3.9%	21%	55	2.2%	62	138	5.5%	27	89	1,373	-6.1%	179
	Total	3.6%	23%	363	2.1%	428	856	5.1%	169	597	10,562	-5.3%	238

Table 4B. Proposal 3, (prev. prop. 4), Abolish CSP Except for SLs with Presumptive Commits at CHS 0, Impact by Offense and Severity

	Severity Level Category	Number of Offenders		Have Custody Status Point		CHS is Decreased		CHS Decrease Results in Change to Prison Sentence					
		Number	Percent	Number	Percent	Number	Percent	Shift from Prison to Probation		Less Time		Total	
								Number	Percent	Number	Percent	Number	Percent
Person	SL1-2	203	1.2%	79	38.9%	79	38.9%	6	3.0%	1	0.5%	7	3.4%
	SL3-4, G	2,966	17.5%	1,560	52.6%	1,560	52.6%	146	4.9%	211	7.1%	357	12.0%
	SL5-7, D-F	891	5.3%	270	30.3%	270	30.3%	17	1.9%	77	8.6%	94	10.5%
	SL8-12, A-C	797	4.7%	238	29.9%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Total	4,857	28.7%	2,147	44.2%	1,909	39.3%	169	3.5%	289	6.0%	458	9.4%
Property	SL1-2	1,950	11.5%	841	43.1%	841	43.1%	29	1.5%	49	2.5%	78	4.0%
	SL3-4	1,775	10.5%	723	40.7%	723	40.7%	50	2.8%	124	7.0%	174	9.8%
	SL5-7	629	3.7%	221	35.1%	221	35.1%	15	2.4%	44	7.0%	59	9.4%
	SL8+	57	0.3%	18	31.6%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Total	4,411	26.1%	1,803	40.9%	1,785	40.5%	94	2.1%	217	4.9%	311	7.1%
Drug	SL1-2, D1-2	3,994	23.6%	1,919	48.0%	1,919	48.0%	64	1.6%	139	3.5%	203	5.1%
	SL3-4,D3-4	125	0.7%	57	45.6%	57	45.6%	2	1.6%	15	12.0%	17	13.6%
	SL5-7,D5-7	626	3.7%	258	41.2%	258	41.2%	2	0.3%	90	14.4%	92	14.7%
	SL8-9,D8-9	730	4.3%	274	37.5%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Total	5,475	32.3%	2,508	45.8%	4,153	75.9%	68	1.2%	244	4.5%	312	5.7%
Other	SL1-2	672	4.0%	283	42.1%	283	42.1%	14	2.1%	5	0.7%	19	2.8%
	SL3-4	252	1.5%	112	44.4%	112	44.4%	9	3.6%	17	6.7%	26	10.3%
	SL5-7	897	5.3%	516	57.5%	516	57.5%	8	0.9%	86	9.6%	94	10.5%
	SL8+,H	363	2.1%	171	47.1%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Total	2,184	12.9%	1,082	49.5%	911	41.7%	32	1.5%	108	4.9%	139	6.4%
Sev. Lev. Total	SL1-2, D1-2	6,819	40.3%	3,122	45.8%	3,122	45.8%	113	1.7%	194	2.8%	307	4.5%
	SL3-4,D3-4, G	5,118	30.2%	2,452	47.9%	2,452	47.9%	207	4.0%	367	7.2%	574	11.2%
	SL5-7,D5-7, D-F	3,043	18.0%	1,265	41.6%	1,265	41.6%	42	1.4%	297	9.8%	339	11.1%
	SL8+,D8,D9, A-C,H	1,947	11.5%	701	36.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Total	16,927	100.0%	7,540	44.5%	6,839	40.4%	362	2.1%	858	5.1%	1,220	7.2%

- **Proposal 4:** 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. § 152.18.³

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 attempted to determine what offense the custody status was related to for offenders who received a prison sentence in 2016. Of the 12,619 offenders who received probation in 2016, 5,014 (40%) had a CSP.

