

Washington State Criminal Sentencing Task Force
Sentencing Grid Subgroup
Meeting Summary: August 23rd, 2022
Meeting via Zoom

ATTENDEES:

- Clela Steelhammer, *Caseload Forecast Council*
- Gregory Link, *WA Association of Defense Attorneys*
- Brian Smith, *WA Association of Sheriffs and Police Chiefs*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Melody Simle, *Families of Incarcerated Persons*
- Chris Gildon, *Washington State Senate (Republicans)*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Keri-Anne, *Sentencing Guidelines Commission*

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Alec Solemslie, Zack Cefalu

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

Public Guests: Bruce Glant, David Trieweiler, Joanne Smieja, Jim Chambers

WELCOME AND AGENDA REVIEW:

Amanda welcomed the group and reviewed the agenda. The group will be discussing the remaining *potential* recommendations to decide whether/how to turn them into *proposed* recommendations for the August 31st Task Force meeting. Those include:

- Address and turn into Proposed Recommendations: #30, 31, 32 (misdemeanor scoring)
- Address and turn into Proposed Recommendations: #26, 27a, 27b, 27c (three strikes)

Chris recapped the group's work last week addressing potential recommendations 28, 28a, 29a, and 29b. Now the group is going to look at Recommendations 30, 31, and 32 as well as 26 and 27a-c. Amanda informed the group that they are currently behind schedule. The facilitation team is going to discuss with the co-chairs the workplan for the remainder of the year. Options being considered: starting in October, the full Task Force may need to transition into two full-day Task Force meetings a month to complete their work by December or continue their work past December and into the new year. Finally, Amanda reminded the group that **Wednesday the 31st is a virtual-only** meeting now so members can prioritize being in-person for the September 1st meeting.

Workplan Overview:

Aug 30th Grid Subgroup

- Address and turn into Proposed Recommendations: #34, 35a, 35b, 35c, 35d, 35e, 36a, 36b, 37a, 37b
- Address and turn into Proposed Recommendations: # 1, 5, 4

Aug 31st CSTF Meeting—virtual only

- Present Proposed Recommendations to the Task Force. The Sentencing Alternatives Workgroup will present the refined CISRS Program and other sentencing alternative recs.

Sept 1st CSTF Meeting is in-person consensus deliberation on Proposed Recommendation: New Felony Sentencing Guidelines Grid

DISCUSSION: TURNING POTENTIAL RECOMMENDATIONS INTO PROPOSED RECS

Potential Recommendation 30: Eliminate the special misdemeanor scoring exceptions for homicide or assault by watercraft offenses and reclassify to the same OSL as the felony traffic offense.

Amanda reviewed previous discussions, noting that most Task Force members generally supported this recommendation at their June meeting. Amanda asked if there is anything that needs to be addressed or if it should be presented as is to the Task Force.

Grid Group Discussion:

- A member said the group should keep this scoring similar to what they proposed about DUI scoring, to maintain special misdemeanor scoring exceptions for prior homicide or assault by watercraft offenses when the current offense is a serious felony traffic offense. Homicide by watercraft should be in the same OSL as vehicular homicide and vehicular assault. The member expressed concern about the wide range of felony traffic offenses and how those might apply to watercraft.
- Another member voiced support for making this scoring similar to the proposed DUI scoring, since both homicide and assault by watercraft seem like behavior that people engage in after being intoxicated.
 - Assault by watercraft is in OSL4 but does not include a DUI component. Homicide by Watercraft does include a DUI component which is at OSL 9
 - Assault by watercraft is OSL 4 (nonviolent)
 - Homicide by watercraft – DUI (OSL9 violent, or V), Disregard (OSL7 V), Careless (OSL8 V)
- Noted that wealthier people own boats, and the group must keep this in mind in order to equitably frame this discussion and recommendation.

Several members discussed whether watercraft offenses should move up OSL levels or vehicular offenses move down, noting the importance of for parity among corresponding vehicular and watercraft offenses. After some discussion and revising, the group expressed support for presenting the following proposed recommendation to the full Task Force:

Proposed Recommendation 30: *Maintain the special misdemeanor DUI scoring exceptions for homicide or assault by watercraft offenses and reclassify homicide or assault by watercraft offenses to the same OSL as the corresponding felony traffic offense (by either increasing watercraft offenses to higher OSLs or reducing vehicular offenses to a lower OSL).*

Potential Recommendation 31: Eliminate the misdemeanor scoring exception and instead create an aggravated factor or enhancement. Maintain a way for judges to consider prior misdemeanor DV at sentencing. Aggravating factor would then be constrained under the potential recommendation for limiting increases in sentences as a result of aggravating factor. Potentially limited to offenses involving

the same victim/same relationship. Potentially an option similar to the repeat violent column approach.

