Washington State Criminal Sentencing Task Force

Detailed Guide to Potential Recommendations

Part 2. Horizontal Axis Components of the Sentencing Grid

Draft as of 7.7.22 Task Force Meeting

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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.

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

- **Potential Recommendation 17**……..pg 38

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

- **Potential Recommendation 18**……..pg 42

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.

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

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

- **Potential Recommendation 24**……..pg 64

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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.

SECTION 10: Potential Recommendations 26-27a-c…… pg 67

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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

- **Potential Recommendation 27a**……..pg 72

Eliminate and do not replace 3-strikes.

- **Potential Recommendation 27b**……..pg 72

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- **Potential Recommendation 29a**……..pg 82

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 these new subsections a higher OSL.

- **Potential Recommendation 29b**……..pg 85

Eliminate the special exception misdemeanor scoring for vehicle prowl.

- **Potential Recommendation 30a**……..pg 87

Eliminate the special misdemeanor scoring exceptions for homicide or assault by watercraft offenses and reclassify to the same OSL as the felony traffic offense.

- **Potential Recommendation 31**……..pg 89

Eliminate the misdemeanor scoring exception 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.

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

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Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a technical violation will not reset the washout period.

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Class A Felony Washout Rules

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Class B Felony Washout Rules

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Class C Felony Washout Rules

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

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Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSA and rDOSA (prison and residential drug offense sentencing alternatives).

- **Potential Recommendation 40**……..pg 137

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

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 9and 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**
- **#9.1: Create a Community Intermediate Sanction and Reintegrative Services Sentencing Alternative Program.**

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 and creating the formula for OSL 10-17.
- # 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

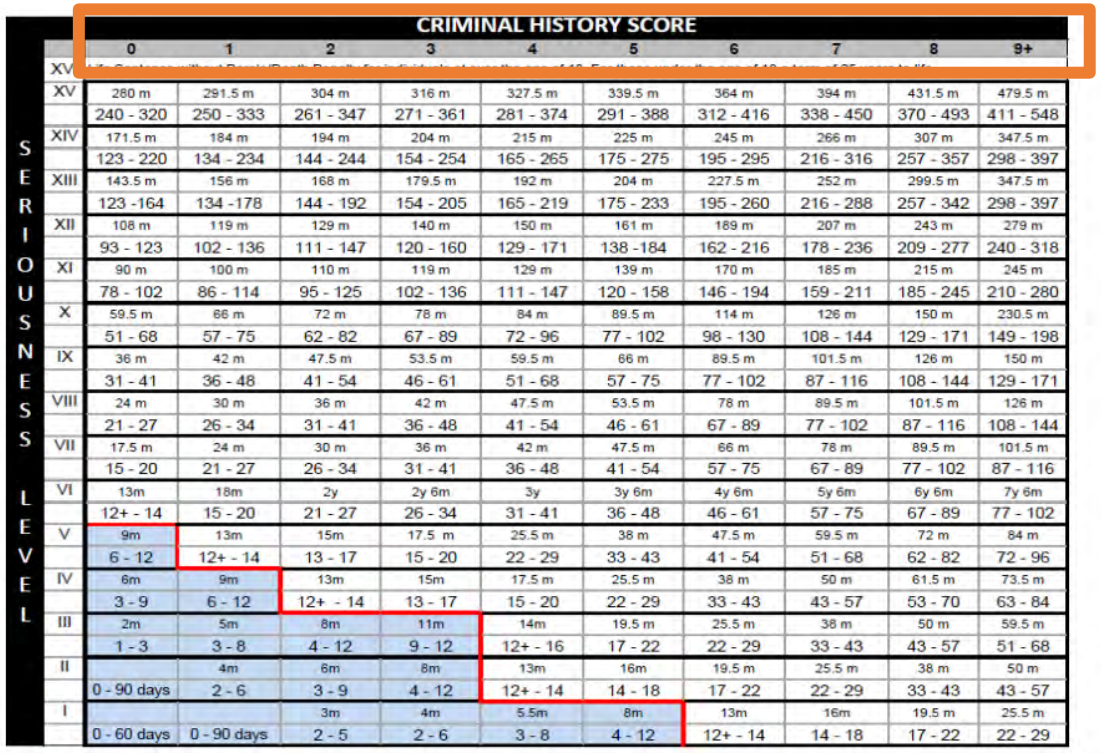
- # 14: Formulaic approach for OSL 6-9

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

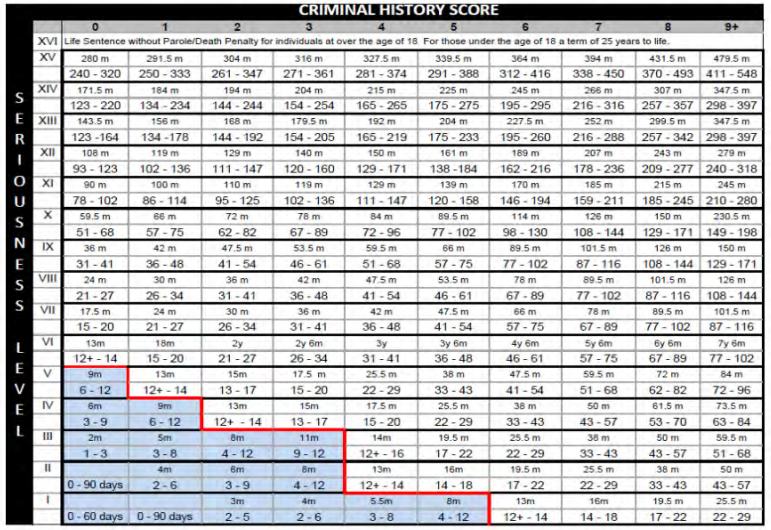


SERIOUSNESS LEVEL	CRIMINAL HISTORY SCORE									
	0	1	2	3	4	5	6	7	8	9+
XV	280 m	291.5 m	304 m	316 m	327.5 m	339.5 m	364 m	394 m	431.5 m	479.5 m
	240 - 320	250 - 333	261 - 347	271 - 361	281 - 374	291 - 388	312 - 416	338 - 450	370 - 493	411 - 548
XIV	171.5 m	184 m	194 m	204 m	215 m	225 m	245 m	266 m	307 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	189 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	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
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		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			3m	4m	5.5m	8m	13m	16m	19.5 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



