

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: June 14th, 2022
Meeting via Zoom**

Attendees:

- Tiffany Attrill, *Interests of Victims of Crime*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Senator Chris Gildon, *Washington State Senate (Republicans)*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *WA Association of Criminal Defense Lawyers*
- Melody Simle, *Families of Incarcerated Persons*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Chief Brian Smith, *WA Ass'n of Sheriffs & Police Chiefs*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated Persons*
- 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, Chris Page, Zack Cefalu

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

Welcome and Agenda Review

Amanda welcomed Grid Subgroup members and recapped last week's discussion on the topic of whether to collapse CHS columns. She explained that during the discussion a number of members present voiced strong concerns about the approach and the lack of data/evidence to inform the discussion. Members also talked about how recidivism by criminal history score data is needed in order to inform whether and if so, which criminal history score columns to collapse, and that looking at info provided in the WSIPP study, depending on which columns were collapsed, may increase disproportionality and that CHS data is needed to explore this further.

Amanda reminded members that this important CHS research is currently being conducted by the Statistical Analysis Center and is not scheduled to be completed until the end of September. The co-chairs have reached out to the SAC Director and Chris and Amanda have a meeting scheduled with Matt Landon (who is conducting the research) to discuss whether and what preliminary data could be shared with this group.

Therefore, Amanda explained that the group will be pausing the discussion about CHS columns until more is known about what data may be made available. Today's discussion will instead focus on topic #5 in the discussion guide: Revisit CHS exceptions to standard scoring rules (multipliers) discussion and potential recommendations

Amanda then confirmed with Subgroup members whether they could attend an all-day work session on July 12th and July 26th with the intent to gather as many folks in person as possible. It appears that a critical mass of Subgroup members can attend on July 12th and July 26th in Olympia.

CHS Exceptions to Standard Scoring Rules - Multipliers

Today's discussion will focus on the following:

- a) Should offenses score against one another when there is more than one current offense?
- b) #8 in Appendix A.: 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) #15 in Appendix A: Community custody: Offenses committed while on community custody. Should extra point apply?
- d) #14 in Appendix A: 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)

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.

The bold header captures current law. Amanda asked whether it makes sense to retain this portion of the statute as it stands. In 2019 the state had 89 sentences under this statute, which states: (25) "Escape" means:

(a) Sexually violent predator escape (RCW [9A.76.115](#)), escape in the first degree (RCW [9A.76.110](#)), escape in the second degree (RCW [9A.76.120](#)), willful failure to return from furlough (*RCW [72.66.060](#)), willful failure to return from work release (*RCW [72.65.070](#)), or willful failure to be available for supervision by the department while in community custody (RCW [72.09.310](#)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

If a person commits related felonies that do not meet the definition of Escape, those do NOT count in the person's CHS.

Discussion

- A question arose about the Department of Corrections (DOC) and how it would define willful failure to report for community custody (escape) vs. just being late.
- A member asked what "other felonies" means: in a scenario when a person escapes from custody and steals a car, the escape would only count against other escapes (the person has committed) but the car theft would have its own CHS count. Any other prior felonies would not get added to the CHS applied for the escape offense.
- The escape and car theft sentences would run concurrently, while the escape would run consecutively to the sentence the person is currently serving.
- A member pointed out that fleeing to another state is vastly different behavior than reporting late.
- The state already adds an extra CHS point for any offense committed while on community custody.
- Eliminating the scoring exception would mean that all prior felonies would be included in a person's CHS when a person gets charged for Escape from community custody.
- Instead of eliminating the scoring exception, could recommend the Escape offense itself goes away, which would eliminate the need/use for the exception.
- Doing nothing keeps unnecessary complexity.
- Alternative proposal: eliminate the inclusion of priors under 72.09.310—leave the offense, but only score more serious prior escapes.
- The point is to make sure people are available during community custody. If this were eliminated, what other tools would DOC and courts have to enforce community supervision?
- The crime of Escape was unranked when the Legislature created it in 1988. In 1992 the Legislature ranked it and created a scoring exception, likely to mitigate the impact of the ranking adding significantly to people's CHS.

The Subgroup agreed to table this topic until it could obtain DOC's definition of willful escape vs. showing up late to a custody hearing or making a mistake about when they were supposed to appear.

Community custody: Offenses committed while on community custody. Should extra point for those offenses apply?

A person on community custody who commits a burglary while under custody/supervision: in that instance all prior felonies count in the CHS and the burglary one carries an extra point for occurring during custody. This scoring rule also dates to 1988, under the rationale that people on community custody are still under jurisdiction of the court/DOC, and if they recidivate during that term, they should face an extra penalty for recidivating while serving the penalty for the prior crime.

