Washington State Criminal Sentencing Task Force Meeting

March 3, 2022   1:00pm-4:30pm

ZOOM Meeting

Agenda

- Task Force Introductions and Updates

- Consensus Decision: Vacant Co-Chair Position

- Build Understanding and Provide Input on Potential Recommendations from Grid Subgroup

  - Exceptional Sentences: Aggravators and Mitigators

  - 3 Strikes and 2 Strikes Laws

Agenda

Agenda

1:00pm
Review Agenda, Groundrules

1:10pm
Introductions & Updates

1:30pm
Consensus Decision: Vacant Co-Chair Position

1:45pm
Presentation of Potential Rec's: Aggravators & Mitigators

2:20pm
BREAK

2:30pm
Task Force Discussion

2:50pm
Presentation and Discussion: Repeat Violent Column and Aggravator Cap Column

3:30pm
Presentation of Potential Rec's: 3 & 2 Strikes Laws

3:55pm
Task Force Discussion

4:15pm
Questions from Observers

4:30pm
Adjourn

Washington State Criminal Sentencing Task Force

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 <u>Molly Stenovec</u>.

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.

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.
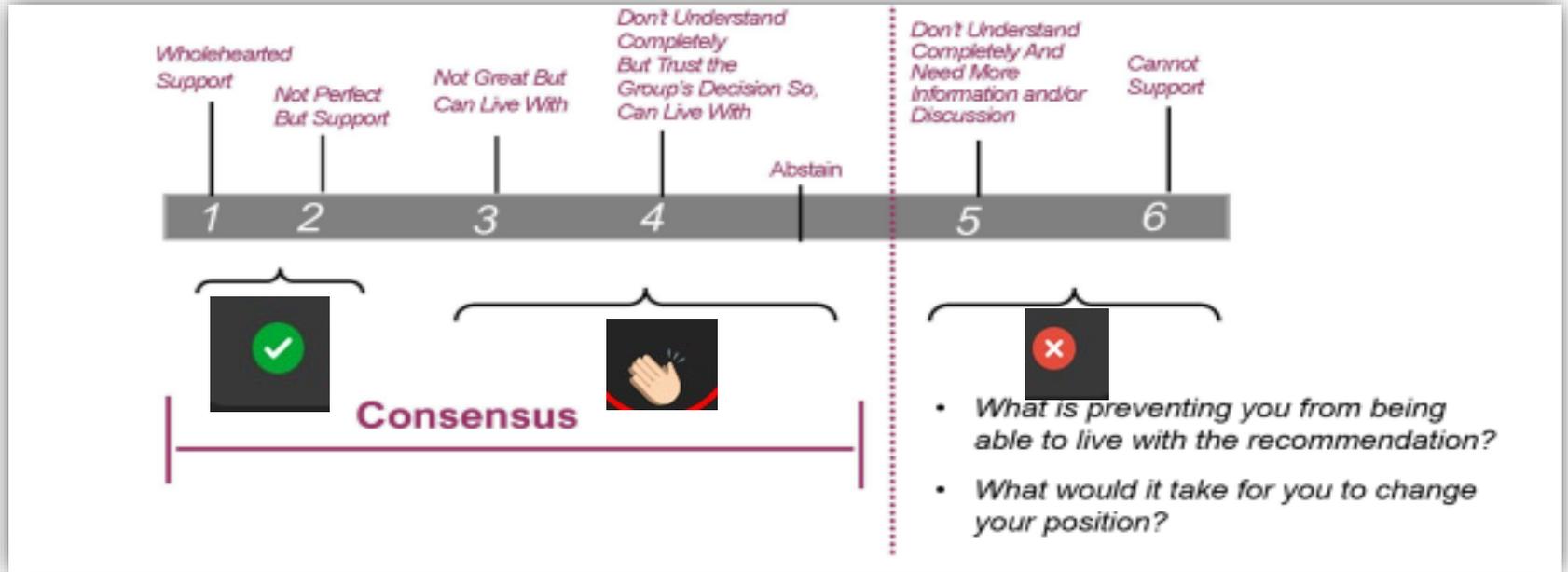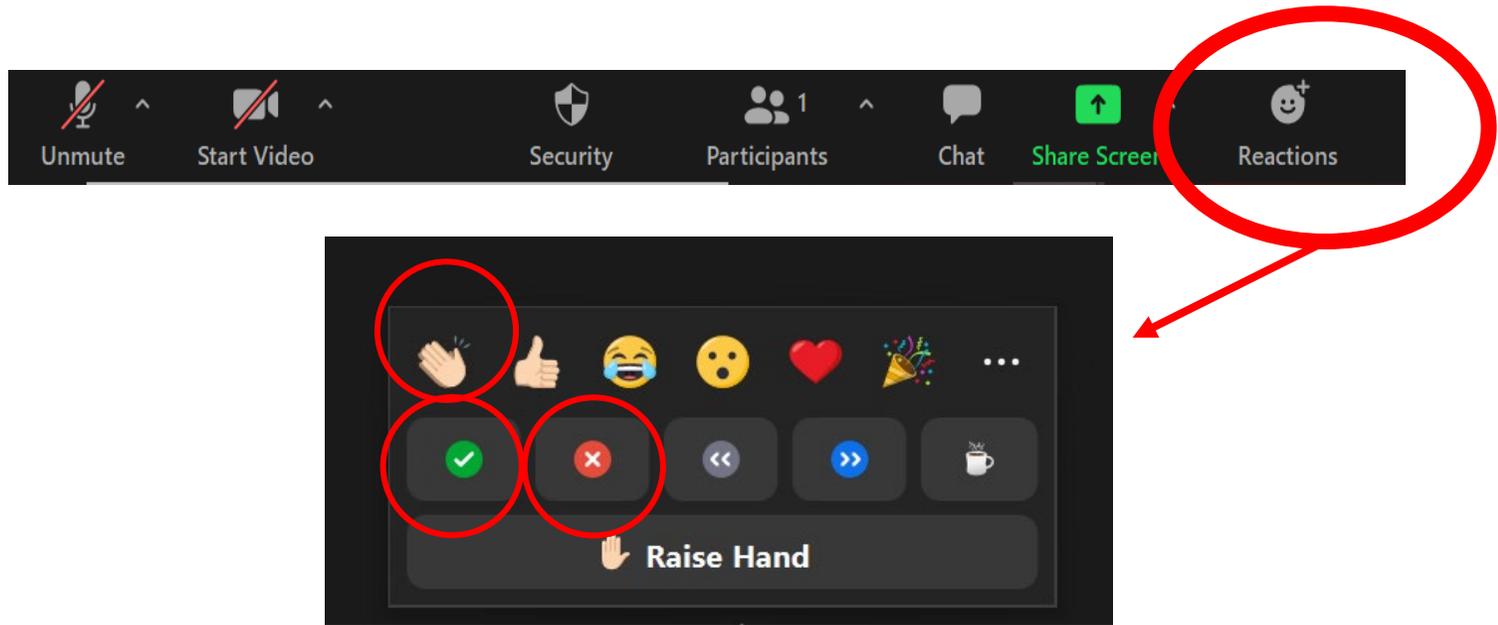
Task Force Introductions

- **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.

Co-Chair & Facilitator Updates

1:10 - 1:30pm

Consensus Decision: Vacant Co-Chair Position

1:30 - 1:45pm

Consensus Icons

Presentation and Potential Recommendations

1:45 - 2:20pm

Exceptional Sentences: Aggravators and Mitigators

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

Exceptional Sentences: Aggravators & Mitigators

- The court may impose a sentence **outside the standard sentence range** for an offense if it finds that 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 (RCW 9.94A.535) or from the consecutive/concurrent policy (RCW 9.94A.589(1) and (2)) in written Findings of Fact and Conclusions of Law.

- The law has a list of factors for the court to consider when imposing an aggravated exceptional sentence (above the standard range) or a mitigated exceptional sentence (below the standard range). RCW 9.94A.535

Exceptional Sentences: Aggravators & Mitigators

- Handout: Background Aggravators Mitigators 2.25.22

- Original SRA included 6 mitigating factors and 13 aggravating factors but was not exclusive.

