

**Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: October 6th, 2022**

In-person: WSU Puyallup Research and Extension Center, 2606 West Pioneer, Puyallup, WA
Virtual Meeting via ZOOM — [Link to Recording](#)

ATTENDEES:

Task Force Members and Alternates: See Appendix A

Members of the Public: See pg. 22

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 discuss updates to the 2022 workplan
- Complete consensus deliberations on proposed felony sentencing grid
- Review and discuss the remainder of the sentencing system proposed recommendations and confirm they are ready to move forward for consensus deliberations at the November Task Force meetings

WELCOME AND AGENDA REVIEW

Amanda and Chris welcomed Task Force members and alternates and reviewed the agenda for the meeting. The first order of business will be to discuss the work plan for the remainder of the year. The facilitation team sent an email reservation to the Task Force on September 22nd with an updated work plan and information about the two added Task Force meetings as well as the December 14th Reentry Committee and Joint House Public Safety and Senate Law and Justice Meeting. Action: Additional meetings for October and November will be added to the website.

The first part of the day will focus on completing the consensus process and deliberations on the proposed recommendation for a new adult felony sentencing guidelines grid. The discussion on Sept 1st concluded with an action item for the Grid Subgroup to meet to try and address the concerns of the remaining three member seats that could not live with the proposed recommendation.

The Grid Subgroup held an all-day work session on September 19th to try and work towards resolving the remaining seats not in consensus, and during this week another seat agreed upon changes made and moved into consensus. Two member seats are still not able to support the proposed grid recommendation. During the discussion today, members will complete deliberations.

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.

The second half of the day will be spent walking through the remaining set of sentencing system proposed recommendations and confirming they are ready for consensus deliberations at the November meetings. Facilitation team reminded the Task Force that over the past two years, they received presentations and gathered information about the sentencing grid, developed a suite of potential recommendations. Those potential recommendations have been refined through iterative process: presentations and discussions among full Task Force with input then integrated by the Subgroups. Another round of presentation and discussion occurs as the Subgroup and full Task Force turn the potential into proposed recommendations. Today's meeting is the final opportunity for discussion on proposed recommendations. Proposed recommendations will be on the agenda for consensus-seeking by the full Task Force later in October and in November meetings.

INTRODUCTIONS

The Task Force members and alternates then introduced themselves, including their name and the constituency that they represent.

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

INTRODUCTIONS & UPDATES: [see recording at 28:51](#)

The Co-Chairs and facilitation team have met to discuss the work plan for the remainder of 2022. Two additional meetings have been added, for the Task Force to complete its work before the December deadline for the Final Report due to the Legislature and Governor's Office.

- October 6th: Complete Consensus Process on New Grid Proposal & Present Remaining Proposed Sentencing System Recommendations
- October 20th: Present Proposed Recommendations: Sentencing Alternatives, CISRS, and Reentry Programming. Dialogue on Retroactivity
- November 3rd: Consensus Deliberations on all proposed recommendations
- November 17th: Consensus Deliberations on all recommendations
- December 8th: Draft Final Report – last review and opportunity to address any unresolved issues

Additional key date - December 14th: Legislative Work Session– Joint House Public Safety and Senate Law and Justice Meeting

COMPLETING CONSENSUS PROCESS ON PROPOSED SENTENCING GRID: [see recording at 37:00](#)

Amanda and Chris provided an overview of consensus deliberations from the September 1st Task Force. During the initial round of consensus, four members were not able to support the proposed recommendation. Those members shared their concerns and how they could be addressed. One member suggested modifying the formula in OSL 17 – that modification was incorporated into the proposed grid recommendation since it did not bring any members to thumbs down and brought one of the seats representing interests of incarcerated persons to a thumb sideways. The September 1 meeting concluded with 3 members unable to support the proposed grid recommendation, and a suggestion for the Grid Subgroup to spend a day trying to address their concerns and reach consensus.

Facilitation team shared that during that work session, which took place on September 19th, one more member was able to change their decision to be able to be in consensus. This constituency was able to change their support due to the promise of the Task Force to discuss and address all associated recommendations with the grid proposal to capture all recommendations that interplay with this new grid. Two constituencies remain unable to live with the New Proposed Felony Sentencing Grid.

Amanda then provided an overview of the discussed that occurred as prosecutors shared their concerns and described what they might be able to support. In developing the grid proposal, group has focused on the structure, noting that the numbers and formulas could change. However, during the work session, group noted the interplay between the formula and structure – the formula brings consistency to the structure, lower guideline ranges in the SW corner enable some members to support the proposal, while the decreases in the higher OSLs prevent others from supporting the recommendation. Increases to the guideline ranges in the higher OSLs could meet the interests of prosecutors but would not maintain the support of other members. After reviewing the proposed grid and the current grid, the Subgroup came to the realization that no single grid proposal would be able to be created that would get everyone on board due to the inherent inconsistencies found in the status quo grid. These inconsistencies inherent within the status quo grid create difficulty for the Subgroup to create a grid that will address everyone's need through the application of a formulaic approach. The Subgroup did not see the way to be able to meet the needs of the constituencies not in consensus in a way that would not jeopardize the constituencies already in consensus and concluded there may be no path forward to achieving consensus.

Additionally, the constituency of WASPC has conditional support of the grid proposal, contingent on the Legislature fully funding and expanding the availability of DOC programming for those incarcerated.

The way forward may be that there is no consensus reached on this grid proposal and that this can be captured in the Final Report. Per operating procedures, those members who either can live with—thumb sideways—or are not able to support—can submit their perspective and what allows them to support/what is needed for them to support for inclusion in the report. The facilitation team then invited members who were present in the September 19th work session to provide additional comments and perspectives.

