

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

Attendees:

- Lydia Flora Barlow, *Statewide Reentry Council*
- Suzanne Cook, *Statewide Family Council*
- Sen. 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*
- Keri-Anne Jetzer (alt. for Russ Hauge), *Sentencing Guidelines Commission*
- Lauren Knoth (research/data support), *Washington State Institute for Public Policy*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- 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*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*

Guests:

- Omeara Harrington
- David Triewailer

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

WELCOME & AGENDA REVIEW

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.

Action Item: SEWG members agreed the Subgroup should continue discussing enhancements to 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 should 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.

Action Item: 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

- **The 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.