

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: December 14, 2021  
Meeting via Zoom**

**Attendees:**

- Russ Brown, (Alt. for Jon Tunheim) *WA Association of Prosecuting Attorneys*
- Rep. Roger Goodman, *Washington State House Democratic Caucus*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Lauren Knoth, *WA State Institute for Public Policy (WSIPP)*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Melody Simle, (Alt. for Suzanne Cook), *Statewide Family Council*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley (Alt. for Nick Allen), *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

**Guests:** Joanne Smieja, David Trieweler, James Chambers

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

**WELCOME & AGENDA REVIEW**

Amanda welcomed the Subgroup and reviewed the meeting focus.

**Aggravator and Repeat Violent Columns**

Lauren provided a brief recap of last weeks discussion and the following options that the group has been discussing:

- Adding a column to the sentencing grid for aggravated sentences that includes X number of months to add to the sentence range.
- The added number of months would increase from six months to 12, then 24, then 36, then 48, as you move up the grid in Offense Seriousness Level (OSL).
- In situations with multiple aggravating factors, the Task Force could recommend that added number of months apply to each aggravator (so for example, up to six months per aggravator at OSL 5 and below) or function as a hard cap (total aggravated exceptional sentence length of six months at OSL 5 and below regardless of the number of aggravators charged).

The question posed to the Subgroup is whether the number of added months should serve as an absolute cap on aggravated exceptional sentences, or apply per aggravator, or cover up to a certain number of aggravators. The graphic below shows the emerging simulated grid with the column in question highlighted in yellow at right.

Potential options:		HOW TO USE:																														
Add a column for aggravated maximum departure for all seriousness levels.		In column V, rows 3 and 4, change the 0 to 1 to "turn on" the additional tie for aggravated sentence and/or repeat violent offenses.																														
Add a column for increase range for instances of repeat violent offenses.		The Red numbers reflect the adjusted maximum of the range based on whether the aggravated sentence and/or repeat violent offense column are "turned on."																														
Aggravated sentence	0																															
Repeat Violent offense	1																															
0	1	2	3	4	5	6	7	8	9+	Agg. Max	Repeat Violent																					
18 Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																																
17	240	320	380	252	336	396	264	352	412	277	370	430	291	388	448	306	408	468	321	428	488	337	450	510	354	472	532	372	496	556	48	60
16	104	138	186	114	152	200	126	168	216	138	184	232	152	203	251	167	223	271	184	246	294	203	270	318	223	297	345	297	397	445	48	48
15	93	124	172	102	137	185	113	150	198	124	165	213	136	182	230	150	200	248	165	220	268	182	242	290	200	267	315	267	356	404	36	48
14	82	110	146	90	121	157	100	133	169	110	146	182	121	161	197	133	177	213	146	195	231	161	214	250	177	236	272	236	315	351	36	36
13	71	95	131	79	105	141	87	116	152	95	127	163	105	140	176	115	154	190	127	169	205	140	186	222	154	205	241	205	274	310	24	36
12	61	81	105	67	89	113	74	98	122	81	108	132	89	119	143	98	131	155	108	144	168	119	158	182	131	174	198	174	233	257	24	24
11	50	67	91	55	73	97	60	81	105	67	89	113	73	98	122	81	108	132	89	119	143	98	130	154	108	144	168	144	192	216	24	24
10	39	52	64	43	58	70	47	63	75	52	70	82	58	77	89	63	85	97	70	93	105	77	102	114	84	113	125	113	151	163	24	12
9	16	21	33	19	25	37	23	31	43	27	37	49	33	44	56	40	53	65	48	64	76	58	77	89	69	92	104	81	108	120	12	12
8	14	19	31	17	22	34	20	27	39	24	32	44	29	39	51	35	47	59	42	56	68	51	68	80	61	81	93	71	95	107	12	12
7	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	40	52	36	48	60	44	58	70	52	70	82	61	82	94	12	12
6	10	13	25	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	41	53	37	49	61	44	59	71	51	69	81	12	12
5	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	46	52	16	54	60	6	6
4	2	9	15	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	45	51	6	6
3	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	7	25	31	9	30	36	10	36	42	6	6
2	0	3	9	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	8	27	33	6	6
1	0	2	8	0	3	9	1	5	11	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	18	24	6	6
nr	0 - 365 days																															

