

**Washington State Criminal Sentencing Task Force
Grid Sub-Group**

DRAFT Meeting Summary: July 12th, 2022

In Person: Helen Sommers Building, Office of Financial Management Conference Room 2015,
110 11th Avenue SW, Olympia, WA 98504
Hybrid Meeting via ZOOM and In-person

ATTENDEES:

- Sen. Chris Gildon, *WA Senate Republicans*
- Rep. Roger Goodman, *WA House Democrats*
- Greg Link, *WA Defenders Association*
- Melody Simle, *Families of Incarcerated Persons*
- Chief Brian Smith, *WA Association of Sheriffs & Police Chiefs*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Blaze Vincent, *Interests of Incarcerated Persons*

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

Facilitation Team: Amanda Murphy, Maggie Counihan, Zack Cefalu, Alec Solemslie

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

WELCOME AND AGENDA REVIEW:

Facilitator Amanda Murphy welcomed the group and reviewed the agenda. This is the first of two full day, in-person work sessions for the Grid Subgroup to put together the full package(s) of recommendations to be presented to the Task Force at the August 4th meeting and that will then go up for consensus deliberations at the September meeting.

Amanda explained that the facilitation team put together a first offer for the organizing/grouping of the potential recommendations (see Attachment A) to help get the Subgroup started in its conversation today. The group will begin by reviewing and providing feedback on how the potential recommendations are organized. Then the day will be spent focusing on sections A-C, which are the recommendations that pertain to the formulaic approach to the grid and the structural framework (offense classification proposal and the added columns) of the grid. Amanda and Dr. Knoth-Peterson then reviewed the packet of meeting materials for the group, which are included in Appendix A.

SECTION A: THE FORMULAIC APPROACH AND POST-FORMULA ADJUSTMENTS (POTENTIAL RECOMMENDATIONS 3, 6, 7, 8, 9, 10, 13, AND 14)

Dr. Knoth-Peterson provided a brief refresher of how the Subgroup created the formula for the simulated grid. When the Subgroup began its work, members discussed how there are cells on the current grid that are not valid because have sentence ranges that exceed the statutory maximum for the majority of the offenses in that OSL row.

	0	Current	1	Current	2	3	4	5	6	7	8	9+																														
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																																									
17	240	320	240	320	252	336	250	333	264	352	261	347	277	370	271	361	291	388	281	374	306	408	291	388	321	428	312	416	337	450	338	450	354	472	370	493	372	496	411	548		
16	104	138	123	220	114	152	134	234	126	168	144	244	138	184	154	254	152	203	165	265	167	223	175	275	184	246	195	295	203	270	216	316	223	297	257	357	297	397	298	397		
15	93	124	123	220	102	137	134	234	113	150	144	244	124	165	154	254	136	182	165	265	150	200	175	275	165	220	195	295	182	242	216	316	200	267	257	357	267	356	298	397		
14	82	110	123	164	90	121	134	178	100	133	144	192	110	146	154	205	121	161	165	219	133	177	175	233	146	195	195	260	161	214	216	288	177	236	257	342	236	315	298	397		
13	71	95	93	133	79	105	102	136	87	116	111	147	95	127	120	160	105	140	129	171	115	154	138	184	127	169	162	216	140	186	178	236	154	205	209	277	205	274	240	318		
12	61	81	78	102	67	89	86	114	74	98	95	125	81	108	102	136	89	119	111	147	98	131	120	158	108	144	146	194	119	158	159	211	131	174	185	245	174	233	210	280		
11	50	67	51	68	55	73	57	75	60	81	62	82	67	89	67	89	67	89	72	98	72	96	81	109	77	102	89	119	98	130	98	130	108	144	108	144	129	171	144	192	149	198
10	39	52			43	58			47	63			52	70			58	77			63	85			70	93			77	102			84	113			113	151				
9	16	21	31	41	19	25	36	48	23	31	41	54	27	37	46	61	33	44	51	68	40	53	57	75	48	64	77	102	58	77	87	116	89	92	108	144	81	108	129	171		
8	14	19	21	27	17	22	26	34	20	27	31	41	24	32	36	48	29	39	41	54	35	47	46	61	42	56	67	89	51	68	77	102	61	81	87	116	71	95	108	144		
7	12	16	15	20	14	19	21	27	17	23	26	34	21	28	31	41	25	34	36	48	30	40	41	54	36	48	57	75	44	58	67	89	52	70	77	102	61	82	87	116		
6	10	13	12	14	12	16	15	20	14	19	21	27	17	23	26	34	21	28	31	41	25	34	36	48	30	41	46	61	37	49	57	75	44	59	67	89	51	69	77	102		
5	3	10	6	12	3	12	12	14	4	15	13	17	5	18	15	20	6	22	22	29	8	26	33	43	9	32	41	54	11	38	51	68	13	46	62	82	16	54	72	96		
4	2	9	3	9	3	10	6	12	3	12	12	14	4	15	13	17	5	18	15	20	6	22	22	29	8	26	33	43	9	32	43	57	11	38	53	70	13	45	63	84		
3	2	7	1	3	2	8	3	8	3	10	4	12	3	12	9	12	4	14	12	16	5	17	17	22	6	21	22	29	7	25	33	43	9	30	43	57	10	36	51	68		
2	0	3	0	3	1	6	2	6	2	7	3	9	2	8	4	12	3	10	12	14	3	12	14	18	4	14	17	22	5	17	22	29	6	21	33	43	8	27	43	57		
1	0	2	0	2	0	3	0	3	1	5	2	5	1	6	2	6	2	7	3	8	2	8	4	12	3	10	12	14	3	12	14	18	4	14	17	22	5	18	22	29		
Unr	0 - 365 days																																									

