

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: June 10, 2020
Zoom Digital Conferencing Technology

Attendees:

- Lydia Flora Barlow
- Suzanne Cook
- Sen. Manka Dinghra
- Judge Veronica Galvin
- Rep. Roger Goodman
- Omeara Harrington
- Keri-Anne Jetzer
- Lauren Knoth
- Greg Link
- Judge Roger Rogoff
- Melody Simle
- Clela Steelhammer
- Nick Straley
- David Triewailer

Facilitation Team: Amanda Murphy, Chris Page, and Hannah Kennedy

WELCOME & REVIEW AGENDA

Chris welcomed members of the Sentencing Effectiveness Working Group (SEWG or working group) and reviewed the agenda. He addressed a few “housekeeping” items, including the grid Subgroup composition. The technical nature of the grid requires a diverse, yet small group to dive into the materials. However, the Subgroup is open to all Task Force members or alternates who wish to observe and track these meetings.

JUNE TASK FORCE MEETING REFLECTIONS

The SEWG debriefed the June Task Force meeting, focusing on addressing the Task Force’s input on their “first offer” of potential recommendations. Comments, questions, and responses are summarized below:

- A working group member reiterated concern about any step that would increase sentencing ranges on the top end. **R:** A Subgroup member noted no consensus has been reached, the potential recommendations discussed at the June Task Force meeting are just suggested paths the Task Force could take.
- **Q:** What do we mean by system improvements? Reducing complexity? **R:** For some SEWG members, simplicity means ending the complexities and constant changes to our sentencing system that have exacerbated the trends of increasing incarceration and longer sentences. Additionally, these constant changes make it difficult to understand the potential impact of any proposed changes to sentencing. Hopefully the emerging research proposal can help address this.
- A working group member requested the SEWG discuss earned time.
- Another member encouraged the SEWG to get “into the weeds” a bit more. There is not enough time in full Task Force meetings to discuss the details, so the working groups really need to do the heavy lifting.
- **Q:** Can the SEWG consider ways to incorporate recent brain science in sentencing, especially as it relates to young people being sentenced? **R:** There are two ways age operates in the sentencing system:
 - 1) **criminal history scores** are supposed to predict risk.
 - 2) We know that age is one of the strongest predictive factors for future recidivism.However, emerging brain science indicates that the legal age of adulthood, does not always correspond with completely developed **cognitive function**. The Subgroup has discussed youthfulness but reached no general agreement on if and how to address it in the grid.
- **Q:** Can we address geographic variations in the research proposal? **R:** While most members agreed it would be important to address geographic disparities, a lack of data could limit researchers’ ability to examine causal links. For example, Washington has 39 counties—each with separate court systems where judges and prosecutors respond to the communities they serve. These local cultural differences may make it difficult to

reach consistency across the entire system. Another member suggested disparities could be reduced if the State's Attorney's General's office handled appeals.

OTHER POTENTIAL SENTENCING EFFECTIVENESS RECOMMENDATIONS

Enhancements

Keri-Anne briefly summarized the 2019 Sentencing Guidelines Commission (SGC) report's discussion of enhancements. The SGC unanimously recommended eliminating mandatory stacking of enhancements and generally agreed enhancements should be eligible for "goodtime" based on the underlying sentence. The SGC and others have long acknowledged that enhancements top the list when you talk about system complexities.

- Several members suggested that all enhancements be reclassified as aggravating factors. Others think enhancements should be addressed on a case-by-case basis, as some (e.g., firearms and deadly weapons) are more politically popular than others.
- A working group member pointed out the many technical and structural conversations that go along with enhancements and suggested this could be a topic area for the Grid Subgroup to discuss.

Decision: SEWG agreed the Subgroup would discuss enhancements and determine whether the working group should present a potential recommendation to move all or some enhancements to the list of aggravating factors.

Multipliers

- A working group member hoped the Task Force could aggressively tackle multipliers as a key factor driving longer sentences. The member suggested ideas such as creating a repeat violent offense category in the grid, reclassifying certain offenses, or making repeat violent offense an aggravating factor.
- Another member suggested the SEWG may want to differentiate between criminal history score multipliers and current sentence multipliers.
- Other members said the SEWG should wait to tackle multipliers until research finding from the Statistical Analysis Center's investigation of criminal history scores become available.

