

Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: September 8, 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 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, noting the Subgroup should prepare to discuss revised firearm and deadly weapon enhancement policy options with the Sentencing Effectiveness Working Group (SEWG or working group) on September 16th. Amanda then asked Clela Steelhammer (Caseload Forecasting Council), to walk the Subgroup through data on the number of criminal counts with a weapon enhancement imposed in Fiscal Year 2019, sorted by earned time percentage sentences (*see supporting materials section below*).

PROTECTED ZONES ENHANCEMENT (*see supporting materials section*)

Clela reviewed the firearm/deadly weapon enhancement earned time data, pointing out that the numerical distribution may differ from the numbers of current prisoners because it represents individuals sentenced in a recent *fiscal* year, whereas those currently incarcerated for a sentence that includes a weapon enhancement could have been sentenced in any *calendar* year since the creation of the enhancement. Also, the earned time percentages represent what the enhancement would be eligible for based on the most serious underlying offense. The following summarizes working group questions/comments/responses related to earned time and firearm/deadly weapon enhancements:

- **C:** At a high level, this data shows that most weapon offenses would be eligible for 33% earned time (i.e., 67 percent of counts).
- **Q:** How do prosecutors feel about retroactively applying earned time on enhanced sentences? **R:** Prosecutors are most concerned about truth in sentencing issues but could support making future enhancements eligible for earned time and may be able to live with retroactively applied earned time.
- **C:** If the potential recommendation eliminating firearm and deadly weapon enhancements in instances where the weapons is an element of the underlying crime goes forward, some of the Assault 1 offenses are unlikely to be eligible for such enhancements in the future.
- **C:** Retroactive earned time at 10% represents a very small portion of the underlying sentence. We're talking about approximately 180 days.
- **Q:** Given that Washington State Institute for Public Policy (WSIPP) found no change in recidivism rates when earned time for serious violent offenses dropped from 15% to 10%, why wasn't serious-violent earned time

reverted back to 15 after the sunset of that change? **R:** There have been a few bills introduced to make this adjustment, but they haven't passed the Legislature.

- **C:** Federal truth-in-sentencing policies require states to ensure individuals serve at least 85% of their sentences for serious violent crimes to qualify for grant funds. Is Washington state aligned with other states on earned time for serious violent offenses?

Action Item: Melody Simle and Lauren Knoth (WSIPP) to share research and information on national truth-in-sentencing and other states' earned time policies.

- **C:** Earned time is a behavioral management and/or correctional facility population management tool. If the goal is to reduce overly punitive felony sentences, this should be done via changes to the sentencing grid. **R:** Several Subgroup members agreed with this observation but at least one member noted the importance of acknowledging that earned time has been used as a policy tool to make sentences harsher.
- **Q:** What should the earned time percentage be? **R:** From 1955-1986 earned time was 50%. A higher earned time percentage gives incarcerated individuals incentive to participate in rehabilitative programs. Without that incentive, fewer people will make the changes we want them to make.
- **Q:** Are we talking about non-violent, or serious violent? If the latter, sentences cannot go below 85% or Washington risks losing federal grant funding via truth-in-sentencing.
- **C:** At a certain point, keeping people behind bars has zero positive effect. Do we know how much money Washington receives under this federal grant program? **R:** The funding must be used to expand or renovate correctional facilities. Currently, four projects in Washington are partially funded.
- **C:** If we were to have 15% apply retroactively to those currently incarcerated with firearm/deadly weapon enhancements associated with serious-violent underlying offenses, but did not extend this to all serious-violent offenses that would be inconsistent and would increase complexity.
- **C:** Increasing underlying earned time is a separate matter than the question of applying earned time to enhancements based on the underlying offense. The question of earned time percentages should be part of the Subgroup's ongoing sentencing grid discussion.

Action Item: The Subgroup agreed to present a revised firearm and deadly weapon enhancement "Policy Option C" (i.e., eliminate mandatory stacking of firearm/deadly weapon enhancements; eliminate total confinement requirement; make firearm/deadly weapon enhancements eligible, prospectively and retroactively, for earned time; AND allow prosecutors to petition for resentencing) to the SEWG on 9/16.

Action Item: The Subgroup agreed to continue their conversation of enhancements next week, focusing on street gangs, sexual motivation, and vehicular homicide.

NEXT STEPS & ACTION ITEMS:

- **Lauren Knoth** and **Melody Simle** will send truth-in-sentencing and earned time research to the Facilitation Team.
- **The Grid Subgroup** will continue discussing enhancements next week and will present a revised firearm/deadly weapon enhancement policy option to the SEWG on 9/16.

SUPPORTING MATERIALS begin on next page.

**Percent of Earned Time Allowed by Count for Offenses with a Weapon Enhancement
Fiscal Year 2019 Data**

(based on current earned time percentages allowed by offense)

10% Earned Time Allowed:

Offense	# of Cts w/ Weapon Enh
ASSAULT 1	57
KIDNAPPING 1	23
MANSLAUGHTER 1	7
MURDER 1	34
MURDER 2	31
RAPE 1 (.712)	3
Total	155

Summary Data

Crimes eligible for 10%	155	33%
Crimes eligible for 33.3%	321	67%
	476	100%

33.3% Earned Time Allowed:

Offense	# of Cts w/ Weapon Enh
ASSAULT 2	152
ASSAULT 3	25
ATTEMPTING TO ELUDE PURSUING POLICE VEH	1
BURGLARY 1	16
BURGLARY 2	3
COMMER SEX ABUSE A MINOR	1
DEL POS W/I METH	16
DOMESTIC VIOLENCE CT ORDER VIOL	1
HARASSMENT	6
INTIMIDATING A WITNESS	3
KIDNAPPING 2	1
MALICIOUS MISCHIEF 2	1
MANSLAUGHTER 2	6
MFG DEL P W/I HER COC	5
MFG DEL P W/I SCH I/II NARC OR FLUNT	2
POSS OF A CONTROLLED SUBSTANCE	6
RAPE 3	1
RESIDENTIAL BURGLARY	2
ROBBERY 1	55
ROBBERY 2	12
THEFT 1	1
THEFT OF MOTOR VEHICLE	1
TMVWOP 2	1
UNLAWFUL IMPRISONMENT	3
Total	321

Note:

Excludes those that will not release (Aggravated Murder or Persistent Offender)