

Felony Sex Offenses Handout – for 9/7/23 Meeting

Offense category: Rape and indecent liberties

Crime	Class	Current Level	Proposed Level	Notes	Draft Recommendation:
Rape 1	A	XII (93-123) low: 93 high: 319	XIII (70-117) low: 70 high: 260 XIV (101-135) low: 101 high: 300	Highly traumatic, violent offenses with serious harm caused to victims; high seriousness level of offense	
Rape 2	A	XI (78-102) low: 78 high: 280	XII (60-101) low: 60 high: 225 XIII (70-117) low: 70 high: 260		
Rape 3	C	V (6-12) low: 6 high: 96	V (3-12) low: 3 high: 60	Moving to a SL 6 would require Rape 3 to be changed to a Class B Offense; ISRB oversees many individuals convicted of Rape 3 Ideas: Could make recommendation of 12-20, effect would be 45-60 on high end of range	
Indecent Liberties w/Forcible Compulsion	A	X (51-68) low: 51 high: 198	X (41-69) low: 41 high: 155 XI (51-85) low: 51 high: 190	Forcible compulsion: Using sufficient force to overcome resistance. This offense is not eligible to be sealed (juvenile).	
Indecent Liberties w/out Forcible Compulsion	B	VII (15-20) low: 15 high: 116	VI (12-20) low: 12 high: 75 VII (14-24) low: 14 high: 90		

Offense category: Child rape and molestation

Crime	Class	Current Level	Proposed Level	Notes	Draft Recommendation
Rape of a Child 1	A	XII (93-123) low: 93 high: 318	XIII (70-117) low: 70 high: 260 XIV (101-135) low: 101 high: 300	Some of the most serious crimes; victims in these cases are under 12 Initial thoughts: moving to SL 14 to make it comparable to a very serious offense; needs to move up; don't believe we should go below the current length of time (new grid as it reads currently is approximately 2 years less than current grid sentence length); something less than Rape 1 since it's not the same as Rape 1;	
Rape of a Child 2	A	XI (78-102) low: 78 high: 280	XII (60-101) low: 60 high: 225 XIII (70-117) low: 70 high: 260		
Rape of a Child 3	C	V (6-12) low: 6 high: 102	V (3-12) low: 3 high: 60		
Child Molestation 1	A	X (51-68) low: 51 high: 198	X (41-69) low: 41 high: 155 XI (51-85) low: 51 high: 190	Victims are under the ages of 12; perpetrator must be 24 months older than the victim	
Child Molestation 2	B	VII (15-20) low: 15 high: 116	VII (14-24) low: 14 high: 90	Victims are ages 12 and 13; perpetrator must be 36 months older than the victim	
Child Molestation 3	C	V (6-12) low: 6 high: 102	V (3-12) low: 3 high: 60	Victims are ages 14 and 15 (less than 16yrs); perpetrator must be 48 months older than the victim	

Offense category: Exploitation offenses

Crime	Class	Current Level	Proposed Level	Notes	Draft Recommendation:
Promoting commercial sexual abuse of a minor	A	XII (93-123) low: 93 high: 318	V (3-12) low: 3 high: 60		
Commercial sexual abuse of a minor	B	VIII (21-27) low: high:	VII (14-24) low: 14 high: 90		Initial thoughts to move up to SL 8 or 9 due to the seriousness of this offense
Sexual exploitation of a minor	B	IX (31-41) low: 31 high: 171	IX (19-33) low: 19 high: 120 X (41-69) low: 41 high: 155		
Communication with a Minor for Immoral Purposes	C	III (1-3) low: 1 high: 68	II (0-3) low: 0 high: 28 III (2-7) low: 2 high: 39		
Promoting travel for commercial sexual abuse of a minor	E	Unranked		Unranked felony. Out of scope of project.	

Offense category: Depiction offenses

Crime	Class	Current Level	Proposed Level	Notes	Draft Recommendation:
Sending, Bringing into the state depictions of minors 1	B	VII (15-20) low: 15 high: 116	VII (14-24) low: 14 high: 90		
Sending, Bringing into the state depictions of minors 2	B	V (6-12) low: 6 high: 96	V (3-12) low: 3 high: 60		

Dealing in depictions of minors 1	B	VII (15-20) low: 15 high: 116	VII (14-24) low: 14 high: 90		
Dealing in depictions of minors 2	B	V (6-12) low: 6 high: 96	V (3-12) low: 3 high: 60		
Possession of depictions of minors 1	B	VI (12+-14) low: 12.05 high: 102	VI (12-20) low: 12 high: 75		
Possession of depictions of minors 2	B	IV (3-9) low: 3 high: 68	IV (2-9) low: 2 high: 49		
Viewing depictions of minors 1	B	IV (3-9) low: 3 high: 68	IV (2-9) low: 2 high: 49		
Viewing depictions of minors 2	E	Unranked.		Unranked felony. Out of scope of project.	

Offense category: Custodial offenses

Crime	Class	Current Level	Proposed Level	Notes	Draft Recommendation:
Incest 1	B	VI (12+-14) low: 12.05 high: 102	VI (12-20) low: 12 high: 75		
Incest 2	C	V (6-12) low: 6 high: 96	V (3-12) low: 3 high: 60		
Custodial sexual misconduct 1	C	V (6-12) low: 6 high: 96	V (3-12) low: 3 high: 60		

Offense category: Miscellaneous offenses

Crime	Class	Current Level	Proposed Level	Notes	Draft Recommendation:
Sexually violating human remains	C	V(6-12) low: 6			

		high: 96			
Sexual misconduct with a minor 1	C	V(6-12) low: 6 high: 96	V (3-12)		
Voyeurism	C	II (0-90 days) low: 0 high: 57	II (0-3)		
Failure to Register as a Sex Offender (Second Violation Committed on or after 6/10/2010)	C	II(0-90 days) low: 0 high: 57			
Failure to Register as a Sex Offender (Third or Subsequent Violation Committed on or after 6/10/2010)	B	II(0-90 days) low: 0 high: 57			
Assault 2 w/sexual motivation				Other subcommittee handling this offense.	
Kidnap 2 with a finding of sexual motivation				Other subcommittee handling this offense.	

Ideas/Thoughts/Notes brainstormed at the 8/3/23 Meeting:

- Most sex offenses are not identified as violent.
- Can look at “repeat” column if it’s felt strongly that the offense should be in the repeat/DV column.
 - o Potentially make recommendation to add sex offenses to this column

SOPB Offense Ranking Review

Important concepts for review:	4
Voyeurism 1 (SL 2, Class C):.....	5
Keep at SL 2:.....	5
Move to SL 3:.....	5
Move to SL 4:.....	5
FTR as SO second violation on or after 6/10/2010 (SL2, Class C):	7
Keep at SL 2:.....	7
Move to SL 3:.....	7
Move to SL 4:.....	7
FTR as SO third or subsequent violation on or after 6/10/2010 (SL2, Class B):.....	8
Keep at SL 2:.....	8
Move to SL 3:.....	8
Move to SL 4:.....	9
Comm w/ Minor for immoral purposes, second or prior sex offense (SL3, Class C):.....	10
Keep at SL 3:.....	10
Move to SL 4:.....	10
Move to SL 5:.....	10
Viewing depictions of minor engaged in sexually explicit conduct 1 (SL4, Class B):.....	11
Keep at SL 4:.....	11
Move to SL 5:.....	11
Move to SL 6:.....	11
Possession of Depictions of Minor engaged in sexually explicit conduct 2 (SL4, Class B*):	12
Keep at SL 4:.....	12
Move to SL 5:.....	12
Move to SL 6:.....	12
Sexually Violating Human Remains (SL 5, Class C):	13
Keep at SL 5:.....	13
Move to SL 6 and Make Class B:.....	13
Sexual Misconduct with a Minor (SL 5, Class C):.....	14
Keep at SL 5:.....	14
Move to SL 6 and Make Class B:.....	14
Move to SL 7 and Make Class B:.....	14
Child Molestation 3 (SL 5, Class C):	15
Keep at SL 5:.....	15
Move to SL 6 and Make Class B:.....	15

