

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: April 12, 2021
Zoom Digital Conferencing Technology

Attendees:

- Russ Brown, *Washington Association of Prosecuting Attorneys*
- Representative Roger Goodman, *Washington State House Democratic Caucus*
- Keri-Anne Jetzer (alt. for Judge 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*
- 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. The Facilitation Team reminded members this would be their last meeting to review the draft sentencing grid research report; Washington State Institute for Public Policy (WSIPP) will finalize the report no later than Tuesday (4/20) and Lauren Knoth (WSIPP) will present the report's findings to the full Task Force on May 6th.

DRAFT SENTENCING GRID DATA & FINDINGS

Lauren continued her presentation of the draft research report. She walked the Subgroup through the distribution of fiscal year 2019 standard sentences (i.e., excluding exceptional sentences) on the current grid and the projected distribution of standard sentences on the simulated felony class-based grid.

Beginning with the current grid, the Subgroup reviewed FY2019 standard sentences by race. Across the grid, Black, Indigenous, and People of Color (BIPOC) individuals received two months longer on average than their white peers. This racial disproportionality was greatest for individuals with smaller criminal history scores (e.g., 0 or 1). Lauren noted that this is consistent with the literature, finding stereotypes are more impactful when less information (i.e., criminal history) is available. Subgroup members noted that this would lead to accumulated bias in the system, with BIPOC individuals more likely to have higher criminal history scores due to the above disparate treatment.

Other key findings that emerged from the Subgroup's discussion of FY2019 standard sentences on the current grid include:

- Data on average sentence lengths could prove helpful in addressing the question of whether it would make sense to collapse or combine some cells horizontally.

- Racial disproportionality may be greater when considering exceptional sentences if white individuals are more likely to receive sentencing alternatives that reduce their total confinement time.

The Subgroup then discussed the draft findings from research on the simulated felony class-based grid. Lauren used the felony class-based grid developed by the Sentencing Guidelines Commission (SGC) as the basis for this simulation. She noted that the simulated grid assumes that judges would anchor sentences on a felony class-based grid in a similar pattern as the current grid (i.e., if a judge tends to sentence at the low end of the standard range for a particular crime on the current grid, they are likely to sentence at the low end of the standard range for the same crime on the new felony class-based grid). Most sentences in the simulated grid fall in the C- felony class.

Given that the felony class-based grid contains more cells (than the current grid) with a minimum sentence of 0 months incarceration, assuming those judges that currently sentence at the minimum of the range will *continue* to sentence at the minimum (if it becomes zero) may overestimate the effects of such a felony class-based grid on overall sentencing.

The simulation predicts a 21% reduction in incarceration, though if judges were unwilling to sentence more individuals to 0 months of confinement, some of this reduction may increase the local jail population as more individuals receive sentences of less than 12 months. Lauren also noted that racial disproportionality appears to decrease slightly under the simulated grid.

NEXT STEPS & ACTION ITEMS

- **Subgroup members** will provide any additional feedback to Lauren before Tuesday (4/20).

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: April 19, 2021
Zoom Digital Conferencing Technology

Attendees:

- Chief Gregory Cobb, *Washington Association of Sheriffs and Police Chiefs*
- Representative Roger Goodman, *Washington State House Democratic Caucus*
- Keri-Anne Jetzer (alt. for Judge Saint Clair), *Sentencing Guidelines Commission*
- Lauren Knoth (research & data support), *Washington Institute for Public Policy*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington 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*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Judge Josephine Wiggs-Martin, *Superior Court Judges Association*

Guest: David Trieweler

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; the meeting would focus on the order of topics to address and decisions to make related to the sentencing grid. The Subgroup also agreed to resume its Tuesday 9am-10am meeting schedule beginning in May.

DRAFT SUBGROUP AND TASK FORCE WORKING PLANS

Amanda shared the Task Force's draft working plan and a list of grid related decisions and topics, asking if anything was missing. Members suggested consolidating some topics related to criminal history score (i.e., scoring/multipliers and washouts) and added the following to the list:

- Information available to judges at the time of sentencing (e.g., risk assessments), and
- Information and data collection needed to monitor the outcomes and impacts of any changes recommended by the Task Force.

