

# Washington State Criminal Sentencing Task Force

***DRAFT***

2020 Report

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# Executive Summary

In 2019, the Legislature established the Washington State Criminal Sentencing Task Force (Task Force) to review state sentencing laws, including a consideration of the Sentencing Guidelines Commission's (SGC) 2019 report and 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.**

The proviso requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 and a final report by December 31, 2020 (Attachment A.). The William D. Ruckelshaus Center (Center) served as a third-party facilitator of the Task Force. The Center's Facilitation Team provided both process design and meeting facilitation, guiding the Task Force in its work to develop the shared understanding necessary to build trust to reach consensus.

In 2019, the Task Force met monthly from September – December 2019 for full-day facilitated meetings and reached consensus on two policy recommendations, described in the 2019 Initial Report (Attachment B.).

In 2020, the Task Force met monthly from January – August and bi-monthly from September-December. The Task Force created two working groups, one focusing on Sentencing Effectiveness and the other on Reentry and Reducing Recidivism and one subgroup, focusing on the State's Sentencing Grid. These working groups enabled members to meet between monthly meetings to identify, research, and analyze potential recommendations for the full Task Force to consider during 2020. Working Groups met at least twice a month and the Sentencing Grid Subgroup met weekly.

At each monthly Task Force meeting from May through October, one of the working groups presented potential recommendations and the Task Force provided input to help the working group refine them and if needed, bring them back as a "second offer" at a subsequent meeting. These groups combined generated more than fifty potential recommendations, presenting each in draft form to the Task Force prior to consensus deliberations.

From mid-October through early December the Task Force deliberated on 49 potential recommendations, reaching consensus on (...X#) recommendations to improve the effectiveness of the criminal sentencing system, reduce complexities and errors, and promote and improve public safety. These recommendations described in this report represent a mix of agency policy and legislative statutory changes to address these three policy goals. The Report also documents potential recommendations considered by the Task Force on which the group did not reach consensus.

While these recommendations promise to improve Washington’s sentencing system, the Task Force agrees that work remains to simplify the system and reduce disparities in adult felony sentencing.

As reflected in Recommendation #1, the Task Force recognizes that proper consideration of changes to the sentencing grid requires a thorough assessment of the possible impacts of those changes. This will take more time than initially allotted to the Task Force. Therefore, the Task Force has agreed to continue meeting and working together in 2021.

Provided here a list of the Task Force’s 2020 recommendations. ***It is important to note that while recommendations are numbered, this numbering does not represent an ordering by priority.*** The body of the report contains additional detail of how each recommendation meets one or more of the policy goals, including links to meeting summaries.

## 2020 Consensus Recommendations

### Sentencing Grid Research for Data Driven Decision Making in 2021

#### RECOMMENDATION #1

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 desired outcomes.

### Diversion and Alternatives to Incarceration

#### RECOMMENDATION #2

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.

#### RECOMMENDATION #3

Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts—recognizing the need for accountability for severe harm. See [RCW 2.30.030](#) for current eligibility requirements.

#### RECOMMENDATION #4

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.

#### RECOMMENDATION #5

Adopt treatment-oriented public health options to address problematic drug use, including expansion of therapeutic interventions to respond to offenses associated with drug use—recognizing the need for accountability for severe harm.

#### RECOMMENDATION #6

Identify and implement public health options for addressing conduct that endangers public safety to which mental health or cognitive conditions or brain injuries are a factor. An important step toward realizing this goal would be to establish a mental health sentencing alternative.

#### RECOMMENDATION #7

Create 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; and
- Create process for record sealing.

### Review and Consolidation of Statutes and Systems

#### RECOMMENDATION #8

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.

#### RECOMMENDATION #9

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

#### RECOMMENDATION #10

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

### RECOMMENDATION #11

#### Pre-Sentencing Investigations:

- Modify statute to increase the occasions when Pre-Sentencing Investigations (PSI) can be requested by Superior Court judges.
- More information earlier in the process allows for better tracking and would help judges sentence appropriately.
- 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.
- 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.
- Remove the sentencing recommendation portion from the PSI form.
- 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.

## Enhancement Reforms

### RECOMMENDATION #12

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

### RECOMMENDATION #13

#### Firearm and Deadly Weapon Enhancements:

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

### RECOMMENDATION #14

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

**RECOMMENDATION #15**

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

**RECOMMENDATION #16**

Make enhancements eligible for earned early release and partial confinement.

**Community Supervision**

**RECOMMENDATION #17**

Develop and implement a formal motivational and 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.

**RECOMMENDATION #18**

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

**RECOMMENDATION #19**

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

**RECOMMENDATION #20**

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).

**RECOMMENDATION #21**

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:

- 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 and during any period for which a Bench Warrant has been issued as specified by the court or a Secretary’s Warrant has been issued;
- While an individual is serving confinement time as part of the original sentence; and
- Any period of time in confinement for a subsequent felony conviction (including pre-sentence confinement as confirmed by the detaining facility).

## Roles for Victims and Survivors in Release and Reentry

### RECOMMENDATION #22

Create new, or enhance existing, notification processes to ensure timely, accessible, clear, transparent, and meaningful notifications for all named victims when someone is released into the community or transferred to work release, either via local authorities or Department of Corrections.

### RECOMMENDATION #23

Expand opportunities and accessibility to culturally relevant, community-based supports outside of Crime Victims' Compensation (CVC) 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.

### RECOMMENDATION #24

Expand the opportunity for victims to be informed at the time of sentencing about the existence of the Facilitated Dialogue process and their right to request such a meeting if that would aid in their healing. Allow community-based organizations to facilitate dialogue processes when a person is incarcerated in a local jail, on work release, on community supervision or living in the community. Expansion of dialogues would require that:

- 1) The court of conviction is encouraged to modify no contact orders to allow for a one-time facilitated meeting and/or the delivery of a letter which, if the person is under DOC supervision or total confinement, has been processed through the DOC Accountability Letter Bank 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; The name and credentials of the individual(s) facilitating the dialogue will be specified in the motion.
- 2) A request to modify a no contact order or condition on a Judgment and Sentence should only be made by a victim or a victim advocate after consultation with a victim. A victim should never be approached on behalf of the person who offended against them. All VOD processes should only be initiated at the request of the victim.
- 3) 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. Develop a system of oversight to assure that facilitators are adequately trained in domestic violence and familial sexual assault dynamics, victim sensitivity and specific Victim/Offender Dialogue Facilitation.

### RECOMMENDATION #25

Increase clarity and purpose for victim testimony during sentencing and release decisions: Communicate clear 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 and

receive clear information on how their testimony will be used.

### RECOMMENDATION #26

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

## Rehabilitative Services and Programs

### RECOMMENDATION #27

Support DOC programs and policy changes that increase opportunities and accessibility for family engagement, when appropriate, during reentry planning.

### RECOMMENDATION #28

Amend [RCW 72.09.270\(8\)\(a\)](#) related to County of Origin (defined in [RCW 72.09.270\(8\)\(c\)](#): the individual's county of origin means the county of the person's first felony conviction in Washington) to allow: In circumstances where there will not be adverse impacts to victims or survivors, increase DOC's ability to consider factors that will increase opportunities for successful reentry and long-term support (e.g., proximity to programs, resources, family and pro-social relationships, housing, employment, etc.) when determining release locations. It will be important to ensure no county gets disproportionately impacted.

### RECOMMENDATION #29

Support policy changes and establishment of criteria that allow individuals to maintain engagement with faith leaders, mentors, and/or volunteers following release.

### RECOMMENDATION #30

Continue to provide resources for the Statewide Reentry Council and the Departments of Commerce and Corrections to partner with community organizations that provide reentry services, mentorship, and credible messaging to individuals prior, during, and following release. Prioritize support to organizations that employ people with lived experience and organizations and approaches shown to produce good outcomes.

### RECOMMENDATION #31

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 other entities delivering vocational/ educational programming such as the Washington Student Achievement Council (WSAC) and Statewide Board of Community and Technical Colleges (SBCTC) providing education for current and formerly incarcerated persons.

