

## List of Potential Recommendations Presented to CSTF as of July 2022 Meeting

### Potential Recommendation 1

Since the current supervision model based on surveillance is insufficient, changes to the grid are based on a broader paradigm shift focused on providing the appropriate treatment and resources for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a separate form of Community Reentry.

### Potential Recommendation 2

Move all felony class B offenses to no higher than OSL 9. Move all felony class C offenses to no higher than OSL 5. Include new legislative/statutory language specifying that: "Class C felony offenses may not exceed offense seriousness level 5. Class B felony offenses may not exceed offense seriousness level 9."

### Potential Recommendation 3

The statutory maximum for class C and class B felonies is 5 and 10 years, respectively. Washington's current grid contains several cells where the courts are unable to sentence some crimes within the full or partial range because they are greater than the statutory maximum. To address cells where the presumptive sentencing range exceeds the statutory maximum for class C and class B felonies, make maximum of the range in CHS 9+ for OSL V 54 months and for OSL IX 108 months.

### Potential Recommendation 4

Establish a sunset committee that reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

### Potential Recommendation 5

Require ongoing monitoring and larger, more in-depth statistical reviews after the first few years.

### Potential Recommendation 6

Establish a formula for determining grid cell ranges for OSLs 1-5. Create the grid ranges for OSLs 1-5 using 54 as the anchor for the most serious maximum punishment for OSL 5, CHS 9+.

### Potential Recommendation 7

If the maximum sentence based on the formula is 12 months or less, the minimum is automatically reduced to zero.

### Potential Recommendation 8

Eliminate Straddle Cells: If the maximum based on the formula is more than 12 months, the minimum must be at least 12 months and a day.

### Potential Recommendation 9

Keep Straddle Cells Keep Straddle Cells and Create a State-Funded Intermediate Sanction Zone  
(see 9.1)

### Potential Recommendation 9.1

Create a Community Intermediate Sanction and Reintegrative Services Sentencing Alternative Program.

### Potential Recommendation 10

Eliminate the mandatory minimum for Murder 1.

### Potential Recommendation 11

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.”

### Potential Recommendation 12

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

### Potential Recommendation 13

Increase the number of seriousness levels from 16 to 18 and establish a formula for OSL 10-17:

- **OSL 18** is Aggravated Murder with a range of 25 to life regardless of Criminal History Score (as it currently is in SL 16)
- **OSL 17** is Murder 1 and Homicide by Abuse with current ranges for Murder 1.
  - Minimum for CHS 0 OSL 17 set at mandatory minimum as the anchor.
  - Maximum from CHS 1 – 9+ is 105% of prior maximum.
  - Minimum from CHS 1-9+ is 75% of maximum for each cell.
- **OSL 16** is Murder 2 with current maximums, but minimums made consistent at 50% of the maximum.
- **OSL 15 to 10** are as classified currently except for the offenses pulled out above.
- **The formula is used starting at OSL 16** (OSL 10-16, including M2):
  - **High ranges:**
    - Current maximum sentence for Murder 2 is used as the anchor for OSL 10-16.
    - Maximum at 0 CHS is 35% of Maximum at CHS 9+.
    - Maximum from CHS 1 – 8 is 110% of prior maximum for OSL 10-16.
    - Minimum is 75% of the maximum for each cell.
  - **Mid-ranges:**
    - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
    - Maximum from CHS 1 – 8 is 120% of prior maximum.

- Minimum is 75% of the maximum for each cell.
- **Low-ranges:**
  - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
  - Maximum from CHS 1 – 8 is 120% of prior maximum.
  - Minimum is 30% of the maximum for each cell.

#### **Potential Recommendation 13a**

Move Trafficking 1 to OSL 15 with Malicious Explosion of a Substance 1. Move all other offenses up one OSL.

#### **Potential Recommendation 13b**

Collapse the ranges for Murder 1 for Criminal History Scores 0-4 and 5-9+.

#### **Potential Recommendation 14**

Establish a formula for determining grid cell ranges for OSLs 6-9. Create the grid ranges for OSLs 6 – 9 using 108 as the anchor for the most serious maximum punishment for OSL 9, CHS 9+.

#### **Potential Recommendation 15**

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.

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

**Potential Recommendation 17:** Create a new column on the grid with the maximum aggravated departure length.

**Potential Recommendation 18:** 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.

**Potential Recommendation 19:** Eliminate the mandatory consecutive sentencing for serious violent offenses and make sentences concurrent.

**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.

**Potential Recommendation 21:** Modify the mandatory consecutive sentencing for serious violent offenses such that it applies only when the offenses are for different victims.

**Potential Recommendation 22:** Eliminate the consecutive sentencing for firearm offenses and make those sentences concurrent.

**Potential Recommendation 23:** Eliminate the mandatory consecutive sentencing for firearms offenses but allow judges discretion to make sentences consecutive.

**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.

**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.

**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.

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

**Potential Recommendation 27a:** Eliminate and do not replace 3-strikes.

Or

**Potential Recommendation 27b:** Replace 3-strikes mandatory sentence with determinate plus - 25 years with opportunity for release.

Or

**Potential Recommendation 27c:** Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life.

**Potential Recommendation 28:** Eliminate the special misdemeanor scoring exceptions for felony traffic.

**Potential Recommendation 28a:** Reclassify felony DUI and physical control from OSL 4 to OSL 6.

**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.

**Potential Recommendation 29b:** Eliminate the special exception misdemeanor scoring for vehicle prowl.

**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.

**Potential Recommendation 31:** Eliminate the misdemeanor scoring exception and instead create an aggravated factor or enhancement.

- 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.

**Potential Recommendation 32:** Include language in the SRA that would define the scope of the CHS as limited to prior felony convictions.

**Potential Recommendation 33:** Offense Classification Proposal

**Potential Recommendation 34:** Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a technical violation will not reset the washout period.

**Potential Recommendation 35:** Class A Felony Washout Rules

**Potential Recommendation 36:** Class B Felony Washout Rules

**Potential Recommendation 37:** Class C Felony Washout Rules

**Potential Recommendation 38:** Include and visually depict sentencing alternatives on the adult felony sentencing guidelines grid.

**Potential Recommendation 39:** Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSAs and rDOSAs (prison and residential drug offense sentencing alternatives).

**Potential Recommendation 40:** eliminate the cap on the number of DOSA sentences that an individual can receive in a 10-year period.

## Section 1: Vertical Axis Components of the Sentencing Grid

### SENTENCING GRID GENERAL/OVERARCHING

#### **Potential Recommendation 1** (Presented at 8.5.21 and 11.4.21 CSTF Meeting)

The current supervision model based on surveillance is insufficient, and changes to the grid are based on a broader paradigm shift focused on providing the appropriate treatment and resources for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a separate form of Community Reentry.

**Purpose:** Members discussed how any changes to the grid, in particular the southwest corner of the grid, that reduce incarceration or increase reentry services may increase the number of individuals on community supervision. Therefore, members thought it important that the model of community supervision is supportive rather than surveillance based.

#### **Summary Task Force Input** at 8.5.21 and 11.4.21 CSTF Meeting

- *DOC is working to accelerate implementation of I-COACH and talking about ways to increase substance abuse treatment. If courts order supervision, then DOC will supervise and determine the conditions of the supervision. In part because of a 2020 Task Force recommendation, the Legislature has authorized and provided resources for DOC to implement a new supervision model.*
- *It is important to know that for most property crimes, prosecutors can't assign supervision; I think you would start to see supervision decrease if supervision is presented as an option.*
- *Is it worth considering a study to assess the workload of community corrections officers along with allocating resources for sufficient and appropriate training, equipment, and support? These programs are part of the fabric of the community and, if implemented effectively and with adequate support and partnerships at the local level, can and will contribute to public safety.*
- *Member(s) expressed a desire to support community organizations to help with reentry services.*
- *A suggestion to reference the purpose of a different supervision model with its components, instead of a specific model that may or may not get implemented.*
- *The Task Force should make dramatic changes to the grid for individuals with a property crime conviction. Judges would like the opportunity for an individual to get the support and treatment they need. Only using incarceration as a tool for accountability for certain crimes is not working.*
- *Suggestion to modify specific statutes that dictates whom DOC supervises. If court orders supervision, then DOC will supervise see: [RCWs 9.94A.501](#) and [9.94A.701](#)*

#### **Potential Recommendation 2** (Presented at 8.5.21 and 11.4.21 CSTF Meeting)

Move all felony class B offenses to no higher than OSL 9. Move all felony class C offenses to no higher than OSL 5. Include new legislative/statutory language specifying that:

“Class C felony offenses may not exceed offense seriousness level 5. Class B felony offenses may not exceed offense seriousness level 9.”

**Purpose:** Creating consistency in the placement of offenses into different seriousness levels, based on felony class. Statutory language helps make changes durable to future legislative decisions. However, the legislature could decide to increase felony classes in order to make an offense fit a particular OSL.

**Summary Task Force Input** at 8.5.21 and 11.4.21 CSTF Meeting

- *Concern expressed that capping sentence lengths at 108 months for Class B felonies might shorten sentences for some felonies (e.g., Offender Seriousness Level (OSL) X at Criminal History Score (CHS) 8-9+) excessively; instead, suggest moving certain felonies up from Class B to Class A for more appropriate ranges of sentencing.*
- *Concern about any step that might shorten sentences for those convicted of crimes of sexual violence.*
- *General understanding of the principle and support for the move toward consistency and alignment with statutory maximum sentence.*
- *Need to think globally when considering all recommendations. My constituency would be ok with these proposed changes to the grid if other changes and reclassifications are made elsewhere.*
- *Don't think we are reclassifying crimes that's the Legislature's job. There is a recommendation to move Class B felonies to where all other Class B felonies are.*
- *A member expressed reservations about reclassifying crimes, saying it has more to do with inconsistent filing standards in the current system that create problems for their constituency. Victims and officers must overcome complicated filing standards, there is a need to consider the barriers to charging. This is especially true when thinking about reductions to sentence ranges and moving offenses down.*
- *The Grid Group has talked about a grid framework that creates more consistency and simplicity, rather than going offense by offense. There may need to be some recalibration or reclassification of specific offenses once the grid framework is established. For example, should Class A felonies remain in OSL 1-5 or be moved elsewhere?*

**Potential Recommendation 3** (Presented at 8.5.21 and 11.4.21 CSTF Meeting)

The statutory maximum for class C and class B felonies is 5 and 10 years, respectively. Washington's current grid contains several cells where the courts are unable to sentence some crimes within the full or partial range because they are greater than the statutory maximum. To address cells where the presumptive sentencing range exceeds the statutory maximum for class C and class B felonies, make maximum of the range in CHS 9+ for OSL V 54 months and for OSL IX 108 months.

