

**Washington State Criminal Sentencing Task Force**  
**Sentencing Effectiveness Working Group**  
**Meeting Summary: August 19, 2020**  
Zoom Digital Conferencing Technology

**Attendees:**

- Lydia Flora Barlow, *Statewide Reentry Council*
- Russ Brown (alt. for Jon Tunheim), *Washington Association of Prosecuting Attorneys*
- Senator Manka Dhingra, *Washington State Senate, Democratic Caucus*
- Judge Veronica Alicea-Galván, *Washington State Minority and Justice Commission*
- Representative Roger Goodman, *Washington State House of Representatives, Democratic Caucus*
- Kim Gordon (alt. for Greg Link), *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Keri-Anne Jetzer (alt. for Judge Rumbaugh), *Sentencing Guidelines Commission*
- Lauren Knoth (research/data support), *Washington State Institute for Public Policy*
- Judge Roger Rogoff, *Superior Court Judges Association*
- Melody Simle (alt. for Suzanne Cook), *Statewide Family Council*
- Clela Steelhammer (research/data support), *Caseload Forecast Council*
- Nick Straley (alt. for Nick Allen), *Interests of Incarcerated Persons*

**Guests:**

- Omeara Harrington
- Kelly Leonard
- David Triewailer

**Facilitation Team:** Amanda Murphy, Molly Stenovec, and Hannah Kennedy

**WELCOME & AGENDA REVIEW**

Amanda welcomed Sentencing Effectiveness Working Group (SEWG or working group) members, noted the facilitation team's annual leave schedule, and briefly reviewed the agenda. She also reviewed the Task Force's 2020 working plan and meeting schedule for September. Amanda reminded SEWG members to submit, to the Facilitation Team, any additional potential recommendations by August 31<sup>st</sup> to be considered for the December 2020 final report.

**DRAFT RESEARCH PROPOSAL**

Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP) shared the Grid Subgroup's draft research proposal. SEWG comments/questions/responses are summarized below:

- **Q:** Given that this research relies on averages and we do not have the resources to examine county-level differences, does this proposal require us to assume a certain level of homogeneity across the state? **R:** This proposal looks at averages across the state; any changes the Task Force proposes that the Legislature and Governor enact would also be statewide. We would assume that individual judges would still "anchor themselves" the way they do now (e.g., those that usually sentence at the top end of the range will continue to do so, even if the absolute length of a top end sentence

changes). A formal report would allow us to document all assumptions made throughout the research process.

- **Q:** Is there any way to make reasoned decisions about how long a certain crime should be sentenced? **R:** Since the 1980s, sentencing has contained some sense of retribution in addition to concerns about reducing recidivism and rehabilitating individuals. The US Sentencing Commission has released reports analyzing impacts of sentencing statute changes on recidivism rates, but given the number of factors that can influence recidivism, there is no practical way to draw such conclusions about an entire sentencing grid at once.
- **C:** Multiple working group members noted the importance of prison culture and reentry opportunities in determining recidivism rates.
- **C:** If sentences are adjusted or reduced without addressing our state's past and current practices when it comes to incarceration and reentry support services, the results are not going to be what we hope for.
- **C:** The Department of Corrections (DOC) is unlikely to receive additional program funding any time soon. Without additional programming resources, people will continue to lack rehabilitation programming while in prison. **C:** It does not make sense to keep people in prison longer if DOC does not offer enough programming options to support their successful reentry. It would be more appropriate to provide programming in the community and avoid incarceration as much as possible.
- **Q:** Will the protected zone enhancement be considered in this research agenda? **R:** It will be included to the extent that the enhancement affects racial disparities.

Amanda reminded SEWG members they will likely present this research proposal to the full Task Force at the September 10<sup>th</sup> meeting.

