

Washington State Criminal Sentencing Task Force
Grid Subgroup
Meeting Summary: October 4th, 2022
Meeting via Zoom

ATTENDEES:

- 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*
- 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*
- Greg Link, *WA Association of Criminal Defense Attorneys*
- 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, Joanne Smieja, David Trieweiler

WELCOME AND AGENDA REVIEW

Amanda welcomed the group and reviewed the agenda for the upcoming Task Force meeting this week, when the Task Force will conclude its consensus deliberation on the proposed felony sentencing grid recommendation and hear and provide input on grid-related recommendations. The Subgroup at this meeting will revisit the following potential recommendation -- **Potential Recommendation:** For all sentences longer than 20 years, require a second chance review at 20 years of incarceration with the presumption of release.

If time permits the group will pick up where the discussion left off on the programming and funding potential recommendation.

DISCUSSION ON POTENTIAL RECOMMENDATIONS

Potential Recommendation: For all sentences longer than 20 years, require a second chance review at 20 years of incarceration with the presumption of release.

Amanda recapped discussions the group had regarding the second chance review, reminding everyone that several members have had concerns with the presumption of release language in this recommendation.

Grid Group Discussion:

- Suggestion to adopt the following verbiage found in the [RCW 9.94A.730](#) pertaining to juvenile release, where release is based on threat to public safety: *The board shall order*

the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released.

- Are there certain crimes where the Independent Sentence Review Board (ISRB) feels unfit for release?
 - This provision applies to anyone under 18 that has been convicted of one or more crimes with aggregate time over 20 years. This is the provision does not apply to anyone under 18 convicted of Aggravated Murder and/or sex crimes who are either never reviewed or under reviewed under a different mechanism. Not all are released; individuals can go back for review and have the ISRB provide requirements for those denied. ISRB conditions release on demonstration of rehabilitation, completion of programming, and more.
- A member cannot agree on a review of all sentences for presumption of release as there are certain offenses they see as undeserving of a review for potential release, such as offenses like Aggravated Murder, Murder 1, and certain sex offenses. Certain offenses have sentences that begin at 20 years as the minimum and they are not comfortable with a review for release at the minimum. Additionally, there should be a delineation of review timelines for juveniles sentenced under 18 and adults sentenced as adults at the time of the offense. Reviews for adult sentences with the potential for release should take place on a longer timeline than the current 20-year review of sentences for juvenile release. Also has concerns with the presumption of release – presumption should be that individual serves full sentence, release should be earned through demonstration of completion of programming or other means of showing rehabilitation and reduced risk to public safety. This should reflect methodology agreed upon by experts.
- Modifying recommendation to reflect RCW 9.94A.730 could provide guidance for earning release, such as programming, periods of crime-free behavior, psychological exams, and other barriers to be released under specific circumstances. This is not an automatic release that certain constituencies are worried about.
- The RCW language says the board “shall,” if that is changed to “may” that might fix it.
- This conversation -- around post-conviction review or second chance review -- has been ongoing for years. It might work to change “presumption” to “possibility” of release.
- The presumption that someone will serve their sentence is, from their perspective, the correct framework. But if there is a possibility of release instead of a presumption of release perhaps the Task Force could reach consensus on it, as a middle ground. However, there are some concerns from both a law enforcement and victim perspective.
- Victims' representatives struggle with the language about a presumption or possibility of release, specifically language of “release” “second chance” and “all sentences.” When judges issue a sentence, the victim assumes that is the sentence that will be served. This lessens the certainty in the sentencing outcome and ties victims to this system even longer because now they have to return to court during review process. Victims already have a hard time coming to the legal system and getting their voices heard. Sentence review process would add additional hardships that could prevent victims from

engaging in the process. Victim rights at an administrative hearing are not as prevalent as a hearing before a judge. Concerned with reference to all sentences over 20 consecutive years, could consider a modification that would exclude some offenses from eligibility.

