

Staff Information Paper

Estimated Impact of Eliminating One-Half Custody Status Point

October 26, 2022

In *State v. Beganovic*, 974 N.W.2d 278, 288 (Minn. App. 2022), review granted on other grounds (Minn. June 29, 2022), the Court of Appeals held, “We now adopt the reasoning of the commission’s interim guidance and hold that a partial custody-status point should be disregarded when calculating the presumptive sentence.” This information paper estimates the impact of codifying this holding in the Minnesota Sentencing Guidelines by eliminating one-half custody status point where it now applies (*i.e.*, when the custody status offense is a misdemeanor, gross misdemeanor, or lesser felony).

Because *Beganovic* is the current state of the law, its codification would generally be a restatement of the status quo, and therefore would be assumed to have no impact on the prison population. It is arguable, however, that eliminating one-half custody status point would have impact in one area: The additional three-month durational increase for off-the-chart criminal history scores.

Current custody-status policy dictates that presumptive sentence durations receive an additional three-month increase when the total criminal history score exceeds the grid maximum (*i.e.*, is 7 or more) and at least one-half custody status point is present (Guidelines section 2.B.c).

Beganovic was based on “the reasoning of the commission’s interim guidance,” and the Commission’s interim guidance* was based on the problem that, although the sentencing grids’ horizontal axes—which reflect the criminal history scores—contain only whole numbers, the Guidelines’ rounding rules now permit partial points in some criminal history scores.

This problem arguably does not exist with respect to section 2.B.c’s three-month durational increase.

For purposes of estimating the impact of this change, staff assumes that the elimination of one-half custody status point will result in the following change from the status quo: Defendants with criminal history scores of 7 or more who also have one-half custody status point will no longer have the three-month durational enhancement that now applies.

* Available online at https://mn.gov/sentencing-guidelines/assets/20220115-MSGC-PartialPointsinCriminalHistory_tcm30-515455.pdf

Proposal:

The proposal would eliminate the half custody status point—*i.e.*, custody status deriving from a lower-level felony, a non-traffic gross misdemeanor, a gross misdemeanor DWI, or a targeted misdemeanor—as a trigger for the additional three-month duration when the total criminal history score exceeds the grid maximum (*i.e.*, is 7 or more).

Assumptions:

Impact estimates are based on 2021 MSGC monitoring data. It is assumed that future cases will be similar in terms of offenses, offense severity, offense distribution, criminal history scores (CHS), departure rates, and demographic characteristics to those sentenced in 2021. It is assumed that future sentences will reflect “post-*Beganovic*” guidance to disregard a partial custody-status point when calculating the presumptive sentence.

In 2021, 124 cases had one-half custody status point and received an additional three-months added to their presumptive duration because their total criminal history score exceeded the grid maximum; 87 of the 124 cases received a prison sentence. The total estimated prison beds required by these cases was 167 beds. If this proposal were adopted, the estimated impact would be a reduction of 11.5 prison beds.

If the assumptions above are accurate, it is estimated that the demographic characteristics of the occupants of the 11.5 prison beds that would no longer be required as a result of this proposal would be as follows (in percent).

- **Gender (%):** Male (92.7); and Female (7.3).
- **Race & Ethnicity (%):** White (67.7); Black (20.2); American Indian (9.7); Hispanic (1.6); and Asian (0.8).
- **Judicial District (%):** First (16.1); Second (8.9); Third (8.1); Fourth (12.1); Fifth (4.0); Sixth (6.5); Seventh (14.5); Eighth (4.0); Ninth (12.1); and Tenth (13.7).

Table 1 shows the demographic change in the prison population that would result from this proposal, if staff’s assumptions are accurate.

Table 1. Minnesota’s Existing Annual Prison Population, Estimated Change in Prison Beds Needed, and Estimated Resulting Annual Prison Population, by Gender, Race and Ethnicity, and Judicial District, Elimination of 3-Month Custody Status Enhancement for One-Half CSP

