

Washington State Criminal Sentencing Task Force
Meeting Summary: April 7, 2022
Virtual Meeting via ZOOM – [Link to recording via TVW](#)

ATTENDEES:

- **Task Force Members and Alternates:** See Appendix A
- **Members of the Public:** see page 7
- **Facilitation Team:** Amanda Murphy, Phyllis Shulman, Molly Stenovec, Maggie Counihan – *Ruckelshaus Center*
- **Research/Technical Support:** Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy*

MEETING GOALS:

- Task Force Introductions and Updates
- Updates from Sentencing Alternatives Workgroup
- Consider potential recommendations from Grid Subgroup – Consecutive and Concurrent Sentencing Policy; Three Strikes and Two Strikes Sentencing Laws

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. Members and alternates introduced themselves and shared the organization and interests they represent. The group welcomed new member Carmen Pacheco-Jones who will be representing the Reentry Council, the seat formerly held by Lydia Flora Barlow, and also Melody Simle who moved from the alternate position to member seat representing the Statewide Family Council.

CO-CHAIR UPDATES

Rep. Goodman, Jon Tunheim, and Nick Allen shared they are looking forward to seeing people in person for the May 5th meeting and mentioned the importance of the Task Force having key conversations moving forward and discussing what the outcomes of the Task Force look like.

FACILITATION TEAM UPDATES

Amanda noted that the May meeting will include discussion of the Task Force's work in relation to legislation and what is doable for the remainder of the year. She reminded the Task Force that some of the potential recommendations on the agenda for today touch on consecutive vs. concurrent sentencing and that the Task Force discussed that same dichotomy (consecutive vs. concurrent) related to enhancements in the past, but enhancements (and the legislation addressing them) are not the focus of today's discussion.

The next Task Force meeting will occur May 5th in person (with a virtual option) at the WSU Puyallup Research and Extension Center from 10am-4pm. Meeting information will be sent out later in the month.

SENTENCING ALTERNATIVES WORKGROUP UPDATES

Amanda provided an update on the workgroup that meets every other Tuesday. The workgroup has been reviewing criteria and eligibility for sentencing alternatives. They have recently discussed SSOSA

with the Chair, and Vice Chair of the state Sex Offender Policy Board (SOPB) attending a recent meeting. Rep. Goodman noted that a request from the Chair of the Public Safety Committee of the state House of Representatives has been transmitted to the SOPB asking the SOPB to develop recommendations on improving SSOSA (based on research and best practice principles) at the end of the year. The House Public Safety committee will hold a work session for those recommendations to be presented.

Mac Pevey, both a Task Force alternate and a member of the SOPB, noted that the SOPB has a lot of subject matter experts. He shared that the board met at the end of March and is looking forward to being a part of that work.

PRESENTATION OF POTENTIAL RECOMMENDATIONS: CONSECUTIVE & CONCURRENT SENTENCING POLICY 36:05

Dr. Knoth-Peterson reviewed consecutive and concurrent sentencing policies ([see 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 what is stated above. Those exceptions include:

- Offenses that constitute same criminal conduct
- Multiple serious violent offenses
- Certain firearm related offenses
- Felony driving while under the influence (DUI)/felony actual physical control of a vehicle while under the influence

Potential Recommendations related to Multiple Serious Violent Offenses ([see video at 35:42](#))

Potential Recommendation: Eliminate the mandatory consecutive sentencing for serious violent offenses and make concurrent.

Potential Recommendation: Eliminate mandatory consecutive sentencing for serious violent offenses and add an aggravating factor for cases including serious violent offenses with multiple victims.

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

Task Force Discussion: 49:50 – grid group context

- A member commented that the recommendations don't address scoring for multiple serious violent offenses and suggested the Task Force discuss that issue. Currently if the sentences for multiple serious violent offenses run consecutive to each other, they do not score against one another, so if you recommend eliminating the consecutive nature of these offenses, you should address that they be scored against one another like non serious violent offenses.

- To what extent would limiting mandatory consecutive sentencing eliminate discretionary consecutive sentencing?
 - The potential recommendations related to firearm offenses would give judges discretion to determine if sentences would run consecutively or concurrently. That distinction has not been made for serious violent offenses.
- A member expressed support for having the court impose sentences either consecutively or concurrently at their discretion.
- If there are charges for multiple serious violent offenses, could a person agree through a plea negotiation that their sentence would not necessarily be consecutive?
 - Yes, one of the things discussed during a plea negotiation (when a defendant pleads guilty) is what charges are part of the plea agreement. That may include all the serious violent offenses or maybe only a portion of the serious violent offenses.
- A member noted that conversations need to include information about how score calculations differ in circumstances with multiple serious violent offenses. There are about 10 offenses in the “serious violent” classification. When scoring, it is not an exact doubling:
 - the offense that has a higher standard range is calculated without including the other most serious violent offense in the scoring,
 - the other serious violent offense is calculated at zero, and
 - the two sentences are run consecutively.
- Another member noted that these offenses don’t necessarily involve separate victims. Often it is a single criminal episode with a single victim and single defendant that can result in lengthy consecutive sentences. In other states these are called mandatory minimum sentences and they can have the effect of forcing plea bargains.
- Currently, serious violent offenses can only earn 10% good time, and the majority of individuals serve the entirety of sentence. We also often see firearm enhancements attached as well because the offense involved a weapon.
- What if there is a single victim of multiple serious violent offenses? I am currently only seeing considerations around situations with multiple victims.
 - One reason the potential recommendations focus on different victims is when the Grid Subgroup discussed this, members had concern around what is appropriate in cases where there are multiple victims. Members noted that if there are different offenses with different victims, it is different than if there are multiple offenses with one victim.
 - The potential recommendations could also apply if there was a single victim of multiple serious violent offenses.
 - A member said they would like whatever the final recommendation is to be more explicit that single victim experiences are not being discounted.
- Do you know how many were trials or plea deals?
 - Data provided from Clela Steelhammer for FY21:
FY21 Serious Violent Consecutive Sentences:
Bench 3.4%
Jury 37.9%
Plea 58.6%
100.0%

