Washington State Criminal Sentencing Task Force
Grid Sub-Group
DRAFT Meeting Summary: July 19th, 2022
Meeting via Zoom

Attendees:
- Jon Tunhein, *WA Association of Prosecuting Attorneys*
- Brian Smith, *WA Association of Sheriffs and Police Chiefs*
- Nick Straley, *Interests of Incarcerated Persons*
- Judge Wesley Saint-Clair, *Sentencing Guidelines Commission*
- Sen. Chris Gildon, *WA Senate Republicans*
- Clela Steelhammer, *Caseload Forecast Council*
- Keri-Ann Jetzer, *Sentencing Guidelines Commissions (SGC)*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Gregory Link, *WA Association of Defense Attorneys*
- Tiffany Attrill, *Interests of Crime Victims*
- Melody Simle, *Families of Incarcerated Persons*

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

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

Welcome and Agenda Review:
Amanda welcomed the group to the meeting and reviewed the agenda. The group will go over the recommendations around the columns for serious violent and violent crimes as a means to get rid of the scoring exception multipliers, specifically the exceptions for sex offenses and felony domestic violence. Amanda also reviewed the progress the group made during last week's all-day working session along with the work the research team has been doing to stitch together a written narrative for the recommendations directly foundational to the formulaic approach and overall structure of the new grid.

Amanda reminded the group of the second all-day working session (July 26th in Olympia), which will focus on columns for serious violent and violent crimes to get rid of the scoring exception multipliers and aggravators, and any remaining issues around washouts and offense classification.

Criminal History Scoring
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 number of months that judges could add to a sentence (in place of scoring exceptions).

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)

Under the inclusion of new columns for repeat violent and serious violent offenses through the 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)

Several members could not support counting juvenile offenses in the CHS and suggested the Task Force recommend these offenses not count, stating that to be consistent, juvenile offenses should not be considered in an adult's criminal history scoring. In response, the facilitation team reminded the group that they do not have any recommendations about including or excluding juvenile scoring because there will be a proposed bill in the legislature that aims to remove juvenile offenses for CHS calculation.

The group then moved to discussing scoring exceptions for sex offenses and felony domestic violence offenses along with potential recommendations that the group might suggest the Task Force make.

Sex Offenses:
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 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.

The discussion moved to consider whether adult and juvenile sex offenses should get scored as 1 point or 3 points. This would apply to Class A sex offenses that would, under the new grid's structure, be considered as violent/serious violent would be subject to these new columns.

Amanda asked the group what the rationale behind the status quo is of having adult and juvenile sex offenses count as 3 points and what is the effect of having them rescored as 1 point. Under this recommendation there would be no exception for sex offenses, and they would be scored just the same as any other offense that this a repeat violent/serious violent offense. In response, a member suggested the rationale behind the status quo was that the scoring exceptions for these offenses were designed to score against other sex offenses to denote increased culpability.

Amanda then reviewed the spreadsheets put together by Dr. Knoth-Peterson to highlight how the new columns interact with the new grid. Rather than having multipliers that add extra points that move someone along to increased levels of CHS score, these columns add on additional time onto the available maximum in a range for that specific offense seriousness level (OSL) and CHS. This new model without multipliers would see reductions in CHS scores for these offenses but the associated sentences at the maximum point in the range are close to, or significantly overlapping with, the status quo. There would also be some reduction in overall incarceration length in most sentence ranges, overlapping with current ranges, in a model that eliminated multipliers without adding the repeat columns.

Felony Domestic Violence
The status quo for scoring 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

Amanda noted that some DV offenses are not classified as violent or serious violent and asked the group for the rationale behind this. The group can craft a potential recommendation to add Domestic Violence in the Repeat SV/V columns, such that these columns would now be classified as Repeat V/SV/DV. There are DV crimes that are not considered crimes against persons (i.e. Malicious Mischief, Cyber Harassment) that are not violent, that can be captured in these columns by including DV.