Of the 4,308 offenders who received a prison sentence in 2016, 2,526 (59%) had a CSP in their criminal history. It was determined that thirty percent of those with a CSP (752) were on custody for an offense that would result in a CSP weight of (0.5). Staff found that, of those 752 offenders, 432 were on probation for a prior Severity Level 1 or 2 conviction, 312 were on probation for a prior misdemeanor or gross misdemeanor, and 8 were on probation for a statutory stay of adjudication for a drug offense under Minn. Stat. § 152.18. Staff could determine that the custody point was for a stay of adjudication only if that was noted on the worksheet. There were 111 cases where the source of the custody point was not determined, thus it is possible that custody points for stay of adjudications were undercounted.

Reducing the CSP to 0.5 for the 752 offenders identified would have the following results: 107 offenders (0.6% of all offenders, 2.5% of prison cases) would shift from a prison sentence to a probation sentence and 256 offenders (1.5% of all offenders, 5.9% of prison cases) would serve less time in prison. The total bed reduction is estimated to be 207. There is not much variation in the impact by race. (Table 5A).

Table 5B displays the impact by severity level and offense type for offender who received a prison sentence. Overall, 17.5% of prison cases would get a CSP with a weight of 0.5 instead of 1. That percentage is largest for drug offenders (24%). The percentage that shifts from probation to prison is greatest at severity levels 1 and 2 for person offenders and the other offense group, but greatest at severity levels 3 and 4 in the property and drug groups. The overall percentage that would serve less time does not vary much by level, but does vary in some offense and severity level groups where there are a limited number of prison cases.

³ 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 5A. Proposal 4 (previously proposal 6), Limit Weight of CSP if Prior Weighted at Less than 1 Point (Prison Cases Only)

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	0.5%	28%	95	0.7%	107	215	1.6%	75	182	10,173	-1.8%	463
	Female	0.3%	12.5%	12	0.4%	15	41	1.3%	9	24	780	-3.0%	35
Race & Ethnicity	White	0.5%	22%	66	0.7%	77	142	1.4%	41	118	5,123	-2.3%	136
	Black	0.5%	31%	28	0.7%	31	68	1.6%	30	61	3,778	-1.6%	1,433
	American Indian	0.4%	26%	8	0.5%	9	26	1.8%	7	16	861	-1.8%	1,244
	Hispanic	0.2%	31%	3	0.3%	3	12	1.3%	4	7	921	-0.8%	476
	Asian	0.4%	23%	2	0.4%	2	8	1.5%	2	4	270	-1.5%	122
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	0.5%	19%	18	0.8%	20	30	1.4%	6	26	1,019	-2.5%	164
	Second	0.5%	28%	12	0.7%	14	28	1.6%	8	22	1,257	-1.7%	290
	Third	0.6%	24%	8	0.6%	8	19	1.4%	7	15	875	-1.7%	228
	Fourth	0.6%	28%	21	0.6%	19	38	1.1%	14	33	2,707	-1.2%	270
	Fifth	0.3%	21.5%	3	0.3%	5	5	0.5%	1	6	557	-1.1%	239
	Sixth	0.3%	21%	4	0.5%	4	6	0.7%	3	7	542	-1.3%	257
	Seventh	0.5%	28%	15	0.9%	23	38	2.2%	11	34	1,136	-2.9%	291
	Eighth	0.5%	29%	2	0.5%	3	2	0.5%	1	4	356	-1.1%	275
	Ninth	0.5%	25%	13	0.8%	16	37	2.2%	9	25	1,076	-2.3%	392
	Tenth	0.4%	22%	11	0.4%	12	53	2.1%	25	37	1,425	-2.5%	186
	Total	0.5%	25%	107	0.6%	123	256	1.5%	84	207	10,952	-1.9%	246

Table 5B. Proposal 4 (previously proposal 6), Limit Weight of CSP if Prior Weighted at Less than 1 Point, Impact by Offense and Severity

