Washington State Criminal Sentencing Task Force
Grid Sub-Group
Meeting Summary: October 25th, 2022
Meeting via Zoom

ATTENDEES:

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

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

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

Public Guests: Jim Chambers, Joanne Smieja, David Trieweiler

Welcome and Agenda Review:
Amanda welcomed the group and previewed the meeting focus: on the substantive input from Task Force members from the Oct 6th and Oct 20th meetings on the proposed recommendations on the sentencing system.

PROPOSED RECOMMENDATIONS:
Recommendation #7: 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.~~ provide prior notice to defendants that a conviction for the charged offense would lead to a third strike and the associated sanctions under the persistent offender laws.

- Status quo it is "standard practice" to include notice on the change of plea that an individual's guilty plea would be a strike offense. Recommendation is to make that "standard practice" a legal requirement such that notice MUST be given prior to entering a guilty plea that the guilty plea would result in a strike offense and, if it is a third strike offense, prior notice must be given that the guilty plea would result in a sentence of life in prison without the possibility of parole. If individuals choose to take their case to trial, notice must be provided prior to the start of trial.

At earlier Task Force meetings it seemed several members could not recall the purpose and intent of the recommendation of aligning Three-Strikes with aggravators. It seemed the main purpose of this recommendation determined by the Grid Group and Task Force input was around the notification of a case that is Three-Strikes related as to inform any defendants before a plea negotiations as well as convictions or decision to go to trial. Dr. Knoth-Peterson explained that Task Force members were united in supporting the practice of giving notice to defendants when a conviction would result in life without parole.

Grid Subgroup Discussion:

- A member noted that this would fill a gap in existing laws.
- A member said this should be focused on the Persistent Offender statute rather than specifically focused on Three-Strikes, as there are similar situations where an individual should be notified they are facing an LWOP sentence that falls under Two-Strikes as well stemming from the Persistent Offender statute.
- A member suggested striking references to the word "strike" as this does not appear anywhere in the statue and is purely colloquial.
- Most guilty pleas have language in them that recognize that an individual will be pleading guilty to a "most serious offense", meaning a strikeable offense, but individuals are not required to be given notice about the possibility of an LWOP sentence for a second or subsequent strike.
- Is this recommendation really changing legal procedure and is this language of the recommendation necessary?
    - Could just require the filing of a document, much how the death penalty used to be, for the notification of a Persistent Offender case with possibility of LWOP before a plea deal or commencement of a trial which is not necessarily a change in legal procedure.

Amanda asked if there is anyone who cannot live with this recommendation and its edits as is? No one spoke up saying they could not live with this and the group will move forward with the recommendation as follows:

- Change the persistent offender laws to provide notice to defendants that a conviction for the charged offense would lead to a sentence of life without parole under the persistent offender laws prior to entering a guilty plea or going to trial.

Recommendation #15: Maintain washout period start upon release from confinement, but base 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.

There was a lot of discussion on this recommendation at the 10.6.22 Task Force meeting, with a lot of the discussion focusing on terminology. Amanda suggests striking "under inmate status" for clarity on the recommendation's intent to potentially address the issues that were vocalized.

Grid Group Discussion:

- A member said that removing under inmate status may be no different from current law. In that case, strike the first sentence as it would be a bit redundant and no longer necessary.
- Just thinking that sentence was trying to distinguish between serving a sentence of revocation and serving time on a violation, and how each would or would not affect the washout countdown. That first sentence prevents that violation of confinement. Not sure WAPA could get behind this.
- Could the last sentence make clear that violating community custody terms would not equate to a revocation and not reset the washout period? Specifically state in the last sentence that confinement and subsequent washout resets do not apply to the revocations to confinement for violating sentencing alternatives.
    - When someone is revoked they are returned to their original sentence and the way it is currently written the violation of community custody does not fall under this definition and doesn't reset washouts.

The recommendation was amended to include the following as the last sentence of the recommendation, as requested by the group:
Maintain washout period start upon release from confinement, but base 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. <u>This does not apply to confinement associated with a revocation of a sentencing alternative. Following a revocation of a sentencing alternative, washout periods will begin at release from confinement for the original sentence imposed and subsequently served following revocation.</u>

Grid Group Discussion Continued:

- This is better but if there is an opportunity in the report to fully explain the workings and amended changes this recommendation would have, it would make us feel better if the report can fully detail the finer workings of this recommendation so there is no room for misinterpretation on the part of the Legislature.
    - In response another remember said that when we talk about “revocation” or “original sentence” those are not statutorily defined terms. Agree that the language here may not perfectly mirror statute, but it needs to be clear enough for nonpartisan Legislative staff to craft statutes.
- Amanda asked what is the one sentence of the intent of this recommendation?
    - Dr. Knoth-Peterson said this was: To eliminate the reset of washout period in situations when short-term confinement in jail (e.g., with a misdemeanor) leads to a community custody violation.
    - Keri-Anne said this one sentence summary should be: Washout times are associated with the current sentence, revocations are a part of this but violation of community custody is not.

