A Comprehensive Review and Evaluation of Sentencing Policy in Washington State

2000–2001

STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

925 Plum Street SE, Bldg 4, 2nd Floor, PO Box 40927 • Olympia, Washington 98504-0927
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December 17, 2001

The Honorable Gary Locke
Governor
State of Washington
Olympia, WA 98504-0002

Dear Governor Locke:

On behalf of the Sentencing Guidelines Commission, I am transmitting the enclosed report entitled *A Comprehensive Review and Evaluation of Sentencing Policy in Washington State: 2000 – 2001*, pursuant to the mandate set forth by the 2000 Legislature. This mandate directed the Commission to examine thoroughly state sentencing policy and recommend revisions and modifications if necessary.

The enclosed report explores many facets of sentencing including, but not limited to, confining violent offenders, alternatives to confinement for nonviolent offenders, the expansion of drug sentences, disproportionality, modifying sentencing to meet correctional capacity and juvenile issues in adult sentencing.

This report should assist policy makers in focusing on key issues related to sentencing in Washington State. It should also provide meaningful suggestions for solutions to those areas identified as problematic. I hope that you find this report useful as we continue to work together on important issues related to public safety and criminal justice.

Sincerely,

David Boerner, Chair
Sentencing Guidelines Commission

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December 17, 2001

The Honorable Sid Snyder
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The Honorable J. Clyde Ballard
Republican Co-Speaker
Washington State House of Representatives
Olympia, WA 98504-0600

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ACKNOWLEDGMENTS

The Sentencing Guidelines Commission acknowledges the contributions made by many individuals and organizations that voluntarily participated in or helped to prepare for the in-depth fact-finding and discussions that form the basis of this report. This evaluation would not have been possible without their assistance.

The Commission particularly thanks the Superior Court Judges' Association, the Washington Association of Prosecuting Attorneys, the Washington Defenders' Association, the Washington Association of Criminal Defense Lawyers, the Washington Association of Sheriffs and Police Chiefs, the Department of Social and Health Services Division of Alcohol and Substance Abuse, Washington Institute of Public Policy, Office of Community Development/Office of Crime Victims Advocacy, the Caseload Forecast Council, and the Friends Committee on Washington State Public Policy. Individual members of these organizations gave generously of their time, providing valuable assistance throughout the course of the evaluation.

Finally, this evaluation would not have been possible without the dedicated assistance of the Commission's facilitator, Kay Knapp. Ms. Knapp's support and expertise were invaluable during all phases of the review process including the completion of this report.

Suggested Citation

State of Washington Sentencing Guidelines Commission. *A Comprehensive Review and Evaluation of Sentencing Policy in Washington State: 2000 – 2001.* Olympia, WA: State of Washington Sentencing Guidelines Commission, 2001.

STATE OF WASHINGTON

Gary Locke
Governor

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EXECUTIVE SUMMARY

In Fiscal Year 2001, the Sentencing Guidelines Commission was asked to conduct a comprehensive review and evaluation of state sentencing policy. The review and evaluation was to include an analysis of whether current sentencing practices are consistent with the purposes of the Sentencing Reform Act as set forth in RCW 9.94A.010. Specifically, the Legislature asked the Commission to examine sentencing ranges and standards, mandatory minimum sentences, enhancements, special sentencing alternatives, procedures for confining violent offenders and for providing alternatives to confinement for nonviolent offenders. Additionally, the Commission was asked to examine the practical effects of current sentences and to determine whether current ranges and standards are consistent with existing corrections capacity.

The Commission began its evaluation in June 2000, by consulting with many organizations and individuals with expertise and interest in sentencing policy. Workgroups were established to address broad sentencing issues and were charged with the tasks of: (1) establishing criteria for measuring the extent of consistency between existing law and the purposes of the SRA; (2) exploring racial disproportionality/disparity in sentencing; (3) addressing cost implications of options explored; and (4) addressing victim impact.

The first section of this report contains a summary of the Commission's view of current practices and characteristics of the state's sentencing law and correction practices. This section includes information about the number, type and length of sentences as well as a review of increases in sentencing laws and incarceration. The remaining sections correspond to nine areas emphasized by the Commission. Each of these sections contains facts, research results and general observations studied by the Commission, followed by a summary of "key issues" and recommendations for changes to the SRA.

The nine areas and the Commission's primary recommendations are summarized as follows:

1) **Confining the Violent Offender:** With few exceptions the current policy should be maintained.
2) **Alternatives to Incarceration:** All cost savings realized through amendments to the SRA should be used to fund alternatives to incarceration programs including drug treatment and other cost-effective pre and post-adjudication programs in the community.
3) **Expansion of Drug Sentences:** A separate drug grid and single scoring should be adopted in addition to using cost-savings in corrections to fund treatment programs at the state, county and regional levels.
4) **Disproportionality:** State and local criminal justice professionals should continue to research the causes and seek resolution of the disproportionality in the criminal justice system.
5) **Capacity:** Options for reducing capacity include reductions in sentence length for specific offenses, changes in earned release policies, examination of existing sanctions and amending the definitions of specific offenses.
6) **Regionalization:** State and local governments would benefit by combining corrections functions.
7) **Monetary Sanctions:** Incarceration should not be included among the sanctions for failure to pay legal/financial obligations.
8) **Juvenile Justice:** Sentencing courts should have the option of employing a Youthful Offender Sentencing Alternative in handling juvenile offenders transferred to adult court.
9) **Aging Prison Population:** Current practices appear sufficient.

I. OVERVIEW

A. The Commission's Task

The Legislature directed the Sentencing Guidelines Commission (Commission) to review current sentencing law and to determine whether that law remains consistent with the purposes of the Sentencing Reform Act (SRA). Specifically, the directive required an examination of sentencing ranges and standards, mandatory minimum sentences, sentence enhancements, and special sentencing alternatives. The Commission was also asked to examine practices with respect to confinement of violent offenders and the use of alternatives to confinement for nonviolent offenders. Additionally, as part of the review and evaluation, the Commission was instructed to "consider studies on the cost- effectiveness of sentencing alternatives, as well as the fiscal impact of sentencing policies on state and local government."[1]

The Sentencing Reform Act (SRA) of 1981 authorized the development of comprehensive sentencing guidelines. The guidelines encompassed all felony sentences, including those that resulted in prison and jail incarceration. The sentencing system established by this reform broke sharply with indeterminate sentencing principles. An emphasis on just deserts and accountability replaced the previous unguided application of multiple sentencing purposes. The largely unguided discretion of the parole board to release an offender when determined rehabilitated was transferred to guided judicial and prosecutorial discretion. Truth and certainty were emphasized with the length of terms and conditions known at the time of sentencing, except for the one-third reduction for earned release. Priority was given to incarcerating violent offenders with alternatives to confinement emphasized for non-violent offenders.

The SRA was informed by Washington State reform efforts in the juvenile justice arena as well as the national sentencing reform movement. Sentencing guidelines systems showed promise as an effective structure with which to reduce real and imagined disparities in felony sentencing. Guidelines were also seen as a way to structure, but not eliminate, discretion in sentencing.

Since its effective date in 1984, the SRA has been revised every year through legislation and citizen initiative. Guidelines are initially developed systematically; amendments are enacted piecemeal. Systematic guideline development balances multiple purposes and examines the interactions and impacts of a multitude of decisions. Conversely, amendments, almost by definition, focus on a single issue, and decision-making often involves an examination of the impact of that single focus. Mindful of the general impact of piecemeal amendments, the Commission welcomed the Legislature's mandate to review the changed guidelines in light of the original purposes the guidelines serve.

[1] 2001 Legislative Budget Notes, 10/8/01.

As enacted in 1981, the Washington State Sentencing Reform Act (SRA) was intended to structure judicial discretion and serve the following purposes:

1. Protect the public;
2. Ensure that punishment for an offense is proportionate to the offense and the offender's criminal history;
3. Promote respect for the law by providing punishment that is just;
4. Ensure that punishment is commensurate with the punishment imposed on others similarly situated;
5. Provide offenders with an opportunity for self improvement; and,
6. Use state resources frugally.

(*See RCW 9.94A.040)*

In 1999, the Legislature added the seventh purpose which mandates that sentences reduce the risk of re-offending by offenders in the community and also amended purpose six to include "local governments."

It should be noted that three amendments to the SRA made during the past two years are particularly significant and fundamental. While the Act has been amended in every legislative session since its adoption in 1981, these recent changes are arguably the most fundamental since adoption of the Act.

First, as part of the 1999 expansion of eligibility for Drug Offender Sentencing Alternative, sentencing judges were given the authority "to authorize county jails to convert jail confinement to an available county supervised community option." This unstructured authority applies to over 70% of all felony sentences and represents a major shift from the structured and limited discretion, which the presumptive sentence ranges previously imposed. Local governments and judges are now free to develop and implement a wide range of alternatives to jail with no statutory guidance as to what "community option" should be used for which cases and also with no source of resources provided for their development.

The second major change occurred with the adoption of the Offender Accountability Act in 1999. The Act explicitly adopts the use of "risk assessment" by the Department of Corrections to determine the nature and intensity of post-incarceration supervision for offenders convicted of violent and drug offenses. Previously, basing decisions under the Sentencing Reform Act on the risk of future dangerousness was permitted only for sex offenders (less than 5% of all sentences). The new authority applies to over 44% of all sentences. Because the authority granted by the Act applies only prospectively (for crimes committed after July 1, 2000) it will be some years before it is applicable to all eligible offenders but there is no doubt it represents a significant expansion of the Department's authority and responsibility for supervision in the community.

The third major change occurred with the adoption in 2001 of "determinate plus" sentencing for sex offenders. For eligible offenders the presumptive determinate sentence imposed under the sentencing grid becomes the minimum sentence. For the balance of the period between the end of the minimum term and the statutory maximum (frequently life), the defendant is subject to the control of the Indeterminate Sentence Review Board and the Department of Corrections. The Board

may extend the prison term beyond the minimum if it finds, by a preponderance of the evidence, that the offender is more likely than not to engage in sex offenses if released. Offenders who are released are subject to conditions imposed by the Board and supervised by the Department of Corrections until the expiration of the statutory maximum. The provision thus combines the presumptive determinate structure of the Sentencing Reform Act with the return of "a sentencing structure strongly evocative of parole." It undoubtedly will increase both length of prison sentences and the intensity of supervision in the community, but these impacts will mainly occur in the future since the changes apply prospectively.

These "reforms" of the Sentencing Reform Act are all based on premises rejected by the Legislature when it adopted the Act two decades ago. This is not a criticism since the history of sentencing reform teaches that all reforms are temporary and that change over time is inevitable. That history also teaches that periodic review and re-assessment are both necessary and healthy. With that in mind, the Sentencing Guidelines Commission offers its assessment of the current state of sentencing in Washington.

B. Current Sentencing Environment

Though the articulated purposes of the SRA remained fairly constant since its enactment, substantive provisions of the Act have been dramatically altered.[2] The volume of felony cases increased substantially over the past twenty years. In 1982, prior to guideline development, there were approximately 10,000 felony sentences. Using its database the Commission found that in Fiscal Year 1987, after full guideline implementation, the number of felony sentences increased to 11,510 and rapidly grew to 17,223 by 1990. In Fiscal Year 2000, the number of felony sentences grew to 25,034, approximately 8,700 of which were drug offenders. During the same period the state population increased 42%, while the number of felony sentences increased by 150%.[3]

The following table and graph summarize the increase in sentences *vis-à-vis* state population.

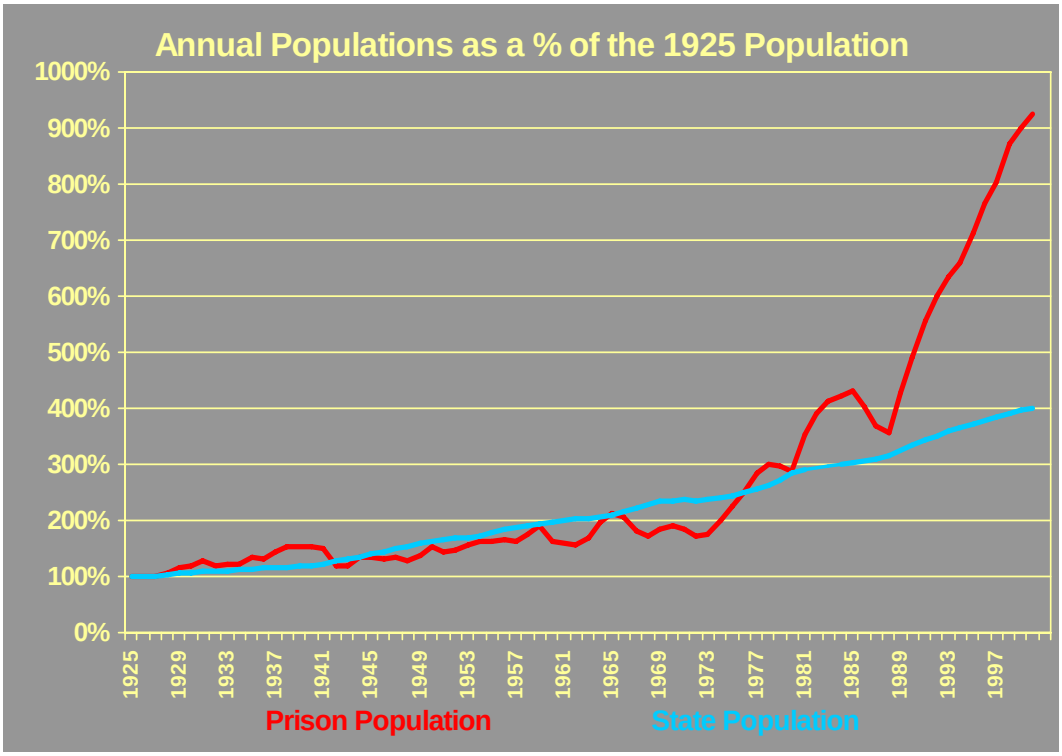
Table 1
Increase in Felony Sentences in Washington State

Year	Felony Sentences	State Population	Rate Per 100,000
1982*	10,000	4,232,156	236.3
1900	17,223	4,866,692	353.9
2000	25,034	5,894,121	424.7

*1982 Pre-Guideline Volume

[2] *See Appendix C for a partial list of change since implementation of the SRA*
[3] The US Census Bureau reports that in 1980, the state's population was 4,232,156 compared to 5,894,121 in 2000.

Figure 1[4]



While adult felony convictions in Superior Court increased by 13.7% during the period between 1990 and 1997, admissions to the Juvenile Rehabilitation Administration (JRA) and to the Department of Corrections (DOC) rose to 31.4 %. The increase in incarceration, however, was not accompanied by a concomitant increase in crime. Reported felony crimes actually decreased from 1990 to 1997 in Washington.[5] Nationally, reported crimes decreased by 22% between 1991 and 1998.[6] Although the Washington State trends are in the same direction as those found nationally, the rate of imprisonment per 100,000 population increased less in Washington than elsewhere. The imprisonment rate in the state rose from 243 per 100,000 in 1982 to 425 per 100,000 in 2000, an increase of 75%. Nationally, the imprisonment rate rose from 200 per 100,000 in 1985 to 476 per 100,000 in 1999, a 138% increase. Changes in the law since guideline implementation partially caused the increased prison population in Washington. The most far-reaching amendments:

- Eliminated the First-time Offender Waiver sentencing option for drug dealing
- Increased the seriousness level of certain drug offenses and miscellaneous felonies
- Imposed consecutive sentencing for serious violent offenses
- Increased the score for certain offenses
- Increased points for prior offenses in offender score

[4] Graph courtesy of David Fallen, Ph.D., Washington State Caseload Forecast Council.
[5] "Trends in Felony Crime in Washington State and Related Taxpayer Costs," Washington State Institute for Public Policy, January 1999.
[6] Jenni Gainsborough and Marc Mauer, "Diminishing Returns: Crime and Incarceration in the 1990's," The Sentencing Project, September 2000.

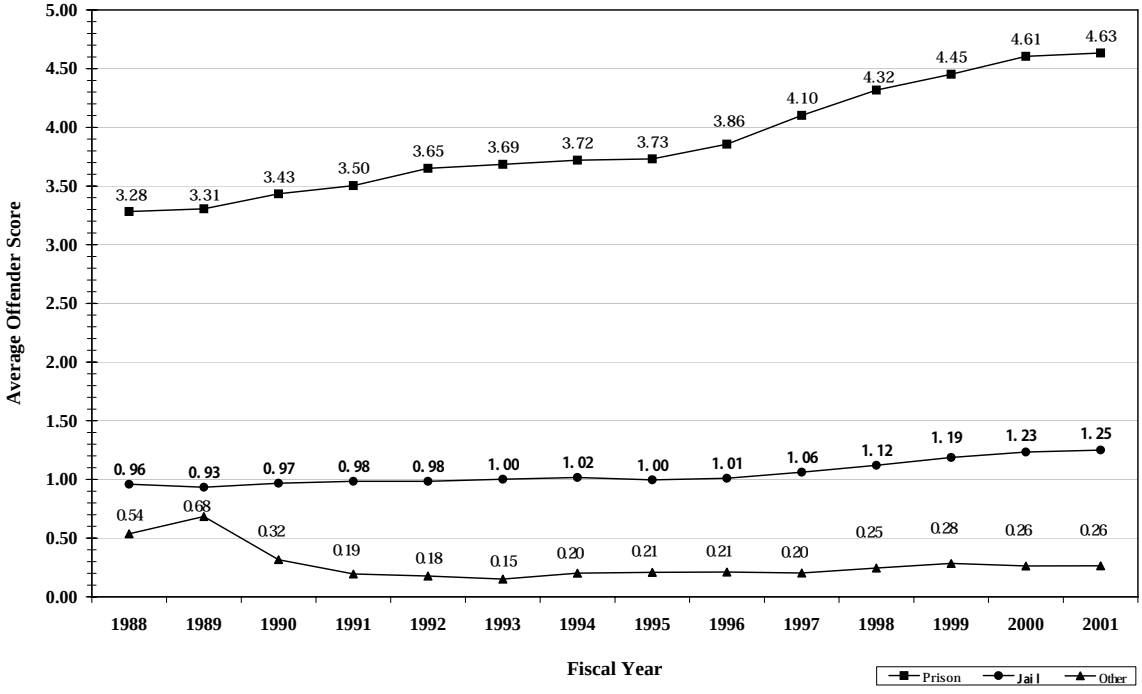
- Imposed life sentences without parole for persistent violent and sex offenders
- Increased penalties for armed crimes
- Reduced/eliminated sentence reduction due to good behavior for some offenses

These changes were made purposefully to target particular types of offenders and offenses. The effect of these changes on the prison population, however, has been considerable. For example, the increase in the score for certain offenses triggered a corresponding variance in the distribution of offenders across the grid. In FY87, less than 1% of the offenders had scores of nine or above. In FY00, offenders with the highest possible score on the grid accounted for 4.4% of offenders. Changes in scoring policies, such as increasing the points assigned to certain prior offenses in part explain this upward offender score "creep." A small part of the change in distribution is likely attributable to real changes in prior records, but much of the change is due to changes in scoring procedure. Figure 2 shows the average offender score for prison, jail and other sentences.

Comparing the average sentence lengths across the offense levels over time, as shown in Figure 5 illustrates the impact of the higher offender scores. The full impact of those scoring changes has yet to be felt.

Figure 2

Washington State Sentencing Guidelines Commission
Average Offender Score for Ranked Offense Sentences by Type
Fiscal Years 1990 Through 2001

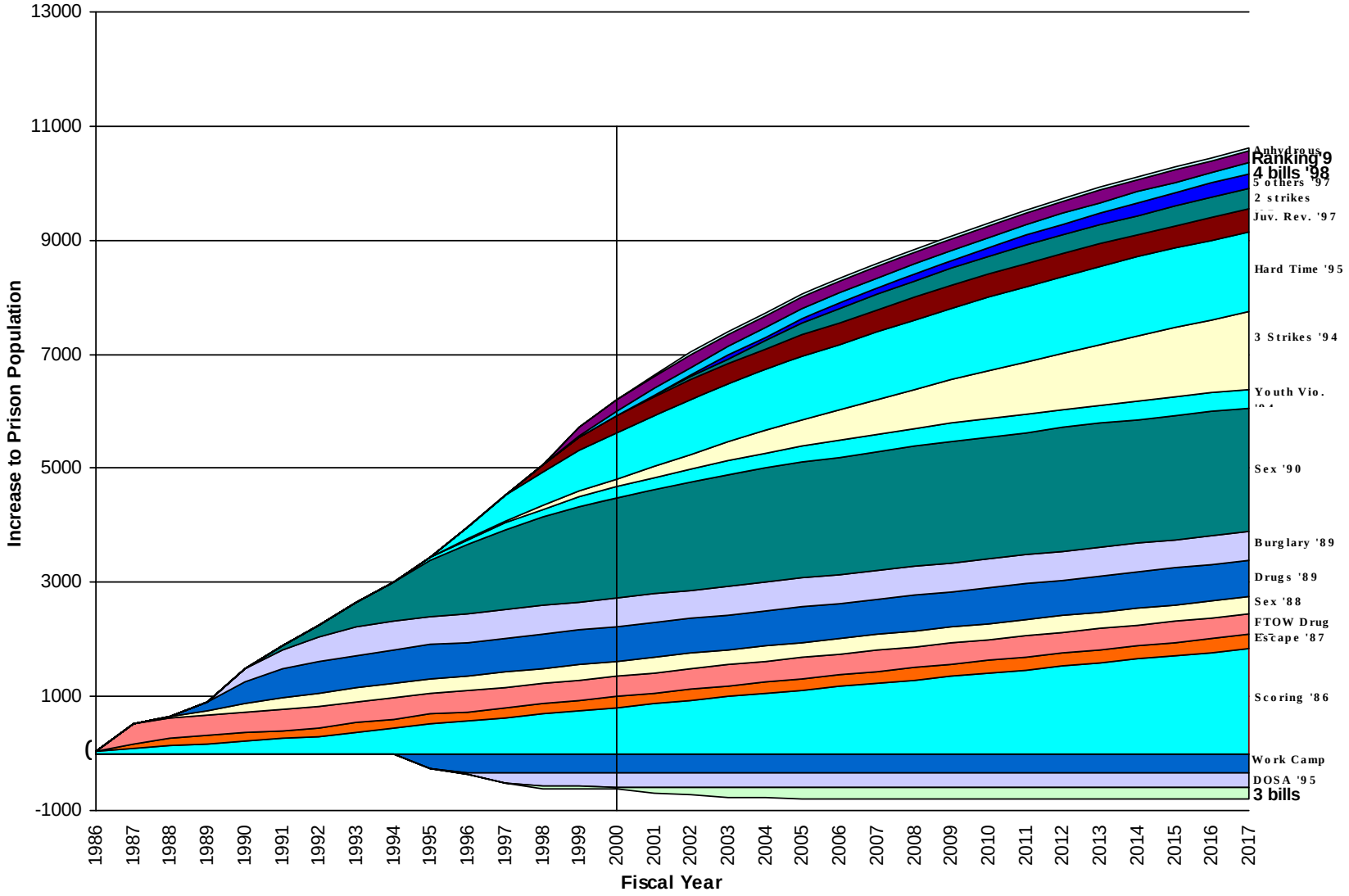


Although the overall sentence length generally increased during the past fifteen years of the SRA, in FY00, the length of stay decreased slightly. In FY87, the average sentence length for prison and jail sentences was 9.12 months. In FY00, the average sentence was 13.6 months, down from a high of 14.7 months in FY99. With respect to offenders sentenced to prison, the average sentence length has remained relatively stable within a small range. The average prison sentence (excluding life sentences) increased from 38.7 months in FY88 to a high of 44.2 months in FY99, but declined to 40.4 months in FY00. The recent decline in length of stay is primarily due to the 1999 expanded eligibility under the Drug Offender Sentencing Alternative (DOSA). DOSA reduces the sentence length but increases intensive drug treatment in prison for designated substance-abusing offenders. Although the sentence length for DOSA offenders decreased, by 2001, the enhanced DOSA eligibility resulted in judges sending more substance-abusing offenders to prison.[7]

Figure 3,[8] on the following page, contain a forecast of the effects of changes to the SRA since its enactment.

