

Washington State Criminal Sentencing Task Force Meeting

August 31, 2022

10:00am-4:00pm

Virtual Meeting: Via ZOOM

Agenda

Agenda

- Task Force Introductions and Updates
- Review, Discuss, and Provide Input on the Next Set of **Proposed Recommendations**:
 - CISRS program
 - Sentencing Discretion
 - Legal Procedures & Other Sentencing Laws
 - Criminal History Score
- Prep for consensus deliberations at Tomorrow's In-Person Task Force meeting.

Agenda

9:45am
**Coffee and Informal
Conversation**

10:00am
**Welcome and Agenda
Review**

10:10am
Introductions & Updates

10:30am
**Proposed
Recommendation: CISRS
Program**

12:00pm
LUNCH BREAK

12:30pm
**Proposed
Recommendations:
Sentencing System**

2:00pm
BREAK

2:15pm
**Cont. Proposed
Recommendations:
Sentencing System**

3:30pm
**Preparing for Consensus
Deliberations at Tomorrow's
Meeting**

3:45pm
Public Comment

4:00pm
Adjourn

Virtual Meeting Groundrules

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.

Camera On (if doable): Strongly encourage cameras on so everyone can see who is present and participating. Personal presence is important for collaborative group meetings, and even more critical for these virtual meetings.

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 Molly Stenovec.**

10:10 -
10:20am

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.

10:20 -
10:30am

Updates

- **Updates from Co-Chairs**
- **Updates from Facilitation Team –
Workplan Updates**

Tentative 2022 Work Plan

- **August 31st:** Proposed Recommendations.
- **September 1st:** Consensus Deliberations on the Proposed Recommendation for the New Sentencing Guidelines Grid
- **October:** Proposed Recommendations and Consensus Deliberations.
- **November:** Consensus Deliberations
- **December:** Final report – last review and opportunity to address any unresolved issues

10:30am –
12:00pm

Proposed

Recommendation:

Community Intermediate
Sanctions and Reintegrative
Services (CISRS) Program

Background

- Sentencing Alternatives Workgroup first presented the initial idea and concept at the 10.7.21 Task Force Meeting.
- Was presented as a **potential** recommendation, in greater detail at the 6.2.22 meeting.
- Sentencing Alternatives Workgroup has incorporated the input from the Task Force and turned it into the following **Proposed** Recommendation.

Background

Current law states that sentences are served at a **state facility** or institution when the sentence imposed is a term of confinement that is **at least one year and one day (12+months)** and are served at a **local facility** or institution when the sentence imposed is a term of **one year or less**.

Current Grid

- This creates a hard line between local and state sanctions – there are no blended sentence ranges.
- **Depicted in orange** is strictly local sanctions and commonly referred to as the “southwest corner” of 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
VII	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																			

Proposed New Grid

- Sentence lengths are created using formulas that “anchor” sentence lengths for each felony class in the statutory maximum.
- This creates “straddle cells” – cells with ranges from shorter than 12 months to longer than 12 months and a day, thus allowing for a jail or a prison sentence.

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap (advisory, greater than is presumptively unreasonable)	Repeat SV/Violent or Repeat DV 9.94A.525(21)										
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	49.0	10%
16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	10%
15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%
14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	10%
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	10%
8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	10%
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	10%
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%
Unr	0 - 365 days																					

Proposed Recommendation: Community Intermediate Sanctions and Reintegrative Services (CISRS)

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap (advisory, greater than is presumptively unreasonable)	Repeat SV/Violent or Repeat DV 9.94A.525(21)											
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	49.0	10%
	16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	10%
	15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%
	14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%
	13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
	12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	10%
	11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
	10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
Zone 3: SA, FOSA, State Prison	9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	10%
	8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	10%
	7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	10%
Zone 2: CISRS, DOSA, FOSA <=12 jail; 12+ prison	6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%
	5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%
Zone 1: CISRS, RDOSA, Jail	4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%
	3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%
	2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%
	1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%
Unr	0 - 365 days																						

CISRS Description

- CISRS is a sentencing alternative that primarily targets individuals in the southwest corner of the grid and those who would otherwise serve a sentence of confinement in a grid cell with a sentence range that straddles county jail term and/or state prison sentence.
- Counties would develop and operate their CISRS programs, which would include both intermediate sanctions and reintegrative service programs.
- Funding would be provided by the state and the state would oversee to ensure programs meet a minimum level of care (programs would be required to receive periodic state approval to ensure they meet state standards).

CISRS Description

Intermediate Sanctions

- Intensive supervision probation
- Day reporting centers
- House arrest
- Electronic home monitoring
- Community service
- Intermittent confinement (e.g., work release or weekenders)
- Mandatory treatment for conditions
- Residential community corrections (e.g., halfway houses)

Reintegrative Services would include rehabilitative programs and begin as soon as possible after a needs assessment. Reintegrative services include, but are not limited to:

- Education programs
- Employment/job training
- Assistance with housing and transportation
- Mentorship and credible messenger services
- Life skills classes and use of technology training

Rehabilitative Services include but are not limited to:

- Substance use disorder treatment
- Mental health counseling
- Cognitive behavioral training
- Other evidence-based programs

Zone 1

Zone 1 is the expanded “southwest corner” of the grid.

- Jail sentences would be locally resourced, as in the status quo.
- If sentenced to CISRS program, access to CISRS state funding would be enabled.

