



# Washington State Criminal Sentencing Task Force

December 2020 Report

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Prepared for:

The Washington State Governor and the Washington State Legislature

# THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON

The William D. Ruckelshaus Center is a neutral resource for collaborative problem solving in the State of Washington and the Pacific Northwest, dedicated to assisting public, private, tribal, non-profit, and other community leaders in their efforts to build consensus and resolve conflicts around difficult public policy issues. It is a joint effort of Washington State University, hosted and administered by WSU Extension, and the University of Washington, hosted by the Daniel J. Evans School of Public Policy and Governance.

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## DISCLAIMER

The following report was prepared by the William D. Ruckelshaus Center (Center) on behalf of the Washington State Criminal Sentencing Task Force. The Center's mission is to help parties involved in complex public policy challenges in the State of Washington and Pacific Northwest tap university expertise to develop collaborative, durable, and effective solutions.

University leadership and the Center's Advisory Board support the preparation of this and other reports produced under the Center's auspices. However, the information and policy recommendations contained in this report are intended to reflect the statements, opinions, and decisions of the Task Force. This information and policy recommendations do not represent the views of the universities, Advisory Board members, or the Center's staff and faculty.

# THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON

## Washington State Criminal Sentencing Task Force

### December 2020 Report

In 2019, The Legislature established the Washington State Criminal Sentencing Task Force and directed the William D. Ruckelshaus Center (Center) to facilitate its work to review state sentencing laws and provide 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.

The proviso requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 and a final report by December 31, 2020. The center's Facilitation Team provided both collaborative process design and meeting facilitation, guiding the Task Force in its work to develop the shared understanding necessary to build trust to reach consensus.

In 2019, the Task Force met monthly from September – December for full-day facilitated meetings and reached consensus on two policy recommendations, described in the 2019 Initial Report.

In 2020, the Task Force met monthly from January – August (except for March) and bi-monthly from September-December, and created working groups that met at least twice a month. From mid-October through early December the Task Force deliberated on potential recommendations, reaching consensus on 47 recommendations to improve the effectiveness of the criminal sentencing system, reduce complexities and errors, and promote and improve public safety. These recommendations described in this report represent a mix of agency policy and legislative statutory changes to address the three policy goals stated above.

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## Co-Chair Letter of Transmittal

December 21, 2020

Governor Jay Inslee

Lt. Governor Cyrus Habib  
President of the Senate

Representative Laurie Jinkins  
Speaker of the House

Senator Christine Rolfes  
Chair, Ways and Means

Senator Jamie Pedersen  
Chair, Law and Justice

Senator Jeannie Darneille  
Chair, Human Services, Reentry, Rehabilitation

Representative Timm Ormsby  
Chair, Appropriations Committee

Representative Christine Kilduff  
Chair, Civil Rights and Judiciary

Dear Governor Inslee, Senators, and Representatives,

We are pleased to submit this Report and Recommendations of the Washington State Criminal Sentencing Task Force. It has been our honor and privilege to serve as Task Force Co-Chairs since 2019, working alongside a highly dedicated and diverse group of people who have devoted countless hours of time and talent to improving Washington's sentencing system.

The following report contains 47 consensus recommendations to improve the effectiveness of the criminal sentencing system, to reduce complexities and errors, and to promote and improve public safety. These recommendations represent a mix of agency policy and legislative statutory changes to address these three policy goals. The Report also documents potential recommendations considered by the Task Force on which the group did not reach consensus. It includes a summary of the differing perspectives of Task Force members to provide information that might help in addressing these issues going forward.

In 2019, the Task Force reached consensus on two major policy recommendations, drafted into law and passed by the Legislature in 2020. These and the dozens of recommendations provided here will move the needle further toward ensuring that our sentencing system is evidence-based, aligned with current best practices, and advances public safety by both holding individuals accountable and providing them with the support and services needed for successful reentry.

While these recommendations will improve our sentencing system, much work remains to simplify the system and reduce disparities in adult felony sentencing. The Task Force established a workgroup of members possessing deep familiarity with the sentencing grid to conduct a "top to bottom" review of the grid with the depth of discussion and technical analysis needed to work through its myriad complexities.

The Task Force has agreed that proper consideration of changes to the sentencing grid requires a thorough and thoughtful assessment of the possible impacts of those changes. This will take more time than initially

# The Washington State Criminal Sentencing Task Force

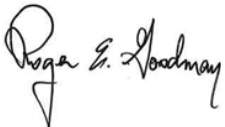
allotted to the Task Force. Therefore, we request to extend the Task Force timeline through June 30, 2022. This will allow the Task Force, which has focused most of its dialogue on topics related to but separate from the grid, to build the level of understanding needed to make informed decisions on whether and, if so, how best to structure a new sentencing grid. It will also enable the Task Force to provide guidance to the Legislature in its 2022 session, when budget and analysis will prospectively enable large-scale improvements to the system.

On behalf of the Task Force, we also must convey the urgent need for investments into the sentencing system, even at this challenging budget time. As with the changes in 2020 to supervision compliance credit and from consecutive to concurrent supervision, many up-front expenditures on recommendations in this Report promise significant future savings.

We strongly urge the policy and law makers of Washington to make the investments required for the recommendations in this Report to get enacted.

Sincerely,

Co-Chair, Representative Roger Goodman  
Washington State House of Representatives  
Chair, House Public Safety Committee



Co-Chair, Lydia Flora Barlow  
Statewide Reentry Council Representative

Co-Chair, Jon Tunheim  
Washington Association of Prosecuting Attorneys



# Executive Summary

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

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

The proviso (Appendix A) requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 (Appendix B) and a final report by December 31, 2020. The William D. Ruckelshaus Center (Center) served as a third-party facilitator of the Task Force. The Center's Facilitation Team designed the process and facilitated meetings, guiding the Task Force in its work to develop the shared understanding necessary to build trust to reach consensus.

In 2019, the Task Force met monthly from September – December 2019 for full-day facilitated meetings and reached consensus on two policy recommendations, described in the 2019 Initial Report (Appendix B).

In 2020, the Task Force met monthly from January – August (except in March 2020) and bi-monthly from September-December. The Task Force created two working groups, one focusing on Sentencing Effectiveness and the other on Reentry and Reducing Recidivism and one subgroup, focusing on the State's Sentencing Grid. These working groups enabled members to work together between monthly meetings to identify, research, and analyze potential recommendations for the full Task Force to consider during 2020. Working Groups met at least twice a month and the Sentencing Grid Subgroup met weekly.

At each Task Force meeting from May through October, one of the working groups presented potential recommendations and the Task Force provided input to help the working group refine them and if needed, bring them back to the Task Force as a "second offer" at a subsequent meeting. These groups combined generated more than fifty potential recommendations, presenting each in draft form to the Task Force prior to consensus deliberations.

From mid-October through early December the Task Force deliberated on potential recommendations, reaching consensus on 47 recommendations to improve the effectiveness of the criminal sentencing system, reduce complexities and errors, and promote and improve public safety. These recommendations, described in this report, represent a mix of agency policy and legislative statutory changes to address these three policy goals. The Report also documents potential recommendations considered by the Task Force on which the group did not reach consensus, explaining differing perspectives and, where appropriate, potential constructive steps to address the underlying issue(s).

While these recommendations will improve Washington's adult felony sentencing system, the Task Force agrees that work remains to simplify the system and reduce racial, ethnic, socioeconomic, and geographic disparities in adult felony sentencing. As reflected in Recommendation #1, the Task Force recognizes that proper consideration of changes to the sentencing grid requires a thorough assessment of the possible impacts of those changes. This will take more time than initially allotted to the Task Force. Therefore, the Task Force has agreed to continue meeting and working together in 2021.



Provided here in the Executive Summary is a list of the Task Force's 2020 recommendations. ***It is important to note that while recommendations are numbered, this numbering does not represent an ordering by priority.*** The body of the report contains additional detail of how each recommendation meets one or more of the policy goals, including links to meeting summaries.

## Task Force Members and Alternates

### Current Members

**Lydia Flora Barlow, Task Force Co-Chair** – Statewide Reentry Council

**Representative Roger Goodman, Task Force Co-Chair** – Washington State House of Representatives

**Jon Tunheim, Task Force Co-Chair** – Washington Association of Prosecuting Attorneys

**Senator Manka Dhingra** – Washington State Senate

**Senator Mike Padden** – Washington State Senate

**Representative Brad Klippert** – Washington State House of Representatives

**Sonja Hallum** – Washington State Office of The Governor

**Secretary Stephen Sinclair** – Washington State Department of Corrections

**Judge Stanley Rumbaugh**, Washington State Sentencing Guidelines Commission

**Suzanne Cook** – Statewide Family Council

**Gregory Link** – Washington Association of Criminal Defense Attorneys and The Washington Defender Association

**Chief Gregory Cobb** – Washington Association of Sheriffs and Police Chiefs

**Councilmember Derek Young** – Washington State Association of Counties

**Judge Veronica Alicea-Galvan** – Washington State Minority and Justice Commission

**Chief James Schrimpsheer** – Washington State Fraternal Order of Police

**Tarra Simmons** – Representing the Interests of Incarcerated Persons

**Nick Allen** – Representing the Interests of Incarcerated Persons

**Martina Kartman** – Representing the Interests of Crime Victims

**Lew Cox** – Representing the Interests of Crime Victims

**Judge Josephine Wiggs-Martin** – Superior Court Judges' Association

**Clela Steelhammer** – Washington State Caseload Forecast Council

### Alternates

**Keri-Anne Jetzer**, Washington State Sentencing Guidelines Commission

**Mac Pevey** – Washington State Department of Corrections

**Christopher Poulos** – Statewide Reentry Council

**DeVitta Briscoe** – Representing the Interests of Crime Victims

**Russ Brown** – Washington Association of Prosecuting Attorneys

**Sarai Cook** – Representing the Interests of Incarcerated Persons

**Nick Straley** – Representing the Interests of Incarcerated Persons

**Melody Simle** – Statewide Family Council

**Kim Gordon** – Washington Association of Criminal Defense Attorneys and The Washington Defender Association

### Former Members

**Russ Hauge** – Washington State Sentencing Guidelines Commission

**Judge Roger Rogoff** – Superior Court Judges' Association

**Chief Rafael Padilla** – Washington Association of Sheriffs and Police Chiefs

## 2020 CONSENSUS RECOMMENDATIONS

### Sentencing Grid Research for Data Driven Decision Making in 2021

#### RECOMMENDATION 1

The Washington State Institute for Public Policy (WSIPP) and the Washington State Caseload Forecast Council (CFC) will 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 will be made between the current grid and two potential grid options put forth by the Task Force. 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 desired outcomes.

### Diversion and Alternatives to Incarceration

#### RECOMMENDATION 2

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 ([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.

#### RECOMMENDATION 3

Assess and consider removing Sentencing Reform Act (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.

#### RECOMMENDATION 4

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.

#### RECOMMENDATION 5

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.

#### RECOMMENDATION 6

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.

