

Presentation to the Washington Sentencing Guidelines Commission

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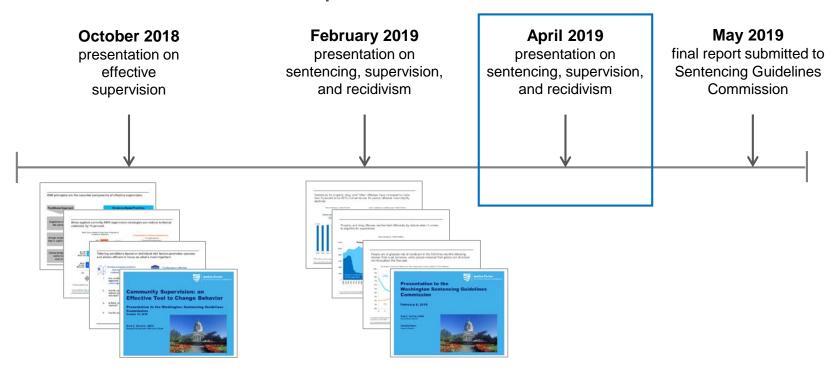




Washington State requested assistance to review the Sentencing Reform Act (SRA) by examining the following areas:

- Review of the literature on effective supervision—what it looks like and the impact it can have on reducing recidivism
- Sentencing analysis including scoring rules, sentence modifications, and recidivism
- Analysis on the state's supervision system, including sanctioning policies and practices and recidivism of people on supervision

This is the third and final presentation to the commission before submission of a final report.



- Review of the literature on effective supervision—what it looks like and the impact it can have on reducing recidivism
- Sentencing analysis including scoring rules, sentence modifications, and recidivism
 - Analysis on the state's supervision system, including sanctioning policies and practices and recidivism of people on supervision

Presentation Outline

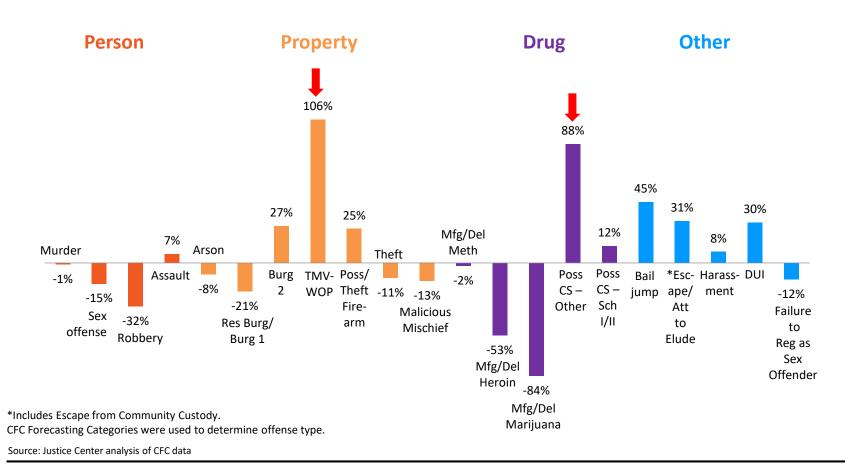
- Sentencing
 - County variation in statewide sentencing trends
 - Use of sentencing alternatives
 - Comparison of sentencing guidelines
 - Supervision Sanctions
 - Recidivism

Sentencing findings from February 2019 presentation

- Felony sentences have steadily increased since 2010.
- This increase appears to be driven by people with more extensive criminal histories sentenced for offenses in lower seriousness levels, generally property and drug offenses.
- Nearly all felony sentences include a period of incarceration in jail or prison, with more than half of felony sentences including a jail sentence.
- While alternative sentences without incarceration do exist, they are applied to less than 10 percent of felony sentences.
- As a result of having few non-custodial sentencing options, lower-level property offenses and possession of controlled substances make up nearly half of all felony sentences to incarceration.

Analysis presented at the last meeting highlighted particular drug and property offenses that have seen the greatest increase in number of felony sentences.

Percent Change in Felony Sentences by Offense Type, FY2010-FY2018



The increase in sentences for motor vehicle theft and drug possession was widespread across the state in recent years.

