

Washington State Criminal Sentencing Task Force Meeting

October 6, 2022

10:00am-4:00pm

Hybrid Meeting: In-Person and Via ZOOM

Agenda

Agenda

- Task Force Introductions and Workplan Updates
- Complete Consensus Deliberation on Proposed Felony Sentencing Grid
- Review, Discuss, and Provide Input on the Next Set of **Proposed Recommendations**:
 - Foundational
 - Legal Procedures & Other Sentencing Laws
 - Criminal History Score
 - Continuing Work

Agenda

9:30am
**Coffee and Informal
Conversation**

10:00am
**Welcome and Agenda
Review**

10:10am
Introductions & Updates

10:30am
**Complete Consensus
Deliberations on Proposed
Felony Sentencing Grid**

12:00pm
LUNCH BREAK

12:30pm
**Proposed
Recommendations Review**

1:50pm
BREAK

2:00pm
**Cont. Proposed
Recommendations Review**

3:45pm
Public Comment

4:00pm
Adjourn

Virtual Meeting Groundrules

Mute your audio: Whether you've joined by phone or video, please mute your audio until just before it's your turn to speak. That helps improve the sound quality for everyone.

Camera On (if doable): Strongly encourage cameras on so everyone can see who is present and participating. Personal presence is important for collaborative group meetings, and even more critical for these virtual meetings.

Zoom Chat Reminder: We have disabled the private chat function to adhere to your groundrule of no side conversations.

*****If you want to chat to the facilitators or pass along info to the Task Force, please send a chat message to Molly Stenovec.**

Hybrid Meeting Groundrules

In-Person Room

Avoid Side Conversations: avoid cross-talks and side conversations as they can be audibly distracting and confusing to your remote colleagues.

Speak Clearly: There are mics around the room but to ensure those in the Zoom room can hear, please speak up.

Mute Electronic Devices

Reminder, you are on camera and this meeting is being recorded.

10:10 -
10:20am

Introductions & Updates

- **Members and Alternates:** Please state name, affiliation, and constituency you represent.

Task Force Groundrules

Criminal Sentencing Task Force Groundrules

- **Be Respectful**

- One person speaks at a time; listen when others are speaking, avoid interrupting and side conversations.
- Keep comments brief so everyone gets a chance to share their thoughts. Avoid dominating the discussion.
- Hear and respect all opinions.
- Silence cell phones and refrain from using laptops during the meeting, except to take notes.

- **Be Constructive**

- **Acknowledge that all participants bring with them legitimate purposes, goals, concerns, and interests**, whether or not you are in agreement with them.
- Openly explore issues.
- Act in “good faith,” seeking to resolve conflicts and identify solutions.
- **State concerns and interests clearly**, listen carefully to and assume the best in others. Leave negative assumptions and attitudes at the door.
- **Share comments that are solution focused**, rather than repeating past discussions.
- It’s OK to disagree, it is not OK to make personal attacks.
- Minimize the use of jargon and acronyms, define and explain when used.
- Work towards consensus. Be willing to compromise.
- Ask for clarification when uncertain of what another person is saying. Ask questions rather than make assumptions.

- **Be Productive**

- Begin and end meetings on time.
- Respect time constraints.
- Adhere to the agenda as much as possible, focusing on the subject at hand.

CSTF 3 Policy Goals:

In 2019, the Legislature established the Washington State Criminal Sentencing Task Force (Task Force) to review state sentencing laws, including a consideration of the Sentencing Guidelines Commission's (SGC) 2019 report, and develop recommendations for the purpose of:

- a) Reducing sentencing implementation complexities and errors;
- b) Improving the effectiveness of the sentencing system; and
- c) Promoting and improving public safety.

10:20 -
10:30am

Updates

- **Updates from Co-Chairs**
- **Updates from Facilitation Team –
Workplan Updates**

Work Plan for Remainder of 2022

- **October 6th:** Complete Consensus Deliberation on the New Grid Proposal & Present Remaining Sentencing System Proposed Recommendations
- **October 20th:** Present Proposed Recommendations:
Sentencing Alternatives, CISRS, and Reentry Programming.
Dialogue on Retroactivity

Work Plan for Remainder of 2022

Consensus Deliberations

- **November 3rd:** Consensus Deliberations on all proposed recommendations
- **November 17th:** Consensus Deliberations on all recommendations
- **December 8th:** Draft Final Report – last review and opportunity to address any unresolved issues

Dec 14th: Joint Legislative Committee Meeting

Joint House Public Safety and Senate Law and Justice Meeting – December 14th

- Joint meeting of the Senate Law and Justice and House Public Safety Committees from 10:00 a.m. to 1:00 p.m., at the Capitol Campus, in Olympia, WA
- **Purpose:** receiving a report from the WA State Criminal Sentencing Task Force

10:30am-
12:00pm

Complete Consensus Deliberations on Proposed Felony Sentencing Grid

Task Force Operating Procedures

Consensus Decision-Making

- Consensus can be achieved at any full Task Force meeting where at least 12 of 20 members (or their designated alternates) are present.
- The Task Force will have the option to ask the Facilitation Team to communicate afterward with members not present for a decision, to explain key points of Task Force deliberations and confirm whether those members can go along with the decision.
- If not, the co-chairs may decide whether the full Task Force should reconsider the decision at a subsequent meeting.

Task Force's Operating Procedures

The Task Force operates under the following definition of consensus:

Consensus means that each Task Force member can say:

- (1) I was a respected member of the group that considered the decision;
- (2) my ideas (opinions, knowledge, concerns, beliefs, hopes) were listened to;
- (3) I listened to the ideas (opinions, knowledge, concerns, beliefs, hopes) of others; and
- (4) I can support the decision of the group, even though I might have made a different decision had I acted alone.

