

Fiscal Year 2024

# Re-ranking Felony Offenses on Proposed New Sentencing Grid



Washington State  
Sentencing Guidelines Commission  
December 2023

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## Background

In April 2023, the Chair of the House Community Safety, Justice & Reentry Committee requested the Sentencing Guidelines Commission (SGC) review the felony offenses included within each seriousness level of the adult felony sentencing grid and make recommendations for re-ranking those offenses onto a proposed sentencing grid. The SGC was instructed to include any unranked offenses that it had recommended be ranked in its report *Criminal Code Review: Unranked Offenses and Drug Sentences* (May 2023).

The request also directed the SGC to consider data when making its recommendations. Staff provided members with conviction and court data, including the average sentence length and number of convictions by criminal history score, the number of convictions by race and gender, and the number of charges filed. The conviction data included only sentences that were not ‘modified’, meaning it excluded sentences with enhancements, sentencing alternatives, consecutive sentences, anticipatory offenses, etc.

During its initial review, the class A committee requested minor adjustments to some of the grid formulas so that more members would be in favor of ranking recommendations. Adjustments were made to the ranges for seriousness levels 10 through 16. A copy of the proposed sentencing grid used for this review can be found in Appendix B.

## Recommendations

In July 2023, the SGC delegated felony offenses to three committees established for this project and the Sex Offender Policy Board to provide first round recommendations for ranked offenses. The SGC committees included participants representing law enforcement, defense and prosecution, people with carceral experience, victims of crime, family members of incarcerated individuals, and judges. All sex offenses were delegated to the SOPB which functioned as a fourth “committee.” The proposed rankings from the committees were presented to the full SGC for final consideration. The full SGC held five meetings between October and December, but many members indicated that more time was needed to fully discuss the proposed rankings. The SGC primarily addressed offenses where there were multiple rankings proposed during those meetings. Because of this, there are still some offenses that need additional review. For example, Malicious Explosion of a Substance 2 and 3 both have a proposed rank of 9. Another example relates to the note for ID Theft 1 to make it commensurate to other Theft offenses, but the proposed rank is currently higher than Theft 1. These are the details that would have been addressed with another run through of the offenses given more time.

Due to the upcoming due date of the project, the importance of this project, and that certain perspectives represented on the SGC were not present for many of the discussions, the SGC submits the following proposed rankings as requested but without an official vote. The SGC recognizes that conversations on the proposed sentencing grid and its components have only just begun and submits the informed proposed rankings to be used as a starting point from which conversations with all stakeholders should continue.

An additional report will be submitted by Dr. Lauren Knoth-Peterson of the Public Safety Policy and Research Center (PSPRC) that will provide insight into the SGC’s review process and information used to make proposed recommendations. In addition, the PSPRC report will highlight additional modifications to the sentencing guideline grid that were discussed, but not taken up for a final vote. As such, these additional modifications should not be interpreted as formal recommendations by the SGC, but rather, are ideas that were put forward and may be given future consideration and discussion in the legislative process.

The SGC is in agreement that, whatever the outcome with the proposed sentencing grid and its components, there should be a regular and continuous review of the policy changes with intentional consideration of racial impact analyses. When originally created in 1981, one of the SGC’s directives was to provide regular reviews of the SRA to ensure it was acting in the way it was intended to and offer recommendations when it wasn’t. To avoid returning to the complex state the Sentencing Reform Act is currently in, regular reviews are necessary. Throughout this project, the SGC reviewed potential racial impact analysis associated with the proposed re-rankings. Future discussions about the proposed sentencing grid and ranking of felony offenses should include the intentional consideration of disparate racial impacts.

### Failure To Register

The list of offenses reviewed by the SOPB included the two current felony versions of Failure to Register as a Sex Offender (RCW 9A.44.132(1)(a) and (1)(b)). In a 2022<sup>1</sup> report, the SOPB published recommendations with unanimous support from its members for several changes to the way these offenses are categorized in various state statutes. First, the SOPB recommended the offense of Failure to Register be reduced to an unranked felony. Additionally, they recommended that a) for a first Failure to Register offense defendants be given one year of community supervision and two years for subsequent offenses, b) Failure to Register offenses no longer be defined as a ‘sex offense’, c) Failure to Register be classified as a ‘disqualifying offense’ which would restart waiting periods for relief from registration, and d) individuals under the jurisdiction of the Department of Corrections for a Failure to Register offense be assessed to identify barriers to registration compliance and be provided resources and tools to support future compliance.

The SGC opted to defer to the SOPB’s existing recommendations for classification of felony Failure to Register offenses and the offenses were excluded from this project. Previous SGC discussions about Failure to Register offenses prompted many members to categorize the offense as more administrative than criminal.

Due to the SOPB reflecting upon its previous recommendations for this offense, and because the list of proposed rankings in Table 1 does not include offenses that are no longer ranked, Failure to Register as a Sex Offender (Second Violation Committed on or after 6/10/2010) and Failure to Register as a Sex Offender (Third or Subsequent Violation Committed on or after 6/10/2010) are not included in Table 1.

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<sup>1</sup> Sex Offender Policy Board. (2022). [Recommendations for SSOSA reforms; treatment alternatives for certain sex offenses; lifetime supervision; failure to register; washouts; and system improvements](#). Olympia, WA.

