

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Table of Contents

Sentencing Grid Research Proposal for Data-Driven Decision Making	3
RECOMMENDATION #1 (Consensus)	3
Post-Conviction Review	3
POTENTIAL RECOMMENDATION #2 (No Consensus – different perspectives will be documented in Dec 2020 report and conversation, specifically around retroactivity will continue in 2021 and be added to Task Force 2021 Work Plan.	3
Diversion and Alternatives to Incarceration	4
RECOMMENDATION #3 (Consensus)	4
RECOMMENDATION #4 (Consensus)	5
RECOMMENDATION #5 (Consensus)	5
RECOMMENDATION #6 (Consensus)	5
RECOMMENDATION #7 (Consensus)	6
RECOMMENDATION #8 (Consensus)	6
Reviewing and Consolidating Statutes and Systems	6
RECOMMENDATION #9 (Partial Consensus)	6
RECOMMENDATION #10 (Consensus)	7
RECOMMENDATION #11 (Consensus)	7
Pre-Sentencing Investigations	7
RECOMMENDATION # 12.1-12.6 (Consensus)	8
Earned Early Release	9
NEW RECOMMENDATION #TBD (Consensus)	9
POTENTIAL RECOMMENDATION #13 (Dec 3rd Consensus Deliberation	9
Enhancement Reforms	10
POTENTIAL RECOMMENDATION #14	10
RECOMMENDATION #15 (Consensus)	12
RECOMMENDATION #16 (Consensus)	12
RECOMMENDATION #17 (Consensus)	14
Reform Criminal History Score	14
POTENTIAL RECOMMENDATION #18	14
Reforming Particular Sentences	15
RECOMMENDATION #19 (Consensus)	15

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Relief from Legal Financial Obligations	15
RECOMMENDATION #20 (Tentative Consensus) (November 19 th Consensus on the concept, small work group updating language and will discuss on Dec 3rd; Task Force reviewed at 7.9.20 meeting).....	15
RECOMMENDATION #21 (Consensus)	16
RECOMMENDATION #22 (Consensus)	16
RECOMMENDATION #23 (Consensus)	16
RECOMMENDATION #24 (Consensus)	17
POTENTIAL RECOMMENDATION #25 (Partial Consensus) (Dec 3 rd Consensus deliberation on a revised first bullet; November 19 th Consensus Deliberation, consensus on 2 nd and 3 rd bullet, work group to address 1 st bullet and will discuss on Dec 3rd;	17
RECOMMENDATION #26 (Consensus)	18
POTENTIAL RECOMMENDATION #27 (Dec 3 rd Consensus Deliberation; November 19 th Consensus Deliberation, work group to revise and bring back for Dec 3 rd ,	18
Community Supervision	19
RECOMMENDATION #28 (Consensus)	19
RECOMMENDATION #29 (Consensus)	20
RECOMMENDATION #30 (Consensus)	20
RECOMMENDATION #31 (Consensus)	20
RECOMMENDATION #32 (Consensus)	21
Roles for Victims and Survivors in Release and Reentry.....	21
RECOMMENDATION #33 (Consensus)	21
RECOMMENDATION #34 (Consensus)	22
RECOMMENDATION #35 (Consensus)	22
RECOMMENDATION #36 (Consensus)	23
RECOMMENDATION #37 (Consensus)	24
Rehabilitative Services and Programs	24
RECOMMENDATION #38 (Consensus)	24
RECOMMENDATION #39 (Consensus).....	24
RECOMMENDATION #40 (Consensus)	24
RECOMMENDATION #41 (Consensus)	25
RECOMMENDATION #42 (Consensus)	25
RECOMMENDATION #43 (Consensus)	26

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

RECOMMENDATION #44	(Consensus)	26
RECOMMENDATION #45	(Consensus)	26
RECOMMENDATION #46	(Consensus)	27
RECOMMENDATION #47	(Consensus)	27
RECOMMENDATION #48	(Consensus)	27
RECOMMENDATION #49	(Consensus)	28
Proposal for Data-Driven Decision Making		29

DRAFT

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Background

In 1981, the Washington State Legislature enacted the Sentencing Reform Act ("SRA"), which established the Sentencing Guidelines Commission (SGC) and directed it to recommend to the Legislature a determinate sentencing system for adult felonies. The purpose of the new sentencing guidelines system was to ensure that individuals who commit similar crimes and have similar criminal histories receive equivalent sentences. Every year since the SRA took effect, the Legislature has made changes to state sentencing laws, resulting in a system of immense complexity. Errors in sentencing have resulted in negative results and rising costs. In 2018, with a focus on best practices and simplification, the Legislature directed the SGC to review the SRA and provide a report to the Legislature.

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

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

Sentencing Grid Research Proposal for Data-Driven Decision Making

RECOMMENDATION #1 (Consensus) (Task Force consensus reached at 9.10.20 meeting)

Washington State Institute for Public Policy (WSIPP) and the Washington State Forecast Council to gather detailed information on Washington's current sentencing grid using historical data and then assessing the possible impacts of changing components of the grid using the same set of historical data. Comparisons could be made between the current grid and two potential grid options put forth by the Sentencing Grid Subgroup. The information on the current grid and hypothetical scenarios can help identify which options best meet the *desired outcomes* and may also help identify where additional changes are necessary to meet the *desired outcomes* (see Attachment A. for draft research proposal).

Post-Conviction Review

POTENTIAL RECOMMENDATION #2 (No Consensus – different perspectives will be documented in Dec 2020 report and conversation, specifically around retroactivity will continue in 2021 and be added to Task Force 2021 Work Plan. (Oct. 15th Consensus Deliberation – no consensus; Task Force reviewed 8.6.20 meeting)

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Establish mechanism for Post-Conviction Review (with Task Force continuing to monitor parallel efforts), noting the need to deal with retroactivity.

- a) **Reduces complexities and errors:** Both post-conviction review and retroactivity of legislative changes provide uniformity to sentences by applying a single rule to all sentences.
- b) **Improves effectiveness of the sentencing system:** Post-conviction review and retroactive application of changes allow current thinking on effective sentencing to apply to all sentences. They allow for correction of past misjudgments and injustices. Post-conviction review supports rehabilitation by providing people with additional incentives to change. Post-conviction review and retroactivity also positively impact efforts to address historical racial, ethnic, and socio-economic disparities in sentencing.
- c) **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation. Multiple scholars have documented the negative impact of incarceration on individual and community health and stability (see Kirk & Wakefield 2018 for a review of the literature). Furthermore, researchers found high rates of incarceration in the U.S. “are associated with declining levels of neighborhood informal social control and collective efficacy (Clear 2007, Drakulich et al. 2012) and increasing levels of cynicism of the law among neighborhood residents (Kirk 2016). In turn, these conditions [likely] contribute to elevated rates of crime and recidivism (Kirk 2015, Kirk & Papachristos 2011)” (Kirk & Wakefield, 2018: p. 175).
- d) **Task Force Input:** *Task Force members identified the need to distinguish between those who have served a significant sentence and those who only seek to have enhancements modified. Concern also expressed about revisiting plea agreements. Members noted the existence of the Clemency & Pardon Board and the Independent Sentencing Review Board, expressing significant reservations about the effectiveness of those entities.*

Diversion and Alternatives to Incarceration

RECOMMENDATION #3 (Consensus) Oct. 15th Consensus

Provide incentives for counties to increase the use of alternatives to incarceration (potentially by establishing a statewide Justice Reinvestment Account via Treasury, for which funds saved can be allocated to counties for proven approaches), modelling such programs on proven offerings (see WSIPP [Inventory of Evidence-Based, Research-Based, and Promising Programs for Adult Corrections](#)) and considering “upstream” (pre-court) options such as education/assistance initiatives, probation, and other community-based responses.

- a) **Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences.
- b) **Improves effectiveness of the sentencing system:** Gives judges another tool to provide individualized sentencing outcomes based on the characteristics and circumstances of the case. Alternatives and diversions are less expensive than confinement.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- c) **Promotes/improves public safety:** Research supports use of diversions and non-confinement alternatives.