**Purpose/Effects:**

- Allows for up to 6 months community custody or aggravated sentence for class C felonies
- Allows for up to 12 months community custody or aggravated sentence for class B felonies

- Would reduce the standard ranges for sentences at OSL 9 or lower.

**Summary Task Force Input** at 8.5.21 and 11.4.21 CSTF Meeting

- *Some members are reluctant to endorse capping sentence lengths in OSL 5 at or below the statutory maximum of 5 years for Class C and in OSL 9 at statutory maximum of 10 years for Class B, until they can see what that would do to sentence lengths in other cells.*
  - *Some of the shifts downward through reclassification are designed not to reduce the sanction, but to adjust the range to a level where all sentences would be valid within statutory maximums and minimums.*
- *Suggestion to refrain from specifying new top ends of cell ranges, in favor of pointing out the inconsistencies to the Legislature and letting them adjust address them*
- *Member(s) suggested eliminating felony classes, as right now they are only tied to statutory maximums, which could be addressed through cell ranges.*
- *The Task Force could look at eliminating the felony classes. There is support among having different zones for the different classes.*

**Potential Recommendation 4** (Presented at 8.5.21 and 11.4.21 CSTF Meeting)

Establish a sunset committee that reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

**Purpose/Effects:**

- Simplifies the criminal code.
- Eliminate offenses that were created as the result of particular incidents that are extremely rare and have not since reoccurred or are no longer applicable.
- There are methods of creating new crimes, but no standard method of eliminating outdated crimes.

**Summary Task Force Input** at 8.5.21 and 11.4.21 CSTF Meeting

- *Task Force members agreed that this recommendation seems like a smart thing to do.*
- *Generally, not a lot of input from the Task Force besides that this seems like a smart idea to pursue, support for this recommendation seemed contingent for some based upon getting a list of possible offenses that exist in this space and subsequently would be up for elimination.*

**Potential Recommendation 5** (Presented at 8.5.21 and 11.4.21 CSTF Meeting)

Require ongoing monitoring and larger, more in-depth statistical reviews after the first few years.

**Purpose:**

- Need to provide a way to monitor the effects of implementation on an ongoing basis rather than once every 40 years.
- If early implementation indicates unintended consequences or exacerbation of racial disproportionality, ongoing monitoring will allow for more timely reforms to address concerns.

- Value in both ongoing monitoring and occasional, wholistic reviews (e.g., basic annual reports and larger reports every 5-10 years to assess patterns that have insufficient sample sizes on an individual year-over-year basis).

**Summary Task Force Input** at 8.5.21 and 11.4.21 CSTF Meeting

- *Generally, there is a lack of input from the task force about this recommendation but there is general support for this recommendation.*
- *Suggestion to assess projected impacts to criminal justice system (Grid, DOC facilities, county court caseloads, county jail populations) from all Legislative statutory changes annually. Additional input suggests support for this recommendation as a way of analyzing the impact of racial disparities and disproportionalities in sentencing outcomes.*

### CREATING A FORMULAIC APPROACH TO THE SENTENCING GUIDELINES GRID

Purpose:

- **Durability:** creating a structure gives guidance to Legislators for future policy decisions. Currently, the absence of structure means that policies are not always consistent with past practices and lead to continuous variation, exceptions, and inconsistency.
- **Consistency:** creating consistency within the grid. Current grid does not have consistency in the increase in sanctions with OSL or CHS. There isn't a particular way to answer the question: "Why are the ranges what they are?" Formula can directly consider other statutory sentencing regulations like statutory maximum to create consistency across different aspects of the sentencing structure.

**Note:** recalibration will likely be necessary to make sure certain offenses make sense within the new structure and formula. The focus is not on any particular offense, but rather the State's policy and views on sentencing broadly. Changes to particular OSL's may be necessary once the overall grid structure is established.

### The Formula for OSL 1-5

**Potential Recommendation 6** (Presented at 8.19.21 and 11.4.21 CSTF Meeting)

Establish a formula for determining grid cell ranges for OSLs 1-5. Create the grid ranges for OSLs 1 –5 using 54 as the anchor for the most serious maximum punishment for OSL 9, CHS 9+.

**Summary Task Force Input** at 8.19.21 and 11.4.21 CSTF Meeting

- *It would be great to develop and provide a consistent formula/structure that everyone would know what it means and to have it overlay with earned time so there is more transparency in the amount of time an individual would serve in jail or prison.*
- *If a specific Class A felony has been classified as an OSL 4 for last 20 years, then the sentence ranges currently available are intended to provide appropriate accountability.*

- *Generally, there is not much input on this specific aspect of the formula but for the formula where members express hesitation to reclassify offenses through a formulaic approach and the associated sentencing ranges*
- *The Grid Group has talked about a grid framework that creates more consistency and simplicity, rather than going offense by offense. There may need to be some recalibration or reclassification of specific offenses once the grid framework is established. For example, should Class A felonies remain in OSL 1-5 or be moved elsewhere?*
- *Some of the shifts downward in reclassification are designed not to reduce the sanction, but to adjust the range to a level where all sentences would be valid within statutory maximums and minimums.*

**Potential Recommendation 7** (Presented at 8.19.21 and 11.4.21 CSTF Meeting)

*If the maximum sentence based on the formula is 12 months or less, the minimum is automatically reduced to zero.*

**Justifications and Effects:**

- *Creates wider discretion for judges in the southwest corner of the grid.*
- *Expands the number of cells in which there is an option for 0 months incarceration (currently 3 cells).*
- *Impact on incarceration will vary because of pre-trial confinement.*
  - *Under current system, some individuals in SW corner sentenced to time served, so no additional incarceration after sentencing.*

**Potential Concerns:**

- *Expands ranges in SW corner where WSIPP found frequent disproportionality in sentencing.*
- *Could lead to geographic differences due to differences in varying philosophies of punishment in combination with wide ranges.*
- *Judges may be unlikely to sentence to 0 months incarceration without some other alternative (e.g., probation)*
  - *Could consider integrating a sentencing alternative for SW corner that provides state funding/assistance for a community alternative.*

**Summary Task Force Input** at 8.19.21 and 11.4.21 CSTF Meeting

- *On the formula: members suggest rounding sentence lengths to the nearest month, rather than reducing all of them by dropping the digit after the decimal point.*
- *All grid changes should be predicated on the Legislature adequately funding DOC to make the workload for community corrections officers manageable.*
- *Request for information on statistical averages of sentence midpoints going back all the way to the SRA. However, this information may not be able to be collected due to the number of changes to the grid and the system.*
- *We need to focus on sentencing alternatives BEFORE we consider lowering sentence lengths to zero.*
- *Members expressed concern about shifting the overall burden onto counties.*

- *There's a need to incorporate a robust set of research-based intermediate local sanctions at the county level.*
- *A need for supervision or other set of alternative tools for judges to use; it will be critically important for prosecutors to order supervision as the tradeoff for increasing the number of non-incarceration sentences.*
- *Concern about seeing the number zero in so many cells—having alternatives is not enough, it makes you think the person in front of the judge will face no repercussions for what they did. Response: many sentences in the cells proposed to have zero as minimum, that currently do not, already receive the First Time Offender Waiver alternative, which can result in zero to 90 days of confinement.*
- *Suggestion to make First Time Offense Waiver (FTOW) available to all individuals in the cells with minimum sentence of zero*

**Potential Recommendation 8** (Presented at 8.19.21 and 11.4.21 CSTF Meeting)

Eliminate Straddle Cells: If the maximum based on the formula is more than 12 months, the minimum must be at least 12 months and a day.

Justifications and Effects:

- Eliminates straddle cells.
- Creates variability in the width of the ranges such that some ranges will be very small.
- Creates more predictability in caseloads for local and state facilities and clarity/predictability about whether a defendant will face a jail or prison sentence.
- Prevents an increase in local resources (jail sentences).

Potential Concerns:

- If there is disproportionality in sentences, potentially bigger consequences on communities of color. If POC are more likely to receive a prison sentence in straddle cells then results: 1) have longer sentences and 2) serve confinement sentences outside their local communities.
- Eliminating straddle cells will make sentences longer in those cells.
- May lead to more trials and/or disagreement within courts based on whether individuals want a jail or prison sentence for a particular case.

**Potential Recommendation 9** (Presented at 8.19.21 and 11.4.21 CSTF Meeting)

Keep Straddle Cells and Create a State-Funded Intermediate Sanction Zone

Effects/Justifications:

- New cells will have a lower mid-point, likely facilitating a small decrease in sentence lengths.
- Provides support for Counties while still allowing State oversight to ensure that community services meet certain standards.
- Supports rehabilitative and non-incarcerative alternatives without increasing financial burden on counties

- Can help support expansions of community services/resources that local counties could then use for other individuals under local sanctions (e.g., SW corner of the grid)
- Shifts focus from retribution/confinement to rehabilitation and community reintegration (reducing collateral consequences of incarceration)
- Provides a check on prosecutorial discretion by creating more opportunities for different outcomes that defendants/defense atty's/judges can impose.

Possible Concerns:

- Geographic differences aren't just due to funding, but fundamental differences in philosophies of punishment, so some courts may still be unlikely or less likely to use intermediate sanction program.
- Potential disparity in who receives the sentencing alternative
- Could be checked by making the intermediate sanction alternative the presumptive sentence
- Potential for large reductions in sentence lengths.

