

**Washington State Criminal Sentencing Task Force
Meeting Summary: December 8, 2022**

In person: WSU Puyallup Research and Extension Center,
2606 West Pioneer Ave. Puyallup, WA 98371

Virtual: ZOOM – [Link to recording](#)

ATTENDEES:

Task Force Members and Alternates: See Appendix A

Members of the Public: See pg. 22

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Alec Solemslie, Zack Cefalu – Ruckelshaus Center

Research/Technical Support: Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy (WSIPP)*

Meeting Goals:

- Task Force introductions and updates
- Discuss 12/14/22 Legislative briefing
- Work through issues on non-consensus recommendations and complete consensus deliberations on all recommendations

WELCOME AND AGENDA REVIEW:

Amanda and Chris welcomed Task Force members and alternates and reviewed the agenda for the meeting. The first order of business will be to discuss the work plan and expectations of the Task Force through June 2023. Then the Task Force will begin its final round of consensus for all remaining proposed recommendations the Task Force has proposed since 2020.

INTRODUCTIONS

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

INTRODUCTIONS & UPDATES:

The facilitation team articulated to the Task Force that there is an opportunity to meet for a final time in the beginning of 2023, as this task force exists under proviso until June 2023. This meeting would allow for members to receive updates from the Legislative members on how the work is being utilized by the Legislature and reflect on the work that has been done. Members said that it would be beneficial for the Task Force to be able to reflect upon the work that has been done over the lifetime of the Task Force as well as receiving any updates on potential bill drafting from Task Force consensus recommendations. This allows the Task Force to discuss the

next steps for the work from this Task Force, which will likely be held in Olympia for no more than 2-3 hours.

An update on the report, the facilitation team has been working to update and finalize the draft report, at the beginning of next week the research staff and facilitation team will begin the final round of edits. The final draft of the report will be sent to Task Force members the week of the 19th for their review to assess an accurate capturing of all materials. This means that if any constituency wants additional information or their proposals to be added into the report this needs to be sent over to the facilitation team by the end of the day next Friday the 16th.

Co-Chair Updates:

There is a week between February and March where bills have moved from the House to the Senate and a meeting in this time this would allow the Task Force to meet briefly during the session and would allow Legislative members to attend.

This work has been continuing for 3 years and has been a victory due to the number of recommendations that have been passed and consequently the number of draft bills being produced from these recommendations.

2022 Remaining Work Plan:

December 8th: Final Consensus Deliberations– last review and opportunity to address any unresolved issues

December 14th: Legislative Work Session– Joint House Public Safety and Senate Law and Justice Meeting 10am-1pm at the O'Brien Building on the Capital Campus

December 14th Legislative Work Session

This will be a 3-hour work session in Olympia, the beginning of the session will cover the history of the SRA as well as an overview of the SGC's role in the CSTF work. The Ruckelshaus Center will then discuss its role as well as an overview of the consensus deliberation process. Dr. Knoth-Peterson will then be giving a presentation discussing the overview of the New Proposed Grid and all the recommendations that were combined to create this proposal, next Co-Chairs will speak on the work of the Task Force. Then the remaining 2 hours will be framed as a dialogue where questions can be asked about the work and will be able to be answered by any member of the Task Force.

Amanda asked what questions Task Force members hope that the Legislature asks the Task Force?

- A member hopes that the Legislature will be provided with a good picture of the entire summary of work by the Task Force and the robust conversations that have been occurring over the years, even covering recommendations that did not achieve consensus. This member wants to provide insight to all recommendations that have been considered by the Task Force and the perspectives as to why consensus was or was not reached. Specifically, the context from the competing perspectives are

important to frame these conversations. Interest in seeing the work continuing to move forward and not just shelved after this next Legislative session.

- Another member said that they would be grateful if the Legislature asked about the perspective of crime victims. At a prior Public Safety meeting two victim's families' members testified and it was very impactful to hear from them. They hope the Legislature takes this perspective into serious consideration.
- Would find it helpful to ask a question about the perceived gaps due to time limits and Task Force's purpose. If the Legislature were to ask about where the Task Force conversations could not address certain issues or did not have the capacity to handle them on their own. Hope the Legislature sees this work and report as long-term work that constantly must be done and is not shelved after this session.
- The Legislature needs to know what didn't happen and why. It is important to understand why the various constituencies agreed to be a part of this Task Force, what their goals of this work would be, and how they problem solved. The Legislature should also know what each constituency believes they need to fix within the sentencing system. These recommendations, while important, did not address the larger issues some constituencies hoped to address.
- A member hopes that the Legislature wants to know the amount of research that went into making these evidence-based proposals and how much learning had to occur before these decisions were made.
- The Legislature would benefit from knowing, of all of these proposals, which select few would be the most impactful and which can be done as standalone or are there recommendations that must be passed as a package.
- What recommendation would create the most positive benefit in people's lives?
- What is within and beyond the scope of the work of the Task Force.

