

Washington State Criminal Sentencing Task Force Meeting

Nov.3rd, 2022

10:00am-4:00pm

Hybrid Meeting: In-person and via ZOOM

Agenda

Agenda

- Task Force introductions and 2022 workplan review
- Roll call for consensus on proposed recommendations
- Work through issues on non-consensus recommendations and identify what will be addressed at the Nov 17th consensus deliberations

Agenda

9:30am
**Coffee and Informal
Conversation**

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

10:10am
Introductions & Updates

10:30am
**Roll Call for Consensus
on Each (28 total)
Recommendation**

12:00pm
LUNCH BREAK

12:30pm
**Work Toward Consensus on
Non-Consensus
Recommendations**

3:45pm
Public Comment

4:00pm
Adjourn

Virtual Meeting Groundrules

Mute your audio: Whether you've joined by phone or video, please mute your audio until just before it's your turn to speak. That helps improve the sound quality for everyone.

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

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

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

10:10 -
10:20am

Introductions & Updates

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

Task Force Groundrules

Criminal Sentencing Task Force Groundrules

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

CSTF 3 Policy Goals:

In 2019, the Legislature established the Washington State Criminal Sentencing Task Force to review state sentencing laws, including a consideration of the Sentencing Guidelines Commission's (SGC) 2019 report, and develop recommendations for the purpose of:

- a) Reducing sentencing implementation complexities and errors;
- b) Improving the effectiveness of the sentencing system; and
- c) Promoting and improving public safety.

10:20 -
10:30am

Updates

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

2022 Work Plan

Consensus Deliberations

- **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

Dec 14th: Joint Legislative Committee Meeting

- **December 14th: Joint House Public Safety, Senate Law and Justice, Human Services, Reentry & Rehabilitation**
- 10am - 1pm: House Hearing Rm A and Virtual - John L. O'Brien Building – Olympia, WA
- **Work Session:** Comprehensive Sentencing Reform: Final Report of the Washington State Criminal Sentencing Task Force

10:30-
10:45am

Review Consensus Process

Task Force's Operating Procedures

The Task Force operates under the following definition of consensus:

Consensus means that each Task Force member can say:

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

Task Force's Operating Procedures

Consensus can be conveyed via:

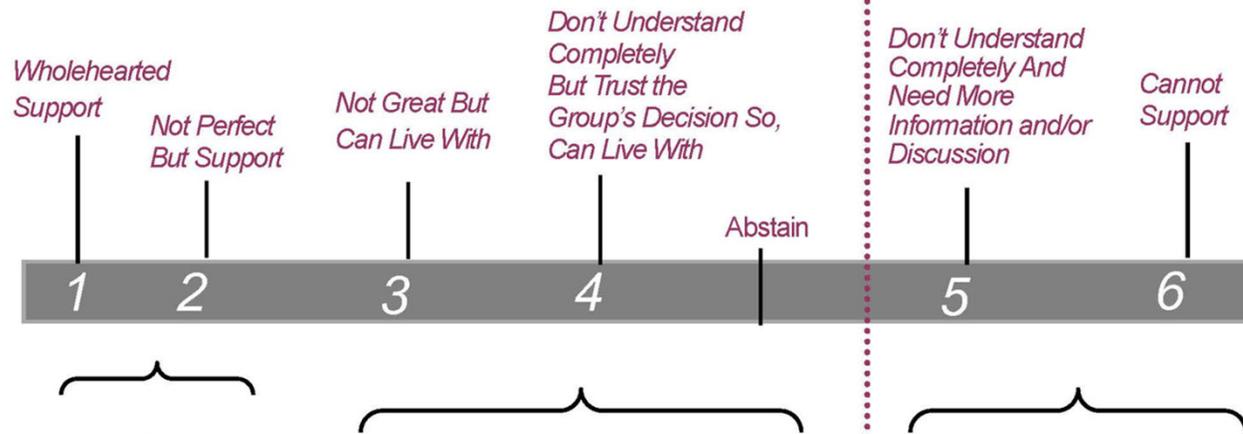
- A thumbs up (I fully support this option),
- A thumbs sideways (I can live with this option for the good of the group and the process) or
- A thumbs down (I cannot live with this option).

Task Force's Operating Procedures

Consensus Decision-Making

- Consensus can be achieved at any full Task Force meeting where at least 12 of 20 members (or their designated alternates) are present.
- The Task Force will have the option to ask the Facilitation Team to communicate afterward with members not present for a decision, to explain key points of Task Force deliberations and confirm whether those members can go along with the decision.
- If not, the co-chairs may decide whether the full Task Force should reconsider the decision at a subsequent meeting.