Discussion

- A member pointed out that when a person commits a new offense while on community custody, they already face sanction for the violation in the form of incarceration. Based on this, the member expressed support for eliminating the extra point. Another member echoed that.
- This extra point only applies to cases that involve community custody; property crimes do not carry community custody so anyone convicted of property crimes would not be subject to this extra CHS point.
- Some individuals are not deemed high enough risk for community custody so would not be eligible for accruing the extra CHS point. Could we level the playing field by making everyone eligible for community custody?
- The Task Force has discussed and appears to be moving toward shorter sentence lengths in the lower left corner of the grid while increasing the length of time a judge could impose community custody. Knowing that a significant percentage of folks committing crimes that fall in the lower left corner of the grid have mental health and/or chemical dependency issues, retaining this scoring rule will increase sentence lengths for these folks if/when they recidivate while under community custody.
- The prosecutors' association will discuss this. There may be initial concern about eliminating it because of its association with culpability; however, if there is a move to increase community custody terms then there may be openness to eliminating the extra point.
- Offenses that tend to get community custody are lower-level ones that evidence shows result in disproportionate outcomes for people of color.
- About 10% of FY'21 sentences carried an additional point for occurring during community custody.
- The system already has an aggravating factor for offenses committed shortly after release from incarceration.
- A person committing a felony while on community custody already faces a return hearing under DOC (which could lead to lifetime supervision) so a violation proceeding from a felony committed during the custody period could lead to incarceration for life.
- Juvenile system makes a distinction that the person can have either a violation hearing or a new sanction; adult rules do not distinguish so they get both.
- A member mentioned a brutal murder committed by a person on community custody and said because of that the extra point should be added to offenses committed by people under community custody. In the discussion after this anecdote, another member pointed out that since that person already had committed multiple felonies (including at least one serious violent one), the extra scoring point due to community custody would not make a significant difference. The person would already have a CHS of at least 5 or 6 and the emerging revised grid allows a judge to impose up to an additional 60 months under the proposed aggravated maximum departure in in the emerging revised grid.
- A couple of members pointed out that the Task Force should not be recommending policies based on outlier cases, but instead focusing on standard, run-of-the-mill types of offenses.
- The Model Penal Code recommends basing sentencing policies on average or common offenses and building in tools to the system to address the outliers of extreme cases.

- A member suggested a **potential recommendation to eliminate the extra point and instead add an aggravating factor a judge could impose for committing an offense while on community custody.**

RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING

- From Clela: About 10% of the FY'21 sentences had an additional point added for being on CC at time of current offense.

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

Bruce Glant: I understand that CCO's stop to check on offenders during work hours most of the time when the offender is not at the house or location. Is that considered an escape because he's not available for supervision per the RCW?

What happens when someone with a violent predator charge has a family or business event, or whatever, and notifies the supervisor of his/her situation, and the supervisor refuses to be flexible?

Joanne Smieja: Lauren makes a good point. Lots of people do not get sentenced to community custody but some people (currently 1900 individuals) get sentenced to lifetime community custody. I agree with Waldo and Melody. Get rid of the extra point if someone is on custody.

DOC is required to supervise some people even if they are low risk.

APPENDIX A.

Criminal History Scoring

The general rule for scoring is that prior felony convictions count as:

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

Exceptions to “standard” scoring:

1. **Burglary 1°** (violent offense):

- a. Adult NV Burglary offenses count as 2 points
- b. Juvenile NV Burglary offenses count as 1 point
- c. Adult and Juvenile Violent & Serious Violent (SV) offenses count as 2 points
- d. Any other felony offenses count standard

2. **Violent** (defined in RCW 9.94A.030) offense (not Sex, SV, Burglary 1°, Felony Traffic, or Homicide/Assault by Watercraft or Manufacture Meth):

- a. Adult and Juvenile Violent & SV offenses count as 2 points
- b. Any other felony offenses count standard

3. **Serious Violent** (defined in RCW 9.94A.030) offenses:

a. Adult and Juvenile Serious Violent (SV) offenses count as 3 points (convictions existing before the date of sentencing. If there are multiple current SV offenses, only the most serious offense is scored – all other SV offenses get a score of 0 and the sentences for each are served consecutively (RCW 9.94A.589(1)(b))

- b. Adult and Juvenile Violent offenses count as 2 points
- c. Any other felony offenses count standard

4. **Felony Traffic** (defined in RCW 9.94A.030) offenses:

- a. Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points
- b. Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point
- c. Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point
- d. Adult convictions of Operation of a Vessel under the Influence offenses count as 1 point and juvenile offenses for Operation of a Vessel offenses under the Influence count as 1/2 point.
- e. Any other felony offenses count standard