*Action Item: All members in attendance will share this proposal with their constituents and will provide any input or suggested edits to Lauren by close of business (COB) on Friday (8/21/20).*

#### **FIREARM & DEADLY WEAPON ENHANCEMENT POLICY OPTIONS**

Representative Goodman presented three draft policy options aimed at reforming the firearm and deadly weapon enhancements. SEWG comments/ questions/responses are summarized below:

- **Q:** When we discuss judicial discretion to make them concurrent, does that refer to multiple enhancements or the underlying offenses? **R:** Multiple enhancements.
- **Q:** Retroactivity is very important. What are the reasons why not to resentence? **R:** There are several concerns. Full retroactivity could be very expensive, could burden local courts, and could result in people waiting years to be resentenced. There are also appellate rights concerns: for example, an individual with stacked enhancements could be resentenced to serve less time compared to another individual charged with the same or similar crime(s) whose charge did not include stacked enhancements. Retroactive resentencing also brings up the potential for revictimization. Finally, retroactive resentencing could create uncertainty, which could negatively affect the plea negotiation process and potentially trigger further revictimization.
- Several working group members emphasized the importance of addressing retroactivity in some manner.
- **Q:** Are these policy options intended to eliminate mandatory stacking but then leave judges the discretion to make enhancements concurrent? **R:** Currently, there is no discretion to make these enhancements concurrent; the stacking is mandatory.
- **C/Q:** This would likely have a large fiscal note and very unlikely to pass in this legislative session. Do we know how many people would be affected under policy options B and C? **R:** The cost would likely be borne by the courts.

Action Item: Clela agreed to contact the Department of Corrections to determine how many individuals would be impacted by policy options B and C; the number would be 631.

- **C:** The working group may want to look at whether any potential DOC cost savings could be shifted to local jurisdictions.
- **Q:** Is it correct that DOC cost-savings only occur when a unit gets shut down? **R:** It depends on the numbers, but in general the big reductions (i.e., closing a unit) allow staffing reductions, which bring larger cost-savings.
- **C:** Currently, many young men hope to be resentenced under [SB 6164](#). If we do not make enhancement policy changes retroactive, there is no other way for individuals to get relief. However, if full retroactivity is too politically untenable, a hybrid approach could be to eliminate mandatory stacking and allow individuals to petition for relief/resentencing.
- **Q:** What about allowing the prosecutor and individuals to be able to seek resentencing? **R:** While some working group members expressed support for this, others had reservations.  
**Q:** Are there opportunities to save resources and streamline the process when all parties agree on reducing a sentence?
- **C:** We should consider the possibility these policy changes could unintentionally increase county jail populations, impacting local efforts to reduce incarceration rates. If/when we have lower sentences, counties will need resources to provide programming that can support reentry and reduce recidivism.
- **Q:** If we want to give more discretion to the courts, why have a mandatory amount of time for firearm and deadly weapon enhancements? Why not make it discretionary, i.e., instead of a mandatory five years, make it *up to five years*? **R:** Changing an enhancement from mandatory to discretionary may not practically give more discretion to judges, because courts do not often deviate from sentencing recommendations when all parties agree.
- **Q:** How does this compare to judicial discretion in aggravated sentences? **R:** Enhancements differ from aggravating factors because before a judge can impose an exceptional sentence, they need to make certain findings. With an enhancement, judges have complete discretion without the need for specific findings.
- **C:** The Sentencing Reform Act (SRA) shifted discretion to prosecutors. It is not about removing discretion from the system, but where in the system that discretion exists. For some, judicial discretion is more transparent because a Judge's decision-making process is part of the public record.

Amanda briefly summarized the firearm and deadly weapon enhancement conversation, noting members seemed most interested in policy options B and C. She asked members to confirm with their constituents whether they could support a recommendation based on policy options B and/or C rather than A. She also asked members that if their constituents could not support anything related to B and C, to bring to the next SEWG meeting proposed changes that their constituents *would* support.

#### **NEXT STEPS & ACTION ITEMS**

- **All SEWG members** should review the draft research proposal. Any feedback/suggestions should go to Lauren at [lauren.knoth@wsipp.wa.gov](mailto:lauren.knoth@wsipp.wa.gov) by Friday (8/21). If she receives no edits/changes, the research proposal will go in front of the Task Force for potential consensus at the September 10<sup>th</sup> meeting.
- **All SEWG members** should review the firearm/deadly weapon enhancement policy options A-C with their constituents and let the facilitation team know if this review process raises any red flags by

COB 8/24. **The Grid Subgroup** will refine the options based on SEWG input and any notes sent to the facilitation team.

- **Clela** will contact DOC to see if the Department can provide any data on the number of individuals who could be impacted by resentencing because of legislative changes to firearm/deadly weapon enhancements.
- **The SEWG** is tentatively scheduled to present its third and final offer of potential recommendations and findings to receive input from the full Task Force on 9/17.
- **Members to send the facilitation team any additional potential recommendations for SEWG consideration by COB 8/28.**