

**Washington State Criminal Sentencing Task Force**  
**Grid Sub-Group**  
**Meeting Notes: August 16<sup>th</sup>, 2022**  
Meeting via Zoom

**ATTENDEES:**

- Clela Steelhammer, *Caseload Forecast Council*
- Russ Brown, *WA Association of Prosecuting Attorneys*
- Gregory Link, *WA Association of Defense Attorneys*
- Representative Roger Goodman, *Washington State House of Representatives (Democrats)*
- Nick Straley, *Interests of Incarcerated Persons*
- Jon Tunheim, *WA Association of Prosecuting Attorneys*
- Chief Brian Smith, *WA Association of Sheriffs and Police Chiefs*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*
- Melody Simle, *Families of Incarcerated Persons*
- Senator Chris Gildon, *Washington State Senate Republicans*
- Keri-Anne, *Sentencing Guidelines Commission*
- Judge Wesley St. Clair, *Sentencing Guidelines Commission*

**Facilitation Team:** Chris Page, Molly Stenovec, Alec Solemslie, Zack Cefalu

**Public Guests:** Bruce Glant, David Triewiler, Joanne Smieja, Jim Chambers

**Research Team:** Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy*

**WELCOME AND AGENDA REVIEW:**

Chris welcomed everyone to the meeting and reviewed the day's agenda. Today the group will continue working through the remaining potential recommendations to turn them into proposed recommendations for the August 31<sup>st</sup> Task Force meeting.

Chris updated the Grid Subgroup that the Sentencing Alternatives Subgroup has turned their remaining potential recommendations into proposed recommendations to bring back to the full Task Force for consensus deliberation. Additionally, Chris also updated the group that Chiefs Cobb and Smith met with Nick Straley and Julie Martin to strategize recommendations around making rehabilitative and reentry programs explicit in the grid and explicitly recommend the allocation of funds for these rehabilitative programs. They looked at some of the 2020 recommendations from the Task Force on programs and alternatives, looking to build on prior work while explicitly calling for the immediate need for resources to support programs during and after incarceration.

Many members of the Grid Group noted that while the full Task Force could potentially support a recommendation for programs and services—the challenge will be where the funds come from to support these programs. Some talked about sentence reductions for individuals currently in prison, reinvesting these savings to fund these programs in and outside of prison. Additional takeaways from the conversation include: need for additional resources to create/expand holistic services and programs that will support successful reentry. A member

also noted that successful reentry can also be influenced by policies that limit an individuals access to housing or professional certifications.

### **August Workplan**

#### **Aug 16th Grid Subgroup**

- Address and turn into Proposed Recommendations: #28, 28a, 29a, 29b, 30, 31, 32 (misdemeanor scoring)
- Address and turn into Proposed Recommendations: #26, 27a, 27b, 27c (3-strikes)

#### **Aug 23<sup>rd</sup> Grid Subgroup**

- Address and turn into Proposed Recommendations: #34, 35a, 35b, 35c, 35d, 35e, 36a, 36b, 37a, 37b

#### **Aug 30th Grid Subgroup**

- Address and turn into Proposed Recommendations: # 1, 5, 4

#### **Aug 31<sup>st</sup> CSTF Meeting**

- Present all these Proposed Recommendations to the Task Force. Sent. Alt. Workgroup will be presenting the CISRS Program and other sentencing alternatives.

### **Sept 1<sup>st</sup> CSTF Meeting is all day consensus deliberation on Proposed Recommendation: New Felony Sentencing Guidelines Grid**

#### **UPDATES FROM TASK FORCE MEMBERS:**

Jon Tunheim and Keri-Anne Jetzer recently participated in a panel discussion at the National Association of Sentencing Guidelines Commissions Meeting in Portland and shared some takeaways with the group.

Washington has one of the most under-resourced sentencing guidelines commissions in the country. Most other sentencing guidelines commissions in the U.S. have multiple full-time staff and a dedicated research staff. The Task Force may want to talk about what the potential roles and resources for the Washington SGC looks like going into the future and how they will interact with a new sentencing structure. Many potential recommendations mention research and data collection—with more robust resources the SGC could support that work. The SGC could do disparity and racial impact statements on proposed legislation, as called for in a 202 recommendation from the task force.

