

Washington State Criminal Sentencing Task Force

Detailed Guide to Potential
Recommendations

Part 2. Horizontal Axis Components of the
Sentencing Grid

Draft as of 4.5.22 Task Force Meeting

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- **Potential Recommendation 27c**.....pg 71
Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life.

CSTF 3 Policy Goals:

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

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

Reminder: Vertical Axis Potential Recommendations

Potential Recommendations 1-5

- # 1: Community Supervision Model
- # 2: Felony Class B no higher than OSL 9 and Felony Class C no higher than OSL 5
- # 3: Addresses sentencing ranges that exceed the statutory maximum for class C and class B felonies
- # 4: Offenses Sunset Committee
- # 5: Ongoing Monitoring and Evaluation of any Changes to the Grid

Potential Recommendations 6-9:

- # 6: Formulaic approach for OSL 1-5
- #7: 12 months or less, minimum become zero
- # 8: Eliminate straddle Cells
- #9: Keep straddle cells and create a state-funded intermediate sanction zone

Potential Recommendations # 10-13

- # 10: Eliminate mandatory minimum for Murder 1
- # 11: For aggravated murder 1, change the age for life without parole.
- # 12: Second chance review at 20 years
- # 13: Increasing the number of OSLs
- # 13a: Move Trafficking 1 to OSL 15 with Malicious Explosion of a Substance 1. Move all other offenses up one OSL
- # 13b: Collapse the ranges for Murder 1 for Criminal History Scores 0-4 and 5-9+

Potential Recommendations # 14

- # 14: Formulaic approach for OSL 6-9

Section 7

Potential Recommendations 15

15: Eliminate the offense-specific multipliers. And create a new column on the grid for repeat serious violent/violent offending.

Criminal History Score

		CRIMINAL HISTORY SCORE									
		0	1	2	3	4	5	6	7	8	9+
S E R I O U S N E S S L E V E L	XV	280 m	291.5 m	304 m	316 m	327.5 m	339.5 m	364 m	394 m	431.5 m	479.5 m
		240 - 320	250 - 333	261 - 347	271 - 361	281 - 374	291 - 388	312 - 416	338 - 450	370 - 493	411 - 548
	XIV	171.5 m	184 m	194 m	204 m	215 m	225 m	245 m	266 m	307 m	347.5 m
		123 - 220	134 - 234	144 - 244	154 - 254	165 - 265	175 - 275	195 - 295	216 - 316	257 - 357	298 - 397
	XIII	143.5 m	156 m	168 m	179.5 m	192 m	204 m	227.5 m	252 m	299.5 m	347.5 m
		123 - 164	134 - 178	144 - 192	154 - 205	165 - 219	175 - 233	195 - 260	216 - 288	257 - 342	298 - 397
	XII	108 m	119 m	129 m	140 m	150 m	161 m	169 m	207 m	243 m	279 m
		93 - 123	102 - 136	111 - 147	120 - 160	129 - 171	138 - 184	162 - 216	178 - 236	209 - 277	240 - 318
	XI	90 m	100 m	110 m	119 m	129 m	139 m	170 m	185 m	215 m	245 m
		78 - 102	86 - 114	95 - 125	102 - 136	111 - 147	120 - 158	146 - 194	159 - 211	185 - 245	210 - 280
	X	59.5 m	66 m	72 m	78 m	84 m	89.5 m	114 m	126 m	150 m	230.5 m
		51 - 68	57 - 75	62 - 82	67 - 89	72 - 96	77 - 102	98 - 130	108 - 144	129 - 171	149 - 198
	IX	36 m	42 m	47.5 m	53.5 m	59.5 m	66 m	89.5 m	101.5 m	126 m	150 m
		31 - 41	36 - 48	41 - 54	46 - 61	51 - 68	57 - 75	77 - 102	87 - 116	108 - 144	129 - 171
	VIII	24 m	30 m	36 m	42 m	47.5 m	53.5 m	78 m	89.5 m	101.5 m	126 m
	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	46 - 61	67 - 89	77 - 102	87 - 116	108 - 144	
VII	17.5 m	24 m	30 m	36 m	42 m	47.5 m	66 m	78 m	89.5 m	101.5 m	
	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	57 - 75	67 - 89	77 - 102	87 - 116	
VI	13m	18m	2y	2y 6m	3y	3y 6m	4y 6m	6y 6m	7y 6m	7y 6m	
	12+ - 14	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	46 - 61	57 - 75	67 - 89	77 - 102	
V	9m	13m	15m	17.5 m	25.5 m	38 m	47.5 m	59.5 m	72 m	84 m	
	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	41 - 54	51 - 68	62 - 82	72 - 96	
IV	6m	9m	13m	15m	17.5 m	25.5 m	38 m	50 m	61.5 m	73.5 m	
	3 - 9	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	53 - 70	63 - 84	
III	2m	5m	8m	11m	14m	19.5 m	25.5 m	38 m	50 m	59.5 m	
	1 - 3	3 - 8	4 - 12	9 - 12	12+ - 16	17 - 22	22 - 29	33 - 43	43 - 57	51 - 68	
II	0 - 90 days	4m	6m	8m	13m	16m	19.5 m	25.5 m	38 m	50 m	
	0 - 90 days	2 - 6	3 - 9	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	33 - 43	43 - 57	
I	0 - 60 days	3m	4m	5.5m	8m	13m	16m	19.5 m	25.5 m	25.5 m	
	0 - 60 days	0 - 90 days	2 - 5	2 - 6	3 - 8	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	

- Ranges from 0 – 9+
- Based on prior convictions and current offenses
- Within a row, as criminal history score increases, sentence lengths increase

*Exception: unranked offenses are 0 – 12 months regardless of criminal history score

Criminal History Score

Complex calculation

- Different offenses scored differently
- Includes juvenile dispositions
- “Multipliers” based on relationship between current offense and prior convictions
- Point added if on community custody
- Some offenses “wash out” after 5 – 10 years and no longer count for points