Member/Alternate Discussion:

- Prosecutors are unable to support the proposed grid due to the number of substantial reductions in sentencing ranges when compared to the current status quo grid, assuming no offense reclassification takes place, particularly at the highest areas of the grid and the furthest areas in the right of the grid. Additionally, they are not comfortable with the removal of multipliers and the cap on aggravators. In preparing for the September 19th work session, they explored how those concerns could be addressed. However, after several hours of working on adjusting formulas, it became clear that taking a status quo grid that was not formalistically based and trying to overlay a formula onto this, creates either significant reductions or significant increases in guideline ranges. Don't see a formula-based approach to reaching consensus. Tried to exclusively focus on the overall structure, but hard to do without also discussing potential guideline ranges, offense reclassification, and re-ranking of certain offenses. Doesn't seem like there is time to take on the task of reclassifying offenses.
- The offense reclassification necessary for WAPA to get to consensus is something that can be included into the finalized report. Any proposal that could get WAPA to consensus can be added to the report as any constituency not in consensus must provide written explanation as to why they could not get there.
- OSL 5 and OSL 9 anchors create a cap that constrains increases in the maximum of a guideline range as criminal history increases. Each increase in CHS should be reflected in the range increasing, but the anchors make this difficult and create continually smaller increases from each CHS level increase in the associated OSLs with these anchors.
- Victim's interests share many of the concerns expressed by WAPA. Families of victims currently feel like sentence ranges are insufficient in length—so could not support proposed reductions, would prefer to see increase in sentencing ranges for some offenses. Support concept of the proposed grid structure but concerned with range reductions for specific offenses-- for example Rape 3 with a CHS 7 would decrease from 51-60 months down to 13 months.
- The other seat representing interests of victims was unable to attend the September 1 meeting but had a meeting with facilitation team. Expressed concerns about the reductions--as the victims they work with feel sentences are already on the lower end and any decreases could lessen their confidence in the accountability within the sentencing system. Task Force has reviewed data on racial disproportionality and considered that information in the development of the grid—would be interested in more data about gender bias disproportionality and discussion about how that could be addressed. Increasing judicial discretion does not address the biases in the system, as the grid does not address implicit bias of the decision makers. Concern with the

direction of the grid as it does not address the system reforms and counters some of the reforms recently for victims, especially of those with gender-based crimes. There is a lot that needs to happen to make sure this grid is responsive to the victim's needs. Offense reclassification and a gender-based lens in the statutes could potentially move their support, as well as taking out sex offenses and violent offenses from this grid proposal and moving these into their own grid.

- Struggle with migration of current offense seriousness levels into the proposed grid—concern that current grid does not provide sufficient justice or services to victims, and that the proposed grid would not either. Support the idea of creating programming that will address criminal behavior to get to desistance. Current programming is not specialized right now to address DV and sex offenders. Concern that CISRS proposal does not meet needs DV and Sexual Assault victims -- 10 sex offenses in SW corner.
- Important for members who are not able to support the grid proposal to articulate those concerns and how they might be addressed so that the Legislature has that information.
- Note that racial and gender-bias in sentencing is different from bias that may exist among victims. Racial bias sees BIPOC people getting longer sentences and more likely to face incarceration. In the lens of gender biases, women are more likely to receive shorter sentences and less likely to face incarceration than men. Are these concerns focused on the system's response to certain crimes where women are disproportionately victims of crimes of gender-based violence?
 - Specifically, was referring to gender disparities of victims, such as Black women experiencing higher rates of homicide and sexual assault, but at sentencing their abusers receive shorter sentences.
- This grid is many different recommendations wrapped up into one recommendation, to create a framework for new grid This new framework requires offense reclassification, which will be a huge undertaking on the part of the Legislature.
- It is incumbent on the Task Force to make sure the Legislature does what they need to do to pass this grid with necessary offense re-ranking work being done beforehand.
- Frustrated that group began this work with agreement that the system is not working for those victimized by crime or for the defendants. This Task Force had a chance to fundamentally create a better system that better allocates funding provides better victims services, provides more expansive reentry services, and to systematically overhaul the system.
- Support having a formula in the grid as it adds logic into the system. Share concern that gendered violence has never been specifically addressed or prioritized in Washington's legal system—this should be addressed in offense reclassification. Washington needs a Task Force that will reclassify crimes based on the values of our society and this means taking a deep dive at both gender-based crimes and property crimes, as well as having this new Task Force devoted to offense reclassification. The work of this Task Force is to create a new grid upon which others can organize and reclassify offenses.
- Current grid proposal allows for the ability to create logic and more effective mechanisms within the sentencing system, to reform the era of the SRA. The proposed grid should address the majority of offenses and cases; concerned that outliers could

prevent progress towards reforms. see offense reclassification as essential to overhauling the sentencing system, as well as developing more victim-centered processes—these are critical to building public confidence in the courts and law enforcement.

- Support the logic baked into the grid proposal—it reduces complexity.
- Appreciates the conversation, wonders if the Task Force should spend time developing a proposal that addresses everyone’s concerns – that may result in a more high-level proposal-- or work flush out details of current proposed grid. Task Force has reviewed extensive information, considered many proposals—want to make sure that information is captured.
- Concern with incarceration/length of incarceration as the only sentencing option— support integrating evidence and processes for reaching appropriate sentencing outcome.
- From victims’ perspective—families of murder victims feel like they have a life sentence, justice does not feel like 8 years for the defendant.
- Support formulas and overall structure of the grid. Concern with reductions in guideline ranges in the higher OSLs, would support using that would maintain proposed ranges in the SW corner while also eliminating the significant reductions in the upper CHS levels.
- Have concerns that proposed grid does not address the components of racial equity that this member was very hopeful that this proposal would address. This grid is not perfect but takes an incremental towards reform. Share concerns about victims’ perspective, yet see this proposal is an opportunity for the state to try something new to increase public safety and meet policy goals.
- Feel that proposed grid does not fully meet desires for addressing racial equity—yet note that no one will be able to get all that they want. Don’t want the pursuit of perfect stand in the way of progress.
- Law enforcement support for proposed grid is contingent on proposed recommendation for a comprehensive package of programming available to all those incarcerated from the first day of incarceration—that recommendation is critical for conditions that will promote public safety.
- Recognize that individuals who are incarcerated may also have been victims.

