

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

DRAFT Meeting Summary: July 26th, 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*
- Clela Steelhammer, *Caseload Forecast Council*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Blaze Vincent, *Interests of Incarcerated Persons*
- Keri-Ann Jetzer, *Sentencing Guidelines Commission*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Tiffany Attrill, *Interests of Crime Victims*
- Nick Straley, *Interests of Incarcerated Persons*
- Kameon Quillen, *Interests of Crime Victims*

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

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

Public Guests: Jim Chambers, David Triewailer, Bruce Glant, Carolyn Gray

Welcome and Agenda Review:

Facilitators Amanda Murphy and Chris Page welcomed the group and reviewed the agenda for today's meeting. On July 12th, the Subgroup created a distinction between where serious violent offenses and violent offenses exist on the grid. The first agenda item is to address the second part of the offense classification proposal, which is whether additional sorting is needed to delineate violent and nonviolent offenses on the grid. For example, violent offenses could exist in OSL 9 or they could be in OSL 9 and 8, or even 9, 8, and 7, with OSL 6 and below reserved for non-violent. To aid this conversation, Dr. Knoth-Peterson created a workbook (that members requested on the 12th) to allow folks to see what the sentence range changes would be when moving specific offenses.

The second agenda item is to pick back up where the group left off on the 12th: looking at the two proposed additional columns (structural components of the grid). They will start with the repeat serious violent/violent (sv/v) column. As requested on Tuesday, Clela and Keri-Anne put together some sample scoring scenarios to compare current multiplier scoring with eliminating the multiplier and using the sv/v column approach. Then the group will address the aggravated departure cap (aggravator) column.

After the group finishes these three items, they will start going through the rest of the sections (Sec. D-J) of potential recommendations, focusing on those with multiple options. The goal for these is to agree on one proposed recommendation for the Task Force to consider. Any that the group does not get to will be on the agenda for the Tuesday meeting on Aug 2nd.

The Grid group will present what they accomplish today and next Tuesday to the full Task Force at its August 4th meeting and the first full-day work session attempt at building consensus at the August 31st meeting.

Amanda and Dr. Knoth-Peterson then reviewed the meeting materials (See Appendix A) with visuals of the recommendations that highlight both the new structure of the grid and its formulaic approach, as well as how these interplay with the list of offenses that would require recalibration.

Delineation Between Violent and Nonviolent Offenses:

Dr. Knoth-Peterson recapped the separation of violent and serious violent formulas in the grid. The final decision on July 12th was to split OSL 14-16 (serious violent) and OSL 10-13 (violent) to delineate between serious violent and violent offenses. Since there is a mandatory minimum for Murder 1 in OSL 17, it is separate and operates under a different formula. This creates a decrease in all minimums of sentence ranges, with some increases in maximums in OSL 11 and OSL 16.

Currently, there are offenses in the current grid classified as serious violent and exist below between OSL 10-13. As part of the proposed structure of the new grid, these offenses cannot stay here while being classified as serious violent. Thus, the group will need to coalesce on a way to either redesignate these offenses as violent or move them up to higher OSLs. If these offenses are moved up to a higher OSL, the largest moves in OSL would be for offenses:

- *Assault 1* (moving from OSL 12 to OSL 13)
- *Assault of a Child 1* (moving from OSL 13 to OSL 15)
- *Rape 1* (moving from OSL 12 to OSL 15)
- *Manslaughter 1* (moving from OSL 12 to OSL 14)
- *Kidnapping 1* (moving from OSL 11 to OSL 14)

This led to a discussion about whether the group should reclassify offenses in higher OSLs to distinguish between serious violent and violent offenses, or if some serious violent offenses should be reclassified as violent offenses. Dr. Knoth-Peterson, at the Subgroup's request, amended the formula for OSL 14-16, changing the cells' minimum from 75% of the maximum to 70%, as well as changing the jump from CHS 9+ at one OSL to the next OSL from a jump of 40 months to a jump of 35 months. This, while still reclassifying these offenses to higher OSLs, lessens the increase in the sentencing ranges these offenses now face for being in higher OSLs. Dr. Knoth-Peterson asked if these amendments would work for the group or whether they would rather keep the formula as decided upon on the 12th.