Table 1: Proposed Ranks for Currently Ranked Felony Offenses by Rank Order

RCW	Offense	Class	Proposed Rank
10.95.020	Aggravated Murder 1	A	18
9A.32.055	Homicide by Abuse	A	17
9A.32.030	Murder 1	A	17
9A.32.050	Murder 2	A	16
70.74.280(1)	Malicious Explosion of a Substance 1	A	15
9A.40.100(1)	Trafficking 1	A	15
9A.36.011	Assault 1	A	14
9A.36.120	Assault of a Child 1	A	14
70.74.270(1)	Malicious Placement of an Explosive 1	A	14
9.68A.101	Promoting Commercial Sexual Abuse of a Minor	A	14
9A.44.040	Rape 1	A	14
9A.44.073	Rape of a Child 1	A	14
79A.60.050(1)(a)	Homicide by Watercraft, by being under the Influence of Intoxicating Liquor or any Drug	A	13
79A.60.050(1)(b)	Homicide by Watercraft, by the Operation of any Vessel in a Reckless Manner	A	13
9A.32.060	Manslaughter 1	A	13
9A.44.050	Rape 2	A	13
9A.44.076	Rape of a Child 2	A	13
9A.40.100(3)	Trafficking 2	A	13
46.61.520(1)(a)	Vehicular Homicide, by being under the Influence of Intoxicating Liquor or any Drug	A	13
46.61.520(1)(b)	Vehicular Homicide, by the Operation of any Vehicle in a Reckless Manner	A	13
9A.44.083	Child Molestation 1	A	12
9A.44.100(1)(a)	Indecent Liberties - with Forcible Compulsion	A	12
9A.40.020	Kidnapping 1	A	12
9A.82.060(1)(a)	Leading Organized Crime	A	11
9.68A.040	Sexual Exploitation of a Minor	<del>B</del> A	10
9A.76.115	Sexually Violent Predator Escape	A	10
9A.42.060	Abandonment of a Dependent Person 1	B	9
9A.48.020	Arson 1	A	9
9A.36.130	Assault of a Child 2	B	9
9A.42.020	Criminal Mistreatment 1	B	9

RCW	Offense	Class	Proposed Rank
70.74.180	Explosive Devices Prohibited	A	9
46.52.020(4)(a)	Hit and Run - Death	B	9
9A.82.060(1)(b)	Inciting Criminal Profiteering	B	9
70.74.280(2)	Malicious Explosion of a Substance 2	A	9
70.74.280(3)	Malicious Explosion of a Substance 3	B	9
70.74.270(2)	Malicious Placement of an Explosive 2	B	9
70.74.272(1)(a)	Malicious Placement of an Imitation Device 1	B	9
9A.56.200	Robbery 1	A	9
9A.44.086	Child Molestation 2	B	8
9.68A.100	Commercial Sexual Abuse of a Minor	B	8
9A.44.160	Custodial Sexual Misconduct 1	B	8
9A.32.070	Manslaughter 2	B	8
9A.88.070	Promoting Prostitution 1	B	8
9A.52.020	Burglary 1	A	7
9A.48.120	Civil Disorder Training	B	7
9.68A.050(1)	Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 1	B	7
9A.36.045	Drive-by Shooting	B	7
9A.84.040(2)(a)	False Reporting 1	B	7
79A.60.050(1)(c)	Homicide by Watercraft by Disregard for the Safety of Others	A	7
9A.44.100(1)(b-c)	Indecent Liberties (without Forcible Compulsion)	B	7
9A.72.160	Intimidating a Judge	B	7
9A.72.130	Intimidating a Juror	B	7
9A.72.110	Intimidating a Witness	B	7
9A.76.140	Introducing Contraband 1	B	7
70.74.270(3)	Malicious Placement of an Explosive 3	B	7
46.37.675	Negligently Causing Death by Use of a Signal Preemption Device	B	7
9.41.040(1)	Unlawful Possession of a Firearm 1	B	7
9.41.225	Use of a Machine Gun or Bump-fire Stock in Commission of a Felony	A	7
46.61.520(1)(c)	Vehicular Homicide by Disregard for the Safety of Others	A	7
9A.76.170(3)(a)	Bail Jumping with Murder 1	A	6
9A.68.010	Bribery	B	6



RCW	Offense	Class	Proposed Rank
46.61.502(6)	Driving while under the Influence <sup>2</sup>	B	6
9A.64.020(1)	Incest 1	B	6
46.61.504(6)	Physical Control of a Vehicle while under the Influence	€ B	6
9.68A.070(1)	Possession of Depictions of Minor Engaged in Sexually Explicit Conduct 1	B	6
9A.76.070(2)(a)	Rendering Criminal Assistance 1	B	6
9.68A.060(1)	Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 1	B	6
9A.56.400(1)	Theft from a Vulnerable Adult 1	B	6
9A.56.300	Theft of a Firearm	B	6
69.55.010	Theft of Ammonia	€ B	6
9A.42.070	Abandonment of a Dependent Person 2	C	5
9A.82.030	Advancing Money or Property for Extortionate Extension of Credit	B	5
46.37.660(2)(b)	Air Bag Diagnostic Systems (Causing Bodily Injury or Death)	C	5
46.37.660(1)(b)	Air Bag Replacement Requirements (Causing Bodily Injury or Death)	C	5
9A.48.030	Arson 2	B	5
9A.36.021(2)(a)	Assault 2	B	5
9A.36.031(1)(h)	Assault 3 - of a Peace Officer with a Projectile Stun Gun	C	5
9A.36.041(3)	Assault 4 (Third Domestic Violence Offense)	C	5
79A.60.060	Assault by Watercraft	B	5
9A.36.140	Assault of a Child 3	C	5
9A.76.170(3)(b)	Bail Jumping with Class A Felony	B	5
9A.42.030	Criminal Mistreatment 2	C	5
9A.44.170	Custodial Sexual Misconduct 2	C	5
9.68A.050(2)	Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2	B	5
7.105.450 <sup>3</sup>	Domestic Violence Court Order Violation	C	5
9A.76.110	Escape 1	B	5
9A.56.120	Extortion 1	B	5

<sup>2</sup> The intent behind placing this at seriousness level 6 is that the gross misdemeanor scoring rule would no longer be needed to achieve a prison sentence and should be eliminated.