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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
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VI	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
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	3 - 9	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	53 - 70	63 - 84
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	1 - 3	3 - 8	4 - 12	9 - 12	12+ - 16	17 - 22	22 - 29	33 - 43	43 - 57	51 - 68
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	0 - 90 days	2 - 6	3 - 9	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	33 - 43	43 - 57
I			3m	4m	5.5m	8m	13m	16m	19.5 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

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 **"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
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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																														

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 Criminal History Score research being conducted by the Statistical Analysis Center (SAC) 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

	Race						
Multiplier	**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

Prior Serious Violent Felony

Race	Has Multiplier
Missing	1.28%
Asian	2.37%
Black	6.79%
Hispanic	4.71%
Indigenous	5.02%
Unknown	0.00%
White	4.08%

Prior Violent Felony

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

	Race						
Multiplier	**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.

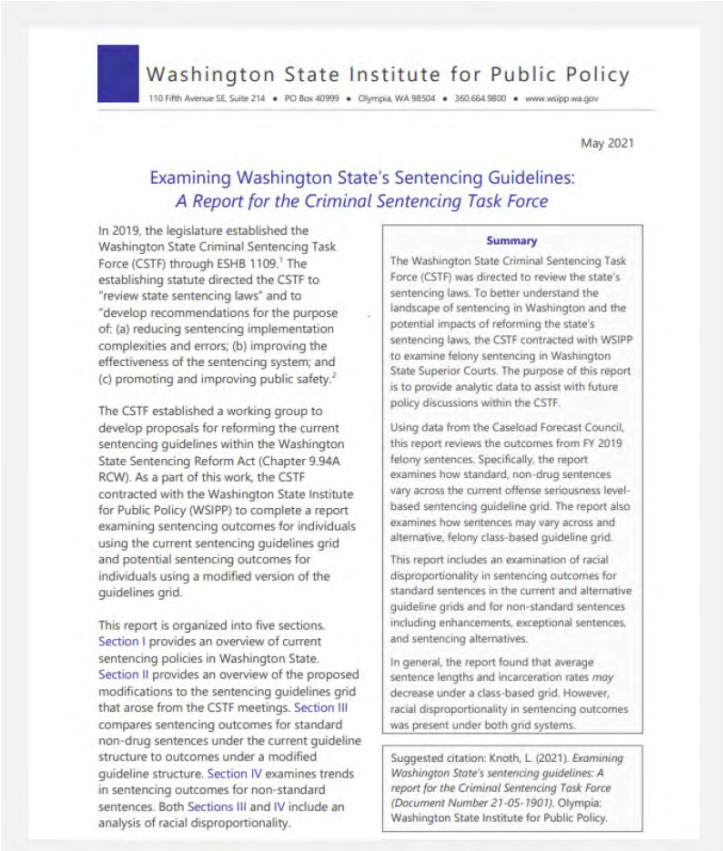
The failure to consider the defendant's prior criminal history which was omitted from the criminal history score calculation results in a presumptive sentence that is clearly too lenient.

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.



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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.

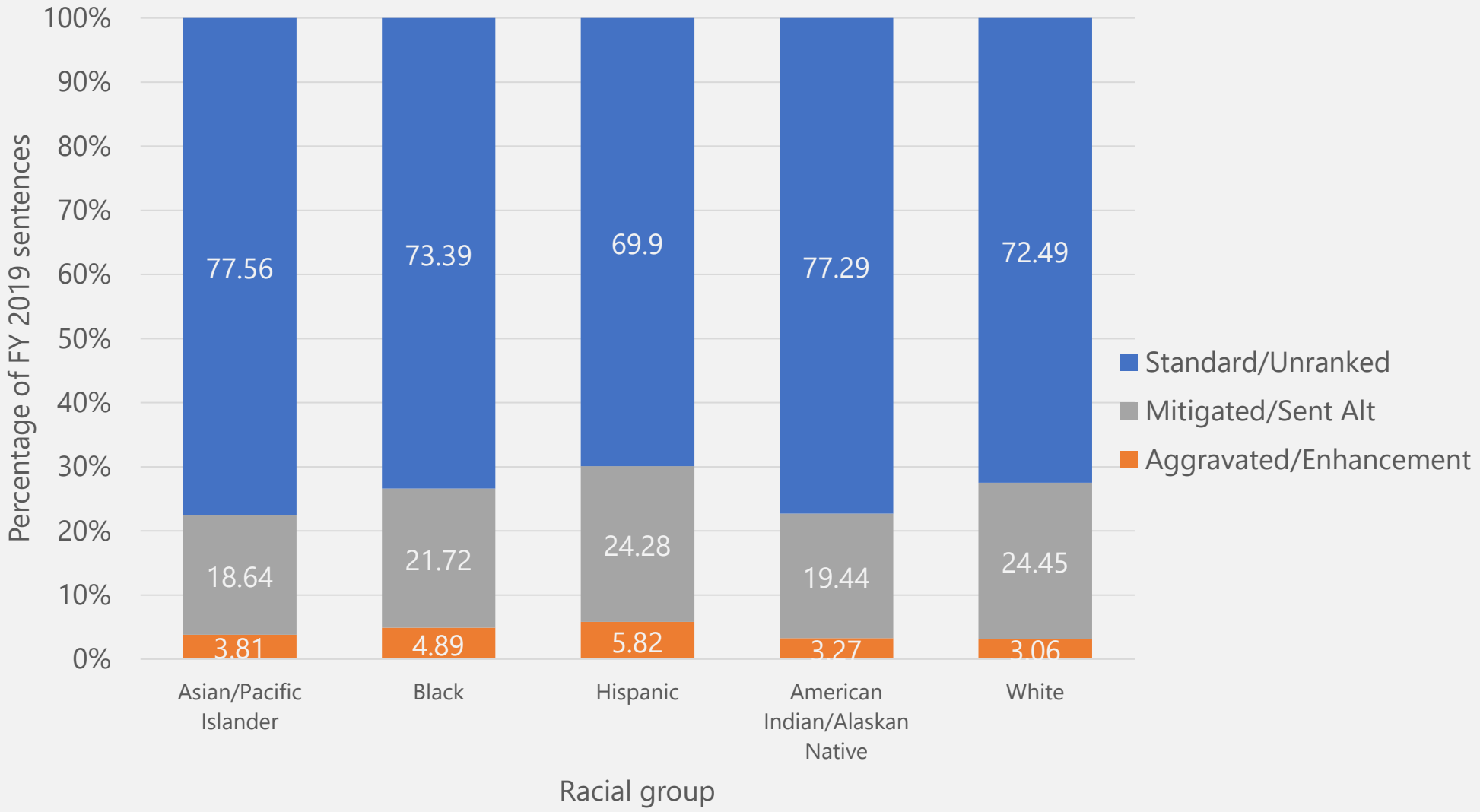
In general, the report found that average sentence lengths and incarceration rates *may* decrease under a class-based grid. However, racial disproportionality in sentencing outcomes was present under both grid systems.

