

Washington State Criminal Sentencing Task Force Meeting

April 7, 2022

1:00pm-4:30pm

ZOOM Meeting

Agenda

Agenda

- Task Force Introductions and Updates
- Build Understanding and Provide Input on Potential Recommendations from Grid Subgroup
 - Consecutive and Concurrent Sentencing Policy
 - 3 Strikes and 2 Strikes Laws

Agenda

1:00pm

**Review Agenda,
Groundrules**

1:10pm

Introductions & Updates

1:30pm

**Presentation of Potential
Rec's: Consecutive and
Concurrent Sentencing
Policy**

2:20pm

BREAK

2:30pm

Task Force Discussion

2:50pm

**Presentation of Potential Rec's:
3 & 2 Strikes Laws**

3:30pm

Task Force Discussion

4:15pm

Questions from Observers

4:30pm

Adjourn

ZOOM: Virtual Meeting Groundrules

Chat Reminder: We have disabled the private chat function to adhere to your groundrule of no side conversations.

*****If you want to chat to the facilitators or pass along info to the Task Force, please send a chat message to Molly Stenovec.**

Phone Participation: For those only on via phone, we will facilitate discussion similar to in-person meetings. During discussion, we will start w/Task Force members “in the room” and then those on phone.

1:10 -
1:30pm

Task Force Introductions

- **Members:** Please state name, affiliation, and constituency you represent.
- **Alternates:** Please state name, affiliation, and who you are an alternate for on the Task Force.

Task Force Groundrules

Criminal Sentencing Task Force Groundrules

- **Be Respectful**

- One person speaks at a time; listen when others are speaking, avoid interrupting and side conversations.
- Keep comments brief so everyone gets a chance to share their thoughts. Avoid dominating the discussion.
- Hear and respect all opinions.
- Silence cell phones and refrain from using laptops during the meeting, except to take notes.

- **Be Constructive**

- Acknowledge that all participants bring with them legitimate purposes, goals, concerns, and interests, whether or not you are in agreement with them.
- **Openly explore issues.**
- Act in “good faith,” seeking to resolve conflicts and identify solutions.
- State concerns and interests clearly, listen carefully to and assume the best in others. Leave negative assumptions and attitudes at the door.
- **Share comments that are solution focused**, rather than repeating past discussions.
- It’s OK to disagree, it is not OK to make personal attacks.
- Minimize the use of jargon and acronyms, define and explain when used.
- Work towards consensus. Be willing to compromise.
- **Ask for clarification when uncertain of what another person is saying. Ask questions rather than make assumptions.**

- **Be Productive**

- Begin and end meetings on time.
- Respect time constraints.
- Adhere to the agenda as much as possible, focusing on the subject at hand.

1:10 -
1:30pm

Co-Chair & Facilitator Updates

- Co-Chair Updates
- May Task Force Meeting - In-Person (with virtual option)
- Sentencing Alternatives Work Group Update

May 5th CSTF Meeting will be In-Person:

- **Hybrid Meeting:** Both in-person and virtual: **10am-4pm**
- Location: **The WSU Puyallup research and Extension Center:** 2606 West Pioneer, Puyallup WA: The Allmendinger Center



Will be sending out calendar invite and email with all the details



CSTF 3 Policy Goals:

In 2019, the Legislature established the Washington State Criminal Sentencing Task Force (Task Force) to review state sentencing laws, including a consideration of the Sentencing Guidelines Commission's (SGC) 2019 report, and develop recommendations for the purpose of:

- a) Reducing sentencing implementation complexities and errors;
- b) Improving the effectiveness of the sentencing system; and
- c) Promoting and improving public safety.