	Prison Population			Estimated Change in Prison Beds Needed*		Estimated Resulting Prison Population*				
	MSGC Category	2019 Adult Inmate Population				Number	Percent	Percent-point change relative to other categories**	Estimated resulting rate per 100,000*†	Percent change from existing prison pop.
		Number	Percent	Rate per 100,000†	Beds					
	Male	8,941	93.07%	417	-10.6	92.7%	8,930	93.1%	399	-0.1%
	Female	666	6.93%	30	-0.8	7.3%	665	6.9%	29	-0.1%
Race & Ethnicity	White	4,427	46.08%	122	-7.8	67.7%	4,419	46.1%	117	-0.2%
	Black	3,534	36.8%	1,267	-2.3	20.2%	3,532	36.8%	1,212	-0.1%
	American Indian	843	8.8%	1,269	-1.1	9.7%	842	8.8%	1,186	-0.1%
	Hispanic	525	5.5%	266	-0.2	1.6%	525	5.5%	250	-0.0%
	Asian	270	2.8%	118	-0.1	0.8%	270	2.8%	113	-0.0%
Judicial District	First	825	8.6%	136	-1.8	16.1%	823	8.6%	129	-0.2%
	Second	1,096	11.41%	259	-1.0	8.9%	1,095	11.4%	248	-0.1%
	Third	668	6.95%	180	-0.9	8.1%	667	7.0%	172	-0.1%
	Fourth	2,646	27.54%	267	-1.4	12.1%	2,645	27.56%	258	-0.1%
	Fifth	479	4.99%	216	-0.5	4.0%	479	5.0%	205	-0.1%
	Sixth	524	5.5%	259	-0.7	6.5%	523	5.5%	248	-0.1%
	Seventh	1,075	11.2%	284	-1.7	14.5%	1,073	11.2%	271	-0.2%
	Eighth	295	3.1%	241	-0.5	4.0%	295	3.1%	229	-0.2%
	Ninth	941	9.8%	356	-1.4	12.1%	940	9.8%	340	-0.1%
	Tenth	954	9.93%	126	-1.6	13.7%	952	9.9%	121	-0.2%
	Total††	9,607	100.0%	220	-11.5	100.0%	9,596	100.0%	212	-0.1%

* This table’s projections assume that future offenders’ demographic characteristics will be similar to past offenders, as stated above. The accuracy of these projections will therefore vary according to the accuracy of these assumptions.

† Rate per 100,000 adult residents, as shown in Appendix 1, Table 2, “General Population” (2019 U.S. Census Bureau Estimate).

** I.e., the expected change, in percentage points, of the category’s share of the annual prison population relative to the other demographic categories.

†† 2019 Adult Inmate Population (Minn. Dept. of Corrections) exclude eight inmates from the Race & Ethnicity category; and 104 inmates from the Judicial District category (because the governing sentence was committed in a non-MN jurisdiction).

Appendix – Current State Demographics

Table 2 displays current demographic information pertaining to three populations within the state: the felony population (that is, the population of offenders sentenced for felony offenses in 2019); the adult prison population (as of July 1, 2019); and the adult population (on July 1, 2019, as estimated by the U.S. Census Bureau). Table 2 breaks down those populations by the following demographic categories: Gender; race and ethnicity; and judicial district.

Table 2. Minnesota’s 2019 General Population, Felony Population, and Prison Population, by Gender, Race and Ethnicity, and Judicial District

	General Population			Felony Population			Prison Population	
	U.S. Census Category	2019 Estimated Adult Population		MSGC Category	Offenders Sentenced in 2019		2019 Adult Inmate Population	
		Number	Percent		Number	Percent	Number	Percent
	Male	2,144,041	49.4%	Male	13,937	80.4%	8,941	93.07%
	Female	2,192,434	50.6%	Female	3,398	19.6%	666	6.93%
Race & Ethnicity	White*	3,629,537	83.7%	White	9,853	56.8%	4,427	46.1%
	Black or African American*	278,909	6.4%	Black	4,580	26.4%	3,534	36.8%
	American Indian*	66,414	1.5%	American Indian	1,492	8.6%	843	8.77%
	Hispanic**	197,548	4.6%	Hispanic**	903	5.2%	525	5.5%
	Asian*	228,242	5.3%	Asian	499	2.9%	270	2.8%
	Native Hawaiian/ Other Pacific Islander*	4,975	0.1%	Other/ Unknown***	8	0.0%	8	8.6%
Judicial District	First	608,254	14.0%	First	2,213	12.8%	825	11.4%
	Second	422,368	9.7%	Second	1,902	11.0%	1,096	6.95%
	Third	372,086	8.6%	Third	1,254	7.2%	668	27.54%
	Fourth	989,707	22.8%	Fourth	3,551	20.5%	2,646	5.0%
	Fifth	221,404	5.1%	Fifth	1,064	6.1%	479	5.5%
	Sixth	202,578	4.7%	Sixth	732	4.2%	524	11.2%
	Seventh	379,092	8.7%	Seventh	1,810	10.4%	1,075	3.07%
	Eighth	122,619	2.8%	Eighth	522	3.0%	295	9.8%
	Ninth	264,123	6.1%	Ninth	1,620	9.3%	941	9.93%
	Tenth	754,244	17.4%	Tenth	2,667	15.4%	954	93.07%
	Total	4,336,475	100.0%	Total	17,335	100.0%	9,607	100.0%

Source of July 1, 2019, population estimate: U.S. Census Bureau (Sept. 2020).

*Not Hispanic, alone or in combination with one or more other races. The sum of percentages of residents in each racial or ethnic category exceeds 100 percent (101.6%) because residents of more than one race are counted in more than one category. **This table lists all Hispanic offenders and residents as Hispanic, regardless of race.

***The MSGC category of “Other/Unknown” is not a valid comparison group to the U.S. Census category of “Native Hawaiian/Other Pacific Islander.”

Source of July 1, 2019, Adult Inmate Population: Minn. Department of Corrections. Judicial district populations exclude 104 inmates whose governing sentences were for offenses committed in non-Minnesota jurisdictions.