



**Felony Sentencing 101: A Primer on the Sentencing Reform Act (SRA)  
A CLE for Investigators, Non-Criminal Attorneys and Attorneys  
New to Felony Criminal Defense and the SRA**

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The Washington legislature passed the Sentencing Reform Act (SRA) in 1981, creating a Sentencing Guidelines Commission (SGC) and directing the SGC to establish a “determinate” sentencing system for adult felony sentencing in Washington.<sup>1</sup> The purpose in creating a new sentencing system was to ensure that individuals across the state who commit similar crimes and have similar criminal histories receive equivalent sentences.<sup>2</sup>

Prior to the existence of the SRA, all felony sentences were “indeterminate” in Washington, meaning judges had discretion in whether to send an individual to prison or not, but could not control the length of time a person would actually be in prison. The Parole Board had discretion over whether and when to release an individual, as long as it was within the statutory maximum.

The Sentencing Guidelines Commission created the first determinate sentencing grid in 1982. The Washington Legislature enacted their recommendations in 1983. The SRA took effect for crimes occurring after July 1, 1984. Since then, the legislature has amended the SRA many times over. It has become a very complicated set of rules and exceptions to those rules that defense attorneys must know and understand to competently and ethically represent clients facing felony charges in Washington state courts.

**I. New to Felony Sentencing? Here is Where to Start:**

- **Book UP!** You are going to have to do some reading to understand and/or apply the SRA. There are several sources of good and basic info if you are new to defending individuals with felony criminal cases in Washington:
- Read through the Sentencing Reform Act (SRA) –find it at [RCW 9.94A](#)

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<sup>1</sup> Determinate sentences state with exactitude the period of total confinement, partial confinement, and community custody, as well as the number of days or hours of community restitution, and the dollars or terms of any legal financial obligations (LFOs). RCW 9.94A.030

<sup>2</sup> See [RCW 9.94A.010](#), Purpose (of the SRA)

- Read the beginning of the current SRA Manual. The Caseload Forecast Council (CFC) publishes a yearly SRA Manual available for downloading online. These manuals include a summary of new laws and recent case authority interpreting SRA. <http://www.cfc.wa.gov/publications.htm>.
- Practice scoring with a few hypotheticals with a felony experienced attorney.
- The [WDA website](#) has many WDA Practice Advisories- available to WDA members and non-member criminal defenders working in indigent defense (user name and password required).
- Contact the Felony Resource Attorney at WDA.

### Must Read Cases:

Every attorney working in Washington defending felony cases should at a minimum read and be familiar with these cases:

- *State v. Ammons*, 105 Wash.2d 175 (1986)(SRA constitutional)
- *State v. Ford*, 137 Wn.2d 472 (1999)(State must prove priors)
- *In re Personal Restraint of Lavery*, 154 Wn.2d 249 (2005)
- *State v. Hunley*, 175 Wn.2d 901 (2012)
- *State v. O'Dell*, 183 Wn.2d 680 (2015)
- *State v. Houston Sconiers*, 188 Wn.2d 1 (2017)
- *St v. Blazina*, 182 Wn.2d 827 (2015).
- *Blakely v. Washington*, 542 U.S. 296 (2004)
- *Apprendi v. New Jersey*, 530 U.S. 466 (2000)
- *Alleyne v. United States*, 570 US \_\_\_, 133 S.Ct. 2151 (2013)

### Other Relevant Authority

The Washington Constitution and the United States Constitution also govern sentencing.

## **II. The Basics**

**A. The governing statute:** The SRA is codified at RCW 9.94A; it governs sentencing of felony cases only, not misdemeanors. There is one exception: aggravated first degree murder sentencing is governed by RCW 10.95.

**B. Timing:** Unless a new law or rule is made retroactive, sentencing rules in place on the date of the offense apply. RCW 9.94A.345. The Washington Courts maintains a webpage where you can access the SRA in effect at any given time.<sup>3</sup>

### **C. Class and Categories of felony crimes:**

There are three classes of felony crimes with different maximum punishments. RCW 9A.20.010, 9A.20.021.

