

SSB 6160
REVISING FELONY SENTENCING RANGES
325 – Sentencing Guidelines Commission
May 4, 2009

SUMMARY

A brief description of what the measure does that has fiscal impact.

Section 1 Amends RCW 9.94A.510, the sentencing grid, to add a new range for offender scores of 10 or more and expands the lower and higher end of sentencing ranges for all seriousness levels except for level XIV which stays the same. The exceptions to these changes are:

- For level I, the standard range stays the same for those with offender scores of 0-5. Only those level I standard ranges with offender scores of 6-10 or more are affected by the change.
- For level II, the standard range stays the same for those with offender scores of 0-3. Only those level II standard ranges with offender scores of 4-10 or more are affected by the change.
- For level III the standard range stays the same for those with offender scores of 0-3. Only those level III standard ranges with offender scores of 4-10 or more are affected by the change.
- For level IV the standard range stays the same for those with offender scores of 0-1. Only those level IV standard ranges with offender scores of 2-10 or more are affected by the change.
- For level V the standard range stays the same for those with offender scores of 0. Those level V standard ranges with offender scores of 1-10 or more are affected by the change.

This section of the Act also clarifies that 10+ on the grid signifies ten months and one day.

Section 2 Amends RCW 9.94A.535 to establish additional criteria for exceptional sentences. This includes a mitigating factor for when an offender score due to other current offenses results in a presumptive sentence that is clearly excessive and an aggravating factor for defendant's prior unscored misdemeanor or prior unscored foreign criminal history resulting in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010. In effect, misdemeanor convictions would be considered as a basis for an exceptional sentence in some cases.

Section 3 Establishes that an offender who is sentenced to a standard range where the minimum term is more than 10 months will spend the term of confinement in prison.

Section 4 Establishes that if the maximum term in the sentence range is greater than one year, the minimum term will be no less than sixty percent of the maximum term, and that for offenses with an offender score of ten or more, the minimum term in the range shall be no less than 25 percent of the maximum term.

Section 5 Makes the act effective August 1, 2009.

EXPENDITURES

Assumptions

The adult jail and prison bed impacts for this bill were calculated under the following assumptions.

- Sentences are based on Sentencing Guidelines Commission Fiscal Year 2008 adult felony sentencing data, and assume no changes in crime rates, filings, plea agreement practices or sentencing volumes, *etc.* (*i.e.*, there will be an identical number of sentences each year).
- Excluded from the data were life sentences, exceptional sentences, SSOSA, FTOW, unranked sentences and offenses scored on the drug grid.
- Sentences are distributed evenly by month.
- Jail bed impacts were calculated using a phase-in factor for Crimes Against Persons; DOSA bed impacts were calculated using a phase-in factor for Other Property; Non-DOSA prison bed impacts were calculated using an average phase-in factor for all offenses.
- The prospective length of stay in prison factors in the amount of time served in jail prior to transferring to the Department of Corrections based on the average time served for specific offenses as reported by DOC.
- Sentences are discounted by the ratio of sentences to jail or prison admissions.
- All records with a score of 9 were re-scored and all sentences in which the total calculated points exceeded 9 were given a score of 10.
- Attempt, solicitation and conspiracy offenses were adjusted to reflect 75% of the proposed standard range.
- New sentences were adjusted to comply with statutory maximum sentences.
- The data assumes all new sentences would be in the relative same position in the sentence range as the existing sentence, *i.e.* if the existing sentence is in the lower one third of the sentence range, the new sentence would be in the lower one third of the new sentence range. Proposed DOSA sentences, however, were calculated based on half the midpoint of the proposed sentence range. Any enhancements were then added to the proposed sentence length.
- Due to conflicting language in the bill, two scenarios were run. The first scenario uses the grid as provided in Section 1. According to the modification in Section 4, the minimum term in the range should be no less than 60% of the maximum term in the range, changed from the current 75%. There were 39 cells in the grid in Section 1 that did not meet that requirement. Therefore, the second scenario was completed by modifying the grid in Section 1 to be in compliance with the 60% range requirement as stated in Section 4. For cells where the low range was 10+, the maximum term in the range was reduced in order to maintain the 10+ distinction. Otherwise, all other cell modifications were made to the minimum term in the range.

Impact on the Sentencing Guidelines Commission

This bill would require modification of the Commission's database and data entry programs. Modification costs of \$75,000 - \$100,000 will be sought from the Small Agency Technology pool or taken from the agency's efficiencies savings account, with OFM approval.

Impact on prison and jail beds

Due to the uniqueness of exceptional sentences, SGC is unable to provide analysis on the mitigating and aggravating factors as proposed on Section 2.

Scenario #1 – Using the standard grid as provided in Section 1

In FY08, there were 15,312 sentences eligible for standard grid reductions as proposed; 9,073 were jail sentences, 824 were DOSA prison sentences and 5,415 were non-DOSA prison sentences. There were 1,885 prison sentences with a score of 9, of which 1,450 (77%) were re-scored as 10+.

Of the 15,312 sentences, only 6,141 sentences had a change in total confinement based on the new grid; 74 were jail sentences (all of these were anticipatory sentences), 817 were DOSA prison sentences and 5,250 were prison sentences.

For the jail sentences, the current average sentence length was 10.0 mos and the current average length of stay was 7.2 mos. These 74 sentences converted to about 57 offenders. Under the proposed grid, only 70 sentences remained jail sentences (4 become prison sentences) and the proposed average sentence length was 9.0 mos and the proposed average length of stay way 6.5 mos. The 70 sentences converted to approximately 54 offenders.

For the DOSA sentences, the current average sentence length was 22.5 mos and the current average length of stay was 11.0 mos. These 817 sentences converted to about 643 offenders. Under the proposed grid, the proposed average sentence length was 26.3 mos and the proposed average length of stay way 12.8 mos. The number of DOSA sentences did not change under the proposal.

For the prison sentences, the current average sentence length was 37.3 mos and the current average length of stay was 22.1 mos. These 5,250 sentences converted to about 4,445 offenders. Under the proposed grid, there were 5,254 sentences as 4 jail sentences become prison sentences. The proposed average sentence length was 38.5 mos and the proposed average length of stay way 22.8 mos. The 5,254 sentences converted to approximately 4,449 offenders.

Analysis indicates a maximum prison bed savings of -49 beds in FY12, after which the savings for non-DOSA prison beds starts to decrease. Prison bed impact will be 10 by FY14 with all prison beds continuing to increase after.

