

Washington State Criminal Sentencing Task Force
Meeting Summary: October 1, 2020 | 8:45am-12:45pm
 Virtual Meeting via ZOOM

Task Force Members & Alternates Attendees:

- Nick Allen
- DeVitta Briscoe
- Lydia Flora Barlow, Co-Chair
- Russ Brown (alt. for Jon Tunheim)
- Chief Gregory Cobb
- Sarai Cook (alt. for Tarra Simmons)
- Suzanne Cook
- Lew Cox
- Sen. Manka Dhingra
- Judge Veronica Galvan
- Rep. Roger Goodman, Co-Chair
- Sonja Hallum
- Keri-Anne Jetzer (alt. for Judge Rumbaugh)
- Martina Kartman
- Rep. Brad Klippert
- Lauren Knoth
- Gregory Link
- Mac Pevey (alt. for Sec. Sinclair)
- Chris Poulos
- Judge Roger Rogoff
- Chief James Schrimpsner
- Melody Simle (alt. for Suzanne Cook)
- Tarra Simmons
- Clela Steelhammer
- Nick Straley (alt. for Nick Allen)
- Jon Tunheim
- Councilmember Derek Young

Additional Participants:

- Megan Allen
- Michael Althaus
- Christopher Bonnington
- D. Brown
- Vicki Christophersen
- Prachi Dave
- Brooke Davies
- Carl Filler
- Allison Franz
- Kelsey-Anne Fung
- Bruce Glant
- Adam Hall
- Omeara Harrington
- Jaime Hawk
- Cynthia Hollimon
- Lauren Knoth
- Brittany Lovely
- John McGrath
- Wendy Ross
- Joanne Smieja
- Matt Tremble
- David Trieweiler
- Kehaulani Walker

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

MEETING GOALS: • Check-ins and updates from members • Present and discuss “final offer” of findings and potential recommendations from both Working Groups • Review upcoming Task Force meetings and overall work plan

WELCOME, AGENDA REVIEW and GROUND RULES

Amanda welcomed Task Force members, alternates, and guests and reminded participants that the meeting was being recorded for posting on TVW. She noted consensus decision making would start during the October 15th meeting. Chris reminded the group of selected ground rules and reminded members to refer any media inquiries to the Task Force Co-chairs. Amanda reviewed the agenda: the meeting focused on a “final offer” of potential recommendations, with members and alternates practicing using virtual meeting tools for consensus decision making “temperature reads” to gauge support for proposals.

INTRODUCTIONS

Task Force members and alternates introduced themselves and shared organizational affiliations and the constituencies they represent on the Task Force. Amanda and Chris reminded observers to send questions for the Task Force to the facilitation team through chat or save them for the time reserved at the end of the meeting for questions.

CO-CHAIR UPDATES

Rep. Goodman, Lydia Flora Barlow, and Jon Tunheim noted the progress the Task Force has made and expressed appreciation for the commitment of members and alternates to address the underlying complexities and consulting their constituencies to include a breadth of voices. Noted that conversations are going to get harder as consensus decision making starts.

FACILITATION TEAM UPDATES

Amanda reminded the Task Force that it would have two monthly meetings through December. The Sentencing Effectiveness and Reentry and Reducing Recidivism working groups have completed their separate meetings.

Amanda read through the consensus decision making process in the agreed-on Task Force operating procedures. She noted the upcoming consensus process will differ from last year. She and Chris will start by asking if anyone cannot live with a potential recommendation; if any Task Force member (or alternate, if a member not present) cannot live with the recommendation, the facilitators will ask what the member/alternate could live with. The facilitation team has planned out which potential recommendations to go over at which meeting.

“FINAL OFFER” OF POTENTIAL RECOMMENDATIONS and DISCUSSION

Amanda reported that the SEWG has some revised potential recommendations to discuss with the Task Force. To initiate discussion on each proposal below, the facilitation team read each recommendation before inviting comments and questions.

Potential Recommendation #14: Prohibit addition of firearms or deadly weapons enhancement to crime for which possession or use of a firearm/weapon is reflected in underlying crime. Modify [9.94A.533\(3\)\(f\)](#) and (4)(f) to read:

“[The firearm/deadly weapon] enhancements in this section shall apply to all felony crimes except the following:

- (i) Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;*
- (ii) Any other offense for which possession and/or use of a firearm/deadly weapon is an element of the underlying crime.”*

OR add a new subsection that says the subsection ii above.

Discussion:

- The SEWG recommended the Task Force table consideration of this potential recommendation in terms of its 2020 report to allow the SEWG and its Grid Subgroup to discuss into next year (assuming the Task Force timeline gets extended into 2021) to address levels of culpability via a holistic reworking of the sentencing grid.

- Members described lengthy conversations about enhancements in the working group (and subgroup) including layers of complexity around statutes related to this enhancement.
- Other members agreed that, recognizing the complexity involved with this, people will be immediately affected by this (over the next year as the subgroup considers it).
- A member pointed out that that retroactivity and its implication for reform have been discussed in the SEWG, and that the Task Force will have to address it at some point.

Members agreed to have the Grid Subgroup incorporate this potential recommendation into its continuing conversations.

Potential recommendation #18: Remove juvenile adjudications from calculation of adult offender score and make reforms retroactive.

Chris noted that research being conducted on the relationship between criminal history score and recidivism by the Statistical Analysis Center is due in March 2021, and that legislation may get put forth next session. Amanda noted the SEWG proposes to hold this potential recommendation in order to look at it in the context of the entire grid and criminal history score.

Discussion:

- Members noted that SEWG could not reach agreement on what juvenile adjudications should be included (i.e. declined offenses, those convicted in criminal court).
- Another member noted that there might be legislation on this in the next session.
- It was mentioned that the Statistical Analysis Center (SAC) is doing research on criminal history score which will be available in March 2021, and that information could help the Task Force.
- Concerns were noted about not wanting to hold back potential recommendations that are related to reform.

