Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: August 31st, 2022
Virtual Meeting via ZOOM – *Link to TVW Recording*

ATTENDEES

- **Task Force Members and Alternates:** See Appendix A
- **Members of the Public**: *See pg. 25*
- **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)*

MEETING GOALS:

- Task Force Introductions and Updates
- Review, Discuss, and Provide Input on Proposed Recommendations
- Lay the groundwork to begin consensus deliberations at the next Task Force meeting

WELCOME AND AGENDA REVIEW

Amanda and Chris welcomed Task Force members and alternates, reviewed the agenda for the meeting, and highlighted specific ground rules. The facilitation team welcomed the Task Force and introduced themselves for any new members who might be present.

The agenda for this meeting today has the Task Force reviewing and discussing all of the proposed recommendations that have been developed so far. The Grid Subgroup completed two more proposed recommendations yesterday that will be a part of the agenda today.

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.

REVIEW, DISCUSS, AND PROVIDE INPUT ON PROPOSED RECOMMENDATIONS

Add: intro by amanda

Proposed Recommendation: Create a Community Intermediate Sanctions & Reintegrative Services Program
See recording at 23:27

The Sentencing Alternatives Workgroup first presented the idea for this recommendation at the 10.7.21 Task Force Meeting and presented the program as a potential recommendation at the 6.2.22 Task Force meeting. Today this program will be presented for the first time as a proposed recommendation.

Underlying Motivations for Creating a CISRS Program:

Current law (RCW 9.94A.190) 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.

As depicted below on the state's current sentencing guidelines grid, this creates a hard line between local and state sanctions – where the sentence range in a cell can only be a jail sentence or a prison sentence – there are no blended sentence ranges. The area on the grid depicted in orange is strictly local sanctions and commonly referred to as the "southwest corner" of the grid.

Washington State's Current Felony Sentencing Guidelines 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																			

Under the proposed new felony sentencing guidelines grid, the sentence lengths are created using formulas that "anchor" sentence lengths for each felony class in the statutory maximum. This creates what is referred to as "straddle cells" – cells with ranges from shorter than 12 months to longer than 12 months and a day.

CSTF Proposed New Felony Sentencing Guidelines Grid

	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																					

Program Description

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

Intermediate sanctions include the following:

- 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

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.

		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%
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																					

Zone 1: is the expanded "southwest corner" of the grid. Jail sentences would be locally resourced, as in the status quo. If an individual is sentenced to a CISRS program, access to CISRS state funding would be enabled. To address concerns that some judges/counties 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: is the area of the grid where there are "straddle cells". Under the current system all the cells that fall within this zone are state prison sentences. Under the proposed new felony sentencing grid, 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. 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. In this zone, a CISRS program sentence would be the default for those individuals meeting program criteria; to sentence to incarceration, prosecutors and/or judges would have to articulate how intermediate sanctions and reintegrative services are not appropriate.

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

Dr. Knoth-Peterson pointed out there are discussions regarding if CISRS should include Zones 1, 2, and 3, or just Zones 1 & 2? Due to the ranges in this zone and the offenses in it as well there are additional concerns of accountability and desire for at least some period of confinement. In zone 3, the Alternatives group has explored whether a CISRS-type option would be duplicative

of graduated re-entry program where individuals are serving some period of time in confinement and once released under a form of supervision. However, unlike the graduated reentry program this would be up to the discretion of a judge rather than DOC.

Dr. Knoth-Peterson further pointed out that this recommendation is outlining the design of this potential program but nothing is finalized for this program yet, so eligibility can be expanded into Zone 3 if the Task Force feels this to be necessary. If expanding CISRS eligibility to Zone 3 then there may have to be potential considerations regarding potential oversight and administration by DOC rather than a full transfer to local programming; including DOC in the process for those sentenced in Zone 3 allows for the facilitation of the reentry process, brought about through the use of the reintegrative services, to continue the continuity of care provided by DOC to ensure smoother transitions.

<u>Key elements of the CISRS Program include:</u>

- 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 county must receive state approval every XX years (interval to be determined) 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.
- 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 Graduated Reentry (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.
- 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.
- 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

<u>Provided and Funded Services and Programs for Victims</u>
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.

Sentencing Alternatives Group Additional Perspectives:
Amanda turns it over to the sentencing alternative group to provide more discussion:
- A member wanted to emphasize that the attractiveness of the program is that the counties would be responsible for building their own infrastructure for creating these resources while the state provides the "seed funding" to the program while it grows itself. Every community could benefit from having these resources and interventions present. For programs like this the main problem is usually a lack of resource funding and this design aims to solve this central problem upfront.

