

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: June 21st, 2022  
Meeting via Zoom**

**Attendees:**

- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *WA Association of Criminal Defense Lawyers*
- Kameon Quillen, *Representing Interests of Crime Victims*
- Melody Simle, *Families of Incarcerated Persons*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Chief Brian Smith, *WA Association of Sheriffs & Police Chiefs*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Blaze Vincent, *Interests of Incarcerated Persons*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

**Research/Technical Support Consultant:** Dr. Lauren Knoth-Peterson, Washington State Institute for Public Policy

**Facilitation Team:** Amanda Murphy, Molly Stenovec

**Public Guests:** Jim Chambers, Bruce Glant, Joanne Smieja, David Trieweiler

**Welcome and Agenda Review**

Amanda welcomed everyone to the meeting and reviewed the agenda, which will focus on the following CHS outstanding items regarding exceptions to standard scoring rules:

- a) Should offenses score against one another when there is more than one current offense?
- b) Escape from community custody: 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.
- c) Community custody: Offenses committed while on community custody. Should extra point apply?
- d) Domestic Violence – clarify that under Potential Rec 15, DV multipliers eliminated and addressed as part of the repeat sv/violent column.
- e) Clarify and confirm that potential recommendation #15 is to eliminate all offense-specific multipliers and add the repeat sv/violent column - that the repeat sv/violent column was intended to replace all offense-specific multipliers related to serious violent and/or violent offenses.
- f) Discuss Task Force input on misdemeanor scoring potential recommendations. (presented at 6.2.22 CSTF meeting)

The group will briefly revisit (b) and (c) outstanding action items and then will then move on to discuss (a) Should offenses score against one another when there is more than one current offense? and (d) domestic violence.

### **Escape from Community Custody**

Escape from community custody: 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.

During the discussion last week on this topic, several questions emerged about what constitutes “escape” and how does DOC interpret this policy? The Research Team followed up with DOC—DOC noted that RCW 72.09.310 names “inmate” so shouldn’t be charged. However, when reviewing sentencing data, the Research Team noted that some counties do sentence with that charge and that the statute is applied differently across the state.

This charge/statute may apply if there is a DOC warrant out for the individual, however, the research team will continue to seek clarification. A member noted that in about 2008, the SGC put forward a few recommendations to clarify terminology, such as community custody, community placement, inmate, language—perhaps this is part of the legacy language that was not cleaned up with the introduction of the offender accountability act?

### **Potential recommendations for the group to consider:**

- Instead of eliminating scoring exception, could develop a recommendation to eliminate the offense, which would eliminate the need for the exception OR
- Eliminate the inclusion of priors under 72.09.310. Maintain the offense, but only the more serious prior escapes score.

Amanda asked the group how they would like to proceed. What are your thoughts on eliminating the offense, could your constituency live with that?

### **Discussion:**

- In speaking with local courts, only DOC can “book” an individual on this charge. Local jurisdictions do not use to seek convictions.
- Is there data on race about counties?
  - Yes, but Caseload Forecast Council treats Hispanic as “race” so not best race data
- This scoring rule only applies if “escape from community custody” is the current offense. If someone on EHM, that is included in escape 3 (a misdemeanor, with caveats)
- Some expressed interest in getting more information from the counties using the charge – context for using and how it being applied.
- WA Association of Prosecutors will discuss at their meeting later this week and will bring input back to the group next week.

- Several members expressed interest developing a recommendation to eliminate the offense.

**Next steps:** Grid Group will continue discussion, once have further clarification on how statute interpreted and constituent input.

### **Community Custody**

Community custody offenses committed while on community custody. Should extra point apply?

Amanda provided a brief overview: the group has been discussing scoring exceptions as a way to look for opportunities to reduce unnecessary complexity. If what the group has been exploring is whether it is possible to eliminate the exceptions to standard scoring rules and address them in another way that that would reduce complexity that has led to errors in the system.

### **Potential recommendations for the group to consider:**

- Eliminate the community custody scoring exception OR
- Eliminate the community custody scoring exception and add an aggravating factor for committing an offense while on community custody.

Discussion:

- If an individual is on custody and commits another crime – they will be sentenced and held accountable for that behavior.
- Several expressed support for eliminating – this rule just extends the punishment for individuals with a prior conviction eligible for supervision.
- If supervision restored for more crimes, prosecutors could potentially support elimination.
- There is a sanction for individuals who commit offenses while on supervision—this seems like a double punishment.
- If someone has not yet finished the term of supervision for a prior crime, that individual could potentially be more culpable. However, this exception does not apply to individuals who commit another crime while in prison or jail.

**Next steps:** Group will keep both recommendations, further discuss next week. But sees that there is energy around eliminating, since DOC would provide accountability/sanctions.

### **Discussion – Task Force input on misdemeanor scoring recommendations**

Amanda provided a brief overview of the four potential recommendations on misdemeanor scoring and emerging themes from the Task Force discussion at the June meeting.

The group reviewed each recommendation and discussed Task Force input.

