

Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: March 3, 2022
Virtual Meeting via ZOOM – [Link to recording via TVW](#)

ATTENDEES:

- **Task Force Members and Alternates:** *See Appendix A*
- **Members of the Public:** *See pg. 9*
- **Facilitation Team:** Amanda Murphy, Chris Page, Molly Stenovec, Maggie Counihan – Ruckelshaus Center
- **Research/Technical Support:** Lauren Knoth-Peterson, *Washington State Institute for Public Policy (WSIPP)*

MEETING GOALS:

- Decide third co-chair position
- Build understanding and provide input on potential recommendations from Grid Subgroup

WELCOME, INTRODUCTIONS, AGENDA REVIEW and GROUND RULES

Facilitator Amanda Murphy welcomed attendees and introduced herself and the rest of the facilitation team before reviewing the agenda and meeting goals. For a legislative update, since no legislative members could attend, Rep. Goodman has invited Task Force members and alternates to reach out to him directly with any questions.

Amanda explained that the meeting will build on the February meeting by including presentations on exceptional (aggravated and mitigated) sentences and potential recommendations developed by the Grid Subgroup. Also on the agenda is a presentation and discussion of potential recommendations on Three Strikes and Two Strikes laws. However, given the level of detail and complexity of aggravated and mitigated sentences and the associated recommendations, if the Task Force feels it is important to spend more time on this discussion, then the three strikes and two strikes discussion will be moved to the April meeting.

Members and alternates provided introductions and affiliations.

FACILITATION TEAM UPDATE

The facilitation team will continue to work with the co-chairs and monitor pandemic policies toward returning to in person/hybrid meetings. As things currently appear, the May meeting will occur as an in person/hybrid meeting. April will be a virtual meeting.

SENTENCING ALTERNATIVE SUBGROUP UPDATE

The subgroup is looking at how current sentencing alternatives could fit onto the grid, reviewing statutory eligibility and offense-specific eligibility, and beginning to identify potential recommendations. The next meeting will focus on the Family and Offender Sentencing Alternative (FOSA) and the subsequent meeting will include the chair and vice chair of the Sex Offender Policy Board (SOPB) to continue the discussion about the Special Sex Offender Sentencing Alternative (SOSA).

CO-CHAIR UPDATE

Task Force Co-Chair Jon Tunheim welcomed everyone to the meeting and expressed hope and optimism for the work ahead.

CONCENSUS DECISION: VACANT CO-CHAIR POSITION

Facilitator Chris Page provided an overview of discussions thus far regarding the open co-chair position. The Task Force desires three co-chairs: one from the legislature, one that works within the system, and one from the communities impacted by the system. Nick Allen has volunteered to be the co-chair; no one else has expressed interest.

Consensus decision: Nick Allen is the new co-chair.

- 12 members present expressed thumbs up – strong support

Nick expressed gratitude for the opportunity. The facilitation team will follow-up with Nick to provide him with information and meeting dates for co-chair meetings.

PRESENTATION: Exceptional Sentences – Aggravators and Mitigators ([see video at 27:22](#))

Dr. Lauren Knoth-Peterson (WSIPP) presented background information and summarized discussions from the Grid Subgroup. Key points from the presentation:

- The court may impose a sentence outside the standard range for an offense if it finds there are substantial and compelling reasons justifying an exceptional sentence. If an exceptional sentence is given, the sentencing court is required to set forth the reasons for the departure from the standard range or from the consecutive/concurrent policy in written findings; see [RCW 9.94A.535](#) and [RCW 9.94A.589 \(1\)](#) and (2). The law has a list of factors for court to consider when imposing an aggravated (above the standard range) or mitigated (below the standard range) exceptional sentence.
- The original Sentencing Reform Act included six mitigating factors and 13 aggravating factors, but that list was not exclusive (i.e., other factors could get added). With the 2005 Blakely v. Washington decision, the list of aggravating factors grew and became exclusive.
- *Mitigated exceptional sentence*: below the standard range. The court may impose a sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. There is no prescribed statutory list of mitigating factors.
- *Aggravated exceptional sentence*: above the standard range. Must be based on one or more circumstances listed in statute.
 - There are 32 aggravating factors listed in statute and some have subsections.
 - Aggravating factors must be pled and proven.

