

Staff Issue Paper

Comparison of the November Custody Status Proposals

October 25, 2021

In this paper, staff attempts directly to compare the three custody status proposals identified by the Chair for the Commission’s consideration at its November meeting. Many of the points of comparison are described in greater detail in the [evaluation staff paper](#) presented at the October meeting. As with that paper, staff intends that the following comparison table serve as a starting point, rather than a replacement, for the Commission’s own evaluation of the merits of these proposals. Staff acknowledges that reasonable minds may disagree as to the completeness or validity of these points of comparison.

Comparison Point	1. Display half points on grids	2. Repeal custody-status policy without replacement	3. Replace custody-status policy with a one-cell aggravating factor
Public safety	Public safety outcomes are more similar to status quo than alternatives.	Sentences of those in a custody status are reduced, including some dispositions. Some who commit a new offense while supervised are freed. On the other hand, more recent research (Petrich (2021)) indicates that harsher sentences are not effective at deterring crime. Also, Laskorunsky (2018) found that, “although custody status is predictive of recidivism, retaining it in the score’s formulation only helps identify an additional 1 out of 100 recidivists.”	
Maintain Neutrality/ Reduce Disparity	Prison beds are reduced across all demographic categories. The White category, which now experiences one of the smallest imprisonment rates, benefits the most. The Black category, which now experiences one of the largest imprisonment rates, sees the smallest percentage reduction.	Prison beds are reduced across all demographic categories. The American Indian category, which now experiences the largest imprisonment rate, sees the largest percentage reduction. The Black and Asian categories see a smaller percentage reduction, but larger than proposal 1.	Not precisely known, but expected to be similar to proposal 2. Increased discretion potentially increases risk of non-neutral sentences.

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.

Comparison Point	1. Display half points on grids	2. Repeal custody-status policy without replacement	3. Replace custody-status policy with a one-cell aggravating factor
Simplicity	<p>No changes to policy language of Guidelines, so less of a learning curve. On the other hand, the grids are visually more complicated, and their example offenses—useful in helping people understand the Guidelines—no longer fit. Practitioners must remember a different rounding rule for each of the four criminal history factors: prior felonies (round down half points); custody status (use half-point grid columns); prior misdemeanors (four units equal one point); and prior juvenile adjudications (one doesn't count, but two are worth one point).</p>	<p>Simplifies criminal history score calculation and shortens the Guidelines. Purifies the criminal history score; all three remaining factors are actually criminal (or juvenile) history, whereas custody status at the time of the offense is not “criminal history.”</p>	<p>Same as 2, except that the new aggravating factor, unlike all aggravating factors heretofore, is limited in the scope of its application (one cell to the right). This requires training and invites error. This is the only proposal to increase the need for jury trials (staff assumes; see Minn. Stat. § 244.10, subd. 5).</p>
Rational, Consistent, Uniform, & Proportional	<p>This proposal alone applies an increased sanction in a consistent way to those who commit new offenses while being officially supervised. Maintains 2019 policy weighting custody status in proportion to the custody offense's seriousness. Clarifies the sentence. On the other hand, the method of application is not consistent with that of the other criminal history factors (see row above).</p>	<p>If, and only if, custody status does not actually increase blameworthiness, then this is the most rational and proportional proposal. Application of the proposal is uniform. Even after repeal of the custody-status point, one custody-status sanction—presumptive consecutive sentencing—remains for prisoners or escapees who commit new offenses.</p>	<p>Invites a rational investigation into the circumstances of the case in deciding whether custody status should increase blameworthiness. On the other hand, because the decision to depart is discretionary, this is the least uniform proposal.</p>
Parsimony	<p>By eliminating the need for an estimated 44 prison beds, conserves the fewest prison resources of the three proposals.</p>	<p>By eliminating the need for an estimated 536 prison beds, conserves the most prison resources of the three proposals.</p>	<p>Conserves the second-most prison resources of the three proposals, but requires more judicial resources for jury trials.</p>

Bibliography

Laskorunsky, Julia A., Robina Inst. of Crim. Law & Crim. Just., *Minnesota Criminal History Score Recidivism Project* (2018) (retrieved Oct. 25, 2021, at https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/minnesota_criminal_history_score_recidivism_report.pdf).

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Petrich, Damon M., Travis C. Pratt, Cheryl Lero Jonson, and Francis T. Cullen, “Custodial Sanctions and Reoffending: A Meta-Analytic Review,” *Crime and Justice* 50, no. 1 (2021) (retrieved Oct. 25, 2021, at <https://www.journals.uchicago.edu/doi/pdf/10.1086/715100>).