Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: September 7, 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*
- Nick Straley, *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Guests: James Chambers, Bruce Glant, Corey Patton, Joanne Smieja, David Trieweiler

Facilitation Team: Amanda Murphy, Chris Page, Maggie Counihan

WELCOME & TASK FORCE TIMELINE

Amanda welcomed everyone before asking Subgroup members for their thoughts on extending the timeline for the Task Force until at least June 30th 2022 and possibly December 31, 2022, with the full Task Force moving to meeting once a month instead of every two weeks. Members agreed that trying to work through enough material on the grid to have new potential recommendations ready every two weeks felt rushed and that it would help to have more time to discuss all the ramifications of approaches to revising the grid—and that the Legislature would not have enough time to consider a revised grid in the short session of 2022.

To address the potential drawback of Task Force members not remembering material with a full month between meetings, Co-Chair, Jon Tunheim suggested the idea of voluntary work sessions to update Task Force members on grid discussions. Others echoed the support for taking enough time to work through issues thoroughly, to avoid rushed decisions. One member raised that people in the criminal justice system and their families are waiting for needed changes to the system, so the Task Force must not lose sight of opportunities to provide immediate relief if those materialize.

A member also expressed support for the Legislature finding a way to provide stipends for those Task Force members volunteering their time.

DISCUSSION ON UPPER ROWS OF THE SENTENCING GRID

Amanda asked the Subgroup to reflect on the input provided by Task Force members on the potential recommendations emerging for the top rows of the grid, higher offense seriousness levels (OSL).

Potential Recommendation 12a: Move Trafficking to OSL 15 and then move all other offenses up one OSL

- If the grid is expanded to 18 rows, there are two OSLs that would have only one offense (OSL 15 with Malicious Explosion of a Substance 1 and OSL 14 with Trafficking 1).
- Increasing the OSL by 1 would moderate the reduction in sentences that result from applying the formula to OSL 10 and above.
- This leaves OSL 10 empty, creating room to recalibrate offenses below OSL 10.

Creating the new OSL of 10 to enable the reclassification of offenses whose sentence lengths exceed the statutory maximum would address a concern raised by Task Force members that sentence lengths for some offenses in certain classes might need recalibrating if/when a new grid gets adopted.

Keri-Anne Jetzer reminded the Subgroup that it had not yet discussed criminal history score (CHS), which could lead to the elimination or reduction of multipliers; this would mitigate some exceptionally long sentences. A member observed that any move that might lengthen sentences would raise issues with retroactivity. This potential recommendation creates two new OSLs at the higher range (17 & 18) and retains sentencing ranges for those most severe offenses, while shortening sentences in OSLs 11-16.

A Subgroup member stated that their constituency would not support retaining the sentence lengths for Aggravated Murder and Murder 1; however, the support could come if the recommendation to retain those sentence lengths got packaged with other recommendations that mitigate concerns around the longest sentence lengths. Another member suggested that a new approach to supervision would have more benefits in the lower OSLs than the higher ones.

Keri-Anne asked the Subgroup if anyone objected to using a formula to calculate sentence lengths throughout the grid. Members expressed general support for using a systematic approach, while pointing out that the same formula might not work for all offenses. Another member agreed that using a single formula for a comprehensive overhaul of the grid would bring complications.

A member asked whether a five-year mandatory minimum for certain offenses would cause complications with the proposed set of sentence ranges. Keri-Anne noted that the proposed sentence lengths in OSLs 12-13 would exceed the mandatory minimum sentence length for those offenses, so this would not bring conflicts. The member asked whether the questions around mandatory minimums belong in a conversation around the grid or might be better answered by a general policy discussion. A member voiced opposition to the use of mandatory minimums, pointing out that it stems from the 1930s—why should we assume the Legislature got it right when they said murder should bring a prison sentence of at least 20 years?

A member asked if anyone had information on how the original sentence lengths were calculated and where to look to find information about sentence lengths from before the Sentencing Reform Act. Members responded that the Sentencing Guidelines Commission, which was charged with developing the grid based them on current sentence lengths as well as looked at sentence lengths from other states and generated the grid based on this information. The book, *Sentencing in Washington: A Legal*

Analysis of the Sentencing Reform Act of 1981 (Butterworth Legal Publishers 1985) by David Boerner and the following article: Sentencing Reform in the Other Washington (Boerner and Lieb, 2001) has a lot of this information.

Amanda asked what those Subgroup members opposing using the sentence length in OSL 9 as the anchor point, what they would propose for sentence length. One member suggested creating a simulation using 25 years. Another member said they had seen research showing that incarceration benefits cease after 15 years, so sentences should not extend longer than that. Another member observed that the full Task Force needs to discuss the topic of mandatory minimums as part of the discussion. The member said they did not think we could ever find the "science" behind the sentence lengths established by the SRA.

Another member suggested that exceptionally long sentences can be addressed by focusing on enhancements, "three strikes" laws, consecutive sentences, and multipliers rather than eliminating mandatory minimums. Another member voiced support for developing tools to address those exceptionally long sentences while noting that the Task Force needs to discuss the power imbalance that favors prosecutors, who gain leverage by threatening to charge exceptionally long sentences.

A member pointed out that recidivism depends more on the quality of incarceration than the quantity, specifically whether an individual has access to education, treatment for mental health or substance use disorder, job training, and other programs. The Task Force might benefit from packaging sentence ranges with recommendations around such programs and services.

Amanda then asked the Subgroup to consider and provide input on the next potential recommendation.

Potential Recommendation 12b: For OSL 17 – collapse ranges for 0-4 and 5-9+ in a way consistent with 0/5 min and 4/9+ max.

This would mean individuals with CHS 0-4 would receive sentences between 240-360 months for Murder 1; those with CHS 5-9 would receive sentences between 300-540 months. This would increase sentence lengths for some and shorten sentences for others.

A member opposed this proposal as a stand-alone since it would enable prosecutors to retain greater discretion to charge excessively long sentences. However, if it got packaged with the elimination of consecutive sentences, multipliers, and some action to limit the impact of enhancements, they would be more likely to support it. Another member expressed support for the Legislature to address the consecutive nature of enhancements related to firearms, which was a consensus recommendation of the Task Force last year. They also pointed out that prosecutorial discretion can be mitigated by increasing discretion for judges.

A member observed that the Task Force still has not discussed the overall philosophy of retribution vs. rehabilitation and expressed support for the Task Force considering what the overall goal of the system

should be. Amanda pointed out that the Task Force has held discussions about the goals of the system and from those conversations, that it does not have to be “either/or” but is “both/and” and that the Task Force can revisit its discussions about the goals and its desired outcomes for the grid.

NEXT STEPS & ACTION ITEMS

- Next meeting will focus on the middle portion of the grid, OSL 6-9.