

Washington State Criminal Sentencing Task Force
Meeting Summary: September 10, 2020 | 8:45am-12:45pm
 Virtual Meeting via ZOOM

Task Force Member & Alternates Attendees:

- Nick Allen
- DeVitta Briscoe (alt. for Martina Kartman)
- Russ Brown (alt. for Jon Tunheim)
- Chief Gregory Cobb
- Suzanne Cook
- Lew Cox
- Sen. Manka Dhingra
- Rep. Roger Goodman, Co-Chair
- Sonja Hallum
- Keri-Anne Jetzer (alt. for Judge Rumbaugh)
- Martina Kartman
- Gregory Link
- Mac Pevey (alt. for Sec. Sinclair)
- Christopher Poulos (alt. for Lydia Flora Barlow)
- Judge Roger Rogoff
- Judge Stanley Rumbaugh
- Secretary Steve Sinclair
- Angee Schrader (alt. for Tarra Simmons)
- Chief James Schrimpsheer
- Melody Simle (alt. for Suzanne Cook)
- Tarra Simmons
- Nick Straley (alt. for Nick Allen)
- Clela Steelhammer (alt. for Elaine Deschamps)
- Jon Tunheim, Co-Chair
- Councilmember Derek Young

Additional Participants:

- Christopher Bonnington
- Jeri Costa
- Shannon Curry
- Carl Filler
- Kelsey-Anne Fung
- Adam Hall
- Jaime Hawk
- Cynthia Hollimon
- Davina Kerrelola
- Lauren Knoth
- Brittany Lovely
- Rep. John Lovick
- James McMahan
- Lisa Mulligan
- Sydney Oliver
- Linda Olsen
- Peggy Papsdorf
- Joanne Smieja
- Joel Strom
- Andrea T.
- David Triewailer
- Matt Tremble
- Kehaulani Walker

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Hannah Kennedy, Maggie Counihan – William D. Ruckelshaus Center

MEETING GOALS: • Check-ins and updates from members • Present and discuss “third offer” of findings and potential recommendations from Working Groups • Review upcoming Task Force meetings and work plan

WELCOME, REVIEW AGENDA and GROUND RULES

Amanda welcomed Task Force members, alternates, and guests and reminded participants the meeting would be recorded for posting on TVW’s website. Chris reminded the group of key ground rules. Amanda summarized the agenda: the Task Force would review a research proposal for potential consensus agreement, followed by presentation and discussion of potential recommendations from both Working Groups with members (and alternates) using virtual meeting tools to indicate levels of support for proposed policy changes.

INTRODUCTIONS

Chris led members and alternates through introductions, starting with the newest Task Force member, Chief Gregory Cobb, who has filled Chief Padilla’s WASPC (WA Association of Sheriffs and Police Chiefs) position. Task

Force members and alternates introduced themselves and shared organizational affiliations and the constituencies they represent.

CO-CHAIR UPDATES

Rep. Goodman recapped conversations with Rep. Klippert, Sen. Dhingra, and Sen. Padden to extend the Task Force timeline through June 2021 and possibly through Dec. 2021 and asked members to prepare to continue the work next year.

FACILITATION TEAM UPDATES

Amanda reminded the Task Force that it would hold two monthly meetings until the end of December, with the next meeting on 9/17.

SENTENCING GRID SUBGROUP UPDATE

Amanda shared an update on the work of the Grid Subgroup. Jon Tunheim explained that the Subgroup, practitioners who work with the grid every day, has met weekly since early June to dig into the Sentencing Grid to consider and suggest ways to revamp the grid toward the policy goals of the Task Force. . He reminded the Task Force that it began its substantive work last year by reviewing the Sentencing Guidelines Commission (SGC) report, which included 2 potential grids:

- large increase in judicial discretion
- more moderate expansion of judicial discretion

The Grid Subgroup conversations began with those grid proposals but realized it would help to run historic state data through potential grid models to gauge how various grid options would impact sentencing. Recent discussions have focused on enhancements and aggravating factors. The Grid Subgroup strongly supports the idea of the research proposal to inform future grid decisions.

