

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: February 22nd, 2022 Meeting via Zoom**

Attendees:

- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *WA Assn. of Criminal Defense Attorneys; WA Defender Assn*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Melody Simle, *Families of Incarcerated Persons*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated persons*

Guests: Jim Chambers, Bruce Glant, David Trieweiler, Joanne Smieja

Research/Technical Support: Dr. Lauren Knoth-Peterson, *WA State Institute for Public Policy (WSIPP)*

Facilitation Team: Amanda Murphy, Maggie Counihan

Welcome and Agenda Review

Amanda Murphy welcomed the Subgroup and noted that the focus of the meeting is to turn back to the discussions on washouts, and where we left off at the Feb 1st meeting discussing #1: *Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout?*

Amanda then provided a recap of last week's meeting and reminded the group that follow up conversations will happen with the association of prosecuting attorneys and the defender association to discuss in greater detail the potential recommendation to eliminate multipliers and to add a column to the grid for repeat violent/serious violent offenses. Amanda also reminded the group that Keri-Anne updated the scoring rules handout (see Appendix A), which now includes the following:

- Proposed Scoring Rules on Simulated Grid w/RepViol Column
- Proposed Scoring Rules on Current Grid
- Current Scoring Rules on Simulated Grid
- Current Scoring Rules on Current Grid

Discussion of Washouts: *Are the current washout periods appropriate for the different classes?*

The Subgroup revisited the list of washouts:

- Class A – never
- Class B – 10 years
- Class C – 5 years
- Sex offenses (all classes) – never
- Felony DUI – prior traffic never washout
- Class C repetitive DV – 10 years

- Misdemeanors – stay until vacated

Members decided to focus the discussion on washouts for sex offenses. Current law states that sex offenses regardless of class never washout.

What is the rationale for sex offenses never washing out? Sex offenses are a special class of offenses and viewed as particularly egregious and/or carry a certain socio-political stature that treat them particularly harshly.

Are recidivism rates high for sex offenses? Sex offenses have greater supervision, and some believe that recidivism rates are artificially low because of the strict rules individuals have to follow, such as registration requirements and supervision. Researchers in the field have seen that recidivism rates for sex offenses are some of the lowest. Research has also shown that those that do recidivate, there may not be a relationship between priors and their current offense.

The group then looked at the list of violent and non-violent sex offenses.

- 10 violent (including 1 serious violent)
- 22 nonviolent
- Also the case if there is a finding of sexual motivation
- FY 2019 – 315 violent convictions
- FY 2019 – 752 nonviolent convictions

How are violent vs. non-violent offenses treated differently? Scoring would be different due to multipliers. Duration of registration time is tied to the class of the offense. The only sentencing alternative that is available is SOSSA, which eligibility criteria excludes many sex offenses.

Is there value in asking Sex Offender Policy Board (SOPB) to look at sex offenses and create different designations, like we do with violent and serious violent? Research seems to indicate difference in re-offense patterns/frequency. Isolating meaningful differences to help guide more targeted policy decisions. Members indicated support for tasking SOPB with additional questions to assist the Task Force/Legislative decision making.

Could crime against persons be used to make these distinctions? Might not be appropriate because newer offenses are not necessarily added to CAP law because all sex offenders are supervised which means they don't have to be on CAP list to get supervision. No other CAP implications, so may have actually been an oversight if some sex offenders not listed as a CAP.

Registration requirements:

- A – lifetime
- B – 15 years registration (may petition at 10 years)
- C – 10 years registration

Registration laws are more expansive than the definition of a sex offense in the SRA.

10) "Sex offense" means:

- (a) Any offense defined as a sex offense by RCW 9.94A.030;
- (b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);
- (c) Any violation under RCW 9A.40.100(1)(b)(ii) (trafficking);
- (d) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(e) A violation under RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) if the person has a prior conviction for one of these offenses;

(f) Any violation under RCW 9A.40.100(1)(a)(i)(A) (III) or (IV) or (a)(i)(B);

(g) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 o

The SOPB also has a fact sheet about registration. The definition of sex offense is slightly different in registration requirements vs. the SRA definition.