Group Input:
- A member mentioned that although their constituency is curious/waiting on the research from Matt Landon around recidivism and offender scores, within their constituency there's no will to move away from a multiplier model.
- A member is struggling to say that they can live with these changes to scoring, they want more conversations about the ranges on the columns associated with these offenses and the related supervision people are potentially exposed to after their sentence.
  - Sex offenders are under supervision regardless of sentencing. If a sex offender goes to jail, they get 12 months of supervision, and if sentenced to prison they get 36 months of supervision.
  - The member then asked what does continually reoffending look like under this column model rather than the offender score model?
    - To answer, Amanda presented an example to clear up any confusion on the function of the columns. Example: If someone has a CHS of 1 due to a prior violent conviction and that person commits a violent offense at OSL 10, they now have a CHS of 2. However, because it is a repeat violent offense the SV/V columns add 24 months onto the top end of the sentence range at CHS 2.
- A member has concerns that other members have expressed they will likely not reach consensus on multipliers. This member wants to know why the group is spending time on these recommendations. They support expanding judicial discretion to individualize cases.
  - In response to the above, another member expressed their belief that the changes do not meet the three policy goals. To prosecutors, these multipliers are not exceptions to standard scoring, but are in fact the standard scoring, so they do not see the complexity in these exceptions. Prosecutors suggest that these columns replace one form of complexity with another, but they need the research that is currently coming about offender scores and recidivism to say whether they will support these recommendations.
- A member mentioned when the group discusses judicial discretion it has been shown that there are large disparities in judicial practices *geographically* across Washington's counties. Additionally, most cases reach a plea deal, and these deals are agreed upon by all parties, and part of that agreement is an agreement on the criminal history scoring.

- ○ Another member responded that 97% of WA cases are resolved by plea deals and the prosecutor's decision on what to charge someone determines everything. Consequently, where power lies is with prosecutors, and this power can be leveraged to coerce plea deals rather than take these cases to a neutral third-party judge that can hear evidence and weigh in on this decision. The member expressed their frustration that the group has spent three years discussing the flaws in our justice systems and the group seems to have come to a deadlock.
- ○ Another member echoed those frustrations, saying the grid group has been going over these similar topics for months. They agree that the state needs more discretion in hands other than prosecutors and more sunlight in the sentencing system. They suggested the Task Force consider passing this work onto the SGC or other agencies.
- ○ In response to this conversation another member spoke up and wanted to demonstrate that they are willing to listen and while the group may not reach consensus on this, they need to do a better job listening to each other. They mentioned that they are all in this justice system but in varying places that influence how each of them see the system and the flaws in it that must be addressed.
- ○ A member mentioned that they very much support having a new grid based on a formulaic approach and the reformed structure. They felt that it seems the group has secondary and tertiary issues that are currently standing in the way of reaching consensus on this.
- ○ A research member reminded the group that evidence shows long sentences are not effective in reducing recidivism and in fact can have the opposite effect. To improve the quality of incarceration, reductions in the quantity of time are needed to bring funding for better programs to reduce recidivism and improve reentry. What the group is being presented with is based on the research and the recommendations are not simply to make the system simpler, but to align our system via evidence-based recommendations.

Action Item: Research team to make a few examples to highlight the difference in ranges in the status quo model and Repeat SV/V Columns, these examples should include sex offenses and a DV scenario and potentially a vehicular homicide scenario.

Next Steps: The next all-day work session will focus on columns for serious violent and violent crimes to get rid of the scoring exception multipliers and aggravators, as well as any remaining conversations around washouts and offense classification before August's full Task Force meeting.

RESOURCES SHARED VIA CHAT:
None

COMMENTS SUBMITTED BY GUEST OBSERVERS VIA ZOOM CHAT and/or EMAIL
Joanne Smieja: Most sex offenses are classified as non-violent.

    SOPB is also looking at washouts for sex offenses.

    The SOPB has been asked to review lifetime supervision.

    Continual reoffending would be an aggravator.

    The grid determines the minimum.

    At sentencing, a person gets sentenced to a minimum sentence which is based on the grid.

Bruce Glant: approximately 75% of the net nanny non-contact cases take pleas. Average sentences are in excess of 6.5 years, (78 months).