

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: January 24, 2020
Digital Conferencing Technology

Task Force Attendees:

- Judge Veronica Alicea-Galvan
- Rep. Roger Goodman
- Russ Hauge
- Ashley Jackson (on behalf of Sen. Manka Dhingra)
- Keri-Anne Jetzer
- Roger Rogoff
- Melody Smile
- Nick Straley
- Jon Tunheim

Facilitation Team: Amanda Murphy and Hannah Kennedy– William D. Ruckelshaus Center

WELCOME & REVIEW PURPOSE OF WORKING GROUP

Amanda Murphy welcomed working group members to first call and introduced Center support staff, Hannah Kennedy. Amanda reviewed the agenda and purpose of the call, noting that this first call would be process focused. Not all members are required to participate in a working group. The facilitation team and co-chairs are looking for a subset of folks to organize and analyze all potential policy recommendations, to determine if and what additional research is needed, and to present their analysis to the wider Task Force for feedback and consideration. The Sentencing Effectiveness Working Group will focus on potential recommendations related to improving the effectiveness of the sentencing system and sentencing grid.

WORK PLAN

Amanda walked the group through the Task Force 2020 work plan. Pending approval by entire Task Force, the facilitation team recommends the following schedule:

- February – April: working groups collect, organize, and analyze potential recommendations;
- April – July (mtgs. 4-7): working groups present these potential recommendations and analysis, soliciting feedback from the wider Task Force to incorporate into further analysis and recommendation refinement;
- August (mtg. 8): develop preliminary combined recommendation list of reentry and sentencing effectiveness recommendations; and
- September – November (mtgs. 9-11): refine recommendations and prepare final Task Force report.

SUMMARY TABLE FOR TRACKING POTENTIAL RECOMMENDATIONS

Amanda presented a draft summary table for the working group to use as an organizing tool to track potential recommendations and the working groups analysis and discussion of these potential recommendations.

The Working Group discussed utility of the summary table and agreed adding additional columns to track potential tradeoffs and key issues associated with each recommendation would be helpful.

Action item: Center staff will add additional columns to the summary table and will take a first crack at filling out portions of the table, starting with the recommendations and info provided in the Sentencing Guidelines Commission report.

The Working Group also discussed the utility of beginning the recommendation analysis work without the wider Task Force first agreeing whether to seek incremental changes or a system-wide overhaul of criminal sentencing.

Key topics discussed included:

- Concern that working group efforts are attempting to *bite something off in the middle* without a collective (i.e., Task Force) understanding of where we are headed.
- Discussion about what level of detail the working group will/should discuss.
- The challenges and opportunities associated with both determinate and indeterminate sentencing systems.
- A desire to ensure consensus on what type of change (i.e., incremental or fundamental) the Task Force is seeking. Some working group members acknowledged the difficult and time-consuming nature of analyzing even just one approach.

Amanda suggested the revised recommendation tracking summary table could be a helpful place to start. The Sentencing Effectiveness Working Group could capture all the important issues and topics associated with different recommendations on paper. Working group members agreed beginning to fill out the table with the Sentencing Guidelines Commission's two options to reform the sentencing grid could be a good place to start and may help the wider Task Force decide what type of change (i.e., incremental or fundamental) to pursue.

Decision: Russ Hauge nominated and confirmed as point person for the Sentencing Effectiveness Working Group.

DRAFT

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: February 25, 2020
Digital Conferencing Technology

Task Force Attendees:

- Diane Ashlock
- Russ Brown
- Rep. Roger Goodman
- Russ Hauge
- Keri-Anne Jetzer
- Nick Straley

Facilitation Team: Amanda Murphy, Chris Page, and Hannah Kennedy– William D. Ruckelshaus Center

WELCOME & REVIEW PURPOSE OF WORKING GROUP

Amanda Murphy welcomed Working Group members to the second Sentencing Effectiveness call. She informed the group that Russ Hauge stepped down as lead/point person for this Working Group and asked if anyone would volunteer to speak for the Group to the Task Force. No member stepped forward, so the Group decided to proceed without a lead for the time being.

