

**Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: September 1st, 2022**

In-person: WSU Puyallup Research and Extension Center, 2606 West Pioneer, Puyallup, WA

Virtual Meeting via ZOOM — [Link to TVW Recording](#)

ATTENDEES:

- **Task Force Members and Alternates:** See Appendix A
- **Members of the Public:** See pg. 19
- **Facilitation Team:** Amanda Murphy, Chris Page, Molly Stenovec, Alec Solemslie, Zack Cefalu – Ruckelshaus Center
- **Research/Technical Support:** Dr. Lauren Knoth-Peterson, *Washington State Institute for Public Policy (WSIPP)*

WELCOME & REVIEW AGENDA

Amanda and Chris welcomed Task Force members and alternates and reviewed the agenda for the meeting. The agenda for this meeting today has the Task Force reviewing and discussing the proposed recommendation for a new Felony Sentencing Guidelines Grid. The Task Force will begin deliberation for consensus on this proposed grid and test for consensus.

Amanda and Chris then reviewed both the hybrid meeting ground rules and operating procedures for consensus deliberations, specifically the need for members to offer solutions when proposals cannot be agreed upon.

INTRODUCTIONS

The Task Force members and alternates then introduced themselves for everyone including their name and the constituency that they represent. The facilitation team then welcomed the Task Force and introduced themselves for any new members who might be present.

The facilitation team then reviewed the three policy goals with the Task Force:

1. Reducing sentencing complexities and errors
2. Improving the effectiveness of the sentencing system
3. Promoting and improving public safety

CO-CHAIR UPDATES — [see recording at 16:23](#)

The Co-Chairs and facilitation team have met to discuss the work plan for the remainder of 2022. The purpose of the Task Force was to create fundamental changes to Washington's sentencing system and it has become apparent that members are becoming frustrated with the focus on seemingly smaller scale recommendations due to the time crunch from now until the end of December. The Co-Chairs and facilitation team have met and decided that the main focus of the Task Force for the remainder of the year should be to focus the efforts of the Task Force on the new Felony Sentencing Guidelines Grid and the CISRS program.

As the number of meetings left are limited, the Task Force needs to prioritize their work plan so that the most impactful recommendations are the focus of the Task Force. Under proviso, this

Task Force exists until the end of June 2023. The Co-Chairs and Facilitation Team suggest that from now until December both the Task Force and Grid Group prioritize the new Felony Sentencing Guidelines Grid and the CISRS program, and then beginning in January and February, and potentially beyond, the Grid Group can continue to meet to turn potential recommendation to proposed recommendations for the Legislature until they have completed their work.

The Co-Chairs and facilitation team then turned towards the whole Task Force to get their input.

Task Force Input:

- A member expressed concern for this plan as they said a lot of the recommendations that are going to be focused on after the grid and CISRS are fundamental to the conversations of the grid. By following this work plan, this would present a piecemeal approach to the Legislature that does not capture the big picture and necessary steps to make the new grid function. The proposed and potential recommendations outside the grid and CISRS are hard to separate from both the new Felony Sentencing Guidelines Grid and the CISRS program.
- Acknowledge frustration about considering another extension to the timeline, however the work will never stop in this field. Thus if the work continues there must be an acknowledgement of the significance of the work that is being done here, this will be incredibly impactful on people's lives thus the Task Force needs to continue the work until the Task Force can make the necessary recommendations to make these changes. The striving for perfection and the rush to finish should not stand in the way of the work being done by the Task Force.
- Support idea of focusing on the new Felony Sentencing Guidelines Grid and the CISRS program until the end of the year is a way to prioritize the work that has to be done. Comfortable presenting the Legislature the report on both the new Felony Sentencing Guidelines Grid and the CISRS program while the Task Force continues to work through the remaining recommendations. However, challenging to think about timeline without knowing level of support for the current proposed grid can get the details associated with the proposed and potential recommendations out.
- Suggestion for Task Force to prioritize recommendations necessary to the functioning of the new Felony Sentencing Guidelines Grid and the CISRS program, such as recommendations around CHS? Identifying key tangential recommendations could provide guidance to the Legislature. Otherwise, they are not confident that the Legislature can move forward with either the new Felony Sentencing Guidelines Grid and the CISRS program as they are not content experts.
- Note complexity of the subject matter, express concern about Legislators developing level of content expertise that the Task Force has assembled—critical to provide all the necessary information and recommendations to the Legislature regardless of consensus or not so that the Legislature can see all the conversations happening and everything that is connected to both the new Felony Sentencing Guidelines Grid and the CISRS program.

- A Legislative member said that the Legislature is ready for these recommendations this upcoming session and they feel they can propose these as bills very soon. However, there are central issues being addressed by other proposed recommendations that need to be given attention beforehand as they are crucial to the functioning of the new grid. Such as retroactivity, enhancements, aggravated murder age change up to age 25, and supervision liability reform. This is a multi-year process but they do not want to put this forward to the Legislature without additional considerations. Suggestion: extend the length and frequencies of the Grid Group meetings and Task Force meetings, so that they can focus on the new Felony Sentencing Guidelines Grid and the CISRS program until December.
- If the Task Force can all reach consensus to focus only on the new Felony Sentencing Guidelines Grid and the CISRS program until December then they need to prioritize the conversation of retroactivity that must happen alongside these recommendations.
- Retroactivity conversations can only happen once there are consensus approved recommendations to make retroactive.
- The Task Force has two really large projects that they are preparing to bring to the Legislature by December, these being the new grid and the CISRS program. Suggest that the Task Force focus on either the new Felony Sentencing Guidelines Grid or the CISRS program in order to prepare a fully formed new program or grid so that they can have a fully-baked idea rather than two potentially half-baked ideas.
- Can the report in December be a draft, or at least a first-part of a report rather than a finalized report? Agree with the point above but feel that the Task Force can do both if the report is split into several parts. The pursuit of the perfect cannot get in the way of a foundation of good thoughtful work. The Task Force will also need to prioritize time to educate the Legislature about these recommendations to ensure complete understanding of their importance.
- There's nothing in the proviso that states that the report in December 2022 must be final. Technically the final report came in 2020, so there are options for creativity from here on out.
- Desire to see action informed by the years of work conducted by the Task; supportive of whatever path forward suggested by Co-Chairs.
- Another member said they will be very uncomfortable to approve consensus on a grid without any conversations on necessary tangential recommendations.
- The Task Force is not limited to only the grid; there are statutes that interplay with a grid that can be addressed through the creation of a new grid.