Move to SL 7 and Make Class B:.....	15
Rape 3 (SL 5, Class C):.....	16
Keep at SL 5:.....	16
Move to SL 6 and Make Class B:.....	16
Move to SL 7 and Make Class B:.....	16
Incest 2 (SL 5, Class C):.....	17
Keep at SL 5:.....	17
Move to SL 6 and Make Class B:.....	17
Sending, Bringing into the state depictions of minor engaged in sexually explicit conduct 2 (SL 5, Class B):.....	18
Keep at SL 5:.....	18
Move to SL 6:.....	18
Custodial Sexual Misconduct 2 (SL 5, Class C):.....	19
Keep at SL 5:.....	19
Move to SL 6 and Make Class B:.....	19
Rape of a Child 3 (SL 6, Class C):.....	20
Keep at SL 6 and Make Class B:.....	20
Move to SL 5 and Keep Class C:.....	20
Possession of depictions of minor engaged in sexually explicit conduct 1 (SL 6, Class B):.....	21
Keep at SL 6:.....	21
Move to SL 7:.....	21
Incest 1 (SL 6, Class B):.....	22
Keep at SL 6:.....	22
Move to SL 7:.....	22
Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 1 (SL 7, Class B):.....	23
Keep at SL 7:.....	23
Move to SL 8:.....	23
Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 1 (SL 7, Class B):.....	24
Keep at SL 7:.....	24
Move to SL 8:.....	24
Custodial Sexual Misconduct 1 (SL 7*, Class B):.....	25
Keep at SL 7:.....	25
Move to SL 8:.....	25
Indecent liberties (without forcible compulsion) (SL 7, Class B):.....	26
Keep at SL 7:.....	26
Move to SL 8:.....	26
Move to SL 9:.....	27
Child Molestation 2 (SL 7, Class B):.....	28

Keep at SL 7:.....	28
Move to SL 8:.....	28
Move to SL 9:.....	28
Commercial Sex Abuse of a Minor (SL 8, Class B):	29
Keep at SL 8:	29
Move to SL 9:.....	29
Sexual Exploitation of a Minor (SL 9, Class B):	30
Keep at SL 9:.....	30
Move to SL 10 and Make Class A:	30
Indecent Liberties w/ forcible compulsion (SL 10, Class A):.....	31
Keep at SL 10:	31
Move to SL 11:.....	31
Child Molestation 1 (SL 10, Class A):.....	32
Keep at SL 10:	32
Move to SL 11:.....	32
Rape of a Child 2 (SL 11, Class A):	33
Keep at SL 11:	33
Move to SL 12:.....	33
Rape 2 (SL 11, Class A):	34
Keep at SL 11:	34
Move to SL 12:.....	34
Move to SL 13:.....	34
Promoting Commercial Sexual Abuse of a Minor (SL 12, Class A):	36
Keep at SL 12:	36
Move to SL 13:.....	36
Move to SL 14:.....	36
Rape 1 (SL 12, Class A):	38
Keep at SL 12:	38
Move to SL 13:.....	38
Move to SL 14:.....	Error! Bookmark not defined.
Rape of a Child 1 (SL 12, Class A):	39
Keep at SL 12:	39
Move to SL 13:.....	39
Move to SL 14:.....	39

Important concepts for review:

- Statutory maximums:
 - The legislature has decided that there is a maximum punishment that should be applied based on felony classes. That is, they have decided the maximum appropriate punishment. Thus, the statutory maximum is for the worst of the worst cases.
 - Class A: life in prison
 - Class B: 120 months
 - Class C: 60 months
 - All offenses are grouped into these three large categories. With hundred of offenses, there is wide variance in the relative seriousness/severity of offenses. The sentencing guidelines are intended to differentiate that seriousness in more refined groups – those are **seriousness levels**.
 - Starting from the top in each category, the new grid applies the statutory maximum to the cases that are presumably the worst of the worst – that is, the most serious offenses within the class and individuals with the longest criminal histories.
 - From there, the new grid assumes that relative seriousness decreases by row and the relative risk decreases with each reduction in criminal history score. Thus, the maximum punishment decreases as you move down and as you move to the left in a systematic way.
- Guideline ranges
 - Ranges are intended to reflect the *average* case.
 - Exceptional cases, either mitigated or aggravated, should be addressed through other means including **enhancements** and downward or upward **departures**.
 - More serious cases are also likely to involve multiple charges which may be sentenced consecutively rather than concurrently to account for the cumulative seriousness of the case.
 - Ranges represent “bounded rationality” – that is, they provide a range with which judges may exert discretion to differentiate between cases, with more serious cases that do not meet the threshold of being “aggravated” to be sentenced higher in the range and other cases that are relatively less serious but do not meet the threshold of “mitigated” to be sentenced lower in the range.
 - Throughout the proposed grid, it is important to look both at changes in the minimum and maximum. In many cases, the ranges widened. That is, the maximum may increase, but the minimum may also decrease.

Voyeurism 1 (SL 2, Class C):

(1) As used in this section:

- (a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;
- (b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;
- (c) "Place where he or she would have a reasonable expectation of privacy" means:
 - (i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or
 - (ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;
- (d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;
- (e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2)(a) A person commits the crime of voyeurism in the first degree if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

- (i) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or
- (ii) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(b) Voyeurism in the first degree is a class C felony.

Sentences 2010-2019: 158 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	1.6	2.6	5.5	7.5	12.1	17.5	19.6	26.0	39.7	48.8										
Number of Sent	76	8	6	26	10	4	10	4	3	11										
Current SL2	0	3	2	6	3	9	4	12	12.03	14	14	18	17	22	22	29	33	43	43	57
Proposed SL2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28
Proposed SL3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49

Keep at SL 2:

- **Average sentence exceeds** new range 6/10 columns (CHS 4-9+) (42 sentence, 27%)
- **Absolute minimum** stays at 0
- **Absolute maximum *decreases*** from 57 to 28
 - NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the new logic on the sentencing grid, the second row was not expected to max out at the statutory maximum.

Move to SL 3:

- **Average sentence exceeds** new range 2/10 columns (CHS 8-9+) (14 sentences; 9%)
- **Average sentence is below** new range 1/10 columns (CHS 0) (76 sentences; 48%)
- **Absolute minimum *increases*** from 0 to 2
- **Absolute maximum *decreases*** from 57 to 39
 - NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the new logic on the sentencing grid, the third row was not expected to max out at the statutory maximum.

Move to SL 4:

- **Average sentence exceeds** new range 0/10 columns
- **Average sentence is below** new range 2/10 columns (CHS 0 and 1) (53 sentences; 36%)
- **Absolute minimum *increases*** from 0 to 2
- **Absolute maximum *decreases*** from 57 to 49

- NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the new logic on the sentencing grid, the fourth row was not expected to max out at the statutory maximum.

FTR as SO second violation on or after 6/10/2010 (SL2, Class C):

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

- (i) It is the person's first conviction for a felony failure to register; or
- (ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state, or pursuant to federal law.

Sentences 2010-2019: 983 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	1.7	3.5	5.5	5.0	12.1	14.4	17.7	22.7	33.4	44.7										
Number of Sent	4	11	6	25	137	145	135	137	103	280										
Current SL2	0	3	2	6	3	9	4	12	12.03	14	14	18	17	22	22	29	33	43	43	57
Proposed SL2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28
Proposed SL3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49

Keep at SL 2:

- **Average sentence exceeds** new range 6/10 times (SL 4-9+) (937 sentences)
- **Absolute minimum** stays at 0
- **Absolute maximum decreases** from 57 to 28
 - NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the application of new logic on the sentencing grid, the second row out of five was not expected to max out at the statutory maximum.

