

**Washington State Criminal Sentencing Task Force**  
Revisiting the Three Policy Goals:  
Notes from May 5, 2022 CSTF Meeting  
*Updated with discussion notes from 6.2.22 CSTF Meeting*

### **Revisiting The Three Policy Goals**

The Task Force's scope of work for 2021-2022 is the sentencing guidelines grid. At the Task Force's May 5<sup>th</sup> 2022 meeting, Task Force members and alternates were asked a set of questions about each goal as they relate to the sentencing guidelines grid, and wrote down their responses on large sticky notes. The Task Force then discussed the responses. Starting at the bottom of page 2 are the typed up sticky notes for each set of questions. Also included are the flip chart notes from the discussion.

At the 6.2.22 meeting the Task Force's Facilitation Team provided a summary of themes captured from the responses and discussion of each policy goal and Task Force members suggested additional themes to add. **Provided here is this summary of key themes:**

#### **SENTENCING IMPLEMENTATION COMPLEXITY AND ERRORS**

- Calculation of Criminal History Score
  - Scoring Exceptions – Multipliers
- Consecutive/Concurrent
- Not an integrated system - overlapping, duplicative
  - Elements that impact sentence lengths outside of the grid OSL and CHS
  - Multiple offense classifications
- Enhancements
- Lack of standardized J&S
- Lack of transparency for all parties
- Earned time policies
- Aggravators
- Stat max

#### **IMPROVING EFFECTIVENESS OF THE SENTENCING SYSTEM**

- Address disparity and disproportionality – the elements of sentencing that show disparate outcomes.
- Better balance of discretion
- Better address/reduce recidivism
- Increase/improve re-entry programs and services
- Increased and more effective investments in communities
- Increasing transparency
- Opportunities for review

- Data collection, review, evaluation
- Better balance of retributive and rehabilitative. Increase/improve rehabilitative and restorative approaches.
- Better alignment of offense classifications

### PROMOTING AND IMPROVING PUBLIC SAFETY

- Reducing recidivism and collateral consequences
  - Re-entry programs and support services
  - Rehabilitative services
  - Restorative services
  - Victim centered approaches
  - Victim support services
  - Family support services
  - Both accountability and rehabilitative
  - Reduction of harm – harm in public and private spaces
- Sentencing Alternatives
- Trauma informed approaches
- Public perceptions of public safety
- Risk/needs/responsivity approaches

### CSTF 5.5.22 Meeting: Responses from Sticky Notes: Both In-Person and Virtual

#### Reducing Sentencing Implementation Complexities and Errors

- *What are the implementation complexities and errors associated with the sentencing guidelines grid that need to be addressed?*
- *Why?*
- *Ideas about how to address?*

#### Complexities:

- Calculation of criminal history score
- Enhancements – earned time, consecutive/concurrent mandatory
- Factors outside the grid that impact sentences – mandatory minimums, stat max, anticipatory range reduction, etc.

The system has been built in pieces over the years. Not designed as one integrated system.

The current grid seems to have gotten complicated/confusing over time.  
Retroactivity is not going to reduce complexities and is not a trauma informed approach.

I am not sure the grid is complex.

Reducing complexities around sentencing appears to be in conflict with making the system effective in addressing public safety.

Implementation complexities:

- When we have Task Force members that are sticking to their beliefs that excessive sentencing is the correct way to keep the sentencing grid then that becomes a implementation complexity

Errors associated with the sentencing guidelines grid:

- The fact that sentencing grid is 40 years old is an error in itself.

Complexities:

- Offender score calculation should be simplified
- Concurrent/consecutive sentence rules should be simplified

Gun enhancements

- Consecutive v. Concurrent
- Enhancements
- Flat time: earned time
- Lack of standardized J&S
  - Still paper based
  - Can be unclear or contain errors
- Enhancements: ineligible for partial confinement/early release
- Multipliers: distort criminal history score
- Tolling rules re: community custody
- Judgement and sentence forms different in each county
- Offense classifications overlap, cross purposes

Consecutive v. concurrent

Current complexity in that sentencing grid does not make sense to a lay person.  
Public understands the difference between violent crimes such as rape, assault or homicide and crimes of need/poverty such as property or drug related crimes. The grid does not reflect this distinction.

