**Washington State Criminal Sentencing Task Force**
**Meeting Summary: October 20th, 2022**
In-person: 901 5th Ave, Seattle, WA
Virtual Meeting via ZOOM – *Link to TVW Recording*

**ATTENDEES:**
**Task Force Members and Alternates:** *See Appendix A*
**Public**: *See page 18*
**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 work plan review
- Review and discuss the remaining proposed recommendations
- Build understanding among Task Force members around issues connected to retroactivity

**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. This includes two additional meetings, which will allow additional time for conversations on recommendations—scheduling these meetings allowed another member to support the proposed grid recommendation. The facilitation team also reminded the group about the December 14th Reentry Committee and Joint House Public Safety and Senate Law and Justice Meeting, which will focus on the work of the Task Force.

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 first part of the day will focus on walking through the remaining set of sentencing alternative proposed recommendations and the proposed CISRS recommendation A reminder that the Grid Subgroup works through the list of *potential* recommendations, incorporating and addressing Task Force input from when they were presented, and turns them into these *Proposed* Recommendations that will now be presented to the full Task Force today.

The second half of the day will have the Task Force having a dialogue on retroactivity with the purpose to build understanding among Task Force members around issues connected to retroactivity.

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

**UPDATES:**
The Co-Chairs and facilitation team have met to discuss the work plan for the remainder of 2022. Two additional meetings, occurring in October and November, have been added in order for the Task Force to complete its work before the December deadline for the Final Report due to the Legislative.

**2022 Work Plan**
*October 20th:* Present Proposed Recommendations: Sentencing Alternatives, CISRS, and Reentry Programming. Dialogue on Retroactivity

**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

**Additional Non-CSTF Meeting**
*December 14th*: Legislative Work Session– Joint House Public Safety and Senate Law and Justice Meeting from 10am–1pm at the Capitol Campus in Olympia

**How the Proposed Recommendations are Being Organized and Presented**
Amanda reviewed the structure of proposed recommendations, which will inform the draft report outline/structure.
*Draft Report Outline*
Section 1: Proposed Recommendation: New Adult Felony Sentencing Guidelines Grid
Section 2: Proposed Recommendation: CISRS Program
Section 3: Proposed Recommendation: Sentencing System

A. Foundational
B. Sentencing Discretion
C. Legal Procedures and Other Sentencing Laws
D. Criminal History Score
E. Continuing Work
F. Post-Sentencing Reform
G. Sentencing Alternatives

**CISRS RECOMMENDATION:** *see recording at 35:11*
**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 CSIRS program, using the information provided in the recommendation as a guideline for the general program framework.*

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

Intermediate sanctions include the following:
- Intensive supervision probation
- Day reporting centers
- House arrest
- Electronic home monitoring
- Community service
- Intermittent confinement (e.g., work release or weekenders)
- Mandatory treatment for conditions
- Residential community corrections (e.g., halfway houses)

Reintegrative services would include rehabilitative programs and begin as soon as possible after a needs assessment. Reintegrative services include, but are not limited to:
- Education programs
- Employment/job training
- Assistance with housing and transportation
- Mentorship and credible messenger services
- Life skills classes and use of technology training

Rehabilitative services include but are not limited to:
- Substance use disorder treatment
- Mental health counseling
- Cognitive behavioral training
- Other evidence-based programs

**Key elements of the CISRS Program include:**
- CISRS consists of two components: 1) intermediate sanctions that meet minimum standards and 2) access to rehabilitative and reintegration programs and services.

- Counties would operate their CISRS program, but each must receive state approval every XX years to ensure that the programs are meeting a minimum standard. As it does with juvenile evidence-based programs (in the Juvenile Block Grant Program), the state could establish quality assurance protocols and standards to set requirements for the county program/s that must be reviewed annually or biannually (i.e., approvals for each two-year budget cycle).
- The state would identify the general types of services that a qualifying CISRS program should provide, e.g., employment/job training, education, housing, cognitive behavioral training.
- The state may set certain minimum levels of care for the general program, but also for specific populations of individuals. For example, the state may require a higher level of supervision (such as electronic home monitoring or day reporting centers) for individuals receiving an intermediate sanction sentence for an offense at a certain seriousness level or for an individual with a certain level of criminal history.
- Similarly, the state may require that all individuals sentenced under the program receive some type of needs assessment to inform treatment.
- Specific sentence terms for an intermediate sentence under a CISRS program would be determined by the judge ordering the alternative and could be informed by the local program supervisor/administrator.
- The state may also create consistent standards for what types of behaviors would require a revocation of a CISRS sentence and a return to incarceration.
- CISRS must be structured to ensure that individuals report to one jurisdiction, whether at the county level or DOC.
- Regular data collection and evaluation should occur to ensure equitable application of the program, ideally with a centralized database. The state could set requirements for the type of data that must be collected and reported on an annual basis. Annual or biennial evaluation of the data would be needed to ensure the money is being properly used.
- Victim advocacy groups should be engaged in creating and implementing this program and its policies, perhaps on an advisory committee; the Legislature should, at a minimum, work with counties and DOC to develop CISRS.
- Concerns with tort liability (for DOC or counties) may arise with this approach; suggestion that needs to get addressed, perhaps in a separate process. Addressing liability concerns will be an important element to integrate into this approach.
- State funding and technical assistance could incentivize local jurisdictions that don't have the access to these types of programs to develop them. There would need to be protection of funding for smaller jurisdictions to ensure adequate resource allocations and recognize different resource needs. Some jurisdictions will need to build a new program, others will need further support for existing under-resourced programs, and others will wish to expand robust programs.
- A critical design element will be to create an implementation structure (i.e., centralized, decentralized, hybrid) that most equitably serves individuals who do not reside in their county of conviction and court oversight.

**Funding Model**
Funding would be provided by the State to counties. This could be done through a block grant system using a formula, modeled on the Juvenile Court Block Grant Program. The Legislature should allocate enough funding up front to ensure adequate levels of staffing and programming (lower caseloads would allow DOC and counties to provide additional services to those incarcerated). Adequate funding to support staffing and capital costs may also allow counties to expand the types of services offered to individuals in jail or individuals sentenced in district court. Thus, this program could have beneficial spillover effects for an even larger population of individuals involved in the criminal legal system. Long term savings would be seen as an effect of the investment in effective programs to reduce overall recidivism and future caseloads.