- 2005 *Blakely v. Washington* and subsequent Leg. Actions –

  - *List of aggravating factors made exclusive*

  - *Expanded list of aggravating factors*
    - *4 that do not require findings of fact by a jury*
    - *25 aggravating factors post questions of fact that must be submitted to a jury*

Mitigated Exceptional Sentence – below the range

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence.

- Judicial discretion – no prescribed statutory list
- E.g., offense committed under duress

Aggravated Exceptional Sentence – above the range

Unlike mitigating circumstances, an exceptional sentence that is aggravated must be based on one or more of the circumstances listed in the statute.

- 32 factors with some having subsections (a – ff)
  - Many added with 2005 legislation, but additional changes in subsequent years (2007-2019)

- Must be "pled and proven" – limited judicial discretion
- Statutorily defined
- E.g., multiple victims

Aggravated Exceptional Sentence – above the range

Aggravators not requiring finding of fact by jury:

The court may impose an aggravated exceptional sentence if the defendant and state both stipulate that justice is best served by an exceptional sentence and the court agrees that the stipulation is in the interest of justice.

The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of RCW 9.94A.010.

The defendant committed multiple current offenses and the defendant's high criminal history score results in some offenses going unpunished.

The failure to consider the defendant's prior criminal history which was omitted from the criminal history score calculation results in a presumptive sentence that is clearly too lenient.

Exceptional Sentences – Philosophies of Punishment

Aggravated Exceptional Sentences

- Rehabilitation – n/a

- Restoration – n/a

- Deterrence
  - No current evidence for deterrent effect.

- Incapacitation/Risk
  - Unknown whether/how aggravated characteristics associate with risk of recidivism

- Retribution

Exceptional Sentences – Philosophies of Punishment

Aggravated Exceptional Sentences

- Rehabilitation – n/a

- Restoration – n/a

- Deterrence
  - No current evidence for deterrent effect.

- Incapacitation/Risk
  - Unknown whether/how aggravated characteristics associate with risk of recidivism

- **Retribution**
  - **Characteristics make the offense particularly harmful/egregious and more "deserving" of punishment.**

Exceptional Sentences – Philosophies of Punishment

Mitigated Exceptional Sentences

- Rehabilitation –
  - Non-incarcerative alternatives or shorter sentence lengths may provide more opportunity for rehabilitation.

- Restoration – n/a

- Deterrence – n/a

- Incapacitation/Risk
  - Mitigating factors may be associated with lower risk of recidivism (also known as "protective" factors).

- Retribution

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
  - o 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

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.

Grid Subgroup Discussion Points:

- Practical constraints – no uniform judgement and sentence form (J&S) – limited time/resources in the courts to record additional details.

- Some concerned about flexibility to engage in charge bargaining.

- Necessary detail to conduct more thorough research/to understand potential racial disproportionality.

- Requiring judges to record/make findings of fact about case characteristics may violate Blakely.

Possible modifications: 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 to the aggravated sentence rather than requiring a finding of fact with a jury.

Exceptional Sentences: FY19 Data
-WSIPP

EXCEPTIONAL SENTENCES

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 CHS or types of offenses (e.g., lower stat maxes for class B and C offenses).

EXCEPTIONAL SENTENCES

	N	% of FY 2019 sentences	Average departure length in months
Aggravated exceptional			
Asian/Pacific Islander	5	1.0%	+39.87
Black	42	1.8%	+31.89
Hispanic	48	2.6%	+24
American Indian/Alaskan Native	12	2.0%	+15.7
White	185	1.7%	+18.49
Mitigated exceptional			
Asian/Pacific Islander	27	5.4%	-87.01
Black	183	7.9%	-41.46
Hispanic	178	9.7%	-30.11
American Indian/Alaskan Native	29	4.7%	-23.85
White	593	5.4%	-31.61