Average Monthly Population Jail and Prison Impacts

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	Fiscal Year									
	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Jail AMP	-1	-4	-5	-5	-5	-5	-5	-5	-5	-5
Prison AMP (DOSA)	-1	22	68	85	92	95	96	97	97	97
Prison AMP (Non-DOSA)	-7	-70	-118	-119	-83	-40	-21	-23	-26	-24
Prison AMP (Total)	-8	-48	-49	-34	10	56	75	73	70	73

	Fiscal Year									
	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29
Jail AMP	-5	-5	-5	-5	-5	-5	-5	-5	-5	-5
Prison AMP (DOSA)	97	98	98	98	98	98	98	98	98	98
Prison AMP (Non-DOSA)	-18	-13	-5	5	17	27	33	38	43	48
Prison AMP (Total)	80	85	92	102	114	124	130	135	141	146

End of Year Jail and Prison Bed Impacts

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	Fiscal Year									
	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Jail Beds	-2	-4	-5	-5	-5	-5	-5	-5	-5	-5
Prison Beds (DOSA)	-2	50	79	89	94	96	96	97	97	97
Prison Beds (Non-DOSA)	-30	-98	-126	-105	-61	-27	-20	-26	-26	-21
Prison Beds (Total)	-31	-48	-48	-16	33	69	76	71	71	76

	Fiscal Year									
	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29
Jail Beds	-5	-5	-5	-5	-5	-5	-5	-5	-5	-5
Prison Beds (DOSA)	97	98	98	98	98	98	98	98	98	98
Prison Beds (Non-DOSA)	-15	-10	-1	10	22	30	35	40	45	51
Prison Beds (Total)	82	88	97	108	119	127	132	138	143	148

Scenario #2 – Modifying the standard grid as provided in Section 1 to meet the 60% requirements of Section 4

The only difference in the number of sentences in Scenario #1 and Scenario #2 was that Scenario #2 had 32 fewer sentences that had a change in total confinement. Where Scenario #1 was based on a total of 6,141 sentences, Scenario #2 was based on only 6,109 sentences; 74 were jail sentences, 817 were DOSA prison sentences and 5,218 were non-DOSA prison sentences. All of the 32 sentences were non-DOSA prison sentences.

Analysis indicates a maximum prison bed savings of -45 beds in FY11, after which the savings for non-DOSA prison beds starts to decrease. Prison bed impact will be 25 by FY14 with all prison beds continuing to increase after.

**Average Monthly Population Jail and Prison Impacts
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Where Min Range is no less than 60% of Max Range

	Fiscal Year									
	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Jail AMP	-1	-4	-5	-5	-5	-5	-5	-5	-5	-5
Prison AMP (DOSA)	-1	22	69	86	93	96	97	98	98	98
Prison AMP (Non-DOSA)	-8	-67	-109	-106	-68	-24	-5	-7	-10	-8
Prison AMP (Total)	-8	-45	-40	-20	25	72	92	90	88	91

	Fiscal Year									
	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29
Jail AMP	-5	-5	-5	-5	-5	-5	-5	-5	-5	-5
Prison AMP (DOSA)	98	99	99	99	99	99	99	99	99	99
Prison AMP (Non-DOSA)	-1	4	11	21	33	43	49	54	59	65
Prison AMP (Total)	97	102	110	120	132	142	148	153	158	164

End of Year Jail and Prison Bed Impacts
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Where Min Range is no less than 60% of Max Range

	Fiscal Year									
	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Jail Beds	-2	-4	-5	-5	-5	-5	-5	-5	-5	-5
Prison Beds (DOSA)	-1	51	80	90	95	97	97	98	98	98
Prison Beds (Non-DOSA)	-30	-93	-116	-92	-46	-11	-4	-10	-10	-5
Prison Beds (Total)	-31	-42	-36	-2	49	86	93	88	88	93

	Fiscal Year									
	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29
Jail Beds	-5	-5	-5	-5	-5	-5	-5	-5	-5	-5
Prison Beds (DOSA)	99	99	99	99	99	99	99	99	99	99
Prison Beds (Non-DOSA)	1	6	15	26	38	46	51	57	62	67
Prison Beds (Total)	100	105	114	125	137	145	150	155	161	166

LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

Bill Number: 6160 S SB	Title: Criminal justice T.O.
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Part I: Jurisdiction—Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities:
- Counties: For a reduction in jail sentences
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:

Estimated revenue impacts to:

Jurisdiction	FY 2010	FY 2011	2009-11	2011-13	2013-15
City					
County					
Special District					
TOTAL \$					
GRAND TOTAL \$					

Estimated expenditure impacts to:

Jurisdiction	FY 2010	FY 2011	2009-11	2011-13	2013-15
City					
County	(27,010)	(108,040)	(135,050)	(270,100)	(270,100)
Special District					
TOTAL \$	(27,010)	(108,040)	(135,050)	(270,100)	(270,100)
GRAND TOTAL \$					(675,250)

Part III: Preparation and Approval

Fiscal Note Analyst: David Elliott	Phone: (360) 725 5033	Date: 05/04/2009
Leg. Committee Contact:	Phone:	Date: 04/22/2009
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 05/04/2009
OFM Review: Adam Aaseby	Phone: 360-902-0539	Date: 05/04/2009

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

This bill amends the sentencing grid for felony sentencing.

Section 1 amends the sentencing grid to expand the lower and higher ends of the sentencing range and adds a new range for offender scores of 10 or more. This section also clarifies that 10+ on the grid means 10 months and one day.

Section 2 establishes additional criteria for exceptional sentences making misdemeanor sentences the basis for exceptional sentences in specific cases.

Section 3 establishes that sentences of more than 10 months under the new grid will be served in prison.

Section 4 makes adjustments to sentencing criteria relating to sentences with a maximum of greater than one year, the minimum term will be no less than 60 percent of the maximum (reduced from 75 percent), and adds a requirement that if the offender score is 10 or more the minimum sentence will be no less than 25 percent of the maximum.

Section 5 makes the act effective August 1, 2009.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

Felony sentences of less than 12 months are served in local jails at local expense, while longer sentences are served in prison at state expense. Changing the sentencing grid could have the effect of transferring sentences that are eligible for prison to jails. The provision of Section 3 requiring that sentences of 10 months plus one day and higher be served in prison (rather than 12 months and more) under the new grid minimizes otherwise likely jail bed impact from the changes to the sentencing grid. The fiscal impact numbers illustrate the small universe of offenders that occupy the borderline between jail and prison sentencing.

There are expected to be minimal local fiscal impacts resulting from this bill in the form of four fewer sentences served in jails. These numbers are based on the Sentencing Guidelines Commission (SGC) evaluation of 2008 sentencing data found in the SGC fiscal note for the bill.

