

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: August 4, 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*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- 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*

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

WELCOME & REVIEW AGENDA

Amanda welcomed Grid Subgroup (Subgroup) members and reviewed the Sentencing Effectiveness Working Group (SEWG or working group) and Subgroup timelines. She then turned the meeting over to Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP), who drafted some additional potential recommendations based on past Subgroup discussions. Amanda and Chris asked the Subgroup to decide which potential recommendations they would like to bring to the SEWG on August 5th.

ADDITIONAL POTENTIAL RECOMMENDATIONS

Lauren walked the Subgroup through the two potential recommendations she drafted (*see supporting materials section below*). The following summarizes the Subgroup’s questions/comments/responses, organized by potential recommendation.

Potential Recommendation 1: Direct the Sentencing Guidelines Commission (SGC) to develop a proposal to move all statutes concerning criminal penalties from RCW Title 69 to RCW Title 9.94a. This proposal should include a review of drug sentences and include recommendations to reduce overly punitive sanctions.

- **C:** This is a good recommendation. The SGC would just need a directive from the Legislature or a legislative member to begin enacting this proposal.
- The Facilitation Team requested that any policy recommendations folks would like the Task Force to weigh-in on and potentially support will need to be presented to the full Task Force as soon as possible. Chris and Amanda also asked members to be open about any criminal sentencing-related policies they plan to pursue regardless of the Task Force’s final recommendations.

Action Item: Subgroup members agreed to bring the policy recommendation to the full Task Force prior to any legislative member or body issuing a directive to the SGC.

- **Q:** What scope should the SGC look at? To what degree would it make sense to do a more sweeping review of drug policies? **R:** Subgroup members generally agree they would like to see the justice system adopt a more therapeutic approach to drug policies.
- **Q:** Are we just discussing the penalty pieces of RCW 69.50? **R:** Yes.
- **C:** The recommendation should explicitly reference reducing or eliminating incarceration sentencing for drug-related crimes. The Department of Corrections (DOC) is already calling for some de-incarceration.
- **C:** "Drug-related" is too broad a term, we should consider being more specific and limit it to possession and addiction motivated property crime. **Q:** What about the term "non-violent drug offenses"? **R:** All (except one) RCW 69.50 offenses are non-violent.
- **C:** If we're trying to reduce drug charges and sentencing length and increase behavioral health support, we should also consider the burden this puts on local jurisdictions: reduced sentencing lengths may lead to increases in local jail populations, and therapeutic programs are run at the county-level. We should consider ways to help finance such a transition. **C:** We should also acknowledge that, to a certain extent, these costs are driven by county-level actors. It is the county prosecutor's office that decides to charge each possession case etc.

Revised Potential Recommendation 1: Request that the SGC develop a proposal to move all statutes concerning criminal penalties from Chapter 69.50 RCW to Chapter 9.94A RCW. At a minimum, this proposal should also include:

- a review of drug sentences and recommendations to reduce reliance on punitive sanctions and to prioritize a therapeutic model for associated drug offenses.
- a review of reforms to reduce or eliminate incarceration penalties for drug related offenses, particularly felony possession.

Potential Recommendation 2: Eliminate the Correctional Facilities Drug Enhancement (RCW 9.94A.533(5)) and replace it with a new statute allowing judges to sentence up to 12 months of additional incarceration time above the standard range for violations of RCW 69.50.401, 69.50.410, or 69.50.4013 that occur in a county jail or state correctional facility.

- **Q:** Should the language be broadened to include city and/or tribal jails? They are not included in the current statute.
- **C:** The Subgroup's individualized approach to enhancements is confusing and may add to the system's complexity, rather than reducing it.
- **Q:** I'm afraid this enhancement just serves to further criminalize addiction. Does the correctional facilities drug enhancement differentiate between personal use and intent to distribute? **R:** No.
- **Q:** We just discussed recommending the SGC should review drug policies. Should this enhancement also be a part of this? Would the protected zone enhancement also be included, as a drug-related charge? **R:** Some members agreed drug-related enhancements should be reviewed by the SGC. Other members expressed reservation about postponing review of the protected zone enhancement, arguing the broad definition of "protected zone" (e.g., public parks, public housing, etc.) explicitly perpetuates socio-economic inequalities.
- **Q:** We keep discussing enhancements but are we looking at things backwards? If the Task Force is going to rework the grid, does the conversation about what to do with enhancements become less substantial? **R:** The Subgroup discussed incorporating several enhancements into the grid as separate offenses. **Q:** What if enhancements stay separate and we table the discussion of enhancement reform until we have a better understanding of what a new sentencing grid might

look like? Depending on how the grid changes, the impact of enhancements and/or the number of exceptional sentences may be diminished.

- **Q:** Can various potential approaches to enhancements be analyzed in the research proposal? Can we assess the impacts of eliminating all enhancements? Some enhancements? Etc.? **R:** Yes. This can be added to the draft research proposal.

NEXT STEPS & ACTION ITEMS

- **The Subgroup** will present the revised draft potential recommendation 1 (above) to the Sentencing Effectiveness Working Group on 8/5.

SUPPORTING MATERIALS: Additional Emerging Potential Recommendations (7.28.20)

Consolidating sentencing statutes

1. **POTENTIAL RECOMMENDATION:** Direct the Sentencing Guidelines Commission to develop a proposal to move all statutes concerning criminal penalties from RCW Title 69 to RCW Title 9.94a. This proposal should include a review of drug sentences and include recommendations to reduce overly punitive sanctions.
 - a. ***Reduces complexities and errors:*** Currently sentencing provisions exist in in both title 69 and title 9.94a. This proposal would centralize all criminal sentencing provisions within the Sentencing Reform Act to eliminate redundancy and reduce the likelihood of errors.
 - b. ***Improves effectiveness of the sentencing system:*** Centralized sentencing provisions makes it easier to assess the full scope of applicable statutes at sentencing.
 - c. ***Promotes/improves public safety:*** Helps ensure that sanctions are accurately determined.

Reforming Enhancements

1. **POTENTIAL RECOMMENDATION:** Eliminate the Correctional Facilities Drug Enhancement (RCW 9.94A.533(5)) and replace with a new statute allowing judges to sentence up to 12 months of additional incarceration time above the standard range for violations of RCW 69.50.401, 69.50.410 or 69.50.4013 that occur in a county jail or state correctional facility.
 - a. ***Reduces complexities and errors:*** Clarifies that an additional sanction may be rendered, but is not mandatory. Eliminates potential confusion about whether the additional time is eligible for earned time.
 - b. ***Improves effectiveness of the sentencing system:*** Eliminates disparity in the amount of additional time that may be assessed by type of drug. In the current statutes, the enhancement ranges from 12 to 18 months depending on the type and amount of drug. The proposed revision creates consistency across all types and amounts of drugs associated with the underlying offense.
 - c. ***Promotes/improves public safety:*** Helps ensure that sanctions are accurately determined and there is not confusion about whether or not the additional time is eligible for earned time.