

Washington State Criminal Sentencing Task Force Meeting

July 7, 2022

9:30am-3:30pm

Hybrid Meeting: In-Person and Via ZOOM

Agenda

Agenda

- Task Force Introductions and Updates
- Consensus Decision on Third Co-Chair Position
- Review, Discuss, and Provide Input on Potential Recommendation: **Offense Classification Proposal**
- Review, Discuss, and Provide Input on Potential Recommendations: **Washout Scoring Rules**
- Review, Discuss, and Provide Input on Potential Recommendations: **Sentencing Alternatives**

Agenda

9:00am
Coffee and Informal
Conversation

9:30am
Welcome and Agenda Review

9:40am
Introductions & Updates

10:05am
Consensus Decision: Vacant
Co-Chair Position

10:15am
Potential Recommendation
33: Offense Classification
Proposal

11:30am
Potential Recommendations:
Washout Scoring Rules

12:00pm
LUNCH

12:30pm
Potential Recommendations:
Washout Scoring Rules

2:00pm
Potential Recommendations:
Sentencing Alternatives

3:00pm
Public Comment

3:20pm
Recap, Action Items, & Closing
Reflections

3:30pm
Adjourn

Hybrid Meeting Groundrules

In-Person Room

Avoid Side Conversations: avoid cross-talks and side conversations as they can be audibly distracting and confusing to your remote colleagues.

Speak Clearly: There are mics around the room but to ensure those in the Zoom room can hear, please speak up.

Mute Electronic Devices

Reminder, you are on camera and this meeting is being recorded.

Hybrid Meeting Groundrules

In the ZOOM Room

Mute your audio: Whether you've joined by phone or video, please mute your audio until just before it's your turn to speak. That helps improve the sound quality for everyone. You can mute/unmute by clicking on the microphone icon or by holding down the space bar.

If you cannot hear people speaking in the room, please let your Zoom facilitator (Maggie Counihan) know.

Camera On (if doable): Strongly encourage cameras on so those both in-person and virtual can see everyone who is present and participating. everyone to join by video. Personal presence is important for collaborative group meetings, and even more critical for these hybrid meetings.

Gallery view: We ask that you select gallery view (in the top left corner of your computer screen), so you can see everyone in both rooms.

Zoom Chat Reminder: We have disabled the private chat function to adhere to your groundrule of no side conversations.

*****If you want to chat to the facilitators or pass along info to the Task Force, please send a chat message to Maggie Counihan.**

9:40 -
10:05am

Task Force Introductions & Updates

- **Members and Alternates:** Please state name, affiliation, and constituency you represent.

Task Force Groundrules

Criminal Sentencing Task Force Groundrules

- **Be Respectful**
 - One person speaks at a time; listen when others are speaking, avoid interrupting and side conversations.
 - Keep comments brief so everyone gets a chance to share their thoughts. Avoid dominating the discussion.
 - **Hear and respect all opinions.**
 - Silence cell phones and refrain from using laptops during the meeting, except to take notes.
- **Be Constructive**
 - Acknowledge that all participants bring with them legitimate purposes, goals, concerns, and interests, whether or not you are in agreement with them.
 - **Openly explore issues.**
 - Act in “good faith,” seeking to resolve conflicts and identify solutions.
 - State concerns and interests clearly, listen carefully to and assume the best in others. Leave negative assumptions and attitudes at the door.
 - **Share comments that are solution focused, rather than repeating past discussions.**
 - It’s OK to disagree, it is not OK to make personal attacks.
 - Minimize the use of jargon and acronyms, define and explain when used.
 - Work towards consensus. Be willing to compromise.
 - **Ask for clarification when uncertain of what another person is saying. Ask questions rather than make assumptions.**
- **Be Productive**
 - Begin and end meetings on time.
 - Respect time constraints.
 - Adhere to the agenda as much as possible, focusing on the subject at hand.

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.

9:40 -
10:05am

Task Force Introductions & Updates

- Co-Chair Updates
- Updates from Facilitation Team
 - Workplan and Input From Last Month's Meeting