Some members stated that their constituencies would not support such increases in time. A member asked whether there needs to be separation of violent and non-violent. This prompted a discussion about the hierarchy in the statutes, the lack of hierarchy in the current grid, and the sentiment that serious violent offenses should receive greater punishment than violent offenses. A

member suggested that the Legislature should recalibrate, since they have chosen the lengths of time in the sentence ranges for each OSL.

Another member suggested delineating between serious violent and violent offenses, and if the Legislature does not agree they can change it. The group again expressed support for reclassifying the offenses in question from serious violent to violent. Amanda reminded the group that the Subgroup has tentatively agreed on the changes in the grid with the formulas. The Subgroup did not discuss distinguishing between violent and non-violent, but again agreed there should be delineation between serious violent and violent.

Amanda asked about recalibration and whether the Task Force can take it on between now and September to reclassify all the offenses or if they should focus on creating a structure that makes sense and point out to the Legislature the next stage of work. This led the group to discuss the changes made to the grid's 5 formulas and overall new structure. The facilitation team reminded the group that these discussions are taking place so the group can create a grid that logically flows in its design and can reduce complexity and errors in sentencing. The Subgroup's proposed delineation between SV/V creates more logic in the system in a way that can reduce complexity and improve both consistent and predictable ranges.

Grid Subgroup Discussion:

- Several members had concerns over the increases in time that could arise from re-assigning offenses to a higher OSL (due to them being listed as serious violent but existing below OSL 14). These members felt that while these offenses have been classified as serious violent, they have not been treated as such because the legislature did not feel they deserved more time than what they have been listed at.
 - A hierarchy of severity currently exists between serious violent and violent offenses. This however does not translate into the current grid, as some violent offenses have longer sentence ranges than some serious violent offenses. To create this hierarchy in the proposed grid, the group must either move serious violent offenses up to higher OSLs or reclassify them as violent. This structure can provide guidance to the Legislature in the creation of new offenses, allowing them to see where they can place offenses on the proposed grid based on the delineation between serious violent, violent, and nonviolent and where these types of offenses fall on the grid.
 - Amanda asked if this reclassification should be done by this Task Force, or should the group get a structure and pass along the task of recalibration to another entity? Many felt that this latter option was the way to go, as they felt this Subgroup and Task Force did not have time to do a deep dive to reclassify offenses.
- A member advocated for removing the delineation of nonviolent, violent, and serious violent crimes entirely, seeing that delineation as arbitrary and leading to inevitable increases in sentences for those who have committed low-level crimes. Rather the group should reframe this proposal as crimes against persons vs crimes against property. The member further stated they would not support any reclassification that moves up offenses into a higher OSL.

- A member said that if the group increases sentences on the top of the grid, they must keep in mind those defendants are disproportionately BIPOC. So, if the group carves out specific offenses and regions of the grid to increase ranges, they by proxy decide to ignore those defendants. That moves the group away from a race-neutral lens and ignores those most disproportionately affected by our current sentencing laws, and this member cannot support this.
 - Another member stated that categorizing Black defendants in a larger group, such as BIPOC, minimizes the disproportionality and disparities Black defendants face and their historical and contemporary experiences with the criminal justice system.
 - A member stated that the group already has data that proves gross racial disproportionality in the sentencing system, but even though they have this data they are not currently focusing on how to remedy this, especially if the group wants to increase sentencing ranges for offenses at the top of grid and lessen ranges at the bottom of the grid.
 - In response, another member said the ranges themselves are not responsible for the disproportionalities, and that an imbalance of discretion and upstream factors are the root causes of the levels of racial disproportionality, so adjusting ranges on the grid will not solve this issue.
- A member stated they feel the objective of the group is to lower sentences and advocate for those put into prison, but this member wants the group to focus on the victims and how their lives are impacted by crime.
- A member brought up that evidence shows a diminishing level of return on incarceration, and the member's personal experience confirms that after the first several years incarcerated, significant reform can occur in someone. However, after this point, if they are still incarcerated, this negatively affects their change and further harms someone needlessly.
- More transparency can potentially help address disparities, but discretion contributes to the wide disparities currently seen.
- A member proposed removing all other factors of offense classifications besides OSLs, keeping all the offenses where they currently exist on the grid. Keeping just the OSLs removes unnecessary dichotomies and makes the grid both less complex and more efficient. Where offenses are ranked on OSLs is based on their perceived culpability.
 - Another member supported this and agreed it would remove unnecessary reclassification and distinction between SV/V, and NV. Additionally, this makes the grid fundamentally easier for the average person to understand, meaning those convicted, victims, the families of those affected, and current/future legislatures could understand the grid after this change.
 - This can have unintended consequences when this reaches the Legislature, such as them moving around offenses without restrictions based on stat max associated with specific felony classes. That could drastically increase sentencing ranges.

