

Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: June 2, 2022

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

ATTENDEES:

- **Task Force Members and Alternates:** See Appendix A
- **Members of the Public:** *See pg. 12*
- **Facilitation Team:** Amanda Murphy, Chris Page, Molly Stenovec, Maggie Counihan, Zack Cefalu – Ruckelshaus Center
- **Research/Technical Support:** Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy (WSIPP)*

MEETING GOALS:

- Task Force Introductions and Updates
- Review Task Force Input on Three Policy Goals
- Review and Discuss Potential Recommendations on Community Intermediate Sanctions
- Review and Discuss Potential Recommendations on Misdemeanors

WELCOME, INTRODUCTIONS, AGENDA REVIEW and GROUND RULES

Amanda and Chris welcomed Task Force members and alternates, reviewed the agenda for the meeting, and highlighted specific ground rules. Chris announced that the co-chairs have asked that members of the public and guests abide by the Task Force ground rules and also provide their input in the form of comments rather than questions.

To begin a round of introductions, Chris invited two individuals new to the Task Force to begin:

- Blaze Vincent, representing the interests of incarcerated individuals. He is filling the seat formerly held by Nick Allen.
- Kameon Quillen joined as an alternate to Tiffany Attrill, representing victims/survivors.

CO-CHAIR UPDATES

After introductions, Rep. Goodman thanked members and alternates for attending and reminded the Task Force that there is a vacant co-chair seat. He shared that the co-chairs have nominated Waldo Waldron-Ramsey for the vacant seat. The criteria for the third co-chair seat are to have been with the Task Force for a long time and to be able to represent the communities most impacted by the sentencing system.

FACILITATION TEAM UPDATES

Chris shared that the group would have a consensus decision at its July meeting to pick the new co-chair and to contact the facilitation team if you have nominations.

Amanda provided an update on the workplan for the remainder of the year. This included key takeaways and updates from now until December:

- **Strategy/plan for Implementation via Legislature**
 - Legislation Working Group is reconvening monthly starting in July.
- **Road Map of the Recommendations** – Guide to which/how recommendations are connected.
 - Grid Subgroup will begin work of packaging all potential recommendations in July. At that time the Subgroup will also identify those recommendations that need to be linked or grouped to achieve the desired outcomes.
 - Identifying possible dates for two-day consensus meetings as a part of a “Consensus Retreat” identified Wednesday, August 31st and Thursday, September 1st for these dates
- **Funding Strategy**
- **Critical conversations to be had:**
 - Retroactivity
 - Criteria for Determining Sentence Ranges – Revisiting the Formulaic Approach – Systematic Structure
 - Data Collection – Monitoring, Evaluation, Adaptive Management
 - How/Ways to reduce sentencing disparity and disproportionality

2022 Work Plan

Amanda reminded the Task Force of the work plan for the rest of the year:

- **July Meeting:** discussions on potential rec’s developed by Grid and Sentencing Alternatives Subgroups: Offense classification expansion/organization proposal; CHS – washouts, ranges; current sentencing alternatives
- **August:** discussion on the full package of recommendations – all potential rec’s stitched together
- **September:** start consensus decision-making on the full package of recommendations
- **October:** continue consensus decision-making
- **November:** continue consensus decision-making, with goal of reaching final consensus. Draft Report. Joint Legislative Work Session
- **December:** Final report – last review and opportunity to address any unresolved issues

Meeting dates to confirm:

- **Tentative July 12th and July 26th, all-day meetings of the Grid Subgroup** to assemble package of potential recommendations. Will check-in with members over the lunch break to confirm attendance for these dates.
- **August 31/September 1, potential two-day consensus session so Task Force** can review all grid recommendations together and test for consensus on the package of recommendations. This will be a work session to discuss issues around any/all thumbs down during first consensus test, followed by the first round of seeking consensus.

Members and alternates agreed on tentative dates for two all-day meetings in July of the Grid Subgroup. These meetings will require cancelling the Sentencing Alternatives Meetings from July 12th and 26th to convey the full day meeting for the Sentencing Grid Subgroup.

Action Item: The facilitation team will email Task Force members about rescheduling the December meeting of the Task Force.

Review Input From Last Month’s Meeting: Revisiting the 3 Policy Goals in Relation to the Sentencing Guidelines Grid

Amanda reminded the Task Force that during last month’s meeting members wrote on sticky notes their responses to the following questions and then spent time discussing:

1. What are the implementation complexities and errors associated with the sentencing guidelines grid that need to be addressed? Why? Ideas about how to address?
2. What aspects of the sentencing grid need improvement/are not effective? Ideas for how to address? How will it improve the overall effectiveness of the system?
3. How does your constituency define public safety? What specific improvements to the sentencing grid would promote public safety? Explain why/how.