Summary Task Force Input at 8.19.21 and 11.4.21 CSTF Meeting

- *Not having incarceration does not mean no consequences. Alternatives that provide treatment at county level, if funded by the state, will lower costs and keep us safer.*
- *We need to make sure we are not anchoring people to their county of conviction and get the best plan for the individual to suit their needs.*
- *What we've been doing has not worked, just results in a cycle. We do need to think outside the box a bit and take people who have made mistakes and help them become productive members of society again. If we have a means to do that, we would not say no, but we have concerns about the effectiveness of community-based alternatives.*
- *Love the aspirations of #9 and law enforcement hates seeing people in that cycle, but we would need to see more about how this would actually work? How can we explain to a victim how this would work?*
- *As I hear from judges, prosecutors, and defense attorneys, I want to remind the Grid Group to remember the victim, and specifically the victim impact statement. Thinking about someone with an offender score of 9 having such a short sentence is hard, and I have concerns about community safety with such short sentence ranges. REPOSE: most common intermediate sanctions are electronic home monitoring, day reporting centers, and work release, so these individuals would not just be out in the community. [WSIPP research](#) shows those approaches to be quite cost-beneficial. Also, having restitution and victim-offender dialog as central to the community-based alternatives can make a real difference.*
- *The core mission of DOC is to ensure public safety. Secondary is to assist with rehabilitation, and Not sure we accomplish that with these recommendations. I support rehabilitation but have concerns about the Graduated Reentry program. RESPONSE: Completely agree that public safety is the #1 priority. Let's keep in mind that the majority of cases, the SW corner, involve mental health or substance use disorders and the research over the last 20 years shows that treatment works to address those underlying issues and ultimately makes us safer.*

- *Can we have more information on the offender score and how it works and how it impacts the grid?*
- *The Task Force should make dramatic changes to the grid for individuals with a property crime conviction. Judges would like the opportunity for an individual to get the support and treatment they need. Only using incarceration as a tool for accountability for certain crimes is not working.*
- *Suggestion to modify specific statutes that dictates whom DOC supervises. If court orders supervision, then DOC will supervise see: [RCWs 9.94A.501](#) and [9.94A.701](#)*
- *In relation to some of the discussions in the Sentencing Alternatives group, are straddle cells necessary to have some sort of community sanctions?*
  - *Eligibility for community sanction can change, or the Task Force may need to write eligibility in a way that fits a grid, with or without straddle cells. In other words, straddle cells don't change the ability to have community sanctions.*

**Potential Recommendation 9.1** *(Presented at 6.2.22 CSTF Meeting)*

*Create a Community Intermediate Sanction and Reintegrative Services Sentencing Alternative Program.*

**Counties would operate their intermediate sanctions (CISRS) programs and the state would oversee to ensure programs meet a minimum level of care.**

- Counties would operate their intermediate sanctions program, but the program must receive state approval every XX years to ensure that the programs are meeting a minimum standard. The state could set requirements for that plan that must be reviewed annually or biannually (i.e., approvals for each two-year budget cycle).
- Programs would need two components: 1) supervision/sanctions that meet minimum standards and 2) access to rehabilitative and reintegration services. This is not just a program focused on surveillance, but also treatment.
- The state could also set requirements for the type of data that must be collected and reported (to the state) on an annual basis.
- The state may establish certain minimum levels of care for the general IS program, but also for specific populations of individuals. For example, the state may require that individuals receiving an IS sentence for an offense at a certain seriousness level or for an individual with a certain level of criminal history must have a higher level of supervision (such as electronic home monitoring or day reporting centers).
- Similarly, the state may require that all individuals sentenced to the IS program receive some type of needs assessment to inform treatment.

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- The state may also create consistent standards for what types of behaviors would require a revocation of the IS sentence and a return to local incarceration.

|   |     | Simulated Grid  |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     | Agg Departure Cap | Repeat SV/Violent |        |  |  |  |  |  |  |  |
|---|-----|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------------------|-------------------|--------|--|--|--|--|--|--|--|
|   |     | 0   | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9+  |     |     |     |     |     |     |     |     |     |                   |                   |        |  |  |  |  |  |  |  |
|   |     | 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 |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |                   |                   |        |  |  |  |  |  |  |  |
| Zone 4:<br>State Prison                               | 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            | 48 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            | 36 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            | 24 mos |  |  |  |  |  |  |  |
| Zone 3:<br>DOSA, FOSA, State Prison                   | 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 |  |  |  |  |  |  |  |
| Zone 2:<br>CISRS, DOSA, FOSA<br><=12 Jail; >12 Prison | 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 |  |  |  |  |  |  |  |
| Zone 1:<br>CISRS, RDOSA, Jail                         | 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  |  |  |  |  |  |  |  |
| Zone 0: Unranked                                      | Unr | 0 - 365 days  |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |                   |                   |        |  |  |  |  |  |  |  |

CISRS: County Intermediate Sanctions and Reintegrative Services Sentencing Alternative.

RDOSA: Residential DOSA, for eligible individuals based on offense type and criminal history

PDOSA: Prison DOSA, for eligible individuals based on offense type and criminal history

FOSA: Parenting Sentencing Alternative, for eligible individuals

Cells in the hatched zone may be eligible for the FOW sentencing alternative.

**Zone 1: (Green Zone)**

**Zone 1 is the expanded “southwest corner” of the grid. Jail sentences would be locally resourced, as in the status quo. If sentenced to CISRS program, access to funds via CISRS block grant.**

- Under potential recommendation #7, the number of cells in which there is an option for 0 months of incarceration would increase.
- However, the actual impact on incarceration will vary because of pre-trial confinement. Under the current system, some individuals sentenced in the southwest corner are sentenced to time served, therefore they do not receive additional incarceration after sentencing.
- This potential recommendation expands ranges in the southwest corner, where WSIPP found frequent disproportionality in sentencing.
- However, this change could lead to geographic differences due to differences in varying philosophies of punishment in combination with wide ranges. And judges may be unlikely to sentence to 0 months incarceration without some other alternative (e.g., probation).

- There were some concerns that some judges may be unlikely to sentence individuals to a local sentencing alternative. To incentivize the development and use of these programs, individuals sentenced to the CISRS alternative would be eligible for the use of state funds while those sentenced to local confinement in jail would be served only by local resources.

### **Zone 2: Straddle Cells (Pink Zone)**

**Stipulate that all sentences for individuals in Zone 2 (straddle cells) are paid for by the state.**

- Justification: if they are not prison sentences, it is saving DOC funding by reducing DOC caseloads, so that funding could be diverted to the local courts to support non-incarcerative alternatives.

**For sentences in this zone, presumptive sentence is a sentencing alternative that is served locally.**

- Could be operated by local courts but funded by the state.
- Reduces prison sentences/beds/costs, so cost savings can be used to fund the county intermediate sanctions programs.

### **Zone 3 (Orange Zone)**

**Sentences in this zone are DOC Sentences and may be eligible for existing sentencing alternatives.**

- By reducing the number of DOC sentences in Zone 1 and 2, DOC can increase its focus on providing appropriate services for individuals sentenced in Zone 3.

### **Examples of Intermediate Sanctions**

Sentencing options that fall between probation and incarceration. Examples include:

- Intensive supervision probation
- Day reporting centers
- House arrest
- Electronic home monitoring
- Community service
- Intermittent confinement (e.g., work release or weekenders)
- Mandatory treatment conditions
- Residential community corrections (e.g., halfway houses)

### **Funding Model**

**Funding would be provided by the State to counties through a block grant based on a formula, modeled on the Juvenile Court Block Grant Program.**

Juvenile Court Block Grant: In accordance with RCW13.06.020, the state appropriates approximately \$38 million to local county juvenile courts each two-year budget cycle. To reduce reliance on state-operated institutions, this funding provides community-based responses for youth who commit crimes. The funding also assists with the application of disposition

(sentencing) programs. DCYF's Juvenile Rehabilitation program administers these dollars across the 33 county juvenile court jurisdictions.

A similar block grant system could be created for county-based IS programs. Funds would be allocated based on county size, caseloads, use of the IS program, etc. There should be a minimum level of funding to support staffing and capital costs of running an IS program.

The funds from the IS block grant program can support staffing and capital costs that may also allow counties to expand the types of services offered to individuals in jail or individuals sentenced in district court. Thus, this program could have beneficial spillover effects for an even larger population of individuals involved in the criminal legal system. Additional savings as an effect of the investment in effective programs to reduce overall recidivism and future caseloads.

- Zone 2 - Straddle cells: under the current system all the cells that fall in this zone are state prison sentences. Under the simulated grid and this proposal, for the cells in this zone, if the court sentences to less than 12 months, the cost of confinement will be reimbursed by the state. Even though the state is still covering the cost of these sentences, these sentences won't be on DOC caseload, so likely cost savings.
- Zone 1 – SW corner of the grid – if order to confinement in jail, locally resourced like status quo. If sentenced to CISRS program, access to funds via block grant.

#### **Provided and Funded Services and Programs for Victims**

Victim services and programs would also be included in the program. This could include a broad array of services and programs that respond to the emotional and physical needs of victims such as support services throughout the criminal legal process, counseling, crisis intervention, shelter, trauma and therapeutic services, restorative justice, etc.

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#### **Questions the Alternatives Workgroup Has Identified So Far:**

- How should requirements for an IS sentence be determined? Would the terms (e.g., EHM vs. day reporting center) be determined by the judge ordering the alternative or by the local IS program supervisor?
- What level of quality assurance and oversight would the state provide? For Juvenile EBPs, the state operates quality assurance protocols and standards for the local court programs. The proposed IS structure is intended to provide more flexibility to the local courts, so there may not be an exhaustive list of specific programs offered in the courts.
- Should the grant funding include funds for ongoing research/evaluation?
- How do the therapeutic programs develop locally? What about locations that don't have the access to these types of programs?
  - State could have general types of services that a qualifying CISRS program should provide: e.g., employment/job training, education, housing, cognitive behavioral training.
- How to address Tort concerns w/ local liability?

- How could the implementation structure (i.e. centralized, decentralized, hybrid) most equitably serve individuals who do not reside in their county of conviction and court oversight?