		CRIMINAL HISTORY SCORE									
		0	1	2	3	4	5	6	7	8	9+
S E R I O U S N E S S L E V E L	XVI	Life Sentence without Parole/Death Penalty for individuals at over the age of 18. For those under the age of 18 a term of 25 years to life.									
	XV	260 m	291.5 m	304 m	316 m	327.5 m	339.5 m	354 m	394 m	431.5 m	479.5 m
	XIV	240 - 320	250 - 333	261 - 347	271 - 361	281 - 374	291 - 388	312 - 416	338 - 450	370 - 493	411 - 548
	XIII	171.5 m	184 m	194 m	204 m	215 m	225 m	245 m	266 m	307 m	347.5 m
	XII	123 - 220	134 - 234	144 - 244	154 - 254	165 - 265	175 - 275	195 - 295	216 - 316	257 - 357	298 - 397
	XI	143.5 m	158 m	168 m	179.5 m	192 m	204 m	227.5 m	252 m	299.5 m	347.5 m
	X	123 - 164	134 - 178	144 - 192	154 - 205	165 - 219	175 - 233	195 - 260	216 - 288	257 - 342	298 - 397
	IX	108 m	119 m	129 m	140 m	150 m	161 m	189 m	207 m	243 m	279 m
	VIII	93 - 123	102 - 136	111 - 147	120 - 160	129 - 171	138 - 184	162 - 216	178 - 236	209 - 277	240 - 318
	VII	90 m	100 m	110 m	119 m	129 m	139 m	170 m	185 m	215 m	245 m
	VI	78 - 102	86 - 114	95 - 125	102 - 136	111 - 147	120 - 158	146 - 194	159 - 211	185 - 245	210 - 280
	V	59.5 m	68 m	72 m	78 m	84 m	89.5 m	114 m	126 m	150 m	230.5 m
	IV	51 - 68	57 - 75	62 - 82	67 - 89	72 - 96	77 - 102	98 - 130	108 - 144	129 - 171	149 - 198
	III	36 m	42 m	47.5 m	53.5 m	59.5 m	66 m	89.5 m	101.5 m	126 m	150 m
	II	31 - 41	36 - 48	41 - 54	46 - 61	51 - 68	57 - 75	77 - 102	87 - 116	108 - 144	129 - 171
	I	24 m	30 m	36 m	42 m	47.5 m	53.5 m	78 m	89.5 m	101.5 m	126 m
		21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	46 - 61	67 - 89	77 - 102	87 - 116	108 - 144
	17.5 m	24 m	30 m	36 m	42 m	47.5 m	66 m	78 m	89.5 m	101.5 m	
	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	57 - 75	67 - 89	77 - 102	87 - 116	
	13m	18m	2y	2y 6m	3y	3y 6m	4y 6m	5y 6m	6y 6m	7y 6m	
	12+ - 14	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	46 - 61	57 - 75	67 - 89	77 - 102	
	9m	13m	15m	17.5 m	25.5 m	38 m	47.5 m	59.5 m	72 m	84 m	
	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	41 - 54	51 - 68	62 - 82	72 - 96	
	3 - 9	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	63 - 70	63 - 84	
	9m	9m	13m	15m	17.5 m	25.5 m	38 m	50 m	61.5 m	73.5 m	
	1 - 3	3 - 8	4 - 12	9 - 12	12+ - 16	17 - 22	22 - 29	33 - 43	43 - 57	51 - 68	
	2m	5m	6m	11m	14m	19.5 m	25.5 m	38 m	50 m	59.5 m	
	0 - 90 days	2 - 6	3 - 9	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	33 - 43	43 - 57	
	0 - 60 days	0 - 90 days	2 - 5	2 - 6	3 - 8	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	

Criminal History “Standard” Scoring

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)
-
- If there is more than one offense for in a sentence, the current offenses will score against one another, but are run concurrently (at the same time). There are exceptions that we’ll go over in the scoring document (SV & certain weapon offenses)
 - If a person was under community custody at the time of the current offense, 1 pt is added to the criminal history score.
 - Offenses score as if they were a completed offense (example: Robbery 2° is a Violent offense and Attempted Robbery 2° is NV, but would be scored as Violent offense).
 - Only offenses ranked on the adult felony sentence grid are scored – unranked offenses have a score of 0 and a standard range of 0-12 months.

Scoring Exceptions: Multiple Scoring for Adult Offenses

Current Offense:	Other Currents/Prior Offenses Score:
Violent	Violent = 2 pts
Serious Violent	SV = 3pts (for offenses not ran consecutive), Violents = 2 pts
Burglary 1	Burlary = 2 pts, Violents or SV = 2 pts
Felony Traffic	Veh Homicide or Veh Assault = 2 pts
Asslt or Homicide By Watercraft	Asslt or Homicide By Watercraft = 2 pts
Manufacture of Meth	Manufacture of Meth = 3 pts
Drug Offense* with history of Sex or SV offenses:	Prior Drugs* = 3 pts
Burglary 2 or Residential Burglary	Burglaries = 2 pts
Sex Offense (other than Failure to Register)	Sex = 3 pts
Failure to Register defined as Sex offense	Sex = 3 pts (except sex offense of FTR = 1 pt)
Domestic Violence (DV)	DV = 2 pts
*Definition of Drug excludes simple possession of controlled substances.	

Proposed Recommendation 15

Eliminate the offense-specific multipliers from the criminal history score calculation.

and

Create a new column on the grid for repeat serious violent/violent offending that increases the maximum of the standard sentencing range if the individual has convictions for a previous violent or serious violent offense.

- Recognizing that retributive sanctions may be justified for individuals who have committed repeat violent offenses (more cumulative harm done to society), this recommendation maintains the ability to increase sanctions for repeat violent offenses while eliminating a significant source of complexity, inefficiency, and error.

Column could be based on a percentage increase or a set number of months by OSL. Graduated by OSL (exact values could change)

	0	1	2	3	4	5	6	7	8	9+	Repeat SV/Violent	Repeat SV/Violent										
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																					
17	240	320	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	25%	60 mos
16	104	138	114	152	126	168	138	184	152	203	167	223	184	246	203	270	223	297	297	397	20%	48 mos
15	93	124	102	137	113	150	124	165	136	182	150	200	165	220	182	242	200	267	267	356	20%	48 mos
14	82	110	90	121	100	133	110	146	121	161	133	177	146	195	161	214	177	236	236	315	15%	36 mos
13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274	15%	36 mos
12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233	15%	24 mos
11	50	67	55	73	60	81	67	89	73	98	81	108	89	119	98	130	108	144	144	192	15%	24 mos
10	39	52	43	58	47	63	52	70	58	77	63	85	70	93	77	102	84	113	113	151	15%	12 mos
9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	10%	12 mos
8	14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	10%	12 mos
7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82	10%	12 mos
6	10	13	12	16	14	19	17	23	21	28	25	34	30	41	37	49	44	59	51	69	10%	12 mos
5	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54	10%	6 mos
4	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45	10%	6 mos
3	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36	10%	6 mos
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27	10%	6 mos
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	10%	6 mos
Unr	0 - 365 days																					

Simulating ranges based on set month approach.

	0	1	2	3	4	5	6	7	8	9+	Repeat SV/Violent																				
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	380	252	336	396	264	352	412	277	370	430	291	388	448	306	408	468	321	428	488	337	450	510	354	472	532	372	496	556	60
16	104	138	186	114	152	200	126	168	216	138	184	232	152	203	251	167	223	271	184	246	294	203	270	318	223	297	345	297	397	445	48
15	93	124	172	102	137	185	113	150	198	124	165	213	136	182	230	150	200	248	165	220	268	182	242	290	200	267	315	267	356	404	48
14	82	110	146	90	121	157	100	133	169	110	146	182	121	161	197	133	177	213	146	195	231	161	214	250	177	236	272	236	315	351	36
13	71	95	131	79	105	141	87	116	152	95	127	163	105	140	176	115	154	190	127	169	205	140	186	222	154	205	241	205	274	310	36
12	61	81	105	67	89	113	74	98	122	81	108	132	89	119	143	98	131	155	108	144	168	119	158	182	131	174	198	174	233	257	24
11	50	67	91	55	73	97	60	81	105	67	89	113	73	98	122	81	108	132	89	119	143	98	130	154	108	144	168	144	192	216	24
10	39	52	64	43	58	70	47	63	75	52	70	82	58	77	89	63	85	97	70	93	105	77	102	114	84	113	125	113	151	163	12
9	16	21	33	19	25	37	23	31	43	27	37	49	33	44	56	40	53	65	48	64	76	58	77	89	69	92	104	81	108	120	12
8	14	19	31	17	22	34	20	27	39	24	32	44	29	39	51	35	47	59	42	56	68	51	68	80	61	81	93	71	95	107	12
7	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	40	52	36	48	60	44	58	70	52	70	82	61	82	94	12
6	10	13	25	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	41	53	37	49	61	44	59	71	51	69	81	12
5	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	46	52	16	54	60	6
4	2	9	15	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	45	51	6
3	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	7	25	31	9	30	36	10	36	42	6
2	0	3	9	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	8	27	33	6
1	0	2	8	0	3	9	1	5	11	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	18	24	6
Unr	0 - 365 days										13																				

Simulations – using simulated grid

Scoring example 2 – Burglary 1st degree (OSL 7)