FY 21 All Felony Sentences:

Bench	1.5%
Jury	1.5%
Plea	97.0%
	100.0%

- A member commented that there are instances when there is a single victim but very distinct serious offenses.
- Another member noted that in their experience working with victims, the victims think it is important for someone to get sentenced for a specific crime. They have difficulty with concurrent sentences.
- A member wanted to make sure there is not already an aggravating factor on top of concurrent sentences and noted that there is an aggravating statute and a lot of ways that a sentence can be aggravated up and that many of the cases are resolved by plea. They noted that ultimately the sentencing entity is the court.
- A member asked for more information about Grid Subgroup discussions around consecutive and concurrent sentencing.
 - In the [history of consecutive sentencing](#), prior to the Sentencing Reform Act (SRA), judges had discretion to determine whether sentences should run consecutively or concurrently. Most sentences were concurrent, with consecutively-run sentences saved for exceptional cases.
- A member noted there is an aggravating factor that addresses felonies involving multiple victims.
- Has there been consideration around crimes committed related to the victim's identity?
 - I don't think there is specific language in the Revised Code of Washington (RCW) but work is happening at the state level around missing and murdered indigenous women and girls, the higher rates of violence towards trans communities, and individuals targeted because of a disability.
 - The malicious harassment statute would allow a separate charge for behavior directed at certain groups. If a prosecutor charged a malicious harassment in addition to assault, it would aggravate the sentence.
- Are we talking about changing the mandatory nature of consecutive sentencing but not getting rid of it?
 - That is what the Grid Subgroup has discussed.
- A member shared they hope these recommendations would give judges discretion to allow for fairer sentencing. They also expressed support for eliminating the mandatory language as well.
- Another member said they think the 33 cases listed in the data provided by Clela don't tell the whole story; it misses that the provisioning isn't being used very often. They opined that it gives the state significant power for plea negotiations and creates an imbalance of power. How can you have an effective sentencing system with power imbalance? The Task Force needs to look at how the system further drives the power imbalance.
- A member asked if data from FY19 could be provided instead of FY21.

- Overall, the data that has been used is FY19 and the total number of consecutive sentences was 33 but didn't have the plea data handy. Clela will go back and look at it after the meeting.
- A member noted one of the reasons they think mandatory consecutive sentencing is important is to have a distinction between serious violent offenses.

Potential Recommendations related to certain Firearm-related Offenses ([see video at 1:36:36](#))

Dr. Knoth-Peterson reviewed the potential recommendations and the discussions by the Grid Subgroup. These are not the firearm and deadly weapon enhancements; they are the theft and illegal possession type firearm offenses. (See presentation slides starting at XX.)

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

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

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

Potential Recommendation: 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. E.g., Multiple burglaries involving firearms would be consecutive, but one burglary of 5 guns would be concurrent.

Task Force Discussion:

- A member said they struggle with how the potential recommendations relate to the policy goals and would like to hear from practitioners on how they fit into the goals. For example, how do these reduce complexity and errors?
 - There is a distinction between multiple serious violent offenses and the firearm offenses in terms of complexity. Firearm offense calculations can get very complex.
- Another member shared they believe it would improve the effectiveness of the sentencing system if courts were provided the discretion to tailor a sentence based on circumstances and the harm done, which would also have a more commensurate treatment of an individual based on risk.
- A member said that in their experience, they don't recall errors in calculations for serious violent offenses but in contrast, there is a high error rate and complexity for firearm scoring.
- Another member asked that if these potential recommendations go forward and are adopted by the Legislature, that the lawmakers include clear language in statute that would be similar to language added to Judgment & Sentencing forms.
- A member expressed concern about allowing more discretion since it could increase disparity.
- A member shared an example of a victim's case, stating that there are some people who are dangerous and need not be in society. They asked whether the proposed changes would benefit all defendants, how it would address disproportionality, and whether retroactivity has been discussed?