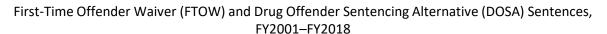
Change in Sentences for TMVWOP by County, FY2010-FY2018

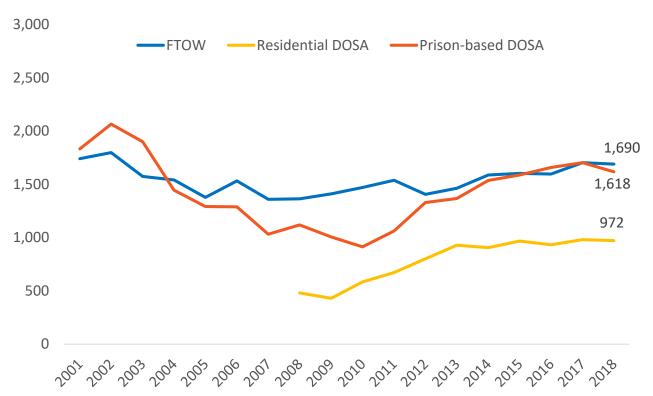
	Clark	King	Pierce	Snohomish	Spokane	Thurston	Yakima	All others	State
2010	100	206	181	90	109	26	79	262	1,053
2018	136	430	324	305	288	68	135	483	2,169
Percent change	36%	109%	79%	239%	164%	162%	71%	84%	106%

Change in Sentences for Poss CS – Other by County, FY2010–FY2018

	Clark	King	Pierce	Snohomish	Spokane	Thurston	Yakima	All others	State
2010	229	60	399	130	210	109	115	1,123	2,375
2018	405	181	310	460	553	217	152	2,187	4,465
Percent change	77%	202%	-22%	254%	163%	99%	32%	95%	88%

The number of FTOW and DOSA sentences each year has remained fairly stable and represents a small proportion of total felony sentences.





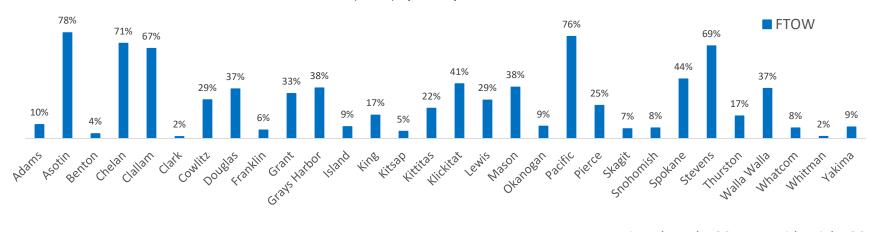
Proportion of All Felony Sentences that are FTOW, Residential DOSA, or Prison-based DOSA

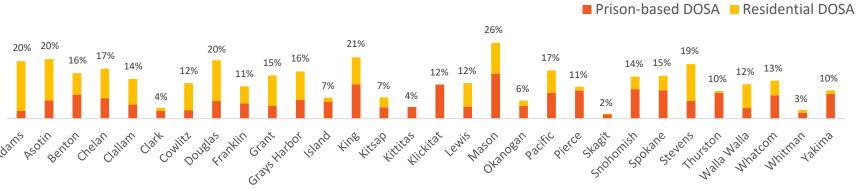
2001	14%
2002	14%
2003	13%
2004	11%
2005	9%
2006	9%
2007	8%
2008	11%
2009	11%
2010	13%
2011	14%
2012	15%
2013	16%
2014	16%
2015	17%
2016	17%
2017	17%
2018	17%

Source: Justice Center analysis of CFC data.

Counties vary in the distribution of alternative sentences, with more variation in FTOW sentences than DOSA sentences.

Percent of Property or Drug Felony Sentences Receiving a First-Time Offender Waiver (FTOW) or Drug Offender Sentencing Alternative (DOSA) by County*, FY2018

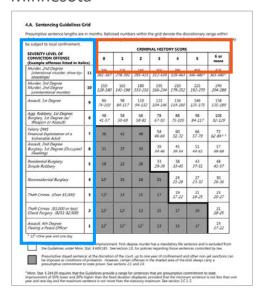




^{*}Counties with fewer than 100 felony sentences in FY2018 were excluded. FTOW analysis includes only sentences of people with no prior convictions. Source: Justice Center analysis of CFC data

Sentencing guidelines systems use offense severity and prior criminal history to guide disposition and length of sentence.