New Grid Mission and Values Exercise:

After these conversations, Amanda asked the group to pull back to review both the purpose and the guiding elements for the new grid's structure. She felt this could get the group's

conversations turned toward what they wanted to achieve with the creation of a new grid and help them focus on any changes they would need to the proposed grid. Below is an exercise and discussion Amanda facilitated, designed to flesh out the group's perceived mission and values associated with a new grid:

The Grid:

- **Guiding Elements – Criteria**
 - Formula
 - Sentencing ranges – minimum/maximum
 - Hierarchy of the severity of offenses
 - Victim Centered
 - Indeterminate
 - Allows for a point of review
 - Enhancements
 - Reduces recidivism
 - Provides skill building/growth and healing
 - A way to mitigate and a way to address the extremes
 - Individual's Culpability
 - Prior offenses?
 - Age?
 - Life circumstances?
 - Recidivism risk?
- **Formula/Purpose**
 - Standard ranges – consistent minimum/maximum
 - Evidence based research
 - Scientific based
 - Philosophies of punishment
 - Value-based
 - Trauma informed treatment
 - Quality of programming
 - Transparency
 - Balanced discretion
 - Adaptive to changes and unique conditions
 - Review: Monitoring, evaluation, and adaptive management

Discussion about amount of time incarcerated as Retribution vs Rehabilitation:

- The desire for restitution, protection of others, victim-centered approaches. Want the incarcerated to become better neighbors by utilizing better systems in prisons to increase trust among victims and survivors. Sincere responsibility of those incarcerated to want to reform.
- Victims/Survivors and incarcerated all fight to survive in their own ways.
- Every year in prison adds \$35k to taxpayers for each person incarcerated. With juveniles it is \$75k to taxpayers. Keeping individuals in prison increases costs to taxpayers,

meaning less funds for victim advocates, community action, mental health, addiction treatments, etc.

Amanda asks the group what affects culpability?

- Age, previous offenses, life circumstances, recidivism risk
- Recidivism and culpability are not necessarily the same thing. There is the bad act/ outcome and then there is the bad intention (mens rea). Sometimes the act is so bad that the state does not care about the mindset and then there are light offenses with very devious intentions. When it comes to the numbers on the grid, where is the accountability or the culpability?

What is the purpose of the grid?

- Accountability
- Proportionality of consequences of the act.
- Treatment/response to the individuals.
- Checks and balances; judges, legislators (executive), prosecutors – the grid is the combination of power and designed to balance this power.
 - Values, not science
 - The current grid does not allow enough discretion. A guiding element should be discretion.
 - Discretion is present, it is just in the hands of prosecutors.
 - Discretion has been abused, so transparency is needed. Disparities in a courtroom are ever present.
- Trauma informed practices and policies that address the historic and generational traumas. Devote more dollars upstream, be more effective at preventing more engagement with the system. Not sure if there is a lot of trust in the judicial system due to the lack of transparency.
- What foundational elements should be included?
 - Should have proportionate sentences on culpability and seriousness.
 - To solve disparity in race, everyone could get the exact same sentence. There may be disparity in the charges, but one number would get rid of disproportionality about sentencing.
 - A grid brings values. Violent and serious violent and nonviolent are all arbitrary. Some non-violent offenses cause more damage than violent offenses. What do we benefit by making these distinctions? These are used to determine consequences, but the group disagrees where the offense falls in these distinctions.