The Facilitation Team noted the Task Force will need to make some decisions in the absence of complete information. In particular, the Office of Financial Management Statistical Analysis Center's criminal history score research may not line up with the Task Force's timeline.

The Subgroup then discussed how to sequence topics, noting the need to begin by first determining the grid's rows and columns. The Subgroup agreed to propose the following decision/topic ordering to the full Task Force, with retroactivity a component of each discussion:

1. Felony Class vs. Offense Serious Level

2. What are the rows? – A, B, C? Expand to D? Or use an offense seriousness level—if so, should the current set of levels be expanded or collapsed, and should it have other reforms too?
3. What are the columns? (Assuming this remains as criminal history score: Scoring, Multipliers, Washouts.)
4. Unranked offenses
5. Cell ranges and zones – sentence lengths
6. Aggravators and mitigators
7. Sentencing Alternatives (where are gaps, what are the limitations, should these be layered onto the grid—if so, where?)
8. Enhancements
9. Information available to judges at time of sentencing – PSIs, risk assessments (or exclusion of risk assessments). Sub-topic: when should PSIs be ordered—what criteria should be used to order them? Should they be tied to the grid?
10. What new data should be gathered to report outcomes and impacts of changes? (For example: prosecutor data, court data, judge’s report that used to be used, monitoring and evaluation, racial impact analysis.)

Finally, the Facilitation Team proposed a draft document (CSTF Grid Discussion Guide) to organize key research findings, remaining questions, potential trade-offs and considerations, and emerging potential recommendations related to each topic. To help inform Task Force discussions and consensus deliberations, the Facilitators suggested the Subgroup could prepare and share this document for each decision/topic prior to the relevant full Task Force meetings.

NEXT STEPS & ACTION ITEMS

- Next meeting: begin discussing Felony Class System vs. Offense Seriousness Level.

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: May 4, 2021
Zoom Digital Conferencing Technology

Attendees:

- Russ Brown (alt. for Jon Tunheim), *Washington Association of Prosecuting Attorneys*
- Representative Roger Goodman, *Washington State House Democratic Caucus*
- Keri-Anne Jetzer (alt. for Judge Saint Clair), *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*
- 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 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. She reminded members that over the next several weeks they will be developing decision guides for the full Task Force, building on the grid research report to come up with key findings, considerations, and tradeoffs on important topics the Task Force will address in coming up with recommendations for a new grid.

REVIEW DESIRED OUTCOMES FOR THE GRID

Amanda reminded the Subgroup of the Task Force's desired outcomes related to the sentencing grid. These outcomes were approved by the full Task Force last year and will help guide the Subgroup's discussions and developments of decision guides. A member suggested revisiting these outcomes with the full Task Force to possibly edit or expand them.

GRID VERTICAL AXIS: OFFENSE SERIOUSNESS LEVEL OR FELONY CLASS?

The Subgroup discussed the key findings and pros/cons of a grid based on offense seriousness level versus a grid based on felony class. Based on the simulated grid research, a felony class-based grid could reduce overall incarceration but may also increase local jail populations. The felony class-based grid could also lead to an increase in some offense ranges as it would require a reordering of some offenses.

Some members questioned the benefit of changing to a class-based system, noting that adjustments to the current grid could achieve the same desired outcomes while limiting unintended

consequences and cost. One member worried that a reduction in grid rows from 16 offense seriousness levels to 9 +/- felony classes could limit nuance among sentences and further limit discretion. The Sentencing Guidelines Commission (SGC), when discussing a felony class-based grid, expressed concern that court costs could increase if legal precedents and case law were challenged. Members noted this would only be an issue if sentences were increased; otherwise not much case law depends on offense seriousness level.