The SGC provides an estimate of affected sentences of 74 under the current law. Under the proposal, this would change to 70 sentences in jail with the other four sentences becoming prison sentences. SGC data shows that future impacts would increase by one more sentence served in prison instead of jail in future years.

ESTIMATED SAVINGS:

Savings may be found for the elimination of four sentences. SGC expects a reduction in jail beds of one in FY 2010, rising to four in FY 2011, reaching five in FY 2012 and beyond. The estimated savings for reduced jail costs is \$27,010 in the first fiscal year, ramping up to \$108,040 in the second fiscal year, and \$135,050 in subsequent years. These savings are for county jails as city jails do not house felony offenders.

This is determined by multiplying the average daily cost for a day in jail of \$74 by 365 days/year to produce a per sentence cost of \$27,010. This is then multiplied by four sentences to produce a savings estimate of \$108,040, and then five to produce the ongoing savings estimate of \$135,050. (LGFN 2008 jail cost survey weighted by population)

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

None

SOURCES:

Sentencing Guidelines Commission (SGC) fiscal note
Administrative Office of the Courts (AOC) fiscal note
LGFN 2008 jail cost survey weighted by population

SENATE BILL REPORT

SSB 6160

As Passed Senate, April 26, 2009

Title: An act relating to criminal justice sentencing by amending the sentencing grid to allow judges greater discretion and addressing mitigating and aggravating circumstances that may allow the imposition of a sentence above or below the standard sentence range.

Brief Description: Concerning criminal justice sentencing.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Prentice).

Brief History:

Committee Activity: Ways & Means: 4/22/09 [DPS, DNP, w/oRec].
Passed Senate: 4/26/09, 43-0.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6160 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Keiser, Kline, Kohl-Welles, McDermott, Murray, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt and Honeyford.

Staff: Richard Ramsey (786-7412)

Background: I. Standard Range Sentences. Prior to 1984, courts were required to impose "indeterminate" sentences upon persons convicted of felonies. Under this system, a court would impose a minimum term and a maximum term. The Board of Prison Terms and Paroles (now called the Indeterminate Sentence Review Board) would evaluate the offender and determine whether the offender could be paroled prior to the expiration of the maximum term. Indeterminate sentencing still applies to offenders convicted of offenses committed prior to July 1, 1984.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 1981 the Legislature enacted the Sentencing Reform Act (SRA), which imposed "determinate" sentences on offenders who committed their offenses on or after July 1, 1984. Under determinate sentencing, a court must sentence an offender to a term within a standard range. The standard range is determined using a grid with the offender's criminal history (called "offender score") on the horizontal axis and the severity of the crime (called "seriousness level") on the vertical axis. The standard ranges in the grid are subject to certain limitations. For example, if the maximum of the range is greater than one year, the minimum term may be no less than 75 percent of the maximum term of the range.

An offender sentenced to a term of more than one year must serve his or her term of confinement in a state facility. An offender sentenced to a term of one year or less must serve his or her term of confinement in county jail.

II. Exceptional Sentences. Prior to 2004 a court could sentence, on its own initiative, an offender above or below the standard range if it found, by a preponderance of the evidence, that aggravating or mitigating circumstances existed. This type of sentence is known as an "exceptional sentence." In 2004 the United States Supreme Court ruled that sentencing an offender above the standard range in this manner is unconstitutional [*Blakely v. Washington*, 542 U.S. 296 (2004)]. According to the court, any factor that increases an offender's sentence above the standard range, other than the fact of a prior conviction, must be proved to a jury beyond a reasonable doubt. *Blakely* did not affect a court's ability to impose an exceptional sentence below the standard range.

In 2005 the Legislature amended the procedure for imposing exceptional sentences in light of *Blakely*. Under this new procedure, the court no longer has the authority to impose an aggravated exceptional sentence on its own initiative in most circumstances. Instead, the prosecutor must provide notice that he or she is seeking a sentence above the standard range. The prosecutor must then prove the aggravating circumstances justifying such a sentence to a jury beyond a reasonable doubt.

The new procedure put in place by the Legislature preserved the court's ability to impose exceptional sentences above the standard range on the court's own initiative only in the following situations:

- the defendant and the prosecutor both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the SRA;
- the defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of the SRA;
- the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished; or
- the failure to consider the defendant's prior criminal history, which was omitted from the offender's offender score calculation, results in a presumptive sentence that is clearly too lenient.

In 2005 the Washington Supreme Court ruled that the question of whether a standard range sentence is too lenient, or whether allowing a current offense to go unpunished is too lenient, is a factual determination that may not be made by the court under *Blakely. State v. Hughes*, 154 Wn.2d 118 (2005).

Summary of Substitute Bill: I. Standard Range Sentences. The current sentencing grid for non-drug offenses is replaced. Most of the standard ranges of greater than one year are changed by decreasing the minimum of the range, increasing the maximum of the range, or both. A new column is added to the grid for offender scores of ten or more. The statutory limitations on the ranges in the grid are amended to accommodate the ranges in the new grid: if the maximum of the range is greater than one year, the minimum term may be no less than 60 percent of the maximum of the range; for offenses with an offender score of ten or more, the minimum term of the range may be no less than 25 percent of the maximum term in the range.

If an offender's standard range has a minimum of more than ten months, the offender must serve his or her term if confinement in a state (as opposed to a county) facility.

II. Exceptional Sentences. A new mitigating circumstance is added to the list of circumstances that may lead to an exceptional sentence below the standard range: when the offender score, due to other current offenses (as opposed to prior offenses), results in a presumptive sentence that is clearly excessive.

The following aggravating circumstances that currently may be found by a judge are moved to the list of aggravating circumstances that must be found by a jury beyond a reasonable doubt:

- The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of the SRA.
- The failure to consider the defendant's prior criminal history, which was omitted from the offender's offender score calculation, results in a presumptive sentence that is clearly too lenient.

Appropriation: None.

Fiscal Note: Requested on April 21, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on August 1, 2009.

Staff Summary of Public Testimony: PRO: This bill restores discretion for superior court judges, which was removed in 2004. In the 2008 Session this bill (SB 6898) passed the Senate unanimously. It was not designed or intended to generate budget savings, but the savings are real.

Persons Testifying: PRO: Tom McBride, Washington Association of Prosecuting Attorneys.