In keeping with operating procedures, facilitation team suggest that individuals who are thumbs sideways to write up what enables them to support the recommendation; and for those unable to support to submit in writing their concerns and what would get them to be able to support—those write-ups will then be included in the report. Amanda wants to call to attention that everyone in the room has been called into an incredibly difficult task to represent the state of Washington. They have done remarkable work. Respect those who have continued to staunchly advocate for their constituencies and what is being offered to the Legislature is an incredible and intentional piece of work. There are many recommendations still to come.

PROPOSED RECOMMENDATIONS: SENTENCING SYSTEMS: [see recording at 2:16:39](#)**Foundational:**

Proposed Recommendation #1: Since the current supervision model based on surveillance is insufficient, changes to the grid are based on a broader paradigm shift focused on providing the appropriate treatment, resources, and mentoring for individuals placed in state custody. To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a comparable model of community reentry practices.

*Formerly Potential Recommendation 1***Background:**

- In 2018, Council of State Governments Justice Center assisted SGC in its review of the Sentencing Reform Act and as part of this assistance identified key components of effective community supervision based on current literature.
- 2020 CSTF Consensus Recommendation #18 to develop and implement a formal motivational and coaching focused supervision model.
- In 2021, the Legislature provided funding to expand reentry support and transition services for incarcerated individuals including development and implementation of a coaching model approach to supervision.
- The Legislature tasked the Department of Corrections to develop an implementation plan for a community supervision coaching model to begin in fiscal year 2023.
- Individualized Community Oriented Accountability Collaborative Help (iCOACH) will be the delivery of supervision, programming, and services for individuals under DOC's supervision and includes a requirement of the CCO to coach supervised individuals throughout the course of supervision.

Overview of Supervision Model

Individualized Community Oriented Accountability Collaborative Help (iCoach) will be the delivery of supervision, programming, and services for individuals under DOC's supervision and includes a requirement of the CCO to coach supervised individuals throughout the course of supervision. iCoach will be driven by two philosophies:

Community Reintegration supervision model

- Will apply to supervised individuals who are released from a prison or re-entry center and all supervised individuals who are released from a violator facility after serving a high-level sanction.
- Frontloads programs, resources, and services to support reentry into the community:
 - For the first 90 days of supervision in the community for individuals releasing from a prison or reentry center,
 - For 30 days after release from a violator facility for individuals who have served a confinement sanction for high-level violations.

- Provides evidence-based approach that includes frequent contacts and increased drug/alcohol testing (as applicable), as well as advocacy and assistance in accessing services, to support the individual's success in the community.
- Tailors' supervision and support functions to meet the individual's needs upon release.

Enhanced supervision model

- Will be utilized throughout the course of supervision for all populations.
- Provides supervised individuals with coaching, advocacy, and assistance in accessing services, to support their success in the community. This requires CCOs to be trained in the use of coaching, being responsive to the individual's needs, the delivery of services and advocating for the supervised individual.
- Focuses on the supervised individuals and tailors case management approaches and support functions to meet the identified needs of the supervised individual.

Task Force Member/Alternate Discussion:

- Before being considered by this group, it was considered by the SGC in 2019 and informed by current practices in some counties. For example, the data collected through implementation of the Second Chance Grant in King County found wraparound services, reentry services and other services that focus on front-end approach before release and services post-please help reduce recidivism and assist with successful reentry. Data shows that targeted services before and after release have a direct impact on success of an individual. Currently, DOC is in the process of providing trauma-informed training to all community custody officers and is working to rewrite some policies to support individuals' engagement in reentry planning while incarcerated. Described other initiatives and policy reviews currently underway at DOC – such as looking at contact standards for individuals and addressing technical violations and relapse policies The intent is to bring supervision to the individual and where they are, and to bring release and services to the individual, not bring them to these necessary services. Full implementation of iCOACH will be achieved by the first quarter of 2023. In situations involving a substance use disorder, DOC hopes this supervision framework will allow for mistakes and provide support with recovery. When someone is incarcerated for a technical violation they lose housing, program placement, and other necessary life needs and now they must start over.
- Question on how DOC feels about the terminology of the recommendation's phrase, *“To sufficiently achieve those goals, changes to the grid must include concurrent changes to the DOC community custody approach to fully adopt the i-COACH model or to adopt a comparable model of community reentry practices.”*
 - Allows for further adoption and enhancements to supervision, as well as the opportunity and flexibility to be open to adopt better ideas or improvements on i-COACH. iCOACH is not a replication, this is a brand new program that puts Washington state on the leading edge of community corrections. If there is a comparable model, then DOC has interest in stakeholder input and potential improvements. Since implementing changes to violation policies, DOC has gone from violator status population of 2100, down to 400.

- Is iCOACH being rolled out statewide? Does DOC have current plans to do future evaluations on the shift to iCOACH?
 - Yes, it is being rolled out statewide. Yes, DOC is absolutely interested in data analysis to demonstrate the effectiveness of this model, has not been determined who will conduct the study.
- Discussion on changes to supervision model have been ongoing since at least 2019—excited to see this moving forward and into implementation phase. Is there a separate recommendation for expanding eligibility for supervision for felonies that not currently eligible? Prosecutors increasing access to supervision.
 - .
- Information CSG provided the SGC is that probation type or community supervision sentences can work very well when applied in certain circumstances, can also be less effective in other situations
- The research on surveillance-based community-based supervision demonstrates this model is not effective in some circumstances but switching to i-COACH model is a different paradigm which could be an opportunity to reassess eligibility.
- WSIPP cost-benefit analysis shows intensive supervision with treatment has a positive return on investment.

