

Staff Information Paper - REVISED

Estimated Impact of Restoring Full Custody Status Point, with Special Requirements for Low-Level Custody Offenses

November 15, 2022

Commissioner Larkin [submitted this proposal on September 22](#), with some clarifications discussed in the October 6 Commission meeting.¹

Proposal:

The proposal would repeal the 2019 creation of one-half custody status point for custody status arising from prior low-level felonies, non-traffic gross misdemeanors, gross misdemeanor DWIs, and targeted misdemeanors. For these offenses, custody status would again contribute a full point to the criminal history score, but only in limited circumstances—when the total criminal history score is very high, or when the custody status was the result of a prior mitigated dispositional departure.

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, 2,423 cases had one-half custody status point; an additional 125 cases had one-half custody status point disregarded in accordance with the “post-*Beganovic*” guidance, totaling 2,548 cases that could be affected by this proposal. Of the 2,548 cases, 376 cases received a prison sentence. The total estimated prison beds required by these cases was 923 beds. If this proposal were adopted, the estimated impact would be an increase of **29.5** prison beds, including cases that would receive a longer prison duration.

¹ At that meeting, Commissioner Larkin clarified her intent that custody status would apply to prior targeted misdemeanors, non-traffic gross misdemeanors, and gross misdemeanor DWIs only if the defendant’s criminal history score was six or more, not counting custody status. The effect of custody status for such offenses would thus be limited to adding three months to the presumptive duration under the policy now found in Guidelines section 2.B.2.c.

If the assumptions above are accurate, it is estimated that the demographic characteristics of the occupants of the 29.5 prison beds would be as follows (in percent).

- **Gender (%):** Male (91.3); and Female (8.7).
- **Race & Ethnicity (%):** White (54.4); Black (24.0); American Indian (14.5); Hispanic (4.9); and Asian (2.2).
- **Judicial District (%):** First (10.4); Second (7.7); Third (5.7); Fourth (17.5); Fifth (7.7); Sixth (4.9); Seventh (16.1); Eighth (4.1); Ninth (15.6); and Tenth (10.4).

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, Restore Full Custody Status Point, with Special Requirements - **REVISED**

	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†						
	Male	8,941	93.07	417	+26.9	91.3	8,968	93.1	400	+0.3
	Female	666	6.93	30	+2.6	8.7	669	6.9	29	+0.4
Race & Ethnicity	White	4,427	46.08	122	+16.0	54.4	4,443	46.1	117	+0.4
	Black	3,534	36.8	1,267	+7.1	24.0	3,541	36.75	1,216	+0.2
	American Indian	843	8.8	1,269	+4.3	14.5	847	8.8	1,193	+0.5
	Hispanic	525	5.5	266	+1.4	4.9	526	5.5	251	+0.3
	Asian	270	2.8	118	+0.6	2.2	271	2.8	113	+0.2
Judicial District	First	825	8.6	136	+3.1	10.4	828	8.6	130	+0.4
	Second	1,096	11.41	259	+2.3	7.7	1,098	11.4	249	+0.2
	Third	668	6.95	180	+1.7	5.7	670	6.95	172	+0.3
	Fourth	2,646	27.54	267	+5.2	17.5	2,651	27.5	258	+0.2
	Fifth	479	4.99	216	+2.3	7.7	481	5.0	207	+0.5
	Sixth	524	5.5	259	+1.4	4.9	525	5.5	249	+0.3
	Seventh	1,075	11.2	284	+4.7	16.1	1,080	11.2	273	+0.4
	Eighth	295	3.1	241	+1.2	4.1	296	3.1	230	+0.4
	Ninth	941	9.8	356	+4.6	15.6	946	9.8	342	+0.5
	Tenth	954	9.93	126	+3.1	10.4	957	9.9	122	+0.3
	Total††	9,607	100.0	220	+29.5		6,636	100.0	213	+0.3

* 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	
		2019 Estimated Adult Population		MSGC Category	Offenders Sentenced in 2019		2019 Adult Inmate Population	
U.S. Census Category		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.