

Potential CSTF Recs Needing Attention from Grid Group on/after 7/26/22

Potential Recommendation 11 *(Presented at 9.2.21 and 11.4.21 CSTF Meeting)*

For aggravated murder 1 change the language from:

“Life sentence without parole/death penalty for individuals at or over the age of **eighteen**. For individuals under the age of **eighteen**, a term of twenty-five years to life.”

To

“Life sentence without parole/death penalty for individuals at or over the age of **twenty-five**. For individuals under the age of **twenty-five**, a term of twenty-five years to life.”

Grid Group Discussion Points:

Recent Supreme Court decisions recognize the emerging brain science and Washington Legislature has made other policy changes recognizing continued brain development between the ages of 18 and 25.

Summary Task Force Input at 9.2.21 and 11.4.21 CSTF Meeting

- *Suggestion to strike reference to the death penalty since not a valid sentence*
- *Some members have some issues with the language. Understand discussion about brain science and culpability. Concern about potential utilization by criminal street gangs.*
- *Since it pertains to individuals under 21, this statute as written is unconstitutional due to a recent [WA Supreme Court Case decision](#) Monschke and Bartholomew. This our approach should be to at least catch up to what the Supreme Court has decided. But with the current brain science being around 25 and the Supreme Court likely heading there, we can be future focused now and make it 25, instead of having to catch up later.*
- *If young people do not have the capacity to think about the future consequences of an action, can they really be guilty of premeditated murder?*
- *If the Supreme Court says its 21, then think should at least address to be 21. But for 25, have a lot of concern, especially given how criminal organizations recruit and groom individuals under 18 to commit crime. So concerned that now they would be having more room to do this for longer if it is up to 25.*
- *Concern about raising the age to 25, especially given that in all other aspects of society, 25 is considered an adult. We give a lot of mixed messages to our youth about when it is that you are an adult. For example, can vote and join the military at 18, drink at 21, many people are married and have kids by age 25. We need to come to some consensus at a greater scope of what is that age in which one is considered an adult.*
- *The science associated with juvenile development is soundly in place. We can use that science to come up with interventions for young people. The last place that matures in the brain is the frontal lobe, which is where judgement occurs, and this happens around age 25. The criminal gangs are going to do what they do and find any opening they can. But we as a community need to say this is the science and we aren't going to pick and choose when we use it. If we do we allow for greater disparity. And this isn't recent science, it is 20 years old and we need to start incorporating it into our criminal sentencing system.*
- *There is a continual stream of Supreme Court decisions on youthfulness and have been having conversations for years on how to legislate. The issue of culpability, which is different*

from guilt. Guilt is defined by the court process, but culpability is about an individual's ability to access the consequences of their own actions, so that's where youthfulness comes into consideration. And remember, there is still a mandatory minimum of 25 years so it's not like there isn't accountability.

- *The difference is whether their sentence is a life without parole sentence or a minimum of 25 years to life. So it is still about accountability, just whether those under 25 should get life without the possibility of parole. Changing the age to 25 and under, they would still be getting a minimum of 25 years to life. The U.S. is out of sync with the rest of the world in our criminal justice system, and other countries are getting better results. We should catch up with other countries, who do use recent brain science to guide their approaches.*

Potential Recommendation 12 *(Presented at 9.2.21 and 11.4.21 CSTF Meeting)*

For all sentences longer than 20 years, require a second chance review at 20 years of incarceration **with the presumption of release.**

Grid Group Discussion Points:

Similar to current statutes for individuals convicted of offenses committed before age 18.

Recognizes that extremely long sentences may not be beneficial/useful.

Acknowledges potential for rehabilitation and redeemability.