- Class A – maximum term of life/\$ 50,000
- Class B- maximum term of 10 years/\$ 20,000
- Class C – maximum term of 5 years/\$ 10,000

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<sup>3</sup> Found at <http://www.courts.wa.gov/sra/>. You can also find past SRA Manuals here: [http://www.cfc.wa.gov/CriminalJustice\\_ADU\\_SEN.htm](http://www.cfc.wa.gov/CriminalJustice_ADU_SEN.htm)

If a felony is defined outside of RCW 9A, or if the class is not provided in the statute, the “class” is determined by the maximum punishment possible. RCW 9.94A.035.

- If the maximum is 20 years or more – treated as Class A
- If the maximum is more than 8 but less than 20 years – treated as Class B
- If the maximum is less than 8 years – treated as Class C
- If a felony has no maximum punishment, it is treated as a Class B. RCW 9.92.010.

In addition to “Class” of crime, there are several categories of crimes defined in the SRA. See the definitions in RCW 9.94A.030 for the crimes included in each category:

- Non-Violent Offense
- Violent Offense
- Most Serious Offense (these are the “three strikes” and “two strikes” offenses)
- Serious Traffic Offense
- Felony Domestic Violence Offense
- Repetitive Domestic Violent Offense
- Felony Traffic Offense
- Serious violent offense
- Sex Offense

There are additional categories to be aware of that come into sentencing:

- Crimes Against Person. RCW 9.94A.411.
- Crimes Against Children. RCW 43.43.850(5).
- Serious Offense for Unlawful Possession of a Firearm (UPFA 1 or 2), RCW 9.41.020, 9.41.010

### III. **The Sentencing Hearing.** [RCW 9.94A.500](#), [RCW 9.94A.530](#), [CrR 7.1, 7.2](#)

A sentencing hearing is required in every case. By statute, a sentencing hearing must take place within 40 days of conviction unless good cause exists to extend the hearing date. Ask for more time to prepare if you need it. Some important things to know about felony sentencing:

- Mandatory detention following conviction and pending sentencing is required for some sex crimes. See RCW 10.64.025(2). All others convicted of a felony “shall be detained unless the court finds by clear and convincing evidence” that the defendant is not likely to flee or pose a danger to others. RCW 10.64.025(1).
- REAL FACTS (*Do not stipulate unless it benefits your client!*): In determining any sentence the court may ONLY rely on information that is admitted in the plea agreement or admitted, acknowledged or proved at trial or at the time of sentencing, or proven pursuant to RCW 9.94A.535 and .537. This is known as the “Real Facts Doctrine,” intended to protect defendants from court consideration of unreliable or inaccurate information at sentencing. If a defendant disputes facts or prior convictions the trial

court must not consider them, or must set a contested sentencing hearing. RCW 9.94A.530(2).

- **Burden of Proof:** The State must prove the existence and classification of prior criminal history by a preponderance. *St. v. Hunley*, 175 Wn.2d 901 (2012). The defense has no obligation to present evidence of criminal history unless convicted pursuant to a plea bargain, when he must provide the court with his understanding of his criminal history. RCW 9.94A.441. Disputes about the existence or scoring of criminal history “shall be decided at the sentencing hearing.” A prior Judgment and Sentence is the best evidence but other reliable evidence is allowed.
- Due process is required for the sentencing hearing. The defendant is entitled to an attorney, notice, disclosure of evidence, an opportunity to be heard, confrontation, a neutral magistrate, and a written statement of findings.
- The trial court has authority in most cases to order the Department of Corrections (DOC) to provide a risk assessment report and/or chemical dependency report for some drug related crimes. The court must order DOC to provide a risk assessment report for individuals convicted of felony sex offenses and certain mentally ill individuals. RCW 9.94A.500(1), CrR 7.1(a).
- Court “shall” consider DOC reports, victim impact, criminal history, and allow arguments from the prosecutor, defense, the defendant, victim (or survivor or representative) and an investigative law enforcement officer as to sentence.
- These hearings can be limited and short, or contested, complex and lengthy. An evidentiary hearing is available if requested or needed. RCW 9.94A.530(2). At least 3 days prior to hearing the parties “shall notify the court and opposing counsel of any part of presentence report that will be controverted by the production of evidence.” CrR 7.1(c).
- The defendant has a right to allocution: the right to make a personal statement to the court before the pronouncement of sentence. It is the defendant’s opportunity to present mitigating evidence and or ask for leniency.
- Privacy/confidential or privileged information: In many cases, a client’s personal and private information is relevant mitigating evidence you want to share with the court to explain the circumstances leading up to or including the crime, including a client’s medical or mental health diagnosis, chemical dependency, current status, treatment history and treatment plan going forward. Take measures to keep private information confidential if you can. When you can’t keep it private, advise the client about the fact that the information will become public *before* you share it. See *St v. Chen*, 178 Wn.2d 350 (2013) *St v. DeLauro*, 163 Wn.App 290 (2011) and *John Doe G v. DOC*, 190 Wn.2d 185 (2018); RCW 9.94A.500(2) provides the court authority to protect mental health information in some instances.

