

**Washington State Criminal Sentencing Task Force**  
**Sentencing Effectiveness Working Group – Grid Sub-Group**  
**Meeting Summary: May 13, 2020**  
Digital Conferencing Technology

**Attendees:**

- Rep. Roger Goodman, *Washington State House of Representatives, Democratic Caucus*
- Keri-Anne Jetzer (alt. for Russ Hauge), *Sentencing Guidelines Commission*
- Lauren Knoth (research/data support), *Washington Institute for Public Policy*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Clela Steelhammer (research/data support), *Caseload Forecast Council*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*

**Guests:**

- Omeara Harrington
- Kelly Leonard

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

**WELCOME & REVIEW AGENDA**

The Facilitation Team welcomed Grid Subgroup (Subgroup) members and reviewed the meeting goals:

1. Confirm whether the Subgroup is in agreement on single grid options, excluding separate drug grid.
2. Discussion potential ways to define the horizontal axis.

**DECISION TREE**

***Review of Progress to-Date***

Lauren summarized the Subgroup’s progress to-date, noting there seems to be general support for using a zone model, but the group had yet to reach consensus on how best to define the vertical axis (e.g., felony class or offense seriousness level). At the request of some participants, Lauren briefly reviewed the significance/utility of zones:

- Zones allow for diagonal movement within the grid and can incorporate alternatives to incarceration. The presumptive range doesn’t change, but zones allow judges to consider alternatives to incarceration.
- Zones also allow for creative policy decisions e.g., aggravating or mitigating factors could be adjusted by zone.
- **Q:** Could you use prosecutorial discretion to “squeeze” individuals into a zone? **R:** Yes, that is possible. Agreements could be made to move individuals into specific zones; this happens frequently in the current system to get people within a specific sentencing range.

***Unranked Offenses***

The Subgroup agreed pursuing single grid models would best meet the Task Force goal of simplicity. The following summarizes the group’s discussion of if and how to incorporate unranked offenses:

- A member proposed that all sentences should be ranked and included on the grid, noting this was a recommendation that came out of the Sentencing Guidelines Commission. Several other members agreed.
- Another member pointed out the sheer number of unranked offenses (more than 300). Ranking this many offenses would take a lot more time than the Task Force has.

- A participant suggested the Subgroup could proceed with the presumption that there are unranked offenses, but design grid proposals intentionally so unranked offenses could be added later. A similar approach could be taken when considering whether or not to include the current drug grid.
- A member pointed out that how offenses are classified on the grid (e.g., felony class or seriousness level) will determine how unranked offenses are incorporated. For example, if the vertical axis is defined by felony class, incorporating unranked offenses could result in a huge increase in ranges for some previously unranked offenses (i.e., B felonies).
- Another member reminded the Subgroup that increasing seriousness level and/or sentencing ranges makes it very difficult to make recommendations retroactive. They also noted that currently, about 8% of sentences are for unranked offenses.

### ***Vertical Axis & Sentence Categorization***

The conversation of unranked offenses led the Subgroup to a discussion of how to define the vertical axis: *should it be defined by felony class or offense seriousness level? Should offenses be recategorized under a single system?* The following bulleted list summarizes the Subgroup's discussion:

- A Subgroup member cautioned that recategorizing sentences would be highly complex and may risk unintended consequences. For example, there are many other non-sentencing related references to felony class in statute that could be impacted by re-ranking sentences.
- Another member pointed out that felony classes put a lid on some sentencing enhancements.
- **Q:** So how useful are other types of classifications used in Washington (e.g., sex crime, violent/non-violent, etc.)? **R:** These classifications all impact supervision eligibility, sentencing alternatives, and enhancements. These classifications also matter for scoring and felony class is connected to earned time.
- Several members agreed these complexities are part of the problem. Washington has different classification systems doing different things, making it difficult to understand a specific offense. A member suggested there should be a deliberate process to streamline the classification systems and create one location where lawmakers and the public can go to understand sentencing implications of a specific offense. Others worried trying to tackle this would be too ambitious for the Task Force.
- Another member pointed out some of these complexities could be addressed using zones. For example, zones allow you to deal with sentencing alternatives within the grid, regardless of how different levels of crimes are organized.
- Lauren suggested there might be a middle ground option. She recommended the Subgroup think about everything that is tied to felony class and add some unranked offense to the grid, but that all of them did not need to be added at once. This could help reduce the out of grid complexity.
- The Subgroup agreed to continue their discussion of the vertical axis at future meetings.

### ***Horizontal Axis***

Lauren briefly reviewed the recidivism risk research landscape, highlighting criminal history and age are consistent predictors of recidivism. However, both variables come with many moral and value decisions relevant to policy. She also pointed out that the Subgroup's discussion of how to define the horizontal axis is somewhat complicated by the fact that the Office of Financial Management is currently conducting research on risk assessment and criminal history scoring in Washington state.

- A member commented that if you look just at criminal history there is a correlation with recidivism but this correlation becomes fuzzier when multipliers are added.

- Another member emphasized age as a strong predictive factor. Nationally there is a lot of talk about separate sentencing for people 18 to 25 years old or above 60 years of age. Research is clear that individuals age out of crime, however reduced sentences for young adults may be more of a value judgement as this age cohort tends to show higher likelihood of recidivism.
- One member suggested the horizontal axis should continue to be defined by criminal history score, sentences should then consider age and multipliers (except for DUI misdemeanors) should be removed, and ranges should be widened to allow for more judicial discretion.

### ***Increasing Judicial Discretion Through Cell Ranges***

Lauren asked the Subgroup to consider whether ranges within the cells should be expanded proportionally or disproportionately (i.e., should the ranges be increased by the same amount on both the minimum and maximum side).

- A Subgroup member cautioned that increasing punishment (i.e., increasing minimum sentencing lengths) would influence the Legislature's ability to make such a change retroactive.
- Some members felt it would be more politically feasible to increase sentences proportionally, while others felt Washington's sentences are already too long and thus the Task Force should only consider expanding ranges by decreasing the minimum sentencing length.
- Lauren pointed out that research shows multipliers drive long sentences, so changing multipliers may have a more significant effect on sentencing length than simply increasing the range.
- Another member suggested the Subgroup consider widening cell ranges differently for different types of crime (i.e., violent vs. non-violent).

### **ACTION ITEMS & NEXT STEPS**

- **Clela Steelhammer** (Caseload Forecasting Council) will provide the information on the number and volume of unranked offenses sentenced.
- **Lauren Knoth** (WSIPP) will develop a dynamic excel workbook for the Subgroup to explore different cell expansion options.
- **The Facilitation Team** will send out a Doodle poll to schedule recurring, weekly Subgroup meetings.