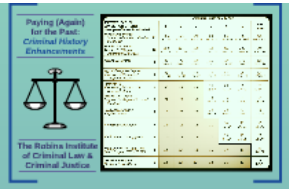

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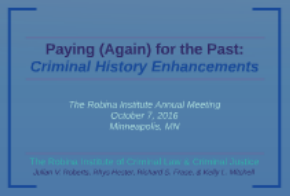

UNIVERSITY OF MINNESOTA
ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE
PAYING FOR THE PAST:
The Consequences of Criminal Convictions
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Paying (Again) for the Past: *Criminal History Enhancements*

The Robina Institute Annual Meeting
October 7, 2016
Minneapolis, MN

The Robina Institute of Criminal Law & Criminal Justice
Julian V. Roberts, Rhys Hester, Richard S. Frase, & Kelly L. Mitchell

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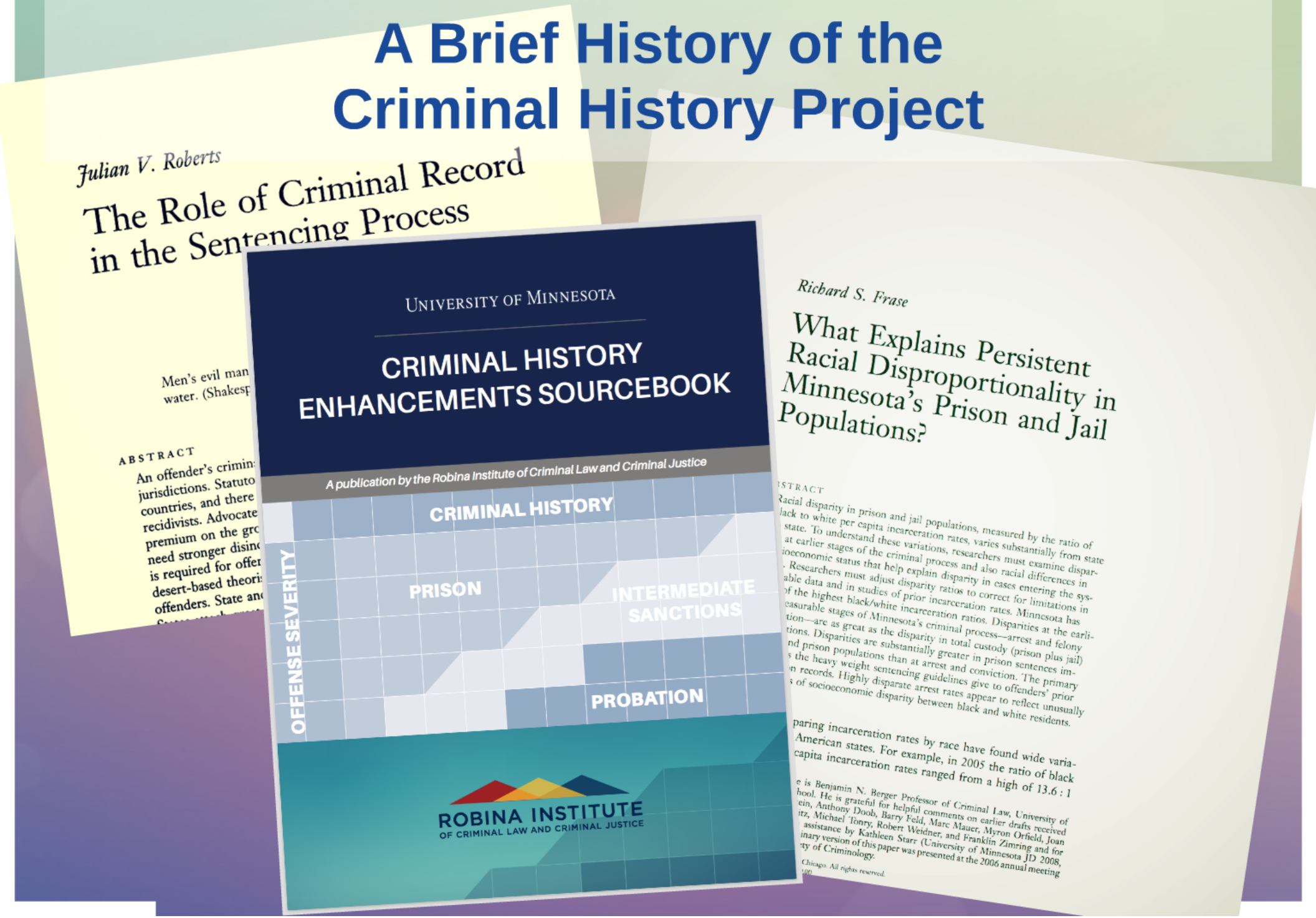
A Brief History of the Criminal History Project



