

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: October 12, 2021  
Meeting via Zoom**

**Attendees:**

- Russ Brown, *WA Association of Prosecuting Attorneys* (Alt. for Jon Tunheim)
- Rep. Roger Goodman, *WA Legislature*
- Keri-Anne Jetzer, (Alt. for Judge St. Clair), *Sentencing Guidelines Commission*
- Greg Link, *WA Criminal Defense Lawyers*
- Lauren Knoth, *WA State Institute for Public Policy*
- Melody Simle, (Alt. for Suzanne Cook), *Statewide Family Council*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

**Guests:** Bruce Glant, Joanne Smieja, David Triewweiler

**Facilitation Team:** Amanda Murphy, Chris Page, Maggie Counihan, Molly Stenovec

**WELCOME & AGENDA**

Amanda welcomed everyone and explained that the Subgroup would be beginning discussions on the horizontal axis of the grid, starting with CHS scoring rules: multipliers. Over the next several weeks the discussion will focus on mandatory consecutive sentencing, “three strikes” laws, and a zone or column for repeat violent offenses.

**PRESENTATION: MULTIPLIERS**

Clela Steelhammer reviewed for the group a document listing the rules for criminal history scoring. In brief, each felony offense adds one to a person’s Criminal History Score (CHS), with several exceptions. Clela’s document listing CHS scoring rules and itemizing exceptions is included as an appendix here.

If a person has multiple current serious violent offenses, the current laws mandate that they must serve the sentences consecutively. Clela walked through a series of exceptions and highlighted key considerations such as: “only ‘ranked’ offenses receive a score,” offenses ruled as “same criminal conduct” do not score against one another, and “the CHS scores for Class B and Class C offense can “washout” over time if the individual fulfills conditions of crime-free behavior.”

- **Q:** Does the issue of “same crime” multipliers have predictive value? In other words, if a person has a prior sex offense multiplier, does it predict that they are more likely to have a future sex offense? We know that prior violent offenses correlate with an increased likelihood of a person committing future violent offenses. **R:** Lauren Knoth summarized research on this by explaining that in general, there’s not a broad correlation between past offenses and a person committing the same type of offense in the future; however, sex offenses and organized crime offenses do connect to future similar offenses.

- **C:** A member noted that the public and lawmakers tend to focus on upticks in particular types of crime, such as auto theft and drug offenses and in response the Legislature increases penalties for those types of crimes.
- **C:** Keri-Anne provided information on how the Sentencing Guidelines Commission determined sentencing guidelines in 1980, noting that in general the punishment is meant to fit the severity of the crime. The SGC made exceptions for repeat violent offenses.
- **C:** If we are serious about reducing complexity, we should recognize that the multipliers are responsible for a significant amount of complexity in the system.

Lauren Knoth summarized findings from [an article by Jean Marie McGloin](#) (University of Maryland), whose research showed that highly motivated crime committers tend to commit a diverse array of offenses and are the most likely to reoffend. This counteracts the idea that specialization in a certain type of crime makes a person more likely to reoffend.

- **Q:** Have any other states reviewed and analyzed the impacts and outcomes of criminal history scoring and multipliers? **R:** Keri-Anne replied that she does not know of any that have done so.
- **Q:** Shouldn't we focus on the fundamental question of whether we want a system based in retribution or one focused on rehabilitation? Also, do we know that criminal history is an accurate predictor of future behavior? **R:** Keri-Anne explained that the system does operate under the philosophy that past behavior can predict future behavior.

A Subgroup member offered the perspective that multipliers basically serve only to increase punishment, based on the thinking that "If you did it before and did not learn, then you need a harsher punishment to keep you from doing it again." In addition to CHS and the seriousness of any given offense, multipliers add a third variable that serve solely to increase punishment. A member pointed out that this is often due to the Legislature reacting to news coverage of a surge in a specific type of crime. The member suggested the Task Force simplify the system to consider only the CHS and the offense seriousness in calculating sentencing ranges.

Another member agreed that multipliers serve primarily to increase punishment for recidivistic behavior, adding that it may make sense to treat repeat serious violent offenses differently than other types of crimes. A third member agreed that multipliers function in a retributive manner and add complexity to the system, adding that the Legislature will want to see a different means of consequences for repeat culpability if the Task Force recommends eliminating multipliers entirely. The Task Force might also recommend that the other six purposes in the Sentencing Reform Act besides punishment be given equal weight.