Move to SL 3:

- **Average sentence exceeds** new range 2/10 times (SL 8-9+) (383 sentences)
- **Average sentence is below** new range 1/10 times (SL 0) (4 sentences)
- **Absolute minimum increases** from 0 to 2
- **Absolute maximum decreases** from 57 to 39
 - NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the new logic on the sentencing grid, the third row was not expected to max out at the statutory maximum

Move to SL 4:

- **Average sentence is below** new range 1/10 times (SL 0) (4 sentences)
- **Absolute minimum increases** from 0 to 2
- **Absolute maximum decreases** from 57 to 49
 - NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the new logic on the sentencing grid, the fourth row was not expected to max out at the statutory maximum
- Range maximums increase in 8/10 cells (CHS 0-7)
- Range minimums increase in 4/10 cells (CHS 0-3)

Potential discussion points:

- Since failure to register necessarily means the individual has a prior conviction for something, a CHS of 0 is rare.
- CSTF discussed the possibility of FTR no longer being classified as a sex offense and the various reasons this occurs, for example, houselessness.
- Previous SOPB recommendation (2022):

- No. 15 (failure to register) “The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.”
- No. 16 (failure to register) “The SOPB recommends that for the crime of Failure to Register, defendants shall be given one year of community custody regardless of risk level for a first offense and two years of community custody for subsequent offenses.”
- No. 17 (failure to register) “The SOPB recommends that Failure to Register offenses should not be defined as a “sex offense” under RCW 9A.44.128 of 9.94A.030. Under current law the second offense of Failure to Register and thereafter are defined as “sex offenses.””
- No. 18 (failure to register) “The SOPB recommends that Failure to Register should be classified as a “disqualifying offense” as defined in RCW 9A.44.128, which would restart the waiting periods for relief from registration for a conviction.”
- No. 19 (failure to register) “The SOPB recommends that individuals under the jurisdiction of the Department of Corrections for a Failure to Register offense, whether they are in the community or still in prison, be assessed to identify the individual’s barrier(s) to registration compliance and provided with resources and tools to support compliance and improve functioning in the community, including housing, vocational rehabilitation, treatment as necessary, and community supports. The SOPB specifically endorses the use of navigators or other specialized corrections approaches in meeting the needs of this population.”
- No. 20 (failure to register) “The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs (WASPC) review the Model Policy for Washington Law Enforcement regarding Adult and Juvenile Sex Offender Registration and Community Notification (4.24.5501) to identify opportunities to utilize technology to streamline initial and ongoing registration processes.”

FTR as SO third or subsequent violation on or after 6/10/2010 (SL2, Class B):

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state, or pursuant to federal law, on two or more prior occasions, the failure to register under this subsection is a class B felony.

Sentences 2010-2019: 816 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	0.7	4.0	0.0	7.2	12.0	14.0	17.1	22.3	32.9	43.2										
Number of Sent	1	1	0	9	5	33	87	81	100	499										
Current SL2	0	3	2	6	3	9	4	12	12.03	14	14	18	17	22	22	29	33	43	43	57
Proposed SL2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	28
Proposed SL3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49

Keep at SL 2:

- **Average sentence exceeds** new range 6/9 times (SL 4-9+) (805 sentences)
- **Absolute minimum** stays at 0
- **Absolute maximum decreases** from 57 to 28

Move to SL 3:

- **Average sentence exceeds** new range 1/9 times (SL 9+) (499 sentences)
- **Average sentence is below** new range 1/9 times (SL 0) (1 sentence)
- **Absolute minimum increases** from 0 to 2
- **Absolute maximum decreases** from 57 to 39

Move to SL 4:

- **Average sentence** is below new range 1/9 times (SL 0) (1 sentence)
- **Absolute minimum** *increases* from 0 to 2
- **Absolute maximum** *decreases* from 57 to 49
- Range maximums increase in 8/10 cells (CHS 0-7) (217 sentences)
- Range minimums increase in 4/10 cells (CHS 0-3) (11 sentences)

Potential discussion points:

- Since failure to register 2+ necessarily means the individual has 2+ prior convictions, a CHS of 0, 1 or 2 is rare.
- CSTF discussed the possibility of FTR no longer being classified as a sex offense and the various reasons this occurs, for example, houselessness.
- As a class B, the statutory max for third and subsequent FTR is 120 months.

Comm w/ Minor for immoral purposes, second or prior sex offense (SL3, Class C):

2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.

Sentences 2010-2019: 414 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	1.9	6.6	7.9	10.3	13.2	20.0	26.0	43.3	50.3	55.9										
Number of Sent	166	90	17	51	16	12	20	12	3	27										
Current SL3	1	3	3	8	4	12	9	12	12.03	16	17	22	22	29	33	43	43	57	51	68
Proposed SL3	2	7	2	9	3	11	4	13	4	16	5	19	6	23	8	27	10	33	11	39
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60

Keep at SL 3:

- **Average sentence exceeds** new range 5/10 times (CHS 5-9+) (74 sentences, 18%)
- **Average sentence below** new range 1/10 time (CHS 0) (166 sentences, 40%)
- **Absolute minimum increases** from 1 to 2
- **Absolute maximum decreases** from 60 (stat max) to 39
 - NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the application of new logic on the sentencing grid, the third row out of five was not expected to max out at the statutory maximum.

Move to SL 4:

- **Average sentence exceeds** new range 3/10 times (CHS 7-9+) (42 sentences, 10%)
- **Average sentence below** new range 1/10 time (CHS 0) (166 sentences, 40%)
- **Absolute minimum increases** from 1 to 2
- **Absolute maximum decreases** from 60 (stat max) to 49
 - NOTE: statutory maximum for class C offenses is 60 months. There are 5 rows of class C offenses. Given the application of new logic on the sentencing grid, the fourth row out of five was not expected to max out at the statutory maximum.

Move to SL 5:

- **Average sentence exceeds** new range 0/10 times
- **Average sentence below** new range 1/10 time (CHS 0) (166 sentences, 40%)
- **Absolute minimum increases** from 1 to 3
- **Absolute maximum stays** at 60 (stat max)
- Range maximums increase in 7/10 cells (CHS 0-6) (372 sentences, 90%)
- Range minimums increase in 3/10 cells (CHS 0-2) (273 sentences, 66%)

Potential discussion points:

- CMIP is also used in Net Nanny cases (fictitious victim sting operations)
- About half of all CMIP convictions during the timeframe were associated with other, more serious offenses. 841 total convictions, only 414 where CMIP was most serious.

Viewing depictions of minor engaged in sexually explicit conduct 1 (SL4, Class B):

(1) Except as provided in subsections (5) and (6) of this section, a person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.

Sentences 2010-2019: 20 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	3.5	6.0	0.0	14.2	0.0	29.0	24.0	40.4	0.0	73.5										
Number of Sent	6	1	0	5	0	1	3	2	0	2										
Current SL4	3	9	6	12	12.03	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

Keep at SL 4:

- **Average sentence exceeds** new range 3/7 times (CHS 5, 7, 9+) (5 sentences, 25%)
- **Average sentence below** new range 0/7 times
- **Absolute minimum decreases** from 3 to 2
- **Absolute maximum decreases** from 84 to 49

Move to SL 5:

- **Average sentence exceeds** new range 1/7 times (CHS 9+) (2 sentences, 10%)
- **Average sentence below** new range 0/7 times
- **Absolute minimum stays** at 3
- **Absolute maximum decreases** from 84 to 60

Move to SL 6:

- **Average sentence exceeds** new range 0/7 times
- **Average sentence below** new range 4/7 times (CHS 0, 1, 3, 6) (15 sentences, 75%)
- **Absolute minimum increases** from 3 to 12
- **Absolute maximum decreases** from 84 to 75
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has two cells that are presumptive jail – CHS 0 and 1
- Very small sample size – no sentences in CHS 2, 4, or 8

Possession of Depictions of Minor engaged in sexually explicit conduct 2 (SL4, Class B*):

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

Changed from Class C to Class B in 2017

Sentences 2010-2019: 5 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	9.0	0.0	0.0	12.5	0.0	0.0	36.0	0.0	0.0	75.0										
Number of Sent	1	0	0	2	0	0	1	0	0	1										
Current SL4	3	9	6	12	12.03	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
Proposed SL4	2	9	3	11	4	14	5	17	6	20	7	24	8	29	10	35	12	42	14	49
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

