

CLALLAM COUNTY PROSECUTING ATTORNEY

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Why Didn't the Defendant get the Maximum Sentence?

We often read in the paper that a defendant charged with a felony faces a maximum term of five, ten years, or even life in prison - but that sentence is rarely imposed. Why?

The answer is the Sentencing Reform Act, ("SRA") passed by the Washington State Legislature in the early 1980s, and found in the Revised Code of Washington (RCW) in Title 9.94A.

At the outset, it is important to note that almost all felonies in Washington fall into three classes; A, B, and C. Class A felonies are the most serious and carry a maximum term of life in prison. Class A felonies include crimes such as Murder, Manslaughter First Degree, Rape First Degree, Vehicular Homicide by Intoxication, and Robbery First Degree. Class B felonies carry a maximum term of ten years in prison. Class B felonies include mid-level crimes such as Residential Burglary, Robbery in the Second Degree, Assault Second Degree, and Delivery of a Controlled Substance such as Heroin or Methamphetamine. Class C felonies carry a maximum sentence of five years in prison. Class C felonies include lower-level crimes such as Assault in the Third Degree, Theft Second Degree, Forgery, and Identity Theft Second Degree.

Prior to the SRA, judges had broad discretion to sentence offenders up to the maximum term for that class of offense. For example, a defendant sentenced in 1979 for Robbery in the First Degree, a class A felony, might receive five to fifteen years in prison, with the parole board considering parole after, say, five years. Another judge in a different county could hand down a much lighter or much stiffer sentence for the same crime. This led to widely disparate outcomes

for defendants convicted of the same crime with similar criminal history, and a desire in the public and the legislature for more standardized, predictable sentences.

Beginning July 1, 1984, the SRA required felony offenders to be sentenced within a presumptive "standard range," which is almost always much less than the maximum term. The standard range is fixed by reference to a sentencing grid found at RCW 9.94A.510. In the sentencing grid the horizontal axis (row) is the offender score, and the vertical axis (column) is the seriousness level of the crime. The intersection of the offender score row and the seriousness level column sets out the presumptive standard range for any particular crime.

The "offender score" reflects the number of "points" that the defendant has on his or her record. Although there are several exceptions, points are generally based on the number of prior felony convictions a defendant has on their record. The maximum number of points in the sentencing grid is 9 - meaning the standard range incorporates a maximum number of nine prior or current felony convictions.

The "seriousness level" (which is completely separate from the A, B, or C felony classification of the crime) reflects the legislature's determination of the relative seriousness of specific crimes. The levels run from the highest level of XVI (16) for Aggravated Murder in the First Degree, for example, to the lowest level of I (1), which includes Theft in the Second Degree and Forgery. A complete listing of the seriousness level set by the legislature for particular crimes may be found at RCW 9.94A.515.

The following example illustrates how the sentencing grid works: Jane Smith was convicted in 2024 for Theft of a Motor Vehicle, a class B felony. The maximum sentence for a class B felony is ten years in prison and a fine of twenty thousand dollars. See RCW 9A.20.021. Looking through the offense seriousness levels, we see that Theft of a Motor Vehicle is a level II offense. Further, Smith has previous felony convictions for Residential Burglary from 2021 and Identity Theft from 2023. So, counting the number of previous felony convictions as two, on the horizontal row she will have an offender score of two points, and on the intersection with seriousness level II, Smith has a presumptive standard range of three to nine months in the county jail. The midpoint of her standard range would be six months. This is depicted in the grid shown below. (The row at the top of the grid reflects the offender score. The column on the left-hand side of the grid reflects the seriousness level of the offense. The intersection of the two reflects Smith's presumptive sentence range in months.)