EXCEPTIONAL AGGRAVATED

Offense SL	Total			White			BIPOC		
	N	Avg. length over max	Avg. % of max	N	Avg. length over max	Avg. % of max.	N	Avg. length over max	Avg. % of max.
15	3	+80.0	15.6%	1	+66.0	9.0%	2	+87.0	**18.8%**
14	4	+95.3	36.3%	3	+90.3	31.7%	1	+110.0	**50.0%**
13	--	--	--	--	--	--	--	--	**--**
12	14	+104.4	37.9%	9	+98.7	35.9%	5	+114.8	**41.3%**
11	6	+56.3	31.7%	5	+37.6	17.4%	1	+150.0	**103.1%**
10	6	+112.3	73.4%	5	+128.4	78.6%	0	.	.
9	6	+60.8	63.8%	3	+59.0	68.0%	3	+62.7	59.7%
8	6	+19.6	34.0%	4	+14.1	38.2%	2	+30.5	25.6%
7	32	+58.3	88.4%	18	+55.8	90.1%	14	+61.5	86.2%
6	5	+73.2	81.5%	3	+109.3	116.0%	--	--	--
5	14	+27.9	82.0%	11	+23.1	58.9%	3	+45.3	**166.7%**
4	76	+21.1	94.1%	40	+20.8	80.0%	33	+22.9	**115.6%**
3	70	+18.4	106.4%	42	+14.0	45.5%	28	+24.9	**197.7%**
2	29	+17.9	330.3%	19	+18.6	299.1%	9	+17.2	**399.5%**
1	28	+8.8	57.2%	22	+9.1	57.8%	6	+7.7	54.8%

As SL increases, the length of aggravated departures tended to increase.

However, as SL increases, the average percent of the maximum decreased.

BIPOC received greater increases in their sentence for 8 of the 12 SLs.

EXCEPTIONAL MITIGATED

Offense SL	Total			White			BIPOC		
	N	Avg. length below min.	Avg. % of min.	N	Avg. length below min.	Avg. % of min.	N	Avg. length below min.	Avg. % of min.
15	6	-138.4	32.1%	1	-60.0	33.3%	5	-154.1	**31.9%**
14	6	-153.6	37.6%	2	-38.3	41.5%	4	-211.3	**35.7%**
13	--	--	--	--	--	--	--	--	--
12	30	-95.2	37.8%	12	-49.3	41.3%	18	-125.8	**35.4%**
11	9	-34.5	40.2%	5	-36.8	44.4%	4	-31.6	**35.0%**
10	12	-80.6	46.9%	6	-55.0	64.2%	6	-106.2	**29.6%**
9	40	-22.5	44.5%	17	-20.9	43.3%	21	-23.6	46.5%
8	5	-13.2	48.9%	1	-15.0	71.4%	4	-12.8	**43.3%**
7	26	-29.1	42.5%	15	-21.6	50.8%	11	-39.3	**31.2%**
6	7	-16.1	37.1%	5	-9.6	34.3%	2	-32.5	44.0%
5	253	-26.3	58.2%	150	-27.1	58.6%	103	-25.3	**57.6%**
4	153	-13.3	46.9%	98	-12.3	48.2%	52	-15.8	**44.4%**
3	276	-13.6	56.4%	157	-13.2	58.7%	110	-15.0	**54.5%**
2	127	-15.2	54.9%	79	-16.1	60.2%	47	-14.0	**46.0%**
1	75	-7.8	55.6%	45	-8.1	59.2%	30	-7.4	**50.1%**

As SL increases, the length of mitigated departures tended to increase.

However, as SL increases, the average percent of the minimum decreased.

Whites received often downward departures that were a larger percentage of the minimum than BIPOC defendants.

EXCEPTIONAL SENTENCES – REASONS FOR DEPARTURE (WSIPP FINDINGS)

	Total		BIPOC		White	
	N	**%**	**N**	**%**	**N**	**%**
Aggravated exceptional						
Defendant agreed to prison, greater sentence, or treatment	**251**	**86.0%**	**95**	**88.8%**	**153**	**82.7%**
Victim was particularly vulnerable	9	3.1%	3	2.8%	5	2.7%
A domestic violence offense that occurred in sight or sound of victims children under age 18	8	2.7%	2	1.9%	5	2.7%
A domestic violence offense that was a part of an ongoing pattern of psychological, physical, or sex abuse of victim multiple incidents over a prolonged period of time	7	2.4%	3	2.8%	4	2.2%
Defendant was in a position of trust (not an economic or drug offense)	6	2.1%	2	1.9%	3	1.6%
Mitigated exceptional						
Exceptional sentence is more appropriate/is in the interests of justice	**427**	**42.3%**	**188**	**45.1%**	**234**	**39.5%**
All parties agreed to mitigated sentence	**397**	**39.3%**	**138**	**33.1%**	**252**	**42.5%**
Part of Plea Agreement	**125**	**12.4%**	**57**	**13.7%**	**67**	**11.3%**
Capacity to appreciate the wrongfulness was significantly impaired	21	2.1%	9	2.2%	12	2.0%
Victim was an initiator, willing participant, aggressor, or provoker	19	1.9%	7	1.7%	12	2.0%