Standard CHS scoring (no multipliers) – CHS = 6; **Sentencing Range = 36-48 months**

With multipliers (Status Quo) – CHS = 10; **Sentencing range = 61-82 months**

	0	1	2	3	4	5	6	7	8	9+										
7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82

Proposed RV Column Recommendation

No multipliers (standard scoring only) CHS = 6; **Sentencing range = 36-60 months**

	0	1	2	3	4	5	6	7	8	9+	Repeat vio.																				
7	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	40	52	36	48	60	44	58	70	52	70	82	61	82	94	12 mos

Simulations – using simulated grid

Scoring example 3 – Assault of a Child 2nd Degree (OSL 9)

Standard CHS scoring (no multipliers) – CHS = 6; **Sentencing Range = 36-48 months**

With multipliers (Status Quo) – CHS = 9; **Sentencing range = 61-82 months**

	0	1	2	3	4	5	6	7	8	9+										
9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108

Proposed RV Column Recommendation

No multipliers (standard scoring only) CHS = 6; **Sentencing range = 48-76 months**

	0	1	2	3	4	5	6	7	8	9+	Repeat vio.																				
9	16	21	33	19	25	37	23	31	43	27	37	49	33	44	56	40	53	65	48	64	76	58	77	89	69	92	104	81	108	120	12

Simulations – using simulated grid

Scoring example 4a – Manslaughter first degree (OSL 12)

Standard CHS scoring (no multipliers) – CHS = 3; **Sentencing Range = 81-108 months**

With multipliers (Status Quo) – CHS = 9; **Sentencing range = 108-144 months**

	0	1	2	3	4	5	6	7	8	9+										
12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233

Proposed RV Column Recommendation

No multipliers (standard scoring only) CHS = 3; **Sentencing range = 81-132 months**

	0	1	2	3	4	5	6	7	8	9+	Repeat vio.																				
12	61	81	105	67	89	113	74	98	122	81	108	132	89	119	143	98	131	155	108	144	168	119	158	182	131	174	198	174	233	257	24

Proposed Recommendation 15

Reducing Complexities and Errors

- Multipliers happen in the background and have many complex rules that are not always known.
- Applying a new column consistently regardless of offense reduces the complexity and potential for errors.
- Applying a new column increases transparency and makes it clearer that an individual's sentence was higher or eligible to be higher as a result of the types of offenses in their criminal history.

Improving Effectiveness of the Sentencing System

- Multipliers increase discretion of the legislature and reduce the discretion of judges/prosecutors/defense. Recommendation creates more balanced discretion.
- Increasing the maximum allows for the similar outcomes as today (e.g., increased punishment for repeat offenses/retributive sanctions), but also allows for more consideration of cases that may not need increased sanctions.
- More individualized sanctions.

Promoting and Improving Public Safety

- Recommendation maintains the ability to issue more serious sanctions for more serious individuals/cases.
- In particularly egregious cases, aggravating factors are likely to apply.
- Many violent and serious violent offenses will also have enhancements which still apply.
- Given the lack of evidence that specialization is a signal for increased risk, there is no evidence that increased incapacitation is necessary to maintain public safety for repeat offenses vs. generalists.

Reducing Racial Disproportionality/Disparity

- Initial evidence from OFM suggests there is racial disproportionality in the application of multipliers which creates disproportionality in sentences.
- Increasing the maximum still allows for increased sentences when warranted, but allows defense to argue that increased sanctions are not justified given considerations of an individual's specific criminal history.
- Allows for more clear understanding of potential disparity by being able to compare cases where the sentence was increased due to the type of offenses in a person's criminal history. In status quo, there is significant heterogeneity in the meaning of different people's criminal history scores.

Additional Considerations

Eliminating all offense-specific multipliers or just eliminating all multipliers related to violent and serious violent offenses?

As proposed, the recommendation would eliminate multipliers for:

- Escape from Community Custody
- Escape 1/2
- Burglary 2/residential burglary
- Failure to register
- Theft of Motor vehicle/possession of stolen vehicle
- Manufacture methamphetamine
- NV Drug offenses
- NV felony traffic offenses

If multipliers function as a retributive form of punishment only, are they necessary or appropriate for non-violent offenses? Should individuals with three similar NV offenses be treated more harshly than individuals with 3 different NV offenses?

Serious Violent Felonies

Multiplier	Race						
	Missing	Asian	Black	Hispanic	Indigenous	Unknown	White
No Serious Violent Felony	77	741	3827	3092	605	202	10390
Serious Violent Felony Present	1	18	279	153	32	0	442
No Violent Felony	78	710	3614	3029	582	202	10087
Violent Felony Present	0	49	492	216	55	0	745

<u>Prior Serious Violent Felony</u>	
Race	Has Multiplier
Missing	1.28%
Asian	2.37%
Black	6.79%
Hispanic	4.71%
Indigenous	5.02%
Unknown	0.00%
White	4.08%

<u>Prior Violent Felony</u>	
Race	Has Multiplier
Missing	0.00%
Asian	6.46%
Black	11.98%
Hispanic	6.66%
Indigenous	8.63%
Unknown	0.00%
White	6.88%

Violent Felonies

Multiplier	Race						
	Missing	Asian	Black	Hispanic	Indigenous	Unknown	White
No Violent Felony	476	1405	7818	5502	1423	423	34047
Violent Felony Present	14	91	1109	365	121	5	2562

Prior Violent Felony

Race	Has Multiplier
Missing	2.86%
Asian	6.08%
Black	12.42%
Hispanic	6.22%
Indigenous	7.84%
Unknown	1.17%
White	7.00%

Burglary 1

Prior Burglary 2 Adult

Race	Has Multiplier
Missing	9.60%
Asian	9.06%
Black	16.77%
Hispanic	13.71%
Indigenous	17.63%
Unknown	0.00%
White	18.29%

Prior Burglary 2 Juvenile

Race	Has Multiplier
Missing	0.00%
Asian	2.27%
Black	2.28%
Hispanic	4.89%
Indigenous	4.91%
Unknown	0.00%
White	2.87%

Prior Violent Felony

Race	Has Multiplier
Missing	0.80%
Asian	17.15%
Black	28.82%
Hispanic	15.30%
Indigenous	20.23%
Unknown	4.55%
White	13.20%

Section 8

Potential Recommendations 16-18

16: Eliminate the aggravated departures that are not required to be pled/proven.

17: Create a new column on the grid with a cap on the maximum aggravated departure length

18: Create a new column on the grid with the maximum **mitigated** departure length.

Exceptional Sentences: Aggravators & Mitigators

- The court may impose a sentence **outside the standard sentence range** for an offense if it finds that there are substantial and compelling reasons justifying an *exceptional sentence*.
- If an exceptional sentence is given, the sentencing court is required to set forth the reasons for the departure from the standard range (RCW 9.94A.535) or from the consecutive/concurrent policy (RCW 9.94A.589(1) and (2)) in written Findings of Fact and Conclusions of Law.
- The law has a list of factors for the court to consider when imposing an aggravated exceptional sentence (above the standard range) or a mitigated exceptional sentence (below the standard range). RCW 9.94A.535

Exceptional Sentences: Aggravators & Mitigators

- Original SRA included 6 mitigating factors and 13 aggravating factors but was not exclusive.
- 2005 *Blakely v. Washington* and subsequent Leg. Actions –
 - *List of aggravating factors made exclusive*
 - *Expanded list of aggravating factors*
 - *4 that do not require findings of fact by a jury*
 - *25 aggravating factors post questions of fact that must be submitted to a jury*

Mitigated Exceptional Sentence – below the range

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence.

