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Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: August 11, 2020
Digital Conferencing Technology

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Attendees:
- Russ Brown (alt. 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*

Facilitation Team: Chris Page and Maggie Counihan

WELCOME & AGENDA REVIEW
Chris welcomed Grid Subgroup (Subgroup) members and reviewed the meeting agenda. The Subgroup reviewed the research proposal from Lauren Knoth (Washington State Institute for Public Policy, aka WSIPP) and discussed enhancements.

POTENTIAL RESEARCH PROPOSAL
Lauren walked the Subgroup through the research proposal (*see supporting materials section below*) she drafted and noted her recent addition of questions #4 and #5 (on first page). She asked the Subgroup to consider what to prioritize if limited resources prevented WSIPP and partners from researching all the questions listed.

Lauren pointed out that the research would examine current sentence distributions, both across the grid and within individual cells, by race, gender, and age. She mentioned that some members had expressed interest in geography, and that the research might also to look at east and west or urban and rural.

The second part of the research proposal would analyze the potential impacts of two proposed grid approaches (A & B). She can use information on the status quo to forecast:
- potential increases or decreases in sanctions;
- the core demographic characteristics; and
- potential factors causing the disparities.

She recently added Question #7 to the study of potential future grid impacts: *What are the potential outcomes from revising enhancements to be either a) a new, separate offense or b) moved into aggravating factors?*

The proposal involves WSIPP, Caseload Forecast Council (CFC), and the Ruckelshaus Center (to provide funding). Clela would pull data from CFC; Lauren will put together the final report with data from WSIPP and CFC to help explain potential changes to the grid.

Lauren asked the Subgroup about their desired timeline and which questions they would prioritize.

Desired timeline:
The Subgroup discussed the possible extension of the Task Force through at least June 30, 2021 and potentially the end of 2021. Lauren said that based on when a report from the Statistical Analysis Center is due (March), she could prepare a preliminary internal report for the Subgroup by March and a final comprehensive report looking at all the factors by the end of June, 2021. She also mentioned the possibility of doing a cost-benefit analysis if resources are available.

Priorities Discussion:
- **Q:** If we move forward making changes to enhancements, is it worth looking at enhancements in this report?
- **Q:** I was wondering how you could look at the fiscal impacts of enhancements if they get changed to become new offenses. **R: T**his is where we would be making some logical assumptions and then say, "this is what we could expect to see." **R:** CFC has also given a range in the past when DOC has requested information.
- **C:** You had mentioned asking about the breakout of the offense +/- class system and the SGC has gone through all of them.

Action Item: The group agreed to make question #7, about enhancements, a low priority, and questions #5 and 8 high priority. The research proposal will go to the SEWG and then to the Task Force in September.

ENHANCEMENTS: *Robbery of a Pharmacy*
The Subgroup discussed the robbery of a pharmacy enhancement which currently adds an additional 24 months. Members focused on two potential options: create a new "prong" of Robbery 1 (the same as bank robbery) or make it an aggravating factor with a potential limit of 12 months. Below is a summary of the discussion (questions/comments/responses):
- **C:** Armed robbery of a pharmacy is already a seriousness-level 9. Robbery 1 is a class A felony and Robbery 2 is a class B felony.
- **C:** My preference would be to create a new prong of Robbery 1 and get rid of the enhancement.
- **C:** You would not want to make it an aggravator? It would be more judicial discretion. These offenses are conduct-specific when you consider where in the range someone should be sentenced.
- **Q:** Does this depend on what the grid looks at the end?
- **C:** If you turn the pharmacy part into an aggravator, it could fit into either robbery or theft, whichever fits best (making it an aggravator makes it more flexible).
- **C:** We still do not have a clear idea of what enhancements are supposed to do. Do we treat the use of a firearm as an enhancement as Robbery 1 and something else for Robbery 2? How do we find a consistent way where we do not make more confusion in the system? I want some sort of framework on how to deal with something that makes a crime more culpable and do it in a consistent way.
- Chris asked if Lauren has information on what other states do for a more consistent way. Lauren noted that is a policy question and not a research question, so not in her area of expertise.
- **C:** I would want to expand judicial discretion and make it an aggravator.
- **C:** I do not think I have a preference, but one thing about an enhancement is that is limits the scope and could limit geographic disparities.
- **C:** The argument about increasing judicial discretion and the potential to increase disparities is something you are going to have for all of them. You have a check on judicial discretion because they are elected.