Dr. Knoth-Peterson also reviewed the philosophies of punishment and how they do or do not apply to aggravated and mitigated exceptional sentences.

The Task Force was also reminded of its three policy goals and the desired outcomes they created in 2019-2020. The policy goals and desired outcomes are guiding the Grid Subgroup discussions and proposals of potential recommendations.

Potential Recommendation 1:

Eliminate the aggravated departures that are not required to be pled/proven (eliminating the stipulation as an aggravated factor).

- Requires that there be a particular characteristic/circumstance justifying the aggravated exceptional sentence.

- A possible modification- require that the Judgement & Sentencing form record more details about the reason for agreement but don't eliminate the ability to stipulate to the aggravated sentence rather than requiring a finding of fact with a jury.

Task Force Discussion

The full Task Force discussed the potential recommendation and Grid Subgroup members provided further context. Discussion points:

- Example of a type of situation where this stipulation would apply: A case where the original charge has an attached sentence to it that would have meant a third strike for the defendant, and each side agrees that a third-strike sentence is not an appropriate sentence. This might result in a plea bargain of an aggravated exceptional charge instead of what would have been a third strike, so there is practical use to having this as an option in court.
- In that example, this is the best safety valve right now for a case where the original charge would result in an unjust sentence, where in effect a defendant is asked to agree to an exceptional sentence because the original charge would have resulted in an unjust sentence.
- Mixed feelings about the recommendation and the aggravated sentence. It illustrates a larger issue in the sentencing scheme, when the mandatory nature of sentences results in unjust sentences.
- See the value in having more details recorded in the J&S form, but concerned that not having a standard J&S form could create confusion.
- It would be useful to have more information on why individuals are accepting this type of sentence. Are they agreeing to avoid a three strikes sentence because that means something is wrong with the three strikes system, or agreeing to a charge reduction for other reasons? We would then be able to see what kind of disproportionality exists.
- Is this one recommendation with two parts or two separate recommendations?
 - The recommendation is to eliminate the aggravators that are not required to be pled and proven. If this is something the Task Force does not support, then another option the Grid Group proposed is to require that the J&S record more details about the reason for agreement (e.g., charge bargain to avoid three-strikes sentence, charge reduction, reduction in total number of charges) but do not eliminate the ability to stipulate the aggravated sentence rather than requiring a finding of fact with a jury.
- This type of information exists already—is it that it's not in one place where we can gather the data?
 - Based on what information is required to be documented and just by looking at this data, it is hard to know why someone accepted an exceptional sentence. It could encompass different behaviors. When thinking about disparity it is hard to know what it is leading to. Also, there is no consistency in how the information is captured and it differs county by county.
- This is in part to move data from qualitative to quantitative. Don't see the value in eliminating this, think it provides more flexibility to the parties.
- This adds transparency to the use of aggravators. For regular reporting, aggravators are a black box. Instead of just removing it, replace with more specifics.

Exceptional Sentences: FY19 Data

Dr. Knoth-Peterson reviewed data related to exceptional sentences for fiscal year 2019, from the [WSIPP report](#) commissioned by the Task Force. ([see video at 01:09:23](#))

- Total 1,365 exceptional sentences
 - 75% Mitigated
 - 22% Aggravated
 - 3% Within standard range
- Overall average aggravated departures:
 - 31.61 months for Whites
 - 36.52 months for BIPOC
- Overall average mitigated departures:
 - 18.49 months for Whites
 - 27.91 months for BIPOC
- These differences may be driven by differences in Criminal History Score or types of offenses (e.g., lower stat maxes for class B and C offenses).
- Racial disproportionality appears in the frequency that individuals get a standard sentence compared to an aggravated sentence: Black and Hispanic defendants were most likely to get an aggravated sentence or an enhancement.
- Exceptional sentences: as seriousness level increases, the length of aggravated departures tended to increase; as seriousness level increases, the average percentage of the maximum decreased; BIPOC individuals received a greater increase in sentence for 8 of 12 seriousness levels. Appears that racial disproportionality exists for both aggravated and mitigated exceptional sentences.
- Many of the aggravated sentences are associated with an offense where a higher degree offense would be a three strikes offense.

