

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: September 21, 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*
- 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, Joanne Smieja, David Trieweler, Aracely Yates

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

WELCOME & AGENDA

Amanda welcomed everyone before letting the Subgroup know today's meeting would focus on offense seriousness levels (OSLs) 10-15, the upper rows of the grid.

DISCUSSION ON UPPER ROWS OF THE SENTENCING GRID

Keri-Anne displayed a proposed simulated grid using the "anchor point" of 25 years for the upper bound of sentence lengths for Murder 1 (300 months, for criminal history score (CHS) of 9+). A member noted that sentence lengths in the proposed sentencing grid appear significantly reduced from the current grid and that those ranges, which would involve eliminating the minimum sentence for Murder 1, and may be a non-starter for prosecutors.

A member observed that virtually all Murder 1 sentences include at least one firearm enhancement, which is a five-year enhancement, which would make sentences at least that much longer than any mandatory minimum. Another member pointed out that many of these sentences get resolved via plea negotiation, which can involve dropping the enhancement from the sentence. This points to the amount of power held by prosecutors in the system. The member suggested the conversation should focus on restoring the balance of power in the system. Another member replied that the Legislature has created the system in which we operate, and that prosecutors do not hold all the power since defense attorneys agree to the terms of plea negotiations also, often in a collaborative manner.

Prosecutors could perhaps live with a reduction of 5-10%. A member responded from the perspective of those representing the incarcerated, that is a place the group can start the conversation, since it is

crucial to address exceptionally long sentences while also addressing retroactivity. Regarding retroactivity, a “Second Look” mechanism merits attention.

A member suggested packaging a relatively modest adjustment to sentence lengths in the grid coupled with eliminating mandatory minimums and mandatory stacking. Prosecutors may be able to support making the stacking of enhancements no longer mandatory, consecutive but would need to further discuss.

A member suggested a minimum of 15 years for Murder 1, and asked members if this was something their constituencies could support or live with. A member suggested instead that the guideline be set at 20 years, with judges having the ability to go below that by five years in cases with mitigating circumstances. For individuals with CHS 0, the mandatory minimum in OSL 15 (Murder 1) could be 20 years in the sentencing guidelines grid, but 15 years by statute—allowing judges to issue the shorter sentence when mitigating circumstances exist. Another member suggested that lowering the sentence in the left-most column to 15 years might garner more support from prosecutors than making the longest sentence 300 months, since that would represent a drop of 20 years from the current range.

To illustrate the last suggestion, Lauren Knoth offered a revised simulated grid, with an adjusted formula such that the longest sentence in OSL 15 for CHS 0 would be 241 months; embedding a rule that the lowest CHS sentence would be 50% of that for the highest CHS (rather than 40%) could result in a middle ground approach that might be acceptable to all the parties. A member pointed out that it would be possible to have three different formulas: one each for OSL 1-5, 6-9, and 10-15.

Lauren asked the Subgroup to turn its attention to OSLs 10-14, asking for input on the simulated ranges and if members were not in support, what specific sentence length they would propose for an anchor point. Members discussed input from the last Task Force meeting and members concerns that the decreases were quite large in some cells. Keri-Anne asked whether the difference in sentence length between OSL 9 and 10 needs to be tethered to the differential between 8 and 9, which is linked to the difference between 7 and 8, and 6 and 7, and so on. If the group could live with a bigger increase from OSL 9 to 10 (i.e., between Class B and Class A felonies, respectively), that could open some possibilities.

A member asked whether the group could view a simulated grid with simple reductions across the board, e.g., 5% or 10%. Keri-Anne replied that this would not address a fundamental perceived shortcoming of the existing grid, which is that it has no science or data or even a systematic approach underpinning the sentence ranges. Since there is no consistency in the ranges of the current grid or the laws that determine the calculation of the upper range, applying an across-the-board percentage reduction would not result in an equal percentage reduction across each cell.

Members then began discussing the issue of retroactivity as it relates to any potential changes to the grid. Amanda suggested that the group hold on getting too deep into a discussion about retroactivity since the group has yet to complete its discussion on the vertical axis components of the grid and has yet to even discuss the horizontal axis of the grid and its components, including multipliers, aggravators, enhancements and their impacts on criminal history score.

Lauren asked whether the group was beginning to coalesce around Potential Recommendation 12a and if so, would move forward with the next iteration of simulations, which would include putting all three sections of the grid back together for next week's discussion. Members were in support of being able to see what this would look like and discussing at next week's meeting.

NEXT STEPS & ACTION ITEMS

- Next meeting will provide a reworked set of the top rows of the grid (OSL 10 and above) alongside all the other rows (OSL 1-9) so the Subgroup can consider all potential recommendations for the vertical axis as a whole.
- Future topics: The horizontal axis (Criminal History Score), multipliers, aggravators, mitigators, and enhancements.

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

James Chambers: First I would just like everyone in group to know I have been listening to every discussion about how we move toward the goal of fixing a sentencing system ! That really was based off of some made up numbers that a few people thought would work Then add over well over 200 amendments most adding to sentence length to SRA The SRA has become weapon used to force people to take plea bargains The mandatory minimum sentences is huge problem and should be completely removed I hear everyone talking about sentence in the upper part of the grid as if th serving long ey are not long enough in the purposed grid I would say I served 21.5 yrs in wa doc that is extremely long time so for people that act as if people don't change after serving decades in prison is offensive To someone like myself who wants nothing more then to be a positive force of change in my community I understand we have to keep our communities safe there Is point when a sentence becomes harmful to community I'm just wanting everyone to understand the people I speak to do not support any mandatory minimum sentences being part of new grid!

Also I completely disagree with the idea that when this grid is finished that people sentenced under old grid could just have sentences adjusted by doc if this group just reduced sentences by a certain % our man in woman in prison deserve opportunity to show they have changed I 100% support 20yr look back process Im listen to every meeting and I'm hopeful that this group will keep pushing forward to come up with something fair and equally for everyone I understand victims need a voice but our communities become victims to by over sentencing. Thank you James Chambers