May 2021

# Examining Washington State's Sentencing Guidelines:
## *A Report for the Criminal Sentencing Task Force*

In 2019, the legislature established the Washington State Criminal Sentencing Task Force (CSTF) through ESHB 1109.[1] The establishing statute directed the CSTF to "review state sentencing laws" and to "develop recommendations for the purpose of: (a) reducing sentencing implementation complexities and errors; (b) improving the effectiveness of the sentencing system; and (c) promoting and improving public safety.[2]

The CSTF established a working group to develop proposals for reforming the current sentencing guidelines within the Washington State Sentencing Reform Act (Chapter 9.94A RCW). As a part of this work, the CSTF contracted with the Washington State Institute for Public Policy (WSIPP) to complete a report examining sentencing outcomes for individuals using the current sentencing guidelines grid and potential sentencing outcomes for individuals using a modified version of the guidelines grid.

This report is organized into five sections. Section I provides an overview of current sentencing policies in Washington State. Section II provides an overview of the proposed modifications to the sentencing guidelines grid that arose from the CSTF meetings. Section III compares sentencing outcomes for standard non-drug sentences under the current guideline structure to outcomes under a modified guideline structure. Section IV examines trends in sentencing outcomes for non-standard sentences. Both Sections III and IV include an analysis of racial disproportionality.

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**Summary**

The Washington State Criminal Sentencing Task Force (CSTF) was directed to review the state's sentencing laws. To better understand the landscape of sentencing in Washington and the potential impacts of reforming the state's sentencing laws, the CSTF contracted with WSIPP to examine felony sentencing in Washington State Superior Courts. The purpose of this report is to provide analytic data to assist with future policy discussions within the CSTF.

Using data from the Caseload Forecast Council, this report reviews the outcomes from FY 2019 felony sentences. Specifically, the report examines how standard, non-drug sentences vary across the current offense seriousness level-based sentencing guideline grid. The report also examines how sentences may vary across and alternative, felony class-based guideline grid.

This report includes an examination of racial disproportionality in sentencing outcomes for standard sentences in the current and alternative guideline grids and for non-standard sentences including enhancements, exceptional sentences, and sentencing alternatives.

In general, the report found that average sentence lengths and incarceration rates *may* decrease under a class-based grid. However, racial disproportionality in sentencing outcomes was present under both grid systems.

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[1] Engrossed Substitute House Bill 1109, Chapter 415, Laws of 2019.

[2] Ibid.

# I. Washington State Sentencing Guidelines

The Washington State Legislature passed the Sentencing Reform Act of 1981 (SRA), establishing a sentencing guidelines commission tasked with developing a recommendation for a sentencing grid for felony sentences in Washington. The purpose of the SRA was to establish a structured sentencing system that:

1) *Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the [individual's] criminal history;*

2) *Promote respect for the law by providing punishment which is just;*

3) *Be commensurate with the punishment imposed on others committing similar offenses;*

4) *Protect the public;*

5) *Offer the [individual] an opportunity to improve him or herself; and*

6) *Make frugal use of the state's resources. [3]*

In 1983, the Washington State Legislature adopted the Sentencing Guidelines Commission's recommendations, formally implementing the state's felony guideline grid. These reforms were a part of national movements towards sentencing guidelines. At least 21 states and the federal government have established some form of sentencing guidelines.[4]

Since the passage of the SRA and the adoption of the original guidelines grid, the legislature has made many modifications to the state's sentencing laws.[5] While many of these changes are relatively minor (e.g., increases in the seriousness level for a particular offense), others were more significant. Most notably, the 2002 Washington State Legislature established a separate sentencing guidelines grid for drug offenses and emphasized the use of rehabilitative treatment approaches for individuals convicted of drug offenses.[6] This report focuses on sentencing for felony non-drug offenses.

Exhibit 1 provides a timeline of some reforms to the Washington State felony sentencing system. This exhibit is based on a more in-depth review published by the Washington Sentencing Guidelines Commission.[7]

## Guideline Structure

Sentencing guideline grids comprise rows and columns that intersect to create different cells. Typically, the rows represent different levels of offense seriousness while columns represent different levels of criminal history. Each cell on the grid prescribes a sentencing range that is to be used for individuals with a particular level of criminal history and who commit an offense of a particular seriousness. Exhibit 2 displays the current Washington State felony sentencing grid.[8]

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[3] Second Substitute House Bill 440, Laws of 1981.
[4] Kauder, N.B., & Ostrom, B.J. (2008) *State Sentencing Guidelines: Profiles and Continuum*. National Center for State Courts; Williamsburg, VA.
[5] For more information, see Boerner, D., & Lieb, R. (2001). Sentencing reform in the other Washington. *Crime and Justice, 28, 71*-136.
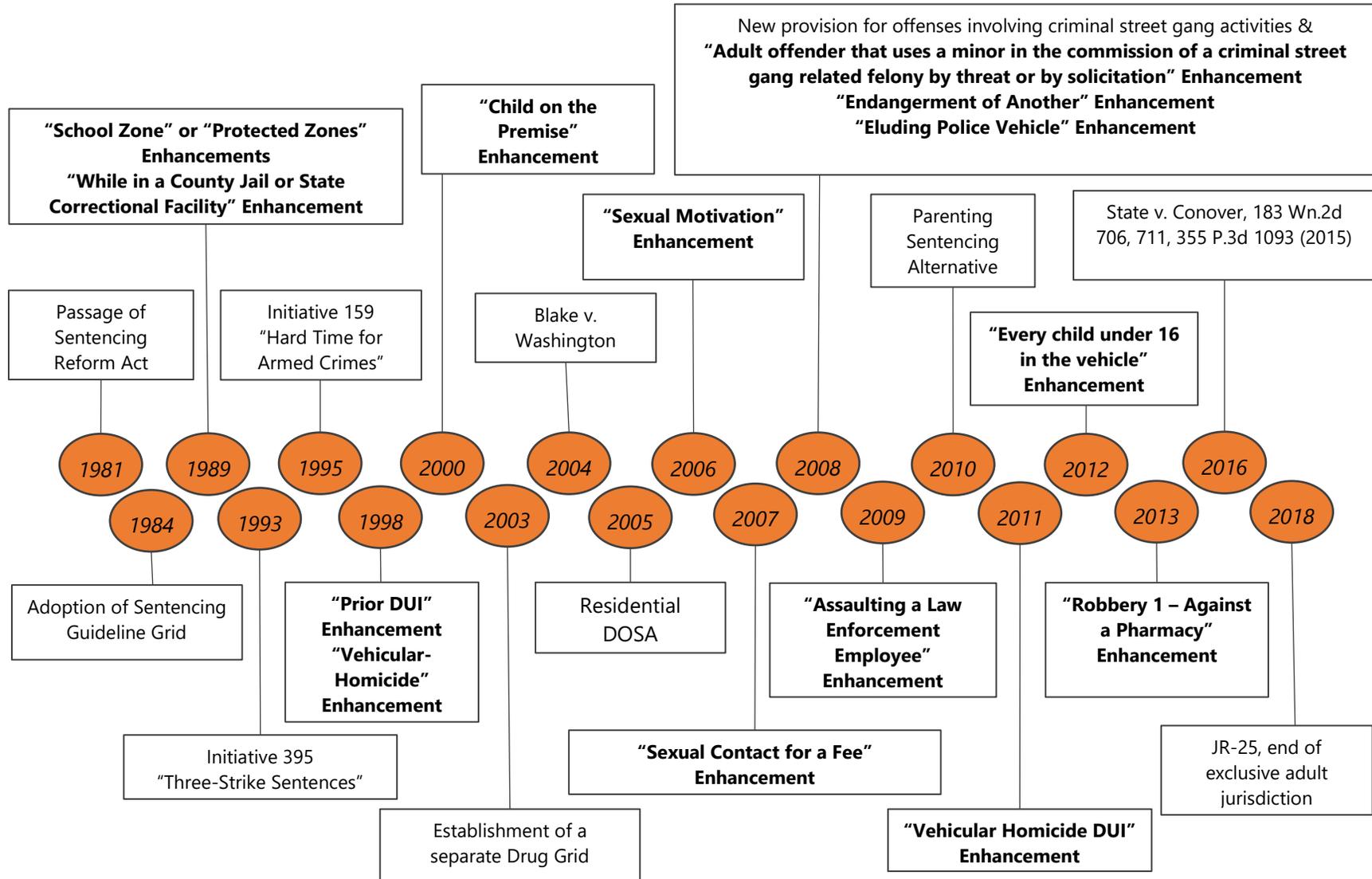
[6] Second Substitute House Bill 2338, Chapter 290, Laws of 2002.
[7] Washington Sentencing Guidelines Commission. (2018). Sentencing Provisions Timeline, 1990-2018. Olympia, WA
[8] RCW 9.94A.507.

**Exhibit 1**

Timeline of Some Major Changes to Sentencing Guideline in Washington State

New provision for offenses involving criminal street gang activities &
**"Adult offender that uses a minor in the commission of a criminal street gang related felony by threat or by solicitation" Enhancement**
**"Endangerment of Another" Enhancement**
**"Eluding Police Vehicle" Enhancement**

**"School Zone" or "Protected Zones" Enhancements**
**"While in a County Jail or State Correctional Facility" Enhancement**

**"Child on the Premise" Enhancement**

**"Sexual Motivation" Enhancement**

Parenting Sentencing Alternative

State v. Conover, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015)

Passage of Sentencing Reform Act

Initiative 159 "Hard Time for Armed Crimes"

Blake v. Washington

**"Every child under 16 in the vehicle" Enhancement**

| 1981 | 1989 | 1995 | 2000 | 2004 | 2006 | 2008 | 2010 | 2012 | 2016 |
| 1984 | 1993 | 1998 | 2003 | 2005 | 2007 | 2009 | 2011 | 2013 | 2018 |

Adoption of Sentencing Guideline Grid

**"Prior DUI" Enhancement "Vehicular-Homicide" Enhancement**

Residential DOSA

**"Assaulting a Law Enforcement Employee" Enhancement**

**"Robbery 1 – Against a Pharmacy" Enhancement**

Initiative 395 "Three-Strike Sentences"

**"Sexual Contact for a Fee" Enhancement**

JR-25, end of exclusive adult jurisdiction

Establishment of a separate Drug Grid

**"Vehicular Homicide DUI" Enhancement**

Notes:
Image based on timelines of major changes to Washington State's felony sentencing system published by the Washington Sentencing Guidelines Commission. For more detailed timelines, see the Sentencing Guidelines Commission's website.
Changes to sentencing enhancements are bolded.

With most guideline grids, more serious offenses have longer sentence lengths. The rows align with principles of proportionate punishment or **just deserts**. That is, the belief that more serious offenses should have more serious punishments.

In Washington State, felony offenses are grouped into an **offense seriousness level** (SL). The rows on the guidelines grid represent different SLs and range from 1 to 16. Higher SLs correspond with longer sentence lengths. While most felony offenses are assigned a particular SL, there are over 300 offenses that are currently unranked.

With most sentencing guidelines grids, individuals with more prior convictions have longer sentence lengths. The columns align with principles of risk in addition to just deserts. The horizontal axis in most structured grids represents a belief that individuals with longer criminal histories are both more deserving of punishment and they are more likely to recidivate, posing a heightened *risk* to public safety.[9]

In Washington State, the columns on the guidelines grid represent different **criminal history scores** (CHS) and range from 0 to 9 or more.[10] Criminal history scores are determined using a complex calculation taking into account prior convictions, prior juvenile adjudications, other current convictions, types of prior and current convictions, offenses committed while on community custody, and the amount of time an individual is crime-free in the community.[11]

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[9] Roberts, J.V. (1997). The role of criminal record in the sentencing process. *Crime and Justice, 22*, 303-362 and Roberts, J.V., & Yalincak, O.H. (2013). Revisiting prior record enhancement provisions in state sentencing guidelines. *Federal Sentencing Rep., 26,* 177.

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**Glossary of Terms**

Cell range: The standard minimum and maximum term of confinement that may be imposed for a specific combination of seriousness level and criminal history score.

Criminal history score: Measure of an individual's prior conviction history ranging from 0-9+. Statutes may refer to this as an "offender score."

Exceptional sentences: Sentences above or below the standard range prescribed on the sentencing guidelines grid. May be referred to as aggravated or mitigated sentences.

Inchoate offenses: Also called "anticipatories," this includes attempt, conspiracy, and solicitation to commit a crime.

Just deserts: A philosophy of punishment which posits that the severity of punishments should be proportionate to the severity of the crime.

Offense seriousness level: Classification of felony offenses ranging from 1-16 with higher values representing more serious crimes.

Sentencing alternative: Non-incarcerative or partial confinement sentencing options that may be imposed in lieu of total confinement based on a strict set of eligibility criteria.

Sentencing enhancement: Laws that prescribe either a fixed additional term of confinement or alter the prescribed sentencing range if the conviction offense meets certain criteria.

Southwest corner of the grid: Cells on the lower-left corner of the guidelines grid that include presumptive sentences no greater than 12 months and which may be served in a local jail rather than state prison.

Unranked offenses: Felony offenses that are not classified into an offense seriousness level.

*Terms are bolded the first time they appear in the text.*

[10] Statutorily, Washington's criminal history score is referred to as the "offender score." For purposes of this report, we refer to this as the "criminal history score." Scores greater than 8 are collapsed into a single column on the guidelines grid labeled "9+."
[11] RCW 9.94A.525.

## Exhibit 2
## Washington State's Felony Sentencing Guidelines Grid with Midpoint and Sentence Ranges (RCW 9.94A.510)

| Offense seriousness level (SL) | Criminal history score (CHS) | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | **0** | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9+** |
| **XVI** | Life sentence without parole/death penalty for individuals at over the age of 18. For those under the age of 18, a term of 25 years to life. | | | | | | | | | |
| **XV** | 280 m | 291.5 m | 304 m | 316 m | 327.5 m | 339.5 m | 364 m | 394 m | 431.5 m | 479.5 m |
| | 240 - 320 | 250 - 333 | 261 - 347 | 271 - 361 | 281 - 374 | 291 - 388 | 312 - 416 | 338 - 450 | 370 - 493 | 411 - 548 |
| **XIV** | 171.5 m | 184 m | 194 m | 204 m | 215 m | 225 m | 245 m | 266 m | 307 m | 347.5 m |
| | 123 - 220 | 134 - 234 | 144 - 244 | 154 - 254 | 165 - 265 | 175 - 275 | 195 - 295 | 216 - 316 | 257 - 357 | 298 - 397 |
| **XIII** | 143.5 m | 156 m | 168 m | 179.5 m | 192 m | 204 m | 227.5 m | 252 m | 299.5 m | 347.5 m |
| | 123 -164 | 134 -178 | 144 - 192 | 154 - 205 | 165 - 219 | 175 - 233 | 195 - 260 | 216 - 288 | 257 - 342 | 298 - 397 |
| **XII** | 108 m | 119 m | 129 m | 140 m | 150 m | 161 m | 189 m | 207 m | 243 m | 279 m |
| | 93 - 123 | 102 - 136 | 111 - 147 | 120 - 160 | 129 - 171 | 138 -184 | 162 - 216 | 178 - 236 | 209 - 277 | 240 - 318 |
| **XI** | 90 m | 100 m | 110 m | 119 m | 129 m | 139 m | 170 m | 185 m | 215 m | 245 m |
| | 78 - 102 | 86 - 114 | 95 - 125 | 102 - 136 | 111 - 147 | 120 - 158 | 146 - 194 | 159 - 211 | 185 - 245 | 210 - 280 |
| **X** | 59.5 m | 66 m | 72 m | 78 m | 84 m | 89.5 m | 114 m | 126 m | 150 m | 230.5 m |
| | 51 - 68 | 57 - 75 | 62 - 82 | 67 - 89 | 72 - 96 | 77 - 102 | 98 - 130 | 108 - 144 | 129 - 171 | 149 - 198 |
| **IX** | 36 m | 42 m | 47.5 m | 53.5 m | 59.5 m | 66 m | 89.5 m | 101.5 m | 126 m | 150 m |
| | 31 - 41 | 36 - 48 | 41 - 54 | 46 - 61 | 51 - 68 | 57 - 75 | 77 - 102 | 87 - 116 | 108 - 144 | 129 - 171 |
| **VIII** | 24 m | 30 m | 36 m | 42 m | 47.5 m | 53.5 m | 78 m | 89.5 m | 101.5 m | 126 m |
| | 21 - 27 | 26 - 34 | 31 - 41 | 36 - 48 | 41 - 54 | 46 - 61 | 67 - 89 | 77 - 102 | 87 - 116 | 108 - 144 |
| **VII** | 17.5 m | 24 m | 30 m | 36 m | 42 m | 47.5 m | 66 m | 78 m | 89.5 m | 101.5 m |
| | 15 - 20 | 21 - 27 | 26 - 34 | 31 - 41 | 36 - 48 | 41 - 54 | 57 - 75 | 67 - 89 | 77 - 102 | 87 - 116 |
| **VI** | 13m | 18m | 2y | 2y 6m | 3y | 3y 6m | 4y 6m | 5y 6m | 6y 6m | 7y 6m |
| | 12+ - 14 | 15 - 20 | 21 - 27 | 26 - 34 | 31 - 41 | 36 - 48 | 46 - 61 | 57 - 75 | 67 - 89 | 77 - 102 |
| **V** | 9m | 13m | 15m | 17.5 m | 25.5 m | 38 m | 47.5 m | 59.5 m | 72 m | 84 m |
| | 6 - 12 | 12+ - 14 | 13 - 17 | 15 - 20 | 22 - 29 | 33 - 43 | 41 - 54 | 51 - 68 | 62 - 82 | 72 - 96 |
| **IV** | 6m | 9m | 13m | 15m | 17.5 m | 25.5 m | 38 m | 50 m | 61.5 m | 73.5 m |
| | 3 - 9 | 6 - 12 | 12+ - 14 | 13 - 17 | 15 - 20 | 22 - 29 | 33 - 43 | 43 - 57 | 53 - 70 | 63 - 84 |
| **III** | 2m | 5m | 8m | 11m | 14m | 19.5 m | 25.5 m | 38 m | 50 m | 59.5 m |
| | 1 - 3 | 3 - 8 | 4 - 12 | 9 - 12 | 12+ - 16 | 17 - 22 | 22 - 29 | 33 - 43 | 43 - 57 | 51 - 68 |
| **II** | | 4m | 6m | 8m | 13m | 16m | 19.5 m | 25.5 m | 38 m | 50 m |
| | 0 - 90 days | 2 - 6 | 3 - 9 | 4 - 12 | 12+ - 14 | 14 - 18 | 17 - 22 | 22 - 29 | 33 - 43 | 43 - 57 |
| **I** | | | 3m | 4m | 5.5m | 8m | 13m | 16m | 19.5 m | 25.5 m |
| | 0 - 60 days | 0 - 90 days | 2 - 5 | 2 - 6 | 3 - 8 | 4 - 12 | 12+ - 14 | 14 - 18 | 17 - 22 | 22 - 29 |

Notes:

The orange shaded section is referred to as the "southwest corner of the grid" and encompasses cells for which the standard range is a jail sentence.

For each seriousness level, the top row indicates the midpoint of the range and the bottom row indicates the minimum and maximum sentence for that cell.

Sentences for 12+ months equal 12 months and one day, making them eligible for incarceration in state prison.

Unranked offenses are not included on the grid and have a presumptive sentence of 0 - 12 months regardless of criminal history score.

For felony offenses, sentences to confinement longer than 12 months are served in state prisons under the jurisdiction of the Department of Corrections (DOC) while sentences to confinement less than 12 months are served in local jails under the jurisdiction of the county.[12]

Sentences for **unranked offenses** are not integrated into the sentencing guidelines grid. For unranked offenses, the presumptive sentence range is 0 – 12 months of incarceration, regardless of an individual's CHS.

The 16 cells in the lower left-hand corner of the guidelines grid include presumptive sentences to local jails. These cells are often referred to as the "**southwest corner of the grid**." While the majority of cells on the guidelines grid correspond with a prison sentence (i.e., 119 out of 135 cells include confinement terms longer than 12 months), the southwest corner of the grid typically accounts for roughly half of the sentences for ranked offenses.

Within each cell, judges are given a sentencing range that includes a minimum and maximum term of confinement. Most visual depictions of guideline systems (including Washington) also indicate the midpoint of the range. **Inchoate offenses** (i.e., attempt, conspiracy, and solicitation to commit a specific offense) may be placed separately on the grid (e.g., in a different row) or may modify the cell range for the related offense.

In Washington, the presumptive sentencing range for inchoate offenses (also known as anticipatory offenses) is 75% of the standard cell range for the underlying offense. In this way, inchoate offenses are considered a standard part of the guideline grid.

The width of the **cell ranges** determines the amount of flexibility judges have when imposing a sentence. Across the grid, the range within each guideline cell varies. Sentencing ranges tend to be narrower for shorter sentences and wider for longer sentences. In Washington, the width of the cell ranges vary from 60 days to 137 months.[13] In general, the width of cell ranges in Washington increases as SL increases and as CHS increases.

Washington State's sentencing guidelines have strict limits on judicial discretion. There are three types of exceptions to the guidelines:

1) The offense includes an aggravating or mitigating factor (exceptional sentences);

2) The case includes a sentencing enhancement; or

3) The defendant is eligible for a sentencing alternative.

