

**Washington State Criminal Sentencing Task Force**  
**Sentencing Grid Subgroup**  
**Meeting Summary: August 3, 2021**  
Zoom Digital Conferencing Technology

**Attendees:**

- Representative Roger Goodman, *Washington State House Democratic Caucus*
- Keri-Anne Jetzer (alt. for Judge Saint Clair), *Sentencing Guidelines Commission*
- Lauren Knoth (research & data support), *Washington Institute for Public Policy*
- Melody Simle, *Interests of Incarcerated Persons*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Nick Straley (alt. for Nick Allen), *Interests of Incarcerated Persons*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

**Guests:** Bruce Glant, Kelly Leonard, Corey Patton, Joanne Smieja, and David Trieweiler

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

**WELCOME & AGENDA REVIEW**

Amanda welcomed Sentencing Grid Subgroup (Subgroup) members and reminded the Subgroup that the Task Force had approved the use of 54 months as statutory maximum for Class C felonies and 108 months for Class B; these can serve as “anchor points” for mapping sentence lengths across the other grid cells using a formula or percentage to ensure consistency.

**DISCRETION IN THE SYSTEM**

Amanda asked Lauren to provide information about discretion throughout the sentencing system, specifically on the “hydraulic” nature of discretion in the system. This means there is a set amount of discretion distributed throughout the system, so when discretion is increase in one area, it must decrease elsewhere, and vice versa.

The research literature does not support the idea that disparate treatment of individuals, and disproportionate outcomes, correlates directly with judicial discretion. There are ways to restrict or limit discretion at certain points in the system.

A member asked Lauren whether disproportionate outcomes exist for aggravated murder and three strikes, for which everyone gets the same sentence. The member encouraged the Subgroup to consider addressing disparity in judicial sentencing by limiting the sentence range in each cell of the grid to a single number. Lauren responded that prosecutorial charging decisions cannot be separated from judicial sentencing: if a sentence under a certain charge would be X, and the prosecutor thinks it more appropriate to have a sentence of Y, they can simply change the charge/s. The member challenged the Subgroup to propose other ways of addressing racial disproportionality in the system, maintaining that setting a single point for sentencing in any given cell at least prevents disparate treatment for those individuals with the same criminal history score (CHS) charged with offenses of the same seriousness level.

The member said that people in prison complain that their sentences get determined by plea negotiations, instead of arguing the merits of the charges and discussing the circumstances of the offense in court. A member asked how plea negotiations determining sentences connects to racial discrimination; the group discussed that since someone facing a third strike charge could enter a plea negotiation to change that, discrimination could affect which individuals get offered such plea negotiations. This raised the question, “Shouldn’t judges have the discretion to assess such situations and compensate or mitigate for them?”

When states restrict judicial discretion for sentences, it leads to discrimination in the use of alternatives and mitigated sentences. Plea bargaining is sentencing, since judges accept the results of plea bargains an overwhelming percentage of the time.

A question arose about transparency in sentencing: judicial decisions are subject to public scrutiny, but not prosecutorial decisions; would it help to increase transparency in those? Lauren reported that the limited number of cases at high offense seriousness levels (OSLs) does not provide enough data to draw meaningful conclusions.

The member advocating for each grid cell having a fixed sentence length number challenged the group to come up with solutions to address racial discrimination in the system. Another member asked if research shows any best practices for reducing discrimination, stating that the Subgroup would benefit from having such information.