### RECOMMENDATION 7

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.

## Review and Consolidation of Statutes and Systems

### RECOMMENDATION 8 (Partial Consensus)

Request the Sentencing Guidelines Commission (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.

### RECOMMENDATION 9

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

### RECOMMENDATION 10

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

## Pre-Sentence Investigations

### RECOMMENDATION 11

Pre-Sentence Investigations:

- Modify statute to increase the occasions when a Pre-Sentence Investigation (PSI) can be requested by Superior Court judges.
- More information earlier in the process allows for better tracking and would help judges sentence appropriately.
- Relocate the duty to complete PSIs from DOC to a state-funded unit within the Superior Court. The Courts should work with all PSI stakeholders to reduce differences among forms and make the form inclusive to the needs of all stakeholders.
- 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.
- Remove the sentencing recommendation portion from the PSI form.
- 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.

## Enhancements and Sentence Reforms

### RECOMMENDATION 12

Eliminate the protected zone enhancement ([RCW 9.94A.533\(6\)](#) and [RCW 69.50.435](#)).

### RECOMMENDATION 13

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 the application of 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 and prosecutors to petition for “de-stacking” where inordinately long sentences were given, requiring Legislative funding for the involved parties to deal with resentencing.

### RECOMMENDATION 14

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

### RECOMMENDATION 15

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

## Earned Release Time

### RECOMMENDATION 16

Make all enhancements eligible for earned release time and partial confinement.

### RECOMMENDATION 17

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

## Community Supervision

### RECOMMENDATION 18

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 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.

### RECOMMENDATION 19

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

### RECOMMENDATION 20

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

### RECOMMENDATION 21

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 practices and not solely on their conviction(s).

### RECOMMENDATION 22

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).

## Roles for Victims and Survivors in Release and Reentry

### RECOMMENDATION 23

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

### RECOMMENDATION 24

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

### RECOMMENDATION 25

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 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 DOC automatically to 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 Victim/Offender Dialogue 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.

### RECOMMENDATION 26

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.

### RECOMMENDATION 27

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.

## Rehabilitative Services and Programs

### RECOMMENDATION 28

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

### RECOMMENDATION 29

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.

### RECOMMENDATION 30

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

### RECOMMENDATION 31

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 to, during, and following release. Prioritize support to organizations that employ people with lived experience and approaches shown to produce good outcomes.

### RECOMMENDATION 32

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.

### RECOMMENDATION 33

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.

### RECOMMENDATION 34

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).

### RECOMMENDATION 35

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.

### RECOMMENDATION 36

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

### RECOMMENDATION 37

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.



### RECOMMENDATION 38

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.

### RECOMMENDATION 39

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.

## Legal Financial Obligations Relief

### RECOMMENDATION 40

Address interest on restitution:

- 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.

### RECOMMENDATION 41

Automatically waive existing non-restitution interest.

### RECOMMENDATION 42

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.

### RECOMMENDATION 43

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.

### RECOMMENDATION 44

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

### RECOMMENDATION 45

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

### RECOMMENDATION 46 (Partial Consensus)

Victim Penalty Assessment:

- Upon motion by the defendant, the court be given the discretion to reduce or waive the VPA upon a finding by the court that the defendant lacks the present and future ability to pay.
- The court be given the discretion to eliminate stacking of multiple VPAs (*multiple VPAs imposed at same time*) based on a finding that the defendant lacks the present and future ability to pay.

DNA Collection Fee and Criminal Filing Fee:

- Upon motion by the defendant, the court should be given the discretion to waive all but one previously imposed DNA collection fee.
- Upon motion by the defendant, the court should be given the discretion to waive any criminal filing fee(s) imposed at sentencing upon a finding by the court that the defendant is indigent and lacks the ability to pay.

### RECOMMENDATION 47

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.

# I.

# Introduction

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# Introduction

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. Since the SRA took effect, the Legislature has made changes to state sentencing laws, resulting in a system of immense complexity. 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 ([SGC 2019 Report](#)).

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.

The proviso (Appendix A) requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 (Appendix B) and a final report by December 31, 2020. The William D. Ruckelshaus Center (Center) served as an impartial facilitator of the Task Force. The Center's Facilitation Team designed the process and facilitated meetings, guiding the Task Force in its work to develop the shared understanding necessary to build trust to reach consensus.

## Summary of Work and Accomplishments - 2019

Prior to the first meeting, the Ruckelshaus Center Facilitation Team (Facilitation Team) spoke with each member of the Task Force to understand their desired goals, visions of success, potential issues and challenges, and ideas on how to address the three policy directives above. The Facilitation Team used that information to design a collaborative process that would help the Task Force build capacity towards consensus and create mutual understanding through the use of information sharing and thinking exercises, productive inquiry and dialogue sessions, and deliberation guided by shared principles.

In 2019, the Task Force met monthly from September – December 2019 for full-day facilitated meetings. At its first meeting, the Task Force reviewed and considered suggested ground rules and operating procedures (Appendix C), agreeing by consensus on the following decision-making process:

### **Consensus means that each Task Force member can say:**

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

*This consensus can be conveyed via a thumbs up (I fully support this option), thumbs sideways (I can live with this option for the good of the group and the process) or thumbs down (I cannot live with this option).*

*If anyone is thumbs down, the group will seek solutions that allow those thumbs to move to up or sideways.*

The Task Force discussed roles, decided each member should commit to attending all meetings, and agreed to allow members to appoint an alternate. The legislative proviso directed the Task Force to elect one legislative co-chair and one or more non-legislative member co-chairs. The Task Force agreed by consensus on the selection of three co-chairs:

- **Lydia Flora Barlow**, *Statewide Reentry Council*
- **Representative Roger Goodman**, *Washington State House of Representatives, Democratic Caucus*
- **Jon Tunheim**, *Washington Association of Prosecuting Attorneys*

The Task Force considered a schematic map of the sentencing system. This brought the recognition that in addition to reviewing Washington state's sentencing laws, a comprehensive approach would include some presentencing elements along with non-sentencing approaches to reducing recidivism and improving public safety. Members also articulated visions of what their collective accomplishments might look like, discussed definitions of key terms, and generated dozens of specific suggestions toward the group's three guiding policy goals (Appendix D).

To assist the Task Force in its decision-making, the Facilitation Team developed a set of principles based on the proviso's policy goals and the values expressed by the Task Force during the assessment interviews and the brainstorm sessions at the first two meetings. The purpose of these principles was to serve as a framework for the Task Force to use when discussing and considering potential recommendations.

The Task Force reviewed and agreed on the following **Guiding Principles**:

- Promotes and improves public safety.
- Improves the effectiveness of the system.
- Reduces complexities and errors in the system.
- Is based on evidence & data.
- Supports accountability and successful reintegration into the community.
- Considers impacts across the whole sentencing system.
- Considers past/present disparities and promotes equitable outcomes for all communities.
- Recognizes and plans for costs and fiscal impacts at all levels.
- Considers and contributes to healthy communities.
- Allows for flexibility – not "one size fits all".
- Can be supported by Task Force members' constituencies and/or member organizations.

In October 2019, the Task Force began creating a workplan and identifying potential recommendations for inclusion in the December 2019 Initial Report. After considerable dialogue, the Task Force agreed its November 18th meeting would focus on tolling, concurrent supervision, “swift & certain” response to supervision violations, and compliance credit (also referred to as Positive Achievement Time).

At the November 2019 meeting, the Task Force, with the aid of a graphic depiction of the ramifications of concurrent vs. consecutive supervision, agreed by consensus on the policy recommendation that the default for multiple supervision terms should be concurrent rather than consecutive. The Task Force also agreed by consensus on the policy recommendation of providing positive incentives to individuals on supervision (Compliance Credit), as opposed to solely a violation-and-punishment focus.

In December 2019, the Task Force considered and discussed the following potential recommendations for inclusion in the report: tolling of community supervision terms, swift and certain count, judgment and sentencing forms, and pre-sentencing investigations. After lengthy information sharing and dialogue members agreed that these topics should instead be included in the 2020 workplan to allow for more discussion time and more data/research to inform conversations.

The Task Force created a workplan for 2020, along with two working groups, one focusing on Sentencing Effectiveness (SEWG) and the other on Reentry and Reducing Recidivism (RWG). These working groups allowed for sufficient time to identify, research, analyze, and discuss and refine potential recommendations for the entire Task Force to consider during 2020. The Task Force also established a Legislation Working Group comprised of the four Legislative members and the non-Legislative co-chairs, tasked with drafting legislation on the Task Force’s policy recommendations and keeping Task Force members updated on relevant legislative topics.

Before finalizing the 2019 Interim Report, the Facilitation Team provided a draft of it to the Task Force for comments and suggested changes. After review and finalization, the Task Force adopted the Interim Report and submitted it to the Legislature and Governor (Appendix B).

## Summary of Work and Accomplishments - 2020

In January and February of 2020, the Task Force worked to learn from one another about the various actors, components, and dynamics of the sentencing system. During “guided walks through the sentencing system,” each Task Force member described how they interact with the criminal sentencing system, followed by questions and dialog. February ended up as the last opportunity to meet in person after the COVID-19 pandemic forced the cancellation of face-to-face meetings beginning in March 2020.

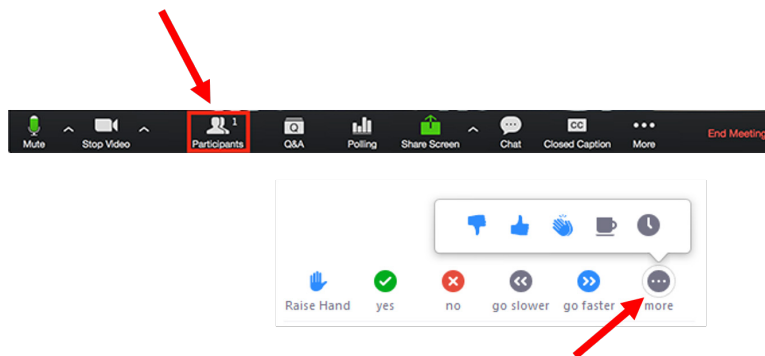
Due to the need to get the Facilitation Team and Task Force members up to speed with the tools and protocols of virtual technology, the Task Force did not meet in March. In April, the full Task Force and working groups began virtual meetings using Zoom videoconference technology. TVW also made meeting recordings available online.

April – September meetings focused on shared learning and gathering input from the Task Force on proposed recommendations crafted by the working groups. One of the goals of both working groups was to identify ways to reduce or eliminate disparities (racial, ethnic, socio-economic, and geographic) and disproportionate impacts within the sentencing system. At the April Task Force meeting, WSIPP and CFC presented on disparity and disproportionality in sentencing<sup>1</sup> and Washington State’s current disproportionality report<sup>2</sup>.