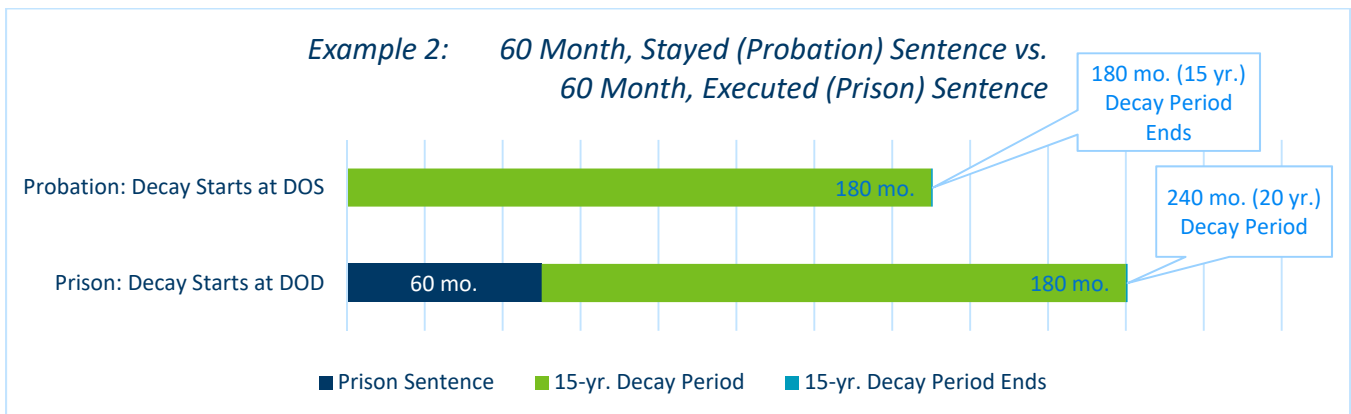
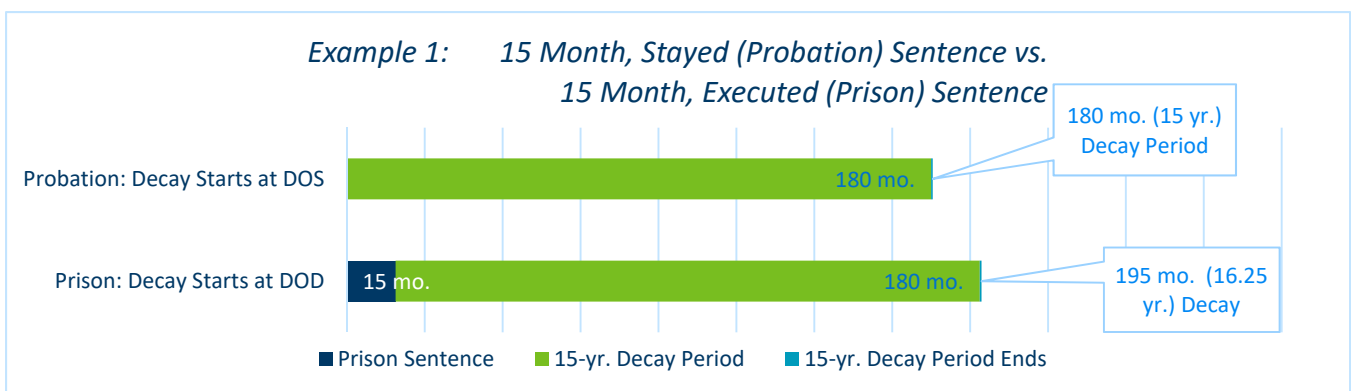
	Severity Level Category	Number of Offenders		Have Custody Status Point		Would get Half Custody Point		CHS Decrease Results in Change to Prison Sentence					
		Number	Percent	Number	Percent	Number	Percent	Shift from Prison to Probation		Less Time		Total	
								Number	Percent	Number	Percent	Number	Percent
Person	SL1-2	29	0.7%	23	79.3%	7	24.1%	2	6.9%	1	3.4%	3	10.3%
	SL3-4, G	591	13.7%	451	76.3%	98	16.6%	25	4.2%	38	6.4%	63	10.7%
	SL5-7, D-F	276	6.4%	138	50.0%	42	15.2%	5	1.8%	14	5.1%	19	6.9%
	SL8-12, A-C	568	13.2%	197	34.7%	75	13.2%	0	0.0%	33	5.8%	33	5.8%
	Total	1,464	34.0%	809	55.3%	222	15.2%	32	2.2%	86	5.9%	118	8.1%
Property	SL1-2	295	6.8%	177	60.0%	41	13.9%	11	3.7%	10	3.4%	21	7.1%
	SL3-4	395	9.2%	251	63.5%	80	20.3%	20	5.1%	29	7.3%	49	12.4%
	SL5-7	155	3.6%	99	63.9%	17	11.0%	4	2.6%	6	3.9%	10	6.5%
	SL8+	32	0.7%	14	43.8%	7	21.9%	0	0.0%	4	12.5%	4	12.5%
	Total	877	20.4%	541	61.7%	145	16.5%	35	4.0%	49	5.6%	84	9.6%
