

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: March 1<sup>st</sup>, 2022 Meeting via Zoom**

**Attendees:**

- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *WA Assn. of Criminal Defense Attorneys; WA Defender Assn*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Melody Simle, *Families of Incarcerated Persons*
- Clela Steelhammer, *Caseload Forecast Council*

**Guests:** Jim Chambers, Joanne Smieja

**Research/Technical Support:** Dr. Lauren Knoth-Peterson, *WA State Institute for Public Policy (WSIPP)*

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

**Welcome and Agenda Review**

Amanda Murphy welcomed the Subgroup and reviewed the agenda for the meeting. The group spent the first half of the meeting reviewing and providing input on the draft PowerPoint presentation for the March 3<sup>rd</sup> Task Force meeting.

**Grid Subgroup Feedback and Discussion of the Task Force March 3<sup>rd</sup> Meeting Presentation**

Dr. Lauren Knoth-Peterson reviewed the PowerPoint slides displaying the potential recommendations associated with adding a new column on the grid that with a cap on maximum aggravated and mitigated departure length; she reminded the Subgroup that it has indicated that the cap on mitigated was not as necessary. The presentation then walks through three example offense simulations, using the simulated grid.

- **Q:** This looks helpful, but how can we explain these in light of the principles of punishment? These seem like a way to mitigate exceptionally long sentences, but if we don't relate these to philosophies or principles, some folks might just say "I just don't think these sentences are long enough." **R:** Could include a reminder of the philosophies of punishment, which were presented at the February meeting, and under what philosophies do these potential recommendations serve.
- Important to show and reiterate how these potential recommendations meet the Task Force's policy goals, especially how they help to reduce complexity within the system.
- On the principles or philosophies of punishment, hopefully we will be able to speak to the fact that the current approach does not seem to reduce recidivism and has produced significant disproportionality. The proposed approach would implement a more logic-based system while mitigating racial disproportionality.
- The WSIPP report shows that returning discretion to judges would not in itself mitigate disproportionality.

Lauren asked if the group thought the presentation should walk through how the proposed approach would handle any other offenses. A member suggested that walking through one example slowly, explaining each step clearly, would help the Task Force more than seeing multiple examples. For example, pointing out that adding an aggravating factor involves a step in which evidence of the aggravating circumstances must be presented. Lauren asked if it would help to walk through the concept of bounded discretion to show how the proposed approach would serve as a middle ground/balanced approach, to what exists currently with enhancements and aggravators.

A Subgroup member observed that for Task Force members and other non-practitioners, the complications of the grid and the system can make even a simplified proposed approach feel confusing. Amanda replied that it would help members on the Task Force to hear from non-practitioners on the Grid Subgroup too, so they can get explanations for areas where the complications make comprehension of all the ramifications of the proposed approach difficult to grasp. Lauren asked if any specific example or explanations in the presentation could help address the confusion Task Force members might feel. A member replied that each step in isolation can seem clear, but the big picture gets hard to understand; specific examples using concrete offenses help illustrate how it all works.

In the examples in the presentation, the proposed simulated grid the sentence length for the base offense would reduce sentences as compared to the status quo, whether or not you add in prior violent and/or adding prior violent and aggravating factor(s). A member observed that aggravators now have no top end aside from the statutory maximum; the proposed approach would simplify the system and address Task Force desired outcomes such as balancing discretion, reducing disproportionality, and providing predictability for all parties.

Based on Subgroup input, Lauren said she could add slides showing an explicit example showing how the proposed approach would supply bounded discretion; new slide showing Task Force desired outcomes. A Subgroup member observed that the number of presentation slides, coupled with the complexity of the material, could seem overwhelming. Fewer slides, focused on the key points of the proposed approach, could help improve Task Force comprehension.

### **Upcoming Presentations and Discussions**

Whitney Hunt, Coordinator of the Sex Offender Policy Board (SOPB), met with the Sentencing Alternatives Workgroup the other week to discuss the Board's previous work, specifically related to SSOSA and to better understand whether the Board may be able to assist the Task Force's work as it relates to sex offenses. Both the chair and vice-chair of the Board have offered to have a follow-up meeting with the Workgroup and asked if members from the Grid Subgroup could join. Looking at March 8<sup>th</sup> or March 22<sup>nd</sup>. Amanda asked whether Subgroup members could attend either or both dates. Members indicated that March 22<sup>nd</sup> would work better. The facilitation team will send Subgroup members the info and Zoom coordinates for the meeting.

Amanda then reminded the group that Dr. Megan Kurlychek, who has researched the connection between criminal records and future criminal involvement, will be joining next week's meeting from 9-10am. The following shows some findings from Dr. Kurlychek's research:

Megan C. Kurlychek, Robert Brame, and Shawn D. Bushway, Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement, 53 Crime & Delinquency 64, 80 (2007)

<https://archive.ilr.cornell.edu/download/57366>

Findings:

- For individuals with police contact as a juvenile, the probability of offending is about the same as those who were not contacted by age 23.
  - For individuals with police contact at age 18, the probability of offending is the same as those who were not contacted becomes the same around age 32.
  - For individuals with police contact at age 19, the probability of offending is the same as those who were not contacted becomes the same around age 26.
  - For individuals with police contact at age 20, the probability of offending is the same as those who were not contacted becomes the same around age 29.
  - For individuals with one police contact at the age of 18/19/20, the probability of offending is the same as those who were not contacted becomes the same around age 27.
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- Washout vs. Decay: Washington uses washout, but should it use decay?
  - Does the washout period need to be crime-free, or can offenses wash out even if the person commits a crime in the interim?
  - Should any jail sentence restart the felony washout period?
  - Is there a difference in recidivism rates between someone in prison for a long time that gets out and someone in prison for a short time who gets out? In other words, can we base the washout period on data?
  - Does the date of first interaction with the criminal justice system connect to disproportionality?
  - Do any studies examine the impact of washout periods (or incarceration itself) on family members of the incarcerated?
  - Have any studies looked at the collateral consequences of the length of incarceration and/or the collateral consequences of criminal records?

### Continued Discussion on Washout

In the remaining minutes of the meeting, the Subgroup picked back up their discussion from last week on whether the current washout periods are appropriate for the different classes, starting with whether there should be a difference between the washout periods for serious violent offenses and violent offenses in Class A. Members noted that today's attendance was low and missing key perspectives. Amanda encouraged those present to provide their thoughts and proposals, that way could at least have ideas captured on paper so that members who not at today's meeting will have something to review and react to at next week's meeting. Members suggested:

- Misdemeanors should always wash out, Class C offenses should wash out after two years, Class B offenses should wash out after five years, and Class A should wash out after 10 years.
- The period of incarceration should be included in the washout period.

- Reincarceration associated with technical violations (aka Swift and Certain) should not restart the washout period.

**Next Steps:** Dr. Megan Kurlychek, who has researched the connection between criminal records and future criminal involvement, will be joining next weeks meeting from 9-10am. From 10-10:30am will continue the discussion on washouts.

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

Joanne Smieja: What would be the range for the Assault 1 stimulation using the current grid?

I suggest she break it into three slides. One each showing current and proposed sentences for each scenario (no previous violent, a previous violent, a previous violent and an aggravator).