[7] The prison population impacts resulting from the implementation of various drug laws are covered in more detail in other sections of this report.
[8] Graph courtesy of David Fallen, Ph.D. Washington State Caseload Forecast Council.

Cumulative Effects of Criminal Justice Legislation in Washington State
1986 - 2000 Sessions



II. CONSISTENCY WITH PURPOSES OF THE SENTENCING REFORM ACT

The Commission determined that the following areas should be addressed in this review:

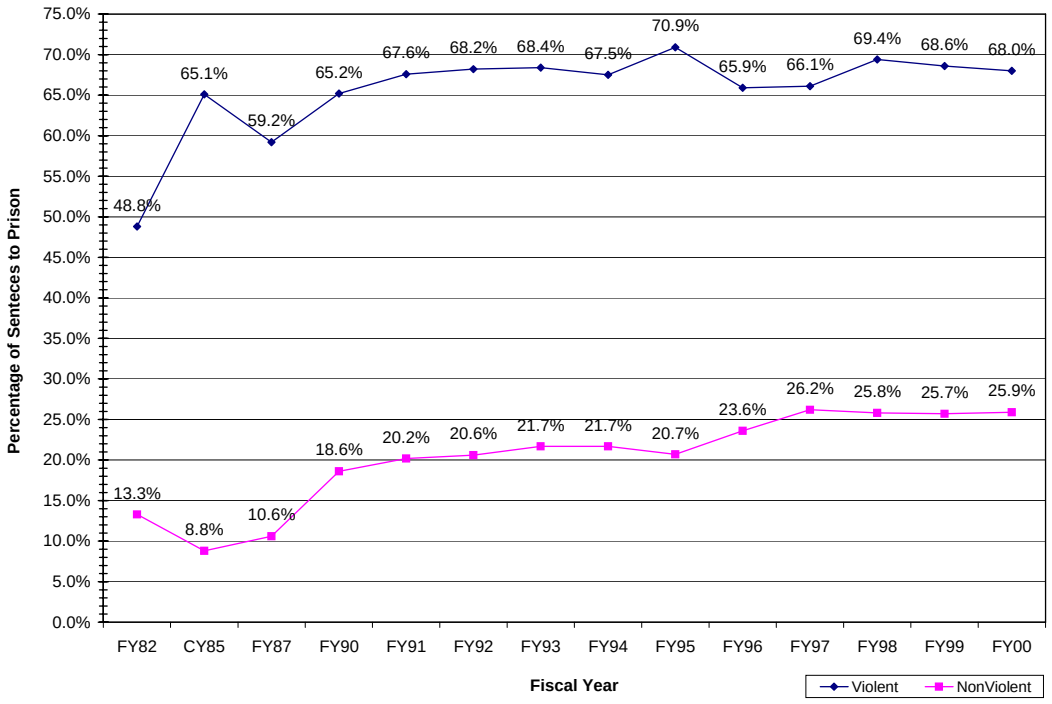
- Violent Offenders
- Alternatives to Incarceration
- Drug Laws
- Racial Disproportionality
- Capacity
- Regionalization of Correction Programs
- Monetary Sanctions
- Juvenile Justice
- The Aging Prison Population

A. Confining the Violent Offender

1. Confinement

A central policy guiding the adoption of sentencing guidelines was the state's interest in confining violent offenders. Under guidelines this goal has been met. The imprisonment rate of violent offenders increased from 48.8% in FY82 to 65.1% in Calendar Year 1985, one year after implementation of the guidelines. This rate varied over the years and included a drop to 59.2% in FY87 – caused in part by the increased use of the Special Sexual Offender Sentencing Alternative (SOSSA)—and a subsequent increase to the present FY00 imprisonment rate of violent offenders of 68%. Figure 4 shows the imprisonment rates from 1982 through 2000.

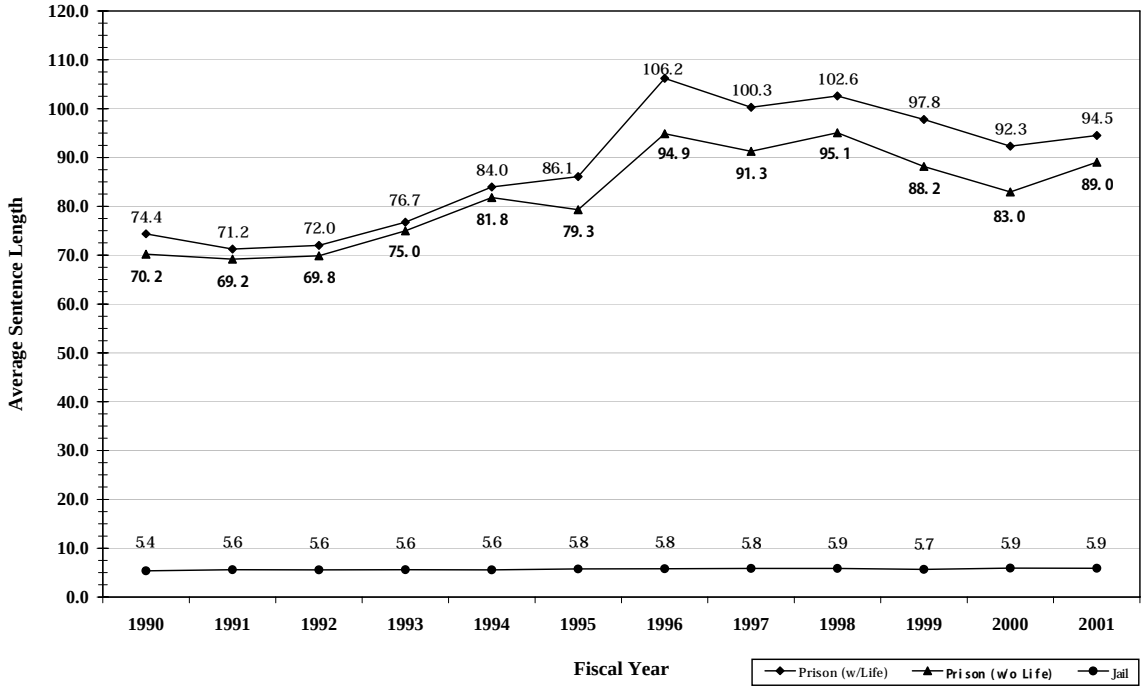
Figure 4
Imprisonment Rates



2. Sentence Length

As illustrated in Figure 5, the average length of stay for violent offenders increased in much the same manner as imprisonment rates.

Figure 5
Washington State Sentencing Guidelines Commission
Average Sentence Length, by Type, for Violent Offenses
Fiscal Years 1990 Through 2001



The mandated life sentences for persistent offenders (1994 initiative), "three strikes'' law, represents one factor affecting the length of stay. Although relatively few offenders have been sentenced under the three strikes laws (173 as of 2000), the life sentences imposed run much longer than the presumptive ranges, or even the exceptional, sentences that were imposed on similar offenders prior to enactment of three-strikes.

3. Three Strikes and other Mandatory Sentences and Sentence Enhancements

Washington was unique among guidelines jurisdictions in repealing most existing mandatory sentences and enhancements. Mandatory sentences for Murder 1, Rape 1 and three levels of Assault were retained but with these exceptions the Commission was not restricted in structuring sentences. Since guideline implementation, the Legislature enacted mandatory minimum sentences for certain other offenses and a series of sentencing enhancements were imposed by legislation and citizen initiatives. These amendments have further increased sentences for violent offenders.

Washington was the first state to enact "three-strikes" legislation following a citizen initiative. Since then, twenty-four states have enacted some form of "strikes" legislation. The Washington law is more narrowly drawn with respect to pertinent offenses than many of the laws subsequently passed in other states. The expected impact of the legislation was dramatic. The originally projected impact of each of the enhancements equaled 1,000 beds spread over twenty years. To date, these estimates appear to be overstated. Instead of the original estimate of forty to seventy sentences under the persistent offender law annually, actual sentences numbered eighty-five three years after the enhancement became effective. As of FY 2000, 173 offenders had been sentenced under the three-strike law. Of the persons sentenced 55% were white and 45% were identified as nonwhites. All but three were male offenders. The most frequently occurring current offense was Robbery 2 (39 cases), followed by Robbery 1 (31 cases).[9]

Table 2

	1994	1995	1996	1997	1998	1999	2000	2001*
3 strikes	4	24	37	35	25	23	34	19
2 strikes	0	0	0	1	2	4	9	6

*2001 to date

The Legislature also enacted "two-strikes" for sex offenders. Nineteen sentences have been imposed since this provision's enactment in 1997, eight or 42% are African American and 58% are Caucasian; all males. One reason for the limited use of two strikes is that many offenses included among two-strike sex offender cases also constitute three-strike cases and are handled as such. Any conclusion about the number of two-strike offenders should be tempered by reference to this practice.

The Commission examined the persistent offender law in relation to the guideline principles of punishment proportionate to the offense and criminal history. In particular, the Commission questioned whether the behaviors included in Robbery 2 and Assault 2 were commensurate with other "strike" offenses that trigger a life sentence without the possibility of parole. The Commission noted that Robbery 2 includes the serious behavior of robbing financial institutions, which carries a substantial risk of injury or death to guards and employees.[10] Because of the serious risk to human life, that behavior appears to be commensurate with strike status. However, the range of other behavior associated with Robbery 2 is relatively much less serious with little risk of physical injury—and when injury does occur, the offender can be charged with assault. Exceptional sentences are also available when the behavior is more egregious than usual. Assault 2 can similarly include a wide range of behavior, some of which is commensurate with strike status, and some of which is probably not. The Commission was unable to easily separate the more serious from the less serious behavior within the current Assault 2 definition.

In addition to the persistent offender law, sentence enhancements must now be imposed for the use of firearms and other weapons, commission of crimes in certain protected zones, and depending upon criminal history, for committing certain sex and violent offenses. For example,

[9] For a complete summary of two and three strike sentences see Appendix D.
[10] The State increasingly prosecutes bank robberies that had previously been handled by Federal Courts.

a protected zone, originally called "school zone," enhancement was initially designed to increase sentences for illegal drug transactions in schools, on school buses and at school bus stops. Since its enactment in 1989, the reach of this provision has expanded to include public parks, public transit vehicles, transit shelters, civic centers and public housing projects. The expansion from "school zones" to "protected zones" means that offenders sentenced for drug transaction taking place in most urban locations are subject to this enhancement. Virtually the entire city of Seattle appears to be included. This is also true in some smaller cities where public transportation is used to transport students.

Despite the prevalence of protected zones, statewide only sixty-six sentences included the enhancement in FY00. Use or nonuse of this enhancement represents one of the more obvious areas for sentencing disparity. For instance, of the cases where the enhancement was employed, 38% involved white defendants and 62% were non-white. This enhancement was imposed in sixteen of the thirty-nine counties. One-third of the sentences (twenty-two) were imposed in King County and eight sentences were imposed in Yakima. Each of the remaining counties imposed fewer than 10% of the protected zone enhancements. Prosecutors report that the value of this enhancement is primarily to encourage pleas at an early case processing stage.

As illustrated by the following table, trial rates are highly correlated with the seriousness level of the offense and the severity of the potential sanction. The rate of trial in cases involving two strikes enhancements is 79%; for three strikes it is 73% compared to a 6% trial rate overall.

Table 3

Adult Felony Trial Pattern
Sentencing Guidelines Commission
Fiscal Year 2000 Data

		Total Sentences	Bench Trial Total	Bench Trial Percent	Jury Trial Total	Jury Trial Percent	Plea Total	Plea Percent
Seriousness Level	0	2,428	18	0.7%	26	1.1%	2,384	98.2%
	1	8,901	192	2.2%	135	1.5%	8,574	96.3%
	2	3,598	129	3.6%	123	3.4%	3,346	93.0%
	3	4,306	55	1.3%	142	3.3%	4,109	95.4%
	4	2,332	16	0.7%	112	4.8%	2,204	94.5%
	5	214	8	3.7%	11	5.1%	195	91.1%
	6	209	7	3.3%	20	9.6%	182	87.1%
	7	493	21	4.3%	49	9.9%	423	85.8%
	8	1,510	33	2.2%	107	7.1%	1,370	90.7%
	9	356	5	1.4%	48	13.5%	303	85.1%
	10	290	25	8.6%	43	14.8%	222	76.6%
	11	115	7	6.1%	20	17.4%	88	76.5%
	12	180	9	5.0%	41	22.8%	130	72.2%
	13	42	0	0.0%	18	42.9%	24	57.1%
	14	52	1	1.9%	30	57.7%	21	40.4%
	15	8	0	0.0%	6	75.0%	2	25.0%
Total		25,034	526	2.1%	931	3.7%	23,577	94.2%

Over 90% of less serious offenses, level 0-5 are resolved through plea agreements, while only 25% of level 15 are resolved short of trial.

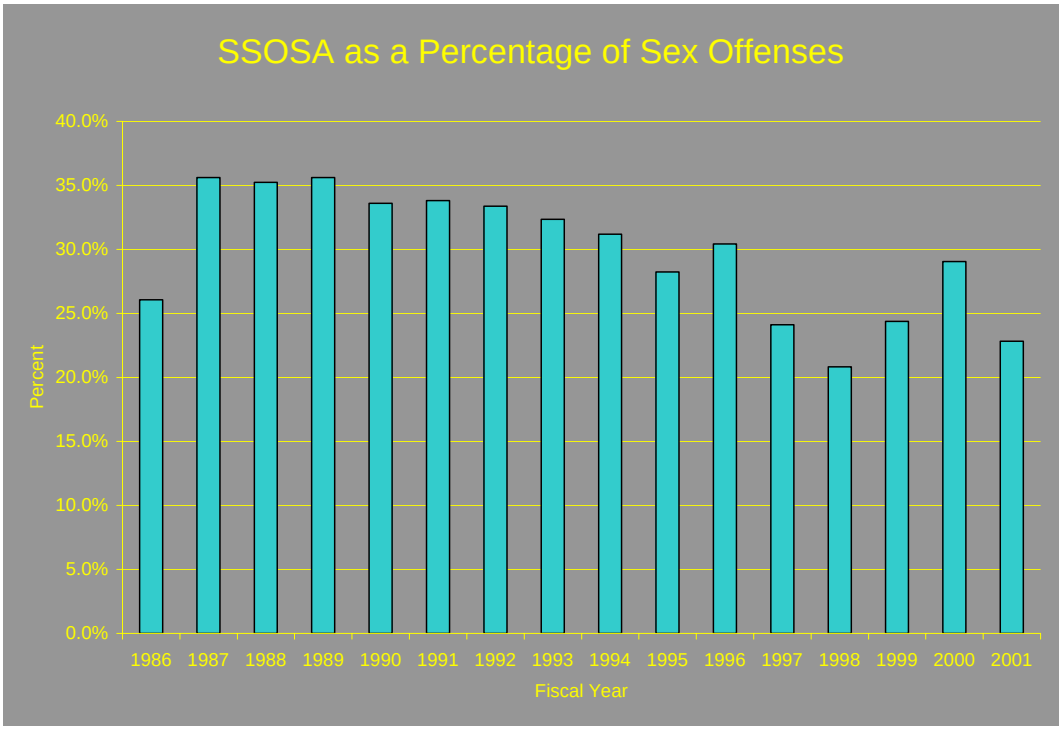
4. Special Sex Offender Sentencing Alternative (SSOSA).

SSOSA is a special sentencing option, which couples punishment with community treatment for certain sex offenders. It was designed to help convince victims, especially familial victims, to come forward. SSOSA sentences include confinement in jail for up to six months followed by outpatient or inpatient treatment. Offenders sentenced under this alternative do not accrue earned release time while serving the suspended sentence. The court places offenders on community custody for the length of the suspended sentence or three years, whichever is greater.

Two hundred thirty-six SSOSA sentences were imposed in FY00. The racial breakdown for these sentences is as follows: 88% White; 5% Hispanic; 3% Black; 1% Asian; 1% Native American. The cost of treatment is borne by the sex offender, so disparities are likely to reflect socio-economic differences.

Judges impose SSOSA less frequently now than in the past, as shown in the following chart. Some apparently feel that a six-month jail term is too short for such a serious offense.

Figure 6[11]



SSOSA represents the one area in which a less severe sentencing option has been developed for violent offenses. The sentencing option is used sparingly.

[11] Graph courtesy of David Fallen, Ph.D. Washington State Caseload Forecast Council.

KEY ISSUES—Confining the Violent Offender

- A central policy guiding the adoption of sentencing guidelines was the state's interest in confining violent offenders. Under guidelines this goal has been met.

- The SRA has been amended to include significant mandatory sentences and enhancements. These amendments have tended to further increase sentences for violent offenders.

- The persistent offender or three-strikes law is used less frequently than originally expected. The range of behavior for two of the "strike" offenses—Robbery 2 and Assault 2—is broad, and not all of that behavior appears to be commensurate with the severity of a life sentence without the possibility of parole.

RECOMMENDATIONS—Confining the Violent Offender

Imprisoning the violent offender is a central policy of the SRA. That policy continues to be realized, seventeen years after full implementation of the guidelines. The Commission continues to support this policy.

The Commission recommends that the Legislature rank robbery of a financial institution as Robbery in the First Degree rather than Robbery in the Second Degree. The Commission further recommends removing Robbery 2 from the list of offenses triggering persistent offender sentences.

The Commission recommends that the Legislature examine the definition of Assault 2 and determine what circumstances are sufficiently harmful to fall within the persistent offender statute.

B. Alternatives to Incarceration for Nonviolent Offenders

Two basic premises for enactment of the Sentencing Reform Act were the need to confine violent offenders and to provide alternatives to confinement for nonviolent offenders. RCW 9.94A.380 (3) provides:

> For sentences of nonviolent offenders for one year or less, the court *shall consider and give priority to available alternatives to total confinement* and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used. *(Emphasis Added)*

In FY00, 17,300 sentences fell within the non-violent, non-prison confinement area of the sentencing grid, commonly known as the "Southwest Corner." The Southwest Corner consists of cells with presumptive sentences of twelve months or less. It extends up to seriousness level 5 and includes the lowest scores. In addition to the rebuttable presumption favoring alternatives to incarceration for these offenders, the SRA also contains additional statutory provisions that provide broad judicial discretion for imposing alternatives to other classes of offenders.

Those provisions include:

- The First-Time Offender Waiver (FTOW)
- The Drug Offender Sentencing Alternative (DOSA)
- The Work Ethic Camp (WEC)

1. First-Time Offender Waiver (FTOW)

First-time felony offenders, those with no prior felony conviction either in Washington or other jurisdictions, no juvenile felony adjudications and who have not been granted deferred prosecution for a felony offense, are eligible for this waiver when the current conviction does not involve:

- A violent or sex offense
- Manufacture, delivery or possession with intent to manufacture or deliver a Schedule I or II Narcotic, Flunitrazepam classified in Schedule IV or Methamphetamine*
- Selling for profit any Schedule I controlled substance or counterfeit substance

See RCW 9.94A.650 (* This provision was added in 1987, eliminating FTOW for drug dealing.)

Sanctions under FTOW include but are not limited to orders requiring ninety days confinement; that the offender refrain from committing new offenses; and that the offender complete community supervision which may include treatment. The court's decision to impose or not impose FTOW cannot be appealed.

Approximately 2,500 offenders received FTOW sentences in FY00. The racial distribution of FTOW sentences was as follows: 78% White; 10% Black; 7% Hispanic; 3% Asian; and, 2% Native American.

The proportion of felons receiving FTOW decreased over time. The 1987 elimination of drug dealing from FTOW eligibility significantly reduced its application, because low- level user/seller drug offenders were prime candidates for this alternative. Because minimal jail terms are presumed for many of the remaining eligible offenders, and because that confinement is often served while offenders await sentencing, there is often no time remaining to apply the waiver. As a result FTOW sentences, would not be imposed because the waiver involves a greater sanction than time served.

