

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Work Group: Grid Subgroup
Meeting Summary: July 28, 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*
- 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 briefly reviewed the revised Task Force workplan. The Subgroup is slated to present its emerging findings at the first September Task Force meeting (9/10), including suggested directions for a new grid and research to gauge projected impacts.

ENHANCEMENTS

The Subgroup continued discussing enhancements, reviewing recent notes and policy suggestions submitted by members. The Subgroup’s conversation, organized by specific enhancement, is summarized below.

Nick Straley: Correctional Facilities Enhancement

Nick briefly summarized his correctional facilities enhancement notes and suggested changes, including draft statute language to create a new offense, similar to the underlying sections of RCW 69.50.401, .410, and .4103. As Nick noted, the “sentence for violation of this newly designated crime would be the range for violation of those offenses, plus up to 18 months for violations of .401(2)(a) or (b), or .410, 15 months for violations of .401(2)(c),(d) or (e), and 12 additional months for violations of .4013.” This could increase judicial discretion without necessarily increasing the severity of the sanction (i.e., additional time is not mandatory).

Nick explained this would meet the Task Force goals of improving effectiveness and reducing complexity because making this enhancement a separate underlying offense will make it easier for DOC to calculate sentences and determine earned time, etc.

- **C:** Reviewing the statute language, it appears this enhancement do not cover city or tribal jails.
- **Q:** Would the Legislature need to re-rank crimes (if committed in correctional facility), assigning seriousness level? **R:** The drug grid is tight (only three offense seriousness levels and three categories of criminal history scores) and assumes a B felony or less. Thus, it could be difficult to incorporate new offenses based on enhancements without sending everything out of whack. **R:** Perhaps adopting a +/- felony system (e.g., C-, C, C+, etc.) would allow greater sentencing precision.
- **C:** Essential this new offense would function the same way as the original enhancement. If this is the direction folks want to go, one option might be to create a separate sentencing matrix for drug

offenses in correctional facilities like Pennsylvania. This would provide more transparency for individuals being sentenced and improve simplicity by eliminating the need for mental math.

- **Q:** Are you saying we just widen the top end of the sentencing range, keeping the bottom end the same? If so, I think this is a good idea. **R:** Pennsylvania’s various matrices operate by increasing the range on both the bottom and the top (e.g., + 6-12 months), but you could also just increase the top.
- **Q:** Does it apply to any crime within that zone or just specific types of crime? **R:** If prosecutors pursue the correctional facilities or protected zone enhancement on qualifying offenses, that would determine what sentencing matrix is used.
- **C:** Adding to drug grid ranges could add substantial amount of time to sentences because the ranges are already quite wide. Another possibility would be to change the statute language to assert if any of these offenses occur in a correctional facility, the judge *may* add X months, instead of the court *shall* add.
- **Q:** Is this enhancement common? **R:** It is not uncommon. There were ten in 2019.
- **C:** Currently, “harder” drugs result in a longer sentence but does the type of drug really matter? **R:** Several members supported simplifying the potential recommendation to allow a judge to add up to 12 months for any substance, rather than different amounts for different drugs.
- **C:** All sentencing statutes should be brought into the Sentencing Reform Act, aka SRA, (i.e., incorporating RCW 69.50 into 9.94A) so folks only need to look at one chapter while sentencing. This would reduce complexity. **R:** This is possibly something that the full Sentencing Effectiveness Working Group (SEWG) could recommend the Sentencing Guideline Commission (SGC) take on.
- **C:** If the Task Force does recommend the SGC review RCW 69.50 and other sentencing statutes to combine them within the SRA, the SGC should also look at opportunities to mitigate overly harsh drug sentences.

Action Item: The Subgroup agreed to develop a potential recommendation to make the correctional facilities enhancement a separate offense where courts MAY impose UP TO 12 additional months on qualifying underlying drug offenses.

Jon Tunheim: Endangerment while Eluding Law Enforcement Officer (LEO) & Assaulting a Police Officer

Jon summarized the results of his review of the “endangerment while eluding” enhancement, which was enacted in response to an incident in Yakama in which two young men were killed when a vehicle eluding police hit them. The bill passed with near-unanimous support, as a priority for the Washington Association of Sheriffs and Police Chiefs (WASPC). Unlike other enhancements, endangerment while eluding applies to a specific underlying crime (i.e., eluding) and is straightforward to charge.

Jon also reviewed his notes on the assaulting a police officer enhancement. This enhancement also introduced in response to an incident—when a fleeing suspect turned and pointed an airsoft pistol at the pursuing officer; the officer believed the gun was real and drew his gun and fired two rounds, missing the suspect both times. Like the endangerment enhancement, assaulting a police officer also passed with little opposition and was strongly supported by law enforcement groups. This enhancement also applies only to a specific underlying crime (i.e., third-degree assault against a police officer).

Given their strong political support and the fact that both enhancements are limited to one underlying crime and easy to apply, Jon suggested they remain as enhancements.

- **C:** Both enhancements might make sense to turn into aggravating factors because enhancements created by “hero bills” like these usually are not used often. In the past 20 years, endangerment while eluding has been charged 15 times and assaulting a police officer has never been charged.

- **C:** Making these aggravating factors would give judges the discretion to determine if (and how much) additional time gets added—so unless some sort of limit is imposed, sentences could end up being longer for crimes charged with aggravators rather than enhancements.
- **C:** These actually operate the way enhancements should, i.e., the statutory language does not establish a mandatory minimum sentence. However, keeping them as enhancements does not reduce complexity.

WORKING PLAN REVIEW

The facilitation team reminded the Subgroup they do not need to reach full agreement. Instead, they may want to put forward two or more options to be thoroughly assessed via the research being proposed by WSIPP. Amanda and Chris also reminded the Subgroup that next week (8/5) is the last scheduled meeting of the full SEWG, so any potential recommendations or findings the Subgroup wishes to share must go to the SEWG on or by August 5th.

Some Subgroup members suggested extending the SEWG’s life. The facilitation team agreed to revise the workplan but noted process challenges that could bring, which in turn would likely require some “shuttle diplomacy” between meeting to ensure the Task Force has the best chance possible of reaching consensus.

NEXT STEPS & ACTION ITEMS

- **Facilitation team** to distribute Representative Goodman’s draft bill language for firearm and deadly weapon enhancements to the Subgroup and revise the SEWG meeting plan/schedule.
- **Greg Link** to review protected zone enhancement prior to the Subgroup’s next meeting.
- **Rep. Goodman** to review robbery of a pharmacy enhancement prior to the Subgroup’s next meeting.