2022 Work Plan

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

2022 Work Plan

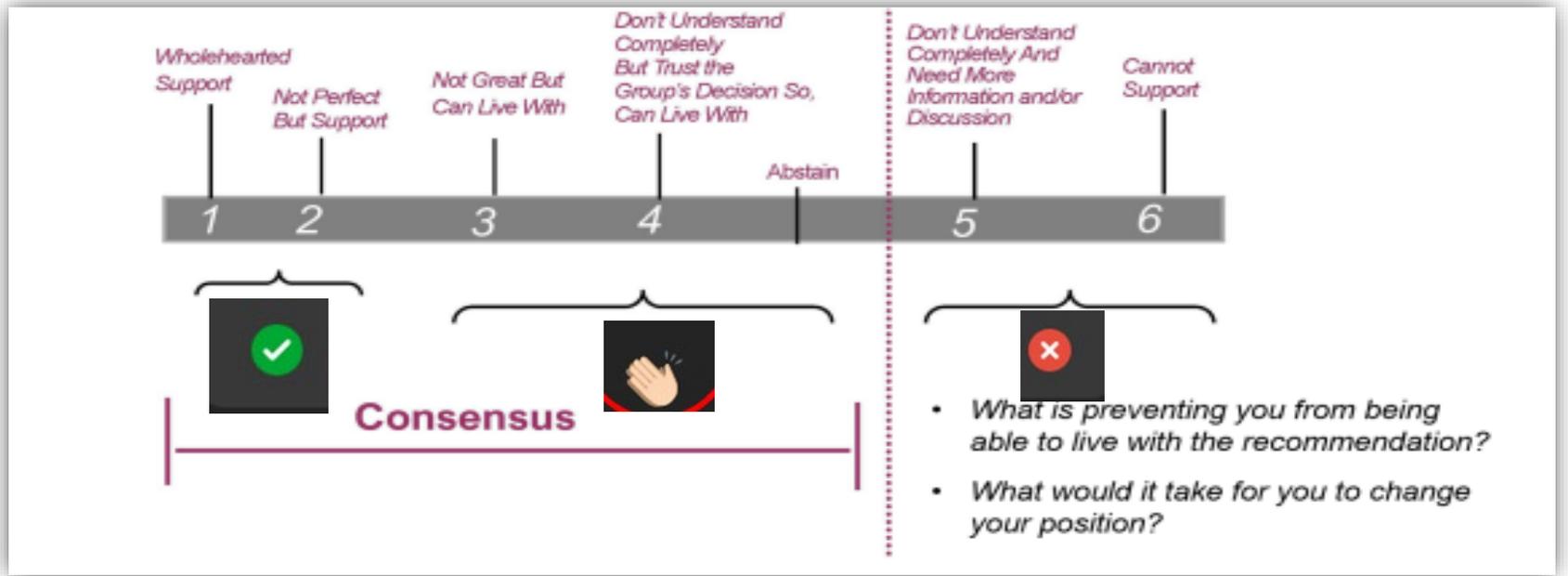
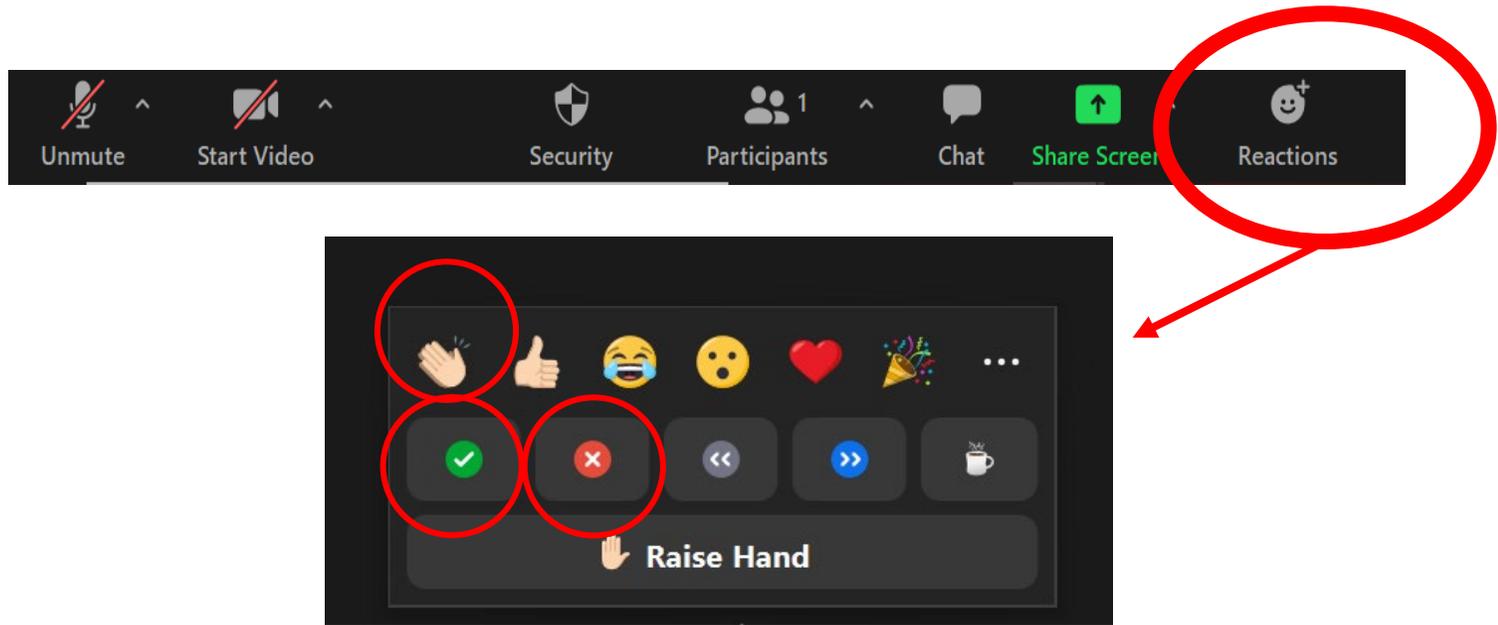
Meeting Reminders:

- **July 12th and July 26th: all-day meetings of the Grid Subgroup to assemble package of potential recommendations.**
- **August 31st/September 1st: two-day consensus session for Task Force to review all grid recommendations together and test for consensus on the package of recommendations—a work session to discuss issues around any/all thumbs down during first consensus test, followed by the first round of seeking consensus.**

10:05 -
10:15am

Consensus Decision: Vacant Co-Chair Position

Consensus Icons



10:15 -
11:30am

Potential Recommendation 33: Offense Classification Proposal

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”.