EXCEPTIONAL SENTENCES – MOST COMMON OFFENSES

Offense	N	%
Aggravated sentence		
Assault 2	43	14.38
Assault 3	32	10.7
Burglary 2	11	3.68
Child Molestation 2	11	3.68
Robbery 2	11	3.68
Theft 1	11	3.68
Attempting to Elude Police Pursuing Vehicle	10	3.34
Unlawful Possession of a Firearm 2	10	3.34
Unlawful Possession of a Firearm 1	9	3.01
Escape from Community Custody	8	2.68
Rape of a Child 1, Age >17	8	2.68
Mitigated sentence		
Domestic Violence Court Order Violation	240	23.41
Assault 3	109	10.63
Assault 2	57	5.56
Burglary 2	54	5.27
Failure to Register as a Sex Offender 3+	38	3.71
Robbery 1	37	3.61
Unlawful Possession of a Firearm 2	36	3.51
Residential Burglary	32	3.12
Possession of a Stolen Vehicle	27	2.63
Bail Jump with Class B OR C Offense	26	2.54

Many of the aggravated sentences associated with offenses where a higher degree offense would be a three-strikes offense.

Note: July 2019 Rob 2 removed as a strike

Potential Recommendation 2

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

- 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 2

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

Grid Subgroup Discussion Points:

- Consistent with concepts of **bounded discretion**.

- Sentencing enhancements represent one end of the spectrum – no (or very limited) judicial discretion. If a particular characteristic is pled or proven, the judge must sentence the individual to the amount of time prescribed by the enhancement.

- Aggravating factors in the status quo represent the other end of the spectrum – unfettered judicial discretion. If a particular characteristic is pled or proven, the judge can impose any sentence up to the stat max.

- Proposed recommendation is a middle ground or more balanced approach to discretion. The approach does not prescribe the amount of time that must be added if a characteristic is pled or proven, but also does not allow unfettered discretion.

Potential Recommendation 2

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

Grid Subgroup Discussion Points:

- <u>*Reduces complexity and errors*</u>:
  - Increases consistency/transparency/predictability in sentencing. Explicitly a part of the grid.
- <u>*Improving Effectiveness of the Sentencing System:*</u>
  - May reduce disproportionate application of aggravated departures by establishing consistent limits regardless of defendant characteristics.
  - Maintains individualized sentencing, but with more balanced discretion.
  - Some concerned about flexibility to engage in charge bargaining.
  - If stat max for Class A is life, but grid caps aggravated sentences, then judges can't access/use stat max.
- <u>*Promoting Public Safety:*</u>
  - No robust evidence of a deterrence effect or correlation between aggravated characteristics and risk of recidivism.
  - Retributive policies may increase collateral consequences of incarceration
- *Increasing Racial Equity*
  - Aggravating factors found to be source of disproportionality in sentence lengths

Potential Recommendation 2

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

Grid Subgroup Discussion Points:

- Question of how can courts deal with extreme cases on the margins.
    - Should we legislate to the hypothetical extremes?

Possible modifications:

- Include the max departure column only for OSL 1-9.
- Make advisory instead of presumptive/mandatory

Potential Recommendation 3

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

- The amount should be graduated such that longer departures are acceptable for higher offense seriousness levels.

Grid Subgroup Discussion Points:
- Unclear whether there is a need – could prevent justified reductions.
- Racial disproportionality not as apparent with mitigated sentences in WSIPP report
- Would essentially establish mandatory minimums for all offenses which currently do not exist.

