

**Washington State Criminal Sentencing Task Force**  
**Sentencing Grid Subgroup**  
**Meeting Notes: August 31, 2021**  
**Meeting via Zoom**

**Attendees:**

- Russell Brown (Alt. for Jon Tunheim), *WA Association of Prosecuting Attorneys*
- Rep. Roger Goodman, *WA Legislature*
- Keri-Anne Jetzer, (Alt. for Judge St. Clair), *Sentencing Guidelines Commission*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Melody Simle, (Alt. for Suzanne Cook), *Statewide Family Council*
- Judge St. Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated Persons*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

**Presenter:** Lauren Knoth (research & data support), *Washington Institute for Public Policy*

**Facilitation Team:** Amanda Murphy and Chris Page, William D. Ruckelshaus Center

**WELCOME & AGENDA REVIEW**

Amanda welcomed everyone and thanked Lauren, Clela, and Keri-Anne for all the research and data support they have been providing to the Subgroup and Task Force. She explained that this meeting will focus on the upper rows of the grid.

**DISCUSSION ON UPPER ROWS OF THE SENTENCING GRID**

Lauren reminded the group of the concerns expressed about mandatory minimums and about exceptionally long sentences, balanced by the fact that the offenses in the highest OSLs are the most violent and serious. She showed the list of those violent offenses: Murder in First Degree; Rape in First Degree; Sexually Violent Predator Escape; Aggravated First Degree Murder; Second Degree murder. The requirement for a mandatory minimum of 240 months in OSL 15 means that applying a formulaic approach to calculating evenly escalating sentence lengths, as criminal history score (CHS) increases from left to right, would create exceptionally long sentences in the upper right cells of the grid.

To address this concern, Lauren and Keri-Anne walked through one idea, where the approach would be creating two new rows at or above the highest OSLs for Aggravated Murder 1 and for Murder 1 / Homicide by Abuse. These two new OSL rows would, in effect, establish a zone at the top of the grid in which crimes involving murder would get treated separately from all other offenses. The first set of changes:

- Murder 1, Homicide by Abuse, and Murder 2 moved to their own OSLs.
- Expands the grid from 16 to 18 rows.
- Murder 1 and Homicide by Abuse wide ranges that extend across CHS, as with Aggravated Murder 1.

- Resulting ranges in OSL 17 are basically the same as the current minimum at CHS 0 and 5 and maximums at CHS 4 and 9+.

Other ideas of potential changes:

- Collapse Malicious Explosion 1 and Trafficking 1 into the same OSL. Move all other offenses up one OSL.
- Since the formula decreases sentences, increasing the OSL by 1 for these offenses will moderate the reduction in sentences.
- Leaves open OSL 10 for Class A felonies in OSL 9 and below that may need to be recalibrated to 10 or above under new grid structure.

Initial thoughts and discussion among Grid Subgroup members included:

- A member expressed discomfort for increasing sentence lengths for any offense, at any level. Extremely long sentences may not get issued often, but prosecutors consistently use them to get defendants to agree to plea bargains. This member emphasized that sentences should be getting shorter and that the Task Force should be bold in its recommendations.
- Another member reminded the group of the increasing support for a Second Look program.
- The group discussed whether Murder 1 is truly different from Murder 2, noting that white defendants are more likely to get charged with Murder 2 than defendants of color.
- Another member said they could not support lengthening any sentence lengths unless the proposal would also eliminate multipliers, enhancements, and consecutive sentences before keeping or expanding sentence lengths.

### **SIMULATED GRID**

Keri-Anne showed the Subgroup the revised mock grid and walked through the formula: e.g., for OSL 16 (Murder 2, Trafficking 1, and Murder 2 – Anticipatories) with the longest sentence in the upper right corner (upper range for Murder 2) would become the anchor point at 397 months. With the shortest sentence in that OSL at the lowest CHS as 108, the difference = 289, divided by 7 = 41.2 so for each CHS level, moving left to right the difference in sentence lengths would be 41. This grid includes offenses changed in each OSL to match the changes Lauren showed the group. Lower OSL cells would have shorter sentences since there would be more OSL rows between the formula's anchor point (397 months) and OSL 10.

OSLs 6-9 could use the same formula, just with different numbers; same with OSLs 10-15.

Initial thoughts and discussion among Grid Subgroup members included:

- **Q:** Why would we set sentences so arbitrarily, using old numbers that do not have factual or research support? **We should set sentences based on what works to create the change we would like to see.** **R:** This approach would disentangle the most serious violent offenses from the other serious and violent crimes, so sentences for the not-as-severe offenses can be tailored somewhat.
- **Q:** Do we have the science to know what works best? **R:** I have seen research that shows sentence lengths up to 15 or 16 years having better outcomes than sentences longer than that.

**R:** The programs and services available during the sentence make more difference than its length.

- This approach would significantly reduce sentences for all offenses in the higher rows except for Murder 1 and Murder 2.
- With a separate zone for serious violent crimes, courts could require victim impact statement or drug and alcohol assessment, or mandate treatment of certain types. Stipulating treatment, services, and required conditions can enable evidence-based approaches to holding individuals accountable for their actions and producing better outcomes.
- A member expressed support for increasing the minimum age at which someone can get sentenced for Murder 1 from 18 to 25 (based on brain science and the Monschke decision<sup>1</sup>) and setting the sentence at 20 years no matter the CHS, with judges able to issue exceptionally long sentences if/when justified.
- Let's keep in mind that this Subgroup has different perspectives than the full Task Force, where we heard a real reluctance to shorten sentences. I am not sure we have evidence to support this new approach, though it does highlight the complexity of the issues encapsulated in the grid and all its layers.
- We should be careful in presenting this to the full Task Force as the Subgroup's proposal. I think we need more time to discuss and potentially refine this.

Amanda pointed out that having Task Force input before this approach progresses too far should help the Subgroup's discussions. Rep. Goodman echoed that, noting that the group still has not discussed multipliers, enhancements, or aggravators and mitigators; in fact, the work to overhaul the entire grid realistically should take more time than just the rest of 2021. The co-chairs have agreed that it makes sense to have the Task Force continue its work through December 2022.

Keri-Anne asked Subgroup members to speak up in favor of what they think would work, instead of focusing just on what they do not like. The facilitators asked the group if they were in support of moving to 90-minute meetings. Members were in support.

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

- Continue the discussion on the upper level of the grid, potentially beginning to discuss the middle rows.

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

Bruce Glant: The number of child sex offenses on the list for FY2019 was quite high. How many of those were as a result of individuals being caught in a Net Nanny Sting from going on an Adult Dating Site. Also, how many of those had NO criminal history or history of misconduct with a child? I believe these numbers are skewed for crimes that harm no one with fictitious victims.

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<sup>1</sup> In the Monschke and Bartholomew cases, the Washington state Supreme Court justices ruled that 18-, 19- and 20-year-olds facing life sentences for aggravated murder must be viewed through a lens that considers the "transient immaturity of youth."

I have already seen where some individuals are not being allowed a 2nd chance opportunity. Many times it will be as a result of the crime charged.