

Washington State Criminal Sentencing Task Force
Meeting Summary: November 4, 2021
Virtual Meeting via ZOOM – [Link to recording via TVW](#)

ATTENDEES:

- **Task Force Members and Alternates Attendees:** see Appendix A.
- **Members of the Public:** Heidi Brodt, James Chambers, Kelsey-Anne Fung, Bruce Glant, Davina Kerrelola, Matt Tremble, David Triewiler, Gideon Newmark, Joanne Smieja, Audra Garcia, Jessie Halladay, Liz Dayton, Lydia, Kathleen Hambrick, Jaime Hawk, Kehaulani Walker, 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 (WSIPP)**

MEETING GOALS:

- Task Force Introductions and Updates
- Review Grid Info & Discussion and Input on Grid Components and Potential Recommendations

WELCOME, INTRODUCTIONS, REVIEW AGENDA and GROUNDRULES

Amanda Murphy welcomed attendees and introduced herself and the rest of the facilitation team before reviewing the agenda and meeting goals.

CO-CHAIR UPDATES

Task Force co-chairs reminded the group of the tremendous amount of work being done, especially in the workgroups, and thanked member and alternates for their continued engagement.

FACILITATION TEAM UPDATES

Amanda updated the Task Force on plans for the December meeting and reminded the group it will not meet in January 2022. The subgroups will keep meeting in January and the full Task Force will reconvene in February 2022.

SENTENCING ALTERNATIVES SUBGROUP UPDATE

Chris updated the Task Force on the work of the Sentencing Alternatives subgroup. Most recently they looked at the First Time Offense Waiver (FTOW) and the eligibility requirements. The next meeting on November 30th at 1:30pm will focus on prison DOSA and a presentation on it from DOC.

PRESENTATION – REVIEW OF COMBINED GRID POTENTIAL RECOMMENDATIONS PRESENTED TO DATE

Amanda explained the study guide created to show all the possible recommendations related to the vertical axis discussed over the past few months. The study guide can be [viewed here](#).

The potential recommendations that relate to the structure of the grid are listed below.

Potential Recommendation #2: *Move all felony class B offenses to no higher than OSL 9. Move all felony class C offenses to no higher than OSL 5. Include new legislative/statutory language specifying that: "Class C felony offenses may not exceed offense seriousness level 5. Class B felony offenses may not exceed offense seriousness level 9."*

Potential Recommendation #3: *The statutory maximum for class C and class B felonies is 5 and 10 years, respectively. Washington’s current grid contains several cells where the courts are unable to sentence some crimes within the full or partial range because they are greater than the statutory maximum. To address cells where the presumptive sentencing range exceeds the statutory maximum for class C and class B felonies, make maximum of the range in CHS 9+ for OSL V 54 months and for OSL IX 108 months.*

Potential Recommendation #6: *Establish a formula for determining grid cell ranges for OSLs 1-5. Create the grid ranges for OSLs 1 –5 using 54 as the anchor for the most serious maximum punishment for OSL 9, CHS 9+.*

Potential Recommendation #7: *If the maximum sentence based on the formula is 12 months or less, the minimum is automatically reduced to zero.*

Potential Recommendation #8 – Eliminate 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.*

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*

Potential Recommendation #10: *Eliminate the mandatory minimum for Murder 1.*

Potential Recommendation #13: *Increase the number of seriousness levels from 16 to 18 whereby:*

- *OSL 18 is Aggravated Murder with a range of 25 to life regardless of Criminal History Score (as it currently is in SL 16)*
- *OSL 17 is Murder 1 and Homicide by Abuse with current ranges for Murder 1*
- *OSL 16 is Murder 2 with current maximums, but minimums made consistent at 50% of the maximum.*
- *OSL 15 to 10 are as classified currently except for the offenses pulled out above. The formula is used starting at OSL 16.*

13a: *Move Trafficking 1 to OSL 15 with Malicious Explosion of a Substance 1. Move all other offenses up one OSL.*

13b: *Collapse the ranges for Murder 1 for Criminal History Scores 0-4 and 5-9+.*

Potential Recommendation #14: *Establish a formula for determining grid cell ranges for OSLs 1-5. Create the grid ranges for OSLs 6 –9 using 108 as the anchor for the most serious maximum punishment for OSL 9, CHS 9+.*

Lauren Knoth (*WSIPP*) walked the Task Force through these potential recommendations and what they look like on the simulated grid vs. how the current grid looks.

