

**Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Notes: April 12th, 2022 Meeting via Zoom**

Attendees:

- Tiffany Attrill, *Interests of Crime Victims*
- Russ Brown, *WA Association 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, Molly Stenovec

Public Guests: Jim Chambers, Joanne Smieja, David Trieweler

Welcome and Agenda Review

Amanda welcomed grid Subgroup members and invited them to share reflections on the most recent Task Force meeting. A member mentioned a good dialog on disproportionality, specifically that both prosecutorial and judicial discretion potentially able to contribute to disproportionality. Another member recalled the Task Force explicitly discussing its three policy goals to keep the conversation focused. In response, a member noted that effectiveness of the sentencing system (one of the three policy goals) can mean a lot of things. Chris Page observed that the Task Force had previously provided input on desired outcomes and will discuss them further at May meeting. He also shared that the desired outcomes mention balancing discretion and addressing disproportionality but do not specifically mention transparency, which can help reveal disproportionality to allow it to be addressed.

A member mentioned the [Sentencing Reform Act \(SRA\)](#) and the specific goals or purposes listed in it. Another member noted the complexity of the system, pointing out that each person views the world from where they exist in it. They shared that they think there is common ground among Task Force members to help decrease the complexity of the system. A member reminded the group about the disproportionality throughout the system, pointing out that it also exists “upstream” before a defendant reaches the courts. Another member mentioned that the conversations about concurrent and consecutive sentencing had many separate potential recommendations and said they would like more time to discuss them. A member appreciated learning about the complexity of the firearm offenses.

Discussion- classification proposal/washouts and potential recommendations

Keri-Anne shared a spreadsheet showing the simulated revised grid with Class A offenses broken out into A1, A2, and A3 (to separate the most severe from serious violent and serious violent from violent). The spreadsheet listed specific offenses by offense seriousness level (OSL) and included associated washouts (see visual below). She reviewed the potential recommendations based off the previous grid subgroup meeting and conversations.

Keri-Anne showed the simulated grid the Task Force has been developing, Class C offenses would all reside in offense seriousness levels (OSLs) 1-5; Class B would reside in OSLs 6-9, and Class A offenses in OSLs 10 and higher. Keri-Anne showed the Subgroup a spreadsheet showing potential washout periods for different OSLs and offense classes. The spreadsheet included an added offense class of D for all the currently unranked offenses. Class A offenses would be separated out into three sub-classes, to delineate the most heinous (A1) from the serious violent (A2), and the serious violent from the violent (A3). Each sub-class would then have its own washout period. The “straw” grid delineations, with washout periods and statutory maximum sentences listed, is below.

SL	Class	Offense	Vacate	Stat Max	Washout*
	A1		N/A	Life	Life
18		Aggravated Murder			
	A2		N/A	40 yrs	15 years against other SV offenses
13		Assault 1			
13		Assault of a Child 1			
17		Homicide by Abuse			
11		Kidnapping 1			
12		Manslaughter 1			
17		Murder 1			
16		Murder 2			
13		Rape 1			
	A3		N/A	20 yrs	10 yrs
		All other current class A felonies			
	B		8 yrs	10 yrs	8 yrs
		All class B felonies			
	C		3 yrs	5 yrs	3 yrs
		All class C felonies			
	D		2 yrs	3 yrs	2 yrs
0		All "unranked" felonies**			

Potential Recommendation: Divide class A felonies into 3 groups:

- A1 - Offenses receiving Life Without Parole/Death sentence

- A2 - Serious Violent offenses
- A3 - Class A Violent offenses (excluding Serious Violent offenses)
 - Recalibrate the seriousness level of A2 offenses into SLs 14 - 17
 - Recalibrate the seriousness level of A3 offenses into SL 10 - 13
 - Create a class D felony for all unranked offenses and reclassify offenses
 - Recalibrate Statutory Maximum, Washout period and Vacation period by class.

The justifications noted for the potential recommendation are listed below.

Functions Related to Offense Classification:

- Statutory Maximum term
- Washout period
- Violent offense status
- Offense vacation time period
- Offense Severity to certain extent (more egregious offense->higher offense classification->higher SL)
 - Existing hierarchy with offense classification (A, B, C) and with serious violent, violent, non-violent offense categories.
 - Logical to place high classification/serious violent offenses higher on grid than high classification/violent offenses. (A current example: Unranked class A offense can get a sentence of 0-365 days, but is considered a violent offense like Rape 2, and never washes out.)
 - Increasing the number of offense classifications may be viewed as adding complexity; however, it could also be viewed as reducing complexity by making transparent and explicit a number of crimes already separated by existing hierarchies (that are not apparent on the grid). It would also apply other functions such as stat max, washout and offense vacation terms more specifically and in concordance with research.