Keep at SL 4:

- **Average sentence exceeds** new range 2/4 times (CHS 6, 9+) (2 sentences, 40%)
- **Average sentence below** new range 0/4 times
- **Absolute minimum decreases** from 3 to 2
- **Absolute maximum decreases** from 84 to 49

Move to SL 5:

- **Average sentence exceeds** new range 2/4 times (CHS 6, 9+) (2 sentences, 40%)
- **Average sentence below** new range 0/4 times
- **Absolute minimum stays** at 3
- **Absolute maximum decreases** from 84 to 60

Move to SL 6:

- **Average sentence exceeds** new range 0/4 times
- **Average sentence below** new range 2/4 times (CHS 0, 3) (3 sentences, 60%)
- **Absolute minimum increases** from 3 to 12
- **Absolute maximum decreases** from 84 to 75
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has two cells that are presumptive jail – CHS 0 and 1
- Very small sample size – no sentences in CHS 1, 2, 4, 5, 7, 8 where offense was most serious offense
- Total of 332 adult convictions, but only 5 where it was the most serious offense, so appears likely to be charged with other, more serious offenses.
- Reclassed from class C to class B in 2017, but no associated change in rank, so unlikely to affect number of cases where it is the most serious offense.

Sexually Violating Human Remains (SL 5, Class C):

(1) Any person who has sexual intercourse or sexual contact with a dead human body is guilty of a class C felony.

(2) As used in this section:

(a) "Sexual intercourse" (i) has its ordinary meaning and occurs upon any penetration, however slight; and (ii) also means any penetration of the vagina or anus however slight, by an object, when committed on a dead human body, except when such penetration is accomplished as part of a procedure authorized or required under chapter 68.50 RCW or other law; and (iii) also means any act of sexual contact between the sex organs of a person and the mouth or anus of a dead human body.

(b) "Sexual contact" means any touching by a person of the sexual or other intimate parts of a dead human body done for the purpose of gratifying the sexual desire of the person.

Sentences 2010-2019: 0 most serious offense

	0		1		2		3		4		5		6		7		8		9+	
Avg Sent (mos)																				
Number of Sent																				
Current SL5	6	12	12.03	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

Keep at SL 5:

- **Absolute minimum** *decreases* from 6 to 3
- **Absolute maximum** *stays* at 60 – stat max.
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.

Move to SL 6 and Make Class B:

- **Absolute minimum** *increases* from 6 to 12
- **Absolute maximum** *increases* from 60 to 75
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 4/10 cells (CHS 0-3)
- **Range maximums** increase in 8/10 cells (CHS 0-4 and 7-9+)
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has one cell that are presumptive jail – CHS 0
- No standard sentences for this offense as most serious offense. Only 2 convictions otherwise.
- Under current grid, maximum sentence for CHS 7, 8, and 9+ are all 6 months. CHS 8 and 9+ are automatically stat max.

Sexual Misconduct with a Minor (SL 5, Class C):

1) A person is guilty of sexual misconduct with a minor in the first degree when:

(a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim;

(b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old, if the employee is at least sixty months older than the student; or

(c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

Sentences 2010-2019: 25 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	8.8	15.0	0.0	16.9	29.0	0.0	48.0	0.0	0.0	60.0										
Number of Sent	10	2	0	8	1	0	1	0	0	3										
Current SL5	6	12	12.03	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90

Keep at SL 5:

- **Average sentence exceeds** new range 3/6 times (CHS 1, 4, 6) (4 sentences, 16%)
- **Average sentence below** new range 0/6 times
- **Absolute minimum decreases** from 6 to 3
- **Absolute maximum stays** at 60 – stat max.
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.

Move to SL 6 and Make Class B:

- **Average sentence exceeds** new range 1/6 times (CHS 6) (1 sentences, 4%)
- **Average sentence below** new range 2/6 times (CHS 0 and 3) (18 sentences, 72%)
- **Absolute minimum increases** from 6 to 12
- **Absolute maximum increases** from 60 to 75
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 4/10 cells (CHS 0-3)
- **Range maximums** increase in 8/10 cells (CHS 0-4 and 7-9+)
- ALL sentences now prison sentences

Move to SL 7 and Make Class B:

- **Average sentence exceeds** new range 0/6 times
- **Average sentence below** new range 3/6 times (CHS 0, 1, and 3) (20 sentences, 80%)
- **Absolute minimum increases** from 6 to 14
- **Absolute maximum increases** from 60 to 90
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60
- **Range minimums** increase in 5/10 cells (CHS 0-4)
- **Range maximums** increase in 10/10 cells (due to change in stat max)
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has one cell that are presumptive jail – CHS 0
- Under current grid, maximum sentence for CHS 7, 8, and 9+ are all 6 months. CHS 8 and 9+ are automatically stat max.
- Changing to Class B has other implications, such as registration requirements.

Child Molestation 3 (SL 5, Class C):

(1) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and the perpetrator is at least forty-eight months older than the victim.

Sentences 2010-2019: 345 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	8.3	12.7	15.0	17.9	26.1	38.2	47.5	60.0	60.0	60.0										
Number of Sent	221	20	17	49	7	6	13	2	1	9										
Current SL5	6	12	12.03	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90

Keep at SL 5:

- **Average sentence exceeds** new range 5/10 times (CHS 4-8) (29 sentences, 8%)
- **Average sentence below** new range 0/10 times
- **Absolute minimum decreases** from 6 to 3
- **Absolute maximum stays** at 60 – stat max.
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.

Move to SL 6 and Make Class B:

- **Average sentence exceeds** new range 2/10 times (CHS 6 and 7) (15 sentences, 4%)
- **Average sentence below** new range 4/10 times (CHS 0 - 3) (307 sentences, 89%)
- **Absolute minimum increases** from 6 to 12
- **Absolute maximum increases** from 60 to 75
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 4/10 cells (CHS 0-3)
- **Range maximums** increase in 8/10 cells (CHS 0-4 and 7-9+)
- ALL sentences now prison sentences

Move to SL 7 and Make Class B:

- **Average sentence exceeds** new range 0/10 times
- **Average sentence below** new range 4/10 times (CHS 0 - 3) (307 sentences, 89%)
- **Absolute minimum increases** from 6 to 14
- **Absolute maximum increases** from 60 to 90
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 5/10 cells (CHS 0-4)
- **Range maximums** increase in 10/10 cells (due to change in stat max)
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has one cell that are presumptive jail – CHS 0
- Under current grid, maximum sentence for CHS 7, 8, and 9+ are all 6 months. CHS 8 and 9+ are automatically stat max.
- Changing to Class B has other implications, such as registration requirements.
- Sentences above reflect the 345 convictions where there was a standard sentence and child molestation 3 was the most serious offense. In total, 746 convictions recorded during the time frame (so 401 either non standard or not the most serious offense).

Rape 3 (SL 5, Class C):

(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

- (a) Where the victim did not consent as defined in *RCW 9A.44.010(7), to sexual intercourse with the perpetrator; or
- (b) Where there is threat of substantial unlawful harm to property rights of the victim..

Sentences 2010-2019: 345 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	8.9	12.9	15.3	18.4	24.8	36.3	50.6	56.8	60.0	61.1										
Number of Sent	163	36	29	45	26	8	12	5	5	16										
Current SL5	6	12	12.03	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90

Keep at SL 5:

- **Average sentence exceeds** new range 6/10 times (CHS 4-9+) (72 sentences, 21%)
- **Average sentence below** new range 0/10 times
- **Absolute minimum decreases** from 6 to 3
- **Absolute maximum stays** at 60 – stat max.
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.