Goals of the Criminal History Project

To systematically study criminal history enhancements and answer:

- *How are states enhancing sentences on the basis of criminal history?*
- *What are the justifications?*
- *What are the costs and benefits?*

Illustration of Criminal History Enhancement

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE 0	1	2	3	4	5	6 or more
Murder, 2nd Degree (intentional murder; drive-by-shootings)	**11**	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480*[2]	426 *363-480*[2]
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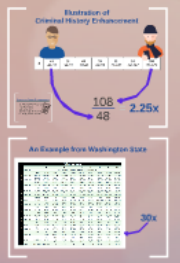
Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from



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			39	45	51	57

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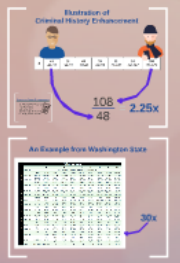

Illustration of Criminal History Enhancement

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Common Score Components:

- Number of Prior Felonies
- Felony Weight
- Misdemeanors
- Juvenile Adjudications
- Custody Status Violation

$$\frac{108}{48} = 2.25x$$

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An Example from Washington State

Seriousness Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL XVI	LIFE SENTENCE WITHOUT PAROLE/DEATH PENALTY									
LEVEL XV	280m 240 - 320	291.5m 250 - 333	304m 261 - 347	316m 271 - 361	327.5m 281 - 374	339.5m 291 - 388	364m 312 - 416	394m 338 - 450	431.5m 370 - 493	479.5m 411 - 548
LEVEL XIV	171.5m 123 - 220	184m 134 - 234	194m 144 - 244	204m 154 - 254	215m 165 - 265	225m 175 - 275	245m 195 - 295	266m 216 - 316	307m 257 - 357	347.5m 298 - 397
LEVEL XIII	143.5m 123 - 164	156m 134 - 178	168m 144 - 192	179.5m 154 - 205	192m 165 - 219	204m 175 - 233	227.5m 195 - 260	252m 216 - 288	299.5m 257 - 342	347.5m 298 - 397
LEVEL XII	108m 93 - 123	119m 102 - 136	129m 111 - 147	140m 120 - 160	150m 129 - 171	161m 138 - 184	189m 162 - 216	207m 178 - 236	243m 209 - 277	279m 240 - 318
LEVEL XI	90m 78 - 102	100m 86 - 114	110m 95 - 125	119m 102 - 136	129m 111 - 147	139m 120 - 158	170m 146 - 194	185m 159 - 211	215m 185 - 245	245m 210 - 280
LEVEL X	59.5m 51 - 68	66m 57 - 75	72m 62 - 82	78m 67 - 89	84m 72 - 96	89.5m 77 - 102	114m 98 - 130	126m 108 - 144	150m 129 - 171	230.5m 149 - 198
LEVEL IX	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	53.5m 46 - 61	59.5m 51 - 68	66m 57 - 75	89.5m 77 - 102	101.5m 87 - 116	126m 108 - 144	150m 129 - 171
LEVEL VIII	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	53.5m 46 - 61	78m 67 - 89	89.5m 77 - 102	101.5m 87 - 116	126m 108 - 144
LEVEL VII	17.5m 15 - 20	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	66m 57 - 75	78m 67 - 89	89.5m 77 - 102	101.5m 87 - 116
LEVEL VI	13m 12+ - 14	17.5m 15 - 20	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	53.5m 46 - 61	66m 57 - 75	78m 67 - 89	89.5m 77 - 102
LEVEL V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	47.5m 41 - 54	59.5m 51 - 68	72m 62 - 82	84m 72 - 96
LEVEL IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	61.5m 53 - 70	73.5m 63 - 84
LEVEL III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	19.5m 17 - 22	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	59.5m 51 - 68
LEVEL II	0-90 days	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	19.5m 17 - 22	25.5m 22 - 29	38m 33 - 43	50m 43 - 57
LEVEL I	0-60 days	0-90 days	3m 2 - 5	4m 2 - 6	5.5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	19.5m 17 - 22	25.5m 22 - 29