WSIPP has a meta-analysis regarding registration requirements and sex offense recidivism.

Potential Recommendation: allow non-violent sex offenses to washout.

- Class A and other violent sex offenses would still never washout. The only non-class-A offense affected is Sexual Exploitation of a minor, which is a class B.
- All other sex offenses would washout consistent with the general washout rules by offense class.
- Expect potential criticism/vocal pushback when the victim is a child.
- Is there an issue with the fact that convictions would wash out potentially before the individual's registration ends?
 - This is already done in other situations. For example, could have an offense wash out but still owe restitution or other LFOs for that offense. Payment of LFOs would matter for things like vacation, but there is a distinction between vacation and washout.
 - Registration is not "punishment" and not a factor in aggravating culpability. The purpose of registration is about prevention/detention.

A member said that maybe a potential modification to washouts could be allow washout except for repeat sex offenses. For class A offenses- should consideration be more than just recidivism risk or also increased culpability?

Discussion of Washouts: Should Class A felonies ever be eligible for washout?

In the remaining time of the meeting, the group revisited their discussion on whether Class A felonies should ever be eligible for washout.

Members discussed how washouts are tied to current sentencing laws. Washouts are consistent with the statutory maxes. Members wondered whether this was purposeful and if so the rational.

A member asked what the implications for addressing disparity might be if Class A felonies were allowed to washout. Currently people of color are more likely to be convicted of a Class A felony and then given that they never washout, this has resulted in prolonged disproportionality in the system. There are many ways to allow for the ratchet up of punishment particularly for those who have ever been convicted of a violent offense without any opportunity to ever wipe the slate clean and be able to start over.

Another member asked about whether and for how long prior offenses should be tied to current offense. At what point is there no longer a connection between offenses? For example, what if some was convicted of second-degree murder, served their sentence, released, and then 25 years after

crime-free behavior, they commit theft. Is the theft really related to their previous offense? At some point with crime free behavior in the community, individuals should be allowed to start over. No deterrence effect – if individuals have lived this long in the community crime free, they should be allowed to get out from under their prior conviction. Another member commented about how washouts are not the same as sealing records or vacating sentences - a person is always free of a washout unless they reoffend.

What is the purpose of washouts? What is the desired outcome? Members talked about risk aspects tied to repeating individual behavior and culpability for individuals repeatedly harming society. A member commented about whether consideration of prior class A's be for more than recidivism risk, but also increased culpability and should that apply forever or is there a time point in which that increased culpability is no longer necessary.

A member suggested that perhaps there should be a difference between serious violent and violent within Class A, and would be open to considering a washout period for Class A violent offenses.

Next Steps: Continue discussion about whether to allow for violent class A felonies to washout. Discuss (at least briefly) all of the different classes and identify any potential recommendations.

- *Class A – never*
- *Class B – 10 years*
- *Class C – 5 years*
- ~~*Sex offenses (all classes) – never*~~
- *Felony DUI – prior traffic never washouts*
- *Class C repetitive DV – 10 years*
- *Misdemeanors – stay until vacated*

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

Joanne Smieja: Registration is class dependent. Only 9 of the 36 sex offenses are violent/serious violent.

Allow for non-violent, Class B and C sex offenses to be eligible for washouts.

Change of mind, allow all Class B and Class C sex offenses to wash out just like other Class B and Class C offenses. One option then is to reclassify some of these offenses as non-sex offenses. The offenses pertaining to depictions were not classified as sex offenses until 2006.

We could also reclassify as failure to register as a regular offense not a sex offense.

