

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: January 11th, 2022
Meeting via Zoom**

Attendees:

- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Lauren Knoth, *WA State Institute for Public Policy (WSIPP)*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Melody Simle, (Alt. for Suzanne Cook), *Statewide Family Council*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Guests: James Chambers, Bruce Glant, Joanne Smieja, David Triewailer

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

WELCOME & AGENDA REVIEW

Chris Page welcomed the Subgroup and reviewed the meeting focus, exceptions to standard scoring for certain offenses. Keri-Anne also mentioned that Matt Landon, with the Statistical Analysis Center of the Office of Financial Management, now has the information he needs to analyze the relationship between criminal history score (CHS) and recidivism. Amanda asked the group to review information on the exceptions to standard scoring rules, noting that it might present opportunities to advance the Task Force's policy goal of reducing complexity and errors in the sentencing system.

Exceptions to Standard Scoring for Certain Offenses

Lauren reviewed the 14 exceptions to standard scoring rules (*see Appendix A*) and the purposes for multipliers that have been discussed:

- **Retribution** – greater punishment because the individual has done this before
- **Risk prevention** – not well supported. Generalists actually have greater rates of recidivism.
- **Deterrence** – unknown. In general, general deterrence not well supported by the evidence. Specific deterrence because individuals are incarcerated longer.

A member asked why has there not been a repeat nonviolent offense multiplier, given that nonviolent offenses occur more frequently and arguably do more damage to society. **R.** The intent in the Sentencing Reform Act was to add violent multipliers for retribution for the more serious offenses.

The scoring rules show significant discretion in the hands of the state legislature, which has often added multipliers in response to media coverage of a particular incident. Discretion on multipliers lies primarily with prosecutors since multipliers are not reviewable. A member suggested that shifting discretion to judges and/or defense attorneys could help mitigate the disproportionate impacts.

A member commented that multipliers are often miscalculated, and present significant complications for both sentencing and the Department of Corrections (DOC). The member stated that multipliers primarily serve to increase punishment. Because they get calculated in the background, they reduce transparency in the court. Without empirical evidence that they reduce recidivism, these appear to function retributively and do not function to increase public safety. We might be better off eliminating them completely.

Lauren reminded the group that adding a column for serious violent and/or repeat violent offenses, as the group discussed in December, could function to address the same issues that the multipliers for violent and serious violent target. A member questioned how adding a column would reduce complexities and errors. Another responded that with the column visible on the grid, then if a defendant's criminal history score and/or sentence length were to increase then everyone could see why— there would be greater transparency

A member asked whether adding the column for repeat violent/serious violent offenses would ultimately function in a similar way as enhancements? Lauren explained how with the column the time added would expand the top portion of the range, but would not change the minimum of the range. So a judge could still sentence at the minimum as opposed to enhancements, which add an additional 12months to the minimum.

Amanda asked the group whether they would like to put forward the following potential recommendation to the full Task Force at the February meeting in order to get a better idea of what other members think about this approach.

Potential Recommendation: Eliminate all offense-specific multipliers. Add to the grid a repeat violent column that still increases the range for repeat violent and serious violent offenses.

- Maintain the retributive goal of increasing punishment where appropriate or justified for repeat violent offending while allowing for standard sentences if a judge determines that increased punishment is not appropriate/necessary.
- Eliminates complexity of having multiple different scoring rules
- Increases transparency and discretion for defense attorneys and judges.
- Eliminates the increased retribution for:
 - Escape from Community Custody
 - Escape 1/2
 - Burglary 2/residential burglary
 - Failure to register
 - Theft of Motor vehicle/possession of stolen vehicle
 - Manufacture methamphetamine
 - NV Drug offenses
 - NV felony traffic offenses

A member expressed support for that idea, noting that it would help their thinking to hear what other Task Force members have to say. All other members agreed that it would be helpful to get feedback and input from the full Task Force, noting that the group is not saying they are in agreement on the potential recommendation.

A member brought up the idea of a data dashboard to track disproportionality across demographics such as race, gender, age, and geography. The member observed that disparate treatment will likely continue to exist in the sentencing system at some level across the state; having a way to track it and potentially address it would improve the current system. The group then briefly discussed the collateral consequences of incarceration. Research into the relationship between incarceration and collateral consequences shows that the collateral consequences (e.g., legal financial obligations, loss of housing, deterioration in job prospects) increase recidivism. A report online [here](#) provides details.

Juvenile Scoring and Washout Periods

Amanda asked the group whether the elimination of offense-specific scoring rules should apply to juvenile defendants too. Keri-Anne pointed out that the above potential recommendation would leave only general scoring rules, in which every offense would count one point toward a person's CHS except juvenile scoring, which is ½ point on the person's CHS.

A member mentioned that recent research demonstrates that the last part of the human body to reach full maturity is the frontal lobe of the brain, which governs decision making. The member pointed out that the current dividing line between juvenile and adult, the age of eighteen, is not an accurate measure of adulthood.

Keri-Anne read from a Pennsylvania Sentencing Commission (report by Robina Institute at the University of Minnesota) that stated that compared to other states, Washington has lower juvenile scoring points for felonies. In brief, the report recommends limiting the use of juvenile felony scoring points.

The report suggested establishing an age cutoff after which points accrued for juvenile felonies would get phased out of the person's CHS. A member commented that prosecutors might support a shorter washout period for juvenile felony points. Currently juvenile points cannot wash out if the individual commits another crime during the washout period; the member questioned whether the washout rules for juveniles should continue to depend on a crime-free period. Another member asked if such a crime-free period should apply to any offense or just to offenses at least as serious as the prior offense.

A member suggested one potential path forward could be to ask the Task Force to recommend limiting the type of offenses that would accrue CHS points for juveniles to violent and serious violent offenses. Another route could be to limit it to offenses committed on or after a person's 16th birthday. A

member pointed out that case law over the years has changed the age by which people move from the status of juvenile to adult, with a recent case establishing that age as 21.

NEXT STEPS

Next week will continue the following discussions:

1. Should juvenile adjudications count in CHS?
 - Should adults who have that CH be treated the same as those who do not?
 - Should all count or just certain types (e.g., violent/serious violent)
 - Could it be limited to offenses committed on or after 16th birthday? Because of discretionary decline, there might already be disparity if youth of color are more likely to be declined to adult court for offenses between age of 16 and 18. Creates consistency in the policy considerations of age and violent/serious violent offenses for emerging adults.
 - Need to consider changes in the case law related to the definitions of juveniles (e.g., 21 vs 25)
 - Should they have special washout rules? Should the washout rules for juv be dependent on a crime free period?
2. General washout considerations
 - Should the crime free period be any offense or be as serious or more serious than previous offense?
 - Decay policy vs gap policy

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

N/A

APPENDIX A 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^o** (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^o, 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 2nd 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.