Suggested citation: Knoth, L. (2021). *Examining Washington State's sentencing guidelines: A report for the Criminal Sentencing Task Force (Document Number 21-05-1901).* 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 N	Total Avg. length over max	Total Avg. % of max	White N	White Avg. length over max	White Avg. % of max.	BIPOC N	BIPOC Avg. length over max	BIPOC 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 N	Total Avg. length below min.	Total Avg. % of min.	White N	White Avg. length below min.	White Avg. % of min.	BIPOC N	BIPOC Avg. length below min.	BIPOC 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? Guidance from Model Penal Code Sentencing Report: : "…members of the sentencing commission are called upon to use their best collective judgment to develop presumptive sentencing recommendations that are proportionate to "ordinary" or "typical" offenses and offenders within each guidelines classification." (page 154 of 4/10/2017 document).

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																				

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																														

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																														

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																					

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*:

<u>Eliminate</u> 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

Section 11

Potential Recommendations 28-32

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

Misdemeanor Scoring in Criminal History Score

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

Felony Traffic

a. Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points

b. Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point

c. Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point

d. Adult convictions of Operation of a Vessel under the Influence offenses count as 1 point and juvenile offenses for Operation of a Vessel offenses under the Influence count as ½ point.

e. Any other felony offenses count standard

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

a. Misdemeanor offense of Vehicular Prowling 2° counts as 1 point

b. Adult and Juvenile offenses of Theft 1° or 2° of a Motor Vehicle, Possession of Stolen Property 1° or 2° of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1° or 2, count as 3 points

c. Any other felony offenses count standard

Homicide or Assault by Watercraft offenses:

a. Adult and Juvenile Homicide or Assault by Watercraft offenses count as 2 points

b. Certain adult Traffic Misd/Gross Misd offenses count as 1 point

c. Certain juvenile Traffic Misd/Gross Misd offenses count as 1/2 point

d. Any other felony offenses count standard

Felony Domestic Violence where DV was pleaded and proven:

a.Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1°, Kidnapping 1° or 2°, Unlawful Imprisonment, Robbery 1° or 2°, Assault 1°, 2° or 3°, or Arson 1° or 2°.

b.Count 2 points for each Adult offense where DV was pleaded/proven after7/23/2017 for any of the following offenses: Assault of a Child 1°, 2° or 3°, or Criminal Mistreatment 1° or 2°.

c.Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.

d.Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011

e.Any other felony offenses count standard

Misdemeanor Scoring in Criminal History Score

- These scoring exceptions depend on the type of current offense and the types of prior misdemeanor convictions.
- Some misdemeanors vary between local jurisdictions.
- As Superior Courts primarily handle *felony* offenses under the SRA, it may be argued that the criminal history score calculations should be limited to the same jurisdiction – *felony* offenses.
- The current misdemeanor scoring exceptions create confusion for courts and other agencies who use the CHS (e.g., Caseload Forecast Council, Department of Corrections).
- Grid subgroup discussions focused on the logic behind the four misdemeanor scoring exceptions and explored ways to achieve the same goals through alternative means while increasing transparency, simplifying the CHS calculation process (increasing efficiency), and reducing errors in calculating CHS.

Potential Recommendations: Misdemeanor Scoring

- The following potential recommendations include a separate change for each of the four current scoring exceptions.
- In combination, these changes would eliminate all special scoring exceptions for misdemeanors in the CHS.
- An additional potential recommendation would incorporate language into the SRA that would define the scope of the CHS as limited to prior felony convictions.

Misdemeanor Scoring Exception 1: Felony Traffic

Felony Traffic (defined in RCW 9.94A.030) offenses:

a. Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points

b. Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point

c. Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point

d. Adult convictions of Operation of a Vessel under the Influence offenses count as 1 point and juvenile offenses for Operation of a Vessel offenses under the Influence count as ½ point.

e. Any other felony offenses count standard

Misdemeanor Scoring Exception 1: Felony Traffic

Felony Traffic (as defined in RCW 9.94A.030)

1. Vehicular homicide (RCW **46.61.520**),
2. Vehicular assault (RCW **46.61.522**),
3. Eluding a police officer (RCW **46.61.024**),
4. Felony hit-and-run injury-accident (RCW **46.52.020**(4)),
5. Felony driving while under the influence of intoxicating liquor or any drug (RCW **46.61.502**(6)), or
6. Felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW **46.61.504**(6))

Misdemeanor Scoring Exception 1: Felony Traffic

Potential Recommendation 28: *Eliminate the special misdemeanor scoring exceptions for felony traffic.*

Potential Recommendation 28a*: Reclassify felony DUI and physical control from OSL 4 to OSL 6.*

Misdemeanor Scoring Exception 1: Felony Traffic

Grid Subgroup Discussion Notes:

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…..