Task Force Discussion:
- Where would sex offenses and violent offenses fall within eligibility for the CISRS programs, and how would SSOSA fit into the CISRS process?
    - SSOSA is a sentencing alternative specifically designed for eligible individuals convicted of sex offenses. Currently, the Sex Offender Policy Board (SOPB) is reviewing all sentencing related to sex offenses – so the CSTF is not making recommendations specifically related to SSOSA. Recognizing the SOPB may make recommendations to modify SSOSA, see that SSOSA would still be the primary sentencing option for eligible individuals convicted of sex offenses, just like DOSA will likely still be the primary go-to alternative for drug offenses. CISRS

emerged, part because of the straddle cells and part because of groups desire to create greater flexibility in sentencing options for individuals where a current sentencing alternative is not appropriate yet gives the judges the reinsurance that there are programs that they can sentence with some sort of reliability and monitoring. So likely DOSA, SOSSA, and FOSA will be the primary sentencing for the same offenses and convictions seen today. A footnote here is that SOSSA does not fit well on this grid overlay so it does not appear on the overlay. The violent classification would need to be grappled with regarding if it should be an eligibility requirement.

- In Zone 2—the straddle cells—intermediate sanctions would be the default, but judges and prosecutors would have opportunity to note how individual does not meet eligibility criteria. Could a CISRS sentence in that zone could include a term of confinement as well—similar to rDOSA? If an individual fails to meet stipulations, would they be then returned to confinement?
    - For pDOSA and rDOSa the individual receives a sentence, but that sentence is to be served in the community or in the program in confinement. But if they are revoked then they return to jail or prison. For CISRS, the state could establish reasons that are needed to meet the requirements for revocation, ensuring a standard use of the need for revoking an individual from an alternative to incarceration to prevent variance in revocations by counties.
- A member said they could see CISRS replacing rDOSA. CISRS offers community treatment and local control that fits individualized needs better than rDOSA can. Prosecutors would prefer a local program where individuals are in the same community to their treatment and supervision, CISRS seems to be better designed to fit this need than rDOSA.
- The state has a serious crisis in access to mental health, behavioral health, chemical dependency, victim-based, and other necessary services, especially in rural communities. So, is the state-funding aimed at creating these programs and building access to them? The lack of existing services highlights a disparity in which more-populated counties can build these programs and expand access to already existing programs, while rural counties do not have programs already. Expressed concerns about geographic disparity in availability and accessibility of programs.
- The Juvenile Block Grant could serve as a model to address those concerns. This Block Grant provides resources for both the creation of non-existing programs and for the continued administration of existing programs. CISRS could also be designed to incentivize counties to develop/implement—for example: the state would reimburse any costs associated with building new programs and running existing programs, and costs associated with jail sentences would still be borne by the county. This incentivizes counties to create these programs.
- If there are counties that refuse, potential that DOC provides a CISRS program to fill the gap. Important aspect to raise. Potential gaps and services in rural areas that should be specified in the recommendation.
- Would first-time offenders qualify for eligibility to participate in the CISRS program?

    - Yes, eligibility is based on the zones in the grid, not number of prior felony conviction. However, this does not replace the first-time offender waiver.
- The state is struggling to find qualified people to work in sentencing alternative programs, and this will be one of the biggest obstacles to get CISRS functioning. If the state cannot find these individuals, especially in smaller, rural, or less-wealthy urban counties will struggle. The state can already see this occurring in their already existing alternatives. The state needs to provide robust work-force training to employ these programs successfully.
- Another member echoed both the concerns of geographic disparities as well as the need for expanded work-force training to get qualified individuals to run these alternatives. Additionally, they are concerned with how racial disparities could affect sentences within the "pink zone" (Zone 2), where the sentence can be CISRS, jail, or a DOC prison sentence. How will racial disparities affect where people are sentenced at this junction of crossroads?
    - The structuring of the program would create CISRS as the default sentence and any departure from CISRS would require the judge to articulate why sentencing an individual away from CISRS to jail/prison. The reasons articulated must be why this individual is a threat to the community and/or not safe to return.
- Concern that sentencing decision articulated by judge could be more reflective of a lack of programs/services than risk to public safety.
- Counties may be well-intentioned and want to provide these programs but if they do not have the necessary work-force ready to be hired, and that are appropriately qualified, then how will this program be successful? What would prevent a judge from sentencing someone to a DOC sentence, bypassing need for county to hire/develop programs? Concern about CISRS be the presumptive sentence when these issues about cost, capacity, and workforce are significant limiting factors.
- For the presumptive aspect, how do you make CISRS the presumptive sentence? The Task Force is aiming to flip the starting point for this decision by using CISRS as a presumptive sentence and requiring an articulation for departing from this. Judges just sentencing people to 13-month DOC sentences in this Zone and not worrying about it, this is how the status quo currently already exists.
- noted need for a state-funded work-force training program to fill the necessary positions to run these alternatives and if this isn't a base-principle and requirement for the implementation of the CISRS program then there will be geographic disparities in access to CISRS. Judges are very aware of county-budget situations and will not do anything that will put an extra burden on the county and its funding. Very supportive of in making this program successfully work within their county but the state is facing an extraordinary labor crisis in the criminal justice system. State-funding and administrative help is needed for this to be implemented.
- 25 counties, more than half in the state, have a population of 100,000 or less so how can counties like this fund and hire people to run this?
- Why does the eligibility of CISRS stop at OSL 9? It seems there is an opportunity to sentence people at OSL 10+ to serve time in DOC prison and then be enrolled in CISRS as a way to have access to programs/services.

