

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: October 26, 2021
Meeting via Zoom**

Attendees:

- Russ Brown, *WA Association of Prosecuting Attorneys*
- Rep. Roger Goodman, *WA Legislature*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Lauren Knoth, *WA State Institute for Public Policy*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Guests: James Chambers, Bruce Glant, Kelly Leonard, Joanne Smieja, David Trieweiler

Facilitation Team: Amanda Murphy, Chris Page, Maggie Counihan, Molly Stenovec

WELCOME & AGENDA REVIEW

Amanda welcomed the Subgroup and noted that this meeting would focus on “two strikes” and “three strikes” laws developed to address issues with individuals who commit persistent repeat offenses.

PRESENTATION: Two Strikes and Three Strikes Laws

Keri-Anne Jetzer walked the Subgroup through RCW 9.92.090, which states for individuals convicted of the same type of offense at least three times, that they “*shall be adjudged to be an habitual criminal and shall be punished by imprisonment in a state correctional facility for not less than ten years.*” Those individuals are to spend life in prison without parole. Subgroup members offered some context for the events that were happening nationally and at the state level during the time that led to creating these laws. Members mentioned drive-by shootings, gang violence from gangs moving north from California, the crack cocaine epidemic, and the end of the Cold War having removed the “enemy from outside the border” and leading society to look for an “enemy within the border.”

In 1994, Washington state voters passed Initiative 593, the first Three Strikes law in the United States. The law defined “persistent offender,” set the term of confinement as “*life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law.*” Under RCW 9.94A.565, the Governor would not have the power to grant a pardon or clemency to such individuals “until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society.”

Other states with Three Strikes laws include, Arizona, California, Connecticut, Delaware,

- Arkansas
- California
- Connecticut
- Delaware
- Florida
- Georgia
- Indiana
- Kansas
- Louisiana
- Maryland
- Massachusetts
- Montana
- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Pennsylvania
- South Carolina
- Tennessee
- Texas
- Utah
- Vermont

A Subgroup member cited [a study](#) that found after the passage of its Three Strikes law, California saw an increase in offenses governed by the new law, rather than a decrease. Lauren Knoth showed information from a reliable study that attributed trends in crime in the 1990s to phenomena other than Three Strikes laws; that study (called "[Striking Out as Crime Reduction Policy](#)") concluded that Three Strikes laws had no quantifiable impact on crime rates. If anything, Three Strikes laws may have contributed to an increase in violent crime rates in urban areas.

Member commented that research has revealed an unintended consequence of Three Strikes laws, which might in part explain the abovementioned increase in violent crime in urban areas: people facing the potential for life in prison (with two prior violent convictions) in the process of committing a robbery have an incentive to kill any witnesses since getting convicted for robbery would count the same as murder (a third "strike") and eliminating witnesses might give the individual a chance to avoid getting pinpointed as the one who committed the robbery.

Related to the last point, Lauren mentioned [another study](#) (called "Homicide Promoting Effects of Three Strikes in U.S. Cities") which concluded that Three Strikes laws brought a slight *increase* in homicide rates in urban areas.

PRESENTATION: Demographic "Persistent Offender" (PO) Sentencing Data

Clela Steelhammer presented statistics from fiscal years 2010 through 2020. She qualified the information, noting that the Council of State Governments treats "Hispanic" as a racial category and that the numbers show total sentences, not individuals (see Appendix below for data)

A member suggested that the ability to charge someone with life without parole gives prosecutors immense power to influence sentences, since the threat of life without parole gives individuals strong incentive to accept any lesser sentencing recommendation. A prosecutors' representative replied that the motivation for charging someone with a shorter sentence than life without parole is because the circumstances do not call for such a harsh penalty.

