

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group: Grid Sub-Group
Meeting Notes: April 23, 2020
Virtual Meeting via ZOOM

Overview:

The grid sub-group met virtually for two hours to discuss a decision tree created by Lauren Knoth.

Review & Discussion of Decision Tree:

Lauren reviewed a decision tree that describes sentencing grids from other states and how they compare to Washington's current model. She urged the group to think creatively because no single model exists for what reform should look like—and when most states created sentencing guidelines, they thought more about risk management while most now are moving more towards individual sentencing.

Key Discussion Points:

- Overarching Q of how many grids to have: one large grid to combine drug and unranked offenses, separate grids for violent and non-violent offenses, or multiple grids with separate ones for different types of offenses.
- Members discussed the current definitions and labels of offenses and they affect sentencing if someone has multiple charges (e.g., most serious is generally the primary charge). It might make sense to have consistent definitions.
- A member voiced support for Option B on the decision tree. It incorporates the labeling from the Sentencing Guideline Commission's 2019 report and could provide continuity by having a single way to label and offense.
- Members discussed discretion in the courts. Some noted that if courts have more discretion, they also have more flexibility via options for sentencing ranges. Lauren noted that within our state, large variations exist in sentencing ranges (based on the location of the court).
- Lauren commented that the federal system has different zones along with seriousness levels and criminal history scores, which allows for diagonal movement within the grid (the Pennsylvania (PA) grid has similar structure). The group discussed the level of complexity of the PA grid, wondering if something similar could be accomplished in Washington if seriousness level was removed.
- The group considered offense seriousness level, noting how it has increased over time along with offender score. The phrasing "offender score" was brought up as language that some members find derogatory; the Task Force would probably prefer to use different wording (e.g., criminal history score).
- There was a conversation around possibility of eliminating multipliers and how there is currently no good safety valve to interrupt the "wash out" period. Others noted that it would be good to look critically at multipliers. Lauren mentioned some research that notes that multipliers should not be included in criminal history; this could be an area for research to look at how this change might impact racial disparity.

Action Items:

- Lauren will create some mock-ups that show a frame without including ranges.
- Agreement among sub-group members that another meeting is needed.

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group: Grid Sub-Group
Meeting Notes: April 30, 2020
Virtual Meeting via ZOOM

Materials List:

- Mock-grid spreadsheet;
- List of offense classifications; and
- 2019 adult felony sentencing statistical summary.

Introduction:

The grid sub-group met to review and discuss four sample grid approaches Lauren Knoth drafted. The group focused on ways various grid designs might reduce complexity in the sentencing system. Lauren encouraged members to rethink the sub-group's goal. Instead of recommending one final grid option, she suggested the sub-group narrow the list of potential grids and develop a research plan to review the projected impacts and outcomes of prospective grid approaches to allow for a final data-driven decision. The following summarizes some discussion points:

- Several members were intrigued by the use of zones to allow for diagonal movement within the grid. As Lauren explained it, zones allow for differential bounds on discretion (i.e., increasing judicial discretion for lower ranked offenses, while maintaining more consistency in sentencing for more serious offenses).
- The group discussed the pros and cons of creating separate grids based on offense type and/or seriousness level (e.g., separate grids for violent and non-violent offenses). Multiple grids would allow for more flexibility in sentencing (particularly for lower-level offenses) and ensure sentences would not increase too quickly with higher criminal history scores, but others felt multiple grids would increase complexity. The group eventually agreed that one grid, using zones, could reduce complexities while still controlling for disparities introduced by higher criminal history score.
- The group agreed the drug-offense grid should remain separate for the time being.
- When discussing specific grid cells, the group considered ways to collapse some cells to allow flexibility and judicial discretion via combined ranges for less serious offenses at multiple criminal history scores.
- One member suggested creating an additional grid zone to house the many unranked offenses.
- Members highlighted the need to review the current offense classification system since current classifications seem arbitrary—and without unpacking the different classifications, the sub-group risks unnecessarily introducing additional complexities.
- The group weighed the merits of basing offense classifications on the felony class system (i.e., class A, class B, etc.) vs. the 16 seriousness-levels. While the group did not reach consensus on either approach, members acknowledged the overall need to reduce complexity in this area too.

Next Steps & Action Items:

The group agreed to eliminate two potential grid options and develop a research plan to further explore the potential costs and benefits of the remaining grid approaches, which include Zones (i.e., similar to Pennsylvania's grid). Lauren, Clela Steelhammer, and Keri-Anne Jetzer agreed to draft the research plan.

- The sub-group agreed to meet again to revisit the decision tree previously discussed. Ruckelshaus Center staff will coordinate schedule and set-up the meeting.
- The group also agreed to schedule a full Sentencing Effectiveness Working Group meeting to update folks on the sub-group's progress and plan, and get input from the full Working Group.