Potential Recommendation 2:

*Create a new column on the grid with a cap on the maximum **aggravated** departure length.*

- It could be graduated such that longer departures are acceptable for higher offense seriousness levels
- The maximum departure length for OSL 9 should not exceed 12 months and the maximum departure length for OSL 5 should not exceed 6 months to be consistent with statutory maximums.

Potential Recommendation 3

Create a new column on the grid with the maximum mitigated departure length.

Grid Subgroup discussion on this recommendation focused on whether or not there is a need for this, and if it could prevent justified reductions. Racial disproportionality is not as apparent with mitigated sentences. This would also essentially establish mandatory minimums for all offenses, which currently do not exist.

Questions the Grid Subgroup would like the Task Force to provide input on:

- *Should the cap be per aggravating factor? If yes, how would that work for stipulated agreements if they are not required to list the associated aggravating characteristics?*
- *Should sentences within the prescribed aggravated maximum be appealable?*

- *Should there be any conditions where exceptional sentences may be granted above the prescribed departure maximum?*

Simulating aggravated ranges based on set month approach.

| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ | Agg Max | | | | | | | | | | | | | | | | | | | | |
|-----|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|----|
| 18 | Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 17 | 240 | 320 | 368 | 252 | 336 | 384 | 264 | 352 | 400 | 277 | 370 | 418 | 291 | 388 | 436 | 306 | 408 | 456 | 321 | 428 | 476 | 337 | 450 | 498 | 354 | 472 | 520 | 372 | 496 | 544 | 48 |
| 16 | 104 | 138 | 186 | 114 | 152 | 200 | 126 | 168 | 216 | 138 | 184 | 232 | 152 | 203 | 251 | 167 | 223 | 271 | 184 | 246 | 294 | 203 | 270 | 318 | 223 | 297 | 345 | 297 | 397 | 445 | 48 |
| 15 | 93 | 124 | 160 | 102 | 137 | 173 | 113 | 150 | 186 | 124 | 165 | 201 | 136 | 182 | 218 | 150 | 200 | 236 | 165 | 220 | 256 | 182 | 242 | 278 | 200 | 267 | 303 | 267 | 356 | 392 | 36 |
| 14 | 82 | 110 | 146 | 90 | 121 | 157 | 100 | 133 | 169 | 110 | 146 | 182 | 121 | 161 | 197 | 133 | 177 | 213 | 146 | 195 | 231 | 161 | 214 | 250 | 177 | 236 | 272 | 236 | 315 | 351 | 36 |
| 13 | 71 | 95 | 119 | 79 | 105 | 129 | 87 | 116 | 140 | 95 | 127 | 151 | 105 | 140 | 164 | 115 | 154 | 178 | 127 | 169 | 193 | 140 | 186 | 210 | 154 | 205 | 229 | 205 | 274 | 298 | 24 |
| 12 | 61 | 81 | 105 | 67 | 89 | 113 | 74 | 98 | 122 | 81 | 108 | 132 | 89 | 119 | 143 | 98 | 131 | 155 | 108 | 144 | 168 | 119 | 158 | 182 | 131 | 174 | 198 | 174 | 233 | 257 | 24 |
| 11 | 50 | 67 | 91 | 55 | 73 | 97 | 60 | 81 | 105 | 67 | 89 | 113 | 73 | 98 | 122 | 81 | 108 | 132 | 89 | 119 | 143 | 98 | 130 | 154 | 108 | 144 | 168 | 144 | 192 | 216 | 24 |
| 10 | 39 | 52 | 76 | 43 | 58 | 82 | 47 | 63 | 87 | 52 | 70 | 94 | 58 | 77 | 101 | 63 | 85 | 109 | 70 | 93 | 117 | 77 | 102 | 126 | 84 | 113 | 137 | 113 | 151 | 175 | 24 |
| 9 | 16 | 21 | 33 | 19 | 25 | 37 | 23 | 31 | 43 | 27 | 37 | 49 | 33 | 44 | 56 | 40 | 53 | 65 | 48 | 64 | 76 | 58 | 77 | 89 | 69 | 92 | 104 | 81 | 108 | 120 | 12 |
| 8 | 14 | 19 | 31 | 17 | 22 | 34 | 20 | 27 | 39 | 24 | 32 | 44 | 29 | 39 | 51 | 35 | 47 | 59 | 42 | 56 | 68 | 51 | 68 | 80 | 61 | 81 | 93 | 71 | 95 | 107 | 12 |
| 7 | 12 | 16 | 28 | 14 | 19 | 31 | 17 | 23 | 35 | 21 | 28 | 40 | 25 | 34 | 46 | 30 | 40 | 52 | 36 | 48 | 60 | 44 | 58 | 70 | 52 | 70 | 82 | 61 | 82 | 94 | 12 |
| 6 | 10 | 13 | 25 | 12 | 16 | 28 | 14 | 19 | 31 | 17 | 23 | 35 | 21 | 28 | 40 | 25 | 34 | 46 | 30 | 41 | 53 | 37 | 49 | 61 | 44 | 59 | 71 | 51 | 69 | 81 | 12 |
| 5 | 3 | 10 | 16 | 3 | 12 | 18 | 4 | 15 | 21 | 5 | 18 | 24 | 6 | 22 | 28 | 8 | 26 | 32 | 9 | 32 | 38 | 11 | 38 | 44 | 13 | 46 | 52 | 16 | 54 | 60 | 6 |
| 4 | 2 | 9 | 15 | 3 | 10 | 16 | 3 | 12 | 18 | 4 | 15 | 21 | 5 | 18 | 24 | 6 | 22 | 28 | 8 | 26 | 32 | 9 | 32 | 38 | 11 | 38 | 44 | 13 | 45 | 51 | 6 |
| 3 | 2 | 7 | 13 | 2 | 8 | 14 | 3 | 10 | 16 | 3 | 12 | 18 | 4 | 14 | 20 | 5 | 17 | 23 | 6 | 21 | 27 | 7 | 25 | 31 | 9 | 30 | 36 | 10 | 36 | 42 | 6 |
| 2 | 0 | 3 | 9 | 1 | 6 | 12 | 2 | 7 | 13 | 2 | 8 | 14 | 3 | 10 | 16 | 3 | 12 | 18 | 4 | 14 | 20 | 5 | 17 | 23 | 6 | 21 | 27 | 8 | 27 | 33 | 6 |
| 1 | 0 | 2 | 8 | 0 | 3 | 9 | 1 | 5 | 11 | 1 | 6 | 12 | 2 | 7 | 13 | 2 | 8 | 14 | 3 | 10 | 16 | 3 | 12 | 18 | 4 | 14 | 20 | 5 | 18 | 24 | 6 |
| Unr | 0 - 365 days | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Task Force Discussion