30x

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Justifications for Enhancing on the Basis of Prior Record

Risk Argument: *criminal history reveals the offender poses a greater risk to reoffend.*

Retribution Argument: *criminal history makes the offender more blameworthy for the current offense.*

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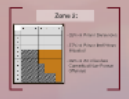


Adverse Impacts:

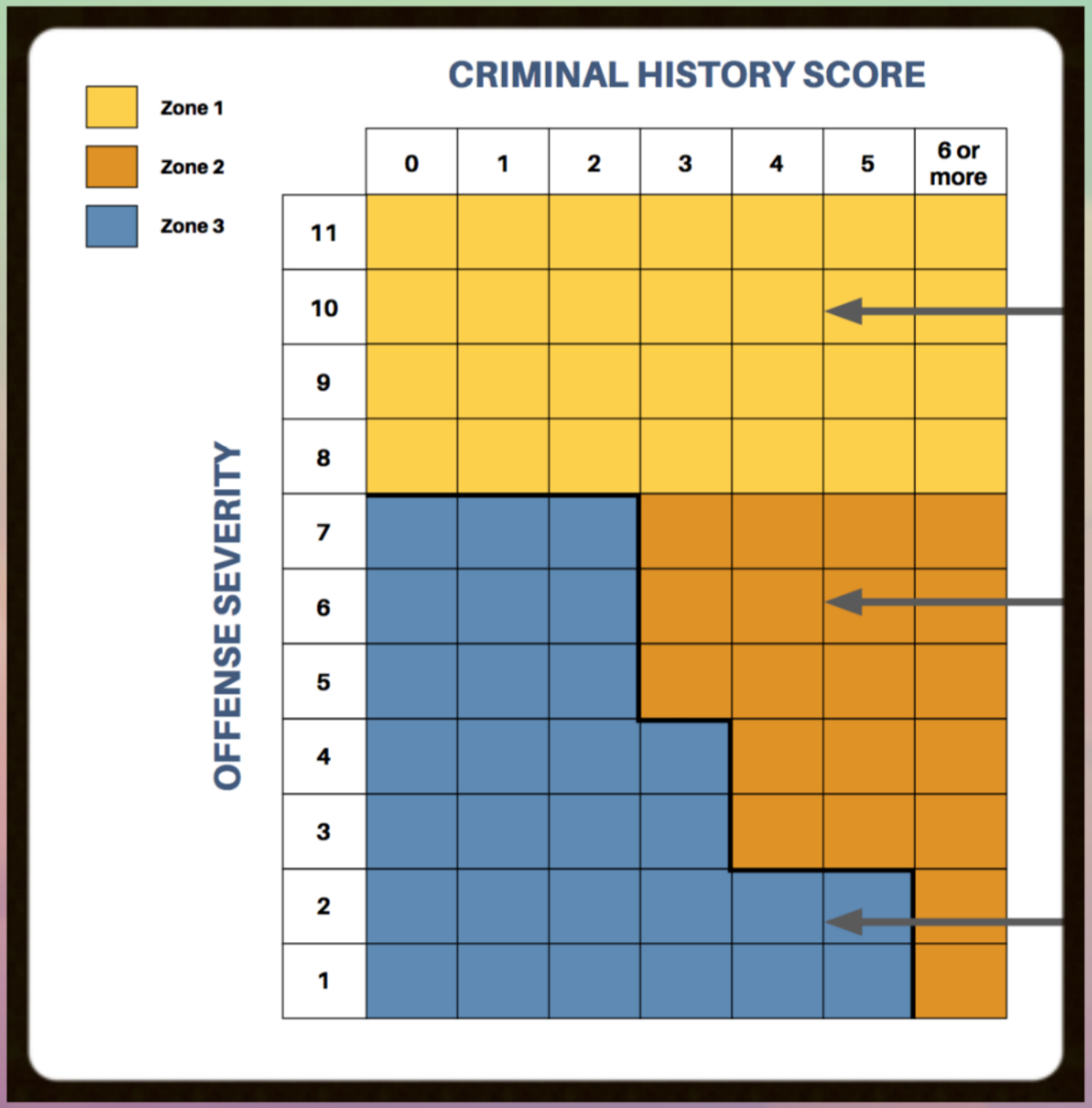
offense proportionality

aging prison population

prison bed priorities

size and expense of prisons

racial disparities

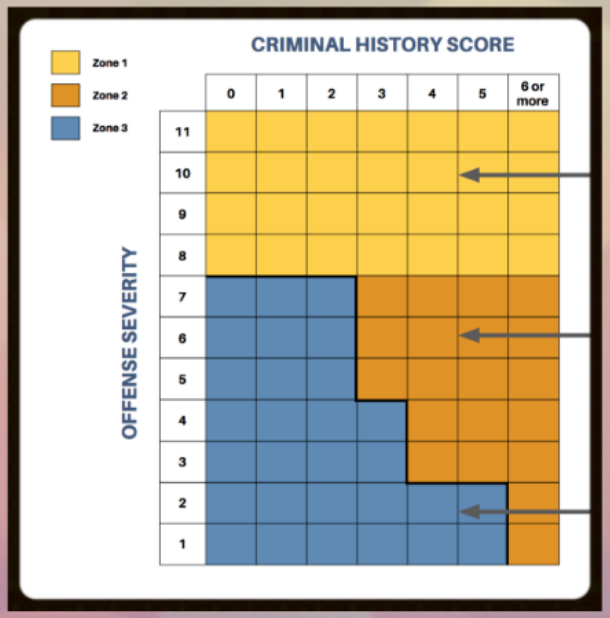


Zone 1
High Severity

Zone 2
High Criminal History

Zone 3
Low Severity & History

Focus on Criminal History: "Zone 2"
Minnesota, Standard Grid (2014)