Minnesota

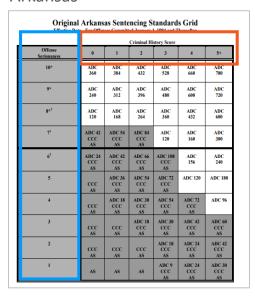


Offense Severity

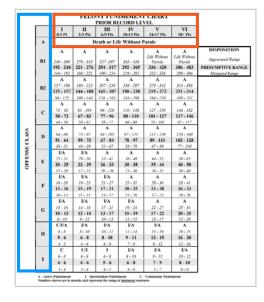
Prior Criminal History

In Washington, the rows and columns are *Seriousness Level* and *Offender Score*.

Arkansas



North Carolina



While offense severity is fairly straightforward, prior criminal history tends to involve a more nuanced approach.



In Michigan, the Prior Record Variables (PRV) level is determined based on a calculated score comprised of seven PRVs.

PRV Level

A = 0 points D = 25-49 points

B = 1-9 points **E** = 50-74 points

C = 10-24 points **F** = 75+ points

PRV 1 – Prior High Severity Felony Convictions

75 points = 3 or more prior high severity felony convictions

50 points = 2 prior high severity felony convictions

25 points = 1 prior high severity felony conviction

0 points = No prior high severity felony convictions

PRV 2 – Prior Low Severity Felony Convictions

30 points = 4 or more prior low severity felony convictions

20 points = 3 prior low severity felony convictions

10 points = 2 prior low severity felony convictions

5 points = 1 prior low severity felony conviction

0 points = No prior low severity felony convictions

PRV 3 – Prior High Severity Juvenile Adjudications

50 points = 3 or more prior high severity juvenile adjudications

25 points = 2 prior high severity juvenile adjudications

10 points = 1 prior high severity juvenile adjudications

0 points = No prior high severity juvenile adjudications

PRV 4 – Prior Low Severity Juvenile Adjudications

20 points = 6 or more prior low severity juvenile adjudications

2 points = 1 prior low severity juvenile adjudication

0 points = No prior low severity juvenile adjudications

PRV 5 – Prior Misdemeanor Convictions or Prior Misdemeanor Juvenile Adjudications

20 points = 7 or more prior misdemeanor convictions or adjudications

15 points = 5 or 6 prior misdemeanor convictions or adjudications

10 points = 3 or 4 prior misdemeanor convictions or adjudications

5 points = 2 prior misdemeanor convictions or adjudications

2 points = 1 prior misdemeanor conviction or adjudication

0 points = No prior misdemeanor convictions or adjudications

PRV 6 – Relationship to Criminal Justice System

20 points = Serving a sentence in Department of Corrections or jail

15 points = Incarcerated in jail awaiting trial or probation violation hearing

10 points = On parole, probation, or delayed sentence status for a felony

5 points = On probation or delayed sentence status for a misdemeanor

O points = No relationship to the criminal justice system

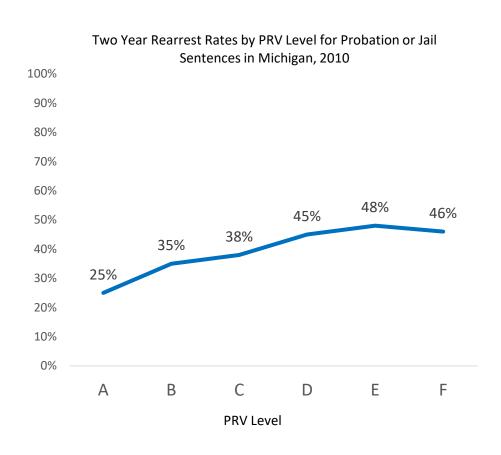
PRV 7 – Subsequent or Concurrent Felony Convictions

20 points = 2 or more subsequent or concurrent felony convictions

10 points = 1 subsequent or concurrent felony convictions

O points = No subsequent or concurrent felony convictions

In most guideline states, prior criminal history is a good predictor of a person's likelihood of recidivating.



Twice as likely to be rearrested as people in PRV Level A.

PRV	PRV	PRV	PRV	PRV	PRV
Level A	Level B	Level C	Level D	Level E	Level F
0 Pts	1-9 Pts	10-24 Pts	25-49 Pts	50-74 Pts	75+ Pts

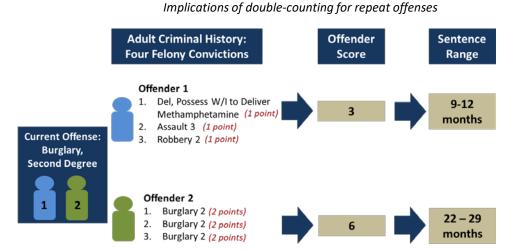
Source: CSG Justice Center presentation to the Michigan Law Revision Commission, May 13, 2014.

