



Washington State Criminal Sentencing Task Force

December 30, 2022 Final Report

Prepared for:
The Washington State Governor and the Washington State Legislature

THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON

The William D. Ruckelshaus Center is an impartial resource for collaborative problem solving in the State of Washington and the Pacific Northwest, dedicated to assisting public, private, tribal, non-profit, and other community leaders in their efforts to build consensus and resolve conflicts around difficult public policy issues. It is a joint effort of Washington State University, hosted and administered by WSU Extension, and the University of Washington, hosted by the Daniel J. Evans School of Public Policy and Governance.

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DISCLAIMER

The following report was prepared by the William D. Ruckelshaus Center (Center) on behalf of the Washington State Criminal Sentencing Task Force. The Center's mission is to help parties involved in complex public policy challenges in the State of Washington and Pacific Northwest to develop collaborative, durable, and effective solutions.

University leadership and the Center's Advisory Board support the preparation of this and other reports produced under the Center's auspices. However, the information and policy recommendations contained in this report are intended to reflect the statements, opinions, and decisions of the Task Force. This information and policy recommendations do not represent the views of the universities, Advisory Board members, or the Center's staff and faculty.

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UNIVERSITY OF WASHINGTON

Washington State Criminal Sentencing Task Force December 2022 Final Report

In 2019, The Legislature established the Washington State Criminal Sentencing Task Force and directed the William D. Ruckelshaus Center (Center) to facilitate its work to review state sentencing laws and provide 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.

The proviso requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 and a final report by December 31, 2020. The Legislature extended the Task Force's work for an additional two years, with a report due by December 31st, 2022.

The William D. Ruckelshaus Center (the Center) served as an impartial facilitator for the effort. The Center's Facilitation Team designed the process and facilitated meetings, guiding the Task Force in its work to develop and agree on recommendations.

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- E. Criminal Sentencing Task Force Recommendations re: State v. Blake

Co-Chair Letter of Transmittal

December 30, 2022

Governor Jay Inslee

Lt. Governor Denny Heck

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Senator John Braun

Senate Minority Leader

Representative Laurie Jinkins

Speaker of the House

Representative J.T. Wilcox

House Minority Leader

Senator Christine Rolfes

Chair, Senate Ways and Means Committee

Senator Lynda Wilson

Ranking Member, Senate Ways and

Means Committee

Senator Manka Dhingra

Chair, Senate Law & Justice Committee

Senator Mike Padden

Ranking Member, Senate Law & Justice Committee

Senator Claire Wilson

Chair, Senate Human Services, Reentry, and
Rehabilitation Committee

Senator Chris Gildon

Ranking Member, Senate Human Services, Reentry,
and Rehabilitation Committee

Representative Timm Ormsby

Chair, House Appropriations Committee

Representative Drew Stokesbary, Ranking Member,
House Appropriations Committee

Representative Roger Goodman

Chair, House Public Safety Committee

Representative Gina Mosbrucker

Ranking Member, House Public Safety Committee

Representative Drew Hanson

Chair, House Civil Rights & Judiciary Committee

Representative Jim Walsh, Ranking Member, House
Civil Rights & Judiciary Committee

Dear Governor Inslee, Senators, and Representatives

We are pleased to submit this Final Report and Recommendations of the Washington State Criminal Sentencing Task Force. It has been our honor and privilege to serve as Task Force Co-Chairs, working alongside a highly dedicated and diverse group of people who have devoted countless hours of time and talent to improving Washington's sentencing system. This work over the last three and a half years represents a rigorous, comprehensive, inclusive effort to modernize Washington state's sentencing system, centered on the policy goals of public safety, improving effectiveness, and reducing complexities and implementation errors. The Task Force and its workgroups held hundreds of meetings, each characterized by active engagement, thoughtful consideration of information and perspectives, and respectful dialog.

This report contains 13 consensus recommendations—and more than a dozen other recommendations with support from multiple diverse constituencies—to improve the effectiveness of the criminal

The Washington State Criminal Sentencing Task Force

sentencing system, to reduce complexities and errors, and to promote and improve public safety. Most of these recommendations suggest legislative statutory changes to address the policy goals. On those recommendations on which the group did not reach consensus, this report contains an explanation of the issues, overview of Task Force discussion, and summary of the differing perspectives to provide information that might help in addressing these issues going forward. The Task Force wanted the Legislature and Governor to have a record of the evidence, issues, and options it considered.

Central among the consensus recommendations is the proposal for intermediate sanctions and reintegrative services, which, along with the top-line recommendation to fund programming and services (based on the findings of an intake assessment) for all incarcerated individuals, hold promise to increase public safety, decrease collateral consequences, and improve the effectiveness of the system, and strengthen communities around the state.

The Task Force reached consensus on 47 recommendations to the Governor and Legislature in 2020. While a handful of these have been implemented (notably, the new Mental Health Sentencing Alternative and several targeting the Department of Corrections), the majority sit unattended, awaiting legislative action, after the state Supreme Court decision in *State v. Blake* decision subsumed the attention of lawmakers during the 2020 Legislative Session. We ask that you revisit these recommendations to gauge which merit action in 2023.

The work herein represents the findings and best thinking of more than three years of the most collaborative, comprehensive, evidence-based consideration of criminal sentencing issues ever done in our state. The recommendations, if implemented, would ensure our sentencing system is evidence-based, aligns with current best practices, and advances public safety by both holding individuals accountable and providing them with the support and services needed for successful reentry.

On behalf of the Task Force, we also must convey the urgent need for investments into the sentencing system. Many up-front expenditures on recommendations in this Report promise significant future savings. We strongly urge the policy and law makers of Washington to make the investments required for the recommendations in this Report to get enacted.

Sincerely,

Co-Chair, Representative Roger Goodman
Washington State House of Representatives
Chair, House Public Safety Committee

Co-Chair, Jon Tunheim
Washington Association of Prosecuting Attorneys

Co-Chair, Waldo Waldron-Ramsey
Washington Community Action Network

Executive Summary

In 2019, the Washington State 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.

The proviso requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 and a final report by December 31, 2020. The Legislature extended the Task Force's work for an additional two years, with a final report due by December 31, 2022. The William D. Ruckelshaus Center (the Center) served as an impartial facilitator for the effort. The Center's Facilitation Team designed the process and facilitated meetings, guiding the Task Force in its work to develop and agree on recommendations.

In 2019, the Task Force met monthly from September to December 2019 for day-long facilitated meetings and reached consensus on two policy recommendations. In 2020, the Task Force met monthly from January – August (except for March) and bi-monthly from September-December and created working groups that met at least twice a month. From mid-October through early December the Task Force deliberated on potential recommendations, reaching consensus on 47 recommendations to improve the effectiveness of the criminal sentencing system, reduce complexities and errors, and promote and improve public safety.

As the Task Force discussed potential policy changes over the course of 2020, the group agreed that detailed, research-based work remains to simplify the sentencing system and reduce racial, ethnic, socioeconomic, and geographic disparities in adult felony sentencing. As reflected in Recommendation #1 in the 2020 Report, the Task Force agreed that proper consideration of changes to the sentencing grid required a thorough assessment of the possible impacts of those changes. This would take more time than initially allotted to the Task Force. Therefore, the Task Force agreed to continue meeting and working together and the Legislature extended the work through June 2023.

On February 25, 2021, the Washington State Supreme Court in *State v. Blake* ruled that Washington's simple drug possession statute was unconstitutional. The Task Force discussed the potential impacts of the *State vs. Blake* decision and reached consensus on four recommendations for the Legislature and Governor to consider in addressing *State v. Blake*.

Also at the beginning of 2021, the Task Force contracted with the Washington State Institute for Public Policy (WSIPP) to examine sentencing outcomes using the current sentencing guidelines grid and potential outcomes using a modified version of the guidelines grid. The report provided analytic data that assisted the Task Force's Sentencing Grid Subgroup (Grid Subgroup) in weekly discussions beginning May 2021 about potential changes to the sentencing grid.

The Task Force's Sentencing Grid Subgroup (referred to as the Grid Subgroup) met weekly to put together a complete proposal for a new grid for the Task Force to consider. At the beginning of 2021, the Grid Subgroup's first big task was to come up with an approach and workplan to deliberately and collaboratively work through the sentencing grid, which is made up of many interconnected laws, knowing that it would be difficult to break it down into part-by-part discussions but also difficult to discuss the grid as a whole without having an in depth understanding of each part and how they connect to other parts. This meant figuring out where to start on the grid, how to sequence the discussion and work, and how best to present ideas back to the full Task Force.

The Grid Subgroup decided to organize the various components of the grid and sequence discussions according to the sentencing grid axis. This approach allowed the Subgroup to break the grid into parts to come up with potential recommendations for each part of the grid, which were presented to the full Task Force. This process was particularly necessary and helpful for ensuring all Task Force members developed an in-depth understanding of each component of the guideline grid and how each of those components connects to other elements of the grid and other sentencing laws.

As the Grid Subgroup began their work of examining each element of the felony sentencing guidelines grid, they saw a need for focused conversation on the potential relationship between the grid and sentencing alternatives to confinement. The full Task Force supported this suggestion and created a Sentencing Alternatives Workgroup.

Presentations on potential recommendations from both the Grid Subgroup and the Sentencing Alternatives Workgroup to the full Task Force occurred from August 2021 – July 2022. Similar to the process used in 2020, each month the working groups would present a set of new potential recommendations to the full Task Force and would take the input gathered to further refine them into proposed recommendations ready for consensus deliberations.

Consensus deliberations on Recommendation 1. Proposal for a New Adult Felony Sentencing Guidelines Grid were held on September 1, 2022 and October 6, 2022. Consensus deliberations on all other recommendations were held on November 3rd and 17th and December 8, 2022.

This report includes the following:

Section I. Provides a brief recap of the Task Force's work and consensus process in 2019 and 2020, followed by a more detailed explanation of the process and work in 2021-2022 to develop the recommendations presented in this report.

Section II. Provides an overview of Washington State's sentencing guidelines.

Section III. Presents the Task Force's 2022 recommendations. There are 28 recommendations, 13 of which are consensus recommendations. Each recommendation includes a brief description of its purpose, rationale, and a high-level summary of workgroup and Task Force discussions about the recommendation, and how it meets the policy goals. On those recommendations on which the Task Force did not reach consensus, a brief and high-level summary of differing perspectives is provided. Each recommendation also includes the following "consensus gradient", which the Task Force created in 2021 to better capture and communicate the range of support on recommendations.

Unanimous Consensus	Full agreement with all aspects of the decision/recommendation – all members present are thumbs up.
Strong Consensus	Support for all or most aspects of the decision/recommendation and no fundamental disagreements with any aspect of the proposal – no more than two members present are thumbs sideways.
General Consensus	Support for most aspects of the decision/recommendation and no fundamental disagreements, however there may be unanswered questions, aspects in need of information not available, etc. There is a mix of thumbs up and thumbs sideways.
Weak Consensus	Significant disagreement with one or more aspects of the decision/ recommendation, however, all members present can live with the proposal (i.e. overall, the decision/recommendation is better than leaving things as they are now or doing nothing) – the majority of members present are thumbs sideways.
Non-Consensus	Significant disagreement with the decision/ recommendation. One or more members cannot support or live with the proposal. Member(s) have suggested alternatives that legitimately attempts to achieve the interest of the constituency they are representing, and the interests of the other members, however, after dialogue and deliberation, there is still no consensus – One or more thumbs down.

Section IV. Includes the full decision roll calls for each recommendation, which lists each Task Force members consensus decision. Also included in this section are members statements and alternative proposals for non-consensus recommendations.

Given the diversity of perspectives, complexity and nuance of the issues, highly technical nature of the sentencing system laws and policies, and the large body of research and data reviewed over the last two years, the Task Force recognizes it would be impossible to capture all of this information in detail in one report. However, it is important to the Task Force that the Legislature and Governor have as complete as possible a record of all the research, issues, discussion, and options considered.

Provided here on the Task Force’s 2020 Final Report web page are the following additional materials, which will provide greater detail about the recommendation in this report and more nuanced information on the discussions which led to their creation:

- 2021 Task Force meeting recordings and materials
- 2021 Task Force meeting summaries, Grid Subgroup and Sentencing Alternatives Workgroup meeting notes
- 2022 Task Force meeting recordings, summaries, and materials
- 2022 Grid Subgroup meeting notes and materials
- 2022 Sentencing Alternatives Workgroup meeting notes and materials
- Research articles and data reviewed by the Task Force and work groups, many of which are footnoted in this report.

Task Force Members and Alternates

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Washington Community Action Network | Representing Interests of Incarcerated Persons

- *Ginny Parham (Alternate) – Interests of Incarcerated Persons*

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- **Jon Tunheim, Co-Chair**

Washington Association of Prosecuting Attorneys

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- *Keri-Anne Jetzer (Alternate) – Washington State Sentencing Guidelines Commission*

- **Melody Simle**

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- **Judge Josephine Wiggs**

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Washington Association of Criminal Defense Attorneys and The Washington Defender Association

- **Chief Gregory Cobb**

Washington Association of Sheriffs and Police Chiefs

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- **Councilmember Derek Young**

Washington State Association of Counties

- **Judge Veronica Galvan**

Washington State Minority and Justice Commission

- **Chief James Schrimpsker**

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- *Kameon Quillen (Alternate) – Snohomish County Prosecuting Attorney Office | Interests of Crime Victims*

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- *Megan Allen (Alternate) – King County Sexual Assault Resource Center | Interests of Crime Victims*

Data and Research Support

Dr. Lauren Knoth-Peterson – Washington State Institute for Public Policy

Clela Steelhammer – Washington State Caseload Forecast Council

Keri-Anne Jetzer – Washington State Sentencing Guidelines Commission

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- **Megan Allen**, (alternate) *Interests of Crime Victims*
- **Russ Brown**, (alternate) *Washington Association of Prosecuting Attorneys*
- **Senator Chris Gildon**, *Washington State Senate, Republican caucus*
- **Representative Roger Goodman**, *Washington State House of Representatives, Democratic Caucus*
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- **Dr. Lauren Knoth-Peterson** (research/data support), *Washington State Institute for Public Policy*
- **Greg Link**, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- **Judge Wesley Saint Clair**, *Sentencing Guidelines Commission*
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- **Chief Brian Smith**, *Washington Association of Sheriffs and Police Chiefs*
- **Clela Steelhammer** (research/data support), *Washington State Caseload Forecast Council*
- **Nick Straley** (alternate), *Interests of Incarcerated Persons*
- **Jon Tunheim**, *Washington Association of Prosecuting Attorneys*
- **Waldo Waldron-Ramsey**, *Interests of Incarcerated Persons*

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- **Tiffany Attrill**, *Interests of Crime Victims*
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- **Keri-Anne Jetzer** (alternate), *Sentencing Guidelines Commission*
- **Julie Martin** (former member), *Washington State Department of Corrections*
- **Mac Pevey**, *Washington State Department of Corrections*
- **Judge Wesley Saint Clair**, *Sentencing Guidelines Commission*
- **Clela Steelhammer** (research/data support), *Washington State Caseload Forecast Council*
- **Jon Tunheim**, *Washington Association of Prosecuting Attorneys*
- **Waldo Waldron-Ramsey**, *Interests of Incarcerated Persons*

Former Members

- Lydia Flora Barlow – Statewide Reentry Council
- Russ Hauge – Washington State Sentencing Guidelines Commission
- Julie Martin – Washington State Department of Corrections
- Judge Roger Rogoff – Superior Court Judges' Association
- Chief Rafael Padilla – Washington Association of Sheriffs and Police Chiefs
- Senator Mike Padden – Washington State Senate
- Representative Brad Klippert – Washington State House of Representatives
- Secretary Stephen Sinclair – Washington State Department of Corrections
- Judge Stanley Rumbaugh, Washington State Sentencing Guidelines Commission
- Tarra Simmons – Representing the Interests of Incarcerated Persons
- Nick Allen – Representing the Interests of Incarcerated Persons
- Martina Kartman – Representing the Interests of Crime Victims
- Lew Cox – Representing the Interests of Crime Victims
- Christopher Poulos – Statewide Reentry Council
- DeVitta Briscoe – Representing the Interests of Crime Victims

2022 RECOMMENDATIONS

RECOMMENDATION 1.

Proposal For A New Felony Sentencing Guidelines Grid

(Non-Consensus)

	Criminal History Score (CHS)																				Aggravator Departure Cap (greater than is presumptively unreasonable)	Repeat Serious Violent/Violent or Repeat Domestic Violence 9.94a.525(21)
	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	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%
Unranked	0 - 365 days																					

RECOMMENDATION 2.

Sufficiently Fund Rehabilitative Programming, To Reduce Recidivism and Strengthen Public Safety

(Consensus - Strong Support)

The Legislature must allocate sufficient funds to implement rehabilitative programming for individuals incarcerated in Washington state, i.e., to support recruitment and training for mental health professionals, substance use disorder counselors, and the evidence-based programs to provide treatment and services along with education and job training for incarcerated individuals. These programs and services must be immediately available after the Department of Corrections (DOC) conducts an individual’s intake assessment. Improving the effectiveness of the system and promoting public safety depend on this, as well as allocation of funds to support the transition to reentry through housing, transportation, removing barriers to employment, providing community supports, and other steps such as those outlined in the Task Force’s 2020 Report. Require DOC to publish annual statistics regarding participation in and completion of programs by program and facility.

RECOMMENDATION 3.

Create A Statewide Program For Intermediate Sanctions And Reintegrative Services

(Consensus - General Support)

Create a statewide program for intermediate sanctions and reintegrative services to be served in the community. Establish a workgroup tasked with determining the legislative standards and implementation plan for the program, using the information provided in the recommendation as a guideline for the general program framework.

RECOMMENDATION 4.

Implement a Motivational-Focused Supervision Model

(Consensus - Strong Support)

The current supervision model based on surveillance should be modified to create a system that allows appropriate treatment, resources, and mentoring for individuals placed in custody. To sufficiently achieve those goals, changes to the adult felony sentencing guideline 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. This includes adequate funding for DOC and training of community corrections officers.

RECOMMENDATION 5.

Request and Fund the Washington State Institute for Public Policy To Update the Adult Corrections Inventory

(Consensus - Unanimous)

Request and fund the Washington State Institute for Public Policy to update its adult corrections inventory in order to update assessments of evidence-based programs and expand the inventory to include new programs that were not previously available when the inventory was conducted.

RECOMMENDATION 6.

Require and Fund the Sentencing Guidelines Commission to Monitor and Evaluate Changes and Reforms to the Sentencing Reform Act Every 5 Years

(Consensus - General Support)

Require and fund the SGC to review the state of evidence about the efficacy of reforms, including recommendations for additional reforms. The SGC will provide a progress report at three years, followed by a full report at five years, and will continue to report every five years. Research should include the impact of the reforms on:

- Public safety (including recidivism, technical violations, violations of protection orders, and the community)
- Racial and gendered disparities and disproportionality (for both defendants and victims) from arrest through sentencing
- The outcomes, 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

RECOMMENDATION 7.

Direct the Sentencing Guidelines Commission to Review Infrequent Used Offenses

(Consensus - Strong Support)

Direct the Sentencing Guidelines Commission (SGC) to review offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

RECOMMENDATION 8.

Visually Depict Sentencing Alternatives on the Sentencing Grid

(Consensus - General Support)

Include and visually depict sentencing alternatives on the adult felony sentencing guidelines grid.

RECOMMENDATION 9.

Change the Drug Offender Sentencing Alternative (DOSA) Eligibility Criteria

(Consensus - General Support)

Eliminate eligibility exclusions related to prior convictions for a violent offense (not serious violent offenses) from Prison DOSA and Residential DOSA. Exclude from eligibility individuals with prior felony offenses where an individual was armed with a firearm or deadly weapon, therefore aligning DOSA eligibility with Family Offender Sentencing Alternative.

RECOMMENDATION 10.

Eliminate the Cap on Prison DOSA Sentences

(Consensus - General Support)

Eliminate the cap on the number of prison DOSA sentences that an individual can receive in a 10-year period.

RECOMMENDATION 11.

Eliminate the Cap on Residential DOSA Sentences

(Non-Consensus)

Eliminate the cap on the number of residential DOSA sentences that an individual can receive in a 10-year period.

RECOMMENDATION 12.

Conduct a Review of the Eligibility Exclusions for Sentencing Alternatives

(Consensus - General Support)

Conduct a review to assess the process and efficacy of eligibility exclusions for sentencing alternatives, including the Department of Correction's capacity to supervise in the community.

RECOMMENDATION 13.

Require Notice be Provided to Defendants Prior to Entering a Guilty Plea or Going to Trial for Cases Involving Offenses Included in Persistent Offender Laws

(Consensus - Strong Support)

Change the persistent offender laws to require notice to defendants that a conviction for the charged offense could lead to a sentence of life without parole under the persistent offender laws prior to entering a guilty plea or going to trial.

RECOMMENDATION 14.

Conduct a Review of the Offenses Under the Persistent Offender Laws

(Consensus - General Support)

The Legislature should conduct a review to assess the objectives of the persistent offender laws and evaluate what offenses should be classified as a most serious offense.

RECOMMENDATION 15a.

Change to Determinate Plus Sentencing for Three-Strikes

(Non-Consensus)

Replace Three-Strikes mandatory life without the possibility of release sentencing with determinate plus sentencing.

RECOMMENDATION 15b.

Evaluate Whether to Change the Persistent Offender Law to a Determinate Plus Sentencing Model

(Non-Consensus)

The Legislature should evaluate whether persistent offender mandatory life without the possibility of release sentences should be replaced with determinate plus sentencing structure.

RECOMMENDATION 16.

Change the Mandatory Life Without the Possibility of Parole Terms for Young Adults

(Non-Consensus)

For aggravated murder 1 change the language from: "Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life." To "Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of twenty-one, a term of twenty-five years to life." In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.

RECOMMENDATION 17.

Establish a New Process for Second Chance Review

(Non-Consensus)

For sentences including a term of total consecutive confinement longer than 20 years, individuals may petition for a second chance review at 20 years of incarceration (total confinement). Require that the review process explicitly include the opportunity for victim input.

RECOMMENDATION 18.

Allow Judges Discretion to Issue Consecutive and Concurrent Sentences

(Non-Consensus)

Eliminate mandatory consecutive sentencing. Leave default consecutive but allow judges discretion to issue concurrent sentences without invoking an exceptional sentence.

RECOMMENDATION 19.

Add an Additional Reason for an Aggravated Departure to RCW 9.94A.535(2)

(Consensus - General Support)

Add an additional reason or reasons for an aggravated departure to RCW 9.94A.535(2), to include “the parties have agreed to reduction of charges and in exchange have sought an exceptional sentence and the parties stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence is in the interest of justice and the purposes of the SRA.”

RECOMMENDATION 20.

Change When the Washout Periods Reset

(Non-Consensus)

Make the appropriate changes to the washout period law so that:

- Washout periods do not reset upon confinement for a community custody violation.
- Washout periods do not reset upon conviction (or subsequent confinement) for a simple misdemeanor offense unless it is the third conviction for a simple misdemeanor offense.

RECOMMENDATION 21.

Change the Washout Period for Class A Felonies

(Non-Consensus)

Violent Class A felonies washout after 15 years. Serious violent Class A felonies would not washout.

RECOMMENDATION 22.

Change the Washout Period for Class B Felonies

(Non-Consensus)

All Class B felonies washout after 7 years.

RECOMMENDATION 23.

Change the Washout Period for Class C Felonies

(Non-Consensus)

Class C felonies washout after 3 years.

RECOMMENDATION 24.

Prior Misdemeanor DUI Offenses No Longer Score for Current Offenses That Do Not Involve a DUI

(Non-Consensus)

Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current

offenses is a serious felony traffic offense involving DUI (e.g., Vehicular homicide-DUI, Vehicular Assault-DUI, Felony DUI, Felony physical control, etc.). Prior misdemeanor DUI offenses no longer score for felony offenses not involving DUI.

RECOMMENDATION 25.

Create Parity Between Vehicular and Watercraft Offenses

(Non-Consensus)

Maintain the special misdemeanor DUI scoring exceptions for homicide or assault by watercraft offenses when the current offense involves a DUI and make homicide or assault by watercraft offenses the same Offense Serious Level (OSL) as the corresponding felony traffic offense (by either increasing watercraft offenses to higher OSLs or reducing vehicular offenses to a lower OSL) with the goal of creating parity between vehicular and watercraft offenses (Homicide by watercraft and vehicular homicide. Assault by watercraft and vehicular assault).

RECOMMENDATION 26.

Change the Offense Serious Level for Vehicle Prowling 2nd Degree (third or subsequent) and Vehicle Prowling 1st Degree

(Non-Consensus)

Reduce the Offense Serious Level (OSL) for Vehicle Prowling – 2nd degree (third or subsequent) to OSL 2 and raise the OSL for Vehicle Prowling – 1st degree to OSL 2.

RECOMMENDATION 27.

Eliminate Special Misdemeanor Scoring for Prior Gross Misdemeanor Vehicle Prowl

(Non-Consensus)

Eliminate special misdemeanor scoring for prior gross misdemeanor vehicle prowling in the second degree for theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1 or 2.

RECOMMENDATION 28.

Limit the Scope of Misdemeanor Offenses that Can Be Included in Felony Criminal History Score

(Non-Consensus)

Include language in Sentencing Reform Act that would define the scope of offenses that can be scored in the calculation of a Criminal History Score as limited to prior felony convictions other than DV, DUI, and vehicular prowl.

I.

Introduction

Introduction

In 1981, the Washington State Legislature enacted the Sentencing Reform Act (SRA), which established the Sentencing Guidelines Commission (SGC) and directed it to recommend to the Legislature a determinate sentencing system for adult felonies. The new sentencing guidelines system was created to ensure that individuals who commit similar crimes and have similar criminal histories receive equivalent sentences. Since the SRA took effect, the Legislature has made myriad changes to state sentencing laws, resulting in a system of great complexity. In 2018, with a focus on best practices and simplification, the Legislature directed the SGC to review the SRA and provide a report to the Legislature.¹

In 2019, the Legislature established the Washington State Criminal Sentencing Task Force to review state sentencing laws, including a consideration of the SGC's 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.

The proviso (Appendix A) requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 (Appendix B) and a final report by December 31, 2020 (Appendix C). The Legislature then extended the Task Force for an additional two years, with a report due by December 31, 2022.

The William D. Ruckelshaus Center (Center) served as an impartial facilitator of the Task Force. The Center's Facilitation Team designed the process and facilitated meetings, guiding the Task Force in its work to develop the shared understanding necessary to build trust to reach consensus.

Summary of Work: 2019 and 2020

Prior to the Task Force's first meeting, the Ruckelshaus Center Facilitation Team (Facilitation Team) spoke with each member to understand their desired goals, visions of success, potential issues and challenges, and ideas on how to address the three policy directives. The Facilitation Team used that information to design a collaborative process that would help the Task Force build capacity towards consensus and create mutual understanding through information sharing and thinking exercises, productive inquiry and dialogue sessions, and deliberation guided by shared principles.

In 2019, the Task Force met monthly from September – December for full-day facilitated meetings. At its first meeting, the Task Force reviewed and considered suggested ground rules and operating procedures (Appendix D), agreeing on the following consensus decision-making process:

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;

¹ SGC Review of the Sentencing Reform Act, revised Aug. 2019: <https://sgc.wa.gov/sentencing-guidelines-commission/publications>

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.

Members can convey their position on any consensus decision via a thumbs up (I fully support this option), thumbs sideways (I can live with this option for the good of the group and the process) or thumbs down (I cannot live with this option). If anyone is thumbs down, the group will seek solutions that allow those thumbs to move to up or sideways.

The Task Force discussed roles, decided each member should commit to attending all meetings, and agreed to allow members to appoint an alternate. The legislative proviso directed the Task Force to elect one legislative co-chair and one or more non-legislative member co-chairs. The Task Force agreed by consensus on the selection of three co-chairs.

In December, the Task Force reached consensus on two policy recommendations, which were introduced as legislation and passed into law in 2020:

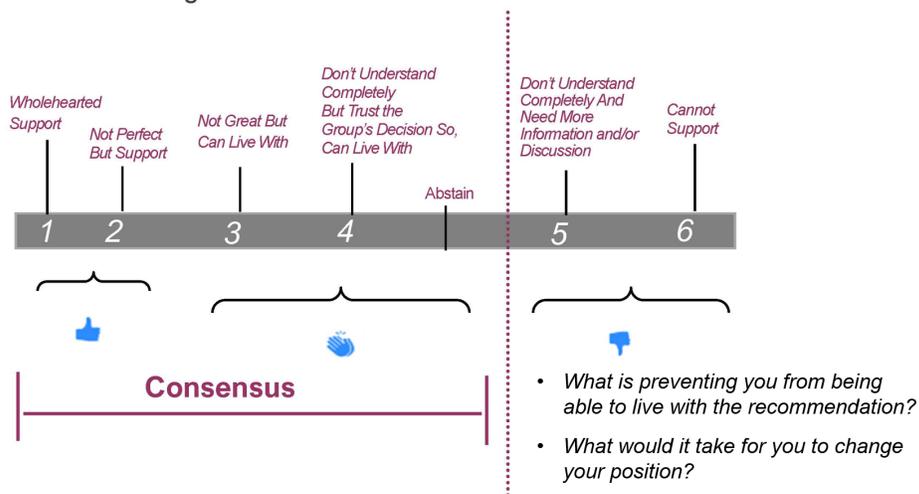
1. The terms of community custody shall run concurrently to each other unless the court expressly orders community custody run consecutively.
2. Allowing DOC to grant Compliance Credit: allows individuals on community supervision to earn time off of their community custody sentence for positive behavior.

In 2020, the Task Force met monthly from January – August and twice a month from September–December. The Task Force created two working groups, one to address Sentencing Effectiveness and the second to identify ways to support Reentry and Reducing Recidivism. Each met at least twice a month. The Task Force also created a Subgroup of the Sentencing Effectiveness Workgroup to focus specifically on the felony sentencing guidelines grid. This Sentencing Grid Subgroup (Grid Subgroup) met weekly starting in June 2020 through December 2022.

At each Task Force meeting from May through October of 2020, one of the working groups presented potential recommendations and the Task Force provided input to help the working group refine them and if needed, bring them back to the Task Force as a “second offer” at a subsequent meeting. Combined, these groups generated more than fifty potential recommendations, presenting each in draft form to the Task Force prior to consensus deliberations.

From mid-October through early December of 2020, the Task Force deliberated on potential policy changes, reaching consensus on 47 recommendations to improve the effectiveness of the criminal sentencing system, reduce complexities and errors, and promote and improve public safety. More

Gradients of Agreement



than twenty bills based on these recommendations were introduced in the 2021 legislative session. Eight of those bills, signed into law, brought important improvements to the criminal legal system.²

As the Task Force discussed potential policy changes over the course of 2020, the group agreed that detailed, research-based work remained to address the sentencing guidelines grid. As reflected in Recommendation #1 in the 2020 Report, the Task Force agreed that proper consideration of changes to the felony sentencing grid would require a thorough assessment of the possible impacts of those changes and would take more time than initially allotted to the Task Force. Thus, the Task Force agreed to continue meeting and working together and the Legislature extended the Task Force until June 2023.

Summary of Work: 2021 - 2022

At the beginning of 2021, the Task Force focused on process, including creating a workplan for the year and revisiting and updating its operating procedures. This included clarifying roles for alternates, lowering the quorum level for decision-making, and email communication protocols. The Task Force also decided to revise its consensus decision-making process and created the following “consensus grade” to better capture and communicate the range of support on recommendations.

Unanimous Consensus	Full agreement with all aspects of the decision/recommendation – all members present are thumbs up.
Strong Consensus	Support for all or most aspects of the decision/recommendation and no fundamental disagreements with any aspect of the proposal – no more than two members present are thumbs sideways.
General Consensus	Support for most aspects of the decision/recommendation and no fundamental disagreements, however there may be unanswered questions, aspects in need of information not available, etc. There is a mix of thumbs up and thumbs sideways.
Weak Consensus	Significant disagreement with one or more aspects of the decision/ recommendation, however, all members present can live with the proposal (i.e. overall, the decision/recommendation is better than leaving things as they are now or doing nothing) – the majority of members present are thumbs sideways.
Non-Consensus	Significant disagreement with the decision/ recommendation. One or more members cannot support or live with the proposal. Member(s) have suggested alternatives that legitimately attempts to achieve the interest of the constituency they are representing, and the interests of the other members, however, after dialogue and deliberation, there is still no consensus – One or more thumbs down.

Also at the beginning of 2021, the Task Force contracted with the Washington State Institute for Public Policy (WSIPP) to examine sentencing outcomes using the current sentencing guidelines grid and potential outcomes using a modified version of the guidelines grid. The report provided analytic data that assisted the Task Force’s Sentencing Grid Subgroup (Grid Subgroup) in discussions beginning May 2021 about potential changes to the sentencing guidelines grid. WSIPP presented the report and findings to the Task Force at its May 6, 2021 meeting: [Examining Washington State’s Sentencing Guidelines: A Report to the Criminal Sentencing Task Force](#).

² 2020 CSTF Recommendations and Associated Legislative Bills

Key Findings of the WSIPP Report

- Of the non-drug felony sentences issued in Washington State superior courts in FY 2019, 92% were for offenses ranked OSL 5 or less.
- Of sentences for ranked offenses, 67.5% were for defendants with a CHS of 1-4. **Exhibit 3** depicts the total distribution of sentences by guideline grid cell, demonstrating the high concentration of sentencing in the southwest corner of the grid.
- **Exhibit A5** depicts the average sentence length in each grid cell. Increases in offense seriousness and/or CHS do not always lead to increases in sentence length; this is because of overlapping ranges for different grid cells, discretion in the use of exceptional sentences, varying applications of sentencing enhancements, and varying eligibility for sentencing alternatives.

The average sentence increases as offense seriousness level (OSL) increases and as criminal history score (CHS) increases. However, examination of the minimum and maximum sentences in each cell shows that sentences do not always increase across the grid.

- Different OSLs include different numbers of offenses, and different offenses have varying rates of conviction. Subsequently, wider variations in sentences imposed within some OSLs may be driven by a larger variety of offense types.

Variation in the minimum and maximum sentences by offense type suggests that even within the same offense OSL, judges perceive varying levels of severity or varying needs for incarceration.

- **Exhibit 5** lists the five offenses (or fewer if there were less than five distinct offense types) in each OSL with the most convictions as well as the average, minimum, and maximum sentences imposed.
- **Exhibit 5** also depicts how the sentences in some OSLs are driven largely by a single offense (e.g., OSL 9 is mostly convictions for Robbery 1) while other OSLs have a broader distribution of convictions across different offense types (e.g., OSL 1 and OSL 2).

Overall, Black, Indigenous, and People of Color (BIPOC) defendants, on average, received longer sentences than White defendants. For individual OSLs, the average sentence length was longer for BIPOC defendants than for White defendants in five OSLs, shorter for BIPOC defendants than for White defendants in seven OSLs, and the same in two OSLs.

- **Exhibit 6** provides the overall sentence length ratios for all standard non-drug sentences as well as the sentence-length ratios by OSL.
- As OSL increases, differences in the OSL ratio are more meaningful because the sentence lengths are longer. For example, in OSL 2, the average sentence for BIPOC was 13.1 months while the average sentence for White defendants was 13.2 months, resulting in a ratio of 0.99.
- However, for OSL 15, the average sentence for BIPOC defendants was 317 months while the average sentence for White defendants was 294.1 months, resulting in a ratio of 1.08.

In 41 cells, BIPOC average sentences were longer than sentences for White individuals while in 52 cells, average sentences for White defendants were greater than average sentences for BIPOC defendants. Eight cells had the same average sentences for BIPOC and White defendants.

- **Exhibit 7** evaluates disproportionality across all sentences for the same OSL. However, since sentences tie directly CHSs, these overall findings may be driven by differences in BIPOC and White defendants' prior conviction history. Although a detailed examination of CHS is beyond the scope of the WSIPP study, some information about the distribution of CHS by race is available in Appendix IV.
- **Exhibit 7** depicts the sentence length ratio for BIPOC and White defendants for each individual cell on the grid. Overall, there were 101 cells with at least one BIPOC and one White defendant

Racial disproportionality was higher than average for individuals with lower criminal history scores.

- For columns corresponding with a CHS of 0 or 1, 23.3% of cells (comprising 57 sentences) had the same average sentence (or insufficient sample sizes to calculate a ratio), 30.0% of cells (comprising 955 sentences) had average sentences for White defendants longer than the average sentence for BIPOC defendants, and in 46.7% of cells (comprising 3,045 sentences), average sentences for BIPOC defendants were longer than the average sentence for White defendants.

On February 25, 2021, the Washington State Supreme Court in *State v. Blake*³ ruled that Washington’s simple drug possession statute⁴ was unconstitutional. The Task Force discussed the potential impacts of the *State vs. Blake* decision and at its March 18, 2021 meeting reached consensus on four recommendations for the Legislature and Governor to consider in addressing *State v. Blake* (Attachment E).

The Task Force’s Sentencing Grid Subgroup (Grid Subgroup) met weekly to put together a complete proposal for a new grid for the Task Force to consider. At the beginning of 2021, the Grid Subgroup’s first big task was to come up with an approach and workplan to deliberately and collaboratively work through the sentencing grid, which is made up of many interconnected laws, knowing that it would be difficult to break it down into part by part discussions but also just as difficult to discuss the grid as a whole without having an in depth understanding of each part and how they connect to other parts. This meant figuring out where to start on the grid, how to sequence the discussion and work, and how best to present ideas back to the full Task Force.

The Grid Subgroup decided to organize the various components of the grid and sequence discussions according to the sentencing grid axes. This approach allowed the Subgroup to break the grid into parts to come up with potential recommendations for each part of the grid, which were presented to the full Task Force from August 2021 - July 2022.

Vertical Axis Components	Horizontal Axis Components
<ul style="list-style-type: none"> • Offense Serious Levels • Felony class –areas on the grid that exceed stat max • Statutory minimums • The “Southwest Corner” of the grid • Cell ranges • Exceptional sentence (departures above and below) • Creating zones • Sentencing alternatives 	<ul style="list-style-type: none"> • Criminal History Score • Aggravators and Mitigators • Sentencing for young adults • Methods for addressing repeat violent offending behaviors <ul style="list-style-type: none"> • Persistent offender laws • Criminal history score multipliers • Mandatory consecutive sentencing

As the Grid Subgroup began their work of examining each element of the felony sentencing guidelines grid, they saw a need for focused conversation on the potential relationship between the grid and sentencing alternatives. The full Task Force supported this suggestion and created a Sentencing Alternatives Workgroup. The Sentencing Alternatives Workgroup (Alternatives Workgroup), comprised of Task Force members and alternates, first convened in July 2021. They began their work by reviewing and receiving presentation on each existing sentencing alternative to better understand the following:

- History, intended purpose, and the alternative and program elements operate.
- Statutory eligibility criteria: current offense, prior record, prior participation in alternative.
- Past and/or current efforts or entities looking at potential changes.

In 2022, the Sentencing Alternatives Workgroup met with the Chair, Vice-Chair, and Coordinator of the Sex Offender Policy Board (SOPB) to discuss the Special Sex Offender Sentencing Alternative

³ State v. Blake 197 Wash.2d 170, 481 P.3d 521 (2021)

⁴ RCW 69.50.4013(1)

(SSOSA) and ways the SOPB and subgroup could coordinate their work. Following those discussions, the Legislature requested the SOPB to review and make recommendations related to the following topics: SSOSA, treatment alternatives for certain sex offenses, lifetime supervision, failure to register laws, washouts, and system improvements.⁵ With the SOPB tasked with reviewing and making recommendations regarding sex offenses and SSOSA, the Sentencing Alternatives Workgroup did not review SSOSA, focusing instead on all other alternatives so not to duplicate efforts.

During conversations, members noted the need for flexibility and non-incarceration sentencing options for accountability for individuals where the current sentencing alternatives are not applicable. This concept converged with Grid Subgroup conversations, which at the time were focused on creating a formula to establish grid cell ranges. Such a formula led to the creation of “straddle cells” – grid cells where the sentence range straddles both a jail and prison term sentence. The Grid Subgroup was exploring whether to eliminate or retain straddle cells, and if retained, whether some sort of alternatives sanction could be available in this portion of the grid. With support from the Task Force, the Sentencing Alternatives Workgroup took on the work to explore and develop a proposal for intermediate sanctions and reintegrative services in that area of the sentencing grid.

In June 2021, the Legislature tasked the Sentencing Guidelines Commission with undertaking a review of the criminal code in three specific areas, to support the ongoing work of the Criminal Sentencing Task Force and in response to recommendations made by the Task Force in its 2020 Report. One of the three areas was to examine “unranked” felony offenses and make recommendations as to which of those offenses should be ranked on the adult felony sentencing grid, and which offenses could be advisably repealed.⁶

Presentations on potential recommendations from both the Grid Subgroup and the Sentencing Alternatives Workgroup to the full Task Force occurred from August 2021 – July 2022. Similar to the process used in 2020, each month the working groups would present a set of new *potential* recommendations to the full Task Force and would take the input gathered to further refine them into *proposed* recommendations ready for consensus deliberations.

As mentioned above, the Grid Subgroup opted to organize the various components of the sentencing guideline grid and sequence discussions according to the sentencing grid axes. This approach allowed the Subgroup to break the grid into parts to come up with potential recommendations for each part of the grid. This process was particularly necessary and helpful for ensuring all Task Force members developed an in-depth understanding of each component of the guideline grid and how each of those components connects to other elements of the grid and other sentencing laws.

In July 2022, the Grid Subgroup held two all-day work sessions to incorporate all Task Force input and stitch together specific recommendations having to do with the formulaic approach and structure for the sentencing guidelines grid into one comprehensive new sentencing grid proposed recommendation.

⁵ In the fall of 2022, the SOPB released “Recommendations for SSOSA reforms; treatment alternatives for certain sex offenses; lifetime supervision; failure to register; washouts; and system improvements.”

⁶ The explanation of the new adult felony sentencing guidelines grid in Recommendation 1 notes the need for recalibration and/or reclassification of some offenses. This would also require incorporating the SGC’s recommendations for ranking of certain unranked offenses.