Amanda reminded the group that many members expressed concern about eliminating misdemeanor scoring exceptions and what this would mean for Domestic Violence and DUI scoring. Dr. Knoth-Peterson said this recommendation was designed to utilize the new columns to address repeat DV while removing the special misdemeanor scoring. In the scoring, there are specific offenses with specific dates that would be kept. Felony Domestic Violence (defined in 9.94A.030) where DV was pleaded and proven:

- a. Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1^o, Kidnapping 1^o or 2^o, Unlawful Imprisonment, Robbery 1^o or 2^o, Assault 1^o, 2^o, or 3^o, or Arson 1^o or 2^o
- b. Count 2 points for each Adult offense where DV was pleaded/proven after 7/23/2017 for any of the following offenses: Assault of a Child 1^o, 2^o, or 3^o, or Criminal Mistreatment 1^o or 2^o.
- c. Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.
- d. Count 1 point for each adult offense for a repetitive domestic violence offense (misdemeanor/GMs), where domestic violence was pleaded/proven after 8/1/2011.
- e. Any other felony offenses count as standard.

The new columns address above sections a and b in the DV exceptional scoring rules, but not sections c and d. The DV scoring sections a and b go down to one point, but there is an increase in the maximum in their ranges.

A member suggested discussing Potential Recommendation 32 to determine how to move forward with Recommendation 31, thinking the new columns just deal with the multiplier aspect of the scoring rules. Amanda reminded the group about their discussions on how repeat DV and DUI misdemeanors indicate possible recurrence tendency. Recommendation 32 keeps prior DUI and DV in the calculation of CHS but limits the scope of SRA to limit CHS to only be counted by prior felonies minus DUI and DV. *After some discussion, the group decided not to turn this into a proposed recommendation for consideration by the Task Force.*

Potential Recommendation 32: Include language in the SRA that would define the scope of the CHS as limited to prior felony convictions other than DV and DUI.

This would lessen complexity in the sentencing system by limiting the inclusion of misdemeanors into the felony grid CHS scoring system, while still prioritizing DV and DUI offenses.

Grid Group Discussion Points:

- Concern that this is getting too close to the status quo.
- It would help to put bounds on the manipulation the Legislature might undertake; however, creating a list allows for the Legislature to extend the list in the future in such a way that returns special misdemeanor scoring rules.

- A member said that Vehicle Prowl would need to be added to this due to the conversations the Grid group had last week (and proposed as a recommendation).
- This is designed to put future bounds on Legislature decisions from including misdemeanor scoring in the felony grid to reduce complexity in the system.

The developed the proposed recommendation below, which incorporates input from the CSTF:

Proposed Recommendation 32: *Include language in the SRA that would define the scope of offenses that can be scored in the calculation of a CHS as limited to prior felony convictions other than DV, DUI, and vehicular prowling (conditional on vehicular prowling and DUI recommendations passing).*

The discussion about the inclusion of language in the SRA that allowed misdemeanor Vehicle Prowl 2^o in the CHS calculation led to a discussion surrounding Recommendation 29, which exists as, *“Reduce the OSL for Vehicle Prowl second degree (third or subsequent) to OSL 1 (the same as Vehicle Prowl first degree).”*

Potential Recommendation 29: Eliminate the special misdemeanor scoring exceptions for vehicular prowling and create a new subsection on Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner’s Permission 1st degree or 2nd degree for individuals with two prior misdemeanor convictions of vehicle prowling. Make these new subsections a higher OSL.

Grid Group Discussion:

This discussion focused on whether, if counting Vehicle Prowl 2 priors was a way for increasing CHS, the offense should be reduced in its OSL such that (in CHS 0) someone with 3+ Vehicle Prowl 2 priors would be the same OSL as someone with Vehicle Prowl 1.

- For Potential Rec 29, a member’s constituency is one of the groups who supported its passage in the Legislature, so they feel they could not go back on this and eliminate the special scoring rules.
- Reducing Vehicle Prowl 2 to OSL 1 without eliminating its special scoring rules would only potentially affect 2 points for any given person’s CHS; after the three or more Vehicle Prowl 2 priors these would be counted as normal, as they would be felonies. Since this change would only have a visible affect for the 2 points, could the group live with this as a proposal?
 - In response, a member said their constituency would not support these changes as they do not see this as complex or see how any changes would decrease complexity.
 - Another member said because this is rarely charged, its potential complexity would not have a significant impact. They opined that this is not a serious crime and there are already felonies that exist for attempted vehicle theft that are Class C felonies.
- Another member suggested creating parity between Vehicle Prowl 1 and 2 by moving Vehicle Prowl 1 to the same OSL by increasing it to align with Vehicle Prowl 2.
- Dr. Knoth-Peterson asked whether reducing the OSL and eliminating the scoring exceptions OR reducing the OSL and keeping the scoring exceptions both reach the same goal—or should there be a third option to eliminate the scoring rules but not move OSLs at all, this captures the idea that Vehicle Prowl 2 priors deserve higher punishments due to the demonstrated escalation of behavior. Dr. Knoth-Peterson asked, “if the OSL stayed the same, would constituencies support the removal of the special scoring?”

