

**Washington State Criminal Sentencing Task Force
Grid Subgroup
Meeting Notes: October 11th, 2022
Meeting via Zoom**

ATTENDEES

Task Force Members/Alternates:

- Clela Steelhammer, *Caseload Forecast Council*
- Chief Brian Smith, *WA Association of Sheriffs and Police Chiefs*
- Melody Simle, *Statewide Family Council*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*
- Nick Straley, *Interests of Incarcerated Persons*
- Kameon Quillen, *Interests of Crime Victims*
- Representative Roger Goodman, *WA House of Representatives (Democrats)*
- Waldo Waldron-Ramsey, *Washington Community Action Network*
- Megan Allen, *Interests of Crime Victims*
- Tiffany Attrill, *Interests of Crime Victims*
- Judge Wesley St. Clair, *Sentencing Guidelines Commission*
- Senator Chris Gildon, *WA Senate Republicans*

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

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

Public Guests: Jim Chambers, Carolyn Gray, Audrey Koreski, David Triewailer

WELCOME AND AGENDA REVIEW

Amanda welcomed the group and reviewed the agenda, which will focus on reviewing the several remaining potential recommendations related to programming and services and sentencing alternatives.

DISCUSS POTENTIAL RECOMMENDATIONS

Potential Recommendation: *The Legislature must allocate sufficient funds to implement rehabilitative programming for individuals incarcerated in Washington state, i.e., to support recruitment and training for mental health professionals, substance use disorder counselors, and the evidence-based programs to provide treatment and services along with education and job training for incarcerated individuals. These programs and services must be immediately available after DOC conducts an individual's intake assessment. Improving the effectiveness of the system and promoting public safety depend on this, as well as allocation of funds to support the transition to reentry through housing, transportation, removing barriers to employment, providing community supports, and other steps such as those outlined in the Task Force's 2020 Report and in draft bill S-3217.*

Member/Alternate Discussion:

- Suggestion to include some language to get an inventory of the programs currently available at each facility. The types of programs available is not standard across facilities and creates disparities for rehabilitative opportunities depending on where one serves their sentence. It could also be helpful to direct a study to determine which programs have the largest impact on reducing recidivism.
- In addition to knowing what programs DOC offers at each facility, it will be important to know what the program capacity is, and how many people complete the program.
- This recommendation should serve as a general guideline for Legislature, who can then work with DOC within that framework.

Dr. Knoth-Peterson provided an overview of an inventory for adult corrections last updated most programs in 2016. There is rich literature available to update assessments of evidence-based programs (EBPs) and to expand the inventory to include new programs not previously available.

Dr. Knoth-Peterson reviewed an inventory of Voluntary Rehabilitative Program Management offerings, last updated by WSIPP in 2016. It's outdated since both the methods of analysis have improved and new services/programs have been created. A new review may illuminate more recent and accurate information. WSIPP also produced a cost-benefit analysis on DOC programs some years ago; asked Subgroup members if they would like that updated, and if so, what specific info they wanted about program availability across DOC facilities.

Grid Group Discussion:

- It will require significantly more resources, commitment, and staffing to increase access to programming that can prepare more individuals to safely and successfully reenter the community. A member suggested keeping the recommendation at the 10,000-foot level to provide guidance to the state without trying to spell it all out.
- DOC will need resources and capacity to scale up offerings to make them available sooner.
- Creating an inventory to learn program capacity may not need to be a part of the recommendation—it might be too much detail. This recommendation should serve as a framework for the Legislature to work out the finer details, similar to other Task Force recommendations. Additionally, having WSIPP update their list could be another recommendation but does not necessarily need to be a part of this recommendation.
- Another member stated that the recommendation could suffice as just the first paragraph.

Based on the discussion, Amanda offered suggestions for the group to consider: first, remove the reference to draft bill S-3217.1 (since the bill's status is uncertain). Secondly, to create an inventory of programs and participation. This can allow for a better examination of potential disparity – i.e., is there equal access to programming or do resources need to be targeted to increase equity in access.

Continued Discussion:

- The state has had programming in DOC for decades but the key here is to provide access to programming earlier rather than later in their period of confinement. This recommendation would return DOC to its past practices.
- This recommendation should stop after the first paragraph and leave the details and management of these programs up to DOC and provide flexibility for programs to evolve to meet current needs.
- Another member said there is value in institutions updating the program rosters for availability.
- Having a large laundry list of programs available within DOC facilities may be beneficial. Individuals incarcerated will only be interested in programs available at their facility.
- Having a group like WSIPP get the data from DOC for a one-time list will highlight the availability of programming but will not be as helpful as an ongoing DOC analysis produced each year that can demonstrate the year-by-year programs capacity and completion rates.
- Could this recommendation include suggestion for DOC to annually update participate counts of program availability and enrollment?
 - DOC used to provide WSIPP with that information annually and it should not take much time to produce, so publishing this on an agency level should not be a huge lift for them.