Legend	
Blue	Overlapping Ranges
Light Blue	Minimally Overlapping
Dark Blue	Overlap w/New Exceeding Old
White	No Overlap
Yellow	Invalid Sentencing Range
Light Yellow	Partially Invalid

For example, in OSL 9 there are both Class A and Class B felony offenses; however, as the criminal history score (CHS) moves towards CHS 8 and 9+ the ranges in those cells exceed 120 months (the statutory maximum for Class B), exceeding the possible sentences someone can receive for a Class B felony. Additionally, OSL 12 includes a Class B felony; however, all of the sentencing ranges from CHS 0-9+ are not valid sentences for the Class B felonies in this OSL. These are addressed through the recommendations that create anchor points in the grid such as recommendations 3, 6, and 14. These recommendations address the issue of sentencing ranges exceeding statutory maximums through the creation of anchor points. To address cells where the presumptive sentencing range exceeds the statutory maximum for both Class C and B felonies, make the maximum of the range in CHS 9+ in OSL 5 54 months and for OSL 9 108 months. Establishing a formula for determining grid cell ranges for OSLs 1-5 by using 54 months as an anchor point for the most serious maximum punishment at OSL 5 in CHS 9+ as well as creating a formula for determining grid cell ranges for OSLs 6-9 using 108 months as an anchor for the most serious maximum punishment at OSL 9 in CHS 9+ addresses the issue of ranges exceeding statutory maximums.

In reviewing how the formula works, Dr. Knoth-Peterson pointed out that the formula is relatively consistent across the grid, with slight changes in the formula's specifications by regions in the grid. Maximum sentence ranges at 9+ increase equally by OSL within the grid's regional sections. The formula laid out in Potential Recommendation 13 and Attachment A exists as follows:

- Increase the number of seriousness levels from 16 to 18 and establish a formula for OSL 10-17:
- OSL 18 is Aggravated Murder with a range of 25 to life regardless of Criminal History Score (as it currently is in SL 16)
 - OSL 17 is Murder 1 and Homicide by Abuse with current ranges for Murder 1.
 - Minimum for CHS 0 OSL 17 set at mandatory minimum as the anchor.
 - Maximum from CHS 1 – 9+ is 105% of prior maximum.
 - Minimum from CHS 1-9+ is 75% of maximum for each cell.
 - OSL 16 is Murder 2 with current maximums, but minimums made consistent at 50% of the maximum.
 - OSL 15 to 10 are as classified currently except for the offenses pulled out above.

- The formula is used starting at OSL 16 (OSL 10-16, including M2):
 - High ranges:
 - Current maximum sentence for Murder 2 is used as the anchor for OSL 10-16.
 - Maximum at 0 CHS is 35% of Maximum at CHS 9+.
 - Maximum from CHS 1 – 8 is 110% of prior maximum for OSL 10-16.
 - Minimum is 75% of the maximum for each cell.
 - Mid-ranges:
 - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
 - Maximum from CHS 1 – 8 is 120% of prior maximum.
 - Minimum is 75% of the maximum for each cell.
 - Low-ranges:
 - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
 - Maximum from CHS 1 – 8 is 120% of prior maximum.
 - Minimum is 30% of the maximum for each cell.
- OSL 9-6: Class A/B offenses
 - Criminal History Score 9+ maximum for OSL 9 is 108 months which is slightly below the statutory maximum sentence for class B felonies.
 - Each decrease in OSL decreases the maximum sentence for CHS 9+ by 13 months.
 - Maximum for CHS 0 20% off the maximum at CHS 9+
 - Percentage increase in maximum for each additional criminal history score point: 120%
 - Percentage of the maximum used to establish the minimum: 75%
- OSL 5-1: Class A/B/C offenses
 - Criminal History Score 9+ maximum for OSL 5 is 54 months which is slightly below the statutory maximum sentence for class C felonies.
 - Each decrease in OSL decreases the maximum sentence for CHS 9+ by 9 months.
 - Maximum for CHS 0 20% off the maximum at CHS 9+
 - Percentage increase in maximum for each additional criminal history score point: 120%
 - Percentage of the maximum used to establish the minimum: 30%

Grid Subgroup Discussion:

The Subgroup discussed the formulaic approach of the grid and tried out multiple variations on the formula to see how changing certain aspects of the formula would change the sentence ranges. The summary below outlines the parameters included in the sentencing grid proposal that was developed by the Sentencing Grid Subgroup at the 7.12.22 all-day work session.

Below is the simulated grid updated to include all the changes made by the subgroup during the working session. In this grid the newly amended anchor points are highlighted in red as well as clearly showing the delineation between serious violent, violent, and nonviolent offenses that were mapped onto the grid.

