

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: October 5, 2021
Meeting via Zoom**

Attendees:

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

Presenter: Matt Landon (Statistical Analysis Center at the Office of Financial Management)

Guests: James Chambers, Bruce Glant, Chelsea Moore

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

WELCOME & AGENDA

Amanda welcomed everyone and gave an update on the Task Force meeting for Thursday, which will instead focus on the work of the Sentencing Alternatives Subgroup. This will give more time for the facilitation team and researchers to compile all the emerging potential recommendations on the grid along with decision guides to give background and context for them.

Amanda then welcomed Matt Landon of the Washington Statistical Analysis Center (SAC) in the Office of Financial Management.

PRESENTATION: CRIMINAL HISTORY SCORE & RECIDIVISM

Matt Landon explained the three goals of the SAC study:

1. Identify to what extent, if any, criminal history score (CHS) is correlated with later recidivism.
2. Identify to what extent, if any, multipliers improve or impede the predictivity of the CHS for recidivism.
3. Determine whether there is disparity in the rate at which multipliers are applied.

Matt let the group know that so far, he has some preliminary findings on #3, which he will focus on today. He is still in the early phases of data analysis on research question #1 and #2 and hopes to have that work ready to give an update to this group by the end of the year.

Challenges: no data set exists that documents each piece of the CHS as it is applied; conviction data does not include categorizations of offenses as calculated in RCW 9.94A.525; Multiple RCWs and offense descriptions may refer to the same crime type for purposes of scoring.

Matt cautioned that the SAC does not have complete data on out-of-state offenses, which can be factored into the CHS. Population data may be able to provide insight on which groups may be missing the most out-of-state offenses.

The SAC research covers approximately 40 years. It includes a breakdown of application of multipliers by race for serious violent felonies, violent felonies, and Burglary 1; based on most recent offense to avoid double counting; at present, only includes scores with multiplied value.

Matt displayed charts showing demographic breakdown of percentages of people charged with serious violent felonies that have had prior violent felonies with multipliers. All races clustered around 6-8% except black, of whom 12.42% had prior violent felonies with multipliers.

He also showed numbers for individuals charged with Burglary 1 who had prior multipliers for prior Burglary 2 (adult and juveniles) or prior violent felony. Of the demographics, Matt noted that Asian defendants had lower rates of multipliers for prior Burglary 2 than other races; however, for those with multipliers for prior violent felonies, black individuals had the highest rate (28.82%) and indigenous people the second highest (20.23%)

Based on these preliminary findings, black people are more likely to have had multipliers applied to prior felony convictions.

- **Q:** If offense classification changes (e.g., what is considered a violent or serious violent felony), does that affect the data? **R:** Matt said it would help the study to have a list of those that have changed, to confirm findings.
- **Q:** If considering past offenses, did the study look at just the most serious or did it encompass all prior felonies? **R:** Matt said he prioritized using the most serious prior felony offense for calculations. A subgroup member pointed out that current offenses count as priors when calculating the CHS; multipliers often come with current offenses rather than past offenses.
- **Q:** Did you account for the washout period? **R:** I did.
- **Q:** Did you account for people having had both a past violent offense with a multiplier and a past serious violent offense with a multiplier? **R:** I think so. I will need to double-check.
- **Q:** Can you confirm that less than 7% of people with violent felony offense charges have had prior violent felony convictions? If so, I think that finding would surprise a lot of the policymakers in our state. **R:** Yes, that's accurate.
- **Q:** Could the racial disparity in charges for Burglary 1 reflect a situation where white defendants more often get plea negotiations to lower their offense to Burglary 2 than black defendants? **R:** I suppose that's possible.
- **Q:** Don't most Burglary 1 charges come with concurrent charges for another offense? **R:** Clela replied that it is more common to have two or more counts.
- **Q:** Do you have a date by which the report will be completed? **R:** We had hoped to have it done by the end of September, but the complexity of calculating CHSs has made that unrealistic; I hope that by late December or early January the multipliers and background for calculations of CHS done. Hopefully by that time we will have enough connection to recidivism to answer Goals 1 and 2

above. In the meantime, I am working on nonviolent felonies and misdemeanors to label them accurately before feeding them into the calculations.

Amanda asked the group whether they would like to have Matt return to brief them as further findings emerge. Matt suggested that he email findings for distribution to the group and if folks would like to hear him talk about them, that could be arranged. Lauren gave Matt a couple suggestions on where to focus his analysis to help shed light on the connect between CHS and recidivism.

The group turned its attention to upcoming meetings and how to start discussions on the horizontal axis of the grid (the columns). Amanda asked if aggravators and mitigators might be a good place to start. Lauren agreed that, given limitations on the available data, starting with aggravators and mitigators could work. A member stated that they would not want to discuss repeat violent offenses until after conversations on multipliers, since the data on racial disparities associated with multipliers offers rationale for eliminating multipliers since they distort the CHS for many people.

Addressing the existing disparities associated the CHS might also be addressed by looking at the “three strikes” law, eliminating multipliers, and mandatory consecutive sentencing. A couple members expressed support for exploring multipliers next. A group member asked whether they could see a survey or list of all the multipliers to build understanding, and another member expressed support for discussing that next. Clela will pull information together for next week’s meeting.

NEXT STEPS & ACTION ITEM

- Upcoming meeting topics: multipliers, issues associated with repeat violent offenses, aggravators and mitigators (what exists today, any additions or subtractions, how far above/below standard range), enhancements.
- Then in early 2022: connection between CHS and recidivism.

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

None.