



MINNesOTA

SENTENCING GUIDELINES
COMMISSION

2019 Modifications to the MN Sentencing Guidelines & Commentary

MSGC Staff Training Presentation

Before We Begin – Effective Dates

GUIDELINES EFFECTIVE DATES

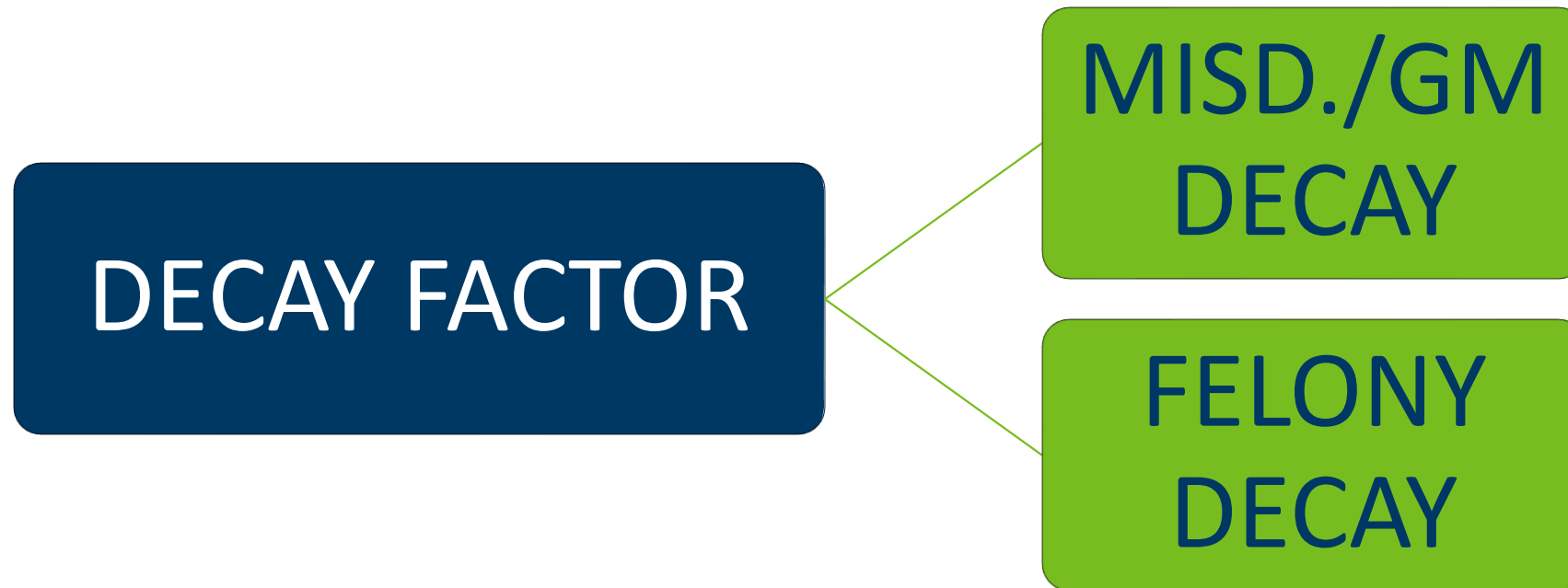
- Always start with the Guidelines in effect when the current offense was committed.
- The 2019 Guidelines are in effect for offenses committed on or after August 1, 2019, and remain in effect until the next publication.

THE COMMISSION'S 2019 ACTION ON EFFECTIVE DATE

- The Commission modified Guidelines § 3.G to clarify that the 1987 effective-date policy applies to the whole Guidelines.
- The Commission has clearly stated its unanimous intent that 2019 Guidelines modifications apply prospectively.

What's New in 2019

- Changes to **Decay Factor**
- Changes to **Custody Status Point**
- Creation of **Severe Violent Offense (SVO) Modifier**
- Increased **Conditional Release Terms** for Specific Offenses
- Routine Guideline Changes



Decay Factor: Modify Misdemeanor Decay Factor

UNDER FORMER POLICY

- Prior gross misdemeanor or targeted misdemeanor decays **10 years after discharge**/expiration of the sentence

AFTER CHANGE

- Prior gross misdemeanor or targeted misdemeanor decays **10 years after sentencing**
- Consistent with change to felony decay factor
- *Note:* There is also a technical change to clarify current misdemeanor point policy

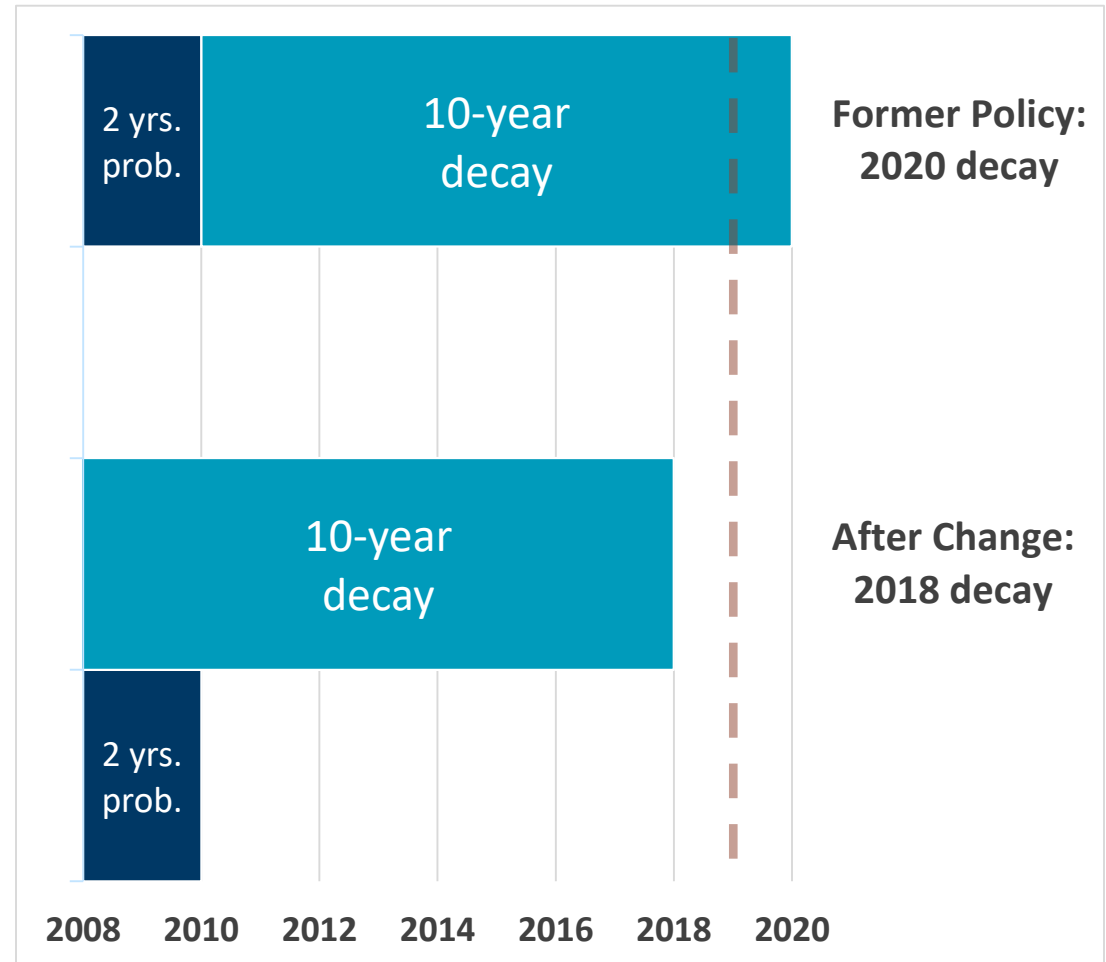
Decay Factor: Misdemeanor Decay Factor – Illustration