	0	1	2	3	4	5	6	7	8	9+										
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																			
17	240.0	320.0	252.0	336.0	264.6	352.8	277.8	370.4	291.7	389.0	306.3	408.4	321.6	428.8	337.7	450.3	354.6	472.8	372.3	496.4
16	114.8	153.0	126.2	168.3	138.8	185.1	152.7	203.6	168.0	224.0	184.8	246.4	203.3	271.0	223.6	298.2	246.0	328.0	255.0	340.0
15	101.3	135.0	111.4	148.5	122.5	163.4	134.8	179.7	148.2	197.7	163.1	217.4	179.4	239.2	197.3	263.1	217.0	289.4	225.0	300.0
14	87.8	117.0	96.5	128.7	106.2	141.6	116.8	155.7	128.5	171.3	141.3	188.4	155.5	207.3	171.0	228.0	188.1	250.8	195.0	260.0
13	59.4	99.0	65.3	108.9	71.9	119.8	79.1	131.8	87.0	144.9	95.7	159.4	105.2	175.4	115.8	192.9	127.3	212.2	132.0	220.0
12	52.7	87.8	57.9	96.5	63.7	106.2	70.1	116.8	77.1	128.5	84.8	141.3	93.3	155.5	102.6	171.0	112.9	188.1	117.0	195.0
11	45.9	76.5	50.5	84.2	55.5	92.6	61.1	101.8	67.2	112.0	73.9	123.2	81.3	135.5	89.4	149.1	98.4	164.0	102.0	170.0
10	39.2	65.3	43.1	71.8	47.4	79.0	52.1	86.8	57.3	95.5	63.1	105.1	69.4	115.6	76.3	127.2	83.9	139.9	87.0	145.0
9	19.8	33.0	22.8	38.0	26.2	43.6	30.1	50.2	34.6	57.7	39.8	66.4	45.8	76.3	52.7	87.8	60.6	100.9	72.0	120.0
8	17.3	28.9	19.9	33.2	22.9	38.2	26.3	43.9	30.3	50.5	34.8	58.1	40.1	66.8	46.1	76.8	53.0	88.3	63.0	105.0
7	14.9	24.8	17.1	28.5	19.6	32.7	22.6	37.6	26.0	43.3	29.9	49.8	34.3	57.2	39.5	65.8	45.4	75.7	54.0	90.0
6	12.4	20.6	14.2	23.7	16.4	27.3	18.8	31.4	21.6	36.1	24.9	41.5	28.6	47.7	32.9	54.9	37.9	63.1	45.0	75.0
5	3.6	12.0	4.3	14.4	5.2	17.3	6.2	20.7	7.5	24.9	9.0	29.9	10.7	35.8	12.9	43.0	15.5	51.6	18.0	60.0
4	3.0	9.9	3.6	11.9	4.3	14.3	5.1	17.1	6.2	20.5	7.4	24.6	8.9	29.6	10.6	35.5	12.8	42.6	14.9	49.5
3	2.3	7.8	2.8	9.4	3.4	11.2	4.0	13.5	4.9	16.2	5.8	19.4	7.0	23.3	8.4	27.9	10.1	33.5	11.7	39.0
2	0.9	3.0	1.8	6.0	2.2	7.2	2.6	8.6	3.1	10.4	3.7	12.4	4.5	14.9	5.4	17.9	6.4	21.5	8.6	28.5
1	0.6	2.0	0.9	3.0	1.5	5.0	1.8	6.0	2.2	7.2	2.6	8.6	3.1	10.4	3.7	12.4	4.5	14.9	5.4	18.0
Unr	0 - 365 days																			

Over the course of the working session the Subgroup members tried out multiple amendments to the formula's structure until they were all able to coalesce around its changes. At the end of the day the proposed formulaic approach looked like this:

1. The number of seriousness levels increases from 16 to 18.
2. Felony offenses are sorted such that class B offenses are no higher than seriousness level 9 and Class C offenses are no higher than seriousness level 5. Further the group agreed to delineate between serious violent and violent offenses. Serious violent offenses are located in seriousness levels 14 – 17 with 17 being Murder 1/Homicide by Abuse, and violent offenses being located in OSL 10-13.
3. There are five formulas used to establish the cell ranges on the grid. Each formula includes the following three core component pieces:
 - a. An **Anchor** – this is a set value that establishes the foundation for all other range values.
 - b. **Percentage increase for each additional criminal history score** – this is a set percentage that determines how much the maximum in the range increases for each additional criminal history score point (this means there is a consistent increase in sentences as defendants move to the right across the grid).
 - c. **Percentage of the maximum used to establish the minimum** – this is a set percentage that determines the value of the minimum in a range, based on the value of the maximum in the range.
4. The five formulas are as follows:

- a. **OSL 17: Murder 1/Homicide by Abuse**
 - i. **Anchor:** Criminal History Score 0 minimum of 240 months (aligned with the mandatory minimum).
 - ii. **Percentage increase in maximum for each additional criminal history score point:** 105%
 - iii. **Percentage of the maximum used to establish the minimum:** 75%
- b. **OSL 16-14: Serious Violent Offenses**
 - i. **Anchor:** Criminal History Score 9+ maximum for OSL 14 is 40 months higher than the maximum for Criminal History Score 9+ for OSL 13. Each additional increase in seriousness level (for 15 and 16) increases the maximum at 9+ 40 months from the previous.
 - ii. **Maximum for CHS 0:** 45% off the maximum at CHS 9+
 - iii. **Percentage increase in maximum for each additional criminal history score point:** 110%
 - iv. **Percentage of the maximum used to establish the minimum:** 75%
- c. **OSL 13-10: Violent Offenses**
 - i. **Anchor:** Criminal History Score 9+ maximum for OSL 10 is 25 months higher than the maximum for Criminal History Score 9+ for OSL 9. Each additional increase in seriousness level (for 11-13) increases the maximum at 9+ 25 months from the previous seriousness level.
 - ii. **Maximum for CHS 0:** 45% off the maximum at CHS 9+
 - iii. **Percentage increase in maximum for each additional criminal history score point:** 110%
 - iv. **Percentage of the maximum used to establish the minimum:** 60%
- d. **OSL 9-6: Class A/B offenses**
 - i. **Anchor:** Criminal History Score 9+ maximum for OSL 9 is 120 months which aligns with the statutory maximum sentence for class B felonies.
 - ii. **Calculation of other maximums at CHS 9+:** Each decrease in OSL decreases the maximum sentence for CHS 9+ by 15 months.
 - iii. **Maximum for CHS 0:** 27.5% off the maximum at CHS 9+
 - iv. **Percentage increase in maximum for each additional criminal history score point:** 115%
 - v. **Percentage of the maximum used to establish the minimum:** 60%
- e. **OSL 5-1: Class A/B/C offenses**
 - i. **Anchor:** Criminal History Score 9+ maximum for OSL 5 is 60 months which aligns with the statutory maximum sentence for class C felonies.
 - ii. **Calculation of other maximums at CHS 9+:** Each decrease in OSL decreases the maximum sentence for CHS 9+ by 10.5 months.

- iii. **Maximum for CHS 0:** 20% off the maximum at CHS 9+
 - iv. **Percentage increase in maximum for each additional criminal history score point:** 120%
 - v. **Percentage of the maximum used to establish the minimum:** 30%
- f. After calculating ranges, values are floored. That is, all numbers after the decimal are removed and not rounded. Thus 29.1 would become 29 and 29.9 would become 29.

The summary will now go into each of the five formulas to discuss the conversations and ultimate changes made for each of the five formulas during the work session:

OSL 17: Murder 1/Homicide by Abuse

- 1) **Anchor:** Criminal History Score 0 minimum of 240 months (aligned with the mandatory minimum).
- 2) **Percentage increase in maximum for each additional criminal history score point:** 105%
- 3) **Percentage of the maximum used to establish the minimum:** 75%

The first formula for specifically OSL 17 differs than the rest of the other formulas. Whereas the other four formulas have their anchors set at the statutory maximum, this formula has its anchor point set at the mandatory minimum for both Murder 1 and Homicide by Abuse, this being 240 months. The Subgroup did not spend much time discussing this formula other than the anchor should be specified to be set at 240 months to align with the mandatory minimum rather than being any different value, as well as leaving this OSL for these two specific offenses.

OSL 16-14: Serious Violent Offenses

- 1) **Anchor:** Criminal History Score 9+ maximum for OSL 14 is 40 months higher than the maximum for Criminal History Score 9+ for OSL 13. Each additional increase in seriousness level (for 15 and 16) increases the maximum at 9+ 40 months from the previous.
- 2) **Maximum for CHS 0:** 45% off the maximum at CHS 9+
- 3) **Percentage increase in maximum for each additional criminal history score point:** 110%
- 4) **Percentage of the maximum used to establish the minimum:** 75%

This formula was generated through the Subgroup's discussions around their desire to create a delineation in the new grid between serious violent and violent offenses. Originally this formula was a part of a larger formula encompassing OSLs 10-16, however the Subgroup did not feel it was appropriate to lump both serious violent and violent offenses together in the same formula. The group discussed the possibility of saving the top 3 OSLs, (OSL16, 17, and 18) for serious violent crimes and the next set of OSLs (10-15) for violent crimes. This could also potentially lead to reclassifying what crime is a "serious violent" crime versus what is a "violent" crime. That might better reflect the jump in severity of sentences on the simulated grid for OSLs 16-18 (serious violent crimes). However, group members suggested saving OSL 14-16 for serious violent crime. The Subgroup felt that the rationale of serious violent offenses having their own region of the grid in higher OSLs would allow the group to create a

separate formula adjustments specific to these offenses. The original formula for OSLs 10-16 included a high-range, a mid-range, and a low-range each of which has different variations on the calculations for sentencing ranges.

The Subgroup changed the maximum for CHS 0 to be based on 45% of the maximum at CHS 9+, in the original formula for OSL 10-16 had this percentage set at 35% for the high range, and set at 20% for the low and mid-range. The Subgroup felt that serious violent offenses were more deserving of larger percentages of the maximum used to establish the minimum when designed to be isolated on their own. The Subgroup further agreed to have the percentage increase in maximum for each additional criminal history score point be set at 110%, which in the original was the percentage used in the high range, but in both the mid and low ranges the percentage used was set at 120%.

