

Washington State Criminal Sentencing Task Force
DRAFT Potential Recommendations

Working document as of September 4, 2020

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Proposal for Data-Driven Decision Making 26

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The Washington State Criminal Sentencing Task Force was established by the Legislature in 2019 to review state sentencing laws, including a consideration of the report of the Sentencing Guidelines Commission required by section 129, chapter 299, Laws of 2018. The task force shall develop recommendations for the purpose of:

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

Sentencing Grid Research Proposal for Data-Driven Decision Making

POTENTIAL RECOMMENDATION #1

(for consensus decision at 9.10.20 Task Force meeting)

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

Post-Conviction Review

POTENTIAL RECOMMENDATION #2

(reviewed by Task Force at 8.6.20 meeting)

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.

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- 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 Alternatives to Incarceration

POTENTIAL RECOMMENDATION #3

(reviewed by Task Force at 8.6.20 meeting)

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

- a) **Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences.
- b) **Improves effectiveness of the sentencing system:** Gives judges another tool to provide individualized sentencing outcomes based on the characteristics and circumstances of the case.
- 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 #4

(reviewed by Task Force at 8.6.20 meeting)

Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts. See [RCW 2.30.030](#) for current eligibility requirements.

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

(reviewed by Task Force at 8.6.20 meeting)

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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

(reviewed by Task Force at 8.6.20 meeting)

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

(reviewed by Task Force at 8.6.20 meeting)

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*

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

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.]*

- Reduces complexities and errors:**
- Improves effectiveness of the sentencing system:**
- 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 #9

(referred by RWG; SEWG discussed 9.2.20; SEWG will discuss on 9.16.20 as more work is needed.)

Expand Community Parenting Alternative and Family Offender Sentencing Alternative, considering the following suggestions:

- Explore sponsor requirements to make them more inclusive to domestic violence survivors and former foster care youth so that parents are not penalized for not having extended family and supportive co-parents to sponsor them;
- Eliminate blanket restrictions for individuals with violent offenses, and undocumented individuals;

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SEWG Input 9/2: *first bullet may be DOC agency change; some confusion about what this is meant to accomplish; request that Martina work w/DOC & her constituency & report back*

- a) **Reduces complexities and errors:** Increases eligibility and access to Community Parenting Alternative & Family Offender Sentencing Alternative.
- b) **Improves effectiveness of the sentencing system:** Children who have incarcerated parents are significantly more likely in end up in the criminal justice system themselves.
- c) **Promotes/improves public safety:** Co-parent is often the only eligible sponsor, but, under some circumstances, that co-sponsor can be a barrier to a criminalized victims' successful reentry.

Reviewing and Consolidating Statutes and Systems

POTENTIAL RECOMMENDATION #10

(reviewed by Task Force at 8.6.20 meeting)

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 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 #11

(reviewed by Task Force at 8.6.20 meeting; SEWG will

discuss on 9.16.20 as more work is needed)

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 statewide due to the potential for scope creep and implementation challenges.*

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Instead the working group proposes for the Task Force's consideration the potential recommendation listed here in # 11.

Pre-Sentencing Investigations

POTENTIAL RECOMMENDATION # 12.1-12.6

(reviewed by Task Force at 8.6.20 meeting; SEWG

will discuss on 9.16.20)

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

12.2 PSIs should be made available earlier in the court process instead of at sentencing.

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

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

12.5 Remove the sentencing recommendation portion from the PSI form.

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

a) **Reduces complexities and errors:**

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

12.2 N/A

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

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

12.5 N/A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.*

Earned Early Release

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

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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.

Enhancement Reforms

POTENTIAL NEW 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., 1st 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;"

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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 NEW 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

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are no longer incentivized to move criminal activity elsewhere when entire cities are effectively deemed protected zones (Prison Policy Institute; Kajstura, 2014).

POTENTIAL RECOMMENDATION #16

(SEWG will discuss on 9.16.20)

Firearm and Deadly Weapon Enhancement Options:

Option A: Prospective Only.

