

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: December 7, 2021
Meeting via Zoom**

Attendees:

- 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*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*

Guests: Joanne Smieja, David Trieweller

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

WELCOME & AGENDA REVIEW

Amanda welcomed the Subgroup and provided a brief update on the schedule and workplan for the remainder of the year and for January 2022.

Aggravator and Repeat Violent Columns

The Subgroup then picked up the discussion where they left off last week. Dr. Lauren Knoth recapped last week's key discussion points and the below simulated grid in the form of a spreadsheet with an added pair of columns showing months for aggravated exceptional sentences and another showing added months for repeat violent offenses.

Potential options:		Aggravated sentence		Repeat Violent offense																												
Add a column for aggravated maximum departure for all seriousness levels.		0	0	1	1																											
Add a column for increase range for instances of repeat violent offenses.																																
		HOW TO USE:		In column V, rows 3 and 4, change the 0 to 1 to "turn on" the additional tie for aggravated sentence and/or repeat violent offenses.																												
				The Red numbers reflect the adjusted maximum of the range based on whether the aggravated sentence and/or repeat violent offense column are "turned on."																												
		0	1	2	3	4	5	6	7	8	9+	Agg. Max	Repeat Violent																			
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																															
17	240	320	380	252	336	396	264	352	412	277	370	430	291	388	448	306	408	468	321	428	488	337	450	510	354	472	532	372	496	556	48	60
16	104	138	186	114	152	200	126	168	216	138	184	232	152	203	251	167	223	271	184	246	294	203	270	318	223	297	345	297	397	445	48	48
15	93	124	172	102	137	185	113	150	198	124	165	213	136	182	230	150	200	248	165	220	268	182	242	290	200	267	315	267	356	404	36	48
14	82	110	146	90	121	157	100	133	169	110	146	182	121	161	197	133	177	213	146	195	231	161	214	250	177	236	272	236	315	351	36	36
13	71	95	131	79	105	141	87	116	152	95	127	163	105	140	176	115	154	190	127	169	205	140	186	222	154	205	241	205	274	310	24	36
12	61	81	105	67	89	113	74	98	122	81	108	132	89	119	143	98	131	155	108	144	168	119	158	182	131	174	198	174	233	257	24	24
11	50	67	91	55	73	97	60	81	105	67	89	113	73	98	122	81	108	132	89	119	143	98	130	154	108	144	168	144	192	216	24	24
10	39	52	64	43	58	70	47	63	75	52	70	82	58	77	89	63	85	97	70	93	105	77	102	114	84	113	125	113	151	163	24	12
9	16	21	33	19	25	37	23	31	43	27	37	49	33	44	56	40	53	65	48	64	76	58	77	89	69	92	104	81	108	120	12	12
8	14	19	31	17	22	34	20	27	39	24	32	44	29	39	51	35	47	59	42	56	68	51	68	80	61	81	93	71	95	107	12	12
7	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	40	52	36	48	60	44	58	70	52	70	82	61	82	94	12	12
6	10	13	25	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	41	53	37	49	61	44	59	71	51	69	81	12	12
5	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	46	52	16	54	60	6	6
4	2	9	15	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	45	51	6	6
3	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	7	25	31	9	30	36	10	36	42	6	6
2	0	3	9	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	8	27	33	6	6
1	0	2	8	0	3	9	1	5	11	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	18	24	6	6
nr																		0 - 365 days														

A Subgroup member commented that given the connection between multipliers and racially disparate treatment leading to disproportionate outcomes, the increased transparency this would bring could

lower disproportionality. There would need to be a more robust review process for standard sentences along with aggravated exceptional ones, that would also encompass these serious violent offense penalties.

The Subgroup then revisited the question and concern about how these options increase sentence ranges and therefore discretion and how this may disproportionately impact POC. Members present voiced support for increasing transparency in general, but specifically in relation to aggravated sentences. Members expressing support for a state dashboard similar to the one Oregon has to display sentence lengths issued in each county by race, gender, and age for various felony offenses at each CHS level.

A member also suggested looking at additional standards for review of sentences; an either automatic review of all sentences through an equity lens or making sentences under the repeat violent column reviewable. If the Task Force does not support a state dashboard, perhaps the CFC could add average sentence by offense and CHS to its annual stat report.

Discussion Maximum Aggravated Sentences

The group then discussed whether the number of months in the aggravator column should be the maximum exceptional sentence regardless of the number of aggravating factors or the additional time allowed per aggravating factor.

One member commented that if each aggravator carried its own added sentence length, it may influence the Legislature to create even more aggravating factors and prosecutors also might be more likely to pursue aggravators to increase the sentence. This could increase or replicate the potential for very long sentences and the accompanying racially disproportionate outcomes. Another member responded that prosecutors do not and cannot charge aggravators in the absence of clear evidence in support. And because of eligibility for review, judges are unlikely to implement egregious sentence lengths.

A member voiced support for a single exceptional/added sentence length to apply no matter how many aggravating factors rather than having different sentence increases apply to different aggravators. If the number in the added column for repeat serious violent offenses was a up to maximum amount of time, judges would have discretion to tailor the aggravated sentence to fit the circumstances of the case.

A member noted that defining an amount of time for each different aggravator would assign a de facto value to each. There are different types of aggravating conduct and they are not all the same and in situations where there are multiple aggravating factors, this would mean the punishment is the same regardless of the differences. It makes more sense to leave it as it currently is whereby there are characteristics that are pled and proven and the judge can holistically review the circumstances and issue a sentence.

To address these concerns, one potential modification could be that the aggravator maximum limit applies up to three aggravating factors and cases beyond that can depart up to the statutory max.

A member notes that defendants may be more likely to go to trial if prosecutors were to seek multiple aggravating factors in order to get a sentence that stacks multiple aggravating factors for a longer total sentence. Lauren noted it would be difficult to predict because current data from the J&S forms shows that “everyone agreed” is the main reason cited and there is no way to determine how often those cases would have actually had multiple aggravating factors. In the instances where multiple aggravating factors are listed, it is more likely those went to trial. of the reasons

Cont. Discussion of Other Potential Changes to Exceptional Factors

The group then briefly revisited previous ideas for changes to exceptional factors such as eliminating consecutive sentencing on gun charges but adding some type of aggravating factors to address cases with concern about culpability (e.g., theft/robbery of a gun store). One idea is to eliminate mandatory consecutive sentences for serious violent offenses (if the additional columns for repeat serious violent offenses were added to the grid) while adding an aggravating factor for serious violent offenses with multiple victims. Another idea is to add a mitigating factor for defendants with only non-violent criminal histories.

NEXT STEPS

Next meeting: recap this discussion for those members not attending today. Jon and Russ will be gathering input at the Washington Association of Prosecuting Attorneys meeting on the ideas and potential changes the Subgroup has discussed over the last two months and will share this input at next weeks meeting.

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

Joanne Smieja: Is the grid subcommittee recommending getting rid of all multipliers or just those associated with violent offenses? What about the multipliers used for other previous offenses such as sex offenses?