REVIEW AND DISCUSS POTENTIAL RECOMMENDATIONS CONTINUED - WASHOUTS

Background on Washouts:

Washouts Rules

Washout is a period of crime-free behavior while in the community that changes the inclusion of prior convictions in the criminal history score calculation (this does not equate to a vacated offense).

RCW 9.94A.525(1) defines a prior conviction as “a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed ‘other current offenses’ within the meaning of RCW 9.94a.589.”

Washington counts prior adult convictions except when wash-out rules apply, a court had determined the offenses count as ‘same criminal conduct’ (RCW9.94A.589), offenses not considered ‘same criminal conduct’ but their sentences were served concurrently and a court now determines they were committed at the same time, same place and involved the same victim; or offenses were committed before 7/1/1986 and were served concurrently.

All felony juvenile adjudications are counted as part of the criminal history score except under general wash-out rules that apply to adult convictions. Juvenile convictions that were sentenced the same are counted separately unless they have been deemed ‘same criminal conduct’ or unless the date the offense was committed was before 7/1/1986.

Wash Out Rules RCW 9.94A.525 (apply to both juvenile and adult prior convictions)

- Class A and felony sex convictions never wash out.
- If the current conviction is a felony DUI or felony DUI-Physical Control, all predicate crimes for the offense as defined by RCW 46.61.5055(14) and prior convictions for felony DUI or felony DUI-Physical Control never wash out.
- Class B felony convictions and convictions for repetitive domestic violence offenses wash out if the individual has not been convicted in the past 10 consecutive years since the date of release or entry of J&S.
- Except as noted above, Class C felony convictions and serious traffic convictions wash out if the individual has not been convicted in the past 5 consecutive years since the date of release or entry of J&S.

Once a conviction is vacated, “the offense shall not be included in the offender’s criminal history for purposes of determining a sentence in any subsequent conviction...” RCW 9.94A.640.

Other Related Washout Policies:

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

The Task Force’s Grid Subgroup spent several months discussing the following:

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

Proposed Recommendation #14: Maintain washout period start upon release from confinement, but base that on release from confinement for the original sentence or the final period of confinement under inmate status. Washout periods reset upon conviction for a new criminal offense that is a felony or gross misdemeanor. If an individual is convicted of three separate misdemeanor offenses, the washout period resets upon the third conviction. Confinement for a community custody violation will not reset the washout period.

Formerly Recommendation #34 which was presented at the July 7, 2022, Task Force Meeting. During this meeting there was confusion and comments about needing clarity about what constituted technical violations, about whether under current law, any violation that occurs while that person is in community custody will reset the washout period, and on whether revocation of a sentence should or should not reset the washout period.

Addresses Policy Goals of the Task Force:

- Reduces complexities by allowing for the start period of washouts, for all classes of felonies, to begin upon the release from confinement for the original sentence, not the conviction of said offense or a revocation to incarceration under “violator status”.
- This would allow for those serving their original sentence in community custody in programs, such as rDOSA, to not have their washout periods reset if they are returned to confinement for violations.
- Further, the washout periods will reset only upon the conviction of either a new felony conviction or new gross misdemeanor conviction. Convictions for misdemeanors will require 3 convictions before resetting an individual’s washout period, this is done to reflect evidence concerning the process of desistance from criminogenic behavior.

Task Force Member/Alternate Discussion:

- Question about inmate status vs violator status - is violator status when an individual has revocation from DOSA and return to serve the remainder of their original sentence? Could they still be crime-free, but in violation of a sentence?
 - Within DOSA individuals can violate the term of their community custody and be sanctioned without revocation. If a DOSA sentence is revoked, then individual is returning to serve the remainder of their original sentence, but if there is a violation that results in a short-term period of incarceration then that individual returns on violator status, not inmate status. Those under violator status do not reset the washout clock from being released from inmate status. For example, someone on a release to community custody term from pDOSA who then violates their terms and returns to incarceration returns as a violator and does not reset their washout, which is still running from being released from that initial term of incarceration. However, if that individual is revoked and returns to incarceration to serve out the remainder of that original sentence in confinement, they are returned to inmate status and their washout resets and starts again upon subsequent release. The crux of Grid Group’s conversation was around whether revocation should be treated as a violation or should remain as resetting the washout clock and returning someone back to incarceration under inmate status.
- Would this recommendation apply to all misdemeanors?
 - It applies to gross misdemeanors but not simple misdemeanors
 - Grid Subgroup considered applying to all misdemeanors, but felt gross misdemeanors were significant enough to be excluded from the recommendation, as well as repeated misdemeanor convictions.

- Prosecutors have concerns about DV and DUI cases that could be pled down to misdemeanors, and that an individual could have three such convictions before the washout period would reset. Suggestion to delineation between kinds misdemeanors that would/would not trigger restart of washout period.
- Trying to balance between always counting misdemeanors and never counting misdemeanors resulted in the 3 separate gross misdemeanors before washouts reset. What offenses constitute misdemeanors and how they are charged differ geographically and by court levels as well, so this was designed to capture this nuance.
- Suggestion to eliminate exception 3 gross misdemeanors, replace with a list of specific offenses.
- Should misdemeanors reset felony washout clocks?
- Court will assign for the length of a sentence then attach conditions for release—if those conditions are not met, that could reset the washout clock. For example, a DOSA sentence articulates conditions of release in exchange for time off the original sentence—if intending to include DOSA sentences, suggestion to clarify between revocation and incarceration.
- When prosecutors look at CHS, able to see that someone was at DOC – records do not distinguish whether it was under inmate or violator status.
- Supreme Court decision has determined that time served for failure to pay fines cannot reset washout clocks. See how that could eventually support excluding consideration of misdemeanors in felony washouts.