Chris reminded the Task Force that the proviso says the Ruckelshaus Center can contract with an independent research body to provide information and support for the Task Force and that all decisions are being made at the Task Force level (as opposed to the Working Group or Subgroup level).

A member had a question about the makeup of the Grid Subgroup. Amanda shared that it includes Task Force members and alternates and support staff: Rep. Goodman, Jon Tunheim, Judge Rogoff, Greg Link, Judge Rumbaugh, Melody Simle, Russ Brown, Nick Straley, Keri-Anne Jetzer, Lauren Knoth, Clela Steelhammer.

PRESENTATION: SENTENCING GRID RESEARCH PROPOSAL RECOMMENDATION

Lauren Knoth shared an overview of the research proposal. The Washington State Institute for Public Policy (WSIPP) and the Caseload Forecast Council (CFC) will collaborate to:

- Determine impacts of the current grid (i.e., how incarcerated persons are distributed across the grid),
- Use that information to look at two potential future grids, and
- Identify and quantify disproportionality in the current grid based on various sub-population demographics.

The research proposal, including the two proposed future grid scenarios and research questions, is attached as supporting material.

Lauren noted the timeline of the research would produce a draft report by March 31, 2021. Then, depending on funding, WSIPP and CFC would make an additional comprehensive examination of the anticipated effects of the package of 2021 proposed grid reforms.

Questions/Comments:

- **C:** A Subgroup member explained the Subgroup is doing technical analyses and any potential recommendations that emerge will be vetted through the SEWG and Task Force before decisions are made.
- **C:** A Task Force member noted that a sentencing judge is no better off with a new grid without pre-sentence information. To have a genuinely informed sentence, we need information, which will cost money.
- **Q:** A member what assumptions would go into the research. **R:** Lauren explained that when she says "assumptions" she means "what information do we have and what information do we not have?". She said research always comes with caveats about what they are able to speak to and what they are not able to speak to. **Q:** Who is going to determine what the assumptions are going to be? Who is determining what we're going to look at? **R:** Lauren noted the specific questions the research will look at are listed on the research proposal and that they came from conversations the Grid subgroup had.

Amanda reiterated that the Task Force makes the final decision on what questions get looked at and asked any members with additional questions they think should be looked at to share them with the group.

- **C:** We are looking at weapon enhancements. Amanda noted potential, related recommendations are in the full potential recommendations document.
- **C:** A member asked about values and assumptions we bring to this work, encouraging members to recognize that the various values and assumptions we bring to this work, will determine what we do with the data.
- **Q:** What are the desired outcomes mentioned in the research proposal? **R:** Chris shared the Sentencing Effectiveness Working Group's list of desired outcomes (presented to the Task Force in the spring), reminding the Task Force that they never adopted the desired outcomes by consensus so are open to discussion.
- **C:** Lauren distinguished between research assumptions and policy assumptions, emphasizing that the research report will not be a policy document, but present findings to inform what the Task Force decides to do with policies related to the Grid.
- **C:** I am in favor of this but caution simply plugging in numbers into what previously happened doesn't necessarily give a good indicator of what might happen in the future, because it doesn't address all the discretionary decisions that happen in every case prior to sentencing.

CONSENSUS DISCUSSION: SENTENCING GRID RESEARCH PROPOSAL RECOMMENDATION

Amanda and Chris reviewed the consensus decision making process before asking members to show if they were thumbs up (fully support), thumbs sideways (can live with it), or thumbs down (cannot support).

There were 15 thumbs up, the first Task Force consensus agreement of the year.

SEWG and RWG "THIRD OFFER" OF POTENTIAL RECOMMENDATIONS + DISCUSSION

Amanda explained that the set of recommendations for this meeting presents ideas from both working groups. As in the previous two Task Force meetings, the goal is not to work toward consensus but to provide guidance, ask questions, and gauge levels of support for potential recommendations. She and Chris took turns reading each potential recommendation and asking Working Group members to add any additional context or guidance.