Task Force Discussion on Grid Structure Potential Recommendations:

- What would the changes be for Assault in 2nd degree and Murder in 2nd degree? Those are the crimes where individuals have most surprise about how short those sentences are.
 - Assault 2 would be in OSL 4 and Murder 2 would move to OSL 16, which would have sentence lengths decrease from 6-30% in CHS 0-8; guideline range at CHS 9+ would remain the same.
 - The Grid Group has talked about a grid framework that creates more consistency and simplicity, rather than going offense by offense. There may need to be some recalibration or

reclassification of specific offenses once the grid framework is established. For example, should Class A felonies remain in OSL 1-5 or be moved elsewhere?

- The Grid Group has discussed the potential to reclassify Assault 2. We need to be open to looking at certain offenses, specifically where they are on the grid, and be ready to ask the Legislature to look at them.
- Need to think globally when considering all recommendations. My constituency would be ok with these proposed changes to the grid if other changes and reclassifications are made elsewhere.
- Don't think we are reclassifying crimes. That's the Legislature's job. There is a recommendation to move Class B felonies to where all other Class B felonies are.
- Concern that the group will make a bunch of recommendations that get perceived – or implemented – as standalone when they really need to come as a package to the Legislature.
- A member expressed reservations about reclassifying crimes. It has more to do with inconsistent filing standards in the current system that create problems for their constituency. Victims and officers must overcome complicated filing standards. It is very hard for an individual to be charged with assault on a law enforcement officer, even with body cameras: need to consider the barriers to charging as thinking about reductions to sentence ranges and moving offenses down.
- Some of the shifts downward in reclassification are designed not to reduce the sanction, but to adjust the range to a level where all sentences would be valid within statutory maximums and minimums.
- The proposed changes would provide a way to have rough groupings of Class A, B, and C felonies. There might be a transition zone, or a need for some A-Class felonies to move to join all the other class A felonies, if we think about the potential recommendations as designed to bring all the classes and sentence ranges into alignment.
- Part of reason that the grid is so funky because in the past the Legislature has focused only on one crime or another.
- If a specific Class A felony has been classified as an OSL 4 for last 20 years, then the sentence ranges currently available are intended to provide appropriate accountability.
- The Task Force should not build the new grid around specific offenses. It can think big picture, so the group should not get stuck on individual offenses.
- Like the idea of having offense-based zones or classifications, but concern about the Legislature's ability to execute the comprehensive package. Would help to provide options for them to consider.
- Appreciate the full, comprehensive look, but also concern that this is a band aid on a band aid. Also want to make sure that we think about what people in crisis need.
- Racial disproportionality in the system is very pronounced, as the WSIPP study identified. How do we create a system that is fairer and gives us the ability to examine what is happening? How is discretion being utilized by judges or prosecutors, and can we come up with a system that address the intensity of the disproportionality?
- It is appealing to have all Class A, Class B, and Class C felonies grouped together, but if we don't have comprehensive recommendations for the Legislature, don't think they will act on it.
- It would be great to develop and provide a consistent formula/structure that everyone would know what it means and to have it overlay with earned time so there is more transparency in the amount of time an individual would serve in jail or prison.
- Support for moving away from individual offenses and creating more logic in the system. We also need to address some of the current fiction in sentence length (i.e., all sentences on the grid should be valid sentences for all OSL). Those steps can help address some systemic challenges.
- In relation to some of the discussions in the Sentencing Alternatives group, are straddle cells necessary to have some sort of community sanctions?

- Eligibility for community sanction can change, or the Task Force may need to write eligibility in a way that fits a grid, with or without straddle cells. In other words, straddle cells don't change the ability to have community sanctions.
- A comprehensive grid overhaul may require some recalibration of individual offenses. We've moved some Class B offenses from the Class A zone, so need to consider moving some offenses up.
- Suggestion to eliminate felony classes. Right now, they are only tied to statutory maximums, which could be addressed through cell ranges.
- The Task Force could look at eliminating the felony classes. Support having different zones for the different classes.
- Have been thinking about where the statutory maximum is much lower, where judge cannot sentence at the range on the grid. The grid should reflect the state of the law.