- Some members of the Sentencing Alternatives Subgroup shared concerns about opening eligibility for individuals with current violent offenses. Additionally, group discussed how CISRS, in tandem with other emerging recommendations could reduce DOC caseload and allow for more resources/services for those convicted at OSL 10+ in DOC custody.
- Would be helpful if the state had a model program so that counties could have an idea of what they can provide and gauge if they can provide the resources, so they can ensure successful implementation. Additionally, the timeline must provide adequate amounts of time for counties to both determine their infrastructure and capacity to successfully build these programs and hire/train workers for them. If the timeline is too short, then counties will haphazardly put faulty programs together just to get funding. Supportive of a regional model with a county focus. A judge's findings would have to address why CISRS is not appropriate or why CISRS is appropriate.
- In thinking about this as a local or state program—if built correctly this sentencing option will be utilized by judges without considering cost to counties, but what tool can best serve the individual in front of them. If an individual is better served by a local/community-based program, then judges will utilize this. There are models the Task Force can look at that can provide incentives for judges, defense, and prosecutors that can be pushed towards utilizing this program. The juvenile block grant had huge success. Oregon has a model that might have similarity here that allows for counties to opt in or out, and the state fills in when a county opts out. But a regional program would help for our smaller and rural counties. The juvenile model worked in both the big and small counties. It might be a leap of faith, but there is experience there to make it work.
- This recommendation is evidence-based and is already working in states like Pennsylvania—see opportunities to learn lessons about building in transparency. See this recommendation in line with state trend towards more options for community-based sanctions.
- Concern about "presumptive" sentencing and legal implications. Suggestion to use "advisory"
- Concern that this recommendation does not specifically lay out how it will address racial disproportionality. Potential avenues such as reviews and/or education to provide more transparency on disproportionalities within the system and specifically address how CISRS can be used to address racial disproportionality are needed. Allocating money based upon resources that can be used for diversion, such as drug courts, can be used to reduce disproportionality as well. Suggestion to think about which organization/agency can best provide these types of services, not necessarily just adding service/responsibilities to DOC. Described value of mentoring relationships, note a barrier to capacity – in this program and other services – could be the policy preventing individuals with a felony conviction from state employment.
- Appreciate work of the Alternatives Subgroup—the concept of this program makes a lot of sense and consistently applies across the three policy goals. Support this program at a high-level but have concerns as to the implementation for this program, especially regarding potential for geographic and/or racial disparities.

PROPOSED RECOMMENDATIONS: SENTENCING SYSTEM

These are recommendations that are not CISRS or directly related to the new grid or its formulaic components. The Grid Subgroup has been working to turn these potential recommendations into proposed recommendations and completed two more proposed recommendations yesterday that will be a part of the agenda today.

SENTENCING DISCRETION– *see recording at 2:02:00*

Proposed Recommendation:

Require that any aggravated departure has reasoning articulated in the Judgment and Sentence form, including any additional information, particular characteristic, or other circumstance justifying aggravating departure.

Background and Explanation

Under current law (RCW 9.94A.120), 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).

In response to Blakely v. Washington (2005), the Legislature made exclusive the list of aggravating factors used to justify an upward departure from the standard sentence range. 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:

- The court may impose an aggravated exceptional sentence if the defendants 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 considering 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.

