

Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: June 4, 2020 | 8:45am-12:45pm
 Virtual Meeting via ZOOM

Task Force Member Attendees:

- Judge Veronica Alicea-Galvan
- Lydia Flora Barlow, Co-Chair
- DeVitta Briscoe
- Suzanne Cook
- Senator Manka Dhingra
- Rep. Roger Goodman, Co-Chair
- Sonja Hallum
- Russ Hauge
- Rep. Brad Klippert
- Gregory Link
- Chief Rafael Padilla
- Secretary Sinclair
- Judge Roger Rogoff
- Chief James Schrimpsker
- Tarra Simmons
- Nick Straley (attended on behalf of Nick Allen)
- Clela Steelhammer
- Jon Tunheim, Co-Chair
- Councilmember Derek Young

Presenting Attendees: Clela Steelhammer- Caseload Forecast Council (CFC); Lauren Knoth- Washington State Institute for Public Policy (WSIPP)

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Hannah Kennedy, Maggie Counihan – William D. Ruckelshaus Center

MEETING GOALS

- Check-ins and updates from members
- Receive presentation on Washington’s Sentencing Reform Act
- Present and discuss “first offer” of findings and potential recommendations from Sentencing Effectiveness Working Group
- Review upcoming Task Force meetings and overall work plan

WELCOME, REVIEW AGENDA and GROUND RULES

Amanda welcomed Task Force members, alternates, and guests and reminded everyone that TVW would livestream the meeting. She and the rest of the Facilitation Team acknowledged this is a difficult time for many to be meeting – it is a time of civil unrest and we are in the midst of a global pandemic and recognize it is challenging for many to be meeting today and for the amount of time scheduled. She also explained that the Facilitation Team is aware that the funeral for George Floyd is scheduled today and will begin during this meeting at 11am. Therefore, the Team has made some adjustments to the agenda so that the break scheduled for 10:45am will instead start at 11am to allow for time for silence and reflection. Amanda reminded members of the Task Force’s shared ground rules, asking all bring an additional level of presence and mindfulness, along with compassion, empathy, and sensitivity.

The meeting focused on a “first offer” of potential recommendations from the Sentencing Effectiveness Working Group (SEWG or Working Group). Clela Steelhammer (with CFC) gave a presentation on the state’s Sentencing Reform Act and the sentencing grid. Jon Tunheim and Representative Goodman summarized the SEWG and the Grid Subgroup’s work to date. And Lauren Knoth (WSIPP) reviewed the SEWG’s potential recommendations and emerging research proposal.

CO-CHAIR UPDATES

The Co-Chairs expressed gratitude for the commitment of Task Force members during this difficult time. Despite not being able to meet in person, they are glad to be doing this work in this important time and proud of the progress the Task Force and Working Groups have made. They are encouraged by and grateful for the momentum both within this Task Force and across the country, as it provides an opportunity to further discuss the complex concept of public safety and broaden our definition. The co-chairs are inspired and hopeful that

those around the table can serve as a model for the community to have similar conversations to transform the system. The co-chairs recognize the level of responsibility of the work, expressing hope that this Task Force can improve the system by bringing people together to better understand each other.

TASK FORCE MEMBER UPDATES

Members shared their name and the organization or constituency they represent along with what percentage of them is “in the room” and where the other percentage is. To hear members responses, **see TVW recording beginning at 11 minutes and 35 seconds.**

FACILITATION TEAM UPDATES

Chris noted that working groups make no actual decisions; these groups are discussing and refining possibilities to bring back to the Task Force for consideration and potential decision-making. He encouraged all members, especially those that need to leave early, to attend working group meetings and join the conversations

47:28: Amanda acknowledged the importance of checking in and hearing from each member, despite the time it takes. Based on mid-point feedback received so far, the Facilitation Team will continue to prioritize this time to hear from each other. Amanda reviewed the meeting goals and agenda, noting that today’s meeting would present a lot of information in a short amount of time.

The sentencing grid is enormously complex; the ensuing presentations are intended to provide a foundational understanding of the complexities. Amanda reminded members that the facilitation team scheduled “grid office hours” for members to learn more about the more about Washington’s sentencing guidelines and system.

Before beginning presentations, Chris reminded attendees that prior Task Force meeting summaries are available for review online, see [Task Force materials webpage](#). The Facilitation team asked members and alternates to submit any requested edits and will make any non-substantive changes that members send and bring more significant comments or suggested edits back to the Task Force to discuss. He also reminded folks that the Reentry Working Group would continue their presentation of potential recommendations at the July Task Force meeting, picking-up where they left off with Nick Allen’s discussion of Legal Financial Obligation (LFO) reforms.

PRESENTATIONS

54:38: Washington’s Sentencing Reform Act (SRA) – Clela Steelhammer: Caseload Forecast Council

Clela reviewed the Sentencing Reform Act at a high level to explain the changes since the state enacted the SRA in 1981. She explained the structure and features of the sentencing grid, reviewed how felonies are classified (A, B, or C), and noted that there are over 300 unranked felonies.