Task Force's Operating Procedures

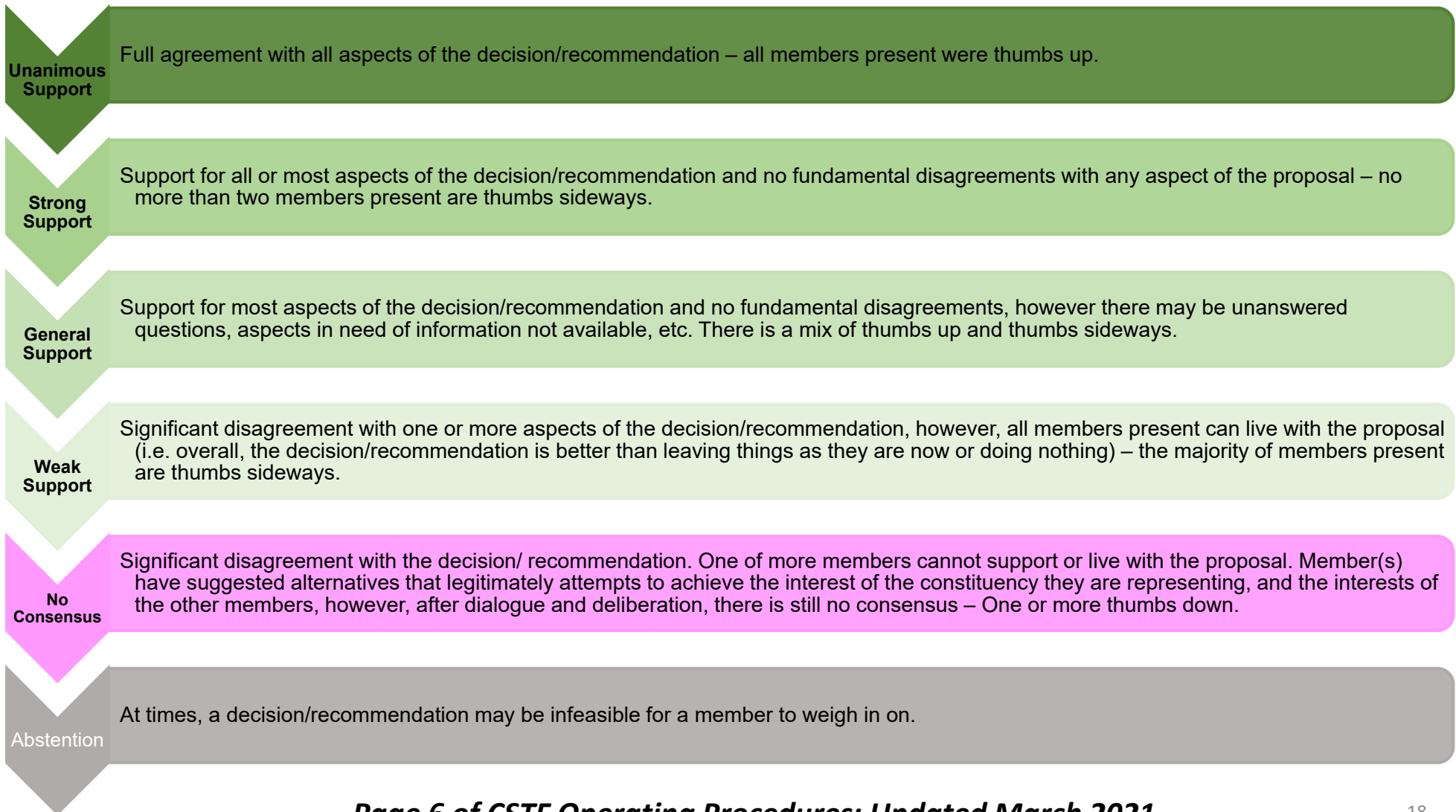
Consensus can be conveyed via:

- A thumbs up (I fully support this option),
- A thumbs sideways (I can live with this option for the good of the group and the process) or
- A thumbs down (I cannot live with this option).

Task Force's Operating Procedures

If anyone is thumbs down, that member is expected to provide a proposal that legitimately attempts to achieve the interest of the constituency they represent and the interests of the other task force members.

All members will seek solutions that allow those thumbs to move up or sideways.



The goal is for all members to be in unanimous, strong, or general support.

In the situation of weak support, members may submit in writing to the facilitation team and the co-chairs for inclusion in the 2002 report, the reasoning behind their constituency being able to “live with” the decision and alternative options or language that would have addressed their constituencies concerns.

In situations when there is no consensus, members not in support will submit in writing to the facilitation team and the co-chairs the reasoning behind their constituency being unable to “live with” the decision and alternative options or language that would have addressed their constituencies’ concerns.

Page 6 of CSTF Operating Procedures: Updated March 2021

Proposed Recommendation: New WA Felony Sentencing Guidelines Grid

	0		1		2		3		4		5		6		7		8		9+		Agg Departure Cap	Repeat SV/Violent or Repeat DV
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																					
17	240	320	249	332	259	346	269	359	280	374	291	389	303	404	315	421	328	437	341	455	49.0	10%
16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	10%
15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%
14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	10%
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	10%
8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	10%
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	10%
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%
Unr	0 - 365 days																					



LUNCH

12:30 –
3:30pm

Proposed Recommendations:

Sentencing System

*(non grid specific proposed
recommendations)*

Background and Explanation

- In 2018, CSG Justice Center assisted SGC in its review of the Sentencing Reform Act and as part of this assistance identified key components of effective community supervision based on current literature.
- 2020 CSTF Consensus Recommendation #18 to develop and implement a formal motivational and coaching focused supervision model.
- In 2021, the Legislature provided funding to expand reentry supports and transition services for incarcerated individuals including development and implementation of a coaching model approach to supervision.
- The Legislature tasked the Department of Corrections to develop an implementation plan for a community supervision coaching model to begin in fiscal year 2023.
- Individualized Community Oriented Accountability Collaborative Help (iCoach) will be the delivery of supervision, programming, and services for individuals under DOC's supervision and includes a requirement of the CCO to coach supervised individuals throughout the course of supervision.

Proposed 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, resources, and mentoring 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 comparable model of community reentry practices.

- Formerly Potential Recommendation #1: Was presented to the Task Force for input at the 8.5.21 and 11.4.21 meeting

Addresses CSTF Policy Goals:

- Frontloads programs, resources, and services to support reentry into the community:
 - For the first 90 days of supervision in the community for individuals releasing from a prison or reentry center, and;
 - For 30 days after release from a violator facility for individuals who have served a confinement sanction for high-level violations.
- Provides evidence-based approach that includes frequent contacts and increased drug/alcohol testing (as applicable), as well as advocacy and assistance in accessing services, to support the individual's success in the community.
- Tailors supervision and support functions to the supervised individual's needs upon release.
- Provides supervised individuals with coaching, advocacy and assistance in accessing services, to support their success in the community. This requires CCOs to be trained in the use of coaching being responsive to the individual's needs, the delivery of services and advocating for the supervised individual.

Proposed Recommendations on Washouts

The Task Force's Grid Subgroup spent several months discussing the following:

- Are the current washout periods appropriate for the different classes? (based on current research and data)
- Should Class A offenses ever be eligible for washout? (based on current research and data)
- When does the washout period start? What about technical violations or DOSA revoke?
- Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction?
- Should misdemeanors trigger reset of “crime-free” period for felony offenses?
- Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule?

Background and Explanation

WASHOUTS RULES

Washout is a period of crime-free behavior while in the community that changes the inclusion of prior convictions in the criminal history score calculation.

This does not equate to a vacated offense.

Background and Explanation

Washout Rules

Never Washout:

- Class A prior felony convictions
- Prior Sex felony convictions
- Non-felony & felony DUI and Physical Control of a Vehicle (PCV) serious traffic offenses ***if the current offense*** is Felony DUI/PCV

10 year Washout:

- Class B prior felony convictions, other than:
 - Sex offenses
 - Felony DUI/PCV
- Prior convictions for a repetitive domestic violence offense (GM/Misd)

5 year Washout:

- Class C prior felony convictions other than sex offenses
- Serious traffic offenses (GM/Misd), other than DUI/PCV when current offense is felony DUI/PCV

Background and Explanation

Washout Rules

Other Related Washout Policies in Status Quo:

- Any confinement interrupts the crime free period, including confinement in local jails.
- Gross Misdemeanor/Misdemeanor convictions interrupt period of crime free period.
- Confinement pursuant to Department of Corrections sanctions for violations of Community Custody interrupt crime free period.
- Counting crime free period starts at release from confinement, release from full-time residential treatment, or entry of J&S form.