2. Drug Offender Sentencing Alternative (DOSA)

DOSA, enacted in 1995, primarily applies to prison-bound offenders. The eligibility criteria for prison-bound DOSA sentences was expanded in 1999 to include all offenders convicted of a Violation of the Uniform Controlled Substances Act (VUCSA) with sentences greater than one year. The new DOSA eligibility statute provides in relevant part:

(1) An offender is eligible for the special drug offender sentencing alternative if the offender:

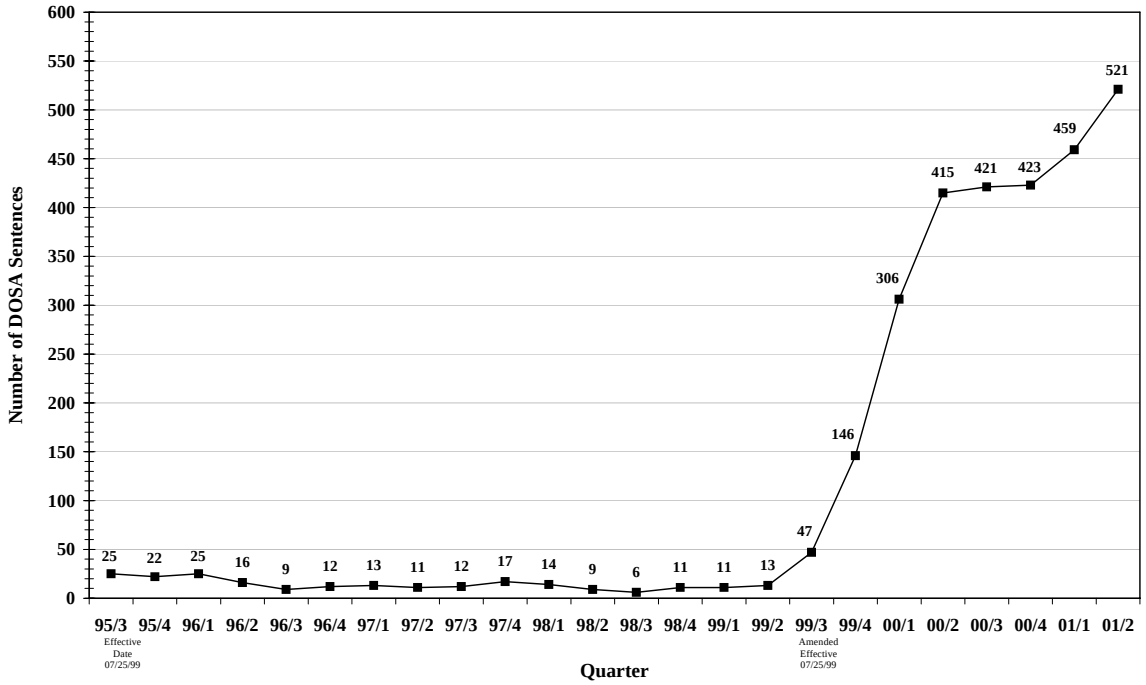
> *is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement…has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States; for violation of the Uniform Controlled Substances Act under chapter **69.50** RCW or a criminal solicitation …(under) chapter **9A.28** RCW, the offense involved only a small quantity of the particular controlled substance… and has not been found … to be subject to a deportation detainer … .* [12]

Inchoate VUCSA offenses -- attempts, solicitation and or/conspiracy -- carry sentences of less than one year and therefore are not covered. Upon a finding that an offender and the community would benefit from the use of the option, all other non-violent, non-sex offenders are eligible for DOSA.

The following chart presents the level of DOSA usage since the effective date of its enactment.

Figure 7

Washington State Sentencing Guidelines Commission
Drug Offender Sentencing Alternative Sentences
Fiscal Years 1996 Through 2001 by Quarter



[12] RCW 9.94A.660

When the court imposes a DOSA sentence in cases involving prison-bound offenders, it is required to impose a sentence of one-half of the midpoint of the offender's standard range, which regardless of length must be served in a prison facility. The Department of Corrections is required to perform a needs assessment and provide appropriate treatment during the period of confinement. DOSA offenders serve the remainder of the midpoint of the standard range in community custody, which must include appropriate outpatient substance abuse treatment, including submission to urinalysis or other testing to monitor compliance. Offenders must abide by all specific prohibitions.

As noted earlier in this report, more offenders are being sent to prison as a result of the expanded DOSA eligibility criteria. Previously, offenders charged with inchoate offenses—generally conspiracy—served jail sentences rather than longer prison terms. With the expanded eligibility, however, many offenders who would have been charged as conspirators are now being charged with completed offenses and are given DOSA prison sentences. DOSA prison sentences are relatively short, but DOSA offenders receive substance abuse treatment that is not readily available in jails or alternative sentence. As a result, commitments to prison have increased, but because the DOSA sentences are half the standard range midpoint, average sentence length for drug offenders has decreased.

Offenders whose standard range sentences are one year or less are not eligible for DOSA and are still confined in local jails. Courts, however, may authorize county jails to convert confinement time to a county-supervised community option for offenders who suffer from a chemical dependency that contributed to the crime. In FY00, 283 sentences were imposed under this provision.

3. Work Ethic Camp (WEC).

In 1993, the Legislature authorized the development of "work ethic camps," Washington's version of boot camps. This option represents a partial return to suspended sentences. Under this option, the court sentences the offender to a term of total confinement falling within the standard sentence range with a recommendation that the sentence be served at a work ethic camp for a period of at least l20 days but not more than 180 days. Depending upon capacity, the Department of Corrections is required to place the offender in a WEC unless the offender has participated in WEC previously; suffers some physical or mental condition that precludes placement; requires placement in a more secure facility; is subject to a deportation order or refuses to agree to the terms and conditions of the program. Upon completion of the program, the offender serves the remainder of the sentence on community custody. A failure to complete the program or a violation of the conditions of community custody could result in the offender being returned to confinement for the balance of the sentence.[13]

An offender is eligible for placement in a WEC if: 1) the court sentences the offender to a term of total confinement of not less than a year and a day and not more than three years; 2) the offender's current offense or criminal history does not involve sex or violent offenses; and 3) the

[13] RCW 9.94A.690

offense does not involve a violation of the uniform controlled substances act or a criminal solicitation to commit such a violation.[14]

During the first six years following its effective date this option was fairly widely used. In 1999, however, the Legislature amended the eligibility criteria excluding persons convicted of drug offenses from participation in the program. There were approximately 200 participants in 1999. With legislative changes, the population has fallen to less than sixty.

4. Other Alternatives

In addition to FTOW, DOSA, and WEC, alternatives to confinement are used in the form of Community Service Hours (3,476 sentences) and various other alternative conditions including: work crews (490 sentences); home detention (249); WCI home (4),[15] inpatient treatment (103); day reporting (14); work release (806); and a combination of alternatives (512).

The following table summarizes the use of alternatives in FY 2000 for those offenses falling within the "Southwest Corner" of the grid. The SW Corner encompasses presumptive jail terms. As noted previously, the "Southwest Corner" extends across seventeen cells distributed among Levels I –V.

Table 4

Adult Felony Sentences to Alternatives
In the "Southwest Corner" of the Adult Felony Sentencing Grid
Fiscal Year 2000

17,300	**Sentences in Non-Prison Cells of the Adult Felony Sentencing Grid**
-2,444	First-time Offender Waiver
-316	Exceptional Sentences
-236	Special Sex Offender Sentencing Alternative
-283	Drug Offender Sentencing Alternative
14,021	**Subtotal**
-3,476	Sentences With Community Service Hours
10,545	**Subtotal**
-2,178	Other Alternatives
	(490) (Work Crew)
	(249) (Home Detention)
	(4) (WCI Home)
	(103) (Inpatient Treatment)
	(14) (Day Reporting)
	(806) (Work Release)
	(512) (Combination of Other Alternatives)
8,367	**Total "Southwest Corner" Non-Alternative Standard Range Sentences**

[14] Id.
[15] "WCI" is the abbreviation used for "Work Camp & Home Detention."

In spite of statutory authority and the presumption that alternatives to incarceration should be used in less serious, non-violent felony cases, alternatives are withheld in almost half of the cases (8,367 out of 17,300). When alternatives are not imposed, reasons for imposing incarceration instead are provided in only 10 to 15% of the cases and generally include reasons such as time served, failure to appear, criminal history and other reasons -- most often, "no alternative available."

5. What Alternatives Work?

The 1974 essay by Robert Martinson[16] that suggested, "nothing works" with respect to corrections rehabilitation, had a profound impact on corrections thinking and programming throughout the 1970's and 1980's. Rehabilitation as a sentencing goal was supplanted by an emphasis on punishment. Prison construction and control guided policy.

More recent research and analysis, however, supports the conclusion that many alternatives do indeed work when approached following basic principles. Treatment must address characteristics that can be changed (i.e., dynamic factors) and are directly related to an individual's behavior. Attitudes, cognitions, substance abuse are all dynamic factors that are often directly related to criminal behavior.

Attitudes have also changed since the 1970's regarding the effectiveness of coerced treatment. Where previously it was thought that coerced treatment was ineffective, research has demonstrated that at least with respect to drug treatment coerced treatment can be effective.[17] This transformation of approaches appears to have occurred with other interventions as well.

Recent reports by the Washington State Institute for Public Policy (WSIPP) and National Criminal Justice Reference Service (NCJRS) reviewed research on alternative programs for effectiveness at reducing recidivism.[18] Several overall conclusions emerge from the research including the following:

- There is a need for better program outcome evaluations. It is impossible to determine the effectiveness of many programs because the evaluation designs are not adequate.
- There are two basic categories of alternative programs: rehabilitation (treatment) programs like drug treatment and cognitive skill development; and, community restraint programs like intensive supervision and home confinement. Community

[16] Robert Martinson, "What works: -Questions and Answers about Prison Reform," The Public Interest, 10 (1974) pp. 22-54.

[17] M. D. Anglin, and Y. I. Hser, "Treatment of Drug Abuse," in M. Tonry and J.Q. Wilson, eds. Drugs and Crime. Chicago, IL: University of Chicago Press (1990); M. D. Anglin, and T. H. Maughn, "Overturning Myths about Coerced Drug Treatment," California Psychologist 14 (1992), 20-22; G. P. Falkin, H. K. Wexler, and D. S. Lipton, "Drug Treatment in State Prisons," in D. R. Gerstein and H. J. Harwood eds. Treating Drug Problems, Vol. II, pp. 89-132, Washington, D.C: National Academy Press; C. G. Leukefeld, and F. M. Tims, eds., Drug Abuse Treatment in Prisons and Jails, National Institute of Drug Abuse, Research Monograph Series, No. 18. Washington, D.C.: U.S. Government Printing Office; J/ Travis, C. Wet Herington, T. E. Feucht, and C. Fisher, "Drug Involved Offenders in the Criminal Justice System," Washington, DC: National Institute of Justice, Working Paper, 1996, 96-02.

[18] Steve Aos, Polly Phipps, Robert Barnoski, and Roxanne Lieb, "The Comparative Costs and Benefits of Programs to Reduce Crime, Version 4.0, Washington State Institute for Public Policy, May 2001; Lawrence W. Sherman, Denise Gottfredson, Doris MacKenzie, John Eck, Peter Reuter, and Shawn Bushway, Preventing Crime: What works, What Doesn't, What's Promising," National Institute of Justice Grant Number 96 MUMU0019, 1997.

restraint programs alone were shown not to be effective at reducing recidivism. Alternative programs with a treatment component, however, were found to be effective when properly designed and appropriately focused.

- New areas of program development that have not yet been thoroughly researched, but hold promise based on early findings include:
  - drug courts which combine treatment with community restraint; and,
  - day fines or monetary sanctions tied to ability to pay
- Programs that may not reduce recidivism do no worse than other forms of intervention, and they may have other advantages when compared to incarceration, such as reduced costs.

The Washington State Institute for Public Policy (WSIPP) examined research studies that employed strong methods to identify programs that are cost-effective in reducing recidivism.[19] Programs that effect even relatively small reductions in crime can be cost-beneficial. Cost-effective community-based programs for adult offenders include:

Drug Courts. Drug courts couple drug treatment with close judicial supervision. Programs generally include frequent testing for drug use with rapid and consistent intervention in the case of non-compliance. Drug courts target nonviolent offenders whose substance abuse is a primary contributor to their criminal involvement.

Drug courts were established in six Washington counties between 1994 and 1999:[20]

- King
- Pierce
- Spokane
- Skagit
- Thurston
- Kitsap

There are also now drug courts in Clallam, Clark, Snohomish, Whatcom and Yakima Counties as well four Tribal Drug Courts. The development has been dependent upon federal funds, and as those funds recede, other resources must be tapped to continue the programs. A recent evaluation of the first six drug courts in Washington found that offenders who graduate from drug court are less likely than other offenders to be reconvicted in a three-year follow-up. The evaluators note, however, that adequate control or comparison groups had not been established, and the findings could be an artifact of self-sorting or self-selection into drug court.[21]

An independent evaluation of the Tacoma "Breaking the Cycle" (BTC) drug court program did establish a comparison group of similar clients who were arrested and processed prior to the BTC program. The study looked at 400 BTC participants between

[19] Aos, ibid.
[20] Gary Cox, Linda Brown, and Charles Morgan, "NW HIDTA/DASA Washington State Drug Court Evaluation Project Final Report," Alcohol and Drug Abuse Institute, University of Washington.
[21] Cox, ibid.

April 2000 and April 2001. Offenders in the comparison group were 1.7 times more likely to be re-arrested than those involved in BTC. Comparison offenders were 2.2 times more likely to commit an illegal act and 1.7 times more likely to commit a serious or violent crime. BTC participants were almost twice as likely to be abstinent nine months after arrest than comparison group offenders.[22]

Treatment-oriented Intensive Supervision. Intensive supervision programs that emphasize control are not cost-effective. Treatment-oriented intensive supervision programs, however, are cost-beneficial.

Intensive supervision programs that serve as an alternative to incarceration do not serve to reduce recidivism. But, neither do they serve to increase recidivism. Since intensive supervision is less expensive than incarceration, it is cost-beneficial to the taxpayer.

Cognitive Behavioral Programs. WSIPP examined two types of programs, Moral Reconation Therapy (MRP) and Reasoning and Rehabilitation (R&R). MRP is designed to raise offenders from low to high levels of moral development through a step-by-step process. Higher levels of moral development will reduce the likelihood of subsequent criminal behavior. R&R is designed to teach social-cognitive skills and attitudes necessary for social competence. The goals are to modify offender's impulsive, rigid and illogical thinking patterns in favor of thought before action and consideration of behavioral consequences.

Sex-Offender Treatment Programs. Cognitive-behavioral sex offender treatment programs are offered both in prison in the community. The cognitive-behavioral approach targets reducing deviant arousal, increasing appropriate sexual desires, improving social skills and modifying distorted thinking.

A persistent factor that undermines effectiveness of alternative programs in reducing recidivism is the use of those programs for low-risk offenders. When offenders pose a low risk to re-offend, there is little reduction for the program to achieve. Programs should target medium or high-risk offenders in order to have any effect on reducing recidivism rates and make effective use of resources.

The most promising method for employing alternatives cost-effectively is to use a sentencing guidelines structure to target appropriate offenders. Other states have used this method with considerable success. States that developed partnerships with local governments have been the most successful. The partnerships define authority, responsibility, funding and other resources. The following examples illustrate various efforts.

6. Models for Use of Alternatives in Other Guidelines States

Statewide models for developing and using alternatives to confinement in other jurisdictions were accompanied by state investments in programming. Several states use community

[22] Jeffrey Merrill, "Tacoma Breaking the Cycle (BTC) Project: Summary of Cost Findings," Robert Wood Johnson Medical School.

corrections acts, probation subsidies, and, more recently, sentencing guidelines structures to establish presumptions and to encourage the use of alternatives.

The early community corrections and probation subsidies states (e.g., Minnesota, Kansas, Oregon) are similar in that the investments were accompanied by broad targeting criteria and rather gross assumptions about sentencing practices, not unlike the broad provision in Washington to use alternatives "for sentences of nonviolent offenders for one year or less."[23] For example, the Minnesota Community Corrections Act targets nonviolent offenders with offenses carrying statutory maximum sentences of 5 years or less. State appropriations cover a portion of the expected costs of keeping offenders in local community. Local governments are also expected to assist in meeting some portion of the correctional costs.

Models developed later in some sentencing guidelines states (North Carolina, Arkansas, Pennsylvania) involve broader, more comprehensive systems approaches to community sanctions. The models incorporate alternatives within the guidelines structure and include the following:

- Expand the common concept of "punishment equals incarceration" to include community punishments
- Address proportionality of community sanctions as well as incarceration sentences
- Provide individualized sentences by providing a limited menu of community programs appropriate for different levels of offense and offender seriousness
- Incorporate proportional responses to non-compliance with community programs
- Bridge, to some extent, local and state corrections
- Identify the entity authorized to exercise discretion to use alternatives

A brief description of three guidelines systems that comprehensively incorporate alternative sentences follows.

North Carolina. North Carolina was the first state to incorporate community and intermediate sanctions into sentencing guidelines. The sentencing grid contains three zones covering the following offenders.

1. ***Active*** – essentially sentenced to prison
2. ***Intermediate*** – the court is authorized to choose either prison or an intermediate punishment, such as
    - Probation with intensive supervision
    - Day reporting
    - House arrest/electronic monitoring
    - Confinement in a residential facility
    - Completion of boot camp
3. ***Community Punishment***—suspended term with probation that could include
    - Fine
    - Community service
    - Restitution

[23] RCW 9.94A.680

- Outpatient counseling
- TASC (Treatment Alternatives to Street Crime)

The zones overlap so that the court may impose a standard range sentence from two of the three types of sentences.

The state funds community and intermediate sanctions by providing grants after counties create plans to develop and implement approved research-based programs. The counties also provide some funding for the programs.

Pennsylvania. Pennsylvania was the second state (1982), after Minnesota (1980), to implement legislatively based sentencing guidelines. Like other early systems, the original Pennsylvania guidelines focused on incarceration as the basis of the grid. In 1994, Pennsylvania promulgated a sentencing structure with a more comprehensive continuum of sanctions. The grid contains zones covering the following four levels:

1. Restorative Sanctions which include
    - Standard probation
    - Community service
    - Restitution
2. Restorative Sanctions or Restrictive Intermediate Punishments, which include
    - In patient drug treatment
    - Day reporting
    - Residence in halfway houses
    - House arrest/electronic monitoring
    - Probation with intensive supervision
3. Longer Restrictive Intermediate Punishments or longer total/partial confinement
4. Total confinement in prison

The Pennsylvania Commonwealth provides funds to counties to develop and implement restorative and intermediate sanctions. Counties develop plans that must be approved before state funds are made available. Drug treatment is richly funded.

Arkansas. The Arkansas guidelines incorporate three zones:

- Penitentiary Only
- Regional Punishment Facility
- Alternative Sanction

The state developed regional punishment centers, multipurpose facilities that encompass security and treatment. Judges target offenders who would otherwise go to prison. Depending upon how the judge pronounces sentence, the offender may remain either under the jurisdiction of the court or be placed under the jurisdiction of the Department of Corrections. The regional facilities bridge the traditionally firm line between state and local jurisdictions. Community treatment programs, alternative sanctions, operate out of the regional punishment centers, which the state funds through the Department of Rehabilitation. Both the Department of Rehabilitation and the Department of Corrections fall with the jurisdiction of the Board of Corrections. The Board is permitted to transfer money between the two departments.

7. 1992- 1994 Proposals for Employing Alternatives

In the early 1990's, the Sentencing Guidelines Commission developed models to more comprehensively incorporate alternative sanctions into determinate sentencing. Increasingly simplified models were proposed in 1992, 1993 and 1994. The proposals were aimed at nonviolent and drug offenders. There appeared to be support for the approach, which increased as the various proposals were simplified. None of the proposals, however, has been enacted.

8. The Substantial Barrier of Liability

Liability is often cited as a barrier to the use of alternatives to confinement. This barrier is not unique to Washington, but it exists in a somewhat more extreme form here than in other jurisdictions. While all jurisdictions expect that alternatives will be imposed prudently and appropriately, there is general agreement that an offender's behavior can neither be guaranteed nor accurately predicted. As such, the criminal justice system cannot be expected fully to prevent breaches in public safety.

Despite this general understanding, a series of decisions beginning in 1983[24] has significantly expanded the potential liability of state and local government. Liability has been imposed on state parole officers[25] and on District Court probation officers for their "negligent failure to carry out [their] supervisory responsibilities."[26]

The consequences of these developments in the law are clear. State and local government face significant liability when offenders subject to supervision in the community commit crimes. As former Supreme Court Justice Phillip Talmadge noted in 1999:

> "These tragic cases result in what may well approximate strict liability for cities, counties and the State. Even if every prescribed supervisory step is followed, if a released person harms someone there may always be a claim for ineffective supervision."[27]

The risk of this result increased significantly with the expansion of authority for supervision of offenders in the community pursuant to the amended Drug Offender Sentencing Alternative and the adoption of the Officer Accountability Act. Fear of liability appears to be driving policy decisions that may not be in the public interest. For example in September 2001, King County terminated its twenty-year old Adult Detention Supervised Release program. Previously the program accepted defendants referred by the court and monitored their compliance with conditions of personal recognizance release orders. The County having recently settled a "Supervised Release" case, reported potential liability as a primary reason for the program's demise. Judges are now forced to choose between detention in jail and release in the community with no monitoring or supervision.

Again, referring to the current status of liability laws, Justice Talmadge wrote:

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[24] *Petersen v. State*, 100 Wn.2d 421, 671 P.2d 230 (1983).
[25] *State v. Taggart*, 118 Wn.2d 195, 822 P.2d 243 (1992); *Savage v. State*, 127 Wn. 2d 434, 899 P.2d 1270 (1995).
[26] Bishop v. Miche, 137 Wn.2d 518, 973 P.2d 465 (1999).
[27] *Hertog v. City of Seattle*, 138 Wn.2d 265, 282, 979 P.2d 400 (1999).

"This situation cries out for legislative action. Only the Legislature can properly balance legitimate concerns about public safety, the existence of liability should a released person cause harm to others, and the operation of pretrial release programs, probation services, and post conviction community supervision programs operated by State and local governments."[28]

KEY ISSUES—Alternatives to Incarceration

- *Much more is now known about the effectiveness of various programs in reducing recidivism than when the SRA was first implemented. The Commission believes that Washington could benefit from an expanded use of cost-effective community corrections programs for nonviolent offenders. Drug treatment appears particularly promising when it is combined with strict judicial oversight of the offender, using rapid and consistent intervention with graduated sanctions for non-compliance. However, there is a continuing need to evaluate programs as they are developed and implemented. Not all effective programs are successfully implemented. It is, therefore, important to monitor program effectiveness.*

- *Washington invested heavily in building and operating prisons and jails, with little investment in alternative programming. The Commission agrees with the policy of confining violent offenders. A problem remains with the current practice of using expensive prison beds for nonviolent offenders, especially drug offenders and offenders whose involvement in property crimes is motivated by drug use. There is, however, ample legislative authority for the use of alternatives. The primary impediments to development and use of alternatives are the lack of funds and concerns about liability. Funding does not necessarily require an infusion of new money. The Commission believes that modest and appropriate changes to the SRA, as described in the section of this report entitled Expansion of Drug Sentences, can generate savings in prison operations. These savings could be captured and reprogrammed into cost-effective drug treatment programs, like Drug Courts, at the county or regional level.*

- *Concerns about the potential for extremely high civil judgments for the acts of third parties are driving potentially harmful policy decisions, such as elimination of locally operated pre and post trial release programs. The Commission believes the elimination of such programs is contrary to the public interest. The Commission sees a need, then, for a close examination of this major impediment to the development and use of alternative programs.*

[28] *Id*. at 294.