In Washington, offender score is not consistently calculated across different offense types and is based on factors other than a person's criminal history.

The Offender Score is calculated based on five factors:

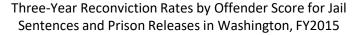
- 1) Number of prior criminal convictions or juvenile dispositions
- 2) Relationship between any prior offense(s) and the current offense of conviction
- Presence of other current convictions
- 4) Community custody status at the time the crime was committed
- 5) Length of crime-free time between offenses

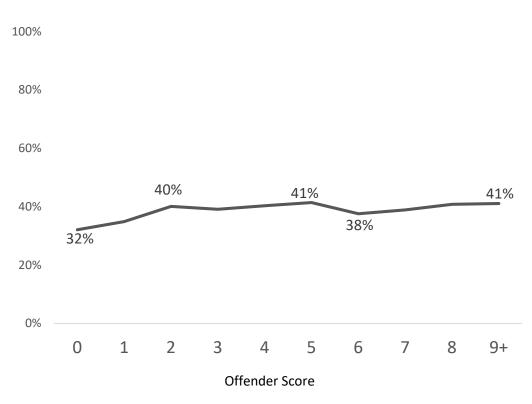
Additionally, the scoring rules vary depending on the type of offense and circumstances of the current conviction.



Source: Washington Sentencing Guidelines Manual.

A higher offender score does not correlate strongly with a higher likelihood of recidivism.





Source: CSG Justice Center analysis of CFC, DOC, and WSP arrest data.

The lack of clear correlation between offender score and recidivism is particularly noteworthy in light of Washington's adoption of sentencing guidelines over time.

First of the six goals articulated in the 1981 enabling statute:

sentences "proportionate to the seriousness of the offense and the offender's criminal history"

Seventh goal added in 1999:

sentences should "reduce the risk of reoffending by offenders in the community"

Sentencing Summary

- Counties of all sizes across the state have experienced increases in motor vehicle theft and non-narcotic drug possession, with drug possession in particular having widespread increases.
- The number of FTOW and DOSA sentences has not changed over time and makes up a small proportion of felony sentences.
- There is wide variation across counties in the application of FTOW sentences and to a lesser extent DOSA sentences.
- Washington is unlike other guidelines states in how criminal history is incorporated in the grid.

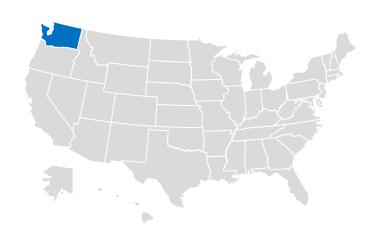
Presentation Outline

- Sentencing
- Supervision Sanctions
 - Supervision sanctioning practices in WA
 - Comparison with other states
 - Costs and implications
 - Recidivism

Supervision Findings from October 2018 and February 2019 Discussions

- A strong research foundation exists to support the use of supervision as an effective public safety alternative to more traditional custody-based sentencing options.
- Statutory restrictions limit access to supervision for certain offenses, resulting in more than half of sentences to jail having no supervision following release.
- Supervision is more likely applied in cases with a higher seriousness level and is less closely tied to a person's criminal history.
- There are limited opportunities for supervision of people sentenced for property offenses.
- The number of supervision violation admissions and the average daily population of people incarcerated for supervision violations have increased in the last three years.

In 2012, Washington became the first state to implement Swift and Certain (SAC) as a supervision model statewide and, as a result, became the site for the largest implementation of SAC.



WA Supervision Sanctioning Process

1st Low-Level Violation – Stipulated Agreement *No confinement*

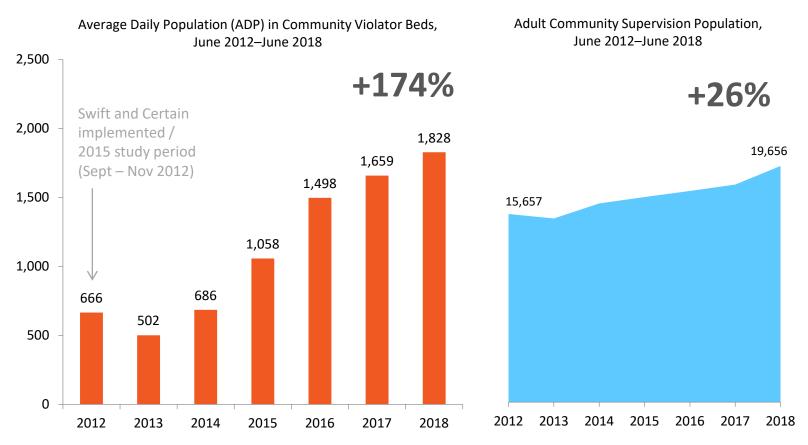
2nd – 5th Low-Level Violation – Short-Term Confinement 1-3 days confinement

