

Fiscal Year 2025

Re-ranking Felony Offenses on Proposed New Sentencing Grid: Follow-up Report



Washington State
Sentencing Guidelines Commission
December 2024

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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 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.¹ The SGC was instructed to include in the review any unranked offenses that it had recommended be ranked in its report *Re-ranking Felony Offenses on Proposed New Sentencing Grid*.²

More information about how the SGC conducted this review can be found in the *2023 Felony Re-Ranking Supplemental Report*³ published by the Office of Financial Management’s Public Safety Policy & Research Center. As the supplemental report notes, the SGC was given limited time to perform this review. The SGC unable to complete a deeper review of its proposed rankings, resulting in a few offenses with different degrees being ranked at the same seriousness level, such as Malicious Mischief 1 and 2 both having a proposed rank of 2. There were also possible recommendations that arose during the subcommittee’s discussions on ranking that were outside the scope of the review. Those possible recommendations, included in detail in the supplemental report, have been addressed in this report.

Recommendations

Offenses With Different Degrees Within Same Proposed Rank

The SGC revisited the proposed ranking recommendations in its December 2023 report and focused on offenses where different degrees of the same offense were put under the same proposed rank or where policy conditions had not been applied.

Figure 1 – Corrected Proposed Offense Rankings

RCW	Offense	Class	Proposed Rank	Corrected Rank
70.74.280(2)	Malicious Explosion of a Substance 2	A	9	9
70.74.280(3)	Malicious Explosion of a Substance 3	B	9	7
9A.82.050	Trafficking in Stolen Property 1	B	3	3
9A.82.055	Trafficking in Stolen Property 2	C	3	2
9A.48.070	Malicious Mischief 1	B	2	2
9A.48.080	Malicious Mischief 2	C	2	1

¹ Goodman, R. (2023, April 25). *Re: Ranking Felony Offenses on Proposed New Sentencing Grid* [Memorandum]. Washington State House of Representatives. Found at:

https://sgc.wa.gov/sites/default/files/public/SGC/meetings/2023/Letter_to_SGC_20230424.pdf

² 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

³ Knoth-Peterson, L., Jetzer, K., and Hunt, W. (2024). *2023 Felony Re-Ranking: Supplemental Report*. Office of Financial Management; Public Safety Policy and Research Center. Olympia, WA. Found at:

https://sgc.wa.gov/sites/default/files/public/SGC/publications/PSPRC_reranking-supplemental-report.pdf

Malicious Explosion of a Substance

Members considered the elements of each degree of Malicious Explosion of a Substance as well as those of Malicious Placement of an Explosive. There have been zero charges and zero convictions for Malicious Explosion of a Substance 3 and two charges and zero convictions for Malicious Explosion of a Substance 2 during fiscal years 2000 – 2019. Members overwhelmingly voted to change the rank of Malicious Explosion of a Substance 3 from a proposed seriousness level 9 to a proposed seriousness level 7 as they believe it should be commensurate with Malicious Placement of an Explosive 3

Recommendation: Rank Malicious Explosion of a Substance 3 at proposed seriousness level 7.

Recommendation: As recommended by the Criminal Sentencing Task Force, SGC members suggested a review of offenses with zero conviction in the past 25 years.

Trafficking in Stolen Property

Members observed that Trafficking in Stolen Property 1 is intentional and/or applies to a leader of trafficking activity and Trafficking in Stolen Property 2 is reckless. Members unanimously agreed to move Trafficking in Stolen Property 2 from proposed seriousness level 3 to proposed seriousness level 2 and leave Trafficking in Stolen Property 1 at proposed seriousness level 3.

Recommendation: Rank Trafficking in Stolen Property 2 at proposed seriousness level 2 and leave Trafficking in Stolen Property 1 at proposed seriousness level 3.

Malicious Mischief

The description of Malicious Mischief 1 includes causing an impairment or interruption of service to the public while Malicious Mischief 2 causes substantial risk of impairment or interruption. It was observed by members that Malicious Mischief 2 and Theft 2 were similar, particularly in monetary value. Members unanimously voted to move Malicious Mischief 2 from proposed seriousness level 2 to proposed seriousness level 1 to make it commensurate with Theft 2. Malicious Mischief 1 would remain at proposed seriousness level 2.

