

Improving public safety by positively changing lives

Budget Reduction Strategy

2021-23 Biennium



In order to achieve a 15 percent DOC Budget Reduction Target set by the Office of Financial Management, there must be a significant and permanent reduction in prison population.

The proposed strategies, when implemented as part of an overall reform effort, create significant budget savings, and support best practices for community safety and decreased recidivism.

The plan includes three tactical endeavors: a prisons population reduction exercise; reform in supervision policies and investment in community supports; and sentencing reforms that result in fewer and shorter prison terms.

The items included here represent both areas that are within the Department's scope of Agency Request Legislation (ARL) and areas that the Department will provide support, but were determined to be outside DOC scope for ARL.

PRISONS POPULATION REDUCTION

AMEND RCW 9.94A.733 HOME DETENTION – GRADUATED RE-ENTRY PROGRAM TO ALLOW FOR THE FOLLOWING PARTIAL CONFINEMENT ALTERNATIVES.

150 day partial confinement, all sentence types included (retroactive and prospective).

This proposal would reduce the prison population by allowing incarcerated individuals with approved housing plans, regardless of offense or sentence type, to serve the final 150 days of their sentence in partial confinement on electronic home monitoring. The savings assumptions assumed individuals would serve at least 180 days in prison, and excludes individuals subject to deportation, civil commitment or interstate compact. There will be additional indeterminate impacts to community corrections, related to the supervision of individuals transferred to partial confinement.

Property/Other (Non-violent, Non-sex, Non-Crime against a Person, include Drug crimes) would serve little, to no time in a prison facility.

This proposal reduces the prison population by allowing incarcerated individuals to serve all but 120 days of their sentence in partial confinement on electronic home monitoring. Similar to the Rapid Reentry program, this proposal would not apply to individuals currently serving a sentence(s) for violent, sex or crimes against a person offense nor individuals with deportation orders or who are under the ISRB review.

AMEND RCW 9.94A.729 – EARNED RELEASE TIME – RISK ASSESSMENTS

50% earned time – retroactive and prospective for anyone that did not commit a crime against a person.

Under current law, certain individuals are eligible to earn up to 33 percent off their prison sentence for good behavior. This proposal changes the allowable amount of earned time on a sentence from a maximum of 33 percent to a maximum of 50 percent, if the offense was not classified as a violent, sex, or crime against a person offense, to include drug offenses.

Allow Earned Time on Weapon Enhancements

Currently, if an offender has a weapon enhancement on one or more counts, the enhancement(s) are served consecutive to one another and consecutive to the underlying sentence. The current law does not allow offenders to receive any earned time for the weapon enhancement portion of an offender's sentence, but does allow earned time on the underlying sentence.

This proposal would allow earned time on an offender's entire sentence, not just a portion of the sentence. The rate of time earned for the enhancement portion would be consistent to the rate allowed for the underlying sentence.

The ADP savings estimate assumes a prospective and retroactive application of the proposed sentencing changes for any offender with a sentence that includes a firearm or other deadly weapon enhancement. It would require any offender currently incarcerated,

as of the effective date of this legislative change, to have his or her estimated release date recalculated to reflect the increased percent of earned time allowed. There will be additional indeterminate impacts to community corrections, related to the early release of individuals with a term of community custody.

This proposal was included in the Sentencing Guidelines Commission (SGC) Recommendations as part of the 2019 Review of the Sentencing Reform Act.

AMEND RCW 9.94A.728 – RELEASE PRIOR TO THE EXPIRATION OF SENTENCE, RCW 9.94A.533 – ADJUSTMENTS TO STANDARD SENTENCES, RCW 9.94A.570 – PERSISTENT OFFENDERS

Second Chances - Permits offenders who have served 15 years or more of a sentence to petition the Indeterminate Sentence Review Board (ISRB) for early release if no serious infractions.

This proposal would permit incarcerated individuals who have served 15 years or more of a sentence to petition the ISRB for early release. DOC will examine the petitions, using methodologies recognized by experts in the prediction of criminal dangerousness, and create a prediction of the probability that the offender will engage in violent offenses if released. Then, the ISRB will hold a hearing at which the offender is entitled to present evidence on his or her behalf. He or she will not be represented by counsel unless the ISRB determines that the offender is not able to adequately represent him or herself, in which case an attorney will be appointed. There must be an opportunity for victims to present statements to the ISRB. If, after the hearing, the ISRB determines that it is more likely than not that the person will commit a new violent offense, if released with conditions, the person will not be released. Otherwise, the person will be released. Will also consider adding statutes related to the Juvenile Review board to align timelines.

