

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: March 8th, 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*
- 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

Guest Speaker: Dr. Megan Kurlychek, Professor of Sociology, Criminology, and Public Policy, Penn State University

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

Welcome and Agenda Review

Amanda Murphy welcomed grid Subgroup members and introduced the guest speaker, Dr. Megan Kurlychek, Professor of Sociology, Criminology, and Public Policy, with Penn State University.

Dr. Lauren Knoth-Peterson briefed Dr. Kurlychek on Washington state's system, explaining its determinate nature and how the Task Force has worked to make the grid consistent and bring research findings to underpin sentence ranges on an emerging revised grid. Repeat offending has been wrapped into criminal history score (CHS) rather than explicitly addressed, so the Subgroup and Task Force are looking at adding a column to address repeat offenses and repeat violent offenses. The Task Force is also looking at balancing discretion across the system by placing caps on aggravated sentences. Questions have emerged as to whether a higher CHS correlates with higher risk to the community, so the Subgroup is digging into the CHS and how it aligns with various philosophies of punishment—and what the evidence says. Washington has a washout system, not a system in which the score of a prior offense would decay (lessen) over time. Lauren posed the question to Dr. Kurlychek of how the washout period correlates with the risk of recidivism.

Prior Criminal Involvement and the Risk of Recidivism

Dr. Kurlychek described her research, related to whether hiring people with criminal records would pose a risk to employers. She and her team found that hiring people with convictions for violent offenses in their past would not increase risk over hiring people previously convicted of nonviolent offenses. The best predictor of future behavior is behavior from the very recent past. How long until they have the risk to the community of someone who has never been convicted of an offense?

Research shows that after around 7-10 years, a person's risk of criminal behavior is not markedly different from someone who has not been convicted.

Based on the available information, reasonable washout periods might be:

- Class A washout period of 15 years
- Class B washout period of ten years
- Class C washout period of five years

Dr. Kurlychek said that no science she knows of would support resetting the clock for a technical violation.

Lauren raised the question of whether a misdemeanor should reset the clock for a person's washout period, as a felony conviction would. Dr. Kurlychek replied that since a person convicted of a misdemeanor has committed a criminal act, statistically they might represent a higher risk to the community; however, the question of who gets convicted of a misdemeanor vs. a felony immediately raises questions around racial disproportionality. Much of the racial disparity arises during the plea negotiation stage: the charge reduction offered to a white person statistically exceeds the reduction offered to a non-white person. Dr. Kurlychek encouraged the Subgroup to look at available data for Washington state for this issue, noting that factors other than race, such as employment status might impact whether the charge is a misdemeanor as opposed to a felony. She encouraged examining the data around how often and when charges are a misdemeanor or felony.

Q. Do you know of any other research that might illuminate the racial disparities around the charging differences of misdemeanor vs felony? **R.** Send me that question in a follow-up and I can look into it.

In Pennsylvania, a person's prior record mattered more than their current offense in determining prospective sentence length and this is not supported by data so the Commission on Sentencing is looking at changing that. Offense gravity score nine, prior record score of four, getting a sentence length nine times longer; new recommendation would stipulate that prior record could increase sentence length by no more than a factor of two (double the length).

- **Q.** Can research shed light on why racial disproportionate treatment occurs around the question of who gets charged with a misdemeanor vs a felony? What mechanism causes that? **R.** Research that is ongoing in New York is based only on administrative data at this point. The team has not done any interviews to try and identify causation; however, people of color are more likely to have their charges dropped completely (than white defendants)—this may be because of the "Stop and Frisk" law. The initial sentence recommended by prosecutor sends a strong signal to the judge as to how dangerous the defendant is perceived to be.
- **Q.** To what extent can this be extrapolated to other states? **R.** It is hard to generalize across states, so that would be a good question for a grad student to research.

Currently, in Pennsylvania a person's juvenile record lasts until age 28 and then vanishes. Dr. Kurlychek compared how a person's record would look with juvenile convictions included with how the person's record would look without juvenile convictions. The policy of how long a person's juvenile record lasts can have a large impact on that persons quality of life.