SENTENCING GRID D: CRIMES COMMITTED AFTER JULY 24, 1999 "CURRENT"



		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
		Life sentence without parole/death penalty for offenders at or over the age of eighteen. For offenders under the age of eighteen, a term of twenty-five years to life.									
S e r i o u s n e s s L e v e l	LEVEL XVI	280m	292m	304m	316m	328m	340m	364m	394m	432m	480m
	LEVEL XV	240 - 320 172m	250 - 333 184m	261 - 347 194m	271 - 361 204m	281 - 374 215m	291 - 388 225m	312 - 416 245m	338 - 450 266m	370 - 493 307m	411 - 548 348m
	LEVEL XIV	123 - 220 144m	134 - 234 156m	144 - 244 168m	154 - 254 180m	165 - 265 192m	175 - 275 204m	195 - 295 228m	216 - 316 252m	257 - 357 300m	298 - 397 348m
	LEVEL XIII	123 - 164 108m	134 - 178 119m	144 - 192 129m	154 - 205 140m	165 - 219 150m	175 - 233 161m	195 - 260 189m	216 - 288 207m	257 - 342 243m	298 - 397 279m
	LEVEL XII	93 - 123 90m	102 - 136 100m	111 - 147 110m	120 - 160 119m	129 - 171 129m	138 - 184 139m	162 - 216 170m	178 - 236 185m	209 - 277 215m	240 - 318 245m
	LEVEL XI	78 - 102 60m	86 - 114 66m	95 - 125 72m	102 - 136 78m	111 - 147 84m	120 - 158 90m	146 - 194 114m	159 - 211 126m	185 - 245 150m	210 - 280 174m
	LEVEL X	51 - 68 36m	57 - 75 42m	62 - 82 48m	67 - 89 54m	72 - 96 60m	77 - 102 66m	98 - 130 90m	108 - 144 102m	129 - 171 126m	149 - 198 150m
	LEVEL IX	31 - 41 24m	36 - 48 30m	41 - 54 36m	46 - 61 42m	51 - 68 48m	57 - 75 54m	77 - 102 78m	87 - 116 90m	108 - 144 102m	129 - 171 126m
	LEVEL VIII	21 - 27 18m	26 - 34 24m	31 - 41 30m	36 - 48 36m	41 - 54 42m	46 - 61 48m	67 - 89 66m	77 - 102 78m	87 - 116 90m	108 - 144 102m
	LEVEL VII	15 - 20 13m	21 - 27 18m	26 - 34 24m	31 - 41 30m	36 - 48 36m	41 - 54 42m	57 - 75 54m	67 - 89 66m	77 - 102 78m	87 - 116 90m
	LEVEL VI	12+ - 14 9m	15 - 20 13m	21 - 27 15m	26 - 34 18m	31 - 41 26m	36 - 48 38m	46 - 61 48m	57 - 75 60m	67 - 89 72m	77 - 102 84m
	LEVEL V	6 - 12 6m	12+ - 14 9m	13 - 17 13m	15 - 20 15m	22 - 29 18m	33 - 43 26m	41 - 54 38m	51 - 68 50m	62 - 82 62m	72 - 96 74m
	LEVEL IV	3 - 9 2m	6 - 12 5m	12+ - 14 8m	13 - 17 11m	15 - 20 14m	22 - 29 20m	33 - 43 26m	43 - 57 38m	53 - 70 50m	63 - 84 60m
	LEVEL III	1 - 3 0-90 days	3 - 8 4m	4 - 12 6m	9 - 12 8m	12+ - 16 13m	17 - 22 16m	22 - 29 20m	33 - 43 26m	43 - 57 38m	51 - 68 50m
	LEVEL II	0-60 days	0-90 days	2 - 6 3m	3 - 9 4m	4 - 12 5m	12+ - 14 8m	14 - 18 13m	17 - 22 16m	22 - 29 20m	33 - 43 26m
	LEVEL I	0-60 days	0-90 days	2 - 5	2 - 6	3 - 8	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29



NOTES:

SSB 5087, passed in the 2023 Legislative Session, eliminated language in RCW 10.95.030 authorizing the death penalty, but did not amend Seriousness Level XVI to remove language referencing the death penalty.

2SSB 5064, passed during the 2014 Legislative Session, amended the mandatory minimum term for aggravated first degree murder committed before the offender's 18th birthday. The changes were made retroactively and, therefore, apply regardless of the date of offense. Refer to RCW 9.94A.510, RCW 9.94A.540, RCW 9.94A.729, RCW 10.95.030, and RCW 10.95.035.

Within the grid, "m" indicates months.

