

**Washington State Criminal Sentencing Task Force  
Meeting Summary: November 17, 2022**

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

**Virtual: ZOOM** – [Link to TVW recording](#)

**ATTENDEES: Task Force Members and Alternates:** See Appendix A

**Members of the Public:** *See pg. 13*

**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 2022 workplan review
- Work through issues on non-consensus recommendations from Nov 3<sup>rd</sup> meeting and complete consensus deliberations on all recommendations

**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 workplan for the remainder of the year. Then the Task Force will begin its second round of deliberations and consensus-seeking for all the outstanding proposed recommendations. Any recommendations not addressed will be on the December 8<sup>th</sup> agenda.

**INTRODUCTIONS & UPDATES:** [see recording at 16:25](#)

The Task Force members and alternates then introduced themselves for everyone including their name and the constituency that they represent. The facilitation team updated that Task Force that Julie Martin, DOC has retired, and her alternative Mac Pevey will take over as the member representing DOC with Dianne Ashlock as his alternative.

**Co-Chair Remarks**

The co-chairs expressed appreciation for the commitment, depth of conversation, and level of engagement that members have demonstrated over three years. The co-chairs observed that this process has been three long years of discussions on historically contentious policy issues, so it is not surprising that there is a lack of agreement. The conversations are still valuable in building relationships, exploring what improvements to the system might be possible, and in compiling necessary information to present to the Legislature. Perhaps most valuable is the ability to be with a group whose members have strong philosophical differences, which has provided opportunities to think differently and more deeply about the whole system. The co-chairs also reminded the Task Force that the issues being discussed today are among the most contentious—during these conversations, remember that the inability to achieve consensus is not failure. The Task Force has taken these

conversations to another level and created a depth of information for the Legislature that will bring benefits in the upcoming session. By no means is this the end of the policymaking conversation.

### **Task Force Workplan**

The Co-Chairs and facilitation team have met to discuss the workplan for the remainder of 2022. The Task Force working through consensus deliberations on all remaining proposed recommendations with the plan to complete its work before the December deadline for the Final Report due to the Legislature. The remaining Task Force meetings and key dates:

- November 17<sup>th</sup>: Consensus Deliberations on all remaining recommendations
- December 8<sup>th</sup>: Draft Final Report – last review and opportunity to address any unresolved issues
- December 14<sup>th</sup>: Legislative Work Session – Joint House Public Safety Committee / Senate Law and Justice Committee; 10am-1pm at the O’Brien Building on the Capital Campus
- December 31<sup>st</sup>: Report due to the Legislature and Governor’s Office

### **REVIEW CONSENSUS PROCESS – [see recording at 29:43](#)**

Amanda and Chris reviewed the consensus process and the Task Force’s identified definition and gradients of consensus, as well as key points from the Task Force’s operating procedures.

### **WORK TOWARD CONSENSUS ON NON-CONSENSUS RECOMMENDATIONS [see recording at 35:24](#)**

***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.***

Given that this recommendation is in reference to the New Proposed Grid recommendation, in which the Task Force did not reach consensus, the Task Force decided to remove it from the list of recommendations for consensus. It will instead be added to the description of the repeat column for the grid recommendation.

***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.***

The following seats indicated they could not live with this recommendation: Washington Association of Prosecuting Attorneys (WAPA), the House Republican Caucus, and the Washington Association of Sheriffs and Police Chiefs (WASPC).

Both the House Republicans Caucus and WASPC proposed that any requirement that calls for explaining rationale for a sentence aggravated outside of the standard range should also require explanations for sentences mitigated outside of the standard range.

WAPA proposed the following: Add an additional reason or reasons for an aggravated departure to RCW 9.94A.535(2), to include “The parties have agreed to reduction of charges and in exchange have sought an exceptional sentence.”