REVIEW CONSENSUS PROCESS – [see recording at 48:56](#)

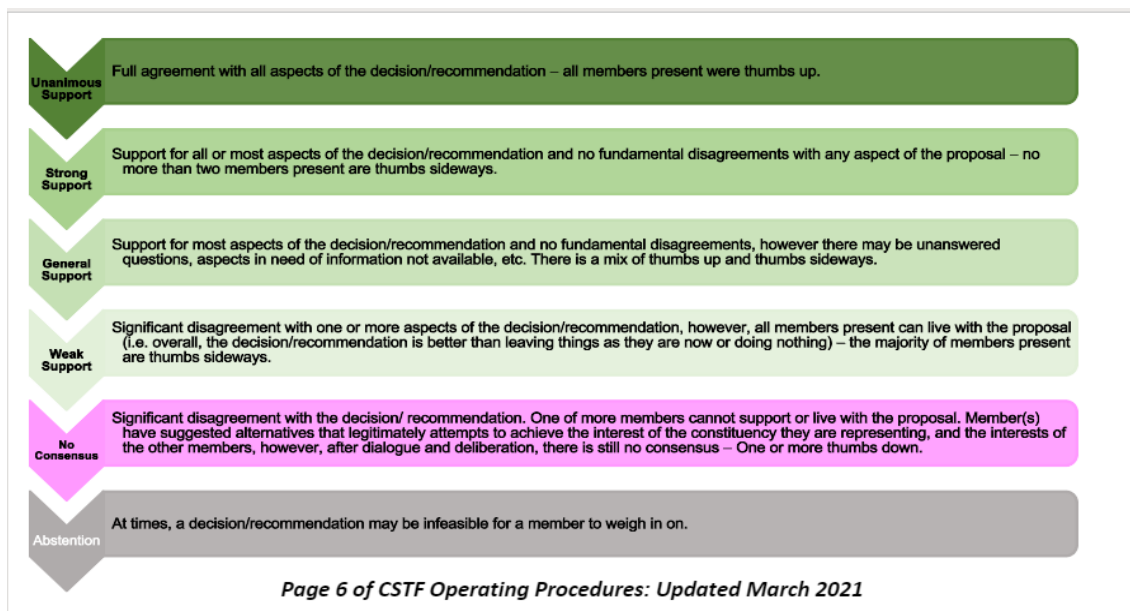
Amanda and Chris reviewed the consensus process and the Task Force's identified definition and gradience of consensus, as well as the Task Force's operating procedures.

Consensus Defined:

The Task Force operates under the following definition of consensus:

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

This consensus can be conveyed via a 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). If a member is thumbs down, that member is expected to provide a proposal that legitimately attempts to achieve the interest of the constituency they represent and the interests of the other members. All members will seek solutions that allow those thumbs to move up or sideways.



The above slide depicts the gradience of varying levels of consensus and their definitions to capture the nuances of support for recommendations.

Consensus decision-making can be achieved at any Task Force meeting that has 12 of 20 members present. The Task Force will have the option to ask the facilitation team to communicate afterwards with members who were not present for a decision, to explain key points of Task Force deliberations, and confirm whether those members can agree with these decisions.

If not, the co-chairs may decide whether the full Task Force should reconsider the decision at subsequent meetings.

CONSENSUS DELIBERATIONS: [see recording at 55:41](#)

The facilitation team noted that these proposed recommendations are the culmination of years of discussions by the Task Force and the list as presented shortly are the finalized proposals that were agreed to go forward to the entire Task Force. The facilitation team will go through remaining proposed recommendations left over from Nov. 3rd and Nov. 17th Task Force meetings and the group will conduct final consensus deliberations to see if a compromise can be reached that could bring more members in support of the recommendation.

Proposed Recommendation: 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.

During the November 3 roll call, six members were not able to support this recommendation. Per operating procedures, those members described their concerns and what modifications could address those concerns while still meeting the needs of the group.

Even before the Task Force identified this as an issue, this topic has been discussed for a long time by other groups and the Legislature. This is already covered through the clemency process, which prosecutors have a lot of confidence in and believe that it is a very transparent process that does account for the victim's input. WAPA is currently in the process with another entity to discuss establishing a process, within the clemency process, to create benchmarks or goals for those incarcerated that need to be accomplished during incarceration that can prime them for clemency. This work is currently in its early stages of development, so there are no proposals that this Task Force could provide that WAPA would support, as they prefer the current one, they are establishing themselves. Cannot abstain as they are opposed to this recommendation as is. Proposed amendment would read as:

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.

Individual representing Senate Republicans shared that not all members from his constituency could not agree to this. He could support the recommendation with the removal of the phrase “possibility of release” as a second chance review inherently is done with the possibility of release. All members remained in support of the recommendation with this modification.

Individual representing House Republican Caucus could support this recommendation potentially in a few years but the current timing of this recommendation is not apt. The recent passage of criminal legal system reform at a time with low law enforcement staffing in the state and limiting of the tools they need to effectively conduct their job, she said, prevent her support. Currently, crime is rampant and this is not the time for this recommendation. It gives the wrong message to the public. Would support the removal of the phrase “possibility of release” that would be more amenable to her constituency.

WASPC believes that this proposal is unnecessary due to the many ways people can receive release from the term of incarceration earlier. If this recommendation is due to the perceived errors in clemency and pardons then that is the area in need of reform and there is no need to develop this newer form of a review for potential release. The Clemency Board provides better perspectives and more in-depth analysis than a second chance review board could.