Overall, the majority of felony sentences imposed are within or below the standard cell range.

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[12] RCW 70.48.400.

[13] RCW 9.94A.506 sets forth the limitations to the standard sentence ranges.

**Exceptional sentences** are sentences imposed above or below the guideline range. Departures from the guideline range may occur when there are "substantial and compelling reasons justifying an exceptional sentence."[14] Sentences below the range can be imposed at the discretion of a judge.[15] Statutes suggest the types of mitigating circumstances that a court may consider, but the list is not exhaustive.[16]

Exceptional sentences above the guideline range may be imposed for only the aggravating factors identified explicitly in statute.[17] In addition, judges may impose a sentence above the guideline range only if those aggravating factors are admitted to by the defendant in a plea agreement or proven beyond a reasonable doubt before a jury.

For exceptional sentences, judges have the discretion to decide how long of a sentence below or above may be imposed. For mitigated exceptional sentences, judges must consider only whether the offense includes a mandatory minimum term of confinement.[18] For aggravated exceptional sentences, judges may depart above the guideline range up to the statutory maximum sentence determined by the offense's felony class.[19]

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[14] RCW 9.94A.535.
[15] Ibid. Statutes dictate that mitigating circumstances may be established using a "preponderance of evidence" standard. These sentences may be appealed under certain conditions.
[16] Ibid.
[17] Ibid.
[18] Judges are not allowed to issue a mitigated sentence that is less than the mandatory minimum for certain offenses. RCW 9.94A.540.

[19] Statutory maximum sentences are as follows: Class A felonies – life imprisonment; class B felonies – 10 years imprisonment; class C felonies – 5 years imprisonment; gross misdemeanor (included in Title 9A RCW) – 364 days incarceration in county jail; misdemeanor (included in Title 9A RCW) – 90 days incarceration in county jail.

**Sentencing enhancements** are separate laws that prescribe either a fixed additional term of confinement or alter the prescribed sentencing range if the conviction offense meets certain criteria. For example, an additional 12 months and one day of incarceration shall be imposed for individuals convicted of eluding a police vehicle if the offense endangered one or more persons.[20] Unlike exceptional sentences, the additional amount of time added for a sentencing enhancement is prescribed by statute rather than at the discretion of the judge.

The types of sentencing enhancements have increased over time. Exhibit 2 provides information about several significant changes to Washington's sentencing guidelines, including the establishment dates for many sentencing enhancements.[21] Currently, Washington has 12 different sentencing enhancements that may increase an individual's sentence length.[22] The conditions of different enhancements vary. For example, additional confinement time associated with some enhancements may be served in partial confinement (e.g., work release) while others must be served in total confinement (i.e., prison or jail). In addition, the confinement time associated with enhancements is not always eligible for earned early release time. Finally, some sentencing enhancements require that the enhancement time be served consecutively

to all other sentences or enhancements, while other enhancements allow the confinement time to be imposed concurrently with other sentences or enhancements.[23]

**Sentencing alternatives** are non-incarcerative or partial confinement sentencing options that may be imposed in lieu of the standard range of incarceration for certain cases. These alternatives can include consequences like outpatient treatment and/or community supervision. Washington has five sentencing alternatives:

1) First Time Offender Waiver,
2) Special Sex Offender Sentencing Alternative,
3) Prison-Based Drug Offender Sentencing Alternative,
4) Residential Drug Offender Sentencing Alternative, and
5) Parenting Sentencing Alternative.

A brief description of the current sentencing alternatives is provided on pg. 9.[24]

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[20] RCW 9.94A.533(11).
[21] Exhibit 2 is based on a more comprehensive timeline published by the Washington State Sentencing Guidelines Commission for changes to felony sentencing provisions from 1990 – 2018.
[22] RCW 9.94A.533.
[23] Of particular concern are the firearm and deadly weapon enhancements which must be served consecutively to all other sentences and enhancements, in instances where a defendant is charged with multiple firearm or deadly weapons enhancements, the confinement time associated

with the enhancements are "stacked" on top of one another, creating the potential for large increases in sentence length above the standard range.
[24] Washington State statutes (RCW 9.94A.690) also allow judges to recommend that individuals sentenced to incarceration in state prison be able to serve their sentence in a Work Ethic Camp. However, DOC has the discretion to place individuals in work ethic camps depending on their capacity. DOC currently does not operate any work ethic camps, so sentences including a judicial recommendation for a work ethic camp are served in standard total confinement.

## II. CSTF Reform Discussions

Beginning in March 2020, the Grid Subgroup (Subgroup) from the CSTF met weekly to discuss potential changes to the sentencing guideline grids.[25] The Subgroup gathered information on sentencing guideline structures in other states (e.g., Minnesota, Pennsylvania, Arizona, and Kansas) as a starting point for their discussions. The Subgroup focused on five components of sentencing in guidelines states:

1) Classification of offenses in rows,
2) Consideration of criminal history in columns,
3) Ranges within a guideline cell,
4) Departures above and below the range, and
5) Sentencing alternatives.

When discussing various concepts, the Subgroup identified and presented to the full CSTF ten outcomes for consideration when reviewing potential reforms including:

1) Balanced discretion throughout the system,
2) Predictability for all parties,
3) Reducing unnecessary incarcerations,
4) Avoiding shifts to jails,
5) Balancing costs and workload requirements,
6) Ensuring adequate resources for DOC and local counties,
7) Eliminating unnecessary complexity,
8) Reducing/eliminating disparities and disproportionate impacts,
9) Increasing informed decision-making, and
10) Ensuring public safety.

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[25] Meeting summaries and meeting minutes are available on the Ruckelshaus Criminal Sentencing Task Force webpage.

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**Washington State Sentencing Alternatives**

First Time Offender Waiver (FTOW): Alternative that waives the standard range sentence for non-violent first-time felony offenders, not convicted of sex or certain drug offenses. In lieu of the standard range individuals receive up to 90 days in jail, up to 12 or 6 months of community supervision, and other special conditions (e.g., community-based treatment). (RCW 9.94A.650)

Special Sex Offender Sentencing Alternative (SSOSA): For the sentencing of individuals convicted of a sex offense. Excludes those with prior felony sex convictions or a current serious violent offense with a sexual motivation finding. SSOSA includes a suspended sentence in the standard range, a jail term up to 12 months, and special conditions such as inpatient and/or outpatient treatment. (RCW 9.94A.670)

Prison-Based Drug Offender Sentencing Alternative (DOSA):  For some chemically dependent individuals. Excludes those with a current violent or sex offense. Judges may impose a sentence of a period of total confinement for one-half the midpoint of the standard sentence range or 12 months (whichever is greater) and one-half the midpoint of the standard sentence range as a term of community supervision that must include substance abuse treatment. (RCW 9.94A.660)

Residential Drug Offender Sentencing Alterative (DOSA): For some chemically dependent individuals. Excludes those with a current violent or sex offense. Judges may impose a sentence including community supervision equal to one-half the midpoint of the standard sentence range or two years (whichever is greater). Sentence includes chemical dependency treatment for three to six months. (RCW 9.94A.660)

Parenting Sentencing Alternative or Family Offender Sentencing Alternative (FOSA): Alternatives for defendants who have physical custody of their minor child or who are a legal guardian or custodian with physical custody of a child under the age of 18. Judges may waive imposition of a standard sentence and impose a sentence consisting of 12 months of community supervision. (RCW 9.94A.655)

Although the exact outcomes resulting from potential reforms cannot be known, the CSTF contracted with WSIPP to assess potential outcomes from reforms using archival adult felony conviction data.

This study examines potential changes in sentencing outcomes and how those changes would impact overall incarceration rates, potential shifts in incarceration populations from prison to jail, and potential changes in racial disproportionality in sentencing outcomes.

## Rows and Columns

Washington's current felony sentencing grid is based on offense seriousness level (SL) and criminal history score (CHS). The Subgroup discussed several modification options to the horizontal and vertical axes.

For the horizontal axes, the Subgroup discussed possible reforms to the state's method of calculating CHS including the elimination of "multipliers," the elimination of points associated with juvenile adjudications, or the development of an entirely new data-driven CHS. The Statistical Analysis Center at the Office of Financial Management is currently conducting an analysis of Washington State's CHS. As such, analyses pertaining to the CHS are excluded from this report.

For the vertical axes, the Subgroup discussed three approaches. The first option was maintaining the current offense SL. Second, the group discussed modifying the offense SL. For example, the group discussed the possibility of modifying SLs to collapse or expand. The Subgroup reviewed grids in Minnesota, with 11 severity levels; Pennsylvania, with 14 seriousness levels; and the US Federal Guideline Grid, with 43 offense levels.

The third option for the vertical axes was to move from a grid based on offense SLs to one based on felony class. The development of a felony class-based grid was proposed as one of the options in the Sentencing Guidelines Commission's (SGC) Review of the Sentencing Reform Act.[26] Similar class-based systems also exist in other states such as Arizona.

## A Diagonal Axis

In addition to the vertical and horizontal axes, the Subgroup discussed the possibility of integrating a third axis that would move diagonally across the grid. This type of system is used in several existing grid systems such as Pennsylvania which has 5 "Levels," the US Federal Sentencing Grid which has 4 "Zones," and the Oregon Sentencing Grid which has five groups of cells denoted by different colors.

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[26] Sentencing Guidelines Commission–Office of Finanial Management. (July 2019). *Fiscal year 2019 review of the Sentencing Reform Act.* Olympia: WA.

The integration of a diagonal axis allows for the development of policy decisions that are not tied strictly to a particular SL or a certain CHS. For example, forms of intermediate punishments or sentencing alternatives could be tied to a diagonal grid such that individuals who commit less serious offenses and who have larger CHSs and individuals who commit more serious offenses but who have lower CHSs could be eligible for the same sentencing alternative.[27] Similarly, diagonal classifications could be used to make policy decisions regarding judicial discretion, such as the maximum allowable departure for an exceptional sentence.[28]

Appendix III provides illustrative examples of how these diagonal axes could look on Washington State's sentencing grid.

## Cell Ranges

The ranges of sentences vary across cells. In general, the minimum and maximum increase as you move to the right and up on the grid.[29] Similarly, there tends to be overlap in the ranges as you move to the right and up on the grid.[30]

The Subgroup discussed several possible options for reforming the cell ranges. First, the group discussed expanding the ranges by both reducing the minimum and increasing the maximum by a consistent percentage (e.g., 20%). This approach would keep the midpoint of the ranges the same but introduce greater flexibility in standard sentences.

Second, the Subgroup discussed moving only one end of the range. For example, the group discussed the possibility of keeping the maximums the same but reducing the minimums by a certain percentage (e.g., 10%). This approach would slightly reduce the midpoint of each cell while increasing judicial discretion in a way that would not have the potential to increase sentences.

Third, the Subgroup discussed combining some cells and their ranges across CHSs. This approach would widen the ranges and acknowledge that sentences might not always need to increase with each additional point in the CHS. Using this same logic, the class-based grid proposed in the SGC's Review of the Sentencing Reform Act had several cells with the same sentence, an alternative approach that functions the same as combining the cells.

## Departures Above and Below the Grid

Exceptional sentences in Washington allow the judge to sentence above or below the guideline range under certain conditions. Currently, there are no limits or guidance on the amount of time that should be added or removed for exceptional sentences.

The Subgroup discussed the possibility of placing limits on exceptional sentences. Additionally, the Subgroup discussed options for integrating these limits into the grid such that the limits on departures could vary across the grid.[31]

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[27] This model exists in Pennsylvania where forms of intermediate punishments are explicitly identified for different diagonal "levels."
[28] This model exists in Oregon where the maximum departure varies from 6 months to 18 months depending on the color-coded categories that move diagonally across the grid.
[29] There are a few exceptions where the minimum remains the same but the maximum increases as you move to the

right or up on the grid. For example, the range for SL 1 CHS 2 is 2 – 5 months and the range for SL 1 CHS 3 is 2-6 months.
[30] There are a few exceptions where the ranges are fully distinct. For example, the range for SL 1 CHS 5 is 4-12 months and the range for SL 1 CHS 6 is 12+ - 14 months.
[31] This model exists in several states including Pennsylvania where aggravated and mitigated ranges are tied to rows (i.e., offense seriousness) and Oregon where the departure

## Sentencing Alternatives

Currently, sentencing alternatives are not explicitly integrated into the sentencing guideline grid. As such, it is unclear whether or how prosecutors and judges consider sentencing alternatives when making sentencing decisions.

The Subgroup discussed options for expanding the available sentencing alternatives and/or integrating sentencing alternatives directly into the sentencing guideline grid. As mentioned previously, sentencing alternatives could be integrated into the grid by developing diagonal rows to capture the cells that are most likely to include individuals who would be eligible for or who would benefit from particular types of alternatives.

## Data-Informed Decisions

Throughout the Subgroup's discussions, a common theme was a question of how the reforms could potentially impact outcomes in adult felony sentences. The Subgroup and the full CSTF expressed a desire to obtain additional information to inform their discussions about different reform options. Consequently, the CSTF approved a recommendation directing the Ruckelshaus Center to contract with WSIPP to examine sentences under the current sentencing guideline grid and a potential felony class-based guideline grid.

Specifically, the CSTF directed WSIPP and the Caseload Forecast Council (CFC) to gather detailed information on Washington's current sentencing grid using historical data and to then assess possible impacts of changing components of the grid using the same set of historical data.[32] The CSTF asked for information primarily for standard sentences but also for exceptional sentences and sentencing alternatives which could help inform decisions regarding the integration of a diagonal axis on the guideline grid, the establishment of limits on exceptional sentences, and the integration of sentencing alternatives into the guideline grid.

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amounts are associated with different diagonal classifications on the grid.

[32] Washington State Criminal Sentencing Task Force. (2020). *Washington State Criminal Sentencing Task Force, December 2020 Report.* Pullman, WA.

# III. Current Study

This study uses adult felony conviction data from the Caseload Forecast Council (CFC) in fiscal year (FY) 2019. These data include all felony cases in Washington State Superior Courts. The analysis begins with an assessment of sentences under the current grid structure. We then examine how sentences would likely change under different modified grid structures.

## Data

CFC receives felony sentencing information as entered on the judgment and sentence forms from Washington's Superior Courts. To supplement these records, we linked the CFC data to WSIPP's criminal history database (CHD) to obtain demographic characteristics including race, ethnicity, gender, and age. [33]

CFC's database maintains records for each sentence. In cases with multiple offenses, each offense receives its own sentence. When individuals are sentenced for multiple convictions, the sentence is often driven by the sentencing range for the most serious offense, with sentences for additional offenses running concurrently. However, there are some instances where separate sentences may be imposed within the same case, and those sentences may be specified to run consecutively.

For this study, we assumed that sentences imposed on the same day were ordered to run concurrently and we included only the sentence for the most serious offense. [34] For individuals with sentences imposed on separate days, we included the sentence for the most serious offense on each sentencing date.

In total, our final dataset included 16,743 unique sentencing events in FY 2019. For analyses of demographic differences, our sample is limited to the 16,259 sentencing events for which we were able to obtain race data (97.11% of sentences).

The CSTF was particularly interested in analyzing disproportionate sentencing outcomes for this report. As such, we only included sentencing records in disproportionality analyses that we could match to the CHD to obtain demographic characteristics.

When calculating sentence length, we include both sentences to confinement and community service. In certain instances, the court may order eight hours of community service in lieu of one day of total confinement up to a total of 30 days. [35]

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[33] WSIPP's criminal history database combines administrative records from the Administrative Office of the Courts, the Department of Corrections, and the Department of Children Youth and Families/Juvenile Rehabilitation. For additional information, see Appendix I. In the CFC data, demographics come from information provided on the judgment and sentence forms. The CHD allows us to cross reference multiple data sources to ensure more complete and accurate demographic data.

[34] Most serious offense was defined as the offense with the longest sentence length. When multiple offenses had the same sentence length, we selected the offense with the highest offense seriousness level and prioritized selection of completed offenses rather than inchoate offenses.

[35] RCW 9.94A.680.

## Methods

The analyses in this report rely solely on descriptive statistics (e.g., counts and means).[36]

In addition to descriptive statistics for the overall populations, this report examines whether there is disproportionality in the sentencing outcomes by race. The analyses in this report are not causal. That is, if there are disproportionate outcomes by race, we will not be able to identify why these differences exist or whether they were the result of disparate treatment at sentencing.

The analyses of disproportionality are based on comparisons of outcomes for individuals who are convicted of a criminal offense. These findings may be driven, in part, by differences in treatment at earlier stages of the criminal justice system. For example, there may be disproportionality in the likelihood of arrest by race regardless of differences in actual offending behaviors. If people of color are more likely than White people to be arrested, then they may also be more likely to be convicted of an offense. Consequently, differences in sentencing outcomes may represent disparate treatment prior to conviction and/or sentencing.

A comprehensive analysis of disproportionality at different intervention points across the criminal justice system is necessary to assess whether disproportionate sentencing outcomes are the result of judicial and prosecutorial discretion at sentencing or if they are driven by disproportionate treatment prior to sentencing.[37] Similarly, the absence of disproportionality in sentencing outcomes does not mean that disproportionate treatment has not occurred at previous stages of the criminal justice system.

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[36] Because our dataset includes nearly the full population of non-drug sentences in FY 2019 and some comparisons rely on small individual cell sizes, we do not present statistical significance tests. Significance tests are used to account for possible sampling error when the sample used in an analysis is not representative of the full population. For this report, differences that we identify should be interpreted as real differences and are unlikely the result of any bias resulting from sampling errors.

[37] Baumer, E.P. (2013). Reassessing and redirecting research on race and sentencing. *Justice Quarterly*, *30*(2), 231-261 and Starr, S.B., & Rehavi, M.M. (2013). Mandatory sentencing and racial disparity: Assessing the role of prosecutors and the effects of Booker. *Yale Law Journal, 123*(2).

# IV. Standard Non-Drug Sentences

The majority of sentences issued in Washington State Superior Courts are standard sentences (57.5% in our FY 2019 dataset). That is, the case does not include an aggravating or mitigating circumstance, there is not an enhancement, and the judge does not issue a sentencing alternative.[38]

This section examines standard sentences on the current sentencing grid and a potential alternative guideline grid. This section also includes an examination of racial disproportionality in standard sentences under both sentencing structures.

**Exhibit 3**

Number of Sentences, by Grid Cell

| | | **Criminal history score (CHS)** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **0** | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9+** |
| **15** | | 22 | 3 | 5 | 3 | 6 | 2 | 4 | 1 | 1 | 4 |
| **14** | | 24 | 4 | 9 | 3 | 6 | 2 | 3 | 2 | 4 | 3 |
| **13** | | -- | -- | -- | -- | -- | -- | -- | -- | -- | 1 |
| **12** | | 40 | 6 | 15 | 13 | 6 | 6 | 2 | 2 | 2 | 21 |
| **11** | | 22 | 6 | 6 | 10 | 4 | 2 | 2 | -- | 1 | 5 |
| **10** | | 17 | -- | -- | 6 | 1 | 3 | 5 | 1 | 1 | 13 |
| **9** | | 49 | 21 | 35 | 18 | 26 | 22 | 10 | 9 | 6 | 40 |
| **8** | | 17 | 9 | 6 | 9 | 2 | 5 | 10 | 1 | 1 | 4 |
| **7** | | 58 | 28 | 30 | 73 | 34 | 33 | 41 | 25 | 15 | 119 |
| **6** | | 42 | 20 | 20 | 33 | 10 | 8 | 19 | 4 | 6 | 37 |
| **5** | | 142 | 52 | 78 | 90 | 94 | 79 | 72 | 58 | 45 | 192 |
| **4** | | 583 | 322 | 244 | 243 | 184 | 131 | 125 | 75 | 60 | 307 |
| **3** | | 1,214 | 748 | 558 | 351 | 293 | 276 | 188 | 158 | 108 | 428 |
| **2** | | 633 | 291 | 206 | 160 | 125 | 121 | 129 | 98 | 96 | 483 |
| **1** | | 939 | 515 | 256 | 237 | 243 | 183 | 106 | 103 | 98 | 413 |
| **Unranked** | | 2,526 | | | | | | | | | |

*Offense seriousness level (SL)* (vertical axis label for the leftmost column)

Notes:
This table represents unique sentencing events.
For sentencing events with multiple sentences for separate offenses, we selected the most serious offense determined by sentence length, offense seriousness level, and inchoate status.
Orange shaded cells correspond with the "southwest corner of the grid" for which the presumptive sentences are jail sentences.

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[38] 72.6% of sentencing events in our dataset were either standard sentences or sentencing events for unranked offenses almost all of which were standard sentences.

## Current Sentencing Guidelines

Our data analyses include 16,766 felony sentences issued in Washington State superior courts in FY 2019. The majority of sentences were for offenses ranked SL 5 or less (92%). Of those sentences for ranked offenses, the majority were for defendants with a CHS of 4 or less (67%). Exhibit 3 depicts the total distribution of sentences by guideline grid cell for unique sentencing events.[39]

In Washington State's sentencing system, presumptive sentences increase as offense seriousness increases and as criminal history increases. Appendix Exhibit A5 depicts the average sentence length in each cell on the sentencing grid. Because of the overlapping ranges for different cells on the grid, discretion in the use of exceptional sentences, varying applications of sentencing enhancements, and varying eligibility for sentencing alternatives, increases in offense seriousness and/or CHS do not always lead to increases in sentence length.

