

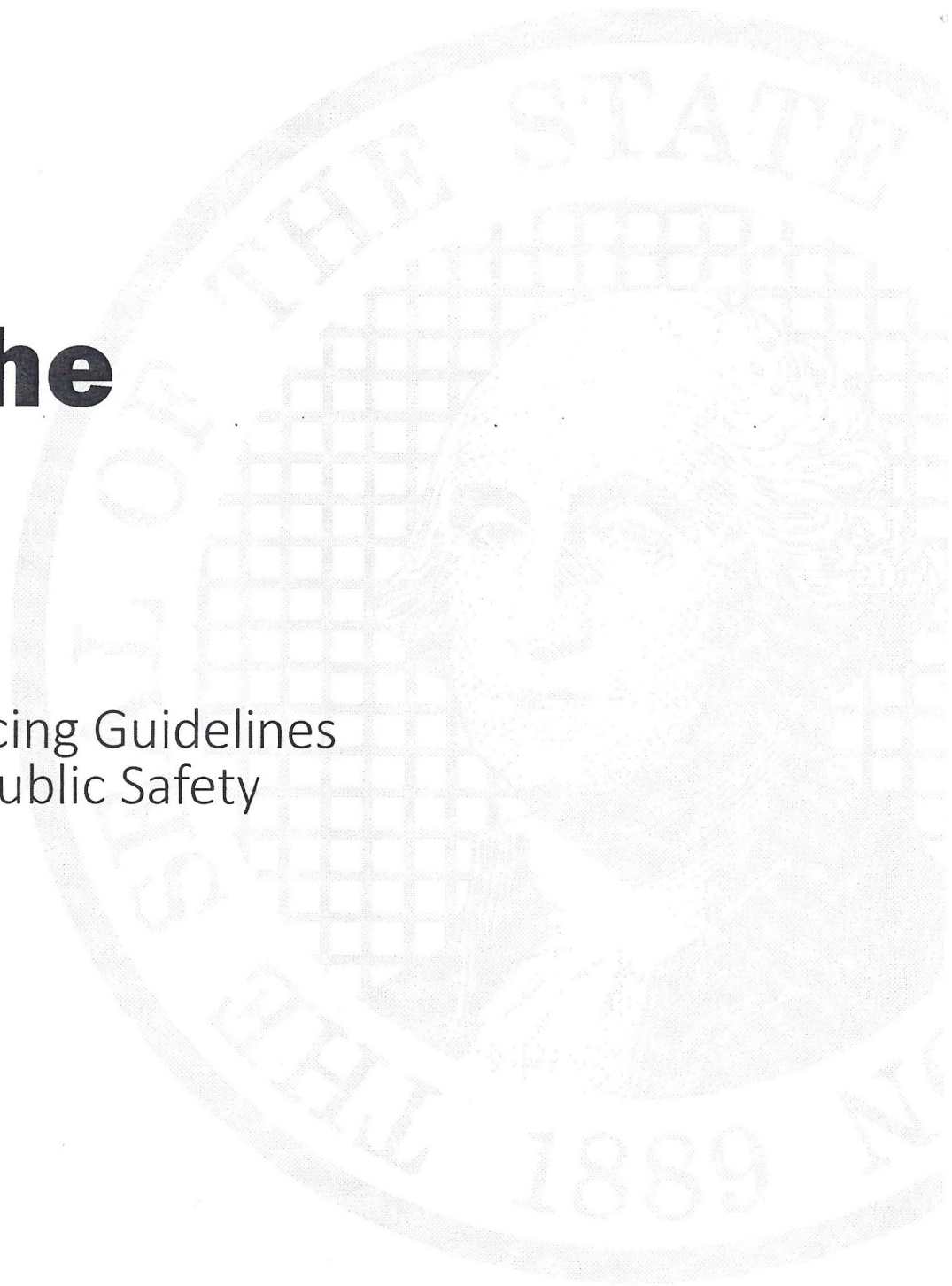
July 16, 2019

Review of the Sentencing Reform Act

Presentation by the Sentencing Guidelines
Commission to the House Public Safety
Committee

OFM

OFFICE OF FINANCIAL MANAGEMENT



Who We Are

The Sentencing Guidelines Commission:

- Derives its authority from the Sentencing Reform Act of 1981, RCW Chapter 9.94A, to advise the Governor and the Legislature on issues relating to adult and juvenile sentencing.
- Promotes accountability and equity in adult and juvenile sentencing, provides accurate and timely information about sentencing and recommends improvements in the criminal justice system.
- Is composed of 20 voting members who are appointed by the Governor and confirmed by the Senate plus four legislative members.
- Was established within the Office of Financial Management by Chapter 40, Laws of 2011.