The Sentencing Grid shows “seriousness level” on the side (vertical axis) and criminal history score (aka “offender score,” the term used in statute that some Task Force members request not be used) across the top of the grid (horizontal axis). The criminal history score is based on prior convictions and other current offenses. The score increases as you move from left to right on the grid.

Clela also discussed sentencing alternatives, what persistent offender law is, and how juveniles are sentenced as adults; explained earned release time; noted the creation of the community parenting alternative; described extraordinary medical placement; and briefly mentioned the graduated reentry program, alien offenders, and Department of Corrections (DOC) community custody.

The full presentation is available to read [here](#). You can also **watch it in [full via the TVW recording](#), beginning at 54 minutes and 38 seconds.**

1:34:50: Question/Comments/Reponses

C: For exceptional sentences, the court can find mitigating factors to decrease a sentence but aggravating factors that increase a sentence must be found, beyond reasonable doubt, by a jury.

C: The presentation highlights how the sum total of all the piecemeal changes to the system over time create staggering complexity in this system, which creates irrationalities. For example, the stacking of gun enhancements can lead to someone who did not cause a death to face a longer sentence than someone who was responsible for a death. The end result of such irrationalities is a system that imposes different sentences for different economic and racial groups.

C: Following up on the exceptional sentence comment, a member noted that they have seen courts increase sentences based on aggravating factors even with a plea agreement in effect. **R:** A judge alone cannot decide to sentence someone outside the standard range; a court case made that change.¹

C: A member noted an emerging theme of modifications to sentencing laws, suggesting that lawmakers should resist continual changes once sentencing policy is set. **R:** Understanding the impact of sentencing changes requires data and research, specifically to comprehend the expected outcomes and predict unintended consequences. Instead of continued statutory modifications, allow judges more flexibility.

Amanda reminded members of the upcoming “grid office hours” and invited folks to take a brief (5 minute) coffee break.

The meeting resumed at 1:54:30.

Amanda invited Task Force members to share any remaining thoughts or questions related to Clela’s SRA presentation.

C: Appreciated hearing about earned time and would like to know more about the history and context of the Legislature’s decision to reduce earned time from approximately 335 to 10% Is there a difference between earned time and good time? **R:** The reduction in earned time only applies to a subset of offenses. The difference in terminology can be confusing as you have terms that are used and/or changed in statutes as well as agency-specific terms. Earned time is a combination of two components: good behavior and programming.

1:58:05 DESIRED OUTCOMES FROM SENTENCING EFFECTIVENESS WORKING GROUP (SEWG or Working Group)

Amanda reminded everyone that SEWG met on March 19th and agreed on draft desired outcomes and had a presentation by Lauren Knoth on determinate and indeterminate systems and discussed grid options. From that conversation they created a sentencing grid subgroup recognizing that there is a lot of complexity and pieces that make up the sentencing grid. The Working Group asked members had additional time and capacity to meet more often and work through the grid and grid options to bring back to the full Working Group to work with and then are bringing to the full Task Force for input guidance and thoughts.

The Working Group put forth a list of desired outcomes for Task Force input and thoughts. It is a working, living document and members can send additional comments to the facilitation team. See 1:59:50 on TVW recording or view the list of [desired outcomes here](#).

Questions/Comments/Guidance: 2:01:50

Q: I believe there should be fewer people in prison, serving shorter sentences. I’m trying to understand if [Desired Outcome] C encapsulates that concept, or the extent to which these outcomes encapsulate that concept. **R:** The sub-bullet on A alludes to longer sentences. **R:** I think outcome C covers what you are talking about, when you look at it broadly. There Workgroup talked about decreasing the use of shorter sentences but

¹ The court case responsible for this change in sentencing practice is the 2004 *Blakely v. Washington* decision.

it has to be done delicately to address accountability without moving populations from state prisons to county jails (thus increasing the pressure and expense on county jails). That's why it was written broadly, to give us room to work in to deal with those different pressures.

C: A member expressed hope for more judicial discretion, hoping that any new approach to the grid includes the option for the court to order intermediate sanctions for accountability and treatment while incorporating non-incarcerated intermediate sanctions into the lower level of the grid.

Q: Is the grid, as anticipated by the subgroup at this time, not going to be altering sentence lengths at the upper levels? **R:** No, all levels of the grid are being looked at. But at the lower level we hope non-incarcerated intermediate sanctions can be built into each cell except at the upper level.

Q: Is there an opportunity for a simpler approach, where you reduce the sentencing grid by a percentage across the board? It would get at the point of reducing the prison population—which isn't a bad thing—and there really is no science behind the length of sentences, that I'm aware of. Has that been discussed in the group? **R:** Yes, the Working Group has discussed it. We looked at where sentencing courts are sentencing in the ranges, and they tend to be below the mid-point. It might be more of a case by case basis. By widening the ranges and giving more judicial discretion and including non-incarcerated alternatives it might result in shorter confinement time.

