

Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: August 4th, 2022

In-person: WSU Puyallup Research and Extension Center, 2606 West Pioneer, Puyallup, WA
Virtual Meeting via ZOOM – [Link to TVW Recording](#)

ATTENDEES:

- **Task Force Members and Alternates:** See Appendix A
- **Members of the Public:** See pg. 22
- **Facilitation Team:** Amanda Murphy, Chris Page, Maggie Counihan, Alec Solemslie, Zack Cefalu – Ruckelshaus Center
- **Research/Technical Support:** Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy (WSIPP)*

MEETING GOALS:

- Task Force Introductions and Updates
- Review, Discuss, and Provide Input on **Potential Recommendations:** Sentencing Alternatives
- Review and Discuss **Proposed Recommendation:** The New Felony Sentencing Guidelines Grid. This is the proposed recommendation up for consensus deliberation at the August 31st and September 1st meeting.
- Lay the groundwork to begin consensus deliberations at the next Task Force meeting.

WELCOME, AGENDA REVIEW and GROUND RULES

Amanda and Chris welcomed Task Force members and alternates, reviewed the agenda for the meeting, and highlighted specific ground rules. The facilitation team welcomed the Task Force and introduced themselves for any new members who might be present.

Amanda congratulated the Task Force on reaching this milestone of a meeting that is the culmination of several years of work to have these proposed recommendations. The agenda for this meeting today has the Task Force reviewing and discussing both potential and proposed recommendations. The first order of business will be to discuss the remaining potential recommendations that they did not get to at last month's meeting that come from the Sentencing Alternatives Workgroup, listed on the agenda, and also included in the PowerPoint from last month's meeting. The Grid Subgroup has completed revisions and the stitching together of the grid formula and structure specific potential recommendations and will be presenting the first proposed recommendation: The New Felony Sentencing Guidelines Grid (the rest of the proposed recommendations will be presented at the August 31st meeting and then they will all be on the agenda for consensus deliberations on September 1st).

Chris announced that the co-chairs have asked that members of the public and guests abide by the Task Force ground rules and provide their input in the form of comments rather than questions.

INTRODUCTIONS

The Task Force members and alternates then introduced themselves for everyone including their name and the constituency that they represent. The facilitation team then welcomed the Task Force and introduced themselves for any new members who might be present.

2022 Work Plan**August 4th CSTF Meeting:**

- Remaining Potential Recommendations (Sentencing Alternatives)
- First Proposed Recommendations New Felony Sentencing Grid

August 31st CSTF Meeting:

- All other Proposed Recommendations

September 1st

- Consensus deliberations on the Proposed Recommendation for the New Sentencing Guidelines Grid.

October

- CSTF Meeting will then be consensus on all other Proposed Recommendations.

November

- CSTF Meeting will be the last opportunity for consensus on any remaining Proposed Recommendations.

November 30th Joint Legislative Work Session is being rescheduled. Date TBD

December

- Final Report— CSTF Meeting will be tying up any loose ends and finalizing the report.

POTENTIAL RECOMMENDATIONS: SENTENCING ALTERNATIVES

Facilitation team provided an overview of the purpose of the Sentencing Alternatives Subgroup, their work over the past year, and potential recommendations—including how they meet the policy goals. See recording at [29:42](#) for the full discussion.

Overview of the Sentencing Alternatives Work

In line with the grid focus of the CSTF, members of this group have focused conversations on sentencing alternatives and their current/potential relationship to the sentencing guidelines grid.

Discussions between July 2021-Spring 2022 have focused on current sentencing alternatives. Specifically:

- Program overview
- Intended purpose

- Statutory Eligibility Criteria: Current offense, Prior record, Prior participation in alternative
- Any past/current efforts or entities looking at potential changes?
- Presentations by DOC and Sex Offender Policy Board

Special Sex Offender Sentencing Alternative– SSOSA

- Reviewed program overview and statutory eligibility criteria
- Conversations with Chair and Vice Chair of Sex Offender Policy Board (SOPB) on SSOSA, sentencing for sex offenses, and ways the SOPB and subgroup could coordinate their work
- Chair of House Public Safety Committee asked the SOPB to review SSOSA (including eligibility criteria), lifetime supervision, washouts, and treatment (capacity, requirements, need, housing barriers, etc.). The request directs SOPB to develop policy recommendations with research and guiding principles for each topic. Report due to Legislature in December 2022.

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

Reducing sentencing implementation complexities and errors:

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

Improving the effectiveness of the sentencing system and Promoting and Improving Public Safety:

- Recognizing concern about the implication to public and 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 alternatives 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 prison and residential drug offense sentencing alternatives.

Overview of Prison and Residential Drug Sentencing Alternative

This recommendation removes the eligibility restrictions for pDOSAs and rDOSAs for those who have been convicted of violent offenses.

Prison DOSA: provide substance use disorder treatment and community supervision for individuals diagnosed with a substance abuse disorder who have committed a drug or other statutorily eligible offenses.

Residential DOSA: residential substance abuse disorder treatment in the community in lieu of serving time in prison.

Current eligibility considers current offense, prior record and for pDOSAs: person cannot have received more than 2 DOSAs in the last 10 years.

How it Meets the 3 Policy Goals:

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) increase simplicity.
- Mental Health Sentencing Alternative (based on 2020 CSTF Recommendation) does not exclude people based on prior record.

Improving the Effectiveness of the Sentencing System and 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—the 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.

How this Meets the 3 Policy Goals:

Reducing Sentencing Implementation Complexities and Errors:

- Current eligibility excludes individuals with more than 2 DOSAs in the past 10 years, however individuals often come to DOC with multiple DOSAs.
- pDOSAs eligibility criteria would more closely align with eligibility for rDOSAs.

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 the 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.

Task Force Discussion on Potential Recommendations related to Sentencing Alternatives:

- The rate for DOSA revocations is very high, interested to hear more about Subgroup discussions on revocations. Knowing that chemical dependency is a process and takes potentially multiple attempts to successfully complete, how would DOSA account for this when getting people to re-enroll treatment?
 - DOSA is a sentencing alternative, not a program. It is a sentence with drug treatment. Individuals may be revoked from the sentence and return to prison; they may still receive treatment but space in treatment for those individuals is no longer prioritized. Someone who was revoked from DOSA and is then allowed into pDOSA or gets arrested again and is eligible for DOSA are the way of getting back into DOSA, however, this is not a treatment program one can enroll in. The limited resources and priority lists create constraints for those eligible for enrollment so this revocation may lead to complications with getting back into treatment programs. Just because someone has a DOSA revocation does not disqualify them for future DOSA enrollment. There is a hope, to the extent possible, to analyze these revocations and enrollment eligibility across age, sex, race and geographically location.
- There are several other efforts currently going on that examine the validity of DOC programming such as DOSA, such as the effectiveness in recidivism as well as cost-benefit analysis. Revocation is not necessarily recidivism, and this is currently being reflected in the program analysis as the research states revocation and complications in removing chemical dependency is an ongoing process in which people fail. Although there is a statutory cap of 2 within 10 years, the group found that individuals were receiving more than 2 DOSAs in a 10-year period from different counties or prisons/jails. Putting people back to incarceration can disrupt the process of desistance and recovery.
 - Dr. Knoth-Peterson shared that the report is due November 1st on the review of DOSA
- Expressed strong support this recommendation; the inevitability of relapse calls for continued support and open availability to treatment for those with chemical dependency. They want to expand the use and enrollment of DOSA, since courts are already sentencing more than 2 DOSAs and additional treatment would be more effective. Additionally, to ensure transparency and provide all options to the courts clearly the new grid needs to visually depict sentencing alternatives.
- Will the WISPP report have any recommendations surrounding DOSA?
 - Dr. Knoth-Peterson explains that the report will review the effectiveness and cost benefit model. The report might review the revoked and non-revoked

outcomes. But that is not required and there are timeline constraints. The central question is if the program works using an intent-to-treat model. Looking at reductions at recidivism rather than revocation. Sometimes individuals may receive good treatment but might break other guidelines leading to revocation. With revocations, individuals may still benefit from their time within the program.