**Feedback from Task Force Member Constituencies:**

Jon Tunheim and Russ Brown shared with the group input they received from the Washington Association of Prosecuting Attorneys meeting they attended last week, where they shared some of the ideas and potential recommendations the Subgroup has been discussing. They commented on how prosecutors around the state have varied and evolving opinions on sentencing, with reactions to the recent increase in violent crime making it a difficult time to suggest reducing sentences. However, that sentiment applies primarily to violent crime, so less opposition is voiced to reform in the lower portion of the grid. There is interest to reducing incarceration in this lower portion and allowing for more program, supervision, and treatment options as alternatives.

Replacing multipliers with a repeat violent crime: some prosecutors were concerned that this approach may be just replacing one type of complexity with another. They expressed concern about limiting a judge’s discretion in terms of aggravated exceptional sentences, but voiced openness to changes in certain specific multipliers.

Three strikes: some prosecutors appear less open to flexible approaches now than in the past. This too appears tied to public perceptions around increased violent crime, along with the fact that this law passed via citizen initiative.

Supervision: prosecutors voiced support for an increased use of supervision if it is done well.

**Subgroup Discussion**

A Subgroup member commented that changes in social conditions in the last couple years are more likely to be driving increases in the crime rate, rather than insufficient sentence lengths.

Lauren shared with the group recent crime data from the Crime in Washington 2020 Report (see Appendix A.)

Another member reminded the group that Task Force recommendations need to be based in data and evidence, not on narratives and public perceptions. The member encouraged the group to be bold in what it presents to the Task Force as recommendations. Another member pushed back on the idea that Washington state has an exceedingly draconian sentencing system, pointing out that this state has one of the lowest incarceration rates in the country. The same member agreed that significant changes make sense in the lower left section of the grid, since approaches that address the underlying causes of defendants' behavior show more promise for reducing recidivism than incarceration, according to available information.

### **Draft Ideas to Date for Increased Sentences for Repeat Violent Offending**

The Subgroup then reviewed the ideas they have generated to date and how they address the 3 policy goals of the Task Force and the desired outcome to reduce racial disproportionality and disparity.

#### ***POTENTIAL RECOMMENDATIONS related to Multipliers for repeat violent crimes:***

- Create a new column on the grid for repeat violent offending that increases that maximum of the sentencing range if the individual has convictions for a previous violent offense.
- Eliminate the offense-specific multipliers from the criminal history score.

#### Reducing complexities and errors.

- Multipliers happen in the background and have many complex rules that aren't always known.
- Applying a new column consistently regardless of offense reduces the complexity and potential for errors.
- Applying a new column increases transparency and makes it more clear that an individual's sentence was higher or eligible to be higher as a result of the types of offenses in their criminal history.

#### Improving effectiveness of the sentencing system

- Multipliers increase discretion of the legislature and reduce the discretion of judges/pros/defense.
- Increasing the maximum allows for the same outcomes as today (e.g., the same increased punishment), but also allows for more consideration of cases that may not need increased sanctions.
- More individualized sanctions.

#### Promoting and improving public safety

- Retains the ability to issue more serious sanctions for more serious individuals/cases.

#### Reducing racial disproportionality/disparity.

- Initial evidence suggests there is racial disproportionality in the application of multipliers which creates disproportionality in sentences by increasing the minimum and maximum.

- Increasing the maximum still allows for increased sentences when warranted but can allow defense to argue that increased sanctions are not warranted given particular considerations of criminal history.
- Allows for more clear understanding of potential disparity by being able to compare cases here the sentence was increased due to the type of offenses in a persons' criminal history. In status quo, we tend to compare sentences within the same CHS but we may not be able to determine if individuals with the same CHS have the same number of offenses in their criminal history or if one person has far fewer offenses but had multipliers applied.

