

Washington State Criminal Sentencing Task Force
Grid Subgroup
Meeting Summary: September 13th, 2022
Meeting via Zoom

ATTENDEES

Members/Alternates:

- Clela Steelhammer, *Caseload Forecast Council*
- Chief Brian Smith, *WA Association of Sheriffs and Police Chiefs*
- Melody Simle, *Statewide Family Council*
- Senator Chris Gildon, *Washington State Senate (Republicans)*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*
- Nick Straley, *Interests of Incarcerated Persons*
- Representative Roger Goodman, *Washington State House of Representatives (Democrats)*
- Greg Link, *WA Association of Defense Attorneys*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Megan Allen, *Interests of Crime Victims*

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Alec Solemslie, Zack Cefalu

Research Team: Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy*

Public Guests: Jim Chambers, Bruce Glant, Audrey Koreski, Joanna Smeija, David Triewailer,

WELCOME AND AGENDA REVIEW

Amanda welcomed the group and reminded them of the work session planned for Monday 9/19 in the Helen Sommers Building in Olympia. She reviewed the potential recommendations the Subgroup turned into proposed recommendations related to Three Strikes.

- Replace 3-strikes mandatory sentence with determinate plus sentencing
- Recommend that the Legislature review the offenses included in the most serious offense list to potentially reduce the number of offenses eligible for the three strikes sentencing.
- Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three-strikes must be treated as elements of the crime. Pled in information. Proven to a jury beyond a reasonable doubt. Or entered via stipulated agreement. Individual acknowledges and agrees in a plea agreement

The Subgroup has also created another potential recommendation: Repeal habitual offender law.

Amanda then reviewed the agenda for the meeting. The Subgroup will continue to work through turning the remaining list of potential recommendations into proposed recommendations. The following potential recommendations to determine whether they are ready to be moved forward as proposed recommendations (see green highlights starting on page 10 of the attached):

- **#1:** Since the current supervision model based on surveillance is insufficient, changes to the grid are based on a broader paradigm shift focused on providing the appropriate treatment and resources for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a separate form of Community Reentry.
- **#4:** Establish a sunset committee that reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.
- **#5:** Require ongoing monitoring and larger, more in-depth statistical reviews after the first few years.

If there is time, they can begin to address the last set of potential recommendations, on washouts: 34, 35a-e, 36a-b, and 37a-b.

DISCUSSION ON TURNING POTENTIAL RECOMMENDATIONS INTO PROPOSED, FOR CONSIDERATION BY FULL CSTF

Potential Recommendation #1: Since the current supervision model based on surveillance is insufficient, changes to the grid are based on a broader paradigm shift focused on providing the appropriate treatment and resources for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a separate form of Community Reentry.

Amanda opened it to the group for discussion and asked what changes, if any, need to be made prior to sending to the full Task Force for consensus deliberation.

Grid Group Discussion:

- This recommendation came from over a year ago before DOC began implementing an i-COACH model of supervision. So, is this recommendation still worth being pursued?
 - While DOC is currently implementing an i-COACH model, it has not been fully implemented yet.
- Do we have any information about how it is actually working in the community?
 - Still very new, but it does appear to be better than the previous approaches
- Concerned about relying on something that is not fully implemented. Would be curious how incarcerated individuals feel the program is working for them. Sounds great in principle but would want to know how it is working on the ground.
- Has major concerns if moving this to consensus testing.

- A member stated that in 2021, the Governor’s office was hesitant to sign off on this type of supervision model but the overall attitude towards this model has since shifted. Suggestion to include “mentoring” into the recommendation, as capitalized Community Reentry does not mean anything, so, insert a comparable model of community reentry practices.
- DOC, regardless of the work of either the Legislature and this Task Force, is already adopting the i-COACH model as a part of their culture change. This recommendation may not be relevant. However, see this is a two part recommendation of HOW and WHEN someone is under supervision. See space for discussion about WHEN someone may be eligible for supervision. Prosecutors would support restoration of supervision for nonviolent offenses especially as a compromise for potential sentencing range reduction.
- When this was proposed the DOC was already implementing an i-COACH model. These changes and recommendations are based on the assumption DOC will keep adopting an i-COACH model or another related community supervision model. Instead of a recommendation, this is more an assumption that sets the framework for other following recommendations.
- Note that DOC is already implementing iCOACH, however, it is critically important that the Task Force develop a recommendation about who is eligible for supervision, specifically suggesting restoration of supervision for nonviolent
- Expressed concern about tying eligibility to specific offenses or kinds of offenses.
- Described importance of programming and services being available for people when incarcerated can help make an individual ready for release and community supervision. These services can be very essential to facilitate successful reentry. While iCOACH is already happening, this model does not extend the supervision to nonviolent offenses. Often see repeat nonviolent this is a problem for their constituency as they often see repeat offending in nonviolent offenses.
- i-COACH is new and may not have the elements that are needed for comprehensive programming, the model does not include the use of people with lived experiences, essentially this is DOC’s Community Reentry program with just a new name. There should be a review process in place to ensure effectiveness and efficacy of i-COACH—such monitoring/evaluation would be of interest
- Could this recommendation and the verbiage being developed by Nick Straley, Chief Smith, and others come together to make these both one recommendation to bring back to the grid group? This could be a recommendation to discuss alongside the new grid.
- Concerned that this model of supervision, especially if extended to restore supervision for nonviolent offenses, adds more time to an individual’s sentence and the reality of this is very different from how the supervision is laid out under i-COACH.
- DOC used to supervise everyone, regardless of offense, then transitioned to supervising only certain offenses, so this group needs at least one DOC representative here to speak on why this change happened in the first place and how restoring nonviolent offense supervision could affect DOC. This recommendation does not talk about expansion of