Members agreed to hold this recommendation to look at it in context of the whole grid and forthcoming research on criminal history score in 2021.

Potential recommendation #16:

Firearm and Deadly Weapon Enhancements:

Prospective and Partially Retroactive (Earned Early Release)

- **Eliminates mandatory stacking of firearm and deadly weapon enhancements going forward (prospective only).** Specifically, provides that multiple firearm or deadly weapon enhancements imposed for offenses (occurring after the effective date of the act) are to be served concurrently, unless the court orders the enhancements to be served consecutively, using judicial discretion.
- **Eliminates the requirement for firearm and deadly weapon enhancements to be served in total confinement (prospective and retroactive),** thereby subjecting that portion of a sentence to the general restrictions and requirements on confinement options.
- **Eliminates the restriction on earned early release time for firearm and deadly weapon enhancements (prospective and retroactive).** Allows the Department of Corrections to implement the retroactive application of these changes for those currently incarcerated over a six-month period.
- **Would allow incarcerated individuals or prosecutors to petition for “de-stacking” where inordinately long sentences were given, requiring Legislative funding for the involved parties to deal with resentencing.**

Discussion:

- Judges and prosecutors have no relief valve for extremely long sentences. This would give them more discretion.
- SEWG members reported having different perspectives on the retroactivity part of the potential recommendation.
- Members had questions about tying this back to the policy goals. In response, others explained that multiple enhancements create complexity for DOC when doing calculations.
- A member asked about the policy goal of promoting and improving public safety, specifically if there was research about length of incarceration related to rehabilitation goals. Lauren noted the research is broad and complex and there is more literature on firearm enhancements and evidence of racial disparity.
- A member asked whether the SEWG had discussed eliminating the enhancement and instead creating a new statute. A working group member responded that the SEWG had discussed the ideas of creating a new law and/or converting the enhancement to an aggravating factor.
- A member requested more data about racial disparity related to this enhancement.

Consensus Practice:

The Facilitation team requested Task Force members show thumbs up, thumbs down, or thumbs sideways for a “temperature read” to gauge support for each subpoint of the potential recommendation. The temperature read follows:

Subpoint 1: Up: 12, Sideways: 5, Down: 2

Subpoint 2 and 3: Up: 13, Sideways: 2, Down: 2

Subpoint 3: Up: 10, Sideways: 6, Down: 1

Potential Recommendation #17:

Eliminate the street gang enhancement ([RCW 9.94A.533\(10\)\(a\)](#)).

Discussion:

- An SEWG member noted that this enhancement has only been used once and an aggravating factor on the same issue gets used more often.
- Also, the aggravating factor is broader and does not have the time limit the enhancement has.

Consensus Practice: The temperature read had 16 UP, 1 sideways, 1 down

Potential Recommendation #19:

Move crime of “failure to register as a sex offender” to a non-sex offense.

Discussion:

- This was one element of DOC’s budget-related recommendations.
- The working group recognized that failing to register is often related to a person’s living situation (i.e. it is much harder for unsheltered people to register).
- Members asked whether data shows that those who fail to register have higher recidivism rates. Keri-Anne said she contacted Leah Fisher from the Sex Offender Policy Board about data and found that the data shows that essentially, failure to register does not elevate risk of sexual reoffending. Those that don’t register are often young and/or non-white individuals.
- Other members noted that this potential recommendation would simply change the designation of failure to register, not to remove it completely.

Consensus Practice: The temperature read had 12 up, 3 sideways, 2 down.

Potential Recommendation #10:

Request the SGC to develop a proposal to consolidate all statutes associated with felony criminal penalties into Chapter 9.94A RCW.

Discussion:

- Members noted this would decrease complexity by consolidating all felony statutes in one spot in the Sentencing Reform Act and help practitioners and decrease confusion.
- Another member noted the location of statutes have to do with when legislation was written and that this would help the legislature make effective decisions.

Consensus Practice: The temperature read had 12 Up, 2 sideways,

Potential Recommendation #27:

Eliminate mandatory nature of the Victim Penalty Assessment (VPA) ([RCW 7.68.035](#)) such that:

- 1) the court be given discretion to impose the VPA at sentencing based on a person's ability to pay, and
- 2) the court be given the discretion to waive the VPA post sentencing if an individual later lacks the ability to pay. This waiver opportunity should apply retroactively to previously imposed VPAs and other mandatory LFOs that were prospectively amended in 2018.

Discussion:

- A member pointed out that this would create a release valve to address someone's ability to pay. The potential recommendation does not get rid of the VPA, it offers an opportunity to waive it.
- Members discussed what gets funded through the VPA and expressed concern about losing funding for victim's advocate services, emphasizing the importance of system-based advocates.
- Other members noted that often families bear the burden of the costs during long sentences.

Consensus Practice: The temperature read had 5 up, 7 sideways, 4 down.

WORKPLAN, REFLECTIONS, ACTION ITEMS, & NEXT STEPS

Amanda asked the Task Force if they would be open to extending the length of meetings, due to the number of potential recommendations the group has on the table. Members agreed that to extend meetings through December (if needed).

QUESTIONS FROM OBSERVERS

Molly shared the questions that observers submitted via the chat function of Zoom.

Q: What are some examples of why an individual lacks ability to pay, in addition to total disability? **R:** A person may be unemployable due to past convictions or not have a living wage job. Other questions asked the difference between voting and consensus. Amanda reminded guests that the Task Force uses a consensus process, which is not voting. She also noted that the Task Force is not a decision-making body, the recommendations go to the Legislature and Governor, presumably for legislation that would be open to public comment.

ADJOURN