The SEWG agreed the Subgroup would tackle multipliers as part of their work to improve the sentencing grid.

Intermediate Sanctions and Alternative Sentences

The working group generally agreed the Task Force should consider ways to expand alternatives to incarceration reduced incarceration sentencing options. Some courts are already experimenting with such programming.

Decision: The SEWG agreed to catalog existing sentencing alternatives to gauge whether they seem sufficient or whether additional options should be considered. The Subgroup will then look at how to incorporate sentencing alternatives into the grid. The Subgroup will also discuss intermediate sanctions.

Post-Conviction Review

- Several working group members noted the SGC and others have been working on post-conviction review for years. Across the state many parties agree that such "second look" options should be available but the details of any such proposed policy still need to be determined.
- Suggestion: eliminate mandatory stacking of enhancements such that the first would be required, but all subsequent enhancements would be subject to judicial discretion.
- Make enhancement time eligible for goodtime.

Keri-Anne explained the net cost-benefit results of these potential changes would be greatest if they are retroactive.

NEXT STEPS & ACTION ITEMS

- Facilitation Team to streamline format of summary table and provide working documents to Keri-Anne Jetzer and Greg Link.

- Keri-Anne to review potential recommendation topic areas assigned to the SEWG to note how each proposed recommendation meets the stated goals of the Task Force.
- Greg to review and revise potential recommendation language related to post-conviction reviews.

ADJOURN

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

Attendees:

- Sen. Manka Dinghra
- Rep. Roger Goodman
- Omeara Harrington
- Keri-Anne Jetzer
- Lauren Knoth
- Kelly Leonard
- Greg Link
- Sydney Oliver
- Judge Roger Rogoff
- Melody Simle
- Clela Steelhammer
- Nick Straley
- David Trieweler
- Jon Tunheim

Facilitation Team: Amanda Murphy, Chris Page, and Hannah Kennedy

WELCOME & REVIEW AGENDA

Amanda welcomed Sentencing Effectiveness Working Group (SEWG or working group) members and commended them for their ongoing commitment to this Task Force. She briefly reviewed past and future meeting schedules and then turned the meeting over to Jon Tunheim and Representative Goodman who updated the SEWG on recent Grid Subgroup (Subgroup) conversations.

GRID SUBGROUP UPDATES

Jon summarized recent Subgroup conversations on aggravators and enhancements, briefly defining both.

- **Aggravators** authorize a judge to impose sentences outside the standard presumptive range (but within reasonableness standards) up to the statutory maximum, while also triggering the right to appeal the sentence via a jury.
- **Enhancements** add onto a sentence automatically (i.e., impose a mandatory minimum). There is no right to appeal if the judge sentences within the standard presumptive range, with the enhancement portion of the individual's sentence not eligible for earned/good time.

The Subgroup would like the SEWG's input on how to address firearm and deadly weapon enhancements, by far the most common types of enhancements and ones with strong political support (voters passed the firearms enhancement by initiative). Jon described the various policy options the Subgroup has discussed and asked SEWG members to provide input on the following potential policy recommendations:

- Maintain the status quo but perhaps rename "enhancements" as "mandatory minimums" to more accurately reflect how they operate;
- Adopt an "enhanced range" approach, where certain factors (i.e., enhancements) when present, shift the presumptive standard range to the right (e.g., by 24 months), allowing judges to sentence within the new enhanced range (or the original range if mitigating factors were found); or
- Change enhancements to aggravators, enhancing judicial discretion and making such sentences eligible for earned/good time.

Representative Goodman emphasized the broad political support for firearm and deadly weapon enhancements. He also informed the SEWG of his plans to introduce legislation during the 2021 session that would eliminate stacking of firearm and deadly weapon enhancements, make them eligible for earned time, and remove the requirement that such enhanced time be served in total confinement.

Lauren Knoth (Washington Institute for Public Policy, aka WSIPP) shared a diagram of the current system and walked the SEWG through the expanded range option for aggravating and mitigating factors, using Pennsylvania’s grid as an example.