### Standard Non-Drug Sentences
Exhibit 4 depicts the average sentence length for standard sentences.[40] This table eliminates the differences in average sentences that may be driven by differential use of exceptional sentences, enhancements, or alternatives.

Consistent with expectations, the average sentence increases as seriousness level (SL) increases and as criminal history score (CHS) increases. However, examination of the minimum and maximum sentences in each cell shows that sentences do not always increase across the grid.

For example, at least one individual sentenced for an offense in SL 4 with a CHS of 1 received a sentence of confinement (4.5 months) that was less than the average sentence for other individuals at the same SL but who had a CHS of 0 (average sentence 4.9 months).

Different SLs include different numbers of offenses, and different offenses have varying rates of conviction. Subsequently, wider variations in sentences imposed within some SLs may be driven by a larger variety of offense types.

Exhibit 5 lists the five offenses (or fewer if there were less than five distinct offense types) in each offense SL with the most convictions as well as the average, minimum, and maximum sentences imposed. Variation in the minimum and maximum sentences by offense type suggest that even within the same offense SL, judges perceive varying levels of severity or varying needs for incarceration. Exhibit 5 also depicts how the sentences in some SLs are driven largely by a single offense (e.g., SL 9 is mostly convictions for Robbery 1) while other SLs have a broader distribution of convictions across different offense types (e.g., SL 1 and SL 2).

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[39] A supplemental table is available in Exhibit A4 depicting the percentage distribution of sentences across the grid.
[40] Standard sentences are those determined solely based on offense seriousness and criminal history. Standard sentences excludes exceptional sentences, sentencing enhancements, and sentencing alternatives.

# Exhibit 4
## Average Sentence Length and Range of Sentences (in months), by Grid Cell for Standard Sentences

Criminal history score (CHS)

| Offense seriousness level (SL) | CHS 0 (N) | | | CHS 1 (N) | | | CHS 2 (N) | | | CHS 3 (N) | | | CHS 4 (N) | | | CHS 5 (N) | | | CHS 6 (N) | | | CHS 7 (N) | | | CHS 8 (N) | | | CHS 9+ (N) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max | Avg | Min | Max |
| 15 | 275.8 | 180.0 | 320.0 | 240.0 | 240.0 | 240.0 | 303.5 | 271.0 | 336.0 | 228.0 | 228.0 | 228.0 | 374.0 | 374.0 | 374.0 | 276.0 | 276.0 | 276.0 | 416.0 | 416.0 | 416.0 | 360.0 | 360.0 | 360.0 | 420.0 | 420.0 | 420.0 | 400.0 | 400.0 | 400.0 |
| 14 | 175.3 | 92.3 | 220.0 | 134.0 | 134.0 | 134.0 | 217.0 | 194.0 | 240.0 | 184.0 | 154.0 | 214.0 | 192.0 | 165.0 | 231.0 | | | | 231.0 | 231.0 | 231.0 | 300.0 | 300.0 | 300.0 | | | | 397.0 | 397.0 | 397.0 |
| 13 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 397.0 | 397.0 | 397.0 |
| 12 | 93.1 | 69.8 | 120.0 | 95.0 | 78.0 | 120.0 | 113.9 | 83.3 | 129.0 | | | | 169.5 | 168.0 | 171.0 | 138.0 | 138.0 | 138.0 | | | | 178.0 | 178.0 | 178.0 | | | | | | |
| 11 | 84.7 | 78.0 | 95.0 | 102.5 | 90.0 | 114.0 | 109.5 | 95.0 | 125.0 | 111.0 | 102.0 | 120.0 | 128.0 | 120.0 | 144.0 | | | | 146.0 | 146.0 | 146.0 | | | | 204.0 | 204.0 | 204.0 | | | |
| 10 | 58.3 | 55.0 | 60.0 | | | | | | | 73.5 | 67.0 | 80.0 | 96.0 | 96.0 | 96.0 | | | | 98.0 | 98.0 | 98.0 | | | | | | | | | |
| 9 | 33.6 | 23.25 | 41 | 38.5 | 30 | 48 | 45.1 | 33 | 54 | 48.3 | 34.5 | 61 | 55.2 | 51 | 68 | 60.7 | 42.75 | 75 | 84.8 | 77 | 102 | 94.8 | 81 | 116 | 112.0 | 108 | 120 | 135.5 | 96.75 | 171 |
| 8 | 23.6 | 15.8 | 27.0 | 28.9 | 19.5 | 34.0 | 36.0 | 31.0 | 41.0 | 41.4 | 29.0 | 48.0 | 52.0 | 52.0 | 52.0 | 56.3 | 54.0 | 60.0 | 78.0 | 67.0 | 89.0 | 60.0 | 60.0 | 60.0 | 101.5 | 101.5 | 101.5 | 121.3 | 100.0 | 144.0 |
| 7 | 17.0 | 12.0 | 20.0 | 22.4 | 16.0 | 27.0 | 26.9 | 20.0 | 34.0 | 33.9 | 23.3 | 41.0 | 41.4 | 27.0 | 48.0 | 44.1 | 35.0 | 54.0 | 60.8 | 42.8 | 75.0 | 72.3 | 57.0 | 89.0 | 85.1 | 57.8 | 102.0 | 96.7 | 60.0 | 116.0 |
| 6 | 13.0 | 12.0 | 14.0 | 15.7 | 11.3 | 20.0 | 22.3 | 21.0 | 27.0 | 29.5 | 19.5 | 36.0 | 36.0 | 31.0 | 41.0 | 40.8 | 36.0 | 48.0 | 50.0 | 46.0 | 61.0 | 57.0 | 57.0 | 57.0 | 69.5 | 69.0 | 70.0 | 83.4 | 60.0 | 102.0 |
| 5 | 8.2 | 6.0 | 12.0 | 12.3 | 9.0 | 14.0 | 14.2 | 10.0 | 17.0 | 16.3 | 15.0 | 20.0 | 23.9 | 22.0 | 29.0 | 34.8 | 33.0 | 43.0 | 42.7 | 41.0 | 50.0 | 52.6 | 51.0 | 60.0 | 64.2 | 60.0 | 82.0 | 64.2 | 60.0 | 96.0 |
| 4 | 4.9 | 2.3 | 9.0 | 7.5 | 4.5 | 12.0 | 12.4 | 9.0 | 14.0 | 14.0 | 9.8 | 17.0 | 15.9 | 11.3 | 20.0 | 23.9 | 16.5 | 29.0 | 35.6 | 24.8 | 60.0 | 45.9 | 32.3 | 57.0 | 57.8 | 44.0 | 70.0 | 70.3 | 47.3 | 84.0 |
| 3 | 1.7 | 0.8 | 3.2 | 4.0 | 2.3 | 8.0 | 5.5 | 3.0 | 12.0 | 9.6 | 6.8 | 14.0 | 12.9 | 9.0 | 24.0 | 18.3 | 13.0 | 22.0 | 23.9 | 16.5 | 29.0 | 35.1 | 24.8 | 43.0 | 46.6 | 32.3 | 57.0 | 54.7 | 38.3 | 68.0 |
| 2 | 1.1 | 0.0 | 4.7 | 2.8 | 0.5 | 9.0 | 4.0 | 2.3 | 9.0 | 5.4 | 3.0 | 12.0 | 12.1 | 9.0 | 14.0 | 14.8 | 10.5 | 18.0 | 17.8 | 16.0 | 22.0 | 23.4 | 17.0 | 29.0 | 34.5 | 24.8 | 43.0 | 45.4 | 32.3 | 57.0 |
| 1 | 0.8 | 0.0 | 2.0 | 1.1 | 0.0 | 3.0 | 2.5 | 2.0 | 12.0 | 2.9 | 2.0 | 6.0 | 4.1 | 3.0 | 9.3 | 5.8 | 3.0 | 12.0 | 12.5 | 12.0 | 14.0 | 14.9 | 14.0 | 18.0 | 17.9 | 17.0 | 22.0 | 24.8 | 22.0 | 29.0 |

Notes:

This table includes the average, minimum, and maximum sentences for unique sentencing events with standard sentences in each grid cell (i.e., excluding sentences with an enhancement, exceptional sentences, and sentencing alternatives).

For sentencing events with multiple offenses, we selected the most serious offense determined by sentence length, offense seriousness level, and inchoate status.

Orange cells correspond with the "southwest corner of the grid" for which the presumptive sentences are jail sentences.

**Exhibit 5**

Number of FY 2019 Sentences and Sentence Lengths (in months) for Offenses, by Seriousness Level

| Offense | N | Average sentence | Minimum sentence | Maximum sentence |
|---|---|---|---|---|
| *Offense seriousness level - 15* | | | | |
| Murder 1 (Post 7/24/1999) | 21 | 300.52 | 180 | 420 |
| Murder (Pre 7/1/1990) | 1 | 320 | 320 | 320 |
| *Offense seriousness level - 14* | | | | |
| Murder 2 (Post 7/24/1999) | 22 | 196.66 | 92.25 | 397 |
| *Offense seriousness level - 13* | | | | |
| Murder 2 (7/1/1990 to 7/24/1999) | 1 | 397 | 397 | 397 |
| *Offense seriousness level - 12* | | | | |
| Assault 1 (post 7/1/1990) | 27 | 108.19 | 69.75 | 178 |
| Commercial Sex Abuse of a Minor | 2 | 95.5 | 80 | 111 |
| Trafficking 2nd Degree | 2 | 109.5 | 108 | 111 |
| Rape of a Child (Post 8/31/2001) | 1 | 108 | 108 | 108 |
| *Offense seriousness level - 11* | | | | |
| Vehicular Homicide - DUI | 13 | 101.85 | 78 | 146 |
| Manslaughter 1 | 11 | 112.91 | 78 | 204 |
| *Offense seriousness level - 10* | | | | |
| Child Molestation 1 (7/1/1990 to 8/31/2001) | 2 | 57.5 | 55 | 60 |
| Child Molestation 1 <18 (Post 8/31/2001) | 2 | 73.5 | 67 | 80 |
| Criminal Mistreatment 1 (Post 6/7/2006) | 2 | 79 | 60 | 98 |
| Kidnapping 1 | 1 | 96 | 96 | 96 |
| *Offense seriousness level - 9* | | | | |
| Robbery 1 | 131 | 63.61 | 23.25 | 171 |
| Assault of a Child 2 | 14 | 39.57 | 31 | 54 |
| Sexual Exploitation (Post 6/30/2001) | 7 | 95.21 | 53.5 | 120 |
| Hit and Run - Death (Post 7/21/2001) | 3 | 37.67 | 36 | 41 |
| *Offense seriousness level - 8* | | | | |
| Manslaughter 2 (Post 7/26/1997) | 14 | 44.89 | 22 | 120 |
| Commercial Sex Abuse of a Minor (Post 6/10/2010) | 13 | 48.27 | 19.5 | 89 |
| Arson 1 | 12 | 37.33 | 15.75 | 100 |
| Vehicular Homicide - Reckless Manner | 3 | 74.67 | 32 | 144 |
| Promoting Prostitution 1 | 1 | 60 | 60 | 60 |

Note:

Exhibit 5 only lists the top five offenses within each category.

**Exhibit 5 Continued**

Number of FY 2019 Sentences and Sentence Lengths (in months) for Offenses, by Seriousness Level

| Offense | N | Average sentence | Minimum sentence | Maximum sentence |
|---|---|---|---|---|
| *Offense seriousness level - 7* | | | | |
| Unlawful Possession of a Firearm 1 | 116 | 58.82 | 16 | 116 |
| Child Molestation 2 (Post 7/1/1990) | 73 | 45.47 | 13.5 | 116 |
| Burglary 1 | 49 | 53.49 | 12 | 116 |
| Indecent Liberties - Developmental Disability Victim | 26 | 39.79 | 15 | 116 |
| Drive-By Shooting (Post 6/30/1997) | 16 | 48.88 | 15 | 100 |
| *Offense seriousness level - 6* | | | | |
| Possession of Depiction of a Minor 1st Degree | 51 | 46.36 | 12.03 | 102 |
| Rape of a Child (Post 7/1/1990) | 38 | 28.71 | 12.03 | 60 |
| Theft of a Firearm (Post 7/22/1995) | 19 | 35.54 | 11.25 | 100 |
| Incest 1 | 8 | 60.63 | 14 | 102 |
| Intimidating a Witness | 7 | 48.79 | 15 | 102 |
| *Offense seriousness level - 5* | | | | |
| Domestic Violence Court Order Violation | 191 | 33.66 | 6 | 60 |
| Rape 3 | 36 | 15.4 | 6 | 60 |
| Child Molestation 3 (Post 7/1/1990) | 33 | 11.89 | 6 | 33 |
| Possession of a Stolen Firearm | 27 | 17.57 | 6 | 75 |
| Rendering Criminal Assistance 1 | 17 | 11.18 | 6 | 25 |
| *Offense seriousness level - 4* | | | | |
| Assault 2 (Post 7/1/1988) | 501 | 18.91 | 2.25 | 84 |
| Residential Burglary (Post 7/1/1990) | 290 | 25.13 | 3 | 84 |
| Robbery 2 | 205 | 18.65 | 2.25 | 84 |
| Driving Under the Influence - Felony | 121 | 22.26 | 3 | 84 |
| Vehicular Assault Under the Influence/Reckless | 97 | 12.48 | 3 | 78 |
| *Offense seriousness level - 3* | | | | |
| Assault 3 | 1,000 | 8.74 | 0.99 | 60 |
| Burglary 2 - Non-dwelling | 695 | 12.65 | 0.75 | 68 |
| Unlawful Possession of a Firearm 2 | 390 | 13.57 | 1 | 60 |
| Harassment | 238 | 8.9 | 0.99 | 60 |
| Bail Jump with Class B or C | 191 | 13.15 | 0.99 | 60 |

Note:
Exhibit 5 only lists the top five offenses within each category.

**Exhibit 5 Continued**

Number of FY 2019 Sentences and Sentence Lengths (in months) for Offenses, by Seriousness Level

| Offense | N | Average sentence | Minimum sentence | Maximum sentence |
|---|---|---|---|---|
| *Offense seriousness level - 2* | | | | |
| Possession of a Stolen Vehicle | 381 | 16.83 | 0 | 57 |
| Identity Theft 2 | 312 | 11.19 | 0 | 57 |
| Escape from Community Custody | 250 | 1.96 | 0 | 12.03 |
| Theft 1 | 224 | 10.09 | 0 | 57 |
| Theft of a Motor Vehicle | 138 | 12.65 | 0 | 57 |
| *Offense seriousness level - 1* | | | | |
| Theft 2 | 634 | 4.42 | 0 | 29 |
| Taking a Motor Vehicle Without Permission 2 | 599 | 6.67 | 0 | 29 |
| Attempting to Elude Pursuing Police Vehicle | 479 | 7.55 | 0 | 29 |
| Forgery | 280 | 4.45 | 0 | 29 |
| Possession of Stolen Property 2 | 262 | 5.44 | 0 | 29 |

Note:

Exhibit 5 only lists the top five offenses within each category.

*Racial Disproportionality.* Previous research on sentencing (in the federal system and other states) finds that White defendants are often less likely than defendants who are Black, Indigenous, and/or people of color (BIPOC) to be sentenced to incarceration and White defendants sentenced to incarceration receive shorter sentences than BIPOC defendants sentenced to incarceration.[41]

We examine racial disproportionality by calculating the ratio of average sentence length for BIPOC defendants to the average sentence length for non-Hispanic White defendants. A value of 1 indicates that the average sentence lengths for White and BIPOC defendants are the same. A value greater than 1 indicates that BIPOC defendants, on average, received longer sentences than White defendants.

Exhibit 6 provides the overall sentence length ratios for all standard non-drug sentences as well as the sentence-length ratios for by SL.

Overall, BIPOC defendants, on average, received longer sentences than White defendants. For individual SLs, the average sentence length was longer for BIPOC defendants than for White defendants in five SLs, shorter for BIPOC defendants than for White defendants in seven SLs, and the same in two SLs. Since our sample includes nearly the entire population of standard non-drug sentences in FY 2019, any

**Exhibit 6**

Sentence Length Ratio for BIPOC and White Defendants, by Seriousness Level—Standard, Non-Drug Sentences

| Offense SL | Sentence length ratio | White | | BIPOC | |
|---|---|---|---|---|---|
| | | N | Avg. sent. | N | Avg. sent. |
| *All SLs* | 1.12 | 6,132 | 16.1 | 3,164 | 18.1 |
| *15* | 1.08 | 15 | 294.1 | 7 | 317.0 |
| *14* | 1.12 | 12 | 189.9 | 9 | 212.6 |
| *13* | | 1 | 397.0 | – | – |
| *12* | 0.80 | 14 | 122.0 | 17 | 97.1 |
| *11* | 0.89 | 11 | 113.8 | 13 | 101.1 |
| *10* | 1.01 | 4 | 73.3 | 3 | 74.3 |
| *9* | 1.01 | 84 | 62.3 | 67 | 62.6 |
| *8* | 1.06 | 29 | 45.3 | 14 | 48.1 |
| *7* | 0.86 | 160 | 57.0 | 145 | 48.9 |
| *6* | 0.79 | 96 | 42.7 | 32 | 33.8 |
| *5* | 0.91 | 211 | 27.8 | 148 | 25.4 |
| *4* | 0.95 | 926 | 21.0 | 519 | 19.9 |
| *3* | 1.12 | 1,823 | 10.8 | 996 | 12.2 |
| *2* | 0.99 | 1,091 | 13.2 | 487 | 13.1 |
| *1* | 1.10 | 1,655 | 5.6 | 707 | 6.2 |

Notes:
Ratio values greater than 1 indicate that the average sentence for BIPOC defendants was greater than the average sentence for White defendants.

differences in sentencing outcomes reflect real and potentially meaningful differences. As SL increases, differences in the SL ratio are more meaningful because the sentence lengths are longer. For example, in SL 2, the average sentence for BIPOC was 13.1 months while the average sentence for White defendants was 13.2 months, resulting in a ratio of 0.99.

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[41] Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in US federal courts: Who is punished more harshly? *American sociological review, 65*(5); Doerner, J. K., & Demuth, S. (2010). The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in US federal courts. *Justice Quarterly, 27*(1); Spohn, C. (2017).

*Race and sentencing disparity. Reforming criminal justice: A report of the Academy for Justice on bridging the gap between scholarship and reform*, 4; and Rehavi, M.M., & Starr, S.B. (2014). Racial disparity in federal criminal sentences. *Journal of Political Economy, 122*(6), 1320-1354.

However, for SL 15, the average sentence for BIPOC defendants was 317 months while the average sentence for White defendants was 294.1 months, resulting in a ratio of 1.08.

Exhibit 7 evaluates disproportionality across all sentences for the same SL. However, since sentences are also directly tied to CHSs, these overall findings may be driven by differences in BIPOC and White defendants' prior conviction history. Although a detailed examination of CHS is beyond the scope of this study, some information about the distribution of CHS by race is available in Appendix IV.

Exhibit 7 depicts the sentence length ratio for BIPOC and White defendants for each individual cell on the grid. Overall, there were 101 cells with at least one BIPOC and one White defendant. In 41 cells, BIPOC average sentences were longer than White sentences and in 52 cells, average sentences for White defendants were greater than average sentences for BIPOC defendants while 8 cells had the same average sentences for BIPOC defendants and White defendants.

**Exhibit 7**

Sentence Length Ratio for Standard Sentences for BIPOC and White Defendants, by Grid Cell

| | | **Criminal history score (CHS)** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **0** | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9+** |
| | **15** | 1.15 | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| | **14** | 0.89 | --- | 1.24 | 1.39 | 0.91 | --- | --- | --- | --- | --- |
| | **13** | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| | **12** | 0.88 | 0.92 | 0.81 | --- | 1.02 | --- | --- | --- | --- | --- |
| | **11** | 0.93 | 0.87 | 0.97 | 0.85 | 1.10 | --- | --- | --- | --- | --- |
| | **10** | 1.04 | --- | --- | 0.84 | --- | --- | --- | --- | --- | --- |
| **Offense seriousness level (SL)** | **9** | 0.92 | 1.01 | 1.00 | 0.94 | 0.99 | 0.90 | 1.01 | 0.99 | 0.95 | 1.11 |
| | **8** | 1.10 | 1.25 | 1.12 | 1.11 | --- | 1.05 | --- | --- | --- | 0.98 |
| | **7** | 0.99 | 1.05 | 0.93 | 0.94 | 0.88 | 0.96 | 0.85 | 0.92 | 1.02 | 0.98 |
| | **6** | 1.00 | 1.09 | 1.19 | 1.06 | 1.24 | 0.86 | 1.07 | --- | 0.99 | 0.90 |
| | **5** | 1.05 | 1.00 | 1.00 | 0.97 | 1.01 | 1.02 | 0.95 | 1.01 | 1.07 | 0.99 |
| | **4** | 0.94 | 1.01 | 0.98 | 1.00 | 0.97 | 0.98 | 0.98 | 1.00 | 0.97 | 1.01 |
| | **3** | 1.06 | 1.06 | 0.96 | 1.02 | 1.01 | 1.02 | 0.92 | 1.01 | 0.99 | 0.96 |
| | **2** | 1.08 | 1.17 | 0.90 | 1.10 | 0.98 | 0.97 | 0.94 | 0.98 | 0.99 | 1.04 |
| | **1** | 1.06 | 0.94 | 0.99 | 0.89 | 1.01 | 1.04 | 0.98 | 0.98 | 1.00 | 1.00 |

Notes:
Ratio values greater than one indicate that the average sentence for BIPOC defendants was greater than the average sentence for White defendants. Ratios were calculated only for the grid cells that had at least one BIPOC and at least one White defendant.