<sup>3</sup> Also includes the following RCWs: 10.99.040, 10.99.050, 26.09.300, 26.26B.050, or 26.52.070

RCW	Offense	Class	Proposed Rank
9A.82.020	Extortionate Extension of Credit	B	5
9A.82.040	Extortionate Means to Collect Extensions of Credit	B	5
9A.36.080	Hate Crime	C	5
46.52.020(4)(b)	Hit and Run - Injury	C	5
79A.60.200(3)	Hit and Run with Vessel - Injury Accident	C	5
9.35.020(2)	Identity Theft 1	B	5
9A.64.020(2)	Incest 2	C	5
9A.88.010(2)(c)	Indecent Exposure to a Person under Age 14 (Subsequent Sex Offense)	C	5
9A.40.030(3)(a)	Kidnapping 2	B	5
70.74.272(1)(b)	Malicious Placement of an Imitation Device 2	C	5
9.41.190	Manufacture of Untraceable Firearm with Intent to Sell	C	5
46.37.650(1)(b)	Manufacture or Import Counterfeit, Nonfunctional, Damaged, or Previously Deployed Air Bag (Causing Bodily Injury or Death)	C	5
9A.72.020	Perjury 1	B	5
9.94.070	Persistent Prison Misbehavior	C	5
9A.56.310	Possession of a Stolen Firearm	B	5
9A.44.060	Rape 3	C	5
9A.44.079	Rape of a Child 3	C	5
9A.52.025	Residential Burglary	B	5
9A.56.210	Robbery 2	B	5
46.37.650(2)(b)	Sell, Install, or Reinstall Counterfeit, Nonfunctional, Damaged, or Previously Deployed Airbag	C	5
9.68A.060(2)	Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 2	B	5
9A.44.093	Sexual Misconduct with a Minor 1	C	5
9A.44.105	Sexually Violating Human Remains	C	5
9A.46.110	Stalking	B	5
9A.56.070	Taking Motor Vehicle without Permission 1	B	5
9.61.160	Threats to Bomb	B	5
69.55.020	Unlawful Storage of Ammonia	C	5
9A.52.100(3)	Vehicle Prowling 2 (Third or Subsequent Offense)	C	5

RCW	Offense	Class	Proposed Rank
46.61.522(1)(a-b)	Vehicular Assault, in a Reckless Manner or while under the Influence of Intoxicating Liquor or any Drug	B	5
46.37.660(2)(c)	Air Bag Diagnostic Systems	C	4
46.37.660(1)(c)	Air Bag Replacement Requirements	C	4
9A.36.031(1)(a-g) & (i-k)	Assault 3 – Except Assault 3 of a Peace Officer with a Projectile Stun Gun	C	4
9A.72.100	Bribe Received by Witness	B	4
9A.72.090	Bribing a Witness	B	4
9.46.1961	Cheating 1	C	4
9A.44.089	Child Molestation 3	C	4
9A.68.060	Commercial Bribery	B	4
9.16.035(4)	Counterfeiting	C	4
9A.36.100	Custodial Assault	C	4
9A.42.100	Endangerment with a Controlled Substance	B	4
9A.84.040(2)(b)	False Reporting 2	C	4
9A.82.070	Influencing Outcome of Sporting Event	C	4
9.41.325	Manufacture or Assembly of an Undetectable Firearm or Untraceable Firearm	C	4
46.37.650(1)(c)	Manufacture or Import Counterfeit, Nonfunctional, Damaged, or Previously Deployed Air Bag	C	4
9.68A.070(2)	Possession of Depictions of Minor Engaged in Sexually Explicit Conduct 2	B	4
9.41.190	Possession of Machine Gun, Bump-fire Stock, Undetectable Firearm, or Short-Barreled Shotgun or Rifle	C	4
9A.88.080	Promoting Prostitution 2	C	4
46.37.650(2)(c)	Sell, Install, or Reinstall Counterfeit, Nonfunctional, Damaged, or Previously Deployed Airbag	C	4
9A.72.120	Tampering with a Witness	C	4
9A.56.080	Theft of Livestock 1	B	4
9A.56.290(4)(b)	Unlawful Factoring of a Credit or Payment Card Transaction (Subsequent Violation)	B	4
48.44.016(3)	Unlawful Transaction of Health Coverage as Health Care Service Contractor	B	4

RCW	Offense	Class	Proposed Rank
48.46.033(3)	Unlawful Transaction of Health Coverage as Health Maintenance Organization	B	4
48.15.023(3)	Unlawful Transaction of Insurance Business	B	4
48.17.063(2)	Unlicensed Practice as an Insurance Professional	B	4
9A.82.080(1),(2)	Use of Proceeds of Criminal Profiteering	B	4
46.61.522(1)(c)	Vehicular Assault - Disregard for the Safety of Others	B	4
9.68A.075(1)	Viewing Depictions of Minor Engaged in Sexually Explicit Conduct 1	B	4
16.52.205(3)	Animal Cruelty 1 - Sexual Conduct or Contact	C	3
9A.76.170(3)(c)	Bail Jumping with Class B or C Felony	C	3
9A.52.030	Burglary 2	B	3
9A.46.120	Criminal Gang Intimidation	C	3
9A.90.120(2)(b)	Cyber Harassment	C	3
9A.76.120	Escape 2	C	3
9A.56.130	Extortion 2	C	3
9A.46.020(2)(b)	Harassment	C	3
28B.10.901(2)(b)	Hazing	C	3
9.35.020(3)	Identity Theft 2	C	3
9A.76.180	Intimidating a Public Servant	B	3
9A.76.150	Introducing Contraband 2	C	3
81.60.070	Malicious Injury to Railroad Property	B	3
19.144.080	Mortgage Fraud	B	3
46.37.674	Negligently Causing Substantial Bodily Harm by Use of a Signal Preemption Device	B	3
9A.56.350(2)	Organized Retail Theft 1	B	3
9A.72.030	Perjury 2	C	3
9.40.120	Possession of Incendiary Device	B	3
9A.56.360(2)	Retail Theft with Special Circumstances 1	B	3
21.20.400	Securities Act Violation	B	3
9.61.230(2)	Telephone Harassment (with Prior Harassment Conviction or Threat of Death)	C	3
9A.56.083	Theft of Livestock 2	C	3
9A.56.340(2)	Theft with Intent to Resell 1	B	3
9A.82.050	Trafficking in Stolen Property 1	B	3
9A.82.055	Trafficking in Stolen Property 2	C	3