- The system should not disqualify people based on certain number DOSA sentences within a set number of years
- A member stated the word relapse is no longer used in this space as the word has a connotation of failure within the use of the word that does not reflect the process of recovery. The preferred terminology is resumption of use, defined as either a complete disengagement of treatment or additional criminal behavior. The revocation rate is not necessarily a measure of the effectiveness (or lack thereof) of DOSA but rather the state should analyze this metric to discern if the right people are being enrolled in these programs. Prison DOSA especially, as according to their constituency believes there to be a large difference between pDOSA and rDOSA, people should not have unlimited access to pDOSA. Their county uses pDOSA and Drug Court over rDOSA, which this member believes to be a better sentencing alternative.
- The process from DOC, to issue a rDOSA sentence, there needs to be an evaluation done by a judge and the defendant needs to meet a level 3 need of treatment with a maximum term of potential confinement being 2 years or less. 3 to 6 months of intensive in-patient treatment is the baseline amount of time to be eligible.
- The high rate of revocation for those in rDOSA should be indicative of a problem in who qualifies for enrollment into this program. Perhaps research should be conducted into rDOSA?
- Another member stated they also believe Drug Courts are far better suited for treatment and are structured in a manner that are far better situated to deal with these chronic issues. DOSA deals with treatment as a one-time quick treatment that is not ongoing or continues to deal with potential resumptions of use or revocation. Perhaps the state should expand the number of drug courts and rethink how they deal with drug use in our criminal justice system, potentially mandating all counties to have access to drug courts or similar drug treatment sentencing alternatives. The Mental Health Alternative was very forward-thinking legislation, and perhaps there are some things that can be used as model legislation for other types of alternatives. There are certain offenses that are not appropriate for mental health alternative, it appears to be the most forward thinking and flexible to meet individual needs. With the Mental Health Alternative, the information provided to the court before sentencing is more robust. However, expressed concerns about eliminating all eligibility exclusions/criteria and provide judges with no other information about what can inform their decisions on who is appropriate to allow in these programs—there are offenses that are not appropriate when enrolling someone in these alternatives. In terms of DOSA, the court gets information/evaluation on a person that is not as robust as other alternatives such as mental health courts. By removing criteria of prior participation in DOSA, this puts judges in spots that they do not provide them with the appropriate amount of

information they need to decide if this is appropriate for the program and community to place this person in these programs. In terms of Potential Recommendation 40, what the group is talking about is in removing this bar of the limited number of times for DOSA enrollment in a 10-year period treats everyone the same and can help prevent disparities. Concerned that eliminating the cap will increase the discretion and racial disproportionality among individuals receiving a DOSA sentence.

- Amanda shared an overview of Sentencing Alternatives discussions: DOSA and SSOSA are the only alternatives that still has prior violent offenses as an exclusionary criterion—this recommendation specifically calls out DOSA as the SOPB is reviewing SSOSA. In current practice, DOC has shared that people are currently going past the cap as they can be sentenced in these programs across multiple counties throughout the state. There are large geographic differences in the number of DOSA sentences given.
- Regarding eliminating prior violent convictions as an exclusion: the data shows that there are disparities currently along the lines of violent offenses convictions that are disproportionately BIPOC defendants. This recommendation was developed, in part, to address the current Disproportionality in DOSA sentencing.
- A finding from WSIPP’s report to the Task Force was disproportionality in Sentencing Alternatives. Also see that BIPOC individuals more likely to have conviction of violent offense—see that as a factor that prevents BIPOC individuals from being considered for a sentencing alternative. Eliminating prior violent convictions as an exclusion could advance equity and allow more people who need treatment to have access.
- For recommendation 40, it is not unreasonable to have two or more sentencing alternatives. However, they are not sure if more than 2 in 10 years seems reasonable concerned that eliminating all consideration of prior participation could lead to disproportionality. Unlimited opportunities might create a disparity in who gets and who doesn’t get considered for third, the fourth, and the fifth DOSA.

Facilitation team shared that Sentencing Alternatives Subgroup spent many meetings discussing the statutory eligibility criteria and exclusions for current sentencing alternatives. The group began that work with the intent of thinking about how to develop potential recommendations to expand eligibility and access. Themes from those conversations include:

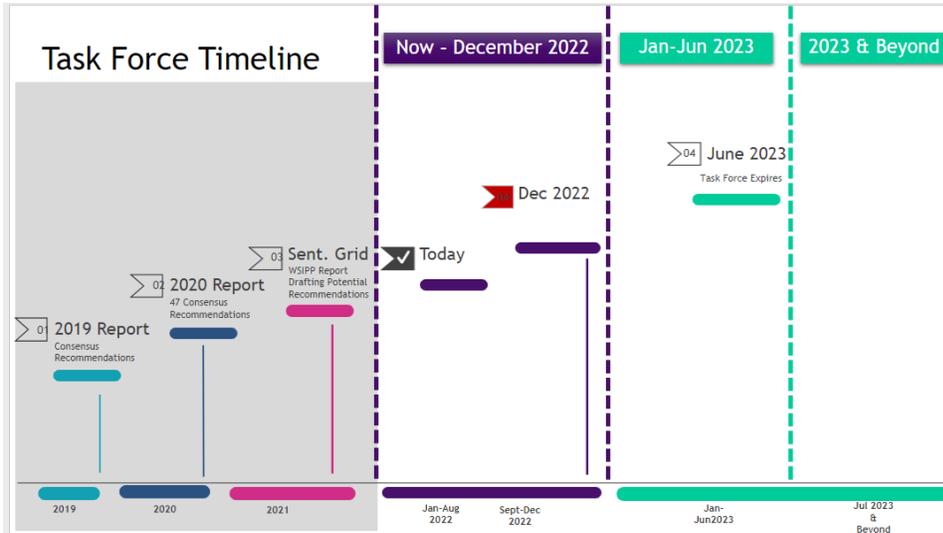
- current system does not have enough treatment opportunities available to meet current needs; treatment capacity needs to be expanded
- Group considered eliminating exclusion based on current violent offense; however, noted that treatment centers do not have the resources to deal with an individual that might be violent. Treatment providers may not want to accept an individual due to potential violence risk/threat to safety of other participants.

Facilitation team: The Sentencing Alternatives Subgroup will consider this input at their upcoming meeting.

DISCUSSION: Proposed Recommendation: The New Felony Sentencing Guidelines Grid

Amanda transitioned the group to an overview of the proposed recommendation for a new felony sentencing guidelines grid, including an overview of how this recommendation was developed.