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap (advisory, greater than is presumptively unreasonable)	Repeat SV/Violent or Repeat DV 9.94A.525(21)										
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16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	10%
15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%
14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	10%
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	10%
8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	10%
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	10%
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%
5	8	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%
Unr	0 - 365 days																					

To address concerns that some judges may be unlikely to sentence individuals to a local sentencing alternative and to incentivize the development and use of these programs, individuals sentenced to the CISRS alternative would be eligible for the use of state funds. Those sentenced to local confinement in jail would continue to be served by local resources.

Zone 2

Zone 2 is the area of the grid where there are “straddle cells”.

- Under the current system all the cells that fall in this zone are state prison sentences.
- Under the proposed new felony sentencing grid and this proposal, for the cells in this zone, **if the court sentences to less than 12 months, the cost of confinement will be reimbursed by the state.**

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap (advisory, greater than is presumptively unreasonable)	Repeat SV/Violent or Repeat DV 9.94A.525(21)											
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	15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%
	14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%
	13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
	12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	10%
	11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
	10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
Zone 3: SA, FOSA, State Prison	9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	10%
	8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	10%
	7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	10%
Zone 2: CISRS, DOSA, FOSA <=12 jail; 12+ prison	6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%
Zone 1: CISRS, RDOSA, Jail	5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%
	4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%
	3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%
	2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%
	1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%
Unr	0 - 365 days																						

- Even though the state is still covering the cost of these sentences, these sentences won't be on DOC caseload, resulting in some cost savings.

Zone 3

Zone 3 is strictly DOC Sentences that would be eligible for existing sentencing alternatives and for CISRS specific programs and services.

In this zone, CISRS could mirror the Drug Offender Sentencing Alternative by requiring a term of confinement of half the midpoint of the sentencing range, followed by a term of supervision or other intermediate sanction.

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap (advisory, greater than is presumptively unreasonable)	Repeat SV/Violent or Repeat DV 9.94A.525(21)										
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	49.0	10%
16	114	153	126	168	138	185	152	203	168	224	184	246	203	271	223	298	245	327	255	340	34.0	10%
15	101	135	111	148	122	163	134	179	148	197	163	217	179	239	197	263	217	289	225	300	30.0	10%
14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260	26.0	10%
13	59	99	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220	22.0	10%
12	52	87	57	96	63	106	70	116	77	128	84	141	93	155	102	170	112	188	117	195	19.0	10%
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	149	98	163	102	170	17.0	10%
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145	14.0	10%
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12.0	10%
8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10.0	10%
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9.0	10%
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7.0	10%
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6.0	10%
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4.0	10%
3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3.0	10%
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2.0	10%
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1.0	10%
Unr	0 - 365 days																					

Key Elements of CISRS

- CISRS consists of two components: 1) intermediate sanctions that meet minimum standards and 2) access to rehabilitative and reintegration programs and services.
- Counties would operate their CISRS program, but each must receive state approval every XX years to ensure that the programs are meeting a minimum standard. As it does with juvenile evidence-based programs (in the Juvenile Block Grant Program), the state could establish quality assurance protocols and standards to set requirements for the county program/s that must be reviewed annually or biannually (i.e., approvals for each two-year budget cycle).
- The state would identify the general types of services that a qualifying CISRS program should provide, e.g., employment/job training, education, housing, cognitive behavioral training.

Cont. Key Elements of CISRS

- The state may set certain minimum levels of care for the general program, but also for specific populations of individuals. For example, the state may require a higher level of supervision (such as electronic home monitoring or day reporting centers) for individuals receiving an intermediate sanction sentence for an offense at a certain seriousness level or for an individual with a certain level of criminal history. In some ways, this would be a sort of expansion of GRE that gives judges the discretion to determine if part of the sentence may be served on EHM or some other LRA as opposed to letting DOC make that decision (as is the case with GRE).
- Similarly, the state may require that all individuals sentenced under the program receive some type of needs assessment to inform treatment.
- Specific sentence terms for an intermediate sentence under a CISRS program would be determined by the judge ordering the alternative and could be informed by the local program supervisor/administrator.

Cont. Key Elements of CISRS

- The state may also create consistent standards for what types of behaviors would require a revocation of a CISRS sentence and a return to incarceration.
- CISRS must be structured to ensure that individuals report to one jurisdiction, whether at the county level or DOC.
- Regular data collection and evaluation would occur to ensure equitable application of the program, ideally with a centralized database. The state could set requirements for the type of data that must be collected and reported on an annual basis. Annual or biennial evaluation of the data would be needed to ensure the money is being properly used.
- Victim advocacy groups should be engaged in creating and implementing this program and its policies, perhaps on an advisory committee; the Legislature should, at a minimum, work with counties and DOC to develop CISRS.

Cont. Key Elements of CISRS

- Concerns with tort liability (for DOC or counties) may arise with this approach; this needs to get addressed. Addressing liability concerns will be an important element to integrate into this approach.
- State funding and technical assistance would incentivize local jurisdictions that don't have the access to these types of programs to develop them. There would need to be protection of funding for smaller jurisdictions to ensure adequate resource allocations and recognize different resource needs. Some jurisdictions will need to build a new program, others will need further support for existing under-resourced programs, and others will wish to expand robust programs.
- A critical design element will be to create an implementation structure (i.e. centralized, decentralized, hybrid) that most equitably serves individuals who do not reside in their county of conviction and court oversight.