Possible modifications:
- Make advisory instead of presumptive/mandatory

Column based on a set number of months by OSL. Graduated by OSL (exact values could change. Could also be based on a percentage increase)

	0	1	2	3	4	5	6	7	8	9+	Agg/Mit +/-
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										months
17	240 320	252 336	264 352	277 370	291 388	306 408	321 428	337 450	354 472	372 496	48 mos
16	104 138	114 152	126 168	138 184	152 203	167 223	184 246	203 270	223 297	297 397	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
14	82 110	90 121	100 133	110 146	121 161	133 177	146 195	161 214	177 236	236 315	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
12	61 81	67 89	74 98	81 108	89 119	98 131	108 144	119 158	131 174	174 233	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
10	39 52	43 58	47 63	52 70	58 77	63 85	70 93	77 102	84 113	113 151	24 mos
9	16 21	19 25	23 31	27 37	33 44	40 53	48 64	58 77	69 92	81 108	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
7	12 16	14 19	17 23	21 28	25 34	30 40	36 48	44 58	52 70	61 82	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
5	3 10	3 12	4 15	5 18	6 22	8 26	9 32	11 38	13 46	16 54	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
3	2 7	2 8	3 10	3 12	4 14	5 17	6 21	7 25	9 30	10 36	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
1	0 2	0 3	1 5	1 6	2 7	2 8	3 10	3 12	4 14	5 18	6 mos
Unr	0 - 365 days										

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																														

Simulations – using simulated grid

Child Molest 3 with an aggravated factor
SQUO: Maximum sentence = 60 months (class C stat max)
Proposed Rec: Maximum sentence = 60 months (CHS 9+)

	0			1			2			3			4			5			6			7			8			9+			Agg Max
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

Criminal Mistreatment 1 with an aggravated factor
SQUO: Maximum sentence = 120 months (Class B stat max)
Proposed Rec: Maximum sentence = 120 months (CHS 9+)

	0			1			2			3			4			5			6			7			8			9+			Agg Max
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

Assault 1 with an aggravated factor
SQUO: Maximum sentence = Life (Class A stat max)
Proposed Rec: Maximum sentence = 298 months (CHS 9+)

	0			1			2			3			4			5			6			7			8			9+			Agg Max
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

Potential Recommendation 2

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

Remaining questions:

- 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?

2:20 – 2:30pm

BREAK
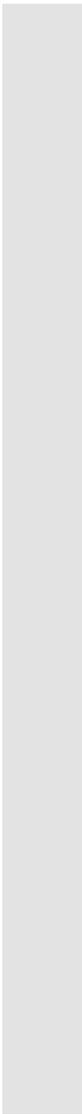
2:30 - 2:50pm

Task Force Discussion
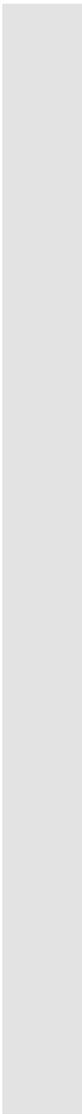
Repeat Violent Column & Aggravator Cap Column

2:50 - 3:30pm

- Looking at together: potential recommendation of a repeat violent offense column (focus of the February meeting) and the potential recommendation of an aggravator cap column. (15min)

- Task Force Discussion.

Proposed Recommendation from 2.3.22 Task Force 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.

Simulating ranges based on set month approach.

	0	1	2	3	4	5	6	7	8	9+	Repeat Violent
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	240 320 380	252 336 396	264 352 412	277 370 430	291 388 448	306 408 468	321 428 488	337 450 510	354 472 532	372 496 556	60
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	93 124 172	102 137 185	113 150 198	124 165 213	136 182 230	150 200 248	165 220 268	182 242 290	200 267 315	267 356 404	48
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 95 131	79 105 141	87 116 152	95 127 163	105 140 176	115 154 190	127 169 205	140 186 222	154 205 241	205 274 310	36
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 64	43 58 70	47 63 75	52 70 82	58 77 89	63 85 97	70 93 105	77 102 114	84 113 125	113 151 163	12
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										

Aggravator Column and Repeat Violent Column.