6th+ Low-Level Violation / High-Level Violations *Up to 30 days confinement*

A person's violation count will accrue during *any continuous period* of department jurisdiction. A continuous period of department jurisdiction ends only when a person has no active, inactive, or consecutive supervision periods remaining or a prison DOSA sentence is reclassified.

DOC currently interprets any orders for multiple supervision sentences to run consecutively unless the order clearly states that they run concurrently.

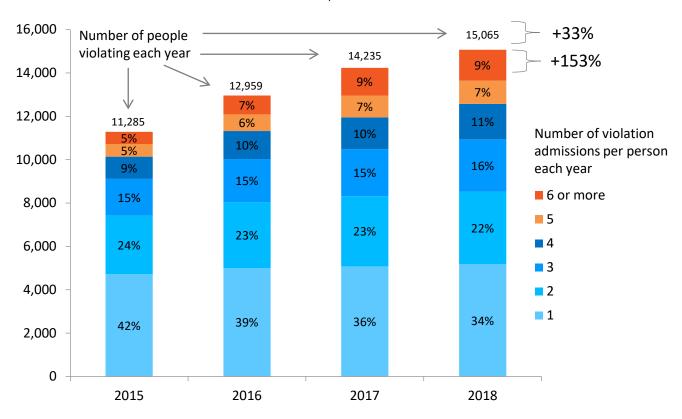
The supervision violator population in county jails has increased at a rate much higher than the increase in the total supervision population, with most of the increase occurring after 2014.



Source: Washington State Department of Corrections, Average Daily Population of Incarcerated Individuals; Caseload Forecast Council, Adult Community Supervision Contact Required Caseload forecast.

Both the number of people violating and the number of times they violate in a year has increased since 2015.





^{*}Admissions include local county jail/violator facilities.

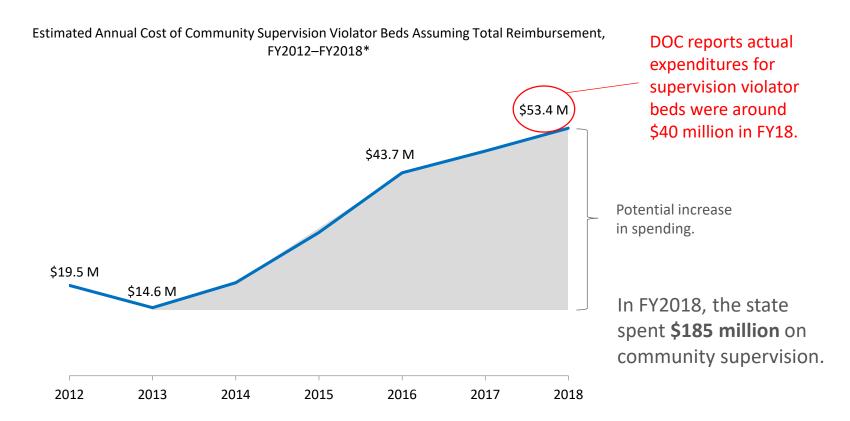
Source: Justice Center analysis of DOC data.

States with similar approaches to supervision sanctioning as Washington have much lower numbers of violation admissions annually.

State	People on or starting supervision in a year	Annual number of supervision violation admissions to incarceration (excludes revocations)	Violation admissions per 100 people supervised	
Washington (2018)	38,015	41,745	109	
North Carolina (2017)	84,003	3,049	4	

North Carolina employs short incarceration stays as a supervision sanction as an alternative to revocation. These sanctions are generally 3 days or less, whereas in Washington they may stay up to 30 days.

