

Staff Issue Paper

Evaluating the October Custody Status Proposals

September 29, 2021

This staff paper proposes criteria for evaluating changes to the Sentencing Guidelines and, using those criteria, attempts to identify some of the pros and cons of each of the seven October custody status proposals. Staff’s intent is that this paper serve as a starting point, rather than a replacement, for the Commission’s own evaluation of the merits of these proposals.

Proposed evaluation criteria

Most of the following criteria are derived from the Sentencing Guidelines’ statement of purpose and principles (section 1.A) and the Commission’s charter statute (Minn. Stat. § 244.09). The final criterion—simplicity—is derived from Commission discussions at past meetings.

Table 1. Guidelines Principles and Their Measurement as Potential Guidelines Evaluation Criteria

Criterion – Guidelines principles	How this <i>may</i> be measured
Public Safety ¹	People are safe in their communities
Maintain Neutrality/Reduce Disparity ^{2, 3}	Similarly situated people are treated alike
Rational, Consistent & Proportional ⁴	Sanctions increase in proportion to severity of offense and criminal history
Parsimony/Conserves Limited Resources ⁵	Sanctions should be least restrictive to achieve the goal
Simplicity ⁶	The Guidelines are simple to use and understandable to practitioners and the public

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.

Pros and cons of October custody status proposals

Keeping these criteria in mind, this section contains staff’s assessment—with the assistance of the Chair—of what might reasonably be viewed as advantages and disadvantages of each of the various proposals. Reasonable minds may disagree on these assessments, and the list is certainly not complete. Please keep in mind staff’s intent: to start the Commission’s discussion, not to make its decision for it.

A1. Apply custody status only to high criminal history scores

Pros:

- Answers the question whether a person who commits an offense before completing a prior sentence is more blameworthy by focusing on multiple, repeat offending as the trigger for additional punishment
- Maintains the Commission’s past practice of having less tolerance for repeat sexual offending

Cons:

- Could be confusing for practitioners since the policy works differently on the sex grid than on the standard and drug grids

A2. Display half points on grids

Pros:

- Maintains the current policy of not having custody status outweigh the criminal history for prior low-weight offenses
- Clarifies the presumptive sentence

Cons:

- Complicates the grids and crowds out example offenses
- Incongruent with the existing policy to round felony points; one might ask why the half point

¹ “... the Commission’s primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.” *Minn. Sentencing Guidelines and Commentary, section 1.A.1 (2021)*.

² “Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.” *Minn. Sentencing Guidelines and Commentary, section 1.A.2 (2021)*.

³ Initiation of Sentencing Guidelines Neutrality Review. [Approved MSGC Meeting Minutes \(July 23, 2020\)](#), p. 12.

⁴ “The severity of the sanction should increase in direct proportion to an increase in offense severity or the convicted felon’s criminal history, or both. This promotes a rational and consistent sentencing policy.” *Minn. Sentencing Guidelines and Commentary, section 1.A.3 (2021)*.

⁵ “The commission shall also consider ... correctional resources, including but not limited to the capacities of local and state correctional facilities” Minn. Stat. § 244.09, subd. 5. “Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.” “Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.” *Minn. Sentencing Guidelines and Commentary, section 1.A.4&5 (2021)*.

⁶ Frase, R. MSGC Meeting (9/9/2021). *Minn. Sentencing Guidelines Commission*. <https://youtu.be/A7DfGpT4110?t=4245>.

applies for custody status but not felony weighting

- Could cause confusion for people doing “back of the envelope” calculations for plea bargaining; they may not appreciate the difference in the rules and assume a person’s criminal history score is higher and make offers accordingly

A3. Establish quarter points

Pros:

- Maintains the current policy of not having custody status outweigh the criminal history for prior low-weight offenses; makes all point assignment proportional to the severity of the current offense
- Maintains the Commission’s past practice of having less tolerance for repeat sexual offending
- Grounded in the Commission’s proportionality principle; point allocation is based on the severity of both the current and prior offense
- Logical because any rounding occurs after adding all criminal history components together

Cons:

- Complicates the guidelines; could cause confusion for practitioners

B1. Repeal without replacement

Pros:

- Recognizes more recent research indicating deterrence (achieved by harsher sentences) is not effective at reducing crime
- Reduces the effect of the criminal history score on sentencing; places more emphasis on the severity of the offense
- Recognizes that the person is receiving increased punishment in other ways (i.e., increased criminal history score from the prior offense, potential revocation or other sanctions for violation probation or supervised release)
- Simplifies the guidelines

Cons:

- Perception may be that this doesn’t adequately address the blameworthiness of an individual who commits a new offense before completing the sentence for a prior offense
- Reduces sentences for too many individuals, and this is especially concerning for repeat sex offenders
- Concern that now is not the right time to reduce sentences because of increasing crime rates

B2. Replace with a 10-percent mandatory enhancement

Pros:

- Provides additional punishment for committing a new offense before completing the sentence for a prior offense, but at a reduced level
- Limits the impact of custody status by removing the prior effect of pushing a person across the disposition line
- Maintains the Commission's past practice of having less tolerance for repeat sexual offending by imposing a larger enhancement in those cases
- Grounded in the Commission's proportionality principle; when the current offense is more severe, the enhancement will be greater
- Reduces the effect of the criminal history score on sentencing; places more emphasis on the severity of the offense

Cons:

- Perception may be that this doesn't adequately address the blameworthiness of an individual who commits a new offense before completing the sentence for a prior offense
- Perception may be that this doesn't go far enough to address repeat offending by sex offenders

B3. Replace with a one-cell discretionary enhancement

Pros:

- Allows for individualized application of the enhancement; only when necessary to address the person's blameworthiness
- Permits recognition of other sanctions that may already adequately address this situation
- Places a limitation on the degree of enhancement available to the court

Cons:

- Won't be uniform in application
- Raises *Blakely* concerns; there is some question whether the court could raise this on its own or whether more process would be necessary to trigger it
- Could trigger litigation

B4. Replace with a one-cell aggravating factor

Pros:

- Allows for individualized application of the enhancement: only when necessary to address the person's blameworthiness
- Fits within the current departure scheme
- Places a limitation on the degree of enhancement available to the court

- Simplifies the guidelines

Cons:

- Won't be uniform in application
- Will require *Blakely* process; could be considered onerous by practitioners