The facilitation team typed up all the responses, which were sent out to members, and on review, the following are some of the common responses and key themes that emerged:

Sentencing Implementation Complexity and Errors

- Calculation of Criminal History Score
 - Scoring Exceptions – Multipliers
- Consecutive/Concurrent
- Not an integrated system - overlapping, duplicative
 - Elements that impact sentence lengths outside of the grid OSL and CHS
 - Multiple offense classifications
- Enhancements
- Lack of standardized J&S
- Lack of transparency for all parties
- Earned time policies
- Aggravators
- Stat max

Improving Effectiveness of the Sentencing System

- Address disparity and disproportionality – the elements of sentencing that show disparate outcomes.
- Better balance of discretion
- Better address/reduce recidivism
- Increase/improve re-entry programs and services
- Increasing transparency
- Opportunities for review
- Data collection, review, evaluation

- Better balance of retributive and rehabilitative. Increase/improve rehabilitative and restorative approaches.
- Better alignment of offense classifications

Promoting and Improving Public Safety

- Reducing recidivism
 - Re-entry programs and support services
 - Rehabilitative services
 - Restorative services
 - Victim support services
 - Family support services
 - Both accountability and rehabilitative
- Sentencing Alternatives
- Trauma informed approaches
- Public perceptions of public safety
- Risk/needs/responsivity approaches

Task Force Member/Alternate Discussion:

Members and alternates provided additional suggestions, noted below.

- The public safety responses do not reflect an important element, which is the destabilizing impact on the community (children, partners, families, friends, and neighbors) from incarceration and the need to acknowledge that harm.
 - The phrase “collateral consequences of incarceration” could capture those elements related to public safety.
 - In the context of COVID, the conditions in jails and prisons during the pandemic has added to those collateral responses by harmfully impacting the physical and mental condition of those incarcerated. COVID brings clear and present danger to incarceration, and consequently the need to prioritize alternatives to incarceration.
- Would like to see language about trauma-informed and victim-centered approaches, as these are necessary within the conversations of public safety. Victim voices are not monolithic and need priority in these conversations.
- In the context of disparities and disproportionality, why do we not look at the historical disinvestment in communities? Using some of our last six months to look at recommendations around this could prove beneficial.
 - Both macro-level disinvestments in communities and micro-level implicit biases contribute to disparities in the criminal legal system.
 - This then necessitates investments in communities to improve housing, education, healthcare, and economic opportunities as a means of combatting the lasting effects of systemic racism and historical de-investment from communities that have higher crime rates.

- Norway has prioritized a new system where they still incarcerate people, but the nation prioritizes humane treatment, retainment of rights, and respecting freedom. They have seen benefits contextualized where their national recidivism rate has dropped from 70% to 25%. Washington needs to follow suit and allocate more resources to DOC for humane treatment that could produce similar decreases in recidivism.

COMMUNITY INTERMEDIATE SANCTIONS AND REINTEGRATIVE SERVICES PROGRAM (CISRS)

see recording at [1:08:28](#)

Dr. Knoth-Peterson reviewed potential recommendations 6-9, that relate to straddle cells and intermediate sanctions:

Potential Recommendation 6: *Establish a formula for determining grid cell ranges for OSLs 1-5. Create the grid ranges for OSLs 1 –5 using 54 as the anchor for the most serious maximum punishment for OSL 9, CHS 9+.*

Potential Recommendation 7: *If the maximum sentence based on the formula is 12 months or less, the minimum is automatically reduced to zero*

Potential Recommendation 8: Eliminate Straddle Cells: *If the maximum based on the formula is more than 12 months, the minimum must be at least 12 months and a day.*

Potential Recommendation 9: Keep Straddle Cells and Create a State-Funded Intermediate Sanction Zone: Stipulate that sentences for individuals in straddle cells are paid for by the state. For sentences in this zone, presumptive sentence is a sentencing alternative that is served locally. For sentences in this zone, sentences that are DOC sentences (more than 12 months) could have an option for state Intermediate Sanctions

Dr. Knoth-Peterson reviewed the potential recommendation from the Sentencing Alternatives workgroup.

Potential recommendation 9.1: *create a community intermediate sanctions & reintegrative services (CISRS) program.*

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent											
	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																						
Zone 4: State Prison	18																						
	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	48 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	36 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	24 mos
	Zone 3: DOSA, FOSA, State Prison	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	12 mos
Zone 2: CISRS, DOSA, FOSA <=12 Jail; >12 Prison	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
Zone 1: CISRS, RDOSA, Jail	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

CISRS: County Intermediate Sanctions and Reintegrative Services Sentencing Alternative.
 RDOSA: Residential DOSA, for eligible individuals based on offense type and criminal history
 PDOSA: Prison DOSA, for eligible individuals based on offense type and criminal history
 FOSA: Parenting Sentencing Alternative, for eligible individuals
 Cells in the hatched zone may be eligible for the FTOW sentencing alternative.