- In 2008, offender was sentenced for misdemeanor domestic assault, placed on probation for 2 years
- Offender is sentenced for 2019 felony theft
- Does the 2008 domestic assault contribute to 2019 criminal history?

Under former policy: **Yes** (but only if offender has 3 other misdemeanor units, to equal one point)

- Misdemeanor decays in **2020**
- 10-year decay period began at 2010 discharge

After change: **No**, misdemeanor decayed in **2018**, 10 years after 2008 sentencing



Mis./GM Decay Factor – Electronic Worksheet System (EWS)

Decay Factor:

For Misdemeanor/Gross Misdemeanor Decay Factor

Prior decays 10 years after sentencing.

* Prior Offense Type: **Misdemeanor/Gross Misdemeanor**

Jurisdiction State: **Minnesota** ▼

Jurisdiction County: **HENNEPIN** ▼

* Description: **Theft - GM**

*  Was offender under eligible custody status for the offense on 8/1/2019: ☐ Yes ☒ No

* Disposition Date: **01/12/2011** **This prior offense will decay on 1/12/2021.**

* Expiration Date: **01/13/2012**

Decay Factor: Modify Felony Decay Factor

UNDER FORMER POLICY

- A prior felony ceases to be included in criminal history if it **decayed** before the current offense was committed
- Prior felony decays **15 years after discharge**/expiration of a sentence

As a result—

- Prior **prison offenses often decay before** prior probationary offenses

AFTER CHANGE

- For executed **prison** sentences—
 - **No change** to current policy
 - Prior decays 15 years after prison sentence
- For never-executed **probationary** sentences—
 - Prior decays 15 years after **sentencing**
 - *But:* No decay while still under supervision

Decay Factor: Felony Decay Factor – Illustration

Two residential burglars were sentenced in 2000—

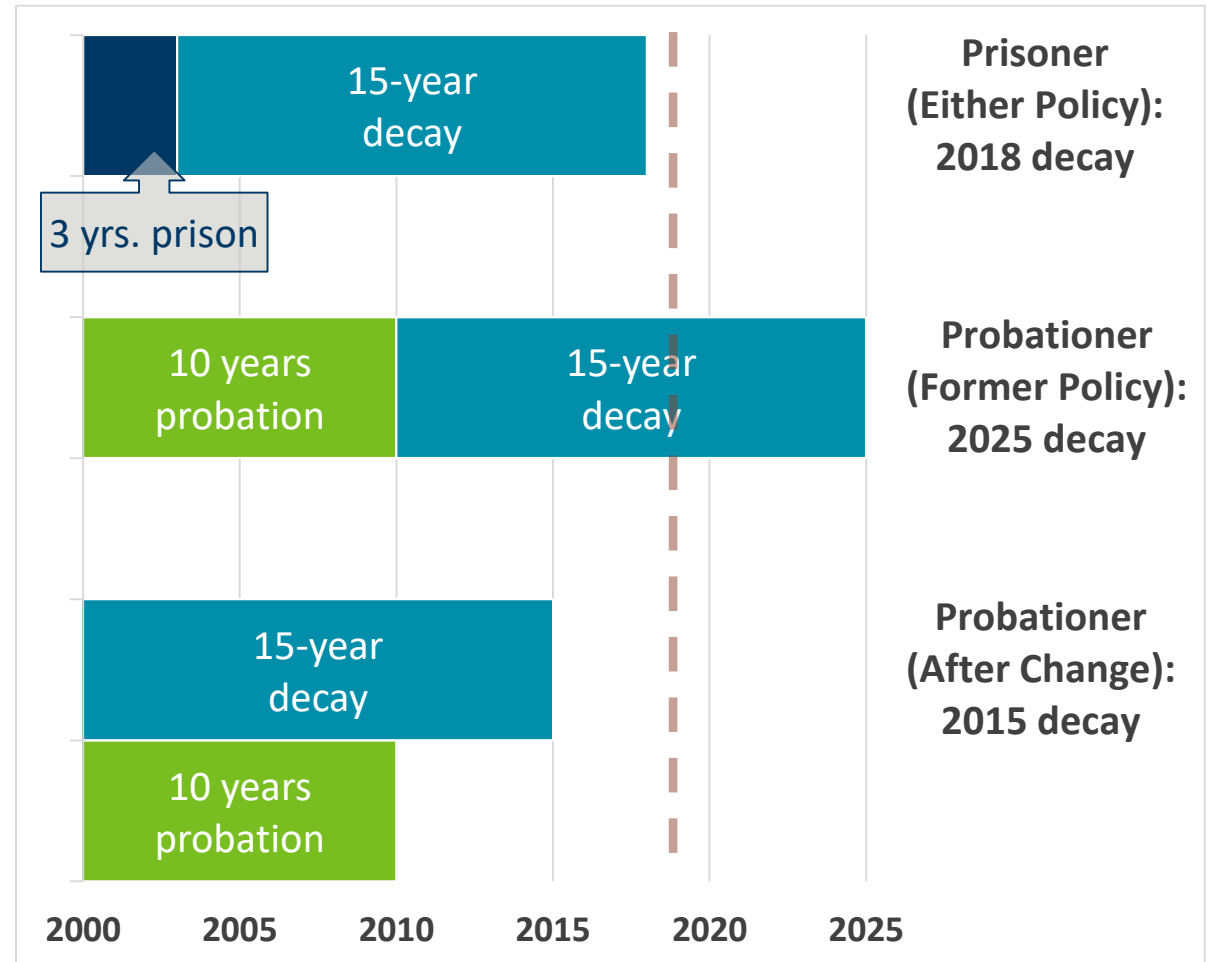
- **Prisoner** got an executed **3-year prison** sentence
- **Probationer** got a stayed sentence with **10 years probation**; prison term was never executed

Each is now being sentenced for 2019 felony theft; do old burglaries count in criminal history?

