

**Washington State Criminal Sentencing  
Legislative Task Force  
Draft 2020 Work Plan**

This work plan covers the Task Force meetings planned for 2020, leading up to the development of the final report.

Per the budget proviso, the Task Force is charged with reviewing state sentencing laws, including a consideration of the report of the sentencing guidelines commission and to develop recommendations for the purpose of:

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

**Initial Report – December 31, 2019:** The Task Force is to submit an initial report, including findings and recommendations, to the governor and the appropriate committees of the Legislature by December 31, 2019.

**Final Report – December 31, 2020:** The Task Force is to submit a final report by December 31, 2020.

**2020 PROPOSED WORK PLAN: 2 TASK FORCE WORKING GROUPS**

Two Task Force Member Working Groups—focusing on the two clusters of topics/potential policy actions identified by the Task Force during its October 2019 meeting – that will identify, research, and analyze potential recommendations for the entire Task Force to consider.

**Working Group 1: Sentencing Accuracy and the Sentencing Grid**

**Working Group 2: Re-entry and Reducing Recidivism**

The Task Force will consider and winnow potential recommendations during summer/fall 2020 meetings to arrive at a consensus package of recommendations to be described in the December 2020 final report.

The Ruckelshaus Center Facilitation Team will be providing facilitation services; preparing meeting agendas, materials, and summaries; and assisting in the writing of draft and final reports on behalf of the Task Force.

**KEY MILESTONES FOR COMPLETING THE DECEMBER 2020 REPORT:**

- Initial Draft of Task Force recommendations at meeting #9 in September.
- Refined list of draft recommendations at Task Force meeting # 10 in October.
- Draft report by Oct 26 for discussion at meeting # 11 in November.
- Final draft report completed by November 23 for final agreement at meeting # 12 in December
- Final report submitted to Governor’s Office and the Legislature on December 31, 2020

## TASK FORCE MEETINGS IN 2020

The table below outlines the Task Force’s work flow, with the topics and important outcomes needed from each meeting.

Meeting	Date/Location	Agenda Topics and Outcomes
<b>Task Force Meeting #1</b>	Jan 9	<b>Sentencing 101</b> <ul style="list-style-type: none"> <li>Learning about the sentencing process through multiple lenses</li> </ul>
<ul style="list-style-type: none"> <li>Working Groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #2</b>	Feb 6	<b>Disproportionality Report</b>
<ul style="list-style-type: none"> <li>Working Groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #3</b>	Mar 19	<b>Visiting a prison</b>
<ul style="list-style-type: none"> <li>Working Groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #4</b>	Apr 9	<b>Working Group 1: Sentencing Accuracy and the Sentencing Grid</b> <ul style="list-style-type: none"> <li>Presentations</li> <li>Discussion</li> </ul> Provide work group with guidance, input, questions to clarify and/or explore, etc.
<ul style="list-style-type: none"> <li>Working groups meeting– additional detail TBD</li> </ul>		
<b>Task Force Meeting #5</b>	May 7	<b>Working Group 2: Re-Entry and Reducing Recidivism</b> <ul style="list-style-type: none"> <li>Presentations</li> <li>Discussion</li> <li>Provide work group with guidance, input, questions to clarify and/or explore, etc.</li> </ul>
<ul style="list-style-type: none"> <li>Working groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #6</b>	Jun 4	<b>Working Group 1: Sentencing Accuracy and the Sentencing Grid</b> <ul style="list-style-type: none"> <li>Presentations</li> <li>Discussion</li> <li>Provide work group with guidance, input, questions to clarify and/or explore, etc.</li> </ul>
<ul style="list-style-type: none"> <li>Working groups meeting – additional detail TBD</li> </ul>		

