

Sentencing Grid Draft Report Language #2

Sentencing Grid Proposal #1 – Guided Discretion

The Guided Discretion approach is intended to limit disproportionate sentences among counties, give judges great discretion in sentencing and simplify the sentencing scheme. Washington’s elected judges, who are answerable at each election date to their voting constituents, would publicly pronounce reasonable sentences. Current practice would be changed by providing judges, before sentencing, with significantly more information about the defendant, the defendant’s case, the defendant’s background, and the sentences handed down by other judges in similar cases. Moreover, the proposal contemplates that this enhanced information would be available to the prosecution and defense much earlier in the process, ideally at or before the point that a defendant is first charged.

This new approach overall simplifies Washington’s sentencing scheme by subsuming sentencing enhancements, the majority of aggravating and mitigating factors, the separate drug offense grid, unranked crimes, and other confusing piecemeal aspects of the current scheme.

Currently, many felony sentences are determined by a grid that sets forth narrow ranges based on criminal history, the “offender score,” and the seriousness of the offense. The vertical side of the grid is based on the “seriousness level” (currently I-XVI) that has been assigned to the offense and the horizontal side of the grid sets forth the “offender score.” There is also presently a separate sentencing grid for drug offenses, a separate sentencing scheme for sex offenses, and a number of “unranked” felony offenses with a range of 0-12 months. Under the Guided Discretion proposal, there would be a new two-step grid with broad ranges based on the longstanding legislative felony classification levels of A, B and C. For instance A-level felonies would have a mandatory term from 1 year + 1 day to Life. This grid also adds another column for offender scores of 10+.

Presumptive Grid

The Guided Discretion proposal creates a presumptive grid with nine seriousness levels (A+, A, A-, B+, B, B-, C+, C, C-) based largely on the classification assigned to the offense. Aggravated Murder would be deemed A++, would not be on the grid, and would maintain its current mandatory sentence of life without possibility of parole. As with the current grid, the seriousness level would be on the vertical axis of the grid, and the offender score (1-10), would be on the horizontal axis. This revised approach eliminates the current disconnection in the SRA between offense seriousness levels and offense classification levels. Basing the seriousness levels on the established classification levels makes the seriousness levels more understandable to the public.

Discretionary Grid

Under the Guided Discretion proposal, sentencing courts would be required to sentence within the presumptive guideline grid unless one of approximately 40 mitigating or aggravating considerations exist. This structure is very similar to the original SRA and the federal sentencing scheme, which, before Blakely, allowed judges to deviate upward or downward from sentencing ranges based on a sentencing judge’s determination that mitigating or aggravating circumstances existed. Under this proposal, mitigating considerations would either have to be proven by a preponderance of the evidence or agreed to exist by the prosecution and defense to be used in sentencing. Aggravating considerations would

have to be pled and proven beyond a reasonable doubt to a jury or agreed to exist by the prosecution and defense. The aggravating and mitigating considerations under the Guided Discretion proposal are not new: they are consistent with current sentencing enhancements and current aggravating/mitigating factors found in RCW 9.94A.535. Currently existing sentencing enhancements such as bus zone, school zone, domestic violence, and deadly weapon enhancements would, under the new proposal, become factors the judge could consider when issuing a sentence either below or above the advisory guidelines range.

If any enumerated mitigating or aggravating consideration exists in a particular case, the sentencing judge would have discretion to impose an appropriate sentence within the Discretionary grid ranges set by the classification of the offense so long as the judge also considers: (1) the guidelines in the grid; (2) the purposes of the SRA; and (3) the circumstances of the offense, and so long as the sentence is reasonable. A sentence of more than 25% above the top end of the Presumptive guidelines is presumed unreasonable, although that presumption can be overcome based on the information provided at sentencing. A sentence more than 50% below the low end of the Presumptive guidelines is presumed unreasonable, but that presumption can be overcome based on the information provided at sentencing.