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

a. Misdemeanor offense of Vehicular Prowling 2° counts as 1 point

b. Adult and Juvenile offenses of Theft 1° or 2° of a Motor Vehicle, Possession of Stolen Property 1° or 2° of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1° or 2, count as 3 points

c. Any other felony offenses count standard

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 these new subsections a higher OSL.*

Misdemeanor Scoring Exception 2: Potential recommendation 29

Grid Subgroup Discussion Notes:

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.

Offense	Without prior prowl	With 2+ prior prowl
Theft of a motor vehicle	OSL 2	OSL 4
Possession of a stolen motor vehicle	OSL 2	OSL 4
Taking a motor vehicle without permission – first degree	OSL 5	OSL 6
Taking a motor vehicle without permission – second degree	OSL 1	OSL 4
Vehicle Prowl – 2nd degree (third or subsequent)		OSL 4

Misdemeanor Scoring Exception 2: Theft of a Motor Vehicle…

Potential Recommendation 29b: *Eliminate the special exception misdemeanor scoring for vehicle prowl.*

Grid Subgroup Discussion Notes:

<u>Reduces complexity and errors and Improving the Effectiveness of the Sentencing System:</u>

- 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

Homicide or Assault by Watercraft offenses:

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

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.*

Grid Subgroup Discussion Notes:

<u>Reduces Complexity and Errors and Improving the Effectiveness of the Sentencing System:</u>

- 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

Felony Domestic Violence (defined in 9.94A.030) where DV was pleaded and proven:

a. Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1°, Kidnapping 1° or 2°, Unlawful Imprisonment, Robbery 1° or 2°, Assault 1°, 2° or 3°, or Arson 1° or 2°.

b. Count 2 points for each Adult offense where DV was pleaded/proven after7/23/2017 for any of the following offenses: Assault of a Child 1°, 2° or 3°, or Criminal Mistreatment 1° or 2°.

c. Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.

d. Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011

e. Any other felony offenses count standard

Misdemeanor Scoring Exception 4: Felony Domestic Violence

***Potential Recommendation 31**: Eliminate the misdemeanor scoring exception 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.*

Grid Subgroup Discussion Notes:

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

- 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

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

Grid Subgroup Discussion Notes:

<u>Reduces Complexity and Errors and Improving the Effectiveness of the Sentencing System:</u>

- 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.

Section 12

Potential Recommendations 33

33: Offense Classification Proposal

Proposal A

Proposal B

Brief Reminder

- Felonies defined in Title 9A RCW have a “class”
  - Class A
  - Class B
  - Class C
- Severity of the offense may determine the class of felony. In WA Class A is the most serious.
- The class of an offense drops to a class lower if it is an anticipatory (attempt, conspiracy, or solicitation) offense, with a few exceptions.
- Some felony offenses are grouped by a specific definition into categories (which are not mutually exclusive) for example:
  - Sex Offenses
  - Serious Violent Offenses
  - Violent Offenses
  - Crimes Against a Person
  - Drug Offenses
  - Violation of the Controlled Substance Act

Brief Reminder

- Offense Seriousness Level: WA also uses sentencing levels based on the seriousness of the offense.
- Some felonies have an Offense Seriousness Level assigned - “ranked”
- Offenses that are not assigned a seriousness level are considered “unranked” offenses.
- The sentence range for all unranked felonies (regardless of whether they are a Class A, B, or C) is 0 to 12 months.
- The majority of felony offenses in statute are unranked - There are over 300 unranked felony offenses.
- House Public Safety Committee requested the SGC “to examine ‘unranked’ felony offenses and make recommendations as to which of those offenses should be ranked on the adult felony sentencing grid, and which offenses could be advisably repealed”.

Current Grid, Current laws

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

Reducing Complexity and Improving Effectiveness

- Many of the potential recommendations developed so far seek to better align and tighten the connections between offense class, stat max, and sentencing ranges.

- The Grid Subgroup has looked at whether it made sense to also try to tighten the connection between all functions of offense classification, i.e. stat max, washout, violent status, offense vacation, etc.