JANUARY MEETING SUMMARY

Members reviewed the draft meeting summary from the Working Group’s previous call, suggesting one correction to the attendance list.

Decision: all members present accepted the 1/24 Working Group meeting summary (as edited) as final.

SUMMARY TABLE FOR TRACKING POTENTIAL RECOMMENDATIONS

Amanda reviewed the draft summary table that members will use to organize and assess potential recommendations. Since the last call, the Facilitation team incorporated Working Group member feedback and added columns to capture *key trade-offs, key issues, and potential impacts* for various recommendations.

A working group member pointed out that some recommendations might be pertinent to both the Sentencing Effectiveness and Reentry Working Groups. To ensure all potential recommendations are captured, the facilitation team encouraged members to add any and all recommendations to the summary table or contact the Ruckelshaus Center with suggestions for the other working group to consider.

Action item: Chris and Amanda asked members to begin thinking about, and populating, the summary table ahead of the March Task Force meeting.

ORDER AND SEQUENCING OF RECOMMENDATIONS DISCUSSION

Amanda and Chris asked the group to consider *where and how they would like to begin the Sentencing Effectiveness Working Group* conversation.

The Working Group discussed recommended Options 1a and 1b from the Sentencing Guidelines Commission’s (SGC) 2019 report:

- Option 1a would increase most sentencing grid cell ranges but leave the drug grid, mitigating and aggravating factors, and enhancements intact.
- Option 1b would create a new two-step sentencing grid with significantly wider cell ranges, subsuming the drug grid and incorporating mitigating and aggravating factors and enhancements.

Multiple members recommended the Group discuss ways to harmonize the two options. According to one member, Option 1b suggests a way to combine the two; however, the SGC ran out of time to reach consensus, thus offered both recommendations in its report. Harmonizing would take time and require a willingness to compromise between those who want to stay with the current system and those who want to increase judicial discretion. This may require the Group to decide whether to center discussions of sentencing and justice around retribution, restitution, rehabilitation, risk, or reintegration.

Another member asked that the Working Group consider recommendations that allow for the creation of a Justice Reinvestment Account.

The Working Group also discussed additional information and examples from other states they could use to inform their work.

Action item: Facilitation team to collect information on sentencing reform efforts from Pennsylvania and the Federal system.

DRAFT

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: March 19, 2020
Digital Conferencing Technology

Task Force Attendees:

- Sen. Manka Dhingra
- Rep. Roger Goodman
- Russ Hauge
- Keri-Anne Jetzer
- Lauren Knoth
- Greg Link
- Chief. James Schrimpsner
- Melody Smile (alternate for Suzanne Cook)
- Clela Steelhammer
- Jon Tunheim
- Councilperson Derek Young

Guests:

- Adam Hall
- Sidney Oliver
- David Tredweiler

Facilitation Team: Amanda Murphy and Chris Page – William D. Ruckelshaus Center

WELCOME, REVIEW AGENDA, & SUGGESTED GROUND RULES FOR ZOOM MEETINGS

Amanda Murphy and Chris Page welcomed Working Group members, acknowledged the challenging time, and reviewed some best practices for effective virtual meetings.

The Facilitation Team (Amanda and Chris) updated members that Jon Tunheim has volunteered to serve as the lead/spokesperson for this Working Group.

Amanda and Chris asked Group members to respond to the following opening question: *Given all the events and circumstances in our community, what percentage of you is “in the room,” i.e., mentally engaged and with working technology?* Participants’ responses ranged from 60% to 100%, with many describing concerns and challenges related to the coronavirus pandemic.

The Group reviewed the meeting agenda and did not provide additions or questions.

Russ Hauge let members know he sent the Facilitation Team a memo based on the Sentencing Guidelines Commission’s (SGC’s) findings, outlining two distinct issues: 1) the problem of long sentences; and 2) the challenge of designing a tool that meets the needs of prosecutors, as well as judges and other actors.