Overview of Task Force Timeline



This slide depicts the timeline of the Criminal Sentencing Task Force since its creation in 2019 through the expiration of its current contract with the Legislature in June 2023. The Task Force was originally set to expire in 2020, but at the request of the group the Legislature extended the contract of the Task Force until June 2023. This was done so the Task Force could spend more time crafting a new sentencing guidelines grid that is now currently being proposed today.

The Grid Subgroup began its work in May 2021:

- How to deliberately *and* collaboratively work through a grid that is made up of many interconnected elements?
- Recognized it is difficult to break the grid down into part-by-part discussions. However, it is also difficult to discuss the grid as a whole without having an in-depth understanding of each part and how it connects to other parts.

Where on the Grid to Start the Discussions?

- The first big task of the Grid Subgroup was figuring out where to start on the grid, how to sequence its work, and to present ideas back to the full Task Force early and often.
- In other words, breaking the grid into parts to come up with potential recommendations for each part of the grid that once all is put together, will make up a whole package(s). Once all is put together, the Task Force will be able to discuss the full suite of potential recommendations and then begin working towards consensus deliberations.

Proposed Recommendation: The New Felony Sentencing Guidelines Grid

[See recording at 2:00:00](#)

Dr. Knoth-Peterson reviewed the work leading up to the formation of the Proposed New Felony Sentencing Guidelines Grid. The facilitation and research team put together a running list of all the Task Force’s 40+ potential recommendations, noting their categories and interconnectivity with Washington’s sentencing system.

Step 1. Categorize the 40+ Potential Recommendations, Identifying their Connectivity to One Another

Formula and Post Formula Adjustments	Potential Recommendations #: 3, 6, 7, 8, 9, 10, 13, 14
Offense Classification	Potential Recommendations #: 2, 13a, 28a, 33
New Columns	Potential Recommendations #: 15, 17, 19
Sentencing Discretion	Potential Recommendations #: 16, 19, 20, 21, 22, 23, 24, 25, 27a, 27b, 27c
Criminal History Score	Potential Recommendations #: 28, 28a, 29a, 29b, 30, 31, 32, 34, 35a, 35b, 35c, 35d, 35e, 36a, 36b, 37a, 37b
Foundational	Potential Recommendations #: 1, 5
Continuing Work	Potential Recommendations #: 4
Post-Sentencing Reform	Potential Recommendations #: 12
Legal Procedures and Other Sentencing Laws	Potential Recommendations #: 26, 11
Sentencing Alternatives	Potential Recommendations #: 9.1, 38, 39, 40

The team then identified which categories of recommendations were specific to the creation and functioning of a newly Proposed Felony Sentencing Guidelines Grid. These recommendations were around the grid’s overall structure and its formulaic approach.

Step 2. Guidelines Grid Specific – Formula and Structure

Formula and Post Formula Adjustments	Potential Recommendations #: 3, 6, 7, 8, 9, 10, 13, 14
Offense Classification	Potential Recommendations #: 2, 13a, 28a, 33
New Columns	Potential Recommendations #: 15, 17, 19
Sentencing Discretion	Potential Recommendations #: 16, 19, 20, 21, 22, 23, 24, 25, 27a, 27b, 27c
Criminal History Score	Potential Recommendations #: 28, 28a, 29a, 29b, 30, 31, 32, 34, 35a, 35b, 35c, 35d, 35e, 36a, 36b, 37a, 37b
Foundational	Potential Recommendations #: 1, 5
Continuing Work	Potential Recommendations #: 4
Post-Sentencing Reform	Potential Recommendations #: 12
Legal Procedures and Other Sentencing Laws	Potential Recommendations #: 26, 11
Sentencing Alternatives	Potential Recommendations #: 9.1, 38, 39, 40

These 15 or so recommendations identified to all be connected to the functioning of this new grid were then stitched together to become one recommendation: the new Proposed Felony Sentencing Guidelines Grid.

All of These Potential Recommendations

Formula and Post Formula Adjustments	Potential Recommendations #: 3, 6, 7, 8, 9, 10, 13, 14
Offense Classification	Potential Recommendations #: 2, 13a, 28a, 33
New Columns	Potential Recommendations #: 15, 17, 19

Have Been Revised and Stitched Together into One Proposed Recommendation:

The new proposed grid has been color-coded to highlight the varying formulas used in the creation of this proposed grid and the regions associated with these.

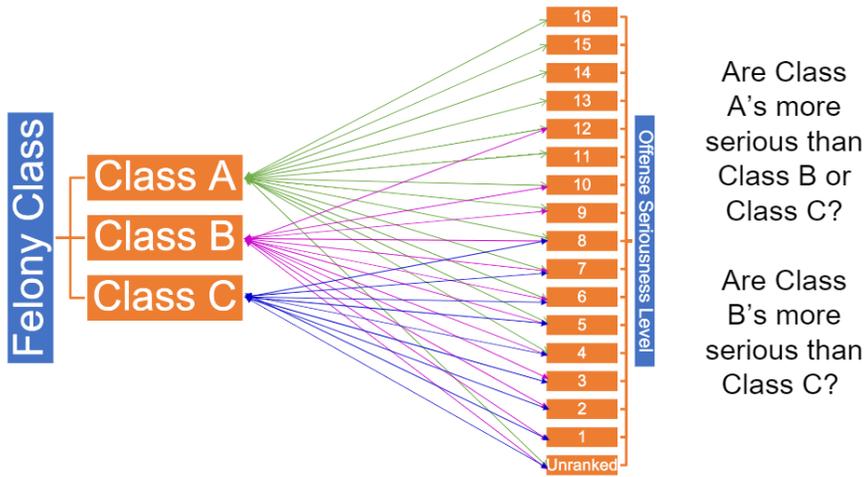
Proposed Recommendation: The New Felony Sentencing Guidelines Grid

	0	1	2	3	4	5	6	7	8	9+	10% of max row sent	10% of cell maximum or 1 month, whichever is greater													
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													OSL 17 anchor	240 minimum at CHS 0										
17	240	320	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	49.0	100%	Increase for each additional CHS	1.05 percent of previous maximum	
16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	100%	Minimum	0.75 percent of max	
15	301	395	311	448	322	463	334	479	348	497	363	517	379	539	397	563	417	599	425	600	30.0	100%	SV minimum	0.75 maximum	
14	87	117	96	128	106	141	116	155	128	171	141	186	155	207	170	227	188	250	195	260	26.0	100%	Anchor minus next anchor divided by	7	
13	59	79	65	108	71	119	79	131	86	144	95	153	105	175	115	192	127	212	132	220	22.0	100%	Max at 0 CHS	0.45 percent of max at CHS 9+	
12	52	67	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	100%	Increase for each additional CHS	1.1 percent of previous maximum	
11	45	56	46	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	100%	Violent Minimum	0.6 percent of max	
10	39	51	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	100%	Violent range inc from prev CHS 9+ max	25 months from previous max	
9	19	25	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	100%	SV range inc from prev CHS 9+ max	40 months from previous max	
8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	100%	OSL 9 Anchor	120 maximum CHS 9+	
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	100%	Anchor minus next anchor divided by	4	
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	100%	Max at 0 CHS	0.275 percent of max at CHS 9+	
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	100%	Increase for each additional CHS	1.15 percent of previous maximum	
4	2	3	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	100%	Minimum	0.6 percent of max	
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	100%	OSL 5 Anchor	60 maximum CHS 9+	
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	100%	Anchor minus next anchor divided by	4	
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	100%	Increase for each additional CHS	1.2 percent of previous maximum	
Unr	0 - 365 days													OSL 1 Anchor	18 maximum CHS 9+										
																								Anchor minus next anchor divided by	4
																									month decrease from prior CHS 9+ max
																									CHS 9+ max
																									Max at 0 CHS
																									Increase for each additional CHS
																									Minimum
																									0.2 percent of max at CHS 9+
																									1.2 percent of previous maximum
																									0.3 percent of max

Varying Considerations of Offense Seriousness

There are currently 2 offense classification systems: OSLs and Felony Class Status. In the status quo there is quite a bit of overlap between OSLs and Felony Classes, with a large mix of felony classes in a range of OSLs, as highlighted in the graphic below.