Simulated Grid

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

Current Grid, Current laws

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

Simulated Grid

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

REMINDER

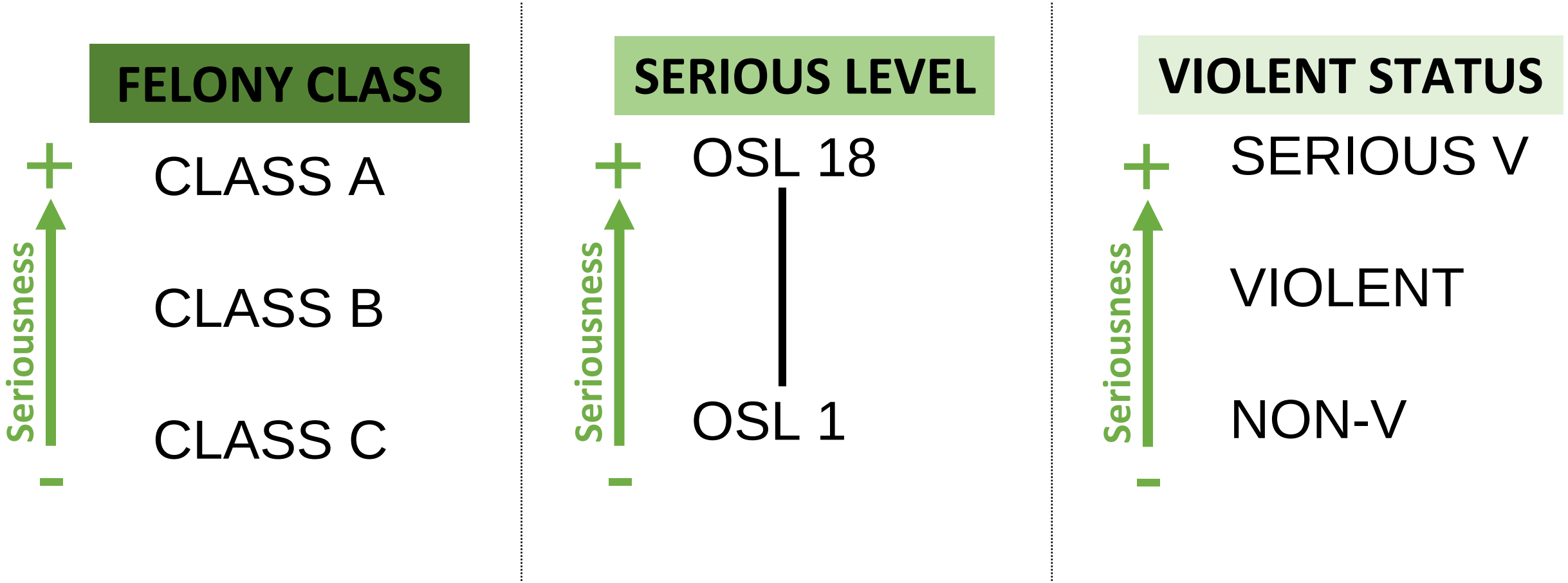
- Potential Recommendation 2 has makes it so that all Class B offenses are to be no higher than OSL 9. And all Class C offenses no higher than OSL 5.
- Potential Recommendation 13 and 13a (which has many parts) increases the number of OSLs from 16-18 and moves up offenses, establishes formula (etc.)

Potential Recommendation 33 will focus (primarily) on the connection between OSL, felony class and violent offense status

Simulated Grid

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

Connection between OSL, felony class and violent offense status



Proposal A

Proposal B

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

Potential Recommendation 33

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

Proposal A

1. **Divide Class A Felonies into 3 Groups**
   i. A1: Offenses receiving Life Without Parole/Death sentence
   ii. A2: Serious Violent offenses
   iii. A3: Class A Violent offenses (excluding serious violent)

2. **Recalibrate the seriousness level of A2 offenses into OSLs 14 – 17**

3. **Recalibrate the seriousness level of A3 offenses into OSL 10 – 13**

4. **Add statutory language so that:**
   a) serious violent offenses are a standalone category and not a subset of violent offenses by definition
   b) class A2 offenses consist only of serious violent offenses
   c) all violent offenses must be a class A3 offense

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

Proposal A

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

Effects:

1. Serious Violent Offenses would be in OSL 14 and above.
2. ***<u>All</u> violent offenses must be a class A3 offense*** - Violent offenses would be in OSL 10-13.
3. This means all Class A offenses will be in OSL 10 - 18.
4. If Violent offenses are to be in OSL 10-13, and OSL 10-18 are for Class A offenses, then will need to recalibrate class B violent offenses (9 total offenses) to either class A3 or as non-violent.
   - OSL 1-9 would be Class B and C
   - OSL 1-9 would be non-violent offenses

Potential Recommendation 33

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

Proposal B

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

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

Proposal B

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

Effects:

1. Serious Violent Offenses would be in OSL 14 and above. (*Same as Proposal A*)
2. ***Class A Violent offenses would be in OSL 10-13***.
3. This means all Class A (1,2,3) offenses will be in OSL 10 - 18. (*Same as Proposal A*)
4. OSL 1-9 would be Class B and C (*Same as Proposal A)*
5. ***OSL 9 will have both V and NV offenses. Class B violent offenses must be assigned OSL 9.*** Therefore, will need to recalibrate Class B violent offenses (9 total offenses). Moving them to OSL 9 or as non-violent.

Proposal A

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

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

Proposal B

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

Reducing Complexity (that leads to errors) and Improving Effectiveness of the System

- This structure (and the formulaic approach for the grid) is an attempt at uniformity and better alignment among the many factors of felony offenses.
- Therefore, under this (or any) new structure, recalibration of offenses and laws will be necessary.
- This recalibration will take additional time and effort that may be beyond the scope and timeline of the Task Force.
- The Co-Chairs have been discussing this. One idea they had is if the Task Force can reach consensus on adopting a structure, to then direct the SGC to make the necessary and sufficient changes to offense classifications to comply to the new structure.

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

Proposal A & B Effects

Serious Violent Offenses would be moved to OSL 14 or above.

Offense Description	Class	SL	Serious violent Offense RCW 9.94A.030	Violent Offense RCW 9.94A.030	Sex Offense RCW 9.94A.030	Crimes against persons RCW 9.94A.411
Aggravated murder 1	A	18	X	X		X
Homicide by abuse	A	17	X	X		
Murder 1	A	17	X	X		X
Murder 2	A	16	X	X		X
Malicious explosion 1	A	15		X		
Trafficking 1st degree	A	15		X		
Malicious explosion 2	A	14		X		
Malicious placement of explosives 1	A	14		X		
Assault 1	A	13	X	X		X
Assault of a child 1	A	13	X	X		X
Commer sex abuse a minor - promote	A	13		X	X	
Rape 1	A	13	X	X	X	X
Rape of a child 1	A	13		X	X	X
Trafficking 2nd degree	A	13		X		
Manslaughter 1	A	12	X	X		X
Rape 2	A	12		X	X	X
Rape of a child 2	A	12		X	X	X
Vehicular homicide - drunk	A	12		X		X
Vehicular homicide - reckless	A	12		X		X
Child molest 1	A	11		X	X	X
Indecent liberties with force	A	11		X	X	X
Kidnapping 1	A	11	X	X		X
Leading organized crime	A	11		X		
Sexually violent predator escape	A	11		X		
Open for recalibration		10				

IMPORTANT NOTE:

Remember Potential Recommendation 13-13a which increases the number of OSLs from 16-18, moves offenses, and establishes a formula for OSL 10-17. This then leaves OSL open for recalibration.