RECOMMENDATION #4 (Consensus) Oct. 15th Consensus

Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts—recognizing the need for accountability for severe harm. See [RCW 2.30.030](#) for current eligibility requirements.

- a) **Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences.
- b) **Improves effectiveness of the sentencing system:** Gives judges another tool to provide individualized sentencing outcomes based on the characteristics and circumstances of the case. Alternatives are less expensive than confinement. *For list of therapeutic court types and locations, see [Washington State Courts webpage](#).*
- c) **Promotes/improves public safety:** Research supports use of diversions and non-confinement alternatives.

RECOMMENDATION #5 (Consensus) Oct. 15th Consensus

Require an equity analysis of the impacts of proposed changes to the criminal justice system to assess the potential to exacerbate racial, socio-economic, or geographic disparities before such changes are adopted.

- a) **Reduces complexities and errors:** Racial, socio-economic, and/or geographic disparities in the criminal justice system are inequities that should be alleviated to the greatest extent possible. An analysis of such impacts before proposed changes to the system will help address these on-going errors.
- b) **Improves effectiveness of the sentencing system:** Information regarding how proposed changes will impact racial, socio-economic, or geographic disparities will promote effectiveness by reducing or eliminating such inappropriate disparities.
- c) **Promotes/improves public safety:** This analysis will enhance the legitimacy of the criminal justice system in the eyes of the public, will ensure that people are treated more equitably, and will address historical disparities that have resulted in disparate outcomes in the criminal justice system that have disproportionately affected certain peoples and communities.

RECOMMENDATION #6 (Consensus) Oct. 15th Consensus

Adopt treatment-oriented public health options to address problematic drug use, including expansion of therapeutic interventions to respond to offenses associated with drug use—recognizing the need for accountability for severe harm.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Addresses the underlying needs and causes that perpetuate criminal activity.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- c) **Promotes/improves public safety:** Supports the long-term health and safety of communities by addressing substance abuse disorders that, when untreated, can lead to criminal activity. Directly supports the health and wellbeing of those convicted.

RECOMMENDATION #7 (Consensus) Oct. 15th Consensus

Identify and implement public health options for addressing conduct that endangers public safety to which mental health or cognitive conditions or brain injuries are a factor. An important step toward realizing this goal would be to establish a mental health sentencing alternative.

NOTE: consider creating a new mitigating factor in [RCW 9.94A.535](#) that recognizes that mental health, cognitive conditions, or brain injuries may reduce culpability for criminal conduct (*significant but not unanimous Task Force support*).

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Addresses the underlying needs and causes that perpetuate criminal activity.
- c) **Promotes/improves public safety:** Supports the long-term health and safety of individuals convicted of crimes as well as communities by treating the underlying cause of anti-social behaviors.

RECOMMENDATION #8 (Consensus) Oct. 15th Consensus

Create meaningful opportunities for pre- and post-arrest diversion, resentencing, and record sealing for individuals who committed crimes due to coercion by an abuser, and against or at the behest of an abuser.

- Allow prosecuting attorneys and judges to reduce prison sentences and redirect sentencing from incarceration to community-based programs, which has proven far more effective in rehabilitating survivors;
 - Permit currently incarcerated survivors to apply for resentencing and earlier release due to their prior victimization; and
 - Create process for record sealing.
- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:** Domestic violence and incarceration rates are highly linked, as over 90 percent of incarcerated women have experienced physical or sexual violence in their lifetime. With the understanding that many women have gone to prison for defending themselves against their batterer or were coerced into illegal activity by their abuser, this would take a step toward ending this cycle of violence and incarceration, and places the burden on the batterer rather than the victim.

Reviewing and Consolidating Statutes and Systems

RECOMMENDATION #9 (Partial Consensus) Nov. 5th

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Request the SGC to develop a proposal to move all statutes associated with felony criminal penalties from Chapter 69.50 RCW to Chapter 9.94A RCW. At a minimum, this proposal should also include:

- a review of drug sentences and recommendations to reduce reliance on punitive sanctions and restructure outcomes to prioritize a therapeutic model for associated drug offenses.
 - **Note: Not in consensus on this second bullet: a review of reforms to reduce or eliminate criminal penalties for problematic drug use, particularly felony possession.**
- a) **Reduces complexities and errors:** Currently sentencing provisions exist in in both Chapter 69.50 and Chapter 9.94A RCW. This proposal would centralize all criminal sentencing provisions within the Sentencing Reform Act to eliminate redundancy and reduce the likelihood of errors.
 - b) **Improves effectiveness of the sentencing system:** Centralized sentencing provisions makes it easier to assess the full scope of applicable statutes at sentencing.
 - c) **Promotes/improves public safety:** Helps ensure that sanctions are accurately determined. Therapeutic models for treating individuals convicted of drug offenses may reduce recidivism and subsequent threats to public safety.

RECOMMENDATION #10 (Consensus) Nov. 5th Consensus

Request the SGC to develop a proposal to consolidate all statutes associated with felony criminal penalties into Chapter 9.94A RCW.

- a) **Reduces complexities and errors:** Currently sentencing provisions exist in multiple places throughout the RCW. This proposal would centralize all criminal sentencing provisions within the Sentencing Reform Act to eliminate redundancy and reduce the likelihood of errors.
- b) **Improves effectiveness of the sentencing system:** Centralized sentencing provisions makes it easier to assess the full scope of applicable statutes at sentencing.
- c) **Promotes/improves public safety:** Helps ensure that sanctions are accurately determined.

RECOMMENDATION #11 (Consensus) Nov. 5th Consensus

Encourage court systems that coordinate or are compatible to adopt a unified filing system.

- a) **Reduces complexities and errors:** Timely access to information eliminates potential inaccuracies in sentences. Currently, each level of the court system (e.g., superior court, appellate court, and district courts) use different filing systems with varying degrees of accessibility. Even courts within the same level may employ different systems.
- b) **Improves effectiveness of the sentencing system:** Many of the Task Force's potential recommendations contemplate increasing the amount of information provided to judges as they make sentencing decisions. That requires all participants (e.g., prosecutors, defense attorneys, and court personnel) to have the ability to timely and efficiently access and file information in all courts.
- c) **Promotes/improves public safety:**

Pre-Sentencing Investigations

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

RECOMMENDATION # 12.1-12.6 (Consensus) Nov. 5th Consensus

12.1 Modify statute to increase the occasions when PSIs can be requested by Superior Court judges. (**New PSI - As of January 2021** *“Unless specifically waived by the court, the court shall order the department to complete a presentence investigation before imposing a drug offender sentencing alternative upon a defendant who has been convicted of a felony offense where domestic violence has been pleaded and proven.”*)

12.2 More information earlier in the process allows for better tracking and would help judges sentence appropriately.

12.3 Relocate the duty to complete PSIs from DOC to a state-funded unit within the Superior Court. Court should work with all PSI stakeholders to reduce differences among forms and make the form inclusive to the needs of all stakeholders.

12.4 Increase cultural competency of persons conducting PSIs to reduce disproportionality, reduce subjective language, and collect as much relevant information as possible from persons of different cultures.

12.5 Remove the sentencing recommendation portion from the PSI form.

12.6 Review approaches and tools in PSI risk assessment and recommend ways to make risk assessment information uniform, accurate, and consistent, and address potential bias and/or disparities and predictability

a) **Reduces complexities and errors:**

12.1 Provides important information that can lead to more informed sentencing decisions.

12.2 *Explanation Needed*

12.3 As primary stakeholder, the Superior Court would work with other stakeholders to create a standardized PSI form that provides information used by all stakeholders. Superior Court staff have greater access to file information than DOC staff (see Recommendation #8 – Unified Court Filing System).

12.4 Helps guard against risk of bias and racial disproportionality on the information collected for the PSI and increase amount of information collected when people of different cultures are more comfortable with interviewers.