Bruce Glant: They have categorized many and maybe most of the net nanny sting individuals as VIOLENT Class A Felonies, and have NEVER harmed anyone. This NEEDS to change. Going onto an Adult Dating site and ending up with a Violent Class A crime is unbelievable to even imagine.

This sentencing committee should recommend different sentencing and alternatives for a sting on an adult dating site as opposed to an actual hands on. The push back can be overcome if the committee properly reports what is being done on these stings but will need a full and complete investigation to find out how law enforcement actually went about using deception and leading conversations to create probable cause. These individuals did not have predisposition or intent.

Jon mentioned in the last alternatives meeting he said the individuals are more dangerous because they groom the fictitious victim, or something to that affect, and that is not true. MANY of the cases involve a situation where the individual NEVER even communicates with a minor or child. How can they groom the child or minor. These are misleading remarks like his remark saying sex crimes have one of the highest recidivism rates.

Aren't we interested in changing the culture of punitive treatment of the 80's and 90's for one of rehabilitation and reward for that rehabilitation, giving someone back their life. Also people age out, but are still punished.

Can someone with no victim and a lifetime registry and community custody appeal and if so when?

Many net nanny have lifetime community custody and registry. Wouldn't a washout end both supervision and registry?

Registry restricts ones ability to obtain jobs, housing, loans, not sure about voting....

Scoring Examples:

PropScoreSimGrid = Proposed Scoring Rules on Simulated Grid w/RepViol Column

PropScoreCurGrid = Proposed Scoring Rules on Current Grid

CurScoreSimGrid = Current Scoring Rules on Simulated Grid

CurScoreCurGrid = Current Scoring Rules on Current Grid

Proposed Scoring Rules:

The general rule for scoring is that prior felony convictions count as:

- Adult offenses count as 1 point
- Juvenile Violent offenses count as 1 point
- Juvenile non-violent (NV) offenses count as 1/2 point (rounded down)

Current: Assault 2 (Violent)			Prior: None
PropScoreSimGrid	CHS: 0 SL: 4	Presumptive Range: 2 – 9 months	
PropScoreCurGrid	CHS: 0 SL: 4	Presumptive Range: 3 – 9 months	
CurScoreSimGrid	CHS: 0 SL: 4	Presumptive Range: 2 – 9 months	
CurScoreCurGrid	CHS: 0 SL: 4	Presumptive Range: 3 – 9 months	
Current: Burglary 1 (Violent)			Prior: (Violent)
PropScoreSimGrid	CHS: 1 SL: 7	Presumptive Range: 14 – (19) 31 months [RepViol=12 mos]	
PropScoreCurGrid	CHS: 1 SL: 7	Presumptive Range: 21 – 27 months	
CurScoreSimGrid	CHS: 2 SL: 7	Presumptive Range: 17 – 23 months	
CurScoreCurGrid	CHS: 2 SL: 7	Presumptive Range: 26 – 34 months	
Current: Assault 1 (Serious Violent)			Prior: (Violent) Prior: (Violent)
PropScoreSimGrid	CHS: 2 SL: 13	Presumptive Range: 87 – (116) 152 months [RepViol=36 mos]	
PropScoreCurGrid	CHS: 2 SL: 12	Presumptive Range: 111 – 147 months	
CurScoreSimGrid	CHS: 4 SL: 13	Presumptive Range: 105 – 140 months	
CurScoreCurGrid	CHS: 4 SL: 12	Presumptive Range: 129 – 171 months	

Scoring Examples:

PropScoreSimGrid = Proposed Scoring Rules on Simulated Grid w/RepViol Column

PropScoreCurGrid = Proposed Scoring Rules on Current Grid

CurScoreSimGrid = Current Scoring Rules on Simulated Grid

CurScoreCurGrid = Current Scoring Rules on Current Grid

Current: Theft of a Motor Vehicle (NonViolent)			Prior: None
PropScoreSimGrid	CHS: 0 SL: 2	Presumptive Range: 0 – 3 months	
PropScoreCurGrid	CHS: 0 SL: 2	Presumptive Range: 0 – 3 months	
CurScoreSimGrid	CHS: 0 SL: 2	Presumptive Range: 0 – 3 months	
CurScoreCurGrid	CHS: 0 SL: 2	Presumptive Range: 0 – 3 months	
Current: Assault 2 (Violent)			Prior: (NonViolent)
PropScoreSimGrid	CHS: 1 SL: 4	Presumptive Range: 3 – 10 months	
PropScoreCurGrid	CHS: 1 SL: 4	Presumptive Range: 6 – 12 months	
CurScoreSimGrid	CHS: 1 SL: 4	Presumptive Range: 3 – 10 months	
CurScoreCurGrid	CHS: 1 SL: 4	Presumptive Range: 6 – 12 months	
Current: Vehicle Prowl 1 (NonViolent)			Prior: (NonViolent) Prior: (Violent)
PropScoreSimGrid	CHS: 2 SL: 1	Presumptive Range: 1 – 5 months	
PropScoreCurGrid	CHS: 2 SL: 1	Presumptive Range: 2 – 5 months	
CurScoreSimGrid	CHS: 2 SL: 1	Presumptive Range: 1 – 5 months	
CurScoreCurGrid	CHS: 2 SL: 1	Presumptive Range: 2 – 5 months	
Current: Assault 2 (Violent)			Prior: (NonViolent) Prior: (Violent) Prior: (NonViolent)
PropScoreSimGrid	CHS: 3 SL: 4	Presumptive Range: 4 – (15) 21 months [RepViol=6 mos]	
PropScoreCurGrid	CHS: 3 SL: 4	Presumptive Range: 13 – 17 months	
CurScoreSimGrid	CHS: 4 SL: 4	Presumptive Range: 5 – 18 months	
CurScoreCurGrid	CHS: 4 SL: 4	Presumptive Range: 15 – 20 months	

Scoring Examples:

PropScoreSimGrid = Proposed Scoring Rules on Simulated Grid w/RepViol Column

PropScoreCurGrid = Proposed Scoring Rules on Current Grid

CurScoreSimGrid = Current Scoring Rules on Simulated Grid

CurScoreCurGrid = Current Scoring Rules on Current Grid

Current: Kidnapping 2 w/Sexual Mot (*Violent*/Sex) Prior: None

PropScoreSimGrid CHS: 0 SL: 5 Presumptive Range: **3 – 10 months**

PropScoreCurGrid CHS: 0 SL: 5 Presumptive Range: **6 – 12 months**

CurScoreSimGrid CHS: 0 SL: 5 Presumptive Range: **3 – 10 months**

CurScoreCurGrid CHS: 0 SL: 5 Presumptive Range: **6 – 12 months**

Current: Failure to Register - SO on or after 6/10/2010 (NonViolent/Sex)

Prior: (*Violent*/Sex)

PropScoreSimGrid CHS: 1 SL: 2 Presumptive Range: **1 – 6 months**

PropScoreCurGrid CHS: 1 SL: 2 Presumptive Range: **2 – 6 months**

CurScoreSimGrid CHS: 3 SL: 2 Presumptive Range: **2 – 8 months**

CurScoreCurGrid CHS: 3 SL: 2 Presumptive Range: **4 – 12 months**

Current: Failure to Register- SO on or after 6/10/2010 (NonViolent/Sex)

Prior: (*Violent*/Sex)

Prior: (Nonviolent/Sex)

PropScoreSimGrid CHS: 2 SL: 2 Presumptive Range: **2 – 7 months**

PropScoreCurGrid CHS: 2 SL: 2 Presumptive Range: **3 – 9 months**

CurScoreSimGrid CHS: 4 SL: 2 Presumptive Range: **3 – 10 months**

CurScoreCurGrid CHS: 4 SL: 2 Presumptive Range: **12+ – 14 months**