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Sub-Group
DRAFT Meeting Summary: May 26, 2020
Zoom Digital Conferencing Technology

Attendees:

- Rep. Roger Goodman
- Omeara Harrington
- Russ Hauge
- Keri-Anne Jetzer
- Lauren Knoth
- Kelly Leonard
- Greg Link
- Sydney Oliver
- Judge Roger Rogoff
- Clela Steelhammer
- Jon Tunheim

Facilitation Team: Amanda Murphy, Chris Page, and Hannah Kennedy

WELCOME & AGENDA REVIEW

Amanda welcomed Grid Subgroup (Subgroup) members and reminded the group that before discussing considerations and approaches for the Grid, they should prepare for presenting their “first offer” of findings and suggested directions to the full Task Force on June 4, 2020. Chris encouraged people to listen at that full Task Force meeting for any non-grid-specific sentencing effectiveness ideas from Task Force members, to inform the full Sentencing Effectiveness Working Group (SEWG or Working Group).

JUNE 4TH TASK FORCE MEETING

Clela & Lauren Presentations

- Clela will provide a high-level overview of the Sentencing Reform Act at the June 4th meeting.
- Representative Goodman and Jon Tunheim will summarize the Grid Sub-Group’s progress to date.
- Lauren will walk the Task Force through t Decision Tree questions, grid options, and draft research proposal.

Office Hours

The Facilitation Team suggested Subgroup and Working Group members establish “office hours,” informal info sessions where Task Force members can pose questions to various fellow members with specific subject matter expertise. Subgroup members reacted favorably to this idea.

DECISION TREE REVISITED

After confirming their approach for the June 4th Task Force meeting, the Subgroup resumed discussing potential grid simplifications and improvements. Lauren summarized progress to date, noting general agreement to expand sentencing ranges. While some support lowering minimum sentencing ranges by more than maximum ranges would increase, others said it would be more politically feasible to expand cell ranges equally—and didn’t think it would change actual sentences too much. The following sections summarize the Subgroup’s conversation, grouped by subject area.

Judicial Discretion

- **Q:** Has the Subgroup discussed whether the new grid proposal(s) would be mandatory? **R:** The group has not yet discussed this possibility, though some members questioned whether it would be politically feasible to recommend moving from a mandatory to advisory sentencing structure.

- Lauren asked the Subgroup if it would help to have Matt Landon from the Office of Financial Management’s (OFM’s) Statistical Analysis Center to describe the scope of their risk-assessment research.
 - **Q:** Can you provide background on where this research came from? **R:** According to a recent report by the Counsel of State Governments, Washington’s criminal history score doesn’t track as many other states do. The state’s Statistical Analysis Center, located within OFM and partly funded by the Governor’s office, received a federal grant to investigate this.
 - **Q:** Does the Subgroup want Matt to join to discuss research on prior record score? **R:** Yes.
- The Subgroup agreed to have a longer conversation on judicial discretion that includes a specific discussion of aggravating versus mitigating factors.

Discussion on the Lower Left (Southwest) Grid Corner

Lauren asked whether folks generally support the expansion of cell ranges equally or not—not only in terms of minimum and maximum sentences, but in terms of whether cells in different areas (aka zones or classes) of the grid should allow the same amount of judicial discretion.

- A member suggested that the “southwest” (lower left, aka SW) corner cells should provide lots of discretion for judges sentencing people going to county jail (0-12 months).
- Others cautioned against the potential impact on counties, emphasizing that we need to account for how any grid changes might change the number of incarcerated individuals committed to state prisons vs. local (county) jails. The Subgroup and full SEWG needs to be careful about how they present this work since local officials will be very concerned about managing costs if it appears grid changes will shift prisoners from state to local facilities. The Subgroup agreed that a clear analysis of fiscal impact on counties would be needed. Another member suggested “justice reinvestment” could help support counties and ensure jail populations do not grow without compensation.
- A member noted that most of the folks incarcerated based on cell ranges in the SW have credit for time served, so will have served most of their sentence prior to conviction.
- Another participant added that the greatest number of cases is in the SW corner, and for those that receive an incarceration sentence in the SW corner, the average length is 3.3-3.9 months (jail, Drug Offender Sentencing Alternative, or prison).

Expanding Cell Ranges

Lauren showed the Subgroup a graphic with sentencing ranges around the state in months for the SW corner, noting a clear lack of consistency in the amount of judicial discretion. Therefore, expanding sentencing ranges by percentage across the grid will only exacerbate this.

- **Comment (C):** the Subgroup needs to discuss how we count criminal history.
- **C.** A member suggested having separate cells for 0 and 1 scores and collapsed ranges for other scores, and wondered about including a repeat felony or repeat violent felony column as is the case in PA.
- **C.** The Working Group and Subgroup will need to address multipliers and/or washouts first, since decisions about these will impact how the grid and cell changes effect the system overall.

Other Comments & Questions

- **C:** The changes in actual time served may not seem like a big deal, but the perception of any grid changes will matter immensely.
- **Q:** Did any of these issues come up in Pennsylvania (PA)? **Lauren:** no, they have different court systems; inherent structural difference between states make comparison difficult.

Action Items & Next Steps

- The Facilitation Team will contact Matt Landon at OFM about joining a future (hopefully 6/2) Subgroup meeting to discuss his current risk assessment research.