- 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 the Trades-Related Apprenticeship Coaching (TRAC) and higher education.
- Support connections to employment opportunities.

### RECOMMENDATION #32

Provide resources in an equitable manner 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;
- Funding to support the ability of community organizations to help facilitate successful reentry programs. For example, the Depts. of Corrections and Commerce and the 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; and
- Opportunities for engagement with family and community-based organizations (if appropriate).

### RECOMMENDATION #33

Support current and ongoing efforts to develop incentives for businesses and organizations that hire formerly incarcerated individuals, including but not limited to those who complete vocational/ educational programming while incarcerated.

### RECOMMENDATION #34

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 and continuing support of DOC's temporary housing program.
- 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.

### RECOMMENDATION #35

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

- Staff training that prioritizes supporting successful rehabilitation and reentry.
- 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.

### RECOMMENDATION #36

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.

### RECOMMENDATION #37

Support DOC efforts to provide sufficient preparation and incentive for custody staff to support and prepare individuals for release and greater eligibility requirements for DOC Correctional Officers (COs), Sergeants, Lieutenants etc., seeking to become Counselors and/or Correctional Program Managers.

### RECOMMENDATION #38

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

## Legal Financial Obligations Relief

### RECOMMENDATION #39

Automatically waive existing non-restitution interest.

### RECOMMENDATION #40

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.

### RECOMMENDATION #41

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

### RECOMMENDATION #42

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

RECOMMENDATION #43

Address the courts statute of limitations to enforce collection of LFOs.

- Reduce available time for which the court has jurisdiction to collect LFOs.
- Jurisdiction will be retained where restitution is owed and there is a willful failure to pay.

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# Introduction

In 1981, the Washington State Legislature enacted the Sentencing Reform Act (SRA), which established the Sentencing Guidelines Commission (SGC) and directed it to recommend to the Legislature a determinate sentencing system for adult felonies. The purpose of the new sentencing guidelines system was to ensure that individuals who commit similar crimes and have similar criminal histories receive equivalent sentences. Every year since the SRA took effect, the Legislature has made changes to state sentencing laws, resulting in a system of immense complexity. Errors in sentencing have resulted in negative results and rising costs. In 2018, with a focus on best practices and simplification, the Legislature directed the SGC to review the SRA and provide a report to the Legislature ([SGC 2019 Report](#)).

In 2019, the Legislature established the Washington State Criminal Sentencing Task Force to review state sentencing laws, including a consideration of the SGC's 2019 report and 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.**

The proviso (Attachment A.) requested the Task Force submit an initial report to the Governor and the appropriate committees of the Legislature by December 31, 2019 (Attachment B.) and a final report by December 31, 2020. The William D. Ruckelshaus Center (Center) served as a third-party facilitator of the Task Force. The Center's Facilitation Team provided both process design and meeting facilitation, guiding the Task Force in its work to develop the shared understanding necessary to build trust to reach consensus.

## Summary of Work and Accomplishments - 2019

Prior to the first meeting, the Ruckelshaus Center Facilitation Team (Facilitation Team) spoke with each member of the Task Force to better understand desired goals, visions of success, potential issues and challenges, and ideas on how to address the three policy directives above. The Facilitation Team used that information to design a collaborative process that would help the Task Force build capacity towards consensus and create mutual understanding through the use of information sharing and thinking exercises, productive inquiry and dialogue sessions, and deliberation guided by shared principles.

In 2019, the Task Force met monthly from September – December 2019 for full-day facilitated meetings. At its first meeting, the Task Force reviewed and considered suggested ground rules and operating procedures (Attachment C.), agreeing by consensus on the following decision-making process:

*Consensus means that each Task Force member can say: (1) I was a respected member of the group that considered the decision; (2) my ideas (opinions, knowledge, concerns,*

*beliefs, hopes) were listened to; (3) I listened to the ideas (opinions, knowledge, concerns, beliefs, hopes) of others; and (4) I can support the decision of the group, even though I might have made a different decision had I acted alone.*

*This consensus can be conveyed via a thumbs up (I fully support this option), thumbs sideways (I can live with this option for the good of the group and the process) or thumbs down (I cannot live with this option). If anyone is thumbs down, the group will seek solutions that allow those thumbs to move to up or sideways.*

The Task Force discussed roles, decided each member should commit to attending all meetings, and agreed to allow members to appoint an alternate. The legislative proviso directed the Task Force to elect one legislative co-chair and one or more non-legislative member co-chairs. The Task Force agreed by consensus on the selection of three co-chairs:

- Lydia Flora Barlow
- Representative Roger Goodman
- Jon Tunheim

The Task Force considered a schematic map of the sentencing system. This brought the recognition that in addition to reviewing Washington state's sentencing laws, a comprehensive approach would range beyond just the state's sentencing grid to include some presentencing elements along with non-sentencing approaches to reducing recidivism and improving public safety. Members also articulated visions of what their accomplishments together might look like, discussed definitions of key terms, and generated dozens of specific suggestions toward the group's three guiding policy goals ([Appendix D.](#)).

To assist the Task Force in its decision-making, the Facilitation Team developed a set of principles based on the proviso's policy goals and the values expressed by the Task Force during the assessment interviews and the brainstorm sessions at the first two meetings. The purpose of these principles was to serve as a framework for the Task Force to use when discussing and considering potential recommendations. The Task Force reviewed and agreed on the following principles:

- Promotes and improves public safety
- Improves the effectiveness of the system
- Reduces complexities and errors in the system
- Is based on evidence & data
- Supports accountability and successful reintegration into the community
- Considers impacts across the whole sentencing system
- Considers past/present disparities and promotes equitable outcomes for all communities
- Recognizes and plans for costs and fiscal impacts at all levels
- Considers and contributes to healthy communities
- Allows for flexibility – not “one size fits all”
- Can be supported by Task Force members' constituencies and/or member organizations

In October 2019, the Task Force focused on creating a workplan and identifying potential recommendations for inclusion in the December 2019 Initial Report. After considerable dialogue, the Task Force agreed its November 18th meeting would focus on tolling, concurrent supervision, “swift & certain” response to supervision violations, and compliance credit (also referred to as Positive Achievement Time).

At the November 2019 meeting, not all members felt ready to consider advancing the proposed Tolling policy change as a recommendation; nor did all members feel comfortable with all elements of the “Swift & Certain” proposal. The Task Force, with the aid of a graphic depiction of the ramifications of concurrent vs. consecutive supervision, agreed by consensus on the policy recommendation that the default for multiple supervision terms should be concurrent rather than consecutive. The Task Force also agreed by consensus on the policy recommendation of providing positive incentives to individuals on supervision (Compliance Credit), as opposed to solely a violation-and-punishment focus.

In December 2019, the Task Force considered and discussed the following potential recommendations for inclusion in the report: tolling of community supervision terms, swift and certain count, judgment and sentencing forms, and pre-sentencing investigations. After lengthy information sharing and dialogue members agreed that these topics should instead be included in the 2020 workplan to allow for more discussion time and more data/research to inform conversations.

The Task Force created a workplan for 2020 along with two working groups, one focusing on Sentencing Effectiveness and the other on Reentry and Reducing Recidivism (Attachment E.). These working groups allowed for sufficient time to identify, research, analyze, and discuss and refine potential recommendations for the entire Task Force to consider during 2020. The Task Force also established a Legislation Working Group comprised of the four Legislative members and the non-Legislative co-chairs, tasked with drafting legislation on the policy recommendations provided in the 2019 Initial Report and this 2020 Report. A description of each working group begins on page 13.

Before finalizing the 2019 Interim Report, the Facilitation Team provided a draft to the Task Force for comments and any suggested changes. After review and finalization, the Task Force adopted the Interim Report and submitted it to the Legislature and Governor (Appendix B.).