- Modification: group deleted “all” before “sentences” in the potential recommendation.
- How possible is a situation where an individual could get a 20-year sentence or longer that does not involve crimes against a person?
- Potentially, if a person were charged with theft with a firearm that included multiple enhancements.
- Described successful sentence review process in Norway—it could serve as a model for developing a review process that considers public safety. Each person has the right for a review, but may waive that right.
- The Sentencing Guidelines Commission’s (SGC) 2019 report posited 15 years as the period of review, based on research, with 20 as the review period for Murder 1 (since that is the minimum sentence). Recognize that changing policies might create distrust among victims, also see sentence review process as a way to bolsters the integrity of the system-- if we recognize the state has made mistakes, and this is a tool to fix those mistakes.
- Several members discussed how other processes and entities integrate victim perspectives in post-sentence release process. Following information was shared:
 - Victim Impact Statement: *(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence.*
- Concern about ISRB capacity, especially developing recommendation that may increase their already high caseloads. ISRB process could be more victim centered. Note that individuals must share their updated contact information with ISRB—but not a process victim always want to follow up with.
- If there are sentences where the judges set a term longer than 20 years, as the minimum, this review provides an avenue for release prior to even the minimum that has been reached. Several constituencies cannot live with that. There are individuals ready to be released at 20 years but there are individuals still not ready to be released.
- After the caseloads of resentencing increased due to the Blake decision, prosecuting attorneys have less interest in sentence review processes.
- Encourage group not to compare this recommendation with resentencing related to Blake decision—to look at how allocating finite resources to incarcerate individuals reduces resources available for rehabilitative services and victim supports.
- Release only applies if there is a demonstration of change. The SGC reviewed this set of issues two different times. How is this different from the argument from prosecutors

against washouts, i.e., “it doesn’t matter unless a person reoffends” – the person would not be released unless it would not compromise public safety.

- See several members express support for support for programming, suggest following alternative recommendation:

Potential Alternative 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>>.*

Continued Grid Group Discussion:

- Want to know that someone has earned a review and has done so through a period of crime-free behavior and demonstrated rehabilitative actions. This puts emphasis on programming and they must demonstrate good behavior while incarcerated
- SGC had similar language – where they used 12 months though instead of 5. 5 years as they felt that period is too long of a look back while 12 months was more demonstrative of their current progress and mindset.
- Concern about having conversation with families of homicide victims that there will be shorter sentences to make room for funding of victim’s services. Could not support this language, prefer to support recommendation that would exclude certain offenses from eligibility.
- Several members expressed support for the alternative recommendation and the idea of someone earning their release and clemency through demonstrated rehabilitation.
- Concern that this proposal creates high barrier for potential review – access to programs at DOC is limited, especially for those with longer sentences, so potential release would be contingent on something individual may not have had opportunity in which to participate.
- There are eligibility issues as to who can get access to the limited programming available to those incarcerated. This would condition the review for release on eligibility and access to programming. Described programs created and run by individuals who are incarcerated. For example, the Black Prisoners Caucus took it upon themselves to start an educational program because it was not available through DOC.
- Suggestion to include the explicit intention that this recommendation is conditional on the Legislature identifying the most effective DOC programs and providing funding to expand availability of programs to all DOC facilities.

Amanda asked whether folks saw the new language as ready to go in front of the Task Force at the October 6th meeting as a Proposed Recommendation for members and alternates to “shop” to their constituencies ahead of a consensus deliberation in November. Some felt the alternative recommendation provides the best possible middle ground that likely has a stronger possibility of Task Force consensus than the original recommendation at the start of the meeting. There are members who struggle to support this recommendation and believe there are flaws in this recommendation that will need to be built out further to present this to the full Task Force or reach consensus.

Amanda asked if it makes sense to hold this recommendation for the October 20th Task Force meeting rather than the October 6th meeting, so this recommendation comes in tandem with the recommendation on funding programming within DOC facilities, and the grid Group has more time to address concerns with the alternative recommendation. Members agreed that this topic should wait, to allow for more Subgroup discussion.

ADJOURN

Resources Shared via Chat:

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