Member and Alternate Discussion:

- A member would be fine with removing the clause “possibility of release” as they too believe that this would still allow for a review that inherently is conducted to potentially release those deemed fit for release.
- A member who was previously wrongfully convicted and served 30+ years incarcerated knows firsthand the difficulty of receiving clemency or pardon as this is contingent on

being “exceptionally self-rehabilitated” during incarceration and these pathways to success are not available to everyone, there is no other opportunity for release if this is not met.

- If there is something in the clemency process that is keeping people from being able to access this process then this process needs to be analyzed and reformed to be more accessible, not the creation of a new process. Expressed concerns about a single individual having authority to determine if that individual is fit for release.
- During the 11.15.22 Grid Subgroup there was an alternate proposal which read as: *“Create a new process for second chance review that is broader than the current Clemency process and has better defined criteria to determine if an individual may be released.”*
- The SGC looked at the clemency process. They can meet more frequently than quarterly and more people can be on the board. Regardless of all that, the governor has a final say. That makes it a political process. The clemency board can make a recommendation but the governor makes the final decision.
- This recommendation is about access to a second chance review, currently the criteria and process is very limited. We are trying to make this process more accessible.
- A member said that clemency and pardons are a political process. There is the ISRB process but it is limited to a number of people. We already do this, but just for some people. This is a reasonable proposal that allows greater access to this form of review to ensure that the state does not spend resources to incarcerate an individual who does not have a high likelihood of posing a risk to community safety.
- Would modifying ISRB criteria and the ISRB process be a better alternative than establishing a whole new system?
- Some expressed support about modifications to the ISRB process.
- Reflect that group in tension from a lack of clarity or preference in the process and which entity is conducting the review, clemency board or ISRB. Or the alternate proposal of the creation of a new review board for this specific purpose.
- An already existing process is to have the judge that sentenced that individual conduct a review of this type.
- It is easier to work with something that already exists rather than creating a newer review process. This recommendation asks the Legislature to create new processes for second chance review, this is a decision that the Legislature needs to make but this recommendation can call to action the legislature for the need to establish a mechanism for this process and highlight the evidence of the necessity for this process, according to the evidence.
- Several members expressed support for a second look process in general and the reasons this recommendation is vague and unclear is that the Task Force agrees this is important but cannot decide how to address this. Because of this it is necessary that the Legislature is given the opportunity to decide how to appropriately conduct this and the recommendation calls the Legislature to action.

Co-Chairs suggest concluding deliberations, closing with the roll call as stood on November 3rd, with modifications to reflect presence of Individual representing WASPC and Senate Republican Caucus, who moved to 'can live with.'

Final Recommendation will read: 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.

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

This recommendation had no alternate proposals from those who could not live with it. In its potential form, there were multiple versions explicitly focused on serious violent convictions and firearm offenses convictions (note this is different from firearm enhancements). The Grid Subgroup suggested revisiting those proposals to see if one may generate more support from the group.

Member and Alternate Discussion:

- There are three features in the SRA that are good features and work fine as is and do not merit change. First is the assumption that all sentences run concurrently. The determination of the CHS allows for offenses to score against each other when running concurrently. Secondly, there are exceptions to this assumption that all sentences run concurrently, and these specific exceptions are reserved for serious violent offenses. When there are 2+ of these offenses committed then these are served consecutively but then these offenses are not scored against each other in the CHS. Another exception for this assumption is for firearm offenses, such as illegal possession of a firearm and theft of a firearm. Sentences for these offenses are modeled after the serious violent offenses. Third is "same criminal conduct" there is a lot of case law that guides this issue and related to gun law this reduced risk of the stacking effect that creates huge sentences that have been seen with firearm enhancements. These SRA features are exactly right and any change would complicate good policy.

The facilitation team stated that while some members may feel that this is good policy, that is not the case for all constituencies. Is there a way to move forward to address the concerns of other Task Force members?

- The status quo meets all three Task Force policy goals very well. The status quo here increases effectiveness, reduces complexity, and improves public safety in a way that any amendments made to this policy would not. We do not see gains to be made under these three policy goals through any changes in the status quo. The current policy is not complex and does not lead to errors. It is a rarely used exception, and if there is a case

where an individual has two or more most serious offenses there is going to be a lot of attention in this case to ensure there are no errors. This also improves public safety. To do anything else is to remove consecutive sentencing and we do not feel like changing from consecutive to concurrent is going to meet any of those 3 policy goals. The other concerns raised in Grid Subgroup meetings was around increasing judicial discretion in these exceptions for consecutive sentencing. The risk run here is there is a substantial difference in time served for the application of consecutive or concurrent. Judicial discretion here could create large disparities in application varying by individual judges. This is not a good area to start enhancing discretion because it runs the risk of increasing disparity.

