Washington State Criminal Sentencing Task Force
Sentencing Effectiveness Working Group – Grid Subgroup
Meeting Summary: November 10, 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*
- 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*

Facilitation Team: Amanda Murphy and Hannah Kennedy

WELCOME & REVIEW OF MEETING SCHEDULE
Amanda welcomed Grid Subgroup (Subgroup) members and reviewed the agenda. She noted the Task Force's recent progress and congratulated present members on reaching consensus on all but two recommendations thus far.

EARNED EARLY RELEASE TIME
At the November 5th Task Force meeting, members were unable to reach consensus on a recommendation to increase earned early release time (EERT) to 50% for some non-violent offense and 33% for all others. Instead the Task Force agreed to have the Subgroup continue discussing earned early release time and rework the recommendation for full Task Force review on December 3rd.

Amanda reminded Subgroup members of the alternative recommendation proposed at the last Task Force meeting: *Increase earned early release time to a minimum of 15% for serious violent crimes and 33% for all other crimes*. She then invited Subgroup members to discuss whether to bring this alternative recommendation back to the full Task Force for consensus deliberation on December 3rd or propose additional changes. The following captures Subgroup members questions/comments/responses related to the alternative recommendation and earned early release time more broadly.

- **Q:** What are the current earned early release percentages? **R:** Serious violent and Class A sex offenses are eligible for 10% EERT, all other offenses are eligible for 33%.
- **C:** Serious violent and Class A sex offense use to be eligible for 15% and prior to that, all offenses were eligible for 33%. There doesn't seem to be a reason for why these changes were necessary and does not seem as if they were based on any research. These changes have increased sentencing calculation complexity for Department of Corrections (DOC).
- **C:** Advocates for sexual assault victims have reached out to the co-chairs and are unlikely to support an increase of EERT for Class A sex offenses.

Subgroup members discussed the utility of using EERT as a population management tool. Some noted prosecutors are less comfortable with using EERT as a population management tool and believe it is better used as a behavior management tool. Others pointed out that regardless of the original intentions of EERT, the Legislature has amended it as a means to increase sentence length for certain types of offenses (i.e., it practically serves as a population management tool).

Confusion arose about the overall goals of the Task Force, some Subgroup members expressed concern that other Task Force members want to reduce all sentences regardless of offense. At least one member noted they would not be able to agree to such a goal. Other members clarified that they do not believe all sentences should be reduced but believe the state's current system is too extreme and too harsh and that inordinately long sentences should be addressed both prospectively and retrospectively. Members generally agreed that some sentence lengths should be reduced, though noted several ways such a goal might be achieved (e.g., post-conviction review, supervision expansion for low-level crimes to encourage prosecutors and judges to seek non-incarceration alternatives, etc.).

- **C:** It seems like EERT and sentence length are on a continuum; a change to one is likely to impact the other. To ensure a holistic approach, we should revisit the conversation of EERT when reviewing the grid research findings. **R:** Addressing sentence length via the grid does not allow us to correct past wrongs; the conversation should consider retroactivity.
- **C:** It doesn't seem likely we or the full Task Force will be able to agree on any specific EERT percentages. Perhaps we can propose a broader recommendation that the Legislature should review EERT and consider increasing it.
- **C:** Changes to EERT offer an important opportunity to reduce complexity for DOC. Any broad EERT recommendation should also include simplifying DOC sentencing calculations as a goal.
- **C:** The complexity DOC faces has to do with all the exceptions to EERT (e.g., the mandatory minimum portion of sentences are not eligible for EERT).

Action Item: The Subgroup agreed to propose the following revised recommendation to the full Task Force on 12/3: The Legislature should review earned early release time and consider increasing the percentage and doing so in a way that provides greater simplicity and consistency in earned early release calculations.

GRID RESEARCH

Lauren and Clela provided a brief update on the grid research process and asked the Subgroup to weigh in on how best to reclassify anticipatory crimes in a +/- felony class grid. In the current system anticipatory and subsequent-degree crimes have the same felony class as their non-anticipatory or first-degree counterpart but have a lower offense seriousness classification. Lauren and Clela suggested one way to address these differences in a felony class grid system would be to classify anticipatory and second-degree offenses as a -A, -B, or -C, depending on the underlying felony class of the offense. They noted that the Subgroup's input does not reflect a binding decision on how to treat offenses in a potential new +/- felony class system but is useful only as a starting point for research.

Action Item: For research purposes, the Subgroup agreed anticipatory crimes should be reclassified a step down on a +/- felony class grid (e.g., B- in stead of B).

NEXT STEPS & ACTION ITEMS

- **Subgroup** will present their revised EERT potential recommendation to the full Task Force.
- **Lauren and Clela** will continue to prioritize the grid research, providing updates to the Subgroup as necessary.