

**Washington State Criminal Sentencing Task Force**  
**Meeting Summary: August 19, 2021**  
Virtual Meeting via ZOOM – [Link to recording via TVW](#)

**ATTENDEES:**

- **Task Force Members and Alternates Attendees:** see Appendix A.
- **Members of the Public:** Michael Althaus, Shani Bauer, Bruce Glant, Carolyn Gray, Corey Patton, Damon Brown, David Trieweiler, Gideon Newmark, Jaime Hawk, Joanne Smieja, John McGrath, Juliana Roe, Kelsey-anne Fung, Megan Allen, Shawnte Holmes-Davenport
- **Facilitation Team:** Amanda Murphy, Chris Page, Molly Stenovec, Maggie Counihan – William D. Ruckelshaus Center
- **Research/Technical Support:** Lauren Knoth (Washington State Institute for Public Policy, or WSIPP)

**MEETING GOALS:**

- Task Force introductions and updates
- Sentencing Alternatives Workgroup update
- Sentencing Grid Subgroup presentation and next offer of potential recommendations for Task Force Input

**WELCOME, INTRODUCTIONS, REVIEW AGENDA and GROUNDRULES**

Amanda Murphy welcomed attendees and introduced herself and the rest of the Facilitation Team.

**CO-CHAIR UPDATES**

Co-chairs Lydia Flora Barlow and Rep. Goodman both provided brief remarks: first to recognize the amount of time and work that individuals are dedicating to this work; second, to recognize that while today's conversation will be about numbers and ranges, the sentencing grid has touched countless individuals and communities.

**SENTENCING ALTERNATIVES SUBGROUP UPDATE**

Chris Page provided an overview of conversations thus far. At the first meeting, Senator Dhingra shared her experiences with the state's Mental Health Sentencing Alternative (newly established, following the Task Force's 2020 recommendation) and the group developed an approach and workplan. Each meeting will focus on different sentencing alternatives and the group will consider how each is currently implemented; which elements work well and where challenges lie; how the alternative relates to the grid; and potential changes to the alternative. Notes from the discussions on the Parenting Sentencing Alternative and FTOW [can be viewed here \(at the bottom of the webpage\)](#).

**PRESENTATION – Sentencing Grid Subgroup Presentation & Discussion: Potential Recommendations, Tradeoffs, and Considerations**

Amanda briefly reviewed how the Grid Subgroup (aka grid group) is divvying up conversation on the sentencing grid. At the August 5<sup>th</sup> meeting, Task Force members expressed support for the grid group to further develop a simulated grid based on two potential changes to address mid-range Offense Seriousness Level (OSL) cells to avoid presumptive sentences that exceed the statutory maximum for Class C and B felonies. Keri-Anne Jetzer, with support from Lauren Knoth, presented a potential revised grid informed by those potential recommendations on behalf of members of the Grid Subgroup. That presentation begins at 00:21:35 ([this link, via TVW, will go directly to the start of the presentation](#)).

**Potential Recommendation #7:**

*If the maximum sentence based on the formula is 12 months or less, the minimum is automatically reduced to zero.*

**Task Force Input:**

- On the formula: suggest rounding sentence lengths to the nearest month, rather than reducing all of them by dropping the digit after the decimal point.
- All grid changes should be predicated on the Legislature adequately funding DOC to make the workload for community corrections officers manageable.
- Request for information on statistical averages of sentence midpoints going back all the way to the SRA. However, this information may not be able to be collected due to the number of changes to the grid and the system.

**Potential Recommendation #8:**

*Eliminating straddle cells: If the maximum based on the formula is more than 12 months, the minimum must be at least 12 months and a day.*

**Task Force Input:**

- Concern about shifting overall burden onto counties.
- Need to incorporate a robust set of intermediate local sanctions, research-based, at the county level.
- Need supervision or other set of alternative tools for judges to use; it will be critically important for prosecutors to order supervision as the tradeoff for increasing the number of non-incarceration sentences.
- We need to focus on sentencing alternatives BEFORE we consider lowering sentence lengths to zero.
- Concern about seeing the number zero in so many cells—having alternatives is not enough, it makes you think the person in front of the judge will face no repercussions for what they did. Response: many sentences in the cells proposed to have zero as minimum, that currently do not, already receive the First Time Offender Waiver alternative, which can result in zero to 90 days of confinement.
- Suggestion to make FTOW available to all individuals in the cells with minimum sentence of zero

