

Fiscal Year 2025

Review of House Bill 2504 (2024) – Sentencing of Felony Sentences



Washington State
Sentencing Guidelines Commission
December 2024

Table of Contents

Sentencing Guidelines Commission Members	iii
Background	1
I. Adding Definitions	1
II. Repeat SV/Violent/Sex or DV Column	2
Rounding Down to Nearest Whole Number	2
Operationalize When to Apply Repeat SV/Violent/Sex or DV Column and Aggravated Departure Cap	3
Clarifying Language Related to Application of Repeat SV/Violent/Sex or DV column	3
Adding Meaning to Vague Language	4
III. Aggravated Departure Cap	5
Use of Percentages in Aggravated Departure Cap Column	5
Clearly Excessive Language	7
Appendix	8

To accommodate persons with disabilities, this document is available in alternate formats by calling the Office of Financial Management at 360-902-0599. TTY/TDD users should contact OFM via the Washington Relay Service at 711 or 1-800-833-6388.

Visit our website at www.sgc.wa.gov.

Sentencing Guidelines Commission Members

Hon. J. Wesley Saint Clair (Ret.), Chair

PO Box 43124
Olympia, WA 98504-3124
(206) 910-7252
jwesleysaintclair@gmail.com

Hon. Karen Donohue

King County Superior Court
516 Third Avenue, C-203
Seattle, WA 98104
(206) 447-3720
karen.donohue@kingcounty.gov

Hon. Sharonda Amamilo

Thurston County Superior Court
2000 Lakeridge Drive SW Bldg 2
Olympia, WA 98502-6001
(360) 786-5560
sharonda.d.amamilo@co.thurston.wa.us

Kecia Rongen

Chair, Indeterminate Sentence Review Board
PO Box 40907
Olympia, WA 98504-0907
(360) 407-2403
kecia.rongen@doc.wa.gov

Tye Menser

Thurston County Commissioner
2000 Lakeridge Dr SW
Olympia, WA 98502
(360) 786-5414
tye.menser@co.thurston.wa.us

Cheryl Strange

Secretary, Department of Corrections
PO Box 41101
Olympia, WA 98504-1101
(360) 725-8810
cheryl.strange@doc.wa.gov

Ramonda Brandes

810 3rd Avenue Ste 258
Seattle, WA 98104
ramona@defensenet.org

Jon Tunheim

Thurston County Prosecuting Attorney
2000 Lakeridge Drive SW Bldg 2
Olympia, WA 98502
(360) 786-5540 x4110
tunheij@co.thurston.wa.us

Hon. Josephine Wiggs

King County Superior Court
516 Third Avenue Rm C-203
Seattle, WA 98104-2316
(206) 477-4933
josephine.wiggs@kingcounty.gov

Gregory Link

Director, Washington Appellate Project
1511 Third Avenue Ste 701
Seattle, WA 98101
(206) 587-2711
greg@washapp.org

Hon. Jeffery Swan

Yakima County Superior Court
128 N 2nd Street
Yakima, WA 98901
(509) 574-2720
jeff.swan@co.yakima.wa.us

Hon. Veronica Galván

Co-Chair, Minority and Justice Commission
PO Box 41170
Olympia, WA 98504-1170
(206) 477-1453
veronica.galvan@kingcounty.gov

Vasiliki Georgoulas-Sherry, PhD

Director, Public Safety Policy & Research Center
Office of Financial Management
PO Box 43124
Olympia, WA 98504-3124
(360) 890-5729
vasiliki.georgoulas-sherry@ofm.wa.gov

Norris “Norrie” Gregoire
Director of Corrections
Walla Walla County
300 W Alder
Walla Walla, WA 99362
(509) 524-2822
nrgregoire@co.walla-walla.wa.us

Chief Brian Smith
Chief of Police, City of Port Angeles
321 East 5th Street
Port Angeles, WA 98362
(360) 912-0184
bsmith@cityofpa.us