## **Summary of Work and Accomplishments - 2020**

In January and February of 2020, the Task Force focused its meetings on learning from one another about the sentencing system. During “guided walks through the sentencing system,” each Task Force member gave a presentation describing how they interact and engage with the criminal sentencing system, followed by questions and dialog. February ended up as the last opportunity to meet in person after the COVID-19 pandemic forced the cancellation of face-to-face meetings beginning in March 2020. Due to the need to get the Facilitation Team and Task Force members up to speed with the tools and protocols of virtual technology, the Task Force did not meet in March. In April, the full Task Force and working groups began virtual meetings using Zoom videoconference technology. TVW also made meeting recordings available online.

May – September meetings focused on gathering input from the Task Force on proposed recommendations crafted by the working groups. Each month, one of the working groups presented potential recommendations and the Task Force provided input to help the working group refine them and if needed, bring them back as a “second offer” at the next meeting. The second offer from each working group included both revised versions of ideas contained in the first offer along with new suggested changes or new potential recommendations.

Beginning in August, the Facilitation Team had the Task Force practice using Zoom icons for consensus decision-making and to provide a “temperature gauge” on the level of support for each recommendation. After a working group presented a potential recommendation and the Task Force discussed, the Facilitation Team asked each Task Force member to indicate whether or not they could “live with” the recommendation. Per Task Force operating procedures, each member (or alternate, if member was not present) showed either a “thumbs up,” a “thumbs down,” or “thumb sideways” (by using the Zoom “hand-clap” icon) *(include as side bar graphic for final report)*. This practice, of expressing the position of the constituency each member represented (vis a vis consensus support) for each potential recommendation multiple times, allowed Task Force members to gain familiarity with all proposed recommendations. It also aided working groups in identifying which recommendations needed further work to ensure all members could be in consensus.

Over the summer of 2020, Grid Subgroup members agreed that recommending changes to the sentencing grid would be best done with comprehensive information about the potential impacts of those proposed changes—along with a study of current outcomes for key variables. With Task Force approval, the Subgroup asked Lauren Knoth, Washington State Institute for Public Policy (WSIPP) and Clela Steelhammer Caseload Forecast Council (CFC) to draft a research proposal to present to the SEWG and Task Force. In August, the Subgroup presented the emerging draft research proposal to the SEWG and the SEWG put it in front of the Task Force. The Task Force reached consensus on the research proposal in September 2020 (Attachment F.).

The Legislation Working Group reconvened in September and met monthly to discuss potential legislation on potential recommendations, possibilities for bills on topics related to Task Force deliberations, and legislative agendas.

In September, with more than forty potential recommendations proposed and more emerging, the Task Force began meeting twice a month. By the first October meeting, each workgroup completed their “third offer” of potential recommendations.

The Facilitation Team put all potential recommendations into one working document that included the dates of prior Task Force review, color coding to indicate the status of each, explanations of how each addresses the three policy goals, and key input from Task Force deliberations for context. The working document contained the record of full Task Force considerations and documented consensus deliberations, which began in mid-October, running through early December 2020.

### SENTENCING EFFECTIVENESS WORKING GROUP

The Task Force created a Sentencing Effectiveness Working Group (SEWG) to develop, analyze, present, and refine potential recommendations related to adult felony sentencing and the sentencing grid for the full Task Force. All Task Force members were invited and encouraged to volunteer for and participate on the working group. The Task Force decided that member alternates could also participate in the working group and that meetings should be open to anyone that wanted to attend. The SEWG met every two weeks (14 times) from January through September to discuss potential changes to the sentencing grid and other ways to improve the sentencing system and its outcomes. To guide their work, the SEWG developed a set of desired outcomes, agreeing that an improved sentencing system should:

- Balance discretion across the system and encourage and provide for individual rehabilitation that is trauma informed and based on risk, need, responsivity.
- Address multipliers, enhancements, consecutive sentences, and mandatory minimums.
- Provide predictability for all parties.
- Encourage accountability while decreasing unnecessary incarceration(s).
- Ensure adequate resources for both Department of Corrections and counties.
- Reduce or eliminates disparities and disproportionate impacts.
- Maximize the information available to the parties and judges to make informed decisions.
- Eliminate unnecessary complexity.

SEWG members include:

- |   |   |
|---|---|
| • Russ Brown  | • Greg Link                                 |
| • Senator Manka Dhingra                                   | • Judge Roger Rogoff (former member)        |
| • Representative Roger Goodman                            | • Melody Simle (alt. for Suzanne Cook)      |
| • Russ Hauge (former member)                              | • Clela Steelhammer (research/data support) |
| • Keri-Anne Jetzer (alt. for Russ Hauge & Judge Rumbaugh) | • Nick Straley (alt. for Nick Allen)        |
| • Representative Brad Klippert                            | • Jon Tunheim                               |
| • Lauren Knoth (research/data support)                    | • Councilmember Derek Young                 |

### SENTENCING GRID SUBGROUP

Early in its conversations the SEWG recognized the need for more in-depth dialogue about myriad core elements and added complexities of the sentencing grid, so asked several members to form a Subgroup focused on potential changes to the sentencing grid. The Sentencing Grid Subgroup (Subgroup) met five times in April and May and then met weekly from June through December. In 2019, Task Force agreed that proper consideration of changes to the sentencing grid would require a thorough assessment of the possible impacts of those changes. Working with Lauren Knoth (WSIPP) and Clela Steelhammer (CFC), the Subgroup focused their conversations on five components of the grid (Attachment G.) to develop a draft research

proposal to present to the SEWG and Task Force. In September 2020, The Task Force reached consensus on the research proposal, described in Recommendation #1 and Attachment F.

Subgroup members include:

- Russ Brown (alt. for Jon Tunheim)
- Representative Roger Goodman
- Russ Hauge (former member)
- Keri-Anne Jetzer (alt. for Russ Hauge & Judge Rumbaugh)
- Lauren Knoth (research/data support)
- Greg Link
- Judge Roger Rogoff (former member)
- Judge Stanley Rumbaugh
- Melody Simle (alt. for Suzanne Cook)
- Nick Straley (alt. for Nick Allen)
- Jon Tunheim

**REENTRY AND REDUCING RECIDIVISM WORKING GROUP**

The Task Force established a Reentry and Reducing Recidivism Working Group (RWG) for the purpose of identifying, researching, analyzing, and presenting potential recommendations for consideration by the entire Task Force. The Working Group enabled additional, focused, in-depth work between Task Force meetings, with all Task Force members (and outside interested parties as observers) welcome. The full Task Force provided direction to the Working Group, which met every two weeks (14 times) from January to September 2020 and proposed dozens of recommendations for the Task Force to consider.

RWG members:

- Nick Allen
- DeVitta Briscoe (former member, current alt. for Martina Kartman)
- Suzanne Cook
- Sonja Hallum
- Martina Kartman
- Rep. Brad Klippert
- Chief Rafael Padilla (former member)
- Sec. Stephen Sinclair
- Clela Steelhammer (alt. for Elaine Deschamps)
- Jon Tunheim
- Chris Poulos (alt. for Lydia Flora Barlow)

The working group met 12 times, from January to September 2020. RWG members identified potential recommendations under the following topic headings: relief from legal financial obligations; community supervision; roles for victims and survivors in release and reentry; and rehabilitative services and programs – presenting a total of 30 potential recommendations to the entire Task Force.

The RWG created, and presented to the Task Force, the following Desired Outcomes for successful reentry and reducing recidivism:

- Individuals are held accountable, supported, and welcomed back into the community.
- Individuals have improved access to programs and resources.
- Increased partnerships and collaboration among entities and organizations as individuals move from incarceration to community.

- Early and continuous access to reentry services including planning, coaching, mentoring, treatment, vocational training, and support.
- Meaningful, wraparound community supervision and reentry services based on an individual's risk, need, and responsivity and informed by research and best practices.
- Enforcement that creates accountability, enhances community safety, and aligns with best practices and research.
- Addresses past/present disparities and promotes equitable outcomes for all communities.
- Encourages successful reintegration into the community.
- Reduced barriers to stability, independence, and participation in family and community.
- Ensures adequate resources for programs and services, including restorative justice.

