

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: March 15, 2021
Zoom Digital Conferencing Technology

Attendees:

- Russ Brown, *Washington Association of Prosecuting Attorneys*
- Chief Gregory Cobb, *Washington State Association of Sheriffs and Police Chiefs*
- Representative Roger Goodman, *Washington State House of Representatives Democratic Caucus*
- 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*
- Chief James Schrimpscher, *Fraternal Order of Police*
- 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*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Judge Josephine Wiggs-Martin, *Superior Court Judges Association*

Guest: David Triewailer

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 PROPOSED RECOMMENDATIONS REVISED DRAFT MEMO

Nick Straley summarized the revised draft memo with proposed recommendations he volunteered to craft in response to the Subgroup's discussion of *State v. Blake* during last week's meeting and with members of the Task Force throughout the week. In addition to recommendations 1-3 (presented in the previous draft memo), Nick Straley offered two additional recommendations for the Task Force to consider:

1. That it should task the Sentencing Guidelines Commission with reviewing the implications of the *Blake* decision as part of a broader analysis of Washington's drug laws and report back to the legislature before the next session.
2. The legislature should also task and fund WSIPP or another appropriate research body with researching the impacts of the *Blake* decision.
3. The Legislature should not take action on addressing RCW 69.50.4013(1) this session and should wait for the research to be done and the SGC to provide recommendations.
4. The Legislature and other policy makers must resource Washington's behavioral health services system so that services can be provided and accessed without the need for the coercive power of the criminal justice system.
5. The legislature should take no action on addressing the consequences of the *Blake* decision until it considers the meaningful input of relevant stakeholders who should be at the table

in deciding the proper policy responses to the Blake decision. (Offered in part as an alternative/revision to recommendation #3).

Nick highlighted several key policy arenas the state is grappling with in the wake of the *Blake* decision. Speaking with other Task Force members, Nick Straley proposed recommending the Legislature convene a group of knowledgeable people (e.g., experts, researchers, individuals with lived experience, etc.) from each policy arena to provide input in guidance to legislative members prior to passing any *Blake*-related 2021 legislation.

Chief Schrimpscher explained the Fraternal Order of Police was not able to support the recommendations as previously written in the prior draft memo, but appreciated the opportunity to work with Nick Straley to revise the recommendations and believes his organization can support what is currently written. Chief Schrimpscher emphasized the sense of urgency felt by law enforcement agencies in the wake of the *Blake* decision. After conversations with legislative members, Chief Schrimpscher was confident the Legislature would implement some sort of “fix” to *Blake*.

Other Subgroup members echoed Chief Schrimpscher and Nick’s sense of urgency, particularly with regards to the Washington’s under-resourced behavioral and mental health systems. Several members also expressed a strong desire to address the issue of juvenile possession. Currently, post-*Blake*, it is illegal for minors to possess alcohol, tobacco, and cannabis, but legal for them to possess other controlled substances such as heroin, methamphetamines, etc. and law enforcement officers have no legal recourse to confiscate such substances. Although Subgroup members disagreed about how to address the issue of juvenile possession (reinstate a felony possession law, reinstate a possession law subject to age restrictions, create a misdemeanor offense, etc.), members agreed the issue was urgent and should be addressed.

Representative Goodman summarized legislative conversations with regard to the *Blake* decision, noting the Legislature is considering interim fixes to the following issues:

- Dealing;
- Personal possession;
- Juvenile possession; and
- Intervention methods if possession is not criminalized

Some Subgroup members expressed concern about instituting an amount/cap for personal use as a means to distinguish between individual possession and intent to distribute. Members noted that prosecutors have not struggled to prove possession with intent to distribute.

NEXT STEPS & ACTION ITEMS

- **The Facilitation Team** will consolidate the draft memos and share the resulting document with the full Task Force along with the other 3/18 meeting materials.
- **Nick Straley, Chief Cobb, and Jon Tunheim** will work together to draft some additional language addressing the juvenile possession issue to be discussed at the full Task Force meeting on 3/18.

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: March 22, 2021
Zoom Digital Conferencing Technology

Attendees:

- Russ Brown, *Washington Association of Prosecuting Attorneys*
- Chief Gregory Cobb, *Washington State Association of Sheriffs and Police Chiefs*
- Representative Roger Goodman, *Washington State House of Representatives Democratic Caucus*
- 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*
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- Jon Tunheim, *Washington Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Judge Josephine Wiggs-Martin, *Superior Court Judges Association*

Guest: David Triewailer

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

WELCOME & AGENDA REVIEW

Amanda welcomed Sentencing Grid Subgroup (Subgroup) members and reviewed the agenda. The Subgroup discussed the March 18th Task Force meeting. Consensus recommendations from that meeting went in a letter from the non-legislative co-chairs to the Legislature (Task Force members and alternates will receive a copy of the letter).

SENTENCING ALTERNATIVES DRAFT DATA & FINDINGS

Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP) walked the Subgroup through the draft tables and findings on sentencing alternatives (fiscal year 2019) a draft WSIPP report. Lauren's analysis examines how the various alternatives to total confinement fall across the grid, highlighting gaps, and how the use of such alternatives differs by demographics (i.e., race, ethnicity, and gender).