- **Eliminates mandatory stacking of firearm and deadly weapon enhancements.** Specifically, provides 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.
- **Eliminates the requirement for firearm and deadly weapon enhancements to be served in total confinement,** thereby subjecting that portion of a sentence to the general restrictions and requirements on confinement options.
- **Eliminates the restriction on earned early release time for firearm and deadly weapon enhancements.**

SEWG Notes (8/19):

- *SEWG members to confirm with their constituents, but generally did not favor Option A.*

Grid Subgroup Notes:

Option B: Prospective and Retroactive.

- **Eliminates mandatory stacking of firearm and deadly weapon enhancements.** Specifically, provides that multiple firearm or deadly weapon enhancements imposed for offenses are to be served concurrently, unless the court orders the enhancements to be served consecutively.
- **Requires the resentencing of persons currently incarcerated and serving sentences involving consecutive firearm and deadly weapon enhancements.**
- **Eliminates the requirement for firearm and deadly weapon enhancements to be served in total confinement,** thereby subjecting that portion of a sentence to the general restrictions and requirements on confinement options.
- **Eliminates the restriction on earned early release time for firearm and deadly weapon enhancements.** Allows the Department of Corrections to implement the retroactive application of these changes for those currently incarcerated over a six month period.

SEWG Notes (8/19):

- *Likely to have a large fiscal note, which would make it difficult to pass during this Legislative session. Therefore, would be helpful to know how many individuals/cases would be impacted.*
- *Some would like to see cost-savings reinvested into prison programming and reentry support services.*
- *Should also consider impact on county resources and jail populations if sentences are to be lowered.*

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Grid Subgroup Notes:

Option C: Prospective and Partially Retroactive (Earned Early Release)

- **Eliminates mandatory stacking of firearm and deadly weapon enhancements going forward (prospective only).** Specifically, provides 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.
- **Eliminates 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.
- **Eliminates the restriction on earned early release time for firearm and deadly weapon enhancements (prospective and retroactive).** Allows the Department of Corrections to implement the retroactive application of these changes for those currently incarcerated over a six month period.

SEWG Notes (8/19):

- *If full retroactivity is unattainable, consider allowing individuals and/or prosecutors to petition for resentencing (similar to relief mechanisms established under [SB 6164 \(2019-20\)](#).*
- *Consider ways to expedite the resentencing process, when all parties are in agreement.*
- *Consider whether firearm/deadly weapon enhancements should be mandatory. Instead of an automatic five years, perhaps judges should have discretion to issue an additional sentence of up to five years.*

Grid Subgroup Notes

- *Subgroup members generally supported recommending the Task Force consider making goodtime retroactive for firearm and deadly weapon enhancements.*

Important Drafting Considerations provided by Office of Program Research

- *There are other types of enhancements without express requirements for consecutive or concurrent application. These enhancements are presumed to be concurrent. An alternative drafting approach for Options B through C would be to strike out the language regarding consecutive terms without inserting any additional language in the amendatory section. However, it might be unclear whether a court would have express authority to impose consecutive terms (as an alternative) going forward without providing additional language. This may require additional research and exploration before finalizing.*
- *All of the drafts contain some ambiguity with respect to whether the firearm/deadly weapon enhancements run consecutively or concurrently to other types of enhancements containing stacking requirements.*
- *You discussed the possibility of exploring a possible fourth option where, in lieu of resentencing persons with consecutive enhancements, the state considered a policy of administrative earned early release that would effectively provide the same relief (in terms of incarceration length). This option requires additional discussion before drafting, as there is complexity in terms of the diversity of sentences (deadly weapon and firearm enhancements have variable terms and*

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persons have varying numbers of enhancements). In addition, some courts considered the presence of "stacking" when calculating base sentences or other requirements.

Reform Offender Scores

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.

Reforming Particular Sentences

POTENTIAL RECOMMENDATION #18

(SEWG will discuss on 9.16.20)

Move crime of "failure to register as a sex offender" to an unranked or non-sex offense.

DOC explanation (from DOC budget cut proposal):

Failure to Register (FTR) as a sex offender changed to an unranked and non-sex offense. Under current law FTR is split into three offenses:

- 1st conviction for FTR is a Class C unranked felony offense, not classified as a sex offense but still has up to one year of community custody after jail if high risk, and 12 months after prison regardless of risk;

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- 2nd conviction of FTR is a Class C felony ranked at Seriousness Level 2 and is classified as a sex offense. Up to one year of community custody after jail and 36 months after prison, regardless of risk level; and
- 3rd conviction of FTR is a Class B felony ranked at Seriousness Level 2 and is classified as a sex offense. Up to one year of community custody after jail and 36 months after prison, regardless of risk level.