Prisoner's burglary decayed in **2018**: 15-yr. decay period started when prison sentence expired, in 2003

Under former policy, Probationer's burglary decays in **2025**: 15-year decay period began at 2010 discharge

After change, Probationer's burglary decayed in **2015**: 15-year decay period began at 2000 sentencing



Decay Factor: Felony Decay Factor – Electronic Worksheet System (EWS)

Two new questions will need to be answered when adding or verifying priors on EWS.



- * ? Did this prior result in a prison term: ☐ Yes ☐ No
- * ? Was offender under eligible custody status for the offense on 8/1/2019: ☐ Yes ☐ No

A prior felony will **not decay** when the offender is assigned a custody status point for the prior offense.



- * ? Did this prior result in a prison term: ☐ Yes ☒ No
- * ? Was offender under eligible custody status for the offense on 8/1/2019: ☒ Yes ☐ No
- * Disposition Date:
- * Expiration Date: Still under custody; no decay.

Decay Factor: Felony Decay Factor – Electronic Worksheet System (EWS)

For Never-Executed Probationary Sentences


*Prior decays 15 years after sentencing.
But: No decay while still under supervision.*


* Prior Offense Type: **Felony**

Jurisdiction State: Jurisdiction County:

* Description:

* Severity Level:

*  Did this prior result in a prison term: ☐ Yes ☒ No

*  Was offender under eligible custody status for the offense on 8/1/2019: ☒ Yes ☐ No

* Disposition Date: This prior offense will decay on 1/12/2026.

* Expiration Date:

For Executed Prison Sentences


*No change to current policy.
Prior decays 15 years after prison sentence.*


* Prior Offense Type: **Felony**

Jurisdiction State: Jurisdiction County:

* Description:

* Severity Level:

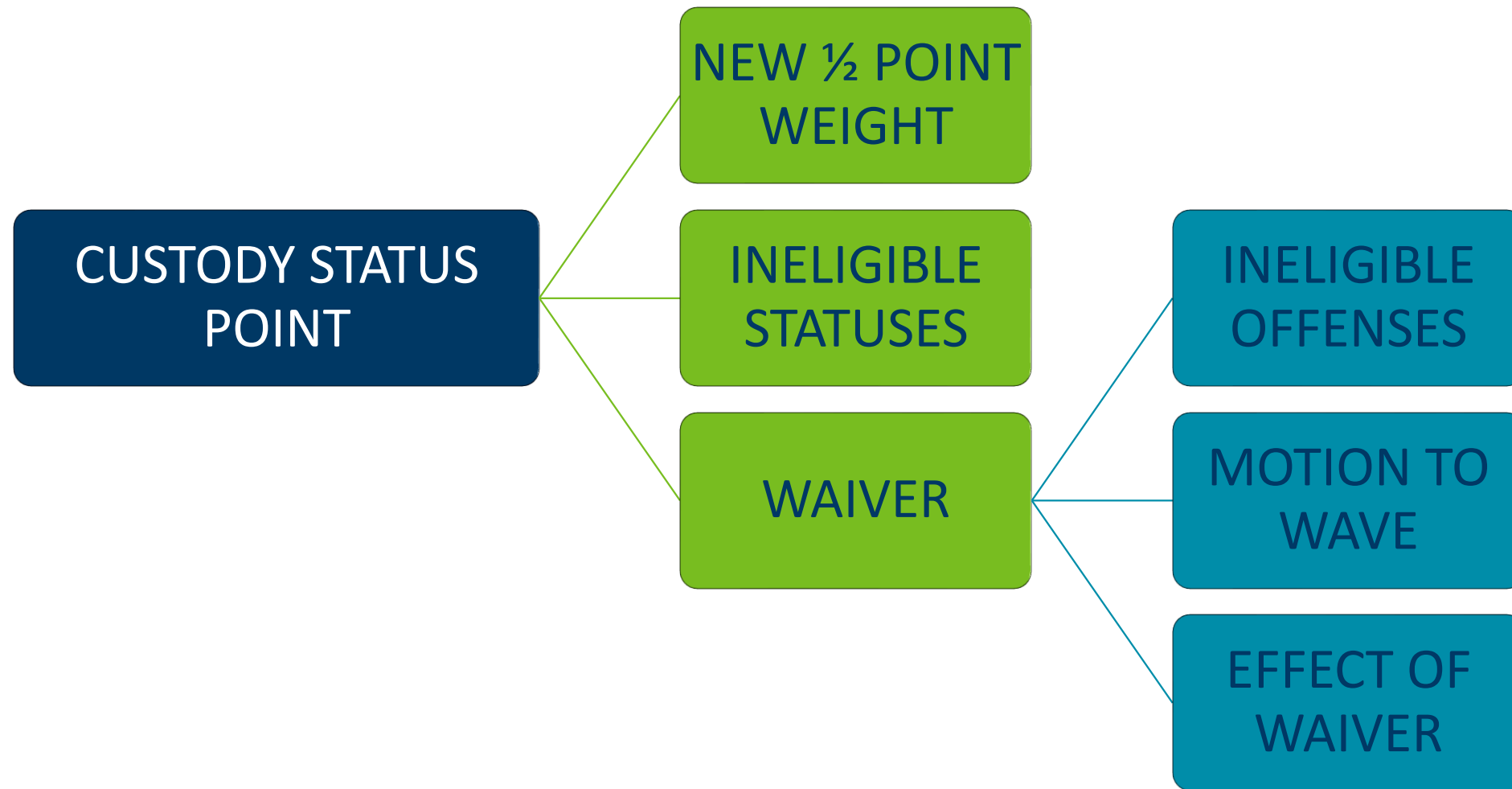
*  Did this prior result in a prison term: ☒ Yes ☐ No

*  Was offender under eligible custody status for the offense on 8/1/2019: ☒ Yes ☐ No

* Disposition Date:

* Expiration Date: This prior offense will decay on 1/12/2029.