Offense Description	Class	SL	Serious violent Offense RCW 9.94A.030	Violent Offense RCW 9.94A.030	Sex Offense RCW 9.94A.030	Crimes against persons RCW 9.94A.411
Explosive devices prohibited	A	9		X		
Homicide by watercraft-drunk	A	9		X		
Robbery 1	A	9		X		X
Abandon dependent persons 1	B	9				
Assault of a child 2	B	9		X		X
Criminal mistreatment 1	B	9				X
Controlled substance homicide	B	9*				
Hit and run - death	B	9				
Inciting criminal profiteering	B	9				
Malicious placement of imitation device 1	B	9				
Malicious explosion 3	B	9				
Malicious placement of explosives 2	B	9				
Sexual exploitation of a minor	B	9		X	X	
Arson 1	A	8		X		X
Homicide by watercraft-reckless	A	8		X		
Commer sex abuse a minor	B	8			X	
Manslaughter 2	B	8		X		X
Promoting prostitution 1	B	8				X
Burglary 1	A	7		X		X
Homicide by watercraft-disregard safety	A	7		X		
Use machine gun or bump-fire stock in commission of a felony	A	7		X		
Vehicular homicide - disregard safety of others*	A	7				X
Child molest 2	B	7			X	X
Civil disorder training	B	7				
Dealing depictions of a minor 1st degree	B	7			X	
Drive-by-shooting	B	7		X		
False reporting 1 *(effective 6/11/2020)*	B	7				
Indecent liberties w/o force	B	7			X	X
Introducing contraband 1	B	7				
Malicious placement of explosives 3	B	7				
Negligently causing death by use of a signal preemption device	B	7				
Send/bring sexual depictions of minor 1st degree	B	7			X	
Unlawful possession of firearm 1	B	7				

Proposal A

- ***<u>All</u> violent offenses must be a class A3 offense*** - Violent offenses would be in OSL 10-13.
- If Violent offenses are to be in OSL 10-13, and OSL 10-18 are for Class A offenses, then will need to recalibrate class B violent offenses (9 total offenses) to either class A3 or as non-violent.

Proposal B

1. ***<u>Class A Violent</u> offenses would be in OSL 10-13***.
2. ***OSL 9 will have both V and NV offenses. Class B violent offenses must be assigned OSL 9.*** Therefore, will need to recalibrate Class B violent offenses (9 total offenses). Moving them to OSL 9 or as non-violent.

Cont.

Offense Description	Class	SL	Serious violent Offense RCW 9.94A.030	Violent Offense RCW 9.94A.030	Sex Offense RCW 9.94A.030	Crimes against persons RCW 9.94A.411
Bail jump with murder 1	A	6		X		
Bribery	B	6				
Incest 1	B	6			X	X
Intimidating a judge	B	6				
Intimidating a juror	B	6				X
Intimidating a witness	B	6				X
Poss of depiction of minor 1st degree	B	6			X	
Theft from a vulnerable adult 1	B	6				X
Theft of a firearm	B	6				
Kidnapping 2, sexual motivation	A	5		X	X	X
Advancing money - extortionate credit	B	5				
Bail jump with class a	B	5				
Dealing depictions of a minor 2nd degree	B	5			X	
Extortion 1	B	5		X		X
Extortionate extensions of credit	B	5				
Extortionate means to collect	B	5				
Kidnapping 2	B	5		X		X
Perjury 1	B	5				
Poss of a stolen firearm	B	5				
Rendering criminal assistance 1	B	5				
Send/bring sexual depictions of minor 2nd degree	B	5			X	
Stalking	B	5				X
Taking motor vehicle without permission 1	B	5				
Abandon dependent persons 2	C	5				
Air bag diagnostic systems	C	5				
Air bag replacement requirements	C	5				
Air bag diagnostic systems (causing bodily injury or death)	C	5				
Air bag replacement requirements (causing bodily injury or death)	C	5				
Manufacture or import counterfeit, nonfunctional, damaged, or previously delployed airbag (causing bodily injury or death)	C	5				
Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously delployed airbag (causing bodily injury or death)	C	5				
Child molest 3	C	5			X	X
Criminal mistreatment 2	C	5				X
Custodial sexual misconduct 1	C	5			X	
Domestic violence court order violation	C	5				X
Driving under the influence (felony) (7/1/2007-7/22/2017)	C	5				X
Incest 2	C	5			X	X
Malicious placement of imitation device 2	C	5				
Manufacture or import counterfeit, nonfunctional, damaged, or previously delployed airbag	C	5				
Persistent prison misbehavior	C	5				
Physical control vehicle under the influence (felony)(7/1/2007-7/22/2017)	C	5				X
Rape 3	C	5			X	X
Rape of a child 3	C	5			X	X
Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously delployed airbag	C	5				
Sexual misconduct 1	C	5			X	
Sexually violate human remains	C	5			X	
Theft of anhydrous ammonia	C	5				
Unlawful storage of anhydrous ammonia	C	5				

Proposal A

- ***<u>All</u> violent offenses must be a class A3 offense*** - Violent offenses would be in OSL 10-13.
- If Violent offenses are to be in OSL 10-13, and OSL 10-18 are for Class A offenses, then will need to ***recalibrate class B violent offenses*** (9 total offenses) to either class A3 or as non-violent.

Proposal B

1. ***<u>Class A Violent</u> offenses would be in OSL 10-13***.
2. ***OSL 9 will have both V and NV offenses. Class B violent offenses must be assigned OSL 9.*** Therefore, will need to recalibrate Class B violent offenses (9 total offenses). Moving them to OSL 9 or as non-violent.