Drug	SL1-2, D1-2	566	13.1%	351	62.0%	159	28.1%	26	4.6%	48	8.5%	74	13.1%
	SL3-4, D3-4	29	0.7%	21	72.4%	11	37.9%	2	6.9%	5	17.2%	7	24.1%
	SL5-7, D5-7	227	5.3%	137	60.4%	56	24.7%	2	0.9%	22	9.7%	24	10.6%
	SL8-9, D8-9	407	9.4%	192	47.2%	68	16.7%	0	0.0%	32	7.9%	32	7.9%
	Total	1,229	28.5%	701	57.0%	294	23.9%	30	2.4%	107	8.7%	137	11.1%
Other	SL1-2	80	1.9%	60	75.0%	16	20.0%	7	8.8%	5	6.3%	12	15.0%
	SL3-4	56	1.3%	41	73.2%	11	19.6%	2	3.6%	4	7.1%	6	10.7%
	SL5-7	411	9.5%	263	64.0%	47	11.4%	1	0.2%	2	0.5%	3	0.7%
	SL8+, H	191	4.4%	111	58.1%	17	8.9%	0	0.0%	3	1.6%	3	1.6%
	Total	738	17.1%	475	64.4%	91	12.3%	10	1.4%	14	1.9%	24	3.3%
Sev. Lev. Total	SL1-2, D1-2	970	22.5%	611	63.0%	223	23.0%	46	4.7%	64	6.6%	110	11.3%
	SL3-4, D3-4, G	1,071	24.9%	764	71.3%	200	18.7%	49	4.6%	76	7.1%	125	11.7%
	SL5-7, D5-7, D-F	1,069	24.8%	637	59.6%	162	15.2%	12	1.1%	44	4.1%	56	5.2%
	SL8+, D8, D9, A-C, H	1,198	27.8%	514	42.9%	167	13.9%	0	0.0%	72	6.0%	72	6.0%
	Total	4,308	100.0%	2,526	58.6%	752	17.5%	107	2.5%	256	5.9%	363	8.4%

