

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Draft Meeting Summary: September 22, 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 (alt. for Judge Rumbaugh), *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*
- Judge Stanley Rumbaugh, *Sentencing Guidelines Commission*
- Melody Simle (alt. for Suzanne Cook), *Statewide Family Council*
- 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 meeting agenda. She explained that both the Sentencing Effectiveness (SEWG or working group) and Reentry Working Groups (RWG) will wrap up their efforts as the Task Force continues to meet twice a month. Although the Subgroup will continue to meet every Tuesday morning, the last SEWG meeting will be held on 9/30 and the Task Force will begin consensus decision-making in October. In preparation, Chris and Amanda reminded folks to review the packet of combined recommendation and to flag anything that members cannot live with as written now. They also asked Subgroup members to note potential changes they could live with.

The Facilitation Team also mentioned a Microsoft data systems project related to WA criminal sentencing that several Task Force members have brought up. Keri-Anne Jetzer provided some additional context on the project, noting a team of Microsoft employees is working with the Seattle Clemency Project to build real-time data dashboards.

Action Item: Keri-Anne will connect the Microsoft team with the Task Force Facilitation Team to invite them to present their work to the Subgroup sometime in October.

VEHICULAR HOMICIDE ENHANCEMENT

Amanda briefly summarized the Subgroup’s discussion of vehicular homicide enhancements to-date. Subgroup member questions/comments/responses are summarized below¹:

- **Q:** Why is the addition of two years for each prior DUI offense listed both under the enhancement statute and the traffic violation penalties (i.e., [RCW 46.61.520](#))? **R:** They are listed in two places for ease of use.
- **Q:** The enhancement statute provides more detail about how the additional time is to be served (e.g., in total confinement and without goodtime or earned release time). Is it possible to issue a penalty not as an

¹ Note: The Subgroup’s conversation focused on [RCW 9.94A.533\(7\)](#). In previous meetings the Subgroup also reviewed [RCW 9.94A.533\(14\)](#).

enhancement? **R:** No, these two sections are meant to be read together. If the enhancement is charged and found valid, the court must add two additional years for any prior DUI offense, they are served consecutively, and in total confinement.

- **C:** Maybe this is another issue, like the controlled substance act, which should be folded into the criminal code. Ensuring sentencing-related statutes are all listed in the same place would reduce complexity.
- **C:** This is a great example of why enhancements are the wrong way to achieve sentencing outcomes; we stick them all over the place and then ask lawyers and judges to go fishing for them. This piecemeal system likely resulted because when the Sentencing Reform Act (SRA) was passed, the Legislature grafted the new system onto the existing system. This should be a cautionary tale to the Task Force.
- **Q:** Is the task of combining all sentencing statutes into one section something the Sentencing Guidelines Commission (SGC) could take on? **R:** Yes, but I would caution that the last time the SGC took on a task of this size they had funding and full-time staff.

Action Item: The Subgroup agreed to develop a potential recommendation, for review by the SEWG, asking the SGC to combine all criminal sentencing statutes into the same RCW chapter.

- **Q:** Why do we have these types of punishments (i.e., mandatory additional time for previous crimes) when we have criminal history scores to account for past offenses? **R:** It does seem redundant. Perhaps the enhancement is necessary because past DUIs would not be included in an individual's criminal history score unless they are convicted of a felony DUI charge (i.e., upon their fourth misdemeanor DUI charge).
 - **R:** Criminal history scores include prior felonies AND serious traffic offense, including "nonfelony driving while under the influence of intoxicating liquor or any drug" (see [RCW 46.25.010\(19\)\(c\)](#)).
- **C:** If we want to ensure additional culpability for seminal crimes, the way that happens is through multipliers (in the criminal history score), that's why I think this enhancement is a better way to do that.

The Subgroup also discussed the possibility of eliminating the enhancement and instead making it an aggravating factor.

- **C:** From a judicial perspective, these cases are some of the most difficult to adjudicate. Vehicular homicide tends to be an episodic crime, with highlight nuanced circumstances and thus should be subject to more judicial discretion.
- **C:** As we continue to discuss vehicular homicide and weapon enhancements, we need to be cognizant of the fact that we're treating white defendants with resources differently than young defendants of color.
- **C:** It should be noted that the use of aggravating factors subject sentences to appeals.
- **C:** Making it an aggravator would make any additional time served beyond the statutory norm eligible for goodtime and earned release time.
- **Q:** Why not build this additional culpability into the range? **R:** There are some enhancements that operate this way (e.g., the street gang enhancement). However, to meet Task Force policy goal of reducing complexity, I think all enhancements (with the possible exception of firearm and deadly weapons) should operate the same way.
- **C:** Building additional culpability into the range could help ameliorate overly harsh sentences by expanding the top end of the range while keeping the minimum end the same.
- **C:** We should consider eliminating all enhancements and addressing them increased culpability in the grid.
- **C:** If the vehicular homicide enhancement increased the range, would a defendant with four priors face an enhanced range of 0-8 years? **R:** If you include prior DUI offenses in the criminal history score then you could exclude them from the range enhancement calculation.
- **C:** I am concerned about adding to the criminal history score calculation because this can undermine the predictive validity of the criminal history score, an issue WA already faces. The issue is not necessarily about counting prior convictions but weighing them differently can negatively impact the predictive validity of the score.

NEXT STEPS & ACTION ITEMS

- **The Grid Subgroup** will propose a draft potential recommendation to the SEWG aimed at consolidating all sentencing-related statutes into the SRA.