

**\*Note: Potential Recommendations are listed in the order they will be discussed during the meeting.**

**POTENTIAL RECOMMENDATION #13**

*(for discussion at CSTF 9.10.20 meeting)*

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

*(NOTE: D.O.C. has recommended increasing earned early release time and applying changes retroactively so that it can comply with Governor's mandate that it cut its budget by 15%. See DOC Budget Reduction Strategy 2021-23 biennium)*

**SEWG Input:** *The Task Force could propose/express support for the concept of "earned" early release time, as one tool to address inordinately long sentences, recognizing potential for 2021 Legislation; Grid Subgroup continue to discuss as part of revised grid. Other points made: this impacts truth in sentencing; a set % brings simplicity; would save resources to have programming in the community rather than behind bars.*

- a) **Reduces complexities and errors:** System for earned early release time is currently quite complicated and has led to difficulties in calculating sentences and release dates. Furthermore, sentences have over the years become more punitive without any additional benefit. Too many people are serving sentences that should be mitigated. Minimizing complexity around earned early release time and applying the rules retroactively simplify the system and assist in rectifying current sentences where are too long and inconsistent with current best practices.
- b) **Improves effectiveness of the sentencing system:** Helps with uniformity, consistency and simplicity of sentencing and assists in correcting past misjudgments and injustices. retroactivity also positively impact efforts to address historical and existing racial, ethnic and socio-economic disparities in sentencing. Also, promotes rehabilitation and safety in prisons by encouraging and supporting all people to engage in available programming as early as possible and maintain good behavior.
- c) **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation.

**POTENTIAL RECOMMENDATION #17**

*(for discussion at CSTF 9.10.20 meeting)*

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

**SEWG Input:** *Potential for 2021 legislation; also would fit in Grid Subgroup deliberations. Research on this underway by Statistical Analysis Center (results due March 2021).*

- a) **Reduces complexities and errors:** Calculation of offender score can be complicated and removing consideration of juvenile crimes will simplify system and treat juvenile adjudications differently than adult convictions. See RCW 9.94A.525. Also, including

juvenile crimes in offender scores increases likelihood of inappropriate sentences for actions taken as a juvenile when person has less culpability.

- b) **Improves effectiveness of the sentencing system:** Youth reduces a person's culpability for crimes because of cognitive and emotional development continues into a person's 20s. The law recognizes this reality in many ways, but nonetheless treats a juvenile adjudication the same as an adult conviction when determining a person's offender score. The current system does not appropriately balance juvenile adjudications and such adjudications should not be used to determine the offender score of someone later in life. Removing consideration of these adjudications will more appropriately recognize the lack of culpability that children have early in their lives.
- c) **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation.

#### POTENTIAL RECOMMENDATION #8

*(for discussion at CSTF 9.10.20 meeting)*

Provide relief to criminalized survivors preventing further victimization of individuals who have endured domestic and sexual violence or human trafficking at the hands of their abusers by creating 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;
- Create process for record sealing.

**SEWG Input 9/2:** *The Task Force could propose / express support for the concept, but leave details to policymakers—OR have Grid Subgroup address this by incorporating as mitigating factor/s in new grid? [NOTE: New York has adopted similar policy and could inform the development of this recommendation. Martina Kartman could provide some additional resources and data, including NY's criteria for determining victimization.]*

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:** Domestic violence and incarceration rates are highly linked, as over 90 percent of incarcerated women have experienced physical or sexual violence in their lifetime. With the understanding that many women have gone to prison for defending themselves against their batterer or were coerced into illegal activity by their abuser, this would take a step toward ending this cycle of violence and incarceration, and places the burden on the batterer rather than the victim.

**POTENTIAL RECOMMENDATION #14**

*(for discussion at CSTF 9.10.20 meeting)*

Prohibit addition of firearms or deadly weapons enhancement to crime for which possession or use of a firearm/weapon is reflected in underlying crime, e.g., 1<sup>st</sup> degree robbery.

**SEWG Input 9/2:** *This would match how other crimes currently get handled. Could modify firearm enhancement statute to add subsection to say enhancement does not apply when firearm is an element of underlying crime:*

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

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

Possible approaches

Modify (3)(f) and (4)(f) to read:

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

- (i) Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;*
- (ii) Any other offense for which possession and/or use of a firearm/deadly weapon is an element of the underlying crime.”*

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

- a) **Reduces complexities and errors:** By eliminating enhancements to crimes for which weapon or firearm involved, allows simplified sentencing range and more clarity about actual sentence to be served and sentence length.
- b) **Improves effectiveness of the sentencing system:** Addition of mandatory weapons enhancement to existing serious crime for which sentence is already extensive reduces ability to accommodate sentences to individual circumstances and leads to inappropriate results in many cases. Allows for more sentencing discretion and ability to accommodate individual circumstances thereby arriving at more just sentences, while also maintaining sufficient amount of consistency by keeping sentences within range determined for underlying crime. Sentence for underlying crime already takes into consideration presence/use of weapon/firearm additional mandatory term is therefore unnecessary. Weapons enhancements have led to significant racial disparities in sentencing. Many of them have been applied to crimes for which use/possession of a firearm is already part of underlying sentence.
- c) **Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation.

**POTENTIAL RECOMMENDATION #15**

*(for discussion at CSTF 9.10.20 meeting)*

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

**SEWG Input:** *Protected zones more important in rural areas (than urban); this could be addressed by strengthening laws prohibiting sale of drugs to minors. Other approaches include limiting hours to during/ adjacent to school hours or limiting the size of the protected zone.*

- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Protected zones were established as part of the War on Drugs to guard against the sale/distribution of illegal substances to minors. However, several studies have shown that such laws fail to protect youth and contribute to racially disparate sentencing outcomes (Greene, Pranis, & Ziedenberg, 2006).
- c) **Promotes/improves public safety:** The number and geographic size of protected zones often leads to overlap and can result in entire cities being subject to enhanced sentences. The proliferation of enhancement zones undermines their intended deterrent effect as individuals are no longer incentivized to move criminal activity elsewhere when entire cities are effectively deemed protected zones (Prison Policy Institute; Kajstura, 2014).

**POTENTIAL RECOMMENDATION #33:**

*(for discussion at CSTF 9.10.20 meeting)*

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

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

**POTENTIAL RECOMMENDATION #38:**

*(for discussion at CSTF 9.10.20 meeting)*

Support Department of Corrections programs and policy changes which increase opportunities and accessibility for family engagement, when appropriate, during reentry planning.

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

**POTENTIAL RECOMMENDATION #41:**

*(for discussion at CSTF 9.10.20 meeting)*

Continue to provide resources for the Statewide Reentry Council and Department of Commerce to partner with community organizations which provide reentry services, mentorship, and credible messaging to individuals prior, during, and following release. Prioritize support to organizations which employ people with lived experience.

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

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