	0		1		2		3		4		5		6		7		8		9+		Agg Departure Cap	Repeat Violent
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	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																					

Simulations – using status quo system

Base offense – Assault 1, OSL 12
3 prior convictions – sentence range 120 – 160 months

	0	1	2	3	4	5	6	7	8	9+
12	93 123	102 136	111 147	120 160	129 171	138 184	162 216	178 236	209 277	240 318

Base offense – Assault 1, OSL 12
3 prior convictions, 1 is violent (multiplier applies)
Sentence range 129 – 171 months

	0	1	2	3	4	5	6	7	8	9+
12	93 123	102 136	111 147	120 160	129 171	138 184	162 216	178 236	209 277	240 318

Base offense – Assault 1, OSL 12

*3 prior convictions, 1 is violent (multiplier applies) AND an **aggravating factor** –*

*Sentence range 129 – **LIFE (Stat Max, unlimited judicial discretion)***

	0	1	2	3	4	5	6	7	8	9+
12	93 LIFE	102 LIFE	111 LIFE	120 LIFE	129 **LIFE**	138 LIFE	162 LIFE	178 LIFE	209 LIFE	240 LIFE

Simulations – using simulated grid

Base offense – Assault 1, OSL 13
3 prior convictions – sentence range 95 - 127 months

	0		1		2		3		4		5		6		7		8		9+	
13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274

Base offense – Assault 1, OSL 13

3 prior convictions, 1 prior violent – sentence range 95 - 163 months

	0			1			2			3			4			5			6			7			8			9+			Agg Max	Repeat Violent
13	71	95	131	79	105	141	87	116	152	95	127	163	105	140	176	115	154	190	127	169	205	140	186	222	154	205	241	205	274	310	24	36

Base offense – Assault 1, OSL 13

*3 prior convictions, 1 prior violent AND an **aggravating factor** –*

Sentence range 95 - 187 months (bounding judicial discretion)

	0			1			2			3			4			5			6			7			8			9+			Agg Max	Repeat Violent
13	71	95	155	79	105	165	87	116	176	95	127	187	105	140	200	115	154	214	127	169	229	140	186	246	154	205	265	205	274	334	24	36

Presentation and Potential Recommendations

3:30 - 3:55pm

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."

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 be 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 4

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 5: 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