Some of the Functions Related to Offense Classification

Statutory Maximum Term
Washout Period
Vacation of Record
Violent Offense Status
Offense Severity (to certain extent)
Sex Offense Registration
Most Serious Offense
Mandatory Remand
Anticipatory

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
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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				Attempt/ Solicitation	Conspiracy	Violent	Most Serious Offense^	Mandatory Remand^^
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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
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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
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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										
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10	A	Life	Life	NA	Life	A/B	B	V	Any Class A	Any Class A w/Sex Mot
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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										

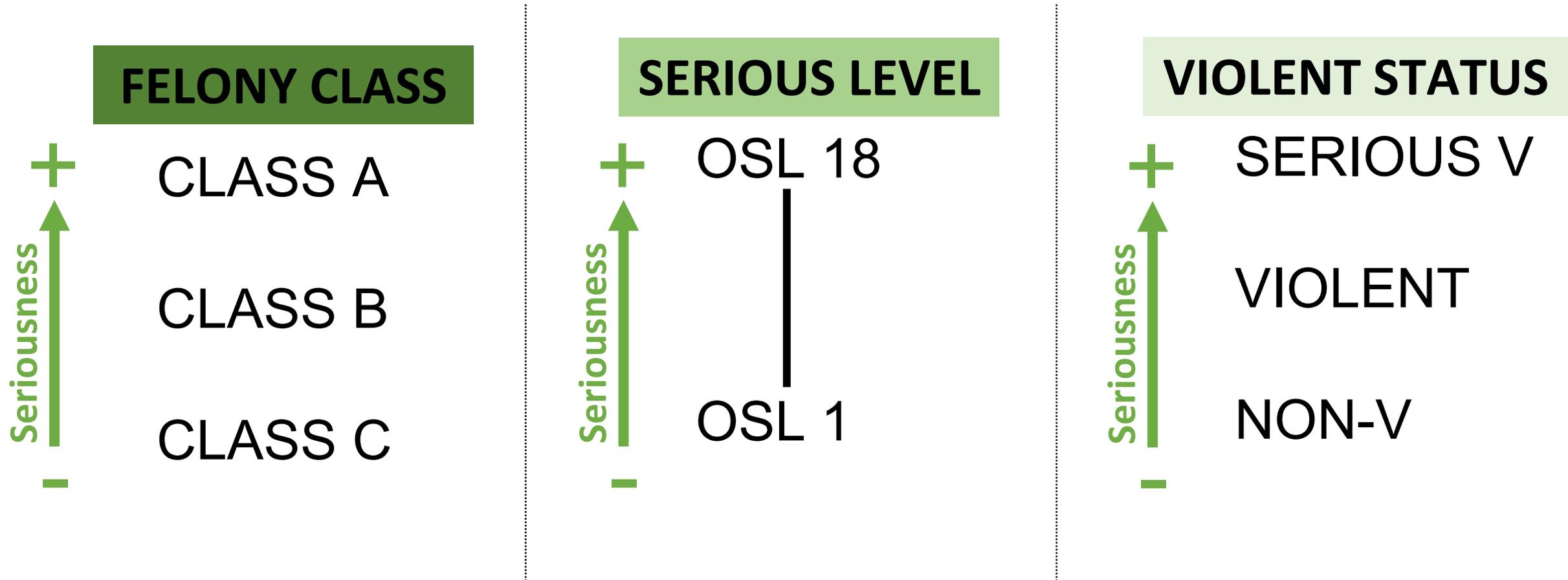
REMINDER

- 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

OSL	Class	In Years			Violent Prop A	Violent Prop B
		Stat Max	Washout	Vacation		
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

OSL	Class	In Years			Violent Prop A	Violent Prop B
		Stat Max	Washout	Vacation		
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. ***All 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

OSL	Class	In Years			Violent Prop A	Violent Prop B
		Stat Max	Washout	Vacation		
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

OSL	Class	In Years			Violent Prop A	Violent Prop B
		Stat Max	Washout	Vacation		
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.

OSL	Class	Stat Max	In Years		Violent Prop A	Violent Prop B
			Washout	Vacation		
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.

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	Violent Offense	Sex Offense	Crimes against persons
			RCW 9.94A.030	RCW 9.94A.030	RCW 9.94A.030	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				

Proposal A

- **All 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. **Class A Violent 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	Sex	Crimes
			violent	Offense	Offense	against
			Offense	RCW	RCW	persons
			9.94A.030	9.94A.030	9.94A.030	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				

Cont.

Offense Description	Class	SL	Violent	Violent	Sex	Crimes
			Offense	Offense	Offense	against
			RCW	RCW	RCW	persons
			9.94A.030	9.94A.030	9.94A.030	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 deployed airbag (causing bodily injury or death)	C	5				
Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed 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 deployed 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 deployed 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

- ***All 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. ***Class A Violent 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	Violent	Sex	Crimes
			Offense	Offense	Offense	against
			RCW	RCW	RCW	persons
			9.94A.030	9.94A.030	9.94A.030	RCW
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 maintenance 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				

Proposal A

- **All 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. **Class A Violent 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.

11:30 -
12:00pm

Potential Recommendations: Washout Scoring Rules

- Overview of Research and Data
- Background and Overview of Washington State Washout Scoring Rules

Potential Recommendation 34-37 will focus on Washouts

Simulated Grid										
DSL	Class	Stat Max	In Years			Attempt/ Solicitation	Conspiracy	Violent	Most Serious Offense	Mandatory Remand
			Washout	Vacation	SO Registration					
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										

Overview of Research and Data

Research and Data

- Grid Subgroup reviewed several articles that are available on the CSTF resources page.
- Grid subgroup met with Dr. Megan Kurlychek from Penn State.
- Dr. Knoth-Peterson previously provided Chapter 4 of National Institute of Justice “Desistance From Crime: Implications for Research, Policy, and Practice” published in Nov. 2021.

Theoretical Underpinnings of Criminal History Score

- 1) **Risk – “past behavior is the best predictor of future behavior”**
 - a) *Theory of punishment: incapacitation* – individuals at a higher risk of committing an offense should be incarcerated longer.

