

Washington State Criminal Sentencing Task Force

Meeting Summary: May 6, 2021

[Virtual Meeting via ZOOM](#)

All Task Force meetings are recorded and available on TVW. This summary is a high-level overview of the meeting. For detailed information, please see video recording linked above

Task Force Members & Alternates Attending:

- Nick Allen
- Tiffany Attrill
- Lydia Flora Barlow
- Russ Brown (alt. for Jon Tunheim)
- DeVitta Briscoe
- Suzanne Cook
- Senator Manka Dhingra
- Judge Veronica Alicea Galvan
- Representative Roger Goodman
- Keri-Anne Jetzer
- Martina Kartman
- Gregory Link
- Deputy Secretary Julie Martin
- Chris Poulos (alt. for Lydia Flora Barlow)
- Judge Wesley Saint Clair
- Chief James Schrimpsheer
- Clela Steelhammer (alt. for Elaine Deschamps)
- Nick Straley (alt. for Nick Allen)
- Jon Tunheim
- Waldo Waldron-Ramsey
- Judge Josephine Wiggs-Martin

Guests/Additional Participants:

- Kelsey-Anne Fung
- Bruce Glant
- Davina Kerrelola
- Joanne Smieja
- David Trieweiler
- Paige Wanner

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

Research Support: Lauren Knoth (WSIPP)

MEETING GOALS: Check-ins and updates • Presentation of Sentencing Grid Research Report Findings • Q&A and Discussion on Research Findings • Debrief of Legislative Session • Preview of Workplan for Remainder of 2021

WELCOME, REVIEW AGENDA, and KEY GROUNDRULES

Amanda welcomed Task Force members, alternates, and guests. She reviewed the agenda and goals for the meeting before reminding folks to send questions by chat to Molly; guests would have time at the end to share comments/questions with the Task Force. Chris reviewed ground rules about listening to build understanding and assuming the best in each other.

FACILITATION TEAM UPDATES

The Task Force has begun meeting twice per month for half a day: the first Thursday each month (1pm-4:30pm) and the third Thursday in each month (9am-12:30pm). The full schedule is at the end of the meeting summary and [online](#).

UPDATES FROM CO-CHAIRS

Co-chairs shared that they had met multiple times since the April meeting and are inspired by the opportunity the Task Force has to re-shape the criminal justice system in Washington for the better. As part of that work, the Task Force has some difficult conversations on race and equity ahead. Co-chairs have suggested that the Facilitation Team reach out to someone with expertise guiding conversations on anti-racism.

WSIPP/CFC RESEARCH ON CURRENT and POTENTIAL FUTURE GRID: REPORT/FINDINGS

Lauren Knoth, Washington State Institute for Public Policy (WSIPP), provided some background information and an overview of findings from the report ([PowerPoint Presentation](#)).

Full report is available online (pdf): [Examining Washington State' Sentencing Guidelines: A Report for the Criminal Sentencing Task Force](#).

Takeaways and clarifying questions from the presentation presented below (full presentation starts at 0:26:05 of [the meeting recording](#)).

Background Information and context:

- WSIPP and the Caseload Forecast Council conducted this research on the Task Force's request so members could identify gaps in sentencing alternatives, understand which aspects of the grid have the biggest impacts on disproportionality, and anticipate consequences of potential changes to the sentencing grid.
- Analytic data vs. Narratives/Case studies are both important. Analytic data increases understanding of averages and general landscape and narratives are key to understanding the analytic data.
- Report focuses on standard, non-drug sentences as well as exceptional sentences, enhancements, and sentencing alternatives. Because the Statistical Analysis Center at the Office of Financial Management is doing research on criminal history score, the report has limited examination of that topic.
- Report presents disproportionality findings for each section of analysis. Analysis generally compares white and BIPOC, identifying high-level areas where disproportionality occurs. Some exhibits and appendices provide information by more specific racial categories: Asian/Pacific Islander, Black, Hispanic, American Indian/Alaskan Native, and White.

Q: Could you provide more information about the desired outcome “avoiding the shifts to jails” -- is that about the cost?

R: Recall that the grid subgroup doesn't think it makes sense to displace individuals from prison to jail without also identifying opportunities both to reduce incarceration and increase opportunities for non-incarcerative alternatives.

Approach to the Report

The report analyses examine:

- standard non-drug sentences on the current offense seriousness level-based grid (using data from sentencing events in FY19);
- standard non-drug sentences on an alternative, felony class-based grid (not intended to be exhaustive of potential options); and
- sentences with enhancements, exceptional sentences, sentencing alternatives, and unranked offenses.

Takeaways from current offense seriousness level-based grid:

- Unranked offenses made up 15% of all sentencing events in FY19; after that the biggest pockets of sentencing events are in the southwest corner of the grid and range from 2.5-7.5% of all sentencing events. (on slide 15, dark red = more sentencing events, dark green = fewer sentencing events).

Q: Was there anything unique about FY19 and why the researchers selected it for analysis?

R: FY20 data was not available when research began (and may also reflect COVID-19 circumstances), so data from FY19 best represents a year of outcomes from the sentencing grid currently used in the courts. Longitudinal studies are challenging due to changes in statute, seriousness level, or criminal history score made by the Legislature over time.

Q: Can you clarify whether this report excludes drug-related offenses (because there is a separate drug-related grid)? Would it help to do a similar research effort for the drug-related grid?

