

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: May 31st, 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*
- Chief Brian Smith, *Washington Association of Sheriffs & Police Chiefs*
- Clela Steelhammer, *Caseload Forecast Council*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Research/Technical Support: Clela Steelhammer, *Caseload Forecast Council*

Facilitation Team: Amanda Murphy, Chris Page, Zack Cefalu

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

Welcome and Agenda Review

Amanda welcomed Grid Subgroup members and reviewed the agenda of the meeting, to revisit the group's previous discussions on the washout periods for the different classes and whether Class A offenses should be eligible for washout. She reminded the group that this will need to be the last week to discuss and finalize the potential recommendation if we are to keep on schedule.

Revisiting Washout Periods

Amanda reminded the Subgroup of the potential recommendation that is the offense classification expansion proposal and that under the proposal Class A felonies would be grouped on the grid as follows:

- A1 – OSL 18; Offenses receiving Life Without Parole/Death sentence
- A2 – OSL 14-17; Serious Violent offenses
- A3 – OSL 10-13; Class A Violent offenses

Amanda and reminded the group of the following options for washouts that the group has been discussion to date:

Potential Recommendation: *Change washout periods to the following:*

- *Class A washout period of 15 years (proposed)*
 - *Alternative Option: Some class A's washout. Higher OSLs do not washout*

- *Alternative Option: Offense Classification Proposal 1 (Appendix D) – creates A1, A2, A3 and assigns different washout periods to each*
- *Class B washout period of ten years (current law)*
 - *Class B washout period of 5 years (proposed)*
- *Class C washout period of five years (current law)*
 - *Class C washout period of 3 years (proposed law)*

Amanda asked for input on the proposal to divide Class A into A1, A2, and A3 along with the above proposed washout periods. A member suggested that subdividing A into three sub-classes would not decrease the complexity of the system, adding that their constituency likely would not support a proposal that would have any violent crimes wash out. Amanda clarified that the Task Force could differentiate between those sub-classes, for example having some violent crimes wash out but no serious violent crimes wash out. When a member agreed that their constituency would not support having any violent crimes was out, another member pointed out that some violent crimes already do wash out, for example Kidnapping 2, Robbery 2, and others.

A member noted that if a person with a prior offense does not commit another offense in the future, whether or not there were a washout period for the prior offense would not matter.

Recent Subgroup conversations have included the question, “*Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction?*” A member offered that when someone has in the past committed a Class A violent crime (maximum penalty of life in prison), the person should be more culpable for any future crime no matter how serious the future crime might be. Another member suggested that a person committing a serious crime should not be held culpable for a minor offense committed several years in the past.

Suggested **Potential Recommendation**: *If the current offense is a serious violent offense, then all prior serious violent offenses should count in the person’s criminal history score (CHS).*

- A member asked if any types of carve-outs exist for certain categories of offense, e.g., for a crime of a sexual nature or one involving a firearm. Another member replied that sexual offenses do not wash out of a person’s CHS; however, some firearm-related felonies can wash out (e.g., second degree assault with a firearm).
- If a person has been in prison for a long time and then gets released, and has not committed another crime for 20-25 years, the increased culpability stemming from the prior offense can be addressed by an aggravating factor.
- Member commented that when a person commits an offense and then in the future commits a less serious offense, the behavior of returning to criminal behavior is concerning enough that any past offense should be considered in their CHS. The member suggested retaining the current law: Class A offenses do not wash out.
- Another commented that allowing an offense to wash out of a criminal record provides an incentive for someone not to commit future offenses.

Amanda provided a recap of all the options that have been put forward so far:

Class A Options

- Option a: Class A do not washout out – current Law
- Option b: Class A washout period of 15 years
- Option c: Offense Classification Proposal 1 (Appendix D) – Violent Class A washout after 15 years, serious violent do not.
- Option d: Allow for Class A to washout after 15 years if the new offense is not as serious or more serious than the original offense.
 - *Need clarity: How defining serious or more serious offenses?*
- Option e: If the current offense is a serious violent than all prior serious violent should be included in the CHS.

Class B Options

- Option: Class B washout period of ten years (*current law*)
- Option: Class B washout after 5 years

Class C

- Option: Class C washout period of five years (*current law*)
- Option: Class C washout after 3 years

Amanda provided some reflections on the discussion: The group has been discussing this question of whether class A felonies should have a washout period for nearly two months. For some members there is support for keeping things as is, that Class A's should not washout and their constituencies would not be able to support a change that would allow class A felonies to washout. For other members, their constituencies cannot support status quo, that class A do not washout. Washouts are an important factor for calculation of CHS. The group has been working hard exploring whether there is a middle ground that might exist and has put forward a number of ideas (potential recommendation options) though it is unclear whether there is a middle ground or win/win solution. Therefore, all the above options that have been put forward will be presented to the Task Force to get other and all constituencies input brought into the discussion and to better inform whether there is in fact an opportunity for problem-solving and a path forward that would lend itself to consensus. Members present agreed it was time to bring in and get input from the full Task Force and to move on to discussing the next element of the grid.

Next Meeting

Discussion topic # 6: How many CHS columns on the grid?

RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING

N/A

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

N/A