#### **Task Force Consensus Deliberation – Summary of Discussion Points:**

- WAPA explained how their proposal attempts to create a new subcategory in statute for exceptional sentences made by plea agreement for charge reductions—this proposal creates a way to collect data to track those exceptional sentences made by plea agreements. Most non-pled/proven exceptions for departures from standard sentencing ranges are for this stipulation, and this proposal would allow for a more granular analysis of that exception. There are agreements to lower a charge to a lesser offense or for a sentence at or below the midpoint, and many of these instances involve those who would be classified as persistent offenders.
- A member said their constituency could not support this, as this alternate proposal puts too much discretion in how the state moves people along the grid in a way that is not transparent. And putting discretion where it is not transparent could lead to racial disproportionality. Judge’s decisions are transparent, and individuals should be allowed to see the reasoning for a judicial officer’s decision for issuing an exceptional sentence.
- Mandatory sentencing results in plea deals and a system determined by prosecutorial discretion, not juries or judges. 97% of cases are resolved by plea deals. If prosecutors do not want to articulate the reasoning for sentences beyond the standard range that get issued to avoid mandatory life sentences, then this points to the flaw of having mandatory sentencing laws.
- Another member said the WAPA proposal would be progress in this area of the sentencing system by allowing the capturing of information not previously captured. The Task Force cannot let the perfect stand in the way of a proposal that might not be ideal but still offers some improvement.
- This proposal tries to enhance data collection in the state. This recommendation does not make huge changes but enhances the ways data can be collected that might help address issues of racial disproportionality and disparities in the system, as this data should help drive information about aggravated sentences and highlight behaviors of those who agree to these sentences. This proposal allows a judge to make a finding that parties have agreed to reduce a charge, there already is authority in the SRA to articulate the rationale for exceptional sentences. This proposal captures the Task Force’s desire for data gathering.
- The proposal by WAPA is essentially the same as the standard practice articulating that someone took a plea bargain, but it does not get at the importance of capturing why someone would take a plea bargain. That reasoning is important information to capture.
- This could help gather data that can help show where in our system there’s opportunity to address issues of disproportionality and disparity that exist in the system.
- Several constituencies want this recommendation to also apply to mitigating sentences issued below the standard range; is this current practice?

- There is a requirement to document regular or exceptional finding of fact for aggravators and mitigators.
- It is required to be documented for both aggravators and mitigators, not necessarily in the Judgement & Sentencing (J&S) document, the reason for any sentence leaving the standard range (regardless of an aggravator and mitigator).
- Through the creation of “check boxes” to identify whether an aggravator or mitigator was found to be appropriate, the “findings of fact” document can articulate the statute category and why. Then data such as the type of sentence and race, ethnicity, and gender of the individual is available in the documentation. But currently it is not always specified which exceptional sentence has been given, whether aggravating or mitigating.
- Defense attorneys may be apprehensive of having their clients state on the record the reasoning for agreeing to any sentence that departs from standard range. With limited exceptions, a judge cannot make a finding of fact to issue an exceptional sentence as the state must charge this and prove it beyond a reasonable doubt.
- Data collection has its limits. The court cannot compel defendants to disclose why they are taking a certain agreement. There is no good way to do quantitative analysis with a J&S form, and analysis of these forms may need to be qualitative: looking at the records and talking to the parties. This subject matter has a lot of nuances.

Facilitator, Amanda Murphy asked whether the recommendation is necessary if standard practice is to articulate the reasoning for issuing an exceptional sentences.

- A member said this proposal seems like an improvement on the status quo but does not make a significant change to the status quo and this could present an issue. Worry that this could create another disparity where judges in more rural and less affluent counties would struggle with this.
- A defendant would likely never agree to an exceptional sentence above the standard range of sentences without a corresponding reduction in charges. This information is necessary to capture in the J&S form.

Amanda asked if anyone was unable to live with WAPA’s proposal.

- A member said they would feel better if the “check boxes” that indicate where the exceptional sentence was issued had judges clearly mark whether the exceptional sentence issued was either an aggravator or mitigator.
  - In response, another member said this would be difficult to enforce across counties without a universal J&S form.
- A member asked whether the court would still be required to show finding that the exceptional sentence furthers the interest of justice? Or would this recommendation negate that? The concern is that it is the latter. Would this maintain the current status quo in addition to the proposal or does this proposal replace the current stipulations?
  - This is designed to address data collection issues and would not replace any current status quo requirements.
- To make sure that this recommendation leaves intact the requirement for judges to find that any exceptional sentence still “serves the interests of justice,” members wanted to include this existing quo statute language.

