

Washington State Sentencing Guidelines Commission

Offense Seriousness Level

The first step in determining what sentence to apply in a particular case involves identifying the seriousness level of the offense for which the defendant was convicted. Crimes included within each seriousness level are listed in RCW 9.94A.515. The sentencing guidelines grid displays the seriousness levels for felony offenses on its vertical axis RCW 9.94A.510.

Some felonies rarely charged or recently created by the Legislature are not included in the table listing crimes by seriousness level or in the felony sentencing grid. These are commonly called "unranked" felonies. For an offender convicted of an unranked felony, no standard sentence range applies. Instead, the sentencing judge may impose a determinate sentence that may include not more than one year of confinement, community service, legal financial obligations, a fine and/or community supervision not to exceed one year. Sentences involving confinement for more than one year are considered exceptional sentences and must be justified in writing by the court.

Offender Score

"Scoring" an offender's criminal history is the most complex element in determining the appropriate sentence to impose. The horizontal axis of the felony sentencing grid displays the number of "points" to be assigned in a particular case, depending on the offender's previous criminal record.

The "scoring" of an offender is not merely as simple as counting the number of the offender's previous felony convictions. Adult and juvenile offenses in an offender's history are counted differently, for instance, and certain offenses are permitted to "wash out" of an offender's record, as well.

The Legislature has amended the scoring rules many times, so that previous drug offenses and previous sex offenses often count for more than one point, depending on the current offense. Previous violent offenses are "double scored" and previous "serious violent" offenses are "triple scored." Offenses committed while being supervised in the community also augment an offender's score. Multiple current convictions also affect the procedure for calculating an offender's criminal history score. When "scoring" a particular case, it is essential to refer to the specific provisions that apply to the current offense of conviction and to previous offenses.

Standard Sentence Ranges and Enhancements

The standard sentence range for an offense can be determined by referring to the felony sentencing "grid" and finding the intersection of the row identifying the seriousness level of the current offense and the column identifying the appropriate number of points in the offender's criminal history score. A judge may impose on the offender a determinate sentence that falls within the standard range, or may impose an exceptional sentence with a written explanation.

When substantial and compelling reasons exist, a court may impose a sentence that falls outside the presumptive sentence range. In such cases, the court is required to provide a written explanation for an exceptional sentence, including the aggravating or mitigating factors that justify the exceptional sentence. Sentences that depart from the standard sentence ranges may be appealed by either the prosecutor or the defendant.

For "anticipatory" offenses (including attempts or conspiracies to commit an offense), the standard sentence range amounts to only 75% of what the range would be for a completed offense. This sentence reduction does not apply to drug offenses.

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The Legislature has added sentence "enhancements" for certain offenses, including longer sentences for offenses committed with a firearm or another deadly weapon, longer sentences for drug offenses committed in a "protected" zone (including schools, school buses, public parks and public housing projects) and for drug offenses committed while confined in a jail or prison. In addition, offenders convicted of vehicular homicide while-under-the-influence face longer sentences if they have previous DUI-related convictions in their records.

Sentence Options and Alternatives

Sentences of one year or less are served in a county jail, whereas sentences of more than one year are served in a state correctional facility. For some offenses, a one-half reduction in the prison sentence is allowed. This is called "earned release." Offenders convicted of the most violent offenses are only allowed a 10 percent reduction in their sentence.

In addition to terms of total confinement, offenders may also be eligible for certain alternative sanctions or may be required to satisfy additional conditions as part of a sentence. For instance, offenders serving jail time are often required to remain under community supervision for up to one year. Similarly, many offenders serving prison time are required to be supervised in the community after their release. Offenders being supervised in the community are prohibited to own, use or possess firearms, must report regularly to a community corrections officer and are subject to other crime-related prohibitions.

The first-time offender waiver is an alternative available to offenders with no felony record and with no record of previous, violent or sex offenses or certain drug dealing offenses. With these offenders, a judge has broad discretion in imposing a sentence, including confinement time, crime-related prohibitions and/or community supervision (including education, work, counseling, etc.). For other less serious offenders, partial confinement options include work crew, work release, home detention and work ethic camp.

Two other special sentencing options exist under law, one for sex offenders and the other for drug offenders. The Special Sex Offender Sentencing Alternative (SSOSA) allows for community treatment of sex offenders. These offenders must be shown to be amenable to treatment and a low risk to community safety. Although not in confinement, offenders in the SSOSA program are required to serve lengthy periods of supervision in the community.

The Drug Offender Sentencing Alternative (DOSA) is available to non-violent drug offenders with no record of violent or sex offenses or of crimes involving deadly weapons, and whose drug offense involved only a small amount of drugs. If the judge determines that the community and the offender would benefit from the offender participating in the program, the judge may impose a shortened period of confinement, followed by a period of community supervision, and including substance abuse treatment, crime-related prohibitions and urinalysis and other testing to monitor compliance.

In addition to sentences of total confinement, periods of community supervision and possible alternatives, a sentencing judge must also order restitution when a felony results in injury to a person or in the damage to or loss of property. A sentencing judge may also order an offender to pay a fine, according to the class and seriousness of the offense, and whether the offender is deemed to be indigent. The judge is also permitted to impose several legal financial obligations, including court costs, attorney's fees, compensation to victims and payment for the cost of incarceration.

Persistent Offenders – "Three Strikes and You're Out"

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Initiative 593, which went into effect in December of 1993, established the penalty of life in prison without the possibility of release for "persistent offenders." Those offenders who commit three "most serious" offenses (enumerated in RCW 9.94A.030(28)) are considered "persistent offenders." In addition, offenders convicted of two separate sex offenses are also considered "persistent offenders" and are subject to imprisonment for life without the possibility of release. The 1997 Legislature broadened the list of offenses that constitute "strikes" under the "Two Strikes" provision (see RCW 9.94A.030(32)(b)).