Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: June 28th, 2022
Meeting via Zoom

Attendees:

- Tiffany Attrill, *Interests of Crime Victims*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Sen. Chris Gildon, *WA Senate Republicans*
- Rep. Roger Goodman, *WA House Democrats*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Kameon Quillen, *Interests of Crime Victims*
- Melody Simle, *Families of Incarcerated Persons*

- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Chief Brian Smith, *WA Association of Sheriffs & Police Chiefs*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Blaze Vincent, *Interests of Incarcerated Persons*

Research/Technical Support Consultant: Dr. Lauren Knoth-Peterson, Washington State Institute for Public Policy

Facilitation Team: Amanda Murphy, Molly Stenovec

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

Welcome and Agenda Review

Amanda welcomed everyone to the meeting and mentioned that the facilitators and research team recently spoke with Matt Landon of the Statistical Analysis Center, who reported that he could have substantive results from his criminal history score (CHS) research by late July. She also mentioned that the Subgroup had tabled its discussion of combining CHS columns on the grid due to the lack of any research or data to inform those conversations.

Amanda walked through the agenda for the meeting explaining how the last two weeks have focused on addressing any outstanding items regarding exceptions to standard scoring rules. Reflecting on last week's discussion, it seems it would be helpful to pull back and ground ourselves and the discussion in terms of the grid specific recommendations developed so far, seeing how they stitch together, and with this wholistic view then move forward on addressing the outstanding items related to criminal history score.

Amanda reminded the group that stitching together the package of recommendations will be the focus of the July 12th and 26th full day work sessions, and in preparation she has been working with the help of Lauren, Clela, and Keri-Anne to begin this work by organizing/grouping

potential recommendations – which for now, is being referred to as a road map to the recommendations.

The document sent out to the group last week is what today's meeting will focus on, which attempts to group/organize the grid/grid formula specific recommendations. Lauren will be walking through some draft visuals showing how/what this looks like stitched together.

Stitching Together Grid/Grid Formula Specific Potential Recommendations

The group walked through the following:

Offense Reclassification: Reclassify B and C to Limit OSL with Felony Class
Lauren reviewed this proposal, which would "Move all felony class B offenses to no higher than OSL 9. Move all felony class C offenses to no higher than OSL 5. Include new legislative/ statutory language specifying that: 'Class C felony offenses may not exceed offense seriousness level 5. Class B felony offenses may not exceed offense seriousness level 9.'"

Formula & Anchor Points: "Stat Max B and C Anchor Setting"
The formula used to develop simple, consistent sentence ranges for the cells in the grid hinges on an "anchor point" of the statutory (stat) maximum (max) for each offense class, e.g., for Class C (top offense seriousness level (OSL) of 5) the stat max = five years, so to leave room for the potential aggravator cap of six months the longest sentence range is 54 months. For Class B (top OSL of 9) the stat max = 10 years, so with room for potential aggravator cap of 12 months the longest sentence range is 108 months.

Formula for OSL 1-5: Starting with those anchor points, the sentence ranges in each grid cell differ by a consistent percentage to provide a logical, systematic underpinning for each sentence range. The max at 0 CHS is 20% of max at CHS 9+; the max sentence length for each cell from CHS 1-8 is 120% of the prior maximum.

Reset minimum to 0 if max is <12: If the maximum sentence based on the formula is 12 months or less, the minimum is automatically reduced to zero.

Straddle Cells: The formulaic approach creates cells in the lower half of the grid with sentence ranges that straddle 12 months, with the shorter end of the range below and the longer end above one year. Lauren reminded the Subgroup that it had generated multiple ways to address straddle cells, such as

- **Eliminate straddle cells - reset min to 12.01 if max >12.01.** This would Eliminate Straddle Cells: If the maximum based on the formula is more than 12 months, the minimum must be at least 12 months and a day.
- **Keep straddle cells with zone for intermediation sanctions:** Keep Straddle Cells Keep Straddle Cells and Create a State-Funded Intermediate Sanction Zone

Lauren then moved to the set of potential recommendations on the higher OSL rows of the grid (listed below with the current number of the rec):