Decay of Priors

Current Policy: A prior felony sentence or stay of imposition following a felony conviction must not be used in computing the criminal history score if 15 years has elapsed since the date of discharge from or expiration of the sentence to the date of the current offense.

Possible Modification Proposals: Below, for the Commission’s consideration, are possible proposals discussed at the April 2018 meeting related to the decay of priors, with examples. A discussion on impact follows the examples.

- **Proposal 5:** (previously proposal 8). Start decay period at date of sentence (DOS) for probationers and date of discharge (DOD) for prisoners. (See examples 1-2.)



Notes on Estimating Impact: Estimating the impact of this proposal requires determining the type of sentence (prison or probation) that the offender received for each of their prior offenses. In order to do this, staff selected a random sample of 35 percent of offenders who were sentenced to prison in 2016 who had prior felony offenses on his or her worksheet.³

³ 1,332 offenders in the prison sample with 6,043 prior felony offenses in their CHS. Of those priors, 45% received prison sentences; 44% received probation; and 11% had an “unknown” disposition (primarily because it was from a jurisdiction other than Minnesota).

Under this proposal, decay would start at date of sentence (DOS) rather than date of discharge (DOD) if the person received probation. Of the 2,657 prior offenses that received a probation sentence, it was determined that 191 (7%) would have decayed before sentencing under this proposal (which translates into 3% of all prior offenses).

Out of the 1,332 offenders in the sample, 110 (8%) would have a lower criminal history score under the proposal. However, the lower scores would result in a lower presumptive sentence for only 49 people because the loss of 0.5 points did not always result in the loss of a criminal history point, and for offenders with scores greater than 6.0 points, the loss of some history point(s) did not always result in a change to the presumptive duration.

Table 6A displays the impact of the proposal for the 1,332 offenders in the sample. Fifteen offenders (1% of sample) would shift from prison to probation and 34 offenders (3% of sample) would serve less time. Since the sample is 35 percent of offenders sentenced to prison who had at least one prior felony offense, it is estimated that the 35 prison bed reduction would translate into a reduction of 100 prison beds for the population of offenders sentenced to prison in 2016.⁴

⁴ Staff expanded the data collection effort to include a probation sample of 20 percent of probation cases. 7,088 offenders in the probation sample with 3,770 prior felony offenses in their CHS. Of those priors, 20% received prison sentences; 69% received probation; and 11% had an “unknown” disposition (primarily because it was from a jurisdiction other than Minnesota). Of the 2,618 prior offenses that received a probation sentence, it was determined that 148 (6%) would have decayed before sentencing under this proposal (which translates into 4% of all prior offenses).

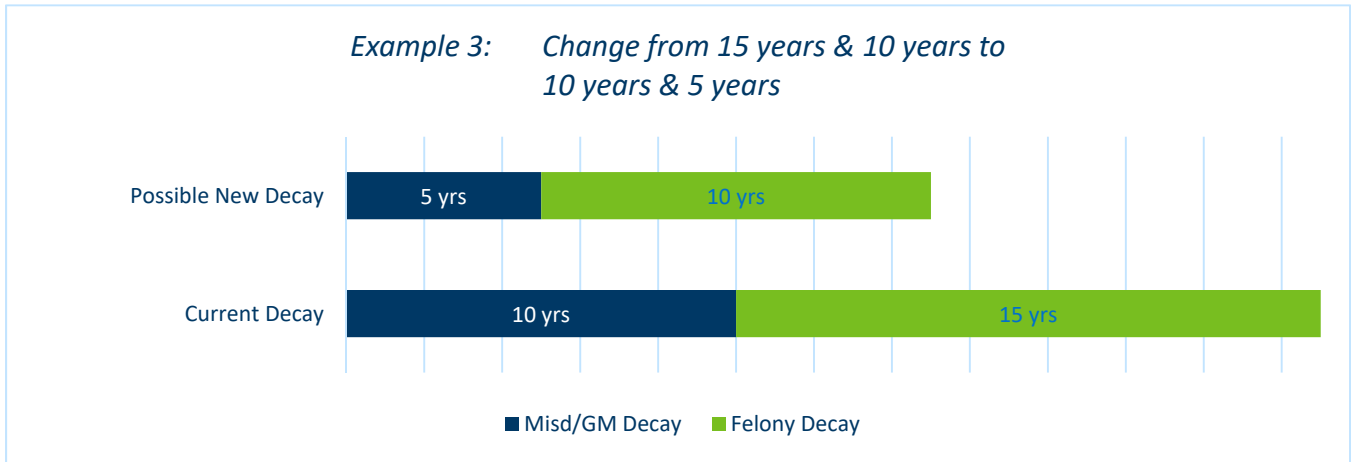
Table 6A. Proposal 5 (previously proposal 8), Start Decay at DOS for Probationers and DOD for Prisoners – Impact for a sample of cases