POTENTIAL RECOMMENDATION # 13:

Increase earned early release time to a minimum of 33% for all crimes and enhancements and increase earned early release time 50% for some crimes and apply changes retroactively.

- Amanda noted the input from the SEWG included that this recommendation could save resources, might impact truth in sentencing, and suggested the Task Force could express support for concept of earned time as a tool to manage irrationally long sentences.

Questions/Comments/Responses:

- **C:** This potential recommendation provides people with incentive to do the right thing and provides a means we can use to address historical problems and a crucial criminal justice reform piece. It would create a relief valve through retroactivity.
- **C:** The gradual reduction of earned time has been a component of “tough on crime.” It is distinct from the work of the Grid Subgroup. We should embrace that good time is separate from sentencing decisions.
- **C:** Earned time has always been a tool to help DOC manage behavior in prison facilities. That was the purpose of the original policy, for behavior management. This conversation should be tabled until after the grid proposal has been done.
- **C:** I respectfully disagree and believe this has been a tool for mass incarceration. At a minimum, for truth in sentencing, it should move back up to 15% for serious violent crimes. There is really no reason to have reduced from 15% to 10%. I don’t want to see this conversation tabled and hope this work will continue.
- **Q:** Does earned early release time also apply to jail sentences? **R:** The jail statute allows up to 33%, and each can set their own rates. **R:** I’ve read that Snohomish County defers to whatever DOC does.
- **C:** I don’t think judges will take a position on this, but I don’t think we should gloss over the importance of truth in sentencing. There should be a provision that requires the court to inform someone what the good time/earned time is. There are ways to get to truth in sentencing without reducing earned time or increasing sentences.
- **C:** What has been prohibited is for judges to calculate what the good time could be and add it to the sentence.
- **C:** We call it earned early release, but it is automatically given at sentence. I think there should be a distinction between good time and earned early release. I agree that it should be decision left to the grid.
- **C:** There is no legal reason for judges not to talk about good time, but they don’t. I encourage you to include language in a legislative proposal that says they can or are encouraged to talk about it.
- **C:** There needs to be a safety valve, some retroactivity to sentence reforms and we need to address how we are going to do that.
- **C:** From an incarcerated person’s perspective, existing in that traumatizing and dehumanizing place and not getting in trouble should be enough to earn time. I would not be in favor of prison labor.
- **C:** The 33% across the board would reduce complexity and allow some simplification to sentencing lengths.
- **C:** I agree with comments about shortening sentences. It is very important to me and we need to address it head on. I want their experiences to be centered and bring real impactful change.
- **C:** I am sympathetic to the complexity of sentencing and understand and support a goal of creating a simpler good time formula.
- **C:** There are many things being looked at right now by the Grid Subgroup dealing with sentence lengths. The grid changes, post-conviction changes. I wonder if this is a bit preemptive with all the potential changes.
- **C:** When you talk about earning the good time, there are not enough jobs to go around, or resources for enough programming, or physical reasons why they can’t earn time. I can’t imagine what it’s like for DOC to calculate all the changes that have happened over the years.
- **C:** It’s correct that there are lots of reasons why people can’t earn time. We have not been able to provide programming to everyone at all times. There could be a legal argument around this. It does help with prison behavior in terms of safety.
- **C:** I agree we should shelve this conversation until later and discuss it another time. Another caveat is that crime victims need to be talked to and could ask that it be added to the research.
- **C:** I think that given the time we are in now with a pandemic, the call for racial justice, and budget issues, it would be irresponsible to table this right now.

Amanda asked the Task Force for a temperature read for two options related to the potential recommendation.

Consensus Practice: The “temperature read” to include this potential recommendation (as written) in consensus decision making this fall - 12 thumbs up, 2 sideways, 1 down.

Consensus Practice: The “temperature read” for continuing the conversation at the subgroup level and not be part of consensus decision making this fall – 6 up, 3 sideways, 4 down.