This bulleted list summarizes questions, comments, and responses from the SEWG’s discussion that followed:

- **Q:** Do all enhancements operate the same in Washington? Do they operate as originally intended? I’ve heard that despite the difference in structural language, they all basically operate as mandatory minimums. **R:** Most are characterized as expansions to the standard range but because they are not eligible for earned/good time and may be served consecutively, enhancements end up looking more like mandatory minimums.
- **C:** We have certain facts that we all generally agree lead to increased culpability, and we need to decide what to do with them. I don’t understand why one tool is right for a specific case but not for another similar case. Do we really need distinctions between the different tools (e.g., aggravators, multipliers, enhancements, etc.)? **R:** Some members felt the various tools are meant to serve the same purpose (i.e., impart longer sentences for factors deemed to increase culpability) but that the Legislature’s habit of reacting to the facts of specific cases has unintentionally increased complexity.
- **Q:** If Washington changed enhancements to aggravators, could you expect to see longer sentences than the mandatory minimum format because judges would no longer be bound to a fixed amount of additional time? **R:** Under our current system, yes, you could see even longer sentences, as the judges would only be bound by the statutory maximum and reasonableness standards. However, the Task Force may also recommend changes to the grid that could cap the amount of additional time judges could sentence when aggravating factors were found (similar to Pennsylvania’s (PA’s) model).
- **C:** The Sentencing Reform Act (SRA) was first developed with aggravators in mind, but few if any enhancements existed. In this sense, the original spirit of the SRA provided more judicial discretion, which has since shifted toward prosecutors with the addition of various enhancements and in the wake of the *Blakely* decision.

Amanda asked the working group to consider whether the enhanced range approach or another policy option could allow both judicial and prosecutorial discretion.

- **Suggestion:** Take an “enhanced range” approach, but only increase the presumptive standard range on the top end while keeping the original minimum sentence length. **R:** Even if the presumptive standard range is significantly widened (i.e., we increase judicial discretion), agreements between parties would still drive judges towards a specific sentence length because judges generally follow joint recommendations if the parties can agree.
- **C:** It is important to note that if the state uses a percentage for enhancements, the higher the prior record score, the greater the sentence length. PA ties such range increases to offense seriousness level; the SEWG may want to consider something similar.
- **Q:** What is the purpose of enhancements?
 - **R:** The practical purpose is to issue longer sentences.
 - **R:** Enhancements are created by the Legislature in response to specific types of conduct to address increased culpability based on particularly distressing factors of a crime. However, the outcome has certainly been longer sentences.
 - **R:** Enhancements and aggravators also serve to categorize crimes, no matter the offense type, by victim. For example, a state might decide that a crime against a pregnant woman, whether assault or theft, becomes more egregious because the victim is pregnant.
- **Q:** Are enhancements attached to specific offenses or to the overall action (i.e., all charges)? **R:** Enhancements are attached to specific offenses, and depending on the type of enhancement, it may be

applied to the sentence of the offense attached to the enhancement, or it could be applied to the sentence with the longest sentence.

EMERGING BASIC PRINCIPLES OF ENHANCEMENTS

A working group member suggested the SEWG establish agreed upon principles with regards to enhancements, and suggested the following:

- Enhancements do not need to be served in total confinement;
- Enhancements should be eligible for earned time;
- Enhancements should operate concurrently unless explicitly ordered by a judge; and
- Enhancements should not be applied if the factor is also an element of the crime or is considered in the criminal history score calculation.

Other working group members added the following “First Order” principles:

- Any potential recommendation related to enhancements should improve simplicity;
- Any potential recommendation related to enhancements should restore some judicial discretion; and
- Any potential recommendation related to enhancements should help avoid irrationally long sentences (the four bullets above primarily serve to address this).

POST-CONVICTION REVIEW

The SEWG reviewed draft language and notes for a potential recommendation related to post-conviction review. They discussed the need to consider retroactivity for any post-conviction review policy changes but did not necessarily agree on specific policy options.

Decision: the SEWG approved the draft potential recommendation language for post-conviction review and agreed to bring it to the full Task Force in August.

NEXT STEPS & ACTION ITEMS

- The Facilitation Team to follow-up with SEWG “homework.”
- The Subgroup will continue to discuss enhancements and develop related potential policy recommendations before moving on to multipliers.
- The SEWG will tackle sentencing alternatives and pre-sentencing investigations at its next meeting.