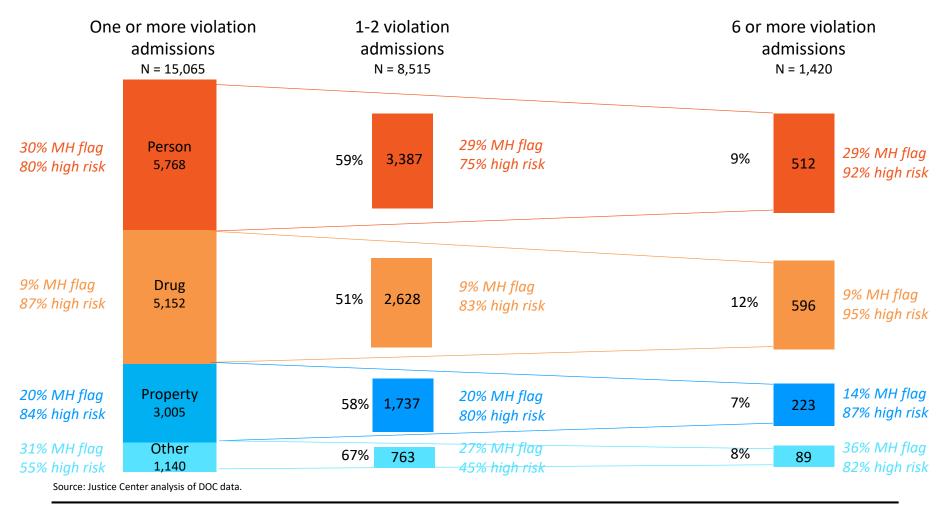
Population growth of people incarcerated for supervision violations has cost implications for the state.



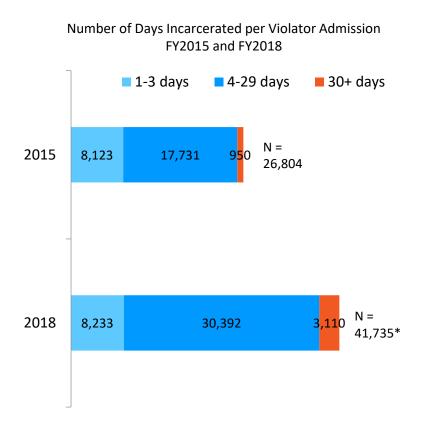
^{*}Cost estimate based on a violator bed cost per day of \$80.

Source: CSG Justice Center analysis of DOC data; Personal communication with DOC staff; State of Washington Budgeted Operating Expenditures for Department of Corrections, https://www.ofm.wa.gov/sites/default/files/public/budget/agencyexp/fiscalstatus/310opexpen.pdf.

While the majority of sanctioned people only had one to two sanctions imposed, those who had six or more imposed sanctions weren't necessarily more likely to have a mental health issue or be at a higher risk of reoffending.



To fully understand what is driving supervision violator admissions to incarceration, a number of research questions need to be addressed.



What is the prevalence of different types of violations (low level vs. high level) and how often do they occur?

What are the underlying causes of low-level and high-level violations?

Are longer lengths of stay associated with high-level violations or the accumulation of low-level violations?

What is the average total number of violations a person has while on supervision, and has this changed over time?

When do violations tend to occur during a period of supervision?

How are people with mental health and/or substance addictions affected by short-term incarceration stays as a result of a supervision sanction?

^{*}Admissions include local county jail/violator facilities. 10 people were admitted in 2018 but did not have a release to calculate length of stay.

Supervision Summary

- The increase in the violator population has outpaced the increase in the supervision population, with an estimated one-third of people on supervision admitted to a violator center at some point during a given year.
- People on supervision are accumulating higher numbers of violations, which leads to longer incarceration stays and growth in incarcerated populations and costs.
- States with similar approaches to supervision sanctioning as Washington have far fewer violation admissions per person.
- Further study is needed to fully understand the dynamics and drivers of supervision violation admissions.

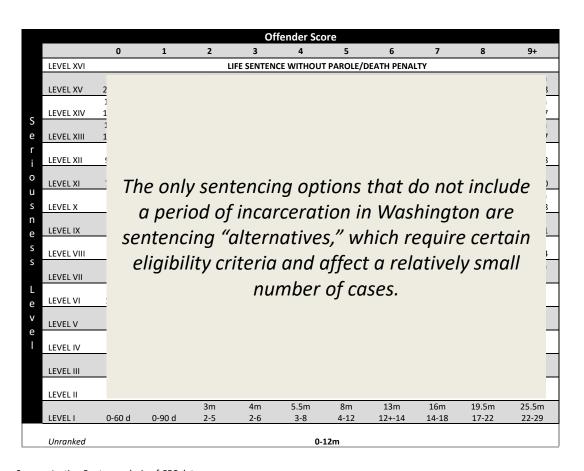
Presentation Outline

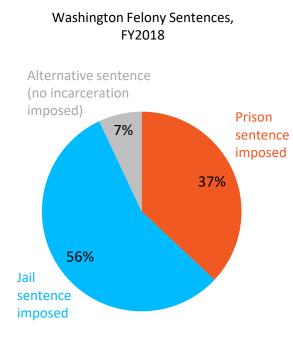
- Sentencing
- Supervision Sanctions
- Recidivism
 - Limitations to recidivism comparisons
 - Timing of recidivism
 - Impact of supervision on recidivism