- Numerosity of crimes, overlapping variations in punishments that can be applied discriminately.
- Creates space for disparate and disproportionate treatment
- Streamline the code

- Need consistency around concurrent and consecutive sentences
- Need simplicity around enhancement and aggravating factors

Criminal history score calculations  
Transparency

- Not transparent or easy to calculate
- Does not consider individual risk/needs/responsivity
- J&S – need new form
- RCW/WAC interpretation
- Location of crimes on the grid
- Piecemeal changes
  - a. Address where crimes are on the grid and sentence lengths
  - b. Uniform J&S
  - c. Look at how RCW v. DOC policy affects earned time
  - d. More guidance for courts
  - e. Get rid of multipliers
  - f. Focus on rehabilitation
  - g. Address racial bias

The current system creates a situation where victims do not get closure and the person cannot get out of the system without added harm.

Does not prevent or address re-offending

39+ J&S's. Every time the grid changes we must keep the old sentence RCW and the new. We keep layering the system and have to remember what is concurrent what is consecutive. Many different ways to write a sentence which may not comport with law.

Too many ways to manipulate sentencing through use of aggravators. Need a grid that contemplates those situations and accounts for them within the grid itself. The more discretionary decision points, the more there is an opportunity for bias to enter the equation.

I think we have done a pretty good job addressing complexities and errors. Certain crimes on the grid calling for a sentence beyond the statutory max is the one area that still needs to be addressed.

Multipliers lead to outcomes that are not clear. Sunshine needs to occur at every level, prosecutors, judges and defense attorneys

Geographic and racial disparities in sentences imposed, lack of transparency in decisions that lead to sentences, with 97% of cases determined by plea and no opportunity for second look no way for errors to be corrected. System wholly reliant upon few system professionals that leads to errors and lack of transparency.

## Improving the Effectiveness of the Sentencing System

- *What aspects of the sentencing grid need improvement/are not effective?*

- *Ideas for how to address?*
- *How will it improve the overall effectiveness of the system?*

Too many aspects of sentencing yield disparate outcomes

- Multipliers
- Enhancements
- Availability of mitigated sentences

Eliminate imbalances in who has discretion

- Reduce length of sentence outcomes from any mandatory aspect
- Provide discretion to other participants to mitigate
- Ensure meaningful review

The Grid needs to be paired with a better system to improve/reduce recidivism.

- Simplify
- Balance of needs and outcomes
- Address re-entry

- Incarceration without re-entry services: supervision is not effective.
- Implement a supervision model focused on state and successful re-entry.

Where does disproportionality occur?

- Prosecutorial discretion
- Plea bargaining
- Judicial discretion
- Upstream events

Needed improvement is understanding the title of the convicted crime (and sentencing) does not always reflect the actual harm or conduct.

- Greater discretion for courts with minimum standards
- Possible lower ranges but with more aggravators

Being able to clearly distinguish between violence against persons and violence against property.

Give judges more discretionary power in sentencing.

- Grid needs a better balance between rehab and retribution.
- For certain classes of crimes reduce retributive focus and increase rehabilitative opportunities.
- Reduce recidivism.
- Consistency in application
- Less complex to apply, understand, and explain.

- Applied in a manner that reduces crime and behavior that harms others
- Applies sanctions appropriately and offers help and guidance for a successful return to society.

