

Washington State Criminal Sentencing Task Force
Grid Sub-Group
Meeting Summary: August 9th, 2022
Meeting via Zoom

ATTENDEES:

- Clela Steelhammer, *Caseload Forecast Council*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Gregory Link, *WA Association of Defense Attorneys*
- Representative Roger Goodman, *Washington State House of Representatives (Democrats)*
- Nick Straley, *Interests of Incarcerated Persons*
- Brian Smith, *WA Association of Sheriffs and Police Chiefs*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Melody Simle, *Statewide Family Council*

Facilitation Team: Chris Page, Molly Stenovec, Alec Solemslie, Maggie Counihan, Zack Cefalu

Public Guests: Bruce Glant, David Triewiler, Joanne Smieja

Welcome and Agenda Review:

Chris welcomed the group and reviewed the agenda for today's meeting. The Subgroup will spend the first 20-30 minutes discussing how they all would like to move forward with the input from the August 4th Task Force meeting and when to have the discussions. They will then focus on turning potential recommendations #16, 12, and 11 into proposed recommendations.

Facilitation team will begin asking for RSVPs to the August 31 & September 1 meetings, to gauge whether Task Force will have two back-to-back in-person full day consensus building sessions or whether one day will be held virtually and one day in-person. Chris asked that the members please prioritize the in-person meeting on September 1st as this day focuses on consensus on the proposed grid.

August 4th Task Force Meeting Debrief:

Chris informed the Subgroup that he and Amanda both met with Chief Smith and Chief Cobb on Friday following the Task Force meeting to discuss their desire for a potential recommendation for the inclusion of programming and treatment into the grid. Chris then invited Subgroup members to review and debrief the Task Force's input from the meeting.

Grid Subgroup Discussion:

- A member said that they believe robust programming and treatments should be available the very first day when someone is incarcerated. If the new proposed grid reduces sentencing ranges, then their constituency would like comprehensive and robust treatment/rehabilitation programs built into the grid and visually depicted. They are excited and hopeful about developing such a recommendation and provide an

avenue for funding. Cost saving from potentially shorter sentences should be used to fund these programs.

- The details of such a policy will be critical, noted need to know what kind of programming the group means? Will funding go to DOC or non-profits? The type of providers will be key for supporting such a recommendation. Non-profits tend to be turned away from being part of the solution to programming in prisons and jails.
 - Initial discussions have mentioned mental health professionals, drug treatments, job training, and educational programming being the type of programming, but the group has not discussed whether DOC or community orgs would implement.
- Will these programs be designed to rehabilitate those incarcerated and focus on making people better neighbors?
 - Yes, the idea is to prepare people to make a living-wage and be better neighbors as a way of reducing recidivism/increasing public safety.
- A member wanted to thank Chief Cobb and Chief Smith for coming forward to this proposal and being creative with solutions to make progress. Additionally, they hear the concern about service providers, and they are interested to discuss this further.
- There is a need to also invest into community factors to support successful reentry such as community supervisors/mentors, housing, and other factors that need funding once someone has been released. Including a recommendation about rehabilitation and reentry supports could help gain political support for other CSTF recommendations.
- Expressed support for developing this recommendation as a standalone potential recommendation. Expressed concern about group reaching consensus on the proposed grid, and while they are happy to get together with the Task Force to further try to play with the numbers or classification of offenses, they do not think this will lead to consensus. Consequently, they want this potential recommendation to be separate from the proposed grid so that this has a shot at consensus.
- Several members expressed support for creating standalone recommendations for funding and developing reentry/rehabilitation programs. Expressed concern that group(s) who oppose reductions in sentencing guideline ranges in the SW corners and lower OSL rows, could also block recommendations to increase programs—if that program funding is tied to potential cost savings as a result of reductions in confinement. Decoupling cost savings from potential sentencing reductions and the recommendation for resources for programs/services, increases the likelihood for the latter to come to fruition.
- A member stated that the SW corners are the area their constituency is willing to work within as those are the bulk of the sentence's prosecutors deal with, as the Task Force moves up to greater OSLs and CHS their constituency will have concerns and does not support reductions in sentencing guideline ranges.
- While majority of sentences are in the SW corner, also need to think about those incarcerated come in the top areas of the grid. 18% of our prison population is Black and for a state that claims to be as progressive as it is this is embarrassing and if the group cannot coalesce around this point, then they agree to let this continue. Our prison population is disparately made up Black and Brown Washingtonians and supporting the status quo keeps these disparities intact. This member agrees that the Task Force will

likely not reach consensus and they will not reach consensus on a proposal that has us re-investing at some point in the future as this may never come.