#### **Summary Task Force Input at 6.2.22 CSTF Meeting**

- *Support the idea of having additional options and the innovations happening around the alternatives, such as coordination of treatment. We need to continue to have broad and challenging conversations. I would urge us to recommend making real and meaningful changes that can be proven with data. In addition to incarceration, black and brown people are under surveillance at grossly disproportionate rates compared to white people and a supervision model must recognize this going forward. We must address this as to not create compounding levels of disproportionate surveillance adding further harm onto systemically racist practices. We need to make sure we are not recreating historically racist and harmful systems under a new name, and we cannot replace a system with disproportionate mass incarceration with disproportionate mass surveillance.*
  - *Alternatives group intentionally added “Reintegrative Services” in the name to make clear the intent is treatment, not just sanctions and surveillance.*
- *Members expressed support of the movement towards a case management model over that of a surveillance model. We need to make sure this is not a justice reinvestment model but rather a “return-on-investment” strategy where the Legislature allocates the necessary funding up front to ensure adequate levels of staffing and programming.*
- *Support CISRS program as presumptive sentence and a process in which prosecutors and judges must articulate how intermediate sanctions are not appropriate.*
- *I can support this proposal, as it would not only reduce overall time incarcerated for DOC but also for local jails, so there would also be a reduction in money spent on incarceration on the local level in addition to the infusion of state money.*
- *There was concern expressed about the costs—what will the costs be of having both the state oversight mechanisms and the county-level facilities needed to run this? We have streamlined state services that are less costly, concerned that state-provided moneys for CISRS could be used by counties to continue operating the status quo.*
  - *State oversight is one avenue to ensure that the dispersing of the money will be appropriately utilized, and initial discussion reflects that there could be, in addition to an oversight board, data requirements to ensure money is being properly used.*
- *Expressed support for keeping straddle cells and creating CISRS if there is actual reimbursement for counties enrolling in the programs (since members believe this will incentivize counties properly to utilize the program).*
- *DOC would be very supportive of this program, but there are nuances to work out. For example, the same person could come into contact with both CISRS (county level) and DOC supervision. Expressed support for individuals to report to one jurisdiction.*
- *Noted that a potential benefit here could allow DOC to provide additional services to those incarcerated. Would the Legislature continue to fund DOC on maintenance?*

- *The funding model (based on the JR Block Grant program) would be based on caseloads. A reduction in caseloads would lead to a lesser need for legislative funding for maintenance.*
- *The data element of this program will be crucial. Absent a centralized database, there will be a need to collect data on the program and evaluate the data to ensure fair application.*
- *We must be aware of one-size fits all solutions at the state level as the resources and practices are much different county-by-county. Are we talking about a statewide solution run at a local level with local legal systems and resources being required to meet certain state goals or objectives to get funding, or a program overseen by DOC but administrated by counties?*
  - *The program would need some level of local tailoring but with state-wide standards, and we need to recognize the disparities in county resources. I see us being able to support this (and the Legislature passing this) if we can guarantee funding. The positive impacts of state policy with properly trained and paid professionals at a local level will be difficult to ensure, so we need state money.*
- *Victim advocacy groups should be involved in the process of creating these programs to have input into programs and policies, so victims can be aware of community progress and rehabilitation of those incarcerated reentering the community. Then they would be able to move through the healing process with those who have caused harm.*
  - *We could set up policies that could create requirements around being involved of multiple perspectives like victims and formerly incarcerated people. It could be set up like the Task Force is right now.*
- *Several members brought up the topic of whether individuals with past convictions for violent offenses would be eligible for CISRS? As there are circumstances to both getting out of and receiving a violent felony charge that rely on both racial and geographic disparities in practices. Even if you have been rehabilitated and served your time, that violent offense could be circumstantial to a certain event.*
  - *The Task Force has a potential recommendation (from the Sentencing Alternatives Workgroup) to expand eligibility for alternatives to those who have been convicted of a violent offense.*
  - *Desistance (from criminal activity) is a process and individuals often move in and out of criminal activity. Data shows that individuals may engage in much less serious offenses and de-accelerate on their way to desistance. Research shows that people have the propensity to change, and highlighted evidence of desistance should qualify someone for enrollment in alternatives.*
- *There have been several discussions on how centralized versus how de-centralized the program would be. Specifically, if it will be up to counties to decide on developing and implementing CISRS?*
  - *Yes. However, the framework could include resources and other incentives for counties to utilize and develop CISRS programs.*
  - *Who would supervise the individuals with CISRS sentencing for the county?*
    - *This could be done by the counties since they have the experience, and the infrastructure already exists. The idea is to keep the operation of CISRS*

*local and allocate state DOC resources to support county programming, which would lessen the burden on DOC's caseload. Counties can either add a new division into their probation offices or fold CISRS into other responsibilities.*

- *CISRS could be a non-incarcerative alternative so defendants would not initially be incarcerated—who would make the decision about the terms to this alternative, as it is supposed to be individualized? Expressed interest in a discussion on who will set the terms of the program: would judges have discretion to sentence defendants to CISRS but case managers within these programs would decide actual CISRS terms, or would judges dictate the terms of a defendant's CISRS program?*

**Potential Recommendation 10** (Presented at 9.2.21 and 11.4.21 CSTF Meeting)

Eliminate the mandatory minimum for Murder 1.

**Grid Group Discussion Points:**

Little difference between M1 and M2.

Mandatory minimum gives more leverage/power/discretion to prosecutors particularly in plea bargaining process.

Potential racial disproportionality in who gets charged with M1 vs M2.

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

- *Wouldn't you have disparate sentencing without a minimum to ensure consistency?*
- *Do all Murder 1 convictions come with a firearm enhancement?*
- *Due to the way pre-meditation in statute is defined, there is little difference between Murder 1 and Murder 2.*
- *While a member said they could not support eliminating the mandatory minimum, they would be willing to discuss what to replace it with.*
- *It is important to look at the conduct of this crime and the impact it has on the victim and their families. 20 years is not completely out of line given the conduct we are talking about here and the forever loss and impact the victims and families face.*
- *Some families are shocked that it is only 20 years.*
- *Does anyone know how it came to be that we have mandatory minimums? Or what is the minimum and maximum sentence length for murder 1 in other states?*

**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.*

**Potential Recommendation 13, 13a, and 13b** (Presented at 9.2.21 and 11.4.21 CSTF Meeting)

- Potential modifications to OSLs 10 and above.
- Focus is on violent offenses.
- Focus is on implementation of the consistent/formulaic approach to setting guideline ranges while considering unique characteristics of offenses in the upper range.

**Grid Group Discussion Points/Considerations:**

- Formula provides an answer to “why this range”
- Creates logical consistency in how sentence lengths change as OSL increases and as CHS increases
- Long term durability of changes
- Focus is on creating the structure of the grid. Individual offenses may need to be recalibrated on the new grid to account for the ad-hoc decisions in the past.

**Potential Recommendation 13** *(Presented at 9.2.21, 9.16.21 and 11.4.21 CSTF Meeting)*

Increase the number of seriousness levels from 16 to 18 and establish a formula for OSL 10-17:

- OSL 18 is Aggravated Murder with a range of 25 to life regardless of Criminal History Score (as it currently is in SL 16)
- OSL 17 is Murder 1 and Homicide by Abuse with current ranges for Murder 1.
- Minimum for CHS 0 OSL 17 set at mandatory minimum as the anchor.
- Maximum from CHS 1 – 9+ is 105% of prior maximum.
- Minimum from CHS 1-9+ is 75% of maximum for each cell.
- OSL 16 is Murder 2 with current maximums, but minimums made consistent at 50% of the maximum.
- OSL 15 to 10 are as classified currently except for the offenses pulled out above.
- The formula is used starting at OSL 16 (OSL 10-16, including M2):
- High ranges:
  - Current maximum sentence for Murder 2 is used as the anchor for OSL 10-16.
  - Maximum at 0 CHS is 35% of Maximum at CHS 9+.
  - Maximum from CHS 1 – 8 is 110% of prior maximum for OSL 10-16.
  - Minimum is 75% of the maximum for each cell.
- Mid-ranges:
  - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
  - Maximum from CHS 1 – 8 is 120% of prior maximum.
  - Minimum is 75% of the maximum for each cell.
- Low-ranges:
  - Maximum at 0 CHS is 20% of Maximum at CHS 9+.
  - Maximum from CHS 1 – 8 is 120% of prior maximum.
  - Minimum is 30% of the maximum for each cell.

**Formula is same as OSL 1-5**

- Anchor is the maximum for OSL 16

- Maximum for CHS 9+ in each row established by creating equal intervals in the maximum for each row.
- Maximum for CHS 0 is calculated as 35% of the CHS 9+ maximum.
- Maximum for each CHS after CHS 0 is 110% of the maximum for the previous CHS.
- Minimum is 75% of the maximum.

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

- *What would the changes be for Assault in 2<sup>nd</sup> degree and Murder in 2<sup>nd</sup> degree? Those are the crimes where individuals have most surprise about how short those sentences are.*
  - *Assault 2 would be in OSL 4 and Murder 2 would move to OSL 16, which would have sentence lengths decrease from 6-30% in CHS 0-8; guideline range at CHS 9+ would remain the same.*
- *The sentence lengths in the original SRA did not have data supporting them and may be arbitrary numbers. How do we know that these sentences are achieving what we intend them to do? How are they reducing recidivism? How do we know that with these sentences, and individual is ready to transition back into society? We do know that after a point, people mature out of their criminogenic behaviors. What's the data that supports the sentence numbers? Our goal should be to come up with some logic to grid and these sentences. Keeping people too long in prison can actual be a detriment to public safety because people are so long removed from their communities, their families become disengaged, and this all has generational effects.*
- *No one recommendation that we as a task Force make will necessarily meet all three of the policy goals this group has been tasked with by the Legislature. It is each in the aggregate, and last year we did spend a lot of time discussing public safety and data and saw that there is a diminishing rate of return that incarceration will reduce crime – that at a point you are doing extra incarceration. Now there is a retribution side of justice that is not just about reducing crime but is to also punish, but on the flipside of this, why not instead use that money that would have been spent on extra incarceration and put it towards housing, education, job training, alternatives to incarceration such as treatment, and other community supports that would help to reduce crime. Agree that just letting people out is probably not going to improve public safety but if can reduce the sentence length and reinvest that money into services that support those being released, this will promote public safety. Our charge is to improve public safety overall, and reinvesting cost savings from reduced incarceration is a way to achieve this.*
- *95% of people sentenced in this portion of the grid will eventually be released. The research shows that it's about the quality of time spent incarcerated, not the quantity of time served. Reducing some of the lengths and reinvesting those resources into programs will support public safety.*
- *The reduction of the numbers in each cell is significant, in this portion of the grid where these offenses are significant. There is an increase in violent crime across the county. Support having a systematic grid but do think we need to discuss the numbers and what level of reduction. The higher the OSL and the farther from the southwest corner we get, the rehabilitation approach becomes more difficult to envision. While a reduction may make*

*sense for those that can rehabilitate, need to recognize that some cannot rehabilitate and in this portion of the grid, with this level of reduction is a concern.*

- *Still reflecting on the proposal – seeing merits and cautions. Merits include similarity to the current grid ranges. Cautious about having just two columns, which would bring challenges when prosecution and defense negotiate plea deals; perhaps six columns since there is merit in the opportunity for greater judicial decision-making, especially at the higher OSLs.*
- *Suggestion to establish a single number in each cell to limit racial disproportionality in judicial decision-making. Have concern with wide range in grid guidelines in this recommendation; however, may be able to support as part of a full package of recommendations that collectively compensate for racial disparity.*

**Potential Recommendation 13a** (Presented at 9.2.21, 9.16.21 and 11.4.21 CSTF Meeting)

Move Trafficking 1 to OSL 15 with Malicious Explosion of a Substance 1. Move all other offenses up one OSL.