RCW	Offense	Class	Proposed Rank
9A.56.290(4)(a)	Unlawful Factoring of a Credit or Payment Card Transaction	C	3
77.15.410(3)(b)	Unlawful Hunting of Big Game 1	C	3
9A.40.040	Unlawful Imprisonment	C	3
77.140.060(3)	Unlawful Misbranding of Fish or Shellfish 1	C	3
9.41.040(2)	Unlawful Possession of a Firearm 2	C	3
77.15.120(3)(b)	Unlawful Taking of Endangered Fish or Wildlife 1	C	3
77.15.260(3)(b)	Unlawful Trafficking in Fish, Shellfish or Wildlife 1	B	3
77.15.530(4)	Unlawful Use of a Nondesignated Vessel	C	3
46.61.024	Attempting to Elude Pursuing Police Vehicle	C	2
77.15.500(3)(b)	Commercial Fishing without a License 1	C	2
9.68A.090(2)	Communication with Minor for Immoral Purposes (Subsequent Violation or Prior Sex Offense Conviction)	C	2
9A.90.040	Computer Trespass 1	C	2
9.16.035(3)	Counterfeiting – 3 Conviction and Value \$10,000 or more	C	2
9A.90.060	Electronic Data Service Interference	C	2
9A.90.080	Electronic Data Tampering 1	C	2
9A.90.100	Electronic Data Theft	C	2
77.15.620(3)(b)	Engaging in Fish Dealing Activity Unlicensed 1	C	2
61.34.030	Equity Skimming	B	2
72.09.310	Escape from Community Custody	C	2
74.08.055(2)	False Verification for Welfare	B	2
48.80.030	Health Care False Claims	C	2
9.35.010	Improperly Obtaining Financial Information	C	2
9A.48.070	Malicious Mischief 1	B	2
9A.48.080	Malicious Mischief 2	C	2
9A.56.350(3)	Organized Retail Theft 2	C	2
9A.56.068	Possession of a Stolen Vehicle	B	2
9A.56.150	Possession of Stolen Property 1 (other than Firearm or Motor Vehicle)	B	2
9A.48.040	Reckless Burning 1	C	2
9A.56.360(3)	Retail Theft with Special Circumstances 2	C	2
19.290.100	Scrap Processing, Recycling, or Supplying without a License (Second or Subsequent Offense)	C	2

RCW	Offense	Class	Proposed Rank
9A.56.030	Theft 1 (Excluding Firearm and Motor Vehicle)	B	2
9A.56.400(2)	Theft from a Vulnerable Adult 2	C	2
9A.56.065	Theft of a Motor Vehicle	B	2
9A.56.096(5)(a)	Theft of Rental, Leased, Lease-purchased or Loaned Property (Valued at \$5,000 or more)	B	2
9A.56.340(3)	Theft with Intent to Resell 2	C	2
48.30A.015	Trafficking in Insurance Claims (Subsequent Violation)	C	2
77.15.570(2)	Unlawful Participation of Non-Indians in Indian Fishery	C	2
2.48.180	Unlawful Practice of Law (Subsequent Violation)	C	2
77.15.650(3)(b)	Unlawful Purchase or Use of a License 1	C	2
77.15.260(3)(a)	Unlawful Trafficking in Fish, Shellfish or Wildlife 2	C	2
18.130.190(7)(b)	Unlicensed Practice of a Profession or Business (Subsequent Violation)	C	2
9A.52.095	Vehicle Prowl 1	C	2
9A.44.115	Voyeurism 1	C	2
9A.60.020	Forgery	C	1
9A.60.060	Fraudulent Creation or Revocation of Mental Health Advance Directive	C	1
78.44.330	Mineral Trespass	C	1
9A.56.160	Possession of Stolen Property 2 (other than Firearm or Motor Vehicle)	C	1
77.15.450(3)(b)	Spotlighting Big Game 1	C	1
77.15.670(3)(b)	Suspension of Department Privileges 1	C	1
9A.56.075	Taking Motor Vehicle without Permission 2	C	1
9A.56.040	Theft 2 (Excluding Firearm and Motor Vehicle)	C	1
9A.56.096(5)(b)	Theft of Rental, Leased, Lease-purchased or Loaned Property (Valued at \$750 or more but less than \$5,000)	C	1
48.17.063	Transaction of Insurance Business Beyond the Scope of Licensure (Violation of RCW 48.17.060)	B	1
77.15.630(3)(b)	Unlawful Fish and Shellfish Catch Accounting 1	C	1
9A.56.060(4)	Unlawful Issuance of Checks or Drafts (Value greater than \$750)	C	1
9A.56.320(3)	Unlawful Possession of a Personal Identification Device	C	1

RCW	Offense	Class	Proposed Rank
9A.56.320(4)	Unlawful Possession of Fictitious Identification	C	1
9A.56.320(5)	Unlawful Possession of Instruments of Financial Fraud	C	1
9A.56.320(2)	Unlawful Possession of Payment Instruments	C	1
9A.56.320(1)	Unlawful Production of Payment Instruments	C	1
9.91.144	Unlawful Redemption of Food Stamps	C	1
77.15.250(2)(b)	Unlawful Releasing, Planting, Possessing or Placing Deleterious Exotic Wildlife	C	1
9.91.142(1)	Unlawful Trafficking in Food Stamps	C	1
77.15.580(3)(b)	Unlawful Use of Net to Take Fish 1	C	1
77.15.550(3)(b)	Violating Commercial Fishing Area or Time 1	C	1