REVIEW OF CONSENSUS PROCESS

Amanda and Chris reviewed the consensus process and the Task Force's identified definition and gradience of consensus, as well as the Task Force's operating procedures.

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 up or sideways.

OVERVIEW OF PROPOSED FELONY SENTENCING GRID

Dr. Knoth-Peterson will first provide an overview of the New Felony Sentencing Guidelines Grid then there will be the day’s first test for consensus.

Proposed Recommendation: New Felony Sentencing Guidelines Grid – [see recording at 1:09:05](#)

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent or Repeat DV										
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																					

Core Components:

- Use of formulas to establish grid ranges (5 total formulas)
- Explicit integration of other statutes that impact sentencing to align the grid with the rest of the sentencing system
- Transparency
- Balanced discretion – increasing judicial discretion
- Longevity – establishing a framework that can guide future legislative decisions to ensure long-term consistency in the sentencing system

Formulas and Structure

Use of five formulas to establish grid ranges.

	0	1	2	3	4	5	6	7	8	9+										
18	240	320	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496
16	114	153	126	168	138	195	152	203	168	224	184	246	203	271	223	298	245	327	255	340
15	101	135	111	148	122	163	134	173	148	197	163	217	179	239	197	263	217	289	225	300
14	87	117	96	128	106	141	116	155	128	171	141	188	155	207	170	227	188	250	195	260
13	59	79	65	108	71	119	79	131	86	144	95	159	105	175	115	192	127	212	132	220
12	52	67	57	96	63	106	70	118	77	128	84	141	93	155	102	170	112	188	117	195
11	45	76	50	84	55	92	61	101	67	112	73	123	81	135	89	143	98	163	102	170
10	39	65	43	71	47	78	52	86	57	95	63	105	69	115	76	127	83	139	87	145
9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120
8	17	28	19	33	22	38	26	43	30	50	34	56	40	66	46	76	52	88	63	105
7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49
3	2	7	2	9	3	11	4	13	4	15	5	19	6	23	8	27	10	33	11	39
2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28
1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18

1. The number of seriousness levels increases from 16 to 18.
 - a. Felony offenses are sorted such that class B offenses are no higher than seriousness level 9 and class C offenses are no higher than seriousness level 5. Serious violent offenses are in seriousness levels 14 – 17, with OSL 17 being Murder 1/Homicide by Abuse.
 - b. There are five formulas that establish the cell ranges on the new grid. Each formula includes the following:
 - An Anchor – this is a set value that establishes the foundation for all other range values.
 - Percentage increase for each additional criminal history score – this is a set percentage that determines how much the maximum in the range increases for each additional criminal history score point (this means there is a consistent increase in sentences as defendants move to the right across the grid).
 - Percentage of the maximum used to establish the minimum – this is a set percentage that determines the value of the minimum in a range, based on the value of the maximum in the range.

The Five Formulas are as follows:

Formula 1: OSL 17: Murder 1/Homicide by Abuse

- a. Anchor: Criminal History Score (CHS) 0 minimum of 240 months (aligned with the mandatory minimum).
- b. Percentage increase in maximum for each additional criminal history score point: 105%
- c. Percentage of the maximum used to establish the minimum: 75%

Formula 2: OSL 16-14: Serious Violent Offenses

- a. Anchor: Criminal History Score 9+ maximum for OSL 14 is 40 months higher than the maximum for Criminal History Score 9+ for OSL 13. Each additional increase

in seriousness level (for 15 and 16) increases the maximum (at CHS 9+) 40 months from the previous.

- b. Maximum for CHS 0: 45% of the maximum at CHS 9+
- c. Percentage increase in maximum for each additional criminal history score point: 110%
- d. Percentage of the maximum used to establish the minimum: 75%

Formula 3: OSL 13-10: Violent Offenses

- a. Anchor: Criminal History Score 9+ maximum for OSL 10 is 25 months higher than the maximum for Criminal History Score 9+ for OSL 9. Each additional increase in seriousness level (for 11-13) increases the maximum at 9+ 25 months from the previous seriousness level.
- b. Maximum for CHS 0: 45% of the maximum at CHS 9+
- c. Percentage increase in maximum for each additional criminal history score point: 110%
- d. Percentage of the maximum used to establish the minimum: 60%

Formula 4: OSL 9-6: Class A/B offenses

- a. Anchor: Criminal History Score 9+ maximum for OSL 9 is 120 months which aligns with the statutory maximum sentence for class B felonies.
- b. Calculation of other maximums at CHS 9+: Each decrease in OSL decreases the maximum sentence for CHS 9+ by 15 months.
- c. Maximum for CHS 0: 27.5% of the maximum at CHS 9+
- d. Percentage increase in maximum for each additional criminal history score point: 115%
- e. Percentage of the maximum used to establish the minimum: 60%

Formula 5: OSL 5-1: Class A/B/C offenses

- a. Anchor: Criminal History Score 9+ maximum for OSL 5 is 60 months which aligns with the statutory maximum sentence for class C felonies.
- b. Calculation of other maximums at CHS 9+: Each decrease in OSL decreases the maximum sentence for CHS 9+ by 10.5 months.
- c. Maximum for CHS 0: 20% of the maximum at CHS 9+
- d. Percentage increase in maximum for each additional criminal history score point: 120%
- e. Percentage of the maximum used to establish the minimum: 30%

After calculating ranges, values are floored. That is, all numbers after the decimal are removed and not rounded. Thus 29.1 would become 29 and 29.9 would become 29.