Lastly, the Grid Group decided to amend the anchor for the serious violent specific region to be set having Criminal History Score 9+ maximum for OSL 14 being 40 months higher than the maximum for Criminal History Score 9+ for OSL 13, thus each additional increase in seriousness level increases the maximum at CHS 9+ by 40 months. This was done rather than using the current maximum sentence for Murder 2 is used as the anchor for OSL 10-16, which had the anchor set at 397 months.

OSL 13-10: Violent Offenses

- 1) Anchor:** Criminal History Score 9+ maximum for OSL 10 is 25 months higher than the maximum for Criminal History Score 9+ for OSL 9. Each additional increase in seriousness level (for 11-13) increases the maximum at 9+ 25 months from the previous seriousness level.
- 2) Maximum for CHS 0:** 45% off the maximum at CHS 9+
- 3) Percentage increase in maximum for each additional criminal history score point:** 110%
- 4) Percentage of the maximum used to establish the minimum:** 60%

As mentioned above, this formula also was generated through the Subgroup's discussions around their desire to create a delineation in the new grid between serious violent and violent offenses. This formula is specific to violent offenses that have been categorized between OSL 10-13. This formula created to provide a delineation between serious violent and violent offenses is where the Subgroup spent much of their time during this work session, and this formula differs vastly from both the original OSL 10-16 formula as well as from the formula for serious violent offenses. This was intentionally designed by the Subgroup to capture the differences in both serious violent and violent offenses as well as the levels of culpability they carry.

First, the group amended the rule that the minimum in each cell must be 75% of the maximum, changing this to have the minimum be 60% of the maximum. This generated a slight increase in maximums but significant decreases in minimums on the grid and allowed for an almost 100% overlap from the current grid and new simulated grid in these OSLs. In the original formula, having the minimum at 75% of the maximum means the maximum sentence ranges in the status quo would decrease more significantly than the minimums. The maximums do not decrease as much in this new 60% simulation; the minimums decrease more significantly and the maximums either minimally decrease or slightly increase from the status quo.

The Subgroup felt that serious violent offenses were more deserving of both larger percentages of the maximum used to establish the minimum as well as a more significant jump from one increasing OSL to the next. Before adjusting both the serious violent and violent formulas, several members had concerns surrounding the “jumps” in increases of the maximums in ranges from one OSL to the next, especially from OSL 10-17. Members were concerned that the increase of 39 months for each increasing OSL is too large of an increase in time for the next OSL. To gauge acceptability, Amanda asked what amount between 5 and 39 months would the group like to see, keeping in mind this must fit into the formula. She asked the group if 30 months would be a more appropriate jump for each increasing level. To figure out what numerical jump they could coalesce around; the group began the discussion to find the appropriate anchor point(s) for OSLs 10-16. Members supported the anchor points for OSL 10-16 being designed based on the differing types of offenses, such that OSL 14-16 and OSL 10-13 would each have separate anchor points from each other. This would allow for the creation of graduating increases for each additional increase in seriousness level increases the maximum at 9+. This is how OSLs 10-13 received an anchor of an increase of 25 months, while OSLs 14-16 received an increase of 40 months. Like the discussion for the setting the anchor point for OSL 14-16, the anchor was changed from originally using the current maximum sentence for Murder 2 being used as the anchor for OSL 10-16, which had the anchor set at 397 months.

As with the formula above for serious violent offenses, the group made changes from the original OSL 10-16 formula to create this separation in offenses. The Subgroup changed the maximum for CHS 0 to be based on 45% of the maximum at CHS 9+, in the original formula for OSL 10-16 had this percentage set at 20% for the low and mid-range (which would fall in the OSLs in this formula). Like above, the Subgroup further agreed to have the percentage increase in maximum for each additional criminal history score point be set at 110%, which changes from the original formula was set at 120% for both the mid and low ranges.

OSL 9-6: Class A/B offenses

- 1) Anchor:** Criminal History Score 9+ maximum for OSL 9 is 120 months which aligns with the statutory maximum sentence for class B felonies.
- 2) Calculation of other maximums at CHS 9+:** Each decrease in OSL decreases the maximum sentence for CHS 9+ by 15 months.
- 3) Maximum for CHS 0:** 27.5% off the maximum at CHS 9+
- 4) Percentage increase in maximum for each additional criminal history score point:** 115%
- 5) Percentage of the maximum used to establish the minimum:** 60%

This formula was also heavily edited by the Grid Subgroup during the conversations about the formulaic approach. Many of the components of this formula were edited from the original formula.

The group discussed the simulated grid’s anchor points, with some members asking to see the anchor points set as the statutory maximum (rather than slightly below the stat max). This would set the 120 months (rather than 108 months in the original formula) at OSL 9 CHS 9+. Members discussed the original rationale behind setting the anchor below the stat max which was designed to allow for a term

of community custody to be added to the max sentence in that cell. Input from the Subgroup included a number of members suggesting that the anchor point for the formula be the actual stat max, so the Subgroup decided to change the formula to be set at the anchor points of 120 months in this formula.