**Provided and Funded Services and Programs for Victims**
Victim services and programs would also be included in the program. This could include a broad array of services and programs that respond to the emotional and physical needs of victims such as support services throughout the criminal legal process, counseling, crisis intervention, shelter, trauma and therapeutic services, restorative justice, etc.

This recommendation was presented at the Task Force meeting on 6.2.22 as a potential recommendation and at the 8.31.22 Task Force meeting as a proposed recommendation. The Grid Subgroup discussed the input from the 8.31.22 Task Force meeting surrounding the need to fully develop an implementation plan for the CISRS program and the finer details of its workings. The Grid Subgroup decided that the following language be added to the recommendation:

- Establish a workgroup tasked with determining the legislative standards and implementation plan for the CSIRS program, using the information provided in the recommendation as a guideline for the general program framework.

**Member and Alternate Discussion:**

- Alternatives group first developed this proposal. Discussed modeling this after the juvenile block grant but geared for the adult system. Group has developed as much of the concept as possible, but ultimately see the need for further development by others with programmatic and implementation expertise.
- Group has noted that there are many details that still need to be developed in order to have an implementable program – that need to be addressed by another entity. Group also noted that developing CISRS is important and could still be developed regardless of how the proposed grid moves forward – see value in developing this proposal as a standalone recommendation.
- Recognize that the CSTF is not composed of all the necessary stakeholders and perspectives who need to be at the table for CISRS implementation. Proposed recommendation provides enough detail so that others will be able to see the intent and capture the discussions had by this group.
- Additional perspectives that should be part of developing implementation such as probation officers and the district courts. Recognize that this program will evolve over

time. Suggestion to create process for ongoing dialogue and ongoing oversight over this program. Support the general concept of the proposal, note concern for liability.

- Should consider including someone who has worked with the CGAA (community juvenile accountability act). Having someone who could provide insights creating an implementable program and developing a structure for ongoing oversight could address the concerns of some members about utilizing lessons learned from the juvenile block grant approach.
- Suggestion for a preliminary report in a year on when this can be implemented, and ready to be operational in 3 years.
- Would this need to be implemented in parallel with a proposed grid?
- Have been talking about developing a grid framework, and then have other groups working on other aspects such as the reclassification work that will need to happen. The CISRS and reclass work could happen between the passing of the framework and effective date of the grid. Grid would have enough shape for groups to develop their pieces, and then timelines would need to be coordinated so that all would come together simultaneously.
- When building the timeline, suggestion to build in the time to fully develop the programs, including staff capacity and training. Important to recognize the time and effort to form these programs and hire and train staff.
- Is this program intended to be a pre-trial alternative? From victims' perspective, expressed concerns about creating an additional layer of unknown potential outcomes. Additionally, cannot support extending eligibility to Zone 3 of the grid.
- A working group would need to determine if the alternative is pre- and/or post-trial. Currently, this proposal is based on a proposed grid, but proposal is also illustrative and could change.
- See this program as a sentencing option. From a prosecutor perspective, this is a tool to facilitate plea agreements. If it is in law, the judge can use it post-trial. Diversion programs are usually pre-trial and pre-conviction while sentencing alternatives are usually post-trial/post-conviction.
- The task force/entity developing the implementation framework would be responsible for creating eligibility criteria and the other different requirements. There could be varying levels of requirements for varying levels of offenses, creation of offense-specific requirement could be built into the framework.
- Expressed concerns about creating more penalties for those who exercise their right to a trial, noting that currently many individuals who exercise this right often receive longer penalties for going to a trial than taking a plea.
- 30-40% of individuals under DOC supervision are not supervised within the jurisdiction in which they live. This provides additional barriers to successful supervision, expressed concerns about creating additional reporting jurisdictions and burdens. This program should take this into consideration and allow flexibility in determining the jurisdiction of oversight.
- Expressed concerns about individuals repeatedly participating in sentencing alternatives without real interest in programs—how would that be considered?

**PROPOSED RECOMMENDATION #1:** *see recording at 1:05:15*
*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 support, 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.*

**Background and Explanation:**
In Washington State, 96% of incarcerated individuals will be released back into the community. In recent years, the recidivism trends have indicated that approximately 30% of those released have returned to prison within three years. Evidence suggests participation in treatment and reentry programs can be highly effective in reducing the likelihood of recidivism and associated costs to society.

This recommendation identifies rehabilitative services and programs necessary to help those in DOC custody such as education, job training programs, chemical dependency treatment, behavioral and mental health treatment. The recommendation also calls out the need for reentry services that can help individuals secure necessary steps to successful integration such as housing, transportation, employment, and continued treatment. Research has also found that in-prison vocational and educational programs are associated with reduced recidivism.

This recommendation acknowledges the need to address work-force capacity issues, such as availability of service providers, retention, geographic disparities, and lack of treatment providers, etc.

**Addresses Sentencing Complexities and Errors, Effectiveness of the Sentencing System, and Public Safety:**
This recommendation can greatly improve the quality of time spent for those incarcerated in DOC facilities. Providing rehabilitative services such as education, job training programs, chemical dependency treatment, behavioral and mental health treatment will help meet unmet needs of individuals in DOC custody. According to research, it will also contribute to individuals' desistance from criminal behavior: Chapter 3 of *Desistence from Crime: Implications for Research, Policy, and Practice* reports that labor market success, family life, housing stability, and mental health are all associated with desistence.

As described in research reviewed by the Task Force, access to such services better prepares individuals for reentry. Reentry services can help successfully support those being released

from DOC custody in securing basic needs. Meeting these needs this can help reduce the likelihood of recidivism, will would advance both public safety and improve effectiveness in the sentencing system.

**Recommendation History:**
This recommendation was developed by a smaller subset of the Grid Subgroup stemming from the discussions on the availability of programming at the 8.4.22 Task Force meeting. This recommendation identifies the important role of access to rehabilitative services and programs, both while individuals are incarcerated and upon release.

The Grid Subgroup also recognized the need to address the work-force capacity issues that come with this recommendation, such as the availability of service providers, retention, geographic disparities and lack of treatment providers.

