Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: May 10th, 2022
Meeting via Zoom

Attendees:

- Tiffany Attrill, *Interests of Victims of Crime*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Senator Chris Gildon, *Washington State Senate (Republicans)*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *WA Assn. of Criminal Defense Attorneys; WA Defender Assn*
- Melody Simle, *Families of Incarcerated Persons*
- Nick Straley, *Interests of Incarcerated Persons-alternate*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Chief Brian Smith, W*ashington Association of Sheriffs and Police Chiefs - alternate*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

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 Trieweiler

Welcome and Agenda Review

Amanda welcomed Grid Subgroup members and mentioned that Lauren Knoth-Peterson has created a complete structural depiction of the emerging revised sentencing grid, with all its components (based on potential Task Force recommendations) combined. Amanda asked the Subgroup for brief reflections on last week's Task Force meeting; members commented on how enjoyable it was to meet in person again, while those who attended remotely said the technology allowing virtual attendance worked adequately.

Criminal History Score (CHS) Topics

Amanda reminded the Subgroup that it would continue its conversations on CHS today. Lauren reviewed Potential Recommendation Option 4: After age 23, nonviolent Class B/C juvenile adjudications no longer count in CHS. After age 27, violent Class B/C juvenile adjudications and juvenile adjudications for serious violent Class A felonies follow washout rules according to general adult washout rules. Prior adjudications count only if the offense was committed when the individual was 15 or older.

A member asked for the logic underlying the age numbers selected; Lauren responded that age 23 was the original Sentencing Reform Act age for not counting Class B/C juvenile adjudications in CHS while Pennsylvania selected age 27 (for more serious felonies to follow washout rules) to have the person spend two years incarcerated after age 25. The research shows that after age 22, the likelihood a person will commit a crime goes down (the "age-crime curve" goes down).

Another member asked about juvenile adjudications for which the confinement time lasts past age 18, in juvenile detention facilities rather than adult prison. Washington state passed that law based on brain science that shows the developing brain in young people does not fully mature until around age 25 (so the person should remain with young people rather than adults, if in confinement).

A member representing defense attorneys suggested that juvenile adjudications should not count longer than they would under general adult washout periods. So if a person goes crime-free for five years prior to age 27, then Class Cs would wash out. The recommendation around age 23 follows current brain science research. Suggest the recommendation should say "juvenile adjudications or convictions" rather than just "juvenile adjudications." That would mean that even if the offense got auto-declined adult court, conviction is treated the same as adjudications.

<u>Other Comments</u>

- These comments venture outside the adult felony sentencing system, the focus of the Task Force.
- Is there a way to simplify this, such as "Juvenile nonviolent offenses wash out after five years (or after age X), violent wash out after seven years (or after age Y)"?
- There are no Class C violent offenses, so we don't need that language in there.
- Some people might have concerns about allowing sex offenses to wash out (as the recommendation would allow).

Lauren reminded the group about the **proposed recommendation to remove juvenile adjudications from CHS calculations** (that would have followed HB 1413). Two Subgroup members said they did not think their constituencies could live with this potential recommendation. Another mentioned that an advocacy coalition is working (in a separate process from the Task Force) to advance that proposed change to the law.

A subgroup members suggested that even if the potential recommendation to follow HB 1413 does not meet the needs of all Task Force constituencies, it could still receive mention in the 2022 Task Force report. That mention could mirror the framing the Task Force used in its 2020 report around "Second Look," which acknowledged other efforts to examine the issue and

expressed support for the Legislature and Governor to take action to address the related challenges.

This prompted a discussion about the degree to which each Task Force member's constituency might be bound by the member's participation in a consensus process. With four potential recommendations around juvenile adjudications, perhaps the best route for Task Force consensus would be to ask the full group to agree that the Legislature needs to examine the inclusion of juvenile adjudications in CHS and examine at what juvenile adjudications mean for people in the criminal justice system (at least in terms of disparities). The report can also mention that HB 1413 covered a set of issues that Task Force members' constituencies are working on and intend to address in the forum of the Legislature.

A member commented that one important purpose of the Task Force is to determine what the various constituencies can live with, rather than what they can actively support. Instead of passing the issue to the Legislature, why not have the Task Force dig into the issue and work through it? Another member replied that the amount of time and effort to work through the issues around juvenile adjudications could eat up a lot of the limited time remaining for the Task Force to do its work and get a final report completed by December.

Amanda reminded the Subgroup that in instances when the Task Force does not reach consensus, members can include the rationale for not supporting the recommendation along with alternate ways to address the issues involved. Keri-Anne mentioned research showing that the earlier a person starts committing crimes, the longer their criminal career is likely to last. She also observed that other research recommend ages at which juvenile adjudications should not count in a person's CHS and none of the researchers suggest that juvenile adjudications should not count at all in CHS calculations.