- A member clarified that this recommendation does not eliminate consecutive sentencing and would keep these sentencing exceptions. This recommendation, however, would eliminate the mandatory aspect of consecutive sentencing, so this keeps the aspects of the policy that WAPA likes but would add judicial discretion into this type of sentencing.
- Prosecutorial discretion is a large driver of disparities in sentencing and mandatory minimums. There is such a thing as warranted disparities for certain individuals and certain cases, but the mandatory aspect of this topic keeps disparities unwarranted as there is no discretion in its application or avenue for review.
- WASPC, along with Senate and House Republicans all agree with WAPA's positions and agree that they do not have any proposals that would move their consensus votes.
- A member whose constituency cannot support this recommendation believes that some offenses are so egregious that mandatory consecutive is warranted. The Task Force cannot ignore a West v. East political divide in this state, and this also is reflected in elected judges. If elected judges do not make value-based decisions, they may not keep their jobs. Therefore, discretion should lay with prosecutors, but discretion to judges will not fix this, and increased judicial discretion would bring this system back to the 1980s.
- The judges will retain some discretion due to the sentencing ranges. There are sentencing ranges for most serious offenses where they are broad enough for judges to determine where within the ranges to set the sentence. The only mandatory thing is that they should be consecutive. If there is something extraordinary in mitigation, there is the exceptional sentence to go downwards. There are still nuances to discretion.
- A member stated that 97% of cases are resolved by plea. This mandatory nature of sentencing is a tool that prosecutors can use to drive defendants towards plea deals. This drives the untransparent nature of the system.
- A member asked whether the statute related to weapons offenses is in line with the case law and if this is the case this should be amended.
 - Subsection A of [RCW 9.94A.589](#) clarifies the same criminal conduct law that allows for concurrent sentencing to override mandatory consecutive sentencing. This applies to all consecutive sentencing.
 - Same criminal conduct does not allow for mandatory consecutive sentencing for the same criminal intent committed at the same time and place, but Unlawful Possession of a Firearm and Theft of a Firearm can run consecutively to each

other as these offenses have a different criminal intent. However, one Unlawful Possession of a Firearm cannot run consecutively to another Unlawful Possession of a Firearm nor can one charge of Theft of a Firearm cannot run consecutively to another Theft of a Firearm as these are the same criminal intent if committed at the same time.

Co-Chairs suggest concluding deliberations, closing with the roll call as stood on November 3rd, with modifications to reflect presence of Individual representing WASPC and Senate Republican Caucus. Members not in support will and those who 'can live with' the recommendation may submit their perspectives in writing, to be included in the final report.

Misdemeanor Scoring Rules Recommendations:

Proposed Recommendation: Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current offense 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.

Per operating procedures, members unable to support the recommendation shared their concerns and modifications that could address those concerns while still meeting the needs of the group.

- Concern that this recommendation would decrease public safety. Misdemeanor DUIs should be included in an individual's CHS. WAPA had a lengthy discussion on this looking at the crossover of scoring DUIs and non-impairment dangerous driving offenses. Many felt that criminal traffic offenses, including misdemeanors, are a very big deal and pose a high risk that can cause significant harm. Misdemeanor scoring was specifically crafted to address this nuance. No proposed alternative could meet our Task Force goals.
- There is no wiggle room, the status quo needs to stay completely the same. An individual's entire criminal history, including misdemeanors, needs to be reflected.
- Special misdemeanor scoring for prior Misdemeanor DUI offenses should stay intact. The scoring of these misdemeanors are especially important when the current offense is a serious traffic offense involving DUI, or for felony driving offenses. Even if the current offense is not for a DUI, these misdemeanors should be included in the CHS as these represent dangerous driving behavior.
- House Democrats are now unable to live with this recommendation as well. All forms of dangerous driving should be included in CHS for misdemeanor DUI offenses, dangerous driving behaviors should not be separated.

Member and Alternate Discussion:

- When discussing Class A felonies and washouts, one of the conversations that the Task Force had was it made sense to use more specific prior offenses such as serious violent offenses that connected prior behavior with current behavior. Focusing on the specificity of prior behavior's connection to current behavior was something the Task Force was able to agree made sense, but within the context of this recommendation

that same specificity is being called unreasonable. Seems some members are trying to justify the status quo.

- Express hope the Task Force or another entity can return later and address this issue in future years.
- In response to the last few comments, if there is a reason to change the status quo but it does not meet the 3 policy goals of the Task Force, then it is not a valid change. Those in opposition are not wedded to the status quo but support recommendations they think are relevant to the policy goals. Arbitrarily changing the status quo is not in the scope of the Task Force and not what it was designed to do.
- These scoring exceptions are something the Task Force has been discussing from its inception as an element of the system that contributes to complexity leading to errors.
- Reducing sentences with no infrastructure in place for reentry or programming is a no go. Shortening sentences with no opportunity to succeed when they are released is not conducive to promoting public safety.
- Arbitrary is what many have been calling this proposal but what is arbitrary are these scoring exceptions. The general rule of the SRA was to address complexities. This is intended to address some misdemeanors scoring and some not scoring. There is arbitrariness of what misdemeanors do and do not get scored in felony CHS.

Co-Chairs suggest concluding deliberations, closing with the non-consensus roll call as stood on November 3rd, with modifications to reflect presence of Individual representing WASPC and Senate Republican Caucus, and House Republicans moving to 'cannot support.' Members not in support will and those who 'can live with' the recommendation may submit their perspectives in writing, to be included in the final report.

Proposed Recommendation: Maintain the special misdemeanor DUI scoring exceptions for homicide or assault by 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).