Funding Model

- Funding would be provided by the State to counties.
- This could be done through a block grant system using a formula, modeled on the Juvenile Court Block Grant Program.
- The Legislature should allocate enough funding up front to ensure adequate levels of staffing and programming (lower caseloads would allow DOC and counties to provide additional services to those incarcerated).
- Adequate funding to support staffing and capital costs may also allow counties to expand the types of services offered to individuals in jail or individuals sentenced in district court.
- Thus, this program could have beneficial spillover effects for an even larger population of individuals involved in the criminal legal system.
- Long term savings would be seen as an effect of the investment in effective programs to reduce overall recidivism and future caseloads.

Provided and Funded Services and Programs for Victims

Victim services and programs would also be included in the program.

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

12:00 –
12:30pm

LUNCH

12:30 –
3:30pm

Proposed Recommendations:

Sentencing System

*(non grid specific proposed
recommendations)*

Sentencing System Proposed Recommendations

A. Sentencing Discretion

Proposed Recommendation 1

Require that any aggravated departure has reasoning articulated in the Judgement and Sentence (J&S) record, including any additional information, particular characteristic, or other circumstance justifying aggravating departure.

Background and Explanation

- Under current law, 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 ([RCW 9.94A.535](#)) 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).

Background and Explanation

- In response to *Blakely v. Washington*, 542 U.S. ... (2004) the Legislature made exclusive the list of aggravating factors used to justify an upward departure from the standard sentence range ([RCW 9.9A.537](#)).
- The Legislature also expanded the list of aggravating factors to include current judicially recognized factors.
- There are currently 32 aggravating factors (some with multiple subsections) that pose questions of fact that must be submitted to a jury.
- There are four aggravating factors that can be used to impose a sentence above the standard range without findings of fact by a jury – *next slide*

Background and Explanation

- 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.

A. Sentencing Discretion

Exceptional Sentences

Exhibit A8 presents the average departure length for aggravated and mitigated exceptional sentences by race using the full racial categories. Averages are not reported for individuals who were missing race information.

Exhibit A8

Aggravated and Mitigated Exceptional Sentences, Full Race Categories

	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

**WSIPP 2021 Report:
Examining Washington State's
Sentencing Guidelines: A Report for
the Criminal Sentencing Task Force**

A. Sentencing Discretion

Differences in the percentage of the maximum for aggravated sentences or percentage of the minimum for mitigated sentences presented in Exhibits 16 and 17 may be driven by underlying differences in the distribution of sentences by criminal history score and race. Exhibits A9 and A10 present the percentage of distribution of aggravated and mitigated sentences by race and grid cell.

Exhibit A9
Distribution of Aggravated Sentences, by Grid Cell and Race

Offense seriousness level (SL)	Criminal history score (CHS)																			
	BIPOC									White										
	0	1	2	3	4	5	6	7	8	9+	0	1	2	3	4	5	6	7	8	9+
15	0.9%									0.9%					0.5%					
14	0.9%										0.5%				1.1%					
12					0.9%	0.9%				2.8%	0.5%					0.5%	0.5%			3.2%
11									0.9%		1.1%									1.6%
10																0.5%				2.2%
9	0.9%									1.9%		0.5%								1.1%
8									0.9%	0.9%		1.1%					1.1%			
7	1.9%	0.9%	0.9%	0.9%	0.9%	1.9%	0.9%	0.9%		3.7%	1.1%	1.1%		1.1%	0.5%	0.5%	1.1%	0.5%		3.8%
6															0.5%				0.5%	0.5%
5				0.9%						1.9%	2.7%			1.1%		0.5%			0.5%	1.1%
4	8.4%	1.9%	3.7%	1.9%	4.7%	4.7%	1.9%	0.9%		2.8%	5.9%	5.4%	1.1%	2.7%	1.1%	0.5%		0.5%	1.1%	3.2%
3	4.7%	1.9%	1.9%	7.5%	0.9%	0.9%	2.8%		0.9%	4.7%	2.2%		3.2%	12.4%		0.5%		0.5%	1.6%	2.2%
2	5.6%			1.9%			0.9%				4.3%	1.1%	1.6%	1.6%		0.5%		0.5%		0.5%
1				0.9%	0.9%	0.9%			0.9%	1.9%	0.5%	0.5%		0.5%	2.2%	2.2%	0.5%	0.5%	0.5%	4.3%

Notes:
Values represent the percentage of total aggravated sentences for BIPOC or White defendants, respectively, in each cell on the guideline grid. BIPOC values are shaded orange with darker colors representing cells with the greatest share of aggravated sentences for BIPOC individuals. White values are shaded blue with darker colors representing cells with the greatest share of aggravated sentences for White individuals.

A. Sentencing Discretion

Exhibit A11 lists the five most common justifications for aggravated and mitigated exceptional sentences.

Exhibit A11

Aggravated and Mitigated Exceptional Sentence Justifications, by Race

	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%

A. Sentencing Discretion

The types of offenses associated with aggravated and mitigated exceptional sentences also varied. [Exhibit A12](#) lists the ten most common offenses associated with each type of exceptional sentence.

Exhibit A12

Most Common Offenses with Aggravated and Mitigated Exceptional Sentences

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

Potential → Proposed Recommendation

- Formerly Potential Recommendation #16
- Was presented to the Task Force for input at the March 3, 2022 Meeting:
 - Concerns were raised about eliminating the four aggravated departures not required to be pled and proven - Support for current practice, allows flexibility to parties
 - Input that it would be helpful having more information recorded when these are imposed and the reasoning why - e.g, reduction in total number of charges, avoid three-strikes, charge reduction.
 - More information would increase transparency on the use of aggravators and potential to identify disproportionality.
 - Some expressed mixed feelings, noting concerns about aggravated sentencing in general, potential for confusion because no standard J&S form

Proposed Recommendation 1

Require that any aggravated departure has reasoning articulated in the Judgement and Sentence (J&S) record, including any additional information, particular characteristic, or other circumstance justifying aggravating departure.

Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System:

- Will require that the Judgement and Sentence (J&S) record more details about the reason for agreement in instances where these four aggravating factors that are not required to be pled and proven are used.
- Under this recommendation there would be greater documented information and transparency about the agreement (e.g., charge bargain to avoid three-strikes sentence, charge reduction, reduction in total number of charges), which is needed to conduct research evaluating whether the use of certain aggravators are a potential source of disproportionality.
- It is important to note that this recommendation does not eliminate the ability to stipulate to the aggravated sentence rather than requiring a finding of fact with a jury.

Proposed Recommendation 2

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

Background and Explanation

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 → Proposed Recommendation

- Formerly Potential Recommendations #19 – 25: which were multiple options for consideration relating specifically to serious violent offenses, instances involving firearms, multiple victims
- Were presented to the Task Force for input at the April 7, 2022 Meeting:
 - Current policy is purely retributive and increased retribution is accounted for already in higher offense seriousness levels.
 - Mandatory consecutive sentencing may disproportionately impact defendants of color.
 - Concerns about the mandatory nature. Lack of judicial discretion.
 - Victim concerns about eliminating consecutive sentencing with no ability to address instances where there are multiple offenses and multiple victims.

Proposed Recommendation 2

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

Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System:

- There is no evidence that mandatory consecutive sentencing is effective at reducing recidivism and there is no evidence that this policy is a deterrent.
- This recommendation would eliminate the use of mandatory consecutive sentencing while keeping consecutive sentencing as the default approach for the listed circumstances.
- This allows for judicial discretion to sentence concurrently without invoking an exceptional sentence.
- This judicial discretion may allow for more effective decisions regarding specific characteristics of a specific case. Currently, judges may be more hesitant to issue a concurrent sentence due to the appealability of exceptional sentences.

Sentencing System Proposed Recommendations

B. Legal Procedures and Other Sentencing Laws

Proposed Recommendation 1

For aggravated murder 1 change the language from: “Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life.”

To

“Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of twenty-one, a term of twenty-five years to life.”

- In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.***

Background and Explanation

- 2012 US Supreme Court in *Miller v. Alabama* held that mandatory sentences of life without parole are unconstitutional when applied to individuals younger than 18 and that such statutes violate the Eighth Amendment protection against cruel and unusual punishments.
- The ruling also stated that judges sentencing minor defendants must be allowed to exercise their discretion to craft an individualized sentence that considers the mitigating qualities of youth.
- In 2018, Washington State Supreme Court prohibited any sentences of life without parole for minors (*State v. Bassett*).
- In 2021, the Washington State Supreme Court held that under the Eighth Amendment and Washington's constitutional prohibition on cruel punishments, the holding of *Miller* should be extended to those 18-20 years old, citing neuroscience research and that mental development continues into a person's 20s.
- The court also cited statutes from other states that provide for differentiated penalties for individuals in their 20s on account of their youth and pointed out that the age of majority in the United States used to be 21 and that some states continue to use 21.

Potential → Proposed Recommendation

- Formerly Potential Recommendation #11
- Was presented to the Task Force for input at the September 2, 21 and November 4, 21 Meetings:
 - Suggestion to strike reference to death penalty since is no longer a valid sentence.
 - Concerns about raising to age 25: all other aspects of society, 25 is an adult (served full terms in the military, married with children, graduated college and graduate level, etc.). Highlights larger scale issue of differing laws and mixed messaging of what constitutes “adult”.
 - Brought up discussion about culpability.
 - Court decisions on youthfulness. Recent WA Supreme Court decision *Monschke and Bartholomew* requires resentencing for individuals under 21, current statute is unconstitutional. Noted that individuals eligible for resentencing are NOT eligible for supervision and reentry supports.
 - Important to make clear that the recommendation doesn’t change the mandatory minimum of 25 years to life. There is still accountability.

Proposed Recommendation 1

For aggravated murder 1 change the language from: “Life sentence without parole/death penalty for individuals at or over the age of eighteen. For individuals under the age of eighteen, a term of twenty-five years to life.”

To

“Life sentence without parole/death penalty for individuals at or over the age of twenty-one. For individuals under the age of twenty-one, a term of twenty-five years to life.”

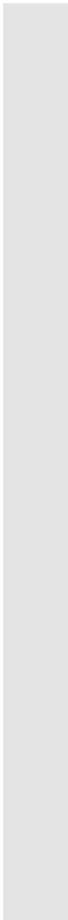
- In addition, strike reference to the death penalty as it is no longer a valid sentence in Washington State.***

Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System:

- Recent Supreme Court decisions recognize the emerging brain science and Washington Legislature has made other policy changes recognizing continued brain development between the ages of 18 and 25.
- Recent WA Supreme Court Case decisions - Monschke and Bartholomew - ruled that 18, 19, and 20-year-olds facing life sentences for aggravated murder must be viewed through a lens that considers the “transient immaturity of youth” and that the court must first consider the age of those under 21 before sentencing to a term of life without parole.
- Under this proposed recommendation, raising the age to 21 years old makes these sentences constitutional.
- Strikes reference to death penalty since not a valid sentence.