After some discussion, the Subgroup expressed support for including language asking DOC to publish statistics on program participation programs by facility and specific program, with demographic information. The group also supported a more general recommendation, with additional information as context in the body of the report. That produced the following: ***Proposed Recommendation:*** *The Legislature must allocate sufficient funds to implement rehabilitative programming for individuals incarcerated in Washington state, i.e., to support recruitment and training for mental health professionals, substance use disorder counselors, and the evidence-based programs to provide treatment and services along with education and job training for incarcerated individuals. These programs and services must be immediately available after DOC conducts an individual's intake assessment. Improving the effectiveness of the system and promoting public safety depend on this, as well as allocation of funds to support the transition to reentry through housing, transportation, removing barriers to employment, providing community supports, and other steps such as those outlined in the Task Force's 2020 Report. Require DOC to publish annual statistics on the number of individuals participating in programs by facility.*

DISCUSSION ON PROPOSED RECOMMENDATION

Amanda reminded everyone that they discussed this recommendation during the meeting last week, but due to time constraints the group did not finalize the language. meeting ended with the following verbiage:

For ~~all~~ sentences including a term of total consecutive confinement longer than 20 years, ~~require~~ individuals have a right to a second chance review at 20 years of incarceration (total

confinement) with the ~~presumption~~ possibility of release. Individuals may waive this right at their discretion. Require that the review process explicitly include victim input.

Amanda then reminded the group that the conversation then led to the following alternative/expanded proposed recommendation:

Proposed Recommendation: *After voluntary and successful completion of programming as offered by DOC, individuals may be eligible for a second chance review after serving 20 years of total consecutive confinement. To be eligible individuals must have demonstrated willful and voluntary participation in and completion of DOC programming during the course of confinement, they must have completed any required treatment associated with SUD/Mental health evaluations, they may not have had certain number of minor or major violations/infractions during last 5 years of incarceration, they may not have been convicted of <<insert crimes excluded here like agg murder, murder 1, murder 2...TBD>>, and they must complete any assessments ordered by the review board. This recommendation is conditional on the Legislature conducting a review of DOC programming effectiveness and availability and providing resources as needed to ensure programming is sufficiently available across facilities for all incarcerated persons discussed in recommendation <<XX>>.*

Grid Group Discussion:

- Expressed concern about excluding individuals with conviction for a violent offense, uncertain how many individuals would potentially receive a 20+ year sentence for a nonviolent offense. See this recommendation as a way to review long sentences, especially in the context of racial disparity.
- Recalled discussions on evidence/research showing that after certain amount of time, many individuals with a felony conviction have no greater risk to public safety than anyone else in the general public.
- Canada operates under the presumption everyone will be released. This recommendation seems to address two separate issues here: 1) What you did, and 2) Are you still dangerous. From victims' perspective, express concern about creating uncertainty in sentencing outcome.
- What is the research/evidence around the 20-year timeframe for review? From victims' perspective, would increase complexity and uncertainty about sentencing. Victims' advocates already must explain other things that can change the release date, such as good-time, credit for time served—all these being opportunities that change the sentence issued by the court. Concern this recommendation could further undermine the victim's trust in the system. That certainty and understanding of what is happening creates trust for victims. Perhaps concerns could be addressed if the group follows the Independent Sentencing Review Board (ISRB) model of a set minimum (with a review after that is reached) this could work.
- This recommendation could still provide certainty and clarity – at 20 years there will be a review, so they will serve a minimum of 20 years. This resembles determinate plus models. This is a big question for Washington state: do we want a parole system? The ISRB already has a clear process; why would we add another?

- This recommendation has a lot of details that ISRB does not, and it would be important to identify whom it doesn't apply to (e.g., those serving determinate plus sentences).
- Someone would only get released if they demonstrate change and no risk to public safety.
- This should be based on current practice: clarify that it would only be available for certain individuals and include screening or preliminary review, perhaps five years prior, to see if individuals are likely to be eligible, similar to juvenile board cases. In a previous report, the Sentencing Guidelines Commission (SGC) suggested that one or more serious infractions within the last 12 months should disqualify a person from the sentencing review.
- Washington Community Action Network advocated for a bill that would add community voices to the review process as well as a racial equity lens: with a sentence of 20 years or more, an individual would get released after 20 years unless determined a threat to public safety, with Governor retaining the final say. [E2SSB 5036](#) would:
 - Establish a process for qualifying individuals to petition the Clemency & Pardons Board (CPB) for conditional commutations
 - Require the CPB to recommend the Governor grant a conditional commutation for a qualifying individual unless the CPB finds it more likely than not that the individual will commit new criminal offenses
 - Authorize DOC to supervise individuals granted conditional commutations
 - Expand the eligibility criteria and modifies electronic monitoring requirements for individuals granted extraordinary medical placement by DOC.
- Several members had a discussion about what entity should oversee the sentencing review process-- ISRB or clemency board. Some noted that the CPB is highly political as the Governor gets final say in who gets this release or reduction in sentences. Currently the CPB runs on volunteers; to take on this work they would need paid full-time staffing. Raised question about whether it would be more expensive to build CPB staff capacity, than having the ISRB doing this work.
- Suggestion to add: *Require that the review process explicitly include the opportunity for victim input and victims should be given the opportunity to participate in person, in writing, or by proxy.*