- The retroactivity conversation (for all potential recommendations) will need to be discussed at a future meeting.
- Regarding disproportionality, the mandatory nature of consecutive sentencing laws has been a tool used in the plea negotiation process. Research indicates that those types of tools to give discretion in plea negotiations can lead to disproportionality. There are limitations to the data available from prosecutors, but research indicates that disproportionality occurs in the plea-bargaining process: it may be more likely that white defendants are offered a charge reduction and thus avoid mandatory consecutive sentencing laws, while defendants of color may not be offered the same charge reduction and so they are more likely to face mandatory consecutive sentences.
- A member noted that a lot of the discussion has been about moving some of the power away from the state level and move it to the judiciary which has more transparency.
- Another member said they would advocate for judges to have more discretion.
- A member also recommended a way to create a dashboard for the courts that would increase transparency on judicial decisions.

PRESENTATION OF POTENTIAL RECOMMENDATIONS: 3 STRIKES AND 2 STRIKES LAWS ([see video at 2:16:52](#))

Dr. Knoth-Peterson reviewed the background and law of 3 strikes and 2 strikes and provided an overview of the potential recommendations.

Potential Recommendation: 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.

Potential Recommendation: Eliminate and do not replace 3-strikes.

Or

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

Or

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

TASK FORCE DISCUSSION

- A member said they would like to see more tailored sentences and asked whether other states have 3 strikes laws—if so, what is similar or different?
 - Dr. Knoth-Peterson responded that it is an area of reform, with other states making changes. She will pull further resources with updated information on what other states' systems look like.
- Is there evidence that three strikes laws cause more violent behavior by an individual facing a third strike? Does the three strikes framework cause additional public safety problems?
 - Dr. Knoth-Peterson shared that some research studies suggest that violent crimes increased after the imposition of three strikes laws.
- A member noted that there is also a power imbalance for defendants and that often they have public defenders because the majority of people in prison are poor and unable to afford private counsel, so often end up taking plea deals.

- When facing the prospect of charging a strike offense that would be a third strike, do prosecutors try to charge something else because the circumstance didn't justify a life sentence?
 - There are times when charging a strike offense is looked at as appropriate but that the mandatory life without parole part might not be.
- Another member noted that you can have an unranked class A felony and still get three strikes.
- A member noted there are different ways to measure effectiveness in the system.
- Another member shared they think that people who exercise discretion need to have access to a lot more information than what's currently available to judges.

NEXT STEPS

May meeting will be in person, with the option for virtual attendance.

PUBLIC ATTENDEES: Megan Allen, Michael Althaus, Jim Chambers, Gideon, Katelyn Kelley, Sydney Oliver, Roger Rogoff, Michelle Rusk, Joanne, Smieja, Corey Patton, Carmen Pacheco-Jones

PUBLIC QUESTIONS AND COMMENTS: Below are summaries of comments and questions 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 [03:04:32](#) in the meeting recording.

Jim Chambers: Shared personal experiences and observations while spending over 20 years in Washington State prisons—that many individuals incarcerated are also victims of crimes, that many also suffer behavioral and mental health challenges, substance abuse—and those circumstances are not always recognized in court. Expressed support for the new mental health sentencing alternative. Some sentencing disparities are tied to income—individuals unable to afford their own defense attorney may have a different sentencing outcome than individuals with greater financial resources. Expressed support for the Task Force to include retroactivity in recommendations—if elected officials are making policy changes to address errors and harms in the system, there is a duty to apply those changes to all individuals, so that individuals with similar convictions serve similar sentences regardless of date of conviction. Encouraged the Task Force to make the big changes, to address bias, in the system—whether or not those changes are part of the mandate of the Task Force.

- Recognize that there are a plethora of challenges that could be addressed in the world of criminal sentencing, and there's room for additional legislation. However, this group has been given a specific directive by the legislature.
- Criminal justice laws and policies often make people who are unfamiliar or not involved in this world very uncomfortable. Policy change is slow, in part, because so many individuals don't have an understanding of the data and how so many people across the world approach criminal justice so differently. There are many individuals who are trying to make significant changes, but also important to think pragmatically about what changes and strategies will generate sufficient votes from the Legislature and a signature from the Governor.

- At the May meeting, the group will discuss the political process and a strategy for achieving the stated goals of the task force, while specifically looking at the sentencing guidelines grid.

David Trieweler: Group has discussed how discretion in decision-making contributes to racial disparity and disproportionality and the potential effects of expanding bounds of discretion to different parts of the system --would significantly reducing sentences reduce the harm and bias caused by the current sentencing structure?

- Difficult to disentangle bias and discretion in the system—it's incredibly complex. This group is looking at decision-making at the point of sentencing. The bias that exists at sentencing may be due, in part, to decision-making by prosecutors and defense attorneys or around policies such as policing, education, and everything that could occur before individuals even enter the justice system. Discussion is around what tools are available in the sentencing system, how those tools being used, and where see bias and disparate outcome as a result of those tools—and how those tools could be reformed to reduce disparate outcomes. For example, group is looking at how mandatory consecutive sentencing leads to bias.

Bruce Glant: Expressed support for opportunities to increase understanding and awareness of criminal justice related issues among Legislators. Described the lengthy sentences imposed to individuals convicted as a result of Net Nanny stings—typically those cases are non-contact and do not involve minors or children.