Potential → **Proposed Recommendation**

- Formerly Potential Recommendation #34, was presented to the Task Force for input at the July 7, 2022, Meeting:
- Confusion and comments about needing clarity about what constituted technical violations, about whether under current law, any violation that occurs while that person is in community custody will reset the washout period, and on whether revocation of a sentence should or should not reset the washout period.

Proposed Recommendation 14

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 community custody violation will not reset the washout period.

Addresses CSTF Policy Goals:

- This recommendation would allow for the start period of washouts, for all classes of felonies, to begin upon the release from confinement for the original sentence, not the conviction of said offense or a revocation to incarceration under “violator status”.
- This would allow for those serving their original sentence in community custody in programs, such as rDOSa, to not have their washout periods reset if they are returned to confinement for violations.
- Further, the washout periods will reset only upon the conviction of either a new felony conviction or new gross misdemeanor conviction. Convictions for misdemeanors will require 3 convictions before resetting an individual’s washout period, this is done to reflect evidence concerning the process of desistance from criminogenic behavior.

Felony Class Washout Rules

Reminder/Recap: Potential Recommendations: 35-37

Grid Subgroup discussed the following questions, in particular, whether Class A felonies should have a washout period, for nearly three months:

- *Are the current washout periods appropriate for the different classes?*
- *Should Class A offenses ever be eligible for washout?*

Felony Class Washout Rules

Reminder/Recap: Potential Recommendations: 35-37

- For some members there is support for keeping things as is, that Class A's should not washout and their constituencies would not be able to support a change that would allow class A felonies to washout. For other members, their constituencies cannot support status quo, that class A do not washout.
- Washouts are an important factor for calculation of CHS. The Subgroup worked hard exploring whether there is a middle ground that might exist and came up with a number of ideas though it is unclear whether there is a middle ground or win/win solution.
- The group agreed it was time to present all these options to the full Task Force, get other and all constituencies input brought into the discussion and to better inform whether there is in fact an opportunity for problem-solving and a path forward that would lend itself to consensus. These options were presented at the July 7th 2022 Task Force meeting.

Class A Washouts

Potential → Proposed Recommendation

Formerly Potential Recommendation #35 a-e, was presented to the Task Force for input at the July 7, 2022, Meeting:

- **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.

Proposed Recommendation 15

Class A Felony Washout Rule: Violent Class A felonies washout after 15 years. Serious Violent Class A felonies never washout.

- Grid Subgroup discussed input from Task Force and while still unclear as to whether any of the presented options all members could live with, the Subgroup determined that this proposed recommendation (previously option c.) was the best middle ground of the options.

**Note that Vehicular Homicide – Disregard for the Safety of Others is defined as a Class A, however, under State v. Stately, it is not considered a violent offense*

Class B Washouts

Potential → **Proposed Recommendation**

Formerly Potential Recommendation #36 a -b, was presented to the Task Force for input at the July 7, 2022, Meeting:

- **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.

Proposed Recommendation 16

Class B Felony Washout Rule: All Class B felonies washout after 7 years if the current offense is less serious than the original offense.

- Grid Subgroup discussed input from Task Force, in particular, around desistance and the concept behind option d for Class A to allow for a washout period if the new offense is less serious. While still unclear as to whether all members could live with, the Subgroup determined that this proposed recommendation (previously option c.) was the best middle ground of the options.

Class C Washouts

Potential → **Proposed Recommendation**

Potential Recommendation #37a-b, was presented to the Task Force for input at the July 7, 2022, Meeting:

- **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.

Proposed Recommendation 17

Class C Felony Washout Rule: All Class C felonies washout after 3 years.

- Grid Subgroup discussed input from Task Force and while still unclear as to whether all members could live with, the Subgroup decided to put forward this recommendation as originally presented, with no added changes.

Recap of Proposed Recommendation for Felony Class Washout Rules

Class A Felony Washout Rule: Violent Class A felonies washout after 15 years. Serious Violent Class A felonies never washout.

Class B Felony Washout Rule: All Class B felonies washout after 7 years if the current offense is less serious than the original offense.

Class C Felony Washout Rule: All Class C felonies washout after 3 years.

****Note:*** The SOPB is tasked with reviewing and providing guidance to the Legislature on washout rules for sex offenses.

Addresses CSTF Policy Goals:

The Grid Subgroup and Task Force reviewed recent data and research on recidivism, the age-crime curve, and desistance (*which are available on the CSTF resources page and will be included in appendices in the final report*). Key findings included:

- Most people who recidivate, do so quickly. The best predictor of future behavior is RECENT past behavior.
- Around years 7-10, most people who have not recidivated have the same probability of committing a crime as someone who has no criminal history. Risk for any person is never 0, but at this point, risk is no longer elevated compared to others with no criminal history. (“Redemption benchmarks”)
- In general, recidivism rates tend to be higher for individuals convicted of a drug or property offense than serious violent offenses. This may be in part because serious violent offenses have longer incarceration sentences and individuals are much older when they are released from prison.

Addresses CSTF Policy Goals:

- Allowing washouts for some Class A felonies, which currently do not wash out, moves away from a one-size-fits-all approach to tailor the washout period to the severity of the offense.
- For Class B, allowing past convictions to wash out if a person commits a less serious offense aligns with the research around desistance from criminogenic behaviors. Specifically, a reduction in the seriousness of offending behaviors is an indicator of the pathway to desistance.”



1:50 –
2:00pm

BREAK

Background and Explanation

- Washington became the first state in the U.S. to enact a Three-Strikes law, when voters approved Initiative 593 ("Three Strikes and You're Out") in 1993.

RCW 9.94A.555: Findings and intent—1994 c 1.

(1) The people of the state of Washington find and declare that:

- (a) Community protection from persistent offenders is a priority for any civilized society.
- (b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.
- (c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.
- (d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

- (a) Improve public safety by placing the most dangerous criminals in prison.
- (b) Reduce the number of serious, repeat offenders by tougher sentencing.
- (c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.
- (d) Restore public trust in our criminal justice system by directly involving the people in the process.

Background and Explanation

- The law established the penalty of life in prison without the possibility of release for “persistent offenders.”

1994 Codification of Initiative 593 language:

9.94A.030(25) "Persistent offender" is an offender who: (a) Has been convicted in this state of any felony considered a most serious offense; and (b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

Background and Explanation

9.94A.505

A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law...

- Anyone convicted of a third most serious offense would be sentenced to life in prison without the possibility of parole.
- A sentence of life without the possibility of parole for an individual convicted of a “most-serious” offense, who had at least two prior convictions for such offenses, that would be included in the criminal history score. In order to count as a strike, the first prior conviction must have occurred before the second prior conviction.
- Juvenile offenses do not count as a strike, unless they are declined from juvenile court and sentenced as an adult.

Background and Explanation

Determinate Plus Sentencing

- A determinate-plus sentencing model is a type of sentencing that sets a range of sentencing that an inmate will serve within the determined range. Inmates sentenced under the determinate plus sentencing system are given a minimum and maximum sentence by the court, and upon the earliest possible release date are given a hearing with the ISRB.