ADJOURN

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: July 8, 2020
Zoom Digital Conferencing Technology

Attendees:

- Senator Manka Dhingra
- Representative Roger Goodman
- Lauren Knoth
- Keri-Anne Jetzer
- Judge Roger Rogoff
- Melody Simle
- Clela Steelhammer
- Jon Tunheim
- Councilmember Derek Young

Facilitation Team: Amanda Murphy, Chris Page, and Hannah Kennedy

INTRODUCTIONS & REVIEW AGENDA

Chris welcomed Sentencing Effectiveness working group (working group or SEWG) members and reviewed the agenda. Chris noted that since no potential recommendations have yet been proposed, today's conversation would focus on eliciting concrete ideas for potential policy changes in the areas of sentencing alternatives and pre-sentencing investigations (PSIs).

SENTENCING ALTERNATIVES

Clela Steelhammer (Caseload Forecasting Council) reviewing the current state of alternatives to provide context for the working group.¹ For sentences of one year or less, courts are supposed to use alternatives to confinement when applicable. For each sentence of more than a year, a court must provide a written decision explaining why an alternative was not used; however, this is not always done in practice. Clela showed summary data on the frequency of various alternatives, disaggregated by race and county.² In providing a breakdown of sentencing alternative percentages by race and county, she cautioned that small sample sizes in some counties make it difficult to draw meaningful conclusions.

Questions/Comments/Responses

- **Q:** Is it possible to look at what percentage of alternatives consisted of "credit for time served"? This could help to know because some got charged but received credit for time served may be released right away, thus alternatives would not pertain even if available. **R:** It should be possible to determine how many individuals had access to alternatives (of those who had additional time to serve) and compare this at the state level.
- **C:** It would be helpful to see, within each race category, what percentage of all non-prison sentences received an alternative sentence. Such information could help us determine what outcome we should expect to see whether alternatives (to incarceration) are offered and applied equally across races/ethnicities.
- Some working group members suggested that a subset of those charged with a crime may turn down sentencing alternatives, preferring to *do the time* instead; however, other participants doubted this happens often.
- **Q:** Are sentencing alternatives always on the table during plea negotiations? **R:** Speaking from experience, yes, but it may differ across the state.

¹ The data Clela presented only includes alternatives to full confined sentences and thus does not include diversion programs.

² It should be noted that in CFC data, Hispanic is categorized as a race rather than an ethnicity.

- **C:** Between 1990 and 2010 it appeared the use of alternatives decreased somewhat. At one point, Drug Offender Sentencing Alternative beds were limited, leading to fewer alternative drug sentences, so scarce resources or other issues may contribute to the decrease in alternatives.
- **Q:** Are defendants sentenced to alternatives new to the criminal justice system? Is there an incentive of reduced criminal record for sentencing alternatives? **R:** There are eligibility requirements which generally favor first time offenders.
- **C:** Judges on the Sentencing Guideline Commission (SGC) would like sentencing alternatives incorporated into the grid. So the low number of alternative sentences issued might be in part due to a lack of information on various programs.

Keri-Anne Jetzer presented survey data on various county sentencing alternative programs collected by the Washington Association of Prosecuting Attorneys (WAPA) and the SGC. Not all counties responded to the survey, but many have established therapeutic courts. While the data is incomplete and most programs have not been evaluated, the information gives a sense of existing programs around the state.

Councilmember Young offered a local (county) perspective on sentencing alternatives, noting that differences in local resources across the state can lead to disparities. For example, whether an individual is charged with a felony or their record gets expunged after completing a program may depend on which county an individual gets charged in. Pierce County established the first drug court in the mid-1990s, and it has proven effective. Newer programs may not yet have enough data to properly evaluate. Councilmember Young credited the effectiveness of Pierce County's alternatives to the use of a social service model.

The working group discussed potential Legislative tools to increase the use of and access to alternative programs. Some suggested the state should authorize such programs and establish policies on their use, as discussed in past legislative sessions. A member pointed out that following the current statute as written today does more harm than good. Others suggested incentives to encourage counties to expand programming, for example:

- Offering state funding to expand the Drug Addiction Reduction Team (DART) but making funding contingent on Counties dropping a felony charge to a misdemeanor upon completion of DART, or
- Proposing something similar to last session's opioid response bill requiring counties to have a drug court in order to accept funds.