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

- This proposed recommendation will require that the 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. For the most frequently used factor (the first

bullet above), which stipulates that justice is best served by an exceptional sentence and the court agrees that the stipulation is in the interest of justice.

- 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.

Task Force Discussion:

- A member said they are not sure how this is different from the current law; the court must enter findings of fact or conclusion of law when issuing an aggravating sentence. When this is agreed upon by all parties it is not unlike someone pleading guilty to a charge, they waive their right to a trial by jury, so when they agree to this exceptional sentence, they are essentially admitting there were exceptional circumstances justifying the departure from the standard range. This member and their constituency are not opposed as this does not seem different from the status quo.
- Another member echoed the above point that they are not sure what else can be done here. Defendants may not want to put all the reasons down on an agreement. The justifications for departing from the standard range are not something that can be easily coded into a computer that can be used in data analysis.
    - The problem is those reasons are not being listed even if there is a stipulated agreement, even if there are multiple justifying reasons only the agreement is listed. So, this will create more consistency in the use of the reasons for departing from the standard ranges. This can also better help the gathering of evidence for data analysis. If there are other reason aside form one of the four factors or the agreement then it should be made clearly through the articulation on the J&S form, without these reasons being articulated then that set list of factors could be manipulated in a way to get a defendant agreement through reasons that are not on the list of aggravating factors.
    - There can be multiple aggravating factors justifying a departure from the standard range, but the issue is these are not always being listed, in the majority of cases where more than one reason exists only the stipulated agreement or only one of the factors is usually listed. This recommendation would create consistency in these standards that would require the full listing of all factors necessitating a departure even if there is a stipulated agreement. Without this, the exclusive list of reasons for a departure is not necessarily exclusive as there can be any reason for this if the defendant agrees to it.
- The agreement could be made to avoid Three-Strikes or other lengthy enhancements that cannot be captured without these reasons being articulated. Better ability to track that rationale could point to needs for other policy reforms.

- The Task Force has expressed interest in developing recommendations to address/mitigate disparity, so this recommendation was designed to shine a light on these reasons for departing from standard ranges to reduce disparities.
- Note that the Legislature may consider a bill to create a standardized J&S form throughout the state.

Proposed Recommendation: — *see recording at 2:25:07*
Eliminate mandatory consecutive sentencing. Leave default consecutive but allow judges discretion to issue concurrent sentences without invoking an exceptional sentence.

Background and Explanation
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:

- 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.
- 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 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.

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

- 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.

Formerly Potential Recommendations #19-25.

Task Force Discussion:

- How does this recommendation change to the scoring formula? Currently, the most serious offense is scored first, and the other current offense(s) are then scored as 0 points, then these sentences run consecutively and are not scored against each other. This was very intentional by the creators of the SRA, there is a very different scoring structure, so would this recommendation keep or replace this unique scoring structure. This potential is asking prosecutors to waive the right to appeal for concurrent exceptional sentences.
    - Based on the Grid Group discussion, the scoring would apply based on the decision to sentence consecutively or concurrently. When the group looked at this, the decision to run concurrently and then to score them and count them would still result in lower sentences then running them consecutively without other current offenses scoring against another.
- Concern that the change would increase complexity in scoring and increase uncertainty in sentencing outcomes. For example, prosecutors would not know if judge would determine concurrent or consecutive sentencing, so have less certainty to inform plea negotiations. Suggestion: keeping the right to appeal while giving judicial discretion on the type of sentencing.
- A member said a potential solution could be there is consecutive sentencing but there would be a cap as to the number of years that would be served because of consecutive sentencing.
- Legislature needs to determine who – judges or prosecutors – makes decision about concurrent/consecutive.
- Support eliminating mandatory consecutive sentencing, providing more discretion to judges, and allowing for appealable sentences regardless of if it is exceptional or not is the way forward.
- Removing predictability that this mandatory sentencing creates—how would this affect prosecutors' charging decision-making? When prosecutors charge for certain offenses, they know whether the sentences associated carry consecutive or concurrent sentences.
- This change would not affect the charging decisions as these are solely based upon the evidence provided by law enforcement. The unpredictability would affect the process of plea negotiation as this would then eliminate some of the boundaries the SRA created within plea negotiations.

