

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: October 13, 2020
Digital Conferencing Technology

Attendees:

- Russ Brown (alt. for Jon Tunheim), *Washington Association of Prosecuting Attorneys*
- Representative 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*
- Judge Stanley Rumbaugh, *Sentencing Guidelines Commission*
- 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*

Guests:

- Megan Allen

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

WELCOME & AGENDA REVIEW

Amanda welcomed Grid Subgroup (Subgroup) members and reviewed the agenda. She congratulated members on a productive conversation at last week’s meeting and reminded them of the upcoming presentation from a Microsoft employee group on that group’s Criminal Justice Equity System data tool.

GRID/ENHANCEMENT CASE-STUDY EXERCISE

Using an Excel spreadsheet, Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP) walked the Subgroup through hypothetical cases with enhancements to compare the min, mid, and max sentence length for enhanced sentences—as currently applied versus how they might be applied. This exercise allowed Subgroup members to consider the potential impact on sentences if enhancements operated by increasing the standard range, either by increasing the offense seriousness level (OSL) of the underlying offense or as a percentage of the presumptive standard range (e.g., as the street gang enhancement currently expands the presumptive range by 125%).

The following captures Subgroup questions/comments/responses as they worked through several hypothetical enhancement cases:

- **C:** When operating within the grid to increase OSL, enhancements become more similar in their impact on sentencing as you move across the grid. Although this approach reduces complexity, it may also limit the ability to tailor sentences for specific crimes.
- **Q:** How would the increase-OSL approach work in cases with multiple enhancements? For example, in an individual is convicted of Vehicular Homicide an enhancement can be applied for each minor (under the age of 16) in the car. With the OSL approach it might increase the sentence more than is reasonable, especially if several children were in the vehicle (e.g., if impaired driver was operating a school bus). **R:** Could we consider applying a cap to OSL increases or limiting the increase to one OSL per child (rather than two as we’ve discussed with other enhancements)? **R:** In the case of a school bus, many states consider DUIs and Vehicular Homicide involving school buses as a specific crime.

- **C:** The way enhancements currently operate (i.e., as de facto mandatory minimums), they do not move dynamically with criminal history score. This would also hold if enhancements operated by increasing the OSL; however, the proportional impact is less pronounced. (*See supporting materials for a calculated example.*)
- **C:** Multiple Subgroup members expressed interest in the idea of enhancements being more dynamic in response to criminal history scores.
- **Q:** Do any states work enhancements into grid zones? **R:** I don't know of any system where enhancements operate this way. However, it might be possible to take this approach based on felony class (i.e., similar to how the sexual motivation enhancement is currently applied). For example, you could adjust the magnitude of OSL based on the felony class.
- **C:** Although the OSL increase approach allows for more judicial discretion, there is still a mandatory minimum aspect because as the OSL increases, so too does the minimum of the presumptive range. **R:** Yes, there is still some increase in the minimum sentence, but it does not get automatically increased by the full "raw" amount of an enhancement. Also, by building enhancements into the grid, judges can then consider aggravating and mitigating factors.
- **C:** Comparing these two approaches (i.e., our current enhancement system and a OSL increase approach), the OSL method would add more months for individuals with higher criminal history scores; however, the proportional impact (i.e., % increase in sentencing range mid-point) would be less pronounced under the OSL method because ranges generally get larger with higher criminal history scores and OSLs.
- **C:** I am concerned that at higher seriousness levels, the increased presumptive range will rise too dramatically.
- **Q:** Perhaps at higher OSLs an enhancement would only increase the OSL by one level rather than two? **R:** We would need to determine where to locate such a cutoff point: if we draw a line between OSL 9 and 10, we could end up with a situation where an individual charged with an OSL 9 crime with an enhancement faces a longer sentence than someone convicted of an OSL 10 crime.
- **C:** We could consider an approach where enhancements only raise the top end of the presumptive range.
- **C:** There is a certain logic to expanding the range by a specific percentage (i.e., make enhancements operate how the street gang enhancement is currently applied). This would address concerns about disproportionately as OSL and criminal history scores increase. **R:** We already do this for "participatories."
- **Q:** How do enhancements operate in other states? **R:** States take varying approaches. For example, in Pennsylvania (PA) some enhancements increase the OSL, while others apply a mandatory fixed term (i.e., mandatory minimum). PA does not need to worry about the complexity of adopting multiple approaches to enhancements because a centralized web-based algorithm calculates all sentencing ranges.
- **Q:** Could we build and run an algorithm to calculate all possible offense range increases per enhancement by OSL and criminal history score? Comparing those range increases to how enhancements operate now could help us identify instances where the impact of the enhancement on a sentence could be overly punitive.

Action Item: The Facilitation Team and Lauren will develop statistical code to help identify potentially extreme sentences under both the current and possible enhancement applications.

NEXT STEPS & ACTION ITEMS

- **Facilitation Team** to share Excel workbook with Subgroup members.
- **Representatives from Microsoft** will present their Criminal Justice Equity Systems data tool to the Subgroup on **10/20**.
- **The Facilitation Team and Lauren** will develop statistical code to help identify potentially extreme sentences under both the current and possible enhancement applications.

SUPPORTING MATERIALS: Comparative Impact of Enhancement on Presumptive Sentencing Range

	Using Offender Score 0 and 5			
	Offense: assault 1 w/ FA			
	OSL: 12			
	Enhancement 60			
	Increase OSL: 1			
Standard Sentence				
	Min	Mid	Max	
CHS 0	93	108	123	
CHS 5	138	161	184	
Standard Sentence + Enhancement				% increase Mid
	Min	Mid	Max	
CHS 0	153	168	183	156%
CHS 5	198	221	244	137%
Raising OSL				% increase Mid
	Min	Mid	Max	
CHS 0	123	144	164	133%
CHS 5	175	204	233	127%