Carmen Rivera
Councilmember, City of Renton
1055 S Grady Way
Renton, WA 98057
(425) 466-4143
crivera@rentonwa.gov

Jennifer Redman
DCYF - Director of Operations, Safety and Security
1500 Jefferson St SE
Olympia, WA 98501
(360) 669-9576
Jennifer.redman@dcyf.wa.gov

Jeremiah Bourgeois
PO Box 43124
Olympia, WA 98504-3124
(509) 464-9180
jj@jeremiahbourgeoisconsulting.com

Esther Matthews, PhD
PO Box 43124
Olympia, WA 98504-3124
esther.matthews33@gmail.com

Amy Anselmi
PO Box 43124
Olympia, WA 98504-3124
Amyhojo1@gmail.com

Roshelle Cleland
210 West Sprague
Spokane, WA 99201
(509) 343-5007
rcleland@lcsnw.org

**Citizen Member – Victim of Crime/Crime
Victim Advocate**
To Be Filled

Tribal Member
To Be Filled

Behavioral Health Professional
To Be Filled

Prosecuting Attorney
To Be Filled

Senate/House Members (non-voting)

Hon. Tarra Simmons
Washington State House of Representatives
PO Box 40600
Olympia, WA 98504-0600
(360) 786-7934
tarra.simmons@leg.wa.gov

Hon. Gina Mosbrucker
Washington State House of Representatives
PO Box 40600
Olympia, WA 98504-0600
(360) 786-7856
gina.mosbrucker@leg.wa.gov

Hon. Claire Wilson
Washington State Senate
PO Box 40430
Olympia, WA 98504-0430
(360) 786-7658
claire.wilson@leg.wa.gov

Washington State Senate
To Be Filled

Background

Since 2018, when the Sentencing Guidelines Commission (SGC) started its review of the Sentencing Reform Act¹ (SRA), it has engaged in discussions and deliberations related to a new adult felony sentencing grid. Between 2019 and 2022, it participated on the Criminal Sentencing Task Force (CSTF) where a new adult felony sentencing grid was formed.² In 2023, upon request from the Chair of the House Community Safety, Justice & Reentry Committee, the SGC then reviewed ranked felony offenses on the current sentencing grid and provided proposed rankings for that new adult felony sentencing grid.³

During the 2024 legislative session, Representative Roger Goodman sponsored House Bill (HB) 2504⁴ which proposed the new adult felony sentencing grid upon where further discussions and negotiations could take place in preparation for the 2025 legislative session.

In May 2024, the Chair of the House Community Safety, Justice & Reentry Committee requested the SGC review of HB 2504 (2024) “to identify remaining points of contention among SGC members and attempt to build consensus on an amended version of the bill.”⁵

The SGC identified two main areas of contention in the bill, (1) the replacement of multipliers with a Repeat Serious Violent/Violent/Sex or Domestic Violence column⁶ (Repeat column) and (2) the addition of an Aggravated Departure Cap. Two committees were created to discuss these issues. In addition, the SGC members identified modifications to proposed statutory language that could add clarity and aid in comprehension.

I. Adding Definitions

Throughout the SGC’s discussions, members realized there were terms used in the bill that would be new to the SRA and should be defined. Under Section 1 of the bill, which describes the new adult felony sentencing grid, members felt definitions for the “minimum standard range value” and the “maximum standard range value” should be included after Table 1 to aid in comprehension.

Recommendation: Add definitions

1. Minimum standard range value means the minimum number of months of the standard sentencing range at each offender score within the cell.