Disproportionality was most obvious for lower CHSs. For columns corresponding with a CHS of 0 or 1, 23.3% of cells (comprising 57 sentences) had the same average sentence or insufficient sample sizes to calculate a ratio, 30.0% of cells (comprising 955 sentences) had average sentences for White defendants that were longer than the average sentence for BIPOC defendants, and in 46.7% of cells (comprising 3,045 sentences), average sentences for BIPOC defendants were longer than the average sentence for White defendants. Thus, racial disproportionality was higher than average for individuals with lower CHSs.

## Modified Guideline Grid

The Subgroup put forth an alternative guideline structure that constructs its rows based on a felony offense class system and that has columns including CHSs ranging from 0 – 10+. This alternative structure was originally put forth by the Sentencing Guidelines Commission (SGC) in their 2019 Review of the Sentencing Reform Act.[42]

For purposes of this report, we refer to this modified guideline grid as the "class-based grid." Exhibit 8 shows the proposed class-based grid. Instead of offense SLs seen in Exhibit 1, offenses are classified in a +/- felony class system. Currently, in the adult system, felony offenses are classified as class A, B, or C. However, in the juvenile system, offenses are classified in a plus-

minus class system (A+, A, A-, B+, B, B-, and C+, C, C-, etc.). The SGC modeled the felony classifications for this new grid on the classifications of offenses in the juvenile system.

We made slight modifications to the grid system to maintain the general increases in cell ranges as offense seriousness and CHSs increase.[43]

Of note on the class-based grid, all sentences in the bottom row are presumptive jail sentences. Since all felony offenses receive a class categorization, unranked offenses would be integrated directly into the grid based on their felony class.

The class-based grid has fewer cells than the current grid (99 cells vs. 150). 22 of the 99 cells (22.2%) include presumptive jail sentences and an additional three cells have sentence ranges that include both jail and prison sentences. The maximum sentence on the class-based grid is 600 months while the maximum sentence on the current grid is 548 months. However, the class-based system includes an additional column separating those with a CHS of 9 from those with a CHS of 10 or more.

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[42] Sentencing Guidelines Commission–Office of Finanial Management. (July 2019).

[43] WSIPP made slight modifications to the grid as proposed by the SGC in coordination with the Caseload Forecast Council (CFC). For example, the class-based grid published in the SGC report had a range of 16 months to 24 months for class B- offenses with a criminal history score of 3 but had a range of 14 months to 24 months for class B offenses with a criminal history score of 3. We switched the minimums for these two cells so that the less serious offense (B-) had a lower minimum (14 months). These minor changes maintained the general approach to sentencing guideline grids such that ranges stay the same or increase but do not decrease as offense seriousness and criminal history increases.

# Exhibit 8
## Class-based Sentencing Grid with Midpoint and Sentence Ranges (in months)

| Felony class | | Criminal history score (CHS) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10+ |
| A+ | | 229.5 | 258 | 276 | 300 | 312 | 354 | 372 | 402 | 432 | 480 | 522 |
| | | 123-336 | 156-360 | 192-360 | 228-372 | 252-372 | 288-420 | 300-444 | 324-480 | 348-516 | 420-540 | 444-600 |
| A | | 126 | 144 | 162 | 180 | 198 | 216 | 234 | 258 | 282 | 294 | 318 |
| | | 72-180 | 96-192 | 120-204 | 132-228 | 156-240 | 168-264 | 180-288 | 216-300 | 240-324 | 252-336 | 276-360 |
| A- | | 66 | 75 | 84 | 84 | 90 | 102 | 114 | 126 | 144 | 168 | 216 |
| | | 42-90 | 54-96 | 60-108 | 60-108 | 72-108 | 84-120 | 96-132 | 108-144 | 120-168 | 132-204 | 168-264 |
| B+ | | 31.5 | 36 | 45 | 54 | 60 | 69 | 72 | 90 | 90 | 108 | 120 |
| | | 21-42 | 24-48 | 30-60 | 36-72 | 48-72 | 54-84 | 60-84 | 72-108 | 72-108 | 96-120 | 120-120 |
| B | | 12 | 13.5 | 18 | 20 | 23 | 28 | 36 | 48 | 60 | 72 | 84 |
| | | 6-18 | 9-18 | 12+-24 | 16-24 | 16-30 | 20-36 | 24-48 | 36-60 | 48-72 | 60-84 | 72-96 |
| B- | | 6 | 11 | 16 | 19 | 20 | 24 | 25 | 30 | 32 | 36 | 45 |
| | | 0-12 | 6-16 | 12+-18 | 14-24 | 16-24 | 18-30 | 20-30 | 24-36 | 24-40 | 24-48 | 30-60 |
| C+ | | 6 | 9 | 14 | 14 | 17 | 17 | 20 | 20 | 24 | 24 | 33 |
| | | 0-12 | 6-12 | 12-16 | 12+-16 | 14-20 | 14-20 | 16-24 | 16-24 | 18-30 | 18-30 | 24-42 |
| C | | 1.5 | 3 | 4.5 | 7.5 | 7.5 | 7.5 | 9 | 10.5 | 16 | 18 | 27 |
| | | 0-3 | 0-6 | 0-9 | 3-12 | 3-12 | 3-12 | 6-12 | 9-12 | 12+-18 | 12+-24 | 18-36 |
| C- | | 0.5 | 1 | 1.5 | 3 | 4.5 | 6 | 7.5 | 7.5 | 9 | 9 | 10.5 |
| | | 0-1 | 0-2 | 0-3 | 0-6 | 0-9 | 0-12 | 3-12 | 3-12 | 6-12 | 6-12 | 9-12 |

Notes:

The top row of each felony class represents the midpoint of the sentencing range for each cell. The minimum and maximum sentence for each cell is listed below the midpoint.

Inchoate offenses were assumed to operate the same on the class-based grid as the current grid with presumptive ranges that are 75% of the standard range for the underlying offense.

Cell ranges were based on the 2019 SGC Review of the Sentencing Reform Act, with some slight modifications. Classification of offenses into a +/- class system was based on the Washington State juvenile offense classification system (RCW 13.40.0357).

Cells shaded dark orange correspond with presumptive jail sentences and those shaded light orange include both presumptive jail and presumptive prison sentences.

**Exhibit 9**

Number of Sentences by Grid Cell for the Class-Based Grid

| | | Criminal history score (CHS) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **0** | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** | **10+** |
| **Felony class** | **A+** | 20 | 8 | 8 | 5 | 7 | 0 | 2 | 1 | 1 | 1 | 2 |
| | **A** | 30 | 4 | 6 | 3 | 3 | 3 | 1 | 2 | 1 | 0 | 1 |
| | **A-** | 36 | 23 | 27 | 15 | 24 | 20 | 8 | 12 | 6 | 9 | 25 |
| | **B+** | 469 | 244 | 179 | 230 | 142 | 109 | 117 | 54 | 45 | 59 | 193 |
| | **B** | 19 | 3 | 7 | 10 | 1 | 3 | 5 | 0 | 2 | 3 | 1 |
| | **B-** | 418 | 243 | 237 | 139 | 99 | 88 | 75 | 66 | 54 | 36 | 248 |
| | **C+** | 83 | 25 | 33 | 33 | 34 | 22 | 21 | 10 | 7 | 12 | 44 |
| | **C** | 10 | 6 | 3 | 8 | 2 | 3 | 1 | 0 | 0 | 2 | 3 |
| | **C-** | 1,642 | 1,018 | 645 | 484 | 394 | 282 | 178 | 154 | 108 | 99 | 350 |

Notes:

This table represents unique sentencing events.

For sentencing events with multiple sentences for separate offenses, we selected the most serious offense determined by sentence length, offense seriousness level, and inchoate status.

Orange shaded cells correspond with presumptive sentences are jail sentences.

## Standard Non-Drug Sentences

Exhibit 9 presents the number of standard, non-drug sentences in each cell on the class-based grid.

To make comparisons to sentencing outcomes on the current grid, we had to estimate what an individual's sentence would likely be on the new grid system. We used a measure calculated by CFC for purposes of their annual statistical summary called "where in the range (WITR)."

The WITR measure creates an estimate for each sentence ranging from 0 to 1 where 0 is the minimum of the cell range and 1 is the maximum of the cell range. We calculated the WITR estimate for sentences on the current grid and applied that same estimate to the cell ranges on the new grid. For example, if an individual with a CHS of 4 was convicted for an offense with an SL of 1 and sentenced to 5.5 months of incarceration, their WITR estimate

would be 0.5 (5.5 months is the midpoint of that cell on the current grid). If that offense was a C- offense, we would apply the 0.5 WITR estimate to the new cell range of 0 – 9 months, resulting in an estimated sentence of 4.5 months. This method assumes that judges make decisions with some consideration of the distance from the minimum, maximum, and midpoint in each cell.

Exhibit 10 depicts the average, minimum, and maximum sentences for standard sentences on the class-based grid. This exhibit includes the same population of cases as Exhibit 4.

Compared to the current grid, 29.1% of sentencing events are predicted to experience an increase in sentence length, 68.5% of sentences are predicted to experience a decrease in sentence length, and 2.4% of sentences are predicted to remain the same.

# Exhibit 10
## Average Sentence Length and Range of Sentences (in months), by Grid Cell for Standard Sentences—Class-Based Grid

Each cell shows: **Average** (top), then **Min** and **Max** below.

| Felony class | CHS 0 | CHS 1 | CHS 2 | CHS 3 | CHS 4 | CHS 5 | CHS 6 | CHS 7 | CHS 8 | CHS 9 | CHS 10+ |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **A+** | 194.4 (92.3–336.0) | 226.5 (126.0–270.0) | 246.7 (144.0–338.5) | 250.6 (210.6–313.1) | 369.1 (363.4–372.0) | 254.5 (187.4–288.0) | 444.0 (444.0–444.0) | 339.3 (324.0–354.6) | 416.3 (416.3–416.3) |  | 437.5 (437.5–437.5) |
| **A** | 118.9 (54.0–180.0) | 131.5 (81.9–192.0) | 155.6 (120.0–204.0) | 172.9 (132.0–228.0) | 194.7 (156.0–240.0) |  | 199.4 (180.0–218.9) | 286.6 (286.6–286.6) | 266.6 (266.6–266.6) | 336.0 (336.0–336.0) | 360.0 (360.0–360.0) |
| **A-** | 54.9 (31.5–90.0) | 64.4 (51.0–96.0) | 77.3 (53.3–108.0) | 72.6 (45.0–108.0) | 85.4 (72.0–108.0) | 93.0 (63.0–120.0) | 108.5 (96.0–132.0) | 113.5 (84.2–144.0) | 137.8 (90.0–168.0) | 145.0 (99.0–168.0) | 198.8 (126.0–264.0) |
| **B+** | 32.8 (21.0–42.0) | 32.7 (18.0–48.0) | 47.1 (30.0–60.0) | 57.2 (36.0–72.0) | 68.3 (68.3–68.3) | 74.7 (70.0–82.0) | 68.5 (60.0–84.0) |  | 81.0 (72.0–90.0) | 108.0 (108.0–108.0) | 120.0 (120.0–120.0) |
| **B** | 9.9 (4.5–18.0) | 11.2 (6.8–18.0) | 15.0 (0.0–24.0) | 18.2 (12.0–32.0) | 19.5 (12.0–30.0) | 24.4 (15.0–36.0) | 30.3 (18.0–48.0) | 41.9 (27.0–60.0) | 55.3 (36.0–72.0) | 70.0 (54.0–84.0) | 81.0 (54.0–96.0) |
| **B-** | 4.0 (0.0–18.8) | 7.6 (4.5–23.5) | 12.9 (9.0–18.0) | 15.2 (10.5–32.0) | 16.7 (12.0–24.0) | 20.8 (13.5–30.0) | 21.5 (15.0–30.0) | 26.3 (18.0–36.0) | 27.3 (18.0–40.0) | 27.1 (18.0–48.0) | 37.9 (22.5–60.0) |
| **C+** | 5.4 (0.0–12.0) | 7.6 (6.0–12.0) | 13.3 (12.0–16.0) | 14.0 (12.0–17.0) | 18.5 (17.0–20.0) | 18.0 (14.0–20.0) | 16.0 (16.0–16.0) |  |  | 24.0 (24.0–24.0) | 33.0 (33.0–33.0) |
| **C** | 1.3 (0.0–3.0) | 1.5 (0.0–6.0) | 2.8 (0.0–9.0) | 5.9 (3.0–12.0) | 4.9 (3.0–12.0) | 5.0 (3.0–12.0) | 6.8 (6.0–10.2) | 9.5 (9.0–12.0) | 15.0 (15.0–15.0) | 18.0 (18.0–18.0) | 27.0 (27.0–27.0) |
| **C-** | 0.4 (0.0–1.1) | 0.6 (0.0–2.0) | 0.5 (0.0–10.0) | 1.4 (0.0–6.0) | 2.1 (0.0–27.1) | 2.9 (0.0–12.0) | 5.4 (3.0–12.0) | 5.0 (3.0–12.0) | 7.2 (6.0–12.0) | 7.7 (6.0–12.0) | 10.2 (9.0–12.0) |

Notes:

This table includes the average, minimum, and maximum sentence for standard sentences in each grid cell (i.e., excluding sentences with an enhancement, exceptional sentences, and sentencing alternatives).

Orange shaded cells correspond with the cells for which the presumptive sentences are jail sentences.

Exhibit 11 shows the number of jail, prison, and non-incarcerative standard sentences under the current and simulated grid systems. Using the WITR calculations, our estimates show a significant reduction in incarceration. This is the result of far greater cells having a presumptive minimum sentence of 0 months on the class-based grid compared to the current grid. It is possible that, if implemented, judges would be less likely to sentence individuals to the minimum of the range if that minimum sentence did not include any time in confinement. Thus, these calculations may overestimate the effects on sentences in a real-world application.

Moving from 16 SLs to 9 class categories also has the potential to introduce more variability into the types of offenses included in each row. Exhibit 12 lists the five offenses in each felony class with the most convictions as well as the average, minimum, and maximum predicted sentences based on the WITR calculation.

**Exhibit 11**

Sentencing Outcome Comparison on the Current and Simulated Sentencing Grids

|  | Current grid | | Simulated class grid | |
| --- | --- | --- | --- | --- |
|  | **N** | **%** | **N** | **%** |
| **Jail** | 5,817 | 60.4% | 4,816 | 50.0% |
| **Prison** | 3,663 | 38.0% | 2,752 | 28.6% |
| **No incarceration** | 148 | 1.5% | 2,060 | 21.4% |

Note:
Jail sentences include any sentence for 12 or fewer months and prison sentences include any sentence for more than 12 months.

**Exhibit 12**

Number of Sentences and Sentence Lengths for Offenses, by Felony Class from WITR

| Offense | N | Sentence length | | |
|---|---|---|---|---|
| | | Avg. | Min. | Max. |
| *Offense class A+* | | | | |
| Assault 1 | 27 | 205.24 | 92.25 | 372 |
| Murder 1 (Post 7/24/99) | 21 | 274.35 | 92.25 | 444 |
| Child Molestation 1 (7/90 - 8/31/01) | 2 | 204.44 | 173.12 | 235.76 |
| Child Molestation 1 <18 (Post 8/31/01) | 2 | 270.55 | 228 | 313.09 |
| Murder 1 (Pre 7/1/90) | 1 | 336 | 336 | 336 |
| *Offense class A* | | | | |
| Murder 2 (Post 7/24/1999) | 22 | 164.18 | 54 | 360 |
| Vehicular Homicide-DUI | 13 | 140.92 | 72 | 192 |
| Manslaughter 1 | 11 | 153.38 | 72 | 266.6 |
| Vehicular Homicide - Reckless Manner | 3 | 244 | 168 | 336 |
| Commercial Sex Abuse of a Minor - Promote | 2 | 100.94 | 81.88 | 120 |
| *Offense class A-* | | | | |
| Robbery 1 | 131 | 92.94 | 31.5 | 264 |
| Burglary 1 | 49 | 108.8 | 38.7 | 264 |
| Vehicular Homicide - Disregard Safety of Others | 13 | 107.29 | 54 | 214.34 |
| Arson 1 | 12 | 81.24 | 31.5 | 176.67 |
| *Offense class B+* | | | | |
| Assault of a Child 2 | 14 | 35.39 | 21 | 60 |
| Manslaughter 2 | 14 | 54.74 | 24.5 | 108 |
| Commercial Sex Abuse of a Minor | 13 | 55.62 | 18 | 84 |
| Sexual Exploitation | 7 | 85.82 | 54 | 120 |
| Hit and Run - Death | 3 | 35 | 31.5 | 42 |

Note:
Exhibit 12 only lists the top five offenses within each category.

**Exhibit 12 Continued**

Number of Sentences and Sentence Lengths for Offenses, by Felony Class from WITR

| Offense | N | Sentence length | | |
|---|---|---|---|---|
| | | Avg. | Min. | Max. |
| *Offense class B* | | | | |
| Assault 2 | 501 | 22.51 | 4.5 | 96 |
| Residential Burglary | 290 | 28.17 | 0 | 96 |
| Robbery 2 | 205 | 21.66 | 4.5 | 96 |
| Driving Under the Influence (Felony) | 121 | 24.8 | 6 | 96 |
| Unlawful Possession of a Firearm 1 | 116 | 38.96 | 7.13 | 96 |
| *Offense class B-* | | | | |
| Burglary 2 - Non-dwelling | 695 | 13.94 | 0 | 60 |
| Possession of a Stolen Vehicle | 381 | 18.86 | 0 | 60 |
| Theft 1 | 224 | 13.76 | 0 | 60 |
| Theft of a Motor Vehicle | 138 | 15.79 | 0 | 60 |
| Failure to Register as a Sex Offender 3+ | 120 | 28.71 | 2.76 | 60 |
| *Offense class C+* | | | | |
| Rape of a Child 3 | 38 | 13.3 | 0 | 33 |
| *Offense class C* | | | | |
| Domestic Violence Court Order Violation | 191 | 9.52 | 0 | 27 |
| Rape 3 | 36 | 4.08 | 0 | 18.02 |
| Child Molestation 3 | 33 | 2.71 | 0 | 12 |
| Hit and Run - Injury | 29 | 5.18 | 0 | 27 |
| Indecent Exposure | 12 | 5.6 | 0 | 27 |
| *Offense class C-* | | | | |
| Assault 3 | 1000 | 1.48 | 0 | 27.14 |
| Theft 2 | 634 | 1.8 | 0 | 12 |
| Taking Motor Vehicle Without Permission 2 | 599 | 2.63 | 0 | 12 |
| Attempting to Elude Pursuing Police Vehicle | 479 | 3.11 | 0 | 12 |
| Unlawful Possession of a Firearm 2 | 390 | 2.15 | 0 | 12 |

Note:
Exhibit 12 only lists the top five offenses within each category.

*Racial Disproportionality*. Using the simulated sentences described above, we examined potential changes in racial disproportionality in sentencing under the class-based guideline structure. Exhibit 13 provides the sentence length ratio for each felony class (i.e., each row on the class-based grid).

Overall, the simulated class-based grid shows slightly lower disparities in sentence length for White and BIPOC defendants (sentence length ratio of 1.12 under the current grid and 1.10 on the simulated grid). The only felony class for which BIPOC defendants receive a longer sentence on average than White defendants are for class C- offenses with a difference in the average sentence of only 0.2 months.

However, the high concentration of offenses in the C- felony class (55.4% of all sentences) are sufficient to drive the overall difference in average sentences between BIPOC and White defendants.

An analysis of cell-based disproportionality further expands upon the findings by felony class. Exhibit 14 presents the sentence length ratio for the felony class-based grid.

**Exhibit 13**

Sentence Length Ratio for BIPOC and White Defendants, by Seriousness Level—Standard, Non-Drug Sentences on a Class-Based Guideline Grid

| Felony class | Sentence length ratio | White | | BIPOC | |
|---|---|---|---|---|---|
| | | N | Avg. sent. | N | Avg. sent. |
| *All classes* | 1.10 | 6,132 | 13.6 | 3,164 | 14.9 |
| *A+* | 0.85 | 31 | 254.0 | 22 | 216.9 |
| *A* | 0.89 | 26 | 172.8 | 28 | 154.3 |
| *A-* | 0.95 | 117 | 99.1 | 85 | 93.9 |
| *B+* | 0.92 | 34 | 55.0 | 19 | 50.6 |
| *B* | 0.90 | 1,115 | 27.2 | 675 | 24.4 |
| *B-* | 0.97 | 1,143 | 16.5 | 494 | 16.0 |
| *C+* | 0.95 | 22 | 13.6 | 16 | 12.9 |
| *C* | 0.97 | 195 | 7.7 | 125 | 7.4 |
| *C-* | 1.12 | 3,449 | 2.0 | 1,700 | 2.2 |

Notes:
Ratios greater than one indicate that the average sentence for BIPOC defendants was greater than the average sentence for White defendants.