BREAK



Sentencing System Proposed Recommendations

C. Criminal History Score

Background and Explanation

- Criminal History Score (called the offender score, RCW 9.94A.525) is one factor affecting a felony sentence and is measured on the horizontal axis of the sentencing guidelines grid.
- Pursuant to RCW 9.94A.030(11), criminal history includes the defendant's prior adult convictions and juvenile court dispositions, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity.
- Although criminal history consists almost exclusively of felony convictions, **in some instances, it also includes misdemeanors.**
- The effect of criminal history also relates to the felony class of the crime (Class A, Class B or Class C), and the type of offense (i.e., serious violent, violent, nonviolent, sex, etc.).

Background and Explanation

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)

Misdemeanor Scoring in Criminal History Score

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

Felony Traffic

- Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points
- Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point
- Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point
- 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 1/2 point.
- 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:

- Misdemeanor offense of Vehicular Prowling 2^o counts as 1 point
- Adult and Juvenile offenses of Theft 1^o or 2^o of a Motor Vehicle, Possession of Stolen Property 1^o or 2^o of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1^o or 2, count as 3 points
- Any other felony offenses count standard

Homicide or Assault by Watercraft offenses:

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

Felony Domestic Violence where DV was pleaded and proven:

- Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1^o, Kidnapping 1^o or 2^o, Unlawful Imprisonment, Robbery 1^o or 2^o, Assault 1^o, 2^o or 3^o, or Arson 1^o or 2^o.
- Count 2 points for each Adult offense where DV was pleaded/proven after 7/23/2017 for any of the following offenses: Assault of a Child 1^o, 2^o or 3^o, or Criminal Mistreatment 1^o or 2^o.
- 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.
- 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
- Any other felony offenses count standard

Background and Explanation

- The four misdemeanor scoring exceptions depend on the type of current offense and the types of prior misdemeanor convictions. As the SRA and Superior Courts primarily handle felony offenses, it may be argued that the criminal history score calculations should be limited to the same jurisdiction – felony offenses.
- Task Force discussions focused on the logic behind the four scoring exceptions and the group explored ways that the same goals can be achieved through alternative means while increasing transparency, simplifying the CHS calculation process (increasing efficiency), and reducing errors in calculating CHS.
- When presented at the 6.2.22 full Task Force meeting, there were a number of members that believed their constituency would not be able to support eliminating one or more of these special scoring exceptions.

Proposed Recommendation 1

Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current offenses is a serious felony traffic offense involving DUI (e.g., Vehicular homicide-DUI, Vehicular Assault-DUI, Felony DUI, Felony physical control, etc). Prior misdemeanor DUI offenses no longer score for felony offenses not involving DUI.

Potential → Proposed Recommendation

- Formerly Potential Recommendation #28 and 28a
- Was presented to the Task Force for input at the June 2, 2022

Meeting:

- Concerns expressed about eliminating the scoring exceptions for felony traffic, specifically when it comes to DUI.
- Concerns about the risk to public safety posed by repeat DUI behaviors.
- Complexity and errors when calculating CHS with felony traffic misdemeanor scoring exceptions to DUI related offenses.

Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System:

- Would allow for the misdemeanor scoring exceptions for DUI Misdemeanor Offenses to remain in use when an individual's current offense is a serious felony traffic charge involving DUI.
- If an individual's current offense is a serious felony traffic offense involving DUI (Vehicular Homicide with DUI, Assault with DUI, Felony DUI, Felony Physical Control, and all other DUI felony traffic offenses then prior misdemeanor DUI) offenses would be included in the calculation of a criminal history score.
- This would eliminate the use of prior misdemeanor DUI offenses in the calculation of criminal history scores for felony offenses not involving DUI-related offenses.
- While this does not fully eliminate complexity, it limits the complexity to DUI-related cases, reducing opportunities for error.

Proposed Recommendation 2

Maintain the special misdemeanor DUI scoring exceptions for homicide or assault by watercraft offenses when the current offense involves a DUI and make homicide or assault by watercraft offenses the same OSL as the corresponding felony traffic offense (by either increasing watercraft offenses to higher OSLs or reducing vehicular offenses to a lower OSL) with the goal of creating parity between vehicular and watercraft offenses (Homicide by watercraft and vehicular homicide. Assault by watercraft and vehicular assault).

Potential → Proposed Recommendation

- Formerly Potential Recommendation #30
- Was presented to the Task Force for input at the June 2, 2022

Meeting:

- Very little input and concerns.
- Members that did offer input agreed with the potential recommendation and creating parity.

Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System:

- Reduces complexity by having these offenses mirror traffic offenses.
- Committing the same offense in a boat vs. a car is really about a different affluence of the individual committing the offense.
- Parity in similar offenses is critical to perceived legitimacy of the court and criminal law code.
- This recommendation eliminates a source of disparity that may also lead to racial disparity.

Proposed Recommendation 3

Maintain the special misdemeanor scoring exception for domestic violence. As described in the proposed recommendation of the new felony sentencing guidelines grid, offense-specific exceptions to standard scoring rules for adult felony offenses are eliminated and a new column is added to the grid for adjustments to the standard range for qualifying individuals. The scoring exceptions for adult felony offenses where domestic violence was pleaded/proven will score as 1 point per standard scoring rules, and are eligible for the expanded sentence range under the repeat violent/serious violent and repeat domestic violence column.