12.5 *Explanation Needed*

12.6 All risk assessment tools are not created equal and use of tools varies by county/agency; staff training in assessment outcomes is often not current and impacts tool fidelity.

b) **Improves effectiveness of the sentencing system:**

12.1 Complements increase in judicial discretion; would allow judges to incorporate individual characteristics and circumstances in sentencing decision; provides important information to defense and prosecution.

12.2 Information would be helpful to judges, prosecutors and defense attorneys in time leading up to sentencing.

12.3 Current form does not provide all relevant information needed by judges. As primary stakeholder, the Superior Court would work with other stakeholders to create a standardized PSI form that provides information used by all stakeholders.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

12.4 Reduces barriers to collecting relevant information from people of different cultures as people may become more comfortable with interviewers.

12.5 Eliminates chance that DOC sentencing recommendation conflicts with the state's sentencing recommendation.

12.6 Unification around assessment tools and approaches would offer uniform, accurate, and consistent results.

c) **Promotes/improves public safety:**

12.1 Complements increase in judicial discretion; provides important information for defense and prosecution for more informed sentencing decisions.

12.2 Information would be helpful to judges, prosecutors, and defense attorneys in making more informed sentencing decisions related to crime reduction needs (e.g., should defendant get punishment, treatment, diversion, etc.)

12.3 When judges, prosecution, and defense are more informed of the characteristics and circumstances of a case, sentencing decision can be, to some degree, individualized instead of using a one-size-fits-all approach.

12.4 The increase of relevant information aids in more informed and individualized sentencing outcomes.

12.5 Keeps sentencing recommendations in the hands of those officially delegated to do so.

12.6 Consistent and accurate information and up-to-date training will result in more precise assessment outcomes.

Earned Early Release

NEW RECOMMENDATION #TBD (Consensus) *Nov. 5th Consensus*

Make enhancements eligible for earned early release and partial confinement.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:**

POTENTIAL RECOMMENDATION #13 (Dec 3rd Consensus Deliberation; Nov. 5th Consensus Deliberation, agreed to have Grid Subgroup revise and bring back for consensus on Dec 3rd; Task Force reviewed 9.10.20; SEWG reviewed 9.30.20)

ORIGINAL: Increase earned early release time to a minimum of 33% for all crimes and enhancements and increase earned early release time 50% for some crimes and apply changes retroactively.

REVISED PROPOSAL: The Legislature should review earned early release time and consider increasing the percentage and doing so in a way that provides greater simplicity and consistency in earned early release calculations.

*Nov 5th meeting notes: *Task Force agreed to have Grid Subgroup continue working on and to bring back to the Task Force for consensus deliberation on December 3rd. Grid group and Task Force to*

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

continue discussion in 2021 when discussing potential grid changes whether/how to use earned early release time as a mechanism to address sentence lengths.

- a) **Reduces complexities and errors:** System for earned early release time is currently quite complicated and has led to difficulties in calculating sentences and release dates. Furthermore, sentences have over the years become more punitive without any additional benefit. Too many people are serving sentences that should be mitigated. Minimizing complexity around earned early release time and applying the rules retroactively simplify the system and assist in rectifying current sentences where are too long and inconsistent with current best practices.
- b) **Improves effectiveness of the sentencing system:** Helps with uniformity, consistency and simplicity of sentencing and assists in correcting past misjudgments and injustices. retroactivity also positively impact efforts to address historical and existing racial, ethnic and socio-economic disparities in sentencing. Also, promotes rehabilitation and safety in prisons by encouraging and supporting all people to engage in available programming as early as possible and maintain good behavior.
- c) **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation. Multiple scholars have documented the negative impact of incarceration on individual and community health and stability (see Kirk & Wakefield 2018 for a review of the literature). Furthermore, researchers found high rates of incarceration in the U.S. “are associated with declining levels of neighborhood informal social control and collective efficacy (Clear 2007, Drakulich et al. 2012) and increasing levels of cynicism of the law among neighborhood residents (Kirk 2016). In turn, these conditions [likely] contribute to elevated rates of crime and recidivism (Kirk 2015, Kirk & Papachristos 2011)” (Kirk & Wakefield, 2018: p. 175).
- d) **SEWG Input:** *The Task Force could propose/express support for the concept of “earned” early release time, as one tool to address inordinately long sentences, recognizing potential for 2021 Legislation; Grid Subgroup continue to discuss as part of revised grid. Other points made: this impacts truth in sentencing; a set % brings simplicity; would save resources to have programming in the community rather than behind bars. Task Force Input: Needs additional information regarding how promotes public safety.*

Enhancement Reforms

POTENTIAL RECOMMENDATION #14

(Task Force agreed to be part of 2021 work plan and not Dec 2020 report at 10.1.20 meeting; Task Force reviewed 9.10.20; SEWG discussed 9.30.20)

Prohibit addition of firearms or deadly weapons enhancement to crime for which possession or use of a firearm/weapon is reflected in underlying crime. Modify [9.94A.533\(3\)\(f\)](#) and (4)(f) to read:

“[The firearm/deadly weapon] enhancements in this section shall apply to all felony crimes except the following:

- (i) *Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;*

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

(ii) *Any other offense for which possession and/or use of a firearm/deadly weapon is an element of the underlying crime.”*

OR add a new subsection that says the subsection ii above.

Additional Context: *This would match how other crimes currently get handled. Could modify firearm enhancement statute to add subsection to say enhancement does not apply when firearm is an element of underlying crime.*

9.94A.533(3)(f): *“The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;”*

9.94A.533(4)(f): *“The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;”*

- a) **Reduces complexities and errors:** By eliminating enhancements to crimes for which weapon or firearm involved, allows simplified sentencing range and more clarity about actual sentence to be served and sentence length. This would match how other crimes currently get handled. Could modify firearm enhancement statute to add
- b) **Improves effectiveness of the sentencing system:** Addition of mandatory weapons enhancement to existing serious crime for which sentence is already extensive reduces ability to accommodate sentences to individual circumstances and leads to inappropriate results in many cases. Allows for more sentencing discretion and ability to accommodate individual circumstances thereby arriving at more just sentences, while also maintaining sufficient amount of consistency by keeping sentences within range determined for underlying crime. Sentence for underlying crime already takes into consideration presence/use of weapon/firearm additional mandatory term is therefore unnecessary. Weapons enhancements have led to significant racial disparities in sentencing. Many of them have been applied to crimes for which use/possession of a firearm is already part of underlying sentence.
- c) **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation. Multiple scholars have documented the negative impact of incarceration on individual and community health and stability (see Kirk & Wakefield 2018 for a review of the literature). Furthermore, researchers found high rates of incarceration in the U.S. “are associated with declining levels of neighborhood informal social control and collective efficacy (Clear 2007, Drakulich et al. 2012) and increasing levels of cynicism of the law among neighborhood residents (Kirk 2016). In turn, these conditions [likely] contribute to elevated rates of crime and recidivism (Kirk 2015, Kirk & Papachristos 2011)” (Kirk & Wakefield, 2018: p. 175).
- d) **Task Force Input:** *Needs additional information regarding how improves public safety.*

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

RECOMMENDATION #15 (Consensus) Nov. 5th Consensus

Eliminate the protected zone enhancement ([RCW 69.50.435](#)).