New Column: Repeat Violent/Serious Violent and Repeat Domestic Violence

The offense-specific exceptions to standard scoring rules (“multipliers”) are eliminated and a new column is added for adjustments to the standard range for qualifying individuals. Individuals are eligible for the expanded range if their current offense is a violent or serious

violent offense and they have at least one prior conviction for a violent or serious violent offense. Individuals are also eligible for the expanded range if their current offense is a domestic violence offense and they have at least one prior conviction for a domestic violence offense.

- a. The maximum sentence of the range should increase 10% for individuals who qualify for the repeat offending column.
- b. Qualifying domestic violence offenses are those included in RCW 9.94A.525(21):
 - i. (a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for any of the following offenses: A felony violation of a no-contact or protection order (RCW 7.105.450 or former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);
 - ii. (b) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW 9A.36.120; Assault of a child in the second degree, RCW 9A.36.130; Assault of a child in the third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW 9A.42.030;

New Column: Aggravated Departure Cap

A new advisory column is added to the grid that provides the recommended cap on aggravated sentences. Aggravated sentences that go beyond the recommended amount are presumptively unreasonable. As in the status quo, all aggravated sentences would still be appealable.

- a. The advisory cap is equal to 10% of the maximum punishment in each seriousness level. Percentage based on the maximum of the departure cap based on the individual's criminal history score.
- b. Intended to replace the previous multiplier effects of the old grid.

Recalibration of Offenses

The Task Force acknowledges that under this new structure, further recalibration of offenses will be needed and recommends this responsibility lie with the Legislature as it is beyond the scope and timeline of this Task Force.

This slide below highlights the differences in sentencing ranges by cells from the status quo grid to the new proposed grid. The yellow cells showing the decrease in ranges and purple cells

showing the increase in ranges. The cells with grayed out ranges represent cells that currently, under the status quo, have invalid sentences.

Change in Ranges
(Yellow = decrease; purple = increase)

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap	Repeat SV/Violent or DV										
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	0	0	2	3	4	6	7	9	11	15	15	20	10	13	0	-15	-20	-39	-52	30.0	10%	
16	-8	-67	-8	-66	-5	-59	-1	-50	3	-41	10	-29	8	-24	8	-18	-11	-29	-43	-57	30.0	10%
15 (malicious explosion 1)																					30.0	10%
15 (trafficking 1)	-22	-85	-23	-86	-21	-81	-19	-74	-17	-67	-12	-58	-16	-56	-19	-53	-40	-68	-73	-97	30.0	10%
14	-35	-47	-37	-49	-38	-50	-37	-49	-37	-48	-34	-45	-40	-53	-45	-60	-69	-91	-103	-137	30.0	10%
13	-34	-24	-37	-27	-39	-27	-41	-26	-42	-26	-42	-25	-57	-41	-62	-43	-82	-65	-108	-98	22.0	10%
12	-25	-14	-28	-17	-31	-19	-32	-19	-34	-19	-35	-17	-53	-39	-56	-40	-72	-57	-93	-85	19.0	10%
11	-5	9	-7	9	-6	11	-6	13	-5	16	-3	21	-17	6	-19	5	-31	-7	-47	-28	17.0	10%
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14.0	10%
9 (Malicious placement imitation device 1)	-73	-90	-79	-98	-85	-103	-90														12.0	10%
9 (Criminal mistreatment 1; malicious explosion 3)	-31	-35	-34	-37	-36	-38	-37	-39	-37	-38	-37	-36	-52								12.0	10%
9	-11	-8	-13	-10	-15	-10	-16	-11	-16	-10	-17	-9	-31	-26	-34	-28	-47				12.0	10%
8	-4	2	-6	-1	-8	-3	-10	-4	-11	-3	-11	-3	-27	-22	-31	-25	-34	-28	-45		10.0	10%
7	0	5	-4	1	-6	-1	-8	-3	-10	-5	-11	-4	-23	-18	-27	-23	-32	-26	-33	-26	9.0	10%
6	0	7	-1	4	-5	0	-7	-3	-9	-5	-11	-7	-17	-13	-24	-20	-29	-26	-32	-27	7.0	10%
5	-2	0	-8	0	-8	0	-9	1	-15	-4	-24	-13	-30	-18	-38						6.0	10%
4	0	1	-2	0	-8	0	-8	0	-9	1	-15	-4	-24	-13	-32	-22	-40				6.0	10%
3	1	5	0	1	-1	-1	-5	1	-7	0	-11	-3	-15	-6	-25	-15	-33	-23	-39		9.0	10%
2	0	0	0	0	-1	-2	-1	-3	-9	-4	-10	-6	-13	-7	-17	-11	-27	-22	-34	-29	2.0	10%
1	0	0	1	0	-1	0	0	0	-1	-1	-1	-3	-9	-4	-10	-6	-13	-7	-17	-11	1.0	10%
Unr	0 - 365 days																					

However, the amount of decreases do not paint the full picture, as these changes are not “real”. For example, there are no convictions for Malicious Explosion 1, and some ranges in the current grid exceed the statutory maximum sentence for that felony class. Under the current grid, judges sentence on average at 30% of a sentencing range. Any changes in the maximum end of a range may overestimate the reduction in actual sentences.