Recommendation: Rank Malicious Mischief 2 at proposed seriousness level 1 and leave Malicious Mischief 1 at proposed seriousness level 2.

Applying Policy Decision to Other Theft Offenses

As reported in the Public Safety Policy and Research Center's supplemental report⁴, there was a policy decision made by the SGC about ranking theft-related offenses, which explained that there are theft-related offenses commensurate with Theft 1 and Theft 2 and there are those that are more serious than Theft 1 and Theft 2 due to additional elements of the offense. There were a few offenses to which this policy decision had not been applied before the SGC submitted its report, some of which also had offenses with multiple degrees ranked within the same seriousness level (see Figure 1).

⁴ Knoth-Peterson, L., et al. (2024).

Figure 2 – Theft 1 and Theft 2 Offenses

RCW	Offense	Class	Proposed Rank
9A.56.030	Theft 1 (Excluding Firearm and Motor Vehicle)	B	2
9A.56.040	Theft 2 (Excluding Firearm and Motor Vehicle)	C	1

Figure 3 – Application of Theft Policy Decision to Theft-related Offenses

RCW	Offense	Class	Proposed Rank	Modified Rank
9A.56.080	Theft of Livestock 1	B	4	3
9A.556.083	Theft of Livestock 2	C	3	2
9A.82.055	Trafficking in Stolen Property 2	C	3	2
9A.90.100	Electronic Data Theft	C	2	2
9A.48.080	Malicious Mischief 2	C	2	1
9.35.020(2)	Identity Theft 1	B	5	3
9.35.020(3)	Identity Theft 2	C	3	2

Trafficking in Stolen Property 2

See Figure 1 – Corrected Proposed Offense Rankings

Malicious Mischief 2

See Figure 1 – Corrected Proposed Offense Rankings

Electronic Data Theft

Applying the policy decision related to theft and theft-related offenses, members voted unanimously that Electronic Data Theft should remain at seriousness level 2 as it is commensurate to Theft 1.

Recommendation: Leave Electronic Data Theft at seriousness level 2.

Theft of Livestock

After a member commented that Theft of Livestock 1 is like trafficking in stolen livestock while Theft of Livestock 2 is the taking of livestock, members voted unanimously to move Theft of Livestock 1 from proposed seriousness level 4 to proposed seriousness level 3 and move Theft of Livestock 2 from proposed seriousness level 3 to proposed seriousness level 2.

Recommendation: Rank Theft of Livestock 1 at proposed seriousness level 3 and rank Theft of Livestock 2 at proposed seriousness level 2.

Identity Theft

During the initial re-ranking work, the Class B subcommittee members believed that Identity Theft 1 should be commensurate with other theft-related offenses. Statutory provisions allow several counts to be stacked and punished separately. A member remarked that there is a difference

between possessing someone’s identity information and using someone’s identity information that the statute doesn’t delineate the difference, prompting the question of whether there is an issue with how the statute is written, rather than where the offense is ranked. There were several situational concerns related to identity theft offenses, including whether possessing credit cards from several institutions that were stolen from a single person constitutes same criminal conduct, that stealing a wallet and using a card to purchase goods is not different from stealing a purse to get the cash – no one carries cash anymore, and how it is easier to meet the elements of the crime of Identity Theft than it is to meet those of Theft 1 and Theft 2 offenses. A member provided the example that stealing \$20,000 would result in a Theft 2 (SL 2) but possessing another person’s driver’s license with intent to get \$1,500 is a seriousness level 5 offense. Additionally, the Identity Theft statute, RCW 9.35.020(7) specifically, provides language related to civil damages, which the theft statutes do not have.

All members approved moving Identity Theft 1 to seriousness level 3 and Identity Theft 2 to seriousness level 2, except for one who believed the current ranking was appropriate to the amount of harm caused by identity theft.

Recommendation: Rank Identity Theft 1 at proposed seriousness level 3 and rank Identity Theft 2 at proposed seriousness level 2.