As you can see, this is far less than the maximum sentence of ten years for her class B felony. However, the judge can only sentence Smith within the standard range of three to nine months. A sentence of more than nine months would not be legal except for a very rare finding of "aggravating circumstances" that are

described below. Other defendants across the State with the same criminal history and committing the same crime as Smith must also receive a sentence within the three-to-nine-month range. This is the purpose of the SRA. The maximum sentence is almost never going to be reached by a standard range sentence, unless the defendant has a very high (greater than 9) offender score.

Every year the State prints a current Sentencing Guidelines Manual. The 2024 Manual is 554 pages and is loaded with sentencing alternatives, exceptions, and a separate page for each common offense. The variations within the SRA are many, but the high points are as follows:

Multipliers for certain crimes in calculating offender score. The legislature decided that defendants who continually commit crimes within a designated class should be punished more severely. Thus, previous burglary convictions are multiplied by two, not just one, when calculating the standard range for a current Residential Burglary conviction (a level IV offense). The result is that a second-time residential burglar would have a score of two points (one prior burglary conviction times a multiplier of two) and a presumptive standard range of prison, (12+ to 14 months) rather a score of one and a county jail sentence (6 to 12 months).

Multipliers are even more severe for sex crimes, where the number of previous sex offense convictions are multiplied by three in calculating a current sex offense standard range.

Drug Offenses have different seriousness levels than any other felony. The legislature has determined that there are only three levels of drug felonies; level III for the most serious, *e.g.* Delivery of Heroin with a Deadly Weapon Enhancement, down to level I, Possession with Intent to Deliver Cannabis. There is therefore a separate grid for drug offenses which is found in RCW 9.94A.517.

Aggravated and Mitigated Sentences. Having set out presumptive sentencing ranges, the legislature also decided that there should be exceptions ("Departures From the Standard Range"). Despite the standard range, if the prosecutor charges and a jury finds that the defendant committed the crime with "aggravated circumstances", the judge is free to sentence the offender up to the statutory maximum. The aggravated circumstances possible are listed in RCW 9.94A.535. The list is a long one, but it includes such factors as a particularly vulnerable victim; a pregnant victim of a violent offense; violation of a position of trust in an embezzlement offense; domestic violence in the presence of the

victim's minor children; burglary where the victim was present in the building; and an ongoing pattern of sexual abuse of the same minor victim.

Statutory mitigating sentences are possible when the victim was an initiator or provoker of the incident; the defendant made a good faith effort to compensate the victim before detection; the defendant committed the crime under duress, or had an impaired capacity to appreciate the wrongfulness of his or her conduct (excluding voluntary intoxication), and other circumstances as listed.

Sentence Enhancements. Where the jury makes a specific finding that the offender used a firearm or other deadly weapon in committing the crime, the sentencing judge must add a specific number of months to the standard range, which will vary from a mandatory 60 months for use of a firearm in a Class A felony (such as Murder or Robbery) to six months for a non-firearm deadly weapon (such as a knife or brass knuckles) in a Class C felony. The weapon enhancement is served consecutively to the base sentence and ineligible for early good time release.

Other sentencing options. Many defendants convicted of felonies are eligible for various sentencing alternatives where they participate in crime-related treatment in lieu of some or all of their standard range sentence. These sentencing alternatives include a Drug Offender Sentencing Alternative (DOSA), a First-Time Offender Option (FTO), a Family Offender Sentencing Alternative (FOSA), a Mental Health Sentencing Alternative (MHSA), a Theft of a Motor Vehicle Sentencing Alternative (TMVSA), and a Special Sex Offender Sentencing Alternative (SSOSA). If a defendant receives a sentencing alternative, the judge waives the standard range sentence and sentences the defendant to either a reduced term of incarceration or no further incarceration. The judge also imposes a term of community custody, which can be as little as six months (FTO) or as long as the defendant's life (SSOSA for Class A felony). Defendants often have to complete more intensive treatment programs as part of a sentencing alternative than they would as part of a standard range sentence. Except for a FTO sentence, judges have the option of revoking a sentencing alternative and imposing a standard range sentence if the defendant fails to make adequate progress in treatment or violates another condition of community custody.

This post is intended to be informative as an aid to understanding the basics of the Washington Sentencing Reform Act. It is not intended to be comprehensive and does not include all potential options which may be available to any particular offender.