Overview

Counties would operate their intermediate sanctions (CISRS) programs and the state would oversee to ensure programs meet a minimum level of care.

- Counties would operate their intermediate sanctions program, but the program must receive state approval every XX years to ensure that the programs are meeting a minimum standard. The state could set requirements for that plan that must be reviewed annually or biannually (i.e., approvals for each two-year budget cycle).
- Programs would need two components: 1) supervision/sanctions that meet minimum standards and 2) access to rehabilitative and reintegration services. This is not just a program focused on surveillance, but also treatment.
- The state could also set requirements for the type of data that must be collected and reported (to the state) on an annual basis.
- The state may establish certain minimum levels of care for the general program, but also for specific populations of individuals. For example, the state may require that individuals receiving a CISRS sentence for an offense at a certain seriousness level or for an individual with a certain level of criminal history must have a higher level of supervision (such as electronic home monitoring or day reporting centers).
- Similarly, the state may require that all individuals sentenced to the CISRS program receive some type of needs assessment to inform treatment.

- The state may also create consistent standards for what types of behaviors would require a revocation of the CISRS sentence and a return to local incarceration.

Dr. Knoth-Peterson reviewed the lower left area, or “Southwest corner,” of the grid and the potential sentencing options – standard confinement, as well as alternatives possible in this zone. Zones present potential sentencing options and can add a third dimension to the grid.

Zone 1: Zone 1 is the expanded “southwest corner” of the grid. Jail sentences would be locally resourced, as in the status quo. If sentenced to CISRS program, access to funds via CISRS block grant.

- Under potential recommendation #7, the number of cells in which there is an option for 0 months of incarceration would increase.
- However, the actual impact on incarceration will vary because of pre-trial confinement. Under the current system, some individuals sentenced in the southwest corner are sentenced to time served, therefore they do not receive additional incarceration after sentencing.
- This potential recommendation expands ranges in the southwest corner, where WSIPP found frequent disproportionality in sentencing.
- However, this change could lead to geographic differences due to differences in varying philosophies of punishment in combination with wide ranges. And judges may be unlikely to sentence to 0 months incarceration without some other alternative (e.g., probation).
- There were some concerns that some judges may be unlikely to sentence individuals to a local sentencing alternative. To incentivize the development and use of these programs, individuals sentenced to the CISRS alternative would be eligible for the use of state funds while those sentenced to local confinement in jail would be served only by local resources.

Zone 2: Zone 2 is the area where there are straddle cells – such that sentences may be jail or prison confinement.

Stipulate that all sentences for individuals in Zone 2 are paid for by the state.

- Justification: if they are not prison sentences, it is saving DOC funding by reducing DOC caseloads, so that funding could be diverted to the local courts to support non-incarcerative alternatives.

For sentences in this zone, presumptive sentence is a sentencing alternative that is served locally.

- Could be operated by local courts but funded by the state.
- Reduces prison sentences/beds/costs, so cost savings can be used to fund the CISRS programs.

Zone 3: Sentences in Zone 3 are DOC sentences and may be eligible for existing sentencing alternatives.

- By reducing the number of DOC sentences in Zone 1 and 2, DOC can increase its focus on providing appropriate services for individuals sentenced in Zone 3.

Funding Model:

Funding would be provided by the State to counties through a block grant based on a formula, modeled on the Juvenile Court Block Grant Program.

- Funds would be allocated based on counties' use of the program and population size
- There would be a minimum level of funding to staff programs and pay capital costs.
- Funds from the block grant program can support staffing and capital costs that may also allow counties to expand the types of services offered to individuals in jail or individuals sentenced in district court.
- Thus, this program could have beneficial spillover effects for an even larger population of individuals involved in the criminal legal system.
- Additional savings as an effect of the investment in effective programs to reduce overall recidivism and future caseloads.

The Task Force recognizes that counties may want to participate but may not have the funds to start investing the resources needed to build out the necessary programs, so the state can invest the startup funding and provide continued operating funding that counties can use to run programs. This could also have beneficial spillover effects, such as creating local jobs.

The reduction in state spending created by reducing DOC caseloads and improved “returns on investments” realized through the implementation of this program could exist on two levels: the short-term savings through immediate reductions in caseloads and long-term savings through reductions in recidivism.