Dr. Knoth-Peterson reminded the group about the Office of Equity which is working on other impact statements, and noted the opportunity for collaboration or conversations with the Office of Equity to ensure work is not duplicated.

Additional takeaways from the conference: that other states are also looking at Minnesota and Pennsylvania as models for overhauling their sentencing systems in ways that follow the evidence from research.

The group discussed developing a recommendation for the SGC to develop concrete proposals to address disproportionality in Washington's criminal justice system, specifically within the DOC prison populations. Several members pointed to current disparities in the system, and the need to reduce/eliminate that disparity.

### **DISCUSSION ON TURNING POTENTIAL RECOMMENDATIONS TO PROPOSED RECOMMENDATIONS**

The purpose of today's meeting is to review potential recommendations, address input from the Task Force, and turn into proposed recommendations—which will be considered by the full Task Force for consensus beginning in September.

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

**Potential Recommendation 28a:** Eliminate special misdemeanor scoring for felony traffic. Reclassify felony DUI and physical control from OSL 4 to OSL 6.

Dr. Knoth-Peterson reviewed potential recommendations 28 and 28a, options regarding felony traffic Misdemeanor Scoring Exception. Prior misdemeanor DUIs are themselves an element of felony DUI. In current policy, individuals charged with a felony DUI will rarely have a CHS of 0 or 1 because the misdemeanor scoring is part of the offense AND part of the CHS calculation.

Potential Recommendation 28a would also eliminate the special misdemeanor scoring for felony traffic AND reclassify two offenses. Currently, DUI misdemeanors are counted in CHS once a traffic felony is committed and convicted. Any current felony traffic offense results in counting prior misdemeanor DUIs in criminal history scoring, but if the group chooses recommendation 28a this would, rather than reinstating multipliers for DUIs, increase the OSLs from 4 to 6 to reflect its higher seriousness and opportunity for inclusion into CHS.

### **Grid Group Discussion:**

- Concern that potential recommendations don't fully address repeat behavior. If an individual has several previous DUIs, these multipliers allow for recognition of the number of previous DUIs. Simplifying this would limit how the sentences can be tailored to the individuals. It would be less punitive to those with a greater history of DUIs.
- Support for reclassifying to a higher OSL could be supported, but not the removal of the special misdemeanor scoring. The concern is to be able to distinguish between people that have priors and those that don't. WAPA/WASPC concern is that felony DUI only met if three in 10 years. So, individuals who have other prior DUI's outside of the 10-year period wouldn't be any different than people who just have 2 in the last 10 years.

- Promoting public safety – DUI particularly concerning crime for public safety and need to consider the totality of the history.
- Support for current OSL classification, it makes sense because max sentence for GM is 365, when move into felony category – first sentence at OSL 4 CHS 2 is 12.05-14 so continues the escalation of the sentence.
- Prior DUI misdemeanors are an element of felony DUI. The concern is to be able to distinguish between people that have priors and those that don't, but the court has to take their priors into consideration through the definition of a felony DUI which predicates prior misdemeanor DUIs. Just moving DUI from OSL 4 to OSL 6 without removing the special misdemeanor scoring elimination would double the sentences and punishments for this offense.
- Concerned about the high number of repeat DUI cases across the state, and risk of that behavior to public safety. Note that cases are routinely they are charged down to negligence or another lesser charge.
- Is this 10-year period the result of washouts for the offense?
  - No, in the statutory language, as defined in RCW 46.61.5055, three or more prior DUIs in a 10-year period constitutes grounds for felony DUI or receiving another felony traffic charge in tandem with a DUI.
- Support for current scoring exception, its well-thought out. This creates scoring with both prior DUIs for additional DUIs or specific felony traffic that would then be used to aggravate these felonies, such as vehicular homicide. This was done purposely and deliberately because this is what the Legislature wants.

Grid Group members developed the proposed recommendation below, which recognizes concerns to account for repeat DUI offenses while also reducing opportunities for errors in the calculation of CHS by limiting felony traffic misdemeanor scoring exceptions to DUI related offenses.

**Proposed Recommendation: Maintain special misdemeanor scoring for prior misdemeanor DUI offenses when the current offenses is a serious felony traffic offense involving DUI (e.g., VHOM-DUI, Veh. Assault-DUI, Felony DUI, Felony physical control, etc). Prior misdemeanor DUI offenses no longer score for felony offenses not involving DUI.**

**Recommendations 29a and 29b:**

The Grid Group reviewed and discussed potential recommendations regarding misdemeanor scoring exceptions for vehicle prowling.