No members present said they were unable to live with this alternate proposal. The Task Force reached consensus on the final recommendation as written here:

***Final Recommendation #11: Add an additional reason or reasons for an aggravated departure to RCW 9.94A.535(2), to include “the parties have agreed to reduction of charges and in exchange have sought an exceptional sentence and the parties stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence is in the interest of justice and the purposes of the SRA.”***

**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.*

The following seats indicated they could not live with this recommendation: WAPA, the House Republican Caucus, WASPC, and both seats representing the Interests of Crime Victims.

WAPA provided an alternate proposal for this recommendation, as follows:

*For aggravated murder 1 change the language 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 to eighteen, a term of thirty years to life, for individuals under eighteen 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.~~*

**Task Force Consensus Deliberation – Summary of Discussion Points:**

- WAPA will be proposing this alternative as a bill in the upcoming Legislative session and therefore cannot support anything but this alternative proposal. This alternate proposal allows for a tiered system that differentiates juveniles under 18 from those aged 18-20, while those 21+ are treated as adults. Current law sets the sentence of 25 years to life for juveniles under 18. This proposal does not change that but instead adds the 30 years to life for individuals under the age of 21-18 years old.
- A member pointed out that a 25-year sentence for juveniles under 18 is a long sentence, and they hoped that the sentences for those under 18 years old would be reduced due to these Supreme Court cases.
- A member said that if this proposal is truly based on neuroscience, then this recommendation would reflect that brain maturation takes until age 25, so the juvenile/young adult sentencing should exclude automatic life in prison for those up to age 25.
- In the *Monschke* and *Bartholomew* cases, the Supreme Court did not make a distinction between juveniles under 18 years old and those under 21 years old, so this recommendation should reflect that the WA Supreme Court did not make a distinction between juveniles being under 18 years old or under 21 years old and create the same sentence of 25 years to life for those under 21 years old.

WASPC, the second seat of those representing the Interests of Crime Victims, and Senate Republicans Caucus could all move to a “thumb sideways” with WAPA’s proposal. The first seat of those

representing the Interests of Crime Victims stayed Thumbs Down. This alternate proposal from WAPA would move the WA Defenders Association and both seats representing the Interests of Incarcerated Persons to a Thumbs Down. Given this, the recommendation was called as non-consensus.

### **Proposed Recommendations #16-18:**

**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.*

Facilitator, Amanda Murphy reminded the Task Force that they held consensus deliberations on these recommendations on November 3<sup>rd</sup>, however a final decision on each is still needed. For proposed recommendation #16, WAPA presented an alternative proposal which would be that Class A violent offenses washout after 25 years and Serious Violent Class A offenses never washout. During the Nov 3<sup>rd</sup> meeting a second alternative proposal was made to allow for Class A violent offenses to washout after 20 years and Serious Violent Class A offenses never washout. WAPA indicated they could live with this. This is where the discussion left off on November 3<sup>rd</sup>.

### **Task Force Consensus Deliberation – Summary of Discussion Points:**

- A member commented that they thought the Legislature was correct with washouts for Class B's and Class C's according to the science: the 20-year washout for Violent Class A offenses would bring the washouts for these offenses closer to what the data captures rather than never washing out. By imposing a lengthy period that must be met, this functions as a solid middle ground.
- Other members commented that the 15-year washout was already a compromise recommendation that the Grid Subgroup put forward.
- 15 - 20 years is 5-8 years higher than what the data suggests the washout period should be since the data on recidivism and desistance suggests that after 7-10 years those with a criminal history are no more likely to commit a new offense than someone without a criminal history.
- Other members talked about how for their constituencies the data the driver for their position on this recommendation is not. The data is based on recidivism and washouts are not based on recidivism but based on designating culpability, based on offenses. When someone does recidivate, their prior offenses should be taken into consideration. 20 years for Class A, 10 years for Class B and 5 years for Class C makes sense: each washout period doubles from the last felony class.
- Research shows when comparing those in the general population with no criminal history against those with a criminal history, the likelihood to commit a criminal offense is the same for both after a person with criminal history has spent 7 years crime-free. Washington's washout periods should reflect this research.