Potential → **Proposed Recommendation**

- Potential Recommendation 27 existed with 3 potential options, which were presented to the Task Force for input at the April 7, 2022 meeting
 - Option A: Eliminate and do not replace Three-Strikes
 - Option B: Replace Three-Strikes mandatory sentence with a determinate-plus model – 25 years with opportunity for release
 - Option C: Replace Three-Strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life

Proposed Recommendation 5

Replace Three-Strikes mandatory sentence with determinate plus sentencing.

Background and Explanation

- This recommendation would eliminate the mandatory life sentences as a result of a third strike under the Three-Strikes Law and replace this with a determinate sentence.
- Judges would issue a standard sentence as if three strikes did not exist. The sentence would then be converted to a determinate plus sentence with the minimum of the sentence issued by the judge and a maximum of life.
- Once the minimum term set by the judge has been reached, the ISRB will then review the sentence for potential release or continued detention. Reviews will continue every 2 years for potential release thereafter.

Addresses CSTF Policy Goals:

- The Grid Subgroup and Task Force looked at several studies and research around Three Strikes Laws, which have shown to have had no quantifiable impact on crime rates. If anything, Three Strikes laws may have contributed to an increase in violent crime rates in urban areas ([Homicide Promoting Effects of Three Strikes in U.S. Cities](#)).
- This recommendation would eliminate the mandatory life sentences as a result of a third strike under the Three-Strikes Law and replace this with a determinate-plus sentence.
- Would increase judicial discretion, whereby Judges would issue a standard sentence as if three strikes did not exist - The sentence would then be converted to a determinate-plus sentence with the minimum of the sentence issued by the judge and a maximum of life.
- Once the minimum term of the sentence has been reached, the Indeterminate Sentence Review Board (ISRB) will then review the sentence for potential release or continued confinement.

Potential → **Proposed Recommendation**

- Formerly Potential Recommendation #26, was presented to the Task Force for input at the April 7, 2022, Meeting:
- Potential Recommendation read as: 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

Proposed Recommendation 6

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. Or entered via stipulated agreement. Individual acknowledges and agrees in a plea agreement.

Background and Explanation

- This would align convictions for strikes and aggravating factors, creating requirements for the use of a strike.

Addresses CSTF Policy Goals:

- 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.
- Addresses errors arising from the application of Three-Strikes laws by enacting requirements that must be met and creating a standardized approach to the application of Three-Strikes.
- Raises the application of a strike to that of securing a conviction, either by the agreement of the defendant in plea or through proving to a jury beyond a reasonable doubt.

Proposed Recommendation 2

Require the SGC to review the state of evidence about the efficacy of reforms and publish a report every five years including recommendations for additional reforms. Research should include the impact of the reforms on:

- Public safety (including recidivism, technical violations, violations of protection orders)*
- Racial and gendered disproportionality*
- The rate and use of incarceration and community alternatives*
- Reentry outcomes including employment, housing, participation in and completion of treatment, etc.*
- Complexity and errors in sentencing*

Potential → Proposed Recommendation

- Formerly Potential Recommendation #5
- Was presented to the Task Force for input at the August 5, 2021 and November 4, 2021 Meetings:

Purpose and Task Force Input:

- 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).

Background and Explanation

- The purpose of this research is to ensure avenues for ongoing reviews of any sentencing system reforms occur more frequently than once every 40+ years.
- SGC reviews will be on an ongoing basis with reports on findings being published every 5 years, the value in the ongoing analysis with occasional reports provide value in identifying year-to-year patterns, impact on public safety, added or reduced effectiveness, increased or decreased racial disproportionality, and effects on rates of recidivism.
- If implementation of any reforms indicates negative unintended consequences or exacerbation of existing problems the ongoing analysis will be able to flag this sooner than previous analysis of Washington's sentencing system.
- Will create a more responsive analysis of Washington's sentencing system that allows for timely solutions to existing or new problems.

Addresses CSTF Policy Goals:

- Periodic reviews aimed at identifying and addressing any complexities or errors in the functioning of the sentencing system.
- Produces actionable steps to address the identified complexities/errors and mend these consequences through SGC's additional recommendations.
- Reviews will also examine the success of reforms and its impacts to identify areas of potential expansion of the successful reforms to other aspects of the sentencing system.
- SGC analysis will identify how any reforms impact public safety, determined through analysis of overall crime rates, changes in rates of recidivism, and collateral consequences of incarceration, allowing for the expansion or mending of reforms until they benefit public safety.
- Analysis addressing any benefits or shortcomings of any enacted reforms have on public safety informs future work on how improve public safety in Washington.

Potential → **Proposed Recommendation**

- During discussion of whether or not to eliminate and replace Three-Strikes (*potential recommendations 27a-c*), Grid Subgroup discussed the lack of clarity of what offenses count as "most serious offenses" when included in this designation and inconsistencies in the inclusion of strikable offenses.
- Grid Subgroup decided to propose this recommendation tasking the Legislature to review the list of "most serious offenses".

Proposed Recommendation 18

The Legislature should review the offenses included in the most serious offense list to potentially reduce the number of offenses eligible for the three strikes sentencing.

Background and Explanation

- In 1993 when Initiative 593 was passed, there were originally 18 specific non-class A offenses eligible for as a “strike” in addition to all 29 Class A felonies. Over the years offenses eligible for a “strike” grew to 17 non-class A offenses plus all 40 class A offenses.
- There are inconsistencies in the inclusion of strikable offenses. The list of “most serious offenses” has the inclusion of unranked felony offenses as strikes, offenses that have never been charged (Malicious Explosion 1/ Malicious Placement of an Explosive), and inconsistent application of aggravating factors such as Sexual Motivation and Deadly Weapons. Sexual Motivation is limited to only applying to Class B felonies, but Deadly Weapon applies to all offenses, including Class C felonies.

Background and Explanation

“Most serious offenses”:

- Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
- Assault in the second degree;
- Assault of a child in the second degree;
- Child molestation in the second degree;
- Controlled substance homicide;
- Extortion in the first degree;
- Incest when committed against a child under age 14;
- Indecent liberties;
- Kidnapping in the second degree;
- Leading organized crime;
- Manslaughter in the first degree;
- Manslaughter in the second degree;
- Promoting prostitution in the first degree;
- Rape in the third degree;
- Sexual exploitation;
- Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug”

Addresses CSTF Policy Goals:

- Can reduce complexity that exists in the status quo that resulted from the expansion of Three-Strikes eligible offenses to include offenses that are never/rarely used.
- Can reduce complexity by addressing the inclusion of unranked felony offenses, aligning the eligibility of offenses based on felony class, and the application of the aggravating factors.
- Reviews will ensure that previous errors are addressed and fixed through adding structure and logic in the inclusion of offenses as a “most serious offense”.