**Exhibit 14**

Sentence Length Ratio for Standard Sentences for BIPOC and White Defendants, by Grid Cell—Felony Class-Based Grid

| Felony class | Criminal history Score (CHS) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10+ |
| A+ | 0.68 | 0.7 | 1.83 | 0.44 | 0.63 | 2 | 0 | 0 | 0 | 0 | 0 |
| A | 0.86 | 1.01 | 0.86 | 0.89 | 0.78 | 0 | 1.58 | 0 | 0 | 0 | 1 |
| A- | 0.91 | 0.96 | 1.03 | 1.13 | 0.98 | 0.95 | 1.07 | 1.01 | 0.99 | 1.25 | 1.097 |
| B+ | 0.91 | 0.96 | 1.03 | 1.13 | 0 | 0.95 | 0 | 0 | 0 | 1.25 | 0 |
| B | 1.02 | 1.13 | 0.97 | 0.96 | 1.07 | 1.1 | 1.03 | 1.02 | 0.99 | 1.02 | 0.982 |
| B- | 0.92 | 1.03 | 0.93 | 0.88 | 0.96 | 1.02 | 0.87 | 0.86 | 0.98 | 1.01 | 0.985 |
| C+ | 1.05 | 1.04 | 1.29 | 1.14 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| C | 1.08 | 1.04 | 1 | 0.97 | 1.13 | 1.02 | 0.93 | 1.01 | 1 | 1 | 1 |
| C- | 1.12 | 1.2 | 1.02 | 1.06 | 1.16 | 1.06 | 1 | 1.21 | 1.04 | 1.06 | 1.052 |

Notes:
Ratio values greater than one indicate that the average sentence for BIPOC defendants was greater than the average sentence for White defendants.
Ratios were calculated only for the grid cells that had at least one BIPOC defendant and at least one White defendant.

# IV. Non-Standard Sentences

The previous sections compared sentencing outcomes on the current and simulated class-based grid for standard, non-drug sentences. Our dataset also included exceptional sentences, sentences with sentencing enhancements, sentencing alternatives, and unranked offenses.

While it is not possible to simulate these offenses on the class-based grid,[44] we did examine variations in sentencing outcomes on the current system, particularly regarding racial disproportionality.

All non-standard sentences are derived from a discretionary decision either by prosecutors or judges. For example, prosecutors must decide whether they will pursue fact-finding for an aggravated factor or characteristics related to a sentencing enhancement. Similarly, if established using the appropriate standards of evidence, judges must decide how far above the standard range to depart (if at all) for an aggravated sentence.

Previous research finds that discretionary decision points may be more likely to result in disproportionate sentencing outcomes.[45] That is, for standard sentences, cell ranges are limited, reducing the possibility of disproportionate outcomes for individuals committing the same offense and who have the same criminal history. However, if for example, prosecutors are more likely to seek aggravated sentences for BIPOC defendants than for White defendants, disproportionality in sentencing outcomes would likely increase as judges are no longer constrained by the limited cell ranges.

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[44] Simulating non-standard sentences would require the development of a number of assumptions about discretionary decisions by prosecutors and judges, undermining the overall reliability of any subsequent findings. For example, it is possible that prosecutors sought an exceptional sentence as a part of a plea bargain that reduced the seriousness level of the underlying charge. If the ranges associated with different offenses were to change, prosecutors may no longer seek a reduced charge and exceptional sentence, or they may seek a different exceptional sentence length. Attempting to simulate these non-standard sentences on the class-based grid would require more information about prosecutorial decision-making in order to establish reasonable assumptions about how decisions may change under an alternative grid structure.

[45] Engen, R.L., Gainey, R.R., Crutchfield, R.D., & Weis, J.G. (2003). Discretion and disparity under sentencing guidelines: The role of departures and structured sentencing alternatives. *Criminology*, 41(1), 99-130.

**Exhibit 15**
Sentence Types, by Race
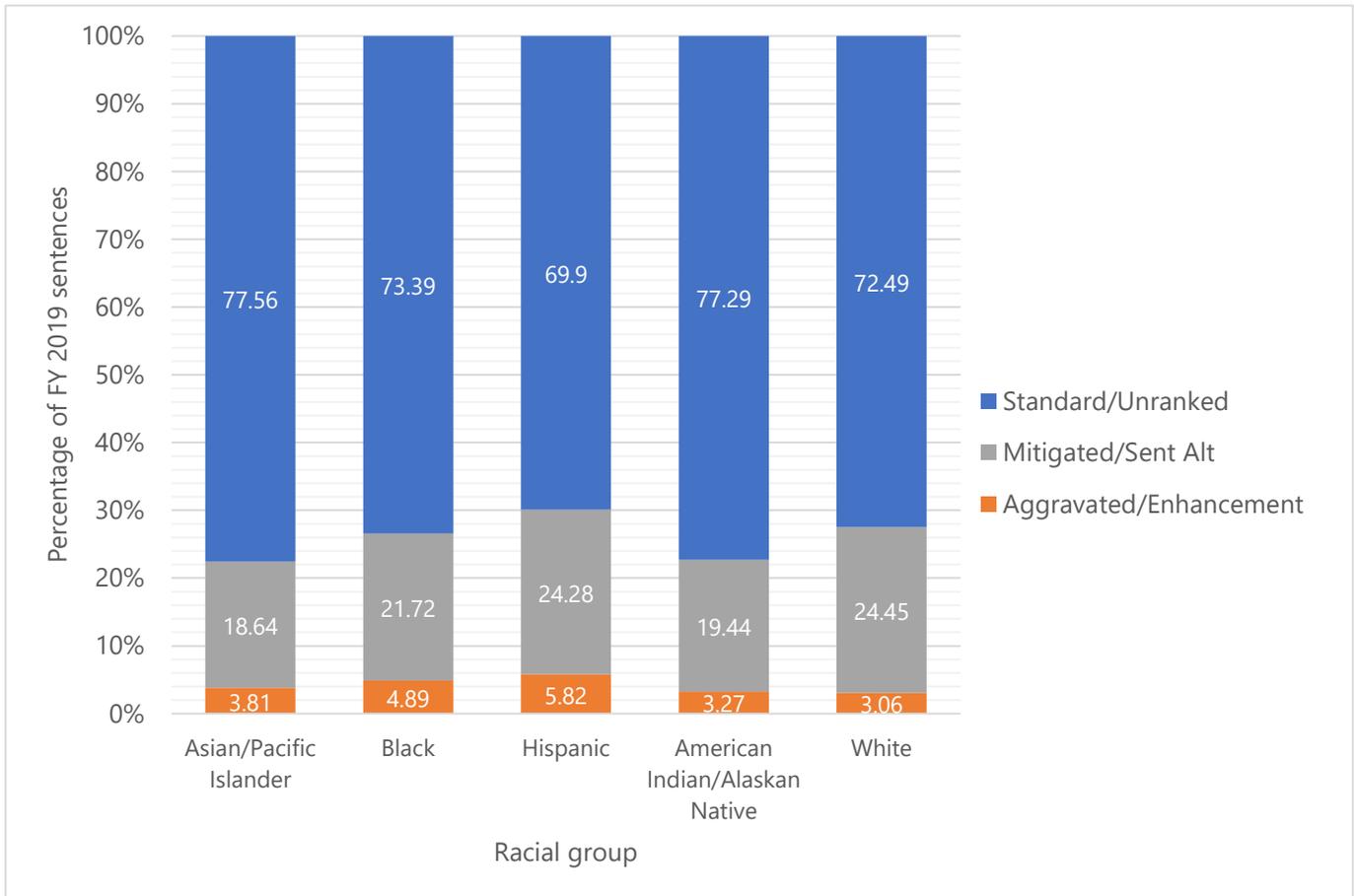


Overall, the likelihood of receiving a standard or non-standard sentence varied by race. Exhibit 15 depicts the percentage of sentences for each racial group that were either 1) standard sentences, 2) aggravated or enhanced sentences, or 3) mitigated sentences or sentencing alternatives.

White defendants were the most likely group to receive a mitigated sentence or sentencing alternative (24.5%) while Hispanic and Black defendants were the most likely groups to receive an aggravated or enhanced sentence (5.8% and 4.9% respectively).

In addition, exceptional sentences, sentencing enhancements, and sentencing alternatives are not currently integrated directly into the grid. The following subsections review the data on each type of non-standard sentence and provide examples of how these non-standard sentences may be formally integrated into a sentencing grid system.

### Exceptional Sentences

Our dataset included 1,365 exceptional sentences. Three-fourths of exceptional sentences were mitigated sentences, 22% were aggravated, and the remaining 3% were within the standard range.

Exceptional aggravated sentences can exceed the maximum of the range within each cell but may not exceed the statutory maximum for the felony class of the offense. Exceptional mitigated sentences may fall any distance below the minimum of the range, including a sentence that includes no incarceration time.

As sentence lengths increase, judges and prosecutors may perceive the need for longer aggravated sentences. For example, if an individual with a CHS of 4 receives an aggravated sentence of 4 months for an SL 1 offense, the aggravated sentence would be 50% greater than the maximum sentence. However, if the individual received an aggravated sentence of 4 months for an SL 8 offense, the aggravated sentence would be 7% greater than the maximum sentence. Consequently, judges and prosecutors may seek a longer aggravated sentence for an SL 8 offense than an SL 1 offense.

One concern raised by the Subgroup was the absence of restriction on aggravated and mitigated sentences. In other states, such as Pennsylvania, the sentencing grid explicitly includes limits to the amount of time that may be added or removed for an exceptional sentence. Recognizing the differences in sentence lengths as seriousness, the limits for exceptional sentences in Pennsylvania increase as offense seriousness increases. However, these approaches do not take into account that there is also heterogeneity in sentences within an SL as CHS varies.

Exhibits 16 and 17 provide details on the average aggravated and mitigated sentences by offense SL.[46] Each table includes the total number of aggravated or mitigated sentences, the average aggravated and mitigated departure length above or below the maximum or minimum, respectively, and the average percentage above the maximum or below the minimum of the range. By providing the percentage above the maximum or below the minimum, the analysis accounts for changes in the sentence range within SL as CHS increases. In addition, we provide the statistics separately for White and BIPOC defendants. Additional details about the distribution of exceptional sentences by race are available in Appendix IV.

Overall, the average aggravated departure length for White defendants was 31.61 months above the maximum while the average aggravated departure length for BIPOC defendants was 36.52 months above the maximum. The average mitigated departure length was 18.49 months below the minimum for White defendants and 27.91 months for BIPOC defendants. However, these differences are influenced by differences in racial distributions across criminal history and seriousness level. For aggravated sentences, White defendants, on average, received an aggravated departure that was 86% of the maximum sentence range while BIPOC defendants, on average, received an aggravated departure that was 146% of the maximum sentence range. For mitigated sentences, White defendants, on average, received a departure that was equal to 55.8% of the minimum sentence range while BIPOC defendants, on average, received a departure that was only 49.7% of the minimum sentence range.

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[46] The analysis of exceptional sentences was limited to the current sentencing guidelines grid. Any attempt to simulate aggravated and mitigated sentences on the class-based grid would require a series of assumptions that may not be reliable in a real-world application of the grid.

For aggravated sentences, the average sentence length above the maximum tended to increase as sentence length increased, but the average percentage above the maximum of the range tended to decrease. There were noticeable differences in the percentage above the maximum for White and BIPOC defendants, with BIPOC defendants receiving greater increases in their sentence for 8 of the 12 SLs for which there were both White and BIPOC defendants. In two of the remaining SLs, the differences were small (3.0% for SL 1 and 4.0% for SL 7) and in the remaining two SLs (8 and 9), the difference was less than 13.0%.

For mitigated sentences, the amount of time below the minimum generally increased as SL increased, but the average percentage of the minimum generally decreased as SL increased. In all but 2 SLs, White defendants received a departure that was a larger percentage of the minimum than BIPOC defendants. In the two SLs where BIPOC defendants received larger percentage reductions below the minimum, the difference was less than 10.0%.

**Exhibit 16**

Exceptional Aggravated Sentence Details (in months), by Seriousness Level and Race

| Offense SL | Total | | | White | | | BIPOC | | |
|---|---|---|---|---|---|---|---|---|---|
| | N | Avg. length over max | Avg. % of max | N | Avg. length over max | Avg. % of max. | N | Avg. length over max | Avg. % of max. |
| 15 | 3 | +80.0 | 15.6% | 1 | +66.0 | 9.0% | 2 | +87.0 | 18.8% |
| 14 | 4 | +95.3 | 36.3% | 3 | +90.3 | 31.7% | 1 | +110.0 | 50.0% |
| 13 | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| 12 | 14 | +104.4 | 37.9% | 9 | +98.7 | 35.9% | 5 | +114.8 | 41.3% |
| 11 | 6 | +56.3 | 31.7% | 5 | +37.6 | 17.4% | 1 | +150.0 | 103.1% |
| 10 | 6 | +112.3 | 73.4% | 5 | +128.4 | 78.6% | 0 | . | . |
| 9 | 6 | +60.8 | 63.8% | 3 | +59.0 | 68.0% | 3 | +62.7 | 59.7% |
| 8 | 6 | +19.6 | 34.0% | 4 | +14.1 | 38.2% | 2 | +30.5 | 25.6% |
| 7 | 32 | +58.3 | 88.4% | 18 | +55.8 | 90.1% | 14 | +61.5 | 86.2% |
| 6 | 5 | +73.2 | 81.5% | 3 | +109.3 | 116.0% | -- | -- | -- |
| 5 | 14 | +27.9 | 82.0% | 11 | +23.1 | 58.9% | 3 | +45.3 | 166.7% |
| 4 | 76 | +21.1 | 94.1% | 40 | +20.8 | 80.0% | 33 | +22.9 | 115.6% |
| 3 | 70 | +18.4 | 106.4% | 42 | +14.0 | 45.5% | 28 | +24.9 | 197.7% |
| 2 | 29 | +17.9 | 330.3% | 19 | +18.6 | 299.1% | 9 | +17.2 | 399.5% |
| 1 | 28 | +8.8 | 57.2% | 22 | +9.1 | 57.8% | 6 | +7.7 | 54.8% |

Notes:
Avg. length represents the additional amount of time above the maximum sentence.
For each sentence, the percentage of the maximum was calculated by taking the length of stay above the maximum sentence for the cell associated with the particular sentence, divided by the maximum sentence for the cell associated with the particular sentence.
This table depicts the average of the percentage of the maximum for all sentences in the seriousness level.

**Exhibit 17**

Exceptional Mitigated Sentence Details (in months), by Seriousness Level and Race

| Offense SL | Total | | | White | | | BIPOC | | |
|---|---|---|---|---|---|---|---|---|---|
| | N | Avg. length below min. | Avg. % of min. | N | Avg. length below min. | Avg. % of min. | N | Avg. length below min. | Avg. % of min. |
| 15 | 6 | -138.4 | 32.1% | 1 | -60.0 | 33.3% | 5 | -154.1 | 31.9% |
| 14 | 6 | -153.6 | 37.6% | 2 | -38.3 | 41.5% | 4 | -211.3 | 35.7% |
| 13 | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| 12 | 30 | -95.2 | 37.8% | 12 | -49.3 | 41.3% | 18 | -125.8 | 35.4% |
| 11 | 9 | -34.5 | 40.2% | 5 | -36.8 | 44.4% | 4 | -31.6 | 35.0% |
| 10 | 12 | -80.6 | 46.9% | 6 | -55.0 | 64.2% | 6 | -106.2 | 29.6% |
| 9 | 40 | -22.5 | 44.5% | 17 | -20.9 | 43.3% | 21 | -23.6 | 46.5% |
| 8 | 5 | -13.2 | 48.9% | 1 | -15.0 | 71.4% | 4 | -12.8 | 43.3% |
| 7 | 26 | -29.1 | 42.5% | 15 | -21.6 | 50.8% | 11 | -39.3 | 31.2% |
| 6 | 7 | -16.1 | 37.1% | 5 | -9.6 | 34.3% | 2 | -32.5 | 44.0% |
| 5 | 253 | -26.3 | 58.2% | 150 | -27.1 | 58.6% | 103 | -25.3 | 57.6% |
| 4 | 153 | -13.3 | 46.9% | 98 | -12.3 | 48.2% | 52 | -15.8 | 44.4% |
| 3 | 276 | -13.6 | 56.4% | 157 | -13.2 | 58.7% | 110 | -15.0 | 54.5% |
| 2 | 127 | -15.2 | 54.9% | 79 | -16.1 | 60.2% | 47 | -14.0 | 46.0% |
| 1 | 75 | -7.8 | 55.6% | 45 | -8.1 | 59.2% | 30 | -7.4 | 50.1% |

Notes:
For each sentence, the percentage of the minimum was calculated by taking the difference between the minimum sentence for the cell associated with the sentence and the actual sentence, divided by the minimum sentence for the cell associated with the particular sentence.
This table displays the average of the percentage of the minimum for all sentences in the seriousness level.

**Exhibit 18**

Sentencing Events with a Sentencing Enhancement, by Race

| Race | Full dataset | | Total enhancements | | Firearm/deadly weapon | | Vehicular homicide— prior DUI | | Sexual motivation | | Endangerment with elude | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | N | % | N | % | N | % | N | % | N | % | N | % |
| Asian/Pacific Islander | 499 | 3.0 | 14 | 4.5 | 12 | 4.8 | 0 | 0.0 | 1 | 5.3 | 1 | 2.6 |
| Black | 2,311 | 13.8 | 71 | 22.6 | 63 | 25.2 | 0 | 0.0 | 2 | 10.5 | 6 | 15.8 |
| Hispanic | 1,837 | 11.0 | 59 | 18.8 | 50 | 20.0 | 0 | 0.0 | 6 | 31.6 | 3 | 7.9 |
| American Indian/ Alaskan Native | 612 | 3.7 | 8 | 2.5 | 5 | 2.0 | 1 | 14.3 | 0 | 0.0 | 2 | 5.3 |
| White | 10,949 | 65.4 | 150 | 47.8 | 113 | 45.2 | 5 | 71.4 | 8 | 42.1 | 24 | 63.2 |
| Race unavailable | 536 | 3.2 | 12 | 3.8 | 7 | 2.8 | 1 | 14.3 | 2 | 10.5 | 2 | 5.3 |
| **Total** | 16,744 | | 314 | | 250 | | 7 | | 19 | | 38 | |

Note:
This table includes only the enhancements associated with non-drug sentences in FY 2019.

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Judges are required to state the reason for an exceptional sentence. Appendix IV displays the five most common reasons stated for aggravated and mitigated exceptional sentences as well as the percentage of sentences. For aggravated sentences, the most common reason listed was "defendant agreed to prison, greater sentence, or treatment." For mitigated sentences, the most common reason listed was, "exceptional sentence is more appropriate/is in the interests of justice."

The general distribution of exceptional reasons was similar for White and BIPOC defendants. However, a greater percentage of mitigated sentences for BIPOC defendants listed "all parties agreed to mitigated sentence" as the reason, while White defendants were most likely to receive a mitigated sentence because it was "more appropriate/in the interests of justice."

Sentencing Enhancements

Similar to aggravated sentences, sentencing enhancements add additional confinement time if an offense includes certain characteristics. For most enhancements, a set amount of time is automatically added to a sentence. For other enhancements, the standard range is increased a certain amount and judges may issue a sentence within the enhanced range. Appendix IV provides additional details for the different types of sentencing enhancements.

Only 2% of the sentences in our analytic dataset included a sentencing enhancement (314 sentences). The dataset included only four enhancements: firearm and deadly weapons, vehicular homicide with a prior DUI, sexual motivation, and endangering others while attempting to elude the police. Many of the other enhancements (e.g., protected zones) are more likely with drug offenses, which were excluded from the dataset for this report since our focus was on non-drug offenses.

Firearm and deadly weapon enhancements accounted for the majority of all sentencing enhancements (79.6%). Importantly, the data for this report were at the sentence-level. Thus, the table reports the number of *sentencing events* that include a firearm or deadly weapon enhancement but, in some cases, defendants may have received multiple firearm or deadly weapons enhancements.

Exhibit 19 compares the racial distribution for all sentences included in our dataset and the racial distribution for each of the four enhancements. Despite accounting for 65.4% of all sentences in our dataset, White defendants accounted for only 47.8% of all sentencing enhancements and 45.2% of firearm and deadly weapon enhancements.

## Exhibit 19
### Number of FY 2019 Sentencing Alternative Sentences, by Guideline Cell

| Offense seriousness level (SL) | Criminal history score (CHS) | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ |
| 16 | | | | | | | | | | |
| ... | | | | | | | | | | |
| 12 | 7 | | | 6 | 1 | | | | | |
| 11 | 2 | 1 | | 4 | | | | | | |
| 10 | 10 | | | 3 | | | 3 | | | |
| 9 | 2 | | | 1 | | | 1 | | | 1 |
| 8 | | 1 | | | | | | | | |
| 7 | 7 | 4 | 2 | 8 | 4 | 6 | 4 | 5 | 3 | 17 |
| 6 | 11 | 9 | 10 | 7 | 5 | 2 | 3 | 2 | 3 | 6 |
| 5 | 30 | 14 | 29 | 29 | 49 | 30 | 23 | 15 | 9 | 41 |
| 4 | 84 | 64 | 45 | 38 | 25 | 25 | 32 | 25 | 16 | 90 |
| 3 | 337 | 146 | 54 | 20 | 68 | 98 | 57 | 42 | 36 | 160 |
| 2 | 113 | 55 | 21 | 16 | 35 | 41 | 56 | 22 | 26 | 162 |
| 1 | 234 | 43 | 19 | 17 | 6 | 5 | 20 | 37 | 25 | 82 |
| Unranked | | | | 40 | | | | | | |

Notes:
This table includes only the sentencing alternatives associated with non-drug sentences in FY 2019.
There were no sentencing alternative sentences for seriousness levels 13-16.