COMMUNITY CORRECTIONS REFORMS AND INVESTMENTS

The prison population reductions proposed above are not sustainable and create community risk if not combined with investments in community services and support. This proposal combines reforms to reduce costs in areas of Community Corrections that do not support the Department's mission of improving public safety by positively changing lives and investments with anticipated long term effects on recidivism.

In order to prevent an increase in recidivism and insure success in the community, some of the savings from this proposal should be reinvested based on recommendations of the Sentencing Guidelines Commission (SGC) 2019 [Review of the Sentencing Reform Act](#), the [Second Chance Pilot results](#), and [other research](#). The Department seeks some fundamental changes to align with research and be responsive to the recommendations therein, to include:

- Front-loading reentry services
- Providing a wrap-around supervision model for all individuals being released from confinement, and
- Developing and implementing a formalized motivational and coaching focused supervision model.

AMEND RCW 9.94A.171 – TOLLING OF TERM OF CONFINEMENT, SUPERVISION

Limit Tolling

Tolling is when time served toward a community custody sentence is paused due to an individual not being available for supervision. The policy proposal would limit the tolling of community supervision terms to only the time when an individual is serving original jail time, has absconded from supervision, or is serving time for a subsequent felony conviction to include pre-sentence confinement as confirmed by the detaining facility. This change would eliminate tolling for times the individual is returned to total confinement, confined for violations of community custody if serving on a current sex offense, or while serving a separate non-felony sentence of confinement.

Tolling information is not readily available through data systems, therefore manual recalculations of Scheduled End Dates (SEDs) are required and significant research is needed in order to reconcile the successful time on supervision, the tolled time on supervision and compliance credits earned. Sentence recalculation is complex, and changes throughout an individual's time while under the jurisdiction of the department. The vast majority of errors in SEDs would be eliminated if tolling was not required to the extent that it is today.

This proposal was included in the SGC Recommendations as part of the 2019 [Review of the Sentencing Reform Act](#).

The following proposed reforms support the proposed budget reductions that are outside the scope of Agency Request Legislation. These strategies would be supported by the Department if contained in the Governor's budget or introduced into legislation.

No lifetime supervision for individuals sentenced as indeterminate plus sex offenses.

This proposal would reduce the terms of DOC supervision for certain offenders released by the ISRB. According to the Sentencing Guidelines Commission 2019 Review of the Sentencing Reform, "Experts agree that maximum supervision terms should not exceed five years...as the impact of supervision diminishes after a few years." Currently, any offender that committed a specified sex offense ([RCW 9.94A.507](#)) on or after September 1, 2001, is sentenced to community custody by the courts to a term of supervision that expires when the offender reaches the statutory maximum sentence for the offense of conviction.

Nearly all offenders sentenced under this requirement have been convicted of a Class A felony, which carries a statutory maximum sentence of life. If an offender has been convicted of a Class B felony the statutory maximum sentence is 10 years, and for a Class C felony it is 5 years. As a result, this population continues to grow exponentially each year. Under the proposed changes, offenders sentenced under this provision would now receive a term of community custody of: 10 years for a Class A felony, 5 years for a Class B felony, and 3 years for a Class C felony.

First Time offender waiver (FTOW) mandatory supervision requirement removed.

The [FTOW](#) either reduces (up to 90 days) or eliminates confinement time in exchange for supervision and/or treatment. This proposal would eliminate the supervision requirement for individuals regardless of risk. The department will only supervise individuals assessed as high violent property and drug, high violent felony, high property felony and high drug felony risk, consistent with the supervision requirements for individuals serving non-sentencing alternatives

Drug Offender Sentencing Alternative (DOSA) mandatory supervision requirement removed.

The [DOSA](#) either reduces or eliminates confinement time in exchange for the offender participating in supervision and treatment. This proposal would eliminate the supervision requirement for individuals serving a residential (community based treatment) or prison DOSA regardless of risk. The department will only supervise individuals assessed as high violent property and drug, high violent felony, high property felony and high drug felony risk, consistent with the supervision requirements for individuals serving non-sentencing alternatives.

