

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: March 22nd, 2022 Meeting via Zoom**

Attendees:

- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Representative Roger Goodman, *Washington State House of Representatives (Democrats)*
- 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*
- Waldo Waldron-Ramsey, *Interests of Incarcerated People*

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

Facilitation Team: Amanda Murphy, Chris Page, Maggie Counihan

Public Guests: Jim Chambers, Bruce Glant, Joanne Smieja

Welcome and Agenda Review

Amanda Murphy welcomed grid Subgroup members and briefed the Subgroup about a couple of potential Task Force members that might begin attending Grid Group meetings soon. Amanda reminded members of the information they received in advance of today’s meeting:

- Survey of public attitudes on washout periods completed by the Robina Institute.
- The compiled data submitted by other states regarding their sentencing ranges and average length of stay for specific offenses. One tab shows the side-by-side comparison, the other tab has the details provided by each state.

State Sentencing Comparisons

Keri-Anne Jetzer showed the Subgroup a comparison of the average sentence length for ten different felony offenses across four states (WA, NC, PA, VA):

NOTE: for WA, the numbers reflect the average length of sentence imposed by the court. The actual length of stay is less, depending upon the amount of earned time the person earns.

| AVERAGE LENGTH OF STAY (MOS) | | | | | | |
|-------------------------------------|---------------|------------|-----------|-----------|-----------|--|
| | WA | NC | PA | VA | AK | |
| Murder 1 | 451.5 | LWOP/death | Life | 468 (430) | NA | |
| Murder 2 (intentional) | 228 | 210 to 265 | 170.7 | 240 (222) | NA | |
| Assault 1 | 163.9 | 70 to 96 | 50.7 | 48 (45) | NA | |
| Rape 1 | 289.4 | 263 to 367 | 73.6 | 156 (143) | NA | |
| Kidnapping 1 | 179.1 | 44 to 69 | 50.0 | 138 (127) | NA | |
| Robbery 1 | 84.4 | 63 to 89 | 17.5 | 93 (87) | NA | |
| Manslaughter 2 | 84.4 | 19 to 32 | 14.4 | 60 (56) | NA | |
| Burglary 1 | 63 | 63 to 88 | 26.5 | 30 (28) | NA | |
| Rape of a Child 1 | 56.9 (154.6*) | 263 to 367 | 125.8 | 144 (132) | NA | |
| Theft 2 | 5.4 | 11 to 22 | 11.3 | 18 (17) | NA | |
| * Determinate Plus sentences | | | | | | |

Keri-Anne walked the group through additional information to give more context. That additional information included a table comparing sentence ranges across multiple offense seriousness levels (OSLs), the fact that Pennsylvania has an advisory rather than determinate sentencing system, and specific conditions each state might have to guide how a sentence length gets established.

A member observed that it appears from the handful of states shown that Washington has significantly longer sentences for most of the felonies shown. Lauren Knoth-Peterson confirmed that her research shows Washington having generally longer sentences than other states, in part due to the addition of multipliers and enhancements. The member added that while Washington had one of the first Three Strikes laws, the original Sentencing Reform Act (SRA) did not have particularly lengthy sentences; however, over the years the legislature has added multipliers and enhancements along with consecutive sentencing requirements to lengthen sentences overall.

Juvenile Adjudications

Amanda revisited the potential recommendations the group developed at last week's meeting:

Potential Recommendation Option A: Policy as proposed in HB 1413: remove juvenile adjudications from CHS calculations. *(Note, HB1413 also states: Require courts to grant a resentencing hearing upon the motion of a person whose sentence was increased by the inclusion of prior juvenile dispositions in the person's score calculation).*

Potential Recommendation Option B: Revert back to 1986 law, whereby after age 23, Class B/C juvenile adjudications no longer count in CHS. Prior adjudications count only if the offense was committed when the individual was 15 or older.

Lauren showed the group a slide with the highest OSL rows in the proposed simulated grid the Task Force has been considering, emphasizing that by adding two rows at the top (one for Aggravated Murder and one for Murder 1 / Homicide by Abuse), the new grid would allow for specific and targeted treatment of the felonies at the highest OSLs to set them apart from other Class A felonies. The Subgroup discussed particulars of how certain felony offenses get handled.