Per operating procedures, members unable to support the recommendation shared their concerns and modifications that could address those concerns while still meeting the needs of the group.

- Our constituency agrees there should be parity but cannot agree to lower motor vehicle DUI to watercraft DUI. Motor vehicle DUI is a huge issue that is more frequent than watercraft DUI and should not move down in OSLs. Could live with the recommendation if watercraft offenses were increased in OSL to create parity.

Member and Alternate Discussion:

- This is just relevant to felony offenses for watercraft offenses for homicide and assault, correct? What are the OSLs differences?

- **Current Offense Classification:**
 - *Homicide by watercraft – under influence: 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 – under the influence: OSL 11*
 - *Assault by watercraft: OSL 4*
 - *Vehicular assault disregard safety: OSL 3*
 - *Vehicular assault under influence/reckless: OSL 4*
- On the current grid OSL 9 at CHS 0 range is 31-49 months and OSL 11 at CHS 0 is 78-102 months.
- A member said this is the perfect example of the arbitrary and illogical nature of the SRA. The watercraft offenses should not be recommended to increase in OSL. They would support eliminating the aspect that calls for decreasing OSLs for motor vehicle offenses. This member wants the Legislature to have to make this decision to grapple with their own illogical creation with the SRA to determine where the appropriate OSL they should meet at.
- A member mentioned that since in an earlier recommendation they had recommended to maintain neutral language as to not influence the decision of the Legislature, to be consistent with that they recommend this recommendation simply clarify that parity is made between these offenses and will change their vote to thumbs sideways. They would like it included in the report their preference is to move watercraft offenses up.
- The creation of the SRA was not evidence-based at all, and those members in support of reducing OSLs have produced evidence that keeping people incarcerated longer is of no benefit to public safety. Expressed frustration about lack of evidence considered and made available that would support current policy.
- WASPC and those representing the Interests of Crime Victims agree that they can support this recommendation if it is simply recommended to create parity but not if that parity is through lower motor vehicle DUI offenses.

Co-Chairs suggest concluding deliberations, closing with the non-consensus roll call as stood on November 3rd, with modifications to reflect presence of Individual representing WASPC and Senate Republican Caucus. Members not in support will and those who 'can live with' the recommendation may submit their perspectives in writing, to be included in the final report.

Overview of Final Roll Call: No consensus

- I can support – 5 members or designated alternates
- I can live with – 7 members or designated alternates
- I cannot support – 4 members or designated alternates
- Abstain – 4 member or designated alternates

Proposed Recommendation: 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

Per operating procedures, members unable to support the recommendation shared their concerns and modifications that could address those concerns while still meeting the needs of the group.

- This recommendation would reduce the felony offense for a third or subsequent Vehicle Prowl 2 offense from OSL 4 down to OSL 2, as well as increase Vehicle Prowl 1 from OSL 1 up to OSL 2. This would align both Vehicle Prowl 1 and Vehicle Prowl 2 in the same felony offense seriousness level.
- Vehicle Prowls are at an all-time high and unless these offenses are increased across the board then we will remain unable to support.
- A member representing WASPC stated that vehicle prowls are so hard to make arrests for, their city's police department responds to these calls all the time. Arrests for vehicle prowls are so infrequent, so if a person has been arrested for this twice prior then it is likely they have committed multiple instances of this crime without getting caught. If there is concern about parity, then Vehicle Prowl 1 should be in the same OSL as Residential Burglary 1. They cannot support this recommendation as is.

Member and Alternate Discussion:

- Are people who commit Vehicle Prowl and Theft of a Motor Vehicle usually committing both offenses? Are these seen as separate offender populations or similar?
 - Car thefts are more prolific and organized, there are criminal enterprises that exist around car theft and people who usually commit vehicle offenses that are involved in these rings usually look to steal cars. Those who prowl cars often just break into vehicles to steal belongings inside and are crimes of opportunity, many of these are people suffering from substance abuse disorder to sell the stolen items to fund their addiction.
 - These offenses are more harmful to the community and vehicle owners than people realize.
- Most vehicle prowling offenses are a crime of opportunity. Often this is not graduating to vehicle theft. Even when they get caught multiple times, we need interventions to help them. We can rehabilitate them. People committing this offense are either individuals with a substance abuse disorder or young adults aged 17-25 in need of rehabilitation, after three offenses a felony charge may help stop this behavior. Rarely do you see people go to prison due to vehicle prowling, agree with WASPC, but this recommendation has an opportunity for consensus to be reached here as this proposed recommendation is an ideal middle ground position.
- Whatever OSL these offenses are at, they would exist in the zone for intermediate sanctions and be eligible for this program, so if this is the case then would either group have wiggle room to raise or lower these offenses to problem solve.

Co-Chairs suggest concluding deliberations, closing with the non-consensus roll call as stood on November 3rd, with modifications to reflect presence of Individual representing WASPC and Senate Republican Caucus. Members not in support will and those who 'can live with' the recommendation may submit their perspectives in writing, to be included in the final report.

Proposed Recommendation: Eliminate special misdemeanor scoring for prior misdemeanor vehicle prowl for theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1 or 2.

Dr. Knoth-Peterson provided some context and an overview of why the group first developed this recommendation.