Review of the Sentencing Reform Act

Under Chapter 299, Laws of 2018, the Sentencing Guidelines Commission was directed to review:

- The current sentencing grid and recommend changes to simplify the grid and increase judicial discretion.
- Fines, fees and other legal financial obligations associated with criminal convictions.
- Community supervision and community custody programs including eligibility criteria, length and manner of supervision, earned time toward termination of supervision and consequences for violations of conditions.
- Available alternatives to full confinement including work crew, home detention and electronic home monitoring.

Review of the Sentencing Reform Act

While achieving the goals of:

- Ensuring evidence-based policies and practices
- Promoting public safety
- Promoting simplicity
- Eliminating inconsistencies

Review of the Sentencing Reform Act

Results of the SGC's review:

- Recommendations for policy changes
 - Sentencing
 - Community Supervision
 - Other
- Sentencing grid proposals
 - Option 1 provides a balance between increasing judicial discretion and maintaining the original design and structure of the SRA.
 - Option 2 increases judicial discretion and limits disproportionate sentences by subsuming sentencing enhancements, aggravating and mitigating factors, the drug grid and unranked offenses.

Recommendations for Policy Changes

Sentencing

Recommendations - Sentencing

- Unranked Offenses – Assign a seriousness level to all unranked felonies and add them to the bottom of any grid, current or proposed, with a 0 - 12 month presumptive range.
- Offense Seriousness Levels – The SGC did not know which grid, current or proposed, the Legislature would pursue and thus, was unable to complete a review. The SGC offers its assistance to review offense seriousness levels once a grid is chosen.
- Offender Scoring – Data analysis by the Council of State Governments Justice Center provided curious results about the relationship of Washington's offender score to recidivism rates. Complex statistical analysis is needed to interpret the results.
- Enhancements
 - Eliminate mandatory stacking of subsequent enhancements.
 - Make all enhancements eligible for good time as applied to the underlying sentence.

Recommendations - Sentencing

- Pre-Sentence Investigations
 - Increase the occasions when a PSI can be requested.
 - Make PSIs available earlier in the court process.
 - Relocate the duty to complete PSIs requested by the superior court judges to the superior court.
 - Increase cultural competency to reduce the disproportionality in PSIs.
 - Exclude risk-assessment information and sentencing recommendation from PSIs.
- Sentence Alternatives – Make alternatives to confinement available to the sentencing judge.
 - More than 90% of felony sentences include a term of confinement.
 - Probation terms can be successful.



Sentencing Grid Proposals

Sentencing Grid Proposals – Option 1

Option 1 Key Tenets:

- Increases judicial discretion
 - Jail cell ranges changed to 0 – 365 days regardless of offender score.
 - Prison cell ranges are increased by 20% on the upper and lower ends.
- Maintains jail/prison line.
- Retains all sentencing alternatives (FTOW, DOSA, SSOSA, FOSA).

Sentencing Grid Proposals – Option 1

Offender Score												
*all ranges are in months												
S e r i o u s n e s L e v e l		0	1	2	3	4	5	6	7	8	9+	
	LEVEL XVI	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.										
	LEVEL XV	192 - 384	200 – 400	209 – 416	217 – 433	225 – 449	233 – 466	250 – 499	270 – 540	296 – 592	329 – 658	
	LEVEL XIV	123 - 220	134 – 234	144 – 244	154 – 254	165 – 265	175 – 275	195 – 295	216 – 316	257 – 357	298 – 397	
	LEVEL XIII	98 - 197	107 – 214	115 – 230	123 – 246	132 – 263	140 – 280	156 – 312	173 – 346	206 – 410	238 – 476	
	LEVEL XII	74 – 148	82 – 163	89 – 176	96 – 192	103 – 205	110 – 221	130 – 259	142 – 283	167 – 332	192 – 382	
	LEVEL XI	62 – 122	69 – 137	76 – 150	82 – 163	89 – 176	96 – 190	117 – 233	127 – 253	148 – 294	168 – 336	
	LEVEL X	41 – 82	46 – 90	50 – 98	54 – 107	58 – 115	62 – 122	78 – 156	86 – 173	103 – 205	119 – 238	
	LEVEL IX	25 – 49	29 – 58	33 – 65	37 – 73	41 – 82	46 – 90	62 – 122	70 – 139	86 – 173	103 – 205	
	LEVEL VIII	17 – 32	21 – 41	25 – 49	29 – 58	33 – 65	37 – 73	54 – 107	62 – 122	70 – 139	86 – 173	
	LEVEL VII	12+ – 24	17 – 32	21 – 41	25 – 49	29 – 58	33 – 65	46 – 90	54 – 107	62 – 122	70 – 139	
	LEVEL VI	12+ – 17	12 – 24	17 – 32	21 – 41	25 – 49	29 – 58	37 – 73	46 – 90	54 – 107	62 – 122	
	LEVEL V	6 – 12	12+ -17	12+ – 20	12+ – 24	18 – 35	26 – 52	33 – 65	41 – 82	50 – 98	58 – 115	
	LEVEL IV	0 – 12	0 – 12	12+ - 17	12+ - 20	12+ – 24	18 – 35	26 – 52	34 – 68	42 – 84	50 – 101	
	LEVEL III	0 – 12	0 – 12	0 – 12	0 – 12	12+ - 17	14 – 26	18 – 35	26 – 52	34 – 68	41 – 82	
	LEVEL II	0 – 12	0 – 12	0 – 12	0 – 12	12+ - 17	12+ – 22	14 - 26	18 – 35	26 – 52	34 – 68	
	LEVEL I	0 – 12	0 – 12	0 – 12	0 – 12	0 – 12	0 – 12	12+ - 17	12+ – 22	14 - 26	18 - 35	