Funded Services and Programs for Victims

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

Task Force Member/Alternate Discussion:

- Expressed concern about the costs—what will the costs be of having both the state oversight mechanisms and the county-level facilities needed to run this? We have streamlined state services that are less costly, concerned that state-provided moneys for CISRS could be used by counties to continue operating the status quo.
 - State oversight is one avenue to ensure that the dispersing of the money will be appropriately utilized, and initial discussion reflects that there could be, in addition to an oversight board, data requirements to ensure money is being properly used.
- SSOSA is not currently included on the potential grid because of the work being conducted by the Sex Offender Policy Board (SOPB), to review sentencing related to sex offenses.
- Is anyone with a current/past violent crime eligible for sentencing alternative?

- Eligibility to existing alternatives varies – i.e. pDOSAs, individuals are not eligible if current violent or past violent within 10 years. Recently eligibility exceptions regarding past convictions of violent offenses have been eliminated from some sentencing alternatives. The Alternatives group has discussed potential recommendations regarding eligibility—those will be shared with the Task Force at an upcoming meeting.
- The CISRS program would only be available in the portion of the grid that does not include violent offenses.
- Would individuals with past convictions for violent offenses be eligible for CISRS? There are circumstances to both getting out of and receiving a violent felony charge that rely on both racial and geographic disparities in practices. Even if you have been rehabilitated and served your time, that violent offense could be circumstantial to a certain event.
 - The Task Force has a potential recommendation (from the Sentencing Alternatives Workgroup) to expand eligibility for alternatives to those who have been convicted of a violent offense. There is a shift underway in this locally; the King County therapeutic alternative does not exclude those with a history of violence. The Legislature has expanded eligibility to alternatives for those with violent offenses and some have access for those if it has been 10+ years since the violent conviction.
 - Desistance (from criminal activity) is a process and individuals often move in and out of criminal activity. Data shows that individuals may engage in much less serious offenses and de-accelerate on their way to desistance. Research shows that people have the propensity to change, and highlighted evidence of desistance should qualify someone for enrollment in alternatives.
- Will it be up to counties to decide on developing and implementing CISRS?
 - Yes. However, the framework could include resources and other incentives for counties to utilize and develop CISRS programs.
- Expressed support for keeping straddle cells and creating CISRS if there is actual reimbursement for counties to implement programs.
- Who would supervise the individuals with CISRS sentencing for the county?
 - This could be done by the counties since they have the experience, and the infrastructure already exists. The idea is to keep the operation of CISRS local and allocate state resources to support county programming, which would lessen the burden on DOC's caseload. Counties can either add a new division into their probation offices or fold CISRS into other responsibilities.
- CISRS could be a non-incarcerative alternative so defendants would not initially be incarcerated—who would make the decision about the terms to this alternative, as it is supposed to be individualized? Expressed interest in a discussion on who will set the terms of the program: would judges have discretion to sentence defendants to CISRS but case managers within these programs would decide actual CISRS terms, or would judges dictate the terms of a defendant's CISRS program?
- The data element of this program will be crucial. Absent a centralized database, there will be a need to collect data on the program and evaluate the data to ensure fair application.

- Regarding the interplay between pre-trial detention and this alternative, how likely will it be for those held pre-trial detention to be eligible for CIRSR?
 - Members expressed concern this could extend an individual's sentence. For example, if someone is held pre-trial and is released on "time served" but is enrolled in CISRS they would have to go through additional surveillance after adjudication.

Amanda asked Task Force members if they think the CISRS alternative is worth more time and energy going forward; the Alternatives Workgroup needs to know now whether it should move forward or not with this.

Continued Task Force Member/Alternate Discussion:

- We must be aware of one-size fits all solutions at the state level as the resources and practices are much different county-by-county. Are we talking about a statewide solution run at a local level with local legal systems and resources being required to meet certain state goals or objectives to get funding, or a program overseen by DOC but administrated by counties?
 - The program would need some level of local tailoring but with state-wide standards, and we need to recognize the disparities in county resources. I see us being able to support this (and the Legislature passing this) if we can guarantee funding. The positive impacts of state policy with properly trained and paid professionals at a local level will be difficult to ensure, so we need state money.
- Victim advocacy groups should be involved in the process of creating these programs to have input into programs and policies, so victims can be aware of community progress and rehabilitation of those incarcerated reentering the community. Then they would be able to move through the healing process with those who have caused harm.
 - We could set up policies that could create requirements around being involved of multiple perspectives like victims and formerly incarcerated people. It could be set up like the Task Force is right now.
- Express support this proposal, as it would not only reduce overall time incarcerated for DOC but also for local jails, so there would also be a reduction in money spent on incarceration on the local level in addition to the infusion of state money.
 - Pennsylvania's version of community intermediate sanctions highlights the benefit-cost ratio. The effectiveness of the PA intermediate sanctions programs demonstrates that this approach has benefits for the state and community.
- DOC would be very supportive of this program, but there are nuances to work out. For example, the same person could come into contact with both CISRS (county level) and DOC supervision. Expressed support for individuals to report to one jurisdiction.
- Noted that a potential benefit here could allow DOC to provide additional services to those incarcerated. Would the Legislature continue to fund DOC on maintenance?
 - The funding model (based on the JR Block Grant program) would be based on caseloads. A reduction in caseloads could lead to a lesser need for legislative funding for maintenance.