**Table 2: Proposed Rankings for Currently Unranked Felony Offenses**

RCW	Offense	Class	Proposed Rank
9A.40.110	Coercion of Involuntary Servitude	C	5
9A.40.090	Luring of a Child or Developmentally Disabled Person	C	5
9A.76.023(2)(a)	Disarming a Law Enforcement or Corrections Officer	C	4
9A.76.023(2)(b)	Disarming a Law Enforcement or Corrections Officer and Firearm is Discharged	B	4
9A.36.060	Promoting a Suicide Attempt	C	4
9A.36.090	Threats Against Governor or Family	C	4
16.52.205(1),(2)	Animal Cruelty 1	C	3
16.52.117(2)(a)	Animal Fighting	C	3
16.52.117(2)(b)	Animal Fighting - Mutilation	B	3
19.144.100(2)	Control of Real Property Resulting from Mortgage Fraud Activities	B	3
19.144.100(1)	Use or Investment of Proceeds from Mortgage Fraud Activities	B	3
9A.40.060	Custodial Interference 1	C	2
18.64.046(7)	Unlawful Selling of Ephedrine, Pseudoephedrine or Phenylpropanolamine by a Wholesaler	€ B	Drug Grid SL 3

## Appendix A

### Re-ranking Committee Volunteers

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

#### **Staff Members:**

Whitney Hunt, Sex Offender Policy Board Coordinator

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

#### **SGC Members:**

Judge Sharonda Amamilo

Greg Link

Kimberly Gordon

Judge Josephine Wiggs

Commissioner Tye Menser

Judge Karen Donohue

Jon Tunheim

#### **SOPB Members:**

Brad Meryhew, Chair

Jedd Pelander

Sonja Hardenbrook

Richard Torrance

Shawn Sant & Jimmy Hung

Jamie Weimer & Terrina Peterson

Dr. Michael A. O'Connell

Judge Nelson Lee

Donald Redfield

Keith Devos

Mac Pevey

Christine Minney

Blanche Barajas

Jill Getty

#### **Other Volunteers:**

Jeremiah Bourgeois, Lived Experience – Formerly Incarcerated

Gail Brashear, Lived Experience – Formerly Incarcerated

Chief Gregory Cobb, Washington Association of a Sheriffs and Police Chiefs



Nicolas Cochrane, Washington Association of a Sheriffs and Police Chiefs  
Martina Kartman, Lived Experience - Victim of Crime  
Anita Khandelwal, Attorney at Law  
Kevin McCrae, Washington Association of Prosecuting Attorneys  
Chelsea Moore, Lived Experience – Family Member of Incarcerated Individual  
Laura Shaver, Attorney at Law  
Joanne Smieja, Lived Experience – Family Member of Incarcerated Individual  
Chief Brian Smith, Washington Association of a Sheriffs and Police Chiefs  
Loren Taylor, Lived Experience – Family Member of Incarcerated Individual  
Jason Walker, Washington Association of Prosecuting Attorneys

## Appendix B

### Policy Decisions and Notes Related to Determination of Proposed Rank for Specific Offenses

Notes:

- Offenses are only included in this table if there were notes related to the determination of rank. This table is not a comprehensive list of all ranked offenses.
- “No CFC code” means there have not been any convictions for this offense since its inception. The Caseload Forecast Council creates a code for its conviction database only when an offense has a conviction to be entered.
- “No Conviction Data” means there were no convictions between fiscal years 2010 and 2019 where this offense was the most serious offense<sup>4</sup> (had the longest confinement term) on the case and the sentence was not ‘modified’.<sup>5</sup>

RCW	Offense	Notes
9A.42.060	Abandonment of a Dependent Person 1	No conviction data
9A.82.030	Advancing Money or Property for Extortionate Extension of Credit	No conviction data
46.37.660(2)(c)	Air Bag Diagnostic Systems	No conviction data; No CFC code
46.37.660(2)(b)	Air Bag Diagnostic Systems (Causing Bodily Injury or Death)	Keep as Class C felony; No conviction data; No CFC code
46.37.660(1)(c)	Air Bag Replacement Requirements	No conviction data; No CFC code
46.37.660(1)(b)	Air Bag Replacement Requirements (Causing Bodily Injury or Death)	Keep as Class C felony; No conviction data; No CFC code
16.52.205(1),(2)	Animal Cruelty 1	SGC (Unranked) recommendation was SL3
16.52.117(2)(a)	Animal Fighting	SGC (Unranked) recommendation was SL3
16.52.117(2)(b)	Animal Fighting - Mutilation	SGC (Unranked) recommendation was SL3
9A.36.031(1)(h)	Assault 3 - of a Peace Officer with a Projectile Stun Gun	Rank 1 SL above Assault 3 - Excl Peace Officer
9A.36.041(3)	Assault 4 (Third Domestic Violence Offense)	Rank commensurate to No Contact Order

<sup>4</sup> Convictions where the offense was not the most serious were not included in the data used for this project.

<sup>5</sup> The conviction data included only sentences that were not ‘modified’, meaning it excluded sentences with enhancements, sentencing alternatives, consecutive sentences, anticipatory offenses, etc.

