

CSTF Recommendation to Eliminate Offense-Specific Multipliers

Review for SGC

10.27.2023

Philosophies of punishment

- Retribution
 - “Just deserts” – punishment should be as serious as the offense.
 - “An eye for an eye” “Let the punishment fit the crime”
- Incapacitation
 - Eliminate the ability for individuals to commit an offense.
 - Individuals at a higher *risk* of crime should be incarcerated longer.
- Deterrence
 - Punishments that are swift, certain, and severe will prevent individuals from committing an offense.
 - Individuals are rational and consider benefits and costs. Punishments must be severe enough to outweigh the benefits of offending.
- Rehabilitation
 - Punishments should reform individuals to reduce their offending behaviors.
 - Prisons as “reformatories.”
- Restoration
 - Punishments should restore harm done to victims and society.
 - Individuals take full responsibility for offense, restore harm done, and reintegrate back into society.

Philosophies of punishment

Most policies can be tied to one or more of these philosophies of punishment.

May not be mutually exclusive.

- Prison sentences may be motivated by retribution, incapacitation, and rehabilitation.
- Legal financial obligations may be motivated by retribution (fines) and restoration (restitution, fees).

Philosophies of punishment

Offense-specific multipliers in Criminal History Scores

- Rehabilitation – n/a
- Restoration – n/a
- Deterrence
 - No current evidence for deterrent effect.
 - Multipliers are a “black box” unknown by most individuals.
- Incapacitation/Risk
- Retribution

Philosophies of punishment

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- **Incapacitation/Risk**
- **Retribution**

Philosophies of punishment

Offense-specific multipliers in Criminal History Scores

- **Incapacitation/Risk**

- Argument for: Past behavior is a predictor of future behavior. If individuals previously committed violent offenses, they may be more likely to recidivate with a violent offense.
- *Quantitative* aspect of history captured in number of priors
- Multipliers capture *qualitative* aspect of history – more points for *specialization*.

Philosophies of punishment

Offense-specific multipliers in Criminal History Scores

- **Incapacitation/Risk**

- Research on specialization:

- Generalization more common than specialization
- Specialization more common among less frequent offending populations
- Some evidence of short-term specialization, but more versatility in long-term.
- “The more highly motivated crime-prone offenders are more likely to engage in a wide range of criminal behaviors relative to their less motivated, more criminally specialized, counterparts.” McGloin et al., (2007)
- “It is quite possible that a trend toward offending specialization may be a part of the desistance process.” McGloin et al., (2007)

Thus, evidence suggests there is a greater risk of recidivism among generalists rather than specialists.

Philosophies of punishment

Offense-specific multipliers in Criminal History Scores

- **Retribution**

- Argument for: Individuals who have repeatedly committed the same crimes are deserving of more serious punishments.
- Value/policy-based question
- Individuals have not “learned their lesson”
- Previous sanctions weren’t enough, so more sanctions may be necessary for repetitive behaviors

Absent a deterrent effect or indicator of risk, offense-specific multipliers are most likely informed by retribution perspective.

CSTF Recommendation – Repeat Column

Eliminate the offense-specific multipliers from the criminal history score calculation.

Create a new column on the grid for repeat violent offending that increases the maximum of the standard sentencing range if the individual has convictions for a previous violent or serious violent offense.

Recognizing that retributive sanctions may be justified for individuals who have committed repeat violent offenses (more cumulative harm done to society), this recommendation maintains the ability to increase sanctions for repeat violent offenses while eliminating a significant source of complexity, inefficiency, and error.

Justification – Task Force Goals

Reducing Complexities and Errors

- Multipliers happen in the background and have many complex rules that are not always known.
- Applying a new column consistently regardless of offense reduces the complexity and potential for errors.
- Applying a new column increases transparency and makes it clearer that an individual's sentence was higher or eligible to be higher as a result of the types of offenses in their criminal history.

Justification – Task Force Goals

Improving Effectiveness of the Sentencing System

- Multipliers increase discretion of the legislature and reduce the discretion of judges/prosecutors/defense. Recommendation creates more balanced discretion.
- Increasing the maximum allows for the similar outcomes as today (e.g., increased punishment for repeat offenses/retributive sanctions), but also allows for more consideration of cases that may not need increased sanctions.
- More individualized sanctions.

Justification – Task Force Goals

Increasing Public Safety

- Recommendation maintains the ability to issue more serious sanctions for more serious individuals/cases.
- In particularly egregious cases, aggravating factors are likely to apply
- Many violent and serious violent offenses will also have enhancements which still apply.
- Given the lack of evidence that specialization is a signal for increased risk, there is no evidence that increased incapacitation is necessary to maintain public safety for repeat offenses vs. generalists.

Justification – Task Force Goals

Reducing Racial Disproportionality/Disparity

- Initial evidence from OFM suggests there is racial disproportionality in the application of multipliers which creates disproportionality in sentences.
- Increasing the maximum still allows for increased sentences when warranted, but allows defense to argue that increased sanctions are not justified given considerations of an individual's specific criminal history.
- Allows for more clear understanding of potential disparity by being able to compare cases where the sentence was increased due to the type of offenses in a person's criminal history. In status quo, there is significant heterogeneity in the meaning of different people's criminal history scores.

Serious Violent Felonies

Multiplier	Race						
	Missing	Asian	Black	Hispanic	Indigenous	Unknown	White
No Serious Violent Felony	77	741	3827	3092	605	202	10390
Serious Violent Felony Present	1	18	279	153	32	0	442
No Violent Felony	78	710	3614	3029	582	202	10087
Violent Felony Present	0	49	492	216	55	0	745

<u>Prior Serious Violent Felony</u>	
Race	Has Multiplier
Missing	1.28%
Asian	2.37%
Black	6.79%
Hispanic	4.71%
Indigenous	5.02%
Unknown	0.00%
White	4.08%

<u>Prior Violent Felony</u>	
Race	Has Multiplier
Missing	0.00%
Asian	6.46%
Black	11.98%
Hispanic	6.66%
Indigenous	8.63%
Unknown	0.00%
White	6.88%

Violent Felonies

Multiplier	Race						
	Missing	Asian	Black	Hispanic	Indigenous	Unknown	White
No Violent Felony	476	1405	7818	5502	1423	423	34047
Violent Felony Present	14	91	1109	365	121	5	2562

Prior Violent Felony

Race	Has Multiplier
Missing	2.86%
Asian	6.08%
Black	12.42%
Hispanic	6.22%
Indigenous	7.84%
Unknown	1.17%
White	7.00%

Burglary 1

Prior Burglary 2 Adult

Race	Has Multiplier
Missing	9.60%
Asian	9.06%
Black	16.77%
Hispanic	13.71%
Indigenous	17.63%
Unknown	0.00%
White	18.29%

Prior Burglary 2 Juvenile

Race	Has Multiplier
Missing	0.00%
Asian	2.27%
Black	2.28%
Hispanic	4.89%
Indigenous	4.91%
Unknown	0.00%
White	2.87%

Prior Violent Felony

Race	Has Multiplier
Missing	0.80%
Asian	17.15%
Black	28.82%
Hispanic	15.30%
Indigenous	20.23%
Unknown	4.55%
White	13.20%