What's New in 2019: Custody Status Point



Custody Status Point: Half Point for Less-Severe Priors

UNDER FORMER POLICY

- “Yes” to these questions = **1 custody status point**:
 - Was offender under custody status on current offense date?
 - Was custody status for a felony, most GMDs, or a targeted MD?
- For many low-severity priors, custody status contributes **more** to the criminal history score than the commission of **the prior offense itself**

AFTER CHANGE

If the weight of the offense itself is less than one point—

- Felonies ranked at 1, 2, D1, or D2
- Gross misdemeanors (DWI/reckless/non-traffic)
- Misdemeanors (targeted)

—then the weight of custody status is **one-half** point

Exception: Predatory offender registration still gets a full CSP

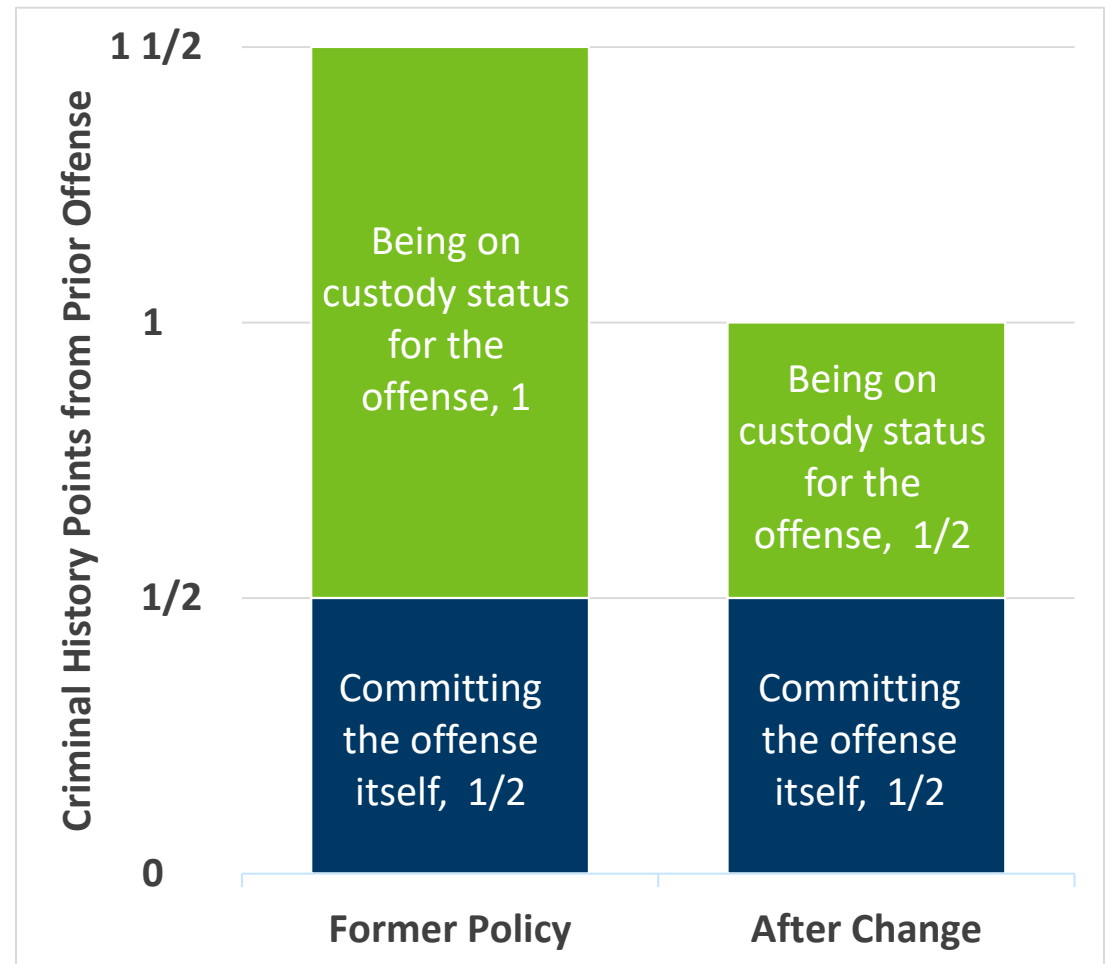
Custody Status Point: Half Point for Less-Severe Priors – Illustration

- In 2016, offender got 5 years probation for felony 5th degree controlled substance crime
- In 2019, while still on probation, offender commits felony theft

At sentencing for theft, offender gets $\frac{1}{2}$ **felony point** for prior low-severity-level drug offense

Under former policy, offender also gets **1 custody status point** for being on probation for the $\frac{1}{2}$ -point drug offense (for a total of 1.5 points)

After change, offender gets $\frac{1}{2}$ **custody status point** (for a total of 1 point); custody status for the prior drug offense does not outweigh the offense itself



Custody Status Point: **Ineligible Custody Status – Original Probationary Period**

UNDER FORMER POLICY

- Beginning in 2001, an offender receives a custody status point for committing an offense during the **originally pronounced period of probation**, even if discharged earlier