RECOMMENDATIONS – Alternatives to Incarceration

That cost-saving amendments to the SRA be adopted and that the savings realized from those programs be used to fund alternatives to incarceration programs including drug treatment and other cost-effective pre and post-adjudication programs in the community.

That the Legislature resolve the liability issue by properly balancing the legitimate concerns about public safety, the potential for harm caused by a released person with the necessity of State operation of pretrial release programs, probation services, and post conviction community supervision programs.

(Please see the Expansion of Drug Sentences section of this report for more specific recommendations).

C. Expansion of Drug Sentences

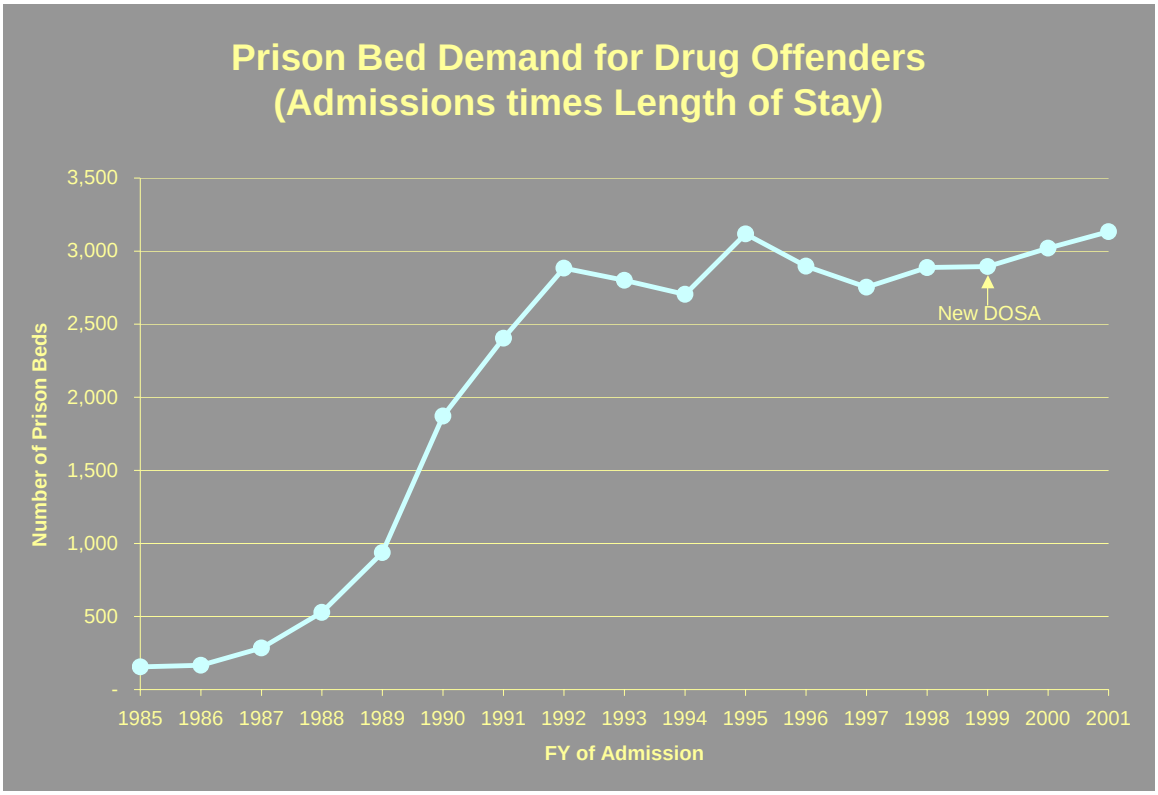
1. Drug Offenses in General

Convictions for drug offenses in Washington State doubled between 1985 and 1987 and doubled again between 1987 and 1989. Prison admissions for drug offenses increased from 143 in 1986 to 1,139 in 1989. By 1990, admissions reached 1,565. Nationally, drug offenders constituted 7.6% of state prison populations in 1984; by 1998 the percentage was 20.7%.[29] Figure 8, at the top of the following page, displays the increased demand for prison beds for drug offenders.[30]

The increase in the volume of drug offenders was accompanied by legislative revisions that increased sentence lengths for some drug offenses. In 1989, the seriousness levels of certain drug offenses was increased, raising the presumptive ranges for first-offense delivery of drugs from 12 – 14 months to 21 – 27 months. Offender score points for prior drug convictions were also increased.

As noted above, protected zones[31], originally called "school zones," enhancements were also enacted. Since its enactment in 1989, the reach of this provision expanded to include public parks, public transit vehicles, transit shelters, civic centers and public housing projects. The penalty, the addition of 24 months to the standard sentencing range, even applies in those instances when children were not present and when offenders are not aware that the protected zone law applies in a particular area.[32] The expansion from "school zones" to "protected zones" means that most urban locations are subject to this enhancement. Despite the prevalence of protected zones, statewide only sixty-six sentences included the enhancement in FY00

[29] Gainsborough and Mauer *op.cit.*p. 17.
[30] Graph courtesy of David Fallen, Ph.D., state of Washington Caseload Forecast Council.
[31] RCW 69.50.435 includes in the definition of a protect zones the following: schools; school buses; sites within one thousand feet of school bus route stops; sites within one thousand feet of the perimeter of the school grounds; public parks; public housing projects; public transit vehicles; a public transit stop shelters; civic centers and sites within one thousand feet of the perimeter of civic centers.
[32] RCW 9.94A.510(6) and 69.50.435(b) and (c).



The increase in drug offenses and drug-related property offenses has created a demand for drug treatment. The need for treatment is greater than the current drug treatment capacity, or at least it is greater than publicly funded capacity. As noted earlier in the report, DOSA provides drug treatment in prison for offenders sentenced to prison for certain drug offenses. In 1999 DOSA eligibility was expanded to include offenders whose involvement in property crimes was drug related. That eligibility expansion caused a significant increase in prison commitments. Offenders that previously might have been convicted of conspiracy to distribute drugs and given local jail time with no drug treatment are now being convicted of completed offenses and receive a DOSA sentence--reduced prison time with drug treatment.

There is a strong component of the "If you build it, they will come," adage in drug treatment and sentencing. It appears that sentences include a treatment component whenever and wherever credible drug treatment programs exist. When those programs are primarily available in prisons or jails, the courts sentence offenders to a period of confinement sufficient for the offender to become eligible for or to complete the program. An example at the local level is the "Stages of Change" drug education program offered in King County facilities. Eligibility is restricted to offenders with 60 days to serve after the sentence is reduced by the one-third earned release credit. Some misdemeanants who might have previously received short sentences now receive much longer sentences in hopes that they will receive treatment.

Drug courts, on the other hand, often use outpatient drug treatment coupled with close court supervision and monitoring. This is a much less costly way, and for many offenders an equally effective way, of getting drug treatment. Federal funds have been used for the drug courts in Washington State. The state has invested in prison-based drug treatment.

Based upon the observations on the particular problems presented by drug use and sentencing law, the Commission explored the use of a sentencing grid solely for drug offenses. The drug grid provides the sentencing court with a preferred drug treatment sentence. Treatment would be provided in prison (DOSA) for serious offenders and in the community for those less serious offenders.

Table 5

Drug Sentencing Grid & Data Assumptions

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9+
Level III	**51 to 68 Months** N = 346 Option 1: DOSA (CP) Option 2: Standard Range (CP)	**68 to 100 Months** N = 109 Option 1: DOSA (CP) Option 2: Standard Range (CP)	**100 to 120 Months** N = 44 Option 1: DOSA (CP) Option 2: Standard Range (CP)
Level II	**12+ to 20 Months** N = 640 Option 1: Drug Court (60%) Option 2: DOSA (30%) Option 3: Stand Range (10%)	**20 to 60 Months** N = 283 Option 1: DOSA (CP) Option 2: Standard Range (CP)	**60 to 120 Months** N = 114 Option 1: DOSA (CP) Option 2: Standard Range (CP)
Level I	**0 to 6 Months** N = 3501 & 451 FTOW'S Option 1: Drug Court (50%) Option 2: Stand Range (50%)	**6+ to 18+ Months** N = 1,108 Option 1: Drug Court (50%) Option 2: DOSA (35%) Option 3: Stand Range (15%)	**12+ to 24 Months** N = 453 Option 1: Drug Court (30%) Option 2: DOSA (50%) Option 3: Standard Range (20%)

N = 126 for unranked possession of marijuana

CP=Current Practice

This proposed grid, as set forth in Table 5 expands the standard sentencing ranges within the three seriousness levels, thereby granting the sentencing court more discretion to address individual differences. The sentencing court retains the option of imposing the standard sentence range or an exceptional sentence.

2. Increased Methamphetamine Use

In the western part of the United States, 86% of criminal justice jurisdictions report an increased availability of Methamphetamine.[33] The drug, variously referred to as "crank," "speed," "crystal," or simply as "meth," is injected, smoked or inhaled, "snorted." The drug used in western Washington is manufactured either in local clandestine labs or in Mexico. In mid-2000, the number of local labs seized in the Seattle area increased from 76 during the first six months of 1998 to 233 during the same period in 2000.[34]

Although Methamphetamine is often sold in rural areas, in Seattle sales are beginning to spread into the suburbs and the inner city. The majority of Methamphetamine users are young-adult Caucasian males who buy the drug from a residence rather than on street corners. The price of a gram ranges for $80 to $120. With the increase in use, there has been a corresponding increase in the number of sellers. Higher levels of violence in the form of turf wars have also been reported along with the increased used of Methamphetamine.

[33] *Pulse Check* "Trends in Drug Abuse: Mid-Year 2000," Office of National Drug Control Policy, NCJRS #186747
[34] *Id.*

Research into the addictive nature of Methamphetamine continues. One study concludes that even though Methamphetamine is thought to be highly addictive, that addiction is treatable. To a large extent, addiction is addiction and treatment works as well for methamphetamine addiction as for other substance abuse addictions. Research suggests that longer treatment might be required for methamphetamine addiction, but that the basic treatment model does work.[35]

KEY ISSUES—Expansion of Drug Sentences

- Washington is currently using expensive prison beds for nonviolent offenders, especially drug offenders and offenders whose involvement in property crimes is motivated by drugs. The Commission believes that modest and appropriate changes to the SRA can generate savings in prison operations that could be captured and reprogrammed into cost-effective drug treatment programs, like Drug Courts, at the county or regional level.

- Current criminal justice data systems lack adequate information about the type of drugs involved in offenses. Unless specifically designated in particular sections of the Code (such as manufacture of methamphetamine in the presence of a child in RCW 9.94A605), the Commission and other criminal justice officials can only partially determine the relative use of different types of drugs. The lack of information inhibits the development of an effective policy to support intervention. The state could benefit from routine data collection, which includes information about the type of drugs being used.

OPTIONS -- Expansion of Drug Sentences

The Commission considered three options for modifying the SRA with respect to drug offenses. These options include:

1) That the separate drug grid described above be adopted.

2) That the seriousness level of certain drug offenses be moved from Level VIII to Level VII, with drug offenses being single scored.

3) That the seriousness level of certain drug offenses be moved from Level VIII to Level VI, with drug offenses being single scored.

The Commission prefers and recommends the first option, but finds the other two options acceptable and preferable to the current sentencing policy.

[35] "Methamphetamine Treatment—Myths & Facts," Washington State Department of Social and Health Services Division of Alcohol and Substance Abuse.

RECOMMENDATIONS – Expansion of Drug Sentences

That the separate drug grid be adopted.

That single scoring be used for all adult drug offenses and that double scoring for prior juvenile drug offenses be eliminated.

That the operational saving in corrections generated from amendments to the SRA be used to fund effective drug treatment programs at the state, county and regional levels.

That the Uniform Sentence and Judgment form be modified to include the primary type(s) of controlled substance involved in an offense, and that its use be implemented uniformly across the state.

D. Disproportionality

One of the purposes underlying the enactment of determinate sentencing laws such as the SRA was the need to minimize real and potential harm caused by disparate treatment of offenders.[36] The only relevant factors in determinate sentencing decisions are the crime committed and the criminal history of the offender, not race or gender and any other demographic traits. To this end, even though the courts retain a certain amount of discretion in imposing non-standard range sentences, sentencing practices consistent with the mandate of the SRA represent the norm in Washington. Racial minorities are nevertheless arrested and sentenced to prisons in this state at rates as high as five times their representation in the general public.

An examination of the fairness of sentencing systems on the basis of race or any other demographic trait requires a two-pronged inquiry—disproportionality and disparity. As used in this report proportionality refers to "the rate at which certain racial groups are sentenced to prison in proportion to their number in the general population."[37] "Disproportionality" is found in situations where a larger proportion of a particular group is incarcerated compared to their proportion of the general population. "Disparity" refers to unequal sentencing of similarly situated offenders. Racial disparity exists when the sentencing decision is based, in whole or in part, upon race.

In presenting this analysis of the data regarding race and gender, the Commission notes that results reported are limited to and only reflect the use of sentencing data. Demographic information, including marital status, numbers of children and employment status and legal factors, such as charging practices, aggravating or mitigating circumstances, defense strategy, and victim impact, all or part of which could affect the sentencing decision, are not included in

[36] RCW 9.94A.340 provides that sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. *See also* Lee, N., and E.Vukich, "Representation and Equity: Disproportionality and Disparity", Washington State Sentencing Guidelines Commission, forth coming 12/01. (This latest version of the biennial SGC report is being summarized and paraphrased throughout this section of the report on the SRA review and should be referred to for a more thorough examination of the issues of disproportionality and disparity.)

[37] Id.

the sentencing database. While the data clearly identify the existence of disproportionality, the Commission is constrained to fully explain the reasons it continues.

1. Overrepresentation

Nationally, when disproportionality is the subject of research, prison populations tend to be the focus. Many studies show that African American males are disproportionately represented in prison and jail populations; one of every fourteen African American children has a parent in state or federal prison.[38] In 1995, one in every three young African American men between the ages of 20 to 29 was under correctional supervision – in prison, jail, on probation or parole-- and in 1994 African Americans comprised 43% of all inmates held in state and federal prisons.[39]

Again, nationally, examinations of arrest rates for minorities often reflect disproportionality. In 1999, 30.5% of all arrests in the United States involved African Americans.[40] In Washington during 2000, African Americans were arrested for violent crimes at the rate of 73.8 per 100,000 compared to an arrest rate for Caucasians for violent crimes of 11.5 per 100,000. Thirteen percent of all arrests for violent crimes were of African Americans, yet they comprised only 3% of the total population. This means that African Americans were arrested at a *ratio* 4.3 times greater than their population. Their arrest *rate* was 6.4 times higher than for Caucasians.[41]

In Washington, based upon the SGC's data, the sentencing patterns tend to mirror national research results. All identified racial groups, except Asian/Pacific Islanders are sentenced at rates considerably higher than Caucasians. African American men in the state were sentenced at a rate of 475.4 per 10,000 population. Native American and Hispanic males were sentenced at rates of 187.5 and 139.6, respectively.[42]

As Table 6, at the top of the following page reveals, Caucasians make up 83.4% of the population statewide yet receive only 69.3% of felony sentences in the state. Hispanics comprise 6.2% of the population; yet receive 9.1% of all sentences. African American make up 3.0% of the state population but receive 16.6% of felony sentences.

[38] Id (Citing Clear and Rose, 1998; Mumola, 2000)
[39] Id (Citing Beck, 1995).
[40] (Bureau of Justice Statistics, 1999)
[41] Lee and Vukich (2001).
[42] Additional graphs and tables showing arrest and sentencing rates within the ten largest counties and remaing regions of the state can be found in the Appendix.

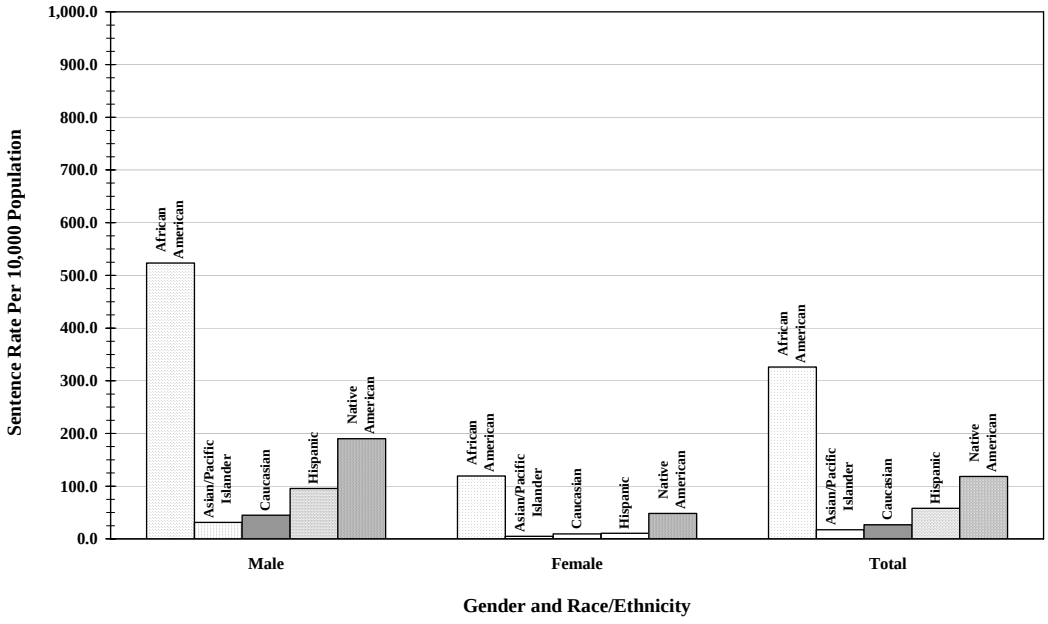
Table 6
Adult Felony Sentencing Percentages and Sentence Ratios
Statewide by Gender and Race/Ethnicity
Fiscal Year 2000

Race/Ethnicity	Male			Female			Total		
	Percentage Population	Percentage Sentences	Sentence Ratio	Percentage Population	Percentage Sentences	Sentence Ratio	Percentage Population	Percentage Sentences	Sentence Ratio
African American	3.3%	16.7%	5.0	2.7%	15.9%	6.0	3.0%	16.6%	5.5
Asian/Pacific Islander	5.6%	2.2%	0.4	6.5%	2.0%	0.3	6.1%	2.2%	0.4
Caucasian	82.9%	68.2%	0.8	84.0%	74.0%	0.9	83.4%	69.3%	0.8
Hispanic	6.9%	10.1%	1.5	5.5%	4.6%	0.8	6.2%	9.1%	1.5
Native American	1.4%	2.7%	2.0	1.4%	3.5%	2.6	1.4%	2.9%	2.1
Total	**100.0%**	**100.0%**	**NA**	**100.0%**	**100.0%**	**NA**	**100.0%**	**100.0%**	**NA**

The information contained in this table and the corresponding chart is based on the U.S. Census Bureau's Census 2000 (age 18 and older) and Washington State Sentencing Guidelines Commission Fiscal Year 2000 adult felony sentencing data, with the Sentencing Guidelines Commission being responsible for all calculations. Statewide sentencing figures exclude 386 sentences: 331 sentences in which gender and/or race/ethnicity is unknown and 55 sentences in which "Other" is given as race/ethnicity. Statewide "Multi-Racial" category population figures total 49,470 males and 51,183 females, which are excluded from the above calculations. Sentencing Guidelines Commission "Other" and Census 2000 "Multi-Racial" figures are excluded due to potential incompatibility between the two categories.

The pattern of racially disproportionate representation in sentences is more egregious in some areas of the state than it is statewide. The following graphs and tables set forth sentencing patterns among the identified racial groups in King and Spokane counties.

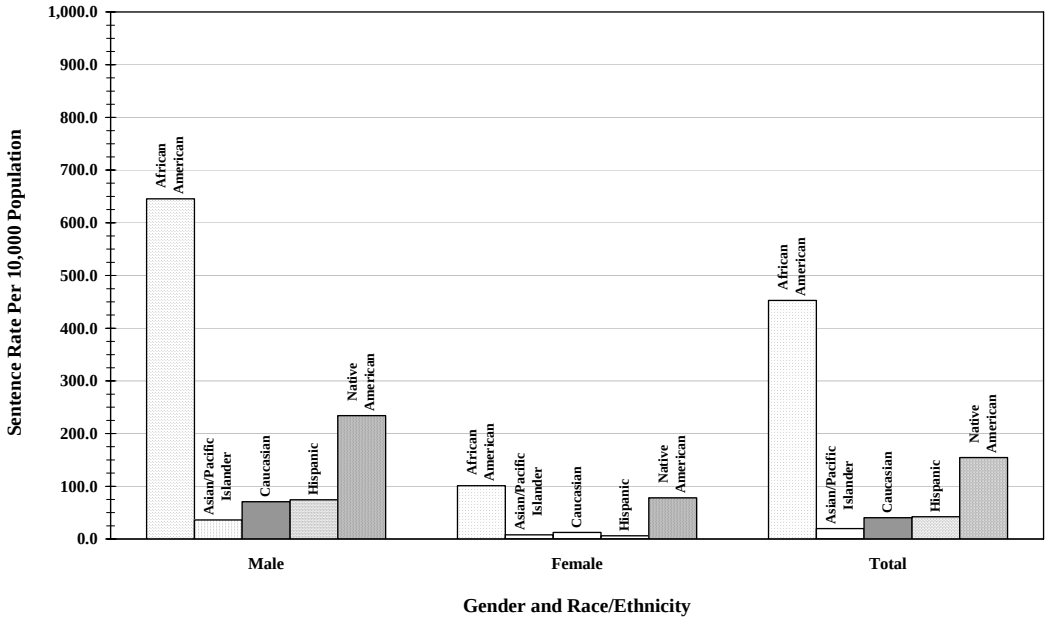
Figure 9
Adult Felony Sentencing Rates Per 10,000 Population
King County by Gender and Race/Ethnicity
Fiscal Year 2000



In King County, Asians and Pacific Islanders were sentenced at a rate of 17.3 per 10,000 population and Caucasians were sentenced at a rate of 26.8. The rates for Native Americans and African Americans were found to be 118.4 and 326.2, respectively. Hispanics faired slightly better than these two groups with a sentencing rate of 58.1; still double the rate of Caucasians.

Across the state in Spokane County, the pattern of disproportionate sentencing was similar to that is King County. African American males and females were sentenced at rates well in excess of their representation in the general population.