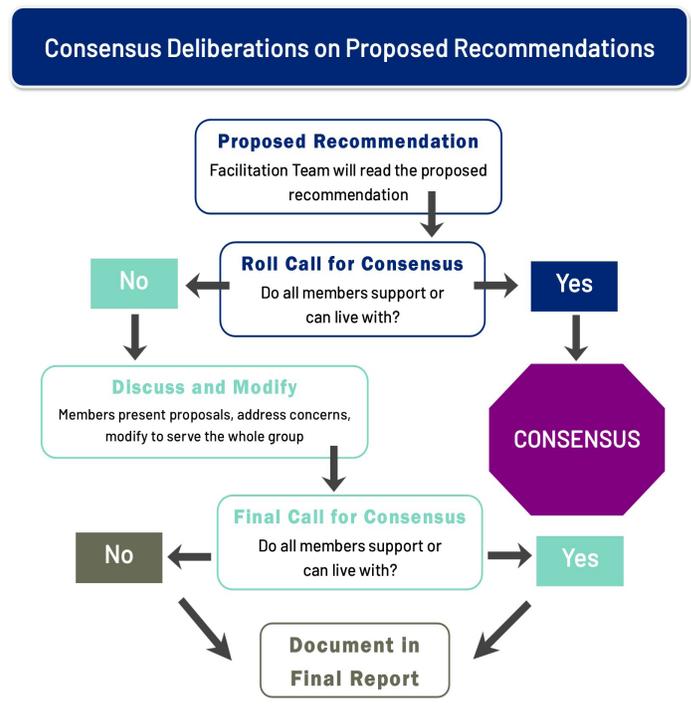
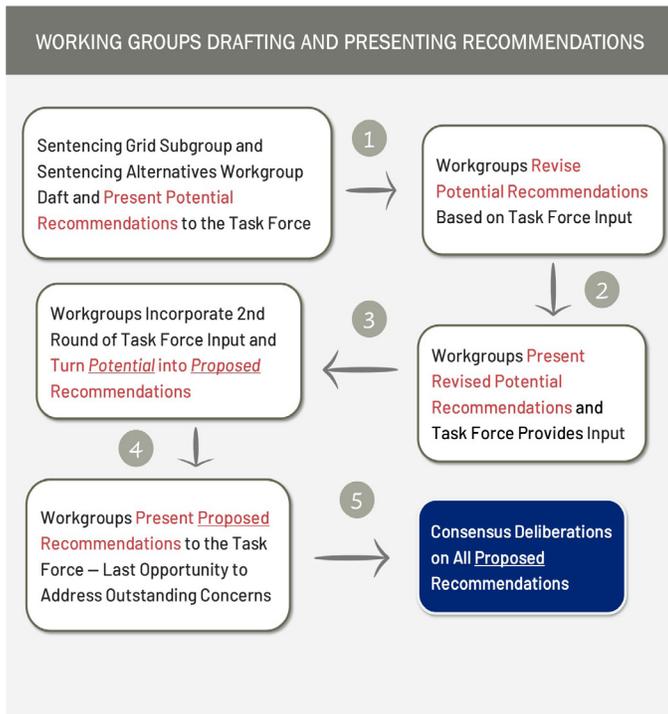
Sentencing Grid Specific potential recommendations were stitched together to become one proposed recommendation: **Recommendation 1.**

All other potential recommendations were referred to as “sentencing system” 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
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 potential recommendations that were not specifically sentencing grid formula and structure related, including the recommendations developed by the Sentencing Alternatives Workgroup, were labeled as “sentencing system” potential recommendations, and were grouped accordingly.

The Grid Subgroup then met weekly in August 2022 to review Task Force input on all “sentencing system” potential recommendations and turn them into proposed recommendations. This involved incorporating input, revising, and working to narrow down those with multiple options into a single proposal. Proposed recommendations were presented for one last round of Task Force input. The Grid Subgroup reviewed this last round of input and confirmed the recommendations were ready to go forward for consensus deliberations.



A detailed walk-through of each potential recommendation can be found in the following documents:

- [CSTF Part 1: DRAFT Potential Recommendations of the Vertical Axis of the Sentencing Guidelines Grid](#)
- [CSTF Part 2: DRAFT Potential Recommendations of the Vertical Axis of the Sentencing Guidelines Grid](#)

The Legislative Workgroup, comprised of the four Legislative members on the Task Force and the two non-legislative Co-Chairs of the Task Force, began meeting twice a month to discuss and coordinate potential legislation based on proposed recommendations.

Consensus deliberations on Recommendation 1. Proposal for a New Adult Felony Sentencing Guidelines Grid were held on September 1, 2022 and October 6, 2022. Consensus deliberations on all other recommendations were held on November 3rd and 17th, and December 8, 2022.

Criminal Sentencing Task Force - 2021 Meetings

JAN

12 GRID
19 GRID
21 CSTF
25 GRID

FEB

01 GRID
08 GRID
18 CSTF
22 GRID

MAR

01 GRID
08 GRID
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APR

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MAY

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JUN

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JUL

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30 SAWG

DEC

02 CSTF
07 GRID
14 GRID
14 SAWG

CSTF = Criminal Sentencing Task Force
GRID = Sentencing Grid Subgroup
SAWG = Sentencing Alternatives Workgroup

**Note: Written Summaries for each meeting and recordings of Task Force meetings can be found here: [CSTF 2021 Webpage](#)*

Criminal Sentencing Task Force - 2022 Meetings

JAN

11 GRID
18 GRID
25 GRID
25 SAWG

FEB

01 GRID
03 CSTF
08 GRID
08 SAWG
15 GRID
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22 SAWG

MAR

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OCT

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Nov

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08 GRID
15 GRID
17 CSTF

DEC

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08 CSTF

CSTF = Criminal Sentencing Task Force
GRID = Sentencing Grid Subgroup
SAWG = Sentencing Alternatives Workgroup

**Note: Written Summaries for each meeting and recordings of Task Force meetings can be found here: [CSTF 2022 Webpage](#)*

Criminal Sentencing Task Force - 2022 Workplan

2022 Meeting	Date	Agenda Topics	Meeting Notes
Grid Subgroup	Jan 11	<ul style="list-style-type: none"> • Exceptions to Standard Scoring for Certain Offenses: Multipliers 	<ul style="list-style-type: none"> • Grid Subgroup – 1.11.22 meeting notes
Grid Subgroup	Jan 18	<ul style="list-style-type: none"> • Should misdemeanors be excluded completely from CHS and/or have a specific washout period that is very short? 	<ul style="list-style-type: none"> • Grid Subgroup – 1.18.22 meeting notes
Grid Subgroup	Jan 25	<ul style="list-style-type: none"> • Should misdemeanors be excluded completely from CHS and/or have a specific washout period that is very short? 	<ul style="list-style-type: none"> • Grid Subgroup – 1.25.22 meeting notes
Sentencing Alternatives Workgroup	Jan 25	<ul style="list-style-type: none"> • DOSA statutory eligibility • How DOSA could overlay onto grid • Community intermediate sanctions 	<ul style="list-style-type: none"> • Meeting notes – 1.25.2022
Grid Subgroup	Feb 1	<ul style="list-style-type: none"> • Should misdemeanors be excluded completely from CHS and/or have a specific washout period that is very short? • Are the current washout periods appropriate for the different classes? • Should Class A offenses ever be eligible for washout? 	<ul style="list-style-type: none"> • Grid Subgroup – 2.1.22 meeting notes
Task Force Meeting #1	Feb 3	<ul style="list-style-type: none"> • Task Force introductions and updates • Update from Sentencing Alternatives Workgroup • Update on 2022 legislation related to Task Force’s work • Discuss vacant co-chair position • Presentation and discussion of potential recommendations from Grid Subgroup: Exceptions to Standard Scoring Rules – Multipliers and Repeat Violent Column on the Grid 	<ul style="list-style-type: none"> • Meeting recording – via TVW. • CSTF Draft 2.3.22 Meeting Summary
Grid Subgroup	Feb: 8	<ul style="list-style-type: none"> • Are the current washout periods appropriate for the different classes? 	<ul style="list-style-type: none"> • Grid Subgroup – 2.8.22 meeting notes

		<ul style="list-style-type: none"> Should Class A offenses ever be eligible for washout? 	
Sentencing Alternatives Workgroup	Feb: 8	<ul style="list-style-type: none"> Approaches for how alternatives overlay on grid rDOSAs 	<ul style="list-style-type: none"> Meeting notes – 2.8.2022
Grid Subgroup	Feb: 15	<ul style="list-style-type: none"> Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout? 	<ul style="list-style-type: none"> Grid Subgroup – 2.15.22 meeting notes
Grid Subgroup	Feb: 22	<ul style="list-style-type: none"> Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout? 	<ul style="list-style-type: none"> Grid Subgroup – 2.22.22 meeting notes
Sentencing Alternatives Workgroup	Feb: 22	<ul style="list-style-type: none"> SSOSA (w/Whitney Hunt, Sex Offender Policy Board): eligibility, washouts, juvenile pDOSAs: overlay on grid, eligibility requirements 	<ul style="list-style-type: none"> Meeting notes – 2.22.2022
Task Force Meeting #2	Mar 3	<ul style="list-style-type: none"> Task Force introductions and updates Decide third co-chair position Build understanding and provide input on potential recommendations from Grid Subgroup: Exceptional Sentences- Aggravators and Mitigators 	<ul style="list-style-type: none"> Meeting recording via TVW CSTF 3.3.22 Meeting Summary
Grid Subgroup	Mar 1	<ul style="list-style-type: none"> Grid Subgroup Feedback and Discussion of the Task Force March 3rd Meeting Presentation Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout? 	<ul style="list-style-type: none"> Grid Subgroup – 3.1.22 meeting notes
Grid Subgroup	Mar 8	<ul style="list-style-type: none"> Guest speaker, Dr. Megan Kurlychek, Professor of Sociology, Criminology, and Public Policy, with Penn State University 	<ul style="list-style-type: none"> Grid Subgroup – 3.8.22 meeting notes
Sentencing Alternatives Workgroup	Mar 8	<ul style="list-style-type: none"> FOSA & CPA: overlay on grid, outcomes, recidivism, eligibility 	<ul style="list-style-type: none"> Meeting notes – 3.8.22

Grid Subgroup	Mar 15	<ul style="list-style-type: none"> Juvenile adjudications – should they count, should they have separate washout rule, should they stay as is? Should all count or just certain types (e.g., violent/serious violent)? What were the previous WA laws regarding juvenile washout? 	<ul style="list-style-type: none"> Grid Subgroup – 3.15.22 meeting notes
Grid Subgroup	Mar 22	<ul style="list-style-type: none"> Juvenile adjudications – should they count, should they have separate washout rule, should they stay as is? Should misdemeanors trigger reset of “crime-free” period for felony offenses? When does the washout period start? What about technical violations or DOSA revokes? 	<ul style="list-style-type: none"> Grid Subgroup – 3.22.22 meeting notes
Sentencing Alternatives Workgroup	Mar 22	<ul style="list-style-type: none"> Discussion with Chair and Vice Chair of SOPB: Discussion on Special Sex Offender Sentencing Alternative (SSOSA), sex offenses, and ways the SOPB and Sentencing Alternatives Subgroup can coordinate their work. 	<ul style="list-style-type: none"> Meeting notes – 3.22.2022
Grid Subgroup	Mar 29	<ul style="list-style-type: none"> Revisit: Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout? Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction? Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule? 	<ul style="list-style-type: none"> Grid Subgroup – 3.29.22 meeting notes
Grid Subgroup	Apr 5	<ul style="list-style-type: none"> Revisit: Are the current washout periods appropriate for the different classes? Should Class A 	<ul style="list-style-type: none"> Grid Subgroup – 4.5.22 meeting notes

		<p>offenses ever be eligible for washout?</p> <ul style="list-style-type: none"> • Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction? • Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule? 	
Sentencing Alternatives Workgroup	Apr 5	<ul style="list-style-type: none"> • Are the current washout periods appropriate for the different classes? • Should Class A offenses ever be eligible for washout? • Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction? • Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule? 	<ul style="list-style-type: none"> • Meeting notes – 4.5.2022
Task Force Meeting #3	Apr 7	<ul style="list-style-type: none"> • Task Force introductions and updates • Updates from Sentencing Alternatives Workgroup • Consider potential recommendations from Grid Subgroup – Consecutive and Concurrent Sentencing Policy; Three Strikes and Two Strikes Sentencing Laws 	<ul style="list-style-type: none"> • Meeting recording via TVW • CSTF 4.7.22 Meeting Summary
Grid Subgroup	Apr 12	<ul style="list-style-type: none"> • Offense Classification Expansion Proposal 	<ul style="list-style-type: none"> • Grid Subgroup – 4.12.22 meeting notes
Grid Subgroup	Apr 18	<ul style="list-style-type: none"> • Offense Classification Expansion Proposal 	<ul style="list-style-type: none"> • Grid Subgroup – 4.18.22 meeting notes
Grid Subgroup	Apr 26	<ul style="list-style-type: none"> • Offense Classification Expansion Proposal 	<ul style="list-style-type: none"> • Grid Subgroup – 4.26.22 Offense Classifications Draft Proposals
Grid Subgroup	May 3	Juvenile Adjudications –	<ul style="list-style-type: none"> • Grid Subgroup – 5.3.22 meeting notes

		<ul style="list-style-type: none"> • Should they ever count? If so, what/conditions? • Just felonies? Just violent/serious violent? • Should they have a separate age-based threshold for washout? • What about offenses committed as a juvenile but that were remanded to adult court? 	
Sentencing Alternatives Workgroup	May 3	<ul style="list-style-type: none"> • Discuss Community Intermediate Sanctions 	<ul style="list-style-type: none"> • Meeting notes – 5.3.2022
Task Force Meeting #4	May 5	<ul style="list-style-type: none"> • Task Force Introductions and Updates • Revisit Three Policy Goals • Discuss The Road Ahead: Until Consensus & After Consensus • Generate List of Important Conversations • Begin Important Conversations 	<ul style="list-style-type: none"> • Meeting recording via TVW • Meeting Summary – May 5th CSTF
Grid Subgroup	May 10	<ul style="list-style-type: none"> • Juvenile Adjudications • Anticipatory offenses <ul style="list-style-type: none"> ○ Scored as completed offense – should they be treated as completed or have separate washout rule? ○ Another aspect of anticipatory commission of offenses is that most that are anticipatory drop a Class. This may have implications to the Offense Classification Proposal (Appendix D). Current law does have complexities because there are exceptions to this rule, and the exceptions are not the same for the different types of anticipatory 	<ul style="list-style-type: none"> • Grid Subgroup – 5.10.22 meeting notes • Grid Subgroup Discussion Guide for CHS Topics_as of 5.10.22

		(i.e., solicitation is not treated the same as attempt). How should these be addressed?	
Grid Subgroup	May 17	<ul style="list-style-type: none"> Revisit Washout Periods Discussion – confirm potential recommendations on when washout periods start 	<ul style="list-style-type: none"> Grid Subgroup Discussion Guide for CHS Topics_as of 5.17.22
Sentencing Alternatives Workgroup	May 17	<ul style="list-style-type: none"> Discuss and draft proposal for Community Intermediate Sanctions and Rehabilitative Services Program 	<ul style="list-style-type: none"> Meeting notes – 5.17.2022
Grid Subgroup	May 24	<ul style="list-style-type: none"> Revisit Washout Periods Discussion – confirm potential recommendations on when washout periods start 	<ul style="list-style-type: none"> Grid Subgroup – 5.24.22 meeting notes Grid Subgroup Discussion Guide for CHS Topics_as of 5.24.22
Grid Subgroup	May 31	<p>Revisit Washout Periods Discussion – confirm potential recommendations</p> <ul style="list-style-type: none"> Revisit and last chance to develop potential recommendation: Are the current washout periods appropriate for the different classes? Should Class A offenses ever be eligible for washout? What about some Class A offenses? A1, A2, A3 classification proposal. Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction? 	<ul style="list-style-type: none"> Grid Subgroup – 5.31.22 meeting notes Grid Subgroup Discussion Guide for CHS Topics_as of 5.31.22
Sentencing Alternatives Workgroup	May 31	<ul style="list-style-type: none"> Discuss and finalize potential recommendations on current sentencing alternatives. 	<ul style="list-style-type: none"> DRAFT of 5.25.22 – potential recommendations Meeting notes – 5.31.2022
Task Force Meeting #5	June 2	<ul style="list-style-type: none"> Task Force Introductions and Updates Review Task Force Input on Three Policy Goals 	<ul style="list-style-type: none"> Meeting recording via TVW

		<ul style="list-style-type: none"> • Review and Discuss Potential Recommendations on Community Intermediate Sanctions • Review and Discuss Potential Recommendations on Misdemeanor Scoring Rules 	
Grid Subgroup	June 7	CHS: How many CHS columns overall?	<ul style="list-style-type: none"> • Grid Subgroup – 6.7.22 meeting notes • Grid Subgroup Discussion Guide for CHS Topics_as of 6.7.22
Grid Subgroup	June 14	<p>CHS Exceptions to Standard Scoring Rules – Multipliers</p> <p>a) Should offenses score against one another when there is more than one current offense?</p> <p>b) Escape from community custody: Only offenses meeting the definition of Escape (see RCW 9.94A.030(25)) count in the criminal history score – other felonies are not included in the score.</p> <p>c) Community custody: Offenses committed while on community custody. Should extra point apply?</p> <p>d) Domestic Violence – clarify that under Potential Rec 15, DV multipliers eliminated and addressed as part of the repeat sv/violent column.</p> <p>e) Clarify and confirm that potential recommendation #15 is to eliminate all offense specific multipliers and add the repeat sv/violent column - that the repeat sv/violent column was intended to replace all offense-specific multipliers</p>	<ul style="list-style-type: none"> • Grid Subgroup – 6.7.22 meeting notes • Grid Subgroup Discussion Guide for CHS Topics_as of 6.14.22

		related to serious violent and/or violent offenses. f) Discuss Task Force input on misdemeanor scoring potential recommendations. (presented at 6.2.22 CSTF meeting)	
Sentencing Alternatives Workgroup	June 14	Discuss and incorporate input from Task Force on Community Intermediate sanctions Program	<ul style="list-style-type: none"> Meeting notes – 6.14.2022
Grid Subgroup	June 21	CHS Exceptions to Standard Scoring Rules – Multipliers	<ul style="list-style-type: none"> Grid Subgroup – 6.21.22 meeting notes
Grid Subgroup	June 28	Walk through of the grouping of the grid/grid formula specific recommendations	<ul style="list-style-type: none"> Grid Subgroup – 6.28.22 meeting notes CSTF_road map_grid potential recs_draft 6.28.22
Sentencing Alternatives Workgroup	June 28	No Meeting	
Grid Subgroup	Jul 5	CHS Exceptions to Standard Scoring Rules – Multipliers	<ul style="list-style-type: none"> Grid Subgroup – 7.5.22 meeting notes
Task Force Meeting #6	July 7	<ul style="list-style-type: none"> Task Force introductions and updates CHS Potential Recommendations Sentencing Alternatives Potential Recommendations 	<ul style="list-style-type: none"> Meeting Summary – CSTF July, 7, 2022
Grid Subgroup	Jul 12 – all day	<ul style="list-style-type: none"> Developing the Proposed Recommendations 	<ul style="list-style-type: none"> CSTF_grouping of potential recs_draft 7.12.22 Draft Compiled Grid and Offense Class Proposals_7.12.22 CSTF_Detailed guide potential recs_part 1 vertaxis_draft 6.2.22 CSTF_Detailed guide potential rec_part 2 horizaxis_draft_7.7.22
Sentencing Alternatives Workgroup	Jul 12	No Meeting	<ul style="list-style-type: none">
Legislative Working Group	Jul 15	<ul style="list-style-type: none"> Discuss Task Force Timeline, Potential Recommendations, and Legislative Strategy 	

Grid Subgroup	Jul 19	<ul style="list-style-type: none"> Developing the Proposed Recommendations 	<ul style="list-style-type: none"> Grid Subgroup – 7.19.22 meeting Notes
Grid Subgroup	Jul 26 – all day	<ul style="list-style-type: none"> Developing the Proposed Recommendations 	<ul style="list-style-type: none"> Proposed Grid Formula Recommendation_7.12.22 Grid Subgroup worksession workbook_7.12.22 and 7.26.22 CSTF_grouping of potential recs_draft 7.21.22 CSTF_draft potential rec 33_offense class proposal_6.30.22 Offenses for Reclassification_violent status proposal ProposedScoringExamples_SV-V-DV_Allpermutations Potential CSTF Recs Needing Grid Group Attention
Sentencing Alternatives Workgroup	Jul 26	No Meeting	
Grid Subgroup	Aug 2	<ul style="list-style-type: none"> Developing the Proposed Recommendations 	<ul style="list-style-type: none"> Grid Group Meeting Notes 8.2.22
Task Force Meeting #7	Aug 4	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Meeting Recording – Via TVW Meeting Summary – August 4th, 2022
Grid Subgroup	Aug 9	<ul style="list-style-type: none"> Developing the Proposed Recommendations 	<ul style="list-style-type: none"> Grid Subgroup August 9th Meeting Notes

Sentencing Alternatives Workgroup	Aug 9	<ul style="list-style-type: none"> • CISRS Program – develop 2nd draft (greater fleshed out program design) • LAST MEETING OF THE SENTENCING ALTERNATIVES WORKGROUP 	<ul style="list-style-type: none"> • Meeting notes – 8.9.2022
Legislative Working Group	Aug 12	<ul style="list-style-type: none"> • Discuss Task Force Timeline, Potential Recommendations, and Legislative Strategy 	
Grid Subgroup	Aug 16	<ul style="list-style-type: none"> • Developing the Proposed Recommendations 	<ul style="list-style-type: none"> • Grid Subgroup August 16th Meeting Notes
Grid Subgroup	Aug 23	<ul style="list-style-type: none"> • Developing the Proposed Recommendations 	<ul style="list-style-type: none"> • Grid Subgroup August 23rd Meeting Notes
Grid Subgroup	Aug 30	<ul style="list-style-type: none"> • Developing the Proposed Recommendations 	<ul style="list-style-type: none"> • Meeting Notes 8.30.2022
Task Force Meeting #8	Aug 31st	<ul style="list-style-type: none"> • Task Force Introductions and Updates • Review, Discuss, and Provide Input on Proposed Recommendations • Lay the groundwork to begin consensus deliberations at the next Task Force meeting. 	<ul style="list-style-type: none"> • Meeting recording – available via TVW • Meeting Summary – CSTF 8.31.2022
Task Force Meeting #9	Sept 1st	<ul style="list-style-type: none"> • Task Force Introductions and Updates • Begin consensus deliberations on proposed felony sentencing grid 	<ul style="list-style-type: none"> • Recording available via TVW • Meeting Summary – CSTF 9.1.2022
Grid Subgroup	Sept 6	<ul style="list-style-type: none"> • Proposed Recommendations – Revise to be ready for consensus attempt # 2 • Developing the Proposed Recommendations 	<ul style="list-style-type: none"> • Grid Subgroup September 6th Meeting Notes
Grid Subgroup	Sept 13	<ul style="list-style-type: none"> • Proposed Recommendations – Revise to be ready for consensus attempt # 2 • Developing the Proposed Recommendations 	<ul style="list-style-type: none"> • Grid Subgroup September 13th Meeting Notes
Legislative Working Group	Sept 16	<ul style="list-style-type: none"> • Discuss Task Force Timeline, Proposed Recommendations, and Legislative Strategy 	

Grid Subgroup	Sept 19	<ul style="list-style-type: none"> All Day Work Session: working to address issues from Sept1 consensus deliberation the new felony sentencing guidelines grid 	
Grid Subgroup	Sept 20	<ul style="list-style-type: none"> Decide on washouts proposed recommendations 	<ul style="list-style-type: none"> Grid Subgroup September 20th Meeting Notes
Grid Subgroup	Sept 27	<ul style="list-style-type: none"> Decide on proposed recommendation for second chance review Discuss CISRS and Reentry Programming Proposed Recommendations Address sentencing alternatives proposed recommendations 	<ul style="list-style-type: none"> Grid Subgroup September 27th Meeting Notes
Grid Subgroup	Oct 4	<ul style="list-style-type: none"> Decide on proposed recommendations on sentencing alternatives that will go forward to be presented as proposed on the 20th Discuss CISRS and Reentry Programming Proposed Recommendations 	<ul style="list-style-type: none"> Grid Subgroup October 4th Meeting Notes
Task Force Meeting #10	Oct 6	<ul style="list-style-type: none"> Task Force introductions and discuss updates to the 2022 workplan Complete consensus deliberations on proposed felony sentencing grid Review and discuss the remainder of the sentencing system proposed recommendations and confirm they are ready to move forward for consensus deliberations at the November Task Force meetings 	<ul style="list-style-type: none"> Meeting Recording – Available via TVW.org CSTF Meeting Summary – 10.6.2022
Grid Subgroup	Oct 11	<ul style="list-style-type: none"> Discuss Reentry Programming Proposed Recommendations and second chance review recommendation 	<ul style="list-style-type: none"> Grid Subgroup October 11th Meeting Notes

Grid Subgroup	Oct 18	<ul style="list-style-type: none"> Last change to decide on Sentencing Alternatives Proposed Recommendations that will be presented on Oct 20 	<ul style="list-style-type: none"> Grid Subgroup October 18th Meeting Notes
Task Force Meeting #11	Oct 20	<ul style="list-style-type: none"> Task Force introductions and 2022 workplan review Review and discuss the remaining proposed recommendations Build understanding among Task Force members around issues connected to retroactivity 	<ul style="list-style-type: none"> Meeting Recording – available via TVW.org
Legislative Working Group	Oct 21	<ul style="list-style-type: none"> Discuss Task Force Timeline, Proposed Recommendations, and Legislative Strategy Discuss Dec 14th Joint Legislative Work Session 	
Grid Subgroup	Oct 25	<ul style="list-style-type: none"> Prep for consensus deliberations next week Drafting final report – reviewing sections, guidance, etc.. 	<ul style="list-style-type: none"> Grid Subgroup October 25th Meeting Notes
Grid Subgroup	Nov 1 <i>Canceled</i>	CANCELED Members take the time to prep for consensus deliberations	
Task Force Meeting #12	Nov 3	<ul style="list-style-type: none"> Consensus Deliberations on all proposed recommendations 	<ul style="list-style-type: none"> Meeting Recording – via TWV.org
Grid Subgroup	Nov 8	<ul style="list-style-type: none"> Prep for consensus deliberations next week – address any remaining issues from Nov 3rd consensus Drafting final report – reviewing sections, guidance, etc.. 	<ul style="list-style-type: none"> Grid Subgroup November 8th Meeting Notes
Grid Subgroup	Nov 15	<ul style="list-style-type: none"> Prep for consensus deliberations next week – address any remaining issues from Nov 3rd consensus 	<ul style="list-style-type: none">

		<ul style="list-style-type: none"> Drafting final report – reviewing sections, guidance, etc.. 	
Task Force Meeting #13	Nov 17	<ul style="list-style-type: none"> Consensus Deliberations on all recommendations 	<ul style="list-style-type: none"> Meeting Recording – Via TVW.org
Legislative Working Group	Nov 18	<ul style="list-style-type: none"> Discuss Task Force Timeline, Proposed Recommendations, and Legislative Strategy Discuss Dec 14th Joint Legislative Work Session 	<ul style="list-style-type: none">
Grid Subgroup	Nov 22	CANCELED	
Grid Subgroup	Nov 29	CANCELED	<ul style="list-style-type: none">
Grid Subgroup	Dec 6	<ul style="list-style-type: none"> Address any remaining issues from Nov 3rd and Nov 17th consensus – preparing for final consensus deliberation on Dec 8th. Prep for Dec 14th Leg work session 	<ul style="list-style-type: none">
Task Force Meeting #14	Dec 8	<ul style="list-style-type: none"> Last chance for consensus – address any remaining issues Prep for work session with the Legislature 	<ul style="list-style-type: none">
Joint House Public Safety and Senate Law and Justice Meeting	Dec 14	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none">
Co-Chairs/Facilitation Team submit final report	Week of Dec 26th		

II.

Overview of Washington State Sentencing Guidelines

Overview of Washington State’s Current Sentencing Guidelines

The Washington State Legislature passed the Sentencing Reform Act of 1981 (SRA) and established the Sentencing Guidelines Commission (SGC) which was tasked with developing a recommendation for a sentencing grid for felony sentences. In 1983, the Legislature adopted the SGC’s recommendations, formally implementing the state’s felony guideline grid. Since the passage and adoption of the original guidelines grid, the legislature has made many modifications to the state’s sentencing laws. Most notably, in 2002, the Legislature established a separate sentencing guidelines grid for drug offenses. The focus of the Criminal Sentencing Task Force’s (CSTF or Task Force) work was on sentencing for adult felony non-drug offenses.

Washington State’s Current Felony Sentencing Guideline Grid

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

Sentencing guideline grids consist of rows and columns that intersect to create different cells. Each cell prescribes a sentence range that is to be used for individuals with a particular level of criminal history and who commit an offense of a particular seriousness.

Washington State’s current felony sentencing guidelines grid (above) consists of offense seriousness levels (vertical axis) and criminal history score⁷ (horizontal axis). The rows on the grid represent different Offense Seriousness Levels (OSLs) and range from 1 to 16. Higher OSLs correspond with longer sentence lengths. The columns represent different criminal history scores and range from 0 to 9 or more. Criminal history scores⁸ are determined using a complex calculation, accounting for prior convictions, current convictions, prior juvenile adjudications, certain types of prior and current convictions, offenses committed while on community custody, and the amount of time an individual is crime-free in the community.

⁷ Statutorily, Washington’s criminal history score is called the “offender score.” When the CSTF first convened in 2019, members shared how labels such as “offender” can be hurtful. Members encouraged using humanizing language during discussions. The Task Force decided to use the term “criminal history score” (CHS) in its conversations in place of “offender score” so this report and all CSTF materials use CHS also. It is also worth noting that while the term “criminal history score” is used as a substitute for “offender score”, the Task Force acknowledges that the term may be misleading since scoring does take into consideration other current offenses.

⁸ RCW 9.94A.525

Each cell provides judges a sentencing range that includes a minimum and a maximum term of confinement. The width of the cell ranges determines the amount of flexibility judges have when imposing a sentence.

All felonies have a “class”: Class A, Class B, Class C.⁹ The class of an offense drops to a class lower if it is an anticipatory (attempt, conspiracy, or solicitation) offense, with a few exceptions.¹⁰ For felony offenses, sentences to confinement longer than 12 months are served in state prisons under the jurisdiction of the Department of Corrections (DOC) while sentences of confinement equal to or less than 12 months are served in local jails under the jurisdiction of the county.¹¹

Washington State statutes includes several different classifications for offenses, including felony class, offense seriousness level, serious violent offenses, violent offenses, sex offenses, and crimes against persons.

The cells in the lower left-hand corner of the guidelines grid on the previous page (highlighted in green) are presumptive sentences to local jails and are often referred to as the “southwest corner of the grid”. The majority of cells on the guidelines grid correspond with a prison sentence however, the southwest corner of the grid typically accounts for roughly half of the convictions for ranked offenses.

More than 300 offenses (the majority of felony offenses) remain unranked (not assigned an OSL). There are A, B, and C class felonies that are unranked. Unranked offenses have a presumptive sentence range of 0 –12 months of incarceration, regardless of an individual’s criminal history score. Sentences for unranked offenses are not integrated into the sentencing guidelines grid but are depicted in some visuals in this report as an additional row at the bottom of the guideline grid.

There are strict limits on judicial discretion in Washington State’s sentencing guidelines. There are three main types of exceptions to the guidelines:

⁹ RCW 9A.20.021

¹⁰ Chapter 9A.28 RCW

¹¹ RCW 9.94A.190

Sentencing Alternatives

First Time Offense Waiver (FTOW): Sentencing Alternative that waives the standard range sentence for non-violent first-time felony conviction, not convicted of sex or certain drug offenses. In lieu of the standard range individuals receive up to 90 days in jail, up to 12 or 6 months of community supervision, and other special conditions, such as community-based treatment. (RCW 9.94A.650)

Prison-Based Drug Offender Sentencing Alternative (pDOSa): This alternative is available for some chemically dependent individuals. Judges may impose a sentence of a period of total confinement for one-half the midpoint of the standard sentence range or 12 months (whichever is greater) and one-half the midpoint of the standard sentence range as a term of community supervision, which must include substance abuse treatment. (RCW 9.94A.660 and RCW 9.94A.662)

Residential Drug Offender Sentencing Alternative (rDOSa): This alternative is available for some chemically dependent individuals. Judges may impose a sentence including community supervision equal to one-half the midpoint of the standard sentence range or two years (whichever is greater). Sentence includes residential substance use disorder treatment for three to six months. (RCW 9.94A.660 and RCW 9.94A.664)

Family and Offender Sentencing Alternative (FOSA): FOSA is an alternative to incarceration available for individuals who have physical custody of their minor child, is an expectant parent, or is a legal guardian of a minor child; or, is a biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with the minor child that existed at the time of the offense. For eligible individuals, judges may consider waiving a sentence involving incarceration and impose 12 months of community supervision along with conditions for treatment and programming. (RCW 9.94A.655)

Special Sex Offender Sentencing Alternative (SSOSA): For the sentencing of individuals convicted of a sex offense. Excludes those with prior convictions of certain felony sex offenses, convicted of certain sex offenses, or a current serious violent offense with a sexual motivation finding. SSOSA includes a suspended sentence in the standard range, a jail term up to 12 months, and special conditions such as inpatient and/or outpatient treatment. (RCW 9.94A.670)

- Exceptional Sentences (aggravating or mitigating factors)
- Sentencing Enhancements
- Sentencing Alternatives

Exceptional sentences¹² are sentences outside the standard sentence range. Departures from the sentence range may occur when there are substantial and compelling reasons justifying an exceptional sentence. Sentences below the range can be imposed at the discretion of a judge and statutes suggest the types of mitigating circumstances that a court may consider.

Exceptional sentences above the guideline range may be imposed for only the aggravating factors identified explicitly in statute. There are a few factors that allow a judge to impose a sentence above the sentence range, however the majority of aggravating factors must be admitted to by the defendant in a plea agreement or proven beyond a reasonable doubt before a jury.

Judges have the discretion to decide how long of a sentence below or above may be imposed. For mitigated exceptional sentences, judges must consider whether the offense includes a mandatory minimum term of confinement.¹³ For aggravated exceptional sentences, judges may depart above the guideline range up to the statutory maximum of the offense's felony class.¹⁴

Sentencing enhancements¹⁵ are separate laws that prescribe either a fixed additional term of confinement or alter the prescribed sentencing range if the conviction offense meets certain criteria. Unlike exceptional sentences, the additional amount of time added for a sentencing enhancement is prescribed by statute rather than at the discretion of the judge.

Sentencing alternatives are non-incarcerative, reduced incarceration, or partial confinement sentencing options that may be imposed in lieu of the standard range of incarceration for certain cases.

Sentencing Alternatives Cont.

Mental Health Sentencing Alternative (MHSA):
The Mental Health Sentencing Alternative (RCW 9.94A.695) was established during the 2021 Legislative Session and effective July 25, 2021. This legislation was informed by a 2020 CSTF Recommendation.

- In making the decision as to whether to impose the MHSA, the court is required to consider whether the defendant and community will benefit from the use of the alternative and must also consider the victim's opinion on whether the defendant should receive the MHSA.
- If the court imposes the MHSA, the court waives imposition of a sentence within the standard range and imposes a term of community custody between 12 and 24 months if the midpoint of the standard range is 36 months or less, and if over 36 months, a term of community custody between 12 and 36 months.
- If a person under the MHSA does not comply with the sentence requirements, the court may revoke the alternative sentence and impose a standard range sentence.

Under the MHSA, courts may issue supervision in lieu of a standard range sentence for defendants who:

- have been convicted of a felony that is not a serious violent or sex offense;
- have been diagnosed with a serious mental health illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;
- would benefit, along with the community, from supervision and treatment (as determined by the judge); and
- are willing to participate in the alternative.

Unless waived by the court, a report (presentence investigation) shall be provided by DOC containing:

- A proposed treatment plan for the defendant's mental illness;
- A proposed monitoring plan;
- Recommended crime-related prohibitions and affirmative conditions; and
- A release of information signed by the defendant.

¹² RCW 9.94A.535

¹³ RCW 9.94A.540

¹⁴ RCW 9A.20.021

¹⁵ RCW 9.94A.533

III.

Recommendations

Recommendations

The Legislature established the Washington State Criminal Sentencing Task Force (CSTF or Task Force) to review state sentencing laws, including a consideration of the Sentencing Guideline 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.

After the Task Force submitted its 2020 Report, the Legislature agreed with the Task Force's recommendation that thorough consideration of the adult felony sentencing guidelines grid (sentencing grid) would require data on its past and current impacts and an extension of the Task Force timeline. While initially the scope of work for 2021-2022 was to focus specifically on the sentencing grid, the Task Force recognized that opportunities to further the three policy goals extended beyond the grid to include other sentencing elements that influence or are influenced by the grid. To make more manageable the work of developing and refining recommendations, the Task Force commissioned working groups to meet between its monthly meetings to discuss ideas and draft potential recommendations.

While the working groups considered additional topics and recommendations important to multiple member constituencies, multiple draft recommendations did not reach the stage of consensus Task Force deliberations. For these topics, either a working group or the Task Force (while reviewing an idea in draft form) decided it would not be appropriate for Task Force consensus for one or more of the following reasons:

- The potential recommendation lay outside of the task Force scope
- It is/was being addressed already by other entities
- Members indicated that the entity they were representing would be advocating for a specific position or legislation and therefore they would be unable to support any other proposal

As noted above, the working groups generated potential recommendations, which were presented multiple times to the Task Force for input before being finalized for consensus deliberations. In this section are 28 recommendations, 13 of which are consensus recommendations. Each recommendation includes a brief description of its purpose, rationale and a high-level summary of workgroup and Task Force discussions about the recommendation, and how it meets the policy goals. On those recommendations on which the Task Force did not reach consensus, a brief and high-level summary of differing perspectives is provided. Each recommendation also includes the "consensus gradient" (see pg. 4), which the Task Force created in 2021 to better capture and communicate the range of support on recommendations.

Section IV includes the full decision roll calls for each recommendation, which lists each Task Force members consensus decision. Also included in this section are members statements and alternative proposals for non-consensus recommendations.

Given the diversity of perspectives, complexity and nuance of the issues, highly technical nature of the sentencing system laws and policies, and the large body of research and data reviewed over the last two years, the Task Force recognizes it would be impossible to capture all of this information in detail in one report. Listed at the end of each recommendation are the meeting dates for both the full Task Force and the working groups when that recommendation was being developed and discussed. The meeting recordings, notes, supporting materials and relevant research and data can be found [here on the Task Force's 2020 Final Report webpage](#).

Recommendation 1.

Proposal for A New Adult Felony Sentencing Guidelines Grid

(Non-Consensus)

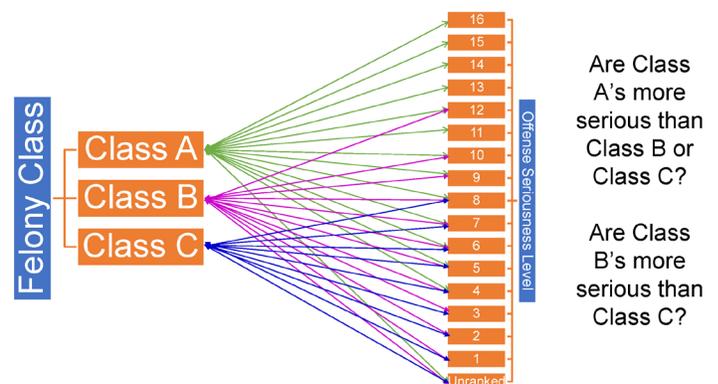
The Task Force acknowledges that under this new structure, recalibration and/or reclassification of some offenses will be needed and recommends this responsibility lie with the Legislature as it is beyond the scope and timeline of this Task Force.

		Criminal History Score (CHS)											Aggravator Departure Cap (greater than is presumptively unreasonable)	Repeat Serious Violent/Violent or Repeat Domestic Violence 9.94a.525(21)									
		0	1	2	3	4	5	6	7	8	9+												
Offense Serious Level (OSL)	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%
Unranked	0 - 365 days																						

Underlying Motivations for Revising Washington’s Current Felony Sentencing Guidelines Grid

In reviewing the current guideline grid through the lens of the three policy goals, the Grid Subgroup and Task Force identified the following:

- Offenses are classified multiple ways, with the two primary ways being felony class and offense serious level. When looking at how offenses are placed on the grid, there is no direct correlation between those two ways. This brings up questions of whether Class A offenses are in fact more serious than Class B and Class C, whether Class B offenses are more serious than Class C, and so on.



2. There are portions of the grid where the sentence ranges are not valid for some of the offenses in those serious levels. This is due to the interaction of statutory maximums that apply to felony class and instances where there are mandatory minimums.

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+										
XVI	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																			
XV	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548
XIV	123	220	134	234	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397
XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397
XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	334
XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
IX	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171
VIII	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144
VII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
VI	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
V	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
III	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68
II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
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																			

Therefore, one must know what other statutes apply, for example, statutory maximums and minimums, to determine if the standard range is a valid sentence.

3. Errors in calculation of CHS have been reported by the Department of Corrections (DOC). Calculation of CHS can be complex, particularly due to exceptions to standard scoring rules (multipliers).

	0	1	2	3	4	5	6	7	8	9+										
XVI	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																			
XV	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548
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XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397
XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	334
XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
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IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
III	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68
II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
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																			

Guideline minimum sentences for Rape 1 and Assault 1 (OSL 12) are much higher than current mandatory minimum sentence (60 months).
Guideline minimum for Sexually Violent Predator-Escape (OSL 10) is below the mandatory minimum sentence (60 months).

4. There is a lack of consistency regarding sentence ranges. Sentence ranges do not increase consistently across criminal history score or with an increase in serious level. Ultimately, there is no answer to the question: "why are the ranges what they are?" Sometimes an increase in CHS will increase a sentence, but not always.

Current ranges do not increase consistently across criminal history score or with an increase in seriousness level.

	0	1	2	3	4	5	6	7	8	9+										
XVI	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																			
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XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397
XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	334
XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
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II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
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																			

Strict delineation between cells that are jail sentences and cells that are prison sentences. Creates significant restriction/variance in judicial discretion

	0	1	2	3	4	5	6	7	8	9+										
XVI	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																			
XV	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548
XIV	123	220	134	234	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397
XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397
XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	334
XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
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VIII	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144
VII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
VI	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
V	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
III	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68
II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22		

are jail sentences (12 months or less) and prison sentences (12 months + one day or more), which creates significant jumps in ranges at the demarcation line. This strict delineation also creates significant restriction/ variance in judicial discretion.