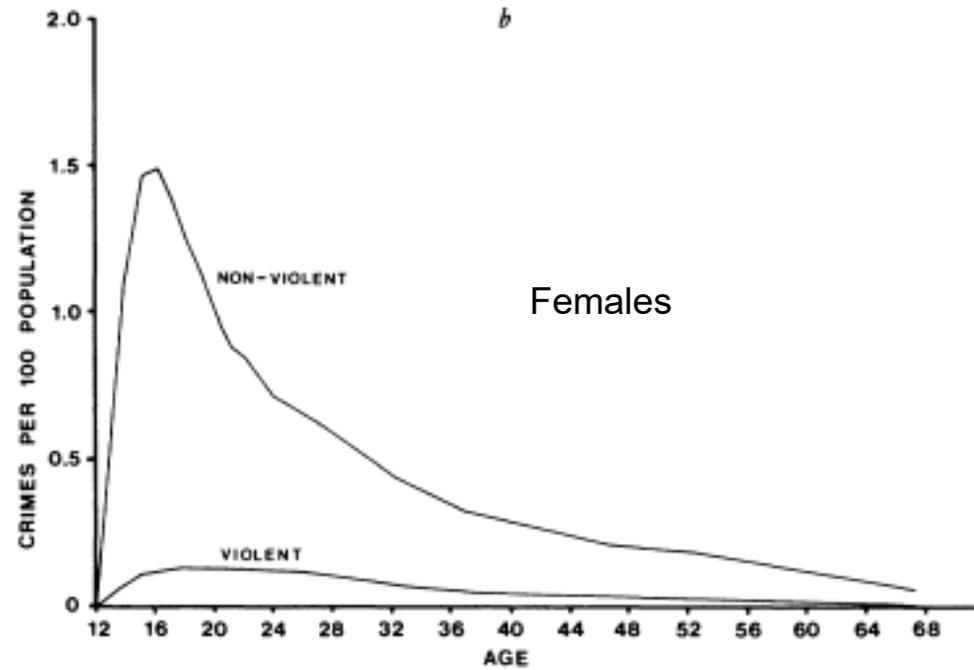
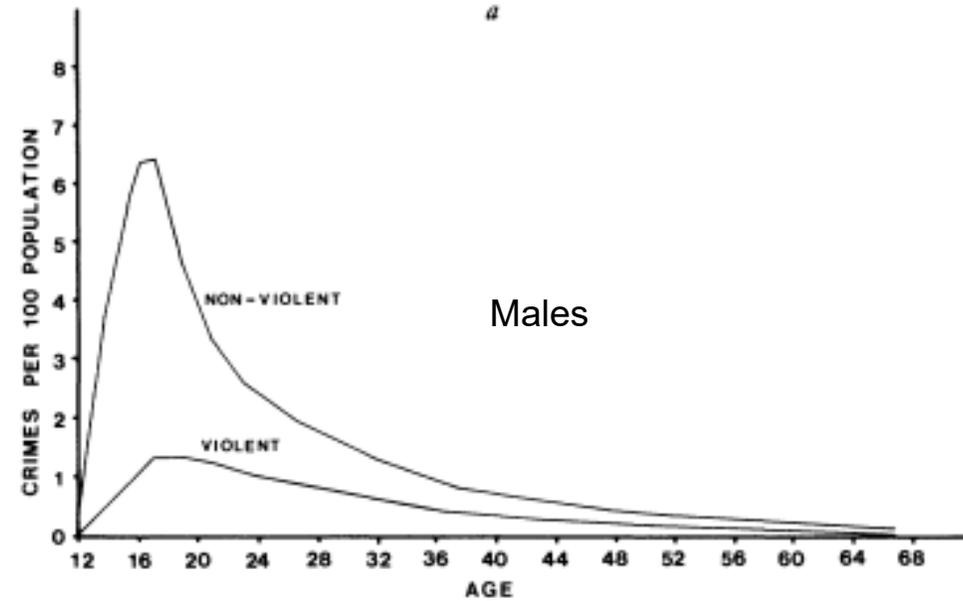
- 2) **Culpability – repeat offending makes an individual more culpable**
 - a) *Theory of punishment: retribution* – individuals who commit more crimes deserve more punishment
 - b) *Theory of punishment: deterrence* – if prior punishments were insufficient to deter an individual from crime, more severe punishments may be/are necessary.

Research and Data – Age-Crime Curve

- **Age-crime curve:** crime tends to peak in late adolescence/early adulthood and declines rapidly thereafter.
- **“Maturation”**
- **Physiology:** Brain development science further supports – as brain matures, executive functions and neuropsychological processes strengthen.
- **Social/cultural:** youth leaving household/parental supervision for the first time = experimentation, hedonism. As people age, prosocial bonds increase (employment, education, family responsibilities).