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**

	Number of Sentences (may include multiple sentences for the same person)					
Most Serious Offense	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
# MV sentences (above) w/a Misd Veh Prowl 2 in Criminal History:	130	107	128	117	78	560
% of MV sentences with a Misd Veh Prowl 2 in Criminal History:	6%	5%	7%	8%	7%	6%

Dr. Knoth-Peterson reviewed the above data, which was previously reviewed by the Grid Subgroup, and reflects the number of sentences for vehicle prowl and theft offenses from 2017 to 2021. This data shows that the percentage of motor vehicle offenses in which a misdemeanor Vehicle Prowl in the 2nd degree was reflected in CHS was on average 5-8% of cases. This indicates that the special exception for misdemeanor scoring is only relevant in less than 10% of all felony traffic offenses, showing that misdemeanor vehicle prowl is not an offense likely to occur multiple times before "escalating" to more serious traffic offenses.

Per operating procedures, members unable to support the recommendation shared their concerns and modifications that could address those concerns while still meeting the needs of the group.

- This was a key provision that was proposed by WASPC in 2007 as a House Bill, this is the reason WA's auto thefts are at the level they are and not higher, this recommendation to repeal this would not improve public safety.
- This constituency is still a thumbs down, the Legislature determined repeat car prowls should be scored against other vehicle offenses.

Member and Alternate Discussion:

- A member asked if in some of those cases, can the existing misdemeanor prior originally have been a felony that was then plead down to one of these offenses?
 - Potentially yes, but the data above includes all the cases where this rule is relevant so even if this was true then it would not have a significant effect.
- Maybe there needs to be policy changes that account for misdemeanors being included in felony scoring. All these recommendations on misdemeanor scoring were tailor made to the issues of complexity of misdemeanor inclusion into felony CHS.
- The cases that represent this vehicle prowler prior to being involved with a felony theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1 or 2 are only in 5-6% of these offenses annually. Perhaps this may be due to how difficult it is to make arrests for this offense and not reflective of the true commission of the offense?
- If there are 3 misdemeanors for a vehicle prowler then this would turn into a felony offense which would score against all felony theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1 or 2 but then would all 3 vehicle prowler misdemeanors score against this? Is this not double scoring?
 - No third or subsequent vehicle prowler does not score against these misdemeanors but scores as a felony and the misdemeanors score against felonies, but none double score.

Co-Chairs suggest concluding deliberations, closing with the non-consensus roll call as stood on November 3rd, with modifications to reflect presence of Individual representing WASPC and Senate Republican Caucus. Members not in support will and those who 'can live with' the recommendation may submit their perspectives in writing, to be included in the final report.

Proposed Recommendation: 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 prowler (conditional on vehicular prowler and DUI recommendations passing).

Per operating procedures, members unable to support the recommendation shared their concerns and modifications that could address those concerns while still meeting the needs of the group.

- This proposal suggests the Legislature attempt to statutorily limit itself on the inclusion of misdemeanors in criminal history scoring on other offenses in the future. This is a bit of a fallacy. The Legislature cannot really limit itself as they could overturn this restriction, so this does not really mean much. The Legislature should not try to regulate itself, but our constituency would not be opposed to creation of a policy statement or a preamble for general presumptions not to use misdemeanors in felony criminal history scoring.

Member and Alternate Discussion:

- When this was discussed, this would be statute but could not prevent the Legislature from doing this in the future as any changes to the Legislature scoring misdemeanors scoring in felony CHS then this statute would have to be amended. This was meant to prompt a discussion to ensure that the inclusion of any other misdemeanors except for these carve outs should truly be included and works as a guardrail that requires that debate prior to including more misdemeanor exceptions.
- A member asked a clarifying question, if except for DV, DUI, vehicular prowl no other misdemeanor scoring exists?
 - Yes, this recommendation would then be designed to limit the scoring to these few exceptions.
- With the failure to reach consensus on other misdemeanor scoring recommendations then all this recommendation does is state that the state should not add anymore exceptions, which at this point does not do much.
- Another member stated that this would have the legislature frame their decisions and would serve as a guide to better inform the impacts of their decisions.
- A member agreed to change their initial vote to sideways.
- If this is in statute, no legislator will be aware of this and this would not stop them from including more misdemeanor scoring in the future.
- What is the reality of a legislator writing and running this as a bill? Do not see that there would be a lot of motivation to support a bill that limits the discretion of the Legislature in the future.
- A member suggested changing the recommendation to, "The Legislature should not include any additional misdemeanor offense in adult felony sentencing", or "misdemeanors should only be considered for inclusion in adult felony sentencing scoring unless they are predicates to felony offense behavior."
- A member pointed out that the use of the word "predicate" in an amendment could potentially expand the inclusion of other misdemeanors into felony scoring. They would not support a recommendation that would limit the Legislative authority. In the Grid Subgroup there were discussions around the importance to include these 3 misdemeanors carve outs due to their nature but other serious misdemeanors that are predicates to felonious behavior exist and should be included in scoring as well.