REVIEW AND DISCUSS PROPOSED RECOMMENDATION, CONTINUED

Proposed Recommendation #15: Violent Class A felonies washout after 15 years. Serious violent Class A felonies would not washout.

**Note that Vehicular Homicide – Disregard for the Safety of Others is defined as a Class A, however, under State v. Stately, it is not considered a violent offense*

Proposed Recommendation #16: All class B washout after 7 years if the current offense is less serious than the original offense.

Proposed Recommendation #17: Class C felonies washout after 3 years.

Background:

The Grid Subgroup and Task Force reviewed recent data and research on recidivism, the age-crime curve, and desistance ([which are available on the CSTF resources page](#)). Key findings included:

- Most people who recidivate, do so quickly. The best predictor of future behavior is recent past behavior
- Around years 7-10, most people who have not recidivated have the same probability of committing a crime as someone who has no criminal history. Risk for any person

is never 0, but at this point, risk is no longer elevated compared to others with no criminal history. (“Redemption benchmarks”)

- In general, recidivism rates tend to be higher for individuals convicted of a drug or property offense than serious violent offenses. This may be in part because serious violent offenses have longer incarceration sentences and individuals are much older when they are released from prison.

Allowing washouts for some Class A felonies, which currently do not wash out, tailors the washout period to the severity of the offense. For Class B, allowing past convictions to wash out if a person commits a less serious offense aligns with the research around desistance from criminogenic behavior, for which a reduction in the seriousness of offending behaviors is an indicator.

Task Force Member/Alternate Discussion:

- These are all separate recommendations and should be treated as such.
- For the recommendation for Class B offenses the washout period would change from 10 years to 7 years if the current offense is less serious than the original offense. Would the washout period remain 10 years or never washout if a new felony is as serious or more serious than the original offense?
- This would be 7 years for the condition the individual does not commit another as serious or more serious felony, but if not, then the washout period would stay at 10 years.
- This adds complexity and potential errors with this new modification, as it adds an additional layer of complexity onto the rules. Current policy is straightforward. Washouts only apply if a person commits another crime, have concerns about reducing consideration of past actions in these instances.
- Would like more information about definitions of how is serious, less, or more serious defined? Is it by OSL? By Felony Class?

Based on comments regarding need for clarity, facilitation team asked if the recommendation for Class B felony washout rule should change from *“All class B washout after 7 years if the current offense is less serious than the original offense”* to *“All class B washout after 7 years”*? Does the phrase “if the current offenses is less serious than the original offense” add complexity or prevent anyone from supporting the recommendation?

Task Force Member/Alternate Discussion

- Several members do not see a reason to reduce Class B washouts or the purpose of reducing it as they feel it adds complexity with that final piece of the recommendation.
- Suggestion to eliminate all washouts on crimes against persons or exclude crimes against persons so washout periods would not decrease in duration.
- Unable to support any reductions or changes to current washout policies. Suggest that group should not spend too much time problem solving. Another member said they do not think they can reach consensus on these washout recommendations, so the Task Force should not focus on these recommendations to save time.

- Regardless of consensus status, these proposed recommendations and discussion will be documented in the report to the Legislature, there is still a value in discussing and workshopping these recommendations to provide the recommendation and reasoning to the Legislature.

REVIEW AND DISCUSS PROPOSED RECOMMENDATIONS CONTINUED

Background on Three-Strikes Policy

In 1994, Washington state voters passed Initiative 593, the first Three Strikes law in the United States (see [History of Two and Three Strikes in Washington, SGC](#) for additional information on history in WA). The law defined “persistent offender,” set the term of confinement as “life without the possibility of parole or, when authorized by [RCW 10.95.030](#) for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law.” Under [RCW 9.94A.565](#), the Governor would not have the power to grant a pardon or clemency to such individuals “until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society.”

[RCW 9.94A.555](#): Findings and intent—1994 c 1.

1. The people of the state of Washington find and declare that:
 - (a) Community protection from persistent offenders is a priority for any civilized society.
 - (b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.
 - (c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.
 - (d) The public has the right and the responsibility to determine when to impose a life sentence.
2. By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:
 - (a) Improve public safety by placing the most dangerous criminals in prison.
 - (b) Reduce the number of serious, repeat offenders by tougher sentencing.
 - (c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.
 - (d) Restore public trust in our criminal justice system by directly involving the people in the process.

1994 Codification of Initiative 593 language:

9.94A.030(25) "Persistent offender" is an offender who: (a) Has been convicted in this state of any felony considered a most serious offense; and (b) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

The law established the penalty of life in prison without the possibility of release for “persistent offenders.”

RCW 9.94A.505 (formerly 9.94A.120(4)): “A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law...”

- Anyone convicted of a third most serious offense would be sentenced to life in prison without the possibility of parole.
- A sentence of life without the possibility of parole for an individual convicted of a “most-serious” offense, who had at least two prior convictions for such offenses, would be included in the criminal history score. To count as a strike, the first prior conviction must have occurred before the second prior conviction.
- Juvenile offenses do not count as a strike, unless they are declined from juvenile court and sentenced as an adult.

Proposed Recommendation #5: Replace Three-Strikes with determinate plus sentencing.