AFTER CHANGE

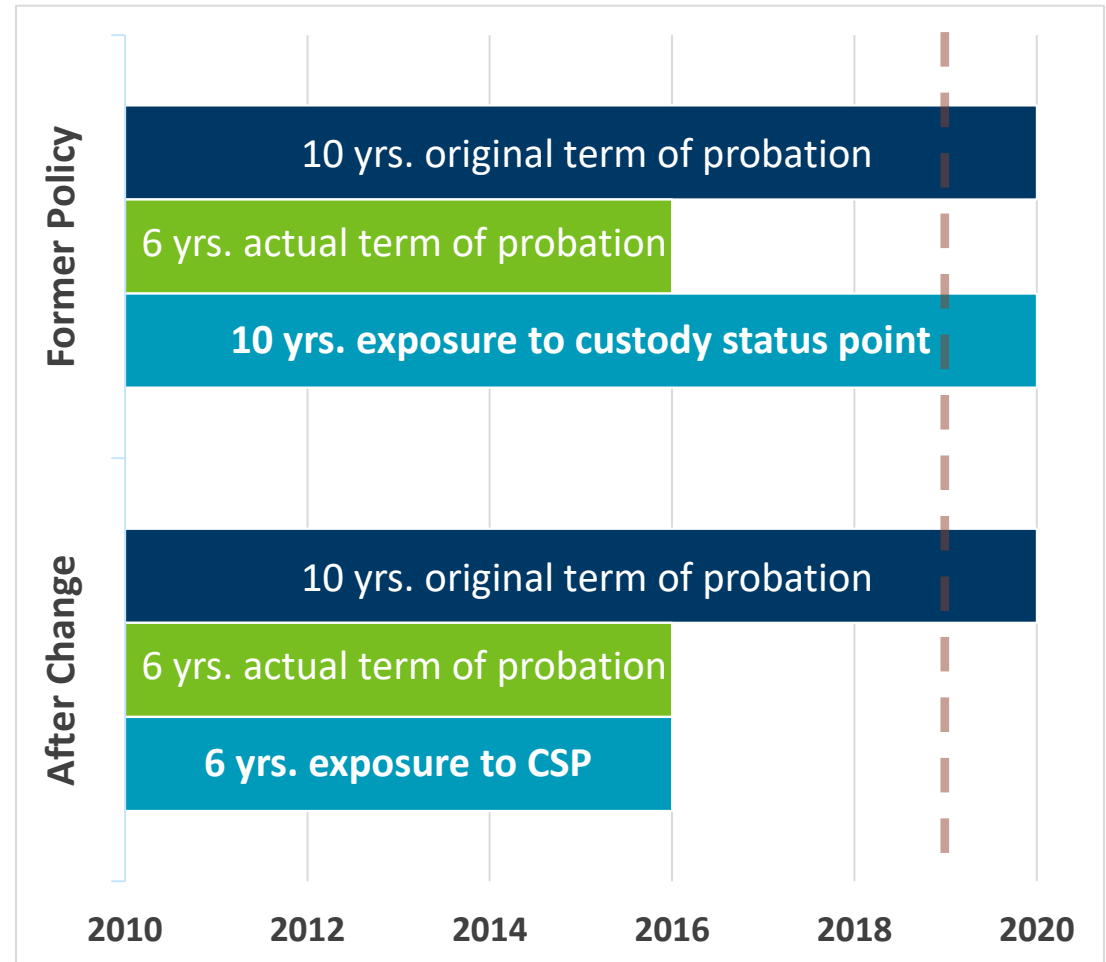
- To get a custody status point, an offender must actually be on custody status at the time of the current offense
- This is a repeal of the 2001 change

Custody Status Point: Ineligible Custody Status – Original Probationary Period

- In 2010, offender got 10 years probation for residential burglary
- In 2016, judge discharged successful offender from probation early
- In 2019 (after discharge but during original term of probation) offender commits felony theft

*Under former policy, offender **gets a custody status point** for committing the new offense during the original term of probation*

*After change, offender **does not get a custody status point** because the offender was not under a custody status at the time of the offense*



Custody Status Point: Ineligible Custody Status – Stay of Adjudications under § 152.18

UNDER FORMER POLICY

- “Stay of adjudication”: defendant pleads guilty, but judge places defendant on probation without accepting the plea & entering conviction
- If probationer is successful, no conviction
- Generally, **stay-of-adjudication probation does not qualify as a “custody status”** for purposes of a custody status point
- **Lone exception:** stays of adjudication granted under the drug statute, **Minn. Stat. § 152.18**

AFTER CHANGE

- All stays of adjudication are treated the same

Custody Status Point: Ineligible Custody Status – Stay of Adjudications under § 152.18

In 2015, two defendants pled guilty and got stays of adjudication, with 5 years probation, for—

- **Defendant 1:** Felony stalking
- **Defendant 2:** 5th-degree controlled substance

In 2019, both offenders commit felony theft

At sentencing for theft, will their 2015 stays of adjudication qualify them for custody status point?

For Defendant 1: No

Under former policy, for Defendant 2: Yes, if the stay of adjudication was given under § 152.18

After change, for Defendant 2: No

Custody Status Point: **Recap of Ineligible Custody Statuses**

Ineligible Custody Statuses as of 8/1/2019:

As of August 1, 2019, the follow custody status types are no longer eligible to assign either one point or a half-point custody point:

1. Custody under “Within Original Probation Period.” When an offender is discharged early from probation, and their current offense was committed on/after 8/1/2019, “Within Original Probation Period” will not be an eligible offense for that specific prior.
2. Probation assigned as a custody status for a 152.18 drug offense.

Custody Status Point: **Permit Custody Status Point Waiver, in Some Cases**

UNDER FORMER POLICY

- An offender who qualifies for a custody status point always gets a custody status point
- Although judges may exercise discretion in departing from the Guidelines presumption, the custody status point is automatic, not discretionary

AFTER CHANGE

- The court may waive assignment of the custody status point in certain circumstances
- Permitted only when offender establishes that waiver would be consistent with public safety
- Waiver is not permitted for severe/sex offenses

Custody Status Point Waiver – Ineligible offense?

Waiver of the custody point is eligible under very specific circumstances – all of which must be *examined by the sentencing court* to determine eligibility. These policies are found in section 2.B.2.e of the Guidelines

What is **not eligible** is more clear. The court may not waive custody for an offense:

The judge **may not** waive the custody-status point if **either**—

- the current offense, **or**
 - a custody status offense
- is an ineligible offense.

INELIGIBLE OFFENSES

- Offenses ranked at—
 - 8 or above (Standard Grid)
 - G or above (Sex Offender Grid)
 - D8 or above (Drug Offender Grid)
- Offenses on new Severe Violent Offense List
- Fleeing Peace Officer (Great Bodily Harm)

Custody Status Point: Custody Status Point Waiver – Motion to Waive

- Offender **must** establish—
 - Waiver is consistent with **public safety**, and
 - Promotes sentencing purposes:
 - Retribution
 - Incapacitation
 - Deterrence
 - Restitution
 - Rehabilitation (see sidebar)
- Then, waiver is **discretionary** with the judge

FOR REHABILITATION ...

Court may examine:

- Offender's use of available probation services in past year
- Whether current offense is an escalation of criminal activity
- Rehab/reentry progress

(See Guidelines § 2.B.2.e)

Custody Status Point: **Custody Status Point Waiver – Effect of Waiver**

- Custody status waiver is not a Guidelines departure ...
 - ... assuming § 2.B.2.e was followed
 - E.g., no “waiver” for ineligible offense
- Presumptive sentence is recalculated without the waived custody status point (or half point)

Custody Status Point: **Custody Status Point Waiver – Illustration**

Three offenders will be sentenced for 2019 offenses committed while on probation—

- **Defendant 1**, on probation for 4th-degree criminal sexual conduct, commits felony theft
- **Defendant 2**, on probation for nonresidential burglary, commits criminal vehicular homicide
- **Defendant 3**, on probation for 3rd degree assault, commits nonresidential burglary

Under former policy, each gets custody status point (CSP)

After change—

Defendants 1 & 2: Will get a CSP (severe/sex offenses)


Defendant 3: Judge is authorized to waive CSP, depending on judge's public safety determination

Custody Status Point: **Custody Status Waiver – Electronic Worksheet System (EWS)**

The following questions must be answered on the “Add/Edit Priors” page when completing a sentencing worksheet. These will aid the system in determining if the waiver of the custody point by the court is eligible for consideration under Guidelines section 2.B.2.e.