***POTENTIAL RECOMMENDATIONS on Modifying consecutive sentencing for serious violent offenses:***

- a) Eliminate mandatory consecutive sentencing and add an aggravating factor for cases including serious violent offenses with multiple victims.
- b) Make consecutive sentencing for serious violent offenses only when the offenses are for different victims.

Reducing complexities and errors.

- Complexity of determining whether/when sentences must run consecutive vs concurrent.

Improving effectiveness of the sentencing system

- No evidence that mandatory consecutive sentencing is more effective at reducing recidivism. This policy is retributive.
- Aggravated sentences still an option in egregious cases.
- Most serious violent offenses are already facing long prison sentences.

Promoting and improving public safety

- Mandatory consecutive sentencing not well evidenced to act as a general deterrent.
- Very rare – 33 in FY 2019

Reducing racial disproportionality/disparity.

- The mandatory consecutive sentencing gives more authority for prosecutors through charging decisions that may disproportionately impact POC.

***POTENTIAL RECOMMENDATION on Three Strikes law:***

- Reform three strikes law to make cases eligible for sanctions “up to life” rather than a mandatory life sentence.

Reducing complexities and errors.

- Three strikes laws may complicate plea bargaining processes as prosecutors change charges but then issue aggravated sentences in order to avoid mandatory life sentences for three-strikes laws.

Improving effectiveness of the sentencing system

- Increasing the maximum allows for the same outcomes as today (e.g., the same increased punishment), but also allows for more consideration of cases that may not need increased sanctions.
- More individualized sanctions.

Promoting and improving public safety

- Three strikes laws not well evidenced as a general deterrent.
- Allows for consideration of less than life sentences that can allow individuals to return to their communities/families/etc.

Reducing racial disproportionality/disparity.

- Three strikes laws may disproportionately impact POC because of legacies of discrimination that are baked into criminal histories.

**POTENTIAL RECOMMENDATION on mandatory consecutive sentences:**

- Eliminate mandatory consecutive sentencing on gun charges and add aggravating factors that address cases for which there is a greater concern for culpability. For example, theft/robbery occurring in a gun store.

Reducing complexities and errors.

- Complexity of determining whether/when sentences must run consecutively vs concurrently. Offense-specific carveouts are particularly complex.
- Gun charges have multiple different sentencing laws that impact them (enhancements, consecutive, etc.). This reduces one of those carve outs.

Improving effectiveness of the sentencing system

- No evidence that mandatory consecutive sentencing is more effective at reducing recidivism.
- Aggravated sentences still an option in egregious cases.
- This policy is too broad and not all cases involving multiple gun charges are necessarily motivated by getting many guns (e.g., burglary of a home that an individual doesn't know has a couple guns vs. robbery of a gun store).
- Relatively rare – FY 19 29 cases with theft and unlawful poss.

Promoting and improving public safety

- Mandatory consecutive sentencing not well evidenced to act as a general deterrent.
- Allows for consideration of individualized sentences that can allow individuals to return to their communities/families/etc.

Reducing racial disproportionality/disparity.

- Unknown impacts

**POTENTIAL RECOMMENDATION on aggravated exceptional sentences:**

- Add a column to the grid that puts a cap on aggravated sentences.

Reducing complexities and errors.

- Complexity resulting from unfettered discretion on aggravated sentences. Unclear when aggravators are applied to achieve a desired sanction that is far different from what is included on the grid.

Improving effectiveness of the sentencing system

- Unfettered discretion leads to inconsistencies of sentences between prosecutors and judges (referred to as “geographic justice”).
- Caps make sentences more consistent for similar cases.

Promoting and improving public safety

- Extremely lengthy sentences may not serve as a deterrent or reduce the likelihood of recidivism.
- More individualized sentences and caps on aggravators increases likelihood of individuals returning to their communities/families/etc.