- For a Class C or Class B felony, there is bounded discretion when it comes to the amount of time that can be added due to an exceptional aggravated sentence because a sentence cannot exceed the statutory max (5 years for Class C felonies and 10 years for Class B felonies). The statutory max for Class A felonies is life, which is not a set number. Under this potential recommendation, there would be bounded discretion in that the column would provide a maximum amount of time that could be added.
- There is a significant difference between an Assault 1 & 2 and have always thought that an Assault 1.5 would make sense. Perhaps an aggravator would create a middle ground between those two charges.
 - Not sure if it would change the relationship between Assault 1 and 2 very much, since there would still need to be pled and proven and the aggravating factor and a judge’s willingness to go above the standard range based on evidence.
- Does this mean that for Class A, the amount of time for an exceptional aggravated sentence would no longer be that statutory maximum, and instead it would bind the judge to an amount of time shorter than the statutory maximum?
 - The stat max for Class A felonies is life. Under this proposed recommendation, there would now be a specified number of months that a sentence could be lengthened due to aggravating factors.
- Is the problem that judges are giving sentences that are too high, that are outside of bounds of what parties have agreed to?
 - Based on the data, 86% of aggravated exceptional sentences are ones that all parties agreed on, which suggests they come from a plea bargain rather than a judge’s decision. However, the reasons for why all parties agreed is unknown and not reported. This is what potential recommendation 1 addresses, where a particular

characteristic/circumstance justifying the aggravated exceptional sentence would need to be given.