RCW	Offense	Notes
79A.60.060	Assault by Watercraft	Make commensurate with Vehicular Assault - Reckless/DUI; No conviction data
9A.76.170(3)(a)	Bail Jumping with Murder 1	No conviction data
9A.52.020	Burglary 1	At trial, the CHS is usually at least 1
9A.44.086	Child Molestation 2	Not a lifetime ISRB case
9A.44.089	Child Molestation 3	Changing to class B would change to registration/supervision requirements; Place Child Mol 3 one SL below Rape of a Child 3, Rape of a Child 3 is more serious
9A.48.120	Civil Disorder Training	No conviction data
9A.40.110	Coercion of Involuntary Servitude	SGC (Unranked) recommendation was SL5
77.15.500(3)(b)	Commercial Fishing without a License 1	No conviction data
19.144.100(2)	Control of Real Property Resulting from Mortgage Fraud Activities	SGC (Unranked) recommendation was SL3
9.16.035(4)	Counterfeiting	No conviction data; Commensurate with Assault 3
9A.46.120	Criminal Gang Intimidation	No conviction data
9A.42.020	Criminal Mistreatment 1	Keep as class B and reduce to SL9
9A.36.100	Custodial Assault	Commensurate with Assault 3
9A.40.060	Custodial Interference 1	SGC (Unranked) recommendation was to rank but no seriousness was offered
9A.90.120(2)(b)	Cyber Harassment	Make commensurate with Harassment/Telephone Harassment
9A.76.023(2)(a)	Disarming a Law Enforcement or Corrections Officer	SGC (Unranked) recommendation was SL3 or higher; Rank 1 SL below Disarm w/FA Discharged
9A.76.023(2)(b)	Disarming a Law Enforcement or Corrections Officer and Firearm is Discharged	SGC (Unranked) recommendation was SL4; Similar to Theft of a FA/Assault of LEO, statutes exist regarding firing FA
9A.36.045	Drive-by Shooting	Strong concerns about racial disproportionality
46.61.502(6)	Driving while under the Influence	Move to SL6 and eliminate Gross Misd scoring rule

RCW	Offense	Notes
9A.90.060	Electronic Data Service Interference	No conviction data; No CFC code
9A.90.080	Electronic Data Tampering 1	No conviction data; No CFC code
9A.90.100	Electronic Data Theft	No conviction data; No CFC code
9A.42.100	Endangerment with a Controlled Substance	Move to drug grid
77.15.620(3)(b)	Engaging in Fish Dealing Activity Unlicensed 1	No conviction data
9A.76.120	Escape 2	Rank one SL below Escape 1
72.09.310	Escape from Community Custody	Variance in charging practice; Less frequent use in remote areas; Used as bargaining chip
70.74.180	Explosive Devices Prohibited	Statute dictates maximum term of 20 yrs
9A.56.130	Extortion 2	Rank 2 SLs below Extortion 1
9A.82.040	Extortionate Means to Collect Extensions of Credit	No conviction data
9A.84.040(2)(a)	False Reporting 1	No conviction data; No CFC code
9A.84.040(2)(b)	False Reporting 2	No conviction data
9A.60.060	Fraudulent Creation or Revocation of Mental Health Advance Directive	No conviction data; No CFC code
9A.46.020(2)(b)	Harassment	Make commensurate with Telephone Harassment/Cyber Harassment
46.52.020(4)(b)	Hit and Run - Injury	Make commensurate with Vehicular Assault - Reckless Manner
79A.60.200(3)	Hit and Run with Vessel - Injury Accident	No conviction data; Make commensurate with vehicle offense version
9A.32.055	Homicide by Abuse	Considered similar to Murder 1 but with children
79A.60.050(1)(c)	Homicide by Watercraft by Disregard for the Safety of Others	Make commensurate with Vehicular Homicide - DSO
79A.60.050(1)(a)	Homicide by Watercraft, by being under the Influence of Intoxicating Liquor or any Drug	Make commensurate with Vehicular Homicide – DUI
79A.60.050(1)(b)	Homicide by Watercraft, by the Operation of any Vessel in a Reckless Manner	Make commensurate with Vehicular Homicide – Reckless Manner

RCW	Offense	Notes
9.35.020(2)	Identity Theft 1	Make commensurate to other Theft offenses
9.35.020(3)	Identity Theft 2	Rank 2 SLs below ID Theft 1
9.35.010	Improperly Obtaining Financial Information	No conviction data
9A.44.100(1)(a)	Indecent Liberties - with Forcible Compulsion	ISRB: mean time served = 85 mos; median = 75 mos
9A.44.100(1)(b-c)	Indecent Liberties (without Forcible Compulsion)	Unranked healthcare provider distinction should not be treated differently - single victim (unranked offense) vs multiple victim (ranked offense)?
9A.82.070	Influencing Outcome of Sporting Event	No conviction data
9A.72.160	Intimidating a Judge	Comport with Intimidating a Witness/ Juror; Should be added to Crime Against Person list
9A.72.130	Intimidating a Juror	Comport with Intimidating a Judge/ Witness; No conviction data
9A.72.110	Intimidating a Witness	Comport with Intimidating a Judge/ Juror
9A.40.090	Luring of a Child or Developmentally Disabled Person	SGC (Unranked) recommendation was SL4; Rank 1 SL below Kidnapping 2
70.74.280(1)	Malicious Explosion of a Substance 1	No conviction data
70.74.280(3)	Malicious Explosion of a Substance 3	Keep as class B and reduce to SL9; No conviction data
9A.48.070	Malicious Mischief 1	Make commensurate with Theft 1
70.74.270(1)	Malicious Placement of an Explosive 1	No conviction data
70.74.270(2)	Malicious Placement of an Explosive 2	No conviction data
70.74.272(1)(a)	Malicious Placement of an Imitation Device 1	Keep as class B and reduce to SL9; No conviction data
70.74.272(1)(b)	Malicious Placement of an Imitation Device 2	No conviction data
9A.32.060	Manslaughter 1	Make commensurate with Vehicular Homicide - DUI/RM

