

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup**

DRAFT Meeting Summary: March 1, 2021

Zoom Digital Conferencing Technology

Attendees:

- Russ Brown, *Washington Association of Prosecuting Attorneys*
- Chief Gregory Cobb, *Washington State Association of Sheriffs and Police Chiefs*
- Keri-Anne Jetzer (alt. for Judge Wesley Saint Clair), *Sentencing Guidelines Commission*
- Lauren Knoth (research & data support), *Washington Institute for Public Policy*
- Greg Link, *WA Association of Criminal Defense Attorneys; WA Defender Association*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Melody Simle (alt. for Suzanne Cook), *Statewide Family Council*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Nick Straley (alt. for Nick Allen), *Interests of Incarcerated Persons*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*
- Judge Josephine Wiggs-Martin, *Superior Court Judges Association*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Guest: David Trieweiler

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Maggie Counihan, and Hannah Kennedy

WELCOME & AGENDA REVIEW

Amanda welcomed Sentencing Grid Subgroup (Subgroup) members and reviewed the agenda.

STATE V. BLAKE DISCUSSION

Subgroup members discussed the recent Washington Supreme Court decision, *State v. Blake*, in which the Court found the state's strict liability drug possession statute (RCW 69.50.4013) unduly harsh and unconstitutional. Members discussed the retroactivity implied by this decision, and how the ruling might impact criminal history score calculations for individuals with prior conviction(s) of possession of a controlled substance.

The Subgroup also discussed how the ruling could impact the Statistical Analysis Center's (SAC) criminal history score research. Lauren Knoth (WSIPP) noted the difficulty and opportunity the Court's decision poses to assess demographic differences in criminal history scores. She asked whether Subgroup members would rather see SAC's research calculate criminal history scores under this new legal change or the old system (in other words, whether the SAC should include prior drug possession convictions in the simulated score calculations or not).

Some Subgroup members proposed that the Task Force should offer a recommendation to the Legislature with regards to *State v. Blake* to not reintroduce drug possession as a felony crime. Other members thought the Supreme Court decision falls outside the scope of the Task Force, as it relates to the criminal code rather than dealing directly with sentencing. After discussion, members agreed the potential outcomes and impacts of the decision did indeed fall within the scope of the Task Force's work.

Subgroup members expressed support for drafting a potential recommendation or policy statement for the Task Force to consider at the next meeting. The Facilitation Team cautioned that it may be difficult to reach consensus on a recommendation and provide it to the Legislature in time for it to be considered, given the next full Task Force meeting is not until March 18, 2021, and reaching consensus in just one meeting, the first time the full group discusses the potential recommendation, may be difficult.

The Facilitation Team instead advised that if the Task Force were to review a proposed recommendation from the Subgroup at the March meeting, that the goal not be to engage in a formal consensus decision-making process, but to instead take a temperature read of the proposal and document areas of support along with concerns.

Action Item: The Subgroup agreed to develop a proposed recommendation for the Task Force to consider. Nick Straley volunteered to put together draft language for the Subgroup to review at the next meeting (on 3/8).

GRID RESEARCH: PRELIMINARY DATA ON SENTENCING ALTERNATIVES

Lauren briefly reviewed summary statistics and data related to Washington's sentencing alternatives, including Family Offender Sentencing Alternative, Drug Offender Sentencing Alternative (both prison and residential), and Sex Offender Sentencing Alternative for the 2019 fiscal year. While the data set is not entirely complete (Lauren is still waiting on some demographic data to be integrated), the Subgroup discerned some high-level patterns such as:

- The natural diagonal pattern describing sentencing alternatives on the felony grid; and
- Defendants of color are less likely than their white peers to receive sentencing alternatives.

Lauren also highlighted the following limitations of the available data:

- The sample size of alternatives in some individual grid cells is very small (e.g., 1-5) and thus limits what can be assessed (in terms of disproportionality etc.) by cell.
- Currently, demographic data only includes racial categories. In order to assess the relative impact on Latinx communities, Lauren would need to include ethnicity data.

Action Item: Lauren will integrate ethnicity data and compare sentencing alternative frequencies for individuals identified as Hispanic and non-Hispanic.

NEXT STEPS & ACTION ITEMS

- **Lauren Knoth** will continue to refine the analysis of alternative, enhanced, and exceptional sentences and present the next round of tables and graphics to the Subgroup on 3/8.
- **Nick Straley**, with input from other Subgroup members, will draft initial language for a potential Task Force recommendation regarding State v. Blake for the Subgroup to review and refine on 3/8 before distributing to the Task Force in advance of its 3/18/21 meeting.