Custody Status Ineligibility Questions

 Is this offense (or its Minnesota equivalent, for non-Minnesota offenses), any of the following?

Check all that apply:

- ☐ Currently assigned a severity-level ranking in the Guidelines of 8–11, A–G, or D8–D9?
- ☐ A Severe Violent Offense?
- ☐ Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b))?

Custody Status Waiver– Electronic Worksheet System (EWS)

Custody Status Point:

In this example, the prior is ineligible because of both the severity level and that it is found on the Severe Violent Offense list in Section 8.



Custody Status Ineligibility Questions

Is this offense (or its Minnesota equivalent, for non-Minnesota offenses), any of the following?

Check all that apply:

- ☒ Currently assigned a severity-level ranking in the Guidelines of 8–11, A–G, or D8–D9?
- ☒ A Severe Violent Offense?
- ☐ Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b))?

Custody status NOT waivable pursuant to section 2.B.2.e(4).

The message indicates that custody is NOT waivable under the policy, and on the presumptive sentence page the check box for the “Court waived assignment of custody point...” option is greyed out.



☐ Court waived assignment of a custody status point or half-point pursuant to section 2.B.2.e. ?

☐ Life Sentence

☐ Presumptive Consecutive ? to Case #

☐ Presumptive Commit due to prior 152.18 ?

☐ Departure Anticipated

☐ Revoked EJJ ?

Custody Status Waiver– Electronic Worksheet System (EWS)

Custody Status Point:

In this example, the prior is eligible.



Custody Status Ineligibility Questions

? Is this offense (or its Minnesota equivalent, for non-Minnesota offenses), any of the following?

Check all that apply:

- ☐ Currently assigned a severity-level ranking in the Guidelines of 8–11, A–G, or D8–D9?
- ☐ A Severe Violent Offense?
- ☐ Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b))?

On the presumptive sentence page the check box for the “Court waived assignment of custody point...” option is available.



- ☐ Court waived assignment of a custody status point or half-point pursuant to section 2.B.2.e. ?
- ☐ Life Sentence
- ☐ Presumptive Consecutive ? to Case #
- ☐ Presumptive Commit due to prior 152.18 ?
- ☐ Departure Anticipated
- ☐ Revoked EJJ ?

Custody Status Waiver— Electronic Worksheet System (EWS)

Eligible Custody Status Waiver - Box Not Checked

When box is not checked, but still eligible for waiver,
The worksheet will indicate such with an asterisk and note.

Criminal History Score					
Custody Status Point	Juv Points	Misd/G.M. Points	Felony Points	Total Criminal History Points	
1	0	0	1	2	
Type: Probation					

Offenses Included in Criminal History Score					Presumptive Disposition
Type	Offense Title	Units/Pts	Disp Date	Exp Date	Stay
Juvenile	No Juvenile Priors				
Misd./G.M.	1. Theft - GM	1 unit	01/12/2011	01/13/2012	Presumptive Duration
Felony	1. Domestic Assault *	1.0 pt.	01/12/2011	01/12/2014	18 months

* If custody status were waived, presumptive sentence would be 15-months - stayed disposition.
The presumptive sentence was automatically calculated. There may be errors, especially if modifiers apply. Please ensure that the presumptive

Eligible Custody Status Waiver - Box Checked

CSP will be zero, but the type remains with the indicator
that it is waived. Sentence is recalculated without the point.

Criminal History Score					
Custody Status Point	Juv Points	Misd/G.M. Points	Felony Points	Total Criminal History Points	
0	0	0	1	1	
Type: Probation, but Waived.					

Offenses Included in Criminal History Score					Presumptive Disposition
Type	Offense Title	Units/Pts	Disp Date	Exp Date	Stay
Juvenile	No Juvenile Priors				
Misd./G.M.	1. Theft - GM	1 unit	01/12/2011	01/13/2012	Presumptive Duration
Felony	1. Domestic Assault *	1.0 pt.	01/12/2011	01/12/2014	15 months

Court waived assignment of a custody status point or half-point pursuant to section 2.B.2.e.
The presumptive sentence was automatically calculated. There may be errors, especially if modifiers apply. Please ensure that the presumptive

To check the box, create a modified worksheet, and check the “court waived...” box on the Presumptive Sentence page.

Custody Status Waiver— Electronic Worksheet System (EWS)

Custody Status Point:

Eligible Custody Status Waiver

Worksheet indicates CSP of probation but waived.
CSP point box reflects “0”.

Criminal History Score					
Custody Status Point	Juv Points	Misd/G.M. Points	Felony Points	Total Criminal History Points	
0	0	0	1	1	
Type: Probation, but Waived.					

Offenses Included in Criminal History Score					Presumptive Disposition
Type	Offense Title	Units/Pts	Disp Date	Exp Date	
Juvenile	No Juvenile Priors				Stay
Misd./G.M.	1. Theft - GM	1 unit	01/12/2011	01/13/2012	
Felony	1. Domestic Assault *	1.0 pt.	01/12/2011	01/12/2014	
					Presumptive Duration
					15 months
					Court waived assignment of a custody status point or half-point pursuant to section 2.B.2.e.
					The presumptive sentence was automatically calculated. There may be errors, especially if modifiers apply. Please ensure that the presumptive sentence is correct by applying the Sentencing Guidelines in effect on the date of offense.