RCW	Offense	Notes
9.41.190	Manufacture of Untraceable Firearm with Intent to Sell	No conviction data; No CFC code; Rank one SL above Mfg or Assembly of Undetectable FA
9.41.325	Manufacture or Assembly of an Undetectable Firearm or Untraceable Firearm	No conviction data; No CFC code; Comports with Possession of Machine Gun, Bump-fire stock, undetectable FA or short-barreled rifle
46.37.650(1)(b)	Manufacture or Import Counterfeit, Nonfunctional, Damaged, or Previously Deployed Air Bag (Causing Bodily Injury or Death)	Keep as Class C felony; No conviction data; No CFC code
46.37.650(1)(c)	Manufacture or Import Counterfeit, Nonfunctional, Damaged, or Previously Deployed Air Bag	No conviction data; No CFC code
78.44.330	Mineral Trespass	No conviction data; No CFC code
19.144.080	Mortgage Fraud	Make one SL above Theft 1; Comports with new Aggravated Theft offense suggestion.
46.37.675	Negligently Causing Death by Use of a Signal Preemption Device	No conviction data; No CFC code
46.37.674	Negligently Causing Substantial Bodily Harm by Use of a Signal Preemption Device	No conviction data; No CFC code
9A.56.350(2)	Organized Retail Theft 1	Make one SL above Theft 1
9A.56.350(3)	Organized Retail Theft 2	Rank one SL above Theft 2
46.61.504(6)	Physical Control of a Vehicle while under the Influence	Make commensurate with Felony DUI (class B)
9A.56.310	Possession of a Stolen Firearm	Racial disproportionality a concern
9A.56.068	Possession of a Stolen Vehicle	Make commensurate with Theft 1
9.41.190	Possession of Machine Gun, Bump-fire Stock, Undetectable Firearm, or Short-Barreled Shotgun or Rifle	Unlawful possession of unlawful gun
9A.56.150	Possession of Stolen Property 1 (other than Firearm or Motor Vehicle)	Make commensurate with Theft 1

RCW	Offense	Notes
9A.56.160	Possession of Stolen Property 2 (other than Firearm or Motor Vehicle)	Make commensurate to Theft 2 (Same \$)
9A.36.060	Promoting a Suicide Attempt	SGC (Unranked) recommendation was to rank but no SL was offered
9.68A.101	Promoting Commercial Sexual Abuse of a Minor	Not an ISRB-qualifying offense
9A.44.040	Rape 1	1 conviction in FY10-19; ISRB: 51 releases with average term of 120 mos (2010-2020)
9A.44.050	Rape 2	ISRB: about 120 releases with average term of 85 mos (2010-2020)
9A.44.060	Rape 3	Changing to class B would change registration/supervision requirements; ISRB: more often than not, maximum term is served (subseq off)
9A.44.073	Rape of a Child 1	SL14 would make it comparable to a serious violent offense;
9A.44.079	Rape of a Child 3	Defense uses for pleas; Raising to class B could impact pleas
9A.56.360(2)	Retail Theft with Special Circumstances 1	Make one SL above Theft 1;
9A.56.360(3)	Retail Theft with Special Circumstances 2	Rank one SL above Theft 2
9A.56.200	Robbery 1	Large racial disparity in sentencing
19.290.100	Scrap Processing, Recycling, or Supplying without a License (Second or Subsequent Offense)	No conviction data; No CFC code
46.37.650(2)(b)	Sell, Install, or Reinstall Counterfeit, Nonfunctional, Damaged, or Previously Deployed Airbag	Keep as Class C felony; No conviction data; No CFC code
46.37.650(2)(c)	Sell, Install, or Reinstall Counterfeit, Nonfunctional, Damaged, or Previously Deployed Airbag	No conviction data; No CFC code; Commensurate to Counterfeiting 1
9.68A.040	Sexual Exploitation of a Minor	Most cases end up in federal court; Change to class A offense

RCW	Offense	Notes
9A.44.093	Sexual Misconduct with a Minor 1	Comport with Custodial Sexual Misconduct
9A.44.105	Sexually Violating Human Remains	No convictions FY10-19
9A.76.115	Sexually Violent Predator Escape	Has mandatory minimum term of 60 mos; CHS = 0 highly unlikely; No conviction data
77.15.450(3)(b)	Spotlighting Big Game 1	No conviction data; No CFC code
9A.56.075	Taking Motor Vehicle without Permission 2	Rank one SL below Possession of Stolen Veh (class B), Theft of Motor Vehicle (class B)
9A.72.120	Tampering with a Witness	Rank one SL above Harassment
9.61.230(2)	Telephone Harassment (with Prior Harassment Conviction or Threat of Death)	Make commensurate with Harassment/ Cyber Harassment
9A.56.030	Theft 1 (Excluding Firearm and Motor Vehicle)	Create new Aggr Theft offense where value >\$200K and place at SL4
9A.56.400(2)	Theft from a Vulnerable Adult 2	Rank one SL above Theft 2
9A.56.065	Theft of a Motor Vehicle	Make commensurate with Theft 1
69.55.010	Theft of Ammonia	Make class B felony; No conviction data
9A.56.083	Theft of Livestock 2	No conviction data
9A.56.096(5)(a)	Theft of Rental, Leased, Lease-purchased or Loaned Property (Valued at \$5,000 or more)	Make commensurate with Theft 1
9A.56.096(5)(b)	Theft of Rental, Leased, Lease-purchased or Loaned Property (Valued at \$750 or more but less than \$5,000)	Make commensurate to Theft 2
9A.56.340(2)	Theft with Intent to Resell 1	Make one SL above Theft 1; Compare to Trafficking SP 1; Value = \$1,500+ (should be same as Theft 1)
9A.56.340(3)	Theft with Intent to Resell 2	Rank one SL above Theft 2
9A.36.090	Threats Against Governor or Family	SGC (Unranked) recommendation was SL4; Rank 1 SL above Harassment
9A.40.100(1)	Trafficking 1	No conviction data
9A.40.100(3)	Trafficking 2	Ok to break away from Assault 1/Assault of a Child 1