- Support the idea of having additional options and the innovations happening around the alternatives, such as coordination of treatment. We need to continue to have broad and challenging conversations. Urged group to recommend making real and meaningful changes that can be proven with data. In addition to incarceration, black and brown people are under surveillance at grossly disproportionate rates compared to white people and a surveillance model must recognize this going forward. Task Force must address this as to not create compounding levels of disproportionate surveillance adding further harm onto systemically racist practices. Task Force needs to make sure we are not recreating historically racist and harmful systems under a new name, and we cannot replace a system with disproportionate mass incarceration with disproportionate mass surveillance.
 - Alternatives group intentionally added “Reintegrative Services” in the name to make clear the intent is treatment, not just sanctions and surveillance.
- Expressed support of the movement towards a case management model over that of a surveillance model. Support for ensuring this is not a justice reinvestment model but rather a “return-on-investment” strategy where the Legislature allocates the necessary funding up front to ensure adequate levels of staffing and programming.
- Support CISRS program as presumptive sentence and a process in which prosecutors and judges must articulate how intermediate sanctions are not appropriate.

MISDEMEANOR SCORING RULES *see recording at [3:35:17](#) and see slides starting at #40*

Dr. Knoth-Peterson provided background on criminal history scoring and then reviewed misdemeanor scoring rules. There are four situations where prior misdemeanor convictions count in a criminal history score (CHS), they are listed in the visual below.

Misdemeanor Scoring in Criminal History Score

Prior Misdemeanor convictions count in the criminal history score in four unique situations.

Felony Traffic	Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner's Permission 1 st degree or 2 nd degree – Vehicular Prowling:	Homicide or Assault by Watercraft offenses:	Felony Domestic Violence where DV was pleaded and proven:
<p>a. Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points</p> <p>b. Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point</p> <p>c. Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point</p> <p>d. Adult convictions of Operation of a Vessel under the Influence offenses count as 1 point and juvenile offenses for Operation of a Vessel offenses under the Influence count as ½ point.</p> <p>e. Any other felony offenses count standard</p>	<p>a. Misdemeanor offense of Vehicular Prowling 2^o counts as 1 point</p> <p>b. Adult and Juvenile offenses of Theft 1^o or 2^o of a Motor Vehicle, Possession of Stolen Property 1^o or 2^o of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1^o or 2, count as 3 points</p> <p>c. Any other felony offenses count standard</p>	<p>a. Adult and Juvenile Homicide or Assault by Watercraft offenses count as 2 points</p> <p>b. Certain adult Traffic Misd/Gross Misd offenses count as 1 point</p> <p>c. Certain juvenile Traffic Misd/Gross Misd offenses count as 1/2 point</p> <p>d. Any other felony offenses count standard</p>	<p>a. Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1^o, Kidnapping 1^o or 2^o, Unlawful Imprisonment, Robbery 1^o or 2^o, Assault 1^o, 2^o or 3^o, or Arson 1^o or 2^o.</p> <p>b. Count 2 points for each Adult offense where DV was pleaded/proven after 7/23/2017 for any of the following offenses: Assault of a Child 1^o, 2^o or 3^o, or Criminal Mistreatment 1^o or 2^o.</p> <p>c. Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.</p> <p>d. Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011</p> <p>e. Any other felony offenses count standard</p>

The potential recommendations below focus on a separate change for each of the four current scoring exceptions. Combined, they would eliminate all special scoring exceptions for misdemeanors in the CHS. There is also a potential recommendation that would incorporate language into the SRA to define the scope of CHS as limited to prior felony convictions.

Misdemeanor Scoring Exception 1: Felony Traffic:

- *Potential Recommendation 28: Eliminate the special misdemeanor scoring exceptions for felony traffic and reclassify felony DUI from OSL 4 to OSL 6.*
- *Potential Recommendation 28a: Reclassify felony DUI and physical control from OSL 4 to OSL 6. Reduces complexity and errors:*
 - Prior misdemeanor DUIs are themselves an element of felony DUI. Thus, in the status quo, the prior convictions both increase the seriousness of offense in the court and increase a person's criminal history score. This means that individuals charged with felony DUI will rarely have a CHS of 0 or 1.
 - Eliminating the scoring exceptions without changing the offense seriousness level would create a situation where individuals may have a lesser sentence for the felony DUI than the mandatory minimum for a 3rd misdemeanor DUI which is 180 days.