The Guided Discretion proposal retains all legislatively approved sentencing alternatives, including the First-time Offender Waiver, Drug Offender Sentence Alternative, Special Sex Offender Sentence Alternative, FOSA, and therapeutic courts such as Drug Courts. Wherever possible, sentencing alternatives would be visually included in the Guided Discretion grid.

This sentencing scheme has multiple advantages over the current scheme. It provides guided discretion to the sentencing judge. It will allow sentencing judges to issue the individualized sentences our public wants from our courts. Judges will be checked by ongoing collection of publicly available information about how other judges are sentencing in similar cases, and by the reality that, at sentencing, judges make public decisions in courts which are open to their constituents, the media, and the public in general.

By contrast, the plea bargains that almost exclusively drive the current criminal case sentences – and leave sentencing judges with virtually no discretion in most cases – are necessarily arrived at behind closed doors. Unfortunately, judges reviewing these plea agreements can only determine whether a defendant is knowingly and voluntarily giving up their trial rights. They cannot force the parties to go to trial, and in the vast majority of cases, no explanation other than “evidentiary concerns” or “equitable reasons” is given for an amendment to the charges to obtain the plea bargain. This sentencing scheme, however, would allow the judge to be a “check” on the plea bargaining process by imposing consistent sentences for publicly stated reasons. This is the function for sentencing judges that was traditionally envisioned by the framers of the federal and state constitutions, and which citizens still expect from their elected judges.

EXAMPLE:

Assault 2nd Degree with Firearm.

- (1) Under the current scheme, if a judge had before her a Class B Assault with a deadly-weapon enhancement where the defendant has two prior convictions, the defendant would face 12-14 months in prison with a 36-month enhancement. Those ranges would be mandatory absent a

very rare exceptional sentence. The 12-14 months would carry 33% off for good time, whereas the 36-month enhancement would have no good time. The sentence is opaque, difficult for the public to understand, and allows almost no discretion for the trial court.

- (2) Under the proposed scheme, the defendant would face a presumed range of 1-2 years. The Court could consider any mitigating considerations proven by a preponderance of the evidence, and any aggravating considerations proven beyond a reasonable doubt and, depending on what was proven (including the possession/use of a firearm), the Court could exceed the presumptive guidelines so long as the sentence is reasonable. Any sentence between 6 months and 30 months would be presumed reasonable in this example. The entire sentence would have the same good-time provision. The parties and public would know exactly how much time the defendant would likely spend in prison.

The Guided Discretion proposal puts the courts back in the business of deciding what sentence is appropriate for a defendant. It puts prosecutors and defense attorneys back in the business of making strong, principled arguments about why particular sentences are appropriate for a particular offender who committed a particular crime. It makes sentencing hearings relevant again. Because decisions on sentences will be made in public, and not part of a mysterious plea bargain based on “evidentiary concerns,” it should eliminate discrepancies between sentences among Washington counties. And if, as the Guided Discretion proposal envisions, the adoption of it is coupled with providing much more information, much earlier, to the parties and to the sentencing judge, a new light will shine on a criminal adjudication and sentencing process that has worked in the dark for far too long.

STEP 1 - PRESUMPTIVE RANGES

CLASS	OFFENDER SCORE										
	0	1	2	3	4	5	6	7	8	9	10+
A+	10y3m-28y	13y-30y	16y-30y	19y-31y	21y-31y	24y-35y	25y-37y	27y-40y	29y-43y	35y-45y	37y-50y
A	6y-15y	8y-16y	10y-17y	11y-19y	13y-20y	14y-22y	15y-24y	18y-25y	20y-27y	21y-28y	23y-30y
A-	3y6m-7y6m	4y6m-8y	5y-9y	5y-9y	6y-9y	7y-10y	8y-11y	9y-12y	10y-14y	11y-17y	14y-22y
B+	1y9m-3y6m	2y-4y	2y6m-5y	3y-6y	4y-6y	4y6m-7y	5y-7y	6y-9y	6y-9y	8y-10y	10y-17y
B	6m-1y6m	9m-1y6m	1y-2y	1y2m-2y	1y4m-2y6m	1y6m-3y	2y-4y	3y-5y	4y-6y	5y-7y	6y-8y
B-	0m-1y	6m-1y4m	1y+-1y6m	1y4m-2y	1y4m-2y	1y8m-2y6m	1y8m-2y6m	2y-3y	2y-3y4m	2y-4y	2y6m-5y
C+	0m-1y	9m-1y	1y+-1y4m	1y+-1y4m	1y2m-1y8m	1y2m-1y8m	1y4m-2y	1y4m-2y	1y6m-2y6m	1y6m-2y6m	2y-3y6m
C	0-3m	0-6m	0-9m	3m-1y	3m-1y	3m-1y	6m-1y	9m-1y	1y+-1y6m	1y+-2y	1y6m-3y
C-	0-1m	0-2m	0-3m	0-6m	0-9m	0-1y	3m-1y	3m-1y	6m-1y	6m-1y	9m-1y