- If you have information about why aggravated sentences are being imposed, you can look back and see if prosecutors have changed what they are doing. This increases transparency.
- Believe that judges should be given all the information and we're supposed to come up with what we believe is an appropriate sentence and anything that impinges upon that is something I have a response against.
- Worry that it gives a disincentive to prosecutors as a way of lowering the charge to get to an outcome which can be agreed to. If the maximum sentence is already there and it prohibits the parties from getting to a place they can agree, it could be a disincentive to even go there in the first place.
- Are the concerns about that this recommendation having to do with how it would impact Class A offenses? Or Class B & Class C as well?
 - Class B and C are basically bound by the statutory maximum.
 - Expect the issue would be more with a Class A felony than a Class B felony.
- If the first recommendation you presented is a way to understand what is happening with aggravators, is it possible to implement the first one without knowing what the second and 3rd recommendations are?
 - They are separate but not mutually exclusive. The first potential recommendation is about what happens before the imposition of an aggravated sentence. The third potential recommendation is a step to reduce the variance by putting a cap on the length of an aggravated sentence.
- Considering our policy goal to look at ways to reduce complexity of sentencing laws, if these changes we are proposing are implemented, then we will have people still serving sentences issued under the past grid and its laws and then people starting to serve sentences based on the new grid and laws. It would be very complicated. Don't know if racial disproportionality would be improved upon based on what is being proposed. It would give more transparency, which is important.
- For the first potential recommendation, I think we could get consensus. Don't know if restricting discretion is going to guarantee any outcome.

PRESENTATION: Looking at Together: Repeat Violent Column & Aggravator Cap Column ([see video at 02:31:27](#))

Dr. Knoth-Peterson then briefly reviewed the potential recommendation of a repeat violent offense column (focus of the February meeting): *Eliminate the offense-specific multipliers from the criminal history score calculation. And create a new column on the grid for repeat violent offending that increases the maximum of the standard sentencing range if the individual has convictions for a previous violent or serious violent offense.*

She then walked through how this recommendation works combined with the aggravator cap column:

Aggravator Column and Repeat Violent Column.

| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ | Agg Departure Cap | Repeat Violent | | | | | | | | | | |
|--|--------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------------------|----------------|-----|-----|-----|-----|-----|-----|-----|-----|--------|--------|
| Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life | | | | | | | | | | | | | | | | | | | | | | |
| 18 | | | | | | | | | | | | | | | | | | | | | | |
| 17 | 240 | 320 | 252 | 336 | 264 | 352 | 277 | 370 | 291 | 388 | 306 | 408 | 321 | 428 | 337 | 450 | 354 | 472 | 372 | 496 | 48 mos | 60 mos |
| 16 | 104 | 138 | 114 | 152 | 126 | 168 | 138 | 184 | 152 | 203 | 167 | 223 | 184 | 246 | 203 | 270 | 223 | 297 | 297 | 397 | 48 mos | 48 mos |
| 15 | 93 | 124 | 102 | 137 | 113 | 150 | 124 | 165 | 136 | 182 | 150 | 200 | 165 | 220 | 182 | 242 | 200 | 267 | 267 | 356 | 36 mos | 48 mos |
| 14 | 82 | 110 | 90 | 121 | 100 | 133 | 110 | 146 | 121 | 161 | 133 | 177 | 146 | 195 | 161 | 214 | 177 | 236 | 236 | 315 | 36 mos | 36 mos |
| 13 | 71 | 95 | 79 | 105 | 87 | 116 | 95 | 127 | 105 | 140 | 115 | 154 | 127 | 169 | 140 | 186 | 154 | 205 | 205 | 274 | 24 mos | 36 mos |
| 12 | 61 | 81 | 67 | 89 | 74 | 98 | 81 | 108 | 89 | 119 | 98 | 131 | 108 | 144 | 119 | 158 | 131 | 174 | 174 | 233 | 24 mos | 24 mos |
| 11 | 50 | 67 | 55 | 73 | 60 | 81 | 67 | 89 | 73 | 98 | 81 | 108 | 89 | 119 | 98 | 130 | 108 | 144 | 144 | 192 | 24 mos | 24 mos |
| 10 | 39 | 52 | 43 | 58 | 47 | 63 | 52 | 70 | 58 | 77 | 63 | 85 | 70 | 93 | 77 | 102 | 84 | 113 | 113 | 151 | 24 mos | 12 mos |
| 9 | 16 | 21 | 19 | 25 | 23 | 31 | 27 | 37 | 33 | 44 | 40 | 53 | 48 | 64 | 58 | 77 | 69 | 92 | 81 | 108 | 12 mos | 12 mos |
| 8 | 14 | 19 | 17 | 22 | 20 | 27 | 24 | 32 | 29 | 39 | 35 | 47 | 42 | 56 | 51 | 68 | 61 | 81 | 71 | 95 | 12 mos | 12 mos |
| 7 | 12 | 16 | 14 | 19 | 17 | 23 | 21 | 28 | 25 | 34 | 30 | 40 | 36 | 48 | 44 | 58 | 52 | 70 | 61 | 82 | 12 mos | 12 mos |
| 6 | 10 | 13 | 12 | 16 | 14 | 19 | 17 | 23 | 21 | 28 | 25 | 34 | 30 | 41 | 37 | 49 | 44 | 59 | 51 | 69 | 12 mos | 12 mos |
| 5 | 3 | 10 | 3 | 12 | 4 | 15 | 5 | 18 | 6 | 22 | 8 | 26 | 9 | 32 | 11 | 38 | 13 | 46 | 16 | 54 | 6 mos | 6 mos |
| 4 | 2 | 9 | 3 | 10 | 3 | 12 | 4 | 15 | 5 | 18 | 6 | 22 | 8 | 26 | 9 | 32 | 11 | 38 | 13 | 45 | 6 mos | 6 mos |
| 3 | 2 | 7 | 2 | 8 | 3 | 10 | 3 | 12 | 4 | 14 | 5 | 17 | 6 | 21 | 7 | 25 | 9 | 30 | 10 | 36 | 6 mos | 6 mos |
| 2 | 0 | 3 | 1 | 6 | 2 | 7 | 2 | 8 | 3 | 10 | 3 | 12 | 4 | 14 | 5 | 17 | 6 | 21 | 8 | 27 | 6 mos | 6 mos |
| 1 | 0 | 2 | 0 | 3 | 1 | 5 | 1 | 6 | 2 | 7 | 2 | 8 | 3 | 10 | 3 | 12 | 4 | 14 | 5 | 18 | 6 mos | 6 mos |
| Unr | 0 - 365 days | | | | | | | | | | | | | | | | | | | | | |

Dr. Knoth-Peterson noted that there are other states that have similar columns on their sentencing grids and including the columns on the grid would decrease complexity by having information in one place. She also walked through an example of a case based on the current grid and then what it could look like on the simulated grid with the aggravator and repeat violent columns.

Task Force Discussion

- Seems like it would create more clarity and transparency, but also seems somewhat complex. Also, we have been talking about judicial discretion a lot during this discussion and also hearing that judicial discretion has led to issues such as racial disproportionality and that putting some bounds on judicial discretion could help in some ways to reduce the disproportionality. Do judges like non-agreed recommended sentences - ones not resulting from plea agreements? In that those non-agreed recommendations do then give them more discretion?
 - From a judges perspective, the overwhelming majority of sentences that are presented to the court, that are recommended to the court are agreed. There is the explicit expectation that the judicial officer is going to follow the agreed recommendation. If we were able to examine the data, I believe that the overwhelming number of the sentences that are imposed are the product of negotiations - agreed upon recommendations. This idea that there is this overwhelming majority of judges exercising their independent authority and discretion in sentencing, I don't know that that is true. And think this is a very important point to examine and consider when we are talking about disproportionality. It would be helpful if we had the data to show how many of these are the product of the judge following the agreed recommendations. So I don't know that it is a matter of the judge liking or not looking when there is an agreed recommendation because regardless, we are duty bound to exercise our discretion, even in the face of that extraordinary pressure to follow the agreed recommendation. For judges, sentencing is our job, it is transparent, and it is known what the judge is doing and the reasons why but what is not transparent is what is happening behind closed doors, before those recommendations come in front of the judge. So do think there is value in creating transparency, as the first recommendation indicates that it would do.