- a) **Reduces complexities and errors:** The number and geographic size of protected zones often leads to overlap and can result in entire cities being subject to enhanced sentences.
- b) **Improves effectiveness of the sentencing system:** Protected zones were established as part of the War on Drugs to guard against the sale/distribution of illegal substances to minors. However, several studies have shown that such laws fail to protect youth and contribute to racially disparate sentencing outcomes (Greene, Pranis, & Ziedenberg, 2006; [Ciaramella & Krisai, 2018](#)). The geographic nature of drug-free zone laws, has often led to disparate impact, as individuals face harsher sentences based on their zip code ([Avila, 2015](#)).
- c) **Promotes/improves public safety:** The number and geographic size of protected zones often leads to overlap and can result in entire cities being subject to enhanced sentences. The proliferation of enhancement zones undermines their intended deterrent effect as individuals *are no longer incentivized to move criminal activity elsewhere when entire cities are effectively deemed protected zones (Prison Policy Institute; [Kajstura, 2014](#)). Protected zones more important in rural areas (than urban); this could be addressed by strengthening laws prohibiting sale of drugs to minors or involving minors in drug dealing. Proliferation of protected zones results in some urban areas being entirely blanketed.*

RECOMMENDATION #16 (Consensus) Nov. 5th Consensus

Firearm and Deadly Weapon Enhancements:

- Eliminate mandatory stacking of firearm and deadly weapon enhancements going forward (prospective only). Specifically, provide that multiple firearm or deadly weapon enhancements imposed for offenses (occurring after the effective date of the act) are to be served concurrently, unless the court orders the enhancements to be served consecutively, using judicial discretion.
- Eliminate the requirement for firearm and deadly weapon enhancements to be served in total confinement (prospective and retroactive), thereby subjecting that portion of a sentence to the general restrictions and requirements on confinement options.
- Eliminate the restriction on earned early release time for firearm and deadly weapon enhancements (prospective and retroactive). This will allow the Department of Corrections to implement the retroactive application of these changes for those currently incarcerated over a six-month period.
- Allow incarcerated individuals or prosecutors to petition for “de-stacking” where inordinately long sentences were given, requiring Legislative funding for the involved parties to deal with resentencing.

The following text comes from the SGC’s 2019 report:

- a) **Reduces complexities and errors:** When the SRA was implemented in July 1984, it included a sentencing enhancement for being armed with a deadly weapon. If the offense was Rape 1, Robbery 1 or Kidnapping 1, the enhancement was 24 months. If the offense was Burglary 1, the

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

enhancement was 18 months. An enhancement for 12 months was applied if the offense was Assault 2, Escape 1, Kidnapping 2 or Burglary 2 of a building other than a dwelling. As with many aspects of the SRA, these have since been modified and expanded. The deadly weapon enhancement was divided into separate firearm and deadly weapon enhancements, the list of offenses to which these two enhancements could be applied was increased and 11 other enhancements have been created for a variety of other crimes.

While some enhancements are well established, there are others that practitioners have never seen applied during their legal careers. The most frequently applied enhancements are for firearms and deadly weapons, averaging 150 sentences and 194 sentences per year, respectively (Calculated using data from the 2007–2018 Statistical Summary of Adult Felony Sentencing reports available on the Caseload Forecast Council's website).

Components of sentencing enhancements differ vastly. Some are mandatory, others are not. Some are to be served consecutively, some are not. Some include statutory language that explicitly states the enhancement time may not be reduced if the sentence exceeds the statutory maximum, while others remain silent. In addition, the rules around eligibility for good time credits differ between enhancements.

Complexity in the sentencing enhancements creates confusion for many practitioners in the criminal justice system. It caused significant problems for the Department of Corrections' computer system when calculating release dates for some incarcerated individuals who had enhancements, resulting in legislative oversight. It remains an area of concern for the agency.

Because of their mandatory nature and the ineligibility for application of earned release time, most enhancements are, at their core, mandatory minimums. Research (presented in the SGC report) has indicated that mandatory minimums limit judicial discretion, hinder individualized sentencing and can increase unwarranted disparity.

Eliminate mandatory "stacking": Stacking occurs in any situation in which a defendant is charged with multiple crimes in a single charging document, like when an offender engages in multiple robberies while armed with a pistol over the course of a night. If each robbery charge is accompanied by a firearm enhancement, the sentencing court must, upon a finding or plea of guilty, impose separate five-year terms to run consecutively to the underlying sentence and to each other. What this means is that if there are six separate robbery charges and each charge includes a firearm enhancement, the defendant faces a sentence of 30 years of incarceration that must be imposed and cannot be reduced in addition to the underlying standard range sentence. The presumption at sentencing would be that the enhancements would be served concurrently, leaving it to the judge to determine if consecutive service was warranted.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Enhancement eligible for good time as applied to the underlying offense. The calculation of good time is complex, as illustrated in the DOC example above. Applying the good time percentage to the entire sentence, as opposed to only part of it, would go a long way in simplifying the calculation.

- b) **Improves effectiveness of the sentencing system:** *see explanation in a)*
- c) **Promotes/improves public safety:**

RECOMMENDATION #17 (Consensus) Nov. 5th Consensus

Eliminate the street gang enhancement ([RCW 9.94A.533\(10\)\(a\)](#)).

- a) **Reduces complexities and errors:** This enhancement is also sometimes confused with an existing aggravating factor related to criminal street gang activity. Based on data compiled by Caseload Forecast Council this enhancement has been applied to only one sentence between FY00-FY19. Grid Subgroup members noted that the aggravator related to criminal street gang activity is what is currently used. This enhancement's extremely narrow definition makes it nearly impossible to prove, and thus is rarely, if ever, used.
- b) **Improves effectiveness of the sentencing system:** A more broadly defined, and thus more practically useful, aggravator related to criminal street gang activity already exists (see [RCW 9.94A.535\(aa\)](#)). Subgroup members noted other laws exist protecting minors from being coerced into committing a felony offense.¹
- c) **Promotes/improves public safety:**

Reform Criminal History Score

POTENTIAL RECOMMENDATION #18

(Task Force agreed to be part of 2021 work plan and not

Dec 2020 report at 10.1.20 meeting; Task Force reviewed 9.10.20; SEWG discussed 9.30.20

Remove juvenile adjudications from calculation of adult offender score and make reforms retroactive.

- a) **Reduces complexities and errors:** Calculation of offender score can be complicated and removing consideration of juvenile crimes will simplify system and treat juvenile adjudications differently than adult convictions. See [RCW 9.94A.525](#). Also, including juvenile crimes in offender scores increases likelihood of inappropriate sentences for actions taken as a juvenile when person has less culpability.
- b) **Improves effectiveness of the sentencing system:** Youth reduces a person's culpability for crimes because of cognitive and emotional development continues into a person's 20s. The law recognizes this reality in many ways, but nonetheless treats a juvenile adjudication the same as an adult conviction when determining a person's offender score. The current system does not appropriately balance juvenile adjudications and such adjudications should not be used to

¹ Facilitation Team research found these: [RCW 60.50.4015](#) Violation of the Uniform Controlled Substance Act (VUCSA) involving a minor and [RCW 69.50.406](#) says that an individual found to have supplied a minor with Schedule I, II or IV narcotics shall be charged with a Class A felony.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

determine the offender score of someone later in life. Removing consideration of these adjudications will more appropriately recognize the lack of culpability that children have early in their lives.

- c) **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation. Multiple scholars have documented the negative impact of incarceration on individual and community health and stability (see Kirk & Wakefield 2018 for a review of the literature). Furthermore, researchers found high rates of incarceration in the U.S. “are associated with declining levels of neighborhood informal social control and collective efficacy (Clear 2007, Drakulich et al. 2012) and increasing levels of cynicism of the law among neighborhood residents (Kirk 2016). In turn, these conditions [likely] contribute to elevated rates of crime and recidivism (Kirk 2015, Kirk & Papachristos 2011)” (Kirk & Wakefield, 2018: p. 175).
- d) **Task Force Input:** *Needs more information/explanation on how this would improve public safety (e.g., how specifically does it encourage rehabilitation?).* **SEWG Input:** *Potential for 2021 legislation; also would fit in Grid Subgroup deliberations. Research on this underway by Statistical Analysis Center (results due March 2021).*

Reforming Particular Sentences

RECOMMENDATION #19 (Consensus) Nov. 5th Consensus

Move crime of “failure to register as a sex offender” to a non-sex offense.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** indeterminate savings realized for both prison and jail sentences based on lower criminal history scores as sex offenses triple score against one another. So, as a non-sex offense it would single score rather than triple score.
- c) **Promotes/improves public safety:**

Relief from Legal Financial Obligations

RECOMMENDATION #20 (Consensus on concept) (November 19th Consensus on the concept, small group updating language and will discuss on Dec 3rd; Task Force reviewed at 7.9.20 meeting)

VERBIAGE FROM LAST MEETING: *Authorize courts to relieve, either in part or full, restitution payments owed to entities OR INDIVIDUALS WHO HAVE SUFFERED INSURED LOSS who HAVE NOT DIRECTLY SUFFERED LOSS are not victims PERSONS (i.e., insurance companies, state agencies) by individuals who lack the means to make payments.*

REVISED PROPOSAL: *Authorize courts to relieve, either in part or full, restitution payments owed to entities by individuals who a court determines lack the means to make payments now or in the realistic future.*

- a) **Reduces complexities and errors:** Allows the court to consider defendant’s ability to pay, allowing for individualized relief that is reflective of a person’s financial situation. After many

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

years, it can be difficult to track where restitution owed to non-individuals is going, or whether payment is even being tracked.