- If the grid is expanded to 18 rows, there are two OSLs that would have only one offense (OSL 15 with Malicious Explosion of a Substance 1 and OSL 14 with Trafficking 1).
- Increasing the OSL by 1 would moderate the reduction in sentences that result from applying the formula to OSL 10 and above.
- This leaves OSL 10 empty, creating room to recalibrate offenses below OSL 10.

**Summary Task Force Input** at 9.2.21, 9.16.21 and 11.4.21 CSTF Meeting

- *Support for looking at this holistically and systematically. When we talk about recidivism in violent crime, the types of crimes we are looking at in this portion of the grid, it is difficult to talk about recidivism because it means a real victim of a serious violent crime—if we get it wrong in reducing sentences significantly, it's hard to think of a person out there getting victimized that wouldn't have if the person was still incarcerated.*
- *Support eliminating offenses not charged in the last 20 years (e.g., malicious placement of explosive device).*

**Potential Recommendation 13b** (Presented at 9.2.21, 9.16.21 and 11.4.21 CSTF Meeting)

Collapse the ranges for Murder 1 for Criminal History Scores 0-4 and 5-9+.

- Because of the mandatory minimum, we cannot apply the formula to Murder 1.
- Proposed ranges would keep the current minimum for CHS 0 and approximate the Maximum in CHS 4, the Minimum in CHS 5 and the Maximum in CHS 9+

**Grid Group Discussion points:**

- Would increase the maximum in some cases (7 columns) and would decrease the minimum for some cases (8 columns).
- Would it increase or decrease prosecutorial discretion? Defense discretion?
- The difference between Murder 1 and Murder 2 is minimal
- Potential racial disproportionality in who is charged with M1 vs. M2

**Summary Task Force Input** at 9.2.21, 9.16.21 and 11.4.21 CSTF Meeting

- *After developing a sentencing grid framework, there may still be work to adjust the ranges and where offenses are classified. For example, if find that courts sentencing higher in the range for certain offenses, that could signify a need to consider reclassifying that offense to a different OSL.*
- *Feel cautious about using current practices to guide changes since disproportionality is occurring under current practices. Encourage the Task Force to think about factors that may have contributed to disproportionality such as mandatory minimums and enhancements. Have concerns about prosecutorial influence in charging decisions because Murder 1 and 2 are so similar and also that two columns in the simulated grid increase potential sentence lengths for individuals with low CHS.*
- *Support decreasing the range for individuals less culpable.*
- *Several members discussed narrower ranges in the grid and potential implications for disproportionality.*
- *The current relatively narrow ranges within the cells limit judicial discretion and give discretion to prosecution—concern that establishing a single number in each cell would give prosecution further power, and the judge would have less ability to exercise discretion.*
  - *Suggestion that judges could still use mitigated/aggravated sentences in a grid with single sentencing guideline numbers.*
  - *Concern that in a single number or minimized range, the prosecution and defense could only recommend the sentence associated with the specific charge. Prosecutors would prefer to negotiate within a sentencing range and have courts review the plea bargain and deviate depending on their perception, rather than negotiate on charging decisions, which are based on the evidence.*
- *Support shortening sentencing guideline ranges but have concern that a single number would shift emphasis onto the charging decisions.*
- *Concern that prison/jail dramatically affect a person. Simply lowering sentences will not affect an individual's experience while in confinement or their behavior on release. Task Force must keep victims and community safety in mind and look at how programs, trainings, and treatment provide opportunities for people to rehabilitate themselves, and thus improve the effectiveness of the system and public safety.*

**Potential Recommendation 14** *(Presented at 9.16.21 and 11.4.21 CSTF Meeting)*

Establish a formula for determining grid cell ranges for OSLs 6-9. Create the grid ranges for OSLs 6 – 9 using 108 as the anchor for the most serious maximum punishment for OSL 9, CHS 9+.

- Formula is same as other portions of the grid
- Anchor is the maximum for OSL 9
- Maximum for CHS 9+ in each row established by creating equal intervals in the maximum for each row.
- Maximum for CHS 0 is calculated as 20% of the CHS 9+ maximum.
- Maximum for each CHS after CHS 0 is 120% of the maximum for the previous CHS.
- Minimum is 75% of the maximum.

**Purpose**

- Previous recommendations suggested moving a few Class C felonies from OSL 6-9 to OSLs 5 and below.
- The majority of offenses in OSL 6-9 are Class B felonies with a statutory maximum of 120 months.
- Setting the maximum punishment at 108 months instead of 120 allows for some judicial discretion to issue aggravated sentences when warranted and allows for some sentences with some time in community custody.

#### **Summary Task Force Input at 9.16.21 and 11.4.21 CSTF Meeting**

- *The Grid Group has talked about a grid framework that creates more consistency and simplicity, rather than going offense by offense. There may need to be some recalibration or reclassification of specific offenses once the grid framework is established. For example, should Class A felonies remain in OSL 1-5 or be moved elsewhere?*
- *The Grid Group has discussed the potential to reclassify Assault 2. We need to be open to looking at certain offenses, specifically where they are on the grid, and be ready to ask the Legislature to look at them.*
- *Some of the shifts downward in reclassification are designed not to reduce the sanction, but to adjust the range to a level where all sentences would be valid within statutory maximums and minimums.*
- *Concern that the anchor points below the statutory maximum, rather than consistent with, does not reduce complexity, but ok with the approach assuming judges understand it.*
- *Concern for recommendation as is, unless also include a recommendation to move Class A felonies to a higher seriousness level.*
- *Concern that different positions are so far apart that Task Force might not reach consensus.*

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#### **Task Force Input About General Grid Structure for Recommendations 6-14:**

- *Need to think globally when considering all recommendations. My constituency would be ok with these proposed changes to the grid if other changes and reclassifications are made elsewhere.*
- *Concern that the group will make a bunch of recommendations that get perceived – or implemented – as standalone when they really need to come as a package to the Legislature.*
- *Part of reason that the grid is so funky because in the past the Legislature has focused only on one crime or another.*
  - *The Task Force should not build the new grid around specific offenses. It can think big picture, so the group should not get stuck on individual offenses.*
- *Like the idea of having offense-based zones or classifications, but concern about the Legislature's ability to execute the comprehensive package. Would help to provide options for them to consider.*
  - *Support for moving away from individual offenses and creating more logic in the system. We also need to address some of the current fiction in sentence length (i.e., all sentences on the grid should be valid sentences for all OSL). Those steps can help address some systemic challenges.*

- *It is appealing to have all Class A, Class B, and Class C felonies grouped together, but if we don't have comprehensive recommendations for the Legislature, don't think they will act on it.*
- *Some members appreciate the full, comprehensive look, but are also concerned that this is a band aid on a band aid. Also want to make sure that we think about what people in crisis need.*
- *Racial disproportionality in the system is very pronounced, as the WSIPP study identified. How do we create a system that is fairer and gives us the ability to examine what is happening? How is discretion being utilized by judges or prosecutors, and can we come up with a system that address the intensity of the disproportionality?*
- *A comprehensive grid overhaul may require some recalibration of individual offenses. We've moved some Class B offenses from the Class A zone, so need to consider moving some offenses up.*
- *Suggestion to eliminate felony classes. Right now, they are only tied to statutory maximums, which could be addressed through cell ranges.*
- *The Task Force could look at eliminating the felony classes. Support having different zones for the different classes.*
- *Have been thinking about where the statutory maximum is much lower, where judge cannot sentence at the range on the grid. The grid should reflect the state of the law.*
- *A member expressed reservations about reclassifying crimes. It has more to do with inconsistent filing standards in the current system that create problems for their constituency.*
- *The proposed changes would provide a way to have rough groupings of Class A, B, and C felonies. There might be a transition zone, or a need for some A-Class felonies to move to join all the other class A felonies, if we think about the potential recommendations as designed to bring all the classes and sentence ranges into alignment.*
- *Current guidelines are based on practices from FY1979-1981. If we base a new grid on current practices, then current practices will continue. When other states enacted sentencing overhauls, their intent was to change current practices and reduce disparity.*
- *Before the Sentencing Reform Act (SRA), after prosecutors selected charges, judges could only determine minimum sentence and parole board decided the end point of each person's sentence.*
- *Framers of the SRA assumed that courts would issue aggravating/mitigating sentences if the case did not fit within the range; however, exceptional sentences may not occur as frequently as envisioned.*
- *Several members encouraged the group to identify how potential recommendations explicitly lessen racial disproportionality and voiced hope that Washington will measure the effects of changes to the sentencing framework regularly and frequently, particularly related to racial disproportionality.*
- *Have some concerns about where the simulated grid would potentially increase sentence lengths, but also see these potential changes as part of a larger puzzle.*
- *Law enforcement expressed concern for any potential new grid framework if it lacked recommendations for offense-specific recalibration, especially in the upper range OSLs.*

*Expressed support for reducing complexities and errors in the system, but that should be paired with proper adjustments for accountabilities for crimes.*

- *Support for basing recommendations on the research and data we do have, for example on the effectiveness of community-based therapeutic approaches for reentry and public safety.*
- *Recognize that different values and perceptions of accountability inform sentence length, rather than science; however, some data points to the value of programs and educational opportunities.*
- *From a law enforcement perspective, it's challenging to work with crime victims and families when the individual who committed the crime has a history of violence. Different for the individuals at the lower end of the grid, who may have been at the wrong place at the wrong time or made a mistake that does not warrant separation from society.*

## **Section 2. Horizontal Axis Potential Recommendations**

### **CRIMINAL HISTORY SCORE MULTIPLIERS AND REPEAT VIOLENT OFFENDING**

#### **Potential Recommendation 15** *(Presented at 2.3.22 and 3.3.22 CSTF 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.

- Recognizing that retributive sanctions may be justified for individuals who have committed repeat violent offenses (more cumulative harm done to society), this recommendation maintains the ability to increase sanctions for repeat violent offenses while eliminating a significant source of complexity, inefficiency, and error.

#### Reducing Complexities and Errors

- Multipliers happen in the background and have many complex rules that are not always known.
- Applying a new column consistently regardless of offense reduces the complexity and potential for errors.
- Applying a new column increases transparency and makes it clearer that an individual's sentence was higher or eligible to be higher as a result of the types of offenses in their criminal history.

#### Improving Effectiveness of the Sentencing System

- Multipliers increase discretion of the legislature and reduce the discretion of judges/prosecutors/defense. Recommendation creates more balanced discretion.
- Increasing the maximum allows for the similar outcomes as today (e.g., increased punishment for repeat offenses/retributive sanctions), but also allows for more consideration of cases that may not need increased sanctions.
- More individualized sanctions.

