

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: July 22, 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*
- Representative Roger Goodman, *Washington State House of Representatives, Democratic Caucus*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*
- Lauren Knoth (research/data support), *Washington 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:

- David Triewailer

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.

Action Item: 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.

Action Item: 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.