- b) **Improves effectiveness of the sentencing system:** Under statute, courts cannot consider ability to pay at sentencing before imposing restitution. Also, under the SRA there is no way to seek relief from principal on restitution
- c) **Promotes/improves public safety:** 12% interest rate applied to LFO while an individual is incarcerated. Current relief programs available only upon release. Reduces post-incarceration financial strain; allows people to become productive community members.
- d) **Task Force input during consensus deliberations:** Some concern over potential for lost revenue, which could theoretically be addressed via allocation from General Fund. Member/s made clear that even though a person can't make payments at one point, they may later have the means to fulfill LFO payments. Task Force members also suggested focusing on relieving payments to entities who have not directly suffered loss (or who don't have immediate proximity to suffering harm), SUCH AS INSURANCE COMPANIES.

RECOMMENDATION #21 (Consensus) Nov. 19th Consensus

Automatically waive existing non-restitution interest.

- a) **Reduces complexities and errors:** Would eliminate the need for defendant to file motion.
- b) **Improves effectiveness of the sentencing system:** Efficiency – would not require administrative time.
- c) **Promotes/improves public safety:** People return to prison because of their inability to pay LFO – providing additional financial relief options would increase community stability and decrease the cost of incarceration to the state.

RECOMMENDATION #22 (Consensus) Nov. 19th Consensus

Expand eligibility of individuals able to seek relief from LFOs to include persons who are incarcerated. Incarcerated individuals requesting relief would still be subject to the same criteria as those in the community (i.e., the court has discretion to determine whether individuals or family members are experiencing hardship). Additionally, the court could consider pausing the accumulation of interest during period of incarceration.

- a) **Reduces complexities and errors:** Currently, this process can be very confusing for people in prison who seek relief. Motion will be denied and they will never seek relief again believing they are permanently barred.
- b) **Improves effectiveness of the sentencing system:** Would allow individuals to address LFOs while still incarcerated, which could allow for improved financial situation upon release. Discretion still lies with the court.
- c) **Promotes/improves public safety:** Addressing LFOs while in prison, if relief granted, can help individual leave prison in a better financial position.

RECOMMENDATION #23 (Consensus) Nov. 19th Consensus

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Create statutory authority for courts to review and adjust or waive fines.

- a) **Reduces complexities and errors:** Reduces the likelihood of error that the amount an individual is required to pay at sentencing was either not accurate at the time or is not reflective of his/her current ability to pay.
- b) **Improves effectiveness of the sentencing system:** Currently, there is very limited affirmative statutory authority for courts to waive, reduce fines. Unlike costs, there is no specific waiver statute, even though fines can be just as problematic.
- c) **Promotes/improves public safety:** This recognizes that at some point there needs to be finality to a conviction, which allows individuals to move past the conviction and successfully reintegrate back into their communities over time.

RECOMMENDATION #24 (Consensus) Nov. 19th Consensus

Consider developing and implementing guidance for local jurisdictions to follow governing the transfer of LFOs to collection agencies.

- a) **Reduces complexities and errors:** More guidance on when and how collection agencies can collect debts would reduce complexities for debtors, who oftentimes do not know who controls their debt, how to access relief from this debt, how to access payments that are reflective of their ability to pay, etc.
- b) **Improves effectiveness of the sentencing system:** Reduce financial burden to people with LFOs who lack ability to pay whose accounts are turned over to collections. Reduces ability to continue to add fees, surcharges, costs to existing debts that are disproportionately owed by people with little or no ability to pay.
- c) **Promotes/improves public safety:** This recognizes that at some point there needs to be finality to a conviction, which allows individuals to move past the conviction and successfully reintegrate back into their communities over time.

POTENTIAL RECOMMENDATION #25 (Partial Consensus) (Dec 3rd Consensus deliberation on a revised first bullet; November 19th Consensus Deliberation, consensus on 2nd and 3rd bullet, work group to address 1st bullet and will discuss on Dec 3rd; Task Force reviewed at 7.9.20 meeting)

Address interest on restitution:

- *Change current law to give judges the discretion to impose interest on restitution, rather than it being mandatory.*
 - *Change current law to give judges the discretion to waive or suspend interest on restitution, rather than it being mandatory, based on a finding of current or likely future ability to pay.*
 - Where imposed, allow accrual of interest to begin following release from the term of total confinement.
 - Lower the current 12% interest rate.
- a) **Reduces complexities and errors:** *Need explanation*

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- b) **Improves effectiveness of the sentencing system:** Interest accrues on restitution at 12% per year from date of judgment. In some instances, allows for amounts to increase exponentially, and can serve as a disincentive to payment.
- c) **Promotes/improves public safety:** Puts people in a situation where they are able to reenter their communities without the burden of court debt so that they can be economically stable.
- d) **Task Force input during consensus deliberations:** While ensuring individual victims get made whole, it could help to develop criteria by which interest could get relieved by judges, (e.g., consider giving discretion to waive interest on restitution to individuals who have insurance coverage, along with insurance companies).

RECOMMENDATION #26 (Consensus) Nov. 19th Consensus

Address the courts statute of limitations to enforce collection of LFOs.

- Reduce available time for which the court has jurisdiction to collect LFOs.
- Jurisdiction will be retained where restitution is owed and there is a willful failure to pay.
- a) **Reduces complexities and errors:** Under SRA, court has jurisdiction to collect LFOs until paid in full. Could reduce complexity by eliminating cases that are several years or decades old instead of ongoing tracking.
- b) **Improves effectiveness of the sentencing system:** Would allow for elimination of old accounts where person lacks ability to pay yet has completed all other conditions of sentence.
- c) **Promotes/improves public safety:** This recognizes that at some point there needs to be finality to a conviction, which allows individuals to move past the conviction and successfully reintegrate back into their communities over time.

POTENTIAL RECOMMENDATION #27 (Dec 3rd Consensus Deliberation; November 19th Consensus Deliberation, work group to revise and bring back for Dec 3rd; Task Force reviewed at 10.1.20 meeting)

If and when alternate funding for victim services can be identified and provided, eliminate mandatory nature of the Victim Penalty Assessment (VPA) such that:

1) the court be given discretion to impose the VPA at sentencing based on a person's ability to pay, and
2) the court be given the discretion to waive the VPA post sentencing if an individual later lacks the ability to pay. This waiver opportunity should apply retroactively to previously imposed VPAs and other mandatory LFOs that were prospectively amended in 2018. Certain LFOs are mandatory. For these LFOs, the Legislature has divested the sentencing court of any ability to consider a defendant's ability to pay, thus these LFO must be imposed.

