

Washington State Criminal Sentencing Task Force
Grid Sub-Group
Meeting Summary: September 6th, 2022
Meeting via Zoom

ATTENDEES:

- Clela Steelhammer, *Caseload Forecast Council*
- Brian Smith, *WA Association of Sheriffs and Police Chiefs*
- Melody Simle, *Statewide Family Council*
- Chris Gildon, *Washington State Senate (Republicans)*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*
- Nick Straley, *Interests of Incarcerated Persons*
- Representative Roger Goodman, *Washington State House of Representatives (Democrats)*
- Greg Link, *WA Association of Defense Attorneys*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Judge Wesley St. Clair, *Sentencing Guidelines Commission*

Facilitation Team: Chris Page, Alec Solemslie, Zack Cefalu

Research Team: Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy*

Public Guests: David Trieweller, Bruce Glant, Jim Chambers, Audrey Koreski,

WELCOME AND AGENDA REVIEW:

Chris welcomed the group and reviewed the agenda for the meeting. The Subgroup will continue to work through turning the remaining list of potential recommendations into proposed recommendations. Today the Grid Subgroup will start this work with picking back up with the discussions on Three-Strikes recommendations.

Chris asked the group to identify a date for the Grid Subgroup to have an all-day working session to address the input and concerns from the Task Force on the New Proposed Felony Sentencing Grid. The group identified Monday the 19th as a possible date in Olympia for this meeting.

Chris then asked the Grid Group to reflect on the two days of Task Force meetings last week and how the Subgroup thinks these went and to offer reflections:

Discussion:

- At the September 1st meeting there was a recommendation that members give Dr. Knoth-Peterson some guidelines to help calibrate numbers on the grid. Specifically, to adjust the formulaic grid to a point where 80% of cells have no change more than 5-10% from the current range. This could help Dr. Knoth-Peterson a lot.

- What should these changes be based on, the minimum or the maximum of the cell? The way the formula works now, there are little changes in the maximums but more in the minimums. This could look as if there's a larger reduction in sentencing ranges from the old grid to the proposed grid, but this is not the case as the ranges are just now widening.
- The range midpoints are the guiding points that can show how the guideline ranges would change.
- Aren't percentage decreases much smaller in the top OSL ranges than at the bottom areas of the grid? If the goal is to use percentages, then this is already successful, the largest reductions are seen in the SW corner.
 - The SW corner has a different philosophical approach – to reduce incarceration; at the top areas in the grid is to maintain accountability for actions while also reducing lengthy sentences.
- Would be helpful to have a visual that shows the differences in midpoints from the current grid to the new grid; this could be very helpful to highlight the differences.
- In an effort to ease tension around offense calibration that will accompany the new grid, if the Subgroup can re-rank the most frequently sentenced serious offenses, this could give them a better understanding of what will happen with these offenses?
- adjustments based on keeping 80% of cells with changes no greater than 5-10% reductions is trying to standardize something that has not been historically standard. Sentencing ranges were arbitrarily chosen in the 1980s, this is not the appropriate way to structure this grid. The ranges should be designed by following empirically based evidence to ensure it's effective.
- A visual depicting either the overlap in ranges based on midpoints or potentially one based on proposed amendments can help visualize the changes between the grids. That could reduce uneasiness some constituencies have when they see the alignment between areas of the current grid and the proposed grid in either the midpoints or percentage changes.
- The pursuit of the perfect should not get in the way of creating a better product, while certain constituencies are locked in their position and if these amendments can help to move the conversation forward then this should be pursued. This is an incremental process.

Three-Strikes Recommendations:

Building on discussions last week about potential recommendations surrounding Three-Strikes the Grid Subgroup agreed to eliminate both options 27a (eliminate and do not replace Three-Strikes) and 27c (replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life).

Option 27b was also modified from *"Replace 3-strikes mandatory sentence with determinate plus - 25 years with opportunity for release"* to *"Replace 3-strikes mandatory sentence with determinate plus sentencing"*.

Proposed Recommendation 27b: Replace 3-strikes mandatory sentence with determinate plus sentencing

How this would work:

- Some standard sentence ranges will have a maximum below 25 years and some may have above 25 years. Instead choose determinate plus where the judge sets time within standard range and then they are reviewed for potential release or continued detention.
- Judges would issue a standard sentence as if three strikes did not exist. The sentence would then be converted to a determinate plus sentence with a minimum of the sentence issued by the judge and a maximum of life.
- Minimum of the term would be the sentence imposed by the judge within the standard range. Review every 2 years for potential release thereafter.

Additionally, during the 8.30.22 Grid Subgroup meeting there came an additional recommendation to be included—**Potential Recommendation:** Recommend that the Legislature review the offenses included in the most serious offense list to potentially reduce the number of offenses eligible for the three strikes sentencing.