<b>Task Force Meeting #7</b>	July 9	<b>Working Group 2: Re-Entry and Reducing Recidivism</b> <ul style="list-style-type: none"> <li>• Presentations</li> <li>• Discussion</li> <li>• Provide work group with guidance, input, questions to clarify and/or explore, etc.</li> </ul>
<ul style="list-style-type: none"> <li>• Working groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #8</b>	Aug 6	Review the suite of potential actions provided by the Working Groups and begin developing a draft list of recommendations. Send additional questions back to the Working Groups for clarification or elaboration, as needed.
<ul style="list-style-type: none"> <li>• Working groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #9</b>	Sep 10	Review a refined set of potential recommendations provided by the Working Groups (initial draft package). Send questions back to the Working Groups for clarification or elaboration. Add to and refine the draft list of recommendations initiated at the previous meeting.
<ul style="list-style-type: none"> <li>• Working groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #10</b>	Oct 1	Review 2 <sup>nd</sup> draft, which will be a refined list of recommendations of the Task Force. Discuss, clarify, provide input for Facilitation and Co-chairs for drafting of final report.
<ul style="list-style-type: none"> <li>• Working groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #11</b>	Nov 5	Present and discuss draft report.
<ul style="list-style-type: none"> <li>• Working groups meeting – additional detail TBD</li> </ul>		
<b>Task Force Meeting #12</b>	Dec 3	Final agreement on final report.
<ul style="list-style-type: none"> <li>• Working groups meeting – additional detail TBD</li> </ul>		

**Washington State Criminal Sentencing  
Legislative Task Force  
Working Groups  
DRAFT**

**WORKING GROUP 1: SENTENCING ACCURACY AND THE SENTENCING GRID**

Provided is a collective list topics, ideas, and potential policy recommendations that have been voiced by members during the Sep-Nov meetings.

**Sentencing Grid: Enhancements, Multipliers, Aggravating & Mitigating Factors**

- Classes of felonies which have no clear connection to sentencing levels
- Some lower degrees of crimes are ranked as more serious than the higher degree of the same crime.
- Different calculations for earned release time.
- Enhancements that function different from aggravators
- Mathematical formulas (the grid) to calculate the sentence plus a lot of “add-ons” for specific crimes
- Enhancements – reduce/eliminate
- Opportunities for judges to collapse enhancements
- Complexity of sentencing makes it difficult for all participants (judges, prosecutors, defense bar, victims, sentenced individuals, DOC) to understand the terms of the sentence.
- Aggravating factors are urban/rural based
- Get rid of multipliers
- Elimination of the accrual of juvenile record in the adult sentencing system
- Get rid of different earned-time calculations
- The rigid nature of the sentencing matrix: What it does not allow for is the flexibility to address some of the most root causes of the offender’s actions.
- Sentence ranges are often too narrow which limits discretion in sentencing decisions.
- Ranges should be expanded.

**SGC Presentation at the 10.24.19 meeting:** The current sentencing grid provides a framework for calculating sentences by factoring in the history of felony convictions (“offender score”/horizontal) and the seriousness of the crime (vertical). The corresponding cell stipulates a prison or jail cell range, for example 6-9 months.

- **Option 1** would, among other things, increase prison cell ranges by 20% on the upper and lower ends and change jail cell ranges to 0-365 days, regardless of the “offender score” (see slide 8 for example grid).
- **Option 2** would create a new two-step grid and modify “offender score” and offense classifications (see slides 9-13). Currently, each felony gets classified (A, B, or C) to rate its

seriousness, but the sentencing grid does not include A, B, or C; this creates the possibility for Class B and Class C felony convictions to lead to a similar sentence. Option 2 retains the letter system but increases the options (A+ through C-) to ensure different sentencing options get associated with different felony classifications. Option 2's two-step sentencing process has legislature develop a broad mandatory grid. The courts and judges would then work within a presumptive grid to individualize sentencing.

- While the sentencing grid itself may appear complicated, additional complexity lies in the calculation of the “offender score” (that calculation gets even more complicated if a person’s history extends beyond Washington).
- Option 2 would permit judges to go beyond the suggested sentencing parameters (whether higher or lower) and explain their rationale before the court.
- In support of judicial discretion, some noted that judges hold elected office and can get voted out of office if their communities no longer deem their opinions fair; others felt that such a process may not work as well in all parts of the state.

### Flexibility/Greater Discretion for Judges

- Give courts discretion to consider prior record, aggravating/mitigating factors as part of individualized sentences.
- Delegate contours of sentencing practice to local authorities, i.e. let judges, working within guidelines set the final parameters of the sentence.
- Create opportunities for individualized tailoring of the sentence, by an informed judge-after hearing from an informed prosecutor and defense council.
- Increase the amount of information provided to judges for sentencing, to allow the judge to better assess the person and the sentence.
- Increase opportunities for post-sentencing review.