3) VPAs do not get "stacked"

Input during consensus deliberations: concern over retroactivity, with desire to see recent data (as of 2004, ~29% of VPA funds in WA ever get collected). Member/s cannot support this without identification of alternate funding for victim services. Funding should not depend on the number/volume of convictions obtained. Member objected to retroactive element, suggesting an impartial study (e.g. by UW) or more recent data.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- a) **Reducing sentencing implementation complexities and errors:** Complexities ensue when courts order LFOs that people do not have the ability to pay. Under those circumstances, there is no purpose to imposing the LFOs because they cannot promote rehabilitation or accountability, it only serves to punish a persons' poverty and make it impossible for a person to get out from under their conviction(s) and successfully reintegrate back into the community. Moreover, these LFOs will remain on the books indefinitely, meaning the case remains open, adding to the administrative burden of the courts as open accounts where people cannot afford to pay continue to increase.
- b) **Improving the effectiveness of the sentencing system:** Ensures proportional sentencing – LFOs people receive should be reflective of their ability to pay. A mandatory LFO that cannot be waived, modified, or converted at a later date amounts to a lifetime of punishment for people who lack the ability to pay. There should be safety nets in place to ensure revisiting of previously imposed sentences if there is a change in circumstances that prevent ability to pay.
- c) **Promoting and improving public safety:** As mentioned in other recommendations around LFOs, public safety includes the ability for a person to eventually access finality to a sentence and put the conviction behind them. As long as the LFOs remain in place, including mandatory LFOs, the court retains jurisdiction to arrest and bring the person before the court to explain his or her ability to pay. This can be an ongoing cycle that can have counterproductive results, including negative impacts on reentry.
- d) **Task Force Input:** In 2018, the Legislature passed [HB 1783](#), which made changes to several mandatory LFOs: 1) the DNA collection fee, which previously was imposed in every felony judgment and sentence, was amended so that it now can only be imposed one time; 2) the \$200 criminal filing fee, which now cannot be imposed if the person is indigent at the time of sentencing; and 3) the jury demand fee, which also now cannot be imposed if the person is indigent at sentencing. However, the victim penalty assessment ([RCW 7.68.035](#)) remains a mandatory LFO that must be imposed when anyone is convicted in a superior court. For felony and gross misdemeanor convictions, the VPA is \$500; for misdemeanors, the amount is \$250. The VPA cannot be waived, modified, or converted, meaning that indigent persons have no way of addressing this assessment. In many counties, the VPA can be the sole source of LFOs owed on a conviction, and if a person has multiple convictions, the likelihood of payment becomes even less likely as the \$500 VPAs stack up. The VPA is not restitution. It is imposed on every person convicted of a crime regardless of whether the crime involved a victim.



Community Supervision

RECOMMENDATION #28 (Consensus) *Oct. 15th Consensus*

Develop and implement a formal motivational and coaching focused supervision model, which includes trauma informed care and core correctional practices and allows for a more responsive and individualized case management approach to facilitate successful transitions and reentry to the

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

community. This supervision model should consider staffing needs, caseload, and program/service delivery, including how community corrections officers dress during routine home and work checks. Because addressing liability concerns will be an important element of any new supervision model, parties directly affected should address this issue and keep the Task Force updated on their work.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Focusing correctional and reentry programming and practices on these needs [thinking patterns, substance addictions, etc.] can help build a roadmap for creating individualized case plans and identifying interventions that will be most effective in reducing recidivism.” CSG Reentry Matters, 2018.
- c) **Promotes/improves public safety:** Opportunity to refocus and reframe DOC work to align a supervision model to research from the Sentencing Guidelines Commission. Allow flexibility to respond to specific individual needs. First year of release is a critical time.

RECOMMENDATION #29 (Consensus) Oct. 15th Consensus

Conduct routine home and work visits in a manner conducive to successful reentry.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:** Showing up at homes and workplaces with highly visible external bulletproof vests, visible side arms, vests that say “DOC” or “POLICE” in huge letters, is not conducive to ongoing employment, family reunification, or successful reentry. Executing a high-risk warrant, finding someone who has absconded, or is otherwise reasonably considered to create a known and present danger, is a different situation. This is not to say officers cannot show up prepared for a dangerous scenario on routine visits, it is only saying that the models of plain clothes officers, followed by law enforcement officer’s across the world, be followed in these situations.

RECOMMENDATION #30 (Consensus) Nov. 19th Consensus

Provide early access to reentry services for all individuals prior to being released from confinement associated with felony convictions.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Early access to reentry services improves effectiveness and promotes public safety by reducing recidivism and supporting community integration.
- c) **Promotes/improves public safety:** Individuals have access to more resources when at most risk to commit another crime (greatest risk of recidivism in first 3 months following release from jail; and similar risk within first year of release for prison – [SGC, 2019](#)).

RECOMMENDATION #31 (Consensus) Oct. 15th Consensus

Supervision (including eligibility, duration, and sequencing and intensity of requirements/programs) should be based on an individual’s Risk Needs Responsivity (RNR) and research and evidence-based

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

practices and not solely on their conviction(s).

- a) **Reduces complexities and errors:** Courts have limitations regarding who can receive supervision at sentencing (based on offense), then DOC has limitations on who can actually be supervised. RNR approach would allow the interventions and services to match individual need and risk and provide opportunities to reassess need and risk.
- b) **Improves effectiveness of the sentencing system:** [SGC Report \(2019\)](#): “WSIPP’s cost-benefit data shows RNR supervision strategies can reduce technical violations by 16% and provide a benefit of more than \$8,000 per person after costs.” WSIPP is conducting an evaluation of WA’s RNR program. Report will be released June 2020.
- c) **Promotes/improves public safety:** By reducing recidivism and supporting community integration.

RECOMMENDATION #32 (Consensus) Nov. 19th Consensus

Simplify tolling of supervision terms to provide clarity and transparency regarding end dates for supervision and access to reentry services. Terms of supervision shall be tolled for:

- Any period of time when an individual has absented themselves from supervision without the prior approval of the entity in whose custody the individual has been placed and during any period for which a Bench Warrant has been issued as specified by the court or a Secretary’s Warrant has been issued;
 - While an individual is serving confinement time as part of the original sentence; and
 - Any period of time in confinement for a subsequent felony conviction (including pre-sentence confinement as confirmed by the detaining facility).
- a) **Reduces complexities and errors:** Tolling information not easily available through data systems and sentence recalculation is complex. If tolling was simplified majority of errors would be eliminated.
 - b) **Improves effectiveness of the sentencing system:** Simplified tolling events will enhance transparency so individuals have a better understanding of when they are on/off supervision and when supervision will end. Provides “truth in sentencing” and a transparent end date for supervision and access to reentry services.
 - c) **Promotes/improves public safety:** see b (above).

Roles for Victims and Survivors in Release and Reentry

RECOMMENDATION #33 (Consensus) Oct. 15th Consensus

Create new, or enhance existing, notification processes to ensure timely, accessible, clear, transparent, and meaningful notifications for all named victims when someone is released into the community or transferred to work release, either via local authorities or Department of Corrections.

Specific suggestions:

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- There must be an option to opt in or out of notification at any stage of the criminal justice system process;
 - Written notices must be in plain language without legal jargon;
 - Written notices must be professionally translated by certified interpreters into the victim/survivor's first language;
 - Verbal communication must be accompanied with a certified interpreters or qualified interpreter in cases when a certified interpreter is not available;
 - There must be notification options via mail, email, text or a phone call;
 - When the information is available, named victims must receive notification at least 90 days prior to a transfer to a work release facility, release to the community or other jurisdiction, addresses being investigated for release of sex offenders, or escorted leave. When information is not available 90 days prior, notification will be sent to named victims at the earliest possible date to enable adequate victim safety planning. Victim notification requirements should not lead to delay in release from incarceration or supervision;
 - Notification must be sent in multiple formats with references to a list of resources including local victim agencies, restorative justice opportunities, and clarity about hearings (see more below); and
 - DOC victim services advocates must be included in the notification process and public disclosure exceptions should be expanded to cover them.
- a) **Reduces complexities and errors:** Changing this process will increase likelihood of receipt of the notification and ensuring that it's meaningful for named victims.
 - b) **Improves effectiveness of the sentencing system:** see a (above).
 - c) **Promotes/improves public safety:** Named victims need sufficient notice to allow opportunity to move, make safety plans etc. Victim/survivor safety is an essential part of reentry.