This recommendation would eliminate the mandatory life sentences as a result of a third strike under the Three-Strikes Law and replace this with a determinate-plus sentence. Judges would issue a standard sentence as if three strikes did not exist. The sentence would then be converted to a determinate-plus sentence with the minimum of the sentence issued by the judge and a maximum of life. Minimum of the term would be the sentence imposed by the judge within the standard range, and the maximum term would be a sentence of life. Once the minimum term of the sentence has been reached, the Indeterminate Sentencing Review Board (ISRB) will then review the sentence for potential release or continued confinement. Reviews will continue every 2 years thereafter.

A determinate-plus sentencing model is a type of sentencing that sets a range of sentencing that an inmate will serve within the determined range. Inmates sentenced under the determinate plus sentencing system are given a minimum and maximum sentence by the court, and upon the earliest possible release date are given a hearing with the ISRB to determine if they are rehabilitated and a fit subject for release

Addresses Policy Goals of the Task Force:

The Grid Subgroup and Task Force looked at several studies and research around Three Strikes Laws ([listed on the Task Force’s webpage](#)). Studies found after the passage of its Three Strikes law, California saw an increase in offenses governed by the new law, rather than a decrease. Trends in crime in the 1990s have shown to be attributed to phenomena other than Three Strikes laws ([Striking Out as Crime Reduction Policy](#)) and concluded that Three Strikes laws had no quantifiable impact on crime rates. If anything, Three Strikes laws may have contributed to an increase in violent crime rates in urban areas ([Homicide Promoting Effects of Three Strikes in U.S. Cities](#)).

Task Force Member/Alternate Discussion:

- Three-Strikes is one-size fits all with small avenues out like clemency and second chance review. Challenging to eliminate three-strikes since it was voter-passed, this recommendation developed middle ground between feasibility of change and being responsive to the data. Sentence includes incapacitation but provides a framework for review and potential release based on individual risk.
- Could you provide more information about the discussions and intent behind “possibility of release”?
- Judges would issue a sentence range, with a determined minimum and maximum. Once individual has reached the minimum, the earliest possible release date, then the Indeterminate Sentencing Review Board (ISRB) or other entity would conduct a hearing to determine potential release or continued confinement. Reviews will continue every 2 years thereafter. Individuals who demonstrate change and deemed not a risk to the community could be released.
- What is the role of the victim in the ISRB process?
- Includes a victim advocate and opportunity to include the victim's voice—challenging in practice due to high case load of victim advocates, contacting victim relies on individuals providing updated contact information, not always clear how much victim’s perspective is considered.
- See process as intended serve individuals who demonstrate rehabilitation so the individual is no longer deemed to be a risk to the community.
- Victims are very engaged in the clemency and pardoning process, prosecutors do a great job of reaching out to the victims for this process, but the focus is on the demonstration of rehabilitation of the defendant. It is a more open setting that allows for an easy presentation for the victims. The ISRB reviews are not as open or include victims as much.
- ISRB release does not necessarily mean treatment is completed. It is not part of the requirements for release.
- Concern that clemency process is political and dependent on Governor, the ISRB process is not perfect but is less influenced by political. This process needs a more viable means to examine what a person has done and if they can be released without the political pressures that a governor may face. Caution relying on the clemency process.
- From the victim perspective, reforms in the ISRB process would be well welcomed. Victims want to be heard and to be valued in the process. In the ISRB review they want to know how the defendant has reformed and rehabilitated by taking accountability.
- WASPC would not support this as those sentenced under this model have been convicted of three of the most serious offenses, they have had two chances to reform already and have chosen to continue to offend in the most serious way. Dr. Knoth-Peterson mentioned these laws increase violence against law enforcement but this is due to these most serious and dangerous offenders trying to avoid accountability. There are no changes that can be made that they can live with.

REVIEW AND DISCUSS PROPOSED RECOMMENDATIONS CONTINUED

Proposed Recommendation #6: Change the legal procedure for three-strikes laws to mirror aggravating factors such that the three-strikes must be treated as elements of the crime. Pled in information. Proven to a jury beyond a reasonable doubt. Or entered via stipulated agreement. Individual acknowledges and agrees in a plea agreement.

This would align convictions for strikes and aggravating factors, creating requirements for the use of a strike. The prosecution would need to clearly articulate why a strike is appropriate and this would have to be pled in information and proven to a jury beyond a reasonable doubt to secure the conviction as a strike, or the individual can acknowledge and agree in a plea agreement to take a strike.

Background

Currently, no requirement exists for a defendant to get notice that current case and criminal history means a guilty plea or jury finding will bring a term of life. Nor is there a requirement for a jury to get notice that a finding of guilt will qualify as a third strike and resulting sentence of life.

Task Force Member/Alternate Discussion:

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- Need more information about how it would meet our policy goals.
- This is the only time someone can get life in prison without the state having to prove something beyond a reasonable doubt but rather a preponderance of the evidence. The possibility of life without parole gives everyone entering the courtroom notice of this potential outcome.
- Some prosecuting attorneys consider three-strikes policy in charging and plea negotiations, will move to a lesser charge to avoid three-strikes, when appropriate.
- Current three-strikes policy meets needs of constituents, concerned with developing recommendations and potential modifications. Defendants are aware of Three-Strikes and what offenses constitute a strike, have had two previous opportunities to reform. Under this recommendation jurors would have to find the defendant deserving of a third strike, but would this not violate that idea that the sentence should not be considered?
- Jurors can know the potential sentence but not determine the sentence. Uncertain that the average person knows what all offenses are strikes, there are obvious offenses that are strikes but many are surprising that they are strikes – including some unranked offenses. Prosecutors are not required to disclose that offenses qualify as a strike when a defendant pleads guilty.
- Suggestion to include a mandatory notification if current offense is a three-strikes case that has the possibility of a life sentence. Only potential change that could be support by sheriffs and police chiefs.