The Grid Subgroup also discussed the following, to be included in the explanation of the recommendation. The group felt the inclusion of language to get an inventory of the program currently available at each facility was necessary because the types of programs available are not standard across facilities and creates disparities for rehabilitative opportunities depending on where one serves their sentence. Further, the group also saw value in a study to increase understanding about what programs are available at each facility, what the capacity is, how many people complete the program, as well as their reduction on recidivism to help successful allocation of funds.

**Task Force Member/Alternate Discussion:**

- Recommendation essential for interest of sheriff/police chiefs – and feels critical to the work the CSTF has been asked to do, as it improves the effectiveness of the sentencing system and promotes public safety. Appreciate all the discussions that helped develop/refine the recommendation.
- Expressed concerns about the effectiveness of cognitive behavior therapy for all individuals. For example, evidence indicates that individuals convicted of a DV offense are less likely benefit from CBT. The language of this recommendation needs to be attentive to the nuances of criminal behavior and desistance. Research does not often reflect the nuances of CBT effectiveness across a breakdown of offense types.
- Interested in more information about the kinds assessments conducted during intake.
- currently these assessments are available and required for all incarcerated now but there are delays in these assessments for varying reasons. There is some detailed work that needs to occur, but these are promising practices that have good rigor around them. DOC is interested in partnering with WSIPP and other external stakeholders to help develop and improve both assessments and programs.
- Request for more information about how an in-depth assessment informs the sequencing of programs and services, as well as DOC analysis to determine effectiveness of connecting those with their needed programs based on their assessment, then report on the programs someone is participating in and the capacity.

- No members indicated that their constituency could not support this recommendation, so the group wrapped up discussion.

**PROPOSED RECOMMENDATION #21:** *see recording at 1:23:29*
*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.*

**Background and Explanation:**
This recommendation was recently developed by the Grid Subgroup and came forward from conversations the Grid group had concerning the recommendations about determining the effectiveness of rehabilitative and reentry services within DOC facilities.

The Washington State Legislature often directs the Washington State Institute for Public Policy (WSIPP) to study the effectiveness and assess the potential benefits and costs of programs and policies that could be implemented in Washington State. These studies are designed to provide policy makers with objective information about which programs or policy options work to achieve desired outcomes (e.g., reduce crime) and the long-term economic consequences of these evaluated options. In order to produce reliable results, WSIPP employs a standardized approach across policy areas. The 2013 Legislature passed a bill to facilitate the use of evidence-based programs in adult corrections and directed WSIPP to develop definitions for "evidence-based" and "research based" and create an inventory of evidence-based and research-based programs to be used by the Department of Corrections. The legislation also directs the Department of Corrections (DOC) to determine if the programs it delivers are evidence-based or research-based according to the inventory developed by WSIPP. The adult corrections inventory can be found here on the WSIPP website.

Many of the evaluations in WSIPP's adult corrections inventory have not been updated since 2016. During the time since 2016, not only have more adult correctional programs been created and implemented, but extensive research has been published since then on effective programming. There exists rich literature available to update assessments of evidence-based programs (EBPs) and to expand the inventory to include new programs that weren't previously available.

**Addresses Sentencing Complexities and Errors, Effectiveness of the Sentencing System, and Public Safety:**
DOC resources for programming are limited, as is program capacity. An updated Adult Corrections Inventory can help identify the programs that are most likely to be effective to help inform decisions about program funding. Many of the programs on WSIPP's adult corrections inventory have not been reviewed since 2016. Updating the inventory ensures that decisions made today are based on the best/most up-to-date information about program effectiveness. WSIPP's inventory uses available research on programs within and outside of Washington to identify programs that are likely to cost-effectively reduce recidivism if implemented in Washington State. Effective programming for incarcerated persons has the ability to reduce

recidivism, increasing public safety, as well as improving other outcomes such as employment, education, and public health.

**Task Force Member/Alternate Discussion:**

- With COVID there were over 2-3 years where people could not participate in programming due to limited jail intake or social distancing inside DOC facilities due to the pandemic.
- In the academic world it could take 12-24 months to do a study and another 12-24 months to publish. WSIPP upcoming DOSA study used timeframe prior to the start of the pandemic to assess the program's functioning under pre-COVID conditions. Organizations based on statistics, like WSIPP, will not see the issues with data based on COVID until 2-3 years down the road.

**PROPOSED RECOMMENDATION #22:** *see recording at 1:32:57*
*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.*

**Background and Explanation:**
The SRA established the framework for felony sentencing in which individuals are generally sentenced to determinate sentences, with some exceptions. The SRA eliminated indeterminate sentences and parole, with some exceptions. Under the SRA, individuals are generally required to serve the specific sentence imposed by the court regardless of their rehabilitative efforts or improvements. However, certain exceptions allow a qualifying person to be released prior to completing the term of confinement ordered by the court, for example, pursuant to:

- transfer to a partial confinement program;
- an authorized furlough or leave of absence;
- an extraordinary medical placement, subject to certain qualifications and conditions; an order to release by the Indeterminate Sentence Review Board (ISRB) for certain qualifying persons;
- administrative earn early release time; and
- a pardon or commutation granted by the Governor.

The Legislature has given authority to the Indeterminate Sentence Review Board (ISRB) to review and release individuals if the statutory criteria is met for the following three populations:

- Individuals on parole, convicted before the enactment of the SRA, July 1, 1984;
- Community Custody Board (CCB): individuals convicted of sex offenses who committed their offenses after August 31, 2001, and who have determinate-plus sentences; and
- Juvenile Board Cases (JUVBRD): individuals who committed crimes under age 18 and are sentenced as adults.

The Washington Constitution provides the Governor the authority to grant pardons, and statute provides the Governor with the authority to commute sentences and release persons in extraordinary cases. The Clemency and Pardons Board (CPB) receives petitions for commutation and pardons and makes recommendations on those petitions to the Governor. The Governor makes the final decision in all petitions heard by the CPB.