Strict delineation between cells that are jail sentences and cells that are prison sentences. Creates significant jumps in ranges around the demarcation line.

	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
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VIII	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
VII	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
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V	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
IV	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
III	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
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																				

8. There is limited transparency in determination of sentence. Characteristics of criminal history operate “behind the scenes” to aggravate sentences.

9. There have been significant changes over 40 years leading to complex scoring and/or sentencing exceptions undermining consistency and contributing to errors.

10. The lack of an overarching framework leaves limited guidance to the Legislature as it considers the creation new offenses or changing components of existing offenses.

11. There is no clear evidence connecting sentence length to reducing recidivism.¹⁶ Collateral consequences from incarceration may in fact increase recidivism and can undermine public safety.

12. There is no present evidence of criminal history score being predictive of the likelihood of recidivism in Washington State.¹⁷

13. Limited transparency and predictability exist for victims at sentencing (e.g., How is CHS calculated? What is the actual possible sentence?)

14. There are limited local and rehabilitative options for judges at sentencing, options that may be more effective at reducing recidivism.

15. Evidence suggests that generalized offending patterns are more predictive of recidivism than specialized/repeat behaviors.

	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	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
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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	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
Unr																				

Minimum for all OSLs other than 14 are 75% of maximum = narrow ranges
OSL 14 is 50% of the maximum

	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	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
VIII	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
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	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
Unr																				

How you reach a particular criminal history score is unclear. Individuals with the same number of prior convictions can end up with significantly different scores/sentences

¹⁶ See generally Paul Gendreau, Claire Goggin & Frank Cullen, The Effects of Prison Sentences on Recidivism (1999) (prepared for the Solicitor General Canada); D.A. Andrews & James Bonta, The Psychology of Criminal Conduct, (5th Ed. 2003); . Pieter Baay, Marieke Liem & Paul Nieuwebeerta, “Ex-Imprisoned Homicide Offenders: Once Bitten, Twice Shy?” The Effect of the Length of Imprisonment on Recidivism for Homicide Offenders, 16 European Journal of Criminology 259-274 (2012); Lila Kazemian, Assessing the Impact of a Recidivist Sentencing Premium on Crime and Recidivism Rates in Previous Convictions at Sentencing, Chapter 10, 244 (Julian V. Roberts & Andreas von Hirsch, eds. 2010)

¹⁷ Review of Sentencing and Supervision in Washington State, A report by The Council of State Governments Justice Center provided for the Washington Sentencing Guidelines Commission, May 2019. p.9.

Description of Recommendation 1. Proposed New Adult Felony Sentencing Guidelines Grid (Non-Consensus)

Proposed New Adult Felony Sentencing Guidelines Grid

		Criminal History Score (CHS)																			Aggravator Departure Cap (greater than is presumptively unreasonable)	Repeat Serious Violent/Violent or Repeat Domestic Violence 9.94a.525(21)	
		0	1	2	3	4	5	6	7	8	9+												
Offense Serious Level (OSL)	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%
Unranked		0 - 365 days																					

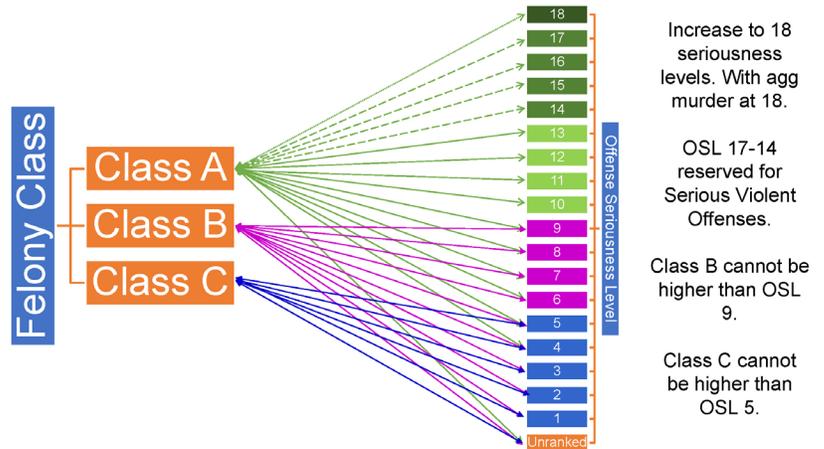
The Task Force acknowledges that under this new structure, recalibration and/or reclassification of some offenses will be needed and recommends this responsibility lie with the Legislature as it is beyond the scope and timeline of this Task Force.

Core Components

- Use of 5 formulas to establish grid ranges
- New Column: Repeat Violent/Serious Violent and Repeat Domestic Violence
- New Column: Aggravated Departure Cap
- 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

Key Structural Elements

1. The number of seriousness levels increases from 16 to 18.
2. Felony offenses are sorted such that Class B offenses are no higher than OSL 9 and Class C offenses are no higher than OSL 5.
3. Serious violent offenses are in OSL 14 – 17, with OSL 17 being Murder 1/Homicide by Abuse.
4. Aggravated Murder is placed in OSL 18.



5. There are **five formulas that establish the cell ranges** on the new grid. **Each formula includes** the following:
 - **An 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.

The Five Formulas¹⁸

Proposed New Adult Felony Sentencing Guidelines Grid

	0	1	2	3	4	5	6	7	8	9+	Aggravator Departure Cap (greater than is presumptively unreasonable)	Repeat Serious Violent/Violent or Repeat Domestic Violence 9.94a.525(21)										
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																					

¹⁸ The colors in the rows are not intended to be part of the grid, but rather are used to illustrate the locations where each of the five formulas explained below are applied.

Formula 5: 1-5: 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% of the maximum at CHS 9+

Percentage increase in maximum for each additional criminal history score point: 20%

Percentage of the maximum used to establish the minimum: 30%

	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																						
16																						
15																						
14																						
13																						
12																						
11																						
10																						
9																						
8																						
7																						
6																						
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60		
4	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39		
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																					

Formula 4: 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% of the maximum at CHS 9+

Percentage increase in maximum for each additional criminal history score point: 15%

Percentage of the maximum used to establish the minimum: 60%

	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																						
16																						
15																						
14																						
13																						
12																						
11																						
10																						
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120		
8	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	78	54	90		
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																						
4																						

Formula 3: OSL 16-14: Serious 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% of the maximum at CHS 9+

Percentage increase in maximum for each additional criminal history score point: 10%

Percentage of the maximum used to establish the minimum: 60%

	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											480	10%											
16											440	10%											
15											400	10%											
14											360	10%											
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	140	10%	
12	42	77	51	83	61	96	66	116	78	118	81	121	91	135	105	170	118	188	117	195	130	10%	
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	104	170	130	10%	
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	120	10%	
9																					120	10%	
8																						100	10%
7																						80	10%
6																						60	10%
5																						45	10%
4																						30	10%

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 CHS 9+) 40 months from the previous.

Maximum for CHS 0: 45% of the maximum at CHS 9+

Percentage increase in maximum for each additional criminal history score point: 10%

Percentage of the maximum used to establish the minimum: 75%

	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											480	10%											
16											440	10%											
15											400	10%											
14											360	10%											
13	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	220	10%	
12	81	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	199	260	180	10%	
11																						170	10%
10																						150	10%
9																						120	10%
8																						90	10%
7																						75	10%
6																						60	10%
5																						45	10%
4																						30	10%
3																						15	10%

Formula 1: OSL 17: Murder 1/Homicide by Abuse

Anchor: Criminal History Score (CHS) 0 minimum of 240 months (aligned with the mandatory minimum).

Percentage increase in maximum for each additional criminal history score point: 4%

Percentage of the maximum used to establish the minimum: 75%

	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%

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.

New Column: Aggravated Departure Cap

Proposed New Adult Felony Sentencing Guidelines Grid

	Criminal History Score (CHS)											Aggravator Departure Cap (greater than is presumptively unreasonable)	Repeat Serious Violent/Violent or Repeat Domestic Violence 9.94a.525(21)									
	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	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%
Unranked	0 - 365 days																					

		Criminal History Score																			Aggravator Departure Cap	Repeat Serious Violent/Violent or Domestic Violence 9.94A.525(21)											
		0	1	2	3	4	5	6	7	8	9+																						
Offense Serious Level (OSL)	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	365	249	332	377	259	346	391	269	359	404	280	374	419	291	389	434	303	404	449	315	421	466	328	437	482	341	455	500	45.0	10%
	16	114	153	187	126	168	202	138	185	219	152	203	237	168	224	258	184	246	280	203	271	305	223	298	332	245	327	361	255	340	374	34.0	10%
	15	101	135	165	111	148	178	122	163	193	134	179	209	148	197	227	163	217	247	179	239	269	197	263	293	217	289	319	225	300	330	30.0	10%
	14	87	117	143	96	128	154	106	141	167	116	155	181	128	171	197	141	188	214	155	207	233	170	227	253	188	250	276	195	260	286	26.0	10%
	13	59	99	121	65	108	130	71	119	141	79	131	153	86	144	166	95	159	181	105	175	197	115	192	214	127	212	234	132	220	242	22.0	10%
	12	52	87	106	57	96	115	63	106	125	70	116	135	77	128	147	84	141	160	93	155	174	102	170	189	112	188	207	117	195	214	19.0	10%
	11	45	76	93	50	84	101	55	92	109	61	101	118	67	112	129	73	123	140	81	135	152	89	149	166	98	163	180	102	170	187	17.0	10%
	10	39	65	79	43	71	85	47	78	92	52	86	100	57	95	109	63	105	119	69	115	129	76	127	141	83	139	153	87	145	159	14.0	10%
	9	19	33	45	22	37	49	26	43	55	30	50	62	34	57	69	39	66	78	45	76	88	52	87	99	60	100	112	72	120	132	12.0	10%
	8	17	28	38	19	33	43	22	38	48	26	43	53	30	50	60	34	58	68	40	66	76	46	76	86	52	88	98	63	105	115	10.0	10%
	7	14	24	33	17	28	37	19	32	41	22	37	46	25	43	52	29	49	58	34	57	66	39	65	74	45	75	84	54	90	99	9.0	10%
	6	12	20	27	14	23	30	16	27	34	18	31	38	21	36	43	24	43	48	28	47	54	32	54	61	37	63	70	45	75	82	7.0	10%
	5	3	12	18	4	14	20	5	12	23	6	20	26	7	24	30	8	29	35	10	35	41	12	42	48	15	51	57	18	60	66	6.0	10%
	4	2	9	13	3	11	15	4	14	18	5	17	21	6	20	24	7	24	28	8	29	33	10	35	39	12	42	46	14	49	53	4.0	10%
3	2	7	10	2	9	12	3	11	14	4	13	16	4	16	19	5	19	22	6	23	26	8	27	30	10	33	36	11	39	42	3.0	10%	
2	0	3	5	1	6	8	2	7	9	2	8	10	3	10	12	3	12	14	4	14	16	5	17	19	6	21	23	8	28	30	2.0	10%	
1	0	2	3	0	3	4	1	5	6	1	6	7	2	7	8	2	8	9	3	10	11	3	12	13	4	14	15	5	18	19	1.0	10%	
Unr		0 - 365 days																															

A new advisory column is added to the grid that establishes a recommended cap on aggravated sentences. Aggravated sentences that go beyond the recommended amount are presumptively unreasonable. As in the status quo, all aggravated sentences would still be appealable. The advisory cap is equal to 10% of the maximum sentence range for the highest CHS in each seriousness level.

New Column: Repeat Violent/Serious Violent and Repeat Domestic Violence

Proposed New Adult Felony Sentencing Guidelines Grid

		Criminal History Score (CHS)																			Aggravator Departure Cap (greater than is presumptively unreasonable)	Repeat Serious Violent/Violent or Repeat Domestic Violence 9.94a.525(21)								
		0	1	2	3	4	5	6	7	8	9+																			
Offense Serious Level (OSL)	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%								
Unranked		0 - 365 days																												

The offense-specific exceptions to standard scoring rules that increase the amount of CHS points added for certain prior convictions (“multipliers”) are eliminated and a new column is added for adjustments to the standard range for qualifying individuals.¹⁹ Sentences are eligible for the

¹⁹ RCW 9.94A.525. Note: RCW 9.94A.525(14): If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point. This scoring rule would be maintained as it is not a “multiplier”.

expanded range if the current offense is a violent or serious violent offense and there is at least one prior conviction for a violent or serious violent offense. The maximum of the sentence range increases by the percentage indicated in the repeat offending column. This is not an aggravated/exceptional sentence. The maximum sentence range should increase 10% for sentences that qualify for the repeat offending column. For example, if the standard range is 45-76 months, the expanded range would be 45-83 months (76 + 7).

		Criminal History Score																		Aggravator Departure Cap	Repeat Serious Violent/Violent or Domestic Violence 9.94A.525(21)												
		0	1	2	3	4	5	6	7	8	9+	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	352	249	332	365	259	346	381	269	359	395	280	374	411	291	389	428	303	404	444	315	421	463	328	437	481	341	455	501	45.0	10%
	16	114	153	168	126	168	185	138	185	204	152	203	223	168	224	246	184	246	271	203	271	298	223	298	328	245	327	360	255	340	374	34.0	10%
	15	101	135	149	111	148	163	122	163	179	134	179	197	148	197	217	163	217	239	179	239	263	197	263	289	217	289	318	225	300	330	30.0	10%
	14	87	117	129	96	128	141	106	141	155	116	155	171	128	171	188	141	188	207	155	207	228	170	227	250	188	250	275	195	260	286	26.0	10%
	13	59	99	109	65	109	119	71	119	131	79	131	144	86	144	158	95	159	175	105	175	193	115	192	211	127	212	233	132	220	242	22.0	10%
	12	52	87	96	57	96	106	63	106	117	70	117	128	77	128	141	84	141	155	93	155	171	102	170	187	112	188	207	117	195	215	19.0	10%
	11	45	76	84	50	84	92	55	92	101	61	101	111	67	112	123	73	123	135	81	135	149	89	149	164	98	163	179	102	170	187	17.0	10%
	10	39	65	72	43	71	78	47	78	86	52	86	95	57	95	105	63	105	116	69	116	127	76	127	140	83	139	153	87	145	160	14.0	10%
	9	19	32	36	22	37	41	26	43	47	30	50	55	34	57	63	39	66	73	45	76	84	52	87	96	60	100	110	72	120	132	12.0	10%
	8	17	28	31	19	33	36	22	38	42	26	43	47	30	50	55	34	58	64	40	66	73	46	76	84	52	88	97	63	105	116	10.0	10%
	7	14	24	26	17	28	31	19	32	35	22	37	41	25	43	47	29	49	54	34	62	63	39	65	72	45	75	83	54	90	99	9.0	10%
	6	12	20	22	14	23	25	16	27	30	18	31	34	21	36	40	24	41	45	28	47	52	32	54	59	37	63	69	45	75	83	7.0	10%
	5	3	12	13	4	14	15	5	17	19	6	20	22	7	24	26	8	29	32	10	35	39	12	42	46	15	51	56	18	60	66	6.0	10%
	4	2	9	10	3	11	12	4	14	15	5	17	19	6	20	22	7	24	26	8	29	32	10	35	39	12	42	46	14	49	54	4.0	10%
	3	2	7	8	2	9	10	3	11	12	4	13	14	4	16	18	5	19	21	6	23	25	8	27	30	10	33	36	11	39	43	3.0	10%
	2	0	3	3	1	4	7	2	7	8	2	8	9	3	10	11	3	12	13	4	14	15	5	17	19	6	21	23	8	28	31	2.0	10%
	1	0	2	2	0	3	3	1	5	6	1	6	7	2	7	8	2	8	9	3	10	11	3	12	13	4	14	15	5	18	20	1.0	10%
	Unr	0 - 365 days																															

Sentences are also eligible for the expanded range if the current offense is a Domestic Violence (DV) offense and there is at least one prior conviction for a domestic violence offense.²⁰ Felony DV offenses will still count as one CHS point. Judges will have additional discretion to increase sanctions even further in the instance of repeat offending. This discretion allows for more nuanced and effective approaches to sentencing based on the characteristics of a particular case. A separate grid with the expanded maximums could be printed in statute to avoid the need for manual calculation.

		Criminal History Score																		Aggravator Departure Cap	Repeat Serious Violent/Violent or Domestic Violence 9.94A.525(21)												
		0	1	2	3	4	5	6	7	8	9+	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	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	234	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	109	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	112	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	32	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	54	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																															

Recalibration of Offenses

The Task Force acknowledges that under this new structure, further recalibration of offenses will be needed and recommends this responsibility lie with the Legislature as it is beyond the scope and timeline of this Task Force.

²⁰ Qualifying domestic violence offenses are those included in RCW 9.94A.525(21)

Addresses the Policy Goals of the Task Force

Addresses Sentencing Complexities and Errors by:

- Aligns sentences with other statutes (e.g., statutory maximum).
- Eliminates multipliers while still holding individuals accountable for repetitive offending behaviors.
- Formula makes it clear exactly why ranges are the way they are.
- Consistent increases in sentences with an increase in CHS.

Addresses Effectiveness of the Sentencing System:

- Increases judicial discretion to tailor sentences to the characteristics of the case.
- Creates consistent and wider sentence ranges.
- No strict cut off for local and state sanctions.
- All sentence ranges are valid sentences.
- Increases transparency with expanded ranges rather than hidden calculations in CHS.
- Creates consistent increases in sentence ranges with increases in CHS and OSL.
- Establishes a framework with clear boundaries and guidance for the Legislature.

Promoting and Improving Public Safety:

- Formulas widen the sentence ranges without resulting in large reductions in the maximum range.
- The change in calculation of CHS due to the elimination of the exceptions to standard scoring (multipliers) and the standard column approach for repeat offending may actually increase predictiveness of CHS.
- Provides increased options for local sanctions to reduce disruptions caused by incarceration in state prison while still holding individuals accountable.
- Clear transparency for all parties, including victims, at sentencing.
- Increases options for local sanctions and increases judicial discretion by widening sentence ranges.
- Reduces overemphasis of specialization/repeat offending while still allowing for an increase in accountability in those cases.

Task Force's Consensus Deliberations on the Proposed New Sentencing Grid

The Task Force's consensus deliberations on the new sentencing grid proposed recommendation began on September 1, 2022. Each Task Force member conveyed their consensus decision via thumbs up ("I support this option"), thumbs sideways ("I can live with this option for the good of the group and the process") or thumbs down ("I cannot live with this option").

Per Task Force consensus protocols, any member who cannot live with a recommendation was expected to provide a proposal that legitimately attempts to achieve the interest of the constituency they represent and the interests of the other members. All members are to seek solutions that allow those thumbs to move up or sideways.

At the September 1st meeting, four member seats initially could not live with the proposed recommendation. Per the operating procedures, those members were asked to provide information about what and why their constituency could not live with the recommendation, their proposal that would allow for their constituency to be able to live with the recommendation, and how the change

would meet the Task Force's three policy goals.

One of the members representing the interests of incarcerated persons proposed a change to the formula for OSL 17 (changing the % increase in the maximum for each additional CHS point from 5% to 4%) and with that change, would be able to live with the proposed recommendation.

All members who already supported or could live with the recommendation could also live with this proposed change. Since the proposed change did not result in any additional members being unable to live with the recommendation, the change was made to OSL 17.

The Task Force continued to discuss the concerns of the remaining members present who could not live with the recommendation. Unable to make further progress reaching consensus in the time remaining in the meeting, the Task Force decided that the Grid Subgroup would meet to continue to try and address the concerns and bring back a revised proposal at the October 6th Task Force meeting.

The Grid Subgroup held an all-day work session on September 19, 2022 to try and work towards resolving the issues of the remaining seats not in consensus. While the Subgroup made considerable progress and resolved a number of outstanding issues and concerns, the Subgroup could not resolve the concerns of members representing the interests of crime victims and the Washington Association of Prosecuting Attorneys (WAPA). Concerns included that the formulas in the proposed grid would decrease sentence ranges for serious violent offenses, that gender bias and offenses such as domestic violence and sex offenses are not specifically addressed, and the belief that applying the formulaic approach would require significant recalibration of the seriousness of offenses, and therefore, could not support the grid proposal without knowing the results of this recalibration.

The Task Force's final consensus deliberations on the sentencing grid proposal occurred at its October 6, 2022 meeting. The remaining constituencies unable to live with the recommendation shared their reasons and concerns. Unable to identify a path to address those concerns, the Task Force decided to conclude consensus deliberation on the recommendation. Per the Task Force's Operating Procedures, those members unable to live with the recommendation were asked to provide their reasoning along with any alternate proposal in writing, for consideration by the Task Force and inclusion in this final report. Members' proposals are provided in Section IV, beginning on page 113.

Given the importance of this new sentencing grid recommendation and that the grid comprised the primary scope of Task Force work for nearly two years, the Task Force agreed that any member should have the ability to provide in writing, for inclusion in this report their constituency's perspectives on the recommendation and reasoning for why they either support or could live with the recommendation. These statements can be found in Section IV, beginning on page 113.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 5.6.21; 5.20.21; 6.3.21; 6.17.21; 8.5.21; 8.19.21; 9.2.21; 9.16.21; 11.4.21
- **Sentencing Grid Subgroup:** 1.25.21; 2.8.21; 2.22.21; 3.1.21; 4.5.21; 4.12.21; 4.19.21; 4.26.21; 5.4.21; 5.18.21; 5.25.21; 6.1.21; 6.8.21; 6.22.21; 6.24.21; 7.6.21; 7.13.21; 7.20.21; 7.27.21; 8.3.21; 8.10.21; 8.17.21; 9.7.21; 9.14.21; 10.5.21; 10.12.21; 11.16.21; 11.23.21; 11.30.21; 12.7.21; 12.14.21; 1.11.22; 2.8.22; 2.15.22; 3.8.22; 6.28.22; 7.19.22; 7.26.22; 8.9.22; 9.6.22; 9.19.22

Rec. 1: Non-Consensus

- Can support – 3
- Can live with – 13
- Cannot support – 3
- Abstain – 1

Consensus roll call on pg: 112

Member statements begin on pg: 113

RECOMMENDATION 2.

Sufficiently Fund Rehabilitative Programming, To Reduce Recidivism and Strengthen Public Safety

(Consensus - Strong Support)

The Legislature must allocate sufficient funds to implement rehabilitative programming for individuals incarcerated in Washington state, i.e., to support recruitment and training for mental health professionals, substance use disorder counselors, and the evidence-based programs to provide treatment and services along with education and job training for incarcerated individuals. These programs and services must be immediately available after the Department of Corrections (DOC) conducts an individual's intake assessment. Improving the effectiveness of the system and promoting public safety depend on this, as well as allocation of funds to support the transition to reentry through housing, transportation, removing barriers to employment, providing community supports, and other steps such as those outlined in the Task Force's 2020 Report. Require DOC to publish annual statistics regarding participation in and completion of programs by program and facility.

In Washington State, 96% of incarcerated individuals will release back out into the community.²¹ In recent years, the traditional recidivism rate has indicated that approximately 30% of those releasing have returned to prison within three years of their release.²² Research evidence shows that incarceration does not reduce recidivism; at best, it merely limits the ability to commit further crimes in the short term - during the period of confinement.²³

Research by WSIPP has shown that use of research-based rehabilitation and prevention programs, in lieu of incarceration to reduce recidivism among targeted criminal offenders, results in significant public savings without increasing the crime rate.²⁴ WSIPP's most recent study for the Washington Legislature, for example, employed sophisticated computer modeling techniques in concluding that if Washington successfully implemented a moderate portfolio of evidence-based alternatives to imprisonment it could avoid a significant level of future prison construction, save Washington taxpayers about two billion dollars, and reduce Washington's crime rate by 8%.²⁵

Research has found that employment and education lead to desistance and there is consistent evidence that in-prison vocational and educational programs are associated with reduced recidivism.²⁶ There is a large body of research conducted over the last twenty years that has shown well-implemented rehabilitation and treatment programs that were carefully directed, with the assistance of validated risk assessment tools, to the appropriate population of individuals can reduce recidivism by 10%-20%.²⁷ In addition, according to evidence compiled by *The Public Safety Performance Project*, "Research clearly identifies the period immediately following release from prison

²¹ <https://www.doc.wa.gov/about/agency/strategic-plan-g1o1.htm>

²² *Ibid*

²³ Warren et al, *Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy*. University of San Francisco Law Review, 2009: p. 594

²⁴ Washington State Institute for Public Policy, *adult Criminal Justice Cost Benefit Results*

²⁵ *Ibid*

²⁶ <https://www.doc.wa.gov/docs/publications/reports/wsu-research-report.pdf>

²⁷ Warren et al, *Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy*. University of San Francisco Law Review, 2009: p. 586

and jail as a particularly high-risk time. Agencies should respond by concentrating resources in the first few days and weeks of supervision, including reaching into correctional institutions to begin the case planning process for those who will be supervised after release.”²⁸

Throughout 2020, the Task Force’s “Reentry and Reducing Recidivism” workgroup met thirteen times to develop and discuss potential recommendations to support individuals in transitioning successfully back into the community and to help prevent future recidivism. The workgroup developed, and the Task Force considered and reached consensus on, several recommendations to these ends.²⁹

In 2021 – 2022, with the scope of the Task Force’s work focused on the sentencing grid, numerous discussions focused on whether changes to the grid would result in reductions in sentence lengths, and if so, how best to address the public safety concerns of some member constituencies. The Task Force and its workgroups frequently discussed the need to focus more on the “quality” of the time spent in incarceration as opposed to the “quantity” of time spent. Members reviewed research and frequently discussed how the likelihood of successful reentry can be improved with the utilization of rehabilitative and reentry-focused programs and evidence-based practices and that prison treatment programs can be highly effective in reducing recidivism and associated costs to society.

When developing this recommendation, the Task Force discussed how the types of programs available are not standard across DOC facilities and that this creates disparities in rehabilitative opportunities depending on where one serves their sentence. Therefore, Task Force members thought it would be valuable to inventory the programs available at each facility and to study which programs have the largest impact on reducing recidivism. Such an inventory and study could provide valuable information about what programs are available at each facility, what the program capacity is, and how many people complete the program. In addition, some members encouraged consideration of non-DOC service providers, noting that some nonprofit community organizations offer effective programs that can support rehabilitation and that DOC could increase its capacity to deliver by partnering with such organizations.

This recommendation prioritizes rehabilitative services and programs necessary to help those in DOC custody such as education, job training programs, chemical dependency treatment, and behavioral and mental health treatment. In addition, this recommendation acknowledges the need to address workforce capacity issues such as the shortage of service providers, retention of those providers, and geographic disparities in levels of service and programming. The Task Force also discussed and included in this recommendation the need for funding and investing in services critical for successful reentry such as housing, transportation, employment, and continued treatment.

During consensus deliberations on November 3, 2022, the Task Force reached consensus following the addition of non-substantive edits to the text of the recommendation. For several members, their constituency’s ability to “live with” the new sentencing grid proposal (Recommendation 1. described in the previous section) and any reductions in sentence ranges hinges upon there being significant investment in and expansion of evidence-based programming in DOC and making them available to individuals from initial intake to their return to the community. Members also spoke about the

²⁸ The Public Safety Performance Project: <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision>

²⁹ CSTF 2020 Report: see recommendations 2-8 and 28-39

importance of the Legislature addressing workforce capacity constraints to ensure such programming is available at all facilities.

In addition, members noted concerns that DOC does not have the current infrastructure and resources to immediately begin offering this level of programming. The Task Force stressed the importance of providing the necessary funding support and investments, including addressing critical staffing capacity constraints.

Rec. 2: Consensus - Strong Support

- Can support – 16
- Can live with – 1
- Cannot support – 0
- Abstain – 1

Consensus roll call on pg: 132

Addresses the Policy Goals of the Task Force

This recommendation can greatly improve the quality of time spent for those incarcerated in DOC facilities. Providing rehabilitative services such as education, job training programs, chemical dependency treatment, and behavioral and mental health treatment will help meet unmet needs of individuals in DOC custody. According to research, it will also contribute to individuals' desistance from criminal behavior: Chapter 3 of *Desistance from Crime: Implications for Research, Policy, and Practice*³⁰ reports that labor market success, family life, housing stability, and mental health all are associated with desistance.

As described in research reviewed by the Task Force, providing such services also better prepares individuals for reentry. Reentry services can help successfully reintegrate those releasing from DOC custody into the community and support them in securing basic needs. Meeting these needs can help reduce the risk of recidivism, which will advance public safety and improve the effectiveness of the sentencing system.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 8.4.2022; 10.6.2022; 10.20.22; 11.3.22
- Sentencing Grid Subgroup: 8.9.22; 9.19.22; 9.27.22; 10.11.22

RECOMMENDATION 3.

Create A Statewide Program for Intermediate Sanctions and Reintegrative Services

(Consensus - General Support)

Create a statewide program for intermediate sanctions and reintegrative services to be served in the community. Establish a workgroup tasked with determining the legislative standards and implementation plan for the program, using the information provided in the recommendation as a guideline for the general program framework.

Early in the Grid Subgroup's review of Washington State's current sentencing guidelines grid, the Subgroup identified areas along the grid with narrow and inconsistent ranges, strict cutoffs for local and state sanctions, and some sentencing ranges that were not applicable since they exceed statutory maximums. As described in Recommendation 1, the proposed new sentencing grid utilizes

³⁰ Solomon, Amy & Scherer, Jennifer. *Desistance from Crime: Implications for Research, Policy, and Practice*; published by the U.S. Department of Justice's Office of Justice Programs / National Institute of Justice, November 2021. NCJ 301497: p. 86

a formulaic approach to create more consistency for sentence ranges throughout the grid. When the Subgroup first applied this formula, they realized that it created “straddle cells” where sentence ranges had a minimum range shorter than 12 months and a maximum range longer than 12 months and a day, thus allowing for either a jail or a prison sentence within the standard range.³¹

As depicted here on the right, on the state’s current sentencing guidelines grid, there is a hard line between local and state sanctions – as it stands, the sentence range in a cell can only allow for a jail sentence or a prison sentence – there are no blended sentence ranges (“straddle cells”). The area on the grid in green depicts strictly local sanctions and is commonly referred to as the “southwest corner” of the grid.

Washington State’s Current Sentencing Guidelines Grid

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

Members of the Grid Subgroup and full Task Force discussed whether the new sentencing grid proposal should allow for straddle cells or maintain a strict division between local and state sanctions. The idea emerged that if the new grid allows for straddle cells, then what could be created for this area of the grid is an “intermediate sanction” zone.

Below is the proposed new adult felony sentencing grid, described under Recommendation 1.³²

		Criminal History Score (CHS)										Aggravator Departure Cap (greater than is presumptively unreasonable)	Repeat Serious Violent/Violent or Repeat Domestic Violence 9.94a.525(21)										
		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	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																					

³¹ Current law (RCW 9.94A.190) states that sentences are to be served at a state facility or institution (prison) when the sentence imposed is a term of confinement that is at least one year and one day (12+months) and are to be served at a local facility or institution (jail) when the sentence imposed is a term of one year or less.

³² Sentencing Grid images and descriptions for this recommendation illustrate potential application of zones on the proposed new sentencing grid. Since the Task Force did not reach consensus on the proposed grid (Recommendation 1.), these images and descriptions are for illustrative purposes only to depict the product of conversations and work prior to the fall of 2022, when consensus deliberations occurred.

The area shaded in purple denotes sentence ranges that are strictly local sanctions. The area shaded in red denotes “straddle cells” - sentence ranges that are shorter than 12 months to longer than 12 months and a day, thus allowing for either a jail or a prison sentence.

With support from the Task Force, the Sentencing Alternatives Workgroup took on the work to explore and develop a proposal for intermediate sanctions in this area of the proposed grid.

Alternatives Workgroup members noted the need for flexibility and non-incarceration options in certain circumstances for accountability for individuals where current sentencing alternatives were not applicable. Members received presentations and learned about intermediate sanctions, reintegrative services, and rehabilitative services. The Alternatives Workgroup also received presentations and had discussions about how zones can add a third dimension to the grid that clearly presents potential sentencing options.

Starting in November 2021, the Alternatives Workgroup presented the Task Force with several iterations of a proposal to create a statewide, community-based intermediate sanctions and rehabilitative services program.

When the Task Force did not reach consensus on Recommendation 1. (the proposal for a new guidelines grid recommendation), members asked to separate this recommendation from the guidelines grid recommendation, since the idea to create a statewide program for community intermediate sanctions and reintegrative services has merit independent of any changes to the guidelines grid.

The Task Force discussed the need for a workgroup to develop the specifics of a framework and implementation plan for a statewide program and proposed this recommendation. This workgroup would be tasked with creating the legislative standards for the statewide program, using the information provided in this recommendation (described on the following pages) as guidance for developing the specific elements of the program and its implementation.

Rec. 3: Consensus - General Support

- Can support – 8
- Can live with – 9
- Cannot support – 0
- Abstain – 1

Consensus roll call on pg: 133

Members provided additional content and clarifying edits to the description of the program during consensus deliberations on November 3, 2022, and ultimately reached consensus.

Addresses the Policy Goals of the Task Force

This proposal will increase the effectiveness of the sentencing system by supplying additional sentencing options that provide structure for accountability, rehabilitation, and community reintegration services while supporting public safety by considering the victim, defendant, and community. Community safety could also be improved through reducing the disruption to families and communities caused by incarceration, while still holding individuals accountable. Increased options for treatment and reintegrative services could also promote community safety through reduced recidivism. Creating a framework for intermediate sanctions, implemented locally and supported by state funding and oversight, supports rehabilitative and non-incarcerative sentencing alternatives without increasing the financial burden on counties. More alternatives to incarceration could reduce the number of individuals in prison and increase resources available for programs and treatment in prison.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 8.19.2021; 10.7.2021; 11.4.2021; 6.2.2022; 8.31.2022; 10.20.22; 11.3.2022
- Sentencing Alternatives Workgroup: 9.7.21; 9.21.21; 10.5.21; 10.19.21; 1.25.22; 2.8.22; 4.5.22; 5.3.22; 5.17.22; 6.14.22; 8.9.22

The following description outlines key components of a statewide program for intermediate sanctions and reintegrative services. It is meant to serve as guidance to be used by the workgroup (described below) that would be designated to develop the program. Per requests from Task Force members during consensus deliberations, it is noted here that the images and descriptions reference and apply to the new guidelines grid proposal and are provided for illustrative purposes only since the Task Force did not reach consensus on the proposed new guidelines grid. These images and descriptions depict the product of conversations and work prior to the fall of 2022, when consensus-seeking occurred.

Statewide Program for Intermediate Sanctions and Reintegrative Services

OSL	Criminal History Score (CHS)											Aggravator Departure Cap	Repeat Serious Violent/Violent or Domestic Violence 9.94A.525(21)										
	0	1	2	3	4	5	6	7	8	9+													
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																						
Zone 4: State Prison	17	240	320	249	332	259	346	269	359	280	374	291	389	303	404	315	421	328	437	341	455	45.0	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%
Zone 3: DOSA, FOSA State Prison	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%
Zone 2: CIS Program, DOSA, FOSA <=12 Jail; >12 Prison	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%
Zone 1: CIS Program, rDOSA Jail	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																						

Zone 1: is the expanded “southwest corner” of the proposed grid. Jail sentences would be locally resourced, as in the status quo. If sentenced to intermediate sanctions and reintegrative services program, access to state funding would be enabled.

To address concerns that some judges may be reluctant to utilize such a sentencing option and to incentivize the development and use of these programs, jurisdictions would be eligible for the use of state funds for those sentences. Those sentenced to local confinement in jail would continue to be served by local resources.

Zone 2: is the area of the proposed grid with straddle cells. Under the current grid, all the cells that fall in this zone are state prison sentences. Under the proposed felony sentencing grid and this proposal, for the cells in this zone, if the court sentences to 12 months or less, the cost of

confinement would be reimbursed by the State. Even though the State would still cover the cost of these sentences, these sentences would not be on DOC caseload, which could increase capacity and resources available in DOC facilities.

In this zone, a state program sentence would be the default for those individuals meeting established criteria; to sentence to incarceration, prosecutors and/or judges would have to articulate how intermediate sanctions and reintegrative services are not appropriate.

Zone 3: Potential sentencing options currently include prison or applicable sentencing alternatives. In this zone, the Alternatives Workgroup discussed whether to include Zone 3 in a community-based intermediate sanctions and reintegrative services. Some members expressed concerns about sentencing alternatives being available for certain offenses in this zone, and expressed support for at least some period of confinement. The group saw potential to mirror the prison Drug Offender Sentencing Alternative by requiring a term of confinement of half the midpoint of the sentencing range, followed by a term of supervision or other intermediate sanction and/or reintegrative services. The Alternatives Workgroup also identified the need for oversight of this program's administration to ensure smooth transitions and avoid potential duplicity with existing programs (such as graduated reentry).

Establish a Workgroup

This recommendation calls to establish a workgroup to develop legislative standards and an implementation plan (using this guidance from the CSTF) for a statewide program for intermediate sanctions and reintegrative services to be served in the community. The workgroup will use the information provided in this report and supporting materials to evaluate the benefits and challenges of both a county organized program and a centralized program under the Department of Corrections (DOC). The workgroup membership will include representation from, but not limited to; county courts, jails, prosecutors, defense council, social services, DOC, BIPOC community members, those with lived experience, and victim advocacy groups including those focused on sexual assault and gender-based violence.

Guidance from the Criminal Sentencing Task Force

Create a framework for a statewide program for intermediate sanctions and reintegrative services. Counties would develop and operate their own programs to include both intermediate sanctions and reintegrative service programs. The State would oversee to ensure programs meet a minimum level of care: programs would be required to receive periodic state approval to ensure they meet state standards. Funding would be provided by the State.

Intermediate sanctions could include the following:

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

- Residential community corrections (e.g., halfway houses)

Reintegrative services could include rehabilitative programs and begin as soon as possible after a needs assessment. Reintegrative services include, but are not limited to:

- Education programs
- Employment/job training
- Assistance with housing and transportation
- Mentorship and credible messenger services
- Life skills classes and use of technology training

Rehabilitative services include but are not limited to:

- Substance use disorder treatment
- Mental health counseling
- Cognitive behavioral training
- Other evidence-based programs

Key Elements of A Statewide Program Include:

- Comprised of two components: 1) intermediate sanctions that meet minimum standards and 2) access to rehabilitative and reintegration programs and services.
- Counties would operate their programs, but each must receive state approval after a specified number of years to ensure the programs meet minimum standards. As it does with juvenile evidence-based programs (in the Juvenile Block Grant Program³³), the state could establish quality assurance protocols and set standards that county program/s must meet. The State would review these annually or biannually (i.e., approvals for each two-year budget cycle).
- The State would identify the categories of services that a qualifying program should provide, e.g., employment/job training, education, housing, cognitive behavioral training.
- The State may set certain minimum levels of care for the general program, but also for specific populations of individuals. For example, the State may require a higher level of supervision (such as electronic home monitoring or day reporting centers) for individuals receiving an intermediate sanction sentence for an offense at a certain seriousness level or for someone with a certain level of criminal history.
- Similarly, the State may require that all individuals sentenced under the program receive some type of needs assessment to inform treatment.
- Specific sentence terms for an intermediate sentence would be determined by the judge ordering the alternative and could be informed by the local program supervisor/administrator.
- The State may also create consistent standards for what types of behaviors would require a revocation and a return to incarceration.
- Framework must be structured to ensure that individuals report to one jurisdiction, whether at the county level or DOC.

³³ RCW 13.40.540

- Regular data collection and evaluation should occur to ensure equitable application of the program, ideally with a centralized database. The State would set requirements for the type of data that must be collected and reported on an annual basis. Annual or biennial evaluation of the data would be needed to ensure the money is being properly used.
- Victim advocacy groups, including those focused on sexual assault and gender-based violence, should be engaged in creating and implementing this program and its policies, perhaps on an advisory committee; the Legislature should, at a minimum, work with counties and DOC.
- Concerns with tort liability (for DOC or counties) may arise with this approach; this needs to be addressed. Addressing liability concerns will be an important element to integrate into this approach.
- State funding and technical assistance would incentivize local jurisdictions that don't have access to these types of programs to develop them. There would need to be protection of funding for smaller jurisdictions to ensure adequate resource allocations and recognize different resource needs. Some jurisdictions will need to build a new program, while others will need state support for existing under-resourced programs, and others will wish to expand robust programs.
- A critical design element will be to create an implementation structure (i.e. centralized, decentralized, hybrid) that most equitably serves individuals who do not reside in their county of conviction and court oversight.

Funding Model

The State would provide funding for this program to counties. This could be done through a block grant system using a formula, modeled on the Juvenile Court Block Grant Program. The Legislature should allocate enough funding up front to ensure adequate levels of staffing and programming (lower caseloads would allow DOC and counties to provide additional services to those incarcerated). Adequate funding to support staffing and capital costs may also allow counties to expand the types of services offered to individuals in jail or individuals sentenced in district court. Thus, this program could have beneficial spillover effects for an even larger population of individuals involved in the criminal legal system. Long-term savings would come as an effect of the investment in effective programs to reduce overall recidivism and future caseloads.

Provided and Funded Services and Programs for Victims

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

RECOMMENDATION 4.

Implement a Motivational-Focused Supervision Model

(Consensus - Strong Support)

The current supervision model based on surveillance should be modified to create a system that allows appropriate treatment, resources, and mentoring for individuals placed in 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. This includes adequate funding for DOC and training of community corrections officers.

In 2018, the Council of State Governments (CSG) Justice Center assisted the Washington Sentencing Guidelines Commission (SGC) in its review of the Sentencing Reform Act (required under Engrossed Substitute Senate Bill 6032, Chapter 299, Laws of 2018) by analyzing criminal justice system trends and practices using Washington data and identified key components of effective community supervision based on current literature. According to the CSG:

“Recent research has focused on the mindset of supervision and corrections officers and the type of relationships they build with the people they supervise, noting that additional recidivism-reduction potential exists when officers use a strengths-based, therapeutic approach in their interactions. This concept is known as becoming a “coach” rather than a “referee” and is truly the embodiment of core correctional practices, which focus on building relationship skills, problem solving, effective reinforcement and modeling in interactions with people under supervision or in a correctional setting.”³⁴

In 2020, the CSTF provided the following consensus recommendation to the Legislature and Governor in its 2020 Report:³⁵

“Develop and implement a formal motivational and coaching focused supervision model, which includes trauma informed care and core correctional practices and allows for a more responsive and individualized case management approach to facilitate successful transitions and reentry to the community. This supervision model should consider staffing needs, caseload, and program/service delivery, including how community corrections officers dress during routine home and work checks. Because addressing liability concerns will be an important element of any new supervision model, parties directly affected should address this issue and keep the Task Force updated on their work.”