¹ Washington State Sentencing Guidelines Commission. (2019). *Review of the Sentencing Reform Act*. Olympia, WA. Found at: https://sgc.wa.gov/sites/default/files/public/SGC/publications/SRA_review_report_rev20190802.pdf

² Washington State Criminal Sentencing Task Force Final Report. (2022). *December 2022 Final Report*. Prepared for The Washington State Governor and the Washington State Legislature. Olympia, WA. Found at: https://wpcdn.web.wsu.edu/wp-wsuhcnrs/uploads/sites/2180/2022/12/CSTF_2022-Final-Report_12.30.22.pdf.pdf

³ Washington State Sentencing Guidelines Commission. (2023). *Re-ranking Felony Offenses on Proposed New Sentencing Grid*. Olympia, WA. Found at: https://sgc.wa.gov/sites/default/files/public/SGC/publications/SGC_Re-rankingProject_Report.pdf

⁴ <https://app.leg.wa.gov/bills/summary?BillNumber=2504&Year=2023&Initiative=false>

⁵ Goodman, R. (2024, May 9). *Re: Review and Comment on Proposed New Sentencing Grid/House Bill 2504* [Memorandum]. Washington State House of Representatives.

⁶ This report also refers to this column as the Repeat SV/Violent/Sex or DV column.

2. Maximum standard range value is the maximum number of months of the standard sentencing range at each offender score within the cell.

“Offender score” is a defined term (RCW 9.94A.525) widely used throughout the SRA. Aligning with a larger movement to eliminate the use of the term “offender”, the term “criminal history score” is used in this report when not citing specific statutory language.

Recommendation: Use phrase “standard range value” to maintain consistency throughout statutes

To maintain consistency, the SGC recommends replacing the phrase “standard range sentence” with “standard range value.” This phrase is used throughout the bill when referring to the standard sentencing ranges within each cell of the sentencing grid. Members believe this change is more reflective of what the phrase references and eliminates potential confusion for the reader.

II. Repeat SV/Violent/Sex or DV Column

The subcommittee created to discuss the Repeat column chose to limit its review because separate negotiations were also taking place that may change the percentages used in the column. The subcommittee submitted some language modifications to the full SGC.

Rounding Down to Nearest Whole Number

Section 1(5) of the bill details when to apply the new Repeat column on the proposed sentencing grid. Subsections (5)(a) – (c) further define the percentage amount applied. In order for practitioners to avoid dealing with fractions of a month, the SGC recommends adding language related to rounding down, similar to that which is found in other statutes within the SRA⁷ and the Juvenile Justice Act.⁸

Recommendation: Add requirement to round down to the nearest whole number when applying the Repeat SV/Violent/Sex or DV column value to the maximum standard range value.

Section 1(5):

- (a) If the present conviction is for a seriousness level one through five offense, the maximum standard range value is increased by 25 percent and rounded down to the nearest whole number, or one month, whichever is greater;
- (b) If the present conviction is for a seriousness level six through 10 offense and rounded down to the nearest whole number, the maximum standard range value is increased by 20 percent or one month, whichever is greater; or
- (c) If the present conviction is for a seriousness level 11 through 17 offense, the maximum standard range value is increased by 15 percent and rounded down to the nearest whole number, or one month, whichever is greater.

⁷ Chapter 9.94A RCW

⁸ Chapter 13.40 RCW

Operationalize When to Apply Repeat SV/Violent/Sex or DV Column and Aggravated Departure Cap

There may be occasions when a defendant has prior history that will require the standard sentencing range to be modified via the Repeat column and where a jury has determined an aggravating factor to be present. The SGC believes it is imperative that HB 2504 address the order of operations for these situations. To that end, the SGC suggests adding another subsection to Section 1 of the bill to include this order of operation.

Recommendation: Codify order of operation when both the Repeat SV/Violent/Sex or DV and the Aggravating Departure Cap columns apply.

Section 1:

(6) Where the present conviction is a repeat offense as set forth in section 1(5) of this act and the present conviction is also being sentenced as an aggravated exceptional departure from the standard range, the aggravated departure cap shall be calculated by first determining the repeat offense maximum standard range value as set forth in section 1(5)(a) through (c) of this act, then adding the aggravated departure cap value as displayed in the sentencing grid in section 1 of this act. The aggravated departure cap value remains the same for each seriousness level regardless of offender score. The number of months that may be added to the maximum sentence range value before reaching the aggravated departure cap for repeat offenses shall be the same as the number of months that may be added to the maximum sentence range value for offenses that are not repeat offenses. Exceptional sentences that exceed the repeat offense maximum standard range value plus the aggravated departure cap value rounded down to the nearest whole number are presumed to be clearly excessive under RCW 9.94A.585.