This proposal would amend all three forms of FTR to unranked felony offenses that are not classified as a sex offense. The 1st and 2nd convictions would remain Class C, and 3rd and subsequent convictions would remain Class B. This change would result in increased jail caseloads, and reduced prison and supervision caseloads.

The savings to prison ADP would result because by making all FTRs offenses unranked, the standard range becomes 0 to 12 months confinement, shifting current prison sentences to jail. The supervision savings assume no community custody is allowed for any Failure to register as a Sex Offender.

There would be additional indeterminate savings realized for both prison and jail sentences based on lower offender scores as sex offenses triple score against one another. So, as a non-sex offense it would single score rather than triple score.

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

POTENTIAL RECOMMENDATION #19

(SEWG will discuss on 9.16.20)

Remove Identity Theft 1 and 2 as “crimes against persons.”

DOC explanation (from DOC budget cut proposal):

The term “crimes against a person” refers to a broad array of criminal offenses which usually involve bodily harm, the threat of bodily harm, or other actions committed against the will of an individual.

Under current law, Identity Theft 1 and 2 are classified as a Crime against a Person (CAP). Courts are allowed to order up to 12 months community custody for non-prison sentences and are required to order 12 months community custody for those with a prison sentence.

This proposal would remove identity theft 1 and 2 as a crime against a person, which would restrict the courts from ordering community custody for individuals convicted of ID Theft. Individuals assessed as high risk to reoffend would no longer be supervised for 12 months. There would be no impact for those at Low or Moderate risk.

- a) **Reduces complexities and errors: See explanation above**
- b) **Improves effectiveness of the sentencing system:**
- c) **Promotes/improves public safety:**
- d) **SEWG Input: At least one TF member opposed.**

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Reentry & Reducing Recidivism Suggested Recommendations

Relief from Legal Financial Obligations

POTENTIAL RECOMMENDATION #20: *(reviewed by Task Force at 7.9.20 meeting)*

Authorize courts to relieve, either in part or full, restitution payments owed to entities who are not victims (i.e. insurance companies, state agencies) by individuals who lack the means to make payments.

- a) **Reduces complexities and errors:** Allows the court to consider defendant's ability to pay, allowing for individualized relief that is reflective of a person's financial situation. After many years, it can be difficult to track where restitution owed to non-individuals is going, or whether payment is even being tracked.
- b) **Improves effectiveness of the sentencing system:** Under statute, courts cannot consider ability to pay at sentencing before imposing restitution. Also, under the SRA there is no way to seek relief from principal on restitution
- c) **Promotes/improves public safety:** 12% interest rate applied to LFO while an individual is incarcerated. Current relief programs available only upon release. Reduces post-incarceration financial strain; allows people to become productive community members.

POTENTIAL RECOMMENDATION #21: *(reviewed by Task Force at 7.9.20 meeting)*

Automatically waive existing non-restitution interest.

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

POTENTIAL RECOMMENDATION #22: *(reviewed by Task Force at 7.9.20 meeting)*

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

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

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- c) **Promotes/improves public safety:** Addressing LFOs while in prison, if relief granted, can help individual leave prison in a better financial position.

POTENTIAL RECOMMENDATION #23: *(reviewed by Task Force at 7.9.20 meeting)*

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

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

POTENTIAL RECOMMENDATION #24: *(reviewed by Task Force at 7.9.20 meeting)*

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

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

POTENTIAL RECOMMENDATION #25 *(Second review at 9.17.20 Task Force meeting)*

Address interest on restitution:

- Change current law to give judges the discretion to impose interest on restitution, rather than it being mandatory.
 - Where imposed, allow accrual of interest to begin following release from the term of total confinement.
 - Lower the current 12% interest rate.
- a) **Reduces complexities and errors:**
- b) **Improves effectiveness of the sentencing system:** Interest accrues on restitution at 12% per year from date of judgment. In some instances, allows for amounts to increase exponentially, and can serve as a disincentive to payment.