### LEGISLATION WORKING GROUP

The Task Force also established a Legislation Working Group comprised of the four Legislative members and the non-Legislative co-chairs, tasked with drafting legislation on the policy recommendations provided in the 2019 Initial Report and this 2020 Report. The working group met between June and December to discuss potential recommendations the Task Force worked on and what would be needed in the upcoming Legislative session in 2021.

## Consensus Recommendations

The legislative proviso authorizing the Task Force stated “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.

The Task Force agreed that opportunities to further these three policy goals extend beyond just the state's sentencing grid to include multiple parts of the criminal sentencing system. To make more manageable the work of coming up with potential recommendations, the Task Force commissioned working groups to meet between its monthly meetings to discuss ideas and draft potential recommendations that the full Task Force could consider recommending to the Governor and Legislature. Together these groups generated more than fifty potential recommendations, presenting each in draft form to the Task Force at least once, some multiple times, prior to consensus deliberations.

While the working groups considered additional topics and recommendations holding importance for multiple parties, several did not reach the stage of consensus Task Force deliberations. For these, either a working group or the Task Force (while reviewing an idea in draft form) decided it would not be appropriate for Task Force consensus in 2020 for one or more of the following reasons:

- The potential recommendation lay outside of the Task Force scope.

- It is/was being addressed already by other entities.
- It was connected to the sentencing grid research and conversations that would be worked on by the Task Force in 2021.

*Please refer to the meeting summaries for Reentry & Reducing Recidivism Working Group or the Sentencing Effectiveness Working Group for more information on the conversations around those ideas.*

## **Sentencing Grid Research for Data Driven Decision Making in 2021**

From the outset, the Task Force agreed to work towards data-driven and evidence-based decisions. To ensure any proposed changes to the sentencing grid structure met these aims, the Subgroup and SEWG worked with Lauren Knoth (WSIPP) and Clela Steelhammer (CFC) to design a research proposal to evaluate sentencing data and trends on the current grid and how they might change in two potential grid options developed by the Subgroup (Attachment F.).

Using research funds provided in the Task Force proviso, WSIPP and CFC began data collection and analysis in November 2020. Preliminary findings and a draft report are scheduled to be available for the Task Force to consider by April 2021. The Subgroup plans to use this information to guide their discussions and will present any proposed changes to the sentencing grid to the full Task Force over multiple meeting in 2021 to gather input from all Task Force members and refine proposed recommendations to get them ready for prospective Task Force consensus deliberations in the fall of 2021.

### **RECOMMENDATION #1**

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 desired outcomes (see Attachment F. for research proposal).

*2020 Task Force Meeting Summaries to reference for additional context: June 4<sup>th</sup>, Sept. 10<sup>th</sup>*

## **Diversion and Alternatives to Incarceration**

Diversion programs allow individuals to avoid conviction and/or a criminal record by completing a court stipulated rehabilitation program to address underlying behavioral issues leading to criminal activity. Sentencing alternatives also seek to address underlying behavioral issues by sentencing individuals to non-carceral options (e.g., residential substance abuse treatment, etc.). The Task Force discussed ways to expand eligibility and the capacity of current diversion and alternative programs such as Drug Offense Sentencing Alternatives (DOSAs) courts. Members saw the expansion of such programs as a way to allow courts to better tailor sentences to fit the needs and actions of the individual convicted of a crime. The Task Force

also discussed ways diversion and alternatives could help alleviate sentencing disparities and increase public safety by addressing the underlying issues driving criminal behavior.

### RECOMMENDATION #2

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.

**Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences.

**Improves effectiveness of the sentencing system:** Would give judges another tool to provide individualized sentencing outcomes based on the characteristics and circumstances of the case. Alternatives and diversions are less expensive than confinement.

**Promotes/improves public safety:** Research supports use of diversions and non-confinement alternatives.

*2020 Task Force Meeting Summaries to reference for additional context: Aug 6<sup>th</sup>, Oct. 15<sup>th</sup>*

### RECOMMENDATION #3

Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts—recognizing the need for accountability for severe harm. See [RCW 2.30.030](#) for current eligibility requirements.

**Reduces complexities and errors:** Would eliminate inconsistency between District and Superior Court sentences.

**Improves effectiveness of the sentencing system:** Gives judges another tool to provide individualized sentencing outcomes based on the characteristics and circumstances of the case. Alternatives are less expensive than confinement. *For list of therapeutic court types and locations, see [Washington State Courts webpage](#).*

**Promotes/improves public safety:** Research supports use of diversions and non-confinement alternatives.

*2020 Task Force Meeting Summaries to reference for additional context: Aug 6<sup>th</sup> and Oct. 15<sup>th</sup>*

### RECOMMENDATION #4

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.

**Reduces complexities and errors:** Racial, socio-economic, and/or geographic disparities in the criminal justice system are inequities 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.

**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.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: Aug 6<sup>th</sup>, Oct. 15<sup>th</sup>*

### RECOMMENDATION #5

Adopt treatment-oriented public health options to address problematic drug use, including expansion of therapeutic interventions to respond to offenses associated with drug use—recognizing the need for accountability for severe harm.

**Improves effectiveness of the sentencing system:** Addresses the underlying needs and causes that perpetuate criminal activity.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: Aug 6<sup>th</sup>, Oct. 15<sup>th</sup>*

### RECOMMENDATION #6

Identify and implement public health options for addressing conduct that endangers public safety to which mental health or cognitive conditions or brain injuries are a factor. An important step toward realizing this goal would be to establish a mental health sentencing alternative.

**Improves effectiveness of the sentencing system:** Addresses the underlying needs and causes that perpetuate criminal activity.

**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.

**Note from Task Force Consensus Deliberation:** Consider 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.

*2020 Task Force Meeting Summaries to reference for additional context: Aug 6<sup>th</sup>, Oct. 15<sup>th</sup>*

### RECOMMENDATION #7

Create 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; and
- Create process for record sealing.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Oct. 15<sup>th</sup>*

### Review and Consolidation of Statutes and Systems

Washington state has 39 individual county court systems and a revised code with criminal statutes spread throughout several chapters. To meet policy goals a) and b), the Task Force recommends the following as ways to encourage better coordination and communication between court systems and consolidate sentencing statutes, so practitioners and lawmakers need only look to one RCW chapter.

Task Force members also saw the consolidation process as an opportunity to review current felony criminal penalties, particularly the effectiveness of drug sentences ([Aos & Drake, 2013](#); [Caulkin et al., 1997](#); [Chandler, Fletcher, & Volkow, 2009](#); [Drake, 2012](#); [Dydia & Sung, 2000](#); [Michell et al., 2017](#); [PEW, 2018](#)).

### RECOMMENDATION #8 (Partial Consensus)

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.

**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.

**Improves effectiveness of the sentencing system:** Centralized sentencing provisions makes it easier to assess the full scope of applicable statutes at sentencing.

**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.

**Note from Task Force Consensus Deliberation:** The Task Force was not in consensus on +including the following statement as a second bullet in the recommendation: “This proposal should also include a review of reforms to reduce or eliminate criminal penalties for problematic drug use, particularly felony possession.”

Members agreed that consolidating criminal statutes from the Uniform Controlled Substance Act (i.e., Chapter 69.50 RCW) into the Sentencing Reform Act (Chapter 9.94A RCW) would meet the Task Force’s goal to reduce complexity and errors in the sentencing system. Members also broadly agreed that as part of the SGC’s consolidation proposal there be a review of reforms to the State’s criminal drug penalties. WASPC expressed concern with the wording of a second bullet of the recommendation and would not be in support if the review only looked or was specifically meant to achieve the outcome to “reduce or eliminate criminal penalties for problematic drug use.” WASPC supported removing the second bullet and if others could not support that, then to remove the word “eliminate” from the second bullet. A number of other members stated they were not able to live with the removal of the second bullet nor with changing the wording of the second bullet, stating that it was important that the Task Force agree that the state’s current approach to problematic drug use is not working. The Task Force was not able to reach consensus on the second bullet.