Research and Data: Age-Crime Curve

- Age-crime curve



Research and Data – Age-Crime Curve

- Age-crime curve
 - Some variance by type of crime

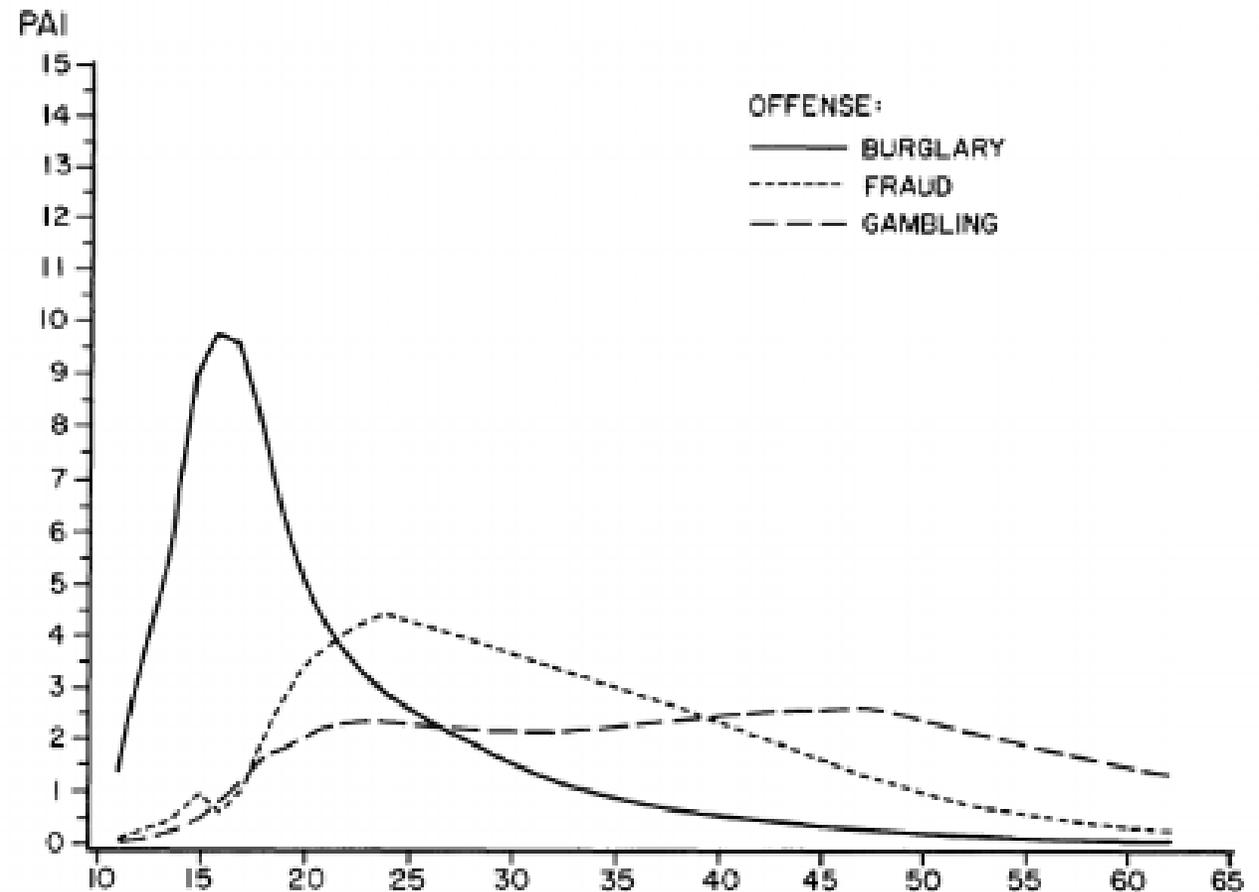
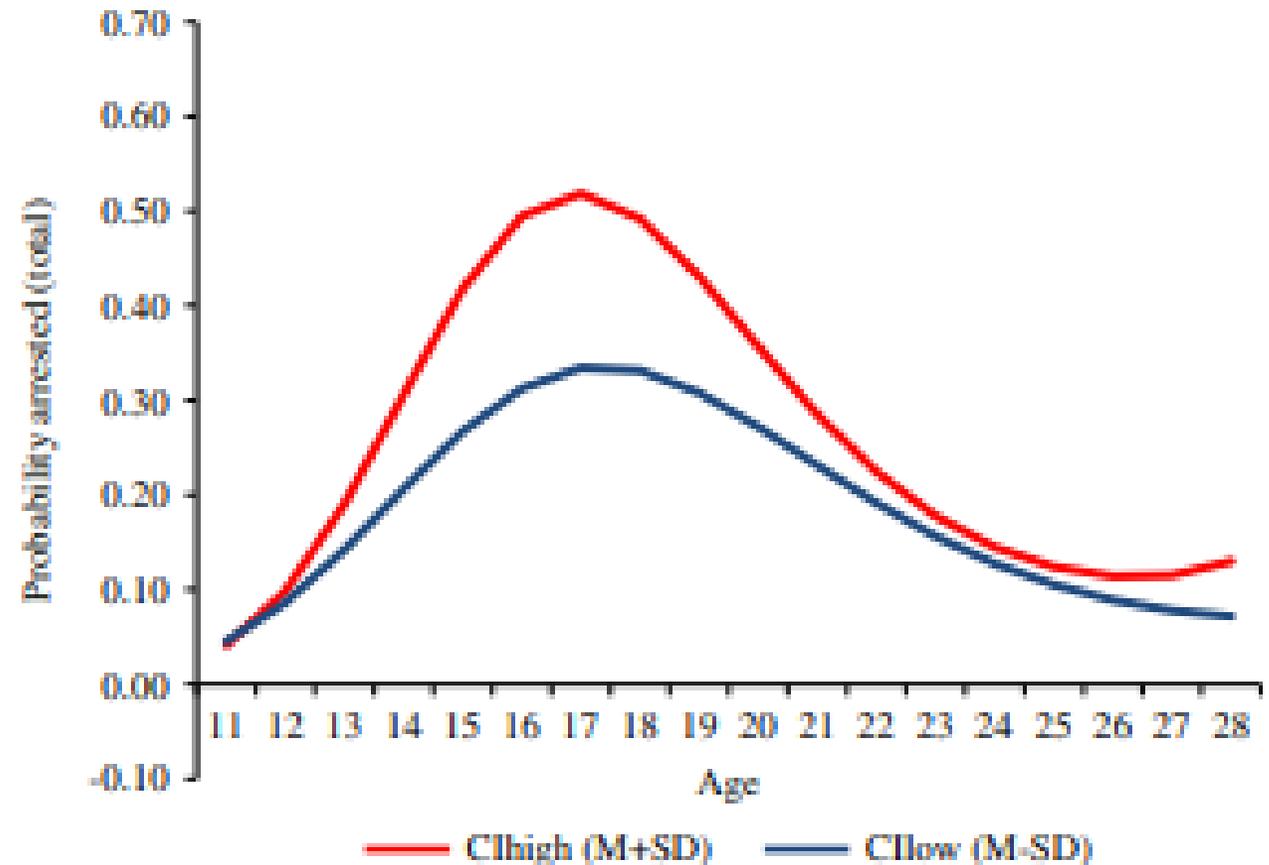