Improving Effectiveness of the Sentencing System:

- Felony DUI is a class B felony. Reclassifying it as OSL 6 would put it in the middle of the grid where Class B offenses are generally concentrated. For an individual in OSL 6 with a CHS of 0, the recommended sentence range would be highly similar to the

recommended sentence range of individuals in OSL 4 with a CHS of 3. Thus, prosecutors and judges would still be able to seek similar sentences, but without the unnecessary complication in the Criminal History Score.

Felony PC would have to be reclassified as a class B felony if moved to OSL 6.

Misdemeanor Scoring Exception 2: Theft of a Motor Vehicle:

- *Potential Recommendation 29a: Eliminate the special misdemeanor scoring exceptions for vehicular prowling and create a new subsection on Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle without the Owner’s Permission 1st degree or 2nd degree for individuals with two prior misdemeanor convictions of vehicle prowl. Make this new subsection OSL 4.*

Reduces complexity and errors and Improving the Effectiveness of the Sentencing System:

- The rationale for this scoring exception is that stealing a car is considered a continuation or escalation of previous vehicle prowl behaviors. A third or subsequent vehicle prowl 2 offense becomes a felony offense at OSL 4. For individuals with their first theft of a motor vehicle, it is a felony offense at OSL 2, but the prior prowls increase criminal history score.
 - Not all vehicle prowls are with the intent to steal a car – thus theft of a motor vehicle may not always reflect increasing intensity of behaviors – it may be a change in behavior. However, for those who are prowling with intent to steal a car, it doesn’t make sense that the third time they’re caught for prowl (i.e., they are stopped before they steal the car) the sentence is greater than the individual who successfully steals the car on the third try.
 - Creating a new offense for theft of a MV with two prior vehicle prowls and making that OSL 4 makes it consistent with the third and subsequent vehicle prowl convictions. However, it should be considered whether it makes sense to have these MV theft offense at OSL 4, given the other offense in this OSL.
 - Eliminating the special scoring rules increases transparency, increases defense flexibility in plea bargaining process, and significantly reduces complexity and error in the calculation of CHS.
- *Potential Recommendation 29b: Eliminate the special exception misdemeanor scoring for vehicle prowl.*

Reduces complexity and errors and Improving the Effectiveness of the Sentencing System:

- Given the type of offenses in OSL 4, theft of motor vehicle related offenses do not seem to fit in this OSL – not comparable to the type of offenses.
- Concerns expressed that this scoring exception is the result of the “crime-of-the-day” logic. Represents an expansion of the authority under the SRA which is otherwise focused on felony offenses.

Misdemeanor Scoring Exception 3: Homicide or Assault by Watercraft Offenses :

- *Potential Recommendation 30: Eliminate the special misdemeanor scoring exceptions for homicide or assault by watercraft offenses and reclassify to the same OSL as the felony traffic offense.*

Reduces Complexity and Errors and Improving the Effectiveness of the Sentencing System:

- Reduces complexity by having these offenses mirror traffic offenses. Committing the same offense in a boat vs. a car is really about a different affluence of the individual committing the offense.
- Felony traffic offenses for which misdemeanors count should be limited to offenses that can be committed by vehicle and boat.
- Felony traffic does include things that you wouldn't have in a boat, for example, eluding.

Misdemeanor Scoring Exception 4: Felony Domestic Violence:

- *Potential Recommendation 31: Eliminate the misdemeanor scoring exception for a repetitive domestic violence offense and instead create an aggravated factor or enhancement.*
 - *Maintain a way for judges to consider prior misdemeanor DV at sentencing.*
 - *Aggravating factor would then be constrained under the potential recommendation for limiting increases in sentences as a result of aggravating factor.*
 - *Potentially limited to offenses involving the same victim/same relationship.*
 - *Potentially an option similar to the repeat violent column approach.*

Reduces Complexity and Errors, Improving the Effectiveness of the Sentencing System, and Promotes/Improves Public Safety:

- Prior DV is a high predictor of lethality in DV.
- Doesn't require that the priors be against the same person. But still allowed to be introduced in court.

Potential Recommendation 32: Include language in the SRA that would define the scope of the CHS as limited to prior felony convictions.

Reduces Complexity and Errors and Improving the Effectiveness of the Sentencing System:

- Would increase the likelihood of long-term consistency and prevent future misdemeanor scoring exceptions, which create complexity and increase calculation errors. Currently disproportionate discretion in that full discretion of the legislature to decide when they should or should not count.
- SRA was not originally intended to cover misdemeanors except for where there is an explicit step up of the same offense (e.g., DUI).
- Inclusion of misdemeanors has led to complexity, errors in calculating CHS, and uncertainty. Inherent issues with reliability and accuracy of prior misdemeanors because reliance on municipal court data.