- **Q:** From a process standpoint, what comes next, because we have split votes? **R:** Amanda said both options will be brought back to the SEWG and then back to the Task Force for discussion.

POTENTIAL RECOMMENDATION #17:

Remove juvenile adjudications from calculation of adult offender score and make reforms retroactive.

- SEWG input indicated the potential to include this in the 2021 legislative session and that this fits with the Grid Subgroup deliberations; also, there is research underway by the Statistical Analysis Center (SAC).

Questions/Comments/Responses:

- **C:** I drafted this and wanted to clarify that not all juvenile offenses are treated the same as adult convictions.
- **Q:** I read this as including adjunctions only in juvenile court and not ones that were mandatory declines. And does this affect the prosecutor’s decision if charging a juvenile for rapid recidivism? **R:** I think that might be deeper than this recommendation has gotten to.
- **C:** A member agreed with this recommendation.
- **C:** Something we have discussed at the SGC is that based on what we know now about brain science, this is something I would support.
- **C:** Low hanging fruit in my mind, I absolutely support this.
- **C:** The SAC’s report could be a way to make a data informed decision.
- **C:** We have concerns about the blanket approach of this potential recommendation.
- **C:** I suspect this is something the Legislature will consider in 2021 regardless of the Task Force’s deliberation.
- **C:** Maybe there is a way to nuance this a bit. I would be supportive of putting in more effort before the start of the Legislative session.
- **Q:** Could we instead get consensus on a general statement of support and then work on a more nuanced proposal?
- **C:** I think there needs to be a third element considered, which is retroactivity.
- **C:** I am very interested in working on lessening the impact of juvenile sentences; the absoluteness was what was concerning to me.
- **Q:** What would the number of resentencing cases be if this was retroactive? **R:** Clela could look at how many of those sentences there are to get a sense of how many juvenile offenses and the magnitude of potential resentencing impact. Could DOC look at those currently incarcerated and the number of juvenile sentences? **R:** Possibly, but not sure.

Consensus Practice: The “temperature read” to gauge Task Force support – 10 thumbs up, 1 sideways, 3 down

Potential Recommendation #8:

Provide relief to criminalized survivors preventing further victimization of individuals who have endured domestic and sexual violence or human trafficking at the hands of their abusers by creating meaningful opportunities for pre- and post-arrest diversion, resentencing, and record sealing for individuals who committed crimes due to coercion by an abuser, and against or at the behest of an abuser.

Questions/Comments/Responses:

Martina explained that this recommendation comes from a group of criminalized survivors she has been working with and is based on a New York policy.

C: A member mentioned it might be hard to do this in a meaningful retroactive way due to the fact-driven nature of criminal proceedings.

C: Another member noted they favor of this recommendation but agreed about the difficulty of discerning these types of facts.

C: A member responded that they thought you could establish a clear pattern, especially for domestic abuse.

C: I'm sideways, I think it would be really hard for retroactively.

Q: A member asked for clarification where retroactivity issues are more administrative vs. procedural. **R:** There are a lot of people in the state who are serving long sentences for crimes where their survival of violence was a major contributing factor.

C: A member noted they were thumbs up but had some similar concerns that had been expressed by others, narrowing in on the word "applied."

Chris summarized that while there seemed to be support for the concept, the details, particularly around retroactivity, need to be worked out.

Consensus Practice: The "temperature read" – 11 thumbs up, 3 sideways.

Potential Recommendation #14:

Prohibit addition of firearms or deadly weapons enhancement to crime for which possession or use of a firearm/weapon is reflected in underlying crime, e.g., 1st degree robbery.