<sup>1</sup> [Sentencing Discretion and Disparity, Washington State Institute for Public Policy](#)

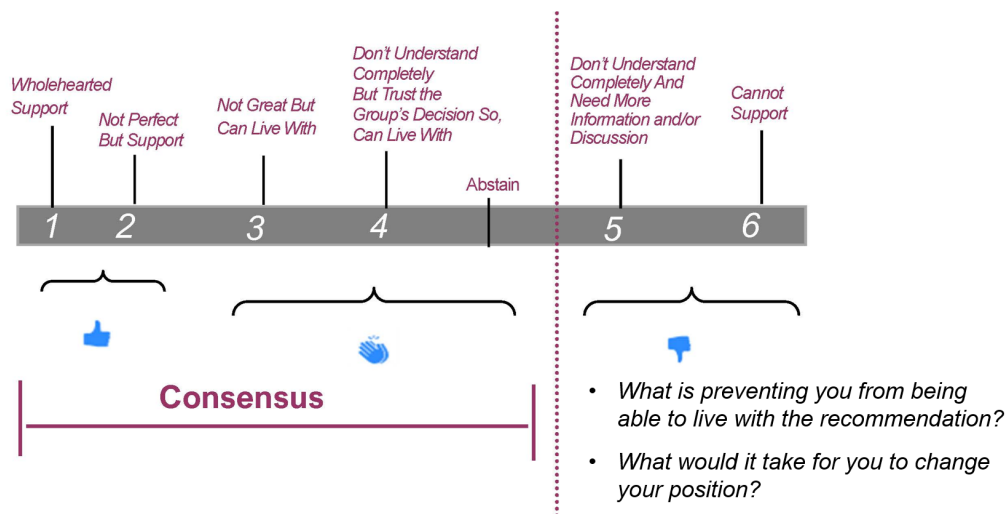
<sup>2</sup> [Adult General Disproportionality Report Fiscal Year 2019, Caseload Forecast Council](#)

Each month starting in May, one of the working groups presented potential recommendations and the Task Force gave input to help the working group refine them and if needed, bring them back as a “second offer” at an ensuing meeting. The second offer from each working group included both revised versions of ideas contained in the first offer along with new suggested changes or new potential recommendations.



Beginning in August, the Facilitation Team had the Task Force practice using Zoom icons for consensus decision-making to gauge the level of support for each recommendation. After a working group presented a potential recommendation and the Task Force discussed, the Facilitation Team asked each Task Force member to indicate whether they could “live with” the recommendation. Per Task Force operating procedures, each member (or alternate, if member was not present) showed either a “thumbs up,” a “thumbs down,” or “thumb sideways” (by using the Zoom “hand-clap” icon).

This practice, of expressing the position of the constituency each member represented (vis a vis consensus support) for each potential recommendation multiple times, allowed Task Force members to gain familiarity with all proposed recommendations. It also aided working groups in identifying which recommendations needed further work to ensure all members could be in consensus.



Early in the year, the SEWG formed a technical subgroup to focus specifically on looking at potential changes to the sentencing grid. Over the summer of 2020, the Sentencing Grid Subgroup (Subgroup) members proposed that thoughtfully recommending changes to the sentencing grid would require comprehensive information about the potential impacts of those proposed changes—along with a study of current outcomes for key variables. With Task Force approval, the Subgroup asked Lauren Knoth, Washington State Institute for Public Policy (WSIPP) and Clela Steelhammer Caseload Forecast Council (CFC) to draft a research proposal to present to the SEWG and Task Force.

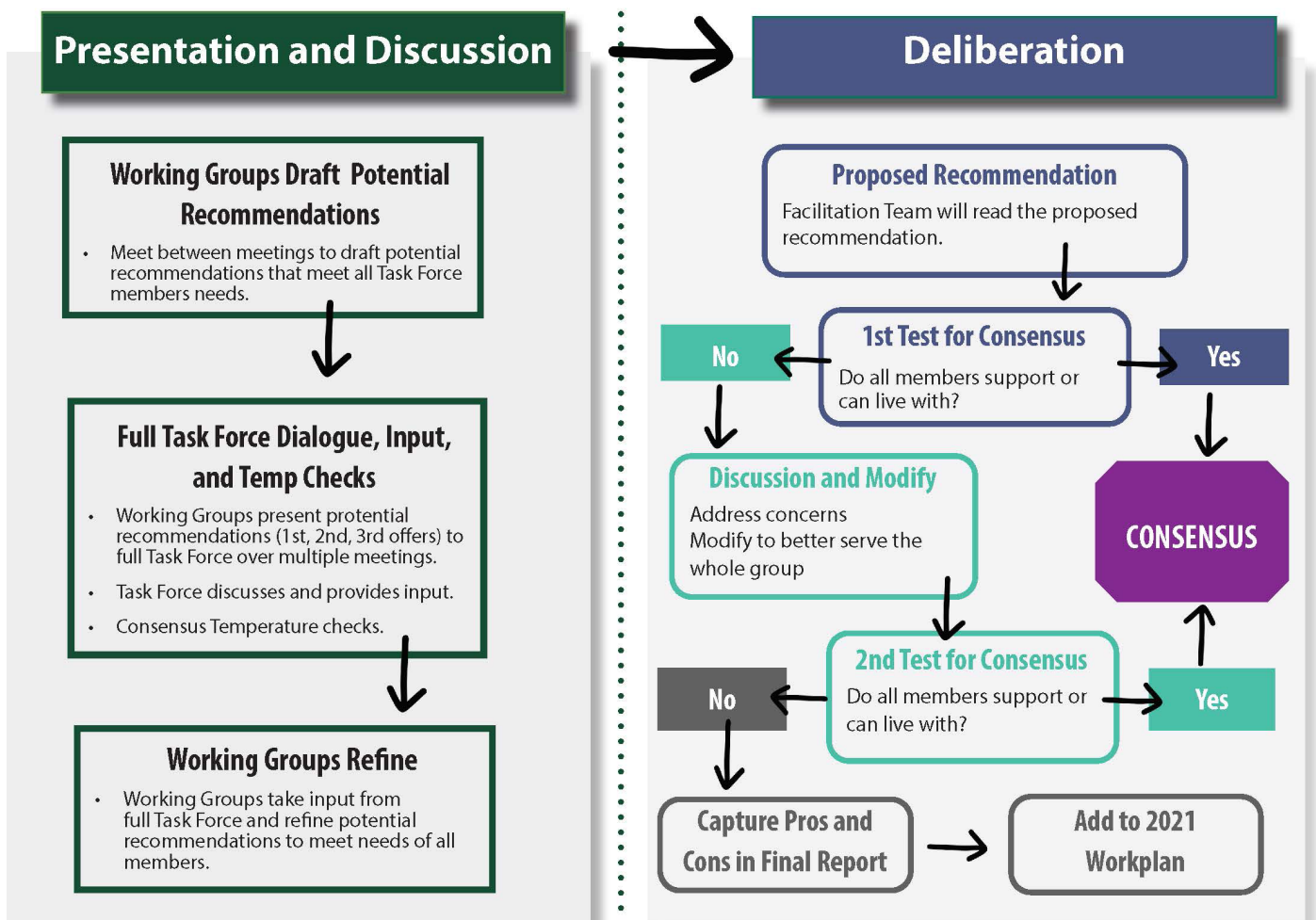
In August, the Subgroup presented the emerging draft research proposal to the SEWG and the SEWG put it in front of the Task Force. The Task Force reached consensus on the research proposal in September 2020 (Appendix E).

The Legislation Working Group reconvened in September and met monthly to discuss potential legislation on potential recommendations, possibilities for bills on topics related to Task Force deliberations, and legislative agendas.

In September, with more than forty potential recommendations proposed and more emerging, the Task Force began meeting twice a month. By the first October meeting, each workgroup completed their “third offer” of potential recommendations.

The Facilitation Team put all potential recommendations into a working document with dates of prior Task Force review, color coding to indicate each recommendation’s status, explanations of how each addresses the three policy goals, and salient input from Task Force deliberations for context. The working document contained the record of full Task Force considerations and documented consensus deliberations, which began in mid-October, running through early December 2020.

## Criminal Sentencing Task Force Consensus Decision-Making Process





## Sentencing Effectiveness Working Group

The Task Force created a Sentencing Effectiveness Working Group (SEWG) to develop, analyze, present, and refine potential recommendations related to adult felony sentencing and the sentencing grid. All Task Force members and alternates were invited and encouraged to participate on the working group. The Task Force decided that working group meetings should be open to anyone who wanted to attend. The SEWG met every two weeks (14 times) from January through September to discuss potential changes to the sentencing grid and other ways to improve the sentencing system and its outcomes.

To guide their work, the SEWG developed a set of **Desired Outcomes**, agreeing that an improved sentencing system should:

- **Balance discretion across the system and encourage and provide for individual rehabilitation that is trauma informed and based on risk, need, responsivity.**
- **Address multipliers, enhancements, consecutive sentences, and mandatory minimums.**
- **Provide predictability for all parties.**
- **Encourage accountability while decreasing unnecessary incarceration(s).**
- **Ensure adequate resources for both Department of Corrections and counties.**
- **Reduce or eliminate disparities and disproportionate impacts.**
- **Maximize the information available to the parties and judges to make informed decisions.**
- **Eliminate unnecessary complexity.**

## Sentencing Effectiveness Working Group Members

- **Lydia Flora Barlow**, *Statewide Reentry Council*
- **Russ Brown**, (alternate) *Washington Association of Prosecuting Attorneys*
- **Senator Manka Dhingra**, *Washington State Senate, Democratic Caucus*
- **Judge Veronica Alicea-Galvan**, *Washington State Minority and Justice Commission*
- **Representative Roger Goodman**, *Washington State House of Representatives, Democratic Caucus*
- **Russ Hauge** (former member), *Sentencing Guidelines Commission*
- **Keri-Anne Jetzer** (alternate), *Sentencing Guidelines Commission*
- **Representative Brad Klippert**, *Washington State House of Representatives, Republican Caucus*
- **Lauren Knoth** (research/data support), *Washington State Institute for Public Policy*
- **Greg Link**, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- **Judge Roger Rogoff** (former member), *Superior Court Judges Association*
- **Melody Simle** (alternate), *Statewide Family Council*
- **Clela Steelhammer** (research/data support), *Washington State Caseload Forecast Council*
- **Nick Straley** (alternate), *Interests of Incarcerated Persons*
- **Jon Tunheim**, *Washington Association of Prosecuting Attorneys*
- **Councilmember Derek Young**, *Washington State Association of Counties*

## Sentencing Grid Subgroup

Early in its conversations the SEWG recognized the need for more in-depth dialogue about myriad core elements and added complexities of the sentencing grid, so formed a technical Subgroup focused on potential changes to the grid. The Sentencing Grid Subgroup (Subgroup) met five times in April and May and then weekly from June through December. In 2019, Task Force agreed that proper consideration of changes to the sentencing grid would require a thorough assessment of the possible impacts of those changes. Working with Lauren Knoth (WSIPP) and Clela Steelhammer (CFC), the Subgroup focused its conversations on five components of the grid to develop a draft research proposal to present to the SEWG and Task Force. In September 2020, The Task Force reached consensus on the research proposal, described in Recommendation #1 and Attachment E.