- Consecutive sentencing disproportionately impacts BIPOC defendants in our criminal legal system--support this recommendation for its potential to address disproportionalities.
- Does this recommendation address violent offenses? If so, believe there would be push-back from their constituency.
    - Yes, it includes firearm offenses such illegal possession and possession of stolen firearms, or Physical Control DUIs. This would revoke the mandatory aspects of the consecutive sentencing nature of these offenses and allow for judicial discretion to issue concurrent sentences.
- The concern is around an individual who commits multiple violent offenses and how this recommendation would address that scoring. Some constituencies, such as prosecutors, would likely not support changes to firearm scoring, but could support expanding judicial discretion into the determination of consecutive versus concurrent sentencing for these offenses. The issue their constituency has is around appeal and scoring is when there are two or more violent offenses
- A member said that mandatory consecutive sentencing is not something that victims either pay attention to or prioritize as something they want to see, only for the exception for firearms used in violent offenses. The access to firearms adds lethality to domestic violence situations or assaults or all other offenses really, so keeping mandatory consecutive sentencing as a preventative method for specifically firearm related offenses is something their constituency could support.
    - Unlawful possession of firearm or theft of a firearm, not for crimes where a firearm is used, use consecutive sentences for EACH firearm stolen or possessed.
- It seems like this recommendation would expand both judicial discretion AND prosecutorial discretion that can be used in plea negotiations where concurrent sentences can be offered in plea agreements, knowing that consecutive sentences could be the outcome of a trial.
- WAPCS would not support this recommendation as concurrent sentencing, in our view, is used to eliminate accountability as sentences are lumped together when certain offenses deserve consecutive sentencing.

LEGAL PROCEDURES & OTHER SENTENCING LAWS

Proposed Recommendation – *see recording at 3:09:00*

*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

In 2012, the United States 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).

Washington's aggravated murder statute provides for a mandatory sentence of life without parole for individuals at or above the age of 18 years old, and for those under 18 years old, a sentence term of 25 years to life. 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.

<u>Addresses Sentencing Complexities and Errors, and Effectiveness of the Sentencing System</u>

- 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 this is no longer a valid sentence in Washington state.

Task Force Discussion:

- This recommendation discusses what is the age of accountability and what is the age of adulthood. WA has many different laws around when someone is old enough to be considered an adult and/or accountable for their own decisions. Perhaps separating this into two recommendations, one addressing striking the death penalty and one addressing the age question?
- Is this saying the judge picks a sentence between 25 to life or if the sentence is 25 to life and then after the 25 years the ISRB would review this after for presumption of release?

    - This would allow the judge to sentence 25 years to life and then the ISRB would conduct a review.
- Policy trend recognizing youthfulness, age threshold has been increasing in line with ongoing understanding of brain development. If the Task Force wants to be forward thinking, then they should raise the age from 21 to 25.
- For individuals under 18 there are two different laws, for anyone 18 and under sentenced to 25 years will have their sentences reviewed by the ISRB, second for those that were under 21 when they were sentenced to life without parole they will automatically be re-sentenced now. Monschke disallows any life without parole sentences for anyone 20 years and younger. Young people are being re-sentenced and there is no provision for supervision of these individuals, so those individuals are being released without supervision and reentry supports.
- WAPA may be creating their own version of this legislation and if this is the case prosecutors would be more willing to support that proposal over the CSTF proposal.
- The death penalty is a very divisive law and it still on WA law books although it has not been eliminated. While there is a pause on any executions going on is there still use of the death penalty as a sentencing option? Striking this option in the recommendation could position the CSTF in a way where they take a certain stance that they may want to avoid.
    - The death penalty statue as it exists now has been deemed unconstitutional and the only way for this to come back into WA is for the Legislature to pass a new bill enacting the death penalty.

CRIMINAL HISTORY SCORE — *see recording at 3:26:44*
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. An individual may receive from 0 to 9+ points on that axis.

In general, the number of points received depends on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the person's community custody status at the time the crime was committed; and (5) the length of crime-free behavior between offenses.

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.).

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)

In addition:

- If there is more than one offense in a sentence, the current offenses will score against one another, but are run concurrently (at the same time). There are exceptions that we'll go over in the scoring document (SV & certain weapon offenses)
- If a person was under community custody at the time of the current offense, 1 pt is added to the criminal history score.
- Offenses score as if they were a completed offense (example: Robbery 2° is a Violent offense and Attempted Robbery 2° is NV, but would be scored as Violent offense).
- Only offenses ranked on the adult felony sentence grid are scored – unranked offenses have a score of 0 and a standard range of 0-12 months.