Grid Subgroup Discussion: The group discussed victim-centered approaches. Several members also brought up the consequences of incarceration for the incarcerated and their families, as many of those incarcerated are themselves victims that should have gotten treatment before ending up in confinement. Neither the victim or those incarcerated are centered or considered after the conviction. To reduce recidivism and center the healing of both the victims and those incarcerated,

both parties should receive access to quality social services that can heal and prevent future criminal behavior.

The group wants to take accountability and culpability into consideration when creating the grid. Victimization as well as life circumstances are precursors to offending behavior and while this increases someone's risk for criminal behavior it should reduce someone's culpability.

In discussing how to determine risk and culpability, the group discussed factors such as age, priors, life circumstances, and intention that all vary the level of risk and culpability a person has. The Subgroup discussed how to reflect this in the proposed grid. All these varying factors interplay into predicting future criminal behavior, can increase risk and/or recidivism, and vary on how they affect accountability/ culpability. The group must rationalize these to create sentencing ranges proportionate to the act(s) committed.

The group decided it would be best to leave the offense reclassification to a separate entity but coalesce around the structure and formula agreed on during the July 12th meeting. This proposed structure and formula address the concerns brought up by the group, such as a way to mitigate sentences, increase transparency, balance discretion, and address the extreme cases.

Columns to Address Exceptions to the Standard Scoring Rules: Potential Recommendation 15 would eliminate the scoring exceptions in the calculation of a person's criminal history score (CHS) and, to address the issues that multipliers target, would create "repeat violent" and "serious violent" columns with a range of months that judges could add to a sentence (in place of multipliers). Rather than having multipliers that add extra points that move someone to a higher CHS score, these columns add on time to the maximum of a range for that specific offense seriousness level (OSL) and CHS.

This new model, without multipliers, would see reductions in CHS scores for the offenses with exceptions to standard scoring rules, but the associated sentences at the maximum point in the range are close to, or significantly overlapping with, the status quo. There would be some reduction in overall incarceration length in most sentence ranges and significant overlapping with current ranges in a model that eliminated multipliers *without* adding the repeat columns.

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)

With new columns for repeat violent and serious violent offenses (and elimination of scoring exceptions), the general rule for scoring would be:

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

The group reviewed the requested scoring examples that Clela and Keri-Ann created for the group.

Examples:

PropScoreSimGrid = Proposed Scoring Rules on Simulated Grid w/RepSV/V/DV Column

CurScoreSimGrid = Current Scoring Rules on Simulated Grid

PropScoreCurGrid = Proposed Scoring Rules on Current Grid

CurScoreCurGrid = Current Scoring Rules on Current Grid

The first example showed a Felony Domestic Violence (DV) scoring. The status quo for scoring Felony DV (defined in 9.94A.030), where DV was pleaded and proven:

- A. Count 2 points for each Adult offense where DV was pled/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 pled/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 pled/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 (misdemeanor/General Misdemeanors), where DV was pled/proven after 8/1/2011
- E. Any other felony offenses count standard

Below is a scoring example of a person with no priors and a current conviction for a nonviolent DV felony charge of Criminal Mistreatment 1 under both the current and proposed grids. This example highlights the differences in both the OSL classification and the associated sentencing ranges.

Current: *Criminal Mistreatment 1 w/DV (NonViolent/DV)*

Prior: None

PropScoreSimGrid CHS: 0 SL: 9 Presumptive Range: 19 – 33 months

PropScoreCurGrid CHS: 0 SL: 10 Presumptive Range: 51 – 68 months

CurScoreSimGrid CHS: 0 SL: 9 Presumptive Range: 19 – 33 months

CurScoreCurGrid CHS: 0 SL: 10 Presumptive Range: 51 – 68 months

Now this person has reoffended and faces a current charge of Robbery 2 with DV as well as their prior conviction of the nonviolent DV Criminal Mistreatment 1. It can be seen the difference in CHS calculation at this point, where the calculations under the proposed structure showed a CHS of 1, while the scoring under the current grid counts this prior as 2 points for a CHS of 2. Additionally, the repeat violent offense column is eligible for use. To highlight how the column works in context, this is how the person would be scored:

Current: *Robbery 2 w/DV (Violent/DV)*

Prior: (NonViolent/DV)

PropScoreSimGrid CHS: 1 SL: 4 Presumptive Range: 3 – (11) 17 months (This person is now eligible to receive additional time under the Repeat Violent Offense column.) [Rep Viol=6 mos]

PropScoreSimGrid CHS: 1 SL: 4 Presumptive Range: 3 – 11 months [w/o RepViol column]

PropScoreCurGrid CHS: 1 SL: 4 Presumptive Range: 6 – 12 months

CurScoreSimGrid CHS: 2 SL: 4 Presumptive Range: 4 – 14 months

CurScoreCurGrid CHS: 2 SL: 4 Presumptive Range: 12+ – 14 months

This hypothetical person has now reoffended again and is now facing a current charge of Stalking with DV with the two priors, Robbery 2 with DV as well as the nonviolent DV Criminal Mistreatment 1. Like the example above, the difference in CHS calculation at this point appears: where the calculations under the proposed structure showed a CHS of 2, while the scoring under the current grid shows a CHS of 4. The repeat violent offense column would still be eligible for use as well. This is how the person would be scored:

Current: *Stalking w/DV* (NonViolent) **Prior:** (NonViolent/DV) AND (Violent/DV)

PropScoreSimGrid CHS: 2 SL: 5 Presumptive Range: 5 – (17) 23 months [RepViol=6 mos]

PropScoreSimGrid CHS: 2 SL: 5 Presumptive Range: 5 – 17 months [w/o SV/V/DV column]

PropScoreCurGrid CHS: 2 SL: 5 Presumptive Range: 13 – 17 months

CurScoreSimGrid CHS: 4 SL: 5 Presumptive Range: 7 – 24 months

CurScoreCurGrid CHS: 4 SL: 5 Presumptive Range: 22 – 29 months

Next the group reviewed an example for Sex Offense scoring. Status quo scoring for Sex Offenses, 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 serious violent (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 as standard.

Potential Recommendation 15 would remove sub-exceptions B and C:

- Sub-exception B: if the current offense is a violent sex offense, prior adult and juvenile non-sex serious violent offenses score as 3 points)
- Sub-exception C: if the current is a SV Sex offense, prior adult and juvenile non-Sex SV offenses score as 3 points

Below is a scoring example of a person with no priors and a current conviction for a violent sex offense charge of Rape of a Child 2, under both the current and proposed grids. This example highlights the differences in both the OSL classification and the associated sentencing ranges.

Current: Rape of a Child 2 (Violent/Sex)	Prior: None
PropScoreSimGrid CHS: 0 SL: 12	Presumptive Range: 59 – 99 months
PropScoreCurGrid CHS: 0 SL: 11	Presumptive Range: 78 – 102 months
CurScoreSimGrid CHS: 0 SL: 12	Presumptive Range: 59 – 99 months
CurScoreCurGrid CHS: 0 SL: 11	Presumptive Range: 78 – 102 months

Now this person has reoffended and faces a current charge of Sexual Exploitation of a Minor (nonviolent) as well as their prior conviction of the violent sex offense Rape of a Child 2. The difference in CHS calculation appears at this point: where the calculations under the proposed structure showed a CHS of 1, the scoring under the current grid counts this prior as 3 points for a CHS of 3. This is how the person would be scored:

Current: Sexual Exploitation of a Minor (NonViolent/Sex)	Prior: (Violent/Sex)
PropScoreSimGrid CHS: 1 SL: 9	Presumptive Range: 22 –38 months
PropScoreCurGrid CHS: 1 SL: 9	Presumptive Range: 36 – 48 months
CurScoreSimGrid CHS: 3 SL: 9	Presumptive Range: 30 – 50 months
CurScoreCurGrid CHS: 3 SL: 9	Presumptive Range: 46 – 61 months

This person has reoffended again and now faces a current charge of Indecent Liberties with Force, another violent sex offense with their two priors of a nonviolent sex offense of Sexual Exploitation of a Minor (nonviolent) and the violent sex offense Rape of a Child 2. The difference in CHS calculation appears at this point, where the calculations under the proposed structure showed a CHS of 2, while the scoring under the current grid counts these priors as 3 points for a CHS of 6. The repeat violent offense column is still eligible for use as well.