Varying Considerations of Offense Seriousness



Current policy has made distinctions in terms of the severity of offenses and the associated punishments for Felony Classes, but when laid over onto OSLs this logic falls apart to some degree as there is significant overlap of classes in OSLs.

in the current grid, some guideline ranges exceed the statutory maximum for offenses included in the offense seriousness level. OSLs that have multiple classes of felonies can have ranges that go beyond the sentence that is legally defined as the maximum for a specific felony class, therefore making these ranges not legally valid for those offenses.

Current Grid
 Circled ranges exceed the statutory maximum for some offenses included in the offense seriousness level.
 Thus, these are not valid sentence ranges for some cases seen by the court.

	0	1	2	3	4	5	6	7	8	9+										
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																				
XVI	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548
XV	123	220	134	234	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397
XIV	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397
XIII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
XII	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
XI	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
X	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171
IX	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144
VIII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
VII	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
VI	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
V	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
IV	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68
III	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
II	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
Unr	0 - 365 days																			

These current ranges do not increase consistently across criminal history scores or with an increase in seriousness level. The current grid, under this framework, does not apply consistent increases but rather arbitrary increases in sentencing ranges across each additional increase in CHS. As highlighted in the image above, the green area of the grid represents a strict delineation between cells that are jail sentences and cells that are prison sentences, creating

significant jumps in ranges around the demarcation line. This further highlights the lack of consistency throughout the current grid, each increase in CHS or OSL for cells that are jail sentences are not significantly increasing but then rapidly increase around the demarcation line. These inconsistencies constrain judicial discretion when calculating the potential range someone may face as some ranges arbitrarily widen or narrow for each additional increase in OSL, CHS, or point past demarcation denomination.

Additionally, there are guideline minimum sentences for offenses such as Rape 1 and Assault 1 that are much higher than the current mandatory minimum sentences. Or in instances such as Sex Predator Escape 1, the minimum guideline range is far below the mandatory minimum for this offense, making the range depicted on the grid invalid.

Current Grid Summary

Complexities and Errors:

- Must know what other statutes apply (e.g., stat max) to determine if standard range is a valid sentence.
- Frequent errors reported by Caseload Forecast Council and complexities by DOC regarding CHS calculations, particularly because of multipliers
- No answer to the question, “why are the ranges the way they are?”
- Sometimes an increase in CHS will increase sentence guideline ranges, but not always.

Effectiveness of the Sentencing System:

- Limited judicial discretion to tailor sentences to the characteristics of the case
 - Narrow and inconsistent ranges
 - Strict cut offs for local and state sanctions
 - Some sentencing ranges are not valid for all offenses within an OSL
- Limited transparency in determination of sentences
 - Characteristics of criminal history operate “behind the screens” to increase sentence guideline ranges
 - Inconsistent increases in guideline ranges with CHS and OSL. Some changes in CHS matter more than others.
 - Significant changes over 40 years leading to complex exceptions in some instances for some offenses, undermining consistency.
 - Lack of overarching framework leaves limited guidance to legislature when creating new offenses or changing components of existing offenses

Public Safety:

- No present evidence of sentence length in reducing recidivism
- No present evidence of criminal history score being predictive of likelihood of recidivism. Number of prior offenses and the age of the person are the two largest predictors of risk of recidivism
- Collateral consequences from incarceration may increase recidivism
- Limited transparency and predictability for victims at sentencing, e.g., how is CHS calculated? What is an actual possible sentence?

- Limited local and rehabilitative options for judges at sentencing which may be more effective at reducing recidivism
- Evidence suggests that generalized offending patterns are more predictive of recidivism than specialized/repeat behaviors

Proposed Recommendation: The New Felony Sentencing Guidelines Grid

Core Components:

- Use of formulas to establish grid guideline ranges (5 total formulas)
- Explicit integration of other statutes that impact sentencing to align the grid with the rest of the sentencing system
- Transparency
- Balanced discretion

The proposed grid increases from 16 SLs to 18 SLs, with OSL 18 reserved for Aggravated Murder 1, OSL 14-17 are saved for Serious Violent, OSL 10-13 are for Violent offenses (meaning only Class A felonies are reserved for OSL 10-18), Class B cannot be higher than OSL 9, Class C cannot be higher than OSL 5.

The use of 5 formulas to establish grid ranges and their core components:

**Proposed Recommendation:
New Felony Sentencing Guidelines Grid**

Use of **five formulas** to establish grid ranges.

	0	1	2	3	4	5	6	7	8	9	%	
18	240	320	252	336	254	352	277	370	291	398	306	408
17	174	230	180	238	185	252	203	268	224	294	246	320
16	126	168	126	168	126	168	126	168	126	168	126	168
15	90	120	90	120	90	120	90	120	90	120	90	120
14	63	84	63	84	63	84	63	84	63	84	63	84
13	45	60	45	60	45	60	45	60	45	60	45	60
12	32	42	32	42	32	42	32	42	32	42	32	42
11	23	30	23	30	23	30	23	30	23	30	23	30
10	16	21	16	21	16	21	16	21	16	21	16	21
9	11	15	11	15	11	15	11	15	11	15	11	15
8	8	11	8	11	8	11	8	11	8	11	8	11
7	6	8	6	8	6	8	6	8	6	8	6	8
6	4	6	4	6	4	6	4	6	4	6	4	6
5	3	4	3	4	3	4	3	4	3	4	3	4
4	2	3	2	3	2	3	2	3	2	3	2	3
3	1	2	1	2	1	2	1	2	1	2	1	2
2	1	1	1	1	1	1	1	1	1	1	1	1
1	0	1	0	1	0	1	0	1	0	1	0	1

- Anchor** – this is a set value that establishes the foundation for all other range values.
- Percentage increase for each additional criminal history score** – this is a set percentage that determines how much the maximum in the range increases for each additional criminal history score point (this means there is a consistent increase in sentences as defendants move to the right across the grid).
- Percentage of the maximum used to establish the minimum** – this is a set percentage that determines the value of the minimum in a range, based on the value of the maximum in the range.

After calculating ranges, values are floored. That is, all numbers after the decimal are removed and not rounded. Thus 29.1 would become 29 and 29.9 would become 29.

