

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group
Meeting Summary: March 19, 2020
Digital Conferencing Technology

Attendees:

- Senator Manka Dhingra, *Washington State Senate, Democratic Caucus*
- Representative Roger Goodman, *Washington State House of Representatives, Democratic Caucus*
- Russ Hauge, *Sentencing Guidelines Commission*
- Keri-Anne Jetzer (alt. for Russ Hauge), *Sentencing Guidelines Commission*
- Lauren Knoth (research/data support, *Washington Institute for Public Policy*)
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- Chief James Schrimpscher, *Washington State Fraternal Order of Police*
- 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*

Guests:

- Adam Hall
- Sidney Oliver
- David Trieweiler

Facilitation Team: Amanda Murphy & Chris Page

WELCOME & AGENDA REVIEW

Amanda and Chris welcomed Sentencing Effectiveness Working Group (SEWG or working group) members, acknowledged the challenging time, and reviewed some best practices for effective virtual meetings.

The Facilitation Team updated members that Jon Tunheim has volunteered to serve as the lead/spokesperson for this working group.

Amanda and Chris asked working group members to respond to the following opening question: *Given all the events and circumstances in our community, what percentage of you is “in the room,” i.e., mentally engaged and with working technology?* Participants’ responses ranged from 60% to 100%, with many describing concerns and challenges related to the Coronavirus pandemic.

The working group reviewed the meeting agenda and did not provide additions or questions.

Russ Hauge let members know he sent the Facilitation Team a memo based on the Sentencing Guidelines Commission’s (SGC’s) findings, outlining two distinct issues: 1) the problem of long sentences; and 2) the challenge of designing a tool that meets the needs of prosecutors, as well as judges and other actors.

Action Item: The Facilitation Team will send the SGC memo to the Task Force along with the Working Group meeting notes and supplemental materials.

DESIRED OUTCOMES OF FUTURE MECHANISM(S) FOR DETERMINING SENTENCING

The Facilitation Team summarized the last two SEWG meetings, noting how conversations have focused on the sentencing grid, specifically the two SGC grid options. To encourage progress and help inform the grid choice discussion, the facilitators explained how this meeting might follow collaborative best practices by starting with a high-level discussion of values or common interests, focusing on “*what are the elements of a successful sentencing grid?*” The working group could create a working list of these desired outcomes to use as criteria when considering which grid option(s) to propose.

The Facilitation Team then provided the following first draft of desired outcomes for the working group to discuss (and use as criteria through which the working group might screen emerging draft grid options) and asked members for input and revisions. Ideally, an improved sentencing grid:

- Balances discretion across the system
- Provides predictability for all parties
- Addresses accountability while decreasing unnecessary incarceration(s).
- Avoids shifting population from state prison to jails.
- Addresses inequities in the burden of the costs & workloads associate with incarceration
- Ensures adequate resources for both DOC & counties
- Eliminates unnecessary complexity
- Reduces or eliminates disparities / disproportionate impacts
- Addresses multipliers and enhancements

After discussing the above outcomes as potential screening criteria for new/improved draft grid proposals, working group members agreed on the following changes:

- Add to the first bullet: “...and encourages and provides for individual rehabilitation that is trauma informed and based on risk, need, responsivity”
- Make the last bullet as a sub bullet under the first bullet and to add the following: “and consecutive sentences – sentencing ranges – mandatory portions of sentences – mandatory features that remove judicial discretion and led to longer sentences”
- Add an additional outcome: “Maximizes/increases the information available to the parties and the Judges to make informed decisions.”

The Facilitation Team explained that these outcomes/criteria can be revisited at any time by the working group if a member suggests changes or additions.

NEXT STEPS & HOW DO WE GET THERE?

The Facilitation Team explained that as of 3/19 the SEWG has discussed at least three options to consider for a grid-type sentencing mechanism: SGC option 1a, SGC option 1b, and the grid from the Justice Reinvestment Initiative (JRI). In addition, members have asked what approaches other states use. Therefore, the Facilitation Team asked Lauren Knoth, Senior Research Associate at Washington Institute for Public Policy (WSIPP), to provide a brief presentation on the national landscape and what types of sentencing systems other states are using.

Presentation on Determinate and Indeterminate Sentencing Systems across the U.S.

Lauren gave an overview of Determinate and Indeterminate sentencing systems, noting that most states

have moved toward using a grid for sentencing and those that do not still rely heavily on codified ranges. Most states include some type of “prior record” consideration along with the variable of the severity of the offense; in those systems not explicitly arrayed in a grid format, these two elements can be combined to create a grid. Lauren emphasized the importance of understanding that simply knowing if a state is indeterminate or determinate or structured or unstructured does not always mean that two states are comparable or highly dissimilar.