- Judicial discretion – no prescribed statutory list
- E.g., offense committed under duress

Aggravated Exceptional Sentence – above the range

Unlike mitigating circumstances, an exceptional sentence that is aggravated must be based on one or more of the circumstances listed in the statute.

- 32 factors with some having subsections (a – ff)
 - Many added with 2005 legislation, but additional changes in subsequent years (2007-2019)
- Must be “pled and proven” – limited judicial discretion
- Statutorily defined
- E.g., multiple victims

Aggravated Exceptional Sentence – above the range

Aggravators not requiring finding of fact by jury:

The court may impose an aggravated exceptional sentence if the defendant 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.

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.

The defendant committed multiple current offenses and the defendant's high criminal history score results in some offenses going unpunished.

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.

Potential Recommendation 16

Eliminate the aggravated departures that are not required to be pled/proven (eliminating the stipulation as an aggravated factor)

- Requires that there be a particular characteristic/circumstance justifying the aggravated exceptional sentence.

Possible modifications: Require that the J&S record more details about the reason for agreement (e.g., charge bargain to avoid three-strikes sentence, charge reduction, reduction in total number of charges) but do not eliminate the ability to stipulate to the aggravated sentence rather than requiring a finding of fact with a jury.

May 2021

Examining Washington State's Sentencing Guidelines: *A Report for the Criminal Sentencing Task Force*

In 2019, the legislature established the Washington State Criminal Sentencing Task Force (CSTF) through ESHB 1109.¹ The establishing statute directed the CSTF to "review state sentencing laws" and to "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."²

The CSTF established a working group to develop proposals for reforming the current sentencing guidelines within the Washington State Sentencing Reform Act (Chapter 9.94A RCW). As a part of this work, the CSTF contracted with the Washington State Institute for Public Policy (WSIPP) to complete a report examining sentencing outcomes for individuals using the current sentencing guidelines grid and potential sentencing outcomes for individuals using a modified version of the guidelines grid.

This report is organized into five sections. Section I provides an overview of current sentencing policies in Washington State. Section II provides an overview of the proposed modifications to the sentencing guidelines grid that arose from the CSTF meetings. Section III compares sentencing outcomes for standard non-drug sentences under the current guideline structure to outcomes under a modified guideline structure. Section IV examines trends in sentencing outcomes for non-standard sentences. Both Sections III and IV include an analysis of racial disproportionality.

Summary

The Washington State Criminal Sentencing Task Force (CSTF) was directed to review the state's sentencing laws. To better understand the landscape of sentencing in Washington and the potential impacts of reforming the state's sentencing laws, the CSTF contracted with WSIPP to examine felony sentencing in Washington State Superior Courts. The purpose of this report is to provide analytic data to assist with future policy discussions within the CSTF.

Using data from the Caseload Forecast Council, this report reviews the outcomes from FY 2019 felony sentences. Specifically, the report examines how standard, non-drug sentences vary across the current offense seriousness level-based sentencing guideline grid. The report also examines how sentences may vary across and alternative, felony class-based guideline grid.

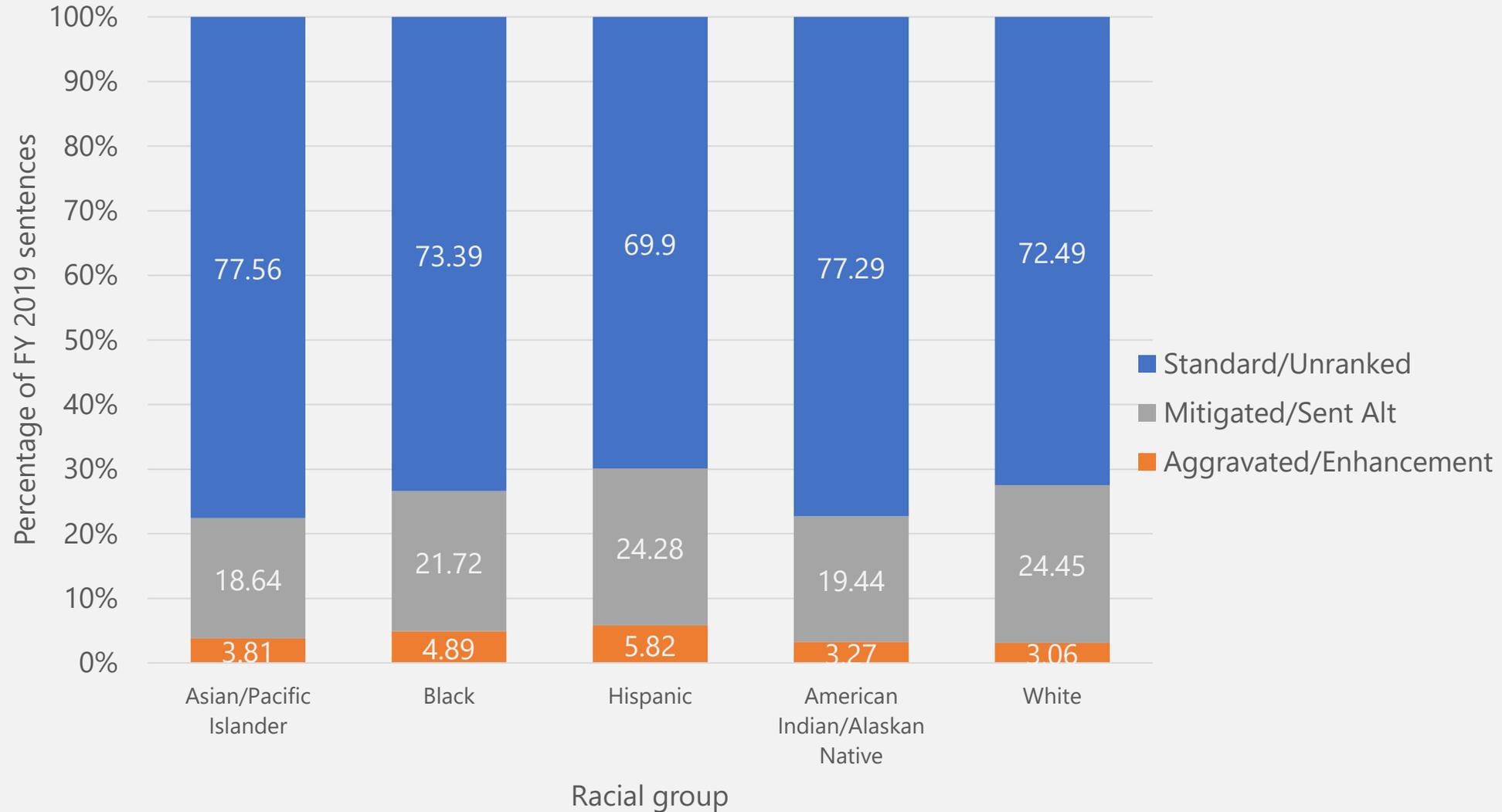
This report includes an examination of racial disproportionality in sentencing outcomes for standard sentences in the current and alternative guideline grids and for non-standard sentences including enhancements, exceptional sentences, and sentencing alternatives.

In general, the report found that average sentence lengths and incarceration rates may decrease under a class-based grid. However, racial disproportionality in sentencing outcomes was present under both grid systems.

Suggested citation: Knoth, L. (2021). *Examining Washington State's sentencing guidelines: A report for the Criminal Sentencing Task Force (Document Number 21-05-1907)*. Olympia: Washington State Institute for Public Policy.