2:08:00 PRESENTATION ON "FIRST OFFER" OF FINDINGS AND POTENTIAL RECOMMENDATIONS FROM SEWG

Rep. Goodman and Jon Tunheim reviewed the work to date of the SEWG and Grid Sub-group. The Grid Sub-group, meeting weekly, have created a list of questions to consider using the IRAC method (issue, rule, analysis, conclusion). Lauren Knoth created a decision tree for the group, which helped them narrow down potential options to suggest the Task Force recommend the state stay with one grid and incorporate different tools in it. They also discussed reincorporating the drug grid back into the main grid. Two possible features to incorporate into a single grid:

- Adding zones to the grid. It allows the creation of "diagonal" policies (to address offenses that might be logically grouped together in seriousness) instead of only policies that encompass horizontal or vertical vectors on the grid.
- Combining certain cells on the grid. The group recognized that in the current grid, every cell is a different range.

The SEWG also discussed whether the axes of the grid should stay the same. They have agreed to pause that discussion for now (with a couple options identified). They also have not started putting ranges into the grid cells yet. Jon cited multipliers as a big issue on the horizontal axis, related to how people move along that axis.

Lauren Knoth shared the two grid options the SEWG discussed:

- Incorporating felony class to the horizontal axis, pending more discussion about offense levels. Unranked offenses could be incorporated or added as a separate class. There are also 12 seriousness levels, a number that the Task Force could recommend adjusting. Zones could be added, which would allow diagonal movement on the grid. She also mentioned that ranges could be widened by collapsing the criminal history score. The Working Group suggests the Task Force should consider recommending the addition of zones to the grid.
- A second option would be keeping the offense seriousness level and adding zones, with the option to collapse some cells.

Lauren also discussed a proposal for research the SEWG supports, to assess potential impacts of decisions under consideration. A report would examine the impact of potential reforms related to the following potential changes to the system:

- Increase/decrease of incarceration rates and sentence lengths.
- Impact of shifting prison populations to local jails.
- Disparate impacts by age, gender, and race/ethnicity.

She mentioned that there currently is statistical analysis being done and encouraged the Task Force to consider what timeline works best so the multiple work efforts complement each other.

Rep. Goodman explained the remaining questions for the Working Group, which relate to the vertical axis, judicial discretion, and whether some or all enhancements should fall under judicial discretion instead of being mandatory. Also left to consider: sentencing alternatives such as blended sentencing for young adults and pre-sentence investigations.

Rep. Goodman also discussed the Task Force timeline, noting that realistically the initial 18-month timeline will not allow for completion of all the relevant work, so a 30-month timeline might make more sense. This would extend the Task Force until December 2021, allowing time for the important work of educating the Legislature as the work of redesigning the grid continues (there are still questions to answer regarding funding). He mentioned that the Task Force could assign two questions to the Sentencing Guidelines Commission (SGC) relating to that body's grid options (a and b) and justice reinvestment.

A PDF of the presentation [can be viewed here](#).

Questions/Comments/Guidance:

Common themes members had comments or questions about include:

- Members noted that any data collected or used should be considered objectively. Lauren reminded the Task Force that WSIPP is a non-partisan agency that synthesizes across multiple databases and pride themselves on being transparent with research and reports.
- Some members think sentences should be decreasing across the board instead of increasing. A member wondered whether the Grid Sub-group has discussed specifics about increasing sentences. **R:** The Sub-group has had conversations but does have anything to bring to the SEWG to consider and potentially present to the entire Task Force yet.
- Resources would be needed if populations shift from state prisons to county jails, preferably using a secure account with funds that would stay.
- Will research examine geographical differences? Local jurisdictions may have some data related to prosecutorial charging that could be useful and interesting, though such data is hard to find and interpret; however, it can help understand disparities among jurisdictions. Members suggested asking larger counties since rural data may be hard to find, hoping it might be feasible to use jurisdictions that are somewhat representative of the whole state.

The facilitation team asked members if they had thoughts on extending the length of the Task Force. Members noted that it is important to continue this work, but it may be challenging to get funds to continue until December 2021. They mentioned that more concrete legislative proposals could be made for the 2022 session.

REFLECTION/FEEDBACK and NEXT STEPS

The Facilitation Team will follow up with members regarding extending the timeframe of the Task Force during the ongoing mid-point check-in interviews. The Task Force can revisit and refine the emerging research proposal over the coming months as more data becomes available.

Amanda reminded the group that the Reentry working group will present its "second offer" of findings and potential recommendations to the Task Force in July and that, in turn, the SEWG will present its "second offer" in August.

QUESTIONS FROM OBSERVERS

Q: What constitutes “unnecessary” incarceration? **R:** It is a subjective interpretation based on “deserved” length of punishment, and thus a policy (rather than statistical) question. **C:** A member agreed that it is a subjective interpretation and that the question can be part of discussion in the SEWG.

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