

**Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: September 30, 2020
Digital Conferencing Technology**

Attendees:

- Representative 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*
- 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 briefly reviewed the meeting agenda. She noted the Facilitation Team had recently fielded a request from a citizen hoping to observe the Subgroup’s weekly discussions. Subgroup members agreed they want to be as transparent as possible and asked Chris and Amanda to extend an invitation to anyone interested in observing Grid Subgroup meetings.

SEXUAL MOTIVATION ENHANCEMENT

Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP) provide a brief background of the sexual motivation enhancement and summarized previous Subgroup discussions. The sexual motivation enhancement was enacted in 2006 and when pleaded or proven adds a mandatory two years for Class A felonies, 18 months for Class B felonies, and one year for Class C.; these additional sentences are doubled for subsequent enhancements. Sexual motivation enhancements are served consecutively and are not eligible for earned release time. In FY19, approximately 31 sentences included a sexual motivation enhancement, compared to 34 sentences that included the sexual motivation aggravating factor over the past 20 years.

Subgroup questions/comments/responses are summarized below:

- **Q:** The sexual motivation aggravating factor cannot be applied to sex offense, but this does not seem to be the case for the enhancement. The statute language says it applies to all felonies. Is this enhancement ever applied to sex offense? **R:** There are occasions where there is a sex crime and additional counts that are not sex-offenses may include the enhancement.
- **C:** Applying the enhancement to sex-crimes would raise the issue of double jeopardy.
- **Q:** How is this different than the double jeopardy issue raised by firearm and deadly weapon enhancements?
- **C:** The legal definition of sexual intercourse does not include sexual motivation. Many rapes are not motivated by sexual gratification but rather a desire for power and control.
- **Q:** Are sexual motivation enhancements stacked? **R:** Yes, these can be stacked any time you have multiple victims or instances.

- **Q:** What are the potential benefits to having both a sexual motivation aggravator and enhancement? **R:** It would be interesting to see the legislative history of this enhancement. Perhaps the enhancement was added because the aggravating factor wasn't being used. Perhaps the mandatory minimum nature of the enhancement, with its added certainty, was appealing to the Legislature. It is fairly common practice to amend a sex charge to a non-sex offense with a sexual motivation enhancement; perhaps this enhancement was added to facilitate plea agreements, allowing all parties to have some degree of certainty.

Action Item: Keri-Anne to provide bill history for the sexual motivation enhancement (SB 6460, 2006).

- **C:** It seems confusing that we would apply a mandatory minimum to Assault 2 with sexual motivation but not Rape 1. **R:** In practice Rape 1 does include a mandatory minimum sentence (“not less than five years”).
- **C:** I still think we should do away with all enhancements and address issues of increased culpability via the grid. This would reduce complexity by ensuring sentencing laws are all located in one place and simplify Department of Corrections (DOC) calculations of earned release time and total confinement.
- **C:** In other states enhancements often operate by increasing offense seriousness levels.

The Subgroup continued to discuss the possibility of eliminating all current enhancements and instead addressing increased culpability for the enhancement factors (e.g., sexual motivation, deadly weapons, etc.) via the different potential grid options. For example, certain factors of a crime could increase the offense seriousness-level of the underlying crime, resulting in an increased presumptive range. A defendant's criminal history score could also impact the range, further increasing the top and/or bottom of the range for defendants with more priors. Some members noted the huge political challenge of eliminating enhancements (especially firearm/deadly weapons and sexual motivation). However, the Subgroup expressed interest in continuing to discuss the idea as a means to both reduce complexity and errors and improve effectiveness (the research is clear that mandatory minimums are not effective deterrents and do not reduce recidivism).

Action Item: Next week (10/6), the Subgroup will walk through example cases with enhancements to see how such increased culpability might be addressed in two potential grid options.

NEXT STEPS & ACTION ITEMS

- **Facilitation Team** to share Subgroup Zoom coordinates with individuals interested in observing future meetings.
- **Keri-Anne** to provide additional legislative history on the sexual motivation enhancement bill.
- **All Subgroup members** to prepare case examples for 10/6 meeting.