FIG. 1.—1980 age curves (PAI) for burglary, fraud, and gambling

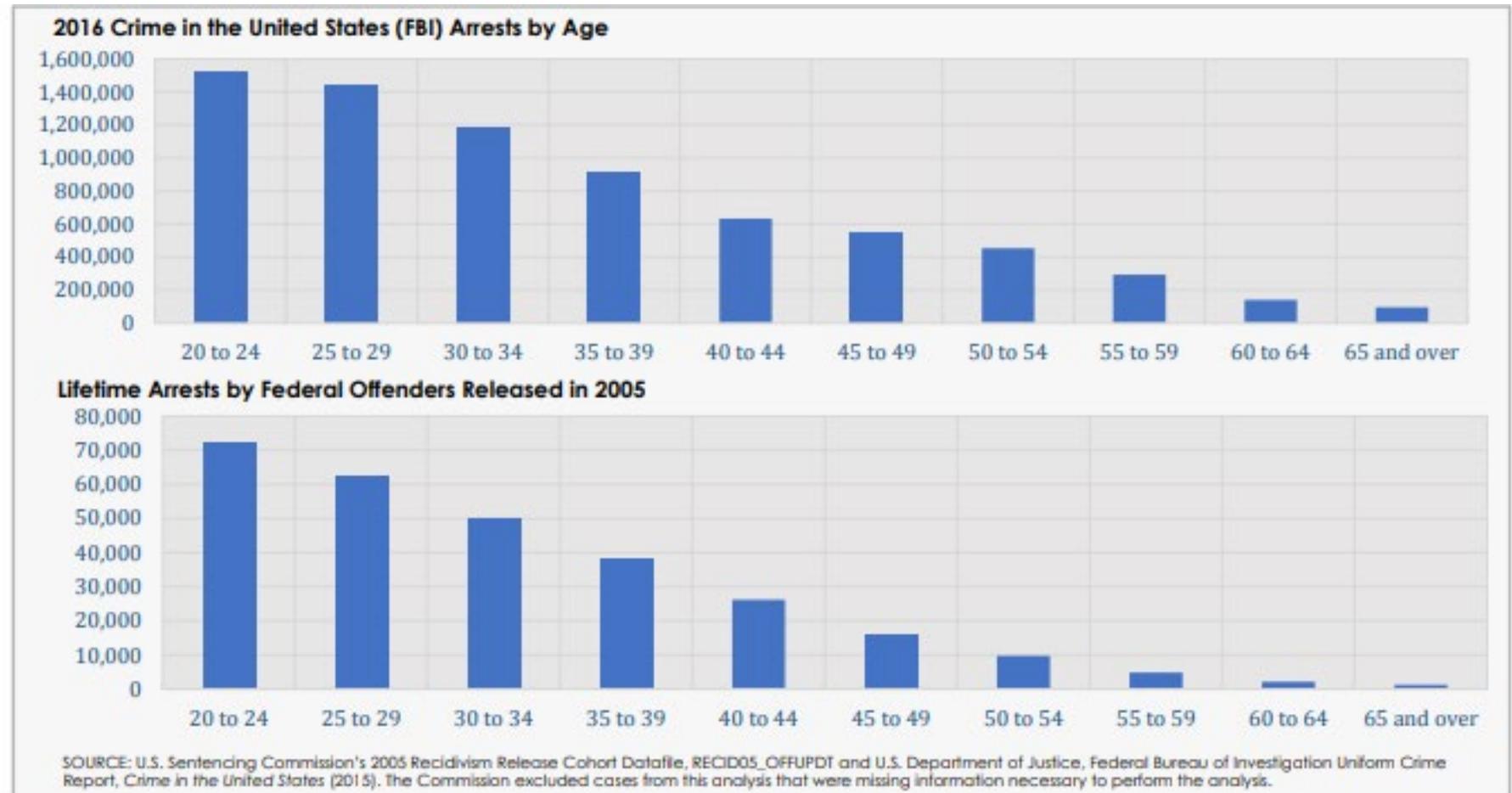
Research and Data – Age-Crime Curve

- Age-crime curve
 - Some within-age differences based on executive functioning (cognitive impulsivity)



Research and Data – Age-Crime Curve

- Age-crime curve
 - Similar for general population and those with criminal history