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*Practice Tip: Take Steps to Protect Your Client's Private, Confidential and Privileged Information when possible.*

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#### **IV. Sentence Options:**

A felony sentence will typically include a combination of these components:

- **Total confinement** means confinement inside the physical boundaries of a facility operated by the state for 24 hours per day.
- **Partial Confinement** means confinement for no more one year in a state or local government run facility or an approved residence for a portion of the day with the balance of the day spent in the community. Partial confinement includes home detention, work release, work crew, parenting sentencing alternative.
- **Community Custody** means that portion of a person's sentence served in the community in lieu of earned release time or imposed as part of a sentence. Community custody includes affirmative and other sentence conditions and DOC supervision.
- **Community Restitution** means compulsory service performed for the benefit of the community.
- **Fines** of \$0-50,000 for a Class A, \$0-20,000 for a Class B or \$0-10,000 for a Class C.
- **Legal Financial Obligations (LFOs):** Upon conviction individuals face both mandatory and discretionary LFOs.

#### **V. Determining the Standard Range (SR):**

Felony sentencing involves calculating a standard sentence range for each count. When an individual has multiple charges, you first determine the standard range for each offense, next determine whether the sentences are presumptively consecutive or concurrent to get the total standard range for your client. If there are any "enhancements" then add them to the standard range. The standard range is determined for each crime by considering both prior criminal history and other current charges, and a number of other rules. The sentencing range is found in the sentencing grid. RCW 9.94A.510, 9.94A.517.

##### **Step 1: Determine the "Seriousness Level" RCW 9.94A.514.**

Most felonies have a designated "seriousness level" ranging from level I (a low level felony) to level XVI (aggravated murder). The legislature establishes the seriousness level for each offense. A felony with no designated seriousness level is considered an "unranked" felony. The standard range for unranked felonies is always 0-12 months, regardless of score. See RCW 9.94A.505(2)(b).

Drug Crimes have their own "seriousness level" for all drug crimes occurring after July 1, 2003. RCW 9.94A.518. Drug crimes have a separate sentencing grid. RCW 9.94A.517.

## Step 2: Determine the “Offender Score” RCW 9.94A.525

Determining the score is a much more complicated process than determining the seriousness level. ***This is where a substantial portion of sentencing litigation takes place.*** You are required to examine both prior convictions and other current charges to get to the individual’s “score.”

There are three questions to answer about prior criminal history: (1) **Is it a conviction?** (2) **Does it count?** and (3) **How do you calculate the score?**

**(1) Is it a conviction:** A prior conviction includes prior juvenile adjudications and adult convictions. "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty." RCW 9.94A.030.

**(2) Does it count?** Determining if a conviction counts involves the application of several rules, most can be found in RCW 9.94A.525. Prior juvenile adjudications will count in the score. Some prior misdemeanors will count in the score for certain current felony crimes.

- Merger: Double jeopardy bars multiple punishments for the same crime. The remedy is dismissal of the lesser sentence. Does proof of one charged crime encompass the same proof as another charged crime? If so, the crimes may merge and the court should dismiss the lesser crime before calculating and imposing sentence. *State v. Freeman*, 153 Wn.2d 765, 108 P.3d 753, 759 (2005).
- Washout: Has the prior conviction “washed out”? RCW 9.94A.525(2). If the individual has spent the required amount of time crime free and in the community following his or her release from a felony conviction and sentence, the crime may not count in the score. \*Note: “washout” is different from “vacate.”
  - Class A and felony sex offense - never washes out;
  - Class B (and not sex) - washes out after 10 years;
  - Class C (and not sex) - washes out after 5 years.
  - Prior serious traffic offense – washes out after 5 years
  - Prior “repetitive domestic violence” - washes out after 10 years.
- Comparability: If an out of state, federal or foreign offense is comparable to a Washington felony it will count in the score. RCW 9.94A.525(3). Federal offenses will count in the score as a class C felony equivalent if it is a felony under federal law and there is no clearly comparable offense under Washington law or the offense is one that is usually subject to exclusive federal jurisdiction.
- Same Criminal Conduct: Multiple current offenses or prior offenses might be considered “same criminal conduct.” If so, they do not all count in the current score. RCW 9.94A.525(5). Same criminal conduct is defined in RCW 9.94A.589(1), and

requires the crimes share the same time and place, victim, and objective criminal intent.