Summary Task Force Input *at 9.2.21 and 11.4.21 CSTF Meeting*

- *A current legislative proposal would increase review for specific offenses that may warrant clemency. The Washington Association of Prosecuting Attorneys has been supportive of those but has concern about the "presumption of release" language.*
 - *Express frustrations with clemency process because governors are inconsistent in their use of granting clemency.*
 - *My constituency is very supportive of a 20-year review and providing a space for rehabilitation.*
 - *From the Independent Sentencing Review Board or elsewhere, would it be possible to get information on how often the presumption of release is used for juveniles?*
 - *There is concern for how an individual got to a 20-year sentence: because of their criminal history? Suggestion: include opportunity for victim input.*
 - *The legislature is considering a bill on a 20-year review*
- *Another member expressed concern about the presumption of release.*
 - *If the presumption of release is problematic, suggest the Task Force still consider this recommendation, without that portion, because the 20-year look is crucial*
- *This recommendation would be like the statute 9.94(a).730, which refers to individuals convicted before the age of 18 and has a presumption of release, unless it is more likely than not that they will commit new law violations. Has been in place for six or seven years now and the last data seen did not show a high rate of return to prison. Not sure if this recommendation is meant to replicate for anyone once they reach 20 years, but if so, it has been successful and worth considering to expanding for all individuals.*

- Senator Dhingra had a bill that passed the Senate and is sitting on the House floor currently, which is related to this recommendation to allow for a second chance review.
- Would suggest having it be 25 years for certain classes of offenses, such as aggravated murder. Also, whether it is a presumption of release or if it should have some other qualities, such as rehabilitation should also be considered.
- Overall, it seems that *the Task Force's main concern with this recommendation is the presumption of release and what this means for the review process.*

EXCEPTIONAL SENTENCES: AGGRAVATORS AND MITIGATORS

Potential Recommendation 16: Eliminate the aggravated departures that are not required to be pled/proven (eliminating the stipulation as an aggravated factor) *(Presented at 3.3.22 CSTF Meeting)*

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

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.

Summary Task Force Input *at 3.3.22 CSTF Meeting*

- *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.*
- *This is in part to move data from qualitative to quantitative. I don't see the value in eliminating this, I 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 it with more specifics.*

NOTE: *The next three Potential Recommendations (19, 20, 21) all address the same issue. The Grid Group can help the Task Force by choosing one of the three to present to the full Task Force.*

Multiple Serious Violent Offenses:

Potential Recommendation 19: Eliminate the mandatory consecutive sentencing for serious violent offenses and make sentences concurrent. *(Presented at 4.7.22 CSTF Meeting)*

- Judges would still have discretion to make sentences consecutive.

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.

Summary Task Force Input at 4.7.22 CSTF Meeting

- *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.*
- *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 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 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.*
- *A member noted one of the reasons they think mandatory consecutive sentencing is important is to have a distinction between serious violent offenses.*

Potential Recommendation 20: Eliminate the mandatory consecutive sentencing for serious violent offenses and add an aggravating factor for cases involving serious violent offenses with multiple victims. (Presented at 4.7.22 CSTF Meeting)

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.

Summary Task Force Input at 4.7.22 CSTF Meeting

- *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.*
- *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 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.*

Potential Recommendation 21: Modify the mandatory consecutive sentencing for serious violent offenses such that it applies only when the offenses are for different victims. (Presented at 4.7.22 CSTF Meeting)

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.

Summary Task Force Input at 4.7.22 CSTF Meeting

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consecutive sentences. In other states these are called mandatory minimum sentences and they can have the effect of forcing plea bargains.

- 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 so that single victim experiences are not being discounted.

NOTE: The next four Potential Recommendations (22, 23, 24, 25) all address the same issue. The Grid Group can help the Task Force by choosing one of the four to present to the full Task Force.

Certain Firearm-Related Offenses (Note: This is different from firearm/deadly weapons enhancements)

Potential Recommendation 22: Eliminate the consecutive sentencing for firearm offenses and make those sentences concurrent. (Presented at 4.7.22 CSTF Meeting)

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.

Summary Task Force Input at 4.7.22 CSTF Meeting

- The Task Force generally did support reforming mandatory consecutive sentencing for firearms offenses but most feedback that existed was centered on passing discretion to make this decision onto judges.
- However, there were members who supported eliminating mandatory consecutive firearm offenses outright, and specifically were worried about transferring discretion to judges as they believe this could increase racial disparities in sentencing.

Potential Recommendation 23: Eliminate the mandatory consecutive sentencing for firearms offenses but allow judges discretion to make sentences consecutive. (Presented at 4.7.22 CSTF Meeting)

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.

Summary Task Force Input at 4.7.22 CSTF Meeting

- *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.*
- *A member expressed concern about allowing more discretion since it could increase disparity.*
- *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.*

Potential Recommendation 24: Eliminate the mandatory consecutive sentencing for firearms offenses but add aggravating factors that may address the cases with most concern about culpability. (Presented at 4.7.22 CSTF Meeting)

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.

