

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: October 19, 2021  
Meeting via Zoom**

**Attendees:**

- Russ Brown, *WA Association of Prosecuting Attorneys*
- Rep. Roger Goodman, *WA Legislature*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*
- Lauren Knoth, *WA State Institute for Public Policy*
- Clela Steelhammer, *Caseload Forecast 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, Corey Patton, Joanne Smieja, David Triewelier

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

**WELCOME & AGENDA REVIEW**

Amanda welcomed everyone and explained that the Subgroup would continue reviewing the structure and contents of the vertical columns of the grid, which the facilitation team describes as reviewing the “horizontal axis” (since the columns move from left to right horizontally). Today’s meeting will continue with discussion on repeat violent and repeat serious violent offenses.

**DISCUSSION: Methods of Addressing Repeat Violent Offending Behaviors**

Dr. Lauren Knoth (WSIPP) reviewed examples of how other states address repeat serious violent and violent offenses. Lauren emphasized that her presenting these options is not meant to steer the Subgroup or the Task Force in any policy direction, but to stimulate some creative thinking. Pennsylvania has “Repeat Violent” & “Repeat Felony 1 and Felony 2” as a separate column in its grid. She showed options such as adding a column with a number of months (10-60, depending on OSL) to the sentencing range or adding a percentage increase to the range (10-20%).

Amanda encouraged the Subgroup to focus on the Task Force’s Desired Outcomes for sentencing effectiveness (*included here as an appendix*) and the sentencing grid. Lauren showed a spreadsheet with vertical columns labeled with those Desired Outcomes and potential methods for addressing repeat violent offending behaviors on the left to label the horizontal rows.

Currently, Washington state’s system addresses serious violent offenses via the three strikes law, two strikes law, criminal history multipliers, and mandatory consecutive sentencing. A member said they do not support the two/three strikes laws since they have not proven effective and bring racially disproportionate outcomes.

The same member suggested leaving the decision on whether sentences should be consecutive or concurrent to judge’s discretion. Another member commented that the two strikes and three strikes

laws are meant to address risk, under the assumption that if a person commits repeated violent felonies then they are more likely to commit them in the future; however, research shows that people age out of criminal behavior, so it might make sense to cap the sentence range at 20-25 years or build in a parole-type review at that point of the sentence. This approach is called a “Determinate Plus” sentencing system, with parole or reviews built in at a certain point in the sentence. A member commented on how multipliers have proven problematic over time and could be replaced by something not as prone to legislative tinkering.

Keri-Anne Jetzer provided statistics from a survey of other states to determine which ones have mandatory consecutive sentencing laws. Nine states (AK, DE, IL, MD, MN, NC, OH, UT, WA), the District of Columbia, and the federal government do, so 11 of 52 jurisdictions surveyed. The summary also covered other countries:

- 79 countries do not have Consecutive sentencing or merge Lesser offenses into most serious offense when same act (46%)
- 44 countries allow for consecutive sentences but cap them (26%)
- 36 countries allow judges to issue concurrent or consecutive sentencing with no known cap (21%)
- For 11 countries, one sentence is issued but it is enhanced and capped (6%)

A member suggested that giving a judge discretion over whether sentences should be served concurrently or consecutively would bring transparency, opining that without transparency then bad decisions get made. Another member spoke of the political sensitivity around changing 3 and 2 strike laws. Another replied that the Task Force should recommend the system the state should ideally have and not worry about the political aspects.

A member asked how the state can track or gauge the potential outcomes of modifications to the upper rows of the grid and expressed support for modifying the existing system rather than replacing it wholesale. Lauren replied that it would be feasible to track the sentencing decisions in the short term, but the effects on recidivism of changes to how the state deals with repeat violent offenses would not manifest for many years.

Lauren then explained the findings of research on recidivism related to sentence length, which shows no clear correlation between length of sentence and committing repeat felony offenses.

A member commented that if the Task Force wants to recommend ways to simplify the system that might potentially reduce disproportionate outcomes, it would not make sense to simply add a column on top of the existing complicated system. Instead, to address repeat violent offending behaviors, the Task Force should recommend something to replace multipliers, enhancements, “three strikes” law, mandatory consecutive sentences for serious violent, and mandatory consecutive sentences for other offenses.

Keri-Anne reminded the group that the number of sentences issued for repeat violent and repeat serious violent comprises only a small percentage of the total sentencing in the state.

A member recalled the multiplier rules of the original Sentencing Reform Act: two points for a violent offense, three points for a serious violent offense, and one point for everything else. While the current system has had many other multiplier rules added, the original approach might still have value. Amanda asked what would stop the Legislature from re-adding additional elements if the Task Force recommended reverting to the original approach and that became law; the member acknowledged that possibility but pointed out that any changes would be subject to future tinkering by the Legislature.

The Subgroup discussed various approaches to address the issues targeted by multipliers, focusing on the policy goals of improving the effectiveness of the system and reducing complexity. Anticipatory offenses currently carry a sentence of 75% of the range of the anticipated offense. Keri-Anne pointed out that the Caseload Forecast Council has developed a version of the grid that lists the sentencing ranges for anticipatory offenses for all grid cells. That agency should be able to do the same if the Task Force recommended the approach of increasing sentence ranges by a certain percentage for repeat violent or repeat serious violent offenses. In theory, the calculations should not be complicated to understand how much time a person could face if we know the charge/s they face and their criminal history.

Clela Steelhammer reported that the most common type of error that occurs in the system is related to calculating a person's criminal history score because of multipliers. Lauren walked the Subgroup through how sentences would get calculated with a certain percentage or number of months added for repeat violent and/or repeat serious violent offenses.

Amanda summarized the discussion and asked members if they would like to focus next week's discussion on 3-strikes and 2-strikes laws. Members were in favor.

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

- Upcoming meeting topics: 3-strike and 2-strike laws. Mandatory consecutive sentences for serious violent, and mandatory consecutive sentences for other offenses.

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

None.

## APPENDIX

### Desired Outcomes: Sentencing Effectiveness Working Group & the Grid

- Balances discretion across the system and encourages and provides for individual rehabilitation that is trauma informed and based on risk, need, responsivity
  - Addresses multipliers and enhancements and consecutive sentences – sentencing ranges – mandatory portions of sentences – mandatory features that remove judicial discretion and lead to longer sentences
- Provides predictability for all parties
- Addresses accountability while decreasing unnecessary incarceration(s).
- Avoids shifting population from state prison to jails.
- Addresses inequities in the burden of the costs & workloads associated with incarceration
- Ensures adequate resources for both DOC & counties
- Reduces or eliminates disparities / disproportionate impacts
- Maximizes/increases the information available to the parties and the Judges to make informed decisions
- Eliminates unnecessary complexity