- There may be another way to think about this and to talk about it beyond just whether it increases or decreases one party's discretion. Talking about discretion is triggering and it is a loaded term. Instead, think its important to focus on what this recommendation is getting at, which is that it is saying, for this particular offense under these conditions and circumstances, this is the maximum sentence that should be given, that it is not appropriate to go beyond this amount if a person has this sentencing score and the starting range is this amount. The conversation shouldn't be about discretion and who gets it and how much. Instead, we should be talking about what the recommendation is doing which is setting what the appropriate maximum sentence should be.
- Agree that this is what we are trying to do with these recommendations – setting parameters on what the sentence should be under different circumstances. What those parameters should be when an aggravated exceptional sentence is appropriate and when it is a repeat violent offense. But also do think its important to recognize where discretion moves in the system. I think we are closer on these issues than we seem.
- Researchers and authors of the field talk about bounded discretion and where it exists in the system and it exists everywhere in the system. Statutory maximums are bounded discretion where the Legislature says this should be the maximum but they are so broad, they don't account for all the types of decisions that are made during sentencing, but it is the Legislature saying that within all of this, this is the upper bound, this is the most. So similar with the aggravated departure cap, the Grid Subgroup was discussing, what is the upper bound. What is the most that should ever be imposed and is appropriate under these circumstances? Because under the current system, there is no specified upper bound for aggravating sentences. What ends up creating an upper bound is the stat max and only for Class C and Class B offenses, but the stat max was not set and doesn't talk about aggravating sentences, it was created for what is the upper bound for a specific class of offenses.
- When a judge issues an exceptional sentence, that sentence is now appealable. With what we have here as proposed, would that sentence still be appealable?
 - Under the current situation, no but one of the conversations we have had and are having in the Grid Subgroup is having some sort of mandatory review. We will be looking at work done by Professor Chang at Seattle University, where sentences are reviewed for disparity and disproportionality automatically. This is conversation that is still needed, what is the review and what are the mechanisms to address where we do see disparity and disproportionality.

Next Steps:

April meeting will be virtual. Discussion will focus on three strikes and two strikes and consecutive sentencing.

PUBLIC ATTENDEES: Jim Chambers, Bruce Glant, Carolyn Gray, Jaime Hawk, Cynthia Hollimon, Katelyn Kelley, Kehaulani, Joanne Smieja, David Trieweler

PUBLIC QUESTIONS AND COMMENTS: Below are summaries of comments and questions related to the work of the Task Force shared by public attendees and any responses from Task Force members and alternates. Full questions/comments and responses can be viewed by following this link to TVW which starts at [02:58:50](#) in the meeting recording.

Bruce Glant: Described a sentencing situation involving mitigating circumstances, which included the defendant's age. The potential sentence range was 90-123 months—defense argued for sentencing at the lower end, prosecution higher, and the court imposed a sentence in the middle. Could someone provide more information?

- No members still present were able to provide additional context.

Joanne Smieja: Clarification—is the Task Force recommending the creation of an upper boundary, or upper limit on the potential number of months that could be considered for an aggravated factor?

- Task Force has not yet developed recommendations. The potential recommendations are **ideas** that have emerged during subgroup conversations. This meeting is an opportunity for the full Task Force to provide input and feedback to the Grid Subgroup.
- This potential recommendation would cap the number of additional time that a court could impose as part of an exceptional sentence. Currently, with an exceptional sentence in Washington, the court cannot impose “life” as a sentence—the court must provide a number of months, which could be 500, 1000, 1200 months.

Joanne Smieja: Has the group had any conversation about eliminating determinate plus sentences and moving to determinate sentences for Class A sex offenses? Instead of a sentencing range of a number of months to life, the potential range would have definitive numbers for the upper and lower ends of the range.