In 2021, the Legislature provided funding to DOC to expand reentry supports and transition services for incarcerated individuals including development and implementation of a coaching model approach to supervision. The Legislature tasked DOC to develop an implementation plan for a coaching model for community supervision to begin in fiscal year 2023 and to submit an initial report to the Legislature on the progress of implementation of the coaching supervision model by no later than February 1, 2023.

³⁴ Review of Sentencing and Supervision in Washington State, A report by The Council of State Governments Justice Center provided for the Washington Sentencing Guidelines Commission, May 2019.

³⁵ Criminal Sentencing Task Force 2020 Final Report: p. 25

The Task Force reached consensus on this recommendation at the November 3, 2022 meeting. Members noted the importance of funding be provided to DOC for adequate training of community corrections officers and this was added to the language of the recommendation.

Rec. 4: Consensus - Strong Support

- Can support – 15
- Can live with – 2
- Cannot support – 0
- Abstain – 1

Consensus roll call on pg: 134

Addresses the Policy Goals of the Task Force

Individualized Community Oriented Accountability

Collaborative Help (i-COACH) will be the delivery of supervision, programming, and services for individuals under DOC's supervision and includes a requirement of the Community Corrections Officer (CCO) to coach supervised individuals throughout the course of supervision.³⁶ i-COACH will be driven by two philosophies:

Community reintegration supervision model

- Will apply to supervised individuals who release from a prison or re-entry center and all supervised individuals who release from a violator facility after serving a high-level sanction.
- 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.

Enhanced supervision model

- Will be utilized throughout the course of supervision for all populations.
- 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.
- Focuses on the supervised individuals and tailors case management approaches and support functions to meet the identified needs of the supervised individual.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 8.5.2021; 11.4.2021; 10.6.22; 11.3.22
- **Sentencing Grid Subgroup:** 6.24.21; 7.6.21; 9.13.22; 9.19.22; 6.14.22; 8.9.22

³⁶ "iCoach Presentation" provided by Washington Department of Corrections

RECOMMENDATION 5.

Request and Fund the Washington State Institute for Public Policy To Update the Adult Corrections Inventory

(Consensus - Unanimous Support)

Request and fund the Washington State Institute for Public Policy to update its adult corrections inventory in order to update assessments of evidence-based programs and expand the inventory to include new programs that were not previously available when the inventory was conducted.

The Legislature often directs the Washington State Institute for Public Policy (WSIPP) to study the effectiveness and assess the potential benefits and costs of programs and policies that could be implemented in Washington State. These studies are designed to provide policy makers with objective information about which programs or policy options work to achieve desired outcomes (e.g., reduce crime) and the long-term economic consequences of these evaluated options. To produce reliable results, WSIPP employs a standardized approach across policy areas.

The 2013 Legislature passed a bill to facilitate the use of evidence-based programs in adult corrections and directed WSIPP to develop definitions for “evidence-based” and “research-based” and create an inventory of evidence-based and research-based programs to be used by DOC. The legislation also directs DOC to determine if the programs it delivers are evidence-based or research-based according to the inventory developed by WSIPP. The adult corrections inventory can be found [here on the WSIPP website](#).

This Grid Subgroup created this recommendation in late 2022 and presented it to the Task Force. Members of the Subgroup noted that many of WSIPP studies regarding programs in the adult corrections inventory have not been updated or reviewed since 2016; however, since 2016, new programs have been created and implemented.

During the consensus deliberations on November 3rd, 2022 the Task Force had unanimous consensus.

Rec. 5: Consensus - Unanimous Support

- Cansupport – 18
- Can live with – 0
- Cannot support – 0
- Abstain – 1

Consensus roll call on pg: 135

Addresses the Policy Goals of the Task Force

DOC resources for programming are limited, as is program capacity. An updated Adult Corrections Inventory can help identify the programs most likely to be effective. This can inform decisions about program funding to ensure those that are most effective get adequately resourced. Many of the programs on WSIPP’s adult corrections inventory have not been reviewed since 2016. Updating the inventory would ensure that decisions made today are based on the best/most up-to-date information about program effectiveness. WSIPP’s inventory uses available research on programs within and outside of Washington to identify programs likely to cost-effectively reduce recidivism if implemented in Washington State. Task Force members stated repeatedly that effective programming for incarcerated persons can reduce recidivism and thereby increase public safety, as well as improving other outcomes such as employment, education, and public health.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 10.20.22
- Sentencing Grid Subgroup: 10.11.22

RECOMMENDATION 6.

Require and Fund the Sentencing Guidelines Commission to Monitor and Evaluate Changes and Reforms to the Sentencing Reform Act (SRA) Every 5 Years.

(Consensus - General Support)

Require and fund the SGC to review the state of evidence about the efficacy of reforms, including recommendations for additional reforms. The SGC will provide a progress report at three years, followed by a full report at five years, and will continue to report every five years. Research should include the impact of the reforms on:

- Public safety (including recidivism, technical violations, violations of protection orders, and the community)*
- Racial and gendered disparities and disproportionality (for both defendants and victims) from arrest through sentencing*
- The outcomes, 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*

On numerous occasions over the last three years, the Task Force faced a lack of information and data regarding various components of the sentencing system, specifically data and evaluation of the outcomes and impacts of changes made to the SRA and sentencing grid following its enactment. This lack of evidence and data at times made it difficult to make informed decisions when it came to recommending changes. In the summer of 2021, the Task Force discussed requiring ongoing monitoring and larger, more in-depth statistical reviews after the first few years of any recommendations of the Task Force that the Legislature enacts.

Over the course of the following year, the Sentencing Grid Subgroup added to this potential recommendation researching recidivism, racial disproportionality, and the impact of reforms on the system and to the community. When presented to the Task Force for input, members supported a timeframe of 5 or 10 years to ensure reviews are consistent and expected. The Task Force identified the SGC as the appropriate entity to conduct the studies and be responsible for the review.

Members discussed how the ongoing analysis and reporting will identify year-to-year patterns, impacts on public safety, added or reduced effectiveness, increased or decreased racial disproportionality, and any measurable 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 analyses of Washington's sentencing system and enable more timely adjustments.

Members also noted the importance of the SGC to make additional recommendations to address any shortcomings of the reforms under review. This will create a more responsive analysis of Washington's sentencing system that allows for timely solutions to existing or new problems.

During consensus deliberations on November 3, 2022 members supported a change to the recommendation that would make clear that the SGC would need funding to support the additional research capacity that this work will required. Members also supported a proposal to specify that the SGC publish a preliminary report three years after any reforms are enacted, a full report at five years, and then a report every five years thereafter. With these changes, the Task Force reached consensus.

Rec. 6: Consensus - General Support

- Can support – 13
- Can live with – 3
- Cannot support – 0
- Abstain – 2

Consensus roll call on pg: 136

Addresses the Policy Goals of the Task Force

Periodic reviews will help identify and address any complexities or errors in the implementation or functioning of the sentencing system. Reviews will produce actionable steps to address the identified complexities/errors and improve the system in other ways through the SGC's additional recommendations. Reviews will also examine the success of reforms and their impacts to identify areas where the successful reforms might be expanded to assist with other aspects of the sentencing system. SGC analyses 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. The analyses and findings will allow for expanding or adjusting of reforms until they maximize benefits to public safety, with periodic review allowing for changes to sustain those benefits. Analysis and reporting on benefits or shortcomings that enacted reforms produce in terms of public safety will also inform future work on how improve public safety in Washington.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 8.5.2021; 11.4.2021; 10.6.2022; 11.3.22
- Sentencing Grid Subgroup: 7.27.21; 9.13.22

RECOMMENDATION 7.

Direct the Sentencing Guidelines Commission to Review Infrequent Used Offenses

(Consensus - Strong Support)

Direct the Sentencing Guidelines Commission (SGC) to review offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

When the Grid Subgroup began its review of the sentencing grid, the Subgroup discussed the fact that many offenses are unranked. Subgroup members looked at the more than 300 unranked (non-drug-related) offenses to determine whether, and if so how, to incorporate them into the adult felony sentencing guidelines grid.

While the Legislature later assigned this work to address unranked offenses to the SGC, the Subgroup had come across several offenses, both ranked and unranked, for which no convictions occurred between FY00-FY17. For example, FY2000-2020 data showed no sentences for Malicious Explosion 1 (Class A felony at OSL 15).

As the Grid Subgroup reported on its deliberations and findings to the Task Force, members suggested that eliminating felony offenses with no sentences in the last 15 years could help reduce complexities and errors in the system. When developing and considering this recommendation, Subgroup and Task Force members suggested that every five, ten, or 20 years could each be a reasonable review period.

Members discussed the possibility that if the review targeted elimination of offenses that have not been sentenced in ten (or five) years, it might occur that one or more individuals could still be serving time under a sentence issued 11 or more years ago, even if no sentences had been issued for that offense in the last ten years. Task Force members made clear that the Legislature and SGC should keep this possibility in mind and integrate that consideration into the statute/s that direct the review.

Rec. 7: Consensus - Strong Support

- Can support – 16
- Can live with – 1
- Cannot support – 0
- Abstain – 3

Consensus roll call on pg: 137

Addresses the Policy Goals of the Task Force

A review of offenses to repeal those that either have not been sentenced, were created as a result of specific incidents during a period of time that have not since reoccurred, and/or are rare and other offenses can be used to charge in those instances, 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 reviewing and 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. This review of unused offenses could be part of this work. As mentioned above, it is worth noting that regardless of the 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.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 8.5.21; 11.4.21; 10.6.22
- **Sentencing Grid Subgroup:** 7.27.21; 9.13.22

RECOMMENDATION 8.

Visually Depict Sentencing Alternatives on the Sentencing Grid

(Consensus - General Support)

Include and visually depict sentencing alternatives on the adult felony sentencing guidelines grid.

Early in its discussion, the Sentencing Alternatives Workgroup discussed the data WSIPP collected on the use of sentencing alternatives – how frequently they are used, in which areas of the grid, and the demographics of individuals receiving a sentencing alternative. The report³⁷ includes findings on the frequency of sentencing alternatives in each guidelines grid cell using FY19 data and distribution across racial groups.

³⁷ Examining Washington State's Sentencing Guidelines: A Report for the Criminal Sentencing Task Force, Washington State Institute for Public Policy, May 2021

As shown in both Exhibit 19 and Exhibit A13 from WSIPP’s report, Sentencing Alternatives were common for individuals convicted of offenses at lower OSLs. This is not unexpected given that most sentencing alternatives have eligibility exclusions for violent and serious violent offenses, which tend to be at higher OSLs.

Exhibit 20 from WSIPP’s report shows White defendants were disproportionately more likely to receive a sentencing alternative instead of receiving a standard sentence for all sentencing alternatives, and that Black and Hispanic defendants were more likely to receive a standard sentence. The data does not provide insight into why sentencing alternatives are disproportionately distributed.

The Alternatives Workgroup also discussed geographic variation, noting that the use of sentencing alternatives may also depend on local resources and judicial preference and awareness of potential sentencing options. Currently, Washington State’s sentencing guidelines grid does not visually show where or which sentencing alternatives are available. Alternatives Workgroup members discussed how judges could benefit from having information more easily available in a visual format on what alternatives a defendant might have eligibility for.

Exhibit 19

Number of FY 2019 Sentencing Alternative Sentences, by Guideline Cell

Offense seriousness level (SL)	Criminal history score (CHS)									
	0	1	2	3	4	5	6	7	8	9+
16										
12				6	1					
11	2	1		4						
10	10			3			3			
9	2			1			1			1
8		1								
7	7	4	2	8	4	6	4	5	3	17
6	11	9	10	7	5	2	3	2	3	6
5	30	14	29	29	49	30	23	15	9	41
4	84	64	45	38	25	25	32	25	16	90
3	337	146	54	20	68	98	57	42	36	160
2	113	55	21	16	35	41	56	22	26	162
1	234	43	19	17	6	5	20	37	25	82
Unranked					40					

Notes:
This table includes only the sentencing alternatives associated with non-drug sentences in FY 2019. There were no sentencing alternative sentences for seriousness levels 13-16.

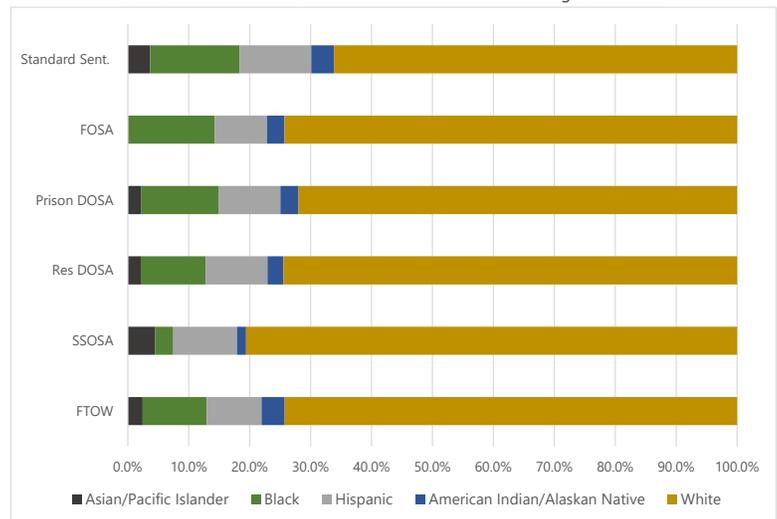
Exhibit A13

Percentage of FY 2019 Sentences in Each Guideline Cell with a Sentencing Alternative

Offense seriousness level (SL)	Criminal history score (CHS)									
	0	1	2	3	4	5	6	7	8	9+
15	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
14	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
13										0.0%
12	17.0%	0.0%	0.0%	46.0%	17.0%	0.0%	0.0%	0.0%	0.0%	0.0%
11	9.0%	17.0%	0.0%	40.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
10	59.0%			50.0%	0.0%	0.0%	60.0%	0.0%	0.0%	0.0%
9	4.0%	0.0%	0.0%	6.0%	0.0%	0.0%	10.0%	0.0%	0.0%	3.0%
8	0.0%	11.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
7	12.0%	14.0%	7.0%	11.0%	12.0%	18.0%	10.0%	20.0%	20.0%	14.0%
6	26.0%	45.0%	50.0%	21.0%	50.0%	25.0%	16.0%	50.0%	50.0%	16.0%
5	21.0%	27.0%	37.0%	32.0%	52.0%	38.0%	32.0%	26.0%	20.0%	21.0%
4	14.0%	20.0%	18.0%	16.0%	14.0%	19.0%	26.0%	33.0%	27.0%	29.0%
3	28.0%	20.0%	10.0%	6.0%	23.0%	36.0%	30.0%	27.0%	33.0%	37.0%
2	18.0%	19.0%	10.0%	10.0%	28.0%	34.0%	43.0%	22.0%	27.0%	34.0%
1	25.0%	8.0%	7.0%	7.0%	2.0%	3.0%	19.0%	36.0%	26.0%	20.0%
Unranked					2.0%					

Exhibit 20

Distribution of Race for Standard Sentences and Sentencing Alternatives



Notes:
This table includes only the sentencing alternatives associated with non-drug sentences in FY 2019. There were no sentencing alternative sentences for seriousness levels 13-16.

Washington State's Current Sentencing Guidelines Grid

		Criminal History Score																																							
		0	1	2	3	4	5	6	7	8	9+	0	1	2	3	4	5	6	7	8	9+																				
Offense Serious Level (OSL)	XV	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548
	XIV	123	220	134	231	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397	123	220	134	231	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397
	XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397
	XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
	XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
	X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
	IX	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171
	VIII	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	86	116	108	144	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	86	116	108	144
	VII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
	VI	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
	V	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
	IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
	III	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68
	II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
	I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29	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																																							

= FTOW eligible cells (11 cells)
 = FOSA and pDOSAs eligible cells (93 cells)
 = rDOSAs eligible cells (42 cells)
123 = SOSSA eligible cells (112 cells)

The above image depicts Washington State’s current adult felony sentencing guideline grid and the sentencing alternatives that may be available depending on the current offense and the individual’s prior history. As part of their discussions, the Alternatives Workgroup also reviewed offense specific eligibility within each OSL for each sentencing alternative.

The Workgroup gave special attention to the First Time Offense Waiver (FTOW) and how to most accurately overlay that alternative on the current grid. FTOW eligibility is highlighted for CHS 0, but the group noted that there may be instances where an individual’s first felony conviction involves multiple offenses that could lead to a CHS of one or more. The Workgroup also discussed potential eligibility modifications to FTOW, such as allowing individuals with a prior felony conviction or deferred prosecution. After some conversation, the Workgroup decided to pause their conversations on FTOW in order to allow the Grid Subgroup time to continue their conversations on the lower portion of the grid. The Workgroup also noted the opportunity to potentially fold the FTOW into intermediate sanctions program, which could provide a mechanism for tailoring programs and requirements based on individual needs and considering the programs and supports that may be needed by victims and survivors.

Depicting sentencing alternatives on the sentencing grid would make all available sentencing options more transparent to all parties (judges, defendants, victims). This could be done as a separate overlay to show where and which alternatives are applicable on the sentencing grid.

This recommendation was presented for consensus deliberations at the November 3, 2022. With no changes, the Task Force reached consensus.

Rec. 8: Consensus - General Support

- Can support – 14
- Can live with – 3
- Cannot support – 0
- Abstain – 2

Consensus roll call on pg: 138

Addresses the Policy Goals of the Task Force

Identifying opportunities to make the sentencing system more transparent for all parties (judges, defendants, victims, family members and representatives of incarcerated individuals) has been a consistent goal of the Task Force to both improve effectiveness and reduce complexity. With this recommendation all sentencing options would be depicted on the guidelines grid, increasing transparency for all parties

regarding when a judge can consider sentencing alternatives. This visual overlay of sentencing alternatives would remind all parties of treatment-oriented sentencing options to encourage consideration of applicable sentencing alternatives in all appropriate situations.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 10.7.21; 11.4.21; 8.4.22; 10.20.22
- Sentencing Grid Subgroup: 9.7.21; 10.5.21; 10.19.21; 8.9.22

Recommendations 9 – 11: Drug Offender Sentencing Alternative (DOSA)

Washington State's Drug Offender Sentencing Alternative (DOSA) provides substance use disorder treatment and community treatment to people with a substance use disorder who have committed certain offenses. A DOSA sentence reduces or eliminates the time a person must spend in jail or prison if they complete treatment and comply with supervision requirements.

There are two types of DOSA options available to the court for eligible individuals:

Prison-Based Drug Offender Sentencing Alternative (pDOSA): This alternative is available for some chemically dependent individuals. Judges may impose a sentence of total confinement for one-half the midpoint of the standard sentence range or 12 months (whichever is greater) and one-half the midpoint of the standard sentence range as a term of community supervision, which must include substance abuse treatment. ([RCW 9.94A.660](#) & [9.94A.662](#))

Residential Drug Offender Sentencing Alternative (rDOSA): This alternative is available for some chemically dependent individuals. Judges may impose a sentence including community supervision equal to one-half the midpoint of the standard sentence range or two years (whichever is greater). Sentence includes residential chemical dependency treatment for three to six months. ([RCW 9.94A.660](#) & [9.94A.664](#)).

RECOMMENDATION 9.

Change the Drug Offender Sentencing Alternative Eligibility Criteria

(Consensus – General Support)

Eliminate eligibility exclusions related to prior convictions for a violent offense (not serious violent offenses) from Prison DOSA and Residential DOSA. Exclude from eligibility individuals with prior felony offenses where an individual was armed with a firearm or deadly weapon, therefore aligning DOSA eligibility with the Family Offender Sentencing Alternative (FOSA).

In 1995, when DOSA was initially established, it had limited eligibility. Individuals eligible were those convicted of their first felony offense and nonviolent felony drug offense and must have been facing a prison sentence.³⁸ In addition, DOSA overlapped with other sentencing alternatives that required less confinement time. Given the restrictive eligibility criteria, DOSA was infrequently used.³⁹

In 1999, the Legislature made several changes to DOSA criteria and other sentencing alternatives

³⁸ WSIPP, Washington State's Drug Offender Sentencing Alternative: Introduction to the Series, p.4

³⁹ Ibid

to increase eligibility and promote the use of DOSA. Following these changes, DOSA sentences significantly increased.⁴⁰

The Legislature has continued to modify DOSA and its eligibility criteria. In 2005, the Legislature established a community-based inpatient treatment option for DOSA – Residential DOSA (rDOSA) – which allows for individuals to be sentenced to inpatient treatment in the community without any prerequisite confinement.⁴¹ In 2020, the Legislature expanded eligibility for DOSA by expanding rDOSA to include cases where the midpoint of the standard sentence range was 26 months instead of 24 months and sentences where the maximum sentence was 12 months or less.⁴²

As noted previously, the Alternatives Workgroup reviewed demographics data on sentencing alternatives. That data showed that White defendants were more likely to receive a sentencing alternative and that Black and Hispanic defendants were more likely to receive a standard sentence.⁴³ The data did not provide insight into why sentencing alternatives are disproportionately distributed.

Some members suggested that prior conviction history as it relates to eligibility criteria may contribute to the disproportionality. For example, fewer BIPOC individuals may be eligible for a sentencing alternative due to disparities elsewhere in the sentencing system, such as in arrest and charging decisions, and racial disproportionality of prior violent crime convictions.⁴⁴

The Alternatives Workgroup considered changes to eligibility based on the current

⁴⁰ Ibid Exhibit 3

⁴¹ Ibid

⁴² 2SSB 6211

⁴³ For more discussion on distribution of race and sentencing alternatives, see [Examining Washington State's Criminal Sentencing System: a report to the Criminal Sentencing Task Force](#): pp. 38-40

⁴⁴ For statistical information on sentencing disproportionality in Washington state for the most recent period available, 7/1/18 – 6/30/19, [Adult Disproportionality Report / Fiscal year 2019](#), Caseload Forecast Council, Report to the Legislature

Prison DOSA Eligibility Criteria¹

- No current conviction for a violent offense. Violent offenses are defined in [RCW 9.94A.030\(58\)](#) and the definition of violent offense includes serious violent offenses.
- No prior convictions for robbery in the second degree that did not involve the use of a firearm and was not reduced from robbery in the first degree in the past seven years.
- No other prior violent offenses in the past ten years.
- Current conviction does not include a sentencing enhancement for a firearm or deadly weapon
- No current or prior conviction for which an individual is currently or may be required to register as a sex offender
- No conviction for felony DUI or felony physical control of a vehicle while under the influence of drugs or alcohol
- If current conviction includes a violation of the Uniform Controlled Substances Act or solicitation to commit such an offense, the offense must involve only a small quantity of the controlled substance
- Not subject to a deportation order
- Not more than one previous DOSA sentence in past ten years
- High end of standard sentence range for current offense must be greater than one year (only applicable to pDOSA)

Residential DOSA Eligibility Criteria²

- All the same eligibility as pDOSA except that the midpoint of standard sentence range must be 26 months or less, and
- Individuals with a sentence range of 12 months or less are eligible for the alternative. Individual is assessed as needing residential treatment

¹ RCW 9.94A.662

² RCW 9.94A.664

conviction but pointed to the importance of a nexus between the current offense and the presence of a substance use disorder. Some members expressed concerns about implications to public and survivor/victim safety and uncertainty about the correlation between presence of a substance use disorder and causing serious violent harm.

Some pointed to current offense specific exclusions such as felony DUI,⁴⁵ noting that there could have been prior opportunities for treatment and recovery. This would indicate a greater need for some period of incapacitation along with reentry planning and supports. Many members expressed support for greater access to substance use disorder treatment and reentry supports, noting that recovery is a process and that relapse is a part of the recovery process. Others shared concerns with the circumstances in which individuals could receive alternatives to confinement for their participation in treatment-oriented sentences.

The Alternatives Workgroup began developing a proposal to eliminate eligibility criteria exclusions for prior violent convictions, noting that the court could still consider the circumstances of the case and that it could simplify the system and potentially increase opportunities for treatment oriented sentencing options. Members noted that other sentencing alternatives do not base eligibility on prior violent offenses – in the case of FOSA, the Legislature recently eliminated that criterion.⁴⁶ Members also noted that increasing the circumstances in which individuals could be considered for a DOSA sentence would not necessarily increase access to treatment due to constraints in capacity and access to treatment providers.

The Alternatives Workgroup, with further refinement by the Grid Subgroup, developed the following proposed recommendation for consideration by the Task Force: *Eliminate eligibility exclusions related to prior convictions for a violent offense (not serious violent offenses) from Sentencing Alternatives (except for SSOSA, which was included in a review conducted by the SOPB in 2022⁴⁷). This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSAs and rDOSAs.*

The Grid Subgroup discussed whether this proposal should also consider serious violent offenses, however, members raised concerns about including individuals with a prior serious violent conviction and indicated their constituencies would be unable to support the proposal.

There were also members that had concerns about including both pDOSAs and rDOSAs in the proposal, noting there should be different levels of exclusions for community treatment programs as opposed to partial confinement sentences. Their concerns could be addressed either by modifying the recommendation to include only pDOSAs, or by developing a proposal to add eligibility exclusions around findings on the use of a deadly weapon or firearm. The following proposal was added as a proposed recommendation for the Task Force's consideration: *Add eligibility criteria excluding individuals with prior felony offenses where an individual was armed with a firearm or deadly weapon, therefore aligning DOSA eligibility with FOSA.*

During the initial consensus roll call there was not consensus on either proposed recommendation. Several members shared they could not support eliminating exclusions for prior convictions for a violent offense as a standalone proposal. However, they could support that elimination if paired or combined with the exclusion related to firearm or deadly weapon.

⁴⁵ DUI becomes a felony offense if the defendant has three or more prior impaired driving offenses in the previous ten years, or has a prior conviction for felony DUI, vehicular homicide, or vehicular assault while under the influence of intoxicating liquor or any drug.

⁴⁶ E2SSB5291

⁴⁷ Full report from the SOPB: https://sgc.wa.gov/sites/default/files/public/SOPB/documents/house_public_safety_committee_report.pdf

After some discussion, all members present expressed support for combining recommendations, and consensus was reached.

Addresses the Policy Goals of the Task Force

By removing exclusionary language relating to prior violent offense convictions (not including serious violent convictions), this recommendation would better align the eligibility of the sentencing alternatives (not including SSOSA since it was part of a review by the SOPB), reducing complexity in sentencing alternatives eligibility. This could increase opportunities to consider substance use treatment-oriented sentencing options 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 each person’s circumstance and needs, and whether those needs could be safely met in the community. This recommendation would better align the eligibility standards for DOSA with FOSA, which would reduce the complexity of determining whether an individual is eligible for one or more alternatives.

Rec. 9: Consensus - General Support

- Can support – 9
- Can live with – 8
- Cannot support – 0
- Abstain – 3

Consensus roll call on pg: 139

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 10.7.21; 8.4.22; 10.20.22; 11.3.22
- **Sentencing Alternatives Workgroup:** 10.5.21; 11.30.21, 1.25.22, 2.8.22, 2.22.22, 3.8.22, 8.9.22
- **Sentencing Grid Subgroup:** 10.18.22

RECOMMENDATION 10.

Eliminate the Cap on Prison DOSA Sentences

(Consensus - General Support)

Eliminate the cap on the number of prison DOSA sentences that an individual can receive in a 10-year period.

AND

RECOMMENDATION 11.

Eliminate the Cap on Residential DOSA Sentences

(Non-Consensus)

Eliminate the cap on the number of residential DOSA sentences that an individual can receive in a 10-year period.

Early in 2022, the Alternatives Workgroup received presentations about DOSA from DOC program providers. DOC data showed differing rates of revocation for pDOSA (53.6% of all prison DOSA sentences did not have a revocation) and rDOSA (35.9% of all residential DOSA sentences were not revoked by the courts).⁴⁸

⁴⁸ For more information, see Washington State Department of Corrections. (2020). Drug Offender Sentencing Alternative (DOSA). 500-FS003 (R 1/2020)

This presentation led to conversations among Alternatives Workgroup members about the revocation process, and challenges and opportunities associated with court-based process or DOC hearings; program implementation and provider capacity; current understanding of relapse and substance use disorder; and conditions for successful completion of substance use disorder treatment—and how those may change over time and vary by individual. Workgroup members noted that while programmatic and implementation changes could improve the effectiveness of DOSA; however, the scope of work of the Task Force at this time was the interface between DOSA and the guidelines grid.

In addition to eligibility criteria based on current and prior offenses, the court may only consider a DOSA sentence for individuals who have not received more than one in a ten-year period—in other words, an individual may not receive more than two DOSAs in 10 years. Some members saw value in eliminating this “cap” on pDOSAs and rDOSAs, allowing the court to consider the current need for treatment and where that individual may be most likely to successfully complete treatment.

Some members saw value in differentiating between rDOSAs and pDOSAs, noting that some offenses may warrant a period of confinement and accountability, in addition to treatment. Some raised concerns about program outcomes and capacity limitations—specifically for rDOSAs—noting that eliminating the cap on the number of rDOSAs sentences may not reduce geographic disparities or increase access to treatment, given limited availability of treatment beds and facilities.

During consensus deliberations on November 3, 2022, some members indicated their constituency could not live with removing the requirement that an individual may not have had more than one previous DOSA sentence in past 10 years to be eligible. During consensus deliberations on November 17, 2022 the Task Force discussed concerns about allowing individuals to participate in multiple rDOSAs, noting the framework of pDOSAs could better support community safety (as compared to rDOSAs) if an individual failed to participate in treatment and meet sentencing requirements. These members indicated they could live with removing the requirement on prison DOSAs but that their constituencies could not support removing it for residential DOSAs.

Members proposed and the Task Force agreed to separate the recommendation into two parts, one that referred to eliminating the requirement for prison DOSAs and one that referred to eliminating the requirement for residential DOSAs.

Rec. 10: Consensus - General Support

- Can support – 10
- Can live with – 5
- Cannot support – 0
- Abstain – 1

Consensus roll call on pg: 140

Rec. 11: Non-Consensus

- Can support – 7
- Can live with – 4
- Cannot support – 4
- Abstain – 1

Consensus roll call on pg: 141

Member statements begin on pg: 141

Addresses the Policy Goals of the Task Force

Removing this eligibility criteria would better reflect current understanding of substance use disorders: that relapse is a part of the recovery process. Prior participation in prison DOSAs would no longer prevent the court from considering another prison DOSA sentence, therefore increasing

judicial discretion (balancing discretion across the system has been a consistent goal of the Task Force). The court would still consider community safety and an individual's unique circumstances in determining whether to issue another DOSA.

Data analysis and studies have demonstrated the effectiveness of prison DOSA in reducing the likelihood of recidivism⁴⁹ and successful completions—45% statewide in FY2019.⁵⁰ WSIPP's recent report on DOSA indicates that prison DOSA reduces the likelihood of recidivism by 6.9 percentage points, with less conclusive findings for residential DOSA outcomes.⁵¹ The report explores possible contributing factors, but notes that more research is necessary to understand rDOSAs program outcomes.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 8.4.22; 10.20.22; 11.17.22
- Sentencing Alternatives Workgroup: 1.30.21, 1.25.22, 2.8.22, 2.22.22, 5.31.22; 8.9.22
- Sentencing Grid Subgroup: 10.18.22; 10.25.22

RECOMMENDATION 12.

Conduct a Review of the Eligibility Exclusions for Sentencing Alternatives

(Consensus – General Support)

Conduct a review to assess the process and efficacy of eligibility exclusions for sentencing alternatives, including Department of Correction's (DOC) capacity to supervise in the community.

One of the recommendations the CSTF made to the Legislature in 2020 was to create a mental health sentencing alternative. In 2021, Washington added the Mental Health Sentencing Alternative as its newest sentencing alternative option, for individuals diagnosed with a serious mental illness. This sentencing alternative has less restrictive eligibility requirements than other sentencing alternatives. The Mental Health Sentencing Alternative (MHSA) does not exclude individuals based on prior convictions. Exclusions for current convictions include serious violent offenses and sex offenses. Additional eligibility requirements are not offense-based but instead include whether the defendant is willing to participate, whether the judge believes that both the individual and community would benefit from their enrollment in this alternative, and prioritizing input from any victims.

As noted in other recommendations, the Alternatives Working Group looked at the opportunities to incorporate sentencing alternatives onto the guidelines grid, including a review of statutory eligibility criteria and sentencing data and disproportionality.

As noted previously, White defendants were disproportionately more likely to receive a sentencing alternative instead of receiving a standard sentence for all sentencing alternatives. Black and Hispanic

⁴⁹ https://www.wsipp.wa.gov/ReportFile/1754/Wsipp_Washington-State-s-Drug-Offender-Sentencing-Alternative-2022-Outcome-Evaluation_Report.pdf: p. 1

⁵⁰ Washington State Department of Corrections. (2020). Drug Offender Sentencing Alternative (DOSAs). 500-FS003 (R 1/2020) p. 4

⁵¹ https://www.wsipp.wa.gov/ReportFile/1754/Wsipp_Washington-State-s-Drug-Offender-Sentencing-Alternative-2022-Outcome-Evaluation_Report.pdf: p. 1

defendants were more likely to receive a standard sentence. Some suggested that disproportionality elsewhere in the sentencing system—such as greater likelihood of having been convicted for a violent or serious violent offense and therefore ineligible for consideration of sentencing alternatives—may be one reason for why Black and Hispanic defendants are less likely to receive a sentencing alternative.

The Alternatives Working Group explored ways that the current alternatives could better emulate the process used by the newly created MHSA to determine eligibility, rather than specific offenses. Ultimately those conversations led to the following proposal for input by the Task Force, first presented in August 2022: *Eliminate eligibility exclusions based on current offense/s – modeled after the Mental Health Sentencing Alternative (does exclude eligibility if current offense is serious violent or sex offense).*

During consensus deliberations on December 8, 2022 a number of members could not support this recommendation. Several expressed concerns that this would effectively eliminate exclusions related to current violent offenses—some reiterating similar comments during discussions about eliminating exclusions related to prior violent offenses; others raising concerns about the safety implications for the other individuals participating in those alternatives or if reduced periods of incarceration make sense in situations involving violence. Some cautioned that the screening process for a mental health diagnosis is rigorous and capacity intensive—such a process could lead to more strict diagnostic requirements, unless developed in a way to allow for a more individualized approach.

One member unable to support suggested a proposal calling for a review of offense specific eligibility and how a more individualized process could be implemented. They also described the need to exclude individuals facing convictions for domestic violence and sexual violence, since mental health is sometimes cited to justify or rationalize domestic violence. They reiterated the vulnerability among victims and survivors and the lethality of these offenses.

Some raised concerns about identifying exclusions from a review of eligibility criteria, noting that the reviewers should have the ability to articulate who should be eligible for what alternatives, in what setting. A member suggested that the review should consider DOC and treatment provider capacity. Another member suggested that the review should consider the efficacy and validity of eligibility criteria. A member encouraged colleagues to take steps towards expanding access to sentencing alternatives, describing situations where prisons or jails may not be appropriate environments for individuals to receive mental or behavioral health care.

Addresses the Policy Goals of the Task Force

Conducting a review of the process and efficacy of eligibility criteria will provide data and understanding about potential changes, if any, to the processes used to effectively determine which circumstances and in what settings accountability and community safety could be met through a sentence that is not full confinement to prison or jail.

Rec. 12: Consensus - General Support

- Can support – 4
- Can live with – 7
- Cannot support – 0
- Abstain – 1

Consensus roll call on pg: 142

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 10.20.22; 12.8.22
- **Sentencing Alternatives Workgroup:** 7.31.21; 8.10.21; 9.7.21; 10.5.21; 10.19.21; 1.25.22; 8.9.22
- **Sentencing Grid Subgroup:** 3.22.21; 10.18.22

Recommendations 13 – 15: Persistent Offender Law

The Task Force’s in-depth review of the sentencing guidelines grid included factors that inform CHS calculation, such as the methods used for addressing repeat violent offending behaviors. That review led to a series of conversations, presentations, and consideration of a suite of recommendations related to Washington’s Persistent Offender Law.

Three-Strikes: Initiative No. 593 was approved by voters in 1993, becoming what is known as the Persistent Offender Accountability Act. This law, commonly referred to as the “three-strikes law”, requires a sentencing court to impose a life sentence of imprisonment without the possibility of release for persons deemed a “persistent offender”. A “persistent offender” has been convicted of a “most serious offense” and has prior convictions on at least two separate occasions for a “most serious offense.”

A “most serious offense”, commonly referred to as a “strike,” or “strike offense,” is defined in [RCW 9.94A.030\(32\)](#), as any of the following felonies or a felony attempt to commit any of the following felonies:

- 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
- Any other class B felony offense with a finding of sexual motivation
- Any other felony with a deadly weapon verdict under [RCW 9.94A.825](#)
- Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense
- A prior conviction for indecent liberties under [RCW 9A.44.100](#)
- Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was 10 years or more

Two-Strikes: In 1996 the Washington State Legislature expanded the Persistent Offender statute to require a sentencing court to impose a life sentence of imprisonment without the possibility of release if the person has two prior convictions on at least two separate occasions of any of the following qualifying offenses, including attempts:

- rape in the first degree;
- rape in the second degree;
- indecent liberties by forcible compulsion; or
- any of the following offenses if they were specifically found to have been sexually motivated:
 - murder in the first or second degree;
 - kidnapping in the first or second degree;
 - assault in the first or second degree; or
 - burglary in the first degree

In 2019 the Legislature removed Robbery in the second degree as a “most serious offense”, making it no longer a strike offense.

Determinate Plus Sentencing: A determinate-plus sentencing model is a type of sentencing that sets a range of time in incarceration that an inmate will serve within the statutorily determined range (the sentence determined by the judge within the standard range). Inmates sentenced under the determinate plus sentencing system are given a minimum and maximum sentence by the court, (the maximum term being the statutory maximum for the offense), and upon the earliest possible release date are given a hearing with the Indeterminate Sentencing Review Board (ISRB) to determine if they are rehabilitated and a fit subject for release.⁵² (RCW 9.94A.507)

RECOMMENDATION 13.

Require Notice be Provided to Defendants Prior to Entering a Guilty Plea or Going to Trial for Cases Involving Offenses Included in Persistent Offender Laws

(Consensus – Strong Support)

Change the persistent offender laws to require notice to defendants that a conviction for the charged offense could lead to a sentence of life without parole under the persistent offender laws prior to entering a guilty plea or going to trial.

Currently, no requirement exists for a defendant to get notice that the current case and criminal history means that a guilty plea or jury finding will bring a term of life without parole. Nor does a requirement exist for a jury to get notice that a finding of guilt will qualify as a third strike and resulting sentence of life without parole.

The Grid Subgroup discussed the sentencing processes related to Persistent Offender cases, specifically in three-strikes instances. Some expressed concerns about sentencing errors arising

⁵² IRSB FAQs, Washington State Department of Corrections: IRSB Frequently Asked Questions (FAQ) | Washington State Department of Corrections

from the variations in the application of the Persistent Offender Law. They developed the following initial recommendation for input by the Task Force: *Change the legal procedure for three-strikes laws to mirror aggravating factors such that each three-strike felony within the persistent offender statute charged in any case must be treated as elements of the crime (pled in information, proven to a jury beyond a reasonable doubt, and the individual acknowledging and agreeing in a plea agreement).* Some members noted that the prosecution would need to clearly articulate why a strike is appropriate and this would have to be pled-in information and proven to a jury beyond a reasonable doubt to secure the conviction as a strike, or the individual could acknowledge and agree in a plea agreement to take a strike. This proposal could also reduce complexity by creating greater alignment in processes for convictions involving strikes and aggravating factors, as well as creating requirements for the use of a strike offense.

When presented to the Task Force for input, some members expressed support for increased transparency and notice of a potential sentence of life without parole.

Others raised questions about what offenses are considered “most serious”—a few noted that strike offenses exist across all portions of the guidelines grid, including unranked felonies. Several members talked about how three-strikes cases are the only situation a person can get sentenced to life in prison without the state having to prove something beyond a reasonable doubt. They suggested that justifying the issuance of a life sentence should require a more rigorous process. Members also indicated they did not see a need for aligning Persistent Offender laws with aggravators.

Some members also indicated that current three-strikes laws meet the needs of their constituencies; however, others questioned whether the average person would know what offenses constitute a “strike.” Based on this question, the suggestion arose that defendants should receive notice in cases where the current charge(s) constitute a third “strike” that has the possibility of a life sentence. In Grid Subgroup discussions, members made the point that this would fill a gap in existing laws: while most guilty pleas have language acknowledging the individual would be pleading guilty to a “most serious offense,” those pleas are not required to provide notice that the person would be pleading guilty in a situation where life without parole is a possible sentence.

A few members expressed concerns about the requirement that a second or third “strike” to be pled and proven beyond a reasonable doubt. To address those concerns and meet the interests for increased transparency expressed by other members, they suggested that the recommendation should be about giving defendants notice when a guilty plea for a second or third most serious offense (aka “strike”) would carry a potential life without parole sentence.

Subgroup members also pointed out that using the term “strike” does not match statute, which refers to Persistent Offender laws. These conversations led to the following revised proposal: Change the Persistent Offender laws to require notice to defendants that a conviction for the charged offense would lead to a sentence of life without parole under the persistent offender laws prior to entering a guilty plea or going to trial.

During consensus deliberations, one member unable to support the recommendation proposed changing the word “would” in the recommendation to “could” only because

Rec. 13: Consensus - Strong Support

- Can support – 14
- Can live with – 2
- Cannot support – 0
- Abstain – 2

Consensus roll call on pg: 143

prosecutors do not always know if there is a third strike—once known, then they would be required to inform defendants when there is a third strike pending.

Addresses the Policy Goals of the Task Force

Standard practice is to include notice on the change of plea that an individual's guilty plea would mean conviction for a most serious offense; however, this standard practice in some courts is not a legal requirement. This recommendation seeks to increase transparency and consistency by making this standard practice a legal requirement.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 3.3.22, 4.7.22, 10.6.22; 11.3.22
- Sentencing Grid Subgroup: 10.26.21; 12.14.21; 9.6.22; 10.18.22; 10.25.22

RECOMMENDATION 14.

Conduct a Review of the Offenses Under the Persistent Offender Law

(Consensus – General Support)

The Legislature should conduct a review to assess the objectives of the Persistent Offender laws and evaluate what offenses should be classified as a most serious offense.