This recommendation calls for the creation a process for individuals sentenced to and that have served more than 20 years of confinement to be able to petition for review for early release. The recommendation does not specify whether this process should be under ISRB or CPB. When developing this recommendation, both the Grid Subgroup and the Task Force talked about how a process could be modeled after RCW 9.94A.730, which for example, includes assessment, participation in programming, evaluation and public safety considerations, victim input process, supervision, and a number of other conditions that must be met and considered. The Grid Subgroup also discussed the importance of demonstrated willful and voluntary participation in and completion of DOC programming to be eligible for petition and the need for such programming to be available at all DOC facilities.

**Addresses Sentencing Complexities and Errors, Effectiveness of the Sentencing System, and Public Safety:**
Provides a pathway for individuals to be able to petition for review after serving more than 20 years of a sentence and an opportunity to address any changes in legislation since conviction. ADOC fact sheet published June 2022 indicates that 29.9% of the current DOC population is serving a sentence over 10 years and 17.3% is serving a sentence of life with the possibility of parole. Research on the age-crime curve shows diminishing returns for long-term incarceration for individuals who would otherwise "age out" of crime.

Potential cost-savings from long-term incarceration could instead be used to support rehabilitative programming. Creating a pathway for individuals to engage in rehabilitative programming and engage in crime-free behaviors will advance public safety and effectiveness of time spent in incarceration.

Such a review process would specifically require opportunity for victim input.

**Task Force Members/Alternates Discussion:**

- Interested in available data/statistics of individuals with sentences between 10-20 and those over 20 years?
- If review process is modeled after the juvenile statute, then individuals would get an ISRB review in a determined frequency of years until either the individual is released into community custody or until the maximum of their sentence range is reached.
- A member anticipates that prosecutors will have concerns with this recommendation, especially with respect to the appropriate timeframe for the review. Currently, there is a 25-year review for aggravated murder for juveniles convicted of this offense. Prosecutors in the state would have issues with this recommendation, if this review process would include individuals with convictions for First Degree Murder and

Aggravated Murder, may need to see exclusions for those offenses as there would be substantial issues with that would potentially necessitate a proposal around offense-specific exclusions. Expressed concerns about review at 20 years.

- Would this review apply to those who have been convicted of the third strike? Suggestion to exclude individuals serving a LWOP due to a persistent offender law.
- See the value of this recommendation as increasing access to a review process—and see that individuals serving a LWOP sentence due to persistent offender law should have access to the review. Expressed interest in more details and information. There is discussion in the Grid Group about the period of time prior to petition of review of no more than a certain number of large or small infractions when incarcerated to demonstrate their rehabilitation and readiness for reintegration.
- If this was modeled after RCW 9.94A.730 then this already has this language that provides a road map for no/minimal infractions and would provide a solid framework for this recommendation to follow.
- Expressed concerns that this would recreate a parole system that would add additional complexities and could contribute to disparities in the system. Sentence reviews are retraumatizing for victims.
- There are very few individuals convicted of a sex offense and sentenced to 20+ years, the idea of opening up review for Three-Strikers is not supported by survivors/victims of crime. Suggestion for more work to determine who should and should not be eligible for this review. expressed concerns that a review for these defendants could discourage victims from coming forward, as it feels like at every step of the way there is a mechanism that could release their offender.

In order to keep on track with the agenda for the meeting and to ensure ample time for both public comment and the discussion on retroactivity, the facilitation team will present all the sentencing alternatives recommendations and then open up for Task Force/Alternate discussion after all the remaining recommendations have been presented.

**SENTENCING ALTERNATIVES RECOMMENDATIONS:** *see recording at 1:58:32*
Sentencing Alternatives Work Group met from Fall 2021 to Spring 2022.

Their discussions focused on current sentencing alternatives, including

- Program overviews
- Intended purpose
- Statutory eligibility criteria: current offense exclusions, prior record requirements, history of prior participation in a sentencing alternative
- Any past/current efforts or entities looking at potential changes?

The Sentencing Alternatives Work Group reviewed spreadsheets that detailed current and simulated portions of the sentencing grid with offense-specific eligibility for DOSA, FOSA, and FTOW, including specific offenses and guideline ranges eligible for an alternative.

The Sentencing Alternatives Work Group also had presentation from the Department of Corrections and the Sex Offender Policy Board.

**Proposed Recommendation # 23**
*Include and visually depict sentencing alternatives on the adult felony sentencing guidelines grid.*

Formerly Potential Recommendation #38 which was presented to the Task Force at the 11.4.21, 7.7.22, and 8.4.22 meetings.

**Background and Explanation**
Currently, the state sentencing guidelines grid does not show sentencing alternatives. Early in its conversations, the Alternatives Workgroup discussed how judges could benefit from having information easily available in a visual format on what alternatives a defendant might have eligibility for.

That Workgroup received presentations on each of the existing state sentencing alternatives, including the newly enacted Mental Health Sentencing Alternative and the five previously existing alternatives:

- First Time Offender Waiver (FTOW)
- Residential Drug Offender Sentencing Alternative (rDOSA)
- Prison Drug Offender Sentencing Alternative (pDOSA)
- Parenting Alternative, also called Family and Offender Sentencing Alternative (FOSA)
- Special Sex Offender Sentencing Alternative (SSOSA)

This recommendation would allow for the depiction of sentencing alternatives on the sentencing grid creating transparency for all parties (judges, defendants, victims) about all available sentencing options. This could be done as a separate overlay to show where and which alternatives are applicable on the sentencing grid.

Below is a slide describing the presentation on sentencing alternatives laid out onto the current grid. Cells filled in with color provide examples of alternatives available in these areas of the grid.

