

**Washington State Criminal Sentencing Task Force**  
**Grid Sub-Group Meeting Summary: September 20<sup>th</sup>, 2022**  
Meeting via Zoom

**ATTENDEES**

**Task Force Members/Alternates:**

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

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

**Public:** David Triewailer, Bruce Glant, Carolyn Gray, Jim Chambers, Joanna Smieja, Audrey Koreski

**WELCOME AND AGENDA REVIEW:**

Amanda welcomed the group and asked Chris Page to recap the previous day's conversations on the grid, the Community Intermediate Sanctions and Reintegrative Services (CISRS) program, and programs and services the Department of Corrections (DOC) offers to individuals. Amanda let folks know that the Task Force will hold two meetings in October and November and that the Grid Subgroup would work on grid-related potential recommendations related to washouts, post-conviction review, and other issues in the weeks to come.

The agenda for today has the Grid Subgroup picking back up where the conversation left off last week, discussing the washout potential recommendations. Amanda suggested starting with the potential recommendations for Class C and Class B to resolve first, and to then move back to Class A, followed by potential recommendation 34, concerning when washout periods start.

**Washouts:**

*Overview of WA Washouts Rules:* Washout is a period of crime-free behavior that changes the inclusion of prior convictions in the criminal history score calculation. This does not equate to a vacated offense.

**Never Washout:**

- Class A prior felony convictions
- Prior Sex felony convictions

- Non-felony & felony DUI and Physical Control of a Vehicle (PVC) serious traffic offenses **if the current offense** is Felony DUI/PCV

**10-year Washout:**

- Class B prior felony convictions, other than:
  - Sex offenses
  - Non-felony & felony DUI and Physical Control of a Vehicle (PVC) serious traffic offenses **if the current offense is not** Felony DUI/PCV
- Prior convictions for a repetitive domestic violence offense (GM<sup>1</sup> / Misd)

**5-year Washout:**

- Class C prior felony convictions other than sex offenses
- Serious traffic offenses (GM/Misd), other than DUI/PCV when current offense is felony DUI/PCV

*Potential Recommendation 36: Class B Felony Washout Scoring Rules*

- Option a: Make no change to the current law (Class B washout period of ten years).<sup>2</sup>
- Option b: Class B felonies washout after 5 years.

*Potential Recommendation 37: Class C Felony Washout Scoring Rules*

- Option a: Make no change to the current law (Class C washout period of 5 years).
- Option b: Class C felonies washout after 3 years.

Amanda asked what the group would like the Task Force to consider for consensus.

**Grid Group Discussion**

- A member asked about the research from Dr. Megan Kurlychek, which found no difference after seven years in the risk of recidivism for someone who has criminal history versus the general public member who has no criminal history.
- Several members feel that this discussion has taken much of the Grid Group's time and that these recommendations, as is, should move forward to the Task Force to see what will happen, whether or not consensus can occur.

Amanda asked if it makes sense to put forward current policy for consensus. Each option must face a round of consensus, if group not in consensus, then face problem solving methods, such as building out work groups to reach consensus on each option, so this is not the most productive use of Task Force time.

**Continued Member/Alternate Discussion:**

- A member suggested proposing to the Task Force the third option above, based on the research presented by Dr. Kurlychek and Dr. Knoth-Peterson's explanations to the Task Force about the

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<sup>1</sup> GM = gross misdemeanor

<sup>2</sup> The Subgroup agreed it does not make sense for the Task Force to try and reach consensus on current laws.

concept of desistance (in which a person's criminal behavior lessens in both severity and frequency over time).

- **Alternative Proposed:** all class B washout after 7 years if the new offense is less serious than the original offense.
- Another member pointed out that some Class C felonies are still severe offenses. That member requested creating an exception for crimes involving interpersonal violence, suggesting that those should not wash out at all. For the victim community, support for washouts depends on the type of offenses. This constituency would have a hard time having interpersonal violent offenses eligible to washout as these offenses cause life-altering harm to victims. Data from DOC shows in 2012-2020 for those released for sex offenses, when removing the offense of Failure to Register, the next greatest offense for recidivism was crimes against persons.
- Model Penal Code recommends having crimes wash out after ten years, while expressing support for differentiation based on severity of the offense. Suggestion for a graduated washout scale, in which a person's criminal history score would lessen by certain degrees of points as they get closer to the washout term free of further criminal conviction, until they reach a full washout. While that might add a bit of complexity, that would not be bad if it allows for more targeted and appropriate washout periods.
- Another member stated that for law enforcement, allowing felony offenses to wash out of a person's record presents a conundrum, especially for violent crimes.
- From a victims/survivor perspective, crimes with a sexual motivation or involving interpersonal violence also comprise a separate, more severe category that should not be eligible for washouts.
- Expressed interest about what specific crimes the victim's representative might mean, if they wanted certain crimes to be addressed differently, suggesting that the specific offenses need to be named if the group is to pursue compromises.
- The member did not have a list of specific offenses they would not want to qualify for washouts on hand, but said offenses such as sex offenses, child abuse, domestic violence (DV), and grooming and manipulation. These crimes cause lasting physical and psychological harm and impacts to individuals.
- A member noted that the only list they know of crimes against persons would be [RCW 9.94A.411](#). Most of it is intuitive. There is a distinction between how prosecutors charge for crimes against property and against persons.
- If there is not a realistic chance to reach consensus the Grid Group should not present this to the Task Force. The group can capture a report of this discussion to bring to the full Task Force to capture everyone's views and desires for washouts in the final report.
- Suggestion to exclude crimes against persons—only way they could support during consensus.
- Excluding crimes against persons would add complexity. The status quo does not make this distinction so the reforms made by the Task Force should not either. The Grid Subgroup and Task Force should focus on amending time associated for washout periods, not narrowing eligibility.