Summary Task Force Input at 4.7.22 CSTF Meeting

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the harm done, which would also have a more commensurate treatment of an individual based on risk.

- *While this input also expresses support for discretion, the suggestion of tailoring sentences based on circumstances and the harm done, which would also have a more commensurate treatment of an individual based on risk, lends itself as support for the potential of aggravating factors for more culpable defendants.*

Potential Recommendation 25: 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. (Presented at 4.7.22 CSTF Meeting)

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.

Summary Task Force Firearm Recommendations #22-25 General Input at 4.7.22 CSTF Meeting

- *A member asked whether the proposed changes would benefit all defendants, how it would address disproportionality, and whether retroactivity has been discussed.*
 - *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 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?*
- *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.*

Summary Task Force Firearm Recommendations #22-25 General Input at 4.7.22 CSTF Meeting

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- *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.*

THREE STRIKES LAW

Potential Recommendation 26: 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. (Presented at 4.7.22 CSTF Meeting)

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

Summary Task Force Input at 4.7.22 CSTF Meeting

- *A member said they would like to see more tailored sentences (support for changing the legal procedure for 3-strikes) and asked whether other states have 3 strikes laws—if so, what is similar or different?*
- *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 the mandatory life without parole part might not be.*

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 27a: Eliminate and do not replace 3-strikes. (Presented at 4.7.22 CSTF Meeting)

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

Or

Potential Recommendation 27b: Replace 3-strikes mandatory sentence with determinate plus - 25 years with opportunity for release. (Presented at 4.7.22 CSTF Meeting)

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

Or

Potential Recommendation 27c: Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life (Presented at 4.7.22 CSTF Meeting)

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

Summary Task Force Input for Recommendations 27A, 27B, and 27C at 4.7.22 CSTF Meeting

- *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.*
- *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.*
- *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.*
- *A member expressed support for more individualized sentencing that take into account specific individualized and offense-specific circumstances to tailor sentencing more appropriately, something that is inherently not done through Three-Strikes.*

Potential Recommendation 28: Eliminate the special misdemeanor scoring exceptions for felony traffic. (Presented at 6.2.22 CSTF Meeting)

Potential Recommendation 28a: Reclassify felony DUI and physical control (PC) from OSL 4 to OSL 6. (Presented at 6.2.22 CSTF Meeting)

Grid Subgroup Discussion Notes:

Reduces complexity and errors:

- Prior misdemeanor DUIs are themselves an element of felony DUI. Thus, in the status quo, the prior convictions both increase the seriousness of offense in the court and increase a person's criminal history score. This means that individuals charged with felony DUI will rarely have a CHS of 0 or 1.
- Eliminating the scoring exceptions without changing the offense seriousness level would create a situation where individuals may have a lesser sentence for the felony DUI than the mandatory minimum for a 3rd misdemeanor DUI which is 180 days.

Improving Effectiveness of the Sentencing System:

- Felony DUI is a class B felony. Reclassifying it as OSL 6 would put it in the middle of the grid where Class B offenses are generally concentrated. For an individual in OSL 6 with a CHS of 0, the recommended sentence range would be highly similar to the recommended sentence range of individuals in OSL 4 with a CHS of 3. Thus, prosecutors and judges would still be able to seek similar sentences, but without the unnecessary complication in the Criminal History Score.
- Felony PC would have to be reclassified as a class B felony if moved to OSL 6.

Summary Task Force Input on 28 and 28A at 6.2.22 CSTF Meeting

- *Compared to now, there are a couple of things we would be giving up going to an aggravating factor approach (as opposed to a situation where an individual has a predicate that adds to the sentence) such as more certainty in the calculation. You would also open additional avenues for appeal that are not currently available. That is neither good nor bad, but an aggravating sentence creates an automatic appeal. For example, a person with a first felony DUI would be treated the same as a person who has a repeat DUI.*
- *A member stated that there is no legislative appetite and not politically possible to create washouts for predicates for felony DUI.*

Scoring Exception 2: Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner's Permission 1st degree or 2nd degree – Vehicular Prowling Misdemeanor Priors

Status Quo:

Misdemeanor offense of Vehicular Prowling 2° counts as 1 point

Potential Recommendation 29a: Eliminate the special misdemeanor scoring exceptions for vehicular prowling and create a new subsection on Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner's Permission 1st degree or 2nd degree for individuals with two prior misdemeanor convictions of vehicle prowl. Make these new subsections a higher OSL. (Presented at 6.2.22 CSTF Meeting)

Grid Subgroup Discussion Notes:

Reduces complexity and errors and Improving the Effectiveness of the Sentencing System:

- The rationale for this scoring exception is that stealing a car is considered a continuation or escalation of previous vehicle prowl behaviors. A third or subsequent vehicle prowl 2 offense becomes a felony offense at OSL 4. For individuals with their first theft of a motor vehicle, it is a felony offense at OSL 2, but the prior prowls increase criminal history score.
- Not all vehicle prowls are with the intent to steal a car – thus theft of a motor vehicle may not always reflect increasing intensity of behaviors – it may be a change in behavior. However, for those who are prowling with intent to steal a car, it doesn't make sense that the third time they're caught for prowl (i.e., they are stopped before they steal the car) the sentence is greater than the individual who successfully steals the car on the third try.
- Creating a new offense for theft of a MV with two prior vehicle prowls and making that OSL 4 makes it consistent with the third and subsequent vehicle prowl convictions. However, it should be considered whether it makes sense to have these MV theft offense at OSL 4, given the other offense in this OSL.
- Eliminating the special scoring rules increases transparency, increases defense flexibility in plea bargaining process, and significantly reduces complexity and error in the calculation of CHS.

Potential Recommendation 29b: Eliminate the special exception misdemeanor scoring for vehicle prowl. (Presented at 6.2.22 CSTF Meeting)

Grid Subgroup Discussion Notes:

Reduces complexity and errors and Improving the Effectiveness of the Sentencing System:

- Given the type of offenses in OSL 4, theft of motor vehicle related offenses do not seem to fit in this OSL – not comparable to the type of offenses.
- Concerns expressed that this scoring exception is the result of the “crime-of-the-day” logic. Represents an expansion of the authority under the SRA which is otherwise focused on felony offenses.

Summary Task Force Input for 29A and 29B at 6.2.22 CSTF Meeting

- *The conversations around this recommendation were trying to clarify the distinction between vehicle prowl in the first versus second degree, and why the third conviction for vehicle prowl was a more severe sentence than successfully stealing a car on the third attempt. The rationale for this scoring exception is that stealing a car is considered a continuation or escalation of previous vehicle prowl behaviors, so thus the third or subsequent vehicle prowl 2 offense becomes a felony offense at OSL 4. There were not many concerns with the recommendation as most of the conversation here was focused on clarification, and no one really was opposed.*
- *In relation to Potential Recommendation 29A, at trial would defendants have to disclose their prior offenses or just prior specific vehicular prowl/theft offenses? It is a concern that a consequence of this will be that the jury will be presented with a person’s criminal history and that increase in the number of times the state will be displaying a person’s criminal history through repeatedly bringing up their past priors in use against them at each subsequent charge could potentially sway juries against defendants.*
- *In response to this a member suggested that there could be a creation of a Potential Recommendation 29c that would make Vehicle Prowl in the 2nd degree OSL 1 and Vehicle Prowl in the 1st degree OSL 2-4, essentially flipping the OSLs in both degrees to reflect a higher OSL in the case of Vehicle Prowling in the 1st degree. They stated this addresses the need for eliminating complexity and avoiding the other member’s above concerns.*

Scoring exception 3: Homicide or Assault by Watercraft Offenses

Status Quo:

Certain adult Traffic Misd/Gross Misd count as 1 point

Certain juvenile Traffic Misd/Gross Misd offenses count as 1/2 point

Potential Recommendation 30: Eliminate the special misdemeanor scoring exceptions for homicide or assault by watercraft offenses and reclassify to the same OSL as the felony traffic offense. (Presented at 6.2.22 CSTF Meeting)

Grid Subgroup Discussion Notes:

Reduces Complexity and Errors and Improving the Effectiveness of the Sentencing System:

- Reduces complexity by having these offenses mirror traffic offenses. Committing the same offense in a boat vs. a car is really about a different affluence of the individual committing the offense.
- Felony traffic offenses for which misdemeanors count should be limited to offenses that can be committed by vehicle and boat.
- Felony traffic does include things that you wouldn't have in a boat, for example, eluding.