- Concern regard racial disproportionality around plea negotiations that result in longer sentences for people of color. 37% of people serving life are Black in a state with 3-4% Black population.
- A 2009 SGC report reviewed offenses most often associated with Three-Strikes and Two-Strikes. Two-Strikes were designed for and mostly used against sex offenses, while most of those convicted under Three-Strikes were convicted of Robbery 1 or 2. Suggestion for review of three-strike offenses

REVIEW AND DISCUSS PROPOSED RECOMMENDATIONS CONTINUED

Proposed Recommendation #18: The Legislature should review the offenses included in the most serious offense list to potentially reduce the number of offenses eligible for the three strikes sentencing.

Background and Explanation:

In 1993 when Initiative 593 was passed, there were originally 18 specific non-class A offenses eligible for as a “strike” in addition to all 29 Class A felonies. Over the years offenses eligible for a “strike” grew to 17 non-class A offenses plus all 40 class A offenses. ([History of Two and Three Strikes in Washington, SGC](#)). All Class A felonies, Class B felonies with findings of sexual motivation, and any felony, regardless of class, with deadly weapons findings, in addition to any individual specified offenses are eligible for a “strike” on an individual’s record, the third of which requires the mandatory sentence of life without the possibility of parole ([RCW 9.94A.030](#)).

However, there are inconsistencies in the inclusion of strikable offenses. The list of “most serious offenses” has the inclusion of unranked felony offenses as strikes, offenses that have never been charged (Malicious Explosion 1/ Malicious Placement of an Explosive), and inconsistent application of aggravating factors such as Sexual Motivation and Deadly Weapons. Sexual Motivation is limited to only applying to Class B felonies, but Deadly Weapon applies to all offenses, including Class C felonies.

Under this recommendation the Legislature would be tasked with reviewing the list of offenses that qualify as a “most serious offense” and thus count as a strike under Washington’s Three-Strikes law to address inconsistencies such as offenses that are never/rarely used and the inclusion of unranked felony offenses.

Task Force Member/Alternate Discussion:

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- Are Class B offenses with sexual motivation (there are 3 offenses) or any offenses with sexual considered two-strike offenses?
 - Two-Strikes is only for the most serious sex crimes and violent sexual offenses.

- Several members suggested eliminating the phrase “potentially reduce” for a “review or modification” or some other language that does not guarantee a reduction in offenses included in strikes
- Not able to support eliminating Three-Strikes but they would support a review of the offenses eligible for Three-Strikes sentencing.

Proposed Recommendation #2: Require the SGC to review the state of evidence about the efficacy of reforms and publish a report every five years including recommendations for additional reforms. Research should include the impact of the reforms on:

- Public safety (including recidivism, technical violations, violations of protection orders)
- Racial and gendered disproportionality
- The rate and use of incarceration and community alternatives
- Reentry outcomes including employment, housing, participation in and completion of treatment, etc.
- Complexity and errors in sentencing

Background and Explanation

The SGC will be responsible for a review every 5 years of all enacted reforms that result from the work being done by the Task Force. This ongoing research will focus on reviewing the evidence of the effectiveness of these reforms with the SGC publishing a report on the findings on this ongoing research. The scope of this research will include, but is not limited to,

- The impact of the reforms on public safety (including recidivism, technical violations, violations of protection orders, overall crime rates, collateral consequences of crime/incarceration)
- The impact of the reforms on racial and gendered disproportionality
- The impact of the reforms on the rate and use of incarceration and community alternatives
- The impact of reforms on reentry outcomes including employment, housing, participation in and completion of treatment, etc.
- The impact on complexity and errors in sentencing.

The purpose of this research is to ensure avenues for ongoing reviews of any sentencing system reforms occur more frequently than once every 40+ years. SGC reviews will be on an ongoing basis with reports on findings being published every 5 years, the value in the ongoing analysis with occasional reports provide value in identifying year-to-year patterns, impact on public safety, added or reduced effectiveness, increased or decreased racial disproportionality, and effects on rates of recidivism. If implementation of any reforms indicates negative unintended consequences or exacerbation of existing problems the ongoing analysis will be able to flag this sooner than previous analysis of Washington’s sentencing system.

This recommendation also outlines the ability of the SGC to make additional recommendations to address any shortcomings of the reforms being reviewed. This will create a more responsive analysis of Washington’s sentencing system that allows for timely solutions to existing or new problems.

Addresses Policy Goals of the Task Force:

- Periodic reviews are aimed at identifying and addressing any complexities or errors in the functioning of the sentencing system.
- Produces actionable steps to address the identified complexities/errors and mend these consequences through SGC's additional recommendations.
- Reviews will also examine the success of reforms and its impacts to identify areas of potential expansion of the successful reforms to other aspects of the sentencing system.
- SGC analysis will identify how any reforms impact public safety, determined through analysis of overall crime rates, changes in rates of recidivism, and collateral consequences of incarceration, allowing for the expansion or mending of reforms until they benefit public safety.
- Analysis addressing any benefits or shortcomings of any enacted reforms on public safety informs future work on how to improve public safety in Washington.

Task Force Member/Alternate Discussion:

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- The SGC has been advocating for increases in transparency to increase accountability within the system, however the SGC does not currently have the staff on hand to have the capacity to conduct reviews of these levels. They would need full-time research staff and director to increase capacity, which will require increased funding from the state.
- There needs to be ongoing continuous review of the sentencing system that can respond to legislative inquiries by other system-player inquiries.
- Suggestion to include the research of gender and racial disproportionalities to include both defendants and victims.

Proposed Recommendation #19: Direct the SGC to review offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

Overview of Task Force Discussion

In 2020 as the Grid Subgroup was in the early phases of its work to review the sentencing guidelines grid, the Subgroup had been looking at the more than 300 unranked (non-drug related) offenses to determine whether, and if so how, to incorporate them into the adult felony sentencing guidelines grid. Out of the 300 unranked offenses there were only 60ish that have been regularly used.

