

**Washington State Criminal Sentencing Task Force**  
**Sentencing Effectiveness Work Group: Grid Subgroup**  
**Meeting Summary: July 7, 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 Court 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 briefly reviewed the Task Force work plan. She reminded members of the Sentencing Effectiveness Working Group and full Task Force meetings this week. The facilitation team then turned the meeting over to Clela Steelhammer (Caseload Forecast Council, aka CFC) and Lauren Knoth (Washington Institute for Public Policy, aka WSIPP).

**EXCEPTIONAL SENTENCES**

Clela presented a spreadsheet summarizing exceptional sentences in Washington state. The data shows that in FY19 the majority (97%) of sentences were reached via plea agreements and 1.6% of sentences were aggravated exceptional.

- **Q:** Do we know how many exceptional sentences had aggravating factors vs. enhancements? **R:** This is not captured on the current spreadsheet but could be determined by the available data.
- **C:** A Subgroup member pointed out that whatever potential recommendation the group proposes to address enhancements and aggravating factors, it will affect very few cases.

The Subgroup resumed their conversation from previous meetings, specifically revisiting:

1. *Whether or not to reclassify all enhancements (except firearms and deadly weapons) as aggravating factors;*
2. *Whether or not to add a aggravator/mitigator column to the grid (similar to Pennsylvania's system); and*
3. *Whether or not to cap the length of exceptional sentences that result from aggravating factors.*

Several Subgroup members noted a lack of interest in pursuing an aggravator/mitigator grid column, and the meeting generally focused on points 1) and 3). The following summarizes Subgroup questions, comments, and responses:

- **C:** A Subgroup member pointed out that most exceptional sentences that arise from the plea negotiation process are the result of prosecutors agreeing to lesson a charge in exchange for a defendant agreeing to aggravating factors that produce an exceptional sentence. The data shows there are very few cases in which a judge issues an exceptional sentence, especially far above the standard range, thus a cap does not seem necessary.

- **Q:** How would a cap on aggravated sentence length impact the ability to maneuver around three-strike laws? For example, prosecutors may lower charges, but purpose an exceptional sentence to avoid triggering a mandatory sentence or strike. **R:** A Subgroup member worried that prosecutors would be less likely to make such maneuvers if the aggravating exceptional sentence was capped.
- **C:** A Subgroup member highlighted the potential disparities in such maneuvers. Indicating it was at least possible that prosecutors would be more likely to avoid three-strike mandatory minimum sentences for white defendants vs. defendants of color. They noted this would be an important piece of data to exam when deciding whether to pursue a cap. **R:** Another member noted such disparities were found in Robbery 2 sentences and were in part why the Legislature voted to remove this offense from the three-strikes laws.
- Clela pointed out that of 32 sentences, assault 3 was the most serious offense with 66% white defendants, 16% Black defendants, and 15% Hispanic<sup>1</sup> defendants. She also noted that of the aggravated exceptional sentences for FY19, 2 included sexual motivation enhancements, 9 had firearm enhancements, and 13 had other deadly weapon enhancements.
- **C:** Still another Subgroup member argued 353 agreed-to exceptional sentences illustrates a broader problem of irrationally long sentences. They noted wherever we have discretion points, we invariably introduce disparity into the system and highlighted the need to balance prosecutor discretion, judicial discretion, and fair sentences. They suggested an aggravator cap could strike this balance. **R:** Others felt the statutory maximum already provided a limit to discretion.

The Subgroup determined they would need more information before they could agreed on a potential recommendation. The Facilitators reminded the Subgroup they did not necessarily need to reach agreement on what potential recommendations to put forward but can instead propose the Task Force recommend certain scenarios or questions be subjected to further research. The Subgroup decided to revisit their conversation on enhancements and aggravators once Clela has compiled more demographic data.

### **PLANNED 2021 STACKING LEGISLATION**

The Subgroup also discussed Representative Goodman’s intentions to introduce legislation to eliminate the staking of enhancements. The facilitation team encouraged the Subgroup to discuss any policies Task Force members plan to pursue regardless of consensus decisions made by the Task Force with all members, as it is important to maintain transparency and trust in the consensus building process. Subgroup members were generally supportive of Rep. Goodman’s planned legislation to:

1. *Make enhancements presumptively concurrent;*
2. *Make all enhancements eligible for early release time; and*
3. *Remove requirements that enhanced sentences be served in total confinement.*

At least one Subgroup member suggested mitigating factors also be included in such legislation. The Subgroup agreed to bring this potential legislation with the full Sentencing Effectiveness Working Group. They also briefly discussed retroactivity, as captured below:

- **C:** A Subgroup member cautioned prosecutors may not support such legislation being retroactive, in part because of the potentially large workload associated with resentencing.
- **C:** Another member suggested piecing out the retroactivity. For example, retroactively applying early release time would not increase prosecutors’ caseloads very much, as most of this would fall on DOC.
- **Q:** How many individuals face multiple firearm (or other stackable) enhancements? This information could help us better predict caseloads for retroactivity.

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<sup>1</sup> It should be noted Hispanic is categorized as a race in CFC datasets.

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

- **Jon Tunheim** will discuss retroactive earned time and partial confinement with constituents.
- **Clela** will compile additional data on stacked enhancements, including a table that shows sentences with a single enhancement, disaggregated by race, a table that shows sentences with stacked enhancements, disaggregated by race, and a table summarizing statewide sentencing, disaggregated by race.