### Pre-Sentence Investigations

- Some Task Force members talked about how that Pre-Sentence Investigations (PSIs) can help judges make more informed decisions and individualize sentencing. Others suggested that PSIs would need a consistent process statewide (which would then get implemented locally). A few emphasized the need for corresponding resources to implement, ideally by a reimbursement process.
- During the afternoon discussion on PSIs, members focused on who would conduct them and how they would be resourced. Some expressed concern that the prosecution would have significant resources, where the defense attorney may be better positioned to ascertain the life circumstances of the defendant. Those familiar with the SGC deliberations shared that the federal court system utilizes an independent PSI writer.

### Independent Review of Sentencing’s Effectiveness

- Lack of an independent body that is responsible for reviewing statutory sentencing on an ongoing and comprehensive manner is short-sighted.
- Need for an independent and well-funded body to advise policy makers. Similar to how the SGC was originally designed (but not how it actually operated).

## Disparities

- At the 10.24.19 meeting the Task Force discussed disparities in the criminal sentencing system, articulating the need to look at racial and cultural disparities with the existing system AND with any recommendations considered by the group. Others mentioned disparities at the county level; some saw the SRA as meeting its intent of standardizing sentences across the state, while others noted that different counties treat the same crimes differently.

## Judgement & Sentencing Forms

- At the 10.24.19 meeting the Task Force discussed a common form or a consistent worksheet; others pointed to the challenges of creating such a form—both in the development and implementation. Specifically, the lack of a unified (county) court system means many different programs, technology systems, and sentencing forms exist. Others expressed concern that a legislatively-created common sentencing worksheet may penalize individuals who filled it out incorrectly. Several members felt that errors in calculating sentences occur, in part, because the complexity of the calculations—such as challenges tracking tolling or someone’s history in the criminal sentencing system. A less complicated sentencing computation could lead to fewer errors and eliminate the need for DOC or any other entity to review a sentencing form.

## Ranking Unranked Crimes

- The SGC recommends assigning a seriousness level to all unranked felonies. Some expressed support for this; others suggested this should be considered in concert with the examination of the overall sentencing grid.

## Sentencing Inconsistencies/ Additional

- Not working: inconsistent sentences that don’t follow guidelines of RCW 9.94A.010 - Example: 5-year max for vehicle crime theft. “Free crime”
  - How to improve: review current sentences to ensure they work to achieve 9.94A.010
- Age-appropriate sentencing
- What is not working? Length of sentences and Errors in scoring
- Sentences not properly individualized
- Additional focus on risk-need-responsive (RNR) sentencing and sanctioning.
- Violation behavior rather than just violation count, and individual circumstances need to be considered in sanction response.
- Offender score: rename “offender score” and consider whether and how juvenile convictions should be integrated into the adult system
- Sentence calculations: consider ability to revisit drug prosecutions from more than 10-20 years ago
- Independent review of practices
- Sentences must be charged to truly address needs of people impacted and accountability of people responsible.

## WORKING GROUP 2: RE-ENTRY and REDUCING RECIDIVISM

Provided is a collective list topics, ideas, and potential policy recommendations that have been voiced by members during the Sep-Nov meetings.

### Diversion and Alternatives to Incarceration

- Resources and training to support victim / "offender" dialogues (pre-sentencing)
- Trauma informed care and gender responsive classification
- Independent review of practices
- In terms of diversion, some talked about the twin needs of investing in people *before* they enter the system and providing alternatives to incarceration.
- Alternatives to warehousing/punishment focus; ways to decrease prison population.
- Maximize the use of system alternatives to incarceration.
- Increase restorative justice programs/services
- Take a second look at causes during incarceration, when lengthy periods of confinement are imposed.
- Fund alternatives and use best practices.
- Non-confinement alternatives for community supervision response to violations.
- Take into account the values that incarceration imposes on some in the community and balance that with what is accomplished via incarceration.

### Legal Financial Obligations (LFOs)

*At the 10.24.19 meeting:* Some support examining LFOs, specifically a recommendation to shift how those moneys are used (while ensuring existing programs funded by LFOs are kept whole) or exploring ways to provide additional financial relief. Others brought forth the suggestion for the adult restitution system to emulate the insurance model of the juvenile system. In terms of victims' needs, some suggested that an upfront payment, such as for funeral expenses, may help more and mean more than small payments over an extended period.