Keri-Anne Jetzer provided a link to a study on criminal history score recidivism by Robina Institute: [https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/minnesota\\_criminal\\_history\\_score\\_recidivism\\_report.pdf](https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/minnesota_criminal_history_score_recidivism_report.pdf)

A member asked if the group might consider presenting a potential recommendation to the Task Force to eliminate all multipliers. A member noted that a person who has a prior serious violent offense and gets charged with a second repeat violent offense already faces a very long sentence, which should not need any multipliers to lengthen it; this suggests that eliminating multipliers and keeping sentence

ranges as they are will likely result in sufficiently long sentences. Another member replied that multipliers and enhancements allow for judges to issue individualized sentences tailored to people's past behavior while accounting for current circumstances.

A member stated that multipliers, enhancements, and mandatory consecutive sentence rules have driven the sentences people refer to as irrationally long. That member expressed support for addressing those instead of significantly changing sentence ranges in the grid.

Amanda asked the Subgroup if they would like to review how other states have addressed these types of issues. Lauren showed information from Pennsylvania, including a stand-alone column for repeat felonies and another for repeat violent offenses.

Lauren also noted that the Subgroup could consider adding in increases in sentence length for any repeat violent offense comprised of either a percentage (e.g., increase range by 20%, 15%, or 10% depending on the offense seriousness level) or a number of months (e.g., increase range by 60, 50, 40, 30, 20, 10, 6, or 3 months depending on offense seriousness level).

#### **NEXT STEPS & ACTION ITEMS**

- Upcoming meeting topics: review how other states have addressed multipliers, mandatory consecutive sentences, repeat violent offenses, and enhancements.

#### **COMMENTS SUBMITTED BY GUEST OBSERVERS VIA ZOOM CHAT and/or EMAIL**

Joanne Smieja: I found the section concerning multipliers for FTR offenses confusing. It was my understanding that if a person was convicted of a second or subsequent FTR, any prior FTR was triple multiplied. When Clela edits the document could should make that section more clear?

David Triewailer: But violent offenses often have enhancements attached and the enhancements run consecutively

Joanne Smieja: Did I hear that if a person commits multiple offenses that are the "same criminal conduct" they don't count as separate offenses? If so, why does each illegal depiction viewed or possessed constitute as a separate offense?

David Triewailer: One possibility is to make multiple priors of the same offense into aggravating factors.

Bruce Glant: please address crimes that harm no one at some point

## **APPENDIX**

### **Criminal History Scoring**

The general rule for scoring is that prior felony convictions count as:

- Adult offenses count as 1 point
- Juvenile Violent offenses count as 1 point

- Juvenile non-violent (NV) offenses count as 1/2 point (rounded down)

Exceptions to “standard” scoring:

- 1. Burglary 1<sup>o</sup>** (violent offense):
  - a. Adult NV Burglary offenses count as 2 points
  - b. Juvenile NV Burglary offenses count as 1 point
  - c. Adult and Juvenile Violent & Serious Violent (SV) offenses count as 2 points
  - d. Any other felony offenses count standard
- 2. Violent** (defined in RCW 9.94A.030) offense (not Sex, SV, Burglary 1<sup>o</sup>, Felony Traffic, or Homicide/Assault by Watercraft or Manufacture Meth):
  - a. Adult and Juvenile Violent & SV offenses count as 2 points
  - b. Any other felony offenses count standard
- 3. Serious Violent** (defined in RCW 9.94A.030) offenses:
  - a. Adult and Juvenile Serious Violent (SV) offenses count as 3 points (convictions existing before the date of sentencing. If there are multiple current SV offenses, only the most serious offense is scored – all other SV offenses get a score of 0 and the sentences for each are served consecutively (RCW 9.94A.589(1)(b))
  - b. Adult and Juvenile Violent offenses count as 2 points
  - c. Any other felony offenses count standard
- 4. Felony Traffic** (defined in RCW 9.94A.030) offenses:
  - a. Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points
  - b. Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point
  - c. Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point
  - d. Adult convictions of Operation of a Vessel under the Influence offenses count as 1 point and juvenile offenses for Operation of a Vessel offenses under the Influence count as ½ point.
  - e. Any other felony offenses count standard
- 5. Homicide or Assault by Watercraft** offenses:
  - a. Adult and Juvenile Homicide or Assault by Watercraft offenses count as 2 points
  - b. Certain adult Traffic Misd/Gross Misd offenses count as 1 point
  - c. Certain juvenile Traffic Misd/Gross Misd offenses count as 1/2 point
  - d. Any other felony offenses count standard
- 6. Manufacture Methamphetamine** offense(NV):
  - a. Adult Manufacture Meth offenses count as 3 points
  - b. Juvenile Manufacture Meth offenses count as 2 points
  - c. Any other felony offenses count standard
- 7. Drug** offense (definition of Drug offense excludes simple possession) with history of a sex or serious violent offense (NV):

