

**Washington State Criminal Sentencing Task Force**  
**Sentencing Effectiveness Working Group**  
**Meeting Summary: September 30, 2020**  
Zoom Digital Conferencing Technology

**Attendees:**

- Russ Brown (alt. 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 (alt. for Judge Rumbaugh), *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 (former member), *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*
- Councilmember Derek Young, *Washington State Association of Counties*

**Guests:**

- Bruce Glant
- Matt Tremble
- David Triewailer

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

**WELCOME & AGENDA REVIEW**

Amanda welcomed the Sentencing Effectiveness Working Group (SEWG or Working Group) members. She briefly reviewed the agenda, reminding SEWG members that this was their last Working Group meeting. Chris and Amanda summarized recent Task Force input and guidance on several potential sentencing recommendations and asked the working group to revise these recommendations for final review by the Task Force on October 1<sup>st</sup>.

Chris shared a working document containing the remaining potential recommendations and asked working group members to confirm they are ready to present these to the full Task Force. Working group discussion and suggested revisions are captured as questions/comments/responses, organized by potential recommendation, below.

**POTENTIAL RECOMMENDATION #10**

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

Action Item: SEWG members agreed this recommendation is ready for final review by the full Task Force.

### POTENTIAL RECOMMENDATION #13

Increase earned early release time to a minimum of 33% for all crimes and enhancements and increase earned early release time 50% for some crimes and apply changes retroactively.

Amanda summarized the Task Force input from September 10<sup>th</sup>, noting at least one member suggested tabling this recommendation until 2021 and considering earned early release time as part of the sentencing grid deliberations. Others Task Force members were adamant that a recommendation related to earned early release time should be included in their 2020 final report.

- **C:** Prosecutors are unlikely to support this recommendation as it is currently written. They feel strongly that earned early release time should not be a mechanism for reducing sentences but rather a behavioral management tool for the Department of Corrections (DOC). Anecdotally, one of the most common questions prosecutors hear is “how much time will an individual serve?”
- **C:** There was no research-driven reason for why Washington reduced earned early release time for serious violent crimes from 15% to 10%. The reduction from 33% earned early release time across the board to 15% for violent crimes was motivated by the federal Truth-in-Sentencing grant program that provided states funding to build new prisons and renovate existing structures.
- **C:** A key part of this recommendation is to address the immense complexity DOC faces. With all the changes that have occurred it is difficult and costly for DOC to accurately calculate an individual’s earned early release time. This recommendation would make the system less complex and fairer.
- **C:** Increasing earned early release time would undermine faith in the system and the plea negotiation process, if the Task Force wants shorter sentences, it should recommend changes to the grid. **R:**

SEWG members expressed various views on the retroactive component of Potential Recommendation #13. Some expressed support for applying increased earned early release time retroactively as a means to correct overly punitive sentences while avoiding costly resentencing. Others worried retroactivity would increase complexity and undermine sentences already agreed to by all parties. The Task Force’s research staff noted there is a possibility that the retroactive application of a law can be different than the prospective application because of the discretion that prosecutors wield. The research is very mixed and it can be hard to tell how both retroactive and prospective changes will impact disparities in the system going forward because prosecutors’ actions could change in response so that the sentencing outcomes are the same.

Action Item: SEWG members agreed to present the recommendation as is to the full Task Force but also summarize their discussion today.

### POTENTIAL RECOMMENDATION #14 (NEW)

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:*

- 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;*
- 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.*

Members of the Grid Subgroup presented a new potential recommendation for consideration.

Action Item: SEWG members agreed to present this new recommendation to the full Task Force on October 1<sup>st</sup>.

**POTENTIAL RECOMMENDATION #18**

Remove juvenile adjudications from calculation of adult offender score and make reforms retroactive.

**POTENTIAL RECOMMENDATION # 12.1-12.6**

**12.1** Modify statute to increase the occasions when PSIs can be requested by Superior Court judges. (\*\*New PSI - As of January 2021\*\* “Unless specifically waived by the court, the court shall order the department to complete a presentence investigation before imposing a drug offender sentencing alternative upon a defendant who has been convicted of a felony offense where domestic violence has been pleaded and proven.”)

**12.2** PSIs should be made available earlier in the court process instead of at sentencing.

**12.3** Relocate the duty to complete PSIs from DOC to a state-funded unit within the Superior Court. Court should work with all PSI stakeholders to reduce differences among forms and make the form inclusive to the needs of all stakeholders.

**12.4** Increase cultural competency of persons conducting PSIs to reduce disproportionality, reduce subjective language, and collect as much relevant information as possible from persons of different cultures.

**12.5** Remove the sentencing recommendation portion from the PSI form.

**12.6** Review approaches and tools in PSI risk assessment and recommend ways to make risk assessment information uniform, accurate, and consistent, and address potential bias and/or disparities and predictability.

Action Item: Working Group agreed to present this recommendation to the full Task Force on October 1<sup>st</sup>.

**POTENTIAL RECOMMENDATION #11**

Encourage court systems that coordinate or are compatible to adopt a unified filing system.

Action Item: Working Group agreed to present this recommendation to the full Task Force on October 1<sup>st</sup>.

**NEXT STEPS & ACTION ITEMS**

- **SEWG members** will present revised recommendations and additional context to the full Task Force on October 1<sup>st</sup>.
- **The Facilitation Team** will update the Task Force’s October 1<sup>st</sup> meeting materials to reflect revisions made to potential recommendations by the working group today.