- When discussing confinement for community custody violation there is one statute that is RCW 9.94A.716, "Swift and Certain Statue" that allows for arrest and return to incarceration for 3-30 days community custody violation. RCW 9.94A.737 also could be a useful reference, as it details the disciplinary proceedings for violations.
    - If RCW 9.94A.631 and RCW 9.94A.633 also discuss Community Corrections Officers making arrests for community custody violations and courts making the determination for a return to confinement time for violations.
- The Legislature should decrease the circumstances when a washout period resets.
- Washout period starts upon release from incarceration; should not be revoked during community custody. Confinement for community custody violation will not reset the washout period.

Amanda then asked for the intent of the recommendation, and if the recommendation with its new edits clearly laid out the intent within it.

A member said that these specifics get the recommendation too into the weeds and does not eliminate complexity but rather adds more. They feel this recommendation does not change the status quo but tries to distinguish and limit the resetting of washouts upon violations.

In response another member said that this recommendation is not focusing on what no longer triggers the reset of washout but refining what does trigger this reset of washout periods. Whether this is current practice or not this helps clearly define current practice and provide guidance to maintain this practice.

The recommendation was amended to include the following, as requested by the group:

Washouts start should be based on the sentence served for the original offense. *Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence (including time served following revocation of a sentence alternative). 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. 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.*

This recommendation should only lay out aspects that depart from current practices, so remove any piece of this recommendation does not clearly state what is changing.

This draft of this recommendation also does not provide additional clarity as this no longer captures the distinction of effects from misdemeanors not resetting the washouts and gross misdemeanor do reset the washouts. Further, this does not necessarily change current practice so this should not be written as changing the procedures.

Several members are not sure if this changes the simplicity of the recommendation and are not sure if this first sentence actually serves our premise.

For the sake of clarity the original language of this recommendation, along with the inclusion two sentences that clearly lay out the intent, will be how the recommendation exists and will

be called for consensus on the first November Task Force meeting. The recommendation was changed again and moved forward as the following:

Change the washout period to start upon release from confinement, but base that on release from confinement for the original sentence (including time served following revocation of a sentencing alternative). Do not reset washout periods upon confinement for a community custody violation. Do not reset 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.

Proposed Recommendation #19:
The Legislature should review the offenses included in the most serious offense list to potentially reduce the number of offenses eligible for the three strikes sentencing.
Suggested modifications during Oct 6th meeting:

- The Legislature should conduct a review of the offenses considered a most serious offense and evaluate whether they should continue to be classified as a most serious offense, eligible for three strikes sentencing.
- The Legislature should conduct a review to assess the objectives of the three-strikes law and evaluate what offenses should be classified as a most serious offense, eligible for three strikes sentencing.
- The Legislature should review the offenses included in the most serious offense list.

Grid Group Discussion:

- A member said that the recommendation should use language that frames this recommendation as evaluating the most serious offense list rather than explicitly laying out that this would aim to reduce the strikeable offenses.
- The Subgroup decided to choose the second bullet option as the language for the recommendation.
- Suggestion to replace the specific mention of Three-Strikes, with Persistent Offender Law? Any Most Serious Offense falls under the Persistent Offender statute.

The second bullet seemed to meet the needs of Subgroup members and their constituencies, with some tweaks. Amanda asked if there is anyone who cannot live with this recommendation and its edits as is? No one spoke up saying they could not live with this and the group will move forward with the recommendation as follows

Proposed Recommendation: The Legislature should conduct a review to assess the objectives of the persistent offender laws and evaluate what offenses should be classified as a most serious offense.

Proposed Recommendation #22:
For sentences including a term of total consecutive confinement longer than 20 / 25 years, individuals not serving sentences under Aggravated Murder, Murder 1, or Three Strikes, may petition for a second chance review at 20 / 25 years of incarceration (total confinement) with the possibility of release. Require that the review process explicitly include the opportunity for

victim input. This does not apply to pre-SRA, Community Custody Board, or Juvenile Board sentences.