Sentencing Grid Proposals – Option 2

Option 2 Key Tenets:

- Uses a two-step sentencing grid process.
- Increases judicial discretion.
- Increases the offender score columns from 9+ to 10+.
- Uses current offense classifications to denote offense seriousness.
- Incorporates sentencing enhancements and aggravating and mitigating factors into sentencing discretion.
- Retains all sentencing alternatives (FTOW, DOSA, SSOSA, FOSA).

Sentencing Grid Proposals – Option 2

Option 2 Two-Step Grid:

- Step 1 – presumptive grid
 - Uses current offense classifications to denote seriousness levels. (A+, A, A-, etc.)
 - Increases offender score columns from 9+ to 10+.
- Step 2 – discretionary grid
 - If certain factors exist, judge considers them to impose an appropriate sentence.
 - Judge also considers:
 - The guidelines in the grid
 - The purpose of the SRA; and
 - The circumstances of the offense and if the sentence is reasonable.

Sentencing Grid Proposals – Option 2

Step 1 – Presumptive Grid

		Offender Score										
		0	1	2	3	4	5	6	7	8	9	10+
C l a s s	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

Sentencing Grid Proposals – Option 2

Step 2 – Discretionary Grid

		Offender Score										
		0	1	2	3	4	5	6	7	8	9	10+
C L A S S	A	1y+- Life	1y+- Life	1y+- Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life	5y-Life
	B	0-5y	0-5y	0-10y	6m- 10y	6m- 10y	1y+- 10y	1y+- 10y	3y-15y	3y-15y	4y-15y	4y-15y
	C	0-3y	0-3y	0-3y	0-3y	0-4y	0-4y	0-5y	6m-5y	6m-5y	6m-5y	9m-5y



Recommendations for Policy Changes

Community Supervision

Recommendations – Community Supervision

- Supervision should be based on Risk Need Responsivity model and not solely on offense type
 - Aim for appropriate community supervision population
 - Higher recidivism rates for individuals releasing from prison to community supervision with low or moderate risk.
 - Lower recidivism for individuals released from jail with community supervision.
 - Half of jail sentences do not receive community supervision after release.
 - Evidence-based approach tailored to the individual
- Front-load reentry services for all felony offenders being released from confinement.

Recommendations – Community Supervision

- New supervision terms should be set concurrent to prior supervision terms.
 - More than 80% of felony J&S forms do not specify the relationship of a new supervision term to a prior supervision term.
 - Supervision would focus on the initial period of transition.
 - Increases public safety by allowing enforcement of all supervision conditions of multiple supervision terms. Example: DOSA revoke cannot occur until DOSA supervision term is active.
- Encourage motivational-focused supervision.
 - Part of RNR approach
 - Referee vs Coach

Supervision officers need to become “coaches” instead of “referees.”

Dimension	Referee	Coach
1. Main Job Function	Procedural justice—apply the rules as intended	“Win”—behavioral change and improved conduct (lower recidivism)
2. Response to a Rule Infraction	“Blow the whistle” and apply the penalty	Accountability and education—learn from mistakes
3. Knowledge of Offender	Know if the person followed the rules or not	Know the person’s deficits (“criminogenic needs”) that need to be improved and strengths that can be built upon
4. Relationship with Offender	Impersonal: Authority figure who imposes sanctions	Supportive and trustworthy: Authority figure who is authoritative (“warm but restrictive”)
5. Feedback to Offender	Warnings, sanctions, and revocation	Training and encouragement: Develop skills so as to perform more successfully
6. Professional Expertise	Know and apply the rules equitably	Core correctional practices
7. Organizational Culture	Control	Human service
8. Organizational Goal	Efficiency and equity	Behavioral change and a good life

Source: Lovins, Cullen, Latessa, Lero Jonson Probation Officer as a Coach: Building a New Professional Identity. Federal Probation.

