

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: June 9, 2020
Digital Conferencing Technology

Attendees:

- Rep. Roger Goodman, *Washington State House of Representatives, Democratic Caucus*
- Russ Hauge, *Sentencing Guidelines Commission*
- Keri-Anne Jetzer (alt. for Russ Hauge), *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 Court Judges Association*
- Clela Steelhammer (research/data support), *Caseload Forecast Council*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*

Guests:

- Sydney Oliver

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

WELCOME & REVIEW AGENDA

Amanda welcomed Grid Subgroup (Subgroup) members and briefly reviewed the agenda. The facilitation team heard from other Task Force members and alternates interested in observing Subgroup meetings. Before extending invitations, the facilitators would like the Subgroup’s approval; no members objected, and Lauren Knoth (WSIPP) offered to onboard folks interested in joining future meetings.

Action Item: open Subgroup meetings to any Task Force members or alternates who want to observe.

RECAP JUNE TASK FORCE MEETING

The Subgroup reflected on input from the Task Force at its June meeting about ways to incorporate nuanced data (from prosecutorial charging decisions, especially in rural counties) into the emerging research proposal. Subgroup members agreed that recidivism analysis should be based on reconviction, emphasizing the importance of collecting more data at the prosecutor office level. For example, Kitsap County used to keep records of rearrests, referrals, and why a case was pursued or not.

JUDICIAL DISCRETION

Keri-Anne Jetzer reviewed the Minnesota Sentencing Guidelines Commission’s 2010 report on the impact of expanded ranges on the state’s sentencing grid. In response to the 2004 *Blakely v. Washington* decision, Minnesota amended its criminal sentencing grid, expanding ranges by 15% downwards and 20% upwards.¹ The Minnesota SGC report found that average sentence lengths dropped from 46 to 42 months, with much of the reduction due to increased judicial discretion. Sentence lengths did increase slightly for some offenses at higher severity levels. The following summarizes the Subgroup’s comments, questions, and responses:

- **Q:** How did sentencing vary by jurisdiction? Washington courts operate independently across counties. While expanded ranges might lead to average sentence lengths decreasing across the

¹ The disproportionate expansion was largely due to political reasons.

state, some local county courts might see significant increases in sentencing length. **R:** Ideally, the research proposal and subsequent studies could provide this type of information.

- **Q:** Should Washington expand ranges evenly across the grid (i.e., apply the same percentage expansions up and down across all sentencing ranges) or should certain grid areas (e.g., the “southwest” or lower left corner) be treated differently? (NOTE: most Washington sentences are for offense seriousness levels 1-5, so for first-time offenses or people with low criminal history scores, this would mean lots of sentences get issued in the southwest corner.)
 - Several Subgroup members favored expanding ranges differently in various sections of the grid, particularly if judicial discretion could increase in the southwest grid corner.
 - Other Subgroup members expressed reservations about expanding ranges, especially on the top end of sentences. Instead, a member suggested increased judicial discretion could be achieved by reforming the state’s enhancements policies.
- **C.** The state should transfer discretion from prosecutors to judges because, as elected officials, judges are beholden to community standards and can more easily be held accountable.
- Another member proposed focusing on broadening judicial discretion for lower seriousness level offenses to balance power between the courts and prosecutors.
- The Subgroup agreed that any proposed increase in judicial discretion on the lower end of seriousness level should also consider the potential impact on county jail populations.
 - Members suggested that incorporating more alternatives to incarceration into the grid could reduce the burden on counties.

NEXT STEPS & ACTION ITEMS

The Subgroup reviewed the draft agenda of the upcoming Sentencing Effectiveness Working Group meeting, emphasizing the need to discuss enhancements with the full group.

- **Lauren** will ask Pennsylvania colleagues to clarify statutory language regarding aggravating and mitigating factors.
- **The Facilitation Team** will open future Subgroup meetings to all Task Force members and alternates.