Gradients of Agreement



Consensus

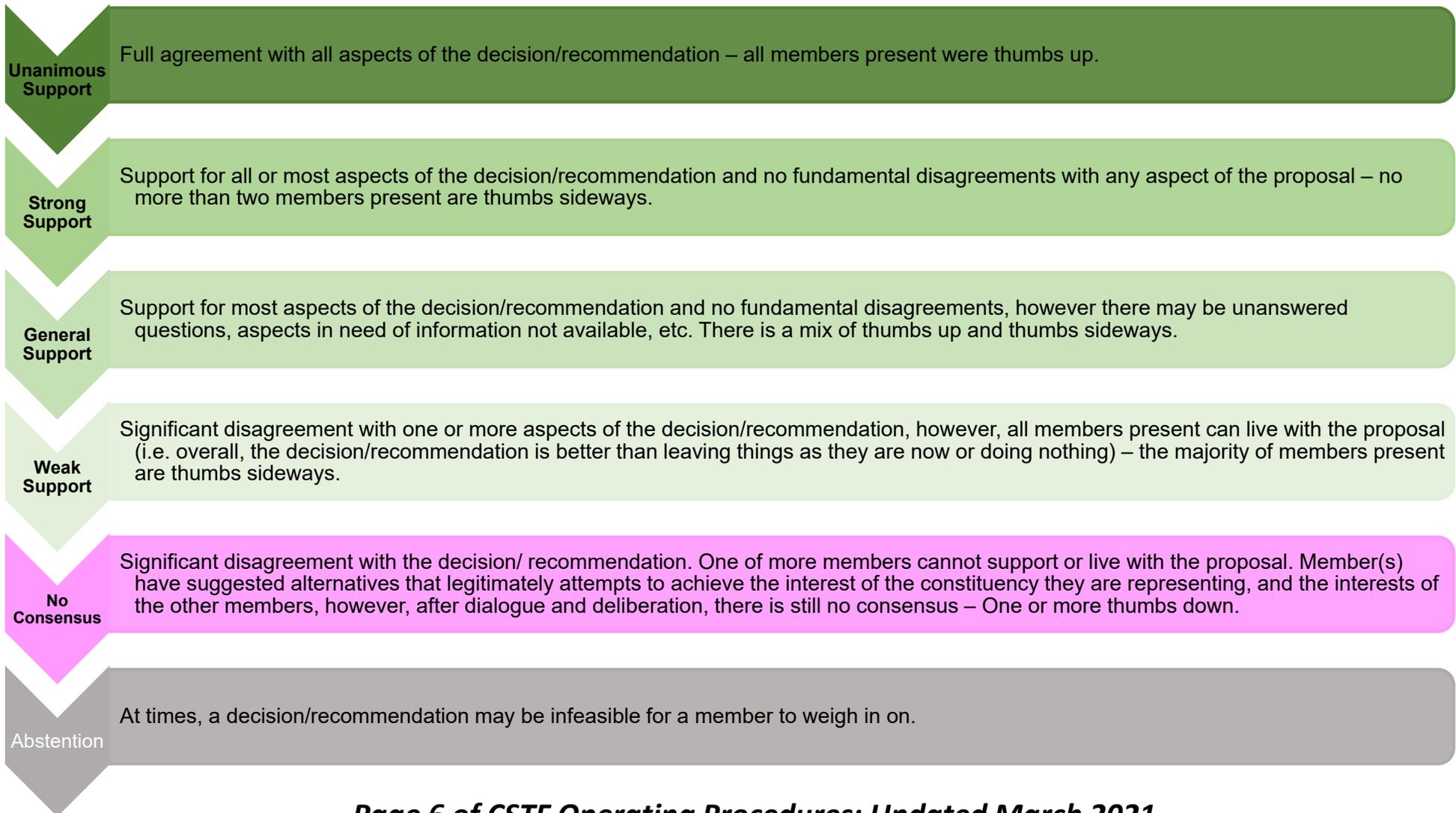
Consensus is not voting. Voting is a power-based approach that results in a yes or a no – majority are winners and minority are losers.

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

Task Force's Operating Procedures

If anyone is thumbs down, that member is expected to provide a proposal that legitimately attempts to achieve the interest of the constituency they represent and the interests of the other task force members.