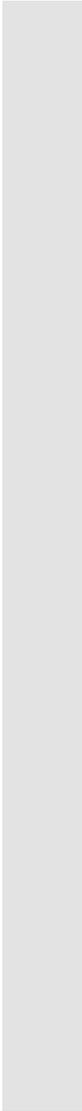*c.* **Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life**
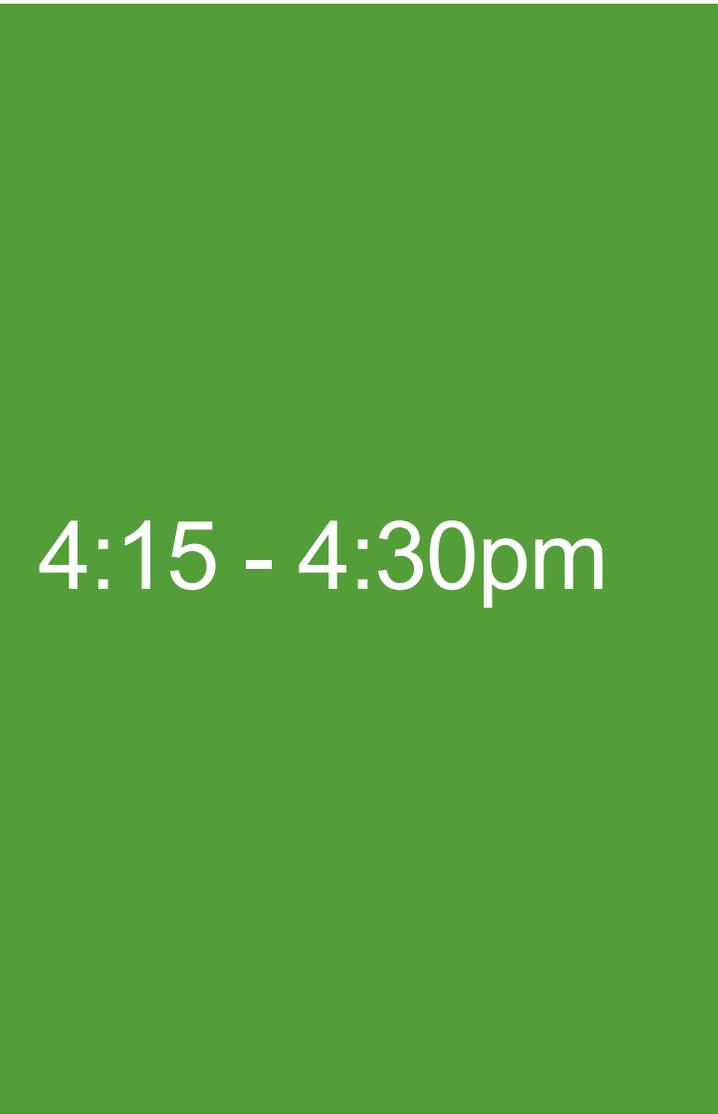
Grid Subgroup Discussion Points:
- Inability to show growth after time like you would with a determinate plus
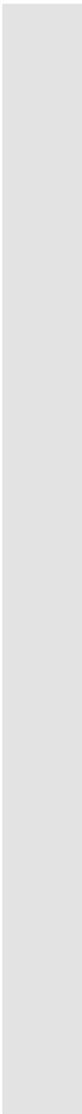- Shifts discretion to judges rather than some external review board
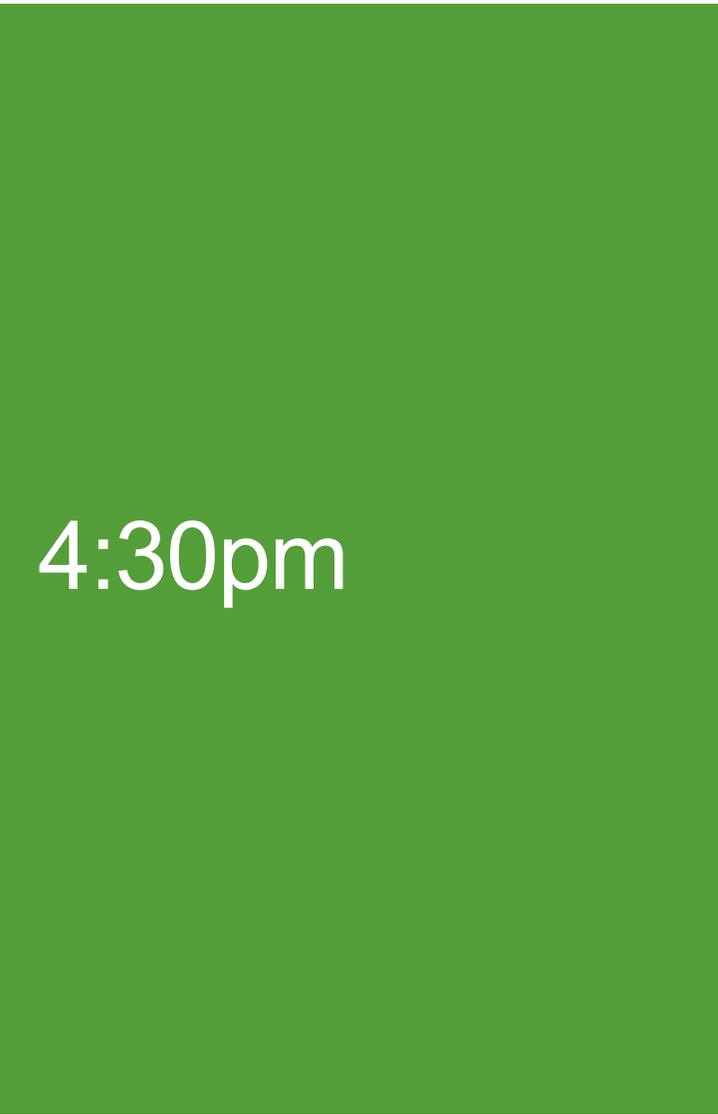
3:55 - 4:15pm

Task Force Discussion

4:15 - 4:30pm

Questions from Observers

ADJOURN

4:30pm