

Custody Status Roundtable

Revised Roundtable Invitation

June 2, 2022

Following the Commission's discussion at its May 12, 2022, meeting and at the direction of the Chair, MSGC staff have worked with the Chair to update a draft memorandum and invitation list for the Commission's consideration. The plan is that the Executive Director would then send the letter to the invitees of the roundtable, proposed to occur on either July 21 or July 28, 2022.

Draft Invitation Email

From: Nate Reitz

Subject: Custody Status Roundtable Invitation – Minn. Sentencing Guidelines Commission – July [21 or 28] in Saint Paul

The Minnesota Sentencing Guidelines Commission invites you to a roundtable on the custody status component of the criminal history score, a factor used by the Sentencing Guidelines in recommending a sentence. As explained below, the current custody status policy is unworkable, and the Commission is seeking assistance from stakeholders in crafting a solution. The Commission respectfully seeks your insights and perspectives as we explore options for reworking this policy. This roundtable will not be in the format of a public hearing. Instead, this will be a collaborative, problem-solving workshop, so please come prepared with your ideas and be ready to work and interact.

Since 1980, the Minnesota Sentencing Guidelines' criminal history score has included a person's custody status, which refers to the status of being under some form of correctional supervision at the time of the current offense such as being on probation or supervised release, being in jail or prison, or being on escape status from prison when the person commits the current offense. [Minn. Sentencing Guidelines section 2.B.2 \(2021\)](#) (pp. 18-24).

In 2019, after a lengthy study of the criminal history score, the Sentencing Guidelines Commission made several changes to the custody status policy, including decreasing by half the weight of custody status deriving from less-severe custody offenses.¹ The Commission made this change in part because custody status was incurring more criminal history points than the prior offense itself. However, the 2019 modifications failed to articulate a rounding rule for these half-points, creating tension with another longstanding tenet of the Guidelines, that only whole numbers are used to determine a person's criminal history score. Currently, the custody status component is being ignored when it results in a half-point, making the policy unworkable.

¹ See the Commission's [2022 Report to the Legislature, p. 11](#), for more detailed background information.

The Commission has identified several options for revising the custody status policy, but has yet to find consensus. The Commission seeks your help in resolving the problem. The roundtable will be held at [Time] on July [21 or 28], 2022, in [Location], St. Paul, Minnesota. This will be a facilitated roundtable discussion, so the Commission respectfully requests that you [or your designee] attend in person to enable back-and-forth discussion. The agenda is attached, and you will find background materials linked here: [Link to background materials]. Because participation is limited, RSVPs are required. The deadline to RSVP is 4 PM on [Two Weeks Later] via the email address or telephone number at the bottom of this page. When you RSVP, please [identify your designee, if applicable, and] advise us of any special accommodations you need.

Respectfully, etc.

Suggested Invitation List

If the Commission's peace officer position remains vacant and Judge Knutson is unable to attend, up to 9 Commission members would be at the roundtable. The suggested invitation list below includes 16 additional people (including substitutes for the two empty Commission seats), for a total of 25 roundtable participants.

Academic

- 1 – Facilitator: Kevin Reitz, Professor, University of Minnesota Law School

Community & Victims

- 1 – Minn. Coalition Against Sexual Assault: Artika Roller, Executive Director, or designee
- 1 – Minn. Justice Research Center: Justin Terrell, Executive Director, or designee
- 1 – Ujamaa Place: Otis Zanders, CEO/COO, or designee
- 1 – Center for the American Experiment: Bill Walsh, Communications Director, or designee

Defense Lawyers

- 1 – Minn. State Bar Ass'n, Criminal Law Section: Paul Baertschi, Chair, or designee

District Court – if Judge Knutson cannot participate

- 1 – Past Commission member: First Judicial District Assistant Chief Judge Carrie Lennon or Chief Judge Kevin Mark

Law Enforcement & Prosecution

- 1 – Past Commission member Salim Omari, Saint Paul Police Patrol Commander
- 1 – Minn. Police & Peace Officers Ass'n: Brian Peters, Executive Director, or designee
- 1 – Minn. County Attorneys Association Robert Small, Executive Director, or designee

Probation & Corrections

- 1 – Jason Anderson, Director, Itasca County Probation
- 1 – Brian Heinsohn, Risk Assessment Supervisor, Minn. Dept. of Corrections

Legislature

- 1 – Representative Brian Johnson, Republican Lead, House Public Safety Committee, or designee
- 1 – Senator Ron Latz, Ranking Minority Member, Senate Judiciary Committee, or designee
- 1 – Senator Warren Limmer, Chair, Senate Judiciary Committee, or designee
- 1 – Representative Carlos Mariani, Chair, House Public Safety Committee, or designee

Draft Agenda (to be attached and linked in the email)

1. Welcome and Introductions
2. Presentation / Information Relating to Custody Status
3. Facilitator-Led Discussion
4. Public Comment
5. Wrap-Up / Themes

Presentation Outline (to be linked in the email)

1. History, Data & Policy Overview
 - Changes to Custody Status Since 1995 ([MSGC Staff Presentation: Custody-Status Policy Study – Data & Policy Overview, Slide 10, Feb. 10, 2022](#))
 - Growth of Custody Status Point (CSP) over time and reduction of people with a Criminal History Point (CHS) of 0 over time ([MSGC Staff Presentation: Custody-Status Policy Study – Data & Policy Overview, Slides 2 & 3, Feb. 10, 2022](#))
 - CSP make up 18 percent of the average CHS, the second largest share after felony points ([MSGC Staff Presentation: Custody-Status Policy Study – Data & Policy Overview, Slide 7, Feb. 10, 2022](#))
 - People with CSP has grown from 29 percent in 1995 to 52 percent in 2018, and this varies by race and ethnicity ([MSGC Staff Presentation: Custody-Status Policy Study – Data & Policy Overview, Slides 11 & 12, Feb. 10, 2022](#))
 - Majority of CSP is from probation, although this varies by race & ethnicity ([MSGC Staff Presentation: Custody-Status Policy Study – Data & Policy Overview, Slides 13-15, Feb. 10, 2022](#))
 - Distribution of Cases with Custody Status aka “heatmaps” ([MSGC Staff Information Paper: Who Receives Custody Status – Cases Sentenced in 2019, Tables 1-6, March 3, 2022](#))
2. The Issue with One-Half CSPs
 - 2019 policy for one-half CSP failed to articulate a rounding rule
 - 2021 – Options for how to resolve this problem
 - 2022 – Proposal to abolish the CSP withdrawn after a [great deal of public input](#)
3. Roundtable
 - Jan. 2022 – [Unanimous Resolution](#) to make concerted efforts to engage and educate community members, system stakeholders, and legislators as it further assesses the implications of the custody status point policy, with this roundtable to be one of those efforts