**Potential Recommendation #9:**

*Keep Straddle Cells –Create a State-Funded Intermediate Sanction Zone*

- Stipulate that sentences for individuals in straddle cells are paid for by the state.
- For sentences in this zone, presumptive sentence is a sentencing alternative that is served locally.
- For sentences in this zone, sentences that are DOC sentences (more than 12 months) could have an option for state Intermediate Sanctions

**Task Force Input:**

- Not having incarceration does not mean no consequences. Alternatives that provide treatment at county level, if funded by the state, will lower costs and keep us safer.
- We need to make sure we are not anchoring people to their county of conviction and get the best plan for the individual to suit their needs.
- What we've been doing has not worked, just results in a cycle. We do need to think outside the box a bit and take people who have made mistakes and help them become productive members of society again.

If we have a means to do that, we would not say no, but we have concerns about the effectiveness of community-based alternatives.

- Love the aspirations of #9 and law enforcement hates seeing people in that cycle, but we would need to see more about how this would actually work? How can we explain to a victim how this would work?
- As I hear from judges, prosecutors, and defense attorneys, I want to remind the Grid Group to remember the victim, and specifically the victim impact statement. Thinking about someone with an offender score of 9 having such a short sentence is hard, and I have concerns about community safety with such short sentence ranges. REPOSE: most common intermediate sanctions are electronic home monitoring, day reporting centers, and work release, so these individuals would not just be out in the community. [WSIPP research](#) shows those approaches to be quite cost-beneficial. Also, having restitution and victim-offender dialog as central to the community-based alternatives can make a real difference.
- The core mission of DOC is to ensure public safety. Secondary is to assist with rehabilitation, and Not sure we accomplish that with these recommendations. I support rehabilitation but have concerns about the Graduated Reentry program. RESPONSE: Completely agree that public safety is the #1 priority. Let's keep in mind that the majority of cases, the SW corner, involve mental health or substance use disorders and the research over the last 20 years shows that treatment works to address those underlying issues and ultimately makes us safer.
- Can we have more information on the offender score and how it works and how it impacts the grid?

#### NEXT STEPS

Facilitation team will post the [PowerPoint presentation to the website](#). CSTF will continue this discussion at the next meeting after everyone has had some time to reflect on all this information. Grid Subgroup will turn its attention to the next portion of the grid..

#### PUBLIC QUESTIONS AND COMMENTS:

David Trieweiler: If studies show that the increase in carceral and sentence lengths over the last 40 years did not result in any increase in public safety, why do you think that reducing sentences would decrease public safety?

**R:** I would turn that around and ask why would one think that decreasing sentences would increase public safety? **David:** That wasn't the question, it was why do you think it would decrease public safety? **R:** I think I'm advocating for a primary mission of ensuring public safety with a complementary mission of rehabilitating person who were incarcerated and ensuring that they have a successful reentry into society, that they are given the supports necessary to have that successful reentry because we want them to be successful and be contributing members of society. My pushback was because pretty much every single recommendation, the default was a reduction in any type of penalty for crime and I think that we should have a balance. It should not be all punishment or all rehabilitation and it feels like the committee is moving towards rehabilitation at the expense of the other.

Shawnte Holmes-Davenport: My question is more on the upper level of the grid...it's kind of concerning for the drive by to be classified as a class B and under the new proposal that would be capped at 5 years. But my experience...specifically with Pierce County, it is a domino effect. A drive by is 5 years, but the car may have 4-5 people in it and so then some Assault 1 charges come in and maybe this is an issue with the Assault 1 classification – because you don't have to inflict harm, just have a firearm that causes fear – but then the mandatory consecutive sentencing comes in. A drive-by is the base crime but can turn into a really long sentence depending on the number of people in the car and things that aren't really considered in the moment. Potentially a drive by could lead to a sentence that is longer than a murder. Those additional charges could also affect the calculation of someone's criminal history score.

**R:** I believe the stat max on a B felony is 10 years. I understand where the question was coming from and I was trying to explain the layout of the structure. **R:** While we almost always call it a class B felony it almost always leads to a sentence of more than 10 years because of the addition of the assault and any corresponding enhancements.

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***The Following are Verbatim Public Comments and Questions Submitted via Zoom Chat Function***

Shawnte Holmes-Davenport: Why is it called criminal history score if the current charges are added to the score prior to sentencing to get the sentencing range? Example shouldn't a person with a score of 1 be sentenced as 1 and given the opportunity to rehabilitate and if they reoffend then score is increased from those charges?