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- c) **Promotes/improves public safety:** Puts people in a situation where they are able to reenter their communities without the burden of court debt so that they can be economically stable.

POTENTIAL RECOMMENDATION #26: *(Second review at 9.17.20 Task Force meeting)*

Address the courts statute of limitations to enforce collection of LFOs

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

Community Supervision

POTENTIAL RECOMMENDATION #27: *(Second review at 9.17.20 Task Force meeting)*

Develop and implement a formal motivational & 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.

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

POTENTIAL RECOMMENDATION #28: *(reviewed by Task Force at 7.9.20 meeting)*

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

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

POTENTIAL RECOMMENDATION #29: *(reviewed by Task Force at 7.9.20 meeting)*

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

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

POTENTIAL RECOMMENDATION #30: *(reviewed by Task Force at 7.9.20 meeting)*

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).

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

POTENTIAL RECOMMENDATION #31: *(Possible 2nd review at 9.17.20 Task Force meeting)*

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 (**bold** = in 2021-23 Biennium Budget Reduction Strategy, *italics* = suggested revisions to RCW 9.94A.171):

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- 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, (has absconded from supervision),
 - while an individual is serving confinement time as part of the original sentence;
 - during which a Secretary's Warrant has been issued;
 - a period of time for which a Bench Warrant has been issued as specified by the court;
 - any period of time in confinement for a subsequent felony conviction (including pre-sentence confinement as confirmed by the detaining facility;
 - a return per RCW 9.94A.633; or
 - reclassification per RCW 9.94A.660/664).
- a) **Reduces complexities and errors:** Tolling information not easily available through data systems and sentence recalculation is complex. If tolling was simplified majority of errors would be eliminated.
- b) **Improves effectiveness of the sentencing system:** Simplified tolling events will enhance transparency so individuals have a better understanding of when they are on/off supervision and when supervision will end. Provides "truth in sentencing" and a transparent end date for supervision and access to reentry services.
- c) **Promotes/improves public safety:** see b (above).
- d) **Task Force input:** *What's the period of time in confinement (for a subsequent conviction) that undermines the intent of the supervision?; Concerns: tolling for gross misdemeanor convictions, reintroduces additional complexity to tolling that falls on the Department to receive, track and verify information that we may or may not have access or be privy to. Additionally, the subsequent arrests, booking, releases and movements accounting for time during the presentence is rather onerous and difficult to ascertain given the varied information systems across the superior and district courts, not to mention the various jails.*

Roles for Victims and Survivors in Release and Reentry

POTENTIAL RECOMMENDATION #32:

(Review at 9.17.20 Task Force meeting)

Create an accessible, clear, transparent, and meaningful notification process for all named victims when someone is released into the community or transferred to work release, either via local authorities or Department of Corrections.

Specific suggestions:

- 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;

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- 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. Victim notification requirements should not lead to delay in release from incarceration or supervision.
 - Notification must be sent in multiple formats with references to a list of resources including local victim agencies, restorative justice opportunities, and clarity about hearings (see more below).
 - Department of Corrections victim services advocates must be included in the notification process and public disclosure exceptions should be expanded to cover them.
- a) **Reduces complexities and errors:** Changing this process will increase likelihood of receipt of the notification and ensuring that it's meaningful for named victims.
 - b) **Improves effectiveness of the sentencing system:** see a.
 - c) **Promotes/improves public safety:** Named victims need sufficient notice to allow opportunity to move, make safety plans etc. Victim/survivor safety is an essential part of reentry.

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 #34: *(Review at 9.17.20 Task Force meeting)*

Expand the opportunity for victims to be consulted on restorative justice and offered an opportunity for facilitated dialogues if that would aid in their healing. Allow community-based organizations to facilitate dialogues processes when a person is incarcerated, on work release, in community supervision or upon their reentry. Would require that:

- The court of conviction automatically temporarily lift or modify no contact orders and notifies Department of Corrections and DOC automatically temporarily lift prohibited contact order for the discrete purpose of restorative justice dialogue at a survivor's request (with approval from DOC Victims Services);

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- 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.
- a) **Reduces complexities and errors:** Increases the timeframe for when a victim/survivor could request a facilitated dialogue.
- b) **Improves effectiveness of the sentencing system:** National data suggests VOD can improve satisfaction of the process, especially in cases of serious crimes.
- c) **Promotes/improves public safety:** Facilitated dialogues can ease the transition of reentry for incarcerated individuals and victims and survivors; increase satisfaction in the process, and aid in the development of reentry plans.