Potential → Proposed Recommendation

- Formerly Potential Recommendation #31
- Was presented to the Task Force for input at the June 2, 2022 Meeting:
 - Number of members raised concerns with eliminating.
 - Domestic violence present in every demographic and drastically underreported.
 - Need to maintain mechanisms to account for patterns of repeat behavior. Prior domestic violence is a predictor of lethality in domestic violence cases.
- Considered recommendation to eliminate misdemeanor scoring exception, instead creating aggravated factor/enhancement to increase simplicity in CHS calculations. Concerns included: increasing state's burden of proof, rec wouldn't address current disparities in gender-based violence

Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System, Public Safety:

- Domestic violence is an offense that may occur at the misdemeanor level one or more times before escalating in seriousness to reach the threshold of a felony DV offense.
- Because misdemeanor DV offenses represent similar or the same criminal conduct as felony DV offenses, it is important to maintain consideration of these prior convictions in sentencing for DV cases.
- Felony DV offenses will still increase the CHS as normal (one point for each conviction), so second and subsequent offenses will result in longer sentencing ranges because of the higher CHS.
- However, judges will have additional discretion to increase sanctions even further in the instance of repeat offending.
- This discretion allows for more nuanced and effective approaches to sentencing based on the characteristics of a particular case.

Proposed Recommendation 4

Reduce the OSL for vehicle prowling – 2nd degree (third or subsequent) to OSL 2 and raise the OSL for vehicle prowling – 1st degree to OSL 2.

Proposed Recommendation 5

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

Background and Explanation

1. Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1° or 2°:

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

“(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count **one point for prior convictions of Vehicle Prowling 2**, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.”

Key Notes

- This is **NOT** for convictions of vehicular prowling
- Vehicle Prowl 2 is a gross misdemeanor when it is the first or second conviction. It becomes a felony upon 3rd or subsequent conviction.
- This would, at most, add 2 points to a criminal history score for the two gross misdemeanor vehicle prowl 2 offenses—third and subsequent vehicular prowl 2 offenses are felonies and would count under the standard scoring rules as 1 point.

Background and Explanation

RCW [9A.52.095](#): Vehicle prowling in the first degree

(1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a motor home, as defined in RCW [46.04.305](#), or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the first degree is a class C felony.

Background and Explanation

RCW [9A.52.100](#): Vehicle prowling in the second degree.

- (1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW [46.04.305](#), or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.
- (2) Except as provided in subsection (3) of this section, vehicle prowling in the second degree is a gross misdemeanor.
- (3) Vehicle prowling in the second degree is a class C felony upon a third or subsequent conviction of vehicle prowling in the second degree. A third or subsequent conviction means that a person has been previously convicted at least two separate occasions of the crime of vehicle prowling in the second degree.

Background and Explanation

Current OSLs

- Theft of Motor Vehicle: **OSL 2**
- Possession of a Stolen Vehicle: **OSL 2**
- Taking a Motor Vehicle without Owner's Permission 1st degree: **OSL 5**
- Taking a Motor Vehicle without Owner's Permission 2nd degree: **OSL 1**

Inconsistencies:

- Vehicle prowling 2nd degree third and subsequent is **OSL 4**. Prior gross misdemeanor vehicle prowl 2 do not count in the scoring of the felony Vehicle Prowl 2 – 3rd/subsequent. Therefore, someone charged with their third vehicle prowl 2 would be OSL 4 with CHS 0.
- Vehicle Prowling 1, which is considered to be more serious than vehicle prowl 2 – 3rd /subsequent, is at OSL 1 and contributes 1 point to the criminal history score of the above offenses.

Background and Explanation

Number of Sentences (may include multiple sentences for the same person)

Most Serious Offense	2017	2018	2019	2020	2021	Total
POSSESSION OF STOLEN VEHICLE	908	942	769	582	413	3,614
TAKING MOTOR VEHICLE WITHOUT PERMISSION 1	12	7	13	10	8	50
TAKING MOTOR VEHICLE WITHOUT PERMISSION 2	876	908	791	560	434	3,569
THEFT OF MOTOR VEHICLE	295	307	286	226	193	1,307
VEHICLE PROWL 1	13	12	8	4	5	42
VEHICLE PROWL 2 (3RD OR SUBS - POST 2013)	15	8	8	9	9	49
Total	2,119	2,184	1,875	1,391	1,062	8,631
Total Felony Sentences in FY	25,186	25,171	24,257	19,742	13,655	108,011
# MV sentences (above) w/a Misd Veh Prowl 2 in Criminal History:	130	107	128	117	78	560
% of MV sentences with a Misd Veh Prowl 2 in Criminal History:	6%	5%	7%	8%	7%	6%

Potential → Proposed Recommendation

- Formerly Potential Recommendation #29a and 29b
- Was presented to the Task Force for input at the June 2, 2022 Meeting:
 - The discussion and input were mostly trying to clarify the distinction between vehicle prowling in the first versus second degree, and why the third conviction for vehicle prowling was a more severe sentence than stealing the car on the third attempt.
 - Discussed the rationale for this scoring exception being that stealing a car is considered a continuation or escalation of previous vehicle prowling behaviors.
 - Input about how 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 prowling (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.
 - Concerns expressed that this scoring exception is the result of "crime-of-the-day" logic. Represents an expansion of the authority under the SRA which is otherwise focused on felony offenses.

Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System, Public Safety:

- Eliminating the special misdemeanor scoring for prior misdemeanor vehicle prowl for theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1 or 2 would eliminate complexity associated with including misdemeanors in the calculation of CHS. Standard scoring rules would then become more transparent and thus would reduce errors in CHS calculation, improving both effectiveness and reducing complexity.
- Reducing the OSL for vehicle prowl – 2nd degree (third or subsequent) to OSL 2 and raising the OSL for vehicle prowl – 1st degree to OSL 2 creates parity in the OSLs for these two offenses.