#### Racial Disparity

- Identify what parts of system are producing the greatest disparity
- Eliminate those aspects or limit their impact

#### Imbalances in discretion

- Increase discretion with other participants so no one participant controls outcomes

#### Increase Transparency

- Data collection
- Broaden review

- Imbalance of discretion vis a vis prosecutors and judges
- Racial/ethnic disparities
- Re-offense rates too high
- Local community/re-entry investments
- Retribution over-stressed at expense of other stated purposes of the system
- Victims and families of the incarcerated neglected
- Research/evidence must drive policy more

Better alignment with offense classification functions, e.g. stat max terms, violent/non-violent category

#### Transparency

##### Improvements:

- Eligibility requirements for sentencing alternatives
- Increase judicial discretion
- Change CHS calculations

##### How to address:

- Widen ranges, decrease and make more consistent eligibility for alternatives
- Simplify CHS

Excessive sentencing and three strikes laws are not effective and do not promote public safety. The far-left portion of the grid is not the only portion of the grid that this Task Force should be focusing on.

Bring back parole!

Low end of the grid need improving. What to do with repeat violations on the low end, when should someone be moved up in score because of harm to others. Repeat offender explanation and judge discretion

It is fundamentally unfair b/c it does not take into account external factors baked into the system that are central to sentencing, including the disparities in power between people entering the crim legal system and those responsible for prosecuting offenses

Begin with the fundamental question: what is the goal? If it is only retribution and ostracization then we have succeeded. If it is accountability and restorability than we must change our collective mindset to truly have an equitable system.

Can be easily manipulated to produce a particular outcome

Does not effectively take into account individualized characteristics of defendants

If we are going to reduce sentences in the grid we need to apply the cost savings into programing. With that said we should recommend that the legislature fund appropriate levels of programing regardless.

Move from a retributive model to a restorative model, that provides services to all aspects of the community. Longer sentences do not equal appropriate outcomes. Look to balance those needs. Call out the oppressive systems in play, whether school, behavioral health, child welfare systems, etc. Use evidence to change systems when they do not work.

Best research demonstrates that long sentences serve no function other than retribution. System does not accommodate harm that long sentences cause communities, families, and children. System perpetuates poverty and crime. System has geographic and racial disproportionate outcomes. Resources dedicated to carceral system are unavailable to address actual harms that crime causes.

## Promoting and Improving Public Safety

- *How does your constituency define public safety?*
- *What specific improvements to the sentencing grid would promote public safety?*
- *Explain why/how.*

- Balance between accountability and addressing root cause
- Ensuring that we are setting someone up for success upon re-entry

Add confinement alternatives options  
Transparency

Public safety has both a trauma-informed lens and a harm reduction lens

Creating a blanket system that simply reduces incarceration for all crimes, in the name of reducing disproportionality of incarcerated people, is not the answer.

They want offenders to never reoffend and cause others harm. What that looks like varies...some believe incarceration...others believe incarceration and rehabilitation. Some believe some people are incapable of being rehabilitated.

- People can live in peace
- It is about everyone but starts with everyone not in the system, not having engaged in behavior that caused harm to others.

<ul style="list-style-type: none"> <li>• Improvements include sentencing that separates the people that need to be sentenced, offers help and education to allow a successful return to society and reduces repeat behavior that harms others.</li> </ul>
<ul style="list-style-type: none"> <li>• Freedom from harm in public/private spaces</li> <li>• Stability of investment in <u>all</u> communities</li> <li>• Attention to underlying needs of dislocated individuals – trauma informed</li> <li>• Community-oriented responses/sanctions instead of needless incarceration</li> </ul>
<p>Public safety includes both accountability and rehabilitation</p> <ul style="list-style-type: none"> <li>• How is accountability identified in the grid</li> </ul>
<p>Public safety is feeling safe in community and trusting that community is invested in helping those impacted by addiction and trauma through program \$ and treatment options and community navigators.</p>
<p>Sentences that help identify the factors that lead to the crime being committed and conditions of sentences that address those factors promote public safety.</p>
<p>How does my constituency define public safety?</p> <ul style="list-style-type: none"> <li>• Restorative justice programs</li> <li>• Rehabilitative programming</li> <li>• Transformational education programs within the prison systems</li> <li>• All of these would contribute to ensuring public safety. All of these would ensure that recidivism rates drop.</li> </ul>
<ul style="list-style-type: none"> <li>• People are safe in communities</li> <li>• It is more about whether we can reduce recidivism than the grid</li> </ul>
<p>Public safety lcfles up the experience of BIPOC communities and individuals who experience higher rates of abuse and violence while receiving little community or systems support.</p>
<p>My daughter can walk through the neighborhood or downtown without fear of becoming a victim of crime.</p>
<ul style="list-style-type: none"> <li>• Increase public perception of safety</li> <li>• Decrease harm caused by violators of law</li> <li>• Reduce recidivism</li> </ul>
<ul style="list-style-type: none"> <li>• Reduce recidivism</li> <li>• Increase rehabilitative opportunities and programs</li> <li>• Increase the chance that people will not return to the system</li> </ul>
<ul style="list-style-type: none"> <li>• Positively changed lives</li> <li>• Harm reduction/prevention</li> <li>• Improvements: employ risk/needs/responsivity tools</li> </ul>
<p>Providing responses to crime that recognizes the humanity of all and which doesn't cause additional harm to any person or community.</p>