Lauren noted that individuals may be included more than once in this data if they had multiple, separate sentencing dates in FY 2019. For individuals charged with multiple offenses at the same time, the longest sentence length or the greatest seriousness level was selected. The data includes Latinx individuals within each racial category, with a majority of Latinx individuals included in the "white" category (Hispanic/not Hispanic is not consistently offered as a racial category across datasets but is included in *some* datasets as an additional ethnicity category).

Action Item: Lauren will revise the sentencing alternative tables to display "Hispanic" as a separate race category.

Lauren and Subgroup members noted the following key findings:

- Sentencing alternatives are rarely used for individuals convicted of offenses with a seriousness-level between 6-9.
- Sentencing alternatives are not available for crimes with the highest offense seriousness level scores (level 13-16).
- The application of sentencing alternatives is a discretionary act, not mandated; thus, we tend to see more disparity because the discretion provides greater opportunity for it.
- The data appears to show greater disparity in the use of sentencing alternatives between Black and white women (compared to the disparity observed among males of different races).
- In general, sentencing alternatives operate as a mitigating force, reducing the length of total confinement time. However, it is important to note that the First Time Offender Waiver can result in a sentence above the standard range as it includes a period of mandatory community custody. Several Subgroup members anecdotally described courts using the First Time Offender Waiver to ensure supervision for individuals who otherwise would not receive supervision.

The Subgroup's discussion of the data led to several important questions:

- Is there any research that speaks to whether sentencing alternatives would be appropriate/effective in addressing serious violent offenses? If so, perhaps we need to rethink how we classify offenses.
- What eligibility requirements exist for each type of sentencing alternative?
- When were they drafted? Do they draw upon modern brain science? Are these restrictions appropriate?
- When reviewing the grid research, what things can the Task Force make decisions on now and what decisions will require additional time, resources, and information?

Action Item: Clela Steelhammer (Caseload Forecast Council) will provide a summary of sentencing alternatives and their eligibility requirements.

NEXT STEPS & ACTION ITEMS

- **Lauren Knoth** will incorporate Subgroup feedback and revise the sentencing alternative data tables.
- **Clela Steelhammer** will draft a summary of current sentencing alternatives and associated eligibility requirements.

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

DRAFT Meeting Summary: March 29, 2021

Zoom Digital Conferencing Technology

Attendees:

- Russ Brown, *Washington Association of Prosecuting Attorneys*
- Chief Gregory Cobb, *Washington State Association of Sheriffs and Police Chiefs*
- Representative Roger Goodman, *Washington State House of Representatives Democratic Caucus*
- 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*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Judge Josephine Wiggs-Martin, *Superior Court Judges Association*

Guest: David Triewailer

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

WELCOME & AGENDA REVIEW

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

The group briefly discussed sentencing-related bills from the current legislative session. Representative Goodman noted that all the bills based on 2020 Task Force recommendations had stalled since the Legislature has had to prioritize addressing the recent *Blake* decision by the state Supreme Court. Rep. Goodman said the Legislature is committed to addressing the issue of juvenile (i.e., under age 21) possession (of controlled substances) and local concerns about public use of controlled substances. However, any *Blake*-related bill passed in the 2021 session is likely to have a sunset clause, allowing policymakers to work in the interim to develop a comprehensive post-*Blake* state approach to drug use.

Some group members noted the importance of considering people experiencing homelessness in any legislative response to public use of control substances. Others expressed concern that the Legislature's response to *Blake* does not adequately involve community and stakeholder voices.

Another member wondered how often prosecutors and courts may use simple possession as a mitigating factor and/or entry into treatment or community supervision as part of a plea negotiation. Completely decriminalizing possession would eliminate this option; however, making possession a gross misdemeanor may still allow for such flexibility.

The Facilitation Team and Lauren Knoth (Washington Institute for Public Policy, aka WSIPP) asked the group how they would like to see possession included in research by Matt Landon (Office of Financial Management Statistical Analysis Center), if at all. Members both support and opposition to including prior possession charges in the criminal history score research. A member also proposed a compromise to run some descriptive statistics on possession charges prior to removing them from the criminal history score calculation.

Action Item: Lauren will talk to Matt, summarize the group's feedback, and see what is possible given his original research question and grant funding.

DRAFT DATA & FINDINGS on SENTENCING

Lauren presented draft data and findings from her sentencing grid research, focusing on exceptional sentences. To avoid small sample sizes and create as clear as possible a picture of sentencing by race, she combined standard and unranked, aggravated and enhancements, and mitigated and sentencing alternatives. Although the First Time Offender Waiver does not necessarily result in a shorter-than-standard sentence, she combined sentencing alternatives with mitigated sentences because both are discretionary and endorse non-incarcerated approaches.

Some members expressed concern that the current research only looks at fiscal year 2019, noting that an examination of just one year could hide larger historic disproportionalities. Lauren explained that longer-term studies of the Sentencing Reform Act (SRA) present difficulties because the Legislature has revised statutes and the scoring of various offenses nearly every year since first passing the SRA. Thus, researchers would need to make a lot of assumptions about how to code the data from year to year, which would limit the clarity of the resulting findings.

NEXT STEPS & ACTION ITEMS

- **Lauren Knoth** will speak with Matt Landon about possible ways to address or exclude possession charges in his criminal history score research.