A member wondered why prosecutors want to count against a person's CHS an offense that got declined to be heard in adult court and instead got tried in juvenile court. Another member mentioned information showing that research (Heather Evans at University of Washington) shows racial disparity in how those decisions have been handled.

Keri-Anne reminded the group that while past behavior tends to predict future behavior, recent research has shown that the most recent 5-6 years have much more relevance to predict future behavior than behavior from 7-20 years prior.

Should misdemeanors trigger reset of "crime-free" period for felony offenses? When does the washout period start? What about technical violations or DOSA revokes.

Amanda asked the group to look at the remaining topics on the discussion list (Appendix A) and whether members had any recommendations they would like to propose. Members proposed and discussed the following:

Proposed Recommendation: *Only conviction for a new criminal felony offense should reset washout periods.* (This addresses discussion topic #4 and #7 – see Appendix A.)

Discussion points:

- Increased surveillance for community custody
- Technical violations are not actually criminal behavior so should not reset crime free period.
- Keeps individuals trapped in the system if washout reset for short-term incarceration from things like “swift and certain”
- Eliminate the ability for misdemeanor offenses to reset the crime-free period
 - Consistent with superior court/SRA jurisdiction over felonies)
- Revocation of a sentencing alternative for reasons other than the commission and conviction of a new felony offense should not reset washout period.

Note: While the Subgroup generally supported having technical violations not reset a person’s washout periods, revocation of a sentencing alternative, such as DOSA needs further discussion.

Proposed Recommendation: *Washout period starts with Judgment & Sentencing Form rather than release to community.*

Discussion points:

- Research on criminal history and relationship to recidivism is about behavior occurring in the most recent past. If long sentences, requiring an additional long period of crime-free time in the community may not be necessary.

Next Steps: Complete discussions on the items on the discussion list in Appendix A. Then will move on to discussing Criminal History Score, followed by information available to judges at sentencing, such as pre-sentence investigations, and then data collection and sharing (monitoring and evaluation).

RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING

- 1983 WA Washout Rules:
 - Class A prior felony convictions are always included in the CHS
 - Class B prior felony convictions are not included if the person has spent 10 years in the community and not been convicted of any felonies.
 - Class C prior felony and serious traffic convictions are not included if the person has spent 5 years in the community and not been convicted of any felonies.
 - This applies to both adult and juvenile prior convictions.
- The RCW regarding Department of Corrections sanctions (high level violation vs. technical is 9.94A.737. More info at https://casetext.com/case/state-v-blair-53/?PHONE_NUMBER_GROUP=P.
- The RCW regarding DOC sanctions (high level violation vs. technical) is 9.94A.737

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

N/A

APPENDIX A.

Upcoming Discussion Topics:

1. **Discuss on 2/1, 2/8, 2/22, 3/1,3/15:** *Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout?*
2. Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction?
 - E.g., conviction for class C in 2000
 - Conviction for class B in 2004 – class C still counts
 - Conviction for class B in 2006 – class C and Class B priors would count. Should class C count?
3. **Discuss on 1/25 and 2/1:** *Should misdemeanors be excluded completely from CHS and/or have a specific washout period that is very short?*
4. **Discuss on 3/22:** Should misdemeanors trigger reset of “crime-free” period for felony offenses?
5. **Discuss on 3/15, 3/22:** Juvenile adjudications – should they count, should they have separate washout rule, should they stay as is?
 - Should all count or just certain types (e.g., violent/serious violent)?
 - What were the previous WA laws regarding juvenile washout?
6. Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule?
7. **Discuss on 3/22:** When does the washout period start? What about technical violations or DOSA revokes.
 - This is particularly important if new grid increases the number of or access to sentencing alternatives.
 - Community custody violation – *State vs. Blair* – will restart the washout period.
 - Complexity with determining when washout periods start if it is last release of confinement. Does DOC have insight on this complexity? Are counties consistently recording/using information about confinement/date of last confinement?