XVII Life Sentence without Parole/Death Penalty

XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
	320	333	347	361	374	388	416	450	493	548
XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	220	234	244	254	265	275	295	316	357	397
XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136	147	160	171	184	216	236	277	318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
	102	114	125	136	147	158	194	211	245	280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	121-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	121-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	121-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	121-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90	2-	3-	4-	121-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	23	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	121-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29))

TABLE 1

Sentencing Grid

SERIOUSNESS

LEVEL

OFFENDER SCORE

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10 or more</u>
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XVI Life Sentence without Parole/Death Penalty

<u>XV</u>	<u>225-</u> <u>337</u>	<u>233-</u> <u>350</u>	<u>243-</u> <u>365</u>	<u>262-</u> <u>393</u>	<u>272-</u> <u>408</u>	<u>289-</u> <u>435</u>	<u>289-</u> <u>435</u>	<u>315-</u> <u>473</u>	<u>345-</u> <u>518</u>	<u>383-</u> <u>575</u>	<u>383-</u> <u>862</u>
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<u>XIV</u>	<u>123-</u> <u>220</u>	<u>134-</u> <u>234</u>	<u>144-</u> <u>244</u>	<u>154-</u> <u>254</u>	<u>165-</u> <u>265</u>	<u>175-</u> <u>275</u>	<u>195-</u> <u>295</u>	<u>216-</u> <u>316</u>	<u>257-</u> <u>357</u>	<u>298-</u> <u>397</u>	<u>298-</u> <u>595</u>
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<u>XIII</u>	<u>115-</u> <u>172</u>	<u>125-</u> <u>187</u>	<u>134-</u> <u>202</u>	<u>144-</u> <u>216</u>	<u>154-</u> <u>230</u>	<u>163-</u> <u>245</u>	<u>182-</u> <u>273</u>	<u>201-</u> <u>301</u>	<u>238-</u> <u>357</u>	<u>277-</u> <u>416</u>	<u>277-</u> <u>624</u>
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<u>XII</u>	<u>88-</u> <u>132</u>	<u>95-</u> <u>143</u>	<u>103-</u> <u>155</u>	<u>112-</u> <u>168</u>	<u>120-</u> <u>180</u>	<u>128-</u> <u>194</u>	<u>151-</u> <u>227</u>	<u>166-</u> <u>248</u>	<u>193-</u> <u>290</u>	<u>222-</u> <u>333</u>	<u>222-</u> <u>500</u>
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<u>XI</u>	<u>72-</u> <u>107</u>	<u>80-</u> <u>120</u>	<u>88-</u> <u>132</u>	<u>95-</u> <u>143</u>	<u>100-</u> <u>150</u>	<u>112-</u> <u>168</u>	<u>136-</u> <u>204</u>	<u>148-</u> <u>222</u>	<u>172-</u> <u>257</u>	<u>196-</u> <u>295</u>	<u>196-</u> <u>442</u>
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<u>X</u>	<u>43-</u> <u>71</u>	<u>47-</u> <u>79</u>	<u>52-</u> <u>86</u>	<u>56-</u> <u>93</u>	<u>61-</u> <u>100</u>	<u>64-</u> <u>107</u>	<u>79-</u> <u>132</u>	<u>90-</u> <u>150</u>	<u>108-</u> <u>180</u>	<u>127-</u> <u>208</u>	<u>127-</u> <u>312</u>
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<u>IX</u>	<u>26-</u> <u>43</u>	<u>29-</u> <u>50</u>	<u>34-</u> <u>57</u>	<u>38-</u> <u>64</u>	<u>43-</u> <u>71</u>	<u>47-</u> <u>79</u>	<u>64-</u> <u>107</u>	<u>72-</u> <u>120</u>	<u>90-</u> <u>150</u>	<u>108-</u> <u>180</u>	<u>108-</u> <u>270</u>
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<u>VIII</u>	<u>17-</u> <u>28</u>	<u>21-</u> <u>36</u>	<u>26-</u> <u>43</u>	<u>30-</u> <u>50</u>	<u>34-</u> <u>57</u>	<u>38-</u> <u>64</u>	<u>56-</u> <u>93</u>	<u>64-</u> <u>107</u>	<u>72-</u> <u>120</u>	<u>90-</u> <u>150</u>	<u>90-</u> <u>225</u>
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<u>VII</u>	<u>14-</u> <u>21</u>	<u>17-</u> <u>28</u>	<u>21-</u> <u>36</u>	<u>26-</u> <u>43</u>	<u>30-</u> <u>50</u>	<u>34-</u> <u>57</u>	<u>47-</u> <u>79</u>	<u>55-</u> <u>93</u>	<u>64-</u> <u>107</u>	<u>72-</u> <u>120</u>	<u>72-</u> <u>180</u>
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<u>VI</u>	<u>10+-</u> <u>17</u>	<u>14-</u> <u>21</u>	<u>17-</u> <u>28</u>	<u>21-</u> <u>36</u>	<u>26-</u> <u>43</u>	<u>30-</u> <u>50</u>	<u>38-</u> <u>64</u>	<u>47-</u> <u>79</u>	<u>55-</u> <u>93</u>	<u>64-</u> <u>107</u>	<u>64-</u> <u>157</u>
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<u>V</u>	<u>6-</u> <u>12</u>	<u>10+-</u> <u>17</u>	<u>12+-</u> <u>18</u>	<u>14-</u> <u>21</u>	<u>17-</u> <u>30</u>	<u>27-</u> <u>45</u>	<u>34-</u> <u>57</u>	<u>43-</u> <u>71</u>	<u>52-</u> <u>86</u>	<u>61-</u> <u>100</u>	<u>61-</u> <u>120</u>
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<u>IV</u>	<u>3-</u> <u>9</u>	<u>6-</u> <u>12</u>	<u>10+-</u> <u>17</u>	<u>12+-</u> <u>18</u>	<u>14-</u> <u>21</u>	<u>17-</u> <u>30</u>	<u>27-</u> <u>45</u>	<u>34-</u> <u>57</u>	<u>44-</u> <u>74</u>	<u>52-</u> <u>86</u>	<u>52-</u> <u>120</u>
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<u>III</u>	<u>1-</u> <u>3</u>	<u>3-</u> <u>8</u>	<u>4-</u> <u>12</u>	<u>9-</u> <u>12</u>	<u>10+-</u> <u>17</u>	<u>16-</u> <u>23</u>	<u>17-</u> <u>30</u>	<u>27-</u> <u>45</u>	<u>36-</u> <u>60</u>	<u>43-</u> <u>71</u>	<u>43-</u> <u>120</u>
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<u>II</u>	<u>0-90</u> <u>Days</u>	<u>2-</u> <u>6</u>	<u>3-</u> <u>9</u>	<u>4-</u> <u>12</u>	<u>10+-</u> <u>17</u>	<u>13-</u> <u>19</u>	<u>16-</u> <u>23</u>	<u>17-</u> <u>30</u>	<u>27-</u> <u>45</u>	<u>36-</u> <u>60</u>	<u>36-</u> <u>120</u>
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<u>I</u>	<u>0-60</u>	<u>0-90</u>	<u>2-</u>	<u>2-</u>	<u>3-</u>	<u>4-</u>	<u>10+-</u>	<u>13-</u>	<u>16-</u>	<u>17-</u>	<u>17-</u>
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1 Days Days 5 6 8 12 17 19 23 30 60

2 Numbers in the first and second horizontal rows of each seriousness
3 category (~~represent sentencing midpoints in years (y) and months (m).~~
4 ~~Numbers in the second and third rows~~) represent standard sentence
5 ranges in months, or in days if so designated. 12+ equals one year and
6 one day. 10+ equals ten months and one day.