Exceptional Sentences: FY19 Data -WSIPP

SENTENCE TYPES BY RACE



EXCEPTIONAL SENTENCES

Total 1,365 exceptional sentences

- 75% Mitigated
- 22% Aggravated
- 3% Within standard range

Overall average aggravated departures:

- 31.61 months for Whites
- 36.52 months for BIPOC

Overall average mitigated departures:

- 18.49 months for Whites
- 27.91 months for BIPOC

These differences may be driven by differences in CHS or types of offenses (e.g., lower stat maxes for class B and C offenses).

EXCEPTIONAL SENTENCES

	N	% of FY 2019 sentences	Average departure length in months
Aggravated exceptional			
Asian/Pacific Islander	5	1.0%	+39.87
Black	42	1.8%	+31.89
Hispanic	48	2.6%	+24
American Indian/Alaskan Native	12	2.0%	+15.7
White	185	1.7%	+18.49
Mitigated exceptional			
Asian/Pacific Islander	27	5.4%	-87.01
Black	183	7.9%	-41.46
Hispanic	178	9.7%	-30.11
American Indian/Alaskan Native	29	4.7%	-23.85
White	593	5.4%	-31.61

EXCEPTIONAL AGGRAVATED

Offense SL	Total			White			BIPOC		
	N	Avg. length over max	Avg. % of max	N	Avg. length over max	Avg. % of max.	N	Avg. length over max	Avg. % of max.
15	3	+80.0	15.6%	1	+66.0	9.0%	2	+87.0	18.8%
14	4	+95.3	36.3%	3	+90.3	31.7%	1	+110.0	50.0%
13	--	--	--	--	--	--	--	--	--
12	14	+104.4	37.9%	9	+98.7	35.9%	5	+114.8	41.3%
11	6	+56.3	31.7%	5	+37.6	17.4%	1	+150.0	103.1%
10	6	+112.3	73.4%	5	+128.4	78.6%	0		
9	6	+60.8	63.8%	3	+59.0	68.0%	3	+62.7	59.7%
8	6	+19.6	34.0%	4	+14.1	38.2%	2	+30.5	25.6%
7	32	+58.3	88.4%	18	+55.8	90.1%	14	+61.5	86.2%
6	5	+73.2	81.5%	3	+109.3	116.0%	--	--	--
5	14	+27.9	82.0%	11	+23.1	58.9%	3	+45.3	166.7%
4	76	+21.1	94.1%	40	+20.8	80.0%	33	+22.9	115.6%
3	70	+18.4	106.4%	42	+14.0	45.5%	28	+24.9	197.7%
2	29	+17.9	330.3%	19	+18.6	299.1%	9	+17.2	399.5%
1	28	+8.8	57.2%	22	+9.1	57.8%	6	+7.7	54.8%

As SL increases, the length of aggravated departures tended to increase.

However, as SL increases, the average percent of the maximum decreased.

BIPOC received greater increases in their sentence for 8 of the 12 SLs.

EXCEPTIONAL MITIGATED

Offense SL	Total			White			BIPOC		
	N	Avg. length below min.	Avg. % of min.	N	Avg. length below min.	Avg. % of min.	N	Avg. length below min.	Avg. % of min.
15	6	-138.4	32.1%	1	-60.0	33.3%	5	-154.1	31.9%
14	6	-153.6	37.6%	2	-38.3	41.5%	4	-211.3	35.7%
13	--	--	--	--	--	--	--	--	--
12	30	-95.2	37.8%	12	-49.3	41.3%	18	-125.8	35.4%
11	9	-34.5	40.2%	5	-36.8	44.4%	4	-31.6	35.0%
10	12	-80.6	46.9%	6	-55.0	64.2%	6	-106.2	29.6%
9	40	-22.5	44.5%	17	-20.9	43.3%	21	-23.6	46.5%
8	5	-13.2	48.9%	1	-15.0	71.4%	4	-12.8	43.3%
7	26	-29.1	42.5%	15	-21.6	50.8%	11	-39.3	31.2%
6	7	-16.1	37.1%	5	-9.6	34.3%	2	-32.5	44.0%
5	253	-26.3	58.2%	150	-27.1	58.6%	103	-25.3	57.6%
4	153	-13.3	46.9%	98	-12.3	48.2%	52	-15.8	44.4%
3	276	-13.6	56.4%	157	-13.2	58.7%	110	-15.0	54.5%
2	127	-15.2	54.9%	79	-16.1	60.2%	47	-14.0	46.0%
1	75	-7.8	55.6%	45	-8.1	59.2%	30	-7.4	50.1%

As SL increases, the length of mitigated departures tended to increase.

However, as SL increases, the average percent of the minimum decreased.

Whites received often downward departures that were a larger percentage of the minimum than BIPOC defendants.

EXCEPTIONAL SENTENCES – REASONS FOR DEPARTURE (WSIPP FINDINGS)

	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%

EXCEPTIONAL SENTENCES – MOST COMMON OFFENSES

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

Many of the aggravated sentences associated with offenses where a higher degree offense would be a three-strikes offense.

Note: July 2019 Rob 2 removed as a strike

Potential Recommendation 17

*Create a new column on the grid with a cap on the maximum **aggravated** departure length.*

- Graduated such that longer departures are acceptable for higher offense seriousness levels
- The maximum departure length for OSL 9 should not exceed 12 months and the maximum departure length for OSL 5 should not exceed 6 months to be consistent with statutory maximums.

Potential Recommendation 17

*Create a new column on the grid with the maximum **aggravated** departure length.*

Grid Subgroup Discussion Points:

- Consistent with concepts of **bounded discretion**.
- Sentencing enhancements represent one end of the spectrum – no (or very limited) judicial discretion. If a particular characteristic is pled or proven, the judge must sentence the individual to the amount of time prescribed by the enhancement.
- Aggravating factors in the status quo represent the other end of the spectrum – unfettered judicial discretion. If a particular characteristic is pled or proven, the judge can impose any sentence up to the stat max.
- Proposed recommendation is a middle ground or more balanced approach to discretion. The approach does not prescribe the amount of time that must be added if a characteristic is pled or proven, but also does not allow unfettered discretion.

Potential Recommendation 17

*Create a new column on the grid with the maximum **aggravated** departure length.*

Grid Subgroup Discussion Points:

- *Reduces complexity and errors:*
 - Increases consistency/transparency/predictability in sentencing. Explicitly a part of the grid.
- *Improving Effectiveness of the Sentencing System:*
 - May reduce disproportionate application of aggravated departures by establishing consistent limits regardless of defendant characteristics.
 - Maintains individualized sentencing, but with more balanced discretion.
 - Some concerned about flexibility to engage in charge bargaining.
 - If stat max for Class A is life, but grid caps aggravated sentences, then judges can't access/use stat max.
- *Promoting Public Safety:*
 - No robust evidence of a deterrence effect or correlation between aggravated characteristics and risk of recidivism.
 - Retributive policies may increase collateral consequences of incarceration
- *Increasing Racial Equity*
 - Aggravating factors found to be source of disproportionality in sentence lengths

Potential Recommendation 17

*Create a new column on the grid with the maximum **aggravated** departure length.*

Grid Subgroup Discussion Points:

- Question of how can courts deal with extreme cases on the margins.
 - Should we legislate to the hypothetical extremes?

Possible modifications:

- Include the max departure column only for OSL 1-9.
- Make advisory instead of presumptive/mandatory

Potential Recommendation 18

*Create a new column on the grid with the maximum **mitigated** departure length.*

- The amount should be graduated such that longer departures are acceptable for higher offense seriousness levels.

Grid Subgroup Discussion Points:

- Unclear whether there is a need – could prevent justified reductions.
- Racial disproportionality not as apparent with mitigated sentences in WSIPP report
- Would essentially establish mandatory minimums for all offenses which currently do not exist.

