

**Washington State Criminal Sentencing Task Force**  
**Sentencing Effectiveness Work Group Grid Subgroup**  
**Meeting Summary: June 23, 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*
- Judge Roger Rogoff, *Superior Courts Judges Association*
- 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 reviewed the work plan and schedule. She mentioned that Russ Hauge stepped down from chairing the Sentencing Guidelines Commission (SGC). In the interim, Keri-Anne will represent the SGC on the Task Force and Russ has indicated he is available to answer questions and chat should the Subgroup want his input on anything.

**ENHANCEMENTS**

Clela Steelhammer introduced the following materials:

- **Enhancement Chart:** An excel table of Washington state (WA) enhancement information, including the annual frequency in sentencing for specific enhancements.
- **Judgment & Sentencing Form (J&S) Examples of Enhancements:** A document with screenshots of J&S examples for each enhancement for Lauren Knoth (Washington Institute for Public Policy, aka WSIPP) to compare WA with Pennsylvania's system.
- **Enhancements:** A document with the statute for each enhancement, including the date each became effective.

Using one of the J&S examples, Lauren described how a similar enhanced sentence would work under the Pennsylvania (PA) system. The "enhanced range" approach in PA allows for more judicial discretion to increase *or* decrease the suggested sentence, whereas enhancements in WA offer little discretion, operating more like mandatory minimums. PA also includes a "reasonableness range" like the federal sentencing system.

The Subgroup then discussed how to address enhancements and develop potential recommendations. The following summarizes the Subgroup's questions, comments, and responses:

- **C:** The firearm and deadly weapon enhancements should go to the full SEWG for further discussion and the Subgroup should suggest making the remaining enhancements into aggravating factors.

- **C:** A Subgroup member noted that *Blakely v. Washington*<sup>1</sup> applies anytime a judge pursues a sentence above the presumptive range and suggested the only way to avoid this is to make the grid advisory. **R:** Other members did not see this change as politically feasible.
- The Subgroup discussed how Legislative changes and the creation of new enhancements has led to an increasingly complex sentencing system over time. For some, it appears the Legislature has created various enhancements in response to specific cases, where a certain element of the crime becomes the political “flavor of the month.”
- **C:** A member emphasized the importance of using “mandatory minimums” terminology instead of “enhancements” because it more accurately reflects how these sentencing tools operate.
- If it is indeed politically infeasible to reclassify firearms and deadly weapons as aggravators, then the Subgroup and working group should focus on ensuring they operate more rationally and consistently (by addressing issues such as enhancement stacking, multipliers, etc.).
- **Q:** Amanda asked the Subgroup to consider what can be done to make potential recommendations related to enhancements more politically feasible? **R:** The Subgroup generally agreed that setting aside firearm and deadly weapon enhancements could help the Task Force reach consensus.
- **Q:** Do folks foresee pushback from defense attorneys if the Task Force recommends changing any or all enhancements to aggravating factors, given there are no limits on additional sentence length beyond the statutory maximum? **R:** Defense attorneys seem to be divided when it comes to increased judicial discretion. However, their support likely depends on how the grid is structured. A new grid recommendation could build in limits to aggravators.
- **C:** A Subgroup member pointed out that aggravators are eligible for goodtime and earned time, so making enhancements into aggravators would ensure individuals are eligible for goodtime based on the underlying offense.

#### **SENTENCING EFFECTIVENESS WORKING GROUP (SEWG) MEETING PREPARATION**

The Subgroup agreed to walk the full SEWG through their progress and discuss the theoretical, political, and philosophical implications of reclassifying ALL enhancements as aggravating factors. Specifically, the Subgroup will solicit input on three potential policy options:

1. ***Change (all, or all except Firearms & Deadly Weapons) enhancements to aggravators under current grid structure;***
2. ***Adopt an “enhanced range” approach similar to Pennsylvania’s; or***
3. ***Treat enhancements in the same way as now (as a mandatory “add-on” once an individual has been sentenced) but change the name “enhancements” to “mandatory minimums” to more accurately describe how they function.***

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

- **The Facilitation Team** will send meeting agenda and enhancement materials to full SEWG.
- **Jon Tunheim and Rep. Roger Goodman** will provide a progress update and summary of Subgroup discussions to-date at the SEWG meeting.

---

<sup>1</sup> *Blakely v. Washington* requires a sentence above the presumptive range be substantiated via proof before a jury