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

1. **Felony Traffic Offenses**
    a. Adult and Juvenile Vehicular Homicide or Vehicular Assault offenses count as 2 points
    b. ***Certain adult Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1 point***
    c. ***Certain juvenile Traffic Misd/Gross Misd offenses (serious traffic offenses) count as 1/2 point***
    d. Adult convictions of Operation of a Vessel under the Influence offenses count as 1 point and juvenile offenses for Operation of a Vessel offenses under the Influence count as ½ point.
    e. Any other felony offenses count standard
2. **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 Priors**
    a. ***Misdemeanor offense of vehicular Prowling counts as 1 point***
    b. Adult and Juvenile offenses of Theft 1° or 2° of a Motor Vehicle, Possession of Stolen Property 1° or 2° of a Motor Vehicle, Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without the Owner's Permission 1° or 2, count as 3 points
    c. Any other felony offenses count standard
3. **Homicide or Assault by Watercraft Offenses**
    a. Adult and Juvenile Homicide or Assault by Watercraft offenses count as 2 points
    b. **Certain adult Traffic Misd/Gross Misd offenses count as 1 point**
    c. **Certain juvenile Traffic Misd/Gross Misd offenses count as ½ point**
    d. Any other felony offenses count standard
4. **Felony Domestic Violence**

a. Count 2 points for each Adult offense where DV was pleaded/proven after 8/1/2011 for any of the following offenses: Violation of a No Contact or Protection Order, felony Harassment, felony Stalking, Burglary 1°, Kidnapping 1° or 2°, Unlawful Imprisonment, Robbery 1° or 2°, Assault 1°, 2° or 3°, or Arson 1° or 2°.
b. Count 2 points for each Adult offense where DV was pleaded/proven after7/23/2017 for any of the following offenses: Assault of a Child 1°, 2° or 3°, or Criminal Mistreatment 1° or 2°.
c. Count 1 point for each 2nd and subsequent Juvenile offense with DV was pleaded/proven after 8/1/2011 for the list of offenses under (a) above.
d. ***Count one point for each adult offense for a repetitive domestic violence offense (misd/GMs), where domestic violence was pleaded/proven after 8/1/2011***
e. Any other felony offenses count standard

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.

The 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.

The Grid Subgroup put together a series of potential recommendations that included a separate change for each of the four current scoring exceptions. In combination, these changes would have eliminated all special scoring exceptions for misdemeanors in the CHS. When the Grid Subgroup presented these potential recommendations to the full Task Force for input at the 6.2.22 full Task Force meeting, several members that believed their constituency would not be able to support eliminating one or more of these special scoring exceptions.

Proposed Recommendation: — *see recording at 3:31:40*
Maintain special misdemeanor scoring for prior Misdemeanor DUI offenses when the current offense 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.

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

- This recommendation 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.

Task Force Discussion:

- Currently misdemeanor DUIs will count to some non-DUI felony traffic but now we aim to make this more specific to DUI felony traffic behavior?
    - Yes, that is correct.
- Is there a list of offenses that are felony traffic offenses that do not involve DUI that will now no longer take DUI misdemeanors into consideration in CHS calculation? Does this not get into washout periods as well?
    - Yes, any offenses such as Vehicular Homicide, Vehicular Assault, Eluding a Police Officer, Felony Injury, etc. that are felony traffic offenses that do not involve intoxication from drugs and/or alcohol are no longer counting misdemeanor DUIs
    - *"(26) "Felony traffic offense" means:*
      ***(a)** Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or*
      ***(b)** Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection."*
- Several members said that their constituencies could support this, as DUI behaviors continue to repeat themselves often so now that this recommendation has narrowed down to solely focus on DUI behavior this will now address their concerns expressed at earlier meeting.
- Further felony traffic offenses demonstrate continued criminal behavior for someone that has a misdemeanor DUI and this should not be ignored within CHS calculation.
    - There is still the special misdemeanor scoring that is applying for repeat behavior, specifically for DUI behavior until these repeated DUIs then become felonious. The DUI misdemeanor would not be held against someone, as no other misdemeanor would, unless the current offense is DUI related.

Proposed Recommendation: — *see recording at 3:51:25*
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.

Like the above recommendation, this would count prior misdemeanor DUIs for watercraft offenses that involve DUIs but would not count those misdemeanor DUIs for felony watercraft offenses that do not concern DUI.

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

- Reduces complexity by having watercraft 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.