Proposed Recommendation 19

Direct the SGC to reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

Potential → **Proposed Recommendation**

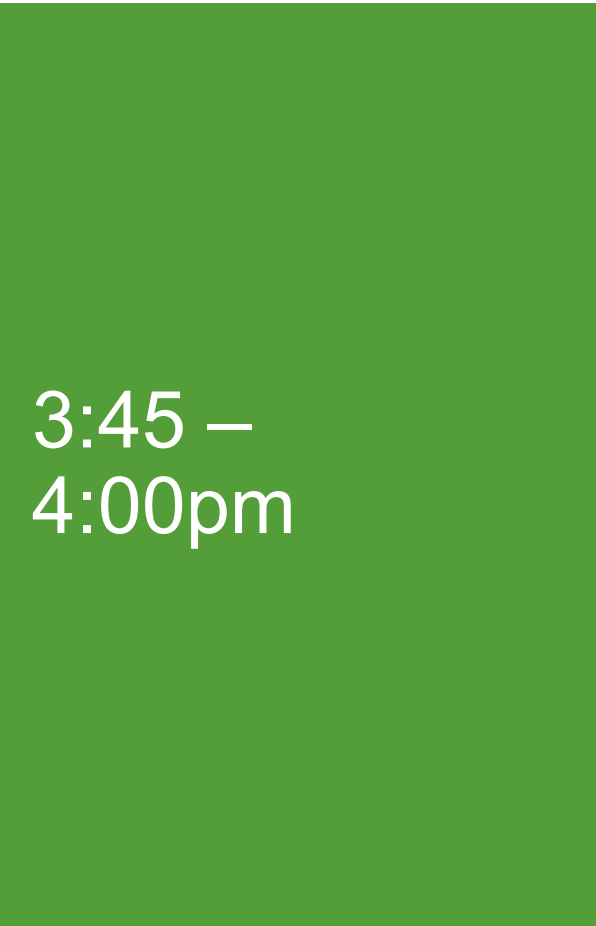
- Formerly Potential Recommendation #4, was presented to the Task Force at the August 5th, 2021, and November 4th, 2021, Meetings:
- Task Force input showed support for this recommendation. Grid subgroup did not make any changes.

Background and Explanation

- Early in its work Grid Subgroup examined the more than 300 (non-drug) unranked offenses to determine whether, and if so how, to incorporate them into the adult felony sentencing guidelines grid.
- While this work to address unranked offenses was later assigned to the Sentencing Guidelines Commission, the Grid Subgroup had come across a number of offenses both ranked and unranked, where there have been no convictions between FY00-FY17.
- For example, FY2000-2020 data shows there have been no sentences for Malicious Explosion 1 (Class A felony at OSL 15).

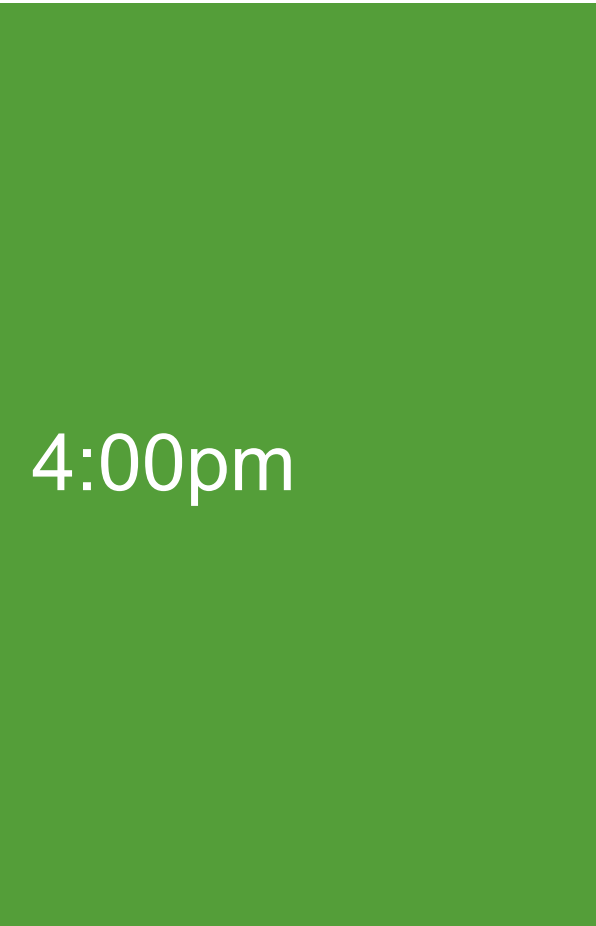
Addresses CSTF Policy Goals:

- A review of offenses and repealing those that were created as a result of specific incidents during a period of time that have not since reoccurred, and/or are rare or where other offenses can be used to charge, would help to reduce unnecessary complexity and simplify the criminal code.
- While there are standard methods for creating new offenses, there is no standard method for repealing outdated and unused offenses.
- If the Legislature were to make changes to and/or adopt a new sentencing guidelines grid structure, recalibration and/or reclassification of some offenses would be needed, and this review of unused offenses could be part of this work.
- It is worth noting that regardless of the time period of review (5, 10, or 20 years) chosen, it will be important to identify whether any sentences were received for that offense in which individuals may still be serving a sentence.