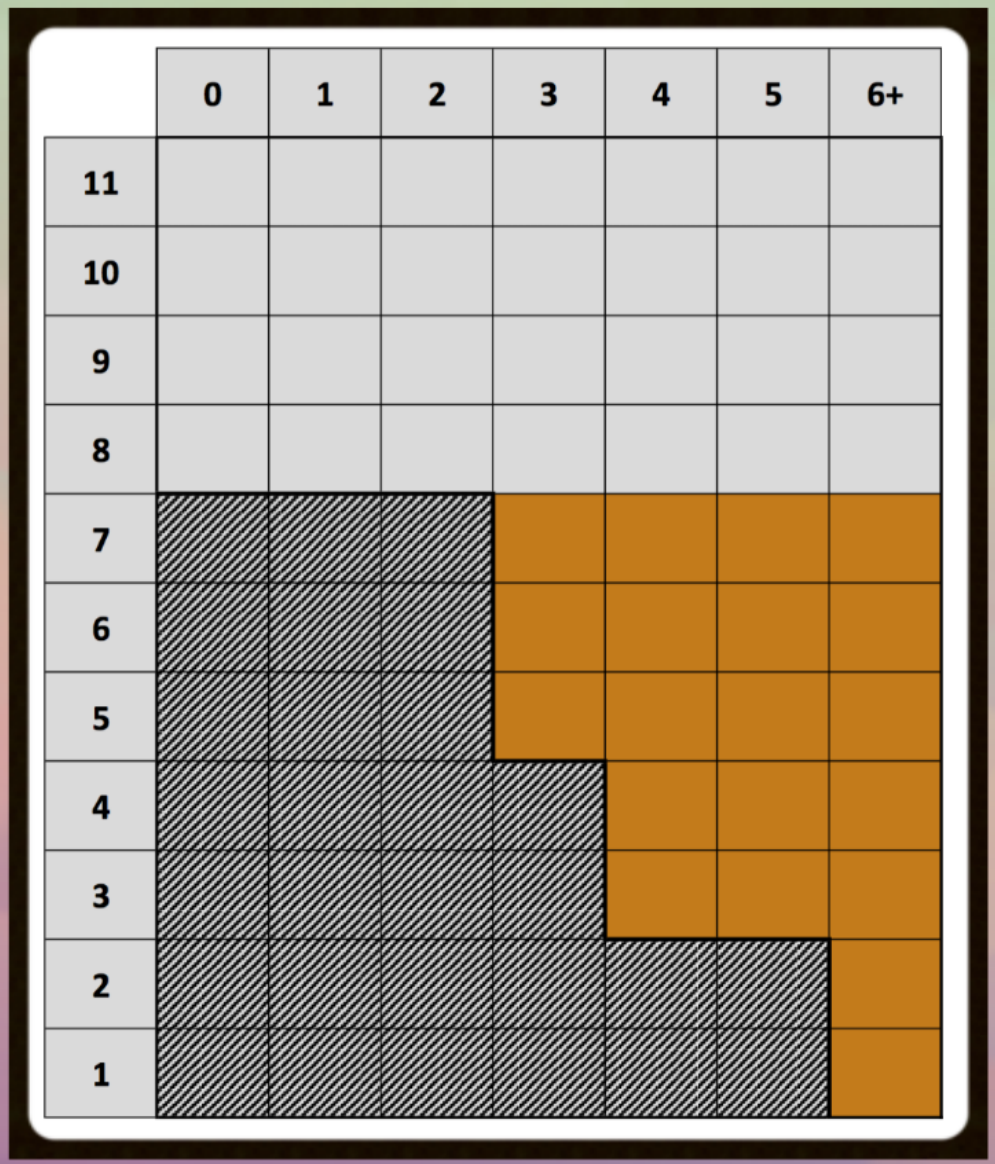


	Total Sentences	Prison Sentences
Zone 1 High Severity	1,346	843
Zone 2 High Criminal History	2,865	2,104
Zone 3 Low Severity & History	10,930	868
Total	15,141	3,815

19%

55%

Zone 2:

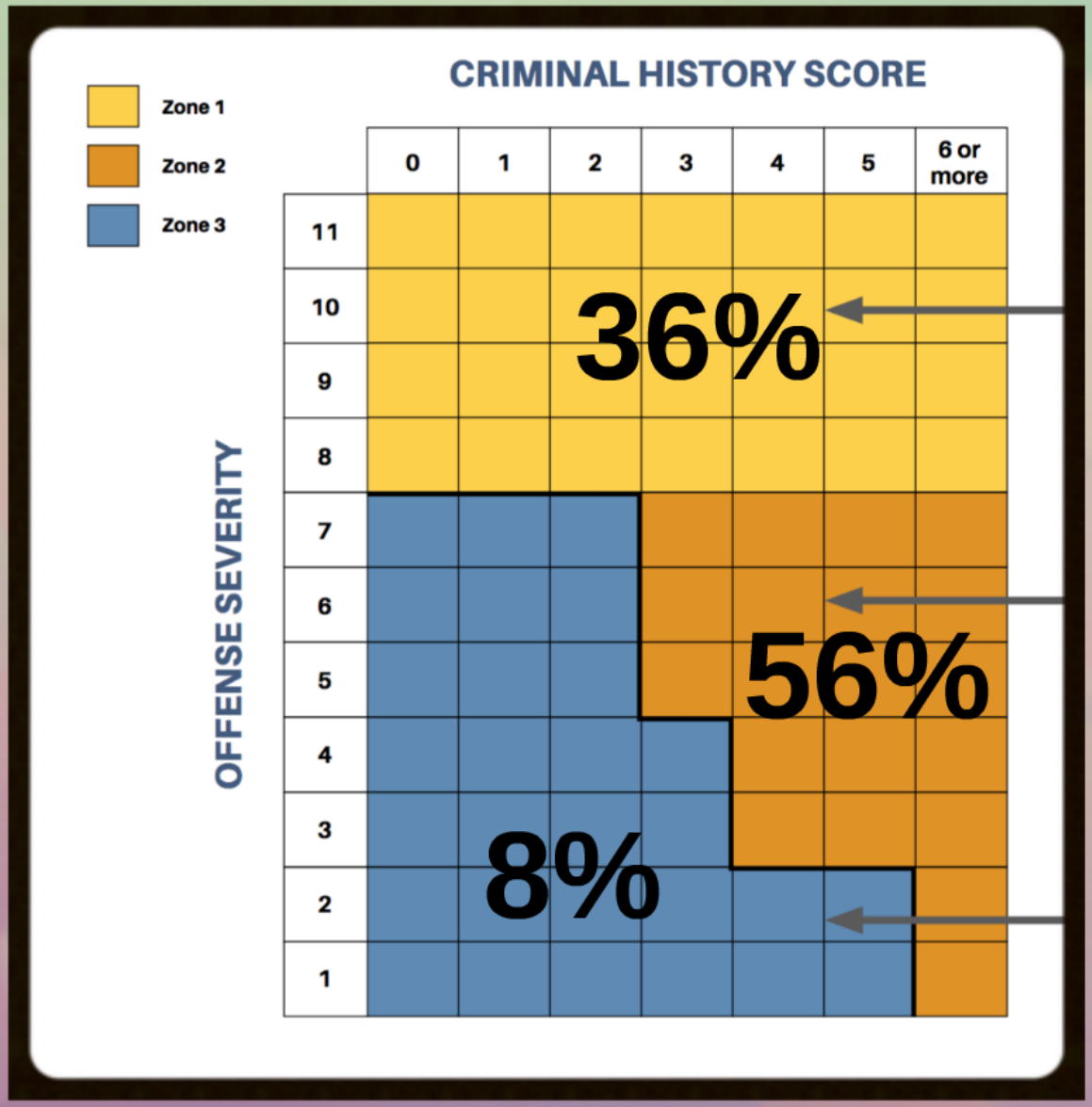


	0	1	2	3	4	5	6+
11							
10							
9							
8							
7							
6							
5							
4							
3							
2							
1							

- 55% of Prison Sentences
- 37% of Prison Bed Years Imposed
- 69% of Z2 Offenders Committed Non-Person Offenses

Criminal History and Race

Disparities in Recommended Prison Rates



High Severity

High History

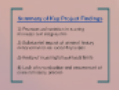
Low Severity & History

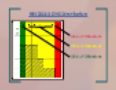
Criminal History & Racial Disparities:
A Jurisdictional Comparison

Primary Grids			
Jurisdiction/Grid	***Zone 1: High Severity***	***Zone 2: High Criminal History***	***Zone 3: Mandatories & Other Special Rules***
Kansas	48%	57%	-4%
Minnesota	36%	56%	8%
North Carolina	61%	41%	-2%
Washington	51%	49%	0%