CSTF Desired Outcomes for Sentencing Effectiveness & the Grid

- Balances discretion across the system and encourages and provides for individual rehabilitation that is trauma informed and based on risk, need, responsivity
 - Addresses multipliers and enhancements and consecutive sentences – sentencing ranges – mandatory portions of sentences – mandatory features that remove judicial discretion and lead to longer sentences
- Provides predictability for all parties
- Addresses accountability while decreasing unnecessary incarceration(s).
- Avoids shifting population from state prison to jails.
- Addresses inequities in the burden of costs & workloads associated with incarceration
- Ensures adequate resources for both DOC & counties
- Reduces or eliminates disparities / disproportionate impacts
- Maximizes/increases info available to the parties & Judges to make informed decisions
- Eliminates unnecessary complexity

1:45 - 2:20pm

Presentation and Potential Recommendations

Consecutive and Concurrent Sentencing Policy

Dr. Lauren Knoth-Peterson, Washington State
Institute for Public Policy

Consecutive and Concurrent Sentencing Policy

RCW 9.94A.589

Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently unless there are two or more separate serious violent offenses, driving under the influence offenses, or weapon offenses. In those cases, the sentences are served consecutively, unless an exceptional sentence is entered (RCW 9.94A.589(1)(a-c)).

There are exceptions to this general rule....

Exceptions:

- **Offenses that Constitute Same Criminal Conduct:**

If the court enters a finding that some or all of the current offenses required the same criminal intent, were committed at the same time and place, and involved the same victim, the offenses are treated as one offense. A departure from this rule requires an exceptional sentence.

- **Multiple Serious Violent Offenses:**

In the case of two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences for these serious violent offenses are served consecutively to each other and concurrently with any other sentences imposed for current offenses. A departure from this rule requires an exceptional sentence.

Exceptions Cont.:

- **Certain Firearm-Related Offenses**

In the case of sentences that include Unlawful Possession of a Firearm in the First or Second Degree and one or both of the crimes of Theft of a Firearm or Possession of a Stolen Firearm, the sentences for these crimes are served consecutively for each conviction of the felony crimes listed and for each firearm unlawfully possessed. (RCW 9.94A.589(1)(c)). A departure from this rule requires an exceptional sentence. (RCW 9.94A.535).

*Note: This is different from firearm/deadly weapons enhancements.

And these offenses don't qualify for a weapon enhancement.

- **Felony Driving while under the Influence (DUI) /Felony Actual Physical Control of a Vehicle while under the Influence**

- All sentences imposed shall be served consecutively to any sentences imposed under the specified RCWs for two Gross Misdemeanors.

Potential Recommendation 1

Multiple Serious Violent Offenses:

Eliminate the mandatory consecutive sentencing for serious violent offenses and make sentences concurrent.

Grid Subgroup Discussion:

- Purely retributive and increased retribution is accounted for already in higher offense seriousness levels.
- No evidence that mandatory consecutive sentencing is more effective at reducing recidivism (public safety).
- Very rare – 33 instances in FY 2019.
- Mandatory consecutive sentencing may disproportionately impact defendants of color.

Potential Recommendation 2

Multiple Serious Violent Offenses:

Eliminate the mandatory consecutive sentencing for serious violent offenses and add an aggravating factor for cases involving serious violent offenses with multiple victims.

Grid Subgroup Discussion:

- Maintains ability to increase sentences in instances where there are multiple offenses and multiple victims.
- Increased sentences when there are multiple victims ensures that victimization of each individual is recognized.
- Moderates the increase in sentences. Allows for a higher than standard sentence, but doesn't require the sentence be doubled (as it would be if two sentences are consecutive).
- Reduces impact of discretionary decisions of whether to charge a criminal event with a single victim as multiple charges or a single charge which may disproportionately affect defendants of color and/or cases where the victim is white.

Potential Recommendation 3

Multiple Serious Violent Offenses:

Modify the mandatory consecutive sentencing for serious violent offenses such that it applies only when the offenses are for different victims.

Grid Subgroup Discussion:

- Maintains ability to increase sentences in instances where there are multiple offenses and multiple victims.
- Increased sentences when there are multiple victims ensures that victimization of each individual is recognized.
- Unlike recommendation 2, this recommendation imposes the full sentence for events associated with each victim.
- Reduces impact of discretionary decisions of whether to charge a criminal event with a single victim as multiple charges or a single charge which may disproportionately affect defendants of color and/or cases where the victim is white.