3:45 –
4:00pm

Public Comment



4:00pm

ADJOURN

Proposed Recommendation: New WA Felony Sentencing Guidelines Grid

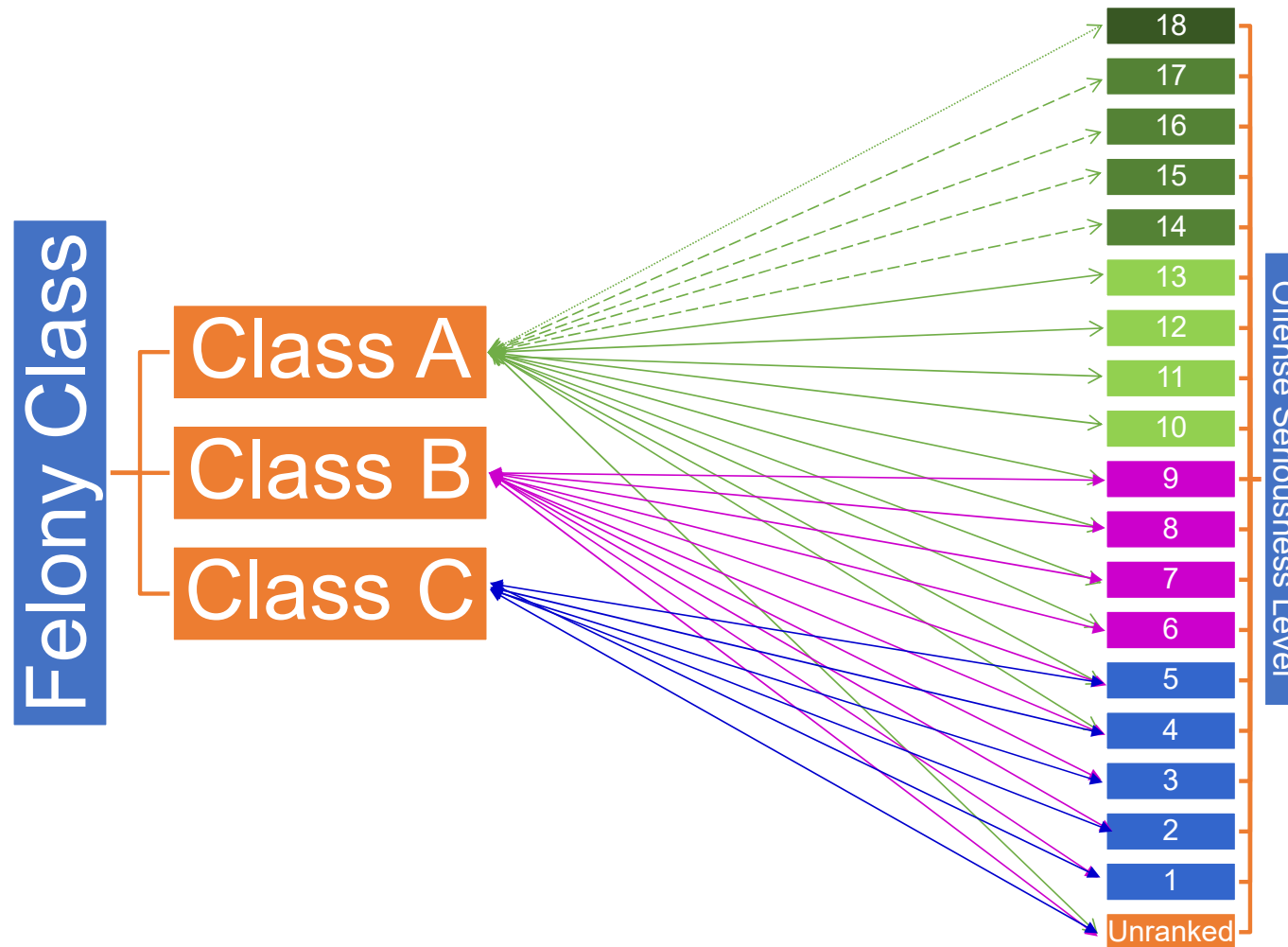
	0		1		2		3		4		5		6		7		8		9+		Agg Departure Cap	Repeat SV/Violent or Repeat DV
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																					
17	240	320	249	332	259	346	269	359	280	374	291	389	303	404	315	421	328	437	341	455	49.0	10%
16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	10%
15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%
14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	10%
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	10%
8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	10%
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	10%
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%
Unr	0 - 365 days																					

Proposed Recommendation: New Felony Sentencing Guidelines Grid

Core Components

- Use of formulas to establish grid 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 – increasing judicial discretion
- Longevity – establishing a framework that can guide future legislative decisions to ensure long-term consistency in the sentencing system

Grid proposal – aligning offense seriousness



Increase to 18 seriousness levels. With agg murder at 18.

OSL 17-14 reserved for Serious Violent Offenses.

Class B cannot be higher than OSL 9.

Class C cannot be higher than OSL 5.

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	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																			
17	240	320	249	332	259	346	269	359	280	374	291	389	303	404	315	421	328	437	341	455
16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340
15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300
14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220
12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120
8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18
Unr	0 - 365 days																			

The Five Formulas

Formula Core Components:

- **Anchor** – this is a set value that establishes the foundation for all other range values.
- **Percentage increase for each additional criminal history score** – 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** – set percentage that determines the value of the minimum in a range, based on the value of the maximum in the range.
- After formula is applied, values are “floored” and the decimal is dropped. Thus 29.1 would become 29 and 29.9 would become 29.

Proposed Recommendation: New Felony Sentencing Guidelines Grid

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	Agg Departure Cap	Repeat SV/Violent or Repeat DV
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, term of 25 years to Life																						
17	240	320	249	332	259	346	269	359	280	374	291	389	303	404	315	421	328	437	341	455	49.0	10%	
16	114	151	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	10%	
15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%	
14	87	117	93	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%	
13	59	99	75	108	71	111	86	125	88	137	100	149	112	171	134	193	156	225	188	260	22.0	10%	
12	52	87	57	96	63	96	66	105	78	117	90	129	102	151	124	173	146	215	188	260	19.0	10%	
11	45	76	50	81	55	86	59	99	72	103	76	117	90	139	112	163	136	205	178	250	17.0	10%	
10	39	65	43	71	47	77	51	91	64	95	68	109	82	131	104	155	128	195	168	250	14.0	10%	
9	19	33	22	37	25	41	28	55	38	62	45	73	50	91	68	123	100	173	150	250	12.0	10%	
8	17	28	19	33	22	37	25	41	38	62	45	73	50	91	68	123	100	173	150	250	10.0	10%	
7	14	24	17	28	19	37	25	41	38	62	45	73	50	91	68	123	100	173	150	250	9.0	10%	
6	12	20	14	23	16	37	25	41	38	62	45	73	50	91	68	123	100	173	150	250	7.0	10%	
5	3	12	4	14	5	11	8	13	10	16	13	19	16	23	18	27	20	33	25	39	6.0	10%	
4	2	9	3	11	4	11	8	13	10	16	13	19	16	23	18	27	20	33	25	39	4.0	10%	
3	2	7	2	9	3	11	8	13	10	16	13	19	16	23	18	27	20	33	25	39	3.0	10%	
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%	
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%	
Unr	0 - 365 days																						

Formula 1 OSL 17 0 Murder 1/Homicide by Abuse

- Anchor:** Criminal History Score 0 minimum of 240 months (aligned with the **mandatory minimum**).
- Percentage of the maximum used to establish the minimum: 75%**
- Percentage increase in maximum for each additional criminal history score point: 104%**

Proposed Recommendation: New Felony Sentencing Guidelines Grid

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent or Repeat DV	
18	Life without parole/death penalty for defendant at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life												
17	140	153	168	185	203	224	246	271	298	327	340	49.0	10%
16	114	126	138	152	168	184	203	223	245	265	280	34.0	10%
15	90	101	117	128	141	155	171	188	207	227	250	30.0	10%
14	87	96	106	116	128	141	155	170	188	207	227	26.0	10%
13	55	63	72	81	91	101	112	124	137	151	166	22.0	10%
12	55	63	72	81	91	101	112	124	137	151	166	19.0	10%
11	45	53	62	71	81	91	101	112	124	137	151	17.0	10%
10	45	53	62	71	81	91	101	112	124	137	151	14.0	10%
9	35	43	52	61	71	81	91	101	112	124	137	12.0	10%
8	35	43	52	61	71	81	91	101	112	124	137	10.0	10%
7	25	33	42	51	61	71	81	91	101	112	124	9.0	10%
6	25	33	42	51	61	71	81	91	101	112	124	7.0	10%
5	15	23	32	41	51	61	71	81	91	101	112	6.0	10%
4	15	23	32	41	51	61	71	81	91	101	112	4.0	10%
3	15	23	32	41	51	61	71	81	91	101	112	3.0	10%
2	15	23	32	41	51	61	71	81	91	101	112	2.0	10%
1	15	23	32	41	51	61	71	81	91	101	112	1.0	10%
Unr	0 - 365 days												

Formula 2 OSL 16-14: Serious Violent Offenses:

- i. **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.
- ii. **Maximum for CHS 0:** 45% off the maximum at CHS 9+
- iii. **Percentage increase in maximum for each additional criminal history score point:** 110%
- iv. **Percentage of the maximum used to establish the minimum:** 75%

