

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: April 5, 2022 Meeting via Zoom**

Attendees:

- Tiffany Attrill, *Interests of Crime Victims*
- Russ Brown, *WA Ass'n of Prosecuting Attorneys*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Senator Chris Gildon, *Washington State Senate (Republicans)*
- Representative Roger Goodman, *Washington State House of Representatives (Democrats)*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Melody Simle, *Families of Incarcerated Persons*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated People*
- Jon Tunheim, *WA Ass'n of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated People*

Facilitation Team: Amanda Murphy, Chris Page, Maggie Counihan

Public Guests: Megan Allen, Jim Chambers, Bruce Glant, David Trieweiler

Welcome and Agenda Review

Amanda Murphy welcomed Grid Subgroup members and began the meeting with updates and schedule changes. Due to Ruckelshaus Center scheduling conflicts, the Grid Subgroup will meet on Monday April 18th instead of April 19th.

For the May 5th meeting, the Task Force will reconvene in person for the first time in more than two years. The Co-Chairs and Facilitation Team have been planning and discussing the agenda for this important meeting. Co-Chair Jon Tunheim shared with the Subgroup some of the initial thinking for the meeting. He relayed that the co-chairs feel that when the Task Force reconvenes in person, will be a good time to have important conversations about the scope of work and what is possible to accomplish by December and also a discussion about legislation based on Task Force recommendations both past and prospects in the future.

Washout Periods

Amanda then opened up the discussion question, "*Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout?*" She recapped discussions the Subgroup had on washout periods based on the research of Dr. Megan Kurlychek, which generated three different sets of washout periods differentiated by offense class, and a question about when a person's washout period should begin.

A member asked if Dr. Kurlychek stated that Washington is one of only three states in which Class A offenses never wash out of a person's criminal record. Keri-Anne responded that more than three states have that policy.

Amanda then reminded the group that for the question of when the washout period should start, the group proposed that the washout period starts with Judgment & Sentencing rather than release to community. The three proposed recommendation options the group has put forward so far for washout periods need to be discussed, in light of this recommendation to have the period start at judgement and sentencing.

Proposed Recommendation a:

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

Proposed Recommendation b:

- Class A washout period of 15 years for some class A's. Higher OSLs do not washout.
- Class B washout period of ten years
- Class C washout period of five years

Proposed Recommendation c:

- Class A washout period of 10 years
- Class B washout period of 5 years
- Class C washout period of 2 years

A member asked whether, for the last proposed recommendation, a sentence of one year for an offense with a two-year washout period would result in a situation where the person would have one year left on the washout period after release to the community. Keri-Anne confirmed that, in the absence of any other sentencing factors, that would be the case.

Offense Classification Expansion Proposals

Amanda then informed the group that Keri-Anne has been reviewing the Model Penal Code and has some ideas related to the discussion on washouts that she will present.

Keri-Anne explained that she had been thinking about how the Subgroup has developed potential recommendations that will tighten the connections between offense class, stat max, and sentencing ranges and wondered whether it made sense to also try to tighten the connection between all the functions of offense classification, i.e. stat max, washout, violent status, offense vacation, and, to a certain extent, offense severity.

Keri-Anne then walked through the following proposal:

- Another member observed that if a person commits an offense, serves their time, then lives in the community for 15 years crime-free, they should not have the washout period restart for a minor offense, such as a traffic violation.
- The washout period does not necessarily have a deterrent effect. There is no evidence that it makes society safer.

Keri-Anne noted that the Model Penal Code encourages creating a sliding scale in its criminal history guidelines, to incrementally depreciate the weight assigned to prior offenses as they become more remote in time. This could make the system more complex; however, it makes sense and appears to be based on thorough research.

Subgroup members noted that adding two OSLs (as the simulated grid does) would make the system more complex but would also make it more effective. Keri-Anne pointed out that the two new OSLs serve only to delineate more clearly those offenses already delineated by other means (e.g., serious violent as opposed to violent).

In response to Subgroup comments, Keri-Anne adjusted the “life” washout period for Class A2 to “25 years against other serious violent offenses.”

A member asked about the rationale for separating A2 offenses from A3 offenses in the above proposed grid information. Keri-Anne responded that based on Task Force input to date, it seems that all serious violent offenses should have higher OSLs than all violent offenses. A member pointed out that the reclassification of individual offenses into specific OSLs is not something the Task Force would likely have time to complete; however, the Sentencing Guidelines Commission could undertake that work after the Task Force completes its work.

Washout Periods for Class B and Class C Felonies

B	10 yrs	8 yrs
All class B felonies		
C	5 yrs	3 yrs
All class C felonies		

Keri-Anne reminded the group that the “10 yrs” for Class B and “5 yrs” for Class C are the statutory maximum sentence lengths. The washout periods (at right in the above rows) comport with the research presented to the Subgroup.

Subgroup Input on Subdividing Class A into Classes A1, A2, and A3

Amanda asked Subgroup members for input on the overall concept of separating Class A felonies into three sub-classes (A1 for Aggravated Murder, A2 for serious violent offenses listed above, and A3 for all other current class A felonies). A number of members expressed support for the concept, adding that it makes sense to have separate washout periods connected to each of those sub-classes. One member posed the question to prosecutors and defense attorneys, “How would this play out in

practice?” A member representing prosecutors said creating additional classes of washout periods would not add complexity in terms of their practice. A member representing incarcerated persons agreed.

Would community custody violations restart the washout period? That could add complexity. A member said community custody violations would not necessarily; however, if someone serves time for a violation of sanctions that would restart the washout period. A member recommended that technical violations (of the terms of a person’s custody) should not restart the washout period.

A member suggested that revocation of an alternative should be differentiated from a technical violation of the terms of community custody. The former results in a return to confinement, which should restart a person’s washout period. The latter should not.

Next Steps: Next week will continue looking at the proposal to tighten the connection between the functions of offense classifications.

Once these discussions are complete and potential recommendations drafted, the Subgroup will move on to discussing Criminal History Score, followed by information available to judges at sentencing, such as pre-sentence investigations, and then data collection and sharing (monitoring and evaluation).

RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING

- “Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the ‘offender’ had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.”

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

Bruce Glant: I just have to chime in that most of the Net Nanny offenders and other non-contact offenders are convicted of a violent class A felony. If you're thinking of adding classes, I think we should add lower classes for these types of offenders.

I agree with Judge St. Clair. 90% of those arrested in Net Nanny Stings have no history, and went onto an adult dating site, had no predisposition or intent.

We should not increase a violent offense upwards into a class with serious violent.

where is there any hope for those with a sex crime?