supervision to non-violent. Not sure if their constituency would support expansion of supervision to non-violent.

- The Legislature directed DOC to do this for financial reasons during the height of the Great Recession.
- Sexual offenses such Rape 3 and Rape of a Child 3 and Assault with Sexual Motivation cases fall in the lower quadrant that are nonviolent offenses. Victim/survivor support essential to treatment oriented sentencing. Supervision can be essential to victims, sometimes more so than prison time, as the oversight, and opportunity for programs/services associated with supervision can support victim sense of safety in the community. As a legal system, the state is not set up to support sexual assault victims. There needs to be awareness of what offenses are non-violent, as these offenses are often thought about as just property crimes but that is not always the case.
- SGC reviewed information/data from Council of State Governments on supervision policies –individuals considered low- and moderate-risk who had been released from prison without supervision had lower recidivism than people released from prison with supervision.
- DOC also determines who is eligible for supervision or release based on their risk assessment and, according to a WSIPP report that was just released, this risk assessment is problematic as it currently operates—DOC should be present during a conversation on supervision eligibility
- Lauren shared an overview of the WSIPP report: The determination of supervision by risk assessment is more effective than supervision by offense type. Same individual will have a different risk level while in prison than in the community. Current risk assessment does not differentiate, so tool creates creates false results.
- Is there any data on this, specifically recidivism by risk assessment levels?
 - There is analysis for the community supervision data but for those serving time incarcerated there is not any available data as of right now.

The Grid Group agrees to table the conversation on Potential Recommendation #1 until 9/19, contingent on representatives from DOC being at the table.

The recommendation as it stands after the discussion states, *“Since the current supervision model based on surveillance is insufficient, changes to the grid are based on a broader paradigm shift focused on providing the appropriate treatment, resources, and mentoring for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a comparable model of community reentry practices.”*

Potential Recommendation 5: *Require ongoing monitoring and larger, more in-depth statistical reviews after the first few years.*

Potential Recommendation #5 calls for a review of everything the Task Force has proposed thus far, the state needs to study, evaluate, and monitor all aspects of the criminal legal system changed by both the work of the Task Force and the aspects remaining in the status quo

Grid Group Discussion:

- Add substantive standards to make clear the goals of the work and add actionable steps to ensure effective use of this monitoring and studying of these changes.
- Can we add standards? Like evaluate against disparity or recidivism?
- Support adding standards, but there needs to be action associated with this recommendation. There needs to be language around actionable steps attached to the evaluation and monitoring.
- A research entity can be directed to review sentences and all other aspects of the sentencing system every 5-10 years on a continual basis.
- Add to the recommendation something to the effect as “Research should include: the impact of the reforms on reducing recidivism, the impact of the reforms on racial disproportionality in sentencing, the impact of the reforms on the rate and use of incarceration and community alternatives.”
- There needs to be a requirement for action. If we are seeing data that individuals are being sentenced differently by race, there needs to be remedies or mechanism for acting on what is being learned.
- Add something that adds 5 or 10 years to a report and evaluation must be done.
- Should fund and support a group for reviews, like the SGC and make the SGC more representative.
- Include a requirement for the SGC to review the state of evidence about the efficacy of reforms and publish a report every 5 years including recommendations for additional reform
- Short term studies of recidivism do not capture the undetected crimes. Need longitudinal studies on recidivism, as well as the need to look at treatment, housing, employment as factors to reduce recidivism. Short-term studies on recidivism are not as accurate as longer-term studies on recidivism that differentiate from actual recidivism and observed recidivism. This also needs to prioritize victims through the gathering of data/interviews to determine what is and is not working to assist victims and reduce recidivism. Racial and gender biases/disparities in the legal system also need to be a focal point of these evaluations and studies conducted by whatever entity will be charged with heading these reviews.
- There needs to be an expansive view of public safety as traditionally this has been used as a reason to further drive the broad injuries that the legal system inflicts.

The Grid group agreed to propose this recommendation to the full Task Force:

Proposed Recommendation: Require the SGC to review the state of evidence about the efficacy of reforms and publish a report every 5 years including recommendations for additional reforms.

Research should include: the impact of the reforms on public safety (including recidivism, technical violations, violations of protection orders, overall crime rates, collateral consequences

of crime/incarceration), the impact of the reforms on racial and gendered disproportionality, the impact of the reforms on the rate and use of incarceration and community alternatives, the impact of reforms on reentry outcomes including employment, housing, participation in and completion of treatment, etc., the impact on complexity and errors in sentencing.