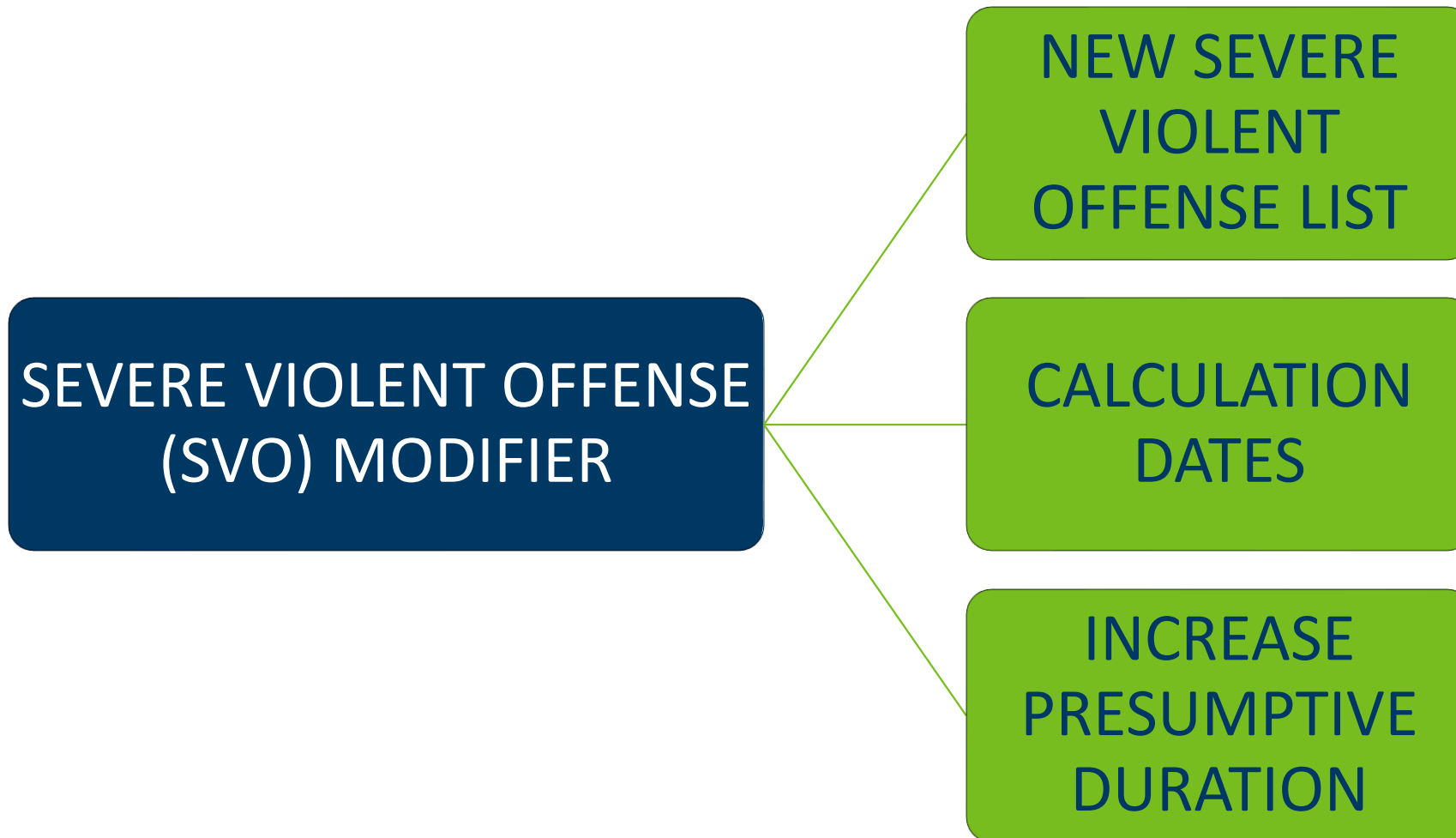
Ineligible Custody Status Waiver

No change to worksheet.
Custody status point remains the same.

Criminal History Score					
Custody Status Point	Juv Points	Misd/G.M. Points	Felony Points	Total Criminal History Points	
1	0	0	1	2	
Type: Probation					

Offenses Included in Criminal History Score					Presumptive Disposition
Type	Offense Title	Units/Pts	Disp Date	Exp Date	
Juvenile	No Juvenile Priors				Stay
Misd./G.M.	1. Theft - GM	1 unit	01/12/2011	01/13/2012	
Felony	1. Domestic Assault	1.0 pt.	01/12/2011	01/12/2014	
					Presumptive Duration
					13 months
					The presumptive sentence was automatically calculated. There may be errors, especially if modifiers apply. Please ensure that the presumptive sentence is correct by applying the Sentencing Guidelines in effect on the date of offense.

What's New in 2019: **Severe Violent Offense Modifier**



§ 2.G.14: Second or Subsequent Severe Violent Offense

New **SEVERE VIOLENT OFFENSE LIST**

- Murder 1 & 2
- Murder 3 (Depraved Mind)
- Assault 1
- Assault 2 with Subst. Bodily Harm
- Agg. Robbery 1
- SL 8 & 9 Kidnapping
- Labor Trafficking
- Crim Sex 1 & 2 not involving age
- Arson 1
- SL 8 Drive-By Shooting

NEW MODIFIER KICKS IN WHEN—

- Current severe violent offense, and
- Before current offense, one or more severe violent offense convictions.
- Unlike felony-point calculation, this modifier uses the **dates** of—
 - Current **offense** (not sentence)
 - Prior **conviction** (not sentence)
- Presumptive sentence is modified:
 - 1 prior: +12 months
 - 2 priors: +18 months
 - 3+ priors: +24 months

Severe Violent Offense Modifier

This modifier is applied when:

- the current offense is a SVO, found in section 8 of the Guidelines; **and**
- the offender was convicted of one or more prior offenses found on the SVO list in section 8, before the current offense was committed.

Number of Prior Severe Violent Offense Convictions	Duration Added to Presumptive Sentence		Consecutive Sentences
	Current Offense is Completed	Current Offense is Attempt/Conspiracy	
1	12 months	6 months	Des Not Apply
2	18 months	9 months	Do Not Apply
3 or more	24 months	12 months	Do Not Apply

