

MEMORANDUM

To: District Court Judges, Probation Officers, and Other Criminal Justice Practitioners
From: Nate Reitz, MSGC Executive Director
Date: March 19, 2021
Subject: **Worksheet Calculation Error – One-Half Custody Status Point**

This memorandum describes an error in sentencing worksheets' automatic calculation of criminal history scores. This error occurs whenever one-half custody status point is present. The Commission is aware of the problem and working on it diligently. In the meantime, MSGC staff offers the following guidance. Please contact staff at sentencing.guidelines@state.mn.us with any questions.

Background. Until 2019, the Sentencing Guidelines made a partial point in a criminal history score impossible: a partial felony point was always rounded down, and the remaining criminal history factors were designed in such a way that they contributed only whole numbers to the criminal history score.

Starting August 1, 2019, the Guidelines permit one-half custody status point, rather than a whole point, whenever custody status derives solely from a misdemeanor, a gross misdemeanor, or a lower-severity felony. Because the Guidelines' rounding rules were not changed, it is now possible to have a partial point in the criminal history score (*i.e.*, a criminal history score ending in ".5"). This is a problem because the sentencing grids' horizontal axes—which reflect the criminal history score—contain only whole numbers.

Guidance. It is the responsibility of the district court judge to apply the Sentencing Guidelines. When the worksheet error described in this memorandum happens, the matter should be brought to the court to determine the correct criminal history score.

Q. When does this error happen?

A. This error happens whenever the "Custody Status Point" box in the sentencing worksheet contains "0.5." If the "Custody Status Point" box contains "1" (or, rarely, "2"), the sentencing worksheet is **correct**.

Q. What is the error?

A. Whenever the "Custody Status Point" box in the sentencing worksheet contains "0.5," the "Total Criminal History Score" box is wrong. The numbers in the other boxes—"Custody Status Point," "Juv Points," "Misd./G.M. Points," and "Felony Points"—are correct, but the sentencing worksheet adds them up incorrectly.

Q. How can the error be corrected?

A. To correct the error, the court must recalculate “Total Criminal History Points” manually whenever the “Custody Status Point” box contains “0.5.” To recalculate the “Total Criminal History Points” according to the Sentencing Guidelines, first round down the number in the “Felony Points” box, and then add the remaining criminal history points to the rounded “Felony Points.” Two examples follow:

- **Example 1.** One-half custody status point and 1.5 felony points are present. The Sentencing Guidelines’ rounding rule applies only to the felony points box, which must be rounded down to 1. The worksheet incorrectly calculates 2 total criminal history points, but the correct number of total criminal history points is 1.5 (0.5 + 0 + 0 + 1 = 1.5).

Criminal History Score				
Custody Status Point	Juv Points	Misd/G.M. Points	Felony Points	Total Criminal History Points
0.5	0	0	1.5	2
Type: Probation				

- **Example 2.** One-half custody status point and 2 felony points are present. The felony points, being a whole number, do not need rounding. The worksheet incorrectly calculates 2 total criminal history points, but the correct number of total criminal history points is 2.5 (0.5 + 0 + 0 + 2 = 2.5).

Criminal History Score				
Custody Status Point	Juv Points	Misd/G.M. Points	Felony Points	Total Criminal History Points
0.5	0	0	2	2
Type: Probation				

Q. These recalculated criminal history scores end in “.5,” but there are no partial points on the sentencing grids. What is the presumptive sentence?

A. MSGC staff recognizes that the Sentencing Guidelines do not currently address the treatment of criminal history scores containing a partial point. Staff regrets that, at this time, it can offer no guidance to practitioners regarding the correct presumptive sentence when a partial point is present in the total criminal history score—with one exception:

When a custody status point is potentially **waivable** under Guidelines section 2.B.2.e, the sentencing worksheet will display, after an asterisk, what the presumptive sentence would be if custody status were waived (example highlighted). The presumptive sentence after the asterisk is **correct**, assuming the court were to waive custody status.

Presumptive Disposition	Stay
Presumptive Duration	18 months
<p><i>* If custody status were waived, presumptive sentence would be 15-months - stayed disposition.</i></p> <p><i>The presumptive sentence was automatically calculated. There may be errors, especially if modifiers apply. Please ensure that the presumptive sentence is correct by applying the Sentencing Guidelines in effect on the date of offense.</i></p>	