Possible modifications:

- Make advisory instead of presumptive/mandatory

Column based on a set number of months by OSL. Graduated by OSL (exact values could change. Could also be based on a percentage increase)

	0	1	2	3	4	5	6	7	8	9+	Agg/Mit +/-										
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										months										
17	240	320	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	48 mos
16	104	138	114	152	126	168	138	184	152	203	167	223	184	246	203	270	223	297	297	397	48 mos
15	93	124	102	137	113	150	124	165	136	182	150	200	165	220	182	242	200	267	267	356	36 mos
14	82	110	90	121	100	133	110	146	121	161	133	177	146	195	161	214	177	236	236	315	36 mos
13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274	24 mos
12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233	24 mos
11	50	67	55	73	60	81	67	89	73	98	81	108	89	119	98	130	108	144	144	192	24 mos
10	39	52	43	58	47	63	52	70	58	77	63	85	70	93	77	102	84	113	113	151	24 mos
9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	12 mos
8	14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	12 mos
7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82	12 mos
6	10	13	12	16	14	19	17	23	21	28	25	34	30	41	37	49	44	59	51	69	12 mos
5	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54	6 mos
4	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45	6 mos
3	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36	6 mos
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27	6 mos
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	6 mos
Unr	0 - 365 days										42										

Simulating aggravated ranges based on set month approach.

	0	1	2	3	4	5	6	7	8	9+	Agg	Max																			
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	368	252	336	384	264	352	400	277	370	418	291	388	436	306	408	456	321	428	476	337	450	498	354	472	520	372	496	544	48
16	104	138	186	114	152	200	126	168	216	138	184	232	152	203	251	167	223	271	184	246	294	203	270	318	223	297	345	297	397	445	48
15	93	124	160	102	137	173	113	150	186	124	165	201	136	182	218	150	200	236	165	220	256	182	242	278	200	267	303	267	356	392	36
14	82	110	146	90	121	157	100	133	169	110	146	182	121	161	197	133	177	213	146	195	231	161	214	250	177	236	272	236	315	351	36
13	71	95	119	79	105	129	87	116	140	95	127	151	105	140	164	115	154	178	127	169	193	140	186	210	154	205	229	205	274	298	24
12	61	81	105	67	89	113	74	98	122	81	108	132	89	119	143	98	131	155	108	144	168	119	158	182	131	174	198	174	233	257	24
11	50	67	91	55	73	97	60	81	105	67	89	113	73	98	122	81	108	132	89	119	143	98	130	154	108	144	168	144	192	216	24
10	39	52	76	43	58	82	47	63	87	52	70	94	58	77	101	63	85	109	70	93	117	77	102	126	84	113	137	113	151	175	24
9	16	21	33	19	25	37	23	31	43	27	37	49	33	44	56	40	53	65	48	64	76	58	77	89	69	92	104	81	108	120	12
8	14	19	31	17	22	34	20	27	39	24	32	44	29	39	51	35	47	59	42	56	68	51	68	80	61	81	93	71	95	107	12
7	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	40	52	36	48	60	44	58	70	52	70	82	61	82	94	12
6	10	13	25	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	41	53	37	49	61	44	59	71	51	69	81	12
5	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	46	52	16	54	60	6
4	2	9	15	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	45	51	6
3	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	7	25	31	9	30	36	10	36	42	6
2	0	3	9	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	8	27	33	6
1	0	2	8	0	3	9	1	5	11	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	18	24	6
Unr	0 - 365 days											43	6																		

Simulations – using simulated grid

Child Molest 3 with an aggravated factor
SQUO: Maximum sentence = 60 months (class C stat max)
Proposed Rec: Maximum sentence = 60 months (CHS 9+)

	0	1	2	3	4	5	6	7	8	9+	Agg Max																				
5	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	46	52	16	54	60	6

Criminal Mistreatment 1 with an aggravated factor
SQUO: Maximum sentence = 120 months (Class B stat max)
Proposed Rec: Maximum sentence = 120 months (CHS 9+)

	0	1	2	3	4	5	6	7	8	9+	Agg Max																				
9	16	21	33	19	25	37	23	31	43	27	37	49	33	44	56	40	53	65	48	64	76	58	77	89	69	92	104	81	108	120	12

Assault 1 with an aggravated factor
SQUO: Maximum sentence = Life (Class A stat max)
Proposed Rec: Maximum sentence = 298 months (CHS 9+)

	0	1	2	3	4	5	6	7	8	9+	Agg Max																				
13	71	95	119	79	105	129	87	116	140	95	127	151	105	140	164	115	154	178	127	169	193	140	186	210	154	205	229	205	274	298	24

Potential Recommendation 17

*Create a new column on the grid with the maximum **aggravated** departure length.*

Remaining questions:

- Should the cap be per aggravating factor? If yes, how would that work for stipulated agreements if they are not required to list the associated aggravating characteristics?
- Should sentences within the prescribed aggravated maximum be appealable?
- Should there be any conditions where exceptional sentences may be granted above the prescribed departure maximum?

Proposed Recommendation 15 and 17

Repeat Violent Column & Aggravator Cap Column

- Looking at together: potential recommendation of a repeat violent offense column and the potential recommendation of an aggravator cap column.

Combining Potential Rec's 15 and 17

Aggravator Column + Repeat SV/Violent Column

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent										
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																					
17	240	320	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	48 mos	60 mos
16	104	138	114	152	126	168	138	184	152	203	167	223	184	246	203	270	223	297	297	397	48 mos	48 mos
15	93	124	102	137	113	150	124	165	136	182	150	200	165	220	182	242	200	267	267	356	36 mos	48 mos
14	82	110	90	121	100	133	110	146	121	161	133	177	146	195	161	214	177	236	236	315	36 mos	36 mos
13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274	24 mos	36 mos
12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233	24 mos	24 mos
11	50	67	55	73	60	81	67	89	73	98	81	108	89	119	98	130	108	144	144	192	24 mos	24 mos
10	39	52	43	58	47	63	52	70	58	77	63	85	70	93	77	102	84	113	113	151	24 mos	12 mos
9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	12 mos	12 mos
8	14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	12 mos	12 mos
7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82	12 mos	12 mos
6	10	13	12	16	14	19	17	23	21	28	25	34	30	41	37	49	44	59	51	69	12 mos	12 mos
5	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54	6 mos	6 mos
4	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45	6 mos	6 mos
3	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36	6 mos	6 mos
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27	6 mos	6 mos
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	6 mos	6 mos
nr	0 - 365 days																					

Proposed Recommendation 15

Eliminate the offense-specific multipliers from the criminal history score calculation.

and

Create a new column on the grid for repeat violent offending that increases the maximum of the standard sentencing range if the individual has convictions for a previous violent or serious violent offense.

Simulating ranges based on set month approach.