7 **Sec. 2.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
8 each reenacted and amended to read as follows:

9 The court may impose a sentence outside the standard sentence range
10 for an offense if it finds, considering the purpose of this chapter,
11 that there are substantial and compelling reasons justifying an
12 exceptional sentence. Facts supporting aggravated sentences, other
13 than the fact of a prior conviction, shall be determined pursuant to
14 the provisions of RCW 9.94A.537.

15 Whenever a sentence outside the standard sentence range is imposed,
16 the court shall set forth the reasons for its decision in written
17 findings of fact and conclusions of law. A sentence outside the
18 standard sentence range shall be a determinate sentence.

19 If the sentencing court finds that an exceptional sentence outside
20 the standard sentence range should be imposed, the sentence is subject
21 to review only as provided for in RCW 9.94A.585(4).

22 A departure from the standards in RCW 9.94A.589 (1) and (2)
23 governing whether sentences are to be served consecutively or
24 concurrently is an exceptional sentence subject to the limitations in
25 this section, and may be appealed by the offender or the state as set
26 forth in RCW 9.94A.585 (2) through (6).

27 (1) Mitigating Circumstances - Court to Consider

28 The court may impose an exceptional sentence below the standard
29 range if it finds that mitigating circumstances are established by a
30 preponderance of the evidence. The following are illustrative only and
31 are not intended to be exclusive reasons for exceptional sentences.

32 (a) To a significant degree, the victim was an initiator, willing
33 participant, aggressor, or provoker of the incident.

34 (b) Before detection, the defendant compensated, or made a good
35 faith effort to compensate, the victim of the criminal conduct for any
36 damage or injury sustained.

1 (c) The defendant committed the crime under duress, coercion,
2 threat, or compulsion insufficient to constitute a complete defense but
3 which significantly affected his or her conduct.

4 (d) The defendant, with no apparent predisposition to do so, was
5 induced by others to participate in the crime.

6 (e) The defendant's capacity to appreciate the wrongfulness of his
7 or her conduct, or to conform his or her conduct to the requirements of
8 the law, was significantly impaired. Voluntary use of drugs or alcohol
9 is excluded.

10 (f) The offense was principally accomplished by another person and
11 the defendant manifested extreme caution or sincere concern for the
12 safety or well-being of the victim.

13 (g) The operation of the multiple offense policy of RCW 9.94A.589
14 results in a presumptive sentence that is clearly excessive in light of
15 the purpose of this chapter, as expressed in RCW 9.94A.010.

16 (h) The defendant or the defendant's children suffered a continuing
17 pattern of physical or sexual abuse by the victim of the offense and
18 the offense is a response to that abuse.

19 (i) The offender score due to other current offenses, as opposed to
20 prior offenses, results in a presumptive sentence that is clearly
21 excessive.

22 (2) Aggravating Circumstances - Considered and Imposed by the Court

23 The trial court may impose an aggravated exceptional sentence
24 without a finding of fact by a jury under the following circumstances:

25 (a) The defendant and the state both stipulate that justice is best
26 served by the imposition of an exceptional sentence outside the
27 standard range, and the court finds the exceptional sentence to be
28 consistent with and in furtherance of the interests of justice and the
29 purposes of the sentencing reform act.

30 ~~(b) ((The defendant's prior unscored misdemeanor or prior unscored~~
31 ~~foreign criminal history results in a presumptive sentence that is~~
32 ~~clearly too lenient in light of the purpose of this chapter, as~~
33 ~~expressed in RCW 9.94A.010.~~

34 ~~(e))~~ The defendant has committed multiple current offenses and the
35 defendant's high offender score results in some of the current offenses
36 going unpunished.

37 ~~((d) The failure to consider the defendant's prior criminal~~

1 ~~history which was omitted from the offender score calculation pursuant~~
2 ~~to RCW 9.94A.525 results in a presumptive sentence that is clearly too~~
3 ~~lenient.))~~

4 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
5 the Court

6 Except for circumstances listed in subsection (2) of this section,
7 the following circumstances are an exclusive list of factors that can
8 support a sentence above the standard range. Such facts should be
9 determined by procedures specified in RCW 9.94A.537.

10 (a) The defendant's conduct during the commission of the current
11 offense manifested deliberate cruelty to the victim.

12 (b) The defendant knew or should have known that the victim of the
13 current offense was particularly vulnerable or incapable of resistance.

14 (c) The current offense was a violent offense, and the defendant
15 knew that the victim of the current offense was pregnant.

16 (d) The current offense was a major economic offense or series of
17 offenses, so identified by a consideration of any of the following
18 factors:

19 (i) The current offense involved multiple victims or multiple
20 incidents per victim;

21 (ii) The current offense involved attempted or actual monetary loss
22 substantially greater than typical for the offense;

23 (iii) The current offense involved a high degree of sophistication
24 or planning or occurred over a lengthy period of time; or

25 (iv) The defendant used his or her position of trust, confidence,
26 or fiduciary responsibility to facilitate the commission of the current
27 offense.

28 (e) The current offense was a major violation of the Uniform
29 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
30 trafficking in controlled substances, which was more onerous than the
31 typical offense of its statutory definition: The presence of ANY of
32 the following may identify a current offense as a major VUCSA:

33 (i) The current offense involved at least three separate
34 transactions in which controlled substances were sold, transferred, or
35 possessed with intent to do so;

36 (ii) The current offense involved an attempted or actual sale or
37 transfer of controlled substances in quantities substantially larger
38 than for personal use;

1 (iii) The current offense involved the manufacture of controlled
2 substances for use by other parties;

3 (iv) The circumstances of the current offense reveal the offender
4 to have occupied a high position in the drug distribution hierarchy;

5 (v) The current offense involved a high degree of sophistication or
6 planning, occurred over a lengthy period of time, or involved a broad
7 geographic area of disbursement; or

8 (vi) The offender used his or her position or status to facilitate
9 the commission of the current offense, including positions of trust,
10 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
11 other medical professional).