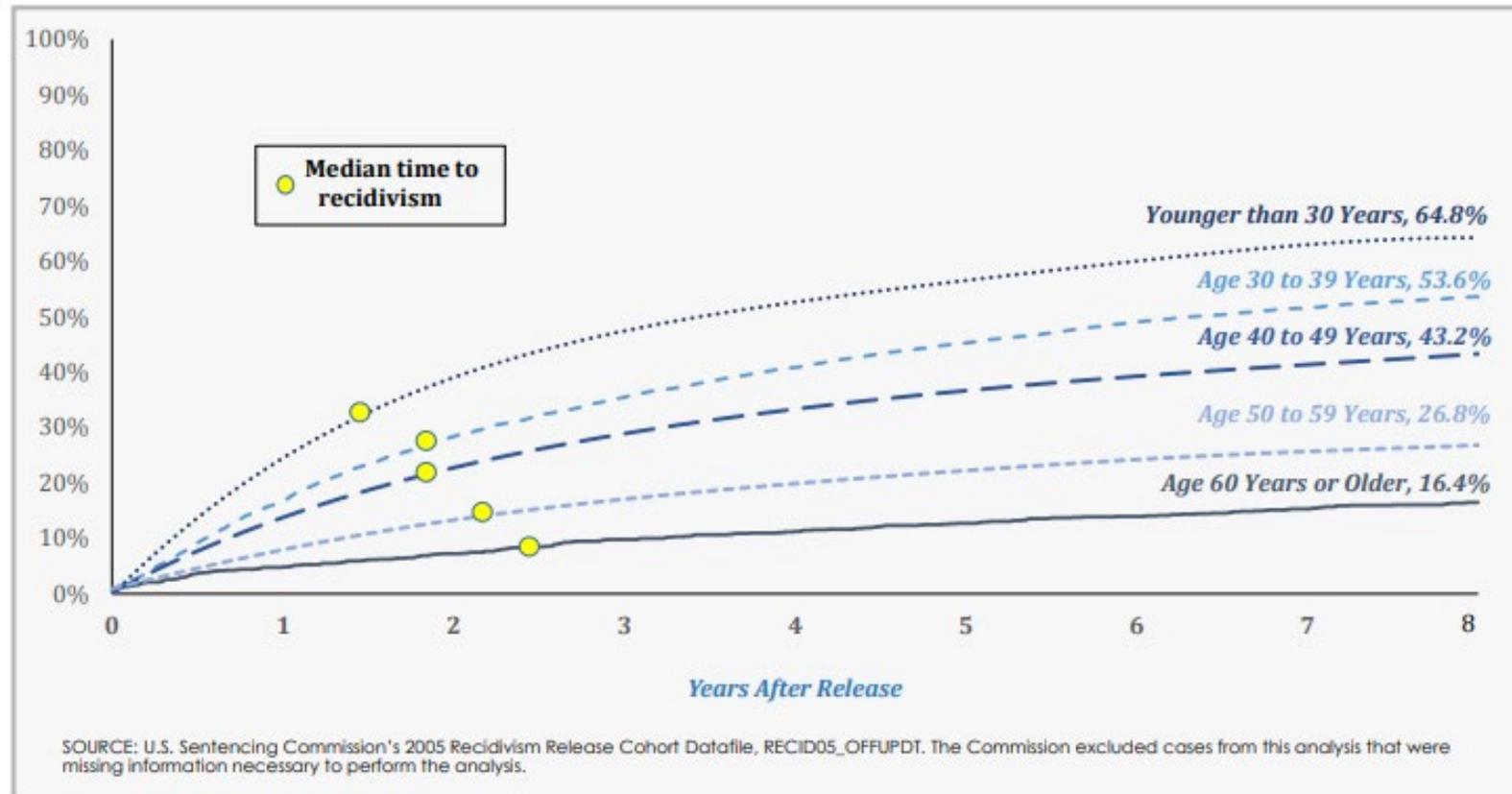
US Sentencing Commission (2017)

Research and Data – Recidivism

- Most people who recidivate, do so quickly.
- Around years 7-10, most people who have not recidivated have the same probability of committing a crime as someone who has no criminal history. Risk for any person is never 0, but at this point, risk is no longer elevated compared to others with no criminal history. (“Redemption benchmarks”)
- In general, recidivism rates tend to be higher for individuals convicted of a drug or property offense than serious violent offenses. This may be in part because serious violent offenses have longer incarceration sentences and individuals are much older when they are released from prison.

Research and Data – Recidivism

- As with the age-crime curve, older individuals are less likely to recidivate and that is typically true across different criminal history records.



Research and Data – Desistance

- Typically we think of recidivism as a yes or no question.
 - As a measure of effectiveness, if people do recidivate, then the intervention “failed” or “didn’t work.”
 - Approach thinks of desistance as an immediate act – either an individual is deterred from committing future crime or they are not.
- Increasingly research is moving toward an understanding of *desistance* as a more important measure of effectiveness than recidivism.

Research and Data – Desistance

- **Desistance:** “the process by which criminality, or the individual risk for antisocial conduct, declines over the life-course, generally after adolescence.”
 - The process may be occurring, even if an individual continues to engage in offending behaviors.
 - Interventions may help facilitate the process, or may impede the process.
 - Desistance processes are tied not only to criminal justice interventions, but general life circumstances through the life course. Criminal justice interventions may have an indirect effect on desistance by negatively or positively influence life circumstances (see Chapter 3 of the NIJ report).
- Desistance doesn't just happen...

Research and Data – Desistance

Desistance - three core measurements/markers to identify individual change vs. continuity in criminal behavior:

- **Deceleration** – over time, a reduction in the frequency of offending is an indicator of desistance.
- **De-escalation** – over time, a reduction in the seriousness of offending behaviors is an indicator of desistance.
 - E.g., a person moving from repeat burglaries (committed to support a substance use disorder) to arrests for drug offenses only may be on a path toward desistance.
- **Reaching a ceiling** – the point at which an individual's criminal behavior has completed ended. The opposite of recidivism.
 - Very difficult to identify because the risk of offending is never truly 0 for anyone.

