

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: November 15, 2022
Meeting via ZOOM**

ATTENDEES

Task Force Members/Alternates:

- Clela Steelhammer, *Caseload Forecast Council*
- 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*
- Russ Brown, *WA Association of Prosecuting Attorneys (WAPA)*
- Melody Simle, *Statewide Family Council*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*

Public: Jim Chambers, Carolyn Gray, David Trieweler, Lisa Mulligan, Audrey Koreski

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

WELCOME AND AGENDA REVIEW

Given the number of recommendations that need addressing at the upcoming November 17th Task Force meeting, it would help to have the Grid Subgroup try and work through some to help advance the problem solving needed at the next Task Force meeting. Looking at the decision roll call, there is much overlap in members “*not able to live with*” recommendations that are also members of the Grid Subgroup. The facilitation team identified several recommendations most likely in need of a considerable amount of time allocated for problem-solving, thus Amanda proposed the following for the meeting’s agenda:

- **12. Proposed Recommendation:** *Reduce the OSL for vehicle prowl – 2nd degree (third or subsequent) to Offense Serious Level (OSL) 2 and raise the OSL for vehicle prowl – 1st degree to OSL 2.*
- **11. Proposed Recommendation:** *Maintain the special misdemeanor scoring exception for domestic violence. As described in the proposed recommendation of the new felony sentencing guidelines grid, offense-specific exceptions to standard scoring rules for adult felony offenses are eliminated and a new column is added to the grid for adjustments to the standard range for qualifying individuals. The scoring exceptions for adult felony offenses where domestic violence was pleaded/proven will score as 1 point per standard scoring rules, and are eligible for the expanded sentence range under the repeat violent/serious violent and repeat domestic violence column.*
- **9. Proposed Recommendation:** *Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current offenses is a serious felony traffic offense*

involving DUI (e.g., Vehicular homicide-DUI, Vehicular Assault-DUI, Felony DUI, Felony physical control, etc). Prior misdemeanor DUI offenses no longer score for felony offenses not involving DUI.

- **14. Proposed Recommendation:** *Include language in the SRA that would define the scope of offenses that can be scored in the calculation of a CHS as limited to prior felony convictions other than DV, DUI, and vehicular prowl (conditional on vehicular prowl and DUI recommendations passing).*

Amanda said the goal of the November 17th meeting is to get through the second round of consensus for ALL remaining recommendations yet to reach consensus. Although due to the number of recommendations remaining the facilitation team thinks the group will still have some recommendations left to work through on the December 8th meeting, and if this is the case the special misdemeanor scoring recommendations will be saved for that meeting.

Proposed Recommendation #12: *Reduce the OSL for vehicle prowl – 2nd degree (third or subsequent) to Offense Serious Level (OSL) 2 and raise the OSL for vehicle prowl – 1st degree to OSL 2.*

Amanda provided some contextual overview of the differences between Vehicle Prowl in the first degree ([RCW 9A.52.095](#)) and Vehicle Prowl in the second degree ([RCW 9A.52.100](#)). Mainly that this offense in the first degree involves breaking into a vehicle that has a permanent cooking or sleeping quarter(s), making this akin to Residential Burglary. When involving other types of vehicles this is classified as a Vehicle Prowl 2, for which a third or subsequent Vehicle Prowl 2 conviction results in a felony, which is placed in OSL 4.

While Vehicle Prowl 1 is classified in OSL 1 and is a felony at the first offense. However, this creates an incentive to escalate criminal behavior to successfully steal a motor vehicle. Theft of a Motor Vehicle resides in OSL 2 while Vehicle Prowl 2nd degree (third or subsequent) is in OSL 4, creating a lesser penalty for the actual theft of a motor vehicle after 2 second degree prowl misdemeanors than getting a third or subsequent second-degree prowl offense.

Grid Group Discussion:

- A member said the Legislature did this to demonstrate the more serious level of the offense when committed in the first degree, as this is akin to Residential Burglary. However, the third or subsequent Vehicle Prowl 2 is a higher OSL to reflect that there is a nuance in vehicle prowling, as many who prowl vehicles are not looking to steal the car but break into the vehicle and steal items within and this status quo enacts harsher penalties on these repeat offenders rather than deal with those who steal cars. That is the purpose for both the higher OSL and scoring of misdemeanors prowling offenses.
- Many laws have been adjusted by the Legislature independently of related offenses. This Task Force suggests a need to recalibrate where offenses are in their OSLs, but when victims' interests' representatives have asked to do this, it has been made clear that a separate entity will be tasked with this. Why is this Task Force then looking at reclassifying OSLs for these offenses? Why are these reclassifications being prioritized over more harmful offenses, such as sexual assault offenses?