Potential Recommendation Summary

Multiple Serious Violent Offenses:

1. Eliminate the mandatory consecutive sentencing for serious violent offenses and make sentences concurrent.
2. Eliminate the mandatory consecutive sentencing for serious violent offenses and add an aggravating factor for cases involving serious violent offenses with multiple victims.
3. Modify the mandatory consecutive sentencing for serious violent offenses such that it applies only when the offenses are for different victims.

Potential Recommendation 4

Certain Firearm-Related Offenses*:

Eliminate the consecutive sentencing for firearm offenses and make those sentences concurrent.

Grid Subgroup Discussion:

- Retributive. No evidence that mandatory consecutive sentencing is more effective at reducing recidivism (public safety).
- Eliminates complexity of trying to determine when sentences are concurrent and when they are consecutive.
- Mandatory consecutive sentencing may disproportionately impact defendants of color.
- This is a carve out just for guns offenses. There are other means of addressing these offenses that would be more effective and less complex, for example, increasing the offense seriousness level.

**Note: This is different from firearm/deadly weapons enhancements.*

Potential Recommendation 5

Certain Firearm-Related Offenses*:

Eliminate the mandatory consecutive sentencing for firearms offenses but allow judges discretion to make sentences consecutive.

Grid Subgroup Discussion:

- Eliminates complexity of trying to determine when sentences are concurrent and when they are consecutive.
- Allows more tailored sentences to the circumstances of the case. For example, even if there are 10 guns, maybe only running 2-3 sentences consecutive instead of all 10 is sufficient.
- Maintains some aspect of the current firearm policy – with gun violence increasing in some areas, may not be political will to fully eliminate.
- Moderates extremely lengthy sentences.
- Mandatory consecutive sentencing may disproportionately impact defendants of color. But shifting discretion may allow disproportionality to persist.

**Note: This is different from firearm/deadly weapons enhancements.*

Potential Recommendation 6

Certain Firearm-Related Offenses*:

Eliminate the mandatory consecutive sentencing for firearms offenses but add aggravating factors that may address the cases with most concern about culpability.

Grid Subgroup Discussion:

- There are differences between cases such as robbing a gun store vs. burglarizing a home that happens to have a gun vs. targeting a home to burgle because they know the owner has a gun collection.
- Instead of basing decisions based on just the numbers of guns, this policy shifts focus to the unique characteristics/motive/culpability in each case.
- Maintains some aspect of the current firearm policy – with gun violence increasing in some areas, may not be political will to fully eliminate without some alternative.
- Some members questioned whether aggravating factors are needed if situations where the culpability is higher (e.g., robbing a gun store and stealing 20 guns) will already have an exceptional sentence because criminal history score will exceed 9.

**Note: This is different from firearm/deadly weapons enhancements.*

Potential Recommendation 7

Certain Firearm-Related Offenses*:

Modify the mandatory consecutive sentencing laws for firearms offenses such that sentences for different criminal events are consecutive, but sentences for multiple offenses within a single criminal event are concurrent.

Grid Subgroup discussion:

- Changes the unit of prosecution for gun crimes. Right now, the sentencing unit is each gun. This would change the unit of prosecution to the criminal episode.
- Maintains some aspect of the current firearm policy – with gun violence increasing in some areas, may not be political will to fully eliminate without some alternative.
- Still ensures that if there is a case with multiple criminal events (e.g., multiple robberies of gun stores) are still sentenced consecutively.
- Reduces unnecessarily long sentences while still ensuring accountability – many of the cases with extreme sentencing lengths is based on the number of guns in an episode (e.g., in a single burglary).
- Concern that a higher number of guns that could eventually end up on the streets presents a greater risk to society.