Recommendations – Community Supervision

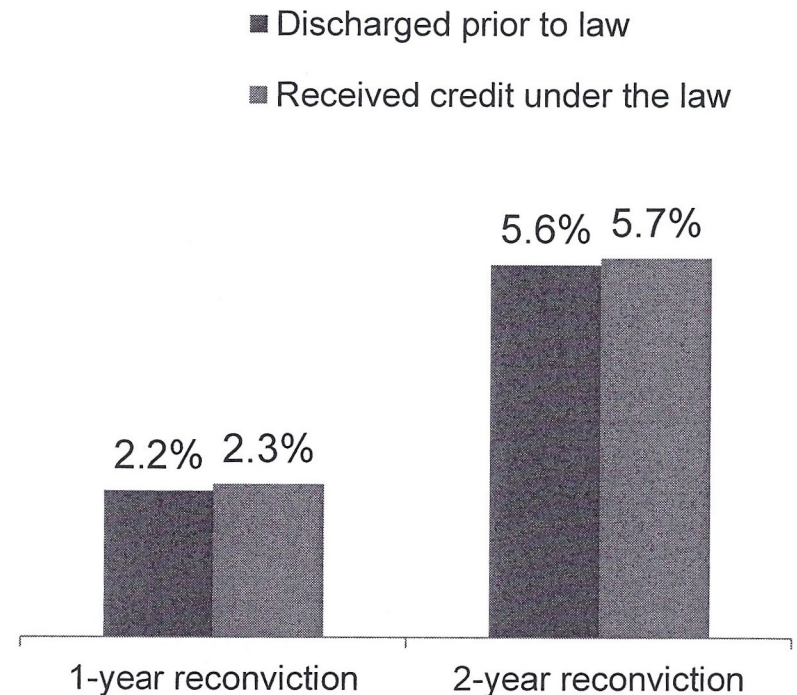
- Add behavior-based incentives to community supervision.
 - Part of RNR approach.
 - Reduce costs without impact to public safety.
 - Missouri's use of compliance credit.
- Simplify tolling of supervision terms by limiting tolling to absconders.
 - Lack of consistent tolling rules creates complexity in identifying and calculating tolling.
 - DOC does not have a reliable mechanism to track jail confinements not ordered by DOC.
- Expand DOC's range of violation sanctions.
 - Flexibility for DOC to sanction undesired behavior accordingly.
 - To include nonincarceration-based punishments.

Missouri was able to reduce supervision lengths and population while maintaining public safety.

Since instituting an earned compliance credit policy for people on supervision, the state reduced its supervised population by nearly **20 percent**.

- Credits are only available to people convicted of lower-level felonies on supervision for at least two years.
- Under the policy, probation or parole can be shortened by 30 days for every month of compliance with conditions of supervision.
- Over two-thirds of people receiving the credit were convicted of drug and property offenses.
- People on probation and parole who earned the compliance credits reduced their supervision terms by an average of 14 months.

Recidivism Rates for People on Probation and Parole Receiving and Not Receiving Earned Compliance Credits

