

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: August 18, 2020
Digital Conferencing Technology

Attendees:

- Russ Brown (alt. for Jon Tunheim), *Washington Association of Prosecuting Attorneys*
- Rep. 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 Institute for Public Policy*
- Judge Stanley Rumbaugh, *Sentencing Guidelines Commission*
- 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*

Guests:

- Omeara Harrington

Facilitation Team: Amanda Murphy and Hannah Kennedy

WELCOME & REVIEW AGENDA

Amanda welcomed Grid Subgroup (Subgroup) members and apologized for any redundancies as the Facilitation Team continues to balance annual leave schedules. The Subgroup confirmed the draft research proposal was finalized and is ready to be reviewed by the Sentencing Effectiveness working group (SEWG or working group). Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP) agreed to present the draft research proposal at the next SEWG meeting. Lauren also noted WSIPP's board would need to approve the research proposal prior to any data collection or analysis. WSIPP's next board meeting is scheduled for September 14th, thus full Task Force approval should be sought at the September 10th meeting.

SENTENCING ENHANCEMENTS

Robbery of a Pharmacy

Based on past Subgroup conversations, Lauren drafted a potential recommendation to make the robbery of a pharmacy enhancement and aggravating factor. The following summarizes the Subgroup's questions/comments/responses:

- **C:** The current language excludes participatory offenses and given attempted robbery of a pharmacy is considered a participatory offense, this recommendation may limit a court's ability to consider mitigating factors.
- **C:** Including participatory offenses would also allow individuals to be eligible for Drug Offender Sentencing Alternatives (DOSAs).
- **Q:** How exactly would this recommendation operate? **R:** The aggravating factor would be conditional on the underlying offense.
- **Q:** How is this functionally different from the current robbery of a pharmacy enhancement? **R:** Making it an aggravating factor removes the required exceptional sentence allowing courts to sentence within the original standard range.

- **C:** Making it an aggravating factor would remove the mandatory minimum. This could help address racial disparities, as African Americans are disparately sentenced in robbery cases.
- **Q:** If you were to shoplift from a pharmacy would you be eligible for this aggravating factor? If the concern is about the robbery of controlled substances, shouldn't we make that explicit? **R:** Different types of robbery are distinguished by monetary value. This aggravator would only apply to individuals who stole \$750 or more worth of goods from a pharmacy. Still, we may want to consider being more detailed about controlled substances.
- **Q:** How often is this enhancement currently used? **R:** Since 2013, only two sentences appear to have included this enhancement.

Action Item: The Subgroup decided to revisit this enhancement and the potential recommendation next week.

Sexual Motivation

WA's current sentencing system includes both a sexual motivation enhancement and a sexual motivation aggravating factor. The Subgroup discussed whether to remove and/or modify either; the Subgroup's comments/questions/responses are summarized below:

- **C:** The enhancement allows for some degree of certainty (i.e., a mandatory additional time) and it can also be used to mitigate a sentence in certain situations. For example, a prosecutor might agree to charge an individual with assault of a child with sexual motivation rather than the more serious offense of child molestation. Removing the enhancement and making sexual motivation just an aggravating factor could reduce sentencing certainty because judges would then have discretion to issue an exceptional sentence up to the statutory maximum.
- **C:** In 2019, sexual motivation was charged for a variety of underlying offenses. An argument for maintaining sexual motivation as an enhancement could be that it would allow sexual motivation to be considered as a factor for a variety of underlying crimes.
- **Q:** Is this an instance where you would want to require pre-sentencing investigations (PSIs)? **R:** Sex crimes currently require PSIs and they can be very helpful, especially for more serious sex crimes.
- **C:** The mandatory minimum aspect of this enhancement could be eliminated. For example, we could recommend changing the statutory language to allow for "up to X years." This would still allow for some certainty.
- **Q:** What if the underlying crime is already a sex crime? Can an individual still be charged with sexual motivation? **R:** No, it is presumed to be built into the underlying crime.
- **C:** The sexual motivation aggravator does not provide certainty for either the defense or the victim.
- **Q:** How often do judges decline to follow the sentence agreed to during the plea negotiation process? **R:** It likely depends on the judge but not very often.
- **C:** Sex crimes and sexually motivated offenses are a unique type of criminal behavior.
- **C:** Approximately 60% of individuals charged with a sexual motivation enhancement are white and approximately 15% are Black/African American.

Action Item: Subgroup members decided to continue discussing sexual motivation as an enhancement, though with possible modifications and generally agreed the sexual motivation aggravating factor was not necessary.

Action Item: Clela Steelhammer will compile additional data on sexual motivation enhancements and aggravating factors, including associated underlying offense.

NEXT STEPS & ACTION ITEMS

- **The Subgroup** will share their draft research proposal with the Sentencing Effectiveness working group on 8/19.
- **The Subgroup** will continue to discuss robbery of a pharmacy and the remaining enhancements (e.g., protected zones).
- **Clela** will compile as much information as possible on the remaining enhancements, including sexual motivation.