Figure 10
Adult Felony Sentencing Rates Per 10,000 Population
Spokane County by Gender and Race/Ethnicity
Fiscal Year 2000



Consistent with the pattern in King County, in Spokane County the percentage of persons in racial groups in the general population varies greatly from the percentage of sentences imposed upon members of those groups. Again, African American, males and females, receive a disproportionate number of felony sentences compared to their representation in the general public. African American women make up 1% of the county's population, but received 7.2% of all the sentences imposed on women. The sentencing ratios for African American males were 9.6 times greater than Caucasian males. Sentencing ratios of African American females were 8.0 times greater than Caucasian females. Native American males had sentencing ratios that were 3.5 times greater than Caucasian males. Native American females had sentencing ratios that were 6.2 times greater than Caucasian females.[43]

[43] The appendix contains a narrative summary of findings for all regions.

Table 7
Adult Felony Sentencing Percentages and Sentence Ratios
Spokane County by Gender and Race/Ethnicity
Fiscal Year 2000

Race/Ethnicity	Male			Female			Total		
	Percentage Population	Percentage Sentences	Sentence Ratio	Percentage Population	Percentage Sentences	Sentence Ratio	Percentage Population	Percentage Sentences	Sentence Ratio
African American	2.0%	15.2%	7.7	1.0%	7.2%	7.2	1.5%	14.0%	9.5
Asian/Pacific Islander	1.9%	0.8%	0.4	2.4%	1.4%	0.6	2.1%	0.9%	0.4
Caucasian	92.4%	78.3%	0.8	93.2%	83.8%	0.9	92.8%	79.1%	0.9
Hispanic	2.6%	2.3%	0.9	2.1%	0.9%	0.4	2.3%	2.1%	0.9
Native American	1.2%	3.5%	2.8	1.2%	6.8%	5.6	1.2%	4.0%	3.2
Total	**100.0%**	**100.0%**	**NA**	**100.0%**	**100.0%**	**NA**	**100.0%**	**100.0%**	**NA**

The information contained in this table and the corresponding chart is based on the U.S. Census Bureau's Census 2000 (age 18 and older) and Washington State Sentencing Guidelines Commission Fiscal Year 2000 adult felony sentencing data, with the Sentencing Guidelines Commission being responsible for all calculations. Spokane County sentencing figures exclude six sentences: three sentences in which gender and/or race/ethnicity is unknown and three sentences in which "Other" is given as race/ethnicity. Spokane County "Multi-Racial" category population figures total 2,742 males and 2,828 females, which are excluded from the above calculations. Sentencing Guidelines Commission "Other" and Census 2000 "Multi-Racial" figures are excluded due to potential incompatibility between the two categories.

In the remaining eight large counties and all other counties grouped regionally, and based upon review of sentences for all felonies, the Commission found that the pattern of disproportionality is consistent.[44] African Americans, males and females, are disproportionately represented in felony sentencing at much higher rates than members of all other identified racial groups. In the Northeast region (Chelan, Douglas, Ferry, Lincoln, Okanogan, Pend Oreille and Stevens Counties), the disproportionality is at its highest where the sentencing ratios of African American males are 12 times greater than Caucasian males and African American females are sentenced at ratios 30.9 times higher than their white counterparts.[45]

This pattern of disproportionality not only exists for overall felony sentences, but also is particularly unbalanced in drug sentences. On a statewide basis, African American males had higher sentencing ratios than Caucasian males. While the extent of the disproportionality of African Americans varied, the sentencing pattern for Caucasians was strikingly similar across all geographic areas. In all areas of the state, Caucasians were under-represented in drug sentences.[46]

Again, with very few exceptions, the Commission's research found racial disproportionality in sentences across the State of Washington. The disproportionality is most apparent between African Americans and Caucasians, although Native Americans and Hispanics, to some extent, are also over-represented in terms of their numbers in the general population. Interestingly, by using rates based upon population, the Commission found that Caucasians, regardless of whether

[44] See the Appendix for a narrative summary and Bar graphs and table displaying these findings.
[45] Note: Many factors not included in the Commission study might explain the results. Rates are sensitive. In areas of smaller population numbers, small numbers of sentences will translate into a large rate. In larger areas, small numbers of sentences will not produce a large rate.
[46] A summary of the finding regarding drug sentencing patterns can be found in the Appendix.

the sentences were for all crimes or just for drug crimes and regardless of which county or region of the state, were sentenced at steady rates, never exceeding the level of their representation in the general public. Conversely, African Americans were consistently over-represented.

2. Disparate Sentencing

Most research on sentencing practices across the nation focuses on disparity rather than disproportionality. Generally the research concerns whether race is a factor in sentencing decisions regarding incarceration or some alternative to incarceration and whether sentence length is affected by race. Reviews of studies published from 1975 to the present indicate that young African American and Hispanic males are at a disadvantage at the time when decisions regarding incarceration are made. Race, however, has been found to have little or no effect on sentence length. There also appears to be general agreement that the most significant predictors of sentence outcome are offense severity and the offender's prior record.[47]

In order to examine disparity in adult felony sentencing, a two-fold approach was employed. For non-standard range sentences – Drug Offender Sentencing Alternative (DOSA) sentences, First-time Offender Waiver (FTOW) sentences, Special Sex Offender Sentencing Alternative (SSOSA) sentences, Work Ethic Camp Program (WEC) sentences, exceptional sentences [below the standard range (mitigated), within the standard range and above the standard range (aggravated)] and life and death sentences – sentencing rates were calculated for each non-standard range sentence type, much the same as in the disproportionality sections of this report.

The principle findings with respect to disparity in adult felony sentencing in Washington can be summarized as follows:

- With standard range sentences for all ranked offenses, the two factors that contribute most to sentence length in terms of mathematical significance were seriousness level and offender score.
- With standard range sentences to prison or jail for ranked offenses including standard range sentences for sex offenses, serious violent and violent offenses, the only two factors that significantly contribute to sentence length are seriousness level and offender score.
- For standard range sentences for ranked VUCSA offenses, five factors significantly contribute to sentence length – seriousness level, offender score, race/ethnicity, county/region and age – as does the interaction of gender and race/ethnicity.

These results notwithstanding, the Commission's study also revealed that:

- Native American males and Hispanic males experience the highest rates of exceptional sentences. Asian/Pacific Islander males and females have the lowest rates.
- African American males and Native American Females receive DOSA at the highest rates, while Hispanic males and Asian/Pacific Islander males are sentenced at the lowest rates.

[47] See Lee and Vukich (2001) for citations to sources.

- Caucasian females, Caucasian males and African American females receive the FTOW at the highest rates, while Hispanic males and Hispanic females receive it at the lowest rates.
- Since Caucasians account for approximately 75% of all sex offenses eligible for SSOSA, Caucasian males and Caucasian females receive SSOSA at the highest rates. (The numbers of offenders eligible from other groups and those who receive this alternative are too small to draw firm conclusions).
- The numbers of within the standard range exceptional sentences are very small. However, Caucasian males receive these sentences at the highest rate.

The principle findings concerning disparity, or the lack thereof, in adult felony sentencing to alternatives in Washington are set forth in the following table.

Table 8

Alternative Sentence Numbers and Rates Per 1,000 Eligible Statewide by Alternative and Race/Ethnicity

Fiscal Year 2000

Race/Ethnicity	DOSA			FTOW		
	Number Eligible	Number Received	Rate Per 1,000 Elig.	Number Eligible	Number Received	Rate Per 1,000 Elig.
African American	812	284	349.8	946	238	251.6
Asian/Pacific Islander	64	9	140.6	247	71	287.4
Caucasian	2,496	519	207.9	5,979	1,897	317.3
Hispanic	484	61	126.0	851	159	186.8
Native American	103	24	233.0	191	51	267.0
Total	**3,959**	**897**	**226.6**	**8,214**	**2,416**	**294.1**
Race/Ethnicity	**SSOSA**			**WEC**		
	Number Eligible	Number Received	Rate Per 1,000 Elig.	Number Eligible	Number Received	Rate Per 1,000 Elig.
African American	49	6	122.4	346	87	251.4
Asian/Pacific Islander	12	2	166.7	35	12	342.9
Caucasian	470	207	440.4	1,445	268	185.5
Hispanic	78	12	153.8	198	31	156.6
Native American	19	3	157.9	60	12	200.0
Total	**628**	**230**	**366.2**	**2,084**	**410**	**196.7**

Total - All Alternatives

Race/Ethnicity	Number Eligible	Number Received	Rate Per 1,000 Elig.
African American	2,153	615	**285.6**
Asian/Pacific Islander	358	94	**262.6**
Caucasian	10,390	2,891	**278.2**
Hispanic	1,611	263	**163.3**
Native American	373	90	**241.3**
Total	**14,885**	**3,953**	**265.6**

3. Race and Life/Death Sentences

An examination of the issues of overrepresentation and disparity causes greater concern in the area of the imposition of sentences to life imprisonment and death. In Washington, a life sentence, without the possibility of release, may be imposed in four possible instances:

- A conviction as a "Two-Strike" persistent offender [RCW 9.94A.030(31)(b)];
- A conviction as a "Three-Strike" persistent offender [RCW 9.94A.030(31)(a)];
- Imposition of an exceptional sentence (RCW 9.94A.535) to the statutory maximum for a conviction for a Class A felony offense; or
- Conviction for aggravated first degree murder (RCW 10.95.020) when insufficient mitigating circumstances exist to merit leniency.

As can be seen in both the table and the chart below, African Americans receive life sentences under "Three-Strikes" at a rate more than 18 times higher than that for Caucasians, and nearly six times higher than that for the next highest group, Native Americans. Asian/Pacific Islanders are sentenced to life under "Three-Strikes" the least, both in terms of raw numbers and rates, with only one "Three-Strike" life sentence since the law became effective.

When dealing with "Other" life sentences, non-persistent offender sentences, both the Table 9 and Figure 11 reveal that African Americans are sentenced at a rate more than six times higher than Caucasians, two and one-half times higher than that for the next highest group, again, Native Americans. Hispanics are sentenced to "Other" life sentences at the lowest rate. Very few "Two-Strikes" life sentences have been imposed in the state, but as with the life sentences described above, African Americans are sentenced at a rate 23.5 times higher than the only other group sentenced under "Two-Strikes," Caucasians.

A death sentence in Washington State may be imposed under only one circumstance:

- Conviction for aggravated first degree murder (RCW 10.95.020) without sufficient mitigating circumstances to merit leniency.

There have been even fewer death sentences than "Two-Strike" life sentences in the past 10 fiscal years. As with life sentences, however, African Americans received death sentences at the highest rates – almost six times higher than that of Hispanics and 11.5 times higher than that of Caucasians.

Table 9

Life and Death Sentence Numbers and Rates Per 100,000 Population Statewide by Type of Sentence and Race/Ethnicity

Fiscal 1991 Through Fiscal Year 2000

Three-Strike Life Sentences

Race/Ethnicity	FY91	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	Total	2000 Population	Rate Per 100,000 Pop.
African American	NA	NA	NA	1	11	12	12	7	9	14	66	128,284	51.4
Asian/Pacific Islander	NA	NA	NA	0	0	1	0	0	0	0	1	259,093	0.4
Caucasian	NA	NA	NA	3	11	22	21	14	9	19	99	3,570,441	2.8
Hispanic	NA	NA	NA	0	0	1	0	4	1	2	8	264,099	3.0
Native American	NA	NA	NA	0	1	1	1	0	2	0	5	58,277	8.6
Total	**NA**	**NA**	**NA**	**4**	**23**	**37**	**34**	**25**	**21**	**35**	**179**	**4,280,194**	**4.2**

Two-Strike Life Sentences

Race/Ethnicity	FY91	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	Total	2000 Population	Rate Per 100,000 Pop.
African American	NA	NA	NA	NA	NA	0	0	0	2	4	6	128,284	4.7
Asian/Pacific Islander	NA	NA	NA	NA	NA	0	0	0	0	0	0	259,093	0.0
Caucasian	NA	NA	NA	NA	NA	0	1	2	1	4	8	3,570,441	0.2
Hispanic	NA	NA	NA	NA	NA	0	0	0	0	0	0	264,099	0.0
Native American	NA	NA	NA	NA	NA	0	0	0	0	0	0	58,277	0.0
Total	**NA**	**NA**	**NA**	**NA**	**NA**	**0**	**1**	**2**	**3**	**8**	**14**	**4,280,194**	**0.3**

Other Life Sentences

Race/Ethnicity	FY91	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	Total	2000 Population	Rate Per 100,000 Pop.
African American	2	1	4	1	0	3	0	1	3	2	17	128,284	13.3
Asian/Pacific Islander	1	0	0	0	3	0	0	0	4	1	9	259,093	3.5
Caucasian	4	9	5	3	12	9	7	14	8	4	75	3,570,441	2.1
Hispanic	1	0	0	1	1	0	0	0	1	1	5	264,099	1.9
Native American	0	0	0	0	0	2	1	0	0	0	3	58,277	5.1
Total	**8**	**10**	**9**	**5**	**16**	**14**	**8**	**15**	**16**	**8**	**109**	**4,280,194**	**2.5**

Death Sentences

Race/Ethnicity	FY91	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	Total	2000 Population	Rate Per 100,000 Pop.
African American	0	1	0	1	0	0	0	1	0	0	3	128,284	2.3
Asian/Pacific Islander	0	0	0	0	0	0	0	0	0	0	0	259,093	0.0
Caucasian	0	0	0	1	1	1	2	1	1	0	7	3,570,441	0.2
Hispanic	0	0	0	0	0	1	0	0	0	0	1	264,099	0.4
Native American	0	0	0	0	0	0	0	0	0	0	0	58,277	0.0
Total	**0**	**1**	**0**	**2**	**1**	**2**	**2**	**2**	**1**	**0**	**11**	**4,280,194**	**0.3**

The information contained in this table and the corresponding chart is based on the U.S. Census Bureau's Census 2000 (age 18 and older) and Washington State Sentencing Guidelines Commission adult felony sentencing data, with the Sentencing Guidelines Commission being responsible for all calculations. Statewide sentencing figures exclude 12 sentences in which race/ethnicity is unknown: four three-strike life sentences, one two strike life sentence, four other life sentences and three death sentences. Due to the fact that Census Bureau population figures are not available for all of the years covered by the sentencing data, only 2000 population figures were used in calculating the sentence rates. Therefore, the rates do not reflect changes in the composition of Washington State's adult population over the past 10 years.

Figure 11

Life Sentence Rates Per 100,000 Population
Statewide by Type of Sentence and Race/Ethnicity
Fiscal Years 1991-2000

KEY ISSUES -- -Disproportionality

- *Disproportionality exists in the state's prison and jail populations.*
- *African Americans, male and female, more than any other racial group are consistently over-represented in adult felony sentences in Washington, regardless of location.*
- *Caucasians and Asian/Pacific Islanders, male and female, are consistently under-represented in adult felony sentences in Washington, regardless of location.*
- *Factors other than the SRA appear to impact imprisonment patterns.*

RECOMMENDATIONS – Disproportionality

That the Legislature, in partnership with state and local criminal justice professionals, continue to research the causes and seek resolution of the disproportionality in the criminal justice system.

That the Legislature order further study into those areas of sentencing where factors in addition to criminal history and crime committed appear to impact the sentencing decision, particularly persistent offender sentencing.

E. Prison and Jail Capacity

1. Prison Population and Capacity

Historically Washington's prison population remained relatively stable for nearly fifty years, from 1925 to 1975, growing at a rate that paralleled the state's population. Beginning around 1973, the prisons experienced a rapid increase in population growth, which was in part responsible for the passage of the SRA. This increased population growth continued through the passage and development of the SRA. With the enactment of the SRA in 1981, and continuing into 1988, the prison population declined due to the SRA's emphasis on violent offenders. In 1988, however, the prison population once again began to increase very rapidly due to longer sentences for violent offenders, increased emphasis on drug offenders and numerous "get tough on crime" legislative acts; a trend that continues to the present.

From 1990 through 2000, the state's prison inmate population nearly doubled, increasing from 7,470 in 1990 to 14,716 in 2001, equating to an average annual increase of 659 offenders.

A recent change in sentencing practices, particularly changes in DOSA eligibility, caused a sudden rise in the prison population in 2001. By the end of FY01, the prison population reached 15,307. The expansion of DOSA eligibility in 1999 apparently resulted in new charging practices for some VUCSA offenses. Previously, many VUCSA offenses were charged as inchoate offenses – generally conspiracy – that resulted in a jail sentence rather than a prison sentence. However, with the DOSA expansion, many offenders who ordinarily would be sentenced to local jail are now being sentenced to prison. DOSA prison sentences are relatively short – one-half of the mid-point of the standard range – during which time offenders receive substance abuse treatment not readily available in local jails or through other sentencing alternatives. DOSA also provides after care following release. The increased use of DOSA results in a shift of the cost of incarceration for some offenders from local jails to state prisons.

Prison capacity measures are complex and capacity changes as facilities are brought on line, remodeled and otherwise modified. Although subject to change, the most recent prison capacity information is summarized in the following table.

Table 10

DEPARTMENTAL SUMMARY REPORT
OPERATIONAL CAPACITY BY FACILITY SECURITY LEVEL DESIGNATION

SUMMARY (FACILITIES FOR MEN AND WOMEN)

OPERATIONAL CAPACITY	------- SECURITY LEVEL DESIGNATION -------					
LOCATION	**5**	**4**	**3**	**2**	**1**	**TOTAL**
INSTITUTIONS						
Ahtanum View-ALF				120		120
Airway Heights CC			1,536	400		1,936
Cedar Creek CC				400		400
Clallam Bay CC	62	396	400			858
Coyote Ridge CC				400		400
Larch CC				400		400
McNeil Island CC	43		865	235		1,143
Monroe Complex		776	834	400		2,010
Olympic CC				340		340
Pine Lodge Pre-release				359		359
Stafford Creek	72		1,320			1,392
Tacoma Pre-release				140		140
Washington CC	124	558	603			1,285
Washington CC for Women		106	256	292		654
Washington State Penitentiary	96	461	1,102	166		1,825
Work Release					699	699
Grand Total	**397**	**2,297**	**6,916**	**3,652**	**699**	**13,961**

Capacity changes funded in the current ten-year plan will result in the construction of 1,440 beds and the demolition of 332 beds, netting an operational capacity increase of 1,108 beds. Construction on the bulk of the capacity additions (about 75%) will commence in 2002. Additionally, pre-design funds have been allocated for the construction of 1,936 beds at the Coyote Ridge Corrections Center in Connell. The Department of Correction's construction schedule is summarized in the following table.

As the comparison figure below illustrates, at the end of FY 2001 the operational prison capacity in Washington is 14,113.[48] Currently the prison population exceeds operational capacity by

[48] Rated capacity is presented in this chart for illustrative purposes only. Rated capacity is not considered a valid measure of correctional capacity because capacity figures are not based on current American Correctional Association standards. More importantly, the Department for budget/planning purposes does not use rated capacity as a measurement of prison bed needs.

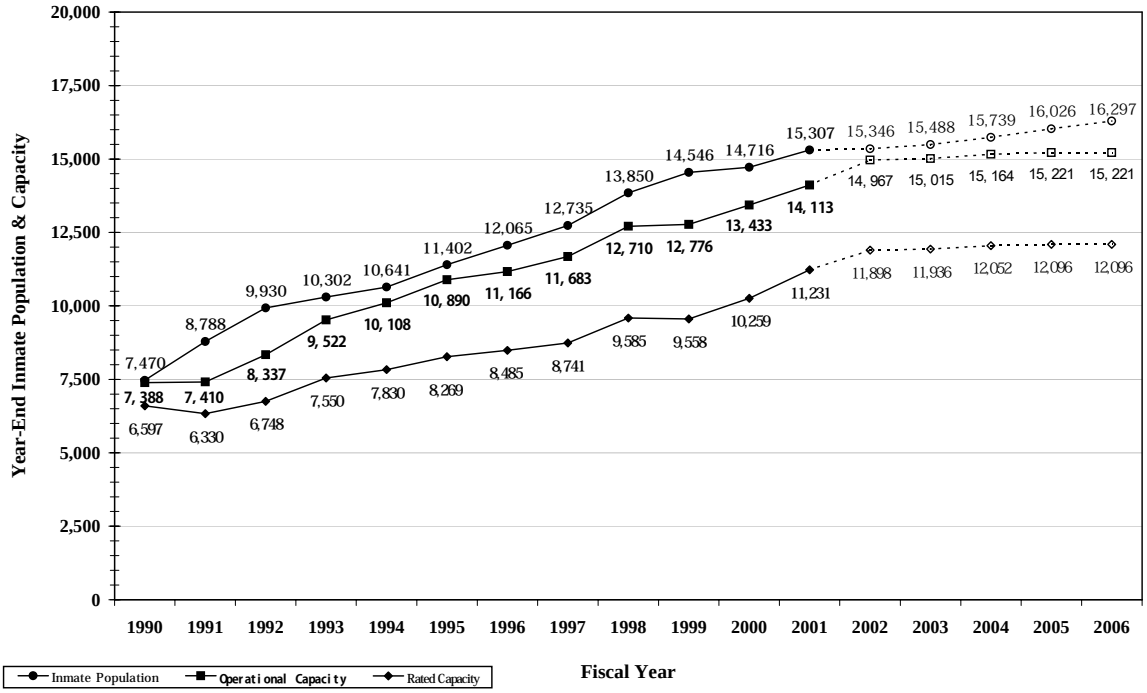
1,194. In the recently released November 2001 forecast, the difference between operational capacity and actual prison population is, however, projected to decrease to 379 by the end of F Y 2002, and then increase to 1,076 by the end of FY 2006.[49]

Table 11

Capacity Changes Funded in the Current Ten Year Plan - Operational Capacity						
Pre-design funds for 1,936 bed expansion at CRCC						
Construction Funding Provided:						
Fiscal Year 2002						
Monroe - Mental Health Beds			256			256
SCCC - Expansion Beds			544			544
WCCW - Special Needs Unit		72	36			108
WCCW - Demolish Old Units		(6)				(6)
WSP - Remodel IMU	(48)					(48)
Fiscal Year 2003						
WSP - Remodel IMU	48					48
Fiscal Year 2004						
MICC - North Complex to DSHS				(235)		(235)
MICC - Return Main to DOC			384			384
Fiscal Year 2005						
Monroe - IMU	100					100
MICC - IMU to Segregation	(43)					(43)
Grand Total	**57**	**66**	**1,220**	**(235)**	**0**	**1,108**

[49] The Washington State Department of Corrections, Planning and Research Section provided historical operational capacity figures and rated capacity figures. Forecast inmate population figures are based on the Caseload Forecast Council's November 2001 Adult Inmate Population Forecast.