**R:** I think the policy we are talking about here is when a person is convicted of committing multiple crimes at the same time. Criminal history score is a combination of past convictions and current convictions. **R:** We haven't discussed scoring rules, and the only question before the Task Force is double and triple scoring, which we will probably look at.

Some Felony B offenses are classified as Seriousness 1-5 offenses. For example, a third Failure to Register offense is a class B felony with a seriousness level 2. So what will happen when it comes to sentencing? Will the judge look at the maximum for a seriousness level 2 offense or will they look at the maximum for a class B felony, which is 10 years not 5 years?

**R:** The way the proposed changes look, the legislature could leave A's, B's, and C's where they are, but if the Legislature was uncomfortable with the reduction in ranges they could move them to a higher seriousness level and they would be similar to what they are under the current system.

Is there any discussion about sentencing no longer being served consecutively outside of enhancements? Example a drive-by almost automatically leads to an assault 1 even if nobody is physically injured, and if there are 3 or 4 victims in the car that's potentially 10 years per person plus 5 years per person for a firearm enhancement which took a drive-by class b felony and allow a sentence even at the low end to 15-20 years of flat time plus 30-50 years of consecutive sentencing for the assault 1s making it a 45-70 year sentence with no physical injury. But if the consecutive was removed it would drastically change.

**R:** Part of it is what the Legislature has to wrestle with, what are crimes and what is the overlap. Drive by shootings was a crime that was created when drive by shootings were happening more and more often so there was a legislative reaction to criminalize that particular conduct in addition to assault 1. Not sure that's exactly the result that comes out because there is an analysis in our sentencing structure for what are called same criminal conduct where if there is similarity in two crimes the court can merge them together for sentencing purposes. The other thing that everyone should understand is that the crime of assault does not require harm. Assault in Washington is defined as either inflicting harm or causing significant fear of harm, along with the capability of inflicting that harm. A drive by shooting can be charged and prosecuted as assault 1 even if no one is injured in the shooting itself. **R:** As we look at scoring, we have to look at consecutive and concurrent sentencing and the three biggest drivers of long sentences are multipliers, enhancements and concurrent sentences.

**ADJOURN**

**Upcoming Meetings:**

September 2, 1 pm – 4:30 pm

Sept. 16, 9 am – 12:30pm

October 7, 1 pm – 4:30 pm

October 21, 9 am – 12:30pm

November 4, 1 pm – 4:30 pm

November 18, 9 am – 12:30pm

December 2, 1 pm – 4:30 pm

December 16, 9 am – 12:30pm

**APPENDIX A**

<b>CSTF Members &amp; Designated Alternates</b>	<b>Affiliation/Perspective Represented</b>	<b>Attendance:</b>
Jon Tunheim	Washington Association of Prosecuting Attorneys	✓
Russell Brown (alternate)		✓
Lydia Flora Barlow (Christopher Poulos)	Statewide Reentry Council	✓ ✓
Rep. Roger Goodman	Washington State House of Representatives	✓
Sen. Chris Gildon	Washington State Senate	✓
Sen. Manka Dhingra	Washington State Senate	
Rep. Carolyn Eslick	Washington State House of Representatives	✓
Sonja Hallum	Washington State Office of the Governor	✓
Elaine Deschamps (Clela Steelhammer)	Washington State Caseload Forecast Council	✓
Julie Martin, Chief of Staff (Mac Pevey)	Washington State Department of Corrections	✓
Judge Wesley Saint Clair (Keri-Anne Jetzer)	Washington State Sentencing Guidelines Commission	✓ ✓
Suzanne Cook (Melody Simle)	Statewide Family Council	✓
Judge Josephine Wiggs-Martin	Superior Court Judges' Association	✓
Gregory Link (Kim Gordon)	Washington Association of Criminal Defense Attorneys; Washington Defender Association	✓
Chief Gregory Cobb (Chief Brian Smith)	Washington Association of Sheriffs and Police Chiefs	✓ ✓
Councilmember Derek Young	Washington State Association of Counties	✓

Judge Veronica Alicea-Galván (Frank Thomas)	Washington State Minority and Justice Commission	✓
Chief James Schrimpsheer	Fraternal Order of Police, Labor Organization Representing Active Law Enforcement Officers in Washington State	✓
Nick Allen (Nick Straley)	Columbia Legal Services, Representing Interests of Incarcerated Persons	✓
Waldo Waldron-Ramsey (Ginny Parham)	Washington Community Action Network, Representing Interests of Incarcerated Persons	✓
Riddhi Mukhopadhyay (Tiffany Attrill)	Sexual Violence Law Center, Representing Interests of Crime Victims	✓ ✓

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