

Sentencing Effectiveness Working Group
Potential Recommendations Working Document

POST-CONVICTION REVIEW

POTENTIAL RECOMMENDATION # 1 *Greg Link to present to Task Force on 8/6*

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

- a. **Reduces complexities and errors:** Both post-conviction review and retroactivity of legislative changes provide uniformity to sentences by applying a single rule to all sentences.
 - b. **Improves effectiveness of the sentencing system:** Post-conviction review and retroactive application of changes allow current thinking on effective sentencing to apply to all sentences. They allow for correction of past misjudgments and injustices. Post-conviction review supports rehabilitation by providing people with additional incentives to change. Post-conviction review and retroactivity also positively impact efforts to address historical racial, ethnic and socio-economic disparities in sentencing.
 - c. **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation.
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DIVERSION AND ALTERNATES TO INCARCERATION

POTENTIAL RECOMMENDATION # 2 *Rep. Goodman to present to Task Force 8/6*

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

- a. **Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences. Ex: Assault 4-DV in District Court = probation; in Superior Court unranked felony = 1 day in jail but no probation.
- b. **Improves effectiveness of the sentencing system:** Gives judges another tool to provide individualized sentencing outcomes based on the characteristics and circumstances of the case.
- c. **Promotes/improves public safety:** Reduces unnecessary confinement terms, is less expensive than confinement, research supports use of diversions and non-confinement alternatives.
- d. **SEWG input (7/22):** *State and counties should share responsibility. The juvenile justice block grant system could serve as a framework for this type of approach.*

POTENTIAL RECOMMENDATION # 3 *Sen. Dhingra (available after 11am 8/6) to present to Task Force*

Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts.

- a. **Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences. Ex: Assault 4-DV in District Court = probation; in Superior Court unranked felony = 1 day in jail but no probation.

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- b. Improves effectiveness of the sentencing system:** Gives judges another tool to provide individualized sentencing outcomes based on the characteristics and circumstances of the case.
- c. Promotes/improves public safety:** Reduces unnecessary confinement terms, is less expensive than confinement, research supports use of diversions and non-confinement alternatives.
- d. SEWG input (7/22):** *Could compliment the first rec above. For list of therapeutic court types and locations, see [Washington State Courts webpage](#).*

POTENTIAL RECOMMENDATION # 5 *Nick S. / Sen. Dhingra present to Task Force*

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

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

POTENTIAL RECOMMENDATION # 6 *Rep. Goodman present to Task Force*

Adopt a treatment-oriented public health approach to problematic drug use, including expansion of therapeutic interventions to respond to offenses associated with drug use.

- a. Reduces complexities and errors:** N/A
- b. Improves effectiveness of the sentencing system:** addresses the underlying needs and causes that perpetuate criminal activity.
- c. Promotes/improves public safety:** supports the long-term health and safety of communities by addressing substance abuse disorders that, when untreated, can lead to criminal activity. Directly supports the health and wellbeing of those convicted.

POTENTIAL RECOMMENDATION # 7 *Sen. Dhingra (available after 11am 8/6) to present to Task Force*

Identify and implement public health approaches for addressing conduct that endangers public safety to which mental health or cognitive conditions or brain injuries are a factor. Two important steps among others toward realizing this goal are (1) establishing a mental health sentencing alternative and (2) 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.

- a. Reduces complexities and errors:** N/A
- b. Improves effectiveness of the sentencing system:** addresses the underlying needs and causes that perpetuate criminal activity.
- c. Promotes/improves public safety:** supports the long-term health and safety of individuals convicted of crimes as well as communities by treating the underlying cause of anti-social behaviors.
- d. SEWG input (7/22):** *Sen. Dhingra shared mental disabilities sentencing alternative proposed legislation (see 7/22 follow-up email from facilitation team). The SEWG also discussed revisiting the diminished*

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capacity defense to better support a public health-oriented response. It is not recommended that the Taskforce address diminished capacity defense itself.

REVIEWING & CONSOLIDATING STATUTES & SYSTEMS

POTENTIAL RECOMMENDATION # 8 *Rep. Goodman present to Task Force*

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

- a review of drug sentences and recommendations to reduce reliance on punitive sanctions and restructure outcomes to prioritize a therapeutic model for associated drug offenses.
 - a review of reforms to reduce or eliminate criminal penalties for problematic drug use, particularly felony possession.
- a. **Reduces complexities and errors:** Currently sentencing provisions exist in both Chapter 69.50 and Chapter 9.94A RCW. This proposal would centralize all criminal sentencing provisions within the Sentencing Reform Act to eliminate redundancy and reduce the likelihood of errors.
 - b. **Improves effectiveness of the sentencing system:** Centralized sentencing provisions makes it easier to assess the full scope of applicable statutes at sentencing.
 - c. **Promotes/improves public safety:** Helps ensure that sanctions are accurately determined. Therapeutic models for treating individuals convicted of drug offenses may reduce recidivism and subsequent threats to public safety.