RECOMMENDATION #34 (Consensus) Oct. 15th Consensus

Expand opportunities and accessibility to culturally relevant, community-based supports outside of Crime Victims' Compensation (CVC) for victims and their families. Programs and resources could include therapy, case management, moving costs if needed, flexible financial assistance, support creating safety plans, emotional support maps, and wellness resources.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Support for victims and their families can prevent crime and increase satisfaction in their experience with the criminal justice system.
- c) **Promotes/improves public safety:** See b (above). Victim/survivor safety is an essential part of reentry.

RECOMMENDATION #35 (Consensus) Nov. 5th Consensus

Expand the opportunity for victims to be informed at the time of sentencing about the existence of the Facilitated Dialogue process and their right to request such a meeting if that would aid in their healing. Allow community-based organizations to facilitate dialogue processes when a person is incarcerated in

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

a local jail, on work release, on community supervision or living in the community. Expansion of dialogues would require that:

1. The court of conviction is encouraged to modify no contact orders to allow for a one-time facilitated meeting and/or the delivery of a letter which, if the person is under DOC supervision or total confinement, has been processed through the DOC Accountability Letter Bank and notifies Department of Corrections and DOC automatically temporarily lift prohibited contact order for the discrete purpose of restorative justice dialogue at a survivor's request; The name and credentials of the individual(s) facilitating the dialogue will be specified in the motion.
 2. A request to modify a no contact order or condition on a Judgment and Sentence should only be made by a victim or a victim advocate after consultation with a victim. A victim should never be approached on behalf of the person who offended against them. All VOD processes should only be initiated at the request of the victim.
 3. Provide resources and facilitation training/capacity building for community-based organizations to facilitate these processes through coordination with the Department of Corrections or local jurisdictions. Develop a system of oversight to assure that facilitators are adequately trained in domestic violence and familial sexual assault dynamics, victim sensitivity and specific Victim/Offender Dialogue Facilitation.
- a) **Reduces complexities and errors:** Currently, VOD is only available only while an individual is in total confinement. The opportunity to have a one-time structured, facilitated meeting with the person reentering may assist the victim(s) with the reentry transition. It provides the person who experienced harm an opportunity to ask questions that only the responsible party can answer, to offer forgiveness, or to describe the impact of the harm and be witnessed in that impact. This process can ease the transition to reentry and aid in the development of plans. Facilitated Dialogue Meetings held while someone is in a local jail or in the community should have specific safety measures in place to protect victims.
 - b) **Improves effectiveness of the sentencing system:** National data suggests VOD can improve satisfaction of the process, especially in cases of serious crimes.
 - c) **Promotes/improves public safety:** Facilitated dialogues can ease the transition of reentry for incarcerated individuals and victims and survivors; increase satisfaction in the process, and aid in the development of reentry plans.

RECOMMENDATION #36 (Consensus) Oct. 15th Consensus

Increase clarity and purpose for victim testimony during sentencing and release decisions: Communicate clear expectations for victim testimony and impact statements and how that information will be considered. This means:

- For notification in the case of release or potential release, named victims should be notified of opportunities to communicate their needs related to reentry conditions and receive clear information on how their testimony will be used.
- a) **Reduces complexities and errors:** Will make the process more transparent for victims and increase understanding of how information they provide will be considered.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:**

RECOMMENDATION #37 (Consensus) Oct. 15th Consensus

Create pathway for domestic violence survivors who do not have an attorney to apply for a domestic violence protection order (DVPO) while in confinement in preparation for their release.

- a) **Reduces complexities and errors:** Will reduce challenges for domestic violence survivors to apply for and receive a domestic violence protection order while still incarcerated.
- b) **Improves effectiveness of the sentencing system:** Will provide increased opportunities for domestic violence survivors to have a DVPO in place upon their release.
- c) **Promotes/improves public safety:** Will provide increased opportunities for domestic violence survivors to have a DVPO in place upon their release.

Rehabilitative Services and Programs

RECOMMENDATION #38 (Consensus) Nov. 5th Consensus

Support DOC programs and policy changes that increase opportunities and accessibility for family engagement, when appropriate, during reentry planning.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:** Family engagement during reentry planning can promote healthy families and reduce recidivism. There are some circumstances when this is not advisable: i.e., no contact order, ongoing abusive relationships, certain victim circumstances, etc.

RECOMMENDATION #39 (Consensus) Nov. 5th Consensus

Amend [RCW 72.09.270\(8\)\(a\)](#) related to County of Origin (defined in [RCW 72.09.270\(8\)\(c\)](#): the individual's county of origin means the county of the person's first felony conviction in Washington) to allow: In circumstances where there will not be adverse impacts to victims or survivors, increase DOC's ability to consider factors that will increase opportunities for successful reentry and long-term support (e.g., proximity to programs, resources, family and pro-social relationships, housing, employment, etc.) when determining release locations. It will be important to ensure no county gets disproportionately impacted.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** In circumstances where there will not be adverse impacts to victims or survivors, proximity to family and programs and resources upon release can increase opportunities for successful reintegration into the community upon release.
- c) **Promotes/improves public safety:** See b (above).

RECOMMENDATION #40 (Consensus) Nov. 5th Consensus

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Support policy changes and establishment of criteria that allow individuals to maintain engagement with faith leaders, mentors, and/or volunteers following release.

- a) **Reduces complexities and errors:** Currently, DOC can make exceptions for individuals to maintain relationships post-incarceration. This recommendation supports the development of criteria/protocols for communications and interactions among volunteers, staff, and individuals post incarceration.
- b) **Improves effectiveness of the sentencing system:** Promotes successful reentry by enabling individuals to build and maintain relationships.
- c) **Promotes/improves public safety:** see b (above).

RECOMMENDATION #41 (Consensus) Nov. 5th Consensus

Continue to provide resources for the Statewide Reentry Council and the Departments of Commerce and Corrections to partner with community organizations that provide reentry services, mentorship, and credible messaging to individuals prior, during, and following release. Prioritize support to organizations that employ people with lived experience and organizations and approaches shown to produce good outcomes.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:**

RECOMMENDATION #42 (Consensus) Nov. 5th Consensus

Increase the delivery of and access to (both while individuals are incarcerated and on supervision) vocational/educational programming that has been proven effective at promoting successful reentry and connecting individuals with employment opportunities upon release. Specifically:

- Support the development of a program delivery action plan among Department of Corrections, Reentry Council, Department of Commerce, and other entities delivering vocational/educational programming such as the Washington Student Achievement Council (WSAC) and Statewide Board of Community and Technical Colleges (SBCTC) providing education for current and formerly incarcerated persons.
 - Increase funding to support the capacity and infrastructure needed to increase accessibility for vocational training and education within DOC facilities and jails.
 - Provide the necessary funding to increase the delivery and access to advanced trade/job skills training programs such as the Trades-Related Apprenticeship Coaching (TRAC) and higher education.
 - Support connections to employment opportunities.
- a) **Reduces complexities and errors:**
 - b) **Improves effectiveness of the sentencing system:**
 - c) **Promotes/improves public safety:** Investments in skills training provides pathways to employment for individuals post-incarceration.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

RECOMMENDATION #43 (Consensus) Nov. 5th Consensus

Provide resources in an equitable manner to DOC and community-based organizations to continue and expand comprehensive and individualized reentry planning. This includes:

- Planning for incarceration period and reentry;
 - Treatment for substance addictions and/or mental health services, if applicable;
 - Appropriate sequencing of programs and training;
 - Funding to support the ability of community organizations to help facilitate successful reentry programs. For example, the Depts. of Corrections and Commerce and the Reentry Council are currently administering grants to community organizations such as DADS, Tacoma Urban League, House of Mercy, Freedom Project, and Revive Reentry. These grants provide for the basic needs of people exiting, or who have recently exited correctional facilities, including but not limited to: housing, transportation, cell phone, groceries; and
 - Opportunities for engagement with family and community-based organizations (if appropriate).
- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:** Providing substance use and mental health treatment to all who need it upon system entry will increase institutional safety, productivity, and ultimately promote successful reentry and healthier families and communities.