3:30-3:45pm

Preparing for Consensus Deliberations at Tomorrow's Meeting

Task Force Consensus Decision-Making

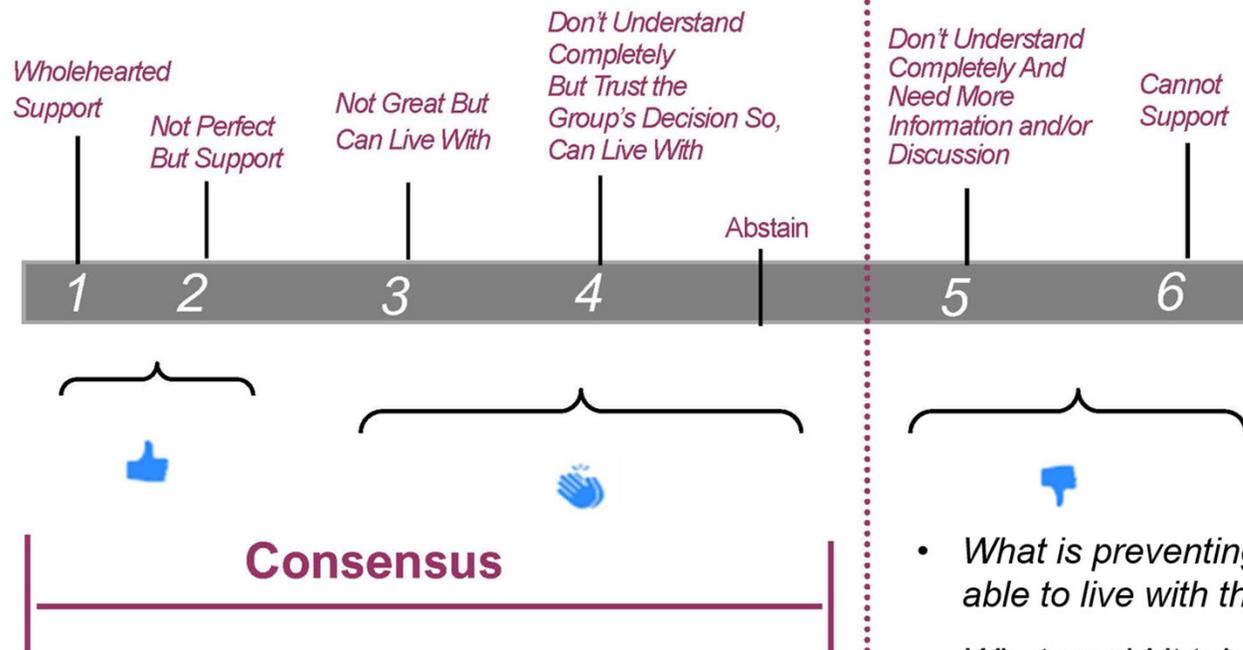
Consensus Defined

The Task Force operates under the following definition of consensus:

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

This consensus can be conveyed via a thumbs up (*I support this option*), thumbs sideways (*I can live with this option for the good of the group and the process*) or thumbs down (*I cannot live with this option*). If a member is thumbs down, that member is expected to provide a proposal that legitimately attempts to achieve the interest of the constituency they represent and the interests of the other members. All members will seek solutions that allow those thumbs to move to up or sideways.

Gradients of Agreement



Consensus is not voting. Voting is a power-based approach that results in a yes or a no – majority are winners and minority are losers.

- *What is preventing you from being able to live with the recommendation?*
- *What would it take for you to change your position?*

Criminal Sentencing Task Force Consensus Process

Presentation and Discussion

Working Groups Draft Potential Recommendations

- Meet between meetings to draft potential recommendations that meet all Task Force members needs.

Full Task Force Dialogue, Input, and Temp Checks

- Working Groups present potential recommendations (1st, 2nd, 3rd offers) to full Task Force over multiple meetings.
- Task Force discusses and provides input.
- Consensus Temperature checks.

Working Groups Refine

- Working Groups take input from full Task Force and refine potential recommendations to meet needs of all members.

Deliberation

Proposed Recommendation
Facilitation Team will read the proposed recommendation.

1st Test for Consensus
Do all members support or can live with?