*2020 Task Force Meeting Summaries to reference for additional context: Aug 6<sup>th</sup>, Nov. 5<sup>th</sup>*

## RECOMMENDATION #9

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

**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.

**Improves effectiveness of the sentencing system:** Centralized sentencing provisions makes it easier to assess the full scope of applicable statutes at sentencing.

**Promotes/improves public safety:** Helps ensure that sanctions are accurately determined.

*2020 Task Force Meeting Summaries to reference for additional context: Oct 1<sup>st</sup> and Nov. 5<sup>th</sup>*

## RECOMMENDATION #10

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

**Reduces complexities and errors:** Timely access to information eliminates potential inaccuracies in sentences. Currently, each level of the court system (e.g., superior court, appellate court, and district courts) use different filing systems with varying degrees of accessibility. Even courts within the same level may employ different systems.

**Improves effectiveness of the sentencing system:** Many of the Task Force's potential recommendations contemplate increasing the amount of information provided to judges as they make sentencing decisions. That requires all participants (e.g., prosecutors, defense attorneys, and court personnel) to have the ability to timely and efficiently access and file information in all courts.

*2020 Task Force Meeting Summaries for additional context: Aug 6<sup>th</sup>, Oct 1<sup>st</sup>, Nov. 5<sup>th</sup>*

## Pre-Sentencing Investigations

According to the Sentencing Guidelines Commission 2019 report: Pre-Sentencing Investigations (PSIs) provide courts with information about a defendant to assist judges in their determination of an appropriate sentence. This information promotes individualized sentencing by informing judges of a person's circumstances of the offense. The SGC's 2019 report consisted of a number of recommendations regarding PSIs in which the Task Force reviewed and support to improve the accuracy and effectiveness of sentences across the state, as reflected in the recommendation below.

### RECOMMENDATION #11

Pre-Sentence Investigations:

- Modify statute to increase the occasions when Pre-Sentencing Investigations (PSIs) can be requested by Superior Court judges.
- More information earlier in the process allows for better tracking and would help judges sentence appropriately.
- 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.
- 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.
- Remove the sentencing recommendation portion from the PSI form.
- 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.

**Reduces complexities and errors:** PSIs provide important information that can lead to more informed sentencing decisions. 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 #10). This would help guard against the risk of bias and racial disproportionality in the information collected for the PSI and increase the amount of information collected when people of different cultures are

more comfortable with certain interviewers. 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.

**Improves effectiveness of the sentencing system:** PSIs complement an increase in judicial discretion by allowing judges to incorporate individual characteristics and circumstances in sentencing decision; PSIs also provide important information to the defense and prosecution. More information would help judges, prosecutors and defense attorneys leading up to sentencing. The current form does not provide all information needed by judges. This would reduce barriers to collecting relevant information from people of different cultures as people may become more comfortable with interviewers. Increased use of PSIs would prevent any given DOC sentencing recommendation from conflicting with the state's sentencing recommendation. Unification around assessment tools and approaches would offer uniform, accurate, and consistent results.

**Promotes/improves public safety:** Additional information would help judges, prosecutors, and defense attorneys make more informed sentencing decisions related to crime reduction needs (e.g., whether defendant gets punishment, treatment, diversion, etc.). When judges, prosecution, and defense have more information on the characteristics and circumstances of a case, the sentencing decision can be individualized instead of using a one-size-fits-all approach. Consistent and accurate information and up-to-date training will result in more precise assessment outcomes.

*2020 Task Force Meeting Summaries for additional context: Aug 6<sup>th</sup>, Sept 17<sup>th</sup>, Nov. 5<sup>th</sup>*

## Enhancements and Sentence Reforms

When Washington State implemented the SRA in 1984, the SRA included a sentencing enhancement for being armed with a deadly weapon. Over the years, that has been modified and expanded. The Legislature divided the deadly weapon enhancement into separate firearm and deadly weapon enhancements, increased the list of offenses to which these two enhancements could be applied, and created 11 other enhancements for a variety of other crimes (SGC 2019 Report).

The Task Force (in particular the SEWG and Subgroup), spent a significant amount of time discussing enhancements. These conversations revealed a complex system of sanctions designed to address increased culpability for certain types of behavior. While some enhancements are frequently applied, there are others that have rarely, if at all been used (Link to Enhancement Spreadsheet). Some are mandatory and some are not. Some are to be served consecutively, others are not. Some include statutory language that explicitly states the enhancement time may not be reduced if the sentence exceeds the statutory maximum. And the rules around eligibility for good time credits differ between enhancements (SGC 2019 Report).

This complexity in sentencing enhancements was talked about by many members as an area in need of being addressed. It has caused significant issues for the Department of Corrections'

computer system when calculating release dates for some incarcerated individuals who had enhancements, resulting in legislative oversight (SGC 2019 Report).

Recommendations 12-14 reduce complexity of sentence calculation, reduce racially disparate sentencing outcomes, and eliminate or modify ineffective and unused enhancements.

The Task Force will focus on sentencing-specific reforms in 2021, once the findings of the sentencing grid research is completed. However, the Task Force agreed that recommendation #15 should be addressed in this 2021 Legislative session. Under current law, the first failure to register conviction 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. All subsequent failure to register convictions are ranked as a sex offense. 2nd conviction 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. 3rd conviction 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. The Task Force discussed how sex offender registration requirements can be disproportionately burdensome, in particular for those experiencing homelessness whom must appear in person to register.<sup>1</sup> The Task Force reviewed data about how FTR has not shown to elevate risk of sex offense recidivism<sup>2</sup> and that changing the designation of FTR to be a non-sex offense would result in cost savings for the State.

### RECOMMENDATION #12

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

**Reduces complexities and errors:** The number and geographic size of protected zones often leads to overlap and can result in entire cities being subject to enhanced sentences.

**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; [Ciaramella & Krisai, 2018](#)). The geographic nature of drug-free zone laws, has often led to disparate impact, as individuals face harsher sentences based on their zip code ([Avila, 2015](#)).

**Promotes/improves public safety:** The number and geographic size of protected zones often leads to overlap and can result in entire cities being subject to enhanced sentences. The proliferation of enhancement zones undermines their intended deterrent effect as individuals are no longer incentivized to move criminal activity elsewhere when entire cities are effectively deemed protected zones (Prison Policy Institute; [Kajstura, 2014](#)). Protected zones more important in rural areas (than urban);

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<sup>1</sup> <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1051&context=wlro>

<sup>2</sup> Failure to Register materials: <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/resources-and-data-criminal-sentencing-task-force/>

this could be addressed by strengthening laws prohibiting sale of drugs to minors or involving minors in drug dealing. Proliferation of protected zones results in some urban areas being entirely blanketed.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 10<sup>th</sup>, Nov. 5<sup>th</sup>*

### RECOMMENDATION #13

Firearm and Deadly Weapon Enhancements:

- Eliminate mandatory stacking of firearm and deadly weapon enhancements going forward (prospective only). Specifically, provide 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.
- Eliminate 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.
- Eliminate the restriction on earned early release time for firearm and deadly weapon enhancements (prospective and retroactive). This will allow the Department of Corrections to implement the retroactive application of these changes for those currently incarcerated over a six-month period.
- 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.
- **Reduces complexities and errors and Improves effectiveness of the sentencing system:** Stacking occurs when a defendant gets charged with multiple crimes in a single charging document. If each charge has a firearm enhancement, the sentencing court currently must, upon a finding or plea of guilty, impose separate five-year terms to run consecutively to the underlying sentence and to each other. For example, if six separate charges each include a firearm enhancement, the defendant faces a sentence of 30 years of incarceration that cannot be reduced in addition to the underlying standard range sentence (SGC 2019 Report). With this recommendation, the presumption at sentencing would have the enhancements served concurrently, leaving it to the judge to determine if consecutive service was warranted. Eliminating the restriction on earned early release time will allow DOC to implement the retroactive application of these changes for those currently incarcerated over a six-month period. Stacking of subsequent enhancements also drastically increases sentence length and exacerbates racial disparities.<sup>3</sup>

*2020 Task Force Meeting Summaries to reference for additional context: Oct 1<sup>st</sup>, Nov. 5<sup>th</sup>*

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<sup>3</sup> For information of the disparate sentencing outcomes of mandatory minimum firearm penalties see:

<https://journals.sagepub.com/doi/10.3818/JRP.5.1.2003.95>

[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315\\_Firearms-Mand-Min.pdf#page=13](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf#page=13)

## RECOMMENDATION #14

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

**Reduces complexities and errors:** This enhancement is also sometimes confused with an existing aggravating factor related to criminal street gang activity. Based on data compiled by Caseload Forecast Council this enhancement has been applied to only one sentence between FY00-FY19. Grid Subgroup members noted that the aggravator related to criminal street gang activity is what is currently used. This enhancement's extremely narrow definition makes it nearly impossible to prove, and thus is rarely, if ever, used.