**Note: This is different from firearm/deadly weapons enhancements.*

Potential Recommendation Summary

Certain Firearm-Related Offenses*:

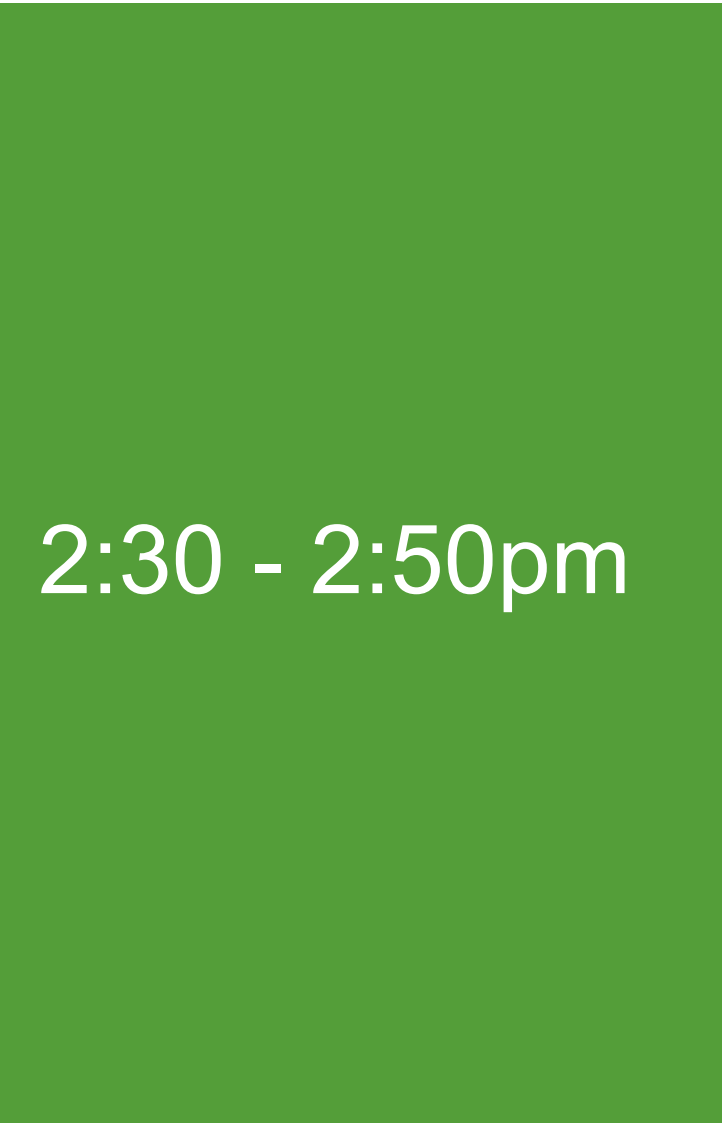
4. Eliminate the consecutive sentencing for firearm offenses and make those sentences concurrent.
5. Eliminate the mandatory consecutive sentencing for firearms offenses but allow judges discretion to make sentences consecutive.
6. Eliminate the mandatory consecutive sentencing for firearms offenses but add aggravating factors that may address the cases with most concern about culpability.
7. Modify the mandatory consecutive sentencing laws for firearms offenses such that sentences for different criminal events are consecutive, but sentences for multiple offenses within a single criminal event are concurrent.

**Note: This is different from firearm/deadly weapons enhancements.*



2:28 - 2:40pm

BREAK



Task Force Discussion

2:50 - 3:30pm

Presentation and Potential Recommendations

3 Strikes and 2 Strikes Laws

Dr. Lauren Knoth-Peterson, Washington State
Institute for Public Policy

“Persistent Offenders”

Voters approved Initiative 593 ("Three Strikes and You're Out") in 1993.

The law, which became effective on December 2, 1993, established the penalty of life in prison without the possibility of release for “persistent offenders.”

1996 – Persistent offending sentencing option expanded to include two-strike sex offenders.

The life sentence applies to both “Three Strike” and “Two Strike” offenders.

3 Strikes

A sentence of life without the possibility of parole for an individual convicted of a “most-serious” offense, who had at least two prior convictions for such offenses, that would be included in the offender score. In order to count as a strike, the first prior conviction must have occurred before the second prior conviction.