Action Item: *The Facilitation Team will send the SGC memo to the Task Force along with the Working Group meeting notes and supplemental materials.*

DISCUSSION: DESIRED OUTCOMES OF FUTURE MECHANISM(S) FOR DETERMINING SENTENCING

The Facilitation Team summarized the last two Sentencing Effectiveness Working Group (SEWG) meetings, noting how conversations have focused on the sentencing grid, specifically the two SGC grid options. To encourage progress and help inform the grid choice discussion, the facilitators explained how this meeting might follow collaborative best practices by starting with a high-level discussion of values or common interests, focusing on *“what are the elements of a successful sentencing grid?”* The Group could create a working list of these desired outcomes to use as criteria when considering which grid option(s) to propose.

The Facilitation Team then provided the following first draft of desired outcomes for the Group to discuss (and use as criteria through which the Group might screen emerging draft Grid options) and asked members for input and revisions. Ideally, an improved sentencing grid:

- Balances discretion across the system
- Provides predictability for all parties
- Addresses accountability while decreasing unnecessary incarceration(s).
- Avoids shifting population from state prison to jails.
- Addresses inequities in the burden of the costs & workloads associate with incarceration
- Ensures adequate resources for both DOC & counties
- Eliminates unnecessary complexity
- Reduces or eliminates disparities / disproportionate impacts
- Addresses multipliers and enhancements

After discussing the above outcomes as potential screening criteria for new/improved draft Grid proposals, working group members agreed on the following changes:

- Add to the first bullet: "...and encourages and provides for individual rehabilitation that is trauma informed and based on risk, need, responsivity"
- Make the last bullet as a sub bullet under the first bullet and to add the following: "and consecutive sentences – sentencing ranges – mandatory portions of sentences – mandatory features that remove judicial discretion and led to longer sentences"
- Add an additional outcome: "Maximizes/increases the information available to the parties and the Judges to make informed decisions".

The Facilitation Team explained that these outcomes/criteria can be revisited at any time by the Group if a member suggests changes or additions. (A copy of the revised outcomes/criteria is provided in Appendix A to these notes.)

DISCUSSION: NEXT STEPS & HOW DO WE GET THERE?

The Facilitation Team explained that as of 3/19 the SEWG has discussed at least three options to consider for a grid-type sentencing mechanism: SGC option 1a, SGC option 1b, and the grid from the Justice Reinvestment Initiative (JRI). In addition, Group members have asked what approaches other states use. Therefore, the Facilitation Team asked Lauren Knoth, Senior Research Associate at Washington Institute for Public Policy (WSIPP), to provide a brief presentation on the national landscape and what types of sentencing systems other states are using.

Presentation on Determinate and Indeterminate Sentencing Systems across the U.S.

Lauren gave an overview of Determinate and Indeterminate sentencing systems, noting that most states have moved toward using a grid for sentencing and those that do not still rely heavily on codified ranges. Most states include some type of "prior record" consideration along with the variable of the severity of the offense; in those systems not explicitly arrayed in a grid format, these two elements can be combined to create a grid. Lauren emphasized the importance of understanding that simply knowing if a state is indeterminate or determinate or structured or unstructured doesn't always mean that two states are comparable or highly dissimilar.

While states may be primarily indeterminate or determinate, no state is purely one or the other. Sentencing guidelines comprise just one example of a structured component of sentencing. Lauren showed members a map of the U.S. that showed each state's primary sentencing system (determinate and indeterminate) and which

states have incorporated a structured component (*see Appendix B. for Lauren's presentation and the map*).