- Group has not had conversations about different sentencing schemes. Would probably want to engage with the Sex Offender Policy Board.

Kehaulani: Where does your data come from?

- Washington State Institute for Public Policy utilized data from the Caseload Forecast Council to produce [Examining Washington State's Sentencing Guidelines: A Report for the Criminal Sentencing Task Force](#). R: it is from a WSIPP report that pulls data from CFC which is the official repository for data.

Kehaulani: How many currently incarcerated individuals took plea bargains?

- 97% of sentences in 2021 were part of a plea negotiation, which is consistent with national data.

Kehaulani: Expressed frustration regarding HB 1169 and legislature's desire to implement policies informed by the work of the Task Force. Expressed interest in participating in the Task Force to represent families of incarcerated individuals.

- Legislature created the Criminal Sentencing Task Force and specified the membership, which includes the Statewide Family Council and two individuals representing the perspective of incarcerated persons.

- Some members also expressed frustration about working to reach consensus and then the political challenges of passing legislation informed by those consensus recommendations.
- Facilitation Team encouraged the Task Force to have a conversation about decision-making process and to explore what that means after reaching consensus—what does the implementation of the recommendations look like?

Samantha Ice: As a family member, see the personal change and hard work that can occur while an individual is incarcerated—will continue to support that person.

PUBLIC INPUT SHARED VIA THE CHAT:

Bruce Glant: How accurate is the score and the criteria that goes into developing that score? I believe the scoring is very questionable

APPENDIX I – CSTF MEMBERS/ALTERNATES ATTENDANCE, March 3, 2022

| CSTF Members & Designated Alternates | Affiliation/Perspective Represented | Attendance: |
|--|---|-------------|
| Jon Tunheim Russell Brown (alternate) | Washington Association of Prosecuting Attorneys | ✓ |
| | Statewide Reentry Council | |
| Rep. Roger Goodman | Washington State House of Representatives | |
| Sen. Chris Gildon | Washington State Senate | |
| Sen. Manka Dhingra | Washington State Senate | |
| Rep. Carolyn Eslick | Washington State House of Representatives | |
| Barbara Serrano | Washington State Office of the Governor | |
| Elaine Deschamps (Clela Steelhammer) | Washington State Caseload Forecast Council (technical support) | ✓ |
| Julie Martin (Mac Pevey) | Washington State Department of Corrections | ✓ ✓ |
| Judge Wesley Saint Clair (Keri-Anne Jetzer) | Washington State Sentencing Guidelines Commission | ✓ ✓ |
| Suzanne Cook (Melody Simle) | Statewide Family Council | ✓ |
| Judge Josephine Wiggs-Martin | Superior Court Judges' Association | ✓ |
| Gregory Link (Kim Gordon) | Washington Association of Criminal Defense Attorneys; Washington Defender Association | ✓ |
| Chief Gregory Cobb (Chief Brian Smith) | Washington Association of Sheriffs and Police Chiefs | ✓ ✓ |
| Councilmember Derek Young | Washington State Association of Counties | ✓ |
| Judge Veronica Alicea-Galván (Frank Thomas) | Washington State Minority and Justice Commission | |

APPENDIX I – CSTF MEMBERS/ALTERNATES ATTENDANCE, February 3, 2022

| | | |
|-------------------------|--|---|
| Chief James Schrimpsher | Fraternal Order of Police, Labor Organization Representing Active Law Enforcement Officers in Washington State | ✓ |
| Nick Allen | Columbia Legal Services, Representing Interests of Incarcerated Persons | ✓ |
| (Nick Straley) | Columbia Legal Services, Representing Interests of Incarcerated Persons | ✓ |
| Waldo Waldron-Ramsey | Washington Community Action Network, Representing Interests of Incarcerated Persons | ✓ |
| (Ginny Parham) | Washington Community Action Network, Representing Interests of Incarcerated Persons | ✓ |
| Tiffany Attrill | King County Prosecutor’s Office, Representing Interests of Crime Victims | ✓ |
| Riddhi Mukhopadhyay | Sexual Violence Law Center, Representing Interests of Crime Victims | ✓ |