pacts

Conclusion & Recommendations





Summary of Key Project Findings

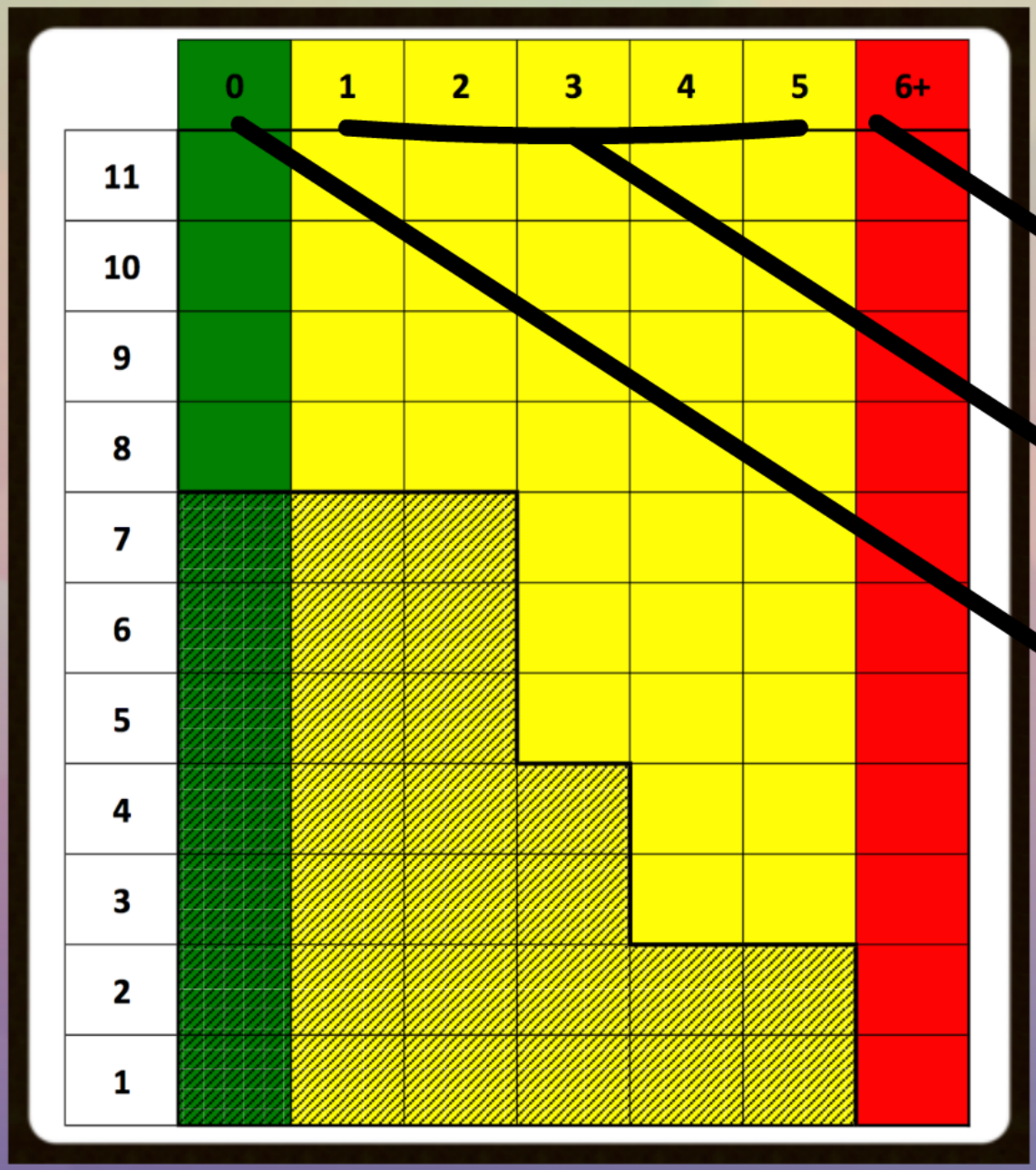
1) Pronounced variation in scoring formulas and magnitudes

2) Substantial impact of criminal history enhancements on racial disparities

3) Rarity of meaningful look-back limits

4) Lack of re-evaluation and assessment of criminal history policies

MN (2014) CHS Distribution



10% of Offenders

57% of Offenders

33% of Offenders

Considerations for Reform

Limit the Magnitude

Prior record should never account for more than half of a sentence.

