

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: February 8th, 2022 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*
- Melody Simle, *Families of Incarcerated Persons*
- Nick Straley, *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Guests: Bruce Glant, Joanne Smieja, David Triewailer

Facilitation Team: Amanda Murphy, Chris Page, Maggie Counihan

WELCOME & AGENDA REVIEW

Amanda Murphy welcomed the Subgroup and informed the group that the facilitation team has compiled all potential recommendations on the horizontal axis of the grid that the Subgroup has discussed to date, including the potential recommendation on multipliers and the repeat violent offense column, which was presented at the February Task Force meeting. She explained that the plan for the March Task Force meeting would be to focus on the rest of the potential recommendations in this document, including aggravators, Three and Two Strikes rules, and consecutive sentencing, recognizing that several of these the Subgroup has not yet finished discussing.

She asked the Subgroup to debrief the feedback received from the full Task Force on the following potential recommendation:

Potential Recommendation: *Eliminate all offense-specific multipliers. And create a new column on the grid for repeat violent offending that increases the maximum of the standard sentencing range if the individual has convictions for a previous violent or serious violent offense. As proposed, the recommendation would eliminate multipliers for:*

- Escape from Community Custody
- Escape 1/2
- Burglary 2/residential burglary*
- Failure to register*
- NV sex offenses*
- Theft of Motor vehicle/possession of stolen vehicle*
- Manufacture methamphetamine
- NV Drug offenses
- NV felony traffic offenses

Column could be based on a percentage increase or a set number of months by OSL. Graduated by OSL (exact values could change)

	0	1	2	3	4	5	6	7	8	9+	Repeat Violent	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	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	25%	60 mos
16	104	138	114	152	126	168	138	184	152	203	167	223	184	246	203	270	223	297	297	397	20%	48 mos
15	93	124	102	137	113	150	124	165	136	182	150	200	165	220	182	242	200	267	267	356	20%	48 mos
14	82	110	90	121	100	133	110	146	121	161	133	177	146	195	161	214	177	236	236	315	15%	36 mos
13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274	15%	36 mos
12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233	15%	24 mos
11	50	67	55	73	60	81	67	89	73	98	81	108	89	119	98	130	108	144	144	192	15%	24 mos
10	39	52	43	58	47	63	52	70	58	77	63	85	70	93	77	102	84	113	113	151	15%	12 mos
9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	10%	12 mos
8	14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	10%	12 mos
7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82	10%	12 mos
6	10	13	12	16	14	19	17	23	21	28	25	34	30	41	37	49	44	59	51	69	10%	12 mos
5	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54	10%	6 mos
4	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45	10%	6 mos
3	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36	10%	6 mos
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27	10%	6 mos
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	10%	6 mos
Unr	0 - 365 days																					

Grid Subgroup Discussion

- Starred offenses might have the most push back from some constituencies.
- Standard scoring, but perhaps juvenile priors should all count as ½ point regardless of violent/non-violent. This is still one type of scoring exception/multiplier that would remain.
- Do any offenses in offense seriousness level (OSL) 1 get classified as violent? If not, why would we have the column with increased sentences cover OSL 1? **R.** The lowest OSL that has a violent offense is OSL4. The column could stop at OSL 4, but the simulated grid has it go down to OSL 1 for consistency’s sake, and perhaps if the Legislature were to classify an OSL 1 offense as violent. Technically the repeat violent column could stop at OSL 4.
- No consistency between violent/serious violent and other classifications – why are there violent offenses so far at the bottom? Seems to reflect the inconsistency in how we define and consider “violent” offenses. If we want to deliver something aspirational to guide the Legislature, let’s make recommendations that are more straightforward and transparent.
- Should we just eliminate the classifications of violent and serious violent offenses?
- Is the Legislature using violent/serious violent as a way to get certain other conditions/sentence types that are tied to those labels?
- NV/V/SV may be most descriptive of what the Legislature is thinking with regards to offenses – more meaningful than class, for example. Need to think about unintended consequences.
- What are the criteria for determining different classifications (OSL, Class, V/SV/CAP)? Should the Task Force consider creating criteria for bounding where each major category (Class A, Class B, Class C; or violent, serious violent, and nonviolent) fits on the grid? Practitioners may understand what these classifications mean, but does the Legislature understand them? Does the public understand them?

- Some restrictions on Legislative decisions may be good – for example, if class B offenses MUST be OSL 6-9, the Legislature will be forced to have the discussion of whether those OSLs are appropriate or if the Class should be different.
- This recommendation would mean the system would go back to general scoring rule: adult offenses 1 point and juvenile ½ point except for juvenile violent (1 point).