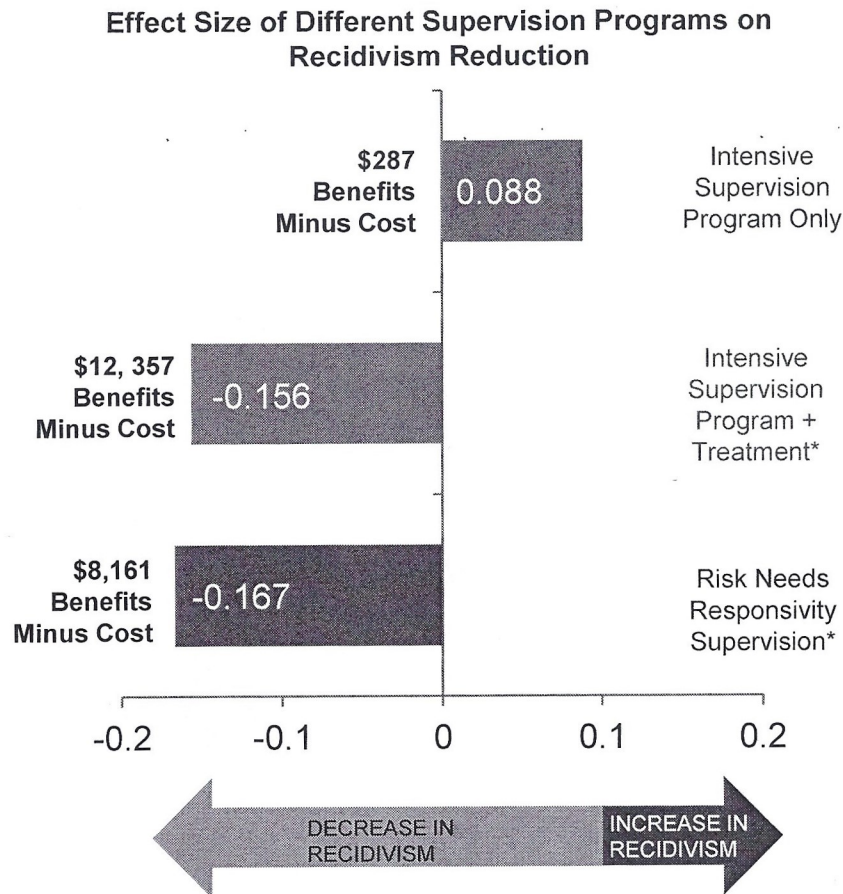


Source: Pew Charitable Trusts, *Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety*, August, 2016.

Recommendations – Community Supervision

- Supervision requirements and violation sanctions should be individualized.
 - Be based on risk and need, the undesired behavior and the circumstances.
 - According to WSIPP, using RNR to individualize supervision requirements and violation sanctions can reduce technical violations by 16% and produce a benefit (minus costs) of over \$8,000 per individual.

When applied correctly, RNR supervision strategies can reduce technical violations by 16 percent.



Characteristics of Intensive Supervision

- Surveillance focus
- One-size-fits-all approach
- Contact frequency as a key performance measure for officers
- Use of incarceration as primary sanction
- Proportionality of sanctions not prioritized
- Little consideration of criminogenic “needs”

Characteristics of RNR Supervision

- Assessing risk/needs
- Focusing on higher-risk parolees
- Balancing supervision and treatment
 - Using incentives and rewards
 - Involving offenders in process
- Responding to violations in swift and consistent manner
- High-quality CBI programming

*Technical violators only

Source: Washington State Institute for Public Policy. Benefit Cost Results: Adult Criminal Justice System. October 2018
<http://www.wsipp.wa.gov/BenefitCost?topicId=2>.

Recommendations for Policy Changes

Other

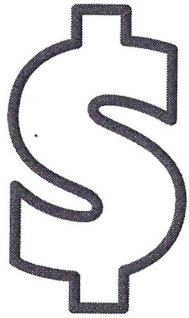
Recommendations – Other

- Legal Financial Obligations
 - The SGC supports the work being carried out by the LFO Stakeholder Consortium through the Minority and Justice Commission.
 - Encourages use of available tools, such as the LFO calculator created by the LFO Stakeholder Consortium, to assist with the computing of legal financial obligations.
- Post-conviction Review – There is wide support for a review of incarcerated individuals who have long sentences.
- Sovereign Immunity – The SGC is mindful of the effect that the waiver of sovereign immunity has on decision-making by agencies and individuals and believes this topic should be included in any SRA reform discussions.

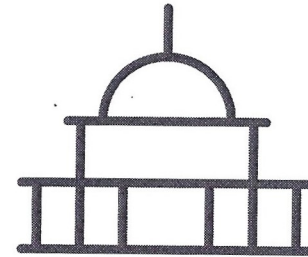
Recommendations – Other

- Sentencing Outcomes Interface - Create an interface in the justice data warehouse located in OFM to provide sentencing information.
 - Would allow judges to query records of similar cases when making sentencing decisions.
 - Would also benefit prosecutors and defense attorneys as they work on cases.
- Standard Recidivism Report - Create research position dedicated to research on recidivism of justice-involved individuals in the Washington State Statistical Analysis Center (SAC).
 - Washington does not have a standard statewide recidivism report.
 - The SAC is creating a justice data warehouse and all records will be linkable to the P20W (education data warehouse) data, thus providing a data-rich source for studies.
- Full-time SGC Staff – Increase the FTE allocation to the SGC to 1 FTE.

The Choices – One Formulation



Currency of
Accountability



Locus of
Decision-making

Thank you for the Opportunity

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