12 (f) The current offense included a finding of sexual motivation
13 pursuant to RCW 9.94A.835.

14 (g) The offense was part of an ongoing pattern of sexual abuse of
15 the same victim under the age of eighteen years manifested by multiple
16 incidents over a prolonged period of time.

17 (h) The current offense involved domestic violence, as defined in
18 RCW 10.99.020, and one or more of the following was present:

19 (i) The offense was part of an ongoing pattern of psychological,
20 physical, or sexual abuse of the victim manifested by multiple
21 incidents over a prolonged period of time;

22 (ii) The offense occurred within sight or sound of the victim's or
23 the offender's minor children under the age of eighteen years; or

24 (iii) The offender's conduct during the commission of the current
25 offense manifested deliberate cruelty or intimidation of the victim.

26 (i) The offense resulted in the pregnancy of a child victim of
27 rape.

28 (j) The defendant knew that the victim of the current offense was
29 a youth who was not residing with a legal custodian and the defendant
30 established or promoted the relationship for the primary purpose of
31 victimization.

32 (k) The offense was committed with the intent to obstruct or impair
33 human or animal health care or agricultural or forestry research or
34 commercial production.

35 (l) The current offense is trafficking in the first degree or
36 trafficking in the second degree and any victim was a minor at the time
37 of the offense.

1 (m) The offense involved a high degree of sophistication or
2 planning.

3 (n) The defendant used his or her position of trust, confidence, or
4 fiduciary responsibility to facilitate the commission of the current
5 offense.

6 (o) The defendant committed a current sex offense, has a history of
7 sex offenses, and is not amenable to treatment.

8 (p) The offense involved an invasion of the victim's privacy.

9 (q) The defendant demonstrated or displayed an egregious lack of
10 remorse.

11 (r) The offense involved a destructive and foreseeable impact on
12 persons other than the victim.

13 (s) The defendant committed the offense to obtain or maintain his
14 or her membership or to advance his or her position in the hierarchy of
15 an organization, association, or identifiable group.

16 (t) The defendant committed the current offense shortly after being
17 released from incarceration.

18 (u) The current offense is a burglary and the victim of the
19 burglary was present in the building or residence when the crime was
20 committed.

21 (v) The offense was committed against a law enforcement officer who
22 was performing his or her official duties at the time of the offense,
23 the offender knew that the victim was a law enforcement officer, and
24 the victim's status as a law enforcement officer is not an element of
25 the offense.

26 (w) The defendant committed the offense against a victim who was
27 acting as a good samaritan.

28 (x) The defendant committed the offense against a public official
29 or officer of the court in retaliation of the public official's
30 performance of his or her duty to the criminal justice system.

31 (y) The victim's injuries substantially exceed the level of bodily
32 harm necessary to satisfy the elements of the offense. This aggravator
33 is not an exception to RCW 9.94A.530(2).

34 (z) The defendant's prior unscored misdemeanor or prior unscored
35 foreign criminal history results in a presumptive sentence that is
36 clearly too lenient in light of the purpose of this chapter, as
37 expressed in RCW 9.94A.010.

1 (aa) The failure to consider the defendant's prior criminal history
2 which was omitted from the offender score calculation pursuant to RCW
3 9.94A.525 results in a presumptive sentence that is clearly too
4 lenient.

5 (bb) (i) (A) The current offense is theft in the first degree, theft
6 in the second degree, possession of stolen property in the first
7 degree, or possession of stolen property in the second degree; (B) the
8 stolen property involved is metal property; and (C) the property damage
9 to the victim caused in the course of the theft of metal property is
10 more than three times the value of the stolen metal property, or the
11 theft of the metal property creates a public hazard.

12 (ii) For purposes of this subsection, "metal property" means
13 commercial metal property, private metal property, or nonferrous metal
14 property, as defined in RCW 19.290.010.

15 (~~(aa)~~) (cc) The defendant committed the offense with the intent
16 to directly or indirectly cause any benefit, aggrandizement, gain,
17 profit, or other advantage to or for a criminal street gang as defined
18 in RCW 9.94A.030, its reputation, influence, or membership.

19 **Sec. 3.** RCW 9.94A.190 and 2009 c 28 s 5 are each amended to read
20 as follows:

21 (1) A sentence that includes a term or terms of confinement
22 totaling more than one year, or a sentence set under RCW 9.94A.510
23 based on a sentence range with a minimum sentence of more than ten
24 months, shall be served in a facility or institution operated, or
25 utilized under contract, by the state. Except as provided in this
26 subsection or subsection (3) or (5) of this section, a sentence of not
27 more than one year of confinement shall be served in a facility
28 operated, licensed, or utilized under contract, by the county, or if
29 home detention or work crew has been ordered by the court, in the
30 residence of either the offender or a member of the offender's
31 immediate family.

32 (2) If a county uses a state partial confinement facility for the
33 partial confinement of a person sentenced to confinement for not more
34 than one year, the county shall reimburse the state for the use of the
35 facility as provided in this subsection. The office of financial
36 management shall set the rate of reimbursement based upon the average
37 per diem cost per offender in the facility. The office of financial

1 management shall determine to what extent, if any, reimbursement shall
2 be reduced or eliminated because of funds provided by the legislature
3 to the department for the purpose of covering the cost of county use of
4 state partial confinement facilities. The office of financial
5 management shall reestablish reimbursement rates each even-numbered
6 year.

7 (3) A person who is sentenced for a felony to a term of not more
8 than one year, and who is committed or returned to incarceration in a
9 state facility on another felony conviction, either under the
10 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
11 shall serve all terms of confinement, including a sentence of not more
12 than one year, in a facility or institution operated, or utilized under
13 contract, by the state, consistent with the provisions of RCW
14 9.94A.589.

15 (4) Notwithstanding any other provision of this section, a sentence
16 imposed pursuant to RCW 9.94A.660 which has a standard sentence range
17 of over one year, regardless of length, shall be served in a facility
18 or institution operated, or utilized under contract, by the state.

19 (5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in
20 a facility or institution operated, or utilized under contract, by the
21 state.

22 **Sec. 4.** RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read
23 as follows:

24 (1) A sentencing guidelines commission is established as an agency
25 of state government.

26 (2) The legislature finds that the commission, having accomplished
27 its original statutory directive to implement this chapter, and having
28 expertise in sentencing practice and policies, shall:

29 (a) Evaluate state sentencing policy, to include whether the
30 sentencing ranges and standards are consistent with and further:

31 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

32 (ii) The intent of the legislature to emphasize confinement for the
33 violent offender and alternatives to confinement for the nonviolent
34 offender.