**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>4</sup>

*2020 Task Force Meeting Summaries to reference for additional context: Oct 1<sup>st</sup>, Nov. 5<sup>th</sup>*

## RECOMMENDATION #15

Move crime of failure to register as a sex offender (FTR) to a non-sex offense.

**Improves effectiveness of the sentencing system:** By moving FTR to a non-sex offense, indeterminate savings would be realized for both prison and jail sentences based on lower criminal history scores as sex offenses triple score against one another.

*2020 Task Force Meeting Summaries to reference for additional context: Oct 1<sup>st</sup>, Nov. 5<sup>th</sup>*

## Earned Early Release

Earned early release refers to the maximum amount of time that can be deducted from an incarcerated individual's sentence for complying with prison rules, good behavior, and program participation. When the SRA was enacted in 1986, all offenses were eligible for 33% earned time. Beginning in the 1990s the Legislature made several amendments to earned early release calculations, most notably reducing earned time to 15% and then 10% for Serious Violent offense or Class A Sex offenses in 1990 and 2003, respectively. The Legislature excluded mandatory minimum terms from earned time calculations and deemed some low or moderate risk individuals eligible for 50% earned time. Some of these changes were made to comply with federal Truth-in-Sentencing grant requirements that provided funding for correctional facilities construction and renovation to states in which individuals convicted of serious violent crimes served a minimum of 85% of their imposed sentence.

Task Force discussions of earned early release time centered on ways for earned time to be allowed to be applied to an individual's entire sentence and to reduce calculation complexity

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<sup>4</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.

for DOC staff, who must calculate a variety of earned early release percentages depending on type of underlying offense and when it was committed. For example, if an individual has a weapon enhancement on one or more counts, currently they must serve enhancement(s) consecutive to one another and to the underlying sentence. Current law does not allow earned time to be received for the weapon enhancement portion of the sentence. The Task Force also discussed addressing earned early release in the sentencing grid itself to increase transparency of sentence lengths.

### RECOMMENDATION #16

Make enhancements eligible for earned early release and partial confinement.

**Reduces complexities and errors:** the calculation of earned early release is complex. Applying the percentage to the entire sentence, as opposed to only part would aid in simplifying the calculation and reducing the potential for error.

**Improves effectiveness of the sentencing system and promotes/improves public safety:** Earned time programs benefit the community at large by reducing recidivism rates and decreasing correctional population and costs.<sup>5</sup>

*2020 Task Force Meeting Summaries to reference for additional context: Oct 1<sup>st</sup>, Nov. 5<sup>th</sup>*

## Community Supervision

Community supervision, sometimes referenced as community custody, includes the planning during incarceration and the framework of accountability and programs individuals are held to upon release. Specifically, supervision includes:

- approval of release address and housing assistance,
- ongoing monitoring of court ordered conditions, and
- access to addiction, cognitive, and behavior treatment programs<sup>6</sup>.

Currently, Washington Department of Corrections supervises over 19,000 persons who have been released from jail or prison and/or were sentenced to a term of community supervision.<sup>7</sup>

During Task Force meetings, DOC and others described some of the challenges and complexities with community supervision. Specific challenges include insufficient contact time with high-risk individuals, variations in availability of resources, and limitations on eligibility. Some of the work to address those challenges has already been identified, or is being addressed, by DOC and others—the following recommendations developed by the Task Force recognize and further refine those efforts.

### RECOMMENDATION #17

Develop and implement a formal motivational and coaching focused supervision model, which includes trauma informed care and core correctional practices and allows for a more responsive

<sup>5</sup> Earned Early Release Time materials reviewed by the Task Force: <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/resources-and-data-criminal-sentencing-task-force/>

<sup>6</sup> DOC presentation to the Task Force:

<https://s3.wp.wsu.edu/uploads/sites/2180/2020/07/CSTF.Supervision.7.9.2020.pdf>

<sup>7</sup> DOC 2019-2023 Strategic Plan, Achieving Results: <https://www.doc.wa.gov/docs/publications/100-SP001.pdf>

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.

**Improves effectiveness of the sentencing system:** Focusing correctional and 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.

**Promotes/improves public safety:** Opportunity to refocus and reframe community supervision to align with research, including from the Sentencing Guidelines Commission. Allows flexibility to respond to specific individual needs, especially during first year of release, which is a critical time.

*2020 Task Force Meeting Summaries for additional context: July 9<sup>th</sup>, Sept. 17<sup>th</sup>, Oct. 15<sup>th</sup>*

### RECOMMENDATION #18

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

**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 law enforcement officer’s across the world, be followed in these situations.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Oct. 15<sup>th</sup>*

### RECOMMENDATION #19

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

**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](#)). Early access to reentry services supports integration into the community and reduces recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Nov 19<sup>th</sup>*

### RECOMMENDATION #20

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).

**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. An RNR approach would allow the interventions and services to match individual need and risk (rather than just the conviction(s)) and provide opportunities to reassess changes to need and risk over time.

**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." WSIPP is conducting an evaluation of WA's RNR program. Report will be released June 2020.

**Promotes/improves public safety:** [DOC Handout 2020](#): An RNR approach to supervision is a key element of a supervision model that reduces recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Oct. 15<sup>th</sup>*

## RECOMMENDATION #21

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:

- 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 and during any period for which a Bench Warrant has been issued as specified by the court or a Secretary's Warrant has been issued;
- While an individual is serving confinement time as part of the original sentence; and
- Any period of time in confinement for a subsequent felony conviction (including pre-sentence confinement as confirmed by the detaining facility).

**Reduces complexities and errors:** Information on events that may cause a term of supervision to be tolled are not easily available through current data systems and sentence recalculation is complex, which can lead to calculation errors.

**Improves effectiveness of the sentencing system:** Simplified tolling events will provide increased "truth in sentencing" for individuals, including a better understanding of when they are on/off supervision and when their term of supervision and access to reentry services will end.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Nov 19<sup>th</sup>*

## Roles for Victims and Survivors in Release and Reentry

Survivor and victim safety is a central element of successful reentry. The following recommendations developed by the Task Force recognize the need to support and expand the important work of system- and community-based organizations to provide meaningful resources and understanding of the processes for victims and survivors.

**RECOMMENDATION #22**

Create new, or enhance existing, notification processes to ensure timely, accessible, clear, transparent, and meaningful notifications 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;
- 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 to enable adequate victim safety planning. 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); and
- DOC victim services advocates must be included in the notification process and public disclosure exceptions should be expanded to cover them.

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

Changing this process will increase likelihood of receipt of the notification and ensuring that it's meaningful for named victims.

**Promotes/improves public safety:** Named victims need time to allow opportunity to move, make safety plans etc. Victim/survivor safety is an essential part of reentry.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Oct. 15<sup>th</sup>*

**RECOMMENDATION #23**

Expand opportunities and accessibility to culturally relevant, community-based supports outside of Crime Victims' Compensation (CVC) 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.