Move to SL 6 and Make Class B:

- **Average sentence exceeds** new range 2/10 times (CHS 6 and 7) (17 sentences, 5%)
- **Average sentence below** new range 3/10 times (CHS 0 - 2) (228 sentences, 66%)
- **Absolute minimum increases** from 6 to 12
- **Absolute maximum increases** from 60 to 75
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 4/10 cells (CHS 0-3)
- **Range maximums** increase in 8/10 cells (CHS 0-4 and 7-9+)
- ALL sentences now prison sentences

Move to SL 7 and Make Class B:

- **Average sentence exceeds** new range 0/10 times
- **Average sentence below** new range 5/10 times (CHS 0 - 4) (299 sentences, 87%)
- **Absolute minimum increases** from 6 to 14
- **Absolute maximum increases** from 60 to 90
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 5/10 cells (CHS 0-4)
- **Range maximums** increase in 10/10 cells (due to change in stat max)
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has one cell that are presumptive jail – CHS 0
- Under current grid, maximum sentence for CHS 7, 8, and 9+ are all 6 months. CHS 8 and 9+ are automatically stat max.
- Changing to Class B has other implications, such as registration requirements.
- Sentences above reflect the 345 convictions where there was a standard sentence and rape 3 was the most serious offense. There were 442 convictions in SGC data. 5 were determinate plus, 6 had a suspended sentence, 29 had an alternative sentence, 7 had an enhancement, and 50 were exceptional sentences, leaving 345.

Incest 2 (SL 5, Class C):

(2)(a) A person is guilty of incest in the second degree if he or she engages in sexual contact with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the second degree is a class C felony.

(3) As used in this section:

(a) "Descendant" includes stepchildren and adopted children under eighteen years of age;

(b) "Sexual contact" has the same meaning as in RCW 9A.44.010; and

(c) "Sexual intercourse" has the same meaning as in RCW 9A.44.010.

Sentences 2010-2019: 45 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	7.9	13.0	15.0	18.8	26.0	0.0	0.0	60.0	0.0	60.0										
Number of Sent	28	2	2	6	2	0	0	1	0	4										
Current SL5	6	12	12.03	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

Keep at SL 5:

- **Average sentence exceeds** new range 2/7 times (CHS 4 and 7) (3 sentences, 7%)
- **Average sentence below** new range 0/10 times
- **Absolute minimum decreases** from 6 to 3
- **Absolute maximum stays** at 60 – stat max.
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.

Move to SL 6 and Make Class B:

- **Average sentence exceeds** new range 1/7 times (CHS 7) (1 sentences, 2%)
- **Average sentence below** new range 3/7 times (CHS 0 - 2) (32 sentences, 71%)
- **Absolute minimum increases** from 6 to 12
- **Absolute maximum increases** from 60 to 75
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 4/10 cells (CHS 0-3)
- **Range maximums** increase in 8/10 cells (CHS 0-4 and 7-9+)
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has one cell that are presumptive jail – CHS 0
- Under current grid, maximum sentence for CHS 7, 8, and 9+ are all 6 months. CHS 8 and 9+ are automatically stat max.
- Changing to Class B has other implications, such as registration requirements.
- Sentences above reflect the 345 convictions where there was a standard sentence and rape 3 was the most serious offense. In total, 121 adult convictions recorded during the time frame (so 76 either non standard or not the most serious offense).

Sending, Bringing into the state depictions of minor engaged in sexually explicit conduct 2 (SL 5, Class B):

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense.

(3) This section does not apply to a minor who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting any minor thirteen years of age or older engaged in sexually explicit conduct.

(4) This section does not apply to a person under thirteen years of age who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting himself or herself engaged in sexually explicit conduct.

Sentences 2010-2019: 0 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)																				
Number of Sent																				
Current SL5	6	12	12.03	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

Keep at SL 5:

- **Absolute minimum** *decreases* from 6 to 3
- **Absolute maximum** *decreases* from 96 to 60

Move to SL 6:

- **Absolute minimum** *increases* from 6 to 12
- **Absolute maximum** *decreases* from 96 to 75
- **Range minimums** increase in 4/10 cells (CHS 0-3)
- **Range maximums** increase in 5/10 cells (CHS 0-4)
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has one cell that are presumptive jail – CHS 0
- No standard sentences for this offense as most serious offense. Only 1 conviction otherwise.
- Due to interstate component, these offenses are likely to be handled at the federal level. State convictions extremely rare.
- Already a class B, so could be placed in SL 6

Custodial Sexual Misconduct 2 (SL 5, Class C):

(1) A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:

(a) When:

- (i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and
- (ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

Sentences 2010-2019: NOTE: Prior to 2023, custodial sexual misconduct 2 was a gross misdemeanor and custodial sexual misconduct 1 was SL 5. In 2023, Custodial Sexual Misconduct 2 was moved to a class C felony at SL 5 and Custodial Misconduct 1 was increased to SL 7 and made a class B felony.

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)																				
Number																				
Current SL5	6	12	12.03	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75

Keep at SL 5:

- **Absolute minimum** *decreases* from 6 to 3
- **Absolute maximum** *stays* at 60 – stat max. (But in reality, a significant increase from the maximum punishment previously as a gross misdemeanor)
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.

Move to SL 6 and Make Class B:

- **Absolute minimum** *increases* from 6 to 12
- **Absolute maximum** *increases* from 60 to 75 (But in reality, a much bigger increase from the maximum punishment previously as a gross misdemeanor)
 - **NOTE:** Stat max for class C offenses is 60 months, so current grid “range” for CHS 8 and 9+ is 60.
- **Range minimums** increase in 4/10 cells (CHS 0-3)
- **Range maximums** increase in 8/10 cells (CHS 0-4 and 7-9+)
- ALL sentences now prison sentences

Potential discussion points:

- Current grid has one cell that are presumptive jail – CHS 0
- 13 prior convictions when it was a gross misdemeanor from 2010-2019.
- Under current grid, maximum sentence for CHS 7, 8, and 9+ are all 6 months. CHS 8 and 9+ are automatically stat max.
- Custodial Sexual Misconduct 1 was just moved to a class B felony.

Rape of a Child 3 (SL 6, Class C):

- (1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and the perpetrator is at least forty-eight months older than the victim.

Sentences 2010-2019: 518 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	12.9	17.2	24.2	30.8	38.9	42.1	50.8	60.0	60.0	62.8										
Number of Sent	196	53	20	107	18	15	30	7	6	66										
Current SL6	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL5	3	12	4	14	5	17	6	20	7	24	8	29	10	35	12	42	15	51	18	60

Keep at SL 6 and Make Class B:

- **Average sentence** exceeds new range 4/10 times (CHS 4-7) (70 sentences, 14%)
- **Average sentence** below new range 0/10 times
- **Absolute minimum** *stays* at 12
- **Absolute maximum** *increases* from 60 (class C stat max) to 75
- On current grid, the range for CHS 7 is essentially 57-60 and there is no range for CHS 8 and 9+ which is always just 60 months – the stat max.

Move to SL 5 and Keep Class C:

- **Average sentence** exceeds new range 10/10 times, 100% sentences
- **Absolute minimum** *decreases* from 12 to 3
- **Absolute maximum** *stays* at 60 (stat max)
- On current grid, the range for CHS 7 is essentially 57-60 and there is no range for CHS 8 and 9+ which is always just 60 months – the stat max.

Potential discussion points:

- Changing to a Class B has other implications, like an expansion in registration requirements.
- Only 518 out of 1308 rape 3 convictions were standard sentences with Rape 3 as most serious offense.

