

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group: Grid Subgroup
Meeting Summary: August 25, 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*
- Lauren Knoth (research/data support), *Washington Institute for Public Policy*
- Greg Link, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- 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:

- Omeara Harrington
- Kelly Leonard

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

WELCOME & AGENDA REVIEW

Amanda welcomed Grid Subgroup (Subgroup) members and reviewed the agenda. She briefly summarized the August 19th Sentencing Effectiveness working group (working group or SEWG) meeting where Rep. Goodman introduced three policy options (A-C) to mitigate irrationally long sentences from stacking of firearm and deadly weapon enhancements. The working group provided feedback on those policy options and asked the Subgroup to refine them based on their input. Policy options A-C are summarized in the supporting materials section (below); SEWG feedback is highlighted in yellow.

POLICY OPTIONS A-C: FIREARM & DEADLY WEAPON ENHANCEMENTS

Rep. Goodman reviewed the three policy options and walked the Subgroup through key points and concerns raised by SEWG members. The following summarizes Subgroup questions/comments/responses:

- **C:** Washington Association of Prosecuting Attorneys (WAPA) discussed these options and members raised concerns about retroactivity. They noted the possibility of revictimization, the potentially immense workloads/resources required, and the possibility of undermining mutual agreement previously reached by all parties.
- **Q:** Did WAPA (Washington Association of Prosecuting Attorneys) members discuss the SEWG suggestion of allowing partial retroactivity (i.e., resentencing under an appeal process similar to SB 6164)? **R:** WAPA members did not discuss this specific option, but most prosecutors still find it difficult to resentence under 6164 because courts are required to resentence under the law as it existed at the time. Prosecutors may also be wary of retroactive bills as they tend to be inundated with resentencing requests.
- **C:** Prosecutors expressed concern about the notion of resentencing individuals who bargained for the sentence they got.
- **Q:** What about instances where all parties agree to resentencing? **R:** WAPA members may support that.

- **C:** If we agree that the stacking of firearm and deadly weapon enhancements resulted in overly punitive sentences and we want to truly fix the problem, we need to be willing to go backwards. If we are not willing to pursue retroactivity then we need to be willing to say that other concerns, including financial and resource burdens, outweigh the benefit of righting past wrongs.
- **Q:** These policy options would make multiple enhancements presumptively concurrent. Would trial judges then have to have exceptional findings to sentence enhancements consecutively? **R:** The proposed options would not require exceptional findings.
- **Q:** Can we eliminate the application of multiple firearm and deadly weapon enhancements altogether? **Q:** What about if a person is charged with three discrete events, all of which involved guns—should there only be one enhancement? **R:** Perhaps we can consider making multiple enhancements episodic.
- **Q:** Can all constituencies support the retroactive application of partial confinement and earned time? **R:** I would be willing to make that case to WAPA members.
- **C:** Based on data from the Department of Corrections (DOC), retroactively applying earned time would have a bigger impact than just de-stacking.
- **C:** If earned time were extended to firearm and deadly weapon enhancements, it would be based on the percentage associated with the underlying (i.e., base) sentence. For example, if an individual were convicted of a serious violent offense, including a firearm enhancement, the enhanced portion of the sentence would be eligible for 10% earned time.
- **C:** Of partial confinement options, the enhancement portion is served first and then base sentence (when you might be eligible for partial confinement/earned time) is served last—so for graduated reentry, you need to serve a number of months before you're eligible. That part can be confusing.
- **C:** Looking at the list of offenses that included weapon enhancements in FY2019, approximately 70% of them would be eligible for 33.3% earned time based on their base sentence.
- Several Subgroup members raised concern that discretionary retroactive re-sentencing would lead to regional disparities.
- **C:** Without some discretion somewhere, the question of retroactivity becomes an all or nothing proposition. **R:** If discretionary resentencing is all we get; I think it is better than a mandatory minimum.
- **C:** Any amount of resentencing will require resources, including court time, pre-sentencing investigations, etc.
- **Q:** How many resentences are we talking about? **R:** According to DOC data, approximately 631 individuals could be affected. However, individuals' current release dates vary widely.
- **Q:** Could the Subgroup consider making individuals eligible for resentencing based on their proximity to current release dates?

Amanda asked the Subgroup to consider where there may be points of agreement.

Action Item: Subgroup members generally supported recommending the Task Force consider making goodtime retroactive for firearm and deadly weapon enhancements.

NEXT STEPS & ACTION ITEMS:

- Subgroup will present the draft research proposal to the full Task Force on 9/10.
- Subgroup will continue to discuss remaining enhancements, including sexual motivation, protected zones, etc.