During discussions on how to address repeat violent behaviors and whether to eliminate and/or replace the three-strikes portion of the Persistent Offender Law, many members of the Task Force raised questions around what and why certain offenses are considered a “Most Serious Offense.” The Subgroup noted that the list of “Most Serious Offenses” has grown since initial passage of the law and that some unranked felony offenses count as a “strike” offense, as well as offenses that have never been charged (Malicious Explosion 1/ Malicious Placement of an Explosive). Some members noted inconsistencies in the application of aggravating factors in “striking” offenses. Sexual Motivation only applies to Class B, and the Deadly Weapon aggravating factor applies to all offenses, including Class C.

The Grid Subgroup initially developed the following proposal for Task Force input: *The Legislature should review the offenses included in the “Most Serious Offense” list to potentially reduce the number of offenses eligible for three strike sentencing.* Several members suggested eliminating the phrase “potentially reduce” for a “review or modification” or some language that does not direct the review to a predetermined outcome. Members also suggested expanding the scope of the review to include both two-strike and three-strike offenses. That input informed the development of the final recommendations.

During the roll call on November 3, the Task Force reached consensus on this recommendation.

Rec. 14: Consensus - General Support

- Can support – 11
- Can live with – 7
- Cannot support – 0
- Abstain – 2

Consensus roll call on pg: 144

Addresses the Policy Goals of the Task Force

Some of the offenses listed as strike offenses encompass wide-ranging behavior, including some that may not involve violence nor physical injury. As any class A felony offense is considered a “most serious offense,” the list also includes unranked felonies and offenses that have never been charged. This review would analyze the frequency with which each offense in the “most serious offenses” list is charged and provide a demographic analysis based on the offense. This analysis would be paramount in identifying any disproportionate or disparate use of a specific offense and allow for the Legislature to make data-informed decisions regarding future policy changes to Persistent Offender laws.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 4.7.22; 10.6.22; 11.3.22
- Sentencing Grid Subgroup: 10.18.22; 10.25.22

RECOMMENDATION 15a.

Change to Determinate Plus Sentencing for Three-Strikes

(Non-Consensus)

Replace Three-Strikes mandatory life without the possibility of release sentencing with determinate plus sentencing.

The Grid Subgroup reviewed a number of studies and research about three-strikes laws. Research suggests that three-strikes laws have had not quantifiable impact on crime rates and that, instead, they may have contributed to an increase in violent crime rates in urban areas. Data also suggests Persistent Offender laws contribute to increased violence against law enforcement, as individuals react with violence and dangerous behaviors to attempt to avoid a sentence of life without parole.

Persistent Offender sentences have been a source of racial disproportionality in Washington’s sentencing system. Of the current 200 individuals serving a life without parole sentence under the Persistent Offender sentencing, 108 of those are either Black, Hispanic, Asian/Pacific Islander, or Indigenous Americans. Task Force members emphasized the need to develop recommendations that address racial disproportionality and prevent exacerbation of racially disproportionate outcomes.

The Subgroup developed and presented to the Task Force three potential recommendations to gauge whether, and if so, to what degree members constituencies would support changes to the three-strikes portion of the Persistent Offender Laws. These options included:

- a. Eliminate and do not replace three-strikes.
- b. Replace three-strikes mandatory sentence with determinate plus model - 25 years with opportunity for release.
- c. Replace three-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life.

Several members indicated that while their constituencies could not support eliminating the three-

strikes portion of the law, they were open to further discussing and exploring ways to improve the laws' effectiveness and address racial disproportionality. Many members talked about how BIPOC individuals have made up the majority of those incarcerated under this law since its inception.⁵³ A member expressed support for more tailored sentences to match the circumstances of the individual case. Another member described the power that a potential life without parole sentencing holds during a plea negotiation, especially for defendants that may be unable to afford private counsel. Some expressed support for maintaining Persistent Offender sentencing—noting the inherent presence of repeat violent behavior and the desire held by many victims for a sentencing outcome ensures that similar harm will not be experienced by others. Others reiterated conversations about the presence of strike-eligible offenses among the unranked felonies.

The Grid Subgroup took this input and spent several weeks discussing and attempting to agree on a recommendation to propose to the Task Force for consensus deliberations. While some Subgroup members indicated they did not think their constituency could support any changes to the law, the Subgroup first agreed to put forward, "Replace the three-strikes portion of the Persistent Offender law with a determinate plus-model with an opportunity for release after 25 years." This option seemed a middle ground to provide the full Task Force the best opportunity to reach consensus. However, upon further discussion, some Subgroup members raised concerns about including an opportunity for release after 25 years, due to some standard sentence ranges being below 25 years and some being above this threshold.

The Subgroup removed the specific sentence threshold and put forward to the Task Force for consensus deliberations the proposed recommendation to replace three-strikes with determinate-plus sentencing. This model of determinate-plus sentencing would rely on judicial discretion to determine the sentence range, and once the minimum range of the sentence is reached the individual would be given a review for potential release every two years thereafter. This recommendation would eliminate the mandatory life sentences as a result of a third strike, allowing judges greater discretion to issue a standard sentence. A few expressed concerns about reducing sentences for individuals convicted of the most serious offenses. Some described this recommendation as a process to serve individuals who have demonstrated rehabilitation and change.

The Task Force held consensus deliberations at the November 17, 2022 Task Force meeting.

Most of the members who indicated their constituency could not live with this recommendation provided no changes or alternate proposals that they could live with, stating that current policy met the policy goal of promoting public safety. Others noted the challenge of eliminating a voter-passed policy. Some reiterated research which suggests that Persistent Offender laws may actually be associated with increased violence in the community

A member suggested including a mandatory minimum of 25 years, or the low end of the guidelines range—while noting that members of their constituency diverged on that proposal.

Another member called for a review of whether Persistent Offender mandatory sentencing should be replaced with determinate plus sentencing—this suggestion led to Recommendation 15b.

⁵³ A Comprehensive Review and Evaluation of Sentencing Policy in Washington State, 2000-2001

RECOMMENDATION 15b.

Evaluate Whether to Change the Persistent Offender Law to a Determinate Plus Sentencing Model

(Non-Consensus)

The Legislature should evaluate whether Persistent Offender mandatory life without the possibility of release sentencing should be replaced with determinate plus sentencing structure.

During consensus deliberations on Recommendation 15a, the Task Force considered a member's proposal to instead have the Legislature conduct a review to determine whether the three-strikes portion of the law should be replaced with a determinate plus sentencing model. The proposal suggested this review could occur in conjunction with Recommendation 14, which would have the Legislature review the "most serious offenses." The Task Force spent considerable time discussing this proposal.

Membership positions on this proposal were nuanced and varied. Those who could at least live with the recommendation reflected on how any work to further understand and address issues around the Persistent Offender law would be better than nothing and suggested communicating to the Legislature that this law requires attention.

Some who indicated they could not live with a Legislative review of the Persistent Offender Law expressed concerns that such a review may inherently turn the Legislature's attention toward sentence reductions for offenses defined under the category of "most serious offense." Others could not support a review if it led to sentence reductions unless necessary corresponding funding and programming was in place to support successful reentry and reduced risk of recidivism. Task Force members noted that any review of this law should include the voices of victims and their families; however, one of the seats representing the interests of crime victims could not live with either Recommendation 15a or this recommendation due to the traumatic nature of the offenses under the purview of the Persistent Offender Law, and the potential for any replacement or review to alter this law would have re-traumatizing effects on victims and their families.

Many members voiced that while they as a group did not reach consensus on reforms to Persistent Offender sentencing, this should not be interpreted by the Legislature that further discussion and action is not needed or is not without merit. The impact of Persistent Offender sentencing has been substantial, both to victims and defendants, and merits the Legislature's attention. Members reflected on how the work of reviewing and potentially replacing this statute would require an inclusive, data-driven, and intentional approach, starting with an analysis of the law's impacts to provide direction for a way forward for Persistent Offender sentencing in Washington

Rec. 15a: Non-Consensus

- Can support – 3
- Can live with – 8
- Cannot support – 6
- Abstain – 3

Consensus roll call on pg: 145

Member statements begin on pg: 145

Rec. 15b: Non-Consensus

- Can support – 2
- Can live with – 10
- Cannot support – 2
- Abstain – 3

Consensus roll call on pg: 146

Addresses the Policy Goals of the Task Force

Recommendation 15a: Because life in prison without the possibility of parole is the mandatory sentence under the three-strikes law, courts do not have the ability to consider factors that support a conclusion that life without parole is not an appropriate sentence under the circumstances in a given case. This recommendation would eliminate the mandatory requirement that the court issue a life sentence without the possibility of release for the three-strikes portion of the Persistent Offender Law and replace with a determinate-plus sentence.⁵⁴ The court would impose a sentence with a minimum and maximum term, where the maximum term would be equal to the statutory maximum for that offense. Once the individual had served the minimum term of the sentence, the ISRB would review the sentence for potential release or continued confinement. Reviews would continue every two years thereafter.

Recommendation 15b: A Legislative evaluation to analyze Persistent Offender sentencing would inform whether moving to a separate model would truly be a better approach. This evaluation would allow for in-depth analysis on how each model could further the desired objectives the Legislature has for Washington's sentencing systems to both improve effectiveness and increase public safety outcomes. This recommendation ensures, especially in tandem with the other recommendations addressing Persistent Offender sentencing, a multi-faceted Legislative analysis on the objectives and effects that Persistent Offender sentencing has had in Washington for the last 30 years in a data-driven and inclusive fashion that aligns Legislative action with other states around the nation who have conducted similar analyses of their own versions of this sentencing model.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 3.3.22; 4.7.22; 10.6.22; 11.17.22
- **Sentencing Grid Subgroup:** 11.30.21; 12.14.21; 8.23.22; 8.30.22; 9.6.22; 10.18.22; 10.25.22; 11.8.22

RECOMMENDATION 16.

Change the Mandatory Life Without the Possibility of Parole Terms for Young Adults

(Non-Consensus)

For aggravated murder 1 change the language from: "Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life." To "Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of twenty-one, a term of twenty-five years to life." In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.

In 2012, the United States Supreme Court in *Miller v. Alabama*⁵⁵ held that mandatory sentences of life without parole are unconstitutional when applied to individuals younger than 18, and that such statutes violate the Eighth Amendment protection against cruel and unusual punishments.

⁵⁴ RCW 9.94A.507: (3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term. (b) The maximum term shall consist of the statutory maximum sentence for the offense. (c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

⁵⁵ *Miller v. Alabama*, 567 U.S. 460 (2012)

The ruling also stated that judges sentencing minor defendants must be allowed to exercise their discretion to craft an individualized sentence that considers the mitigating qualities of youth. In 2018, the Washington State Supreme Court prohibited any sentences of life without parole for minors (*State v. Bassett*⁵⁶).

Washington's aggravated murder statute provides for a mandatory sentence of life without parole for individuals 18 or older, and for those under 18, a sentence of 25 years to life. In 2021, the Washington State Supreme Court held that under the Eighth Amendment and Washington's constitutional prohibition on cruel punishments, the holding of *Miller* should extend to those aged 18-20, citing neuroscience research showing that mental development continues into a person's 20s.⁵⁷ The court also cited statutes from other states that provide for differentiated penalties for individuals in their 20s based on their youth. The court pointed out that the age of majority in the United States used to be 21 and that some states continue to use 21.

With that context, the Grid Subgroup developed the following potential recommendation for Task Force consideration shortly after the 2021 Washington State Supreme Court ruling in *Monschke and Bartholomew*⁵⁸: *For Aggravated Murder 1 change the language from: 'Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life.' To 'Life sentence without parole/death penalty for individuals at or over the age of twenty-five. For individuals under the age of twenty-five, a term of twenty-five years to life.*

Several Task Force members referenced recent neuroscience that indicates that the frontal lobe of the brain is not fully developed until about the age of 25.^{59 60} While the *Monschke and Bartholomew* decision finds that a mandatory life sentence without parole is unconstitutional for individuals 18-20 years old, these members advocated for extending that finding to up to 25 years old so to better reflect recent neuroscience. This would be a preemptive action, should the Washington State Supreme Court rule a mandatory life sentence for those between the ages 21 and 25 was also unconstitutional.

Others noted the difficulty of trying to legislate what constitutes youthfulness, with the issue more about culpability, which is different from guilt. Guilt is defined by the court process, but culpability is about an individual's ability to comprehend the consequences of their own actions. Members pointed out that under the recommendation being proposed, there is still a mandatory minimum of 25 years. The difference is whether those 25 and under would receive a life without parole sentence or a minimum of 25 years to life sentence, with the possibility of parole. Individuals will still be held accountable and can receive a life sentence.

Several members of the Task Force expressed concern about extending the age to 25. Members discussed how in all other contexts of society individuals are considered adults between the ages of 18-25. Individuals vote, consume alcohol, have served full military terms, get married and have

⁵⁶ *State v. Bassett*, 192 Wash. 2d 67, 428 P.3d 343 (2018)

⁵⁷ Jay N. Giedd, Structural Magnetic Resonance Imaging of the Adolescent Brain, 1021 Ann. N.Y. Acad. Sci. 77 (2004). Abstract available at <https://pubmed.ncbi.nlm.nih.gov/15251877/>

⁵⁸ *In re Pers. Restraint of Monschke*, 197 Wash. 2d 305, 482 P.3d 276 (2021)

⁵⁹ Alexandra O. Cohen et al., When Does a Juvenile Become an Adult? Implications for Law and Policy, 88 Temple L. Rev. 769 (2016). Abstract available at <https://www.templelawreview.org/article/when-does-a-juvenile-become-an-adult-implications-for-law-and-policy/>

⁶⁰ Elizabeth S. Scott et al., Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L. Rev. 641 (2016).

children, have graduated college or completed higher education degrees by the age of 25— and are considered culpable for all of these actions and decisions. Some members raised concerns about implications for public safety, and the potential for organized crime to further groom young adults.

Task Force members frequently discussed culpability and the degree to which a person has the capacity to assess the consequences of their own actions and how maturity and youthfulness affects culpability. Some members saw value in differentiating between the juvenile system and the adult system, while also developing policy that is responsive to neuroscience and youthfulness – that there should be different sentencing approaches for individuals under 18, 18-21 or 25, and 21+/25+.

Given the feedback from the Task Force, the Grid Subgroup sought a middle ground option and proposed under the age of 21 instead of 25, therefore addressing in statute what the State Supreme Court has already ruled regarding *Monschke*. In addition, the Subgroup added language to strike reference to the death penalty, given the State Supreme Court ruling in 2018 that capital punishment in Washington State is unconstitutional as applied.

During consensus deliberations on November 3rd, 2022, four members indicated that their constituencies could not support this recommendation. Members brought with them to the November 17, 2022 meeting their constituencies' proposed changes that they could live with.

The Task Force discussed a proposal that would allow individuals under the age of 21 to be eligible for release but to change the minimum sentence term to 30 years instead of 25 years - individuals under the age of twenty-one to eighteen could receive a term of thirty years to life. And in addition, to eliminate from the recommendation the last sentence regarding striking reference to the death penalty. These changes would provide a progression of sentence severity from the age group under 18, between 18 and 20, and 21 and older. This proposal reflects differing levels of youthfulness for those under 18 years old and those aged 18-21 years old. Members in support of this proposal articulated increasing levels of both brain development and accountability for those legally considered adults versus those considered juveniles. This proposal met the needs of several constituencies that originally were unable to support the recommendation.

However, several members stated their constituencies could not live with this proposal. These members differed in their reasonings for opposing this proposal. Several constituencies articulated that the proposal to create a progression of incarceration from under 18 years old to 18-21 years old was antithetical to the findings of the Washington State Supreme Court. Specifically, that the findings of the *Monschke* and *Bartholomew* cases found no difference in youthfulness for those under 18 years old and those under 21 years old, citing neuro-scientific findings on adolescent brain development.

Other members opposing both the original recommendation and the suggested alternative proposal identified no alteration that their constituencies could live with, due to the violent and traumatic nature of the offense in question. Specifically, that Aggravated Murder 1 is the highest ranked offense in Washington's offense seriousness levels, and any reductions in sentence length or allowing for the opportunity for parole for an offense of this nature would not serve the interests of public safety.

At the conclusion of consensus deliberations, the Task Force was unable to reach consensus.

Rec. 16: Non-Consensus

- Can support – 3
- Can live with – 6
- Cannot support – 6
- Abstain – 5

Consensus roll call on pg: 147

Member statements begin on pg: 147

Addresses the Policy Goals of the Task Force

Recent Supreme Court decisions recognize the recent neuroscience and the Washington Legislature has made other policy changes recognizing continued brain development between the ages of 18 and 25. A recent WA Supreme Court Case decision (*Monschke and Bartholomew*) ruled that 18, 19, and 20-year-olds facing life sentences for aggravated murder must be viewed through a lens that considers the “transient immaturity of youth” and that the court must first consider the age of those under 21 before sentencing to a term of life without parole. Under this proposed recommendation, raising the age to 21 years old makes these sentences constitutional.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 9.2.21; 11.4.21; 8.31.2022; 11.17.22
- Sentencing Grid Subgroup: 11.30.21; 12.14.21; 8.23.22; 8.30.22; 9.6.22; 10.18.22; 10.25.22; 11.8.22

RECOMMENDATION 17.

Establish a New Process for Second Chance Review

(Non-Consensus)

For sentences including a term of total consecutive confinement longer than 20 years, individuals may petition for a second chance review at 20 years of incarceration (total confinement). Require that the review process explicitly include the opportunity for victim input.

Post sentencing reform (also called “second look”, “post-conviction review”, or “second chance review”) refers to mechanisms that allow for the revisiting, review, and reconsideration of the conditions and provisions of an individual’s criminal sentence. The SRA established the framework for felony sentencing, in which individuals are generally sentenced to determinate sentences, with some exceptions. The SRA eliminated indeterminate sentences and parole, with some exceptions. Under the SRA, individuals are generally required to serve the specific sentence imposed by the court regardless of their rehabilitative efforts or improvements. However, certain exceptions allow a qualifying person to be released prior to completing the term of confinement ordered by the court, for example, pursuant to:

- transfer to a partial confinement program;
- an authorized furlough or leave of absence;
- an extraordinary medical placement, subject to certain qualifications and conditions; an order to release by the Indeterminate Sentence Review Board (ISRB) for certain qualifying persons;
- administrative earn early release time; and
- a pardon or commutation granted by the Governor.

The Legislature has given authority to the Indeterminate Sentence Review Board (ISRB) to review and release individuals if the statutory criteria is met for the following three populations:

- Pre-SRA (PRE): individuals convicted and sentenced to an indeterminate prison sentence before the enactment of the SRA, July 1, 1984;

- Community Custody Board (CCB): individuals convicted of sex offenses who committed their offenses after August 31, 2001, and who have determinate-plus sentences; and
- Juvenile Board Cases (JUVBRD): individuals who committed crimes under age 18 and are sentenced as adults.

The Washington Constitution provides the Governor the authority to grant pardons, and statute provides the Governor with the authority to commute sentences and release persons in extraordinary cases. The Clemency and Pardons Board (CPB) receives petitions for commutation and pardons and makes recommendations on those petitions to the Governor. The Governor makes the final decision in all petitions heard by the CPB.

In 2020, the Task Force considered a related recommendation: *Establish mechanism for Post-Conviction Review (with Task Force continuing to monitor parallel efforts), noting the need to deal with retroactivity*. However, the Task Force did not reach consensus on this recommendation. While most members support establishing a post-conviction review mechanism, the nature of that mechanism would ultimately determine whether their constituency could support a post-conviction review.⁶¹

In 2022, the Grid Subgroup returned to the issue, discussing various approaches for instituting a mechanism for post-conviction review, expanding beyond the legal processes that already exist. Subgroup members discussed different time frames for when the opportunity for review should occur, the importance of individuals showing they had rehabilitated during incarceration, the criteria and decision-making authority for determining whether a person should be released, the impact on victims, and who should have the decision-making authority.

This recommendation is to create a process for individuals sentenced to and who have served more than 20 years of confinement to be able to petition for review for release. The recommendation does not specify whether this process should be under ISRB or CPB or a new agency.

Members described challenges such as capacity and the process for considering victim perspectives. Some expressed concerns about the influence of political pressures on the CPB, noting the need for a process to examine how the defendant has changed and assess their level of risk to public safety. When developing this recommendation, both the Grid Subgroup and the Task Force talked about how a process could be modeled after [RCW 9.94A.730](#), which includes assessment, participation in programming, evaluation and public safety considerations, victim input process, supervision, and a number of other conditions that must be met and considered. The Grid Subgroup also discussed the importance of a person demonstrating willful and voluntary participation in and completion of DOC programming to be eligible for petition and the need for such programming to be available at all DOC facilities.

During the November 3, 2022 consensus roll call, the Task Force was not in consensus on the recommendation, which at that time read as follows: *For sentences including a term of total consecutive confinement longer than 20 years, individuals may petition for a second chance review at 20 years of incarceration (total confinement) with the possibility of release. Require that the review process explicitly include the opportunity for victim input*. Those members unable to support expressed their concerns, and the Task Force explored compromise during their final deliberations on December 8, 2022.

⁶¹ See p. 39 of the [CSTF 2020 Report](#) for more discussion.

During consensus deliberation, one member expressed concern about the inclusion of “with the possibility of release,” noting that could skew the end result of a review process. All members in attendance who could already live with the recommendation could also live with removing that language.

Several members shared concerns about the timing of putting forward such a recommendation. Currently WAPA is participating in a process to develop an improved framework and benchmarks for review under the CPB. Another member expressed concerns about the implications to public safety, noting that what is needed first, before being able to support such a recommendation, is to see increased resources and access to programs and services being funded and implemented.

A member expressed concerns that such a recommendation is duplicative of existing processes, suggesting that modifications should focus on improving those specific programs. Several members described the need for such a recommendation. Some described the limited access individuals have to CPB, noting its infrequent meeting cycles as well as the challenge of demonstrating “extraordinary merit” while incarcerated and infrequent meeting cycles. Some described the financial costs to Washington of incarceration, pointing to the need for an accessible and objective review process to determine whether individuals are still a risk to public safety so those resources could be invested elsewhere.

The Task Force discussed who should have the power to determine if someone should be released or remain in prison. Given that the ultimate power to grant clemency is vested with the Governor, some reiterated concerns about how it is a politicized process and therefore underutilized due to the risk of negative press and opposition from political opponents. A member suggested that a better alternative would be to establish a process where an individual could directly petition a judge to review their circumstances and sentence, which would be a modification to a current process that requires the sign-off from a Prosecuting Attorney’s office prior to judicial review.⁶²

During further discussion, many members shared support for a process to review an individual’s sentence after a period of incarceration, but the Task Force diverged on the nature of that process and who should have the authority to make decisions.

Rec. 17: Non-Consensus

- Can support – 3
- Can live with – 6
- Cannot support – 6
- Abstain – 4

Consensus roll call on pg: 148

Member statements begin on pg: 148

Addresses the Policy Goals of the Task Force

The purpose of this recommendation is to provide a process for individuals to petition for review after serving more than 20 years of a sentence. As of a June 2022 DOC fact sheet, 29.9% of current DOC population is serving a sentence over 10 years, 17.3% are serving a sentence of life with the possibility of parole, and 4.3% are serving life without the possibility of parole.⁶³ Research on the age-crime curve shows diminishing returns for long-term incarceration for individuals who would otherwise “age out” of crime.

Potential cost savings from long-term incarceration could be used to support rehabilitative programming. Creating a pathway for individuals to petition for review provides an incentive to engage in rehabilitative programming and engage in crime-free behaviors that will advance public safety and improve the effectiveness of time spent in incarceration. It specifically requires that such a

⁶² Chapter 203, Laws of 2020 <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/6164.SL.pdf#page=1>

⁶³ Agency Fact Card. Research & Data Analytics | Washington State Department of Corrections. (2022, June).

review process include the opportunity for victim input to ensure their safety is upheld.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 9.2.21; 11.4.21; 10.20.22; 12.8.22
- Sentencing Grid Subgroup: 8.9.22; 10.11.22; 10.25.22; 11.8.22; 11.15.22

RECOMMENDATION 18.

Allow Judges Discretion to Issue Consecutive and Concurrent Sentences

(Non-Consensus)

Eliminate mandatory consecutive sentencing. Leave default consecutive but allow judges discretion to issue concurrent sentences without invoking an exceptional sentence.

Consecutive or Concurrent Sentences (RCW 9.94A.589)

In general, sentences for multiple offenses that constitute same criminal conduct set at one sentencing hearing are served concurrently. However, there are exceptions to this general rule (RCW 9.94A.589(1)(a-c)):

- **Offenses that Constitute Same Criminal Conduct:** If the court enters a finding that some or all of the current offenses required the same criminal intent, were committed at the same time and place, and involved the same victim, the offenses are treated as one offense. A departure from this rule requires an exceptional sentence.
- **Multiple Serious Violent Offenses:** In the case of two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences for these serious violent offenses are served consecutively to each other and concurrently with any other sentences imposed for current offenses. A departure from this rule requires an exceptional sentence.
- **Certain Firearm-Related Offenses:** In the case of sentences that include Unlawful Possession of a Firearm in the First or Second Degree and one or both of the crimes of Theft of a Firearm or Possession of a Stolen Firearm, the sentences for these crimes are served consecutively for each conviction of the felony crimes listed and for each firearm unlawfully possessed. (RCW 9.94A.589(1)(c)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

**Note: This is different from firearm/deadly weapons enhancements. These offenses don't qualify for a weapon enhancement.*

- **Felony Driving while under the Influence (DUI)/Felony Actual Physical Control of a Vehicle while under the Influence:** All sentences imposed shall be served consecutively to any sentences imposed under the specified RCWs for two Gross Misdemeanors.

The Grid Subgroup spent several weeks discussing consecutive and concurrent sentencing. The Subgroup developed the following list of potential recommendations as options for the Task Force to consider and provide direction to the Subgroup on what policies members could and could not

support⁶⁴:

1. **Eliminate** the **mandatory** consecutive sentencing for serious violent offenses and make sentences concurrent.
2. **Eliminate** the **mandatory** consecutive sentencing for serious violent offenses and **add an aggravating factor for cases involving serious violent offenses with multiple victims**.
3. **Modify** the mandatory consecutive sentencing for serious violent offenses such that it applies **only when the offenses are for different victims**.
4. **Eliminate** the consecutive sentencing for firearms offenses and make those sentences concurrent.
5. **Eliminate** the **mandatory** consecutive sentencing for firearms offenses but **allow judges discretion to make sentences consecutive**.
6. **Eliminate** the **mandatory** consecutive sentencing for firearms offenses but **add aggravating factors that may address the cases with most concern about culpability**.
7. **Modify** the mandatory consecutive sentencing laws for firearms offenses such that **sentences for different criminal events are consecutive**, but sentences for **multiple offenses within a single criminal event are concurrent**.

When addressing the Task Force's feedback on these potential recommendations, the Grid Subgroup discussed how [Recommendation #13 in the Task Force's 2020 Report](#) recommended allowing for multiple firearm and deadly weapon enhancements to be served concurrently, unless the court orders them served consecutively. That recommendation intended to eliminate the mandatory requirement and allow judicial discretion to determine whether the sentence should run consecutively or concurrently, based on the circumstances of the case. Subgroup members discussed a similar potential recommendation for serious violent offenses and firearm offenses, where the recommendation would be not to eliminate the use of consecutive sentences but to eliminate the mandatory aspect and allow judges the discretion to issue concurrent or consecutive sentences.

The Grid Subgroup also looked into whether judges currently have such discretion, noting findings in *State v. McFarland and In re Pers. Restraint of Mulholland*.⁶⁵

- Discretion for sentencing downward through issuing an exceptional mitigating sentence to allow for concurrent sentencing, such exceptions are narrow. Status quo is always consecutive and exceptions to the rule cases can be concurrent.
- Mitigated exceptional sentences are then appealable – if law were to be concurrent but allow consecutive, that is a standard sentence
- Mitigated sentences may be more difficult to obtain. Courts are reluctant to acknowledge undefined circumstances to go below the guidelines.
- Appealable based on abuse of discretion on mitigated sentences.

Under current policy, judges have the ability to issue a concurrent sentence if issued as an

⁶⁴ See [CSTF Detailed Guide to Potential Recommendations_Part 2. Horizontal Axis Components of the Sentencing Grid](#)

⁶⁵ *In re Pers. Restraint of Mulholland*, 161 Wn.2d 322, 166 P.3d 677 (2007)

exceptional mitigated sentence. Some members expressed concerns that requirement may disincentivize some courts from issuing concurrent sentences, rather than consecutive.

The Grid Subgroup noted during this discussion that allowing for sentences to be run either consecutively or concurrently would add additional complexity to calculating criminal history scores. For concurrent sentencing when determining the sentence for two offenses, the offenses score against one another, and both add together at sentencing, increasing the criminal history score. However, for consecutive sentencing, offenses are not scored against one another, and while each offense individually carries a lower sentence range; when combined the two sentences make a longer period of incarceration as they are served back-to-back.

After further discussion, the Grid Subgroup proposed a compromise that for both serious violent and firearm offenses to eliminate the mandatory requirement that these sentences run consecutive and to leave the default as consecutive sentencing but allow judges to have discretion to issue concurrent sentences without invoking an exceptional sentence.

The Task Force did not reach consensus on this recommendation during the November 3 roll call. Both the Grid Subgroup and Task Force had conversations to address outstanding concerns and find potential compromise. Some were unable to support any modifications to current policy, stating that some actions are so egregious that mandatory consecutive sentencing is warranted. Others described the ways they see current policy as meeting the policy goals—no complexity leading to errors, allowing judges the discretion to issue concurrent sentences without invoking an exceptional sentence would not improve public safety, and allowing judges to consider issuing either a consecutive or a concurrent sentence could lead to disparate sentencing outcomes for similar actions. Some raised questions about instances where consecutive sentencing may not be appropriate and described the value of differentiating between warranted and unwarranted disparities.

Rec. 18: Non-Consensus

- Can support – 10
- Can live with – 2
- Cannot support – 6
- Abstain – 2

Consensus roll call on pg: 149

Member statements begin on pg: 149

Addresses the Policy Goals of the Task Force

Current research suggests the high likelihood that length of sentence hinders desistance.⁶⁶ This recommendation would eliminate the use of mandatory consecutive sentencing while keeping consecutive sentencing as the default approach for the listed circumstances. This would allow judges the discretion to sentence concurrently without invoking an exceptional sentence. This judicial discretion could allow for more effective decisions since judges would be able to tailor sentences to the distinct characteristics of a specific case. Currently, judges may be more hesitant to issue a concurrent sentence due to the appealability of exceptional sentences.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 4.7.22; 8.31.2022; 11.17.22; 12.8.2022
- **Sentencing Grid Subgroup:** 9.7.21; 10.19.21; 11.2.21; 12.7.21; 12.14.21; 7.26.22; 8.2.22; 12.6.22

⁶⁶ The Impact of Incarceration on the Desistance Process Among Individuals Who Chronically Engage in Criminal Activity, chapter 3: p. 103 (Executive Summary available at: <https://nij.ojp.gov/topics/articles/impact-incarceration-desistance-process-among-individuals-who-chronically-engage>)

RECOMMENDATION 19.

Add an Additional Reason for an Aggravated Departure to RCW

9.94A.535(2)

(Consensus – General Support)

Add an additional reason or reasons for an aggravated departure to RCW 9.94A.535(2), to include “the parties have agreed to reduction of charges and in exchange have sought an exceptional sentence and the parties stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence is in the interest of justice and the purposes of the SRA.”

Exceptional Sentences (RCW 9.94A.535)

Exceptional sentences are sentences imposed above or below the guideline range. Departures from the guideline range may occur when there are “substantial and compelling reasons justifying an exceptional sentence”. Sentences below the range can be imposed at the discretion of a judge and statutes suggest the types of mitigating circumstances the court may consider, but the list is not exhaustive. Exceptional sentences above the guideline range may be imposed for only the aggravating factors identified explicitly in statute. In addition, judges may impose a sentence above the guideline range under limited circumstances, or when those specific aggravating factors are admitted to by the defendant in a plea agreement or proven beyond a reasonable doubt before a jury.

The original SRA included 6 mitigating factors and 13 aggravating factors, but these were not exclusive. In 2005, in response to *Blakely v. Washington*⁶⁷ the Legislature made the list of aggravating factors exclusive and expanded the list⁶⁸. There are currently 32 aggravating factors (some with multiple subsections) that pose questions of fact that must be submitted to a jury.

In addition, the Legislature created four aggravating factors that can be used to impose a sentence above the standard guideline range that do not require being proven beyond reasonable doubt before a jury:

1. The court may impose an aggravated exceptional sentence if the defendants and state both stipulate that justice is best served by an exceptional sentence and the court agrees that the stipulation is in the interest of justice.
2. The defendant’s prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of [RCW 9.94A.010](#).
3. The defendant committed multiple current offenses and the defendant’s high criminal history score results in some offenses going unpunished.
4. The failure to consider the defendant’s prior criminal history which was omitted from the criminal history score calculation results in a presumptive sentence that is clearly too lenient.

The Grid Subgroup reviewed data provided in the 2019 WSIPP report, which showed that for 86% of aggravated exceptional sentences, the justification was that the defendant agreed to prison, a greater sentence, or treatment.

⁶⁷ *Blakely v. Washington*, 542 U.S. 296 (2004)

⁶⁸ [RCW 9.9A.537](#)

In addition, WSIPP found that many of the aggravated sentences were associated with offenses where a higher degree offense would be a three-strikes offense.

Some Grid Subgroup members suggested that every aggravated exceptional sentence should have to meet the standard of being pled and proven. Based on this thinking the Subgroup initially presented to the Task Force a potential recommendation to eliminate these four aggravating departures that do not require being proven beyond reasonable doubt before a jury (thereby eliminating the stipulation as an aggravated factor). This would require that there be a particular characteristic or circumstance justifying each aggravated exceptional sentence. Several Task Force members expressed concerns with this idea; others questioned about how it would work in practice and suggested it could add complexity. Given that the first factor listed above is used in 86% of aggravated exceptional sentences, some members indicated their constituency would be unable to live with eliminating this factor.

Many members indicated that greater transparency is needed when it comes to the plea-bargaining process and plea agreements. They suggested it would help to require additional detail be captured about the reasons for why these exceptional sentences were agreed to. Members suggested modifications to the potential recommendation, including requiring that the Judgment and Sentence form record additional details when this factor is used (e.g., charge bargain to avoid three-strikes sentence, charge reduction, reduction in total number of charges) but not eliminating the ability to stipulate to the aggravated sentence without requiring a finding of fact with a jury. Members noted how this additional information would benefit data and research collection to better understand whether and under what conditions disproportionality or disparities exists in the application of exceptional sentences. Some members expressed concerns about requiring defendants to articulate more detailed rationale for their agreement to the plea.

On November 3, 2022 the Task Force did not reach consensus on the originally proposed recommendation. On November 17th members not able to live with the recommendation provided proposals their constituencies could support. During the discussion, several members said they thought the law already requires the court to document when making a finding for departures beyond the standard guideline range. And multiple members noted potential legal concerns of

Exhibit A11: Aggravated and Mitigated Exceptional Sentence Justifications, by Race

	Total		BIPOC		White	
	N	%	N	%	N	%
Aggravated exceptional						
Defendant agreed to prison, greater sentence, or treatment	251	86.0%	95	88.8%	153	82.7%
Victim was particularly vulnerable	9	3.1%	3	2.8%	5	2.7%
A domestic violence offense that occurred in sight or sound of victims children under age 18	8	2.7%	2	1.9%	5	2.7%
A domestic violence offense that was a part of an ongoing pattern of psychological, physical, or sex abuse of victim multiple incidents over a prolonged period of time	7	2.4%	3	2.8%	4	2.2%
Defendant was in a position of trust (not an economic or drug offense)	6	2.1%	2	1.9%	3	1.6%
Mitigated exceptional						
Exceptional sentence is more appropriate/is in the interests of justice	427	42.3%	188	45.1%	234	39.5%
All parties agreed to mitigated sentence	397	39.3%	138	33.1%	252	42.5%
Part of Plea Agreement	125	12.4%	57	13.7%	67	11.3%
Capacity to appreciate the wrongfulness was significantly impaired	21	2.1%	9	2.2%	12	2.0%
Victim was an initiator, willing participant, aggressor, or provoker	19	1.9%	7	1.7%	12	2.0%

Exhibit A12: Most Common Offenses with Aggravated and Mitigated Exceptional Sentences

Offense	N	%
Aggravated sentence		
Assault 2	43	14.38
Assault 3	32	10.7
Burglary 2	11	3.68
Child Molestation 2	11	3.68
Robbery 2	11	3.68
Theft 1	11	3.68
Attempting to Elude Police Pursuing Vehicle	10	3.34
Unlawful Possession of a Firearm 2	10	3.34
Unlawful Possession of a Firearm 1	9	3.01
Escape from Community Custody	8	2.68
Rape of a Child 1, Age > 17	8	2.68
Mitigated sentence		
Domestic Violence Court Order Violation	240	23.41
Assault 3	109	10.63
Assault 2	57	5.56
Burglary 2	54	5.27
Failure to Register as a Sex Offender 3+	38	3.71
Robbery 1	37	3.61
Unlawful Possession of a Firearm 2	36	3.51
Residential Burglary	32	3.12
Possession of a Stolen Vehicle	27	2.63
Bail Jump with Class B OR C Offense	26	2.54

having to create a written record of additional information concerning the stipulations of the agreement.

One of the members proposed changing the recommendation to instead add another reason to the aggravated departure statute that allows the court to impose an aggravated exceptional sentence that does not have to be pled and proven, if the defendants and state both stipulate that justice is best served by an exceptional sentence and the court agrees that the stipulation is in the interest of justice. This additional reason would be that *“the parties have agreed to reduction of charges and in exchange have sought an exceptional sentence”*.

Members noted there is not a clear way to categorize all the nuanced reasons for why parties agree to an exceptional sentence. This recommendation provides a way to identify when agreements for an exceptional sentence are associated with charge reductions, which can help identify when higher degree offenses were not appropriate. This might be the case due to certain circumstances of a case or in the event it would be a three-strikes offense.

While several members voiced preference for either the proposed recommendation – *to require that any aggravated departure have reasoning articulated in the Judgment and Sentence form* – or *to eliminate the four aggravating departures not required to be pled or proven*, members could live with the proposal to add a reason, given that it would provide some improvement by capturing an additional level of information.

Members stressed the importance of making clear that this additional reason would not create a separate or distinct aggravating factor. It is an additional reason associated with the aggravated departure that allows the court to impose an aggravated exceptional sentence that does not have to be pled and proven, if the defendants and state both stipulate that justice is best served by an exceptional sentence and the court agrees that the stipulation is in the interest of justice.

Rec. 19: Consensus - General Support

- Can support – 4
- Can live with – 11
- Cannot support – 0
- Abstain – 2

Consensus roll call on pg: 151

Addresses the Policy Goals of the Task Force

Adding a reason for potentially issuing an aggravated exceptional sentence and documenting the instances in which the court issues such a sentence because the parties agreed to reduction of charges and in exchange have sought an exceptional sentence, would help shed light on how often such sentences get issued as a result of a plea agreement. This could assist in identifying the frequency with which defendants agree to aggravated exceptional lower charges to avoid a potential three-strikes sentence. By identifying and documenting these occurrences, it can contribute to understanding and addressing any potential disproportionality involved and further inform policy decisions. This is meant to improve the effectiveness of the system while ensuring that justice is best served by the imposition of any exceptional sentences outside the standard range, and the court finds such exceptional sentences are in the interest of justice.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 3.3.22; 8.31.2022
- **Sentencing Grid Subgroup:** 11.23.21; 2.15.22; 8.9.22

Recommendations 20 – 23: Washout Rules for Prior Felony Convictions

“Washout” refers to 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). [RCW 9.94A.525\(1\)](#) defines a prior conviction as “a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed ‘other current offenses’ within the meaning of [RCW 9.94A.589](#).”

All felony juvenile adjudications count as part of the CHS except under general washout rules that apply to adult convictions. Juvenile convictions sentenced the same day count separately unless they have been deemed ‘same criminal conduct’ or unless the offense occurred before 7/1/1986.

Washout Rules⁶⁹

Never Washout

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

10 Year Washout Period

- Class B prior felony convictions, except for
 - Sex offenses
- Felony DUI and PVC when the current offense is felony DUI/PCV
- Prior convictions for a repetitive domestic violence offense (Gross Misdemeanor/Misdemeanor)

5 Year Washout Period

- Class C prior felony convictions except for sex offenses
- Serious traffic offenses (Gross Misdemeanor/Misdemeanor), other than DUI/PCV when the current offense is felony DUI/PCV

Other Related Washout Policies

- Gross Misdemeanor/Misdemeanor convictions interrupt period of crime free period
- Confinement pursuant to DOC sanctions for violations of Community Custody interrupt crime free period
- Counting crime free period starts at release of confinement, release from full-time residential treatment, or entry of J&S form

The Grid Subgroup spent several months discussing the following:

- Are the current washout periods appropriate for the different classes (based on current research and data)?

⁶⁹ [RCW 9.94A.525](#)

- 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?⁷⁰

RECOMMENDATION 20.

Change When the Washout Periods Reset

(Non-Consensus)

Make the appropriate changes to the washout period law so that:

- *Washout periods do not reset upon confinement for a community custody violation.*
- *Washout periods do not reset upon conviction (or subsequent confinement) for a simple misdemeanor offense unless it is the third conviction for a simple misdemeanor offense.*

The Grid Subgroup’s discussion on washouts began with a focus on eliminating complexities around when a washout period begins and under what circumstances they are reset. The Subgroup’s initial version of this recommendation that it presented to the Task Force for input was as follows: *Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a technical violation will not reset the washout period.*

Part of the intent of this initial recommendation was to maintain the washout period start point at the initial release from incarceration under an “inmate status,” as opposed to a “violator status,” for their original sentence requiring incarceration. The Task Force had several discussions discerning the differences between “inmate status” and “violator status” and how these should relate to resetting washout periods. Members of the Grid Subgroup maintained that if a sentencing alternative is revoked and the person is consequently returned to incarceration under inmate status, then the washout period starts upon release from confinement, but this is different from someone returning to incarceration under violator status. Violator status is not the same as inmate status, as an individual under violator status is deemed to have violated their terms of community custody and is returned to incarceration but is not guilty of an additional crime or serving confinement under a new conviction, as this is still serving out the original sentence.