A member said that if the state charges someone with a third-time violation such as DUI, felony harassment, or other non-violent offense, they must prove not just the current charge but also the prior two charges. That does not hold true for Three Strikes convictions; individuals have been locked in prison for life on a third strike of stealing less than five dollars' worth of food from a convenience store. That member urged the Subgroup to ask the Task Force to recommend a jury trial for anyone facing their third "strike." That recommendation could be as simple as "Treat Three Strikes offenses as any other repeat felony offense, which must be pled and proved in front of a jury." It could also be worded "Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three-strikes must be treated as elements of the crime: pled in information; proven to a jury beyond reasonable doubt; individual acknowledges and agrees in a plea agreement."

Currently, no requirement exists for a defendant to get notice that current case and criminal history means a guilty plea or jury finding will bring a term of life. Nor is there a requirement for a jury to get notice that a finding of guilt will qualify as a third strike and resulting sentence of life. Some defense attorneys may prefer the jury not know of two prior strikes since it could prejudice the jury to use prior convictions as evidence for current case.

Other options (with discussion points):

- Replace Three Strikes mandatory sentence with determinate plus sentencing guideline of 25 years with opportunity for release.
 - This could reduce incarceration lengths, with individuals potentially being released upon review.
 - It would shift discretion from prosecutors to the board conducting release reviews.
- Replace Three Strikes mandatory sentence with determinate plus sentencing guideline of 25 years with judicial discretion allowing a sentence up to life in prison.
 - This would eliminate the opportunity for a person to show that they have grown behind bars and shift discretion to judges rather than an external review board.

Both the above options recognize the potential for rehabilitation/reform and could potentially reduce racial disparity at sentencing.

- Eliminate and do not replace Three Strikes laws.
 - This would acknowledge that sentences for the types of violent crimes covered under these laws already carry long sentences.
 - It could undermine the structure of the sentencing system by carving out exceptions.

Additional Discussion

- A member noted that one outcome of Three Strikes laws is the removal of any uncertainty around what a person's sentence would be if convicted.
- Another member stated that 25 years is still a really long time. Changing laws to allow that a person can grow personally, and change for the better, would make sense.
- Other approaches (e.g., creating a Repeat Serious Violent column on the grid) could meet the same goals.
- There might be a political opportunity for reform since people are starting to recognize that exceptionally long sentences have not led to improvements in public safety.

NEXT STEPS & ACTION ITEMS

- Next meeting: continuing discussing topics related to repeat violent offenses, the Subgroup will move to mandatory consecutive sentencing.

COMMENTS SUBMITTED BY GUEST OBSERVERS VIA ZOOM CHAT and/or EMAIL

None

APPENDIX

Individuals
w/PO
Sentences:
Race*
Demo-
graphics:

% by
Race*
:

Fiscal Year	# Individuals w/PO Sentences: Race* Demo-graphics:							% by Race*:						
	White	African American	Hispanic	Asian	Nat. Am.	Unk.	Total	White	African American	Hispanic	Asian	Nat. Am.	Unk.	Total
2010	10	7	1	0	0	0	18	56%	39%	6%	0%	0%	0%	100%
2011	8	5	0	0	0	0	13	62%	38%	0%	0%	0%	0%	100%
2012	12	8	0	0	0	0	20	60%	40%	0%	0%	0%	0%	100%
2013	13	6	2	1	0	0	22	59%	27%	9%	5%	0%	0%	100%
2014	8	2	0	0	0	0	10	80%	20%	0%	0%	0%	0%	100%
2015	6	6	0	1	0	0	13	46%	46%	0%	8%	0%	0%	100%
2016	9	6	1	1	0	0	17	53%	35%	6%	6%	0%	0%	100%
2017	6	7	1	0	0	0	14	43%	50%	7%	0%	0%	0%	100%
2018	4	3	1	0	0	0	8	50%	38%	13%	0%	0%	0%	100%
2019	4	4	1	0	1	0	10	40%	40%	10%	0%	10%	0%	100%
2020	8	4	1	0	1	1	15	53%	27%	7%	0%	7%	7%	93%