

**Washington State Criminal Sentencing Task Force**  
**Sentencing Grid Subgroup**  
**Meeting Notes: November 8, 2022**  
**Meeting via ZOOM**

**ATTENDEES**

**Task Force Members/Alternates:**

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

**Public:** Jim Chambers, Carolyn Gray, Joanne Smieja, David Triewailer

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

**Research/Technical Support:** Lauren Knoth-Peterson, *Washington State Institute for Public Policy*

**WELCOME AND AGENDA REVIEW**

As the facilitation team suggested during last Thursday's Task Force meeting -- given the number of recommendations needing to be addressed at the November 17<sup>th</sup> meeting, the Grid Subgroup would discuss some of these recommendations to help advance the problem solving. That approach also makes sense because many of the members "*not able to live with*" recommendations also participate in the Grid Subgroup.

Amanda proposed the following for the meeting's agenda:

- **Proposed Recommendation #6**
- **Proposed Recommendation #8**
- **Proposed Recommendation #22**

**PROPOSED RECOMMENDATIONS DISCUSSION:**

The Grid Group decided to begin discussing the proposed recommendation on aggravated murder. The language, as proposed on November 3:

**Proposed Recommendation #8**

For aggravated murder 1 change the language from: “Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life.” To “Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of twenty-one, a term of twenty-five years to life.” In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.

Facilitation team reminded the group that on November 3, the following seats were unable to live with the recommendation: WAPA, House Republicans Caucus, Seats Representing the Interests of Crime Victims 1 & 2, WASPC, and Senate Republican Caucus.

Amanda then invited these individuals to share what proposals they have prepared that would make them able to live with or support this recommendation, and still meet the needs of the group.

Individuals representing WAPA proposed the following changes be made to the recommendation, “For aggravated murder 1 change the language from: “Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life.” To “Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of eighteen, a term of twenty-five years to life. For individuals the age of eighteen to twenty, a term of thirty years to life.” ~~In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.”~~

From prosecutor’s perspective, the overturn of legislation from the Washington Supreme Court following both the Monschke and Bartholomew cases eliminated automatic life without parole sentences for 18-20 year old. They stated that this essentially extended the sentence of 25 years to life from individuals under 18 years old to those under 21 years old. However, WAPA wants there to be a distinction in sentencing for those aged 18 and under from those between 18 and 21 years old. Additionally, WAPA members have diverging views on striking the reference to the death penalty so WAPA would propose the reference to striking the death penalty be removed to reflect this.

**Member/Alternate Discussion:**

- A member asked for more information supporting the proposed term of 30 years to life for 18–20-year-olds is based on? The Subgroup has had several discussions on recent brain science that states the brain is not fully developed until 25 years old and that young adults from 18-25 are like the brain patterns of juveniles 18 and under.
- This proposed change recognizes that juveniles under age 18 and will not face an automatic life without parole sentence and extended this sentence restriction to those

under age 21. However, the law distinguishes that those aged 18-21 are a different age group than juveniles under 18 and therefore have a different level of culpability, and this proposal aims to capture this nuance. Once someone is older than 18 but under 25, they are more developed and therefore more culpable than juveniles but still not yet fully matured, thus this proposal is still a lowering of the original mandatory LWOP but in a way that also reflects that nuance of differences in legal culpability from juveniles to young/emerging adulthood.