Juvenile offenses do not count as a strike, unless they are declined from juvenile court and sentenced as an adult.

2 Strikes Law

The 2-strike law applies to an individual convicted of certain sex offenses.

To qualify as a 2-striker, an individual has to be convicted of Rape 1 or 2, Rape of a Child 1 or 2, Child Molestation 1, Indecent Liberties with Force (or attempts) or a list of specified offenses that had a finding of Sexual Motivation; and have one prior conviction for such an offense.

Juvenile offenses do not count as a strike, unless they are declined from juvenile court and sentenced as an adult.

Also, for a current conviction of Rape of a Child 1, the individual must be 16 or older when the individual committed the offense and for a current conviction of Rape of a Child 2, the individual must be 18 or older when the individual committed the offense.

Potential Recommendation 8

Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three-strikes must be treated as elements of the crime.

- Pled in information
- Proven to a jury beyond a reasonable doubt
- Individual acknowledges and agrees in a plea agreement

Grid Subgroup Discussion Points:

- Currently there is no requirement for defendants to be put on notice that their current case and criminal history means a guilty plea or jury finding will carry term of life.
- Currently there is no requirement for jury to be notified that a finding of guilt will qualify as a third strike, resulting in a sentence of life.
- Some defense attorneys may prefer that the jury not be notified of the two prior strikes as it may prejudice the jury. Could lead to prosecutors using prior convictions as evidence for current case.
- Propensity evidence already introduced/used in other cases (e.g., cx DUI disclosure of 3 prior DUIs)

Potential Recommendation 9: a or b or c

a. Eliminate and do not replace 3-strikes.

Grid Subgroup Discussion Points:

- Sentences are already lengthy because they are a high OSL and individuals will have higher criminal history scoring
- Undermines the structure of the sentencing system by carving out exceptions
- Other approaches could meet same goals within the grid (e.g., repeat violent column on grid)
- Restores individualized sentencing - 25 years may not be appropriate or necessary in all cases

b. Replace 3-strikes mandatory sentence with determinate plus - 25 years with opportunity for release.

Grid Subgroup Discussion Points:

- Could reduce incarceration lengths with individuals being released upon review
- Recognizes potential for rehabilitation/reform
- Could reduce racial disparity at sentencing
- Shifts discretion to the board conducting release reviews
- Replicates concerns of parole that there is a group facing an unknown amount of time in incarceration

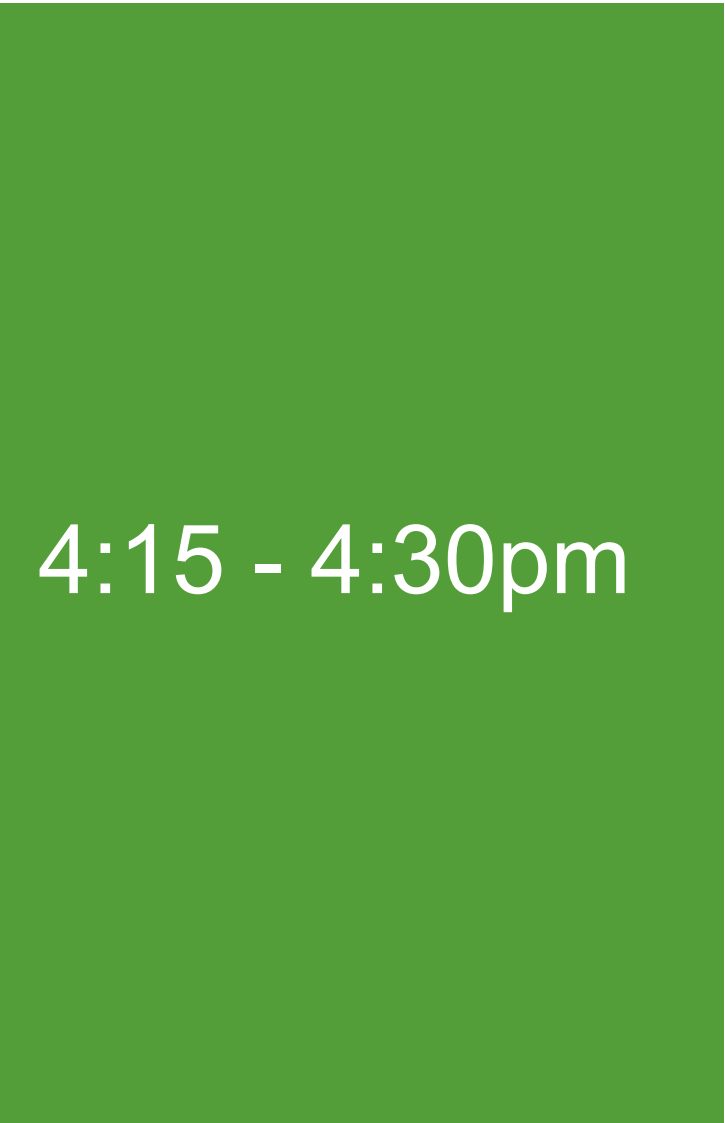
c. Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life