- WASPC indicated that they could not live with WAPA's proposal of a 20-year washout for violent Class A offenses. Washouts are only relevant for those who commit another offense and for Class A felonies.
- Another member commented that while the conversation has been between recidivism and risk and culpability, there is another aspect that should be considered, which is the fiscal effectiveness - the cost-benefit ratio of washouts. Trying to find a balance between punishment and crime prevention through effective rehabilitation can be framed in the lens of how much time sentenced is effective for the funds allocated to it and how much rehabilitation and reduction in incarceration are effective.

The Co-Chairs commented that even though the Task Force could not reach consensus, everyone in the Task Force actively engaged in the discussions and research around washouts. However, while the discussion has been insightful there remains an unsolvable tension between support for culpability and support for recidivism data. The discussion on these recommendations has moved into differences in philosophical values around the justice system among Task Force members. Because the Task Force is unable to reach consensus, the final report will document this process and include the first roll call for consensus, along with the nuance of WAPA's proposal and the discussions from today.

#### **Proposed Recommendation #6:**

*Replace three-strikes mandatory sentence with determinate plus sentencing.*

The following seats could not live with the recommendation: WAPA, House Republicans Caucus, both seats Representing the Interests of Crime Victims, WASPC, and Senate Republicans Caucus.

WAPA proposed the following changes, *"Replace three-strikes mandatory sentence with determinate plus sentencing with a mandatory minimum of 25 years or the minimum of the standard range, whichever is greater."*

The second seat representing the Interests of Crime Victims proposed that this recommendation become an addition to Recommendation #19, which called for the Legislature to review the offenses on the Most Serious Offense list, to have the Legislature, as a part of this offense review, review whether Three-Strikes should be replaced with determinate plus sentencing model.

Suggested Modifications to the Proposed Recommendation: The Legislature should Replace-evaluate whether three-strikes mandatory sentence should be replaced with determinate plus sentencing.

#### **Task Force Consensus Deliberation – Summary of Discussion Points:**

- WAPA explained that this is an issue in which their members are divided. This law was a voter initiative from the 1990s and therefore some members believe that any repeal for Three-Strikes should come from a voter initiative or Legislative action, and not from this Task Force. However, do believe that members would be able to support a proposal to have the Legislature review whether Three-Strikes should be replaced.
- Washington was the first state to enact this law, which now on a national level has been the subject of scrutiny for whether those laws have made the nation safer or not. Washington state should participate in this review to consider and address the harms done by Three-Strikes.

- Member commented that studies show a heavy fiscal cost associated with Persistent Offender laws, and they are not as effective as once believed. Are our resources better spent incarcerating people or addressing factors and needs that cause criminogenic behavior?
- Members spoke about making sure the Legislature knows that action is needed to address Three-Strikes and the disparities that exist.
- WASPC explained that their constituency would not live with this recommendation or a recommendation to evaluate whether the law should be replaced. WASPC cannot support any recommendations that may result in shortened incarceration periods without there being appropriate programming already in place.
- Senate Republicans could support a study of Three-Strikes law and its effect on public safety in Washington to determine what should be done about this law.
- The member of the first seat representing the Interests of Crime Victims would support this review by the Legislature if it included input from victims and victims' families and if there was no component of retroactivity in Three-Strikes' replacement. The finality of sentencing is very important to victim's families.
- Other members voiced that their constituencies could not support doing nothing when it comes to Three-Strikes or to just study the law. A member talked about how the law has disproportionately incarcerated young Black men in Washington and how the WA Supreme Court is vested in addressing such sentencing disproportionalities, as evident in the Blake and Monschke cases. The Court is currently looking at a Three-Strikes case and so it will be that these issues will have to be addressed. If the Task Force and Legislature don't address this now, they must wait for potential reform from the Supreme Court. Any case from the Supreme Court of Washington will be retroactive automatically.
- Members representing the Interests of Victims spoke about the institutionalized indifference toward sexual violence, as many of those incarcerated under Persistent Offender Laws are incarcerated for sexually violent offenses. These offenses represent years of abuse inflicted by them on multiple victims. This law and those incarcerated under it have many nuances to them. The work that is needed is to evaluate the effect these laws have had on public safety—a very large task for this Task Force to do. So, this is unfinished work that cannot be analyzed as effectively as it needs to be by the Task Force and that is why this proposal to conduct an evaluation would make sense as a next step.
- Members voiced that while the Task Force is unable to reach consensus on reforms to Persistent Offender sentencing, this should not be interpreted by the Legislature that further discussion and action is not needed or is not without merit. The impact of Persistent Offender sentencing has been substantial, both to victims and defendants, and merits the Legislature's attention. Members reflected on how the work of reviewing and potentially replacing this statute would require an inclusive, data-driven, and intentional approach, starting with an analysis of the law's impacts to provide direction for a way forward for Persistent Offender sentencing in Washington.