		Number in Sample	Prison Beds in Sample, Under Current Policy	Prison Bed Impact within Sample								
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change
				No.	Percent	Beds (-)	Number	Percent	Beds (-)			
	Male	1,209	2,945	14	1.2%	21	33	2.7%	13	34	2,911	-1.2%
	Female	113	203	1	0.9%	0.5	1	0.9%	0.5	1	202	-0.5%
Race & Ethnicity	White	654	1,487	10	1.5%	15	17	2.6%	5	20	1,467	-1.3%
	Black	408	1,054	2	0.5%	3	7	1.7%	5.5	8.5	1,046	-0.8%
	American Indian	145	341	2	1.4%	2	8	5.5%	2	4	337	-1.2%
	Hispanic	74	177	1	1.4%	1	0	0.0%	0	1	176	-0.6%
	Asian	41	90	0	0%	0	2	4.9%	1	1	89	-1.1%
	Other/unknown	0	0	0	0.0%	0	0	0.0%	0	0	0	---
Judicial District	First	129	230	1	0.8%	4	1	0.8%	0.5	5	225	-2.2%
	Second	155	297	2	1.3%	3	1	0.6%	0.2	3	294	-1.0%
	Third	98	253	0	0.0%	0	2	2.0%	0.5	0.5	253	-0.2%
	Fourth	303	767	3	1.0%	3.5	10	3.3%	3.5	7	760	-0.9%
	Fifth	68	186	0	0.0%	0	0	0.0%	0	0	186	-0.0%
	Sixth	58	149	1	1.7%	1	1	1.7%	0.3	1.3	148	-0.9%
	Seventh	155	343	3	1.9%	4	8	5.2%	2	6	337	-1.7%
	Eighth	44	134	1	2.3%	1	0	0.0%	0	1	133	-0.7%
	Ninth	132	351	2	1.5%	2	3	2.3%	1	3	348	-0.9%
	Tenth	180	437	2	1.1%	2	8	4.4%	6	8	429	-1.8%
	Total	1,322	3,149	15	1.1%	21.5	34	2.6%	13.5	35	3,114	-1.1%

Table 6B. Proposal 5 (previously proposal 8), Start Decay at DOS for Probationers and DOD for Prisoners, Impact by Offense and Severity

	Severity Level Category	Number of Offenders		CHS is Decreased		CHS Decrease Results in Change to Prison Sentence					
						Shift from Prison to Probation		Less Time		Total	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Person	SL1-2	11	0.8%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	SL3-4, G	216	16.3%	25	11.6%	7	3.2%	9	4.2%	16	7.4%
	SL5-7, D-F	71	5.4%	3	4.2%	0	0.0%	1	1.4%	1	1.4%
	SL8-12, A-C	106	8.0%	6	5.7%	0	0.0%	2	1.9%	2	1.9%
	Total	404	30.6%	34	8.4%	7	1.7%	12	3.0%	19	4.7%
Property	SL1-2	92	7.0%	7	7.6%	1	1.1%	1	1.1%	2	2.2%
	SL3-4	131	9.9%	13	9.9%	1	0.8%	7	5.3%	8	6.1%
	SL5-7	48	3.6%	9	18.8%	0	0.0%	1	2.1%	1	2.1%
	SL8+	9	0.7%	1	11.1%	0	0.0%	1	11.1%	1	11.1%
	Total	280	21.2%	30	10.7%	2	0.7%	10	3.6%	12	4.3%
Drug	SL1-2, D1-2	172	13.0%	11	6.4%	5	2.9%	1	0.6%	6	3.5%
	SL3-4,D3-4	10	0.8%	1	10.0%	0	0.0%	1	10.0%	1	10.0%
	SL5-7,D5-7	77	5.8%	4	5.2%	1	1.3%	2	2.6%	3	3.9%
	SL8-9,D8-9	123	9.3%	8	6.5%	0	0.0%	3	2.4%	3	2.4%
	Total	382	28.9%	24	6.3%	6	1.6%	7	1.8%	13	3.4%
Other	SL1-2	30	2.3%	3	10.0%	0	0.0%	0	0.0%	0	0.0%
	SL3-4	16	1.2%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	SL5-7	140	10.6%	12	5.6%	0	0.0%	3	2.1%	3	2.1%
	SL8+,H	70	5.3%	7	10.0%	0	0.0%	2	2.9%	2	2.9%
	Total	256	19.4%	22	8.6%	0	0.0%	5	2.0%	5	2.0%
Sev. Lev. Total	SL1-2, D1-2	305	23.1%	21	6.9%	6	2.0%	2	0.7%	8	2.6%
	SL3-4,D3-4, G	373	28.2%	39	10.5%	8	2.1%	17	4.6%	25	6.7%
	SL5-7,D5-7, D-F	336	25.4%	28	8.3%	1	0.3%	7	2.1%	8	2.4%
	SL8+,D8,D9, A-C,H	308	23.3%	22	7.1%	0	0.0%	8	2.6%	8	2.6%
	Total	1,322	100.0%	110	8.3%	15	1.1%	34	2.6%	49	3.7%