Figure 12
Washington State Department of Corrections
Year-End Inmate Population & Capacity
Fiscal Years 1990 Through 2006



2. Jail Capacity

The 1998 inmate population in local jails numbered 10,393. The design capacity for local jails, based on the 1988 Jail Standards Board, was 8,348 beds. Jails have added temporary operational capacity for a total of 9,770 beds. Almost 40% of local jails impose some type of booking restriction due to crowding. The consequence of crowding and booking restrictions is that there are 300,000 to 400,000 "unserved" arrest warrants in the state.[50] The magnitude of unserved warrants makes it difficult to project jail populations. Although the unserved warrants apparently stem from less serious infractions than those that are currently being served, and although many of the unserved warrants perhaps would not result in incarceration, the potential exists that the absence of service is precluding court ordered detention.

Of the numerous factors affecting jail operations, four are prevalent in Washington. The first issue is the impact of pre-trial detention of the least serious felony offenders. The most common sentence imposed on this category of offender is "Time Served." There is little to be gained by encouraging the use of non-custodial sentences for that group of offenders because they serve

[50] Ed Vukich and Karen Daniels, "City and County Jails in the State of Washington: The Washington State Master Capacity Plan Snapshot Report, 2000.

their "sentences" in jail as a result of pre-trial detention. Before those custodial days can be saved and concomitantly ease crowding, alternatives to pre-trial detention and revision of bail structure would be necessary.

A second issue is the impact of unrealistic monetary sanctions on jails. Offenders who are unable to or otherwise do not pay monetary penalties are subject to detention. Often these offenders' monetary sanctions arise in more than one jurisdiction and the offenders have neither the funds nor the organizational capacity to meet the obligations imposed by monetary penalties. Two concepts—consolidated supervision requiring a single contact for all offenses, and a universal cashier system, permitting payment of any jurisdiction's sanctions at any location—would facilitate an offender's compliance. Realistic monetary sanctions coupled with the removal of administrative barriers could make monetary sanctions much more effective and collectable, as well as save jail beds.

A third issue plaguing jails is the incarceration of persons convicted of Driving with License Suspended 3 (DWLS 3). A DWLS 3 conviction results most often when a license is suspended or revoked from failure to pay a fine or failure to appear in court for a traffic violation. Difficulty often arises when a notice to appear in court is mailed to the address designated on the driver's license. With a mobile population, the addresses are often incorrect and drivers are not aware of the notice, do not appear and thereby commit DWLS 3. Approximately 2000 of the 10,393 jail beds are used for traffic-related offenses, a significant number being DWLS 3.[51]

Suggested remedies of the problem include decriminalizing DWLS 3 and imposing sanctions not including arrest. The city of Seattle implemented an alternative approach—impounding vehicles and requiring offenders to meet responsibilities for traffic tickets before the vehicle is released. This so-called "lock up cars, not people" approach has been attacked as disproportionately impacting racial minorities and the economically disadvantaged. A third suggestion involves using vehicle registration addresses to update driver's license addresses so that court appearance notices are more likely to reach the offender, thus decreasing the number of DWLS 3 offenses.

A fourth factor impacting jail operations involves the handling of special needs inmates in jail populations. Mental illness and substance abuse afflict much of the jail population. It is estimated that over 20% of the jail population suffers from mental illness and almost 70% suffer some level of substance abuse.[52] Many jails, however, do not have adequate space to properly segregate special populations and for most inmates the length of a jail stay is too short for adequate diagnosis, let alone treatment of special conditions. Sentenced offenders serving longer jail terms could benefit from programs were they available, but funds and space for programming are very limited. Only 2% of the jail inmates with mental health needs participate in programs and only 8% of inmates with substance abuse problems participate in programs.

[51] Id.

[52] James Austin, Tim Brennan and Wendy Naro, "Washington State/Local Planning for Correctional Population Management Final Report," The Institute on Crime, Justice, and Corrections at The George Washington University, February 2001.

3. Bridging the Gap Between Capacity and Population

Relying upon Commission data and experience and practices in other jurisdictions, the Commission explored various options to bridge the gap between operational prison and jail capacity and projected prison and jail populations. The options outlined below have substantive merit in addition to providing population relief.[53] The first three options that deal with drug offenses are covered in *The Expanding Drug Sentences* section. The first of the three, using a separate drug grid, is the preferred recommendation. The seventh option below that deals with Robbery II is recommended in the *Confining the Violent Offender* section. The options the Commission identified include:

- *Using a Separate Drug Grid*
- *VUCSA Level VIII to Level VII & Single Scoring*
- *VUCSA Level VIII to Level VI & Single Scoring*
- *20% Sentence Reduction & 12+ to 9+ Threshold*
- *12+ to 9+ Threshold*
- *Single Score 2º Burglary and Residential Burglary*
- *Move Bank Robbery From 2º Robbery Into 1º Robbery and Remove 2º Robbery as a Strike*
- *Increase maximum Earned Release to 50% for Property Offenders*
- *Authorize Jails to add an Extra 5 Days of Earned Release*
- *Increase Community Service Exchange From 30 to 90 Days*
- *Legislature Examine Under What Circumstances Should the Persistent Offender law include 2º Assault*

a. Using a Separate Drug Grid

The Commission concluded that treatment should comprise a major component of sentences imposed on drug offenders. The Commission explored the use of a sentencing grid solely for drug offenses. If adopted by the Legislature, the new grid displayed in Table 12 would be used for sentencing drug offenders.

[53] The fiscal impact of each of these options is summarized in a table located at the end of this section. The table includes all the Commission's recommendations presented throughout this report.

Table 12

Drug Sentencing Grid			
Seriousness Level	**Offender Score 0 to 2**	**Offender Score 3 to 5**	**Offender Score 6 to 9+**
Level III	**51 to 68 Months** Option 1: DOSA Option 2: Standard Range	**68 to 100 Months** Option 1: DOSA Option 2: Standard Range	**100 to 120 Months** Option 1: DOSA Option 2: Standard Range
Level II	**12+ to 20 Months** Option 1: Drug Court Option 2: DOSA Option 3: Standard Range	**20 to 60 Months** Option 1: DOSA Option 2: Standard Range	**60 to 120 Months** Option 1: DOSA Option 2: Standard Range
Level I	**0 to 6 Months** Option 1: Drug Court Option 2: Standard Range	**6+ to 18+ Months** Option 1: Drug Court Option 2: DOSA Option 3: Standard Range	**12+ to 24 Months** Option 1: Drug Court Option 2: DOSA Option 3: Standard Range

The Drug Grid transfers VUCSA offenders from the adult felony sentencing grid to the grid designed specifically for VUCSA offenses. The grid formalizes the requirement of using alternatives to incarceration when sentencing non-violent low level offenders. Like the existing grid, the drug grid subjects more serious violators to more severe sanctions. This proposed grid also expands the standard sentencing ranges within the three seriousness levels, thereby granting the sentencing court more discretion to address individual differences. The grid incorporates the Commission's proposal of eliminating triple scoring of drug offenses with prior adult drug offense convictions and eliminating double scoring of all drug offenses with prior juvenile drug offense convictions. Implementation of the Drug Grid should result in estimated savings as set forth in the following table.[54]

Adoption of the drug grid could result in savings of corrections cost of a little less than thirteen million dollars by the end of FY05.

Table 13

Drug Grid Proposals Single Score Priors	FY03	FY04	FY05	FY06	FY07	FY08
Prison ADP Reduction	90	404	542	581	607	635
DOC Dollar Savings	$445,160	$9,569,190	$12,980,520	$14,082,102	$14,765,486	$15,490,475
Jail ADP Reduction	148	264	287	295	298	301

[54] The SGC staff calculated the savings in prison beds. The DOC provided the dollar values of the bed savings.

b. VUCSA Level VIII to Level VII & Single Scoring

While the Drug Grid is the Commission's preferred option, lowering the seriousness level of manufacturing, delivery or possession with intent to deliver heroin or cocaine from Seriousness Level VIII to Level VII on the adult felony sentencing grid is an acceptable alternative. This option amends the offender scoring rules by eliminating triple scoring of drug offenses with prior adult drug offense convictions, except for the manufacture of methamphetamine, and additionally amends the offender scoring rules by eliminating double scoring of all drug offenses with prior juvenile drug offenses, except for the manufacture of methamphetamine.

Under this proposal, there would be an average monthly population (AMP) cost of 3 jail beds and a savings of 351 prison beds in FY05, and an AMP cost of 3 jail beds and a savings of 706 prison beds in FY22.

c. VUCSA Level VIII to Level VI & Single Score

This option reduces manufacture, delivery or possession with intent to deliver heroin or cocaine from Seriousness Level VIII to Seriousness Level VI on the adult felony sentencing grid. It amends the offender scoring rules by eliminating triple scoring of current drug offenses committed by persons with prior adult drug offense convictions, except for the manufacture of methamphetamine when the offender has a prior adult conviction for the manufacture of methamphetamine and additionally amends the offender scoring rules by eliminating double scoring of all drug offenses with prior juvenile drug offenses, except for the manufacture of methamphetamine.

Under this option, the initial savings in average monthly population (AMP) cost would equal of 21 jail beds and of 487 prison beds in FY05. By FY22, the option is expected to result in AMP cost savings of 23 jail beds and a savings of 864 prison beds.

d. 20% Sentence Reduction & 12+ to 9+ Threshold

This option combines a reduction of sentence length for non-violent, non-drug offenses with lowering the threshold for prison sentences from 12+ months to 9+ months. The 20% sentence reduction reduces prison populations and raises jail populations. The threshold change increases prison populations and lowers jail populations.

The just deserts principle regarding sentence lengths is that more serious offenses deserve more severe sanctions. As long as the relative severity of the sentences stays in place, this option is consistent with the just deserts emphasis. A reduction of sentences for non-violent, non-sex, non-crimes against persons, and non-VUCSA felony offenses by 20% frees prison space for more serious offenders. By the end of FY05, the need for jail beds would be reduced by 581 and prison bed needs would drop by 27. By FY22, the bed reductions for jails and prisons would equal 629 and 204, respectively.

e. 12+ to 9+ Threshold

The Commission prefers combining the 20% sentence reduction for non-violent, non-drug offenses with the threshold change in order to balance population impacts. However, if the combination is not adopted, the Commission recommends the threshold change. This option shifts a portion of the burden of paying for incarceration from local government to the state. If implemented as a single approach to sentencing, this option would have the effect in FY05 of reducing the need for 345 jail beds while increasing the need for 359 beds in state prisons. The effect over time, in FY22, would equal a reduction of 368 jail beds and an addition of 379 prison beds.

f. Single Score 2º Burglary and Residential Burglary

This option amends the offender scoring rules by eliminating double scoring of Burglary 2 and Residential Burglary. The option additionally amends the offender scoring rules by eliminating double scoring of Burglary 2 and Residential Burglary with prior juvenile burglary 2 or Residential Burglary convictions. It is recommended on substantive and procedural grounds as well as for its population impacts. A simpler scoring procedure results in a more transparent offender score. It is easier to understand, and it maintains an appropriate substantive balance between prior record and the current offense. Under this proposal, there would be an average monthly population (AMP) cost of 14 jail beds and a savings of 128 prison beds in FY05. By FY22, the AMP cost would be 15 jail beds and the savings would be 162 prison beds.

g. Move Bank Robbery From 2º Robbery Into 1º Robbery and Remove 2º Robbery as a Strike

This option would 1) require that robbery of a financial institution, including bank robbery by note, be removed from the definition of Robbery 2 and added to the definition of Robbery 1, and 2) remove Robbery 2 from the list of most serious offenses under the persistent offender act. This option narrows the scope of the persistent offender law and decreases the sentence length for some offenders. The rationale for the option is the recognition that at present the definition of Robbery 2 encompasses a broad range of conduct. The option reduces the potential for disproportionate sentences between the marginally and the truly violent offender. Exceptional sentences are still available for more egregious offenses. Because of the range of conduct covered, the fiscal impact of the option cannot be determined.

h. Maximum Earned Release to 50% for Property Offenders

This option increases the maximum possible earned release credit from 33% to 50% for non-violent, non-sex, non-crimes against persons, and non-VUCSA offenders sentenced to prison. Under this proposal, there would be no jail bed impact, but there would be an average monthly population (AMP) savings of 636 prison beds in FY05 and 919 prison beds in FY22. The reduction, however, would not be automatic and absolute. The requirement that offenders earn the right to release would continue. The earned release time for class A sex offenders and serious violent offenders would remain at its present rate, 15%.

i. Authorize Jails to add an Extra 5 Days of Earned Release

Local jails are presently authorized to permit offenders to earn 10 days of earned release for every 30 days served. This option increases the maximum earned release time to 15 days. Persons sentenced to jail for less serious felonies will be permitted to earn release at the same rate as prison bound offenders, 50%. The fiscal impact upon jails under this option cannot be determined. There is no impact upon prisons.

j. Increase Community Service Exchange From 30 to 90 Days

This option permits local officials to manage crowded jail conditions by increasing the maximum number of jail confinement days that can be exchanged for community service from 30 days to 90 days for nonviolent felony offenders sentenced to jails. Local jurisdictions will continue to be free to set appropriate eligibility criteria. This proposal has an undetermined jail bed impact and no prison bed impact.

k. Legislature Examine Assault 2 Circumstances Regarding the Persistent Offender Law

The Commission recommends further study of Assault 2 with the aim of separating the more serious instances of assault from the less serious behavior. The Commission notes ongoing concern about the potential for disparity given the range of behavior Assault 2 encompasses.

The following table summarizes the impact of each of these options.

Table 14

Jail and Prison Bed Impact Summary of Proposed Sentencing Changes

Options	Impact Estimates			
	Fiscal Year 2005		Fiscal Year 2022	
	Jail	Prison	Jail	Prison
New Drug Grid & Single Scoring for All VUCSA[1†]	-287	-542	-307	-687
VUCSA Level VIII to Level VII & Single Score[1‡]	3	-351	3	-706
VUCSA Level VIII to Level VI & Single Score[1‡]	21	-487	23	-864
Single Score 2° Burglary and Residential Burglary[1]	14	-128	15	-162
20% Sentence Reduction & 12+ to 9+ Threshold[1]	-581	-27	-629	-204
12+ to 9+ Threshold[2]	-345	359	-368	379
Move Bank Robbery From 2° Robbery Into 1° Robbery[1]	UND	UND	UND	UND
Remove 2° Robbery as a Strike[1]	UND	UND	UND	UND
Maximum Earned Release to 50% for Property Offenders[1]	NA	-636	NA	-919
Allow Local Jails an Extra 5 Days of Earned Release[1]	UND	NA	UND	NA
Increase Community Service Exchange From 30 to 90 Days[1]	UND	NA	UND	NA
Legislature Examine if/when 2° Assault Should be a Strike[1]	UND	UND	UND	UND
Addition of Regional Correctional Facilities[1]	UND	UND	UND	UND
Establish the Youthful Offender Sentencing Alternative[1]	UND	UND	UND	UND

[1] Sentencing Guidelines Commission Recommendation to the Washington State Legislature

[1†] Preferred Drug Sentencing Recommendation

[1‡] Acceptable Drug Sentencing Recommendation

[2] Recommendation In Lieu of Adopting the Combination 20% Reduction & 12+ to 9+ Threshold Proposal

UND = Undetermined Impact

NA = Not Applicable

The Commission's four major recommendations can be summarized as follows:

(1). New Drug Grid & Single Score for All VUCSA;
(2). 20% Reduction 12+ to 9+ Threshold;(
(3). Single Score Burglary 2 & Residential Burglary; and
(4). Maximum Earned Release to 50% for Property Offenders.

Should the Legislature adopt all of these recommendations, the Commission estimates that the impact of the combined recommendations on prison and jail capacity would equal the figures set forth in the following table.

Table 15

Average Monthly Population Jail and Prison Impacts
Summary Analysis - SRA Review Four Major Recommendations

	Fiscal Year									
	FY03	**FY04**	**FY05**	**FY06**	**FY07**	**FY08**	**FY09**	**FY10**	**FY11**	**FY12**
Jail AMP	-324	-781	-869	-895	-907	-913	-917	-918	-920	-922
Prison AMP (DOSA)	1	-95	-139	-179	-193	-197	-199	-200	-200	-201
Prison AMP (Non-DOSA)	-92	-701	-1,126	-1,300	-1,396	-1,457	-1,496	-1,520	-1,535	-1,546
Prison AMP (Total)	-90	-796	-1,265	-1,480	-1,589	-1,654	-1,695	-1,720	-1,735	-1,747

	Fiscal Year									
	FY13	**FY14**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**	**FY22**
Jail AMP	-924	-925	-926	-926	-927	-927	-928	-928	-929	-929
Prison AMP (DOSA)	-201	-201	-202	-202	-202	-202	-202	-202	-202	-202
Prison AMP (Non-DOSA)	-1,554	-1,561	-1,565	-1,568	-1,571	-1,573	-1,575	-1,575	-1,576	-1,576
Prison AMP (Total)	-1,755	-1,762	-1,766	-1,770	-1,773	-1,775	-1,776	-1,777	-1,778	-1,778

Comparing the decreases in population in the manner recommended by the Commission, it is apparent that operational capacity could be met by FY05, at which time the Commission estimates that difference between population and operational capacity will be 805.[55] Meeting rated capacity, a concept the Commission has learned is not currently used, will be much more difficult. The combined analysis yields a prison bed savings of -1,265 beds in FY05. The gap between rated capacity and population in FY05 is 3,867; meaning that 2,602 more prison beds would be needed. Even by an additional reduction of the sentences for property offenses beyond the 20% cut already included in the analysis, there are serious concerns that rated capacity could not be reached by FY05 even with a 100% reduction in property crimes. Even assuming that a 100% reduction in imprisonment of property offenders would meet rated capacity, such an approach would likely erase any savings for jails and may, in fact, increase the need for jail beds.

KEY ISSUES—Prison and Jail Capacity

- *The prison population almost doubled during the last decade. Drug law violators constitute the largest and the fastest growing group sentenced to jail and prison in this*

[55] See the Chart comparing the year end population and capacity found at the end of Section E. (1) of this report.

state. A recent upsurge in commitments due to enhanced DOSA eligibility resulted in the current gap of approximately 1,200 between operational capacity and prison population. According to the most recent forecast, the difference between operational capacity and actual prison population is projected to decrease to 379 by the end of FY02, and then increase to 1,076 by the end of FY06.

- *The population in local jails exceeds design capacity by approximately 2,000 inmates. The addition of temporary operational capacity reduced the shortfall to approximately 600 beds. Jails lack the capacity to adequately deal with special needs populations. Mental illness and substance abuse afflict much of the population.*

- *There are options for reducing prison and jail populations that are both meritorious and consistent with the principles of the SRA.*

RECOMMENDATIONS – Prison and Jail Capacity

The Commission unanimously recommends that all savings realized for amendments to the SRA be applied to fund alternatives to incarceration programs including drug treatment and other cost-effective programs in the community. The Commission further recommends the following:

That the Legislature adopt the New Drug Grid and apply Single Scoring to all VUCSA offenses;

That should the new Drug Grid not be adopted, VUCSA Level VIII offenses be reduced to Level VII and single scored; or

That VUCSA Level VIII offenses be reduced to Level VI and single scored; and

That the Legislature reduce sentencing for non-violent, non-sex, non-crimes against persons, and non-VUCSA felony offenses by 20% along with reducing the jail/prison threshold from 12+ months to 9+ months for all felony offenses; or

That should the Legislature not adopt the combined 20%/12+ to 9+ recommendation, the Legislature adopt 12+ months to 9+ months threshold option for all felony offenses: and

That the offenses of Burglary in the Second Degree and Residential Burglary be single scored; and

That the Legislature remove robbery of financial institutions from inclusion in the definition of Robbery 2 and place that offense in the definition of Robbery 1 and remove Robbery 2 from the list of offenses that constitute a strike under the persistent offender statute; and

That the maximum earned release credit be increased from 30% to 50% for most felony offenders; and

That local jails be permitted to increase the maximum earned release credit by 5 extra days; and

That authority of local jail officials to permit the exchange of community service for confinement be increased from 30 days to 90 days; and

That the Legislature examine the circumstances under which a charge of Assault 2 applies and examine under what circumstances, if any, should Assault 2 be treated as a strike under the persistent offender statute.

F. Regionalization

Presently, there is little policy or administrative connection between state and local corrections. The two systems do, however, share a significant overlap in offenders.

Jails are multipurpose institutions. They serve as pre-trial detention facilities, as corrections facilities for convicted misdemeanants, gross misdemeanants and felons, and as holding facilities for sentenced offenders awaiting transfer to state prison. Many prison-bound offenders spend time in a local jail in all three capacities, and some will return to jail after release from prison due to violations of release conditions. Despite the ease of offender movement between the systems, there is no corresponding movement of funds, policies, procedures, standards or information.

A separation between state and local facilities is not uncommon in this country, but the separation in Washington appears more extensive than in other states. Like many states, Washington established a Jail Standards Board in 1978 to monitor and inspect local jails for compliance with statutorily mandated standards. Compliance with those standards triggered funding for jails. When the Board ceased operation in 1988, each jurisdiction was directed to establish and adopt its own set of standards. The sunsetting of the state standards board resulted in a lack of uniform practices among the 37 county and 20 city jails and created a greater divide between state and local jurisdictions.

The state/local divide in corrections is presently being felt more keenly than in the past for several reasons. First, crowding in local facilities caused approximately 40% of those facilities to depart from traditional booking practices. Jails are housing more felons and fewer misdemeanants.[56] This increases the offender overlap between jails and prisons. Second, the composition of the jail population has changed. Jails house high needs individuals, particularly those needing attention for mental health and substance abuse, yet are ill equipped to deal with these offenders because most lengths of stay are short (the average length of stay is 15 days) and there are limited funds to support programming. State corrections facilities are better suited to handle these special populations than are jails. Third, an increasing proportion of local funds support jails and corrections, placing a greater strain on the delivery of non-corrections related local services. Over $230 million is spent annually operating jails.

One response to these factors is the suggestion that state and local jurisdictions share facilities and policies as well as offenders. One mechanism cited as a means of achieving this objective is

[56] James Austin, Tim Brennan and Wendy Nero, "Washington State/Local Planning for Correctional Population Management Final Report," The Institute on Crime, Justice, and Corrections at The George Washington University, February 2001.

the installation of regional jails. A May 2001 report sponsored by the Washington Association of Sheriffs and Police Chiefs noted the following factors that appear to make regional multi-jurisdictional jails a viable option.[57] These include:

- Construction cost savings
- Better special offender services
- Increased capacity
- Improved staffing
- Opportunities to improve operations in existing jails, and closing substandard facilities
- Improved position of risk
- An opportunity to improve law enforcement activities and functions

The report presented eleven recommendations for consideration. One key recommendation requires the inclusion of the Department of Corrections in a pilot multiple jurisdiction jail.