Clarifying Language Related to Application of Repeat SV/Violent/Sex or DV column

Bill language modifications recommended below incorporate two previous recommendations, replacing “standard range sentence” with “standard range value” and adding language to round down to the nearest whole number. Further modifications were made to add clarity on how to calculate the maximum standard range value when applying the Repeat column. Members also recommended specifying that, under this subsection, qualifying offenses must be scorable as they would be when calculating the criminal history score.

Recommendation: Simplify language to determine maximum standard range value and specify that qualifying offenses must be scorable offenses per RCW 9.94A.525.

Section 5:

(3)(a) For sentences pursuant to section 1 of this act, the maximum standard range value is determined by locating the appropriate offender score and the seriousness level of the completed crime and multiplying the maximum standard range value of that cell by 125, 120, or 115 percent, depending on the seriousness level of the current offense as provided under section 1(5) of this act, and rounding down to the nearest whole number, or adding one month to the maximum standard range value, whichever results in the greater sentence, when the present conviction is for any of the following qualifying offenses that are scorable per RCW 9.94A.525:

Adding Meaning to Vague Language

Members struggled to ascertain the intent of Section 5(b). Without clarification or direction from the bill sponsor, the SGC is recommending language that it believes simplifies the sentencing guidelines, comports with current policy, and addresses the application of the Repeat column for mandatory consecutive sentencing.

This modified language explains that if a defendant has multiple current convictions that qualify under the Repeat column, the Repeat column will only be applied once per current conviction. In the case of mandatory consecutive sentencing, the offense with the highest seriousness level will have the Repeat column applied while the other offense will receive a score of 0. This approach is consistent with current statutes.

Example 1

Current Conviction: Kidnapping 1 (serious violent)	Repeat column would apply once
Prior Convictions: Arson 2 (violent)	due to the prior violent offense
Forgery (non-violent)	(Arson 2)

Example 2

Current Conviction: DV Kidnapping 2 (SV/DV*)	Repeat column would apply
Prior Convictions: Arson 2 (violent)	only once even though the prior
DV Kidnapping 1 (SV/DV)	violent and SV/DV offenses are
	both qualifying offenses

Example 3

Current Conviction: Kidnapping 1 (serious violent)	Repeat column would apply
Arson 2 (violent)	when determining the standard
Prior Conviction: Arson 2 (violent)	sentencing range for both current
	Offenses (Kidnap 1 and Arson 2)

Example 4

Current Conviction: Manslaughter 1 (serious violent)	Repeat column would apply
Assault 1 (serious violent)	to Assault 1 (higher seriousness
Prior Conviction: Criminal Mistreatment (non-violent)	level) and Manslaughter 1 would
	be given an offender score of 0.
	These two sentences would be
	served consecutively.

*SV/DV = Serious Violent/Domestic Violence

It is unknown whether this reflects the intent of the sponsor, but the SGC offers this language as a starting place for further discussion.

Recommendation: Adding clarity to vague language that allows the Repeat SV/Violent/Sex or DV column to be applied only once when multiple qualifying offenses exist.

Section 5:

(b) If the present convictions are for multiple offenses qualifying for an increased maximum sentencing range value under subsection (a)(i), (a)(ii), or (a)(iii), then the maximum of the sentencing range for each current qualifying offense shall be calculated as described in subsection (a). Each

current qualifying conviction shall be subject to only one increase of the maximum sentence range value under subsection (a) even when the present conviction qualifies as a repeat offense under more than one of the subsections set forth in (3)(a), or if there are multiple prior qualifying convictions. If there are multiple current offenses that are eligible for an increase of the maximum sentence range value under subsection (a) but also subject to mandatory consecutive sentencing per RCW 9.94A.589, the increase of the maximum sentence range value under subsection (a) applies only to the offense with the highest seriousness level.

