

MEMORANDUM

To: District Court Judges, Probation Officers, and Other Criminal Justice Practitioners
From: Nate Reitz, MSGC Executive Director
Date: January 15, 2022
Subject: **Half Custody Status Point Problem – Interim Guidance**

On March 19, 2021, MSGC staff published a memo called “Worksheet Calculation Error – One-Half Custody Status Point.” That document, available online [here](#), described an error in sentencing worksheets’ automatic calculation of criminal history scores that occurred whenever one-half custody status point was present and provided guidance on how to recalculate the correct number of total criminal history points in such situations. On January 13, 2022, the Minnesota Sentencing Guidelines Commission rectified this problem by adopting interim guidance to address the handling of the half-point issue. The purpose of this memo is to communicate that guidance to practitioners. Additionally, MSGC staff is working to modify the electronic worksheet (EWS) to reflect this interim guidance.

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 Regarding Calculation of Criminal History Scores. In the absence of Sentencing Guidelines policy, and in light of the recent Court of Appeals decision in *State v. Eubanks*,* the Commission provides the following interim guidance to criminal justice practitioners. Until the sentencing worksheet reflects this guidance, 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.” Whenever the criminal history point total contains a partial point (i.e., ends in “.5”) due to custody status, the partial point must be disregarded when determining the presumptive sentence.

The practical effect is that when a criminal history score falls between two numbers on the grid because of a half custody status point, the lower number should be used to determine the presumptive sentence as if the half custody status point were always rounded down.

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. Applying the Commission’s interim guidance, the correct number of total criminal history points, **1.5** ($0.5 + 0 + 0 + 1 = 1.5$), is treated as a criminal history score of **1** for purposes of finding the presumptive sentence.

| 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. Applying the Commission’s interim guidance, the correct number of total criminal history points, **2.5** ($0.5 + 0 + 0 + 2 = 2.5$), is treated as a criminal history score of **2** for purposes of finding the presumptive sentence.

| 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 | | | | |

* *State v. Eubanks*, No. [A19-2042](#), 2021 WL 318260 (Minn. Ct. App. Feb. 1, 2021) (nonprecedential) (“Since Eubanks has only one-half of a felony point, with rounding down, his total felony points are zero. With the recent amendments to the sentencing guidelines, he is left with only one-half of a custody point, which is also rounded down. This leaves him with a criminal history score of zero ...”).