Task Force Member/Alternate Discussion:

- Compared to now, there are a couple of things we would be giving up going to an aggravating factor approach (as opposed to a situation where an individual has a predicate that adds to the sentence) such as more certainty in the calculation. You would also open additional avenues for appeal that are not currently available. That is neither good nor bad, but an aggravating sentence creates an automatic appeal. For example, a person with a first felony DUI would be treated the same as a person who has a repeat DUI.
- In relation to Potential Recommendation 29A, at trial would defendants have to disclose their prior offenses or just prior specific vehicular prowls/theft offenses? It is a concern that a consequence of this will be that the jury will be presented with a person's criminal history and that increase in the number of times the state will be displaying a person's criminal history through repeatedly bringing up their past priors in use against them at each subsequent charge could potentially sway juries against defendants.
 - In response to this a member suggested that there could be a creation of a Potential Recommendation 29c that would make Vehicle Prowl in the 2nd degree OSL 1 and Vehicle Prowl in the 1st degree OSL 2-4, essentially flipping the OSLs in both degrees to reflect a higher OSL in the case of Vehicle Prowling in the 1st degree. They stated this addresses the need for eliminating complexity and avoiding the other member's above concerns.
- The domestic violence recommendation will be tough for my constituency to accept.
- When talking about reliability or accuracy in calculation of sentences, one thing to consider is that when we add aggravators to sentences, we also increase the state's burden of proof. We should be talking about the various types of reviews, and we must broaden the avenues of sentencing review and utilize data-based analysis that can highlight where this system is failing. We often see appeals and reappeals of CHS scoring and this is not something we should shy away from as it can bring more transparency.
 - An aggravator is guaranteed to change the dynamic in a way that creates less certainty and that opens avenues for automatic appeals that predicates do not. Predicates allow for the individualization of prosecution and eliminating this would allow for harsher treatment of first-time offenders than a repeat offender. This removes possibilities for individualization and discretion that we need, and because of this the DV recommendation will be especially tough to get by my constituency.
- Leaving out the homicide/assault by watercraft recommendation, there are specific public policy reasons why the misdemeanor scoring gets included in felony sentencing, and I think they are important reasons, especially the domestic violence one. Our culture and state do not do a good job with gender-based violence. It very challenging in our culture for survivors of domestic violence or sexual assault to get justice. So, there is a role for misdemeanor cases in felony sentences. We need to be thoughtful in making sure we look at escalating behaviors and risk assessments because there are certain behaviors that are more dangerous than others.
- Domestic violence is in every demographic in our society and it's dramatically underreported. Would have a difficult time supporting the potential recommendation.

- Would changing the misdemeanor scoring to aggravating factors and increasing the serious levels if there is a prior offense change opinion on the domestic violence potential recommendation?
 - No, because there is still a learning component when it comes to domestic violence and the judicial branch. We have seen repeatedly many survivors of DV get their protection orders denied because of a lack of judicial understanding of power control dynamics. We do not have a bench that is fully understanding of these issues and creating an aggravating factor does not get us there either. There can be judicial disparities in how serious gender-based violence cases are taken, and this factor would not help address this.
- Is there a way to reduce complexity but not keep the status quo that has shown to be very complex and leads to errors?
 - There's a difference between complexity and specificity. Don't think this is complex in the day-to-day work of somebody in the court.
- If it is not doable to eliminate the scoring rules for felony DUI and DV, could we still have a recommendation that restricts the future use of misdemeanor scoring in the felony system?

CLOSING REFLECTIONS

Members and alternates provided reflections to the following question: *what's one hope you have for the Task Force going into the summer?*

- Hope to be in person at the next meeting
- Need to focus on areas where we can be productive and reach consensus, so we do not run out of time
- Hope people get their thinking caps on, since we have a lot of recommendations and if something doesn't work for your constituency, that you offer a solution
- Admit where we can't find consensus and focus on the ones on which we can reach consensus on. Also, that we have a conversation about ways to address racial bias.
- Looking forward to meeting in person and drilling down on main key points and concrete conversations. Talks about where there are hard no's and where there is wiggle room. Look forward to retroactivity conversation.
- Continue to contribute and focus
- Looking forward to retroactivity conversation and consensus retreat
- Talk about racial disparity and disproportionality and come up with solutions
- Create a solid workplan for Legislators
- Have good ideas to bring to the Legislative session
- Talk about what is politically viable
- Have conversation about racial disparity and be able to get past hard no's
- Evidence-based discussions and look at data
- Focus on what we can agree on

