

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: May 24th, 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)*
- Rep. Roger Goodman, *Washington State House of Representatives (Democrats)*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Melody Simle, *Families of Incarcerated Persons*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*

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

Facilitation Team: Amanda Murphy, Maggie Counihan

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

Welcome and Agenda Review

Amanda welcomed Grid Subgroup members and reminded the group that the full Task Force meeting was next Thursday, where the focus of the meeting would be the group's potential recommendations related to misdemeanor scoring along with the Sentencing Alternatives Workgroup's proposed framework for Community Intermediate Sanctions program. Amanda also mentioned that the Task Force in August would consider (for the first time) the whole grid with all its elements compiled together (as opposed to looking at individual components of the grid in isolation). To make that feasible, the facilitation would like to schedule two half day work sessions of the Grid Subgroup in July. A scheduling doodle poll will be coming out soon.

Washout Rules

Amanda reminded members that last week's meeting focused on when the washout period should start. By the end of the meeting, captured the following potential recommendation based on the discussion, which the group decided to further discuss at today's meeting:

Proposed Recommendation: Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence. Washout periods only reset upon conviction for a new criminal offense. Confinement for a technical violation will not reset the washout period.

- Remaining questions
 - Revocations – should washout start at original release on the sentencing alternative (regardless of whether or not the sentencing alternative is revoked)

and the person returns to prison) or should it start at the release for the final confinement sentence after the revocation?

- Misdemeanors – should conviction for a misdemeanor offense reset the washout period or only felony convictions?

Amanda asked the group for its thoughts on whether/how the proposed recommendation addresses the three Task Force policy goals, specifically whether it would reduce complexity. A member commented that from their perspective, it would not necessarily lessen complexity. Another member noted that it can be difficult to track down misdemeanors due to differences in record keeping systems; however, the burden is on the state to establish prior offenses, so the complexity presented by that additional work is on the prosecution.

Subgroup members drew a distinction between misdemeanors and gross misdemeanors. This led to the following ***Revised Potential Recommendation***: *maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence. Washout periods only reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. Confinement for a technical violation will not reset the washout period.*

Discussion points:

- Some misdemeanors are used as a predicate offense for some felony offenses, and many of those are gross misdemeanors.
- Minor misdemeanors like fishing and/or game violations or potentially disproportionate offenses such as driving with a suspended license may not be appropriate for extending washout periods.
- There are some instances when a gross misdemeanor or low-level felony may be pled down to a misdemeanor, or a more serious misdemeanor such as criminal trespassing or disorderly conduct might have been pled down from domestic violence or assault.
- A washout period is supposed to denote that someone has been in the community crime-free for long enough that we're comfortable saying they have ceased committing crime. But if they're convicted of a misdemeanor, they are committing crime and the activity may be more serious.
- How can we address behavior in which someone continues committing misdemeanors? Currently they're not getting counted in criminal history score (CHS), so it would only matter if someone were to return to committing one or more felony offenses.
 - Perhaps by changing the language on aggravating factors in RCW section 9.94A.535 2.b? Aggravated sentences change discretion and present a wide range of potential sentencing outcomes and are open to appeal.
 - In the Model Penal Code, some do include criminal history as an aggravating factor. The Task Force could recommend that prior misdemeanors do not impact CHS but may be considered by the judge.
 - Another idea would be to allow for up to two misdemeanors but have the CHS impacted when a person commits a third.

This led to the following **Revised Potential Recommendation**: *maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets after the third conviction. Confinement for a technical violation will not reset the washout period.*

The Subgroup discussed the merits of this revised potential recommendation, with multiple members noting that it would not increase complexity and one member observing that they do not think it would not increase disproportionality.

The Subgroup discussed whether and how revocation should apply to washout periods. A member noted that revocation by the Department of Corrections (DOC), as for the Drug Offender Sentencing and Community Parenting Alternatives, does not have any judicial appeal or the right to counsel for the defendant. Another member advocated for having the washout period start after final release, since it is meant to refer to a crime-free period *in the community*. A member distinguished between violation (e.g., of the terms of supervision) and revocation; violations do not bring a return to the original sentence, while revocations do.

The Subgroup discussed recordkeeping and how to track the issues around washout periods, misdemeanors, other potential criminal conduct, and supervision. Confinement for a technical violation would not reset the washout period. Would the washout period starting on “release from confinement for the original sentence” apply in cases of revocation? Work release and electronic home monitoring are both considered confinement, so would count against a person’s confinement time. A member distinguished between these types of sentences and “full confinement” under “inmate status.”

This led to the following **Revised Potential Recommendation**: *maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets after the third conviction. Confinement for a technical violation will not reset the washout period.*

This means that if an individual has a sentencing alternative revoked and returns to incarceration under “inmate status,” the washout period starts when they are released; this differs from individuals returned to incarceration under “violator status.”

A member suggested asking DOC what types of violations comprise the majority of revocations, since minor technical violations do not bring the same level of concern that more substantive violations. Another member reminded the Subgroup that a 2019 Task Force recommendation addressed “Swift and Certain” repercussions for technical violations of the terms of supervision or a sentencing alternative.

Next Steps

Review and come prepared to discuss next week: Proposed Recommendation: Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence. Washout periods only reset upon conviction for a new criminal offense. Confinement for a technical violation will not reset the washout period.

- Remaining questions
 - Revocations – should washout start at original release on the sentencing alternative (regardless of whether or not the sentencing alternative is revoked and the person returns to prison) or should it start at the release for the final confinement sentence after the revocation?
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Then will revisit the following two remaining items on washouts.

- a. 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.
- b. 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?

The goal is to complete all washout discussions next week and have identified the potential recommendations the group is comfortable putting in front of the full Task Force for input. In order to stay on schedule, the following week (May 31st) will be moving on to discussing criminal history score and revisiting the discussion on multipliers.

RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING

From Clela Steelhammer: Graduated reentry is considered partial confinement under the definition section of the Sentencing Reform Act.

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

N/A