**Simulated Grid Options for OSL 1-5 / Class C**

Keri-Anne showed a simulation of the bottom five rows of the grid (OSL 1-5), with the whole SW corner presumptive zero for CHS 0 and 1. In addition, all unranked sentences would have a presumptive length of 0-365 days (the top segment shows only the width of the sentence ranges, with green showing info for the proposed new grid and orange font showing the sentence range of each cell for the current grid, for comparison purposes):

	0	1	2	3	4	5	6	7	8	9+											
V	10.0	6.0	12.0	2.0	11.0	4.0	13.0	5.0	16.0	7.0	18.0	10.0	23.0	13.0	27.0	17.0	33.0	20.0	38.0	24.0	
IV	9.0	6.0	10.0	6.0	12.0	2.0	11.0	4.0	13.0	5.0	16.0	7.0	18.0	10.0	23.0	14.0	27.0	17.0	32.0	21.0	
III	7.0	2.0	8.0	5.0	10.0	8.0	12.0	3.0	10.0	4.0	12.0	5.0	15.0	7.0	18.0	10.0	21.0	14.0	26.0	17.0	
II	3.0	3.0	6.0	4.0	7.0	6.0	8.0	8.0	10.0	2.0	12.0	4.0	10.0	5.0	12.0	7.0	15.0	10.0	19.0	14.0	
I	2.0	2.0	3.0	3.0	5.0	3.0	6.0	4.0	7.0	5.0	8.0	8.0	10.0	2.0	9.0	4.0	10.0	5.0	13.0	7.0	
<b>Jail/Straddle/Prison Cells</b>																					
	0	1	2	3	4	5	6	7	8	9+											
V	0.0	10.0	0.0	12.0	4.0	15.0	5.0	18.0	6.0	22.0	8.0	26.0	9.0	32.0	11.0	38.0	13.0	46.0	16.0	54.0	
IV	0.0	9.0	0.0	10.0	0.0	12.0	4.0	15.0	5.0	18.0	6.0	22.0	8.0	26.0	9.0	32.0	11.0	38.0	13.0	45.0	
III	0.0	7.0	0.0	8.0	0.0	10.0	0.0	12.0	4.0	14.0	5.0	17.0	6.0	21.0	7.0	25.0	9.0	30.0	10.0	36.0	
II	0.0	3.0	0.0	6.0	0.0	7.0	0.0	8.0	0.0	10.0	0.0	12.0	4.0	14.0	5.0	17.0	6.0	21.0	8.0	27.0	
I	0.0	2.0	0.0	3.0	0.0	5.0	0.0	6.0	0.0	7.0	0.0	8.0	0.0	10.0	3.0	12.0	4.0	14.0	5.0	18.0	

Those cells that straddle jail and prison lengths (below and above 12 months) are shaded lightly; those with minimums at zero are shaded orange; those with sentence lengths greater than one year (presumptive prison terms) are the darkest shade.

A member expressed support for aspects of this approach, praising the wider cell ranges and increase in number of cells with presumptive minimum sentences of zero months. Another member voiced support for reducing incarceration across the board, noting that if populations of the

incarcerated shift from state prisons to county jails, as this grid might cause to occur, it would raise multiple issues needing attention. These include improving jail conditions, providing resources for counties to handle the increase load of incarcerated persons, and others.

Lauren pointed out that the use of zones could assist in addressing such challenges. For example, the orange cells could get designated as a zone, for which the state might get tasked with reimbursing counties, or judges could have the option to sentence people to state facilities or programs, even for sentences shorter than one year. She reminded the group to keep in mind the potential for racial discrimination to occur in such decisions. Keri-Anne asked if the Subgroup wanted to suggest the Task Force recommend that in the zone of orange cells, the default sentence would be an alternative to incarceration—or stipulate that prosecutors and judges must consider alternatives.

#### **NEXT STEPS & ACTION ITEMS**

- Next week the Subgroup will look at the options for OSL 1-5, continue looking at how to mitigate racial discrimination, and further discuss plea bargains.

#### **COMMENT SUBMITTED BY GUEST OBSERVER VIA ZOOM CHAT**

Bruce Glant: What Lauren is talking about is exactly what happens in the Net Nanny sex stings. Prosecutors sit down with the head of the task force prior to the operation. They look at the grid to determine the charges with the highest sentences and run those venues. At trial, judges are biased by the crime, which is victimless using fictitious children.

As to Nick's comments, judges actually using Alternatives to Incarceration can help alleviate overcrowding in the jails. But please understand, they need to do it across the board, including sex crimes..... not including aggravated.