2022 MEETING SCHEDULE

July 7, 9:30 am –3:30 pm

August 4, 10am – 4:00pm

September 1, 10am-4:00pm

October 6, 10am-4:00pm

November 3, 10am- 4:00pm

December 1, 10am-4:00pm

PUBLIC COMMENTS: Below are summaries of comments and questions shared by public attendees and any responses from Task Force members and alternates. Full questions/comments and responses can be viewed by following [this link to TVW which starts at 4:44:16 in the meeting recording.](#)

Jim Chambers: I agree with what Waldo said about sentencing alternatives. They shouldn't be done without due process, anyone whose sentence is being revoked should go in front of their sentencing judge and have them decide if they are sent back to prison to serve their entire sentence or if they can be sent to treatment and get the help they really need. Most people on DOSA are drug offenders and they don't necessarily receive the treatment they need before being released. For the sentencing alternatives that would be based in the community, if people get revoked and get sent back to county jail for violations are we going to make sure there is a process where they receive treatment and their needs are met while in county jail? Another comment is about domestic violence and misdemeanor stuff. Those are charging decisions made by a prosecutor and most people agree to misdemeanors very quickly so need to consider all the facts when looking at misdemeanors.

David Trieweiler: I'd rather be asking questions than making comments, think it's valuable to hear task force members rationale. I've noticed a pattern that has been ongoing, anytime there is a proposal that would reduce sentences for any crimes there is opposition mainly by prosecutors and police and a reason why we can't do it for violent crimes, or felony DUI's or domestic violence. One has to be forgiven for thinking that their actual agenda on the task force has always been to prevent any significant change to the current system of mass incarceration.

Bruce Glant: A little confused at the last section pertaining to the two crimes that would not be included. My constituency deals with net nanny stings and the problem with that is that they are people who did not harm anybody, these are non contact and you have to look at the way they came into this arena through law enforcement. Think of those caught in stings as a different group. Do think those in the sexual crime arena should be included.

Kehaulani: Didn't realize we couldn't ask questions. Concerned about a statement made about an investment. Why were the programs stated as an investment? I would like the task force to consider the exception and errors that are made. My husband's situation, he should not be in prison and I believe his CHS was calculated incorrectly. Would like the Task Force to consider how many criminal history scores are incorrect and if there is data provided on how many incarcerated individuals are sitting in prison that should not be there. Someone's freedom being taken away for year because of an exception or error will not bring back an individual's life nor the people that support that individual.

Alex Mayo: Thank you for allowing me to speak, I am the Executive Director of WA Voices. We are a group comprised of sex offenses and would like to state that we are excluded from so many things and it's really important that we always first honor the voices of victims and that many if not most of the members in my community are also victims and we are excluded from funding, from services, from time off, from political discourse and it's very discouraging. I encourage each one of you to please consider that when you talk about sex offenses there are so many different things that are considered a sex offense and there are so many things that go into that action that someone was committed and gets a conviction. It's very discouraging when we are not about to be seen as humans and we are trying our best to be good individuals that are loving members of our community and trying to get engaged in our communities. WA Voices has several values and one of them is hope and it is very difficult if you are looking at recidivism and an individual is continually told they shouldn't have hope, which is what many of our laws do. I ask for you to consider that when you continue to perpetuate this idea that we can't make laws less draconian.

PUBLIC ATTENDEES: Michael Althaus, Joanne Smieja, Bruce Glant, David Trieweller, Adam Hall, Juliana Roe, Kelsey-anne Fung, Loren, Joe McKittrick, Michelle Rusk, Sen. Wilson, Gideon, Jim Chambers, Katelyn Kelley, Elinor Jones Toutant, Kehaulani, Anthony Powers, Matt Tremble, Faraji

PUBLIC INPUT SHARED VIA THE CHAT:

Bruce Glant: Regarding supervision, Some I have talked with on supervision say they have had numerous CCO's over a very short period of time. I believe a more uniform and consistent standard is necessary for success of those under the DOC's supervision. Those reentering the community get confused and abused by some without this required standard.

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

Judge Veronica Alicea-Galván (Frank Thomas)	Washington State Minority and Justice Commission	✓
Chief James Schrimpsher	Fraternal Order of Police, Labor Organization Representing Active Law Enforcement Officers in Washington State	✓
Nick Straley (Blaze Vincent)	Columbia Legal Services, Representing Interests of Incarcerated Persons	✓
Waldo Waldron-Ramsey (Ginny Parham)	Washington Community Action Network, Representing Interests of Incarcerated Persons	✓
Tiffany Attrill	King County, Representing Interests of Crime Victims	✓
Riddhi Mukhopadhyay	Sexual Violence Law Center, Representing Interests of Crime Victims	✓