### Promoting and Improving Public Safety

- Recommendation maintains the ability to issue more serious sanctions for more serious individuals/cases.
- In particularly egregious cases, aggravating factors are likely to apply.
- Many violent and serious violent offenses will also have enhancements which still apply.
- Given the lack of evidence that specialization is a signal for increased risk, there is no evidence that increased incapacitation is necessary to maintain public safety for repeat offenses vs. generalists.

### Addresses Racial Disproportionality/Disparity

- Initial evidence from OFM suggests there is racial disproportionality in the application of multipliers which creates disproportionality in sentences.
- Increasing the maximum still allows for increased sentences when warranted, but allows defense to argue that increased sanctions are not justified given considerations of an individual's specific criminal history.
- Allows for more clear understanding of potential disparity by being able to compare cases where the sentence was increased due to the type of offenses in a person's criminal history. In status quo, there is significant heterogeneity in the meaning of different people's criminal history scores.

### **Additional Considerations:**

Eliminating all offense-specific multipliers or just eliminating all multipliers related to violent and serious violent offenses?

As proposed, the recommendation would eliminate multipliers for:

- Escape from Community Custody
- Escape 1/2
- Burglary 2/residential burglary
- Failure to register
- Theft of Motor vehicle/possession of stolen vehicle
- Manufacture methamphetamine
- NV Drug offenses
- NV felony traffic offenses

If multipliers function as a retributive form of punishment only, are they necessary or appropriate for non-violent offenses? Should individuals with three similar NV offenses be treated more harshly than individuals with 3 different NV offenses?

### **Summary Task Force Input** at 2.3.22 and 3.3.22 CSTF Meeting

- *Recognizing that retributive sanctions may be justified for individuals who have committed repeat violent offenses, this recommendation maintains the ability to increase sanctions for repeat violent offenses while eliminating a significant source of complexity, inefficiency and error.*

- *After some discussion the grid group expressed more interest in a column that would increase the maximum of the range by a set number of months.*
- *Expressed support for simplification, for making a sentence and the intent of the court easier to understand by all parties, including defendant, Dept. of Corrections.*
- *Expressed concerns about dramatically reducing sentences for some fairly violent crimes.*
- *The SRA came about, in part, because of incredible sentencing disparity and ultimately sentence lengths were determined by the parole board, in a decision-making process that was not transparent. The grid provides boundaries, but still offers some judicial discretion.*
- *About retroactivity, if we decide that the system has been unfair for the past 40 years, then we should undo that as best we can. We know there is a cost, but I think we have an obligation to undo the harm.*
- *Much of the discussion today has been about providing opportunity for more judicial discretion, also wondering about level of interest among judges in having more discretion, as well as thinking about how current grid was created to reduce disparate outcomes in sentencing.*
  - *Appreciate the historical context in terms of broad judicial discretion and changes that have occurred over the years. The current grid provides bounds, or limits, for judicial discretion. I struggle with a system where overwhelming majority of the sentencing recommendations are negotiated, and there's an expectation that the judge will then affirm that recommendation. The court does frequently give deference to the parties—however, this raises the question: what is the role of a judge? And what do we expect judges to do? Judges exist for many reasons, one of which is that the judge is the entity in the system to assign the appropriate response—punishment, rehabilitation. Judges want the discretion in order to fulfill that purpose. Also believe in transparent decision-making so that people can be held accountable.*
- *Most of the time a judge does not sentence at the top end of the range. Several members observed that the vast majority of criminal sentences are issued after a guilty plea, not a trial, so sentence presented to the judge for consideration has been negotiated. Negotiations between lawyers would be influenced by the applicable sentencing range.*
- *Expressed concern that plea negotiations would not specify where in the expanded range is appropriate and that the judge would have a broad range of discretion to issues a sentence.*
- *Expressed concern about grouping prosecutors and judges—they have very different roles.*
- *As we try to simplify the grid, also thinking about the inherent biases built into the system—having an expanded sentencing range provides more discretion for the courts, but uncertain about how it addresses disparity and biases that could lead to different sentencing outcomes county by county.*
- *Seems like it would create more clarity and transparency, but also seems somewhat complex. Also, we have been talking about judicial discretion a lot during this discussion and also hearing that judicial discretion has led to issues such as racial disproportionality and that putting some bounds on judicial discretion could help in some ways to reduce the disproportionality. Do judges like non-agreed recommended sentences - ones not resulting*

*from plea agreements? In that those non-agreed recommendations do then give them more discretion?*

- *From a judge's perspective, the overwhelming majority of sentences presented to the court, that are recommended to the court, are agreed. There is the explicit expectation that the judicial officer is going to follow the agreed recommendation. If we were able to examine the data, I believe that the overwhelming number of the sentences that are imposed are the product of negotiations - agreed upon recommendations. This idea that there is this overwhelming majority of judges exercising their independent authority and discretion in sentencing, I don't know that that is true. And think this is a very important point to examine and consider when we are talking about disproportionality. It would be helpful if we had the data to show how many of these are the product of the judge following the agreed recommendations. So I don't know that it is a matter of the judge liking or not looking when there is an agreed recommendation because regardless, we are duty bound to exercise our discretion, even in the face of that extraordinary pressure to follow the agreed recommendation. For judges, sentencing is our job, it is transparent, and it is known what the judge is doing and the reasons why but what is not transparent is what is happening behind closed doors, before those recommendations come in front of the judge. So do think there is value in creating transparency, as the first recommendation indicates that it would do.*

### **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.*

**Potential Recommendation 17:** *Create a new column on the grid with the maximum aggravated departure length. (Presented at 3.3.22 CSTF Meeting)*

Reduces complexity and errors:

- Increases consistency/transparency/predictability in sentencing. Explicitly a part of the grid.

Improving Effectiveness of the Sentencing System:

- 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.
- Addresses racial disproportionality/disparity: Aggravating factors found to be source of disproportionality in sentence lengths

Promoting Public Safety:

- No robust evidence of a deterrence effect or correlation between aggravated characteristics and risk of recidivism.
- Retributive policies may increase collateral consequences of incarceration

**Possible modifications:**

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

**Summary Task Force Input** *at 3.3.22 CSTF Meeting*

- *If you have information about why aggravated sentences are being imposed, you can look back and see if prosecutors have changed what they are doing. This increases transparency.*
- *Believe that judges should be given all the information and we're supposed to come up with what we believe is an appropriate sentence and anything that impinges upon that is something I have a response against.*
- *For potential recommendation, 17 I think we could get consensus. Don't know if restricting discretion is going to guarantee any outcome.*
- *Worry that it gives a disincentive to prosecutors as a way of lowering the charge to get to an outcome which can be agreed to. If the maximum sentence is already there and it prohibits*

*the parties from getting to a place they can agree, it could be a disincentive to even go there in the first place.*

**Potential Recommendation 18:** 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. (Presented at 3.3.22 CSTF Meeting)

- 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

**Summary Task Force Input at 3.3.22 CSTF Meeting**

- *Considering our policy goal to look at ways to reduce complexity of sentencing laws, if these changes we are proposing are implemented, then we will have people still serving sentences issued under the past grid and its laws and then people starting to serve sentences based on the new grid and laws. It would be very complicated. Don't know if racial disproportionality would be improved upon based on what is being proposed. It would give more transparency, which is important.*
- *Grid Subgroup discussion on this recommendation focused on whether there is a need for this, and if it could prevent justified reductions. Racial disproportionality is not as apparent with mitigated sentences. This would also essentially establish mandatory minimums for all offenses, which currently do not exist.*

## CONSECUTIVE & CONCURRENT SENTENCING POLICY

### 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)

### 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**

- *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.*
- *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.*

**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

- *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.*
  - *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.*

**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.*

**Criminal History Score Overview**

Criminal History Score (called the offender score, RCW 9.94A.525) is one factor affecting a felony sentence and is measured on the horizontal axis of the sentencing guidelines grid. An individual may receive from 0 to 9+ points on that axis. In general, the number of points received depends on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the person's community custody status at the time the crime was committed; and (5) the length of crime-free behavior between offenses.

Pursuant to RCW 9.94A.030(11), criminal history includes the defendant's prior adult convictions and juvenile court dispositions, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity. Although criminal history consists

almost exclusively of felony convictions, in some instances, it also includes misdemeanors. The effect of criminal history also relates to the felony class of the crime (Class A, Class B or Class C), and the type of offense (i.e., serious violent, violent, nonviolent, sex, etc.).

The general rule for scoring is that prior felony convictions count as:

- Adult offenses count as 1 point
- Juvenile Violent offenses count as 1 point
- Juvenile non-violent (NV) offenses count as 1/2 point (rounded down)

In addition:

- If there is more than one offense for in a sentence, the current offenses will score against one another, but are run concurrently (at the same time). There are exceptions that we'll go over in the scoring document (SV & certain weapon offenses)
- If a person was under community custody at the time of the current offense, 1 pt is added to the criminal history score.
- Offenses score as if they were a completed offense (example: Robbery 2° is a Violent offense and Attempted Robbery 2° is NV, but would be scored as Violent offense).
- Only offenses ranked on the adult felony sentence grid are scored – unranked offenses have a score of 0 and a standard range of 0-12 months.

#### **Misdemeanor Scoring in Criminal History Scoring**

Prior Misdemeanor convictions count in the criminal history score in four unique situations:

##### **1) Felony Traffic Offenses**

- a) Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points
- b) *Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point***
- c) *Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point***
- d) Adult convictions of Operation of a Vessel under the Influence offenses count as 1 point and juvenile offenses for Operation of a Vessel offenses under the Influence count as ½ point.
- e) Any other felony offenses count standard

##### **2) Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner's Permission 1<sup>st</sup> degree or 2<sup>nd</sup> degree – Vehicular Prowling Misdemeanor Priors**

- a. *Misdemeanor offense of vehicular Prowling counts as 1 point***
- b. Adult and Juvenile offenses of Theft 1° or 2° of a Motor Vehicle, Possession of Stolen Property 1° or 2° of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1° or 2, count as 3 points
- c. Any other felony offenses count standard

### 3) Homicide or Assault by Watercraft Offenses

- a. Adult and Juvenile Homicide or Assault by Watercraft offenses count as 2 points
- b. Certain adult Traffic Misd/Gross Misd offenses count as 1 point**
- c. Certain juvenile Traffic Misd/Gross Misd offenses count as ½ point**
- d. Any other felony offenses count standard

### 4) Felony Domestic Violence

- a. Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1°, Kidnapping 1° or 2°, Unlawful Imprisonment, Robbery 1° or 2°, Assault 1°, 2° or 3°, or Arson 1° or 2°.
- b. Count 2 points for each Adult offense where DV was pleaded/proven after 7/23/2017 for any of the following offenses: Assault of a Child 1°, 2° or 3°, or Criminal Mistreatment 1° or 2°.
- c. Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.
- d. 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**
- e. Any other felony offenses count standard

These scoring exceptions depend on the type of current offense and the types of prior misdemeanor convictions. As the SRA and Superior Courts primarily handle felony offenses, it may be argued that the criminal history score calculations should be limited to the same jurisdiction – felony offenses. The current misdemeanor scoring exceptions create confusion for courts and other agencies who use the CHS (e.g., Caseload Forecast Council, Department of Corrections).

