

**Washington State Criminal Sentencing Task Force  
Sentencing Grid Subgroup  
Meeting Notes: June 7<sup>th</sup>, 2022  
Meeting via Zoom**

**Attendees:**

- Tiffany Attrill, *Interests of Victims of Crime*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Senator Chris Gildon, *Washington State Senate (Republicans)*
- Rep. Roger Goodman, *Washington State House of Representatives (Democrats)*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission (SGC)*
- Greg Link, *WA Association of Criminal Defense Lawyers*
- Kameon Quillen, *Interests of Victims of Crime*
- Melody Simle, *Families of Incarcerated Persons*
- Judge Wesley Saint Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer, *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Blaze Vincent, *Interests of Incarcerated Persons*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

**Research/Technical Support Consultant:** Dr. Lauren Knoth-Peterson, Washington State Institute for Public Policy

**Facilitation Team:** Amanda Murphy, Chris Page, Zack Cefalu

**Public Guests:** Jim Chambers, Bruce Glant, Alex Mayo, Joanne Smieja, David Triewailer

**Welcome and Agenda Review**

Amanda welcomed Grid Subgroup members and provided a recap of last week's discussion. She then walked through the agenda for today's meeting, to discuss the number of columns of criminal history score (CHS).

**Levels of Criminal History Score**

To frame the dialogue, Dr. Lauren Knoth-Peterson reminded members of the philosophies of punishment, and how CHS is used to gauge the likelihood of recidivism. It is a held belief that past behavior is a predictor of future behavior, but as Dr Kurlycheck explained, it is a predictor of *recent* behavior. Data analysis by the Council of State Government Justice Center demonstrated that in sentencing guideline systems across the nation, there is a positive correlation between offender score and recidivism rates, however Washington seems to be the exception to that rule. The SGC recommended additional analysis be conducted to better understand the CSGs findings and this work is currently being conducted by the Statistical Analysis Center.

Pennsylvania is currently going through a similar effort as this Task Force in reviewing its sentencing guidelines system and putting together a package of recommendations. The Pennsylvania Commission on Sentencing has a recommendation to reduce their number of scoring columns from eight to three. They use a risk-based model, and their recommendation is based on research they conducted showing that no additional risk of increased recidivism comes with a score of three as opposed to a score of two.

A member asked why the Subgroup continually hears about findings and steps Pennsylvania and not any other states. Lauren explained that Pennsylvania (PA) is the only other state that has undertaken a comprehensive review and update of its sentencing system. In addition, Pennsylvania uses a grid system with many similar features to Washington State's and in its revamping of the system has considered the same types of variables, issues, and approaches that the Task Force is deliberating.

PA calls CHS "Prior Record Score" or PRS. The new PA system determines PRS category by identifying the person's most serious previous adjudication or conviction offense and then determining the number of previous offenses with the same grade.

PA's study called "Distribution of Offenders across PRS categories" conducted by an academic review board for the state found no functional difference in the risk of recidivism across certain levels of PA's PRS. That same study also found a disproportionately high percentage of African American individuals in the PA system with higher PRS levels.

The rationale for PA combining PRS levels:

- No functional difference in the risk of recidivism across certain levels of PRS (CHS)
- Expansion and protection of judicial discretion
- Lowering racial disproportionality

**Question for discussion:** *Should Washington consider having fewer levels of CHS?*

A member asked what impacts it would have to combine CHS columns, expressing concern about increasing sentences for 1 and 2 if 1-3 combine and increasing sentence lengths for CHS 4 and 5 if 4-6 combine. Since PA has not yet implemented the changes to its grid, no research has been done on the impact of combining CHS levels.

A member observed that higher CHS indicates greater culpability for the current offense, as per the retributive philosophy. The member asked if there are any other aspects other than CHS, such as age, for example that contribute to the likelihood of a person committing another offense? Lauren responded that while a person's likelihood of committing crime decreases as they age (a phenomenon known as the age-crime curve), the number of variables in addition to

age that can contribute to recidivism makes it difficult to add age into the calculus of the sentencing system.

A member suggested that combining CHS levels to widen the sentence ranges may provide increased discretion and latitude to agree to a more appropriate and just sentence for each individual than the current system allows. Another member expressed support for enabling a holistic approach to determining sentencing for each case based on the specific circumstances of the offense, the characteristics of the individual being sentenced, and all the unique elements of each situation.

A member explained that most prosecutors recognize that judges would benefit from having more discretion in sentencing. In response to the concern that combining columns would bring longer sentences for some, the culture of sentencing is shifting toward consideration of more factors than just sentence length, e.g., sentencing alternatives and their conditions, treatment options to address underlying causes, and the programs and services available during incarceration.

Another member provided several observations around the current system:

- The State Supreme Court has widened judicial discretion to allow for consideration of individual cases.
- The Legislature has added offenses to the list of those that qualify as Two Strikes and Three Strikes crimes.
- The creation of drug courts and now the Mental Health Sentencing Alternative combine with these to show an ever-evolving system.
- The Blake decision adds complexity by creating opportunities for resentencing in cases that criminalized innocent conduct.
- The age of the Sentencing Reform Act (SRA), combined with the direction of police and prosecutors, has led to a system with sentences so long that people remain in prison for periods longer than necessary.
- The most important elements to ensuring a person will not commit future harm is to provide them with treatment for underlying issues (e.g., mental health or substance use disorder) along with education and job training, then housing and community supports upon release.