Reducing racial disproportionality/disparity

- WSIPP report found significant racial disproportionality in the application of aggravated sentences with POC receiving much greater upward departures.

**Sentences in other States**

Before adjourning, the group looked briefly at a spreadsheet compared the minimum and maximum sentence lengths for a sample of felony offenses from other states. The researchers and facilitation team will review and update this spreadsheet so it is more accurate and will provide it for discussion at a later meeting.

**NEXT STEPS**

Next meeting: January 11<sup>th</sup> 2022. The facilitation team and researchers will do some fact-checking and bring back the above compiled recommendations and information from other states for the Subgroup to resume its discussions.

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

None

**Appendix A.**

**Links to Data and Materials Referenced During the Meeting**

- [Crime in Washington 2020 Annual Report, Washington Association of Sheriffs and Police Chiefs](#)

**2020 Washington Statewide NIBRS Profile****Facts at a Glance**

- The total population for the State of Washington is **7,656,066**.
- In 2020, there were **211** agencies that reported two consecutive years of NIBRS data. Based on the submissions from these agencies, there were **495,984** Group A offenses reported in 2020; compared to **463,055** Group A offenses reported in 2019. This resulted in an *increase* of **7.1%** in Group A offenses reported.
  - In 2020, Crimes Against Persons showed a *decrease* of **4.7%** with **98,756** offenses reported; compared to 2019 offenses reported of **103,654**.
  - In 2020, Crimes Against Property showed an *increase* of **13.8%** with **365,435** offenses reported; compared to **321,215** offenses reported in 2019.
  - In 2020, Crimes Against Society showed a *decrease* of **16.8%** with **31,780** offenses reported; compared to **38,186** offenses reported in 2019.
  - In 2020, Violent Crimes showed a *decrease* of **3.6%** with **25,600** offenses reported; compared to **26,561** offenses reported in 2019.
- There were **302** murders in 2020; this is an increase of **46.6%** compared to **206** murders in 2019.
- There were **59,134** fraud offenses in 2020; this is an increase of **131.3%** compared to **25,562** fraud offenses in 2019. The significant increase in fraud activity in 2020 was due to fraudulent unemployment claims.
- Group A offenses were cleared by arrest or exceptional means **22.8%** of the time.
- The crime rate (per 1,000 in population) for Group A offenses was **65.3**.
- The total arrest rate per 1,000 in population was **19.2**.
- Juveniles comprised of **4.7%** of the total arrests.
- Domestic Violence offenses made up **49.7%** of all Crimes Against Persons and **2.7%** of all Crimes Against Property.
- A total of **22,070** persons were arrested for DUI, including **172** juveniles.
- A total of **468** hate crime incidents were reported.

**2020 Washington Statewide NIBRS Profile****Facts at a Glance**

- There were a total of **2,047** assaults on law enforcement officers, this is an increase of **6.2%** compared to **1,927** assault in 2019. **Two** officers killed in the line of duty.
- Full-time law enforcement employees totaled **16,268**; of these **11,231** were commissioned officers.
- There were **8,200** arrests for Drug/Narcotic violations; of that number **4.2%** were persons under 18 years of age.
  - Possessing/concealing of marijuana constituted **4.7%** of the total drug abuse incidents; the distributing/selling of marijuana accounted for **0.6%** of incidents (*type of criminal activity can be entered three times in each incident*).
  - Possessing/concealing of heroin constituted **23.6%** of the total drug abuse incidents; the distributing/selling of heroin accounted for **3.5%** of incidents (*type of criminal activity can be entered three times in each incident*).
- The weapon type of "Personal Weapons" (hands, fists or feet) was reported in **47,263** incidents; firearms were reported in **8,809** incidents (*up to three weapons can be reported in each incident*).
- There were **5,432** sexual offenses (forcible and non-forcible) reported in 2020. There were a total of **5,432** victims in these incidents; with a total of **5,026** offenders.
- There were a total of **59,289** domestic violence offenses reported; **13,909** of these offenses were Violations of Protection or No Contact Orders.