Grid Subgroup Discussion:

- Has the group already considered and dismissed developing a recommendation to eliminate Three-Strikes all together?
 - Yes, the recommendations being considered are the ones the group feels that could have the most success with the Task Force.
- How does this work? When are people considered for release?
 - Rather than require a 25-yr plus sentence, it would give the judge discretion to sentence within the standard range of the felony and the repeat column would be activated. The minimum of the term would be the sentence set by the judge within the standard range providing for review every 2 years for potential release extending until the statutory maximum in the standard range. This extends judicial discretion at the initial sentencing phase that would then set the minimum range of this sentence.
 - 2-year review would continue until stat max
- Noted similarity with life with the possibility of parole, where the parole review begins where the minimum of the range the judges determines.
- How would statutory maximums relate? Currently, Persistent Offender law trumps statutory maximums. Would that still be the case with these eligible determinate-plus sentences, or would the statutory maximums be reinstated for these sentences? Is this determinate plus to life or determinate plus to stat max?
- If it is stat max, then there would be some confusion. If it is life, it is more clean-cut and less complexity and less errors.
- Would this persistent offender law supersede statutory maximums below life in the way that the third strike does? If someone's third strike is a Class B, C, or unranked felony that is subject to statutory maximum would this be overridden?
 - In most cases, those who receive their third strike are receiving this strike for mostly Class A offenses so the statutory maximum would be life.
 - The maximum would be set at Life and if the offense is a Class B or C this amendment should trump that stat max.
- Is there a way to see what the original 17 strikes were? This way the group may see how the list has changed and expanded over the years.

- the original 17 three strikes: [SHB 1062 1995-1996](#). [RCW 9.94A.030](#) contains the current offenses
- How is this different from sex offender sentencing?
 - Sex offender sentencing does not have something that supersedes statutory maximums associated with offenses, still has an avenue for review with potential for release.
 - Sex Offender Policy Board (SOPB) is reviewing all sentencing related to sex offenses
- Are people sentenced under this law subject to the new columns?
 - Yes, someone would be sentenced by the judge how they normally would be, absent a repeat offender law, then their sentence would be subject to a determinate life sentence. Because of this they would still be subject to the columns. The columns expand the standard range of sentences that the judge can choose anywhere within that range to be set as the minimum of their term.
- Concern with this recommendation as this feels like double retribution for the same offense before they are even able to see a parole board.
- This, even in the highest case, increases the sentence by 10% on the maximum, these people would be subject to expanded sentences even under the current grid due to multipliers.
- Can the judge use both the aggravator and the repeat column?
 - The minimum for the three strikes is that the judge can use all tools on the grid as sentencing at a standard range (both columns and other scorings)
- This seems that the group is essentially re-creating Three-Strikes under a different name, is there a possibility people can receive sentences they can complete until parole on their third-strike or would this essentially recreate mandatory life sentences with an opportunity of parole that's so far away it is not likely people could live to receive parole? This member is concerned this isn't really a change because low likelihood of release from ISRB, so likely to be life anyway.
- This discussion could pair well with recommendations that the group has to review sentences at 20 years, in addition to review for lengthy sentences that recommendation could also extend to a specified age for those incarcerated.
- This is an opportunity for the group to say that elements of the sentencing grid are not effective and not a deterrent. Science has also illustrated the ineffective nature of the status quo and the financial obligation associated with caring for older people that are incarcerated.
- This would create a determinate sentencing system that operates with indeterminate sentences, concern that this would increase both complexity and potential for errors.
- The Task Force should look to other states that repealed Three-Strikes to see if there are any ways in which Washington could model from them.
 - Other states have created parole eligibility, different min and max ranges, increased judicial discretion, others have replaced three strikes with something else
 - many other states have revised their three strikes laws – including proposals aligned with this proposal to make offenses parole eligible after a minimum term.
- Currently there are about 56 total three strike offenses. New ones listed in sentencing manual include: malicious explosion, malicious placement, homicide by watercraft reckless and DUI, over 18 deliver heroin/meth/etc. to someone under 18.
- There are inconsistencies in strikable offenses, for example, the fact that sexual motivation is limited to Class B felonies, but deadly weapon applies to all, including Class C. This might indicate that there is a need for a review of the offenses eligible for strikes. This refers to the

new potential recommendation that the legislature review the offenses included in the most serious offense list to potentially reduce the number of offenses eligible for the three strikes sentencing.

The Grid Subgroup agreed to propose both options forward to the Task Force.

Proposed Recommendations: Replace 3-strikes mandatory sentence with determinate plus sentencing
AND

Recommend that the Legislature review the offenses included in the most serious offense list to potentially reduce the number of offenses eligible for the three strikes sentencing.

Potential Recommendation #26:

Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three-strikes must be treated as elements of the crime. Pled in information. Proven to a jury beyond a reasonable doubt. Individual acknowledges and agrees in a plea agreement.

Grid Group Discussion:

- If the above recommendations about Three-Strikes passes consensus to change to a determinate-plus model then is this recommendation still necessary?
- Uncertain about the purpose of the plead and proven
- If there is the possibility to sentence someone to life then there should be heightened burdens of proof, under the model replaced by Three-Strikes this used to be a requirement as well. This, under the way it operates in the status quo, is a departure of how the state sentenced people before 1993, this was the standard practice under habitual offender statute that was replaced by the persistent offender statute.
- How is this done?
 - Trial of conviction of previous charges, focuses on identifying the existence of priors. Would bring in the certified judgment in sentences from prior convictions, might need to bring in copies of J&S documenting the convictions. Frequently done by stipulation now, bringing in judgements from those priors and officials who issued them.

Potential recommendation: Repeal habitual offender law

The group agrees to move forward with recommendation 26 as proposed.

Proposed Recommendation: Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three strikes must be treated as elements of the crime. Pled in information. Proven to a jury beyond a reasonable doubt. Individual acknowledges and agrees in a plea agreement.

Chris closed the group and stated the group will continue to review potential recommendations next week.

Adjourn

Resources Shared via Chat: 1995 Three-Strikes definition: [1062-S.SL.pdf \(wa.gov\)](#)

Action Items: Dr. Knoth-Peterson to make visuals showing deviances from the current grid to the proposed grid in the midpoints of the ranges.