As noted in the "Alternatives to Confinement" section of this report, North Carolina, Pennsylvania and Arkansas use the guideline system to bridge the gap between state and local corrections. State funding for local programs or regional facilities is tied to program design and program use standards. These partnerships operate on the assumptions that 1) local activity affects prison populations; and 2) earlier intervention into the criminal behavior of offenders can be more effective than later intervention.

The Commission notes that not all of the purposes jails serve are well served by regionalization or by state/local sharing. Pre-trial detainees must be available for court appearances and require housing in facilities close to the court. Post-trial detainees, those awaiting sentence, and those already sentenced (over 50% of the jail population), however, could be housed in more remote locations. Offenders serving longer jail terms (e.g., sixty days or longer) could benefit from regional facilities because of greater opportunities to participate in programs where available and appropriate. It is thought that better intervention in the sentenced jail population could mean an eventual reduction in prison admissions.

KEY ISSUES—Regionalization

- There is little policy or administrative connection between state and local corrections. Offenders, however, easily move between the two systems. Jails are equipped to house offenders with short sentences and to process defendants through the courts. They do not work well for special populations (e.g., mentally ill and substance abusers) or for offenders serving relatively long sentences.

- Prisons are more appropriate than jails for offenders serving longer sentences. There is no need to use that scarce resource for less serious offenders serving relatively short sentences.

[57] James W. LaMunyon, "Regional Jails in the State of Washington, May 2001.

RECOMMENDATIONS -- Regionalization

That state and local governments add regional corrections capacity to the current system, with the following features:

1) Cooperation between state and local governments in leveraging better use of correctional resources at each level and in siting regional facilities.

2) Using jails for processing defendants and for very short sentences; locally held offenders with longer sentences should be placed in a regional facility.

3) Using regional facilities for less serious felony offenders that are currently being housed in prison.

4) *Using a strong treatment component* in r*egional facilities to serve special populations, especially those with chemical dependency and/or mental illness.*

G. Monetary Sanctions

A myriad of monetary sanctions exist in law, many with mandatory minimums. For example, mandatory minimum fines, including statutory assessments, for Driving Under the Influence include the following:

DUI with BAC reading less than 0.15	
No prior offense within past 7 years	$ 685
One prior offense within past 7 years	$ 925
Two or more prior offenses within past 7 years	$1,725
DUI with BAC reading 0.15 or greater or BAC was refused	
No prior offense within past 7 years	$ 925
One prior offense within past 7 years	$1,325
Two or more prior offenses within past 7 years	$2,525

In addition to fines and fees, various other assessments are imposed, most notably the crime victim penalty assessment for conviction of crimes in Superior Court. Felony and gross misdemeanor convictions include a $500 victim assessment, and misdemeanors are assessed $250. Various court costs, such as court interpreters, public defender, jury costs, the cost for corrections, either probation or jail, and witness costs may also be imposed. These fees are levied in addition to any restitution.

The sum of the various fines, fees, assessments and costs are often considerable and are often well beyond the means of offenders. Tracking and collecting monetary sanctions involve considerable administrative costs, which in instances where the offender has little ability to pay, can outpace collections.

It is difficult to determine the annual collection rate of monetary sanctions imposed in a given year. Collection of crime victim penalty assessments and restitution receive top priority. In 1996, the penalty assessments were increased from $75 to $250 for misdemeanors and from $100 to $500 for felonies. Data on the imposition and collection of penalty assessments are shown in the table below.

Table 16
Penalty Assessments in Superior Court (Including Juvenile)
Amounts Imposed and Collected by Year
1995-2000*

	1995	1996	1997	1998	1999	2000
Imposed	$2,913,456	$6,293,140	$12,821,907	$15,408,922	$15,798,854	$16,433,252
Collected	$1,010,919	$1,342,216	$2,160,767	$3,544,803	$4,408,440	$5,237,618
Percentage collected	34.7%	21.3%	16.9%	23%	27.9%	31.9%

*Data provided by the Office of Crime and Victims Advocacy

According to RCW 9.94A.145, the priority for distribution of funds received is as follows:

1. Restitution
2. Fines, costs & assessments (including crime victim's fund)
3. Interest owed
4. Jail cost (incarceration)

Amounts collected in any year include payments on assessments imposed in that year and in previous years. Because many felony offenders are incarcerated for some period of time before paying legal financial obligations (LFO's), and because restitution must be paid in full before payments are applied on a proportional basis to other LFO's, it is likely that a large percentage of the payments received on penalty assessments for any given year are in reality tied to assessments imposed in previous years. Thus, when the increased penalty assessments were imposed in 1996, many of those assessments were not collected until after offenders had served some period of incarceration and had paid restitution. Both the imposition and collection amounts appear to be stabilizing.

Court data reveal that statewide $60,619,256 in monetary sanctions were imposed in 2000 in Superior Court.[58] A total of $40,848,594 was collected. The following table summarizes the amounts ordered and collected in 2000 among some fund categories. Again, because the fees are often ordered in one year but are not collected until later years, the amounts assessed do not match the amounts remitted.

[58] The Office of the Administrator of the Court provided information regarding the fees collected for the different categories of cost

Table 17

Account	Assessed in CY2000	Remitted in CY2000
Restitution	$40,848,594.24	$9,014,974.45
Local Drug Funds	$2,383,118.24	$897,416.10
Sc-Criminal Filing Fees	$1,648,595.00	$742,114.46
Meth Lab Cleanup Fund	$230,125.00	$14,330.75
Other Superior Court Penalties (Fines)	$4,623,556.82	$2,363,080.64
Crime Lab Analysis Admin Costs	$332,905.56	$105,815.37
Public Defense Costs	$5,729,576.43	$1,828,895.69
Sc-Cost Recoupments	$990,927.93	$324,347.42
Sc-Criminal Filing Fees	$1,648,595.00	$742,114.46
Crime Victim Penalty Assessments	$16,991,465.35	$5,237,618.16

Some judges and court administrators express the view that current monetary sanctions are unrealistically high. Unrealistic monetary sanctions are potentially counter-indicated in four ways. First, current sanctions are frequently beyond the financial means of many offenders, and collection activity serves only to prolong the offender's reintegration into the community free of supervision. This activity is viewed by many as undermining one of the philosophical basis supporting the SRA -- the notion that offenders should be held accountable and then be permitted to move on. Second, the respect of the court and the courts' authority are undermined by the lack of compliance with court orders. Third, offenders who do not pay monetary sanctions are sometimes incarcerated for non-compliance and impair the ability of the system to confine riskier offenders. Fourth, the uniform imposition of mandatory minimum fines, fees and costs sometimes results in disproportional impact upon offenders with limited means.

Jurisdictions within the United States and Europe have struggled with fair and effective structures for monetary sanctions. The most promising avenue pursued is the concept of "day fines." While day fine systems vary, they generally include the following features:

- Combining all monetary sanctions, except restitution and victim penalty assessments, into a single sum with an easy single point of payment
- Scaling overall monetary sanctions to ability to pay—"a day's pay" is the "day" in "day fine," so that the burden is more proportional to ability to pay. Thus 5 day fine units would equal 5 days of pay.
- Separating fines from restitution and victim penalty assessments because restitution and victim penalty assessments are not viewed as sanctions but are intended to restore victims to the pre-crime states.

Day fine systems have been used more extensively in Europe than in the United States. When used in the United States (Staten Island, New York; Maricopa County, Arizona), the concept or practice tends to be implemented only for lesser misdemeanor offenses. Germany uses day fines extensively as an alternative to short periods of incarceration, and in fact has practically

eliminated short incarceration terms.[59] Other jurisdictions have found that the amount of money collected has actually increased when realistic monetary sanctions are imposed accompanied by effective enforcement.

KEY ISSUES—Monetary Sanctions

- The sum of the various fines, fees, assessments and costs are often considerable and are often well beyond the means of offenders. Tracking and collecting monetary sanctions involve administrative costs, which in instances where the offender has little ability to pay, can outpace collections.

- Unrealistic monetary sanctions are counter-indicated in four ways. The sanctions: 1) prolong offender's efforts to pay debt to society and interfere with the offender's full reintegration into the community; 2) undermine respect for the court and the courts' authority due to the lack of compliance; 3) impair the ability of the system to confine riskier offenders when offenders are sometimes incarcerated for non-compliance and 4) disproportionately impact offenders with limited means even when the imposition of minimum fines, fees and costs is uniform.

RECOMMENDATIONS – Monetary Sanctions

That the Legislature remove incarceration as an option for failure to pay legal/financial obligations and provide a comprehensive system of civil remedies.

H. Juvenile Issues in Adult Sentencing

While most youth charged with a crime remain under the jurisdiction of juvenile court, Washington has long allowed judicial review and discretion to move juveniles to adult court on a case-by-case basis. This is often referred to as transfer or waiver of jurisdiction. In Washington State, the hearing to determine transfer to adult court is called a "Decline Hearing." The U.S. Supreme Court provides clear guidelines for decline hearings. Those guidelines, commonly referred to as the *"Kent Criteria,"*[60] require an assessment of several factors, including the seriousness of the crime, developmental stage of the juvenile, and the juvenile's amenability to rehabilitation.

In 1994, the Washington State Legislature substantially changed the juvenile justice system in this state with the enactment of the *Violence Reduction Act*. For the first time, Washington law permitted the automatic transfer to the adult system of juveniles charged with certain crimes. Three years later in 1997, Washington's automatic transfer provisions were expanded. Automatic transfer is also referred to as "statutory exclusion" because juvenile court jurisdiction is excluded by statute for juveniles who are charged with certain crimes, regardless of the juvenile's individual circumstances, the nature of the crime committed or the developmental

[59] Thomas Weigend, "Germany Reduces Use of Prison Sentences" in Michael Tonry, ed., Sentencing Reform in Overcrowded Times: A Comparative Perspective, Oxford University Press 1997, pp 122 - 216

[60] *Kent v United States*, 383 U.S. 541 (1966)

maturity of the offender. These changes in Washington law came at the end of a national trend of treating juvenile offenders charged with serious crimes more like adults, a movement that can be summed up by the catchphrase "adult time for adult crime."

Forty-six states and the District of Columbia have some type of discretionary mechanism, similar to our decline hearing process, for transferring juveniles to adult court. Twenty-eight states have statutes that automatically transfer youth to adult court. Of those twenty-eight, twenty-three have a mechanism for returning a juvenile to juvenile court if it is appropriate. This is often referred to as "reverse waiver." Twenty states also have "blended" sentencing models in place. Blended sentencing can take several forms, but generally involves creating an adult-juvenile system crossover mechanism, providing longer terms of incarceration for juvenile offenders while still attempting to provide the rehabilitation services that developing juveniles need. Washington State does not currently have a reverse waiver or blended sentencing system. No judicial discretion currently exists in Washington law with regard to automatic transfer of juveniles to adult court.

1. The Impact of Transferring Juveniles to the Adult Criminal System

Studies examining the impact of transferring juveniles to adult criminal systems on adolescent development, effectiveness of rehabilitation, and rates of recidivism have recently been released. The studies confirm the premise that children and adolescents are qualitatively and developmentally different than adults. Normal adolescent development means that youth under age 17 have difficulty consistently exercising adult-like judgment. Judgment includes, among other things, the ability to control impulses, manage one's behavior in the face of pressure from others to violate the law, or the ability to extricate oneself form a potentially problematic situation. [61]

During the last several years revelations have emerged about the development of the teenage brain. One researcher found that during the teen years a massive loss of gray matter brain tissue occurs specifically in the areas of the brain that control impulses, risk-taking and self control.[62] The deficits occurring in normal adolescent development are compounded among juvenile offenders, who have higher rates of disability, trauma, mental health problems and immaturity than the general teenaged population. Conservative estimates are that between 17% and 53% of juvenile offenders have learning disabilities, in comparison to 2-10% of the overall child population. Nineteen to 46% of juvenile offenders have ADD/ADHD as compared to 1-10% of the general child population. Seven to 15% of offenders have an I.Q. below 70, compared to fewer than 3% in the overall child population,[63] and one group of researchers found that 32% of

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[61] Should Juvenile Offenders Be Tried as Adults? A Developmental Perspective on Changing Legal Policies, Steinberg, L., Temple University, *Paper presented as a part of a Congressional Research Briefing entitled "Juvenile Crime: Causes and Consequences," Washington D.C., January 19, 2000.*

[62] Brain Research Shows 'A Child is Not a Man', Thompson, P., UCLA School of Medicine, Neurology, *Newsday, Viewpoints* May 23, 2001

[63] Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youth, Kazdin, Alan, *Youth on Trial* (Thomas Grisso and Robert Schwartz, eds.), Chicago, University of Chicago Press, 2000. Estimates of prevalence are based on multiple sources and are likely to be underestimates of the significant impairment of disorders on youth.

delinquents had suffered trauma sufficient to result in Post Traumatic Stress Disorder, as compared to an occurrence of 3% or less in the general child population .[64] These are problems that clearly contribute to delinquent behavior and can often be managed with rehabilitative services.

Researchers in several states conclude that children detained in adult facilities instead of juvenile facilities are more likely to re-offend when released. In Florida, one study matched groups of youthful offenders that were committed to adult facilities with those kept in the juvenile system. The juveniles housed in adult facilities were found more likely to re-offend, more likely to re-offend earlier, more likely to commit more subsequent offenses and more serious offenses than juveniles retained in juvenile facilities.[65] These results are similar to studies conducted in other states, including Pennsylvania, New York and New Jersey. [66]

According to another report, juveniles in the adult system are likely to suffer other repercussions from transfer to adult correctional facilities. They are almost eight times more likely to commit suicide; are five times more likely to be sexually assaulted; twice as likely to be beaten by staff; and 50% more likely to be attacked with a weapon.[67] Further, juveniles held in adult facilities frequently do not receive the education or rehabilitation services appropriate to their needs. Adult correctional agencies, Washington included, have limited resources to devote to juvenile-specific programming.

2. Balancing Juvenile Development With SRA Principles

The research regarding the efficacy of a "one-size-fits-all" transfer policy suggests the need for some level of individualized review of juvenile offenders. The majority of states with automatic transfer laws permit discretionary review under certain circumstances.

The Commission favors a modification to the automatic transfer policy that balances the need to aggressively address serious crimes committed by youth with the goal of identifying those youth who may deserve opportunities at rehabilitation. The model developed by the Commission is a sentencing alternative ("Youthful Offender Sentencing Alternative"), not a reverse waiver. It represents a cautious approach. First, it is a sentencing alternative only available after an assessment of specific criteria. Second, an adult sentence is suspended on the condition of the juvenile taking advantage of rehabilitation services offered while confined in the state juvenile rehabilitation system until at least age 21. Youth convicted of serious violent offenses are confined within the adult system up to age 25. Short-term public safety is achieved because the juvenile is confined, and long-term public safety is improved because the offender's access to

[64] Childhood Posttraumatic Stress Disorder, Fletcher, K.E. and Barkley, R.A., eds., *Child Psychopathy*, New York: Guilford, 1996

[65] The Transfer of Juveniles to Criminal Court: Does it Make a Difference? D. Bishop, C. Frazier, L. Lanza-Kaduce, and L. Winner, *Crime and Delinquency*, Vol. 42 No. 2, April 1996.

[66] Evaluating Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver, David Meyers, University of Maryland, 1999; The Comparative Advantage of Juvenile vs. Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders, Jeffrey Fagan, *Law and Policy*, Vol. 18 #1 and 2, Jan/Apr. 1996.

[67] Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences; The Sentencing Project

rehabilitation programs reduces the chances of the juvenile committing new or more serious crimes in the future.

The sentencing alternative would be available only to youth who have been automatically declined to adult court. The adult court retains jurisdiction. The Commission expects that the alternative will be used no more than 25% to 30% of eligible cases. Specific language outlining the sentencing alternative is contained in Appendix B. The key aspects of the Youthful Offender Sentencing Alternative include:

- Sentencing *alternative* (juvenile stays under the jurisdiction of adult court)
- Excludes Murder 1 and Murder 2 convictions
- Applies only to automatic transfer cases
- Mandatory incarceration to age 21 in non-serious violent offense cases
- Mandatory incarceration in serious violent offense cases to age 25 or the length of the adult sentence
- Incarceration is at JRA until age 21, at DOC thereafter
- Imposition and suspension of a standard adult sentence under the Sentencing Guidelines Act
- Victim right to participate in sentencing hearing
- Offender required to make progress in rehabilitative programs
- Successful completion of the sentencing alternative results in a juvenile conviction record
- Regular reports must be made to sentencing judge about the progress of the offender
- Judge can revoke the alternative at any time and send the offender to serve the adult sentence at DOC

KEY ISSUES – Juvenile Issues in Adult Sentencing

- In 1994, the Washington State Legislature substantially changed the juvenile justice system in this state with the enactment of the *Violence Reduction Act.* The new law permitted the automatic transfer of juveniles charged with certain crimes to the adult system.

- Recent research on adolescent development and on the impact of transferring juveniles to the adult criminal system challenges the efficacy of a "one-size-fits-all" transfer policy. The research suggests the need for a modest modification of the automatic transfer policy to provide a means of assessing juvenile offenders.

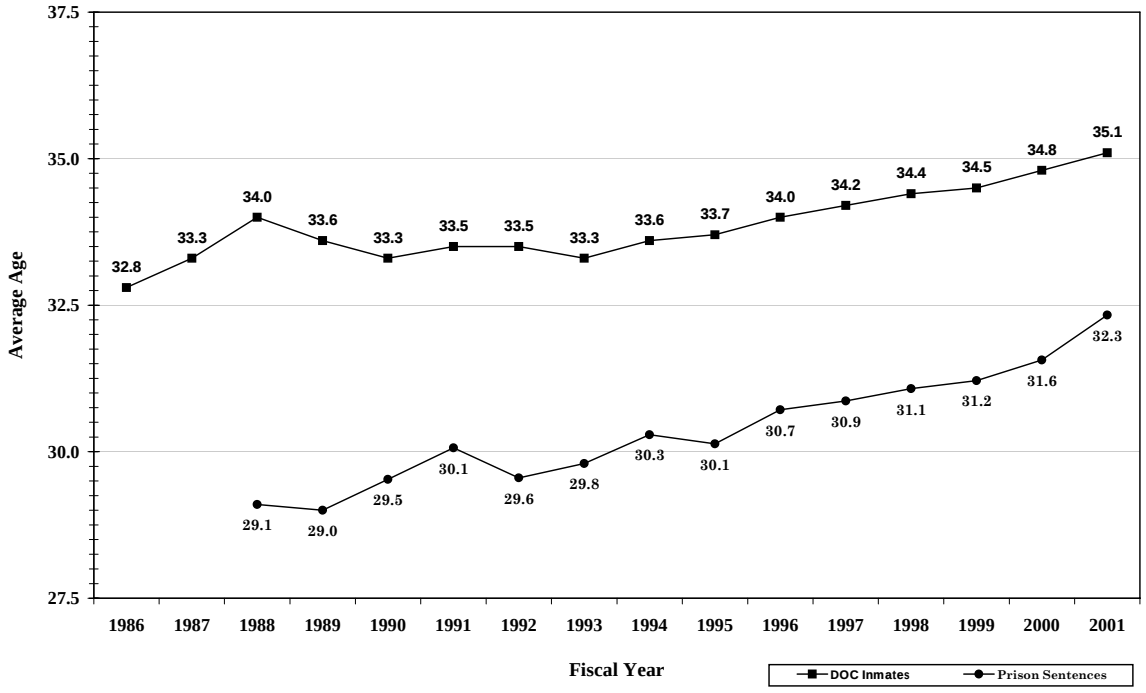
RECOMMENDATIONS – Juvenile Issues in Adult Sentencing

That the Legislature modify the automatic transfer policy to provide for a Youthful Offender Sentencing Alternative.

I. Aging Prison Population

In Washington, the average inmate age increased from twenty-nine in 1980 to thirty-five in 2001.[68] As the following chart demonstrates, the average age of Washington offenders has also steadily increased.

Figure 13
Department of Corrections and Sentencing Guidelines Commission
Average Inmate Age and Average Age at Sentence to Prison
Fiscal Years 1986 Through 2001



As of the date of this report, there were 415 inmates serving life without parole (LWOP) sentences. Roughly half of those offenders are over forty years old. While the elderly prison population is presently manageable, its growth rate is daunting. Nationally, by 2010, 33% of inmates will be fifty or older.[69] The full impact of long sentences imposed during the last decade's tough on crime sentencing provisions has yet to be felt.

Opinions vary as to what constitutes "old" in prison. The Sentencing Guidelines Commission's Workgroup on Aged and Infirm Offenders developed a proposal for "emergency medical release" in 1998 by examining the population of fifty years and older. That group reasoned that inmates tend to become "elderly" earlier than their non-incarcerated counterparts and when inmates are ill, they tend to be more severely stricken than others. The physical age of inmates tends to exceed chronological age by about ten years. Due to lifestyles and the stress

[68] Department of Corrections Office of Planning and Research
[69] Connie L. Neeley et al., Addressing the Needs of Elderly Offenders, Corrections Today, August 1997, at 120.

experienced living in prison, approximately 40% of male inmates have fair to poor health compared with 13% of non-incarcerated males. Whatever definition is used, the Commission found that the cost of incarcerating the elderly falls over four times above that of other inmates, $270 per day compared to $63.29 for an "ordinary inmate."[70] This discrepancy is even more troubling when weighed against minimal incapacitative benefit (except for certain types of sex offenders) and the likelihood of the loss of space needed for detaining higher risk offenders.

Not all elderly inmates are serving long sentences. Many were incarcerated for crimes recently committed (25% of elderly inmates nationally have been in prison for less than a year), and that trend is likely to continue as the proportion of elderly in society increases.[71] In Washington the number of offenders over fifty-five who receive prison sentences is increasing. Two hundred and seven offenders over fifty-five were sentenced to prison in 1995. In 2000, 329 offenders over fifty-five were imprisoned. To date in 2001, 322 older offenders have been imprisoned.

The United States Supreme Court interprets the American for Disability Act as applying to state prisons. As such, states must bear the cost of improvements to prison design to accommodate the elderly and employ prison personnel trained to handle the special needs of senior inmates. Disability or impairment, as covered by the ADA, includes physical and mental problems. Although elderly offenders are not necessarily ill, they are far more likely to be disabled, to become disabled, or to develop conditions that require special accommodation.[72] Some conditions such as hearing and visual impairments, diabetes, and mental diseases inevitably afflict the elderly.

The Department of Corrections operates the Ahtanum View Correctional Complex, a minimum-security institution of approximately 100 offenders that includes the "Assisted Living Facility." It houses the aged, disabled, and medically stable offenders who do not require extensive medical care.