	0	1	2	3	4	5	6	7	8	9+	Repeat SV/Violent																				
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	380	252	336	396	264	352	412	277	370	430	291	388	448	306	408	468	321	428	488	337	450	510	354	472	532	372	496	556	60
16	104	138	186	114	152	200	126	168	216	138	184	232	152	203	251	167	223	271	184	246	294	203	270	318	223	297	345	297	397	445	48
15	93	124	172	102	137	185	113	150	198	124	165	213	136	182	230	150	200	248	165	220	268	182	242	290	200	267	315	267	356	404	48
14	82	110	146	90	121	157	100	133	169	110	146	182	121	161	197	133	177	213	146	195	231	161	214	250	177	236	272	236	315	351	36
13	71	95	131	79	105	141	87	116	152	95	127	163	105	140	176	115	154	190	127	169	205	140	186	222	154	205	241	205	274	310	36
12	61	81	105	67	89	113	74	98	122	81	108	132	89	119	143	98	131	155	108	144	168	119	158	182	131	174	198	174	233	257	24
11	50	67	91	55	73	97	60	81	105	67	89	113	73	98	122	81	108	132	89	119	143	98	130	154	108	144	168	144	192	216	24
10	39	52	64	43	58	70	47	63	75	52	70	82	58	77	89	63	85	97	70	93	105	77	102	114	84	113	125	113	151	163	12
9	16	21	33	19	25	37	23	31	43	27	37	49	33	44	56	40	53	65	48	64	76	58	77	89	69	92	104	81	108	120	12
8	14	19	31	17	22	34	20	27	39	24	32	44	29	39	51	35	47	59	42	56	68	51	68	80	61	81	93	71	95	107	12
7	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	40	52	36	48	60	44	58	70	52	70	82	61	82	94	12
6	10	13	25	12	16	28	14	19	31	17	23	35	21	28	40	25	34	46	30	41	53	37	49	61	44	59	71	51	69	81	12
5	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	46	52	16	54	60	6
4	2	9	15	3	10	16	3	12	18	4	15	21	5	18	24	6	22	28	8	26	32	9	32	38	11	38	44	13	45	51	6
3	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	7	25	31	9	30	36	10	36	42	6
2	0	3	9	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	17	23	6	21	27	8	27	33	6
1	0	2	8	0	3	9	1	5	11	1	6	12	2	7	13	2	8	14	3	10	16	3	12	18	4	14	20	5	18	24	6
Unr	0 - 365 days										49																				

Aggravator Column and Repeat SV/Violent Column.

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent										
18	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																					
17	240	320	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	48 mos	60 mos
16	104	138	114	152	126	168	138	184	152	203	167	223	184	246	203	270	223	297	297	397	48 mos	48 mos
15	93	124	102	137	113	150	124	165	136	182	150	200	165	220	182	242	200	267	267	356	36 mos	48 mos
14	82	110	90	121	100	133	110	146	121	161	133	177	146	195	161	214	177	236	236	315	36 mos	36 mos
13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274	24 mos	36 mos
12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233	24 mos	24 mos
11	50	67	55	73	60	81	67	89	73	98	81	108	89	119	98	130	108	144	144	192	24 mos	24 mos
10	39	52	43	58	47	63	52	70	58	77	63	85	70	93	77	102	84	113	113	151	24 mos	12 mos
9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	12 mos	12 mos
8	14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	12 mos	12 mos
7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82	12 mos	12 mos
6	10	13	12	16	14	19	17	23	21	28	25	34	30	41	37	49	44	59	51	69	12 mos	12 mos
5	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54	6 mos	6 mos
4	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45	6 mos	6 mos
3	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36	6 mos	6 mos
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27	6 mos	6 mos
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	6 mos	6 mos
Unr	0 - 365 days											50										

Simulations – using status quo system

*Base offense – Assault 1, OSL 12
3 prior convictions – sentence range 120 – 160 months*

	0		1		2		3		4		5		6		7		8		9+	
12	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318

*Base offense – Assault 1, OSL 12
3 prior convictions, 1 is violent (multiplier applies)
Sentence range 129 – 171 months*

	0		1		2		3		4		5		6		7		8		9+	
12	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318

*Base offense – Assault 1, OSL 12
3 prior convictions, 1 is violent (multiplier applies) AND an **aggravating factor** –
Sentence range 129 – **LIFE (Stat Max, unlimited judicial discretion)***

	0		1		2		3		4		5		6		7		8		9+	
12	93	LIFE	102	LIFE	111	LIFE	120	LIFE	129	LIFE	138	LIFE	162	LIFE	178	LIFE	209	LIFE	240	LIFE

Simulations – using simulated grid

*Base offense – Assault 1, OSL 13
3 prior convictions – sentence range 95 - 127 months*

	0	1	2	3	4	5	6	7	8	9+
13	71 95	79 105	87 116	95 127	105 140	115 154	127 169	140 186	154 205	205 274

*Base offense – Assault 1, OSL 13
3 prior convictions, 1 prior violent – sentence range 95 - 163 months*

	0	1	2	3	4	5	6	7	8	9+	Agg Max	Repeat Violent
13	71 95 131	79 105 141	87 116 152	95 127 163	105 140 176	115 154 190	127 169 205	140 186 222	154 205 241	205 274 310	24	36

*Base offense – Assault 1, OSL 13
3 prior convictions, 1 prior violent AND an **aggravating factor** –
Sentence range 95 - 187 months (bounding judicial discretion)*

	0	1	2	3	4	5	6	7	8	9+	Agg Max	Repeat Violent
13	71 95 155	79 105 165	87 116 176	95 127 187	105 140 200	115 154 214	127 169 229	140 186 246	154 205 265	205 274 334	24	36

Section 9

Potential Recommendations 19-25

19: Eliminate the mandatory consecutive sentencing for serious violent offenses and make sentences concurrent.

20: Eliminate the mandatory consecutive sentencing for serious violent offenses and add an aggravating factor for cases involving serious violent offenses with multiple victims.

21: Modify the mandatory consecutive sentencing for serious violent offenses such that it applies only when the offenses are for different victims.

22: Eliminate the consecutive sentencing for firearm offenses and make those sentences concurrent.

23: Eliminate the mandatory consecutive sentencing for firearms offenses but allow judges discretion to make sentences consecutive.

24: Eliminate the mandatory consecutive sentencing for firearms offenses but add aggravating factors that may address the cases with most concern about culpability.

25: 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

Consecutive and Concurrent Sentencing Policy

RCW 9.94A.589

Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently unless there are two or more separate serious violent offenses, driving under the influence offenses, or weapon offenses. In those cases, the sentences are served consecutively, unless an exceptional sentence is entered (RCW 9.94A.589(1)(a-c)).

There are exceptions to this general rule....

Exceptions:

- **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.

Exceptions Cont.:

- **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.

And 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.

Potential Recommendation 19

Multiple Serious Violent Offenses:

Eliminate the mandatory consecutive sentencing for serious violent offenses and make sentences concurrent.

Grid Subgroup Discussion:

- Purely retributive and increased retribution is accounted for already in higher offense seriousness levels.
- No evidence that mandatory consecutive sentencing is more effective at reducing recidivism (public safety).
- Very rare – 33 instances in FY 2019.
- Mandatory consecutive sentencing may disproportionately impact defendants of color.

Potential Recommendation 20

Multiple Serious Violent Offenses:

Eliminate the mandatory consecutive sentencing for serious violent offenses and add an aggravating factor for cases involving serious violent offenses with multiple victims.

Grid Subgroup Discussion:

- Maintains ability to increase sentences in instances where there are multiple offenses and multiple victims.
- Increased sentences when there are multiple victims ensures that victimization of each individual is recognized.
- Moderates the increase in sentences. Allows for a higher than standard sentence, but doesn't require the sentence be doubled (as it would be if two sentences are consecutive).
- Reduces impact of discretionary decisions of whether to charge a criminal event with a single victim as multiple charges or a single charge which may disproportionately affect defendants of color and/or cases where the victim is white.

Potential Recommendation 21

Multiple Serious Violent Offenses:

Modify the mandatory consecutive sentencing for serious violent offenses such that it applies only when the offenses are for different victims.

Grid Subgroup Discussion:

- Maintains ability to increase sentences in instances where there are multiple offenses and multiple victims.
- Increased sentences when there are multiple victims ensures that victimization of each individual is recognized.
- Unlike recommendation 2, this recommendation imposes the full sentence for events associated with each victim.
- Reduces impact of discretionary decisions of whether to charge a criminal event with a single victim as multiple charges or a single charge which may disproportionately affect defendants of color and/or cases where the victim is white.