Finally, this assumes offenses remain where they are now, but the grid group acknowledges that the Legislature will likely calibrate offenses which could result in offenses having similar ranges to what they are in the current grid.

How This Proposed Recommendation Addresses the Three Policy Goals:

Addresses Sentencing Complexities and Errors by:

- Aligns sentences with all other statutes (e.g., stat max)
- Eliminates multipliers while still holding individuals accountable for repetitive offending behaviors.
- Formula makes it clear exactly why ranges are the way they are.
- Consistent increases in sentences with an increase in CHS.

Addresses Effectiveness of the Sentencing System:

- Increases judicial discretion to tailor sentences to the characteristics of the case.
- Creates consistent and wider sentence ranges.
- No strict cut off for local and state sanctions.
- All sentence ranges are valid sentences.

- Increased transparency with expanded ranges rather than hidden moves in CHS
- Creates consistent increases in sentence ranges with increases in CHS and OSL.
- Establishes a framework with clear boundaries and guidance for the Legislature.

Promoting and Improving Public Safety:

- Formulas widen the sentence ranges without resulting in large reductions in the maximum range.
- The change in calculation of CHS due to the elimination of the exceptions to standard scoring (multipliers) and the standard column approach for repeat offending may actually increase predictiveness of CHS.
- Provides increased options for local sanctions to reduce disruptions caused by incarceration in state prison while still holding individuals accountable.
- Clear transparency for all parties, including victims, at sentencing.
- Increases options for local sanctions and increases judicial discretion by widening sentence ranges.
- Reduces overemphasis of specialization/repeat offending while still allowing for an increase in accountability in those cases.

CALL FOR CONSENSUS ON PROPOSED FELONY SENTENCING GRID — [see recording at 1:53:43](#)

Per operating procedures, Amanda asked members, or designated alternate—if member was absent, to indicate their support. Of 18 members present, the first test for consensus:

- 3 support
- 11 can live with
- 4 cannot support

The facilitation team asked individuals who were thumbs down to present in writing the following:

1. What they cannot live with
2. Why they cannot live with it
3. Describe proposed change that they could live with – and how it attempts to meet the needs of the group
4. What value does this/these proposed change(s) bring to meeting the 3 policy goals of the Task Force

A member expressed concern about providing their perspective before leaving, and noted that representatives of victims were not present or about to leave.

Facilitation team pointed to the group's operating procedures, noting that the group will continue problem solving conversations as long as there is a quorum of members or their designated alternates present.

BREAK FOR LUNCH

DELIBERATIONS TO RESOLVE DIFFERENCES — [see recording at 02:09:30](#)

Amanda and Chris reminded the group that individuals who cannot support the proposed new grid will present their perspectives and proposed changes. The goal is to find something that meets the needs of the group as a whole.

Rep. Eslick let the group know that she has to leave shortly, but wants her thumbs sideways to continue through the day—nothing would get her to “cannot support.”

Amanda and Chris then asked those members who could not support the grid to share those concerns and suggestions for meeting the needs of their constituency and the group.

Nick Straley, alternate for Blaze Vincent, Representing Interests of Incarcerated Persons, submitted the following:

From: Nick Straley

To: Criminal Sentencing Taskforce

Date: 9/1/22

Re: Reasons why I voted thumbs down on the grid proposal.

Issues of vital importance to the constituency that I represent.

As we have discussed today, I am concerned that there may be vital issues that need to be addressed before I can vote sideways or affirmatively on the grid proposal. In addition, I have a concern with one aspect of the grid proposal that I would like to have the Taskforce consider. The areas of vital importance to the constituency that I represent include:

- Wash outs
- Retroactivity
- Three strikes
- Racial impacts of sentencing.
- Mandatory consecutive sentencing
- Expanding eligibility for sentencing alternatives

I would add that there may be other areas that I was not able to think of over lunch. I also note that I have not had a chance to discuss this list with Blaze who is the member representing the interests of incarcerated people. So, I ask that I have at least a few days to confirm that there are not other crucial issues that need attention. I am also at this time uncertain which of these issues must be considered before Blaze or I can support or be neutral on the grid proposal. I will touch base with Blaze and others over the next several days in order to provide the taskforce with more information on this point. That review may allow Blaze and me to become thumbs sideways with the grid proposal without initiating or completing these conversations, provided there is a commitment from the Taskforce to address them.

All of this being said, but I have a serious concern with one aspect of the grid proposal.

Concern with the Grid Proposal itself

I do not support utilizing the violent/serious violent categories in the new grid. I would like to simply assign the OSL based upon the A, B and C categories. I do not think that non-violent/violent/serious violent categories are necessary or particularly useful way in which to delineate crimes. As we have discussed, there are “non-violent crimes” that cause significantly more individual and community harm than some “violent” crimes. While generally crimes that cause physical injury to people are more serious, there are many crimes that injure victims, economically or psychologically, or damage the broader community, in much more significant ways than some “violent” crimes. The A, B and C categories allow the legislature to identify where particular crimes should be slotted into the grid without adding an additional, unnecessary determination as to whether a crime is “non-violent”, “violent” or “seriously violent”. These different distinctions within the existing sentencing laws have created significant confusion and uncertainty. The taskforce should reduce complexity by removing generally redundant categorizations that may be similar to each other in some ways, but also vary from one another in certain regards. We should use one classification categorization structure to simplify and clarify the system for everyone. The A, B and C system is long-standing and a viable way to delineate crimes while allowing for the nuance that is essential when addressing difficult questions of punishment for particular crimes.