- Another member suggested an alternate, “The Legislature, to their best extent possible, only include felonies in criminal history scoring”
- In many of these offenses there needs to be a gender-biased and gendered violence-based analysis. Sex offenses should be added to the exclusions. There could be a second grid for offenses such as DV and other predatory offenses that are targeted towards vulnerable populations. The Task Force has discussed sexual motivation as an aggravating factor, this creation of another grid or another scoring system for predatory sexual and/or gender-based offenses could capture the necessity to properly address these offenses whether they are felonies or misdemeanors.
- A member could not support adding more misdemeanors be included onto these three exceptions.
- Does the Legislature take any action acknowledging the receipt of reports? When city councils receive reports that city council can adopt those guidelines formally. Since this report would be expansive there should be the inclusion of a number of value statements then they could be used as guiding principles for the Legislature to encourage further discussion.
- At some point the Legislature may determine that there are other misdemeanors that need to be included, this may be a solution looking for a problem. The Legislature is very deliberate in its inclusion of misdemeanors, concerned with the regulatory nature of any recommendation concerning this.

Co-Chairs suggest concluding deliberations, closing with the non-consensus roll call as stood on November 3rd, with modifications to reflect presence of Individual representing WASPC and Senate Republican Caucus. Members not in support will and those who ‘can live with’ the recommendation may submit their perspectives in writing, to be included in the final report.

Proposed Recommendation: Eliminate eligibility exclusion based on current offense/s – modeled after Mental Health Sentencing alternatives (does exclude eligibility if current offense is serious violent or sex offense).

Per operating procedures, members unable to support the recommendation shared their concerns and modifications that could address those concerns while still meeting the needs of the group.

- This constituency agrees with the intent to improve reentry and reduce recidivism but worry about public safety effects of opening sentencing alternative eligibility to those with violent or serious violent offenses. Do not see the public safety aspect of this being easily addressed with the tools available now.
- In the Grid Subgroup, there was considerable discussion on the rigors of the differing models. We need to find the right model for the right populations, looking for better alternatives to connect those with needs to their services but still ensure accountability for offenses committed. There was a lot of conversation about therapeutic courts, and we were trying to look at different alternatives to accomplish the success seen in these courts. The proposal is still a thumbs down. Our takeaway from the Grid Subgroup

meeting is ensuring the state has the right models for the right populations with the right rigor.

Member and Alternate Discussion:

- A member clarified that the intent of the recommendation focused much on the offense specific eligibility limitations of current sentencing alternatives and looking at a different process to determine eligibility and appropriate sentencing outcomes. The Mental Health Sentencing Alternative utilizes a public health model to provide services.
- Current proposal would remove eligibility exclusions for current offenses. Eligibility would be based on criteria, specific needs, or the conditions to the case, not based on the offense. The mental health alternative is specific, but it has a different type of model of how individuals are allowed to participate. So, can anything be gleaned from that model that can individualize treatment for individuals?
- A member said the concern for them is in the inclusion of violent offenses, knowing that this is modeled after mental health alternatives. The bottom line for this proposal, it removes current violent offense exclusion from DOSA, FOSA, FTOW. This is not about what offenses should be looked at in terms of eligibility, but violence predicts violence. If someone is in a sentencing alternative for a violent offense, is this a good way to ensure public safety from further violent behavior? Additionally, expressed concerns about the accountability of DOSA and FOSA programs within their supervision structure and lower-level quality of treatment.
- Around 50-60 people sentenced to Mental Health Sentencing Alternative in FY 2022. By the end of May there were 57 cases of the Mental Health Sentencing Alternative. Highest utilizers were in Spokane county and Pierce County.
- The second seat representing the Interests of Crime Victims suggested developing a recommendation to reviewing and assessing the process to determine eligibility and see if modeling other sentencing alternatives after this new sentencing alternative is appropriate. Additionally, they suggest adding DV to violence offense exclusion, as mental illness has been used as an excuse for DV or other violent behaviors.
- A member shared concerns that it seems DOC is struggling to keep up with the demands for graduated reentry and other surveillance tasks they have, could they keep up on community custody capacity? Hesitant to add to DOC workload due to unexpected fatalities reviews of those on community supervision.
 - Yes, we could use more resources especially for mental health services but DOC is certainly not at a breaking point and still able to supervise those in need. The unexpected deaths have a lot to do with the fentanyl epidemic we are currently in.
- Is the recommendation excluding only serious violent or sex offenses and only these offenses for all sentencing alternatives? What about current firearms offenses, are they excluded or not?
 - Yes. No exclusions for any current offenses, only for those prior serious violent and sex offenses.
- When the Sentencing Alternatives Work Group began their work reviewing the process for determining eligibility, they received a presentation from program providers from

each sentencing alternative. One of the things that was discussed here was, when looking at the WSIPP report written for this Task Force, when examining who is receiving these alternatives there is documented racial disproportionality. The Sentencing Alternatives Work Group tried to examine where and why this occurs, the data cannot explain why this is the case, but the group spoke that this could occur from geographic differences and/or from racially disproportionate convictions for violent offenses. This led the group towards analyzing the treatment model from the Mental Health Sentencing Alternative, as this program had no restrictions for current or prior offenses (except for serious violent and sex offenses), rather there is a robust process of evaluation and individual assessment. That is the path that has led to the creation of this recommendation.