Questions/Comments/Responses:

- **Q:** Would this mean for a robbery with a 1st degree charge that if you have your finger in your pocket and say you have a gun get treated the same as if you actually have a machine gun? **R:** That's exactly the kind of ambiguity that needs to get address in this proposal. I think we can all get behind the concept of no double jeopardy.
- **Q:** How would it apply if someone uses a fake gun? Would gun enhancement apply to that? **R:** Unless you can prove it's an actual firearm it doesn't apply. You also have to prove that it's operational.
- **C:** After our small group discussion, I walked away thinking we should make a new crime, instead of using the enhancement.
- **C:** I want to echo the above point. I agree that addressing the issue of a finger in a pocket and saying it's a gun is an issue of creating a new crime to address the double jeopardy issue.
- **C:** I would want to see legislation or suggestion that encompasses the issue of if they use a firearm and not just eliminate the enhancement but also include another option.

Amanda asked if Nick Straley and Judge Rogoff could work on this potential recommendation to bring back to the SEWG; the two agreed.

Potential Recommendation #15:

Eliminate the protected zone enhancement (RCW [69.50.435](#)).

Questions/Comments/Responses:

Rep. Goodman noted that 20 years of research shows that these types of laws have disproportionately impacted people of color. It works more as a plea-bargaining tool than actually preventing the sale of drugs to children.

C: Many of our urban areas are entirely within the zone.

C: If we don't eliminate it, we could refine this to reduce disproportionate impacts (e.g., when schools are not in session) and then strengthen the laws that target involvement of minors in drug sales.

Q: Are we talking just around schools? By eliminating this, would that impact other zones? For example, SODA orders individuals to stay out of drug activity areas. Is there any data that shows it was a deterrent? **R:** Instead of having a deterrent effect, it pushes activity to adjacent areas.

Consensus Practice: The "temperature read" – 11 thumbs up, 1 sideways

Potential Recommendation #33:

Expand opportunities and accessibility to culturally relevant, community-based supports outside of Crime Victims' Compensation (CVC) for victims and their families. Programs and resources could include therapy, case

management, moving costs if needed, flexible financial assistance, support creating safety plans, emotional support maps, and wellness resources.

Questions/Comments/Responses:

C: This came out of the victims' community group we are convening, a perception that there are not enough resources to meet the needs of people.

Q: Are we talking about victims in general? **R:** This is intended to meet the needs of any victims who have experienced harm including those previously incarcerated or touched by the criminal legal system. We want to respond to the need regardless of who the victim is.

C: I'm curious why the CVC isn't living up to the capacity that it could. **R:** The community group discussed that too, and that over half of victims don't call the police, so this includes broader support (community support tends to be much more long term). The feedback we got was the criminal justice system says, "this is what we have" and community organization ask what you need. **R:** I just wonder how this fits into sentencing. **R:** I think it's an acknowledgement that lots of people are opting out of the criminal justice system to address public safety.

Q: How does this connect with federal VOCA (Victims of Crime Act) funds; where is the gap between CVC and VOCA? **R:** Some of the community organizations get VOCA funds. **Q:** Is this more VOCA funding-focused? **R:** Yes, that and other funds.

C: CVC is a separate provider. If people don't have medical insurance, they can apply for CVC. It is a last resource. VOCA funds are available through nonprofit organizations. I'm for adding all of this, but who is going to fund it? CVC is always underfunded.

Consensus Practice: The "temperature read" – 13 thumbs up, 1 sideways

WORKPLAN, REFLECTIONS, ACTION ITEMS, & NEXT STEPS

Amanda congratulated Task Force members on their first consensus recommendation of 2020 and reminded them of the next meeting, Thursday 9/17. Chris encouraged folks to contact the facilitation team if they have questions or comments.

QUESTIONS FROM OBSERVERS

Molly shared comments and questions from observers:

- **Q:** Will research look at potential impacts to prison population? **R:** Lauren said yes, the research will include a prospective assessment of population impact.
- **Q:** Who makes the final decision on these recommendations? **R:** The Task Force makes the final decision, through a consensus process, on what gets forwarded to the Legislature.

Amanda reminded guests if they have contact information for people interested in the Task Force, to send the information to the Facilitation Team to be added to our email listserv.

ADJOURN