**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.

**Promotes/improves public safety:** Victim/survivor safety is an essential part of reentry.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 10<sup>th</sup>, Oct. 15<sup>th</sup>*

### RECOMMENDATION #24

Expand the opportunity for victims to be informed at the time of sentencing about the existence of the Facilitated Dialogue process and their right to request such a meeting if that would aid in their healing. Allow community-based organizations to facilitate dialogue processes when a person is incarcerated in a local jail, on work release, on community supervision or living in the community. Expansion of dialogues would require that:

1. The court of conviction is encouraged to modify no contact orders to allow for a one-time facilitated meeting and/or the delivery of a letter which, if the person is under DOC supervision or total confinement, has been processed through the DOC Accountability Letter Bank 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; The name and credentials of the individual(s) facilitating the dialogue will be specified in the motion.
2. A request to modify a no contact order or condition on a Judgment and Sentence should only be made by a victim or a victim advocate after consultation with a victim. A victim should never be approached on behalf of the person who offended against them. All VOD processes should only be initiated at the request of the victim.
3. 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. Develop a system of oversight to assure that facilitators are adequately trained in domestic violence and familial sexual assault dynamics, victim sensitivity and specific Victim/Offender Dialogue Facilitation.

**Reduces complexities and errors:** Currently, VOD is only available only while an individual is in total confinement. Meetings held while someone is in a local jail or in the community should have specific safety measures in place to protect victims.

**Improves effectiveness of the sentencing system:** National data suggests VOD can improve satisfaction of the process, especially in cases of serious crimes. It provides the person who experienced harm an opportunity to ask questions that only the responsible party can answer, to offer forgiveness, or to describe the impact of the harm and be witnessed in that impact.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

### RECOMMENDATION #25

Increase clarity and purpose for victim testimony during sentencing and release decisions: Communicate clear 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 and receive clear information on how their testimony will be used.

**Reduces complexities and errors:** Will increase transparency of the process for victims and survivors and increase their understanding of how information they provide will be considered.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Oct 15<sup>th</sup>*

### RECOMMENDATION #26

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

**Reduces complexities and errors; Improves effectiveness of the sentencing system; and Promotes/improves public safety:** Will reduce challenges for domestic violence survivors to apply for a DVPO while still incarcerated and have it in place upon their release.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Oct 15<sup>th</sup>*

## Rehabilitative Services and Programs

Rehabilitative services and programs includes the variety of job training programs, treatments, housing assistance, and other supports offered by the Department of Corrections, community- and faith-based organizations, and other providers. The Task Force supports the partnership and ongoing work of those entities to better support individuals in their preparation and reintegration into the community.

### RECOMMENDATION #27

Support DOC programs and policy changes that increase opportunities and accessibility for family engagement, when appropriate, during reentry planning.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

### RECOMMENDATION #28

Amend [RCW 72.09.270\(8\)\(a\)](#) related to County of Origin (defined in [RCW 72.09.270\(8\)\(c\)](#): the individual's county of origin means the county of the person's first felony conviction in Washington) to allow: In circumstances where there will not be adverse impacts to victims or survivors, increase DOC's ability to consider factors that will increase opportunities for

successful reentry and long-term support (e.g., proximity to programs, resources, family and pro-social relationships, housing, employment, etc.) when determining release locations. It will be important to ensure no county gets disproportionately impacted.

**Improves effectiveness of the sentencing system and Promotes/improves public safety:** 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.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

### RECOMMENDATION #29

Support policy changes and establishment of criteria that allow individuals to maintain engagement with faith leaders, mentors, and/or volunteers following release.

**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.

**Improves effectiveness of the sentencing system and Promotes/improves public safety:** Promotes successful reentry by enabling individuals to maintain relationships built during incarceration.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

### RECOMMENDATION #30

Continue to provide resources for the Statewide Reentry Council and the Departments of Commerce and Corrections to partner with community organizations that provide reentry services, mentorship, and credible messaging to individuals prior, during, and following incarceration. Prioritize support to organizations that employ people with lived experience and organizations and approaches shown to produce good outcomes.

**Improves effectiveness of the sentencing system and Promotes/improves public safety:** Access to reentry services supports integration into the community and reduces recidivism.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

### RECOMMENDATION #31

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 other entities delivering vocational/ educational programming such as the Washington Student Achievement

Council (WSAC) and Statewide Board of Community and Technical Colleges (SBCTC) providing education for current and formerly incarcerated persons.

- 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 the Trades-Related Apprenticeship Coaching (TRAC) and higher education.
- Support connections to employment opportunities.

**Promotes/improves public safety:** Investments in skills training provides pathways to employment for individuals post-incarceration.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

### RECOMMENDATION #32

Provide resources in an equitable manner 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;
- Funding to support the ability of community organizations to help facilitate successful reentry programs. For example, the Depts. of Corrections and Commerce and the 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; and
- Opportunities for engagement with family and community-based organizations (if appropriate).

**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.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

### RECOMMENDATION #33

Support current and ongoing efforts to develop incentives for businesses and organizations that hire formerly incarcerated individuals, including but not limited to those who complete vocational/ educational programming while incarcerated.

**Promotes/improves public safety:** Reduces barriers for individuals to secure employment post-incarceration.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

**RECOMMENDATION #34**

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 and continuing support of DOC's temporary housing program.
- 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.

**Reduces complexities and errors:** Will reduce complexities and barriers facing individuals as they seek to find and secure housing after release from incarceration.

**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.

**Promotes/improves public safety:** Individuals with safe and secure housing are better able to positively reengage with their families and communities.

*2020 Task Force Meeting Summaries to reference for additional context: Sept 17<sup>th</sup>, Nov 5<sup>th</sup>*

**RECOMMENDATION #35**

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

- Staff training that prioritizes supporting successful rehabilitation and reentry.
- 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.

**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.

**Promotes/improves public safety:** Productive experiences during incarceration can be conducive successful rehabilitation and reentry can reduce crime and thus improve community safety.

2020 Task Force Meeting Summaries to reference for additional context: Oct 15<sup>th</sup>, Nov 19<sup>th</sup>

**RECOMMENDATION #36**

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.

**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 can help ensure DOC staff support individuals’ rehabilitation, thus reducing recidivism and improving public safety.

2020 Task Force Meeting Summaries to reference for additional context: Oct 15<sup>th</sup>, Nov 19<sup>th</sup>

**RECOMMENDATION #37**

Support DOC efforts to provide sufficient preparation and incentive for custody staff to support and prepare individuals for release and greater eligibility requirements for DOC Correctional Officers (COs), Sergeants, Lieutenants etc., seeking to become Counselors and/or Correctional Program Managers.

**Reduces complexities and errors:**  
**Improves effectiveness of the sentencing system:**  
**Promotes/improves public safety:**

**Task Force Consensus Deliberation:** work group will draft text on how this recommendation meets the three policy goals.

2020 Task Force Meeting Summaries to reference for additional context: Oct 15<sup>th</sup>, Nov 19<sup>th</sup>

**RECOMMENDATION #38**

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

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

**Task Force Input from consensus deliberations:** DOC already doing this work. Making DOC an accredited agency could address this as well as 35-37. Both this and #37 can be addressed through a higher-level shift in focus on the purpose of the system (potentially reworking the SRA), from punishment to rehabilitation.

2020 Task Force Meeting Summaries to reference for additional context: Oct 15<sup>th</sup>, Nov 19<sup>th</sup>

## Legal Financial Obligations Relief

A court may include payment of legal financial obligations (LFOs) as part of an individual's judgment and sentence. Legal financial obligations broadly refers to the variety of fees, fines, penalty assessments, costs, restitution, and associated interest that may be imposed by the court. The court has discretion to consider ability to pay—both at the time of sentencing and later—however, LFOs may still comprise a significant financial burden and barrier for an individual's successful reentry<sup>8</sup>.