**Potential Recommendation a:** *Replace Three-Strikes mandatory life without the possibility of release sentencing with determinate plus sentencing.*

**Overview of CSTF Decision: Non-Consensus**

- I can support – 3 members or designated alternates

- I can live with – 8 members or designated alternates
- I cannot support – 6 members or designated alternates
- Abstain – 3 members or designated alternates

**Potential Recommendation b:** *The Legislature should evaluate whether Persistent Offender mandatory life without the possibility of release sentencing should be replaced with determinate plus sentencing structure.*

**Overview of CSTF Decision: Non-Consensus**

- I can support – 2 members or designated alternates
- I can live with – 10 members or designated alternates
- I cannot support – 2 members or designated alternates
- Abstain – 3 members or designated alternates

**Proposed Recommendation #24**

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

The following seats could not live with the recommendation: WAPA, House Republicans Caucus, the first seat representing the Interests of Crime Victims, WASPC, and Senate Republicans Caucus.

WAPA, Senate Republicans Caucus, and WASPC proposed an alternate recommendation to eliminate the 10-year cap on prison DOSA (pDOSAs) sentences while retaining that 10-year cap on residential DOSA sentences (rDOSAs). WAPA proposed an additional stipulation that for an individual to be eligible for a removal of this cap they must have willingly engaged in and completed all prior treatment.

**Task Force Consensus Deliberation – Summary of Discussion Points:**

- Concerns were expressed about the stipulation of requiring individuals to willingly engage in and complete all prior treatment. There are situations where individuals are sentenced to rDOSAs but a treatment bed is not available and then never does come available during the term of their sentence. So the individual never completed treatment because of capacity issues, not because they were unwilling.
- In some counties, relapses and violations of terms do not result in revocations. Relapse is a part of the recovery process; as long as someone demonstrates commitment to treatment, they should not be ineligible from DOSA.
- A member commented on how the decision to issue a DOSA sentence is at the discretion of a judge; a prosecutor can only recommend for or against a DOSA sentence. So, if an individual has received many DOSA sentences, then this reflects on the judicial discretion, rather than the need for the creation of new requirements for individuals to be willing to engage in and complete all prior treatment.
- WAPA said they can live with not having a requirement that all prior treatment be completed. However, their constituency views pDOSAs and rDOSAs as separate programs. Failing to complete treatment under rDOSAs twice and having two prior DOSA sentences revoked should result in not being given a third DOSA. The cap for rDOSAs should remain to provide a continuum of increased sanctions moving from rDOSAs to pDOSAs to incarceration only.

- Members commented that DOSA programming needs to be individualized to determine whether incarceration is necessary or if a sentencing alternative such as rDOSA would better serve both the defendant be in the best interest of public safety.
- Assuming someone goes through rDOSA twice, upon their arrest for a third or greater felony, at what point should the eligibility of a community-based alternative be transitioned towards an institutional alternative. This captures a progressive structure in a continuum of punishment.
- WSIPP report documents the effectiveness of pDOSA and rDOSA recidivism rates when compared against similar groups who did not receive either a pDOSA or a rDOSA sentence. The report found that rDOSA had no significant influence or decreases in the likelihood of recidivism (compared to someone who did not receive rDOSA), but pDOSA was found to reduce recidivism by 6.9% (compared to those who did not receive a pDOSA sentence)—however, there are issues with the rDOSA conclusion:
  - First, WSIPP could not identify a truly identical comparison group. This is because not everyone sentenced to prison or jail has a full assessment for substance abuse disorders. Thus, it is not possible to identify a population of individuals who all receive the same sentencing range that have a Level 3 SUD treatment need.
  - Second is the lack of data for those that go through a drug court. The data shows which cases get processed in a superior court, but it is not possible to distinguish superior court cases from a drug court cases. Research from decades of national data has shown that drug courts are effective sentencing alternatives—so this may explain why the data shows rDOSA having no effect on recidivism rates as these individuals are receiving another form of treatment. 50% of individuals sentenced to rDOSA do not receive a treatment bed.
  - This study utilized pre-2017 data and since then there have been large changes in the functioning of the DOSA program, e.g., a change from Community DOSA treatment facilities being funded by DOC to those being funded through Medicaid. In addition, the 2019 ruling that individuals cannot be held for more than 30 days awaiting treatment, which could also skew the data.
- A member commented on how the recommendation should mention that the State should provide funding to increase the capacity for rDOSA to fulfill current and future needs so that individuals sentenced to the program actually receive treatment and are not revoked after 30 days because a treatment bed was not available.
- Another member commented on how each day of unnecessary incarceration represents funding that cannot be spent on rDOSA. The decision should be left to judges to make about whether a sentencing alternative is best.

