

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: March 29<sup>th</sup>, 2022 Meeting via Zoom**

**Attendees:**

- Tiffany Attrill, *Interests of Crime Victims*
- Russ Brown, *WA Ass'n of Prosecuting Attorneys*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Senator Chris Gildon, *Washington State Senate (Republicans)*
- 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, Robert Dowling, Bruce Glant, Joanne Smieja, David Trieweiler

**Welcome and Agenda Review**

Amanda Murphy welcomed grid Subgroup members and explained that the planned agenda was to start the discussion by revisiting the potential recommendations the group proposed last week, however, given the fact that some key Task Force perspectives were present today and not for some previous topics, it could help to also revisit the discussion on the following:

- *Are the current washout periods appropriate for the different classes?*
- *Should Class A offenses ever be eligible for washout?*

For the second half of the meeting, the group would move on to discuss the following remaining items on the discussion list and get on paper potential recommendations:

- *#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?
- *#6: Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule?*

A member asked a clarifying question about washout periods then brought up a comment around victims and their role in the system made by another Subgroup member two weeks ago, wanting to better understand the other member's perspective. Labels such as Victim, Perpetrator, and Offender

carry significant connotations in the criminal legal system. Some “perpetrators” are also “victims” but do not get recognized as the latter due to the weight the first term carries. The Subgroup discussed issues around alternatives to incarceration, the different types of victim, and the role of the system in appropriately addressing the harms caused to all parties. Members acknowledged the complexity of these issues and the need to hold conflicting perspectives together while recognizing the tension, tradeoffs, and the big picture. The conversation turned to the need to increase and improve services for victims.

### **Discussion: Washout Periods**

Dr. Lauren Knoth-Peterson provided a recap of the presentation and research of Dr. Megan Kurlychek, who met with the Subgroup on March 8<sup>th</sup> and who has been working with the Pennsylvania Sentencing Commission. Dr. Kurlychek conducted research on the relationship between criminal history and recidivism. Dr. Knoth-Peterson also showed statistics from Washington state on percentages of prisoners released in 30 states in 2005 by most serious commitment offense and type of post-arrest offense, each year from Year 1 post-release to Year 9 post-release:

<https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>

- A member commented that some complexity relates to if and when washouts apply, but this is not a major source of complexity in the system in the view of prosecutors.
- There is a problem with time spent in jail because of the lack of reporting to the jail booking and reporting system, so some people’s time is not being paused. It would be easier if it was just felonies because Department of Corrections (DOC) would know about those.
- On the Task Force goal of sentencing effectiveness: without washouts, we add unnecessary punishment and that does not reduce recidivism. The current system is not effective in identifying risk of recidivism.
- When misdemeanors or gross misdemeanors arise, DOC does not always know about them so it would be less complex if only felony offenses restart washout periods.
- When we talk about Class A felonies and washout periods we need to recognize that it will affect a person's sentence for the rest of the person’s life. Evidence shows that it does not reduce recidivism so does not increase the effectiveness of the system.
- Revocation of a sentencing alternative for reasons other than conviction of a new felony should not reset a person’s washout period. Technical violations do not have the same due process as new convictions (done with a lower standard of evidence) so should not reset the washout period automatically.
- When washouts originally created under SRA, violations did go back to court. Now they do not and are through DOC so it may have made sense during initial SRA, but not now.
- Technical violations only reset washout period if they result in confinement.
- A member suggested that if you commit a misdemeanor and then commit a felony within the washout period, the misdemeanor should count against your CHS. What about gross

misdemeanors—many misdemeanors have corollary felony offenses and why would we not include the misdemeanor in considering crime-free period when we include the felony version?

The last point connects to the second topic on the discussion list which is whether washout periods should restart for any offense or only for an offense equal to or greater than the original offense. Amanda suggested the group start next weeks discussion by further exploring this topic.

**Next Steps:** Next week will continue and then wrap up the discussions on the following topics:

- *Are the current washout periods appropriate for the different classes?*
- *Should Class A offenses ever be eligible for washout?*
- *Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction?*
- Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule?

Once these discussion are complete and potential recommendations drafted, the Subgroup 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**

- <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>

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

Bruce Glant: Sex crimes make it very difficult for people to find housing and job, and therefore probably commit theft crimes to simply survive. The system seems to create these recidivism crimes in many cases.

David Triewailer: For misdemeanors, there is a deferred sentence. This is different than a deferred disposition.

## 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?