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**Minnesota Sentencing Guidelines Commission**  
Second Custody Status Point for Offenders Discharged Early from Probation  
September 19, 2013

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**Description:** MSGC staff received a question from a practitioner: Should a second custody status point be applied to a sex offender who committed the current sex offense after being discharged early from probation for a sex offense, but within the original probationary period?

**Guidelines Considerations:** According to the 2013 Minn. Sentencing Guidelines § 2.B.2.b, an additional custody status point is assigned to an offender who was on custody status for a sex offense when they commit a sex offense. However, the Guidelines are unclear if a second point applies to an offender discharged early from probation under § 2.B.2.a(4).

Staff believes that this is an oversight; a result of the extensive Guidelines revisions that took effect August 1, 2012. The Commission's intent to assign a second Custody Status Point appears clear in the 2011 Minn. Sentencing Guidelines, § 2.B.2.

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2. **One point** is assigned if the offender:

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- b. committed the current offense within the period of the initial probationary sentence....;

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- d. An **additional** custody status point shall be assigned if the offender was under any of the custody status conditions in a through d above for a specified sex offense, other than Failure to Register as a Predatory Offender (M.S. 243.166), and the current offense of conviction is a specified sex offense, other than Failure to Register as a Predatory Offender (243.166).

**MSGC Staff Recommendation:** Staff recommends revising 2014 Minn. Sentencing Guidelines, § 2.B, to make it clear that a sex offender committing an offense within the original length of probation qualifies for two custody points, as outlined below.

**Recommended Modification:**

2. Custody Status at the Time of the Offense.

- a. One Custody Status Point. Assign **one** custody status point when the conditions in paragraphs (1) through (3) are met:

(1) The offender was under one of the following custody statuses:

- (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. This includes a guilty plea for an offense under Minn. Stat. § 152.18, subd. 1.

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

- (i) a felony;
- (ii) extended jurisdiction juvenile (EJJ) conviction;
- (iii) non-traffic gross misdemeanor;
- (iv) gross misdemeanor driving while impaired or refusal to submit to a chemical test; or
- (v) targeted misdemeanor.

(4) Early Discharge from Probation. Assign a custody point if the offender is discharged from probation but commits an offense within the initial period of probation pronounced by the court. **Do not** assign a point if probation is revoked and the offender serves an executed sentence.

(5) Assigning Points to Offenses Committed Over Time. Assign a 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 (243.166);

(2) the offender qualifies for one custody status point, as described in section a, above, was under any of the custody statuses in paragraph a(1) for an offense currently found on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).