

**Washington State Criminal Sentencing Task Force**  
**Sentencing Effectiveness Working Group – Grid Subgroup**  
**Meeting Summary: September 15, 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*
- Melody Simle (alt. for Suzanne Cook), *Statewide Family 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

**INTRODUCTION AND AGENDA REVIEW**

Amanda welcomed Grid Subgroup (Subgroup) members and congratulated them on the Task Force’s first consensus decision of 2020. She then briefly reviewed the meeting agenda and Task Force meeting schedule.

**STREET GANG ENHANCEMENT ([RCW 9.94A.533\(10\)\(a\)](#))**

Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP) shared an excel spreadsheet listing WA sentencing enhancements and summarized the Subgroup’s past conversations about the street gang enhancement. According to data compiled by Clela Steelhammer (Caseload Forecasting Council), this enhancement has been applied to one sentence in the past 20 years. Subgroup questions/comments/responses are summarized below:

- **C:** In 2008 there were some reports of gangs from Tacoma recruiting in Thurston County middle schools and concerns about gang involvement of human trafficking. Was there something else that catalyzed this enhancement? **R:** I am not aware of the human trafficking concern, but as I recall this enhancement grew out of concerns around gang graffiti in Yakima and motorcycle gangs. **R:** The bill report ([see E2SHB 2712](#)) indicates this enhancement was recommended to the Legislature by Washington Association of Sheriffs and Police Chiefs (WASPC) working group.
- **C:** Given this enhancement has rarely, if ever, been used, it seems like low hanging fruit for this Task Force to recommend eliminating it.
- **C:** One option is to get rid of the enhancement entirely, another option would be to make it an aggravating factor.
- **C:** A street gang aggravating factor already exists ([see RCW 9.94A.535\(aa\)](#)), and its much broader in scope than this enhancement.
- **C:** The street gang enhancement is so narrowly tailored that it is almost impossible to prove.

- **C:** If our goal is to simplify the sentencing system, we should eliminate this enhancement. We already have an aggravating factor to address the concern of street gangs and the enhancement is so difficult to prove it is practically useless.
- **Q:** Would it be helpful to reach out to prosecutors in Yakima and Skagit Counties where Latino gangs are particularly active?
- **C:** I am concerned that this enhancement could disproportionately impact people of color.

Action Item: The Subgroup agreed to present a potential recommendation to eliminate the street gang enhancement at 9/16 or 9/30 Sentencing Effectiveness working group meeting.

Action Item: Jon Tunheim will reach out to prosecutors in Skagit and Yakima Counties for additional background/input on the street gang enhancement.

### **VEHICULAR HOMICIDE ([RCW 9.94A.533 \(7\) & \(13\)](#))**

The Subgroup spent the remainder of their meeting discussing two vehicular homicide enhancements, a) vehicular homicide committed under the influence of drugs and/or alcohol where the defendant was previously convicted of DUI(s), and b) DUI vehicular homicide with passengers under age 16. Subgroup questions/comments/responses are summarized below:

- **Q:** How often is someone convicted of vehicular homicide when drugs and alcohol are not involved? It seems like we are further criminalizing behavior caused by substance abuse disorders. **R:** In my experience, the vast majority of vehicular homicide cases involve drugs and/or alcohol.
- **C:** RCW 9.94A533(7) appears to be aimed at repeat DUI offenders.
- **Q:** Isn't the repetitive nature of an offense captured in a defendant's criminal history score? **R:** It is captured in the criminal history score and in fact you cannot use this enhancement if you use past DUIs in the criminal history score calculation.
- **C:** We seem to be trying to get at prior DUIs in several ways. Multiple different approaches create unnecessary complexity, it seems we should choose the most effective approach to addressing prior DUIs and stick with that.
- **Q:** How do other states address this? **R:** Most Subgroup members were unaware of how other states address prior DUIs in vehicular homicide cases, though Lauren did note that Pennsylvania takes a much more punitive approach, applying a mandatory additional seven years with priors.
- **Q:** What is the political background of these two enhancements? **R:** Both enhancements, in their current form, are fairly recent. They were championed by King County Prosecutor, Amy Freedheim and the enhancement for vehicular homicide involving child passengers was recommended by Washington State Patrol. The enhancement for involving minor passengers was also recently amended to be consecutive and allow for one enhancement per child present.
- **C:** Personally, I am more supportive of the child passenger enhancement (i.e., RCW 9.94A.533(13)) because I believe there is more culpability when you put minors at risk. I also agree with others that RCW 9.94A.533(7) increases complexity in the system and could be revised.
- **Q:** Could prior DUI convictions be addressed via the grid? **R:** Yes, I think past DUIs are best addressed via criminal history scores, rather than other enhancements.

Most Subgroup members liked the idea of including RCW 9.94A.533(7) as part of their ongoing sentencing grid discussion.

- **C:** There are policy issues to consider here. We need to ask ourselves if we want to further criminalize behavior caused by substance abuse disorders. Furthermore, we should consider whether it makes sense to lock someone up longer who likely has children and a family.
- **C:** I agree that substance abuse disorders should not be criminalized but the decision to get in a car suggests more culpability. I am also reluctant to increase confinement time for DUIs as longer sentences do not seem to influence recidivism rates. Instead, I prefer the use of ignition interlock devices.
- **Q:** Could we consider making RCW 9.94A.533(13) discretionary, i.e., the number of children present would increase the presumptive range rather than require a mandatory minimum sentence per child?
- **C:** I have handled quite a few vehicular homicide cases. The concern I heard most often from victims' families was defendants do not get enough time. Families wanted to know why vehicular homicide was treated differently compared to other types of homicide.
- **C:** I agree. Vehicular homicide does not compare to other types of homicide. From a sentencing policy standpoint, if we are concerned about something not being punitive or taken seriously enough, we should address it via the grid (e.g., via criminal history score). I think we've hesitated to require harsher sentences for this type of crime because it's something that affects the middle class. We've approached DUIs and vehicular homicide in a piecemeal fashion because it often involves white, middle class defendants. I am not a fan of mandatory minimums but would agree that seven years for vehicular homicide with prior DUIs doesn't seem unreasonable.
- **C:** I agree in part. I think addressing prior DUIs via criminal history scores and eliminating the enhancement could help reduce unnecessary complexity. However, I support the enhancement addressing minor passengers because it is narrowly defined and simple to use.
- **Q:** Could we create a separate crime for vehicular homicide with a child present and allow the prosecutor to decide how many counts to charge? **R:** I think it would be difficult to create a separate charge that would be equitable to other vehicular homicide charges.
- **C:** The minor passenger enhancement also applies to felony DUI and vehicular assault; you can face the same sentence whether you kill someone or not.

#### **NEXT STEPS & ACTION ITEMS**

The Subgroup will continue their discussion of vehicular homicide enhancements next week.

- **The Facilitation Team** will draft a potential recommendation to eliminate the street gang enhancement based on the Subgroup's discussion today.
- **Jon Tunheim** will follow-up with prosecutors from counties concerned about Latino street gang activity.