

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: August 17, 2021
Zoom Digital Conferencing Technology

Attendees:

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

Guests: Corey Patton, Joanne Smieja, Bruce Glant, and David Trieweler

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

WELCOME & AGENDA REVIEW

Amanda reminded Subgroup members that at the August 5th Task Force meeting members tentatively supported using 54 months and 108 months as “anchor points” to simulate calculating the cell ranges for Offense Serious Levels (OSL) 1-9.

GRID CELLS WITH SENTENCE LENGTHS STRADDLING 12 MONTHS

A member commented that adopting a grid with cells containing sentence lengths as long as the simulated grid shows would mean different sentence lengths for the same crime (by a person with the same criminal history score) in different counties around the state. Another member suggested that in situations involving straddle cells, some counties would likely have judges issuing most sentences longer than 12 months to limit the number of individuals incarcerated in county jail, in favor of having them in state facilities using state resources.

The Subgroup then discussed potential recommendations to present to the full Task Force:

Potential Recommendation 1: If the maximum based on the formula is 12 months or less, the minimum is automatically reduced to zero. Effects:

- a. Creates wider discretion for judges in southwest corner.
- b. Expands the number of cells in which there is an option for 0 months incarceration
- c. Increases the ranges in the SW corner which is where the WSIPP report found the most disproportionality in sentences (so concern that this could exacerbate disproportionality)
 - i. Potential check on this – require that the presumptive sentence is a sentencing alternative?

- ii. Provide funding for a non-incarcerative community supervision option for any sentence in these cells that is funded by the state. Funding could be a block grant that is based on county populations and court use.

Potential Recommendation 2: If the maximum based on the formula is more than 12 months, the minimum is automatically 12 months and a day (this could go into effect for any cell with current minimum of at least 8 to avoid making some cells have exceedingly narrow ranges). Effects:

- d. Eliminates straddle cells.
- e. Creates variability in the width of the ranges such that some ranges are very small (e.g., only 2 months).
- f. Potentially reduces jail sentences, but doesn't have as significant of an impact on prison sentences (though lengths would likely decrease).

Potential Recommendation 3: If not number 2 and keeping straddle cells, possible recommendations:

- g. Create a zone that covers straddle cells.
- h. Stipulate that sentences for individuals in straddle cells are paid for by the state.
 - i. Justification: if they are not prison sentences, it is saving DOC funding by reducing DOC caseloads, so that funding could be diverted to the local courts to support non-incarcerative alternatives.
- i. For sentences in this zone, presumptive sentence is a sentencing alternative that is served locally. Ideas:
 - i. Could be operated by local courts but funded by the state
 - ii. Reduces prison sentences/beds/costs, so cost savings can be used to fund the intermediate punishment program.
 - iii. Could require state approval of county's intermediate punishment plan to ensure that the programs are meeting a minimum standard. Can set requirements for that plan that must be reviewed annually.
 - iv. Provide funding through a block grant based on a formula, modeled on the Juvenile Court block grant program
- j. For sentences in this zone, sentences that are DOC sentences (more than 12 months) could have an option for state Intermediate Punishment
 - i. Partial confinement
 - ii. Allows DOC to assume the financial/resource responsibility for community supervision portion of the sentence.
 - iii. Includes an emphasis on rehabilitation and programming.

Comments on straddle cells:

- Multiple members expressed support for having a grid with cells that straddle 12 months; however, one wondered if the sentence range in each cell could be on the lower side, e.g., 8-15 months rather than 6-24 months. Keri-Anne pointed out that a simple formula adjustment in the simulated grid could shorten the sentence ranges in each cell.
- Another member echoed that building in structural elements to mitigate the burden on counties will be important, while wondering if straddle cells could increase disproportionality. Increasing reentry resources will be important; ideally counties will offer a range of options that even individuals in jail could benefit from.
- It would create a stark delineation between non-incarceration options and state prison, assuming sentences less than 12 months primarily go to intermediate sanctions and programs.
- Straddle cells could lesson prosecutorial discretion.
- Support for moving the midpoint of sentence ranges in each cell downward.

- The current grid contains cells with sentence ranges 12-15 months where judges can depart downward; this functionally creates straddle cells; however, any such exceptional sentence is subject to appeal so judges must use that option selectively.
- Keri-Anne pointed out that the intermediate sanctions providing treatment rather than incarceration comprises a philosophical shift from the Sentencing Reform Act, toward rehabilitation and away from punishment.
- Using alternatives to incarceration as the presumptive sentence (for straddle cells) would appeal to judges. If rejected and courts seek incarceration within the ranges, they must provide justification.
- Explaining these considerations to the Task Force will take time: combining intermediate county-level sanctions with jail and prison sentences results in a complex mix of elements.
- No other state has tackled a large-scale structural rebuild of its sentencing grid; these conversations are digging into the issues head-on and, while difficult, have the potential to make Washington state a model for the rest of the United States.

NEXT STEPS & ACTION ITEMS

- Next week the Subgroup will look at the input provided by the Task Force in response to its presentation on the simulated grid, its sentence ranges, and approaches to straddle cells.

COMMENT SUBMITTED BY GUEST OBSERVER VIA ZOOM CHAT

None.