### Right to Vote:

*At the 10.24.19 meeting:* Some members suggested that restoring voting rights to individuals with a felony conviction would restore a sense of enfranchisement in the community, which in turn can help reduce recidivism. Some suggested that the issue of felony voting rights exceeds the scope of the Task Force; others countered that because it (losing voting rights) is a consequence of sentencing, it is part of the sentencing system.

### Reentry - Supervision

- The effectiveness of frontloading resources and support at the point of reentry, rather than over the course of an extended supervision period.
- Excessive incarceration is counterproductive to successful reentry. Woefully inadequate community supervision/support. Inadequate focus on offender risks/needs/responsibility.
- Simplified supervision laws

- Supervision is not authorized for many non-violent felonies. This limits re-entry resources as well as system confidence in reentry programming.
- Addition of merit-based benchmarks
- Develop a multi-based early release model
- Overhaul and expand community reentry and supervision program.
- At the 10.24.19 meeting the Task Force briefly discussed the SGC’s recommendation regarding sovereign immunity. Some acknowledged the need for punitive actions in situations of negligent supervision, while noting that the lack of a sovereign immunity doctrine contributes to a risk-averse approach to supervision.
- Sentencing can be improved by:
  - Preparing the incarcerated for release.
  - Housing, career training
  - Mental health/drug treatment
  - Transportation plan prior to release
  - Anger management tools
  - Tools/hope for a better life after release

*At the 10.24.19 meeting:* Multiple Task Force members expressed frustration with various aspects of current supervision policies and implementation, noting that eligibility for supervision depends on the crime for which a person was convicted—not their risk of recidivism. Several described ways that supervision feels like a barrier to reintegrating in the community such as the difficulty to travel and testify on legislation. Others noted a need for a conversation on how supervision is experienced and what it means for various communities, particularly impacts of “swift and certain” responses to violations.

Many members support shifting the paradigm of supervision. Some described a shift from an adversarial relationship between an individual and the Department of Corrections (DOC) to one of coaching and mentoring. Though some see a need to house supervision in a new state entity, others pointed to institutional changes as indicators that DOC staff have the commitment to reframe supervision. Specific modifications discussed included adopting a Risk Need Responsivity (RNR) approach to supervision and expanding DOC’s range of options to include more than swift and certain incarceration in their response to violations.

### **Resources, Rehabilitative Programs/Services**

- Recidivism/re-offense rates are too high. Inadequate rehabilitation programs and services →
- Not enough \$
- Not enough trained professionals in the system.
- DOC not equipped to deal with elderly folks.
- It’s not working because we have a ballooning aging prison population that will cost the state.
- Inadequate healthcare in prisons.

- Challenges with family visits, building a support system.
- Conversation on effect of drug convictions in communities
- Place needs of impacted communities at heart of sentencing paradigms.
- Risk-based, more community-oriented responses; greatly increased programming both inside and outside the facilities.
- Need trauma-informed rehabilitative prisons.
- Post-conviction review process will give offenders incentive to participate in rehabilitative programs.
- Dis-investment strategy that transfers to community-based responses/public health approaches.
- Invest in marginalized communities:
  - Wrap-around services in education
  - Homes for all
  - Healthcare accessibility – mental health; Sub treatment
  - Food for all
  - Love/connection for all
  - Opportunity for all
- Improve child labor laws so kids can work earlier.
- Promote a focus on returning offenders to the community with tools to be successful.
- Invest in the success of offenders while they are being supervised.
- Put rehabilitation programs into the prison system. Make it mandatory for inmates to take the program before being released.
- BA/AA degree and education opportunities while incarcerated
- Increase/implement post-sentence/release services/programs.

### **Credible Messenger Programs**

- Some noted success with “credible messenger programs” as a means of deterrence. However, such programs are less successful when the government runs them.

**List of Information and Data**

- An assessment of Washington’s RNR program. The Washington State Institute for Public Policy (WSIPP) is using data from December 2017-October 2019 to evaluate the program by looking at how an individual’s risk level may change over time, and whether that lessens the need for supervision. WSIPP plans to release the final report in June 2020.
- At Senator Dhingra’s request, WSIPP is also preparing an assessment on the frequency that the most serious charge at arrest is the most serious conviction charge—by gender, race, age, and county. This report will not include information on which jurisdiction makes the arrest.
- The SGC will release an inventory of alternatives to incarceration utilized at the county level, which will be released spring of 2020.