

Staff Information Paper

A Brief Chronology of the Half Custody Status Point

September 2, 2021

The following chronology is intended to give the Commission some background on both the half custody status point and the rounding of partial points in the criminal history score.

- **May 1, 1980:** The Minnesota Sentencing Guidelines take effect. The presumptive sentence for a felony is determined by offense severity and criminal history. The criminal history score is comprised of four items, each of which contributes a whole number of points to the criminal history score: Each *prior felony* is worth one whole point; qualifying *custody status* at the time of the offense is worth one whole point; four or more *misdemeanor* units are worth one whole point; and two qualifying *juvenile* adjudications are worth one whole point, for a maximum of two juvenile points. ([Section II.B.](#))
- **August 1, 1989:** To “assure a greater degree of proportionality,” prior felonies are weighted according to severity. The weights range from ½ point to 2 points, incremented by ½ point. A rounding rule is articulated in commentary: “No partial points are given — thus, a person with less than a full point is not given that point. For example, an offender with a total weight of 2½ would have 2 felony points.” ([Comment II.B.101.](#))
- **August 1, 2006:** The prohibition against partial felony points is articulated in the Guidelines themselves: “The felony point total is the sum of these weights; no partial points are given.” ([Section 2.B.1.](#))
- **August 1, 2012:** As part of a larger Guidelines rewrite, the felony-point rounding rule is clarified: “[Total Felony Points](#). The felony point total is the sum of the felony weights. If the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number.” ([Section 2.B.1.i.](#))
- **August 26, 2015:** Family and friends of murder victim Anarae Schunk address the Commission, initiating a conversation that results in years of study and discussion regarding the sentencing of repeat violent offenders.
- **March 26, 2016:** Concurrent with its study of repeat violent offenders, the Commission initiates a two-year study of how the Guidelines use criminal history in calculating the presumptive sentence.
- **Throughout 2018:** Reviewing research and receiving input from stakeholders, the Commission further discusses criminal history and the sentencing of repeat violent offenders. Consensus begins to build among Commission members that some components of the Guidelines’ criminal history score need reform. (Chair Dietzen’s August [memorandum to stakeholders](#), reflecting some of the

This document was prepared by the staff of the Minnesota Sentencing Guidelines Commission for the Commission’s review. This document has not been adopted by the Commission and does not necessarily represent its views.

Commission's thoughts during this time, is separately included in the September 2021 meeting materials.)

- **December 20, 2018:** The Commission unanimously adopts a [package of modifications](#) intended to address the needs both for reform of the criminal history score, and to enhance the punishment of those who repeatedly commit severe, violent offenses. Among the modifications to the criminal history score is the reduction, by half, of the weight of the custody status point in connection with certain lower-severity felonies, gross misdemeanors, and misdemeanors. The Commission's [purpose](#) in creating one-half custody status point is to avoid situations in which an offender's custody status in connection with these lower-severity offenses contributes more to the criminal history score (one point) than the commission of the prior offense itself (one-half point or less). Staff incorrectly assumes that the unrounded sum of all criminal history factors, including a partial felony point and a partial custody status point, will be rounded down; due to that oversight, the staff-drafted modifications neither alter the felony-point rounding rule nor establish a rounding rule of their own.
- **August 1, 2019:** The Legislature tacitly permits the [package of modifications](#) to take effect for offenses committed on or this date. The Electronic Worksheet System is changed to implement these modifications, consistent with staff's incorrect rounding assumptions.
- **August 2020:** A district court judge brings to staff's attention the fact that the Guidelines' only rounding rule applies to felony points alone. The judge questions why 1½ felony points should not be rounded down to 1 felony point. Because adding ½ custody status point to the result yields a criminal history score of 1½, the judge questions why a case involving 1½ felony points and ½ custody status point should not be treated as if the total criminal history score were 1, rather than 2.
- **September 10, 2020:** Recognizing that the district court judge's interpretation would always round down one-half custody status point—and thus nullify the Commission's decision to give some weight to custody status derived from a lower-level felony or misdemeanor—staff [brings the issue to the Commission](#) for consideration of an amendment to the Guidelines and/or Commentary.
- **October 8, 2020:** The Commission preliminarily [agrees](#), subject to a public hearing, to amend the Guidelines to round down the sum of all four criminal history score factors, rather than the sum of felony points alone.
- **December 17, 2020:** The Commission holds a public hearing on, among other things, the rounding-rule amendment, but no member of the public testifies. Immediately after the public hearing, the Commission holds its regular, monthly meeting, at which the Commission discusses whether to recommend that the Legislature give immediate effect to the rounding-rule amendment, assuming the Commission adopts the amendment at the following meeting. During discussion on the [potential recommendation](#)—which the Commission does not adopt—some members express concerns about the rounding-rule amendment itself. After the hearing, and within the time for receiving written comments from the public, Prof. Richard Frase of the University of Minnesota Law School [writes](#) to express opposition to the rounding-rule amendment—or, alternatively, to make explicit the policy of ignoring one-half custody status point.

- **January 14, 2021:** Meeting to take final action on the rounding-rule amendment, the Commission unanimously [rejects](#) it, although several members express interest in some sort of resolution to the problem.
- **February & March 2021:** Chair Mitchell convenes a four-member working group to develop a proposal to resolve the problem of partial points in criminal history before bringing it before the full Commission for action. Meanwhile, the Commission provides guidance to staff about its interim communication regarding the treatment of one-half custody status point. The result is a widely distributed [staff memo](#) explaining that: (1) when one-half custody status point is present, the Electronic Worksheet System incorrectly rounds down the sum of all criminal history factors, resulting in a calculated criminal history score that is one-half point higher or lower than the true criminal history score; (2) staff can offer no guidance regarding what the presumptive sentence is in such cases (unless custody status is waived); and (3) the Commission is working diligently on the problem.