

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: July 8, 2020
Zoom Digital Conferencing Technology

Attendees:

- 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 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*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*
- Councilmember Derek Young, *Washington State Association of Counties*

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

WELCOME & AGENDA REVIEW

Chris welcomed Sentencing Effectiveness working group (working group or SEWG) members and reviewed the agenda. Chris noted that since no potential recommendations have yet been proposed, today's conversation would focus on eliciting concrete ideas for potential policy changes in the areas of sentencing alternatives and pre-sentencing investigations (PSIs).

SENTENCING ALTERNATIVES

Clela Steelhammer (Caseload Forecasting Council) reviewing the current state of alternatives to provide context for the working group.¹ For sentences of one year or less, courts are supposed to use alternatives to confinement when applicable. For each sentence of more than a year, a court must provide a written decision explaining why an alternative was not used; however, this is not always done in practice. Clela showed summary data on the frequency of various alternatives, disaggregated by race and county.² In providing a breakdown of sentencing alternative percentages by race and county, she cautioned that small sample sizes in some counties make it difficult to draw meaningful conclusions.

Questions/Comments/Responses:

- **Q:** Is it possible to look at what percentage of alternatives consisted of "credit for time served"? This could help to know because some got charged but received credit for time served may be released right away, thus alternatives would not pertain even if available. **R:** It should be possible to determine how many individuals had access to alternatives (of those who had additional time to serve) and compare this at the state level.
- **C:** It would be helpful to see, within each race category, what percentage of all non-prison sentences received an alternative sentence. Such information could help us determine what outcome we should expect to see whether alternatives (to incarceration) are offered and applied equally across races/ethnicities.

¹ The data Clela presented only includes alternatives to full confined sentences and thus does not include diversion programs.

² It should be noted that in CFC data, Hispanic is categorized as a race rather than an ethnicity.

- Some working group members suggested that a subset of those charged with a crime may turn down sentencing alternatives, preferring to *do the time* instead; however, other participants doubted this happens often.
- **Q:** Are sentencing alternatives always on the table during plea negotiations? **R:** Speaking from experience, yes, but it may differ across the state.
- **C:** Between 1990 and 2010 it appeared the use of alternatives decreased somewhat. At one point, Drug Offender Sentencing Alternative beds were limited, leading to fewer alternative drug sentences, so scarce resources or other issues may contribute to the decrease in alternatives.
- **Q:** Are defendants sentenced to alternatives new to the criminal justice system? Is there an incentive of reduced criminal record for sentencing alternatives? **R:** There are eligibility requirements which generally favor first time offenders.
- **C:** Judges on the Sentencing Guideline Commission (SGC) would like sentencing alternatives incorporated into the grid. So the low number of alternative sentences issued might be in part due to a lack of information on various programs.

Keri-Anne Jetzer presented survey data on various county sentencing alternative programs collected by the Washington Association of Prosecuting Attorneys (WAPA) and the SGC. Not all counties responded to the survey, but many have established therapeutic courts. While the data is incomplete and most programs have not been evaluated, the information gives a sense of existing programs around the state.

Councilmember Young offered a local (county) perspective on sentencing alternatives, noting that differences in local resources across the state can lead to disparities. For example, whether an individual is charged with a felony or their record gets expunged after completing a program may depend on which county an individual gets charged in. Pierce County established the first drug court in the mid-1990s, and it has proven effective. Newer programs may not yet have enough data to properly evaluate. Councilmember Young credited the effectiveness of Pierce County's alternatives to the use of a social service model.

The working group discussed potential Legislative tools to increase the use of and access to alternative programs. Some suggested the state should authorize such programs and establish policies on their use, as discussed in past legislative sessions. A member pointed out that following the current statute as written today does more harm than good. Others suggested incentives to encourage counties to expand programming, for example:

- Offering state funding to expand the Drug Addiction Reduction Team (DART) but making funding contingent on Counties dropping a felony charge to a misdemeanor upon completion of DART, or
- Proposing something similar to last session's opioid response bill requiring counties to have a drug court in order to accept funds.

Several SEWG members also indicated these tools would be appropriate for the Legislature to examine as part of a justice reinvestment initiative.

Questions/Comments/Responses:

- **C:** Rather than making recommendations on specific types of courts, the working group and Task Force should focus on supervision, particularly looking at who should be supervised and for how long. **R:** Other members felt some sentencing alternative-specific recommendations would be helpful, particularly those that might address structural barriers in the Sentencing Reform Act (SRA) that prevent individuals from accessing programs.