- a. Adult drug offenses count as 3 points
  - b. Juvenile drug offenses count cores as 2 points
  - c. Any other felony offenses count standard (unless current Drug offense is violent, than prior Adult and Juvenile violent/serious violent offenses count as 2 points)
8. **Escape from Community Custody** offense (NV):
- a. Adult Escape offenses count as 1 point
  - b. Juvenile Escape offenses count as ½ point
  - c. Only offenses meeting the definition of Escape (see RCW 9.94A.030(25)) count in the criminal history score – other felonies are not included in the score.
9. **Escape 1° or 2°** offenses (NV):
- a. Adult offenses count as 1 point
  - b. Juvenile offenses count as ½ point (violent or NV)
10. **Burglary 2° or Residential Burglary** offenses (NV):
- a. Adult and Juvenile Burglary 1° offenses count as 2 points
  - b. Adult Burglary 2° or Residential Burglary offenses count as 2 points
  - c. Juvenile Burglary 2° or Residential Burglary offenses count as 1 point
  - d. Any other felony offenses count standard
11. **Sex** Offense, other than Failure to Register as a Sex Offender (defined in RCW 9.94A.030):
- a. Adult and Juvenile Sex offenses count as 3 points
  - b. If the current is a Violent Sex offense, prior adult & juvenile non-Sex Violent offenses score as 2 points.
  - c. If the current is a SV Sex offense, prior adult & juvenile non-Sex SV offenses score as 3 points (if they are not other current SV offenses).
  - d. Any other felony offenses count standard
12. **Failure to Register as a Sex Offender** (FTR) offenses (ranked FTR are defined as Sex offenses):
- a. Adult and Juvenile Sex offenses that **are not** FTR are score as 3 points
  - b. Adult and Juvenile Sex offenses that **are** FTR score as 1 point
  - c. Any other felony offenses count standard
13. **Theft of a Motor Vehicle, Possession of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner’s Permission 1° or 2°**:
- a. Misdemeanor offense of Vehicular Prowling 2° counts as 1 point
  - b. Adult and Juvenile offenses of Theft 1° or 2° of a Motor Vehicle, Possession of Stolen Property 1° or 2° of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner’s Permission 1° or 2, count as 3 points
  - c. Any other felony offenses count standard
14. Felony **Domestic Violence** (defined in 9.94A.030) where DV was pleaded and proven:

- a. Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1°, Kidnapping 1° or 2°, Unlawful Imprisonment, Robbery 1° or 2°, Assault 1°, 2° or 3°, or Arson 1° or 2°.
- b. Count 2 points for each Adult offense where DV was pleaded/proven after 7/23/2017 for any of the following offenses: Assault of a Child 1°, 2° or 3°, or Criminal Mistreatment 1° or 2°.
- c. Count 1 point for each 2<sup>nd</sup> and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.
- d. Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011
- e. Any other felony offenses count standard

15. **Community Custody Point:** If the present offense was committed while the person was under community custody, 1 point is added to the criminal history score.

**Other Scoring Considerations:**

- Only “ranked” offenses (those assigned a seriousness level) receive a score
- If there is more than one current offenses, offenses score against one another (with some exceptions) as though they were criminal history.
- A finding of Sexual Motivation changes the categorization of any felony non-sex offense into a sex offense and as such, the offense is scored as a sex offense
- Class B Violent offenses that are anticipatory are not considered Violent offenses but still score as though it was a Violent offense
- For Class B and Class C offenses in criminal history can “washout” if conditions of crime-free behavior are met (with some exceptions)
- Offenses ruled as same criminal conduct do not score against one another
- Offenses committed prior to 7/1/1986 and served concurrently count as one offense for scoring purposes
- Some offenses in history may not be included in the criminal history score if they also resulted in an enhancement

**Note:** Original SRA had multipliers for the following offense types: Serious Violent, Burglary 1°, Violent, Vehicular Homicide, Escape, Burglary 2, and Drug offenses. Also, Juvenile offenses were only scored if the person was 15 year or older at the time the offense was committed and was less than 23 at sentencing.