Summary Task Force Input at 6.2.22 CSTF Meeting

- *There was generally not a lot of concern about this recommendation as the majority of the discussion surrounding misdemeanor scoring rules focused on the other recommendations. Seemed there would be support.*

Scoring exception 4: Felony Domestic Violence

Status Quo:

Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011

Potential Recommendation 31: Eliminate the misdemeanor scoring exception and instead create an aggravated factor or enhancement. (Presented at 6.2.22 CSTF Meeting)

- Maintain a way for judges to consider prior misdemeanor DV at sentencing.
- Aggravating factor would then be constrained under the potential recommendation for limiting increases in sentences as a result of aggravating factor.
- Potentially limited to offenses involving the same victim/same relationship.
- Potentially an option similar to the repeat violent column approach.

Grid Subgroup Discussion Notes:

Reduces Complexity and Errors, Improving the Effectiveness of the Sentencing System, and Promotes/Improves Public Safety:

- Prior DV is a high predictor of lethality in DV.
- Doesn't require that the priors be against the same person. But still allowed to be introduced in court.

Summary Task Force Input at 6.2.22 CSTF Meeting

- *The domestic violence recommendation will be tough for my constituency to accept.*
- *When talking about reliability or accuracy in calculation of sentences, one thing to consider is that when we add aggravators to sentences, we also increase the state's burden of proof. We should be talking about the various types of review.*
 - *An aggravator is guaranteed to change the dynamic in a way that creates less certainty and that opens up avenues for automatic appeals that predicates do not. Predicates allow for the individualization of prosecution and eliminating this would allow for harsher treatment of first-time offenders than a repeat offender. This*

removes possibilities for individualization and discretion that we need, and because of this the DV recommendation will be especially tough to get by my constituency.

- *Domestic violence is in every demographic in our society and it's dramatically underreported. Would have a difficult time supporting the potential recommendation.*
- *Would changing the misdemeanor scoring to aggravating factors and increasing the serious levels if there is a prior offense change opinion on the domestic violence potential recommendation?*
 - *No, because there is still a learning component when it comes to domestic violence and the judicial branch. We have seen repeatedly many survivors of DV get their protection orders denied because of a lack of judicial understanding of power control dynamics. We do not have a bench that is fully understanding of these issues and creating an aggravating factor does not get us there either. There can be judicial disparities in how serious gender-based violence cases are taken, and this factor would not help address this.*

Potential Recommendation 32: Include language in the SRA that would define the scope of the CHS as limited to prior felony convictions. (Presented at 6.2.22 CSTF Meeting)

Grid Subgroup Discussion Notes:

Reduces Complexity and Errors and Improving the Effectiveness of the Sentencing System:

- Would increase the likelihood of long-term consistency and prevent future misdemeanor scoring exceptions, which create complexity and increase calculation errors. Currently disproportionate discretion in that full discretion of the legislature to decide when they should or should not count.
- SRA was not originally intended to cover misdemeanors except for where there is an explicit step up of the same offense (e.g., DUI).
- Inclusion of misdemeanors has led to complexity, errors in calculating CHS, and uncertainty. Inherent issues with reliability and accuracy of prior misdemeanors because reliance on municipal court data.

Summary Task Force Input at 6.2.22 CSTF Meeting

- *Leaving out the vehicle recommendation, there are specific public policy reasons why the misdemeanor scoring gets included in felony sentencing, and I think they are important reasons, especially the domestic violence one. Our culture and state do not do a good job with gender-based violence. It very challenging in our culture for survivors of domestic violence or sexual assault to get justice. So, there is a role for misdemeanor cases in felony sentences. We need to be thoughtful in making sure we look at escalating behaviors and risk assessments because there are certain behaviors that are more dangerous than others.*
- *If it is not doable to eliminate the scoring rules for felony DUI and DV, could we still have a recommendation that restricts the future use of misdemeanor scoring in the felony system?*
- *Is there a way to reduce complexity but not keep the status quo that has shown to be very complex and leads to errors?*
- *There's a difference between complexity and specificity. Don't think this is complex in the day-to-day work of somebody in the court.*