III. Aggravated Departure Cap

The SGC created a subcommittee to review the related Aggravated Departure Cap bill language. Modification to Section 1(4) is proposed to reduce potential ambiguity issues.

Recommendation: Add clarity to language explaining the origination of the value of the Aggravated Departure Cap values.

Section 1:

(4) The numbers in the column titled "AGGRAVATED DEPARTURE CAP" represents 10 percent of the maximum standard range value possible for offender score 9+ prior to any application of the Repeat SV/Violent/Sex or DV column in each seriousness level, rounded down to the nearest whole number. Exceptional sentences that exceed the maximum standard range value plus the number of months signified in this column are presumed to be clearly excessive under RCW 9.94A.585.

Use of Percentages in Aggravated Departure Cap Column

SGC members had lengthy discussions about the use of integers versus percentages with the Aggravated Departure Cap column. The intent of an aggravator is to emphasize a circumstance or factor of the offense committed that makes it more egregious than what is in the offense's standard definition and thus warrants additional punishment. There are two ways to view the application of additional punishment related to an aggravating factor. When using an integer, the Aggravated Departure Cap value is uniform for the offense, meaning the aggravating factor holds the same value regardless of what the individual's criminal history score is. When using a percentage, the value of the additional amount of punishment is tied to the criminal history score. Thus, if an individual has a lower criminal history score, the additional amount of punishment for the egregious behavior is less than it would be for someone with a higher criminal history score.

Some members expressed concern that, under the integer approach, the amount of the Aggravated Departure Cap that would be applied to the maximum standard range value was a larger percentage of the maximum standard range value when applied to a lower the offender score. As shown in the example below, the 12 month Aggravated Departure Cap value for seriousness level 9 is a 36% increase for someone with an offender score of 0 but is only a 10% increase when they have an offender score of 9+.

	Offender Score = 0	Offender Score = 9+	Aggravated Departure Cap
Seriousness Level 9	Range: 19 – 33 33+12=45 (45 is an increase of 36%)	Range: 72 – 120 120+12=132 (132 is an increase of 10%)	12

It was suggested that there is a legal framework that warrants using the percentage approach rather than the integer approach. The U.S. Supreme Court has determined that aggravating factors are elements of the crime. By using the percentage approach, it applies additional punishment similar to the way the sentencing grid differentiates people who commit said offense without the aggravating factor based on their criminal history score. Using a consistent integer is akin to punishing one element of the crime (the base offense) one way and a different element of the crime (the aggravating factor) in a different way, was the example provided.

An argument against using percentages was that aggravating factors are for behavior that supersedes the level of the individual's criminal history. Additionally, the aggravating factor captures characteristics that are particularly egregious, regardless of a person's criminal history score. Thus, the additional punishment associated with the aggravating factor should be the same for a defendant with little criminal history and a defendant with a lengthier criminal history.

Recommendation: Use percentages within the Aggravated Departure Cap column instead of integers.

After these lengthy discussions, the SGC voted to recommend using percentages instead of integers in the Aggravated Departure Cap column. The result of the vote was eight members in support of using percentages, two members opposed to using percentages, and eight members abstaining from the vote.

The two members opposed to the motion believed that, since aggravators emphasize a particular egregious circumstance/factor of how the offense was committed, it should be applied equitably regardless of the defendant's criminal history as the aggravator is tied to the conduct, not the criminal history. The defendant's criminal history is accounted for elsewhere within the sentencing grid. It could be surmised that a victim of such an egregious act does not care what the length of the criminal history of defendant is.