*THE 5 FORMULAS:***OSL 17: Murder 1/Homicide by Abuse**

- Anchor: Criminal History Score 0 minimum of 240 months (aligned with the mandatory minimum).
- Percentage increase in maximum for each additional criminal history score point: 105%
- Percentage of the maximum used to establish the minimum: 75%

OSL 16-14: Serious Violent Offenses

- Anchor: Criminal History Score 9+ maximum for OSL 14 is 40 months higher than the maximum for Criminal History Score 9+ for OSL 13. Each additional increase in seriousness level (for 15 and 16) increases the maximum at 9+ 40 months from the previous.
- Maximum for CHS 0: 45% off the maximum at CHS 9+
- Percentage increase in maximum for each additional criminal history score point: 110%
- Percentage of the maximum used to establish the minimum: 75%

OSL 13-10: Violent Offenses

- Anchor: Criminal History Score 9+ maximum for OSL 10 is 25 months higher than the maximum for Criminal History Score 9+ for OSL 9. Each additional increase in seriousness level (for 11-13) increases the maximum at 9+ 25 months from the previous seriousness level.
- Maximum for CHS 0: 45% off the maximum at CHS 9+
- Percentage increase in maximum for each additional criminal history score point: 110%
- Percentage of the maximum used to establish the minimum: 60%

OSL 9-6: Class A/B offenses

- Anchor: Criminal History Score 9+ maximum for OSL 9 is 120 months which aligns with the statutory maximum sentence for class B felonies.
- Calculation of other maximums at CHS 9+: Each decrease in OSL decreases the maximum sentence for CHS 9+ by 15 months.
- Maximum for CHS 0: 27.5% off the maximum at CHS 9+
- Percentage increase in maximum for each additional criminal history score point: 115%
- Percentage of the maximum used to establish the minimum: 60%

OSL 5-1: Class A/B/C offenses

- Anchor: Criminal History Score 9+ maximum for OSL 5 is 60 months which aligns with the statutory maximum sentence for class C felonies.
- Calculation of other maximums at CHS 9+: Each decrease in OSL decreases the maximum sentence for CHS 9+ by 10.5 months.
- Maximum for CHS 0: 20% off the maximum at CHS 9+
- Percentage increase in maximum for each additional criminal history score point: 120%
- Percentage of the maximum used to establish the minimum: 30%
- New range values expand the SW corner; these new ranges create “straddle cells” where standard sentences may be a local sentence (<12.05) or a state sentence (>12.05).

NEW COLUMNS

Repeat Violent/Serious Violent and Repeat DV (as articulated in RCW 9.94A.525(21))

- Elimination of multipliers in criminal history score
- For qualifying individuals, the maximum of the range increases by the percentage indicated in the repeat offending column
- Value of the column is set at an addition of 10%, so if the standard range is 45-76 months, the expanded range would be 45-83 months. ((76 * 0.10) +76= 7 + 76= 83))
- This is not an aggravated/exceptional sentence
- A separate grid with the expanded maximums could be printed in statute to avoid the need for manual calculation.

Aggravated Departure Cap

- Establishes an advisory cap for aggravated departures above the maximum
- Not mandatory, but could specify that sentences above the cap are presumptively unreasonable
- All aggravated sentences are still appealable
- Amount of advisory cap is calculated to be set at 10% of the maximum sentence of the OSL at CHS 9+
- The advisory aspect shapes the discussion around the departure range bringing a more consistent application.

Change in Ranges

The below grid depicts the magnitude of changes in the minimums and maximums of ranges from the current grid to the proposed grid. The values represent the number of months that ranges will either increase or decrease when transitioning from the current status quo towards the proposed grid. Cells highlighted in yellow represent decreases, while cells highlighted blue represent increases.

Appendix B.

		Magnitude of Changes in Min and Max - Proposed New Grid vs. Current Grid																			Agg Departure Cap (adv. greater than is presumptively unreasonable)	Repeat SV/Violent or Repeat DV 9.94A.525(21)																																																																																
		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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	0	0	2	3	4	6	7	9	11	15	15	20	10	13	0	0	-15	-20	-39	-52	49	10%																																																																															
17		-8	-67	-8	-66	-5	-59	-1	-50	3	-41	10	-29	8	-24	8	-18	-11	-29	-43	-57	34	10%																																																																															
16		-139	-185	-139	-185	-138	-184	-136	-181	-133	-176	-128	-171	-133	-177	-141	-187	-153	-204	-186	-248	30	10%																																																																															
15 (malicious explosion 1)		-22	-85	-23	-86	-21	-81	-19	-74	-17	-67	-12	-58	-16	-56	-19	-53	-40	-68	-73	-97	30	10%																																																																															
15 (trafficking 1)		-35	-47	-37	-49	-38	-50	-37	-49	-37	-48	-34	-45	-40	-53	-45	-60	-69	-91	-103	-137	26	10%																																																																															
14		-34	-24	-37	-27	-39	-27	-41	-28	-42	-26	-42	-25	-57	-41	-62	-43	-82	-65	-108	-98	22	10%																																																																															
13		-25	-14	-28	-17	-31	-19	-32	-19	-34	-19	-35	-17	-53	-39	-56	-40	-72	-57	-93	-85	19	10%																																																																															
12		-5	9	-7	9	-6	11	-6	13	-5	16	-3	21	-17	6	-19	5	-31	-7	-47	-28	17	10%																																																																															
11		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14	10%																																																																															
10		-73	-90	-79	-98	-85	-103	-90	-110	-94	-113	-98	-118	-116	-140	-125	-148	-148	-176	-168	-198	12	10%																																																																															
9 (Malicious placement imitation device 1)		-31	-35	-34	-37	-36	-38	-37	-39	-37	-38	-37	-36	-52	-54	-55	-56	-68	-70	-77	-78	12	10%																																																																															
9 (Criminal mistreatment 1; malicious explosion 3)		-11	-8	-13	-10	-15	-10	-16	-11	-16	-10	-17	-9	-31	-26	-34	-28	-47	-43	-57	-51	12	10%																																																																															
8		-4	2	-6	-1	-8	-3	-10	-4	-11	-3	-11	-3	-27	-22	-31	-25	-34	-28	-45	-39	10	10%																																																																															
7		0	5	-4	1	-6	-1	-8	-3	-10	-5	-11	-4	-23	-18	-27	-23	-32	-26	-33	-26	9	10%																																																																															
6		0	7	-1	4	-5	0	-7	-3	-9	-5	-11	-7	-17	-13	-24	-20	-29	-26	-32	-27	7	10%																																																																															
5		-2	0	-8	0	-8	0	-9	1	-15	-4	-24	-13	-30	-18	-38	-25	-47	-30	-54	-36	6	10%																																																																															
4		0	1	-2	0	-8	0	-8	0	-9	1	-15	-4	-24	-13	-32	-22	-40	-27	-48	-35	4	10%																																																																															
3		1.3	5	0	1	-1	-1	-5	1	-7	0	-11	-3	-15	-6	-25	-15	-33	-23	-39	-29	3	10%																																																																															
2		0.9	0	0	0	-1	-2	-1	-3	-9	-4	-10	-6	-13	-7	-17	-11	-27	-22	-34	-29	2	10%																																																																															
1		0.6	0	1	0	-1	0	0	0	-1	-1	-1	-3	-9	-4	-10	-6	-13	-7	-17	-11	1	10%																																																																															
Unr		0 - 365 days																																																																																																				

Legend

Blue: Increase on new grid

Yellow: Decrease on new grid

While there seems to be significant reductions in sentence length this is not an accurate reflection of what is happening. Some ranges have had no convictions in several years or more, such as Malicious Explosion 1. Since some ranges in the current grid go beyond the statutory

maximum these must be reduced to become legally valid ranges. Also, under the current grid, judges on average sentence at 30% of the presented range. Consequently, any reductions in the maximum end of the range may overestimate the reduction in actual sentences.