5. **Homicide or Assault by Watercraft offenses:**

- a. Adult and Juvenile Homicide or Assault by Watercraft offenses count as 2 points
- b. Certain adult Traffic Misd/Gross Misd offenses count as 1 point

- c. Certain juvenile Traffic Misd/Gross Misd offenses count as 1/2 point
- d. Any other felony offenses count standard

6. Manufacture Methamphetamine offense (NV):

- a. Adult Manufacture Meth offenses count as 3 points
- b. Juvenile Manufacture Meth offenses count as 2 points
- c. Any other felony offenses count standard

7. Drug offense (definition of Drug offense excludes simple possession) with history of a sex or serious violent offense (NV):

- a. Adult drug offenses count as 3 points
- b. Juvenile drug offenses count cores as 2 points
- c. Any other felony offenses count standard (unless current Drug offense is violent, than prior Adult and Juvenile violent/serious violent offenses count as 2 points)

8. Escape from Community Custody offense (NV):

- a. Adult Escape offenses count as 1 point
- b. Juvenile Escape offenses count as ½ point
- c. Only offenses meeting the definition of Escape (see RCW 9.94A.030(25)) count in the criminal history score – other felonies are not included in the score.

9. Escape 1° or 2° offenses (NV):

- a. Adult offenses count as 1 point
- b. Juvenile offenses count as ½ point (violent or NV)

10. Burglary 2° or Residential Burglary offenses (NV):

- a. Adult and Juvenile Burglary 1° offenses count as 2 points
- b. Adult Burglary 2° or Residential Burglary offenses count as 2 points
- c. Juvenile Burglary 2° or Residential Burglary offenses count as 1 point
- d. Any other felony offenses count standard

11. Sex Offense, other than Failure to Register as a Sex Offender (defined in RCW 9.94A.030):

- a. Adult and Juvenile Sex offenses count as 3 points
- b. If the current is a Violent Sex offense, prior adult & juvenile non-Sex Violent offenses score as 2 points.
- c. If the current is a SV Sex offense, prior adult & juvenile non-Sex SV offenses score as 3 points (if they are not other current SV offenses).
- d. Any other felony offenses count standard

12. Failure to Register as a Sex Offender (FTR) offenses (ranked FTR are defined as Sex offenses):

- a. Adult and Juvenile Sex offenses that are not FTR are score as 3 points
- b. Adult and Juvenile Sex offenses that are FTR score as 1 point
- c. Any other felony offenses count standard

13. Theft of a Motor Vehicle, Possession of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1° or 2°:

- a. Misdemeanor offense of Vehicular Prowling 2° counts as 1 point
- b. Adult and Juvenile offenses of Theft 1° or 2° of a Motor Vehicle, Possession of Stolen Property 1° or 2° of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1° or 2°, count as 3 points
- c. Any other felony offenses count standard

14. Felony Domestic Violence (defined in 9.94A.030) where DV was pleaded and proven:

a. Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1°, Kidnapping 1° or 2°, Unlawful Imprisonment, Robbery 1° or 2°, Assault 1°, 2° or 3°, or Arson 1° or 2°.

b. Count 2 points for each Adult offense where DV was pleaded/proven after 7/23/2017 for any of the following offenses: Assault of a Child 1°, 2° or 3°, or Criminal Mistreatment 1° or 2°.

c. Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.

d. Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011 e. Any other felony offenses count standard

15. Community Custody Point: If the present offense was committed while the person was under community custody, 1 point is added to the criminal history score.

Other Scoring Considerations:

- Only "ranked" offenses (those assigned a seriousness level) receive a score
- If there is more than one current offenses, offenses score against one another (with some exceptions) as though they were criminal history.
- A finding of Sexual Motivation changes the categorization of any felony non-sex offense into a sex offense and as such, the offense is scored as a sex offense
- Class B Violent offenses that are anticipatory are not considered Violent offenses but still score as though it was a Violent offense
- For Class B and Class C offenses in criminal history can "washout" if conditions of crimefree behavior are met (with some exceptions)
- Offenses ruled as same criminal conduct do not score against one another
- Offenses committed prior to 7/1/1986 and served concurrently count as one offense for scoring purposes
- Some offenses in history may not be included in the criminal history score if they also resulted in an enhancement

Note: Original SRA had multipliers for the following offense types: Serious Violent, Burglary 1°, Violent, Vehicular Homicide, Escape, Burglary 2, and Drug offenses. Also, Juvenile offenses were only scored if the person was 15 year or older at the time the offense was committed and was less than 23 at sentencing.