In its 2019 Report, the Sentencing Guidelines Commission recognized the work of the Minority and Justice Commission and the LFO Stakeholder Commission to identify ways that LFOs can be structured “in ways that support, rather than undermine, rehabilitation and successful reintegration of justice-involved individuals into communities.”<sup>9</sup> Specifically, that work has included collection of data on state and local practices and creation of an LFO calculator tool to aid judges in determining an individual's ability to pay.<sup>10</sup>

In recognition of those efforts, the Task Force decided to explore challenges related to LFOs that individuals may experience post-sentencing and pathways for financial relief. Several recent studies note that, while LFOs may provide some compensation to those who have experienced harm and local governments/judicial systems, the amount imposed may be far greater than the amount actually collected.<sup>11</sup> Many of the following recommendations for relief of LFOs developed by the Task Force explicitly focus on those individuals who are not able to pay—which may have little to no fiscal impact on local governments and could provide significant administrative savings. According to data collected by the LFO Stakeholder Consortium—and shared by members of the Task Force—local governments may only receive approximately 20% of the total amount of LFOs imposed by a court.<sup>12</sup>

### RECOMMENDATION #39

Automatically waive existing non-restitution interest.

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<sup>8</sup> Available: [http://www.courts.wa.gov/committee/pdf/2008LFO\\_report.pdf](http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf)

<sup>9</sup> Available: 2019 SGC Report (ways that support, rather than undermine, rehabilitation and successful reintegration of justice-involved individuals into communities) and 2017-18 Minority and Justice Commission Annual Report (<http://www.courts.wa.gov/committee/pdf/AnnualReportMJC2017-2018.pdf>)

<sup>10</sup> 2017-2019 Washington State LFO Stakeholder Consortium, Progress Report 2018 LFO Symposium: <https://www.courts.wa.gov/subsite/mjc/docs/2018/LFO%20Stakeholder%20Consortium%20Progress%20Report.pdf>

<sup>11</sup> See The Assessment and Consequences of Legal Financial Obligations in Washington State, 2008: [http://www.courts.wa.gov/committee/pdf/2008LFO\\_report.pdf](http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf); and The Steep Costs of Criminal Justice Fees and Fines, The Brennan Report: <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>

<sup>12</sup> <https://www.courts.wa.gov/subsite/mjc/docs/2018/LFO%20Stakeholder%20Consortium%20Progress%20Report.pdf>

**Reduces complexities and errors:** Would eliminate the need for defendant to file motion.

**Improves effectiveness of the sentencing system:** Efficiency – would not require administrative time.

**Promotes/improves public safety:** People return to prison because of their inability to pay Legal Financial Obligations (LFOs) – providing additional financial relief options would increase community stability and decrease the cost of incarceration to the state.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Nov 19<sup>th</sup>*

#### RECOMMENDATION #40

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.

**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.

**Improves effectiveness of the sentencing system and Promotes/improves public safety:** Would allow individuals to address LFOs while still incarcerated, which could allow for improved financial situation upon release. Discretion still lies with the court.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup> and Nov 19<sup>th</sup>*

#### RECOMMENDATION #41

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

**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.

**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.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Nov 19<sup>th</sup>*

#### RECOMMENDATION #42

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

**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.

**Improves effectiveness of the sentencing system:** Reduces financial burden to people with LFOs who lack ability to pay whose accounts are turned over to collections. Reduces ability of collections agencies to continue to add fees, surcharges, costs to existing debts that are disproportionately owed by people with little or no ability to pay.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Nov 19<sup>th</sup>*

### RECOMMENDATION #43

Address the courts statute of limitations to enforce collection of LFOs.

- Reduce available time for which the court has jurisdiction to collect LFOs.
- Jurisdiction will be retained where restitution is owed and there is a willful failure to pay.

**Reduces complexities and errors and Improves effectiveness of the sentencing system:** Would allow for elimination of accounts, that are several years or decades old, where person lacks ability to pay yet has completed all other conditions of sentence.

**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.

*2020 Task Force Meeting Summaries to reference for additional context: July 9<sup>th</sup>, Nov 19<sup>th</sup>*

## Recommendations Considered

During the consensus conversations which began mid-October, the Facilitation Team would read the recommendation and then ask each Task Force member to indicate whether or not they could “live with” the recommendation. Per Task Force operating procedures, each member (or alternate, if member was not present) showed either a “thumbs up,” a “thumbs down,” or “thumb sideways” (by using the Zoom “hand-clap” icon). If any members, or alternates, showed “thumbs down,” those individuals would share the concerns held by their constituency and the Task Force would explore opportunities to address those concerns. The Task Force considered the following recommendation; after much dialogue, however, all members and alternates present were unable to identify a solution for which everyone could be thumbs up or sideways.

## Post-Conviction Review

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

**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.

**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.

**Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation. Multiple scholars have documented the negative impact of incarceration on individual and community health and stability (see Kirk & Wakefield 2018 for a review of the literature). Furthermore, researchers found high rates of incarceration in the U.S. “are associated with declining levels of neighborhood informal social control and collective efficacy (Clear 2007, Drakulich et al. 2012) and increasing levels of cynicism of the law among neighborhood residents (Kirk 2016). In turn, these conditions [likely] contribute to elevated rates of crime and recidivism (Kirk 2015, Kirk & Papachristos 2011)” (Kirk & Wakefield, 2018: p. 175).

**Task Force Consensus Deliberation:** The Task Force discussed this recommendation at its October 15<sup>th</sup> meeting and did not reach consensus. Members had varying perspectives on retroactivity. Some proposed removing the reference to retroactivity and others could not support its removal. The group discussed the fact that the recommendation comprises a general policy statement, noting it suggests needing to deal with retroactivity but does not state how this would be done. More than one member could not “live with” the recommendation (the colloquial terminology for when a Task Force member could not be in consensus with the recommendation written as a broad policy statement without greater specificity about retroactivity, while others could not “live with” the potential recommendation if it *did not* include the verbiage on retroactivity.

*2020 Task Force Meeting Summaries to reference for additional context: Aug 6<sup>th</sup>, Oct 15<sup>th</sup>*

# WORKPLAN AND TOPICS FOR 2021

## Sentencing Grid

As mentioned, the Task Force agreed that proper consideration of changes to the sentencing grid requires a thorough assessment of the possible impacts of those changes, along with several months of information-sharing and building understanding among Task Force members.

**Attachment F. is a summary of the research being done in 2021, including a proposed timeline.**

In addition, there were two potential recommendations the Task Force discussed at length before concluding that they can best consider them in conjunction with the sentencing grid in 2021. These two recommendations are described below.

### Potential Recommendation on Enhancement Reform

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.

OR 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;"*

**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

**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.

**Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation. Multiple scholars have documented the negative impact of incarceration on individual and community health and stability (see Kirk & Wakefield 2018 for a review of the literature). Furthermore, researchers found high rates of incarceration in the U.S. “are associated with declining levels of neighborhood informal social control and collective efficacy (Clear 2007, Drakulich et al. 2012) and increasing levels of cynicism of the law among neighborhood residents (Kirk 2016). In turn, these conditions [likely] contribute to elevated rates of crime and recidivism (Kirk 2015, Kirk & Papachristos 2011)” (Kirk & Wakefield, 2018: p. 175).

### Criminal History Score Reform

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

**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.

**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.

**Promotes/improves public safety:** Allows opportunity to reduce the destabilizing impact of long-term incarceration on communities and encourages rehabilitation. Multiple scholars have documented the negative impact of incarceration on individual and community health and stability (see Kirk & Wakefield 2018 for a review of the literature). Furthermore, researchers found high rates of incarceration in the U.S. “are associated with declining levels of neighborhood informal social control and collective efficacy (Clear 2007, Drakulich et al. 2012) and increasing levels of cynicism of the law among neighborhood residents (Kirk 2016). In turn, these conditions [likely] contribute to elevated rates of crime and recidivism (Kirk 2015, Kirk & Papachristos 2011)” (Kirk & Wakefield, 2018: p. 175).

*Research on Criminal History Score is underway by Statistical Analysis Center (results due March 2021).*