Several SEWG members also indicated these tools would be appropriate for the Legislature to examine as part of a justice reinvestment initiative.

Questions/Comments/Responses:

- **C:** Rather than making recommendations on specific types of courts, the working group and Task Force should focus on supervision, particularly looking at who should be supervised and for how long. **R:** Other members felt some sentencing alternative-specific recommendations would be helpful, particularly those that might address structural barriers in the Sentencing Reform Act (SRA) that prevent individuals from accessing programs.
- **C:** The Washington Institute for Public Policy (WSIPP) has studied some programs and found drug courts to be effective, DUI courts somewhat effective, but WSIPP has not been able to review veterans' courts.
- **Q:** What about creating a unified court system across the state? It would make things a lot easier and would definitely meet the Task Force's goal to reduce complexity. It would allow more transfer

between district and superior courts. **R:** Several members agreed a unified system would improve consistency and reduce complexity but acknowledged the political difficulty of doing so.

PRE-SENTENCING INVESTIGATIONS (PSIs)

Chris asked SEWG members to look at the draft language for potential PSI recommendations and encouraged members to refine the placeholder language from the SGC. He then invited Keri-Anne to provide some background on SGC conversations related to PSIs. Keri-Anne explained that judges were the driving force behind most of the SGC's 2019 recommendations on PSIs. They wanted more information available to judges, especially if judicial discretion were to be expanded. Risk reports are different from PSIs. As of now, anyone convicted of a felony sex offense or having a mental illness may receive a PSI. Prior to budget cuts in the mid-2000s, many more cases received PSIs; after budget cuts, Department of Corrections (DOC) limited PSIs and now only provides them when statutorily required.

Questions/Comments/Responses:

- **C:** If PSI eligibility were expanded, DOC may end up compiling PSIs for individuals who never end up in their custody.
- **C:** Several members noted that any recommendation to expand statutory PSI requirements should include resources to fund them.
- **Q:** Could PSIs be limited to where the judge has significant discretion, perhaps as something added to the Grid? **R:** This is something the Grid Subgroup could build into the grid research proposal. In Pennsylvania for example, the static risk assessment guides judges in ordering PSIs for individuals with very low and very high risks.
- **Q:** Are there any offenses that require a drug and alcohol assessment? **R:** Yes, see [RCW 9.94A.500 subsection \(1\)](#).
- **C:** A group member suggested finding a way to connect PSIs directly to a percentage of the cost savings associated with alternative sentencing programs, as this could help incentivize local governments to support PSI expansion. If part of the reason to do more PSIs is to defer individuals to alternative programs, perhaps counties could share in that cost savings directly.
- **Q:** If we look to expand PSIs in the lower quadrant of the grid (i.e., lower seriousness level and criminal history scores), will PSIs be conducted for people likely to be held in confinement longer (e.g., 60 days)? Would this increase jail populations as result? **R:** This is a potential unintended consequence. Furthermore, plea agreements and sentencing usually happen at the same time. If we mandate more PSIs, that could separate these two and cause additional unintended consequences, so limiting it to instances where judges have more discretion may make more sense.
- **Q:** What about clients risking additional admissions of guilt for different criminal activity? Would attorneys advise clients not to participate? **R:** PSIs would leave out individual interviews with defendants if they declined to participate or honor the request if they asked that certain information not get included. **R:** The SGC also discussed this issue and looked at the federal system.
- **C:** To avoid a significant increase in recourses to expand PSIs, and if the interest really is in understanding criminal history, we could propose PSIs only for those with a criminal history score of X or higher, IF resources are available. This would significantly reduce the number of cases but may still have a big impact. Another option might be to suggest requiring PSIs if the prosecutor seeks an enhanced or aggravated sentence, to address concerns about unnecessarily long incarcerations.
- **C:** If PSIs are based on criminal history scores, which are already racially disproportionate, we risk exacerbating this disproportionality.

- **C:** A SEWG member noted concern about PSIs included a sentencing recommendation, as there may be wide variation among different investigators. **R:** Judges on the SGC favored eliminating sentencing recommendations from PSIs.
- **Q:** If judges were given discretion to determine which cases get PSIs but superior courts had to pay for the investigations, would that curb the number of investigations ordered and conserve resources?