POTENTIAL RECOMMENDATION # 9 *Greg L. present to Task Force 8/6*

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

- a. **Reduces complexities and errors:**
- b. **Improves effectiveness of the sentencing system:**
- c. **Promotes/improves public safety:**
- d. **SEWG input (7/22):** *The idea of a unified court system (and/or filing system), either statewide or within counties between district and superior courts, arose multiple times. However, the working group suggests the Task Force not put forth such a recommendation to require a unified system state-wide due to the potential for scope creep and implementation challenges. Instead the working group proposes for the Task Force's consideration the potential recommendation listed here in # 4.*

PRE-SENTENCING INVESTIGATIONS

POTENTIAL RECOMMENDATION # 10 *Keri-Anne present*

Increase the occasions when a PSI can be requested.

- a. **Reduces complexities and errors:** N/A
- b. **Improves effectiveness of the sentencing system:** Would allow judges to incorporate individual characteristics and circumstances in sentencing; complements increase in judicial discretion; provides important information for defense and prosecution.
- c. **Promotes/improves public safety:** Complements increases in judicial discretion and provides important information for defense and prosecution for more informed sentencing decisions.

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- d. SEWG input (7/22): The working group discussed prioritizing cases where judges have a wide degree of discretion, stipulating that persons with a criminal history score of X or greater, and/or offenses of a certain seriousness level should have a PSI if resources are available. The SEWG acknowledge the need to provide resources to support additional PSIs, possibly through a justice reinvestment account.*

POTENTIAL RECOMMENDATION # 11 *Keri-Anne present to Task Force 8/6*

Make PSIs available earlier in the court process.

- a. Reduces complexities and errors:**
- b. Improves effectiveness of the sentencing system:** Information would be helpful to judges, prosecutors and defense attorneys in time leading up to sentencing.
- c. Promotes/improves public safety:** Information would be helpful to judges, prosecutor and defense attorneys in making more informed sentencing decision related to crime reduction needs (e.g. should defendant get punishment, treatment, diversion, etc.)

POTENTIAL RECOMMENDATION # 12 *Keri-Anne present to Task Force 8/6*

Relocate the duty to complete PSIs requested by superior court judges to the superior court and have superior courts work with all parties (including DOC and the Administrative Office of the Courts) to reduce differences across forms and make forms as applicable as possible to all who use them.

- a. Reduces complexities and errors:** As a primary stakeholder, the superior court, working with other stakeholders, would create a standardized PSI form that provides information judges need to make informed sentencing decisions.
- b. Improves effectiveness of the sentencing system:** A PSI form created by the superior court would contain important information not currently provided to judges as well as information used by other stakeholders.
- c. Promotes/improves public safety:** When judges, prosecution and defense are more informed of the characteristics and circumstances of a case, sentencing decisions can be, to some degree, individualized instead of using a one-size-fits-all approach.
- d. SEWG input (7/8): Should this be a general policy recommendation for courts to consider? OR should the Task Force consider recommending the Legislature form a workgroup to consider implementation?*

POTENTIAL RECOMMENDATION # 13 *Keri-Anne present to Task Force 8/6*

Increase cultural competency of those conducting PSIs to reduce disproportionality.

- a. Reduces complexities and errors:** Help guard against risk of bias and racial disproportionality on information collected in PSI.
- b. Improves effectiveness of the sentencing system:** Reduces barriers to obtaining relevant information from people of different cultures.
- c. Promotes/improves public safety:** Increase of relevant information aids in more informed individualized sentencing outcomes.

POTENTIAL RECOMMENDATION # 14 *Greg L. present to Task Force 8/6*

Exclude sentencing recommendations from PSIs

- a. Reduces complexities and errors:** Sentencing recommendations have been perceived as biased.
- b. Improves effectiveness of the sentencing system:** N/A
- c. Promotes/improves public safety:** N/A

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POTENTIAL RECOMMENDATION # 15 *Lauren present to Task Force 8/6*

Review risk-assessment tools and approaches to recommend ways to address potential bias and/or disparities in sentencing recommendation from PSIs and to make the information available as uniform and accurate as possible and to make the risk assessments consistently predictive.

- d. Reduces complexities and errors:** All risk assessments are not created equal. Use of risk assessment tools vary by county/agency. Staff training to maintain fidelity in assessment outcomes is often not current.
- e. Improves effectiveness of the sentencing system:** N/A
- f. Promotes/improves public safety:** N/A
- g. SEWG Input:** *Similar to unified J&S form idea, mandating a unified risk-assessment tool/approach would present (logistical, political, geographical) challenges to implement.*

DRAFT