The Grid Subgroup also reviewed current research on desistance, which is the process of decreasing risk for criminality over time.⁷¹ Benchmarks for desistance include, over time, a reduction in the frequency of offending and a reduction in the seriousness of offending behaviors. General life

⁷⁰ Regarding anticipatory offenses, the Grid Subgroup concluded no recommendations were necessary since scoring would be the same regardless of whether it is a Class A or B felony. Washout is based on the conviction class, for example, if an anticipatory drops to Class B, the conviction will washout according to Class B washout rules.

⁷¹ Solomon, Amy & Scherer, Jennifer. *Desistance from Crime: Implications for Research, Policy, and Practice*; published by the U.S. Department of Justice’s Office of Justice Programs / National Institute of Justice, November 2021. NCJ 301497: p. 10

circumstances can affect the course of desistance and criminal justice interventions may have an indirect negative or positive influence on life circumstances.⁷²

The Subgroup then discussed whether misdemeanors should reset the washout period for felony offenses. Some members noted that simple misdemeanors, such as driving with a suspended license, should not reset the washout period. Others expressed concerns about more serious misdemeanor and gross misdemeanor offenses such as Assault 4 and DV offenses, noting that repeat behavior in these types of cases is concerning and an indicator of escalating violent behavior. The Subgroup discussed ways to better stipulate which and under what conditions misdemeanors reset the washout period for felony offenses. The Subgroup proposed that simple misdemeanors would not reset the washout period, yet if there is repetitive behavior, then the third and subsequent conviction would reset the washout period. And that gross misdemeanors would continue to reset the washout period.

When presented to the Task Force, members had many questions and lengthy discussions about what constituted technical violations, about whether under current law if any violation that occurs while a 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.

During consensus deliberations on November 3, 2022 several members indicated their constituencies could not live with the recommendation. The Task Force continued deliberations on November 17, 2022 and discussed alternative proposals. One proposal was to limit when washout periods would not reset to be only for minor community custody violations. Several members indicated their constituencies could not live with this proposal and that it would add increased complexity into determining when washouts would or would reset. Members noted that “minor violations” is a vague term that would be difficult to define and decide where the threshold between a “minor” violation and a “major” violation. DOC clarified that statute specifies that the Department determine “high-level” and “low-level” violations.⁷³ Members noted that it would still be difficult to track and calculate at the time of sentencing whether there was a “high-level” or “low-level” violation and whether the washout is or is not reset. Also noted was that it would be an additional draw on DOC resources to track this nuanced information for all individuals’ violations.

One suggestion was that since “low-level” can result in up to 3 days confinement, perhaps the proposal be that violations that are 3 days or less do not reset the washout period. The issue that this recommendation is trying to address is that under current law, if an individual is returned to confinement for any period of time, such as 24 hours for a low-level violation, then the washout period is automatically reset. It was noted that since the implementation of “swift and certain”, alternatives to confinement have been at DOC’s disposal to address low-level violations. Under current law, these individuals not returned to confinement are not having their washout period reset. Therefore, what could be specified is the term of confinement that should reset the washout period. Other members indicated their constituency could not live with this proposal and discussed how the authority to determine whether an individual has violated the terms of their community custody lies with DOC and not the courts and these violations hearings do not follow the same due process and therefore should not affect an individual’s washout period.

⁷² Solomon, Amy & Scherer, Jennifer. *Desistance from Crime: Implications for Research, Policy, and Practice*; published by the U.S. Department of Justice’s Office of Justice Programs / National Institute of Justice, November 2021: p. 23

⁷³ RCW 9.94A.737. Statute states DOC must define low and high level violations in WAC. WAC 137-104-020 states High level and Low level violations are defined per departmental policy.

A second proposal the Task Force discussed was to add to the end of the sentence in the second bullet, “or was a misdemeanor involving domestic violence or sex offense/sexual motivation”. Members discussed how these misdemeanor offenses have characteristics that are more comparable and connected to the more serious DV and sex offenses that are gross misdemeanors and felonies. In other words, a repeat escalating of behavior is accounted for in the classification of these types of offenses. Members discussed how DV in particular tends to be a continued pattern of behavior. Others noted that this recommendation does not just limit the washout period to reset only for when the current offense is of similar criminal behavior as the past offense and perhaps the recommendation could be modified so that the washout period resets when there is a repeating pattern of behavior. Members also reflected on comments about how the intent behind the recommendation is to have a more individualized way to take a look at criminal behavior and understand what is behind that behavior, whether it be drug seeking behavior, trauma, or power and control behaviors. To do this would require an individualized psychological assessment for every individual and this is not feasible under the current system. Therefore, what is available are crimes that show risk factors that can indicate these risk behaviors and DV and sexual motivation are unique and these risk factors are different from those such as drug seeking behaviors and therefore, should be included in the recommendation.

Several members indicated their constituencies could not live with the proposals that members presented. The Task Force could not find a modification that could allow more members to be in support it. Deliberations closed with no consensus.

Addresses the Policy Goals of the Task Force

Current washout rules require prosecutors to know every instance a person was confined in any jail or prison facility for any reason. Given that jails in Washington are decentralized, it may be complicated to determine whether individuals were ever incarcerated in a local jail. In some instances, courts must engage in additional outreach to obtain varying jail admission records or records from the Department of Corrections. This recommendation eliminates complexity by limiting the washout periods to reset upon conviction of a new felony or gross misdemeanor conviction (and release from subsequent confinement) which would be known via superior court case records and Judgment and Sentence forms rather than relying on community custody violation records from DOC.

As a compromise, the Task Force proposed allowing washout periods to rest upon the third conviction for a misdemeanor offense. General criminal histories must be obtained as a part of calculating an individual’s criminal history score (given that certain misdemeanor convictions count in the criminal history score for certain cases). Courts will only be required to seek out additional information regarding potential confinement in local jails if the individual has three prior misdemeanor offenses without a prior felony offense during the same time period. This limits the amount of cases that will rely on local jail records, reducing complexity and the likelihood of error.

Finally, elimination of washout period restarts following community custody violations increases sentencing effectiveness. The theory behind restarting washout periods is that individuals must remain “crime-free” to signal the process of desistance. Often, community custody violations are not

Rec. 20: Non-Consensus

- Can support – 5
- Can live with – 6
- Cannot support – 6
- Abstain – 3

Consensus roll call on pg: 152

Member statements begin on pg: 152

themselves crimes. As a result, individuals may be abstain from offending, but still have their washout period reset due to non-criminal behaviors resulting in community custody violations.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 7.7.2022, 10.6.22, 11.3.2022, 11.17.2022
- Sentencing Grid Subgroup: 1.18.22; 2.1.22, 2.8.22, 2.15.22, 2.22.22, 3.1.22, 3.8.22, 3.22.22, 3.29.22, 4.5.22, 4.12.22, 5.5.22, 5.31.22, 9.13.22, 9.20.22; 10.25.22

RECOMMENDATION 21.

Change the Washout Period for Class A Felonies

(Non-Consensus)

Violent Class A felonies washout after 15 years. Serious violent Class A felonies would not washout.

**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*

A consistent discussion among Task Force members was the role of prior convictions in determining criminal history score and the effect of prior convictions on sentence severity. In both determinate and indeterminate sentencing systems, an individual's prior record can be used to establish an appropriate sentence, however consideration may be given to the time period for which prior record is used. There are two types of these policies:

- **Decay policy:** prior convictions eventually age out of the criminal history calculation after a certain defined period of time has passed.
- **Gap policy:** requires an individual to remain crime free for a specified period of time before an offense will be removed or discounted in the criminal history calculation. What happens to an offense when such a crime-free gap is present is commonly referred to as “washout” or “lapse”.

Washington State has a gap policy but does exclude certain offenses, such as all Class A felonies from this policy, in that these offenses are always counted.

The Grid Subgroup looked at other states' policies^{74 75} and spent several months discussing whether current washout periods were appropriate for each felony class, in particular whether Class A felonies should ever be eligible to washout.

The Grid Subgroup and Task Force also reviewed recent data and research on recidivism, the age-crime curve, and desistance.^{76 77}Key findings included:

- Most people who recidivate do so quickly.
- The best predictor of future behavior is **recent** past behavior

⁷⁴ Frase, R., Roberts, J., Hester, R., & Mitchell, K. (2015). *Criminal History Enhancements Sourcebook*. University of Minnesota Robina Institute of Criminal Law and Criminal Justice.

⁷⁵ [SCCRC_2011_Issues_Paper_No_3_Decay_Factors.pdf](#) (dc.gov)

⁷⁶ Solomon, Amy & Scherer, Jennifer. *Desistance from Crime: Implications for Research, Policy, and Practice*; published by the U.S. Department of Justice's Office of Justice Programs / National Institute of Justice, November 2021.

⁷⁷ Council of State Governments, Justice Center. Presentation to the Washington State Sentencing Guidelines Commission, Feb 8, 2019 https://sgc.wa.gov/sites/default/files/public/SGC/meetings/2019/WA_SGC_Feb_presentation.pdf

- 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. This pattern may also reflect the different circumstances that influence different types of behaviors. For example, drug and property offenses tend to be motivated by underlying, pervasive circumstances such as a substance use disorder or poverty. On the other hand, violent offenses tend to be motivated by situational characteristics that are temporary (e.g., a dispute over a particular interaction).

Around the time of these discussions, many of the potential recommendations the Grid Subgroup had developed so far sought to better align and tighten the connections between offense class, statutory maximums, and sentencing ranges. The Subgroup then looked at whether it made sense to also try to tighten the connection between all functions of offense classification, including washout periods.

The Subgroup first mapped out on the current sentencing grid all functions of offense classification, identifying areas of complexity and where better alignment would improve effectiveness.

Current Washington State Felony Sentencing Guideline Grid

OSL	Class	In Years				SO Registration	Attempt/ Solicitation	Conspiracy	Violent	Most Serious Offense [^]	Mandatory Remand ^{^^}
		Stat Max	Washout #	Vacation ##	SO Registration						
16	A	Life	Life	NA	Life			SV	Any Class A	Any Class A w/Sex Mot	
15	A	Life	Life	NA	Life	A/B	A/B	SV/V	Any Class A	Any Class A w/Sex Mot	
14	A	Life	Life	NA	Life	A/B	B	SV	Any Class A	Any Class A w/Sex Mot	
13	A	Life	Life	NA	Life	B	B	V	Any Class A	Any Class A w/Sex Mot	
12	A/B	Life/10	Life/10	NA/10	Life/15	A/B/C	B/C	SV/V	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
11	A	Life	Life	NA	Life	A/B	B	SV/V	Any Class A	Any Class A w/Sex Mot	
10	A/B	Life/10	Life/10	NA/10	Life/15	A/B/C	B/C	SV/V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
9	A/B	Life/10	Life/10	NA/10	Life/15	B/C	B/C	V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
8	A/B/C	Life/10/5	Life/10/5	NA/10/5	Life/15/5	B/C/GM	B/C/GM	V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
7	A/B*/C	Life/10/5	Life/10/5	NA/10/5	Life/15/5	B/C/GM	B/C/GM	V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
6	A/B/C	Life/10/5	Life/10/5	NA/10/5	Life/15/5	B/C/GM	B/C/GM	V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
5	A/B/C	Life/10/5	Life/10/5	NA/10/5	Life/15/5	B/C/GM	B/C/GM	V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
4	A/B/C	Life/10/5	Life/10/5	NA/10/5	Life/15/5	B/C/GM	B/C/GM	V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot	
3	B/C	10/5	10/5	10/5	15/10	C/GM	C/GM	NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot	
2	B/C	10/5	10/5	10/5	15/10	C/GM	C/GM	NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot	
1	B/C	10/5	10/5	10/5	15/10	C/GM	C/GM	NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot	
Unranked Offenses											

*Veh Hom - Disregard for Safety is a class A offense, however, under *State v. Stately* (152, Wn.App. 604, 216 P.3d 1102 (2009)) it is not considered a violent offense

Statute still states sex offenses, felony DUI, felony DUI-PC will always be included regardless of class or violent category

Statute still exempts offenses categorized as Crime Against a Person (with few exceptions) from being vacated

^ Also includes list of specific offenses and other qualifying offenses

^^ Also includes list of specific offenses and other qualifying offenses. Mandatory Remand RCW 10.64.025(2)

The Grid Subgroup then mapped the functions of offense classification onto the version of the new grid proposal it was working on at that time (referred to as the “simulated grid”).

Grid Subgroup's "Simulated Grid" on 7.7.22

OSL	Class	Stat Max	Washout	Vacation	SO Registration	Attempt/ Solicitation	Conspiracy	Violent	Most Serious Offense	Mandatory Remand
18	A	Life	Life	NA	Life			SV	Any Class A	Any Class A w/Sex Mot
17	A	Life	Life	NA	Life	A/B	A/B	SV	Any Class A	Any Class A w/Sex Mot
16	A	Life	Life	NA	Life	A	B	SV	Any Class A	Any Class A w/Sex Mot
15	A	Life	Life	NA	Life	A/B	B	SV/V	Any Class A	Any Class A w/Sex Mot
14	A	Life	Life	NA	Life	B	B	SV/V	Any Class A	Any Class A w/Sex Mot
13	A	Life	Life	NA	Life	A/B	B	SV/V	Any Class A	Any Class A w/Sex Mot
12	A	Life	Life	NA	Life	A/B	B	SV/V	Any Class A	Any Class A w/Sex Mot
11	A	Life	Life	NA	Life	A/B	B	SV/V	Any Class A	Any Class A w/Sex Mot
10	A	Life	Life	NA	Life	A/B	B	V	Any Class A	Any Class A w/Sex Mot
9	A/B	Life/10	Life/10	NA/10	Life/15	B/C	B/C	V/NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
8	A/B	Life/10	Life/10	NA/10	Life/15	B/C	B/C	V/NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
7	A/B	Life/10	Life/10	NA/10	Life/15	B/C	B/C	V/NV	Any Class A/B w/Sex Mot	Any Class A/B w/Sex Mot
6	A/B	Life/10	Life/10	NA/10	Life/15	B/C	B/C	V/NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
5	A/B/C	Life/10/5	Life/10/5	NA/10/5	Life/15/10	B/C/GM	B/C/GM	V/NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
4	A/B/C	Life/10/5	Life/10/5	NA/10/5	Life/15/10	B/C/GM	B/C/GM	V/NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
3	B/C	10/5	10/5	10/5	15/10	C/GM	C/GM	NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
2	B/C	10/5	10/5	10/5	15/10	C/GM	C/GM	NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
1	B/C	10/5	10/5	10/5	15/10	C/GM	C/GM	NV	Any Class B w/Sex Mot	Any Class B w/Sex Mot
Unranked Offenses										

In this "simulated grid" (and is also part of the new grid proposed in Recommendation 1), all Class A felonies exist in OSL 10 and above. The Grid Subgroup then looked at better aligning the violent status of offenses with felony class and OSL and presented two options for the Task Force to consider and provide input and guidance on what direction to pursue. Under both proposals, Class A felonies are divided into three groups, as shown in the image below:⁷⁸

- **A1:** Offenses receiving life without the possibility of parole
- **A2:** Serious Violent Offenses
- **A3:** Class A Violent Offenses (excluding serious violent offenses)

Proposal A

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

OSL	Class	Stat Max	Washout	Vacation	In Years	
					Violent Prop A	Violent Prop B
18	A1	Life	Life	NA	SV	SV
17	A2	Life	Life	NA	SV	SV
16	A2	Life	Life	NA	SV	SV
15	A2	Life	Life	NA	SV	SV
14	A2	Life	Life	NA	SV	SV
13	A3	Life	Life	NA	V	V
12	A3	Life	Life	NA	V	V
11	A3	Life	Life	NA	V	V
10	A3	Life	Life	NA	V	V
9	B	10	10	10	NV	V/NV
8	B	10	10	10	NV	NV
7	A/B*	10	10	NA/10	NV	NV
6	B	10	10	10	NV	NV
5	B/C	10/5	10/5	10/5	NV	NV
4	B/C	10/5	10/5	10/5	NV	NV
3	B/C	10/5	10/5	10/5	NV	NV
2	B/C	10/5	10/5	10/5	NV	NV
1	B/C	10/5	10/5	10/5	NV	NV
Unranked Offenses						

Proposal B

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

⁷⁸ The final grid proposal in Recommendation 1. did not use either option for organizing violent offenses for Class B and Class C, and not all Class A felonies were moved to OSL 10 and above.

Under this organization, the Grid Subgroup discussed whether different washout period rules could be created for these three groupings of Class A felonies. At the July 7, 2022 Task Force meeting, the Subgroup presented five options to explore opportunities for problem-solving in search of a path to consensus.

Potential Recommendation 35:
Class A Felony Washout Scoring Rules

Option a: Make no change to the current law (Class A felonies would continue to not washout).

Option b: All Class A felonies washout after 15 years.

Option c: Class A3 felonies washout after 15 years. Serious violent Class A felonies (A1 and A2) 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.

Option a: Option b: Option c:

OSL	Class	Stat Max	Washout (current law) Prop	Washout Prop B	Washout Prop C	Vacation	Violent Prop A	Violent Prop B
18	A1	Life	Life	15	Life	NA	SV	SV
17	A2	Life	Life	15	Life	NA	SV	SV
16	A2	Life	Life	15	Life	NA	SV	SV
15	A2	Life	Life	15	Life	NA	SV	SV
14	A2	Life	Life	15	Life	NA	SV	SV
13	A3	Life	Life	15	15	NA	V	V
12	A3	Life	Life	15	15	NA	V	V
11	A3	Life	Life	15	15	NA	V	V
10	A3	Life	Life	15	15	NA	V	V
9	B	10	10	5		10	NV	V/NV
8	B	10	10	5		10	NV	NV
7	A/B**	10	10	5		NA/10	NV	NV
6	B	10	10	5		10	NV	NV
5	B/C	10/5	10/5	5/3		10/5	NV	NV
4	B/C	10/5	10/5	5/3		10/5	NV	NV
3	B/C	10/5	10/5	5/3		10/5	NV	NV
2	B/C	10/5	10/5	5/3		10/5	NV	NV
1	B/C	10/5	10/5	5/3		10/5	NV	NV

Unranked Offenses

* 15 year washout unless new offense is SV, then previous SV does not washout
** Veh Hom - Disregard for Safety is a class A offense, however, under *State v. Stately* (152, Wn.App. 604, 216 P.3d 1102 (2009)) it is not considered a violent offense

Some Subgroup members supported keeping the current law as is: that all Class A felonies should continue to not washout; their constituencies would not be able to support a change that would allow Class A felonies to washout. Other members, whose constituencies could not support the status quo, wanted to create a washout period for Class A felonies. Given that washouts are an important factor for calculation of CHS, the Subgroup worked hard, seeking a potential middle ground that all members could support.

Many members of the Task Force expressed support for allowing washouts period for Class A felonies, noting that most people who recidivate do so quickly. Members noted that the research presented to the Subgroup and the Task Force showed that 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.⁷⁹ Risk for any person is never 0, but at this point, risk is no longer elevated compared to others with no criminal history. Research has also shown that in general, recidivism rates tend to be higher for individuals convicted of a drug or property offense than violent and serious violent offenses. This may be in part because more egregious offenses have longer incarceration sentences and individuals are much older when they are released from prison.

Other members noted that if an individual completes their entire sentence for a Class A felony and is released, there should be a reasonable washout period to incentivize a continuation of crime-free behavior. Other members disagreed with this reasoning, noting that Class A felonies are violent offenses and therefore more serious than most other felonies. Those members expressed concerns about reducing consideration of past actions in these instances. They reiterated that the washout

⁷⁹ Megan C. Kurlychek, Robert Brame, and Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53 *Crime & Delinquency* 64, 80 (2007): p. 1

period is only relevant if an individual re-offends. Some noted that given the severity of these offenses, it is appropriate that the offense never washout given the harm likely caused and the long-term impact on victims and their families.

With input from the Task Force and group discussion, the Grid Subgroup determined that Option C was the best possible middle ground between the diverging viewpoints concerning Class A washouts, so proposed it for consensus deliberation by the Task Force.

During consensus deliberations on November 3, 2022, several members could not live with the recommendation and provided proposals that they could support. The first proposal the Task Force discussed was to change the proposed washout term from 15 years to 25 years for violent Class A felonies, with serious violent Class A felonies continuing to not washout. Several members indicated their constituencies could not support 25 years, citing the abovementioned research presented to the Task Force showing that most who recidivate do so quickly and that at around 7-10 years individuals who have not recidivated have the same probability of committing a crime as someone who has no criminal history. Members observed that what the 15 years the Grid Subgroup put forward was already a compromise.

This led to Task Force members discussing 20 years, as a middle ground between 15 and 25 years. While some members previously unable to live with the recommendation indicated they could live with this new proposal, there were members that stated they could only support the original recommendation. Deliberations concluded on this recommendation and were revisited at the November 17, 2022 meeting, where members continued to discuss the proposal to allow for violent Class A felonies to washout at 20 years. After further discussion there were members still unable to live with the recommendation and/or alternate proposals. Deliberations closed with no consensus and the first roll call for consensus remained the record of decision.

Rec. 21: Non-Consensus

- Can support – 3
- Can live with – 8
- Cannot support – 5
- Abstain – 3

Consensus roll call on pg: 153

Member statements begin on pg: 153

Addresses the Policy Goals of the Task Force

One goal of incarceration is to reduce the likelihood of recidivism. As criminal history score increases, so too do the sentence lengths for offenses on the sentencing guideline grid as recognition that prior incarceration has not deterred individuals from committing a new offense. However, research finds that, after enough time has passed, individuals with a prior record are no more likely to commit an offense than members of the general public with no criminal history. As a result, individuals who do commit a new crime after a long enough crime-free period in the community should not necessarily be treated differently in the courts than similar individuals who have no criminal history. By considering these priors, sentences are increased unnecessarily, potentially increasing the collateral consequences of long sentences.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 7.7.2022; 10.6.22; 11.3.2022; 11.17.2022
- **Sentencing Grid Subgroup:** 1.18.22; 2.1.22; 2.8.22; 2.15.22; 2.22.22; 3.1.22; 3.8.22; 3.22.22; 3.29.22; 4.5.22; 4.12.22; 5.5.22; 5.31.22; 9.13.22; 9.20.22; 10.25.22

RECOMMENDATION 22.

Change the Washout Period for Class B Felonies

(Non-Consensus)

All Class B felonies washout after 7 years.

AND

RECOMMENDATION 23.

Change the Washout Period for Class C Felonies

(Non-Consensus)

Class C felonies washout after 3 years.

As noted above, the Grid Subgroup spent months discussing the washout rules for Class A, B, and C felonies including the research and its implications, and what changes (if any) to existing washout rules could advance the three policy goals. Some members saw value in considering the appropriate washout period for each felony class as a standalone recommendation. Some members saw utility in looking holistically at washout policies; initially, the Subgroup developed one recommendation to modify washout policies for each felony class. Some members focused on a particular felony class: some could not support changes to Class A, for example, but could consider modifications for Class B and C felony washout periods. This section combines the background and overview of the Task Force discussion on Class B and C felony washout periods since the discussions were often intertwined.

During Grid Subgroup discussions, for some members, the current washout terms already meet the goals of the Task Force, noting that washouts only apply if a subsequent crime has been committed and that individuals with repeated criminogenic behavior should not receive leniency.

Other Subgroup members raised concerns about the collateral consequences of criminal records, both on the individual and their families. The Subgroup reviewed research on desistance and destigmatization, such as removing labels that may hinder reentry.⁸⁰ The Grid Subgroup spent months trying to find common ground.

Initially, the Subgroup developed the following proposals for the Task Force to consider and provide input on:

Class B Felony Washout Options:

- Option a – make no change to the current law (washout period of 10 years)
- Option b – Class B felonies washout after 5 years

Class C Felony Washout Options:

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

⁸⁰ Solomon, Amy & Scherer, Jennifer. *Desistance from Crime: Implications for Research, Policy, and Practice*; published by the U.S. Department of Justice's Office of Justice Programs / National Institute of Justice, November 2021: p. 69

Task Force discussions mirrored discussions amongst the Grid Subgroup members. Some expressed support for modifications to washout policies, noting that would better align policy with research on desistance and destigmatization.⁸¹ Some expressed concerns, especially in regard to Class B felonies, if the subsequent conviction was for an offense of similar or greater seriousness. A few raised concerns about the need to define seriousness – whether by offense class or OSL. Others expressed concerns about increasing complexity—and some saw complexity as an opportunity to address nuance and individual circumstances.

In discussing proposals related to Class C washouts, some members pointed to some of the severe offenses within this class and suggested that there should be exclusions for crimes against a person and/or offenses involving sexual motivation. A few described the value in retaining current washout policies for offenses related to child abuse, domestic violence, and sexual conduct, noting the lasting physical and psychological harm to survivors. Some suggested that the Task Force focus on amending the washout timeframe, rather than offense-specific eligibility policies.

After much discussion, the Grid Subgroup decided to put forward a proposed recommendation that Class C felonies should washout after 3 years, noting that research suggests that most people who recidivate do so within three years. While not all members expressed that they could support such a recommendation, they saw value in allowing the perspectives of the full Task Force to articulate their concerns and supports, which could guide further modifications.

Continuing throughout 2022, the Grid Subgroup considered different proposals to modify washouts. Taking in all the input provided by Task Force members, the Subgroup put forward another proposal to the Task Force for consideration: All Class B felonies washout after 7 years if the current offense is less serious than the original offense. This proposal addressed concerns regarding repeat and escalating criminogenic behavior, noting the need to clearly define “seriousness,” whether by offense class or OSL. And it addressed other members interests to better align with research on desistance, which notes that after 7-10 years, individuals with prior felony convictions have a similar level of culpability as individuals with no criminal history.

Members noted that adding the stipulation of “if the current offense is less serious than the original offense” added significant complexity and questioned how and whether this could be done in practice. This led to discussion about removing this stipulation, to leave the potential recommendation as: “all Class B washout after 7 years.” Several members reiterated concerns about making any modifications to washouts for Class B felonies, especially for when the offenses committed were crimes against a person.

The Grid Subgroup ultimately settled on putting forward for consensus deliberation the proposal for all Class B felonies to washout after 7 years, seeing this as the best compromise and opportunity for consensus that the group could put forward.

During consensus deliberations on November 3, 2022 there were members who were not able to live with either one or both of the recommendations for Class B and Class C washouts. The Task Force began problem-solving deliberations on November 3rd and completed them on November 17th.

⁸¹ Solomon, Amy & Scherer, Jennifer. *Desistance from Crime: Implications for Research, Policy, and Practice*; published by the U.S. Department of Justice’s Office of Justice Programs / National Institute of Justice, November 2021

Many of the members unable to support the recommendations did not offer modifications, noting that current policy provided an appropriate timeframe in which prior convictions should inform a greater level of culpability for individuals facing a subsequent conviction. Others offered, in the interest of seeking consensus, modifications that would retain current washout policies for crimes against a person.

Several members encouraged the Task Force to consider shorter washout periods as more effective in supporting reintegration and rehabilitation. Specifically, an individual's conviction history can limit ability to secure housing, jobs, etc. They described value in defining a period of time for which an individual should demonstrate rehabilitation and remain crime-free—and also saw the need to welcome someone back to the community after meeting certain conditions.

That conversation led a member to suggest that the group consider washouts and vacation, the court process by which an individual can request removal of a record of conviction.⁸² While washouts and vacation are not connected in statute, under current policy, both operate on the similar time frames. They suggested a proposal that would retain current washout periods for Class B and Class C felonies and create a process that would allow individuals to petition the sentencing court at seven years and three years, for Class B and Class C respectively, as to why they deserve an earlier washout. Such a process should include victim input as well. Other members responded that they would not change their position on washouts.

As the Task Force closed deliberations with the decision to retain the “no consensus” roll call from November 3rd, several members offered reflections on the culmination of months of hard work, reviewing research, and engaging in difficult conversations trying to find compromise. Members reflected on how the Task Force discussions have focused on the tensions between efficacy and retributive justice – what society believes people may deserve if they recidivate and how effective this level of punishment actually is at deterring crime and promoting public safety. Members noted that additional considerations should be crime prevention and the fiscal impact that increasing sentences has and whether increased retribution is worth the additional fiscal cost. Adding resources to ineffective deterrents has a cost to communities. If increased sentence lengths are not effective in deterring crime, then perhaps those resources would be better spent investing in crime prevention measures and reentry programs that are known to promote public safety. Another member encouraged the Task Force to consider and reflect on differences between culpability and recidivism. Culpability has to do with the current crime. Recidivism is about bringing in the past and attributing culpability to the current circumstances. Deciding when and under what circumstances this is appropriate merits continued reflection and discussion.

Rec. 22: Non-Consensus

- Can support – 1
- Can live with – 9
- Cannot support – 7
- Abstain – 3

Consensus roll call on pg: 154

Rec. 23: Non-Consensus

- Can support – 4
- Can live with – 5
- Cannot support – 8
- Abstain – 3

Consensus roll call on pg: 155

⁸² See RCW 9.94A.640

Addresses the Policy Goals of the Task Force

Current research is exploring the timeframes in which individuals with a criminal history have a different level of risk for criminogenic behavior than individuals without a criminal history. While that research is often used to inform policies regarding background checks or employment, it is also used to inform conversations on washouts and when an individual with a criminal history may be more culpable because of underlying criminality. As noted above, research shows the likelihood becomes the same at about seven years that individuals in a similar situation, one with a criminal history and one without, will respond in a way that leads to a criminal behavior. Making the washout period for Class B felonies seven years would establish a policy threshold based on risk for criminogenic activities.

Data on recidivism demonstrates that most individuals who will commit a subsequent crime do so within three years. Making the washout period for Class C felonies three years would establish a policy threshold based on likelihood of recidivism.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 7.7.2022; 10.6.22; 11.3.2022; 11.17.22
- Sentencing Grid Subgroup: 1.18.22; 2.1.22, 2.8.22, 2.15.22, 2.22.22, 3.1.22, 3.8.22, 3.22.22, 3.29.22, 4.5.22, 4.12.22, 5.5.22, 5.31.22, 9.13.22, 9.20.22; 10.25.22

Recommendations 24 – 28: Misdemeanor Scoring Exceptions

Criminal History Score (CHS, which in statute is called the Offender Score, [RCW 9.94A.525](#)) is one factor affecting a felony sentence and is measured on the horizontal axis of the sentencing guidelines grid. The axis provides columns for scores from 0 to 9+. In general, the number of points received depends on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the person's community custody status at the time the crime was committed; and (5) the length of crime-free behavior between offenses.

Pursuant to [RCW 9.94A.030\(11\)](#), criminal history includes the defendant's prior adult convictions and juvenile court dispositions, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity. Although criminal history calculations consist almost exclusively of felony convictions, in some instances, it also includes misdemeanors and gross misdemeanors.

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

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

In addition:

- If there is more than one offense in a sentence, the current offenses will score against one

another, but are run concurrently (at the same time), with a few exceptions.

- If a person was under community custody at the time of the current offense, 1 point is added to the criminal history score.
- Offenses score as if they were a completed offense (example: Robbery in the 2nd degree is a violent offense and Attempted Robbery in the 2nd degree is a non-violent offense, but it would be scored as a violent offense).
- Only offenses ranked on the adult felony sentence grid are scored – unranked offenses are not scored and have a standard range of 0-12 months.

Misdemeanor Scoring Exceptions

Prior Misdemeanor convictions count in the criminal history score in four unique situations (misdemeanor offenses are shaded and in italics):

1. Felony Traffic Offenses

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

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

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

3. Homicide or Assault by Watercraft Offenses

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

4. Felony Domestic Violence (DV)

- a.) Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony

Harassment, felony Stalking, Burglary 1°, Kidnapping 1° or 2°, Unlawful Imprisonment, Robbery 1° or 2°, Assault 1°, 2° or 3°, or Arson 1° or 2°.

- b.) Count 2 points for each Adult offense where DV was pleaded/proven after 7/23/2017 for any of the following offenses: Assault of a Child 1°, 2° or 3°, or Criminal Mistreatment 1° or 2°.
- c.) Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.
- d.) *Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011.*
- e.) Any other felony offenses count standard.

The four misdemeanor scoring exceptions depend on the type of current offense and the types of prior misdemeanor convictions. As the SRA and Superior Courts primarily handle felony offenses, it may be argued that the criminal history score calculations should be limited to the same jurisdiction – felony offenses.

The Task Force looked at how the four misdemeanor scoring exceptions intersect with felony sentencing. The Subgroup began by developing a proposal to eliminate all misdemeanor scoring exceptions.⁸³ During their discussions, many members saw value in considering an individual's repeat and potentially escalating behavior. They focused on the reasons for why these specific misdemeanor scoring exceptions exist and explored ways to achieve the same goals through alternative means while increasing transparency, simplifying the CHS calculation process (increasing efficiency), and reducing errors in calculating CHS.

The Grid Subgroup put together a series of potential recommendations that offered different approaches to consider the actions addressed in the current misdemeanor scoring exceptions. In combination, these changes would have eliminated all special scoring exceptions for misdemeanors in the felony CHS, which would reduce complexity by creating clear delineations between misdemeanor and felony sentencing.

When the Subgroup presented these potential recommendations to the full Task Force for input at its June 2, 2022 meeting, a number of members expressed concerns about eliminating one or more of these special scoring exceptions. Specifically, members saw value in including prior misdemeanor convictions for Domestic Violence (DV), Driving under the Influence (DUI), and crimes with a sexual motivation finding. Including prior misdemeanor convictions to inform CHS calculation provides more context for repetitive, potentially lethal or escalating behavior, particularly in DV and sexual assault cases, which are often underreported and would not be sufficiently addressed through an aggravated factor or repeat violent column.

Members also raised concerns for victims and survivors experiencing disparate outcomes based on their gender in the current sentencing system, noting that proposed changes could exacerbate disproportionality and disparity among victims.

The Grid Subgroup incorporated the input from the full Task Force, made revisions, and proposed the recommendations below on special scoring exceptions for misdemeanors.

⁸³ Potential Recommendations 28-32: See [CSTF Detailed Guide to Potential Recommendations_Part 2. Horizontal Axis Components of the Sentencing Grid](#)

RECOMMENDATION 24.

Prior Misdemeanor DUI Offenses No Longer Score for Current Offenses That Do Not Involve a DUI

(Non-Consensus)

Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current offenses is a serious felony traffic offense involving DUI (e.g., Vehicular homicide-DUI, Vehicular Assault-DUI, Felony DUI, Felony physical control, etc.). Prior misdemeanor DUI offenses no longer score for felony offenses not involving DUI.

As noted above, the Grid Subgroup's discussions about misdemeanor scoring rules began with the purpose of reducing complexity and creating clear boundaries between felonies and misdemeanors. The Subgroup began by developing a two-part proposal: 1) *Eliminate the special scoring exceptions for felony traffic.* 2) *Reclassify felony DUI and physical control DUI from OSL 4 to OSL 6.* In combination, those proposals would lead to similar sentencing guideline ranges in a way that only considered prior felony convictions and ensure that Felony DUI would have longer sentencing guideline ranges than the mandatory minimum for a 3rd misdemeanor DUI.

Task Force members and alternates emphasized the importance of taking seriously those offenses that typically occur as part of a pattern of behavior, (such as DUI) and the value in considering those patterns in calculating a person's CHS. A few expressed support for limiting CHS as much as possible to prior felony convictions, but noted that the Legislature crafted current exceptions related to DUI with consideration of different perspectives.

To give those offenses sufficient weight, some Task Force members and alternates suggested continuing to count prior misdemeanor DUI offenses (in a person's CHS) in cases involving serious felony traffic offenses. However, members suggested that when the current felony offense is not a DUI it should not count in a person's CHS, which would still decrease instances when misdemeanors affect felony sentencing.

Some constituencies expressed concerns about any recommendation to eliminate special misdemeanor scoring rules, especially for offenses such as a DUI, so the Grid Subgroup agreed the best potential for consensus was to maintain the special scoring for misdemeanor DUI offenses when the current offense is a serious felony traffic offense involving DUI, while eliminating the exception when the current felony does not involve DUI.

Some members unable to support the proposed recommendation described the relationship among all traffic offenses and the pattern of repeat risky behavior and expressed concerns about treating risky traffic related behaviors for DUI and for non-DUI situations differently.

A few shared concerns about how this recommendation furthers the policy goals—specifically that this recommendation could reduce sentence lengths without the necessary infrastructure in place to increase and improve programming for individuals while of incarcerated. Some recalled the process-driven origin of this recommendation—that sometimes misdemeanors affect felony sentencing and yet misdemeanor policies vary by jurisdiction.

After some discussion without identifying a compromise, one member moved their position on the

recommendation to “unable to support” and discussion closed without consensus.

Addresses the Policy Goals of the Task Force

Eliminating the use of prior misdemeanor DUI offenses in the CHS calculations for felony offenses not involving DUI-related would reduce the instances when prior misdemeanors affect felony sentencing. In general, prior misdemeanor offenses do not count in the calculation of criminal history scores. The exceptions that allow misdemeanor offenses to score in certain cases create complexity and the possibility for error. This recommendation limits the instances in which prior misdemeanors would need to be considered, reducing the cases in which errors may occur.

Rec. 24: Non-Consensus

- Can support – 1
- Can live with – 9
- Cannot support – 6
- Abstain – 4

Consensus roll call on pg: 156

Member statements begin on pg: 156

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 6.2.22; 8.31.2022; 12.8.2022
- **Sentencing Grid Subgroup:** 1.18.22; 1.25.22; 2.1.22; 6.21.22, 8.16.22; 8.23.22; 11.15.22

RECOMMENDATION 25.

Create Parity Between Vehicular and Watercraft Offenses

(Non-Consensus)

Maintain the special misdemeanor DUI scoring exceptions for homicide or assault by watercraft offenses when the current offense involves a DUI and make homicide or assault by watercraft offenses the same Offense Serious Level (OSL) as the corresponding felony traffic offense (by either increasing watercraft offenses to higher OSLs or reducing vehicular offenses to a lower OSL) with the goal of creating parity between vehicular and watercraft offenses (Homicide by watercraft and vehicular homicide. Assault by watercraft and vehicular assault).

Discussion around this recommendation started with a focus on eliminating the special misdemeanor scoring exceptions for homicide or assault by watercraft offenses to reduce instances when prior misdemeanors affect felony sentencing. During those discussions, members of the Grid Subgroup also noted the inconsistent OSL classification of watercraft and vehicle offenses for similar behaviors.

The Grid Subgroup initially developed the following proposal: *Eliminate the special misdemeanor scoring exceptions for homicide or assault by watercraft offenses and reclassify to the same OSL as the felony traffic offense.* This proposal would reduce complexity by creating better alignment between that the OSL differentiation between watercraft and vehicle for essentially the same offense is a differentiation based on the affluence of the individual committing the crime.

A few members of the Task Force expressed concern about eliminating misdemeanor DUI scoring exceptions, pointing to the pattern of repeat, escalating behavior, whether in a watercraft or a vehicle, that merit consideration in calculating CHS. Members expressed support for placing analogous watercraft and traffic offenses in similar seriousness levels. Some members expressed

support for parity but stated that they would not be able to support reducing the seriousness level for felony traffic offenses.

To incorporate concerns raised about the importance of considering prior DUI misdemeanors, the Grid Subgroup determined that misdemeanor DUI scoring exceptions for watercraft offenses should be maintained, noting that homicide by watercraft does include a DUI component.

The Grid Subgroup had a lengthy discussion about the appropriate OSL for similar watercraft and traffic offenses. Many saw the need for parity but diverged as to how to achieve it. Some members suggested that the lower OSLs for watercraft related offenses should indicate that vehicular homicide was classified too high. Others expressed concerns about decreasing an offense—vehicular homicide—for which more individuals may face conviction.

The Subgroup decided to make the following modification: make homicide or assault by watercraft offenses the same OSL as the corresponding felony traffic offenses (by either increasing watercraft offenses to higher OSLs or reducing vehicular offenses to lower OSLs) with the goal of creating parity between vehicular and watercraft offenses. They reached a compromise to clearly call attention to the need to reconcile different OSL classifications for similar offenses while conveying that the Task Force diverged on how that parity should be reached.

The Task Force could not reach consensus during the November 3rd roll call. During deliberations, some members expressed concerns about the serious implications that risky traffic behaviors have for public safety. As mentioned, they could support parity but not if it meant decreasing the OSL for vehicular homicide. Some raised questions about the racial demographics of individuals with convictions for watercraft offenses as compared to vehicular offenses. One member moved their position to “live with” the recommendation, noting that their preference would be maintaining the OSL for vehicular homicide but that the recommendation is not trying to influence the outcome.

Addresses the Policy Goals of the Task Force

Increasing alignment among similar watercraft and traffic offenses would increase parity in similar actions, which is critical to the perceived legitimacy of the court and criminal law code. This recommendation would improve the effectiveness of the system by eliminating a source of disparate treatment that may also lead to racially disproportionate outcomes. Maintaining the misdemeanor DUI scoring exceptions would still allow for repeat and escalating behaviors to affect the calculation of an individual’s CHS.

Current Offense Classification:

- Homicide by watercraft – DUI: OSL 9
- Homicide by watercraft-reckless: OSL 8
- Homicide by watercraft-disregard for safety: OSL 7
- Vehicular homicide-disregard for safety of others: OSL 7
- Vehicular homicide – DUI/reckless: OSL 11
- Assault by watercraft: OSL 4
- Vehicular assault disregard safety: OSL 3
- Vehicular assault DUI/reckless: OSL 4

Rec. 25: Non-Consensus

- Can support – 5
- Can live with – 7
- Cannot support – 4
- Abstain – 4

Consensus roll call on pg: 157

Member statements begin on pg: 157

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 6.2.22; 8.31.2022; 11.3.22; 12.8.22
- Sentencing Grid Subgroup: 1.25.22; 2.1.22; 2.15.22; 5.3.22; 6.21.22; 8.23.22

RECOMMENDATION 26.

Change the Offense Serious Level for Vehicle Prowling 2nd Degree (third or subsequent) and Vehicle Prowling 1st Degree

(Non-Consensus)

Reduce the OSL for Vehicle Prowling – 2nd degree (third or subsequent) to Offense Serious Level (OSL) 2 and raise the OSL for Vehicle Prowling – 1st degree to OSL 2.

Under current law, gross misdemeanor offense of Vehicular Prowling in the 2nd degree counts as 1 point in CHS when the current offense is Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner’s Permission 1st degree or 2nd degree.