November 2021 Task Force Meeting: Presentation on Sentencing Alternatives and Looked at How Sentencing Alternatives could Integrate onto the Grid

| | 0 | | 1 | | 2 | | 3 | | 4 | | 5 | | 6 | | 7 | | 8 | | 9+ | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| XVI | Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life | | | | | | | | | | | | | | | | | | | |
| XV | 240 | 320 | 250 | 333 | 261 | 347 | 271 | 361 | 281 | 374 | 291 | 388 | 312 | 416 | 338 | 450 | 370 | 493 | 411 | 548 |
| XIV | 123 | 220 | 134 | 234 | 144 | 244 | 154 | 254 | 165 | 265 | 175 | 275 | 195 | 295 | 216 | 316 | 257 | 357 | 298 | 397 |
| XIII | 123 | 164 | 134 | 178 | 144 | 192 | 154 | 205 | 165 | 219 | 175 | 233 | 195 | 260 | 216 | 288 | 257 | 342 | 298 | 397 |
| XII | 93 | 123 | 102 | 136 | 111 | 147 | 120 | 160 | 129 | 171 | 138 | 184 | 162 | 216 | 178 | 236 | 209 | 277 | 240 | 318 |
| XI | 78 | 102 | 86 | 114 | 95 | 125 | 102 | 136 | 111 | 147 | 120 | 158 | 146 | 194 | 159 | 211 | 185 | 245 | 210 | 280 |
| X | 51 | 68 | 57 | 75 | 62 | 82 | 67 | 89 | 72 | 96 | 77 | 102 | 98 | 130 | 108 | 144 | 129 | 171 | 149 | 198 |
| IX | 31 | 41 | 36 | 48 | 41 | 54 | 46 | 61 | 51 | 68 | 57 | 75 | 77 | 102 | 87 | 116 | 108 | 144 | 129 | 171 |
| VIII | 21 | 27 | 26 | 34 | 31 | 41 | 36 | 48 | 41 | 54 | 46 | 61 | 67 | 89 | 77 | 102 | 87 | 116 | 108 | 144 |
| VII | 15 | 20 | 21 | 27 | 26 | 34 | 31 | 41 | 36 | 48 | 41 | 54 | 57 | 75 | 67 | 89 | 77 | 102 | 87 | 116 |
| VI | 12.05 | 14 | 15 | 20 | 21 | 27 | 26 | 34 | 31 | 41 | 36 | 48 | 46 | 61 | 57 | 75 | 67 | 89 | 77 | 102 |
| V | 6 | 12 | 12.05 | 14 | 13 | 17 | 15 | 20 | 22 | 29 | 33 | 43 | 41 | 54 | 51 | 68 | 62 | 82 | 72 | 96 |
| IV | 3 | 9 | 6 | 12 | 12.05 | 14 | 13 | 17 | 15 | 20 | 22 | 29 | 33 | 43 | 43 | 57 | 53 | 70 | 63 | 84 |
| III | 1 | 3 | 3 | 8 | 4 | 12 | 9 | 12 | 12.05 | 16 | 17 | 22 | 22 | 29 | 33 | 43 | 43 | 57 | 51 | 68 |
| II | 0 | 3 | 2 | 6 | 3 | 9 | 4 | 12 | 12.05 | 14 | 14 | 18 | 17 | 22 | 22 | 29 | 33 | 43 | 43 | 57 |
| I | 0 | 2 | 0 | 3 | 2 | 5 | 2 | 6 | 3 | 8 | 4 | 12 | 12.05 | 14 | 14 | 18 | 17 | 22 | 22 | 29 |
| Unr | 0 - 365 days | | | | | | | | | | | | | | | | | | | |

Cells in the green zone are presumptive jail sentences. Depending on the offense, individuals may be eligible for a residential DOSA or SOSSA disposition.

Cells in the yellow zone may be eligible for a residential DOSA, FOSA, or SOSSA disposition depending on the offense and the types of offenses in an individual's criminal history.

Cells in the blue zone may be eligible for a prison DOSA, FOSA, or SOSSA disposition depending on the offense and the types of offenses in an individual's criminal history.

Cells in the hatched zone may be eligible for the FTOW sentencing alternative.

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

Identifying opportunities to make the sentencing system more transparent for all parties (judges, defendants, victims) has been a consistent goal of the Task Force and a way to both improve effectiveness and reduce complexity. With this recommendation all sentencing options would be included on the guidelines grid, increasing transparency for all parties regarding when sentencing alternatives could be considered. This visual overlay of sentencing alternatives would remind all parties of treatment-oriented sentencing options to encourage consideration of applicable sentencing alternatives in all possible situations.

**Proposed Recommendation #24**

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

Formerly Potential Recommendation #40 which was presented to the Task Force at the 7.7.22 and 8.4.22 meetings.

**Background and Explanation**

There are two DOSA options available to the court for eligible individuals:

1. Prison-based DOSA alternative: The sentence under Prison DOSA consists of a period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater; and one-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment. See RCW 9.94A.660 and 9.94A.662 for further information.

2. Residential DOSA alternative: If the midpoint of the standard range is twenty-four months or less, the court may impose a Residential DOSA sentence consisting of a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment for a period between three and six months. See RCW 9.94A.660 and 9.94A.664 for further information. Current eligibility considers current offense, prior record and a person cannot have received more than two DOSA sentences in the last 10 years.

**Addresses Sentencing Complexities and Errors, Effectiveness of the Sentencing System, and Public Safety:**
Removing this eligibility criteria would better reflect current understanding of substance use disorders– that recovery is a process. Prior participation in DOSA would no longer prevent the court from considering another DOSA sentence, therefore increasing judicial discretion—and balancing discretion across the system has been a consistent goal of the Task Force. The court would still consider community safety and an individuals' unique circumstance.

However, eliminating this cap on the number of DOSA sentences may not reduce geographic disparities or increase access to treatment given limited availability of treatment beds and facilities.

**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 pDOSA and rDOSA.*

Formerly Potential Recommendation #39 which was presented to the Task Force at the 7.7.22 and 8.4.22 meetings.

**Background and Explanation**
Prison DOSA provides substance abuse disorder treatment and community supervision to those who have been diagnosed with a substance abuse disorder and are currently incarcerated in DOC facilities for drug related offenses or other statutorily eligible offenses.

For those sentenced to a pDOSA sentence, the standard sentencing range is waived requiring the individual serve ½ the midpoint of the standard sentence, or 12 months whichever is greater, in confinement. Then the individual would then serve ½ the midpoint of the standard sentence on community supervision receiving treatment. There are eligibility exclusions for sentencing to this alternative that pertain to both prior offenses, current offenses, and prior DOSA sentences.

For current offense eligibility exclusions, individuals are ineligible if they are facing a charge for a serious violent offense, a violent offense, a sex offense, felony DUI or physical control, or any other offense with a finding of a deadly weapon and/or firearm enhancement. Prior offense exclusions function in a similar capacity where those previously convicted of a sex offense (registered), a serious violent offense, or a violent offense within the last ten years (excluding Robbery 2), have no previous Robbery 2 convictions within the last 7-year period (excluding Robbery 2 offenses that were plead down from Robbery 1 or had a firearm enhancement).

