

DATE: January 5, 2022

TO: Nate Reitz, Executive Director, M.S.G.C.  
Kelly Mitchell, Chair, M.S.G.C.  
Commissioners, M.S.G.C.

FROM: Michelle A. Larkin, Commissioner

RE: New Custody Status Proposal in Response to Public Hearing Comments

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Under the current guidelines, a one-half custody point is awarded if the offender has custody status based on a felony offense with a severity ranking of 1 or 2 on the standard grid (98 offense types), a felony offense with a severity ranking of D1 or D2 on the drug offender list (9 offense types), or a targeted misdemeanor (8 offense types).

Proposal:

Maintain the current method of assigning a one-half custody point.

Adopt a new rule providing that an additional three months must be added to the duration of the appropriate cell time, which then becomes the presumptive duration, any time a one-half custody point is assigned.

Benefits of the proposal:

1. It imposes a penalty for all offenders who commit a new offense while on custody status, which is consistent with the majority of the public comments regarding this issue over the past two years. The vast majority of the public shares the common-sense view that commission of a new offense while on custody status warrants an additional consequence, which should also serve as a deterrent.
2. It honors the commission's purpose in creating the one-half custody point by assigning a consequence to the commission of a new offense while on custody status, without causing an offender to "cross the line" from a presumptively stayed prison sentence to a presumptively executed prison sentence.
3. It requires minimal modification of the guidelines. The rules regarding calculation of the custody point would remain the same. The only change is that an additional

three months would be added to the presumptive sentence based on assignment of a one-half custody point. The guidelines already provide for this approach when an offender's total criminal history score exceeds seven. The proposal simply extends that approach to any offender who receives a one-half custody point. In sum, the proposal is simple, unambiguous, and one that practitioners are accustomed to using.

Proposed modification to implement the new rule (highlighted on next page):

2. Custody Status at the Time of the Offense.

a. One or One-Half Custody Status Point. Assign one custody status point when the conditions in paragraphs (1), (2), and (3)(ii) or (iii) are met. In all other cases when the conditions in paragraphs (1) through (3) are met, assign one-half custody status point:

(1) The offender was under one of the following custody statuses at the time the current offense was committed:

(i) probation;

(ii) parole;

(iii) supervised release;

(iv) conditional release following release from an executed prison sentence (see conditional release terms listed in section 2.E.3);

(v) release pending sentencing;

(vi) confinement in a jail, workhouse, or prison pending or after sentencing; or

(vii) escape from confinement following an executed sentence.

(2) The offender was under one of the custody statuses in paragraph (1) after entry of a guilty plea, guilty verdict, or conviction.

(3) The offender was under one of the custody statuses in paragraph (1) for one of the following:

(i) a felony currently assigned a severity level ranking, on the Offense Severity Reference Table, of 1 or 2 on the Standard Grid or D1 or D2 on the Drug Offender Grid, a felony from a jurisdiction other than Minnesota equivalent to an offense currently ranked at one of those severity levels, or an extended jurisdiction juvenile (EJJ) conviction for an offense currently ranked at one of those severity levels;

(ii) any other felony;

(iii) any other EJJ conviction;

(iv) a non-traffic gross misdemeanor;

(v) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or

(vi) a targeted misdemeanor.

(4) Assigning Points to Offenses Committed Over Time. Assign one or one-half custody status point when the offender meets the conditions in paragraphs (1) through (3) and the offender was placed under one of the custody statuses in paragraph (1) at any point in time during which the offense occurred when:

(i) multiple offenses are an element of the conviction offense; or

(ii) the conviction offense is an aggregated offense.

b. Two Custody Status Points. Assign two custody status points if:

(1) the current conviction offense is an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166); and

(2) the offender qualifies for one custody status point, as described in section a, above, for an offense currently found on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).

**c. Additional Duration. An additional three months must be added to the duration of the appropriate cell time, which then becomes the presumptive**

duration, when: one half custody status point is assigned.

(1) at least one half custody status point is assigned; and

(2) the offender's total Criminal History Score exceeds the maximum score on the applicable Grid (i.e., 7 or more).

Three months must also be added to the lower and upper end of the range provided in the appropriate cell on the applicable Grid.

If the current conviction is an attempt, conspiracy, or other offense with a sentence modifier that reduces the presumptive sentence, the three months must be added to the cell duration before the duration is reduced as outlined in section 2.G. The presumptive duration, however, cannot be less than one year and one day.