Grid Subgroup Discussion Points:

- Inability to show growth after time like you would with a determinate plus
- Shifts discretion to judges rather than some external review board

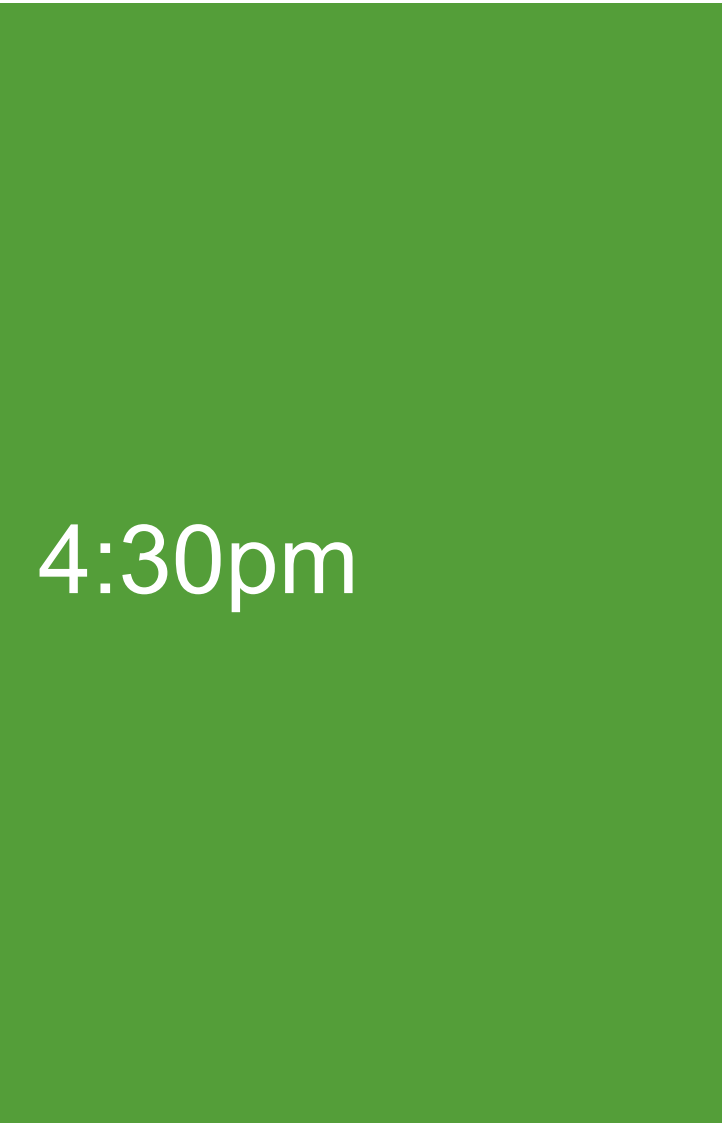


Task Force Discussion



4:15 - 4:30pm

Questions from Observers



ADJOURN