NEXT STEPS & ACTION ITEMS

The Facilitation Team reminded SEWG members that the working group would present their second offer of potential recommendations and findings to the full Task Force on August 6th.

- **ACTION ITEM:** All members should review the emerging potential recommendations (sent in follow-up emails by the Facilitation Team). Members should submit their suggested edits and/or additions prior to the next SEWG meeting and flag any potential recommendations they don't think should be put in front of the full Task Force.

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: July 22, 2020
Zoom Digital Conferencing Technology

Attendees:

- Lydia Flora Barlow
- Russ Brown
- Senator Manka Dhingra
- Representative Roger Goodman
- Lauren Knoth
- Keri-Anne Jetzer
- Greg Link
- Judge Roger Rogoff
- Melody Simle
- Clela Steelhammer
- Nick Straley
- David Trieweiler
- Jon Tunheim

Facilitation Team: Amanda Murphy, Chris Page, and Hannah Kennedy

INTRODUCTIONS & REVIEW AGENDA

Chris and Amanda welcomed Sentencing Effectiveness working group (working group or SEWG) members, reviewed the SEWG's revised working plan, and reminded members this meeting would serve as a last call for any potential recommendations they wish to present to the full Task Force in August. Jon Tunheim summarized the Grid Subgroup's recent progress, noting the Subgroup continues to examine enhancements and aggravators. Representative Goodman also noted his office is currently drafting legislation to eliminate automatic stacking of firearm and deadly weapon enhancements.

EMERGING POTENTIAL RECOMMEND

Chris shared the SEWG's working document of emerging potential recommendations. The working group walked through each recommendation to gauge which to offer to the full Task Force for consideration, which need revision, and which should be abandoned. Working group questions, comments, and responses are summarized below, organized by emerging potential recommendations.

1. *Establish mechanism for Post-Conviction Review, with Task Force continuing to monitor parallel efforts, nothing the need to deal with retroactivity.*

- The SEWG previously approved this potential recommendation and agreed to bring it to the full Task Force on August 6th. No additional comments, edits, or objections were made.

2. *Provide incentives for counties to increase the use of alternatives to incarceration (potentially by allocating "justice reinvestment" funds), modelling such programs on proven offerings (see [WSIPP Inventory of Evidence-Based, Research-Based, and Promising Programs for Adult Corrections](#)) and considering "upstream" (pre-court) options such as education/assistance initiatives.*

- **C:** This is not just the state's responsibility; counties should also own some fiscal responsibility. For example, access to *some* justice reinvestment funds could be made contingent on counties providing funding via a 1/10th of 1% tax. **R:** The Juvenile Justice Block Grant system might offer a model for this type of reinvestment system.
- **C:** Several members suggested recommending the Legislature establish a justice reinvestment account via the state treasury to support the expansion of alternatives to incarceration. The Legislature may hesitate to establish a separate account (political viability may depend on whether it is an appropriated or unappropriated account); however, establishing such an account could help sway counties and law enforcement groups in favor of sentencing alternatives expansion.
- *SEWG agreed to bring this potential rec before full Task Force and agreed Representative Goodman will present this policy option on August 6th.*

3. Assess and consider removing Sentencing Reform Act (and other) barriers to therapeutic courts and other alternatives to incarceration.

- **C:** The SRA is a barrier to therapeutic courts, and program availability varies by court. For example, deferred supervision is not available in Superior Court.
- **C:** Many actors have come up with ways around these barriers. For example, charges are often reduced from higher felony offenses to get individuals into veterans' or other therapeutic courts.
- SEWG agreed to bring this potential rec before full Task Force.

4. Engage Washington state Association of Counties, judges' associations, and other relevant interests in dialog around potential for unified court system — either statewide or within counties, between district and superior courts.

- **C:** Establishing a unified, statewide court system is a pipe dream and beyond the scope of this Task Force. The SEWG generally agreed but some members thought unifying at the county-level may be possible.
- **C:** Even just a unified filing system would be a huge improvement. If the Task Force is going to consider expanding pre-sentencing investigations (PSIs), we need to consider the data collection and reporting systems.
- **C:** It is worth noting that one of the fiscal drivers of increased PSIs is going to be figuring out how to file PSIs in various systems across the state. This is a good example of system complexity.
- **Q:** Is this something that needs its own Task Force? Can we develop a high-level potential rec to promote future integration and unification? **R:** It is worth noting, so that various groups can at least see what stands in the way of a more integrated and simplified system.