Vehicle Prowling In The First Degree (RCW 9A.52.095)	Vehicle Prowling In The Second Degree (RCW 9A.52.100)
<p>(1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.</p> <p>(2) Vehicle prowling in the first degree is a class C felony.</p>	<p>(1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.</p> <p>(2) Except as provided in subsection (3) of this section, vehicle prowling in the second degree is a gross misdemeanor.</p> <p>(3) Vehicle prowling in the second degree is a class C felony upon a third or subsequent conviction of vehicle prowling in the second degree. A third or subsequent conviction means that a person has been previously convicted at least two separate occasions of the crime of vehicle prowling in the second degree.</p>

When looking at the classifications of vehicle offenses and their OSLs, inconsistencies were noted by Subgroup members and confusion ensued.

Current OSLs:

- Vehicle Prowl 2nd degree, third and subsequent conviction: **OSL 4**
- Vehicle Prowl 1st degree: **OSL 1**
- Theft of Motor Vehicle: **OSL 2**
- Possession of a Stolen Vehicle: **OSL 2**
- Taking a Motor Vehicle without Owner's Permission 1st degree: **OSL 5**
- Taking a Motor Vehicle without Owner's Permission 2nd degree: **OSL 1**

Vehicle Prowling in the 2nd degree, third and subsequent conviction is a Class C felony at OSL 4. Prior gross misdemeanor for Vehicle Prowling in the 2nd degree convictions do not count in the scoring of the felony Vehicle Prowling 2nd – 3rd/subsequent. Therefore, someone charged with their third Vehicle Prowling in the 2nd degree could be at OSL 4 with CHS 0. The Subgroup looked at the OSLs for related motor vehicle offenses, noting that for individuals with their first Theft of a Motor Vehicle, it is a Class C felony offense at OSL 2. In addition, Vehicle Prowling in the 1st degree, which is considered to be more serious than Vehicle Prowling in the 2nd degree – 3rd /subsequent, is at OSL 1. Members questioned whether it made sense for an individual prowling a vehicle, with two prior vehicle prowl convictions, was caught before they stole the vehicle, their sentence at OSL 4 would be greater than for an individual who successfully steals the vehicle on the third try (OSL 2).

The Grid Subgroup first presented to the Task Force for input the idea to eliminate the special misdemeanor scoring exceptions for Vehicular Prowling and instead create a new felony offense for Theft of a Motor Vehicle with two prior Vehicle Prowling offenses and to place this offense at OSL 4, making it consistent with the third and subsequent Vehicle Prowling convictions. When discussing this proposal, some members asked whether the rationale behind this misdemeanor scoring exception was connected to the felony offense of Theft of a Motor Vehicle, in that stealing a car is considered a continuation or escalation of previous vehicle prowl behaviors. Others noted that not all vehicle prowls are with the intent to steal a car – thus Theft of a Motor Vehicle may not always reflect increasing intensity of behaviors – it may be a change in behavior. Other members questioned whether it made sense to have these offenses at OSL 4, given the other types of offenses in that OSL.

When discussing the Task Force's input, some Grid Subgroup members indicated their constituency would be unlikely to support a recommendation that would move offenses into higher OSLs. Other members indicated their constituencies would likely not support moving offenses to lower OSLs and expressed concerns for public safety—specifically, that car prowls are a frequent occurrence and have high impact on individuals yet are not frequently charged or convicted. Others noted that for Vehicle Prowling, the third or subsequent second-degree offense is more serious than the first-degree offense. This is an example of inconsistency, part of the complexity the Task Force was asked to address.

One suggestion was to eliminate the misdemeanor scoring rule and put Vehicle Prowling in the 2nd degree, third/subsequent in the same OSL as Vehicle Prowling in the 1st degree (OSL 1). Some members reiterated that they could not support moving this offense to a lower OSL. Ultimately, the

Subgroup decided to put forward to the Task Force for consensus deliberations what is listed here as Recommendation 26.

Consensus deliberations on this recommendation occurred on December 8, 2022. Some members reiterated concerns about the ratio of car prowling to the actual number of arrests and convictions for prowling, noting that individuals with multiple convictions for Vehicular Prowling have likely prowled many more vehicles than their number of convictions. Members also raised questions about the relationship between vehicular prowl and vehicular theft. Some described vehicular prowling and car theft as crimes of opportunity, saying that in their experience individuals do not graduate from one to another. They notes that often defendants either have an underlying substance use disorder or are young people making poor decisions. A few members noted that both offenses lie within the potential zone for intermediate sanctions under Recommendation 3.

Rec. 26: Non-Consensus

- Can support – 3
- Can live with – 11
- Cannot support – 3
- Abstain – 2

Consensus roll call on pg: 158

Member statements begin on pg: 158

Addresses the Policy Goals of the Task Force

Reducing the OSL for Vehicle Prowling – 2nd degree (third or subsequent) to OSL 2 and raising the OSL for Vehicle Prowling – 1st degree to OSL 2 would address inconsistencies in OSL and level of risk to community safety. This recommendation increases sentencing effectiveness by ensuring that similar offenses are treated similarly in sentencing. For example, Vehicle Prowling – 1st degree is similar to Residential Burglary. As a result, the offense itself is considered more serious than Vehicle Prowling – 2nd degree, but it is currently ranked as less serious than Vehicle Prowling – 2nd degree and Residential Burglary.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- CSTF: 6.2.22; 8.31.2022; 11.3.22; 12.8.22
- Sentencing Grid Subgroup: 1.25.22; 2.1.22; 2.15.22; 5.3.22; 6.21.22; 8.23.22; 8.30.22; 11.15.22

RECOMMENDATION 27.

Eliminate Special Misdemeanor Scoring for Prior Gross Misdemeanor Vehicle Prowl

(Non-Consensus)

Eliminate special misdemeanor scoring for prior gross misdemeanor vehicle prowling in the second degree for theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1st degree or 2nd degree.

As part of their discussions on how to reduce or minimize the instances when misdemeanors would affect felony sentencing, the Grid Subgroup also proposed to the Task Force for input the option to eliminate vehicle prowl as a scoring exception for:

- Theft of a Motor Vehicle,
- Possession of a Stolen Vehicle, or

- Theft of a Motor Vehicle Without Permission in the 1st degree or 2nd degree.

The Grid Subgroup discussed the potential intent of the current policy and reviewed sentencing data. Members observed that if Theft of a Motor Vehicle is not considered a continuation or escalation of previous vehicle prowling behaviors, and if vehicle prowling is a separate category of behavior from vehicle theft, then it does not make sense to have prior vehicle prowls count in the scoring for motor vehicle theft offenses.

Most Serious Offense	Number of Sentences (may include multiple sentences for the same person)					
	2017	2018	2019	2020	2021	Total
POSSESSION OF STOLEN VEHICLE	908	942	769	582	413	3,614
TAKING MOTOR VEHICLE WITHOUT PERMISSION 1	12	7	13	10	8	50
TAKING MOTOR VEHICLE WITHOUT PERMISSION 2	876	908	791	560	434	3,569
THEFT OF MOTOR VEHICLE	295	307	286	226	193	1,307
VEHICLE PROWL 1	13	12	8	4	5	42
VEHICLE PROWL 2 (3RD OR SUBS - POST 2013)	15	8	8	9	9	49
Total	2,119	2,184	1,875	1,391	1,062	8,631
Total Felony Sentences in FY	25,186	25,171	24,257	19,742	13,655	108,011
# Motor Vehicle sentences (above) w/a Misd Veh Prowl 2 in Criminal History:	130	107	128	117	78	560
% of Motor Vehicle sentences with a Misd Veh Prowl 2 in Criminal History:	6%	5%	7%	8%	7%	6%

The Grid Subgroup reviewed data on the number of sentences for Vehicle Prowling and theft offenses from 2017 to 2021, which showed that the percentage of motor vehicle offenses in which a misdemeanor Vehicle Prowling 2nd degree was reflected in CHS was on average 5-8%. This indicates that the special exception for misdemeanor scoring is only relevant in less than 10% of all felony traffic offenses. In addition, this shows that misdemeanor vehicle prowling is not an offense likely to occur multiple times before “escalating” to more serious traffic offenses. Since these policies only affect a few individuals each year, members observed that this policy does not have significant public safety implications. They reasoned that eliminating it would further the policy goal of reducing complexity and opportunity for error in the calculation of CHS.

The Grid Subgroup developed the following proposal for Task Force input: *Eliminate the special misdemeanor scoring exceptions for Vehicular Prowling and create a new subsection on Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner’s Permission 1st degree or 2nd degree for individuals with two prior misdemeanor convictions of Vehicle Prowling. Make these subsections a higher OSL.*

Those who could not support eliminating this special misdemeanor scoring exception noted that it plays a role in differentiating sentences between those whose first offense is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner's Permission (1st degree or 2nd degree), and for those who have priors of Vehicle Prowling 2nd degree. The reason to differentiate is that those with prior gross misdemeanor Vehicle Prowling 2nd degree offenses have demonstrated an escalation of their criminal behavior when facing a felony related to vehicle theft or possession, so should be treated differently in their sentences. Some members thought that could be addressed through subsections in a higher OSL; some could not support increases to potential sentencing lengths.

Many members had questions about current classifications for certain offenses related to vehicle prowling and theft in relation to other such offenses, specifically wondering how to achieve parity. To reflect the discussions and diverging viewpoints, the group decided to address OSL classification and CHS calculation separately. The Task Force conducted final consensus deliberations at the December 2nd meeting.

Many recalled from previous conversations on misdemeanor scoring exceptions the proposal to eliminate them all, but maintain those exceptions for DV and DUI to address repeat and escalating behaviors. Some members expressed concerns about circumstances where individuals may have faced a charge for a felony that they then pled down to misdemeanor Vehicle Prowling, so similar behaviors may not be fully reflected in someone's CHS.

Members unable to live with the recommendation noted that this scoring exception was a key provision in HB 1001 from 2007,⁸⁴ legislation that WASPC supported and assisted in the development of. They reiterated concerns that repealing this provision would enable still more auto theft-related offenses. Other members noted that the misdemeanor scoring exceptions for Vehicle Prowling affect approximately 6% of people per year, and data suggests that vehicular prowl does not often escalate to vehicular theft.

Rec. 27: Non-Consensus

- Can support – 3
- Can live with – 8
- Cannot support – 6
- Abstain – 3

Consensus roll call on pg: 159

Member statements begin on pg: 159

Addresses the Policy Goals of the Task Force

Eliminating the special misdemeanor scoring for prior misdemeanor Vehicle Prowling for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Theft of a Motor Vehicle Without Permission in the 1st or 2nd degree would eliminate complexity associated with including misdemeanors in the calculation of felony CHS. Standard scoring rules would then become more transparent, reducing complexity leading to errors in CHS calculation.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 6.2.22; 8.31.2022; 11.3.22; 12.8.22
- **Sentencing Grid Subgroup:** 1.25.22; 2.1.22; 8.16.22, 8.23.22, 8.30.22

⁸⁴ HB 1001: <https://app.leg.wa.gov/billsummary?BillNumber=1001&Year=2007&Initiative=false>

RECOMMENDATION 28.

Limit the Scope of Misdemeanor Offenses that Can Be Included in Felony Criminal History Score

(Non-Consensus)

Include language in the Sentencing Reform Act that would define the scope of offenses that can be scored in the calculation of a Criminal History Score as limited to prior felony convictions other than DV, DUI, and vehicular prowl.

As previously noted, scoring exceptions depend on the type of current felony offense and the types of prior misdemeanor convictions. Since Superior Courts primarily handle felony offenses under the SRA, Grid Subgroup members discussed whether criminal history score calculations should be limited to the same jurisdiction – felony offenses. Focused on the logic behind misdemeanor scoring exceptions, the Subgroup explored ways that the same goals can be achieved through alternative means while increasing transparency, simplifying the CHS calculation process (increasing efficiency), and reducing errors in calculating CHS.

The Grid Subgroup first presented to the Task Force for input the following potential recommendation: *Include language in the SRA that would define the scope of the CHS as limited to prior felony convictions.* Subgroup members talked about how the SRA was not originally intended to include misdemeanors except for instances where there is an explicit step up of the same offense, such as DUI type offenses. Members noted that the inclusion of misdemeanor scoring exceptions has created complexity for entities such as DOC and the Caseload Forecast Council, which have seen errors in calculating CHS.

When presented to the Task Force, several members said their constituency could not support eliminating one or more of these special scoring exceptions. Other recommendations evolved to call for maintaining special misdemeanor scoring exceptions, so the Subgroup proposed a recommendation that would limit the scope of misdemeanor offenses that can be included in felony CHS.

Rec. 28: Non-Consensus

- Can support – 1
- Can live with – 10
- Cannot support – 6
- Abstain – 3

Consensus roll call on pg: 160

Member statements begin on pg: 160

The Task Force held consensus deliberations during their December 8th meeting. Some members expressed concerns for the Legislature to self-impose limitations in creating future misdemeanor scoring exceptions. Several members offered modifications to reach a compromise: that misdemeanors should only be included in felony CHS if they are a predicate offense.

This led to the suggestion to limit consideration of prior felonies in CHS to the greatest extent possible—and the group explored whether that could be placed in statute or a general principle in a preamble of the SRA. Some expressed concerns about the likelihood of disparate and disproportionate sentencing outcomes for survivors and victims, based on their gender identity and called for a gender-based analysis among victims and survivors. After further deliberations, one member indicated they could move their position to “live with” the recommendation. Deliberations ultimately concluded with no consensus.

Addresses the Policy Goals of the Task Force

This recommendation would add language into the SRA that would effectively limit the scope of a CHS to only include prior felony convictions except for misdemeanors such as DUI, Domestic Violence (DV), and Vehicular Prowling in the 2nd degree.

The SRA did not originally include misdemeanor offenses, except for instances involving an explicit step up of the same offense (i.e., DUI). Inclusion of misdemeanor offenses may contribute to complexity that has caused errors in calculating CHS and led to uncertainty in sentencing outcomes. Misdemeanor sentencing and offenses fall within the municipal court framework, and the use of misdemeanors and actions described within misdemeanors varies by local jurisdictions across the state.

This recommendation would increase the likelihood of long-term consistency in the felony sentencing structure and prevent future misdemeanor scoring exceptions—or at least prompt a thoughtful conversation about why such a scoring exception was needed or if the desired outcome could be reached in a way that did not blend misdemeanor and felony sentencing.

The following meetings to reference for additional context can be found here: [Final Report 2022](#)

- **CSTF:** 6.2.22; 8.31.2022; 11.3.22; 12.8.22
- **Sentencing Grid Subgroup:** 1.18.22; 2.1.22; 8.23.22

IV.

**Consensus
Decision Roll Call
Sheets
&
Task Force
Member
Statements**

Recommendation 1

Proposal For A New Adult Felony Sentencing Guidelines Grid

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can live with
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Can live with
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can live with
WA State Office of the Governor	Abstain
WA Department of Corrections	Can support
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can live with
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Can live with
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Can live with
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

Washington Association of Prosecuting Attorneys

Comments re: Recommendation 1. Sentencing Grid

The Washington Association of Prosecuting Attorney (WAPA) was thumbs down on the grid proposed to the full task force. WAPA agrees that some modifications to the current grid may further task force goals, but the proposed grid goes too far and is actually antithetical to those goals.

The grid proposal uses a formula to create logical incremental increases in sentence ranges as one moves both horizontally and vertically across the grid. WAPA agreed that incremental increases from left to right is appropriate given that this movement is based on the persons offender score. WAPA agrees there is logic in moving incrementally as one accumulates “points” to their score. However, this rationale does not transfer to vertical movement. Increasing sentence lengths according the severity of the crime does not necessarily suggest that increase follow a formula. For instance, is a Assault 1 thirty percent worse than a Assault 2? Instead, WAPA believes the increase in sentence range as seriousness levels increase stay aligned with current sentence practice.

In addition, during the creation of the grid proposal, certain members of the task force indicated early on that no increases in sentence range would be tolerated. This unwritten rule, when combined with a desire to make the grid “formulistic”, resulted in a proposal that only contained decreases, most of which were substantial.

The end result of this process was a proposal that would substantially reduce sentence ranges through all parts of the grid, including for those who commit the worst crimes and those who commit the most crimes. WAPA opposes this significant change in sentencing policy for violent and repeat offenses.

The proposed grid also substantially changes how offender scores are calculated by eliminating the multiplier effect for violent and serious violent offenses. In place of multipliers, the proposal adds a column to the grid which adds time onto the high end of the range if the person has a prior violent offense. This results in a new range which is adjusted at the high end but does not increase the low end. It would also create additional scoring columns for domestic violence offenses and eliminate multiplier scoring in that category of crime. The result is arguably a more complex criminal history system that is more prone to errors.

WAPA’s primary concern with this new methodology is that it does not distinguish between someone who has one prior violent offense from someone who might have multiple violent prior offenses or even prior serious violent offenses resulting again in lower sentence ranges for those who are committing the worst crimes. WAPA believes that the scoring methodology in the original SRA was extremely well thought out and properly increases sentence ranges for defendants who accumulate a history of violent or serious violent offenses. There is no reason to fix what is not broken.

Finally, the proposed grid would also attempt to limit a judge’s discretion to impose an exceptional sentence after a jury has determined that there are facts to support such an exceptional sentence. Concern was expressed during discussions about the grid that judges have unfettered discretion when it comes to exceptional sentences above the range which, if abused, could result in unjustly high sentences. Yet no examples of such a sentence was provided. Even if such a sentence were imposed, an exceptional sentence carries with it an automatic right to appeal the sentence and have it reviewed.

Instead of creating a new grid with substantial sentence reductions for violent and serious violent offenses, WAPA supports widening grid cells in the “southwest corner” of the grid where a high percentage of felony sentences actually occur. People being sentenced in the SW corner are generally those who have committed fewer crimes and less serious crimes. Widening these cells would provide judges more discretion to tailor a sentence to the individual facts and circumstances of a particular case with a goal of reducing recidivism.

If a new grid is adopted, WAPA supports a process to review the ranking of crimes to provide an opportunity to assess the impact of a new grid on each crime and determine if the sentence ranges are appropriate. We refer to this process as “re-ranking.” Any move to a new grid should only happen upon completion of the re-ranking process. This is especially true for certain violent crimes that WAPA believes are under ranked in the current grid such as Assault in the Second Degree and Rape in the Third Degree.

Whether a new grid is adopted or not, WAPA strongly recommends that the legislature reinstate judicial authority to place anyone convicted of a felony on supervision, especially now that a new supervision model is being implemented by DOC. Current sentencing law actually prohibits courts from ordering supervision for many crimes in the lower levels of the grid meaning courts have no authority to include treatment or other related programming as a part of their sentence. Therefore, the only consideration currently before a court for these crimes is how long to incarcerate the person. WAPA believes that this type of sentence does very little to reduce recidivism which should always be a goal in dealing with lower level felony crime. We strongly urge the legislature to reinstate supervision which would provide opportunity for judges to use incarceration less and impose rehabilitative programming more in the SW corner.

COMMENTS REGARDING THE CRIMINAL SENTENCING TASK FORCE'S 2022 REPORT

December 19, 2022

Submitted by Task Force members and alternates who represent families of the incarcerated, people who are incarcerated in Washington's prisons and jails, and professionals who fight for the rights of people caught up in Washington's criminal legal system.

*Introduction*¹

We, the undersigned, represent constituencies particularly impacted by Washington's criminal sentencing system. We have provided these comments in order to highlight important aspects of the Task Force's work and to identify places where the legislature needs to take immediate and vital action.

Our constituencies joined this Task Force because they saw an opportunity to evaluate our current system in a way that has not been done since adoption of the Sentencing Reform Act (SRA) more than 40 years ago. They hoped that with the application of science and research and an honest appraisal of the true costs of the criminal sentencing system on individuals, families and communities, the Task Force could reach recommendations that would move Washington toward a more transparent, just and effective sentencing system – Reforms that would reorient the system away from a model based solely in punishment and retribution to one designed to actually heal harms, support growth and offer true accountability.

In creating the Task Force, the legislature recognized this need for real reform and asked for recommendations that would make the criminal sentencing system more effective, less complex and prone to error, more evidence-based, and more supportive of public safety.

The people that we represent believe that the current system is not effective and does not enhance public safety because it places too much power in the hands of prosecutors, perpetuates cycles of violence by failing to actually address harm, and

¹ We want to thank the Co-Chairs, Representative Goodman, Jon Tunheim and Waldo Waldron-Ramsey, for their leadership during sometimes very contentious discussions. We also thank the entire Ruckleshaus team for their work and support through this long process. They pushed us to reach common ground where we could. We'd particularly like to acknowledge and show appreciation for Clela Steelhammer with the Forecast Council, Keri Ann Jetzer with the Sentencing Guidelines Commission and Dr. Lauren Knoth-Peterson. The research and the data that they provided was invaluable and brought intellectual heft to these difficult topics. We also want to thank our fellow Task Force members who though we had heated, difficult conversations, each came to this difficult work in good faith and with dedication. Unfortunately, deeply entrenched interests and disagreements on core aspects of the criminal legal system kept us from reaching consensus on many of the most important issues facing the criminal sentencing system.

needlessly removes people from their families and their communities. It locks up BIPOC people at higher rates and imposes longer sentences than on white people. It does not actually support people impacted by crime and instead operates as if there is a binary difference between “victims” of crime and perpetrators of crime.

The people we represent aren’t alone in thinking that our system is broken and requires significant change. On the very first day that this Task Force met, every member of the Task Force agreed that the system is not operating as it should and reforms are necessary.

Unfortunately, the Task Force could not reach consensus on many recommendations that will make the criminal sentencing system significantly more effective, less complex, or ones that will actually enhance public safety. Instead, certain system professionals sought to maintain the status quo because it works for them, even though it fails the people most impacted and actually causes unnecessary and disproportionate harm to vulnerable communities. The lack of recommendations regarding excessive, unnecessary sentences or any that expand the eligibility of sentencing alternatives to all who could benefit, are particularly disheartening.

The legislature should not allow the opposition of a few entrenched system players from pursuing essential and broadly popular sentencing reforms that will enhance public safety, promote healing of individuals, families and communities, and move us toward a more just and equitable future.

Washington’s current sentencing system is not evidence-based and results in irrational, racially disproportionate outcomes.

In the early 1980s, a small group of people got together to construct a new sentencing system. They were interested in moving from a system that created significant disparities in sentences for similar conduct and lacked transparency and fairness. The goal was relatively straightforward; a sentencing structure that would provide greater transparency into sentencing practices and limit unbridled discretion, then held by Washington’s parole board.

However, the sentencing ranges that came out with the adoption of the SRA were based on little more than subjective notions of what an appropriate sentence for a particular crime “should be”; ideas not informed by the input of impacted people or their communities or empirical data and science. As the Task Force discovered, there was no empirical basis for any of the SRA’s sentencing ranges.

In fact, those initial sentencing guidelines ranges were based almost exclusively in ideas of retribution and deterrence. As the years have passed Washington’s sentencing structure has become only more punitive and severe. See Knoth-Peterson, Lauren, *Examining Washington State’s Sentencing Guidelines: A Report For the Criminal Sentencing Task Force*, Washington State Institute for Public Policy, Ex. 1 at 3 (May 2021).

Since the creation of the SRA, the use of multipliers, mandatory sentences, and life without parole sentences has greatly expanded and a number of other excessive sentencing laws, including Three Strikes and new sentencing enhancements, have been enacted. *Id.* As a consequence of these changes, many more people are needlessly serving extremely long sentences in Washington's prisons. The few reforms that have been implemented generally exclude large classes of people from their benefits. For example, the vast majority of sentencing alternatives prohibit anyone with a conviction for a "violent" offense from participating.

This fixation on punishment and retribution has been in part driven by institutional and structural racism, forces endemic in Washington's criminal legal system. Evidence-based research has proven that Washington's criminal legal system results in racialized outcomes. *Id.* at 21-22 & 32-34. As Dr. Knoth-Peterson notes in her research prepared for the Task Force:

[p]revious research on sentencing (in the federal system and other states) finds that White defendants are often less likely than defendants who are Black, Indigenous, and/or people of color (BIPOC) to be sentenced to incarceration and White defendants sentenced to incarceration receive shorter sentences than BIPOC defendants sentenced to incarceration...[In Washington] BIPOC defendants, on average, receive[] longer sentences than White defendants.

Id. at 21. Dr. Knoth-Peterson's research proves that White defendants in Washington are more likely to receive mitigated or alternative sentences than BIPOC defendants and BIPOC defendants in general receive longer aggravated sentences than white defendants, even for similar criminal conduct. *Id.* at 32-35.

The system's excessive emphasis on punishment, its lack of evidence-based sentences, and its racially disproportionate outcomes, led the Task Force to recognize that:

[f]rom the inception of the SRA, and for a long time afterwards, the Legislature was taught that the only thing we could do was punish and incapacitate, to seek retribution and deterrence. Although the science is clear that we were wrong in 1980, this argument over the proper currency of accountability is still very much alive...The challenge is to show our Senators and Representatives that considering values beyond retribution and deterrence will make a difference. That should be easy. The data is there. The bigger challenge will be convincing the Legislature that if given the authority and an operating environment less cluttered by scoring rules, enhancements, and mandatory minimums, our Executive and Judicial agencies can deliver.

Hauge, Russell, *Washington Sentencing Reform: The Fundamentals*, at 4-5 (March 13, 2020).

As the Task Force acknowledged, Washington's current criminal sentencing structure imposes excessively long and unnecessary sentences. The evidence presented to the Task Force proves that shorter sentences are as effective, if not more effective, at reducing recidivism and that longer sentences actually reduce the likelihood of rehabilitation; all without the waste of precious public safety resources and the damage caused by unnecessary, prolonged incarceration. By contrast, longer criminal sentences are supported by nothing more than someone's subjective sense of what a person "deserves" for a particular crime.

The evidence and research considered by the Task Force proves that by embracing sentencing reform we can hold people appropriately accountable, reduce recidivism and costs, and create healthier communities. Unfortunately, a few members of the Task Force refused to agree to any reduction in sentence lengths. The only justification these Task Force members offered is that they believe that the current sentencing structure properly "punishes" people.

The evidence presented to the Task Force demonstrated that not only is our current system is unnecessarily punitive and inefficient, but it also does not actually serve victims or the people convicted of crimes. A number of the Task Force recommendations reflect the unanimous agreement that much more must be done to provide services and supports to each of these constituencies. As most, but not all, Task Force members understand, scarce resources should be redirected away from needless and counter-productive sentences and towards victims', chemical dependency and mental health services, vocational and other training, violence prevention and intervention programs, and family reunification efforts.

The law enforcement members of the Task Force, Chief Cobb, Chief Smith and Chief Schrimpsner, all showed a willingness to support shorter sentences if vital services and supports are in place to help people avoid future criminal behavior. Unfortunately, other constituencies, particularly the Washington Association of Prosecuting Attorneys (WAPA), showed little interest in addressing excessive sentence lengths in any meaningful way. In fact, as they stated in their testimony at the Joint Legislative Task Force Work Session on December 14, one of WAPA's two primary goals was to block any effort to address excessive sentences.

The evidence the Task Force received also demonstrated that there is no binary distinction between "victims" of crime and those who commit crime. Thousands of people living in Washington's prisons were victims of crime before their arrival; for many, the crimes that were committed against them are in fact the reasons they ended up in prison. As the evidence showed, the communities that are most impacted by crime are also those most harmed by our current, punishment-focused, criminal sentencing system. The failure of system players to understand these dynamics and the corresponding lack of trauma-informed laws and practices exacerbate the injuries that the system causes people caught within it. A system that requires a victims' advocate to

simultaneously care for the needs of over 350 families, as one of the victims' advocate members described, does not promote healing or justice.

It was for these myriad reasons that the vast majority of Task Force members agreed that Washington's criminal sentencing system is not working as it should. This recognition led the Task Force to identify certain "Desired Outcomes" to guide our work. All members, including prosecutors, law enforcement and victims' advocates, agreed that the sentencing system should be reformed to:

- Balance discretion across the system and encourage and provide individual rehabilitation that is trauma informed and based on risk, need, [and] responsivity.
- Address multipliers, enhancements, consecutive sentences, and mandatory minimums.
- Provide predictability for all parties.
- Encourage accountability while decreasing unnecessary incarceration(s).
- Ensure adequate resources for both Department of Corrections and counties.
- Reduce or eliminate disparities or disproportionate impacts.
- Maximize the information available to parties and judges to make informed decisions.
- Eliminate unnecessary complexity.

Washington State Criminal Sentencing Task Force, December 2020 Report, at 7.

Unfortunately, though they acknowledged the serious deficiencies in the criminal sentencing system at the outset of the Task Force, in the end, WAPA and other constituencies refused to support any significant reforms; reforms that would actually lead to a more just, transparent, and effective criminal sentencing system.²

Washington's criminal sentencing system will continue to result in racially disproportionate and irrational outcomes until power is readjusted away from prosecutors and toward other constituencies.

One of the Task Force's desired outcomes was to adjust the power within the system by distributing discretionary authority from prosecutors to other actors. *Id.* As the Task Force recognized early on, prosecutors are the most important constituency in our current criminal legal system, primarily because of the power they hold to determine who goes to prison and for how long.

² We note that the turnover of certain seats on the Task Force likely led to later failures at reaching consensus on important reforms. For example, the victims' advocates who were initially seated on the Task Force understood that the world is not actually divided between "victims" of crime on one side and "perpetrators" on the other. They also appreciated that the communities most affected by crime are also the communities most harmed by our unnecessarily punitive, criminal sentencing system. As a result, those early members worked to find consensus and solutions. By contrast, the change in membership of one victims' advocate seat brought with it an entirely different perspective, one much more focused on maintaining the status quo and less interested in proposing solutions, compromise, or truly grappling with the unfortunate realities of a racialized, punishment-based system.

Prosecutors wield enormous power granted to them by the legislature through our sentencing laws. The more extreme the sentences that can be imposed, the more power prosecutors have to compel people to forego trial and accept a plea. Our current system provides prosecutors with many advantages in this regard. Sentence enhancements, multipliers, mandatory minimum terms, Three Strikes, aggravated sentences, mandatory consecutive and excessively long sentencing ranges are features of our current system that allow prosecutors to fashion sentences that they individually deem appropriate. The fact that 94% or more of cases are resolved through a plea demonstrates the power that prosecutors currently possess.

These decisions take place behind closed doors, without external transparency. Because of the variance in prosecutorial behavior between counties, people who engage in similar conduct receive significantly different sentences depending on the county in which they are charged. In fact, even within the same county, the amount of time a person will serve in prison can depend on the individual prosecutor who handles that particular case. This level of unfettered discretion leads to disproportionate outcomes on the basis of geography, class and race, as the research and evidence proves.

The vast majority of the Task Force recognized that this unbridled power should be readjusted to allow for more transparency, to reduce the threat of excessive sentences, and to increase the involvement of other more neutral decision-makers, particularly judges. All but two members supported the adoption of the new sentencing grid, new limitations on unnecessarily long sentences, and the elimination of multipliers when calculating criminal history.

Law enforcement, the members from the Senate and House Republican and Democratic caucuses, judges, counties, one of the victims' advocates, and members representing families of the incarcerated and people incarcerated in our prisons and jails, all agreed that the legislature should adopt the proposed grid because it is more rational, more effective, less complicated and less prone to error than our current grid.

Unfortunately, two members refused to support the proposed grid, WAPA and one of the victims' advocate members who works for the King County Prosecuting Attorney's Office. In discussing its opposition, WAPA readily acknowledged that though every other constituency recognized that the current grid is deficient in many different ways, WAPA opposes these necessary reforms because the current grid works for them. Throughout the Task Force's deliberations, WAPA opposed any effort to significantly shift power away from prosecutors and towards any other decision-makers, including judges.³

³ Task Force members recognized that judges are also impacted by bias and structural and institutional racism infects the entire criminal legal system. Nonetheless, judicial decisions provide more transparency and accountability because they are on the record, announced in open court, based upon admissible evidence, and subject to appellate review.

“Power concedes nothing without a demand. It never has and it never will.”
Fredrick Douglass.

WAPA opposed any reform that would redistribute even a modicum of power to other players. Unjust, excessive and racially disproportionate sentences will continue until the legislature properly adjusts the balance of power within the system.

Our current system, which leads to racially disproportionate sentences, is not rational or effective, is rife with errors, and does not truly support public safety.

At the outset, all Task Force members recognized that our current system must be reformed in order to “reduce or eliminate disparities or disproportionate impacts”. Task Force 2020 Report, at 7.

By any measure, our current system is riddled with racialized disparities that result in people being treated differently for the same conduct merely because of the color of their skin. Black people make up roughly 4% of Washington’s population and 18% of Washington’s prison population. Latinx and Indigenous people are also disproportionately represented in our prisons. By contrast, White people make up 77% of Washington’s population, but only 55% of the people incarcerated in our prisons.

Dr. Knoth-Peterson’s work and the other research and evidence presented to the Task Force proves that BIPOC people generally receive longer sentences for the same conduct than White people and that whenever discretion is exercised within our system, racial disproportionality occurs. For example, White people are more likely to receive alternative sentences than people of color and Black people generally receive longer aggravated sentences than White people. *Examining Washington State’s Sentencing Guidelines: A Report For the Criminal Sentencing Task Force*, at 21-23 & 32-35.

Though the Task Force agreed that our current system is racially biased and results in racialized outcomes, none of the consensus recommendations truly address racial disproportionality within the criminal legal system. Research proves that certain sentencing practices lead to greater disparities. Reducing the power of prosecutors, eliminating mandatory minimum and mandatory consecutive sentences, enhancements and Three Strikes sentences, expanding eligibility for alternative sentences and access to opportunities for post-conviction relief, would all significantly improve Washington’s deplorable, racialized, criminal legal system. However, once again, certain system players, particularly WAPA, refused to agree to any reforms that will have a meaningful impact. The legislature must take action, even if prosecutors refuse to support these essential reforms.

Washington can reduce prison sentences while also improving public safety and supporting the people most impacted by the criminal legal system.

As detailed above, Task Force members agreed that our current system does not properly care for the people most impacted. It does not support victims in their healing, it does not properly intervene to deescalate violence or support people attempting to

return to their communities, and it wastes resources on needless incarceration in order to satisfy arcane and subjective notions of punishment and retribution. All agreed that an ideal system would rely upon incarceration much less, and programming, training and services much more.

For far too long, policy makers have not appreciated the impact that long prison sentences have on the person sentenced, but also on the children, spouses, and other loved ones left behind. It is an unfortunate fact that children of incarcerated parents are much more likely to be sent to prison in the future, than are children with parents who have not been locked away.

Readily available data proves that the current system does not properly support parents or their children. Only 25 people were allowed access to Washington's Community Parenting Alternative In fiscal year 2021 and only 40 people were supervised under Washington's Family Offender Sentencing Alternative. By contrast, Washington's Department of Corrections holds over 13,000 people in prison and supervises an additional 12,400 people in the community. See Department of Corrections, *Agency Fact Card*, at 1-2 (Sept. 30, 2022). Limitations on eligibility for alternatives, the absence of effective, evidence-based interventions, and overly harsh sentences, destroy families and ensure additional cycles of poverty.

In addition to injuring children, our criminal legal system needlessly incarcerates many older people. Washington currently houses almost 1750 people over the age of 55 in our prisons. While tax payers pay an average of over \$57,000 per year to incarcerate one person, that number increases dramatically for any person over 50. The proof the Task Force received shows that with proper supportive supervision, risk assessments, and available community-based services, people of almost any age can be reintegrated into their communities without sacrificing public safety.

This is particularly true for older people. People over 50 are very unlikely to reoffend no matter their prior criminal history. Moreover, people convicted of serious violent crimes are much less likely to recidivate than are people convicted of less serious crimes. In fact, as the research proves, only 3 to 4% of people convicted of a sex offense will recidivate.

The reality is that there are many people currently living in our prisons who can more effectively and less expensively be supervised while living with their families in their own communities. DOC is embracing this new model of supportive, community-based supervision because it works. The legislature should encourage those efforts by expanding eligibility for alternative sentences and reducing needlessly long prison sentences.

The legislature should embrace reforms that will truly make our system more effective, less prone to error, and more responsive to the needs of people and their communities; reforms that will truly enhance public safety.

The Task Force's 2020 and 2022 Reports provide the legislature with a roadmap to improve our criminal sentencing system. Legislators should adopt the reforms that

reached unanimous consensus, but that will not be sufficient. Other reforms must also be enacted.

The proposed new grid was supported by all constituencies, except those that seek to maintain prosecutorial power. If adopted, it will provide greater clarity, transparency, and simplicity, while also being much more rational and evidence-based than our current system. Other reforms, including a reduction in unnecessary incarceration, will allow the legislature to reallocate scarce dollars to more effective, humane and just uses. As discussed above, long sentences can be reduced and community-based initiatives can be created and strengthened, all while enhancing public safety and promoting healthy communities. The legislature should grab this opportunity and not wait another 40 years before moving Washington's criminal sentencing system in a more equitable, humane and effective direction.

Waldo Waldron-Ramsey
Washington Community Action
Network
Co-Chair of Task Force
representing the interests of
the incarcerated

Melody Simle
Member representing the
interests of families of the
incarcerated

Blaze Vincent
Member representing the
interests of the
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Greg Link
Washington Appellate Project
Member representing
Washington Defender
Association and Washington
Association of Criminal
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Suzanne Gordon
Alternate member
representing interests of
families of the incarcerated

Nick Straley
Columbia Legal Services
Alternate member
representing the interests
of the incarcerated

Washington Association of Sheriffs and Police Chiefs

WASPC support for the recommendation for the Proposed New Felony Sentencing Guidelines Grid was conditional on Legislative support for Recommendation #1. This recommendation if implemented will have a significant impact on recidivism and reduce crime victimization in the future. **The full implementation of Recommendation #1 is the only way WASPC could support the sentence reductions that are proposed in the new Grid.** Please see attached scoring examples as prepared by WAPA that reflect significant sentence reductions in the proposed new Grid. Please note: If the new Grid proposal removes the sex offender multiplier the differences of sex offenses sentence ranges between the two grids would be even more magnified (same with DV multipliers).

Given that Recommendation #1 looks to future results that would occur after years of new inmate programming, is predicated on future Legislative action (that is not currently in any proposed) and program implementation will be complex. **As things move forward, WASPC cannot support the significant sentence reductions that could occur well ahead of the realization of Recommendation #1. Given this consideration, the WASPC position of the new Grid has changed from thumbs sideways to thumbs down (“cannot live with”).**

Sincerely,

Chief Greg Cobb
Chief Brian S. Smith

WASHINGTON STATE ASSOCIATION OF SHERIFFS AND POLICE CHIEFS: comments re: Recommendation 1.