Task Force Discussion:

- There are only 700 fatal boat collisions a year in WA and over 40,000 a year for motor vehicles, so it would make sense to align motor vehicle and watercraft offenses.
- Several members were concerned about the vagueness of aligning motor vehicle and watercraft offenses. For several constituencies to support this recommendation, it would need to be written out that felony watercraft offenses would need to be moved up to the same OSL as felony motor vehicle offenses. Felony watercraft offenses need to be moved up OSLs rather than felony traffic offenses moving down. For someone who has felony traffic convictions they have a demonstrated history of endangering the public on roadways, and since it takes a lot to get to a felony traffic offense these constituencies cannot live with someone receiving a lower sentence for these offenses.
- A member said they are willing to support this recommendation as it is written—to reach parity—but they want to make it clear that they do not want to lend their support for this if felony traffic offenses would move down and do not want to be bound in agreement if that is the case.
- This language was written this way to reach a compromise to leave this decision to the legislature as there were people in Grid Group who wanted to increase felony watercraft offenses and those who wanted to lower felony traffic offenses.
- Given political climate, they do not believe that felony traffic offenses will ever be lower in OSL.
- A member proposed that the recommendation should cut the parenthetical sentences, so that special misdemeanor DUI scoring is the same across both felony traffic offenses involving DUI and felony watercraft offenses involving DUI.

Proposed Recommendation: — *see recording at 4:11:47*

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.

<u>Addresses Sentencing Complexities and Errors, and Effectiveness of the Sentencing System</u>

- 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 a longer sentence 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.

Task Force Discussion:

- A member previously against this recommendation stated that they feel this recommendation is heading in the right direction and they are more supportive of this than the previous version of the recommendation.
- Since this recommendation is intertwined with the new column for multiple violent offenses aggravators, and their constituency is not in support of those columns, they cannot support this recommendation. Believe that moving to a multiple violent column does not capture someone's entire criminal history in the way that the multiplier does.
    - There currently is an aggravating factor that does encompass this.
- How often are there cases that have multiple violent offenses that are not Three-Strikes eligible?
- Several members expressed support for maintaining the misdemeanor DV scoring exception.

<u>Proposed Recommendation</u>:

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

<u>Proposed Recommendation:</u>

Eliminate 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.

Background and Explanation

See recording at 4:25:58

According to RCW 9.94A.525, concerning Criminal History Scoring, *"(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."*

If the current offense is one of these four offenses (Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking of a Motor vehicle without Permission 1 or 2), then prior special misdemeanor scoring for Vehicle Prowl in the second degree would count as 1 point in the calculation of the CHS. Proposed Recommendation #7 aims to eliminate the inclusion of the misdemeanor scoring exceptions for Vehicle Prowl in the second degree.

Key Information:

- 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.

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 motorhome, 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.

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 motorhome, 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 on at least two separate occasions of the crime of vehicle prowling in the second degree.
(4) Multiple counts of vehicle prowling (a) charged in the same charging document do not count as separate offenses for the purposes of charging as a felony based on previous convictions for vehicle prowling in the second degree and (b) based on the same date of occurrence do not count as separate offenses for the purposes of charging as a felony based on previous convictions for vehicle prowling in the second degree.

Current OSLs for Offenses that Include Misdemeanor Vehicle Prowl 2:

- 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**

<u>Inconsistencies:</u>

- Vehicle prowling 2nd degree third and subsequent is OSL 4. Prior gross misdemeanor vehicle prowl 2 does 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.

The below slide depicts how often the offenses that count prior misdemeanor Vehicle Prowl 2 are sentenced each year and how often both degrees of Vehicle Prowls are sentenced as well. The top four offenses on this chart are the offenses that count prior misdemeanor Vehicle Prowl 2 in the calculation of the CHS. Overall, both degrees of Vehicle Prowls have small numbers of convictions each year. Additionally, below the chart the number of motor vehicle sentences with a misdemeanor Vehicle Prowl 2 in the CHS is shown, along with the percentage of how many of the sentences for that year had these misdemeanors included in the CHS. Each year for the past 5 years has less than 10% of motor vehicle offense sentences including an inclusion for misdemeanor Vehicle Prowl 2 in the CHS. Proposed Recommendation 6 would affect less than 20 cases each year and Proposed Recommendation 7 would only be applicable to around 8% of motor vehicle cases each year.

C. Criminal History Score

Background and Explanation

Most Serious Offense	2017	2018	2019	2020	2021	Total
	Number of Sentences (may include multiple sentences for the same person)					
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%

<u>Addresses Sentencing Complexities and Errors and Effectiveness of the Sentencing System:</u>
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.