Waldo Waldron-Ramsey, Representing Interests of Incarcerated Persons – [follow this link to join at 02:22:23](#) – described his concerns. On the top end of the grid that is where the most overall increases in sentencing ranges. Every month of an increase counts to those who are serving these sentences. There are decreases in most regions of the new grid, except for the upper regions of the grid—which includes increases in both the minimum and the maximum. I won’t allow the pursuit of the perfect to be the enemy of the good and I understand these numbers are not set in stone, however if we can re-work the formula to allow for either some decreases or no increases in OSL 17+ I could change my decision to thumb sideways.

Changing the formula for OSL 17 to prevent any increase in ranges, improves and promotes public safety as when an individual feels respected by the law and treated fairly they are more likely to respect and follow the law. This row, as is, adds complexity to the new grid.

Task Force Discussion and Clarifying Questions:

- The increase in both minimums and maximums in cells for OSL 17 represent the widening of the ranges for offenses within this OSL. For example, in OSL 11 there are increases in the maximum and decreases in the minimum, while in OSL 17 there are increases in both minimums and maximums. Both of these adjustments exist as a part of the formula to expand the possible ranges for offenses at these specified seriousness levels. OSL 17 has its own formula so the Task Force can address these issues through amending the specific OSL 17 formula.
- Formula is part of the recommendation, so the guideline ranges are part of the recommendation; however OSL 17 has it’s own formula

Jon Tunheim, representing Washington Association of Prosecuting Attorneys submitted the following:

We can live with:

- Use of a formula as it relates to horizontal movement on the grid
- Organizing grid by sections using offense maximums (i.e., C felonies at the bottom, B in the middle, A's at the top.
- Max anchors for B felony section at 120 and 60 for class C felonies
- A guideline for exceptional sentences

What we cannot live with:

- Pervasive reduction in ranges in the N and NE parts of the grid.
- The current formula approach as it relates to vertical movement on the grid.
- Abandoning the multiplier criminal history approach and adopting a single V/SV column.

Proposed Changes

- Abandon efforts to create formula for vertical movement
- Not presume that sentence ranges may not move up, even if necessary to implement a formula
- Set more anchors and seek a formula which better preserved current sentence ranges at the N and NE sections
- Maintain multipliers with openness to modifications about how offenses multiply

Meet goals:

- Recidivism reduction is not the primary effectiveness goal for sentences in N and NE portions
- No evidence that lowering sentences increases public safety
- Effectiveness includes a sense of justice for victims which will not be achieved in this new grid

Task Force Discussion and Clarifying Questions:

- A member encourages the Task Force to consider association that incarceration equals justice. Describes concern about Southwest corner and recidivism. Those offenses are underpinned with mental health, poverty, and substance abuse. We are trying to come up with binary answers to nuanced issues and add math onto humanity both of which are such incredibly difficult tasks. Most individuals will return to the community – need to rethink the system to reduce recidivism.
- Concerns shared regarding formulaic approach seem like the tension between the academic versus the real-world philosophies of operating the legal system. Do not think that the plea bargain system is what was intended, concerned that it creates safety issues for both their constituency and our communities. One of the goals of the Task

Force is to reduce complexity—this new grid ultimately reduces complexity and provides accountability.

- The function of an adequate sentence is the product of culture not mathematics. Recall discussions about idea of punishment is absolutely culturally based and research that indicates that longer sentences offer no additional increases in public safety. Most of those incarcerated in Washington jails and prisons will be released, so there is a need to prioritize rehabilitation and successful reentry for those who are the most high-risk, which are those that are in the NE corner. These decisions need to be based on data and evidence-driven research to create a logical structure towards successful rehabilitation and reentry.
- Punishment will never be enough for people who are victims and their families and it will always be too much for those incarcerated and their families. Continuing our current system for the sake of this being the way it has always been done is not a valid reason to maintain the status quo.
- Proposed new grid doesn't provide everything for each member—group began process expressing desire to improve current system, -- if this grid will not work for some members, then the Task Force needs to move on towards something that they can get consensus on.
- See that the reasons for thumbs down seem like what was articulated before the process of the Task Force—these themes have been present from the very beginning, so feels challenging to see a path forward.
- Are the sentence reductions at the top regions of the grid a non-starter? What can the Task Force do about the racial disparities that exist at these top OSL? The Task Force knows these people that are sentenced at these upper regions of the grid get disproportionate enhancements, longer sentences, and are disproportionately BIPOC.
 - Prosecutors do have tolerance to reduction but the degree of change is substantial in sentencing practices for people who have committed the most crimes and/or the worst crimes. They will tolerate decreases but feel this is too much. On disparities I am not convinced a grid's structure is responsible for this or will be able to solve this, the way such tools, like gun enhancements, are disproportionately used against BIPOC Washingtonians are responsible for this. If there are structures in the grid that can address racial disproportionality then WAPA is willing to address this but so far, we have not seen this. Uncertain that reducing sentencing ranges will address disparate outcomes for BIPOC Washingtonians.
- Another member responded saying how the grid is used is how it contributes to racial disproportionalities, not simply the structure of the grid itself. And while, yes, the reductions in ranges does not reduce racial disproportionality it can reduce the impact.
- Grid is not the reason for the racial disparity, but there are other features that have contributed, like firearm enhancements. The member is willing to talk about if there is a causal relationship but is not convinced it is in the grid or the formula; the grid does not change people getting into those ranges or how CHS affects the plea negotiations.
- Another member states that moving about the field of the grid is the disparity. The grid is neutral as a face, but how it is being used causes issues. The grid is one piece; one

statute out of many. The member indicates that reducing sentence ranges do not decrease disparity but decreases the impact. The member suggests giving discretion to a judge.