NEXT STEPS & ACTION ITEMS
- Grid Subgroup will discuss other remaining enhancements (protected zones, assaulting a law enforcement officer, sexual motivation, etc.)
- The Subgroup will update the SEWG about research proposal on 8/19.
- Have SEWG discuss Rep. Goodman's three options for Firearms/deadly weapons

SUPPORTING MEETING MATERIALS: *Research Proposal from WSIPP (8.11.20)*

Proposal for Data-Driven Decision Making

Sentencing Effectiveness Work Group

Sentencing Grid Sub-Group

Remaining questions for sub-group:

1. Currently there are 3 classes of offenses (A, B, C) plus unranked offenses. The grid mockup had up to class D as a way to show the potential for making more offense-type distinctions within a class-based guidelines system. There are not currently class D offenses. What classification system does the group want to use on the vertical axis for a class-based grid? Would need to determine if/how to incorporate unranked offenses.
   a. There is not currently a +/- system for adult felony sentences. We would need guidance on which offenses fall in which classification.

Potential research Directions:

The current proposal for research includes gathering detailed information on the current grid using historical data and then assessing the possible impacts of changing components of the grid using the same set of historical data. Comparisons could be made between the current grid and the two potential grid options put forth by the sub-group.

The information on the current grid and hypothetical scenarios can help identify which options best meet the previously identified *desired outcomes*, but may also help identify where additional changes are necessary to meet the *desired outcomes*.

Information on current grid:

Data could be gathered to examine the following:

1. Number of sentences issued within each cell of the grid
2. Average sentence within each cell on the grid
3. Range of sentences in each cell as well as proportions of sentences that are are in the range, below the range, and above the range.
4. Average reduction in length of stay for mitigated sentences and average increase in length of stay for aggravated sentences, by offense seriousness level.
5. Are there racial/ethnic or gender disparities in the use of sentencing enhancements?
6. Assessment of average range of sentences for the 5 most common crimes in each cell
7. Amount of sentences in each guideline cell that received a disposition alternative
8. Disparity in the outcomes for individuals across the grid?
   a. *Is there racial/gender/age disparity in the general distribution of individuals?*
   b. *Is there racial/gender/age disparity in average sentences within a guideline cell?*

Assessing the impact of changes:

There are two proposed options that the group has coalesced around.

Grid A: two vertical axes: Level and Class (+/- system)

Grid B: two vertical axes: Level and Offense Seriousness Level

In order to assess the potential impact of moving forward with either grid, we could examine:

1. How many offenses would have an increase or decrease in the range of sentences on the new grid? (Relevant only for the class-based grid)
2. How many sentences would have had a potential increase or decrease on the new grid?
3. How do changes differentially affect racial/ethnic groups? Different genders? Different age groups?

4. Are there data-driven adjustments to the ranges in different cells that can reduce racial/ethnic, gender, or age disparities?
5. Where do disposition alternatives most commonly fall on the new grid? (to assess reasonable placements for new "levels")
6. *What are the potential outcomes from expanding the ranges in the guideline cells?*
7. *What are the potential outcomes from revising enhancements to be either a) a new, separate offense or b) moved into aggravating factors?*

Other potential areas of examination:

The above questions focus primarily on the changes to the guideline rows and the width of the range in each of the individual cells. Based on the conversations from the sub-group, other potential areas of exploration include:

1. Combining felony and drug grid – additional analyses could examine the effects of eliminating the drug grid and putting those offenses back into the main felony sentencing grid.
2. Incorporating unranked offenses – how would sentences be affected if unranked offenses were incorporated into the grid?