

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

**POTENTIAL RECOMMENDATION #16**

**(Task Force will review at 10.1.20 meeting)**

Firearm and Deadly Weapon Enhancements:

**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, using judicial discretion.
  - **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.
  - **Would allow incarcerated individuals or prosecutors to petition for “de-stacking” where inordinately long sentences were given, requiring Legislative funding for the involved parties to deal with resentencing.**
- a) **Reduces complexities and errors:** *Needs explanation(?)*
- b) **Improves effectiveness of the sentencing system:** *Needs explanation(?)*
- c) **Promotes/improves public safety:** *Needs explanation(?)*
- d) **SEWG Input (8/19):**
- (i) *This, like other proposed recommendations, would require Legislative investments. Suggestions to address funding/resource needs: implement all prospective changes immediately, and delay implementation of retroactive mandatory stacking resentencing (apply savings to fund the parties for implementation); consider appointing a “special master” to adjudicate resentencing petitions. ALSO: Task Force can include a note in its report requesting the “front-loading” of projected savings from other recommendations to enable the short-term court implementation of key changes to achieve policy goals.*
  - (ii) *Consider ways to expedite the resentencing process when all parties are in agreement.*
  - (iii) *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.*
  - (iv) *The SGC unanimously supported this recommendation in its 2019 report.*

**POTENTIAL RECOMMENDATION #19**

*(Task Force will review at 10.1.20 meeting)*

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

- a) **Reduces complexities and errors:** *Need explanation*
- b) **Improves effectiveness of the sentencing system:** *Need explanation*
- c) **Promotes/improves public safety:** *Need explanation*
- d) **SEWG Input:** *Would help to have data underpinning the rationale for applying this to subsequent convictions (i.e., that it would not be indicative of future recidivism).*

**POTENTIAL RECOMMENDATION #17**

*(Task Force will review at 10.1.20 meeting)*

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

- a) **Reduces complexities and errors:** Based on data compiled by Caseload Forecast Council this enhancement has been applied to only one sentence between FY00-FY19. Grid Subgroup members noted the enhancement’s extremely narrow definition makes it nearly impossible to prove, and thus is rarely, if ever, used. This enhancement is also sometimes confused with an aggravating factor related to criminal street gang activity.
- b) **Improves effectiveness of the sentencing system:** A more broadly defined, and thus more practically useful, aggravator related to criminal street gang activity already exists (see [RCW 9.94A.535\(aa\)](#)). Subgroup members noted other laws exist protecting minors from being coerced into committing a felony offense.<sup>1</sup>
- c) **Promotes/improves public safety:** *Need explanation*

**POTENTIAL RECOMMENDATION #10**

*(SEWG discussion on 9.30.20)*

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

- a) **Reduces complexities and errors:** Currently sentencing provisions exist in multiple places throughout the RCW. This proposal would centralize all criminal sentencing provisions within the Sentencing Reform Act to eliminate redundancy and reduce the likelihood of errors.
- 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.
- d) **Task Force Input:** *Needs additional information regarding how meets public safety.*

**POTENTIAL RECOMMENDATION #27**

*(Task Force will review at 10.1.20 meeting)*

Eliminate mandatory nature of the Victim Penalty Assessment (VPA): Certain LFOs are mandatory. For these LFOs, the Legislature has divested the sentencing court of any ability to consider a defendant’s ability to pay, thus these LFO must be imposed. In 2018, the Legislature passed [HB 1783](#), which made changes to several mandatory LFOs: 1) the DNA collection fee,

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<sup>1</sup> Facilitation Team research found these: [RCW 60.50.4015](#) Violation of the Uniform Controlled Substance Act (VUCSA) involving a minor and [RCW 69.50.406](#) says that an individual found to have supplied a minor with Schedule I, II or IV narcotics shall be charged with a Class A felony.

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which previously was imposed in every felony judgment and sentence, was amended so that it now can only be imposed one time; 2) the \$200 criminal filing fee, which now cannot be imposed if the person is indigent at the time of sentencing; and 3) the jury demand fee, which also now cannot be imposed if the person is indigent at sentencing.

However, the victim penalty assessment ([RCW 7.68.035](#)) remains a mandatory LFO that must be imposed when anyone is convicted in a superior court. For felony and gross misdemeanor convictions, the VPA is \$500; for misdemeanors, the amount is \$250. The VPA cannot be waived, modified, or converted, meaning that indigent persons have no way of addressing this assessment. In many counties, the VPA can be the sole source of LFOs owed on a conviction, and if a person has multiple convictions, the likelihood of payment becomes even less likely as the \$500 VPAs stack up. The VPA is not restitution. It is imposed on every person convicted of a crime regardless of whether the crime involved a victim.

The specific recommendation is that 1) the court be given discretion to impose the VPA at sentencing based on a person's ability to pay, and 2) the court be given the discretion to waive the VPA post sentencing if an individual later lacks the ability to pay. This waiver opportunity should apply retroactively to previously imposed VPAs and other mandatory LFOs that were prospectively amended in 2018.

- a) **Reducing sentencing implementation complexities and errors:** Complexities ensue when courts order LFOs that people do not have the ability to pay. Under those circumstances, there is no purpose to imposing the LFOs because they cannot promote rehabilitation or accountability, it only serves to punish a persons' poverty and make it impossible for a person to get out from under their conviction(s) and successfully reintegrate back into the community. Moreover, these LFOs will remain on the books indefinitely, meaning the case remains open, adding to the administrative burden of the courts as open accounts where people cannot afford to pay continue to increase.
- b) **Improving the effectiveness of the sentencing system:** Ensures proportional sentencing – LFOs people receive should be reflective of their ability to pay. A mandatory LFO that cannot be waived, modified, or converted at a later date amounts to a lifetime of punishment for people who lack the ability to pay. There should be safety nets in place to ensure revisiting of previously imposed sentences if there is a change in circumstances that prevent ability to pay.
- c) **Promoting and improving public safety:** As mentioned in other recommendations around LFOs, public safety includes the ability for a person to eventually access finality to a sentence and put the conviction behind them. As long as the LFOs remain in place, including mandatory LFOs, the court retains jurisdiction to arrest and bring the person before the court to explain his or her ability to pay. This can be an ongoing cycle that can have counterproductive results, including negative impacts on reentry.