Tiffany Attrill, Representing Interests of Victims, described her concerns, and how they could be addressed. Agrees with the principle of the grid. However, there is some fine-tuning that needs to be done before could support. My constituency is hesitant to sign their name without full support. I work with homicide families, many of whom feel that the sentences for homicide in the status quo are too low. I do not feel comfortable with the lack of victim advocacy in this meeting. I do not want this to test for consensus without more victim advocates being present.

Some of the things that my constituency would like to discuss first include retroactivity, washout periods, and three strikes. We do not want to be surprised with this becoming retroactive post-consensus. Additionally, constituency is not comfortable with the current proposed reduction of in sentence ranges.

Task Force Discussion and Clarifying Questions:

- The columns for repeat serious violent/violent/domestic violence (SV/V/DV), what do those apply to? Does it matter how many priors exist before?
 - This, in part, replaces multipliers. Prior felony convictions still count for one point each. If there is a current offense that is a SV/V/DV and the individual has a prior SV/V/DV, the maximum of the standard range increases by 10% and the judges have the authority, without a finding of fact by a jury, to sentence within the expanded range.

CONTINUE WORKING TOWARDS CONSENSUS:

Waldo's Concerns: Adjusting the formula for OSL 17 to reduce the guideline ranges where the maximum increases.

Suggested Modification: change to the formula for OSL 17 (changing the % increase in the maximum for each additional CHS point from 105% to 104%), which would reduce the increases in the maximum guideline ranges.

Task Force Discussion on Suggested Modification:

- A member states that they would think that the range would likely be decreased with the new formula and columns and is not sure if the columns work.
- Multiple members suggest the differences from the status quo diagram makes it difficult to see the actual impact due to the complexity of other things affecting the grid, such as multipliers or the new proposed columns. The impact slide is an over simplified representation of changes.
- Another member suggests that the Task Force should build the grid for when someone ends up in OSL 17.
- Proposed modification exacerbates concerns expressed by WAPA about reductions of sentencing ranges in the NE corner.

- Encourage group to think about developing a grid to meet the majority of cases, not the outlier examples—no matter how horrific.
- Waldo expresses support for proposed modification

Dr. Knoth-Peterson states that the columns increase the ranges and may mitigate, if not increase, the differences from the status quo.

Dr. Knoth-Peterson explains that OSL 17 would be similar to the status quo under this suggestion with no changes to CHS 6, 7, 8, or 9+. The likelihood of individuals in the NE corner is already relatively low and these individuals would already have spent a lot of time in prison unless all the crimes they committed were unranked. There are also aggravators and repeat additions that would affect sentence ranges for this OSL. The higher end of the NE corner would likely be in three-strikes territory. However, that is not always the case.

Amanda thanked group for their conversation, noting there is a proposal that has been brought forward what addresses the concerns of one member who had been unable to support the proposed grid. She also noted that Jon, on behalf of WAPA, has indicated that he is not able to support the proposal—does anybody move to a thumbs down under this change?

The other members present were asked if they could live with this proposed change. Members that supported or could live with the recommendation could all live with this proposed change. The other member representing the interests of incarcerated individuals that could not live with the proposed recommendation, could live with this proposed change. The Washington Association of Prosecuting Attorneys who could not live with the proposed recommendation could also not live with this proposed change to OSL 17. One of the members representing crime victims, who could not live with the proposed recommendation had to leave the meeting before the Task Force discussed this proposed change to OSL 17.

Since the proposed change did not result in any additional members being unable to live with the recommendation, the change was made to OSL 17 and will be integrated into the proposed grid recommendation.

The table below reflects the consensus decision on the proposed grid with modification to formula at OSL 17.

9.1.22: Consensus Decision on Proposed Recommendation: New Adult Felony Sentencing Guidelines Grid		
Task Force Member	Affiliation/Perspective Represented	Consensus Decision
Jon Tunheim, Co-Chair	Washington Association of Prosecuting Attorneys	Cannot live with
Waldo Waldron-Ramsey, Co-Chair	Representing Interests of Incarcerated Persons	Can live with (<i>with formula change to OSL 17</i>)
Rep. Roger Goodman, Co-Chair	Washington State House of Representatives	Can live with

Sen. Chris Gildon	Washington State Senate	Can live with
Sen. Manka Dhingra	Washington State Senate	Support
Rep. Carolyn Eslick	Washington State House of Representatives	Can live with
Sonja Hallum	Washington State Office of the Governor	<i>Not in attendance on September 1</i>
Francis Adewale	Statewide Reentry Council	Can live with
Julie Martin, Chief of Staff	Washington State Department of Corrections	Support
Judge Wesley Saint Clair	Washington State Sentencing Guidelines Commission	Support
Melody Simle	Statewide Family Council	Can live with
Judge Josephine Wiggs	Superior Court Judges' Association	Can live with
Gregory Link	Washington Association of Criminal Defense Attorneys; Washington Defender Association	Can live with
Chief Brian Smith (alternate)	Washington Association of Sheriffs and Police Chiefs	Can live with
Councilmember Derek Young	Washington State Association of Counties	Can live with
Judge Veronica Galván	Washington State Minority and Justice Commission	Can live with
Chief James Schrimsher	Fraternal Order of Police, Labor Organization Representing Active Law Enforcement Officers in Washington State	Can live with
Nick Straley (alternate)	Representing Interests of Incarcerated Persons	Cannot live with
Tiffany Attrill	Representing Interests of Crime Victims	Cannot live with
Riddhi Mukhopadhyay	Representing Interests of Crime Victims	<i>Not in attendance on September 1</i>

CONTINUED TASK FORCE DISCUSSION:

- It is difficult if not impossible to accurately compare a case by case basis from the current grid to the new grid as the current grid has ranges that exceed statutory maximums, judges typically sentence in lower portion of the range.
- Supports direction of the proposal and supports adjusting other grid formulas so that there are cells that are neither reduction or increases in sentences.
- Another member agreed that this would allow for them to potentially reach consensus. Further they would like to work with a small group such as the Grid Group or smaller, with Dr. Knoth-Peterson, so that this group can make experimental adjustments with the formula.
- Reductions in guideline ranges makes their constituency uncomfortable but if there are efforts to increase focus on re-entry this could relieve their concerns over reductions.