POTENTIAL RECOMMENDATION #35:

(Review at 9.17.20 Task Force meeting)

Increase clarity and purpose for victim testimony during sentencing and release decisions: Communicate clear boundaries and 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.
- a) **Reduces complexities and errors:** Will make the process more transparent for victims and increase understanding of how information they provide will be considered.
- b) **Improves effectiveness of the sentencing system:** see above
- c) **Promotes/improves public safety:** see above

POTENTIAL RECOMMENDATION #36

(Review at 9.17.20 Task Force meeting)

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

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

POTENTIAL RECOMMENDATION #37

(Review at 9.17.20 Task Force meeting)

Increase communications and streamline processes regarding potential changes to no contact orders and prohibited contact. Specifically:

- Streamline the process to lift or modify no contact orders when it is victim-initiated;
- Provide timely notice of modification and termination of no contact orders to victims so they have an opportunity to contest.

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- a) **Reduces complexities and errors** Changing this process will increase likelihood of receipt of the notification and ensuring that it's meaningful for named victims.
- b) **Improves effectiveness of the sentencing system:** see above.
- c) **Promotes/improves public safety: See above.** Victim/survivor safety is an essential part of reentry.

Community Based Involvement in Resources, Programs, and Rehabilitative Services

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 #39:

(Review at 9.17.20 Task Force meeting)

Amend 72.09.270(8)(a) related to County of Origin to allow: In circumstances where there will not be adverse impacts to victims or survivors, increase Department of Corrections ability to consider factors which will increase opportunities for successful reentry and long-term support (eg proximity to programs, resources, family and pro-social relationships, housing, employment, etc) when determining release locations.

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

POTENTIAL RECOMMENDATION #40:

(Review at 9.17.20 Task Force meeting)

Support policy changes and establishment of criteria which allow individuals to engage with faith leaders, mentors, and/or volunteers prior, during, and following release.

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

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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:**

POTENTIAL RECOMMENDATION #42: *(Review at 9.17.20 Task Force meeting)*

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 entities delivering vocational/educational programming.
 - 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 TRAC and higher education.
 - Provide the necessary funding to support the ability of community organizations to help facilitate successful reentry programs. For example, the Dept. of Corrections, Dept. of Commerce, & 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.
- a) **Reduces complexities and errors:**
 - b) **Improves effectiveness of the sentencing system:**
 - c) **Promotes/improves public safety:** Investments in skills training provides pathways to employment for individuals post-incarceration.

POTENTIAL RECOMMENDATION #43: *(Review at 9.17.20 Task Force meeting)*

Provide resources 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;

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- opportunities for engagement with family and community-based organizations (if appropriate); and
 - connections to employment opportunities, housing, housing assistance programs, and reentry programs/services.
- a) **Reduces complexities and errors:**
 - b) **Improves effectiveness of the sentencing system:**
 - c) **Promotes/improves public safety:** Providing substance use and mental health treatment to all who need it upon system entry will increase institutional safety, productivity, and ultimately promote successful reentry and healthier families and communities.

POTENTIAL RECOMMENDATION #44:

(Review at 9.17.20 Task Force meeting)

Support current and ongoing efforts to develop incentives for businesses and organizations which hire individuals who complete vocation/educational programming while incarcerated.

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

POTENTIAL RECOMMENDATION #45:

(Review at 9.17.20 Task Force meeting)

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

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ATTACHMENT A.

Proposal for Data-Driven Decision Making

Proposal for Data-Driven Decision Making

Sentencing Effectiveness Work Group

Sentencing Grid Sub-Group

Remaining questions for sub-group:

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

Potential research Directions:

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

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

Information on current grid:

Data could be gathered to examine the following:

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

Assessing the impact of changes:

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

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

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

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

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

Other potential areas of examination:

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

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

Proposed timeline:

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

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

Grid subgroup decision making on final choices, May 2021.

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