

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: February 1, 2021
Zoom Digital Conferencing Technology

Attendees:

- Russ Brown (alt. for Jon Tunheim), *WA Association of Prosecuting Attorneys*
- Representative Roger Goodman, *Washington State House of Representatives, Democratic Caucus*
- Keri-Anne Jetzer (alt. for Judge Wesley 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*
- Nick Straley (alt. for Nick Allen), *Interests of Incarcerated Persons*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

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.

DECISION POINTS & DISCUSSION TOPICS

The Subgroup reviewed its running list of decision points and discussion topics. Members highlighted the importance of using a systems perspective when addressing many of the topics listed. Members also added additional issues to the list (*see supporting materials for the updated list*).

CONCURRENT/CONSECUTIVE SENTENCING

Keri-Anne reviewed information she compiled on concurrent and consecutive sentencing practices in other jurisdictions (e.g., several other states, nations, and the U.S. federal system). Some states have very specific conditions for when consecutive sentencing applies and/or is mandatory, while other states (like Washington) are less clear.

A member noted that no statute or case law appears to establish the court's ability to impose consecutive sentencing; instead, it seems to just be an accepted practice. The Subgroup discussed how the Sentencing Reform Act (SRA) codified the practice in the early 1980s, and how this represented a departure from prior practices. The Subgroup also discussed the original purposes the SRA and its use of consecutive sentencing (i.e., just desserts approach to criminal justice, the notion that discrete periods of time should be served for certain crimes, etc.). Members asked:

- What proportion of long sentences result from consecutive sentencing,
- How these differ across racial demographics, and
- What underlying offenses drive the majority of consecutive sentences.

Some members noted a difference between serious violent offenses, which are served consecutively, and some weapon-related crimes that result in consecutive sentences.

Action Item: The Facilitation Team will request data from Department of Corrections on individuals currently serving consecutive sentences.

LEGISLATION UPDATE

The Subgroup also discussed current Legislation related to the Task Force and sentencing grid. Representative Goodman noted his bill concerning sentencing enhancements (HB 1169) was moving forward, with an amendment. He also noted that HB 1126 regarding tolling of community custody got voted out of committee, and HB 1282 concerning earned early release time, a controversial bill, would be discussed in committee tomorrow.

The Subgroup noted several other bills, not directly related to Task Force recommendations, that could impact the Subgroup's work and discussions. These bills included proposed legislation related to criminal history scores, certain drug offenses, and the youthfulness of individuals convicted of a crime.

NEXT STEPS & ACTION ITEMS

- **The Facilitation Team** will reach out to the Department of Corrections requesting data on individuals currently serving consecutive sentences.

SUPPORTING MATERIALS: REVISED LIST OF DECISION POINTS & ISSUES

Decision Points for Grid Redevelopment

1. How many grids should there be?
2. What are the axes?
3. What is the appropriate range for grid cells?
4. How can judges move within the grid?
5. What information is available to judges at sentencing?

Full Task Force conversations:

- Charging decisions/discretion/power in system—how to bring balance
- Relationship between discretion & disparity
- Systemic racism
- Purpose(s) and goals of sentencing, considerations in sentencing (to guide other discussions)—rehabilitation (system perspective, incarcerated individuals experience), public safety, accountability to the rule of law, reducing risk of reoffense. Original purposes in SRA: just desserts et al—how well does the system fulfill these?
- Restorative justice (victims voices)
- Mass incarceration

Additional Related Topics Suitable for Ad Hoc Group Dialogue:

- What information should be collected over time (to measure outcomes & impacts and inform decision-making), and what systems are needed to do so?
- Mandatory minimums (including Three Strikes)—*philosophical discussion*
- Retroactivity
- Second Look

Keep with Grid due to integral relationship:

- Criminal History Score including Multipliers, risk, offender characteristics (e.g., youthfulness of over-18 & prior offenses as juvenile), washout period, and other variables (Lauren/Clela/Keri-Anne add to this and other topics)
- Seriousness levels & ranking (zones?)
 - Unranked offenses
- Aggravators & mitigators
- Community-based alternatives to incarceration
- Enhancements (*mechanics of how to address each*)
- Data collection over time
- Anticipatory offenses