Formula 2 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%

Proposed Recommendation: New Felony Sentencing Guidelines Grid

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent or Repeat DV										
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, term of 25 years to Life																					
17	240	230	220	210	200	190	180	170	160	150	49.0	10%										
16	114	153	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	340	34.0	10%		
15	101	148	122	163	134	179	148	197	163	217	175	239	197	263	215	289	237	310	30.0	10%		
14	87	96	106	116	128	141	155	170	188	210	195	220	245	270	295	320	345	370	26.0	10%		
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
12	42	77	55	84	61	96	71	116	78	123	84	131	95	145	105	170	122	188	137	195	19.0	10%
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
9	30	50	35	55	38	60	42	66	48	75	54	84	60	90	66	96	72	102	78	108	12.0	10%
8	25	40	28	45	31	48	35	54	39	57	40	60	45	66	48	69	51	72	54	75	10.0	10%
7	20	32	22	35	24	36	26	40	29	43	31	46	33	49	36	52	39	56	42	60	9.0	10%
6	15	24	17	27	19	28	20	30	22	33	24	35	26	38	28	41	31	44	33	46	7.0	10%
5	10	16	11	18	13	19	14	21	16	24	18	27	20	30	22	33	24	35	26	38	6.0	10%
4	7	12	8	13	9	14	10	16	12	18	14	21	16	24	18	27	20	30	22	33	4.0	10%
3	5	9	6	10	7	11	8	12	9	14	10	16	12	18	14	21	16	24	18	27	3.0	10%
2	3	6	4	7	5	8	6	9	7	10	8	11	9	12	10	14	11	15	12	16	2.0	10%
1	2	4	3	5	4	6	4	7	5	8	6	9	7	10	8	11	9	12	10	14	1.0	10%
Unr																						

Formula 3 OSL 13-10: Violent Offenses :

i. **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.

ii. **Maximum for CHS 0:** 45% off the maximum at CHS 9+

iii. **Percentage increase in maximum for each additional criminal history score point:** 110%

iv. **Percentage of the maximum used to establish the minimum:** 60%

Proposed Recommendation: New Felony Sentencing Guidelines Grid

Formula 4 OSL 9-6: Class A/B offenses:

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

[illegible]

Proposed Recommendation: New Felony Sentencing Guidelines Grid

[illegible]

Proposed Recommendation: New Felony Sentencing Guidelines Grid

	0		1		2		3		4		5		6		7		8		9+		Agg Departure Cap	Repeat SV/Violent or Repeat DV	
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																						
17	240	320	252	336	264	<div>New range values expands the SW Corner (GREEN)</div> <div>New range values create “straddle cells” where standard sentences may be a local sentence (<12.05) or a state sentence (>12.05) (BLUE)</div> <div>Largely applies to Class C felonies and low level Class B felonies.</div>															496	49.0	10%
16	114	153	126	168	138																340	34.0	10%
15	101	135	111	148	122																300	30.0	10%
14	87	117	96	128	106																260	26.0	10%
13	59	99	65	108	71																220	22.0	10%
12	52	87	57	96	63																195	19.0	10%
11	45	76	50	84	55																170	17.0	10%
10	39	65	43	71	47																145	14.0	10%
9																					12.0	10%	
8																						10.0	10%
7																						9.0	10%
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%	
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%	
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%	
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%	
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%	
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%	
Unr	0 - 365 days																						

Proposed Recommendation: New Felony Sentencing Guidelines Grid

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 10%. So if the standard range is 45-76 months, the expanded range would be 45-83 months ($76 + 7$)
 - 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.

Proposed Recommendation: New Felony Sentencing Guidelines Grid

Proposal 1			RANGES WITH REPEAT COLUMN AND AGG CAP APPLIED TO MAXIMUM														10% of max ro														or 1 month, whichever is greater											
Simulated Grid																																										
	0				1				2				3				4				5				6				7				8				9+				Agg Departure Cap	Repeat SV/Violent or Repeat DV
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																																									
17	240	320	397	249	332	410	259	346	426	269	359	440	280	374	456	291	389	473	303	404	489	315	421	508	328	437	526	341	455	546	45.0	10%										
16	114	153	202	126	168	219	138	185	238	152	203	257	168	224	280	184	246	305	203	271	332	223	298	362	245	327	394	255	340	408	34.0	10%										
15	101	135	179	111	148	193	122	163	209	134	179	227	148	197	247	163	217	269	179	239	293	197	263	319	217	289	348	225	300	360	30.0	10%										
14	87	117	155	96	128	167	106	141	181	116	155	197	128	171	214	141	188	233	155	207	254	170	227	276	188	250	301	195	260	312	26.0	10%										
13	59	99	131	65	108	141	71	119	153	79	131	166	86	144	180	95	159	197	105	175	215	115	192	233	127	212	255	132	220	264	22.0	10%										
12	52	87	115	57	96	125	63	106	136	70	116	147	77	128	160	84	141	174	93	155	190	102	170	206	112	188	226	117	195	234	19.0	10%										
11	45	76	101	50	84	109	55	92	118	61	101	128	67	113	140	73	123	152	81	135	166	89	149	181	98	163	196	102	170	204	17.0	10%										
10	39	65	86	43	71	92	47	78	100	52	86	109	57	95	119	63	105	130	69	115	141	76	127	154	83	139	167	87	145	174	14.0	10%										
9	19	33	48	22	37	53	26	43	59	30	50	67	34	57	75	39	66	85	45	76	96	52	87	108	60	100	122	72	120	144	12.0	10%										
8	17	28	41	19	33	46	22	38	52	26	43	57	30	50	65	34	58	74	40	66	83	46	76	94	52	88	107	63	105	126	10.0	10%										
7	14	24	35	17	28	40	19	32	44	22	37	50	25	43	56	29	49	63	34	57	72	39	65	81	45	75	92	54	90	108	9.0	10%										
6	12	20	29	14	23	32	16	27	37	18	31	41	21	36	47	24	41	52	28	47	59	32	54	66	37	63	76	45	75	90	7.0	10%										
5	3	12	19	4	14	21	5	17	25	6	20	28	7	24	32	8	29	38	10	35	45	12	42	52	15	51	62	18	60	72	6.0	10%										
4	2	9	14	3	11	16	4	14	19	5	17	23	6	20	26	7	24	30	8	29	36	10	35	43	12	42	50	14	49	58	4.0	10%										
3	2	7	11	2	9	13	3	11	15	4	13	17	4	16	21	5	19	24	6	23	28	8	27	33	10	33	39	11	39	46	3.0	10%										
2	0	3	5	1	6	9	2	7	10	2	8	11	3	10	13	3	12	15	4	14	17	5	17	21	6	21	25	8	28	33	2.0	10%										
1	0	2	3	0	3	4	1	5	7	1	6	8	2	7	9	2	8	10	3	10	12	3	12	14	4	14	16	5	18	21	1.0	10%										
Unr	0 - 365 days																																		84							

Proposed Recommendation: New Felony Sentencing Guidelines Grid

New Columns

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 still appealable
- Amount of advisory cap is calculated as 10% of the maximum sentence in the row.

