

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group: Grid Subgroup
Meeting Summary: July 14, 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, *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 Roger Rogoff, *Superior Courts Judges Association*
- 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*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*

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

WELCOME & AGENDA REVIEW

Amanda welcomed Grid Subgroup (Subgroup) members and reviewed the meeting agenda, encouraged members to focus on information and decisions to further hone the sentencing grid research proposal.

FIREARMS/DEADLY WEAPONS ENHANCEMENTS & SENTENCING DISPARITIES

Clela Steelhammer from the Caseload Forecast Council (CFC) presented a spreadsheet of Washington sentencing data comparing single, paired, and multiple firearm and deadly weapons enhancements by race. She walked the Subgroup through various tables, noting that the greatest racial disparity appears when multiple weapon enhancements get applied. Although a small portion of cases, the data shows African Americans more likely than any other racial group to be sentenced with multiple counts of firearms enhancements or multiple counts that include both firearm and deadly weapon enhancements. The following summarizes the Subgroup's subsequent questions, comments, and responses:

- **C:** It is common for prosecutors to reduce a firearm enhancement to a deadly weapon enhancement during plea negotiations.
- **Q:** Are there studies that examine the impact of firearm enhancements and gun policies on racial disparity? **R:** Though due to the relatively small sample size, few studies look explicitly at firearm enhancements, it does appear that people of color, and particularly African Americans, are more likely to be charged and convicted of firearm offenses.
- **C:** It is often on the fringes of sentencing, i.e., the application of aggravating/mitigating factors or enhancements, where we see the most racial disparity.
- **C:** Less than 10% of enhanced sentences (20 of 290) apply to drug offenses. The majority of firearm and deadly weapon enhancements are attached to the most serious types of offenses.
- **Q:** How do enhancements get processed and recorded in court proceedings? Would we see them in court data if an enhancement initially got filed but then dropped as part of the negotiation process? **R:** Whether such data gets captured varies by (and within) counties. No data captures what is not charged (e.g., a gun was used or present but the prosecutor did not attach an enhancement to the offense charged), but depending on office preference, you may see whether it got initially filed and then dropped.

Lauren Knoth (Washington Institute for Public Policy, or WSIPP) noted it is hard to determine the why or how of disproportionality from just this data. She will look at WSIPP's database and other sources for ways the Subgroup (or other researchers) might parse out the initial filing statistics.

- **C:** Maybe we could limit the disparate impact of enhancements would be to eliminate their use on offenses where the enhancement is already in the definition of the crime. For example, the definition of Robbery 1 (see [RCW 9A.56.200](#)) includes firearms and deadly weapons. **R:** Another member cautioned that the definition of Robbery 1 also includes *what appears to be* a firearm or deadly weapon.
- **Q:** Is there research that supports the idea that firearm enhancements actually deter people from committing a crime with a gun? How many people really know about enhancements? Can they be a deterrent if most people are not aware of them? **R:** The research is not definitive, but it appears that such enhancements do not have a general deterrent effect. They may have specific deterrent effect for individuals who have gone through the system and thus know of the steeper consequences associated with firearm and/or deadly weapon enhancements.

ENHANCEMENTS & AGGRAVATORS REVISITED

The facilitation team asked the Subgroup to consider how they want to treat enhancements in the future. The Subgroup generally agrees that all enhancements, except firearms and deadly weapons, should be converted to aggravating factors; however, the Subgroup still needs to work out the details of how the aggravating factors should operate.

Representative Roger Goodman informed they Subgroup he is currently working on draft legislation to make firearm and deadly weapon enhancements presumptively concurrent and eligible for earned time. His team has not yet decided whether to pursue retroactivity.

- A Subgroup member asked that the draft legislation make charges including enhancements also eligible for mitigating factors.
- Another member suggested that any potential recommendation that emerges out of the Sentencing Effectiveness Working Group should require data collection to assess the impacts of future changes to the system, and provide guidance (if not explicit rules and procedures) for data collection.
- A Subgroup member also suggested another way to address disparities would be to limit how many enhancements can be applied (e.g., a prosecutor cannot charge multiple firearm enhancements).

The Subgroup agreed Representative Goodman's draft legislation should be discussed with the full Task Force.

ACTION ITEMS & NEXT STEPS

- **Representative Goodman** will share draft legislation language with the Subgroup when complete.
- **The Subgroup** will table discussion of firearms and deadly weapons until the draft legislation language is available and will focus on the specifics of how to treat the remaining enhancements would work as aggravators (i.e., using the current parameters or instituting a cap or some other constraint on aggravated sentences).