### Sentencing Grid Subgroup Members

- **Russ Brown**, (alternate) *Washington Association of Prosecuting Attorneys*
- **Representative Roger Goodman**, *Washington State House of Representatives, Democratic Caucus*
- **Russ Hauge** (former member), *Sentencing Guidelines Commission*
- **Keri-Anne Jetzer** (alternate), *Sentencing Guidelines Commission*
- **Lauren Knoth** (research/data support), *Washington State Institute for Public Policy*
- **Greg Link**, *Washington Association of Criminal Defense Attorneys; Washington Defender Association*
- **Judge Roger Rogoff** (former member), *Superior Court Judges Association*
- **Judge Stanley Rumbaugh**, *Sentencing Guidelines Commission*
- **Melody Simle** (alternate), *Statewide Family Council*
- **Clela Steelhammer** (research/data support), *Washington State Caseload Forecast Council*
- **Nick Straley** (alternate), *Interests of Incarcerated Persons*
- **Jon Tunheim**, *Washington Association of Prosecuting Attorneys*

## Reentry and Reducing Recidivism Working Group

The Task Force established a Reentry and Reducing Recidivism Working Group (RWG) for the purpose of identifying, researching, analyzing, and presenting potential recommendations for consideration by the entire Task Force. The RWG enabled additional, focused, in-depth work between Task Force meetings, with all Task Force members (and outside interested parties as observers) welcome. The full Task Force provided direction to the RWG, which met every two weeks (14 times) from January to September 2020 and proposed dozens of recommendations for the Task Force to consider.

The working group met 12 times, from January to September 2020. RWG members identified potential recommendations under the following topic headings: relief from legal financial obligations; community supervision; roles for victims and survivors in release and reentry; and rehabilitative services and programs – presenting a total of 30 potential recommendations to the entire Task Force.

### Reentry and Reducing Recidivism Members

- **Nick Allen**, *Interests of Incarcerated Persons*
- **DeVitta Briscoe** (former member, current alternate), *Interests of Crime Victims*
- **Suzanne Cook**, *Statewide Family Council*
- **Sonja Hallum**, *Washington State Office of the Governor*

- **Martina Kartman**, *Interests of Crime Victims*
- **Representative Brad Klippert**, *Washington State House of Representatives, Republican Caucus*
- **Chief Rafael Padilla**, (former member) *Washington Association of Sheriffs and Police Chiefs*
- **Mac Pevey** (alternate), *Department of Corrections*
- **Chief James Schrimpsheer**, *Washington State Fraternal Order of Police*
- **Sec. Stephen Sinclair**, *Department of Corrections*
- **Clela Steelhammer** (research/data support), *Washington State Caseload Forecast Council*
- **Jon Tunheim**, *Washington Association of Prosecuting Attorneys*
- **Chris Poulos** (alternate), *Statewide Reentry Council*

The RWG created, and presented to the Task Force, the following **Desired Outcomes** for successful reentry and reducing recidivism:

- **Individuals are held accountable, supported, and welcomed back into the community.**
- **Individuals have improved access to programs and resources.**
- **Increased partnerships and collaboration among entities and organizations as individuals move from incarceration to community.**
- **Early and continuous access to reentry services including planning, coaching, mentoring, treatment, vocational training, and support.**
- **Meaningful, wraparound community supervision and reentry services based on an individual’s risk, need, and responsivity and informed by research and best practices.**
- **Enforcement that creates accountability, enhances community safety, and aligns with best practices and research.**
- **Addresses past/present disparities and promotes equitable outcomes for all communities.**
- **Encourages successful reintegration into the community.**
- **Reduced barriers to stability, independence, and participation in family and community.**
- **Ensures adequate resources for programs and services, including restorative justice.**

### Legislation Working Group

The Task Force also established a Legislation Working Group comprised of the four Legislative members and the non-Legislative co-chairs, tasked with drafting legislation on the policy recommendations provided in the 2019 Initial Report and this 2020 Report. The working group met between June and December to discuss potential Task Force recommendations and how to implement them in the 2021 Legislative session.

## Criminal Sentencing Task Force - 2020 Meetings

### JAN

09 CSTF  
24 SEWG  
28 RWG

### FEB

06 CSTF  
25 SEWG

### MAR

05 RWG  
19 SEWG  
19 RWG

### APR

16 CSTF  
23 GRID  
27 RWG  
30 GRID

### MAY

07 CSTF  
13 GRID  
19 SEWG  
26 GRID  
29 RWG

### JUN

04 CSTF  
09 GRID  
10 SEWG  
15 RWG  
16 GRID  
23 GRID  
24 SEWG  
29 RWG  
30 GRID

### JUL

07 GRID  
08 SEWG  
09 CSTF  
13 RWG  
14 GRID  
21 GRID  
22 SEWG  
27 RWG  
28 GRID

### AUG

04 GRID  
05 SEWG  
06 CSTF  
10 RWG  
11 GRID  
18 GRID  
19 SEWG  
24 RWG  
25 GRID

### SEP

01 GRID  
02 SEWG  
03 RWG  
08 GRID  
10 CSTF  
15 GRID  
16 SEWG  
17 CSTF  
21 RWG  
22 GRID  
29 GRID  
30 SEWG

### OCT

01 CSTF  
13 GRID  
15 CSTF  
20 GRID  
27 GRID

### Nov

03 GRID  
05 CSTF  
10 GRID  
17 GRID  
19 CSTF

### DEC

01 GRID  
03 CSTF  
08 GRID  
15 GRID  
17 CSTF

CSTF = Criminal Sentencing Task Force  
SEWG = Sentencing Effectiveness Working Group  
RWG = Reentry and Reducing Recidivism Working Group  
GRID = Sentencing Grid Subgroup

*\*Note: Meeting Summaries for each meeting are provided in Appendix F.*

## Criminal Sentencing Task Force - 2020 Workplan

Meeting	Date/Location	Agenda Topics and Outcomes
Task Force Meeting #1	Jan 9	<ul style="list-style-type: none"> <li>Shared learning about the sentencing system through the lens of some of the members/seat they are representing.</li> </ul>
Task Force Meeting #2	Feb 6	(cont.) <ul style="list-style-type: none"> <li>Shared learning about the sentencing system through the lens of some of the members/seat they are representing.</li> </ul>
<b>Task Force Meeting #3</b> <i>*Due to cancellation of in-person gatherings, the full meeting was canceled and instead, working groups met virtually</i>	Mar 19	Working Group 1: Sentencing Effectiveness <ul style="list-style-type: none"> <li>Develop &amp; agree on desired outcomes</li> <li>Presentation on other states' sentencing systems</li> <li>Chartered subgroup to focus on the grid</li> </ul> Working Group 2: Re-Entry and Reducing Recidivism <ul style="list-style-type: none"> <li>Check-ins with "category captains" (subject matter experts)</li> <li>Discussion</li> <li>Next steps</li> </ul>
Task Force Meeting #4	Apr16	<ul style="list-style-type: none"> <li>Reports from working groups</li> <li>Presentation and Q&amp;A on disproportionality and disparity in sentencing</li> <li>Gauge support for virtual TF meetings</li> </ul>
Task Force Meeting #5	May 7	<ul style="list-style-type: none"> <li>Sentencing Effectiveness Working Group Update</li> <li>"1<sup>st</sup> Offer" of potential recommendations from Reentry Working Group</li> </ul>
Task Force Meeting #6	Jun 4	<ul style="list-style-type: none"> <li>Presentation on Washington's Sentencing Reform Act</li> <li>"1<sup>st</sup> Offer" of potential recommendations from Sentencing Effectiveness Working Group</li> </ul>
Task Force Meeting #7	July 9	<ul style="list-style-type: none"> <li>"2<sup>nd</sup> Offer" of potential recommendations from Reentry Working Group</li> </ul>
Task Force Meeting #8	Aug 6	<ul style="list-style-type: none"> <li>"2<sup>nd</sup> Offer" of potential recommendations from Sentencing Effectiveness Working Group</li> </ul>

<b>Task Force Meeting #9</b>	Sep 10	<ul style="list-style-type: none"> <li>• “3<sup>rd</sup> Offer” of potential recommendations from Sentencing Effectiveness Working Group – Sentencing Grid Research Proposal</li> <li>• Consensus on the research (Recommendation #1)</li> </ul>
<b>Task Force Meeting #10</b>	Sept 17	<ul style="list-style-type: none"> <li>• “3<sup>rd</sup> Offer” of potential recommendations from both Sentencing Effectiveness Working Group and Reentry Working Group</li> </ul>
<b>Task Force Meeting #11</b>	Oct 1	<ul style="list-style-type: none"> <li>• “Final Offer” of potential recommendations from both Working Groups</li> </ul>
<b>Task Force Meeting #12</b>	Oct 15	<ul style="list-style-type: none"> <li>• Complete “Final Offer” of potential recommendations</li> <li>• Consensus Deliberations</li> </ul>
<b>Task Force Meeting #13</b>	Nov 5	<ul style="list-style-type: none"> <li>• Consensus Deliberations</li> </ul>
<b>Task Force Meeting #14</b>	Nov 19	<ul style="list-style-type: none"> <li>• Consensus Deliberations</li> </ul>
<b>Task Force Meeting #15</b>	Dec 3	<ul style="list-style-type: none"> <li>• Consensus Deliberations</li> <li>• Input on the draft 2020 Report</li> </ul>
<b>Task Force Meeting #16</b>	Dec 17	<ul style="list-style-type: none"> <li>• Review and Finalize 2020 Report</li> <li>• Legislation Working group Update</li> <li>• 2021 Workplan</li> </ul>

# II.

# 2020 Consensus Recommendations

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# Consensus Recommendations

The Legislature established the Task Force to review state sentencing laws, including considering 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.

The Task Force agreed that opportunities to further these three policy goals extend beyond just the state's sentencing grid to include multiple parts of the criminal sentencing system. As mentioned, to make more manageable the work of developing and refining potential recommendations, the Task Force commissioned working groups to meet between its monthly meetings to discuss ideas and draft potential recommendations. Together these groups generated more than fifty potential recommendations, presenting each in draft form to the Task Force at least once, some multiple times, prior to consensus deliberations.

While the working groups considered additional topics and recommendations important to multiple parties, several draft recommendations did not reach the stage of consensus Task Force deliberations. For these topics, either a working group or the Task Force (while reviewing an idea in draft form) decided it would not be appropriate for Task Force consensus in 2020 for one or more of the following reasons:

- The potential recommendation lay outside of the Task Force scope.
- It is/was being addressed already by other entities.
- It connected directly to the sentencing grid research and conversations that the Task Force would undertake in 2021.

*Please refer to Appendix F for meeting summaries of the Task Force, Reentry & Reducing Recidivism Working Group, Sentencing Effectiveness Working Group, and Grid Subgroup for more information on the conversations around those ideas.*

## Sentencing Grid Research for Data Driven Decision Making in 2021

From the outset, the Task Force agreed to work towards data-driven, evidence-based decisions. To ensure any proposed changes to the sentencing grid structure met these aims, the Subgroup and SEWG worked with Lauren Knoth (WSIPP) and Clela Steelhammer (CFC) to design a research proposal to evaluate sentencing data and trends on the current grid and how they might change in two potential grid options (Appendix E).