Offense Description	Class	SL	Serious violent Offense RCW 9.94A.030	Violent Offense RCW 9.94A.030	Sex Offense RCW 9.94A.030	Crimes against persons RCW 9.94A.411
Assault 2, sexual motivation	A	4		X	X	X
Arson 2	B	4		X		
Assault 2	B	4		X		X
Assault by watercraft	B	4				
Bribe received by witness	B	4				
Bribing a witness	B	4				
Commercial bribery	B	4				
Driving under the influence (felony) (post 07/23/2017)	B	4				X
Endangerment with a controlled substance	B	4				
Escape 1	B	4				
Identity theft 1	B	4				X
Poss of depiction of minors 2nd degree (post 07/23/2017)	B	4			X	
Residential burglary	B	4				
Robbery 2	B	4		X		X
Theft of livestock 1	B	4				
Threats to bomb	B	4				X
Trafficking in stolen property 1	B	4				
Unlawful factoring credit/pay card transaction-2nd	B	4				
Unlawful transaction of health coverage as a health care service contractor	B	4				
Unlawful transaction of health coverage as a health maiintenance organization	B	4				
Unlawful transaction of insurance business	B	4				
Unlawful practice as an insurance professional	B	4				
Use of proceeds of criminal profiteering	B	4				
Vehicular assault under infl/reckless	B	4		X		X
View depiction of minor engaged sex conduct 1st degree	B	4			X	
Willfully failure return from furlough	B	4				
Assault 4 (3rd domestic violent offense)	C	4				X
Assault 3 (peace officer w/projectile stun gun)	C	4				
Cheating 1	C	4				
Counterfeit - endanger public health/ safety	C	4				X
Hate crime (previously malicious harassment)	C	4				
Hit and run - injury	C	4				
Hit and run w/vessel	C	4				
Indecent exposure	C	4				X
Influencing outcome of sporting event	C	4				
Physical control vehicle under the influence (felony) post (07/23/17)	C	4				X
Vehicle prowl 2 (3rd or subs)	C	4				

Cont.

Proposal A

- ***<u>All</u> violent offenses must be a class A3 offense*** - Violent offenses would be in OSL 10-13.
- If Violent offenses are to be in OSL 10-13, and OSL 10-18 are for Class A offenses, then will need to ***recalibrate class B violent offenses*** (9 total offenses) to either class A3 or as non-violent.

Proposal B

1. ***<u>Class A Violent</u> offenses would be in OSL 10-13***.
2. ***OSL 9 will have both V and NV offenses. Class B violent offenses must be assigned OSL 9.*** Therefore, will need to recalibrate Class B violent offenses (9 total offenses). Moving them to OSL 9 or as non-violent.

Section 13

Potential Recommendations 34-37

34: Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a technical violation will not reset the washout period.

35: Class A Felony Washout Rules

36: Class B Felony Washout Rules

37: Class C Felony Washout Rules

Overview of WA Washout Rules

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

<u>This does not equate to a vacated offense.</u>

Overview of WA Washout Rules

Never Washout:

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

10 year Washout:

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

5 year Washout:

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

Overview of WA Washout Rules

Other Related Washout Policies in Status Quo:

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

Grid Subgroup Discussions

The Grid Subgroup spent several months discussing the following:

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

Grid Subgroup Discussion: Anticipatory Offenses

Anticipatory offenses scored as completed offense – should they be treated as completed or have separate washout rule?

Grid Subgroup concluded no recommendations necessary – scoring would be the same regardless of if Class A or B. Laws already account for the lesser punishment for anticipatories (i.e., sentenced at 75% of the minimum of the range). Washout is based on the conviction class, so if anticipatory drops to Class B, the conviction will washout according to Class B washout rules.

Potential Recommendation 34 Encompasses:

- When does the washout period start? What about technical violations or DOSA revoke?
- Should washout periods be restarted for any offense or only for an offense that is as serious or more serious than the new conviction?
- Should misdemeanors trigger reset of “crime-free” period for felony offenses?

Potential Recommendation 34

Potential Recommendation 34: *Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a technical violation will not reset the washout period.*

- What it means? If an individual is revoked under a sentencing alternative and they consequently return to incarceration under inmate status, washout period starts when they release. This is different from individuals who are returned to incarceration under violator status.

Potential Recommendations 35-37

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

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

Potential Recommendation 35

Potential Recommendation 35: Class A Felony Washout Scoring Rules

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

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

Option c: *Offense Classification Proposal – Violent Class A felonies washout after 15 years. Serious violent Class A felonies would not washout.*

Option d: *Allow for Class A felonies to washout after 15 years if the new offense is not as serious or more serious than the original offense.*

Option e: *If the current offense is a serious violent than all prior serious violent should be included in the CHS.*

Potential Recommendation 35:
Class A Felony Washout Scoring Rules

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

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

Option c: Class A3 felonies washout after 15 years. Serious violent Class A felonies (A1 and A2) would not washout.

Option d: Allow for Class A felonies to washout after 15 years if the new offense is not as serious or more serious than the original offense.

Option e: If the current offense is a serious violent than all prior serious violent should be included in the CHS.

Option a: Option b: Option c:

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

* 15 year washout unless new offfense is SV, then previous SV does not washout

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

Potential Recommendation 36

Potential Recommendation 36: Class B Felony Washout Scoring Rules

- ***Option a:*** *Make no change to the current law (Class B washout period of ten years).*
- ***Option b:*** *Class B felonies washout after 5 years.*

Potential Recommendation 36:
Class B Felony Washout Scoring Rules

Option a: Make no change to the current law (Class B washout period of ten years).

Option b: Class B felonies washout after 5 years.

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

Option a

Option b

* 15 year washout unless new offfense is SV, then previous SV does not washout

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

Potential Recommendation 37

Potential Recommendation 37: Class C Felony Washout Scoring Rules

- ***Option a:*** *Make no change to the current law (Class C washout period of 5 years).*
- ***Option b:*** *Class C felonies washout after 3 years.*

Potential Recommendation 37:
Class C Felony Washout Scoring Rules

Option a: Make no change to the current law (Class C washout period of 5 years).