## Sentencing Alternatives

Sentencing alternatives are available for defendants whose cases meet certain conditions. Exhibit 19 shows the total number of FY 2019 non-drug sentences with a sentencing alternative for each cell on the guideline grid. A supplemental table examining the percentage of non-drug sentences in each cell with a sentencing alternative is included in Appendix IV.

Sentencing alternatives were most common for individuals convicted of offenses at lower SLs. This finding is unsurprising given that most sentencing alternatives preclude individuals convicted of violent offenses which tend to be concentrated in higher SLs.

The use of sentencing alternatives varied across the grid. For example, First Time Offender Waiver (FTOW) alternatives were more likely for individuals at a lower SL and with a lower CHS while Drug Offender Sentencing Alternatives (DOSA) were more common with individuals with a higher SL or individuals with a higher CHS. In some sentencing grids (like Pennsylvania or the US Federal Government), a second horizontal axis is included on the grid but captures cells in a diagonal pattern. Integrating a diagonal axis on the grid may be particularly useful for providing explicit guidance on the use of sentencing alternatives. Examples of the use of explicit guidance for sentencing alternatives within a grid can be found in Appendix III. Appendix IV provides additional information on the distribution of sentencing alternatives across the Washington State Felony Guideline Grid.

Sentencing alternatives were disproportionately distributed across racial groups. Exhibit 20 shows the distribution of race by sentencing alternative as well as the racial distribution for those receiving standard sentences. Overall, White defendants were disproportionately likely to receive a sentencing alternative rather than a standard sentence. Black and Hispanic defendants were more likely to receive a standard sentence than any of the five sentencing alternatives.

**Exhibit 20**
Distribution of Race for Standard Sentences and Sentencing Alternatives
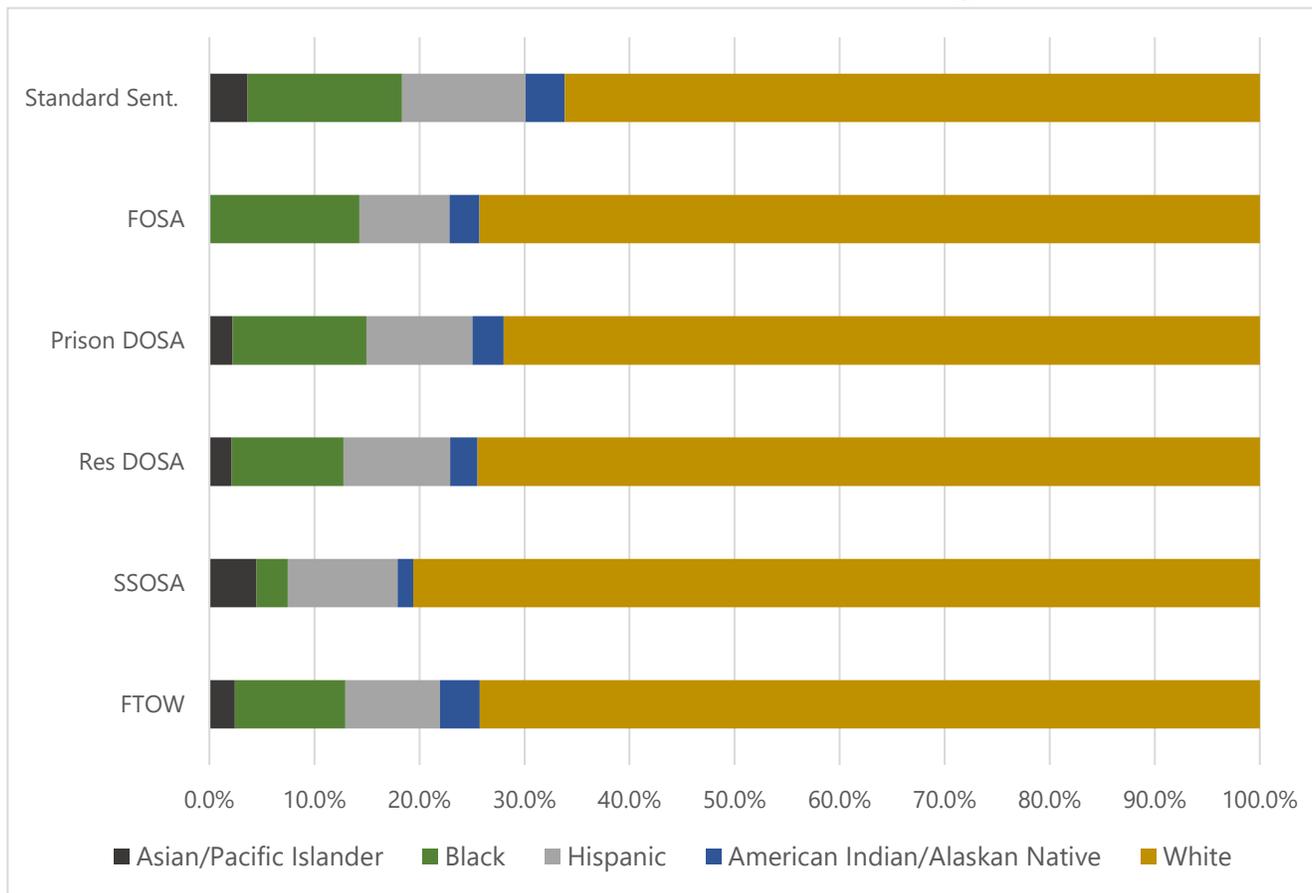


Notes:
This table includes only the sentencing alternatives associated with non-drug sentences in FY 2019.
There were no sentencing alternative sentences for seriousness levels 13-16.

### Unranked Offenses

Currently, there are over 300 unranked offenses. These offenses do have a felony class but have not been assigned an offense SL. At the time of publication, there are 3 class A felony offenses that are unranked, 99 class B felony offenses that are unranked, and 209 class C felony offenses that are unranked.

For unranked offenses, the standard range is 0-12 months incarceration, regardless of an individual's CHS. Because sentences for unranked offenses are not dependent on CHS, our dataset did not include CHS for sentences associated with unranked offenses.[47]

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[47] This exclusion was because felony sentences for unranked offenses are not dependent upon an individual's criminal history score.

Our dataset included 2,526 sentences for unranked offenses. Forty-eight of those sentences were exceptional aggravated sentences, with sentences longer than 12 months. An additional four sentences for unranked offenses included a sentencing enhancement.

For the remaining sentences for unranked offenses, BIPOC defendants, on average, were sentenced to longer periods of confinement. Exhibit 21 shows the average confinement length for all unranked offenses and separately for unranked class B felonies and unranked class C felonies.

By moving to a class-based grid, unranked offenses would be integrated directly into the grid using their associated felony class. It is likely that, at least in some instances, this switch would result in an increased sanction for unranked offenses.

On the simulated grid, class B felonies would only be eligible for a sentence between 0-12 months if they were reclassified as B- felonies and individuals had a CHS of 0. For all other cells on the simulated grid for offenses classified as B+, B, or B-, the potential sentencing range would exceed 12 months. If the unranked class C felonies remain class C or are reclassified as C-, the sentencing ranges would largely fall within 0-12 months. However, if any offenses were reclassified as C+ offenses, defendants with a CHS of 2 or greater would likely see an increase in their sentence.

**Exhibit 21**
Average Sentencing Length for Unranked Offenses, by Race
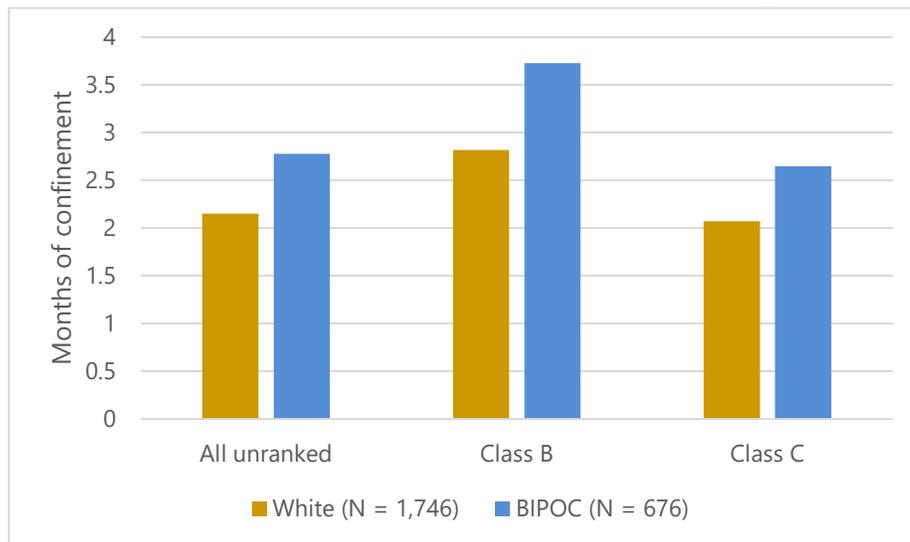


Note:
This table includes only the sentences for unranked offenses that did not include an exceptional sentence or a sentencing enhancement.

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# V. Conclusion

The purpose of this report was to provide detailed information about the current Washington State Felony Sentencing Grid to inform discussions being held by the Criminal Sentencing Task Force. Using data on adult felony sentences from fiscal year 2019, this report examines different distributions of standard, non-drug sentences in the context of different aspects of the sentencing guideline grid as well as differences in non-standard sentences including exceptional sentences, sentencing enhancements, sentences for unranked offenses, and sentencing alternatives.

In addition, this report examined the potential impacts of moving from a sentencing grid based on offense seriousness level to one based on a felony class system. In general, the analyses find that moving to a felony class-based grid has the potential to substantially reduce overall incarceration rates and reduce the length of the majority of sentences. However, the simulation analyses are based on a series of assumptions, so the findings may overestimate the effects of implementing an alternative grid in the real world.

Beyond general sentencing trends, this report also focuses on analyses of racial disproportionality for standard and non-standard sentences. However, the analyses in this report were limited to differences in outcomes for those convicted of an offense. Consequently, the analyses are unable to capture any disproportionality that occurs earlier in the criminal justice system (e.g., arrests or charging decisions).

Overall, the report found notable areas of racial disproportionality in sentencing outcomes including that BIPOC defendants were more likely than White defendants to have longer average sentences under both the current and simulated class-based grid. Under the current grid, BIPOC defendants received a higher rate of aggravated sentences and longer average departures for aggravated sentences than White defendants, while White defendants were more likely than BIPOC defendants to receive a sentencing alternative in lieu of the standard incarceration sentence.

It is impossible to perfectly predict the outcomes of modifying the state's felony sentencing system. Ultimately the impact of any reform will be affected by the discretion of court actors, namely prosecutors and judges. For example, reforms that restrict the allowable departure for aggravated exceptional sentences may lead prosecutors to seek charges for more serious offenses to obtain a longer incarceration sentence. The complex relationship between each component of the sentencing system requires continued data collection and monitoring of any reforms in order to evaluate whether the modifications to the sentencing system have the intended effects and to identify any unintended consequences from the reforms.

The analyses in this report are unable to answer questions regarding "why" or "how" differences in sentencing outcomes occur. Future analyses could examine broader causal relationships using multivariate models that can simultaneously account for the relative influence of different factors.

However, to fully understand the process of sentencing decisions, more data is needed from prosecutors' offices to track decisions made regarding charges, plea bargains, and the decision to seek discretionary departures such as aggravated exceptional sentences, sentencing enhancements, or sentencing alternatives.

# Appendices

## I. Coding Decisions/Assumptions

For this report, we used standard non-drug felony sentences, including sentences for unranked offenses, exceptional sentences (both aggravated and mitigated), and cases disposed with sentencing alternatives. We examined enhanced sentences separately, as the impact of those enhancements on the sentencing guideline outcomes varies. We did not examine cases disposed under the persistent offender law, drug offenses, sentences of life, or indeterminate sex offense sentences.

For duplicate records (multiple sentencings on the same day) we kept the case number with the longest sentence and removed additional cases. If sentences were issued on different dates, we kept both records and assumed the sentences ran concurrent and not consecutive.

When placing individuals on the new, simulated grids, we assumed general scoring rules would remain the same—e.g., any class A offense currently defined as a violent offense has enhanced scoring. Additionally, we did not change the score if the current class offense dropped to a B+ offense.

### Standard Non-drug Sentences

1. Excludes:

   a) Offenses sentenced on the drug grid,

   b) Unranked offenses,

   c) Sentences with any enhancement,

   d) Exceptional sentences,

   e) Sentences to any alternative,

   f) Sentences outside the standard range (errors in sentencing or incomplete information in the J&S), and

   g) Sentences of life or indeterminate sex (CCBs).

## Persistent Offenders

We excluded ten "persistent offender" sentences from our analysis. Washington statutes define two categories of persistent offenders:

1) Individuals sentenced under Washington's Persistent Offender law[48] individuals who are convicted of a "most serious felony offense" (see RCW 9.94A.030 (32)) and who were previously convicted of a most serious felony offense on at least two separate occasions; and

2) Those who are convicted of completing or attempting: rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or who are convicted of any of the following with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree and who has previously been convicted on at least one occasion for the aforementioned crimes.

Defendants meeting the classification of persistent offenders are sentenced to a term of total confinement for life without the possibility of release or, when applicable, sentenced to death. These sentences are not dependent upon an individual's placement on a sentencing guidelines grid and thus, are excluded from our analysis.

## Other Life Without Parole

There were six sentences for aggravated murder 1, an offense with an SL 16, and a presumptive sentence of life without parole. We excluded these cases since their sentence would not change under a revised sentencing guideline grid.

## Demographic Characteristics

We matched adult felony sentencing records from the Caseload Forecast Council to WSIPP's Criminal History Database (CHD) to obtain demographic data for our sample. The CHD combines data from multiple Washington State agencies: court data from the Administrative Office of the Courts, residential confinement data from Juvenile Rehbilitation at the Department of Children, Youth and Families (DCYF), and incarceration and community supervision data from the Department of Corrections. This database allows for a more robust collection of demographic data by drawing on multiple sources, reducing the likelihood of missing data.

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[48] RCW 9.94A.570.

# II. Offense Classifications

Washington State RCWs include several different offense classifications. The tables in this Appendix provide comparisons of six different classifications including felony class, offense seriousness level, serious violent offenses, violent offenses, sex offenses, and crimes against persons.

**Exhibit A1**
Offense Classifications

| Offense description | Class | SL | Serious violent offense RCW 9.94A.030 | Violent offense RCW 9.94A.030 | Sex offense RCW 9.94A.030 | Crimes against persons RCW 9.94A.411 |
|---|---|---|---|---|---|---|
| Aggravated murder 1 | A | 16 | X | X | | X |
| Homicide by abuse | A | 15 | X | X | | |
| Malicious explosion 1 | A | 15 | | X | | |
| Murder 1 | A | 15 | X | X | | X |
| Murder 2 | A | 14 | X | X | | X |
| Trafficking 1st degree | A | 14 | | X | | |
| Malicious explosion 2 | A | 13 | | X | | |
| Malicious placement of explosives 1 | A | 13 | | X | | |
| Assault 1 | A | 12 | X | X | | X |
| Assault of a child 1 | A | 12 | X | X | | X |
| Commer sex abuse a minor - promote | A | 12 | | X | X | |
| Rape 1 | A | 12 | X | X | X | X |
| Rape of a child 1 | A | 12 | | X | X | X |
| Trafficking 2nd degree | A | 12 | | X | | |
| Malicious placement of imitation device 1 | B | 12 | | | | |
| Manslaughter 1 | A | 11 | X | X | | X |
| Rape 2 | A | 11 | | X | X | X |
| Rape of a child 2 | A | 11 | | X | X | X |
| Vehicular homicide - drunk | A | 11 | | X | | X |
| Vehicular homicide - reckless | A | 11 | | X | | X |
| Child molest 1 | A | 10 | | X | X | X |
| Indecent liberties with force | A | 10 | | X | X | X |
| Kidnapping 1 | A | 10 | X | X | | X |
| Leading organized crime | A | 10 | | X | | |
| Sexually violent predator escape | A | 10 | | X | | |
| Criminal mistreatment 1 | B | 10 | | | | X |
| Malicious explosion 3 | B | 10 | | | | |

| Offense description | Class | SL | Serious violent offense RCW 9.94A.030 | Violent offense RCW 9.94A.030 | Sex offense RCW 9.94A.030 | Crimes against persons RCW 9.94A.411 |
|---|---|---|---|---|---|---|
| Explosive devices prohibited | A | 9 | | X | | |
| Homicide by watercraft-drunk | A | 9 | | X | | |
| Robbery 1 | A | 9 | | X | | X |
| Abandon dependent persons 1 | B | 9 | | | | |
| Assault of a child 2 | B | 9 | | X | | X |
| Controlled substance homicide | B | 9* | | | | |
| Hit and run - death | B | 9 | | | | |
| Inciting criminal profiteering | B | 9 | | | | |
| Malicious placement of explosives 2 | B | 9 | | | | |
| Sexual exploitation of a minor | B | 9 | | X | X | |
| Arson 1 | A | 8 | | X | | X |
| Homicide by watercraft-reckless | A | 8 | | X | | |
| Commer sex abuse a minor | B | 8 | | | X | |
| Manslaughter 2 | B | 8 | | X | | X |
| Promoting prostitution 1 | B | 8 | | | | X |
| Theft of anhydrous ammonia | C | 8 | | | | |
| Burglary 1 | A | 7 | | X | | X |
| Homicide by watercraft-disregard safety | A | 7 | | X | | |
| Use machine gun or bump-fire stock in commission of a felony | A | 7 | | X | | |
| Vehicular homicide - disregard safety of others* | A | 7 | | | | X |
| Child molest 2 | B | 7 | | | X | X |
| Civil disorder training | B | 7 | | | | |
| Dealing depictions of a minor 1st degree | B | 7 | | | X | |
| Drive-by-shooting | B | 7 | | X | | |
| False reporting 1 (effective 6/11/2020) | B | 7 | | | | |
| Indecent liberties w/o force | B | 7 | | | X | X |
| Introducing contraband 1 | B | 7 | | | | |
| Malicious placement of explosives 3 | B | 7 | | | | |
| Negligently causing death by use of a signal preemption device | B | 7 | | | | |
| Send/bring sexual depictions of minor 1st degree | B | 7 | | | X | |
| Unlawful possession of firearm 1 | B | 7 | | | | |
| Air bag diagnostic systems (causing bodily injury or death) | C | 7 | | | | |
| Air bag replacement requirements (causing bodily injury or death) | C | 7 | | | | |
| Manufacture or import counterfeit, nonfunctional, damaged, or previously delployed airbag (causing bodily injury or death) | C | 7 | | | | |
| Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously delployed airbag (causing bodily injury or death) | C | 7 | | | | |

| Offense description | Class | SL | Serious violent offense RCW 9.94A.030 | Violent offense RCW 9.94A.030 | Sex offense RCW 9.94A.030 | Crimes against persons RCW 9.94A.411 |
|---|---|---|---|---|---|---|
| Bail jump with murder 1 | A | 6 | | X | | |
| Bribery | B | 6 | | | | |
| Incest 1 | B | 6 | | | X | X |
| Intimidating a judge | B | 6 | | | | |
| Intimidating a juror | B | 6 | | | | X |
| Intimidating a witness | B | 6 | | | | X |
| Poss of depiction of minor 1st degree | B | 6 | | | X | |
| Theft from a vulnerable adult 1 | B | 6 | | | | X |
| Theft of a firearm | B | 6 | | | | |
| Malicious placement of imitation device 2 | C | 6 | | | | |
| Rape of a child 3 | C | 6 | | | X | X |
| Unlawful storage of anhydrous ammonia | C | 6 | | | | |
| Kidnapping 2, sexual motivation | A | 5 | | X | X | X |
| Advancing money - extortionate credit | B | 5 | | | | |
| Bail jump with class a | B | 5 | | | | |
| Dealing depictions of a minor 2nd degree | B | 5 | | | X | |
| Extortion 1 | B | 5 | | X | | X |
| Extortionate extensions of credit | B | 5 | | | | |
| Extortionate means to collect | B | 5 | | | | |
| Kidnapping 2 | B | 5 | | X | | X |
| Perjury 1 | B | 5 | | | | |
| Poss of a stolen firearm | B | 5 | | | | |
| Rendering criminal assistance 1 | B | 5 | | | | |
| Send/bring sexual depictions of minor 2nd degree | B | 5 | | | X | |
| Stalking | B | 5 | | | | X |
| Taking motor vehicle without permission  1 | B | 5 | | | | |
| Abandon dependent persons 2 | C | 5 | | | | |
| Air bag diagnostic systems | C | 5 | | | | |
| Air bag replacement requirements | C | 5 | | | | |
| Child molest 3 | C | 5 | | | X | X |
| Criminal mistreatment 2 | C | 5 | | | | X |
| Custodial sexual misconduct 1 | C | 5 | | | X | |
| Domestic violence court order violation | C | 5 | | | | X |
| Driving under the influence (felony) (7/1/2007-7/22/2017) | C | 5 | | | | X |
| Incest 2 | C | 5 | | | X | X |
| Manufacture or import counterfeit, nonfunctional, damaged, or previously delployed airbag | C | 5 | | | | |
| Persistent prison misbehavior | C | 5 | | | | |
| Physical control vehicle under the influence (felony)(7/1/2007-7/22/2017) | C | 5 | | | | X |
| Rape 3 | C | 5 | | | X | X |
| Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously delployed airbag | C | 5 | | | | |
| Sexual misconduct 1 | C | 5 | | | X | |
| Sexually violate human remains | C | 5 | | | X | |