This proposed grid also assumes that offenses stay where they are at in the current grid, however as both the Grid Subgroup and Task Force has discussed, the Legislature will likely need to recalibrate or reclassify offenses. This could potentially result in offenses having overlapping ranges in the proposed grid that they once had in the current grid.

WSIPP reports indicate that most sentences happen down in the SW corner of the grid and the changes we see here are less than a year in the minimum and maximum, where the reductions in ranges are larger is where there are less significant number of sentences given out here.

Thus, all these reductions are not necessarily “real” as there needs to be nuance added to the discussion surrounding the changing ranges in the new proposed grid.

How the Proposed Grid Meets The 3 Policy Areas:

Complexities and Errors

- Must know what other statues apply (i.e., stat max) to determine if standard range is valid sentence
 - *Aligns sentences with all other statues (i.e., stat max)*
- Frequent errors reported by CFC and complexities reported by DOC regarding CHS calculation particularly because of multipliers
 - *Eliminates multipliers while still holding individuals accountable for repetitive offending behavior*
- No answer to the question: “why are ranges the way they are?”
 - *Formula makes it clear exactly why ranges are the way they are*
- Sometimes an increase in CHS will increase sentence but not always
 - Consistent increases in sentences with an increase in CHS

Effectiveness of the Sentencing System:

- Limited judicial discretion to tailor sentences to the characteristics of the case
 - Narrow and inconsistent range
 - *Wider and consistent ranges*
 - Strict cut offs for local and state sanctions
 - *No strict cutoff for local and state sanctions*
 - Some sentencing ranges that aren’t even applicable
 - *All ranges are valid sentencing ranges*
- Limited transparency in determination of sentence
 - Characteristics of criminal history operate “behind the scenes” to aggravate sentences
 - *Increased transparency with expanded ranges rather than hidden moves in CHS*

- Inconsistent increases in sentences with CHS and OSL increases. Some changes in CHS matter more than others.
 - Consistent increases in sentences with increases in CHS and OSL
- Significant changes over 40 years leading to complex exceptions in some instances for some offenses, undermining consistency
 - Lack of an overarching framework leaves limited guidance to the legislature when creating new crimes or changing components of existing crimes.
 - *Framework with clear boundaries and guidance for Legislature*

Public Safety:

- No present evidence of sentence length in reducing recidivism
 - *Formulas widen the range without having huge reductions in the maximum*
- No present evidence of criminal history score being predictive likelihood of recidivism
 - *Change in calculation of CHS may increase predictiveness of CHS*
- Collateral consequences from incarceration may increase recidivism
 - *Increased options to local sanctions to reduce disruptions caused by incarceration in state prison while still holding people accountable*
- Limited transparency and predictability for victims at sentencing (how is CHS calculated? What is the actual possible sentence?)
 - *Clear transparency for all parties, including victims, at sentencing*
- Limited local and rehabilitative options for judges at sentencing which may be more effective at reducing recidivism
 - *Increased options for local sanctions and increased judicial discretion by widening ranges*
- Evidence suggests that generalized offending patterns are more predictive of recidivism than specialized/repeat behaviors
 - *Reduces overemphasis of specialization/repeat offending while still allowing for an increase in accountability in those cases*

Task Force Discussion on the Proposed New Felony Guidelines Grid:

- The framework on these columns state that, although advisory, departing past this line is presumptively unreasonable and thus puts the burden on the prosecutors to explain why this departure greater than the advised length is reasonable.
- This work is incredibly logical and builds in such transparency into the grid, so congratulations to the team on this. Are the guidelines in PA advisory like this or mandatory?
 - They too are advisory.
- This proposal adds in more transparency in a way that should be already present to allow for review that any departure from the standard range is reasonable.
- Currently, there is significant disproportionality in the way in which aggravators are applied so this recommendation can, to some extent, limit the discretion that has led to great disproportionality.
- What if there are multiple aggravators? Will these multiple aggravators be repeatedly added on from the column or applied once?

- No, these numbers will only apply to increase the maximum once and while these numbers are the departure cap, the maximum cap was designed to encompass multiple aggravators
- A member expressed concern that this new grid does not capture the distinction between crimes against persons versus crimes against property and asked if this should be reflected in the proposed grid.
 - Currently, there are inconsistencies in “crimes against persons” vs “violent crime” designations. These inconsistencies in this designation did not make enough sense for its inclusion into the proposed grid’s structure or formula. For example, intimidating a juror is a violent crime against a person but intimidating a judge is not considered a crime against a person. As one begins to create consistencies and connect the necessary other pieces of offense classification, this will inevitably bring more questions to light that need to be addressed first. One such question when dealing in offense classification could be when SV/V offenses have designations that are associated with a higher punishment severity, currently this is not the case as CAP (crimes against persons) offenses are not always associated with a higher severity of punishment like SV/V offenses are.
- appreciate all the hard work it took to create this new proposed grid and they are thankful to the Grid Group. It is important to look at this proposed grid from the perspective of someone from outside the Criminal Justice system—this is a more understandable, predictable, and consistent grid such that they feel they can defend this to their constituency. This is a huge step forward.
- Agree that the structure of this grid makes sense and provides much needed logic and consistency. However, have some concerns, especially when it comes down to offense reclassification and reduced guideline ranges in the SW corner. Proposed grid increases ranges that would be jail sentences-- there must be a recognition of the funding to these programs that will be needed to do so. Their constituency will have problems with the offense reclassification, specifically the significant decreases in ranges seen in certain OSLs and the reclassification of offenses to new OSLs will prevent their group from supporting this proposal. In reference to the new columns, especially the aggravator column, sentence ranges decrease significantly due to the elimination of the multipliers and their scoring exceptions. This greatly diminishes the sentence ranges for repeat offenses such as, Burglary and Theft of a Motor Vehicle. The general concept of offense recalibration is something they cannot support—their constituency would need to dive further into offense recalibration. They feel that the Task Force is not all in agreement as to what this ultimately means.
- Recalibration is more of a renovation project than restructuring. Tough with the significant decreases in sentences across.
- The repeat column as currently is (not a as an idea) would decrease sentencing ranges significantly. Two priors on Theft of a Vehicle is currently 17-20 months, on this new grid it would be 2 – 9 months. Burglary 1 with three priors currently is 31-41 months, now would be 14-24 months due to the range of 14-17 months with 10% repeat with the columns. This is a significant reduction. Child molest 3 with two prior SV is currently 46-

61 months, under the proposed grid this is 5-17 months. It is not recalibration, but a remodel of those grids. Not sure if my constituency could do that.