As a part of the earlier discussion to establish graduated increases in “jumps” from the maximum as CHS 9+ from one OSL to the next, this conversation also extended to the jumps in OSLs 1-9. For OSLs 6-9 it was a shared sentiment among the group that these offenses were deserving of a smaller increase than higher OSL offenses. Since it was established earlier that offenses in OSL 14-16 will receive an increase of 40 months for each increase in seriousness level and offenses in OSL 10-13 receive an increase of 25 months, it was determined that offenses in OSL 6-9 would now be set at 15 months. 15 months was the number arrived at through the formula due to the changes by setting a new anchor point of 120 months subtracted by the anchor for OSLs 1-5 (later decided to be set at the stat max of 60 months) and divided by the number of seriousness levels in this formula (4 seriousness levels) and this resulted in a 15 month jump. This departs from the original formula which had this jump set at a 13 month increase.

The group made changes to the percentage used to calculate the maximum at CHS 0 from the original OSL 6-9 formula. The Subgroup changed the maximum for CHS 0 to be based on 27.5% of the maximum at CHS 9+, in the original formula for OSL 6-9 had this percentage set at 20%. The rationale in doing so was to use an increase in the percentage to increase the jump from one OSL to the next at CHS 9+ from 13 months to 15 months.

The Subgroup agreed to change the percentage increase in maximum for each additional criminal history score point. In the original formula this percentage was set to be at 120% however the group was able to coalesce around this percentage changing to be set at 115%. The demonstrated effect was a slight reduction in both the minimums and maximums in the ranges, however given the increased percentage to determine the maximum for CHS 0 provided an increase in both the minimums and maximums the group felt this change from 120% to 115% to be appropriate.

The final change made from the original formula in this section to this new formula was the amendment of the rule to determine minimum in each cell. Originally for this section this formula had the minimum being 75% of the maximum however the group felt that in order to create a reduction in the minimums that changing this to have the minimum be 60% of the maximum was more appropriate. The group agreed on the principle that as the seriousness levels decreased so too should the percent of the maximum used to calculate the minimum, saving the 75% of the maximum for serious violent offenses.

OSL 5-1: Class A/B/C offenses

- 1) Anchor:** Criminal History Score 9+ maximum for OSL 5 is 60 months which aligns with the statutory maximum sentence for class C felonies.
- 2) Calculation of other maximums at CHS 9+:** Each decrease in OSL decreases the maximum sentence for CHS 9+ by 10.5 months.
- 3) Maximum for CHS 0:** 20% off the maximum at CHS 9+

- 4) **Percentage increase in maximum for each additional criminal history score point:** 120%
- 5) **Percentage of the maximum used to establish the minimum:** 30%

For the final formula in the overall formulaic approach, several members said themselves and their constituencies did not understand the creation of sentencing ranges in the simulated grid that do not reach the statutory maximum. While they understand this was done to include the possibility of having someone sentenced to community supervision, they feel the range should extend to the statutory maximum to allow for judicial discretion to sentence up to the maximum or provide community custody. This discussion was in reference to the anchors in both this formula and the formula for OSL 6-9. Both the anchor points for these two formulas were first set slight below the statutory maximum at 54 months for OSL 1-5 and 108 months for OSL 6-9. However, when the group agreed the change the anchor in OSL 6-9 to be 120 months (the statutory maximum), they also agreed around changing the anchor for this formula to be set at the statutory maximum as well, changing the anchors in OSL 5 at CHS 9+ at 60 months (rather than 54 months).

As mentioned above, a part of the earlier discussion to establish a graduated increases in “jumps” from the maximum as CHS 9+ from one OSL to the next, the conversation also extended to the jumps in OSLs 1-5. Due to the changes of setting a new anchor point of 60 months this created a new value in the increase at CHS 9+ from one OSL to the next. The new anchor of 60 months is subtracted by the anchor for OSLs 1 (18 months) and divided by the number of seriousness levels in this formula (4 seriousness levels) and this resulted in a 10.5 month jump. This departs from the original formula which had this jump set at a 9 month increase.

The final three components of this formula, the maximum for CHS 0, the percentage increase in maximum for each additional criminal history score point, and the percentage of the maximum used to establish the minimum all remained unaltered from the original.

Grid Group Input:

- A grid group member asked how many people annually are sentenced under these OSLs that have sentencing ranges that go beyond the statutory maximum.
 - A member of the research team pointed out that 85% of the charges sentenced in OSL 9 are a Class A felony of Robbery 1 and this OSL is rarely used to sentence Class B felonies.
- A member asked if instead of saving OSL 10 to recalibrate offenses, whether the group should instead propose saving OSL 13 for this, since the offenses in that OSL are rarely charged and sentenced. For example, one of the offenses in OSL 13 is “Malicious placement of explosives 2,” last used in 2018.
 - In the new simulated grid, both OSL 14 and OSL 15 have just two offenses in them. This is the result of the Grid Groups potential recommendation to put Murder 1 and Homicide by Abuse in the same OSL (OSL 17) as they have a mandatory minimum and Murder 2 would then be in OSL 16. The group discussed whether to combine the offenses in OSL 14 and 15 into one OSL, however, doing so would then put Malicious placement of explosive in the 1st degree and 2nd degree into the same OSL.