- **10: Eliminate mandatory minimum for M1:** Eliminate the mandatory minimum for Murder 1.
- **13: Increase number of OSLs from 16 to 18 & formula 10-17:** Increase the number of seriousness levels from 16 to 18 and establish a formula for OSL 10-17:
  - OSL 18 is Aggravated Murder with a range of 25 to life regardless of Criminal History Score (as it currently is in SL 16)
  - OSL 17 is Murder 1 and Homicide by Abuse with current ranges for Murder 1.
    - Minimum for CHS 0 OSL 17 set at mandatory minimum as the anchor.
    - Maximum from CHS 1 – 9+ is 105% of prior maximum.
    - Minimum from CHS 1-9+ is 75% of maximum for each cell.
  - OSL 16 is Murder 2 with current maximums, but minimums made consistent at 50% of the maximum.
  - OSL 15 to 10 are as classified currently except for the offenses pulled out above.
  - The formula is used starting at OSL 16 (OSL 10-16, including M2):
    - High ranges:
      - Current maximum sentence for Murder 2 is used as the anchor for OSL 10-16.
      - Maximum at 0 CHS is 35% of Maximum at CHS 9+.
      - Maximum from CHS 1 – 8 is 110% of prior maximum for OSL 10-16.
      - Minimum is 75% of the maximum for each cell.
    - Mid-ranges:
      - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
      - Maximum from CHS 1 – 8 is 120% of prior maximum.
      - Minimum is 75% of the maximum for each cell.
    - Low-ranges:
      - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
      - Maximum from CHS 1 – 8 is 120% of prior maximum.
      - Minimum is 30% of the maximum for each cell.
  - **13a: Trafficking 1 to OSL 15 - all other offenses up one:** Move Trafficking 1 to OSL 15 with Malicious Explosion of a Substance 1. Move all other offenses up one OSL.
  - **14: Formula OSL 6-9:** Establish a formula for determining grid cell ranges for OSLs 6-9. Create the grid ranges for OSLs 6 – 9 using 108 as the anchor for the most serious maximum punishment for OSL 9, CHS 9+.
  - **15: Eliminate offense spec multipliers, add repeat violent/serious violent column:** Eliminate the offense-specific multipliers from the criminal history score calculation. And create a new column on the grid for repeat violent offending that increases the maximum of the standard sentencing range if the individual has convictions for a previous violent or serious violent offense.

A member asked how the potential new sentence ranges would impact judges' sentencing practices. Lauren replied that the sentence ranges in the revamped grid, in conjunction with the

allowance for adding time for aggravators and repeat violent (or serious violent) will provide more discretion for judges than they currently have.

The Subgroup recently discussed eliminating all the exceptions to standard scoring, considering the idea of retaining domestic violence as an exception. The proposal would reduce the complexity of the system by eliminating such exceptions, allowing judges to address extenuating or extreme circumstances by using the aggravated departure option.

A member asked what level of agreement or alignment Subgroup members have reached on this set of potential recommendations, expressing concern that the full Task Force might not agree on some of them. Amanda replied that these potential recommendations emerged from Subgroup members over the last year and a half, and that now would be the time for any Subgroup member to speak up if their constituency cannot live with one or more of them.

The member said some specifics of the sentence ranges would present problems for their constituency, specifically the shorter sentence lengths in the upper ranges for certain offenses. Amanda responded that to meet its policy goals, the Task Force will have to create the structure and formula for the grid before considering specific ranges and how certain offenses would get sentenced under that structure/formula. The Task Force will not have time to go through every felony, offense by offense, but could flag certain ones for extra attention or express concerns.

The Legislature and most constituencies are not likely to object to a formulaic structural approach, as another member observed; any potential objections are likely to center on where certain offenses might land within the structure/formula. Those constituencies objecting can bring those specific objections to the Legislature to reclassify.

The research team noted that the current grid has elements that defy logic, and that the placeholder numbers on the grid represent best estimates. Now is the time for Subgroup and Task Force members to provide input on those placeholder numbers.

The Subgroup discussed how the proposed grid might play out. One member noted how reducing sentence ranges would free up some resources to support increased treatment and programs to support rehabilitation and successful reentry.

Another member commented that while their constituency will have problems with reduced sentence ranges for certain serious violent and violent offenses, they understand and support the overall approach of using a formulaic approach to systematize the structure of the grid.

Amanda reminded the Subgroup that the Task Force has potential recommendations focused on data collection and monitoring. This can help track the length of sentences issued under a revised grid, which can lead to adjustments if the results do not bring the desired outcomes. A member suggested that with all the adjustments taken together, the new grid does not represent a huge departure from the current grid in terms of sentence lengths.

Amanda encouraged Subgroup members to check with their constituencies about the grid structure and its elements.

A member asked if the research team could bring back the proposed grid with the current sentence ranges (perhaps italicized) next to or underneath the potential new ranges.

Action items: Lauren will put together a visual of the grid that shows the simulated grid ranges (min/max) for each OLS and also shows the current grid min/max on a line just below. A direct comparison of current and proposed sentencing on a single chart.

Next steps: Grid Group will return to the remaining items for discussion re: exceptions to standard scoring rules.

RESOURCES SHARED VIA CHAT:
https://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult_Stat_Sum_FY2019.pdf

COMMENTS SUBMITTED BY GUEST OBSERVERS VIA ZOOM CHAT and/or EMAIL
Joanne Smieja: Could the repeat column also include sex offenses?

Can't the particulars mentioned by Russell Brown be dealt with when the recalibration occurs? For example, if the punishment for Assault 2 is too low in the new grid can't it be increased by changing its seriousness level?

Bruce Glant: the question is will these changes keep the community safe, or are we just more concerned about punishment. I think the research all leads to shorter times of incarceration, rehabilitation, and even supervision. We should pay attention to the research, and what still keeps the community safe.

I hope there will be discussion at some point after SOPB about changing the name and classification for those arrested from stings on 18 and older dating sites. FTO's