- **Q.** For washout periods, why do you support five and 10 (for Class C and Class B offenses to washout) if data shows the risk of reoffending is the same as for people without criminal

convictions after four years (Class C) and seven years (Class B)? **R.** We decided to err on the side of caution in what the Pennsylvania Sentencing Commission recommended to the state to adopt as its washout policy.

- **Q.** Does data support the Washington state policy that no sex crime ever washes out, even if the past offense was nonviolent and involved no contact with a person? **R.** Data shows that people with those (nonviolent, non-contact sex offense) convictions are no more likely to reoffend than a person without a criminal record.
- **Q.** Comparing Washington's washout policies for serious violent offenses to other states, how many other states have policies in which violent offenses never wash out? **R.** As far as I know, only Arkansas and Delaware share that policy with Washington. I can look into that further.
- **Q.** Is Washington state not having a washout period for violent offenses an outlier? **R.** I'm not sure but I can look into that and get back to you.

The group briefly discussed the Sex Offender Policy Board and proposed a Q to ask the Chair and Vice Chair of the SOPB: has the Board looked at research around how long a washout period makes sense for different types of sex offenses?

A member commented that the group should consider looking at what distinguishes a violent from a nonviolent offense. That one distinction lumps lots of different crimes and lots of different people together and it may not be supported by data: nonviolent crimes have a higher recidivism rate than violent crimes.

Task Force Meeting Debrief

Amanda asked Subgroup members for their thoughts on the Task Force meeting the week prior. The following reflect questions (Q) and comments (C) with responses (R) in some cases.

- **Q.** If you cap aggravators, are you over-restricting judicial discretion? Would it make sense to stipulate that a judge can issue a sentence longer than the bounded discretion if sufficient evidence of aggravating circumstances were presented? **R.** That might run afoul of the Blakely decision. We already have a presumptive range from which the judge can depart if aggravating circumstances are pled and proven in front of a jury.
- **C.** Some Task Force members still automatically oppose anything perceived to shorten sentences. Trying to rein in exceptional sentences might be made easier if we make it clear how rare those exceptions really are.
- **C.** The Task Force should recommend the bounded discretion fix retroactively, so those sentenced to exceptionally long sentences have some relief.
- **C.** There does not seem to be any political will to make changes be retroactive.
- **C.** We need to resolve unjust policies going forward, but also looking back in time and based on evidence. Evidence shows that having shorter sentences fulfills all the philosophies of punishment and purposes of the system except for retribution. We need to reckon with that.
- **Q.** Can we have the leadership of the Legislature come talk with the Task Force to address the question of what they will do with our recommendations? **R.** Things take a long time to get passed through the Legislature. For example, "Second Look" got proposed in 2012 and the 2022 session was the first time it appeared likely to pass. The Sentencing Reform Act itself took 4-5 years to pass the Legislature.

- **C.** Can we request a work session with the Law and Justice Committee? **R.** That is an excellent idea. One public hearing will not be enough to explain all the work that has gone into this.

Next Steps: wrap up discussions about whether the current washout periods are appropriate for the different classes and get on paper any potential recommendations.

Research and Information Shared During Meeting

From Lauren: <https://www.apa.org/pubs/journals/features/law-law0000135.pdf>

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

Joanne Smieja: I'm unclear what she is saying about sex offenses. Could you please clarify? Does she think class B and class C offenses should wash out or does she think they should never wash out?

Bruce Glant: with the new brain science, what about the grey zone of 18-25 and how they should be considered.

The problem with the SOPB is it's been the same individuals who have been on the board for many years and we're living with their personal policies they have put forth in the past. They ALL have a financially vested interest in the system. Also, there is NO representative of those that have been directly impacted or loved ones that have been directly impacted. This should be taken into consideration.

How can someone who has NEVER harmed anyone be defined as a violent offender?