Potential Recommendation #4: Establish a sunset committee that reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

Lauren and Amanda provided a brief overview of the recommendation and prior discussions among Grid and Task Force members. There are 301 non-drug related unranked offenses that currently exist in Washington state. Early on, the facilitation team asked each Grid Group member to review up to 50 of these offenses to determine if these offenses are useful, often used, and where they should be ranked within the grid. The group found that of the 301 unranked non-drug related offenses reviewed, only 60 of these offenses have actually been charged before. That work led to the group saying that this is a big task that the SGC should take on—the Legislature has since directed the SGC to review unranked offenses.

Grid Group Discussion:

- Based on SGC experience on unranked offenses, suggest eliminating reviews at 5-years since it takes 3 years for fiscal impacts to be reported for full ramp up of the offense
- This work could be done through the SGC or other already existing entities doing similar work within the system, there is no need to create a new sunset committee for this recommendation.

The Grid group agreed to propose this recommendation to the full Task Force.

Proposed Recommendation: Direct the SGC to review offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

Washouts: Potential Recommendations #34, 35a-e, 36a-b, and 37a-b:

Lauren and Amanda provided a brief overview of the recommendation and prior discussions among Grid and Task Force members. The Grid Subgroup has spent months talking about washouts. The majority of the discussions concerning washouts came around Class A offenses and if they should washout, and if so when. The Subgroup has had guest speakers present on this topic as well. Currently, the group has not been able to coalesce around one recommendation. The Task Force saw all the options back in the July Task Force meeting. There are many options around class A washouts. For Class B, it is either maintaining the status quo or having washouts reduced to 5 years. For Class C, it is either maintaining the status quo or having washouts reduced to 3 years.

The Grid Subgroup will first discuss Potential Recommendation #35a-e.

Potential Recommendation #35a-e, Class A Felonies

- Option a: Make no change to the current law (Class A felonies would continue to not washout).
- Option b: All Class A felonies washout after 15 years.
- Option c: Offense Classification Proposal – Violent Class A felonies washout after 15 years. Serious violent Class A felonies would not washout.
- Option d: Allow for Class A felonies to washout after 15 years if the new offense is not as serious or more serious than the original offense.
- Option e: If the current offense is a serious violent crime, then all prior serious violent should be included in the CHS.

Grid Group Discussion:

- The lifelong and life-altering harm done by Class A felonies is too severe, the trauma never washes-out for the victims of these types of offenses. Washouts seem like the state is planning on the recidivism of an individual, this member could not imagine how to explain the passage of Class A washouts to victims. There is hope that past offenses will deter individuals from committing more crimes, but why is the Task Force concerned with having leniency for individuals who are committing the worst crimes and repeatedly do so? It has been shown that a small group of the highest-risk individuals make up a large proportion of repeat offenses. Also expressed concerns about options C&D: General recidivism is often-times a sign of antisocial behaviors, thoughts, and/or beliefs that lead to repeat offender behavior and a higher-risk individual. This would be changing the system too much without the proven efficacy of the reforms.
- Reminder that this recommendation does not include sex offenses that are Class A as the Sex Offender Policy Board is reviewing all sentencing related to sex offenses.
- A member said the group has had this conversation plenty of times and no progress has been made, they do not feel the group will ever reach agreement on this topic.
- Is it worth putting forward more than one of these options to the full Task Force? Even if consensus is not achieved, the reasoning for not reaching consensus, on any of these options, can be made clear in the report to the Legislature.
- Another member said anything below Option A, their constituency will not agree to. This recommendation touches on the inherent beliefs of the varying perspectives on this Task Force so they do not believe consensus can ever be achieved.
- Noted that members use phrase “second chances” to describe different things – being in the community after a jail/prison sentence, the sentencing review process – express interest in clarity or common understanding.
- Another member stated their constituency would not support washouts for Class A offenses, could consider washouts for Class Bs and Cs
- The concept of desistance shows that people will not simply stop criminogenic behavior but many will commit less serious offenses over time—this should be considered when making criminal legal policy. Option D should be considered for proposal for the Task Force. There has not been a research-based argument demonstrating the need to consider an individual’s full conviction history—use of prior convictions is tied to

philosophy of retribution. Option D would not be addressing repeat offenders and would only apply to those who have not been convicted of another offense for 15+ years.

- The model penal code recommends no case should reach back further than 10 years. This can help limit the effects of racial disproportionality.
- Support for Option D to go forward to the entire Task Force so that it can at least be in the report for the Legislature.

Amanda adjourns the meeting stating the recommendations concerning washouts will be saved for the following week and reminds the group that we have an all-day meeting on Monday 9/19.

Comments or Resources Shared Via Chat:

Bruce Glant: I hope that consideration would always be considered for FTO's of non-contact Class A sting crimes. There is so much knowledge and agreement of the questionable tactics of NOT following procedures and policies to begin with, and these individuals have NEVER harmed anyone. Yet many are Class A offenses.