Dr. Lauren Knoth- Peterson noted the more information you can put on the sentencing grid, the more transparency is provided. It could potentially allow practitioners to reference a single sheet of paper that had all the sentencing information.

Amanda noted that the grid subgroup has had previous conversations about the possible need to reclassify certain offenses. This proposal would essentially create clear guidelines for seriousness levels on the grid.

A member said they like the idea of having A1, A2, A3 levels based on the seriousness of the crime. It would help allay some individuals' concerns.

Keri-Anne also noted that currently there are some class A offenses in lower seriousness levels.

Amanda reminded the group of some of the vertical axis potential recommendation to move class B offense to SL 9 or below.

Potential recommendation: Divide class A felonies into 3 groups:

- A1 - Offenses receiving Life Without Parole/Death sentence
- A2 - Serious Violent offenses
- A3 - Class A Violent offenses (excluding Serious Violent offenses)
- Create a class D felony for all unranked offenses and reclassify offenses
- Recalibrate Statutory Maximum, Washout period and Vacation period by class.

Keri-Anne noted that the only difference in this recommendation from the one discussed previously, expect without the reranking of the seriousness levels.

The difference between washout and vacate was discussed. Vacate means you can request from the court that your record of conviction be removed ([see RCW 9.94a.640](#)). Washout is only for criminal history score calculations. Keri-Anne also shared that the washout periods are based on a person's release date or on the date of Judgement & Sentence, whichever is earlier. This means it does not include incarceration time.

Discussion/Questions

A member shared that the model penal code notes that a growing body of longitudinal research shows that, after seven to nine years from past criminal conduct (varying by type of offense), the likelihood that a person will commit a new crime is the same as for a person with no record.

A member asked if there is any research showing what length of incarceration is necessary for reduction of recidivism. Dr. Knoth-Peterson reminded the group there is no research that shows that and noted that the presentation from Dr. Kurlychek at a previous meeting said that recent past behavior is the best predictor of future behavior.

Another member noted the model penal code also encourages a commission to create a sliding scale in its criminal-history guidelines, to incrementally depreciate the weight assigned to prior offenses as they become more remote in time (before their legal significance expires entirely). Dr. Knoth-Peterson noted this is related to decay vs. washout.

A member said their perspective is that washout doesn't matter unless an individual commits another crime. It's for those that continue to repeat their behavior.

Is the washout period a retributive or risk assessment justification? The literature we are discussing looks at risk level.

Members appreciated the discussion on retributive vs. risk assessment literature, with one asking if there is a way to distinguish a washout. Keri-Anne noted the washout column of A2 says "15 years against other serious violent offenses" means that if they committed another serious violent offense it would count against the washout period.

A member asked if there is research on the number of times an individual commits an offense before getting caught? Dr. Knoth-Peterson noted that there is some research gathered from

victims' statements; if there is a crime with serious bodily injury and a physical victim there is a higher likelihood for an arrest.

A member asked if there is information on what the recidivism rates are for class A offenses and sex offenses? Dr. Knoth-Peterson didn't have specific numbers on hand but noted that violent offenses tend to be lower as do sex offenses. She shared data from a WSIPP report on recidivism, [*Washington State Adult and Juvenile Recidivism Trends: FY 1995-FY 2014*](#) (see Exhibit 10), which shows the breakdown of recidivism and the related type of index offense (violent felony, felony, misdemeanor). A member asked if there is information on recidivism rates for domestic violence cases and Dr. Knoth-Peterson noted the WSIPP report does not have information on domestic violence cases. She also noted the goal is to look at the recidivism data every 5 years.

Keri-Anne also shared that the policies focus on the ordinary and typical offenses. For the atypical or extraordinary offenses there are ways for judges to address those offenses through aggravators or mitigators. She also noted that the Sentencing Guidelines Commission made a recommendation about recidivism in a previous report.

Chris asked if anyone is not able to live with this specific proposal? Some members said they needed more time to look at it and requested to see what it looked like overlaid on the full grid.

Next Steps

Once these discussions 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

N/A

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

Is there earlier data on recidivism? No, need to have 4 years of data at the time of publication.