Amanda reviewed the potential recommendations listed below, before inviting questions and discussion from the Task Force. See presentation slide starting at slide #39

Potential Recommendation #1: *The current supervision model based on surveillance is insufficient, and changes to the grid are based on a broader paradigm shift focused on providing the appropriate treatment and resources for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a separate form of Community Reentry.*

Potential Recommendation #4: *Establish a sunset committee that reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.*

Potential Recommendation #5: *Require ongoing monitoring and larger, more in-depth statistical reviews after the first few years.*

Potential Recommendation #11: *For aggravated murder 1 change the language from:*

*“Life sentence without parole/death penalty for individuals at or over the age of **eighteen**. For individuals under the age of **eighteen**, a term of twenty-five years to life.”*

To

*“Life sentence without parole/death penalty for individuals at or over the age of **twenty-five**. For individuals under the age of **twenty-five**, a term of twenty-five years to life.”*

Potential Recommendation #12: *For all sentences longer than 20 years, require a second chance review at 20 years of incarceration with the presumption of release.*

QUESTIONS AND DISCUSSION

- Wish the state had an Assault 1.5, something between assault 1 and 2 to better capture the range of behaviors and actions.
- The Task Force should make dramatic changes to the grid for individuals with a property crime conviction. Judges would like the opportunity for an individual to get the support and treatment they need. Only using incarceration as a tool for accountability for certain crimes is not working.
- Suggestion to modify specific statutes that dictates whom DOC supervises. If court orders supervision, then DOC will supervise see: [RCWs 9.94A.501](#) and [9.94A.701](#)

Comments related to potential recommendation #1: *The current supervision model based on surveillance is insufficient, and changes to the grid are based on a broader paradigm shift focused on providing the*

appropriate treatment and resources for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a separate form of Community Reentry.

- DOC is working to accelerate implementation of I-COACH and talking about ways to increase substance use treatment. If courts order supervision, then DOC will supervise and determine the conditions of the supervision. In part because of a 2020 Task Force recommendation, the Legislature has authorized and provided resources for DOC to implement a new supervision model.
- It is important to know that for most property crimes, prosecutors can't assign supervision; think you would start to see supervision decrease if supervision is an option.

Comments related to potential recommendation #4: *Establish a sunset committee that reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.*

- Seems like a smart thing to do.

Comments related to potential recommendation #11: *For aggravated murder 1 change the language from: "Life sentence without parole/death penalty for individuals at or over the age of **eighteen**. For individuals under the age of **eighteen**, a term of twenty-five years to life."*

To

*"Life sentence without parole/death penalty for individuals at or over the age of **twenty-five**. For individuals under the age of **twenty-five**, a term of twenty-five years to life."*

- Suggestion to strike reference to the death penalty since not a valid sentence
- Have some issues with the language. Understand discussion about brain science and culpability. Concern about potential utilization by criminal street gangs.

Comments related to potential recommendation #12: *For all sentences longer than 20 years, require a second chance review at 20 years of incarceration with the presumption of release.*

- Could the research team or facilitators provide more context about the presumption of release?
 - A current legislative proposal would increase review for specific offenses that may warrant clemency. The Washington Association of Prosecuting Attorneys has been supportive of those but has concern about the "presumption of release" language.
 - Express frustrations with clemency process because governors are inconsistent in their use of granting clemency.
 - My constituency is very supportive of a 20-year review and providing a space for rehabilitation.
 - From the Independent Sentencing Review Board or elsewhere, would it be possible to get information on how often the presumption of release is used for juveniles?
 - Concern for how an individual got to a 20-year sentence: because of their criminal history? Suggestion: include opportunity for victim input.
 - Legislature is considering a bill on a 20-year review
- Another member expressed concern about the presumption of release.
- If the presumption of release is problematic, suggest the Task Force still consider this recommendation, without that portion, because the 20-year look is crucial.

REFLECTION/FEEDBACK and NEXT STEPS

Next meeting: December 2, at 1 pm.

PUBLIC QUESTIONS AND COMMENTS: Below are summaries of comments and questions shared by public attendees and any responses from Task Force members and alternates. Full questions and comments can be viewed by following [this link to TVW](#) which starts at 2:44:08 in the meeting recording.

Heidi Brodt: Thank you for your time and diligent work. I have a deep concern about victimless crimes that have affected my family. My brother was convicted of attempted rape of a child and got 80 months with lifetime supervision. He got catfished. There are 300 out of 365 men in net nanny stings who had no priors or predatory history.

- How does time off apply on sex offenses?
 - Individuals who have committed a sex offense, compliance credits don't apply. The sex offender policy board has made recommendations on those who receive lifetime supervision. My experience is that there is diminishing returns for those that get lifetime supervision. It also drives a lot of resources that could be used elsewhere.
 - The sentencing alternatives group is looking at eligibility related to SSOSA. Have had discussions about lifetime supervision.
 - Removing lifetime supervision was also a recommendation in the SGC's 2019 report.