**Misdemeanor Scoring Exception – Felony Traffic**

Potential Recommendation 28: Eliminate the special misdemeanor scoring exceptions for felony traffic.

Potential Recommendation 28a: Reclassify felony DUI and physical control from OSL 4 to OSL 6.

Overview: Task Force members/alternates have expressed confusion about status quo -- what the statutes are, how interpreted -- and what the potential recommendation does. Group has noted that in some instances the offense may have higher OSL if the individual did NOT steal the car.

Discussion:

- Heard support for potential recommendations at June meeting.
- Vehicle prowl: gross misdemeanor for the first 2, then the 3<sup>rd</sup> conviction is a felony.
- Group briefly discussed accuracy of the scoring sheet for this offense

**Misdemeanor Scoring Exception 3: homicide or assault by watercraft offenses**

Potential Recommendation 30: Eliminate the special misdemeanor scoring exceptions for homicide or assault by watercraft offenses and reclassify to the same OSL as the felony traffic offense.

Discussion:

- At CSTF meeting, general support for the recommendation.

**Misdemeanor scoring exception: felony domestic violence**

Potential Recommendation 31: Eliminate the misdemeanor scoring exception and instead create an aggravated factor or enhancement.

At the June full task Force meeting many members shared that they and their constituencies could not support eliminating scoring exceptions for domestic violence offenses. This has led to discussion about Potential recommendation 32 – to include language in the SRA that defines the scope of the criminal history score as limited to prior felony convictions. Another emerging suggestion: to address DV in a past conviction history, but in a way that is not a carve out/exception to scoring. Amanda then asked how group how they would like to address and how to move forward?

Discussion:

- If legislative action is required to make policy limiting scope of CHS to the felony convictions then they also have the ability to change it. Express support for including this language in the purpose/intent of a bill report and/or Task Force report.
- Unsure the point of this recommendation. Even as looking, we're thinking about ways that misdemeanor convictions could lead to a felony conviction.
- Expressed support that there should be a strong presumption in the SRA that calculating the CHS should primarily be based on past felony convictions. Don't see a way for the legislature to be held to this policy.
- If legislature puts this language in a bill/policy, then it is something that a future legislature must intentionally change. If the language is in a report, or in legislative intent of a bill – future legislators, may not be aware of or have any incentive to acknowledge.
- Express support for the recommendation – it's a way to reduce complexity.

Amanda asked if the group has any ideas about the ways to incorporate feedback generated at the June meeting—to consider prior misdemeanor convictions for DUI and DV while also reducing complexity.

**Discussion:**

- Could CHS calculations be limited to offenses within the SRA?
  - some offenses could be based on city ordinance...so the scoring would change based on geography. In the state code, then it could be more consistently applied. JON:
  - Another member noted disparity could still occur—if some individuals were only charged in municipal or state code.
- Believe there was a push for cities to adopt state code.
- Could this recommendation have the effect of diverting misdemeanors to district court?
- Expressed support for limiting CHS as much as possible to felonies, but don't have lots of energy about how that policy could be moved forward. Exceptions related to DV, and DUI were intentionally crafted by many different interest groups—modifications to current policy may be challenging.

**Felony Domestic Violence Scoring Exception**

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

**Discussion:**

What led to the changes that went into effect in 2011?

- Part of a DV omnibus bill, there had been a big review of DV offenses and sentencing. Those policy changes likely reflect that report. Rep. Goodman may be able to provide more context.
- Group discussed possible high-profile case that may have also contributed to policy changes
- Could these scoring exceptions be addressed by including DV in the repeat S/SV column?
  - See that the current exceptions add complexity, yet also heard from members/alternates that changes are not acceptable

Amanda asked about potential recommendation #15, which is to eliminate all the exceptions to standard scoring rules and to create a column for repeat S/SV, and how it would apply/address to this scoring exception?

- Not all the DV charges currently are S or SV (felony harassment, felony stalking, unlawful imprisonment, assault 3, Assault of a child 3, criminal mistreatment 1 or 2). Expressed support to explicitly name those offenses in the repeat column
- Expressed concern about creating recommendation to include DV offenses in a repeat column, noting that the group is not in alignment about whether the repeat column should be applied once OR the number of past V/SV charges. If the increase applies for each of the prior convictions, then the range would be increased much more significantly than if the CHS just increases.
- Many members could NOT live with the repeat column applying for each prior conviction. increasing w/ each past.
- See the logic of moving from the multipliers to the repeat column. Express support for further defining how the repeat column would work, then come back to the conversation about how to move forward with the DV exceptions.
- Expressed support that repeat column would be applied once. Initially interpreted as a having effect of reducing sentencing ranges—but starting to think about scenarios and comparing the range in current multiplier approach with repeat column approach.

Amanda: the multiplier/column approach is a core component of building the grid and pulling all the recommendations together. The time for the discussion is now. Is there a way to address past criminal convictions in a more transparent manner? Amanda encouraged to create some scenarios and see what it would lead to.

For the next meeting:

- Members will share constituency feedback, including input from WAPA meeting
- Continue discussion on repeat S/SV column, DV exceptions

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

*None submitted.*