Additionally, they appreciate the idea of working with a small group such as the Grid Group or smaller, with Dr. Knoth-Peterson, so that this group can make experimental adjustments with the formula. Any effort to reduce sentencing ranges without efforts such as re-entry or other efforts would move them to thumbs down.

- WAPA could also support a different approach with the formulas, such as more anchors. The member suggests that maybe this work could happen with the grid group or a smaller group.
- Another member suggests that it is the packaging that might be difficult to comprehend. There is no diagram that considers the implications of the columns. There may be similar changes if the columns are considered.
- Maintaining the categorization of SV/V makes these conversations difficult due to the charged nature of the crimes. Removing this designation and strictly classifying offenses by felony class is a better suited approach. The violent/nonviolent distinction does not help these conversations as it puts people into certain camps that stall conversations. Would like to explore rationale for keeping those distinctions.
- The SV offenses are designated for offenses in which someone has lost their life or came close to losing their life, representing some of the most harmful offenses. Class A offenses are entirely violent offenses but there are many other aspects of this designation that are associated with other tools in the system such as washouts, earned release time, enhancements, sentencing alternatives, etc.
- Any changes to the current system should also be made retroactive – so that individuals currently incarcerated benefit from changes.
- If ranges shift towards remaining the same as the current ranges or increases, people need to really think on how this will affect people who are serving these sentences and at some point the state must ask at what point is incarceration too much.
- Another member said that the Task Force should focus on the process of moving forward so that the group can focus on reform rather than focusing on reviewing the system as it currently operates. The current status quo has not made a meaningful difference in public safety and thus the group must focus on how to reform the system to function properly to reflect these policy goals. The Task Force should take a step back and examine the original goals of the Task Force's creation and be willing to give a little in order to reach compromises.
- Dr. Knoth-Peterson said she is happy to create wiggle room within the formulas but is concerned about getting all the work that needs to be done. It feels like the boundaries are still unknown and this creates uncertainty in the possibility to do her work. Are the number of reductions too much or are the reductions that are given too much? At what point are they not too much so that she can set parameters for adjusting formulas as she is unclear what the balance to strive for is, what would be helpful is a more concrete understanding of where boundaries are. For example, is it where in the grid are the reductions too much or is it the reductions in ranges of where there are reductions?
- There are a number of different ways to make adjustments, could alter confinement periods in each cell, or re-ranking felonies, these both could help to alleviate the concerns without altering the structure.

- Encourage WAPA to come back with highly specific recommendations of what they can live with.
- Would it be possible moving forward to start recording grid Group meetings?
 - This is a conversation that needs to happen within the Grid Group and the capacity of the facilitation team as well as TVW.
- A member said that any members that cannot live with the current recommendation should suggest concrete solutions, such as creating parameters such as “80% of the cells cannot have a decrease greater than 5-10%.”
- A potential way to move forward is to allow Nick and Tiffany to bring their concerns to their constituencies, while bringing Jon’s concerns to the Grid Group and then to the full Task Force the following meeting. Tiffany’s concerns will be tabled for when more victim advocates are present.
- Another member suggested running simulations of cases through both the current and new grid to see how the new grid interplays. Another member spoke in support of this idea of running simulation cases in both grids.
- Several members voice support to do simulations of convictions through the status quo grid and the proposed grid so that there is a blueprint of what is discussed (to see how the columns would apply versus current structures). There needs to be different visualizations of the grid.
 - Dr. Knoth-Peterson said that it would be helpful if members could email her 4-5 cases they worked or interacted with that she could then compile and run a handful of these cases.

RECAP, ACTION ITEMS, & CLOSING REFLECTIONS:

Amanda asked members to share something that they’re taking from this meeting and what will they bring next meeting to help reach consensus:

- I am struck by the courage everyone had to speak up for their constituencies
- Frustration but will continue to work with the Task Force.
- Frustration, feels like Groundhog’s Day a little bit. Still going to keep working.
- I am quite encouraged by these conversations. I am seeing a light at the end of the tunnel.
- Good discussion and we are breaking through boundaries. Sometimes it takes a lot of effort, but we will push through by December.
- Thanks, everyone is here in good faith. The discussions we will have: will it only be about retribution or is there evidence and research in the sentences being imposed? If it is just retribution, then that is all subjective, but if there is something more to it, I would like to know more.
- We had difficult conversations but we saw great resolutions and I can see the progress.
- I am beyond myself as this is going to change things. Even if we don’t get what we all want. But this is the beginning, in time there will be justice. We are moving forward. This is the beginning of us achieving all our three policy goals.
- Yesterday I was very frustrated but today I am very optimistic. I’m seeing the light at the end of the tunnel, we are moving in the right direction.