Aggravated Theft Offense

During the original re-ranking discussions, the class B subcommittee struggled with where to rank Theft 1. The definition of Theft 1 includes values greater than \$5,000 and the subcommittee members believed that ranking an offense with a value of \$5,000 was very different from ranking an offense with a value of \$500,000. Through their discussion, a new offense, Aggravated Theft, was suggested that could address the larger values. The suggested limit for this proposed offense were values greater than \$200,000 and the ranking would be at seriousness level 4 (Theft 1 is proposed at seriousness level 2).

Figure 4 – Proposed Aggravated Theft Offense

Current Theft Offenses	Proposed Theft Offenses
	Aggravated Theft – greater than \$200,000 (class B)
Theft 1 – greater than \$5,000 (class B)	Theft 1 - \$5,000 - \$200,000 (class B)
Theft 2 - \$750 - \$5,000 (class C)	Theft 2 - \$750 - \$5,000 (class C)
Theft 3 – less than \$750 (Gross Misd)	Theft 3 – less than \$750 (Gross Misd)

During the SGC’s discussion of this proposal, it was noted that cases driven by larger dollar amounts are generally resolved with exceptional sentences. As well, in cases where there were multiple items stolen, each item could count as an offense, thereby increasing the criminal history score. These examples are why exceptional sentences exist, to deal with circumstances that are outside of the ordinary. It was pointed out that other economic offenses have the same “greater than \$5,000” limiter in their definitions and those offenses would also need an aggravated offense to create parity. For these reasons, members did not see the need for the creation of a new theft offense.

Recommendation: Aggravated Theft offense not needed.

Unlawful Redemption of Food Stamps and Unlawful Trafficking in Food Stamps

Figure 5 – Unlawful Trafficking in and Redemption of Food Stamps

RCW	Offense	Class	Current SL	Proposed SL
RCW 9.91.142 (1)	Unlawful Trafficking in Food Stamps (>\$100)	C	1	Gross Misd
RCW 9.91.142(2)	Unlawful Trafficking in Food Stamps (=<\$100)		Gross Misd	Misd
RCW 9.91.144	Unlawful Redemption of Food Stamps	C	1	Misd

The class C subcommittee determined that Unlawful Trafficking in Food Stamps is a more serious offense than Unlawful Redemption of Food Stamps even though there is no monetary value associated with the latter in statute. SGC members agreed that there is a difference between people unlawfully redeeming food stamps (redeeming are getting sustenance) and trafficking in food stamps (getting something other than what is available with food stamps). Members also theorized that in a case where an EBT card was stolen and used, that would possibly move the crime into the Identity Theft arena based on the definition of that statute. There have been fewer than 20 convictions for Unlawful Redemption of Food Stamps or Unlawful Trafficking in Food Stamps, combined, in the past 20 years.

More than a majority of members supported reducing Unlawful Trafficking in Food Stamps where the amount was greater than \$100 from a class C felony ranked at seriousness level 1 to a gross misdemeanor, and reducing Unlawful Trafficking in Food Stamps where the amount was \$100 or less from a gross misdemeanor to a simple misdemeanor. Even though the presumptive sentence for a gross misdemeanor (0-364 days) could be greater than it is for a ranked felony, members thought not having a felony record would be beneficial to the defendant. And since Unlawful Redemption in Food Stamps is believed to be less serious than Unlawful Trafficking in Food Stamps, they supported making Unlawful Redemption of Food Stamps a misdemeanor.

SGC members spotted that the threshold for Unlawful Trafficking in Food Stamps has remained unchanged since 2004. According to the U.S. Bureau of Labor Statistics, \$100 in July 2004 has the same buying power as \$162.12 in November 2023. Given the relative change in value over time, some members thought that the monetary threshold for the felony version of Unlawful Trafficking in Food Stamps should be increased to maintain the intent of the differences in punishment established in 2004.⁵

There was unanimous agreement among SGC members that the Legislature should revisit all offense monetary values every five years to keep it in line with inflation and create consistency across offenses.

Recommendation: Make Unlawful Trafficking of Food Stamps (>\$100) a Gross Misdemeanor offense and make Unlawful Trafficking of Food Stamps (<\$100) a Misdemeanor offense.

Recommendation: Reduce Unlawful Redemption of Food Stamps to a misdemeanor.

⁵ Knoth-Peterson, et al. (2024).