- **C:** The Washington Institute for Public Policy (WSIPP) has studied some programs and found drug courts to be effective, DUI courts somewhat effective, but WSIPP has not been able to review veterans' courts.
- **Q:** What about creating a unified court system across the state? It would make things a lot easier and would definitely meet the Task Force's goal to reduce complexity. It would allow more transfer between district and superior courts. **R:** Several members agreed a unified system would improve consistency and reduce complexity but acknowledged the political difficulty of doing so.

PRE-SENTENCING INVESTIGATIONS (PSIs)

Chris asked SEWG members to look at the draft language for potential PSI recommendations and encouraged members to refine the placeholder language from the SGC. He then invited Keri-Anne to provide some background on SGC conversations related to PSIs. Keri-Anne explained that judges were the driving force behind most of the SGC's 2019 recommendations on PSIs. They wanted more information available to judges, especially if judicial discretion were to be expanded. Risk reports are different from PSIs. As of now, anyone convicted of a felony sex offense or having a mental illness may receive a PSI. Prior to budget cuts in the mid-2000s, many more cases received PSIs; after budget cuts, Department of Corrections (DOC) limited PSIs and now only provides them when statutorily required.

Questions/Comments/Responses:

- **C:** If PSI eligibility were expanded, DOC may end up compiling PSIs for individuals who never end up in their custody.
- **C:** Several members noted that any recommendation to expand statutory PSI requirements should include resources to fund them.
- **Q:** Could PSIs be limited to where the judge has significant discretion, perhaps as something added to the Grid? **R:** This is something the Grid Subgroup could build into the grid research proposal. In Pennsylvania for example, the static risk assessment guides judges in ordering PSIs for individuals with very low and very high risks.
- **Q:** Are there any offenses that require a drug and alcohol assessment? **R:** Yes, see [RCW 9.94A.500 subsection \(1\)](#).
- **C:** A group member suggested finding a way to connect PSIs directly to a percentage of the cost savings associated with alternative sentencing programs, as this could help incentivize local governments to support PSI expansion. If part of the reason to do more PSIs is to defer individuals to alternative programs, perhaps counties could share in that cost savings directly.
- **Q:** If we look to expand PSIs in the lower quadrant of the grid (i.e., lower seriousness level and criminal history scores), will PSIs be conducted for people likely to be held in confinement longer (e.g., 60 days)? Would this increase jail populations as result? **R:** This is a potential unintended consequence. Furthermore, plea agreements and sentencing usually happen at the same time. If we mandate more PSIs, that could separate these two and cause additional unintended consequences, so limiting it to instances where judges have more discretion may make more sense.
- **Q:** What about clients risking additional admissions of guilt for different criminal activity? Would attorneys advise clients not to participate? **R:** PSIs would leave out individual interviews with defendants if they declined to participate or honor the request if they asked that certain information not get included. **R:** The SGC also discussed this issue and looked at the federal system.
- **C:** To avoid a significant increase in recourses to expand PSIs, and if the interest really is in understanding criminal history, we could propose PSIs only for those with a criminal history score of X or higher, IF resources are available. This would significantly reduce the number of cases but may

still have a big impact. Another option might be to suggest requiring PSIs if the prosecutor seeks an enhanced or aggravated sentence, to address concerns about unnecessarily long incarcerations.

- **C:** If PSIs are based on criminal history scores, which are already racially disproportionate, we risk exacerbating this disproportionality.
- **C:** A SEWG member noted concern about PSIs included a sentencing recommendation, as there may be wide variation among different investigators. **R:** Judges on the SGC favored eliminating sentencing recommendations from PSIs.
- **Q:** If judges were given discretion to determine which cases get PSIs but superior courts had to pay for the investigations, would that curb the number of investigations ordered and conserve resources?

NEXT STEPS & ACTION ITEMS

The Facilitation Team reminded SEWG members that the working group would present their second offer of potential recommendations and findings to the full Task Force on August 6th.

- **All members** should review the emerging potential recommendations (sent in follow-up emails by the Facilitation Team). Members should submit their suggested edits and/or additions prior to the next SEWG meeting and flag any potential recommendations they do not think should be put in front of the full Task Force.