The facilitation team described the recommendation and the suggestions to change 20 years to 25 years, members suggested that certain offenses should not be included, and then include the statement, "this does not apply to pre-SRA, Community Custody Board, or Juvenile Board sentences"

Amanda asked if these changes from the original recommendation would then get all constituencies able to live with this recommendation? Specifically, if WAPA, Victim's Interests constituencies, and WASPC could get on board with this? All these constituencies said they might be able to live with this, specifically WAPA and WASPC will be discussing this with their constituencies in the immediate upcoming days and will know this by the time consensus deliberations begin.

Grid Group Discussion:

- It is a maybe from the victims. Would need to exclude those sentenced under the Persistent Offenders law. Do all crimes need that or do certain crimes need a focus in on. For three strikers, there are not that many, but these cases often have multiple victims across different cases. For that reason it would be important to exclude those sentenced under these laws.
- With all these carve outs, a second chance review would not be available to many people at all. For whom would it be available? Second chance review at 20 years would almost exclusively apply to those sentenced for violent and serious violent offenses as those who get these longer sentences. They are deserving of at least an assessment to determine if they are still a threat to public safety, this is how the system worked pre-SRA. Do we really want to say that people are not redeemable? People can change and should be given a chance at redemption. This is about our values as a society: are we vengeful and unforgiving, or do we believe that people can change for the better?
    - People with multiple enhancements, and some convicted of violent crimes other than Murder 1, Murder 2, or persistent offender felony offenses.
- Does the verbiage need to include "with the possibility of release"?
- Currently, anyone convicted of a felony at Offense Seriousness Level (OSL) 12 can petition for a review by the Independent Sentencing Review Board (ISRB). There are some crimes that you do not come back from. Still committed to that belief. Murder 1 and Aggravated Murder should be different.
- WAPA supported a 15 year review for most offenses and a review at 20 years for Murder 1 when the SGC proposed them as a part of SB 5036, but now WAPA wants no reviews at all.
    - WAPA is happy with the clemency process instead, their constituency at one point was supporting these reviews but is no longer there due to the potential re-sentencing that would occur because of this. Like most constituencies, WAPA is able to change their positions too.
- If the sentence for three strikes violations goes to determinate plus, do we want it excluded from the automatic review due to its determinate plus structure?

- Defender's Association would not support this if this is not applicable to Persistent Offender law due to the high levels of racial disproportionality present with sentences under this law.
    - Does this matter if the recommendation surrounding Three-Strikes getting a determinate-plus model with potential release from ISRB gets passed?

The facilitation team suggested the group leave the recommendation as it was presented (below) and for members to consult their constituencies and, if they cannot live with it, to come back to the Task Force with what they can live with. That recommendation:

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.

Proposed Recommendation #29: *Eliminate the cap on the number of DOSA sentences that an individual can receive in a 10-year period*
Member Proposed Alternative: Eliminate the cap on the number of Prison DOSA sentences that an individual can receive in a 10-year period.

Grid Group Discussion:

- What is the idea behind this alternative? Would leave as the previous original recommendation.
    - WAPA probably would not support eliminating the cap on the number of residential DOSA sentences—if treatment in the community isn't working, we should acknowledge that. WAPA is more likely to support eliminating the cap on the number of prison DOSA sentences.
- The people with multiple residential DOSA sentences primarily have sentences from the lower left of the grid, where WAPA has expressed openness to additional tools. This leaves the potential for someone to have been successful in treatment but has fallen into a relapse within this 10-year window to be restricted from accessing treatment. This cap would artificially constrain what tools prosecutors would have and they can always argue that rDOSA is not warranted in certain cases.

Again, the facilitation team told members to ask their constituencies whether they can live with the original wording of the recommendation and, if not, what they can live with. Ideally then the Task Force would get clear communication on all these.

Further the facilitation team, in the interest of clarity of intent advised leaving the following Proposed Recommendation unaltered: Eliminate the cap on the number of DOSA sentences that an individual can receive in a 10-year period

Action Items:

- Mark Lauren's and/or Keri-Anne's one sentence summary of this recommendation for them to write this into the final report

- Facilitation team to work with research team to clean up the document with the 28 proposed recommendations to send to the Task Force.
- Task Force members ask their constituencies if they can live with the 27 sentencing system recommendations and the Community Intermediate Sanctions and Reintegrative Services recommendation and come prepared for consensus deliberations on November 3rd.