- Amanda provided background context on how the Grid Subgroup got to these recommendations surrounding vehicle prowling reclassification. When the Grid Subgroup started reviewing how to establish a new grid, they found many legal procedures were interconnected with the status quo grid. One of those being the CHS procedures and how there are special misdemeanor scoring exceptions. Looking at areas of complexity when it comes to CHS, there are 4 distinct misdemeanor scoring rules. This led to looking at those scoring exceptions and how they add or do not add to complexity. The misdemeanor scoring led to this (the group did not go offense by offense).
- A member thinks this is the single best example about how broken the SRA is. If the group wants to say someone who breaks into cars three or more times deserves a sentence similar to those convicted of Assault 2 or Vehicular Assault 2 in OSL 4, this member simply does not care about this anymore though and wants to spend the little remaining time addressing issues of more substance. This demonstrates a broken system and a rare case where an offense in the second degree carries a longer sentence at a higher OSL than the offense in the first degree.

Recommendation #11: Maintain the special misdemeanor scoring exception for domestic violence. As described in the proposed recommendation of the new felony sentencing guidelines grid, offense-specific exceptions to standard scoring rules for adult felony offenses are eliminated and a new column is added to the grid for adjustments to the standard range for qualifying individuals. The scoring exceptions for adult felony offenses where domestic violence was pleaded/proven will score as 1 point per standard scoring rules and are eligible for the expanded sentence range under the repeat violent/serious violent and repeat domestic violence column.

Amanda said this recommendation requires the attention of the group as it has a direct reference to the New Proposed Grid that did not reach consensus. The question is whether this recommendation is still relevant to call for consensus—or should this be included in the writeup on the New Proposed Grid in the Task Force 2022 Report?

Grid Group Discussion:

- Is there double/multiple scoring of prior domestic violence (DV) offenses if the current offense is a felony DV where prior DV convictions were counted?
 - There is a list of specific offenses that, when pled and proven, score as double in the CHS. The list can be found in [RCW 9.94A.525\(21\)](#)
- A member felt this was already addressed in the final round of consensus for the New Proposed Grid, and if the New Proposed Grid did not get to consensus, then any recommendations with direct reference to that grid should be removed from consensus deliberations, and the Task Force should move on from this recommendation and no longer discuss this.
- Scoring sheets for DV all pertain to felony offenses; where do misdemeanor offenses come into the scoring?

- All prior repetitive DV offenses are eligible to be scored as 1 point, where felony DV offenses double score as 2 points. Prior DV felonies would double score when facing new DV charges. Specifically see Subsection (D) of RCW 9.94A.525(21).
- [RCW 9.94A.525\(21\)](#) If the present conviction is for a felony domestic violence offense where DV (as defined in RCW **9.94A.030**) was pled and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:
 - (a) Count two points for each adult prior conviction where domestic violence as defined in RCW **9.94A.030** was pleaded and proven after August 1, 2011, for any of the following offenses: A felony violation of a no-contact or protection order (RCW **7.105.450** or former RCW **26.50.110**), felony Harassment (RCW **9A.46.020(2)(b)**), felony Stalking (RCW **9A.46.110(5)(b)**), Burglary 1 (RCW **9A.52.020**), Kidnapping 1 (RCW **9A.40.020**), Kidnapping 2 (RCW **9A.40.030**), Unlawful imprisonment (RCW **9A.40.040**), Robbery 1 (RCW **9A.56.200**), Robbery 2 (RCW **9A.56.210**), Assault 1 (RCW **9A.36.011**), Assault 2 (RCW **9A.36.021**), Assault 3 (RCW **9A.36.031**), Arson 1 (RCW **9A.48.020**), or Arson 2 (RCW **9A.48.030**);
 - (b) Count two points for each adult prior conviction where domestic violence as defined in RCW **9.94A.030** was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW **9A.36.120**; Assault of a child in the second degree, RCW **9A.36.130**; Assault of a child in the third degree, RCW **9A.36.140**; Criminal Mistreatment in the first degree, RCW **9A.42.020**; or Criminal Mistreatment in the second degree, RCW **9A.42.030**;
 - (c) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW **9.94A.030** was pleaded and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and
 - (d) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW **9.94A.030**, where domestic violence as defined in RCW **9.94A.030**, was pleaded and proven after August 1, 2011.
- By maintaining the special scoring exceptions for misdemeanor DV offense, if it's a repetitive act of DV, it creates a system where these prior misdemeanor offenses are treated harsher than felony DV offenses and this does not make sense. This highlights errors in the function of the status quo system.
 - In response, a member clarified that the repetitive felony DV is 2 pts and repetitive misdemeanor DV is 1 point, so they are not sure how this creates an area where prior misdemeanors are treated more harshly.

Amanda said this recommendation would address the creation of new columns for repetitive DV offenses to replace the special scoring rules, and perhaps this should be moved off the table and included to the write-up for the New Proposed Grid. The group agreed to take this recommendation off the table for consensus and this will be brought to the attention of the full Task Force.