Option b: Class C felonies washout after 3 years.

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

* 15 year washout unless new offfense is SV, then previous SV does not washout

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

Section 14

Potential Recommendations 38-40

38: Include & visually depict all sentencing alternatives on the felony sentencing guidelines grid.

39: Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSA and rDOSA (prison and residential drug offense sentencing alternatives).

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

Overview of Sentencing Alternatives Work

Fall 2021-Spring 2022:
Discussion on current sentencing alternatives, including

- Program overview
- Intended purpose
- Statutory Eligibility Criteria: Current offense, Prior record, Prior participation in alternative
- Any past/current efforts or entities looking at potential changes?

Presentations from DOC, Sex Offender Policy Board

Reviewed: spreadsheets of current and simulated grids with offense-specific eligibility for DOSA, FOSA, and FTOW, including specific offenses and guideline ranges eligible for an alternative.

November 2021 Task Force Meeting: Presentation on Sentencing Alternatives and Looked at How Sentencing Alternatives could Integrate to the Grid

	0		1		2		3		4		5		6		7		8		9+	
XVI	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																			
XV	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548
XIV	123	220	134	234	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397
XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397
XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
IX	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171
VIII	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144
VII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
VI	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
V	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
III	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68
II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
Unr	0 - 365 days																			

Cells in the green zone are presumptive jail sentences. Depending on the offense, individuals may be eligible for a residential DOSA or SOSSA disposition.

Cells in the yellow zone may be eligible for a residential DOSA, FOSA, or SOSSA disposition depending on the offense and the types of offenses in an individual's criminal history.

Cells in the blue zone may be eligible for a prison DOSA, FOSA, or SOSSA disposition depending on the offense and the types of offenses in an individual's criminal history.

Cells in the hatched zone may be eligible for the FTOW sentencing alternative.

Overview of Sentencing Alternatives Work cont.

Special Sex Offender Sentencing Alternative – SSOSA

- Reviewed program overview & statutory eligibility criteria
- Conversations w/Chair & Vice-Chair of Sex Offender Policy Board (SOPB) on SSOSA, sentencing for sex offenses, and ways the SOPB & subgroup could coordinate their work
- Chair of House Public Safety Committee asked the SOPB to review SSOSA (including eligibility criteria), lifetime supervision, washouts, and treatment (capacity, requirements, need, housing barriers, etc.). The request directs SOPB to develop policy recommendations with research & guiding principles for each topic. Report due to Legislature December 2022.

Potential Recommendation 38

Include & visually depict all sentencing alternatives on the felony sentencing guidelines grid.

Simulated Grid

		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																					
Zone 4: State Prison	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	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

Potential Recommendation 38, cont.

Reducing sentencing implementation complexities and errors:

- Group discussed modifying eligibility criteria to align w/OSL while retaining the nexus between the offense and treatment/underlying need.
- All sentencing options would be included on the guidelines grid and increase transparency regarding when sentencing alternatives could be considered

Improving the effectiveness of the sentencing system & Promoting and improving public safety:

- Recognizing concern about implications to public & survivor/victim safety if eligibility expanded to individuals facing convictions in higher OSLs, noted that individuals should have access to treatment when needed.
- Visual overlay of sentencing alternatives would remind all parties of treatment-oriented sentencing options to encourage consideration of applicable sentencing alternative in all possible situations

Overview: Prison & Residential Drug Offender Sentencing Alternatives

Prison DOSA: provide substance use disorder treatment and community supervision for individuals diagnosed with a substance disorder who have committed a drug or other statutory eligible crimes

Residential DOSA: residential substance use disorder treatment in the community in lieu of serving time in prison.

Current eligibility considers current offense, prior record and, for pDOSA: person cannot have received more than 2 DOSA in the last 10 years

Potential Recommendation 39

Potential Recommendation 39: Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSA and rDOSA (prison and residential drug offense sentencing alternatives).

Potential Recommendation 39, cont.

How meets the 3 policy goals:

Reducing sentencing implementation complexities and errors:

- Current alternatives vary as to whether an individual with a past felony violent conviction could be considered for an alternative. In 2020, Legislature eliminated exclusion for prior violent convictions, unless committed with a deadly weapon, for FOSA.
- Eliminating criteria/exclusions that do not correspond to the sentencing guidelines grid (such as prior convictions) increases simplicity.
- Mental Health Sentencing Alternative (based on 2020 CSTF Rec) does not exclude people based on prior record.

Improving the effectiveness of the sentencing system & Promoting and improving public safety:

- Could increase instances where substance use treatment-oriented sentencing options could be considered (when substance use disorder contributed to the commission of a crime).
- Eliminating exclusions based on prior history would not automatically lead to a sentencing alternative—court would still consider the individuals' circumstance and needs, and if those needs could be safely met in the community.

Potential Recommendation 40

Potential Recommendation 40: eliminate cap on the number of DOSA sentences that an individual can receive in a 10-year period.

Potential Recommendation 40, cont.

How meets the 3 policy goals:

Reducing sentencing implementation complexities and errors:

- Current eligibility excludes individuals w/more than 2 DOSAs in past 10 years, however individuals often come to DOC with multiple DOSAs.
- pDOSA eligibility criteria would more closely align with eligibility for rDOSA.

Improving the effectiveness of the sentencing system:

- Criteria would reflect current understanding of substance use disorders—that recovery is a process. Group discussed potential modifications to revocations.

Promoting and improving public safety:

- Prior participation in pDOSA would no longer prevent court from considering another DOSA sentence. Court would still consider community safety and an individuals' unique circumstance.
- Eliminating all exclusions/eligibility criteria may not reduce geographic disparities or increase access to programs. Some exclusions due to safety of other participants in programs.