After voting to recommend the use of percentages, the members discussed what percentages should be used. Due to on-going negotiations related to the Repeat column, the SGC did not wish to connect those percentages to the ones used within the Aggravated Departure Cap as they did not know what those percentages may end up being in the final bill draft. Rather, some members suggested tying the percentages to the offense classification (A, B, and C) which also aligns with seriousness levels on the new sentencing grid, i.e. class C offenses are in seriousness levels 1-5, class B offenses are in seriousness levels 9 and below, and class A offenses are mostly found in seriousness levels 10-17.

Recommendation: Percentages 20, 15, and 10 to be used within the Aggravated Departure Cap column.

The SGC voted to support the use of the following percentages within the Aggravated Departure Cap: 20% for seriousness levels 1-5; 15% for seriousness levels 6-9; and 10% for seriousness levels 10-17. The voting result was seven members in support of these percentages, one member opposed, and 10 members abstained from the vote.

Opposition was based on the belief that integers, not percentages, should be used in the column.

Please note that if the Aggravated Departure Cap integers are replaced with the proposed percentages, some of the proposed language in this report will need to be adjusted accordingly.

Clearly Excessive Language

Under the SRA, there is no current guidance for what a reasonable departure is when sentencing an exceptional sentence. The intent of the Aggravated Departure Cap is to offer bounded discretion to judges when sentencing exceptional sentences. While this would offer consistent guidance, judges could still sentence up to the statutory maximum, as they currently have the authority to do. Once the Aggravated Departure Cap value was added to the maximum standard sentence value, any sentence that exceeds that number is presumed to be clearly excessive.

Several members had great concerns about the addition of the term “presumed to be clearly excessive” and what that change in presumption might lead to. The term “clearly excessive” is not defined within the SRA. The Supreme Court has said that “excessive” means unreasonable, “clearly excessive” means clearly unreasonable, and “clearly unreasonable” means unlawful. An SGC member who is an appellate attorney remarked that there isn’t an instance in criminal law where an appellant goes into court with a presumption that the sentence they received is unlawful.

Additionally, this presumption would shift the burden of who determines if the sentence is excessive. Currently, that burden is on the defendant but under this change, the burden would be on the state. There is no guidance for the trial courts on how the presumption is overcome.

Furthermore, if a judge must make a finding or point to some fact in order to overcome the presumption of unreasonableness, that may conflict with the *Blakely v Washington*⁹ decision where the U.S. Supreme Court determined that finding is something a jury, not a judge, has the authority to do under a mandatory sentencing system.

The SGC determined there are three options available to deal with these concerns:

1. Leave it as it is and see how it works.
2. Make the Aggravating Departure Cap a hard cap, not a presumption. This would resolve any constitutionality problems, and resolve the question about who has the burden in appeal and how that would play out.
3. Find a way to make it work in practice.

Part of the SGC’s review of HB 2504 included making recommendations that address vague, complex, or confusing language. Leaving the language as is and not dealing with concerns was not an option for members. The option that appealed to the SGC was to figure out a way to make it work. The amount of time needed to hold discussions necessary to determine a path through would surpass the due date of this report. Thus, the SGC was only able to highlight these concerns, rather than offer a recommendation to address the concerns.

⁹ *Blakely v Washington*, 542 U.S. 296 (2004)

Appendix

Sub-Committee Volunteers

The Sentencing Guidelines Commission would like to thank all the participants who volunteered their time and expertise on this project. This report would not have been possible without their assistance.

Staff Member:

Dr. Lauren Knoth-Peterson, Public Safety Policy & Research Center

SGC Members:

Judge Josephine Wiggs

Jeremiah Bourgeois

Chief Brian Smith

Commissioner Tye Menser

Dr. Esther Matthews

Greg Link

Chief Gregory Cobb

Ramona Brandes

Judge Karen Donohue

Other Volunteer:

Gerard Boseman, Lived Experience

Mac Pevey – Department of Corrections

Washington State Sentencing Guidelines Commission

PO Box 43124 • Olympia, WA • 98504-3124

Phone: 360-688-8511