Recommendation: Legislature to revisit statutory monetary values every five years to keep in line with inflation.

Intimidating a Judge – add to Crime Against a Person list

While reviewing offenses in the class B committee, members agreed that three intimidation offenses, Intimidation of a Judge, of a Juror, and of a Witness, should be treated the same. Upon review, it was noted that Intimidation of a Juror and Intimidation of a Witness are both classified as a Crime Against a Person, but Intimidation of a Judge is not.

Although SGC members discerned that jurors and witnesses are not part of the criminal legal system, while judges and prosecutors are, prosecutors are included under Intimidating a Public Servant, which is included as a Crime Against a Person.

A majority of members agreed that Intimidating a Judge should be added to the list of Crimes Against a Person.

Recommendation: Add Intimidating a Judge to the list of Crimes Against a Person.

Indecent Liberties without Forcible Compulsion (RCW 9A.44.100(d-f))

Figure 6 – Ranked and Unranked Indecent Liberties Offenses

RCW	Offense	Class	Proposed Rank	Modified Rank
9A.44.100(1)(a)	Indecent Liberties - with Forcible Compulsion	A	12	No change
9A.44.100(1)(b-c)	Indecent Liberties (without Forcible Compulsion)	B	7	No change
9A.44.100(1)(d-f)	Indecent Liberties (without Forcible Compulsion)	B	Unranked	3

During the Sex Offender Policy Board’s (SOPB) discussion of the ranked version of the Indecent Liberties without Forcible Compulsion felony, members were reminded that there is also an unranked version of this offense. Some SOPB members thought the subsections of this statute should not be treated differently because both the ranked and unranked offenses are about sexual intercourse with a related victim and an abuse of power in absence of consent. The thought was that both should be similarly ranked.

During the SGC’s discussion of this idea, some members disagreed that the conduct within each subsection was similar. They suggested the ranked offense is related to people who are incapable of giving consent and is about the status of the individual, whereas the unranked offense is related to people who did not give consent and is more about the relationship between the perpetrator and the victim.

Discussion also recognized the use of the unranked offense in plea agreements, however, it was concluded that if the unranked version of Indecent Liberties without Forcible Compulsion became ranked, it would not completely eliminate available plea options.

The SGC looked at other offenses within the proposed seriousness levels and voted unanimously to recommend Indecent Liberties without Forcible Compulsion (RCW 9A.44.100(d-f)) be ranked at seriousness level 3 instead of being an unranked felony.

Recommendation: Rank Indecent Liberties without Forcible Compulsion (RCW 9A.44.100(d-f)) at seriousness level 3.

Vehicle Prowl 1 and Residential Burglary

During the class C subcommittee’s discussion on Vehicle Prowl 1, similarities between that offense and Residential Burglary were observed. A person is guilty of Vehicle Prowl 1 if they enter/remain unlawfully in a motor home or vessel with sleeping quarters or cooking facilities. A person is guilty of Residential Burglary if they enter/remain unlawfully in a dwelling other than a vehicle. Vehicle Prowl 1 is a class C offense ranked at seriousness level 1 while Residential Burglary is a class B offense ranked at seriousness level 4. While the type of domain differs, the behavior is the same. Many people live in motor homes, and those who do may be more likely to have a lower socioeconomic status, compounding the effects of victimization. Members believed that more consideration should be given to whether Vehicle Prowl 1 should comport with Residential Burglary.

Figure 6 – Ranked and Unranked Indecent Liberties Offenses

RCW	Offense	Class	Proposed Rank	Modified Rank
9A.52.025	Residential Burglary	B	5	No change
9A.52.095	Vehicle Prowl 1	C	2	No change

Because the ruling of the Washington State Supreme Court that some vehicles are considered abodes has been upheld,⁶ SGC members unanimously agreed that the Legislature should consider a change to the definition of dwelling within the Residential Burglary statute and its limitation on vehicles. Otherwise, the rankings of these two offenses should remain as originally proposed.

Recommendation: Legislature should review the Residential Burglary statute and consider modifying the definition of dwelling and the limitation on vehicles.

⁶ *City of Seattle v. Long*, 463 P.3d 135 (Wash. Ct. App. 2020)

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