Current: Indecent Liberties w/Force (Violent/Sex)	Prior: (Violent/Sex) &(NonViolent/Sex)
PropScoreSimGrid CHS: 2 SL: 11 [RepViol=24 mos]	Presumptive Range: 55 – (92) 116 months
PropScoreCurGrid CHS: 2 SL: 10	Presumptive Range: 62 – 82 months
CurScoreSimGrid CHS: 6 SL: 11	Presumptive Range: 81 – 135 months
CurScoreCurGrid CHS: 6 SL: 10	Presumptive Range: 98 – 130 months

Both examples show that the multipliers as they currently exist exacerbate a person's criminal history score, causing the resulting sentencing ranges to be much higher than they would be if the scoring exceptions were replaced with the proposed columns.

The group began discussing when these columns would apply. For example, if charged with a violent/serious violent crime and your prior(s) is not a violent/serious violent crime, should these columns apply? Or should it only count prior SV/V/DV offenses the person were convicted of? If there is a prior nonviolent DV and then someone reoffends with a violent crime, should the column apply even if the prior DV was nonviolent? Several members agree that yes, the column should still apply here, if your current offense fits into this column and so does your prior, then it should apply.

Amanda asked whether anyone in the grid group could not live with the elimination of offense specific multipliers and replacing them with a column on the grid for repeat SV/V/DV? A member said that for now, while they would abstain (as they cannot yet say one way or the other), they are fine with presenting this to the full Task Force. All other members present felt comfortable bringing this to the full Task Force in the August meeting as one of their proposals. Following this, Amanda asked the group to then narrow down and focus on the numbers associated with this column.

Aggravated Departure Cap Column: The facilitation team transitioned the group to discussing the proposed aggravated departure cap column. The aggravated departure column functions 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 one-time extension onto the maximum of the standard range, instead of multiple potential extensions onto the maximum (one for each aggravating factor). The maximum cap on aggravating departures is graduated, so 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.

The aggravated departure column is intended to limit the racial disproportionality associated with the discretionary application of aggravating factors. While the number of exceptional sentences has gone down over the last 15+ years, 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. BIPOC defendants across Washington were both more likely to receive an aggravated sentence and to have their sentence increased in its severity than white defendants; this disparity is especially pronounced for Black Washingtonians.

The most common offenses to receive an aggravating sentence were Assault 2 and 3, Burglary 2, Child Molestation 2, Robbery 2, and Theft 1. The facilitation team asked what structure or approach to this proposed column can capture the majority of cases that might fit within the confines of the new column. For example, if Assault 2 is an issue that the group keeps coming back to, what can the group do to capture the rest of most offenses? Dr. Knoth-Peterson said that if the group does not feel they can all reach consensus on the aggravating column they can still propose this column as an advisory practice, not required to be followed but as a suggested guideline that should be followed. Several members supported proposing this column as an advisory practice.

Amanda asked the group not to speculate what the Task Force will/will not reach consensus on, but to focus on if this is something the group feels they can coalesce around *the structure of* to present this to the full Task Force at the August meeting. She asked if this column could reach the 3 policy goals: if it reduces complexity and reduces errors, improves effectiveness and addresses racial disparities, and promotes and improves public safety.

Amanda asked if anyone in the grid group could not live with bringing the creation of a column that caps the departure for aggravating sentences to the full Task Force in August. No one in the grid group said they could not live with this. Now the group has a structure for the Proposed Felony Sentencing Grid!