Recidivism Findings from February 2019 Discussion

- People sentenced to jail have higher recidivism rates than people released from prison, particularly in the first year following release.
- Recidivism rates vary across types of offense; people sentenced for certain property and drug offenses have higher rates than people sentenced for other offense types.
- People sentenced for property and drug offenses are most likely to be rearrested for property and drug offenses.

In Washington, nearly all felony sentences include a period of incarceration, which complicates potential comparisons in supervision vs. incarceration outcomes.





Source: Justice Center analysis of CFC data

Nearly half of recidivism events occur in the first six months following a jail release, and rates stabilize after 18 months.

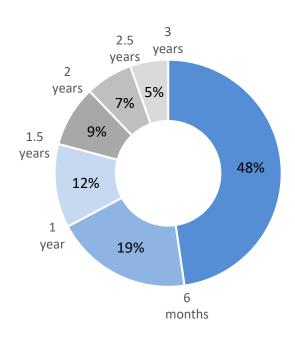
Jail Sentence* and Prison Release Three-Year Felony Rearrest Rates by Month,
FY2015 Releases

9%
8%
7%
6%
5%
4%
3%
2%
1%

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36

Month

Time to Arrest for People Recidivating After a Jail Sentence, FY2015 Releases



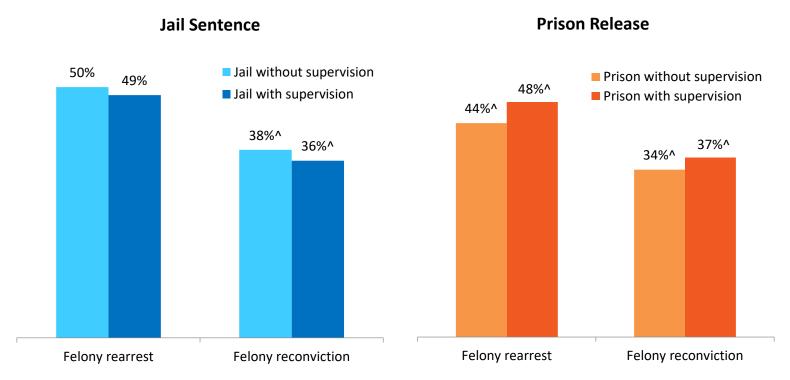
Source: Justice Center analysis of CFC and WSP data

0%

^{*}Estimated jail release date was calculated using sentence date, sentence length, and credit for time served. People released more than once in a fiscal year were only counted once in the analysis.

People sentenced to jail who are released with supervision have lower reconviction rates than people sentenced to jail who are released without supervision, but the opposite is true for people released from prison.

Jail Sentence* and Prison Release Three-Year Recidivism Rates, FY2015 Releases



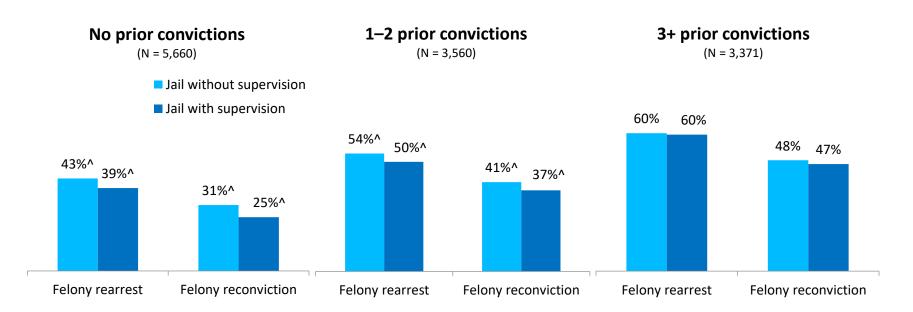
[^]Difference in recidivism between groups is significant at p < .05 level

Source: Justice Center analysis of CFC, DOC, and WSP data

^{*}Estimated release date was calculated using sentence date, sentence length, and credit for time served. People released more than once in a fiscal year were only counted once in the analysis.