DECREASE CONVICTIONS THAT REQUIRE PRISON TIME AND/OR SHORTEN SENTENCE LENGTH

All of the following reforms support the proposed budget reductions that are outside the scope of Agency Request Legislation. These strategies would be supported by the Department if contained in the Governor's budget or introduced into legislation.

Prisons reduction strategies cannot be sustained without a change in sentencing that would reduce the number of individuals and sentence length. All of the following recommendations have been supported and vetted in past efforts, and are consistent with stakeholder recommendations.

Establish a Property Crime Grid

This proposal is based off the CSG Justice Center's Justice Reinvestment efforts to create a new sentencing grid for felony property offenses with reduced standard ranges. This new sentencing grid would impose 12 months of community custody for a felony property offense when an individual has an offender score of two or more. Currently, individuals convicted of a felony property offense are sentenced to confinement but do not receive a term of community custody.

In 2014, the CSG Justice Center analyzed Washington's criminal justice data, interviewed stakeholders across the criminal justice system, and worked with state leaders to develop data-driven policy options to reduce spending on corrections and increase public safety. CSG found that Washington State had the highest reported property crime rate in the country, yet was the only state where supervision was not available for property offenders.

The [Justice Reinvestment Policy Framework](#) was translated into legislation and introduced during the 2015 legislative session as [HB 1885/SB 5755](#).

Possession of a Controlled Substance

Possession of a Controlled Substance and Forged Prescription (PCS) offenses are currently ranked as a Seriousness Level I on the Adult Drug Offense Sentencing Grid. Convictions for such offenses can result in a jail sentence of between 0 and 12 months, or a prison sentence between 12 months and a day to 24 months, depending on the offender's criminal history score. DOC is required to supervise any alternative sentence with community custody orders regardless of risk, and may only supervise those assessed as high risk for non-alternative sentences.

This proposal would make PCS a misdemeanor, by removing the applicable offenses from Table 4 - Drug Offense Seriousness Level ([RCW 9.94A.518](#)). Punishment for a misdemeanor PCS offense may not exceed 90 days of confinement and would not be eligible for community custody. The savings estimate assumes a prospective application of the proposed sentencing changes and would result in reductions to prison, jail, DCYF juvenile detention and community correction populations.

An alternative could include making a PCS offense an unranked felony. Unranked felonies have a standard sentence range of 0 to 12 months, resulting in a presumptive jail sentence.

Failure to Register (FTR) as a sex offender changed to an unranked and non-sex offense

Under current law FTR is split into three offenses:

- 1st conviction for FTR is a Class C unranked felony offense, not classified as a sex offense but still has up to one year of community custody after jail if high risk, and 12 months after prison regardless of risk;
- 2nd conviction of FTR is a Class C felony ranked at Seriousness Level 2 and is classified as a sex offense. Up to one year of community custody after jail and 36 months after prison, regardless of risk level; and
- 3rd conviction of FTR is a Class B felony ranked at Seriousness Level 2 and is classified as a sex offense. Up to one year of community custody after jail and 36 months after prison, regardless of risk level.

This proposal would amend all three forms of FTR to unranked felony offenses that are not classified as a sex offense. The 1st and 2nd convictions would remain Class C, and 3rd and subsequent convictions would remain Class B. This change would result in increased jail caseloads, and reduced prison and supervision caseloads.

The savings to prison ADP would result because by making all FTRs offenses unranked, the standard range becomes 0 to 12 months confinement, shifting current prison sentences to jail. The supervision savings assume no community custody is allowed for any Failure to register as a Sex Offender.

There would be additional indeterminate savings realized for both prison and jail sentences based on lower offender scores as sex offenses triple score against one another. So, as a non-sex offense it would single score rather than triple score.

Identity Theft

The term "crimes against a person" refers to a broad array of criminal offenses which usually involve bodily harm, the threat of bodily harm, or other actions committed against the will of an individual.

Under current law, Identity Theft 1 and 2 are classified as a Crime against a Person (CAP). Courts are allowed to order up to 12 months community custody for non-prison sentences, and are required to order 12 months community custody for those with a prison sentence

This proposal would remove identity theft 1 and 2 as a crime against a person, which would restrict the courts from ordering community custody for individuals convicted of ID Theft. Individuals assessed as high risk to reoffend would no longer be supervised for 12 months. There would be no impact for those at Low or Moderate risk.