While states may be primarily indeterminate or determinate, no state is purely one or the other. Sentencing guidelines comprise just one example of a structured component of sentencing. Lauren showed members a map of the U.S. that showed each state’s primary sentencing system (determinate and indeterminate) and which states have incorporated a structured component. Some key points from Lauren’s presentation and the SEWG discussion:

- There are many permutations of these systems, especially with the increasing proliferation of risk assessment instruments.
- New Mexico, Maine, and New York have a determinate sentencing system but not a structured sentencing system (e.g., no sentencing grid).
- Data shows that in states where guidelines are advisory the overwhelming majority of sentences still fall within the guideline range.
- Even states with indeterminate sentencing may have mandatory minimum sentences, which are a type of determinate sentence.
- Some states have a grid but allow judges to issue sentences that depart from the grid.
- Several states use bounded discretion, allowing certain levels in some areas but recognizing that increasing it in one part of the system should decrease it elsewhere.
- Virginia has a mechanism to identify low risk individuals who can benefit from diversion to community supervision instead of incarceration.
- Risk assessments at sentencing (to determine what level of supervision is likely necessary) function differently than those done during incarceration (e.g., how can we get the individual into treatment?).
- Two important things not captured on the map:
 - The availability of pre-sentence investigations (PSIs) and
 - The use of sentencing risk assessment instruments.

For example, Washington and Pennsylvania do PSIs for felony cases; however, in Pennsylvania, the local probation department completes the PSI while in Washington, DOC conducts the PSIs.

- In Washington, many felony cases receive a PSI, while in Pennsylvania, only about 15% of cases receive a PSI due to resource constraints. That creates fundamental differences in the types of information available to the judge during sentencing, regardless of whether they are sentencing within a grid and/or whether that grid is mandatory.
- Pennsylvania has incorporated a tool to identify the 15% highest risk and 15% lowest risk individuals, prioritizing PSIs for high-risk individuals since they are more likely to have underlying conditions that can benefit from treatment.

Following Lauren’s presentation, the Facilitation Team created a table with the desired outcomes/criteria from earlier in the meeting and four sentencing grid options discussed by the group to date (SGC option 1a, SGC option 1b, JRI, and other/blended). The Group then discussed the opportunities and challenges associated with sentencing alternative grids. The following bulleted list summarizes their conversation.

- The JRI approach sends those who commit violent crimes to prison and those found guilty of drug crimes to treatment. By separating the important categories of offense, it may be possible for the sentence to achieve positive outcomes.
- Perhaps there could be grids for certain categories of crimes (e.g., violent crimes, property crimes, and drug crimes), with bounded discretion to allow judges to tailor sentences to individual case circumstances.
- There are important differences between option 1a and 1b when it comes to discretion Option 1a maintains Legislative control over sentencing, whereas 1b would transfer more authority to prosecutors and judges.
- A lot has been learned from the Drug Offender Sentencing Alternative (DOSA), and the drug grid seems to have widespread support.
- There is a need to lower sentences for violent crime based on the statistics and studies available; the extensive increases in sentence lengths over the years has not contributed to public safety. Department of Corrections (DOC) statistics show average length of prison stay as 23.9 months. Those in prison for property crimes = 16.7% of current prison population; those imprisoned for drug crimes now comprise 6.7%.
- Options 1a, 1b, and JRI are not mutually exclusive; perhaps there is a way to blend/harmonize these options.

The working group suggested creating a sentencing grid subgroup to develop a blended approach of the sentencing grid options and bring it to the full Working Group for discussion. The working group proposed the following members should make up the subgroup:

- Lauren Knoth
- Representative Goodman
- Jon Tunheim
- Russ Hauge
- Greg Link
- Judge Rogoff or Judge Alicea-Galán (*since neither participated in this meeting, the Facilitation Team will ask both whether they have interest and ability*)

LEGISLATIVE WORKING GROUP UPDATE

Representative Goodman provided members with an update on the session and the Task Force's legislation. He explained that the Task Force process has resulted in three near-unanimous pieces of legislation that together will lead to positive improvements in the sentencing system.

ACTION ITEMS & NEXT STEPS

- The Facilitation Team indicated the April Task Force meeting will not occur in person due to COVID-19. If this is the case, the group will likely use the time scheduled to meet virtually as either the full Task Force or as Working Groups.
- **The Facilitation Team** will follow up with Judges Rogoff and Galvan to see if one of them can participate in the sentencing grid subgroup.
- **The Facilitation Team** will follow up with subgroup members to schedule a meeting.
- **The Facilitation Team** will send to the Task Force and the Working Group the following materials from this meeting:
 - SGC memo from Russ Hauge
 - Lauren's presentation materials
 - [The National Council of State Legislators \(NCSL\) Report](#).