

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

Attendees:

- Suzanne Cook, *Statewide Family Council*
- 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*

Guests:

- Omeara Harrington
- Kelly Leonard
- Sydney Oliver
- David Trieweller

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

WELCOME & AGENDA REVIEW

Amanda Murphy welcomed Sentencing Effectiveness Working Group (SEWG or working group) members, reviewed the agenda, and took attendance. She briefly summarized the Grid Subgroup's meeting schedule and Chris emphasized the tremendous progress the Subgroup has achieved. The facilitation team also reminded SEWG members they will present their "first offer" of findings and emerging recommendations to the full Task Force on June 4, 2020.

GRID SUBGROUP UPDATE

Jon Tunheim and Rep. Goodman summarized the Subgroup's work to date. They emphasized the sheer complexity of trying to reform a 40-year-old system. To guide the Subgroup, Lauren Knoth (Washington Institute for Public Policy, aka WSIPP) provided examples of grids from other states and developed a decision tree to walk folks through a stepwise approach to constructing a simpler, more effective grid system so the Subgroup could focus on tackling one issue at a time. The major topics (framed as questions below) discussed thus far include:

- **How many grids?** Washington's current system includes one grid, with an additional, separate drug sentencing grid and several (approximately 300) unranked offenses. To meet the Task Force policy goal of simplicity, the Subgroup suggests maintaining a single grid system that incorporate features used by other states, such as zones and collapsed cells:
 - **Zones** allow for diagonal movement within the grid. For instance, they could allow for a loosening of judicial discretion lower down on the grid, while maintaining stricter sentencing guidelines for the most serious crimes or individuals with longer criminal histories.
 - When "criminal history scores" (the Grid Subgroup's preferred name for Offender Scores) occupy the horizontal axis, **collapsed cells** (combining certain cells) can help control how

quickly an individual's sentence increases (i.e., move to the right in the grid) with additional past convictions.

- **How to define the horizontal axis?** In the current grid, the horizontal axis is determined by Washington's offender score, ranging from 0 to 9+. In the example grids included in their draft research proposal, the Subgroup suggests maintaining a horizontal axis based on past convictions. They discussed ways to limit the influence prior convictions exert on sentencing severity (particularly for less serious crimes) by incorporating zones and collapsed cells, as discussed above.
- **How to define the vertical axis?** In the current grid, the vertical axis is defined by offense seriousness level. While agreeing that the vertical axis should be based on offense classification, the Subgroup struggled with the variety of ways offenses are currently classified in WA (e.g., felony class, offense seriousness, unranked offenses in statute, etc.), since those various classifications can be confusing and at times appear to conflict with each other. They identified the need for research to fully understand the spider-web effect of reclassifying all felony offenses under one system.
- **What is the appropriate range for grid cells?** The Subgroup considered increasing sentencing ranges for some crimes to offer more judicial discretion. This could occur proportionally (i.e., by the same amount up and down) or disproportionately (i.e., increasing the range more either on the top or bottom end). Some Subgroup members pointed out that it may be more politically feasible to increase ranges proportionally rather than disproportionately, especially on the bottom end.
- **How to address judicial discretion?** The Sub-Group discussed at length the appropriate degree of judicial discretion, and how to achieve it, without reaching agreement on ideal mechanism(s) or amount(s) of increase. Ideas discussed include:
 - Allow for intermediate punishment (e.g., non-incarceration alternatives)
 - Ways to incorporate age as a factor into sentencing
 - Creating criteria and mechanisms for judges to consider sentences outside a prescribed grid cell
 - Increasing sentence ranges within cells

Draft Research Proposal—Lauren Knoth, Washington State Institute for Public Policy (WSIPP)

Lauren walked the working group through a draft research proposal to ensure any new grid(s) the Task Force recommends are based on the best available evidence. All the complications involved with potential changes (hinted at above) make it difficult to know the impact of any potential grid changes. We do have enough data now to make some informed decisions; Lauren, Clela, and Keri-Anne have outlined research to examine the demographic differences and potential impacts of moving forward with either grid option developed by the Subgroup. For example, the research could answer:

- How would changing the vertical axis from offense seriousness to felony class effect sentencing?
- Are demographic disparities in sentencing driven by associations between a specific sub-population/demographic group and particular offenses?
- How frequently are individuals convicted under unranked offenses? How would changes in the categorization of unranked offenses impact sentencing?