Since there are already outside efforts underway for developing policy and members have communicated that they would not be able to support anything contrary to HB 1413, then this is not an issue where consensus discussions and decision could take place in good faith. The conditions do not support consensus dialogue and deliberation. Perhaps instead, a similar process that was used in 2020 for recommendations that did not come forward for consensus due to similar conditions could be applied here. That what can be recommended is a general policy statement that the Legislature revisit the inclusion of juvenile adjudications and what they mean but that we do not propose a consensus recommendation on how they do that.

Anticipatory Offenses

Discussion questions:

- Anticipatory offenses are currently scored the same as a completed offense: should they be treated as completed or have a separate washout rule?

- Most anticipatory commission of offenses get lowered a Class, but not all do. This may have implications for the Task Force's Offense Classification proposal (*Appendix E to these notes*). Current law does have complexities around the exceptions to the rule; the exceptions are not the same for the different types of anticipatory offenses (i.e., solicitation is not treated the same as attempt)—how should these be addressed?

	9A.28.020-.040	Attempt		Solicitation		Conspiracy	
		Class	SV/V	Class	SV/V	Class	SV/V
V	Arson 1	A	V	A	V	B	V
SV	Assault 1	B	SV	B	SV	B	SV
SV	Assault of a Child 1	B	SV	B	SV	B	SV
V	Child Mol 1	A	V	A	V	B	V
SV	Homicide by Abuse	B	SV	B	SV	B	SV
V	Indecent Lib w/force	A	V	A	V	B	V
SV	Kidnapping 1	B	SV	B	SV	B	SV
SV	Manslaughter 1	B	SV	B	SV	B	SV
SV	Murder 1	A	SV	A	SV	A	SV
SV	Murder 2	A	SV	A	SV	B	SV
SV	Rape 1	A	SV	A	SV	B	SV
V	Rape 2	A	V	A	V	B	V
V	Rape of a Child 1	A	V	A	V	B	V
V	Rape of a Child 2	A	V	A	V	B	V
V	Other Class A	B	V	B	V	B	V
	Red offenses are SV offenses.						
	Black offenses are offenses specificed in RCW 9A.28.020 as remaining class A for attempt/solicitation						

A member suggested that anticipatory offenses should be treated less severely than completed crimes, since the harm or injury caused by the crime has not occurred. In other words, using the same logic by which nonviolent offenses get scored lower than violent crimes because less harm occurs, anticipatory offenses should count less than completed crimes. The washout rule for anticipatory offenses treats each anticipatory offense the same as a completed crime, unless it gets lowered a Class.

A court case known as Moeurn made a ruling determining that for each crime, to determine scoring and washout: first you determine if something washes out before determining how it is scored. So a washout is based on the conviction class; therefore, if the anticipatory offense drops from Class A to B then its washout gets determined on Class B rules and if it doesn't wash out, then it gets scored as completed. For this discussion, that would only matter if the offense

being anticipatory instead of completed would drop it from violent to nonviolent (violent felonies include "attempt," "solicit," and "conspire" for offenses such as Assault, so those individuals could still commit repeat violent offenses).

Lauren suggested that since the scoring would remain the same regardless of whether the anticipatory offense is Class A or B. Laws already account for lesser punishment of anticipatory offenses: they get sentenced at 75% of the range. Washout is based on the conviction class, so if anticipatory drops from Class A to Class B, washout rules for Class B would apply. The Subgroup generally agreed with this suggestion.

CONCLUSION: No recommendations necessary – scoring would be the same regardless of if Class A or B. Laws already account for the lesser punishment for anticipatories (i.e., sentenced at 75% of the minimum of the range). Washout is based on the conviction class, so if anticipatory drops to Class B, the conviction will washout according to Class B washout rules.

Next Steps

Next week's discussion will be on topic #3 - **Revisit Washout Periods Discussions** - Last Chance for Potential Recommendations.

a) Revisiting, clarifying, and confirming the potential recommendations that have been captured during previous Grid Subgroup discussions to date.
b) Revisit and last chance to develop potential recommendation: Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout? What about some Class A offenses? A1, A2, A3 classification proposal.
c) Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction?
    - E.g., conviction for class C in 2000
    - Conviction for class B in 2004 – class C still counts
    - Conviction for class B in 2006 – class C and Class B priors would count. Should class C count?

RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING

State v. Moeurn: Supreme Court of Washington, En Banc. October 07, 2010 170 Wash.2d 169 240 P.3d 1158

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

None.