All members will seek solutions that allow those thumbs to move up or sideways.



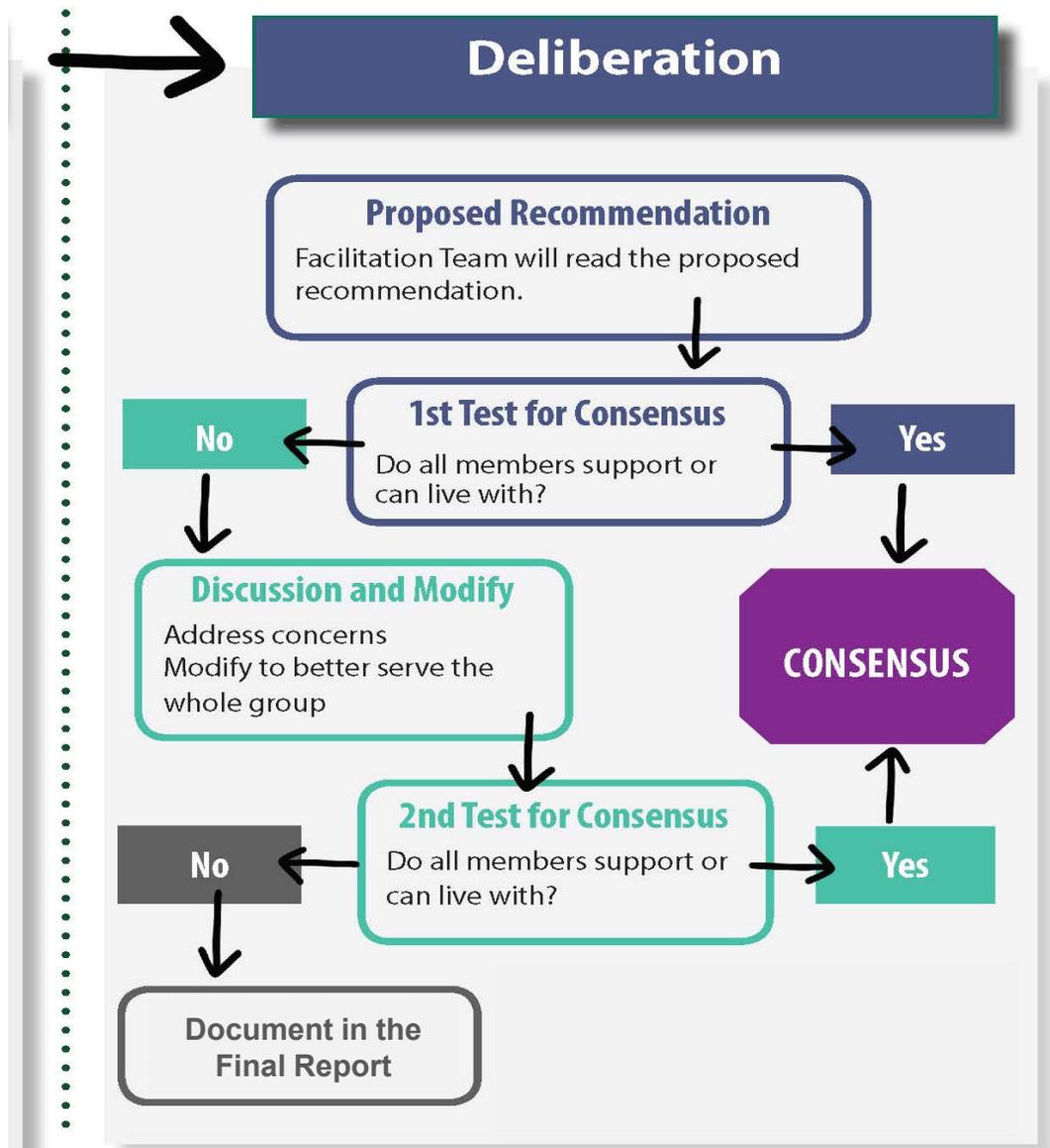
The goal is for all members to be in unanimous, strong, or general support.

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

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

Page 6 of CSTF Operating Procedures: Updated March 2021

CSTF Consensus Deliberation Process



10:45am –
12:00pm

**Roll Call for Consensus on
Each Recommendation
(28 total)**

Proposed Recommendation

Community Intermediate Sanctions
and Reintegrative Services
(CISRS) Program

CISRS Program Proposed Recommendation

Create a Community Intermediate Sanctions and Reintegrative Services (CISRS) Program. Establish a workgroup tasked with determining the legislative standards and implementation plan for the CISRS program, using the information provided in the recommendation as a guideline for the general program framework.