Amanda asked the Subgroup what language to put forward to the Task Force as a proposed recommendation for consensus.

Discussion, cont.

- A person with a 20-year sentence would not be eligible for this review—suggestion to clarify recommendation that the review is for sentences longer than 20 years.
- Could this be a graduated table with original sentence length and review trigger? For example, 20 years gets review at 15? 40 year gets review initially at 20?
- Concern about the language of having a “right” to a review. The burden should be on the defendant to prove they have changed, rather than on the victims and families of victims. Process should meaningfully center victims and their input, yet also acknowledging that some victims may not want to engage in a sentencing review.

- This would follow the same process of juvenile convictions to have reviews to determine any additional threats to public safety to determine release as outlined in RCW 9.94A.730. Restorative justice principles should also be utilized more in the process of review as well.
- Victims and their families like the finality of sentencing hearings that allow them to start the healing process, if there is a review after 20 years then this creates a lingering effect for these 20 years such that they cannot move on and have to be pulled back into the process 20 years later. Suggestion to exclude those convicted of serious violent crimes from any potential review. Many victims do not want any involvement with restorative justice.
- Restorative justice (RJ) can provide answers and be beneficial. The percentage of victims not open to RJ is small, in my experience.
- Many victims have not been subject to the most heinous crimes. Victims are generally interested in the why and do not want it to happen to others. There is a population that does not want to go through restorative justice. But there is another population not in the highest category that has some interest (that can be seen in juvenile cases). Not a one size fits all.

Amanda asked if the recommendation, with the following edits, can be presented to the entire Task Force as a proposed recommendation?

For ~~all~~ sentences including a term of total consecutive confinement longer than 20 years, ~~require~~ individuals have a right to a second chance review at 20 years of incarceration (total confinement) with the ~~presumption~~ possibility of release. ~~Individuals may waive this right at their discretion.~~ Require that the review process explicitly include the opportunity for victim input. The process for review should be modeled on RCW 9.94A.730 (not necessarily with the ISRB).

Discussion, cont.

- A member felt this language and the language in RCW 9.94A.730 is not sufficiently inclusive of victim input; they would like this process to be more victim-centered. Additionally, they needed clarification if the ISRB is the agency conducting the reviews or can the group at the Task Force meeting decide upon another agency to conduct the reviews?
- Another member said that recommendation should include notification and resources regarding victim advocacy; victims should be given the opportunity to participate in person, in writing, or by proxy through a victim advocate. RCW 7.69.032 lays out the right for victims to make statements before a post-sentence release of the defendant.
- Several members expressed a desire to move away from the modeling of this process after the ISRB model and ISRB language, since it is an administrative hearing process.

The Subgroup agreed to move the recommendation forward to be a proposed recommendation with the following edits:

Proposed Recommendation: For sentences including a term of total consecutive confinement longer than 20 years, individuals may petition for a second chance review at 20 years of incarceration (total confinement) with the possibility of release. Require that the review process explicitly include the opportunity for victim input.

Due to time, facilitation team suggested moving conversation to address outstanding issues/input on the remaining sentencing alternative proposed recommendations to next week's Grid meeting:

Review potential recommendations on sentencing alternatives.

- *Include and visually depict sentencing alternatives on the adult felony sentencing guidelines grid.*
- *Eliminate the cap on the number of DOSA sentences that an individual can receive in a 10-year period.*
- *Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSA and rDOSA (prison and residential drug offense sentencing alternatives).*
- ***Proposed Recommendation Addition:*** *Eliminate eligibility exclusion based on current offense/s – modeled after Mental Health Sentencing alternative (does exclude eligibility if convicted of serious violent or sex offense)*

Resources Shared via Chat:

- E2SSB 5036: <https://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bills/Senate%20Bills/5036-S2.E.pdf?q=20221011095431>
- RCW 9.94A.730: <https://app.leg.wa.gov/rcw/default.aspx?cite=9.94A.730>
- RCW 7.69.032: <https://apps.leg.wa.gov/rcw/default.aspx?cite=7.69.032>