- Inchoate Crimes: Prior felony convictions for felony attempt, solicitation or conspiracy count the same as a completed offense. RCW 9.94A.525(4). When the current offense is a felony attempt, solicitation or conspiracy, count prior offenses the same as if the current offense were a completed offense. RCW 9.94A.525(6).

**(3) What is the Score?** See RCW 9.94A.525 (7)-(21). A series of complex rules applies depending on the category of the current crime (violent offense, felony traffic offense, etc.) and the crime(s) of conviction (burglary, escape, etc.). For multiple current offenses, a separate sentence calculation is required for each offense. See the individual scoring forms found in the Adult SRA Manual and read the applicable rules in RCW 9.94A.525 (7)-(21). Some prior misdemeanors will count in the score.

- Prior and other current offenses follow the same rules;
  - Some crimes use doubling and tripling;
  - Special traffic rules apply;
  - Special rules for multiple serious violent offenses
  - AND MANY MORE....
- Bonus Point: If the individual was on community custody at the time of the offense, add a point to the score. RCW 9.94A.525(19).

#### Standard Range:

#### Step 3: Determine Standard Range and any Adjustments to the Standard Range:

Once you have the seriousness level and have calculated the “score,” then you turn to the sentencing grid to find the applicable standard range and midpoint. See RCW 9.94A.510 and 9.94A.517 for the standard and drug sentencing grids. You are not done yet, here are additional rules to consider:

- Inchoate crimes: Criminal Attempt, Solicitation, or Conspiracy: The standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 %. RCW 9.94A.533(2). The class of crime steps down one step when an individual is convicted of attempt, solicitation or conspiracy under RCW 9A.28.
- Alternative Sentences- does your client qualify for an alternative sentence? See RCW 9.94A.650-9.94A.690. These sentencing alternatives involve substantially less confinement time, but more significant treatment and/or other conditions and DOC supervision.
  - **The First Time Offender Waiver (FTOW)** allows the court to waive the standard range sentence for an individual with no prior felony convictions. A court may sentence the individual up to 90 days confinement and up to 6 months of

community custody, or up to 12 months community custody if treatment is ordered.

- The **Drug Offender Sentencing Alternative (DOSA)** allows the court to suspend the standard range sentence for certain drug related crimes. There are two options, the Prison Based DOSA and the Residential DOSA.
- The **Special Sex Offender Sentencing Alternative (SSOSA)**, allows the court to suspend the standard range sentence for certain sex crimes.
- The **Parenting Sentencing Alternative** allows the court to suspend the standard range sentence for an individual who is a custodial parent or legal guardian of a child under the age of 18 at the time of the offense. There are two options, the Parent Sentencing Alternative (PSA) and the Community Parenting Alternative (CPA).
- **Work Ethic Camp** Program allows the court to suspend the standard range sentence and instead impose a short sentence focused on rehabilitation within DOC.
- Sentencing Enhancements- There are a number of enhancements found in the SRA, note that only some are “mandatory.” Enhancements add confinement time the standard range for specific conduct related to the underlying crime, such as carrying or using a weapon. See RCW 9.94A.533(3)-(13). An enhancement increases the presumptive range, it is not a separate sentence. *St. v. Silva-Baltazar*, 125 Wn.2d 472, 886 P.2d 138 (1994).
- Departures/Exceptional Sentences: The court can impose a sentence above or below the standard range when “there are substantial and compelling reasons justifying an exceptional sentence.” See RCW 9.94A.535.(Seeking departures down is a separate CLE topic, see the CLE and materials from the WDA 2.27.18 CLE ). Most departures upward require a jury finding of any fact that increases the minimum term or increases the potential sentence. No jury finding is required for mitigating circumstances that justify a departure down.
- Mandatory Minimums: There are statutory minimum terms for murder 1, rape 1, assault 1, assault on a child 1, and sexually violent predator escape. These rules do not apply for youth declined for these crimes committed after July 2005. RCW 9.94A.540. Aggravated murder 1 also has mandatory minimum sentencing. RCW 10.95.030.
- Statutory Maximum: If the standard range exceeds the statutory maximum, the statutory maximum is a cap on the range. RCW 9.94A.505(5).

