

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: June 16, 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*
- Clela Steelhammer (research/data support), *Caseload Forecast Council*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*

Guests:

- Omeara Harrington
- Kelly Leonard

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

WELCOME & AGENDA REVIEW

Amanda welcomed Grid Subgroup (Subgroup) members and recapped the recent Sentencing Effectiveness Working Group (SEWG) meeting. As requested by the SEWG, the Subgroup reviewed a list of the current enhancements to determine which might fit better as aggravating factors. Whatever enhancements remain will go back to the full SEWG for further discussion on issues such as whether enhancements should be consecutively (as they are now) or concurrently applied, enhancement length, offense eligibility, etc. Lauren reviewed a list of current Washington state enhancements. The following summarizes Subgroup comments, questions, and responses:

- **C:** The most frequently used enhancements are Firearms and Deadly Weapons. Between 2009 and 2018, approximately 150 firearm¹, 94 non-firearm enhancements, and 34 Sexual Motivation enhancements per year were applied.
- **C:** Since the Legislature only recently established the Vehicular Homicide and Child Minor enhancements, it may be politically difficult to recategorize them as aggravating factors. Deadly Weapons and Firearms enhancements are also considered politically “sacred.” **R.** Members noted the political landscape may be shifting and suggested the group consider all possible options.
- **C:** Enhancements is somewhat of a misnomer; they function more like mandatory minimums.
- Discussion of specific enhancements highlighted the system’s current complexity. Different enhancements operate differently from each other (e.g., some increase criminal history scores, they have varied lengths, some require special allegations, some are eligible for earned release time).

What is the aim of enhancements as compared to aggravating factors (what does the Legislature consider worse behavior)?

¹ NOTE: The Caseload Forecasting Council (CFC) counts firearm enhancements by sentence, e.g., if four firearm enhancements are applied to one sentence, they count as one firearm enhancement in CFC adult sentencing statistical summary.

- **C:** In PA, enhancements either add onto the standard range or increase the offense seriousness level. Then aggravators and mitigators get added to either end of the range. Aggravators cannot be anything that is currently addressed via the grid (e.g., factors already accounted for in criminal history score or offense seriousness).
- Some Subgroup members expressed interest in adopting a similar system, particularly where enhancements would broaden the sentencing range and could be applied alongside aggravating and/or mitigating factors.
- **C.** Adopting such a system could reduce future complexity by limiting the Legislature's ability to influence specific sentences.

The Subgroup agreed to suggest the SEWG recommend the Task Force:

- Keep Firearms and Deadly weapons as enhancements.
- Develop a consistent approach to enhancements (e.g., get rid of stacking, make eligible for earned time, decide if enhancements should be included in criminal history score calculations, etc.).

ACTION ITEMS & NEXT STEPS

- **The Facilitation Team** to inform full SEWG of the Subgroup's intention to keep Firearms and Deadly Weapons as enhancements; Subgroup will continue to discuss the remaining enhancements and potentially agreeing to suggest they become aggravating factors with enhanced ranges.
- **Jon** will broach the enhancements/aggravators conversation with prosecutors and report back.
- **Jon** will review statutory language on enhancements, clarifying how they are applied in practice.
- **Clela** will gather information on annual frequency in sentencing for each enhancement.