While this work to address unranked offenses was later assigned to the Sentencing Guidelines Commission, the Grid Subgroup had come across a number of offenses both ranked and unranked, where there have been no convictions between FY00-FY17. For example, FY2000-2020 data shows there have been no sentences for Malicious Explosion 1 (Class A felony at OSL 15).

Addresses Policy Goals of the Task Force:

- Would increase simplicity and reduce unnecessary complexity by removing offenses that have never or rarely been used from the RCW. While there are standard methods for creating new offenses, there is no standard method for repealing outdated and unused offenses. If the Legislature were to make changes to and/or adopt a new sentencing guidelines grid structure, recalibration and/or reclassification of some offenses would be needed, and this review of unused offenses could be part of this work. The time period of review (5, 10, or 20 years) may need to vary based on guideline ranges associated with the specific offenses, and the review process should consider whether individuals may still be serving a sentence.

Task Force Member/Alternate Discussion:

- There might be instances where these offenses were charged but later were then pled down and that specific offense may not have an associated felony conviction. There may be value to keeping some offenses, even if not frequently associated with a conviction.

CLOSING REFLECTIONS: [see recording at 5:05:39](#)

Facilitation team invited everyone to share how feeling, something that they're taking away from the meeting, or plan to bring to consensus-seeking meetings.

Member/Alternate Reflections:

- I think that today has provided additional clarity as where everyone stands on what recommendations, as in Grid Group it is more nebulous.
- Conversations here today were valuable and we will get things done that will benefit us as a society here in Washington.
- We will get some things done, concern that we will never reach agreement on the grid.
- Very pleased with the progress made today and over the years, even if the Task Force did not reach consensus on the grid, these conversations are still valuable and provide a good foundation for Legislative action.
- Still more work to do and more heartfelt conversations to be had. These conversations challenge my own beliefs and that is healthy.
- Consensus on grid is unlikely but this will not prevent my consensus on the other recommendations.
- tired
- I feel like I am exhausted mentally and physically, so rest up in December before the Legislative session.
- It has been a long three years, although I will be back and ready to engage in the remaining work we have left. Maybe the work we do will set the groundwork for another entity
- Doing work like this is always humbling, so difficult to create meaningful reform.
- These are hard conversations that take up a lot of space and emotional energy, grateful to everyone here doing this work.
- The clarity on the consensus was good and valuable for the Legislature. I appreciate being listened to and that everyone acts in good faith.

- Work of the Task Force involves people’s lives, move slowly out of concern. Want to continue to come together with an open mind to help our communities.
- Frustration, as we are dealing with the peripheral issues in the legal system in our society. See some of the earlier conversations considering more transformative and core issues. Many incarcerated individuals are victims themselves and need services—see need for supporting ability to rehabilitate and change, not just periods of incarceration. It is important to hear everyone’s perspective to potentially come up with solutions.
- Frustration that we had an opportunity to address systemic changes and reforms but still have divergences on incremental changes.
- Appreciate the presentations on background and context--recommendations are starting to get clearer. Would like to have PowerPoint form of the finalized recommendations.

PUBLIC ATTENDEES: Heidi Brodt, Jim Chambers, Katelyn Kelley, Adam Hall, Gideon, Bruce Glant, Carolyn Gray, John McGrath, Joe McKittrick, Joanne Smieja, David Treiweiler, Matt Tremble,

PUBLIC COMMENTS:

Below are summaries of comments shared by public attendees. Full comments can be viewed by following this link to TVW.org [which begins at 5:22:03](#) of the meeting recording.

Jim Chambers: Just giving judges more discretion will not address racial bias inherent in the system and this is why we need second chance review legislation passed alongside expanding judicial discretion. So that someone can always check and counterbalance any ongoing implicit bias occurring in our legal system. Chief Cobb said earlier that people incarcerated do not get access to programming until their last 18 months of confinement, and this is not the case, they would be lucky to get that much time. DOC’s answer for rehabilitation programming is like going to work in the correctional industries building furniture and other jobs used for prison labor. I was a drug offender and never got treatment in prison despite repeatedly asking for treatment, and I had to rehabilitate myself. Adding more crimes to community custody and the need to hire a broader workforce in this field, as I just got off community custody and had 4 COs in 9 months. This is not sustainable and unmanageable for those being released from incarceration. Adding crimes to the list for community custody would virtually extend the sentences for all these offenses, placing a higher burden on those incarcerated and the taxpayers.

Some constituencies talk about 15-20 years in prison like it's nothing and these people have never stepped foot into a prison. Those incarcerated live in unnatural conditions in prisons, this must be kept in mind when discussing sentences.

David Trieweiler: There are many things that deserve comments about the Task Force’s failure to make any progress on the central issues plaguing the criminal justice system such, racism, mass incarceration, or address the needs of victims. We have heard the pain of the victims of violent crime as a means to justify a refusal of sentence reduction and for an increase in

sentences as well. Victims' pain is used to justify longer sentences that serve no one but prosecutors, and does not justify the lie we tell victims that longer sentences will help them recover and make them safer. Most victims do not want these long sentences, only a small portion of them do and that seems to be the victim voices represented on this Task Force. We need to stop exploiting victim's pain to justify something that does not help the community or reduce recidivism or benefit anyone. Before any progress can be made this must be recognized for its self-serving nature.

ADJOURN

Action Items:

- Grid Subgroup to develop a recommendation to establish i-COACH community supervision eligibility to all felonies, regardless of class or OSL.
- Lawyers need to clarify what resets washout clocks and how it appears on CHS calculation.

APPENDIX A: CSTF MEMBERS/ALTERNATES ATTENDANCE – October 6th, 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	Sexual Violence Law Center, Representing Interests of Crime Victims	✓

(Megan Allen)