Using funds provided in the Task Force proviso, Lauren and Clela began data collection and analysis in November 2020. Preliminary findings and a draft report are scheduled to be available for the Task Force to consider by April 2021. The Subgroup plans to use this information to guide discussions before presenting any proposed changes to the sentencing grid to the full Task Force over multiple meetings in 2021. This will enable input from all Task Force members to refine proposed grid recommendations for prospective Task Force consensus deliberations in the fall of 2021.



## RECOMMENDATION 1

The Washington State Institute for Public Policy (WSIPP) and the Washington State Caseload Forecast Council (CFC) will 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 will be made between the current grid and two potential grid options put forth by the Task Force. 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 desired outcomes.

*2020 Task Force Meeting Summaries to reference for additional context: [June 4th](#) and [Sept. 10th](#)*

## Diversion and Alternatives to Incarceration

Diversion programs allow individuals to avoid conviction and/or a criminal record by completing a court-stipulated rehabilitation program to address behavioral issues associated with underlying criminal activity. Sentencing alternatives while not a diversion, also seek to address underlying behavioral issues by sentencing individuals to non-incarceration options or reduced incarceration terms (e.g., residential substance abuse treatment, etc.). The Task Force discussed ways to expand eligibility for, and the capacity of, current diversion programs (such as Drug Court) and alternative sentences (such as Drug Offense Sentencing Alternatives aka DOSA). Members stated that the expansion of such programs allows courts to tailor sentences to fit the needs and actions of the individual convicted of a crime. The Task Force also discussed ways diversion and alternatives could help alleviate sentencing disparities and increase public safety by addressing the underlying issues driving criminal behavior.

## RECOMMENDATION 2

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 ([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.

**Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences.

**Improves effectiveness of the sentencing system:** Would give 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.**

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

*2020 Task Force Meeting Summaries to reference for additional context: [Aug 6th](#) and [Oct. 15th](#)*

## RECOMMENDATION 3

Assess and consider removing Sentencing Reform Act (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.

**Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences.

**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.

**Promotes/improves public safety:** Research supports use of diversions and non-confinement alternatives in reducing recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: [Aug 6th](#) and [Oct. 15th](#)*

#### RECOMMENDATION 4

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.

**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 ongoing issues.

**Improves effectiveness of the sentencing system:** Information regarding how proposed changes will impact racial, socio-economic, or geographic disparities will promote effectiveness by allowing the identification of actions that can reduce or eliminate such inappropriate disparities.

**Promotes/improves public safety:** This analysis will enhance the legitimacy of the criminal justice system in the eyes of the public, ensure that people are treated more equitably, and address historical disparities that have resulted in disparate outcomes in the criminal justice system disproportionately affecting certain peoples and communities.

*2020 Task Force Meeting Summaries to reference for additional context: [Aug 6th](#) and [Oct. 15th](#)*

#### RECOMMENDATION 5

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.

**Improves effectiveness of the sentencing system:** Addresses the underlying needs and causes that perpetuate criminal activity.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: [Aug 6th](#) and [Oct. 15th](#)*

## RECOMMENDATION 6

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.

**Improves effectiveness of the sentencing system:** Addresses the underlying needs and causes that perpetuate criminal activity.

**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.

*\*Note from Task Force Consensus Deliberation: 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.*

2020 Task Force Meeting Summaries to reference for additional context: [Aug 6th](#) and [Oct. 15th](#)

## RECOMMENDATION 7

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.

**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. Because 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.

2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Oct. 15th](#)

## Review and Consolidation of Statutes and Systems

Washington state has 39 county courts and a revised code with criminal statutes in many chapters. To meet policy goals a) and b), the Task Force recommends the following to encourage better coordination and communication among court systems and consolidate sentencing statutes so practitioners and lawmakers need only look to one RCW chapter.

Task Force members also saw the consolidation process as an opportunity to review current felony criminal penalties, particularly the effectiveness of drug sentences.

## RECOMMENDATION 8 (Partial Consensus)

Request the Sentencing Guidelines Commission (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.

**Reduces complexities and errors:** Currently sentencing provisions exist in both Chapter 69.50 and Chapter 9.94A RCW. This proposal would centralize all drug-related criminal sentencing penalties within the SRA to eliminate redundancy and reduce the likelihood of errors.

**Improves effectiveness of the sentencing system:** Centralized sentencing provisions would make it easier to assess the full scope of applicable statutes at sentencing. A review of drug sentences could improve effectiveness by identifying failed practices and suggest ways to increase access to evidence-based practices to address the underlying behavior leading individuals with substance abuse disorders to become involved in criminal activity in the first place<sup>1</sup>.

**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<sup>2</sup>.

**\*Note from Task Force Consensus Deliberation:** The Task Force did not reach consensus on including the following statement as a second bullet in the recommendation: "This proposal should also include a review of reforms to reduce or eliminate criminal penalties for problematic drug use, particularly felony possession". Members agreed that consolidating criminal statutes from the Uniform Controlled Substance Act (Chapter 69.50 RCW) into the Sentencing Reform Act (Chapter 9.94A RCW) would meet the Task Force's goal to reduce complexity and errors in the sentencing system. Members also broadly agreed that as part of the SGC's consolidation proposal, there should be a review of reforms to the state's criminal drug penalties. The Washington Association of Sheriffs and Police Chiefs (WASPC) expressed concern with the above italicized wording of the potential second bullet of the recommendation and would not support a review that only looked at, or was specifically meant, to "reduce or eliminate criminal penalties for problematic drug use". WASPC supported removing the second bullet and, if others could not support that, removing the word "eliminate" from the second bullet. Other members could not "live with" the removal of the second bullet nor with changing the wording of the second bullet, wanting the Task Force to acknowledge that the state's current approach to problematic drug use is not working. The Task Force could not reach consensus on the second bullet.

*2020 Task Force Meeting Summaries to reference for additional context: [Aug 6th](#) and [Nov. 5th](#)*

## RECOMMENDATION 9

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

<sup>1</sup> Kopak, A.M. (2015). Breaking the addictive cycle of the system: improving U.S. criminal justice practices to address substance use disorders. *International Journal of Prison Health* 11(1): 4-16. Available at: <https://www.ncbi.nlm.nih.gov/>.

<sup>2</sup> Chandler, R.K., Fletcher, B.W., and Volkow, N.D. (2018). Treating drug abuse and addiction in the criminal justice system: improving public health and safety. *JAMA* 301(2): 183-190. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2681083/>.

**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.

**Improves effectiveness of the sentencing system:** Centralized sentencing provisions makes it easier to assess the full scope of applicable statutes at sentencing.

**Promotes/improves public safety:** Helps ensure that sanctions are accurately determined.

*2020 Task Force Meeting Summaries to reference for additional context: [Oct 1st](#) and [Nov. 5th](#)*

## RECOMMENDATION 10

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

**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.

**Improves effectiveness of the sentencing system:** Many of the Task Force's potential recommendations contemplate increasing the amount of information provided to judges so they can make more effective sentencing decisions. Having a unified system or at least ones that were compatible with one another would make it easier and less time consuming for all participants (e.g., prosecutors, defense attorneys, and court personnel) to access and file information in all courts.

*2020 Task Force Meeting Summaries for additional context: [Aug 6th](#), [Oct 1st](#) and [Nov. 5th](#)*

## Pre-Sentence Investigations

According to the [Sentencing Guidelines Commission 2019 Report](#): Pre-Sentencing Investigations (PSIs) provide information about a defendant that assist judges in their determination of an appropriate sentence. This information promotes individualized sentencing by informing judges of the circumstances of the crime and personal characteristics of the defendant. The SGC's 2019 report contained multiple recommendations regarding PSIs that the Task Force reviewed and agreed would improve the accuracy and effectiveness of sentences across the state, as reflected in the recommendation below.

## RECOMMENDATION 11

Pre-Sentence Investigations:

- Modify statute to increase the occasions when a Pre-Sentence Investigation (PSI) can be requested by Superior Court judges.
- More information earlier in the process allows for better tracking and would help judges sentence appropriately.
- Relocate the duty to complete PSIs from DOC to a state-funded unit within the Superior Court. The Courts should work with all PSI stakeholders to reduce differences among forms and make the form inclusive to the needs of all stakeholders.
- 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.

- Remove the sentencing recommendation portion from the PSI form.
- 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.

**Reduces complexities and errors:** PSIs provide important information that can lead to more informed sentencing decisions; this is likely to lead to fewer errors. 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. 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.

**Improves effectiveness of the sentencing system:** PSIs complement an increase in judicial discretion by allowing judges to incorporate individual characteristics and circumstances in sentencing decision; PSIs also provide important information to the defense and prosecution. More information would help by providing important context for judges, prosecutors, and defense attorneys leading up to sentencing. The current form does not provide all information judges need. This would reduce barriers to collecting relevant information from people of different cultures as people may become more comfortable with interviewers. Removing the sentencing recommendation in the current form that is completed by DOC would prevent any given DOC sentencing recommendation from conflicting with the state's sentencing recommendation. Unification around assessment tools and approaches would offer uniform, accurate, and consistent results.

**Promotes/improves public safety:** Additional information would help judges, prosecutors, and defense attorneys make more informed sentencing decisions related to crime reduction needs (e.g., whether defendant gets punishment, treatment, diversion, etc.). When judges, prosecution, and defense have more information on the characteristics and circumstances of a case, the sentencing decision can be individualized instead of using a one-size-fits-all approach. Consistent and accurate information and up-to-date training will result in more precise assessment outcomes.

*2020 Task Force Meeting Summaries for additional context: [Aug 6th](#), [Sept 17th](#) and [Nov. 5th](#)*

## Enhancements and Sentence Reforms

When Washington State implemented the SRA in 1984, the SRA included a sentencing enhancement for being armed with a deadly weapon. Over the years, the Legislature has modified and expanded it by dividing the deadly weapon enhancement into separate firearm and deadly weapon enhancements, increasing the list of offenses to which these two enhancements could be applied, and creating 11 other enhancements for a variety of other crimes ([SGC 2019 Report](#)).

The Task Force (in particular the SEWG and Subgroup), discussed enhancements at length. These conversations revealed a complex system of sanctions designed to address increased culpability for certain types of behavior. While some enhancements are frequently applied, others have rarely if ever been used. Some are mandatory and some are not. Some are to be served consecutively, others are not. Some include statutory language that explicitly states the enhancement time may not be reduced if the sentence exceeds the statutory maximum. And the rules around eligibility for good time credits differ between enhancements ([SGC 2019 Report](#)).

The Task Force saw this complexity in sentencing enhancements as an important area to address. It has caused significant issues for the Department of Corrections' computer system in calculating release dates for some incarcerated individuals who had enhancements, resulting in legislative oversight ([SGC 2019 Report](#)).