Task Force Discussion:

- Several members said that the proposed recommendation #6 should be eliminated as they do not feel the Task Force can come to an agreement on this as the Grid Group could barely agree to bring this to the Task Force. This recommendation addressed an offense that is very difficult to get arrests for and harder to prosecute as well, which contributes to the low numbers in convictions. There are bigger issues at hand that require the Task Force's attention.
- There is a very low clearance rate for Vehicle Prowling and for those who have been arrested for one of the 4 offenses (theft of a motor vehicle, possession of a stolen vehicle, or theft of a motor vehicle without permission 1 or 2). Concerns about increasing sentencing guideline ranges when likely all those arrested for these 4 offenses have committed this offense without being caught. Concerns about racial disproportionality as BIPOC neighborhoods often have higher rates of police presence increasing the likelihood of arrest for such an offense.
- This recommendation draws our attention away from bigger issues that have more impact on the system.

- Just because there is a low-clearance rate, and this is a hard offense to prove is not a good reason not to pursue this recommendation. This is important as this special misdemeanor scoring creates a system in which the misdemeanor scoring double counts against a person.
- Vehicle Prowl second degree is a higher OSL than the first-degree offense is not logical--Grid Group has spent many hours over the past 3 months discussing its ineffectiveness
- This rule is one of the lowest-hanging fruits that the group can address within the criminal legal system that can meet our 3 policy goals and is a great example of why the Task Force was even created.

Amanda reminded the Task Force that their following meeting will be the first test of consensus for this year and congratulated them for reaching this milestone. Amanda then reviewed the Operating Procedure of the Task Force.

PUBLIC ATTENDEES:
David Treiweiler, Joanne Smieja, Chris Johnson, Katelyn Kelley, Adam Hall, Jim Chambers, Kelly Leonard, Matt Tremble, Noah Bein, Jack Bridgewater

PUBLIC QUESTIONS AND COMMENTS:
Below are summaries of comments and questions shared by public attendees. Full questions/comments and responses can be viewed by following this link to TVW which starts at 5:02:23 of the meeting recording.

David Trieweiler: Having sat through today's meeting along with most of the meeting over the last 2.5 years. It struck me once again that law enforcement is against almost every recommendation to reduce sentencing ranges and in fact advocate for increasing sentences. In almost every sentencing reform proposal law enforcement's first concern is the reduction of any sentence lengths. Law enforcement has agreed to reduce ranges in the SW corner but refuses to reduce ranges for Vehicle Prowl 1 which is as far SW as the grid can get. There's been no recognition that lengthy sentences are problematic and increase racial disproportionalities. I have to point out that it is clear that law enforcement is fine with the racial disparities in the status quo system and I urge them to go against their usual stances and reduce sentences.

Jim Chambers: I commend everyone here taking on this task as it seems pretty overwhelming. I think everyone knows I'm formerly incarcerated and served 22 years in Washington state prisons. The things we are talking about it seems there will never be consensus on as those who represent incarcerated people are never going to agree with raising sentences. Washington has some of the highest sentences in the country and the Task Force is aiming to build a new grid within the confines of the old SRA and within the aspects that are causing the bias and racial disparities. If these are not removed when creating the new grid we will just stand to recreate a system of failures and fail to eliminate racial disproportionality, and nothing significant will change. We have to give judges more discretion as when this discretion was stripped from judges people began to get overly sentenced and this discretion was placed in the hands of

prosecutors. The court proceedings need more transparency and to be recorded to ensure appropriate conduct.

Resources Shared via Zoom Chat:
Report on Juvenile Block Grant: Juvenile court block grant (wa.gov)

HB1818 was passed last session, that stopped requiring the DOC to have those under supervision pay for supervision fees.

APPENDIX A: CSTF MEMBERS/ALTERNATES ATTENDANCE, AUGUST 31, 2022

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

APPENDIX A: CSTF MEMBERS/ALTERNATES ATTENDANCE, AUGUST 31, 2022

Judge Veronica Galván	Washington State Minority and Justice Commission	
(Frank Thomas)		
Chief James Schrimpsher	Fraternal Order of Police, Labor Organization Representing Active Law Enforcement Officers in Washington State	✓
Blaze Vincent	Seattle Clemency Project, Representing Interests of Incarcerated Persons	
(Nick Straley)		✓
Tiffany Attrill	King County, Representing Interests of Crime Victims	
(Kameon Quillen)		✓
Riddhi Mukhopadhyay	Sexual Violence Law Center, Representing Interests of Crime Victims	✓
(Megan Allen)		