## **VI. Additional Terms of Sentence**

- Legal Financial Obligations (LFOs): LFOs carry long-term effects for clients long past any jail or prison term and can deter or unravel successful reentry. Every defender should challenge the imposition of any discretionary LFOs and must be familiar with *St. v. Blazina* 182 Wn.2d 827 (2015) (a judge may not impose discretionary LFOs without an individualized inquiry into the individual’s ability to pay).
- Restitution: The trial court’s authority to impose restitution is statutory and must be imposed at the sentencing hearing or within 180 days of the sentencing hearing.



Whether restitution is proper and the amount of restitution can be negotiated or litigated at the plea bargain stage or at sentencing.

- Community Custody Terms/Length: Not all crimes carry community custody (DOC probation/supervision). Some crimes include supervision in all cases, and for others it will depend on the DOC Risk Assessment. See RCW 9.94A.703, .704, 9.94A.501, 9.94A.603, and .607.
- Good Time: The judge does not award “Good Time” as a part of a sentence, but is important to your client. Local jails and the Department of Corrections award good time (early release) based on good behavior and successful engagement in programming. See RCW 9.94A.728, .729. There are different good time rules for different crimes, and some sentences are not eligible for any good time.
- Vacate/Discharge: See RCW 9.94A.637 and RCW 9.94A.640 for rules governing discharge and vacation of a felony conviction. These crimes or categories of crimes are not eligible: violent crimes, crimes against a person, Felony DUI, and Felony Physical Control.

## **VII. Exceptions: Two Strikes/Three Strikes, Drug, Indeterminate Sex, Aggravated Murder and Youth/Young Adult**

Persistent Offender: There is no standard range when an individual is a “persistent offender” because the only sentence available to them is life without the possibility of parole (LWOP). An individual becomes a persistent offender when they have been convicted of three “most serious offenses” or two serious sex offenses. See RCW 9.94A.030 for the definition of “persistent offender.”

Indeterminate Sex Offenses – “Determinate Plus” (2001): Certain sex offenses trigger the special sentencing rules in RCW 9.95A.507, where the sentence is composed of a maximum term that is the statutory maximum and a minimum term that is something within the standard range. The minimum term is set by the court. Most of these are Class A offenses which carry a maximum term of life sentence. Individuals with indeterminate sex offense sentences go before the Indeterminate Sentence Review Board (ISRB) to seek release pursuant to RCW 9.95.420. If they are released they will be supervised by DOC for the remainder of their maximum term and can be revoked and placed back into confinement for the remainder of their term.

Aggravated First Degree Murder: The SRA does not apply to aggravated first degree murder sentences, see RCW 10.95. There is one possible sentence for adults: life without parole. Youth who are declined and prosecuted as adults have a different sentence. The court sets a minimum and a maximum, and the youth may be released early from the ISRB, see 10.95.030(3).

Exception -Drug Offenses: There are special rules for drug offenses.

Anticipatory Offenses -VUCSA - RCW 69.50.407

- Attempt or Conspiracy is an unranked felony
- Solicitation is prosecuted under RCW 9A.28, as a non-drug offense

Second or Subsequent drug offense: Statutory maximum doubles for some offenses. RCW 69.50.408

Youth and Young Adults: There are special rules for sentencing youth and young adults. Trial courts have discretion to depart from the standard range based on age/developmental maturity. See *St. v. O'Dell*, 183 Wn.2d 680 (2015). This includes departures from mandatory sentencing, such as mandatory enhancement time. *St. v. Houston-Sconiers*, 188 Wn.2d 1 (2017). Youth who are declined into adult court are eligible for early release after 20 years when sentenced to lengthy terms for serious crimes, RCW 9.94A.730, and when sentenced for aggravated murder pursuant to RCW 10.95.030 or RCW 10.95.035.

### **VIII. Conclusion:**

The Sentencing Reform Act is a complicated statute with numerous complex rules and exceptions to those rules. Defenders must learn and become fluent in these rules in order to competently, and ethically, represent clients facing felony charges in Washington state courts. This will require an investment of time and practice when new to this practice area. This CLE is just one of many resources to assist you in this process.