- Different options/alternatives to total confinement
- Engagement with community/family while serving a sentence will result in safer outcomes for all.

Interesting question - I think the community would say that we improve them so they do not get released on commit additional crimes and hold them for as long as the court has mandated. The incarcerated would say improved activity, programming, food, environment and reducing institutionalizing them. Treating them respectfully.

Those who are serving community time, it would be to coach them, give them needed housing, jobs, and other programs so they don't serve a prison sentence.

Current system does not reflect how communities can be truly "safe". It dedicates resources unnecessarily to incarceration and fails to provide resources where most effective at repairing harms and protecting communities. History has shown that punitive system does not reduce crime, reduce disproportionality, or improve long-term outcomes. Incarceration should be last resort, not first resort.

Have systems that are transparent for all to see and evaluate, especially around areas of racial or gender disparities. Create programming in the community that support disengagement from the systems of oppression. People should not be defined by an single act. Have system of accountability that understand adolescent brain development. Redefine adult to something that is reflective of the science indicates when the brain is mature.

Public safety includes finding ways to reintegrate into the community in a manner that will lessen criminogenic behavior. We need to support families, victims, and the incarcerated. Our current policies force people to live on the margins, by denying meaningful reintegration into community. I.e denial of shelter, jobs, opportunity, health care, treatment etc.

WASPC defines public safety by reducing the occasions where people are victims of crime. Funding programs that provide opportunities for counselling, education and job training will reduce recidivism rates and thus reduce the occasions where people become crime victims.

### **Flip Chart Notes from Discussion**

#### Reduce Complexity and Errors and Increase Effectiveness

- Some complexity needed to allow for PSI's and individual risk assessments to tailor sentences
- Can simplify to make it more transparent and predictable, with discretion for judges
- Criminal History Score = highly complex
- Increase transparency by including alternatives on the grid
- Basic structure = simple. Hidden elements (including discretion) increase complexity and result in disparity

- 39 J&S forms; tolling; enhancements' multipliers
- Need balance (some complexity) and stop piecemeal approach, case-by-case legislative changes create problems
- Plea bargains → innocent people plead guilty. Disparate treatments (geog, racial) bring errors and here is no appeal or 2<sup>nd</sup> look
- J&S forms = 39
- Plea bargains can also benefit defendants
- Grid has over time actually decreased some disproportionality
- 3 Strikes, LWOP, +25 year sentences still highly disproportionate
- Restorative justice can increase better outcomes

#### Promoting and Improving Public Safety

- Reduce risk of harm, increase perception of safety
- Reduce recidivism through programming, e.g. via prison education programs and received at the start of sentence, not at the end. Focus on the quality of incarceration not the quantity.
- Accountability does not always equal punishment
- Restorative justice can bring healing and reduce recidivism
- Not all victims want to engage in restorative justice
- SRA and determinate system has not made us safer. Need to shift the levels of power in the system and move resources
- Victim services have lost funding and more is needed