- Thinks recalibration is needed to get to consensus. This shows a grid but not the changes. Each OSL would have crimes that need to be changed. Want to be at consensus with recalibration. Would need to revisit the decreases, as they feel these are too significant. For example, child molestation increases the max for several CHS, the minimum does decrease. It is hard to frame this discussion since there is emotional weight for responses when discussing these offenses. For Child Molestation 1, the punishment increases for all but CHS 8 and 9.
- Encourage Task Force not to operate under the assumption that the current grid is accurate/effective. The numbers on the current grid are also entirely arbitrary. When talking about decreases in sentence ranges—reminder status quo sentence ranges are arbitrary. Express concern about wanting to stick with what is familiar over change.
- Another member said that they like the framework and structure of the grid, but they are concerned about the drastic reductions in the sentencing ranges. There are not enough areas where sentencing ranges increase at all, the handout (See [Appendix B Attachment 1](#)) that shows the ranges whether they increase or decrease, see too many areas that decrease. The reduction in the ranges is something they cannot support, especially when working with crime survivors/victims.

The facilitation team reminded the group that when talking about certain crimes there are heavy emotional responses that are associated with this—group has talked about how those specific examples cannot dictate our policy decisions. When these discussions leave what is the appropriate framework of a sentencing system and move towards specific offenses then the Task Force leaves a productive conversation to have a conversation that does not address the original underlying problems in the current grid, and how they can address these with this new proposed grid. Focusing on specific offenses will not allow for the Task Force to be able to come up with a new grid. Is there a framework, structure, or approach that can meet the Task Force's 3 policy goals?

Continued Member/Alternate Discussion:

- A Task Force member asked, what is meant by structure?
 - Facilitation team: Using a sports metaphor, the structure the field or the court that will be used for the game; then the rules determine how players will engage on the field. The structure of the guidelines grid: A formulaic approach that has anchor points that organizes the grid in a delineated and consistently logical format. Subsequent recommendations will address movement across the grid.
- A member stated that they support this proposed grid and feel they can get a good number of their colleagues on board with them to support this grid. However, they asked if there must be a mathematical connection in the rows? Their colleagues will look at (Attachment 1) Appendix B and think this will be a hard no. The formula does not work how it did on the first all-day grid group meeting and they would need to amend this to prevent such dramatic decreases in sentencing ranges.

- The facilitation team pointed out that as the formula currently exists is how it was decided upon at the July 12th all-day work session.
- Many of the ranges that are being reduced, are ranges that are currently not meeting our 3 policy goals. Longer sentences do not necessarily advance public safety; it seems that the structure is what they all agree on. However, in discussing reclassification—believe that Class A felonies that exist in OSLs 1-5 with Class Cs are meant to be not as serious as other Class As. So, these Class As and Bs that exist in lower OSLs with Class C offenses should be reclassified as Class C. There needs to be serious reclassification of offenses to capture this.
- A member mentioned the U.S. rates of incarceration and recidivism as the highest in the world, so our Task Force needs to compare the current system to international models that do criminal justice well and study how Washington can model after this. Encourage group to consider international models of criminal justice.
- The current grid has broader and more inconsistent sentencing guideline ranges, while this new grid is based on formulaic logic. So, if there is an offense that the group feels do not fit in that range, they can move them if they wish but do so formulaically. However, this member wants the group to keep in mind that punishments associated with specific offenses are moral values and this is not something the Task Force alone can reflect but this strong foundational framework approach is what the group is here to capture today.
- Appendix C on Attachment 1 shows overlapping sentences between the current grid and this newly proposed grid. There are significant reductions in ranges but both grids still overlap in a huge portion of the grid, these reductions are not entirely removing overlap or decreasing ranges as much as everyone seems to think.
- Express concern that if the Task Force starts focusing on every offense this will stall their efforts to develop policy recommendations. They feel that focusing on specific offense reclassification matters and if they show Appendix B of Attachment 1 to their colleagues, they will be strongly against this. Having a grid with a formula makes sense and provides reductions in complexities and errors in our sentencing system.

Amanda asked what criteria is needed to determine appropriate sentencing ranges for offenses?

Continued Member/Alternate Discussion:

- offense classification—including Felony Class and/or OSLs for a specific offense
- Is the Task Force was trying to reclassify offenses to certain rows that provide the least amount of reduction in punishments to be closest to the status quo? These conversations the Task Force wants to have been not discussing what is a Class A vs Class B or the foundations of a Class A versus an offense at OSL 5, but what reclassification can provide the least reduction.
- Some of the current classifications are appropriate if this new grid provides such large decreases in sentencing ranges, especially when trying to delineate between the hierarchy of severity in this new grid.

- The facilitation team reminded the Task Force that on the 26th the Grid group tried to do so, and they could not coalesce around any changes in offense reclassification and were not able to arrive at an agreed upon recommendation from this conversation. Current potential options would entail moving lower-level Class As and Bs to higher OSLs or reclassify those lower As and Bs to become Class Cs.
- On average for the last 10 years sentences are being given at 30% of the range. Decreasing ranges in the proposed grid gets ranges closer to where judges are currently sentencing—increasing ranges does not align with current practices and consequently forces judges to sentence outside what they have been for the last 10 years, removing judicial discretion which is something the Task Force has identified as crucial to protect.
- Concern that research team is defending the grid rather than using evidence to find common ground.
- Encouraged members to share data/research.
- If the expectation is that this new grid becomes a bill, a member said they cannot support this bill and will not try to tie their constituency to support this. They need to see how this new grid interacts with specific offense classification before they can lend their support to moving this towards legislation.
- Sentencing ranges are guidelines. Shifting the ranges-- either increasing or decreasing-- contradicts current guidance by the Legislature regarding sentencing. Concern that shifting the midpoint of ranges will shift where judges will sentence within that range.
- Express interest in getting more information about justification to keeping the status quo other than “this is how things have always been done”. The money the state could save from reducing incarceration can be allocated towards upstream factors to be truly transformative.
- Interest in information about how the current grid meets the three policy goals of the Task Force.
- acknowledge that there is some frustration and tension in the room due to the time crunch and upcoming consensus-seeking. What is just and what is right varies greatly across everyone in the room as everyone’s life circumstances and experience inform their moral values. Appreciates the diverse perspectives and wants to put time in before September 1st to deep dive into the offense reclassification.
- Developing recommendations around reinvestments in programs and mentor/coaching approaches to community supervision seem like paths to reaching consensus on the grid, as well as increasing public safety. The system, especially at the county level, needs more funding desperately.
- Also support and would need a commitment that any money saved from reducing incarceration will be put forward to both preventive and rehabilitative programs/investments. As their constituency would be far more likely to support any recommendation if this is the case.
- Described experience touring transitional facilities from prison to the community. This grid will be difficult to sell to my colleagues if there are large reductions without any funding for reentry services both in prison and after release.

- Confinement only goes so far, community-based resources and other upstream factors and investments is something we can all coalesce around that can provide serious change.

PUBLIC ATTENDEES:

Alex Mayo, David Treweiler, Joe McKittrick, Bruce Glant, Joanne Smieja, Chris Johnson, Jack Bridgewater, Michael Althaus, Matt Tremble

PUBLIC QUESTIONS AND COMMENTS:

Below are summaries of comments and questions shared by public attendees and any responses from Task Force members and alternates. Full questions/comments and responses can be viewed by following this link to TVW which [starts at 5:18:06](#) of the meeting recording.