Recommendation #9: *Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current offense is a serious felony traffic offense involving DUI (e.g., Vehicular homicide-DUI, Vehicular Assault-DUI, Felony DUI, Felony physical control, etc). Prior misdemeanor DUI offenses no longer score for felony offenses not involving DUI.*

Grid Group Discussion:

- A member feels like these misdemeanor scoring rules are not worth talking about due to the Task Force failing to reach consensus on the grid, as some members have demonstrated they prefer the status quo for misdemeanor scoring. It does not seem like a topic the Task Force can reach consensus on and the Grid Subgroup should move away from this topic and spend time on bigger issues.
- Some of the scoring rules recommendations, like Proposed Recommendation #11, were proposed to go in those new columns in the New Proposed Grid. Without those columns, some of those recommendations do not work. But this recommendation is one we can deal with, as with or without a new grid this is still relevant. Maybe it should have the second sentence first and then a sentence that says “but maintain special misdemeanor scoring for prior misdemeanor DUI offenses when the current offense is a serious felony traffic offense involving DUI.”
- WAPA would not support this recommendation; they feel the status quo has more logic with the special scoring rules for misdemeanor DUI offenses and better serves public safety than any elimination of these rules. These rules are not complex and eliminating them would not reduce any system complexities.

It is important for the Task Force to work as close to reaching consensus as possible. The closer the group can get, the more valuable the recommendation is for the Legislature. Even though some constituencies will not reach consensus, these discussions provide critical information in the report to the Legislature so that the Legislature understands why people could not live with and why some constituencies could support the changes.

Grid Group Discussion continued:

- A member said the more recommendations that the Task Force puts out that are not significant or that could provide significant reforms, will put the idea into the minds of our public officers that only granular reforms need to be made to fix our sentencing system. The recommendations currently being discussed are inconsequential when the Task Force could have accomplished more significant recommendations.
 - Another member said that everyone all comes from different perspectives into this work. People have stayed at the table even though this has not always been enjoyable because the work is important to them. They respect everyone here and they want to be careful about those that stayed at this table during the conversation. Appreciate the perspective but want to be careful of how the discussion on the work being done has been framed.
 - Amanda acknowledged the frustration in the room and the amount of time members have spent in this Task Force but mentioned that some recommendations

that may seem inconsequential to some in the Grid Subgroup may be essential recommendations to members in the Task Force or for other constituencies.

- A Legislative member said that this process has been incredibly helpful to identify a guiding path for future Legislative action; these conversations help identify where the major issues are and how they can be addressed.

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.

Amanda mentioned this is an example of a very divisive recommendation but a recommendation to many constituencies is a recommendation that is critical to them.

Grid Subgroup Discussion:

- At the last meeting, a member stated that this describes what is currently available since anyone can petition to review. If we add more detail on who, when, and where, that is where things get complicated. So, while there is a certain benefit of not making it too detailed, it needs some specific language to it clearer.
- A member said that certain conditions will mean that there will need to be carveouts on certain offenses and the carveouts will make consensus impossible.
- Does WAPA think a second chance review is appropriate in certain circumstances?
 - Absolutely.
 - Then the recommendation should focus on the area where we have the best chance to reach consensus. We get bogged down focusing on the creation of a process for a second chance review rather than whether someone who has served 20+ years incarcerated should be reviewed to determine if they still represent a harm to their community. This recommendation could state that the Task Force could reach consensus on the basic idea, but the Legislature should decide what entity should oversee this review.
 - Another member agreed that the recommendation can be vague to highlight the shared desire for a broad second chance review after a certain amount of time to determine an individual's risk level to the community with possibility for release, and let the Legislature work out the details.
- There is a current process, and that is the tension, is Clemency the appropriate process or is a new process? Folks want more detail and a different version of the recommendation, but as soon as we talk about that, it will become a challenge.
- A member said whatever additions to this recommendation or process the Legislature comes up with will be independent of the Clemency process; also, the Legislature legally cannot make any adjustments to the Clemency process since it is overseen by the Governor.
- A member said that they could live with the recommendation if the reference to a “possibility of release” is struck to create a neutral frame for the recommendation to not influence the outcomes of these reviews. Additionally, if there were exclusions for Aggravated Murder, Murder 1 and Three-Strikes convictions then they could live with this.

- A member said that a bill about this topic has come to the Legislature every year for 5+ years, first appearing in 2012, so this demonstrates how important this issue is and how many support this recommendation.

This recommendation was amended for potential introduction to the full Task Force as an alternate proposal if consensus cannot be reached on the original proposed recommendation. This reads as:

PROPOSED RECOMMENDATION: *For sentences including a term of total consecutive confinement longer than 20 years, individuals may petition for a second chance sentence 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. Except agq murder, murder1 and three strikes.*

Establish a new process for second chance review that is broader than the current clemency process and has better defined criteria, to determine if an individual may be released.

Appendix

Attachment 1: [List of CSTF Sentencing System Proposed Recommendations](#)