- The conditions to be eligible for the Mental Health Sentencing Alternative are very severe. The individuals eligible are required to have a serious mental health disorder and go through many examinations and assessments to determine this. It's a rigorous screening process – which is warranted but expressed concern about inadvertently creating a process more cumbersome for other alternatives.
- A member suggested the following edits be made: **Review to assess process** of eligibility exclusion based on current offense/s – modeled after Mental Health Sentencing alternatives (does exclude eligibility if current offense is serious violent, **domestic violence**, or sex offense).
- If suggesting a review, then we should not suggest the outcome. Risk is a far better predictor of who should be eligible for a sentencing alternative than offense-restrictions. Excluding DV then creates a narrower criterion for eligibility than the status quo eligibility has.
- Expressed concern about a lack of a gender lens, to ensure gender equity as well as racial equity. Have seen mental health used to excuse for sexual assault and sex offenses as well as DV. This nuance needs to be called out in the form of restricting DV and sex offenses.
- Eligibility exclusions are there to balance those in need but if the restrictions are too loose, and there is community custody for violent individuals this creates a risk to the public. Assessing the process of the exclusions is nice but if this is conducted wrong then this puts the community at risk.
- The recommendation just reviews eligibility exclusion for all sentencing alternatives outside the Mental Health Sentencing Alternative to determine if they are appropriate. This review could determine that there is a need for more exclusions. The state needs data to determine whether we need more or less eligibility exclusion, so this recommendation is innocuous.
- A member asks if DOC capacity for supervision for those in community custody is included in the recommendation's review? The inclusion of this in the review can ensure that the capacity is available within DOC for less restrictive sentencing alternative eligibility. **"Review to assess process** of eligibility exclusion for sentencing alternatives, **including DOC's capacity to supervise in the community"**
- A member said that it is exhausting having to re-explain the vulnerability of victims of DV and sex offenses. By taking out the language of modeling other alternatives after the

Mental Health Sentencing Alternative and establishing a substantive review to determine if this is appropriate then they could lend their support for that recommendation. But if the recommendation is based on modeling after Mental Health Sentencing Alternative without a review, then it is necessary that DV and sex offenses be listed in exclusion. There is a higher risk of lethality when DV is involved in situations.

The facilitation team took a final consensus roll call for the recommendation: ***Conduct a review to assess the process and efficacy of eligibility exclusions for sentencing alternatives, including DOC's capacity to supervise in the community.***

Overview of Roll Call: General Support

- I can support – 4 members or designated alternates
- I can live with – 7 members or designated alternates
- I cannot support – 0 members or designated alternates
- Abstain – 1 member or designated alternates
- Not in attendance – 7 member or designated alternates

Members of the Public: Kelsey Anne-Fung, Noah Bein, Jim Chambers, Bruce Glant, Carolyn Grey, Adam Hall, Kathleen Hambrix, Chris Johnson, Katelyn Kelly, Eric Kiffe, Audrey Koreski, Joe McKittrick, Corey Patton, Joanne Smieja, David Treiweiler

PUBLIC COMMENT: *None*

APPENDIX A: CSTF MEMBERS/ALTERNATES ATTENDANCE – December 8, 2022

CSTF Members & Designated Alternates	Affiliation/Perspective Represented	Attendance
Jon Tunheim, Co-Chair (Russell Brown)	Washington Association of Prosecuting Attorneys	✓
Rep. Roger Goodman, Co-Chair	Washington State House of Representatives, Democratic Caucus	✓
Waldo Waldron-Ramsey, Co-Chair (Ginny Parham)	Washington Community Action Network, Representing Interests of Incarcerated Persons	✓
Sen. Chris Gildon	Washington State Senate, Republican Caucus	✓
Sen. Manka Dhingra	Washington State Senate, Democratic Caucus	
Rep. Carolyn Eslick	Washington State House of Representatives, Republican Caucus	✓
Sonja Hallum	Washington State Office of the Governor	
Elaine Deschamps (Clela Steelhammer)	Washington State Caseload Forecast Council (non- decisional seat)	✓
Mac Pevey (Diane Ashlock)	Washington State Department of Corrections	✓
Judge Wesley Saint Clair (Keri-Anne Jetzer)	Washington State Sentencing Guidelines Commission	✓
Melody Simle (Suzanne Gordon)	Statewide Family Council	✓
Francis Adewale (Interim)	Statewide Reentry Council	✓
Judge Josephine Wiggs	Superior Court Judges' Association	✓
Gregory Link (Kim Gordon)	Washington Association of Criminal Defense Attorneys; Washington Defender Association	✓
Chief Gregory Cobb (Chief Brian Smith)	Washington Association of Sheriffs and Police Chiefs	✓
Councilmember Derek Young	Washington State Association of Counties	✓
Judge Veronica Galván (Frank Thomas)	Washington State Minority and Justice Commission	
Chief James Schrimpscher	Fraternal Order of Police (Labor Organization Representing Active Law Enforcement Officers in Washington State)	
Blaze Vincent (Nick Straley)	Seattle Clemency Project, Representing Interests of Incarcerated Persons	✓
Tiffany Attrill (Kameon Quillen)	King County, Representing Interests of Crime Victims	✓
Riddhi Mukhopadhyay	Sexual Violence Law Center, Representing Interests of Crime Victims	✓

(Megan Allen)