Limit the Impact of Older Offenses

Exclude all adult priors after 10 years.

Impact should decay with time.

Limit Juvenile Priors

Options:

- *Disregard once the individual is 18*
- *Disregard juvenile offenses after 5 years*
- *Give juvenile offenses less weight*

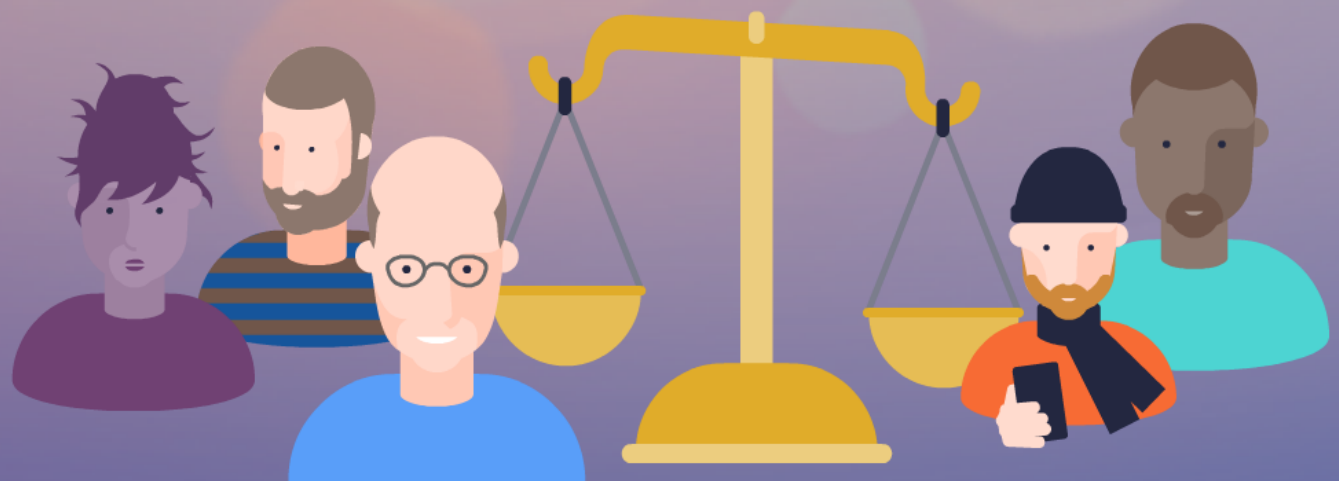
Robina Public Opinion Research

- 69% in favor of restricting use of old priors
- Increasing disregard of aging priors in sentencing vignettes
- 74% in favor of restricting use of juvenile priors

Allow for Some Judicial Adjustment to the Criminal Record

For example:

- *Court can increase or decrease the criminal history score if it understates or overstates the seriousness of the prior record.*
- *Court can remove or decrease the weight of older priors if close to the decay period.*



Thank You

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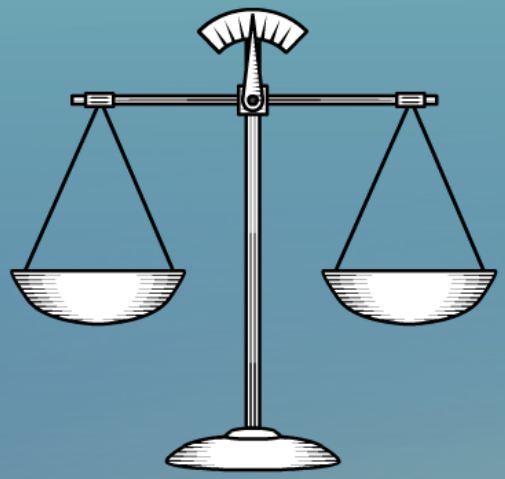

The Robina Institute of Criminal Law & Criminal Justice

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