- **Proposal 6:** (previously proposal 9). Change decay period for prior felonies to 10 years, and 5 years for misdemeanors & gross misdemeanors. (See Example 3.)



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 7A displays the number of offenders who shift from prison sentences to probation sentences, the number 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. The impact appears to be slightly greater for minorities than whites, both in shifts from prison to probation and offenders serving less time in prison.

Table 7B displays the impact by severity level and offense type. Overall, 10.5% of prison offenders would see a reduction in CHS. That figures varies only slightly by offense type with 13.2% of other offenders getting a reduction. That reduction in CHS would result in 1.2% of offenders shifting from prison to probation and 1.5% serving less time. A higher percentage of offenders at severity levels 8 and above would see a reduction in time to serve (4.5%) than at the other severity levels.

Table 7A. Proposal 6 (previously proposal 9), 2016 Prison Sentences, Demographic Impact

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	2.4%	27%	190	1.4%	255	241	1.8%	122	377	9,978	-3.6%	454
	Female	0.6%	12.5%	10	0.3%	11	12	0.4%	4	15	789	-1.9%	35
Race & Ethnicity	White	1.6%	21%	94	1.0%	128	108	1.1%	49	177	5,064	-3.4%	135
	Black	3.2%	29.5%	74	1.8%	95	89	2.1%	50	145	3,694	-3.8%	1,401
	American Indian	2.4%	25%	22	1.5%	30	36	2.4%	16	46	831	-5.2%	1,200
	Hispanic	1.3%	31%	9	1.0%	12	12	1.3%	6	18	910	-1.9%	470
	Asian	0.8%	23%	1	0.2%	1	8	1.5%	3	4	270	-1.5%	122
	Other/unknown	0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	1.6%	19%	19	0.9%	26	23	1.0%	9	35	1,010	-3.3%	163
	Second	2.5%	27%	24	1.3%	31	35	2.0%	15	46	1,233	-3.6%	284
	Third	1.4%	24%	13	1.0%	19	16	1.2%	7	26	864	-2.9%	225
	Fourth	2.6%	27.5%	51	1.5%	64	46	1.4%	30	94	2,646	-3.4%	264
	Fifth	0.8%	21%	5	0.5%	7	23	2.1%	10	17	546	-3.0%	234
	Sixth	2.1%	21%	9	1.0%	15	9	1.0%	6	21	528	-3.8%	250
	Seventh	2.2%	28%	28	1.7%	35	29	1.7%	11	46	1,124	-3.9%	288
	Eighth	2.1%	28.5%	6	1.4%	8	9	2.1%	6	14	346	-3.9%	267
	Ninth	2.3%	24.5%	21	1.2%	32	26	1.5%	14	46	1,055	-4.2%	385
	Tenth	1.7%	22%	24	1.0%	29	37	1.5%	17	46	1,416	-3.1%	185
	Total	2.0%	24%	200	1.2%	266	253	1.5%	125	391	10,768	-3.5%	242