Possession of depictions of minor engaged in sexually explicit conduct 1 (SL 6, Class B):

(1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

Sentences 2010-2019: 322 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	12.6	15.9	23.0	29.2	33.3	44.0	51.8	60.5	70.3	85.4										
Number of Sent	108	10	3	74	9	2	58	6	4	48										
Current SL6	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90

Keep at SL 6:

- **Average sentence exceeds** new range 5/10 times (CHS 5-9+) (118 sentences, 37%)
- **Average sentence below** new range 0/10 times
- **Absolute minimum *stays*** at 12
- **Absolute maximum *decreases*** from 102 to 75

Move to SL 7:

- **Average sentence exceeds** new range 0/10 times
- **Average sentence below** new range 2/10 times (CHS 0 and 1) (118 sentences, 37%)
- **Absolute minimum *increases*** from 12 to 14
- **Absolute maximum *decreases*** from 102 to 90

Incest 1 (SL 6, Class B):

(1)(a) A person is guilty of incest in the first degree if he or she engages in sexual intercourse with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

Sentences 2010-2019: 85 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	12.6	17.9	24.0	31.3	37.7	44.0	55.3	61.8	80.0	95.3										
Number of Sent	16	6	3	18	3	2	14	4	1	18										
Current SL6	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
Proposed SL6	12	20	14	23	16	27	18	31	21	36	24	41	28	47	32	54	37	63	45	75
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90

Keep at SL 6:

- **Average sentence** exceeds new range 7/10 times (CHS 3-9+) (60 sentences, 71%)
- **Average sentence** below new range 0/10 times
- **Absolute minimum** *stays* at 12
- **Absolute maximum** *decreases* from 102 to 75

Move to SL 7:

- **Average sentence** exceeds new range 2/10 times (CHS 8-9+) (19 sentences, 22%)
- **Average sentence** below new range 1/10 times (CHS 0) (16 sentences, 19%)
- **Absolute minimum** *increases* from 12 to 14
- **Absolute maximum** *decreases* from 102 to 90

Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 1 (SL 7, Class B):

(1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

Sentences 2010-2019: 1 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	0.0	0.0	0.0	0.0	0.0	41.0	0.0	0.0	0.0	0.0										
Number of Sent	0	0	0	0	0	1	0	0	0	0										
Current SL7	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

Keep at SL 7:

- **Only sentence (CHS 5) still valid**
- **Absolute minimum decreases** from 15 to 14
- **Absolute maximum decreases** from 116 to 90

Move to SL 8:

- **Only sentence (CHS 5) still valid**
- **Absolute minimum increases** from 15 to 17
- **Absolute maximum decreases** from 116 to 105

Potential discussion points:

- Due to interstate component, these offenses are likely to be handled at the federal level. State convictions extremely rare.

Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 1 (SL 7, Class B):

(1)(a) A person eighteen years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

Sentences 2010-2019: 62 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	16.9	24.0	0.0	35.3	0.0	41.0	63.3	80.3	0.0	101.2										
Number of Sent	11	1	0	13	0	1	17	3	0	16										
Current SL7	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

Keep at SL 7:

- **Average sentence exceeds** new range 3/7 times (CHS 6, 7, 9+) (36 sentences, 58%)
- **Average sentence below** new range 0/7 times
- **Absolute minimum decreases** from 15 to 14
- **Absolute maximum decreases** from 116 to 90

Move to SL 8:

- **Average sentence exceeds** new range 1/7 times (CHS 7) (3 sentences, 5%)
- **Average sentence below** new range 1/10 times (CHS 0) (11 sentences, 18%)
- **Absolute minimum increases** from 15 to 17
- **Absolute maximum decreases** from 116 to 105

Custodial Sexual Misconduct 1 (SL 7*, Class B):

(1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:

(a) When:

(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest[,], or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

Sentences 2010-2019: 5 most serious offense

*****NOTE:** Prior to 2023, CSM was SL 5 and Class C offense. Now moving to SL 7 and Class B. 5 sentences below were prior to legislative change and subject to current SL 5 ranges.

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	9.8	0.0	0.0	0.0	29.0	0.0	0.0	0.0	0.0	0.0										
Number of Sent	4	0	0	0	1	0	0	0	0	0										
Current SL7	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105

Keep at SL 7:

- **Average sentence exceeds** new range 0/2
- **Average sentence below** new range 2/2 times (CHS 0 and 4) (6 sentences, 100%)
- **Absolute minimum decreases** from 15 to 14 (but still an increase from absolute minimum prior to 2023 which was 6 months)
- **Absolute maximum decreases** from 116 to 90 (but still an increase from absolute maximum prior to 2023 which was 60 months [stat max])

Move to SL 8:

- **Average sentence exceeds** new range 0/2
- **Average sentence below** new range 1/2 times (CHS 0) (4 sentences, 80%)
- **Absolute minimum increases** from 15 to 17 (absolute minimum prior to 2023 was 6 months)
- **Absolute maximum decreases** from 116 to 105 (but still an increase from absolute maximum prior to 2023 which was 60 months [stat max])

Potential discussion points:

- Very rare offense (only 5 in last 20 years)
- Changes in 2023 resulting from “Kimberly Bender’s law.”
 - Seems possible that other approaches could have addressed underlying concern from this case, such as the multiple victims aggravating factor.
 - The sentence in this case was part of a negotiated plea agreement. Negotiated pleas can depart from the guidelines, so unclear what the impact of the change in the law would have been in this case.

Indecent liberties (without forcible compulsion) (SL 7, Class B):

(1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

(a) ~~By forcible compulsion;~~

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

Sentences 2010-2019: 256 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	16.8	24.0	30.6	36.5	44.3	49.9	68.2	75.3	88.0	93.9										
Number of Sent	96	24	14	37	20	12	22	4	6	21										
Current SL7	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105
Proposed SL9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120

Keep at SL 7:

- **Average sentence exceeds** new range 6/10 times (CHS 4-9+) (33% of sentences)
- **Average sentence below** new range 0/10 times
- **Absolute minimum decreases** from 15 to 14
- **Absolute maximum decreases** from 116 to 90
 - **Note: Stat max for class B is 120 months.** There are 4 rows of primarily class B offenses. Given the new logic on the sentencing grid, the second row out of four was not expected to max out at the statutory maximum.

Move to SL 8:

- **Average sentence exceeds** new range 1/10 times (CHS 6) (8% of sentences)
- **Average sentence below** new range 1/10 times (CHS 0) (38% of sentences)
- **Absolute minimum increases** from 15 to 17
- **Absolute maximum decreases** from 116 to 105
 - **Note: Stat max for class B is 120 months.** There are 4 rows of primarily class B offenses. Given the new logic on the sentencing grid, the third row out of four was not expected to max out at the statutory maximum.
- **Range minimum increases** in 1/10 cells (CHS 0)
- **Range maximum increases** in 6/10 cells (CHS 0-5)

Move to SL 9:

- **Average sentence** exceeds new range 0/10 times
- **Average sentence** below new range 1/10 times (CHS 0) (38% of sentences)
- **Absolute minimum** *increases* from 15 to 19
- **Absolute maximum** *increases* from 116 to 120
- **Range minimum** *increases* in 2/10 cells (CHS 0-1)
- **Range maximum** *increases* in 8/10 cells (all CHS except 7 and 8)

Child Molestation 2 (SL 7, Class B):

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and the perpetrator is at least thirty-six months older than the victim.

Sentences 2010-2019: 687 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	16.9	24.1	28.9	35.9	43.7	49.2	67.4	85.1	84.5	102.7										
Number of Sent	257	43	12	160	25	13	87	7	6	77										
Current SL7	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
Proposed SL7	14	24	17	28	19	32	22	37	25	43	29	49	34	57	39	65	45	75	54	90
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105
Proposed SL9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120

Keep at SL 7:

- **Average sentence exceeds** new range 6/10 times (CHS 4-9+) (31% of sentences)
- **Average sentence below** new range 0/10 times
- **Absolute minimum decreases** from 15 to 14
- **Absolute maximum decreases** from 116 to 90
 - **Note: Stat max for class B is 120 months.** There are 4 rows of primarily class B offenses. Given the new logic on the sentencing grid, the second row out of four was not expected to max out at the statutory maximum.