Potential Recommendation Summary

Multiple Serious Violent Offenses:

#19: Eliminate the mandatory consecutive sentencing for serious violent offenses and make sentences concurrent.

#20: Eliminate the mandatory consecutive sentencing for serious violent offenses and add an aggravating factor for cases involving serious violent offenses with multiple victims.

#21: Modify the mandatory consecutive sentencing for serious violent offenses such that it applies only when the offenses are for different victims.

Potential Recommendation 22

Certain Firearm-Related Offenses*:

Eliminate the consecutive sentencing for firearm offenses and make those sentences concurrent.

Grid Subgroup Discussion:

- Retributive. No evidence that mandatory consecutive sentencing is more effective at reducing recidivism (public safety).
- Eliminates complexity of trying to determine when sentences are concurrent and when they are consecutive.
- Mandatory consecutive sentencing may disproportionately impact defendants of color.
- This is a carve out just for guns offenses. There are other means of addressing these offenses that would be more effective and less complex, for example, increasing the offense seriousness level.

**Note: This is different from firearm/deadly weapons enhancements.*

Potential Recommendation 23

Certain Firearm-Related Offenses*:

Eliminate the mandatory consecutive sentencing for firearms offenses but allow judges discretion to make sentences consecutive.

Grid Subgroup Discussion:

- Eliminates complexity of trying to determine when sentences are concurrent and when they are consecutive.
- Allows more tailored sentences to the circumstances of the case. For example, even if there are 10 guns, maybe only running 2-3 sentences consecutive instead of all 10 is sufficient.
- Maintains some aspect of the current firearm policy – with gun violence increasing in some areas, may not be political will to fully eliminate.
- Moderates extremely lengthy sentences.
- Mandatory consecutive sentencing may disproportionately impact defendants of color. But shifting discretion may allow disproportionality to persist.

**Note: This is different from firearm/deadly weapons enhancements.*

Potential Recommendation 24

Certain Firearm-Related Offenses*:

Eliminate the mandatory consecutive sentencing for firearms offenses but add aggravating factors that may address the cases with most concern about culpability.

Grid Subgroup Discussion:

- There are differences between cases such as robbing a gun store vs. burglarizing a home that happens to have a gun vs. targeting a home to burgle because they know the owner has a gun collection.
- Instead of basing decisions based on just the numbers of guns, this policy shifts focus to the unique characteristics/motive/culpability in each case.
- Maintains some aspect of the current firearm policy – with gun violence increasing in some areas, may not be political will to fully eliminate without some alternative.
- Some members questioned whether aggravating factors are needed if situations where the culpability is higher (e.g., robbing a gun store and stealing 20 guns) will already have an exceptional sentence because criminal history score will exceed 9.

*Note: This is different from firearm/deadly weapons enhancements.

Potential Recommendation 25

Certain Firearm-Related Offenses*:

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.

Grid Subgroup discussion:

- Changes the unit of prosecution for gun crimes. Right now, the sentencing unit is each gun. This would change the unit of prosecution to the criminal episode.
- Maintains some aspect of the current firearm policy – with gun violence increasing in some areas, may not be political will to fully eliminate without some alternative.
- Still ensures that if there is a case with multiple criminal events (e.g., multiple robberies of gun stores) are still sentenced consecutively.
- Reduces unnecessarily long sentences while still ensuring accountability – many of the cases with extreme sentencing lengths is based on the number of guns in an episode (e.g., in a single burglary).
- Concern that a higher number of guns that could eventually end up on the streets presents a greater risk to society.

*Note: This is different from firearm/deadly weapons enhancements.

Potential Recommendation Summary

Certain Firearm-Related Offenses*:

#22: Eliminate the consecutive sentencing for firearm offenses and make those sentences concurrent.

#23: Eliminate the mandatory consecutive sentencing for firearms offenses but allow judges discretion to make sentences consecutive.

#24: Eliminate the mandatory consecutive sentencing for firearms offenses but add aggravating factors that may address the cases with most concern about culpability.

#25: 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.

**Note: This is different from firearm/deadly weapons enhancements.*

Section 10

Potential Recommendations 26-27a-c

26: Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three-strikes must be treated as elements of the crime

#27a: Eliminate and do not replace 3-strikes.

#27b: Replace 3-strikes mandatory sentence with determinate plus - 25 years with opportunity for release.

#27c: Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life

“Persistent Offenders”

Voters approved Initiative 593 ("Three Strikes and You're Out") in 1993.

The law, which became effective on December 2, 1993, established the penalty of life in prison without the possibility of release for “persistent offenders.”

1996 – Persistent offending sentencing option expanded to include two-strike sex offenders.

The life sentence applies to both “Three Strike” and “Two Strike” offenders.

3 Strikes

A sentence of life without the possibility of parole for an individual convicted of a “most-serious” offense, who had at least two prior convictions for such offenses, that would be included in the offender score. In order to count as a strike, the first prior conviction must have occurred before the second prior conviction.

Juvenile offenses do not count as a strike, unless they are declined from juvenile court and sentenced as an adult.

2 Strikes Law

The 2-strike law applies to an individual convicted of certain sex offenses.

To qualify as a 2-striker, an individual has to be convicted of Rape 1 or 2, Rape of a Child 1 or 2, Child Molestation 1, Indecent Liberties with Force (or attempts) or a list of specified offenses that had a finding of Sexual Motivation; and have one prior conviction for such an offense.

Juvenile offenses do not count as a strike, unless they are declined from juvenile court and sentenced as an adult.

Also, for a current conviction of Rape of a Child 1, the individual must be 16 or older when the individual committed the offense and for a current conviction of Rape of a Child 2, the individual must be 18 or older when the individual committed the offense.

Potential Recommendation 26

Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three-strikes must be treated as elements of the crime.

- Pled in information
- Proven to a jury beyond a reasonable doubt
- Individual acknowledges and agrees in a plea agreement

Grid Subgroup Discussion Points:

- Currently there is no requirement for defendants to be put on notice that their current case and criminal history means a guilty plea or jury finding will carry term of life.
- Currently there is no requirement for jury to be notified that a finding of guilt will qualify as a third strike, resulting in a sentence of life.
- Some defense attorneys may prefer that the jury not be notified of the two prior strikes as it may prejudice the jury. Could lead to prosecutors using prior convictions as evidence for current case.
- Propensity evidence already introduced/used in other cases (e.g., cx DUI disclosure of 3 prior DUIs)

Potential Recommendation 27: a or b or c

a. Eliminate and do not replace 3-strikes.

Grid Subgroup Discussion Points:

- Sentences are already lengthy because they are a high OSL and individuals will have higher criminal history scoring
- Undermines the structure of the sentencing system by carving out exceptions
- Other approaches could meet same goals within the grid (e.g., repeat violent column on grid)
- Restores individualized sentencing - 25 years may not be appropriate or necessary in all cases

b. Replace 3-strikes mandatory sentence with determinate plus - 25 years with opportunity for release.

Grid Subgroup Discussion Points:

- Could reduce incarceration lengths with individuals being released upon review
- Recognizes potential for rehabilitation/reform
- Could reduce racial disparity at sentencing
- Shifts discretion to the board conducting release reviews
- Replicates concerns of parole that there is a group facing an unknown amount of time in incarceration

c. Replace 3-strikes mandatory sentence with mandatory minimum 25 years with judicial discretion up to life

Grid Subgroup Discussion Points:

- Inability to show growth after time like you would with a determinate plus
- Shifts discretion to judges rather than some external review board

Next Set of Potential
Recommendations:

June 2, 2022 CSTF
Meeting