STEP 2 – DISCRETIONARY RANGES

CLASS	OFFENDER SCORE										
	0	1	2	3	4	5	6	7	8	9	10+
A FELONIES	1y+-Life	1y+-Life	1y+-Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life
B FELONIES	0-5y	0-5y	0-10y	6m-10y	6m-10y	1y+-10y	1y+-10y	3y-15y	3y-15y	4y-15y	4y-15y
C FELONIES	0-3y	0-3y	0-3y	0-3y	0-4y	0-4y	0-5y	6m-5y	6m-5y	6m-5y	9m-5y

Examples of Offenses in Presumptive Grid Classifications

Statute (RCW)	Offense	Guided Discretion New Class	Current Class	Current Seriousness Level
9A.42.060	Abandonment of Dependent Persons 1	B+	B	9
9A.42.070	Abandonment of Dependent Persons 2	B	C	5
29A.84.680(1)	Absentee Voting Violation	C-	C	Unranked
16.52.205(2)	Animal Cruelty 1	C-	C	Unranked
16.52.205(3)	Animal Cruelty 1 - Sexual Contact or Conduct	B-	C	3
9A.36.011	Assault 1	A	A	12
9A.36.021(2)(a)	Assault 2	B-	B	4
9A.36.021(2)(b)	Assault 2 With a Finding of Sexual Motivation	B	A	4
9A.36.031(1)(a-g) & (i-j)	Assault 3 – Excluding Assault 3 of a Peace Officer with a Projectile Stun Gun	B-	C	3
9A.36.031(1)(h)	Assault 3 - Of a Peace Officer with a Projectile Stun Gun	B-	C	4
9A.36.041(3)	Assault 4 (third domestic violence offense)	B-	C	4
9A.52.020	Burglary 1	B	A	7
9A.52.030	Burglary 2	B-	B	3
9A.44.083	Child Molestation 1	A-	A	10
9A.44.086	Child Molestation 2	B	B	7
9A.44.089	Child Molestation 3	B	C	5
9A.64.030(3)(a)	Child Selling	C-	C	Unranked
9A.90.040	Computer Trespass 1	C	C	2
69.50.4011(2)(a-b)	Create, Deliver or Possess a Counterfeit Controlled Substance - Schedule I or II Narcotic or Flunitrazepam or Methamphetamine	B-	B	DG-2
69.50.4011(2)(c-e)	Create, Deliver or Possess a Counterfeit Controlled Substance - Schedule I-II Nonnarcotic, Schedule III-V Except Flunitrazepam or Methamphetamine	B-	C	DG-2
9A.60.040	Criminal Impersonation 1	C-	C	Unranked
9A.84.010(2)(b)	Criminal Mischief	C-	C	Unranked
9A.42.020	Criminal Mistreatment 1	A-	B	10
9A.42.030	Criminal Mistreatment 2	B	C	5
69.50.401(2)(b)	Deliver or Possess with Intent to Deliver - Methamphetamine	B-	B	DG-2
9A.36.045	Drive-by Shooting	B	B	7
46.61.502(6)	Driving While Under the Influence of Intoxicating Liquor or any Drug	B-	B	4