- This proposal would have the following effects on the sentencing ranges for Vehicle Prowl 2:
 - Keeping Vehicle Prowl 2 at OSL 4 with the special scoring rules in the proposed grid has a range of 4-14 months (12-14 in the status quo grid). Keeping this at OSL 4 but eliminating special scoring would change this range to be 2-9 months, but keeping special scoring and reducing the seriousness to OSL 1 would change this range to be 1-5 months.
 - Vehicle Prowl 1 is a more serious offense than Vehicle Prowl 2, but this is not included in CHS scoring for offenses like Theft of a Motor Vehicle or other offenses like this, so why is Vehicle Prowl 2 taken into consideration for these and at a higher OSL?
 - Vehicle Prowl 1 is meant to be considered on par with a Residential Burglary but is ranked lower than residential burglary and Vehicle Prowl 2. Also, Vehicle Prowl 2 is ranked higher than offenses such as Attempted Theft of a motor Vehicle or Taking of a Motor Vehicle without Owner Permission which does not make sense.
 - Suggestion that the recommendation could be that the SGC should review the parity of offenses in relation to vehicular prowling, and that the group tables vehicular prowling until next week while the research team cleans up the discussion.
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Three-Strikes Potential Recommendations:

Amanda asked if anyone knows if there is any upcoming legislation that concerns Three-Strikes or if anyone knows of any other working groups doing work concerning Three-Strikes. WAPA has heard of offers about 2nd chance reviews on life sentences, and the same with clemency. Another member shared that work on second chance reviews by other entities should not affect the work of the Task Force. Things often change during Legislative session, and this makes it hard to know what people will be working on or pushing for, so the Task Force should focus reforming the current system even if there is other work parallel to ours. In 2020, the group did not reach consensus on post-conviction reviews.

A member pointed out that there has been second chance legislation and juvenile legislation in the past 3 sessions, but they think that it is independent of the work the Task Force is doing.

Potential Recommendation 27:

Three potential options concerning three-strikes.

- a. Eliminate and do not replace three-strikes.
- b. Replace 3-strikes mandatory sentence with determinate plus - 25 years with opportunity for release.
- c. Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life.

Grid Group Input:

- Option C would expand judicial discretion to allow judges to pick sentences, while B limits judicial discretion and increases discretion for the Independent Sentencing Review Board (ISRB) to essentially create a parole system. WAPA would most likely support Option B, expressed concern about ISRB as entity to review sentencing

- What is determinate plus?
 - The judge picks a minimum in the standard range. The maximum is the maximum of the offense. In sex offenses currently. When the person reaches the minimum, the individual is reviewed for release, then reviewed every 2 years
- For families of those incarcerated, also expressed concern about ISRB as entity to review sentences, noted preference for Option C
- Another member offered that for their constituency, the best option is Option A. If not Option A, then Options B and C should be combined to include judicial discretion that sets a minimum term not to exceed 25 years and then an ISRB review at 20-25 years to determine potential release.
- Another member said there could be a more nuanced approach with the type of offenses that can leave intact Three-strikes for serious offenses such as murder, rape, child molestation, etc. and remove three-strikes for offenses such as assault or robbery/
- Three Strikes in WA requires a crime-conviction-crime-conviction-crime model where someone cannot get multiple strikes in one spree, it requires someone to fully serve their sentence for the first 2 strikes first before the third strike can be on the table.
- A member mentioned that while several constituencies would support Option A (to eliminate Three-Strikes), other constituencies would oppose this. They suggested the public would oppose its repeal also, since 76% of Washingtonians voted for three-strikes.
 - Another member responded that Washington was the first state to ever pass Three-Strikes legislation—at a very different time culturally, during the peak of the crime wave in the 1990s. Voters passed it after it failed to pass the legislature.
 - The evidence from extensive research demonstrates no added public safety or reductions in recidivism due to three-strikes laws and actually has shown that in regions that have these laws, they lead to increased violent crime especially against law enforcement officers.
 - The 1990s were a very different time culturally when discussing our response to crime and not sure this law would receive support from 76% of Washingtonians today.

Group discussed the following revision: *Replace Three-Strikes mandatory sentencing with mandatory minimum of top of standard range with maximum up to determinate plus sentence with mandatory review starting at 25 years.*

Action: Amanda closed by asking members to bring verbiage that their constituencies could live with for recommendation 27. The research team will try to get the breakdown of individuals in DOC with three-strikes and the demographics.

Adjourn

Action Items:

- Dr. Knoth-Peterson will revise Potential Rec 29 based on today's discussion and try several scenarios capturing the group input and return to this conversation next week.
- All members to bring verbiage that their constituencies could live with for recommendation 27.
- The research team will try to get the breakdown of individuals in DOC with three-strikes and the demographics.