Jon Tunheim, speaking as co-chair, questioned the usefulness of bringing proposed recommendations to the Task Force while knowing (based on grid group dialog) that consensus would not occur. These

recommendations include multiple options that represent all the ideas presented by the Grid Group; however, the group has not coalesced around any one option. The whole Task Force does not have enough time remaining to have productive conversations and consensus deliberations on all the options, so Jon suggested the group pick the best option to put forward to the Task Force and then live with their decision, knowing the report will be an opportunity to provide different perspectives.

A member agreed that the group has tried to create alternatives to address everyone's concerns, and it has resulted in a long list of potential recommendations for the three classes of washouts. Another member asked what information would help the Legislature in crafting potential washout legislation. Two legislative members stated that without any likelihood of Task Force consensus, they did not plan to introduce any legislation on washouts in the upcoming session. Potentially the group could revisit the discussion around the timelines for revocation and how those affect washout periods.

Amanda pointed out that with several Task Force member seats not represented on the Grid Subgroup, a fair process would create space for those not on the Subgroup to consider and weigh in on proposals. She asked if anyone could NOT live with the following going to the Task Force as a proposed recommendation:

- All Class B felonies wash out after seven years if the new offense is less serious than the original offense

A member representing victims said they could live with it as long as it addressed their concern about crimes involving interpersonal violence. After some discussion, Subgroup members concurred that they could live with the following going to the Task Force:

**Proposed Recommendation:** All Class B felonies wash out after seven years if the current offense is less serious than the prior offenses.

Amanda asked the Subgroup to turn its attention to **Class C felonies**. After the group decided to remove options pertaining to keeping the status quo, the remaining option for Class C washouts had the washout period move down from 5 years to 3 years. Subgroup members agreed that the following would be acceptable to present to the Task Force:

**Proposed Recommendation:** All Class C felonies wash out after three years.

For **Class A felonies**, the Subgroup considered multiple options:

**Potential Recommendations:**

- ~~Make no change to the current law for Class A felony washout period (Class A felonies would not wash out).~~
- All Class A felonies wash out after 15 years.
- Violent Class A felonies wash out after 15 years. Serious violent Class A felonies would not wash out.
- Allow for Class A felonies to wash out after 15 years if the new offense is less serious than the prior offense.
- If the current offense is a serious violent one, then all prior serious violent felony convictions should be included in the Criminal History Score.

**Grid Subgroup Discussion:**

- Feels the option with best chance of Task Force consensus would be the one distinguishing between Violent and Serious Violent Offenses. They understand the evidence of desistance, but washouts require someone not to reoffend and they do not see how washouts are an issue if someone never reoffends. Maybe there should be some cutoff period that do not affect any future convictions, but they do not see this yet.
- If a person is convicted of a Class A felony, does the washout period start at the date of release or at the date of conviction?
  - There is another potential recommendation that needs to be finalized on when washout period starts. Currently, the status quo starts the washout period at the date of release.
- A member suggested that the option to have Violent offenses in Class A washout after 15 years but never having Serious Violent washout would be the only option with a chance at Task Force consensus.

The Subgroup discussed the ramifications of the potential recommendations, eventually settling on the following to present to the Task Force:

**Proposed Recommendation:** Violent Class A felonies wash out after 15 years. Serious violent Class A felonies would not wash out.

Amanda then asked the group to consider a potential recommendation it had discussed at length:

**Potential Recommendation:** Maintain the washout period to start upon release from confinement but based that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a technical violation will not reset the washout period.

**Grid Group Discussion:**

- Should it start upon release of the misdemeanor offense?
  - Many misdemeanors do not have jail time.
  - Maybe it should start at release or conviction, whichever is later?
  - Current law states that the washout period is crime free after release. Any misdemeanor conviction will reset a person's washout clock.
- Does this include any reference for a revocation for programming such as that under the Drug Offender Sentencing Alternative (DOSA)?
  - Revocation for technical violations (of the terms of supervision or programming) do not reset a washout period. These revocations mean serving the remainder of your sentence in confinement, as the program is still serving the original sentence and a technical violation would result in returning to incarceration. This is considered finishing the original sentence.

- Another member is concerned about how revocations for technical violations or any other type of violation relate to washout periods. They remember the conversation around this occurring at the July 2022 Task Force meeting but cannot recall if there have been follow-up conversations.
- A member asked why community custody violations should be factored into this recommendation at all, stating that confinement for any violation, short of an actual conviction for an offense, should not have any effect over the washout period.
- Another member agreed that this adds complexity in a way that does not improve the effectiveness of the system.

The Subgroup discussed the connotations of the various elements contained in the potential recommendation, spending significant time on the issue of technical violations. A member asked whether the Department of Corrections had provided input on that topic. A person returned to prison under “violator status” does not have the washout period restart; one returned under “inmate status” does have their washout period restart upon their release. A member noted that a wide range of behaviors could constitute a technical violation and expressed hesitation as to whether their constituency could support the last sentence of the potential recommendation.

After additional discussion, the group agreed on presenting the Task Force with the following proposed recommendation:

**Proposed Recommendation:** Maintain the washout period to start upon release from confinement but based that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a community custody violation will not reset the washout period.

**Next Steps:** Consider potential recommendations on post-conviction review, CISRS, and programming in prisons.

**Comments or Resources Shared Via Chat:**

*Bruce Glant:* Don't sex crimes have a lot of minimal misdemeanors? Should consideration be made and discussed as to what level or type of misdemeanor qualifies or doesn't to reset the clock? Need to look at violations like FTR's and other similar minor community custody violations.