No

Yes

Discussion and Modify
Address concerns
Modify to better serve the whole group

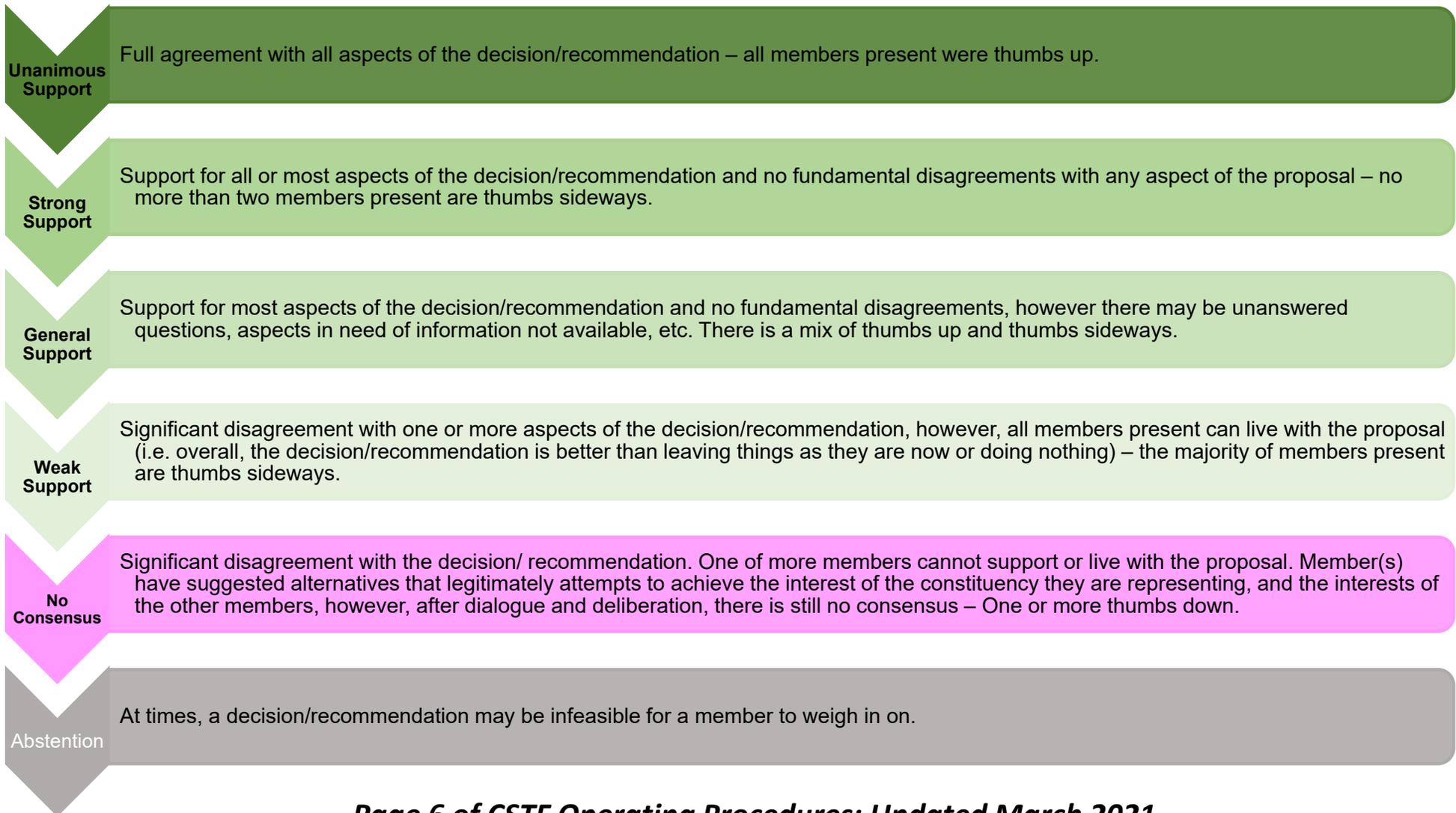
CONSENSUS

2nd Test for Consensus
Do all members support or can live with?

No

Yes

Capture Pros and Cons in Final Report

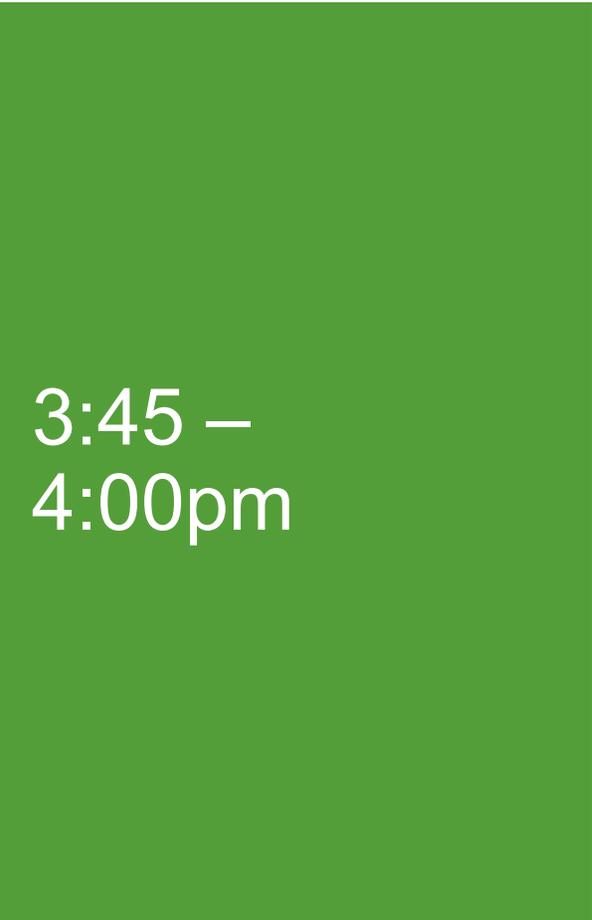


The goal is for all members to be in unanimous, strong, or general support.

In the situation of weak support, members may submit in writing to the facilitation team and the co-chairs for inclusion in the 2021 report, the reasoning behind their constituency being able to “live with” the decision and alternative options or language that would have addressed their constituencies concerns.

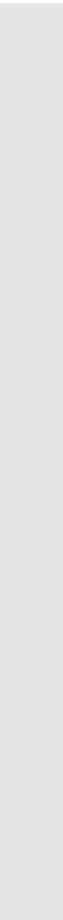
In situations when there is no consensus, members not in support will submit in writing to the facilitation team and the co-chairs the reasoning behind their constituency being unable to “live with” the decision and alternative options or language that would have addressed their constituencies’ concerns.

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3:45 –
4:00pm

Public Comment





4:00pm

ADJOURN