- A member did specify that with this revised setting of the formula's anchor points, they think their constituency could support the anchor points.
- A member had a question about the OSL 9 and CHS 9 cell, specifically why the courts are sentencing at a midpoint of 42% of the possible range, when 42% of the minimum is below the range laid out in the sentence and 42% of the maximum does not reach the statutory maximum.
 - This can be due to the varying classifications of felonies in this OSL, as most of the sentences in the range are for Robbery 1. The information on the average sentence range in OSL 9 and CHS 9 is about 138 months. The new simulated grid sets the anchor point at a maximum of 120 months.
 - A member expressed concern about having the new maximum set at 18 months below the average.
- A member asked why we are not setting anchor points in the formula based on the average sentences that judges give for the specified OSL and CHS.
 - The resulting discussion highlighted the need to change certain ranges to reduce the length of sentences because of the existing invalid sentence ranges for some of the offenses in those OSL. Potential recommendation #2 makes it so that Class B felonies go no higher than OSL 9 and Class C no higher than 5. Potential Rec 2 provides a way to create a formulaic approach as it delineates where mathematical anchor points would be – which leads to potential recommendation #3. The rationale the group discussed was if OSL 9 is the highest OSL for Class B then the maximum sentence that can be issued for a Class B would be the max of the range for CHS 9+. The approach is to address the inaccuracy/ineffectiveness of the current grid where the sentence ranges are not valid for many of the offenses at OSL 9, CHS 8 (to some extent) and CHS 9.

Section B: Offense Classification (This section concerns Recommendations **2, 13a, 28a, and 33.**)

As mentioned earlier and in Attachment G, per the group's proposed recommendations and the earlier discussion, they agreed around felony offenses being sorted such that Class B offenses are no higher than seriousness level 9 and Class C offenses are no higher than seriousness level 5. The group also agreed around delineating between serious violent and violent offenses such that serious violent offenses are located in seriousness levels 14 – 17 with 17 being Murder 1/Homicide by Abuse, and violent offenses being located in OSL 10-13. The group then decided to adjust the two formula for serious violent and violent offenses to further the delineation between the two being adjusting the specifics in these two formulas.

This new distinction would build increases according to each "region" of the new simulated grid, with Class Cs having a jump of 10.5 months, Class Bs having a jump of 15 months, Class A violent offenses having a jump of 25 months, and Class A serious violent offenses having a jump of 40 months. A member noted that this could create a scenario where the maximums are decreasing more than the minimums are increasing; however, this increase in the potential ranges gives judges more discretion in sentencing.

Further, this new separation on the grid between serious violent offenses and violent offenses would create a situation in which offenses that are considered serious violent that exist in OSL 10-13. Consequently, there will be necessary reclassifications of either the violent/serious violent designation or their associated OSLs to make these changes appropriate. The reclassification would entail having to reclassify serious violent crimes that exist in OSLs 10-13 such as *kidnapping 1*, *trafficking 1*, *malicious explosion 1*, and *manslaughter 1*. The group would either have to reclassify these as violent offenses or move them up to a higher OSL to fit into the OSLs saved for serious violent offenses.

Grid Group Input:

- Several members had concerns surrounding the “jumps” in increases of the maximums in ranges from one OSL to the next, especially from OSL 10-17.
 - Judicial discretion can help address concerns members had associated with the increases in ranges, even if the “jump” is higher than some may be comfortable with.
 - Another member proposed to create a simulated grid with 16 OSLs similar to the current grid, with two separate anchor points for violent and serious violent crimes. This would save the largest increases in sentence range for the most serious violent crimes.
- A member expressed that their constituency would be concerned with any drop in sentencing ranges greater than 5%. They suggested being more intentional on the top 3 rows so they are as follows: OSL 18 = Aggravated Murder 1, OSL 17 = Murder 1, OSL 16 = Murder 2, and OSL 15 = the rest of the serious violent crimes.
- A member said the legislature created the varying mix of felony classes in different OSLs because the Class A and B felonies in lower OSLs (with Class C felonies) were seen as deserving of less time. Separating the felony classes and using the statutory maximum as an anchor point would increase the associated sentences for these Class A’s and B’s in lower OSLs and they cannot support this. Instead, they recommended reclassifying these offenses to be Class C’s to fit into these lower OSLs to ensure no one is receiving extended sentences for offenses considered worthy of significantly shorter sentences than others in their class(es).
- A member asked whether the group should reclassify offenses based on the perceived level of seriousness compared to other similar offenses in that OSL or based on the perception of the seriousness level and the appropriate confinement time of that specific offense?
 - Several members expressed that felony classes can be mixed together in similar OSLs, voicing preference for moving all offenses in a given felony class down to the corresponding lower OSLs, since moving all lower offenses in one felony class up to higher OSL without reclassifying that offenses’ felony class runs the risk of having invalid sentencing ranges.
 - The group noted that the grid has no built-in guidance for the creation of future offenses; this group now has the opportunity to do so by recommending guiding principles for future legislatures to follow when creating new offenses and deciding where on the grid to place them (or for other entities such as the SGC to follow when reclassifying offenses).
- A member expressed concern with the creation of categories that classify regions of the grid for specific felony classes such as OSL 1-5 for Class Cs, OSL 6-9 for Class Bs, and OSL 10-18 for Class A, as they are concerned about the potential increase in the severity of sentences as compared to the existing grid, especially in the transition zones for felony classes (OSL 5-6 and OSL9-10).