- In the Monschke and Bartholomew cases there was no distinction between 18-20 year olds from juveniles younger than 18 years old and these cases raised the levels of who is considered a juvenile and eligible for LWOP sentences, based on the brain science of brain development up to 25 years old.
- Reviewed the following excerpt from the draft report which stated, “Recent Supreme Court decisions recognize the emerging brain science and the Washington Legislature has made other policy changes recognizing continued brain development between the ages of 18 and 25. The recent WA Supreme Court Case decisions,– (*Monschke and Bartholomew*) ruled that 18, 19, and 20-year-olds facing life sentences for aggravated murder must be viewed through a lens that considers the “transient immaturity of youth” and that the court must first consider the age of those under 21 before sentencing to a term of life without parole.” While this states that automatic life without parole sentences are no longer constitutionally allowed, this does not necessarily automatically expand the definition of juveniles to those under age 21.
- A member said that they cannot support this proposal for 30 years but plan to reach out to their constituency to see how they would feel with this recommended change and come back by COB Thursday and let the Task Force know their position.
- WAPA could not support the strike reference to the death penalty. That would be an important piece to remove for their full support.
- During earlier discussions about the death penalty, the Supreme Court in the state ruled that the death penalty is not allowed.
- A member stated that the decision was more nuanced than that, a moratorium has been placed on it but it has not been banned entirely. The legislature has been considering it. The idea of striking the reference might be more complicated as an issue.
- Senate Republicans said this recommendation is reflective of what society deems as the appropriate age of responsibility to be held fully accountable for their actions, this is not something that either the Task Force or society has yet to fully come to a position on, and the member representing this constituency feels that this recommendation is not one they can live with but will discuss WAPA’s proposal with their constituency.
- WASPC thinks this proposal may be the best they can do, as they cannot live with the recommendations as is, and will discuss this edited proposal with their constituency as well.
- A victims’ representative said that deeper dives into brain science cited as the rationale for the recommendation reveal that it is not always as consistent or accurate to be used as the basis for changing the laws around culpability. Their constituency feels that this recommendation is not one they can live with but will discuss WAPA’s proposal.

- A member responded that the age of majority has been arbitrarily stated at 18. The brain is the last part of the body to mature between the ages of 24 and 29.
- Recall conversations about basing recommendations on research and evidence based practices, feels like this recommendation diverges from research on brain development. This recommendation is proposing that after 25 years in prison, individuals could go before the ISRB to demonstrate how they've matured and rehabilitated, and no longer risk to public safety.
- Many neuroscientists agree on brain development up until age 24-29 but diverge on this application in law surrounding culpability. Not saying that there shouldn't be a different lens with younger people, but we have not discussed how to hold youth and young adults accountable differently and need to be thoughtful about how applying research to discussions in the legal sector.
- Anyone of any age who commits Aggravated Murder should be held accountable but the legal changes resulting from these Supreme Court cases recognize that young people could rehabilitate. To create consistency across juvenile and adult sentencing systems, the threshold of 25 years to life should be used for all individuals between 18 and 21. Expressed concern that threshold of 30 years could be justified in the Legislature.
- Described how legal definitions of adulthood have evolved—the 26th amendment was passed to allow 18 years old to vote, and this change came about due the drafting of young men of 18 to go fight in the Vietnam War.

In order to allow time for discussion on the other proposed recommendations, the facilitation team suggested pausing this discussion and asked members to send their proposals to the facilitation team by Thursday.

## **DISCUSSION**

### **Proposed Recommendation #6**

Replace three-strikes mandatory sentence with determinate plus sentencing.

After reading the proposed recommendation, the facilitation team reminded the group that the following seats were unable to live with the recommendation on November 3: WAPA, House Republicans Caucus, Seats Representing the Interests of Crime Victims 1 & 2, WASPC, and Senate Republicans Caucus.

Individuals representing WAPA proposed the following changes be made to the recommendation, “Replace three-strikes mandatory sentence with determinate plus sentencing with a mandatory minimum of 25 years or the minimum of the standard range, whichever is greater.”

### **Member/Alternate Discussion:**

- A member representing Republican lawmakers said that since the Three Strikes law passed via citizen's initiative, they would have a hard time overturning it. They said they

would support a review of which offenses qualify under the persistent offender (Three Strikes) law.

- This vote passed many years ago, this proposition was not winning until there was an influx of money from a political action group that pushed for its success in the polls, many things that were not popular years ago have since passed in this state such as marriage equality and the legalization of cannabis that demonstrate a shifting of voters that could result in many no longer supporting Persistent Offender Laws.
- WASPC could not support changing the Three Strikes penalty from life without parole but would support review of what offenses would constitute a Most Serious Offense.