Bruce Glant: We are trying to help someone with reentry, and it is difficult. I've attended most of the meetings for the past year and a half. I feel like there are two camps and I think the committee really needs to decide what they want to do about rehabilitation and punishment. Hope the Task Force will look at the 18-25 age group. I think you need to bring everything to the Legislature and think you should meet with the entire body and really explain what is going on.

Bruce Glant: Net nanny sting are not new, but the fact they are going on adult dating sites is new. Maybe there should be something in a provision to create a new crime.

Verbatim Public Comments and Questions Submitted via Zoom Chat Function:

Shawnte Holmes-Davenport: Does Washington have a "defacto life number" ? For example a 19 year old man who is sentenced to 47 years. Would this be reviewed after 20 years? It's not technically life but its basically life considering their age at the time of release. Especially when there was no death or physical injury.

Joanne Smieja: Is the task force planning to eliminate lifetime supervision? It sounds like they everyone agrees we should move to an I-Coach model which focuses on helping people with reentry. If that's the case, why would we keep lifetime supervision?

Shawnte Holmes-Davenport: Earlier the comment of a middle charge between assault 1 and 2, I agree. Especially because you can receive an assault 1 without ever injuring anyone. Simply because the "element" of a gun is present in another charge. Like a drive by. You almost never just get a drive by and gun enhancement. Especially in pierce county they will take a class b and add a class a and now it could be life.

Joanne Smieja: Assault 2 is a Class B felony with seriousness level 4. So if we move to the simulated grid, its seriousness level will have to be increased to at least 6 or its classification will have to be changed to a Class C felony.

Bruce Glant: Recommendation 5 could also look at new crimes that no one has thought about before ie. Net Nanny. would apply to new technologies that create new crimes.

Joanne Smieja: I am grateful DOC is moving to an I-Coach model and that the legislature approved the law so that people can earn time off from supervision. Now all we need to do is eliminate lifetime supervision. All the data shows supervision longer than 5 years does not improve public safety.

ADJOURN

Upcoming Meetings: Starting in February, meeting times reflect possible in-person, all-day meetings—*also noted in italics.*

2021

December 2, 1 pm – 4:30 pm

2022

~~January 6, 1 pm – 4:30 pm~~ - CANCELLED

February 3, 9 am – 4:30 pm

March 3, 9 am – 4:30 pm

April 7, 9 am – 4:30 pm

May 5, 9 am – 4:30 pm

June 2, 9 am – 4:30 pm

CSTF Members & Designated Alternates	Affiliation/Perspective Represented	Attendance:
Jon Tunheim	Washington Association of Prosecuting Attorneys	✓
Russell Brown (alternate)		✓
Lydia Flora Barlow	Statewide Reentry Council	✓
Rep. Roger Goodman	Washington State House of Representatives	Unable to attend
Sen. Chris Gildon	Washington State Senate	
Sen. Manka Dhingra	Washington State Senate	Unable to attend
Rep. Carolyn Eslick	Washington State House of Representatives	Unable to attend
Sonja Hallum	Washington State Office of the Governor	Unable to attend
Elaine Deschamps (Clela Steelhammer)	Washington State Caseload Forecast Council	Unable to attend ✓
Julie Martin (Mac Pevey)	Washington State Department of Corrections	✓ (will join late) ✓
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	✓ Unable to attend
Chief Gregory Cobb (Chief Brian Smith)	Washington Association of Sheriffs and Police Chiefs	✓ ✓
Councilmember Derek Young	Washington State Association of Counties	✓

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Judge Veronica Alicea-Galván (Frank Thomas)	Washington State Minority and Justice Commission	✓ Unable to attend
Chief James Schrimpsher	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 Columbia Legal Services, Representing Interests of Incarcerated Persons	✓ Unable to attend
Waldo Waldron-Ramsey (Ginny Parham)	Washington Community Action Network, Representing Interests of Incarcerated Persons Washington Community Action Network, Representing Interests of Incarcerated Persons	✓ Unable to attend
Tiffany Attrill	King County Prosecutor's Office, Representing Interests of Crime Victims	✓
Riddhi Mukhopadhyay	Sexual Violence Law Center, Representing Interests of Crime Victims	Unable to attend