Further exclusions exist as well, such as individuals cannot have been sentenced to more than two DOSA sentences within a 10-year period, cannot be subject to a deportation order, the drug offense must involve a small amount of narcotics, and the high range of the sentence must be greater than 1 year in confinement.

Currently, sentencing alternatives vary as to whether an individual with a past felony violent conviction could be considered for a sentencing alternative. In 2020, the Legislature eliminated the exclusion for prior violent convictions (unless committed with a deadly weapon) for the Family Offender Sentencing Alternative (FOSA). This recommendation would eliminate the eligibility exclusion based on prior convictions for violent offenses (excluding serious violent from the definition of a violent offense) for DOSA sentences.

**Addresses Sentencing Complexities and Errors, Effectiveness of the Sentencing System, and Public Safety:**
By removing exclusionary language relating to prior violent offense convictions, this recommendation would better align the eligibility of the sentencing alternatives (except SSOSA, which is being addressed by the SOPB), reducing complexity in sentencing alternatives eligibility. This could increase opportunities where substance use treatment-oriented sentencing options could be considered, when a substance use disorder contributed to the commission of a crime, to expand access to treatment. Eliminating exclusions based on prior history would not automatically lead to a sentencing alternative—the court would still consider the individuals' circumstance and needs, and if those needs could be safely met in the community.

**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.*

**Background and Explanation:**
To be eligible for the special drug offender sentencing alternative (DOSA – both rDOSA and pDOSA) the current offense may not be a violent offense, a serious violent offense, a sex offense, or an offense where the individual was armed with a firearm or deadly weapon. An individual is ineligible if they have a prior sex offense requiring registration, a prior violent offense (excluding Robbery 2) within 10 years, or a prior Robbery 2 within the last 7 years and it must not have been reduced from Robbery 1 or a firearm enhancement.

The Family and Offender Sentencing Alternative (FOSA) allows judges to waive a sentence for eligible persons and impose 12 months of community supervision along with conditions for treatment and programming for people facing a prison sentence. To be eligible for a FOSA sentence, the current offense may not be a sex offense, a serious violent offense, a felony offense where individual was armed with a firearm or deadly weapon, or a violent offense. An individual is ineligible if they have a prior sex offense, serious violent offense, or a felony offense where the individual was armed with a firearm or deadly weapon. In addition, the individual must be parent, expectant parent, legal guardian, adoptive parent, custodian, or stepparent of a minor child. And the high end of the sentence range must be greater than one year.

In 2020, the Legislature removed from the Family and Offender Sentencing Alternative (FOSA) the eligibility exclusion of prior violent offenses, unless committed with a firearm or deadly weapon, for FOSA.

This recommendation would add eligibility exclusions for individuals with prior convictions of felony offenses involving a finding of deadly weapons or firearm enhancements to both pDOSA and rDOSA effectively aligning these alternatives with FOSA.

**Addresses Sentencing Complexities and Errors, Effectiveness of the Sentencing System, and Public Safety:**
This recommendation would better align the eligibility standards for DOSA with FOSA, which would reduce the complexity of determining whether an individual is eligible for one or more alternatives. Aligning the eligibility standards across these several sentencing alternatives would ensure that any future amendments to eligibility and exclusions made to one of these alternatives could be easily amended to align with the others.

**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).*

**Background and Explanation**
One of the recommendations the CSTF made to the Legislature in 2020 was to create a mental health sentencing alternative (Recommendation #6). In 2021, Washington added the Mental Health Sentencing Alternative as its newest sentencing alternative option to be used for individuals diagnosed with a serious mental illness. This sentencing alternative utilizes a different process for determining eligibility. The Mental Health Sentencing Alternative (MHSA) does not exclude individuals for any prior convictions. Exclusions for current convictions include serious violent offenses and sex offenses. Additional eligibility requirements are not offense based but instead include the defendant is willing to participate, the judge believes that both the individual and community would benefit from their enrollment in this alternative, and the input from any victims be prioritized.

This recommendation aims to model the MHSA process for determining eligibility onto the other sentencing alternatives available in Washington. Currently, other sentencing alternatives in Washington have exclusions that are offense based - for current offenses such as exclusions for violent offenses (not serious violent offenses), serious violent offenses, sex offenses, felony offenses with deadly weapons and/or firearms enhancements, manufacturing/distribution/possession with intent to sell Schedule 1 or 2 Narcotics. This recommendation would remove all exclusions for current offenses, with the exception of serious violent offenses and sex offenses.

**Addresses Sentencing Complexities and Errors, Effectiveness of the Sentencing System, and Public Safety:**
This recommendation would align all sentencing alternatives to have the same eligibility standards pertaining to current offenses exclusions, reducing complexities in determining eligibility. Further, by reducing the number of current offenses excluding individuals for being eligible for these alternatives, expands the pool of those eligible for both treatment-based alternatives and alternatives to incarceration. This would improve the effectiveness of the sentencing system both by connecting individuals with necessary treatment, and decreasing DOC caseloads by diverting more individuals, deemed safe to do so, away from incarceration saving DOC funds which could be used to increase capacity and availability of programming to improve quality of facilities, or other services for those currently incarcerated.

**Task Force Members/Alternate Discussion:**

- Recommendations on DOSA eligibility and effectiveness highlight the need for research. There is a review of DOSA every 5 years but there are benchmarks that can be evaluated in the meantime between these 5-year studies. These benchmarks can be used to identify program completion, revocation, and recidivism. These benchmarks let us know that revocation is higher for rDOSA. rDOSA is less effective than pDOSA according to that data.
- It is important to remember that DOSA is a sentencing alternative, an individual does not need a DOSA sentence to have access to treatment for a substance use disorder. The question is around the circumstances where the individual could serve reduced time in incarceration.
- Expressed concerns about aligning eligibility criteria for pDOSA and rDOSA—they are different alternatives. The cap on the number of DOSA should not be removed for rDOSA but would be able to support the removal of the cap for pDOSA. The same concerns would hold true for violent offense prior issues. Prosecutors would be concerned with violent exclusions for rDOSA but not for pDOSA.