Move to SL 8:

- **Average sentence exceeds** new range 2/10 times (CHS 6 and 7) (14% of sentences)
- **Average sentence below** new range 1/10 times (CHS 0) (37% of sentences)
- **Absolute minimum increases** from 15 to 17
- **Absolute maximum decreases** from 116 to 105
 - **Note: Stat max for class B is 120 months.** There are 4 rows of primarily class B offenses. Given the new logic on the sentencing grid, the third row out of four was not expected to max out at the statutory maximum.
- **Range minimum increases** in 1/10 cells (CHS 0)
- **Range maximum increases** in 6/10 cells (CHS 0-5)

Move to SL 9:

- **Average sentence exceeds** new range 0/10 times
- **Average sentence below** new range 1/10 times (CHS 0) (38% of sentences)
- **Absolute minimum increases** from 15 to 19
- **Absolute maximum increases** from 116 to 120
- **Range minimum increases** in 2/10 cells (CHS 0-1)
- **Range maximum increases** in 8/10 cells (all CHS except 7 and 8)

Commercial Sex Abuse of a Minor (SL 8, Class B):

(1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

Sentences 2010-2019: 56 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	19.0	19.5	36.0	38.7	48.0	47.4	70.7	90.0	0.0	103.5										
Number of Sent	21	2	1	13	1	4	11	1	0	2										
Current SL8	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144
Proposed SL8	17	28	19	33	22	38	26	43	30	50	34	58	40	66	46	76	52	88	63	105
Proposed SL9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120

Keep at SL 8:

- **Average sentence exceeds** new range 2/9 times (CHS 6 and 7) (21% of sentences)
- **Average sentence below** new range 0/10 times
- **Absolute minimum decreases** from 21 to 17
- **Absolute maximum decreases** from 120 (stat max) to 105
 - **Note: Stat max for class B is 120 months.** The range for CHS 9+ on current grid is really 108-120

Move to SL 9:

- **Average sentence exceeds** new range 1/9 times (CHS 7) (2% of sentences)
- **Average sentence below** new range 2/9 times (CHS 0-1) (41% of sentences)
- **Absolute minimum decreases** from 21 to 19
- **Absolute maximum decreases** from 116 to 105
 - **Note: Stat max for class B is 120 months.** The range for CHS 9+ on current grid is really 108-120
- **Range minimum increases** in 0/10 cells
- **Range maximum increases** in 6/10 cells (CHS 0-5)

Potential discussion points:

- Small sample sizes – no sentences for CHS 8
- Range on current grid not valid for CHS 9+ - stat max is 120 months

Sexual Exploitation of a Minor (SL 9, Class B):

(1) A person is guilty of sexual exploitation of a minor if the person:

- (a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
- (b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or
- (c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

Sentences 2010-2019: 56 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	32.6	41.5	0.0	53.5	68.0	68.8	82.1	0.0	108.0	120.0										
Number of Sent	12	4	0	10	1	6	10	0	1	12										
Current SL9	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171
Proposed SL9	19	33	22	37	26	43	30	50	34	57	39	66	45	76	52	87	60	100	72	120
Proposed SL10	41	69	46	76	50	84	55	92	61	102	67	112	74	123	81	135	89	149	93	155

Keep at SL 9:

- **Average sentence exceeds** new range 6/8 times (CHS 1, 3-6, 8) (57% of sentences)
- **Average sentence below** new range 0/8 times
- **Absolute minimum decreases** from 31 to 19
- **Absolute maximum stays** at the stat max
 - **Note: Stat max for class B is 120 months.** The range for CHS 9+ on current grid is 120-120

Move to SL 10 and Make Class A:

- **Average sentence exceeds** new range 0/8 times
- **Average sentence below** new range 3/8 times (CHS 0-1, 3) (46% of sentences)
- **Absolute minimum increases** from 31 to 41
- **Absolute maximum increases** from 120 (class B stat max) to 155
 - **Note: Stat max for class B is 120 months.** The range for CHS 9+ on current grid is really 108-120
- **Range minimum increases** in 6/10 cells (CHS 0-5)
- **Range maximum increases** in 10/10 cells (all CHS)

Indecent Liberties w/ forcible compulsion (SL 10, Class A):

(1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

(a) By forcible compulsion;

Sentences 2010-2019: 2 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	41.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	148.5										
Number of Sent	1	0	0	0	0	0	0	0	0	1										
Current SL10	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
Proposed SL10	41	69	46	76	50	84	55	92	61	102	67	112	74	123	81	135	89	149	93	155
Proposed SL11	51	85	56	94	62	103	68	113	75	125	82	137	90	151	99	166	109	183	114	190

Keep at SL 10:

- **Average sentence** exceeds new range 0/2
- **Average sentence** below new range 0/2 times
- **Absolute minimum** *decreases* from 51 to 41
- **Absolute maximum** *decreases* from 198 to 155
- **Range minimum** *increases* in 0/10 cells
- **Range maximum** *increases* in 6/10 cells (CHS 0-5)

Move to SL 11:

- **Average sentence** exceeds new range 0/2 times
- **Average sentence** below new range 1/2 times (CHS 0) (50% of sentences)
- **Absolute minimum** *stays* at 51 months
- **Absolute maximum** *decreases* from 198 to 190
- **Range minimum** *increases* in 3/10 cells (CHS 3, 4, 5)
- **Range maximum** *increases* in 9/10 cells (all but 9+)

Potential discussion points:

- Very small sample – only 2 cases in 9 years.
- Keeping at SL 10 largely widens the ranges – minimums decrease, but maximums increase.

Child Molestation 1 (SL 10, Class A):

(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and the perpetrator is at least thirty-six months older than the victim.

Sentences 2010-2019: 44 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	58.6	58.0	62.0	70.3	0.0	77.0	112.9	0.0	0.0	0.0										
Number of Sent	20	3	1	12	0	2	4	0	1	1										
Current SL10	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
Proposed SL10	41	69	46	76	50	84	55	92	61	102	67	112	74	123	81	135	89	149	93	155
Proposed SL11	51	85	56	94	62	103	68	113	75	125	82	137	90	151	99	166	109	183	114	190

Keep at SL 10:

- **Average sentence** exceeds new range 0/8
- **Average sentence** below new range 0/8 times
- **Absolute minimum** *decreases* from 51 to 41
- **Absolute maximum** *decreases* from 198 to 155
- **Range minimum** *increases* in 0/10 cells
- **Range maximum** *increases* in 6/10 cells (CHS 0-5)

Move to SL 11:

- **Average sentence** exceeds new range 0/8 times
- **Average sentence** below new range 1/8 times (CHS 5) (50% of sentences)
- **Absolute minimum** *stays* at 51 months
- **Absolute maximum** *decreases* from 198 to 190
- **Range minimum** *increases* in 3/10 cells (CHS 3, 4, 5)
- **Range maximum** *increases* in 9/10 cells (all but 9+)

Potential discussion points:

- Small sample – no cases in CHS 4 or 7
- Keeping at SL 10 largely widens the ranges – minimums decrease, but maximums increase.

Rape of a Child 2 (SL 11, Class A):

(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and the perpetrator is at least thirty-six months older than the victim.

Sentences 2010-2019: 11 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	86.5	0.0	0.0	113.1	0.0	0.0	0.0	0.0	0.0	174.0										
Number of Sent	3	0	0	7	0	0	0	0	0	1										
Current SL11	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
Proposed SL11	51	85	56	94	62	103	68	113	75	125	82	137	90	151	99	166	109	183	114	190
Proposed SL12	60	101	66	111	73	122	80	134	88	148	97	163	107	179	118	197	130	217	135	225

Keep at SL 11:

- **Average sentence exceeds** new range 2/3 times (CHS 0 and 3) (91% of sentences)
- **Average sentence below** new range 0/3 times
- **Absolute minimum decreases** from 78 to 51
- **Absolute maximum decreases** from 280 to 190

Move to SL 12:

- **Average sentence exceeds** new range 0/3 times
- **Average sentence below** new range 0/3 times (CHS 5)
- **Absolute minimum decreases** from 78 to 60 months
- **Absolute maximum decreases** from 280 to 225
- **Range minimum increases** in 0/10 cells
- **Range maximum increases** in 2/10 cells (CHS 4 and 5)

Potential discussion points:

- Very small sample – no cases in CHS 1, 2, 4, 5, 6, 7, 8
- Only 11 out of 596 convictions had ROC2 as most serious offense and standard sentence (e.g., not exceptional or sentencing alternative)