The Task Force decided to break the recommendation into two separate recommendations and then called for consensus.

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

#### **Overview of CSTF Decision: Consensus - General Support**

- I can support – 10 members or designated alternates
- I can live with – 5 members or designated alternates

- I cannot support – 0 members or designated alternates
- Abstain – 1 members or designated alternates

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

**Overview of CSTF Decision: Non-consensus**

- I can support – 7 members or designated alternates
- I can live with – 4 members or designated alternates
- I cannot support – 4 members or designated alternates
- Abstain – 1 members or designated alternates

**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.*

The following seats could not live with the recommendation: WAPA, House Republicans Caucus, both seats representing the Interests of Crime Victims, WASPC, and Senate Republicans Caucus.

WAPA proposed the following edits:

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

- *Washout periods do not reset upon confinement for a **low-level** 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.*~~

The second seat representing crime victims proposed the following edits:

*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 **or was a misdemeanor involving domestic violence or sex offense/sexual motivation.***

**Task Force Consensus Deliberation – Summary of Discussion Points:**

- DOC provided clarity about what the Department defines as “low-level” and “high-level” violations. High-level violations include possession of deadly weapons, contact with specified prohibited businesses or persons, contact with minors, search refusal, possession of ammunition or explosives, during drug or alcohol treatment the possession and use of illicit substances, failure to submit to a polygraph or altering a polygraph, and failure to comply with prison release address.
- Several of these violations are not a new criminal offense. This recommendation may be difficult to implement in practice, to have to track whether a violation was low level or high level and then determine whether it applies to an individuals washout. This would add complexity and require additional staff time and capacity to track.

- Low-level violations require no more than three days in confinement. The recommendation could set a time span in that violations which result in more than 3+ days of holding reset the washout period.
  - However, since the implementation of the “swift and certain” amendment, DOC has also used alternatives to confinement for low-level violations.
  - Those alternatives already would not reset a washout period. The washout period resets for any period of confinement, so incarceration for any time for a violation would reset the washout period. If there are alternatives to confinement, they do not affect washouts, so the only issue is determining whether any specific duration of confinement time for violations should affect washouts.
- Members commented that under current law, any confinement for a new offense causes a washout period to reset. Community custody violations do not follow the same due process as new criminal convictions do, as it is a hearing of DOC, not the court. Community custody violations that are low-level violations are not new criminal offenses. Some members thought these should not result in resetting the washout period.
- Members discussed WAPA’s proposal to strike out the second bullet in the recommendation and the proposal from the second seat representing the interests of crime victims. Questions were raised about whether a single misdemeanor for domestic violence or sexual offense/sexual motivation would reset the washout period or would it be upon the third misdemeanor the washout period would reset?
  - A member representing the Interests of Crime Victims noted that this proposal would reset the washout period upon the third misdemeanor conviction or the first misdemeanor conviction for domestic violence or sexual offense/sexual motivation.
- Members discussed how these misdemeanor offenses have characteristics that are more comparable and connected to the more serious DV and sex offenses that are gross misdemeanors and felonies. In other words, a repeat escalating of behavior is accounted for in the classification of these types of offenses. Members discussed how DV in particular tends to be a continued pattern of behavior.
- A member reflected on how what it seems like members are wanting is an individualized approach to examining criminal behavior. This could be done if everyone received a full psychological evaluation to determine if the crime was driven by drug seeking behavior, or mental illness, or trauma, or behavioral control issues. However, this is not realistically doable in the current system. Therefore, what is doable is identifying crimes that demonstrate risk behaviors, that would be risk factors identified by an assessment. DV and sexual motivation are unique and are high risk factors that tell the court something about the psychopathy of an individual that engages in these offenses that the court must pay attention to.