Recommendations 12-14 reduce complexity of sentence calculation, reduce racially disparate sentencing outcomes, and eliminate or modify ineffective and unused enhancements.

The Task Force will focus on sentencing-specific reforms in 2021 after the findings of the sentencing grid research. However, the Task Force agreed that recommendation #15 below should be addressed in this 2021 Legislative session. Under current law, the first failure to register conviction is a Class C unranked felony, non-sex offense. While not classified as a sex offense, it still brings up to one year of community custody for a jail sentence if the individual is scored as high risk, or 12 months of community custody for a prison sentence, regardless of risk. All subsequent "failure to register" convictions are classified as a sex offense. This means that a second conviction is a Class C felony ranked at Seriousness Level 2, is categorized as a sex offense and includes up to one year of community custody with a jail sentence or 36 months with a prison sentence, regardless of risk level. A third conviction is a Class B felony ranked at Seriousness Level 2, is categorized as a sex offense, and includes up to one year of community custody with a jail sentence or 36 months with a prison sentence, regardless of risk level.

The Task Force discussed how sex offender registration requirements can be disproportionately burdensome, in particular for those experiencing homelessness who must appear in person to register<sup>3</sup>. The Task Force reviewed data about how failure to register convictions have not shown to elevate risk of sex offense recidivism<sup>4</sup> and that changing the designation of failure to register to non-sex offenses would result in cost savings for the state.

## RECOMMENDATION 12

Eliminate the protected zone enhancement ([RCW 9.94A.533\(6\)](#) and [RCW 69.50.435](#)).

**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.

**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<sup>5</sup>. The geographic nature of drug-free zone laws has often led to disparate impact, as individuals face harsher sentences based on their zip code<sup>6</sup>.

**Promotes/improves public safety:** 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<sup>7</sup>. Protected zones are 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.

<sup>3</sup> [Registering a Home When Homeless: A Case for Invalidating Washington's Sex Offender Registration Statute](#)

<sup>4</sup> [Failure to Register materials reviewed by Task Force members](#)

<sup>5</sup> [Disparity by Design: How Drug-Free Zone Laws impact Racial Disparity-and Fail to Protect Youth and The Myth of the Playground Pusher](#)

<sup>6</sup> [In Connecticut, Effort to Change Drug Laws Focuses on School Zones](#)

<sup>7</sup> [Reaching too far: How Connecticut's large sentencing enhancement zones miss the mark](#)

2020 Task Force Meeting Summaries to reference for additional context: [Sept 10th](#) and [Nov. 5th](#)

### RECOMMENDATION 13

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 the application of 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 and prosecutors to petition for “de-stacking” where inordinately long sentences were given, requiring Legislative funding for the involved parties to deal with resentencing.

**Reduces complexities and errors and Improves effectiveness of the sentencing system:** Stacking occurs when a defendant gets charged with multiple crimes in a single charging document. If each charge has a firearm enhancement, the sentencing court currently must, upon a finding or plea of guilty, impose separate enhancement terms to run consecutively to the underlying sentence and to each other. For example, if six separate charges each include a firearm enhancement, the defendant faces a mandatory minimum sentence of 30 years of incarceration in addition to the underlying standard range sentence (SGC 2019 Report). With this recommendation, the presumption at sentencing would have the enhancements served concurrently, leaving it to the judge to determine if consecutive service were warranted. Upon elimination of the restriction on earned early release time, over a six-month period, DOC will implement the retroactive application of these changes for those currently incarcerated and sentenced with a weapon enhancement. Stacking of subsequent enhancements also drastically increases sentence length and exacerbates racial disparities<sup>8</sup>.

2020 Task Force Meeting Summaries to reference for additional context: [Oct 1st](#) and [Nov. 5th](#)

### RECOMMENDATION 14

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

**Reduces complexities and errors:** This enhancement is 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 it rarely, if ever, gets used.

<sup>8</sup> For information on sentencing outcomes of mandatory minimum firearm penalties see: <https://journals.sagepub.com/doi/10.3818/JRP.5.1.2003.95>



**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 that other laws exist protecting minors from being coerced into committing a felony offense<sup>9</sup>.

*2020 Task Force Meeting Summaries to reference for additional context: [Oct 1st](#) and [Nov. 5th](#)*

## RECOMMENDATION 15

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

**Improves effectiveness of the sentencing system:** By removing all failure to register offenses from the definition of sex offense ([RCW 9.94A.030\(47\)](#)) indeterminate savings would be realized for both prison and jail sentences based on lower criminal history scores (since sex offenses triple score against one another).

*2020 Task Force Meeting Summaries to reference for additional context: [Oct 1st](#), and [Nov. 5th](#)*

## Earned Release Time

Earned early release refers to the maximum amount of time that can be deducted from an incarcerated individual’s sentence for complying with rules, good behavior, and program participation. When the SRA was enacted in 1984, all offenses were eligible for 33% earned time. The Legislature excluded mandatory minimum terms and certain enhancements from earned time eligibility. Beginning in the 1990s, the Legislature made several amendments to earned early release calculations, most notably reducing earned time to 15% for Serious Violent offenses or Class A Sex offenses. In 2003, changes were implemented impacting individuals serving confinement in state facilities (prison) by reducing the 15% allowance to 10% and increasing the allowance to 50% for some low or moderate risk individuals with convictions prior to July 1, 2010. Some of these changes were made to comply with federal Truth-in-Sentencing grant requirements that provided funding to states for correctional facilities construction and renovation in which individuals convicted of serious violent crimes served a minimum of 85% of their imposed sentence. The changes in 2003 did not impact earned early release calculations for confinement occurring in local (jail) facilities.

Task Force discussions of earned early release time centered on ways for earned time of individuals serving confinement in a state facility to be allowed to be applied to an individual’s entire sentence and to reduce calculation complexity for DOC staff, who must calculate a variety of earned early release percentages depending on type of underlying offense and when it was committed. For example, if an individual has a weapon enhancement on one or more counts, currently they must serve enhancement(s) consecutive to one another and to the underlying sentence. Current law does not allow earned time to be received for the weapon enhancement portion of the sentence. The Task Force also discussed addressing earned early release in the sentencing grid itself to increase transparency of sentence lengths. The SGC has also been discussing earned time as part of its work and has received presentations from DOC<sup>10</sup>. While the Task Force’s discussions regarding earned time focused on confinement time in state facilities, if changes to the percent of earned time are considered, calculations for confinement in local facilities should also be reviewed ([RCW 9.92.151](#)).

<sup>9</sup> [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.

<sup>10</sup> [Increased Earned Time Scenarios - Department of Corrections 2020](#)

## RECOMMENDATION 16

Make all enhancements eligible for earned release time and partial confinement.

**Reduces complexities and errors:** The calculation of earned early release is complex. Applying the percentage to the entire sentence, as opposed to only part, would aid simplify the calculation and reduce the potential for error.

**Improves effectiveness of the sentencing system and promotes/improves public safety:** Earned time programs benefit the community at large by reducing recidivism rates and decreasing correctional population and costs<sup>11</sup>.

2020 Task Force Meeting Summaries to reference for additional context: [Oct 1st](#), [Nov. 5th](#), and [Dec 3rd](#)

## RECOMMENDATION 17

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

**\*Note from Task Force Consensus Deliberation:** Several members suggested the Legislature should establish a uniform percentage applicable to all offenses as a way to reduce calculation complexity for DOC. However, the Task Force did not agree on a particular number. Some members expressed support for increasing earned release time to 50% for all crimes. Others were strongly opposed to increasing earned time to 50%. Others felt serious violent and Class A sex offenses should be treated differently and they opposed suggestions to increase such times to either 50% or 33%. Many Task Force members opposed a further percentage reduction for any crime and many supported changes to earned release time applying retroactively.

## Community Supervision

Community supervision, sometimes referenced as community custody, includes the release planning during incarceration and the framework of accountability and programs individuals must comply with upon release. Specifically, supervision includes:

- approval of release address and housing assistance,
- ongoing monitoring of court ordered conditions, and
- access to addiction, cognitive, and behavior treatment programs<sup>12</sup>.

Currently, DOC supervises more than 20,000 persons released from jail or prison and/or sentenced to a term of community supervision<sup>13</sup>.

During Task Force meetings, DOC and others described challenges and complexities with community supervision, such as insufficient contact time with high-risk individuals, variations in availability of resources, and limitations on eligibility. DOC is currently working to address these challenges and the following recommendations developed by the Task Force recognize and further refine those efforts.

<sup>11</sup> [Earned Early Release Time materials reviewed by the Task Force](#)

<sup>12</sup> [DOC presentation to the Task Force](#)

<sup>13</sup> [DOC 2019-2023 Strategic Plan, Achieving Results](#)

## RECOMMENDATION 18

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 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.

**Improves effectiveness of the sentencing system:** Focusing correctional and reentry programming and practices on these needs of the individual can help build a roadmap for creating individualized case plans and identifying the most effective interventions to reduce recidivism<sup>14</sup>.

**Promotes/improves public safety:** This would refocus and reframe community supervision to align with research, including from the Sentencing Guidelines Commission. It would provide flexibility to respond to specific individual needs, especially during each individual's first year of release, a critical time.

*2020 Task Force Meeting Summaries for additional context: [July 9th](#), [Sept. 17th](#) and [Oct. 15th](#)*

## RECOMMENDATION 19

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

**Promotes/improves public safety:** Showing up at homes and workplaces with highly visible bulletproof vests, side arms, and/or vests with "DOC" or "POLICE" written in large lettering is not conducive to ongoing employment, family reunification, or successful reentry. Executing a high-risk warrant or finding someone who has absconded or is otherwise reasonably considered to create a known and present danger are different situations. This is not to say officers cannot show up prepared for a dangerous scenario on routine visits, it is saying that the model of plain clothes officers followed by law enforcement across the world should be followed in these situations.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Oct. 15th](#)*

## RECOMMENDATION 20

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

**Promotes/improves public safety:** Individuals need access to more resources when at most risk to commit another crime. According to the [SGC 2019 Report](#), the greatest risk of recidivism occurs in first three months following release from jail; and similar risk within first year of release for prison. In addition, early access to reentry services supports integration into the community and reduces recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Nov 19th](#)*

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<sup>14</sup> [The Council of state Governments: Reentry Matters: Strategies and Successes of Second Chance Act Grantees Across the United States](#)

## RECOMMENDATION 21

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 practices and not solely on their conviction(s).

**Reduces complexities and errors:** Courts have limitations regarding who can receive supervision at sentencing (based on offense) and DOC faces limitations on whom the agency can supervise. An RNR approach would allow interventions and services to match individual need and risk (rather than just the conviction(s)) and provide opportunities to reassess changes to need and risk over time.

**Improves effectiveness of the sentencing system:** According to the [SGC's 2019 Report](#), 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.

**Promotes/improves public safety:** According to [DOC Handout 2020](#), an RNR approach to supervision is a key element of a supervision model that reduces recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Oct. 15th](#)*

## RECOMMENDATION #22

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).