The Grid Subgroup discussions focused on the logic behind the four scoring exceptions and explored ways that the same goals can be achieved through alternative means while increasing transparency, simplifying the CHS calculation process (increasing efficiency), and reducing errors in calculating CHS.

The following potential recommendations include a separate change for each of the four current scoring exceptions. In combination, these changes would eliminate all special scoring exceptions for misdemeanors in the CHS. An additional potential recommendation recommends including language in the SRA that would define the scope of the CHS as limited to prior felony convictions.

#### **Scoring exception 1: Felony Traffic (Felony DUI, veh assault/homicide)**

##### Status Quo:

Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point

Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point

##### **Felony Traffic (as defined in RCW 9.94A.030)**

1. Vehicular homicide (RCW [46.61.520](#)),

2. Vehicular assault (RCW [46.61.522](#)),
3. Eluding a police officer (RCW [46.61.024](#)),
4. Felony hit-and-run injury-accident (RCW [46.52.020](#)(4)),
5. Felony driving while under the influence of intoxicating liquor or any drug (RCW [46.61.502](#)(6)), or
6. Felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW [46.61.504](#)(6))

**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 3<sup>rd</sup> 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 1<sup>st</sup> degree or 2<sup>nd</sup> 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 2<sup>nd</sup> degree OSL 1 and Vehicle Prowl in the 1<sup>st</sup> degree OSL 2-4, essentially flipping the OSLs in both degrees to reflect a higher OSL in the case of Vehicle Prowling in the 1<sup>st</sup> 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.*

## OFFENSE CLASSIFICATION

**Potential Recommendation 33:** Offense Classification Proposal

### Proposal A

1. **Divide Class A Felonies into 3 Groups**
  - i. A1: Offenses receiving Life Without Parole/Death sentence
  - ii. A2: Serious Violent offenses

- iii. A3: Class A Violent offenses (excluding serious violent)
2. **Recalibrate the seriousness level of A2 offenses into OSLs 14 – 17**
3. **Recalibrate the seriousness level of A3 offenses into OSL 10 – 13**
4. **Add statutory language so that:**
  - i. serious violent offenses are a standalone category and not a subset of violent offenses by definition
  - ii. class A2 offenses consist only of serious violent offenses
  - iii. ***all violent offenses must be a class A3 offense***

**Effects:**

- Serious Violent Offenses would be in OSL 14 and above.
- ***All violent offenses must be a class A3 offense*** - Violent offenses would be in OSL 10-13.
- This means all Class A offenses will be in OSL 10 - 18.
- If Violent offenses are to be in OSL 10-13, and OSL 10-18 are for Class A offenses, then will need to recalibrate class B violent offenses (9 total offenses) to either class A3 or as non-violent.
- OSL 1-9 would be Class B and C
- OSL 1-9 would be non-violent offenses

**Proposal B**

1. **Divide Class A Felonies into 3 Groups**
  - i. A1: Offenses receiving Life Without Parole/Death sentence
  - ii. A2: Serious Violent offenses
  - iii. A3: Class A Violent offenses (excluding serious violent)
2. **Recalibrate the seriousness level of A2 offenses into SLs 14 – 17**
3. **Recalibrate the seriousness level of A3 offenses into SL 10 – 13**
4. **Add statutory language so that:**
  - i. serious violent offenses are a standalone category and not a subset of violent offenses by definition
  - ii. class A2 offenses consist only of serious violent offenses
  - iii. class A3 offenses consist of only violent offenses
  - iv. class B violent offenses must be assigned SL 9

**Effects:**

- Serious Violent Offenses would be in OSL 14 and above. (*Same as Proposal A*)
- ***Class A Violent offenses would be in OSL 10-13.***
- This means all Class A (1,2,3) offenses will be in OSL 10 - 18. (*Same as Proposal A*)
- OSL 1-9 would be Class B and C (*Same as Proposal A*)
- ***OSL 9 will have both V and NV offenses. Class B violent offenses must be assigned OSL 9.*** Therefore, will need to recalibrate Class B violent offenses (9 total offenses). Moving them to OSL 9 or as non-violent.

Summary Task Force Input:

- *A member expressed support for taking a look at the offenses that are frequently seen in courtrooms (i.e. Robbery in the 2nd degree, Felony DUI, Assault 2, etc.), in order to move them into more appropriate places in the grid. The members expressed they are fairly confident they can reach consensus on this, this is in order to make changes to the grid that reflect best sentencing practices that historically has not been the case.*
- *Several members stated that they support the framework of separating the felony classes by OSLs and that this recommendation creates better consistency in this new simulated grid. They mentioned that this structure provides the legislature with an appropriate framework when deciding upon the creation of new offenses, and this structure is what the Task Force should strive for. However, these members specified that they would need to be clear on what offenses will need to be reclassified and where, as this would make or break their agreement to consensus.*
  - *Several members expressed, due to the nature of this recommendation, that they do not want the Task Force to be in a position that increases sentence lengths, especially in the context of discussing moving offenses up to higher OSLs. This reclassification of offenses by increasing their OSLs can have multilateral consequences that will negatively affect those being sentenced. For example, moving up offenses from Class B felonies to Class A felonies would eliminate wash-outs for previously classified Class B offenses for those sentenced under this new classification. These members support the new structure of this recommendation but state the Task Force needs to focus on the specifics associated with this new structure.*
  - *There was expressed agreement among several members surrounding the conversation that the concept of this new grid makes a lot of sense and that it provides structural consistency and seems incredibly logical. However, it generally seems reaching consensus on the offense recalibration will be difficult, and several members wonder what happens if they cannot reach consensus.*
  - *A member informed the Task Force that their constituency is not interested in breaking these details down to reach consensus on individual offense reclassification. Maybe they can reach consensus on the new structure on the grid as a whole but they will only reach consensus through focusing on the bigger picture with language that more generally outlines the process of reclassification.*
  - *A member pointed out that they think this is a very appropriate way to begin restructuring the grid but this recommendation would require work that is beyond the time and effort available to the Task Force so this specific recommendation may be beyond the scope of what they can do.*

- *Another member wondered if the Task Force is trying to align aspects of the grid that are not meant to be aligned or if this would make the grid even more complicated, especially for them to do themselves, let alone another entity. The members state that they do not think the Task Force can ever reach consensus on the reclassification of offenses and thinks trying to do so sets them up for failure.*
  - *Several Task Force members felt that they do not think they can weigh in on if the structure of the new simulated grid is actually a good fit because they do not know the details that determine if this structure will work as intended or not. These members stated that they cannot commit to consensus on this until the Task Force further builds out this recommendation by further diving into the reclassification, as their constituencies cannot support this until they know more about the reclassification of offenses.*
- *A Task Force member was concerned with the dichotomy of classifying crimes as either violent or nonviolent crimes when this does not accurately reflect the true impact of offenses or the mens rea associated with an offense. This member stated that the group does need details to determine how this would work in practice because the simplicity and alignment of this simulated grid is nice but may not reflect real-life conditions.*
- *A member expressed support for the distinction of violent versus nonviolent crime but they felt this new grid does not capture the distinction between crimes against persons versus crimes against property and this should be reflected.*
- *The Task Force was reminded by one of its Co-Chairs that the task at hand will be to re-define the gray areas of the new simulated grid where crimes do not neatly fall into the a violent or nonviolent category, so in order to ensure the success of this new grid the Task Force must look at this from the standpoint of it working with our other recommendations, such as washouts, aggravating factors, enhancements, and sentencing alternatives.*
- *A member had an issue with this version of the simulated grid; specifically that the length of confinement seems to dictate the other columns of the grid such as availability/access to washouts, availability/access to vacation, and mandatory reprimand. This should not be the case as these columns should be dictated by other factors than length of incarceration, while our current grid has flaws it reflects the non-linear reality that offenses have.*
- *Knowing they will have to recalibrate offenses, a member asked, are there any offenses that if they recalibrate offenses would those no longer fit into this new structure?*
  - *The ranges can be manipulated accordingly to fit the offenses reclassification into a new place into the grid, in order to do such there needs to be political will in order to successfully complete the necessary offense reclassification. The group*

*does not want a sentencing grid that puts people in a worse position than they are in today, should prioritize just sentencing in this new grid.*

- *A member recommended that the group scrap the designation of violent versus nonviolent versus serious violent crime distinction and solely focus on the designation of crime through their felony classes and corresponding OSL. They do not think the Task Force will reach consensus on this if they cannot move away from focusing on the discussion about the reclassification of offenses.*
  - *There are many things tied into this designation but just for the purposes of the grid this is possible but the designation is important in other aspects of the legal system.*
  - *A member posed the following question to the Task Force: “we have to ask ourselves what is the point of the offense classification? There’s associated consequences with these classifications and that is why we have them. The group should add the availability of community custody/sentencing alternatives with associated classes in order to orient the grid around the availability of alternatives and not just revolving around punishment.”*
- *A member brought up the tension between simplicity and nuance here actually raises the complexity in a way that is tied to a multitude of factors in a way the Task Force cannot see right now, because of that they are not sure this recommendation hits our 3 policy goals. If the Task Force does not know the details of this recommendation then they cannot be sure how they can hit these 3 policy goals. This member feels that the more they talk about this the more they are not sure this recommendation reaches these policy goals.*
  - *The interconnectedness of this new grid makes it very clear what will happen to a defendant at varying OSLs and felony classes in a way that can benefit the legislature for a clearer interpretation in statute and the associated correctional organization to see what the practices are for specified sentences.*
- *This clearer structure can also make punishments and sanctions that are not simply incarcerative clearer to stakeholders and this is important to add to the grid.*
- *Several members felt there was a lot more consensus among the group when they first were talking about how the current old grid has a lack of structure and is overly complex. The discussions continued to be broadly supported as they moved away to a discussion of nuance on why they do not believe the old grid has structure and what structure a new grid needs along with how to achieve this. Once the group began to talk about reclassification the discussion fell off and support varied widely.*
- *In the current grid there are the relics of old legislation that is no longer applicable or even able to be used, so when discussing the flaws of the current grid the Task Force*

*needs to focus on these relics as opportunities for change that they can incorporate into their new grid and then figure out where to fill in these gaps in the structure but they think they are getting bogged down in the details before that is necessary to do so.*

## WASHOUTS

**Potential Recommendation 34:** Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a technical violation will not reset the washout period.