David Treweiler: First I wanted to point out what people have called a discrepancy between Class A, B, and C and OSLs. The OSL scoring system is intended to deal with average offenses of a specified crime, while the Class system is designed to deal with the most extreme cases of that crime. So, there aren't really any inconsistencies in having a mix of Felony Classes in varying OSLs. My other point is making the grid simple to understand for non-legal professional people has never been the problem with the grid. People in the Grid Group have said the current grid is simple and not hard to understand. Trying to address this is not the main problem, it is not close to the main problem in our sentencing system at all. The main problem is the tremendous increase in incarceration rates and sentencing lengths for no valid purpose, and almost certainly for racial hostile reasons. It has been pointed out many times today that there is no valid reason for these lengthy sentences as they have not increased the effectiveness of the system nor public safety. What is concerning and disappointing, having watched all the meetings, is that the prosecutors and some police have adamantly refused to acknowledge the problems of the grid and the racial disproportionality. These constituencies refuse any reductions in sentencing ranges for serious offenses for no valid reasons other than they do not believe it is appropriate. Lower the sentence ranges acknowledges the failure of mass incarceration and its failure to reduce recidivism or increase public safety. Adamant and continued refusal for reductions makes me believe that there will not be any substantial changes to Washington's sentencing system and is a great disappointment to the people who are not Task Force members. My solution is to lower all sentences.

Jim Chambers: A member earlier suggested amending the process for risk assessments that DOC does to determine if someone is fit for release. The correctional counselors who do risk assessments for release who were formerly COs, leading these assessments to not be done accurately at times. I, myself, took me six months to get mine amended as the counselor who did mine lied on the forms. This also ruined my chances of being released and took me to wait 90 days to file a motion to get the form back, while filing for clemency, because he lied and refused to fix it. This happens all the time to people, people who are actively engaged that allow for personal problems or biases to influence how they fill out these risk assessments. Those assessments should not be done in the dark and should be done by an independent third

party. Another point, when a member earlier said judges will sentence people to lower sentences if the grid is changed, well most sentences are agreed recommendations coming from prosecutors. Judges always follow these agreed recommendations. It is not accurate to say that if any ranges change judges will not start lowering sentences, as prosecutors still charge what they want, and judges then follow their recommended sentences. Additionally, on another point made earlier about the costs of incarceration, what about the costs of incarceration that has on communities and families. This is an important factor to consider, and those entrenched in the system that rely on its functioning have an interest in preventing change. Finally, no one is talking about the racial bias that is built into these amendments. If we build a new grid that includes the same amendments that the old grid, we will see the same problems arise. To fix this we need to expand judicial discretion. We are talking about all the programs DOC needs; I was never put in drug treatment in prison. I had to rehabilitate myself and get myself healed. If someone comes to prison with a drug problem, they should receive treatment on day 1 in prison. We have a serious drug problem in Washington prisons. There needs to be a serious investment in programs. There are a lot of people incarcerated who, if given the tools to get help could return to the community as a successful member. Treatment does not work for everyone the first time; it takes a while to heal. If we are going to rely on DOC, they need to give people the opportunity to get better.

Kehaulani: If we are trying to work off the data of the grid, I have a hard time when the Caseload Forecast Council uses the data they use. I look at the DOC as a business. I'm trying to understand the complexities of this Task Force. The three policy goals of the Task Force stand out to me, particularly the first one on errors. If there is not a checkpoint or an audit from the moment someone is arrested through the point at which they are sentenced, then I do not feel comprehensive changes are possible. I am the wife of an incarcerated individual in Washington and him being incarcerated does no justice. He is ready to come home and back to the community, it is a waste of taxpayer money. He just sits in there and then works; this keeps the facility running. If we want to save money for Washington and build better communities, why don't we take the funds and send them towards programming for individuals. Make an amendment on 5121 to allow for individuals to be released home with ankle monitors. I'm just trying to understand how someone on this Task Force will ask their constituents how they feel about a new proposed grid when the injustices are not being addressed.

Joanne Smeija: The proposed grid is so much more logical and rational than the status quo. This presents much more opportunity to create transparency in the system. I applaud the effort it took to get here. However, determining the maximum sentence for a Class B for OSL 6-9 the percentage here was between OSL 10-13 and OSL 1-5. Then when determining the minimum to calculate for OSL 6-9 the percentage was not between OSLs 10-13 and OSLs 1-5.

Comments and Questions submitted via Zoom chat

Bruce Glant: 95% or so of molestation is done by family and friends get a SSOSA max of 12 months, except for those deceived in sex stings with no probable cause or prior history and are getting an average of 81 to 120 months.

I will put into the chat that I agree with David, we need to lower sentences. I have a very hard time knowing what I know about how the net nanny stings were operated by not following procedures and rules, and many of those arrested with no probable cause or predisposition and end up with a SL 12 class A violent crime. 75% approx. plea because of the threat of a long sentence. I also want to state I agree with Nick Straley and Judge Galvan.

I also wanted to know where individuals that were SL 12 roc 1 from these stings are in on the new grid.

Kehaulani: Why is the task force not on that link (<https://www.atg.wa.gov/task-forces>) as active?

RECAP, ACTION ITEMS, & CLOSING REFLECTIONS:

Action Item: Amanda to find research shared on geographic disparities on DOSA sentencing and if these disparities allow for people to receive more DOSA sentences beyond the statutory cap.

Looking Forward: Amanda reviewed the upcoming working subgroup meetings and invited all members and alternates to join.

APPENDIX A: CSTF MEMBERS/ALTERNATES ATTENDANCE, AUGUST 4, 2022

CSTF Members & Designated Alternates	Affiliation/Perspective Represented	Attendance
Jon Tunheim, Co-Chair	Washington Association of Prosecuting Attorneys	✓
Russell Brown (alternate)		✓
Rep. Roger Goodman, Co-Chair	Washington State House of Representatives	✓
Sen. Chris Gildon	Washington State Senate	
Sen. Manka Dhingra	Washington State Senate	✓
Rep. Carolyn Eslick	Washington State House of Representatives	✓
Sonja Hallum	Washington State Office of the Governor	✓
Carmen Pacheco Jones (Francis Adewale)	Statewide Reentry Council	✓
Elaine Deschamps (Clela Steelhammer)	Washington State Caseload Forecast Council	✓
Julie Martin, Chief of Staff (Mac Pevey)	Washington State Department of Corrections	✓
Judge Wesley Saint Clair (Keri-Anne Jetzer)	Washington State Sentencing Guidelines Commission	✓
Melody Simle (Suzanne Cook)	Statewide Family Council	✓
Judge Josephine Wiggs	Superior Court Judges' Association	✓
Gregory Link (Kim Gordon)	Washington Association of Criminal Defense Attorneys; Washington Defender Association	
Chief Gregory Cobb (Chief Brian Smith)	Washington Association of Sheriffs and Police Chiefs	✓
Councilmember Derek Young	Washington State Association of Counties	✓
Judge Veronica Galván (Frank Thomas)	Washington State Minority and Justice Commission	✓

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Chief James Schrimpsheer	Fraternal Order of Police, Labor Organization Representing Active Law Enforcement Officers in Washington State	✓
Blaze Vincent (Nick Straley)	Seattle Clemency Project, Representing Interests of Incarcerated Persons	✓
Waldo Waldron-Ramsey (Ginny Parham)	Washington Community Action Network, Representing Interests of Incarcerated Persons	✓
Tiffany Attrill (Kameon Quillen)	King County, Representing Interests of Crime Victims	✓
Riddhi Mukhopadhyay	Sexual Violence Law Center, Representing Interests of Crime Victims	✓