The Subgroup also briefly discussed whether the column would apply once regardless of the number of violent priors or for each violent prior. A member responded that it should apply once, regardless of number of priors and if it were the latter, it would replicate harm of current multiplier system. Another member responded that it should apply once regardless, which would maintain the increased retribution while not doing so in an excessive way. If people have multiple priors, then they likely would've seen the increase in retribution on one of their priors. A number of members present indicated that having the column apply for each prior would be something their constituencies could not live with and would not support.

The Subgroup then discussed whether there should also be a column for general repeat offending:

Potential Recommendation: Create a new column on the grid for repeat offending.

Repeat offending could be defined as an individual who has a prior conviction (not a concurrent conviction) for the same offense or for an offense in the same seriousness level. If an individual fits in the repeat offending category, the sentencing range would increase by either a percentage amount or by a flat amount. The amount would be graduated such that lower seriousness levels have a smaller increase in the range.

	0	1	2	3	4	5	6	7	8	9+	Repeat Offending	Repeat Offending										
XVI	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																					
XV	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548	+20%	+60 months
XIV	123	220	134	234	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397	+20%	+50 months
XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397	+15%	+40 months
XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318	+15%	+30 months
XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280	+10%	+20 months
X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198	+10%	+10 months
IX	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171	+10%	+10 months
VIII	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144	+10%	+10 months
VII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116	+10%	+6 months
VI	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102	+10%	+6 months
V	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96	+10%	+6 months
IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84	+10%	+6 months
III	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68	+10%	+ 3 months
II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57	+10%	+ 3 months
I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29	+10%	+ 3 months
Unr	0 - 365 days																					

Grid Subgroup Discussion

- No evidence to support increased risk with specialization. Thus, doesn't serve maintenance of public safety goal.
- Violent reoffending supported by philosophy of retribution. That doesn't apply to non-violent offenses.
- What is the evidence that we might use to develop a truly evidence-based sentencing system? Most of the Task Force members whose input was opposed to or in question of the recommendation seemed focused on sentence length and on the retributive philosophy, with

people saying they just feel like people who commit certain kinds of crimes need to be in prison for a long time.

- The original SRA had a general distinction between violent and non-violent crimes such that violent crimes were intended to be treated more harshly and had special considerations like repeat offending because of the increased seriousness of the offense.
- Does increased punishment for repeat commission of the same offense actually incentivize people to commit different types of crimes?
- Adding a column to increase the sentence range for repeat offenses might give people the incentive to commit different types of crimes.
- Don't know of any evidence that supports increased risk with people who repeat the same criminal behavior.
- Can see some constituencies not able to support eliminating the multiplier for Failure to Register.
- Since some sex offenses are considered violent, they would carry longer sentences with the new column that increases the range if the person has any prior violent offenses.
- It is important to keep in mind the data presented by Matt Landon on the racial disproportionate outcomes connected with multipliers.

ACTION ITEMS

Amanda asked members to reach out to their constituencies to get their input on the potential recommendation of eliminating all multipliers and adding column for violent/serious violent.

Specifically, whether they could support:

- eliminating all offense specific multipliers and if not
 - Which specific multipliers could they not support eliminating
 - Whether they could support having them be addressed in another way (such as making an aggravator), thereby allowing for the recommendation to go forward
 - What other ideas could be used to address those multipliers

Jon Tunheim will meet with members of WA Association of Prosecuting Attorneys on Friday and will share their feedback at next week's meeting.

Next Meeting

- Reports out from members on feedback from their constituencies and wrap up the discussion on the potential recommendation on the repeat violent offense column and multipliers.
- Review the list of other potential recommendations on the horizontal axis and confirm whether they are ready to go in front of the Task Force for input at the March meeting.
- Pick back up the discussion on washouts.

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

Joanne Smieja: All of the seriousness level 4 that are listed as violent are class B. Won't they have to be reclassified to seriousness level 6 or higher in the new grid?

Bruce Glant: How do you justify a net nanny conviction with NO prior anything, harming no one, end up as a violent sex offender. Never harming anyone? These stings are being done with very

questionable tactics by not following rules and procedures. This committee SHOULD discuss making changes in classifications of these crimes done on legitimate adult dating sites. In the HB1690 hearing, it was stated that they needed to use deception in order to make arrests in the HOPES that they might find someone they arrest MIGHT lead them to a child being abused. Maybe 1 out of 10 at the very most MIGHT lead them to a child, the other 9 are arrested and harshly punished and sentenced with lifetime supervision and registry. NO ONE WAS harmed except for those arrested and all of their family's and loved ones.

Bruce Glant: FTO's caught in these fictitious children stings on adult dating sites should be treated differently than someone going onto the dark web and teen chat rooms, (where predators actually hang out). In net nanny, law enforcement brings the subject of children and sex first.