35 The commission shall provide the governor and the legislature with
36 its evaluation and recommendations under this subsection not later than
37 December 1, 1996, and every two years thereafter;

1 (b) Recommend to the legislature revisions or modifications to the
2 standard sentence ranges, state sentencing policy, prosecuting
3 standards, and other standards. If implementation of the revisions or
4 modifications would result in exceeding the capacity of correctional
5 facilities, then the commission shall accompany its recommendation with
6 an additional list of standard sentence ranges which are consistent
7 with correction capacity;

8 (c) Study the existing criminal code and from time to time make
9 recommendations to the legislature for modification;

10 (d) (i) Serve as a clearinghouse and information center for the
11 collection, preparation, analysis, and dissemination of information on
12 state and local adult and juvenile sentencing practices; (ii) develop
13 and maintain a computerized adult and juvenile sentencing information
14 system by individual superior court judge consisting of offender,
15 offense, history, and sentence information entered from judgment and
16 sentence forms for all adult felons; and (iii) conduct ongoing research
17 regarding adult and juvenile sentencing guidelines, use of total
18 confinement and alternatives to total confinement, plea bargaining, and
19 other matters relating to the improvement of the adult criminal justice
20 system and the juvenile justice system;

21 (e) Assume the powers and duties of the juvenile disposition
22 standards commission after June 30, 1996;

23 (f) Evaluate the effectiveness of existing disposition standards
24 and related statutes in implementing policies set forth in RCW
25 13.40.010 generally, specifically review the guidelines relating to the
26 confinement of minor and first-time offenders as well as the use of
27 diversion, and review the application of current and proposed juvenile
28 sentencing standards and guidelines for potential adverse impacts on
29 the sentencing outcomes of racial and ethnic minority youth;

30 (g) Solicit the comments and suggestions of the juvenile justice
31 community concerning disposition standards, and make recommendations to
32 the legislature regarding revisions or modifications of the standards.
33 The evaluations shall be submitted to the legislature on December 1 of
34 each odd-numbered year. The department of social and health services
35 shall provide the commission with available data concerning the
36 implementation of the disposition standards and related statutes and
37 their effect on the performance of the department's responsibilities
38 relating to juvenile offenders, and with recommendations for

1 modification of the disposition standards. The administrative office
2 of the courts shall provide the commission with available data on
3 diversion, including the use of youth court programs, and dispositions
4 of juvenile offenders under chapter 13.40 RCW; and

5 (h) Not later than December 1, 1997, and at least every two years
6 thereafter, based on available information, report to the governor and
7 the legislature on:

8 (i) Racial disproportionality in juvenile and adult sentencing,
9 and, if available, the impact that diversions, such as youth courts,
10 have on racial disproportionality in juvenile prosecution,
11 adjudication, and sentencing;

12 (ii) The capacity of state and local juvenile and adult facilities
13 and resources; and

14 (iii) Recidivism information on adult and juvenile offenders.

15 (3) Each of the commission's recommended standard sentence ranges
16 shall include one or more of the following: Total confinement, partial
17 confinement, community supervision, community restitution, and a fine.

18 (4) The standard sentence ranges of total and partial confinement
19 under this chapter, except as provided in RCW 9.94A.517, are subject to
20 the following limitations:

21 (a) If the maximum term in the range is one year or less, the
22 minimum term in the range shall be no less than one-third of the
23 maximum term in the range, except that if the maximum term in the range
24 is ninety days or less, the minimum term may be less than one-third of
25 the maximum;

26 (b) If the maximum term in the range is greater than one year, the
27 minimum term in the range shall be no less than ~~((seventy-five))~~ sixty
28 percent of the maximum term in the range, except that for murder in the
29 second degree in seriousness level XIV under RCW 9.94A.510, the minimum
30 term in the range shall be no less than fifty percent of the maximum
31 term in the range and except that for any offense with an offender
32 score of ten or more, the minimum term in the range shall be no less
33 than twenty-five percent of the maximum term in the range; and

34 (c) The maximum term of confinement in a range may not exceed the
35 statutory maximum for the crime as provided in RCW 9A.20.021.

36 (5) (a) Not later than December 31 of each year, the commission may
37 propose modifications to the community custody ranges to be included in
38 sentences under RCW 9.94A.701. The ranges shall be based on the

1 principles in RCW 9.94A.010, and shall take into account the funds
2 available to the department for community custody. The minimum term in
3 each range shall not be less than one-half of the maximum term.

4 (b) The legislature may, by enactment of a legislative bill, adopt
5 or modify the community custody ranges proposed by the commission. If
6 the legislature fails to adopt or modify the initial ranges in its next
7 regular session after they are proposed, the proposed ranges shall take
8 effect without legislative approval for crimes committed on or after
9 July 1, 2000.

10 (c) When the commission proposes modifications to ranges pursuant
11 to this subsection, the legislature may, by enactment of a bill, adopt
12 or modify the ranges proposed by the commission for crimes committed on
13 or after July 1 of the year after they were proposed. Unless the
14 legislature adopts or modifies the commission's proposal in its next
15 regular session, the proposed ranges shall not take effect.

16 (6) The commission shall exercise its duties under this section in
17 conformity with chapter 34.05 RCW.

18 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2009.

--- END ---

Multiple Agency Fiscal Note Summary

Bill Number: 6160 S SB	Title: Criminal justice T.O.
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Estimated Cash Receipts

Agency Name	2009 FY		2010 FY		2011 FY	
	GF State	Total	GF State	Total	GF State	Total
Total \$						

Local Gov. Courts *						
Local Gov. Other **						
Local Gov. Total						

Estimated Expenditures

Agency Name	2009 FY			2010 FY			2011 FY		
	FTEs	GF State	Total	FTEs	GF State	Total	FTEs	GF State	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	.0	(194,931)	(194,931)	.0	(329,895)	(329,895)	.0	251,349	251,349
Sentencing Guidelines Commission	.0	0	0	.0	0	0	.0	0	0
Total	0.0	\$(194,931)	\$(194,931)	0.0	\$(329,895)	\$(329,895)	0.0	\$251,349	\$251,349

Local Gov. Courts *									
Local Gov. Other **			(135,050)			(270,100)			(270,100)
Local Gov. Total			(135,050)			(270,100)			(270,100)

Prepared by: Adam Aaseby, OFM	Phone: 360-902-0539	Date Published: Revised
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* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

Judicial Impact Fiscal Note

Bill Number: 6160 S SB	Title: Criminal justice T.O.	Agency: 055-Admin Office of the Courts
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Part I: Estimates

No Fiscal Impact

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Contact	Phone:	Date: 04/22/2009
Agency Preparation: Gil Austin	Phone: 360-705-5271	Date: 04/23/2009
Agency Approval: Dirk Marler	Phone: 360-705-5211	Date: 04/23/2009
OFM Review: Cherie Berthon	Phone: 360-902-0659	Date: 04/23/2009

Request # -1

Bill # 6160 S SB

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

Section 1 amends the sentencing grid to expand the sentencing ranges and adds a new range for offender scores of 10 or more.

