

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: November 30, 2021
Meeting via Zoom**

Attendees:

- Russ Brown, (Alt. for Jon Tunheim) *WA Association of Prosecuting Attorneys*
- Rep. Roger Goodman, *Washington State House Democratic Caucus*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Lauren Knoth, *WA State Institute for Public Policy (WSIPP)*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Melody Simle, (Alt. for Suzanne Cook), *Statewide Family Council*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley, (Alt. for Nick Allen) *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 Trieweller

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

Welcome & Agenda Review

Amanda welcomed the Subgroup and gave a brief overview of the agenda for the Task Force meeting. She reminded members that there would be no Task Force meeting in January. This will allow the Subgroup to have additional time to put together the potential recommendations for the horizontal axis, which for go in front of the Task Force for input at the February meeting.

Options For Addressing Repeat Violent Offenses: Exceptional Sentences

Amanda asked Lauren Knoth to walk the Subgroup through a simulated grid in the form of a spreadsheet showing a pair of columns added at right: one showing months for aggravated exceptional sentences and another showing added months for repeat violent offenses (Appendix A.). The excel included formulas so the group can see what the changes in sentence ranges would be in each cell of the grid when a aggravated sentence and/or a repeat violent offense was added.

A member asked whether the grid could include cells with CHS levels combined, e.g., CHS 0-1 could be one column instead of two; CHS 2-4 could be the same, and so on. Lauren replied that the Subgroup had opted to wait to consider that approach until information on the correlation of CHS with recidivism became available from the Statistical Analysis Center (SAC) of the Office of Financial Management.

Another member asked to see what the sentence range for Assault 2 would be when adding a repeat violent offense. The simulated grid would add 12 months to that sentence as Assault 2 is currently classified. Assault 2 is currently a Class B felony. This has been brought up by members as one offense that may need to be looked at for reclassifying or moving to a different serious level.

A member asked about whether a judge would have any freedom to depart from an aggravated maximum or would it be a hard/mandatory cap? Another member responded that this could potentially raise issues with the Blakely decision, so any departure above the recommended range would have to fall within certain bounds. If a judge sentences within the range, there would be no right to appeal; however, if the judge issues a sentence above or below the range on the grid, a defendant or plaintiff could appeal. The Legislature has created two mechanisms by which sentences longer than the range on the grid can get created: aggravating factors and enhancements.

A member noted that at CHS 9, offense seriousness level (OSL) 17, the sentence range goes to 50 years and asked why this wouldn't be a long enough sentence.

Addressing Racial Disparity and Disproportionality

A member suggested that increasing the opportunities for sentences to get appealed could help address racial disproportionality. Another member agreed and expressed support for increasing the circumstances in which a judge's sentence would be subject to appeal. A cap on aggravated sentences would be another tool to mitigate disproportionate sentence outcomes.

A member pointed out that Oregon, using a database showing sentences by demographics, has a pair of tools to address racial disproportionality:

- At sentencing the defendant can introduce evidence of racial disproportionality in the county where they are getting sentenced, and the judge would have to consider that evidence prior to sentencing.
- Second Look could also provide another tool.

Another member suggested that judges should have in front of them at the time of sentencing a regularly updated "bench card" showing racial disproportionate treatment in the county of sentencing. Lauren replied that to date, it has been extremely difficult to prove racially disproportionate treatment in any given case. A member recounted that at the time of a wrongful charge of murder with a \$500,000 bail set, the defense provided evidence that in the county white defendants accused of murder had bail from \$10,000-\$250,000 while black defendants had bail set at \$500,000. Even with this evidence, the judge denied the defense's motion to reduce the bail number.

A member stated that allowing a defendant more opportunities to appeal a long sentence would be one tool, but insufficient on its own. Another member suggested that a person appealing a sentence from prison should have the right to counsel and a public defender appointed on request. They asked the Subgroup to consider urging the Task Force to recommend a mandatory review of any sentence longer than a certain amount, since putting the onus on the defendant creates barriers that make it unrealistic for most people to successfully challenge excessively long sentences.

A member mentioned they have been speaking with Professor Chang at Seattle University who has been doing research on racial disproportionality in the criminal justice system and proposing tools to address it. Amanda asked the Subgroup if they would like to invite Professor Chang to attend one of their meetings to present his information and members agreed that they would like to do so.

Amanda then asked the Subgroup to return to some of the other ideas that the group had discussed in the previous weeks for addressing repeat offending.

Options For Addressing Repeat Violent Offenses: Three Strikes Laws

Amanda asked if anyone in the Subgroup opposed eliminating Three Strikes laws. A member replied that it would be more politically palatable to change that to an “Indeterminate Plus” system in which a judge sets the minimum sentence and person is detained beyond that if a risk assessment shows they are a risk to recidivate. The person would be eligible for life in prison as in Three Strikes law currently dictates but create an option for release if a person gets deemed low or no risk to recidivate. Another member pointed out that the current Three Strikes law allows for gubernatorial review of such sentences. A member responded that this has never or has rarely ever happened.

A member suggested that while prosecutors may be unlikely to support complete elimination of Three Strikes, there may be support for reforming the law, such as modifying to “up to life” and not mandatory, that would allow a person to get released after a certain minimum sentence if they are deemed low or no risk.

Cont. Discussion of Aggravated and Repeat Violent offense Column

The Subgroup turned its attention back to the excel sheet. A member suggested eliminating the application of multipliers in instances of repeating specific felony offenses in favor of allowing aggravated exceptional sentences to apply. Another member asked why the repetition of specific felonies or of violent offenses gets treated as more egregious than a felony of the same OSL committed by someone with the same CHS that is not a repeat offense, when research shows that the repetition of offenses does not necessarily indicate a higher risk of recidivism.

A member pointed out that when the Matt Landon with the SAC presented preliminary findings on the connection between CHS and recidivism, it included the finding that people of color are more likely to have a violent offense in their past. This could imply that increasing sentence lengths based on the repetition of a violent offense can result in disproportionate outcomes. A member replied that a person with five violent assaults would seem more likely to reoffend than someone with only one.

Adding a column to the grid with longer sentences for repeat violent offenses could allow for the consideration of individual circumstances in sentencing. Currently, multipliers for repeat violent offenses automatically lengthen sentences—but the option for a judge to issue a longer sentence up to a certain amount (e.g., up to 48 months at the upper OSLs) would allow for consideration of specific circumstances of a case and provide more judicial discretion while retaining a mechanism to address egregious offenses.

In the current system, repeat violent offenses impact sentence outcomes via multipliers on the criminal history score. A repeat violent offense is likely to increase the Criminal History Score by 1-2-ish points. Defendants may not be aware of what their sentence would have been if their CHS was not multiplied due to the repeat nature of their current offense.

Potential Option: Eliminate offense specific multipliers and add a column on the grid with a prescribed increase in the maximum of the standard range if the current offense is violent offense and the individual has the same violent offense in their criminal history.

- Looking at the simulation, the increases in the maximum generally leads to instances where the expanded range captures the standard range for individuals with 1 or 2 more CHS points. Thus, the same sentencing outcomes may be possible for those individuals using the repeat violent column as would've been seen with a multiplier approach.