| Offense description | Class | SL | Serious violent offense RCW 9.94A.030 | Violent offense RCW 9.94A.030 | Sex offense RCW 9.94A.030 | Crimes against persons RCW 9.94A.411 |
|---|---|---|---|---|---|---|
| Assault 2, sexual motivation | A | 4 | | X | X | X |
| Arson 2 | B | 4 | | X | | |
| Assault 2 | B | 4 | | X | | X |
| Assault by watercraft | B | 4 | | | | |
| Bribe received by witness | B | 4 | | | | |
| Bribing a witness | B | 4 | | | | |
| Commercial bribery | B | 4 | | | | |
| Driving under the influence (felony) (post 07/23/2017) | B | 4 | | | | X |
| Endangerment with a controlled substance | B | 4 | | | | |
| Escape 1 | B | 4 | | | | |
| Identity theft 1 | B | 4 | | | | X |
| Poss of depiction of minors 2nd degree (post 07/23/2017) | B | 4 | | | X | |
| Residential burglary | B | 4 | | | | |
| Robbery 2 | B | 4 | | X | | X |
| Theft of livestock 1 | B | 4 | | | | |
| Threats to bomb | B | 4 | | | | X |
| Trafficking in stolen property 1 | B | 4 | | | | |
| Unlawful factoring credit/pay card transaction-2nd | B | 4 | | | | |
| Unlawful transaction of health coverage as a health care service contractor | B | 4 | | | | |
| Unlawful transaction of health coverage as a health maiintenance organization | B | 4 | | | | |
| Unlawful transaction of insurance business | B | 4 | | | | |
| Unlawful practice as an insurance professional | B | 4 | | | | |
| Use of proceeds of criminal profiteering | B | 4 | | | | |
| Vehicular assault under infl/reckless | B | 4 | | X | | X |
| View depiction of minor engaged sex conduct 1st degree | B | 4 | | | X | |
| Willfully failure return from furlough | B | 4 | | | | |
| Assault 4 (3rd domestic violent offense) | C | 4 | | | | X |
| Assault 3 (peace officer w/projectile stun gun) | C | 4 | | | | |
| Cheating 1 | C | 4 | | | | |
| Counterfeit - endanger public health/ safety | C | 4 | | | | X |
| Hate crime (previously malicious harassment) | C | 4 | | | | |
| Hit and run - injury | C | 4 | | | | |
| Hit and run w/vessel | C | 4 | | | | |
| Indecent exposure | C | 4 | | | | X |
| Influencing outcome of sporting event | C | 4 | | | | |
| Physical control vehicle under the influence (felony) post (07/23/17) | C | 4 | | | | X |
| Vehicle prowl 2 (3rd or subs) | C | 4 | | | | |

| Offense description | Class | SL | Serious violent offense RCW 9.94A.030 | Violent offense RCW 9.94A.030 | Sex offense RCW 9.94A.030 | Crimes against persons RCW 9.94A.411 |
|---|---|---|---|---|---|---|
| Burglary 2 (nondwelling) | B | 3 | | | | |
| Incendiary devices | B | 3 | | | | |
| Intimidating a public servant | B | 3 | | | | X |
| Malicious injury to railroad property | B | 3 | | | | |
| Mortgage fraud | B | 3 | | | | |
| Negligently causing substantial bodily harm by use of a signal preemption device | B | 3 | | | | |
| Organized retail theft 1 | B | 3 | | | | |
| Retail theft with extenuating circumstances 1 | B | 3 | | | | |
| Security act violation | B | 3 | | | | |
| Theft w/ intent  resell 1 | B | 3 | | | | |
| Unlawful trafficking fish or wildlife - 1 | B | 3 | | | | |
| Vehicular assault disregard safety | B | 3 | | | | X |
| Willfully failure return from work release | B | 3 | | | | |
| Animal cruelty 1 - sex/conduct | C | 3 | | | | |
| Assault 3 (not a peace officer w/projectile stun gun) | C | 3 | | | | X |
| Assault of a child 3 | C | 3 | | | | X |
| Bail jump with class b or c | C | 3 | | | | |
| Communication with a minor | C | 3 | | | | X |
| Criminal gang intimidation | C | 3 | | | | |
| Custodial assault | C | 3 | | | | X |
| Cyberstalking | C | 3 | | | | |
| Escape 2 | C | 3 | | | | |
| Extortion 2 | C | 3 | | | | X |
| False reporting 2 (*effective 6/11/2020*) | C | 3 | | | | |
| Harassment | C | 3 | | | | |
| Introducing contraband 2 | C | 3 | | | | |
| Manufacture of untraceable firearm with intent to sell | C | 3 | | | | |
| Manufacture or assembly of an undetectable or untraceable firearm | C | 3 | | | | |
| Perjury 2 | C | 3 | | | | |
| Possession of machine gun, bump-fire stock, undetectable firearm or short barrel shotgun or riffle | C | 3 | | | | |
| Promoting prostitution 2 | C | 3 | | | | |
| Tampering with a witness | C | 3 | | | | |
| Telephone harassment | C | 3 | | | | |
| Theft of livestock 2 | C | 3 | | | | |
| Trafficking in stolen property 2 | C | 3 | | | | |
| Unlawful hunting big game - 1st | C | 3 | | | | |
| Unlawful imprisonment | C | 3 | | | | X |
| Unlawful misbranding or fish or shellfish 1 | C | 3 | | | | |
| Unlawful possession of firearm 2 | C | 3 | | | | |
| Unlawful taking of endangered fish or wildlife 1 | C | 3 | | | | |
| Unlawful use of a nondesignated vessel | C | 3 | | | | |

| Offense description | Class | SL | Serious violent offense RCW 9.94A.030 | Violent offense RCW 9.94A.030 | Sex offense RCW 9.94A.030 | Crimes against persons RCW 9.94A.411 |
|---|---|---|---|---|---|---|
| Failure to register as sex offender 3+ | B | 2 | | | X | |
| Malicious mischief 1 | B | 2 | | | | |
| Possession of stolen property 1 | B | 2 | | | | |
| Possession of stolen vehicle | B | 2 | | | | |
| Theft 1 | B | 2 | | | | |
| Theft of motor vehicle | B | 2 | | | | |
| Theft of rental or leased property (>$5,000) | B | 2 | | | | |
| Commercial fishing without a license | C | 2 | | | | |
| Computer trespass 1 | C | 2 | | | | |
| Counterfeit - 3rd conviction and >$10,000 | C | 2 | | | | |
| Electronic data service interference | C | 2 | | | | |
| Electronic data tampering 1 | C | 2 | | | | |
| Electronic data theft | C | 2 | | | | |
| Engaging in fish dealing activity | C | 2 | | | | |
| Escape from community custody | C | 2 | | | | |
| Failure to register as sex offender 2+ | C | 2 | | | X | |
| False claims - health care | C | 2 | | | | |
| Identity theft 2 | C | 2 | | | | X |
| Insurance claims trafficking subseq off | C | 2 | | | | |
| Organized retail theft 2 | C | 2 | | | | |
| Practice of law unlawfully | C | 2 | | | | |
| Practice of profession w/o license | C | 2 | | | | |
| Retail theft with extenuating circumstances 2 | C | 2 | | | | |
| Scrap processing, recycling, or supplying without a license | C | 2 | | | | |
| Theft with intent to resell 2 | C | 2 | | | | |
| Unlawful factoring credit/pay card transaction-1st | C | 2 | | | | |
| Unlawful obtain financial info | C | 2 | | | | |
| Unlawful participation of non-indians in indian fishery | C | 2 | | | | |
| Unlawful trafficking fish or wildlife - 2 | C | 2 | | | | |
| Voyeurism 1 | C | 2 | | | X | |

| Offense description | Class | SL | Serious violent offense RCW 9.94A.030 | Violent offense RCW 9.94A.030 | Sex offense RCW 9.94A.030 | Crimes against persons RCW 9.94A.411 |
|---|---|---|---|---|---|---|
| False verification for welfare | B | 1 | | | | |
| Transaction of insurance business beyond scope of licensure | B | 1 | | | | |
| Attempting to elude pursuing police vehicle | C | 1 | | | | |
| Food stamps - trafficking | C | 1 | | | | |
| Food stamps - unlawful use | C | 1 | | | | |
| Forgery | C | 1 | | | | |
| Fraudulent creation or revocation of a mental health advance directive | C | 1 | | | | |
| Malicious mischief 2 | C | 1 | | | | |
| Mineral trespass | C | 1 | | | | |
| Possession of stolen property 2 | C | 1 | | | | |
| Reckless burning 1 | C | 1 | | | | |
| Spotlighting big game 1 | C | 1 | | | | |
| Taking motor vehicle without permission 2 | C | 1 | | | | |
| Theft 2 | C | 1 | | | | |
| Theft from a vulnerable adult 2 | C | 1 | | | | X |
| Theft of rental or leased property ($750-$5,000) | C | 1 | | | | |
| Unlawful fish and shellfish catch accounting | C | 1 | | | | |
| Unlawful issuance of checks or drafts | C | 1 | | | | |
| Unlawful possession of a personal identification device | C | 1 | | | | |
| Unlawful possession of fictitious identification | C | 1 | | | | |
| Unlawful possession of payment instruments | C | 1 | | | | |
| Unlawful possession of instruments for financial fraud | C | 1 | | | | |
| Unlawful production of payment instruments | C | 1 | | | | |
| Unlawful releasing, planting, possessing, or placing deleterious exotic wildlife | C | 1 | | | | |
| Unlawful use of a net to take fish 1 | C | 1 | | | | |
| Unlawful use of prohibited aquatic animal species (*repealed 2014*) | C | 1 | | | | |
| Vehicle prowl 1 | C | 1 | | | | |
| Violating commercial fishing area | C | 1 | | | | |
| Violation of suspension of department privileges 1 | C | 1 | | | | |

# III. Grid Illustrations

The Subgroup discussed several possible modifications to the sentencing guideline grid. This Appendix includes some illustrations of how these modifications may look in a modified guideline grid. Exhibit A2 presents an illustration of how diagonal zones could be integrated into the current offense seriousness level-based grid. In addition, Exhibit A2 illustrates how limits on exceptional sentences (aggravated and mitigated) could be integrated as a final column on the grid. The color-shaded cells are purely illustrative and not meant to suggest which cells should be grouped in particular zones.

**Exhibit A2**
Bi-level Grid Based on Offense Seriousness and a Separate Zone System and
Varying Caps on Exceptional Sentences

| Zone | Offense seriousness level (SL) | Criminal history score (CHS) | | | | | | | | | | Agg/Mit +/- |
|------|------|---|---|---|---|---|---|---|---|---|---|---|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ | |
| Zone A | XVI | | | | | | | | | | | 12 |
| | XV | | | | | | | | | | | 12 |
| | XIV | | | | | | | | | | | 12 |
| | XIII | | | | | | | | | | | 12 |
| Zone B | XII | | | | | | | | | | | 12 |
| | XI | | | | | | | | | | | 6 |
| | X | | | | | | | | | | | 6 |
| | IX | | | | | | | | | | | 6 |
| Zone C | VIII | | | | | | | | | | | 6 |
| | VII | | | | | | | | | | | 6 |
| | VI | | | | | | | | | | | 6 |
| | V | | | | | | | | | | | 3 |
| | IV | | | | | | | | | | | 3 |
| Zone D | III | | | | | | | | | | | 3 |
| | II | | | | | | | | | | | 3 |
| | I | | | | | | | | | | | 3 |

Exhibit A3 presents an illustration of how a felony class-based grid could be developed with the additional consideration of diagonal grids. The color-shaded cells are purely illustrative and not meant to suggest which cells should be grouped in particular zones.

**Exhibit A3**
Bi-level Grid Based on Felony Class and a Separate One System

| Zone | Felony class | Criminal history score (CHS) | | | | | | | | | | |
|------|--------------|---|---|---|---|---|---|---|---|---|----|-----|
| | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ | 10+ |
| Zone 4 | A+ | | | | | | | | | | | |
| Zone 4 | A | | | | | | | | | | | |
| Zone 3 | A- | | | | | | | | | | | |
| Zone 3 | B+ | | | | | | | | | | | |
| Zone 2 | B | | | | | | | | | | | |
| Zone 2 | B- | | | | | | | | | | | |
| Zone 1 | C+ | | | | | | | | | | | |
| Zone 1 | C | | | | | | | | | | | |
| Zone 1 | C- | | | | | | | | | | | |

# IV. Supplemental Tables

For brevity, this section contains supplemental tables for the findings in the main report. A brief description is provided for each table.

## All Sentences

As a complement to Exhibit 3 in the main report, Exhibit A4 provides the percentage distribution of sentences across the current sentencing grid. The sum of all cells is 100%.

**Exhibit A4**
Percentage of FY 2019 Sentencing Events, by Guideline Cell

| Offense seriousness level (SL) | Criminal history score (CHS) | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ |
| 15 | 0.13% | 0.02% | 0.03% | 0.02% | 0.04% | 0.01% | 0.02% | 0.01% | 0.01% | 0.02% |
| 14 | 0.14% | 0.02% | 0.05% | 0.02% | 0.04% | 0.01% | 0.02% | 0.01% | | 0.02% |
| 13 | | | | | | | | | | 0.01% |
| 12 | 0.24% | 0.04% | 0.09% | | 0.04% | 0.04% | | 0.01% | | |
| 11 | 0.13% | 0.04% | 0.04% | 0.06% | 0.02% | | 0.01% | | 0.01% | |
| 10 | 0.10% | | 0.04% | 0.01% | | | 0.03% | | | |
| 9 | 0.29% | 0.13% | 0.21% | 0.11% | 0.16% | 0.13% | 0.06% | 0.05% | 0.04% | 0.24% |
| 8 | 0.10% | 0.05% | 0.04% | 0.05% | 0.01% | 0.03% | 0.06% | 0.01% | 0.01% | 0.02% |
| 7 | 0.35% | 0.17% | 0.18% | 0.44% | 0.20% | 0.20% | 0.24% | 0.15% | 0.09% | 0.71% |
| 6 | 0.25% | 0.12% | 0.12% | 0.20% | 0.06% | 0.05% | 0.11% | 0.02% | 0.04% | 0.22% |
| 5 | 0.85% | 0.31% | 0.47% | 0.54% | 0.56% | 0.47% | 0.43% | 0.35% | 0.27% | 1.15% |
| 4 | 3.48% | 1.92% | 1.46% | 1.45% | 1.10% | 0.78% | 0.75% | 0.45% | 0.36% | 1.83% |
| 3 | 7.25% | 4.47% | 3.33% | 2.10% | 1.75% | 1.65% | 1.12% | 0.94% | 0.65% | 2.56% |
| 2 | 3.78% | 1.74% | 1.23% | 0.96% | 0.75% | 0.72% | 0.77% | 0.59% | 0.57% | 2.88% |
| 1 | 5.61% | 3.08% | 1.53% | 1.42% | 1.45% | 1.09% | 0.63% | 0.62% | 0.59% | 2.47% |
| Unranked | 15.09% | | | | | | | | | |

Exhibit A5 presents the average sentence in each cell on the felony sentencing grid as well as the minimum and maximum sentence imposed for sentences associated with each cell. This table includes standard sentences, exceptional sentences, sentencing enhancements, and sentencing alternatives.

**Exhibit A5**
Average Sentence Length and Range of Sentences (in months), by Grid Cell

| Offense seriousness level (SL) | CHS 0 Avg | 0 Min | 0 Max | 1 Avg | 1 Min | 1 Max | 2 Avg | 2 Min | 2 Max | 3 Avg | 3 Min | 3 Max | 4 Avg | 4 Min | 4 Max | 5 Avg | 5 Min | 5 Max | 6 Avg | 6 Min | 6 Max | 7 Avg | 7 Min | 7 Max | 8 Avg | 8 Min | 8 Max | 9+ Avg | 9+ Min | 9+ Max |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 15 | 329.0 | 120.0 | 608.0 | 237.3 | 198.0 | 274.0 | 371.7 | 240.0 | 640.3 | 261.0 | 228.0 | 300.0 | 473.1 | 270.8 | 800.0 | 570.0 | 276.0 | 864.0 | 385.5 | 246.0 | 448.0 | 360.0 | 360.0 | 360.0 | 420.0 | 420.0 | 420.0 | 614.0 | 340.0 | 934.0 |
| 14 | 193.1 | 36.0 | 330.0 | 190.0 | 134.0 | 260.0 | 265.3 | 194.0 | 360.0 | 215.3 | 154.0 | 278.0 | 274.3 | 165.0 | 493.0 | 281.0 | 262.0 | 300.0 | 251.0 | 192.0 | 330.0 | 441.0 | 300.0 | 582.0 | 401.0 | 353.0 | 453.0 | 344.7 | 180.0 | 457.0 |
| 13 | | | | | | | | | | | | | | | | | | | | | | | | | | | | 397.0 | 397.0 | 397.0 |
| 12 | 78.8 | 6.0 | 186.0 | 104.0 | 78.0 | 160.0 | 135.1 | 60.0 | 360.0 | 71.9 | 6.0 | 180.0 | 170.0 | 12.0 | 360.0 | 248.0 | 138.0 | 480.0 | 224.0 | 220.0 | 228.0 | 222.5 | 178.0 | 267.0 | 327.5 | 233.0 | 422.0 | 805.8 | 66.0 | 9998.0 |
| 11 | 83.1 | 1.3 | 198.0 | 91.0 | 6.0 | 130.0 | 123.8 | 60.0 | 245.0 | 64.5 | 6.0 | 160.0 | 138.8 | 120.0 | 171.0 | 114.0 | 70.0 | 158.0 | 220.8 | 146.0 | 295.5 | | | | 204.0 | 204.0 | 204.0 | 270.8 | 180.0 | 340.0 |
| 10 | 24.9 | 0.0 | 100.0 | | | | | | | 47.8 | 6.0 | 114.8 | 96.0 | 96.0 | 96.0 | 191.3 | 144.0 | 247.0 | 60.0 | 12.0 | 166.0 | 144.0 | 144.0 | 144.0 | 174.0 | 174.0 | 174.0 | 264.3 | 60.0 | 504.0 |
| 9 | 31.0 | 3.0 | 65.0 | 38.3 | 12.0 | 96.0 | 45.9 | 12.0 | 101.0 | 40.8 | 2.0 | 84.0 | 51.7 | 12.0 | 111.0 | 70.2 | 42.8 | 123.0 | 90.9 | 1.1 | 150.0 | 78.8 | 43.0 | 116.0 | 127.7 | 100.0 | 186.0 | 152.0 | 23.0 | 381.0 |
| 8 | 22.8 | 6.0 | 57.0 | 36.1 | 0.0 | 70.0 | 35.5 | 31.0 | 41.0 | 41.4 | 29.0 | 48.0 | 31.5 | 11.0 | 52.0 | 61.4 | 54.0 | 82.0 | 88.4 | 67.0 | 103.0 | 60.0 | 60.0 | 60.0 | 101.5 | 101.5 | 101.5 | 136.0 | 100.0 | 180.0 |
| 7 | 18.2 | 0.1 | 60.0 | 25.5 | 0.0 | 108.0 | 29.1 | 0.0 | 72.0 | 34.3 | 1.0 | 120.0 | 41.3 | 0.9 | 108.0 | 47.9 | 12.0 | 120.0 | 61.7 | 4.0 | 120.0 | 64.5 | 2.7 | 132.0 | 82.8 | 44.8 | 117.0 | 104.3 | 12.0 | 420.0 |
| 6 | 9.4 | 0.0 | 14.0 | 9.6 | 0.0 | 20.0 | 11.9 | 0.0 | 27.0 | 27.2 | 1.5 | 104.0 | 29.3 | 12.0 | 58.0 | 40.4 | 21.0 | 68.0 | 48.7 | 11.0 | 126.0 | 64.5 | 57.0 | 72.0 | 61.6 | 27.6 | 100.0 | 84.7 | 6.0 | 402.0 |
| 5 | 7.1 | 0.0 | 48.0 | 8.0 | 0.0 | 14.0 | 8.5 | 0.0 | 17.0 | 11.6 | 0.0 | 102.0 | 13.8 | 0.0 | 37.0 | 19.4 | 0.0 | 72.0 | 24.4 | 0.0 | 53.0 | 26.1 | 2.7 | 60.0 | 35.6 | 0.0 | 96.0 | 40.9 | 0.0 | 240.0 |
| 4 | 6.3 | 0.0 | 48.0 | 7.3 | 0.0 | 60.0 | 12.0 | 0.0 | 60.0 | 13.3 | 0.0 | 75.0 | 16.8 | 0.0 | 123.0 | 22.3 | 0.0 | 95.0 | 30.3 | 0.0 | 64.0 | 39.9 | 0.0 | 120.0 | 49.7 | 12.0 | 120.0 | 56.7 | 0.0 | 180.0 |
| 3 | 1.6 | 0.0 | 48.0 | 3.5 | 0.0 | 17.5 | 5.3 | 0.0 | 60.0 | 9.2 | 0.0 | 60.0 | 9.8 | 0.0 | 60.0 | 11.3 | 0.0 | 40.0 | 19.4 | 0.0 | 48.0 | 29.1 | 0.4 | 47.0 | 37.5 | 0.0 | 240.0 | 40.5 | 0.0 | 288.0 |
| 2 | 1.4 | 0.0 | 36.0 | 2.5 | 0.0 | 30.0 | 4.4 | 0.0 | 120.0 | 5.6 | 0.0 | 60.0 | 8.5 | 0.0 | 15.0 | 9.4 | 0.0 | 50.0 | 10.1 | 0.0 | 35.0 | 19.4 | 2.0 | 34.0 | 27.1 | 0.0 | 43.0 | 35.4 | 0.0 | 96.0 |
| 1 | 0.8 | 0.0 | 14.0 | 1.1 | 0.0 | 13.0 | 2.3 | 0.0 | 12.0 | 3.1 | 0.0 | 18.0 | 4.3 | 0.0 | 20.0 | 6.0 | 0.0 | 16.0 | 10.0 | 0.0 | 24.1 | 10.2 | 0.0 | 24.0 | 13.6 | 0.0 | 34.0 | 22.2 | 0.0 | 125.0 |
| Unranked | 2.8 | 0.0 | 48.0 | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Notes:
This table represents unique sentencing events.
For sentencing events with multiple sentences for separate offenses, we selected the most serious offense determined by sentence length, offense seriousness level, and inchoate status.
Orange shaded cells correspond with the "southwest corner of the grid" for which the presumptive sentences are jail sentences.