- Expanding programming will also need to consider who is eligible, who gets funding, the potential cap on enrollment-- so many factors that cannot be seen right now. The Task Force must make sure they are not wasting their time here on this by just throwing money at DOC to provide programs that won't do what the Task Force is hoping to achieve.
- Another member stated HB 2010 took education out of the prisons. Treatment and sentencing should be together. If there are savings, those resources should go to the programs and services. Expressed concern that decoupling the recommendation would cause a weakened proposal—see need to integrate sentencing grid and savings reinvestment, an
- Expressed concern consensus on the grid, then the services proposal should be decoupled so that it does not sink with the grid. If there is a recommendation that includes savings be reinvested at some time, that works. They can all say that more funding should be present, but some don't want to put a strong recommendation with another proposal that is not going to get consensus. Can all agree on more funding for services but include a statement that savings should not move somewhere else.

Chris suggested 3 paths forward for the grid:

1. Keep the current proposed structure and formulaic approach. Then request each constituency to bring forward the offenses that they would like to see reclassified and where they feel these offenses need to be reclassified, and how those changes add value and meet the policy goals of the Task Force.
2. Keep the current proposed structure and formulaic approach. For anyone who cannot live for the current formulas, they can propose new formulas and share how those changes will need to fit everyone's needs, as well as the policy goals of the Task Force
3. Toss out all the numbers in the grid and focus on reaching consensus on the overall structure of the new proposed grid (e.g., serious violent/violent separation; Class A above B above C; nothing over stat max, consistent increase in ranges moving L to R across CHS)

The Grid Subgroup and Task Force will continue to reflect on the proposed grid and what modifications could meet the needs of their constituency, while still meeting the needs of others.

Discussion on Potential Recommendations #11, #12, and #16:

Chris transitioned the Subgroup towards building proposed recommendations from the potential recommendations starting with Potential Recommendation #16

Potential Recommendation 16:

Eliminate the aggravated departures that are not required to be pled/proven (eliminating the stipulation as an aggravated factor)

- Requires that there be a particular characteristic/circumstance justifying the aggravated exceptional sentence.

Grid Subgroup Discussion:

- A member expressed mixed feelings about this, prosecutors hold a lot of discretion that dictates what a person's charges will be, including aggravators. Judges should already be articulating reasoning for aggravating departures under the status quo. Nothing binds judges to the agreements. They can see the usefulness of this from a data gathering standpoint, but this does not change any operations of the system.
- This would help explain the purpose of aggravators and transparently explain the details around plea agreements and what was pleaded and proved to get these aggravating departures.
- Noted that statutes already require courts to include considerations in determining an appropriate sentence but saw value in a recommendation that could increase transparency in sentencing.
- This could potentially improve effectiveness through increased transparency, group has often discussed the need for greater transparency.
- Interested in a discussion about how this meets the three policy goals
- Noted that many plea agreements cite “all parties agree”—generally support greater transparency but expressed concern that greater details could lead to more individualized sentencing which would violate case law/statutes.

During discussions members have described aggravated sentences and plea deals as a way to avoid three-strikes. More details and transparency could illuminate the rationale behind plea deals or provide data about the effectiveness of three-strikes policy.

After some discussion, the group expressed support for bringing the following recommendation to the Task Force. The facilitation team will also reach out to Dr. Knoth-Peterson for additional information/context for this recommendation.

Proposed Recommendation: ***Require that any aggravating departure has reasoning articulated in the J&S, including any additional information, particular characteristic, or other circumstance justifying aggravating departure.***

This will require that the J&S record more details about the reason for aggravating departures for both plead and proven and non-plead/proven agreements (e.g., charge bargain to avoid three-strikes sentence, charge reduction, reduction in total number of charges) but do not eliminate the ability to stipulate to the aggravated sentence.