**POTENTIAL RECOMMENDATION #46**

*(Task Force will review at 10.1.20 meeting)*

Require DOC to develop and implement formal processes to prioritize rehabilitation, including:

- Staff training that prioritizes supporting successful rehabilitation and reentry.

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- Each facility working with relevant organizations to provide input in decision-making around incarcerated students' learning and/or access to programming.
  - A formal review process to review requests and decisions that impact incarcerated students and/or the organizations that support programming.
- a) **Reduces complexities and errors:** *Needs explanation(?)*
  - b) **Improves effectiveness of the sentencing system:** Recent research indicates that education and job-training program can significantly reduce recidivism and increase post-incarceration employment and earnings. In addition to the philosophies of crime control/deterrence and retribution, our sentencing system is based on the premise of criminal rehabilitation. As central authority figures in the lives of incarcerated individuals, DOC staff can have a significant impact on rehabilitation and reentry success, which reduces recidivism
  - c) **Promotes/improves public safety:** Successful rehabilitation and reentry can reduce crime and thus improve community safety.

**POTENTIAL RECOMMENDATION #47** *(Task Force will review at 10.1.20 meeting)*

Require DOC to establish (or revise existing) clear and enforceable code of conduct for officer behavior that emphasizes respectful, equitable, and fair treatment of all individuals under DOC jurisdiction.

- a) **Reduces complexities and errors:** *Needs explanation(?)*
- b) **Improves effectiveness of the sentencing system:** *Needs explanation(?)*
- c) **Promotes/improves public safety:** DOC identifies "improving lives" as one of four primary organizational goals. Establishing a system of metrics and accountability for officer behavior that is derogatory or offensive can help ensure DOC staff support individuals' rehabilitation, thus reducing recidivism and improving public safety.

**POTENTIAL RECOMMENDATION #48** *(Task Force will review at 10.1.20 meeting)*

Until custody staff have sufficient preparation and incentive to support and prepare individuals for release, there should be greater eligibility requirements for DOC commanding officers (COs), Sergeants, Lieutenants etc., seeking to become Counselors and/or Correctional Program Managers.

- a) **Reduces complexities and errors:** *Need explanation*
- b) **Improves effectiveness of the sentencing system:** *Need explanation*
- c) **Promotes/improves public safety:** *Need explanation*
- d) **Task Force Input:** *Currently, many staff who spend years working as COs, Sergeants, Lieutenants etc. who are steeped in a culture that views prisoners as an imminent threat are eligible to become Counselors and Correctional Program Managers, which are key administrative roles responsible for preparing prisoners for release. There is a fundamental disconnect in asking a person who has for years held an "us vs them" mentality to suddenly become that same incarcerated individual's ally and advocate.*

**POTENTIAL RECOMMENDATION #49** *(Task Force will review at 10.1.20 meeting)*

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

- a) **Reduces complexities and errors:** *Need explanation*
- b) **Improves effectiveness of the sentencing system:** Rehabilitation is a central tenant of our criminal sentencing system. Currently, security concerns often outweigh any other DOC considerations and undermine or obstruct pro-rehabilitative programs, initiatives, and practices.
- c) **Promotes/improves public safety:** For DOC to fulfill its mission, the Department needs to adopt policies and practices that valorize education and personal transformation as the most effective approach to safer facilities and communities.

**POTENTIAL RECOMMENDATION # 12.1-12.6** *(Task Force reviewed 8.6.20; SEWG discussed 9.30.20)*

**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** *Needs Explanation(?)*

**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** *Needs Explanation(?)*

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**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:**

**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.

**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 #18**

*(Task Force reviewed 9.10.20 SEWG discussed 9.30.20)*

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



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- 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.
- d) **Task Force Input:** Needs more information/explanation on how this would improve public safety (e.g., how specifically does it encourage rehabilitation?). **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).

**POTENTIAL RECOMMENDATION #13**

(Task Force reviewed 9.10.20; SEWG reviewed 9.30.20)

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.

- 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.
- d) **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

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*resources to have programming in the community rather than behind bars. **Task Force Input:** Needs additional information regarding how promotes public safety.*

**POTENTIAL NEW RECOMMENDATION #14** *(Task Force reviewed 9.10.20; SEWG discussed 9.30.20)*

Prohibit addition of firearms or deadly weapons enhancement to crime for which possession or use of a firearm/weapon is reflected in underlying crime. Modify [9.94A.533\(3\)\(f\)](#) and (4)(f) to read:

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

- (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.*

**Additional Context:** *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;"*

- 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. This would match how other crimes currently get handled. Could modify firearm enhancement statute to add
- 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.



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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.
- d) **Task Force Input:** *Needs additional information regarding how improves public safety.*

**POTENTIAL RECOMMENDATION #11** *(Task Force reviewed 8.6.20; SEWG discuss on 9.30.20)*

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

- a) **Reduces complexities and errors:** *Need explanation*
- b) **Improves effectiveness of the sentencing system:** *Need explanation*
- c) **Promotes/improves public safety:** *Need explanation*
- 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. Instead the working group proposes for the Task Force's consideration the potential recommendation listed here.*

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