**Public Attendees**: Jim Chambers, Kehaulani, Tim, David Treiweiler, Erik Kiffe, Gideon, Chris Johnson, Adam Hall, Carolyn Gray, Megan, DeLon Elizabeth, Michelle Mason, Audrey Koreski, Matt Tremble

**PUBLIC COMMENT:**

Below are summaries of comments shared by public attendees. Full comments can be viewed by following this link to TVW which starts at 02:21:50 of the meeting recording.

**Jim Chambers:** The 20 Year post-conviction review would eliminate disparities as reviews are done transparently, where the reasons why someone is being denied or approved is articulated.

People who have "struck-out" under the Three-strikes are not always sentenced for violent offenses and should be eligible for review. Oftentimes these people are receiving strikes or a life without parole sentence for non-violent offenses, such as having a firearm on the premises in which they are arrested whether or not it is in their possession. This highlights the necessity for those sentenced under this law to be eligible for review, especially if they are incarcerated for nonviolent offenses.

For the recommendation on DOSA caps and eligibility, it takes many attempts for an individual to be successful at rehabilitation for substance abuse disorders. Discounting individuals who have reached 2 DOSA sentences in a 10-year period bars many who could benefit from this type of an alternative from doing so. By expanding the cap and eligibility of this program it could open the doors to many of those struggling with addiction who could really benefit from this sentencing alternative.

The devil is in the details for the CISRS program as there is much left uncertain or what will be made available for community alternatives. Additionally, it is unclear of who will have authority over this alternative and will be in charge of running it.

For retroactivity of recommendations, I am someone who was left behind when the laws changed 2 years after my convictions and I served an extra 10 years because of this. I was left behind when there were changes made to the drug laws in 2002, I received a 40-year sentence in 1999. Had I been sentenced in 2002 it would have been 20 years instead. I was able to get clemency through my progress and rehabilitation while incarcerated. The bill that changed the law to retroactively apply to get me released only affected 6 people including myself. If a flaw in a law is known or there are wrongdoings in the functioning of the system it should be applied to those in the system currently as this is the right thing to do.

**David Treiweiler**: Throughout these meetings there is a narrative that is still repeated. This narrative is that victims support long sentences and oppose reductions in sentences. This is not true, they want more reliance on things that will help victims. Most victims support shorter sentences and less reliance on incarceration.

**Tim J.**: Heard a few things in the meeting that is not the whole picture about what is effective for someone that is formerly convicted. When I was released it was very difficult to find employment, although earlier I heard a member of the Task Force say the programs helped people get employment, however there was no assistance from DOC. Treatment programs on the inside do not necessarily reflect better treatment outside. Treatment on the inside takes

place around the framework of prison politics. The people on the outside do not know and there are almost no formerly incarcerated people at the table in these meetings that can provide the proper voices to those who are previously incarcerated. DOC can circumvent judge's orders and DOC has jurisdiction over those incarcerated. So when the group discusses "discretion" it is not clearly defined who's discretion this refers to. These individuals in DOC then have discretion of a person's life but these people are not always honest individuals. DOC should be requiring CO's to provide body cameras for those who work within these facilities. DOC keeps pushing back on body cameras though. Like others, I had to rehabilitate myself when I was incarcerated as the DOC did not help me when I was incarcerated in their facilities.

As for solutions, if DOC facilities divided each of their units by usable trades that are directly transferable to the real world, these units could provide the necessary treatments and training to those incarcerated. Programs that are based on trades by units that can provide the necessary skills that can base eligibility on good behavior could be extremely beneficial. Policy makers should be checking with people who are currently incarcerated to fully understand their situations and their needs to be developed within their policy decisions. Individuals are changed based on the time spent incarcerated.

**Public Attendee:** I appreciate what you do and appreciate the space to be able to speak. Under RCW 9.94A.500, which pertains to Sentencing Hearing - Presentencing Procedures - and Disclosure of Mental Health Services Information, I had found that when someone is sentenced with a drug offense the court will have them complete a chemical screening report. The specific language in the RCW states,

> *"Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter **69.50** RCW, a criminal solicitation to commit such a violation under chapter **9A.28** RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense."*

These chemical dependency screening which are under law supposed to happen during a pre-sentencing intake often happens after an individual is incarcerated or has almost served their entire sentence. DOC has the tools to provide treatment when inside but wait to conduct these screening until someone is in community custody. The funding that is supposed to be used for these intake screenings and programming along with the current staffing would take the DOC's current model would take 10 years to fully implement these programs with the necessary work force to staff them. Communities are taking on the burden and then this necessitates the need for increased community funding. We are doing things backwards. We are not following the RCW. It has been done that the communities are taking on the burden. We are overburdening the communities once the individual is on community release. The applications of the law (how they should function) vs how they function in practicality differs greatly.

**DIALOGUE ON RETROACTIVITY**

The facilitation team has noticed that members speak about retroactivity, individuals have different definitions of retroactivity. This is an opportunity to invite people into the conversation. The Task Force has agreed upon ground rules --what other commitments or agreements need to be in place to have this conversation?

- The details of capacity and logistics should not constrain the group's ability to brainstorm this topic, encourage the group to dream big for this conversation.
- Focus on calling people in rather than calling people out. If someone expresses something that another does not agree with, everyone should maintain an open and inquisitive mind. There are topics that are personal such as this one and members should share their lived experiences and feel free to create space for exploration of varying views.
- Group has a collective responsibility to make sure everyone that is present is given sufficient opportunity to be heard.
- Individuals can call "ouch."

**What does retroactivity mean?** Members were asked to write down what retroactivity means to them and their constituency.

