Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: July 5th, 2022
Meeting via Zoom

Attendees:

- Russ Brown, *WA Association of Prosecuting Attorneys*
- Sen. Chris Gildon, *WA Senate Republicans*
- Rep. Roger Goodman, *WA House Democrats*
- Greg Link, *WA Defenders Association*
- 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*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

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

Facilitation Team: Amanda Murphy, Chris Page, Maggie Counihan, Zack Cefalu

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

Welcome and Agenda Review

Amanda welcomed everyone to the meeting and reminded the Subgroup of its two upcoming work sessions on July 12th and July 26th in Olympia at the Helen Sommers Building. She mentioned that Matt Landon (of the Statistical Analysis Center of the Office of Financial Management) would have some research findings on the relationship between criminal history score (CHS) and recidivism by late July.

At its meeting on Thursday July 7th, the full Task Force will discuss the Subgroup's offense classification proposal, which the Subgroup reviewed and proposed a couple months ago in the spring. Amanda reminded the group that the discussion of the proposal will first focus on the on the structure of the proposal and members will be asked to suspend for a moment focusing on what specific offenses would need to change and what that would mean for sentence ranges and lengths.

A member stated that while focusing on structure and not particulars may be possible in theory, their constituency has significant concerns about the specific sentence ranges proposed on the simulated grid.

Co-Chair, Rep. Goodman spoke about how creating a structure for a new grid is fundamental and hopes the group can prioritize the use of evidence-based practices to create a more proportional grid and one that highlights best practices, and that after the structure of the grid

is agreed upon, then recalibration of offenses will need to occur. The new grid would not go into effect until after certain offenses get recalibrated, so would have a delay before implementation to allow for that recalibration.

Another member asked whether anything would prohibit such a recalibration of offenses. While it would take a significant amount of work and time to develop and agree on how offenses would be recalibrated to fit the new structure, nothing in law prohibits such recalibration. The implementation of the original Sentencing Reform Act did not occur until three years after it was created in law to allow for the development of sentence ranges for each CHS score and each offense seriousness level (OSL).

The emerging grid structure creates better alignment and connection among OSL, stat max, and felony class—which are not logically connected in the current grid. Once that all gets laid out clearly, some felony offenses will emerge as "out of place" based on their class or OSL. If Class A felonies all go to OSL 10 and above, some Class A felonies will need to get moved, or they would need to be reclassified to Class B, etc.—that is one example of the recalibration that would need to occur.

Discussion: Outstanding items regarding exceptions to standard scoring rules

Amanda reminded the Subgroup of the following list of items still needing to be discussed regarding exceptions to standard scoring rules:

a) Should offenses score against one another when there is more than one current offense?
b) Escape from community custody: Only offenses meeting the definition of Escape (see RCW 9.94A.030(25)) count in the criminal history score – other felonies are not included in the score.
c) Community custody: Offenses committed while on community custody. Should extra point apply?
d) Domestic Violence – clarify that under Potential Rec 15, DV multipliers eliminated and addressed as part of the repeat sv/violent column.

<u>Escape from Community Custody</u>

Dr. Lauren Knoth-Peterson reached out to Mac Pevey as the Grid Subgroup asked, to see if he could provide more information about any DOC policy that defines the type of conduct that would rise to the level of a charge under 72.03.310 for escape from community custody, so to better group understand when DOC would say someone has willfully failed to be available for supervision rather than just being late or making a mistake and failing to show up one day. Mac responded that72.09.310 makes a reference to an inmate on community custody, which was a sentencing type (Community Custody Inmate / Post Release Supervision) prior to the implementation of the Offender Accountability Act (OAA) in 2000. This statute is not applied by the Department if/when an individual absconds or fails to report today, given it references

inmate, which implies an individual that would otherwise be incarcerated or is finishing their term of imprisonment as a part of the original sentence in the community.

However, Lauren explained that while some individuals would still fall under inmate status from sentences before 2000, when looking at data for Escape from Community Custody, there were 89 convictions in FY19 alone, which seemed high. Looking at the data by county, it does appear that only some counties are charging this offense. Lauren asked Subgroup members if they knew why some counties use the "escape from community custody" charge for individuals who are not under "inmate status" in the custody of the Department of Corrections (DOC).

Some thought the difference by county to be due to various applications of prosecutorial discretion in these counties. Others said DOC is making the charging request to prosecutors, so it may be worth looking into when and why these DOC field offices are making this charging request.

A member suggested that instead of recommending the elimination of the exception to standard scoring of this charge, the Task Force *could recommend eliminating the charge itself (which would eliminate the need/use for the exception).*

Someone charged with escape from community custody usually gets charged with another offense at the same time, so they often face multiple charges. The Subgroup discussed the meaning of "willful" in "willful failure to be available for supervision by the department while in community custody," positing that it likely includes elements of "knowingly" and "intentionally."

Members expressed support for the Task Force recommending some change for this exception, but first want to hear from DOC to get some clarity about when and why this is being used.

A member suggested an alternate option*: Eliminate the inclusion of priors under statute 72.09.310. Leave the offense but only score more serious prior escapes*.

A member said their constituency could not endorse eliminating the charge completely. They asked for more information on how DOC handles the fact that some counties do not use this charge while others do. In those counties where this charge does not get used (or does not get used often), it may have to do with whether the DOC field office refers such cases to the county prosecutor's office to charge.

A member commented that eliminating this charge could help reduce complexity and disproportionality. Another member pointed out that this charge is by no means the only one that gets applied differently across counties and suggested that it is not a reliable tool or evidence base to simply look at how many cases in each county involve this charge.

Lauren suggested contacting Mac Pevey and Julie Martin to ask how DOC field offices are applying or referring the escape from community custody charge, noting that DOC has more than 80 field offices so it may take some time to get information back.

<u>Should offenses score against each other when there is more than one current offense?</u>

Status quo: when more than one offense gets charged, the offenses score against each other (the scores for each/all get added together), but the sentences run concurrently.

One idea proposed was *multiple offenses do not score against each other, but the sentences could run consecutively.* Another member suggested recommending *that one point get added in cases with multiple current charges, rather than a point for every charge.*

A number of members commented on how this is not an area of complexity or ineffectiveness and suggested keeping the status quo: The status quo may be more efficient than the alternative proposals above because it encourages consolidation of charges whereas having them run consecutively may encourage the filing of additional charges. The status quo may be more efficient than any changes that the group can make, as they agree that changes could potentially encourage the need to charge multiple offenses as bargaining strategies if people are to face consecutive sentences. The status quo runs sentences concurrently, which may be better overall in terms of meeting the Task Force policy goals.

Another member noted however, the status quo can be manipulated, for example instances where undercover police would make multiple drug buys. The appeals in cases with these charges bring complexity around whether the offenses are the same criminal conduct or not.

Next steps: Next meeting, July 12th is the4 all day work session. Agenda will be on the potential recommendations that pertain to the formulaic approach to the grid and the structural framework (offense classification and added columns) of the grid.

RESOURCES SHARED VIA CHAT:
None

COMMENTS SUBMITTED BY GUEST OBSERVERS VIA ZOOM CHAT and/or EMAIL
None