

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group Grid Subgroup
Meeting Summary: June 30, 2020
Digital Conferencing Technology

Attendees:

- Rep. Roger Goodman, *Washington State House of Representatives, Democratic Caucus*
- Keri-Anne Jetzer, *Sentencing Guidelines Commission*
- Lauren Knoth (research/data support), *Washington Institute for Public Policy*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender 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

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

WELCOME & AGENDA REVIEW

Amanda welcomed Grid Subgroup (Subgroup) members and provided a few highlights from the Sentencing Effectiveness Working Group (working group or SEWG) meeting on 6/24.

AGGRAVATORS & ENHANCEMENTS

Lauren Knoth (Washington Institute for Public Policy, aka WSIPP) walked the Subgroup through a visualization of various sentencing alteration approaches the SEWG discussed. These approaches include (see Appendix A for a complete diagram):

- **Aggravator Approaches:**
 - **1a. Status quo:** a proven aggravating factor allows the judge to sentence above the standard presumptive range but within the statutory maximum and within reason.
 - **1b. Bounded discretion:** a proven aggravating factor allows the judge to sentence above the standard presumptive range but within a pre-defined limit (e.g., a 12-month cap).
- **Enhanced Range Approaches:**
 - **2a. Range shift:** an enhancement shifts the standard range upward by adding a pre-determined number of months to the top and bottom of the standard range. An individual can still be sentenced in the original standard range if mitigating factors exist.
 - **2b. Range expansion:** an enhancement expands the standard range by adding a predetermined number of months only to the top end of the range.
- **Mandatory Minimum Approach:** an enhancement adds a mandatory term to the sentence, functionally shifting and constricting the range upward (NOTE: this currently describes how enhancements function, but the Subgroup could suggest the SEWG propose to the Task Force that the nomenclature for enhancements change to become or include "mandatory minimums").

Lauren pointed out the Subgroup would also need to consider the order of operations, if the SEWG decides to propose a system that still includes both aggravators and enhancements; the Subgroup would

also need to address whether any cap on exceptional sentences for aggravating factors should be applied per factor or per sentence.

- **Q:** Does *Blakely* apply to some, or all, of these approaches? **R:** *Blakely* would only apply to the mandatory minimums approach.
- **C:** A Subgroup member suggested reclassifying all the seldomly-used enhancements as aggravators and setting a limit to the upper range.
- **C:** Some enhancements seem fundamentally different than others and thus should perhaps operate differently. For example, the firearms enhancement came out of the *hard time for armed crime* era and was specifically designed to ensure a mandatory minimum sentence for acts that involve a gun. However, other enhancements (e.g., sexual motivation) are broader and appear to allow for more discretion.
- **Q:** If an enhancement can be applied towards good time, how is that still a mandatory minimum? **R:** Representative Goodman informed the Subgroup he plans to introduce legislation to ban stacking of enhancements in the 2021 session. The bill will likely be similar to [HB 1148](#), which was introduced in 2015 and would have removed stacking of enhancement, ensured enhancements are eligible for earned time, and removed the requirement of total confinement.
- The Subgroup generally supported this proposed legislation, though at least one member requested the bill also ensure enhancements are served concurrently unless explicitly sentenced as consecutive.
- **Q:** What kind of earned time would enhancements be eligible for under this bill? **R:** Earned time would track to the underlying offense (e.g., 10% for violent offenses).
- **C:** A Subgroup member pointed out that earned time for many types of offenses has been significantly shrunk by the Legislature in past years.

Action Item: The Subgroup agreed to present a potential recommendation to the SEWG where deadly weapon and firearm enhancements function like the enhanced approaches (2a or 2b) discussed above.

As the questions, comments, and responses below indicate, the Subgroup needs more discussion to determine whether it supports an enhanced approach like 2a or 2b.

- **C:** If we change all other enhancements (i.e., not deadly weapons or firearms) to aggravators, they would be subject to the current system and body of case law surrounding aggravators.
- Others noted support for instituting a proportional or set cap on the length of exceptional sentences imposed based on aggravating factors.
- A Subgroup member suggested adding an aggravating/mitigating grid column like Pennsylvania's model. Another member felt this would be too large a change to the system and noted that checks exist already on judicial discretion in the current aggravator system. If a judge sentences above the standard range, these exceptional sentences are automatically subject to a review by appellate courts.
- **Q:** Are there cases that have multiple aggravators? **R:** Yes, it is not unusual for prosecutors to seek a sentence with multiple aggravating factors.

The Subgroup agreed it needed more discussion on aggravating factors and asked Clela to prepare some information on their use in the current system.

NEXT STEPS & ACTION ITEMS

- **The Facilitation Team** will follow-up with Subgroup members unable to attend.
- **Clela** will provide a brief statistical summary/report on aggravators, including:
 - The number of exceptional sentences due to aggravating factors;
 - How much beyond the standard presumptive range such sentences were; and
 - How many went in front of a jury, i.e., were not the result of a two-party agreement.

APPENDIX A: Enhancements & Aggravators Approaches Visualization

| | | | | | | | | | | | | | |
|--|--|----|----|----|----|----|----|----|----|----|-----|---------------|--|
| Standard range - Offense Seriousness Level 10, Criminal History Score 2, Felony Class A | | | | | | | | | | | | | |
| | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 90 | 95 | 100 | 100 | |
| | *technical range 62-82 | | | | | | | | | | | | |
| AGGRAVATOR APPROACHES | | | | | | | | | | | | | |
| Range with aggravator, assuming no change to aggravator structure | | | | | | | | | | | | | |
| 1a. | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 90 | 95 | 100 | 105...to life | |
| | *Range extends from 62 months to the statutory maximum - Life | | | | | | | | | | | | |
| Range with aggravator, assuming a 12 month cap to aggravating sentences | | | | | | | | | | | | | |
| 1b. | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 90 | 95 | 100 | 105 | |
| | *range includes the standard range of 62-82, plus an additional 12 months. | | | | | | | | | | | | |
| ENHANCED RANGE APPROACHES - Assumes enhancement is 12-24 | | | | | | | | | | | | | |
| Range with enhancement shifting entire range | | | | | | | | | | | | | |
| 2a. | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 90 | 95 | 100 | 105 | |
| | *Range minimum moves from 62 to 74 and maximum moves from 82 to 106 | | | | | | | | | | | | |
| Range with enhancement expanding only upper end of range | | | | | | | | | | | | | |
| 2b. | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 90 | 95 | 100 | 105 | |
| | *range includes the standard range of 62-82, plus an additional 24 months | | | | | | | | | | | | |
| MANDATORY MINIMUM APPROACHES - Assumes enhancement is 12-24 | | | | | | | | | | | | | |
| Mandatory Minimum of 24 months, functionally shifting range upward. | | | | | | | | | | | | | |
| 3a. | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 90 | 95 | 100 | 105 | |
| | *Range moves upward 24 months to 86-106 | | | | | | | | | | | | |