Lauren proposed the following timeline: Clela and the Caseload Forecasting Council (CFC) would begin evaluation of sentencing trends within the current grid during the summer of 2020; Lauren and WSIPP would then begin forecasting and exploring demographics in September or October. The following summarizes the comments, questions, and responses as SEWG members reacted to the Subgroup and Lauren's presentations:

- Several working group members expressed concern about increasing the maximum length of sentences. In response, Lauren highlighted the difficulty in predicting how judges will sentence when ranges are widened; however, if we find that for certain crimes most judges tend to sentence

in the middle of the range, then we might assume a proportional expansion of the range will not significantly impact sentencing.

- **C:** It could be politically difficult to disproportionately widen ranges, especially if proposing to decrease minimum confinement length.
- **C:** Past WSIPP research indicates that the longer sentences had no statistical impact on recidivism.
- Working group members noted the importance of pre-trial negotiation on sentencing length. For example, when the State agrees to lessen a charge, it usually results in an individual being sentenced at the maximum end of the lesser charge. As most cases are settled via plea bargaining, high-end sentencing may actually be mostly due to pre-trial agreements.
- In general, the SEWG supported the Subgroup's work to date, especially their work to ensure any new grid recommendations are backed up by research. However, some expressed concerns about:
 - Inadvertently increasing sentencing lengths
 - The use of certain risk assessment tools, such as WA1.
- Given the Sentencing Guideline Commission (SGC) has had an ongoing discussions of judicial discretion and justice reinvestment, a Group member proposed assigning some work and/or research to the SGC.
- **Q:** To what extent are upcoming decisions for them and the full Task Force contingent on the proposed research? Lauren responded that the research would not be conducted in a silo. Instead, the process would be iterative with CFC and WSIPP sharing information regularly with Task Force members to refine research questions and ensure the availability of information needed to make informed recommendations.
- **Q:** A Working Group member also emphasized the importance of considering retroactive action, asking: how do we move forward knowing of historical challenges, especially around criminal history scores? Another member echoed this comment, pointing out that criminal history scores are the number one driver of increased sentencing lengths.
- Another member asked that the grid development process also address pre-trial investigations.

Based on the Task Force's commitment to providing evidence-based recommendations and the anticipated need to educate the Legislature about the complexities of sentencing, the SEWG discussed the pros and cons of suggesting the full Task Force extend their work through June 2021.

Action Item: The SEWG will present the proposed research proposal to the full Task Force on June 4, 2020.

OTHER POTENTIAL POLICY CHANGES RELATED TO SENTENCING EFFECTIVENESS

The SEWG briefly reviewed the Summary Table of emerging possible recommendations for the Task Force to consider and discussed other potential, non-grid-specific sentencing-related recommendations the working group could explore. Keri-Anne summarized the unanimous recommendations from the SGC's 2019 report:

- 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 cost-benefit of these would be greatest if they are retroactive.

The following bulleted list summarizes SEWG questions and comments related to potential enhancement recommendations:

- Some SEWG members noted the SGC recommendations would likely improve simplicity, particularly when calculating sentences.

- Another member pointed out the second proposal appears only to address total time served in confinement and suggested that time of enhancement could be converted to another type of custody.

NEXT STEPS & ACTION ITEMS

- **The Facilitation Team** will follow up to coordinate schedules and set a recurring, bi-weekly meeting time.
- **The Facilitation Team** will ask members to help populate the Summary Table in advance of the next working group meeting.