Amanda asked if any member could not live with either of the alternate proposals. Both proposals had constituencies unable to live with them and if added would result in their constituency being no longer able to support or live with the original recommendation.

Since neither of the alternative proposals had consensus, consensus deliberations concluded. The original recommendation will be listed as non-consensus in the final report and will include a summary of the alternative proposals and the discussion.

**PUBLIC COMMENT:** [see recording at 5:00:02](#)

**Members of the Public:** *Starcia Aguié, Heidi Brodt, Jim Chambers, Bruce Glant, Carolyn Gray, Kelsey-Anne Fung, Adam Hall, Katie Hurley, Chris Johnson, Katelyn Kelley, Audrey Koreski, Michelle Mason, John McGrath, Joe McKittrick, Gideon Newsome, Joanne Smieja, David Treiweiler, Matt Tremble, Kehaulani*

**Michelle Mason:** Concerned with DOSA. Individuals going into incarceration for DOSA sentencing do not always get their services due to limited DOC staffing and programming capacity. I have spoken with a number of individuals that were formerly incarcerated within the last 3 years who reached out to receive drug and alcohol programming and were denied these services. DOC does not have the staffing to do these things, and we need to see some shifting on their end in order to meet these needs. According to Teamsters it will take 10 years to be fully staffed. When a judge's orders are not being followed this is a public safety issue.

**Kehaulani:** Thank you for your hard work. There are 13,000 people currently incarcerated right now and for each of those there are at least 4 persons attached to them as loved ones. This Task Force needs to be careful when discussing these topics and how they describe those incarcerated or with substance abuse disorder and trauma. The way people with substance abuse disorders have been described as deserving of incarceration is inappropriate. I am close to human beings that had severe child abuse that results in heavy trauma. How is it that individuals that have trauma are classified as having behavioral issues? I cannot support that this report to the Legislature will be accurate, I am a constituent of me, the people, and have not been asked what I think of these recommendations. As someone who is a wife to an incarcerated individual and deals with the trauma associated with this, I really hope that roots of the justice system will be looked at such as prosecutorial misconduct, under-resourced DOC, and civil rights violations. I would like to state this report will not be accurate.

**Jim Chambers:** Thank you to everyone for the work that has been put in over this 3 year journey. Some members do not understand the recommendations fully and do not attend Grid Subgroup meetings. I have attended these meetings for over a year and a half. I know the work and discussion that have been happening to make these meetings possible and this work comes from the Grid Subgroup, not attending these Subgroup meetings makes it hard to grasp the depth of these recommendations. I understand that different interpretations will arise because of this. Treatment takes multiple times to get successful treatment, it is a long process. I work with people struggling with their addictions and they are not provided with the necessary treatment they need, this needs to be focused on. Prison alone cannot heal someone unless that person can put in an exceptional amount of self-rehabilitation. Violation hearings in prison are problematic as individuals running these hearings often come from correctional officer positions that become hearing officers, and have a culture already ingrained in them. My experience with hearings is that if an individual is found guilty, they are then treated worse. It is hard to change culture within DOC but this is necessary. People get their DOSA sentence revoked due to drug use in prisons when they are not provided treatment in prison or do not receive treatment in prisons and are released to their community only to continue drug use and get incarcerated once more.

**APPENDIX A: Attendance**

<b>CSTF Members &amp; Designated Alternates</b>	<b>Affiliation/Perspective Represented</b>	<b>Attendance</b>
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)	✓
Mac Pevey (Diane Ashlock)	Washington State Department of Corrections	✓
Judge Wesley Saint Clair (Keri-Anne Jetzer)	Washington State Sentencing Guidelines Commission	✓
Melody Simle (Suzanne Gordon)	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 Schrimsher	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)		✓