R: Report only presents non-drug, felony sentences. Further research could be valuable, depending on resources and what information would most help the Task Force.

Q: Could you provide more information on the racial distribution by seriousness level (SL)? Is there variation among race/ethnicities on the cells where BIPOC was greater than 1?

R: Approximately 70% of BIPOC individuals identify as black or Hispanic.

Felony Class Simulated Grid

This simulated grid builds on the work conducted by the Sentencing Guidelines Commission and was informed by “where in the range” (WITR) calculations using sentencing data from FY19. WITR calculations assume that judges make decisions with considerations of the bounds of the sentencing range (i.e., the more serious, the closer to the higher end). The report assumes this logic for both the current grid and the simulated grid.

Notes from researchers: “Decreases in incarceration driven by increase in number of sentences falling in cells where the minimum incarceration length is 0. It is possible that, if implemented, judges would be less likely to sentence individuals to the minimum of the range if that minimum sentence did not include any time in confinement. Thus, these calculations may overestimate the effects on sentences in a real-world application.”

Comment: In instances where 0 days in confinement is the minimum, I hope that judges will be sentencing individuals into something that has proven effectiveness.

Q: The simulated grid predicts that 68.5% of sentences will decrease in length, 29.1% will increase; where in the grid are those increases and decreases occurring?

R: Increase in sentence lengths is driven mostly by a significant increase in the mid-point of sentences in moving from B to B+ Felony Class offenses (possibly A- too). This identifies a possible unintended consequence of moving to a felony class-based grid but provides an opportunity to identify rows with potential increases and for the Task Force to have conversations about how to address (i.e., make sure that those sentences are comparable to current sentence ranges).

Non-Standard Sentences

Q: It looks like Black people are more likely receive enhanced or aggravated sentences and less likely to receive mitigated or alternatives – is that correct?

R: Correct.

Follow up Q: Is it correct that this chart doesn't answer questions about why that might be, but identifies points where people might be influenced by bias (prosecution, defense, judicial decision-making)?

R: Yes, and the disproportionality could also reflect differences outlined by statute. For example, more white people may receive sentencing alternatives because they fall within portions of the grid where alternatives are an option.

Comment: Prosecution amending a charge to a non-strike charge (one that would not contribute to a three-strikes-and-you're-out life sentence) could drive some of the aggravated sentences, so the plea agreement could involve for a non-strike charge, with an aggravated sentence, ultimately leading to a shorter incarceration time.

R: This report doesn't cover the why and the how of bias occurring throughout the system. Those conversations will come from the diverse perspectives and experiences of the Task Force members, in part because some data (such as information on prosecutorial or plea bargain decision-making) is not available.

Q&A and DISCUSSION ON RESEARCH FINDINGS

Many the Task Force members and alternates shared that they're processing and reflecting on the report findings. Some observations and questions for further reflection include:

- Disparities in among individuals who receive enhancements and sentencing alternatives
- Observe a lack of transparency and data
- Desire for a system that allows for more judicial discretion and alternatives to incarceration—the challenge will be to do that in a way that minimizes potential disparities.

DEBRIEF OF LEGISLATIVE SESSION

Many of the bills introduced in the 2021 Legislative session related to Task Force recommendations stopped moving forward after the State Supreme Court *State v. Blake* decision. Rep. Goodman indicated those bills will be a priority for him during the 2022 Legislative session.

Bills (related to Task Force recommendations) that did reach the Governor’s Desk:

SB 5304	Wilson	Providing reentry services to persons releasing from state and local institutions. Includes county of origin.	4/26: Delivered to Governor
SB 5293	Nobles, Dhingra	Addressing mental health sentencing alternatives	4/20: Delivered to Governor
SB 5476	Dhingra	Addressing the State v. Blake decision	4/26: Delivered to Governor

QUESTIONS FROM OBSERVERS

Q: Would increasing judicial discretion actually increase disproportionality? Or just shift where it occurs? Aren’t shorter sentences the only way to decrease disparity?

R: I believe there is a need to increase judicial discretion and decision-making – but also for transparency and checks against bias. Sentence length will be an ongoing conversation – finding the balance of justice and accountability.

Comment: I hope the Task Force considers at what age an individual is considered an adult, as well as different classes of crimes, such as those without victims.

Q: How does the research map current seriousness levels to felony classes in the simulated grid?

R: Offenses already have felony classifications of A, B, C. SGC members initiated +/- designations prior to the formation of the Task Force, using the juvenile classifications as a guide. If the Task Force decides to further develop a felony class-based grid, the group will need to make decisions about which offenses should be associated with which classification.

NEXT STEPS

Facilitation Team will forward a document tracking all legislation related to Task Force Recommendations created by Keri-Anne for members of the SGC.

Next meeting is May 20th, from 9am – 12:30

ADJOURN

Upcoming Meetings:

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| June 3, from 1pm – 4:30pm | June 17, from 9am – 12:30 |
| July 1, 1 pm – 4:30 pm | July 15, 9 am – 12:30 |
| August 5, 1 pm – 4:30 pm | August 19, 9 am – 12:30 |
| September 2, 1 pm – 4:30 pm | Sept. 16, 9 am – 12:30 |
| October 7, 1 pm – 4:30 pm | October 21, 9 am – 12:30 |
| November 4, 1 pm – 4:30 pm | November 18, 9 am – 12:30 |
| December 2, 1 pm – 4:30 pm | December 16, 9 am – 12:30 |