Change in Ranges (Yellow = decrease; purple = increase)

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent or DV										
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																					
17	0	0	0	0	-1	-1	-1	-1	0	0	1	1	-8	-11	-22	-29	-42	-55	-69	-93	49.0	10%
16	-8	-67	-8	-66	-5	-59	-1	-50	3	-41	10	-29	8	-24	8	-18	-11	-29	-43	-57	34.0	10%
15 (malicious explosion 1)	-139	-185	-139	-185	-138	-184	-136	-181	-133	-176	-128	-171	-133	-177	-141	-187	-153	-204	-186	-248	30.0	10%
15 (trafficking 1)	-22	-85	-23	-86	-21	-81	-19	-74	-17	-67	-12	-58	-16	-56	-19	-53	-40	-68	-73	-97	30.0	10%
14	-35	-47	-37	-49	-38	-50	-37	-49	-37	-48	-34	-45	-40	-53	-45	-60	-69	-91	-103	-137	26.0	10%
13	-34	-24	-37	-27	-39	-27	-41	-28	-42	-26	-42	-25	-57	-41	-62	-43	-82	-65	-108	-98	22.0	10%
12	-25	-14	-28	-17	-31	-19	-32	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	19.0	10%	
11	-5	9	-7	9	-6	11	-6	1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	17.0	10%	
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14.0	10%	
9 (Malicious placement imitation device 1)	-73	-90	-79	-98	-85	-103	-90	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	12.0	10%	
9 (Criminal mistreatment 1; malicious explosion 3)	-31	-35	-34	-37	-36	-38	-37	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	12.0	10%	
9	-11	-8	-13	-10	-15	-10	-16	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	12.0	10%	
8	-4	2	-6	-1	-8	-3	-10	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4	10.0	10%	
7	0	5	-4	1	-6	-1	-8	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	9.0	10%	
6	0	7	-1	4	-5	0	-7	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	7.0	10%	
5	-2	0	-8	0	-8	0	-9	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	6.0	10%	
4	0	1	-2	0	-8	0	-8	0	-8	0	-8	0	-8	0	-8	0	-8	0	-8	0	4.0	10%
3	1.3	5	0	1	-1	-1	-5	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	3.0	10%	
2	0.0	0	0	0	-1	-2	-1	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	2.0	10%	
1	0.0	0	1	0	-1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1.0	10%	
Unr	0 - 365 days																					

But! Not all of these changes are “real”

- No convictions for Malicious Explosion 1
- Since some ranges in current grid exceed stat max, it’s not a “real” decrease

Also, we know that under the current grid, judges sentence, on average, at 30% of the range. Changes in the maximum may overestimate the reduction in actual sentences.

Finally, this assumes offenses remain where they are now, but the grid group acknowledges that the Legislature will likely recalibrate offenses which could result in offenses having similar ranges to what they are in the current grid.

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14	-35	-47	-37	-49	-38	-50	-37	-49	-37	-48	-34	-45	-40	-53	-45	-60	-69	-91	-103	-137	26.0	10%
13	-34	-24	-37	-27	-39	-27	-41	-28	-42	-26	-42	-25	-57	-41	-62	-43	-82	-65	-108	-98	22.0	10%
12	-25	-14	-28	-17	-31	-19	-32	-19	-34	-19	-35	-17	-53	-39	-56	-40	-72	-57	-93	-85	19.0	10%
11	-5	9	-7	9	-6	11	-6	13	-5	16	-3	21	-17	6	-19	5	-31	-7	-47	-28	17.0	10%
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14.0	10%
9 (Malicious placement imitation device 1)	-73	-90	-79	-98	-85	-103	-90	-110	-94	-113	-98	-118	-116	-140	-125	-148	-148	-176	-168	-198	12.0	10%
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9	-11	-8	-13	-10	-15	-10	-16	-11	-16	-10	-17	-9	-31	-26	-34	-28	-47	-43	-57	-51	12.0	10%
8	-4	2	-6	-1	-8	-3	-10	-4	-11	-3	-11	-3	-27	-22	-31	-25	-34	-28	-45	-39	10.0	10%
7	0	5	-4	1	-6	-1	-8	-3	-10	-5	-11	-4	-23	-18	-27	-23	-32	-26	-33	-26	9.0	10%
6	0	7	-1	4	-5	0	-7	-3	-9	-5	-11	-7	-17	-13	-24	-20	-29	-26	-32	-27	7.0	10%
5	-2	0	-8	0	-8	0	-9	1	-15	-4	-24	-13	-30	-18	-38	-25	-47	-30	-54	-36	6.0	10%
4	0	1	-2	0	-8	0	-8	0	-9	1	-15	-4	-24	-13	-32	-22	-40	-27	-48	-35	4.0	10%
3	1.3	5	0	1	-1	-1	-5	1	-7	0	-11	-3	-15	-6	-25	-15	-33	-23	-39	-29	3.0	10%
2	0.0	0	0	0	-1	-2	-1	-3	-9	-4	-10	-6	-13	-7	-17	-11	-27	-22	-34	-29	2.0	10%
1	0.0	0	1	0	-1	0	0	0	-1	-1	-1	-3	-9	-4	-10	-6	-13	-7	-17	-11	1.0	10%
Unr	0 - 365 days																					

Proposed Recommendation: New Felony Sentencing Guidelines Grid

SUMMARY

Complexities and Errors:

- *Must know what other statutes apply (e.g., stat max) to determine if standard range is valid sentence.*
 - **Aligns sentences with all other statutes (e.g., stat max)**
- *Frequent errors reported by CFC and complexities reported by DOC regarding CHS calculations particularly because of multipliers.*
 - **Eliminates multipliers while still holding individuals accountable for repetitive offending behaviors.**
- *No answer to question: “why are the ranges what 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**

Proposed Recommendation: New Felony Sentencing Guidelines Grid

SUMMARY

Effectiveness of the Sentencing System:

- *Limited judicial discretion to tailor sentences to the characteristics of the case*
 - *Narrow and inconsistent ranges*
 - **Wider and consistent ranges**
 - *Strict cut offs for local and state sanctions*
 - **No strict cut off for local and state sanctions**
 - *Some sentencing ranges that aren't even applicable*
 - **All sentence ranges are valid sentences.**
- *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**

Effectiveness of the Sentencing System:

- *Inconsistent increases in sentence with CHS and OSL increases. Some changes in CHS matter more than others.*
 - **Consistent increases in sentence 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 overarching framework leaves limited guidance to legislature when creating new crimes or changing components of existing crimes.*
 - **Framework with clear boundaries and guidance for Legislature**

Proposed Recommendation: New Felony Sentencing Guidelines Grid

SUMMARY

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 of likelihood of recidivism*
 - **Change in calculation of CHS may actually increase predictiveness of CHS**
- *Collateral consequences from incarceration may actually increase recidivism*
 - **Increased options for local sanctions to reduce disruptions caused by incarceration in state prison while still holding individuals accountable.**

Proposed Recommendation: New Felony Sentencing Guidelines Grid

Public Safety:

- *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.**