Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: September 14, 2021
Meeting via Zoom

Attendees:

- Russ 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*
- Lauren Knoth, *WA State Institute for Public Policy*
- Greg Link, *WA Association of Criminal Defense Attorneys; WA Defender Association*

- Melody Simle, (Alt. for Suzanne Cook), *Statewide Family Council*
- Judge St. Clair, *Sentencing Guidelines Commission*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

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

Facilitation Team: Amanda Murphy, Chris Page, Maggie Counihan

WELCOME & TASK FORCE TIMELINE
Amanda welcomed everyone before letting the Subgroup know today's meeting would focus on offense seriousness levels (OSLs) 6-9, the middle rows of the grid. She mentioned that Matt Landon, the researcher from the Office of Financial Management doing research on the relationship between criminal history score (CHS) and recidivism, would be able to brief the Subgroup on his preliminary findings at an upcoming meeting.

DISCUSSION ON MIDDLE ROWS OF THE SENTENCING GRID
Keri Anne displayed versions of both the current grid and a proposed simulated grid that show each individual offense listed by OSL. She explained the formula used to outline sentence lengths in the simulated grid, which starts with an "anchor point" of the statutory maximum for B class felonies with twelve months to allow for an aggravated sentence.

In the simulated grid, most sentence lengths decrease when compared to the current grid. Lauren pointed out that some Class A offenses sit within OSLs 6-9; with the formula in those rows using the Class B "anchor point" of statutory maximum (120 months) minus 12 months for an aggravates sentence (108 months), that one thing the group may want to consider in its recalibration discussions is whether to move the OSL 9 Class A offenses up to OSL 10 in a new grid. Similarly, the two Class A offenses in OSL 8 could get moved to OSL 9 to mitigate the reduction in sentence lengths. The Task Force could also move the handful of Class B offenses in OSLs 1-5 up to OSL 6 or 7 for the same reason.

A member observed that some Task Force members would react negatively to shortening sentence lengths like this, and it would be important to explain that many courts currently sentence near the bottom of the range for certain offenses so this would mean the new grid would more accurately reflect the sentences issued now in many instances. Certain offenses, like Robbery 1 and Burglary 1, might be especially important to reclassify to address concern about shortening sentence lengths.

It might help Task Force members put the new simulated grid into perspective if research could provide data showing the average sentence for certain offenses in relation to the simulated grid, to show the percentage of average sentences that would still fall within the range of the new grid. Lauren Knoth agreed to look for standard sentences (those with no enhancements or aggravators) to show what percentage would still fall within the simulated range. Keri Anne will try to find sentence lengths from other states for comparison.

A member expressed support for showing current sentencing practices in relation to the new simulated grid to put it into perspective, speculating that the medians for current sentence lengths would fall near the middle of its given cell sentence range. Lauren displayed data showing sentence lengths for Robbery 1 with median sentence length at 31.4% of the maximum and explained that judges might take a few years to adjust their sentencing practices after a new grid goes into effect, but eventually would likely end up issuing sentences at similar points in the new cell ranges as they did in the old.

Another member questioned whether shortening sentence lengths for some of the more seriousness offenses would improve public safety. It would be hard to explain to victims' families the rationale for shortening such sentences. It would be important to show something in exchange to address the concerns those folks would have, such as improving supervision perhaps. Another member responded that no evidence exists showing long sentences improve public safety, noting that when people point to the current rising violent crime as reason not to shorten sentence lengths, that increase in violent crime is occurring under the current system so would indicate that the current system is not improving public safety.

Other Subgroup members agreed with the latter sentiment, observing that increasing sentence lengths to address recidivism does not seem to have had the intended deterrent effect. Jon Tunheim stated that prosecutors do not wish to lengthen sentences, but to use a more targeted approach around when to use incarceration. Prosecutors understand that in the lower rows, at lower CHS score levels (aka the SW corner of the grid), non-incarceration approaches might make good sense. They want to see a targeted rehabilitative approach in the lower rows, likely through expanding the use of sentencing alternatives.

The group continued discussing the relationship between sentence lengths and public safety, incorporating the issue of racial disparity. A member commented that racial disparity rises significantly with the longer sentences associated with violent and serious violent crimes. These sentences often carry enhancements and multipliers, which can escalate sentence lengths massively. Earned early release time could perhaps play a role in developing and implementing solutions to these issues.

The Subgroup then briefly revisited discussions on sentencing alternatives. A member pointed out the power held by prosecutors in determining who gets an alternative sentence recommended. Having the issuance of alternatives ride on the offense, rather than the individual, does not make sense based on the effectiveness shown by the risk-needs-responsivity approach.

Prosecutors and defense attorneys can agree on the need for a system that provides judges enough discretion to issue a sentence based on the needs of the individual and the specific circumstances of each case. This raised the issue of disparities associated with judicial discretion, which has arisen in both the Subgroup and the Task Force. A professor at Seattle University, Professor Chang, has a project underway to analyze and develop tools that can help mitigate those disparities.

NEXT STEPS & ACTION ITEMS
- Next meeting will focus on the top rows of the grid and associated elements
    - "Where in the range" judges currently sentence
    - Potential to require a Victim Impact Statement
    - Modifications to minimum supervision term after release
    - Repeat violent offense column or zone
    - Anticipatory offenses
    - Aggravators and mitigators

COMMENTS SUBMITTED BY GUEST OBSERVERS VIA ZOOM CHAT and/or EMAIL

Bruce Glant: what about crimes that are class A felonies where there are NO victims, harming no one, have the lowest recidivism rates, induced from LE interaction to create the crime, and had no criminal history. When will there be discussion about alternatives for these types of crimes? That are in the upper section of the grid... SL 12