Others noted that portions of the current grid, based on offense seriousness level, are irrelevant because several ranges exceed the statutory max for certain crimes (e.g., Class C and B felonies) at certain offense seriousness levels. At least one member felt the current mixture of A, B, and C felonies across offense seriousness levels is illogical and dilutes the notion of culpability and seriousness of an offense. They also felt the current sprinkling of A, B, and C felonies across offense seriousness level reflects the Legislature's reactive and piecemeal approach to criminal legal policy.

Multiple Subgroup members suggested tying felony class to offense seriousness level. For example, Class C felonies would occupy the first five seriousness levels, Class B felonies would make up the next five seriousness levels, and Class A offense would be placed in offense seriousness levels 11-16.

NEXT STEPS & ACTION ITEMS

- **The Subgroup** will continue its discussion of felony class vs. offense seriousness level next week.
- **The Facilitation Team** will begin developing a draft decision guide based on the Subgroup's vertical axis conversation to-date.

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: May 11, 2021
Zoom Digital Conferencing Technology

Attendees:

- Russ Brown (alt. for Jon Tunheim), *Washington State Association of Prosecuting Attorneys*
- Representative Roger Goodman, *Washington State House Democratic Caucus*
- Keri-Anne Jetzer (alt. for Judge Saint Clair), *Sentencing Guidelines Commission*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington 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*
- Jon Tunheim, *Washington State 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. She noted the Co-Chairs and Facilitation Team are working to arrange a special, guest-facilitated meeting to help the Task Force in discussing issues of race and racism in the criminal justice system.

DRAFT MAY 20th TASK FORCE MEETING AGENDA & SUBGROUP WORKING PLAN

The Facilitation Team suggested revisiting earlier conversations on the purpose and goals of the Sentencing Reform Act (SRA) at the May 20th Task Force meeting to determine whether the purpose and goals should be amended or expanded. Instead, Subgroup members suggested a conversation around the purpose and goals of the Task Force would be more useful. In particular, the Subgroup suggested discussing the Task Force’s mandated goal of promoting and improving public safety and better defining “public safety” as a collective. Some Subgroup members noted sentence lengths, non-incarcerated alternatives, and community supervision models are an important part of the public safety conversation.

Subgroup members also discussed the immense amount of work needed for the Task Force to reach consensus on a new proposed felony sentencing grid by the end of the year. The Subgroup reviewed the Task Force’s draft workplan and agreed to continue developing discussion guides for the key grid decision-points:

1. Felony Class vs. Offense Serious Level
2. What are the rows – (ABC? Expand to D? Offense serious level? OSL expanded/collapsed? Etc.)?
3. Scoring/multipliers, Criminal history score, Washouts

4. Unranked offenses
5. Cell ranges and zones – sentence lengths
6. Aggravators and mitigators
7. Sentencing Alternatives (where are gaps, what are the limitations, to layer onto the grid?)
8. Enhancements
9. Information available to judges at time of sentencing – PSIs, risk assessments, etc.
10. New information/data needed to be gathered to report outcomes and impacts of changes (example – prosecutor data, court data, judge’s report that used to be used), monitoring and evaluation, and racial impact analysis.

FELONY CLASS V. OFFENSE SERIOUSNESS LEVEL

The Subgroup resumed discussing findings, context, and considerations from the grid research and the tradeoffs of using a felony-class-based versus offense-seriousness-level-based grid. Multiple members were interested in exploring further the idea of tying felony-class to offense seriousness level. For example, Class C felonies would occupy the first 5 seriousness levels, Class B the next 5 seriousness levels, and Class A the following 5 seriousness levels. Currently, most offense seriousness levels include a variety of Class A, B, and C offenses. However, because each felony class has a corresponding statutory max, several Class C and B felonies which have higher offense seriousness level rankings are not eligible for most of the presumptive sentence ranges on the current grid. Tying felony class to offense seriousness level could address this while simultaneously meeting the Task Force goal of reducing complexity.

Action Item: The Subgroup agreed to continue discussing felony class v. offense seriousness level with the goal of presenting the Task Force with a potential recommendation or path forward on this issue at its May 20th meeting.

NEXT STEPS & ACTION ITEMS

- **The Subgroup** will finish discussing felony class system vs. offense seriousness level on May 18th.