Table 7B. Proposal 6 (previously proposal 9), 2016 Presumptive Commits who received Prison Sentences, Impact by Offense and Severity

	Severity Level Category	Number of Offenders		CHS is Decreased		CHS Decrease Results in Change to Prison Sentence					
						Shift from Prison to Probation		Less Time		Total	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Person	SL1-2	203	1.2%	10	4.9%	2	1.0%	0	0.0%	2	1.0%
	SL3-4, G	2,966	17.5%	340	11.5%	57	1.9%	52	1.8%	109	3.7%
	SL5-7, D-F	891	5.3%	77	8.6%	11	1.2%	18	2.0%	29	3.3%
	SL8-12, A-C	797	4.7%	56	7.0%	0	0.0%	23	2.9%	23	2.9%
	Total	4,857	28.7%	483	9.9%	70	1.4%	93	1.9%	163	3.4%
Property	SL1-2	1,950	11.5%	206	10.6%	26	1.3%	5	0.3%	31	1.6%
	SL3-4	1,775	10.5%	162	9.1%	24	1.4%	27	1.5%	51	2.9%
	SL5-7	629	3.7%	68	10.8%	5	0.8%	16	2.5%	21	3.3%
	SL8+	57	0.3%	10	17.5%	0	0.0%	6	10.5%	6	10.5%
	Total	4,411	26.1%	446	10.1%	55	1.2%	54	1.2%	109	2.5%
Drug	SL1-2, D1-2	3,994	23.6%	381	9.5%	47	1.2%	5	0.1%	52	1.3%
	SL3-4, D3-4	125	0.7%	8	6.4%	2	1.6%	0	0.0%	2	1.6%
	SL5-7, D5-7	626	3.7%	70	11.2%	5	0.8%	22	3.5%	27	4.3%
	SL8-9, D8-9	730	4.3%	92	12.6%	0	0.0%	39	5.3%	39	5.3%
	Total	5,475	32.3%	551	10.1%	54	1.0%	66	1.2%	120	2.2%
Other	SL1-2	672	4.0%	66	9.8%	11	1.6%	0	0.0%	11	1.6%
	SL3-4	252	1.5%	25	9.9%	5	2.0%	2	0.8%	7	2.8%
	SL5-7	897	5.3%	119	13.3%	5	0.6%	19	2.1%	24	2.7%
	SL8+,H	363	2.1%	79	21.8%	0	0.0%	19	5.2%	19	5.2%
	Total	2,184	12.9%	289	13.2%	21	1.0%	40	1.8%	61	2.8%
Sev. Lev. Total	SL1-2, D1-2	6,819	40.3%	663	9.7%	86	1.3%	10	0.1%	96	1.4%
	SL3-4, D3-4, G	5,118	30.2%	535	10.5%	88	1.7%	81	1.6%	169	3.3%
	SL5-7, D5-7, D-F	3,043	18.0%	334	11.0%	26	0.9%	75	2.5%	101	3.3%
	SL8+, D8, D9, A-C, H	1,947	11.5%	237	12.2%	0	0.0%	87	4.5%	87	4.5%
	Total	16,927	100.0%	1,769	10.5%	200	1.2%	253	1.5%	453	2.7%

• 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)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Agg. Robbery, 1st Degree;</i> <i>Burglary, 1st Degree (w/</i> <i>Weapon or Assault)</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI;</i> <i>Financial Exploitation of a</i> <i>Vulnerable Adult</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84^{2,3}</i>
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied</i> <i>Dwelling)</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary;</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=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.