- Impressed by the grace that everyone shows. This system was never designed to be perfect so we should not owe blind faith to the past but have the courage to make difficult decisions and stand for change. Willing to bet that the willingness for change and the discussions in this room are different now than 3 years ago. Let's focus on progress, not perfection.
- Our experiences color our positions and beliefs on how to reform our legal system. Trying to look at that balance of what justice really means and what that looks like to the victims, the community, and to the incarcerated. I am going to continue to engage and work to get us to a place where we can agree. I believe in the work we are doing.
- The reward will be at the end and would be worth it.
- Change is hard. Both people and institutions hate change, this works asks a wide variation of institutions to change the way they conduct their practices. Much of the conversation has been predictable but relationships of trust are being built here.
- This is hard work that is happening with mutual respect that I am appreciative of.
- We are a lot closer than we may suspect and we are in a great spot, keep plugging away.
- I take this seriously and I am not against change, when we all treat each other with respect we would be surprised where we can go and I am appreciative of where we have gone so far.
- I am hopeful and think we are close to reaching consensus.
- I am very hopeful that things will change and people will come with an open mind. Think about people incarcerated as humans and prioritize their humanity, when we keep each other's humanity in mind it is easier to reach compromise.

PUBLIC ATTENDEES: Noah Bein, Jack Bridgewater, Jim Chambers, Bruce Glant, Adam Hall, Chris Johnson, Katelyn Kelly, Kelly Leonard, Joe McKittrick, Joanne Smieja, Matthew Tremble, David Triewailer,

PUBLIC COMMENTS:

Below are summaries of comments and questions shared by public attendees and any responses from Task Force members and alternates. Full questions/comments and responses can be viewed by following this link to TVW which [starts at 04:49:40](#) of the meeting recording.

David Triewailer: Chief Schrimpsheer mentioned it feels like Groundhog Day and I have been feeling that way for a long time. I feel that way when the victims and public are used as a way to oppose sentencing reductions, most victims do not desire these exceptionally long sentences. These lengthy sentences do not help or serve the victims or serve public safety. Rather than using the victims and public to oppose reform, more time should be spent trying to educate them about the truth about the utter effectiveness of long sentences. Someone said that sentence length is not a charge of the Task Force and this is not true. Sentence length is a major component of the work of the Task Force, this is a fundamental part of the system's effectiveness, as is reducing racial disparity. Improving system effectiveness through sentence length reductions can free up funds to be used on rehabilitative services. Would urge people to address sentence lengths and recognize that is a fundamental part of the task force.

Jim Chambers: An extra month in prison is quite a lot, I served 272 months in prison and watched many people die as a result of incarceration's poor conditions such as low-quality food and lack of/poor medical treatment. These conditions must be kept in mind when sentencing someone to long periods of incarceration. Many in prison are victims themselves who never received treatment or services, many coming from our foster care system. When handing out sentences that can range from 300-500 months in prison, we need to keep in mind the conditions they will have to live in and what conditions in their lives brought them here. We need to think about the humanity of people in the prison over time. People in prison are victims growing up in places that increase our chances to be in prison. I think that is disingenuous for some members that have said they are not opposed to reducing sentences, as I've been in every meeting for the last year and a half. No one is willing to talk about the top end of the grid, where the most harm from incarceration is done. We need to lay your cards on the table and let everyone know where they stand. The ripple effects and the longevity of these effects when handing out long sentences. Thank you for the work you're all doing and I hope the Task Force can find cooperative solutions.

Bruce Glant: We need to consider the humanity of everyone when they are being sent to prison. My focus is narrow. The net nanny stings have led to sentences that are 6.5 years to life. We have people who have never harmed anyone but are lumped into a violent area of the grid. These are people who have not harmed anyone but their classification is violent. That should only be for those that are serious harmed. Just wanted to say that I hope the Task Force will be suggesting alternatives to sting individuals on 18 and older sites for FTO's (as many are Class A).

APPENDIX A: CSTF MEMBERS/ALTERNATES ATTENDANCE – September 1, 2022

CSTF Members & Designated Alternates	Affiliation/Perspective Represented	Attendance
Jon Tunheim, Co-Chair (Russell Brown)	Washington Association of Prosecuting Attorneys	✓
Rep. Roger Goodman, Co-Chair	Washington State House of Representatives, Democratic Caucus	✓
Waldo Waldron-Ramsey, Co-Chair (Ginny Parham)	Washington Community Action Network, Representing Interests of Incarcerated Persons	✓
Sen. Chris Gildon	Washington State Senate, Republican Caucus	✓
Sen. Manka Dhingra	Washington State Senate, Democratic Caucus	✓
Rep. Carolyn Eslick	Washington State House of Representatives, Republican Caucus	✓
Sonja Hallum	Washington State Office of the Governor	
Elaine Deschamps (Clela Steelhammer)	Washington State Caseload Forecast Council (non- decisional seat)	✓
Julie Martin, Chief of Staff (Mac Pevey)	Washington State Department of Corrections	✓
Judge Wesley Saint Clair (Keri-Anne Jetzer)	Washington State Sentencing Guidelines Commission	✓
Melody Simle (Suzanne Cook)	Statewide Family Council	✓
Francis Adewale (Interim)	Statewide Reentry Council	✓
Judge Josephine Wiggs	Superior Court Judges' Association	
Gregory Link (Kim Gordon)	Washington Association of Criminal Defense Attorneys; Washington Defender Association	✓
Chief Gregory Cobb (Chief Brian Smith)	Washington Association of Sheriffs and Police Chiefs	✓
Councilmember Derek Young	Washington State Association of Counties	✓
Judge Veronica Galván (Frank Thomas)	Washington State Minority and Justice Commission	✓
Chief James Schrimpscher	Fraternal Order of Police (Labor Organization Representing Active Law Enforcement Officers in Washington State)	✓
Blaze Vincent (Nick Straley)	Seattle Clemency Project, Representing Interests of Incarcerated Persons	✓
Tiffany Attrill (Kameon Quillen)	King County, Representing Interests of Crime Victims	✓

Riddhi Mukhopadhyay
(Megan Allen)

Sexual Violence Law Center, Representing Interests of
Crime Victims