Section 2 This bill moves two aggravating circumstances that allow a trial court to impose an exceptional sentence without a finding of fact by a jury to the list of aggravating circumstances which must be heard by a jury.

II. B - Cash Receipts Impact

II. C - Expenditures

Section 1

Because the adjustments to the sentencing ranges include both lowering the low end and raising the top end, it is not expected that plea and trial rates will be substantially affected. That is, a lowering of the bottom of the range might be expected to increase plea rates, while an increase to the top of the range might be expected to increase trial rates. Because the adjustments do both, this should not result in a fiscal impact to the Washington courts.

The creation of a new offender score level is likewise not expected to substantially affect trial and plea rates as individuals who would now score at the most serious level would have also previously scored at the most serious level.

Section 2

It is unknown how many exceptional sentences are currently imposed by trial courts under RCW 9.94A.535(2)(b) and (d). These RCW sub-sections allow a trial court to impose an aggravated exceptional sentence without fact finding by a jury where the defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient, or where the failure to consider the defendant's prior criminal history which was omitted from the offender score calculation results in a presumptive sentence that is clearly too lenient. However, it is assumed that requiring fact finding by a jury for these situations will not occur with any significant frequency nor add considerable time to fact finding hearings otherwise initiated. Therefore, this section is anticipated to have little fiscal impact.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

Individual State Agency Fiscal Note

Revised

Bill Number: 6160 S SB	Title: Criminal justice T.O.	Agency: 310-Department of Corrections
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

FUND					
Total \$					

Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
Fund					
General Fund-State 001-1	(6,419)	(188,512)	(194,931)	(329,895)	251,349
Total \$	(6,419)	(188,512)	(194,931)	(329,895)	251,349

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 04/22/2009
Agency Preparation: Susan Lucas	Phone: (360) 725-8277	Date: 05/05/2009
Agency Approval: Susan Lucas	Phone: (360) 725-8277	Date: 05/05/2009
OFM Review: Adam Aaseby	Phone: 360-902-0539	Date: 05/05/2009

Request # 156-3-3

Bill # 6160 S SB

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1 amends RCW 9.94A.510 by expanding the sentencing ranges on the Adult Felony Sentencing Grid and adds a new column and range for offender scores of 10 or more.

Section 2 amends RCW 9.94A.535 modifying the list of mitigating circumstances and aggravating circumstances the court may consider for exceptional sentences. This includes a mitigating factor for when an offender score due to other current offenses results in a presumptive sentence that is clearly excessive and an aggravating factor for defendant's prior unscored misdemeanor or prior unscored foreign criminal history resulting in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010

Section 3 amends RCW 9.94A.190 and establishes that a sentence of more than 10 months under the new grid will be served in prison.

Section 4 amends RCW 9.94A.850 establishing that if the maximum term; in the sentence range is greater than one year, the minimum term will be no less than sixty percent of the maximum term and that for offenses with an offender score of ten or more, the minimum term in the range shall be no less than twenty-five percent of the maximum term.

Section 5 makes the act effective August 1, 2009.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Prison Impacts:

This legislation expands sentencing ranges both higher and lower; allowing judges more discretion when sentencing offenders within a standard range sentence. The Department estimated prison bed savings based on the Sentencing Guidelines Commission assuming sentences are calculated at the same relative position in the range.

The Department's estimate of the proposed legislation was prepared using Fiscal Year 2008 sentencing data provided by the Sentencing Guidelines Commission. The assumptions used by SGC are outlined in the SGC fiscal note for this bill. These estimates assume that the Department's institutional average daily population (ADP) will decrease by (8) in Fiscal year 2010; (48) in Fiscal Year 2011, (50) in Fiscal Year 2012, (34) in Fiscal Year 2013. Prison ADP will increase by 9 in Fiscal Year 2014, and 55 in Fiscal Year 2015.

This legislation lowers the threshold for a presumptive prison sentence from 12 months and one day to 10 months and one day. RCW 9.94A.545 governing community custody for offenders with a sentence of 12 months or less was not

Request # 156-3-3.

amended and may be in conflict with statute governing community custody requirements for offenders released from prison. This estimate assumes that offenders who are sentenced to prison will still be required to serve the community custody range in RCW 9.94A.715, and there will be no change in the length of supervision required for offenders between 10 and 12 months.

ADP reductions are less than the level required to close a unit (256 beds) therefore, savings are calculated based on the direct variable costs associated with each offender at a rate of \$3,928 per year.

The Department projects that the fiscal impact to change the offender tracking system will be \$25,000 in Fiscal Year 2010.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Personal Service Contracts	25,000		25,000		
E-Goods and Services	(28,905)	(173,431)	(202,336)	(303,504)	231,241
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services	(2,514)	(15,081)	(17,595)	(26,391)	20,108
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total:	\$(6,419)	\$(188,512)	\$(194,931)	(\$329,895)	\$251,349

III. C - Expenditures By Program (optional)

Program	FY 2010	FY 2011	2009-11	2011-13	2013-15
Administrative Services Division (100)	25,000		25,000		
Institutional Services (200)	(31,419)	(188,512)	(219,931)	(329,895)	(251,349)
Total \$	(6,419)	(188,512)	(194,931)	(329,895)	(251,349)

Part IV: Capital Budget Impact

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 6160 S SB	Title: Criminal justice T.O.	Agency: 325-Sentencing Guidelines Commission
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Part I: Estimates

No Fiscal Impact

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 04/22/2009
Agency Preparation: Keri-Anne Jetzer	Phone: 360-407-1060	Date: 05/04/2009
Agency Approval: Keri-Anne Jetzer	Phone: 360-407-1060	Date: 05/04/2009
OFM Review: Adam Aaseby	Phone: 360-902-0539	Date: 05/04/2009

Request # 325-09-079-3

Bill # 6160 S SB

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part IV: Capital Budget Impact

Request # 325-09-079-3

Form FN (Rev 1/00)

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Bill # 6160 S SB