SL 1: Attempt to Elude, Forgery, MM2, PSP2, TMVWP2, Vehicle Prowl

TMVWP

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies

- 3 prior felonies with two prior theft of a motor vehicle (OS 7 v OS 3)
- 3 prior felonies w/three prior theft of a motor vehicles (OS 9 v. OS 3)

Current Range	New Range
2 to 6 months	1 to 6 months
4-12 months	2 - 8 mo
17-22 months	4 -14 month
22 -29 mo	5 -18 mo
14-18 months	1 to 6 months
22-29 months	1 to 6 months

SL 2: Computer Trespass, Escape from CC, FTR (2nd or subsequent), ID Theft2, MM1, Organized retail theft 2, PSP 1, Poss Stolen Vehicle, Retail theft with special circumstances, Theft 1, Theft of a motor vehicle, Voyeurism

ID Theft 2

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies

Current Range	New Range
4 - 12 mo	2 to 8 mo
14 - 18 mo	3 to 12 mo
33 - 43 mo	6 to 21 mo
43-57 mo	8 to 28 mo

PSV

- 3 prior felonies with two prior theft of a motor vehicle (OS 7 v OS 3)
- 3 prior felonies w/three prior theft of a motor vehicles (OS 9 v. OS 3)

Current Range	New Range
22 -29 mo	2 to 8 mo
43-57 mo	2 to 8 mo

SL 3: Animal Cruelty 1, Assault 3, Assault of a child, Burg 2, Communication with a minor, Criminal Gang intimidation, Cyberstalking, Escape 2, Harassment, Intimidating a public servant, Organized retail theft1, Possession of an incendiary device, Possession of a machine gun, Promoting prostitution, Retail Theft with special circumstances, tampering with a witness, telephone harassment, trafficking in stolen property, unlawful imprisonment, Vehicular assault DSO

Burg 2

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies
- 3 prior felonies with two prior burg 2 convictions
- 3 prior felonies with three prior burg 2 convictions
- 5 prior felonies with 3 prior burg 2 convictions
- 6 prior felonies with 3 prior burg 2 convictions

Current Range	New Range
9 - 12 mo	4 to 13 mo
17-22 mo	5 -19 mo
43-57	10 - 33 mo
51-68	11 - 39 mo
17 - 22 mo	4 - 13 mo
22-29 mo	4 - 13 mo
43 - 57	5 -19 mo
51-68 mon	6 to 23 mo

SL 4 - Arson 2, Assault 2, Assault 3 (stun gun), Repeat DV A4, Felony DUI/physical control, Endangerment with a controlled substance, Hate Crime, H&R Injury, ID theft 1, Indecent exposure, Possession of depictions of minor engaged in sexually explicit conduct 2, Res Burg, Threats to bomb, Trafficking in stolen property 1, Veh Prowl 2nd or sub, Viewing depictions of minors

ID theft 1

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies

Current Range	New Range
13-17 mo	5-17 mo
22-29 mo	7-24 mo
53-70 mo	10-33 mo
63-84 mo	11-39 mo

Res Burg

- 3 prior felonies with two prior burg 2 convictions
- 3 prior felonies with three prior burg 2 convictions
- 5 prior felonies with 3 prior burg 2 convictions
- 6 prior felonies with 3 prior burg 2 convictions

Current Range	New Range
22-29 mo	5-17 mo
33-43 mo	5-17 mo
53-70	10-33 mo
63-84	11-39 mo

SL 5 - Child molest 3, criminal mistreatment 2, custodial sexual misconduct 1, Dealing in depictions of minors, DV Court order violations, Incest 2, **Kidnap 2**, Poss of stolen firearm, Rape 3, rendering criminal assistance, Sexual misconduct with a minor 1, stalking, taking a motor vehicle without permission 1

Dealing in depictions of minors engaged in sexually explicit conduct 2

3 prior felonies

5 prior felonies

8 prior felonies

9 prior felonies

Current Range	New Range
15-20 mo	6 -20 mo
33-43 mo	8-29 mo
62-82	15-51 mo
72-96	18-60 mo

Kidnapping

3 prior felonies with two prior violent convictions

3 prior felonies with three prior violent convictions

5 prior felonies with 3 prior violent convictions

6 prior felonies with 3 prior violent convictions

Current Range	New Range
33-43 mo	6-22 mo
41-54	6-22 mo
62-82	8-32 mo
72-96	10-38 mo

10% repeat violent
10% repeat violent
10% repeat violent
10% repeat violent

SL 6: Bail jumping with murder, Bribery, **Incest 1**, Intimidating a judge/Juror/Witness, **Possessions of depictions, Rape of a child 3**, Theft of a firearm, Theft from a vulnerable adult

Theft from a vulnerable adult

3 prior felonies

5 prior felonies

8 prior felonies

9 prior felonies

Current Range	New Range
26-34 mo	18-31 mo
36-48 mo	24-41 mo
67-89 mo	37-63 mo
77-102 mo	45-75 mo

Rape of a child 3

3 prior felonies

5 prior felonies

8 prior felonies

9 prior felonies

Current Range	New Range
26-34 mo	18-31 mo
36-48 mo	24-41 mo
60-60 mo	37-60 mo
60-60 mo	45-60 mo

SL 7: Burg 1, Child molest 2, Dealing in depictions 1, Drive by shooting, Homicide by watercraft, indecent liberties, UPF 1, use of a machine gun in commission of a felony, veh hom by DSO

Child molest 2

3 prior felonies

5 prior felonies

8 prior felonies

9 prior felonies

Current Range	New Range
31-41 mo	22-37 mo
41-54 mo	29-49 mo
77-102 mo	45-75 mo
87-116 mo	54-90 mo

Drive by shooting

3 prior felonies with two prior violent convictions

3 prior felonies with three prior violent convictions

5 prior felonies with 3 prior violent convictions

6 prior felonies with 3 prior violent convictions

Current Range	New Range
41-54 mo	22-40 mo
57-75 mo	22-40
77-102	29-54 mo
87-116 mo	34-62 mo

10% repeat violent
10% repeat violent
10% repeat violent
10% repeat violent

SL 8: Arson 1, Commercial sex abuse of a minor, homicide by watercraft (reckless), manslaughter 2, Promoting prostitution 1

Commercial sex abuse of a minor

3 prior felonies

5 prior felonies

8 prior felonies

9 prior felonies

Current Range	New Range
36-48 mo	26-43 mo
46-61 mo	34-58 mo
87-116 mo	52-88 mo
108-120 mo	63-105 mo

Manslaughter 2

3 prior felonies with two prior violent convictions

3 prior felonies with three prior violent convictions

Current Range	New Range
46-61 mo	26-47 mo
67-89 mo	26-47 mo

10% repeat violent
10% repeat violent

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5 prior felonies with 3 prior violent convictions
6 prior felonies with 3 prior violent convictions

87-116 mo	34-63 mo	10% repeat violent
108-120 mo	40-72 mo	10% repeat violent

SL 9: Assault of a child 2, **h&R Death**, Homicide by watercraft (DUI), **Rob 1**, sexual exploitation

Rob 1

3 prior felonies
5 prior felonies
8 prior felonies
9 prior felonies

Current Range	New Range
46-61 mo	30-50 mo
57-75 mo	39-66 mo
108-144 mo	60-100 mo
129-171 mo	72-120 mo

3 prior felonies with two prior violent convictions
3 prior felonies with three prior violent convictions
5 prior felonies with 3 prior violent convictions
6 prior felonies with 3 prior violent convictions

57-75 mo	30-55 mo	10% repeat violent
77-102 mo	30-55 mo	10% repeat violent
108-144 mo	39-72 mo	10% repeat violent
129-171 mo	45-83 mo	10% repeat violent

SL 10 Child molestation 1, criminal mistreatment 1, indecent liberties, kidnap 1, leading organized crime, sexual violent predator escape

Child Molestation 1

3 prior felonies
5 prior felonies
8 prior felonies
9 prior felonies

Current Range	New Range
67-89 mo	61-101 mo
77-102 mo	73-123 mo
129-171 mo	98-163 mo
149-198 mo	102-170 mo

Kidnap 1 (violent double score, serious violent triple score)

3 prior felonies with two prior violent convictions
3 prior felonies with two prior **serious violent** convictions
5 prior felonies with 3 prior violent convictions
6 prior felonies with 3 prior violent convictions

77-102	61-111	10% repeat violent
98-130	61-111	10% repeat violent
129-171	73-135	10% repeat violent
149-198	81-148	10% repeat violent

SL 11 Manslaughter 1, Rape 2, ROC 2, Veh Hom (DUI/reckless)

ROC 2

3 prior felonies
5 prior felonies
8 prior felonies
9 prior felonies

Current Range	New Range
102-136	70-116
120-158 mo	84-141 mo
185-245 mo	112-188 mo
210-280	117-195 mo

3 prior felonies with two prior violent convictions
3 prior felonies with three prior violent convictions
5 prior felonies with 3 prior violent convictions
6 prior felonies with 3 prior violent convictions

120-158	70-127	10% repeat violent
146-194	70-127	10% repeat violent
185-245	84-155 mo	10% repeat violent
210-280 mo	93-170 mo	10% repeat violent

SL 12: Assault 1, assault of a child 1, promoting commercial sex abuse of a minor, Rape 1, ROC 1, trafficking 2

Rape 1

3 prior felonies
5 prior felonies
8 prior felonies
9 prior felonies

Current Range	New Range
120-160 mo	79-131 mo
138-184 mo	95-159 mo
209-277 mo	127-212 mo
240-318 mo	132-220 mo

Assault 1 (violent double score, serious violent triple score)

3 prior felonies with two prior violent convictions
3 prior felonies with three prior violent convictions
5 prior felonies with 3 prior violent convictions
6 prior felonies with 3 prior violent convictions

138-184 mo	79-144 mo	10% repeat violent
162-216 mo	79-144 mo	10% repeat violent
209-277 mo	95-175 mo	10% repeat violent
240-318 mo	105-192 mo	10% repeat violent

SL 13: Malicious explosion of a substance 2, Malicious Placement of an explosive 1

Malicious Explosion of a substance 2

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies

Current Range	New Range
154-205 mo	116-155 mo
175-233 mo	141-188 mo
257-342 mo	188-250 mo
298-397 mo	195-260 mo

SL 14 A: Malicious explosion and placement 1, trafficking 1 (violent double score, serious violent triple score)

Trafficking 1

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies

Current Range	New Range
271-361 mo	134-179 mo
291-388	163-217 mo
370-493 mo	217-289 mo
411-548 mo	225-300 mo

3 prior felonies with two prior violent convictions

291-388 mo	134-197
312-416 mo	134-197
370-493 mo	163-238 mo
411-548 mo	179-264 mo

10% repeat violent

10% repeat violent

5 prior felonies with 3 prior violent convictions

10% repeat violent

6 prior felonies with 3 prior violent convictions

10% repeat violent

SL 14B: Murder 2, (violent double score, serious violent triple score)

Murder 2

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies

Current Range	New Range
154-254 mo	152-203 mo
175-275 mo	184-246 mo
257-357 mo	245-327 mo
298-397 mo	255-340 mo

3 prior felonies with two prior violent convictions

175-275 mo	152-223 mo
195-295 mo	152-223 mo
257-357 mo	184-270 mo
298-397 mo	203-298 mo

10% repeat violent

3 prior felonies with three prior violent convictions

10% repeat violent

5 prior felonies with 3 prior violent convictions

10% repeat violent

6 prior felonies with 3 prior violent convictions

10% repeat violent

SL 15: Murder 1, Homicide by abuse

Rob 1

- 3 prior felonies
- 5 prior felonies
- 8 prior felonies
- 9 prior felonies

Current Range	New Range
271-361 mo	277-370 mo
291-388 mo	306-408 mo
370-493 mo	354-472 mo
411-548 mo	372-496 mo

3 prior felonies with two prior violent convictions

291-388 mo	277-407 mo
312-416 mo	277-407
370-493 mo	306-448 mo
411-548 mo	321-470 mo

10% repeat violent

3 prior felonies with three prior violent convictions

10% repeat violent

5 prior felonies with 3 prior violent convictions

10% repeat violent

6 prior felonies with 3 prior violent convictions

10% repeat violent

10/4/22

Washington State Criminal Sentencing Task Force

The Washington State Legislature asked the William D. Ruckelshaus Center to facilitate a Task Force directed to "...review state sentencing laws, including a consideration of the report of the Sentencing Guidelines Commission...[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."

Tiffany Attrill (King County Victim Advocate) and Kameon Quillen (Snohomish County Victim Advocate) - Representing Interests of Crime Victims

Together we have over 45 years of combined victim advocacy experience working with diverse populations from all socioeconomic backgrounds, racial identities, ethnicities, religious affiliations, gender identity and sexual orientations, cultural experiences, individuals with disabilities as well as vulnerable populations. Combined, we have provided advocacy for thousands of individual victims and families - we have listened, held space, answered questions, provided resources, explained the criminal justice system process and sat side by side through countless arraignments, victim interviews, plea hearings, trials and sentencings. We have heard thousands of victim experiences. It is an honor to be on this task force representing the interests of crime victims and sharing their perspectives and stories.

We cannot live with the current proposed sentencing grid recommendation. Given the path that was taken to reach the current proposed recommendation, there is no possibility of consensus. Here is why.

SECTION 1. Proposed Recommendation: A New Felony Sentencing Guidelines Grid

For the constituency that we represent, the proposed drastic reductions to the current sentencing grid is not something we can live with. While we could agree to modifications to the lower southwest corner of the grid, we feel that keeping largely the same structure on the right side and higher portions of the grid is appropriate.

Below is a visual showing the magnitude of changes in minimum and maximum on the current grid vs. the proposed simulated.

YELLOW – % reduction
PEACH – no change
PURPLE - % increase

17	0%	0%	0%	0%	0%	0%	-1%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	-3%	-3%	-3%	-7%	-6%	-6%	-11%	-11%	-11%	-17%	-17%	-17%
16	-1%	-17%	-26%	0%	-15%	-24%	2%	-12%	-20%	5%	-8%	-15%	8%	-3%	-10%	12%	1%	-5%	10%	2%	-3%	10%	4%	0%	1%	-1%	-3%	-9%	-9%
5 (malicious explosion)	-55%	-55%	-55%	-52%	-52%	-52%	-50%	-50%	-50%	-47%	-47%	-47%	-44%	-44%	-44%	-40%	-40%	-40%	-39%	-39%	-39%	-38%	-38%	-37%	-37%	-37%	-42%	-42%	
15 (trafficking 1)	-12%	-27%	-35%	-11%	-25%	-32%	-9%	-21%	-29%	-7%	-18%	-25%	-4%	-14%	-20%	-1%	-10%	-16%	-2%	-9%	-14%	-3%	-8%	-11%	-10%	-12%	-14%	-19%	-19%
14	-23%	-23%	-23%	-22%	-22%	-22%	-21%	-21%	-21%	-18%	-18%	-18%	-16%	-16%	-16%	-13%	-13%	-14%	-14%	-14%	-15%	-15%	-15%	-21%	-21%	-21%	-30%	-29%	
13	-30%	-20%	-12%	-30%	-20%	-13%	-29%	-19%	-11%	-28%	-18%	-10%	-26%	-16%	-8%	-24%	-14%	-5%	-29%	-19%	-11%	-29%	-19%	-11%	-34%	-24%	-16%	-40%	-25%
12	-27%	-16%	-7%	-27%	-17%	-9%	-28%	-17%	-9%	-26%	-15%	-8%	-25%	-14%	-6%	-24%	-12%	-4%	-31%	-21%	-14%	-31%	-20%	-13%	-34%	-25%	-17%	-40%	-25%
11	-5%	9%	19%	-6%	8%	19%	-5%	9%	20%	-3%	11%	21%	-1%	13%	24%	2%	17%	28%	-12%	1%	10%	-12%	0%	10%	-7%	2%	-28%	-17%	-9%
10	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
placement imitation device 1	-79%	-76%	-73%	-78%	-74%	-72%	-76%	-73%	-70%	-75%	-71%	-69%	-73%	-69%	-66%	-71%	-67%	-64%	-72%	-68%	-65%	-70%	-66%	-63%	-71%	-67%	-64%	-70%	-66%
criminal mistreatment 1; malicious explosion 3	-61%	-56%	-51%	-60%	-54%	-49%	-58%	-52%	-47%	-55%	-49%	-44%	-52%	-45%	-40%	-48%	-41%	-35%	-53%	-46%	-41%	-51%	-44%	-39%	-53%	-46%	-41%	-52%	-39%
9	-36%	-27%	-20%	-37%	-28%	-21%	-36%	-26%	-19%	-35%	-25%	-18%	-32%	-22%	-15%	-30%	-20%	-12%	-41%	-32%	-25%	-39%	-31%	-24%	-44%	-33%	-16%	-40%	0%
8	-18%	-8%	7%	-23%	-11%	-2%	-26%	-15%	-7%	-27%	-16%	-9%	-26%	-15%	-6%	-24%	-13%	-5%	-40%	-31%	-25%	-40%	-31%	-25%	-39%	-30%	-24%	-42%	-13%
7	-1%	13%	24%	-19%	-5%	5%	-24%	-13%	-4%	-27%	-16%	-8%	-28%	-18%	-10%	-27%	-16%	-8%	-40%	-31%	-24%	-41%	-32%	-26%	-41%	-32%	-26%	-38%	-22%
6	3%	27%	47%	-5%	8%	19%	-22%	-9%	1%	-28%	-16%	-8%	-30%	-20%	-12%	-31%	-21%	-14%	-38%	-29%	-22%	-42%	-33%	-27%	-43%	-35%	-29%	-42%	-26%
5	-40%	-13%	0%	-64%	-28%	3%	-60%	-25%	2%	-59%	-23%	4%	-66%	-37%	-14%	-73%	-49%	-31%	-74%	-51%	-34%	-75%	-50%	-28%	-74%	-44%	-14%	-70%	0%
4	-1%	7%	10%	-41%	-14%	-1%	-65%	-29%	2%	-61%	-26%	1%	-59%	-24%	3%	-66%	-37%	-15%	-73%	-49%	-31%	-75%	-54%	-38%	-76%	-54%	-29%	-75%	-46%
3	134%	154%	160%	-6%	11%	17%	-16%	-9%	-6%	-55%	-17%	12%	-60%	-25%	1%	-66%	-35%	-12%	-68%	-41%	-20%	-75%	-52%	-35%	-77%	-56%	-41%	-77%	-35%
2	0%	0%	0%	-10%	-3%	0%	-28%	-22%	-20%	-35%	-30%	-28%	-74%	-48%	-26%	-73%	-49%	-31%	-74%	-50%	-32%	-76%	-54%	-38%	-80%	-63%	-50%	-80%	-50%
1	0%	0%	0%	0%	30%	0%	-25%	-7%	0%	-10%	-3%	0%	-28%	-15%	-10%	-35%	-30%	-28%	-74%	-48%	-26%	-73%	-49%	-31%	-74%	-50%	-32%	-76%	-54%

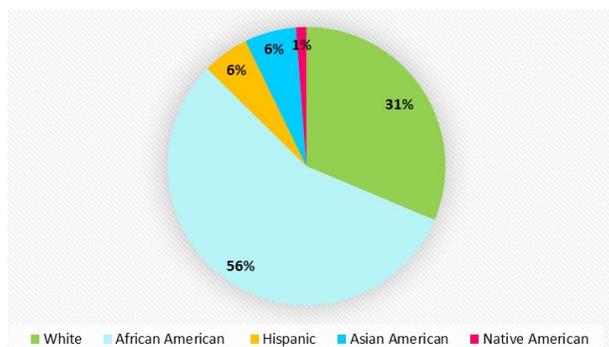
Simply put, there is too much yellow. We are not able to live with such drastic reductions across the board, particularly regarding violent crimes that have life-long impacts to victims. We cannot support reducing sentences for crimes against a person.

Here are some examples of what the proposed grid would do to certain crimes.

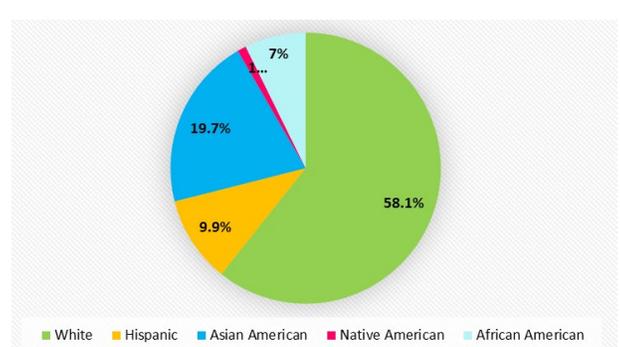
- **Murder 2** (OSL 15, CHS 0) with a current range of 10.25 – 18 years, down to a 9.5 – 12.75 years. (*With 10% off for good time, a 9.5 year sentence would equate to 8.5 years)
- **Assault of a Child 1 Rape 1** or **ROC 1** (OSL 12, CHS 0) with a current range of 7.75 – 10.25 years, down to 4.3 – 7.25 years. (*With 10% off for good time, a 4.3 year sentence would equate to 3.8 years)
- **Robbery 1** or **Hit and Run (Death)** (OSL 9, CHS 0) with a current range 2.5 – 3.4 years, down to 1.5 – 2.75 years. (*With 10% off for good time, a 1.5 year sentence would equate to 1.3 years)
- **Rape 3** (OSL 5, CHS 0) with a current range 6 – 12 months, down to 3 – 12 months.
- **Rape 3** (OSL 5, CHS 7) with a current range of 4.25 – 5 years, down to 1 – 3.5 years.

There has been much conversation in this task force about the racial disproportionalities of incarcerated individuals. We would like to point out that there are also racial disparities present in victim populations that we serve. No sensible logic, study or analysis has been provided that indicates these proposals will reduce disproportionality amongst defendants or victims.

Race of Homicide Victims in King County:



Race of the population of King County:



Riddhi Mukhopadhyay and Megan Allen | Representing the Interests of Crime Victims
Comments re: Recommendation 1.

This email is to formalize our conversation with you last week and record our vote on the new proposed sentencing grid. At this time, on behalf of the communities we serve, **Megan and I are voting NO on the new grid.**

There are several reasons for this vote against the new grid. At its core, this grid does not actually address racial bias. It also does nothing to address gender bias that is also inherent in the criminal system--completely lacking a gendered lens--which is necessary to appropriately address many of the DV and sex offense crimes. Additionally, it appears the default belief is that by giving judges greater discretion, that will address the inherent inequalities within our current sentencing process. There is no indication that judicial discretion is less biased than prosecutor discretion.

Sentences for serious violent offenses like Rape in the Third degree, Rape of a Child, DV Assault are getting reduced through the new grid structure. This counters efforts in the last few years to improve public safety and increase access to accountability and justice for victims of gender-based violence crimes and improve - removing conflicting language around consent, increasing the statute of limitation on sex offenses, and the creation of the MMIW taskforce are a few examples.

Furthermore, the grid also does not account for the fact that in many cases, the serious felony offense can be pled down (Felony DV to Misdemeanor DV or Rape 3 to Assault 4 without even adding SM), which further reduces public safety. There is no accountability for the victim community through further reduced sentences of serious felony level crimes.

Also, based on the suggested grid structure and CISRS recommendations, there will be violent offenses which didn't qualify for SSOSA, that will now qualify through CISRS, which completely ignores the fear and legitimate safety concerns our clients have. Judicial discretion has not worked in our favor of survivors particularly from communities of color, indigenous, or who are indigent.

Lastly, the proposed grid requires us to take a leap of faith that the Legislature will eventually fix the level classification of many of the crimes we've identified. There is no guarantee that will happen and many of the failures of the criminal system for victims will only be further exacerbated by the current proposal.

There are two alternates we are suggesting:

- 1) Adoption of the proposed grid ONLY AFTER legislature has gone through and reclassified the seriousness/felony level of many of the gender based and violent crimes that we are concerned will have significant reduced sentences; or,
- 2) Create a second grid that focuses specifically on violent and gender-based crimes, removing these from the current proposed grid. A second grid would address many of the sentencing and gender bias concerns we have with the current proposal.

Riddhi Mukhopadhyay
Sexual Violence Law Center

Recommendation 2

Sufficiently Fund Rehabilitative Programming, To Reduce Recidivism and Strengthen Public Safety

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Not in attendance
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Can support
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Not in attendance
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can support
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can support

Recommendation 3

Create A Statewide Program For Intermediate Sanctions And Reintegrative Services

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can live with
State Senate, Republican Caucus	Not in attendance
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Can live with
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can live with
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can live with
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Not in attendance
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can live with

Recommendation 4

Implement a Motivational-Focused Supervision Model

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Not in attendance
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Can support
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Not in attendance
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can support

Recommendation 5

Request and Fund the WSIPP To Update the Adult Corrections Inventory

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Can support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Can support
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Can support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Not in attendance
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Can support
Interests of Crime Victims (Seat 2)	Can support

Recommendation 6

Require and Fund the Sentencing Guidelines Commission to Monitor and Evaluate Changes and Reforms to the SRA Every 5 Years

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Not in attendance
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Can support
WA State Sentencing Guidelines Commission	Abstain
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Not in attendance
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can support
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can support

Recommendation 7

Direct the SGC to Review Non-Sentenced Offenses

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Can support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Abstain
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Can support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can support
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Can support
Interests of Crime Victims (Seat 2)	Can live with

Recommendation 8

Visually Depict Sentencing Alternatives on the Sentencing Grid

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can live with
State Senate, Republican Caucus	Can support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can live with
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Can live with
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Not in attendance
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Can support
Interests of Crime Victims (Seat 2)	Can support

Recommendation 9

Change DOSA Eligibility Criteria

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Abstain
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Can live with
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Can support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can support

Recommendation 10

Eliminate the Cap on Prison DOSA Sentences

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can live with
State Senate, Republican Caucus	Can live with
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Not in attendance
WA State Office of the Governor	Not in attendance
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Not in attendance
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Can support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Not in attendance
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can support

Recommendation 11

Eliminate the Cap on Residential DOSA Sentences

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Not in attendance
WA State Office of the Governor	Not in attendance
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Not in attendance
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Not in attendance
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Can live with

RECOMMENDATION 11.

Eliminate the Cap on Residential DOSA Sentences (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

(Non-consensus)

Eliminate the cap on the number of residential DOSA sentences that an individual can receive in a 10-year period.

Washington Association of Prosecuting Attorneys (WAPA)	Eliminate the cap on the number of <u>prison</u> DOSA sentences that an individual can receive in a 10-year period. <i>(Although, we have discussed and would like to propose language that would also take into consideration their attempt or completion of treatment if we remove the cap)</i>
State Senate, Republican Caucus	YES to remove cap on pDOSAs. NO if rDOSAs is included.
State House, Republican Caucus	Removing the cap on the rDOSAs does not work.
Washington Association of Sheriffs and Police Chiefs (WASPC)	Oppose this as it seems like an easy way to use an SUD to continually avoid prison time. Cannot support elimination of cap on rDOSAs. We could support if the proposal read "eliminate the cap on the number of pDOSAs sentences that an individual can receive in a 10 year period."
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.

Recommendation 12

Conduct a Review of the Eligibility Exclusions for Sentencing Alternatives

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Not in attendance
WA Association of Prosecuting Attorneys	Can live with
State Senate, Republican Caucus	Can support
State Senate, Democratic Caucus	Not in attendance
State House of Representatives, Republican Caucus	Can live with
WA State Office of the Governor	Not in attendance
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Not in attendance
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can live with
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Can live with
WA State Association of Counties	Not in attendance
WA State Minority & Justice Commission	Not in attendance
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Not in attendance
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Not in attendance
Interests of Crime Victims (Seat 2)	Can live with

Recommendation 13

Require Notice be Provided to Defendants Prior to Entering a Guilty Plea or Going to Trial for Cases Involving Offenses Included in Persistent Offender Laws

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Not in attendance
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can live with
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Not in attendance
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Can support
Interests of Crime Victims (Seat 2)	Can support

Recommendation 14

Conduct a Review of the Offenses Under the Persistent Offender Laws

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Can live with
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Can support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can live with
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Can live with
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can support
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can support
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Can support
Interests of Crime Victims (Seat 2)	Can support

Recommendation 15a

Change to Determinate Plus Sentencing for Three-Strikes

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can support
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

RECOMMENDATION 15a. (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

Change to Determinate Plus Sentencing for Three-Strikes

(Non-Consensus)

Replace Three-Strikes mandatory life without the possibility of release sentencing with determinate plus sentencing.

Washington Association of Prosecuting Attorneys (WAPA)	<i>Proposal discussed in Grid Group:</i> Replace three-strikes mandatory sentence with determinate plus sentencing <u>with a mandatory minimum of 25 years or the minimum of the standard range, whichever is greater.</u> Thumbs down. We don't have consensus on this proposal. We provided language as a discussion during our meeting last week "with a mandatory minimum of 25 years to life or whatever the low end sentence would be, whichever is longer." But I'm not sure we can support that.
State House, Republican Caucus	Replacing 3 strikes with determinate plus sentencing doesn't work with my caucus. This proposal just needs to be eliminated. The legislature already dealt with this many years ago.
WA Association of Sheriffs and Police Chiefs (WASPC)	We cannot support this. This would have a direct and significant impact on public safety and more than likely lead to the creation of more victims.
Seat 2, Interests of Crime Victims	Legislature should Replace evaluate whether three strikes mandatory sentences should be replaced with determinate plus sentencing.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.

Recommendation 15b

Evaluate Whether to Change the Persistent Offender Law to a Determinate Plus Sentencing Model

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Abstain
WA Association of Prosecuting Attorneys	Can live with
State Senate, Republican Caucus	Can live with
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Not in attendance
WA State Office of the Governor	Not in attendance
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Not in attendance
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Abstain
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Can live with

Recommendation 16

Change the Mandatory Life Without the Possibility of Parole Terms for Young Adults

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Abstain
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Abstain
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

RECOMMENDATION 16. (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

Change the Mandatory Life Without the Possibility of Parole Terms for Young Adults
(Non-Consensus)

For aggravated murder 1 change the language from: "Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life." To "Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of twenty-one, a term of twenty-five years to life." In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.

Washington Association of Prosecuting Attorneys (WAPA)	For aggravated murder 1 change the language from: "Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life." To "Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of twenty-one <u>to eighteen, a term of thirty years to life, for individuals under eighteen</u> a term of twenty-five years to life." In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.
Washington Association of Sheriffs and Police Chiefs (WASPC)	25 to life is the same sentence structure for juveniles. While the science around brain development should inform the criminal justice system response, the science is also clear that the brain of an 18, 19 or 20 year old are significantly more developed than that of a juvenile, and the criminal sentencing structure should reflect that science. WAPA has language modifying this proposal and can support WAPA position.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.
Seat 2, Representing the Interests of Crime Victims	*No suggested language, needed more information.

Recommendation 17

Establish a New Process for Second Chance Review

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Abstain
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Not in attendance
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

RECOMMENDATION 17. (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

Establish a New Process for Second Chance Review

(Non-Consensus)

For sentences including a term of total consecutive confinement longer than 20 years, individuals may petition for a second chance review at 20 years of incarceration (total confinement). Require that the review process explicitly include the opportunity for victim input.

Washington Association of Prosecuting Attorneys (WAPA)	Thumbs down. Individuals can already seek a review through clemency.
State Senate, Republican Caucus	Can support if remove "with possibility of release", cannot live with otherwise.
State House, Republican Caucus	Sentences including a term of total consecutive confinement longer than 20/25 years etc.....there is already many ways a person receives reduced incarceration....When the Prosecuting Attorneys agree on some language then I will look at this one again.
Washington Association of Sheriffs and Police Chiefs (WASPC)	There are already a myriad of ways a person receives reduced incarceration: prosecutorial discretion, plea agreements, judicial discretion, good time, graduated re-entry, extraordinary medical placement, clemency & pardons, etc.
Seat 2, Representing the Interests of Crime Victims	Need to understand how this would differ from petitioning for clemency

Recommendation 18

Allow Judges Discretion to Issue Consecutive and Concurrent Sentences

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can support
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Can support
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Cannot support
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Can live with

RECOMMENDATION 18.

Allow Judges Discretion to Issue Consecutive and Concurrent Sentences (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

(Non-Consensus)

Eliminate mandatory consecutive sentencing. Leave default consecutive but allow judges discretion to issue concurrent sentences without invoking an exceptional sentence.

Washington Association of Prosecuting Attorneys (WAPA)	Thumbs down. We don't have a proposal for this recommendation. We believe it would add unnecessary complexity into sentencing. We do not believe it would improve public safety.
State Senate, Republican Caucus	Thumbs down. Current system actually seems to be working quite well.
State House, Republican Caucus	Eliminating mandatory consecutive sentencing will not fly with my caucus. There are some offenses that are so egregious that mandatory consecutive sentencing is appropriate.
WA Association of Sheriffs and Police Chiefs (WASPC)	Some offenses are so egregious that mandatory consecutive sentencing is appropriate. We also have concerns about disparate sentencing based on geography.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.

Washington State Association of Prosecuting Attorneys

Comments re: Eliminating mandatory consecutive sentences:

WAPA was thumbs down on the proposal to eliminate mandatory consecutive sentences because such a change would substantially reduce sentence ranges for those committing serious violent offenses and also create a risk of substantially disparate sentences from county to county.

Sentences imposed under the Sentencing Reform Act are generally presumed to run concurrently, that is, all sentences for all current offenses run at the same time. Thus, the actual time of confinement is the incarceration time imposed on the most serious charge. However, the standard range available to the judge for that most serious charge is increased when there are other current convictions because those convictions add points to the overall offender score. This sophisticated scoring system provides a good balance between running sentences concurrent to each other but also increasing punishment when a person is convicted of multiple crimes.

There are two exceptions to the general rule that all sentences run concurrently. The first is when a person is convicted of two or more serious violent offenses which is a category of the most serious crimes in our criminal code. In this instance, the court is required to order the sentences for each serious violent offense to be served consecutive to the other serious violent offense. However, the offender score for one of the serious violent offenses is no longer calculated from other prior and current offenses. Instead, the sentence range for that crime is the range associated with an offender score of zero. Again, this sophisticated scoring system provides a higher level of punishment for someone who commits two or more serious violent offenses but offsets the change to consecutive sentences by not counting other offenses in the offender score for one of the crimes.

The second example is when a person commits theft of a firearm or is found in possession of a stolen firearm and they are also legally prohibited from possessing any firearm because of a prior felony conviction (referred to as Unlawful Possession of a Firearm or UPF). In this circumstance, courts are directed to order sentences imposed for the theft or possession of a stolen firearm to be consecutive to the count of unlawful possession of a firearm. However, the other firearm charges are not included in the offender score. Again, the SRA creates a balance of creating separate punishments for stolen firearm offenses and the crime where the person is a convicted felon and in possession of the firearm.

The proposal would eliminate the requirement that the crimes involved in the circumstances described above run consecutive and instead give the judge discretion to order the sentences be run concurrently or consecutively. The proposal, however, provides no guidance on whether scoring rules would be adjusted and if so how and when. In WAPA's view, this rule would actually increase risk of confusion and scoring errors by practitioners. In addition, the actual incarceration time served could be substantially different depending on the judge's decision about consecutive or concurrent sentences, leading to drastically disparate sentences for similar conduct from judge to judge or county to county.

WAPA believes that the original scoring rules in the SRA strike exactly the right balance and provide consistency in sentencing decisions as to consecutive and concurrent sentences. Again, WAPA believes that we should not try to fix what is not broken. Therefore, WAPA is thumbs down on this proposal and recommends the legislature not create new consecutive concurrent sentence rules.

Recommendation 19

Add an Additional Reason for an Aggravated Departure to RCW 9.94A.535(2)

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can live with
WA Association of Prosecuting Attorneys	Can support
State Senate, Republican Caucus	Can support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Not in attendance
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Not in attendance
Superior Court Judges' Association	Not in attendance
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Can live with
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can live with

Recommendation 20

Changes When the Washout Period Resets

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

RECOMMENDATION 20. (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

Changes When the Washout Periods Reset

(Non-consensus)

Make the appropriate changes to the washout period law so that:

- Washout periods do not reset upon confinement for a community custody violation.
- Washout periods do not reset upon conviction (or subsequent confinement) for a simple misdemeanor offense unless it is the third conviction for a simple misdemeanor offense.

Washington Association of Prosecuting Attorneys (WAPA)	Make the appropriate changes to the washout period law so that: <ul style="list-style-type: none"> • Washout periods do not reset upon confinement for a community custody violation. • Washout periods do not reset upon conviction (or subsequent confinement) for a simple misdemeanor offense unless it is the third conviction for a simple misdemeanor offense.
State House, Republican Caucus	Maintain washout period start upon release from confinement.....This adds more complexity to the system which is opposite of the task force's mandate.
Seat 2, Representing the Interests of Crime Victims	Proposed Recommendation: Make the appropriate changes to the washout period law so that: <ul style="list-style-type: none"> • Washout periods do not reset upon confinement for a community custody violation. • Washout periods do not reset upon conviction (or subsequent confinement) for a simple misdemeanor offense unless it is the third conviction for a simple misdemeanor offense or was a misdemeanor involving domestic violence or sex offense/sexual motivation.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.

Recommendation 21

Change the Washout Period for Class A Felonies

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Not in attendance
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can support
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

Recommendation 22

Change the Washout Period for Class B Felonies

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can live with
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can support
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Cannot support
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

Recommendation 23

Change the Washout Period for Class C Felonies

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Cannot support
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can support
Statewide Reentry Council	Can support
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Cannot support
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

Recommendation 24

Prior Misdemeanor DUI Offenses No Longer Score for Current Offenses That Do Not Involve a DUI

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Cannot support
Interests of Incarcerated Persons (Seat 1)	Can live with
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Abstain
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Can live with

RECOMMENDATION 24. (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

Prior Misdemeanor DUI Offenses No Longer Score for Current Offenses That Do Not Involve a DUI (*Non-Consensus*)

Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current offenses is a serious felony traffic offense involving DUI (e.g., Vehicular homicide-DUI, Vehicular Assault-DUI, Felony DUI, Felony physical control, etc.). Prior misdemeanor DUI offenses no longer score for felony offenses not involving DUI.

Washington Association of Prosecuting Attorneys (WAPA)	Thumbs down. We believe this proposal decreases public safety. We believe that the prior misdemeanor scoring for DUI's is an appropriate reflection of repeated dangerous driving. For felony level dangerous driving, whether or not it is alcohol facilitated, we believe the legislature appropriately includes misdemeanor DUI's on felony dangerous driving crimes.
State Senate, Republican Caucus	Thumbs down. this actually seems to add complexity
State House, Republican Caucus	We need to see the whole picture and history. This is definitely a no.
WA Association of Sheriffs and Police Chiefs (WASPC)	Dangerous driving behaviors should score for other dangerous driving behaviors.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.

Recommendation 25

Create Parity Between Vehicular and Watercraft Offenses

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Can live with
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can support
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Abstain
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Can live with

RECOMMENDATION 25.

Create Parity Between Vehicular and Watercraft Offenses (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)
(*Non-Consensus*)

Maintain the special misdemeanor DUI scoring exceptions for homicide or assault by watercraft offenses when the current offense involves a DUI and make homicide or assault by watercraft offenses the same OSL as the corresponding felony traffic offense (by either increasing watercraft offenses to higher OSLs or reducing vehicular offenses to a lower OSL) with the goal of creating parity between vehicular and watercraft offenses (Homicide by watercraft and vehicular homicide. Assault by watercraft and vehicular assault).

Washington Association of Prosecuting Attorneys (WAPA)	Maintain the special misdemeanor DUI scoring exceptions for homicide or assault by <u>increase</u> the OSL for watercraft offenses and make homicide or assault by watercraft offenses the same OSL as the corresponding felony traffic offense (by either increasing watercraft offenses to higher OSLs or reducing vehicular offenses to a lower OSL) with the goal of creating parity between vehicular and watercraft offenses (Homicide by watercraft and vehicular homicide. Assault by watercraft and vehicular assault). Thumbs down.
State House, Republican Caucus	Increase watercraft offenses to higher OSLs is the proposal I would recommend, not lowering it. They should be the same.
Washington Association of Sheriffs and Police Chiefs (WASPC)	We oppose this based on the "either" provision in this recommendation. WASPC would SUPPORT this recommendation if it eliminated references to lowering the vehicle offenses OSL and only referenced raising the watercraft offenses OSL.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.

Recommendation 26

Change the OSL for Vehicle Prowl 2nd Degree (third or subsequent) and Vehicle Prowl 1st

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can support
Interests of Incarcerated Persons (Seat 1)	Can live with
WA Association of Prosecuting Attorneys	Can live with
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can support
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can support
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Can live with
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Can live with
Interests of Crime Victims (Seat 2)	Can live with

RECOMMENDATION 26. (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

Change the OSL for Vehicle Prowl 2nd Degree (third or subsequent) and Vehicle Prowl 1st

(Non-Consensus)

Reduce the OSL for vehicle prowl – 2nd degree (third or subsequent) to Offense Serious Level (OSL) 2 and raise the OSL for vehicle prowl – 1st degree to OSL 2.

State Senate, Republican Caucus	Thumbs down A higher OSL is warranted after THREE previous offenses.
State House, Republican Caucus	With the vehicle prowls at an all time high it is not the time to change the law. These are two distinct offenses and should not be changed. This is a no without a proposal to make it a yes.
Washington Association of Sheriffs and Police Chiefs (WASPC)	These are two distinct offenses, based off of two different types of vehicles, and VP2 only drives a higher penalty upon multiple vehicle-related convictions. Parity among these two offenses is neither appropriate nor necessary.

Recommendation 27

Eliminate Special Misdemeanor Scoring for Prior Misdemeanor Vehicle Prowl

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can live with
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Cannot support
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can support
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can support
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Cannot support
Interests of Incarcerated Persons (Seat 2)	Can support
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Can live with

RECOMMENDATION 27. (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)

Eliminate Special Misdemeanor Scoring for Prior Gross Misdemeanor Vehicle Prowl (Non-Consensus)

Eliminate special misdemeanor scoring for prior misdemeanor vehicle prowling for theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1 or 2.

Washington Association of Prosecuting Attorneys (WAPA)	Thumbs down. We believe the legislature has appropriately determined that repeat car prowls should be scored on other crimes involving unauthorized use of or theft of vehicles.
State Senate, Republican Caucus	Thumbs down
State House, Republican Caucus	Eliminate special misdemeanor scoring for prior misdemeanor vehicle prowling for theft of a motor vehicle, possession of a stolen vehicle or theft of a motor vehicle without permission, if this was eliminated it would only increase more auto theft- related offenses.
Washington Association of Sheriffs and Police Chiefs (WASPC)	This was a key provision in HB 1001 from 2007, and one reason why Washington's auto thefts are only double what they were two years ago. Repealing this provision would further enable more auto theft-related offenses.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.

Recommendation 28

Limit the Scope of Misdemeanor Offenses that Can Be Included in Felony CHS

Affiliation/Perspective Represented	Decision
State House of Representatives, Democratic Caucus	Can live with
Interests of Incarcerated Persons (Seat 1)	Can support
WA Association of Prosecuting Attorneys	Cannot support
State Senate, Republican Caucus	Can live with
State Senate, Democratic Caucus	Can live with
State House of Representatives, Republican Caucus	Cannot support
WA State Office of the Governor	Abstain
WA Department of Corrections	Abstain
WA State Sentencing Guidelines Commission	Can live with
Statewide Family Council	Can live with
Statewide Reentry Council	Can live with
Superior Court Judges' Association	Abstain
WA Association of Criminal Defense Attorneys; WA Defender Association	Can live with
WA Association of Sheriffs & Police Chiefs	Cannot support
WA State Association of Counties	Can live with
WA State Minority & Justice Commission	Can live with
Fraternal Order of Police (Labor Organization, Active Law Enforcement Officers)	Cannot support
Interests of Incarcerated Persons (Seat 2)	Can live with
Interests of Crime Victims (Seat 1)	Cannot support
Interests of Crime Victims (Seat 2)	Cannot support

RECOMMENDATION 28.

Limit the Scope of Misdemeanor Offenses that Can Be Included in Felony Criminal History Score (Note: the following member proposals were provided for the 11.3.22 and 12.8.22 consensus deliberations)
(*Non-Consensus*)

Include language in SRA that would define the scope of offenses that can be scored in the calculation of a CHS as limited to prior felony convictions other than DV, DUI, and vehicular prowl.

Washington Association of Prosecuting Attorneys (WAPA)	Include language in the SRA that would define the scope of offenses that can be scored in the calculation of a CHS as limited to prior felony convictions other than DV, DUI, and vehicular prowl (conditional on vehicular prowl and DUI recommendations passing). Thumbs down.
State House, Republican Caucus	If "conditional on vehicular prowl and DUI" was eliminated, this could be a yes.
Washington Association of Sheriffs and Police Chiefs (WASPC)	This appears to be an attempt to limit the Legislature's authority to make changes to the SRA.
Seat 1, Representing the Interests of Crime Victims	As a member of the task force representing the interests of crime victims I do not believe we will be able to reach consensus, in part, because the constituencies that I represent feel that the remaining recommendations are unacceptable for the following reasons: they reduce penalties for the most severe violent and sex offenders, they reduce penalties for repeat offenders, they place victims and the community at risk, they risk greater disparity in sentencing by giving Judges greater discretion, they retraumatize victims by eliminating finality in sentencing, they complicate sentence calculations for DOC thereby introducing new opportunities for error, and they create a complex sentence review requirements. Additionally, retroactivity will always be a concern for my constituency. Even beyond the problem that retroactivity undermines public confidence in the law and betrays victims' reliance on promises that a defendant was going to serve his sentence, there is the very practical problem that it would be impossible for the courts to resentence the thousands of defendants who would be subject to a retroactive provision.
Seat 2, Representing the Interests of Crime Victims	Include language in the SRA that would define the scope of offenses that can be scored in the calculation of a CHS as limited to prior felony convictions other than DV, DUI, sex offenses (such as CMIP and Indecent Exposure) and vehicular prowl (conditional on vehicular prowl and DUI recommendations passing).

Appendices

Appendix A.

Legislative Proviso Establishing the Criminal Sentencing Task Force

Appendix B.

Criminal Sentencing Task Force 2019 Initial Report

Appendix C.

Criminal Sentencing Task Force 2020 Report

Appendix D.

Ground Rules and Operating Procedures, updated March 18, 2021

Appendix E.

CSTF Memo and Recommendations Re: State v. Blake

Meeting Recordings, Notes and Materials from 2021 and 2022 can be found here [Task Force's 2022 report webpage](#).

Resources, Data, and Research reviewed by the Task Force and referenced throughout this report can be found here on the [Task Force's 2022 report webpage](#).