Amanda noted that in other discussions members have noted that the Legislature created a task force in 2008 that reviewed Three-strikes and Three-Strikes offenses that called for the removal of Assault 2 and Robbery 2 from the list of offenses that constitute a Most Serious Offense eligible for this type of sentencing. Robbery 2 was recently removed from the Most Serious Offense.

Dr. Knuth Peterson also noted that several states have changed their Three Strikes penalty to 25 years to life, and 16 of 25 states that passed Three Strikes laws have made changes to those laws. A lot of those other states have changed the mandatory nature of three strikes, so it would be relevant to look at other state decisions.

**Continued Task Force Discussion:**

- The seats of Crime Victims can support a review of what offenses would constitute a Most Serious Offense, but would not support replacing Three-Strikes. A report showed data on three strikes and many of the strikes given were for sexual offenses. Sex offenses and Robbery 1s were highest in the tally for strikes given. Thinking about the sex offense cases, a single conviction may not reflect actual repetitive behavior due to cases not getting reported, or plead down. See need for focus on what crimes are listed as strike offenses and to see what offenses should be removed and what should be added. Persistent Offender Laws deal with a small percentage, around 4% or less, of those incarcerated in WA state.
- This recommendation does not remove accountability, trying to provide process and opportunity for parole if they can demonstrate rehabilitation. Persistent Offender Laws say that in every single case those convicted should be incarcerated forever without any exception. This recommendation would open up an avenue for second chances for those who have been rehabilitated.
- This recommendation would focus solely on Three-Strikes laws and would not touch Two-Strikes laws related to sex offenses.

Amanda reminded the group to think of the collective. There are recommendations that for some members might be vital for their constituency, even though it may not rise to that level for others. A consensus process provides space for individuals to both show what they can support and what they can live with.

Given the time left in the meeting, the facilitation team suggested pausing this discussion and reminded members who are not able to support this recommendation to submit their proposed changes to the facilitation team by the end of the day on Thursday.

**Proposed Recommendation #22**

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.

After reading the recommendation, the facilitation team noted that the following seats were unable to live with the recommendation during the November 3 roll call: WAPA, House Republicans Caucus, Seats Representing the Interests of Crime Victims 1 & 2, WASPC, and Senate Republicans Caucus.

Facilitation team then invited those members to share their suggested modifications.

Senate Republicans recommend eliminating the phrasing of “with the possibility of release,” so there isn’t a reference to a specific outcome.

WAPA representatives stated that WAPA currently has a bill proposal in the works right now that focuses on ramping up the Clemency Board in such a way that could statutorily create a pathway forward towards clemency. WAPA does not feel comfortable lending any support for a recommendation that is counter to a recommendation their organization is creating that differs from this recommendation.

**Member/Alternate Discussion:**

- The intent of the proposal is probably to create a review process under the ISRB; currently the review process would go through the Clemency process in Washington state.
- A member mentioned another version of the recommendation that has certain offense-specific exclusions; the Republican lawmakers’ representative said they would be much more comfortable with that.
- A member pointed out that this proposal differs from the clemency process--there are no time limits or time served requirements to apply for and achieve clemency, clemency requires someone to have extraordinary circumstances of their rehabilitation from their date of conviction, regardless of offense. This recommendation requires 20 years to be served first and could have the introduction of offense-specific exclusions for eligibility.
- Concern that clemency is a highly political decision that is based on the individual Governor that is in office and the political pressures they are facing that directly influence who does or does not get clemency. Clemency is an exclusive power of the Executive branch and proposing Legislative action to direct this power creates a gray area of uncertainty of legal powers if this is valid for the Legislature to be able to do.

Amanda asked the members of the Grid Subgroup who cannot live with any recommendations to go back to their constituencies to go back to their constituencies and get their input on any proposed changes before next week's meeting.

**Action Items:**

- Task Force members who cannot live with remaining sentencing system recommendations talk with their constituencies and come prepared to problem-solve on those on November 15th.

**Adjourn**