Rape 2 (SL 11, Class A):

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

- (a) By forcible compulsion;
- (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
- (c) When the victim is a person with a developmental disability and the perpetrator is a person who:
 - (i) Has supervisory authority over the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;
- (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;
- (e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who has supervisory authority over the victim; or
- (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who:
 - (i) Has a significant relationship with the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

Sentences 2010-2019: 4 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	84.0	0.0	110.0	0.0	0.0	0.0	0.0	0.0	0.0	240.0										
Number of Sent	2	0	1	0	0	0	0	0	0	1										
Current SL11	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
Proposed SL11	51	85	56	94	62	103	68	113	75	125	82	137	90	151	99	166	109	183	114	190
Proposed SL12	60	101	66	111	73	122	80	134	88	148	97	163	107	179	118	197	130	217	135	225
Proposed SL13	70	117	77	128	84	141	93	155	102	171	113	188	124	207	136	227	150	250	156	260

Keep at SL 11:

- **Average sentence exceeds** new range 2/3 times (CHS 2 and 9+) (50% of sentences)
- **Average sentence below** new range 0/3 times
- **Absolute minimum decreases** from 78 to 51
- **Absolute maximum decreases** from 280 to 190

Move to SL 12:

- **Average sentence exceeds** new range 1/3 times (CHS 9+) (25% sentences)
- **Average sentence below** new range 0/3 times
- **Absolute minimum decreases** from 78 to 60 months
- **Absolute maximum decreases** from 280 to 225
- **Range minimum increases** in 0/10 cells
- **Range maximum increases** in 2/10 cells (CHS 4 and 5)

Move to SL 13:

- **Average sentence exceeds** new range 0/3 times
- **Average sentence below** new range 0/3 times
- **Absolute minimum decreases** from 78 to 70 months
- **Absolute maximum decreases** from 280 to 260
- **Range minimum increases** in 0/10 cells (CHS 3, 4, 5)
- **Range maximum increases** in 9/10 cells (all except CHS 9+)

Potential discussion points:

- Very small sample – no cases in CHS 1, 3, 4, 5, 6, 7, 8. Between FY 10 and FY 19, there were 243 convictions. All but 6 of those were either a 3-strike, 2-strike, or determinate plus sentence. One had an exceptional sentence, leaving just the four sentences.
- Both 13 would greatly widen the ranges – minimums decrease and maximums increase.

Promoting Commercial Sexual Abuse of a Minor (SL 12, Class A):

(1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which anything of value is given or received.

(e) A "patron" is a person who provides or agrees to provide anything of value to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

Sentences 2010-2019: 17 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	0.0	94.6	100.5	120.0	0.0	120.5	189.0	236.0	209.0	279.0										
Number of Sent	0	4	2	2	0	3	1	2	1	2										
Current SL12	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
Proposed SL12	60	101	66	111	73	122	80	134	88	148	97	163	107	179	118	197	130	217	135	225
Proposed SL13	70	117	77	128	84	141	93	155	102	171	113	188	124	207	136	227	150	250	156	260
Proposed SL14	101	135	111	148	122	163	135	180	149	198	164	219	182	242	201	268	222	297	225	300

Keep at SL 12:

- **Average sentence exceeds** new range 3/8 times (CHS 6, 7, and 9+) (29% of sentences)
- **Average sentence below** new range 0/8 times
- **Absolute minimum decreases** from 93 to 60
- **Absolute maximum decreases** from 318 to 225

Move to SL 13:

- **Average sentence exceeds** new range 2/8 times (CHS 7 and 9+) (24% sentences)
- **Average sentence below** new range 0/8 times
- **Absolute minimum decreases** from 93 to 70
- **Absolute maximum decreases** from 318 to 260
- **Range minimum increases** in 0/10 cells
- **Range maximum increases** in 1/10 cells (CHS 5)

Move to SL 14:

- **Average sentence exceeds** new range 0/8 times
- **Average sentence below** new range 5/8 times (CHS 1, 2, 3, 5, and 8) (71% sentences)

- **Absolute minimum** *Increases* from 93 to 101
- **Absolute maximum** *decreases* from 318 to 300
- **Range minimum** *increases* in 9/10 cells (all except CHS 9+)
- **Range maximum** *increases* in 9/10 cells (all except CHS 9+)

Rape 1 (SL 12, Class A):

(1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

- (a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
- (b) Kidnaps the victim; or
- (c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
- (d) Feloniously enters into the building or vehicle where the victim is situated.

Sentences 2010-2019: 3 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	0.0	0.0	0.0	0.0	120.0	150.0	0.0	0.0	170.0	0.0										
Number of Sent	0	0	0	0	1	1	0	0	1	0										
Current SL12	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
Proposed SL12	60	101	66	111	73	122	80	134	88	148	97	163	107	179	118	197	130	217	135	225
Proposed SL13	70	117	77	128	84	141	93	155	102	171	113	188	124	207	136	227	150	250	156	260

Keep at SL 12:

- **Average sentence** exceeds new range 0/3
- **Average sentence** below new range 0/3 times
- **Absolute minimum** *decreases* from 93 to 60
 - **NOTE:** Mandatory minimum for Rape 1 is 60 months.
- **Absolute maximum** *decreases* from 318 to 225

Move to SL 13:

- **Average sentence** exceeds new range 0/3
- **Average sentence** below new range 0/3 times
- **Absolute minimum** *decreases* from 93 to 70
 - **NOTE:** Mandatory minimum for Rape 1 is 60 months.
- **Absolute maximum** *decreases* from 318 to 260
- **Range minimum** *increases* in /10 cells
- **Range maximum** *increases* in /10 cells (CHS)

Potential discussion points:

- CSTF discussed the fact that the legislature has established mandatory minimums which signal the appropriate minimum punishment for certain offenses. If the absolute minimum is higher than the mandatory minimum, then that de facto increases the mandatory minimum.
- There were 122 convictions in the SGC data where Rape 1 was most serious. All but 6 of those were either a 3-strike, 2-strike, or determinate plus sentence. Two of the six were exceptional sentences and another had an enhancement, leaving just the 3 offenses for the 10 years.

Rape of a Child 1 (SL 12, Class A):

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and the perpetrator is at least twenty-four months older than the victim.

Sentences 2010-2019: 26 most serious offense

	0	1	2	3	4	5	6	7	8	9+										
Avg Sent (mos)	98.3	0.0	132.0	123.7	157.0	0.0	194.0	0.0	0.0	276.0										
Number of Sent	9	0	1	9	3	0	3	0	0	1										
Current SL12	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
Proposed SL12	60	101	66	111	73	122	80	134	88	148	97	163	107	179	118	197	130	217	135	225
Proposed SL13	70	117	77	128	84	141	93	155	102	171	113	188	124	207	136	227	150	250	156	260
Proposed SL14	101	135	111	148	122	163	135	180	149	198	164	219	182	242	201	268	222	297	225	300

Keep at SL 12:

- **Average sentence exceeds** new range 4/6 times (CHS 2, 4, 6, 9+) (31% of sentences)
- **Average sentence below** new range 0/6 times
- **Absolute minimum decreases** from 93 to 60
- **Absolute maximum decreases** from 318 to 225

Move to SL 13:

- **Average sentence exceeds** new range 1/6 times (CHS 9+) (4% of sentences)
- **Average sentence below** new range 0/6 times
- **Absolute minimum decreases** from 93 to 70
- **Absolute maximum decreases** from 318 to 260
- **Range minimum increases** in 0/10 cells
- **Range maximum increases** in 1/10 cells (CHS 5)

Move to SL 14:

- **Average sentence exceeds** new range 0/6 times
- **Average sentence below** new range 2/6 times (CHS 0 and 3) (69% of sentences)
- **Absolute minimum increases** from 93 to 101
- **Absolute maximum decreases** from 318 to 300
- **Range minimum increases** in 9/10 cells (all except CHS 9+)
- **Range maximum increases** in 9/10 cells (all except CHS 9+)