Proposed Recommendations

Sentencing System (27 total)

Proposed Recommendation 1

The Legislature must allocate sufficient funds to implement rehabilitative programming for individuals incarcerated in Washington state, i.e., to support recruitment and training for mental health professionals, substance use disorder counselors, and the evidence-based programs to provide treatment and services along with education and job training for incarcerated individuals. These programs and services must be immediately available after DOC conducts an individual's intake assessment. Improving the effectiveness of the system and promoting public safety depend on this, as well as allocation of funds to support the transition to reentry through housing, transportation, removing barriers to employment, providing community supports, and other steps such as those outlined in the Task Force's 2020 Report. Require DOC to publish annual statistics on the number of individuals participating in programs by program and facility.

Proposed Recommendation 2

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.

Proposed Recommendation 3

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 (for both defendants and victims)
- 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

Proposed Recommendation 4

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

Proposed Recommendation 5

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

Proposed Recommendation 6

Replace three-strikes mandatory sentence with determinate plus sentencing.

Proposed Recommendation 7

Change the persistent offender laws to require notice to defendants that a conviction for the charged offense would lead to a sentence of life without parole under the persistent offender laws prior to entering a guilty plea or going to trial.

Proposed Recommendation 8

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.

Proposed Recommendation 9

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

Proposed Recommendation 10

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

Proposed Recommendation 11

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.

Proposed Recommendation 12

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.

Proposed Recommendation 13

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.

Proposed Recommendation 14

Include language in the SRA that would define the scope of offenses that can be scored in the calculation of a CHS as limited to prior felony convictions other than DV, DUI, and vehicular prowl (conditional on vehicular prowl and DUI recommendations passing).

Proposed Recommendation 15

Make the appropriate changes to the washout period law so that:

- Washout periods do not reset upon confinement for a community custody violation.
- Washout periods do not reset upon conviction (or subsequent confinement) for a simple misdemeanor offense unless it is the third conviction for a simple misdemeanor offense.

Proposed Recommendation 16

Washouts for Class A Felonies:

Violent Class A felonies washout after 15 years. Serious violent Class A felonies would not washout.

Proposed Recommendation 17

Washouts for Class B Felonies:

All class B felonies washout after 7 years.

Proposed Recommendation 18

Washouts for Class C Felonies:

Class C felonies washout after 3 years.

Proposed Recommendation 19

The Legislature should conduct a review to assess the objectives of the persistent offender laws and evaluate what offenses should be classified as a most serious offense.

Proposed Recommendation 20

Direct the Sentencing Guidelines Commission to reviews offenses that have not been sentenced in the last 5-10-20 years for potential elimination from the criminal code.

Proposed Recommendation 21

Request and Fund the Washington State Institute for Public Policy to update its adult corrections inventory in order to update assessments of evidence-based programs and expand the inventory to include new programs that were not previously available when the inventory was conducted.

Proposed Recommendation 22

For sentences including a term of total consecutive confinement longer than 20 years, individuals may petition for a second chance review at 20 years of incarceration (total confinement) with the possibility of release. Require that the review process explicitly include the opportunity for victim input.

Proposed Recommendation 23

Include and visually depict sentencing alternatives on the adult felony sentencing guidelines grid.

Proposed Recommendation 24

Eliminate the cap on the number of DOSA sentences that an individual can receive in a 10-year period.

Proposed Recommendation 25

Eliminate eligibility exclusions related to prior convictions for a violent offense (not serious violent offenses) from Sentencing Alternatives (except for SSOSA, which is currently being addressed by the SOPB). This would eliminate eligibility exclusions related to prior convictions for a violent offense from pDOSAs and rDOSAs.

Proposed Recommendation 26

Add eligibility criteria excluding individuals with prior felony offenses where an individual was armed with a firearm or deadly weapon, therefore aligning DOSA eligibility with FOSA.

Proposed Recommendation 27

Eliminate eligibility exclusion based on current offense/s – modeled after Mental Health Sentencing alternatives (does exclude eligibility if current offense is serious violent or sex offense).

12:30–
1:00pm

LUNCH

12:30–
3:30pm

Work Toward Consensus on Non-Consensus Recommendations

3:45 –
4:00pm

Public Comment



4:00pm

ADJOURN