RECOMMENDATION #44 (Consensus) Nov. 5th Consensus

Support current and ongoing efforts to develop incentives for businesses and organizations that hire formerly incarcerated individuals, including but not limited to those who complete vocational/educational programming while incarcerated.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:**

RECOMMENDATION #45 (Consensus) Nov. 5th Consensus

Support efforts to address housing concerns for individuals impacted by the criminal justice system. This includes:

- Legislative efforts to address landlord practices that exclude individuals with any arrest record or conviction record from rental housing.
- Current and ongoing efforts (among DOC, Reentry Council, Dept. of Commerce) to increase access to safe, affordable, and quality housing options for individuals upon reentry.
- Developing incentives for reentry housing providers and landlords.
- Providing housing assistance and continuing support of DOC's temporary housing program.
- Increasing opportunities for vacant buildings, units, or public land to be developed into reentry housing.
- Establishing performance-based criteria for contracts with reentry housing providers.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- a) **Reduces complexities and errors:** Will reduce complexities and barriers facing individuals as they seek to find and secure housing after release from incarceration.
- b) **Improves effectiveness of the system:** Individuals with safe and secure housing situations are better able to address other needs such as mental health and substance use treatment, employment, and healthcare.
- c) **Promotes/improves public safety:** Individuals with safe and secure housing are better able to positively reengage with their families and communities.

RECOMMENDATION #46 (Consensus) Nov. 19th Consensus

Support DOC efforts to develop and implement formal processes to prioritize rehabilitation, including:

- Staff training that prioritizes supporting successful rehabilitation and reentry.
 - Each facility working with relevant organizations to provide input in decision-making around incarcerated students' learning and/or access to programming.
 - A formal review process to review requests and decisions that impact incarcerated students and/or the organizations that support programming.
- a) **Reduces complexities and errors:**
 - b) **Improves effectiveness of the sentencing system:** Recent research indicates that education and job-training program can significantly reduce recidivism and increase post-incarceration employment and earnings. In addition to the philosophies of crime control/deterrence and retribution, our sentencing system is based on the premise of criminal rehabilitation. As central authority figures in the lives of incarcerated individuals, DOC staff can have a significant impact on rehabilitation and reentry success, which reduces recidivism
 - c) **Promotes/improves public safety:** Successful rehabilitation and reentry can reduce crime and thus improve community safety.

RECOMMENDATION #47 (Consensus) Nov. 19th Consensus

Require DOC to establish (or revise existing) clear and enforceable code of conduct for officer behavior that emphasizes respectful, equitable, and fair treatment of all individuals under DOC jurisdiction.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:** DOC identifies "improving lives" as one of four primary organizational goals. Establishing a system of metrics and accountability for officer behavior can help ensure DOC staff support individuals' rehabilitation, thus reducing recidivism and improving public safety.

RECOMMENDATION #48 (Consensus) Nov. 19th Consensus

Support DOC efforts to provide sufficient preparation and incentive for custody staff to support and prepare individuals for release and greater eligibility requirements for DOC Correctional Officers (COs), Sergeants, Lieutenants etc., seeking to become Counselors and/or Correctional Program Managers.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

- c) **Promotes/improves public safety:**
- d) **Task Force Consensus Deliberation:** *work group will draft text on how this recommendation meets the three policy goals.*

RECOMMENDATION #49 (Consensus) Nov. 19th Consensus

DOC should reevaluate policy through a process that accords equal weight and measurement to rehabilitation goals as it does to security goals.

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Rehabilitation is a central tenet of our criminal sentencing system. Currently, security concerns often outweigh any other DOC considerations and undermine or obstruct pro-rehabilitative programs, initiatives, and practices.
- c) **Promotes/improves public safety:** For DOC to fulfill its mission, the Department needs to adopt policies and practices that promote education and personal transformation as the most effective approach to safer facilities and communities.
- d) **Task Force Input from consensus deliberations:** *DOC already doing this work. Making DOC an accredited agency could address this as well as 46-48
Both this and #48 can be addressed through a higher-level shift in focus on the purpose of the system (potentially reworking the SRA), from punishment to rehabilitation.*

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

ATTACHMENT A.

Proposal for Data-Driven Decision Making

Proposal for Data-Driven Decision Making

Sentencing Effectiveness Work Group

Sentencing Grid Sub-Group

Remaining questions for sub-group:

1. Currently there are 3 classes of offenses (A, B, C) plus unranked offenses. The grid mockup had up to class D as a way to show the potential for making more offense-type distinctions within a class-based guidelines system. There are not currently class D offenses. What classification system does the group want to use on the vertical axis for a class-based grid? Would need to determine if/how to incorporate unranked offenses.
 - a. There is not currently a +/- system for adult felony sentences. We would need guidance on which offenses fall in which classification.
 - b. Can use the SGC review and proposed classifications (based on the juvenile +/- system) as a starting point.

Potential research Directions:

The current proposal for research includes gathering detailed information on the current grid using historical data and then assessing the possible impacts of changing components of the grid using the same set of historical data. Comparisons could be made between the current grid and the two potential grid options put forth by the sub-group.

The information on the current grid and hypothetical scenarios can help identify which options best meet the previously identified *desired outcomes* but may also help identify where additional changes are necessary to meet the *desired outcomes*.

Information on current grid:

Data could be gathered to examine the following:

1. Number of sentences issued within each cell of the grid
2. Average sentence within each cell on the grid
3. Range of sentences in each cell as well as proportions of sentences that are in the range, below the range, and above the range.
4. Average reduction in length of stay for mitigated sentences and average increase in length of stay for aggravated sentences, by offense seriousness level.
5. **Are there racial/ethnic or gender disparities in the use of sentencing enhancements?**
6. Assessment of average range of sentences for the 5 most common crimes in each cell
7. Amount of sentences in each guideline cell that received a disposition alternative
8. **Disparity in the outcomes for individuals across the grid?**
 - a. *Is there racial/gender/age disparity in the general distribution of individuals?*
 - b. *Is there racial/gender/age disparity in average sentences within a guideline cell?*

Assessing the impact of changes:

There are two proposed options that the group has coalesced around.

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of November 19, 2020

Grid A: two vertical axes: Zone and Class (+/- system)

Grid B: two vertical axes: Zone and Offense Seriousness Level

In order to assess the potential impact of moving forward with either grid, we could examine:

1. How many offenses would have an increase or decrease in the range of sentences on the new grid? (Relevant only for the class-based grid)
2. How many sentences would have had a potential increase or decrease on the new grid?
3. How do changes differentially affect racial/ethnic groups? Different genders? Different age groups?
4. Are there data-driven adjustments to the ranges in different cells that can reduce racial/ethnic, gender, or age disparities?
5. Where do disposition alternatives most commonly fall on the new grid? (to assess reasonable placements for new “zones”)
6. What are the potential outcomes from expanding the ranges in the guideline cells?
7. What are the potential outcomes from removing enhancements to be either a) a new, separate offense or b) moved into aggravating factors?

Other potential areas of examination:

The above questions focus primarily on the changes to the guideline rows and the width of the range in each of the individual cells. Based on the conversations from the sub-group, other potential areas of exploration include:

1. Combining felony and drug grid – additional analyses could examine the effects of eliminating the drug grid and putting those offenses back into the main felony sentencing grid.
2. Incorporating unranked offenses – how would sentences be affected if unranked offenses were incorporated into the grid?

Proposed timeline:

Draft report to Sentencing Effectiveness Grid Subgroup by March 31, 2021 (SAC report on criminal history scores should also be available).

Grid subgroup review WSIPP/CFC report and SAC report, April, 2021.

Grid subgroup decision making on final choices, May 2021.

WSIPP/CFC complete analyses on the combined/aggregate effects of final changes, June, 2021 (pending availability of additional funds).