People sentenced to jail who are released with supervision had lower recidivism rates across various levels of criminal history.

Jail Sentence* Three-Year Recidivism Rates, FY2015 Releases



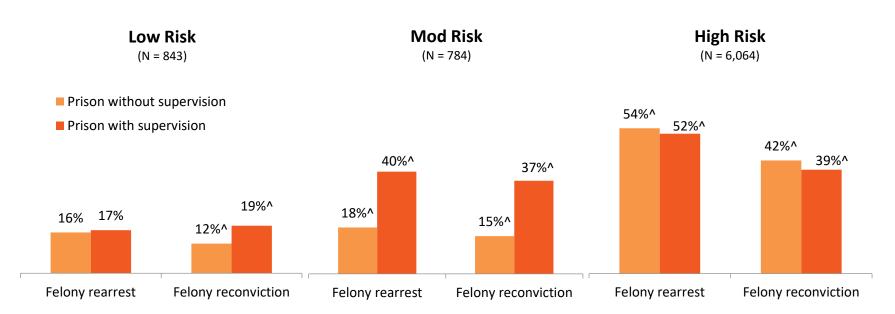
[^]Difference in recidivism between groups is significant at p < .05 level

Source: Justice Center analysis of CFC, DOC, and WSP data

^{*}Estimated release date was calculated using sentence date, sentence length, and credit for time served. People released more than once in a fiscal year were only counted once in the analysis.

Recidivism rates for high-risk people released from prison to supervision are lower than for high-risk people released without supervision, but this is not the case for low- and moderate-risk people.

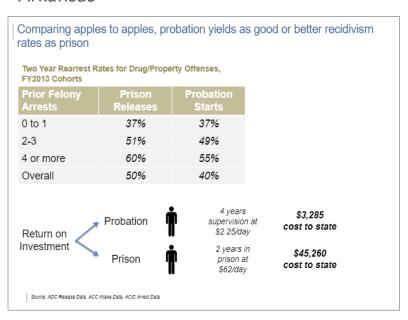
Prison Release Three-Year Recidivism Rates by Risk Level, FY2015 Releases



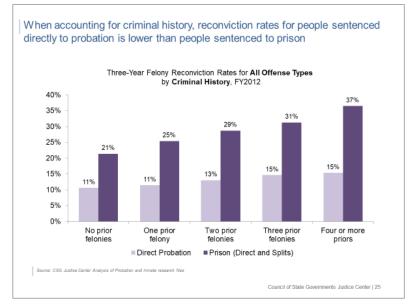
[^]Difference in recidivism between groups is significant at p < .05 level

A number of states have demonstrated that straight probation without incarceration can have better outcomes than jail or prison at a substantially lower cost.

Arkansas



Georgia



Recidivism Summary

- For people sentenced to jail, those who are released supervision have lower rearrest and reconviction rates in three years. For people released from prison, those who are released to supervision have slightly higher recidivism rates in three years.
- Recidivism rates for high-risk people released from prison to supervision are lower than for high-risk people released without supervision, but this is not the case for low- and moderate-risk people.

Key Findings	Implications for Washington
The vast majority of sentences handed down involves a period of incarceration, largely driven by the fact that probation is not an available option as a fundamental sentencing alternative to incarceration-oriented punishments.	Consider adoption of probation as a statutorily recognized sentencing alternative to jail and prison to allow for more effective approach to appropriate populations.
 Recidivism rates comparing different populations is challenging, largely due to the inability to separate effects of incarceration and supervision. 	 Ensure any adoption of more utilization of supervision is in line with research base on known best practices.
 Volume of felony sentences has been increasing steadily since 2010, particularly among drug and property related crimes. 	Address behavioral health challenges and repeat criminal behavior with accountability and connection to services.
 Growth is across many counties of various population size. Use of alternative sentences such as the First-Time Offender Waiver varies by county. 	Seek pathways to establish meaningful local- state relationships to focus on resource issues to help ensure effective interventions at the local level.
 Poor relationship between offender score embedded in guidelines and actual recidivism outcomes. This is predictable given the approach to scoring. 	 Consider more consistent framework tied more directly to criminal history for offender scoring.
 Very high utilization of jail sanctions for supervised population. 	Research is needed on effects of current approach to use of jail sanctions.

Thank You

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