Potential Recommendation #12:

For all sentences longer than 20 years, require a second chance review at 20 years of incarceration with the presumption of release.

Grid Subgroup Discussion:

- Could not support the recommendation with the presumption of release. Interested in excluding some offenses, such as aggravated murder and murder 1, or potentially increasing the length of time before those two offenses can be reviewed.
- In 2015 and 2019, the SGC put forth legislation to require a review for all sentences at 15 years and at 20 years for all murders—those thresholds were based on research in risk/recidivism. Prior to SRA, average sentence length for murder 1 was closer to 15 years—that average has increased over past 40 years.
- The juvenile standard is currently around 20-25 years, so the group could potentially model based on the juvenile system, mirror the language in the juvenile second chance such that there is a presumption of release, unless a preponderance of evidence indicates that the individual would be a risk to public safety.
 - According to RCW 9.94A.730(3), *“The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.”*
- Second chance review policy could address and mitigate racial disproportionality in the current system.
- Note that the Task Force considered, and did not reach consensus, on a similar recommendation in 2020, and that there are other groups/legislators who have/will be introducing legislation in the upcoming session. Some noted that Task Force support on a second chance policy could help generate support; some noted that the Task Force could spend limited time/resources on other policy recommendations.
- How does the current clemency process meet the need of this potential recommendation?

Clemency as a second review creates more complications, such as political issues and potential racially disproportionate outcomes. This requires the Governor to sign off on each release and could create varying views on who/if anyone should receive a second look and turn this into a political action. Has the implication for when a governor changes party or administration, there is a different outlook on who should receive clemency.

- A member expressed frustrations with the clemency process because governors are inconsistent in their use of granting clemency. They would not support this idea as this is not a second look review and the group should not waste time going down this rabbit hole.
- Suggested modification: *“Establish a mechanism for second chance review at 20 years for all offenses (excluding aggravated murder)”*

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- Concerned about exclude aggravated murder, they feel the group is back-tracking from what they initially talked about in 2020.
- Concern about having the review threshold match the mandatory minimum--suggestion to raise post-conviction review threshold, potentially to 25 years, as well as eliminate the presumption of release.

Potential Recommendation 11:

For aggravated murder 1 change the language from:

“Life sentence without parole/death penalty for individuals **at or over the age of eighteen**. For individuals under the age of **eighteen**, a term of twenty-five years to life.”

to

“Life sentence without parole for individuals **at or over the age of twenty-five**. For individuals under the age of **twenty-five**, a term of twenty-five years to life.

Grid Subgroup Discussion:

- Changing the age threshold to 21 would align statutes with case law—this statute as currently written is unconstitutional due to the WA Supreme Court Case decision Monschke and Bartholomew. Our approach should be to at least catch up to what the Supreme Court has decided.
- Individuals who were between 18 and 21 at the time of conviction for aggravated murder 1 are currently getting resentenced. Noted that individuals being released are not eligible for supervision and reentry supports.
- The group discussed using 25 as the age threshold. Some pointed to brain science and other legislative policy changes recognizing the continued brain development between the ages of 18 and 25. Some pointed to the varied thresholds of adulthood, such as voting or driving ages, and noted that by 25 individuals could have achieved secondary degrees, started families, and/or served terms in the military.
- Age 25 is not politically tenable but at least age 21 is possible in the current political climate in Washington.

After some discussion and revision to integrate input, the Grid Subgroup developed the following proposed recommendation for consideration of the Task Force:

Proposed Recommendation: “Life sentence without parole for individuals **at or over the age of twenty-one**. For individuals under the age of **twenty-one**, a term of twenty-five years to life.” In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.

Action Items:

- Melody to send a list of non-profits who would be good providers and those who are severely under-staffed and under-resourced that would benefit from funding.
- Russ will send changes to the proposed grid recommendation that he feels he and his constituency could support.

No Comments Submitted By Guest Observers Via Zoom Chat And/or Email