- What it means? If an individual is revoked under a sentencing alternative and they consequently return to incarceration under inmate status, washout period starts when they release. This is different from individuals who are returned to incarceration under violator status.

### Anticipatory Offenses

Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule?

Grid Subgroup concluded no recommendations necessary – scoring would be the same regardless of if Class A or B. Laws already account for the lesser punishment for anticipatories (i.e., sentenced at 75% of the minimum of the range). Washout is based on the conviction class, so if anticipatory drops to Class B, the conviction will washout according to Class B washout rules.

### Summary Task Force Input:

- *A member asked why is the recommendation not set up in a simpler form to have someone's washout period reset after a subsequent conviction after their release?*
  - *Any violation that occurs while that person is in community custody will reset the washout period and for technical violations the Task Force agreed they would not reset the washout period and would keep it set as from the day of their release. But for revocation, their return to incarceration is still considered their original sentence and they are serving time on that conviction of an offense rather than a technical violation.*
- *A member asked if someone is arrested on a technical violation and incarcerated pre-trial but not convicted would this then reset their washout? This member said that they would argue that yes it should reset, if someone commits a criminal law violation whether convicted or not their washout should reset.*

- *In response to this, another member asked does this serve public safety or respect someone's desistance? This does not and it does not serve the purpose of rehabilitation the Task Force is aiming to achieve.*
- *A member agreed that a washout period reset should only be reset through a new conviction and only in that circumstance.*
- *A member suggested that the recommendation should be written in a way that makes it clearer on whether revocation of a sentence should or should not reset the washout period. For example, people on DOSA or rDOSA go back to incarceration on revocation or a technical violation, will this reset the washout period or not?*
- *Can something other than a new crime cause a judicial revocation?*
  - *Yes, if someone agrees to engage in treatment programming and they do not do so they will be revoked to incarceration. If someone does not meet their conditions of programming, then they can be subject to judicial revocation.*
  - *In response a member asked if this does justify restarting the clock on their washout then is the question? Does this serve public safety to punish this person who tried and failed to meet the conditions to reset their washout periods? They would argue that this does not serve public safety.*
- *A member believes that this proposal is probably more complex than the status quo and they believe this is done to serve a specific group of people and historically this leads to further complexity in the grid. They asked if this washout is based upon retribution or rehabilitation? Depending on the answer to this then this will slant your idea on culpability of defendants and whether or not their washout period should be reset or not, and this question is something we struggle to make consensus on. They think the group is making complexity for the sake of complexity.*

### **Potential Recommendation 35: Class A Felony Washout Scoring Rules**

- Option a: Make no change to the current law (Class A felonies would continue to not washout).
- Option b: All Class A felonies washout after 15 years.
- Option c: Offense Classification Proposal – Violent Class A felonies washout after 15 years. Serious violent Class A felonies would not washout.
- Option d: Allow for Class A felonies to washout after 15 years if the new offense is not as serious or more serious than the original offense.
- Option e: If the current offense is a serious violent than all prior serious violent should be included in the CHS.

### Potential Recommendation 36: Class B Felony Washout Scoring Rules

- Option a: Make no change to the current law (Class B washout period of ten years).
- Option b: Class B felonies washout after 5 years.

### Potential Recommendation 37: Class C Felony Washout Scoring Rules

- Option a: Make no change to the current law (Class C washout period of 5 years).
- Option b: Class C felonies washout after 3 years.

#### Summary Task Force Input:

- *A member questioned why the group is concerned with washouts at all and how these recommendations would relate to their 3 policy goals. They feel many of these options are contrary to the things they want to accomplish with this Task Force. Several members agreed that if someone does not reoffend then that person has nothing to worry about and the washouts will go away on their own without any changes, because of this they do not see the group reaching consensus on this at all.*
  - *Another member in response to the statement above conveyed that moving away from this perspective in the discussion is important because they are trying to create an evidence-based and rational system not based on retribution. The current washout period holds people's past mistakes over their heads for excessively long periods of time for the sake of retribution and this Task Force should not look to retribution and culpability as the basis of the legal system, especially after the discussion they had on desistance earlier in the meeting.*
  - *A member responded and stated that Washington prioritizes retribution, but this is the wrong approach. The nation had an entire generation of the victims of "Tough on Crime " policy that were excessively incarcerated and then had this held over their heads once they were released in ways that held them back from moving past their mistakes. This treats people who have made mistakes as disposable and not worthy of rehabilitation and defines them as the worst thing they have ever done. The Task Force needs to follow the evidence and proceed with centering justice and accountability while rehabilitating people and welcoming them back into our community.*
  - *A member stated that they cannot live with Potential Recommendations 35-37 Option B but is curious to hear what victim advocates have to say.*
    - *A member who serves as a victim advocate stated they agree with the members who stated that this is not a good use of time for us to focus on and that people should face punishment as a way of taking ownership of their mistakes. Washouts are not an issue for people who do not commit any future crimes and as such they support the status quo for the*

*washout period of all classes staying the same, it would be difficult for my constituency.*

- *A member mentioned that they had a different take on the research and evidence, these recommendations only matter when someone recidivates and has further culpability. They said the state has tried to implement leniency, so they are comfortable with amending for shorter washouts for Felony Classes B and C, but not for Class A. They believe that as someone gets older and should be aging out of crime the state should enact stricter punishments and longer washouts because people should know better than to commit the offense(s) that they did.*
- *A member is curious to see how many people who commit a Class A felony and once released then successfully go 15 years without committing any new offenses.*
- *In response to members asking how these recommended changes would address public safety, a member asked how the status quo does this? They explained that the status quo of washouts does not improve public safety and they do not think it is appropriate to ask this question only of any proposed change, but that this lens must also be applied to the status quo. The same scrutiny of the recommendations must also be applied to the status quo, as they believe the Task Force seems to go along with the status quo simply because it has been around longer. These washouts can be completely unrelated to current offenses, it forces the judges to hand out harsher sentences.*
  - *It would be simpler to either always include all criminal history or to never include any criminal history, but there are more nuances to distinguish this around felony classes and their perceived levels of culpability based on their criminal history. While this might not be ideal or perfect this is the way it has been done to capture more nuanced levels of culpability.*
- *A member reminded the Task Force that if they are tying washouts to felony classes and they believe that certain class A offenses are more serious, the group just spent the whole morning not being comfortable with how felony classes create a hierarchy of seriousness but in the context of washouts the group is saying exactly this. It was noted that the group must tie all conversations together and keep the conversations fluid and have a full-circle holistic view.*
- *The SRA did not remove discretion, it transferred discretion from judges to the prosecutors. Today judicial decisions are now transparent and reviewable, but this is not the case for prosecutors who can act unchecked. Judges should have the CHS removed from their sentencing equation to decode a more appropriate and transparent sentencing process.*
- *A Task Force member brought up that they believe prosecutors have way too much discretion in the system and this leads to excessive sentences for those convicted. Their profession is only now trying to explore pre-arrest diversion, and while they agree that the current system has flaws, they believe it still advocates for public safety. They do still believe prosecutors have too much discretion in the system and that the state needs to see reforms in the current system to amend this.*
- *A member stated that the criminal sentencing system is a measure for moral systems that a community values. The current system has so many avenues for increasing*

*sentences and punishments but few avenues for moving down. This is indicative of the morals inherent in the current system that prioritizes retribution. They are frustrated because they believe the other side makes little room to compromise and meet the rest of the group where they are at, while the rest of them try to compromise with this other side.*

- *A member stated their curiosity for the concrete steps that Norway takes to prioritize successful reentry and rehabilitation of those incarcerated.*
  - *The DOC in the West Coast and North Dakota are working to implement Norwegian practices of more humane treatment of those incarcerated and actual rehabilitation to ensure successful reentry.*

**Potential Recommendation 38:** Include & visually depict all sentencing alternatives on the felony sentencing guidelines grid.

Reducing sentencing implementation complexities and errors:

- Group discussed modifying eligibility criteria to align w/OSL while retaining the nexus between the offense and treatment/underlying need.
- All sentencing options would be included on the guidelines grid and increase transparency regarding when sentencing alternatives could be considered

Improving the effectiveness of the sentencing system & Promoting and improving public safety:

- Recognizing concern about implications to public & survivor/victim safety if eligibility expanded to individuals facing convictions in higher OSLs, noted that individuals should have access to treatment when needed.
- Visual overlay of sentencing alternatives would remind all parties of treatment-oriented sentencing options to encourage consideration of applicable sentencing alternative in all possible situations

**Potential Recommendation 39:** Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSAs and rDOSAs (prison and residential drug offense sentencing alternatives).

Reducing sentencing implementation complexities and errors:

- Current alternatives vary as to whether an individual with a past felony violent conviction could be considered for an alternative. In 2020, Legislature eliminated exclusion for prior violent convictions, unless committed with a deadly weapon, for FOSA.
- Eliminating criteria/exclusions that do not correspond to the sentencing guidelines grid (such as prior convictions) increases simplicity.
- Mental Health Sentencing Alternative (based on 2020 CSTF Rec) does not exclude people based on prior record.

Improving the effectiveness of the sentencing system & Promoting and improving public safety:

- Could increase instances where substance use treatment-oriented sentencing options could be considered (when substance use disorder contributed to the commission of a crime).
- Eliminating exclusions based on prior history would not automatically lead to a sentencing alternative—court would still consider the individuals' circumstance and needs, and if those needs could be safely met in the community.

**Potential Recommendation 40:** eliminate cap on the number of DOSA sentences that an individual can receive in a 10-year period.

Reducing sentencing implementation complexities and errors:

- Current eligibility excludes individuals w/more than 2 DOSAs in past 10 years, however individuals often come to DOC with multiple DOSAs.
- pDOSA eligibility criteria would more closely align with eligibility for rDOSA.

Improving the effectiveness of the sentencing system:

- Criteria would reflect current understanding of substance use disorders—that recovery is a process. Group discussed potential modifications to revocations.

Promoting and improving public safety:

- Prior participation in pDOSA would no longer prevent court from considering another DOSA sentence. Court would still consider community safety and an individuals' unique circumstance.
- Eliminating all exclusions/eligibility criteria may not reduce geographic disparities or increase access to programs. Some exclusions due to safety of other participants in programs.