The member expressed support for empirical approaches (those based on data) to revising the grid, noting that the theories that informed the SRA and subsequent revisions to the grid were not based on empirics but rather concerns about specific crimes occurring at the time.

Lauren provided information about research on desistance. The process of desistance from crime over time has three distinct elements: deceleration, de-escalation, and reaching a ceiling. As people move through those phases, e.g., de-escalating behaviors, they are showing signs that they are not as high a risk to public safety as they once were. The same goes for deceleration - committing crimes less frequently.

A member suggested combining CHS levels at lower levels of the grid to allow for more discretion while retaining distinct CHS levels at higher levels when a person’s past behavior relates to more serious conduct. Another member questioned this approach, in that if CHS columns were combined, then individuals with a lower CHS (e.g., 1 if columns 1-3 combined or 4 if columns 4-6 combined) could potentially receive a longer sentence than they would currently, while those with higher CHS (e.g., 3 if 1-3 combine or 6 if 4-6 combine) may receive a shorter sentences.

For example, in the simulated grid combining CHS score columns 2-4, at OSL 5 the range would be 4-22 months. The additional column for aggravated circumstances would enable the addition of up to six more months so would expand the range to 28. Concerned that this could lead to greater racial disproportionality when it comes to sentence lengths.

Simulated Grid																				Agg Departure Cap	Repeat Violent	
0	1	2	3	4	5	6	7	8	9+													
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	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	48 mos	60 mos
16	104	138	114	152	126	168	138	184	152	203	167	223	184	246	203	270	223	297	297	397	48 mos	48 mos
15	93	124	102	137	113	150	124	165	136	182	150	200	165	220	182	242	200	267	267	356	36 mos	48 mos
14	82	110	90	121	100	133	110	146	121	161	133	177	146	195	161	214	177	236	236	315	36 mos	36 mos
13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274	24 mos	36 mos
12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233	24 mos	24 mos
11	50	67	55	73	60	81	67	89	73	98	81	108	89	119	98	130	108	144	144	192	24 mos	24 mos
10	39	52	43	58	47	63	52	70	58	77	63	85	70	93	77	102	84	113	113	151	24 mos	12 mos
9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	12 mos	12 mos
8	14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	12 mos	12 mos
7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82	12 mos	12 mos
6	10	13	12	16	14	19	17	23	21	28	25	34	30	41	37	49	44	59	51	69	12 mos	12 mos
5	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54	6 mos	6 mos
4	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45	6 mos	6 mos
3	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36	6 mos	6 mos
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27	6 mos	6 mos
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	6 mos	6 mos
Unr	0 - 365 days																					

A member suggested that increased transparency could offset the risk of increased judicial direction leading to more disproportionate outcomes. Regularly collecting data on sentencing across the state and making it public would show where this sentencing disparity is occurring so that it could be addressed.

A member commented that a system in which 98% of sentences are determined by a prosecutor and defense attorney is not a healthy system, especially when the former can propose longer sentence charges and use it as leverage in bargaining. Another member replied that that gives too much credit to prosecutors and assumes that defense attorneys do not stand up for their clients.

A member explained how many people who are and have been incarcerated do not feel that they were well represented by their defense attorney and that public defenders get called “public pretenders” by those in prison. The incarcerated are human beings; expanding sentencing ranges without knowing what the impact or outcome of doing this would be would not be supported by incarcerated persons.

Amanda observed that the Subgroup continually returns to the issue of plea negotiations and prosecutorial discretion; it could help to discuss openly the power dynamics among the executive, legislative, and judicial branches of the system. She reminded members that they were overtime and that would need to continue discussions next week.

**RESEARCH AND INFORMATION SHARED VIA ZOOM CHAT DURING MEETING**

- <https://pcs.la.psu.edu/guidelines-statutes/sentencing/comprehensive-review-of-sentencing-guidelines/>
- From Clela: In FY 21, 31% of the non-drug grid sentences had score of zero, but that includes unranked offenses where the person could have criminal history and have a score of 0.
- [http://www.wsipp.wa.gov/ReportFile/1736/Wsipp\\_Examining-Washington-State-s-Sentencing-Guidelines-A-Report-for-the-Criminal-Sentencing-Task-Force\\_Report.pdf](http://www.wsipp.wa.gov/ReportFile/1736/Wsipp_Examining-Washington-State-s-Sentencing-Guidelines-A-Report-for-the-Criminal-Sentencing-Task-Force_Report.pdf)

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

Joanne Smieja: I agree with Lauren. Because we count current offenses in the criminal history score, we have many people who enter the system for the first time but they land up with a criminal history score that is not 0.

Bruce Glant: Prosecutors along with WSP manufactured the net nanny sting with each county and created the crime for individuals going onto adult dating sites looking for adult women or men. it was agreed by prosecutors that they would charge the harshest of charges they could with the longest sentences. Some 90% are FTO's, 65-70% pleas, 25-30. % are under 25.