**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.

Offense	Without prior prowl	With 2+ prior prowl
Theft of a motor vehicle	OSL 2	OSL 4
Possession of a stolen motor vehicle	OSL 2	OSL 4
Taking a motor vehicle without permission – first degree	OSL 5	OSL 6
Taking a motor vehicle without permission – second degree	OSL 1	OSL 4
Vehicle Prowl – 2 <sup>nd</sup> degree (third or subsequent)		OSL 4

Under Potential Recommendation 29a, if someone has two previous vehicle prowl 2 misdemeanors their third and subsequent convictions for this offense will now be felonies and count towards CHS scoring. This will also increase the OSLs for felony traffic offenses after two previous vehicle prowl 2 convictions. This is done to reflect an escalation of behavior from someone vehicle prowling and then is either successful at stealing a car or demonstrates their desire to do so with additional vehicle prowl 2 convictions.

**Grid Group Input:**

- The raise in a higher OSL is problematic. This problem can be solved by reducing the OSL for the third vehicle prowl 2, as the raise in OSL would currently put this offense in the same seriousness level as Assault 2 and Robbery 2, that is not appropriate for this offense.
  - The problem is that the SRA created the third or subsequent second-degree vehicle prowl to be more serious than the first degree vehicle prowl. An alternative proposal would be to eliminate the misdemeanor scoring rule and put second degree vehicle prowl in the same OSL as vehicle prowl in the first degree, which would be OSL 1. Vehicle Prowl 1 is more serious than vehicle prowl 2 regardless of the number of priors for vehicle prowl 2.
    - Vehicle prowl 1 is a prowl of a vehicle with permanent sleeping quarters
    - Vehicle prowl 2 is a prowl of a vehicle without a permanent sleeping
- Would it make sense to only include felony vehicle prowl in CHS calculation and eliminate the prior two gross misdemeanor vehicle prowl 2 in scoring calculation?

- This is getting us back on track to what the Task Force was originally trying to do with these recommendations here, which was to eliminate the special scoring rules. Without eliminating special misdemeanor scoring then, on non-prowling offenses, CHS is double dipping – because felony prior prowling increases the sentence, but then prior misdemeanors increase the sentence also but the felony prior only exists because of the prior misdemeanors.
- In FY 2021, there were five vehicle prowling 1 and nine vehicle prowling 2 sentences, while in FY 2019 there were eight vehicle prowling 1 and eight vehicle prowling 2.
- These prior vehicle prowling misdemeanors scoring exceptions were designed to count in scoring to escalate the sentences for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without Owner Permission 1 and 2, which was what the Legislature intended. Eliminating the special scoring would eliminate the use of these priors that demonstrates escalation of criminal behavior. This member's constituency would not support both a reduction to OSL 1 and the elimination of the misdemeanor scoring exception.
  - The removal of these two misdemeanors would still capture this escalation after a third and subsequent vehicle prowling once they are now felonies, this would at most remove 2 CHS points from their prior misdemeanors.

Group began discussing potential modifications to reduce the OSL classification, and whether to eliminate/maintain special scoring.

ALTERNATIVE RECOMMENDATION 1: Reduce the OSL for Vehicle Prowling – 2nd degree (third or subsequent) to OSL 1 (the same as vehicle prowling first degree) and **eliminate** the special scoring for prior misdemeanor vehicle prowling

ALTERNATIVE RECOMMENDATION 2: Reduce the OSL for Vehicle Prowling – 2nd degree (third or subsequent) to OSL 1 (the same as vehicle prowling first degree) and **DO NOT eliminate** the special scoring for prior misdemeanor vehicle prowling.

Suggestion to separate OSL classification and scoring exceptions – vehicle prowling 2 third and subsequent convictions should not be an OSL 4, the equivalent of Assault 2 or Robbery 2.

Action: Given that the group was over time, Lauren offered to develop a revised potential recommendation based on the conversation. Grid group will continue the discussion at an upcoming meeting.

**Comments Submitted by Guest Observers Via Zoom Chat And/or Email**

None