

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: March 15<sup>th</sup>, 2022 Meeting via Zoom**

**Attendees:**

- Tiffany Attrill, *Interests of Crime Victims*
- 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*
- Nick Straley, *Interests of Incarcerated People*
- Waldo Waldron-Ramsey, *Interests of Incarcerated People*

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

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

**Public Guests:** Jim Chambers, Bruce Glant, Joanne Smieja, David Triewailer

**Welcome and Agenda Review**

Amanda Murphy welcomed grid Subgroup members and asked Representative Goodman to update the Subgroup on the recently concluded legislative session. Rep. Goodman relayed that seven sentencing-related bills were proposed, and none passed. A member asked how HB 1169, supported by consensus of the Task Force, did not move forward when it came from the SGC and had the Task Force's consensus recommendation in its favor. Rep. Goodman replied that the retroactivity element faced a great deal of opposition. Rep. Goodman explained that while sentencing changes might not get through the Washington Legislature in 2023 or even 2024, the current political and social climate will evolve and eventually, changes will occur.

**Washout Periods**

Amanda provided an update on her check-in with Jon Tunheim, who is unable to participate in the Subgroup meetings for the next several weeks, due to his trial schedule. Amanda reminded the group that she will meet with Jon weekly to update him on the discussions of this group and will bring back his input. She shared with Jon the discussion the group had with Dr. Kurlycheck, her research findings, and the Subgroups discussion of potential recommendations for washout periods for Class A felonies. The prosecutors' association is likely to push back on washout periods for Class A offenses at high offense seriousness levels (OSLs), however, there may be support for washouts for some Class A felonies and would be interested in having a discussion that looked at tying washouts periods to OSL and not just felony class.

A Subgroup member commented that the rationale for that pushback seems tied to retribution alone and does not take into account the research and evidence that was presented by Dr. Kurlycheck. A Subgroup member suggested that this conversation would be better to have when a representative of

prosecutors was in attendance, specifically citing the need to address racial disparity and disproportionality in the system and wanting to see proposed solutions from prosecutors.

### **Sentencing Guidelines Proposals by the Pennsylvania Commission on Sentencing: Washout Periods and Juvenile PRS Calculation**

Amanda reminded the Subgroup that the Pennsylvania Sentencing Commission has recently completed a draft package of proposed changes to its sentencing guidelines that might be helpful for the Subgroup to review. Dr. Megan Kurlychek's who visited with the Subgroup last week was one of the researchers involved in the Pennsylvania Sentencing Commission's work.

Keri-Anne has been reviewing the draft proposals and provided in Attachment A is what relates to the Subgroup's discussion on washout periods and juvenile offense inclusion in the criminal history score.

### **Discussion: Juvenile Adjudications**

Amanda opened the discussion of whether and if so, how juvenile adjudications should count in calculations of criminal history score (CHS) and whether they should have separate washout rules.

The status quo is that all juvenile adjudications count and juvenile wash out rules are consistent with adult washout rules based on class; however, juvenile violent offenses count as 1 point and juvenile nonviolent offense count as ½ point.

In 1983: Class A felonies were always included, Class B's included unless 10 years, crime free, and Class C's and other traffic related felony offenses were included unless 5 years crime free.

From 1986 to mid-90s: Included Class A juvenile felonies only if the individual was 15 or older at the time the juvenile offense was committed. Included Class B and C juvenile felony convictions only if the individual was 15 or older at the time the juvenile offense was committed and was less than 23 at the time the offense for which he or she is being sentenced was committed. This changed w/ autodecline because offenses were processed/considered as adult offenses.

1990s – always include juvenile convictions for sex offenses.

**Potential Recommendation Option A: Policy as proposed in HB 1413: remove juvenile adjudications from CHS calculations.** *(Note, HB1413 also states: Require courts to grant a resentencing hearing upon the motion of a person whose sentence was increased by the inclusion of prior juvenile dispositions in the person's score calculation).*

- Given recent brain science/court decisions about diminished culpability, should not be included in consideration of adult sentencing.
- What about most serious offenses? More discussion is needed.

**Potential Recommendation Option B: Revert back to 1986 law, whereby after age 23, Class B/C juvenile adjudications no longer count in CHS. Prior adjudications count only if the offense was committed when the individual was 15 or older.**

- With the carve out for Class A – likely to see racially disparate outcomes.

- Reinstate the floor at 15 years of age – so adjudications for offenses committed prior to age 15 do not count.

The question arose, are there alternative approaches to consider when offenses are repeated and one is juvenile and one is adult (e.g., age 17 and age 19) that doesn't cause the juvenile adjudication to stay with the person over the long term? For example, would the Subgroup want to consider an aggravating factor if the person had a prior juvenile adjudication for the same offense within two years prior to the current offense?

From the victims' perspective, having an offense like murder that a person committed at age 17 disappear by the 23rd birthday of the person who committed the offense would not be acceptable. Another member commented that the system should also be based in restorative justice and noted there is not only one perspective of victims, but many.

**Next Steps:** Continue the discussion on juvenile adjudications.

#### **RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING**

- Added in 1990: Always include juvenile convictions for sex offenses. (b) Juvenile prior convictions entered or sentenced on the same data shall count as one offense, the offense that yields the highest offender score, except for juvenile prior convictions for violent offenses with separate victims, which shall count as separate offenses.
- Class A prior felony convictions are always included in the CHS. Class B prior felony convictions are not included if the person has spent 10 years in the community and has not been convicted of any felonies. Class C prior felony and serious traffic convictions are not included if the person has spent five years in the community and not been convicted of any felonies. This applies to both adult and juvenile prior convictions

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

Joanne Smieja: These timeframes are not consistent with the research presented last week. Why not 5 years, 10 years, and 15 years instead of 10 years, 15 years, and 25 years?

Wait, are these periods from conviction or since release from prison?

So if someone serves 10 years in prison and they have a F3 offense, their offense will wash out as they leave prison?

Bruce Glant: Is this group ever going to discuss increasing the juvenile age to 25 based on the new brain science?

Or at least make a new age group of the 18-25, and not include them in the Adult offense category?

Also, I wanted to comment that we must always remember the exists because of the system that is currently in place. It is punitive racially biased, and long sentences and lifetime restrictions following incarceration.