Some key points from Lauren's presentation and the Group discussion:

- There are many permutations of these systems, especially with the increasing proliferation of risk assessment instruments.
- New Mexico, Maine, and New York have a determinate sentencing system but not a structured sentencing system (e.g., no sentencing grid).
- Data shows that in states where guidelines are advisory the overwhelming majority of sentences still fall within the guideline range.
- Even states with indeterminate sentencing may have mandatory minimum sentences, which are a type of determinate sentence.
- Some states have a grid but allow judges to issue sentences that depart from the grid.
- Several states use bounded discretion, allowing certain levels in some areas but recognizing that increasing it in one part of the system should decrease it elsewhere.
- Virginia has a mechanism to identify low risk individuals who can benefit from diversion to community supervision instead of incarceration.
- Risk assessments at sentencing (to determine what level of supervision is likely necessary) function differently than those done during incarceration (e.g., how can we get the individual into treatment?).
- Two important things not captured on the map:
 - The availability of pre-sentence investigations (PSIs) and
 - The use of sentencing risk assessment instruments.

For example, Washington and Pennsylvania do PSIs for felony cases; however, in Pennsylvania, the local probation department completes the PSI while in Washington, DOC conducts the PSIs.

- In Washington, many felony cases receive a PSI, while in Pennsylvania, only about 15% of cases receive a PSI due to resource constraints. That creates fundamental differences in the types of information available to the judge during sentencing, regardless of whether they are sentencing within a grid and/or whether that grid is mandatory.
- Pennsylvania has incorporated a tool to identify the 15% highest risk and 15% lowest risk individuals, prioritizing PSIs for high-risk individuals since they are more likely to have underlying conditions that can benefit from treatment.

Following Lauren's presentation, the Facilitation Team created a table with the desired outcomes/criteria from earlier in the meeting and four sentencing grid options discussed by the group to date (SGC option 1a, SGC option 1b, JRI, and other/blended). The Group then discussed the opportunities and challenges associated with sentencing alternative grids. The following bulleted list summarizes their conversation.

- The JRI approach sends those who commit violent crimes to prison and those found guilty of drug crimes to treatment. By separating the important categories of offense, it may be possible for the sentence to achieve positive outcomes.
- Perhaps there could be grids for certain categories of crimes (e.g., violent crimes, property crimes, and drug crimes), with bounded discretion to allow judges to tailor sentences to individual case circumstances.
- There are important differences between option 1a and 1b when it comes to discretion. Option 1a maintains Legislative control over sentencing, whereas 1b would transfer more authority to prosecutors and judges.
- A lot has been learned from the Drug Offender Sentencing Alternative (DOSA), and the drug grid seems to have widespread support.

- There is a need to lower sentences for violent crime based on the statistics and studies available; the extensive increases in sentence lengths over the years hasn't contributed to public safety. Department of Corrections (DOC) statistics show average length of prison stay as 23.9 months. Those in prison for property crimes = 16.7% of current prison population; those imprisoned for drug crimes now comprise 6.7%.
- Options 1a, 1b, and JRI are not mutually exclusive; perhaps there is a way to blend/harmonize these options.

The Working Group decided to create a sentencing grid subgroup to develop a blended approach of the sentencing grid options and will bring it to the full Working Group for discussion. The Working Group decided the following members should make up the subgroup:

- Lauren Knoth
- Representative Goodman
- Jon Tunheim
- Russ Hauge
- Greg Link
- Judge Rogoff or Judge Galvan (*since neither participated in this meeting, the Facilitation Team will ask both whether they have interest and ability, and encourage at least one to participate in the subgroup*)

Legislation Working Group Update

Representative Goodman provided members with an update on the session and the Task Force's legislation. He explained that the Sentencing Task Force process has resulted in three near-unanimous pieces of legislation that together will lead to positive improvements in the sentencing system.

ACTION ITEMS & NEXT STEPS

- The Facilitation Team indicated the April Task Force meeting will not occur in person due to COVID-19. If this is the case, the group will likely use the time scheduled to meet virtually as either the full Task Force or as Working Groups.
- The Facilitation Team will follow up with Judges Rogoff and Galvan to see if one of them can participate in the sentencing grid subgroup.
- The Facilitation Team will follow up with subgroup members to schedule a meeting.
- The Facilitation Team will send to the Task Force and the Working Group the following materials from this meeting:
 - SGC memo from Russ Hauge
 - Lauren's presentation materials
 - The National Council of State Legislators (NCSL) Report.

ADJOURNED