**Reduces complexities and errors:** Information on events that may result in tolling on a term of supervision are not easily available through current data systems, and sentence recalculation is complex, which can lead to calculation errors.

**Improves effectiveness of the sentencing system:** Simplified tolling events will provide increased "truth in sentencing" for individuals, including a better understanding of when they are on/off supervision and when their term of supervision and access to reentry services will end.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Nov 19th](#)*

## Roles for Victims and Survivors in Release and Reentry

Safety for survivors and victims is a central element of successful reentry. The following recommendations recognize the need to support and expand the important work of system- and community-based organizations to provide meaningful resources for, and understanding of, the various processes involved with release and reentry for victims and survivors.

## RECOMMENDATION 23

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

Specific suggestions:

- 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; and
- DOC victim services advocates must be included in the notification process and public disclosure exceptions should be expanded to cover them.

**Reduces complexities and errors and Improves effectiveness of the sentencing system:** Changing this process will increase likelihood of receipt of the notification and ensure it is meaningful for named victims.

**Promotes/improves public safety:** Named victims need time to move, make safety plans, etc. Victim/survivor safety is an essential part of reentry.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Oct. 15th](#)*

## RECOMMENDATION 24

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

**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.

**Promotes/improves public safety:** Victim/survivor safety is an essential part of reentry.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 10th](#) and [Oct. 15th](#)*

## RECOMMENDATION 25

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 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 DOC automatically to 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 Victim/Offender Dialogue 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.

**Reduces complexities and errors:** Currently, Victim/Offender Dialogue is only available only while an individual is in total confinement. Meetings held while someone is in a local jail or in the community should have specific safety measures in place to protect victims.

**Improves effectiveness of the sentencing system:** National data suggests Victim/Offender Dialogue can improve satisfaction with the criminal justice process, especially in cases of serious crimes. It provides the person who experienced harm an opportunity to ask questions only the responsible party can answer, to offer forgiveness, or to describe the impact of the harm and have that impact be witnessed.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#).*

## RECOMMENDATION 26

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.

**Reduces complexities and errors:** Will increase transparency of the process for victims and survivors and increase their understanding of how information they provide will be considered.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Oct 15th](#)*

### RECOMMENDATION 27

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.

**Reduces complexities and errors and Promotes/improves public safety:** Will reduce challenges for domestic violence survivors to apply for a DVPO while still incarcerated and have it in place upon their release.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Oct 15th](#)*

## Rehabilitative Services and Programs

Rehabilitative services and programs include job training programs, treatments, housing assistance, and other supports offered by DOC, community- and faith-based organizations, and other providers. The Task Force supports the partnership and ongoing work of those entities to better support individuals in their preparation and reintegration into the community.

### RECOMMENDATION 28

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

**Promotes/improves public safety:** Family engagement during reentry planning can promote healthy families and reduce recidivism. In some circumstances this is not advisable: i.e., no contact order, ongoing abusive relationships, certain victim situations, etc.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*

### RECOMMENDATION 29

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.

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

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*

### RECOMMENDATION 30

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

**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.

**Improves effectiveness of the sentencing system and Promotes/improves public safety:** Promotes successful reentry by enabling individuals to maintain relationships built during incarceration.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*

### RECOMMENDATION 31

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 to, during, and following release. Prioritize support to organizations that employ people with lived experience and approaches shown to produce good outcomes.

**Improves effectiveness of the sentencing system and Promotes/improves public safety:** Access to reentry services supports integration into the community and reduces recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*

### RECOMMENDATION 32

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.

**Promotes/improves public safety:** Investments in skills training will increase pathways to employment for individuals post-incarceration.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*



### RECOMMENDATION 33

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.

**Promotes/improves public safety:** Reduces barriers for individuals to secure post-incarceration employment, which increases the likelihood of successful reentry and reduced recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*

### RECOMMENDATION 34

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).

**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.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*

### RECOMMENDATION 35

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.

**Reduces complexities and errors:** Will reduce complexities and barriers facing individuals as they seek to find and secure housing after release from incarceration.

**Improves effectiveness of the system:** Individuals with safe and secure housing situations can better address other needs such as mental health and substance use treatment, employment, and healthcare.

**Promotes/improves public safety:** Individuals with safe and secure housing are better able to positively reengage with their families and communities.

*2020 Task Force Meeting Summaries to reference for additional context: [Sept 17th](#) and [Nov 5th](#)*

### RECOMMENDATION 36

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

**Improves effectiveness of the sentencing system:** Rehabilitation is a central tenet of our criminal sentencing system; however, currently security concerns often outweigh any other DOC considerations and undermine or obstruct pro-rehabilitative programs, initiatives, and practices.

**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.

**\*Note from Task Force Consensus Deliberation:** Making DOC an accredited agency could address this as well as 37-39. Both this recommendation and #39 can be addressed through a higher-level shift in focus on the purpose of the system (potentially reworking the SRA), from punishment to rehabilitation.

*2020 Task Force Meeting Summaries to reference for additional context: [Oct 15th](#) and [Nov 19th](#)*

### RECOMMENDATION 37

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.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: [Oct 15th](#) and [Nov 19th](#)*

### RECOMMENDATION #38

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.

**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. 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.

**Promotes/improves public safety:** Productive experiences during incarceration can be conducive to successful rehabilitation and reentry, which can reduce crime and thus improve community safety.

*2020 Task Force Meeting Summaries to reference for additional context: [Oct 15th](#) and [Nov 19th](#)*

### RECOMMENDATION 39

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.

**Promotes/improves public safety:** To further improve outcomes relative to the treatment, behavior change, reentry and recidivism of incarcerated individuals, well qualified and skillful case managers will be better positioned to achieve positive results. As such, the Department should establish enhanced pathways and qualifications for the recruitment, retention, training and career advancement of qualified DOC personnel performing case management duties in an incarcerated setting.

*2020 Task Force Meeting Summaries to reference for additional context: [Oct 15th](#) and [Nov 19th](#)*

## Legal Financial Obligations Relief

A court may include payment of legal financial obligations (LFOs) as part of an individual's Judgment and Sentence. LFOs broadly refers to the variety of fees, fines, penalty assessments, costs, restitution, and associated interest that the court may impose. Most LFOs are discretionary. For certain LFOs, the court must consider ability to pay in determining whether they can be imposed. Other LFOs are mandatory and must be imposed regardless of an individual's ability to pay. While the court has discretion to waive certain LFOs if it finds that the person lacks the ability to pay, LFOs still may create a significant financial burden and barrier for an individual's successful reentry<sup>15</sup>.

In its 2019 Report, the SGC recognized the work of the Minority and Justice Commission and the LFO Stakeholder Consortium to identify ways that LFOs can be structured "in ways that support, rather than undermine, rehabilitation and successful reintegration of justice-involved individuals into communities."<sup>16</sup> That work has included collection of data on state and local practices and creation of an LFO calculator tool<sup>17</sup>.

Building on those efforts, the Task Force explored challenges related to LFOs that individuals may experience post-sentencing and pathways for financial relief. Several recent studies note that, while LFOs

<sup>15</sup> Available: <http://www.courts.wa.gov/committee/pdf/2008LFOreport.pdf>

<sup>16</sup> 2017-18 Minority and Justice Commission Annual Report

<sup>17</sup> 2017-2019 Washington State LFO Stakeholder Consortium, Progress Report 2018 LFO Symposium

may provide some compensation to those who have experienced harm and local governments/judicial systems, the amount imposed may be far greater than the amount collected<sup>18</sup>. Many of the following recommendations for relief of LFOs developed by the Task Force explicitly focus on those individuals who are not able to pay—relieving these LFO burdens may have little to no fiscal impact on local governments and could provide significant administrative savings. According to data collected by the LFO Stakeholder Consortium shared by members of the Task Force, local governments may only receive approximately 20% of the total amount of LFOs imposed by a court<sup>19</sup>.

#### RECOMMENDATION 40

Address interest on restitution:

- 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.

**Improves effectiveness of the sentencing system:** Interest accrues on restitution at 12% annually from date of judgment, and in some instances amounts increase exponentially. Interest rates that high can serve as a disincentive to payment.

**Promotes/improves public safety:** Would allow people to reenter their communities without the burden of court debt. This increases their chances of achieving economic stability, which reduces recidivism.

**\*Note from Task Force Consensus Deliberation:** 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).

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#), [Nov 19th](#), and [Dec 3rd](#)*

#### RECOMMENDATION 41

Automatically waive existing non-restitution interest.

**Reduces complexities and errors:** Would eliminate the need for defendant to file motion.

**Improves effectiveness of the sentencing system:** Efficiency – would not require administrative time.

**Promotes/improves public safety:** People often return to prison because of their inability to pay LFOs; providing additional financial relief options would increase community stability and decrease the cost of incarceration to the state.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Nov 19th](#)*

<sup>18</sup> [The Assessment and Consequences of Legal Financial Obligations in Washington State, 2008;](#) and [The Steep Costs of Criminal Justice Fees and Fines, The Brennan Report](#)

<sup>19</sup> <https://www.courts.wa.gov/subsite/mjc/docs/2018/LFO%20Stakeholder%20Consortium%20Progress%20Report.pdf>

## RECOMMENDATION 42

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.

**Reduces complexities and errors:** Allows the court to consider defendant's ability to pay, allowing for individualized relief that reflects a person's financial situation. After many years it becomes difficult to track where restitution owed to non-individuals is going, or whether payment is even being tracked.

**Improves effectiveness of the sentencing system:** Allowing courts to consider ability to pay at sentencing before imposing restitution provides courts with a tool to enable relief that might enhance individuals' prospects for financial stability after release. Also, not forcing courts to expend resources on record keeping for, and debt collection from, individuals who cannot pay will lessen administrative costs and burdens<sup>20</sup>.

**Promotes/improves public safety:** The 12% interest rate gets applied to LFO while an individual is incarcerated and current relief programs are available only upon release. Relief from payments for individuals unable to pay reduces post-incarceration financial strain, giving people more opportunity to become productive community members.

**\*Note from Task Force Consensus Deliberation:** Some members expressed 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).

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#), [Nov 19th](#), and [Dec 3rd](#)*

## RECOMMENDATION 43

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.

**Reduces complexities and errors:** Currently, this process can be very confusing for people in prison who seek relief. Their motion will be denied and they will never seek relief again believing they are permanently barred.

**Improves effectiveness of the sentencing system and Promotes/improves public safety:** Would allow individuals to address LFOs while still incarcerated, which could allow for improved financial situation upon release. Discretion still lies with the court.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Nov 19th](#)*

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<sup>20</sup> [The Assessment and Consequences of Legal Financial Obligations in Washington State, 2008](#)

## RECOMMENDATION 44

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

**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.

**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.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Nov 19th](#)*

## RECOMMENDATION 45

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

**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.

**Improves effectiveness of the sentencing system:** Would reduce financial burdens to people with LFOs who lack ability to pay whose accounts are turned over to collections. Would also reduce the ability of collections agencies to continue to add fees, surcharges, and other costs to existing debts disproportionately owed by people with little or no ability to pay.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Nov 19th](#)*

## RECOMMENDATION 46 (Partial Consensus)

Victim Penalty Assessment:

- Upon motion by the defendant, the court be given the discretion to reduce or waive the VPA upon a finding by the court that the defendant lacks the present and future ability to pay.
- The court be given the discretion to eliminate stacking of multiple VPAs (*multiple VPAs imposed at same time*) based on a finding that the defendant lacks the present and future ability to pay.