5. Adopt a less punitive approach to drug related crimes and reorient the system towards a public health and treatment model.

- **Q:** Should this recommendation be combined with 6? **R:** They should be kept separate because the interests and issues for each are distinct from the other.
- **C:** We should distinguish possession and use from distribution and violent behavior associated with drugs and decriminalize personal use in favor of creating medical or commercial markets.
- **C/Q:** "Decriminalize drug-related crime" seems too broad. For example, would this apply to an armed robbery where the primary motivation is to obtain drugs? I think prosecutors may have a hard time with this potential recommendation.
- **Q:** Could we include language around establishing a "pathway" out of criminal justice towards health/social support? The criminal justice system is a potential intervention point for some people.
- **C:** Even with a public health approach we need to be careful of disproportionality and make sure we're not just further punishing poverty.
- **C:** Members highlighted historic and continued racial and socio-economic disparities in drug-related criminal processing. The SEWG agreed potential recommendations should work to minimize these.

6. Decriminalize behaviors caused by mental health disorders and instead identify and implement public health approaches for addressing problematic behaviors caused by mental health disorders.

- **C:** SEWG members expressed concern for mentally disabled individuals in the criminal justice system. Senator Dhingra promised to share draft bill language for a mental disabilities sentencing alternative for the working group to review.
- **C:** At least one member asked that any recommendation related to mental health and ability consider impacts to those on the Autism spectrum.

- **Q:** Do we need to revisit diminished capacity defense? **R:** A SEWG member agreed that the diminished capacity defense should be revisited, particularly with regards to “voluntary intoxication.” Another member cautioned against proposing recommendations likely to increase complexity; other members argued reviewing/revising diminished capacity defense could meet the Task Force goal to improve public safety.
- **C:** A SEWG member expressed concern that mental health is not given appropriate credence in our criminal justice system, likely because we cannot always see it. **R:** This is why mental health courts are so important.
- **C:** Many incarcerated individuals do not have the faculties to manage daily living. If we want to promote successful reentry and reduce recidivism, we need to address underlying mental illnesses.

PRE-SENTENCING INVESTIGATIONS (PSIs)

The SEWG also briefly discussed PSIs but did not have enough time to fully review all PSI-related potential recommendations. The following summarizes the working group’s dialog in relation to PSIs:

- **C:** We should prioritize the times that a court can order a PSI based on the amount of discretion a judge has (i.e., PSIs should be reserved for cases where the defendant faces a wider sentencing range).
- **Q:** What about in situations where all parties agree to a specific sentence? **R:** We should still be careful and allow judges to order PSIs because the decision may have resulted from system pressures.
- **C:** Concern about prosecutors being the ones to request PSIs have been raised in other states, as this may lead to disparities and geographic differences. Therefore, we should be wary of putting PSI discretion in the hands of one party or an agreement between parties. Instead, requiring PSIs by case type might help mitigate disparate impacts.
- **C:** There is a lot of positive energy around PSIs in prison but if we look to expand use, we should also address historic issues of cultural competency and who is appropriateness to conduct them.

NEXT STEPS & ACTION ITEMS

The Facilitation Team reminded SEWG members they have one more meeting, on August 5th, to finalize potential recommendations to present to the full Task Force on August 6th.

- **Facilitation team** to revise the working document of potential recommendations to reflect this meeting’s discussion and share with SEWG.
- **All SEWG members** to carefully review potential rec 4 to ensure the facilitation team accurately captured discussion. Please send notes or revisions to the facilitation team by noon on Monday, 8/3.
- **Greg Link** to prepare draft text on how potential rec 4 meets the Task Force goals a-c, sending notes to the facilitation team by noon on Monday, 8/3.
- **Nick Straley** to review potential recs 5 and 6 and send revisions/notes to the facilitation team by noon on Monday, 8/3.
- **Senator Dhingra** to send draft mental disabilities sentencing alternative bill language and review potential rec 6, sending any additional thoughts or materials to the facilitation team and/or Nick Straley.