Grid Group Input:

- A member stated that a prior DV conviction is the best predictor for future criminal behavior and future DV, especially when predicting for future violent offenses, and as such these offenses should have multipliers associated with them.
 - Regarding people who commit generalized offenses versus specified offenses, the former has higher recidivism rates and the latter has lower recidivism rates.
- A member asked, can both columns used together at once?
 - Yes, these columns can interact with each other as they are used for different things.
- A member said that Assault 2 is a charge they often struggle with, it is not surprising that this carries aggravators, but can these different types of aggravators be stacked upon each other?
 - Initially the group said no, but if we want to do this and it was tied to characteristics that were pled and proven we would need to touch up the associated length with each aggravating factor. Currently it's capped at 48 months, but this can be sentenced at any point below 48 months, so we expanded this range to encompass that need/desire to stack aggravators.
- A member said they are willing to either support one column or the other but not both. They said this new structure builds something new that has the same effect in terms of increasing sentencing ranges and exacerbating racial disparities. Both columns should not be allowed to apply simultaneously but rather should be one or the other, as this increases the power prosecutors have.
- A member said that this discussion is entirely academic as they feel the prosecutors will never agree to this. Any serious crime can be counted as an aggravator and there is mandatory consecutive sentencing for these, so while there is a departure cap on the aggravator these consecutive sentences still give prosecutors disproportionate levels of power for them to hold leverage over defendants.
- In terms of societal values in holding people accountable for their mistakes, the Legislature needs to retroactively pass all reforms, as we cannot hit our 3 policy goals without thinking retroactively, as this is a matter of what is perceived as just/fair.

Numbers Associated with the Columns: The group discussed the numbers in each column to give feedback on whether they supported these potential additions to people's sentences (in place of the existing aggravator system). Several members asked if the similar formulaic approach done to

amend the jumps at OSLs at CHS 9+ can be done for these columns so that the length of each graduate as OSLs increase. The group reviewed different percentage increases for each increasing level in the columns (10% and 15%). the group agreed to present a 10% increase in each level on both columns to the full Task Force at its August meeting. The group also agreed on putting the minimum increase in SV/V/DV column at a 1 month addition. In the SW corner of the grid this would be either 10% or 1 month, whichever is greater.

A member asked if the group would consider proposing a 10% increase based on the maximum in a cell for the repeat SV/V/DV column, but for the aggravator column the increase would be 10% of the statutory maximum. In response, another member asked whether it would be simpler and less complex to make both a 10% increase, based on the cell maximum, for both columns. The group agreed that they supported a percentage increase between 10%-15% of the maximum of the cell that the person falls into for each column.

Other Recommendations Tied to the Grid: Section D of the Grouping of Grid Recommendations document deals with moving, shifting, and giving discretion in the system, such as Potential Recommendations 16, 19, 20, and 21. These are three different options to get at one thing in the grid. Potential Recommendation 22, 23, 24, and 25 also all get at one thing: consecutive versus concurrent sentencing (brought up in May's Task Force input). A member proposed to the group that it would make sense to change serious violent mandatory consecutive sentencing the same way firearm enhancements were changed (i.e., remove the mandatory consecutive sentencing for these offenses and make them presumed concurrent).

Another member said that these can be presumptive sentences that run concurrently unless a judge decides to make them consecutive, but this may trigger review under Blakely. They further stated the CHS would have to be calculated in different ways once judges decide whether to sentence consecutive or concurrent; this would change their CHS and subsequently their sentences. The current offense counts in scoring if it is current but not when sentencing consecutively. This would have to potentially entail creating different scoring rules and recommendations that current offenses do not count in CHS calculation; however, doesn't this make the system more complicated?

Looking Forward: In next week's grid group meeting the group will begin going over the remaining potential recommendations to decide what the group will propose to the full Task Force. Amanda asked the group to look at the Potential Recommendations Roadmap to find the recommendations with multiple options in the interest of deciding on one option for each of these, to bring them to the full Task Force on August 31st.

Appendix A

Attachment 1: [CSTF Grouping of Potential Recommendations](#)

Attachment 2: [Proposed Grid Formula Recommendation](#)

Attachment 3: [Grid Subgroup Work Session Workbook](#)

Attachment 4: [Offense Reclassification_violent status proposal](#)