Research and Data – Desistance

- Deceleration and De-escalation
 - Difficult to measure with types of criminal justice interventions, especially with long-term interventions like incarceration, because the measurements are confounded with age.
 - Statistically, younger individuals are more likely to offend than older individuals.
 - Individuals who are incarcerated at age 20 and released at age 40 would be expected to have less frequent offending after release due to maturation alone and not because of the direct effect of incarceration itself.

Rethinking Criminal History Score Theory and Practice

- 1) **Risk – “past behavior is the best predictor of future behavior”**
 - a) Recent past behavior is the best predictor of future behavior.
 - b) Criminal history score is likely to increase as people age (they’ve had more exposure to the possibility of arrest/conviction), but as people age, the likelihood they will commit additional crimes decreases.
 - c) Research indicates as time passes, prior offenses are less predictive of future behavior. (“Redemption Benchmarks”)
 - d) Quality matters. Even with extensive criminal history, a decline in *frequency* or a decline in *severity* may indicate desistance and severe interventions could actually disrupt the desistance process.

Rethinking Criminal History Score Theory and Practice

- 2) **Culpability – repeat offending makes an individual more culpable**
 - a) Desistance is not an immediate process
 - b) Offenses occurring in closer succession are more likely to be related and representative of a similar/consistent level of underlying “criminality.”
 - c) Criminal history is likely to accumulate during late adolescence, a time that the US Supreme Court has indicated individuals are less culpable due to underdevelopment of cognitive functioning (*Roper v. Simmons, Graham v. Florida, Miller v. Alabama*). Yet, those offenses are used to indicate increased culpability in later years through criminal history scores.

Overview of WA 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.

This does not equate to a vacated offense.

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

12:00 –
12:30pm

LUNCH

12:30 -
2:00pm

Potential Recommendations: Washout Scoring Rules Cont.

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.*

Potential Recommendations 34-37

- *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:

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

Unranked Offenses

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

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

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.

OSL	Class	Stat Max	In Years				Violent Prop A	Violent Prop B
			Washout (current law) Prop A	Washout Prop B	Washout Prop C	Vacation		
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

Option a (green box) and **Option b** (purple box) are overlaid on the 'Washout (current law) Prop A' and 'Washout Prop B' columns for OSL 10-11.



Unranked Offenses

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

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.

OSL	Class	Stat Max	In Years				Violent Prop A	Violent Prop B
			Washout (current law) Prop A	Washout Prop B	Washout Prob C	Vacation		
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

Option a (circled in blue)
 Option b (circled in yellow)

Unranked Offenses

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

2:00 –
3:00pm

Potential Recommendations: Sentencing Alternatives

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: DOSAs, FOSAs, State Prison	9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	12 mos
8		14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	12 mos	12 mos
Zone 2: CISRS, DOSAs, FOSAs <=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, RDOSAs, 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 pDOSAs: person cannot have received more than 2 DOSAs 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 pDOSAs and rDOSAs (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.
- pDOSAs eligibility criteria would more closely align with eligibility for rDOSAs.

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 pDOSAs would no longer prevent court from considering another DOSAs 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.

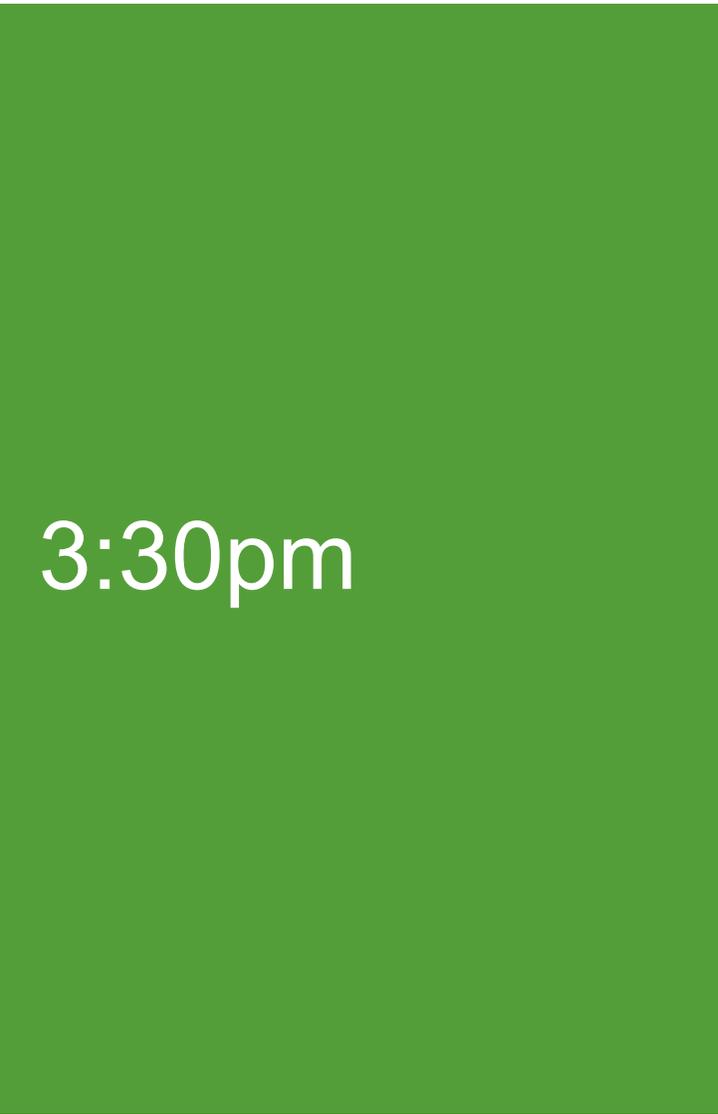
3:00 –
3:20pm

Public Comment

Recap and Action Items

Closing Reflections

3:20 - 3:30pm



3:30pm

ADJOURN