Section C: New Columns (Recommendations to eliminate offense-specific multipliers and replace them with both a Serious Violent/ Violent repeat offender column and an Aggravated Departure Length Cap Column. This section concerns Recommendations **15, 17, and 18.**)

Dr. Knoth-Peterson reviewed the recommendations in this section and how they would affect the structure of the new grid. She also provided an overview of the two new columns that would be added to the simulated grid's structure. These two columns would be replacing all offense-specific multipliers with a repeat violent/serious violent column and capping the maximum aggravated departure length.

The repeat Serious Violent/Violent offender column would replace the offense-specific multipliers from the criminal history score calculation with a new column that increases the maximum of the standard sentencing range if the individual has convictions for a previous violent or serious violent offense. These additional increases include 6 months for Class C felonies, 12 months for Class B felonies, and between 24 months for lower-level Class A offenses and 60 months for the most serious Class A offenses.

The column for aggravating departure column would function in a similar capacity to the SV/V repeat offender column by creating maximum lengths for aggravated departures from standard sentencing ranges. This column would add a onetime extension onto the maximum of the standard range rather than multiple extensions onto the maximum for each aggravating factor. The maximum cap on aggravating departures is graduated such that longer departures are associated with higher OSLs. The maximum departure lengths for OSL 5 and below is not to exceed 6 months, for OSL 6-9 the departure is not to exceed 12 months, and for OSLs 10-17 the maximum departures exist on a graduating scale from 24 months to 48 months.

A member asked if both columns can interact with each other or if they are mutually exclusive; Dr. Knoth-Peterson clarified that both can apply at the same time, one at a time can apply, or neither can apply. As initially envisioned, for both columns the additional time added onto the sentencing range may only be used once regardless of the number of priors or aggravators in that specific case. This led to a discussion on how these columns should be used in relation to the number of priors a defendant has and how this should be scored. The group was split on whether each prior should be counted to increase the range's maximum (thus increasing sentences for each prior) or if any number of priors would together result in one flat addition to the sentence.

The repeat violent offender column was built to eliminate multipliers (seen as adding complexity) and the aggravating departure column was made to limit the racial disproportionality associated with discretionary application of aggravating factors. The number of exceptional sentences has gone down over the last 15+ years but these sentences still have relevance (research has shown that the length and application of these sentences have exacerbated racial disproportionality, with most of these sentences used against defendants of color).

Grid Group Input:

- A member expressed concern because the columns can add more time than multipliers and worries that these columns will increase incarceration beyond what multipliers currently do. Additionally,

as the research shows, multipliers and aggravators are applied disproportionately against BIPOC defendants, so these columns might uphold or even exacerbate the status quo of racial disproportionality. As a result, these numbers will have to be recalibrated for them to reach consensus on these columns.

- Another member did not support the maximum addition of time in these columns that add 5 years onto a sentence and expressed support for recalibrating the additional time potentially given via these columns.
- A member pointed out that the group must think through the unintended consequences that may emerge from changes to the status quo, in this case the potential use of Three Strikes and exceptional sentences to leverage plea deals that might ensue from the elimination or limiting of multipliers and aggravating sentences.
- A member suggested that the new columns would add complexity and expressed interest in continuing this discussion with the full Task Force. They feel this recommendation is a change made for the sake of expanding judicial discretion and do not see the multiplier status quo as complex.
 - Another member responded that while some members may feel that the status quo is not complex, there are plenty of examples of errors in the calculations of these exceptional sentences and multipliers.
 - Calculating criminal history scores is a complex process and many people are not aware how it works. People that work in the system might think that the calculation of criminal history scores is easy, but most people do not work in the system.
- A member expressed that their constituency could support the new structure of the simulated grid with all the changes made today; however, two members expressed concerns with the SV/V columns and gaining support for consensus among their constituents.
- There is no mechanism to overcome the legacy effects of the War on Drugs, which via multipliers led to disproportionately increased levels of incarceration and sentence lengths.

Action Items and Looking Forward:

Amanda thanked members for their hard work and congratulated them on the amount they accomplished today. Next week the group will resume its regular 90-minute Zoom meetings, continuing the conversation around the proposed new columns and exceptions to standard scoring in CHS, and possibly rehashing discussion of washout periods. Amanda reminded the group of its second all-day work session on July 26th, which will resume conversations surrounding the two new columns, focusing on the aggravator departure cap column, and considering whether further offense reclassification is needed to delineate between violent and nonviolent offenses. Depending on how long these conversations take, the group will also continue working through the remaining section D-J on the recommendations roadmap.

Action Items: Dr. Knoth-Peterson will develop a narrative to describe the formulaic approach and structure of the new simulated grid that includes the changes made during today's work session. She will also create a list of offenses and how their sentence would change from the current grid to the updated simulated grid.

Appendix A

Attachment A: [CSTF grouping of potential recs draft 7.28.22](#)

Attachment B: [Draft Compiled Grid and Offense Class Proposals 7.12.22](#)

Attachment C: [Combined Vertical and Horizontal Potential Recommendations Task Force Input](#)

Attachment D: [CSTF Detailed guide potential rec part 2 horizaxis draft 7.7.22.pptx](#)

Attachment E: [CSTF Detailed guide potential recs part 1 vertaxis draft 6.2.22.pptx](#)

Attachment F: [Proposed Recommendation New Felony Sentencing Grid 7.27.22](#)

Attachment G: [Workshop Workbook with Variable Formula](#)