DNA Collection Fee and Criminal Filing Fee:

- Upon motion by the defendant, the court should be given the discretion to waive all but one previously imposed DNA collection fee.
- Upon motion by the defendant, the court should be given the discretion to waive any criminal

filing fee(s) imposed at sentencing upon a finding by the court that the defendant is indigent and lacks the ability to pay.

**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.

**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.

**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.

**\*Note from Task Force Consensus Deliberation:** The Task Force agreed victim services are essential and should be adequately and sustainably funded. However, members did not reach consensus on a bullet that was in the proposed recommendation stating, "The Legislature should fully fund victim services and eliminate the Victim Penalty Assessment". Some members of the Task Force support the Legislature fully funding victim services; however, a member representing crime victims and the representative of the House Republican Caucus objected to taxpayers fully funding victim services. Many members supported the elimination of the VPA and reliance on defendant-funded models.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#), [Nov 19th](#), and [Dec 3rd](#)*

## RECOMMENDATION 47

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.

**Reduces complexities and errors and Improves effectiveness of the sentencing system:** Would allow for elimination of accounts, several years or decades old, where a person lacks ability to pay yet has completed all the other conditions of their sentence.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: [July 9th](#) and [Nov 19th](#)*

# III.

# Recommendations Considered

Post-Conviction Review.....39



# Recommendations Considered

During consensus deliberations, the Facilitation Team would read the recommendation then ask each Task Force member to indicate whether they could “live with” the recommendation. Per Task Force operating procedures, each member (or alternate, if member was not present) showed either a “thumbs up,” a “thumbs down,” or “thumb sideways” (by using the Zoom “hand-clap” icon). If any members, or alternates acting in place of a member, showed “thumbs down,” those individuals would share the concerns held by their constituency; the Task Force would then explore opportunities to address those concerns. The Task Force considered the recommendation below; however, after much dialogue, members and alternates present could not identify a solution everyone could “live with.”

## Post-Conviction Review

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

**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.

**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.

**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 long-term incarceration on individual and community health and stability ([see Kirk & Wakefield 2018 for a review of the literature](#)).

**\*Note from Task Force Consensus Deliberation:** In the SEWG’s initial discussions on Post-Conviction Review, some members strongly stated the need to deal with past injustices (i.e., individuals incarcerated for what members described as irrationally long sentences). From these conversations, the group added “...noting the need to deal with retroactivity” to the potential recommendation to convey the need to address those past injustices, whether via Post-Conviction Review or otherwise. The Task Force held consensus deliberations on this recommendation at its October 15th meeting and did not reach consensus. While most members indicated they supported establishing a mechanism for post-conviction review, what that mechanism looked like would ultimately determine whether their constituency would support of post-conviction review. Members also had varying perspectives on retroactivity: some proposed removing the reference to retroactivity while others could not support its removal. The group discussed the fact that the recommendation comprises a general policy statement, noting it suggests the need to deal with retroactivity but does not state how to do so. More than one member could not “live with” the recommendation (the colloquial terminology for when a Task Force member could not be in consensus with the recommendation) written as a broad policy statement without greater specificity about retroactivity, while others could not “live with” the potential recommendation if it did not include the verbiage on retroactivity.

2020 Task Force Meeting Summaries to reference for additional context: [Aug 6th](#) and [Oct 15th](#)

# IV.

# 2021 Workplan

Washington State Sentencing Grid.....41

# 2021 Workplan

## Washington State Sentencing Grid

As mentioned, the Task Force agreed that proper consideration of changes to the sentencing grid requires a thorough assessment of the possible impacts of those changes, along with several months of information-sharing and building understanding among Task Force members. Lauren Knoth (WSIPP) and Clela Steelhammer (CFC) have begun gathering detailed information on the current grid using historical data and will then assess the possible impacts of changing components of the grid (using the same set of data). The research will draw comparisons between the current grid and the two potential grid options put forth by the Task Force:

- **Grid A: two vertical axes: Zone and Class (+/- system)**
- **Grid B: two vertical axes: Zone and Offense Seriousness Level**

The information on the current grid and hypothetical scenarios will help to identify which options best meet the Task Force's identified desired outcomes and may help identify additional changes to meet the desired outcomes.

### **WSIPP and CFC will gather data on the current grid 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?

### **To assess the impact of potential changes with either of the grid options, the researchers will also examine the following:**

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 revising enhancements to be either a) a new, separate offense or b) moved into aggravating factors?

As the research evolves it may reveal additional areas of examination. For example, 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 of the Task Force to date, 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?

As the research proceeds in 2021, the Grid Subgroup will continue meeting weekly and the Task Force will continue meeting monthly. Preliminary findings and a draft report are scheduled to be available for Task Force consideration by April 2021. The Subgroup plans to use this information to guide its discussions and present any proposed draft recommendations to the full Task Force at its meetings in 2021. This will enable input from all Task Force members to assist the Subgroup in refining any proposed grid recommendations for prospective Task Force consensus deliberations in the fall of 2021.

In addition, the Task Force discussed two potential recommendations at length before concluding that they can best consider them in conjunction with the sentencing grid in 2021. These two recommendations are described below.

### Potential Recommendation on Enhancement Reform

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:

- 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;
- Any other offense for which possession and/or use of a firearm/deadly weapon is an element of the underlying crime.

OR modify the firearm enhancement statute to add a subsection to say the enhancement does not apply when a 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;”

**Reduces complexities and errors:** By eliminating enhancements to crimes for which weapon or firearm involved, would simplify sentencing ranges and provide clarity about actual sentence to be served and its length. This would match how other crimes currently get handled.

**Improves effectiveness of the sentencing system:** Addition of mandatory weapons enhancements to existing serious crime that already has a long sentence reduces the ability to accommodate sentences to individual circumstances and leads to inappropriate results in many cases. Allows for more sentencing discretion and accommodation of individual circumstances thereby arriving at more just sentences, while maintaining sufficient amount of consistency by keeping sentences within the range for the underlying crime. Because the sentence for underlying crime already considers the presence/use of weapon/firearm, an additional mandatory term is 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.

**Promotes/improves public safety:** Would reduce the destabilizing impact of long-term incarceration on communities and encourage 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](#)).

## Criminal History Score Reform

Remove juvenile adjudications from calculation of criminal history score and make reforms retroactive.

**Reduces complexities and errors:** SScore calculation can be complicated. Removing inclusion of juvenile crimes will simplify the system and treat juvenile adjudications differently than adult convictions ([RCW 9.94A.525](#)). Also, including juvenile crimes in offender scores increases the likelihood of inappropriate sentences for actions taken as a juvenile, when a person has less culpability (see next paragraph for explanation).

**Improves effectiveness of the sentencing system:** Youth reduces a person’s culpability for crimes because 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 calculating a person’s score. The current system does not appropriately balance juvenile adjudications and such adjudications should not be used to determine the 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.

**Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation.

**\*Note from Task Force Discussions:** Called “Offender Score” in statute, “Criminal History Score” became the Task Force’s preferred name after members stated that the term “Offender” feels derogatory to many in the criminal justice system.

*Research on Criminal History Score is underway by Statistical Analysis Center (results due March 2021).*

# V.

# Appendices

A. Legislative Budget Proviso

B. Criminal Sentencing Task Force 2019 Initial Report

C. Criminal Sentencing Task Force Operating Procedures

D. 2019 Policy Goals Exercise - Sticky Notes Responses

E. Recommendation # 1: Sentencing Grid Research for 2021

F. Meeting Summaries

# Appendix A.

[Legislative Budget Proviso](#)

# Appendix B.

[2019 Criminal Sentencing Task Force Initial Report](#)

# Appendix C.

[Operating Procedures](#)

# Appendix D.

[2019 Policy Goals – Sticky Note Responses](#)

# Appendix E.

[Recommendation #1: Sentencing Grid Research for 2021](#)

# Appendix F.

**Meeting Summaries:** The following pages contain a list of links to each of the summaries for 2020 meetings of the Criminal Sentencing Task Force, the Sentencing Effectiveness Working Group, and the Reentry & Reducing Recidivism Working Group.

## Criminal Sentencing Task Force

- [January 9, 2020](#)
- [February 6, 2020](#)
- [April 16, 2020](#)
- [May 7, 2020](#)
- [June 4, 2020](#)
- [July 9, 2020](#)
- [August 6, 2020](#)
- [September 10, 2020](#)
- [September 17, 2020](#)
- [October 1, 2020](#)
- [October 15, 2020](#)
- [November 5, 2020](#)
- [November 19, 2020](#)
- [December 3, 2020](#)
- December 17, 2020 (forthcoming in 2021)

## Sentencing Effectiveness Working Group

- [January 24, 2020](#)
- [February 25, 2020](#)
- [March 19, 2020](#)
- [May 19, 2020](#)
- [June 10, 2020](#)
- [June 24, 2020](#)
- [July 8, 2020](#)
- [July 22, 2020](#)
- [August 5, 2020](#)
- [August 19, 2020](#)
- [September 2, 2020](#)
- [September 16, 2020](#)
- [September 30, 2020](#)

## Sentencing Grid Subgroup

- [April 23, 2020](#)
- [April 30, 2020](#)
- [May 13, 2020](#)



- [May 26, 2020](#)
- [June 9, 2020](#)
- [June 16, 2020](#)
- [June 23, 2020](#)
- [June 30, 2020](#)
- [July 7, 2020](#)
- [July 14, 2020](#)
- [July 21, 2020](#)
- [July 28, 2020](#)
- [August 4, 2020](#)
- [August 11, 2020](#)
- [August 18, 2020](#)
- [August 25, 2020](#)
- [September 1, 2020](#)
- [September 8, 2020](#)
- [September 15, 2020](#)
- [September 22, 2020](#)
- [September 30, 2020](#)
- [October 13, 2020](#)
- [October 20, 2020](#)
- [October 27, 2020](#)
- [November 3, 2020](#)
- [November 10, 2020](#)
- [November 17, 2020](#)
- [December 1, 2020](#)
- [December 8, 2020](#)
- December 15, 2020 (forthcoming in 2021)

## **Reentry & Reducing Recidivism Working Group**

- [January 28, 2020](#)
- [March 5, 2020](#)
- [March 19, 2020](#)
- [April 27, 2020](#)
- [May 29, 2020](#)
- [June 15, 2020](#)

- [June 29, 2020](#)
- [July 13, 2020](#)
- [July 27, 2020](#)
- [August 10, 2020](#)
- [August 24, 2020](#)
- [September 3, 2020](#)
- [September 21, 2020](#)