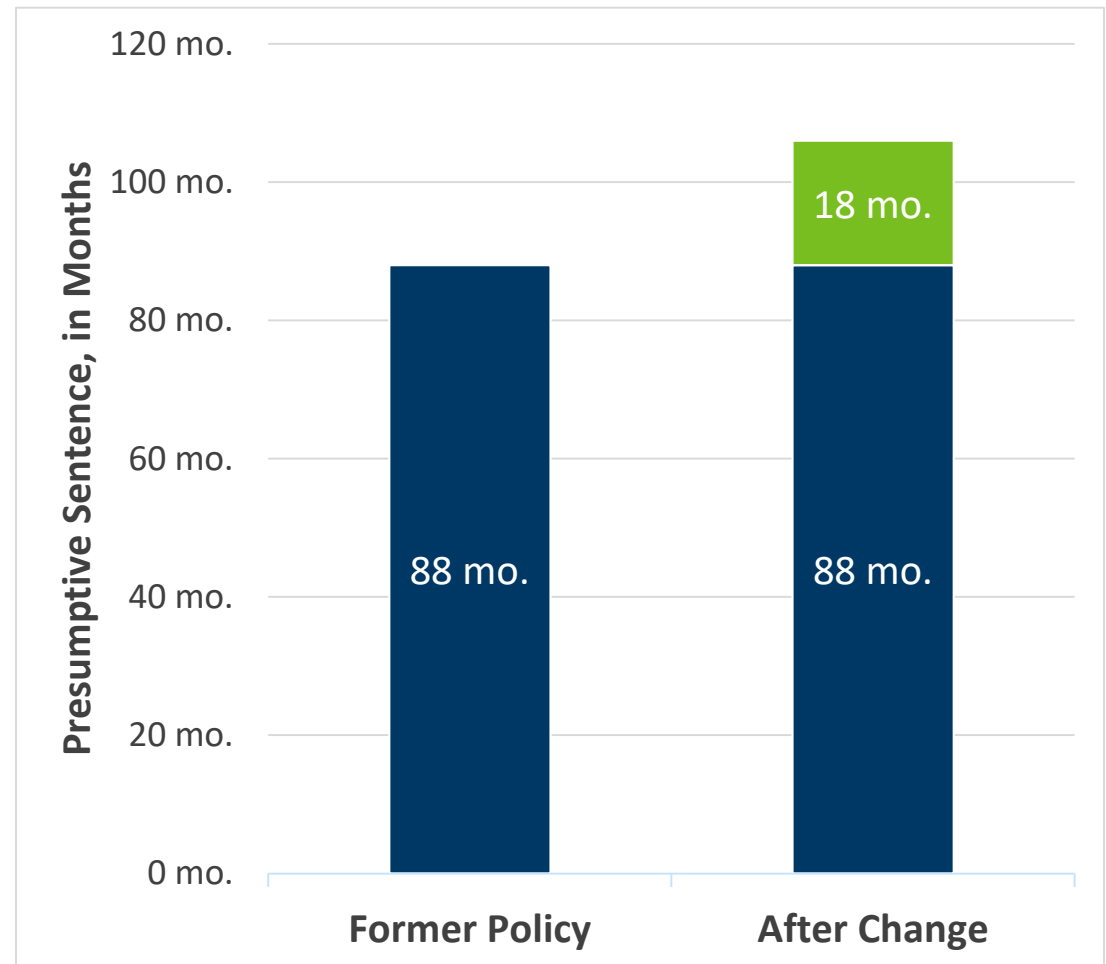
Severe Violent Offense Modifier

- In 2013 & 2014, offender committed two 1st-degree aggravated (armed) robberies
- In 2015, offender was convicted of both and sentenced to 58 months in prison
- In 2019, while on supervised release, offender commits 3rd armed robbery

Under former policy—

- Presumptive sentence was **88 months** prison
- Dangerous offender law did not apply because 2nd offense occurred before 1st conviction

*After change, presumptive sentence is **112 months** in prison (+18 mo. for 3rd severe violent offense)*




Severe Violent Offense Modifier: Application of New Modifier – Electronic Worksheet System (EWS)

When the current offense occurs on/after 8/1/2019 AND is found on the SVO list in section 8 of the Guidelines, a message will appear indicating that one of the SVO modifiers must be selected when there is applicable criminal history – specifically prior offenses found on the SVO list.

* Conviction Statute: 609.245.1 - Aggravated Robbery-1st Degree ▼

Penalty Statute: ▼

* Severity Level: 8 ▼

 The current offense is found on the Severe Violent Offense List, Guidelines Sec. 8. A conviction for a prior eligible offense which occurred before 8/1/2019 will require the addition of the appropriate Severe Violent Offender Modifier as determined by Guidelines Sec. 2.G.14. Custody status NOT waivable pursuant to section 2.B.2.e(4).

Severe Violent Offense Modifier: Application of New Modifier – Electronic Worksheet System (EWS)

- Select the modifier based on the number of qualifying felony priors the offender has.
- Depending on which modifier is selected, the duration will add either 12 months, 18 months, or 24 months.
- Attempt/conspiracy of the current offense will result in half the additional duration being added.

Modifiers
(e.g. attempt, conspiracy, subsequent drug, etc.)

Select Modifier ▼

Select Modifier

- 152.021.3(c) Penalty
- Aiding Offender - Responsible for Criminal Acts
- Assault Bias
- Attempt
- Benefit of Gang
- Benefit of Gang - Victim Under 18
- Burglary of Occupied Dwelling w/Applicable Prior
- Conspiracy
- Criminal Sexual Predatory Conduct
- Criminal Sexual Predatory Conduct (Subsequent)
- Criminal Vehicular Homicide (Qualified Prior Driving Offense)
- Drug Offense (Subsequent)
- Failure to Register (Subsequent)
- Felony DWI w/Applicable Prior
- Prostitution (Aggravated) - Sex Trafficking 609.322
- Repeat Severe Violent Offender (1 Prior)
- Repeat Severe Violent Offender (2 Priors)
- Repeat Severe Violent Offender (3+ Priors)
- Sex Offense (Subsequent)
- Solicit Mentally Impaired

Increased Conditional Release Term for Certain Offenses

The change will affect the conditional release term, for offenses committed on or after 8/1/2019, in the following manner:

Current Offense	Conditional Release Term
Possession of Child Pornography, Minn. Stat. § 617.247, subd. 4(a)	5 years
Dissemination of Child Pornography, Minn. Stat. § 617.247, subd. 3(a)	5 years
Use Minor in Sexual Performance, Minn. Stat. § 617.246, subd. 2(a), 3(a), or 4(a)	10 years
Possession of Child Pornography, Minn. Stat. § 617.247, subd. 4(b)	15 years
Dissemination of Child Pornography, Minn. Stat. § 617.247, subd. 3(b)	15 years
Use Minor in Sexual Performance, Minn. Stat. § 617.246, subd. 2(b), 3(b), or 4(b)	15 years

2019 Routine Guidelines Changes – in Brief

LEGISLATIVE ACT	COMMISSION'S RESPONSE
Criminalize police sex with arrestees	Rank like similar crim sex offenses
Enhance child pornography if victim younger than 13	Rank like child porn committed by repeat or predatory offenders
Apply child porn enhancements to use of minors in sexual performance	Rank enhanced offenses more severely (Severity Level D)
Enhance surreptitious observation device vs. minor if committed with sexual intent	Rank enhanced offense at SL G on the Sex Offender Grid
Create offense of wage theft	Rank like other theft offenses (SL 6 if >\$35,000)
Change stalking/harassment terminology	Make conforming changes

*For the details of these proposed modifications,
please refer to the Commission's web site*

<https://mn.gov/sentencing-guidelines/guidelines/>

For Guidelines assistance:

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