State statute permits extraordinary medical placement of certain low risk, physically incapacitated offenders, in alternative community settings. Inmates serving life without parole sentences are not eligible for this placement. As of December 1, 2000, five offenders participated in the program with an additional nine approved pending a finding that they suffer "physical incapacitation." An equal number was denied placement. Because placement in alternative community settings relieves the Department of Corrections of health care costs, the five placements resulted in cost savings totaling $150,903. Health care expenses in the community placement are variously paid by family, the Veteran Administration and Medicaid.[73]

[70] "Cost Savings in State Corrections: Medical Treatment in the Community for Very Ill Offenders," Sentencing Guidelines Commission Report to the Legislature, December 1998.
[71] Bureau of Justice Statistics
[72] Ira P. Robbins, "*George Bush's America Meets Dante's Inferno: The Americans with Disabilities Act in Prison*." 15 Yale Law & Policy Review, 49, 66 (1996).
[73] "Addendum to the Secretary's Report on Chapter 324 Laws of 1999, Department of Corrections Report to the Legislature, January 2000.

KEY ISSUES --- Aging Prison Population

- While currently manageable, the growth rate of the elderly prison population is daunting. Older inmates are almost three times as expensive to house as are younger inmates. Furthermore, except for certain categories of sex offenders, there is minimal incapacitative benefit in incarcerating older offenders.

RECOMMENDATIONS – Aging Prison Population

Because current procedures appear to be adequate, the Commission does not recommend changes.

III. Appendix

A. Offenses Included in the Drug Grid

RCW	Offense	VUCSA Level
69.50.401(a)(1)(ii)	Delivery or Possession with Intent to Deliver Methamphetamine	3
69.50.401(a)(1)(ii)	Manufacture Methamphetamine	3
69.50.401(b)(1)(ii)	Create, Deliver, or Possess a Counterfeit Controlled Substance - Methamphetamine	3
69.50.406	Over 18 and Deliver Heroin, Methamphetamine, a Narcotic from Schedule I or II, or Flunitrazepam from Schedule IV to Someone Under 18	3
69.50.410	Selling for Profit (Controlled or Counterfeit) any Controlled Substance	3
69.50.415	Controlled Substance Homicide	3
69.50.440	Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with Intent to Manufacture Methamphetamine	3
*	Any VUCSA offense with a finding of a weapon	3
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule I and II (Except Heroin or Cocaine) or Flunitrazepam from Schedule IV	2
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine	2
69.50.401(a)(1)(ii)	Manufacture, Deliver, or Possess with Intent to Deliver Amphetamine	2
69.50.401(a)(1)(iii-v)	Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except Marijuana, Amphetamine, Methamphetamine, or Flunitrazepam)	2
69.50.401(b)(1)(i)	Create, Deliver, or Possess a Counterfeit Controlled Substance - Schedule I or II Narcotic	2
69.50.401(b)(1)(iii-v)	Create, Deliver, or Possess a Counterfeit Controlled Substance - Schedule III-V Narcotic or Schedule I-V Nonnarcotic	2
69.50.401(c)	Delivery of Material in Lieu of a Controlled Substance	2
69.50.401(f)	Involving a Minor in Drug Dealing	2
69.50.402(a)(6)	Maintaining a Dwelling for Controlled Substances	2
69.50.406	Over 18 and Deliver Narcotic from Schedule III-V, or a Nonnarcotic, except Flunitrazepam, from Schedule I-V to Someone Under 18 and 3 Years Junior	2
69.50.401(d)	Possession of Phencyclidine (PCP)	1
69.50.401(d)	Possession of Controlled Substance that is either Heroin or Narcotics from Schedule I or II or Flunitrazepam from Schedule IV	1
69.50.401(d)	Possession of Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine or Flunitrazepam) Excluding Marijuana	1
69.50.402	Dispensing Violation (VUCSA)	1
69.50.403	Obtain a Controlled Substance by Fraud or Forged Prescription	1
69.50.416	Controlled Substance Label Violation	1
69.50.401(a)(1)(iii)	Manufacture, Deliver, or Possess with Intent to Deliver Marijuana	1
69.50.401(d)	Possession of Controlled Substance - Marijuana	Unranked

B. Youthful Offender Sentencing Alternative[74]

(1) A offender who is convicted in adult criminal court pursuant to RCW 13.04.030(1)(v) of any charge other than Murder 1 or Murder 2, may be sentenced under the youthful offender sentencing alternative.

(2) In considering whether to impose the youthful offender sentencing alternative, the court shall consider relevant reports, facts, opinions and arguments justifying the imposition of the youthful offender sentencing alternative. The court shall consider the history, character, and condition of the offender, including the offender's sophistication and maturity, pattern of living, emotional and mental development. The court may impose a youthful offender sentencing alternative upon a finding that sentence would be in the best interest of the community.

(3) If a youthful offender sentencing alternative is imposed, the court shall:
   (a) Impose both an adult sentence and a sentence in the juvenile system at the time of sentencing.
   (b) Determine the adult sentence according to the sentencing reform act, RCW 9.94A.
   (c) Commit the offender to the custody of the Juvenile Rehabilitation Administration until age 21.
   (d) For cases involving serious violent offenses, order the offender transferred to the custody of the Department of Corrections at age 21 and committed to the Department of Corrections until age 25 or the length of the adult sentence, whichever is shorter.
   (e) Suspend the adult sentence on the condition of the offender's compliance with the terms of the youthful offender sentencing alternative sentence.

(4) The Juvenile Rehabilitation Administration shall submit annual reports on the offender's compliance with the terms of the youthful offender sentencing alternative to the court.

(5) If, at anytime while the offender is serving the youthful offender alternative sentence, the offender fails to make progress in rehabilitative programs made available to him or her, re-offends or constitutes a serious threat to the physical safety of others, the court may, upon its own motion or upon application by the Juvenile Rehabilitation Administration or the Department of Corrections, revoke the youthful offender sentencing alternative sentence and impose the suspended adult sentence. If the youthful offender sentencing alternative sentence is revoked, and the offender is at the Juvenile Rehabilitation Administration, the offender shall be transferred to the Department of Corrections to serve the adult sentence.

[74] *Draft 10/5/01*

(6) For cases that are not serious violent offenses, no sooner than three months before the offender's twenty-first birthday, the offender shall appear before the court to determine compliance with the youthful sentencing alternative sentence. Victims enrolled in the Victim Notification Program shall be notified of the hearing. Victims have the right to participate in the hearing in whatever manner they choose.
   a. If the court determines at the hearing that the offender has made progress in available rehabilitative programs, has not re-offended, and has not posed a serious threat to the physical safety of others, the court shall release the offender from the adult sentence and order Community Custody with the Department of Correction for up to 48 months.
   b. If the court determines at the hearing that the offender has not made progress in available rehabilitative programs, has re-offended, or has posed a serious threat to the physical safety of others, then the court shall revoke the youthful offender sentencing alternative and impose the suspended adult sentence.

(7) For cases involving serious violent offenses, the offender will remain at the Department of Corrections until age 25 or for the length of the adult sentence, whichever is shorter. No sooner than three months before the offender's 25th birthday or an expected release date, the offender shall appear before the sentencing court to determine compliance with the youthful sentencing alternative sentence. Victims enrolled in the Victim Notification Program shall be notified of the hearing. Victims have the right to participate in the hearing in whatever manner they choose.
   a. If the sentencing court determines at the hearing that the offender has made progress in available rehabilitative programs, has not re-offended, and has not posed a serious threat to the physical safety of others, the court may release the offender from the adult sentence and order Community Custody with the Department of Corrections for up to 48 months.
   b. If the court determines at the hearing that the offender has not made progress in available rehabilitative programs, has re-offended, or has posed a serious threat to the physical safety of others, then the court shall revoke the youthful offender sentencing alternative and impose the suspended adult sentence.

(8) If the offender is released from the adult portion of the sentence as provided in sections 6(a) or 7(a), then the matter will be considered a juvenile offense for all purposes.

(9) If the youthful offender sentencing alternative sentence is revoked the matter will be considered an adult conviction for all purposes. The offender shall be given credit for the time served while committed to the custody of the Juvenile Rehabilitation Administration and the Department of Corrections.

(10) The Department of Corrections and the Juvenile Rehabilitation Administration shall develop a system of shared information and resources for assessment and placement of offenders in Community Custody under section 6(a).

C. Criminal Justice Legislation With Significant Prison Impact

Fiscal Years 1986 Through 2000

SHB 1399 (1986)	• Include all adult priors in the offender score (previously, prior offenses served concurrently counted as one offense). • Juvenile Class A adjudication's are always counted. • Count attempted offenses the same as completed offenses (both for scoring and weapon enhancement). • Clarified several definitions.
SHB 684 (1987)	• All prior felonies score on current Escape I and II convictions (previously, only prior escapes were counted).
HB 1228 (1987)	• Eliminated the First-Time Offender Waiver options for drug dealing.
SHB 1333 (1988)	• Reclassified some sex offenses involving child victims, increased some of the penalties for these offenses, and created 2 new crimes involving older teenage victims.
SHB 1793 (1989)	• Dealing heroin or cocaine moved to Seriousness Level VIII (from Level VI). • For drug offenses, prior adult drug convictions count 3 points and prior juvenile drug adjudications count 2 points (previously, 2 for adult and 1 for juvenile). • A 24 month enhancement was added for dealing narcotics in a school zone.
SB 5233 (1989)	• Residential Burglary set as Seriousness Level IV (previously Level II). • Burglary of a non-residence set as Seriousness Level III (previously Level II).
SSB 6259 (1990)	• Expanded the sentencing grid to 15 levels, and increased the standard range for Assault 1 and various sex offenses. • Reduced good time for serious violent and Class A sex offenses from 33 percent to 15 percent of the sentence. • Increased offender scores for sex offenses by counting prior sex offenses as 3 points. • Required consecutive sentences for two or more serious violent offenses. • Increased the mandatory minimum term for Rape 1 from 3 years to 5 years. • Eliminated washout of juvenile sex offenses.

	• Prior violent juvenile offenses adjudicated on the same date now count separately if the offenses involved different victims. • Provides for a sexual motivation finding on any offense. • Created a process for civil commitment of certain sexual predators.
ESHB 1922 (1993)	• Provides a Work Ethic Camp of 120 - 180 days with 3-for-1 prison credit and community custody for the remaining time.
ESSHB 2319 (1994)	• Reckless Endangerment 1 set at Seriousness Level V (previously Level II). • Theft of a firearm created as a new felony at Seriousness Level V (previously charged as Theft 1 (Level II) or Theft 2 Level I). • Vehicular Homicide by intoxication raised to Seriousness Level IX. • 12 month deadly weapons enhancement extended to violent offenses not already eligible for an enhancement. • Adult criminal jurisdiction extended to 16-17 year old offenders for serious violent offenses or with violent offenses with certain criminal history.
I 593 (1994) (Initiative to the people)	• "3 Strikes You're Out" initiative provides for life sentences without parole for 3 separate convictions of "most serious offenses".
SHB 1549 (1995)	• Provides for in-prison substance abuse treatment for first-time narcotics dealers coupled with reduced prison terms and community custody.
I 159 (1995) (Initiative to the legislature)	• "Hard Time for Armed Crime" initiative increased penalties for armed crimes (especially firearms), extended the enhancements to all felonies, removed earned early release for the enhanced portion of the sentence, and required the enhancements to run consecutive to other sentence provisions. • Reckless Endangerment 1 re-ranked at Seriousness Level VII. • Unlawful Possession of a Firearm (Seriousness Level III) split into 1st degree (Level VII) and 2d degree (Level III). • Theft of a Firearm re-ranked to Seriousness Level VI. • Created Possession of a Stolen Firearm as a separate offense at Level V. • The definition of First Degree Burglary was changed to include residential burglaries committed while armed or with an assault.
3SHB 3900 (1997)	• Automatic decline to adult court for 16 or 17 year old offenders who commit a violent offense. • Removes age limitation for using juvenile adjudications to calculate offender score in adult court. • Removes age limitation for using juvenile adjudication to bar usage

	of the First-Time Offender Waiver.
HB 1924 (1997)	• Increases standard range for Rape 1 & 2, Rape of a Child 1 & 2, and Indecent Liberties with Forcible Compulsion.
SB 5509 (1997)	• Adds Rape of a Child 1, Child Molestation 1, Homicide by Abuse (with sexual motivation) , and Assault of a Child 1 (with sexual motivation) to the "two-strikes" list.
SHB 1176 (1997)	• Adds Rape of a Child 1 and 2 to the "two-strikes" list.
SB 5938 (1997)	• Manslaughter 1 is added to the definition of "serious violent offenses." • Standard sentence increased for Manslaughter 1 & 2. • The top of the standard range for Murder 2 was raised.
HB 2628 (1998)	• Increase standard range for manufacture of methamphetamine.
ESB 6139 (1998)	• Increase standard range for manufacture, delivery, or possession with intent to deliver amphetamine.
ESSB 6166 (1998)	• Vehicular Homicide sentence enhanced by two years for each prior offense.
ESB 5695 (1998)	• Amendments to firearms enhancements.
E2SSB 5421 (1999)	• Sex offender release triage.
SSB 5011 (1999)	• Mentally Ill offender release triage.
HB1544A (1999)	• Ranking of certain unranked offenses.
HB 1006 (1999)	• Changes to eligibility for Work Ethic Camp and the Drug Offender Sentencing Alternative.
E2SSB 5421(1999)	• The Supervision of Offenders in the Community
3ESSB 6151 (2001)	• Indeterminate sentencing for certain sex offenders

Note: This list is intended to briefly summarize legislation with significant prison impact. It is not a list of all significant criminal justice legislation, nor does this list necessarily include all important provisions of the legislation cited. Beginning in 1997, bills with a relatively small impact are included.

D. Summary of Three-Strike and Two-Strike Sentences

Three-Strike Sentences Through Fiscal Year 2000

Summary of Conviction by County		
Asotin	1	1%
Benton	1	1%
Clallam	4	2%
Clark	7	4%
Cowlitz	3	2%
Grant	3	2%
King	58	34%
Kitsap	3	2%
Lewis	1	1%
Mason	1	1%
Pacific	2	1%
Pierce	38	22%
Skagit	2	1%
Snohomish	22	13%
Spokane	9	5%
Stevens	1	1%
Thurston	5	3%
Walla Walla	2	1%
Whatcom	5	3%
Yakima	5	3%
Total	173	100%

Summary by Race		
Asian	1	1%
Black	64	37%
Hispanic	7	4%
Native Am.	5	3%
White	96	55%
Total	173	100%

Summary by Sex		
Male	170	98%
Female	3	2%
Total	173	100%

Summary by Current Offense		
Aggravated Murder 1	1	1%
Arson 1	3	2%
Assault 1	7	4%
Assault 1 (Attempt)	1	1%
Assault 2	15	9%
Burglary 1	8	5%
Child Molestation 1	5	3%
Child Molestation 2	1	1%
Child Molest 1 (Attempt)	1	1%
Drug Del Level 8 w/FA	1	1%
Indecent Lib w/Force	1	1%
Kidnapping 1	6	3%
Murder 1	14	8%
Murder 1 (Attempt)	2	1%
Murder 2	5	3%
Murder 2 (Attempt)	1	1%
Rape 1	8	5%
Rape 1 (Attempt)	2	1%
Rape 2	2	1%
Rape 2 (Attempt)	1	1%
Rape 3	1	1%
Rape of a Child 1	6	3%
Rape of a Child 2	1	1%
Rape of a Child 2(Att)	1	1%
Robbery 1	31	18%
Robbery 1 (Attempt)	4	2%
Robbery 2	39	23%
Robbery 2 (Attempt)	3	2%
Vehicular Assault	1	1%
Vehicular Homicide	1	1%
Total	173	100%

Average Age	38

Jury Trial		
Yes	127	73%
No	46	27%
Total	173	100%

Summary by Prior Offenses		
Aggravated Assault	1	0.3%
Aggravated Murder	1	0.3%
Arson 1	1	0.3%
Assault	8	2.3%
Assault 1	9	2.6%
Assault 1(Attempt)	1	0.3%
Assault 2	55	15.9%
Assault 2 (Attempt)	2	0.6%
Assault w/Sex Mot	1	0.3%
Assault 2 w/Sex Mot	2	0.6%
Burglary 1	12	3.5%
Burglary 1 (Attempt)	1	0.3%
Child Molestation 1	3	0.9%
Child Molestation 2	3	0.9%
Child Molestation 2 (Attempt)	1	0.3%
Extortion 1	1	0.3%
Indecent Lib w/Force	5	1.4%
Indecent Lib w/o Force	1	0.3%
Indecent Liberties	1	0.3%
Kidnapping	1	0.3%
Kidnapping 2	2	0.6%
Manslaughter 1	1	0.3%
Manslaughter 1(Attempt)	1	0.3%
Murder (Attempt) w/FA	1	0.3%
Murder 1	3	0.9%
Murder 1 (Attempt)	1	0.3%
Murder 2	3	0.9%
Poss. of Meth w/FA	1	0.3%
Promote Prostitution 1	3	0.9%
Rape (Other)	4	1.2%
Rape 1	4	1.2%
Rape 1 (Attempt)	1	0.3%
Rape 2	5	1.4%
Rape 2 (Attempt)	1	0.3%
Rape 3	6	1.7%
Rape of a Child 1	2	0.6%
Robbery 1 (Attempt)	4	1.2%
Robbery (Other)	31	9.0%
Robbery 1	72	20.8%
Robbery 2	76	22.0%
Robbery 2 (Attempt)	10	2.9%
Sodomy	1	0.3%
Vehicular Assault	1	0.3%
Vehicular Homicide	1	0.3%
Vol. Manslaughter w/DWSE	1	0.3%
Total	346	100.0%

Note: Not all prior offenses are shown.

***** Was sentenced twice as a persistent offender.

****** Separate convictions in separate states.

******* Conviction overturned by Court of Appeals.

Two-Strike Sentences Through Fiscal Year 2000

Summary by County of Conviction		
Clallam	1	5%
King	7	37%
Kitsap	1	5%
Lewis	1	5%
Pierce	4	21%
Skagit	1	5%
Spokane	2	11%
Yakima	2	11%
Total	19	100%

Summary by Current Offense		
Child Molestation 1	3	17%
Att Child Molestation 1	1	6%
Indecent Liberties	3	17%
Kidnap 1 w/Sex Motivation	1	6%
Rape of a Child 1	4	22%
Rape 1	2	11%
Rape 2	4	22%
Total	18	100%

Summary by PRIOR Offenses:		
Lewd & Lascivious Conduct - Out-of-State	1	8%
Rape 1 (Attempt)	1	8%
Rape 1	5	42%
Rape of Child 1	1	8%
Rape 2	4	33%
Total	12	100%

Summary by Race		
Asian	0	0%
Black	8	42%
Hispanic	0	0%
Native American	0	0%
White	11	58%
Total	19	100%

Average Age	44

Jury Trial		
Yes	15	79%
No	4	21%
Total	19	100%

Summary by Sex		
Male	19	100%
Female	0	0%
Total	19	100%

Not all prior offenses are shown. Prior "Strikes" are determined from history listed on the Judgment and Sentence form.
Not all data is listed on the Judgment and Sentence form. Additional data obtained from Department of Corrections.

E. Disproportionality in Adult Felony Sentencing in Washington State

Adult Felony Sentencing Rates Per 10,000 Population
County/Region by Gender and Race/Ethnicity
Fiscal Year 2000

County/Region	African American	Asian/Pacific Islander	Caucasian	Hispanic	Native American	Total
Male						
King	523.3	31.3	44.9	95.6	189.9	72.0
Pierce	469.4	60.4	121.4	148.0	259.4	146.2
Snohomish	291.5	21.2	58.0	59.4	110.7	61.3
Spokane	645.3	36.0	70.9	74.5	234.1	83.7
Clark	446.4	52.9	97.0	166.1	296.1	106.0
Kitsap	360.3	66.1	87.6	76.5	105.2	95.5
Yakima	479.7	75.3	96.1	192.5	224.9	134.9
Thurston	399.0	58.8	129.0	180.1	211.3	136.6
Whatcom	460.7	136.9	57.9	177.9	264.3	73.9
Benton/Franklin	539.0	28.1	108.5	135.7	100.4	117.4
Northwest	70.2	41.3	67.9	143.2	124.1	72.8
Southwest	867.1	78.5	143.4	312.9	164.2	153.5
Southeast	309.1	10.5	74.7	134.1	261.7	87.4
Northeast	939.6	29.6	81.6	185.4	154.1	97.5
Total	475.4	37.9	77.7	139.6	187.5	94.5
Female						
King	119.4	4.9	9.3	10.6	48.3	14.4
Pierce	145.9	9.5	32.8	15.0	74.4	37.5
Snohomish	88.9	2.8	14.0	3.7	41.3	14.1
Spokane	100.9	7.9	12.7	6.0	78.2	14.1
Clark	134.9	6.3	28.1	18.6	73.5	28.6
Kitsap	187.9	9.6	24.8	29.2	25.6	27.4
Yakima	108.7	46.2	24.3	30.8	89.1	29.4
Thurston	103.8	11.7	33.0	21.7	29.9	32.5
Whatcom	37.9	14.7	12.8	16.6	50.8	14.0
Benton/Franklin	251.7	6.4	35.5	29.0	152.8	36.9
Northwest	93.0	15.7	16.1	15.5	37.6	17.0
Southwest	411.0	14.3	35.8	44.4	51.4	36.9
Southeast	180.9	0.0	16.4	9.1	56.1	16.5
Northeast	609.8	34.3	20.6	22.0	33.8	22.0
Total	129.6	6.6	19.2	18.2	55.5	21.8
Total						
King	326.2	17.3	26.8	58.1	118.4	42.8
Pierce	321.8	30.4	76.4	86.9	162.5	91.0
Snohomish	215.7	11.2	35.7	34.3	75.1	37.5
Spokane	452.8	19.8	40.7	42.2	154.5	47.7
Clark	310.7	27.4	61.7	99.6	180.2	66.5
Kitsap	292.7	32.1	56.5	54.5	64.9	61.7
Yakima	314.5	58.9	58.5	116.7	152.8	81.4
Thurston	283.8	31.3	79.0	104.1	120.2	82.5
Whatcom	318.5	71.2	34.7	103.4	156.9	43.2
Benton/Franklin	409.6	16.7	71.2	86.6	116.9	77.2
Northwest	76.4	25.4	41.6	87.0	80.2	44.6
Southwest	690.3	41.3	88.1	204.7	106.9	94.0
Southeast	269.4	5.1	45.0	78.4	159.8	52.0
Northeast	822.5	32.6	50.2	113.4	92.9	59.2
Total	318.8	20.8	47.8	84.7	120.6	57.6