- Retroactivity means looking backwards not forward. Means potentially releasing people early without any regard for public safety.
- Retroactivity means new and different legal effects to something that has been settled and occurred in the past.
- Applying a new or changed rule to past acts or decisions.
- Retroactivity is essential to incarcerated individuals, SB 5164 re-sentenced individuals who struck out due to Robbery 2 strikes. One of those re-sentenced under this law had their third strike repealed; he was released after serving time and is an upstanding member of the community. We do our community an injustice when laws are changed and then not applied retroactively.
- Retroactivity means changing legal consequences or status of past actions. Financial impacts on courts and the judicial system should also be considered.
- Retroactivity means re-sentencing individuals especially after a statute or court rule has been changed.
- For victim's, retroactivity means a broken promise of closure.
- Applying law to events that took place before the new law was in place. It's a refinancing of a sentence based on current terms. See need for retroactivity to be applied both ways – to lessen sentences for wrong legal applications but also increase sentences for crimes determined to have increased sentences.
- Specific to sexual assault, retroactivity can change statute of limitations with no ability for legal remedy for the crimes victims have experienced in the past.
- Application of retroactivity is three-fold: tremendous impact to records and the burden falls upon them to make determination to release individuals or not; huge impacts on our victim services; and also impact on incarcerated persons. How manage expectations of potential change?

- Retroactivity means recognizing when we have made a mistake or there is a better way of doing things. Those who are incarcerated suffer for these mistakes, everyone should be extended the ability to be given leniency for past systemic mistakes and benefit from present day wisdom.
- Retroactivity means when you know better you do better, addressing the harms of the misdoings of the system.
- Retroactivity means the same application of the law across the past, present, and future.
- Victim's bill of rights gives families the opportunity to speak at sentencing to inform the sentence and retroactivity then negates all these victim impact statements.
- Retroactivity is a refinement in sentencing laws that would benefit an individual by reducing their sentence or slightly increasing time as a result of the new law. Note implications for staffing to implement policies.

The facilitation team then asked members to share what they learned about each other and what stood out while listening and learning? Did anything surprise anyone?

- Everyone sincerely believes in the constituencies they represent
- Current system disproportionately impacts communities of color, expressed frustration about limited opportunities to address effect historic policies continue to have on individuals, families, and communities. Shared personal story noting that individuals who are incarcerated may also be victims of crimes. See need for increased communication about potential resentencing due to changes in laws.
- See agreement among members that the system is not working and not benefiting either victims or defendants. System reforms will require recognition of the dignity and humanity of victims.
- Need to see the humanity and trauma of our incarcerated individuals as well.
- Victims need to be better supported and better informed of the nuances of legal changes and the associated retroactivity of legal changes.
- This conversation is about taking abstract concepts and applying to specific cases and individuals. This is very real, especially for the incarcerated and victims and their families. It is a difficult subject for that reason.
- Victims are informed, but this is a really hard process. Contacting victims due to resentencing opens wounds that are extremely difficult. Victims are hurt and confused by retroactive resentencing. They have to live with very personal, often life or death situations where any retroactivity can put them in danger. Prison should be the last resort but there are crimes in which the impact to the community requires prison time as a part of accountability. If a sentence is unconstitutional, that needs to change, otherwise the victim's constituencies are not supportive of retroactivity.
- Much of this conversation has centered on the most extreme cases of harm and trauma. Encourage group to look at the cases that could warrant retroactive look backs. For example, addressing the sentencing disparities between crack cocaine and powder

cocaine that came largely down to racial discrimination. At least some retroactivity is the just thing when offenses do not deal with breaking promises for justice with victims.

- Encourage the Task Force to consider the collateral consequences of incarceration – such as the financial impact on families and the state.
- The vast majority of cases are settled by an agreement where all parties are giving something up. Those negotiations and discussions are based on the laws in place at that time and prosecutors make those decisions in close discussion with the victims. If laws changed, then should the full case get reopened and then negotiation restart based on the new legal framework? If the negotiations should then be reopened, this adds layers upon layers of complexity.
- Racial disparity and disproportionality in the NE corner of the grid: Black individuals make up 4% of the population of Washington, yet 17% of incarcerated individuals are Black and 37% percent of individuals who are serving Life Without Parole are Black.
- There are vast disproportionalities among victims and survivors of crime as well: 7% of the King County population is Black but comprise 56% of the victims of violent crime in King County.
- A member said that the Task Force would not be having these conversations if people did not choose to commit crime and harm people. Prosecutors look at behavior, evidence, and the law. Prosecutorial power disparity is not something they see.
- If a person's incarceration no longer serves the interest of justice or community safety, then why should the state continue to dedicate resources to their ongoing incarceration? Those resources could be allocated elsewhere in support of community safety.
- The disproportionality in the system needs to be addressed, prosecutors have a lot of power but so do judges or defense attorneys—the whole system should be examined. The system should be more centered on individuals, considering the harm experienced by victims/survivors and accountability for the defendant.
- Tempting to place the blame for a systemic issue at the feet of one group or another, however, it is a societal problem not just a criminal justice issue problem. Individuals in the system do good work, and all have a role to play in doing the hard work of addressing societal challenges.
- The decisions of who to charge, what to charge and what not to charge represent the imbalances of discretion in the sentencing system. Policy and implementation changes can be made moving forward, but retroactivity is essential to fully recognizing historic disparities.
- Encourage group not to frame discussion about retroactivity as deciding between crimes that have victims and crimes that do not have victims. Is there resentencing process that gives value to the victims and the defendants?
- Retroactivity was not a part of the discussion when changes being considered to the statute of limitations for reporting sexual assault offenses. This had largely negative effects for victims but little consideration was given to their perspective. Now the Task Force is talking about retroactivity for defendants—see an imbalance and gender bias of where we're willing to consider retroactivity.

**CLOSING REFLECTIONS:**
The facilitation team then asked members to share reflections about what members share in common:

- It is a broken system that has failed victims and defendants.
- This is complex and there are misuses of power by all.
- There is interest in a person-centered system and a desire for harm reduction.
- The system has suggested there is a zero-sum between victims and defendants where one's benefits must come from the expense of another—see opportunity to rethink that assumption.
- There is a common interest in reducing harm.
- A lookback on sentencing would need to also include families and victims.
- There are so few resources for victims.
- There isn't a one-size fits all approach to retroactivity.
- See a need for accountability.
- This is an extremely complex conversation with variables and factors we all cannot fully grasp. There's a lot of hurt and frustration from these conversations.

Before adjourning the meeting, the facilitation team reminded the group that they have been appointed, and it is no easy feat to do the work of representing their constituencies. Thank you for doing that work.

**APPENDIX A: CSTF MEMBERS/ALTERNATES ATTENDANCE – October 20th, 2022**

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