RCW	Offense	Notes
48.30A.015	Trafficking in Insurance Claims (Subsequent Violation)	No conviction data
9A.82.050	Trafficking in Stolen Property 1	Compare to Theft w/Intent to Resell 1; Move to SL3 to comport with other theft offenses with special factors
48.17.063	Transaction of Insurance Business Beyond the Scope of Licensure (Violation of RCW 48.17.060)	No convictions; No CFC Code
9A.56.290(4)(b)	Unlawful Factoring of a Credit or Payment Card Transaction (Subsequent Violation)	No conviction data
77.15.630(3)(b)	Unlawful Fish and Shellfish Catch Accounting 1	No conviction data
77.140.060(3)	Unlawful Misbranding of Fish or Shellfish 1	No conviction data; No CFC code
77.15.570(2)	Unlawful Participation of Non-Indians in Indian Fishery	No conviction data; No CFC code
9A.56.320(3)	Unlawful Possession of a Personal Identification Device	Make commensurate with Forgery
9A.56.320(4)	Unlawful Possession of Fictitious Identification	Make commensurate with Forgery
9A.56.320(5)	Unlawful Possession of Instruments of Financial Fraud	Make commensurate with Forgery
9A.56.320(2)	Unlawful Possession of Payment Instruments	Make commensurate with Forgery
9A.56.320(1)	Unlawful Production of Payment Instruments	Make commensurate with Forgery
77.15.650(3)(b)	Unlawful Purchase or Use of a License 1	No conviction data; No CFC code
9.91.144	Unlawful Redemption of Food Stamps	Consider reducing to misdemeanor offense
77.15.250(2)(b)	Unlawful Releasing, Planting, Possessing or Placing Deleterious Exotic Wildlife	No conviction data; No CFC code
18.64.046(7)	Unlawful Selling of Ephedrine, Pseudoephedrine or Phenylpropanolamine by a Wholesaler	SGC (Unranked) rec was to make class B/SL3; Committee suggests making it class B/DG-3 to comport with Mfg of Meth (DG III)

RCW	Offense	Notes
77.15.120(3)(b)	Unlawful Taking of Endangered Fish or Wildlife 1	No conviction data; No CFC code
9.91.142(1)	Unlawful Trafficking in Food Stamps	Gross Misd < \$100; Felony > \$100; Consider adjusting \$ values
48.44.016(3)	Unlawful Transaction of Health Coverage as Health Care Service Contractor	No conviction data; No CFC code
48.46.033(3)	Unlawful Transaction of Health Coverage as Health Maintenance Organization	Make it an unranked, class B offense; No conviction data; No CFC code
77.15.530(4)	Unlawful Use of a Nondesignated Vessel	No conviction data; No CFC code
77.15.580(3)(b)	Unlawful Use of Net to Take Fish 1	No conviction data; No CFC code
48.17.063(2)	Unlicensed Practice as an Insurance Professional	Make it an unranked, class C offense; No conviction data; No CFC code
18.130.190(7)(b)	Unlicensed Practice of a Profession or Business (Subsequent Violation)	First offense = Gross Misd
9.41.225	Use of a Machine Gun or Bump-fire Stock in Commission of a Felony	No conviction data
19.144.100(1)	Use or Investment of Proceeds from Mortgage Fraud Activities	SGC (Unranked) recommendation was SL3
9A.52.095	Vehicle Prowl 1	How does this compare to Residential Burglary?
46.61.522(1)(c)	Vehicular Assault - Disregard for the Safety of Others	Make commensurate with Assault 3 (class C)
46.61.520(1)(c)	Vehicular Homicide by Disregard for the Safety of Others	Big difference in culpability from DUI/ Reckless;
46.61.520(1)(a)	Vehicular Homicide, by being under the Influence of Intoxicating Liquor or any Drug	Make commensurate with Manslaughter 1
46.61.520(1)(b)	Vehicular Homicide, by the Operation of any Vehicle in a Reckless Manner	Make commensurate with Manslaughter 1
77.15.550(3)(b)	Violating Commercial Fishing Area or Time 1	No conviction data; No CFC code

# Appendix C

## Proposed Sentencing Grid as Modified by SGC.<sup>6</sup>

	0	1	2	3	4	5	6	7	8	9+	Agg Departure Cap (advisory, greater than is presumptively unreasonable)	Repeat SV/Violent or Repeat DV 9.94A.525(21)										
<b>18</b>	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																					
<b>17</b>	240	320	249	332	260	347	274	365	289	385	306	409	327	436	350	467	377	502	407	543	54	10%
<b>16</b>	109	156	118	169	129	185	141	201	155	222	183	245	204	272	227	303	255	340	294	392	39	10%
<b>15</b>	98	140	106	151	115	165	126	180	139	198	164	218	182	243	203	270	228	304	262	350	35	10%
<b>14</b>	86	123	93	133	101	145	111	158	122	174	144	192	160	214	178	238	200	267	231	308	30	10%
<b>13</b>	56	94	62	104	68	114	76	126	83	139	94	157	106	177	120	200	135	225	162	270	27	10%
<b>12</b>	41	69	45	76	50	83	55	92	61	102	69	115	77	129	87	146	98	164	138	230	23	10%
<b>11</b>	34	57	37	62	41	69	45	76	50	84	57	95	64	107	72	120	81	136	114	190	19	10%
<b>10</b>	27	46	30	51	33	56	37	62	41	68	46	77	52	87	59	98	66	111	93	155	15	10%
<b>9</b>	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120	12	10%
<b>8</b>	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105	10	10%
<b>7</b>	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90	9	10%
<b>6</b>	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75	7	10%
<b>5</b>	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60	6	10%
<b>4</b>	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49	4	10%
<b>3</b>	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39	3	10%
<b>2</b>	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28	2	10%
<b>1</b>	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	1	10%
<b>Unr</b>	0 - 365 days																					

<sup>6</sup> Only the formulas within seriousness levels 10 through 16 were modified from the version originally provided to the SGC for this review.

Washington State Sentencing Guidelines Commission

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