## Standard, Non-Drug Sentences—Current Grid

Detailed examinations of criminal history scores are beyond the scope of this report. However, Exhibit A6 presents the distribution of individuals across criminal history scores (ranging from 0 to 9+) for BIPOC and White defendants included in our dataset for standard sentences.

**Exhibit A6**
Criminal History Score by Race for FY 2019 Standard Sentences

| | | BIPOC | | White | |
|---|---|---|---|---|---|
| | | N | % | N | % |
| Criminal history score (CHS) | 0 | 792 | 25.0% | 1,762 | 28.7% |
| | 1 | 471 | 14.9% | 1,034 | 16.9% |
| | 2 | 383 | 12.1% | 732 | 11.9% |
| | 3 | 329 | 10.4% | 578 | 9.4% |
| | 4 | 276 | 8.7% | 421 | 6.9% |
| | 5 | 220 | 7.0% | 296 | 4.8% |
| | 6 | 154 | 4.9% | 251 | 4.1% |
| | 7 | 121 | 3.8% | 174 | 2.8% |
| | 8 | 88 | 2.8% | 135 | 2.2% |
| | 9 | 330 | 10.4% | 749 | 12.2% |

Further disaggregating the distribution of sentences by race, Exhibit A7 presents the ratio of the percentage of sentences for BIPOC individuals and the percentage of sentences for White individuals. Because of the different sample sizes for White and BIPOC defendants, using percentages allows us to compare how the distributions across the grid differ by race.

The values in Exhibit A7 were calculated as the percentage of all standard non-drug sentences for BIPOC defendants, divided by the percentage of all standard non-drug sentences for White defendants. For example, 5.25% of sentences for BIPOC defendants were for the cell corresponding with SL 1 and CHS 0 while 7.80% of sentences for White defendants were for the cell corresponding with SL 1 and CHS 0. Thus, the percentage ratio was 0.67 (7.80/5.25). Values less than 1 indicate that a greater percentage of sentences for White defendants fell in a particular cell than the percentage of sentences for BIPOC defendants. On the other hand, values greater than 1 indicate that a greater percentage of sentences for BIPOC defendants fell in a particular cell than the percentage of sentences for White defendants.

**Exhibit A7**

Comparison of the Racial Distribution of Standard Non-Drug Sentences in FY 2019—
Ratios of the Percentage of All BIPOC Sentences, by Cell to the Percentage of All White Sentences by Cell

| Offense seriousness level (SL) | Criminal history score (CHS) | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ |
| 15 | 0.65 | | | | | | | | | |
| 14 | 1.29 | | 1.94 | 1.94 | 0.97 | | | | | |
| 13 | | | | | | | | | | |
| 12 | 4.26 | 1.94 | 1.94 | | 1.94 | | | | | |
| 11 | 1.55 | 5.81 | 5.81 | 1.94 | 3.88 | | | | | |
| 10 | 0.97 | | | 1.94 | | | | | | |
| 9 | 0.97 | 2.21 | 1.16 | 1.62 | 1.74 | 3.05 | 7.75 | 1.29 | 0.97 | 1.19 |
| 8 | 0.97 | 0.65 | 2.91 | 0.55 | | 1.94 | | | | 0.97 |
| 7 | 1.66 | 4.20 | 1.72 | 1.13 | 2.80 | 4.15 | 3.52 | 1.51 | 2.42 | 1.01 |
| 6 | 0.78 | 1.11 | 0.55 | 0.80 | 3.88 | 0.48 | 0.48 | | 1.94 | 0.31 |
| 5 | 1.43 | 1.37 | 1.09 | 2.45 | 1.71 | 0.97 | 0.65 | 0.83 | 0.58 | 1.45 |
| 4 | 0.97 | 0.98 | 1.30 | 1.14 | 1.35 | 1.54 | 1.31 | 0.97 | 1.51 | 0.79 |
| 3 | 0.86 | 0.97 | 1.06 | 1.07 | 1.54 | 1.45 | 1.16 | 1.94 | 1.36 | 1.03 |
| 2 | 0.88 | 0.79 | 0.68 | 1.00 | 0.97 | 0.84 | 1.19 | 1.54 | 1.18 | 0.70 |
| 1 | 0.67 | 0.66 | 0.89 | 1.02 | 0.94 | 1.44 | 0.85 | 0.97 | 1.22 | 0.85 |

Notes:

These were calculated as the percentage of all standard non-drug sentences for BIPOC defendants, divided by the percentage of all standard non-drug sentences for White defendants.

Results are presented only for the cells that included a sentence for at least 1 White defendant and 1 BIPOC defendant.

Values less than 1 (shaded green) indicate that a greater percentage of sentences for White defendants fell in a particular cell than the percentage of sentences for BIPOC defendants.

Values greater than 1 (shaded yellow) indicate that a greater percentage of sentences for BIPOC defendants fell in a particular cell than the percentage of sentences for White defendants.

Cells below and to the left of the black border are cells in the "southwest corner of the grid" where presumptive sentences are 12 months or less.

The values in Exhibit A7 indicate that a greater share of the sentences for BIPOC defendants fell in cells associated with higher offense seriousness levels and greater criminal history scores. These estimates represent the percentage of BIPOC sentences for every 1% of White sentences. For example, 7.80% of sentences for White defendants were for individuals convicted of SL 1 with a CHS of 0 while only 5.25% of sentences for BIPOC defendants were for individuals convicted of SL 1 with a CHS of 0. Thus, the ratio was 0.67 (5.25/7.80).

The distributional difference was particularly notable in the southwest corner of the grid. Overall, 63.03% of sentences for White defendants fell in the southwest corner of the grid while only 56.38% of BIPOC sentences fell in this same region. Consequently, BIPOC defendants were more likely than White defendants to receive a prison sentence.

## Exceptional Sentences

Exhibit A8 presents the average departure length for aggravated and mitigated exceptional sentences by race using the full racial categories. Averages are not reported for individuals who were missing race information.

**Exhibit A8**
Aggravated and Mitigated Exceptional Sentences, Full Race Categories

| | N | % of FY 2019 sentences | Average departure length in months |
|---|---|---|---|
| **Aggravated exceptional** | | | |
| Asian/Pacific Islander | 5 | 1.0% | +39.87 |
| Black | 42 | 1.8% | +31.89 |
| Hispanic | 48 | 2.6% | +24 |
| American Indian/Alaskan Native | 12 | 2.0% | +15.7 |
| White | 185 | 1.7% | +18.49 |
| **Mitigated exceptional** | | | |
| Asian/Pacific Islander | 27 | 5.4% | -87.01 |
| Black | 183 | 7.9% | -41.46 |
| Hispanic | 178 | 9.7% | -30.11 |
| American Indian/Alaskan Native | 29 | 4.7% | -23.85 |
| White | 593 | 5.4% | -31.61 |

Differences in the percentage of the maximum for aggravated sentences or percentage of the minimum for mitigated sentences presented in Exhibits 16 and 17 may be driven by underlying differences in the distribution of sentences by criminal history score and race. Exhibits A9 and A10 present the percentage of distribution of aggravated and mitigated sentences by race and grid cell.

### Exhibit A9
#### Distribution of Aggravated Sentences, by Grid Cell and Race

| | Criminal history score (CHS) | | | | | | | | | | | | | | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| | BIPOC | | | | | | | | | | White | | | | | | | | | |
| SL | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ |
| 15 | 0.9% | | | | | | | | | 0.9% | | | | | 0.5% | | | | | |
| 14 | 0.9% | | | | | | | | | | 0.5% | | | | 1.1% | | | | | |
| 12 | | | | 0.9% | 0.9% | | | | | 2.8% | 0.5% | | | | | 0.5% | 0.5% | | | 3.2% |
| 11 | | | | | | | 0.9% | | | | 1.1% | | | | | | | | | 1.6% |
| 10 | | | | | | | | | | | | | | | | 0.5% | | | | 2.2% |
| 9 | 0.9% | | | | | | | | | 1.9% | | 0.5% | | | | | | | | 1.1% |
| 8 | | | | | | | 0.9% | | | 0.9% | | 1.1% | | | | | 1.1% | | | |
| 7 | 1.9% | 0.9% | 0.9% | 0.9% | 0.9% | 1.9% | 0.9% | 0.9% | | 3.7% | 1.1% | 1.1% | | 1.1% | 0.5% | 0.5% | 1.1% | 0.5% | | 3.8% |
| 6 | | | | | | | | | | | | | | | 0.5% | | | | 0.5% | 0.5% |
| 5 | | | | 0.9% | | | | | | 1.9% | 2.7% | | | 1.1% | | 0.5% | | | 0.5% | 1.1% |
| 4 | 8.4% | 1.9% | 3.7% | 1.9% | 4.7% | 4.7% | 1.9% | 0.9% | | 2.8% | 5.9% | 5.4% | 1.1% | 2.7% | 1.1% | 0.5% | | 0.5% | 1.1% | 3.2% |
| 3 | 4.7% | 1.9% | 1.9% | 7.5% | 0.9% | 0.9% | 2.8% | | 0.9% | 4.7% | 2.2% | | 3.2% | 12.4% | | 0.5% | | 0.5% | 1.6% | 2.2% |
| 2 | 5.6% | | | 1.9% | | | 0.9% | | | | 4.3% | 1.1% | 1.6% | 1.6% | | 0.5% | | 0.5% | | 0.5% |
| 1 | | | | 0.9% | 0.9% | 0.9% | | | 0.9% | 1.9% | 0.5% | 0.5% | | 0.5% | 2.2% | 2.2% | 0.5% | 0.5% | 0.5% | 4.3% |

Offense seriousness level (SL)

Notes:

Values represent the percentage of total aggravated sentences for BIPOC or White defendants, respectively, in each cell on the guideline grid. BIPOC values are shaded orange with darker colors representing cells with the greatest share of aggravated sentences for BIPOC individuals. White values are shaded blue with darker colors representing cells with the greatest share of aggravated sentences for White individuals.

## Exhibit A10
### Distribution of Mitigated Sentences, by Grid Cell and Race

| | Criminal history score (CHS) | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **BIPOC** | | | | | | | | | | **White** | | | | | | | | | |
| **SL** | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ |
| 15 | | 0.2% | | 0.5% | | | 0.2% | | | 0.2% | 0.2% | | | | | | | | | |
| 14 | | 0.2% | | | 0.2% | 0.2% | | | | 0.2% | 0.3% | | | | | | | | | |
| 12 | 1.7% | 0.2% | 0.7% | 0.5% | 0.2% | | | | | 1.0% | 0.5% | | 0.5% | 0.5% | 0.2% | | | | | 0.3% |
| 11 | 0.5% | | 0.0% | 0.2% | 0.2% | | | | | | 0.3% | | 0.2% | 0.2% | | | | | | 0.2% |
| 10 | 0.2% | | | | | | | | | 1.2% | 0.5% | | | | | | | | | 0.5% |
| 9 | 1.4% | 0.5% | 1.2% | 0.7% | 0.7% | | | | | 0.5% | 0.8% | 0.3% | 0.2% | 0.3% | 0.3% | | 0.3% | 0.2% | | 0.3% |
| 8 | 0.7% | | | 0.2% | | | | | | | 0.2% | | | | | | | | | |
| 7 | 0.5% | 0.2% | | 0.5% | 0.5% | | 0.2% | | | 0.7% | 0.3% | 0.2% | 0.8% | | 0.3% | | 0.2% | 0.2% | | 0.5% |
| 6 | | | | 0.2% | | 0.2% | | | | | 0.3% | | 0.2% | 0.2% | 0.2% | | | | | |
| 5 | 1.0% | 0.7% | 0.7% | 1.9% | 1.0% | 3.4% | 2.4% | 3.1% | 1.7% | 8.9% | | 1.2% | 1.2% | 1.0% | 1.5% | 2.5% | 3.0% | 3.4% | 2.5% | 8.9% |
| 4 | 0.7% | 1.0% | 1.9% | 1.4% | 1.2% | 0.7% | 1.0% | 0.7% | 1.2% | 2.6% | 2.7% | 1.2% | 2.7% | 2.9% | 1.7% | 0.7% | 0.8% | 0.2% | 0.5% | 3.2% |
| 3 | 1.4% | 1.7% | 2.2% | 2.2% | 3.4% | 2.9% | 1.2% | 1.4% | 2.6% | 7.4% | 1.9% | 2.9% | 1.9% | 3.0% | 2.2% | 3.7% | 1.2% | 1.3% | 1.3% | 7.1% |
| 2 | | 0.7% | | | 1.4% | 1.0% | 0.2% | 1.0% | 1.4% | 5.5% | | 0.5% | 0.3% | 0.5% | 1.2% | 1.7% | 1.2% | 1.3% | 1.0% | 5.6% |
| 1 | | 0.2% | 0.2% | | 0.7% | 1.7% | 1.0% | 1.4% | | 1.9% | | | 1.0% | 0.2% | 0.7% | 0.7% | 0.8% | 0.7% | 0.5% | 3.0% |

Offense seriousness level (SL)

Notes:

Values represent the percentage of total mitigated sentences for BIPOC or White defendants, respectively, in each cell on the guideline grid. BIPOC values are shaded orange with darker colors representing cells with the greatest share of mitigated sentences for BIPOC individuals. White values are shaded blue with darker colors representing cells with the greatest share of mitigated sentences for White individuals.

Exhibit A11 lists the five most common justifications for aggravated and mitigated exceptional sentences.

**Exhibit A11**
Aggravated and Mitigated Exceptional Sentence Justifications, by Race

| | Total | | BIPOC | | White | |
|---|---|---|---|---|---|---|
| | N | % | N | % | N | % |
| **Aggravated exceptional** | | | | | | |
| Defendant agreed to prison, greater sentence, or treatment | 251 | 86.0% | 95 | 88.8% | 153 | 82.7% |
| Victim was particularly vulnerable | 9 | 3.1% | 3 | 2.8% | 5 | 2.7% |
| A domestic violence offense that occurred in sight or sound of victims children under age 18 | 8 | 2.7% | 2 | 1.9% | 5 | 2.7% |
| A domestic violence offense that was a part of an ongoing pattern of psychological, physical, or sex abuse of victim multiple incidents over a prolonged period of time | 7 | 2.4% | 3 | 2.8% | 4 | 2.2% |
| Defendant was in a position of trust (not an economic or drug offense) | 6 | 2.1% | 2 | 1.9% | 3 | 1.6% |
| **Mitigated exceptional** | | | | | | |
| Exceptional sentence is more appropriate/is in the interests of justice | 427 | 42.3% | 188 | 45.1% | 234 | 39.5% |
| All parties agreed to mitigated sentence | 397 | 39.3% | 138 | 33.1% | 252 | 42.5% |
| Part of Plea Agreement | 125 | 12.4% | 57 | 13.7% | 67 | 11.3% |
| Capacity to appreciate the wrongfulness was significantly impaired | 21 | 2.1% | 9 | 2.2% | 12 | 2.0% |
| Victim was an initiator, willing participant, aggressor, or provoker | 19 | 1.9% | 7 | 1.7% | 12 | 2.0% |

The types of offenses associated with aggravated and mitigated exceptional sentences also varied. Exhibit A12 lists the ten most common offenses associated with each type of exceptional sentence.

**Exhibit A12**
Most Common Offenses with Aggravated and Mitigated Exceptional Sentences

| Offense | N | % |
|---|---|---|
| **Aggravated sentence** | | |
| Assault 2 | 43 | 14.38 |
| Assault 3 | 32 | 10.7 |
| Burglary 2 | 11 | 3.68 |
| Child Molestation 2 | 11 | 3.68 |
| Robbery 2 | 11 | 3.68 |
| Theft 1 | 11 | 3.68 |
| Attempting to Elude Police Pursuing Vehicle | 10 | 3.34 |
| Unlawful Possession of a Firearm 2 | 10 | 3.34 |
| Unlawful Possession of a Firearm 1 | 9 | 3.01 |
| Escape from Community Custody | 8 | 2.68 |
| Rape of a Child 1, Age >17 | 8 | 2.68 |
| **Mitigated sentence** | | |
| Domestic Violence Court Order Violation | 240 | 23.41 |
| Assault 3 | 109 | 10.63 |
| Assault 2 | 57 | 5.56 |
| Burglary 2 | 54 | 5.27 |
| Failure to Register as a Sex Offender 3+ | 38 | 3.71 |
| Robbery 1 | 37 | 3.61 |
| Unlawful Possession of a Firearm 2 | 36 | 3.51 |
| Residential Burglary | 32 | 3.12 |
| Possession of a Stolen Vehicle | 27 | 2.63 |
| Bail Jump with Class B OR C Offense | 26 | 2.54 |

## Sentencing Alternatives

Exhibit A13 presents the percentage of sentences in each cell on the guideline grid that received a sentencing alternative. This table includes a color scale with dark red cells containing no sentences that received a sentencing alternative, lighter red cells having fewer than 10% of the sentences with a sentencing alternative, light green cells having greater than 10% of sentences with a sentencing alternative, and dark green having between 50% and 60% of sentences with a sentencing alternative. This table may help policy makers identify areas of the grid where the sentencing alternatives are underutilized or currently unavailable.

**Exhibit A13**

Percentage of FY 2019 Sentences in Each Guideline Cell with a Sentencing Alternative

| | Criminal history score (CHS) | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Offense seriousness level (SL)** | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9+ |
| 15 | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| 14 | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| 13 | | | | | | | | | | 0.0% |
| 12 | 17.0% | 0.0% | 0.0% | 46.0% | 17.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| 11 | 9.0% | 17.0% | 0.0% | 40.0% | 0.0% | 0.0% | 0.0% | | 0.0% | 0.0% |
| 10 | 59.0% | | | 50.0% | 0.0% | 0.0% | 60.0% | 0.0% | 0.0% | 0.0% |
| 9 | 4.0% | 0.0% | 0.0% | 6.0% | 0.0% | 0.0% | 10.0% | 0.0% | 0.0% | 3.0% |
| 8 | 0.0% | 11.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| 7 | 12.0% | 14.0% | 7.0% | 11.0% | 12.0% | 18.0% | 10.0% | 20.0% | 20.0% | 14.0% |
| 6 | 26.0% | 45.0% | 50.0% | 21.0% | 50.0% | 25.0% | 16.0% | 50.0% | 50.0% | 16.0% |
| 5 | 21.0% | 27.0% | 37.0% | 32.0% | 52.0% | 38.0% | 32.0% | 26.0% | 20.0% | 21.0% |
| 4 | 14.0% | 20.0% | 18.0% | 16.0% | 14.0% | 19.0% | 26.0% | 33.0% | 27.0% | 29.0% |
| 3 | 28.0% | 20.0% | 10.0% | 6.0% | 23.0% | 36.0% | 30.0% | 27.0% | 33.0% | 37.0% |
| 2 | 18.0% | 19.0% | 10.0% | 10.0% | 28.0% | 34.0% | 43.0% | 22.0% | 27.0% | 34.0% |
| 1 | 25.0% | 8.0% | 7.0% | 7.0% | 2.0% | 3.0% | 19.0% | 36.0% | 26.0% | 20.0% |
| **Unranked** | | | | | 2.0% | | | | | |

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